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# New Jersey Court of Errors and Appeals

| | |
|---|---|
| THE STATE OF NEW JERSEY,<br>*Defendant-in-Error,*<br>*vs.*<br>EDWARD METALSKI,<br>*Plaintiff-in-Error.* | On Application for Writ of Error.<br>Certificate Denying Writ. |

## Certificate of Chancellor.

THIS IS TO CERTIFY that application has been made to me for the allowance of a writ of error, to be issued out of the New Jersey Supreme Court, for the review of the judgment of the Court of Oyer and Terminer of Middlesex County, in this State, convicting the said Edward Metalski of the crime of murder in the first degree, and that I have refused to order a writ of error for the review of said judgment.

Dated, Trenton, N. J., January 31st, 1936.

LUTHER A. CAMPBELL,
C.

A True Copy.

EDW. L. WHELAN,
Clerk.

ENDORSED:

Filed Jan. 31, 1936.

THOMAS A. MATHIS,
Clerk.

## Writ of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

No. 11911

NEW JERSEY, ss.

THE STATE OF NEW JERSEY, to ADRIAN LYON, Esq., Judge of the Court of (SEAL) Quarter Sessions in and for Middlesex County, duly appointed by CLARENCE E. CASE, Esq., presiding Supreme Court Justice of said County, to hold the Court of Oyer and Terminer in and for the County of Middlesex,

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 Edward Metalski, for murder in the Township of Woodbridge and said County of Middlesex, heard and determined by our said Court of Oyer and Terminer in and for the said County of Middlesex, manifest error hath intervened to the great damage of the said Edward Metalski, 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 Edward Metalski, Do COMMAND you that if judgment be 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 19th day of February, Nineteen Hundred and Thirty-six, that inspecting the record and proceedings aforesaid, we may further do thereupon for correcting that error of right and according to law ought to be done.

WITNESS, LUTHER A. CAMPBELL, Esquire, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this 31st day of January, in the year of our Lord One Thousand Nine Hundred and Thirty-six.

THOMAS A. MATHIS,
Clerk.

WALTER C. SEDAM,
Attorney for Plaintiff-in-Error.

ENDORSED:

Filed: January 31, 1936.

Presented in open Court this 4th day of February, A. D. 1936.

ADRIAN LYON,
Judge.

Presented to County Clerk February 4th, 1936.

GEO. CATHERS,
Clerk.

## Return to Writ.

State of New Jersey, }
County of Middlesex, } ss.:

I, Adrian Lyon, Judge of the Inferior Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the County of Middlesex, New Jersey, do hereby certify and return to the Court of Errors and Appeals of the State of New Jersey, the Indictment, Judgment Record and Proceedings, together with all things touching and concerning, together with the entire record, as by the within Writ to me directed, I am commanded.

In witness whereof, I have hereunto set my hand and the official seal of said Court and County this 10th day of February, A. D., nineteen hundred and thirty-six.

(seal) Adrian Lyon,
Judge.

---

## Indictment.

State of New Jersey, }
County of Middlesex, } ss.:

Be it remembered, that at a Court of Oyer and Terminer, holden at New Brunswick, in and for the County of Middlesex, on the third Tuesday in September, in the year of our Lord one thousand nine hundred and thirty-five, by the Honorable Clarence E. Case, Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Middlesex, New Jersey, by the oath of Sidney Riddlestorffer, E. Bayard

Cathers, Wallace Carroll, Albert Frederick, John Reng, Nielsen B. Dale, Aloysius Hendricks, Joseph L. Foley, Chas. E. Jacquart, Wilbur C. Box, Chas. Harding, Dorothy M. McCarter, Conrad Kuhlthau, Leon E. Campbell, Edward J. Cahill, Martin O'Hara, George W. Bowne, Thos. Kenyon, Carlos B. Needham, Earl H. Devanny, George Reilly, Otto Wolf, Geo. M. Anderson, good and lawful men of the said County of Middlesex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Middlesex, it is presented in manner and form following, to wit:

MIDDLESEX COUNTY, to wit:

THE GRAND INQUEST for the State of New Jersey, and for the body of the County of Middlesex, upon their oath PRESENT, that Edward Metalski, late of the Township of Woodbridge, in the said County of Middlesex, on the ninth day of November, in the year of our Lord one thousand nine hundred and thirty-five, with force and arms, at the Township of Woodbridge aforesaid, in the County aforesaid, and within the jurisdiction of this Court, wilfully, feloniously and of his malice aforethought did kill and murder one Warren G. Yenser, 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.

DOUGLAS M. HICKS,
Prosecutor of the Pleas.

## Judgment Record.

On the fifteenth day of November, A. D., nineteen hundred and thirty-five, on which day the said indictment was presented by the grand jury aforesaid, to the said Court of Oyer and Terminer, and the Judge of the Inferior Court of Common Pleas, did then and there order the said indictment to be handed down to the Court of Oyer and Terminer, and to be delivered to the Clerk of the Court of Oyer and Terminer, in and for said County of Middlesex, then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was then and there made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the sixteenth day of November, A. D. nineteen hundred and thirty-five, the Honorable Clarence E. Case, Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Middlesex, New Jersey, by formal requisition, duly filed by the Clerk of the Middlesex County Oyer and Terminer, requested the Honorable Adrian Lyon, Judge of the Inferior Court of Common Pleas, in and for the County of Middlesex, to hold the Court of Oyer and Terminer and as presiding judge, sitting alone, of said Court of Oyer and Terminer, in and for said County of Middlesex, to try and dispose of the said indictment charging the said Edward Metalski with murder.

*Judgment Record.*

## ASSIGNMENT OF COUNSEL.

And afterwards, that is to say, on the twenty-second day of November, A. D. nineteen hundred and thirty-five, the Honorable Adrian Lyon, Judge of the Inferior Court of Common Pleas, in and for the County of Middlesex, New Jersey, specially designated to hold the Court of Oyer and Terminer, in and for the County of Middlesex, ordered that Walter C. Sedam, Esq., be appointed and assigned as counsel for the said Edward Metalski.

## PLEA.

And afterwards, that is to say, on the twenty-fifth day of November, A. D. nineteen hundred and thirty-five, at a Court of Oyer and Terminer, holden at New Brunswick, in and for the County of Middlesex, before the Honorable Adrian Lyon, Judge of the Inferior Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the County of Middlesex, Edward Metalski, in the custody of F. Herdman Harding, Sheriff of the County of Middlesex aforesaid, and the said Edward Metalski being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him how he would acquit himself thereof, says that he is Not Guilty thereof, and therefore, for good and evil he puts himself upon the county, etc., and Douglas M. Hicks, Prosecutor of the Pleas of said State, for said County of Middlesex in this behalf doth the like.

ORDER FOR JURY.

Therefore, let a jury thereupon come before the Court of Oyer and Terminer to be holden at New Brunswick, in and for the County of Middlesex, on the sixth day of January, A. D. nineteen hundred and thirty-six, then next ensuing twelve free and lawful men and women, each of whom shall be a citizen of this State and resident within the County of Middlesex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Edward Metalski, to recognize upon their oath whether the said Edward Metalski, is guilty of the premises in the said indictment specified or not guilty because the said Douglas M. Hicks, Prosecutor, &c., as the said Edward Metalski puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

LIST OF JURORS AND VERDICT.

And afterwards, that is to say on the same day, at the same Court of Oyer and Terminer, holden before the Honorable Adrian Lyon, Judge of the Inferior Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the County of Middlesex, comes the said Douglas M. Hicks, who prosecutes as aforesaid, and the said Edward Metalski, and the jury of whom mention is before made, and by F. Herdman Harding, Sheriff of the County of Middlesex, for this purpose empanelled and returned, to wit:

*Judgment Record.*

1. Ursula Downs
2. Joseph Delisi
3. Thomas G. Radics, Jr.
4. Frank Delaney
5. Edward N. Bowen
6. Chester R. Barbour
7. Harold Applegate
8. Salvatore Chibbaro
9. James R. Quaid, Jr.
10 Mary A. Walters
11. John J. Ryan
12. James A. Casey

being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the eighth day of January, A. D. nineteen hundred and thirty-six, the jury being called, and in the presence of the Prosecutor, defendant and Court do say upon their oath, "we find the defendant, Edward Metalski, guilty of murder in the first degree," and so say they all. By request of attorney for defendant, the jury was polled and when the roll was called, each juror for himself answered, "guilty."

SENTENCE.

Whereupon all and singular the premises being seen and by the Court now here fully understood, the Court, Hon. Adrian Lyon, on this eighth day of January, A. D. nineteen hundred and thirty-six, sentenced the defendant, Edward Metalski, to death, the said sentence to be executed in the week beginning February 17th, 1936, and the said defendant be in Mercy, etc.

*Judgment Record.*

## WARRANT.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

To MARK O. KIMBERLING, Esquire, Principal Keeper of the State Prison of the State of New Jersey:

WHEREAS, Edward Metalski was on the eighth day of January, A. D. nineteen hundred and thirty-six duly convicted in the manner provided by law, of the crime of murder of the first degree in the Court of Oyer and Terminer held in and for the County of Middlesex for the murder of Warren G. Yenser upon which conviction the said court hath, by its sentence and judgment, adjudged that for the crime of which he was so convicted, he, the said Edward Metalski, suffer the penalty of death in the manner provided by law.

YOU ARE HEREBY COMMANDED to receive from the Sheriff of the County of Middlesex the body of the said Edward Metalski and that within the week commencing on the seventeenth day of February, nineteen hundred and thirty-six you do execute the sentence and judgment of the Court by inflicting upon the said Edward Metalski the punishment of death in the manner required by the statute of the State of New Jersey in such case made and provided, and for the due performance of which this shall be your warrant.

WITNESS my hand and the seal of the Court of Oyer and Terminer of the County of Middlesex this tenth day of January, nineteen hundred and thirty-six.

(SEAL)

ADRIAN LYON,
Judge of the Court of Quarter Sessions to hold the Court of Oyer and Terminer of Middlesex County.

Attest:

GEORGE CATHERS, Clerk.

## Transcript of Testimony.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

DECEMBER TERM, 1935.

STATE OF NEW JERSEY,

*vs.*

EDWARD METALSKI.

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before HON. ADRIAN LYON, Judge, and a Jury, at the Middlesex County Court House, New Brunswick, New Jersey, on the sixth day of January, 1936.

APPEARANCES:

DOUGLAS M. HICKS, Esq., Prosecutor of the Pleas (present).

JAMES S. WIGHT, Esq., Assistant Prosecutor of the Pleas (present).

WALTER C. SEDAM, ESQ., Attorney for the Defendant (present).

Mr. Hicks: May it please the Court, the State is ready to move the indictment against Edward Metalski, charging him with the murder of one Warren G. Yenser.

The Court: Is the defense ready?

Mr. Sedam: Yes.

The Court: Is the defendant in Court?

Mr. Sedam: Yes.

The Court: The officers appointed to attend the jury will be Officers Sensbach and Newton.

(The officers referred to were sworn.)

The Court: You may proceed to draw the jury.

## EXAMINATION OF JURORS.

Number 31, Ursula Downs.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(The juror was sworn to tell the truth.)

Mr. Hicks: Mrs. Downs, would you vote for a verdict of guilty of murder in the first degree if the evidence justified it?

Mrs. Downs: Yes.

Mr. Hicks: And if the Court will later define for the law, and if the facts as proven by the State will justify, in accordance with the law, a verdict of guilty of murder in the first degree, would you vote for such a verdict?

The Court: Do you understand the question that was asked you?

Mrs. Downs: Yes, I do.

The Court: What is your answer?

Mrs. Downs: I think I would.

Mr. Hicks: Mrs. Downs, would you vote for such a verdict knowing that it meant that the defendant would be sentenced to die in the electric chair?

Mrs. Downs: If the evidence proved it, I would

Mr. Hicks: The juror is satisfactory to the State.

Mr. Sedam: I challenge upon the ground that the juror has formed an opinion either from hearing about or reading about this case, which would preclude her or prevent her from giving a just and true verdict in accordance with the evidence; and upon the further ground that the juror has or may have such affiliation with the officers charged with the administration of the penal law as would influence her and prevent her from giving a just and true verdict in accordance with the evidence.

*Examination of Jurors.*

The Court: Proceed. She has been sworn.

Mr. Sedam: Mrs. Downs, you live in Sayreville?

Mrs. Downs: Yes.

Mr. Sedam: And you are a housewife, and not employed anywhere?

Mrs. Downs: No.

Mr. Sedam: Pardon me?

Mrs. Downs: Housewife.

Mr. Sedam: Have you read about the case of Edward Metalski, who is charged with the slaying of a trooper?

Mrs. Downs: Yes, I have.

Mr. Sedam: Have you discussed the case with anyone, either before or after his arrest?

Mrs. Downs: Well, I have talked about it.

Mr. Sedam: You have read about it, of course, and have you, as a result of having talked it over with anybody or having read about it, formed a fixed opinion in your mind which would prevent you from giving a just and true verdict based upon what you hear right in this courtroom, and exclusive of anything you have read or heard?

Mrs. Downs: Yes.

Mr. Sedam: Your mind is open?

Mrs. Downs: Yes.

Mr. Sedam: Are you or your husband or any member of your immediate family clients of Prosecutor Hicks or of Mr. Edgar or of Mr. Wight of the Prosecutor's office? Are they your personal attorneys in your family?

Mrs. Downs: No.

Mr. Sedam: They are not?

Mrs. Downs: No.

Mr. Sedam: Is any member of your immediate family connected with the administration of the

criminal law in the township where you live, in the place where you live—any member of your family connected with the constabulary or with the State Police?

Mrs. Downs: No.

Mr. Sedam: Do you include among your friends, among your personal friends and those with whom you constantly come in contact, any member of the detective staff of the Prosecutor's office, or of the police department there in Sayreville, or any members of the State Constabulary?

Mrs. Downs: No.

Mr. Sedam: You have no friendly intimate contacts with any of them?

Mrs. Downs: No.

Mr. Sedam: So that there is nothing that you know of that would preclude you from giving a fair verdict here in this court based upon what you hear here, is that right?

Mrs. Downs: Yes.

Mr. Sedam: Juror satisfactory.

(Ursula Downs was sworn as a juror.)

---

Number 34, Joseph Delisi.

Mr. Sedam: Challenge upon the ground that the juror has formed a fixed opinion either from hearing about this case or reading about this case, which would preclude him from giving a fair and just verdict in accordance with the evidence; and upon the further ground that the juror is so closely affiliated with those in charge of the administration of the criminal law, that his association with them would influence his mind and prevent him from giving a just and true verdict in accordance with the evidence.

(Joseph Delisi was sworn to tell the truth.)

Mr. Sedam: Mr. Juror, you live in South River?

Mr. Delisi: No, in Perth Amboy.

Mr. Sedam: Perth Amboy?

Mr. Delisi: Yes, sir.

Mr. Sedam: And your business is that of barber?

Mr. Delisi: Yes.

Mr. Sedam: You have heard about this case against Edward Metalski?

Mr. Delisi: Just heard; never read about it.

Mr. Sedam: Never read it?

Mr. Delisi: No, never was interested in the case; read it.

Mr. Sedam: Have you formed any opinion, Mr. Delisi, as to the guilt or innocence of this defendant?

Mr. Delisi: No, sir. I judge according to the testimony.

Mr. Sedam: Sir?

Mr. Delisi: Judge according to the testimony.

Mr. Sedam: You would judge according to the testimony?

Mr. Delisi: Yes, sir.

Mr. Sedam: Are you a client or do you have any direct association with Prosecutor Hicks personally.

Mr. Delisi: No, sir.

Mr. Sedam: Or through his position as Prosecutor?

Mr. Delisi: No, sir.

Mr. Sedam: Or with Mr. Wight, of Perth Amboy?

Mr. Delisi: No, sir. I know him if I seen him, that is all.

Mr. Sedam: Or with Mr. Edgar?

Mr. Delisi: No, never know him.

Mr. Sedam: Are you connected with the administration of the criminal law in any way there in Perth Amboy?

Mr. Delisi: No, sir.

Mr. Sedam: Do you have any relatives who are officers of any kind?

Mr. Delisi: No, sir.

Mr. Sedam: Do you have any personal relations with any of the members of the Prosecutor's detective staff?

Mr. Delisi: No, sir.

Mr. Sedam: Do you know or are you affiliated in any way with any of the members of the State Constabulary, the State Police force?

Mr. Delisi: No, sir.

Mr. Sedam: Has any member of your family, Mr. Delisi, or any close personal friend of yours ever been the victim of a beating or a killing by another person?

Mr. Delisi: No, sir, thank the Lord.

Mr. Sedam: Sir?

Mr. Delisi: Thank the Lord, I say.

Mr. Sedam: Would the fact that the defendant will admit in this case that he has previously been convicted of crime, not including any murder or other crimes of personal violence, and not in anywise connected with this particular charge, would that prevent you from acting dispassionately in determining his guilt or innocence under the evidence which is to be produced right here?

Mr. Delisi: Well, I judge according to the testimony. If the evidence is there, why—I never read the case, as I told you before.

Mr. Sedam: You what?

Mr. Delisi: I never read the case. I judge according to the testimony and the evidence.

Mr. Sedam: Would the fact that the man who was so unfortunately killed was a State Trooper influence your mind toward convicting this defendant any more than——

Mr. Delisi: No, sir.

Mr. Sedam: (Continuing)—if it were some other person?

Mr. Delisi: No, sir.

Mr. Sedam: If as a result of the evidence which is produced here in court, regardless of any admission of previous crimes by the defendant, if the evidence produced right here in court should create a reasonable doubt in your mind, in accordance with the method to be described by the Judge, by the Court, would you give the benefit of that reasonable doubt to the defendant?

Mr. Delisi: Yes, sir.

Mr. Sedam: Would you?

Mr. Delisi: Yes, sir.

Mr. Sedam: Satisfactory.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

Now, Mr. Juror, would you vote for a verdict of murder in the first degree if the facts justified such a verdict?

Mr. Delisi: Yes, sir.

Mr. Hicks: Would you vote for such a verdict knowing that it meant that the defendant would be sentenced to die in the electric chair?

Mr. Delisi: I do.

Mr. Hicks: Satisfactory to the State.

(Joseph Delisi was sworn as a juror.)

Number 16, Addie M. Baker.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(Addie M. Baker was sworn to tell the truth.)

Mr. Hicks: Mrs. Baker, would you vote for a verdict of guilty of murder in the first degree if the facts justified it?

Mrs. Baker: I would.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mrs. Baker: I would.

Mr. Hicks: Satisfactory to the State.

Mr. Sedam: I challenge peremptorily.

---

No. 98, Thomas G. Radics, Jr.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion either from reading about this case or hearing about the case, which opinion is so fixed as to make it impossible for him to render a fair and just verdict in accordance with the evidence; and upon the further ground that the juror is so affiliated with the administration of the criminal law, either through friendships or relationships, as to make it impossible for him to give a fair and just verdict in accordance with the evidence.

(Thomas G. Radics, Jr., was sworn to tell the truth.)

Mr. Sedam: Mr. Radics, you live in Brunswick, do you?

Mr. Radics: Yes, sir.

Mr. Sedam: What is your business?

Mr. Radics: Tavern keeper.
Mr. Sedam: Tavern keeper?
Mr. Radics: Saloon keeper.
Mr. Sedam: You have heard about the Metalski case, haven't you?
Mr. Radics: Naturally.
Mr. Sedam: You have read about it?
Mr. Radics: Yes, sir.
Mr. Sedam: Have you discussed it with anybody?
Mr. Radics: Well, I have talked about it.
Mr. Sedam: And as a result of either hearing or reading about it or talking about it, have you formed any fixed opinion in your mind as to the guilt or innocence of the defendant pertaining to the murder charge?
Mr. Radics: No.
Mr. Sedam: Well, you hesitate——
Mr. Radics: Well, we talked about that in different ways, and, of course, I never believe anything the paper says, that is, what they——
Mr. Sedam: So that you haven't formed an opinion that would preclude you from voting in accord with the evidence that is produced right here in court, is that right?
Mr. Radics: Right.
Mr. Sedam: Mr. Radics, I suppose you know a good many of the police officers, don't you?
Mr. Radics: Yes, sir.
Mr. Sedam: Personally friendly with them?
Mr. Radics: Some of them.
Mr. Sedam: Do you know some of the detectives connected with the Prosecutor's office?
Mr. Radics: Yes, sir.
Mr. Sedam: Personally friendly with them?
Mr. Radics: Well, we are friends.

Mr. Sedam: Do you know any of the members of the State Constabulary?

Mr. Radics: No.

Mr. Sedam: Would your acquaintanceship or friendship, whichever it might be called, with various members of the constabulary and police force have any influence upon your mind as far as influencing you in connection with the rendering of a verdict in accordance with the evidence to be brought here in court?

Mr. Radics: No.

Mr. Sedam: Would the fact that the defendant will admit here as part of the evidence that he has been convicted of crime previously, a crime not involving murder or any personal violence, would that influence your mind to an extent which would prevent you from acting dispassionately and fairly in determining his guilt on this particular charge under the evidence to be produced right here at this trial?

Mr. Radics: No.

Mr. Sedam: Would the fact that the deceased was a State Trooper influence your mind unduly or more than it would if it were a matter of the death of some other person?

Mr. Radics: No.

Mr. Sedam: If the evidence to be produced before you, assuming that you sit as a juror, reveals that the defendant did not fire the shot which caused the death, and that he didn't aid or abet in this killing, or if you have a reasonable doubt under the evidence on either point, would you permit this defendant's subsequent escape from the County Jail to influence your verdict on the merits of the case or regard same as any proof of guilt on this main murder charge, other than

to the extent or in the manner permitted by the Court in his instructions to the jury?

Mr. Radics: No.

Mr. Sedam: In other words, you would keep that separate and distinct from this main charge?

Mr. Radics: That is right.

Mr. Sedam: Now, do you know of any reason, Mr. Radics, why you would not be able to render a fair and just verdict in accordance with the evidence to be given here?

Mr. Radics: No reason at all.

Mr. Sedam: No reason at all.

Satisfactory.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

Mr. Radics, would you vote for a verdict of guilty of murder in the first degree if the evidence justified it?

Mr. Radics: Yes, sir.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Radics: If positive evidence is there, yes.

Mr. Hicks: Satisfactory to the State.

(Thomas G. Radics, Jr., was sworn as a juror.)

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Number 9, John J. Burke.

Mr. Hicks: The State challenges on the grounds that the juror has conscientious scruples against capital punishment.

(John J. Burke was sworn to tell the truth.)

Mr. Hicks: Mr. Burke, if the evidence justified it, would you vote for a verdict of guilty of murder in the first degree?

Mr. Burke: I would.

Mr. Hicks: You would?

Mr. Burke: Yes.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Burke: I would.

Mr. Hicks: I have no further questions.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion either by reading about or hearing about this case which would prevent him from giving a fair and just verdict in accordance with the evidence; and upon the further ground that the juror is so connected with those in charge of the administration of the criminal law in this county as to influence his mind and prevent him from giving a just verdict in accordance with the evidence.

Your name is Burke?

Mr. Burke: Yes, sir.

Mr. Sedam: What is your occupation, Mr. Burke?

Mr. Burke: Brass press over at Phillips and Dodge.

Mr. Sedam: From Woodbridge, are you?

Mr. Burke: Yes, sir.

Mr. Sedam: You have read about this case in the paper, I presume, haven't you?

Mr. Burke: Yes, a little of it.

Mr. Sedam: Have you discussed it with anybody, talked about it with anybody?

Mr. Burke: Well, some of it.

Mr. Sedam: Sir?

Mr. Burke: Yes, a little of it.

Mr. Sedam: Were those with whom you talked about the case officers of the law?

Mr. Burke: No, sir.

Mr. Sedam: Just casual acquaintances as you came along?

Mr. Burke: Men working with me.

Mr. Sedam: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Burke: No, I haven't.

Mr. Sedam: So that your mind would be free and open to consider what you hear right here in the courtroom?

Mr. Burke: Yes, sir.

Mr. Sedam: And determine your verdict in accordance with that, is that so?

Mr. Burke: Yes.

Mr. Sedam: Now, sir, do you have any relatives or close friends who are connected with the administration of the criminal law either in Woodbridge or throughout the county?

Mr. Burke: No, I haven't.

Mr. Sedam: You know, I presume, some of the members of the Woodbridge police force?

Mr. Burke: I do.

Mr. Sedam: Is that affiliation or association with them or any of them of such a nature as to have any effect or bearing upon your mind?

Mr. Burke: No, sir, not at all.

Mr. Sedam: Do you know any of the men connected with the Prosecutor's office, detectives?

Mr. Burke: No, I don't.

Mr. Sedam: You don't know any of them?

Mr. Burke: No.

Mr. Sedam: Do you know any of the members of the State Constabulary?

Mr. Burke: No, I don't.

Mr. Sedam: You don't come in contact with any of them?

Mr. Burke: No, sir.

Mr. Sedam: I assume that you are not a client of Prosecutor Hicks or Mr. Wight or Mr. Edgar, who are the prosecuting officials of this county?

Mr. Burke: No, I am not.

Mr. Sedam: Did you hear about this defendant escaping from jail?

Mr. Burke: I did.

Mr. Sedam: Would the fact that he did escape from jail influence your mind as to the guilt or innocence of the defendant on the charge on which he is being tried here——

Mr. Burke: No.

Mr. Sedam (Continuing): except insofar as the evidence—as the Court might permit evidence on that point?

Mr. Burke: No.

Mr. Sedam: Would the fact that the man who was killed was a State Trooper influence your mind any more than if it were any other civilian?

Mr. Burke: No.

Mr. Sedam: Any civilian.

Mr. Burke: No.

Mr. Sedam: Do you know of any reason, any good substantial honest reason, Mr. Burke, why, if you are sworn as a juror, you couldn't give a just and true verdict in accordance with the evidence to be produced here on the main charge?

Mr. Burke: No, I don't.

Mr. Sedam: There is no reason, as far as you know?

Mr. Burke: No.

Mr. Sedam: Satisfactory.

Mr. Hicks: Now, just a minute. The State challenges peremptorily.

Number 27, Anthony J. Cassera.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion from hearing about or reading about this case which would prevent him from giving a just and true verdict in accordance with the evidence; and upon the further ground that the juror either through friendship or relationship is so connected with those in charge of the administration of the criminal law in this city or county as to influence his mind and prevent him from giving a just and true verdict in accordance with the evidence.

(Anthony J. Cassera was sworn to tell the truth.)

Mr. Sedam: Mr. Cassera, I note here that you live in New Brunswick, New Jersey, on Throop Avenue, and that you are a clerk. Is that true?

Mr. Cassera: Right.

Mr. Sedam: You have heard about this case of Edward Metalski, charged with killing a trooper, haven't you?

Mr. Cassera: I have.

Mr. Sedam: And you have read about it?

Mr. Cassera: I have.

Mr. Sedam: Have you discussed it with any members of the police department or anybody connected with the administration of the criminal law?

Mr. Cassera: No.

Mr. Sedam: You haven't?

Mr. Cassera: I haven't.

Mr. Sedam: Have you formed any opinion as to the guilt or innocence of the defendant on the charge of murder?

Mr. Cassera: No, I haven't.

Mr. Sedam: Do you have any personal relationship or friendship with any members of the police department?

Mr. Cassera: No.

Mr. Sedam: Or with any members of the Prosecutor's detective staff?

Mr. Cassera: No.

Mr. Sedam: Do you know any of those men?

Mr. Cassera: No.

Mr. Sedam: Do you know the Sheriff of this county?

Mr. Cassera: No, I don't.

Mr. Sedam: You don't know him. Are you or, as far as you know, any members of your immediate family here in New Brunswick clients of the office of Mr. Hicks in his role as regular attorney?

Mr. Cassera: No.

Mr. Sedam: Have you ever been involved in any case, Mr. Cassera, either directly or indirectly, where you or any member of your family or any close friend has been the victim of a shooting or a killing by another person?

Mr. Cassera: No.

Mr. Sedam: You never had anything like that?

Mr. Cassera: No.

Mr. Sedam: Now, sir, would the fact that the defendant in this case will admit in the course of this trial that he has previously been convicted of a crime or crimes not involving murder or personal violence to anybody and not in anywise connected with this particular murder charge, influence your mind to an extent which would prevent you from acting dispassionately and fairly, and in accordance with your oath, in determining his guilt or his innocence under the evidence that is to be produced here?

Mr. Cassera: No, it would not.

Mr. Sedam: Would the fact that the man who was so unfortunately killed was a State Trooper have any more influence or bearing upon the case, than if the deceased were a civilian?

Mr. Cassera: No.

Mr. Sedam: Now, you heard about and read about Metalski escaping from jail, didn't you?

Mr. Cassera: Yes.

Mr. Sedam: That was all in the paper, too, wasn't it?

Mr. Cassera: Yes.

Mr. Sedam: And would you be able, if you were to sit as a juror in this case, to keep separate in your mind that which has happened since his escape from jail, distinguishing it from the main charge of murder, except insofar as reference thereto might be permitted by the Court under the rules of evidence? In other words, the defendant is charged with murder. Would you consider the evidence of that charge by itself as distinguished from anything that has happened since?

Mr. Cassera: Yes.

Mr. Hicks: Well, now, if it please the Court, Mr. Sedam's first question was proper, but the law is that the escape—the fact that this defendant escaped raises a presumption and is part of the facts that may be shown.

The Court: That was an element in the previous question. You certainly can't object to his answer?

Mr. Sedam: The Prosecutor speaking about raising a presumption, I think that is an erroneous statement right there.

The Court: Proceed.

Mr. Sedam: Now, if I may have it noted, sir, that on my last question I contemplated adding, except that insofar as it is permitted by the Court under the law.

The Court: He answered that before.

Mr. Sedam: Do you know of any good reason, Mr. Cassera, why you cannot serve impartially and fairly as a juror in this case?

Mr. Cassera: No.

Mr. Sedam: Satisfactory.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

Now, Mr. Cassera, if the evidence justified it, would you vote for a verdict of guilty of murder in the first degree?

Mr. Cassera: Yes.

Mr. Hicks: Would you vote for such a verdict knowing that it meant that the defendant would be sentenced to die in the electric chair?

Mr. Cassera: Yes.

Mr. Hicks: The State will excuse the juror.

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Number 36, Frank Delaney.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(Frank Delaney was sworn to tell the truth.)

Mr. Hicks: Mr. Delaney, you live in South Amboy?

Mr. Delaney: South Amboy.

Mr. Hicks: Now, if the evidence justified it, would you vote for a verdct of guilty of murder in the first degree?

Mr. Delaney: If the evidence satisfied me, I would.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Delaney: I would.

Mr. Hicks: No further questions.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion either from hearing about or reading about this case which would prevent him from giving a just and true verdict in accordance with the evidence; and upon the further ground that the juror is so related and so affiliated with those in charge of the administration of the criminal law that it would influence his mind and prevent him from giving such just and true verdict.

What is your business, Mr. Delaney?

Mr. Delaney: Unemployed.

Mr. Sedam: Sir?

Mr. Delaney: Unemployed.

Mr. Sedam: You have read about this case and heard about it?

Mr. Delaney: I have.

Mr. Sedam: And talked about it?

Mr. Delaney: Yes, sir.

Mr. Sedam: And have you talked it over with any members of the police department?

Mr. Delaney: I haven't.

Mr. Sedam: Nobody connected with the administration of the criminal law?

Mr. Delaney: No.

Mr. Sedam: So that I take it that you haven't formed any fixed opinion as to the guilt or innocence of the defendant?

Mr. Delaney: I haven't.

Mr. Sedam: And you would be guided by the evidence to be given here in this courtroom?

Mr. Delaney: Positively.

Mr. Sedam: Do you have, Mr. Delaney, any members of your family, or among your close personal friends, who are connected with the administration of the criminal law?

Mr. Delaney: No. I have a brother a lawyer.

Mr. Sedam: Well, I know, but not on the police force.

Mr. Delaney: No.

Mr. Sedam: Satisfactory.

Mr. Hicks: Satisfactory to the State.

(Frank Delaney was sworn as a juror.)

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Number 3, Edward N. Bowen.

Mr. Sedam: I challenge upon the ground that the juror has formed a fixed opinion based either upon reading about or hearing about this case which would prevent him from giving a just and true verdict in accordance with the evidence; and upon the further ground that the juror is so affiliated either by friendship or relationship with those in charge of the administration of the criminal law in this county, so that it would influence his mind and preclude him from giving a just and true verdict in accordance with the evidence.

(Edward N. Bowen was sworn to tell the truth.)

Mr. Sedam: Mr. Bowen—your name is?

Mr. Bowen: Right.

Mr. Sedam: What is your business, sir?

Mr. Bowen: Telephone company.

Mr. Sedam: And you are from Dunellen?

Mr. Bowen: Right.

Mr. Sedam: Sir?

Mr. Bowen: Right.

Mr. Sedam: Have you read about this Metalski case, Mr. Bowen?

Mr. Bowen: I have.

Mr. Sedam: Have you discussed it with anybody?

Mr. Bowen: A few.

Mr. Sedam: Have you discussed it with anybody who is connected with the police department or the Prosecutor's staff, or just casual discussion day by day?

Mr. Bowen: Yes.

Mr. Sedam: Have you formed any opinion, Mr. Bowen, as to the guilt or innocence of this defendant?

Mr. Bowen: I haven't.

Mr. Sedam: Are you a client of the Prosecutor or either one of the Assistant Prosecutors?

Mr. Bowen: No.

Mr. Sedam: Do you have any member of your family or among your close friends who are members of or connected with the police department anywhere?

Mr. Bowen: No one.

Mr. Sedam: Have you ever been involved in a case, either directly or indirectly, where you or any member of your family or any close friend has been the victim of a shooting or a killing?

Mr. Bowen: No.

Mr. Sedam: If you were sworn as a juror, Mr. Bowen, would the fact that the defendant admits in testimony in this case that he has been previously convicted of one or more crimes, not including any murder or other crime involving personal violence or death, and those crimes not being in anywise connected with this particular charge

before the Court now, would that influence you to an extent that would prevent you from acting dispassionately and fairly in accordance with your oath in determining his guilt or innocence under the evidence to be produced before you in this case?

Mr. Bowen: No.

Mr. Sedam: Admitting that the deceased was a State Trooper, would that influence your mind any more than if a civilian had been killed?

Mr. Bowen: No.

Mr. Sedam: If the evidence to be produced before you reveals that this defendant did not fire the shot which caused the death, and that he didn't aid in the killing—aid or abet in this killing, or if you have a reasonable doubt under the evidence on either point, would you permit this defendant's subsequent escape from the County Jail to influence or determine your verdict on the merits of the case, or regard same as proof of guilt on the main charge of murder other than to the extent and in the manner permitted by the Court?

Mr. Bowen: No.

Mr. Sedam: Is there any reason, Mr. Bowen, that you know of, why you cannot serve as a juror and give a just and true verdict in accordance with the evidence?

Mr. Bowen: No.

Mr. Sedam: There is none. Satisfactory.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

Mr. Bowen, would you vote for a verdict of guilty of murder in the first degree if the evidence justified it?

Mr. Bowen: I would.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Bowen: I would.

Mr. Hicks: Satisfactory to the State.

(Edward N. Bowen was sworn as a juror.)

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Number 18, Louis Check, Sr.

Mr. Hicks: The State challenges peremptorily.

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Number 62, Minnie Kramer.

Mr. Sedam: Challenged peremptorily.

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Number 93, John H. Prominski.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(John H. Prominski was sworn to tell the truth.)

Mr. Hicks: Now, Mr. Prominski, if the evidence justified it, would you vote for a verdict of guilty of murder in the first degree?

Mr. Prominski: Yes.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Prominski: Yes.

Mr. Hicks: Go ahead, Mr. Sedam.

Challenged peremptorily.

Number 8, Edward P. Bader.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion as to the guilt or innocence of the defendant based either upon hearing about or reading about this case, so that he would be precluded from giving a fair and just verdict in accordance with the evidence; and upon the further ground that the juror is so affiliated by relationship or friendship with those in charge of the administration of the criminal law of this county so as to preclude him from being able to give a just and fair verdict in accordance with the evidence.

(Edward P. Bader was sworn to tell the truth.)

Mr. Sedam: Your name is Edward P. Bader?

Mr. Bader: That is right.

Mr. Sedam: What is your occupation, sir?

Mr. Bader: Mechanic.

Mr. Sedam: And from Woodbridge?

Mr. Bader: From Woodbridge.

Mr. Sedam: Mr. Bader, I presume that you have heard about this case and read something about it, haven't you?

Mr. Bader: I did.

Mr. Sedam: Have you talked it over with anybody and discussed it generally with people?

Mr. Bader: Not of any account.

Mr. Sedam: Not of any account. Have you formed any opinion, either from what you have read or what you have heard, as to whether or not Metalski is guilty on this charge of murder?

Mr. Bader: I haven't.

Mr. Sedam: Your mind is open and free, is it?

Mr. Bader: Yes.

Mr. Sedam: Mr. Bader, I assume that you are not a client of Prosecutor Hicks or of Assistant

Prosecutor Wight or of Assistant Prosecutor Edgar?

Mr. Bader: No, sir.

Mr. Sedam: Do you come in close contact with any members of the police force in your town?

Mr. Bader: I do not.

Mr. Sedam: You know some of them?

Mr. Bader: I know a few of them, yes.

Mr. Sedam: No close association or friendship with any of them?

Mr. Bader: Know them to talk to, that is all, say hello to.

Mr. Sedam: That would not influence your mind in any way in connection with this case or any other case, would it?

Mr. Bader: Not a bit.

Mr. Sedam: Do you know any of the gentlemen who are on the Prosecutor's staff as detectives here in Middlesex County?

Mr. Bader: No, I do not.

Mr. Sedam: You know Mr. Wight, who lives in Woodbridge, don't you?

Mr. Bader: I know him to see, but I don't know him to talk to.

Mr. Sedam: You don't know him personally. All right. Have you or has anyone in your family been connected with a case where there has been a victim of a shooting or a killing by another?

Mr. Bader: No, sir, I have not.

Mr. Sedam: Would the fact that the defendant in this case will admit in the course of the trial that he has previously been convicted of one or more crimes, not including any charge of murder or any charge of personal violence toward anybody, the same not being in any way connected with this present charge of murder, influence your

mind to an extent that it would prevent you from acting dispassionately and fairly in accordance with your oath in determining his guilt or innocence under the evidence that is to be produced right here in this courtroom?

Mr. Bader: No, sir.

Mr. Sedam: Would the fact that the man who was killed was a State Trooper influence your mind any more than it would influence it if it were some other person?

Mr. Bader: No, sir.

Mr. Sedam: If the evidence that is to be produced here in court reveals that the defendant did not fire the shot that killed the trooper, and that he didn't aid or abet in the killing, and if you have a reasonable doubt under the evidence on either point, would you permit the fact that the defendant later on escaped from the County Jail to influence or determine your verdict on the merits of the case or regard same as proof of guilt on the main charge or murder, other than to the extent or in the manner that the Court permits in his instructions to the jury?

Mr. Bader: No.

Mr. Sedam: Is there any reason, Mr. Bader, why you cannot take your seat and serve as a juror in this case and give a just and true verdict under the evidence?

Mr. Bader: No, sir.

Mr. Sedam: There isn't any reason that you know of, is there?

Mr. Bader: No, sir.

Mr. Sedam: Satisfactory.

Mr. Hicks: The State challenges.

*Examination of Jurors.*

Number 11, Chester R. Barbour.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(Chester R. Barbour was sworn to tell the truth.)

Mr. Hicks: Now, Mr. Barbour, if the evidence justified it, would you vote for a verdict of guilty of murder in the first degree?

Mr. Barbour: I would.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Barbour: I would.

Mr. Hicks: Satisfactory.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion, either from hearing about or reading about the case, which would preclude him from giving a just and true verdict in accordance with the evidence; and upon the further ground that the juror is either so related or connected with those in charge of the administration of criminal law in this county as to influence his mind and prevent him from giving a just and true verdict in accordance with the evidence.

Mr. Juror, you apparently live here in New Brunswick, don't you?

Mr. Barbour: Yes, sir.

Mr. Sedam: On Baldwin Street?

Mr. Barbour: 21 Baldwin.

Mr. Sedam: You are a machinist by trade?

Mr. Barbour: Machine designer.

Mr. Sedam: Mr. Barbour, I assume that you heard about this case before and read something of it?

Mr. Barbour: Yes, sir.

Mr. Sedam: Has your reading about it or hearing about it caused you to form any fixed opinion as to either the guilt or innocence of the defendant?

Mr. Barbour: No, sir.

Mr. Sedam: Do you know Mr. Hicks?

Mr. Barbour: I do.

Mr. Sedam: You do. Are you a client of his?

Mr. Barbour: No.

Mr. Sedam: Are you affiliated with him in any way, in any business way?

Mr. Barbour: No, sir.

Mr. Sedam: Or in any organization with which he is connected?

Mr. Barbour: No, sir.

Mr. Sedam: Are any of your relatives or close personal friends connected with the administration of the criminal law here in this State or in this county?

Mr. Barbour: No, sir.

Mr. Sedam: Do you know or have any association with any of the members of the Prosecutor's staff of detectives?

Mr. Barbour: No, sir.

Mr. Sedam: You don't know any of them?

Mr. Barbour: Except Mr. Hicks:

Mr. Sedam: No, his detectives, I said.

Mr. Barbour: Oh, no.

Mr. Sedam: Do you know any of the State Troopers?

Mr. Barbour: No.

Mr. Sedam: You have no affiliation with them in any way?

Mr. Barbour: No, sir.

Mr. Sedam: Have you ever been involved in a case, either directly or indirectly, where you or any

member of your family or any close friend has been the victim of a shooting or a killing by another person?

Mr. Barbour: No, sir.

Mr. Sedam: Mr. Barbour, would the fact that the defendant will admit in this case that he has previously been convicted of one or more crimes, not including any murder or any other crime involving personal violence to anyone and not in anywise connected with this charge of murder, influence your mind to an extent which would prevent you from acting dispassionately and fairly in accordance with your oath in determining his guilt or innocence under the evidence that is to be produced right here in court?

Mr. Barbour: It would not.

Mr. Sedam: Would the fact that the deceased was a State Trooper have any greater influence upon your mind than if the deceased happened to be a civilian?

Mr. Barbour: No.

Mr. Sedam: If the evidence to be produced before you, if you became a juror, revealed that this defendant did not fire the shot which caused the death, and that he didn't aid or abet in the killing, or if you have a reasonable doubt under the evidence on either point, would you permit this defendant's subsequent escape from the County Jail to influence or determine your verdict on the merits of the case, or would you regard same as any proof of guilt on the main charge of murder other than to the extent or in the manner permitted by the Court in his instructions to the jury?

Mr. Barbour: No, sir.

Mr. Sedam: You would be able to keep the subsequent events separate and apart from this main charge of murder?

Mr. Barbour: Yes, sir.

Mr. Sedam: Now, is there any reason that you know of, Mr. Barbour, any good reason to assign to this Court or to us, why you cannot serve as a juror and render a fair and true verdict in accordance with the evidence?

Mr. Barbour: There is none.

Mr. Sedam: Satisfactory.

(Chester R. Barbour was sworn as a juror.)

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Number 2, Harold Applegate.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion, either from reading about the case or talking about it with others, which would preclude him from giving a just and fair verdict in accordance with the evidence; and upon the further ground that the juror is so affiliated either by friendship or relationship with those in charge of the administration of the criminal law in this county as to influence his mind and thus prevent him from giving a just and true verdict in accordance with the evidence.

(Harold Applegate was sworn to tell the truth.)

Mr. Sedam: Mr. Applegate, you live in Raritan Township, don't you?

Mr. Applegate: Yes, sir.

Mr. Sedam: And you know some of the members of the constabulary, the police department, over in Raritan Township?

Mr. Applegate: Yes, sir.

Mr. Sedam: Are you on such intimate terms with any of them as to influence your mind in the matter of a case of this kind?

Mr. Applegate: No, sir.

Mr. Sedam: You know Under Sheriff or Deputy Sheriff Engel well, do you?

Mr. Applegate: I know him, yes, sir.
Mr. Sedam: Personally friendly with him?
Mr. Applegate: No, sir.
Mr. Sedam: What is that?
Mr. Applegate: No, sir, not friendly.
Mr. Sedam: You have talked about this case with somebody, haven't you, Mr. Applegate? I mean, have you talked about it?
Mr. Applegate: I have talked about it, yes, sir.
Mr. Sedam: And you have read about it?
Mr. Applegate: Yes, sir.
Mr. Sedam: Have you talked with any of the police officers about it?
Mr. Applegate: No, sir.
Mr. Sedam: Well, as a result of hearing about it or reading about it or talking about it, have you formed any opinion in your mind as to whether the defendant is guilty of this charge of murder or innocent of it?
Mr. Applegate: No, sir.
Mr. Sedam: You haven't formed any opinion? Your mind is open?
Mr. Applegate: Yes, sir.
Mr. Sedam: Now, do you know Mr. Hicks or Mr. Wight or Mr. Edgar, the Prosecutor and his assistants, respectively, in this county?
Mr. Applegate: No, sir.
Mr. Sedam: You don't know any of them?
Mr. Applegate: No, sir.
Mr. Sedam: Not a client of theirs?
Mr. Applegate: No, sir.
Mr. Sedam: Do you have any member of your family or any close personal friend connected with the police department there in Raritan Township or in any other municipality here in New Jersey?
Mr. Applegate: No.

Mr. Sedam: None of them on the force?

Mr. Applegate: No.

Mr. Sedam: And none of them are Prosecutor's detectives?

Mr. Applegate: No, sir.

Mr. Sedam: And none of them are in the State Constabulary.

Mr. Applegate: No, sir.

Mr. Sedam: Do you know any of the State troopers?

Mr. Applegate: No, sir.

Mr. Sedam: Have you ever been involved in a case, either directly or indirectly, where either you or any member of your family or close personal friend has been the victim of a shooting by another person?

Mr. Applegate: No, sir.

Mr. Sedam: That is, you never had a unfortunate thing like that?

Mr. Applegate: No.

Mr. Sedam: Now, would the fact, Mr. Applegate, that the defendant will admit in the course of this trial that he has previously been convicted of a crime or crimes, not involving a murder, not involving any crimes of personal violence, and not in any way connected with this particular case, influence your mind to an extent which would prevent you from acting dispassionately and fairly and in accordance with your oath in determining his guilt or his innocence under the evidence that is to be produced right here in this courtroom?

Mr. Applegate: No, sir.

Mr. Sedam: Would the fact that the man who was killed was a State trooper have any particular significance or bearing on the case any more than it would if it were some other person?

Mr. Applegate: No, sir.

Mr. Sedam: And if the evidence to be produced before you, assuming that you serve as a juror, reveals that the defendant did not fire the shot which caused death, and that he didn't aid or abet in the killing, or if you have a reasonable doubt under the evidence on either point, would you permit the subsequent escape of the defendant from the County Jail to influence or determine your verdict on the merits of the case, or regard same as any proof of guilt on the main charge of murder, other than to the extent and in the manner that is permitted by the Court in his instructions to the jury?

Mr. Applegate: No, sir.

Mr. Sedam: Do you know of any good reason why you cannot honestly and fearlessly serve as a juror and render a verdict in accordance with the evidence?

Mr. Applegate: I do not.

Mr. Sedam: You don't know.

Satisfactory.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

Now, Mr. Applegate, would you vote for a verdict of guilty of murder in the first degree if the evidence justified it?

Mr. Applegate: Yes, sir.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Applegate: Yes, sir.

Mr. Hicks: Satisfactory to the State.

(Harold Applegate was sworn as a juror.)

Number 19, Edna A. Christopherson.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(Edna A. Christopherson was sworn to tell the truth.)

Mr. Hicks: Now, Mrs. Christopherson, would you vote for a verdict of guilty of murder in the first degree if the evidence justified it?

Mrs. Christopherson: I would.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mrs. Christopherson: I would not.

Mr. Hicks: You would not?

Mrs. Christopherson: I would not. I don't believe in capital punishment.

Mr. Hicks: You have conscientious scruples against capital punishment?

Mrs. Christopherson: I have.

Mr. Hicks: Even though that is the law of the State of New Jersey?

Mrs. Christopherson: That is my feeling. I have other feelings of punishment.

Mr. Hicks: I challenge the juror for cause.

The Court: Challenge sustained.

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Number 24, Salvatore Chibbaro.

Mr. Sedam: Challenge upon the ground that the juror has formed a fixed opinion as to the guilt or innocence of the defendant based upon either hearing about or reading about this case, so that he would be precluded from giving a just and true verdict in accordance with the evidence; and upon the further ground that the juror is so

affiliated either through friendship or relationship with those in charge of the administration of the criminal law in this city or county that it would influence his mind and prevent him from giving a true verdict in accordance with the evidence.

(Salvatore Chibbaro was sworn to tell the truth.)

Mr. Sedam: Mr. Chibbaro, you live on Throop Avenue?

Mr. Chibbaro: No. 170 Remsen Avenue.

Mr. Sedam: And you are—it says here—in the insurance business?

Mr. Chibbaro: Yes.

Mr. Sedam: Have you heard about or read about this Metalski case?

Mr. Chibbaro: I have.

Mr. Sedam: From the newspaper and so forth?

Mr. Chibbaro: Yes.

Mr. Sedam: Have you discussed it with anyone?

Mr. Chibbaro: Very little.

Mr. Sedam: Have you formed any opinion from reading about or hearing about the case——

Mr. Chibbaro: No.

Mr. Sedam: (Continuing) any fixed opinion which would prevent you from giving a just and true verdict in accordance with the evidence?

Mr. Chibbaro: No.

