

691
1917

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,	} On Error to Union Oyer and Terminer.	10
Defendant in Error,		
vs.		
CAMILLO CRIVELLI,		
Plaintiff in Error.		

BRIEF FOR PLAINTIFF IN ERROR.

ABSTRACT OF THE CASE.

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Camillo Crivelli, the plaintiff in error, was indicted and charged with having murdered his wife, Annina Crivelli, by giving to her laudanum, on March 22d, 1915, at the Borough of Linden, County of Union.

Crivelli was married to his wife in Italy, eight years before March, 1915. Two years after his marriage he came to this country alone, settling in Pennsylvania for a short time. Then he came to this State, and finally established himself in Linden, where he was employed by a construction company.

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In May, 1914, he became engaged in the ice business at that place. While so engaged he became acquainted with one Emma Meyer, who lived in Linden with her husband, and took meals at the Meyer house for a time.

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In November, 1914, he sent for his wife and six-year-old daughter, procuring passage for them with his own money, through a Philadelphia banker. The steamship tickets were sent to them by him, together with the necessary documents required by the Italian government, in order to obtain passports and permission for them to leave the Kingdom of Italy.

10 In March, 1915, Crivelli went to Philadelphia and waited there a week for his wife and daughter to arrive. On March 15th or 16th, 1915, his wife and daughter were received by him at Philadelphia, where they remained for a day or two visiting relatives and friends and making purchases (p. 187). After a visit to a brother-in-law, in Trenton, they all came to his home at Linden.

20 On the morning of March 22d, 1915, Crivelli made preparations to go on his route to serve customers with ice (pp. 188-189). His wife assisted him while he harnessed a horse to a wagon, and upon going into the stable, at his request, to procure a blanket (p. 190), she complained to him that another horse, which was in the stable, had kicked and injured her. They entered the house and had coffee together. He put some whiskey in his coffee and put a little in hers also (p. 191).
30 He then went out to serve his customers. When he returned, in the afternoon, he found his wife upstairs in bed suffering from menstruation. He suggested sending for a doctor (p. 193). She would not permit the calling of a doctor and stated to him that she had taken, during his absence, some of the stuff he had given her in the morning (p. 193). He then went to call a doctor.
40 On his way out he removed some bottles from a

closet in the dining room and threw them out, fearing that his wife might want to take some more whiskey and mistake one bottle for another. He left in the closet the beer bottle containing the whiskey which he had put in their coffee that morning. This bottle was taken by the prosecutor's detectives (p. 155), but was not produced. He went to the office of John Molsen and there requested young Mr. Molsen to telephone to Dr. Huff (p. 195). It was then after 2 P. M. He proceeded to the blacksmith's where he had a horse shod. 10

He returned to his house to wait for the doctor. At 4.30 P. M. he called in a neighbor, one Mrs. Balding. At 5 o'clock he went out to again summon the doctor. The doctor came after six (pp. 13-197). Upon examination the doctor pronounced the woman dead. 20

Dr. Huff requested Crivelli to accompany him to a telephone, and together they notified Dr. Wescott, the county physician. Dr. Wescott came the next day, March 23d, 1915, and after making out a certificate permitting the burial of the deceased, notified the prosecutor's office. Crivelli was taken into custody on the afternoon of March 23d, 1915.

Dr. Wescott testified that he made an autopsy of the body of Annina Crivelli on March 23d, 1915, and that he could not say, from the autopsy, what caused death (p. 35). 30

The stomach and its contents were delivered to Dr. Garhardt, who testified that he made a chemical analysis of the stomach which showed the presence of opium (p. 74). Mr. Foster, another chemist, testified that he made a chemical analysis 40

of the stomach contents (p. 79), and that as a result of said analysis he obtained a morphine residue or extract of a little over one and one-quarter grains of morphine residue, the total found by himself and Dr. Garhardt would not cause death in every case (p. 86).

10 In the effort to connect Crivelli with the homicide the State relied entirely upon circumstantial evidence. It consisted mainly of evidence of the sexual relations between Emma Meyer and Crivelli which had ceased about five months prior to the death of Annina Crivelli (p. 122). It was claimed by the State that the proof of sexual relations justified an inference that Crivelli desired to kill his wife.

20 At the trial it was contended, in behalf of Crivelli, that all evidence of the sexual relations should be excluded, and that evidence relating to an alleged assault upon one Meyer in the latter part of 1914 should also be excluded, and also the testimony of the various witnesses as to the amount of grief exhibited by the defendant should be excluded, and also that certain portions of the experts' testimony should be excluded.

SPECIFICATION OF ERRORS.

30 1. The admission of evidence relating to an injury inflicted upon a Mr. Meyer in 1914.

Exception, p. 17.

Assignment No. 1, p. 256.

Specification of causes, Nos. 2 and 3, p. 262.

40 2. The admission of evidence of a mere suspicion on the part of the physician assisting in performing the autopsy.

Exception, p. 53.

Assignment No. 3, p. 256.

3. The admission of hearsay evidence.

Exception, p. 79.

Assignment No. 3, pp. 256 and 257.

Specification of causes, No. 4, p. 263.

4. The admission of the testimony of William Foster as to the quantity of morphine or laudanum that was likely in the system or in the stomach prior to death. 10

Exception, p. 82.

Assignment No. 4, p. 257.

Specification of causes, No. 4, p. 263.

5. The admission of the testimony of Etty Ludka, as to what was said to her by the plaintiff in error. 20

Exception, p. 94.

Assignment No. 5, p. 257.

Specification of causes, No. 2, p. 262.

6. The admission of the testimony of Lucy Balding, as to the degree of grief exhibited by the plaintiff in error.

Exception, p. 109. 30

Assignment No. 6, p. 257.

7. The admission of evidence of the sexual relations between the plaintiff in error and Emma Meyer.

Exception, p. 121.

Assignment Nos. 7 and 8, pp. 257 and 258.

Specification of causes, No. 1, p. 262. 40

8. The admission of this question, on direct examination, of Dr. Victor Mravlag, called as an expert.

Q. "Let us say a person will take four grains of morphine in a solution, what portion of it would likely be absorbed through the system?"

Testimony of Dr. Mravlag, p. 161.

10 Exception, p. 162.

Assignment No. 9, p. 258.

Specification of causes No. 4, p. 263.

9. The admission of the testimony of Dominico Giordano, in rebuttal, as to what plaintiff in error said to him.

Testimony of Dominico Giordano, pp. 238 and 239.

20 Exception, p. 240.

Assignment No. 10, p. 258.

Specification of causes, No. 1, 262.

10. The charge of the Court substantially as follows: "Can you, from this evidence, say that this woman's death came from that kick, if she was kicked?"

30 Charge of the Court, p. 247.

General exception, p. 253.

Assignment, No. 11, p. 258.

Specification of causes, No. 9, p. 263.

11. The charge of the Court substantially as follows: "Was the defendant liable on the other branch of the case? Did, he, in other words, give his wife this poison? You have heard his own testimony to start with, that his wife was up in the

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morning, that she went into the barn, she came out and said she had been kicked in the side, they went in and had breakfast, and then he put some whiskey in her coffee. She did not want it, but he insisted on putting it in. That shortly after that she went upstairs and went to bed, to lie down. You have heard the testimony of the physicians, as I recall it, saying that the toxic effect of this laudanum would begin to show itself in about thirty minutes, a person would not be entirely overcome, but they would begin to be drowsy. That woman lay in bed all day and died at six o'clock at night. Was it the result of anything that was put in that coffee that morning? What is the reasonable inference that men of good judgment will draw from such a situation?" 10

Charge of the Court, p. 250.

General exception, p. 253. 20

Assignment No. 12, pp. 258 and 259.

Specification of causes, No. 5, p. 263.

12. The charge of the Court substantially as follows: "He says there was whiskey in a particular bottle. You must remember that this woman was in bed, afflicted with something that made her so ill that she went to bed early in the morning. There is no proof that she ever went downstairs and took anything, except what this defendant testifies to that she said to him. Thereafter he went downstairs, as he says, and took these bottles and some others, fearing she would make a mistake and take something she ought not to take, and he threw them out, apparently empty, according to this evidence. Does that strike you as a good excuse for putting these bottles out, if there was nothing in 30
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the bottles, if they were empty, nothing in them she could take, what would be the danger that he apprehended?"

Charge of the Court, pp. 251 and 252.

General exception, p. 253.

Assignment, No. 13, p. 259.

Specification of causes, No. 8, p. 263.

- 10 13. The charge of the Court substantially as follows: "If that testimony raises in your minds any reasonable doubt, or the whole case taken together, the State's case, raises a reasonable doubt of the defendant's guilt, he is entitled to the benefit of it. That is the law of the land. But if no such reasonable doubt exists in your minds, then it is your duty to render such a verdict as the evidence in this case leads you to, but you must be satisfied
- 20 of the defendant's guilt beyond a reasonable doubt if it is a verdict of guilty."

Charge of the Court, pp. 252 and 253.

General exception, p. 253.

Assignment No. 15, pp. 259 and 260.

- 30 14. The omission to charge plainly and distinctly that the jury was not to take the opinion of the Court, or the argument of the Court, as conclusive.

General exception, p. 253.

Specification of causes, No. 9, p. 263.

- 40 15. The charge of the Court in answer to a question asked by the jury after some deliberation, upon their return to the court room, substantially as follows: "Gentlemen I have received a communication from the jury, and in the performance of my

duty I cannot have any private communication with the jury. What I must say must be said openly. Suppose you ask me the question that you want me to answer."

The Foreman: Is there any direct evidence that the drug was administered by Roosi?

The Court: That is the first question?

The Foreman: Yes, sir.

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The Court: "As to that question, that is a question of fact, depending on the evidence, which the jury must find. You heard the testimony of Mr. Galation, who says that the defendant admitted to him, in the presence of these other persons, that he did give his wife some of the contents of this large bottle, which the State claims contained opium and whiskey. The defendant denies that he put it in. So you see it is a question of fact entirely for the jury. You have the evidence of Mr. Galatian of his admission that he did it, and also his denial." What is the other question?

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Charge of the Court, pp. 253 and 254.

Exception, p. 254.

Assignment No. 16, p. 260.

Specification of causes, No. 6, p. 263.

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16. The charge of the Court in answer to a question asked by the jury after some deliberation, upon their return to the court room, substantially as follows: The Foreman: The other question is must we accept circumstantial evidence?

The Court: "You must accept, of course, all evidence, circumstantial evidence is evidence of facts from which the existence of other facts may

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be inferred. Sometimes circumstantial evidence is the strongest kind of evidence, because if there is a congeries of facts that lead only to one conclusion, they may all be circumstantial—when I say facts, I mean circumstances that lead to but one conclusion, and putting them together, if you followed that you could not reach any other conclusion. Whereas the testimony of an eye witness might be based on a mistake. The notion that circumstantial evidence, that is the question you asked me, ought not to be accepted, is erroneous. It is a question of what you believe of that testimony. Are there any other questions you would like to ask?"

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Charge of the Court, p. 254.

Exception, p. 254.

Assignment No. 16, p. 260.

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Specification of causes, No. 7, p. 263.

BRIEF OF ARGUMENT.

The following points, covered by the various assignments of error and specification of causes, are urged in behalf of the plaintiff in error.

POINT I.

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The testimony of Dr. Huff, that he was called to attend a Mr. Meyer and the statement of the Prosecutor of the Pleas, made in the presence of the jury, that the occasion of the call of Dr. Huff was because a murderous assault had been made by the plaintiff in error upon Meyer, through jealousy, was clearly irrelevant and tended to prejudice the jury.

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That the evidence was incompetent, even if the State could prove all that was asserted, is obvious.

Yet the statement was made in the presence of the jury to be the fact.

The jury were told that the accused had, months before the death of his wife, committed a murderous assault on Meyer because of jealousy, although the undisputed facts also show that there had been no illicit relations by the plaintiff in error with Mrs. Meyer, of recent occurrence.

In *People vs. Wolf*, 183 N. Y., 464, the Court said:

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"Of what use is the rule that jurors must not listen to conversations out of court in relation to the case, or read newspapers containing an account of the transactions involved, if the District Attorney, with all the influence of his official position, is permitted to make statements of facts to them in court which it is the very object of the rules of evidence to exclude from their consideration."

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The Court further said:

"It is true the District Attorney was not allowed to prove his prejudicial assertions, but he told the jury he could prove it."

Without doubt the jury regarded the evidence of the doctor and the statements of the Prosecutor as proof of the guilt of the accused.

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In *Schaffner vs. Commonwealth*, 72 Pa. St., '60, in speaking of the question of whether such evidence is admissible the Court said:

"The benefit of the doubt should be given the prisoner instead of suffering the minds of the jurors to be prejudiced by an independent fact, carrying with it no proper evidence of guilt."

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In *State vs. Dickerson*, 77 Ohio St., 34, it is held that in order to justify such proof "It must be so related with the crime charged as to have a logical connection therewith."

In *Commonwealth vs. Jackson*, 132 Mass., 16, the Court said:

10 "The objections to admission of evidence as to other transactions, whether amounting to indictable crimes or not, are very apparent. Such evidence * * * raises a variety of issues and thus diverts the attention of the jury from the one immediately before it, and by showing the defendant to have been a knave on other occasions, creates a prejudice which may cause injustice to him."

People vs. Molineux, 168 N. Y., 293.

20 *People vs. Flanigan*, 42 App. Div. 318.

People vs. Thompson, 212 N. Y., 251.

People vs. Romano, 84 App. Div. 320.

The prosecution cannot show the prisoner's bad character by proving particular acts.

State vs. Lapage, 57 N. H., 245.

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POINT II.

There was no proof in the case showing the cause of death.

The testimony of the chemists to the effect that parts of the body not examined by them probably contained tincture of opium sufficient to cause death, was based as it appears, on mere imagination. Excluding this conjecture of the chemists,

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the evidence then will clearly show that there was

an insufficient quantity of opium or morphine or laudanum found to cause death. It will be remembered that in this case the physicians and chemists testify from what knowledge they obtained from the post mortem examinations. Not one of them was acquainted with the symptoms exhibited by the deceased before death. There was no evidence to support the theory that the physicians and the chemists based their testimony upon frequent examinations made by themselves or others. Mrs. Crivelli's death may have been caused by something she had taken to alleviate pain during her menstrual period. The mere probability that the other parts of the body may have contained sufficient morphine to cause death is not sufficient in law to sustain the charge of murder. 10

POINT III.

The evidence of sexual relations, testified to by Mrs. Meyer, should have been excluded. 20

In this case the plaintiff in error could not marry Mrs. Meyer. She was already married and living with her husband. Furthermore long before Crivelli sent for his wife and long before her death the relations between Crivelli and Mrs. Meyer had ceased. According to the theory of the prosecution Crivelli sent for his wife and daughter to come to him in this country for the deliberate and fixed purpose of murdering his wife after she came. Why does the prosecution say he did this? The only answer is because he had previously had sexual intercourse with Mrs. Meyer while his wife was in Europe. 30

Such evidence is sometimes competent for the purpose of proving motive, but what motive could it tend to prove in this case? If Crivelli had de- 40

sired to continue any illicit relations with Mrs. Meyer, why bring his wife over to America? Besides, as before stated, Mrs. Meyer was married and there was no pretense that she would have married Crivelli, so this evidence should have been excluded as irrelevant, incompetent and too remote to show any motive.

- 10 “Circumstantial evidence may be excluded by reason of the general principle that the probative usefulness of the evidence is more than counterbalanced by its disadvantageous effects in complicating and confusing the issues before the jury, or in creating an unfair prejudice in excess of its legitimate probative weight.”

Wigmore on Evidence, Par. 1904.

- 20 The Court did not take into consideration the possible prejudice that might be caused or the confusion that might arise because the Court in charging the jury did not point out to them that Crivelli was not being tried on a charge of having had sexual intercourse with Mrs. Meyer but to the contrary, the Court said to the jury in the charge (p. 248): “The State claims that the motive which this man had in getting rid of his wife was that he
- 30 might enjoy the person of Mrs. Meyer, the person with whom she said he had been intimate for a long time. If you believe that, if you believe that this man was intimate with Mrs. Meyer * * * you may consider, whether the encumbrance of a wife would interfere with his intimacy with this woman to such an extent that it would be an inducement to him to get rid of her.

- 40 What makes the theory of the prosecution inconsistent, and at the same time shows clearly the

fallacy of the alleged motive, is that Crivelli knew that Mrs. Meyer preferred Meyer to him; that he knew that she would not even meet him and, as above stated, the evidence showed that she had not had intercourse with him for months. Hence the idea that the motive for Crivelli murdering his wife was because he desired to have sexual relations with Mrs. Meyer and that he sent for his wife, using his own savings, for the purpose of killing her, when it appears that Mrs. Meyer had completely broken with him, is neither reasonable nor logical. The alleged motive was of no consequence.

POINT IV.

It was error to permit the witness, Dominico Giordano, to testify in rebuttal, as to an alleged conversation with Crivelli, merely for the purpose of attacking the credibility of the plaintiff in error in reference to a collateral fact.

As set forth, at length, in the preceding point the evidence in the case reveals that the proof does not show motive in the slightest degree. Not only had the prosecution in this case introduced incompetent and prejudicial evidence of Crivelli's sexual relations with Mrs. Meyer while his wife was in Italy, but not satisfied with the proof offered against him the prosecutor put the question directly to the defendant at p. 223. Q. Did you ever say to Dominick Giordano "of all the women I have known or slept with, I never had pleasure as I did with Mrs. Meyer, it is a pleasure that I cannot forget." The express purpose was to impeach him if he denied the conversation (p. 225). At p. 238, the State called Giordano to impeach the defendant's answer to the question put by the Prosecutor of the Pleas. Upon objection to it the Court stated as follows at p. 239:

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"If this testimony is true it tends to prove that the defendant, as a witness, testified falsely. To that extent it would effect the credibility that a jury would be likely to give to his testimony."

10 Here is a man on trial for his life for murder. Proof is offered of other reprehensible acts. The prosecutor demands that he admit them. So he denies them. Then the prosecutor is permitted to offer proof to show that he is a perjurer and has testified falsely. The incompetency and the inadmissibility of the evidence, for the purpose specified by the Court, is elementary.

20 The rule is that if a question as to a collateral fact be put to a witness for the purpose of discrediting his testimony or impeaching it by contradicting him, his answer in such case must be taken as conclusive, and no evidence can be afterwards admitted to contradict it.

Stark. Ev. 484.

Bullock vs. State, 36 Vr. 557.

State vs. Hendrick, 70 N. J. L. 41.

POINT V.

30 There was no evidence in the case to support the argument of the Court, in its charge to the jury, that the plaintiff in error probably administered poison to his wife when he admittedly put whiskey in her coffee on the morning of March 22nd, 1915.

The Court delivered to the jury what is deemed to be an argument as to whether poison was administered by the plaintiff in error.

40 The Court said substantially as follows at p. 250, l. 27:

“Did he in other words give his wife this poison? You have heard his own testimony to start with, that his wife was up in the morning, that she went into the barn, she came out and said she had been kicked in the side. They went in and had breakfast, and then he put some whiskey in her coffee. She did not want it, but he insisted on putting it in. That shortly after that she went upstairs and went to bed, to lie down. You have heard the testimony of the physicians, as I recall it, saying that the toxic effect of this laudanum would begin to show itself in about thirty minutes, a person would not be entirely overcome, but they would begin to be drowsy. That woman lay in bed all day and died at six o'clock at night. *Was it the result of anything that was put in that coffee that morning? What is the reasonable inference that men of good judgment will draw from such a situation?*”

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Crivelli testified that he had some whiskey in a beer bottle and that he had put the whiskey in said beer bottle, taking it from a jug or a big jar (p. 191, l. 20). That on the morning of March 22nd, 1915, he poured some whiskey into his coffee *from said beer bottle* and, at the same time, put a few drops of the whiskey in his wife's coffee also *from said beer bottle*. It was not proven that the beer bottle contained any laudanum or any poison besides whiskey. No analysis of the contents of said beer bottle was proven, although that bottle was pointed out, by Crivelli, to the prosecutor's officers on March 23rd, 1915, and taken by them and was in the possession of the prosecution at the time of the trial (p. 155, l. 20).

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It is respectfully urged that the evidence on this point did not warrant any such charge by the Court whereby it pointed out, erroneously, the guilt of the accused. Although comments and expressions of opinion, *upon the testimony*, in charging the jury are not legally erroneous, the contention made here is that there is no testimony in this case to support the Court's argument.

- 10 Likewise there is no testimony tending to show that the bottles thrown out by Crivelli were empty at the time he threw them out, and the Court's argument in reference thereto was unsupported by the evidence (12th assignment).

POINT VI.

- 20 **There is no direct evidence that the drug was administered by the plaintiff in error.**

Direct evidence differs from circumstantial evidence; in the former witnesses testify directly of *their own knowledge* of the main fact or facts to be proven; while the latter is the proof of certain facts and circumstances in a given case, from which the jury may infer other connected facts which reasonably follow according to the usual order of things.

- 30 After the jury had retired to consider the verdict, they returned into Court and asked this question: "Is there any direct evidence that the drug was administered by Roosi?" (meaning Crivelli). The answer of the Court to the foreman was, in effect, in the affirmative.

- 40 At this particular stage of the case the Court took a part of defendant's story as to giving his wife whiskey, and rejected the rest of defendant's story;

the Court overcame the rejected part by what the State "claimed" about the bottles; and by that process argued to the jury that there was direct evidence showing that Crivelli administered the drug. It embodied a vital question in the case and is in fact the whole case. The answer should have been in the negative.

It was error to call attention to any particular fact and indicate its importance. 10

Commonwealth vs. Delaney, 29 S. W. 616.

In re Knox, 123 La. 24.

In *Commonwealth vs. Gray*, 30 S. W. 1015, it is said:

"It is error to single out any evidence and direct special attention of the jury to it."

In *Commonwealth vs. Haurrigan*, 89, Ky. 305, the Court said: 20

"It is improper to instruct specially as to mere matters of evidence already before the jury and thus give undue prominence."

Weiss vs. Beth Iron Co., 31 C. C. A. 363. 88 Fed. 23.

POINT VII.

The answer of the Court to the question asked by the jury as to circumstantial evidence, in effect, charged them to accept such evidence as being true. 30

The jury had retired and some hours after the submission of this cause to them they returned into Court and asked the question: "Must we *accept* circumstantial evidence?" To which the Court answered (p. 254): "You must accept, of course, all evidence, circumstantial or otherwise." 40

Here the jury were unable to agree, and manifestly in great doubt, and the Court dwells upon the value of circumstantial evidence. In answer to the bare question the jury is told that they "must" accept circumstantial evidence. The Court did not say to the jury that circumstantial evidence must be received and considered, but that *they must accept such evidence*. The jury evidently desired to know what weight should be given to circumstantial evidence, for the question clearly indicates that they had already considered it. What they wanted to know was whether or not they should take the circumstantial evidence in this case to be true. It is contended that the answer of the Court misled the jury and thereby induced the jury to take the circumstantial evidence and accept it as being absolutely true, which they might not have been willing to believe if the Court had left the question open to them to decide.

In *People vs. Leonardi*, 143 N. Y. 360, the conviction was reversed on the charge alone, although there was not in fact an error, but the Court deemed that the jury "may have been misled."

CONCLUSION.

The foregoing points are considered as the most important, and I have deemed it my duty, in behalf of the plaintiff in error, to set them forth at length.

I am of the opinion that there is merit in some of them sufficient to lead to a reversal of the judgment of conviction.

Respectfully submitted,

J. VICTOR D'ALOIA,
Attorney for Plaintiff in Error.

New Jersey Court of Errors and Appeals

THE STATE OF
NEW JERSEY,
Defendant in Error,

vs.

CAMILLO CRIVELLI,
Plaintiff in Error.

IN ERROR.

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BRIEF FOR DEFENDANT IN ERROR.

The defendant was tried in the Union County Court of Oyer and Terminer in the May Term, nineteen hundred and fifteen, on an indictment charging him with the murder of his wife. The murder was committed by means of poison administered by the defendant and the motive which prompted the commission of the crime, as shown by the case, was the defendant's infatuation for a Mrs. Meyer. The defendant was convicted of murder in the first degree. 20

The first assignment of error is directed to the ruling of the Court "permitting Dr. H. Page Huff to answer the Prosecutor's question regarding an assault upon one Meyer, occurring some months prior to the death of the deceased." 30

It is sufficient to say that no such question was put by the Prosecutor or any evidence given by the witness regarding an assault upon Meyer.

The second assignment of error complains of the following question put to Dr. Monger: "Was there anything that you suspected from the condition of this brain and the blood?" The answer to the question was stricken out as not responsive. Case pa. 53 Li. 22. 40
The question was then repeated and the witness an-

swered: "Why, yes. Poisoning." There was no objection to the question as finally put to the witness or to the answer he made.

It will be observed that Dr. Monger was the physician who performed the autopsy. He testified that there was nothing from an external examination of the body that indicated a cause of death. Case pa. 51 Li. 20 to 30. He also testified that an autopsy revealed nothing that indicated the cause of death. Case pa. 52 Li. 20 to 40. The witness further testified that: "Not
10 finding any general cause of death he thought it advisable to remove the stomach with its contents for examination." Case pa. 53 Li. 10.

The brain being congested and an abnormal quantity of fluid blood being present prompted the doctor to remove the stomach and its contents. Case pa. 53 Li. 1 to 10. The doctor evidently suspected a cause of death and the question put to him was for the purpose of ascertaining what was the cause, and he stated: "Poisoning." Consequently there can be no error in
20 this assignment.

The third assignment of error questions the ruling of the Court in permitting Dr. Foster to testify that certain jars contained a liquid "which was said to be" the stomach contents of the wife of the defendant. The language complained of was harmless in view of the fact that **before** Dr. Foster had been called upon to testify the fact had been established that the jar marked "P 2" contained the stomach contents of the deceased. (See testimony of Dr. Garhart, Case pa. 69
30 Li. 35.) So that when Dr. Foster referred to Exhibit P 2, using the language "which was said to be," the stomach contents, it was of no consequence, in view of the fact that the exhibit referred to in such manner had already been established by competent testimony that it did, in fact, contain the stomach contents.

The fourth assignment of error complains of the following question asked of the witness: "Can you form any idea, from your experience as a chemist, as to the quantity of morphine or laudanum that was likely
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in the system of that person or in the stomach prior to death?"

Dr. Garhart, one of the physicians called by the State, testified that from an examination he made of the stomach he found one grain of morphine which is one of the main alkaloids of opium, and that morphine, opium or laudanum are one and the same thing except that the laudanum is a solution. Case pa. 74 Li. 10 to 30.

Dr. Foster testified that he saw the morphine alkaloids which Dr. Garhart got in the solid condition amounting to about one grain. Case pa. 81, Li. 515. 10

The witness also testified that he made an analysis of the stomach contents and extracted a little over one and one-quarter grains of morphine. Case pa. 80 and 81.

With these facts in evidence, and known to Dr Foster, who participated in the examination, the question complained of was a fair one because the doctor was, therefore, able to tell that, in his opinion, "there was a large quantity and considerably larger than was found." Case pa. 83, Li. 1 to 10. 20

The fifth assignment of error is because the Court permitted the Prosecutor to ask the following question of the witness Etty Lutka: "Do you recall Tom coming to your store one day to talk about — and his talking about Mrs. Meyer?" The answer was: "He never did." Case pa. 94, Li. 10. The answer being in the negative did no harm and, therefore, the question complained of became of no value for the State or prejudicial to the defendant. 30

The sixth assignment of error is directed to the Court's ruling in permitting the witness, Lucy Balding, to testify as follows: "He just made a little move. He didn't seem to care much." The motion was to strike out the answer, and was entirely too broad. The Court would not be justified in striking it out, because the first half of the answer was absolutely proper and the second half, although not directly responsive, was, nevertheless, competent evidence. 40

The witness saw the defendant, and from what she saw of his conduct, to use her language, "He didn't seem to care much." She was testifying of her own knowledge. It was her opinion, and was expressed on a subject not involving science, skill or trade and was, therefore, beyond question, competent evidence. Greenleaf on Evidence, Vol.1, section 440; Steven's Digest of Ev. (second edition), pa. 176 and 177, and cases cited.

10 The seventh assignment of error is because the Court permitted the Prosecutor to ask of the witness, Emma Meyer, the following question: "Were you ever intimate with Tom Rossi?" The answer was: "Yes." Following the answer the objection was interposed that the question connected or involved the defendant with another crime. In explanation of this it may be said that on the trial of this indictment the State contended that there was a motive for the crime, namely, that because of the affection and regard the defendant entertained for the witness he, the defendant,
20 to be free from his wife, and to enjoy the society of Mrs. Meyer (the witness) poisoned his wife. In the light of such motive, the question had a tendency to elicit a fact establishing motive. Such testimony was competent as was the question, even though it did, in fact, involve and connect the defendant with another crime.

The eighth assignment of error is because the Court permitted the Prosecutor to ask the witness, Emma Meyer, the question as follows: "Did you ever have
30 sexual intercourse with him?" What has been said in answer to the seventh assignment of error applies with equal force to this one, inasmuch as such question was helpful in eliciting evidence establishing the motive which the State contended existed. It being the State's contention that the crime was committed by reason of the love and affection entertained by the defendant for this witness.

The ninth assignment of error raises the propriety of the Court's ruling in permitting the Prosecutor to
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ask of Dr. Victor Mravlag the question: "Let us say a person will take four grains of morphine or opium in a solution, what portion of it would likely be absorbed through the system," The answer was: "No, I cannot." The doctor being unable to answer the question, made the question complained of, standing alone, harmless, and without resultant prejudice to the defendant.

The tenth assignment of error complains of the following question, put to the witness, Domenico Giordano, in rebuttal: "Did Tom Rossi say to you in Linden, of all the women that I have known and slept with, I never had pleasure as with Mrs. Meyer; it is a pleasure that I cannot forget." 10

As to this assignment, "every witness under cross-examination, in any proceeding, civil or criminal, may be asked whether he has made any former statement relative to the subject matter of the proceeding, and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not distinctly admit that he has made such statement, proof may be given that he did; in fact, make it." Steven's Digest of Ev. (second edition) pa. 327. 20

The defendant, on his cross-examination, denied that he made the statement to the witness, Giordano. Case pa. 223, Li. 1 to 10. This was not a collateral matter, but a statement of fact relative to the subject matter of the trial, as bearing out the State's contention of motive for the crime. 30

It may also be said that the question raised by this assignment was discretionary with the Court to allow it or not. And, in doing so, there was no abuse of that discretion. State vs. Skillman (N. J. Supreme Court) 70 Atlan. Rep. 83, affirmed 76 Atlan. Rep. 1073.

The eleventh, twelfth, and thirteenth assignments will be treated together.

Eleventh assignment. Because the Court erroneously charged the jury as follows: "Can you, from 40

the evidence, say that this woman's death came from that kick, if she was kicked?"

There is no specification of this as a cause for reversal.

Twelfth assignment. Because the Court erroneously charged the jury as follows: "Was the defendant liable on the other branch of the case? Did he, in other words, give his wife this poison? You have heard his own testimony to start with, that his wife was up in the morning, that she went into the barn, she came out and said she had been kicked in the side, then went in and had breakfast, and then he put some whiskey in her coffee. She did not want it, but he insisted upon putting it in. That shortly after that she went upstairs and went to bed, to lie down. You have heard the testimony of the physicians, as I recall it, saying that the toxic effect of this laudanum would begin to show itself in about thirty minutes, a person would not be entirely overcome, but they would begin to be drowsy. That woman lay in bed all day and died at six o'clock at night. Was it the result of anything that was put in that coffee that morning? What is the reasonable inference that men of good judgment will draw from such a situation?"

I quote from the testimony, case page 189, commencing at line 23, of the defendant, Tom Crivelli, on his direct examination:

Q. What happened that morning at that time? A. Well, I went to hitch up the bay horse. Q. Yes; then what happened? A. And my wife come in outside and I will ask my wife, please go in stable and get that blanket behind the grey horse. He said for me not. Q. What? A. He was not. No one to go. I ask her please, I don't want to stay too late, because busy day. I want to put ice in and don't want to get too late. She went. Q. Then what happened? A. She went, and when he went in the stable and I standing twenty foot far in the door right close to the fence, he hollers. Q. Who hollered? A. My wife.

And at case page 190, commencing line 23:

Q. Then what happened? A. He was for me and ask him what is the matter; said, horse kick. Q. Then what? A. Well, I said the horse kick. I say I never see very much, some horse when he stands too long was kind scared anybody come in the barn. Q. Then what did she do? A. And then I ask myself are you sure the horse kick? Said yes. I said, go call the doctor. Said no. I say why. Because I can't speak

And at case page 191:

Q. You took her by the arm and took her inside? A. Yes, sir. Q. Where did you go inside? A. After I 10
went kitchen she stand the side door, stand up side door, behind the stove, between the stove and the dining room, and myself I went to pour the coffee from the stove in the kitchen table. Q. How many cups were put on the table. A. I will take two cups out of the closet in the kitchen. I put in coffee. Q. You put what in the cups? A. The coffee. Q. For whom. A. For me, for her. Q. What did you do after you put the coffee in the two cups? A. I went dining room, and I was use little whisky in winter time, and put in 20
the coffee myself. Q. Yes. A. I went in dining room I will have bottle, whiskey bottle. Q. Yes. A. Bottle of whiskey was first bottle was supposed to be beer bottle. Q. First bottle had been a beer bottle? A. Yes. Q. And it had whiskey in it? A. Yes, sir. Q. Who put that whiskey in? A. Myself. Q. Where did you get the whiskey? A. I will take out of the jar, the big jar. Q. Out of the jar? A. Yes, sir. Q. What did you do when you took that beer bottle with the whiskey in it? A. Well, I put in my cup, and I 30
will ask her have a little them in. That very good, drink a little, it will do good, the whiskey. Say no, I know like, I no like the smell; I no put in much a little, grab the bottle and put in about four or five drops.

And at case page 192, we find, commencing at line 12:

Q. Did she take her coffee? A. Yes, sir. Q. Where did you go then? A. I will go ice. Q. You went to get your ice? A. He told me, no stay too late. Q. She says, don't stay too late? A. Yes, sir. Then fol- 40

lows his testimony that he served twelve customers with ice and that he got back to the house at 12.30. Found no one downstairs but his little girl.

Then at case page 195, appears the defendant's testimony, on direct examination, to the effect that he saw his wife again later in the day, after he had told John Molson to telephone for a doctor, and at line 23: Q. After the telephone message to the doctor, where did you go? A. I went to the house. Q. What did you do there? A. I went ask my wife she is feeling.
10 Q. And what did she say? A. Say, I feel pretty bad. I said, the doctor be pretty soon; I going take the horse in the blacksmith; I will be back soon. And at line 34: Q. What time did you come back? A. I will come back; I was talk to the blacksmith about quarter of an hour.

And then his testimony that he went upstairs again to see his wife and at case page 196, "and I ask what you feel. Said, pretty bad; I want to call Mrs. Molson: Q. You went to call Mrs. Molson? A. No; Mrs.
20 Balding; and at line 11: Q. What time was it when you called in Mrs. Balding? A. Half-past four; and then follows testimony showing that Mrs. Balding came there and at case page 197, appears the testimony of what the doctor said to him. Commencing at line 30: A. He said I am going to surprise you. He said, wife dead. I say what? Your wife dead. I droop down and calm myself. Q. You droop where? A. To calm myself.

And in the testimony of Dr. Ray T. Munger, case
30 page 63, upon cross-examination, commencing line 24:

Q. How long after the introduction of that opium in the stomach and the absorption commences would it be for the toxic effect to begin? A. Depends upon the size of the dose. **Ordinarily in thirty minutes you ought to begin to see toxic effects.** And at the bottom of the same page: Q. Yes, thirty minutes after what would be the toxic effect that you say that would take place thirty minutes after taking the poison? A. Why,
40 she would possibly become drowsy, if her dose was

large enough. Continued at case page 64: Q. A state of coma, would it produce? A. Not in that short time. Q. But she would become **drowsy** or semi-conscious? A. I would say **drowsy** in thirty minutes.

The portions of the Court's charge complained of in the assignments is thus shown to contain an accurate recollection of the testimony offered by the defendant and physicians.

Thirteenth assignment. Because the Court erroneously charged the jury as follows: "He says there was whiskey in a particular bottle. You must remember that this woman was in bed, afflicted with something that made her so ill that she went to bed early in the morning. There is no proof that she ever went downstairs and took anything, except what the defendant testifies to that she said to him. Thereafter he went downstairs, as he says, and took these bottles and some others, fearing she would make a mistake and take something she ought not to take, and he threw them out, apparently empty, according to this evidence. Does that strike you as a good excuse for putting these bottles out, if there was nothing in the bottles, if they were empty, nothing in them she could take, what would be the danger he apprehended?"

And the eighth specification as cause for reversal. "Because there is no proof in the case to show that the bottles, admittedly thrown out by the defendant, were empty at the time he threw them out, and the Court's comment and argument in reference thereto, was misleading and unduly prejudiced the jury."

The language complained of in the assignments is based upon the evidence as has already been shown heretofore, to the effect that there was whiskey in a particular bottle and that the deceased was in bed, afflicted with something that made her ill and that she retired early in the morning and that she never went downstairs again except that the defendant claimed she told him she went down to take of the bottle he gave her in the morning. And now at case page 193, commencing at line 23, we find this testimony: Q. She

said, I took some of that stuff you gave me this morning? A. Yes, sir. Q. What did you say? A. I never said nothing. I went downstairs, and I say, I will go call the doctor, and I went downstairs and I went to look in the closet, and I throw some bottle away; I afraid get up again and get some bottle sometimes and make mistake. Q. How many bottles did you throw away? A. Four or five. And then at page 206 appears further direct testimony of the defendant, and how he showed Detective Galatian and other officers where he had thrown the bottles on the next day. At line 25: Q. Did you tell him you would show them where you threw the bottles? A. Yes, sir. Q. Took them to the house and showed him? A. I show them the place where I throw away bottles. Q. Did they find any bottles? A. Yes, sir. Q. How many? A. Was three bottles. Q. Did they take them? A. Yes, sir. One bottle was break. And at case page 207, commencing line 12: Q. Did you take them to the spot in the yard? A. Yes, sir. I will say, I throw in the yard; I don't know where they went. Q. Did you show them where the bottles were? A. No; I never show. I said, I throw in the yard; I don't know where they went.

And now referring to the testimony of County Detective John A. Galatian, case page 145, commencing at line 23: "We went to Linden and he took us to what I would call the eastern side of the house. The house faces on the railroad tracks, and I judge that it would be the eastern side, about parallel with the front of the house, up against a picket fence, there he claimed that he threw the bottles from an upstairs window down to this point where he showed us. An investigation at that spot didn't satisfy us that he did do that. So we made a careful search of the entire yard and on the opposite side of the house we found this bottle, or rather Detective Walsh found this bottle and that bottle."

From the specification for reversal, it would appear that the chief cause of complaint is that the Court re-

marked in this portion of the charge: "Thereafter he went downstairs, as he says, and took **these bottles** and some others, fearing she would make a mistake * * * and he threw them out, **apparently empty**, according to this evidence." The bottles, as shown by the case, were in evidence before the jury and the testimony of the officers was to the effect that they picked them up in the yard and preserved them and brought them to Court, where, while this remark was being made, it was not possible for the Court to mislead the jury on the question of whether they were full or empty. 10

Further answering the assignments above set forth, it is submitted that the trial judge is not only justified in a criminal case, in pointing out to the jury what seems to be to him the salient features of the case, but he may give the jury the benefit of his greater experience by telling them how the testimony strikes his mind, both as to its force and to the **inference** he would draw from it, and here the Court drew no inference of its own, but left it to the jury to see what "reasonable inference" men of good judgment would draw from the situation. 20

In *State vs. Hummer*, 65 Atl. at page 249, the Court of Errors and Appeals said: "The notion that it is any part of our judicial system that the jury in a criminal case must be kept in ignorance of the impression made by the testimony upon the mind of the trial judge, is absolutely devoid of foundation."

"So long as the duty of the jury to decide the questions of fact for themselves is pointed out in the charge," said Justice Dixon, in *Engel vs. State*, 50 N. J. Law, page 272, "the Court's comments and expressions of opinion of testimony are not assignable." 30

And in *State vs. Schuyler*, 68 Atl., page 561, the Court of Errors and Appeals, in passing upon the comments made by the trial Court in that case, said: "Under our system of jurisprudence, a trial judge is not only justified in pointing to the jury what seems to him to be the salient features of the case, but, as 40

was said by this Court in *State vs. Hummer*, 65 Atl., 249, it is always his right, and frequently his duty, to go further, and give the jury the benefit of his greater experience by telling them how the testimony strikes his mind both as to its force and as to inference he would draw from it."

Fourteenth assignment. Because the Court erroneously refused to charge the jury as requested, to wit: "The jury have a right to infer that if Sergeant Pickle, of the Linden police force, was not called, after he had been mentioned by the State's witnesses, his testimony would be adverse and unfavorable to the prosecution." It is deemed unnecessary to answer this.

Fifteenth assignment. Because the Court erroneously charged the jury as follows: "If that testimony raises in your minds any reasonable doubt, or the whole case taken together, the State's case and the defendant's case raises a reasonable doubt of the defendant's guilt, he is entitled to the benefit of it. That is the law of the land. But if no such reasonable doubt exists in your minds, then it is your duty to render such a verdict as the evidence in this case leads you to, but you must be satisfied of the defendant's guilt beyond a reasonable doubt if it is a verdict of guilty."

Here I call attention of the Court to the fact that the assignment of error does not truthfully set forth what the Court said. See Court's charge, case page 252, line 37, and when compared with the assignment, it will be noted that the Court's language was "if that testimony raises in your minds any reasonable doubt, or the whole case taken together, the State's case and the defendant's case, raises a reasonable doubt of the defendant's guilt, he is entitled to the benefit of it," etc., whereas, in the assignment of error, the words "and the defendant's case" are omitted.

The extract above quoted upon reasonable doubt is not all that the Court said in its charge upon that subject. At page 246, the Court spoke of the legal presumption of innocence that accompanies every defend-

ant" and that presumption remains until the State has shown his guilt beyond a reasonable doubt."

"By reasonable doubt we do not mean any sort of a doubt that a timid mind might conjure up, but is rather that condition of mind which exists when, after a very careful consideration of all the evidence, you lack an abiding conviction of the defendant's guilt. If that condition exists, then there is a reasonable doubt, to which the defendant is entitled to the benefit.

And at case page 253, commencing line 7: "As I 10
said at the outset, if the facts convince you beyond a reasonable doubt, this man administered this poison to this woman for the purpose of taking her life, the law says what the crime is, that is, murder in the first degree. If the State has failed to make out the defendant's guilt beyond a reasonable doubt, then he is entitled to a **verdict of acquital.**"

Sixteenth assignment. Because the Court erroneously charged the jury as follows:

The Foreman—Is there any direct evidence that the 20
drug was administered by Rossi?

The Court—That is the first question?

The Foreman—Yes, sir.

The Court—As to that question, that is a question of fact, depending on the evidence, which the jury must find. You heard the testimony of Mr. Galatian, who says that the defendant admitted to him, in the presence of these other persons, that he did give his wife some of the contents of this large bottle, which the State claims contained opium and whiskey. The defendant denies that, **denies that he said that, denies 30**
that he put it in. So you see, it is a question of fact entirely for the jury. You have the evidence of Mr. Galatian, of his admission that he did it, and also his denial. What is the other question?

Note: The words "denies that he said that, denies that" in black type are omitted in the assignment of error, but will be found in the charge case page 254.

The Foreman—The other question is, must we accept circumstantial evidence?

The Court—You must accept, of course, all evidence, circumstantial or otherwise. Circumstantial evidence is evidence of facts from which the existence of other facts may be inferred. Sometimes circumstantial evidence is the strongest kind of evidence, because if there is a congeries of facts that lead only to one conclusion, they may all be circumstantial—when I say facts, I mean circumstances—there may be a collection of circumstances that lead to but one conclusion, and putting them all together, if you followed that you could not reach any other conclusion. Whereas the testimony of an eye witness might be based on a mistake. The notion that circumstantial evidence, that is the question you asked me, ought not to be accepted, is erroneous. It is a question of what you believe of that testimony. Are there any other questions you would like to ask?

The Court, in its answer to the first question, left the question of whether there was such evidence to the jury, but then referred to the confession of the defendant testified to on direct examination in the State's case by John Galatian.

In *Commonwealth vs. Webster*, 5 Cushing (59 Mass.) at page 310 the court said:

"The distinction, then, between direct and circumstantial evidence is this: **Direct** or positive evidence is when a witness can be called to testify to the precise fact which is the subject of the issue on trial; that is, in a case of homicide, that the party accused did cause the death of the deceased. Whatever may be the kind or force of the evidence this is the fact to be proved."

In *Langdon vs. People*, Supreme Court of Illinois, 24 N. E. Rep. page 874, the defendant was tried on an indictment for forgery. The evidence in the case was entirely circumstantial, but when the defendant was arrested one O'Brien swore that he read the warrant to the defendant and that he asked him what it was for, to which he replied: "I have done the whole thing and am willing to suffer the consequence," and another wit-

ness swears he was present and heard him say: "I did it and I will have to take the consequence." One of the requests to charge was that this confession was not direct evidence. The Court, at page 881, says:

"The fourth instruction asked by the defendant was also properly refused for two reasons. First. It assumes that all the evidence of his guilt was purely circumstantial, whereas the testimony as to the confession made by him was **direct** and **not** circumstantial evidence.

Voluntary confession is spoken of in Greenleaf on Evidence, 16th Ed. Vol. 1, page 353, section 49, as follows:

"A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore it is admitted as proof of the crime to which it refers."

Aside from all this, the question was: "Is there any direct evidence that the drug was administered by Rossi?" To this the Court said: "That is a question of fact depending on the evidence which the jury must find." The jury were not instructed that there was any direct evidence, but the Court called their attention again to the testimony relating to the admission made by the defendant, and his denial of it. It cannot be inferred that the jury were using the word "direct" in a technical sense. What they wanted to know was, whether there was any evidence which showed that the drug was administered by the defendant. That question the Court left to the jury to determine. No legal proposition was involved in refusing to answer this question, for whether there was direct evidence in the sense intended by the jury, was a question of fact, or an inference to be drawn from what was testified to. This was plainly the function of the jury, nor was there any error in calling the attention of the jury to all of the testimony bearing upon the admission of the defendant. If the defendant admitted that he admin-

istered the drug, that would be the highest grade of testimony tending to show that he administered it. In addition to this, what the Court did was simply to call the attention of the jury to certain parts of the evidence, leaving it to the jury to determine where the truth lay, and there is no legal error in this. The Court was asked, is there any direct evidence, and replied, that is a jury question, and then commented on the testimony given, which, if believed, tended to show defendant's admission of the material fact. Whether
10 that was direct, in the sense intended by the jury, or not, they could judge having in mind what they wished to know. The jury was not instructed that there was any direct evidence (if by that term they meant an eye witness), but they were told that was a question they must determine. The reference to the testimony was merely a reiteration of comments previously made, and the jury were left to answer the question put as they might decide from the testimony.

20 The foreman's second question and the court's reply thereto, which is assigned as error, can be disposed of with the seventh specification of cause for reversal, which alleges that the Court, "erroneously instructed the jury to accept circumstantial evidence as adduced as being absolutely true."

It is to be first observed that the assignment of error does not correctly set forth the charge of the Court.

30 The question asked of the Court by the jury was, "must we accept circumstantial evidence?" The Court replied, "You must accept of course all evidence, circumstantial or otherwise." This language standing alone might have the meaning and the effect attributed to it, but this language must be taken and understood in the light of all that the Court said to the jury at this time. The Court next proceeded to define circumstantial evidence and concluded its answer to the foreman's question by saying: "It (meaning the circumstantial evidence in the case) as a question of what

you believe of the testimony." It therefore cannot be reasonably said in the light of the entire answer of the court to the question of the jury that the jury was told that they must accept circumstantial evidence as true or that the words "must accept" conveyed the meaning to the jury that they must believe it. It is plain that under specific instruction it was left to the jury to say whether they believed it or not. The language of the court, "must accept" cannot be taken in a literal sense, but rather according to the signification that the entire charge gives to it. 10

In the State vs. Zdanowicz (Court of E. and A.) 55 Atl. Rep. 743, the Court held, "When a defendant in an indictment under the provisions of the criminal procedure act takes a general exception to the charge of the trial court, and assigns error upon a portion thereof, the reviewing court is not restricted to the consideration of such portion of the charge severed from its context and the rest of the charge; for the duty to reverse in such case only arises when it appears that error in law was committed in the part of the charge so selected to the prejudice or injury of the defendant in maintaining his defense." 20

Under the heading of specifications of causes relied upon for reversal.

The first cause for reversal is the same as the eighth assignment of error, which has been answered.

The second cause for reversal is that the "Court permitted the Prosecutor to make a statement and introduce evidence referring to an assault alleged to have been committed by the defendant on one Meyer sometime in December, 1914." 30

The record does not indicate that the State at any time introduced evidence referring to an assault as alleged in the cause of reversal. It is true that the Prosecutor did make the statement concerning such an assault and this arose over a question asked of 40

Dr. Hough, which was objected to by counsel for the defense. The court thereupon inquired as to how the evidence sought to be elicited was competent. The Prosecutor's statement was simply one wherein he assigned his reasons. The Court then **sustained** the objections (Case pages 18 19). At no time during the State's recitation of its reason for this evidence, or at the conclusion of them, did counsel object to such a statement or argument as prejudicial to the defendant.

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The third cause of reversal alleges that the Court "erroneously commented upon the fact that an assault had taken place in December, 1914, upon one Meyer and misled the jury into believing that the defendant had been the assailant through jealousy.

The Court at no time, either in the charge or in his rulings on evidence commented as charged in this cause.

20

The fourth specification of causes for reversal is that: "There was no proof in the case that death was caused by tincture of opium or laudanum or morphine.

Suffice it to say that opium, morphine and laudanum are the same with the exception that laudanum is a solution of the former two. This is testified to by Dr. Garhert and Professor Foster, who also testified that morphine was found in the stomach contents. The testimony is supplemented by Dr. Mravlag, an expert, who testified that in his opinion death resulted from morphine. Consequently it was for the jury to determine whether or not morphine, opium or laudanum was the cause of death.

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The fifth specification of causes for reversal alleges there was no proof in the case that there was any morphine or laudanum or tincture of opium in the coffee which defendant admitted having poured out for his wife on the morning of the day she died, and

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the Court's comment and argument in reference thereto, was erroneous.

As for this cause for reversal it is fully answered under the twelfth assignment of error.

The sixth specification of causes for reversal that there was no direct evidence in the case that the defendant had administered poison to his wife and the Court's instruction to the jury that the testimony of Chief County Detective Galatian was direct evidence, 10
was erroneous.

This is the same as the sixteenth assignment of error.

The eighth specification of causes for reversal that there is no proof in the case to show that the bottles, admittedly thrown out by the defendant, were empty at the time he threw them out and the Court's comment and argument in reference thereto, was misleading and unduly prejudiced the jury. 20

This was answered under the thirteenth assignment of error.

The ninth specification of causes for reversal complains because the Court did not clearly explain the inferences to be drawn from the facts, or as to the general effect of the evidence, or as to the weight to be given the evidence, but made it plain to the jury that in the opinion of the court Crivelli was guilty and the general effect of the charge, as a whole, is to indicate to the jury that the defendant's testimony 30
was not worthy of belief.

At case page 246 the Court said: "Whatever I may say to you with reference to the facts in the hope that I may aid you is merely an expression of my opinion, which in no way controls you," and added that if he omitted or misstated evidence they were to correct it, and again at case page 252 he says: "The defendant denies nearly all of the testimony, as I recall it, all the material parts of it," and then recited speci- 40

fically all of the important facts in evidence which were denied by the defendant.

Further, there was no request to charge bearing upon the subject matter of this cause for reversal.

The judgment of conviction should be affirmed.

Respectfully submitted,

ALFRED A. STEIN,

Prosecutor of the Pleas,

Attorney for Defendant in Error.

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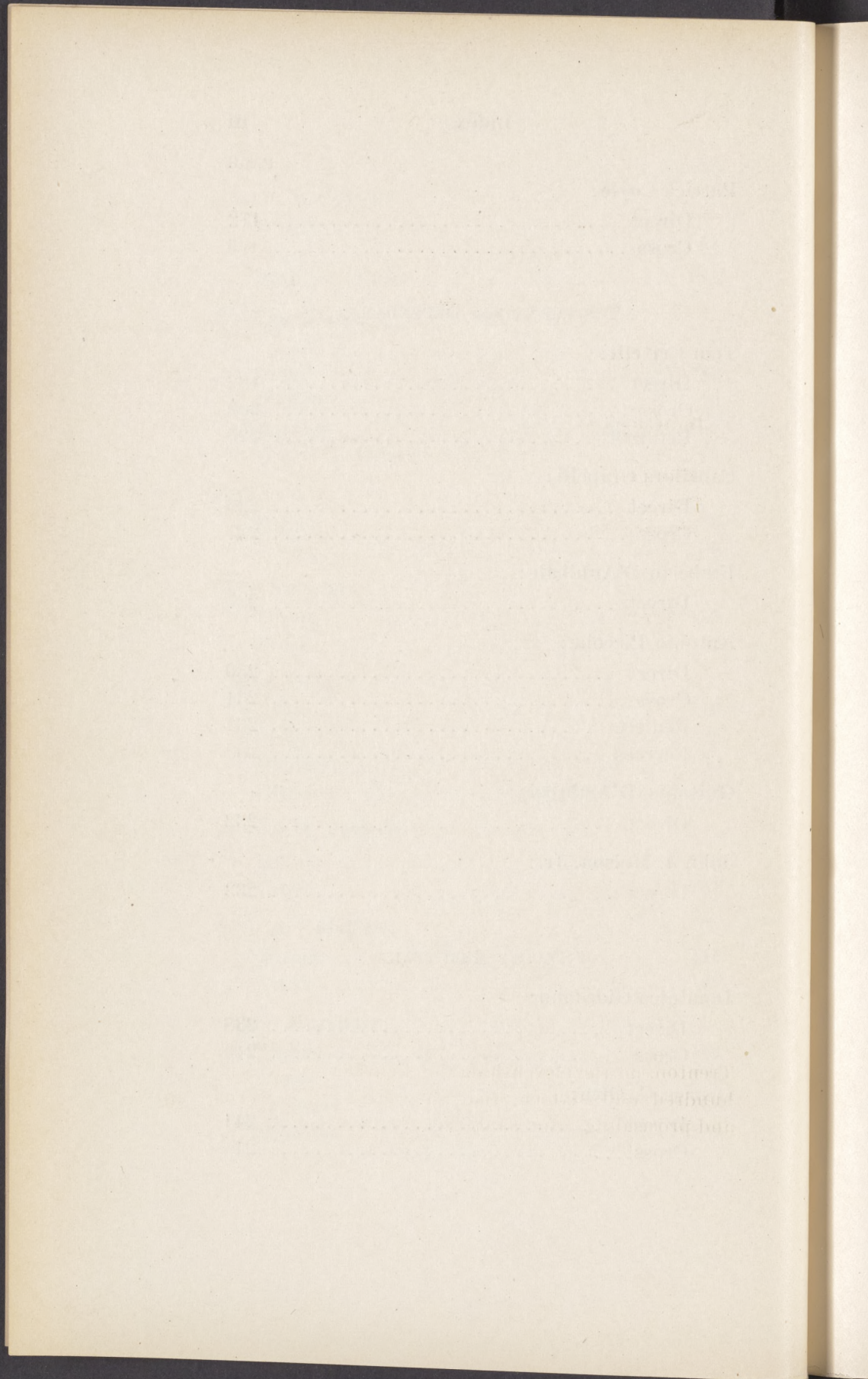
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Writ of Error.

(Filed Feb. 11th, 1916.)

New Jersey, ss.:

The State of New Jersey to James J. 10
Bergen, Esq., a Justice of the Supreme Court, constituting the Court
[L. S.] of Oyer and Terminer in and for the
County of Union, Greeting: Because
in the record and proceedings and
also in the giving of judgment upon
a certain indictment in the name of
the State of New Jersey against Camillo Crivelli
for murder in the Township of Linden and said 20
County of Union, heard and determined by our
said Court of Oyer and Terminer in and for the
said County of Union, manifest error hath inter-
vened to the great damage of the said Camillo Crivelli,
as from his complaint we have received information: We being willing in his behalf to correct
the error in due manner if any shall be, and that
speedy justice be done to him the said Camillo Crivelli, DO COMMAND you that if judgment be 30
thereupon given, that then you do distinctly and
openly send the record and proceedings aforesaid
with all things touching the same, to our Judges of
our Court of Errors and Appeals in the last resort
in all causes, under your seal together with
this writ, so that we may have the same before our
Judges of our said Court of Errors and Appeals at
Trenton, on the eleventh day of February, nineteen
hundred and sixteen, that inspecting the record 40
and proceedings aforesaid, we may further do there-

upon for correcting that error what of right and according to law ought to be done.

Witness, Edwin Robert Walker, Esquire, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this twenty-fifth day of January, in the year of our Lord one thousand nine hundred and sixteen.

10

THOMAS F. MARTIN,
Clerk.

J. Victor D'Aloia,
Attorney for Plaintiff-in-Error.

Endorsed:

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

20

STATE OF NEW JERSEY,
Defendant-in-Error,

v.

CAMILLO CRIVELLI,
Plaintiff-in-Error.

On Error to
Union Oyer
and Terminer.

WRIT OF ERROR.

30

Returnable February 11th, 1916.

J. VICTOR D'ALOIA,

Attorney,

738 Broad Street,

Newark, N. J.

This writ is allowed by the Court.

E. R. WALKER,

C. & P. J.

40

The within writ presented in open Court, this
5th day of February, 1916.

J. J. BERGEN.

Return.

(Filed Feb. 11th, 1916.)

The answer of James J. Bergen, Judge of the Court of Oyer 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 last resort in all causes, within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded. 10

Judge of the Union County Court of
Oyer and Terminer.

The execution of this writ appears by the schedule hereto annexed. 20

In testimony whereof, I, Abram P. Morris, Clerk of the County of Union and of the Court of Oyer and Terminer holden therein, have hereunto set my hand and the seal of said County, which is the seal of said Court, this fifth day of February, in the year of our Lord, nineteen hundred and sixteen. 30

[SEAL.]

ABRAM P. MORRIS,
Clerk.

Return.

State of New Jersey, { ss.:
 County of Union, }

Be it remembered, that at the Court of Oyer
 and Terminer, holden at the City of Elizabeth, in
 and for the County of Union, on the first Tues-
 day of May in the year of our Lord one thou-
 sand nine hundred and fifteen, before the Honor-
 10 able James J. Bergen one of the Justices of the
 Supreme Court of Judicature of the State of New
 Jersey, and the Honorable James C. Connolly,
 Judge of the Court of Common Pleas in and for
 the County of Union, upon the oaths of William
 E. Tuttle, Jr., Emil Schuman, Charles J. Spencer,
 Burr A. Towl, Louis F. Hersh, William P. Flem-
 ings, W. Irwin Steans, Arthur E. Smith, Edward
 20 R. Grant, George L. Babcock, William K. Vezin,
 Edward Beadle, Jr., Matthew C. Stewart, George
 B. Richards, Benjamin Whitely, Bernardo Ulmer,
 Samuel Stamler, Sidney L. Kniffin, Burton P.
 Hall, Isaac N. Faulks, Ernest C. Commel, Daniel
 H. Beach and William J. Fowler, good and law-
 ful men of said County of Union, then and there
 sworn and charged to inquire on behalf of the
 State of New Jersey, in and for said County of
 30 Union, it is presented by at least twelve of said
 jurors in the manner and form following, to wit:

UNION OYER AND TERMINER

May Term, A. D. Nineteen hundred and fifteen.
 Union County, to wit:

The grand inquest for the State of New Jersey,
 and for the body of the County of Union, upon
 40 their oaths

Present, that Camillo Crivelli, alias Tom Rossi,
 late of the Borough of Linden in the said County

of Union, on the twenty-second day of March in the year of our Lord, one thousand nine hundred and fifteen at the Borough of Linden in the said County of Linden, and within the jurisdiction of this Court with force and arms one Annina Crivelli, then and there being, in the peace of God and of this State, did wilfully, feloniously and of his malice aforethought kill and murder, contrary to the form of the statute in such case made and provided and against the peace of this State, the Government and dignity of the same.

10

ALFRED A. STEIN,
Prosecutor of the Pleas.

Witnesses:

That a Court of Quarter Sessions holden at Elizabeth in said County of Union on Monday, the twenty-fourth day of May, in the year of our Lord one thousand nine hundred and fifteen, before Hon. James C. Connolly, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions in and for said County of Union according to the form of the statute in such case made and provided. The Grand Jury presented the indictment aforesaid, which said indictment was thereupon ordered by said Court to be delivered to the Court of Oyer and Terminer of said County according to the form of the statute in such case made and provided, and thereupon the said indictment is filed and entered in said Court of Oyer and Terminer of said County.

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30

That at a Court of Oyer and Terminer holden at Elizabeth aforesaid, on Saturday, the fifth day of June in the year last aforesaid, before the Hon. James J. Bergen, Justice of the Supreme Court constituting the Court of Oyer and Terminer in and for said County of Union, according

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to the form of the statute in such case made and provided, comes the said Camillo Crivelli alias Tom Rossi, in his own proper person and now here touching the premises in the said indictment above specified and charged upon him, being asked in what manner he would acquit himself thereof, says he is not guilty thereof, and of this he puts himself upon the County, etc., and Alfred A. Stein, Esquire, who prosecutes for the State in this behalf doth likewise the same.

And afterwards, that is to say, at a Court of Oyer and Terminer holden at Elizabeth aforesaid, on Wednesday, the tenth day of November in the year of our Lord one thousand nine hundred and fifteen, before the Hon. James J. Bergen, Justice of the Supreme Court and the Hon. James C. Connolly, 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 Camillo Crivelli, alias Tom Rossi, being set to the Bar, Alfred A. Stein, Esquire, who prosecutes for the State, moves the trial of the indictment aforesaid, wherefore let a jury thereupon come on this day last aforesaid, before this Court of Oyer and Terminer aforesaid, of good and lawful men of the County of Union aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said Camillo Crivelli alias Tom Rossi, to recognize upon their oaths whether the said Camillo Crivelli alias Tom Rossi, be guilty of murder in the indictment aforesaid specified, or not guilty, because as well the said Alfred A. Stein, Esquire, who prosecutes for the State in this behalf as the said Camillo Crivelli alias Tom Rossi have put themselves upon the jury and the jurors of the said jury, by George C. Otto, Esquire, Sheriff of the said County of Union,

for this purpose empanelled and returned agreeable to the statute in such case made and provided, to wit: Theodore F. Richart, Owen H. Fleming, Knight J. Faucett, Jacob Turner, Joseph Tobin, Harry Duval, Edward W. Chapin, Jr., George B. Elmhurst, J. Louis Bolmer, John J. Locke, Irving J. Pratt, William B. Cretty, who are 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 from day to day, until the eleventh day of November, in the year last aforesaid, when the jury 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 Camillo Crivelli alias Tom Rossi, guilty of murder in the first degree, as in the said indictment is charged upon him, and so say they all.

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That at the same session of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid, in the County aforesaid, on Thursday, the eleventh day of November, in the year of our lord, one thousand nine hundred and fifteen, before the Hon. James J. Bergen, Justice of the Supreme Court and the Hon. James C. Connolly, 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 Camillo Crivelli, alias Tom Rossi being set to the Bar, Alfred A. Stein, Esquire, who prosecutes for the State in this behalf moves for judgment on the said Camillo Crivelli alias Tom Rossi.

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Whereupon all and singular the premises being seen and by the Court now here fully understood—it is ordered and adjudged that the prisoner, Camil-

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lo Crivelli alias Tom Rossi, having been convicted of the crime of murder in the first degree, suffer the penalty of death, in the manner provided by law, within the week commencing on the twenty-seventh day of December, nineteen hundred and fifteen, upon this conviction.

And the said defendant in mercy, etc.

Judgment signed November 11, 1915.

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J. J. BERGEN,
Judge.

COURT OF OYER AND TERMINER,

UNION COUNTY.

May Term, 1915.

20

STATE OF NEW JERSEY

v.

CAMILLO CRIVELLI, alias TOM
ROOSI.

On Indictment
for Homicide.

30

Transcript of stenographer's notes of evidence taken in the above entitled cause, before Hon. James J. Bergen, Justice of the Supreme Court, and a jury, at the Court House in the City of Elizabeth, N. J., on the tenth day of November, A. D. 1915, at 10:00 A. M.

APPEARANCES:

ALFRED A. STEIN, Esq., Prosecutor of the
Pleas for the State.

J. VICTOR D'ALOIA, Esq.; FRANCIS A.
GORDON, Esq., for the Defendant.

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Mr. Stein: I move the trial of indictment num-

ber seventy-five, May Term, 1915, State against Camillo Crivelli, alias Tom Rossi.

The Court: Let the Sheriff return a panel.

Prosecutor opens for the State.

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

10

Direct examination by Mr. Stein:

Q. Do you hold any official position in the County of Union? A. Morgue keeper.

Q. Were you such on the twenty-second day of March last? A. That was the twenty-third day of March.

Q. Well, if you were on the twenty-second you were still on the twenty-third? A. I was called to Linden, Lombard Street.

20

Q. The home of who? A. The home of Tom Rossi.

Q. What time of the day did you get there? A. It was somewhere in the neighborhood of between five and six o'clock, I believe.

Q. Whom did you meet there? A. I saw Mr. Tom Rossi there.

Q. This defendant? A. Yes; Chief of Police from Linden.

30

Q. That is all right. For what purpose did you go there? A. Went there to get the body of a woman who was found dead.

Q. Did you get the body? A. Yes.

Q. Where did you find it? A. Upstairs in the bed.

Q. Where did you bring the body to? A. Brought it to my morgue, 1143 Elizabeth Avenue.

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Q. And after it was brought to your morgue what was done with it? A. Why, Dr. Wescott, the

county physician, I believe, and Dr. Monger, his assistant, came and performed an autopsy that evening.

Q. On the same body that you brought from this house? A. Yes.

Mr. Stein: That is all.

Cross examination by Mr. D'Aloia:

10 Q. Who sent you for this body? A. The county physician Wescott called me on the telephone.

Q. Did you know at the time you took the body from the house in Linden how long the woman had been dead? A. No, I did not.

Q. Did you know whether she had died the same day or the day before? A. No, I didn't ask.

Q. When you found the body where was it? A. In bed.

20 Q. In what part of the house? A. Upstairs on the second floor.

Q. In a bed room? A. Bed room.

Q. Did you notice the condition of the bed? A. Just ordinary. I didn't take any particular notice.

Q. You removed the body therefrom? A. We removed the body therefrom.

Q. Was there any blood on the sheets? A. I don't remember seeing any.

30 Q. Was there any blood on some rags alongside of the bed? A. I don't remember seeing any.

Q. Did you look over the body? A. After we got the body to our morgue we looked over.

Q. In that room before you removed it? A. No, we did not.

Q. Did you notice whether there was any blood on the body? A. I didn't see any.

40 Q. You didn't see any, or you didn't notice any? A. I didn't notice any.

Q. You didn't pay any particular attention to

the condition of the body before you moved it, did you? A. No.

Q. And you didn't pay any particular attention to the bedding, and the bed clothes and the floor of the room? A. The bedding was very nice bedding, everything looked very nice there.

Q. Well, now, isn't it a fact that there were blood stains all over the sheet? A. I don't remember seeing any.

10

Q. Well, there may have been blood stains there and you not remember? A. There may have been lots there. I didn't see.

Q. And you didn't look for them? A. I did not.

Q. Did you have an assistant with you? A. I did.

Q. What is his name? A. William Pruce.

Q. Is he here? A. He is not.

Q. How old a man is Pruce? A. Oh, I suppose about twenty-seven or twenty-eight years of age.

20

Q. Could we get Mr. Pruce here? A. I suppose so. He is not working for me now. He lives in Newark.

Q. Well, so far as you are concerned, you don't remember any blood stains on the bedding or on the floor? A. No, I don't remember any.

Q. And there may have been some there and you didn't see them because you didn't pay any attention to them, is that right? A. Well, of course, I couldn't answer that question. I don't know. I don't remember.

30

Q. What kind of a light did you have in the room when you removed the body? A. Just the sunlight. The daylight.

Q. You got there around six o'clock? A. Yes.

Q. Twenty-second of March? A. Twenty-third of March, between five and six o'clock. I won't be positive.

40

Q. Did you have to light a lamp? A. No, sir.

Q. Wasn't it semi-dark about six o'clock on that night? A. No. It was daylight.

Q. I know it was daylight, but not very bright. The sun wasn't up? A. Yes, I believe the sun was. I won't be sure. I couldn't tell in the house, but there was bright light.

Q. There was only one window in that room?

A. No, I think there was two windows.

10 Q. One of them was closed? A. I won't be positive about that, but I think there was two windows in the room.

Q. Well, the bed wasn't lighted up? A. There was no mark of any kind. There was daylight coming in. I could see very clearly.

Q. You could see to remove the body, but you couldn't see to inspect the bed clothes? A. I didn't go there to inspect any bed clothes.

20 Q. So far as you are concerned there may have been blood spots there, and you not see them? A. I don't remember.

Q. Isn't it possible that there may have been blood spots there and you not see them? A. I couldn't answer that question. I couldn't say.

Q. From your examination of the place? A. I made no examination.

30 Q. But from your precursory examination, taking the body out of there, is it possible for blood spots to have been there and you not to have seen them? A. I don't remember seeing any.

Q. Will you answer the question.

The Court: I do not see how he can answer any better. He went there and he says he did not see any. You can ask me if it is not possible for blood stains to have been there. I was not there. The man tells you he was there, it was broad daylight, and he saw no blood stains. Now, anything is possible but that is not within his knowledge.

Mr. D'Aloia: He said he did not inspect the clothing, the bed clothing.

Q. Did you notice anything on the floor? A. I didn't notice.

Q. Was there any carpet on the floor? A. I don't remember.

Q. Was there any paper on the wall? A. I didn't look on the wall. I went to get the body, and took the body and put it in the basket. The Chief of Police was there, and said he would like to hurry up, he wanted to put the man under arrest.

10

Q. So that what you did there you did in a hurry? A. Well, customary.

Q. You don't know where Mr. Pruce is now, do you? A. Yes, I know he is in Newark. I don't know his address.

Q. What is his first name? A. William.

20

Mr. D'Aloia: That is all.

H. PAGE HUFF, produced as a witness on behalf of the State, being duly sworn on his oath, according to law, saith:

Direct examination Mr. Stein:

Q. You are a practicing physician and surgeon? A. I am.

30

Q. How long have you practiced in Linden? A. Five years.

Q. How long have you practiced altogether? A. Thirty years.

Q. Do you know this defendant, Tom Crivelli, or Tom Rossi? A. I do.

Q. Were you called to his house in March of this year? The 23rd? A. I was.

Q. Or the 22nd? A. Twenty-second of March.

40

Q. About what time were you called? A. I received the call about six-fifteen.

Q. What time was it sent in, if you know? A. I don't know.

Q. Who received the call? A. My daughter.

Q. Were you home during the day, before that time, six-thirty? A. No, I was out from two until six.

Q. All calls that came in before two, had you received those? A. I had.

10 Q. Then you were out from two until six? A. Yes.

Q. You went there at six-thirty? A. No, I went there between seven and seven-fifteen.

Q. You got the call yourself at what time? A. I didn't receive the call.

Q. You were notified of the call when? A. Six-fifteen.

20 Q. Why did you delay? Was there anything about the call that caused your delay? A. No. The call came Tom Ross in the Hampf house. I did not know Tom Ross. This man was known as Tom Rossi.

Q. There was nothing about the call which would indicate to you that you must make haste, was there?

Mr. D'Aloia: I object to that.

Mr. Stein: I will withdraw the question.

30

Q. What was the call? A. The call was Tom Ross in the Hampf house.

By the Court:

Q. What time did you say that was? A. I received that at six-fifteen.

Q. At night? A. Yes.

By Mr. Stein:

40

Q. What time did you get to the house; six-thirty? A. No, between seven and seven-fifteen.

Q. When you got there, whom did you meet? A. Rossi.

Q. Where A. In the alleyway leading from his house to the street.

Q. On what street does he live? A. Well, his house faces the railroad; I don't know it has any name.

Q. Well, what is the alleyway named that you went in? A. Lombard Street.

10

Q. Did you say anything to Tom when you met him there in that alleyway called Lombard Street?

A. No. Just told me his wife was sick.

Q. Did you say anything to him? A. I don't think I did.

Q. What did he say? A. Said he wanted me to come in, his wife was sick.

Q. Did you go in? A. I did.

Q. Who went in with you? A. Tom.

20

Q. Where did you go; what part of the house? A. Upstairs.

Q. Was there anyone downstairs when you went in? A. A little child, and I think, Mrs. Baldy.

Q. Who was upstairs in the room when you got there? A. Mrs. Baldy and Tom followed me up.

Q. I mean when you went into the room was anyone there when you went in? A. No.

Q. You and Tom went in and Mrs. Baldy followed? A. I won't be positive about that; Mrs. Baldy was in the room.

30

Mr. D'Aloia: Let him tell what happened.

Q. What happened in the room there? A. As soon as I entered I thought she was dead, but upon examination I found positively that she was dead.

Q. Then what was said? A. I said, "Tom, I think I am going to give you a surprise. Your wife is dead." And he exclaimed, "Oh!" He was sitting in a chair at the time.

40

Q. What did he do after he exclaimed "Oh!"?
A. That's all. That's all was said.

Q. Then what was said nextly? A. I said, "Tom, how did this happen?" "Why," he said, "she was kicked by a horse." Shall I go on?

10 Q. Go on, doctor. A. I said, "Where?" He said, "In the left side." And I examined that body, both left side and right side and turned it over and I saw no evidence of a kick or injury of any kind. I said, "Tom, why didn't you send for me before?" He said, "Well, she had her blood, and she didn't want to send for you."

Q. Tell us that; I didn't hear that. A. She had her blood and she didn't want to send for you—she didn't want to send for you.

Q. Go on. A. From an examination I found that she had her menstrual flow.

20 Q. Was there anything about the bed to indicate that? A. Nothing at all.

Q. What then? What was said then? A. I said, "I will have to notify the proper authorities." And he said, "Will this give me any trouble?" I said, "I don't know, Tom; I will have to notify the County Physician."

30 Q. Did you make an examination of the body did you say, for the purpose of locating any bruises that might have been inflicted by a kick? A. I did.

Q. Were there any to be found on that body? A. Nothing whatever.

Q. How far did your examination go? A. I examined her back, her side, in fact the whole body. She laid there in a nude state. Pulled the sheet right up.

40 Q. Doctor, do you remember December, 1914, your being called to the home of a Mrs. Balding?
A. December first.

Mr. D'Aloia: That is objected to.

Q. To attend a Mr. Meyer?

Mr. D'Aloia: I object to that.

The Court: Why?

Mr. D'Aloia: Some call made in December to attend a Mr. Meyer? We didn't call Mr. Meyer.

The Court: Do not ask me. I ask you why it is objected to.

10

Mr. D'Aloia: Because it is immaterial and irrelevant and not binding on this defendant.

The Court: I overrule your objection. Proceed.

A. On December first I was called.

Q. What year? A. 1914.

Q. Where did you find this Mr. Meyer?

(Question repeated by the stenographer.)

20

Mr. D'Aloia: I object to that; same ground.

The Court: And I allow the question.

Mr. D'Aloia: Exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

A. In Mrs. Balding's house.

Q. Did you know where Meyer lived at that time? A. I did.

30

Mr. D'Aloia: I object to that upon the same ground.

The Court: I will allow the question.

Mr. D'Aloia: Prays exeception.

Exception allowed; sealed accordingly.

J. J. BERGEN,

Judge.

40

Q. Where did Meyer live at that time?

Mr. D'Aloia: That is objected to.

The Court: I will allow the question.

Mr. D'Aloia: Prays exception.

Exception allowed; sealed accordingly.

J. J. BERGEN,
Judge.

A. On Elizabeth Avenue, the first house this side of Mrs. Balding.

10 Q. That is next door to Mrs. Balding? A. Yes.

Q. What was the condition of Mr. Meyer when you called to see him on that day?

Mr. D'Aloia: I object to that on the ground it is immaterial.

The Court: Why is that competent?

20 Mr. Stein: On this ground: This testimony is offered for the purpose of proving the motive, of this defendant in the killing of his wife. The State alleges that Mrs. Meyer and this defendant were intimate and had been so for sometime, and at that time Mrs. Crivelli was not yet in this country. That in December, a few months before the alleged murder, this defendant made a murderous assault upon the man that Mrs. Meyer was living with. It is offered to show his affection and his illicit relation with that woman at that time and which was then broken off because of this assault, which was made on Meyer. And then to connect up the evidence that Crivelli afterwards, through the proprietor of the lunch wagon, Mrs. Lutpin, endeavored to bring about again this relation between himself and Mrs. Meyer.

30

The Court: That is another question.

40

Mr. Stein: This is offered to show the motive; the affection that he had for the wo-

man, whom the State alleges he killed his wife for.

The Court: That is not an assumption. We have to try the question whether that was the ground of the assault.

Mr. Stein; I can't prove it all at once. I propose to prove that was the ground of the assault.

The Court: I think I will overrule that.

10

Mr. Stein: That is all, doctor.

Cross examination by Mr. D'Aloia:

Q. You were away from the house, on this day in March, doctor from two o'clock in the afternoon? A. Until six fifteen.

Q. You went to a school meeting that afternoon? A. I don't remember where I went that day.

Q. You remember very particularly just what was said that evening. Can't you remember whether you went to a school meeting that afternoon? A. We do not have school meetings in the afternoon.

20

Q. That evening? Did you attend a meeting of the Trustees of the school in Linden some time that day? A. I do not think so.

Q. Aren't you sure of that? A. If you tell me the day I can tell you.

Q. The day when you made this call at 7:15 P. M. A. I mean the day of the week. We have school meetings the second Wednesday in the month, and I think this happened on a Monday.

30

Q. Did you have a meeting that afternoon of the school board, or whatever you might call the commission that has charge of school affairs in Linden? A. No.

Q. Where did you go from your home at two o'clock? A. Why, I think I went to Elizabeth.

40

Q. Well, aren't you sure? A. Well, no, I can't recall just where I went that day.

Q. How can you recall everything that was said by this defendant? Did you make a note of what was said by the defendant that night? A. Yes.

Q. Where is it? A. I haven't it now. I made a memorandum of it.

Q. What became of the memorandum? A. I don't remember what I did with it. I always make a memorandum.

10 Q. You remember you made a memorandum?
A. Yes.

Q. Of the conversation you had with the defendant, is that so? A. That is right.

Q. When did you last see that memorandum?
A. Oh, I haven't seen it in three or four months. Destroyed it, I think.

Q. Well, did you destroy it? A. I think I did.

20 Q. Aren't you sure of what happened subsequent to that day? A. I am not positive.

Q. How can you tell us now positively that you made a memorandum? A. Why, because I did.

Q. And you can't tell us whether you destroyed it, or when you did? A. I think I destroyed it. I often destroy lots of my papers. I don't remember particularly this case.

30 Q. If you thought it so important to jot it down and make a memorandum of this conversation, why is it that you destroyed it? A. Why, I destroy my papers very frequently.

Q. When did you destroy it? A. I think some time in July or August. I am not positive.

40 Q. That you are not positive of what happened in July, but you are absolutely positive of what happened in March, is that what you want us to understand? A. I was not positive. I say I destroy a great many papers; I don't remember just the month. Every month I destroy many papers.

Q. Outside of saying to Rossi that you were going to notify the authorities, did you say any-

thing else to him? A. We had a general conversation about the case. I can't remember.

Q. What was the general conversation? A. I spoke to him about his wife. How long she had been in this country. And how long it took her to come over, and how she was coming over.

Q. You and he carried that on for about fifteen or twenty minutes, didn't you? A. Oh, no. It only takes about five minutes to walk from his house to the telephone booth.

10

Q. Wasn't this said outside, all along the walk there on Lombard Street? A. Yes.

Q. So that he told you the wife had been kicked by a horse in the street, didn't he, when he first met you? A. Yes.

Q. And not in the house? A. I don't remember. He said his wife was sick. I don't remember just what he said. It was only a minute's walk from the street to his house.

20

Q. Were you in Court, Doctor, when the Prosecutor was addressing the jury in his opening? A. Yes.

Q. It is very important that you tell us as nearly as possible the conversation between you and this man, the defendant. Now, try to remember where he told you about the wife being kicked by the horse. A. I don't think he said it until in the room upstairs. I am almost positive.

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Q. You just said a few minutes ago that he told it to you on Lombard Street as you approached the house? A. No, I didn't say that.

Q. You said it took five minutes to walk from where you first met him to the house and at that time you got the information that his wife came from Italy? A. I didn't say that. I said it took five minutes from his house to the public telephone booth where I telephoned to the physician.

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Q. Then he told it to you after the house, and

going to the phone? A. No, he told it to me upstairs in the room.

Q. Where did you do the writing? A. After I came home.

Q. You didn't make any memorandum right there? A. No.

Q. You said something to him about surprising him, didn't you? A. Yes.

10 Q. That was your own original expression? A. Yes.

Q. You said, "Tom, I have a surprise for you"? A. Yes.

Q. And the minute that you told him that his wife was dead he gave vent to an exclamation: "Oh!" A. Yes.

Q. Did he say much after that? A. That is all he said at that time.

20 Q. How long a time between the time he said: "Oh!" and the next thing he said? A. I don't remember. I don't think we were in the room five minutes.

Q. After he said: "Oh!" and after you had broken the news to him of his wife's death, how long was it before he next said something? A. Oh, possibly a few seconds. He spoke about his wife being sick, this monthly period.

30 Q. Did you make an examination after he told you that? A. I did.

Q. Was there any evidence of her being menstruating at the time? A. There was.

Q. Was there any presence of blood? A. None, only on the napkin.

Q. Was the napkin in there in bed with her? A. Yes.

Q. Between her legs? A. Yes.

40 Q. Soaked with blood? A. Well, considerable blood on it. I won't call it soaked.

Q. Do you know what you did with that napkin?
A. I do not.

Q. Did you leave it there between her legs or did you throw it on the floor? A. I think I left it there.

Q. Just where you found it? A. Yes.

Q. You were satisfied that he told you the truth about her condition, weren't you? A. Yes.

Q. What is your daughter's name, please, doctor?
A. Jenny.

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Q. What time did she give you this call? A. Quarter after six.

Q. Do you know what time she got the call? A. I asked her this morning and she said she wasn't positive. I asked her several times. I couldn't say.

Q. Don't you know that your daughter told you when you got home at quarter after six there has been a call here since shortly after two for you to go to Lombard Street? A. I do not.

20

Q. You have been trying to find out from your daughter since this thing occurred just what time she did get that call? A. That is right.

Q. And you have been unable to do so, isn't that so? A. I understood a call came for me, but it was not received at my house.

Q. I am not asking you that.

The Court: What is that answer?

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(Answer repeated by the stenographer).

A. Between four and six.

Q. Where was the call received for you to go to this place? A. At my house later on, but first off I understood a call came to my house between four and six, which I did not receive, and my family did not receive.

Q. So that that was the second time you had

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been called for, the one between four and six, which your family did not receive? A. That is right.

Q. Will you kindly tell us what time the first call was made for your services, which you did receive at six fifteen? A. I don't know

Q. Have you tried to find that out? A. I have, yes.

10 Q. And your daughter has been unable to tell you? A. Yes.

Q. But you have satisfied yourself that the first call which you did receive at six fifteen was made prior to four o'clock that afternoon? A. No.

Q. You can't say that it wasn't, can you? A. No, I can't say that it wasn't.

Q. You have a telephone at your residence? A. I have.

20 Q. And the number of it is what, or was what on March twenty-second? A. 1468.

Q. You got the call at six-fifteen and you didn't get to Lombard Street until between seven and seven-thirty? A. Seven and seven-fifteen.

Q. Seven or seven-fifteen? A. Seven to seven-fifteen.

Q. During that hour you had your dinner, I presume? A. I did.

30 Q. There was no indication about the call which necessitated your immediate leaving of the house? A. That is right.

Q. Did he tell you that night, that that morning while he was harnessing one horse he had sent his wife into the stable to get a blanket, and that he had heard her give vent to an exclamation of pain, "Oh!" something like that, did he tell you that? A. I don't think he did.

40 Q. Well, aren't you sure? A. I will say he did not.

Q. You will say he did not, and take a guess at it? A. No, I will say he did not.

Q. You are positive he did not? A. I am positive.

Q. Didn't he further tell you that night that when he asked her what was the matter with her she said, the horse kicked me? A. Yes.

Q. He didn't tell you that he had seen the horse kick her, did he? A. No.

Q. He told you that when she went into the stable for a blanket and he heard the exclamation of pain he asked her what was the matter with her and she had said the horse had kicked her? A. No, he didn't say that.

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Q. What did he say? A. Anything about the blanket at all.

Q. He didn't give you any idea that he saw the horse kick her? A. No.

Q. He didn't tell you that he saw the horse kick her? A. No.

20

Q. Did he tell you how the horse came to kick her? A. No.

Q. Did you hear him say these words, "She told me that the horse kicked her when I asked her?" A. Not positive about that.

Q. Did you have that down in your memorandum? A. No.

Q. Another thing, Doctor, before you left you made it absolutely clear to Rossi that you were going to notify the authorities? A. That is the law.

30

Q. I am not asking you what the law is. Kindly answer my question. You made it absolutely clear to him that you were going to notify the authorities, didn't you? A. I did.

Q. Did you use the word, "authorities," or did you say, "police?" A. The authorities.

Q. Well, now, did you—you know he is an ice man, don't you? A. Yes.

40

Q. And you know that don't speak very good English, don't you? Because your conversation

with him indicated that to you? You didn't say authorities to him? A. Pardon me. I said the proper authorities. The very words I used.

Q. Didn't you explain that you were going to tell the police? A. No.

Q. Did you know whether he understood you? A. I qualified it by saying, we will now go and talk to the County Physician.

10

Q. And he said, all right? A. Yes.

Q. You are sure now, you want to tell the jury and Court that you made him understand that you were going to notify the people that were in authority that might put him in jail if there was something wrong? A. That is right.

Q. You made that clear to him? A. Yes.

Q. You left there at what time? A. Between seven-fifteen and seven-thirty.

20

Q. You were there about fifteen minutes all told?

A. Five to ten. About ten minutes I should say.

Q. You walked from the house to the coal office at the coal yard known as Molson's, didn't you?

A. Not that night.

Q. Where did you telephone to the County Physician from? A. The booth in the station, Pennsylvania Railroad station.

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Q. And he was with you? A. Outside.

Q. You told him before you went into the booth that you were going to call up the County Physician? A. I did.

Q. And after you emerged from the booth you told him you had called the County Physician?

A. I did.

Q. And you told him that County Physician would be there to view the body some time that night or the next day? A. The next day, I told him.

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Q. You told him he would be there the next day? A. Yes.

Q. Did you give him any definite time when the County Physician would be there? A. Yes, because the County Physician, what he said on the 'phone, he said he would be there about eleven o'clock.

Q. Did you tell him that? A. I did.

Q. Did you get there the next day at eleven o'clock when the County Physician came? A. I did not.

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Q. Did you think it was important enough for you as a medical man, who thought that the presence of the County Physician was necessary, so much that you called him up that night immediately, did you think you had to go there the next day?

Mr. Stein: I object to the question being put to the witness as to what he thought.

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The Court: How is that competent?

Mr. D'Aloia: I will withdraw the question.

Q. You didn't go there the next day at eleven o'clock? A. No.

Q. You don't know what the County Physician found, do you? A. Yes.

Q. You asked him afterwards, or communicated with him? A. I saw the County Physician that afternoon.

30

Q. Now, isn't it a fact that Mrs. Baldy, this lady that you found there, didn't you find her in an excited condition? A. No.

Q. Wasn't it Mrs. Baldy who first suggested to you that you call up the County Physician? A. Oh, no.

Q. Sure about that? A. I am positive about that.

Q. How long was this memorandum that you

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wrote in the conversation that night? A. Oh, just a few sentences.

Q. Just a few sentences that you had uttered and that Rossi had uttered? A. Yes.

Q. Didn't put anything down that Mrs. Baldy said? A. No.

10 Q. You didn't have on that memorandum the fact that the dead woman had been menstruating for all day, or for some time prior to your examination? A. No.

Q. Do you keep a record of your cases? A. These cases, always.

Q. Have you a record of this case? A. Only the notes that I told you I had.

Q. Where is that? That you destroyed? A. I destroyed that.

20 Q. You don't keep records, you destroy them?
A. I keep a record at the time, always at the time.

Q. Did you know after the talk with the County Physician next day that this was going to be important, this memorandum of yours? A. Probably, yes.

Q. And yet you destroyed it in July? A. Yes.

Mr. D'Aloia: That is all, Doctor.

30

Mr. Stein: That is all, Doctor.

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

Direct examination by Mr. Stein:

Q. Doctor, how long have you been a practicing physician and surgeon? A. Forty-three years.

40 Q. What position do you hold in this county?
A. County Physician.

Q. How long have you been the County Physi-

cian of this County? A. In the neighborhood of twenty years.

Mr. D'Aloia: Qualifications are absolutely admitted.

Q. Do you remember the case of Annie Roosi, or Crivelli, or Linden? A. I do.

Q. When were you notified to come to that home on Lombard Street in Linden, the Crivelli's? A. On March twenty-second in the evening, some time. I can't tell just the hour. 10

Q. Did you go that evening? A. I went the next day.

Q. At what time? A. I judge it was in the neighborhood of eleven o'clock. I can't say for sure.

Q. Through whom had you been notified? A. Dr. Huff telephoned. 20

Q. When you arrived at the Crivelli home, whom did you meet on the twenty-third, the next day? A. On entering the house I suppose it was the dining-room or kitchen, I saw there Crivelli.

Q. This defendant— A. Roosi.

Q. (continued)—who is seated here? A. Yes.

Q. And who was with him? A. A little girl was in the room.

Q. And whose little girl was that? A. Said to be his daughter. 30

Q. About how old a child was she, in your estimation? A. I should judge about six years. Five or six years.

Q. Did you speak to Tom when you came in the house, the defendant? A. I did. I said, "How do you do, sir?"

Q. And then, just tell us now in your own way what happened, from there on. A. I asked if I could see his wife, and he got up then and led the way upstairs. I went in the room—no; 40

10 before that I asked Tom what was the trouble, and he said that the horse had kicked his wife. And then I said I would like to see the body. He took me upstairs in the bed room. I found a female lying on the bed. I immediately said to him, I thought it would be necessary for me to examine in this case. He made no reply. He sat down in one corner of the room and I proceeded to examine the case. I found that there was no indication of any external injury what-
20 ever. Satisfied myself in regard to that. And then I turned to Tom, and I said, "Tom, this is a very strange case, you say your wife was kicked. Are you positive of that?" "Yes." I said, "How do you know?" "Well," he said, she said she was kicked." "Well," I said, "there is no indications here. It is something very strange indeed about this. I don't understand it. I want to go out and see the surroundings."

Q. Just at that point let me ask you, did he say where it happened that the horse had kicked her? A. Yes.

Mr. D'Aloia: I object to that.

Mr. Stein: On what ground, please?

Mr. D'Aloia: It is leading. Let the
30 Doctor tell what he saw.

The Court: I overrule the objection. Let the question stand. Proceed.

Q. Where did he say it happened? A. He said it happened out at the stable, pointing in the direction of the stable.

Q. Where did he say that he was when the horse kicked the wife? A. He said he was out in the yard.

40 Q. The point where he indicated that the horse kicked the wife was how far from where he said

he stood? A. Oh, about seven feet—we will say about ten or fifteen feet.

Q. Where did you go with Tom from the house then, when you were just testifying about? A. We went out to the barn.

Q. To the barn? A. Yes, I asked him to locate—

Q. Wait a minute. Who went with you? A. Tom.

10

Q. Now, then, now tell us what he showed you in the yard about this horse kicking his wife. A. Tom showed me the horse; it was a white horse; alongside stood a darker horse.

Q. At that point, pardon me another minute until I ask you this question: As you entered this barn—did you enter the barn? A. I did.

Q. As you entered the barn, where was the white horse standing? A. Right by the door. There is a large door, unusually large for a stable door.

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Q. And if the door were opened, we will say, could you see the horse from any point in Tom Roos's yard? A. Yes, you could, plainly.

Q. Now, go on and tell us what you and Tom did out there. A. Tom told me here was the horse, and the horse kicked his wife. I examined the horse, went around the horse, and I said to Tom, "Tom I don't believe that horse ever kicked anything, hardly kick a fly."

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Q. And then? A. And then he said, "Yes." And I said, "How did you know? Did you hear any noise, did you hear the horse kick, or did you hear any noise whatever?" He said, "No." I said, "Do you know whether the horse kicked your wife?" He shrugged his shoulders, he said, "She told me the horse kicked."

40

Q. Did he say when the horse was supposed to have kicked his wife? When it was supposed

to have happened, rather? A. On the morning of the twenty-second, he said. I then asked Tom what he did, if he sent for a doctor.

Q. Just pardon me a moment before you come to that. On the morning of the twenty-second the horse was supposed to have kicked his wife, so Tom said? A. So he said.

10 Q. Did Tom tell you where he himself was when this horse was supposed to have kicked his wife?

A. He said he was out in the yard.

Q. Doing what? A. I don't remember. He told me something, but I can't exactly say what it was.

Q. When his wife came out of the barn and made the alleged remark that the horse kicked her, did Tom say where he was then?

20 Mr. D'Aloia: I object to that. I object to the form of the question, when his wife came out of the barn. That is fixing the fact. The doctor does not know anything about that.

Mr. Stein: I will withdraw the question.

30 Q. On the morning of Monday, the twenty-second, when this supposed kicking was to have taken place, did Tom say where he was when his wife went into the barn to this white horse? A. He said he was out in the yard.

Q. How far away from this door leading to the barn? A. Well, he pointed out there. I should judge it was—the yard isn't very large there.

Q. No. A. Somewhere near the—between the watering place and the barn.

Q. Well, about how far would that be from where Tom stood as he showed it to you? A. Well, I should think about as far as—

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The Court: Give it to us in feet, doctor.

A. Ten or fifteen feet.

Mr. D'Aloia: He said that before.

Q. Was anything said by Tom about his wife, after the horse kicked her? A. Yes. I questioned him about the case and I said, Did your wife, after the horse kicked, did your wife walk to the house? And he said yes. I said, Where did she go? Well, he said I went in the house, and she was in the kitchen. And I said, was she sitting down? I think he said that she was standing up, but she did sit down by the stove. Then he said—I said, when did she go to bed. He said, she got up then and went upstairs and went to bed. Well, I said, did you pay any attention to her, did you get a doctor? He said, no. No, she said she wasn't hurt much.

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Q. What else did he say after his wife had gone upstairs and gone to bed? A. He told me then that he went and had one of the horses shod somewhere, and come home after twelve, or after noon a little, and found his wife in bed. I said, did you find her in bed when you came home. He said, yes. And then he said that he saw her again an hour or two later. Then I said, who was with your wife? He said the little girl. Well, I said, did anyone—did you send—didn't you send for the doctor? He said no. But he told me after that that he had sent for a neighbor to come in. I don't know the name. I didn't see any neighbor. And that the doctor came in after the wife died.