Mr. Sedam: Are you or, as far as you know, any member of your immediate family a client or clients of Prosecutor Hicks?

Mr. Chibbaro: No, sir.

Mr. Sedam: Do you have any member of your family connected with or a member of either the

city police force or the State Constabulary or detective force of the Prosecutor's office?

Mr. Chibbaro: I haven't.

Mr. Sedam: Have you ever been involved in a case, either directly or indirectly, where you or a member of your family or any close friend has been the victim of a shooting or a killing at the hands of another person?

Mr. Chibbaro: No.

Mr. Sedam: Would the fact that the defendant will admit in this case that he has previously been convicted of one or more crimes, not including any murder or other crime involving personal violence or death, and not in anywise connected with this main charge of murder on which he is being tried, influence your mind to an extent which would prevent you from acting dispassionately and fairly and in accordance with your oath in determining his guilt or innocence under the evidence that is to be produced before you right here in court?

Mr. Chibbaro: The evidence that is produced here, I will guide myself by.

Mr. Sedam: That is what you will be guided by?

Mr. Chibbaro: Yes.

Mr. Sedam: If the evidence to be produced here reveals that the defendant did not fire the shot which caused death, and that he didn't aid or abet in the killing, or if you have a reasonable doubt under the evidence on either point, would you permit the fact that this defendant later escaped from the County Jail to influence or determine your verdict on the merits of the case, or regard same as any proof of guilt on the main

charge of murder other than to the extent or in the manner permitted by the Court in his instructions to the jury?

Mr. Chibbaro: Just what will be——

Mr. Sedam: Perhaps you don't understand my question. Just let me brief it in this way: The fact that the defendant escaped from jail later is to be kept separate, as I claim, in the minds of the jurors from what happened before, except insofar as the Court may instruct the jury that it may be competent in evidence, and would you be able to distinguish between the main charge of murder and the things that happened after it?

Mr. Chibbaro: No, just the main things that the discussion will be now.

Mr. Sedam: That is the point, that is to be taken up here in court.

Mr. Chibbaro: That is right.

Mr. Sedam: Do you know any reason why you should not serve as a juror in this case?

Mr. Chibbaro: No.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

Mr. Chibbaro, would you vote for a verdict of guilty of murder in the first degree if the evidence justified it?

Mr. Chibbaro: I would.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Chibbaro: I would.

Mr. Hicks: Satisfactory to the State.

(Salvatore Chibbaro was sworn as a juror.)

Number 95, James R. Quaid, Jr.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(James R. Quaid, Jr., was sworn to tell the truth.)

Mr. Hicks: Mr. Quaid, you live in Sayreville?

Mr. Quaid: Yes, sir.

Mr. Hicks: Now, would you vote for a verdict of guilty of murder in the first degree if the evidence justified it?

Mr. Quaid: Yes, sir.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Quaid: Yes, sir.

Mr. Hicks: Satisfactory, I think.

Mr. Sedam: Challenge upon the ground that the juror has formed a fixed opinion based either upon hearing or reading about this case which would preclude him from giving a just and true verdict in accordance with the evidence; and upon the further ground that the juror is so connected either by friendship or relationship with those in charge of the administration of the criminal law in this county, so that it would influence his mind and prevent him from giving a just and true verdict in accordance with the evidence.

Mr. Quaid, I see you live in Sayreville, and your occupation is what, sir?

Mr. Quaid: Mechanic.

Mr. Sedam: What?

Mr. Quaid: Mechanic.

Mr. Sedam: You have hard about this case and read something about it, Mr. Quaid?

Mr. Quaid: A little of it.

Mr. Sedam: Have you formed any fixed opinion as to the guilt or innocence of the defendant?

Mr. Quaid: No, sir.

Mr. Sedam: Are you or, as far as you know, any of your immediate family personal clients of Prosecutor Hicks or of Mr. Wight or of Mr. Edgar?

Mr. Quaid: No, sir.

Mr. Sedam: Are any members of your family connected with the administration of criminal law there in the community where you live?

Mr. Quaid: Only my cousin.

Mr. Sedam: What is that?

Mr. Quaid: My cousin is just assistant surrogate.

Mr. Sedam: Oh, no. Well, I said, criminal law.

Mr. Quaid: No.

Mr. Sedam: Do you have any close personal friends among the group of detectives connected with the Prosecutor's office?

Mr. Quaid. No, sir.

Mr. Sedam: Detective Collins lives down your general direction?

Mr. Quaid: Just know him by sight, that is all.

Mr. Sedam: Do you come in personal contact with any of the members of the State Constabulary?

Mr. Quaid: No, sir.

Mr. Sedam: Mr. Quaid, have you ever been involved in a case, either directly or indirectly where either you or any member of your family or any close personal friend has been the victim of a shooting or a killing at the hands of somebody else?

Mr. Quaid: No, sir.

Mr. Sedam: Would the fact that the defendant

will admit during the course of this trial that he has previously been convicted of one or more crimes, not including any murder charge or other crime involving personal violence or death, and not in anywise connected with this present case, influence your mind to an extent that it would prevent you from acting dispassionately and fairly and in accordance with your oath in determining his guilt or innocence under the evidence that is to be produced right here in this courtroom?

Mr. Quaid: No, sir.

Mr. Sedam: Would the fact that the deceased was a State Trooper have any greater influence——

Mr. Quaid: No, sir.

Mr. Sedam (Continuing): —upon your mind than if it were somebody else?

Mr. Quaid: It wouldn't make any difference.

Mr. Sedam: You read in the paper or heard about the defendant's escape from jail, didn't you?

Mr. Quaid: Yes, sir.

Mr. Sedam: Would you be able to keep separate in your mind the events subsequent to his arrest on this charge and under this indictment which is to be tried?

Mr. Quaid: I would.

Mr. Sedam: Except insofar as the Court may give instructions to the jury pertaining to that.

Mr. Quaid: Yes, sir.

Mr. Sedam: Do you know of any reason, Mr. Quaid, why you cannot honestly and fearlessly act as a juror in this case and render a verdict in accordance with the true evidence to be produced here?

Mr. Quaid: I don't know of any reason.

Mr. Sedam: Satisfactory.

(James R. Quaid, Jr., was sworn as a juror.)

Number 113, Mary A. Walters.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion, either from hearing about or reading about this case, which would preclude her from giving a just and true verdict in accordance with the evidence.

(Mary A. Walters was sworn to tell the truth.)

Mr. Sedam: You live where, Madam?

Mrs. Walters: In Jamesburg.

Mr. Sedam: I think your occupation is given as housewife.

Mrs. Walters: Housewife.

Mr. Sedam: You have heard about and read about this case, Mrs. Walters, have you?

Mrs. Walters: Yes.

Mr. Sedam: And have you talked it over with anybody?

Mrs. Walters: Not in particular.

Mr. Sedam: Since you were summoned as a juror in this case, have you discussed it with anybody?

Mrs. Walters: No.

Mr. Sedam: Have you formed any fixed opinion in your mind as to the guilt or the innocence of Mr. Edward Metalski?

Mrs. Walters: No.

Mr. Sedam: If you serve as a juror, will you give the defendant the benefit of every reasonable doubt that is permitted by law on the evidence that is produced right before you in this courtroom?

Mrs. Walters: Yes.

Mr. Sedam: Do you know of any valid reason why you could not or cannot serve as a juror, Mrs. Walters?

Mrs. Walters: No.

Mr. Sedam: None of the members of your immediate family are connected with the administration of the criminal law, are they?

Mrs. Walters: No.

Mr. Sedam: Satisfactory.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

Now, Mrs. Walters, if the evidence justified it, would you vote for a verdict of guilty of murder in the first degree?

Mrs. Walters: Yes.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mrs. Walters: Yes.

Mr. Hicks: Satisfactory to the State.

(Mary A. Walters was sworn as a juror.)

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Number 101, John J. Ryan.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(John J. Ryan was sworn to tell the truth.)

Mr. Hicks: Now, Mr. Ryan, would you vote for a verdict of guilty of murder in the first degree if the evidence justified it?

Mr. Ryan: Yes.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Ryan: Yes, sir.

Mr. Hicks: Satisfactory to the State.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion as to the guilt or innocence of the defendant based either upon hearing about or reading about the case; and upon the further ground that the juror is so connected either by friendship or relationship with those in charge of the administration of the criminal law in this county, so that it would influence his judgment and prevent him from giving a just and true verdict in accordance with the evidence.

Mr. Ryan, you live where?

Mr. Ryan: South Amboy.

Mr. Sedam: And your occupation is?

Mr. Ryan: Contractor.

Mr. Sedam: You have read about and talked about this case, haven't you?

Mr. Ryan: Yes, sir.

Mr. Sedam: Have you discussed it since it became known that you were to be a juror here?

Mr. Ryan: No, sir.

Mr. Sedam: Have you formed any fixed opinion as to the guilt or innocence of the defendant, Metalski?

Mr. Ryan: No, sir.

Mr. Sedam: Do you know Mr. Wight or Mr. Edgar or Mr. Hicks?

Mr. Ryan: No, sir.

Mr. Sedam: Do you know who I mean, the Prosecutor and his two assistants?

Mr. Ryan: Yes.

Mr. Sedam: When I say, do you know them, I mean, are you connected with them in any direct way?

Mr. Ryan: No way whatsoever.

Mr. Sedam: Have you any personal friendship or relationship with any of the members of the Prosecutor's detective staff?

Mr. Ryan: No, sir.

Mr. Sedam: Do you know some of them?

Mr. Ryan: No, sir.

Mr. Sedam: Do you know any of the State police, State troopers?

Mr. Ryan: No, sir.

Mr. Sedam: You don't even know any of them?

Mr. Ryan: Not personally.

Mr. Sedam: Do you know the Sheriff of the county, Mr. Harding.

Mr. Ryan: I know of him.

Mr. Sedam: Mr. Ryan, have you ever been involved in a case, either directly or indirectly, where either you or any member of your family or any close friend has been the victim of a shooting or killing at the hands of any other person?

Mr. Ryan: No, sir.

Mr. Sedam: Would the fact that the defendant admits that he has, or will admit that he has previously been convicted of one or more crimes, not including any murder or other crime involving personal violence or death, and not in any way connected with this present charge of murder, influence your mind to an extent which would prevent you from acting dispassionately and fairly in accordance with your oath in determining his guilt or innocence under the evidence that is to be produced right here in court?

Mr. Ryan: No, sir.

Mr. Sedam: Would the fact that the man killed was a State trooper have any greater influence upon your mind that if it were any other person?

Mr. Ryan: No, sir.

Mr. Sedam: If the evidence to be produced here reveals that the defendant did not fire the shot which caused death, and did not aid or abet

in the killing, or if you have a reasonable doubt under the evidence on either point, would you permit this defendant's subsequent escape from the County Jail to influence or determine your verdict on the merits of the case, or regard same as any proof of guilt on the main charge of murder, other than to the extent or in the manner permitted by the Court in his instructions to the jury?

Mr. Ryan: No, sir.

Mr. Sedam: Do you know of any reason why you cannot fearlessly and honestly act as a juror in this case and give a just and true verdict on the evidence to be produced right here?

Mr. Ryan: No, sir.

Mr. Sedam: Satisfactory.

Mr. Hicks: Satisfactory.

(John J. Ryan was sworn as a juror.)

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Number 14, Jasper H. Boehm.

Mr. Sedam: Challenged peremptorily.

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Number 100, Dennis T. Ryan.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(Dennis T. Ryan was sworn to tell the truth.)

Mr. Hicks: Now, Mr. Ryan, if the evidence justified it, would you vote for a verdict of guilty or murder in the first degree?

Mr. Ryan: I would.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Ryan: I would.

Mr. Hicks: Satisfactory.

Mr. Sedam: Challenged peremptorily.

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Number 12, Peter Barbieri.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion as to the guilt or innocence of the defendant based upon either reading about or hearing about the case, so that he would be precluded from giving a fair and true verdict in accordance with the evidence; and upon the further ground that the juror is so connected with those in charge of the administration of the criminal law in this county, either through close association or relationship, so that it would influence his mind and prevent him from giving a just and true verdict in accordance with the evidence.

(Peter Barbieri was sworn to tell the truth.)

Mr. Sedam: I note, sir, that you are a merchant, with a place of business or living at 131 Washington Street, Perth Amboy.

Mr. Barbieri: Yes, sir.

Mr. Sedam: Sir?

Mr. Barbieri: Yes, sir.

Mr. Sedam: You have heard about this Metalski case, I presume?

Mr. Barbieri: Yes, sir.

Mr. Sedam: You have read about it?

Mr. Barbieri: A little.

Mr. Sedam: Have you discussed it with anyone?

Mr. Barbieri: No, sir.

The Court: Mr. Sedam and Mr. Hicks.

(Discussion at the bench.)

The Court: Are you the man that came to see me about your business?

Mr. Barbieri: Yes, sir.

The Court: All right. You are excused from service.

Mr. Barbieri: Thank you.

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Number 91, Harry S. Platt.

The Court: This man is very hard of hearing. Do you want him to be excused?

Mr. Sedam: Are you hard of hearing, sir?

Mr. Platt: Slightly. My right ear is gone entirely.

Mr. Sedam: I would like to exercise the right of a challenge.

The Court: You challenge him?

Mr. Sedam: Yes.

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Number 22, James A. Casey.

Mr. Hicks: The State challenges on the ground that the juror has conscientious scruples against capital punishment.

(James A. Casey was sworn to tell the truth.)

Mr. Hicks: Mr. Casey, if the evidence justifies it, would you vote for a verdict of guilty of murder in the first degree?

Mr. Casey: I would.

Mr. Hicks: Would you vote for such a verdict knowing that it meant the defendant would be sentenced to die in the electric chair?

Mr. Casey: I would.

Mr. Hicks: Are you by any chance a client of Mr. Sedam's?

Mr. Casey: No.

Mr. Hicks: Satisfactory to the State.

Mr. Sedam: Challenge upon the ground that the juror has formed an opinion either as to the guilt or innocence of the defendant based upon hearing about or reading about this case; and upon the further ground that the juror is so connected with those in charge of the administration of the criminal law in this county, either through friendship or relationship, so that it would influence his mind and prevent him from giving a just and true verdict in accordance with the evidence.

Mr. Casey, your business is what?

Mr. Casey: Carpenter.

Mr. Sedam: Carpenter. You have heard about and talked about this case, haven't you?

Mr. Casey: Yes, sir.

Mr. Sedam: Have you formed any opinion as to the guilt or innocence of the defendant?

Mr. Casey: No.

Mr. Sedam: Are you connected with the administration of the criminal law in any way in this county?

Mr. Casey: No, sir.

Mr. Sedam: Do you have any relative who is a member of the constabulary, either the police department or detective force or the State Constabulary?

Mr. Casey: No, sir.

Mr. Sedam: Do you know any of the members of the Prosecutor's detective staff?

Mr. Casey: Just to see.

Mr. Sedam: Are you associated with them in any way?

Mr. Casey: No, sir.

Mr. Sedam: Do you know Sheriff Harding?

Mr. Casey: Just to see.

Mr. Sedam: Just to see?

Mr. Casey: That is all.

Mr. Sedam: Mr. Casey, have you ever been involved in a case, either directly or indirectly, where you or any member of your family or any close friend has been the victim of a shooting or a killing at the hands of any other person?

Mr. Casey: No, sir.

Mr. Sedam: Would the fact that the defendant will admit in this case that he has previously been convicted of one or more crimes, not involving murder or any act of personal violence, and not in any way connected with this present case, influence your mind to an extent that would prevent you from acting dispassionately and fairly and in accordance with your oath in determining his guilt or innocence under the evidence that is to be brought forth right here in court?

Mr. Casey: No.

Mr. Sedam: Would the fact that the man who was unfortunately killed was a State Trooper have any greater or different effect upon your mind than if it were some other person?

Mr. Casey: No, sir.

Mr. Sedam: If the evidence produced before you here reveals that the defendant didn't fire the shot which caused death, and that he didn't aid or abet in the killing, or if you have a reasonable doubt under the evidence on either point, would you permit the fact that the defendant's later escape from the County Jail to influence or determine your verdict on the merits of the case, or regard same as any proof of guilt on the main charge of murder other than to the extent and in

the manner that the Court may permit in its charge to the jury?

Mr. Casey: Right.

Mr. Sedam: It would not influence you?

Mr. Casey: It would not influence me, no.

Mr. Sedam: Do you know of any good reason, Mr. Casey—do you know of any good reason why you should not serve as a juror in this case and be able to give a just and true verdict in accordance with the evidence?

Mr. Casey: No.

Mr. Sedam: You don't know of any?

Mr. Casey: No.

Mr. Sedam: Satisfactory.

Mr. Hicks: Satisfactory.

(James A. Casey was sworn as a juror.)

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The Court: Now we will take a recess for five minutes. Let the officers see that during the recess the defendant and the jurors are properly in custody. I suggest that no one goes out during this recess unless it is necessary to go.

( A short recess was had.)

The Court: You may proceed.

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## OPENING STATEMENT ON BEHALF OF STATE.

Mr. Hicks: Now, if it please the Court, Madam Foreman, and Members of this Jury:

You are impaneled to try an indictment charging Edward Metalski with the murder of a State Trooper named Warren G. Yenser. The indictment alleges that this defendant, Edward Metalski, wilfully, feloniously, and his malice afore-

thought, did kill and murder one Warren G. Yenser.

Now, that is a charge of murder in the first degree, and for you to find this defendant guilty of murder in the first degree, the State must prove one of three things: First, that this defendant himself deliberately and with malice aforethought killed this Warren G. Yenser; or, secondly, that this defendant aided and abetted and assisted in the murder of Trooper Yenser; and the third, that Yenser was killed by this defendant or by a man aiding and assisting and cooperating with this defendant while engaged and attempting to escape from the commission of another offense, in this particular instance, robbery, and while the robbers were in possession of the loot, which they got as a result of the robbery, and in order to escape and get away from the forces of the law.

If you find that this defendant is guilty, either he himself killed this trooper or that he aided and abetted in the killing of the trooper, or that the killing took place while the defendant was escaping or engaged in protecting loot from a robbery, then, it is your duty to find him guilty of murder in the first degree.

It is the first of the matters that the State is largely interested in, because the State expects to prove to you, Ladies and Gentlemen of the Jury, that this defendant was the one who, in the early morning of November 9, 1935, shot and killed Trooper Yenser of the New Jersey State Police. The State will show you by witnesses that at the time this shooting took place, Trooper Yenser, together with Trooper Matey, had been assigned to patrol the super-highway; that while they were out on this patrol duty they were at a

New Jersey State Library

point about four or five miles west of New Brunswick on this straight turnpike, the road to Trenton; that they noticed a coupe bearing Pennsylvania license plates proceeding along that highway towards New Brunswick at a very high rate of speed.

They started in a Ford automobile belonging to the State Police to pursue this Pennsylvania coupe. They pursued that automobile for some time, and finally lost sight of it. They then started to retrace the road and go back towards New Brunswick, thinking that possibly they might have missed it. As they passed along the highway going back in the direction from which they had come, they observed this car coming towards them, going towards Rahway. This time they were the other side of the Raritan River. They passed over the bridge across the Raritan.

They turned around immediately and started in pursuit of this Pennsylvania automobile again; and they got up close to it, blew a signal for it to stop, and the Pennsylvania auto slowed up. They then slowed up, too, intending to pull in back of the Pennsylvania car; but instead of coming to a complete stop, this Chevrolet automobile started again to speed up, and went on.

Troopers Matey and Yenser again started in pursuit, and Trooper Matey, who will be a witness for the State, was the driver of the troopers' automobile. Trooper Yenser, who was murdered, was sitting alongside of Matey on his right side, in the front seat of this Ford automobile. As they got alongside of the Chevrolet coupe, the Pennsylvania automobile, Trooper Yenser put his whistle in his mouth and was just on the point of blowing that whistle, to indicate to the two men in this Chevro-

let coupe that they should stop, when a man in this Chevrolet coupe, using a sawed-off shotgun, which will be introduced in evidence, fired the gun. The full charge from that gun was received by Yenser right in the face, and he was instantly killed—practically instantly killed.

He slumped down in the seat, against his fellow trooper, Matey, who was driving the automobile; and Matey took up the pursuit and, in fact, fired several shots at this Pennsylvania automobile which he was pursuing. In the course of this pursuit, this defendant and the man who accompanied him, whom we will show was a man named Morton, broke out the back window of this Chevrolet coupe, and they fired several more shots, and the State says that this defendant was the one that fired those several more shots, both from the shotgun and also from a revolver. One of the bullets from the revolver was fired at the State troopers' automobile on that particular morning was subsequently found in the radiator of the troopers' car.

Trooper Matey, with his dead companion alongside of him, continued this chase until he reached a point in Linden where there was an all night restaurant or lunch wagon. At that time this defendant, in the Chevrolet coupe, and his companion had gotten so far ahead that Matey decided to stop and give a warning. The place where the shooting actually took place is in Woodbridge Township, in Middlesex County, at a point between the intersection of the super-highway and Amboy Avenue and Green Street, which goes from Iselin to Woodbridge.

Trooper Matey stopped at this lunch wagon, directed the lunch wagon man to call the State

Police, and get another man who was in the lunch wagon at the time to go with him in the automobile to the Elizabeth General Hospital, where Trooper Yenser was pronounced dead.

The alarm went out, and the Elizabeth police officers on patrol in Elizabeth, having received the alarm, two officers on foot, Officers Morris and Geiger, noticed this automobile coming through Elizabeth at a high rate of speed. One of them called the Elizabeth Police Headquarters and informed them of it. The other commandeered a taxi cab, and the two of them started in pursuit, but they lost the car. The car continued down through Elizabeth, and reached a section in the eastern part of Elizabeth called the "meadows," when it was observed by one of the radio patrol cars of the Elizabeth police force. This car started in pursuit, with the result that after a chase of four blocks, this defendant, Metalski, and his companion jumped out of this automobile and started to run, and the Elizabeth patrolmen started in pursuit.

We will show you that the taller of the two, Morton, who had a light felt hat on, and who was the driver of the Chevrolet coupe, the operator of this Chevrolet Pennsylvania automobile which was used in the case, turned and ran over through the railroad yards. The Elizabeth patrolman, believing that he had a better chance to get Metalski, continued on in pursuit of Metalski. During the course of this chase, the defendant, the man who is on trial before you, turned and fired one more shot at the Elizabeth patrolman, and the Elizabeth patrolman fired at him. He, however, succeeded in escaping.

Subsequently, at around seven o'clock that morning, and this actual shooting took place around

4:45 or a little before five o'clock; but around seven o'clock that morning Officer Geiger entered the railroad station at Elizabeth, and on questioning the ticket agent, found that a purchase had been made of a ticket to Philadelphia. He went upstairs to the waiting-room, and in the waiting-room found this defendant. This defendant had a dark colored hat and an overcoat on; and in his pockets the ticket to Philadelphia was found, and also a considerable amount of cash, silver, quarters, nickels, dimes, half dollars, and two silver dollars, also the defendant had a flashlight with him at the time of his arrest.

The defendant was taken to Elizabeth Police Headquarters. This Pennsylvania Chevrolet automobile was brought there. It was found that this automobile had been stolen from Philadelphia earlier the night before, and in the automobile, at the time that these defendants abandoned it, there was a sawed-off shotgun, which will be introduced into evidence, and which is the gun used in the murder of Trooper Yenser.

There were two discharged shells. There were several loaded shells of the same type as those discharged. The shotgun had been reloaded. There were two loaded shells for that shotgun. There was also found in this automobile two bottles of liquor, one of cognac and one of Overholt whiskey, both of which bottles had been stolen in connection with the robbery of a tavern or saloon on Ridge Avenue, Philadelphia, at about one or two A. M. that morning of this shooting. Among the cash which was found on the person of this defendant were two silver dollars. We will show you that those two silver dollars had been taken in in trade

in the course of the business conducted by this tavern the day prior to the shooting.

The defendant was questioned. He said that he had left Philadelphia the noontime of the day before. We will show you by testimony—reliable witnesses—witnesses that you can believe—that this defendant went over to Morton's home at about eight o'clock P. M. on the night before this shooting. Now, this is a Friday night, and that he and Morton went out together; that subsequently they held up this tavern, this saloon on Ridge Avenue in Philadelphia; that they took these two bottles of liquor. We will show you that the finger prints of this defendant are on the bottle of Overholt whiskey; that after this holdup, and at the time of this holdup, that this defendant and his companion used in connection with that holdup a sawed-off shotgun and a revolver; that after the holdup, they proceeded over to New Jersey in this stolen car; that they stopped here at a lunch wagon in Middlesex County; that one or more of the people that were in the lunch wagon at the time of their visit, which was in the early morning of the day that this crime was committed, had a drink out of the bottle; that this defendant subsequently went out and got in the car, together with his companion, and proceeded towards Elizabeth.

We will show you by testimony of witnesses that this defendant was the man who was sitting alongside of the driver, that he was the passenger in this automobile. We will show you further that at the time when the escape from this automobile was made, when he and his companion left this automobile shortly after the shooting, that in addition to other things that were left by Morton and his companion, this defendant, there was a

button with a few shreds of cloth, and that that button and those shreds of cloth absolutely check up and conform to the overcoat which this defendant, Metalski, had on at the time that he was arrested in the Elizabeth railroad station.

Now, there are other facts and other testimony which the State will show to you and will prove to you to sustain the charge made in this indictment. It is unnecessary that we acquaint you with all the circumstances and all the facts, but in this opening I have tried to give you an outline of what the State's case will be, and what the testimony is going to be that will be produced before you. If we show you the facts, then, naturally, Ladies and Gentlemen of the Jury, we will ask for a verdict at your hands of guilty of murder in the first degree as to this defendant.

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## OPENING STATEMENT ON BEHALF OF DEFENSE.

Mr. Sedam: Ladies and Gentlemen of the Jury: May I say at the very beginning of my remarks that never before in all of my years of practice have I had a man which placed a greater responsibility upon my mind and upon my judgment than does this case. I have been assigned by the Court to represent the interests of this defendant, who is charged with first degree murder; and my only thought is that perhaps I may not prove equal to the task; that I may not do full justice in presenting to you his story and in properly preserving his legal rights as far as counsel has the duty of so doing.

*Opening Statement on Behalf of Defense.*

At the very outset—this in no summation—may I say to you, especially if there be those of you who have not served in a capital case before, bear in mind right from the beginning that this defendant is here charged in an indictment with having wilfully, feloniously, and of his malice aforethought, killed Trooper Yenser; and that our defense is that he didn't fire the shot which killed Trooper Yenser.

Now, the Prosecutor in his opening has said to you that the State must show one of three things, and one of them was that this defendant fired the shot that killed the trooper, or that he was present, aiding and abetting; and then, if I understood correctly, the third point was, that he said that Metalski fired the shot which killed the man.

So, I take it, that I have the right from this point on in my opening, the right to understand that the Prosecutor is going to unequivocally prove to you, Ladies and Gentlemen of the Jury, that Edward Metalski fired the shot that killed the trooper. Now, what is our defense in this case, Ladies and Gentlemen?

I come in this court as an officer of this court, charged with the duty to be honest with the Court and with the jury, and, yes, with the Prosecutor's office; and the same story that Metalski told me when I first saw him, regardless of any subsequent developments, which you have pledged on your oath and your honor to keep out of your minds, except as the Court may refer to them, the very story he told me at the beginning is the story which will be unfolded to you here today; and that story, so far as I know or have been able to determine, is a true story, be it for him or against him.

*Opening Statement on Behalf of Defense.*

Ladies and Gentlemen, Metalski is twenty-six years old. He has a mother, a father, and a little sister. They live in Newark. Metalski, unfortunately, has not been the most desirable citizen of the world. He does not profess or claim that he is; and he is going to tell you, with the Court's permission, everything that he has been convicted of before the State ever has to tell you about it or gets a chance to tell you about it; and when he unfolds what he has done and what he has been convicted of, and what he has paid his debt to society for, you won't find among them—and I say it in the hope and belief that I am correct—that the State can't show that Metalski has ever committed a murder or a crime involving personal violence.

Now, I am not going to take the time of this Court and jury to give the outline at this moment of this career of Metalski, other than to begin at the point where Metalski was in State's Prison at Trenton. I have to give you this, so that you may understand the connecting links in our defense which is to be here presented. There is another name connected with this case, which is not before you in the indictment, and that name is of one Morton, whose nickname was "Whitey" Morton, as I understand it.

Morton was in the New Jersey State Prison. Metalski was in the New Jersey State Prison; and despite the fact that they had known each other since 1931, they were not sent there from the same county or for the same offense; but they happened to see each other in the New Jersey State Prison. Metalski's term expired first. Morton, in the course of things, told Metalski to hunt up his girl friend or lady friend, named Dorothy Johnson, in Philadelphia. When Metalski

came out of State's Prison in 1933, he hunted up Dot Johnson, Dorothy Johnson, in Philadelphia, he having been told by Morton that she would do whatever she might to help, or whatever she could to help Metalski. I don't know what the parlance is in that particular circle of friends and acquaintances; but, be that as it may, Metalski formed an alliance or an association or whatever you want to call it with this Dot Johnson while her beau was still in the State's Prison at Trenton; and they went off together, and landed—leaving out the details of the in-between—landed in North Carolina. Down in North Carolina, they committed offenses there for which they came into the toils of the law.

Those things will be told to you in more detail, and as a result of their actions there and of the offenses committed, both of them were sent to prison in North Carolina; the woman to a women's prison, and he to a men's prison, in different parts of the State. Metalski was transferred to the prison camp, and while there in the prison camp, after some months, as he says, being slow in doing the job, he thought that he would like to be away from there, and he dropped in a hole as they were going across the fields, and subsequently escaped from that prison camp in North Carolina.

He then began to work his way north again. That was on August 16 of this year, 1935. On August 31 of this year, Dorothy Johnson was released from the women's prison in North Carolina. Metalski had told her—I presume as a sort of reciprocity, helpfulness—to go to his mother's home, in Newark, when her term was up. Metalski was sentenced down there for a longer period. That will be brought out in the evidence.

When this Johnson woman did come north, she went to the home of Metalski's mother, in Newark, at Number 48 Lentz Avenue, and lived there for a period of several weeks, Mrs. Metalski obtaining employment for her in an upholstery place in Newark, conducted by a woman who is here in this courtroom today. Now, my object in getting this before you, Ladies and Gentlemen of the Jury, is that we can readily show to you that this Dot Johnson, who was the girl friend of Morton, was living at the Lentz Avenue address on November 9, which is the date mentioned in this indictment.

Meanwhile, on September 14 of this year, 1935, Metalski, the defendant, had married a girl in Philadelphia, here was his friend, so to speak, Dot Johnson, living at his mother's house, in Newark, he not having having seen her, as I understand it, from the time she was committed to the women's prison in North Carolina. In any event, the association between this Dot Johnson and Metalski was at an end and had been for months and months, but what of Morton?

Morton—Morton, the man who committed suicide two days after this occurred—what of Morton? What do you suppose his feelings were towards Metalski, the man who had swiped his girl, so to speak? Morton sent word to Metalski, "I want to see you", and you heard the Prosecutor say, "We will show you that Metalski went around to Morton's house on this evening of November 8". Absolutely, we admit he went around there, because Morton had gotten the word to him that he wanted to see him, and he wanted to see him "damn quick", and he went there and found Morton and another woman. I don't know who she was, perhaps Mrs. Morton. I don't say that disparagingly, but he found Morton there, and he stayed there a little while with Morton,

and they went out of the house, as the Prosecutor says.

Morton told Metalski—you remember, Metalski had not been to Newark in a long while—he told him, "You take me to my girl, and tell me where she is, and take me to her, or I will give it to you". Now, I never saw Morton. None of you have, but unless I am very much mistaken, his physical proportions were considerably more powerful than are Metalski's, and he told him, "You take me to my girl, or I will give it to you".

Now, here is Metalski. He is about five feet six. I would say, somewheres here on me (indicating). He weighs one hundred and forty-odd pounds. Not a killer, not a man who has been engaged in brawls. He has broken into places, and he has stolen things, yes, but he is not a man of big physical proportions, and, possibly, not of great daring, and he was scared, and I will tell you, anybody else would be scared when a man like Morton tell you, "You take me to my girl, or I will give it to you". You can steal money. You can steal other things, but I can well imagine in certain circles in this great country of ours, it is not exactly according to Hoyle or a very wise and proper thing to do to steal the other fellow's girl.

Metalski had a wife, recently acquired, legitimately married to her, I am informed, and he had to square himself with her, and so when Morton said, "Take me to my girl", and knowing that she was somewhere in Newark, Metalski agreed to comply; but they didn't have any money, and they didn't have any car. Now, how are they going to get there? How are they going to make this trip? I haven't got a lot of witnesses in this case, Ladies and Gentlemen. Where in Heaven's name

would they come from? Where would they come from in this particular kind of case?

On this night, Morton and Metalski went out and made a number of stops to see friends, alleged friends of Morton's, to try to get money. Apparently, they didn't succeed, and they didn't have any car; and the suggestion emanated with Morton that they go to this garage in Philadelphia, this place that Morton knew, where he knew one of the workers or assistants there, and "I think I can get a car". They went there, and, as I understand the story, the garage attendant offered Morton a car, at his request, provided it was returned there in the early morning before the boss or the owner of the car got there. In any event, they took this car out. They got this car out of the garage. It was not a stolen car, in the sense of the word. It was wrongfully procured in that the proper person had not given them the authority to take it out, but an attendant did let them take it out on the word that it would be back in the morning. Wrong? Of course, it was wrong. So, in that car, they made some more stops. Morton, the man who had charge of the expedition, the man who was insisting that Metalski take him and deliver him to his girl.

Now, a robbery in Philadelphia? Yes, sir, and yes, mam. A robbery in Philadelphia there was. There is no denying or lying about it. These two men, after the car had been procured, but, as we say, at the instigation of Morton, who had this shotgun in his car and a revolver in his pocket, went to this place. Now, am I going to paint Metalski as the little innocent boy? No, I am not at all. He knew they were after money, after some money, just the same as Morton knew it, and

he went in this saloon with Morton, and Morton pointed his gun, and herded four people in the toilet in the saloon, and Metalski went around behind the bar and took the money out of the cash register, and also grabbed two bottles of liquor off the bar, and they ran out to this car.

Where were they going? Both of them, as we will show you, had been drinking considerably. Where were they going? What was their destination? Newark, New Jersey, at Morton behest, to see Dorothy Johnson, and that is what brings them out, Ladies and Gentlemen, on this highway, Number 25.

Now, what do they do on the highway? The Prosecutor says, "Well, they were fleeing, fleeing from a robbery". Now, I ask you, in the light of what I am to say in these subsequent words of my opening and to bear in mind as the case proceeds: What did they do? They came along this highway, Route 25. I don't know whether the Prosecutor said, "We will show that they stopped in a gas station", or not, but we say they stopped in a gas station, and they took the bottles of liquor, finger prints all over them, Ladies and Gentlemen,— took the bottles of liquor and offered them to the gas attendants to take some drinks with them, which, I understand, they did. Then they came along, sauntering along to a restaurant here on this new highway, an eating place, and they go in there. They take the bottles of liquor in with them and offered drinks to the people in the place— forced it on them, practically, and the people in there took some drinks with them.

Talk about fleeing from a robbery? Why, they were doing everything, you might say, to put themselves in the way of being captured. Then what?

The Prosecutor says, "Driving fast along the highway". All right. He says that Morton was driving the car. The only person in this world who actually knows who was driving the car is Metalski, and Metalski says, or will say, that he absolutely was driving the car all the way from Philadelphia. You heard the Prosecutor say they were going along the road at a very fast rate of speed when they were being pursued. They certainly were in the early morning hours going, we say, between sixty and seventy miles an hour. What was their destination? Were they engaged in the commission of a crime? Hadn't that taken place several hours before? Hadn't they stopped at several places and broken the continuity of the thing? That is what we will show you—that they had; and as they came along this highway, the Prosecutor says the trooper blew a whistle. Metalski says, personally, he didn't hear any whistle blown, although he is not going to try to say it was not blown; but he says the troopers didn't come up alongside of their car.

I hope that the Court, before this case is over, will permit or will grant my request to have you jurors view the coupe, which is, as I understand it, in storage here just a block or so away. You will there see that the rear window is broken out of that coupe. It was broken out by Morton, who picked up this shotgun from the seat alongside of him and knocked the window out, and fired out of the rear window of this car. That is how the shot was fired, and we claim that the car itself gives evidence of the fact that this window was broken out by Morton.

Now, the troopers' car did not come up alongside of the other car, and after the shot was fired out

of the rear window, the coupe proceeded on, and the other car dropped behind. As far as I know, or as far as I have been able to learn in my investigation in preparation of this case, Morton or Metalski, neither of them knew at that time what, if anything, had happened. They simply knew that the car had slowed down. This, as I understand it, occurred between Avenel and Rahway, on Route 25——

Mr. Hicks: Between Amboy Avenue and the Green Street crossing.

Mr. Sedam: All right. Wherever it was, they continued on to the crossing at Linden, New Jersey, on this Route 25. Metalski stopped his car for the traffic signal. Two policemen standing over there on the corner at Linden—kept on the road, the outskirts of Elizabeth, as I understand it, and wound up in the vicinity of the Singer Sewing Machine plant, at Elizabeth.

I, of course, can't tell you, and it is not part of my case, or I don't know anything about what the pursuit of the officers had been in and around Elizabeth. I do know this from what Metalski has told me, that when they saw this police car coming towards them in Elizabeth, they did get out and run. Now, where did Metalski go to? Where did he go to? He could not have done a thing to more openly walk into the hands of the authorities than he did. He went directly down to the Elizabeth, New Jersey, Pennsylvania Railroad Station at seven o'clock in the morning, or thereabouts, and went in and bought a ticket for Philadelphia, the very place that he had just come from. When I say, "Just come from," had come from several hours before—right back to Philadelphia was he going on the train, and by chance, by good fortune,

picked him up so-called, not for Metalski, but a policeman came in there, and you heard the Prosecutor tell about picking the man up, finding a flashlight in his pocket, yes. I didn't hear the Prosecutor say any place where the flashlight had been used at any time, finding a lot of change and some bills in his pockets. Yes, he certainly had the change and the bills in his pockets; and he told the officer that he had been in a crap game; that he had been over in Newark, I think he said, to see his mother, which, of course, was not truthful.

They took him into custody. The officer, in the station at Elizabeth, didn't say a word to him about being wanted for any crime, any offense; didn't say a word about any trooper having been shot or having been killed. The authorities didn't know it themselves at that time, I don't believe. Just the same way it is, as part of our defense, that the troopers at the time they were chasing this car out on the highway didn't know anything about a crime having been committed in Philadelphia. That is our contention, and no reference to it was made to Metalski for hours after that. Metalski didn't talk.

Now, where did Morton go? What am I talking about, anyway? Where did Morton go? Morton kept right on this straight line, the point of his destination, and went to Newark to the home of the mother of this defendant, at 48 Lentz Avenue, and there met this Dot Johnson, to whom I have referred. The first time that he had seen her in a long, long time, but his wish was fulfilled. The Johnson woman had four dollars and a half due to her from Mrs. ———, in Newark, the woman who conducted this upholstery place, makes slip covers and table covers and whatnot, but we will

show you that Dot Johnson went with this man Morton and collected her four dollars and fifty cents, saying something about having to have her money, and that she, with Morton, went back to Philadelphia on that same day. The Johnson woman was arrested on that same Saturday night.

These men, presumably, started out from Philadelphia on either late Friday night or the early morning hours on Saturday morning, which brings it to November 9, so that is the date we are dealing with, November 9; and this occurrence was later on in the early morning hours of November 9. That made it Saturday, and this Saturday is when I am speaking of, that the Johnson woman and Morton returned to Philadelphia. I don't know what they did in Philadelphia, but I do know this, that the papers became full of this terrible, of this horrible, of this most unfortunate thing that had happened; and I know this, that Morton, on Monday, if the reports be true, and I believe it will be developed from the evidence, wrapped wet towels around his head and took gas and killed himself.

And why would he do it? It is one of our points in this case. Why did he do it? Metalski is left here to take it on the chin alone? Now, Ladies and Gentlemen, we deny that we killed this man. I say, asking you to bear this in mind as we go along, the State is asking you, in your consideration of this case, to look at it from the viewpoint of only first degree murder. I don't know which they are going to prove. I don't know yet—either that Metalski killed or that he aided and abetted in the killing. Our answer to that, and when I have gone on and presented the story to you it will be all that I can do, but our answer to that is that Metalski didn't fire the shot, that the shooting was one of those

spontaneous things on the part of Morton while Metalski was driving in the darkness at between sixty and seventy miles an hour in the early morning; that there was no chance for deliberation or premeditation; and that what Morton did was his own act, for which now, as a result of death, he can't be brought to justice. If those facts are exhibited to you Ladies and Gentlemen of the jury, it will then be within your province to decide.

The Court: We are about to take a recess now for lunch. Let the defendant first, at this time, be returned to the jail.

(The defendant was removed.)

The Court: Now, while the audience remains here, let the officers take the jury to the place where they are to be entertained.

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(Afternoon Session.)

FRED F. SENERCHIA, Jr., called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Doctor, you are a member of the staff of the Elizabeth General Hospital? A. I am, sir.

Q. And you were on their staff on November 9, 1935? A. I was.

Q. And in the early morning of that day, around five o'clock or shortly thereafter, did you receive a call to go to the emergency room? A. I did, sir.

Q. Did you go there? A. I responded immediately.

Q. Did you make an examination of a trooper who had been brought into the hospital? A. Yes, I did.

Q. Do you know who that trooper was? A. I didn't at the time. I later learned that his name was Trooper Yenser.

Q. At the time you examined him, was Trooper Yenser alive? A. No, sir, he was dead.

Q. What injuries did you notice Trooper Yenser had sustained? A. Why, I noticed that he had a large gaping wound of the face. His face—his cheeks appeared pock-marked, and there was a perforation of the left eyeball.

Q. By pock-marked, what do you mean, Doctor? A. Well, presumably caused by powder burns.

Q. From your examination, would you say that this trooper had died recently? A. Yes, I would say that.

Q. Do you know the exact time of your examination? A. It was shortly after five, about ten minutes after five. I think he was brought into the hospital at five minutes after five.

Q. From the nature of the wounds which you observed, what have you to say, Doctor, as to whether or not death was instantaneous? A. I believe it was instantaneous.

Mr. Hicks: Cross examine.

Mr. Sedam: No questions.

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WILLIAM C. WILENTZ, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Dr. Wilentz, you are the county physician of Middlesex County? A. I am.

Q. And have you been such county physician for how long? A. The past three years.

Q. Did you perform an autopsy on November 9, 1935, on the body of Trooper Warren Yenser? A. I did.

Q. Will you give the jury the results of your autopsy? A. Warren Yenser died from suffocation as a result of multiple fractures of the jaw, multiple displacements of his teeth, which were thrown backward into his throat, causing him to actually strangle to death.

Q. What have you to say as to whether or not death was instantaneous? A. No question about it.

Q. It was or it was not? A. It was.

Q. Now, Doctor, did you take certain cardboard wadding and pellets out of the face and head of the deceased? A. I did.

Q. And have you those pellets and wadding there with you? A. I have.

Q. After taking them out, to whom did you give them? A. Chief Collins.

Mr. Hicks: I will offer them in evidence.

Mr. Sedam: No objection.

(The articles referred to were received in evidence and marked "Exhibit S-1.")

Mr. Sedam: Except, of course, your Honor, when I say no objection, that is with the general reservation they connect this defendant with the offense as they go on.

The Court: Oh, certainly.

*By Mr. Hicks:*

Q. Now, Doctor, prior to the autopsy, and while you were present, were there some pictures taken of Trooper Warren Yenser? A. There were.

Q. I show you five photographs, and ask you whether or not those are the pictures that were taken in your presence, and whether or not they truly show the condition of the trooper at the time when you examined him and at the time when you later performed your autopsy?

Mr. Sedam: Now, if your Honor please, I object to either the identification or introduction of the photographs allegedly of the deceased, on the ground that the introduction of such photographs is not necessary to the proof of the State in connection with the commission of a crime where the corpus delicti is admitted, and that unless and until the State puts in its proof connecting this defendant either as a principal or as an aider and abettor, it would be highly prejudicial to permit these photographs to be introduced in evidence in order to, I would say, incite the minds of the jury and make the picture more aggravated that it is.

The Court: I think it is within the province of the Prosecutor to state whether, in the development of his case, these photographs are necessary. I presume he thinks so, or he would not offer them. I admit them. You may have an exception.

Mr. Sedam: Yes, sir, I think, if the Court please, that they should not go in until after the proof that this defendant is the person——

The Court: I admit them.

Mr. Sedam: And I may have my exception?

The Court: Yes.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

Mr. Hicks: Read the last question, please.

(The last question was read by the reporter as follows: "Question: I show you five photographs, and ask you whether or not those are the pictures that were taken in your presence, and whether or not they truly show the condition of the trooper at the time when you examined him at the time when you later performed your autopsy?")

A. Those pictures were taken in my presence.

*By Mr. Hicks:*

Q. Are they true pictures? A. They are true pictures of the condition, as I saw him.

(The photographs referred to were received in evidence and marked "Exhibits S-2 to S-6," respectively.)

Mr. Hicks: Of course, the State proposes to show the defendant's connection with these pictures in the course of the proof.

The Court: Certainly.

Mr. Hicks: And these pictures having been introduced in evidence, I presume I may show them to the jury (handing photographs to the jury).

Mr. Sedam: I, if the Court please, desire to have my objection entered on the record pertaining to the exhibition of these pic-

tures to the jury at this time until the defendant has been proved to be the one who did it.

The Court: Let your objection be noted.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

Mr. Hicks: Cross examine.
Mr. Sedam: No questions.

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JOHN J. MATEY, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Now, Mr. Matey, on November 9, 1935, you were a member of the New Jersey State Police? A. I was.

Q. And had been for how many years prior to that time? A. Seven and one-half years.

Q. And you are still a member? A. Yes, sir.

Q. And on the evening of November 9, Friday evening, were you assigned to patrol duty with Trooper Yenser? A. I was assigned to night patrol.

Q. What time does your night patrol start? A. At midnight.

Q. Then, you started on this night to patrol midnight, November 9? A. I left my station to pick up Yenser at Penns Neck Station.

Q. And this was on midnight of the night of November 8? A. Yes, sir.

Q. And your station is what? A. Milltown.

Q. And Yenser was at Penns Neck? A. Penns Neck.

Q. Do the two stations cooperate in this night patrol? A. Yes, sir.

Q. You say you went to Penns Neck to pick up Trooper Yenser? A. Yes, sir.

Q. Then, did you and Yenser start on the night patrol? A. We did.

Q. About what time was that? A. At about one o'clock.

Q. On the morning of November 9? A. Yes, sir.

Q. What kind of automobile were you using on this patrol? A. We had a Ford sedan owned by the State Police.

Q. Who was driving the Ford sedan in patrol? A. I was driving the Ford.

Q. Was this Ford sedan assigned to the Milltown Station? A. Yes, sir.

Q. Where was Trooper Yenser riding? A. He was riding alongside of me.

Q. Now, at about half past four or shortly before that on the morning of November 9, where were you patroling? A. We were patroling south on the super-highway in North Brunswick Township.

Q. With reference to the new construction work, where they are moving the highway, where were you? A. We were right at that spot there. It was a—there was an accident there, and we covered the accident.

Q. And where was that accident exactly? A. About midway in that construction work.

Q. Now, after you covered the accident, what, if anything, happened? A. Why, one of the cars was pretty badly banged up. It was unable to be moved. We went down to Spilatore's Garage to

get a wrecker, and while there a truck went by with very poor tail-lights, and Trooper Yenser went over and warned the driver about this. It was about two hundred yards down from where I was. I was waking up Mr. Spilatore, the owner of the garage, and telling him about this accident, and for him to have his wrecker go down. After waking him up, I walked toward where they were, and I noticed a car going north, traveling at a high rate of speed. I motioned with my hand while at the edge of the road there for the party to slow down. As they went by me, I noticed it was a Chevvie coupe—Chevrolet coupe.

Q. Were you in uniform at the time you motioned to this car to slow down? A. I was. Instead of slowing down, it seemed to put on more speed. I ran down to where the car was parked with Trooper Yenser near this truck. I waited for him to get through talking to this man. It was only a few seconds. We got in the car. We were unable to see this car ahead of us, but thinking that if we traveled fast we would be able to overtake it at either one of the traffic lights.

Q. Now, when you say you got in the car, what seat did you take in the car? A. I drove.

Q. And Yenser was sitting where? A. Sitting alongside of me.

Q. And these traffic lights you mentioned, where are they located? A. One is located at the intersection of Highway 25 and 26, and the other one is the Milltown road.

Q. All on the south side or west side of the Raritan River? A. Yes, sir. We didn't see this car at either one of these lights, and we continued on to Amboy Avenue and the super-highway in Raritan Township. We didn't see it there, and

we decided that it probably stopped at either one of the service stations or road stands along the road. So we retraced our—we were going back towards Milltown. We knew the noise the exhaust made on this car, and we traveled about a mile south from Amboy Avenue, when we noticed a car coming towards us. We lowered our windows as it went by. It had this peculiar sound, and we knew it was the car that passed, so we turned around to set out after it again.

Q. Now, up to this time, Trooper, had you observed the license plates of this coupe? A. I saw it was a Pennsylvania license plate. I noticed the D in the plate and no spare tire of this car. We turned around, and we started chasing it. We went by Amboy Avenue and the super-highway intersection. We went about a mile past that, and we pulled up alongside of this car and blew the whistle. The car started slowing up. We slowed up to pull in back of it, and as we slowed up and started pulling in back, why, the car shot out again.