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Q. Now, doctor, what time—how long were you in the house altogether on that morning, about? A. Oh, I was in and out. I was there two or two and one-half hours. The case bothered me. I couldn't get head nor tail from him. And I thought something was peculiar. I was rather inclined to think at first that Tom was telling me the truth. And I put it up to him straight. I said, Tom, now I want you to tell me, there was no horse

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business about this, I don't believe. Yes, he said, the horse kicked her. And I finally went over to the lumber office there and I inquired about Tom. I inquired what his standing was in the community.

Mr. D'Aloia: I do not think that is proper.

The Court: No.

10 Q. Don't tell about that. Now, Doctor, just before you left the house, what did Tom Roosi say to you as you were leaving? A. When I went over for the last time, I said to Tom, I said, Tom, there is something more than a horse kick here, I believe, and I am—really I will admit that I am at a loss to know what can be the trouble. Your wife seems to have died without a struggle; if there is an injury; internal injury there sufficient to cause death, I would not have found the body in this condition. Then he says, I don't want you to make
20 me any trouble, I don't want you to make me any trouble. And I said, Tom, I don't want to make you any trouble. I want to get right down to the facts of this case. I said, you were here, you say the horse kicked your wife, she is in bed lying there as though she died in the sweetest kind of slumber and I find no marks of violence anywhere about the body and I can't tell what the cause of death is,
30 and I shall have to have an examination. I must have an examination.

Q. Now, Doctor, then on that evening were you at the morgue of Mr. Leonard? A. I was.

Q. In company with whom? A. Dr. Monger.

Q. Was there an autopsy performed by Dr. Monger in your presence? A. There was.

Q. Did that autopsy reveal the cause of death? A. It did not.

40 Q. But as a result of the autopsy, what did you and Dr. Monger do? A. Well, the organs were in

such a normal condition, as we found them,—they were in a normal condition practically, and we decided that the best thing to do was to tie the stomach and take it out and have an examination made of the contents of the stomach.

Q. What have you to say as to the condition of the brain? A. The brain, on removing the skull we found it congested and a large amount of free blood there.

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Q. Congestion of the brain and a large amount of free blood indicate what? A. One of the things—that was one of the points that led us to tie the stomach and take it out. It is an indication that there was poison.

Q. That was all then that you did, and you didn't find the cause of death, simply this brain and the free blood, the congested brain and the free blood? A. Free blood and rather congested condition of the brain.

20

Q. That suggested to you what? A. Poison.

Q. Was that why the stomach was removed, do you know? A. That was why the stomach was removed.

Q. The stomach was removed and placed in what? A. In a glass jar.

By the Court:

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Q. Doctor, did you find any indications of any such result as might come from a kick? A. Nothing at all. I say the organs were just as natural as possible for a dead person to have.

Q. Would that have been the condition if she had been kicked hard enough to be killed? A. Undoubtedly so. It would have been utterly impossible. I think he said she was kicked on the left side there.

Q. I am only asking for your opinion as to what you found. That is all.

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By Mr. Stein:

Q. The stomach was placed into a large jar by whom? A. By Dr. Monger and myself.

Q. And after it was so placed what was done with the jar? A. The top was placed in position. The jar was sealed and it was taken by Dr. Monger and myself to my office, placed in my desk and locked until the following morning when we delivered it to Dr. Garhart.

Q. At what place? A. At my office.

Q. Delivered it to Dr. Garhart at your office? A. At my office.

Q. Was that the only connection now that you had with the stomach that was removed from the body, just delivered over to Dr. Garhart? A. Yes, practically all I had.

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Mr. Stein: That is all.

Cross examination by Mr. D'Aloia:

Q. Doctor, what time was it on the twenty-third of March, when you first arrived at this place?

A. It was between eleven and twelve o'clock in the A. M.

Q. You remained there until about three in the afternoon? A. I don't know. I was there I think about two hours. Two hours and a half, as near as I can tell.

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Q. Did you find the woman whose body you saw there suffering from menstruation? A. I should judge that she had been menstruating. Everything was spotlessly clean. I never found a case where such clean surroundings and conditions as the bed was in.

Q. But she had been menstruating? A. I should judge that she had.

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Q. Did you notice a napkin there? A. No I didn't notice a napkin there.

Q. Did you see any napkin around soaked with blood? A. I looked in the room and I did not see anything of any.

Q. What was there about the body that indicated to you that she had been menstruating prior to her death? A. My attention was called to it by Tom. He said that his wife had been sick that day menstruating.

Q. Didn't he say, in connection with her being sick that that was the reason why she had done to bed? A. No, no, sir. He said and stuck to it—and that was the provoking part of it—that she was kicked by a horse.

Q. Well, he told you in a conversation that he thought she told him that she had been kicked by a horse? A. He told me that she was kicked by a horse before that.

Q. I know, but then when you asked him for details he then explained to you that she had said to him that she had been kicked by a horse? A. Certainly that is what he said.

Q. And you were absolutely satisfied after the explanation was made that she had told him that she had been kicked by a horse, isn't that so? A. No, I don't know anything about that.

Q. I know, but after you had talked to him for sometime, Doctor, about this horse kicking her weren't you absolutely satisfied— A. No, I was not.

Q. Wait until I get through. A. The surroundings there were such that any investigating mind would have felt that there was a screw loose somewhere.

Q. That is all true, sir, but I am not asking you that. If you will pardon me for a moment, Doctor, and pay attention, while I will try and make myself clear. It is my fault for not making myself clear. I am asking you now, if it isn't a fact

that after you had talked to him for some time about the case that you were told plainly by him that she had told him that she had been kicked by a horse; she had said that to him? A. I wasn't clear about anything after that.

Q. You were suspicious? A. Very, very suspicious.

10 Q. And you became suspicious immediately upon your arrival? A. Oh, no. I was rather inclined to favor Tom.

Q. While you were in that condition of mind when you were rather inclined to favor Tom— A. As telling the truth.

Q. Yes. Didn't he tell you that his wife had told him that she had been kicked by the horse? A. Yes, he told me that.

20 Q. And weren't you satisfied in your own mind that the only knowledge he had of any horse kicking his wife was what he had learned from her by her telling him that fact? A. No, I wasn't satisfied.

Q. What evidence was there that he was not telling the truth in that particular? A. Simply because he said he was around there; that he heard no cry at all; that the woman was able to walk straight into the house. I don't see what a reasonable man could expect but a lie there.

30 Q. You came to the conclusion that he wasn't telling you the truth when he told you that she had said that she had been kicked by a horse? A. I didn't believe a thing he said after that.

Q. And the only reason you had for doubting his word was your own suspicion? A. Why, certainly.

40 Q. What had happened before you changed your mind to indicate to you that he wasn't telling you the truth? A. Why, simply when he told me that he was standing out there in the yard and that

the horse had kicked his wife. Furthermore, he told me—I said, “Did the horse throw her over, kick her over?” “No,” he said. “Well,” I said, “How do you know?” “Why,” he said, “I was standing there.”

Q. Now, Doctor, didn't he tell you that his wife had told him that the horse had kicked her and that he had not seen the horse kick her? A. No, he did not say he had not seen. I said, “How do you know, then, that the horse kicked your wife?”

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Q. What did he say to that? A. He said, “I didn't see it.” He said, “She told me that.”

Q. He said, “I didn't see it, she told me that”? A. Yes.

Q. Now, what reason did you have to doubt that? A. Why, because, small yard there; a big horse would kick a woman with sufficient force to cause her death in twenty-four hours and she never made a groan, as he said; never made a cry, but simply deliberately walked right into the house.

20

Q. Now, Doctor, just a moment. He didn't tell you that that horse's kick had caused his wife's death? A. No. He intimated. I said, “What is the cause of death; what is the trouble here?” He said, “It is the kick of a horse.”

Q. He didn't intimate what the cause of death was at all. He told you in answer to your questions to him that all he knew was that she had said that she had been kicked by a horse in the morning, isn't that true? A. Yes, he told me that.

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Q. What was there about that that made you suspicious?

Mr. Stein: He has explained that, I think, hasn't he?

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A. I can't explain the case any further than I have.

The Court: Answer the question.

Mr. Stein: Answer it again, Doctor.

10 A. Why, the confounded sneaky looking appearance that the man presented to me, if you want to know freely. I never saw such a looking man in my life. He sat there crouched down. I never saw a man take the news of a death of a wife so satisfactorily and calmly in my life. He sat there just this way.

Q. Isn't that an indication of gloominess? A. You never saw an Italian do that before, I don't believe, that wasn't guilty of something.

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

20 The Court: You are pursuing this investigation yourself.

Mr. D'Aloia: All right, we will let it stand.

Q. Isn't that an indication of gloominess when a man sits on the chair with his head bowed down? A. It isn't an indication of sorrow, surely.

Q. What is it an indication of? Joy? A. Well, it seemed so in this case.

30 Q. What was there about it that made it an indication of joy in this case? A. Well, I made some considerable inquiry about this man around.

Q. You are not judging this man from what you saw that morning? A. Yes, I am.

40 Q. You are telling just—just a moment please. I am going to be just as fair with you as I can under the circumstances. You are not judging this man from what you saw that morning. You are concluding a lot of things from what you have heard of him since you began in this case. Isn't that true? A. No. Now, then, I don't know. I

had heard nothing about the man at all. Everybody seemed to be noncommittal when I got there. I couldn't get a word of information from anyone.

Q. That is true. A. And I went in there and saw him and heard his statement that the horse had kicked her, and made the examination and come out convinced that there was no truth in the assertion at all.

Q. But, Doctor, isn't it a fact that he never made the statement that the horse had kicked her? A. Why, no.

10

Q. Isn't that the fact? A. Why, no, it isn't a fact. He told me the horse had kicked her and then on coming out again, and on questioning him, he said she said the horse kicked her. There is a distinct turn.

Q. You didn't understand his English very well, did you? A. Oh, he can talk English when he has a mind to. I found that out very plainly.

20

Q. But you had never spoken to him before that morning, had you? A. I don't know that I had ever seen him before.

Q. And you haven't spoken to him very often since that time? A. I have seen him several times.

Q. Spoken to him? A. Yes.

Q. Since that day? A. Yes.

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Q. When? A. During the investigation.

Q. Afterward, the next day? A. Yes, the next day.

Q. You know he can't speak English very well? A. No, I don't know it. He can speak English fairly well.

Q. Didn't you make out a certificate that day? A. I did make out one, but I tore that up.

Q. Just please answer the question. A. Yes, I did.

40

Q. And didn't you have a great deal of difficulty with him in getting the name of the wife correctly spelled? Yes or no? A. No, I did not. He just told me and I sat down and wrote it, and I wrote it just as he said that it was spelled.

Q. And the purpose of that certificate would have been to allow the body to be buried? A. Yes.

10 Q. How long after you had been there did you sit down and write that certificate? A. I made that certificate out, I suppose, in about three-quarters of an hour. Now, that is guessing. I can't say positively.

Q. It may have been an hour or so? A. Well, I don't think so, no.

Q. Well, you are sure that it was about three-quarters of an hour? A. Well, about.

20 Q. And during the three-quarters of an hour that you were there, you were investigating conditions all around, weren't you? A. Yes.

Q. And you were talking to him? A. Well, not very much after that, no.

Q. I am not talking about after that, Doctor. I am talking during the three-quarters of an hour prior to your making out the certificate? A. I had talked to him, just as I have told you.

30 Q. And had he told you that she had told him that she had been kicked by a horse at the time you sat down to write the certificate? A. Yes.

Q. And notwithstanding the change, as you say, between the first statement he made that she had been kicked by the horse and the second statement that she had told him that she had been kicked by the horse, you sat down and you filled out a certificate as County Physician for the permission to bury the body? A. Yes.

40 Q. How long have you been County Physician? A. Oh, about twenty years.

Q. You were satisfied at the time you sat down,

Doctor, and wrote out that certificate, that there was nothing suspicious about the case, and you made out a permit to bury the body? A. Not by any means, sir.

Q. Why did you make out the certificate? A. Well, I made out that certificate particularly to get the data; the age, the name, the age and the data from him, before I went aaway.

Q. Well, isn't it a fact that that certificate is only used for one purpose; and that is to permit the burial of the body? A. That certificate is on file, and was intended to go on file in my office. 10

Q. And that body could not have been buried without that certificate, could it? A. No, not without a certificate.

Q. Who did you give the certificate after you had finished it? A. Who did I give it to?

Q. Yes, sir. 20

Mr. Stein: Which certificate?

Mr. D'Aloia: The certificate he made out, Mr. Stein. There is only one certificate.

Mr. Stein: The certificate upon which the burial was permitted?

Mr. D'Aloia: No. The certificate he made out after being there three-quarters of an hour. 30

Mr. Stein: There is not one certificate. There are two. That is the reason I raised the point.

The Court: Let the witness answer. He is being asked about a certificate which he made out after three-quarters of an hour. Read the question.

Mr. Stein: I wanted to show what it was. 40

Mr. D'Aloia: There is only one certificate I know of.

Mr. Stein: That is on file and it is a record.

Q. (Question repeated by the stenographer.)

A. I was in the lumber office.

By the Court:

10 Q. Who did you give it to, Doctor? A. I left it at the lumber office, and said to them, Now, that certificate is not to be used until you hear from me, I want to investigate this case. I am not satisfied and I want to investigate this case and I am going to call on the Prosecutor, and I did, then took down the receiver and called the Prosecutor's office and told him that there was a case in Linden; I described it to the Prosecutor.

20 Mr. D'Aloia: I object to what he told the Prosecutor.

The Court: This is an answer to your question.

Mr. D'Aloia: I simply asked him what he did with the certificate. I am not asking him what he said to the Prosecutor over the wire.

30 The Court: He is trying to tell you what he did with the certificate.

Mr. D'Aloia: He has told us. He said he left it there and he told somebody there not to use it.

The Court: That is an answer to the question. Ask your next question.

By Mr. D'Aloia:

40 Q. You say that when the autopsy was performed the organs were in a normal condition?

A. Practically normal condition.

Q. Except the brain, and that was congested?

A. The brain was congested.

Q. And you found a lot of free blood there?
A. Yes.

Q. Was there any congestion of the blood of the brain? A. No. Free blood.

Q. What is the condition of a woman's brain, so far as the blood surrounding it is concerned, when she is undergoing her menstrual period?
A. I don't know that I could answer that, only offhand. I should not think there would be very much blood in her brain.

10

Q. If she had been lying down from somewhere in the neighborhood of six-thirty in the morning until about seven o'clock in the evening, and she were menstruating all those hours, lying perfectly flat, horizontal, would you say that there would not be very much blood in that brain? A. I should say that in all probability there would not be very much free blood there to flow out after death.

20

Q. In all probability? A. Yes.

Q. It would flow out after death? A. Not in normal condition?

Q. What is that? A. Not in a normal condition.

Q. I mean the condition of a woman who is menstruating? A. That is a normal condition. It is normal for a woman to menstruate. What is the use of talking about that? It is a normal condition.

30

Q. You say that that blood in the brain would flow out after death? A. Not from menstruating I didn't. I said there must be some additional cause for it, and that led to tying the stomach and having the examination.

Q. Would there be any difference about the blood in the brain of a woman menstruating, and the blood about the brain of a woman that is not

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menstruating, at the time of death? A. I can't answer that. I should judge not.

Q. When a woman menstruates she is very morbid, isn't she, usually? A. Very what?

Q. Morbid? A. Not necessarily so.

Q. Nervous? A. Well, that depends on how much external—a great deal about her surroundings.

10

Q. Does a woman undergo very much pain during the menstrual period? A. Normally not.

Q. If it is an abnormal menstruation does she undergo very much pain? A. Depends on what sort of a condition that she is, I suppose.

Q. Could you tell from your examination of this body whether this woman was menstruating normally or abnormally? A. Couldn't tell anything about it.

20

Q. Did you make the examination? A. Yes, we examined all the organs. They were all in normal condition.

Q. You just said you could not tell anything about it. Now, could you tell from the examination of the body whether the woman was normally menstruating— A. No, I could not.

Q. (continued) :—or abnormally menstruating? A. I could not.

30

Q. You could not tell what the cause of death was, not even after the autopsy, could you? A. Yes, we told after the autopsy. It took some time though.

Q. What? A. It took some time to tell after the autopsy.

Q. I mean immediately upon performing the autopsy? A. No.

Q. What would cause a congestion of the brain? A. An overdose of morphine.

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Q. Anything else? A. Well, I have understood people who were electrocuted.

Q. I don't want what you understood. A. I don't know.

Q. From your experience as a physician, and your knowledge, what other causes are there besides an overdose of morphine? A. I have never seen any other cause.

Q. Would not a tight corset cause a congestion of the brain?

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Mr. D'Aloia: Don't laugh, Mr. Prosecutor.

Mr. Stein: I am laughing because—

Mr. D'Aloia: I do not want to be interrupted by the Prosecutor's sardonic laugh.

Mr. Stein: I object to the question.

The Court: Try and conduct this case as it ought to be conducted in a Court of Justice.

Mr. D'Aloia: Yes, sir; I will.

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The Court: This constant wrangling between counsel is unseemly. If you have a complaint to make of counsel, call the Court's attention to it. Do not undertake to discuss it with him.

Mr. Stein: Now I desire to object to the question on the ground that there is not any evidence in this case whatever that this woman lying in that bed, dead, had on tight corsets, or at any time previous to that time that she wore tight corsets, which might have produced congestion.

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The Court: They may prove hereafter that she had. I will allow that question. Proceed.

Question repeated by the stenographer.

A. I don't know. I never have seen it.

Q. And the only cause that you know of that would produce a congested brain, such as you found at the time you performed the autopsy, would be

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an overdose of morphine? A. Well, I wouldn't say that.

Q. Then give us some other causes. A. I don't know of any.

Q. Then I can state safely that the only cause that you know of that would produce the congested condition of the brain as you found it when you performed this autopsy is an overdose of morphine, and nothing else? A. That is what I should say.

Q. Are there any other causes? A. I don't know of any.

Q. It is not whether you know—

The Court: He cannot—does not know.

A. Perhaps you might tell me of some. I don't know.

20

The Court: You might ask me if there were any other causes. I might say I did not know. There might be ten thousand that I would not know about. That is only wasting the time of the Court.

Q. Is there any other poison that would cause a congestion of the brain? A. I don't think. Not to my knowledge. I think morphine is the only particular one that I can name.

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Q. What is the action of strychnine upon the brain? A. I don't know.

Q. What is the action of digitalis upon the brain? A. I don't know.

Q. What is the action of chlorine gas on the brain? A. I never saw a case of that kind. I never have seen a case.

Q. How many morphine poisoning cases have you had occasion to perform autopsies on? A. Oh, I can't tell that.

40

Q. More or less? A. Well, I suppose perhaps ten or fifteen.

Q. Did you ever find a congested brain in any one of your cases during your time as County Physician, where you did not come to the conclusion that the cause was morphine poisoning? A. No, sir.

Q. You didn't know it was morphine poisoning at the time you found the congested condition?

A. I didn't know anything about it. I was only suspicious.

10

Q. Of poisoning? Not of morphine poisoning?

A. Yes. That was in my mind.

Q. What? A. Morphine poisoning.

Q. Did you associate any other poison with your condition of mind? A. No. I thought that was the most direct and most natural cause, the conditions that I found.

Q. When next did you receive that certificate that you made out and left with somebody there with instructions not to use it? A. I was down the following day.

20

Q. Did you find the certificate there? A. I did; found it just where I left it.

Q. Who had it? A. I left it in the office of the lumber company.

Q. And you know that that same night of the day that you were there, Mr. Leonard had been sent down by your orders to take the body away? A. I did.

30

Q. And the next day you went for the certificate? A. Yes, sir. I didn't go for the certificate. I went down—

Q. You didn't go for the certificate? A. Not particularly, no. I went down to see whether Mr. Leonard had been there, and to arrange with the Prosecutor about the autopsy. I knew that he would be there.

40

Q. Did you know what was in the stomach at

the time they performed the autopsy, at the time it was taken out? A. The stomach was put in intact in that glass bottle.

The Court: He wants to know whether you knew what was in it?

A. No.

10 Q. And of your own knowledge, outside of what you have heard since the stomach left your possession, of your own knowledge, you never knew what the cause of death was? A. Why, of course I knew what the cause of death was.

Q. Doctor, did you understand my question? Of your own knowledge, outside of what you have heard since the stomach left your possession, you never knew what the cause of death was in this case? A. I had the finding of the investigation.
20 All I knew.

Q. I am not asking you that. You, of your own knowledge, outside of what you have heard since the stomach left your possession, never knew what the cause of death was in this case? A. No.

Mr. D'Aloia: That is all, Doctor.

Mr. Stein: That is all, Doctor.

30 RAY T. MONGER, a witness, produced on behalf of the State, being duly sworn, on his oath, according to law, saith:

Direct examination by Mr. Stein:

Q. Dr. Monger, you are a practicing physician and surgeon, and have been so how long? A. About five or six years.

Q. Where do you practice? A. Fanwood.

40 Q. And have you practiced here all the time? A. Yes, all but one year.

Q. About how many autopsies have you per-

formed in your time? A. Why, I probably assisted at about fifty, and I performed probably about twenty.

Q. Talk a little louder. Were you at Leonard's Morgue on the twenty-third day of March of this year, in this city? A. Yes, sir.

Q. Did you perform an autopsy on a body there? A. Yes, sir.

Q. Do you know whose body it was? A. A woman said to be Mary Crivelli, I think.

Q. Anna Crivelli, you mean, don't you? A. Anna Crivelli; yes, sir.

Q. Who was with you associated in the performance of that? A. Dr. Wescott.

Q. Who actually performed the autopsy? A. I did.

Q. Now, Doctor, tell us what you found? A. Well, I made a careful general examination of the external body and found—

Q. Now, firstly, you made the external examination of the body? A. Yes.

Q. Why? What is the reason for that? A. Well, that is a routine method in performing autopsies.

Q. Was there anything externally that you saw? A. Nothing at all.

Q. Any marks or bruises at all about the body? A. No marks of injury or bruises of any kind on the body.

Q. Go on with the internal examination. A. Why, the skull was opened in the usual way, and the dura, or the covering of the brain was removed, and upon removing the dura, quite a quantity, I should say about two ounces of liquid blood flowed out.

Q. Is that usual or unusual? A. Unusual.

Q. Go on. A. The surface of the brain was markedly injected, meaning congested. On sec-

tion the brain was perfectly normal, and the base of the skull appeared normal in every respect. No evidence of fracture or injury of any kind. I then opened the chest. The left lung showed a chronic inflammation or adhesion to the chest wall, which is abnormal, probably the result of an old pneumonia, or pleurisy which she had had. The right lung was practically normal. The heart was rather flabby, and upon opening the heart, it was filled with fluid blood, not a clot. The valves were normal and the heart appeared normal in every respect. I then opened the abdomen, and found the stomach possibly slightly congested. The liver normal. Gall bladder normal. Spleen normal. Intestines normal, and appendix also. The kidneys were slightly congested. The ovaries and uterus were normal. The bladder contained probably about five ounces of urine, which apparently looked like urine. That was the result of the examination.

Q. As the result of the examination was there anything at all that indicated a cause that might produce death? A. No, there was nothing that would indicate, absolutely, the cause of death.

Q. What was the only thing that you found that might, if anything in that examination would, indicate death? A. Well, there was nothing. The things that were abnormal and led us to investigate further were the condition of the brain and the condition of the blood.

Q. What was the abnormal condition of the brain? What was it about the brain that causes you to say it was abnormal? A. Well, the surface of the brain was congested. The blood flowing out of the large vessels that come up from the neck into the base of the skull, normally you will find very little blood coming from those large vessels, and in this case there was quite a quan-

tity, so much so that I rather thought that we had a fracture of the skull to deal with.

Q. What did the congested condition of the brain, and the abnormal quantity of fluid blood indicate to you? A. Well, it didn't indicate anything absolutely. The things that it might cause, you might find a congested brain in several conditions, but not finding any general cause of death, we thought it advisable, to remove the stomach, with its contents, for examination.

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Q. Was there anything that you suspected from the condition of this brain and the blood?

Mr. D'Aloia: That is objected to.

The Court: I will allow the question.

Mr. D'Aloia: Prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

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Judge.

A. Well, one of the things it might be would be opium poison.

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

The Court: Strike that answer out. Answer the question.

Q. Was there anything you suspected, that was the question. A. Was there anything I suspected?

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Q. Yes. A. Why, yes. Poisoning.

Q. Doctor, will you please tell us what relation opium and morphine have to laudanum? Or in other words, what is laudanum? A. Laudanum is a tincture of opium, and an alcoholic solution of opium.

Q. It is opium containing morphine? A. Yes. If you crystallize it out you will get the alkaloid of morphine.

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Q. What did you do after you had performed your autopsy and had noted the condition of the brain and the quaantity of fluid blood? A. I tied off the upper end of the stomach, and also the lower end of the stomach with a strong cord.

Q. Why do we have to tie that up on either end?
A. So the contents of the stomach would remain in the stomach. I tied it off in two places and cut
10 between and then removed the stomach from the abdominal cavity.

Q. Dr. Wescott was present when you did this?
A. Yes.

Q. After you had removed the stomach from the body, what did you do with it? A. We put it in a clean glass jar and sealed it.

Q. How did you seal it, Doctor? A. Well, we took adhesive plaster and sealed it over the top. It
20 was a wide mouthed jar, about that large, and put two strips of adhesive at right angles to one another, and then sealed it with sealing wax.

Q. After you had sealed it, what became of it?
A. Well, it was in our possession. We took it out of the morgue into the room where our coats were, and then transferred it into the automobile and took it home, and it was put in a desk and locked.

Q. You say we, who do you mean? A. Dr. Wescott and I.
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Q. This stomach was brought by Dr. Wescott and yourself to the home of Dr. Wescott? A. Yes.

Q. Where was it placed there? A. In a roll top desk and locked.

Q. After that what became of the stomach? A. Remained there for twelve hours about, and then Dr. Garhart came there with several jars.

Q. Were you present when Dr. Garhart came?
40 A. Yes.

Q. And Dr. Wescott present too? A. Yes.

Q. He came with several jars. What happened

in your presence? A. Well, I took the jars and boiled them, rinsed them out and boiled them.

Q. The two jars that Dr. Garhart brought? A. Yes. Then Dr. Garhart broke the seal in the presence of Dr. Wescott and me.

Q. Broke the seal of what? A. Of the jar.

Q. Of what jar? A. Of the jar that we brought home from the morgue the previous night.

Q. Which contained what? A. The stomach and its contents. 10

Q. Yes. What did he do after he had broken the seal on this jar? A. The stomach was removed from this jar.

Q. By whom? A. Dr. Garhart.

Q. Go on, A. The string on one end of the stomach was cut, which allowed the contents of the stomach to flow out into one of these new clean jars. 20

Q. Yes. A. Then he took another clean jar and put the stomach—no. Before that he opened the stomach up, took a pair of scissors and slit it right across so we could open it and see the inner surface and put that stomach in another jar.

Q. Then he had two jars then, one with the contents of the stomach in it, and the other with the stomach itself in it? A. Yes.

Q. What did he do with these two jars in your presence? A. Well, he took them in his own machine. 30

Q. He took them along with him in his own machine, these two jars? A. Yes, sir.

Q. Would you recognize these two jars, or would you recognize the jars that he put them in? A. I would recognize the kind of jars. I couldn't identify the exact jar. That was the type of jar.

Q. I show you jars marked for identification P1, and P3, on the part of the State and ask you whether they are the jars? 40

The Court: He said they are the kind of jars.

Mr. D'Aloia: I object to the question.

The Court: What is your objection?

Mr. D'Aloia: My objection is that those jars, are not now to be marked for identification, because the witness has not said that those are the jars. He said it was a jar of that type.

The Court: Will you tell me if you are serious about it, what objection there is to marking anything for identification?

Mr. D'Aloia: No objection at all.

The Court: Then do not object.

Mr. D'Aloia: I do not want him to call certain exhibits as having been introduced in the case.

The Court: He is not doing that at all, and you know it. He is simply marking these for identification, and if he does not prove them they will not be admitted in evidence. You know that. Why object?

Mr. D'Aloia: I did not want the witness' answer to be understood as identifying those jars, that is why I made the objection.

The Court: He did not do anything of the kind.

Jar marked P1 for identification.

Jar marked P2 for identification.

Q. I show you P1 and P2, and ask you whether you can recognize those as being the jars in which Dr. Garhart placed the stomach and the stomach contents? A. I can't recognize them.

Q. Then he took them away with him in two jars? A. Yes, sir.

Q. After that had you any further connection with the matter? A. No.

Q. Doctor, while Dr. Garhart opened the stomach in your office, or in Dr. Wescott's office, and removed the contents from it, did you smell of the liquid? A. Yes, we did.

Q. Did you detect anything about the odor of the liquid? A. It simulated that of laudanum or tincture of opium.

Q. What? A. It smelled like tincture of opium.

Q. Tincture of opium is also called what? A. Laudanum.

Q. What smelled of that, the liquid that came from the stomach? A. Yes.

Q. Or the stomach? A. Because we opened the stomach and smelled the inner surface of the stomach; it had the same characteristic odor.

Mr. Stein: That is all.

Cross examination by Mr. D'Aloia:

Q. Did you smell any alcohol? A. No. The odor of the opium would probably cover up any odor of alcohol.

Q. Did you smell any alcohol? I am not asking what something else might have done, or probably would have done. A. Well, no, I didn't.

Q. You told the Prosecutor, Doctor, that there are several conditions which will produce a congested brain, such as you found when this autopsy was performed. What are those several conditions? A. I didn't say as I found them in this condition. There are conditions that will cause congestion of the brain other than opium poisoning.

Q. What are they? A. Well, some of them are any type of meningitis, an injury.

Q. What else? A. Those are the most common ones. I can't recall any others just now.

Q. Give us those that are not common, if there are any. A. I say I don't recall any now.

Q. There are a great many more causes that

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would produce a congestion of the brain, such as you found when you made this autopsy, other than those you have mentioned, aren't there? A. Yes, there are others.

10 Q. Can you tell us probably or approximately the number of those causes, approximately, not accurately? A. Well, that is an awfully broad answer. Congestion of the brain may be one hundred different degrees, and you may have one hundred different diseases having congestion of the brain, of various types, of various intensity. But there are no other conditions that would cause this particular type of engorgement, that I have ever seen, except as in this case.

20 Q. Congestion of the brain is congestion of the brain. How does a congested brain differ from a normal brain? A. That also varies. A congested brain, the blood vessels are all engorged with blood. The capillaries are engorged, and gives a general red appearance. A normal brain does not give you that appearance. It gives you more of a whitish appearance.

Q. Did you find that condition of the reddish appearance in this case? A. Yes.

Q. That reddish condition is found in every case of congested brain? A. Yes.

30 Q. And from the reddish condition and the presence of the blood in the capillaries and the absolute stuffing of those blood vessels, if we might call it that, you come to the conclusion that it is a congested brain, don't you? A. Yes.

Q. So that there is nothing about that reddish tinge that indicates opium poisoning or morphine? A. Not in itself, no.

40 Q. There are, you say, innumerable causes that will produce that result of the reddish tinge? A. There are a great many; yes, sir.

Q. Which you, as a doctor, and your conferers call a congested brain? A. Yes.

Q. You said you found, after opening the skull, two ounces of free blood? A. After removing the dura, yes.

Q. And those two ounces of free blood didn't indicate anything but an ordinary case of congested brain, did they? A. Yes, it did indicate.

Q. What? A. Well, ordinarily blood clots to a certain measure after death, and this didn't clot at all. It just poured out as though it were water. 10

Q. In an alcoholic condition, would death caused by alcoholism, an autopsy being performed on the body of a man who had died from alcoholism, you found a congested brain there, would you find any free blood due to alcoholism? A. Not to the extent that I found in this case. 20

Q. To what extent? A. Well, you would get probably a few ounces, possibly dripping on the basin on the floor, after you removed the brain of an alcoholic. And the general appearance of the brain also looks different in acute alcoholism. You get a spongy, odematous appearance of the brain in acute alcoholism which we didn't find in this case.

Q. Did you make a blood test in this case? A. No. 30

Q. Can you tell whether there is any poison in the blood that might have caused that brain to congest? A. You couldn't, without an examination, no, you couldn't.

Q. Did you make any examination to show any poison in the blood stream? A. No.

Q. Isn't it possible some time when there is poison in the blood stream that a congested brain will result such as you found in this case? A. 40

Well, the poison has to get into the blood to produce congestion as we found, yes.

Q. In a case of alcoholism, isn't the person killed by poison? A. Yes.

10 Q. And doesn't the poison of the alcohol affect the blood in such a manner, that when you find a congested brain in a case of alcoholism, that free blood is there in just as large a quantity as it was in this case? A. No, you don't find it in such.

Q. You don't find it? A. No.

Q. Outside of what you learned when you made the autopsy, you don't know what the cause of death was, do you? A. I didn't at the time, no.

Q. You haven't examined anything since that time, have you? A. No.

20 Q. So that outside of what you have heard since the time you made the autopsy, you do not know, as a doctor, what was the cause of death? A. No, I don't.

Q. And you didn't know when you got through with your autopsy? A. No, I didn't. That is why I removed the stomach, to find out if we could.

30 Q. Your sense of smell on this particular evening, Dr. Garhart, took that stomach, as you say he did, and you smelled of the liquid in the stomach, it was in perfect condition as far as you know? A. I don't quite understand.

Q. Your sense of smell, you didn't suffer from any cold? A. No.

Q. And if there had been any alcohol in that liquid you would have detected the smell of alcohol? A. Not necessarily.

40 Q. You said you detected an odor of morphine? A. No.

Q. You detected an odor of laudanum? A. Yes.

Q. Tincture of opium? A. Yes.

Q. Is there any difference between the odor of morphine poisoning and tincture of opium? A. Yes.

Q. What is the difference? A. Why, it is difficult to describe a smell. A tincture of opium, as you might describe it, has a sweetish acid smell. I couldn't describe it.

Q. And you could not tell how much that sweetish acid smell would the smell of alcohol, could you? A. Why, no.

Q. But you are sure— A. You could not mistake the two. I mean they are so dissimilar.

Q. Distinct. A. Distinct, that you could not.

Q. They are so distinct that you could not mistake the two? A. Yes.

Q. But you are sure now that you didn't smell any alcohol, did you? A. Could not detect it.

Q. You could not detect any odor of alcohol? A. No.

Q. Did you detect any odor of morphine? A. No.

Q. Sure about that? A. Yes.

Q. Dr. Westcott testified that he knows this is a case of morphine poisoning. Dr. Wescott says that this is a case of morphine poisoning. Is that what you found—

Mr. Stein: Wait a minute now.

Q. (continued): —when you smelled the liquid that was poured out of that stomach into the jar that Dr. Garhart took?

Mr. Stein: I object to the evidence because it is a misstatement of the evidence. Dr. Wescott did not say that this was a case of morphine poisoning.

The Court: I will allow the question. If he did not say it—

Mr. Stein: The witness Wescott did not testify the cause of death at all.

The Court: If he did not say that it did not amount to anything.

Question repeated by the stenographer.

A. No.

10 Q. If a person takes laudanum at six o'clock in the morning, and a person taking it dies around seven o'clock in the evening, would you be able to smell any laudanum in the contents of that stomach? A. You ought to, yes.

Q. You ought to? A. Yes.

Q. In every case? A. Why, in this case—no—

Q. What? A. Yes, you should.

20 Q. What effect would it have upon the presence of that laudanum in the stomach if the person taking it at six A. M. were to have taken some medicine to move his or her bowels before seven P. M., the time of death? A. Why, you still get opium in the stomach, because opium is absorbed by the blood vessels from the stomach and goes through the circulation, and is reabsorbed by the stomach again.

30 Q. And how long does it take for the opium to be absorbed, circulate, be reabsorbed by the stomach and you find a trace of it? A. Depends on a great many conditions. Depends on whether the stomach is empty, and whether it is in—

40 Q. So that it is barely possible that anybody taking laudanum at six o'clock in the morning, and dying at seven o'clock in the evening, thirteen hours, or eleven hours afterwards—thirteen hours afterwards, or twelve hours afterward, if he or she had had some medicine which had caused a movement, peristaltic movement of the bowels, you would not find any laudanum there, would you? A. Yes, you would.

Q. You would? A. Yes.

Q. Or you should? A. You would. Opium is very slowly absorbed.

Q. How slowly? A. Those things vary so much. You can't make any definite statement of time.

Q. You are qualifying your answer. You are the expert. You say that it is very slowly absorbed? A. Yes.

Q. No, tell us how slowly. A. In comparison with possibly other liquids? 10

Q. Yes. How long does it take, say a certain quantity of opium introduced in the stomach in the morning at six A. M., how long a period would it take for the stomach to absorb that opium? A. Why, approximately two hours.

Q. How long would it take for that opium to circulate and come back to the stomach to be reabsorbed? A. Well, it would begin to absorb the moment it is ingested, and then you get a vicious circle right around there and it would be reabsorbed and be reabsorbed. 20

Q. How long after the introduction of that opium in the stomach and the absorption commences would it be for the toxic effect to begin? A. Depends upon the size of the dose. Ordinarily in thirty minutes you ought to begin to see toxic effects. 30

Q. In thirty minutes after the introduction of the poison into the stomach? A. Yes. Conditions being normal.

Q. What would be the toxic effect of opium or laudanum upon a person suffering from menstruation, a woman? A. What would be the effect on the menstruation?

Q. Yes, thirty minutes after, what would be the toxic effect that you say that would take place thirty minutes after taking the poison? A. Why, she would possibly become drowsy, if her dose was large enough. 40

Q. A state of coma, wouldn't it produce? A. Not in that short time.

Q. But she would become drowsy or semi-conscious? A. I would say drowsy in thirty minutes.

Q. And the degree of drowsiness would depend upon the dose? A. Depend upon the dose, yes, at that period.

10 Q. What is a dose of laudanum sufficient to kill, ordinarily? The smallest dose that you know of as a doctor? A. Why, to people that have a particular susceptibility a dram might cause death.

Q. If a dram of laudanum is introduced in the stomach of a woman, like the woman that you performed the autopsy on, the body of the woman, like the one you performed the autopsy on, at six o'clock in the morning, would drowsiness begin to
20 come upon her at six-thirty? A. Of that same morning?

Q. Yes. A. Thirty minutes afterwards.

Q. Yes? A. Yes, probably.

Q. How much drowsiness would one dram of laudanum produce? A. Well, it would not produce in a normal individual, scarcely any in thirty minutes.

Q. Would the drowsiness become more aggravated as time rolled on, after the thirty minutes?
30 A. Yes.

Q. What would be the condition of that person, say two hours after taking the laudanum? A. One dram?

Q. Yes? A. Well, she—possibly she would never be more than just a little bit drowsy, or lackadaisical.

Q. How about three hours afterwards? A.
40 From a dram she probably wouldn't change much. She would get her maximum effect in two hours from a dram.

Q. What would you call the maximum effect of one dram of laudanum, so far as drowsiness is concerned? A. Very slight drowsiness.

Q. What would be the effect of that dram of laudanum upon the person's vitality in two hours?

A. In a normal individual it would have practically none. You would be able to walk around and attend to your work.

Q. When would the fatal period begin? A. 10
Probably never, in a normal individual, from a dram.

Q. Well, I asked you what was the smallest amount of laudanum that could cause death. A. I told you in a particularly susceptible individual.

Q. I am not asking you about a particularly susceptible individual. I want a normal individual. A normal person. This woman was normal, you found everything normal when you performed the autopsy, didn't you? A. Yes. 20

Q. That is the kind of a person I want you to talk about, a person that closely resembles this woman upon whom you performed the autopsy, and that is a normal person. Not one that is susceptible to the action of opium, or not susceptible to the action of laudanum, but a normal person. What is the smallest dose of laudanum that would cause death of a normal person? A. Probably about an ounce. 30

Q. If an ounce of opium or an ounce of laudanum is introduced into the stomach of a normal person at six A. M., what time would that person become drowsy? A. Probably in thirty minutes, begin to.

Q. Would the toxic effect begin then? A. That is the beginning of the toxic effect, that drowsiness.

Q. What would it consist of? What would the 40

effect be? A. Well, she might feel a little bit drowsy and sleepy.

Q. Lose consciousness to a certain extent? A. No.

Q. When would that person lose consciousness, if at all, at what time after taking the poison?

A. Why, approximately four or five hours she might lose consciousness.

10 Q. So that by one o'clock that person would be absolutely unconscious, if she had taken the poison at six o'clock? A. She probably could be aroused, yes.

Q. She could be aroused? A. Yes.

Q. Could she speak intelligently? A. Yes, she might be aroused.

Q. Might? A. Yes.

20 Q. It would be extraordinary for her to speak intelligently? A. No, not necessarily. It varies so in different individuals. Even a normal individual. You cannot put down any definite hours when a patient becomes unconscious. Conditions change those things very much.

Q. How long after taking that ounce of laudanum would the normal person die? A. Why, it is awfully hard to make a positive statement.

30 Q. Give it to us approximately. A. I should think twelve to eighteen hours.

Q. How long before the death would absolute unconsciousness set in? A. Probably an hour or two hours; maybe longer than that.

Q. Is laudanum sometimes taken by a woman suffering from painful menstruation?

Mr. Stein: Now wait. I object to the question on the ground that all—

The Court: Why is that competent?

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Mr. Stein: That all of this was not cross examination. I have allowed him to go on. I object to it on that ground.

The Court: I ask you why is it competent?

Mr. D'Aloia: This woman, I understand from the doctor, and Dr. Wescott, may it please the Court, was menstruating.

The Court: That is not what you are asking. You are asking whether some woman, or a class of woman don't take it. That does not prove anything in this case.

Mr. D'Aloia: I want to show that laudanum is used to alleviate pain in cases such as—

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The Court: If you can prove that laudanum is used to alleviate pain?

Mr. D'Aloia: That is the question.

The Court: No, that was not the question.

Mr. D'Aloia: I beg your Honor's pardon.

I think your Honor will—

Question repeated by the stenographer.

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The Court: That I will overrule.

Q. Is laudanum used to alleviate pain? A. Yes.

Mr. Stein: Why don't you wait, doctor?

The Court: I will allow that.

Q. Is laudanum used to alleviate pain in cases of painful menstruation? A. Yes.

Mr. D'Aloia: That is all.

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Mr. Stein: That is all, doctor.

MANCH N. GARHART, a witness produced on behalf of the State, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Stein:

Q. What is your business? A. I am a Pathologist.

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Q. Where is your laboratory? A. Plainfield, New Jersey; Muehlenberg Hospital.

Q. How long have you been a Pathologist? A. I have been there about one year.

Q. How long have you been a Pathologist? A. Over two years.

Q. Are you also a physician, a graduate physician? A. I am.

Q. What is the line of work you follow, if any, as a specialty? A. Laboratory work.

10 Q. Do you recall Drs. Wescott and Monger, at their office in Fanwood handing to you a jar containing a stomach? A. I do.

Q. About when was that? A. That was about nine o'clock in the morning of the twenty-fourth of March.

Q. Where was the jar taken from, if you know. A. The jar was taken from the desk. It was locked, the roll topped desk was down. The top was down
20 and the desk was locked and Dr. Wescott had the key. He unlocked the desk and rolled the top up and there was a jar there which was sealed, as has been described, and it was handed to me for examination.

Q. Upon its being handed to you, what did you do? A. I held the jar and inquired something about how the specimen was obtained.

30 Mr. D'Aloia: I object.

Q. Do not tell what they told you. After you had gotten the information which you desired concerning how this specimen was obtained, then what did you do? A. In the presence of Dr. Wescott, and Dr. Monger I broke the seal and removed—

Q. The seals of what? A. The sealing-wax which was smeared over the strips of adhesive which were placed on the jar, and removed the strips of adhesive and opened the jar.
40

Q. And then did what? A. Then I removed the stomach from this jar.

Q. And then what did you do? A. I had six new clean jars, which I had boiled and I had brought those with me, of the same type as the jars before me.

Q. What did you do? A. With the clean scissors I cut the string which closed one of the openings of the stomach and poured the contents of the stomach into one of these clean jars.

Q. What did you do with the stomach itself? A. And the stomach itself I opened with this same scissors and looked down into the stomach to see the condition of the stomach and also smelled of the stomach and also of the stomach contents to see whether or not there was any characteristic odor of anything present which would account for suspicion. 10

Q. Well, did you discover anything? A. I did

Q. Of what? A. I discovered the odor of—suggestive of tincture of laudanum, or tincture of opium, or laudanum. 20

Q. In smelling of which jar did you discover that, the stomach itself, or the jar with the stomach contents? A. I discovered the odor in the jar containing the stomach contents. Also I discovered the same odor coming from the mucous surface of the opened stomach.

Q. Now, I show you two jars marked one and two respectively for identification and ask you whether those are the two jars in which was placed—in one of which was placed the stomach and the other the stomach contents. A. They are. 30

Q. Which of the two contained the stomach contents? Look at it. A. This one which is marked—

Q. That is marked P2 for identification. What did the other jar contain, marked P1 for identification? A. This is a jar in which I put the stomach after I had opened it and emptied it of its contents. 40

Q. That is the jar that contained the stomach itself without any contents? A. Yes, the stomach without the contents.

10 Q. After you had placed the stomach in the jar P1 and the contents in P2, what did you do with the jar? A. The jars were then sealed and in the presence of Dr. Monger and Dr. Wescott. They bore seals with strips of adhesive, as you see them here, and the smears of the sealing wax which was placed on a number of places so that it was impossible to open the jar without breaking the seal, and the impression of a coin was made on the sealing wax for identification.

20 Q. Where did you take those two jars after you had done all that? A. I then took these jars from the office of Dr. Wescott, and Dr. Monger in Fanwood in my automobile to my laboratory in Muehlenberg Hospital at Plainfield.

Q. And did what with them there? A. And placed them in an ice box in my laboratory, and locked them in this ice box and I alone held the key to this ice box.

Q. After that what did you do with the two jars, P1 and P2? A. I opened the jar containing the stomach contents.

30 Q. When and where? A. In my laboratory the following day, or—I will get the date.

Q. Look at your date, bottom of page three.

By the Court:

Q. What time did you get that no— A. March twenty-fourth.

Q. You got them on the twenty-fourth? A. Yes.

40 Q. How long did you have them before you opened them? A. It was the same afternoon that I opened them.

By Mr. Stein:

Q. Which one? A. I opened the jar containing the stomach contents.

Q. At your laboratory in Plainfield? A. At my laboratory in Plainfield.

Q. What did you do after you opened the jar? A. With a clean pipette I removed from the jar containing the stomach contents twenty-five c. c.

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Q. What is that? A. A cubic centimeter, four of those equal a teaspoonful. I opened it and removed twenty-five c. c., or twenty-five grams, of this contents from this stomach,—from the jar containing the stomach contents, and resealed the jar.

Q. Or in other words four teaspoonful? Is that right? A. Approximately.

Q. What did you do with the four teaspoonsful? A. I then resealed the jar and placed the impression of a coin on the jar as a mark of identification and placed it in my ice box, with the jar containing the stomach from this case. Locked the ice box and myself held the key.

20

Q. What did you do with the four teaspoonsful of the stomach contents that you had taken out? A. I examined that.

Q. What did you examine it for? What were you looking for? A. Because of the odor.

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Q. What were you looking for? A. I was looking for opium.

Q. Did you get any opium in those four teaspoonsful? A. I did.

Q. What kind of a test did that call for? A. Preliminary test.

Q. When did you discover—in the four teaspoonsful you discovered how much opium, if you can tell? A. I can't tell.

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Q. But you discovered opium? A. Yes, sir.

Q. After that what did you do with the jar containing the stomach and the jar containing stomach contents, that is, the liquid from the stomach? A. They remained in my ice box.

Q. Until when? A. Until the thirteenth of March, when, by invitation, Prof. Foster came to my laboratory.

10 Q. Who is Prof. Foster, the gentleman here (indicating)? A. Prof. Foster is the Professor of Chemistry at Princeton University.

Q. He came to your laboratory by invitation, and then what? A. Also there was the Assistant County Prosecutor.

Q. Mr. O'Connor? A. Mr. O'Connor, County Detective Galatian.

Q. Yes? A. And your Secretary.

20 Q. Louden, all right. A. And Dr. Westcott were present, and these specimens were then given to Prof. Foster.

Q. By these specimens are you speaking now of the two jars in your ice box, one containing the stomach contents, the liquid fluid, and the other containing the stomach itself? A. As well as other specimens.

Q. Yes, but I am talking about these two specimens. A. Yes.

30 Q. These two specimens and other specimens were handed to him. What were the other specimens you are talking about? A. The other specimens were specimens which were given to me by—

Q. What were they? A. Well, a bottle containing coffee. A bottle containing coffee that was poured from a coffee pot which was in the house of this—

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Mr. D'Aloia: I object to that.

Mr. Stein: Well, said to be. What else?

A. (continued)—a bottle—

Q. Well, if you don't remember. Some specimens and you have mentioned some of them. A. Other specimens.

Q. These were all handed over to Dr. Foster, including the stomach contents and including the stomach. After you had handed these over to Dr. Foster, in the sealed condition were they then sealed? A. They were. 10

Q. What became of them? Did he take them away or keep them there? A. Professor Foster and myself took these specimens in my automobile to Princeton, and he took them up, I accompanying him, into his private laboratory, and the specimens were placed in an ice box in his laboratory and the key to which he held.

Q. Now, then, after that did you leave Professor Foster? A. After that I returned to Plainfield. 20

Q. That was on the thirtieth of March? A. That was on the evening of the thirtieth of March, about seven-thirty.

Q. Did you return subsequently to the laboratory of Professor Foster, at Princeton? A. On the second of March I returned—

Q. Second of March? A. I mean on the second of April I returned to his laboratory. 30

Q. For what purpose? A. For the examination of these specimens.

Q. With whom? A. With Professor Foster.

Q. Did that examination of the two specimens, the stomach contents and the stomach take place then? A. It did.

Q. And also of some other samples that he had? A. It did.

Q. Who conducted the examination? 40

Mr. D'Aloia: Is this the analysis?

Q. Who conducted the examination of the stomach contents and the stomach? A. Professor Foster conducted the examination of the stomach contents.

Q. And who examined the stomach itself? A. I did that.

10 Q. What was the result of your examination of the stomach itself? Did it reveal any foreign substance or poison? A. It did.

Q. What did the stomach itself show by way of poison? A. It showed the presence of opium.

Q. And how much? A. There was one grain of opium, of morphine, which is the—one of the main alkaloids of opium, found in the stomach contents.

Q. What relation has laudanum to opium? A. Laudanum is a solution of opium.

20 Q. So that laudanum is really opium, but it is liquid form? A. Yes.

Q. And the chief ingredient of opium is what? Morphine? A. Morphine.

30 Q. So that when you speak of morphine and opium and laudanum, it is one and the same thing, is it, except that the laudanum is the solution? A. The laudanum is the solution of opium, and morphine is an alkaloid, the active principle of opium.

Q. How do we make this solution of opium with laudanum? How do we make it? What do we dissolve it in? A. It is dissolved in alcohol.

Q. You found how much morphine, did you say, or opium? A. One grain of morphine.

40 Q. Of morphine in the stomach. Morphine being the chief ingredient of opium, how much opium would one grain of morphine correspond to? A. There is, from sixteen to eighteen per cent. of morphine present in opium.

Adjourned until 1:45 P. M.

Afternoon Session, 1:45 P. M.

MANCH N. GARHART, resumed.

Direct examination (continued) by Mr. Stein:

Q. Doctor, the test of the stomach contents was made by Prof. Foster, of Princeton entirely? A. It was.

Q. And the one test that you made was the stomach itself, is that right? A. Yes. 10

Mr. Stein: Cross examine the witness.

Cross examination by Mr. D'Aloia:

Q. By a test do you mean an analysis? A. Yes.

Q. You found from an analysis of the stomach how much opium? A. I found one grain of morphine, which is the alkaloid of opium.

Q. How much opium is one grain of morphine equal to? A. That would represent from sixteen to eighteen per cent. of the opium. In other words— 20

Q. How large a dose of morphine—

Mr. Stein: Let him answer.

A. In other words it would be twelve or eighteen times that—or rather, this would only be twelve or eighteen per cent., one hundred per cent. equalling the whole, you could calculate the amount of opium which was present. 30

Q. What is the largest morphine tablet sold ordinarily? A. I am not certain.

Q. Are there any one grain tablets? A. I am not certain.

Q. You are not certain. How long have you been a pathologist at the Muehlenberg Hospital? A. About one year.

Q. And you are not certain whether they sell or put up in tablet form one grain of morphine? A. I am not. I never have used that much. 40

Q. How much have you used? A. One-half grain.

Q. Have you used it for the purpose of making a hypodermic injection? A. I have.

Q. Morphine taken by way of the mouth too? A. No, sir.

10 Q. Can a half grain tablet of morphine be dissolved in a teaspoonful of water and taken that way? A. It can.

Q. How do you take a teaspoonful of water with a half a grain of morphine and dissolve it, if you don't take it by the mouth? A. Hypodermically.

Q. Can it be taken by the mouth? A. It can.

Q. You said, no, sir, that can't be taken by the mouth? A. I understood your question to be, did you ever give by mouth a half a grain.

20 Q. My question was, can it be taken by way of the mouth? A. It may.

Q. Does one grain of morphine cause death? A. It may.

Q. And if it does it is an extreme case, isn't it? A. It is not.

Q. It may cause death and it may not cause death? A. Yes, sir.

30 Q. One grain of morphine aided by some other ingredient in the stomach might cause death, isn't that so? A. Read the question, please?

Q. One grain of morphine aided in its chemical action by some other ingredient, or some other matter in the stomach, might cause death, isn't that so? A. I don't know.

40 Q. One grain of morphine, not aided in its chemical action by another ingredient or some other matter in the stomach, might not cause death, isn't that so? A. It would depend on the individual, the habits of that individual, if that individual was customary to taking the drug it might not cause death.

Q. So that one grain of morphine of itself does not cause death, ordinarily, does it? A. Yes, ordinarily it does.

Q. Without the assistance of some other ingredient in the stomach? A. Yes.

Q. You say, yes? A. Yes.

Q. How much morphine can be taken by one addicted to the habit? A. I don't know.

Q. How much morphine can be taken by a woman who suffers pain during her menstruation period and is addicted to the use of morphine during those periods in order to alleviate pain? A. I don't know.

Q. Is it possible for a woman who suffers great pain when she goes through her menstrual period to take morphine in order to alleviate her pain? A. Read the question please?

Question repeated by the stenographer.

A. Yes.

Q. If a woman does that for six years, a normal woman, who for a period of six years every twenty-eight days takes morphine to alleviate pain, would she be able to stand one grain of it without any fatal result? A. I don't think so.

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

Q. Then don't think about it if you don't know. Can you tell the cause of death upon the analysis of a stomach, without an examination of the rest of the body? A. Not in all cases.

Mr. D'Aloia: That is all.

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

Direct examination by Mr. Stein:

Q. What is your profession? A. Professor of chemistry.

Q. And when did you graduate as a chemist, and where? A. I specialized in chemistry at Princeton University, after doing undergraduate work at the colleges in the South, finishing up in chemistry at Vanderbilt, I specialized in chemistry at Princeton University for four years. I received a degree of Master of Arts from Princeton in 1895, and a Degree of Doctor of Philosophy in 1899.

Q. How long have you been connected with Princeton laboratory? A. Well, first and last about seventeen years. I am starting on my sixteenth year of continuous service on the staff of instruction at Princeton.

Q. How long have you been Professor of Chemistry at Princeton University? A. I started in as instructor in chemistry in 1900. I was instructor for five years, Assistant Professor for five years, and I am now starting on my sixth year as full Professor of Chemistry.

Q. I call your attention to Exhibits P1 and P2 on the part of the State, or rather—yes, exhibit, and I ask you whether you recognize those two jars? A. Yes, sir, I do.

Q. When did you firstly see those? A. I first saw them on the thirtieth of March last.

Q. And where? A. Muehlenberg Hospital, Plainfield.

Q. And in whose possession were they at that time? A. They were in the possession of Dr. Garhart at that time.

Q. Who was there when you were in the laboratory of the Muehlenberg Hospital beside Dr. Garhart? A. Dr. Wescott was there and Detective Galatian was there and your assistant, Mr. O'Connor, were present in the room when the specimens were shown to me and when they were turned over to me.

Q. These jars marked there P1 and P2 contained what, when they were handed to you? A. P2 contained a dark colored liquid. It was about one-third full of a dark, muddy brown liquid, which was said to be the stomach contents of the wife of the defendant.

Mr. D'Aloia: I object to what it was said to be and move that it be stricken out.

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The Court: I will allow it to stand; take an exception.

Mr. D'Aloia prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

Q. And P1 contained what? A. P1 contained the stomach itself.

Q. And when these were handed to you what condition were they in? That is, were the tops of the jars open or otherwise? A. No. They were securely sealed with a cloth or tape running across, and the ends were fastened down with wax, and the wax bore the impression of a coin in each case.

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Q. What did you do with the jars, these two specimens, the specimen of the stomach contents and of the stomach itself on that day? A. Well, in connection with Dr. Garhart I took them to my laboratory, in Princeton, and I locked them up in an ice box there, kept the key myself, and the door to that room was padlocked, I retained possession of the key, and then there was a door outside of that which was locked also. So that the specimens were under seal and were under three locks.

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Q. After March thirtieth when these specimens were brought there, when you—what did you do nextly with them, and when? A. On the morn-

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ing of the second of April Dr. Garhart came to my laboratory and I began the analysis of the stomach contents on that day.

Q. Then what did you do next?

The Court: He said he proceeded with the analysis.

10 A. I proceeded with the analysis. I made a thorough analysis of the contents of the stomach.

Q. Did you examine the stomach itself, you yourself? A. I didn't make a chemical examination of it. I saw the stomach, took a careful look at it, but I didn't make the chemical examination of the stomach itself.

Q. That was made by whom? A. Dr. Garhart.

20 Q. Now, the stomach contents, what was the result of your examination of that? A. My examination established the presence of opium, or an opium preparation. I isolated from the stomach contents morphine, obtaining the morphine in the crystalline condition. Morphine is the chief poison or alkaloid in opium. I also obtained a large number of chemical tests for morphine, in addition to the obtaining of the substance in the crystalline condition, I also established the presence of meconic acid, which is
30 found in opium, and so far as my knowledge goes, in nothing but opium; and I also established the presence of narcotine. So having established the presence of those three chemicals, it was quite easy to draw the conclusion that opium, or an opium preparation, such as laudanum, was present in the stomach contents.

40 Q. Did you examine further to find the quantity of morphine? A. I extracted the morphine from the stomach contents. I was exceedingly careful to use the various methods of purification,

and I obtained a morphine residue, or extract of a little over one and one-quarter grains.

Q. Were you shown the result of the examination made by Dr. Garhart on the stomach itself, that is, the residue that was obtained? A. Yes, I was shown that.

Q. And what was it you saw? A. I saw the morphine extract which he got in the solid condition. He weighed it on my balance.

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Q. How much did the morphine that he got from the stomach weigh on your balance? A. Well, as I remember it, he got approximately a grain of morphine.

Q. So that from the stomach itself and the stomach contents you got two grains and one-quarter of morphine? A. Two grains and a quarter of morphine extract.

20

Q. Now, Doctor, what would be the proportion of opium you would find, or that you could extract, from which you would extract two and one-quarter grains of morphine? In other words, morphine being the chief ingredient of opium, how much opium would that represent? A. Well, I have tried to be very conservative in my estimate, estimating it very conservatively, I would multiply the quantity of morphine by ten. Some would multiply it by a larger number, perhaps twelve, or sixteen, or even eighteen. But looking at it very fairly and conservatively I have multiplied the quantity of morphine extract by ten, so from two and one-quarter grains of morphine extract we would figure up it would be about twenty-two and one-half grains of opium it would correspond to.

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Q. When morphine, or laudanum, the solution of opium is taken, is any portion of that absorbed through the system so that you would

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not get all of it in the stomach? A. Oh, yes, certainly.

Q. After it is absorbed through the system, does it pass back again into the stomach? A. Yes, some of it might pass back into the stomach, part of it.

10 Q. In other words, the question I desire to ask you is this: The fact that there were two and one-quarter grains of morphine in this deceased's stomach, does that mean that was all the morphine or laudanum that was taken? A. Not by any means.

20 Q. Now, when you find in the stomach after death, two and one-quarter grains of morphine, does that indicate to you that that is all that was taken, or does—or does it indicate to you something other than that? A. It indicates to me that it was only a part of what was taken.

Q. Can you form any idea from your experience as a chemist as to the quantity of morphine or laudanum that was likely in the system of that person, or in the stomach prior to death?

30 Mr. D'Aloia: I object to that because it has not been shown that the Professor made any examination of the body, or the alleged body from which the stomach is supposed to have been extracted and sent to him.

The Court: I will allow the question.

Mr. D'Aloia prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

Question repeated by the stenographer.

A. Yes, in my opinion there was a large quantity.

Q. I beg pardon? A. It is my opinion that there was a large quantity present, considerably larger than was found. That was certainly so if death resulted from a dose of the drug.

Q. Now, doctor, assuming there was an autopsy performed on this body by physicians, and the cause of death not revealed by the autopsy, can you say from the examination which you made of the stomach contents, and the quantity of morphine that you found therein, what was the cause of the death of this woman? A. It is my opinion that the drug caused the death of the woman.

Q. Doctor, will you please tell us now what is laudanum? A. Laudanum is an alcoholic solution of opium.

Q. And the chief ingredient of opium is what? A. The chief ingredient, the chief alkaloid in it is morphine. It also contains a considerable quantity of narcotine and meconic acid and some other components. It is a complex mixture.

Q. Did you find the things which go to make up the complex mixture of laudanum, as you call it, in this stomach? A. It is always considered that we have proved the presence of opium if we establish that morphine, narcotine and meconic acid are present, because so far as my knowledge goes meconic acid is found in nothing save opium.

Q. Well, what I meant to ask you was this, the opium and the morphine which you found is what we find in laudanum, is that right? A. Yes, find both morphine and opium in laudanum.

Mr. Stein: Cross examine the witness.

Cross examination by Mr. D'Aloia:

Q. Are you a physician? A. I am not, sir.

Q. When you said that in your opinion the cause of death may have been the morphine that you found in that stomach after the analysis—

Mr. Stein: I did not understand the witness to say may have been.

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The Court: Do not interrupt him until he gets the question asked. Is that the entire question?

Mr. D'Aloia: No, sir.

Q. When you said that the cause of death may have been the morphine that you found after an analysis of the stomach, were you then testifying as a chemist, or as a physician? A. Testifying as a chemist.

20

Q. And as a chemist you know that a morphine extract, as you call that result of your analysis, is not entirely morphine? A. It was presumably pure morphine. It is said on high authority to be pure morphine, or the treatment I put it through should yield pure morphine. It gave about a dozen tests answering to morphine, and also gave crystals of morphine.

30

Q. When you characterize the result as two and one-quarter grains of morphine extract, would you say there were two and one-quarter grains of pure morphine there? A. I couldn't say it was absolutely pure. As a matter of fact, we cannot prepare anything that is absolutely pure, so I couldn't testify that that was one hundred per cent. morphine.

Q. So that if I understand you correctly, professor, you would say— A. Pardon me. But it is my opinion that it was substantially pure morphine.

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Q. Substantially pure morphine, but not entire-

ly pure morphine? A. No, I say substantially pure because I used special precautions in purifying it, and so I got finally extract, after using certain methods, which was claimed would give morphine which was practically pure.

Q. But you would not call the two and one-quarter grains of the material that you found as the result of your analysis pure morphine? You limit yourself and call it morphine extract, wouldn't you? A. I prefer to call it morphine residue, or morphine extract. It is usually called morphine residue.

10

Q. Morphine residue? A. Yes.

Q. How many ounces of laudanum would it be necessary to take on the part of a normal person to show a residue, a morphine residue of two and one-quarter grains? A. Well, a half an ounce of laudanum would correspond to about three grains of morphine.

20

Q. One-half an ounce of laudanum would— A. One-half ounce of laudanum would, as a rule; of course, the strength will vary somewhat, but as a rule one-half an ounce of laudanum would correspond approximately to three grains of morphine.

Q. Is it a half ounce of laudanum or an ounce of laudanum that would produce three grains of morphine? A. Half an ounce.

30

Q. Half an ounce. What effect would the laudanum contained, or rather the morphine contained in a half-ounce of laudanum have on the organs of the human body? A. It has been known to produce death. Half an ounce has been known to produce death.

Q. Outside of any information that was given to you at the time that you received the stomach and the contents of the stomach, do you know whether the quantity of morphine extract that you found

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there would cause death? A. Will you please state that over again?

Q. (Question repeated by the stenographer.) A. Well, I don't know that I could say that I know it would cause death. It would depend on conditions.

Q. What is that? A. It would depend on conditions.

10

Q. Well, you are not ready to say now that two and one-quarter grains of morphine extract or morphine residue would cause death, are you? A. Very likely in my opinion cause death.

20

Q. But you could not say that it certainly would cause death, could you? A. I could not say it absolutely, because that depends on conditions. Sometimes a small dose of poison will cause death whereas a larger one will not, so we cannot lay down any hard and fast rules. That is well known to all chemists.

Q. Without knowing any conditions at all—there were no conditions that you were called in to find at the time of the autopsy, were there? You were not called in on the autopsy to look over the body? A. No, I was not.

30

Q. Without knowing of any conditions are you willing to swear that two and one-quarter grains of morphine residue or extract would cause death? A. I am willing to swear that it might cause death.

Q. That is not the question that it might cause death. Would it cause death in each case and every case? A. I could not say that it would.

40

Q. It would have to be aided by some other conditions, of which in this case you know nothing? A. Of course, you must remember that in opium there are other things beside morphine. When you find that much morphine there are other active principles in opium which might aid the morphine.

Q. The only thing that you found as the result of your analysis of the contents of that stomach, professor, were two and one-quarter grains of morphine extract, that was the only thing that you found that was of a poisonous nature, isn't that so?
A. That was the chief thing.

Q. That was what you told the Prosecutor you found after your analysis in your laboratory, isn't that so? A. I reported of one and one-quarter grains, a little over one and one-quarter grains of morphine residue, or extract, and Dr. Garhart reported the rest. 10

Q. That makes a total of two and one-quarter grains of morphine extract, or morphine residue, doesn't it? A. Yes.

Q. Now I come back to the same question: without knowing of any other conditions, would two and one-quarter grains of morphine extract cause death? Yes or no, in your opinion? A. Yes, I believe it would in certain cases, but I could not say it would in every case, because there are no hard and fast rules as to what the effect is going to be. 20

Q. Well, then, you can't tell positively in this case that the two and one-quarter grains of morphine extract which you found, together with Dr. Garhart, after your analysis made by both you gentlemen, would cause death? A. No, but we must bear this in mind, that if we find that much in the stomach and the stomach contents, we must not forget the fact that if death has resulted, that perhaps the other part of the drug administered has been used up in the producing of the death. 30

Q. That would be mere imagination on your part, presumption? That I am not asking you about. I am asking you this, Doctor, it is a very simple question and you can answer yes or no: you and Dr. 40

Garhart, after making an analysis of the stomach and the contents of the stomach, found together two and one-quarter grains of morphine extract, isn't that a fact? A. Yes.

10 Q. Now, without knowing else, because you did not make any examination of the body, and you were not present at the autopsy, without knowing any conditions, and without qualifications, would two and one-quarter grains of morphine cause death? Yes or no. A. Well, it is my opinion, that in many cases it would cause death, but I am not willing to swear that it would cause death in every case, because no mortal knows whether it would or not.

20 Q. And you are willing to swear that it would cause death in this case, are you, Professor? A. It is my opinion that the drug administered caused death in this case, but I could not say that two and one-quarter grains of morphine extract found caused the death.

30 Q. You do not know of any other conditions in this case, do you? You did not know of any other conditions in this case except what you found as the result of your analysis of the contents of the stomach, and what Dr. Garhart found as the result of his analysis of the stomach itself, isn't that so? A. Of course, that is all I know what I found out as the result of investigation.

40 Q. Now, professor, knowing only that and nothing more you are not willing to swear that two and one-quarter grains of morphine residue or extract caused death in this case, are you? A. Well, I am willing to swear that to the best of my knowledge if we were to find two and one-quarter grains of morphine extract in a stomach and stomach contents that death had resulted from it, that is, from the administration of the drug.

Q. Notwithstanding the fact that the stomach came from the body of a person that was shot in the head, you would still say that that was the cause of death?

Mr. Stein: He did not say that.

The Court: That is not a fair question.

Mr. D'Aloia: I am asking this question now.

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Q. Without seeing the rest of the body, and without knowing the condition of any of the organs in the rest of the body, the mere finding of two and one-quarter grains of morphine residue or extract, you would say that caused death, that was the cause of death?

Mr. Stein: I object to the question because he did not say that, and there is no testimony in this case that this woman was shot in the head.

20

The Court: Mr. Prosecutor, I think the question is objectionable upon another ground. This witness has answered that question two or three times. He says he found two and one-quarter grains of residue, that is, that is what they found of what was left, but it did not represent all that the person had probably taken, and that under such conditions he thinks that that quantity as found was sufficient to take life. That is what he has said two or three times over, and if you want that question repeated again, you may ask it, but I think you ought to be satisfied with one answer. Proceed. Read the question again if Mr. D'Aloia wants it answered.

30

Mr. D'Aloia: Does your Honor allow that to be answered?

40

The Court: I am allowing it. I only say it has been asked two or three times and I think it is useless. You may ask it again.

Question repeated by the stenographer.

10 A. It was my conviction that opium, an opium preparation was the cause of death, that is my honest conviction, after finding that amount of morphine residue.

Q. But you would not be absolutely certain about it, would you? A. Why, I could not be absolutely certain.

Q. You say you made this analysis on the second of April? A. I began it on the second of April. It was a very long, complicated analysis.

20 Q. Did you make any analysis of blood that was taken from the body? A. I did not.

Q. Without any other test, without any other analysis of any other organ, or of a specimen of the blood, the fact that there might have been some more morphine absorbed in the system is mere conjecture on your part, isn't it? A. Yes.

Mr. D'Aloia: That is all.

Redirect examination by Mr. Stein:

30 Q. Professor, where you find two and one-quarter grains of residue, the very fact you use the word "residue," do you want us to understand by that that that is what is left? A. That is the material that was extracted with the proper solvent for morphine.

Q. And there is a certain quantity of it that is absorbed, that never comes back in the stomach? A. Certainly.

40 Q. So when you find two and one-quarter grains in the stomach, not only the probability, but the

likelihood is that there was more in the stomach originally? A. The likelihood is there was considerably more.

Q. And do I understand, now, you to say that where the autopsy as in this case showed no other possible cause of death, as the doctors have testified—

Mr. D'Aloia: I object to that. That question embodies a fact that has not— 10

Mr. Stein: I have not finished the question.

Question repeated by the stenographer.

Q. (continued) —when the autopsy was completed that it is your opinion that this person died from the morphine which had been administered or given or taken, or whatever got into her stomach, any way in the laudanum? 20

Mr. D'Aloia: I object to that.

The Court: That question has been fully answered by this witness, just as plain as the English language could make it, and I do not see why you want to repeat it. If he has answered any question in the world, he has answered that two or three times over.

Mr. Stein: I was satisfied, but I wanted to make it plain. 30

The Court: I do not think you make anything plain to a jury by constantly reiterating the thing. They hear it once and they understand it, and then you put it in another shape and it loses its effect.

Mr. Stein: That is all.

Mr. D'Aloia: Will your Honor permit me one question?

The Court: Yes. 40

Recross examination by Mr. D'Aloia:

Q. Did anybody inform you as to how long before death this laudanum had been taken, or this morphine or opium had been taken? A. Why, I had information as to when the defendant's wife died, and as to when the autopsy was performed.

10 Q. Did you have any information from which you could tell how long a time elapsed between the taking of the opium and the time of death? A. Between the taking of opium and time of death?

Q. Yes? A. I think I was told, yes, as I recall it, I think I was told when the medicine was probably taken and when the defendant's wife died.

20 Q. Probably taken. Who told you that? A. I probably learned that when I went up to Plainfield to get the specimens on the thirtieth of March.

Q. Do you recall who gave you that information when you requested it? A. I didn't request it, as I remember, but it is a general impression that death resulted in about thirteen hours, and I happened to think of that later on, that that is the usual time, in from six to eighteen hours, when an overdose of laudanum has been taken, death usually results in from six to eighteen hours. On the average perhaps twelve hours would be fair. I remember that corresponded very well to the usual period when death follows the administration of an overdose of laudanum or opium.

30 Q. You don't remember the name of the person who told you the number of hours? A. No, I don't.

40 Q. Between the time of the probable taking and

the death? A. Any one of the gentlemen present may have told me, but I wasn't especially interested in that. I was called in to make the analysis as a chemist.

Mr. D'Aloia: Thank you, Doctor.

Mr. Stein: That is all, Doctor.

ETTY LUDKA, a witness produced on behalf of the State being duly sworn according to law, on her oath, saith:

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Direct examination by Mr. Stein:

Q. Mrs. Ludka, where do you live? A. Linden, New Jersey, Wood Avenue.

Q. And what is your business? A. I have a lunch room and ice cream store.

Q. What is it? A. Lunch room and ice cream store.

20

Q. Do you know this defendant, Mr. Tom Roosi, or Crivelli? A. Yes, I know him about two years.

Q. By what name do you know him? A. Because he served ice.

Q. By what name do you know him? A. Oh, I only know Tom. I never know other name. I just heard the name now since that happened.

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Q. Did he come to your store very often? A. He did come to serve the ice with Mr. Meyer, so sometimes he will come with him.

Q. Do you know Mr. Meyer and Mrs. Meyer? A. I know all three of them the same when I start the ice cream business. It will be two years—

Q. I simply ask you if you know them. Do you know them? A. Yes.

Q. How long have you lived in Linden? A. It was on the eighteenth of October, three years.

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Q. What is that? A. On the eighteenth of October was three years.

Q. How long has Tom been living up there, that you know? A. I know him since two years beyond Spring, since I know him. I don't know if he was before in Linden or not.

10 Q. Do you recall Tom coming to your store one day to talk about—and his talking about Mrs. Meyer?

Mr. D'Aloia: I object to that unless the time is fixed.

A. He never did.

Mr. D'Aloia: I object to that unless we find out what month or what year, approximately. Otherwise it is leading.

20 The Court: I will allow the question. Take an exception.

Mr. D'Aloia: Prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,
Judge.

Q. Did he come to your store? A. He will come since that happened with Mr. Meyer.

30 Q. Since what happened? A. That Mr. Meyer, since Mr. Meyer got shot. Since that time he come a few times for his meals.

Q. Since Mr. Meyer was shot. When was Mr. Meyer shot? A. Well, I can't remember, because I don't pay no attention to me to know. I know it was, but I don't know when.

40 Q. Do you remember Mr. Roosi coming to your store in the month of March, of this year? A. Yes, when I start the ice cream.

Q. Do you remember him coming in in the month

of March? A. No. Oh, well, he will come the whole time, sometimes in house, because he was a good friend to me.

Q. Did you ever go to Jersey City to see Mrs. Meyer? A. Yes.

Q. Who asked you to go over there? A. He will ask me.

Q. Who? A. Tom.

Q. And when was that? A. I can't tell. I can't remember when was it, which month and what day.

Q. Well, was it this year? A. Yes, it was this year. It was in the Springtime, but I can't tell which month, and I can't tell which day.

Q. Was it before Tom Roos's wife died? A. Yes.

Q. How long before about? A. It was about four weeks before she come in this country that I went in Jersey City, and that was three weeks, one after the other, I was three times.

Q. You were three times? A. Yes.

Q. Who asked you to go over there three times? A. Tom asked me.

Q. The first time he asked you to go over there what did he say to you in your store? A. Why, he said, if I do a favor to him; I said yes I will; what you want. If I can, I do it. So he said if I will come to Mrs. Meyer in Jersey City and ask her to meet him in Newark by the station.

Q. What else did he say to you about Mrs. Meyer? A. Well, he said that he can't be without her; when he going crazy if he can't be with her, if he can't meet her again.

Q. What else did he say that day before you went over? A. That he will give me twenty dollar if he going to meet her and if he will be good with her again.

Q. Did you go? A. Yes, I did.

Q. Did you see Mrs. Meyer? A. Yes, I see her.

Q. Did you tell her what Tom told you to say?

A. Yes, I did.

Q. Did Mrs. Meyer come out with you? A. No, she don't.

Q. Then when you came back did you meet Tom again? A. Not the same day.

10 Q. Well, when? A. Yes, the other day.

Q. Another day? A. Yes.

Q. Did you tell Tom what Mrs. Meyer said? A. Yes.

Q. What did you tell Tom that Mrs. Meyer said?

A. Well, I said that Mrs. Meyer said she is afraid to meet him alone. She wants to have me there when he meet her, but I wasn't there.

20 Q. She was afraid to meet him alone? A. She was afraid. She said she don't know if she going to meet him or not.

Q. Did you tell Tom why she was afraid? A. Yes.

Q. Well, what did you tell him? A. I told him that Mrs. Meyer said she is afraid to meet him alone, she wants me there.

Q. Did she tell you why she was afraid? A. No, she don't say why, she only says she is afraid to meet him.

30 Q. Then what did Tom say? A. He said she don't have to be afraid, he won't do nothing to her.

Q. Then did you go again to Mrs. Meyer's the second time? A. Yes.

Q. Who asked you to do it? A. Nobody asked me the second time.

Q. The second time Tom didn't ask you? A. No.

40 Q. Why did you go the second time? A. Because

when I was the first time she said if I go to New York, she wanted to go with me.

Q. Shopping? A. Yes.

The Court: Do not bother with that.

Q. Did you go a third time over to her? A. Yes.

Q. Who asked you to go the third time? A. Nobody asked me.

Q. Well, when you got over there to Mrs. Meyers did you have any talk about Tom? 10

Mr. D'Aloia: I object to that; if she went over there unsolicited by this defendant, that visit is not at all material, competent or relevant.

The Court: I will allow this question to be answered, yes or no.

Q. Did you have any talk about Tom that day? 20
A. Only he told me—

Q. Tom told you? A. He told me to ask her a few envelopes with her address, that was all.

Q. Was that before you went over this third time? A. That was the third time when I was there.

Q. Well, was it before you went over the third time that Tom asked you to get a few envelopes with the address on? A. That was the third 30 time.

Q. And did you get the envelopes? A. Yes.

Q. Who wrote the address on the envelopes?
A. Mrs. Meyer.

Q. Whose address did she write on them?
Whose address did she write on these envelopes?
A. That was her.

Q. Her? A. Yes, Mrs. Meyer.

Q. What did you do with the envelopes when you got them? A. I give it to Tom. 40

Q. What did Tom say when he received the envelopes? A. He said all right.

Q. Well, now, do you know whether she and Tom afterwards met? A. I don't know when.

Q. No, do you remember, Mrs. Ludka, whether the third time when you went over to Jersey City, whether Tom's wife was here then in Linden?

10 A. No, she was not here. She was not in this country here when I was the third time there.

Q. Do you know how soon after that Mrs. Crivelli came to Linden? A. I can't tell.

Q. Did Tom ever come over to your place after that and tell you anything about his wife being sick, or anything?

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

The Court: I will allow the question.

20 Mr. D'Aloia prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

A. He said, he come to me when she come in Linden.

Q. What is that? A. He will come to me to tell me that his wife is in Linden.

Q. He did tell you that she was there? A. Yes.

30 Q. You remember that? A. Yes.

Q. How long after she was in Linden did he come to see you again to tell you something about her? A. About a week.

Q. About a week, and then what did he say?

A. That was the Sunday when he was there and I asked him what his wife is doing. He said, She is sick.

40 Q. What day of the week was that? A. That was Sunday.

Q. Sunday? A. Yes.

Q. What time of the day on Sunday? A. It was about between seven and eight in the evening.

Q. What did Tom say to you that night when you asked him how his wife was? A. He said she is sick. The horse kick her.

Q. That was on Sunday? A. That was on Sunday.

Q. Between seven and eight? A. Yes.

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Q. How long did he stay? A. How long did he stay there?

Q. Yes. A. About fifteen minutes.

Mr. Stein: Cross examine.

Cross examination by Mr. D'Aloia:

Q. Are you sure it wasn't Monday night when he told you that? A. No, it was Sunday night.

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Q. How do you know it was Sunday? A. Because I don't see him after until he will come over with Mr. Pickle, that his wife was dead.

Q. How do you know it was Sunday when he told you this, that is what I would like to know. A. Well, I know that it was Sunday evening when he come in the house.

Q. Well, how do you know it was Sunday evening? A. Well, I can't say any more than I know it was Sunday, because he was dressed up on Sunday in his good clothes.

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Q. What time was it, about eight o'clock in the evening? A. Between seven and eight.

Q. Wasn't he dressed up because his wife had died an hour or so before and he was making arrangements for the funeral? A. No, I don't see him until Mr. Pickle bring him over for his supper.

Q. When was that? A. That was Tuesday night.

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Q. And did you see him the night before Tuesday? A. No, not the night before Tuesday.

Q. Are you sure it was Sunday? A. Yes, I am sure because I heard in the town that his wife is dead on Monday.

Q. You heard in the town that his wife was dead on Monday? A. Yes.

10 Q. Did you go to his house when his wife died? A. No, I never see her.

Q. Never go to his house at all while his wife was there? A. No, never.

Q. He told you that his wife had arrived in Linden? A. Yes.

Q. And he was feeling good, didn't he ask you to go and meet her? A. Yes. I said I come over once I was here. He said yes, I should come over anytime.

20 Q. And he was happy that she was here, wasn't he? A. Yes.

Q. Told you so, didn't he? A. Yes.

Q. He said, I am glad my wife is here? A. Yes, he say that.

Q. Did he tell you something about his little girl? A. He said his little girl is here too, he is very glad to see his little girl.

30 Q. How many days before she died was this that he told you all these things about his wife and his little girl? A. That was about the middle week when she come, then she come on Saturday, and that was about the middle week, Thursday or Wednesday, I can't remember which day.

Q. The middle of the week before she died? A. Yes.

Q. About three days or four days before she died? A. Yes, about three days or four. I can't remember which day.

40 Q. You can't tell us now when you went to Jersey

City? A. I can't tell the day and I can't tell the month. I know it was before she come. She was not in the country yet. I never was in Jersey City—

Q. Didn't Mrs. Meyer do Tom's housework? I couldn't tell, I don't know nothing about that.

Q. Did you ever visit Tom when Mrs. Meyer was doing his housework? A. No. Just she take me out on the car to Elizabeth for shop and sometimes she stop off his house and went in for cup of coffee, or glass of water. That is all I was in the house.

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Q. Do you know who did Tom's housework? A. No, I can't tell.

Q. Before his wife came? A. No, I can't tell, I don' know nothing about it.

Q. Did Mrs. Meyer ever tell you that she had done it? A. No, I can't tell. I don't know nothing about it.

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Q. Wasn't he Mr. Meyer's partner for a while there? A. He was.

Q. And didn't Mrs Meyer do all the housework for him? A. I can't tell that.

Q. Who told you that they were partners? A. I know, because he come with the ice together and Mr. Meyers.

Q. Didn't he say to you, go and tell Mrs. Meyers to come here and help me out for a little while before my wife come, go and get Mrs. Meyer in Jersey City to come here, I can't get along without here in the house? A. Not to help him out.

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Q. What? A. Not to help him out. He said he want see Mrs. Meyer. What for I can't tell.

Q. You don't know what he wanted to see Mrs. Meyer? A. No, I don't know that.

Q. Didn't he say go and try to get Mrs. Meyer to come here to fix up my house for my wife's arrival in a short time? A. Not in Linden. He don't tell

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me to ask Mrs. Meyer to come in Linden. He said he wanted meet Mrs. Meyer in Newark.

Q. He simply asked you to please find Mrs. Meyer in Jersey City and tell her that he would like to see her? A. He likes to see her.

Q. And you went to Jersey City and you saw her? A. Yes.

10 Q. And she said she didn't want to come? A. No, she said she is afraid, she don't know yet if she going to meet him or not.

Q. She was undecided about it? A. Yes.

Q. And you went back and you told him that? A. Yes.

Q. The next time when you went over to see Mrs. Meyer you went on your own account because you were going shopping in New York with her? A. Yes.

20 Q. And the third time you went you went on your own account? A. Yes, because I want come again.

Q. Did you tell Tom that you were going the third time? A. Yes, I told him.

Q. You were the first one to say, I am going to Jersey City to see Mrs Meyer? A. Yes, I said so.

Q. And then he said to you will you please tell her to give you her address? A. Yes.

30 Q. And that is all there was to it? A. Yes, that is all.

Q. You got her address? A. Yes.

Q. And you brought it to him? A. Yes, and give it to him.

Mr. D'Aloia: That is all.

LUCY BALDING, a witness produced on behalf of the State, being duly sworn on her oath, according to law, saith:

Direct examination by Mr. Stein:

Q. Mrs. Balding, where do you live? A. Elizabeth Avenue, Linden.

Q. How long have you lived there? A. Thirteen years.

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Q. Do you know Tom Roosi, the defendant here? A. Yes.

Q. How long have you known him? A. Well, I only have known him a year to speak to, but I have known him, however, when he first come with the Gaston Company.

Q. Do you know Mr. and Mrs. Meyer? A. I did.

Q. Where did they live with respect to your house in Linden? A. They lived next door to me.

20

Q. Do you know whether Tom Roosi ever lived with his wife in Linden? A. Well, I know that she come to Linden, because he told me about Thursday that his wife was coming.

Q. About Thursday? A. Yes.

Q. What do you mean, Thursday before she came? A. Before she came.

Q. When she came did you see her? A. No, I didn't see her.

30

Q. How long did she live in Linden before she died? A. I seen her on the Sunday before she died. That was after he told me she was coming.

Q. Do you know how long she was in Linden? A. I don't know. I couldn't say.

Q. Do you remember the twenty-second day of March? A. I don't know exactly the date. I didn't look at the date.

40

Q. Do you remember the date upon which Mrs. Roosi was sick? A. Well, it was on a Monday.

Q. You don't know the day of the month? A. No.

Q. How did you get information that she was sick? A. He come over about half-past five.

Q. Who? A. Tom.

10 Q. In the morning or afternoon, half-past five? A. No. In the evening.

Q. Was that the first you knew about her being sick? A. That was the first I knew about it.

Q. What did he say to you? A. He asked me if I would come over, his wife was sick.

Q. How far did you live from his house? A. Well, I couldn't tell you exactly how far, but his house faces the track, and mine is in the next street.

20 Q. What street are you on? A. I am on Elizabeth Avenue, and his is on Lombard Street.

Q. And his house is on Lombard Street? A. Yes.

Q. Lombard Street runs into Elizabeth Avenue, doesn't it? A. Yes, crosses.

Q. Is your house right opposite Lombard Street? A. No.

30 Q. How far from the corner of Lombard Street are you? A. A block.

Q. A block? A. Yes.

Q. To go to his house you had to go the block up Lombard Street? A. Yes.

Q. And then how far up Lombard Street? A. And turn around and go another block.

Q. Up Lombard Street? A. Yes.

40 Q. Did you go over? A. I went over. I wasn't ready and I told him I would come over when I was ready.

Q. How long after five-thirty in the evening

was it that you went over there then? A. Well, about quarter to six when I got there.

Q. Did he wait for you? A. No. He went home.

Q. When you got over into the house whom did you find there? A. I found nobody downstairs and he told me to come upstairs with him, his wife was in bed.

Q. Was he downstairs? A. Yes, he was downstairs.

10

Q. Who was with him downstairs in the kitchen? A. Nobody.

Q. Which way did you go then, when you say you went upstairs? A. Through the dining-room and up into the hallway, straight up into the bedroom.

Q. Who went with you? A. Nobody, only Tom.

Q. Nobody, only Tom? A. Yes. He went first. He went up.

20

Q. Who went first? A. He went first.

Q. Now, then, when you got in that room who was in there? A. Nobody, only the lady, she was in bed.

Q. Who was in the room? A. There was nobody in the room. The little girl was in the next room off. Only her in bed.

Q. What? A. She was in bed.

30

Q. Who was in bed? A. His wife.

Q. That was somebody. Mrs. Roosi was in bed when you got in there. Who else was in the room besides Tom and yourself and Mrs. Roosi who was in bed? A. Nobody.

Q. What was the matter with Mrs. Roosi, did you say? A. Well, when I got there she was unconscious.

Q. Did she talk? A. No, she didn't talk.

40

Q. Now, how was she acting? A. She was only breathing very heavy.

Q. What did you say to Tom? A. I smelled her breath and I told him—I asked him had she been drinking whiskey, because I could smell the whiskey.

10 Q. Now, can you show us just how Mrs. Roosi was breathing, yourself, here now? A. Well, I couldn't exactly show you.

Q. You can't imitate that. Now, then, after you had smelled of her breath, and smelled whiskey, did you say anything? A. I asked him had his wife been drinking whiskey.

Q. What did he say? A. He said there was whiskey downstairs.

Q. Is that all he said? A. That is all.

20 Q. Now, what did you do? A. I got hold of her hand and I rubbed, and I asked him to get the other one and help me to rub it, because I thought she was unconscious.

Q. Well, until you took hold of her hand to start rubbing, did he do anything? A. No.

Q. Did he take hold when you asked him to? A. Yes, he did.

Q. How long did you rub? A. For a little while, then he stopped.

30 Q. About how long? A. Well, about a couple of minutes.

Q. Who stopped? A. He stopped, and then of course I stopped.

Q. Did you say anything to him when he stopped rubbing? A. No, I didn't.

Q. What, now, what did you say to him then? A. He told me to come downstairs after that.

40 Q. Well, how long were you in the room altogether with this woman? A. Well, around half an hour.

Q. Have you told us all that was done—just simply this rubbing the hands for a couple of minutes? A. Yes. I asked him what was the matter with his wife and he said a horse had kicked her. And I asked him when. And he said in the morning. I said to him, Haven't you got a doctor. And he said, No. Well, I said, You had better get somebody. So I said, get Dr. Huff, if you can't get him get somebody else. So he said he would go for the doctor, and I said, No, 'phone to Molson's for the doctor.

10

Q. When you said to him get a doctor, did he say anything about having gotten a doctor before, or tried to? A. No.

Q. What did he do about getting a doctor when you told him to get one? A. He got his coat on and went to Molson's 'phone.

Q. He went out? A. Yes.

20

Q. You don't know where he went to? A. I don't know where he went; he went out.

Q. How long was he out? A. Well, he was out about five minutes and he come back.

Q. When he came back you were where? A. In the kitchen.

Q. And when he went out where were the two of you? You had already gone to the kitchen, had you, before he went out? A. Yes.

30

Q. What did you do then when he came back? A. When he came back it was around half-past six, he told me I could go home. He said—

Q. Was there anybody upstairs in the room with the woman at all? A. No. He brought the little girl down with him.

Q. How old is this little girl, about, in your opinion? A. Well, around six years old.

Q. Well, did you go out then, when he told you to? A. Yes. I went home.

40

Q. When you went out you left who behind?
A. Just him and the little girl.

Q. Now, did you go back again that same night? A. Yes.

Q. About what time? A. Seven o'clock.

Q. Anybody ask you to come back? A. No. He told me that when the doctor come he would come for me.

10 Q. Did he come for you? A. No, he didn't.

Q. When you went over whom did you meet there about seven o'clock? A. He was sitting in the kitchen with the little girl.

Q. Did you go upstairs in the bedroom to see the woman? A. No. I never seen her after.

Q. Did any doctor come while you were there? A. No, he didn't come then.

20 Q. Well, were you still there when the doctor came? A. I asked him hadn't the doctor been and he said, No. So I told him I would go for the doctor, and he said, No, you stay with the little girl and I will go. So he went out.

Q. Did he come back with the doctor? A. Yes, he come back with the doctor.

Q. The doctor and he. Do you know where he met the doctor? A. The doctor said he—

30 Q. No. Do you know? A. I don't know where he met.

Q. Did the doctor say where he met him, in his presence? Was Tom there when the doctor told you where he met him? A. Told me he met him at the gate.

Q. Was Tom there when the doctor told you? A. I don't remember.

Q. Then I don't want that. Did you go upstairs in the room when the doctor came? A. Yes.

40 Q. Did you hear what Tom told the doctor? A. I told the doctor the horse had kicked her.

Q. Yes. Was Tom there? A. Yes.

Q. What else happened? A. Well, the doctor looked at her and he said there was no marks of a kick at all.

Q. When Tom was told that the wife was dead, what did he do? A. He just made a little move. He didn't seem to care much.

Mr. D'Aloia: I think that that states a conclusion. That latter part of the answer, "he didn't seem to care much." I think it is beyond this witness or anybody else to find out how much grief anybody can express. 10

The Court: You object to the question?

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

The Court: I refuse it. Take an exception. 20

Mr. D'Aloia: Prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

Q. Did he say anything? A. No.

Q. Did he cry? A. I didn't see him cry.

Q. Did the doctor question him in your presence then? A. No. 30

Q. Did you stay or did you come down then? A. I went down with the doctor.

Q. And then when you got downstairs where did you go? A. He had to go out to send telegram or something.

Q. Who did? A. Tom, and he asked me to stay with the little girl.

Q. Then did you wait until he came back? A. Yes, I waited while he got back. 40

Q. And when he came back, what then? Did he

say anything more? A. No. There was two men come in before Tom come back.

Q. You don't know who they are? A. Yes. One is a witness.

Q. What is his name? A. I don't know what his name is, only they called him "Shorty," that is all I know.

10 Q. Outside of those two men there was nobody else came in until Tom came? A. Yes.

Q. Did Tom say anything after he came back? A. Well, I couldn't tell, because they talked in Italian.

Q. I mean to you? A. No, not to me.

20 Q. Did you remain after that, or did you go away? A. Dr. Huff asked me if I would take the little girl home, and Tom said she wouldn't stay with me. So then after I went home the little girl was fast asleep.

Q. Could this little girl talk English? A. I couldn't understand her.

Q. You tried to talk with her? A. She tried to talk to me but I couldn't understand her.

Q. Don't answer these questions until the Court rules. Do you remember in December, 1914, when the Meyers lived next door to you something that happened in the house there? A. Yes.

30 Q. On that day—what was it happened, first?

Mr. D'Aloia: I object to that. Absolutely immaterial incompetent and not binding.

The Court: I think I have once overruled that.

40 Mr. Stein: Maybe I didn't state it clearly to your Honor before what I endeavored to show. I am endeavoring to show, along the line of motive, that this defendant assaulted Mr. Meyers, with whom Mrs. Meyers was

living at the time, and I rely upon the law which I handed a little while ago to your Honor, to the effect that any motive, you can even prove an independent crime committed by the same defendant, if it connects up with the motive of the crime, which was committed and for which the defendant is then being tried. Now, the motive we allege in this case—

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The Court: What do you refer to, this, (indicating paper)?

Mr. Stein: Yes: The same thing I claim which prompted this incident was the thing which prompted the killing of this woman.

The Court: Well, I understand what you mean by that memorandum, but that is not quite applicable to this present situation. Mere proof of an assault does not prove motive. You ought to lay the foundation for it in some other way before you undertake to prove it.

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Mr. Stein: I could do that by reversing the order of proof and calling Mrs. Meyer before I called this witness. If I do not follow it up, the Court can always strike it out.

The Court: I do not want to waste time taking evidence that you cannot connect.

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Mr. Stein: But I will.

The Court: If you can show, if that is what your offer is, to show that this defendant, even in December, previous to this March, did anything which would indicate that he had a motive, for getting rid of his wife in March, that I will be inclined to consider, but I do not want to try just now the mere question of who is guilty of an assault and battery, until,—in other words, I do not

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imagine it makes much difference whether he committed an assault and battery or not, if he was in love with this woman.