Q. You say, who blew the whistle? A. Trooper Yenser blew the whistle. We started out again. We went almost a mile, and we pulled up alongside of the car again. Trooper Yenser had his whistle in his mouth and was about to blow when this shot was fired.

Q. Now, what was the position of your automobile with reference to this Pennsylvania coupe at the time when the shot was fired? A. We were alongside of the car.

Q. Who was the nearest occupant of your car to the Pennsylvania car? A. Trooper Yenser.

Q. Now, at what rate of speed was this Pennsylvania car traveling prior to this shooting? A.

We were traveling at a speed between seventy and eighty miles an hour. Well, after the shot was fired, Trooper Yenser slumped alongside of me. As I bent forward, why, he slumped in back of me, and we kept riding along that way about a hundred and fifty feet. I already pulled out my gun and started firing, when the back window of this coupe was broken out and shots were being fired out of that at me.

Q. Do you know what kind of weapons were being used? A. Why, the first—the first weapon they used, I knew that was a shotgun, and then after another shot or two, why, it was a different sound to the reports of the shots being fired at me.

Q. And you continued along the highway and proceeded in your automobile? A. Yes, sir. I traveled, trying to get up alongside of it. They seemed to put on all the speed they had. I was just able to keep in back of them, and the shots were being fired at me. I was hampered with Trooper Yenser leaning against me, and I yelled to him several times.

Q. Yelled to who? A. To Trooper Yenser.

Q. Yes? A. I asked him to answer me. He didn't answer at all.

Q. Did he say anything at all after this first shot was fired? A. He didn't say nothing at all. He didn't even quiver, so I felt around to find out what was wrong with him. I pulled my hand away. It was all bloody, so I kept after this car. We went through red traffic lights at Green Street, Avenel Street, and as we started getting into Linden, he was gaining distance every mile we went; then I knew I could not do nothing myself, and I had to get the alarm in, and also I had to think about getting Trooper Yenser to a hospital.

I kept on the lookout for the best place along the highway that I would be certain would have a telephone, and I stopped at that Edgar Diner, which looked very good. I gave orders to the counterman to call up the Elizabeth Police immediately, giving this man, the counterman, a full description of what happened, a full description of this car, and after he got hold of the operator on the phone and got in touch with the police, I asked one of the patrons there to go with me to a hospital, the nearest hospital. He got in the car with me, and brought me to the Elizabeth General Hospital in Elizabeth, and upon arrival there, I carried Trooper Yenser onto the emergency room table. Then a doctor came and examined him and pronounced him dead.

Q. At any time, did you see how many men were in this automobile? A. I noticed two men in it.

Q. Was there anybody else in the car? A. No, sir.

Q. Could you identify those two men or either one of them? A. No, sir.

Q. Did you notice any articles of clothing that were worn by either of those two men? A. I noticed the driver had a light hat on.

Q. Well, now, by a light hat, do you mean light in color? A. Light in color, yes, sir.

Q. Now, subsequent to taking Trooper Yenser to the Elizabeth Hospital, did you make an examination of the automobile you had been driving? That is, the police car. A. While at the hospital?

Q. No. At the Elizabeth police station. A. Yes, sir, I did.

Q. Did you find any bullet holes anywhere in the automobile you had been driving? A. Yes, sir.

Q. Where were they? A. In the radiator.

Q. How many? A. There was one.

Q. Do you know what kind of bullet it was? A. I haven't seen it since it was taken out, but it looked to me as if it was a thirty-eight.

Q. It was not a shotgun pellet or anything like that? A. No, sir, from a revolver.

Q. I show you a picture of a Chevrolet coupe, DC240, Pennsylvania, with the rear window broken out. Can you identify that picture? A. Yes, sir.

Q. Is that a picture of the automobile which you were chasing on the morning of November 9? A. Yes, sir.

Mr. Hicks: I offer this picture in evidence.

Mr. Sedam: No objection.

(The photograph referred to was received in evidence and marked "Exhibit S-7".)

*By Mr. Hicks:*

Q. About how close was your automobile to this Chevrolet coupe at the time the shot was fired that killed Trooper Yenser? A. It would be about three foot.

Q. Opposite what part of the Pennsylvania automobile was your front seat at the time the shot was fired? A. I don't understand that one.

Q. Opposite what part of the Pennsylvania automobile was your front seat at the time the shot was fired? A. Parallel with the front seat.

Mr. Hicks: That is all. Cross examine.

*Cross examination by Mr. Sedam:*

Q. Trooper Matey, what time do you say it was when you first observed this Chevrolet coupe

on the road in the morning of November 9? A. It must have been four-twenty to four-thirty, somewhere in between there.

Q. And I understand you to say that you were at the point of this construction work on Route 25 at about that time? A. I was on Route 26.

Q. Route 26? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. About up at that point? A. Yes, sir.

Q. What have you to say as to whether it was dark—yes, very dark, at about four-twenty in the morning of November 9? A. Whether it was very dark at that time?

Q. It was, was it not? A. It was a dark night, yes, sir.

Q. And dawn had not broken yet on that morning? A. No, sir.

Q. And when this car first came along, the car which attracted your attention, you were at or near the Spilatore Garage on account of this wreck, were you not? A. Yes, sir.

Q. And that garage is how far in from the roadway ? A. I should judge, about—about fifty foot.

Q. About fifty foot from the roadway. On which side of the road? We will call it, this side as the southerly side, and the far side as the northerly side. Which side of the road is the Spilatore Garage located on? A. It would be on this side.

Q. For instance, if you were going from New Brunswick to Trenton— A. Yes, sir.

Q. (Continuing) it would be on the— A. Right-hand side, yes, sir.

Q. And the Spilatore house or garage, wherever you were, or whether it was house or garage,

is about fifty feet in from the right-hand side of the road? A. It would be about that, yes, sir.

Q. Now, the width of the road is about what? A. About forty to fifty feet.

Q. About forty to fifty feet, and the car which attracted your attention was proceeding in a northerly direction— A. Yes, sir.

Q. (Continuing) meaning towards New Brunswick, and was on its right side of the road, was it not? A. The center of the road.

Q. The center of the road? A. Yes, sir.

Q. So that, taking your figures that you are undertaking to give us, you were standing at a point that was at least fifty feet from the edge of the right-hand side of the roadway going towards Trenton, and the car which attracted your attention was in a position, about the center position on the road that is forty feet wide, so that this car proceeding in the other direction was at least seventy feet away from you, was it not? A. No, sir.

Q. Sir? A. No, sir.

Q. How far was it? A. I was standing at the edge of the road.

Q. Didn't you say that you were at the Spilatore place, that you had gone there to call him to try to get a wrecker? A. I had already called him.

Q. And had come out from the house? A. Yes, sir.

Q. And had gotten up to the edge of the road? A. I was on the edge of the road.

Q. I see, so that the car, when it went by you, was about how far away from you? A. Twenty to twenty-five feet.

Q. Did it have bright lights on it? A. It had lights.

Q. I asked you whether it had bright lights. A. It had good lights.

Q. Well, it didn't have the dimmers on? A. Do you mean the cowl lights?

Q. Not the cowl lights. A. The headlights were lit.

Q. There are dim lights on a car and bright lights on a car usually. Which would you say these were? A. Well, it had very good lights.

Q. Was there any light inside of the car? A. No, sir.

Q. There were no overhead lights in this immediate vicinity, were there? A. Spilatore's Garage is well lit up at night.

Q. But Spilatore's Garage is fifty feet back from the road, isn't it? A. The lights light up very good, covering the road also.

Q. Oh, the lights that are fifty feet back from the road cover this highway, too, do they? A. No, sir.

Q. Sir? A. They are not all the way back from the road.

Q. Well, how far back are they? Supposing you tell us. A. That I could not say, how far back.

Q. But there weren't any overhead lights at the point where the car was proceeding? A. Not on the highway, no, sir.

Q. And you say there were no lights inside of the Chevrolet coupe? A. No, sir.

Q. And you, standing at a point twenty to twenty-five feet back from the edge of the road, are able to say here with certainty who was driving that car and the color of hat the man had on? A. I saw the color of the hat, yes, sir.

Q. What color was it? A. It was a light color.

Q. Well, was it light gray or was it light brown? A. It was a light colored hat.

Q. You don't know whether it was light gray or light brown? A. I know the difference between a light and dark hat.

Q. Did you give that description when you telephoned ahead or had somebody telephone ahead with reference to this car? A. I gave a hurried description.

Q. What did your hurried description consist of? A. Of a small coupe, Pennsylvania license plates, the D, two men in it, no spare tire.

Q. And nothing about the hat? A. No, sir.

Q. Could you tell what kind of coat the man had on? A. No, sir, I could not.

Q. Do you know whether he had a light or a dark coat on? A. I don't know.

Q. He had a light coat on, didn't he? A. I don't know.

Q. Haven't you found that out since? A. No, sir.

Q. Are you the man who found the button that had allegedly been torn off or ripped off the coat down near Elizabeth? A. No, sir.

Q. Did you see the coat from which the button was supposed to have come? A. I have seen that coat.

Q. That is a light coat, isn't it? A. No, it is not.

Q. What is it? A. It is a sort of grayish color, I should say. I just saw it as it was being carried in. I didn't examine it.

Q. If he had on a light grayish coat, not too light at that, to distinguish it from black or dark, couldn't you have seen what kind of coat he had as well as his hat? A. No, sir, I could not.

Q. Wouldn't you be more likely to observe his coat instead of his hat? A. No, sir.

Q. Now, sir, as I understand you to say, you were attracted by a peculiar sound to this approaching automobile, is that right? A. The exhaust had a peculiar sound, yes, sir.

Q. Made by the exhaust on the car? A. A hissing noise, yes, sir.

Q. A hissing noise. How far away from where you were standing was this car when you first saw it? A. It was traveling north. It was down below me.

Q. Coming toward you? A. Coming towards me, yes.

Q. Yes, and I say, about how far away from you was it when you first observed it? A. It was quite some distance down.

Q. Well, would you say five or six hundred feet? A. I could not just say how far.

Q. Because it was too dark to see, wasn't it? A. I seen it coming towards me.

Q. I beg your pardon? A. I had seen it coming toward me.

Q. Well, then, if you did see it coming toward you, I ask you again, about how far away from you it was when you first saw it? A. I really could not say how far it was.

Q. You can't answer that? All right. Where was your car located when you were standing at this point where you first saw the approaching car? A. A short ways down the road on the opposite side, in back of a truck that Trooper Yenser had stopped.

Q. Well, how far away was that, about? A. Oh, several hundred feet down.

Q. So that Trooper Yenser was nearer to this approaching car than you were, is that right? A. No, sir.

Q. Oh, your car was in the opposite direction? A. In the direction they were going.

Q. How fast was this car going, based upon your best judgment, when it passed you at the point where you were standing? A. It was going very fast.

Q. Very fast? A. Yes, sir.

Q. And when you say very fast, and give us the figure of your car going between seventy and eighty miles an hour in this pursuit, would you say that that car was going at least seventy or eighty miles an hour when it passed you, in your best judgment? A. He was going pretty fast. I could not say. I was not in back of him.

Q. Seventy to eighty is very fast, isn't it? A. It is.

Q. And it was because of this speed that you were attracted to the car, is that so? A. Yes, sir.

Q. Now, Trooper Matey, at that time you had no knowledge or information of any crime having been committed in the City of Philadelphia earlier in the evening, had you? A. I didn't.

Q. So that when you began to pursue these men, it was not because of any knowledge on your part—pursue the car and its occupants, it was not because of any knowledge on your part that a crime had been committed, or because they were doing anything at the moment which might cause bloodshed? Isn't that so? A. That is right.

Q. Now, did Trooper Yenser come up and join you, or did you go down— A. I went down and joined him.

Q. Then you and he got in the car and began this pursuit? A. Yes, sir.

Q. In your pursuit, I understand you to say that this car outdistanced you, or, at least, kept going faster? Did you say that or didn't you? A. That was after Trooper Yenser was shot, I said that.

Q. Well, let us take the time when you first began the pursuit. How close did you come to that car after you began the pursuit up until the time that you got down to this traffic light where you thought they would stop? A. Why, I didn't see it up to that spot.

Q. You didn't see it at all? A. No, sir.

Q. But do you know, as a matter of fact, whether the other car stayed—whether it was on the highway, or whether they turned in or not? Do you know that? A. Say that again, please.

Q. You say you didn't see the car immediately when you began the pursuit? A. No, sir, I didn't.

Q. Do you know whether it went off the highway or whether it kept on the highway? Why didn't you see it? A. It must have stopped and pulled off the highway.

Q. It must have pulled in somewhere? A. It must have pulled in somewhere.

Q. I see. Where was it that you first did see the car again? A. In Raritan Township, on Route 25.

Q. And in what general vicinity that you could describe to us? I mean, near what? Can you tell us near what? A. Near Bob's Garage.

Q. Near Bob's Garage, and where would that be with respect to either the Highland Park or the Metuchen crossing on that highway? A. Why, it would be, possibly, a mile—close to a mile south of Bonhamtown road.

Q. And Bonhamtown road would be in between Metuchen and New Brunswick? A. It runs—it is a continuation of Main Street, Metuchen, to Bonhamtown, across the highway.

Q. You say this was about a mile beyond that? A. This side of it.

Q. This side of it? A. Yes, sir, south.

Q. Then you spied the car there again? A. Traveling north.

Q. Still in the same general direction? A. Yes, sir.

Q. And did you take up the pursuit again? A. Yes, sir, we did. We turned around and followed them.

Q. Well, when you were coming back in a southerly direction, and the other car proceeded in a northerly direction at the time you say you spied it, the second time— A. Yes, sir.

Q. (Continuing) what, if anything, did you do or did your companion do to either halt or attract the attention of this other car? A. We lowered our windows. We noticed it coming towards us. We lowered our windows, and as they went by, it had that same hissing sound that attracted us when it first went by us.

Q. When you say, "we lowered our windows"— A. I lowered mine on my side, and he lowered his on his side.

Q. You both lowered windows even though you were driving? A. Yes, sir.

Q. And you decided in your mind that that was the same car that you had heard with the hissing sound? A. Positive.

Q. So you turned around and pursued it? A. Yes, sir.

Q. Now, how fast, if you know, was that car, namely, the Chevrolet, going at that time? A. As it just went by us before we turned around?

Q. Yes. A. I could not say how fast. We were traveling in the opposite direction.

Q. I know you were, but it went by you. A. It went by us, yes, sir.

Q. And you have a great many cars going by you, and you can tell whether it is going fast or slowly, and what would you say about that car? A. It was going fast.

Q. It was going fast? A. Yes.

Q. When you turned around to pursue it, how fast was your speed then in the pursuit? A. We traveled between seventy-five and eighty miles an hour until we caught up to it.

Q. All on account of a car that was going by at a fast rate of speed? A. Yes, sir.

Q. Without knowing who the occupants were, and without knowing that any crime had been committed? A. Yes, sir.

Q. Where, if at all, did you catch up with the car that you were pursuing? A. We caught up to that car about one mile north of Amboy Avenue on Route 25.

Q. And what have you to say as to the time that it had consumed, or that had been consumed, between the time that you first saw it at twenty minutes after four and the time that you caught up with it? How many minutes approximately? A. Oh, between fifteen and twenty minutes.

Q. As a matter of fact, at five o'clock in the morning on November 9, and even now, on January 6, it is very dark, isn't it? A. It was dark, yes, sir.

Q. What, if anything, did either you or Trooper Yenser do in connection with this pursuit? A. We tried to apprehend the car.

Q. How close did you come to the car in this particular time we are talking about now, up near the Metuchen crosing? A. Alongside of the car.

Q. And when you say alongside of it, do you mean, Trooper, that the driver's seat of your car was virtually parallel to the driver's seat of the other car? A. It was.

Q. And you were on the left-hand side, being a left-hand drive, as I understand you, and Trooper was on the right in your car? A. Yes, sir.

Q. And your car was on the outside or to the left of the other car, is that right? A. To the left, yes, sir.

Q. And at that time you were driving at what speed? A. We were driving about in the vicinity of seventy to eighty miles an hour, in that speed.

Q. Would you say, Trooper Matey, that as you came alongside of this car which you were pursuing, and you say that you came parallel with it— A. Yes, sir.

Q. (Continuing) and at a distance of about three feet— A. Yes, sir.

Q. (Continuing) would you say that you, driving at between seventy to seventy-five miles an hour, only three feet away from another car, and parallel to it, that you took your eyes off what you were doing and looked into the other car? A. I didn't look into the other car just then.

Q. You didn't? A. No, sir, I was driving.

Q. So that you didn't even see who was driving the car, did you? A. No, sir, not the first time.

Q. Well, when you were alongside of that car that day, and you had any doubt as to who the occupants of that car were, or whether their mission was good or bad, wouldn't it have been an easy matter for Trooper Yenser, who was not

otherwise occupied in your car, to have fired a shot or shots at the tires of the automobile and put the other car out of commission right there on the road without this bloodshed? A. We had no cause for it.

Q. You had no cause for it? A. No, sir.

Q. But you regarded it as a very important situation in the light of the fact that it was only a speeding car, to have taken up the pursuit from away down the road and to have gone along our public highways at seventy-five to eighty miles an hour. You must have thought it was important, Trooper, didn't you? A. That is being done every day, though.

Q. What is being done every day? A. Speeding.

Q. By troopers, you mean? A. No, sir.

Q. Oh, by people? A. By people, yes, sir.

Q. And then the troopers have to speed to catch them? A. Yes, sir.

Q. I see. Well, didn't you, as the driver of that car, at this terrific rate of speed, feel that you were endangering not only your own lives but the lives of the people in the other car, who were doing nothing more than speeding? A. It is our duty to apprehend them.

Q. At all costs? A. Yes, sir.

Q. All right, sir. Now, was it on this occasion, when your car came parallel to the other car, that the shots were fired? A. Not the first time, no, sir.

Q. Do I understand you correctly that when you pulled alongside the first time, a whistle was blown? A. Yes, sir, it was.

Q. And the other car, you said, I think, slowed down? A. Slowed down.

Q. And you, naturally, felt that they were going to stop? A. Yes, sir.

Q. And then you slowed down from this seventy-five to eighty miles an hour at the same time? A. Yes, sir.

Q. Believing that they were going to stop, and then when you had slowed down, I understand you to say, the driver of the other car, whoever he was, put on steam and went ahead again? A. That is right.

Q. At a terrific rate of speed? A. Yes, sir.

Q. Now, sir, was the pursuit taken up again by you? A. It was.

Q. And in connection with that pursuit, what speed did you have to go at in order to catch up with them again? A. We were traveling in the vicinity of seventy-five miles an hour.

Q. And that took you by more of the crossings on the main highway, did it? A. No, sir.

Q. There were no intersecting crossings that you had to pass? A. No, sir, not to catch them the second time.

Q. Was there any other traffic on the highway, as far as you observed? A. Not at that particular spot, no, sir.

Q. When you were going at seventy-five to eighty miles an hour—this second time now we are referring to— A. Yes, sir.

Q. (Continuing) what have you to say as to the speed at which the other car was being driven? A. Why, it was being driven at that same speed.

Q. Well, if they were ahead of you, quite a little distance ahead of you, they got a start on you, so to speak, you had to go faster than they did in order to catch up to them, didn't you? A. We had to go almost nine-tenths of a mile—we were

directly in back of them—before we got alongside of them again.

Q. And then when you came alongside of them again, what, if anything, did you or Trooper Yenser do? A. He was about to blow his whistle. We never blow a whistle until we are alongside of a person. He was just about to blow the whistle when this shot was fired.

Q. You don't literally mean that—that you never blow a whistle until you are alongside of a person? A. In pursuit of them, yes, sir.

Q. That is not what the troopers did to me. A. That is the way we do.

Q. Well, you caught up to them? A. Yes, sir.

Q. Came parallel with them again? A. Yes, sir.

Q. How many more minutes had been consumed, would you say? A. Oh, it was very few minutes.

Q. Very few minutes? A. Yes.

Q. That brought it, we will say, a little before five, a quarter of five? A. A quarter to five, or twenty, or somewheres in that vicinity.

Q. It was still very dark, wasn't it? A. Yes, sir.

Q. And with those two cars, one going almost as fast as the other, and your speed being estimated by yourself at between seventy and seventy-five miles an hour, you certainly weren't able to take your eyes off of what you were doing then, were you? A. After the shot was fired, I was—I was just looking over there about the time this shot was fired.

Q. Do you mean to tell me, at the time this shot was fired— A. Yes, sir.

Q. (Continuing) out of the car which you were pursuing— A. Yes, sir.

Q. (Continuing) a shot which you say came from a sawed off shotgun— A. Yes, sir.

Q. (Continuing) do you mean to say that at the time that shot was fired, Trooper, with their car going seventy to seventy-five, and yours going seventy to seventy-five, parallel to each other again, just a few feet apart, that you were able to take your mind off of your wheel, particularly when you say you didn't do it until after the shot was fired, at which time poor Trooper Yenser had slumped over against you, and you, with an attempt to manage the car and to hold him on the seat, that you were able to look over into this car and see who was in there? A. I wasn't holding him before the shot was fired.

Q. No, sir, but you said after the shot was fired, you said you looked over to the car. A. About the time the shot was fired.

Q. About the time the shot was fired? A. About the time the shot was fired.

Q. Well, I have never seen a sawed off shotgun. I don't believe I have even seen the gun. I have never seen one fired. Does it make a bigger blaze when it shoots, when it explodes? A. It makes a blaze at night, yes, sir.

Q. And you, at this moment, looking at about the time the shot was fired, and with this blaze coming directly towards you and your partner, and you going seventy to seventy-five miles an hour, you say that you looked over toward that car? A. I looked over toward that car, yes, sir.

Q. How did you keep your car on the road? A. It was on the road.

Q. Well, it must have stayed on the road, because you are here. A. Yes, sir.

Q. Didn't the fact that Trooper Yenser's body slumped towards you, didn't that make an extra difficulty, an extra hazard for you right then and there, in addition to driving? A. After he was hit, yes, sir. The car was ahead, and I was unable to get alongside of it again.

Q. Well, you didn't see who was in the car then, did you? A. Not after they got up ahead of me, no, sir.

Q. At the time the shot was fired, you didn't see any faces of anybody? A. No, I didn't see their faces, no, sir.

Q. Or you didn't observe the clothing? A. I observed the hat.

Q. You observed the hat, the same hat that you saw before down the street about fifteen minutes before? A. What street?

Q. I mean, down the road. I said street, but I meant down the road. A. No.

Q. Not the same hat? A. I didn't see no hat down the road there the first time.

Q. You told us you did. A. I didn't.

Mr. Hicks: If it please the Court, there is no testimony in that regard.

Mr. Sedam: Yes, there is, if the Court please. When he saw the car go by him, he said he saw a light hat.

The Court: I am not certain, Mr. Sedam, but I think he said he saw the light hat at the time of the shot, and not before. The jury will remember.

*By Mr. Sedam:*

Q. Well, now, as a matter of fact, when you were down at the edge of this road, and I asked you

about the car going up the street then, going up the road, you said you were about twenty to twenty-five feet away—didn't you say, "And I observed the light hat"? A. I didn't.

Q. Well, we talked about it for five minutes, Trooper, here. A. No, sir.

The Court: I think, Mr. Sedam, there was a misunderstanding in the testimony as to just the time that was meant.

Mr. Sedam: Well, may I just offer to clear it up in this respect?

*By Mr. Sedam:*

Q. In summarizing it all, Trooper, you testified at the time you first saw the car coming, and you were standing on the edge of the road down by Spilatore's, you neither saw the face nor the clothing of the man who was driving the car? A. No, sir.

Q. And you don't know who was driving? A. No, sir.

Q. Now, at no other time, then, in between and up to the point of the time when the shot was fired, at no other time did you have any opportunity to observe either the facial expression or the clothing of the people in the car, did you? A. No, sir.

Q. So that it comes down, then, to—I am sorry if I was mistaken—it comes down to this one time of about the time the shot was fired that you looked across and saw whoever was the driver, not knowing his face, but somebody having a light hat, is that correct? A. Yes.

Q. That was at the time when you were driving between seventy and seventy-five miles an hour? A. Yes, sir.

Q. And at the time just when the shot was exploding out of the other car? A. In about that time.

Q. And about the time that Trooper Yenser slumped over against you? A. After—he slumped over against me after the shot was fired.

Q. Are you able to identify, either by photograph or in reality, the occupants of that Chevrolet coupe on that night? A. I am not.

Q. Now, you have told us that after Trooper Yenser slumped over against you that you still continued the pursuit, is that correct? A. I did, yes, sir.

Q. And for how far, do you know? A. To Linden.

Q. And are you able to tell us about what speed the fleeing car was going after the shot was fired and up until you gave up the chase at Linden? A. We were traveling about eighty miles an hour.

Q. And this fleeing car was also going at that speed? A. Yes, sir, it was up ahead of me.

Q. Are you familiar with the crossing at Linden, the main crossing there? A. Do you mean Wood Avenue?

Q. Well, sir, I don't know the name of it, but it is a street that I want to refer to as being a street where two officers were supposed to be standing that night. I am coming to the question. did you see the officers standing there that night? A. No, sir, I didn't.

Q. You didn't? A. No, sir.

Q. How many shots were fired—well, you can only fire one shot out of a sawed off shotgun without reloading, isn't that so? That is true, isn't it? A. One shot out of a single barrel shotgun.

Q. Well, I never saw this one. Was this a single barrel shotgun? A. I just couldn't recall what it is.

Q. But, as far as you can remember, there was only one shot fired out of the shotgun? A. I could not say that. There was about eight shots fired all told.

Q. Well, I say, with reference to the shotgun, wouldn't you know whether there was more than one shot fired? A. I know that first shot was fired by a shotgun.

Q. Is that the shot that took effect? A. Yes, sir.

Q. Well, you would know, if you were there, assuming that you do know the difference between firing a shotgun and firing from a revolver, you certainly do know whether there were more shots fired, don't you? A. Well, there has been a matter of seconds before the second shot was fired. That was fired after the glass was broken.

Q. That was out of a revolver, you say, don't you? A. Later on there was shots out of a revolver. I knew the difference between them and the first one that was fired.

Q. Yes. Well, if you knew the difference between them and the first one, you would know the difference between the second shots, or other shots, if they were other than revolver shots, wouldn't you? A. The only thing I would say, the last few shots fired at me were from a revolver.

Q. Then, you don't know whether there was more than one shot fired from the shotgun, do you? A. I could not say more than one, no, sir.

Q. That is, you could not say that there was more than one? A. No, sir.

Q. You have identified the picture of the coupe as being the car which you pursued on the road that night? A. Yes, sir.

Q. And that picture, which has been offered into evidence, reveals the back window broken out, does it not? A. Yes, sir.

Q. In addition to your examination of the picture, did you examine the car itself? A. I looked the car over, yes, sir.

Q. Are you able to tell whether that rear window of the coupe was broken out by means of a bullet or bullets, or by the use of an instrument such as the butt of a gun would be? A. It was knocked out by someone inside of the car.

Q. You observed that, didn't you? A. Yes, sir.

Q. And it was done with the butt of a gun, wasn't it? A. It may have.

Q. You have told us about your movements after—from that point on, that is, from the point of the pursuit up to Linden, and then you dropped out of the race, or out of the pursuit, in order to take, or in order to summon aid, and then took the man to the hospital, isn't that so? A. Yes, sir.

Q. You didn't follow through, in other words, from that point on, but after you had given the word to other authorities— A. No, I didn't follow through after that.

Q. In your examination of this Chevrolet, isn't it a fact that there was blood found on the right-hand seat of the car? The right side of the seat of that car? A. I didn't examine the car; that Chevrolet.

Q. Well, you looked it over? A. I looked it over. I didn't look over the inside, though.

Q. You didn't look inside at all? A. No, sir.

Q. Do you know now whether or not blood spots or blood stains were found on the right side of the seat of that Chevrolet coupe? A. I didn't look inside for that.

Q. And you don't know, as a matter of official information, whether or not blood spots were found there? A. I heard there was.

Q. You heard there was, didn't you? A. Yes, sir.

Q. Did you hear that any blood spots or blood stains were found on the left-hand side of the seat of the Chevrolet? A. No, sir, I didn't.

Q. Not even in your official investigation you haven't heard that, have you? A. I haven't heard anything about that.

Q. All right, sir. Did you look over your own Ford sedan? A. I did.

Q. And at no time was your Ford sedan ahead of the car on the road, was it? A. No, sir.

Q. I mean by that, you were either pursuing or up alongside of it, so that any shots that might have been fired, Trooper Matey, out of the other car, would not have had an opportunity to hit the back of your car? They were apt to hit the side or the front, wouldn't they? A. I don't understand that one.

Mr. Sedam: Read the question, please.

(The last question was read by the reporter as follows: "Question: I mean by that, you were either pursuing or up alongside of it, so that any shots that might have been fired, Trooper Matey, out of the other car, would not have had an opportunity to hit the back of your car? They were apt to hit the side or the front, wouldn't they?")

A. That is right.

*John J. Matey, for State—Redirect.*

*By Mr. Sedam:*

Q. In your examination of the Ford car—have you made one? I don't know whether you did or not—I think you said that you found one slug in the radiator—had hit the radiator of that Ford? A. Yes, sir.

Q. And how many shots do you say were fired at you? A. There were about eight shots fired altogether.

Q. Eight shots were fired, and they were right alongside of you, within three feet of you? A. The first shot was fired alongside of me.

Q. Yes? A. And the rest were fired while they were up ahead of me, at me, while I was in back of them.

Q. And, yet, you were still going, even after Trooper Yenser had been shot—you were still going, you said, between seventy-five and eighty miles an hour, right up to Linden? A. Yes, sir.

Q. And they were going beyond—they must have been going faster than eighty miles an hour? A. They were gaining on me.

Q. But, in any event, only one slug hit the front radiator of the Ford? A. Yes, sir.

Mr. Sedam: I think that is all, Trooper Matey.

*Redirect examination by Mr. Hicks:*

Q. Was there any glass broken in your automobile, Trooper? A. No, sir.

Q. Windshield or any other part of the car? A. No, sir.

Q. Was the window on the right side of the car down at the time Yenser was shot? A. It was.

Q. The window in the front, I am talking about. A. On his side?

Q. Yes. A. Yes, sir.

Q. Then, I gathered from your answers to Mr. Sedam's questions, it was not the practice of you or Trooper Yenser to shoot at people that you were trying to apprehend for speeding? A. No, sir.

Q. And it is your custom to blow a whistle when you are opposite the car or a little ahead of the car you are chasing, in order that they may hear it?

Mr. Sedam: If the Court please, I object to this. It is not redirect examination, how far the——

The Witness: Yes, sir.

The Court: I think, upon the cross, the question was brought out about the place where the whistle was blown. If that is so, this would be proper redirect.

Mr. Sedam: He is asking about the custom.

Mr. Hicks: Mr. Sedam was talking about blowing the whistle when the troopers were in the rear of the car they were pursuing. I am just bringing out that it would not be very likely that anybody could hear it.

The Court: I admit it.

Mr. Hicks: Read the last answer, please.

(The last answer was read by the reporter as follows: "Answer: Yes, sir.")

Mr. Hicks: That is all.

*By the Court:*

Q. For how long a distance on and along the highway did this chase take place from the time that you turned around near the Bonhamtown road until the shot was fired? A. It would be in the vicinity of three and a half miles.

The Court: That is all.

*Recross examination by Mr. Sedam:*

Q. Just one minute. Trooper, would you be kind enough to explain this: Is it the practice in the State Police, in the carrying on of your duties, to use sedans or motorcycles? What do you usually use? A. Well, we are assigned to automobiles for night duty. Motorcycles are used——

Q. For night duty? A. Yes.

Q. But it is not the ordinary method of travel for troopers in their duty, is it? A. After dark, yes, sir.

Q. After dark? A. Yes, sir.

Mr. Sedam: That is all.

Mr. Hicks: That is all.

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Mr. Hicks: There is just one further question that I would like to ask Dr. Wilentz, if there is no objection.

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WILLIAM C. WILENTZ, recalled as a witness on behalf of the State, testified further as follows:

*Direct examination by Mr. Hicks:*

Q. Doctor, when you examined Trooper Yenser, did you notice any burns, any powder burns around the face where a shot had entered? A. Every wound that was on the face, and I counted at least fifty, showed evidence of burn marks, powder marks.

Mr. Hicks: That is all.

Mr. Sedam: No questions.

ROCHUS MALSAM, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Mr. Malsam, you are a member of the Linden police department? A. Yes, sir.

Q. And you were in that department on November 9, 1935? A. I was.

Q. What was your shift of duty on November 9? A. Eleven to seven.

Q. What? A. Eleven to seven.

Q. Eleven in the evening? A. Until seven in the morning.

Q. So you were out on duty, or were on duty that night from eleven o'clock on Friday night, November 8, until seven o'clock on Saturday morning, November 9? A. Yes, sir.

Q. Now, at about five o'clock on the morning of November 9, were you at the intersection of Elizabeth and Wood Avenue in Linden? A. I was.

Q. Just describe to the jury where the intersection is with reference to the super-highway. A. That is about close to half a mile from the super-highway, going north.

Q. Now, as you go along the super-highway, if you wanted to go to Wood and Elizabeth Avenues, as you got into Linden, you would turn to the left on Wood Avenue, wouldn't you? A. Yes, sir.

Q. This Wood Avenue is the street which intersects the super-highway? A. It does.

Q. Is there a traffic light at the intersection of Wood Avenue and the super-highway? A. Yes, sir.

Q. Is there a police booth there on the right side of the super-highway? A. As you go east, yes.

Q. If you turn left off the super-highway and run along Wood Avenue, you say you would go along about a half a mile until you came to Elizabeth Avenue? A. Yes, sir.

Q. Now, you cross under the railroad tracks of the Pennsylvania Railroad before you come to Elizabeth Avenue, is that correct? A. Yes, sir.

Q. Is Elizabeth Avenue the first street you meet after you cross under those railroad tracks? A. It is, up in this end of the town, yes.

Q. Up in the eastern end of Elizabeth? A. That is the center of Linden, Wood Avenue, the first street there.

Q. Now, is Elizabeth Avenue one of the main streets in Linden? A. No, Wood Avenue is.

Q. Where does Elizabeth Avenue go to? A. Well, it runs from Rahway all the way into Elizabeth city line.

Q. Are there any traffic lights at the intersection of Wood and Elizabeth Avenues? A. There is four there, but they are only using two.

Q. Were those traffic lights in operation about five A. M. on the morning of November 9, 1935? A. They are always on, continuously.

Q. Were you parked at that intersection in your automobile?

Mr. Sedam: If your Honor please, Mr. Hicks is telling the witness, and asking him, yet.

Mr. Hicks: Now, if it please the Court, we have been dealing with the geographical location of this area.

Mr. Sedam: Ask him now where he was.

The Court: Proceed.

*By Mr. Hicks*:

Q. What was your answer to the last question, Mr. Witness?

(The last answer was read by the reporter.)

*By Mr. Hicks*:

Q. At about five A. M. on the morning of November 9, 1935, were you anywhere near the intersection of Elizabeth Avenue and Wood Avenue in Linden? A. I was on the southeast corner.

Q. By the southeast corner, you mean the corner nearest to the super-highway? A. That is it.

Q. Is there a call box at that corner? A. Yes.

Q. Were you alone or with another officer? A. No, an officer had just made a ring at that corner.

Q. Another officer had just made a ring at that corner? A. Yes, sir.

Q. And who was the other officer? A. Joseph Kopec.

Q. Did you get out of the automobile yourself? A. No, sir.

Q. How was your automobile parked as this other officer was making the ring? A. It was facing south, the southerly corner of the other side of Wood Avenue.

Q. Now, did you observe the Pennsylvania automobile coming along Wood Avenue from the direction of the super-highway?

Mr. Sedam: Now, if your Honor please, may I interpose—the Prosecutor is simply continuing, and going right ahead and saying "When you were parked." The man has not said he was parked.

Mr. Hicks: I withdraw the question, if it please the Court.

*By Mr. Hicks:*

Q. Did you see any other automobiles around the corner of Wood Avenue and Elizabeth Avenue at the time you were parked there? A. One coupe pulled up, and stopped.

Q. From what direction did this coupe come? A. South Wood Avenue.

Q. From where? A. South Wood Avenue. The Pennsylvania Railroad is the dividing line between north and south.

Q. South Wood Avenue leads over to what street? A. Well, it continues all the way down to the plants and factories.

Q. Does South Wood Avenue cross the super-highway? A. It does.

Q. Then, you say, this automobile came from the direction of the super-highway, is that correct? A. Yes, sir.

Q. Did you notice the license on this coupe automobile? A. I did, after the light turned green for him.

Q. Then, was the light red when the coupe got to the intersection? A. It was.

Q. When it changed to green, you say you noticed the license? A. Yes, sir, when it passed the intersection.

Q. Will you tell us what the license was on this car? A. I could not get the number, but there was two and dash and three.

Q. Do you know what State that license was? A. It was a Pennsylvania plate.

Q. Now, was this coupe parked, waiting for the light to change? A. When they came to a stop, it turned just as they got there.

Q. Do you know how many people there were in this coupe? A. There were two men in the coupe.

Q. Did you look at the coupe? A. Well, I looked at it. I seen it was steaming.

Q. You saw the coupe was steaming? A. It was.

Q. At the time you were looking at this coupe, and the coupe was steaming, and it stopped for the traffic light, in what direction was your automobile—the lights of your automobile pointing? A. My lights was pointed right at that car.

Q. Are there any street lights at this particular intersection? A. Oh, that street is well lit up.

Q. Are there any arc lights there? A. There is one on each corner.

Q. What? A. There is one on each corner.

Q. Were those lights lit? A. They are on until daylight.

Q. Can you identify either of the two men you saw in this Pennsylvania coupe? A. I did identify one.

Q. Who was that whom you identified? A. Metalski.

Q. This defendant, Eddie Metalski (indicating)? A. Yes, sir.

Q. This man sitting here? A. Yes, sir.

Q. Where did you identify him? A. Elizabeth Police Headquarters.

Q. Where was Eddie Metalski sitting in the Pennsylvania coupe at the time you saw him at the intersection of Wood and Elizabeth Avenues? A. On the right-hand side of the coupe.

Q. On the right-hand side? A. Yes, sir.

Q. What, if anything, did Eddie Metalski do while you were watching him? A. He lit a cigarette.

Q. Could you identify the man who was driving the automobile? A. No, sir, I could not.

Q. Now, were there any other men in the lineup when you picked out Eddie Metalski in Elizabeth? A. I think there was eight.

Q. At that time, did you look at Eddie both front and side views? A. I did.

Q. And do you know exactly what time this was you saw Eddie sitting alongside of the driver in this Pennsylvania coupe? A. Well, it was a little after five. The men just went home from the five o'clock shift.

Q. That is, the men from the Linden police department? A. Yes, they work nine to five. They just went off. It was a little after that.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. How long have you been a police officer, sir? A. It will be eight years the first of March.

Q. Is that your regular position of doing night patrol work? A. No, I am on shift work.

Q. What? A. I am on shift work.

Q. Well, do you mean, you got shifted often? A. Every week.

Q. Every week? A. Yes, sir.

Q. You remember the night of November 8, and in the early morning of November 9, don't you? A. I do.

Q. How was it, clear or stormy? A. It was not stormy.

Q. Well, was it clear? A. Well, it was not raining, but I could not just say how the sky was.

Q. It was not storming, and it was not raining, but what was it? Foggy? A. No, sir.

Q. Dark, wasn't it? A. Well, it was towards morning.

Q. Well, it was dark, I said. A. Not real dark, no.

Q. Not real dark? A. No, sir.

Q. Five o'clock in the morning was not real dark on that morning? A. Not at that corner.

Q. Well, do you mean by virtue of there being lights around? A. Well, that is one reason, yes.

Q. What? A. That is it.

Q. You were parked in an automobile? A. In the city patrol car.

Q. Well, that is an automobile, isn't it? A. Yes, sir.

Q. It is not drawn by horses, is it? How long had you been sitting there before Metalski came along—before this coupe came along? A. Oh, probably a minute, two minutes.

Q. You say there was another officer there by the name of Kopec? A. Yes, sir.

Q. You say that he had come there to make his call and report to headquarters? A. He already made a ring. That is why I stopped there.

Q. How did you know he made the ring, Officer? A. He rings at five o'clock.

Q. You thought he had made the ring? A. He just made it; he had.

Q. But you didn't see it? A. Yes, I pulled in when he made the ring.

Q. You were only there a minute? A. About a minute, yes.

Q. You mean, he was in the car with you, and got out to make the ring? A. No. He was at the box, and I pulled alongside of the box on the corner.

Q. Now, as you drew your car up there, I mean, the police car, did you have your bright lights on the front of your car? A. I did.

Q. And you were pointed, pointing, then, back in the direction of the super-highway or in the opposite direction? A. No, on the angle.

Q. What do you mean, you had your car at an angle across the road, or what? A. Well, not across the road. I was up against the left-hand curb at the bend, right near the corner.

Q. Pointing in at an angle like we call ranking? A. Yes. I was on the wrong side of the street.

Q. And the coupe car, which you say was a Pennsylvania coupe, did it come along in the direction in which your car was facing in at an angle? A. No, it came straight down Wood Avenue.

Q. Well, then, how could your lights, which you say were—you being parked at an angle, and that car coming down Wood Avenue, how could your lights shine directly on this other car? A. After they came to a stop—they stopped about ten feet back. They have an extra line there where they say stop, and that is where they stopped.

Q. They stopped to observe this traffic light on the corner? A. They did.

Q. How long is the interval between the changes of signals there? A. I could not exactly tell you the time, but it is about fifty seconds, I think; not exact, but it is around that neighborhood.

Q. That is quite a frequently traveled— A. It is.

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Q. You don't let me finish. That is quite a frequently traveled street, isn't it? A. Yes, sir.

Q. During the night as well as the day? A. No, not after midnight.

Q. Well, there wasn't anything unusual in seeing a Chevrolet coupe come along there at five o'clock in the morning? There wasn't anything very unusual, was it? A. No, sir.

Q. And there was nothing about this other car that particularly attracted your attention? A. Not while it stopped, no.

Q. Not while it stopped? A. No, sir.

Q. Well, was there any other time? A. After it passed, I seen the back window busted—that it was broke.

Q. How far would you say your car was back from the corner where you were parked? A. It was right at the corner.

Q. Right at the corner? A. Yes, sir.

Q. And this other car was about ten feet back of the street intersection, would you say, that is, the other street, the second street? You were on which street? A. Elizabeth Avenue.

Q. And they were coming along Wood, weren't they? A. Right.

Q. And they were about ten feet back of Elizabeth Avenue on Wood, waiting for the light to change? That is correct, isn't it? A. Yes, sir.

Q. They had their bright lights on? A. Well, I could not say whether they were bright or dim.

Q. Well, weren't they shining right toward you? A. No, sir.

Q. Yours were shining towards them? A. Right. I was on an angle.

Q. And there was nothing to cause you to look at the people in the car, was there? A. Well, I always look.

Q. Always look? A. Always look.

Q. Everybody that goes by in a car? A. Well, not everybody. If anybody stops, I am right there, I am bound to look at them.

Q. Well, when you are ten feet away in the night time, in the early morning hours, and there is nothing there about the car to attract your attention, you would not look over the faces of everybody in the car, would you? A. Well, I don't get off to look at their faces, but the one I can see, I will look at him or her, whichever it may be.

Q. Well, now, you have said that you saw this defendant, Edward Metalski, in the car? A. The man I picked out in Elizabeth.

Q. Oh, well, I know. Can't you pick him out now? A. Yes, sir.

Q. He is sitting right here, isn't he? A. Yes, sir.

Q. With a lot of officers around on all sides? A. One on one side.

Q. This man who is under arrest here, you know? A. Yes, sir.

Q. You could see from that distance the faces of the men in the car? A. Not faces; face.

Q. Face? A. One man, yes.

Q. Why didn't you look at the other man? A. He was too far on the other side. He was in back of this man.

Q. What do you mean, in back of him? Wasn't he alongside of him? A. Yes, but from the direction he was alongside of him, I could not see him.

Q. Two people sitting on the seat of the Chevrolet coupe can't get very far away from each other, can they? A. Well, not very far, no.

Q. Now, how was the man that you saw—how was he dressed? A. I don't know the clothes he wore. He was down in the car.

Q. He was what? A. He was in the car, and he had a slouch hat on. That is all I can say.

Q. He was in a car, and he had a slouch hat on? A. Yes, sir, and a coat.

Q. What kind of coat? A. I don't know. I could not say.

Q. Well, assuming that there are lots of men who wear slouch hats and coats, and who ride in automobiles, don't you have to look at a man's face in order to identify him? A. That is when I looked.

Q. Well, what was there about his face that made any impression upon you? A. Well, two minutes after—I looked at that man, and then I said to the other officer, "It is funny. I don't know what makes me look at this car in particular."

Q. You said that to the other officer? A. Yes, because it was steaming. That is why I looked.

Q. That is before you knew the glass was broken out of the rear? A. Yes, sir.

Q. And then the traffic light changed, and this car moved, and then you saw, following it, saw that there was a glass broken out? A. Yes, sir.

Q. Then, what did you do, sir? A. What?

Q. Then, what did you do, sir? A. I had the red light. I just stood there. That ain't the first car I seen broken in the back.

Q. You didn't get any nearer to the car, then, or to the occupants of it than you were while you were sitting in this parked car? A. That is it.

Q. And you didn't go after this car to try to find out why the window was broken out of the back? A. No, sir.

Q. Take a look at that picture there a minute, will you please, the picture right in front of you, the picture of that car? Is there any jagged glass left in the window of that, or is it all out? I haven't looked at it. A. There is some in there.

Q. Some jagged glass in there? A. Yes.

Q. An out of State license? A. Yes, sir.

Q. Coupe steaming, somebody in the car whom you didn't know, riding off the main highway through your town in the early morning hours, with a window broken out of the back of the car, and a piece of jagged glass in there—that didn't attract you sufficiently to make you go up to the car and ask the persons to give an account of themselves, did it? A. No, sir. I didn't know he came off the highway.

Q. What? A. I didn't know he came off the highway.

Q. What difference does it make where he came from? A. That is what you asked me.

Q. Well, he was coming from the direction of the highway. Where did you think he came from? A. He came from South Wood Avenue.

Q. Which is in the direction of the highway, you told the Prosecutor? A. The highway crosses that.

Q. And the direction of the highway. Now, you say the driver of that car lit a cigarette? A. Yes, sir, just before they started.

Q. That made such an impression upon your mind, Officer, that a man sitting in a car should light a cigarette, that you refer to that as one of your methods of identification, do you? A. Not the cigarette, no.

Q. Well, there wasn't anything unusual about lighting a cigarette, was there? A. No.

The Court: Mr. Sedam, the witness didn't say the driver of the car lit a cigarette, did he?

The Witness: No, sir.

The Court: Your question said that.

*By Mr. Sedam:*

Q. You have testified that Metalski, the man whom you pick out as Metalski, was sitting on the right side of the car, is that correct? A. Yes.

Q. That is, it was the man on the right side of the car who lit the cigarette? A. Yes, sir.

Q. Now, the man on the right side of the car—they were going toward Elizabeth, weren't they? A. No, sir.

Q. Which way were they going? A. They were going towards Roselle.

Q. Towards Roselle? A. Yes. Wood Avenue runs into Roselle and Cranford.

Q. Then, they were going in a westerly direction, northwesterly direction? A. We call it north, North Wood Avenue—yes, northwest.

Q. According to the way your car was parked—you see, I am not familiar with these streets, Officer; you have got to help out—the way your car was parked, and the way I understand you to give it, wasn't the man who was on the right in the car, wasn't he farthest away from you? A. No, sir.

Q. Nearest to you? A. Yes, sir.

Q. And about how many feet away? Give us an estimate of how many feet away. Fifteen or twenty feet, wasn't it? A. No, it wasn't twenty feet.

Q. Well, I didn't say twenty feet. I said, fifteen or twenty feet. A. No, between fifteen and twelve.

Q. Between fifteen and twelve? A. Yes, sir.

Q. And, then, when did you first hear that a trooper had been shot? A. About two minutes after they passed the intersection there.

Q. How many? A. About two minutes.

Q. Two minutes? A. Yes.

Q. How did you get that word? A. Well, we have a ring system, and the lights were on, and that is when I answered, and that is when I was told by the desk sergeant that a State trooper had been shot by two men with a Pennsylvania plate.

Q. Did you make a note in your notebook or any place at all, mental or otherwise, as to the time of the day when you got the word? A. No, sir, we don't make no reports on that.

Q. You don't make any reports? A. Not when we get a call about something like that, unless we do anything.

Q. Well, do you know what time it was? A. I judge, about seven after five.

Q. Seven after five? A. I got the call about the State trooper being shot.

Q. Now, it was still dark at seven after five on the morning of November 9, wasn't it? A. Yes, sir.

Q. Very dark? A. No, sir, I wouldn't say very dark, no.

Q. Do you suppose that on the morning of November 9, 1935, that you would be able, without any overhead lights or anything, that you would be able to distinguish the features of a person ten feet away from you? A. No, not without lights.

Q. Not without lights? A. No, sir.

Q. But with a light, you could see a man sitting inside of an automobile? A. Especially on that street there, yes.

Q. With no lights in the car? A. Yes.

Q. In his car? A. Yes.

Q. No lights inside of his car, and you didn't use any flashlight or searchlight? A. No.

Q. Just sitting ten or twelve feet away, you were able at this angle, you were able to look over a distance of ten to twelve feet and observe the face, the features of a man who was sitting in a car in the street? A. Yes, sir.