Mr. Stein: That is the whole gist of the thing. I want to show the infatuation of this woman, and what he did.

The Court: I will not admit it now.

Mr. Stein: Cross examine.

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Cross examination by Mr. D'Aloia:

Q. Did you look at the clock that afternoon when he came to ask you to go over to his house? A. I did.

Mr. Stein: May I ask one more question? Before you go into cross examination?

Mr. D'Aloia: Go ahead.

20 By Mr. Stein:

Q. Before Tom went out for the Doctor, and while you were down in the kitchen, did you ask him to go upstairs and see how his wife was once more? A. I did. I asked him to go and see how she was before he went for the Doctor.

Q. Did he go upstairs? A. Yes, he did.

Q. When he came downstairs what did he say to you was the condition of his wife? A. He said she was better.

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Q. Just about how soon was that before the Doctor came and pronounced her dead? A. He was away about quarter of an hour before he came back with the Doctor.

Mr. Stein: No.

By Mr. D'Aloia:

Q. What time was it when you went over to that house, Mrs. Balding? A. About quarter to six. It was half-past five when he came over.

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Q. It was daylight, wasn't it? A. Yes.

Q. Did you try to talk to the lady that was sick?

A. I said that she was unconscious.

Q. Did you try to talk to her? A. No, I didn't.

Q. What is that? A. I did not.

Q. She didn't answer you? A. No.

Q. And you didn't try to wake her up or have her answer you? A. No.

Q. You didn't talk to her at all? A. No.

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Q. How far away from the bed did you stand when you looked at her? A. Right near the bed.

Q. Touched her? A. Yes.

Q. Shake her? A. Sure I did.

Q. Did you call her by name? A. I didn't know her name.

Q. Well, did you say Mrs. Roosi, or Mrs. Tom, or anything to her? A. No, I didn't.

Q. You stayed there a half hour? A. Yes.

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Q. Who was the first one to say something about a Doctor? A. I did.

Q. What did you say to him? A. I asked him had he had a Doctor.

Q. What were the words you used? A. Well, I couldn't tell you exactly what I did, but I asked him to get a Doctor.

Q. Did you say, get a Doctor, or did you say to him has a Doctor come here? A. Had he had a Doctor, and he said no.

30

Q. Wait a minute. A few moments ago you said you didn't remember the exact words you used? A. Well, I couldn't exactly.

Q. Try to remember if you said this to him, has the Doctor come, or has the Doctor seen her. A. I didn't say anything. I asked him had he got a Doctor.

Q. Just that way? A. Yes.

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Q. And he said no? A. Yes.

Q. Did you ask him again whether he had called for one? A. No.

Q. That was the only time anything was said about a Doctor? A. Yes, until after seven o'clock, until seven o'clock on the second time I went back.

Q. Then you told him to go out and get one?

10 A. I said I would go for a Doctor, And he said, no, he would go if I would stay with the little girl.

Q. Weren't you there sometime earlier in the afternoon that day? A. No, sir.

Q. Did you send in a call to Dr. Huff sometime around four o'clock? A. No, I did not.

Q. Do you know who did? A. I don't.

Q. You live two blocks away from this house? A. Yes.

Q. And you are sure it was about six o'clock when your attention was first called? A. Half-past five.

20 Q. Half-past five? A. Yes.

Q. When you saw the woman in bed was she unconscious? A. Yes.

Q. You don't know whether she was sleeping, or not, do you? A. Well, you can easy tell when a woman is sleeping the way she was breathing.

Q. Was she a stout woman? A. Yes, middling stout.

Q. And was lying on her back? A. Yes.

30 Q. And she was breathing heavily? A. Yes.

Q. You tried to talk to her? A. No, I didn't.

Q. Then you can't tell us whether she was unconscious or not? A. Well, she couldn't talk to me, so I knew she couldn't talk.

Q. You knew she couldn't talk to you because she couldn't speak your language? A. Yes.

Q. But you don't know whether she couldn't talk to you because she was conscious or unconscious, did you? A. No, I didn't because she didn't look like
40 if she could talk to me.

Q. Didn't you say at six-thirty Tom, I have got to go home and fix up supper? A. No, I did not.

Q. Was it supper time when you left? A. It was half-past six when I left.

Q. Was that your supper time? A. Well, around that time.

Q. Did you have to prepare supper for any member of your family? A. No, I had it all fixed.

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Q. Who was going to serve? A. Well, I always go and bring my husband home.

Q. What time do you go and bring your husband home? A. Around half-past five.

Mr. Stein: I object to the examination on this line.

The Court: We will save time by allowing it to go on. Proceed.

20

Q. Did you go home because it was your husband's dinner hour? A. No, I didn't because it was past that time; I should have met my husband coming out of his work at six o'clock. I drive up for him and I bring him home and I was just getting ready to go when Tom come for me.

Q. Did you have your horse and rig outside? A. My boy was hitching up the horse for me, and I told him not to do it because Tom's wife had got kicked with the horse.

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Q. When the Doctor came you were present, weren't you? A. Yes.

Q. You don't know what time the Doctor had been called? A. No, I don't.

Q. You don't know who had called the Doctor? A. No.

Q. But you do know this, that when the Doctor came you told the Doctor that the woman in bed

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had been kicked by a horse? A. After the Doctor had examined her.

Q. The first person in that room to tell the Doctor that the woman in bed had been kicked by a horse, was yourself? A. Sure, because Tom had told me.

Q. What? A. Tom told me the horse had kicked.

10 Q. I am not asking you who told you, I am simply asking you if it isn't a fact that you told the Doctor when he came there? A. After the Doctor had said she was dead.

Q. Now, Mrs. Balding, will you listen to my question now. When the Doctor came you went up into the room where the lady was in bed? A. Yes.

Q. And the persons in that room were yourself, Dr. Huff, and Tom? A. Yes.

Q. And the woman in bed? A. Yes.

20 Q. Where was the little girl? A. She was around looking through the window.

Q. She wasn't in that room, was she? A. No, not right in the room.

Q. As soon as you and the doctor and Tom got in the room, the first person to talk and to say anything to the doctor was you? A. I did not. The doctor said it was a bad case.

30 Q. He examined the woman? A. And he looked at her and he said she was dead, and of course he didn't know what happened, he wanted to know what happened and I told him that Tom had told me the horse had kicked her.

Q. So that you told the doctor that the horse had kicked her? A. Yes.

Q. And the doctor kept on talking to you while he was there? A. No, he didn't.

Q. Did you keep on explaining things to him? A. No, I did not.

40 Q. How long was the doctor there all told? A. I couldn't tell you what time, how long it was.

Q. Did you hear the doctor say to Tom, I am going to notify the authorities? A. Yes, he said he would have to.

Q. He would do what? A. He would have to.

Q. Have to do what? A. Notify the coroner.

Q. Before the doctor said that to Tom, Tom hadn't said a word to the doctor, had he? A. I don't remember.

Q. But you are sure of one thing, that you told Dr. Huff that the lady had been kicked by a horse? A. Sure, because I asked the doctor—I wanted the doctor to examine her.

Q. You left there with the doctor, didn't you? A. No.

Q. You said you went down with the doctor? A. I went down the stairs with the doctor and Tom.

Q. Where did you go after you got downstairs? A. I stayed in the kitchen.

Q. Where did the doctor go? A. The doctor went home and Tom had to go and send telegram.

Q. You don't remember anything said by the doctor to Tom, or by Tom to the doctor, except that the doctor said I will have to notify the coroner, is that right? A. Yes.

Q. Before Tom's wife arrived in Linden, did he talk to you of her coming from Italy? A. Once when I—

Q. Did he tell you that he was very glad she was coming? A. He didn't say anything.

Q. Did he say she was coming with her little girl? A. Yes, he said she was coming—she was to Philadelphia with his little girl.

Q. And did he ask you to call upon his wife after she had arrived? A. No, he did not.

Q. Didn't do that? A. No.

Q. How did he come to tell you about his wife?

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A. I went over to pay him for some work he had done me, that was on a Sunday.

Q. How long before his wife really came and arrived there, was it? A. I couldn't tell you.

Q. Was it a week? A. No, it wasn't quite a week.

Q. About two or three days before she came? A. Yes.

10 Q. Did you call on the wife during the time she was there? A. No.

Q. You never saw the woman at all except when she was sick in bed? A. Yes, I seen her on the Sunday.

Q. On that Sunday? A. Yes, when I went to pay him for some work he done me. And he give me an introduction to his wife, and she couldn't speak, and she shook hands with me.

20 Q. That was the day before? A. That was on Sunday, and she was all right then.

Q. That was the day before she died? A. Yes.

Q. When you were there on the Sunday, the day before she died, and she shook hands with you, nobody told you at that time that she had been kicked in the morning by a horse, did they? A. No, because it was Monday when she was supposed to be kicked.

30 Q. What time was it on Sunday that you paid a visit there? A. In the morning.

Q. Forenoon? A. Yes.

Q. She wasn't sick then, was she? A. No.

Mr. D'Aloia: That is all.

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

Direct examination by Mr. Stein:

Q. Mrs. Meyer, where do you live now? A. 212 Second Street, Jersey City.

Q. Where did you live before you moved to Jersey City? A. Elizabeth Avenue, Linden, New Jersey. 10

Q. How long have you lived in Linden? A. Going on four years altogether.

Q. When was it that you moved to Jersey City? A. I moved to Jersey City the first time in 1913, October.

Q. And then when did you come back again to Linden? A. I came back to Linden, in February, 1914. 20

Q. You lived in Linden, then, until when? A. Until December the ninth, I moved then back to Jersey City.

Q. December 9th, 1914? A. 1915—1914, yes.

Q. While you lived in Linden, did you know a man named Tom Roosi, the defendant here at the bar? A. Yes, sir.

Q. This man here? A. Yes, sir.

Q. How long did you know him? A. I know him from three and a half to four years. 30

Q. And how did you first get acquainted with him? A. Passing my house in Linden Avenue.

Q. How soon after you came to Linden was it you got acquainted with him? A. A little over six months.

Q. What is your husband's name? A. My husband's name?

Q. Yes. A. I am not married to Mr. Meyer. 40

Q. Well, you take his name, don't you? A. Henry Meyer.

Q. What is your right name? A. My right name is Biggs.

Q. You have been going by the name of Mrs. Meyers for how many years? A. Fifteen years.

Q. You have been living together as man and wife during that time? A. Yes.

10 Q. Was Mr. Meyer living with you in Linden? A. Yes.

Q. How did you get acquainted with Tom Roosi? A. Just passing my door.

Q. Did he ever come to your house? A. Not right away, he didn't. Passing my door, we would stand at the gate and talk.

20 Q. How did he come to—did he come to your house at any time afterwards? You say not right away, but he did. When did he come, about how soon after you got acquainted? A. About two weeks.

Q. In what way did he start coming there? Was it doing business with you? A. No, not right away. He would stand at the gate and talk, but in two weeks after then he used to come and take his meals.

Q. Take his meals? A. Yes.

30 Q. Did he live right in your house or only eat there? A. No, sir; he just ate there.

Q. What was your husband's business? A. He is a driver, truck driver.

Q. And has that been his business right along? A. Yes, sir.

Q. While you lived in Linden who used he work for? A. James A. Ackerman.

40 Q. Was he home during the day? A. No, he went out on the 5:37 train in the morning and didn't come around until 7:18 o'clock.

Q. In the evening? A. In the evening.

Q. So that during the day you were alone? A. Yes.

Q. And Tom would come and take his meals? A. Yes, sir.

Q. All his meals? A. Oh, no, just his dinner, sometimes, and sometimes just his supper.

Q. Were you ever intimate with Tom Roosi? A. Yes.

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Mr. D'Aloia: I object to that.

The Court: Why do you object to it?

Mr. D'Aloia: I do not think he can—she is not going to testify as to some other crime this defendant may have committed.

The Court: That is an entirely different thing. I will allow the question. Take an exception.

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Mr. D'Aloia prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

Q. What is your answer to that? A. Yes.

Q. And when did you start to become intimate with him? A. Two weeks after I got acquainted with him.

Q. Did you ever have sexual intercourse with him? A. Yes.

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Mr. D'Aloia: That is objected to on the same ground.

The Court: I will allow it.

Mr. D'Aloia prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

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Q. How often, say, in a week? A. About twice a week.

Q. And for how long a time did that continue? A. Oh, while I was there in Linden.

Q. For a spell you went to Jersey City? A. Yes.

Q. Did Tom come to see you there? A. This last time?

10 Q. Not the last time, the time before. A. I didn't move to Jersey City then, I moved to New York.

Q. Did he come to see you in New York? A. He visited the house, yes.

Q. Relations continued over there, the same relations? A. No.

20 Q. When you came back to Linden again, were the relations taken up the same as before? A. Yes.

Q. When was it that you—how long did those relations continue then, in Linden after you came back from New York the second time, up until when? A. Well, up until November.

Q. November, or December, which? A. No, November.

30 Q. Now, in November they were discontinued, why? A. Because Mr.—Tom had abused Mr. Meyers.

By the Court:

Q. Then it was stopped, was it? A. Yes.

By Mr. Stein:

Q. Was it in November he had abused Mr. Meyer or in December? A. Well, it was the thirtieth. The last day of the month.

40 Q. Of November. Did you tell Tom why your relations with him were discontinued? A. No,

because I didn't speak to him for over three months after that.

Q. Then when you moved to Jersey City, did Tom ever come over to see you? A. No, sir.

Q. I don't mean did he see you, I mean did he come over to see you?

Mr. D'Aloia: I object to that.

Q. That you know of? A. Yes, he was around my house. 10

Q. Did you see him? A. No, I didn't see him.

The Court: Then you do not know that?

The Witness: No.

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

The Court: Strike that out.

Q. While you were in Linden there, living with your husband, and intimate with Tom, did your husband and Tom have any business relations? Were they in business together? A. Yes, in the ice business. 20

Q. Who furnished the capital to go in the ice business?

Mr. D'Aloia: I object to that. That is immaterial. I do not see that that has anything to do with this occurrence in March, 1915, who furnished the capital to that partnership. 30

The Court: I do not think it is important.

Mr. Stein: Will your Honor allow the question?

The Court: No.

Q. Did your husband have any money where-with to go in business? A. No, sir.

Q. Did he get any money from Tom Roosi? A. No, sir. 40

Q. At no time? A. Only just what he give me from fifty cents, sometimes twenty-five cents, sometimes two dollars, every pay day. That was for his washing and ironing, and mending and meals.

Q. Nothing for the sensual pleasure? A. No, sir.

10 Q. What was the highest that you ever received? A. Ten dollars.

Q. When was that? A. That was New Year's eve, 1914.

Q. After you went to Jersey City, you yourself saw nothing of Tom? A. Not for three months.

Q. Not for three months? A. Not from I left Linden until the latter part of February.

Q. Latter part of February? A. Yes.

20 Q. Was there any correspondence between you and Tom in the meanwhile? A. No.

Q. Did anyone come to see you for Tom? A. Yes.

Q. Who? A. Mrs. Ludka.

Q. And when was it she came? A. The latter part of February, she came.

Q. Where did she see you? A. In my house.

Q. Where? A. 212 Second Street, Jersey City.

30 Q. Do you know about when that was? A. Well, no, I don't know just exactly the date.

Q. About how long before Tom's wife died, do you know?

Mr. D'Aloia: Does this witness know when Tom's wife died?

A. This was in the latter part of February that Mrs. Ludka came down to me.

Q. The first time? A. Yes.

40 Q. How many times did she come to you? A. She came four or five times.

Q. The first time she came did you and she have a talk about Tom? A. She did.

Mr. D'Aloia: I object to the talk in the absence of this defendant.

The Court: He has not asked that question yet.

Q. As the result of that talk did you send any message to Tom? A. Not that day I didn't.

Q. Did she come again? A. She came the next day.

10

Q. Did you have a talk about Tom, you and she? A. Yes.

Q. And as the result of that talk did you send any message to Tom? A. Yes.

Q. Verbal or in writing? A. No. Just told her.

Q. To tell him something? A. Yes.

Q. As the result of the message which you sent did you and Tom meet anywhere? A. Yes.

Q. Where? A. Met in Newark.

20

Q. Whereabouts in Newark? A. Right at the depot.

Q. Where? A. At the Pennsylvania depot.

Q. What did Tom say to you when you met? A. What did he say? To me? I don't just exactly know what he said to me.

Q. When you first met at the depot, don't you remember what he said to you? A. He only said, how do you do, and he shook hands.

30

Q. Then what did you say? A. Then I asked where Mrs. Ludga was and he said she wasn't coming, which she had told me she was going to meet me there with him.

Q. What did he say then? Did you remain at the depot or did you go anywhere together? A. No. We went right across the street.

Q. Across the street to where? A. In a drinking room.

Q. What kind of a drinking room? A. saloon? A. It is a cafe.

40

Q. Did you have something to drink? A. Yes.

Q. What did you have? A. He had beer and I had sarsaparilla.

Q. More than one? A. There was three drinks.

Q. While in there did you have a talk? A. Yes, sir.

10 Q. Now, just tell the jury what Tom said to you. A. Well, I asked him what he had done—turned around and abused my husband the way he did and he said he didn't do it. I said you know you did do it. And he said, I didn't do it. Well, I said, I know you did do it. Then he admitted to me that he had done it, and said only that for Mrs. Balding had come to Mr. Meyer's assistance he would have had him dead. And he said, I had to go away with him. And I said, I won't go away with you. He said you will come when I
20 am ready, for to go. Well, I said, I won't. He said, if I can't have you, nobody else will have you, he said.

Q. Now, had he ever told you that before? A. Yes, he had told me that before.

Q. When? A. Told me that on the fifth of July.

Q. And when he told it to you what did he do? A. He pointed a gun up to my head.

30 Q. What did he say? A. And said he would blow my head off if I didn't do what he wanted me to do.

Q. On the day in Newark now in the saloon where you were having this drink, when he said he was going to have you, did you know that Tom Crivelli's wife was home in Linden? A. Yes, I did.

40 Q. What did you say, if anything, to him about that? A. I told him he should stay home with his wife and child and take care of his wife and child. And he said he wouldn't that he didn't like his wife and that he was going to sell the business, and if he couldn't sell the business he was going to leave the business to her, and leave her.

Q. What else did he say about his wife? Did he tell you when he married her? A. Why, he told me he didn't like her when he married her, that it was his father's fault that he married her.

Q. What did you say to him in reply to that? A. Well, I said she is your wife, I said, and your child, and you should take care of her, I said. Why didn't you leave her where she was, I said, if you didn't want to take care of her.

10

Q. Then what did he say? A. He didn't make any answer to that.

Q. Did you go back with him to the depot? A. Yes, I went down home.

Q. Now, what did he say, either in the place after that, or on the way down to the depot, about you?

Mr. D'Aloia: I object to that as leading. If there was anything else said the Prosecutor can put it in that form.

20

The Court: I will allow the question. You may take an exception.

Mr. D'Aloia: Prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

Question repeated by the stenographer.

30

A. About me? Well, I was to meet him again.

Q. And for what purpose did he want to meet you again? A. I was—he was to let me know, and I was to send him some envelopes.

Q. Did you send him some envelopes? A. I did.

Q. Through whom? A. Through the mail.

Q. Had you sent him any envelopes before that with anybody? A. Yes.

Q. With whom? A. Mrs. Ludka.

40

Q. What was on these envelopes? A. Only just my name and address.

Q. Have you told us all that he said there on that day to you about going away with him? A. Yes, that is all he said.

Q. On that day in Newark when he said these things did you get any money from him? A. Two dollars.

10

Q. Did he say anything more to you about money? A. Yes, he said he would give me some more money, but he didn't have any money just then, but he had money standing out and he said when he would collect it in that he would give me some more.

Q. When was the first you learned of his wife's death? A. Well, I didn't know until the officer came down to my house after me.

20

Mr. Stein: Cross examine.

Cross examination by Mr. D'Aloia:

Q. He owed you some money when you met him in Newark? A. What did you say?

Q. He owed you some money when you met him in Newark? A. No, he didn't.

Q. You had done the cooking for him? A. I know that, but he didn't owe me any money.

30

Q. Why did you take the two dollars? A. Because he gave it to me.

Q. Did you take the two dollars before this talk about his wife or afterwards? A. What talk about his wife?

Q. When he said to you that you were the only person that he would want to go away with, and that you would go away with him and no one else, had you received the two dollars, or hadn't you? A. I had received the two dollars then, yes.

40

Q. You had received the two dollars when you

told him to go back to your wife and your child?

A. Yes.

Q. So you gave him to understand when he made that proposition of going away with you that you would not go away with him? A. I would not go away with him and I told him so.

Q. Under no circumstances? A. Yes, sir.

Q. Sure about that? A. Yes, I am positive.

Q. And at no time during that talk did you give him any intimation, or say anything which he could construe to mean that you would go away with him? A. No, sir; I did not.

Q. He didn't hurt you that day, did he? A. No, he didn't hurt me that day.

Q. You are very positive and clear in your terms when you said to him that you would not go away with him? A. I said I would not go with him.

Q. He didn't strike you, did he? A. No, he didn't strike me.

Q. He gave you two dollars? A. Yes.

Q. And you went back to Jersey City? A. Yes.

Q. And the first thing you know the officer from the Prosecutor arrested you, isn't that so? A. The first thing I knew?

Q. Yes, after that? A. Yes.

Q. You were arrested? A. Yes.

Q. Now, will you tell us why you sent him the envelopes after this talk in Newark and after you got the two dollars, if you had told him to go back home and take care of his wife and child and that you would not go away with him? A. Because he wouldn't listen to that. He wanted the envelopes to send a letter, and I didn't want him sending his writing because he used to get the Italians to write and I couldn't understand it, and I didn't want to have that writing coming to the house and I sent him the envelopes.

Q. How many days after you had met him in

Newark did you mail the envelopes? A. That I couldn't tell you. I didn't take the date down.

Q. How many days after you had met him in Newark were you arrested in Jersey City and taken to Elizabeth by the Prosecutor's officers? A. That I couldn't tell you either.

Q. Was it a month, or two months? A. I couldn't tell.

10

Q. Was it six months? A. No, it wasn't.

Q. Five months? A. No, it wasn't.

Q. Four months? A. No, it wasn't a month.

Q. You were taken from Jersey City by the Prosecutor's officer and put in jail here in Elizabeth, weren't you? A. Yes.

Q. You were kept in jail how long? A. Four days.

20

Q. Before you left the Union County Jail you made a statement, didn't you? A. Before I left the County Jail, no, I didn't.

Q. You didn't make a statement in writing? A. No, not before I left it, no.

Q. After you left it? A. Nor after I left it either.

Q. Did you at any time after being— A. Yes, before I entered the jail I made a statement.

30

Q. And after making that statement were you told that they wanted you as a witness in this case? A. I was told I was wanted as a witness. I wasn't told on what case.

Q. Well, when you made the statement did you know what you were talking about? A. Yes, I knew what I was talking about.

Q. Was it about this case? A. Yes, it was.

40

Q. Then you did know that you were wanted in this case? A. Yes, when I was arrested and went up to the Prosecutor's office.

Q. I mean at the time you made the statement before you were incarcerated, did you know that

you were wanted as a witness in this case? A. Not on a murder case, I didn't know what I was a witness for.

Q. You didn't find that out until after you had made the statement and you were lodged in the Union County Jail? A. No, I found that out before I went into the jail.

Q. After you made the statement? A. Yes.

Q. Are you out on bail? A. Yes, sir.

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

Q. You did do cooking for Tom? A. Yes.

Q. And you did do washing for him? A. Yes.

Q. And you prepared his meals? A. Yes.

Q. When your husband was his partner? A. Yes. And before that too he had his meals at my house.

Q. And before you left Linden and went to Jersey City, didn't he at any time during your acquaintance with him say that he had a wife in Italy? A. No. I knew Tom Roosie for two years before I knew he was a married man.

Q. How long before you went to Jersey City did you know that he was a married man? A. I went to New York; not to Jersey City.

Q. You went to New York in 1913? A. Yes.

Q. And before 1913, you knew that he was a married man? A. I went to New York just through that, because I had found out that he was a married man.

Q. You told the Prosecutor that you went to Linden and you were there a short time and in 1913 you went to New York? A. Yes.

Q. Now, before you went to New York you knew he was married? A. Yes.

Q. And at the time you met him in Newark you knew he was married? A. Yes.

Q. Between the time you came back from New York and lived in Linden and the time you met him in Newark, did he ever tell you that he was going to send for his wife? A. Why, he sent for his wife when I lived in Linden.

Q. And you knew he was sending for her? A. I certainly did. I bought stuff for him for to furnish his house.

10

Q. And you knew he went to Philadelphia to get some money out of the bank to pay for the passage for his wife and his child? A. I didn't know where he was going to get the money. I knew he went to Philadelphia to send for his wife and child, yes.

Q. Didn't he ask you to fix up the house for the arrival of his wife and child? A. No, he did not. I bought near everything for him in the line of household goods, with his own money.

20

Q. Weren't you buying those goods at his request because his wife and child were going to come there and live in that house? A. That was not in my house, no.

Q. In that house of his, the house that you bought the goods for? A. He didn't have no house then. The goods were stored in my house.

30

Q. And didn't you buy things and store them in your house for him, to be used when his wife and child came? A. Yes, I did.

Q. Those goods that he bought were not to be used by you? A. I didn't use them.

Q. That is not the question. They were not for your use, were they? A. No, sir.

Q. You were fully aware of the fact when you bought those goods for him that those goods were being bought— A. For his wife.

40

Q. (continued)—for his wife and child? A. Yes.

Q. That he was sending for, coming across the ocean? A. Yes.

Mr. D'Aloia: That is all.

Mr. Stein: That is all, Mrs. Meyer.

By the Court:

Q. I understood you to say that when you were in Newark that you were to meet him? Did you say that? A. I was to meet him?

Q. To meet the defendant somewhere. A. Yes.

Q. What arrangement did you make about that?

A. Well, I didn't get any letter from him to meet him. I sent him the envelopes, but never got no reply.

Q. You were to meet him at some place he should notify you about afterwards? A. Yes.

By Mr. D'Aloia:

Q. And you never met him after that? A. No.

Redirect examination by Mr. Stein:

Q. Just about how many days—if you recall, was that before his wife died? A. Well, I don't really know. It was the latter part of March.

Q. But I thought probably you had some idea?

A. Around the eighteenth or nineteenth of March. I am not sure of the date.

Q. The eighteenth or nineteenth of March that you were in Newark with him? A. Yes.

Recross examination by Mr. D'Aloia:

Q. When I asked you that same question you said you didn't know, and I asked you again if it was a month or two months and you didn't know.

Mr. Stein: Is this a question or statement? I object to counsel putting a question in that way.

Mr. D'Aloia: Wait until I get through and I will put it in the form of a question.

Q. You answered my question, how long was it before his wife died that you met him in Newark, and you said you didn't know. You answered my question, was it a month or two months before—

Mr. D'Aloia: Wait until I get through, Mr. Prosecutor.

10 Q. (continued)—and you said you didn't know. What made you remember between the time you were answering my question and this question that the Prosecutor put, that it was the nineteenth of March?

20 Mr. Stein: Now, I object to the form of the question, because it includes in it statements of counsel summarizing the evidence incorrectly, and then calling for an answer.

The Court: I think we will have to look at the evidence. I did not understand this witness was testifying about this date. I may be wrong about it. Do not discuss it. Testimony read by the stenographer.

Mr. D'Aloia: I will withdraw that question.

30 Q. In what month were you taken from Jersey City to Elizabeth? A. In March.

Q. By the Prosecutor's detective? A. In March, yes.

Q. How long a time was it before you were taken from Jersey City to Elizabeth, by the Prosecutor's office that you met the defendant in Newark? A. Either the eighteenth or the nineteenth.

40 Q. That does not answer my question. How long was it A. I don't know what you mean.

Q. I asked you before how long a time elapsed between the time you say you met Roosie in New-

ark and the time you were arrested and taken to Elizabeth, and you said you didn't know? A. The last time I met him was between the eighteenth and the nineteenth. Now, the date that I was arrested, I don't know.

The Court: If you want to know we will get the record and you can easily find out.

10

Q. How do you fix the eighteenth or nineteenth of March as the day you saw him in Newark? A. Because I know it was either one of the days.

Q. How do you fix that? A. Because I know it.

Q. How do you know it so positively? A. Well, I know it was either one of those two days.

Q. Do you mean to tell me you can remember a meeting with him in Newark, and not remember the day you were arrested and put in jail here? A. Certainly. I don't remember the exact date that I was arrested. It was a Friday evening.

20

Q. Did you know what day of the month it was? A. No, I do not.

Q. What particular examination did you undergo here when you made this statement, wherein you fixed the eighteenth or the nineteenth of March as the day you met him in Newark? A. Well, I was asked when I last seen him.

30

Q. When were you asked that? Do you know what day that was? A. No, I don't know what day that was.

Q. Were you asked that the same— A. That day after I was locked up.

Q. Were you asked that the same day you were locked up? A. The day after I was locked up.

Q. The day after you were locked up? A. I wasn't asked anything the day I was locked up, or the evening.

40

Q. Have you seen the statement that you first made, since you made it? A. Have I seen it? Yes.

Q. This morning? A. No.

Q. Yesterday? A. No.

Q. The other day? A. I don't know when it was I seen the statement.

10 Q. How long ago before to-day have you seen the statement that you made on the day here in Elizabeth, when you were arrested? How long before to-day was it? A. What statement do you mean?

Q. The statement that you made to the Prosecutor when you were arrested. A. Oh, to the Prosecutor?

Q. Yes. A. I seen that to-day.

20 Q. And that statement contained the nineteenth of March, didn't it? A. Yes.

The Court: On minute. If you want to use a statement, you must, I think, find some means to get it in evidence.

30 Mr. D'Aloia: I do not want to use the statement. I simply ask the witness now if it is not a fact that she says that she met the defendant in Newark on the nineteenth of March, because she saw a paper to-day, and not because it took place on the nineteenth of March. That is what I want to ask her.

40 The Witness: Well, I know it took place either on the eighteenth or nineteenth, because I had sent him a postal card for Patrick's Day, which is on the seventeenth, and it was either one day or two days after that I have met him. That is why I know the date.

Q. It is not because you saw the statement to-day? A. No, sir; it is not.

Q. You sent him the card? A. Yes, sir.

Q. Before you met him? A. I only just sent him a Patrick's card. Nothing on it.

Q. Did you sign your name to it? A. No, not even my name signed to it.

Q. Was it postmarked Jersey City? A. Yes.

Q. Was it directed to him? A. Yes.

10

Q. Was there any endearing message on the outside? A. No, sir.

Q. And your name wasn't on it? A. No, sir.

Q. This was before you had seen him at Newark? A. Yes, sir.

Q. Was it after Mrs. Ludka had asked you to meet him, at his request, and you had said, I am afraid to meet him, unless you are present? A. Yes.

20

Q. Notwithstanding the fact that you sent word back by Mrs. Ludka that you were afraid to meet him, you sent him a postal card on Pat's Day or Patrick's Day? A. Yes.

Q. To show your profession? A. And sent her one, too.

Q. I say, you sent him one. Never mind her. A. Yes.

Q. Do you remember the words you used on that card? A. I didn't use any words on the card, only just his name and address.

30

Q. Was there anything printed on the card? A. No.

Q. Was there any picture on the card? A. Yes, there was a picture; I don't know what picture it was. It was a green card.

Q. How long after you had seen Mrs. Ludka and you had told her that you were afraid to meet him unless she were present, did you send him this card? A. Well, this was a March card that I sent.

40

She had been down to my house, I don't know whether it was four or five times.

Q. How long before you sent him this card had you seen her last? A. Only just a couple of days.

Q. And you had told her on that occasion that you would not meet him unless she were present?

10 A. I told her on the first occasion that she came down to me that I would not meet him unless that she was present.

Q. And you kept on telling her that every time you talked of Tom? A. I did not. I only told that woman that, once.

Mr. D'Aloia: That is all.

Mr. Stein: That is all, Mrs. Meyer.

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

Direct examination by Mr. Stein:

Q. What is your business? A. Pharmacist.

Q. Where is your pharmacy? A. 147 Irving Street, Rahway, New Jersey.

Q. Were you a pharmacist on the eight day of March last at that address? A. Yes, sir.

30 Q. And under whose name was that drug store run at that time? A. At that time under Arthur S. Wilcox.

Bottle marked P3 for identification.

Paper marked P4 for identification.

Q. I show you bottle marked P3 for identification and ask you whether you recognize that bottle? A. Yes, sir.

40 Q. By what do you recognize it? A. By my handwriting. By Wilcox's label, who was my predecessor at that time.

Q. What else? A. Number and general appearance.

Q. What do you say about the date? A. The date; yes, sir; March eighth.

Q. And now I show you P4 for identification on the part of the State, and ask you what that paper is? A. It is a prescription written by Dr. Randolph calling for two ounces of tincture of opium.

Q. What is the number of that prescription? A. 116694.

Q. Is that the number you gave it? A. That is the number I gave it.

Q. Did you put up that prescription? A. Yes, sir.

Q. What does the number on this bottle marked P3 for identification, represent? A. Represents a duplicate of the prescription dispensed.

Q. And did you also place the number which appears on that bottle? A. Yes, sir.

Q. On the same? A. Yes, sir.

Q. And is it identical with the prescription number? A. Yes, sir.

Q. Do you recall that prescription being brought to your place? A. Yes, sir.

Q. Do you remember who brought that there? A. Who bought it?

Q. Who brought it? A. A party by the name of Harry Paulis.

Q. Is that full strength? A. It is U. S. P. strength.

Q. What does U. S. P. strength represent? A. Official preparation.

Q. Official preparation approved by whom? A. Approved by the Government, by a party of men.

Q. How many ounces do we get there? A. Two ounces.

Q. Do you remember Chief Galatian, together with officers Wash and Buckley and this defend-

ant, Tom Rossi coming to your drug store one evening? A. Yes, this gentleman here at the door.

Q. No. You are referring to last night now? A. Yes, I thought you meant that gentleman there.

Q. No. •I don't mean last night. That man came last night with a subpoena, did he? A. Yes, I thought you meant him.

10 Q. I don't mean that. Do you remember Chief Galatian here? A. I remember him, yes.

Q. And detective Walsh? A. I do.

Q. And this defendant here? A. No, I do not.

Q. Don't remember him? A. Don't know him.

Q. Well, do you remember these two coming to your drug store? A. Those two gentlemen there, yes.

Q. What did they have with them on that occasion? A. This bottle.

20 Q. For what purpose did they call there? Did they state their business?

Mr. D'Aloia: I object to that.

A. Yes, to take—

Q. Don't state what it is. Did they state their business to you? A. Yes.

Q. Was this bottle exhibited to you? A. Yes, sir.

30 Q. What else did they do at the drug store? A. Look up the prescription.

Q. Do you know where this defendant was at the time? A. I do not.

Q. Did you go out with them at all? A. No, sir.

Q. Do you remember whether or not a man was exhibited to you, and you asked the question, is this the man who brought this prescription? A. No, sir.

40

Mr. D'Aloia: I object.

The Court: Well, he answered, no, sir.

Mr. D'Aloia: I don't like all those facts incorporated in a question in that leading fashion. It is his witness. It is not mine.

The Court: Proceed.

Q. What in the requirement of the U. S. P. laudanum? A. Forty-eight grains of powdered opium to the ounce.

Mr. Stein: That is all.

10

Cross examination by Mr. D'Aloia:

Q. Forty-eight grains of powdered opium to the ounce? A. Forty-eight grains of powdered opium to the ounce.

Q. Dissolved in alcohol? A. Yes, sir.

Q. And that two ounces of that you put up in that bottle for a man by the name of Harry Paulis? A. Correct.

20

Q. And how many times before this last time that you put it up had you put it up for Harry Paulis? A. This prescription we only put up once.

Q. How many times did you sell laudanum to Paulis? A. Once.

Q. Before that time? A. No. The only time.

Q. This is the only time? A. Yes, sir.

Q. You said that was something like a duplicate prescription did you? A. No. I made a duplicate for the County Physician for reference.

30

Q. Was that prescription that you put up on the eighth of March, was that renewed at any time? A. No, sir.

Q. Do you know what Paulis did with that bottle after he got it? A. I do not.

Q. Did you know Paulis at all? A. I knew him by sight; yes, sir.

Q. Did you take his name? A. Yes, sir.

40

Q. And address? A. Yes, sir.

Q. Where did he live? A. Linden, New Jersey.

Q. What street? A. No street required.

Q. You can't tell us how that bottle got into the possession of Mr. Galatian and his colleague, when they came to you, can you?

Mr. Stein: I object to that as not being cross examination. He has not been offered for that, and he cannot tell.

10 The Court: I overrule the question.

Mr. Stein: We will tell. Do not worry about that.

Q. Let me see the bottle please? A. Certainly.

Q. Did you direct Paulis how to use that? A. No, sir; that is up to the physician.

Q. Did the prescription contain any direction? A. No, sir.

20 Q. Just said, as directed? A. As directed. It contained no directions whatever, but that is the requirements given when no exact directions are given.

Q. Do you know whether Paulis owned any horses? A. I did not.

Q. Is that used for horses? A. It can be; yes, sir.

Q. For what purpose? A. Why, colic, cramps, or anything of that kind.

30 Q. How many doses would that bottle contain, for a horse, for colic? A. Two.

Mr. D'Aloia: That is all.

JOHN A. GALATIAN, a witness produced on behalf of the State, being duly sworn according to law, on his oath, said:

Direct examination by Mr. Stein:

40 Q. What position do you hold? A. Chief of County Detectives attached to the Prosecutor's office.

Q. Did you, on March twenty-second, make a trip to Linden, in company with anybody, and if so, who? A. March twenty-third.

Q. Yes. A. Went to Linden with Prosecutor Stein, Detectives Walsh and Buckley.

Q. And whereabouts in Linden did you go? A. Went to Lombard Street, Linden.

Q. It is not Lumber Street? A. It is Lombard. I think it is Lombard.

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Q. Whereabouts in Lombard Street did you go? A. The home of Thomas Roosi.

Q. Whom did you meet there? A. Tom Roosi, the defendant, and his little girl, apparently about five years old.

Q. Anybody speak to Tom? A. Yes, sir; the Prosecutor did.

Q. What did he say to him? A. He asked him, are you the husband. And he said, yes; my wife is dead upstairs. The Prosecutor asked him, what is the matter; and he told him, he told us all that she had been kicked by a horse, the morning of the previous day.

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Q. That was on the twenty-second. Now, then, what did we do? A. Buckley and I went upstairs where the body lay and we made a hasty examination of the room and came downstairs. The body at that time, there was a foam oozing from the right corner of the mouth, extending down on the neck. She was lying right directly on her back, in a night dress. She wasn't dressed. She had her night dress on.

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Q. When you came downstairs, who did you meet downstairs? A. We met the Prosecutor and detective Walsh and the defendant, Tom Roosi. They were engaged in conversation, and as the result of what was being talked about we all proceeded out in the yard towards the barn.

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Q. Out there in the yard, how far from the house

was this barn located there? A. Well, I should say that it was probably not more than twenty feet from the kitchen door.

10 Q. What took place in the yard, Chief? A. Roosie went out and the topic of conversation was his wife being kicked. And he went out there and showed us where he was at the time, and how the barn door, which was a swinging door outward, the position in which that door was at the time he alleged his wife was kicked. He claimed that he was hitching up the bay horse, he had taken the bay horse out of the barn, and was hitching it up to the ice wagon, his wife remained in the barn attending to the grey horse, with a view of bringing the grey horse out to him. All of a sudden she came out of the barn, he said, and holding her side, claimed the horse had kicked her, and claiming that
20 she complained of pain.

Q. Go on. A. He said that shortly after that his wife went in the house and remained there. He left the house with the team at eight-thirty and went off to the ice house. He didn't return until two o'clock in the afternoon and found his wife in bed, complaining of the sickness. He remained around and sent for the doctor at about half-past five, between five and half-past five he thought. And
30 also sent for Mrs. Balding, he said, and at that time she was unconscious. Asked him if she was conscious when he sent for the doctor, and he replied and said that she couldn't talk. Sergeant Pickle came there. I believe the Prosecutor caused a telephone to be made summoning Sergeant Pickle from the Linden Police. He was instructed to take Roosie in charge and take him over to the Linden police station and take him in custody that night.
40 We returned back to Elizabeth that night.

Q. When you say we, who was in the party? A. Prosecutor, myself, Buckley and Walsh.

Q. Go on. A. The following morning I sent detective Buckley to Linden to make a further investigation and gather whatever evidence was obtainable, and he telephoned to me about noon, and as the result of that telephone I went to Linden.

Q. Did anybody go with you? A. Not on that occasion. I went up alone on that trip.

Q. All right. A. I returned back and instructed I had to go elsewhere, and I instructed Buckley to bring Roosi down on the train to Elizabeth. When he arrived on the train I was here in the office, and after Roosi, we had a conversation here, and as the result of that conversation Roosi said, "well, if you will come back to Linden with me I will show you where I threw the bottles. We had been talking about bottles which contained laudanum, and a concoction of laudanum and whiskey. And he admitted that he had those bottles, he had those bottles in his possession, and said that if we would go to Linden with him he would show us where he threw them. We went to Linden and he took us to what I would call the eastern side of the house. The house faces on the railroad tracks, and I judge that it would be the eastern side, about parallel with the front of the house, up against a picket fence, there he claimed that he threw the bottles from an upstairs window down to this point where he showed us. An investigation at that spot didn't satisfy us that he did do that. So we made a careful search of the entire yard and on the opposite side of the house we found this bottle, or rather detective Walsh found this bottle and that bottle.

Q. This bottle that you refer to is marked P3 for identification. A. That was one of them that he found.

Bottle marked P5 for identification.

Q. And this? A. They were about, I should judge, two or three feet from each other.

Q. P5 for identification was two or three feet from P3, is that right? A. Yes.

10 Q. Go on. A. And we were all within hearing distance, probably fifteen feet from each other, when Walsh picked those bottles up. And he brought them back and Walsh said, here are the bottles. Are these the bottles, Tom? And he shook his shoulders and he said, No. I don't know. I never saw those bottles before. And we then went—we had an automobile and we went to the drug store formerly conducted by Wilcox.

Q. Who went with you? A. Detectives Walsh and Buckley and the prisoner, we went over to Wilcox's drug store and met this gentleman.

20 Q. Mr. Verneau? A. Verneau, and I went around the corner, around the prescription counter, rather, and talked with Mr. Verneau, and Roosie was on the outside, out towards the front of the store, and there was another gentleman there, an older gentleman than he, and I asked either one of them, pointed out towards Roosie, and asked him if that was the man that got the prescription filled. I remember he immediately said, No, no, it was Harry Paulis, I know Harry Paulis; Harry Paulis was the man that got the prescription filled. And from the information on this bottle—

30 Q. P3? A. From the information on P3, it was to locate the prescription, and he referred back to that prescription and said that he remembered it, it was within his personal knowledge, and that Harry Paulis got it. We then went over to Dr. Randolph's office on Main Street, 131, and on the way over—

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Q. All of you, the prisoner included? A. Yes, all of us kept together. On our way over to Dr. Randolph's office the prisoner was asked questions, and he admitted that Harry Paulis did give him a bottle, and Harry Paulis got some laudanum for him from that drug store; but he says—he shook his shoulders again and said that if that bottle is the one—

Q. Speaking of what bottle, P3? A. Yes. If this is the one, then Harry Paulis must have thrown it there himself. Up to that time he would not admit that that was the bottle. I went in Dr. Randolph's office, and the others in the party remained in the automobile on the street. I went in Dr. Randolph's office alone and talked with Dr. Randolph. He explained to me how he came to issue this prescription. And I came out and then told Roosi that I had a complete line on that bottle, to show from the doctor that gave the prescription and everything, and accused him of getting Harry Paulis to procure this for him. Now, you and Harry Paulis are friends and I know you are, because Dr. Randolph has told me so, and you requested Harry Paulis to get that for you. He broke down and he said, Yes, that that was true, and then for the first time openly admitted that that was the bottle that Harry Paulis had given him and that Harry Paulis got it at his request from Dr. Randolph. And that he asked Harry Paulis to say to Dr. Randolph that he wanted it to treat a horse with.

Q. Now, then— A. We went from there over to the barn of the Keystone Construction Company in Rahway, where Harry Paulis was employed as the foreman of the stables. They had a number of horses there. We saw Harry Paulis, and I believe it was possibly between nine and

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half-past nine and ten o'clock, when we got over there, and the defendant, Walsh, Buckley and myself and the chauffeur that we had, Paddy Coyle, went in the barn with us. And after some talk Paulis told him—

10 Q. Told who? A. Told Roosi, the defendant, that he had taken some laudanum several months before and had taken it out of the Keystone Construction Company, out of a big bottle, he said, You know you stole some laudanum out of that bottle there several months ago. And Roosi admitted that he had. And he then admitted afterwards, Paulis told him, he says, Tom, you ought to get on your knees for what you have done, he said, You ought to get on your knees and pray to God to forgive you. And after that

20 Mr. Roosi admitted that he had—
Q. What did he say? A. That he had given his wife—I had this bottle in my hand like this, and he pointed at this bottle.

Q. That bottle is number P5? A. He says, Yes, I gave my wife about that much (indicating) measuring with his fingers, out of that bottle yesterday morning.

30 Q. Out of which bottle, now? A. This bottle. I had the bottle in my hand, this bottle in my hand.

By the Court:

40 Q. The large bottle? A. Yes, sir; the large bottle. And he said that he had whiskey and laudanum in this bottle, that he had concocted it and put it together. That he had poured it in this bottle from this bottle and made a concoction of whiskey and laudanum. And that he had given his wife about that much, indicating with his fingers, about that much out of that bottle yesterday morning.

By Mr. Stein:

Q. Now, Chief, at that time when this bottle marked P5 was shown to him was there anything in it? A. Yes, sir; there was about a spoonful in it.

Q. Did you smell of it? A. I did.

Q. What did it smell like to you? A. Well, very much, it resembled, from what I know of laudanum, it was laudanum. It had the odor of laudanum and whiskey. You could smell both.

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Q. Bottle marked P5, do you know what was subsequently done with that? A. I brought this, as soon as Walsh picked these up, he turned them right over to me and I kept them in my possession, until I, subsequently, I think it was on the thirty-first of March, turned them over to Dr. Garhart at the Muehlenberg Hospital, Plainfield.

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Q. Was that the time that Dr. Foster was present? A. No, Dr. Foster wasn't present at that time.

Mr. Stein: Cross examine.

Cross examination by Mr. D'Aloia:

Q. Did you also take some coffee that was in a coffee pot? A. I did not, no.

Q. Did any member of the party that went down to Linden take any coffee? A. Sergeant Pickle took some coffee—a coffee pot, and I believe a cup, of coffee.

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Q. And did he do that after defendant had told you that on the morning when he left the house and his wife had said she had been kicked by a horse, he and she had had some coffee together? A. The morning?

Q. I will try to frame it so that I will make it a little clear. Did Sergeant Pickle, or whatever you call him, at Linden, take that coffee from the coffee

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pot, and the cup, after the defendant had informed you and the sergeant that on the morning when the wife said she had been kicked by the horse, both of them, he and she, had had some coffee together? A. He never talked to me in the presence of Sergeant Pickle, that I know of.

10 Q. Then, Chief, you don't know just what led the sergeant to take the coffee, do you? A. Yes, I do.

Q. Well, wasn't the information that had been given to you, or the sergeant, by the defendant? A. It was by directions from the Prosecutor that sergeant Pickle took a coffee pot off the kitchen stove, containing coffee, and also took a cup of coffee, which was elsewhere in the house.

20 Q. Were you present at any time when the defendant said to any member of the party, either yourself or the Prosecutor, or Buckley, or Walsh, or Pickle, my wife and I, on the morning when I left to deliver ice, had a cup of coffee together? Were you present when he said that? A. Yes, I believe he made that statement the first time we were up there.

30 Q. When Prosecutor Stein was asking him all these questions, he said to you and the Prosecutor, or to the Prosecutor in your presence, that on this morning in question he had gone out in the yard to harness one horse, that the wife had come out of the house to help him with the other horse, and she had gone into the barn, is that so? A. Well, not in just that way.

Q. No, but this is the substance of what he told you? A. Substantially.

40 Q. That she went into the barn, he remained out in the yard, the door of the barn was so situated— A. He was engaged in hooking the bay horse up to the ice wagon.

Q. Yes. And the wife went into the barn while

he was so engaged, is that so? A. The wife was in the barn when he brought the bay horse out.

Q. But at the time the wife was in the barn, he also told you, or the Prosecutor at that time, that the door of the barn was so situated that he could not see his wife in the barn from where he was standing in the yard? A. He didn't. He opened the door, he showed us how that door was on the swing, which indicated the door was fully three-quarters open, nearly swung back full.

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Q. He never told you, or he never told the Prosecutor in your presence that he had seen the horse kick his wife? A. No. All he said, that he saw his wife coming out of the barn, complaining and holding her sides and complaining of pain.

Q. And then he also told the Prosecutor in your presence that after she came out of the barn complaining of pain in the side, where she alleged the horse kicked her, she went into the house? A. Yes, afterwards.

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Q. And he went into the house? A. No, he didn't say he went in the house then.

Q. They had coffee together in the house before he left on his route? A. He said that he got up and he cooked his own coffee that morning about six o'clock, he first said, and then he changed it again and said it was after seven.

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Q. Did he tell you or the Prosecutor, that after the wife come out of the barn saying that she had been kicked by the horse, that both of them, he and his wife, went in the kitchen and had coffee together? A. No, the coffee was before they went out there, but he claimed that they had partaken of the coffee before they went out to hitch the horses up.

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Q. And didn't he also say at that time, when he spoke of having coffee with his wife, that

she complained of a pain, and that he took a whiskey bottle out of a little closet in the kitchen and said to her, I take this in my coffee every morning, this is good for you, and for your pain, take a little in your coffee, did he tell you that, or tell the Prosecutor that? A. No. We were asking him those very questions if he didn't do that, and he kept on denying it.

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Q. Who was asking him the questions? A. The Prosecutor and myself.

Q. Was the conversation in English? A. Oh, yes. He understood it well.

Q. Was what he said taken down in writing? A. No, not at that time. He understood English well.

Q. Was it written out? A. No.

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Q. When did you first learn from him that at the time he and wife had coffee, that he had put some whiskey in his wife's coffee and in his own coffee that morning? A. At no time has he said that he and his wife had coffee together.

Q. That is to your knowledge? A. Yes. Well, it wasn't so stated. He indicated in the barn that he had given his wife about that much.

Q. This was on the night of the twenty-fourth? A. Early yesterday morning.

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Q. But this was on the night of the twenty-fourth that he said that, when you were talking to Paulis? A. No, that was on the night—that was on Wednesday night.

Q. That was the night when you went down to see Paulis? A. Yes.

Q. After you had been to the drug store? A. Yes.

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Q. I am talking of the morning when you first arrived there in company with the Prosecutor? A. It wasn't morning. It was about three-thirty, or four o'clock in the afternoon.

Q. That was the day after the death, wasn't it? A. Yes, the afternoon following the night of the death.

Q. About four o'clock? A. Yes.

Q. At that time for how long a time did the Prosecutor ask questions of the defendant? A. Well, we left there before—I believe we were back down here at supper time.

Q. At that time was Pickle called in? A. Yes, sir; Sergeant Pickle was called in. 10

Q. And at that time before you all left, Sergeant Pickle, by order of the Prosecutor, took the coffee that was in the coffee pot, and took the coffee that was in the cup? A. Yes.

Q. And that happened one day before you and your colleague went to see Paulis visiting the drug store? A. Yes.

Q. Now, do you know what was said by the defendant about coffee, in your presence to the Prosecutor, which made the Prosecutor tell Pickle to go to the closet, or go to the coffee pot and take the contents and go and find that cup of coffee? A. He took the pot and everything. And the fact we saw coffee there suggested to our minds that possibly poison had been taken in that coffee, and that was the reason why we dwelt upon the question as to whether he hadn't put something in coffee. 20 30

Q. Yes, but what was said by the defendant? A. That was our first inference.

Q. Didn't the defendant Tom, before you left there, say that he and his wife had taken coffee together, and that they had some whiskey in the coffee, and isn't it because of his admission of those facts that the Prosecutor instructed Sergeant Pickle to take the coffee pot and the cup of coffee with him? A. No. We were asking him if he hadn't taken something in coffee, and 40

he wouldn't admit that he had taken anything in coffee.

Q. He didn't say he had taken nothing in his coffee? A. Nothing but coffee.

Q. Did he say anything about whiskey? A. Not at that time. He wouldn't admit that he had taken any whiskey.

10 Q. Did' you look around that kitchen? A. Yes.

Q. Did you see any whiskey bottles in that closet? A. There wasn't any closet in the kitchen.

Q. Isn't there a little cabinet there where there are some bottles and wine? A. No, sir; not in the kitchen. In the dining room.

Q. In the room next to it? A. Yes, in the dining room.

20 Q. In the room next to the kitchen wasn't there a little cabinet or a little opening there? A. Yes.

Q. Where there were lots of bottles? A. Yes.

Q. Wasn't there a beer bottle there? A. I believe there was.

Q. And wasn't that beer bottle half full of whiskey? A. Yes.

30 Q. And didn't he point out to you and the Prosecutor, this is the bottle that I poured some whiskey from this morning into my cup and into my wife's cup? A. He wouldn't as I recollect it, he wouldn't admit that he had poured anything in his wife's coffee.

The Court: Officer, you heard the question. That is a perfectly simple one. Why don't you answer it?

40 A. It is kind of half and half. I do think he claimed he had put some whiskey in his own coffee, but he wouldn't admit that he had administered anything to her.

Q. That is what I have been trying to get you to say. Isn't it a fact that for a whole day before you saw Paulis down in the barn, and a whole day before he measured with his fingers as to how much whiskey he had put in a cup of coffee the day before, or two days before, isn't it a fact that on that very afternoon when you first got there, he told you and told the Prosecutor that he had put whiskey in his coffee that morning when he took it with his wife? A. No, sir.

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Q. Did he admit that afternoon, before the coffee was taken, that he had put the whiskey in his own coffee? A. I don't recollect that he did.

Q. Didn't you just say in answer— A. He claimed in a general way that he himself had put whiskey in his coffee, but he wouldn't admit that he had done it at all to his wife.

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Q. Did he point out to the Prosecutor, and to you, upon request of one of you gentlemen, the bottle in that little cabinet, the beer bottle half full of whiskey, from which he had poured the whiskey, and didn't you take that particular bottle with you that day? A. I forget whether I took it, or somebody else.

Q. It was taken? A. Took several bottles, yes.

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Q. Where is it? A. I believe it is upstairs.

Q. Now, try to remember this; didn't he say, I put some of the whiskey that is in this particular bottle in my wife's coffee? A. No, he didn't. He wouldn't admit that then. You are talking now about the conversation on the first night, are you not?

Q. Yes, the first afternoon? A. He did not.

Q. You were not present all the time while he was talking to the Prosecutor? A. Yes, sir; excepting the time for probably three minutes

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that Buckley and I went upstairs. Not to exceed five.

Q. You don't know what he told the Prosecutor during those five minutes, do you? A. No. Of course not.

10 Q. You didn't give orders to Sergeant Pickle to take the coffee pot and the cup of coffee, did you? A. I believe I did. The Prosecutor told me to have Sergeant Pickle take it.

Q. But it was the Prosecutor's original idea? A. Yes, it was the Prosecutor's orders that Pickle acted on.

Q. Are you sure now that in the presence of Paulis in the barn he said, I put so much, indicating with his fingers, of whiskey in the coffee out of that bottle? A. Yes, sir; out of this bottle.

20 Q. Who was asking the questions at that time? A. I was. I had that bottle in my hand at that time.

Q. Where was the particular bottle at that time that contained the whiskey? A. Well, I don't know. We didn't have it.

Q. This was the next day, wasn't it? A. Yes.

Q. Where is Paulis now, do you know? A. I do not know. I have tried to locate him.

Q. Have you made any effort? A. I have.

30 Q. And when did you begin to make any efforts for him? A. Oh, I forget just exactly when.

Q. If I quote you correctly, didn't you say that it was Paulis who first said to him, you ought to get down on your knees and thank Heaven for what you have done, or something like that? A. Yes, after he had commenced to say, yes, that is the bottle, and admitted those two bottles, and then I asked him if he didn't
40 give her some out of that very bottle that contained whiskey and laudanum, and then it was that he indicated that I gave her about that much

out of that bottle yesterday morning. Paulis said, you ought to get on your knees and pray to God to forgive you.

Q. Did you understand him correctly when he said that? Didn't he say, I gave her that much out of the bottle that you took away from my house, yesterday morning? A. Oh, no; no, sir. He took this bottle in his own hands and he said that that was the bottle, and he took them both this way (indicating).

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Q. And Paulis was present? A. Yes, sir; Paulis was present, Walsh and Buckley.

Q. And that was the last time you saw Paulis? A. Yes.

Q. You don't know where he is now, do you? A. I know he was in West Virginia for a while. And from West Virginia I have lost track of him. I don't know where he is now.

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Q. Are you sure you had that bottle down there in that barn when Paulis was present? A. Positively. Both of them.

Q. Did he speak good English at that time? A. Oh, yes.

Q. Very good English? A. Yes, sir.

Q. You are sure that he didn't say to you, I gave her so much out of the bottle that you took away, or that was taken away yesterday morning at my house? A. No, sir; he didn't refer to any bottle excepting that bottle there.

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Q. When he measured? A. When he measured.

Q. Well, the measurement, he had the bottle for the purpose of giving you an idea of how much whiskey he had used, didn't he? A. No. He said in as good English as anyone can speak that he gave her that much out of this very bottle the morning before.

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Q. And he said in very good English that he had put laudanum and whiskey in that bottle? A.

Asked him what he had done, what that bottle contained.

Q. Did you hear my question, chief? A. He said that he poured some laudanum out of this bottle into that which contained whiskey, and made the concoction of whiskey and laudanum.

Q. And Paulis heard all that? A. Yes, sir.

10 Q. And that was said in good English? A. Yes, sir.

Q. And the first time he said that, or anything like that, was in the presence of Paulis, after you and Buckley and Pickle and the Prosecutor had been keeping him in custody since the night before, or the afternoon before at four o'clock? A. Well, I think the Prosecutor—yes, I might say that.

20 Q. Do you remember Paulis saying to him, why, Tom, you took some laudanum once from the Keystone Company here, several months before? A. Yes, sir. He didn't say take it. He said you stole it.

Q. And Tom admitted it? A. Yes, he did.

Q. Did Paulis admit to you that he had gone to this drug store to get this laudanum? A. Nearly a year before he said that he did.

30 Q. What is that? A. He said nearly a year before. Several months before that, nearly a year ago, you took some out of that black bottle, and he pointed over in the corner.

Q. After you met Paulis in this barn, coming from the drug store, did Paulis tell you that he had procured this laudanum at that drug store? A. Oh, yes.

40 Q. Didn't he say to you that he had been furnishing or getting laudanum for Roosie, the defendant here, time and again, so that he could use it for his horses? A. No.

Q. Did you ask him how many? A. This was the first time, Paulis said, that he ever procured any laudanum for Tom.

Q. Paulis said that? A. Yes.

Q. Didn't he say there that Tom had stolen some before from the Keystone Company? A. Yes.

Q. Paulis was employed there in charge of the stable, wasn't he? A. Yes, he was the foreman of the stable.

Q. And the defendant at that time was in the ice business, wasn't he? And had two horses and an ice wagon, you knew that much, the night when you had this talk in the barn?

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Mr. Stein: There are three questions in one.

A. No, I don't know all that. I know some of it. and I don't know all of it.

The Court: Answer the question as well as you can.

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A. I don't know whether he ever was in the ice business or not, only what I hear.

Q. Didn't you know, at the time you were talking to Paulis, that the defendant was the owner of horses? A. Yes.

Q. Didn't you know that Paulis was in charge of horses for the Keystone Company? A. Yes.

Q. And didn't you know at the time—didn't Paulis say, I got the laudanum, and he has taken laudanum here for the use of the horses, without paying for it, time and again? A. Well, he accused Roosi of taking it without his knowledge.

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Q. On many an occasion? A. About a year before. No, just on one occasion, he said.

Q. A whole year before? A. Yes, about a year before that.

Q. Are you sure he said a year? A. Yes.

Q. A while ago you said a few months? A. No. I said several months. Nearly a year before that, he said.

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Q. Is it possible that Paulis told you he had taken some a year before, and he had taken some more a couple of months before, stealing it from the Keystone Company? A. Where do you get the two months before?

10 Q. From your answer. Is it possible that Paulis in speaking to you spoke of two occasions on which the defendant stole some laudanum from the Keystone Company, one year before and one four months before? A. I don't think I said two months. If I did I was mistaken. Several months before.

Q. Did Paulis speak of the stealing of the laudanum as having occurred twice, once some months before and once a whole year before?

20 The Court: He has told you three or four times it was only one occasion. Several months, nearly a year before. I do not see why you want to take up the time of the Court in insisting to have that witness repeat that question.

Mr. D'Aloia: May it please the Court, I do not want to take up any time, but I would like to get this conversation precisely, if I can. It is very important to the defendant.

30 The Court: You are not asking any conversation at all. You are trying to have this witness answer a question which you have asked him four or five times, whether this man did not get laudanum twice. He said no, only once, on one occasion. He has answered that question three or four times. Now, he may not be telling the truth, but I do not think you can get him to tell any different story, by taking up a lot of time about it.

40 Q. What else did Paulis say that night, if anything, about laudanum, and this man whom you

had in custody, besides telling you that a year before he had taken some from the Keystone Company? A. Well, I don't remember anything else, only probably there was some general conversation there, the exact words I don't remember.

Q. About laudanum, and about this man, and about the procuring of laudanum? A. Yes.

Q. But you don't remember that, do you? A. A general conversation. The details I don't remember.

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Q. That you don't remember now? A. No.

Mr. D'Aloia: That is all.

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

Direct examination by Mr. Stein:

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Q. Doctor, how many years have you been practicing as a physician and surgeon? A. Forty-two years in Elizabeth.

Q. And besides being a physician, you are Mayor of the City, and have been for a number of terms, several terms. Yes, Doctor, are you familiar with the effect of opium or morphine on the stomach? A. On the human system, yes, certainly.

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Q. And when taken into the human system is any portion of it absorbed? A. Yes, it is.

Q. Let us say a person will take four grains of morphine or opium in solution, what portion of it would likely be absorbed through the system?

Mr. D'Aloia: I object to the question because it incorporates a fact that has not been testified to, and if this question is a hypothetical question, it can only be put when it includes all the facts testified to by the experts prior to the witness now on the stand.

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The Prosecutor incorporates in this hypothetical question—I take it for granted that it is meant for a hypothetical question—the quantity of four grains of morphine or opium. There has been no testimony up to now, administering at any time, or anybody taking at any time four grains of morphine or opium solution.

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The Court : Why not?

Mr. D'Aloia : Because there has not.

The Court : This jury might infer from the testimony, that having discovered two grains and a half of morphine as a residue in the stomach of this woman, and the testimony of the experts, that that would indicate a much larger quantity having been given, the jury might very well infer that a sufficient dose had been given to amount to four grains.

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Mr. D'Aloia : Then the only question that the Prosecutor can put, may it please your Honor, is this: If two and one-quarter grains of morphine extract are found in the stomach upon analysis, what would be the quantity that could be taken that would leave that residue after different processes of absorption through the body.

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The Court : I will allow the question.

Mr. D'Aloia : Prays exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

Question repeated by the stenographer.

A. No, I could not.

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Q. Of any given portion of opium that is administered or taken, is any portion of it absorbed through the system, and if so, what portion? A. I couldn't tell how much of it is absorbed—

The Court: Doctor, before you answer that question, I think we will have to take a recess now. It is quarter of five, and it may take some little time.

Adjourned until to-morrow, November 11th, 1915, at 9:20 A. M.

Transcript of stenographer's notes of evidence taken in the above entitled cause, before Hon. James J. Bergen, Justice of the Supreme Court, and a jury, at the Court House in the City of Elizabeth, N. J., on the eleventh day of November, A. D. 1915, at 9:20 A. M. 10

APPEARANCES:

ALFRED A. STEIN, Esq., Prosecutor of the Pleas, for the State.

J. VICTOR D'ALOIA, Esq., FRANCIS A. GORDON, Esq., for the Defendant. 20

VICTOR MRAVLAG, resumed.

Direct examination continued by Mr. Stein:

(Question repeated by the stenographer.) Of any given portion of opium that is administered or taken, is any portion of it absorbed through the system, and if so, what portion? A. I cannot say what portion is absorbed, but the drug itself is absorbed, and depends upon what form the drug is in, more or less rapidly. 30

Q. Doctor, if a body was found in bed, unconscious, breathing heavily and slowly, and then dies, and a post mortem or an autopsy did not reveal the cause of death, but showed a congested brain, liquid brain, and an analysis was made of the stomach contents and the stomach, which showed two and one-quarter grains of morphine, what would you say was the cause of the death of that person? A. In the absence of any pathological 40

condition that would account for death in that individual, and the presence of a large quantity of a poisonous drug, like morphine, in the stomach, I would infer from that that a larger quantity than the one found in the stomach had been ingested and absorbed, and that that patient died from poisoning with morphine, or some other form of opium.

10 Q. What would you say if a portion of two and one-quarter grains of morphine residue were found, together with the symptoms prior to death, and the post mortem, after that I have described, what would be the cause of death of that person? A. Well, I would not hesitate to say that person died from poisoning with some form of opium.

Q. Now, what produces coma or unconsciousness in cases of poisoning, Doctor? A. With opium?

20 Q. Yes. A. Why, the drug itself is a paralyzer of nerve centres, and especially of the centre of respiration.

Q. How do we get that paralysis? What produces that? A. Why, the poison is carried by absorption into the circulation and by the circulation into the central nervous system, the brain.

30 Q. Then do I understand the fact that a person is unconscious, shows the absorption of the poison which is in the system, or in the stomach? A. Undoubtedly.

Q. So that in a poison case you get this state of coma or unconsciousness from the absorption of the poison through the system? A. And its effect upon the central nervous system.

40 Q. That poison which is absorbed, you cannot get after the death, when the chemical analysis is made? That is in the system? A. Yes, but some of it, if the patient lives long enough, is again excreted, and particularly through the stomach. Some of it disappears, although I am not a chemist, but that is about—it disappears because it is used

up in the system, some of it is again eliminated, and the principal avenue of elimination is through the stomach, but also through the bowels and through the kidneys.

Q. So that that which we find afterwards of two and one-quarter grains, for instance, in this particular case, is simply the residue, or that which is left, and not absorbed through the system? A. That is what the system has again excreted, of the original quantity injected.

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Cross examination by Mr. D'Aloia:

Q. Would there be physical evidence of the absorption in the kidneys? A. Do you mean pathological condition in the kidneys?

Q. Yes? A. No.

Q. Would you find any morphine in the liver by absorption? A. No, not very much, if any at all.

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Q. Would you find some? A. Possibly traces of it, but the principal place where you find it is the stomach and the bowels.

Q. But upon performing an autopsy would the physicians find traces of morphine in the liver? A. Not a physician would not. A chemist might.

Q. Would there be any condition that the person performing the autopsy could conclude from that there was poison in that body? A. Except the condition of the brain.

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Q. How about the smell? A. There is no smell to morphine.

Q. There is no smell to morphine? A. No, sir.

Q. Not even when it is in the stomach? A. Well, you simply smell the contents, but you don't smell the morphine. The contents of the stomach will smell just the same whether morphine is in it, or whether morphine is not in it.

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Q. The contents of the stomach, now let me understand you correctly, doctor, the contents of the

stomach would smell the same whether there was any morphine in that stomach or not? A. Yes, Or in other words there is nothing in the morphine that gives the stomach or the tissues any particular odor of any kind whatsoever. The opium has a smell.

Q. What is that, doctor? A. The opium has a smell.

10 Q. Opium has a smell? A. Opium has a smell and the tincture of opium, the laudanum has a smell.

Q. But the morphine has no smell? A. But the morphine has no particular odor. I can put quinine before you, and morphine and atrophine, and any other of the alkaloids of drugs, and you would not be able to smell to discover the difference between any one of them.

20 Q. Upon performing an autopsy and finding the liver of a body, would you be able to trace the odor of opium in that liver? A. Well, opium would not be excreted as opium, and therefore you would have the smell of opium in the liver. If there were solid opium in the stomach and you could take it out and dry it, you might get some of the odor of the opium, but the opium as a solid thing is not absorbed promptly, and not excreted as opium
30 either.

Q. Let us take the tincture of opium, if the tincture of opium is absorbed as you say? A. Yes.

Q. It usually is when taken by way of mouth, would there be enough absorbed by the liver so that on the performing of the autopsy the liver would give forth an odor of tincture of opium? A. No. The tincture of opium would not be excreted as tincture of opium.

40 Q. It would not be excreted? A. In the form of tincture of opium.

Q. How would it be absorbed? A. Why, it is

absorbed as a solution made out of the extraction of the defective parts of the opium by the dissolution with alcohol. When it is absorbed the alcohol is one thing and the alkaloid of the opium, either morphine or some portion of morphine, is the other thing that is excreted again. The alcohol is probably burned up and used up in the system. It is not excreted in small quantities as alcohol again. But the opium has its component principles, especially the morphine, excreted in the shape of the alkaloids of morphine and that has no odor. If there has been a quantity of the tincture of opium taken and not absorbed, so that you find it in the stomach as injected, then you might find the characteristic smell of the tincture of opium, but whatever has been refurnished from the system by excretion through the stomach, that part of it is not tincture of opium, but that part is the alkaloid of morphine.

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Q. Would you then smell the odor of alcohol upon performing the autopsy, smelling the contents of the stomach? A. I have just said a small quantity of the alcohol is oxidized and disappears. That you would not smell. You smell the alcohol only if it is injected in such quantities that it does not become oxidized, and passes into the tissues as alcohol and stays there; but, of course, an ounce of laudanum does not contain that much, therefore that would disappear.

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Q. Isn't it a fact that an excessive use of alcohol just immediately before death will cause a congested brain upon the performing of the autopsy, or rather would show a congested brain, when the autopsy is performed? A. Yes, an excessive use, but the poisonous limit, if I remember right, that you would not call an excessive use of alcohol, is three ounces of absolute alcohol spread over the day.

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Q. You don't know how much alcohol was taken by the person whose body the stomach was removed from, do you, in this case? A. I have not seen the person and I have not seen the stomach and I have not heard the testimony, so I don't know anything about it.

10 Q. You have been called here as a witness by the Prosecutor, and the Prosecutor has given you certain facts before calling you and has asked you for your opinion? A. The Prosecutor has brought me here on this stand and asked me questions which everybody heard, and that is all that I know about it.

20 Q. You say, though, doctor, that you cannot tell by the simple fact that there were two and one-quarter grains of morphine residue or extract in the stomach upon analysis, you cannot tell how much more had been absorbed by the body? A. No. But quite a good deal more. That I can say in a general way. If two and one-half grains were left over then a good deal more must have gone through the system than that.

30 Q. Two and one-quarter grains. Well, isn't it possible that the two and one-quarter grains of morphine had been taken by the person say fifteen or twenty minutes before death, or thirty minutes before death, and remained in that stomach without any absorption at all having taken place? A. Well, it is possible that some was taken that way.

Mr. D'Aloia: That is all.

Redirect examination by Mr. Stein:

40 Q. Doctor, but it is a fact too, is it not, that a person who dies from opium poison is not able to take anything fifteen minutes before death? A. No. I am pretty sure about that.

Q. Something might be fed that person, but of itself it could not do anything? A. No.

Q. Why? A. Well, because all the functions are practically abolished for that time. A. Person does not breathe, a person does not swallow. All the reflexes are gone, and, therefore, that person, unless it has been forced into him or her in some way, could not have taken it.

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Recross examination by Mr. D'Aloia:

Q. The answer you just gave the Prosecutor, is that upon an assumption that the person he speaks of had died of opium poisoning?

Mr. Stein: Certainly.

Mr. D'Aloia: That is what you tried to get the doctor to prove.

A. Well, no, I assume this; that the person who had been, as the Prosecutor asked before, unconscious, breathing only once in a while, absolutely insensible, that such a person, no matter what he or she died from, could swallow anything voluntarily, I say no, no matter what that person died of. Fifteen minutes before death, that is the time that you fixed. 20

Q. Will you say, doctor, that a woman twenty-six or twenty-seven years of age, during her menstruation period, would you say that that woman is suffering from a condition which is not normal? A. No, I would not say that. 30

Q. Is she weak? A. The menstrual condition in a woman is a normal thing.

Q. Is she weaker during that period than she is at other times of the month? A. That depends upon the woman. I have seen lots of women during that time do a big day's wash. 40

Q. And there are lots of women who have to lay down? A. Yes.

Q. And there are lots of women that cannot raise their heads for three or four days? A. Yes, and there are lots of women who do not menstruate.

10 Q. And immediately after the menstrual period is over this very same woman who has to lay down for three or four days, and is absolutely useless, can get up and do a big day's wash, can she? A. I guess—hardly—well, let it go at that.

Q. Isn't that possible? A. Yes, let it go at that.

Q. So that there are women at the age of twenty-five or twenty-six years who during the time that they menstruate, cannot stand on their feet? A. I have no doubt there are some.

20 Q. And are very morbid and nervous? A. Yes, no doubt.

Q. And that do everything that is possible to alleviate pain that they might be suffering?

Mr. Stein: I object to that.

Mr. D'Aloia: I will withdraw the last part.

Q. Would a woman suffering in that condition be liable to take some alcoholic drink?

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Mr. Stein: I object.

A. They take a drink without that.

Mr. Stein: I object to what some woman might do. It is possible, counsel may be able to show that this woman did it, but I object to the question for the time being.

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The Court Do you press the question?

Mr. D'Aloia: No, sir; I do not.

Q. Isn't it a fact, doctor, that whiskey, cognac,

and brandy is sometimes prescribed during the menstrual period to keep the parts either heated or alleviate pain?

Mr. Stein: I object to that because it is not cross examination.

The Court: I will allow it. I do not see what effect it has upon this case, that is all, so far.

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Mr. D'Aloia: I will connect it.

Q. Shall I answer it? I myself have never prescribed it, and I do not think any conscientious physician will prescribe it, and I don't know that he does prescribe alcohol in any form for the alleviation of pain.

Q. You don't believe in alcohol, do you? A. I drink it myself.

Q. Do you consider it a poison? A. If I drink too much, no question. 20

Q. Don't you consider it a poison in any quantity? A. Some say it is, and some say it is a nourishment.

Q. Yet, you would not prescribe it for a woman? A. Not for that purpose, no, indeed not.

Q. Don't you know, as a physician, that women who are older and experienced will suggest to women who are younger to take a drink when they are in that condition? 30

Mr. Stein: I object.

A. I don't know what they suggest.

The Court: I do not see how that is competent.

Q. Well, don't you know that alcoholic drinks are taken by women during their menstrual period? A. And at other times. 40

Q. Do they take it during their menstruation?

A. I don't know.

Q. Why, do you say and at other times? A. Well, because I know they do drink occasionally.

By Mr. Stein:

Q. Doctor, were you requested by me to go down and view the body of the deceased, Annie Crivelli, at Leonard's Morgue? A. I was.

Q. So you saw the body of this deceased woman? A. I did.

Q. Was she—can you say from your observation of her, as she lay there dead, whether she was a strong healthy woman? A. Her general appearance was that of an average sized woman, developed and nourished well.

Q. Can you say from that observation of her whether or not she would in any wise be affected by the normal condition of menstrual—

Mr. D'Aloia: I object.

A. I could not.

By Mr. D'Aloia:

Q. Doctor, when you saw that body, it had been embalmed, hadn't it? A. I think so, yes.

Mr. D'Aloia: That is all, doctor.

Mr. Stein: That is all, doctor.

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

Direct examination by Mr. Stein:

Q. Do you remember March twenty-fourth last, driving an automobile in which Chief Galatian and others were riding? A. I do, sir.

Q. Do you see this defendant, Tom Roosi here?

A. Yes, sir.

Q. Was he in the car? A. He was, sir.

Q. Who else was in the car? A. Detective Buckley and Walsh.

Q. Where did you go? A. The Keystone Construction Company, Linden.

Q. Before that where had you been with the party? A. To a drug store and to a physician's office.

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Q. To a drug store and the— A. A physician's office.

Q. Then where did you go from the physician's office? A. To the Keystone Construction Company.

Q. And where was that? A. Why, I don't know just the road.

Q. I mean what place? A. Right along the railroad, just a block from Wood Avenue.

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Q. Wood Avenue, what place? A. In Linden.

Q. Did you go into any building? A. Yes, sir. Went in this shanty there, like, where they kept a lot of horses.

Q. Who all went in there? A. The three detectives and myself.

Q. And where did Roosi stay? A. They took him inside with them.

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Q. Did you go in right away with them? A. Not exactly. I had to put some covers over my car, it was a little cold, and there was two or three minutes before I got in there.

Q. Was that the reason for you going in there? A. On account of being cold, I went in to get warm.

Q. You didn't go right along with the party right away? A. No, sir; I didn't.

Q. When you got in the shed who was in the shed? A. Man by the name of Paulis.

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Q. Paulis? A. Paulis.

Q. Did you know Paulis? A. No, sir; never saw him before.

Q. Who else was in then, besides Paulis, who else was in the shed then? A. Nobody at all, sir.

Q. Where were these detectives when you came in? A. Oh, I thought you meant at first. They were also inside, sir.

10 Q. And where Tom Roosie when you came in there? A. They were inside—he was inside with the detectives.

Q. Did you hear any talk there between the chief detective, Mr. Galatian, and Mr. Paulis? A. Yes, sir.

Q. What was it they were saying when you came in? A. Why, Galatian asked him if he ever saw that bottle before.

20 Q. I show you two bottles, one marked P3 for identification, and P5 for identification, and ask you which of those bottles the Chief was talking about? A. At first the small one.

Q. P3? A. Yes, sir.

Q. What did he say to Paulis about that? A. He asked him if he ever saw it before. He said yes.

Q. Tom was right there? Yes, sir.

30 Q. Then what did he say? A. He asked him where he got it and he looked at it and he told him he got it at Randolph's drug store, and gave it to Roosie.

Q. Then what was said? A. He asked Roosie was that right, and he said yes.

Q. Who asked Roosie? A. Galatian. And Paulis said, yes, that was right, that he did give it to him.

Q. And Roosie said that was right? A. Yes, sir.

40 Q. Now, then, what next took place? A. Why, Galatian took the two bottles and asked Roosie if he knew them. He said yes. And he asked him

didn't he take the small contents and pour it in the big bottle, and measure it out and give it to his wife, and Roosi said he did, by pointing to the amount he put in the glass.

Q. How did he point? A. Just with his finger.

Q. What did Roosi say? A. He said that he took the small contents.

Q. What do you mean, the small bottle? A. The small bottle into the big bottle and filled it out like that he gave it to his wife.

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Q. What was said then by anybody? A. I didn't hear much of anything then, sir. It was getting cold, and I went outside.

Q. You went outside again? A. Went outside to look after my car, yes.

By the Court:

Q. Did he say how he gave it to his wife? Did you hear anything of that? A. No, sir; that was all I heard; that he filled it out measuring that way, that was all I heard.

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Mr. Stein: Cross examine the witness.

Cross examination by Mr. D.Aloia:

Q. Did you hear him say that there was whiskey in that big bottle? A. No, sir.

Q. Did you hear him say that he had put whiskey and laudanum in that big bottle before he gave that much of it to his wife? A. No, I didn't.

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Q. Did you hear him say that I gave that much to her from the bottle that you took yesterday morning? Talking to Galatian? A. No, I didn't hear it that way. I only heard it that he filled the small bottle into the big bottle. That was all I heard him say.

Q. Who put it that way, did Galatian ask him whether he had poured the contents of the small

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bottle in the big bottle? A. No, but I heard Roosi say that.

Q. What did he say? A. He asked him what he done with it, and he said he took that bottle and poured it in the big bottle.

Q. Did he say that there was whiskey in the big bottle at the time? A. He didn't say nothing. I didn't hear him say whiskey.

10 Q. You didn't hear him say whiskey? A. No, sir.

Q. You didn't hear him say that there was whiskey and some of the stuff in the little bottle, mixed in the big bottle, and that he gave his wife that much of it? A. No, I didn't hear that.

Q. Were you there when that was said? A. That was all I heard.

20 Q. Did you go out alone, or did they all come out with you? A. I went out all alone, sir; I didn't hear it all.

Q. Now, look at this bottle. A. I couldn't swear it was the bottle. I didn't put any mark of mine on them.

Q. You can't swear this is the bottle Galatian had that night? A. No, sir; I can't.

Q. And you can't swear this is the bottle that Galatian had that night? A. No, I can't.

30 Q. They were bottles that looked like these? A. Exactly, that is, a half pint flask, and this bottle here.

Q. Do you remember the half pint flask that Galatian had in his hands, whether or not it was clean? A. I couldn't, because it was dark in there and there was only a little bit of a light.

Q. Do you remember whether the half pint flask was in Galatian's hand had anything in it at all?

40 A. Yes, there was small stuff in the end of it.

Q. How could you see that if it was dark? A. Well, only by shaking it, when they had it up to

the light that way talking, and that is the only reason why I seen it, but I couldn't say whether it was in the same bottle or not, but I know there was a very small amount of stuff in the bottle I saw.

Q. You know that? A. Yes.

Q. You are not willing to swear that is the bottle? A. No, sir; they all look alike.

Q. Paulis was there? A. Yes, sir.

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Q. You would know Paulis again if you saw him? A. No, sir; I would not, because I didn't have a very good look at the man in the dark there, and I never saw him before.

Q. If you couldn't see a man's face, how could you see a few drops of liquid in the bottom of a pint flask of whiskey? A. Well, they took it up to the light there, that was all. They were up there by the window, and the amount was in there, and that is the only reason I saw it, and this other man was sitting on the cot there. I didn't say much to Paulis.

20

Q. Did Galatian have a beer bottle that was half full of whiskey at the time? A. No, sir; I never seen that.

Q. How many other bottles were there besides two that looked like this? A. That is the only bottles I saw and one bottle this man Paulis had, that he had some medicine in.

30

Q. Then there were other bottles there? A. Was down in the corner, that is the only bottle I saw in the place. I didn't have to look at this. I just seen them in the corner as I come in the door.

Q. Did you hear Paulis say to Roosie, you stole some laudanum here several months ago? A. No, sir; I didn't.

Q. Did you hear him say, you stole some laudanum about a year ago? A. No, sir; I didn't.

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Mr. D'Aloia: That is all.

Mr. Stein: That is all.

Mr. Stein: I offer in evidence P 1, P 2, P 3, P 4 and P 5.

The Court: That is two jars, two bottles, and the prescription?

Mr. Stein: Yes.

10 Mr. D'Aloia: There is an objection to P 3 and P 5 going in in this form, with a label evidently put on since the bottles were found.

The Court: Why did you say "evidently put on?"

Mr. D'Aloia: Because the writing is dated subsequent to the finding of the bottles.

20 The Court: That I do not know.

Mr. D'Aloia: I will hand them to Your Honor so that Your Honor can see it.

The Court: On this large bottle, and on this smaller bottle, there are two pieces of writing pasted. You do not contend that they are competent evidence?

Mr. Stein: I do not care. You can tear them off. Simply put on there, and you know why.

30 The Court: They ought to be taken off. The bottles only should go in. Any objection otherwise?

Mr. D'Aloia: No, sir.

Mr. Stein: You do not object to Mr. Lou-
den washing this off?

Mr. D'Aloia: No.

The Court: Let them be admitted.

40 (Jar heretofore marked P 1 for Identification entered in evidence and marked Exhibit P 1.)

(Jar heretofore marked P 2 for Identifi-

cation entered in evidence and marked Exhibit P 2.)

(Bottle heretofore marked P 3 for Identification entered in evidence and marked Exhibit P 3.)

(Prescription heretofore marked P 4 for Identification entered in evidence and marked Exhibit P 4.)

(Bottle heretofore marked P 5 for Identification entered in evidence and marked Exhibit P 5.)

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WILLIAM FOSTER, recalled.

Direct examination by Mr. Stein:

Q. Professor Foster, I show you Exhibit P5 on behalf of the State and ask you whether that bottle was brought to you, and who gave it to you? A. It was brought to me at my laboratory in Princeton by Dr. Garhard on the second of April.

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Q. And when brought to you what was the condition of it? A. The bottle was sealed with wax that bore the impression of a coin.

Q. Was anything in that bottle? A. Yes.

Q. What was it? A. There was a small quantity of liquid. I should say a small teaspoonful of rather dark colored liquid.

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Q. And when you got it what was the first you did? A. Oh, after I had finished up the analysis of the stomach contents—

Q. I mean with that, doctor? A. I opened the bottle and I first observed that it had a strong odor of opium, or tincture of laudanum. And then I analyzed the contents of the bottle, that is to say, I made a qualitative analysis or test and as a result of my test I concluded that opium, or some form of opium was present. I based this upon the fact that I got the test for morphine and for mecon-

40

ic acid. That established beyond doubt, the presence of opium, or some preparation of opium.

Q. You simply made a qualitative test, and not a test for the quantity of the opium found there?

A. There being a very small quantity of the liquid I could not make a quantitative analysis.

10 Q. Can you positively say now that it did contain opium, or the tincture of that, namely, laudanum? A. Yes.

Mr. Stein: Cross examine the witness.

Cross examination by Mr. D'Aloia:

Q. Could you say that it contained whiskey?

A. I couldn't say that it contained whiskey.

Q. Did you find any traces of alcohol? A. I didn't examine it for alcohol.

20 Q. It was dark colored? A. Yes.

Q. Do you know who put it in the bottle? A. I do not.

Q. Do you know how long it had been in the bottle? A. All I know is what I saw—

By the Court:

Q. No, but do you know how long that liquid had been in the bottle? A. No, I couldn't say how long it had been in the bottle.

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By Mr. D'Aloia:

Q. Had it been in that bottle for say a month, could you tell that? A. Oh, I couldn't tell. I couldn't tell anything about it.

Q. As far as you know it may have been there for six months? A. May have been.

40 Q. Now, the only thing you can tell us, after making the analysis of that teaspoonful which comprised the contents of that bottle, is that there was an indication that it had contained tincture of opium, just an indication? A. No. I found there opium.

Q. What is that? A. I say I got a physiological test for opium, namely, the smell, and it was a good strong smell of opium. And furthermore I actually detected meconic acid and morphine.

Q. Wasn't there any smell of alcohol at all? A. Well, I couldn't say that there was. You see opium masks the alcohol smell.

Q. What was the rest of the liquid, if the liquid amounted to a small teaspoonful, and you say that the odor test showed a trace of opium, what were the rest of the elements that went to make up that liquid? A. Well, it was no doubt alcohol, but as I said a while ago, I made no test for alcohol, but it smelled exactly like tincture of opium and laudanum, and as soon as I opened the bottle and smelled it, I was quite content that opium or some form of opium was present.

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Q. What is the color of tincture of opium? A. Well, that varies somewhat. A sample which I have in my laboratory is quite dark colored. Sometimes it is lighter in appearance.

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Q. Lighter? A. Yes. Might even be a little reddish color.

Q. Does it depend upon strength? A. I suppose it depends somewhat upon the strength, and perhaps the quality of the opium, or the source of it. That I have not gone into at all.

30

Q. Does it change color with age? A. I don't know that it does, I couldn't say about that.

Q. If it is exposed in a vessel, without a cork, does the atmosphere have any effect upon it? A. Well, I don't know that the atmosphere would. The alcohol would evaporate off and become more concentrated.

Q. But this was liquid that you found there? A. This was liquid and stoppered and sealed.

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Mr. D'Aloia: That is all.

MANCH N. GARHART, recalled.

Direct examination by Mr. Stein:

Q. Doctor, I show you Exhibit P5 on the part of the State, and ask you whether you received that bottle, and if so, from whom? A. I received this bottle in my laboratory, from Detective Galatian.

10 Q. And at the time you received it was it sealed or unsealed? A. It was unsealed.

Q. Was there anything in it? A. There was about a teaspoonful of a dark brown liquid.

Q. What did you do when you got it? A. In the presence of Detective Galatian I removed the cork and smelled the contents of the bottle, and it in my opinion was that undoubtedly of tincture of opium or laudanum.

20 Q. Then what did you do after you had smelled of it? A. This was also confirmed by detective—

Q. What did you do after you smelled it? He has testified about his end of it. A. I then sealed the bottle.

Q. Who did you give it to? A. I then took the bottle to Princeton and delivered it to Prof. Foster.

Q. And that is all you know about it? A. Yes, sir.

30 Mr. Stein: Cross examine.

Mr. D'Aloia: No questions.

Mr. Stein: The State will rest.

The Court: Proceed with the defense.

Mr. D'Aloia opens the case for the defendant.

TOM CRIVELLI, the defendant, being duly sworn according to law on his oath, saith:

40 Direct examination by Mr. D'Aloia:

Q. What is your name? A. Tom Crivelli.

Q. Why did you use the name of Roosi? A. For business.

Q. What was your business in March of this year? A. An ice wagon, a moving truck, and all kinds of work.

Q. When did you leave Italy? A. Well, I can't tell for when I was leave Italy.

Q. What? A. I can't tell for, I don't remember.

Q. How many years ago? A. Six years.

Q. What was your wife's name? A. For me?

Q. What was your wife's name, your wife's name? You were married in Italy, weren't you? A. Yes, sir.

Q. Well, did you marry—you married a woman? A. Yes, sir.

Q. What was her name? A. Anina Disangre.

Q. How long had you been married to Anina Disangre? Before you came to America? A. Two years.

Q. When you came to America two years after your marriage, did your wife know you were coming to America? A. Yes, sir.

Q. Did she see you at the steamer? A. Yes, sir.

Q. Was anybody else there? A. My sister and my brother.

Mr. D'Aloia: Stand up.

Q. Was she there (indicating person in Court room)? A. Yes, sir.

Q. Did you say good-bye to your wife? A. Yes, sir. Was a whole lot of people in my house. House was full.

Q. When you got to America where did you go? A. I going in Greensburg.

Q. What state? A. Pennsylvania.

Q. How long did you stay there? A. Year and a half.

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Q. Then from where did you go? A. From there moved to Morristown.

Q. Pennsylvania? A. Yes, sir.

Q. How long did you stay there? A. Two and one-half.

Q. Then where did you go? A. Linden.

Q. How long have you been in Linden? A. Well, possibly about two years.

10 Q. What was your business in Linden? A. I was working Keystone first.

Q. Keystone Construction Company? A. Yes, sir.

Q. As what? A. In the stable.

Q. When did you go in business for yourself? A. I went in the business first in May.

Q. Which year? A. The ice business.

Q. Which year? A. Well, I don't remember, I don't remember, I can't tell that.

20 Q. Was it this last May or the other May? A. No, last May.

Q. The May before this last May? A. Yes.

The Court: 1915, or 1914?

Q. 1913 or 1914? A. 1914.

Q. Do you know Mrs. Meyer? A. I know when she in Linden.

30 Q. You know her when she was in Linden? A. Yes.

Q. Did you ever tell Mrs. Meyer that you were not married? A. No, sir.

Q. Did you tell Mrs. Meyer where your wife was? A. Yes, sir.

Q. Did you tell Mrs. Meyer that you had a daughter in Italy? A. Yes, sir.

40 Q. When did you first make up your mind to send for your wife and child? A. When I was had every thing ready.

Q. When was that? A. I was send for my wife,

I don't know if it was the fifteenth, or sixteenth of this month.

Q. What month? A. November.

Q. In November? A. Yes, sir.

The Court: Did he say he sent for her, or made up his mind?

Mr. D'Aloia: Made up his mind.

Q. In November when you decided to send for your wife and child did you tell Mrs. Meyer? A. Yes, sir. 10

Q. Did you tell Mrs. Meyer to get some furniture for you because your wife was coming? A. Yes, sir; she buy all the furniture.

Q. She bought the furniture? A. Yes, sir.

Q. From November, December, January? A. Yes, sir.

Q. Did you go and buy the tickets for your wife and your daughter? A. Yes, sir. 20

Q. Where? A. Philadelphia.

Q. What bank? A. Frank Bardino Bank.

Q. Did you have money there? A. Yes, sir.

Q. What day was it when you purchased the tickets for your wife and daughter? A. Well, I don't remember then, because I was stay a few day in Philadelphia.

Q. Well, I mean what month was it? A. November. 30

Q. Same month, November? A. Yes, sir.

Q. Was it before Christmas? A. Yes, sir.

Q. How long before Christmas? A. I can't tell for ten day, fifteen day, I don't know, I can't tell them, because I don't remember.

Q. What did you say? A. I say I don't remember which day.

The Court: Find out what month.

Q. Can you tell what month it was when you bought the ticket? A. November.

Q. Well, do you know anything about Thanksgiving Day? A. Yes, sir.

Q. Was it about Thanksgiving Day, before or after? A. Before Thanksgiving Day.

10 Q. How much, did you pay for the tickets? A. Well, I don't know how much I pay, because the bank got me receipt.

Q. Did you write to your wife all the time you were in America? A. Yes, I was writing.

Q. Did she write to you? A. Yes, sir.

Q. Where did you go to meet your wife? A. To Philadelphia.

Q. Did you know she was going to land in Philadelphia? A. Yes, sir.

20 Q. How long did you remain in Philadelphia while waiting for your wife? A. Seven days.

Q. Why, did you remain seven days in Philadelphia? A. Wait for my wife coming.

Q. What caused your wife to be delayed, do you know? A. Because the boat was backed.

Mr. Stein: That will be—

Mr. D'Aloia: I will withdraw it.

Mr. Stein: It would be hearsay.

30 Q. You stayed in Philadelphia seven days? A. Yes, sir.

Q. Did your wife come to Philadelphia? A. Yes, sir.

Q. Your daughter? A. Yes, sir.

Q. When your wife came to Philadelphia and your daughter what month was that? A. March.

Q. This year? A. Yes, sir.

40 Q. What day in March? A. Well, I can't possibly tell, was the sixteenth, fifteenth.

Q. Fifteenth or sixteenth. When your wife came to Philadelphia on the fifteenth or six-

teenth of March, did you come to Linden that same day with her? A. No, sir.

Q. What did you do? A. I stay in Philadelphia.

Q. How long? A. I stay two days.

Q. What for? A. Visit all my people.

Q. Did you introduce your wife to them? A. Yes, sir; to everybody.

Q. And your daughter? A. Yes, sir.

10

Q. And then where did you go from Philadelphia? A. I bought stuff first Philadelphia.

Q. What did you buy in Philadelphia? A. Bed clothes.

Q. What else? A. Bed.

Q. What else? A. And clothes for my child, for my daughter.

Q. On the way to Linden did you come directly to Linden, or did you stop anywhere? A. No, sir; I stop at Trenton.

20

Q. What for? A. To visit my sister and other people my wife know.

Q. Did you show your wife to those people and introduce her? A. I leave Sunday night my wife and my sister.

Q. You left your wife on Sunday night with your sister? A. Yes, sir.

Q. And you came to Linden? A. I am come Linden, because I never have nobody in the stable to attend to my horses.

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Q. How long after that did your wife come to Linden? A. Come Monday night.

Q. Did you meet her at the station? A. I meet her at the station Elizabeth.

Q. Was your daughter with your wife? A. Yes, sir.

Q. Who accompanied her from Trenton to Elizabeth? A. Nobody.

40

Q. Did you take her home? A. Yes, sir.

Q. Were you glad to see her? A. Sure, I was glad to see.

Mr. Stein: That is not leading, of course.