Q. Now, sir, you were called upon, you say, to go to Elizabeth for identification purposes, is that so? A. Yes, sir.

Q. When did you go there? A. I could not say the date.

Q. You didn't go the same day, Saturday? A. No, it was the following week.

Q. You didn't go that Saturday, or didn't go the next day? A. It was the following week. I wouldn't know what day it was.

Q. All right. Did you say that you saw some men in a lineup? A. Yes.

Q. In the police station in Elizabeth? A. Yes, sir.

Q. How many of them? A. I think, about eight.

Q. About eight? A. Yes.

Q. Did you know any of the eight men? A. The one I picked out, yes, that is all.

Q. Well, who were the other seven? A. I don't know.

Q. Well, they weren't prisoners, were they? A. I don't know.

Q. They were officers, weren't they? A. I don't know.

Q. Well, isn't it a fact that out of those eight men who were stood in this lineup in the Elizabeth station, Elizabeth headquarters, that he was the only poorly dressed looking person there was,

and disheveled and unshaven, and that the rest of them were all decent looking appearing fellows? A. They all looked about the same to me.

Q. What do you mean? A. As far as clothing and dressing were concerned, yes.

Q. Well, now, tell me this: When you looked at him in the lineup, in Elizabeth, what was there about him that you recognized as being the person whom you saw several nights before in Linden? A. The face; the side of the face.

Q. The side of the face? A. Yes, sir.

Q. And he had a heavy beard, didn't he? A. I wasn't that close there that night.

Q. Did he have a heavy beard the night you saw him sitting in the parked car there? A. I told you I wasn't that close.

Q. You weren't that close? A. To know whether he had a heavy beard or not.

Q. Did you get close to him in the station at Elizabeth? A. About five foot away.

Q. Did he have a heavy beard then? A. I wouldn't say heavy. He needed a shave.

Q. Well, did the man you saw sitting in the car several nights before need a shave? A. Well, he didn't have no light beard on that night. His face looked dark, so I don't know whether he needed one badly or not.

Q. Of course, when you went in that station, you were told what you were there for, weren't you? A. No, sir, I was not.

Q. What did you think you were going over to Elizabeth for? A. They just called me down. I didn't know.

Q. Called you down for what? A. After work, to go down to Elizabeth Police Headquarters.

Q. Without telling you what they wanted you to come there for? A. Yes, sir, my Chief didn't tell me what they wanted me for.

Q. I see. When you got to Elizabeth, I don't suppose anybody told you there what you were there for, did they? A. No, sir.

Q. You just walked in the place and looked around, and they brought out eight men and stood them in the line, and you said, "There is the fellow that sat in the car in Linden four or five nights ago"? A. No, it wasn't that way. I went in to see the Chief. I said, "Here I am. I am from Linden Police Headquarters. My name is Malsam."

Q. Did you say to Captain Brennan, "What do you want me here for?" A. I asked him what I was wanted for in there.

Q. What did he tell you? A. He said, "You sit down. We will let you know in a little while."

Q. They still didn't tell you? They were trying to keep it dark?

Mr. Hicks: Well, now,——

Mr. Sedam: I withdraw that.

Mr. Hicks: May we have that stricken from the record?

The Court: Strike it out.

*By Mr. Sedam:*

Q. They still didn't tell you what they wanted you for after you asked Chief Brennan, "I am here. What do you want?" And he said, "Sit down a little while." A. Yes.

Q. "And you may find"—I think you said— A. No.

Q. What did he tell you? A. He said, "Come

ahead in and see if you can pick out a man that you think you seen the other night."

Q. See if you can pick out—a man that you think you seen the other night. Did you think you had seen him, or did you tell him you had seen him? A. I didn't say anything to Captain Brennan.

Q. Did you tell anybody, sir, before you went over there to make that identification, what this man that you were going to look at, that is, what the man whom you had seen in Linden looked like, so that you might make a comparison there? A. I told him I saw him the morning of the murder.

Q. Describe the man you had told him he looked like. A. I am no artist. I could not draw no picture.

Q. You don't have to be an artist to do that. All you have to do is tell what you have in your mind. What did he look like? A. A dark complected fellow.

Q. A dark complected fellow? Could you tell whether he was five feet tall or six feet tall? A. No, sir.

Q. Could you tell whether he had a beard or he had a heavy beard? A. He didn't have no heavy beard.

Q. Could you tell whether he had black hair or brown hair? A. He had a hat on.

Q. He had a hat on? A. Yes, sir.

Q. Could you tell anything about the color of his eyes? A. No, sir.

Q. Could you tell whether he had a fat nose, or a broad nose, or a thin nose? A. I was on the side of him, so I couldn't say.

Q. You don't know very much about what the man in the car looked like, do you, Officer? A. I did that morning, yes.

Q. You knew that they picked up somebody and charged him with being the man that killed the trooper, and you went over there to identify him? A. My sergeant made the report out that I told him I could pick him out, before the man was caught.

Q. But you couldn't tell him that day, you couldn't pick him out by any distinguishing marks, could you? A. No, sir.

Q. Do you know whether the man in the car had a light overcoat on or not? A. I could not say.

Q. Or whether he had a light hat on? A. No, it wasn't light.

Q. It was a dark hat, wasn't it? A. Well, it was not black. It was a dark colored hat.

Q. Did he have gloves on, do you know? A. No, not when he lit the cigarette.

Q. You could see he didn't have gloves on when he lit the cigarette? A. Yes, sir, one hand, the match——

Q. Do you know whether he had gloves on before he lit the cigarette? A. I don't know. He had his hands down.

Q. Well, he didn't keep them down when he lit the cigarette? A. No, he put them up. That is when I noticed he had no gloves on.

Q. How about the fellow driving the car? A. I don't know.

Q. Did he have gloves on? A. I don't know.

Q. Was he tall or short? A. He was sitting in the car. I could not tell whether he was tall or short.

Q. I see, no, and you couldn't tell whether the other man was tall or short, could you? A. No, sir.

Mr. Sedam: That is all.

*Redirect examination by Mr. Hicks*:

Q. Now, Officer, you say you got a call that your red light was flashing on one of the call boxes, is that correct? A. Yes, there are overheads on certain streets.

Q. That was within a minute or two after you had seen this Chevrolet? A. Yes, sir.

Q. When you answered that call, you say, you learned of the shooting of Trooper Yenser? A. Yes, sir.

Q. Did you make any report to your sergeant about the Chevrolet coupe you had just seen? A. I did tell him, yes.

Q. Did you make any search for that Chevrolet at that time? A. Yes. Three of us went out in cars looking, right after that.

Q. This was within a few minutes after you had seen the Chevrolet at Wood and Elizabeth Avenues, and after you had received the telephone call from police headquarters? A. Yes, sir.

Q. Now, did you give the sergeant any description of the automobile? A. I did.

Q. Now, Officer, I would like to get this straight as to exactly how your car was parked. Just for the sake of the jury, assuming this is Wood Avenue, running along here— A. Make it Elizabeth Avenue.

Q. Well, we will make this Wood Avenue, and the super-highway is over here. Then, this coupe that you described was coming along Wood Avenue from the direction of the super-highway? A. Yes.

Q. We will use this Bible for it now. Now, this is Elizabeth Avenue? A. Yes, sir.

Q. This is Elizabeth, up here, and it runs through down towards Rahway, is that correct? A. Right.

Q. Now, this coupe was coming towards Elizabeth Avenue, is that right? A. Towards—going north.

Q. Towards Elizabeth Avenue, that would be going north? A. Yes.

Q. It stopped at the intersection of Elizabeth and Wood Avenues, is that correct? A. Yes.

Q. And you were parked on Elizabeth Avenue, is that right? A. Yes, sir.

Q. Headed? A. West.

Q. Headed west? A. Southwest.

Q. Headed southwest, that is, headed in the direction towards Rahway? A. Yes.

Q. Using this picture, how was your car headed with reference— A. Like this. My car was here, their car was there (indicating).

Q. Was this the front of your car? A. This was the front, yes.

Q. Did you have your lights on? A. Yes.

Q. Then, your lights were pointing right at the Chevrolet? A. Yes.

Q. Right at the two people that were sitting in the Chevrolet?

Mr. Sedam: Just a moment, I object, if your Honor please.

The Court: On the ground that it is leading?

Mr. Sedam: On the ground that it is leading, yes, sir.

The Court: Well, he said that before, Mr. Sedam, so I suppose——

Mr. Sedam: Pointing towards the car, he said.

The Court: Well, he said that before.

Mr. Hicks: That is all.

*Recross examination by Mr. Sedam:*

Q. Where is that call box on that corner, Officer Malsam? A. That is on the easterly corner.

Q. Well, is that the corner where your car was parked, the corner where the call box is? A. Yes, sir.

Q. Isn't there a bank of land that rises up there? A. No. There is a gasoline station right there, a Warner Quinlan Gasoline Station.

Q. To the right of where your car was facing? A. To the right?

Q. Yes. A. There was a bank on one corner.

Q. I don't mean a bank that you put money in. Is that a bank, you mean, or a sand bank? Well, isn't there a bank on the corner there? A. Well, there was one.

Q. There was one? A. Yes, and, well, it went under, so they are tearing it down now.

Q. I mean, the building. There is a building there? A. Yes, one on each corner.

Q. And you were on the corner where the call box is? A. Yes, sir.

Q. And the car of the men, that these men were in, was over away from the corner, on the right-hand side of the road from where the call box was? A. No. They were in front of my car, left front.

Q. Yes, but out in a road approaching toward you where you were standing, so that they were about ten feet away from you? A. No, they were facing a different direction than I was. They were facing north, and I was facing southwest.

Q. And if they were facing north, and you were facing southwest, then, the lights of your car could not have been right directly on them? A. Directly in their face.

Q. Right in their faces? A. Right in the man's face.

Q. All right, that is just what I want to know. If the light shone right smack in their faces, why can't you—why couldn't you describe what the men in the car looked like? A. I did pick the man out. There he is, sitting there.

Q. Yes, but you couldn't tell anything about what he looked like, could you? A. I picked him out of the lineup.

Q. You said he was a dark man that needed a shave? A. Yes, and the feature—his face.

Q. Was there another officer that went over with you to make the identification? A. Yes, sir.

Q. He went over? A. Yes, sir.

Q. Did he identify him? A. No, sir.

Q. He was right there with you, wasn't he? A. He was on the other side of me.

Q. What do you mean, on the other side of you? A. On the right side of me.

Q. Well, how many feet away from you? A. He was sitting alongside of me.

Q. In the car? A. Yes.

Q. Sitting alongside of you in the car in which the lights were streaming right at the faces of the men in the other car? A. Yes, sir.

Q. And you were in the driver's seat? A. Yes, sir.

Q. And he wasn't in the driver's seat, and he couldn't identify the man in the car, but you could, is that right? A. Yes.

Q. Could you identify the other man, the man that killed himself later in Philadelphia? A. I could now, after seeing his picture.

Q. That is what I want to get at. The other man that was in the car, do you now identify him as the

man whose picture you saw in the paper as being the one who killed himself in Philadelphia? Would you go so far as to say that, Officer? A. I don't get that.

Q. You say you saw the faces of both men in the car? A. I don't. The man on the right, I seen.

Q. Oh, you didn't see the other man at all? A. I seen the feature, but I didn't see his face. I didn't—wouldn't know him.

Q. You what? You seen what? A. I seen the build of the man, the driver, in the seat, but I couldn't say who he was.

Q. Didn't you say just before, "I seen his face"? Did you say that, or didn't you? A. The feature of a man sitting there, yes.

Q. You mean, the figure of a man? A. Oh, well, the figure, yes.

Q. But you didn't see his face? A. No, I could not.

Q. Then, you could not identify the other man as being the man who killed himself in Philadelphia, whether it be from a picture or any other thing, could you? A. No, I could not.

Q. Didn't you just say a moment ago, after you saw his picture, you could identify the man who killed himself in Philadelphia? A. If he was alive, yes.

Q. Suppose he were alive, sitting right here today, if you didn't see his face in the car, you certainly wouldn't get up and identify him here in court today, would you? A. Through the picture, I would.

Q. A picture of who? Somebody you never saw? A. Yes.

Q. You would identify him? A. Yes, sir.

Mr. Hicks: Now, if it please the Court, I think Mr. Sedam is a little confused as to what the witness said.

Mr. Sedam: No, I am not confused.

Mr. Hicks: The witness has said, taking the picture of Morton, and using that picture, he could identify the man who committed suicide with that picture, that he is the same man. He doesn't say he can identify Morton as being the man who was riding in the automobile, at all.

The Witness: No, I could not.

Mr. Sedam: Well, now, if your Honor please, that changes my whole examination around, when Mr. Hicks makes that statement to the Court. Now, I am going at this gentleman again, with your permission.

Mr. Hicks: No objection at all.

*By Mr. Sedam:*

Q. Now, Officer Malsam, you have told us the position in which your car was parked at or near the corner where the call box was? A. Yes, sir.

Q. That you were sitting in the car, behind the wheel, that is, not driving, or not with your hands on the wheel, but in the wheel seat? A. Yes, sir.

Q. And that your buddy, whatever we want to call him, your assistant, Mr. Kopec, was sitting alongside of you in that car, is that correct? A. Yes, sir.

Q. And that the lights of your car, parked at this angle, were reflected directly toward this Chevrolet car, which was on South Wood Avenue, is that right? A. Yes, sir.

Q. That you were a distance of about ten to twelve feet away? A. Yes, sir.

Q. From that car which had stopped with the red light, waiting for the traffic to change? A. Yes, sir.

Q. The signal to change? A. Yes, sir.

Q. That Metalski, the defendant, according to your identification, was sitting in the right-hand seat of the car? That is correct? A. Yes, sir.

Q. Which was the point nearest to you? A. Yes, sir.

Q. That the lights from your car were on the faces—not the face, but on the faces of the men in the other car? A. No, the right side face of the man on the right-hand side.

Q. Just the right side face of the man who was nearest to you? A. Yes.

Q. So that you didn't see his entire face or his entire features, did you? A. No, sir.

Q. All you saw was a fellow whose complexion was dark, and you can't tell what color overcoat he had on? A. No.

Q. You can't tell what color his eyes were, or what color his hair is or was, can you? A. (The witness shook his head.)

Q. Well, please answer. Don't shake your head. We can't get those shakes on the record. A. No.

Q. You can't tell whether he was six feet tall or five feet tall, and he wore a dark hat, the man you saw? A. Yes, sir.

Q. And, let us see, and you could not see the features of the second man at all? A. No.

Q. No. Although the light was shining directly on their car, you said? A. Yes.

Q. Now, come back to the part where Mr. Hicks says I am confused. Now, you get me straight.

Didn't you say here a few minutes ago that you could identify from a picture the face of the man who committed suicide in Philadelphia? A. I don't know about that.

Q. Well, now, I didn't ask you whether or not you know. Just answer yes or no to my question, please. Didn't you say here, and isn't it in the record here, that you said a few minutes ago that you could identify the face of the man who committed suicide in Philadelphia if you saw a picture of it? A. On the picture that I have seen of Morton.

Q. Now, I want to ask you—of the picture that you saw of Morton? A. Yes.

Q. Which you saw after his reported death, is that right? A. No, I had it before his reported death.

Q. Before his reported death? A. Yes.

Q. But he killed himself on that following Monday? A. I don't know.

Q. Well, I am telling you that he did. Did you have the picture on Sunday or Saturday? A. Well, we didn't get it Saturday.

Q. Well, if you didn't get it Saturday, did you get it Sunday? A. I could not say whether I got it Sunday or Monday.

Q. Well, how can you answer the question that you got it before he was dead if you don't know when you got it? A. He committed suicide on Monday?

Q. Yes. Now, when did you get the picture, with relation to that? A. Monday morning.

Q. Do I understand you to mean that after you had been supplied with a picture of a man on Monday, said to be the picture of a man named Morton, you, after you saw another picture of him in the paper, could tell that the picture in the paper was

the picture of the same man that you had? Is that what you mean? A. Yes.

Q. What is there to that? I didn't ask you that. A. What?

Mr. Hicks: If it please the Court, that was exactly counsel's question. He asked if this witness could take the picture of Morton and compare it with the dead man in Philadelphia, and say whether it was the same man. He didn't ask this witness, "Was the picture of Morton the picture of the man who was driving the automobile on the morning in question?" That was not the question at all. This witness has answered all the way through.

The Court: The witness, evidently, was confused about the question, but I don't see why he should have been confused, because we don't care anything about the comparison of one picture with another. What we are concerned about is the picture that was produced as being the man in the car that night. I assumed that the witness would understand that, but he evidently didn't, so go on.

Mr. Hicks: I submit that counsel's question didn't refer to the man that was in the car. He was talking about a picture, and the witness answered the question.

Mr. Sedam: My first question was, Mr. Hicks, when I was standing over there——

The Court: Go on.

*By Mr. Sedam:*

Q. Just to try to clear this up: I understand you mean that after this unfortunate killing of

the trooper, pictures were supplied you fellows of Morton, that is correct, isn't it? A. Yes, sir.

Q. And it is your best judgment that that was during the day on the following Monday that that picture was put in your possession? A. Yes, sir.

Q. And that regardless of what time it was—because I don't know either—Morton having killed himself on Monday, you saw a picture of him in the newspaper? A. I don't know whether I did or not.

Q. Well, all right, you don't know whether you did or not. I thought you were going to say that the picture you had in your possession was the same as the picture of the man that was in the paper; but you don't know. You don't say that the picture that was supplied to you was the picture that was in the paper that you saw, if you saw it, or the picture of anybody that you saw in the car that night? You don't say that, do you? A. No.

Mr. Sedam: That is all.

Mr. Hicks: That is all.

The Court: We will take a two minute recess.

(A short recess was had.)

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LEONARD MAYEA, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Officer, you are a member of the Elizabeth Police Department? A. Yes, sir.

Q. On November 9, 1935, the early morning of that day, were you on duty at Elizabeth Police Headquarters? A. Yes, sir.

Q. Were you in charge of the switchboard that sent out the radio alarms? A. Yes, sir.

Q. Did you receive a call from the lunch wagon attendant at Linden about the murder of a trooper? A. Yes, sir.

Q. Do you know exactly about what time that call was received? A. Exactly five o'clock.

Mr. Hicks: That is all. Cross examine.

Mr. Sedam: No questions.

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MICHAEL MORRIS, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Officer, you are a member of the Elizabeth Police Department? A. That is right.

Q. Were you on duty on the morning of November 9, 1935? A. That is right.

Q. On that morning, did you get an alarm from headquarters to look out for a Chevrolet automobile with Pennsylvania license plates? A. That is right.

Q. Where were you in Elizabeth when you received that alarm? A. About three hundred feet from a call box.

Q. Where was that call box located? A. Broad and East Jersey Streets.

Q. Did you go and answer the call box? A. That is right.

Q. While you were answering that call box, what, if anything, happened? A. I noticed a dark coupe coming out of West Jersey Street, the radiator steaming over, going to cross Broad Street, going

very slow. Patrolman Geiger, who already had answered the siren, was standing eight or nine feet from me at the curb. I said, "This looks like them coming now." I said, "I will call headquarters, and you get a taxi cab which is catty-corner across the street, and we will chase them." In the meantime, I called up headquarters and reported the information I had in reference to the car, giving directions, the way it was going.

Q. Now, what kind of automobile was it? A. Dark coupe, either a Ford or Chevrolet.

Q. Was the rear window——

Mr. Sedam: I object to that.

*By Mr. Hicks*:

Q. Was there a rear window in the car? A. Yes, sir.

Q. Or didn't you notice? A. Yes, sir, there was.

Q. Was it broken or not?

Mr. Sedam: Just a moment, if the Court please.

The Court: Yes, Mr. Hicks, allow him to describe it.

*By Mr. Hicks*:

Q. Well, describe this car as well as you can. A. We could not see the front plates, on account of the radiator steaming over, but as soon as it passed abreast of us, I stuck my head out and looked at the rear of the car to see the license plates. I immediately saw they were Pennsylvania plates; then I called in.

Q. Did you notice anything else about the automobile? A. Two men in it.

Q. Did you notice anything else? A. No, not exactly.

Q. What was the condition of the car? A. Well, it seemed as if it had been driven very fast and long, on account of the radiator steaming over.

Q. Then, you say, you and Officer Geiger took a taxi cab? A. That is right.

Q. Did you follow this car? A. No, sir.

Q. Try to find it? A. Well, we went south instead of going east, the way they were going. We thought we would head them off by going south, cut across them, and double back.

Q. Did you see that car at any time again after it crossed Broad Street and West Jersey? A. Yes, turning right into Jefferson Avenue, which is the next block going east.

Q. Did you see it again after it turned east at Jefferson Avenue? A. No, sir.

Q. You turned off onto Jefferson Avenue? A. No, sir.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Officer Morris, how close did you come to the automobile at any time? A. Twelve feet.

Q. I understand you to say that you were at the corner of Broad and East Jersey Streets? A. That is right.

Q. That is one of the most prominent and brightest corners in Elizabeth, is it not? A. You are right.

Q. Were you able to see the occupants of the car? A. Positively.

Q. Both of them? A. That is, two men in the car.

Q. Oh, two men in the car? A. Right.

Q. But, were you able to identify them? A. No, sir.

Q. Well, now, Prosecutor Hicks asked you whether you noticed anything about the car, anything else about it, and you told him about the men being in it, and about it steaming, and about not being able to see the front license plate, but being able to see the rear license plate; but you saw the window broken out of the car, didn't you? A. Yes, after it passed me, but not when it was abreast of me.

Mr. Sedam: Sure, that is all.

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ERNEST KECK, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. You are a member of the Elizabeth Police Department? A. Yes, sir.

Q. On the morning of November 9, 1935, were you and Patrolman Carolan together in a radio patrol car? A. We were.

Q. And at about five A. M., did you receive an alarm to the effect that a trooper had been shot? A. We did.

Q. Where was your patrol car at the time you received the alarm? A. At Livingston and First Streets, Elizabeth.

Q. Just tell the jury as near as you can what section of Elizabeth your automobile was in at the time you got the alarm. A. Why, it is in the lower section of Elizabeth, near the water front, a block from the water front.

Q. As you go through Elizabeth on the superhighway, going from New Brunswick to New York, which side of the highway is this section of Elizabeth located? A. The right side.

Q. That is, it is east of the highway? A. East.

Q. Now, after you received the alarm, did you and Carolan do anything at that time? A. We proceeded one block to East Jersey, that is, south on First Street, and stopped and talked to another officer there.

Q. Who is the other officer? A. Officer Schilinski.

Q. He was a radio patrolman? A. No, he is a street patrolman.

Q. While you were talking to Officer Schilinski, did anything happen? A. Why, yes. A baker's truck pulled alongside of us, that is, on the left of us, we were facing south, and this baker's truck, Ward's Bakery truck, pulled alongside of us, and started telling us about something.

Q. What happened after that? A. While we were sitting there, this here truck had blocked practically our view of the—on our left side; and then a car speeded past between the curb on the right side of the street, in other words, the east side of First Street, and our car and the bakery truck. They were going north on First Street. My partner looked around, and he says, "There goes that speeding car—coupe. Probably those are the fellows that——"

Q. Well, now, don't tell what your partner said. This other car speeded past? A. That is right.

Q. What did you and your partner, Carolan, do? A. I was driving. I made a four-cornered turn at East Jersey and First Streets where we was talking to Officer Schilinski; made the turn, and proceeded north on First Street, chasing after this

car. Finally, the car outdistanced us. They continued on right straight over First Street, which is a dead end. Instead of us going to the—the way they went, and the way we figured they went, we cut across another street by the name of Insley Place, figuring if they went around that way, they would have to come out where we would have to come out. We traveled two blocks—well, Insley Place is two blocks long, to Third Street. There is a vacant lot. By the time we got there, we saw a car probably right near the Long Branch Railroad, saw the tail light.

We turned right on Third Street to Trumbull. That is the street this other car came up. We continued after them to the gate on the railroad crossing, and we noticed like a tail light was lighting up, as if they were going to stop or make a turn. We thought we could outfigure them by turning left on New Point Road, which runs on an angle to the block which we figured they were turning in at, and come out on this street we went up.

We proceeded up that way. We didn't see this car come out. We got as far as what you call Port Avenue. We didn't see no car. We could see very plain there, if the car was around there. We didn't see no car come out. We turned right on Port Avenue, that is, going west. We got to the intersection of Port Avenue and Schiller Street. We noticed this steaming coupe stopping, that is,—no, I will take that—not stopping. The car was stopped. Just as we turned the corner, I noticed two men jumping out of the car, the right side of the car, and running through the alley.

I hollered to my partner, "There they go, through the alley." I, being on the left side, near-

est to the Chevrolet coupe, I leaped out from my car in through the alley after them. My partner ran down Schiller Street to Trumbull. As he got down to Trumbull, he turned Trumbull, and looked up, and he hollered, "There they go, up that way, up Trumbull."

I came out from behind the building, jumped in the radio car, and that was the last that I saw them. I searched around there for them.

Q. Did you fire any shots? A. I didn't.

Q. Were there any shots fired at you? A. Not at me, no.

Q. I show you four pictures of this Chevrolet coupe, and shown in those pictures is a street. What is the name of the street? A. Schiller Street.

Q. Will you look at these pictures, and tell us whether or not these pictures show where that Chevrolet was abandoned, and show the Chevrolet? A. Yes, it does.

Mr. Hicks: If there is no objection, I will offer them in evidence.

(The photographs referred to were received in evidence and marked "Exhibits S-8 to 11," inclusive.)

*By Mr. Hicks:*

Q. After you gave up the chase up this alley, what did you do, Officer? A. I went back and got in the radio car, and called over the air for more help, and told them——

Q. Well, never mind. You called over the air for more help? A. That is right.

Q. Did you make any examination of this Chevrolet coupe which had been abandoned? A. In what way?

Q. Did you look in the car? A. I looked in the car later, yes.

Q. What did you see when you looked in the car? A. I saw Sergeant Clair removing a sawed off shotgun.

Q. Do you know whether or not this is the shotgun that Sergeant Clair removed from this car? A. I could, if you break it, I mean, take it apart. I have a mark on it.

Q. You have a mark on it? Where is your mark, Officer? A. I got a mark on this, and this, and the barrel.

Q. Well, just take the wooden stock off.

Mr. Sedam: Well, if your Honor please, if it will expedite any, if the officer says that is it, and the Prosecutor says that is the gun in the case, that is all right.

Mr. Hicks: This is the gun, if it please the Court.

The Court: All right.

Mr. Hicks: Well, I will offer it in evidence.

Mr. Sedam: No objection.

(The article referred to was received in evidence and marked "Exhibit S-12.")

*By Mr. Hicks:*

Q. Now, did you observe anything else in this automobile? A. Yes, I saw two bottles.

Q. Do you know what kind of bottles they were? A. Why, there were two bottles laying in the back of the seat. Well—I can't say, "I think." There was one quart bottle, and there was one-fifth bottle.

Q. Do you know what kind of bottles they were? A. One bottle was a brandy bottle.

Q. Did you make any identifying marks on these bottles? A. I didn't.

Q. Did you see any of the other officers pick up anything near this car? A. No, I didn't.

Q. Were you there after the Chevrolet automobile had been taken to police headquarters? A. I was.

Q. Did you see any of the other Elizabeth officers or detectives pick up anything near where this Chevrolet had been? A. I didn't.

Q. Were you present at the scene where this car was abandoned when Detective Von Bischoffshausen came there? A. I was.

Q. Did Detective Von Bischoffshausen show you anything? A. He did.

Q. What was it? A. A button.

Q. Well, did you make any identifying marks on this button? A. I didn't.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Officer Keck, how close did you come to this car at any time? In other words, what was the closest you were to the car? A. The closest I was, when they were getting out of the car, when I saw the door open.

Q. How far away from you were the men at that time? A. I would say, approximately two hundred to two hundred and fifty foot, maybe more.

Q. And can you tell us approximately what time it was then? A. At that time?

Q. Yes. A. I should judge, around five-fifteen.

Q. Still dark, wasn't it? A. Yes, sir.

Q. So that you, of course, weren't able to distinguish the faces of either of the men, were you? A. I was not.

Q. And you have not been called upon at any time since then to try to identify them, have you, to identify the men? You haven't been called upon by anybody to try to identify these men? A. Where do you mean, here or in Elizabeth?

Q. Anywhere. A. I was, in Elizabeth, yes.

Q. They asked you to identify them? A. To see if I could identify them.

Q. And the closest you were to them was two hundred feet, so you told them you could not identify them? A. That is right.

Q. You have said that you examined the Chevrolet coupe some time around that time or later, didn't you? A. I didn't say that at all.

Q. Oh, didn't you? Didn't you say, "I looked in the car later"? A. I did. I said that.

Q. Well, sir, I didn't mean a minute examination, but when you did look in the car, at about the time you looked in the car, you saw Sergeant Clair removing this gun? A. That is right.

Q. And you saw two bottles in the car? A. That is right.

Q. You didn't see the button around there yourself? A. I didn't.

Q. Until a detective later showed it to you? A. That is right.

Q. Now, I am just wondering, did you look at the seat of the automobile? Did you see blood stains on the seat? A. I didn't.

Q. Did you look for that? A. I didn't.

Q. Have you found out since that there were stains on the front seat of the Chevrolet? A. I haven't found out since, no.

Mr. Sedam: I think that is all, Officer.

*Redirect examination by Mr. Hicks:*

Q. This Sergeant Clair who found this shotgun has since died, is that correct? A. Yes.

Mr. Hicks: That is all.

*Recross examination by Mr. Sedam:*

Q. You didn't fire any shots at all? A. I didn't, no.

Q. Did the man with you fire some? A. He did.

Q. How many? A. I couldn't say, I wasn't there when he fired them. I was around in back of the building.

Q. Of course, you don't know which man was going in which direction, do you? A. That is right, I don't.

Mr. Sedam: That is all.
Mr. Hicks: That is all.

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LEO CAROLAN, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, you are a member of the Elizabeth Police Department? A. Yes, sir.

Q. And on the early morning of November 9, 1935, you, with Officer Keck, were parked in a radio patrol car? A. Yes.

Q. We won't go over the first part of his testimony, but you and Officer Keck followed this Pennsylvania Chevrolet down towards the rail-

road in the lower and eastern end of Elizabeth, is that correct? A. Yes, sir.

Q. Now, did you see the Pennsylvania coupe stop? A. Yes, sir.

Q. Now, what street was it it stopped? A. Schiller Street.

Q. How far away from the car were you at the time? A. About two hundred and fifty feet.

Q. Were you driving your car, or Keck? A. Keck was driving.

Q. After the Chevrolet stopped, what did your automobile do? A. We pulled right in front of them.

Q. And then what happened? A. Officer Keck went in the alleyway, and I went to the corner.

Q. And you went to the corner? A. I went to the corner.

Q. When you got to the corner, what did you do? A. I seen the two men running up the street.

Q. What did you do? A. I commanded both men to halt, and I hollered to my partner that they were running up the street, and they didn't stop, so I fired one shot at them.

Q. Did the two men continue to run up the street? A. As soon as I fired the first shot, the man with the light cap run over Trumbull Street to the railroad.

Q. You say, a man with what? A light what? A. A light cap, ran through the railroad.

Q. Was he the taller or the shorter of the two? A. He looked to be the tallest.

Q. Where did the other man go? A. He kept running right up the street.

Q. What kind of clothes did he have on? A. As far as I could make, it was a dark, soft hat.

Q. Any overcoat? A. He had an overcoat.

Q. Which one of these two did you chase? A. The man with the dark, soft hat and the overcoat.

Q. Did you fire any more shots? A. I started to chase after them, and when he got to the end of the building, I fired another one, because I knew if he got around the building, I couldn't hit him, and he, in turn, fired one back at me. I chased him around the building, and I was running down the street. He doubled back on another street on me, and I immediately fired at—another shot at him, and he got to the turn, and he turned. I didn't see him no more.

Q. You say it was the shorter of the two men you were following? A. Yes.

Q. He fired just one shot at you? A. Just one shot.

Q. Were you close enough to see the features of either of these two men—to see the faces? A. I was not.

Q. When you saw them, they were going in the opposite direction, correct? A. Yes.

Q. After you had chased these men, what did you do? A. I still looked for them, and Sergeant Clair had arrived.

Q. Did you return to the place where they had abandoned this Pennsylvania Chevrolet? A. Not until later. I was still looking for these fellows that got away from me.

Q. When you got back to that place, had the Pennsylvania automobile been taken away? A. No, it was there.

Q. Did you look in the Pennsylvania car? A. I did.

Q. Did you see this shotgun there? A. Well, Sergeant Clair had it when I arrived back.

Q. Did you see any shotgun shells around the car? A. I did.

Q. How many? A. I saw two empty ones on the floor.

Q. Did you make any identifying marks on those empty shells? A. No, sir.

Q. Who did that, do you know? A. I could not tell you.

Q. Did you see any other shells around the car? A. No, sir.

Mr. Hicks: That is all. Cross examine.

*Cross examination by Mr. Sedam:*

Q. Officer Carolan, you say that Officer Keck was driving this radio car? A. Yes, sir.

Q. What time of the morning was it when you first got sight of the men and started to pursue them? A. Five-ten.

Q. And how long did you devote altogether to the pursuit? About how long a time did you devote to it? A. About five minutes.

Q. The whole thing was over in about five minutes? A. Yes, sir.

Q. That made it approximately five-fifteen? A. Yes, sir.

Q. Now, it was dark, wasn't it? A. It was dark, yes, sir.

Q. Did you use the expression, "We pulled right in front of them"? A. Well, I was in the car. I pulled up in front of the car.

Q. But, what do you mean when you say you pulled right in front of them? How close did you ever get to this other car while the men were in it? A. The men were out of the car when we pulled up to it.

Q. Of course, and I am not talking about that. Of course, after the car stopped, you pulled up to it. A. That is what I mean.

Q. How far were you away from their car at the time these men got out and began to run? A. About two hundred and fifty feet.

Q. Yes, so that you didn't see either one of these men, did you, except to see two figures? A. I saw the two figures running up the street.

Q. Yes, but you couldn't distinguish their faces? A. Not their faces, no, sir.

Q. You say one of them had a light cap on? A. Yes, sir.

Q. Do you mean to tell me that at a quarter after five in the morning on November 9, 1935, at a distance of approximately two hundred and fifty feet, you could see whether a man had a cap or a hat on? A. Yes, sir, because they passed an arc light.

Q. What? A. They passed an arc light on Trumbull Street. There was an arc light. At the arc light they both separated.

Q. You mean, in their flight? A. Yes.

Q. Past an arc light? A. Yes.

Q. Well, they were running away? A. They were running away from me.

Q. Well, your car was two hundred and fifty feet away from them when they got out of the car and began to run? A. Yes, sir.

Q. All right. Now, they didn't keep right on the street when they began to run, did they? A. No, sir.

Q. They ran through an alley, didn't they? A. Yes, sir.

Q. When did you get near enough to them to see them under any arc light? A. I know, when they went through the alley, the coupe hadn't been

stopped right away, and they lost ground; and when they ran in the alley, they didn't know which way to go.

Q. How do you know whether— A. Because, sir, there is a very funny alley there.

Q. How close did you come to them? A. About a hundred and fifty feet.

Q. A hundred and fifty feet? A. Yes, sir.

Q. At a quarter after five on the morning of November 9, 1935, you were able to say, a distance of a hundred and fifty feet, to say whether a man had a cap or hat on? A. When he was underneath the light.

Q. Now, where is the light? Is it in this alley? A. No, sir, on the street.

Q. Well, you didn't tell us about going by any light; you said they ran through this alley. A. I said—you didn't ask the question.

Q. Well, tell us about the arc light. A. When they came out of the alleyway, and they ran up the street, they had to pass an arc light, and they both went underneath the arc light.

Q. Just a minute. Did you not say that you were a distance of approximately two hundred feet, two hundred and fifty feet away from this car, this other car, at the time two men got out of the car and began to run? A. Yes, sir.

Q. That is correct to that point, is it not? A. Yes, sir.

Q. Now, the two men didn't run in the same direction, did they? A. They did.

Q. Didn't one go one way, and the other go another? A. Not when they got out of the car, no, sir.

Q. They didn't? A. No, sir.

Q. All right. Where did they run? A. In an alleyway.

Q. How near was the alley to the place where they stopped their car? A. About ten feet.

Q. So that they didn't have to pass any street intersection to get into that alley, did they? A. No, sir.

Q. Now, do you mean to say that when they went into the alley, that they came out of the alley again while you were standing there? A. At the other side of the alley.

Q. At the other side of the alley? A. Yes, sir. The house is on the corner.

Q. Did you go through the alley? A. No, sir.

Q. Well, then, if they came out the other side of the alley, and you didn't go through the alley, you didn't get very near to them, did you? A. Yes, sir. The house is on the corner. The house only sets off Schiller Street about seventy-five feet.

Q. Where is this light? A. On Trumbull Street, about two hundred and fifty feet up the street.

Q. Two hundred and fifty feet from where you were? A. No, sir, from the alleyway where they came out.

Q. Well, you didn't go through the alleyway? A. No.

Q. You must have been further than that away from them? A. No, sir.

Mr. Hicks: Now, if it please the Court, it might help if the stenographer might read the testimony of this witness back to Mr. Sedam.

Mr. Sedam: No, thank you, Mr. Prosecutor.

The Court: Proceed.

*By Mr. Sedam:*

Q. Did you at any time see the men as they were in the automobile? A. No, sir.

Q. You couldn't get a view of them in the automobile? A. No, sir.

Q. So that when you described one man as wearing a light cap, and another man as wearing a dark hat, you are not able to tell this Court and jury which one was in the driver's seat of the car and which one on the other side? A. No, sir.

Q. Did you see the two men when they emerged from the car? A. No, sir.

Q. When they got out to run? A. No, sir.

Q. I thought you told us a few minutes ago you did? A. My partner said, "They are going through the alley." I didn't see them.

Q. They didn't get up to the alley, yet. I am talking about getting out of the car. Did you see them get out of the car? A. No, sir. I didn't say I saw them get out of the car.

Q. Are you sure one of the men had on a light cap? A. Yes, sir.

Q. Have you found out since which one it was? A. No, sir.

Q. Have you found out since which one had on the dark Fedora hat? A. No, sir.

Q. You have never identified either one of the men anywhere, have you? A. No, sir.

Q. And you can't identify them now, can you? A. No, sir.

Q. Officer Carolan, when you looked in the automobile, you saw this gun? A. No, sir.

Q. Oh, you didn't see the gun? A. Sergeant Clair had the gun in his hand.

Q. Oh, Sergeant Clair had the gun in his hand? A. Yes, sir.

Q. Did you look in the automobile? A. I did.

Q. What did you see there? A. I saw two empty shells on the floor.

Q. Is that the only thing? A. That is the only thing I saw.

Q. Didn't you see these bottles? A. I didn't look for the bottles. I saw the two shells on the floor.

Q. And it was too dark for you to see whether or not there were blood stains on the seat at any time? A. Well, I didn't examine the car that much, no, sir.

Mr. Sedam: I think that is all, sir.

Mr. Hicks: That is all.

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The Court: We are about to take a recess. Let the prisoner be remanded, first thing, into custody.

(The defendant was removed from the courtroom.)

The Court: Now, we will take a recess until tomorrow morning at nine-thirty. The witnesses will come back tomorrow morning, both for the State and for the defendant, without further subpoena.

I advise the jurors and the officers that it would not be proper for the jurors to read any newspapers that have any account of this trial. You will be entertained, Members of the Jury, by the Sheriff during the night; and we will start tomorrow morning at nine-thirty. Let the jurors retire in the presence of the officers before any of the audience in the courtroom go out.

(You may retire.)

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

December Term, 1935.

STATE OF NEW JERSEY,

*vs.*

EDWARD METALSKI.

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before HON. ADRIAN LYON, Judge, and a jury, at the Middlesex County Court House, New Brunswick, New Jersey, on the seventh day of January, 1936.

APPEARANCES:

DOUGLAS M. HICKS, Esq., Prosecutor of the Pleas (present).

JAMES S. WIGHT, Esq., Assistant Prosecutor of the Pleas (present).

WALTER C. SEDAM, Esq., Attorney for the Defendant (present).

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JOSEPH KOPEC, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Mr. Kopec, you are a member of the Linden police force? A. Yes, sir.

Q. You were a member on the morning of November 9, 1935? A. Yes.

Q. What shift were you working that day? A. Eleven to seven.

Q. That is, eleven at night on November 8, to seven in the morning on November 9? A. Yes.

Q. Now, on the morning of November 9, at about five A. M., did you go to a call box at the corner of Wood Avenue and Elizabeth Avenue and make a ring? A. I did.

Q. While you were at that box, did you see Officer Malsam there? A. I did.

Q. Was Officer Malsam in an automobile? A. He was.

Q. As you were making this call, or about the time you were making this call, did you see an automobile come up and stop? A. I did.

Q. Do you know what kind of automobile it was? A. Chevrolet coupe.

Q. Do you know what kind of license plates it had on? A. Pennsylvania plates.

Q. What? A. Pennsylvania plates.

Q. Now, when did you first notice that this automobile had Pennsylvania plates on it? A. After it passed me.

Q. When did you notice it was a Pennsylvania car? A. After it passed me.

Q. What were you doing while the automobile stopped at this traffic light? A. I made a ring, and went to the car.

Q. And got in the car with Officer Malsam? A. Officer Malsam.

Q. What did you do while you were in the car with Officer Malsam? A. I took a cigar I had, and lit it.

Q. Did you look at this Pennsylvania car? A. After it passed me, yes.

Q. Did you look at it before? A. No, I didn't pay much attention to it.

Q. Do you know how many people there were in the car? A. No, sir, I don't.

Q. Did you look to see how many people there were in the car? A. No, I didn't.

Q. Then, you can't identify anybody that was in the car at all? A. No, sir.

Q. And you went down to a lineup, the same lineup that Officer Malsam saw, at the Elizabeth Police Department, is that correct? A. Yes, sir.

Q. Were you able to identify anybody in the lineup? A. No, sir.

Mr. Hicks: That is all. Cross examine.

*Cross examination by Mr. Sedam*:

Q. Just one question, Officer Kopec. At the time you were sitting in the car with Officer Malsam, what have you to say with regard to the position of his car and the lights on the other car? A. His lights was facing right out—west on Elizabeth Avenue.

Q. And you were sitting directly alongside of Officer Malsam? A. I was.

Q. And looking in the same direction he was looking? A. No, I lit a cigar before looking at that car, in that direction.

Q. Whether you lit a cigar or whether you didn't, you looked in the same direction as that car, didn't you? A. I did.

Q. Was there anything about it that attracted your attention? A. Not until afterwards.

Q. Not until afterwards. Did Officer Malsam say anything to you at that time with relation to either the car or its occupants? A. Not until after the car passed us.

Q. Not until after the car passed you; then, what did he say? A. Well, I said to him—I saw broken glass in the rear of the window. I says, "There is something funny about that car."

Q. Did he say anything about the occupants of the car? A. No, he didn't; not to me.

Mr. Sedam: That is all, Officer.

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JOHN HENRY VON BISCHOFFSHAUSEN, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. You are a member of the Elizabeth Police Department? A. Yes, sir.

Q. Detective bureau? A. Yes, sir.

Q. And you were a member on November 9, 1935? A. Yes, sir.

Q. How long have you been a police officer? A. Twenty-one years.

Q. Now, Detective, did you go to where a Pennsylvania Chevrolet had been abandoned on Schiller Street in Elizabeth on that morning? A. Schiller and Trumbull, yes.

Q. Schiller and Trumbull. Who went with you? A. Sergeant Martin.

Q. At about what time was it? A. We arrived there about seven-fifteen.

Q. Was it light when you got there? A. Just about.

Q. Now, did you make any search of the vicinity where this Chevrolet coupe had been abandoned? A. I did.

Q. What, if anything, did you find there? A. I found a button and a pink sheet of paper in front of 260 Schiller Street.

Mr. Sedam: What was the answer?

(The last answer was read by the reporter.)

*By Mr. Hicks:*

Q. Now, I show you a button, detective. Is that the button you found on the morning of November 9? A. That is the button.

Q. Did you make any identifying mark on it? A. Yes, I have my initial V in there, right here (indicating).

Mr. Hicks: I will offer it in evidence.

(The article referred to was received in evidence and marked "Exhibit S-13.")

*By Mr. Hicks:*

Q. Now, you say you also found a pink slip of paper? A. Yes.

Q. I show you a pink slip of paper. Is that the piece of paper you found? A. Yes, that is my indentification mark there.

Q. Where was that found? A. That was found in front of 260 Schiller Street.

Mr. Sedam: Now, if the Court please, did the witness mean in the car, or out on the street in front of 260 Schiller Street?

The Witness: In the street, on the street pavement.

Mr. Sedam: Oh, I object to the admission of that.

The Court: Well, I don't know. I will have to see how it is connected up.

*By the Court:*

Q. It was near this button? A. Right alongside of the button.

Mr. Hicks: Well, the paper isn't of any great assistance, but the detective said that he found a paper and a button.

Mr. Sedam: Oh, I will withdraw the objection.

Mr. Hicks: Well, then, as I understand it, they are both admitted in evidence?

The Court: Yes.

(The paper referred to was received in evidence and marked "Exhibit S-14.")

*By Mr. Hicks:*

Q. Who was with you at the time you found the paper? A. Sergeant Martin was with me. When I picked the button up, there was two other plain clothesmen across the street, Kennedy and Marzak.

Q. Did you show the button to anyone else? A. I showed the button to Sergeant Martin, Kennedy, Marzak, and some State officer, I don't know who he was.

Q. Now, I show you State exhibit S-10, being a picture of this Pennsylvania Chevrolet on Schiller Street. Did you subsequently replace that button where you had found it? A. Yes.

Q. Will you point out to the jury where that button appears in the picture? A. That button is right about three foot from the curbstone. There is the button there (indicating). The paper

is half way between the curb and the button, and about ten feet from—in front of the car.

Mr. Hicks: Cross examine.
Mr. Sedam: No questions.

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HUGH MARTIN, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. You are a detective sergeant of the Elizabeth Police. A. I am.

Q. Were you with Detective Von Bischoffshausen on the morning of November 9? A. I was.

Q. Down at Schiller and Trumbull Streets? A. Yes, sir.

Q. Were you present when Detective Von Bischoffshausen picked up this button, Exhibit S-13? A. Yes, sir.

Q. And this paper, Exhibit S-14? A. Yes, sir.

Q. And were you also there when these pictures were taken of the— A. I was.

Q. (Continuing) Chevrolet automobile? A. I was.

Q. And will you point out on this picture, S-10, where the button was located with reference to the automobile? A. Right here (indicating).

Mr. Hicks: Indicating the lower left-hand side of the picture.

*By Mr. Hicks*:

Q. Now, with reference to an alleyway there, or not an alleyway, but a yard between two houses, where was this button? A. About three foot from

the line of the house if it was brought out to the curb.

Q. Then, it was not directly in front of the house? It was between two houses? A. It was in front of 260 Schiller Street, about three foot from the line.

Q. Between 260 Schiller Street and the next house, is there an alleyway there? A. About three foot wide.

Q. Are there any fences or anything in that alleyway? A. There is a fence, and there is a gate, a wooden gate.

Mr. Hicks: That is all, Sergeant.

*Cross examination by Mr. Sedam:*

Q. Please tell me your name, first. I didn't get it, sir. A. Hugh Martin.

Q. Detective Martin. Detective, how far is this alleyway from the place where you say you picked up the button and the pink sheet of paper? A. The distance to the entrance to the alley?

Q. Yes. A. A distance of about ten and a half feet.

Q. And how far away from the car was the button and the pink slip of paper? A. Ten foot directly in front of the car, in the street.

Q. Did you see any men there on that occasion? A. As I arrived?

Q. Yes. A. I noticed police officers.

Q. Yes, but, I mean, neither of the two men who are mentioned as having been in the car? A. No, sir.

Q. That all happened before you got there? A. That is right.

Mr. Sedam: Well, that is all.

Mr. Hicks: That is all, Sergeant.

JAMES KENNEDY, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. You are a member of the Elizabeth Police Department? A. Yes, sir.

Q. On the morning of November 9, 1935, were you present near Schiller and Trumbull Streets when Detective Von Bischoffshausen picked up that button that is marked Exhibit S-13? A. Yes, sir.

Q. Did he show the button to you? A. Yes.

Q. Were you present when he picked up that sheet of paper, Exhibit S-14? A. Yes.

Mr. Hicks: Cross examine.
Mr. Sedam: No questions.
Mr. Hicks: That is all.

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ALEXANDER W. GEIGER, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. You are a member of the Elizabeth Police Department, Officer? A. I am.

Q. What shift were you working on the morning of November 9, 1935? A. From midnight until eight in the morning.

Q. Were you on duty at the time that the alarm came in relative to the shooting of Trooper Yenser? A. I was.

Q. Where were you in Elizabeth when you re-

ceived that alarm? A. Broad and East Jersey Street.

Q. What other Elizabeth officer was there at the time? A. Michael Morris.

Q. Did you notice at that intersection a Pennsylvania Chevrolet coupe? A. It was just proceeding east on East Jersey Street as Officer Morris was receiving the alarm.

Q. Coming east on East Jersey Street? A. Coming out of West Jersey into East Jersey, across Broad.

Q. What direction did that automobile go? A. East.

Q. Did you commandeer a taxicab and start pursuit?

Mr. Sedam: Well, now, if your Honor please——

Mr. Hicks: Well, the other officer, Morris, has so testified.