Q. Did you feel happy when you met her? A. Yes, sir; I feel happy.

10 Mr. Stein: I object to the leading character of the questions. It has been going on right along.

Q. Do you remember the first Sunday at the Linden house? A. Yes, sir; I remember this Sunday in the Linden house.

Q. Who cooked that day? A. My wife.

Q. How many people were there? A. Seven.

Q. Did you have dinner? A. Yes, sir.

Q. Was your wife there? A. Yes, sir.

20 Q. Was she sick that day?

Mr. Stein: I object to the leading character of the question. Let him tell what was the matter.

The Court: Go on.

Mr. D'Aloia: You see the kind of witness I have got.

30 Mr. Stein: Oh, I know the kind of witness you have got. I talked with him myself.

Q. Did you eat? Was she at the table? A. Yes, sir; was at the table.

Q. What time did you go to bed Sunday night? A. Ten o'clock.

Q. What time you get up Monday morning? A. Five o'clock.

40 Q. What did you do when you got up? A. I make a fire.

Q. After you made the fire what did you do? A. I put in my coffee. Put on the stove.

Q. Put your coffee pot on the stove? A. Yes, sir.

Q. What did you do then? A. I went to feed my horses.

Q. After feeding the horses what did you do? A. I clean.

Q. And then what did you do? A. I put him in the harness.

Q. Then what happened? A. Happened I went to shed.

Q. Yes. You went to the shed? A. Yes, sir.

Q. What for? A. Take my wagon out.

Q. Then what did you do? A. I grease my wagon, I cleaning my wagon.

Q. And— A. I put him outside and my wife was in the front porch.

Q. Your wife came to the porch? A. Yes, the front door, the porch.

Q. Which door? A. In the back door.

Q. What room did that door give into? A. In the kitchen.

Q. What happened that morning at that time? A. Well, I went to hitch up the bay horse.

Q. Yes. Then what happened? A. And my wife come in outside and I will ask my wife, please go in stable and get that blanket behind the grey horse. He said for me not.

Q. What? A. He was not. No one to go.

The Court: She said she didn't want to go.

A. I ask her please, I don't want to stay too late, because busy day. I want to put ice in and I don't want to get too late. She went.

Q. She went? A. Yes, sir.

Q. Then what happened? A. She went, and when he went in the stable and I standing twen-

ty foot far in the door right close to the fence, he hollers.

Q. Who hollered? A. My wife.

Q. Could you see her when she hollered? A. No, sir.

Q. Why? A. Because I was far in the door, and the door was half shut down.

10 Q. What did you do when she hollered? A. A. He coming out.

Q. What did you do? A. I was listen.

Q. What? A. I was listen.

Q. What did you do? A. Well, I see come out.

Q. What did you see, anything? A. He come out with the blanket on hands and put hand on left side.

20 Q. She had a blanket in her hand? A. Yes.

Q. And she had her hand on her left side? A. Left side.

Q. Then what happened? A. He was for me and ask him what is the matter; said, horse kick.

Q. Then what? A. Well, I said the horse kick. I say I never see very much, some horse when he stands too long was kind scared anybody come in the barn.

30 Q. You said that to her? A. Yes.

Q. Then what did she do? A. And then I ask myself are you sure the horse kick? Said yes. I said, go call the doctor. Said no. I say why. Because I can't speak.

Q. Then what happened? A. I say myself I will talk myself to the doctor. And say, no, I don't want doctor, because I am this way, I don't want doctor, you know yourself, I don't want to have anybody around me when I am sick.

40 Q. This was in the morning? A. Yes, sir.

Q. Then what happened? A. Well, happened,

I went—she stood there and I finish up and I grab in arm and took inside.

Q. You took her by the arm and took her inside?

A. Yes, sir.

Q. Where did you go inside? A. After I went kitchen she stand the side door, stand up side door, behind the stove, between the stove and the dining room, and myself I went to pour the coffee from the stove in the kitchen table.

10

Q. How many cups were put on the table? A. I will take two cups out of the closet in the kitchen. I put in coffee.

Q. You put what in the cups? A. The coffee.

Q. For whom? A. For me, for her.

Q. Where was the little girl? A. The little girl upstairs in the bed.

Q. What did you do after you put the coffee in the two cups? A. I went dining room, and I was use little whiskey in winter time, and put in the coffee myself.

20

Q. Yes. A. I went in dining room, I will have bottle, whiskey bottle.

Q. Yes? A. Bottle of whiskey was—first bottle was supposed to be beer bottle.

Q. First the bottle had been a beer bottle? A. Yes.

Q. And it had whiskey in? A. Yes, sir.

30

Q. Who put that whiskey in? A. Myself.

Q. Where did you get the whiskey? A. I will take out of the jar, the big jar.

Q. Out of the jar? A. Yes, sir.

Q. What did you do when you took that beer bottle with the whiskey in? A. Well, I put in my cup, and I will ask her have a little them in. That very good, drink a little, it will do good, the whiskey. Say no, I no like, I no like the smell; I no put in much a little, grab the bottle and put in about four or five drop.

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Q. Four or five drops out of the beer bottle? A. Yes, sir.

Q. How much did you put in your coffee? A. Well, I put in about a glass full.

Q. From the same bottle? A. The same bottle.

Q. The beer bottle with the whiskey in? A. Yes, sir.

10 Q. Did you take your coffee? A. Yes, sir; I take my coffee.

Q. Did she take her coffee? A. Yes, sir.

Q. Where did you go then? A. I will go ice.

Q. You went to get your ice? A. He told me, no stay too late.

Q. What? A. He told me, no stay too late.

Q. She says, don't stay too late? A. Yes, sir.

Q. How many customers did you have that day? A. Twelve.

20 Q. Did you get your ice at the ice house? A. Yes, sir.

Q. Did you serve your customers? A. Yes, sir.

Q. What time was it when you got back to the house? A. Well, was about half past twelve.

Q. Where did you go? A. In my house.

Q. Who did you find there? A. I find my little girl in.

30 Q. What did you say to her? A. I asked her where is her mama.

Q. Did you say anything to her? A. The little girl?

Q. Yes. A. I say, where is your mama.

Mr. Stein: I object to what this defendant said to the little girl downstairs.

The Court: How is that competent?

40 Q. Well, after you got to the house did you see your wife? A. No, I no see my wife.

Q. After you got to the house did you see your wife— A. I see my little girl.

Q. After you saw the little girl did you see your wife? A. Yes, sir.

Q. Where? A. Upstairs.

Q. Where was she? A. In the bed.

Q. Did you talk to her? A. Yes, sir.

Q. What did you say to her? A. I ask what is her feeling. Say, I feel a little better.

Q. Feel a little better? A. Yes.

Q. What else did you say to her? A. I ask her,' 10
will I go for the doctor.

Q. What? A. I ask her, better I go call the doctor. She said not.

Q. She said not? A. No, no want no doctor, because she say, when I sick this way I no want no doctor near me because I am strange this place I know nobody.

Q. What did you say? A. I say, I will go and call the doctor. 20

Q. What did she say? A. Said, I will took some of that stuff got this morning.

Q. She said, I took some of that stuff you gave me this morning? A. Yes, sir.

Q. What did you say? A. I never said nothing. I went downstairs, and I say, I will go call the doctor, and I went downstairs and I went to look in the closet, and I throw some bottle away, I afraid get up again and get some bottle sometimes and make mistake. 30

Q. How many bottles did you throw away? A. Four or five.

Q. Did you throw away this bottle (indicating P5)? A. No, sir. Show me the bottle, I can tell.

Q. If you see the bottle you threw away can you tell it? A. Yes, sir.

Q. Did you throw away that bottle? A. No, same. 40

Q. Bottle just like that? A. Was throw away before that week, or two weeks before.

Q. That bottle you threw away a week or two weeks before? A. Yes, sir.

Q. This bottle here, P3? A. Yes, sir.

Q. What did you do with the stuff that was in this bottle? A. I put in the pint bottle.

Q. Which pint bottle? A. The pint bottle, whiskey bottle, screw the top in.

10 Q. With the screw top on it? A. Yes, sir.

Q. Did you have any more of that stuff in that pint bottle with the screw top? A. Yes, sir.

Q. What did you use that stuff for? A. I used for the horse.

Q. Did you tell the Prosecutor that the whiskey bottle into which you poured the stuff in the bottle like this, had a screw top on? A. No, sir.

20 Q. What did you tell him about that whiskey bottle? A. Thursday afternoon he come up and I was in the Town Hall, he come up and one fellow—if I see him in this place I can point him.

Q. You don't see him now? A. Right over there the man.

Q. Mr. Buckley?

Mr. Stein. Stand up, Buckley.

Q. That man? A. That is the one come in first.

30 Q. The first one? A. They come in in the Town Hall.

Mr. Stein: Sit down, Jim.

Q. Did you tell him about the whiskey bottle that had the screw top on?

Mr. Stein: Wait.

A. The whiskey bottle, open top.

40 Mr. Stein: I object to the character of the question, because it is leading. Did you tell him you threw this bottle away?

Mr. D'Aloia: I will withdraw the question.

Q: Did you go for a doctor? A. Yes, I was to doctor before.

Q. Did you go to call a doctor? A. Yes, I was call the doctor.

Q. Where did you go? A. I went in John Molson's office.

10

Q. What did you do then? A. I told Johnnie, to call doctor, my wife looked bad.

Q. What time was that? A. Was in about after two o'clock; I no can remember time.

Q. What did Johnnie do when you told him to do that? A. Call in the doctor.

Q. How? A. On the telephone.

Q. Do you know the name of the doctor? A. Dr. Huff. After I went out and I want to pay Johnnie Molson; he say no got no pay to him.

20

Q. After the telephone mesage to the doctor where did you go? A. I went to the house.

Q. What did you do there? A. I went ask my wife she is feeling.

Q. And what did she say? A. Say, I feel pretty bad. I said, the doctor be pretty soon, I going take the horse in the blacksmith, I will be back soon.

Q. You said, I am going to take the horse to the blacksmith? A. Yes, sir.

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Q. Did you take the horse to the blacksmith? A Yes, sir.

Q. What time did you come back? A. I will come back, I was talk to the blacksmith about quarter of an hour.

Q. Quarter of an hour? A. Yes, sir.

Q. Did you wait for the doctor? A. Yes, sir.

Q. Did the doctor come? A. No, sir. I went in my house and I went upstairs, when I went to the house again I went upstairs and I want see my

40

wife, and I ask what you feel. Said, pretty bad. I want to call Mrs. Molson.

Q. You went to call Mrs. Molson? A. No, Mrs. Balding.

Q. Mrs. Balding? A. Yes, sir.

10 Mr. Stein: There is no question but what he called her. There is no dispute about that.

Q. What time was it when you called in Mrs. Balding? A. Half past four.

Q. Did she come over right away? A. Yes, sir.

Q. Did she come upstairs? A. Yes, sir; I will take upstairs.

20 Q. What happened next? A. He ask, was I call the doctor. I say yes, I call the doctor, but not doctor no come yet. I think I will go out and call again. He said for me, yes, you go out call again; if you can't get doctor Huff, get somebody else. I say, I don't know nobody.

Q. Did you tell Mrs. Balding that you had called the doctor? A. Yes, sir. Right in the street, between Lombard Street and Elizabeth Avenue I tell her when come in the house.

Q. You went out for the doctor again? A. Yes, I went out.

30 Q. What time was that? A. That was about five o'clock.

Q. Did you get the doctor? A. No, sir.

Q. What did you do then? A. Still stay in the house wait for the doctor, and Johnnie Molson tell the doctor coming soon.

Mr. Stein: Don't tell what somebody told you.

40 Q. Did you ask Molson to call the doctor again for you? A. Yes, sir.

Q. What time was it when the doctor came? A. Was quarter after six.

Q. Quarter after six? A. Yes, sir.

Q. Were you there? A. Yes, sir; I was over there. No. I meet the doctor in the street. For three minutes no come up. Mrs. Balding was in the house. I say, me go with doctor up, to let nobody—I told Mrs. Balding, I told him I run out in the doctor to call him in the house.

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Q. You told Mrs. Balding that you were going to run out to the doctor's house? A. Yes, sir. When I went out to Lombard Street, I meet the doctor on about five or six feet out of Lombard Street. I meet the doctor at Mrs. Molson's door, with two babies, two small girls, two small sister.

Q. What did you do then? A. I told the doctor to hurry up, my wife looked bad.

Q. Then what happened? A. Well, the doctor come in, in the house, he raised hand my wife. Stated, well take watch out of the pocket and looking. Mrs. Balding was right in the front side of the bed when the doctor say, I don't know was this kind of a patient, I eat my supper.

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Q. What else did he say to you? A. He say for me, Tom, I going to surprise you. I say what, doctor.

Q. Speak loud. A. He said, I going to surprise you. He said, wife dead. I say what. Your wife dead. I droop down and calm myself.

30

Q. You droop where? A. To calm myself.

Q. Did you sit down in a chair? A. No, sir.

Q. What did you do? A. I was standing right by doctor beside the bed.

Q. What else did the doctor say to you? A. The doctor call me, he said, Tom, come on.

Q. Where did you go with the doctor? A. And doctor taked me in the station.

40

Q. What happened then? A. Before I go in the

street I ask the doctor, what cost this trouble, He said, one dollar. I hand one dollar. He say he want to pay for the telephone. I say, I will.

Q. He said to you, you have got to pay for the telephone? A. Yes, sir.

Q. You went to the station with him? A. Went to the station.

10 Q. Did you pay for the telephone? A. Yes, sir; he call the telephone.

Q. Where did he call? A. In the station he got little cage call telephone. He call doctor from Rahway.

Q. And you paid for that telephone call? A. When he come out I hand it to him, change it right in the station there. He get the money out of the station man.

20 Q. What else did he say to you? A. He will say, I will be over there to-morrow morning nine o'clock, meet doctor from Rahway.

Q. You went back home? A. Yes, sir.

Q. Did you go to bed that night? A. No, sir.

Q. What did you do that night? A. I sent for couple of friends of mine.

Q. Sent for friends of yours? A. Yes, sir.

Q. You didn't sleep at all? A. No, sir; no sleep at all.

30 Q. The next morning what time was it when anybody came there, either Doctor Huff or any other doctor? A. Nobody come in that morning at all.

Q. What time was it? A. Was half-past three when come in.

Q. Who came? A. Come in the fellow from Rahway. I don't know, because I was stranger.

Mr. Stein: Stand up, Doctor Wescott.

40 Q. Is that the gentleman? A. Yes, that is the man, and Johnnie Molson come.

Q. Johnnie Molson too? A. Yes, sir.

Q. The boy, young Molson? A. Yes, the boy.

Mr. D'Aloia: Stand up, will you, Mr. Molson, please.

Q. Is that the young man? A. Yes, sir; that is him.

Q. He came with the old gentleman? A. Yes, came with the old gentleman. When he come in have a talk in the yard. He stand—because the dog got ten foot chain. He stand far the yard, he no come in, he was afraid. I have door shut and I was stay inside. 10

Q. The doctor was afraid to come in because of the dog? A. Yes, sir. Myself I went chase the dog and the doctor and Johnnie Molson come in the house.

Q. After the doctor came there what happened? A. I will take doctor upstairs. He ask me, where is my wife. I say upstairs, because the Doctor Huff told me cover her up, nobody will touch. I will take upstairs. 20

Q. Then what happened upstairs? A. He look around and say, what happened wife. I say myself my wife, I say I don't know, my wife ask me—he say to me, the horse was kick.

Q. Did you tell that to Doctor Wescott? A. Yes, sir. 30

Q. What did he say? A. Well, he ask me which place. Left side.

Q. What did he do after you told him? A. Well, he look around then. He say, no marks, Tom.

Q. What did you say? A. Well, I don't know. That is what say for me.

Q. Is that what you said to him, that is what she say for me? A. Yes, sir. 40

Q. Then what happened? A. He coming down in the kitchen, he sit down in the kitchen; I

stand up in kitchen; he sit down in dining room—in the kitchen table, Johnnie Molson was at the side, was at the front side.

Q. How long was the doctor there? A. The doctor was in about half an hour.

Q. Did he write anything there? A. No, wait a minute. He ask me what is my mother's name.

10 Q. What else did he ask you? A. Ask my father's name.

Q. Did you give it to him? A. Yes, sir.

Q. What else did he ask you? A. Ask me my mother-in-law's name.

Q. Did you give it to him? A. Yes, sir.

Q. What else? A. Ask me my father-in-law's name. He ask my wife's name. Won't I will give my wife's name, because myself I can't explain the word America, he got mad.

20 Q. Who got mad? A. The doctor from Rah-way.

Q. What did he do with that paper he wrote? A. After he ask my name he say, you go for name Roosi, for business, I write my name Crivelli. He write Crivelli. What you do, Crivelli? He writing. He went out have the paper in his hand.

30 Q. Who went out? A. The doctor. No wait a minute. Johnnie Molson—and the doctor got mad because I no give him the right name of my wife. Myself I can't explain. Johnnie Molson ask for me. Johnnie Molson explain my wife's name in for the doctor.

Q. Johnnie Molson explained your wife's name for the doctor? A. Yes, sir.

40 Q. What did the doctor do with the paper? A. Have the paper in the hand. Went out the yard and he say, I leave this in Johnnie Molson's office.

Q. Who said that? A. Doctor. He said to me, you call the undertaker.

Q. Who said that? A. The doctor. I will ask the Johnnie Molson, I don't know nobody myself. I must call the same telephone. Do you know anybody. A. Which the best one, from Rahway or from Elizabeth. Johnnie Molson say for me, say no, why don't you call the fellow from Roselle, he live in Linden. I say I don't know which one. I say I serve ice to.

10

Q. Then what happened? A. I give ten cents for Johnnie Molson for call the telephone.

Q. Call who on the telephone? A. The undertaker.

Q. Which undertaker? A. From Roselle.

Q. Was Doctor Wescott there then? A. Yes, sir.

Q. Was he there when Johnnie Molson picked up the telephone to call the undertaker? A. No. Was in my yard when I give ten cents for Johnnie Molson call the telephone.

20

Q. Who had the paper then? A. The doctor had the paper.

Q. Then where did you go from your yard, if any place? A. In my house. After half an hour, maybe three-quarters an hour, come in four gentlemen, I don't know, the first time I don't know, I can't tell anybody, come in four men.

30

Q. Four men came in about a half an hour after? A. Yes, four men come in. They stood in the yard, because the dog was bark.

Q. Who were the four men, do you see them here in Court? A. Yes, sir; there is one, Mr. Prosecutor, there is one over there, Galatian.

Mr. Stein: It is admitted Walsh, Buckley, Galatian and myself.

40

A. The Assistant Prosecutor.

Mr. Stein: No, the Assistant Prosecutor wasn't there.

A. Yes, he was over there.

Mr. Stein: All right.

Q. Then what happened? A. He ask me, where is my wife, and I tell him.

10 Q. Who asked you that? A. The Prosecutor.

Q. This gentleman here (indicating)? A. Yes, sir.

Q. What did you say? A. I say upstairs. What happened your wife? He say the horse kick.

Q. What did you say to him about the horse kicking her? A. My wife was tell the horse was kick.

20 Q. What else did you say to him? A. He say which place in the horse; in the stable.

Q. He asked you where the horse was? A. Yes.

Q. You said in the stable? A. Yes. Where you was. I was standing right just a little bit back then and horse stand right this place. What were you doing. I was hitching up the horse. He went, that fellow over there went in the stable look the horse. The Prosecutor never went in the stable. He stand outside.

30 Q. Then what happened? A. Well, he went to, I don't know which one, Galatian I think that fellow went upstairs, went in the house, went inside of the house.

Q. Yes. A. And me stand outside with the Prosecutor. After stay a while and talking and walk away.

40 Q. Who walked away? A. All four with the Prosecutor.

Q. Where did you go? A. Me in the house.

Q. Then what happened? A. All four come back with a wagon.

Q. With a wagon? A. Yes, sir. Undertaker wagon.

Q. Wagon or automobile? A. No. Wagon. Single horse.

Q. What happened? A. Two young men went upstairs and take the body out of the way.

Q. Two young men went upstairs and took the body out? A. Yes.

Q. What time was that? A. Was in about six o'clock.

Q. What did you do? A. Me, Judge Pickle take me in town hall.

Q. The sergeant of Linden? A. Yes, sir.

Q. Did you tell the Prosecutor at that time about the coffee in the morning? A. Yes, sir.

Q. Did you tell the Prosecutor at that time that you had put some whiskey out of the beer bottle in your coffee and in your wife's coffee? A. Yes, I was told them.

Q. When they went away did they take any bottles from the dining room? A. No, sir; no take that day at all.

Q. Did you show them the bottles in the dining room? A. I never show that day at all.

Q. Didn't show it to them? A. No.

Q. Did they ask you about the bottles? A. Never ask me anything. Just take coffee pot and the cup the coffee was in upstairs and another pots.

Q. After you got to the town hall with Sergeant Pickle where did they take you? A. Let me stay over there for me.

Q. How long? A. All night.

Q. Did you talk to anybody that night? A. No, sir.

Q. Did you see anybody the next day? A. Yes, sir.

Q. Who? A. This man.

Q. Mr. Buckley? A. Yes, sir.

Q. Did you speak to him in Italian? A. Yes, sir.

10 Q. What did he say to you? A. He take me in the room, only me and him. He started—he find—he upstairs all the bureaus and all everything in the house, he find check was two hundred dollars check. That was receipt a check.

Q. You mean a receipt? A. Yes, because I was pay that money back. He started to ask me questions, where is that check and what is that money for that check. I said that is a check I was pay when I was Philadelphia. He say for which.

Q. He asked you about the receipt he found in your place? A. Yes.

20 Q. What else did he say? A. He say for me, who give you the money. I tell, my wife bring the money for me. Your wife have the money. Yes, sir.

Q. Did you tell him your wife had brought some money? A. Yes, sir.

Q. Did your wife bring any money? A. Yes, sir.

Q. How much? A. Four hundred dollars.

Q. Whose money was that? A. Was my money.

30 The Court: How can you prove these conversations with some strange person who has not been a witness? He has testified that he had a talk with some man. He could have talked with a man—

A. Yes, I talk with him.

The Court: Never mind.

Mr. D'Aloia: The conduct of this man subsequent to this discovery—

40 The Court: Conduct is one thing. Do not argue that. You may prove his conduct by

a number of witnesses you have. What I object to is permitting him to testify to a conversation with a person who apparently is a perfect stranger to this case. He has not been called as a witness.

Mr. D'Aloia: Prosecutor's detective.

The Court: He has not called him.

Mr. D'Aloia: Well, I will tell him to eliminate the conversation.

10

Q. After you talked to that gentleman, Mr. Buckley, did you talk to anybody else, did you see anybody else? A. I was talking with him quite a while.

Q. But after that what happened to you? A. He take me in Elizabeth.

Q. When you came to Elizabeth where did they take you? A. Taking standing on the street.

20

Q. And after you had been standing in the street where did you go? A. Take me to supper.

Q. Who took you to supper? A. Three men, Galatian and that man over there.

Q. And after you went to supper where did you go? A. In Rahway.

Q. What did you do in Rahway? A. Take me in the drugstore.

Q. In a drugstore in Rahway? A. Yes, sir.

30

Q. After you had been to the drugstore in Rahway where did you go? A. I went in Stile Street.

Q. What was there? A. Keystone stable.

Q. Who was in the party when you went to the Keystone place? A. Was three young men and that man over there was, the short man, where the stable was.

Q. Did you see Paulis there at the Keystone place? A. Yes, sir.

40

Q. At the Keystone place did you say to Mr. Galatian— A. No.

Q. Wait a minute until I get through with the question. Did you say to Mr. Galatian there, with Mr. Paulis present, "I put the stuff in this bottle, in this bottle and put some whiskey in here and then I gave my wife that much of it?" Did you say that? A. No, sir; he say.

Q. Who said that? A. Galatian.

10 Q. What did you say to Galatian there when Paulis was present, what did you say? A. I no say nothing. He say, you want to tell them, I can't tell them. He say, you must tell them. And grabbed me in the face.

Q. In there in the presence of Paulis? A. Yes, grab in the face and punch head right into the boards.

Q. How long were you there in that stable? A. Well, I no was stay very long. About ten minutes.

20 Q. Did you at any time tell Mr. Galatian, or anybody else, that you gave your wife any laudanum? A. No, sir.

Q. When you were in Elizabeth here, brought here from Linden? A. Yes, sir.

Q. Did you tell him you would show them where you threw the bottles? A. Yes, sir.

30 Q. And didn't you go with them to point out the place where the bottles were? A. Yes, I take in my house.

Q. Took them to the house and showed him? A. I show them the place where I throw away bottles.

Q. Did they find any bottles? A. Yes, sir.

Q. How many? A. Was three bottles.

Q. Did they take them? A. Yes, sir. One bottle was break.

Q. One bottle was broken? A. Yes, sir.

40 Q. Did they take the beer bottle that had the whiskey in? A. I will show in which place I have the bottle, myself I will show the closet, and all the bottle was in together. He was in the closet, he

look; I will take bottle out of the closet and I put on the floor myself.

Q. You took all the bottles out of the closet and put them on the floor? A. Yes, sir. Was lot of paint bottle, lot of kinds paint, and was whiskey bottle, and was alcohol bottle, was in there spirits of nitre bottle, was sweet oil, was all kinds.

Q. Did you show them the bottles that you had thrown out, where you had thrown them? A. Yes, sir; I will show them.

10

Q. Did you take them to the spot in the yard? A. Yes, sir. I will say, I throw in the yard, I don't know where they went.

Q. Did you show them where the bottles were? A. No, I never show. I said, I throw in the yard, I don't know where they went.

Q. What became of the beer bottle that had the whiskey in it, do you know? A. Galatian took him. Take four bottles, take my basket and take all the bottles along. Take a can, too.

20

Q. When you asked Doctor Huff how much his trouble was, did you say to him, "Don't you make any trouble for me"? A. No, sir.

Q. What did you want to do then? Why did you say that? Why did you say "trouble"? A. I never say anything. I say, "What is the trouble cost."

Q. What does the trouble cost? A. Yes.

30

Q. Why did you ask that? A. Well, for pay.

Q. Pay who? A. Doctor.

Q. Did you pay him? A. Yes, sir. He take a dollar in the street.

Q. Did you ever say to Mrs. Ludka, or anybody in Lindén, "I cannot live without Mrs. Meyer, I will give you twenty dollars if you go and find her in Jersey City for me"? A. What for I want to give twenty dollars?

40

Q. Answer the question. Did you ever say that? A. No, sir.

Q. Why did you want to see Mrs. Meyer in Linden? A. I want see for fix my house.

Q. Is that why you asked that lady to go and look for her? A. Yes, sir.

Q. Do you remember when Mrs. Balding went home that night when your wife died? A. Yes, sir.

10 Q. Why did she leave the house? A. Leave the house, said, "Tom, I can't stay too long, because my man coming, I must get ready supper, my man coming home from work."

Q. Did you say to her, "Go home"? A. I said, "No stay too late, Mrs. Balding; come back."

Q. You told her to come back? A. Yes.

Q. Did you ever have any quarrel with your wife, any trouble, when she was here, after she came from Italy? A. No, sir; no trouble when come in. I have trouble in Italy.

20 Q. You had trouble where? A. In Italy.

Q. With who? A. When was sick.

Q. When she was sick you had trouble with her? A. Yes, sir.

Q. I mean, did you fight with her? A. No, sir.

Q. What do you mean trouble, when she was sick? A. Well, trouble for me when was sick, and was pain too much and get up out of the bed and was walk the floor.

30 Q. You mean when she was sick every month? A. Yes.

Q. That is the kind of trouble you had? A. Yes.

Q. You didn't have any fight with her? A. No, sir; never have no fight.

Q. You didn't have any fight with her family? A. No, sir; never have no fight with the family at all.

Mr. D'Aloia: Cross examine.

Cross examination by Mr. Stein:

Q. Well, did you tell Doctor Wescott you hoped that he would not make any trouble for you? A. No, sir.

Q. Never told him that? A. No, sir.

Q. Did you pay him any money? A. No, sir.

Q. You didn't ask him, "How much is your trouble?" did you? A. No, sir; because I never say, no, because Doctor Huff—

10

Q. Just answer that. You didn't ask him, "How much is your trouble"? A. No.

Q. The same as you did Doctor Huff? A. No.

Q. And you now say that you didn't say to Doctor Huff, "Will this get me into any trouble?" A. I never say them.

Q. What is that? A. I never say them to Doctor Huff at all.

Q. You never said that? A. No.

20

Q. What did you say to him about trouble? A. I said trouble. I said, "What is cost your trouble?"

Q. How much cost your trouble? A. Yes, sir.

Q. Where did you tell him that, or ask him that? A. In the street, and me walking for going station.

Q. Tom, you say that Chief Galatian pushed your head up against the wall and grabbed you by the nose? A. Yes.

Q. And he made you say? A. Yes, sir.

30

Q. That you took it out of that bottle? A. Yes, sir.

Q. Then you did tell him that you took it out of that bottle, that much, did you? A. He told me must have told him.

Q. Answer my question, Tom. You and I have talked before, haven't we? A. Yes, sir.

Q. And now, did Chief Galatian make you say, "I took that much out of this bottle"? A. He points himself.

40

Q. Did he make you say it? A. Yes, sir.

Q. And did you say it? A. Yes, was say, because the dark man—

Q. Did you say that? A. Yes, I say it.

Q. "I took that much out of that bottle"? A. Yes, sir; because he told me to tell that.

Q. He told you to say it. And if Chief Gallatian hadn't told you to say that, you would not have said it? A. No, sir.

Q. And he pushed your head against the wall by taking you by the nose? A. Yes, sir.

Q. And he says, "You have got to say that"? A. Yes, sir.

Q. Then you did say it? A. Yes, sir.

Q. When the Chief did that to you.

Mr. Stein: Stand up, Coyle.

Mr. Galatian: Coyle went out.

Mr. Stein: Stand up, Galatian.

Q. When Chief did that to you, grabbed you by the nose and pushed your head against the wall, who was in the room? A. Was rest of the people was along with him.

Q. Everybody was in there? A. Yes.

Q. What did you say to him then? A. Well, myself I can't say anything. I can't say everything. Everything is go against me. Point one way, and another way, and another way.

Q. Point? A. Yes, sir.

Q. They all had you? A. Yes, sir.

Q. Pointing you? A. Yes, sir.

Q. Pushing you? A. Yes, sir.

Q. Shoving you around? A. Yes, sir.

Q. The only friend you had in there was Paulis? A. Only friend I had was Paulis. Paulis was on the bed.

Q. That happened up in the shed of the Keystone Construction Company? A. Yes, sir.

Q. Did they push you around anywhere else, too? A. In my house.

Q. In your house? A. Yes, sir.

Q. Who pushed you, who hit you? A. All two.

Q. Was I there? A. No, sir.

Q. What two hit you? A. Galatian and this other second fellow.

Q. Galatian and what second fellow?

10

Mr. Stein: Stand up, Buckley.

A. Yes.

Q. Which one of the two hit you? A. Galatian, first. I was standing—

Q. Wait.

Mr. D'Aloia: Let him tell that.

Mr. Stein: I will conduct this my own way, for cross examination.

20

Mr. D'Aloia: I think he ought to be allowed to finish his answer. The Prosecutor has asked him this question. Now let him finish his answer.

Mr. Stein: It was answered.

Mr. D'Aloia: It was not answered. You interrupted him as he was saying something.

Question and answer repeated by stenographer.

30

The Court: Isn't that an answer?

The Witness: Galatian grabbed me.

The Court: He says Galatian. Now, he wants to go on and volunteer something else which is not an answer.

Mr. D'Aloia: All right.

Q. When was that? A. Was Wednesday.

Q. And after that you saw me upstairs here in the Prosecutor's office, didn't you, on Wednesday afternoon? A. No, I saw you Thursday.

40

Q. Thursday? A. Yes, sir.

Q. Before you saw me on Thursday Galatian and Buckley had struck you up in your house?

A. Yes, sir.

Q. And Galatian struck you up in the Keystone Construction Company's barn? A. Yes, sir.

10 Q. Did you tell me anything about that? A. Yes, I was tell you.

Q. Oh, you did tell me? A. Yes, sir.

Q. That those two men struck you? A. Yes, sir.

Q. Who was there when you told me that, Tom? A. Was lot of people over there.

Q. When you were talking to me on Thursday afternoon?

Mr. Stein: Stand up, Sheriff.

20 Q. Was the Sheriff there? A. Yes, sir.

Q. Was the Sheriff there when you told me that those officers struck you? A. I told—

Q. Was the Sheriff there when you told me that officer Buckley— A. Yes, the Sheriff was there.

Q. Wait a minute. I must get my question out first.

30 Mr. D'Aloia: He is trying to answer you.

Q. Was the Sheriff present when you told me that Buckley and Galatian struck you? A. Well, I don't know was Sheriff. Was a lot of people over there. No was only one.

Q. Just look over there. Was that man there? A. I don't know that man. I was alone this place. I was upstairs, too.

40 Q. You don't know Sheriff Otto? A. I was no upstairs.

Q. Answer the question. You don't know Sheriff Otto? A. I was no upstairs.

Q. Do you know Sheriff Otto? A. Yes, I know this place.

Q. That man there? A. Yes, sir.

Q. How long have you been in the county jail? A. Seven months and a half.

Q. And you have seen this man right along, haven't you? A. Yes, I see every day.

Q. Was that man up in the room when you told me that those detectives assaulted you? A. Well, I saw that first time I saw him.

10

Q. Was he there? A. Yes, was over there. I don't know is right man or not, because I never know before.

Q. Look at me and don't be looking all over. Answer the question. It is a simple one. Was Sheriff Otto there in the room on that Thursday afternoon in my office when you told me that Galatian and Buckley had struck you? A. This was the man over there. I don't know as Sheriff business him or not, because first time I was see.

20

Q. Well, did you see this man there that day for the first time, the Sheriff of this County? Look at him. A. Yes, that is the first time I see.

Q. But he was there, wasn't he? A. Yes, sir.

Q. When you told me that? A. Yes, sir.

Q. Now, then, Mr. Roosi, all these people, commencing with Doctor Huff, when he says that you told him or asked him would this get you into any trouble, he told an untruth, didn't he?

30

Mr. D'Aloia: I object to that question.

Q. That wasn't what you said at all, was it?

Mr. D'Aloia: I object to that.

A. No, sir.

The Court: As amended I will allow it. Take your exception.

40

Mr. D'Aloia: I think that has been answered.

The Court: Proceed.

Q. He did not tell an untruth then? He did not tell an untruth? A. Which no tell the truth?

Mr. D'Aloia: He can't tell what you mean by untruth.

10

Mr. Stein: He can tell, if you will stop bouncing up and down.

Q. Now, Tom, you say that Doctor Huff is mistaken when he said that you said to him, "Will this get me into any trouble"? A. I never told any such thing of the kind

Q. You say that Doctor Wescott is mistaken? A. No, sir.

20

Q. Now, wait. Doctor Wescott says that you said to him, "I hope you won't make any trouble for me." A. No, sir.

Q. You never said that? A. No, sir.

Q. And he is mistaken about that? A. Johnnie Molson was together.

The Court: When he says he never said it, whether he is mistaken or not is a question for the jury.

30

Mr. Stein: All right.

Q. Now, Tom, when your wife in the morning was kicked by the horse— A. That is what my wife told me.

Q. When she was kicked by the horse you were standing in the yard? A. Yes, sir.

Q. You showed Detective Galatian and myself and Buckley and Walsh just where you stood, didn't you? A. Yes, sir.

40

Q. And you showed the county physician just where you were standing when that happened? A. Yes, sir.

Q. And it was the white horse? A. Yes.

Q. Now, the white horse was in a stall where you could see it from the yard? It was right in front of the door, wasn't it? A. I know that anybody could—

Q. Will you please answer that question? It was right in front of the door, that white horse, wasn't it? A. No, was in the front of door.

10

Q. The first stall in your stable was the stall in which the white horse was? A. Was the first stall.

Q. Will you answer the question? Was it or wasn't it? A. No, was in the first stall white horse. Was in the second stall.

Q. Second stall? A. Yes, sir.

Q. Behind the second stall, then, if you call it that, was the door? A. Yes, sir. No door behind second stall. The first stall was door in.

20

Q. But your white horse stood then in the first stall where the door was, right to the rear of it? A. No, sir; the horse was stand second stall.

Q. Didn't you show us the white horse in the barn that morning? A. Yes, sir.

Q. And wasn't the white horse in the first stall that you come to when you open the door? A. No, was in the first stall. Was in the second stall.

Q. It wasn't in the first stall? A. No, sir.

30

Q. And don't you remember me saying to you, Tom, if that horse kicked your wife you couldn't help but see it, do you remember? A. No, sir; you never said that.

Q I never said that? A. No.

Q. And didn't you say to me, "I saw the horse kick her"? A. No, sir; I never told that.

Q. Tom, you say your wife didn't come here until the 18th of March? A. My wife was before the 18th.

40

The Court: He said his wife arrived March 15th or 16th, that is what he said.

A. Yes, sir.

Q. How long was she in Philadelphia? A. Two days.

Q. Were you there with her all during that time?

A. Yes, sir.

Q. During those two days? A. Yes, sir.

Q. With her all the time? A. Yes, sir.

10 Q. Did you come with her from Philadelphia to Trenton? A. Yes, sir.

Q. How long did you stay in Trenton? A. My wife stay one day in Trenton.

Q. How long did you stay in Trenton? A. How long I stay in Trenton myself?

Q. Yes. A. Oh, about an hour.

Q. An hour? A. Yes, sir.

20 Q. You were away for two days and an hour then. Who was taking care of your horses? A. I was two days? I was one week out.

Q. Who was taking care of your horses? A. I have young fellow attending to horses.

Q. Well, why didn't you stay with your wife and bring her back from Trenton? A. Because was Monday and I wanted to go out and serve the ice.

Q. I thought you told your counsel that it was because you had to come back to take care of your horses? A. Well, the horses, and have the ice.

30 Q. Who took care of the horses in the meanwhile, while you were gone? A. The fellow that was in.

Q. Freddie Loudon? A. Friend of mine.

Q. Freddie Loudon, wasn't it? A. No, sir.

Q. What was his name? A. Was name Domini.

Q. Didn't Freddie Loudon work for you? A. Freddie Loudon work for me when I got work.

40 Q. Didn't Freddie Loudon work for you during the time you were in Philadelphia? A. No, sir; Freddie Loudon never work.

Q. Who took care of your ice business for you? A. I told Dominici, was anybody come in for anything, for loading, no take my horse for nobody.

Q. You could have stayed then another day, so far as the business was concerned, and your horses, couldn't you? It was being taken care of? A. Well, because I have some moving job.

Q. Who were you going to move? A. I want move some fellow from Rahway.

10

Q. When? A. Between that week when I come back.

Q. Then it wasn't on account of the horses or the ice business, but because you had somebody to move? A. It was all the time have to get back attend to my horse and my business and my job.

Q. So it was because you had somebody to move, is that the answer? A. No was answer, because I want to move them. Was all three together.

20

Q. Now, Tom, Mrs. Balding says that you would not rub your wife's hand only for a little while. Is that true? A. No, sir. Mrs. Balding—no.

Q. What? A. Never told such thing of the kind.

Q. She didn't say that you said that. She said when you went upstairs with her she took your wife's hand and started to rub it. A. Yes, sir.

30

Q. And she told you to take hold of the other one. A. Yes, sir.

Q. Did you take hold of it? A. Yes, sir.

Q. Did you rub it? A. Yes, sir; I rub.

Q. How long? A. I was rubbing ten minutes, or longer.

Q. And then you stopped? A. I never stop. Mrs. Balding told me going out call the doctor.

40

Q. Mrs. Balding told you to go out and call the doctor? A. Yes, sir.

Q. That is the reason you stopped? A. Yes, sir.

Q. I thought you had called the doctor at two o'clock? A. Well, I was call two times doctor, and he told me to go call again.

10 Q. Tom, when did you first notice that your wife could not talk? A. When?

Q. Yes. A. About half-past four or five o'clock.

Q. And then what did you do when you found she could not talk? A. I went to call Mrs. Balding.

Q. But you didn't call anybody until she could not talk, is that right? A. Well, because I never was in the house.

20 Q. You were in there before two o'clock? A. I was in, and I was down in blacksmith shop.

Q. But you were in the house before two o'clock, weren't you? A. Yes, sir.

Q. From twelve o'clock until two you were in the house, weren't you? A. Yes, sir.

Q. And it wasn't until two that you went out to the blacksmith shop, was it? A. I call the doctor, first.

30 Q. It was not until two o'clock that you went to the blacksmith shop, was it? A. No, no went two o'clock into the blacksmith shop.

Q. Just pay attention to the questions and answer those, please. Now, between twelve and two you didn't call any doctor, did you? A. What do you mean, in the morning?

Q. No, I mean that in the same day, between twelve o'clock noontime and two o'clock in the afternoon you didn't call a doctor? A. No.

40 Q. You say you didn't do that because your wife told you she didn't want a doctor? A. Yes, sir.

Q. Because she was menstruating? A. Yes, sir; was sick.

Q. Having her monthly sickness? A. Yes, sir.

Q. Well, why did you suggest calling a doctor? Did you think she needed one? A. Well, I say need one, and when I ask him again, told me—

Q. What? A. When I ask him again I ask, "What feeling?" Said, "Feel pretty bad;" and I want call the doctor. 10

Q. What made you think that she was pretty bad, the kick from the horse? A. Because he told me.

Q. Well, did you look to see where she was kicked? A. Yes, I was looking.

Q. Did you see anything? A. No, I never see anything.

Q. Did you rub anything on her side where she was kicked? A. Yes, I was rub. 20

Q. What did you rub on it? A. Spirits of nitre.

Q. Spirits of nitre? A. Yes.

Q. When did you rub the spirits of nitre on her side? A. I rubbing after two o'clock.

Q. You forgot to tell that to Mr. D'Aloia, didn't you?

Mr. D'Aloia: I didn't ask him.

Mr. Stein: Now, wait a minute. 30

Q. In telling what you had done for your wife you forgot to tell him that, did you? A. No ask for me.

Q. You didn't think that was necessary to tell, what you had done for her side? A. I don't know.

Q. What? A. I don't know.

Q. When you didn't see anything the matter with her side you still kept rubbing it with spirits of nitre, is that right? A. Little while. 40

Q. What? A. I will bathe little while.

Q. Then where did you go? Did you make up

your mind then you would get a doctor yourself?

A. Yes, sir.

Q. How many doctors are there in Linden? A. I know only one I know.

Q. What? A. Only one I know.

Q. Rahway isn't far from Linden, is it? A. No.

10 Q. In Rahway there are a number of them, are there not? A. Yes. Well, I know no one in Rahway myself.

Q. Well, do you know any doctor in Linden? A. Well, I don't know only Doctor Huff.

Q. Did you ever have Doctor Huff before in your family? A. No.

Q. When the telephone call went out from the lumber yard, by Mr. Molson, and you found you couldn't get a doctor, what did you do? A. Johnnie Molson said for me wife is saying—

20 Q. Never mind what Johnnie Molson said. You found out you couldn't get the doctor. A. He said, Johnnie Molson say, "Soon come home will send down," and I was waiting for the doctor to come.

Q. But you didn't know when that was going to be, did you? A. Well, I don't know.

Q. Your wife was pretty bad? A. Never was no pretty bad when I went to call the doctor.

30 Q. Then when you went back to the house and you didn't have a doctor for your wife, how was she then at 2 o'clock, when you went back again? A. I can't be same time four or five times, two o'clock, can it?

Q. What is that? A. It can't be two o'clock.

Q. Don't argue with me. Just answer the question. You came back from the lumber yard where you telephoned, didn't you, to your house? A. Yes.

40 Q. That was around two o'clock, wasn't it? A. It was after 2 o'clock.

Q. Did you go upstairs to see how she was then? A. Yes, sir.

Q. How was she, Tom? A. I ask, "What is feeling." Said, "I feel pretty bad."

Q. And after she told you at 2 o'clock, when you couldn't get the doctor, that she felt pretty bad, where did you go? A. I went downstairs.

Q. And took your horse to the blacksmith shop, didn't you? A. I take horse blacksmith shop, go call doctor myself in the house.

Q. But you didn't go to the doctor's house, did you? A. No, I never went. I went in my house first.

Q. To your house first? A. Yes, sir.

Q. You took the horse to the blacksmith shop, is that right? A. Yes, sir.

Q. What time did you get back to your own house again? A. Was about half-past three.

Q. How was your wife then? A. I can't tell was right half-past three or four o'clock.

Q. How was your wife then? A. Still same way.

Q. Pretty bad? A. Yes.

Q. All the while that the horse was being shod in the blacksmith shop, which was from 2 o'clock until half-past three, you didn't try to get any other doctor, did you? A. No, because I never was know nobody.

Q. I don't care anything about that. You didn't try? That is the fact, you didn't try to get anybody else, did you? A. Because I don't know no one.

Q. Well, you didn't know Huff, did you? You had never had Huff before? A. I was know him in Linden, because I serve ice to.

Q. All right. The telephone call will go as far as Rahway, won't it, you knew that, didn't you?

Mr. D'Aloia: I object to that.

A. I never have telephone in my house.

Mr. D'Aloia: What he did or did not do.

Mr. Stein: Very important to me what he did or did not do.

The Court: It is a mere matter of argument.

Mr. D'Aloia: That is all.

10 Q. Now, Roosi, Mrs. Meyer and you have been intimate together haven't you? A. No, sir.

Q. Didn't you have anything to do with Mrs. Meyer at any time? A. No, sir.

Q. Never had connection with her? A. No, sir.

Q. Did you take meals at her house? A. Yes, sir.

Q. Did you ever go to bed with her? A. No, sir.

Q. Did you ever give her any money? A. Yes, sir.

20 Q. What for? A. For the meal and for my wash.

Q. That is all? A. Yes, sir.

Q. Why did you go over to Newark to meet Mrs. Meyer on the 18th of March? A. I never was meet Mrs. Meyer 18th of March.

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

30 Q. Well, you went to meet Mrs. Meyer after your wife was here? A. I never went Mrs. Meyer when my wife was in this place.

Q. Then what Mrs. Meyer says about that is not so? A. No, sir.

Q. You never sent this lady that runs the restaurant up there? A. No, sir.

Q. To tell Mrs. Meyer that you would like her to meet you, did you? A. I told them; yes, sir.

40 Q. And you wanted to meet her for what purpose? A. To come and fixing my house.

Q. And for nothing else? A. Nothing else.

Q. Do you know Dominick Guidoni?

Mr. Stein: Stand up, Guidoni.

Q. Did you ever tell anybody in Linden about what pleasure you had with Mrs. Meyer when you slept with her? A. No, sir.

Q. Did you ever say to Dominick Giordano, "Of all the women I have known and slept with, I never had pleasure as I did with Mrs. Meyer, it is a pleasure that I cannot forget?"

10

Mr. D'Aloia: I object to that, because it is not proper cross examination.

Mr. Stein: Foundation for rebuttal.

The Court: That is not the purpose. This man has testified that he never had intercourse with Mrs. Meyer.

Mr. D'Aloia: Mrs. Meyer was on the stand. He could have asked her if that had ever taken place.

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Mr. Stein: She said it did.

Mr. D'Aloia: She did not say it did. Not those words.

The Court: Mrs. Meyer would not say that. What Mrs. Meyer testified to was that this man had lived with her and he had arranged to meet her in Newark, and he did meet her in Newark. Now, upon cross examination upon the question of motive, this man is asked, and answers without objection, whether he has ever been intimate or had sexual intercourse with Mrs. Meyer, and he says no. The State wants to lay the foundation to prove that is not true.

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Mr. D'Aloia: Now, my objection is that that is an entirely collateral matter, and it cannot be rebutted. It is not material to this issue at all.

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The Court: What is not?

Mr. D'Aloia: The fact that he had intimate relations with Mrs. Meyer?

The Court: Why not?

Mr. D'Aloia: Because it is not. The fact that he had intimate relations with Mrs. Meyer does not necessarily mean that on such and such a day he did certain things. We are only charged here with one fact.