Mr. Sedam: No, they haven't testified to this part all, about commandeering any——

*By Mr. Hicks:*

Q. What did you do when you saw the Pennsylvania coupe? A. Well, while Officer Morris was receiving his alarm, I noticed this car coming up, the Chevrolet coupe, steaming, out of West Jersey Street. I says to the officer, I says, "This looks like the car——"

Q. Never mind what you said to the officer. A. I stepped off the curb and almost out to the middle of the street, and they were going slow across Broad Street, and I hollered to the officer, "There they go," and he sent in the alarm, and I ran over to the taxicab. The taxicab driver was

asleep, and I woke him up, and in the meantime the officer sent in the alarm. We pulled out in front of the box and picked him up, and we gave chase to this coupe.

Q. At the time you got this taxicab driver awake and started in pursuit, where was the Chevrolet? A. They had turned—they had turned south on Jefferson Avenue.

Q. Did you see that Chevrolet again that day? A. I didn't see it again, no, sir.

Q. Now, around seven o'clock that morning, where did you go? A. Well, it was a quarter after seven. I made my last round along Broad Street, and I went to the Pennsylvania Railroad ticket office.

Q. And you made an inquiry there? A. I made an inquiry if anybody had been here purchasing a ticket for any part of Pennsylvania.

Q. And subsequent to that inquiry, did you go upstairs in the station? A. I immediately went upstairs.

Mr. Sedam: If you Honor please, just a moment——

*By Mr. Hicks:*

Q. Well, what did you say——

Mr. Sedam: Just a moment.

The Court: What is the objection?

Mr. Sedam: If your Honor please, Mr. Hicks is testifying for this officer as to what he did. I think it should come out of the officer's mouth what he did.

The Court: Mr. Sedam, I suppose it is leading in a way, but it seems to be leading in a very unimportant way. Of course, he

can ask the witness, but I suppose you are right technically. He can ask the witness what he did. Perhaps that is the best way to do it.

Proceed, Mr. Prosecutor.

*By Mr. Hicks:*

Q. What did you do, Officer Geiger? A. I immediately went upstairs, and got up the last step, and there is a window on the right before you enter the door, and as I looked in that window, I pulled my gun out, and I seen the man sitting inside this window. I walked in the door, and walked right up to him, and stood in front of him, and looked around for the other man that was in this car.

Q. How many men did you see in this automobile? A. Two men.

Q. Did you see any other man there? A. I didn't see any other man there, but this man, so I said to him, I says, "Stand up. Where are you going?" He says, "Philadelphia." I went through him and searched him, and I found a ticket for Philadelphia in his possession.

Q. Now, just a minute— A. A flashlight.

Q. Just a minute. Do you see that man you searched, in the courtroom here, today? A. I do.

Q. Where is here? A. Edward Metalski, right here (indicating).

Mr. Hicks: Indicating the defendant.

*By Mr. Hicks:*

Q. Now, I don't want to lead you, Officer, but are you sure it is this defendant you saw there? A. Yes, sir.

Q. Now, I show you a ticket, Elizabeth, New Jersey, to Philadelphia, Pennsylvania, with the date stamped on the back, November 9, 1935, and the Pennsylvania Railroad. A. Yes, sir, this is the ticket. My initial——

Q. Is that the ticket? A. My initial is on there.

Q. Where are you initials on the ticket? A. On the bottom there.

Q. What are your initials? A. A. W. G.

Mr. Hicks: I offer the ticket in evidence.

Mr. Sedam: No objection.

(The ticket referred to was received in evidence and marked "Exhibit S-15".)

*By Mr. Hicks:*

Q. Now, did you search him at the station? A. I took everything out that he had in his pockets.

Q. What else did you find on him besides this railroad ticket? A. I found a Pennsylvania driver's license under the name of John Fanning, a flashlight——

Q. Is this the Pennsylvania driver's license in the name of John Fanning which you refer to? A. This is.

Mr. Hicks: I offer it in evidence.

Mr. Sedam: No objection.

(The paper referred to was received in evidence and marked "Exhibit S-16".)

*By Mr. Hicks:*

Q. Now, you say you found a flashlight. Is this the flashlight you found? A. Yes, sir.

Mr. Hicks: I ask that it be marked in evidence.

Mr. Sedam: No objection.

(The article referred to was received in evidence and marked "Exhibit S-17".)

*By Mr. Hicks:*

Q. What was the condition of the clothing worn by this defendant at that time? A. Well, his shoes were covered with mud, and his bottom of his pants and stockings had these stickers on, as though he came out from a field somewheres or something. The overcoat he had was opened, with one button missing.

Q. Now, I show you an overcoat with one button missing— A. Right top.

Q. You say, right top. Is that the coat Eddie Metalski had on at the time of his arrest? A. Yes, sir. There is my initials on there, A. W. G., and Elizabeth Police Department.

Mr. Hicks: With the Court's permission, I will show this coat and button to the jury.

Mr. Sedam: You haven't offered the coat yet.

Mr. Hicks: Well, I will offer the coat in evidence.

Mr. Sedam: That is our coat.

Mr. Hicks: Any objection?

Mr. Sedam: No, sir. That is our coat.

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

*By Mr. Hicks:*

Q. What kind of hat did he have on? A. He had a dark hat on.

Q. Can you identify the hat? A. That is the hat, yes, sir.

Mr. Hicks: I will offer the hat in evidence.

Mr. Sedam: Let me see it. I will tell you whether it is our hat, too.

Mr. Hicks: (Handing hat to Mr. Sedam.)

Mr. Sedam: All right.

(The article referred to was received in evidence and marked "Exhibit S-19.")

*By Mr. Hicks:*

Q. Now, I show you some other articles, cigarettes, some matches, comb, and a tie clasp. They were taken away from him on a search—taken from Metalski? A. On the search, yes, sir.

Mr. Hicks: I will offer these articles in evidence.

Mr. Sedam: All right.

(The articles referred to were received in evidence and marked "Exhibit S-20.")

*By Mr. Hicks:*

Q. I also show you an envelope containing twelve one dollar bills, two silver dollars, two silver half dollars, fifty-one silver quarters, forty-two dimes, one hundred and sixty-three nickels, and twenty-five pennies, totaling $40.40, I think. Was that money taken from this defendant at the time of his arrest and search? A. I don't know the exact amount that was taken away. The sergeant checked that up.

Q. Well, was there a quantity of silver? A. Yes. He had silver in two of his coat pockets, probably half full they were. He had twelve dollars in bills, that I know about.

Q. Do you know whether or not there were any silver dollars? A. I didn't notice whether—of course, I took them out in my hands.

Q. This money was counted and taken by whom? A. Sergeant Cochran.

Mr. Hicks: If there is any question about it, why, we can call Sergeant Cochran.

Mr. Sedam: There is no question about it.

Mr. Hicks: I will offer them in evidence, then.

Mr. Sedam: No objection.

(The envelope and its contents were received in evidence and marked "Exhibit S-21.")

*By Mr. Hicks:*

Q. After your arrest and preliminary search of this defendant, where did you take him? A. We took him into the Captain's room.

Q. Well, you took him to Elizabeth Police Department? A. Elizabeth Police.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Officer Geiger, what time was it on the morning of November 9 when you first saw this car coming out of West Jersey Street, crossing Broad, and going into East Jersey Street? A. It was around a little after five o'clock. I was standing there for my ten minutes after five ring.

Q. And, of course, it was dark, wasn't it? A. It was dark, but not at that corner. It is one of the most lit up corners there is in the city. Six hundred candle power lights there.

Q. Now, at that time, did you have any knowledge of any crime having been committed anywhere at five-ten? A. Yes, sir.

Q. You have testified that you were in the vicinity of this corner—I think you said—with Officer Morris? A. That is right.

Q. And that he was the one who received a call through the phone booth there? A. I received it first.

Q. What? A. I received it first.

Q. You received it first? A. Yes, sir.

Q. What was that phone call to you? A. The desk sergeant had notified me to be on the lookout for a dark Pennsylvania license coupe with the Pennsylvania plates on it. The occupants of that car were wanted for shooting a State Trooper near Linden.

Q. And as you saw this car, having had that knowledge, what, if anything, attracted your attention to the car? A. The steaming of the radiator.

Q. Had you been told before that this car seemed to have some defect and was steaming? Had that fact been brought to your attention? A. No, sir. The only call I got was that the car had a broken rear window.

Q. That information was given to you? A. Given to me, yes, sir.

Q. And as this car went by you at the corner, did you observe that it had a broken rear window? A. Yes, sir.

Q. How far did you have to go to commandeer this taxi that was standing around? A. Just across the street from East Jersey to West Jersey.

Q. And the man in the taxi was asleep? A. Yes, sir.

Q. Had you woke him up? A. Yes, sir.

Q. And started off, and Officer Morris, too? A. Yes, sir.

Q. In pursuit? A. Yes, sir.

Q. And do I understand you to say that you saw the car turn south on Jefferson Avenue, or you just surmised that? A. No, we saw it turn there on two wheels. We heard the squeech of the tires at the same time, and when he seen us, he increased his speed.

Q. Now, just a moment. Please don't testify to what they did. You confine it to what you did.

Mr. Hicks: Well, now, if it please the Court——

The Court: Yes. One moment. It is entirely proper, Mr. Sedam.

Mr. Sedam: If your Honor please, he says, "When they saw us." That is the part I object to.

The Court: Yes?

Mr. Sedam: He can't testify to their seeing him.

The Court: Well, he can testify as to appearance. If a man is looking right at you, you can say, "That man saw me."

Mr. Sedam: But it is not only "see." He says that they were behind them, and that a car turning around down below on the street, on Jefferson Avenue——

The Court: I know, but whether or not they did see him is a subject of cross examination by you.

*By Mr. Sedam:*

Q. Now, Sir, Officer Geiger, how far ahead of you was this car when you got in the taxi and

started off to pursue it? A. They had just turned the corner on Jefferson Avenue, one block from Broad Street.

Q. They were a block ahead of you? A. Yes, sir.

Q. At ten minutes after five in the morning? A. About that time.

Q. It was dark? A. It was dark.

Q. And you say that, from a block away, you saw a car turning a corner on two wheels in the darkness at five minutes after—ten minutes after five in the morning? A. That street isn't dark.

Q. Well, do you mean to say that from a block away you could see that car went around the corner on two wheels? A. Yes, you could see it three blocks.

Q. You could, hey? A. Yes, sir.

Q. Now, what is the basis for your making the statement that when they saw you, they put on speed? A. Well, as they came across Broad Street, they both looked at me, because I stepped off the curb, and as they saw me, I hollered over to the officer, "Send in the alarm." They stepped on the gas. Now, they increased their speed.

Q. Well, then, they increased their speed right there before you ever got in the taxi? A. Oh, yes, yes, sir.

Q. And they had only covered one block by the time you crossed over the street and woke up the taxi man, and he got his car started, had to get his car started, and under all this increased speed, they only covered one block? A. That is right.

Q. Well, then, they weren't going very fast, were they? A. They were going fast enough when they hit the corner, to hear the tires squeech going around the corner.

Q. Did you observe the two men in the car? A. Yes, sir.

Q. And you identify Metalski as being one of them? A. Yes, sir.

Q. Who was driving? A. Well, there is a man I identified that morning from the rogues gallery, I later found out that he was Whitey Morton.

Q. Identified when? A. Saturday, around Saturday noontime, before noon, from the pictures.

Q. Did you or did you not say to Metalski in the Elizabeth station, "You look like the man that was driving that car"? A. No, sir.

Q. You didn't say that? A. No, sir.

Q. Now, sir, how long have you been transferred to this present beat of yours or the beat that you were on on November 9? A. I came there November—on the beat, November 6 or 7, I am not sure. It was on a Wednesday I came there, the day after Election, the night after Election.

Q. That hadn't formerly been your beat, had it? A. No, sir.

Q. Was it your custom to visit the Pennsylvania Railroad Station in the morning? A. Our orders from our Captain is to meet all trains during the night on that station, and the Central Railroad Station.

*By the Court*:

Q. Was this the Central Railroad Station? A. That is the Pennsylvania.

Q. The Pennsylvania? A. Yes.

*By Mr. Sedam*:

Q. And on the three days that you had been on this new beat, since your transfer, you had visited the Pennsylvania Railroad Station every

New Jersey State Library

morning at about that same time to meet the train, had you not? A. Well, as a rule.

Q. Not as a rule, but the three days that you had been on there— A. Visit the Pennsylvania Railroad Station?

Q. Yes. A. The station, yes.

Q. What do you mean when you say the station, and you are to meet trains? You have to go upstairs where the trains come in to meet them, don't you? A. Yes.

Q. That is what you had done on each of these three preceding mornings, had you not? A. Well, I had never met the trains at that hour of the morning—meet the trains at that hour of the morning. The 5:09 was the last train we meet.

Q. Didn't you just testify that your instructions from your Captain are to meet all incoming trains? A. Until that time.

Q. Oh, until that time? A. Yes, sir.

Q. Now, of course, your visit to the Pennsylvania Railroad Station on this morning at around a quarter after seven, I think you said— A. That is right, sir.

Q. (Continuing) was a mere chance, following up this, of a thought in your mind that somebody might be at the station, is that right? A. Yes.

Q. It was a lucky thing that you went there, wasn't it? A. Well, I don't know whether you would call it luck or not.

Q. Lucky for you, wasn't it? A. No, it wasn't lucky for me. The same thing would happen to anybody.

The Court: Luck with science.

Mr. Sedam: Science?

*Alexander W. Geiger, for State—Cross.*

*By Mr. Sedam:*

Q. Now, Officer Geiger, you have testified that you went into the ticket office. A. Not into the ticket office; to the ticket office window.

Q. I mean, into the station, to the ticket office window? A. That is right.

Q. And made an inquiry there? A. Yes, sir.

Q. An inquiry as to whether or not anybody had bought a ticket for any place in Pennsylvania? A. That is right, this morning.

Q. That morning? A. That morning, yes, sir.

Q. What reply did you receive? A. I received from the ticket agent there that there was a man had purchased a ticket for Philadelphia here this morning.

Q. And did you ask the ticket agent what the man looked like? A. I did say, "What did he look like?"

Q. What answer did you get? A. He told me it was a fellow with a kind of lightish gray coat, and he smelled as though he had been with horses all night.

Q. That he had been with horses all night? A. That is right.

Q. And when you received that information, then it was, I understand, you went upstairs? A. Then I went right upstairs.

Q. You didn't have any reinforcement with you, any other officer accompanying you? A. No, only a small thirty-eight gun.

Q. Sir? A. Only a small thirty-eight gun.

Q. I supposed that you were armed. I followed that up by asking you if you had any officer accompanying you. A. No, sir, no officer accompanied me.

Q. When you went upstairs, where was the man whom you have referred to? A. He was sitting directly alongside—across a window, alongside of a telephone booth in the corner, just a little ways off as you go in the door.

Q. Did he have on this overcoat and hat which have been identified here? A. Yes, sir.

Q. What did you say to him? A. I says to him, I says, "Get up." He stood up. I says, "Where are you going?" He says, "Philadelphia."

Q. He told you right out, didn't he, he was going to Philadelphia? A. Yes.

Q. And, then, what next? A. Then I started searching him for any weapons of any kind.

Q. Now, before you searched him, didn't you ask him where he had been? A. Oh, no, not then.

Q. Not then? A. No, sir.

Q. Well, you searched him. You didn't find any weapons on him of any kind, did you? A. No, sir.

Q. And you found this money and these other articles that have been identified here? A. That is right, yes.

Q. You say that you didn't say to him there in the Elizabeth station, "You look like the fellow that was driving that car"? A. No, sir.

Q. Didn't you tell him then that any trooper had been shot or killed? A. Not until I got him into Police Headquarters, I didn't say a word. I wanted to get him out of there as quick as I could.

Q. Didn't you tell him, "You look suspicious to me; come along with me"? A. Yes.

Q. You didn't tell him what he was wanted for?

A. No, well, I didn't want to raise a scene there, all the people around there.

Q. Oh, were there a lot of people around there? A. Yes.

Q. You didn't tell us that before. A. Yes, there was a lot of people around, waiting for the 7:30 train.

Q. Oh, other people were on the platform? A. Yes.

Q. When, if you know, was it first made known to Metalski that an officer had been killed? A. In Elizabeth headquarters.

Q. How long after he was taken in there? A. I don't know how long after the authorities told him that.

Q. You weren't present when it was told to him? A. No, I wasn't.

Q. Were you present in the Elizabeth police headquarters at the time he was being examined? A. Examined?

Q. Well, questioned, if it is a better word. A. I asked him myself, where did the other fellow go, and who he was, that was with him. After the Captain—after I came in and told the Captain, I says, "Here is your man here that was in that car", when I walked in police headquarters; then they searched him, and took him in; then they told him about this trooper being killed.

Q. You said to the Captain, "Here is your man here who was in that car"? A. Yes.

Q. You were very anxious to ingratiate yourself with the Captain? A. I don't know about that.

Q. Well, you had been demoted, hadn't you? A. Demoted?

Q. Yes. A. No, sir.

Q. You had been transferred? A. Yes, sir.

Q. And now you are to be put back on another beat again after this capture? A. No, sir, I am still holding the same beat down.

Q. With hopes of being transferred? A. No, sir.

Q. Well, you had your pay cut? A. No, sir, I had no pay cut at all.

Mr. Hicks: I object to that.

The Court: Let it in. You didn't object to it, Mr. Hicks.

The Witness: I had no pay cut.

Mr. Hicks: Never mind. I object to any further questions along that line.

Mr. Sedam: Well, I think that is all.

Mr. Hicks: That is all, Officer.

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CHARLES WEINER, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. You are a member of the police department of Elizabeth? A. Yes, sir.

Q. You are a radio patrolman? A. Yes, sir.

Q. Were you on duty on the morning of November 9, about five A. M.? A. I was.

Q. Did you go with Sergeant Clair to the point near the intersection of Trumbull and Schiller Streets? A. I arrived there after Sergeant Clair did.

Q. Was there a Pennsylvania Chevrolet coupe there? A. Yes, sir.

Q. Were you in company with Sergeant Clair when a search was made of that automobile? A. I was.

Q. I show you this shotgun, Exhibit S-12. Were you present when Sergeant Clair took this shot gun out of the car? A. Yes, sir.

Q. Did he take anything else out of the car while you were there? A. No, sir.

Q. Did you see anything else in the automobile? A. Yes, sir.

Q. What was it? A. Shotgun shells, and two bottles of liquor.

Q. Can you identify these shells which were found in the car? A. Yes, sir, I have my name on them.

Q. I show you three loaded, twelve gauge Winchester Ranger shotgun shells, number six C. Will you tell the Court and jury whether or not those shells were the three loaded shells which you found in the Chevrolet coupe? A. Yes, they have my name on them, and the file on the metal.

Q. That is, your name and Sergeant Clair's name are written on the shells? A. Yes.

Q. And Sergeant Clair has since died? A. Yes, sir.

Mr. Hicks: I will offer those shells in evidence.

(The articles refered to were received in evidence and marked "Exhibit S-22.")

*By Mr. Hicks:*

Q. Now, did you find any empty shells in the car? A. Yes, sir, on the floor.

Q. Did you mark them, also? A. Yes, sir, the same way.

Q. I show you two empty shells of the same make and type. A. Those are the shells that were on the floor of the car.

Q. You say these shells were on the floor of the car? A. Yes.

Mr. Hicks: I will offer them in evidence.

Mr. Sedam: No objection.

(The articles referred to were received in evidence and marked "Exhibit S-23.")

*By Mr. Hicks:*

Q. Where were the loaded shells found, Officer? A. Why, there was one under the seat, and two in the back of the driver's seat.

Q. In this particular car, was there a little shelf or compartment in back of the seat? A. A compartment in the back.

Q. You say you found two whisky bottles. Did you mark them for identification? A. No, I didn't.

Q. Do you know what kind of whisky bottles they were? A. One was a cognac bottle, and the other was a rye.

Q. Do you know who took them out of the car? A. No, I don't.

Q. When you last saw them, they were in the automobile? A. They were in the automobile.

Q. Did you touch anything in the car other than these— A. Only the shells. I took the shells out.

Q. Where was the car taken? A. To Schaeffer's Garage. It was taken to headquarters by Schaffer's wrecker.

Q. Were you present when the car was processed for finger prints? A. No, sir.

Q. Or any of these articles were looked at for finger prints? A. No, sir.

Q. Were you present, Officer, when this button was found, which has been introduced into evidence? A. I was.

Q. Who found that button? A. Detective Von Bischoffshausen.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Officer Weiner, assuming that you were present when these various articles were found, do you know whether they were preserved, or, rather, they were handled in such a way, all of them, as to preserve them for finger prints? A. Yes, sir.

Q. You are sure of that? A. Yes.

Q. That includes the gun? A. Yes, sir.

Q. You were there at the time the gun was found? A. Yes, sir.

Q. And the whisky bottles? A. Well, the whisky bottles weren't moved. The shells were.

Q. But the gun and shells? A. Yes.

Q. Well, they are the two main things, but you know they were preserved for finger prints? A. Yes, sir.

Mr. Sedam: I think that is all, sir.

Mr. Hicks: That is all.

MATTHEW G. HANSON, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Mr. Hanson, what is you business? A. I am a bacteriologist chemist.

Q. Are you the head of the Tri-County Chemical Laboratory? A. Yes, sir.

Q. What do you do in that laboratory, what kind of work? A. We do both chemical and bacteriological analysis.

Mr. Hicks: Qualifications admitted?

Mr. Sedam: Well, I suppose so, Mr. Hicks. I don't know Mr. Hanson, but I suppose that is all right. Go ahead.

*By Mr. Hicks:*

Q. You do various analysis work for doctors and other people in the county? A. Yes.

Q. Did you, at the request of my office, examine a button and an overcoat? A. Yes, sir.

Q. Now, I show you Exhibit S-13. Is that the button that you examined with the shreds of cloth? A. Yes, sir.

Q. I show you Exhibit S-18, an overcoat. Is that the coat which you were given for examination? A. Yes, sir.

Q. Now, Mr. Hanson, did you make any comparison between the cloth on the back of that button, the shreds of cloth on the button, and the overcoat?

Mr. Sedam: If your Honor please, may I interpose an objection. We had admitted

the coat, and consented to the admission of the coat into evidence; admit that it is ours; that the button is ours; that the button came off the coat.

Mr. Hicks: That is satisfactory, then.

The Court: Very well, then.

Mr. Hicks: It is admitted that this particular button came off this coat.

That is all.

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Mr. Sedam: If your Honor please, may I recall Officer Geiger at this point for a question?

The Court: Yes. Officer Geiger, take the stand.

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ALEXANDER W. GEIGER, recalled as a witness, testified further as follows:

*By Mr. Sedam:*

Q. Officer Geiger, when you saw the defendant in the Elizabeth railroad station, you looked at him very carefully, didn't you? I mean, you observed his countenance carefully, did you not? A. Yes, sir.

Q. Did you see any cut on his face of any kind? A. No, sir.

Q. Did you see any cut or any blood on either his hands or his face? A. No, sir.

Q. You would have seen it had it been there, would you not? A. Yes.

Mr. Sedam: Thank you.

Mr. Hicks: That is all, Officer.

EDWARD BARLOW, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Now, Mr. Barlow, you are employed by Stewart's as an attendant at an Esso gas station in Plainsboro, New Jersey? A. That is right.

Q. How long have you been working there? A. Just a little over two years.

Q. Were you working there on the night of November 8 and the morning of Novemer 9? A. Yes, I was.

Q. What was your particular job there at the gas station or at the lunch wagon? A. I work in the gas station.

Q. Were you in the lunch wagon at any time during the early morning of Novemer 9? A. Yes, I was.

Q. Were there any other men in there at the time that you know? A. Yes, there was, well, six or seven, maybe eight, I am not sure. There was quite a few.

Q. Can you name any of those men? A. Well, there was a chef, Jack; a truck driver, Clarence; and a fellow I was talking to, the mechanic; and another driver, Forker, I had just gassed up.

Q. And by Clarence, do you mean Clarence Hullfish? A. Yes, I do.

Q. And Jack is Jack Golden? A. That is right.

Q. Is Jack Golden the lunch wagon attendant? A. Yes, he was then.

Q. Is he the cook? A. Yes.

Q. He was the cook? A. Yes.

Q. Now, did anybody come there that particular evening whom you hadn't seen before? A. Yes.

Q. Did you know who they were? A. No, I didn't know who they were.

Q. Did you find out who they were afterwards? A. I did later on, yes.

Q. Have you seen either of these two men? I will withdraw that. How many men were there that came in? A. Two.

Q. Have you seen either of these two men since that time? A. One.

Q. Once, or one of them? A. One of them.

Q. Is that one here in the courtroom? A. No, I can't see him.

Q. Well, when you saw this man, where was he? A. He was in the—he was in the lunch wagon when I first saw him.

Q. When did you see him again after the lunch wagon? A. At Elizabeth.

Q. Where in Elizabeth? A. In the courtroom —not in the court. I think it was in the police station up there.

Q. Did you see him in a lineup or alone? A. Alone.

Q. Were you shown any pictures of another man? A. Yes, I was.

Q. Did you recognize this man you saw alone in the Elizabeth police department? A. I seen him in the lunch wagon that morning.

Q. Did he do anything in the lunch wagon that attracted your attention to him? A. Well, the fellow was with him, he was passing out drinks, and hollering and talking, and making quite a lot of disturbance, otherwise I would not have paid any attention to him. He was talking and making a lot of noise around there, so I just happened to pay attention to him, because he was making a lot of noise.

Q. Were you offered a drink? A. No, I wasn't.

Q. Did you see what kind of liquor they had? A. I seen two bottles, but I didn't—I didn't know what kind it was.

Q. Do you know what kind of automobile these two fellows had? A. It was a black coupe.

Q. Do you know what license plates were on it? A. No, I didn't pay no particular attention to the license plates.

Q. How long were you in there? A. I was in there, I should judge, about three-quarters of an hour.

Q. Will you just come down here, and look in the courtroom, and see if you see the man that you saw in police headquarters? A. Yes, I do, now, after I look around.

Q. Where is he? A. Sitting right here.

Q. Indicating the defendant, Edward Metalski? A. That is the fellow I seen.

*By Mr. Sedam*:

Q. In the lunch room? A. Yes, sir.

*By Mr. Hicks*:

Q. Can you describe the man that was with him? A. Well, there was a man came in there, I should judge, about five foot or ten inches tall.

Q. Well, was he shorter or taller than Eddie Metalski? A. He seemed to be somewhat taller than Metalski.

Q. Do you remember how this other man was dressed? A. As near as I can come to, he was dressed in a light suit, light overcoat, and a light hat.

Q. Did you hear any conversation between these two men? A. No, I didn't—I didn't hear them

talking much. I wasn't paying too much attention to them. After, they ordered some ham and eggs, and they was talking quite a bit about that, and this other fellow—the other fellow seemed to do most of the talking.

Q. Do you remember anything that was said by either of these two men? A. Well, no, I don't, because I was sitting quite a distance from them.

Q. Do you know about what time that was that these two men were in there? A. I should judge it was around four o'clock when they came in, and I imagine they were there about a half hour or a little longer, I am not sure.

*By Mr. Sedam*:

Q. You say they were there or you were there? A. I was there.

*By Mr. Hicks*:

Q. Did they leave before you left or after you left? A. They left before I went out.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam*:

Q. I understand you to say that this is a combination lunchroom and gas station? A. That is right.

Q. That is, two different businesses are operated there? A. That is right.

Q. And your occupation is that of attendant in the gas station? A. That is right.

Q. And I understand you to say that about four A. M. on the morning, Saturday morning, November 9— A. Yes, I would saw it was around about that time.

Q. (Continuing) you were in this lunch room or eating place? A. Yes, that is right.

Q. Were you there before these two strangers came in? A. Yes, I was.

Q. I understood you to say that altogether you were there about three-quarters of an hour? A. Somewhere around that, I should judge.

Q. And, then, at the end of your examination, you said you were there about a half hour? A. No, I meant to say that they were there about a half hour.

The Court: That is what he did say.

Mr. Sedam: That is what I asked him, again, your Honor, and then he changed it.

*By Mr. Sedam*:

Q. You mean, they were there about a half hour? A. Yes, that is as near as I can judge.

Q. These two men who came in were men whom you had never seen before? A. That is right.

Q. As far as you know? A. That is right.

Q. What have you to say about their condition, condition for sobriety, that is, whether they had been drinking or not? A. Well, I didn't—that is something I could not say. I didn't pay too much attention to that. Of course, they was quite noisy. They made quite a bit of noise. They acted like they had a few drinks.

Q. Well, they came in this room, in this lunch room, and you have said that one of the men was making quite a bit of noise, he was talking a lot? A. That is right.

Q. Which man was that? A. That was the taller of the two.

Q. The taller of the two? A. Yes.

Q. Not Metalski, this defendant? A. No, no, he didn't have too much to say.

Q. He appeared to be more sober than the other? A. He was more quiet.

Q. I understand you to say that the taller of the two men had liquor, or, at least, bottles, a bottle in his possession? A. Well, they had two bottles laying on the counter.

Q. When you say they had two bottles laying on the counter, do you know which one of them brought the two bottles in? A. That other fellow went out and brought two bottles in.

Q. The other fellow went out and brought two bottles in. I understand you to say that he set them on the counter? A. That is right.

Q. Now, he is the one who was quite noisy? A. Yes, he had more to say.

Q. Well, when you say, "He had more to say," do you mean just talking in a casual conversation, or do you mean a man who acted somewhat boisterous and somewhat loud? A. Yes, he acted somewhat loud, that is right.

Q. And gave you the appearance of being under the influence of liquor? A. Somewhat.

Q. Did the other man give you the appearance of being under the influence of liquor? A. No, he was more quiet, and didn't have much to say.

Q. And didn't do anything offensive or loud, is that correct? A. No.

Q. Assuming that these two bottles, which are now on the end of this counsel table, are the bottles that they had there that night, did either of them drink anything out of the two bottles in the eating place? A. Well, that—that I could not say. I didn't pay too much attention to whether they drank or not.

Q. Well, you have said that they offered drinks? A. Yes.

Q. Do you know that? A. Yes, they did.

Q. Can you tell us whether or not anybody took anything to drink when it was offered to them? A. Yes, I think a couple of fellows took something to drink.

Q. Who did the offering? A. The fellow—the other fellow.

Q. The other fellow? A. That is right.

Q. Now, you had a chance to observe these two strangers, didn't you? A. I imagine I could, if I wanted to.

Q. That is, in a general way to size them up? A. I think so.

Q. Could you give us a general estimate of the weight of this other man? A. Well, I would judge he weighed about a hundred and forty-five, maybe fifty pounds.

Q. The other man? A. Yes, maybe a little heavier.

Q. What would be your estimation of the weight of this man, you having seen both of them? A. I imagine about a hundred and thirty-five, a hundred and forty.

Q. But less weight than the other man, though—the smaller man than the other man? A. Yes, he was so much shorter, but he seemed a little bit stockier built.

Q. You say you didn't take any liquor? A. No, I didn't.

Q. Did you see either one of the two men outside of the place? A. No, I just saw them——

Q. At any time? A. Well, the taller of the two walked out once, and started to go over towards the gas station. Then he came back, and walked in the lunch wagon again.

Q. What, if anything, did Metalski do to attract your attention in any way? Did he do anything offensive there? A. No, he seemed to be sitting pretty quiet, and he didn't have much to say.

Q. Did they have something to eat? A. Yes, they had something to eat.

Q. You have said that the larger of the two men had on a light overcoat, a light hat, and a light suit? A. Yes, that is what I said.

Q. When you say light, comparing it with that overcoat that is in front of you there, was it lighter than that? A. Yes, it was somewhat lighter than that coat.

Q. Somewhat lighter? A. Yes.

Q. Do you recognize that hat and overcoat in front of you? A. Yes, I do.

Q. That was the hat and overcoat that the smaller of the two men had on, isn't that so? A. That is right.

Q. Were you outside when you saw the other man go over toward the gas station? A. No, I wasn't. I was sitting right there, watching over toward the gas station.

Q. Was anybody in the gas station? A. No, there was nobody in the gas station.

Q. Didn't you go out when you saw this man go over toward it? A. No, I didn't, because I had the station locked, and a lot of people go over there to use the toilet.

Q. Oh, the station was locked up. I see. A. Yes.

Q. And these men lingered in this place for about a half hour? A. I should say, maybe a little longer.

Q. Maybe a little longer than a half hour? A. It was around there. I am not too sure.

Q. Did they act as if they were trying to hide themselves in any way? A. They seemed to act like pretty normal people.

Q. They acted like pretty normal people? A. Yes, only they just had a few drinks. I wouldn't possibly pay no attention to them, only they came in there kicking up a fuss. The fellow was making a lot of noise.

Q. Will you be kind enough to explain the consistency of what you say, when you say they seemed to act like two pretty normal people, when in the next breath you say you wouldn't have paid any attention to them only one of them had kicked up a fuss? A. Just as I say, one fellow was quiet, and this other fellow, he done a lot of talking and hollering.

Q. But he didn't kick up any fuss? A. Well, I mean by that, talking loud and drawing everybody's attention to him.

Q. Is this gas station at or near Plainsboro? A. Yes, it is.

Q. What route? Twenty what? A. 26.

Q. Route 26. A corner place? A. No, it is not a corner place. It is right in between—it is—in between two intersections.

Q. And a well lighted up place? A. Yes, well lighted up.

Q. And a much frequented place? That is, people go in there all hours of the night, don't they? A. Yes, they do.

Mr. Sedam: That is all, sir.

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CLARENCE HULLFISH, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Mr. Hullfish, where do you live? A. On Route 25, between Cranbury and Hightstown.

Q. In Monroe Township? A. Middlesex County, near—near the county line.

Q. Are you employed by Walker-Gordon? A. Willard Applegate.

Q. Well, you do trucking for Walker-Gordon out of Plainsboro? A. Yes.

Q. In the early morning of November 9, 1935, did you go to the lunch wagon conducted by Stewart in Plainsboro? A. Yes.

Q. Is it your habit to stop there quite frequently? A. Every morning that I am working.

Q. While you were in there on the morning of November 9, did you see two strangers at the lunch wagon? A. Yes, sir.

Q. Do you see any one of those strangers here in the courtroom? A. Yes, sitting right there.

Q. Indicating the defendant, Edward Metalski? A. Yes.

Q. Was there another man with him? A. Yes.

Q. What were these two men doing when you came in the lunch wagon? A. They were eating.

Q. Did they have any bottles of liquor with them? A. They had two bottles of liquor sitting on the counter.

Q. Do you know what kind of liquor it was? A. Overholt and Three Star Hennessy.

Q. Did either of these two men offer you a drink? A. Yes, the other guy offered me—he told the chef to tell that guy to come over, that he knew me.

Q. By the other fellow, you mean the man who was with Metalski, but not Metalski, is that correct? A. Yes.

Q. Did you know this other man? A. No, I never seen him before.

Q. Talk a little louder, so the jury can hear you. A. No, I never seen him before.

Q. Did you have a drink with him? A. Yes, I had a little out of the Three Star Hennessy bottle.

Q. Did anybody else in the place have a drink at that time? A. No, I didn't see anybody have

Q. Did you see anybody else have a drink out of either of these two bottles? A. No.

Q. Did this defendant, Eddie Metalski, take a drink while you were there? A. No.

Q. Did the other fellow? A. No.

Q. Now, do you know what automobile these two men used? A. Why, there was a coupe parked up away from the gas station with no lights on it. I imagine that is the one they were using.

Q. Did you see them in the car at any time? A. No, I didn't see them in the car.

Q. Were you there when they left? A. No.

Q. Did you see this coupe again after you left the lunch wagon? A. No, I didn't see it.

Mr. Hicks: That is all.

*Cross examination by Mr. Sedam*:

Q. Mr. Hullfish, I understand you to say that it is your custom to go to this lunch room at Plainsboro practically every morning while you were on your route in connection with your work, is that so? A. Yes.

Q. And on this morning of November 9, you went there at about what time? A. A little after four o'clock. It was five minutes to four when I left the dairy.

Q. So that you got there a few minutes after four? A. Yes.

Q. Were you just starting out on your route then? A. Yes.

Q. You wanted to eat first, is that right? A. Yes, sir.

Q. And were these two men whom you refer to in there when you got there? A. Yes.

Q. They were already there? A. Yes.

Q. One of the two men you now recognize as this defendant? A. Yes.

Q. That is here in court, you recognize him as the defendant? A. Yes.

Q. How many men were in the lunch room? A. I imagine about five or six when I was there.

Q. Well, do you know who they were? A. Well, some of them I seen—I don't know their names—from going in there at different times, you know.

Q. What were the two strangers doing when you got here? A. They were eating.

Q. Did you hear any loud talking or any boisterous talking of any kind on the part of either one of these two men? A. Well, the other fellow was doing most of the talking.

Q. Now, you have seen people at different stages, in your career, when they were somewhat under the influence of liquor, haven't you? A. Yes, sir.

Q. Would you say that he man who was doing the loud talking was under the influence of liquor? A. Oh, he had a few drinks, but he wasn't what you would call real bad.

Q. He wasn't real bad? A. No.

Q. Well, of course, you don't know how many drinks he had, do you? A. No.

Q. But he had had enough to make him quite talkative? A. Yes.

Q. What was he talking about, do you know? A. Well, he was talking about he wanted to give me a drink; then he was talking about the chef cooking the ham and eggs for him.

Q. Well, that didn't take him very long to say that, did it? A. No.

Q. What else was he talking about? A. That was about all.

Q. Didn't he keep on talking quite a lot at this restaurant? A. Yes, quite a bit.

Q. Well, what was he talking about? What do you remember hearing him say, outside of about the ham and eggs and giving you a drink? A. That is about all.

Q. Well, when he offered you a drink, you took it, didn't you? A. Yes.

Q. Who else did he offer any drinks or drink? A. Nobody, while I was there.

Q. He didn't even offer anybody else a drink while you were there? A. No.

Q. And nobody else took a drink while you were there? A. No.

Q. Were you in the restaurant at the same time that Edward Barlow was in there? A. He was in there when I came in, and he was in there when I went out.

Q. Did you hear Mr. Barlow say he offered several people drinks in there? A. That might have been before I came in or after I went out.

*By the Court*:

Q. How long were you there? A. About fifteen minutes, I guess.

*By Mr. Sedam*:

Q. Did you look at this defendant, as well as at the other man? A. Yes.

Q. You looked them over in a general way? A. Yes, sir.

Q. What, if anything, did this defendant, Metalski, say or do in this lunch room that might

be called either loud or offensive or talkative? A. Why, he didn't have much to say.

Q. Well, what did he say when he said anything? A. Well, the other fellow was telling him about how to cook ham and eggs; that he didn't cook them—he was kidding him about cooking them. He says, "He is only kidding him, because they are cooked."

Q. What else did he say? A. That is all he said that I remember.

Q. He seemed to have more control of his actions than the other man had, didn't he? A. Yes, sir.

Q. More quiet and inoffensive? Of course, you didn't see these men in any car, did you? A. No, sir.

Q. When you started to make reference a few minutes ago to the fact that you saw a coupe parked a short distance away, or a distance away, you didn't go up and examine that coupe? A. No.

Q. And you don't know whether that coupe came from Pennsylvania, Illinois, New Jersey, or anywhere else, do you? A. No, there was no lights on it. I couldn't tell. I didn't pay any attention to say. I just seen it parked there.

Q. These men, you looked at them pretty carefully, you say? A. Yes.

Q. Did you observe how they were dressed? A. Yes.

Q. What did you say? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Well, how was this fellow who was doing the talking and who appeared to have had a few drinks, how was he dressed? A. Why, he had a light hat, a light coat, and a light suit.

Q. And a light suit, too? A. Yes.

Q. How was the other fellow dressed? A. The other fellow had a dark coat and a dark hat.

Q. Does that hat there look like it? A. Yes, sir.

Q. How about the suit? Did you notice his suit? A. No, I didn't notice his suit.

Q. You didn't notice his suit? A. No, sir.

Q. What made you notice the other fellow's suit and not notice his suit? A. Well, when I went over to sit where they were and have a drink, I sat alongside of the other fellow.

Q. You got a little more chummy with the other fellow? A. I sat next to the other fellow, and he done most of the talking.

Q. You answered the Prosecutor's question, that after you left there, you didn't see the men or the car again? A. No, sir.

Mr. Sedam: Is that right? That is all.

Mr. Hicks: That is all.

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FRANK LEPP, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Now, Mr. Lepp, what is your business? A. A printer by trade.

Q. Where do you live? A. 2309 Germantown Avenue.

Q. Where is that? A. It is in Philadelphia.

Q. By whom are you employed? A. By the Linley Press.

Q. On the morning of November 9, 1935, did

you stop at a diner known as Stewart's Diner? A. I did.

Q. Was a Mr. Herman Wald with you? A. Yes.

Q. Is he also a pressman? A. He is a compositor.

Q. A compositor? A. Yes, sir.

Q. Just talk a little louder, so that the jury can hear you. A. Yes.

Q. While you were in there, did you have a drink of liquor? A. I did.

Q. Who offered you this drink or gave you this drink? A. I believe, Morton.

Q. Well, you didn't know who it was at the time? A. At the time, I didn't.

Q. What kind of liquor was it? A. I am not quite sure if it was Hennessy.

Q. That is, it was brandy? A. I couldn't tell the difference.

Q. It was a bottle with Hennessy on it? A. Hennessy on it.

Q. You say it was Morton that offered you this drink. Subsequently, were you shown a picture of a man by the name of Morton? A. I was.

Q. Did you identify that picture as the man who offered you the drink? A. Morton, no? I couldn't exactly remember Morton.

Q. Well, do you remember who—was there anybody with this other man? A. Yes, sir.

Q. Do you know who that man was? A. As I understand it right now, it is Metalski.

Q. Well, did you see him again at any time after you saw him in the restaurant? A. No, sir.

Q. When you say you understand it was Metalski, how did you reach that conclusion? A. Well, I saw him in there that night, see, and he approached me from the left, see, and I got a side

glance of Metalski. When I was shown the picture, that is when I identified him.

Q. You were shown a picture of Metalski? A. Yes.

Q. Do you see Metalski in the courtroom? A. What?

Q. Do you see Metalski here in the courtroom? A. I believe I do.

Q. Which one is it? A. This man there (indicating).

Q. Indicating the man sitting at the table next to Mr. Sedam? Oh, you don't know Mr. Sedam.

Mr. Hicks: Just stand up.

(Edward Metalski stood.)

*By Mr. Hicks*:

Q. This man here? A. Yes, sir.

Q. Now, you say it was the other man that offered you the drink? A. Yes.

Q. And you had a drink out of a bottle with Hennessy on it, is that correct? A. Yes.

Q. Now, was there any other bottle there in the restaurant at this time? A. There was another bottle.

Q. Do you know what kind of liquor was in the other bottle? A. No, I really don't.

Q. Did you pour yourself? Did you pour the drink yourself? A. I believe I did.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam*:

Q. Would you mind telling me your last name again? A. L-e-p-p.

Q. L-e-p-p? A. That is right.

Q. Mr. Lepp, how old are you? A. Twenty-two.

Q. And as I gather from what you say, you are not very accustomed to taking liquor, are you? A. No, very little of it.

Q. Are you familiar with the different kinds of liquors and brandies? Are you? A. No, I am not.

Q. Sir? A. I am not.

Q. Well, what impressed your mind? What was it that impressed you that night, so that you could remember that the name on the bottle was a bottle of Hennessy? A. Well, Morton came up to me and said this is his favorite brand, and he offered us a drink.

Q. What did he say was his favorite brand? A. Hennessy.

Q. Oh, he told you that? A. Yes.

Q. And that stuck in your mind? A. Yes.

Q. And you took a chance by taking a little drink of Hennessy? A. Yes.

Q. Was it good? A. It was. That morning it was kind of chilly.

(Laughter in the courtroom.)

The Court: Now, if that continues, those who break out in that way will have to be taken out of the courtroom. This is a judicial proceeding. It is not a circus.

Proceed.

*By Mr. Sedam:*

Q. How many people were in this diner when you arrived there? A. Why, I could not exactly state how many there were, but there was about five or six of us, seven of us, I am not postively sure of it.

Q. Were the two men to whom you refer, including this defendant, in there at the time you went there? Were they already there or did they come in after? A. They were already there.

Q. They were already there? A. Yes.

Q. What attracted your attention, if anything, to either of these two men? A. Well, when they walked up to us—they walked up to us—to myself, and offered me a drink.

Q. When you say they did— A. They did.

Q. Do you mean that both men walked up to you? A. The taller one walked up first.

Q. Well, was that this man who walked up to you and offered you a dink? A. It was Morton walked up to me—walked up to me, and put his arm around my neck.

Q. Walked up to you and put his arms around your neck? A. Yes.

Q. A man you had never seen before? A. Never seen him before.

Q. How tall would you say Morton was? A. About five foot eight or six foot.

Q. Well, now, which, five foot eight or six foot? Which do you mean? A. I could not exactly say how tall.

Q. Was he nearly six foot tall? A. Nearly six foot tall.

Q. How tall are you? A. I am about five foot eight.

Q. And this man was taller than you were—that is, Morton? A. Well, I was sitting on the lunch counter there—at the counter. I didn't exactly get his right height.

Q. Well, weren't you standing up at any time? A. No, I wasn't.

Q. But your best judgment is that he was approaching, at least, approaching six foot tall? A. Approaching that height.

Q. And what have you to say as to your best judgment of his weight? A. On the average of my own, I guess.

Q. How much do you weigh? A. I weigh a hundred and fifty.

Q. And you think this man who was nearly six foot tall weighed about a hundred and fifty, approximately? A. About that. He was a little thinner than I am.

Q. Did you form any judgment as to the height and weight of Metalski, the other man? A. Metalski was shorter.

Q. How much shorter, in your opinion? A. Well, four feet something. On the average of that.

Q. Four feet? A. Four feet.

Q. Four inches, do you mean? A. No, four foot—five foot, something on the average of five foot—six foot. I don't really know the height of him, but I noticed he was smaller than Morton.

Q. Let us understand each other, young man. You don't mean five foot or six foot. I am just trying to get you to describe the two men as you saw them on this occasion we are referring to. Now, you have told us, in your best judgment, Morton was approaching—we will put it that way—approaching six feet in height, and that you think he weighed approximately a hundred and fifty pounds. Now, in the same way, I asked you whether you formed any judgment as to the height and weight of the other man who was with him. Was he shorter? A. He was shorter.

Q. Several inches shorter, would you say? A. About a head shorter than Morton.

Q. A head shorter? A. A head shorter.

Q. Well, if you say a head shorter, would you mean, at least six inches shorter? A. Six to eight inches shorter.

Q. Six to eight inches shorter, and what would you say as to his weight, as near as you could size it up? A. I really could not judge his weight.

Q. You could not judge his weight? A. I really could not.

Q. What did you see or hear the other man do while he was in the restaurant at the time you were there? A. Well, they were——

Q. You have told us that he came up to you and put his arms around you, and offered you a drink, and gave you a drink, and that you took it. Now, what else, besides that? A. They walked out; out of the restaurant.

Q. They didn't just offer you a drink and walk out of the restaurant, did he? What else did he do while he was there? Did he talk loudly? A. He talked.

Q. Did he talk rather loudly? A. He did; not loudly, I wouldn't say. He spoke moderately. As far as I could—I couldn't recall what he said that night. He offered me Hennessy, that is all he said—he said that was his favorite brand.

Q. I see. Now, did he offer anybody else a drink? A. Mr. Wald.

Q. Did he take one, too? A. He took a drink.

Q. Who else, if anybody, did he offer a drink, without giving their names? Did he offer it to anybody? A. The counter man.

Q. Did he take one, too? A. He took one.

Q. Who else besides the counter man and you two? A. That was all.

Q. Just three people in there took drinks at the instigation or at the insistence of Mr.—we will call him, Mr. Morton? A. That is right.

Q. Now, referring to this defendant, whom you say was there, what did he say or do in the restaurant that attracted your attention in any way? A. The only attention that Metalski attracted of mine was when I turned around towards Morton, that was all the attention, I saw. Morton was around me, talking to me. He talked to me from the back.

Q. Morton did? A. Yes, he had his arm around my shoulder at the time.

Q. All right, sir. Now, please answer my question. What, if anything, did Metalski either say or do there in the restaurant while you were there that in any way attracted your attention? A. Nothing whatsoever. Metalski didn't——

Q. Did Morton give you the appearance, based upon the way he talked or the way he acted, either or both, that he had been drinking? A. Well, the only way I could describe him is by the breath of Morton around my neck, that was all. He came down—in appearance, as a perfect gentleman.

Q. A perfect gentleman he was, hey? A. Yes.

Q. He was close enough for you to get his breath? A. Yes.

Q. And did that breath portray the odor of liquor? A. It did.

Q. It did, and you say the only thing he did was to permit you to get his breath, but before you said he came up and put his arms around you, or his arm around you, whichever it was, and offered you a drink? A. He offered me a drink.

Q. Metalski didn't do anything like that, did he? A. No.

Q. So that the conduct of a perfect stranger in coming up to you and putting his arm around you and offering you a drink, and then drinking with you, was, rather, unusual, wasn't it? A. It was.

Q. And didn't that make you feel and know that Morton was more or less under the influence of liquor? Well, you smelled it on his breath, to begin with, didn't you? A. Yes.

Q. And what he did wasn't the normal thing to do, was it? A. No, it wasn't.

Mr. Sedam: That is all.

Mr. Hicks: That is all.

*By the Court*:

Q. Where was this diner? A. It was in about half way mark between Philadelphia and New York.

The Court: Was this the same diner the last witness testified to?

Mr. Hicks: Yes, the same diner.

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JAMES BURNS, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Mr. Burns, you live in Philadelphia? A. Yes, sir.

Q. At about two A. M. on the morning of November 9, 1935, were you at the Palm Gardens Cafe? A. Yes, sir.

Q. 4142 Ridge Avenue, Philadelphia? A. Yes, sir.

Q. Was there anybody else in the place at that time? A. The proprietor, the bartender, and the waitress, and myself.

Q. Who is the proprietor? A. John Cupo.

Q. What is the waitress's name? A. Margie White.

Q. And the bartender? A. William Starrett.

Q. Then, you were the only customer in there? A. Yes, sir.

Q. What is your business, Mr. Burns? A. I am an insurance inspector.

Q. Did anyone else come in this Palm Gardens Cafe while you were in there at two A. M. on November 9? A. Yes, sir. The door suddenly opened, and these two men jumped in, one carrying a revolver, and the other carrying a sawed-off shotgun. The one with the sawed-off shotgun put it in my stomach and told me to throw my arms up, which I did; then he told me to back up. He backed me the full length of the bar into the gents' room at the rear end.

Q. Do you know who the man was with the sawed-off shotgun? A. Yes, sir.

Q. Who was it? A. Whitey Morton.

Q. You didn't know him at the time, did you? A. No, sir.

Q. How did you identify him? A. I identified him at the morgue.

Q. In Philadelphia? A. Yes, sir.

Q. Do you know who the other man was who was with Whitey Morton? A. Yes, sir, Metalski.

Q. Where did you identify him? A. In Elizabeth.

Q. Police headquarters? A. Yes, sir.

Q. Do you see Metalski here in the courtroom? A. Yes, sir.

Q. Where is he? A. Right there.

Q. You say Morton had the shotgun? A. Yes, sir.

Q. Now, did Metalski have any gun? A. Metalski had a revolver. He covered the bartender. He told the bartender to throw his hands up, and, in turn, he backed him into the gents' room.

Q. Well, what, if anything, did Metalski say during the course of this holdup? A. You mean, his exact words?

Q. Yes. A. He says, "I will blow your God damn brains out if you make a noise."

Q. You say, this defendant, Metalski, said that? A. Yes, sir.

Q. Did he say anything else? A. No, I don't remember him saying anything else.

Q. Did you see which one of these two men took the money from the cash register? A. Metalski was then in back of the bar as I was being backed in. Morton stood at the back end of the bar with the shotgun.

Q. You don't know how much money was taken, do you? A. Well, I did hear the proprietor say that there was eighty-five dollars.

Q. Never mind what you heard the proprietor say. Was there anything else taken besides money? A. Yes, sir.

Q. What? A. Two bottles of whisky.

Q. Do you know what kind of whisky it was that was taken? A. Yes, sir.

Q. What kind is it? A. A bottle of Three Star Hennessy, and a bottle of Old Overholt.

Q. Do you know whether these bottles had any identifying marks on them? A. I know that the

proprietor usually marks the bottles, that is, with the prices.

Q. How long do you know Mr. Cupo, the proprietor of this place? A. About ten years.

Q. Do you go there frequently or not? A. Well, yes, I do. In fact, I go around with him. He is a personal friend of mine.

Q. Now, what else happened in this place at the time of this holdup? A. Well, the waitress—it seems the waitress had reached over and picked up her pocketbook, so Morton made a grab for the bag, and I remember her saying, "You can't take that, that is my bag," so then the bartender, he walked over to her, and asked both Morton and Metalski to give her a break, to let her alone, that she didn't know what it was all about. She didn't realize it was a holdup.

Q. What happened then? A. Then, in turn, I walked out and got hold of her, and explained to her it was a holdup, so Morton put the gun up, and we backed up again.

Q. You backed up where? A. Into the gents' room.

Q. What happened after you got in the gents' room? A. Well, they closed the door.

Q. Who was in the gents' room with you? A. The bartender, Margie White, and myself.

Q. Did this defendant, Edward Metalski, point this revolver at anyone? A. At the bartender.

Q. Did you hear him say anything else besides, "If they make a noise, blow their God damm brains out"? A. No, sir.

Mr. Hicks: That is all.

*Cross examination by Mr. Sedam:*

Q. Mr. Burns, you say that you are an insurance inspector? A. Yes, sir.

Q. And by that, just what do you mean? Do you go around and inspect valuations, inspect buildings? A. No. I pass on the desirability of risks.

Q. Of both personal property and real estate? A. Well, fire, casualty, and life insurance.

Q. What? A. Fire, casualty, and life insurance.

Q. Fire, casualty, and life insurance? A. And life insurance.

Q. Well, you weren't out inspecting any fire, casualties, or life insurance that time, were you? A. No, sir.

Q. You say that Mr. Cupo is a personal friend of yours? A. Yes, sir.

Q. And that you go—often go around with him? A. Yes, sir.

Q. How long had you been in this place on this night of— A. Well, I had been in and out of there——

Q. Just let me finish, please. (Continuing) on this morning of November 9? A. About how long what?

Q. How long had you been in that place on this early morning of November 9? A. Well, I had been in there in the early part of the night, and left there and went to our club, which is right below there; and I came back again, and I was in there about a half hour that time when this episode occurred.

Q. Let us see about the time question. What time did you go back into this saloon from your club? A. Oh, I would say, maybe one o'clock.

Q. You are not sure? A. No, not offhand.

Q. Well, offhand or any other way, are you? A. Well, I would say, one o'clock.

Q. That is a guess? A. Well, no, it is not a guess.

Q. When did you look at any clock to make sure in your mind that it was two o'clock that this thing happened? A. Because everybody had left. The light went down. He put one light out at the end of the bar.

Q. When was that done? A. Two o'clock.

Q. Well, then, it was after two when they came in there? A. Five minutes after, approximately.

Q. You never see neither one of these men before? A. No, sir.

Q. And I understand that your identification of the two men occurred, as to Morton, by seeing him in the morgue at Philadelphia, and as to Metalski, by seeing him when he was taken in custody in Elizabeth? A. Yes, sir.

Q. I understand you to say that the man whom you later identified as Morton was the man who handled the shotgun? A. Yes, sir.

Q. And that Metalski had a revolver? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. And did Morton keep the shotgun in his hands all the time? A. Yes, sir.

Q. Will you tell us where this men's room is with relation to the room that the two men came in? A. It is opposite the rear end of the bar.

Q. Yes, and I presume it is shut off by a door? A. Yes, not—of course, there is a door on it, but the men's room is not shut off from the entire bar.

Q. When you leave the bar to go into the men's room, don't you go through a door? A. Yes, through the one door, that is all.

Q. Through the one door, and that puts you in the men's room? A. That is it.

Q. Has that door any glass panel in it or anything of that kind? A. No, sir.

Q. Solid wooden door? A. Yes, sir.

Q. And I understood you to say that when these two men came in, in this menacing manner, one with the shotgun and one with the revolver, that they made this threat, and backed you or put you all in the men's room? A. That is right.

Q. Is that right? A. Yes, sir.

Q. Then, if they did that, how do you know which man went behind the bar and took— A. Because when I was——

Q. Just a moment, please, until I finish. How do you know which man went behind the bar and took the money and the bottles of whisky? A. Because when I was being backed into the men's room, he was already in back of the bar.

Q. What did they do; back you into the room? A. Yes, sir. He backed me the full length of the bar, yes, sir.

Q. Looking right at the men all the time? A. I don't understand that question.

Q. Why don't you?

Mr. Hicks: Well, now, if it please the Court,——

A. Well, it is only natural that if a man backs me up with a shotgun, it is only natural that I can see looking back.

*By Mr. Sedam:*

Q. Well, now, when you say, backed you up, you mean you were walking with your back into the room? A. That is it, and he had the shotgun in my stomach.

Q. Then, would you say you were looking at both men all the time? A. No, I would not say I

was looking at both men all the time. I was looking at Morton until I arrived at the end of the bar.

Q. All right, sir. A. And as I was being backed in, it was only natural to get a vision of both of them.

Q. Well, eventually, you got into this men's room? A. Yes, sir.

Q. Now, from that moment on you weren't out of the men's room until the men disappeared? A. Yes, sir.

Q. What do you mean? You came out while the men were there? A. Because, when the argument started over the pocketbook which was owned by the waitress, I stepped out.

Q. Before, you told us that these two men backed all four of you occupants into the men's room? A. No, I didn't say four occupants.

Q. Well, who did they back into the men's room? A. Why, they backed the waitress, the bartender, and myself.

Q. Who else was there besides those three? A. The proprietor was in the back room.

Q. And the proprietor came out into the barroom while the two men were there? A. No, sir.

Q. All right. If you were backed into that room at the point of a gun, do you mean to say that you came out of that room again while the two men were there? A. Yes, sir, for I thought one of them was going to strike the waitress, and the bartender himself walked out, and said to give her a break, that she didn't know what it was all about.

Q. Now, don't go so fast. Before, you testified that the waitress was backed into this men's room with you and the bartender. A. After this episode with the pocketbook, yes.

The Court: That is what he said before, Mr. Sedam.

*By Mr. Sedam*:

Q. Do you mean the pocketbook episode took place before— A. Before she was backed in, yes, sir.

The Court: And after he was backed in the first time.

Mr. Sedam: Now, if your Honor please,——

*By Mr. Sedam*:

Q. Were you backed into that room twice? A. Yes, sir.

Q. Well,— A. I merely took about a step out of the door and grabbed hold of the waitress, and told her that it was a holdup. That was the whole thing, and, of course, the bartender told them to give her a break; that she didn't know what it was all about.

Q. Had he come out of the room, too? A. Yes, sir. Well, the bartender was right at the door of the gents' room.

Q. And where were you? A. I was inside the door.

Q. And where was the girl? A. She was at the bar.

Q. Then you all three weren't backed into the room at the same time, were you? A. No, sir.

Q. And the girl stayed outside in the bar-room, while you and the bartender were backed into this men's room, is that right? A. That is right, and then——

Q. Yes? A. And then, when it was all straightened out with regard to that pocketbook, they let her have it, and they backed her in, and they closed the door.

Q. And you say, Mr. Burns, that in face of the fact that a man had backed you into this room

with a shotgun, and another man was out there with a revolver, that you, nevertheless, came out of this men's room and went over to the assistance of the girl? A. Yes, that is right.

Q. And the bartender did the same thing? A. The bartender said, "Give her a break."

Q. Well, then, he came out of the men's room to say that? A. I didn't say he was in the men's room, yet. I said he was right at the door.

Q. How do you know what kind of liquor they took? A. How do I know?

Q. Yes. A. Because after they went out, the owner came out——

Q. Came out and told you what had been taken? A. He didn't tell me. The bartender and he were in back of the bar, talking. They said that a bottle of whisky was missing, and they didn't know that the other bottle was missing until the following morning, late on Saturday morning.

Q. Then, somebody told you the kind of whisky it was? A. That is right.

Q. So, you didn't know what kind had been taken when you answered Mr. Hicks' question? A. Yes, I knew this one bottle had been taken right then and there.

Q. But you didn't know what kind it was until you were told? A. Certainly, I knew.

Q. How did you know? A. Because the owner told me.

Q. Well, then, what I just asked you, you didn't know until you were told by the owner? A. That is right.

Q. You don't have any interest in this place of business, do you? A. No, sir.

Q. And this Miss White, the waitress there, she didn't know this was a holdup, with one man

pointing a shotgun in your stomach, and the other man waving a revolver around the room? A. I don't know.

Q. Did she make known to you what she thought it was? A. No, she didn't.

Mr. Sedam: That is all, sir.

Mr. Hicks: That is all, Mr. Burns, thank you.

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MARGARET WHITE, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Miss White, in November, 1935, were you working for John Cupo? A. I was.

Q. In the Palm Gardens Cafe on Ridge Avenue, in Philadelphia? A. That is right.

Q. What was your job? A. Waitress.

Q. Were you working there the night of November 8, and the early morning of November 9? A. I was.

Q. What is the closing time there? A. We have to close at two o'clock.

Q. Now, were you in this Palm Gardens Cafe at closing time, two o'clock, on the morning of November 9, 1935? A. I was.

Q. Who else was in the cafe at the time? A. Mr. Cupo, the owner; Mr. Starrett, the bartender; and Mr. Burns, a patron; and myself.

Q. And Mr. Burns is the gentleman who was just on the stand? A. That is right.

Q. Now, did anybody else come in this cafe at about closing time the morning of November 9?

A. The bartender had just put the light out in front of the place, and I went in back of the bar to get my bag. I heard the door slam, and I was still down in back of the bar, and I had my bag. I didn't hear them say stickup or anything else.

Q. Where was your bag? A. Down in back of the bar.

Q. After you picked up your bag and walked out, what did you see? A. While I was down there, the boss asked me if I had burning any lights out in the kitchen, and I didn't have, and I was going back to the bar, and when I came out from in back of the bar, I saw two black eyes looking at me, which was the sawed off shotgun, and I was told to get going.

Q. Does this look like the gun? A. Yes, but the eyes looked bigger to me than that.

The Court: I don't wonder.

*By Mr. Hicks:*

Q. Do you know who it was that had this sawed off shotgun with big eyes? A. Later on I found out it was the man known as Whitey Morton.

Q. How did you identfy him as the man known as Whitey Morton? A. Well, on Saturday, after the holdup, he came up with some pictures, up to Mr. Cupo's, and I happened to be eating dinner across the street, when he sent over for me. They showed me some pictures, and I looked at this picture of Whitey Morton, and I said, "I seen that face before."

After it was all over, he said, "No doubt you did. That is the fellow that had the shotgun."

Q. Now, did you go to Elizabeth police headquarters after this holdup? A. I did.

Q. Did you look at a lineup of men at Elizabeth police headquarters? A. I did.

Q. Did you pick out any man in the lineup? A. I did. I picked out the man that had the revolver on me.

Q. Do you see him here in this courtroom? A. I positively do. He is sitting right there (indicating).

Q. Did you see him point that revolver at anybody? A. Well, I came down from in back of the bar with my bag under my arm, and he snatched it. I said, "You can't do that. That is mine," and he was going to take it again, when the bartender said, "Give her a break. She don't know what it is all about."

Q. Who was it that snatched this bag? A. Metalski.

Q. This fellow here (indicating)? A. That is right. He stood at the end of the bar.

Q. What did he have in his hand? A. He had a nickel looking revolver, a silver—or something.

Q. Was this revolver pointing at you at any time? A. While he was grabbing for my bag, it was pointed at my stomach.

Q. Do you know what was stolen from the cafe? A. Only what I was told. I have no knowledge.

Q. Well, did you take in any silver dollars that day? A. Well, I don't touch anything for money in the back. I didn't take any silver pieces at all, because I only work at the bar.

Q. Are the whisky bottles in this cafe marked with the prices on them? A. He always marked the prices, so his brother, if he is there, he will know the price.

Q. I show you a bottle of cognac with the figure thirty-five written above the label. Will you look

at that figure thirty-five? A. Well, I am not very well acquainted with his handwriting, because I don't touch any bottles.

Q. You say the bottles are marked with the prices? A. He marks most of them when he gets them from the store.

Q. You can identify them? A. No, I can't identify them, because I don't have nothing to do with them.

Mr. Hicks: That is all. Cross examine.

*Cross examination by Mr. Sedam:*

Q. Young lady, this Palm Gardens Cafe is essentially a saloon, isn't it? A. Yes, it is known as a little tap-room.

Q. It is not an eating place? A. They have food there, yes.

Q. They do have food there? A. Yes.

Q. Well, which department are you a waitress in, the food or the liquor department? A. They have the dining room in back. I take care of the tables for the drink, and if anybody wants anything to eat, I serve that, too.

Q. How long have you lived in Philadelphia? A. All my life.

Q. All your life. Did you ever read of any hold-ups or stickups in the City of Philadelphia in all the lifetime you have lived there? A. I read of plenty of them.

Q. What? A. I read of plenty of them.

Q. When two men come in a place, and one of them puts a sawed off shotgun over toward you or in your direction, and another fellow waving a revolver around in the room, you didn't know what it was all about? A. I just got done say-

ing that I was in back of the bar. I had my back to the door.

Q. Yes? A. When I brought my head up, the man known as Whitey Morton was leaning across the bar with this shotgun, and I didn't hear the stickup. It was right after Hallowe'en, and I thought then it was some of the boys around there playing a prank on us.

Q. You heard Mr. Burns testify here a few minutes ago? A. I did.

Q. And not only did he say, but you say, also, that you didn't know what it was all about? A. Not then I didn't know, because I was back of the bar, and I didn't hear they say stickup or anything else. Then, when I came around the end of the bar, I saw this revolver.

Q. Well, when was this attempt made to snatch your pocketbook? When was that made? A. When I came from behind the bar.

Q. You had the pocketbook in your hand? A. Under my arm.

Q. Was Morton the man who was covering you with the gun then? A. No, it was Mr. Metalski.

Q. Didn't you say that Morton had the gun resting over the bar? A. At the other end of the bar; not the part where I was. He was up near the door. I was at the rear end of the bar, coming around. That is the only way you can get out from behind the bar—at the rear end.

Q. Where was Metalski then? A. He was standing at the rear end of the bar as I came out.

Q. You say he made a grab for you pocketbook? A. He did have it out of my arm, and I grabbed it back again.

Q. You grabbed the pocketbook back from the fellow who had the revolver on you? A. I just

got done saying I thought it was a prank. I didn't realize at the time. I wasn't in a holdup before, and after all, sometimes you don't understand those things. They come on so sudden. Well, I was at the end of the bar—yes, there was Mr. Burns, and Mr. Starrett was at the door there. That is when he hollered to Metalski to give me a break, and give her her bag, which he did. As he give me the bag, the two of them came out to get me, and we were backed in there in the men's room.

Q. You weren't in there yet? A. Not yet. We were having a struggle over the bag.

Q. While the two men had the guns out there in the room, both the bartender and Mr. Burns came out of the men's room, and came out to rescue you and your bag? A. It would look like that, after all. They hadn't told them to shut the door yet, because I wasn't in there yet.

Q. You are sure, are you, that Morton, or the man whom you later found out to be Morton, is the man who had the shotgun? A. Yes.

Q. And you are quite sure that Metalski, the man sitting alongside of me, had a revolver? You saw that revolver? A. I saw the silver-looking revolver, nickel, or whatever it is, I don't know. It was a shiny revolver.

Q. Well, you know a revolver when you see one, don't you? Could you see that this was a revolver and not any other kind of— A. It wasn't another sawed-off shotgun. It was a revolver.

Q. No, no, it wasn't a sawed-off shotgun, but might it have been something else besides a revolver? A. No, it was a revolver.

Q. You say that you were asked to go to the morgue in Philadelphia? A. I was asked, but I refused.

Q. Oh, you didn't go? A. No.

Q. Well, now, Madam, didn't you tell us that here a few minutes ago—that at the morgue you said to the bartender, "I have seen that face somewhere before"? A. I didn't.

Q. Where was this? A. In the proprietor's kitchen at 4142 Ridge Avenue.

The Court: She said when the photograph was presented to her.

The Witness: The photograph was presented to me. I didn't see him at the morgue.

*By Mr. Sedam:*

Q. I see. You said, "I have seen that face somewhere before"? A. When I saw the picture, I said, "I have seen that face somewhere before."

Q. And the bartender replied? A. After it was all over.

Q. To you, "No doubt you did. He is the man who had the sawed-off shotgun"? A. That is right. After they had put the pictures away and everything else. That is when he said it to me.

Q. You didn't remember, however, when you looked at the picture, where you had seen the face before? A. Well, I guess it was just the idea—it was an impression on my mind that I had seen it, but I couldn't say where I had seen it at the time.

Q. Well, if had seen a man looking at you at a distance of a very few feet, and menacing you with a sawed-off shotgun, wouldn't you remember his face? A. Sometimes those things happen, and sometimes you don't even get a clear vision of them with surprise at times.

Q. But you weren't surprised? A. Not then. I didn't know what it was, because I just looked

up at him, and I had a glimpse of him there, and walked around the other end of the bar.

Mr. Sedam: That is all.

*Redirect examination by Mr. Hicks*:

Q. Now, just a minute. You say that Eddie Metalski had a revolver in his hand? A. Yes.

Q. You are sure it was not that flashlight you see in front of you? A. No, it was a revolver.

Q. Are you positive? A. Yes.

Q. Now, did Morton wrestle with you to get the pocketbook? A. No, Morton stayed up at the other end of the bar. Metalski's back was towards Morton, so I guess that is why if there was any shooting to be done, he wasn't afraid, because he knew he would hit his buddy.

Q. You say Metalski was the one at the end of the bar? A. Yes.

Q. And Metalski was the one that grabbed the pocketbook? A. Yes.

Mr. Hicks: That is all.

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FRED H. SCHULTZ, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Now, Sergeant, you are a member of the New Jersey State Police? A. Yes, sir.

Q. In the identification bureau? A. That is right.

Q. Did you make an examination of an auto-

mobile which was used by Troopers Matey and Yenser on the morning of November 9, 1935? A. Yes, sir.

Q. And did you find anything in the radiator of that automobile? A. I did.

Q. Who pointed it out to you? A. Trooper Haussler.

Q. What did you take out of the radiator of this automobile? A. We took out a thirty-eight caliber bullet.

Q. Is this the bullet? Will you look at that? A. Yes, sir.

Q. Has it any identifying marks on it, put on by you? A. It has a Y, for Yenser.

Q. A Y for Yenser, you say? A. That is the way I marked it.

Mr. Hicks: I will offer it in evidence.

(The article referred to was received in evidence and marked "Exhibit S-24.")

*By Mr. Hicks:*

Q. Sergeant, you went to Elizabeth police headquarters on the morning of November 9, 1935? A. Yes, sir.

Q. And at that time, did you look over a Chevrolet coupe, which was in the Elizabeth police department garage? A. Yes, sir.

Q. Do you remember the license number of the car? A. The license number was Pennsylvania license DC240.

Q. What had happened to the back window of this Chevrolet coupe? A. The back window was broken.

Q. Now, did you examine that automobile for finger prints? A. Yes, sir.

Mr. Sedam: Now, just a moment——

*By Mr. Hicks*:

Q. As part of your duties in the identification bureau, do you make comparisons of finger prints? A. I do.

Q. How many comparisons of finger prints, and classification of finger prints have you made in the last year or so? A. Probably six or seven hundred.

Q. How long have you been in the identification bureau of the State Police? A. About seven or eight years.

Q. During that course of time, about how many comparisons or identifications have you made? A. That would be hard to say. It would probably run into thousands.

Q. Well, is it part of your duty to classify finger prints as they come in from the various police departments? A. Not from the various; from our own department.

Q. From the State Police? A. From the State Police.

Q. Do you also go out on cases to look for finger prints? A. Yes, sir.

Q. Take photographs of finger prints? A. Yes, sir.

Q. And make comparisons of the finger prints which you have on file? A. Yes, sir.

Q. Did you inspect this Chevrolet coupe for finger prints? A. I did.

Q. Did you find any finger prints that you could decipher on this automobile? A. On the car itself?

Q. Yes. A. I think there was one on the front fender that we could use.

Q. Well, you say "We." Who do you mean by "we"? A. Lieutenant Sjostrom made the comparison of those.

Q. Who else worked with you on these finger prints? A. Trooper Haussler.

Q. Anybody else? A. Sergeant Donovan of Elizabeth.

Q. You say that there was one finger print on the automobile of which Lieutenant Sjostrum made the comparison? A. Yes, sir.

Q. Now, at the time when you inspected this automobile, did you find any bottles of liquor in the car? A. I did.

Q. Did you take these bottles out? A. I did, yes, sir.

Q. Did you put any identifying marks on them? A. No, sir.

Q. Well, can you tell whether or not this bottle of Hennessy cognac was the bottle that was taken out of this Chevrolet coupe? A. It is.

Mr. Sedam: Now, if your Honor please—

*By Mr. Hicks*:

Q. How do you tell that?

Mr. Sedam: Just a moment. This officer has said he put no identifying marks on them, and unless he shows they have been in his possession or under his control in the meantime, he can't identify these particular bottles.

The Court: No, but there may be other identifying marks by which he can identify them.

Mr. Sedam: He says he didn't put any on.

Mr. Hicks: What was the last question?

(The last question was read by the re-

porter as follows: "Question: How do you tell that?")

A. I did put a mark; I put a label on later.

*By Mr. Hicks*:

Q. Is that label on that bottle at the present time? A. Yes.

Q. Is that bottle of Hennessy Three Star Cognac one of the bottles taken out of this Chevrolet coupe? A. Yes, sir.

Mr. Hicks: I will offer it in evidence.

The Court: Let it be marked.

(The article referred to was received in evidence and marked "Exhibit S-25".)

*By Mr. Hicks*:

Q. Now, after you took this bottle of cognac out of this Chevrolet coupe, what did you do with it? A. Left it there in a box, with Trooper Haussler watching, and then after I went downstairs and I took and brought it to Sergeant Donovan's office, and examined it for finger prints.

Q. Did you find any finger prints on the cognac bottle? A. Yes, sir.

Q. And after you found the finger prints, what did you do? A. Took them into Trenton and had them photographed.

Q. And under whose supervision were those photographs taken? A. They were taken under my supervision.

Q. After these photographs were taken, to whom were they given? A. The photographs were given to Lieutenant Sjostrom.

Q. Did he have anything to do with the taking of these photographs? A. He sort of supervised it for the State Bureau of Identification.

Q. He is your superior officer? A. He is.

Q. You say the photographs of these finger prints were taken off the cognac bottle? A. Yes, sir.

Q. How many finger prints did you find on the cognac bottle? A. On the cognac bottle there was one that I thought could be checked.

Q. It was that finger print that you had a picture of, is that correct? A. Yes, sir.

Q. And who has those pictures? A. Lieutenant Sjostrom.

Q. Did you also find in this Chevrolet coupe this bottle of Overholt? A. Yes, sir.

Q. Were there any identifying marks placed on this bottle? A. The same label as on that one.

Q. Who put the label on it? A. I did.

Q. Did you go over this Overholt bottle for finger prints? A. Yes, sir.

Q. Did you find any finger prints on the bottle? A. I did.

Q. How many? A. Two.

Q. Were there any finger prints taken—any photographs taken of those finger prints? A. Yes, sir.

Q. Under whose supervision? A. Still under my supervision.

Q. To whom were these bottles and these photographs of finger prints turned over? A. Over to Lieutenant Sjostrom.

Q. Have you those photographs with you? A. No, I haven't.

Mr. Hicks: I will offer the bottle of Overholt in evidence, if there is no objection.

Mr. Sedam: No objection.

(The article referred to was received in evidence and marked "Exhibit S-26".)

*By Mr. Hicks:*

Q. I show you a photograph of a portion of a label of a cognac bottle. Is that the photograph that was taken under your supervision? A. Yes, sir.

Mr. Hicks: I ask that it be marked for identification and offered in evidence. I offer it in evidence.

Mr. Sedam: This man didn't take the photographs, Mr. Prosecutor.

Mr. Hicks: Well, the witness testified, if it please the Court——

The Court: It was taken under his supervision.

Mr. Hicks: This photograph was taken under his supervision.

*By Mr. Hicks:*

Q. Now, is that a true picture? A. Yes, sir.

Q. Of the label on the Hennessy bottle? A. It is.

Mr. Sedam: No objection.

Mr. Hicks: I ask that it be marked in evidence.

(The photograph referred to was received in evidence and marked "Exhibit S-27".)

*By Mr. Hicks:*

Q. Now, I show you a photograph of a part of the label on the Overholt whisky bottle. Was that photograph taken under your supervision? A. It was.

Q. Does it truly represent that portion of the label of the Overholt bottle? A. Yes, sir.

Mr. Hicks: I offer that in evidence.

(The photograph referred to was received in evidence and marked "Exhibit S-28.")

*By Mr. Hicks:*

Q. Now, were those photographs subsequently enlarged? A. I believe they were.

Q. Well, who did you turn these photographs over to? A. To Lieutenant Sjostrom.

Q. Now, did you inspect this sawed-off shotgun, which is Exhibit S-12? Did you look at it for finger prints? A. I did.

Q. Did Sergeant Donovan also inspect it with you? A. Yes, sir.

Q. Did you find any finger prints on the shotgun? A. We found fragments, and a lot of smears, but there wasn't anything that we could use for comparison.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Sergeant, I didn't get your name. What is it? A. Schultz.

Mr. Hicks: Oh, there is one further question I would like to ask him.

*Fred H. Schultz, for State—Cross.*

*By Mr. Hicks:*

Q. Who put these coverings or wrappings around the bottles? A. I did.

Q. What is the purpose of these coverings or wrappings? A. To protect the finger prints.

Q. Will you just indicate to the jury exactly where these finger prints appear on these labels? A. (The witness indicated to the jury.)

Q. They are the prints that show up in black? A. Yes.

Q. Will you just show the jury the prints on the Overholt bottle? A. (To the jury) The prints on this bottle are a little fainter than the other. The black mark you see on the label.

Q. Now, how were those prints brought out in black, Sergeant? A. They were dusted with finger print powder.

Q. Was the car also dusted? A. Yes, sir.

Q. Was the shotgun dusted? A. Yes, sir.

Q. I show you Exhibit S-7, the Chevrolet automobile, from that picture, can you tell whether or not that car had been dusted for finger prints prior to the taking of the picture? A. Yes, sir.

Q. Just point out to the jury what indicates that the car had been dusted? A. Being a black object, was powdered with a white powder, and it is naturally streaked with part of the powder on the car yet.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Sergeant Schultz, I understand you to say that you are officially connected with the identification bureau of the State Police? A. Yes, sir.

Q. Do your duties include the inspection of various kinds of properties that are taken or come

into the hands of the department? Is that what that is for? A. Yes, sir.

Q. And you referred to Trooper Hanson. Is he in the same line of work? A. I referred to Trooper Haussler.

Q. Trooper Haussler. Is he in the same line of work that you are in? A. He is an assistant, yes.

Q. Was the duty delegated to you to look over your car after this trouble? A. Yes, sir.

Q. That is, the department's car. A. That is right.

Q. Did you do it alone at first, and then assisted by Trooper Haussler afterwards, or were you both together? A. We were working on the job together.

Q. In making this examination, I understand that Trooper Haussler was the one who found a bullet hole with a bullet imbedded in the radiator of the Ford car? A. Trooper Haussler saw it and called my attention to it.

Q. Well, I say, he found it, then, didn't he? A. Yes, sir.

Q. Now, in addition to this work of identifying property and looking over property, you also have become expert in the finger printing work? A. Yes, sir.

Q. And you have been engaged in that for several years, in the department six or seven years, and have done thousands of jobs of that kind? A. Yes, sir.

Q. And to you is also delegated the job of looking over this Chevrolet coupe? A. That is right.

Q. Where did that take place, in Elizabeth or here? A. In Elizabeth police headquarters garage.

Q. And how soon after Saturday morning, November 9, was this inspection made by you? A.

Well, we arrived there somewhere around seven o'clock, and we started on that right away.

Q. So that your examination of the car was made on the morning of November 9, at somewheres around eight to nine o'clock, in there? A. Approximately.

Q. And you say that your entire inspection of the entire car revealed only one finger print on the front fender? A. There were a lot of smudgy smears. We had them all over, but they are of no value to us.

Q. But only one tangible finger print? A. There were palm prints.

Q. Will you tell the Court and jury whose finger print it was, if you are expert in determining that?

Mr. Hicks: Well, if it please the Court, this officer didn't make the comparison. I have Lieutenant Sjostrom here. He will testify to that.

*By Mr. Sedam:*

Q. You don't know whose finger print it was? A. No, sir.

Q. That is, you don't know of your own knowledge, do you? A. That is right. I heard whose it was, but I don't know myself.

Q. No. I am speaking of what you may have found out yourself. Your examination of this Chevrolet coupe was intended to be, and no doubt was, a thorough one, wasn't it? A. Yes, sir.

Q. And did your examination reveal blood stains on the right front seat of the Chevrolet coupe? A. I can't remember that.

Q. Now, Officer, you can't remember that? I asked you if you made a thorough examination of that car, and you said yes, you did. A. Yes, sir.

Q. Now, isn't it a fact that there were blood stains on the right-hand side of this seat in the coupe? A. I can't recall whether there was or not.

Q. Why, didn't you put down any distinguishing marks that you found in that car? Didn't you note that right down? A. No, sir.

Q. Did you hear Trooper Matey testify here yesterday afternoon? A. No, sir.

Q. You didn't? A. No, sir.

Q. You don't know that he testified that he saw blood stains on the front seat of that car? A. No, sir.

Q. But you, charged with the duty of finding things on the car, didn't see any blood stains? A. That is right.

Q. Well, haven't you seen them since? A. I can't recall seeing the inside of the car since that date.

Q. Don't you know as a matter of official report in your department, of this State Police Department, that it is recorded that there were blood stains on the front seat of that car? A. I don't know. I haven't seen the report.

Q. You have heard it, though, haven't you? A. No, sir.

Q. Well, do you suppose that if you went over here to this garage, which is about a block and a half away from here, and looked at that car now, would you in your expert capacity be able to tell whether there were blood stains on the seat of that car? A. I am not a blood expert.

Q. You are not a blood expert? A. No, sir.

Q. But you would know blood stains if you saw them, wouldn't you? A. They would appear to be blood stains, but I could not say they were.

Q. What was that? A. They may appear to me

to be blood stains, but I could not say they were.

Q. You mean, in any case? A. That is right.

Q. Oh, you are not referring to this particular thing now; you are referring to any blood stains? A. No, sir.

Q. You looked after the obtaining of these finger prints on the bottles and on the car, didn't you? A. Yes, sir.

Q. And I understand that you caused them to be photographed and enlarged, is that correct? A. I had these photogrphs taken. Lieutenant Sjostrom took care of the enlargements.

Q. Oh, you had nothing to do with the enlargements? A. No, sir.

Q. And even today, outside of hearsay, you don't know whose finger prints they are? A. Yes, I do, on these.

Q. Well, do you know it from your own examination, or do you know it from having heard about it? A. From what the Lieutenant had told me.

Q. Yes, from what the Lieutenant had told you, but I say, from your own knowledge, you don't know whose finger prints are on these bottles or anything else, do you? A. I didn't check them, no, sir.

Q. When did you first see this shotgun? A. It was on the morning of November 9.

Q. At what time on that morning? A. As near as I can figure, it would be in around, somewhere, nine or ten o'clock.

Q. Did you make an examination of the shotgun? A. I did.

Q. Immediately? A. Yes, sir.

Q. You examined it for finger prints, of course, didn't you? A. That is right.

Q. And I understand your testimony to be that there were no finger prints on the shotgun sufficiently plain to enable you to get a picture of them? A. There were no finger prints sufficient enough to make a comparison.

Q. Well, do you mean by that, that there were blurs and smears on the shotgun of which a picture could be taken, but that they weren't sufficiently clear to permit identification or comparison? Is that so? A. We probably could have got a photograph of something that looked like a finger print, but it would not be any good for comparison.

Q. So that there is nothing, as far as you know, as a result of your work in connection with the shotgun, which would enable you to say with sureness and honesty as to whose finger prints were on that gun? A. No, sir.

Q. Now, you said, with reference to the two bottles that are before you, that there was one print on the cognac bottle that you thought could be taken? A. There was one print on the cognac bottle that looked to me as if it could be compared—a comparison made with another print.

Q. Well, was that finger print taken by you? A. It was photographed in my presence.

Q. It was photographed in your presence? A. Yes.

Q. Has it been compared, as far as you know? A. Yes, sir.

Q. But not by you? A. Not by me, no, sir.

Q. And with reference to the Old Overholt bottle, what have you to say about that? Two prints were found on that, you say? A. Yes, sir.

Q. Of which photographs were taken? A. That is right.

Q. But not compared by you? A. That is right.

Q. And this was turned over by you to Lieutenant Sjostrom? A. That is right.

Mr. Sedam: All right, sir. Thank you.
Mr. Hicks: That is all, Sergeant.

*By Mr. Sedam:*

Q. Just a moment, please. Was Trooper Matey down in Elizabeth with you at the time you made an examination of the trooper's car? A. I don't recall if he was there or not.

Q. You don't know whether it was him who found or discovered the bullet in the trooper's car? A. My attention was called to it by Trooper Haussler.

Q. And when he called your attention to it, was it supposed to be an original discovery, meaning by that, had it been discovered before and just left there, or was that the first time that anybody had noticed, as far as you were concerned? A. As far as I was concerned, that is the first time anybody had noticed it.

Mr. Sedam: All right, that is all.

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E. PAUL SJOSTROM, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Lieutenant, you are a member of the New Jersey State Police? A. Yes, sir.

Q. What part of the work of the identification bureau are you in charge of? A. Assistant supervisor of the State Bureau of Identification.

Q. Now, were there certain photographs of prints—I am referring now to Exhibit S-27 and Exhibit S-28, were those given to you by Sergeant Schultz? A. Yes, sir.

Q. And did you yourself make any inspection of these two liquor bottles, the cognac bottle and the Overholt bottle? A. I was present when they were photographed.

Q. Did you make any examination of these bottles yourself to determine what prints could be obtained from them? A. No, sir, I didn't.

Q. That was all done by Sergeant Schultz? A. Sergeant Schultz.

Q. These photographs that were taken of these bottles, what did you do with them? A. Compared them with various suspects and persons who were—one person who was under arrest.

Q. And the person whom you refer to as being under arrest at the time of the comparison was this defendant, Edward Metalski? A. Yes, sir.

Q. Can you tell us whose prints these were that were found on the cognac bottle? A. On the cognac bottle was the left middle finger of one Frank Lepp.

Q. He was one of the witnesses on the stand this morning? A. Yes, sir.

Q. How did you get his prints to compare them with the print on the cognac bottle? A. They were taken by Trooper Stockburger, in Philadelphia, and brought over to us for the comparison, and as a possible elimination.

Q. Was that the only print found on the cognac bottle? A. The only print of any value. There were several marks and smudges there that weren't of any value for identification.

Q. Did you find any prints of Morton on the cognac bottle? A. No, sir.

Q. Did you make any examination or comparison of the photographs of prints on the Overholt bottle? A. Yes, sir.

Q. Did you compare them with the prints of anyone else? A. Of Edward Metalski.

Q. What was the result of that comparison? A. The prints on the label of the Old Overholt bottle are those of the right ring and the little finger of Edward Metalski.

Q. How many comparisons have you made, Lieutenant? A. Well, many thousands.

Q. Is it your function with the State Police to classify finger prints? A. Yes, sir.

Q. And make comparisons of prints with other prints on file? A. Yes, sir.

Q. Make comparisons of prints obtained in connection with crimes with prints on file? A. Yes, sir.

Q. Did you have any enlarged photograph made up of these prints on the Overholt bottle? A. I did.

Q. And have you got them here with you? A. I have, yes, sir.

Q. Using those prints, will you just show the jury, or explain to the jury how you made this comparison between the print of Edward Metalski and the prints on the Overholt bottle? A. Yes, sir.

Q. You have one for Mr. Sedam, haven't you? A. Yes, I have (handing enlarged photograph).

Mr. Sedam: Thank you.

The Court: Are they all the same?

Mr. Hicks: Yes.

The Court: Three duplicates.

*By Mr. Hicks*:

Q. Now, Lieutenant, this print which appears in the center and in the lower part of the chart that you have prepared, which bears the name Edward Metalski, impressions taken by Lieutenant W. H. McDermott, from whom did you obtain those finger prints? A. From Lieutenant McDermott.

Mr. Hicks: Now, if necessary, I can call McDermott.

Is McDermott here in the courtroom?

If the witness will just step down a minute——

Mr. Sedam: I don't quite comprehend. I thought it was the last witness on the stand, Sergeant Schultz, who said——

The Court: No, this is for the purpose——

Mr. Sedam: Oh, well, if he says he took them, we can go right ahead with them.

*By Mr. Hicks*:

Q. Well, these finger prints which appear in the center and in the lower part of this chart were given you by Lieutenant McDermott? A. Yes, sir.

Q. They are the finger prints of Edward Metalski? A. Yes, sir.

Mr. Hicks: And I understand that counsel admits they are his finger prints?

Mr. Sedam: Sure, if you say so.

Mr. Hicks: Well, I am quite certain they are.

*By Mr. Hicks:*

Q. And these other pictures, now, just tell the Court and jury exactly what these pictures are on the left side, as you look at the chart? A. On the left side?

Q. Yes. A. The one marked A at the top is an enlarged copy of the print that is marked A on the bottle, on the Old Overholt whisky bottle.

Q. And this whisky bottle appears in the center at the top of the chart? A. Yes, sir. Now, the photograph marked A-1 is an enlarged copy of the plain impression of the finger prints of Edward Metalski marked A-1 on the finger print card.

Q. What finger is that? A. That is the right ring finger.

Q. And it is shown as A-1 in the finger print— A. A-1.

Q. (Continuing) card at the bottom of the chart? A. Yes, sir.

Q. Now, will you just point out to the jury, or tell the jury how you made your comparison between these two prints, that is, A print which was found on the Overholt bottle, and the A-1 print, which was the actual print of Edward Metalski, as taken by Lieutenant McDermott? A. Now, looking at A-1, we find at the lower portion to the left a scar which is visible but not quite as clear as on A-1—visible on A. The puckering formation is there with the black line. Immediately above the scar and to the left on A-1, we see the line marked number 1, which, if we look at A, we find it appearing in practically the same place which is a ridge ending. Now, go over one line, and two to the right, and upward slightly on A-1, we see another ridge ending marked number 2.

Looking at A, we find that the ridge ending marked 2, appearing in practically the same place.

Q. Now, Lieutenant, possibly we can shorten this. How many points of similarity do you have to find in a comparison of finger prints before you can be definitely certain that the finger prints being compared are the same? A. Well, in my opinion, seven or eight is sufficient.

Q. How many points of similarity have you charted on the chart here? A. Fifteen.

Q. Now, you have on the chart print A, which was taken from the Overholt bottle, marked "pattern central pocket loop pattern." A. Yes, sir.

Q. What do you mean by that? A. There are nine different patterns, distinct patterns, of finger print classification, and the center pocket loop is one of those nine patterns. In identifying an individual by finger prints, the first consideration is the pattern, and then the individual characteristics within that pattern. A-1, or the right ring finger, of Edward Metalski, is the central pocket loop. The pattern obtained on the Overholt whisky bottle is likewise the central pocket loop pattern.

Q. There was another finger print of Metalski's hand found on this bottle? A. Yes.

Q. What finger is that? A. That is the right little finger.

Q. And marked B-1 on the lower part of this chart? A. Yes, the B on the Overholt whisky bottle.

Q. Then, the enlarged photograph of B-1, as it appears on the finger print chart of Metalski, is shown on the right hand side of the chart on the lower right hand corner? A. Yes. That is known as an ulnar loop, and it means where the slant of the ridges is toward the ulnar bone of the hand, and it has a loop formation.

Q. That is, the loops in this comparison, both in B and B-1, are open at the right side of the chart, is that correct? A. In the B, yes, sir; and B and B-1.

Q. Instead of being a central pocket loop or a center loop as in A and A-1? A. Yes, sir, they are two distinct patterns.

Q. Now, how many points of comparison, Lieutenant, have you charted in comparison of the little finger? A. Fifteen points on the little finger.

Q. Based on your experience and your comparison in this case, what have you to say as to whether or not the two finger prints found on the Overholt bottle are the finger prints of Edward Metalski? A. Well, in my opinion, the fifteen characteristcs appearing on one finger print is sufficient for identification. Here we have two fingers with fifteen on each, which, in my opinion, is positive testimony that they are the fingers of Edward Metalski.

Q. Now, what chance, Lieutenant, would there be of any other person having similar prints to the prints of Edward Metalski? A. The French scientist mathematically—how he did it, I don't know—figured it was one possibility of a finger being alike once in sixty-four thousand million times.

Q. Did you ever find a finger print alike in your comparison? A. No, sir.

Q. Did you ever hear of any being found alike? A. No, sir.

Mr. Hicks: I would like to offer these charts in evidence.

(The charts referred to were received in evidence and marked "Exhibit S-29.")

Mr. Hicks: That is all.

*Cross examination by Mr. Sedam:*

Q. Lieutenant, assuming that I don't know a thing about finger printing, which I don't, but which you know a great deal about, would this be a fair summary of what you just have said, namely, that Lieutenant Schultz took the photographs of such prints as he found on any of the objects involved— A. Yes, sir.

Q. That he, in turn, turned them over to you— A. Yes, sir.

Q. That Lieutenant McDermott of the Prosecutor's office had taken the finger prints of Metalski? A. Yes, sir.

Q. And he, in turn, furnished them to you? A. Yes, sir.

Q. And you compared the finger prints—compared the photographs taken by or under the directions of Lieutenant Schultz with the finger prints, and found that certain of them belonged to Metalski? A. Not originally, no, sir. We had, oh, I would say, approximately ten or twelve sets of finger prints of Edward Metalski in our files, and we checked one of those, but the one that is used for that enlargement is the one that was taken by Lieutenant McDermott.

Q. Now, assuming that you had plenty of information on the matter of the finger prints of Edward Metalski, from different sources— A. Yes, sir.

Q. Assuming that, and coming down to the object that we are dealing with in this case, one of which is the finger print on the cognac bottle— A. Yes, sir.

Q. Whose finger print was that? A. Frank Lepp's, the left middle finger of Frank Lepp.

Q. Were they any other prints on that bottle? A. No, sir. No, sir, no finger prints. There were finger marks on it; nothing of any value.

Q. You heard the testimony here this morning, where Frank Lepp, the witness, said he was given a drink out of this bottle by— A. Yes, sir.

Q. (Continuing) the man who proved to be Morton? A. Yes, sir.

Q. And, apparently, Morton was handling that cognac bottle, wasn't he? A. Well, I can explain that in this way: It is possible to handle a thing fifty or sixty times a day and still not leave a good finger print on any object.

Q. So that Lepp's happened to be the only one that could be photographed? A. Yes, sir. There were other marks on it, but nothing of sufficient value to make the identification of an individual finger there.

Q. So that really disposes of the cognac bottle as far as finger prints are concerned? A. Yes.

Q. Now, on the Overholt bottle, testimony was given by Sergeant Schultz to the effect that two prints were found on that bottle? A. Yes, sir.

Q. Of which photographs were taken and turned over to you for proper comparison, is that correct? A. Yes, sir.

Q. And in making your comparison of those prints, you have told us that one of them or both of them belonged to Metalski? A. Both of them.

Q. Both of them belonged to Metalski? A. Yes, sir.

Q. And there were no other prints, as far as you know, of anybody else? A. As far as I know, no, sir.

Q. At least, legible enough to take? A. No, as far as I know, there wasn't, no, sir. Of course, I didn't powder the bottle.

New Jersey State Library

Q. And there is no question but that Metalski's finger prints were on the Overholt bottle? A. Yes, sir.

Q. Was it explained to you in connection with your official duties by Sergeant Schultz, who took up this question of photographs and so forth with you, that there were no finger prints found on the gun which could be photographed, taken, and identified? A. Yes, sir.

Q. There were none? A. There were none of sufficient value for identification.

Mr. Sedam: That is all, Lieutenant.

*Redirect examination by Mr. Hicks*:

Q. Lieutenant, there was a print on the automobile. Did you make a comparison of that print? A. Yes, sir, I did.

Q. Whose print was it? A. It was the left middle finger of Jack Cuttler, who, I found out later to be the owner of that automobile.

Q. And the clearness of a finger print always depends largely upon the moisture on the finger? A. On the surface, and that leaves, or that is termed as a latent print, or a hidden or invisible print. What leaves that print on the object is the moisture that comes out of the pores that are on top of the ridges of the fingers, which makes the finger print, and the impression of the finger on an object leaves that fluid on that object, and to bring that or make it visible, to make that out, powder must be used to make it plain.

Q. Then, Lieutenant, if a surface were dry, and if the finger were dry, would there be any latent print? A. It depends on the dryness. A finger would have to be very dry not to leave a finger

print. It would depend on the dryness, of course. The more moist the finger is, the plainer and clearer the print that would be left, and then, again, there are—would be an impression where not much moisture was in the fingers, where practically no impression would be left on a certain surface which would be of any value for identification.

Q. Do heat and cold have anything to do with the latent print? A. Yes.

Q. Just tell us what you mean by that. A. Well, weather conditions, now, we will take a print on a surface, such as paper. It is the fluid that comes out of the pores that leaves that impression, but a dry air would naturally dry that fluid out, the same as it would water, if water was placed on an object.

Q. Well, is a print under the same conditions of cold weather likely to be more legible than one in hot weather? A. Cold weather, it would be hard to say under just what the conditions would be. It would depend on the weather conditions, where the print was.

Mr. Hicks: Cross examine.

*Recross examination by Mr. Sedam:*

Q. Did you have anything to do with an examination of this Chevrolet coupe? A. Indirectly—directly, no, sir, just as to receiving the finger prints.

Q. I mean, an inspection of the car itself, did you make it? A. No, sir.

Q. You didn't? A. No, sir.

Mr. Sedam: That is all.

Mr. Hicks: That is all.

The Court: We are about to take a recess now. Let the defendant first be taken into custody.

(The defendant was removed from the courtroom.)

The Court: The audience will remain seated until the jury retires.

(The jury retired.)

The Court: We will take a recess until two o'clock.

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(Afternoon Session.)

S. JOSEPH DONOVAN, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. You are a member of the Elizabeth Police Department, Sergeant? A. I am.

Q. On November 9, 1935, did you work with Sergeant Schultz in connection with taking certain finger prints and so on? A. I did.

Q. And did you examine a sawed-off shotgun? A. I did.

Q. At that time, was the shotgun loaded? A. It was.

Q. I show you two shells, and ask you whether those are the shells that were taken out of that shotgun by you? A. They are.