10

The Court: I know, but is it your understanding that the State cannot prove that a man had been guilty of illicit intercourse with another woman, and having proven that he wants to pursue it, the woman having told him you had better go back and live with your wife, that that is not a motive to get rid of his wife?

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Mr. D'Aloia: Does your Honor mean—

The Court: I do not ask what I mean. I am asking you whether you claim that that is not competent testimony?

30

Mr. D'Aloia: I do not claim that that is not competent testimony. I claim this is not the proper way of proving that fact. He cannot ask this defendant, did you ever have a conversation with another man, and did you say this to him, and lay the foundation now for something which has not appeared in his main case, and which is collateral to this issue now on trial. I do not say that that is not competent proof, if it can be put in at the proper time and in the proper way, but just now, with this defendant on the stand, in his defense, he cannot lay any foundation to prove any collateral matter by asking this defendant if he ever had a conversation with any Tom, Dick or Harry, or Mr. Smith or Mr. Jones. That is my position.

40

The Court: I understand that you asked this witness, on your examination in chief, all about his relations with his wife. You claim to have shown that they were friendly, that there could not have been any motive for this man to get rid of his wife. Now, the State asked this witness, upon cross examination, without objection, whether he hadn't had illicit intercourse with Mrs. Meyer. He answers no. No objection made to that at all by defendant's counsel. That evidence stands. Now, the State wants to show—wants to lay the foundation to show that that statement is not true. I think it is competent and I will allow it and allow you an exception.

10

Mr. D'Aloia: That is the point that is reached now, that I say he cannot pursue it when he says no.

20

The Court: I have ruled against you. Why do you want to discuss it?

Mr. D'Aloia: I ask an exception.

Exception allowed, sealed accordingly.

J. J. BERGEN,

Judge.

Question repeated by stenographer.

30

A. No, sir.

Mr. Stein: That is all.

Redirect examination by Mr. D'Aloia:

Q. Did you know, at the time you came upstairs in Mr. Stein's office, whether the Sheriff understood what you were talking about to Mr. Stein? A. I don't know what understood.

Mr. Stein: I object to his testifying to what the Sheriff understood.

40

Q. Before that day had you ever seen the Sheriff?
A. No, sir.

Q. Did you know who the Sheriff of Union County was? A. No, sir.

Q. How many people were upstairs in that office when you were talking to Mr. Stein? A. Was about a half a dozen or more.

10

Mr. D'Aloia: That is all.

CANTILORA CRAPELLI, a witness produced on behalf of the defendant, being duly sworn according to law on her oath, saith:

Direct examination by Mr. D'Aloia (through Interpreter George Angen):

20

Q. Mrs. Crapelli, where do you live? A. Trenton.

Q. Are you married? A. Yes.

Q. Do you know Camillo Crivelli (the defendant)? A. Yes, sir.

Q. Is he any relation of yours? A. He is my brother.

Q. Do you remember when his wife came from Italy? A. Sure.

Q. Where were you living at that time? A. Trenton.

30

Q. Did he come to Trenton at that time with his wife? A. Sure, yes.

Q. Did you go to Philadelphia when his wife came from Italy? A. Yes, sir.

Q. Did you go there with him to wait the coming of his wife? A. No, sir.

Q. Did you go by yourself? A. Where?

Q. Philadelphia? A. No, sir.

40

Q. When his wife came from Italy were you in Philadelphia? A. No, sir; I was home at Trenton.

Q. Were you in Italy when Crivelli left his wife and came to America? A. Sure.

Q. Was his wife at the seaport where he took the ship to come to America? A. Yes, sir.

Q. What was her name? A. The deceased?

Q. Yes. A. Anina Desangre.

Q. Were there a lot of people there when he sailed for America? A. Yes, sir. The mother, the mother-in-law, everybody.

Q. Did he kiss his wife when he sailed? A. Yes, sir. She accompanied.

10

Q. Did she kiss him? A. Sure.

Q. When they came to Trenton upon her arrival in this country, did they quarrel at your house?

Mr. Stein: I object to the question as being leading.

Mr. D'Aloia: I will withdraw it.

Q. What was their relation in Trenton, so far as being happy or unfriendly, if you know, when they came to your house? A. Good.

20

Mr. D'Aloia: I do not care about the rest.

Cross examination by Mr. Stein:

Q. Did you know Tom's wife before he married her? A. She was a companion of mine.

Q. How long did Tom know her before he married her? A. We were raised together. About the same age.

30

Mr. Stein: That is all.

Mr. D'Aloia: That is all.

UMBERTO D'ANNIBALE, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct examination by Mr. D'Aloia:

Q. Where do you reside? A. In Philadelphia.

40

Q. What is your business? A. I am a clerk.

Q. Where? A. On Christian Street bank.

Q. Who is the owner of that bank? A. Frank Di Berardino.

Q. How long have you been there? A. I have been employed with him for the last five years, but I wasn't in the office right along.

10 Q. Do you know this man Crivelli? A. Well, I don't know him personally. I have seen him quite often over there when he came in Philadelphia, but I don't know him personally.

Q. What is your work there at the bank? A. I answer to the letters and in the information department.

Q. Do you have control of any books? A. Yes, sir.

Q. Is that a book that you have control of? A. Yes, sir.

20 Q. Open it, please, to November, 1914? A. This is the copy—

Q. Open the book to November, 1914?

The Court: Suppose we find out what the book is before he reads from it.

Q. What is the book? A. This is the copy of interior business we do, everything else.

30 Q. Does that show the sale of steamship tickets? A. Yes, sir. That shows the act that he had to sign and send over to the old country so his wife could get the passport and come over here.

Q. That book shows the document, the act, you call it? A. Yes.

Q. That this defendant had to sign in order to have his wife come over here and get a passport on it? A. Yes, sir.

Q. Turn to that, please, and the date of it?

40

Mr. Stein: Is this for the purpose of showing he sent for her?

Mr. D'Aloia: Yes.

Mr. Stein: We will not deny that he sent for her.

Mr. D'Aloia: You won't deny that he bought the tickets at this bank in November, 1914?

Mr. Stein: You can prove that part, but I won't deny the fact that he sent for her. I don't know who bought the tickets.

10

The Court: Prove the fact. He is using the book, I suppose, to refresh his recollection. That is all.

Mr. D'Aloia: Yes.

The Court: Proceed.

Q. When was it that document was signed to enable her to get a passport, as it appears from that book? A. November 21st.

Q. What year? A. 1914. The document was issued November 21st, 1914.

20

Q. Have you any other entry in that book showing when the tickets for his wife and his child were issued? A. Yes, sir. The ticket was issued on November 21st.

Q. November 21st? A. Yes, sir.

Q. Is there any entry there to show who paid for those tickets? A. It was paid for by Mr. Camillo Crivelli Di Luigi, residing R. F. D. 1, Box 48, Rahway, New Jersey.

30

Q. Both tickets read that way, purchased by that person? A. Yes, sir.

Mr. Stein: By what person?

Mr. D'Aloia: The person named there, Camillo Crivelli Di Luigi.

Mr. Stein: That is not him, is it?

Mr. D'Aloia: Yes, that is him.

Q. Di Luigi is the first name of the father? A. Yes, sir; that is the father's name.

40

Q. And it is used in Italian in order to dis-

tinguish one John Smith from another John Smith? A. That is right.

Q. You put next to his name "of Luigi," giving the first name of the father? A. Yes, sir.

Q. That is not part of his name at all, is it?
A. No, sir. That is his father's name.

10 Mr. D'Aloia: I offer in evidence that record of those dates and tickets showing the dates.

The Court: How do you think that record is competent? The witness has used it to refresh his recollection, and proved the fact.

Mr. D'Aloia: That is all.

Mr. Stein: No questions.

20

ANTONIO PICCONE, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct examination by Mr. D'Aloia:

Q. Where did you live in the month of March, 1915? A. In Philadelphia.

Q. What street, what number? A. 720 South Percy Street.

30

Q. Do you know this man (indicating defendant)? A. Yes.

Q. In March of this year was he in Philadelphia? A. Yes, sir.

Q. What for? A. For because his wife comes from Italy.

Q. From Italy? A. Yes, sir.

Q. Did she arrive at Philadelphia? A. Yes, sir.

40

Q. Do you know when that was? A. I don't remember.

Q. Do you remember what month? A. Well, before his wife got to come he write to me, see.

Q. Before his wife was to come he wrote to you? A. Yes, sir.

Q. Then did he come to Philadelphia? A. Yes, sir.

Q. And how long had he been in Philadelphia before his wife arrived? A. About six or seven days.

10

Q. After his wife arrived did you see him and his wife? A. Yes, sir.

Q. Where? A. Live in my house.

Q. What did they do in Philadelphia, if you know? A. Well, just around Philadelphia and see his friends, you know.

Q. Did he have his wife with him? A. Yes, sir.

Q. Have his daughter with him? A. Yes, sir.

Q. How many days did he stay in Philadelphia after his wife came there with the daughter? A. Two days.

20

Mr. D'Aloia: That is all.

Cross examination by Mr. Stein:

Q. You are the brother-in-law? A. Yes, sir.

Q. How are you related? Was this man's wife your sister? A. No. I married his sister.

Q. You married the defendant's sister? A. Yes, sir.

30

Mr. Stein: That is all.

Redirect examination by Mr. D'Aloia:

Q. Is there anybody in this country of the wife's family?

Mr. Stein: I object to this witness testifying to that, unless he positively knows.

Mr. D'Aloia: That is the question.

40

Q. Do you know of any person in this country of his deceased wife's family, here in America, is there anybody here? A. No.

Mr. D'Aloia: That is all.

Recross examination by Mr. Stein:

10 Q. Don't you know that that woman's little girl is here, this defendant's little girl, the daughter of the deceased woman? A. What do you mean?

Q. Don't you know the little six-year old child of this woman is here in this country, the baby? A. I see the girl when he coming from Italy.

Q. Where is she now? A. Over there

Mr. Stein: Let her stand up.

20 The Witness: Come with me from Philadelphia.

Q. How did you get here?

The Court: What has this to do with it? How is this material cross examination?

Mr. Stein: All right.

Mr. D'Aloia: I do not think that is material at all.

30 Mr. Stein: All right. Let it go.

Mr. D'Aloia: I did not mean that when I asked him that question. I meant grown persons.

The Court: Proceed. Anything further?

GUISEPPE D'AMBROSIO, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

40 Direct examination by Mr. D'Aloia:

Q. Where did you live in March, 1915? A. Trenton.

Q. You understand English, don't you? A. Little bit. Not much.

Q. Do you know this man (indicating defendant)? A. Yes, sir.

Q. Did you see him in Trenton in March, 1915? A. Certainly.

Q. Was his wife with him? A. Yes, sir. He been in my house nine o'clock in the night, Sunday night. 10

Q. Did he have his little daughter with him? A. Sure.

Q. Did you go to Philadelphia when his wife came? A. No, sir. He wrote me a letter, but I don't have no time to go.

Q. Never mind that. Did you go to Philadelphia? A. No.

Q. At that time when she came over with him, and when he came there with her, what were their relations, if you know? Were they friendly or unfriendly? A. Why, is good. 20

Mr. D'Aloia: That is all.

Mr. Stein: That is all.

JOHN J. MOLSON, Jr., a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith: 30

Direct examination by Mr. D'Aloia:

Q. Where did you live in March, 1915? A. On Elizabeth Avenue near Lombard Street in Linden.

Q. How far away is your house from the house of the defendant, Tom Roosi? A. About one hundred yards.

Q. Lombard Street is a very narrow street, is it? A. It is.

Q. It runs from Elizabeth Avenue and terminates in the railroad, blank? A. It does. 40

Q. Up the bank? A. It does.

Q. Your father keeps a coal office there? A. He does.

Q. How far is the coal office away from his house? A. That is about one hundred and twenty-five yards from the house.

10 Q. Do you remember the day when this man's wife died? A. Don't know when she died, but I know when he came to me, what day this occurred.

Q. Do you remember the day he came to you? A. I do.

Q. What day was that? A. It was on a Monday. The exact date I don't remember.

Q. What month was it? A. March.

20 Q. What time of the day was it? A. It was just about half-past two.

Q. What did he say to you at that time? A. He came in and he asked me to call up Doctor Huff.

Q. Did you do that for him? A. I did.

Q. Did you actually go to the telephone and call up? A. I did.

Q. Did you know Doctor Huff's number? A. I did.

30 Q. Did anybody answer you? A. A lady's voice answered at the other end of the wire.

Q. What did you say over that wire at that time? A. I asked was the doctor in, and the voice said, No, but he will be in in a few moments. I said, "Will you kindly send him over to Thomas Roos' house?" And the lady at the other end of the wire told me that she didn't know where Tom Ross' house was. And I explained and said, "John Hampf's old house," and she still didn't know. And I stated, "At the back of Molson's coal yard," and then she understood and she

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promised to send him up, and with that I rang off.

Q. What time was that? A. The 2:22 train had just pulled out, and I remember saying to Tom, "I doubt whether you will find the doctor in now, as I believe he is in Rahway at this time."

Q. It was about 2:22 on Monday afternoon? A. Yes, sir.

10

Q. Did you see the defendant after that on that afternoon? A. Why, yes, I saw him on one occasion. He asked me had the doctor been over at the office, and I said, "No."

Q. What time was that, about? A. That I can't recollect.

Q. Was it dark yet? A. No, I don't believe it was.

Q. Now, the next day—did you find out that night that his wife died? A. I did.

20

Q. The next day did you see Doctor Wescott? A. I did.

Q. Where? A. He stopped at our office and asked me where this Tom Roosi lived.

Q. Did you point out the place to him? A. I did.

Q. Did you walk to the house with him? A. I did, and the dog was tied there and I stood—I was familiar with the dog and I stood there while the doctor was able to pass in.

30

Q. What time was that the day after this defendant's wife died when Doctor Wescott came there? A. That I can't say. I believe it was around noon time. Either before or after, I am not sure.

Q. When you got there and the dog was chained, what did you do with Doctor Wescott? A. Walked in the kitchen.

40

Q. Who was there? A. Why, Tom Ross was

sitting on a chair close to the stove and the little girl playing close to him with the dog.

Q. What was the first thing said by either Doctor Wescott or the defendant? A. Why, I can't recollect what conversation he had.

Q. How long were you there with Doctor Wescott? A. I left with Doctor Wescott.

10 Q. How long were you there? A. Oh, I should say about half an hour.

Q. After you left with Doctor Wescott did you get any paper from Doctor Wescott? A. Why, yes. As we passed out of the yard of Tom Ross, Doctor Wescott gave me a certificate.

Q. What for? A. As far as I understand it was a burial permit to give the undertaker.

20 Q. Who told you to give it to the undertaker? A. Well, the doctor told me that the undertaker would ask for that.

Q. What else was said about an undertaker between yourself, Doctor Wescott and the defendant? A. Why, the defendant asked me to call up an undertaker. And I asked him was there any particular one he wanted. He said, no, he didn't know of any, to call up some man in Rahway. And I suggested that he give the case to a man in town by the name of Prall, he was a resident of Roselle, 30 but had a shop in Linden. And he agreed to that and gave me ten cents to call up the undertaker.

Q. Who did? A. Ross.

Q. Did you try to call up the undertaker? A. No, I made no attempt to call him.

Q. Was Doctor Wescott there at the time? A. Yes, we went back to our office.

Q. Who had the certificate, the burial permit? A. I put it on the desk and closed the desk.

40 Q. Did you have it? A. Yes, sir.

Q. At any time from the moment of Doctor Wescott's arrival, during the time that you were there,

until Doctor Wescott went away, did this defendant ever say to Doctor Wescott, "Don't you make any trouble for me?" A. I didn't hear that statement.

Q. Well, were you there all the time, close by? A. Well, no. Doctor Wescott and Mr. Ross went upstairs to view the body, and I stayed down.

Q. How long were they upstairs? A. Oh, I should say about ten minutes, ten or fifteen minutes.

10

Q. Outside of that ten minutes breach, you didn't hear him say that, did you? A. I didn't.

Q. When Doctor Wescott left did he say anything that sounded like that? A. Who, Mr. Ross?

Q. Yes. A. To me?

Q. To Doctor Wescott, did he say anything that sounded, "don't make any trouble for me?" A. I didn't hear it.

20

Q. Did Doctor Wescott say he was going to notify the authorities at any time? A. Why, I recollect that when Doctor Huff walked into our office and they had a conversation together with Doctor Wescott, then I believe he did notify the authorities then.

Q. The day after the wife of the defendant died, after Doctor Wescott had given you the burial permit, Doctor Huff came in? A. He did.

30

Q. And they had a conversation? A. They did.

Q. And it was after that conversation between the two doctors that somebody notified the authorities? A. Yes, sir.

Q. How? What means was used to notify the authorities? A. Telephone.

Q. Your telephone? A. Yes, sir.

Q. Who was called up? A. Prosecutor's office.

Q. Who called up? A. Doctor Wescott.

40

Q. At that time who had that burial permit? A. I did.

Q. Was there anything said about calling up the Prosecutor's office until Doctor Huff's arrival there? A. No, sir.

Q. Was there anything said by Doctor Wescott while he was there about calling up the authorities? A. None.

Q. Before Doctor Huff's arrival? A. No, sir.

10 Q. Did you help Doctor Wescott in making out that burial permit? A. None, other than the Doctor used more fluent English to Tom Ross, and I saw that he couldn't very well answer it, and I put it in more of a foreign way to him, and he was able to answer, and I helped the doctor to translate his answers somewhat.

Q. Did you ever see Tom Rossi, the defendant, and his wife together while she was in Linden? A. Never did.

20

Mr. D'Aloia: That is all.

Mr. Stein: No questions.

Mr. D'Aloia: Defense rests.

The Court: Any rebuttal?

State's Rebuttal Testimony.

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

Direct examination by Mr. Stein:

Q. Do you know Tom Roosi? A. Yes, I know Tom.

Q. How long do you know him? A. About thirteen months.

40 Q. Did Tom Roosi say to you in Linden, "Of all the women that I have known and slept with, I never had pleasure as with Mrs. Meyer; it is a pleasure that I cannot forget"?

Mr. D'Aloia: Don't answer that. I object to that question, because the mere fact of saying that to this witness, whether the defendant said it or not, is collateral. It does not prove any fact of the sexual intercourse. It is a collateral fact entirely, and the Prosecutor is bound by the defendant's answer, when the question was put to him, "Did you say so and such to so and so?" He said no. Now, the fact of his having said that to this witness is not a material issue here. It is a collateral fact that has come about by the Prosecutor's cross examination of the defendant. Now, it is not the main fact, nor can the jury be allowed to infer from the fact that he may have said that to this man, that the intimacy is proven. This is a separate and distinct fact. Did you talk to Dominick Giordano, and the defendant said no. Now he is trying to show that the defendant did talk to Dominick, the witness. That I say is entirely improper. It is a collateral matter and has nothing to do with this case. Whether he talked to this man or not does not help us any as to what happened on the 22nd of March, 1915. Therefore, I object to it on those grounds. He is bound by the answer of the defendant, when the defendant said, no, I didn't talk to him, because it is a collateral matter entirely.

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The Court: If this testimony is true it tends to prove that the defendant, as a witness, testified falsely. To that extent it would affect the credibility that a jury would be likely to give to his testimony.

Mr. D'Aloia: I appreciate the object, but, if your Honor please, it cannot be done in this way. It cannot be done by proving any

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collateral matter which is foreign to this issue on trial.

The Court: The difficulty with your argument is that you assume a false premise. It is not a collateral matter. I will allow the question to be answered and you may take an exception.

10 Mr. D'Aloia: All right, sir.

Prays exception.

Exception allowed; sealed accordingly.

J. J. BERGEN,
Judge.

Question repeated by stenographer.

Q. Did he say that? A. Yes, sir.

Mr. Stein: Cross examine.

20 Cross examination by Mr. D'Aloia:

Q. Were you in the house of the defendant on Sunday, the day before his wife died?

Mr. Stein: Wait a minute.

A. Yes, sir.

Mr. Stein: Wait until I object.

Q. When did the defendant say this to you, do you know? A. What do you mean?

30 Q. Yes, you speak—now wait a minute. You speak English? A. No much.

Q. When did the defendant say this to you?

The Court: Call him Tom.

Q. When did Tom say that to you? A. What, this before?

Q. Yes, what the Prosecutor said before? A. About a month before.

40 Q. About a month before? A. Before his wife comes.

Q. Before his wife came? A. Yes, sir.

Q. Sure about that? A. Sure.

Q. When were you arrested in this case?

Mr. Stein: I object to the question. I do not care about the answer, but it is not cross examination. He was not arrested in this case at any time, and you know it. Go on and answer the question.

Mr. D'Aloia: Then don't ask it.

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Q. When were you first taken down here to the Prosecutor's office? A. Why, I don't know. He come and got me from an automobile down in Rah-way.

Q. Who did? A. I don't know his name.

Mr. Stein: Mr. Buckley.

A. Buckley, that is all.

Mr. D'Aloia: Let him tell, Mr. Stein, don't volunteer so much.

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A. Buckley and another fellow, I don't know his name. The chauffeur, that is all.

Q. You were taken down here? A. Yes, sir.

Q. When they asked you about Tom the first time you said you didn't know anything about him, didn't you?

Mr. Stein: Now, I object to that.

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The Court: I think the question is competent.

Mr. D'Aloia: I will withdraw the question.

Q. What was asked of you the first time you came here?

Mr. Stein: I object, as it is not cross examination on the strict rebuttal that I offered him for.

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Mr. D'Aloia: Trying to test this man's veracity.

Mr. Stein: I have offered him only on one thing.

Mr. D'Aloia: Let us see how he come to do that one thing.

The Court: I will allow the question.

10 Q. When you came up to Elizabeth with Buckley in an automobile, and the other gentleman, what was the first thing you were asked? A. Arrested, who take arrested?

Q. No. What were you asked? Who asked you questions? A. The car go down to Prosecutor, and that is all.

Q. You didn't say anything? A. No.

Q. Nobody said anything to you? A. No, sir.

20 Q. And you haven't said anything to anybody up to to-day, have you? A. Prosecutor going to write that in.

Q. Did anybody tell you you were going to go to jail? A. No jail.

Q. Nobody said anything about jail? A. No, sir.

Q. What did the Prosecutor write? A. Write all I know, he said, that is all. Buckley. Not the Prosecutor.

30 Q. Do you know a man by the name of Galoni? A. Yes, sir.

Q. Wasn't he on your bail? A. Yes, sir.

Q. Didn't he give bail for you? A. That is night time.

Q. Galoni came here in the night time and gave bail for you? A. Yes, sir.

Q. Then you were in jail? A. No in jail. Upstairs.

Q. But you couldn't go home, could you?

40 Mr. Stein: He don't know whether he could or not.

Q. Did you send for Galoni to come and give bail for you? A. Sure.

Q. How much bail did he give? A. He says five hundred dollars, that is all, but not the case.

The Court: How is this cross examination?

Mr. Stein: That is the reason I objected to it before.

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The Court: It does not test his credulity to be—

Mr. D'Aloia: Why doesn't it? He said he wasn't arrested, and now we find out he was taken here and put under bail.

The Court: That is a mere matter—

Mr. D'Aloia: If your Honor does not want me to pursue this course I will not, but I am trying to find out how he can come here and testify to one fact, in answer to the Prosecutor's question.

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Q. How long did it take the Prosecutor to write that Tom Roosie had said this to you about a month before his wife came? How long a time did that take? A. How long what?

Q. How long a time were you up in the Prosecutor's office while somebody was writing? A. I was write myself with my hands.

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Q. Where is that paper?

Mr. Stein: Here it is.

Mr. D'Aloia: Let me see it?

Mr. Stein: No, I will not let you see it.

Mr. D'Aloia: That is all.

Mr. Stein: Why should you see it?

Mr. D'Aloia: Then don't flash it.

Mr. Stein: Well, you want to know about the paper, and there it is.

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Mr. D'Aloia: That is all.

GEORGE C. OTTO, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Stein:

Q. You are the Sheriff of this County? A. Yes, sir.

10 Q. And you were upstairs in the Prosecutor's office on the Thursday that this defendant Roosì was there? A. Yes, sir.

Q. Did the defendant Roosì say to me on that occasion that officer Buckley and detective Galatian, or either of them, had pushed his head up against a wall and made him say? A. No, sir.

Q. What is that? A. No, sir; he did not.

Q. And made him say that he took that much out of that bottle? A. No, sir.

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Mr. Stein: Cross examine.

Cross examination by Mr. D'Aloia:

Q. Did you at any time hear the defendant say that Galatian, or one of the officers, had pushed his face in to make him say what they wanted him to say?

Mr. Stein: Wait a minute, now. I object, since he is brought on rebuttal.

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The Court: I will allow that question.

A. No, sir.

Q. How long were you up there on that Thursday? A. Possibly two hours.

Q. Do you know how many conversations had taken place between Mr. Stein and this defendant, without your being present, before that time? A. No, sir.

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Mr. Stein: It is this Thursday we are talking about?

Mr. D'Aloia: This Thursday, yes.

The Court: Is that all?

Mr. D'Aloia: That is all.

Mr. Stein: That is all.

The Court: State rests?

Mr. Stein: Yes.

Mr. D'Aloia: That is all.

Case Closed.

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Mr. D'Aloia sums up the case for the defendant.

Mr. Stein sums up the case for the State.

Adjourned until 1:45 P. M.

Afternoon Session, 1:45 P. M.

Mr. Stein continues summing up for the State.

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COURT OF OYER AND TERMINER,

UNION COUNTY,

May Term, 1915.

STATE OF NEW JERSEY

v.

CAMILLO CRIVELLI, alias TOM
ROOSI.

On Indictment
for Homicide.
No. 75.

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Charge to the Jury, by Hon. James J. Bergen,
Justice of the Supreme Court, as follows:

Gentlemen of the Jury:

It now becomes my duty to instruct you with reference to the law that you are to apply in this case. I wish to say in the outset that all the rules of law which I lay down you are to observe. If I com-

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mit any error in charging you with reference to the rules of law, the defendant has his remedy. But upon questions of fact, you are the persons who are to settle all questions of fact. Whatever I may say to you with reference to the facts, in the hope that I may aid you, is merely an expression of my opinion, which in no way controls you. If I omit any evidence, or misstate any evidence, you are to correct it.

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Under the law of this State, murder which shall be perpetrated by means of poisoning shall be murder of the first degree. So in this case my instruction to you is, on that subject, that if you determine that the defendant is guilty of the crime laid to his charge, you can render no other verdict except a verdict of murder of the first degree. It is either that, or the defendant is entitled to an acquittal. And when you render your verdict you must state, if it is a verdict of murder of the first degree, that it is murder of the first degree. If you find the defendant not guilty and is entitled to an acquittal, your verdict will be not guilty. Neither you nor I are responsible for this law. The law is made by the Legislature of this State, and we are all bound to obey it, and you must apply to the facts as you find them in this case this particular rule of law; neither you nor I can change that.

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You start, of course, with the presumption that the defendant is innocent. That is a legal presumption to which every man charged with a crime is entitled, and that presumption remains until the State has shown his guilt beyond a reasonable doubt. By reasonable doubt we do not mean any sort of a doubt that a timid mind might conjure up, but it is rather that condition of mind which exists when after a very careful consideration of all the evidence you lack an abiding conviction of the defendant's guilt. If that condition exists, then

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there is a reasonable doubt, to which the defendant is entitled to the benefit.

The State must show the death and the cause of the death. If you believe the uncontradicted evidence in this case, the wife of the defendant is dead. I do not understand that point is contested. All of the witnesses who were present at the house and saw this woman, the doctors, I think the defendant himself, all say that this woman is dead.

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The next thing you have to determine is, what was the cause of her death. The State claims that the cause of her death was poison administered to her by someone, in the shape of tincture of laudanum, which as I understand from the testimony of the physicians and experts, contains opium and morphine, and that it of itself is a poison which, if taken in sufficient quantities, will cause death. What was the cause of this woman's death? Apparently she was well in the morning. She went out to the stable and, according to the testimony of the defendant she claimed to have been kicked by a horse. That is what the defendant testifies she said to him. No other witness testifies to that. Can you, from this evidence, say that this woman's death came from that kick, if she was kicked? All of the physicians who examined this body saw there was no external evidence to indicate that she had been kicked. Competent physicians have testified that at the post mortem made after her death, all of the organs of the stomach and chest were in normal condition; nothing there to indicate any condition which would produce death. It is for you to say whether, if you believe that testimony, this woman came to her death because of the kick of a horse in the morning. What the State says, and claims to have proved, is that she died of poison. Doctor Garhart, and Doctor Foster of Princeton College, made an analysis of the contents of this

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woman's stomach. You have heard all the medical testimony on that subject. You have heard the testimony of Doctor Mravlag, the Mayor of Elizabeth, as to the effect of poison. You have heard what Professor Foster says as to what he found in the analysis of that woman's stomach. And I think the witnesses for the State pretty generally, who have testified on the subject, say that the quantity which was found in the stomach would indicate that a large dose was administered, and that it was the cause of this woman's death. So you are to settle that question, what was the cause of this woman's death, and did it result from opium or morphine or laudanum administered to this woman by someone. Having settled that she is dead, having settled the cause of the death, if you can agree on that, then the next question for you to determine is, was the defendant responsible, as the State charges.

The State claims that the defendant had a motive in getting rid of his wife. A motive is a means of arriving at an ultimate fact, not for the purpose of explaining the reason for a criminal act, but for the important aid it may render in completing the proof of an act, when it might otherwise remain in doubt. If the act charged and the criminal agency of the accused are shown beyond a reasonable doubt, proof of motive is not material. But it is a valuable aid in removing doubts of the criminal agency of the accused, in a case like the present, where proof of the defendant's participation in the crime depends upon his admissions, which he denies, and the circumstances surrounding the defendant, as well as his actions, which may tend to show guilt. The State claims that the motive which this man had in getting rid of his wife was that he might enjoy the person of Mrs. Meyer, the person with whom she says he had been intimate

for a long time. If you believe that, if you believe that this man was intimate with Mrs. Meyer, and that notwithstanding his wife was coming to this country, he still persisted in following up this woman, and wanted to continue his illicit relations with her, and when, as she testified, she told him at Newark, you have a wife now, you had better go back and stay with her, you may consider whether the encumbrance of a wife would interfere with his intimacy with this woman to such an extent that it would be an inducement to him to get rid of her. That is what the State claims. The State as I have stated, claims that this man was infatuated with this woman; that she had a break with him; he had assaulted her husband along in November of 1914, and for three months she did not speak to him, during which time or about that time, this man had sent to Italy for his wife. That some time in February, 1915, he induced some woman who lived in the neighborhood to go down to Jersey City to this Mrs. Meyer, to see if she would not take up their old relations again, and an arrangement was made for these people to meet in Newark, where this woman says that she told this man he had a wife now, and to go back home. The State insists that because of his wife, because of the objection which this woman made to continuing the relations when he had a wife, he wanted to get rid of his wife, in order that that difficulty might be removed so their relations could be continued. Of course, the defendant says in substance that he did not have this meeting in Newark. It is for you to say who is telling the truth about that. You must bear in mind that this other witness, this woman he sent to Mrs. Meyer, says that the defendant had induced her to go down to Jersey City and see this woman and arrange for the meeting, and that she

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arranged for the meeting to be held in Newark, and that she was to be there. Mrs. Meyer did not want to see him alone. But she did not go there. The defendant says he was not there. Mrs. Meyer says he was, and that he gave her some money that day. You have to settle where the truth lies on that particular point. And so as to all the matters relating to this question of motive, whether this
10 man was pursuing this woman, whether all that was a sufficient motive to induce him to commit this crime; but, as I said, if you are satisfied from the other evidence in the case that this man did give this potion to his wife, so that his criminal agency is beyond doubt, then whether there was such a motive or not would not be very important, because there may be motives existing in the minds
20 of men that you cannot always discover. It would never do to say, in a perfectly clear case of murder, where one man shot another down, that you could not convict him of the criminal agency simply because you could not show a motive. Motive, as I have said to you, is rather in aid of clearing up a thing that otherwise would be doubtful.

Was the defendant responsible on the other branch of the case? Did he, in other words, give his wife this poison? You have heard his own testimony to start with, that his wife was up in the
30 morning, that she went into the barn, she came out and said she had been kicked in the side, they went in and had breakfast, and then he put some whiskey in her coffee. She did not want it, but he insisted on putting it in. That shortly after that she went upstairs and went to bed, to lie down. You have heard the testimony of the physicians, as I recall it, saying that the toxic effect of this laudanum would begin to show itself in about thirty
40 minutes, a person would not be entirely overcome, but they would begin to be drowsy. That woman

lay in bed all day and died at six o'clock at night. Was it the result of anything that was put in that coffee that morning? What is the reasonable inference that men of good judgment will draw from such a situation? Then after the officers came there they found these two bottles. The defendant was there. He agreed to go and show them, so the officers testified, where the bottles were. When they got there he showed them some place about the yard where the bottles were not. They were found in another place. There is evidence from which you may infer that that small bottle was filled with laudanum, by the druggist, under a prescription by Doctor Randolph, obtained by a man by the name of Paulas, for this defendant. If that is true, then he bought that small bottle full of laudanum. There is evidence to show that he admitted that he put the entire contents of that small bottle into a larger bottle which contained whiskey, so as to make a compound of laudanum and whiskey. That is the evidence of the State. What he says is this: That during the day, while his wife was in this condition, I do not recall exactly what part of the day, but as I remember it, in the afternoon she told him that she had got up and gone downstairs and taken something out of the same bottle that he had given her in the morning. He says there was whiskey in a particular bottle. You must remember that this woman was in bed, afflicted with something that made her so ill that she went to bed early in the morning. There is no proof that she ever went downstairs and took anything, except what this defendant testifies to that she said to him. Thereafter he went downstairs, as he says, and took these bottles and some others, fearing she would make a mistake and take something she ought not to take, and he threw them out, apparently empty, according to this evidence. Does that strike you

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as a good excuse for putting these bottles out, if there was nothing in the bottles, if they were empty, nothing in them that she could take, what would be the danger that he apprehended? On the other hand, the State claims that he wanted to put these bottles that contained this poison out of the way, so that they would not be readily found. That is the contention of the State.

10 So taking the case of the State, and all this evidence, you are first to determine the death, the cause of the death, and whether the State has made out its claim that this defendant administered to this woman the poison which it claims took her life.

20 On the other hand, the defendant denies nearly all of this testimony, substantially, as I recall it, all the material parts of it. He says that he never gave his wife any laudanum, or any whiskey that had it in. All he did, he had a bottle there, a particular bottle that had some whiskey in, and he put some whiskey in her coffee and put some in his, and he wanted to put it in her's and she protested, she did not want it in the coffee, but he insisted, and put it in. Exactly why does not appear to be clear, why he should persist in telling his wife to take whiskey in her coffee, against her protest.

30 He also says that he had no motive to do this thing, because he was fond of his wife. That he sent money abroad to buy tickets to have her brought over here. You have heard all that, and you must give it all the weight it is entitled to. If that testimony raises in your minds any reasonable doubt, or the whole case taken together, the State's case and the defendant's case, raises a reasonable doubt of the defendant's guilt,

40 he is entitled to the benefit of it. That is the law of the land. But if no such reasonable doubt exists in your minds, then it is your duty to ren-

der such a verdict as the evidence in this case leads you to, but you must be satisfied of defendant's guilt beyond any reasonable doubt if it is a verdict of guilty.

I do not know that I can help you any further. The case is in somewhat narrow limits. It is almost entirely a question of fact. As I said at the outset, if the facts convince you beyond a reasonable doubt this man administered this poison to this woman for the purpose of taking her life, the laws says what the crime is, that is, murder of the first degree. If the State has failed to make out the defendant's guilt beyond a reasonable doubt, then he is entitled to a verdict of acquittal.

I have been requested by the defendant to charge the jury as follows: "The jury have a right to infer that, if Sergeant Pickle of the Linden police force was not called, after he had been mentioned by the State's witnesses, his testimony would be adverse and unfavorable to the prosecution."

That request I refuse.

Mr. D'Aloia: I pray a general exception to the charge as a whole, and then an exception to this refusal to charge the request.

Exception allowed; sealed accordingly.

J. J. BERGEN,

Judge.

Jury returned to court room.

The Court: Gentlemen, I have received a communication from the jury, and in the performance of my duty I cannot have any private communication with the jury. What I say must be said openly. Suppose you ask me the questions that you want me to answer.

The Foreman: Is there any direct evidence that the drug was administered by Roosi—

The Court: That is the first question?

The Foreman: Yes, sir.

10 The Court: As to that question, that is a question of fact, depending on the evidence, which the jury must find. You heard the testimony of Mr. Galatian, who says that the defendant admitted to him, in the presence of these other persons, that he did give his wife some of the contents of this large bottle, which the State claims contained opium and whiskey. The defendant denies that, denies that he said that, denies that he put it in. So you see it is a question of fact entirely for the jury. You have the evidence of Mr. Galatian of his admission that he did it, and also his denial. What is the other question?

The Foreman: The other question is, must we accept circumstantial evidence?

20 The Court: You must accept, of course, all evidence, circumstantial or otherwise. Circumstantial evidence is evidence of facts from which the existence of other facts may be inferred. Sometimes circumstantial evidence is the strongest kind of evidence, because if there is a congeries of facts that lead only to one conclusion, they may all be circumstances—when I say facts, I mean circumstances—there may be a collection of circumstances that lead to but one conclusion, and putting them
30 altogether, if you followed that you could not reach any other conclusion. Whereas the testimony of an eye witness might be based on a mistake. The notion that circumstantial evidence, that is the question you asked me, ought not to be accepted, is erroneous. It is a question of what you believe of the testimony. Are there any other questions you would like to ask?

The Foreman: That is all, I think you.

40 Mr. Gordon: Prays exception to the Court's instructions to the jury.

Exception allowed, sealed accordingly.

J. J. BERGEN,
Judge.

Defendant's Request to Charge.

(1)

"The jury have a right to infer that, if Sergeant Pickle of the Linden police force was not called, after he had been mentioned by the State's witnesses, his testimony would be adverse and unfavorable to the prosecution."

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Certificate of Entire Record.

(Filed Feb. 11.)

UNION COUNTY COURT OF OYER AND TERMINER.

THE STATE OF NEW JERSEY,

v.

CAMILLO CRIVELLI.

On Indictment
for Murder.

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I, James J. Bergen, a Justice of the Supreme Court, constituting the Court of Oyer and Terminer in and for the County of Union, before whom the above stated indictment was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the indictment in the above stated cause of the State of New Jersey v. Camillo Crielli.

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Dated February 5th, 1916.

JAMES J. BERGEN,
Judge.

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Assignment of Errors.

(Filed Feb. 21st, 1916.)

**NEW JERSEY COURT OF ERRORS AND AP-
PEALS.**

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THE STATE OF NEW JERSEY,
Defendant-in-Error,

v.

CAMILLO CRIVELLI,
Plaintiff-in-Error.

In Error to Union
County Court of
Oyer and Ter-
miner.

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Afterwards, to wit, on the return day of the writ of error issued in this cause, comes the said Camillo Crivelli, plaintiff-in-error, by J. Victor D'Aloia, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

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1. Because the Court erred in permitting the witness Dr. H. Page Huff, to answer the Prosecutor's questions regarding an assault upon one Meyer, occurring some months prior to the date of the death of the deceased as set forth in the indictment herein, against the objections of the plaintiff-in-error.

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2. Because the Court erroneously permitted the Prosecutor to ask the following question of the witness Ray T. Monger, a physician, upon his direct examination: "Was there anything that you suspected from the condition of this brain and the blood?" against the objection of the plaintiff-in-error.

3. Because the Court erred in permitting the

witness William Foster, a chemist, to testify upon his direct examination as follows: That certain jars contained a liquid "which was said to be" the stomach contents of the wife of the defendant, against the objection of the plaintiff-in-error.

4. Because the Court erred in permitting the witness William Foster, a chemist, to be asked the following question, by the Prosecutor, upon his direct examination: "Can you form any idea from your experience as a chemist, as to the quantity of morphine or laudanum that was likely in the system of that person, or in the stomach prior to death?" against the objection of the plaintiff-in-error.

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5. Because the Court erred in permitting the witness Etty Lutka, to be asked the following question by the Prosecutor, upon her direct examination: "Do you recall Tom coming to your store one day to talk about—and his talking about Mrs. Meyers?" against the objection of the plaintiff-in-error.

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6. Because the Court erred in permitting the witness Lucy Balding, to make the following answer to a question put to her upon her direct examination, by the Prosecutor, concerning the grief exhibited by the defendant when informed of his wife's death: "A. He just made a little move. He didn't seem to care much" against the objection of the plaintiff-in-error.

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7. Because the Court erred in permitting the Prosecutor to ask the following question of the witness Emma Meyers, upon her direct examination: "Were you ever intimate with Tom Rossi?" against the objection of the plaintiff-in-error.

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8. Because the Court erred in permitting the

Prosecutor to ask the witness Emma Meyers, the following question, upon her direct examination: "Did you ever have sexual intercourse with him?" against the objection of the plaintiff-in-error.

9. Because the Court erred in permitting the Prosecutor to ask the following question of the witness Victor Mravlag, upon his direct examination: "Let us say a person will take four grains of morphine or opium in a solution, what portion of it would likely be absorbed through the system?" against the objection of the plaintiff-in-error.

10. Because the Court erred in permitting the Prosecutor to ask the witness Domenico Giordano, in rebuttal, the following question: "Did Tom Rossi say to you in Linden, of all the women that I have known and slept with, I never had pleasure as with Mrs. Meyers, it is a pleasure that I cannot forget?" against the objection of the plaintiff-in-error.

11. Because the Court erroneously charged the jury as follows: "Can you, from this evidence, say that this woman's death, came from that kick, if she was kicked?"

12. Because the Court erroneously charged the jury as follows: "Was the defendant liable on the other branch of the case? Did, he, in other words, give his wife this poison? You have heard his own testimony to start with, that his wife was up in the morning, that she went into the barn, she came out and said she had been kicked in the side, they went in and had breakfast, and then he put some whiskey in her coffee. She did not want it, but he insisted on putting it in. That shortly after that she went upstairs and went to bed, to lie down. You have heard the testimony of the physicians, as I recall it, saying that the toxic effect of this laudanum would begin to show itself in about

thirty minutes, a person would not be entirely overcome, but they would begin to be drowsy. That woman lay in bed all day and died at six o'clock at night. Was it the result of anything that was put in that coffee that morning? What is the reasonable inference that men of good judgment will draw from such a situation?"

13. Because the Court erroneously charged the jury as follows: "He says there was whiskey in a particular bottle. You must remember that this woman was in bed, afflicted with something that made her so ill that she went to bed early in the morning. There is no proof that she ever went downstairs and took anything, except what this defendant testifies to that she said to him. Thereafter he went downstairs, as he says, and took these bottles and some others, fearing she would make a mistake and take something she ought not to take, and he threw them out, apparently empty, according to this evidence. Does that strike you as a good excuse for putting these bottles out, if there was nothing in the bottles, if they were empty, nothing in them she could take, what would be the danger that he apprehended?"

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14. Because the Court erroneously refused to charge the jury as requested to wit: "The jury have a right to infer that, if Sergeant Pickle, of the Linden police force was not called, after he had been mentioned by the State's witnesses, his testimony would be adverse and unfavorable to the prosecution."

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15. Because the Court erroneously charged the jury as follows: "If that testimony raises in your minds any reasonable doubt, or the whole case taken together, the State's case, raises a reasonable doubt of the defendant's guilt, he is entitled to the benefit of it. That is the law of the

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land. But if no such reasonable doubt exists in your minds, then it is your duty to render such a verdict as the evidence in this case leads you to, but you must be satisfied of the defendant's guilt beyond a reasonable doubt if it is a verdict of guilty."

10 16. Because the Court erroneously charged the jury as follows: "Gentlemen, I have received a communication from the jury, and in the performance of my duty I cannot have any private communication with the jury. What I say must be said openly. Suppose you ask me the questions that you want me to answer.

The Foreman: Is there any direct evidence that the drug was administered by Roosi?

The Court: That is the first question?

20 The Foreman: Yes, sir.

The Court: As to that question, that is a question of fact, depending on the evidence, which the jury must find. You heard the testimony of Mr. Galatian, who says that the defendant admitted to him, in the presence of these other persons, that he did give his wife some of the contents of this large bottle, which the State claims contained opium and whiskey. The defendant denies that he put it in. So you see it is a question of fact
30 entirely for the jury. You have the evidence of Mr. Galatian of his admission that he did it, and also his denial. What is the other question?

The Foreman: The other question is, must we accept circumstantial evidence?

The Court: You must accept, of course, all evidence, circumstantial evidence is evidence of facts from which the existence of other facts may be
40 inferred. Sometimes circumstantial evidence is the strongest kind of evidence, because if there is a congeries of facts that lead only to one conclu-

sion, they may all be circumstances—when I say facts, I mean circumstances—there may be a collection of circumstances that lead to but one conclusion, and putting them altogether, if you followed that you could not reach any other conclusion. Whereas the testimony of an eye witness might be based on a mistake. The notion that circumstantial evidence, that is the question you asked me, ought not to be accepted, is erroneous. It is a question of what you believe of that testimony. Are there any other questions you would like to ask?"

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Wherefore, the said plaintiff-in-error, Camillo Crivelli, prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, be reversed, annulled and held for nothing, and that the said Camillo Crivelli may be restored to all things he has lost on occasion thereof.

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J. VICTOR D'ALOIA,
Attorney of Plaintiff-in-Error.

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Specification of Causes.

(Filed February 21st, 1916.)

**NEW JERSEY COURT OF ERRORS AND AP-
PEALS.**

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THE STATE OF NEW JERSEY,
Defendant-in-Error,

v.

CAMILLO CRIVELLI,
Plaintiff-in-Error.In Error to Union
County Court of
Oyer and Ter-
miner.

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And the said plaintiff-in-error also specifies the following causes relied upon by him for relief or reversal pursuant to the statute in such case made and provided.

1. Because the Court admitted evidence of the sexual relations between Emma Meyers and the plaintiff-in-error, and such evidence was unnecessary and tended to unduly prejudice the jury.

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2. Because the Court permitted the Prosecutor to make a statement and introduce evidence referring to an assault alleged to have been committed, by the defendant, on one Meyers, sometime in December, 1914, which unduly prejudiced the jury.

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3. Because the Court erroneously commented upon the fact that an assault had taken place in December, 1914, upon one Meyers and misled the jury into believing that the defendant had been the assailant through jealousy.

4. Because there was no proof in the case that death was caused by tincture of opium or laudanum or morphine.

5. Because there was no proof in the case that there was any morphine or laudanum or tincture of opium in the coffee which defendant admitted having poured out for his wife on the morning of the day she died, and the Court's comment and argument, in reference thereto, was erroneous. 10

6. Because there was no "direct" evidence in the case that the defendant had administered poison to his wife and the Court's instruction to the jury that the testimony of chief County Detective Galatian was direct evidence, was erroneous.

7. Because the Court erroneously instructed the jury to accept the circumstantial evidence adduced, as being absolutely true. 20

8. Because there is no proof in the case to show that the bottles, admittedly thrown out by the defendant, were empty at the time he threw them out and the Court's comment and argument in reference thereto, was misleading and unduly prejudiced the jury.

9. Because the Court did not clearly explain to the jury that the opinion of the Court relating to the inferences to be drawn from the facts or as to the general effect of the evidence or as to the weight to be given to the evidence was not binding upon the jury, but to the contrary the Court made it plain to the jury that in the opinion of the Court Crivelli was guilty and the general effect of the charge, as a whole, is to indicate to the jury 30

that the defendant's testimony was not worthy of belief.

The said plaintiff-in-error for the causes aforesaid in addition to the assignments of error, prays that the judgment aforesaid may be reversed.

J. VICTOR D'ALOIA,
Attorney for Plaintiff-in-Error.

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Joinder in Error.

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