Q. Are they marked with any identifying marks? A. They are scratched with a D.

Mr. Hicks: I offer in evidence these two Winchester Ranger twelve gauge, number 6-C, shotgun shells.

Mr. Sedam: No objection.

(The articles referred to were received in evidence and marked "Exhibit S-30".)

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Sergeant Donovan, do I understand that you were with Sergeant Schultz in making the examination of this car? A. Of the car? No.

Q. Not of the car? A. No.

Q. You just said you took this shotgun out of the car? A. I was up with him with the two bottles and the shotgun.

Q. But you didn't look over the car? A. I didn't go over the car.

Mr. Sedam: That is all.

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WILLIAM ARTHUR, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Mr. Arthur, you are a member of the Philadelphia Police Department? A . That is correct.

Q. A detective? A. That is right, sir.

Q. On Saturday, November 9, 1935, in compliance with instructions from your superior, did you go to the home of Edward Metalski? A. I did, sir.

Q. Did you search Edward Metalski's apartment? A. I did.

Q. What is the address? A. 1621 North Hutchinson Street.

Q. Did you find anything in the apartment? A. In the middle bureau drawer, inside of a shirt, a man's shirt, I found three shotgun shells.

Q. I show you three shotgun shells, Winchester Ranger twelve gauge, 6-C, and bearing the name in ink on them "William Arthur, 11/9/35." Will you look at those shells, Detective? A. (The witness handed the shells.)

Q. Now, are those the shells that you found in Eddie Metalski's room on the day of November 9, 1935? A. They are, sir.

Mr. Hicks: I offer them in evidence.

The Court: They may be marked.

(The articles referred to were received in evidence and marked "Exhibit S-31".)

*By Mr. Hicks:*

Q. Now, Detective Arthur, will you look at the shells, Exhibit S-30, and tell me whether or not these shells that you found, S-31, that you found in Eddie Metalski's room, are the same caliber and the same make? A. From my personal observation, they are.

Q. They are all twelve gauge Winchester Rangers, is that correct? A. That is correct.

Q. And the size of the pellets, the lead pellets, is indicated by the 6-C appearing on the wadding, is that correct? A. Yes.

Q. I show you Exhibit S-23, two discharged shells, found in the Chevrolet coupe. Will you look at those shells and compare them with the

ones which you found in the room of Eddie Metalski in Philadelphia? A. From my personal observation, they are, sir.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam*:

Q. Are you familiar with shotguns and shotgun shells? A. I am not a ballistics expert, but I do know a little about them.

Mr. Sedam: Which are which, Mr. Hicks?

The Witness: There is two in there, and there is—one of these is marked.

*By Mr. Sedam*:

Q. This one? A. Yes.

Q. Do they go off if I drop them or anything like that? A. No, sir.

Q. Now, of course, Officer, all Winchester-make shells of the same caliber look alike, don't they? A. Of the same caliber, they would be alike.

Q. They would be alike? A. Yes, as far as size. There is a variation in the size of the shot.

*By Mr. Hicks*:

Q. Talk a little louder, please. A. There is a variation in the size of the shot.

*By Mr. Sedam*:

Q. Is there anything for you to tell from observation whether these three shells are of more recent make or manufacture than these? A. Only from the observation that these shells look to be a trifle older than these, as though they were weatherbeaten.

Q. As though what? A. They had been weather-beaten. They were exposed.

Q. Exposed to what? To air, you mean? A. To air. Air will change the color of them.

Q. Based on your knowledge of shells, and looking at those two which are part of Exhibit S-30, doesn't it appear that these shells are much older than these other shells? A. That I could not qualify to say, Counsellor.

Q. What day was it that you went to Metalski's room? A. On November 9.

Q. November 9, which was the same day of this alleged shooting? A. The same morning, yes, sir.

Q. The day of the morning of the alleged shooting? A. That is right.

Q. And these shells, Officer, were allegedly found in the Chevrolet coupe on this same day of January 9, the date of the alleged shooting? A. That I don't know.

Q. That you don't know, no, sir. It is in evidence that they were, I mean. Now, sir, in order to justify your opinion that the difference in appearance between the shells that were found in the coupe on that day and three shells which you say were found in Metalski's drawer in his room— A. Bureau drawer.

Q. Bureau drawer in his room, in your opinion, would there be any such different appearance as there is in these shells when they were found on the same day? A. I am not qualified to say, Counsellor.

Q. Did you have any other part in the investigation of this case in Philadelphia, other than with reference to the finding of these shells?

Mr. Hicks: Now, if it please the Court, does the attorney for the defense wish to

make this witness his witness? I have no objection.

Mr. Sedam: I will make him my witness, sir, if I may.

*By Mr. Sedam:*

Q. Did you, sir? A. Yes, sir.

Q. Do you know where this Whitey Morton lived in Philadelphia? A. I didn't, sir, no, sir. All that I know, where he did live, that is, when he became deceased.

Q. Well, I ask you now, do you know where he lived in Philadelphia as of November 8 or November 9? A. No, sir, I didn't.

Q. Did you ever see Whitey Morton in his life? A. I haven't.

Q. During his lifetime? A. I haven't, no, sir.

Q. Do you have knowledge of the fact that Whitey Morton is now dead? A. I do, sir.

Q. Did you see his body? A. I identified his body at the morgue.

Q. Do you know what the cause of his death was? A. I believe that it was gas. My investigation showed that this man had committed suicide.

Q. Do you know whether or not, at the time of your inspection of the body at the morgue, there were any cuts on either his face or his hands? A. I didn't investigate the man's body. At that time, he had a large scar here alonside of the neck which was partly partial to the investigation, and the scar he had on the side of his neck, that was also on the picture we saw, as well as on the picture which I carried in my pocket, which was part of the picture which I used to identify him as the man.

Q. Now, did you, in the course of your personal

inspection, see any cut of any kind on his nose or on his hand? A. There was a pretty small mark right here (indicating). I wouldn't say it was a cut. That is something I could not say.

Q. On his nose? A. Right here (indicating), there was a very small mark. What it was, I don't know.

Q. Wasn't it a cut? A. That I would not say. I don't know that.

Q. Did you see any cut or cuts on his hands? A. I didn't. I didn't investigate it.

Q. You didn't look for it? A. I didn't look for any cuts on his hands or any part of his body.

Q. Do you know, detective, from the official report in your department file, gathered in the course of your investigation, whether there is anything that tells about cuts on his nose or on his hand? A. Only on the back of the picture, which identifies this mark on the side of his neck, that was all.

Q. That was an old scar for identification? A. That was an old scar.

Q. But, I mean, in connection with the investigation of his death at this time? A. No, sir.

Q. You don't know of any record of any new cuts? A. No, sir.

Mr. Sedam: That is all, sir. Thank you.

*Redirect examination by Mr. Hicks*:

Q. Do you know what day it was that Morton committed suicide? A. It was on Monday, November 11.

Q. And he committed suicide by putting his head in an oven, didn't he? A. That is right.

Q. You don't know whether he got any cuts in the course of committing suicide, on his face? A. I could not say.

Q. I mean, this mark that has been mentioned on his nose? A. That I could not say. He had his whole head in the oven by what I could find out about the investigation.

Mr. Hicks: That is all.

*Recross examination by Mr. Sedam:*

Q. He first wrapped his head in a towel, didn't he? A. That I don't know. I didn't see the body when it was taken from the house.

Mr. Sedam: That is all.
Mr. Hicks: That is all.

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Mr. Sedam: If your Honor please, this last witness, may I ask one or two more questions of this last witness?

(Detective William Arthur resumed the stand.)

*By Mr. Sedam:*

Q. Detective Arthur, I have forgotten to ask you one or two questions. When you went to this address in Philadelphia where Metalski lived, you said that you went to his room, and in the bureau drawer in his room is where you found these shells, is that right? A. That is right.

Q. Will you be kind enough to tell me who was present there at the time you went there? A. When I went to the front door, and knocked at the front door, Detective Poggi, who accompanied me, and a girl by the name of Helen, who I understood is a sister of this Metalski's, answered the door. I asked her if Mary was there, and she said that

she was not at home. Detective Poggi then left to go to Ninth and Columbia Avenues, to see if he could find her where she formerly worked in a tap-room.

I talked to this girl, Helen, for awhile, and told her it was advisable that I see Mary. It was important, and she told me that Mary was upstairs asleep; so I told her to go up and wake her up. She invited me in the house, and I went in. Then, after this defendant's wife came downstairs, I told her what I was there for. She says, "You can search the whole house."

I said, "Will you show me where your room or his room is?"

She said, "Yes." She took me up to the second floor front room. There was a bureau on the north wall, and the bed is on the east wall, and in this bureau, in the second drawer, of a shirt, is where I took these three shells from.

Q. And the young woman whom you speak of as Mrs. Metalski, is she the one known as Mary Metalski? A. That is right.

Q. And the other girl who was there is Helen, who was the sister of Mrs. Metalski? A. Yes.

Q. Did you ascertain, Detective Arthur,—you say, "Metalski's wife." Did you ascertain whether she is his wife? A. I did.

Q. She is his legal wife, is she not? A. That is right. September 14, 1935.

Q. Just one more thing. Did you ascertain under what name they were married? Wasn't this defendant married under the name of Edward Metalski? A. Well, I wouldn't say, positively sure, because I didn't look at the marriage certificate.

Q. Was it exhibited to you? A. She showed it to me, but I didn't pay no attention to it.

Q. She had a marriage certificate? A. Yes.

Q. It was from Elkton. Maryland, wasn't it? A. I believe it was.

Mr. Sedam: Thank you.

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F. HERDMAN HARDING, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Now, Mr. Harding, you became Sheriff of Middlesex County immediately after the election, this past November, 1935? A. I did.

Q. And as Sheriff, you are in general charge of the jail? A. Yes, sir.

Q. Did you, at the time, or shortly after you were sworn in as Sheriff, did you have a prisoner in the jail named Edward Metalski? A. Yes, I did.

Q. This defendant here? A. Yes.

Mr. Sedam: Now, if your Honor please, I would like to interject here to this extent, that I said in my opening to this jury, and my whole question of the jurors was a concession and an admission that this defendant had escaped from jail.

The Court: Yes, I know, but Mr. Sedam, the State can prove it, if it wants to do it. I can only pass on the competency of the testimony.

Mr. Sedam: But I think, sir, your Honor, if I may respectfully submit this, that this is a matter here, which the defendant having done something, havnig com-

mitted an offense, that he would have to be questioned, and then if he denied it, then for the State to prove it.

Mr. Hicks: Now, is this defendant——

Mr. Sedam: One minute. The Court is just thinking.

The Court: No, I have decided.

Mr. Sedam: I thought you started in to say something.

The Court: No. I don't think there is any merit in your objection.

Mr. Sedam: I pray an exception.

The Court: Exception allowed.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

*By Mr. Hicks*:

Q. Has this defendant, Edward Metalski, ever been legally discharged or released from the Middlesex County Jail and from your custody? A. No, he has not.

Mr. Hicks: That is all. Cross examine.

Mr. Sedam: No questions.

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LAWRENCE OFFENBACKER, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Now, Mr. Offenbacker, where do you live? A. I live at 1264 Raritan Avenue, Highland Park.

Q. On December 14 of this year, were you employed in a garage conducted by Walter Reynolds,

which garage is located between Paterson and French Streets, New Brunswick? A. Yes.

Mr. Sedam: Now, if your Honor please, I object to the calling of this witness as to an offense subsequent to this murder, to this alleged murder. One thing that may pertain would be while he was in custody and charged under this indictment that he may have escaped from jail, as indeed he did, but the subsequent acts, or acts for which this man is amenable to the law at a proper time and at a proper place——

The Court: Yes, but, Mr. Sedam, the escape of one from jail who is under a charge of a crime is competent evidence of guilt. There are many cases, as you know, that hold that, and this testimony that is offered is in pursuance of proof that this defendant did escape from jail. Therefore, I can allow it. You may have an exception.

Mr. Sedam: My point being that the escape is admitted and is proved, I ask for an exception.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

*By Mr. Hicks*:

Q. Do you see the defendant, Edward Metalski? A. Yes, sir.

Q. Have you ever seen him before coming in court yesterday or today? A. Yes, sir. I seen him the day he came into the garage.

Q. When was that? A. That was on Saturday, December 14, at about twenty minutes to six. He came in, and he pulled out a revolver, and told

me to give him money, and he wanted an automobile, and they wanted to get away quick. Then they seized me, and hit me, and I went down, and that is all I know.

Q. Who hit you? A. Metalski is the man that hit me, the short man right in front of me.

Q. Do you know what he hit you with? A. I could not exactly say what he hit me with.

Q. Was it his fist? A. His fist? Something in his fist, in his hand.

Q. How was he dressed? A. Why, he had a dark hat and a dark overcoat and white trousers.

Q. Now, do you say that this defendant is the man that came in this garage? A. Yes, sir.

Q. On this day? A. Yes, sir, because he came right face—we came face to face to each other.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Mr. Offenbacker, there were two men came in there, were there not? A. Yes, sir.

Q. And you say that this defendant had a revolver? A. Yes, sir.

Q. Did the other man have anything in his hand? A. I don't know.

Q. Demand was made upon you to give them anything that you had, meaning money in your pocket? A. Yes.

Q. And, then, also, a demand made for—at least, an assertion made—that they wanted a car? A. Yes.

Q. Who did the talking? A. Mr. Metalski did the talking.

Q. Now, can you say with certainty and sureness, Mr. Offenbacker, that it was not the other

man who hit you a blow with his fist? A. I am pretty sure that it was the man right in front of me.

Q. Do you know of the fact that this other man who actually did escape from jail with Metalski is a powerful type of fellow who was known to be something of a prize fighter? Have you heard that? A. I don't know that.

Q. You haven't heard that at all? A. No, I never saw the man before in my life.

Q. Have you heard it since? A. No.

Q. When you say you are pretty sure, you don't mean that you are positive of it, do you? A. Well, to my knowledge, what I know, I am positive that Mr. Metalski is the man that hit me.

Q. But you aren't sure that he hit you with a revolver? A. Well, he hit me with his hand, but I can't exactly say that it was the revolver.

Q. Did you hear Metalski say anything to the other man, "Don't do that"? A. I didn't hear anything after I was hit. I didn't hear anything.

Q. No, I mean, before you were hit? A. I don't remember anything.

Q. Did the other man make any move to hit you? A. I don't know.

Q. What is that? A. I don't know.

Q. No, I mean, before you were knocked down. I think you were knocked down? A. Yes.

Q. Before that, did the other man make any move or motion to hit you? A. Not that I know of.

Q. Not that you know of? A. No.

Q. The place where you were and where these men came into, was it dark in there? A. No, sir, the light was lit on the outside and in the little office.

Q. Were you in the little office? A. Yes.

Q. Not out in the garage part? A. No.

Mr. Sedam: That is all.

Mr. Hicks: The State rests, if it please the Court.

The State rested.

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EDWARD METALSKI, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

*Direct examination by Mr. Sedam:*

Q. Edward, you are the defendant in this case, aren't you? A. Yes, sir.

Q. How old are you, Edward? A. Twenty-six.

Q. And where were you born? A. In Keasby, New Jersey, Woodbridge Township.

Q. Here in this county? A. Yes, sir.

Q. And your birthday is August 3, isn't it, born in 1909? A. Yes, sir.

Q. You have a father, and you have a mother, and you have a little sister, have you not? A. Yes, sir.

Q. How old is your little sister? A. Nine years old.

Q. And after you lived in Keasby, where did the family move to? A. Here to New Brunswick.

Q. How long did you live here in New Brunswick, if you know? A. About nine years, I guess.

Q. And then the family left here, and you moved to Newark, isn't that so? A. Yes.

Q. And you were then about nine years old? A. I was then about twelve, ten, eleven or twelve, something like that.

Q. So, in Newark, you were a boy, and you were sent to the Parental Home, weren't you? A. Yes, sir.

Q. You ran away from school and so forth, didn't you? A. Yes, sir.

Q. And how long were you in the Parental Home in Newark, Eddie? A. Well, sir, I was sent there. You could leave pretty near any time you wanted to, and I used to get homesick, and leave.

Q. And you were in and out of there several times, weren't you? A. Yes, sir.

Q. Up until you were what age? A. Until I was almost sixteen.

Q. Let me interrupt you just a minute to ask you, how tall are you? A. About five foot six and a half.

Q. And how much do you weigh? A. About a hundred and thirty.

Q. You say that you were in and out of this Parental Home several times, and up to the time that you were about sixteen? A. Yes, sir.

Q. And then when you were sixteen, where did you go? A. Well, I left—I left that home, and wandered in Pennsylvania.

Q. In Ardmore, Pennsylvania, you were arrested, weren't you, Eddie? A. Yes, sir.

Q. For breaking and entering? A. Yes, sir.

Mr. Hicks: If it please the Court, can the jury hear this witness? It is hard for me to hear him from hear.

The Witness: Yes, sir.

*By Mr. Sedam:*

Q. You were convicted of that, weren't you? A. Yes, sir.

Q. And you were sent to the reformatory at

Huntington, Pennsylvania, weren't you? A. Yes, sir.

Q. How long did you stay there? A. About nineteen and a half months.

Q. You served your term there, didn't you? A. Yes, sir.

Q. When you got out, where did you go to? A. Came home.

Q. Came back to Newark, didn't you? A. Yes, sir.

Q. What did you do there in Newark? A. Went to work.

Q. Do you have any trade, Eddie? A. Yes, sir.

Q. What trade? A. Printing trade.

Q. Do you have any card that pertains to the printing industry? A. I used to belong to the Typographical Union.

Q. Where? A. In Rahway and Newark. If you have a card, you can use it anywhere.

Q. Well, did you go to work? A. Yes, sir.

Q. Could you tell any place where you worked for any appreciable time after you came back from Huntington, Pennsylvania? A. Yes, sir.

Q. Where? A. I worked in a couple of small junk shops, and then I secured a position in New York City, and I worked there for about twenty months.

Q. Well, now, when you say you secured a position in New York City and worked there for about twenty months, what was the name of that place? A. Sorg Printing Company.

Q. Sorg Printing Company? A. Financial printers.

Q. They are located where? A. 201 Fulton Street.

Q. And you say you worked for that one place about nineteen months?

The Court: Twenty months.

A. About twenty months.

*By Mr. Sedam:*

Q. That brought you along to about what time, Eddie, when you left that job? A. About February, 1929.

Q. 1929? A. Yes, sir.

Q. Where did you go to after you left the job in New York City? After you finished at the Sorg Company, where did you go to? A. I went to St. Louis.

Q. Well, you came back to Newark, first, didn't you? A. Yes.

Q. And you were there for awhile? A. I was there for a little while, but then I went to St. Louis.

Q. What month did you go to St. Louis in 1929? A. April of 1929.

Q. And in Kansas City, Missouri. you were arrested, weren't you? A. Yes, sir.

Q. What were you arrested for? A. I was riding in an automobile and having knowledge that it was a stolen automobile.

Q. And you pleaded guilty to that, didn't you? A. Yes, sir.

Q. And you served a period of six months in the Workhouse in St. Louis, did you not, for that offense? A. Yes, sir.

Q. When were you released from there? A. 16th of October, 1929.

Q. In 1929? A. Yes, sir.

Q. Where did you go to then? A. I came home.

Q. To Newark? A. Yes, sir.

Q. In November, 1929, did anything happen to you in Newark? A. Yes, sir.

Q. What happened? A. I got in trouble.

Q. You got in trouble? A. Yes, sir.

Q. What kind of trouble? A. It was——

Q. Breaking and entering, wasn't it? A. Yes, sir.

The Court: One moment. Put a glass of water in front of the witness if he wants it.

What was this date? November what?

Mr. Sedam: November, 1929.

*By Mr. Sedam:*

Q. Were you convicted of that, or did you plead guilty, or what? A. I pleaded guilty to it.

Q. In Newark, in 1929? A. Yes, sir.

Q. And you were sentenced to the Rahway Reformatory, were you not? A. Yes, sir.

Q. How long were you there? A. Fourteen and a half months.

Q. That brought you along to— A. Around April, 1931.

Q. April, 1931, and you were released in the minimum term, werent you? A. Yes, sir.

Q. And after you were released from Rahway, where did you go? A. I came to Newark.

Mr. Hicks: I can't hear the witness.

*By Mr. Sedam:*

Q. Take a drink of water, Eddie, and try to speak a little louder. Now, what did you do in Newark? A. I went to work.

Q. You went to work? A. Yes, sir.

Q. As a compositor, isn't that so? A. Yes, sir.

Q. Where did you go after you had been in Newark a short time? A. I went to New York State.

Q. And where in New York State? A. A town called Hudson, New York. I went up there to work on a newspaper.

Q. What was the name of the newspaper for which you worked in Hudson, New York? A. It was either the Observer or the—I think the name of it was The Hudson Observer.

Q. Register, or one of those? A. Register or the Observer.

Q. You didn't know when you told me, either, did you? Now, did you have any trouble in Hudson, New York? A. No, sir.

Q. And when you left there—you didn't stay there very long, did you? A. No, sir.

Q. When you left there, where did you go then? A. I came back home, and then I wandered to Camden.

Q. Down to Camden? A. Yes, sir.

Q. And that was in August, 1931, wasn't it? A. Yes, sir, about that time.

Q. Did anything happen to you in December, 1931? A. Yes, sir.

Q. What? A. I was arrested.

Q. You were arrested. Where? A. In Camden, New Jersey.

Q. For what? A. For some charges that were supposed to have occurred in Burlington County.

Q. Well, when you say some charges that were supposed to have occurred, the charges actually were breaking and entering charges, weren't they? A. That is what I was tried for.

Q. That is what you were charged with? A. Yes, sir.

Q. Were you tried on those charges in Burlington County? A. Yes, sir.

Q. What happened to them? A. The jury acquit us.

Q. What? A. The jury acquit us.

Q. The jury acquitted you? A. Yes.

Q. Now, while you were in Mt. Holly jail on these charges, waiting trial on these charges on which you were later acquitted, you were charged with trying to get out of there, weren't you? A. Yes.

Q. And you did try, didn't you? A. Yes, sir.

Q. And you were tried and convicted of trying to get out of that jail, weren't you? A. Yes, sir.

Q. Where did they send you? A. To Trenton.

Q. For how long? A. For three years, and a thousand dollar fine.

Q. When were you taken to Trenton? A. Some time in May, 1932.

Q. And when were you released from Trenton? A. The first of September, 1933.

Q. So that you served a term of about fifteen or sixteen months in Trenton, is that so? A. About fourteen months. I didn't serve my sentence.

Q. Oh, about fourteen months in Trenton? A. Yes, sir.

Q. You knew, in his lifetime, a man by the name of Morton, did you not? A. Yes, sir.

Q. Do you know, or do you remember when you first met him? A. I met him in the City of Camden, in 1931.

Q. 1931? A. Yes, sir.

Q. I ask you now, were you ever engaged in any unlawful undertaking with Whitey Morton? A. No, sir.

Q. Were you ever convicted with him or sent to jail or prison with him for any similar—for the same offense? A. No, sir.

Q. Was Morton in the State Prison at the same time that you were there? A. Yes, sir.

Q. Do you know from what county he had been sent there? A. He was sent from—from Camden County.

Q. Did it have anything at all to do with the offense for which you were sent there? A. No, sir.

Q. Did you go there at the same time? A. No, sir.

Q. Did you see Morton in Trenton? A. Yes, sir.

Q. Do you know a woman named Dorothy Johnson, or, for short, Dot Johnson? A. Yes, sir.

Q. Through whom did you meet her? A. Through Morton.

Q. And how did you meet her through Morton? A. Well, through—one time they went to a bungalow in Burlington County, and Whitey was there—that is what they called him—and his girl there, and a couple of more people.

Q. Now, that, of course, was before you were sent to Trenton, wasn't it? A. Yes, sir.

Q. Well, after you were in Trenton, or when you were in Trenton, and when you saw Morton in Trenton, did you, as a result of what Morton said to you, hunt up Dorothy Johnson in Philadelphia? A. Yes, sir.

Q. Did you go away from Philadelphia with her? A. Yes, sir.

Q. Where did you go with her? A. Well, I will try to tell you about it the best I can, what he told me, where to go, and how to go, what to tell her when I went there.

Mr. Sedam: Well, I don't know whether the Prosecutor is going to object to that or not. He says he will tell what a man told him to tell the woman, and so forth. I don't know, if the Court please, whether that is part of our connected story, but it is hearsay, of course.

The Court: Well, I don't know that it is hearsay, because, I suppose, the important thing there is the fact that it was said.

Mr. Sedam: That it was said, and that it connects up later with our later conduct.

The Court: I will admit it.

*By Mr. Sedam:*

Q. You tell us— A. He told me that—he said, "You are going to get out," he said; and he said, "You have no place to go." He says, "I will send you to a place where—where you can be sure of something to eat until you get a job of something," so he sent me to his—his girl friend.

Q. That was in Philadelphia? A. Yes, sir.

Q. Do you remember where the address was in Philadelphia? A. Around twenty hundred something.

Q. You don't remember the name of the street? A. Fifteenth Street, a block below Broad Street, in Philadelphia.

Q. All right. Now, you went there, and you met her, didn't you? A. Yes, sir.

*Edward Metalski, for Defendant—Direct.*

Q. And you told her about Morton telling you to go there? A. Yes, sir.

Q. Now, what did you and she do after you went there and met her? A. Well, she got some mail from him.

Mr. Hicks: Can the jury hear him?

*By Mr. Sedam:*

Q. Edward, speak, so that even the last juror may hear your story, if you want them to hear it.

The Court: "She got mail from him," he said.

A. (Continuing) Yes, she had some mail from him, and he was getting kind of pretty mad at her, the literature that he was writing.

Mr. Hicks: I can't hear him. Will you read that answer, please.

(The last answer was read by the reporter.)

A. (Continuing) He was writing her letters, and he was pretty sore against her conduct towards him, and he practically accused me of acting out of bounds, I guess.

*By Mr. Sedam:*

Q. Now, look here, Eddie, I am going to move my chair back here a ways. I am not going to be able to hear you unless you talk loud, so you will have to talk up.

The Court: Read the last answer, please.

(The last answer was read by the reporter as follows: "Answer: He was writing

her letters, and he was pretty sore against her conduct towards him, and he practically accused me of acting out of bounds, I guess.")

*By Mr. Sedam*:

Q. Well, then, what did you do, and where did you go with her afterwards? A. Well, we got together, and we left Philadelphia.

Q. All right, Edward. Where did you go? A. We went to—out in Ohio. We traveled around a little bit, and finally we wound up in North Carolina.

Q. Down in a place called Winston-Salem? A. Yes, sir.

Q. Do you remember when it was, or approximately when it was that you went down to North Carolina with the Johnson woman? A. About—about five days before Christmas, 1933, about the 20th of December.

Q. Now, you and she stayed together down there, didn't you? A. Yes.

Q. Was there any reason—any reason why you went down to North Carolina instead of, for instance, going somewhere else? You just happened to go there? A. Yes.

Q. Well, now, down in North Carolina, did you get in any trouble? A. Yes, sir.

Q. In North Carolina, did you get into trouble? A. Yes, sir.

Q. Now, as I understand it, Eddie, you and she—before you tell about the trouble in North Carolina—you went over to Cairo, West Virginia, didn't you? A. Yes, sir.

Q. Now, will you tell us briefly what took place in Cairo, West Virginia, which was the basis of

your being taken into custody in Winston-Salem? A. Well, sir, I had—I had North Carolina license plates on the car, and I was in West Virginia there, and I was riding around, and it was a small town, and they locked up Dot, and started up an investigation, and had her in a little town railroad station; so when I came back from where the car was at, I didn't see the car there where I left it, so I looked around to see where it could possibly have gone, and there was only one highway going through town, and it was right in front of that railroad station; so I walked over there, and the doors were locked on the car. I knew that this Dorothy could not drive, so things looked kind of peculiar to me, and I looked in the station, and I seen Dorothy in there, so I went in to find out what they had her in there for, what she was doing in there. When I went in there, why, I was locked up.

Q. Did you or did you not commit any crime or any offense in Cairo, West Virginia, that night when you were there? A. No, sir.

Q. You say that both of you were then in custody in Cairo, West Virginia? A. Yes, sir.

Q. And from there, where were you taken? A. I was taken to the main city around there, called Parkersburg, and from there we were taken to Winston-Salem.

Q. Taken back to Winston-Salem? A. Yes, sir.

Q. In Winston-Salem, you were charged with one or more crimes, weren't you? A. Yes, sir.

Q. The Johnson woman was also charged with crime, was she not? A. Yes, sir.

Q. As a matter of fact, there were how many charges against you there in Winston-Salem? A. The way—about the way I can figure, is three charges.

Q. And those charges included breaking and entering places? A. Yes, sir.

Q. At night times, in houses, were they? A. No, sir. The way they read was store breaking.

Q. Store breaking? A. Yes.

Q. And, also, that you had some explosives in your possession of some kind, isn't that so? A. In the apartment, yes, sir.

Q. In the apartment? A. Yes, sir.

Q. You weren't charged with using it, but with possessing it, isn't that so? A. I wasn't charged no way with it.

Q. With the explosives? A. No, sir.

Q. All right, I didn't know that. Now, the girl was charged with using some checks? A. Yes, sir.

Q. They had been obtained, and which didn't belong to her, isn't that so? A. Yes, sir.

Q. Some CWA checks, weren't they? A. Yes, sir, government checks.

Q. And she was sentenced to prison, was she not? A. Yes, sir.

Q. In North Carolina? A. Yes, sir.

Q. And you were sentenced to prison in North Carolina? A. Yes, sir.

Q. And you were taken to prison there, were you not? A. Yes, sir.

Q. And from this prison in North Carolina—what was the name of the town or the city? Is that Parkersburg? Is that the place? A. It is the State Capital, called Raleigh.

Q. That is a men's prison there, isn't it? A. Men's and women's.

Q. Men and women? A. Yes.

Q. But Dorothy Johnson wasn't taken to the prison at Raleigh? A. Yes, sir.

Q. Were you both taken to the same prison? A.

Yes, sir, and she was in the women's quarters, and I was sent away.

Q. I see. Then, after you were there for a few weeks or a few months, you were transferred to a prison farm, weren't you? A. Yes, sir.

Q. Where was that located? A. A place called Halifax, North Carolina.

Q. Halifax? A. Yes, sir. They called it Caledonia.

Q. Caledonia? A. Yes.

Q. How long were you actually at the prison farm? A. Around fourteen months.

Q. At the farm? A. Yes, sir.

Q. And your duty was to work outside around there, wasn't it? A. Yes, sir.

Q. And you were supposed to be a slow workman? A. Yes, sir.

Q. And you got away from that prison farm, didn't you? A. Yes, sir.

Q. How did you get away from there? A. Well, it is—it is the only—the only thing people think down there—of trying to get away.

Mr. Hicks: Oh, I can appreciate this defendant would be very likely to try to get away, but as to what people think down in North Carolina, we are not interested in.

Mr. Sedam: I don't suppose you are interested in this at all, Mr. Hicks.

Mr. Hicks: Not very much so far.

*By Mr. Sedam:*

Q. Now, Eddie, let us get together, and go ahead from where you were. You got away from down there, didn't you? A. Yes, sir.

Q. What was the means by which you got away? A. Well, there is a number of ditches around there.

The farm is ten thousand acres, and then they have a number of ditches to keep the land together, and I slipped in one of the ditches there one day.

Q. Now, please speak up, so we can hear you. And you dropped into one of the ditches? A. Yes.

Q. And you got away, and you came up? A. Yes.

Q. And worked your way up north here again, is that right? A. Yes.

Q. Now, what time was that when you got away? A. About the sixteenth—fifteenth or sixteenth of August of this year.

Q. 1935? A. 1935.

Q. Now, do you know the date on which Dot Johnson was released from the women's prison in North Carolina? A. Yes, sir, about the last day of August or the first day of September.

Q. 1935? A. Yes, sir.

Q. Did you, at the time of your arrest in North Carolina, which was the same time you say as Dorothy Johnson was arrested, did you inquire at any time afterwards with reference to where she might or could go upon her release? A. Well, as we were being sentenced, I told her that she had a shorter sentence than I did. If she got out, that she could only find a home at my mother's.

Q. Where? A. In Newark.

Q. That your mother would help her? A. That she had a chance to get a job or——

Q. Was your mother then living at this same place, 48 Lentz Avenue, where she is now living? A. Yes, sir.

Q. After you got away in North Carolina, how long did it take you before you got up here to this general vicinity? A. It took about eight days or ten days.

Q. Did you see Dorothy Johnson after she was released from prison, and after you came back north? A. No, sir, never seen her.

Q. Never talked with her since? A. No, sir.

Q. Between the time when you escaped from North Carolina, August 16, and worked your way back north, to the date of November 8, 1935, where were you staying in that in between period? In other words, in between August and November, 1935, where did you put in your time? A. In Philadelphia.

Q. Are you married? A. Yes, sir.

Q. When were you married? A. About the 15th or 16th of September.

Q. Of 1935? A. Yes, sir.

Q. Were you legally married? A. Yes, sir.

Q. Were you married under the name of Edward Metalski? A. Yes, sir.

Q. Were you married to a young woman in Philadelphia, who now bears your name, Mary Metalski? A. Yes, sir.

Q. After you came back from North Carolina, did you see the man they call Whitey Morton? A. Yes, sir.

Q. Where did you see him? A. Well, around the neighborhood where I was living in.

Q. That is, in Philadelphia? A. Yes. Why, he is a sort of relation. He married my wife's sister, and he has what they call tap-rooms or saloons there.

*By Mr. Hicks:*

Q. What is that?

(The last answer was read by the reporter.)

*By Mr. Sedam:*

Q. You are talking about an entirely different person. I say, after you came back to Philadelphia, did you see Whitey Morton? A. Yes, sir, at one time.

Q. Yes. Well, who were you just going to begin talking about? A. Where I seen him.

Q. Oh, that is the place where you saw him? A. Yes.

Q. Oh, I see. Where was it? At a tap-room in Philadelphia? A. Yes, sir. I was going to the lavatory, and I unconsciously—walking up, never paying no attention, and I looked over, and this fellow spied me.

Q. What was his attitude toward you from then on? From the time he met you in Philadelphia, was it friendly or hostile? A. He was plenty sore at me.

Q. You had run away with his girl for one thing, hadn't you? A. Yes, sir.

Mr. Hicks: If Mr. Sedam wants to take the stand and testify as to his knowledge of his client's story, I have no objection.

Mr. Sedam: Do you want to let me, Mr. Hicks?

Mr. Hicks: I have no objection whatsoever.

The Court: So long as we get the story in legal evidence, that is all I care about.

*By Mr. Sedam:*

Q. Now, Edward, coming down to the date, November 8, 1935, did you see Whitey Morton on that day? A. Yes, sir.

Q. Day or evening? Which? A. It was in the evening.

Q. Where did you see him? A. Where he told me I should meet him.

Q. Why did he want to see you? A. Well, he said he wanted to talk to me about something pretty important.

Q. And when you went to see him, and did see him, what did he say to you? A. Well, I—I went to a place where he said to come to find him, and when I went up there, why, there was some woman there. I didn't know if it was his wife or it was a girl friend or what she was.

Q. Yes? A. So I said that Whitey wanted to see me. I said, "Is he around?"

Q. Well, when you did see him, what was his feeling toward you then, on this November 8? A. He wanted to know where his girl friend was.

Q. What did he say to you with reference to seeing his girl friend? A. Well, he told me I done him a dirty deal, and he wanted to find out where his girl friend was at.

Q. Did he say anything by way of threat to you? A. He said that if I didn't bring her around, like —talked at me like I done him a dirty deal, one day, why, he would make me feel sorry.

Q. Did you tell him where his girl friend was, where she could be found? A. Yes, sir.

Q. Where did you tell him she could be found? A. My home.

Q. Where? A. In Newark.

Q. That was not your home then? That was your mother's home? A. Well, I mean, my mother's home.

Q. Your old home? A. Yes, sir.

Q. What, if anything, did he say with reference to going to see this girl? A. He kept talking about that I done him a dirty deal, and I better bring her around.

Q. Well, was there any conversation with reference to going to see her? A. Yes, sir.

Q. Well, what was it, let us have it. A. Well, I was there around—it was about the 8th of December, I guess, around seven o'clock. I went to his home where he was staying at, and I stood there for about an hour, and I finally went out with him.

*By the Court*:

Q. You said, "8th of December." Do you mean that, or 8th of November? A. 8th of November, I am sorry.

The Court: Yes.

*By Mr. Sedam*:

Q. Well, you and he went out together, didn't you? A. Yes.

Q. Now, you tell us where you went, if you know. A. Well, it was around eight o'clock when we left his home, and he kept talking about where I was down south and all that stuff, and he wanted to know about his girl. He said—he told me he is going to look up a few friends of his, so he took me —he took me to a certain place where a Mrs. Ferguson runs some kind of a hotel there and some kind of a tap-room, and he was pretty friendly in there, and he said, "Come on in here," so I went in there.

Q. Did either you or Morton have any money? A. No, sir; about a dollar, that is all.

Q. Well, how many places—how many places did you and Morton stop in on that night? A. We stopped at this place.

Q. Well, how many other places? A. He knew a lot of different places where he knew the bartenders in the place, where he could step in and get a few—a few beers.

Q. Well, do you know whether Morton procured any money? A. He said he was going to see some of his friends to get some money.

Q. How many places did he stop at in an effort to do that? A. Well, I would judge, about five or six different places.

Q. Do you know whether or not he got any money? A. No, sir.

Q. That is, you don't know, or he didn't get it? Which? A. He said he didn't get any money.

Q. Now, in the course of your travels that night or walking around, you and Morton landed at some garage, didn't you? A. Yes, sir.

Q. Do you know whose garage it was? A. It was—he wanted to look up some more friends of his, and he didn't have extra money to spend, and he said, "Come on in." He said, "I have a friend here." He said, "We can borrow a car."

Q. In this garage? A. Yes.

Q. You don't know the name of the garage, do you? A. It has there—I don't know the name, sir, no, sir. They have some kind of a sign there.

Q. But you actually went to the garage where this car was parked, didn't you? A. Yes.

Q. Now, will you tell the Court and Jury the circumstances under which that car, which has been spoken of in this trial as the Chevrolet coupe, under which it was procured? A. Well, he went across the street, and I was a total stranger around there, and he got the man who was a night attendant there, and he asked him—he kept talking to him, and he asked him for a loan of one of his cars for a little while.

Q. Yes? A. So this fellow says, "All right, I will loan you a car, but you must bring it back by morning."

Q. Well, did he loan the car? A. Yes, sir.

Q. Who drove the car out of the garage? A. I did.

Q. Do you know whether or not Morton was an automobile driver? A. To my knowledge, I don't know.

Q. Did you ever see him drive an automobile? A. No, sir.

Q. After the car was obtained, where did you and Morton go in the car? A. Well, it was around twelve o'clock when we got the car.

Q. Around twelve o'clock at night? A. Yes.

Q. Yes? A. And he told me to drive a few squares from there. I just don't remember the name of the street, but he told me to drive, and I drove.

Q. Were there any stops made while you and he were in the car? A. Yes, sir.

Q. Did Morton at any place on that night, while you were with him, whether you knew it at the time that he was getting it or whether you discovered it afterwards, have in his possession a shotgun? A. Well, he—he told me to drive to a street right around there, and I drove, and he went in one of them homes there—I don't know right where it is at—and he came out with a package.

Q. Was this package—when you say a package, did it have a covering of some kind on it, that is, paper or otherwise? A. It was wrapped up.

Q. As a matter of fact, Eddie, what you then saw to be a package, was it later discovered by you that that package contained a shotgun? A. Yes, sir.

Q. Now, you and Morton drove along in this car, and you went to a saloon or a tap-room? I

think they call them tap-rooms in Philadelphia. You went to a saloon or a tap-room, didn't you? A. Yes, sir.

Q. And you heard witnesses say on the stand in court this morning, and tell about you and a man who has since been identified as Morton, coming into that tap-room and holding up the tap-room? You heard that, didn't you? A. Yes, sir.

Q. And testimony was given here, as you heard, that Morton had a shotgun, a sawed-off shotgun, either this one or one resembling this one that is here in evidence, and that you had a revolver. Will you describe to the jury frankly and truthfully just what happened in that tap-room that night? A. Well, it was around one o'clock, if I am not mistaken——

Q. In the first place, you went there to get some money, didn't you? A. Yes, sir.

Mr. Hicks: Well, now, if it please the Court, I have listened to Mr. Sedam, and I have made one or two objections——

The Court: Don't lead him.

Mr. Hicks: And I submit that the witness has not yet made a statement of his own volition as to what he had been doing this night.

The Court: Well, now, let him begin.

Mr. Sedam: Well, that is the Prosecutor's version of it.

The Court: All right.

*By Mr. Sedam:*

Q. Now, Edward, you tell us what happened in the tap-room, tell us frankly. A. Well, he went to a number of places, friends of his, and tried to

borrow some money to go to Newark, so he finally came down to this neighborhood. He knew the town good, and knowing that I was—been in trouble before, and he had been complaining to me about my being indebted to him, he told me I better help him, so he drove by this place, and he said, "Come on with me," so I went in with him. He said he wanted to get some money to go to Newark.

Q. And he had this gun with him when he went in there, didn't he? A. Yes.

*By the Court*:

Q. Proceed with your story, Edward. Go on.

*By Mr. Sedam*:

Q. Go ahead. A. So I had a flashlight, and he told me that—that I owed him a debt, and I better do what he tells me, and he was kind of under the weather, and he was plenty sore at me; so he told me to go in there. He said he knew the neighborhood and knew the place, so I went in there with him.

Q. You went in with him? A. Yes.

Q. All right. Now, tell us what happened. A. So he—he issued a command and—for the people in there to stick their hands up.

Q. Please speak a little louder, so the jury can hear you. A. For the people to stick their hands up.

Q. He used this shotgun in making that command?

Mr. Hicks: If it please the Court, I object again.

The Court: Yes. Let him tell his story. Don't lead him.

Mr. Sedam: If your Honor please, that is testimony that has been given here.

The Court: I know.

Mr. Sedam: It is just the same as if I am examining——

The Court: I know, but let him go on and tell his story.

*By Mr. Sedam:*

Q. All right, Edward. A. So we went in, and he told me what to do, so I went in there with him. He told me to get the money out of the place. I got it out, and he told me to take a couple of bottles of liquor. He pointed to them. I took them out.

Q. Now, stopping there for a moment, Edward, these exhibits here on the part of the State, including a sawed-off shotgun, and including two bottles of liquor, one a bottle of Cognac and the other a bottle of Old Overholt—have you looked at this gun? You have seen it here in court, haven't you? A. Yes, sir.

Q. And that looks like the gun he had there that night? A. Yes, sir.

Q. The liquor, it has been testified, was found in this Chevrolet coupe. They are the two bottles of liquor, are they not? A. They look like it.

Q. In other words, you don't deny the assertion by the State that they were found in the automobile? A. No, sir.

Q. Do you know who owned this sawed-off shotgun? A. Morton did.

Q. Did you, when you went in this place in Philadelphia, have a revolver in your possession? A. No, sir.

Q. What, if anything, did you use or have in

your hand when you went in this place in Philadelphia? A. A flashlight.

Q. Is that the flashlight which has been exhibited here in court?

Mr. Sedam: Where is that?

Mr. Hicks: Right there (indicating).

*By Mr. Sedam:*

Q. Is that your flashlight (handing exhibit to witness)? A. It looks like it.

Q. It is either yours or one like you had? A. Yes, sir.

Q. When you left this place in Philadelphia, you and Morton left together, I assume? A. Yes, sir.

Q. Where did you go? A. Well, he told me to drive on, so I drove on, and I—and I hit what they call Broad Street. That takes you to the main part of town, so he told me to drive, drive on, so I kept driving—driving him towards his neighborhood where he lived at, and when I got near his neighborhood, he starting seeing where he was at. He says, "Where are you taking me?"

I said, "I am taking you home."

He says, "No," he says, "we are not going home." He says, "We are going to see Dorothy."

Q. Yes. Then what did you do? A. So I tried to talk to him, but he was—he started getting vicious.

Q. Well, where did you go? A. So he told me to drive on the road. He says, "Take me to your home."

Q. Well, now, as a matter of fact, where did you go? He told you that he wanted to go to see Dorothy, you say. Now, where did you go? A. So I decided to take him to my home, take him where his girl was at.

Q. Where was that? A. In Newark.

Q. Now, you started out on this highway which leads from Philadelphia to Trenton, New Brunswick, and Newark, didn't you? What they call the super-highway? A. Yes, sir.

Q. Did you make any stops on this highway after you left Philadelphia? A. Yes, sir.

Q. How many stops? A. About two.

Q. Do you remember where they were? A. One place to get some gasoline.

Q. Well, where was that with reference to, we will say, with reference to Trenton and New Brunswick? In between there, or beyond Trenton, or where? A. Well, it seemed like it was nearer Philadelphia; between Philadelphia and Trenton.

Q. What other stop did you make? A. I made a stop at some kind of a restaurant or a diner.

Q. Well, you saw several young men on the witness stand here this morning who said they were in the diner where you and Morton stopped. Is that the place to which you refer, the same place that they were referring to? A. It must be the same place.

Q. Well, did you recognize some of the people on the stand as having seen them there that night? A. I could not say I did.

Q. You could not say you did. Now, what happened in the diner where you stopped? A. We went in there to get something to eat.

Q. Do you remember how long you stayed there? A. I could not be positive how long I was there.

Q. Both you and Morton go in the diner? A. Yes, sir.

Q. Did you take the liquor bottles in there in the diner? A. He took them in.

Q. Now, in the diner, what did Morton do and what did you do? A. I—he was making a lot of different kind of noises, acting awful—awful bossy, and talking about different things.

Q. Well, what have you to say as to whether Morton was drinking that night? A. He was drinking.

Q. And what have you to say as to whether you were drinking? A. I was drinking a little bit, too.

Q. Did you drink as much as Morton did? A. No, sir.

Q. Did you see Morton offer a drink or drinks to any of the people in there in the diner—offer them liquor out of his bottle? A. I—I could not be positive.

Q. You heard them say that he did, didn't you? A. Yes, sir.

Q. You didn't see it? A. No.

Q. Now, this diner, it was testified, is at Plainsboro, in this highway? When you came out of the diner, who drove the car? A. I did.

Q. This was a Chevrolet coupe, was it not, bearing Pennsylvania license? A. It was a Pennsylvania car, yes, sir.

Q. You and Morton were occupying this coupe together, were you? A. Yes, sir.

Q. Nobody else in the car but you two, I mean. A. No, sir.

Q. And as you drove along the road, do you remember coming in contact with some troopers in an automobile, a Ford car? A. No, sir.

Q. Would you know where Spilatore's Garage is at what they call Sand Hills on this main highway, 26 or 25? Would you know where that is? A. No, sir.

Q. Well, was there any point on the highway where you observed troopers or anybody else following you in an automobile? A. No.

Q. Well, the troopers pursued your car; somebody pursued your car that night, didn't they? A. Not that I know of.

Q. How fast were you operating this car on the highway? A. Plenty fast.

Q. Now, please speak up, Edward. Not a soul can hear you on this jury. Plenty fast? What was plenty fast? How fast, in your opinion? A. Oh, about seventy-five miles an hour.

Q. And why were you driving so fast? A. I wanted to take Morton and get it over with, and take him to my home.

Q. And why were you anxious to get there so fast? A. He was getting boisterous and threatening me.

Q. You know now of the fact that one of the New Jersey State troopers, Mr. Yenser, by name, was killed on that night, don't you? A. Now I do, yes, sir.

Q. And you know that he was killed by a shot fired out of this Chevrolet coupe, don't you? A. That is the way I understand, yes, sir.

Q. You know that a shot or shots was fired from that coupe in which you were riding, don't you? A. Yes, sir.

Q. Do you know where it was fired from in the coupe? A. Well, from the back.

Q. By whom was it fired? A. By the man sitting inside.

Q. What was his name? A. Morton.

Q. Do you know whether the glass in that coupe was broken at any time? A. Yes, sir.

Q. By whom was it broken? A. Morton broke it.

Q. With what, do you know? A. He was hitting it with—it must have been the gun he had.

Q. Who was driving that coupe? A. I was.

Q. If Morton fired the shot from that coupe, did he fire it across in front of you, out parallel to the car—out at the car which was said to be parallel to your car? A. No, sir.

Q. Did you at any time see a Ford car containing troopers, which was out alongside of your car at a distance of about three feet away, and parallel to your driver's seat? A. No, sir, I could not say I did.

Q. Where was this shotgun in the automobile? A. Morton had it.

Mr. Sedam: What's the answer?

(The last answer was read by the reporter.)

The Witness: Morton had it.

*By Mr. Sedam:*

Q. Where was it in the car? Where was it? A. In his lap.

Q. Did you have a revolver in your possession? A. No, sir.

Q. As you were going along the road? A. No, sir.

Q. Do you know whether or not Morton had a revolver in his possession as you were riding along the road with him? A. I could not say.

Q. You could not say? A. No, sir.

Q. Testimony has been given here that several shots were fired out of the coupe, evidently revolver shots as distinguished from this shotgun

shot. Wolud you say that revolver shots were not fired? A. I could not say.

Q. You could not say? No, sir.

Q. Did you fire any revolver? A. No, sir.

Q. It is a fact, is it not, that another car was pursuing the car that you were driving on this night—on this early morning in question? A. I could not tell you, Mr. Sedam.

Q. Well, didn't you know that there was a car either to your rear—immediately to your rear or on the side of you? Didn't you know that? A. I could not—I could not say.

Q. Well, was—what was Morton firing at, do you know? A. I didn't know at the time.

Q. You didn't know at the time? A. No, sir.

Q. When was the first time that you found out that a trooper had either been shot or killed? A. I didn't know it until I was arrested in Elizabeth.

Q. After the shot was fired—the shot which you say, too, was fired, did you continue at the same rate of speed down the road? A. Yes, sir.

Q. Did you go faster or slower, I mean? That is what I am trying to find out. A. It seemed like I was going about the same speed.

Q. Do you remember a crossing in Linden, New Jersey? Do you know where Linden is? A. Yes, sir.

Q. Do you know where there is a crossing there with a traffic signal, in Linden, New Jersey? A. Yes, sir.

Q. Did you come to that traffic signal on that night? A. Yes, sir.

Q. Did you stop there? A. Yes, sir.

Q. Did you see two officers there at the corner in a car? A. There was two officers standing there, but I didn't see no car.

Q. Did you hear, as you were going along this highway in the early morning hours of November 9, did you hear a police whistle blown at any time, ordering you to stop, or calling upon you to stop? A. I could not say. I didn't hear nothing myself.

Q. Will you please speak up, Edward? A. No, sir, I didn't hear any.

Q. You didn't hear any? A. No, sir.

Q. Are you familiar with the territory in and around Elizabeth, New Jersey? A. Just the main streets.

Q. Well, you went through Elizabeth, didn't you, on that night? A. Yes, sir.

Q. I say, the night; in the early morning hours. And you have heard the testimony of several officers in this case about giving chase to this car in the streets of Elizabeth, haven't you? A. Yes, sir.

Q. And about this Pennsylvania coupe being stopped at the point—some point known as Schiller Street, and you—and the two occupants, whoever they were, getting out and running away, isn't that so? A. Yes, sir.

Q. The two persons who got out and ran away were who? A. I was one of them.

Q. Yes? A. And Morton was the other.

Q. And Morton was the other? A. Yes, sir.

Q. Where did you go, Edward? Well, there was some street—Morton was getting awful boisterous——

Mr. Hicks: What was the answer?

(The last answer was read by the reporter.)

A. (Continuing) and I really wanted to get away from him, so I told him I had to stop at a—well,

I would say, lavatory, and he stopped and got out, and I got out, and when I got there, I saw somebody start to shoot me.

Q. Well, when you say somebody started to shoot, did you see any officer there? A. I just could not say. I just heard shots and——

Q. Well, it turns out it was an officer started to shoot, wasn't it? Where did you go? A. I ran down a ways there.

Q. Where did you finally land? A. Railroad station.

Q. Railroad station in Elizabeth, New Jersey? A. Yes.

Q. Pennsylvania station, wasn't it? A. Yes, sir.

Q. Now, this coat and hat that has been offered and introduced into evidence is your coat and hat, isn't it, Eddie? A. Yes, sir.

Q. It is your coat and hat, all right? A. Yes, sir.

Q. And a button that has been introduced here in evidence—anyway they showed us the button this morning, and it is a button off your overcoat, isn't it, off there (indicating)? A. I could not say.

The Court: We will take a recess for three minutes.

(A short recess was had.)

*By Mr. Sedam:*

Q. This button, Edward, is the button from your coat? It is just like the other buttons? A. (There was no answer.)

Q. After you got out of the car in Elizabeth and Morton went one way and you went the other, where did you go to? A. Railroad station.

Q. And what did you do at the railroad station? A. Went in and bought a ticket.

Q. Now, please speak up. A. Went in and bought a ticket.

Q. Where did you buy a ticket for? A. Philadelphia.

Q. Had you or had you not told Morton where your mother's address was in Newark? A. Yes, sir.

Q. Yes, sir, you had told him? A. Yes, sir.

Q. What address did you give him? A. 48 Lentz Avenue, Newark.

Q. While you were in the railroad station in Elizabeth, New Jersey, waiting for a train to go to Philadelphia—were you? A. Yes, sir.

Q. (Continuing) an officer came up there, didn't he? A. Yes, sir.

Q. Will you tell the Court and jury what conversation you had with the officer, and what he said to you? A. I was the only one sitting there, and there was a girl sitting across the way from me. I had about twenty minutes, I guess——

Q. Speak up. A. (Continuing) to wait for a train, and the station was practically empty. The girl was sitting across the way from me, and I was sitting there, and the police officer came in. He came up to me, and he said, "Where are you going?" So I told him Philadelphia. He said, "Have you got your ticket?" I said, "Yes, sir." So he said, "Do you know anybody around here?" I told him I didn't, so he said, "Where did you come from?" I said, "Newark," so he went through my pockets.

Q. And in your pockets he found what? A. I had a searchlight, and some money, and a ticket.

Q. And what else? A. Some money, and a ticket.

Q. Yes, and what else? A searchlight, some money, and a ticket. Well, he found an automobile license, didn't he? A. Yes, sir.

Q. And he found some of these other trinkets or whatever they were, matches, and so forth, that were produced here in evidence this morning. Just as he said, he found those things in your pocket, didn't he? A. Yes, he did.

Q. And there was change and bills to the extent that he says, isn't that so? A. About that, yes, sir.

Q. Did he ask you where you got the money? A. Yes, sir.

Q. What did you tell him? A. I told him I was a crap shooter.

Q. Did you tell him anything about Newark? About having any people in Newark? A. Yes, sir.

Q. Did the officer say anything to you relating to an automobile? A. No, sir.

Q. About seeing an automobile? A. No, sir.

Q. Or seeing you? A. He told me that in the station.

Q. Well, I am talking about in the railroad station. A. In the police station.

Q. Oh, in the police station? A. Yes, sir.

Q. So, then, the officer took you to the police station in Elizabeth, didn't he? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And when was the first that you heard that a trooper had been either killed or shot? A. I didn't hear it until about pretty near dinner time.

Q. On this Saturday, November 9? A. Yes, sir.

Q. Well, what information was given to you by the police as to why you were held there in the station in Elizabeth? What did they say to you?

What did anybody say to you? A. They said they didn't like my story about being in that station and what was I doing there.

Q. You didn't, of course, tell them about the Philadelphia end of it, did you? A. No, sir.

Q. What, if anything, happened there in the Elizabeth police station while you were held there? What happened to you, if anything? A. I was beat up.

Q. Over in the Elizabeth station, weren't you? A. Yes, sir.

The Court: What do you mean, now, the railroad station or the police station?

Mr. Sedam: No. The police station, over in the Elizabeth Police station.

The Witness: The police station.

*By Mr. Sedam:*

Q. What part of your body was beaten while you were there in the Elizabeth police station? A. It was all over, except in my face. One officer said he was not going to hit me in the face and leave no marks.

Q. And your body had those marks on when you were brought here in the jail afterwards?

Mr. Hicks: If it please the Court, may we have the witness testify instead of Mr. Sedam?

The Court: All right.

*By Mr. Sedam:*

Q. Did you have marks on your body?

Mr. Hicks: I object to that as leading, if it please the Court.

The Court: Oh, I admit that.

*By the Court*:

Q. You may answer.

*By Mr. Sedam*:

Q. I am referring to that first arrest now, when you were taken to the Elizabeth police station. Did you have marks on your body when you were taken back over here to the jail? A. Yes.

Q. What parts of your body? A. It was along my sides, and along my shins and legs—practically all over, except my face.

Q. Was a doctor called in? A. Yes, sir.

Q. What did you complain of to the doctor?

Mr. Hicks: Well, now, if it please the Court, I object to that.

The Court: Yes. I suppose, Mr. Sedam, that is not competent. The reason why that kind of testimony is usually offered is to explain a statement. There doesn't seem to be anything in this case which requires that testimony now.

Mr. Sedam: The only reason it is being offered, if your Honor please, is that it is the logical sequence of things in Elizabeth, telling what happened there, just as the other gentlemen, the State's witnesses, have told what happened there, omitting this. Now, whatever happened is something that happened there.

The Court: That is competent on the ground that it was an escape after this alleged shooting, or was a flight, rather. I suppose that testimony is competent on that ground, but here, I can't see any theory upon which this testimony that he was beaten is competent here.

Mr. Sedam: Which escape, your Honor, are you speaking of? This escape from jail?

The Court: Oh, no, no; the escape after the shooting, the flight after the shooting.

Mr. Sedam: Well, it was not received, if your Honor please, in connection with any flight. It was received after he was picked up as a suspicious person in Elizabeth, New Jersey, in the railroad station, and taken to police headquarters.

The Court: Yes, I know, but you were comparing it with other testimony that had been offered by the State as to what happened in and around Elizabeth. Now, that testimony was entirely competent, as showing the flight of these men after this alleged shooting. Now, then, I can't see any comparison between that and the fact that this man was beaten up by the police in the station there in Elizabeth.

Mr. Sedam: It is not offered by way of comparison.

The Court: No, but you were justifying it by saying I allowed other testimony.

Mr. Sedam: Oh, I didn't mean that, if I gave that impression.

The Court: It was simply the principle of evidence that was in controversy, that is all.

Mr. Sedam: I didn't mean it that way. Read the last question, please.

(The last question was read by the reporter as follows: "Question: What did you complain of to the doctor?")

Mr. Sedam: It is overruled, your Honor?

The Court: Is it objected to?
Mr. Hicks: I object to it.
The Court: Objection sustained.
Mr. Sedam: I ask for an exception.
The Court: Exception allowed.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

*By Mr. Sedam:*

Q. Do you know, Edward, whether Morton, at or about the time that he broke the glass out of the car, if what you say is so, received any wound of any kind or any cut of any kind? A. Yes, sir.

Q. Why did you say that? A. Because there was blood dripping in his hands.

Q. And do you know whether or not there was any blood on the Chevrolet coupe, on the seat? A. He was bleeding where he was sitting. It kept dripping on his hands. I don't know where it came from.

Q. After you were brought here to New Brunswick and located in the Middlesex County Jail, you escaped from here, didn't you? A. Yes, sir.

Q. And there was a young man on the witness stand a little while ago by the name of Lawrence Offenbacker, who testified that you came in the place up here on upper Paterson Street where he was employed, and made a demand for money, and and also sought to take a car, and that you struck him in the face or head with an instrument, which he thinks was a revolver, and which he says was in your hands. Do you remember going in that place? A. Yes, sir.

Q. You had a revolver, didn't you? A. Yes, sir.

Q. Did you or did you not strike Offenbacker with that revolver? A. I didn't.

Mr. Hicks: What was the answer?
The Court: I didn't.

*By Mr. Sedam:*

Q. Do you know how he was struck or who struck him? A. Yes.

Q. You do know? A. Yes.

Q. Who struck him? A. I didn't.

Q. What? A. I didn't.

Q. Was it the man who was with you that did it? (After a pause.) Edward, he was struck. I have asked you a question. I think you properly should answer it. You say you didn't, and this man was hurt. How was he hurt, if you know? A. I didn't strike him. I wasn't even near him.

Q. Do you remember or know how Morton was dressed on this night in question? A. Yes, sir.

Q. How was he dressed? A. He had a black—black smooth coat like——

Mr. Hicks: I can't hear the answer.

A. He had a black coat and a dark suit, and he had a light hat.

*By Mr. Sedam:*

Q. Edward, I asked you to narrate to this Court and jury the trouble which you had been in, and for which you had been convicted in any court. There may be others that I know nothing about for which you have been convicted, but I ask you now, do you know of or do you recall any other conviction of crime against you in any court of this country that you have not frankly told about to the jury? A. Not to my knowledge.

Q. Not to your knowledge? A. No, sir.

Q. And if there be anything that you might have omitted to tell me or that you have forgotten, you will admit it if called to your mind, will you not? A. Yes, sir.

Mr. Sedam: Cross examine.

*Cross examination by Mr. Hicks:*

Q. Your first sentence, Eddie, was to the reformatory in Pennsylvania, is that correct? That is, first, when you reached the age of sixteen, that was your first sentence. Is that right? A. I went to a children's home before that.

Q. You went to a children's home first, and when you reached the age of sixteen, you were up in Pennsylvania? A. Yes, sir.

Q. And you were sentenced to the reformatory. Now, where is that reformatory located? A. In Huntington, Pennsylvania.

Q. What was the exact charge for which you were sentenced there? A. If I am not mistaken, it read "felonious entry."

Q. Felonious entry? A. Yes.

Q. What alias did you use up there? What name did you give them when you were arrested there? A. The name of Woods.

Q. Woods? A. Yes, sir.

Q. What first name? A. Edward.

Q. Edward Woods? Now, were you known by any other name than Edward Woods or Edward Metalski? A. I one time left three letters out of my last name.

Q. You were known then as what? A. Metal.

Q. Now, on these occasions when you were arrested and convicted of crime, did you use any other names? A. In North Carolina, I was under the name of Edward Johnson.

Q. Edward Johnson, in North Carolina? A. Yes.

Q. Any other alias? A. Not that I can think of.

Q. Did you always give your birthplace as Middlesex County? A. New Jersey. In Pennsylvania, I said I was from California.

Q. At these various places where you were convicted of crime, you would give different information as to your name and birthplace and so on, is that correct? A. Well, I couldn't very well give them different places where I came from, because they could tell on my talk where I came from.

Q. Well, you said you came from California when you were up in Pennsylvania? A. Yes.

Q. Now, when you were arrested in North Carolina, where did you tell them you came from? A. New Jersey.

Q. Now, you were sentenced for how long a period of time in connection wth the felonious entry at Ardmore, Pennsylvania? A. Well, I was sentenced for an indefinite period to the reformatory.

Q. What is the length of the term? A. Well, they have different maximums.

Q. Well, the maximum is ten years, isn't it? A. Yes, sir.

Q. And you were released on May 17, 1927, is that correct? A. About that time, yes, sir.

Q. May 17, 1927? A. Yes, sir.

Q. And then, you say you returned to New Jersey? A. Yes.

Q. And you went to work? A. Yes.

Q. In 1929, you went out West? A. Yes, sir.

Q. Were you working all the time from May 17, 1927, until February, 1929? A. Yes, sir.

Q. Did you go out to St. Louis alone? A. Yes, sir.

Q. And did you know Dot Johnson at that time? A. No, sir.

Q. And you were released out there, you say, in October, 1929, when you came back to Newark? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And you were arrested in St. Louis, and from St. Louis you were taken to Kansas City? A. I was arrested in Kansas City, and taken to St. Louis, and sentenced out of St. Louis.

Q. That was in connection with a stolen automobile? A. Having knowledge of a stolen automobile.

Q. Were you operating the automobile at the time you were arrested? A. I was riding in it.

Q. Then, you were with somebody else out there at the time, is that correct? A. Well, that is what it came to. They called it a knowledge of a stolen automobile, a misdemeanor.

Q. Was Morton with you out there? A. I don't know who.

Q. Who was with you out there? A. Some man picked me up.

Q. But you don't know who it was. Now, in November, 1929, you say you were arrested in Newark on two charges, is that correct? A. In the same year?

Q. I think you said one charge, but here were two charges in Newark, weren't here, 1929? A. Yes, sir.

Q. What were those charges? A. Breaking and entering.

Q. Larceny? A. I guess that is the way it reads.

Q. And these particular jobs in Newark were safe jobs, weren't they?

Mr. Sedam: Now, if your Honor please, I respectfully submit, if the man tells he has been convicted of crime, and he has given the fact of the convictions, that it is not competent for the State, unless the man denies the offense, to go into details of it.

The Court: The Court has held, Mr. Sedam, that you may bring out on cross examination anything that could be shown by the record, and I take it that that is what the Prosecutor is attempting to do, that is, to show the character of the crime, the punishment, and so forth.

Mr. Sedam: Even though the man has admitted it?

The Court: Yes.

Mr. Sedam: I would like to have my exception noted on the record.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

*By Mr. Hicks:*

Q. What were these two charges upon which you were sentenced to Rahway Reformatory? A. Breaking and entering.

Q. Both of them? A. If I am not mistaken, they were.

Q. Well, you may not be acquainted with what charge was made. You are acquainted with the fact, aren't you? I mean, you know whether you committed any particular offense there? A. Yes, sir.

Q. But you are not positive as to what charge the officers made against you, is that correct? A. Yes.

Q. Did you plead guilty or go to trial? A. Pleaded guilty.

Q. Now, you got out of Rahway Reformatory in April, 1931, and in August, 1931, you went to Camden, New Jersey, is that correct? A. Yes, sir.

Q. And down in Camden you became acquainted with a gentleman by the name of Shooey Bonner, is that correct? A. I didn't get acquainted, no, sir.

Q. Well, that is where you met Dot Johnson, isn't it? A. I met her in——

Q. And Dot Johnson was an inmate in a disorderly house operated and under the guidance and control of Shooey Bonner, isn't that correct? When you met her?

Mr. Sedam: I respectfully object to this as being prejudicial to the defendant in this case. He has nothing to do with what she did, and that somebody says she was an inmate of so and so.

The Court: How is that competent, Mr. Prosecutor? On what theory?

Mr. Hicks: This witness has been testifying about a woman known as Dot Johnson, with whom he went to North Carolina. He testified that he met her down in Camden in 1931, and I am attempting to bring out from him where and when he met her, and what his relations with her were, because the defense apparently is that this very vicious Mr. Morton scared Eddie Metalski by reason of Metalski's friendship with his girl, Dot Johnson, and I think that all those facts are certainly pertinent.

The Court: Very well, I will admit it.

Mr. Hicks: I think the witness has already answered the question, and denied it.

Mr. Sedam: I would like to have an exception entered on the record to the reference to the disorderly house proposition, where this man had no control over that.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

*By Mr. Hicks:*

Q. Where did Dot Johnson come from, Eddie? A. Well, I found out——

Q. What? A. I found out she had people in Pennsylvania.

Q. Well, did she come from Newark? A. No. She was adopted by some people in Pennsylvania, up in the coal regions.

Q. Well, did she ever live in Newark at any time? A. Not that I know of, outside of——

Q. What year did you meet her? A. In 1931.

Q. Now, did you know her on January 11, 1931, when she was convicted of the crime of fornication, in Newark? A. No, sir.

Q. You were in Newark in January, 1931, weren't you? A. I was in Rahway.

Q. When did you get out of Rahway? A. Not until April that year.

Q. And you didn't meet her until later on that year, 1931? A. No, sir.

Q. And you say that you met her at the bungalow down near Camden? A. Yes, sir.

Q. And that bungalow belonged to Shooey Bonner, didn't it? A. It belonged to his wife.

Q. Oh, it belonged to Shooey's wife? Is Shooey alive at the present time? A. No, sir.

Q. What happened to him?

Mr. Sedam: Well, now, if the Court please, I object to it.

The Court: Objection sustained.

*By Mr. Hicks:*

Q. Well, was Shooey out there at the time you met Dot Johnson? A. I could not be positive.

Q. What? A. I could not be positive.

Q. Well, were you present, out in this bungalow, when it was raided by police?

Mr. Sedam: Well, I object to that, if your Honor please, as being immaterial to this issue.

The Court: Yes. I sustain the objection.

*By Mr. Hicks:*

Q. Well, exactly when was it in 1931 that you were out at this bungalow that belonged to the wife of Shooey Bonner?

Mr. Sedam: Now, if the Court please, who is Shooey Bonner? What has that got to do with this case?

Mr. Hicks: Well, every time I asked this witness who Shooey Bonner is, Mr. Sedam objected.

Mr. Sedam: Sure I object, because he sounds like some crook to me.

The Court: I can't see any harm in this question. It just refers to a time in his career, that is all.

Mr. Hicks: Read the question, please.

(The last question was read as follows: "Question: Well, exactly when was it in 1931 that you were out at this bungalow

that belonged to the wife of Shooey Bonner?'')

The Court: I will admit that. That just calls for a time.

*By the Court*:

Q. Answer the question. A. About what time?

Q. Yes. What time were you out at this bungalow? That is the question. A. I just could not be positive of what time it was.

*By Mr. Hicks*:

Q. Well, do you remember what month it was? A. It was during the winter months.

Q. During the winter months of what year? A. 1931, or late in the fall.

Q. And who was present at this bungalow belonging to Mrs. Bonner at the time that you were there and met Dot Johnson?

Mr. Sedam: I object, if your Honor please.

The Court: I admit it. You may answer.

Mr. Sedam: I pray an exception.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

A. Who was there?

*By Mr. Hicks*:

Q. Yes, who was there? A. There was a friend of that family, this Bonner family, a fellow named Pernier.

Q. Who? A. A fellow named Pernier.

Q. Yes, Pernier. A. His wife was there.

Q. Yes? A. And this Dot was there.

Q. Dot Johnson? A. Yes.

Q. And Whitey Morton was there, wasn't he? A. I could not say if he was there or not.

Q. What? A. I could not say if he was there or not. I am not positive.

Q. Well, was Dot Johnson living with Whitey Morton at that time? A. She was.

Q. Had she been living with this Pernier before that? A. Who?

Q. Pernier, this is Bill Pernier who are speaking of, isn't it? A. William Pernier, yes, sir.

Q. Had Dot Johnson been living with him before she started living with Morton? A. She used to run around with Mr. Pernier's wife.

Q. Oh, with Mr. Pernier's wife? A. Yes, sir.

Q. Did Whitey Morton introduce you to Dot Johnson? A. Well, I was—I knew that it was his girl friend.

Q. Well, did he introduce her to you? A. No, but I knew she was——

Q. Well, who introduced you to Dot Johnson? A. There was really no introduction. I just knew it—just run around with the people there, and I just knew it.

Q. You just knew that she was Morton's girl from going around with that group down in Camden, is that correct? A. Yes, sir.

Q. And you say you were arrested in Camden on a Burlington County charge? A. Yes.

Q. For which you were acquitted? A. Yes.

Q. And that charge was burglary, wasn't it? A. Breaking and entering.

Q. Was there another man convicted of that burglary charge, or was he acquitted, too? A. Acquitted.

Q. While you were in jail there in Burlington County, you attempted to break jail, is that correct? A. Yes, sir.

Q. You were convicted of that? A. Yes, sir.

Q. Now, how long had you known Whitey Morton before you were convicted of breaking prison in Burlington County?

Mr. Sedam: He was not convicted of breaking prison, Mr. Hicks.

Mr. Hicks: Attempted breaking prison, then.

*By Mr. Hicks:*

Q. How long had you known Whitey Morton? A. Just a few times at the time—just seen him a few times.

Q. Well, did you know him well enough to speak to him when you met him on the street? A. Well, there is a lot of people I spoke to——

Q. Just answer my question. Talk a little louder. Talk like you were on the morning of November 9, when you went in the saloon down in Philadelphia. Talk so we can all hear you.

Mr. Sedam: Were you there, Mr. Hicks?

*By Mr. Hicks:*

Q. I asked you, Eddie, how well you knew Mr. Morton, and when you first became acquainted with him? A. Through Camden.

Q. Through who? A. Camden.

Q. Well, now, when you say, "Through Camden," who do you mean? A. I mean, when I went to Camden, New Jersey.

Q. Do you mean that you were introduced to Morton by Dot Johnson, or Mrs. Bonner, or

Shooey, or who? A. No, sir, they—there was just a gathering of people, and I just knew different people, and still wasn't introduced actually to him.

Q. You met him at a gathering of people? A. They used to gather together, yes, sir.

Q. Where was this you used to gather together? A. In Camden.

Q. At this bungalow you talked about before? A. No, sir.

Q. Well, where in Camden? A. Well, I just couldn't give the street, but one of the streets there in Camden.

Q. A saloon or somebody's house? A. No, sir; somebody's home.

Q. At whose home? A. This Pernier.

Q. Bill Pernier? A. Yes, sir.

Q. Now, you say you only served a small part of your time in State's Prison. Is that correct? A. Yes, sir.

Q. How did it come that you got out so quickly? A. Well, I explained my case to the Board of Pardons, and explained to them just the way everything was, and they told me that if—if things were like I said they were, if they are proven by investigation, why, I could expect some clemency.

Q. And at the same time you gave some of the police authorities some information on some of the other members of the Bonner gang, didn't you? A. No, sir.

Q. Are you sure about that? A. Yes, sir.

Q. That wasn't one of the reasons you got out a little early, was it? A. No, sir.

Q. Now then, you got out of State's Prison on September 1, 1933? A. Yes.

Q. Now, after you got out of State's Prison, did you go back to work? A. Why, I never—

when my time was up to go out, I was never released out. I was taken back on an old charge.

Q. Oh, then, you didn't get out on September 1, 1933? A. Well, I got out of prison, yes, sir. I was released out of there and taken into custody. I was never—I was permitted to go out, but was taken in custody on an old charge.

Q. Where were you taken on this old charge? A. To Elizabeth.

Q. Were you convicted in Elizabeth? A. No, sir.

Q. Did you ever go to trial? A. I went to trial two or three times, and the prosecution was never ready, so they reduced my bail.

Q. Will you talk a little louder? A. There was two or three times I was supposed to go to trial.

Q. Yes? A. And when I went there, they postponed it.

Q. Well, were you in jail during this period of time? A. Yes, sir.

Q. Did you finally get out on bail? A. Yes, sir.

Q. What did you do about that bail? A. I never appeared.

Q. You never appeared? A. No, sir.

Q. And that case is still pending, isn't it? Is that case still pending? A. I guess it is.

Q. Well, now, when did you actually get out of jail? You say you got out of State's Prison on September 1, 1933. Then they took you to Union County. Now, when did you get out of Union County? A. I guess it was around the 23rd of October.

Q. Of the same year, 1933? A. Yes, sir.

Q. Where did you go when you got out of Union County Jail? A. I went home, and stayed there.

Q. Where do you mean by home? A. Newark.
Q. To Newark? A. Yes, sir.
Q. With your father and mother? A. Yes, sir.
Q. How long did you stay there with your father and mother? A. Just a few days.
Q. Where did you go then? A. I went to Ohio.
Q. Where did you go in Ohio? A. A place called Canton.
Q. Where? A. A town called Canton.
Q. What did you go out there for? To get some work there? A. I went out there with a girl.
Q. With a girl? A. Yes, sir.
Q. Well, did you and the girl go out there to get some work? What did you go out there for? A. Just going out there. I just——

*By the Court*:

Q. That is the time you said you went out with Dot Johnson, isn't it? A. Yes, sir.

The Court: He said that on his direct.

*By Mr. Hicks*:

Q. You say that you went from State's Prison to Elizabeth, Union County Jail? A. Yes, sir.
Q. From Union County Jail, you went home; from home, you went out—by home, I mean, your parents' house in Newark. A. Yes.
Q. You went out to Canton, Ohio. Now, where did you pick up this Dot Johnson? A. In Philadelphia.
Q. Well, was that before or after you got out of that Union County Jail? A. It was after I got out of Union County Jail.
Q. Was it before or after you went to Newark? A. It was two days after—after I got out. Two days later I was in Philadelphia.

Q. That is, you went home for just two days? A. Yes, sir.

Q. How long did you stay in Philadelphia? A. Not long.

Q. Then, you and Dot went out to Canton? A. Yes, sir.

Q. Did you have any money when you were discharged from prison? A. I had a little bit.

Q. You had a little? A. Yes, sir.

Q. Why did you and Dot Johnson go out to Canton? A. I just couldn't give no——

Q. You just went out to see the country? Did you have any reason at all for going out there? A. No, sir.

Q. And, then, when you got through out at Canton, where did you go? A. To North Carolina.

Q. Did you have any reason for going to North Carolina? A. No, sir.

Q. And when you got to North Carolina, you rented a room in Winston-Salem, didn't you? A. Yes, sir.

Q. And, then, in the summer of 1933—well, when was it you were arrested in Cairo, West Virginia? A. I just couldn't be positive of the date.

Q. Well, was it in 1933, or 1934? A. It must have been around the first part of 1934.

Q. And you say the police up there in Cairo, or the police, or whoever it was, picked you up because you had North Carolina license plates, is that correct? A. Suspicious car.

Q. And at the time that you were picked up, were you anywheres near a glycerine plant at Cairo? A. No, sir.

Q. Nowheres near that? A. No, sir.

Q. Who was arrested first, you or Dot Johnson? A. The girl was.

Q. What? A. She was.

Q. What names did you give then when you were arrested? A. Johnson.

Q. What name did you give? A. Edward Johnson.

Q. And why were you returned to North Carolina? What happened? What did you do? Why did they send you back to North Carolina? A. Why, they wanted me for a charge out there.

Q. Well, had you been arrested there any time in North Carolina before you went to West Virginia? A. Not that I know of, no, sir.

Q. What? A. Not that I know of.

Q. Well, you would know it you were arrested, wouldn't you? You hadn't been arrested in North Carolina at all, had you? A. When I was arrested in West Virginia, and they took my North Carolina license—in that way they sent me to North Carolina.

Q. Had there been any criminal charge made against you in North Carolina up until the time of your arrest in West Virginia? A. I was taken there.

Q. Had there been any criminal charge made against you in North Carolina before your arrest in West Virginia? A. No, I don't think so.

Q. Well, then, why did they take you back to North Carolina? A. Well, when they locked me up, they got my registration card and everything, my address, and then they got my record and everything, and then they took me over there.

Q. Well, you mean, after they found that you had an address in Winston-Salem, North Carolina, they locked you up, and sent you over there, is that

correct? A. Well, they preferred charges, and sent me there.

Q. Well, now, what charges did they prefer against you? A. Store breaking.

Q. What? A. Store breaking.

Q. Store breaking? A. Yes, sir.

Q. Well, do you mean, breaking and entering, and blowing a safe, or what do you mean? A. That is what I was sent there for, store breaking was the name of the offense.

Q. Now, was this crime that you were sentenced for in North Carolina, was that committed prior to your arrest in West Virginia or afterwards? A. Prior.

Q. And you say you were sentenced to from eight to twelve years, is that correct? A. Yes, sir.

Q. Now, you say you didn't have any place to go when you were leaving State's Prison, so Morton suggested you go down and see his girl in Philadelphia, that she would take care of you. Is that correct? A. Yes.

Q. So, instead of going to Philadelphia, you were taken to Elizabeth Jail, weren't you? A. Yes.

Q. And then, from Elizabeth you returned to your home, didn't you? A. Yes, sir.

Q. And your father and mother were willing to take care of you there at home? A. They—they—things was pretty hard home.

Q. Did you ever send any money home for them? A. Yes, sir.

Q. As a result of your working, you mean? A. Well, I used to work.

Q. Well, you haven't worked since 1929, have you? This Sorg Company was the last job you

had, wasn't it? A. No, sir, I worked in a place in New York State.

Q. What? A. New York State.

Q. Well, that was a couple of days up in Hudson, New York, you mean? A. Yes.

Q. That is the last time you did work, isn't it? A. Yes, sir.

Q. I mean, work at printing or anything like that? A. Yes, sir.

Q. Well, how did you support yourself, Eddie? A. Well——

Mr. Sedam: Now, if your Honor please, is that a competent question, may I ask?

The Court: I think on cross examination it is Mr. Sedam. You went into his life under direct examination——

Mr. Sedam: And he has been in jail practically all the time.

The Court: And the Prosecutor has the right to cross examine him, because it is clearly directed to testimony he gave in chief. I will allow it.

Mr. Sedam: Exception, if you Honor please.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

*By Mr. Hicks:*

Q. Now, will you just answer that question?

Mr. Hicks: What was that question? Just read the question, Mr. Stenographer. He has had plenty of time to think about it.

A. Well, I gambled.

*By Mr. Hicks:*

Q. You gambled? A. Yes, sir.

Q. Were you a crap shooter, as you told the police in Elizabeth? A. Well, I have done some gambling.

Q. Where did you get the money to gamble with, or were you always a successful gambler? A. I had a few dollars.

Q. What? A. I always managed to have a few dollars.

Q. I can't hear you.

The Court: "I always managed to have a few dollars," he said.

*By Mr. Hicks:*

Q. And it is with these few dollars that you took Dot Johnson out to Canton, Ohio, and down to North Carolina and West Virginia, and so on? A. I didn't have much money then.

Q. No, but you had sufficient money to make those trips? A. She supplied the money.

Q. Oh, Dot supplied the money? Was she working at the time while you were on these trips? A. No.

Q. Did you have an auomobile when you were down in North Carolina? A. Yes, sir.

Q. Did you buy the automobile or did Dot buy it? **A. I bought it.**

Q. With your own money, or, I mean, money that you had in your possession? A. Yes, sir.

Q. Now, you say that when you were down in North Carolina, after you had been caught in West Virginia, you told Dot Johnson that when she got out, to go to your mother's home at Newark. Now,

did you tell her that you were going to meet her there? A. No, sir.

Q. And when you got out, did you ever go up to your mother's home? A. Yes, sir.

Q. When? A. I just don't know the exact date.

Q. Well, was it while Dot Johnson was at your mother's home? A. I was there once with my wife, and I took my wife up there.

Q. Was Dot there, too? A. I found out she was there.

Q. Your wife and Dot got along all right? A. I never seen Dot.

Q. Well, was Dot at the house when you and your wife came up there? A. She was staying at our house, yes. She wasn't there right at my home, but she was living there, and I took my wife away from there.

Q. You got married, when? On September 14? A. About the 14th.

Q. That was just a day less than a month after you escaped down in North Carolina, is that right? A. About that, yes, sir.

Q. This girl that you married, what is her name? A. You mean, her first name?

Q. Yes. A. Mary.

Q. Did you know her before you were sentenced to jail down in North Carolina? A. No, sir.

Q. When did you meet her? A. Since I have been released.

Q. In Philadelphia? A. Yes, sir.

Q. Now, you say, since you were released. You mean, since you escaped? A. That is right.

Q. Now, do you know when Morton got out of State's Prison? A. Around——

Q. What? A. Around—well, I just couldn't say what exact day it was.

Q. Well, didn't you go to see him when you got back north again? Didn't you go to see Morton? A. Where at? You mean, in prison, Prosecutor?

Q. In Philadelphia. A. No, I didn't go to see him, no, sir.

Q. You just met him by chance? A. Yes.

Q. Now, you say you escaped from North Carolina on about the 15th of August. Now, where did you go after you left the prison or the road camp down in North Carolina? A. Well, I hiked my way in.

Q. What? A. I hiked my way in.

Q. Into where? A. Philadelphia.

Q. About what time of the month did you reach Philadelphia? A. I could not be positive.

Q. Well, was it after Labor Day or before Labor Day? A. I just could not be positive.

Q. Well, when you came back to Philadelphia, and before you got married, did you take a trip down south again? You went down as far as Georgia? A. Yes, sir.

Q. And during the course of this trip, you called on various people that you had met in these various prisons, isn't that correct? A. I had stopping places, yes, sir.

Q. To see these fellows that you had met in these various jails you had been in, is that correct? A. Yes, sir.

Q. When was it you returned from this trip down South to see these friends of yours? A. I just could not be positive.

Q. Well, it was in September, wasn't it? A. I just would not exactly know the date.

Q. What? A. I just would not exactly know the date.

Q. Well, was the weather cold or warm? A.

Well, it is warm down around the southern part of the country.

Q. What? A. It is pretty warm around the southern part of the country.

Q. Well, was it warm down there when you were down visiting these friends? A. I just could not be positive.

Q. Well, did you see Morton on this trip? A. No, sir.

Q. What? A. No, sir.

Q. Now, you say you saw Dot Johnson down in Newark on an occasion when you visited your mother down there? A. I didn't see her, but I just knew that she was there, because the man left a notice there that she was there, and she figured——

Q. Who left the notice? A. Some man there left a notice at our home, some family friend.

Mr. Hicks: Read that answer, please.

(The last answer was read by the reporter.)

The Court: He testified on his direct examination that he never saw Dot Johnson after he came up from the South.

Mr. Hicks: If your Honor please, I can't believe all that this witness said on the direct examination, and that is why I am cross examining him.

The Court: That may be, but you characterized your question as if he had so said on his direct examination, which he didn't.

Mr. Hicks: The witness on cross examination said that he went to Newark, and that Dot Johnson was in Newark, living with his mother.

The Court: Yes, but she was not home at the time.

Mr. Hicks: Now, he explains that.

*By Mr. Hicks:*

Q. Now, did you go in the house at the time of your visit to Newark? A. Yes, sir.

Q. And you talked to your mother? A. My mother wasn't home.

Q. Oh, she wasn't home. Who did you talk to there? A. We have—there is——

Q. What? A. There is an old granny around there, we call her. She stays with our folks.

Q. Was there anybody else there? A. This family friend was there.

Q. Who is the family friend? A. I just don't know his exact name.

Q. Well, is the family friend that left the notice that Dot Johnson was there? A. No. Dot Johnson left a notice there that if I should come around, that they were at some address. I just forget where it was at.

Q. Do you remember when this was that you went to Newark? A. It was after I got married.

Q. Well, was it three weeks after, a month after, two months after, or when? A. I just could not be positive, Prosecutor. It was after I got married.

Q. You remember when you were arrested in Elizabeth on November 9? Do you remember when you were arrested in Elizabeth on November 9? A. Yes, sir.

Q. Well, was it before that time? A. Yes, sir.

Q. About how long before? Can you give us any idea? A. Well, I just could not be exactly

positive, but I imagine I was married about a month then, just offhand.

Q. Now, when did you first see Whitey Morton? A. I don't exactly know the day, but it was in the tap-room.

Q. In the tap-room in Philadelphia? A. Yes, sir.

Q. Now, you are talking about after Whitey got out of State's Prison, aren't you? A. Yes, sir.

Q. Where is this tap-room located? A. Ninth and Columbia Avenues.

Q. Ninth and Columbia Avenues in Philadelphia? A. Yes, sir.

Q. Was this the occasion when you met Whitey by chance, that you described on your direct examination? You were going to the lavatory, and you suddenly saw him? A. Yes, sir.

Q. Is that the first time, the only time you met him? A. Since I left the penitentiary, yes, sir.

Q. And that was on November 8, 1935, is that correct? A. No, sir.

Q. Well, you said on direct examination that on November 8, 1935, you saw Morton in the evening, is that correct? A. I didn't say about what date I seen him.

Q. What? A. I didn't say that date, no, sir.

Q. Well, do you remember when Morton and you went over to Jersey after holding up this tavern on Ridge Avenue? Do you remember that? A. Yes, sir.

Q. Was it the night before that you saw Morton in this tap-room at Ninth and Columbia? A. No, sir, I seen him about a month previous to that.

Q. About a month previous to that? A. Yes, sir.

Q. And where did you see him? A. In Ninth and Columbia Avenue, in this tap-room.

Q. Then, you saw Morton about October 9, at Ninth and Columbia Avenue, is that correct? A. About that time, yes, sir.

Q. Was this the time that he told you, "You must come around and see me," was it? A. He left notice around there.

Q. Well, he left notice. Did you talk to him? A. Yes, sir.

Q. What do you mean, he left notice? A. Well, he has been around there quite a few times looking for me.

Q. Well, when you first saw him, a month before the time you came to New Jersey with him, did he ask you to come around and see him at his home? A. He told me where he lived at.

Q. Did he say anything to you about being sore at you then? A. Yes, sir.

Q. Did he say anything to you about taking him to Newark, bringing him to Newark? A. Not exactly at that time, no, sir.

Q. Well, what did he say to you this first time that you met him after you had both gotten out of State's Prison? A. He asked me what was I doing out. He said—he said, "I heard that you had gotten into some trouble." I told him, "Yes." And he said, "Well, where is my girl friend?"

Q. What did you say? A. I said, "She got in trouble, too."

Q. Yes, what else was said? A. So he asked me where she was at, and I told him that she was down South.

Q. You told him what? A. That she was down South.

Q. And this was in October, 1935, right? A. About that time.

Q. And she was released from the penitentiary down South when? A. About the first of September, or the last of August.

Q. 1935? A. Yes, sir.

Q. And, yet, in October, you told Morton that she was still down South in jail, is that correct? A. Yes, sir.

Q. What else did he say? A. He just told me I done him a pretty dirty deal.

Q. Yes, and did you have any other conversation with him? A. At that time?

Q. Yes. A. I was kind of scarey of him.

Q. You were very much scared of him, weren't you? A. Well, I figured he would turn me in.

Q. What? A. I was afraid he would turn me in or something.

Q. Were you afraid that he was going to hurt you physically? A. No. I figured he would turn me in—as sore as he could be.

Q. Turn you in to the police? A. Yes.

Q. I asked you, were you afraid of him physically? I asked you, were you afraid he might hurt you physically, hit you, beat you up? A. He could do that, yes.

Q. I say, were you afraid of him doing that? A. I was afraid of him all around.

Q. Did you have any other conversation this particular evening? A. No, sir.

Q. Well, after you had this talk about the girl, and you were afraid that he was going to turn you in, what did you say, "Good night; see you again"? A. It was during the day——

Q. What? A. It was during the day, and I told him that I didn't live around there.

New Jersey State Library

Q. Did he make any threats against you at that time? A. No, sir, not at that time.

Q. Did he ask you to take him to Newark, or take him any other place to see his girl? A. Well, he understood at the time, that the first time I met him, that she was still down South.

Q. Now, did you give him this address where you were living? A. Not at that time, no, sir.

Q. Were you married at the time? A. Yes, sir.

Q. Did you tell him you were married? A. No, sir.

Q. Did he tell you anything about being married himself? What? A. I never knew he was married.

Q. Well, I just asked you whether he told you he was married or not. What is the answer? A. No, sir.

Q. Did he give you his address at the time in October when you had this conversation? A. He told me where he could be met, yes.

Q. What? A. Yes, sir.

Q. What address was it he gave you? A. I think it was 1800 Sixteenth Street, if I am not mistaken.

The Court: We are about to take a recess. Let the defendant be taken out before anybody else leaves the courtroom.

(The defendant was removed.)

The Court: Now, before anyone else leaves, let the jury retire in the custody of the officers.

(The jury retired.)

The Court: The court stands adjourned until nine-thirty tomorrow morning.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

December Term, 1935.

STATE OF NEW JERSEY,

*vs.*

EDWARD METALSKI.

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before Hon. ADRIAN LYON, Judge, and a Jury, at the Middlesex County Court House, New Brunswick, New Jersey, on the eighth day of January, 1936.

APPEARANCES:

DOUGLAS M. HICKS, Esq., Prosecutor of the Pleas (present).

JAMES S. WIGHT, Esq., Assistant Prosecutor of the Pleas (present).

WALTER C. SEDAM, Esq., Attorney for the Defendant (present).

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The Court: You may proceed, gentlemen. Let the witness take the stand.

(Edward Metalski resumed the stand.)

Mr. Hicks: What was the last question and answer?

(The last question and answer were read by the reporter as follows: "Question: What address was it he gave you? Answer: I think it was 1800 Sixteenth Street, if I am not mistaken.")

*Cross examination* (continued) *by Mr. Hicks*:

Q. Now, in that answer, Eddie, you are referring to Morton? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And you said yesterday that the first time you met Morton after you got out or after you escaped from North Carolina was about October 8, 1935, in a saloon at Ninth and Columbia Avenues, in Philadelphia. Is that correct? A. Yes, sir.

Q. Well, as a matter of fact, on October 8, you were down in Washington, weren't you? A. I would not say.

Q. Well, do you know whether you were in Philadelphia or Washington on October 8? A. I would not know exactly that particular date, but I know that is where I met him, about that time.

Q. When did you see him again after October 8, or around October 8? A. It was the—December —December or November 8.

Q. Well, the night of the murder of Trooper Yenser? A. Yes, sir.

Q. Did you at any time see him between the time you first met him in the saloon and November 8? A. No, sir.

Q. On both these occasions, both October 8 and November 8, did you meet him in this saloon? A. No, sir. I met him home on the 8th—around the 8th of December.

*By the Court*:

Q. November, you mean? A. On November, rather.

Q. Now, when did you get his home address? A. The first time I met him.

Q. How did you come to go to his home on November 8? A. I was told to go there.

Q. By whom? A. By some fellows in the place there at Ninth and Columbia Avenue.

Q. When were you told to go there? A. Well, I just wouldn't know exactly the date.

Q. Well, do you know who it was that told you to go to see Morton? A. Well, some of the fellows in the place.

Q. Well, have you any idea who it was? A. I just could not recall right now.

Q. Well, did you receive a note from Morton, or was it just by word of mouth? A. Word of mouth.

Q. When did you get that message to go to see Morton? A. One of them times I was over at the Ninth and Columbia Avenue place.

Q. Was it on November 8? A. No, sir, it was about—oh, I imagine, a couple of weeks previous to that.

Q. Didn't they fix a time as to when you were to go to see Morton? A. No, sir.

Q. When was the first time you went to see Morton? A. The first time I really did see him since that time at the tap-room was on the 8th of December.

Q. Now, the 8th of December——

*By the Court*:

Q. You mean the 8th of November? A. 8th of November, rather.

*By Mr. Hicks*:

Q. How many times did you go to Morton's house? A. About once or twice.

Q. Once or twice? A. Yes, sir.

Q. Well, do you know whether or not you went there once or twice? A. I could not positively say.

Q. Well, did you go there more than on the evening of November 8? Did you go there at any other time than on the evening of November 8? A. Yes, sir.

Q. When was that? A. About a couple of weeks previous to that.

Q. Did you go to Morton's home at any other time? A. No, sir.

Q. Now, on November 8, 1935, when you went to Morton's home, you say there was a girl there? A. Why, sort of middle-aged woman.

Q. Where did Morton live then? A. If I am not mistaken, it is 1800 block of Sixteenth Street, or Montgomery——

Q. Did Morton occupy the whole house? Did he have a whole house, or did he have a room in a rooming house? A. No, sir, it was an apartment house. He had an apartment in an apartment house.

Q. And the apartment consisted of one room, didn't it? A. Well, I could not be sure.

Q. Well, you were in there for how long? A. About an hour.

Q. In Morton's room ? A. Yes, sir.

Q. This is on November 8, we are talking about? A. Yes, sir.

Q. And at that time, during that hour, Morton was there, wasn't he? A. Yes, sir.

Q. And this woman was there, is that correct? A. Yes, sir.

Q. During this hour, you were talking about Dot Johnson, is that correct? A. No, sir, I wasn't.

Q. Well, what were you talking about? A. Just things in particular. I just don't remember what, because I didn't know who that other woman was there.

Q. Well, now, you say, "Just things in particular". What do you mean by that? A. Well, things of the day, I imagine. I am not positive, but I know one thing, I was not talking about no Dorothy Johnson at that time with that woman there.

Q. Well, you just spent an hour in conversation, is that correct? A. Yes, sir.

Q. Did you play cards? A. No, sir.

Q. Did you talk about going out somewhere? A. No, sir.

Q. Did you discuss with Morton what you were going to do that evening? A. No, sir.

Q. And you merely—the three of you—sat in this room and talked for an hour, is that correct? A. Well, they had something to eat.

Q. Did you have something to eat there? A. I didn't want nothing to eat.

Q. Morton brought you something to eat? A. Yes, sir.

Q. And you sat there and talked with them while Morton and this woman ate, is that right? A. I took a cup of coffee.

Q. What? A. I took a cup of coffee.

Q. Did you and Morton have any argument there at that time? A. No, sir.

Q. Now, this woman who was there, you said in your direct examination, "I didn't know if it was his wife, or if it was his girl friend, or what she was". Now, she was known as Mrs. Morton, wasn't she? A. Not that I know of.

Q. Well, you say you had been to the house on two occasions. Did you see her both times? A. Yes, sir.

Q. Did you talk with her both times? A. I just asked her if Al was home.

Q. Did you tell her who you were? A. Yes, sir.

Q. Who did you tell her you were? A. I just told her that Eddie was around.

Q. Then, nothing was said about Dot Johnson while you were talking to Mr. Morton and this woman at his room? A. No, sir.

Q. Is that correct? A. Yes.

Q. Now, who suggested that you go out? A. Morton.

Q. Who? A. Morton.

Q. And you agreed? A. Yes, sir.

Q. And where did you go first? A. We went to —walked around there in a few different neighborhoods around there, which I don't exactly know where, but then we went to a woman who runs a hotel, and we had something to drink.

Q. Did you stop there for awhile? A. Yes, sir.

Q. And then you went to some other places, some other saloons and taverns? A. Yes, sir.

Q. And, then, ultimately, you went to this garage, didn't you? A. Yes, sir.

Q. And who was it you talked to when you got to this garage? A. I didn't know who to talk to. This fellow Morton was talking across the street where the fellow lived at.

Q. Well, you were there, weren't you? A. Yes, sir, I wasn't exactly right there. Oh, I was about —oh, I don't know, about ten feet away from him.

Q. Did you take part in that conversation? A. No, sir.

Q. What? A. No, sir.

Q. Did you hear the conversation? A. Not—no, sir.

Q. You say, no. Now, on your direct examination, you said, in answer to a question from your counsel, "So this fellow,"—referring to the garage man—"says 'all right, I will loan you a car, but

you must bring it back in the morning.' '' A. Well, that is what I understand Morton told me.

Q. Well, you say that you heard this fellow say that. Do you want to change your testimony and say that Morton told you that? A. Well, that is what—that is the way he was—he told me that.

Q. Morton told you that? A. Yes, sir.

Q. And you didn't hear the fellow say anything at all, did you? A. If I said that, I didn't mean that, no, sir.

Q. Any other part of your testimony you want to change now? Is there anything else you remember that you said that was wrong? Can you answer that question? A. I don't remember.

Q. Well, you remember what you said yesterday when you were on the stand, don't you? A. Yes, sir.

Q. Now, did you hear anything that this garage attendant said to Morton? A. Well, Morton was telling me that——

Q. Did you hear anything that this garage attendant said to Morton? A. No, sir.

Q. What? A. No, sir.

Q. Now, was the garage attendant there when you went in the garage and drove this Chevrolet coupe out? A. No, sir.

Q. Where had he gone to? A. He and Morton went to the tap-room.

Q. Oh, then you took this car out of the garage while the garage attendant had gone, is that correct? A. No, sir. He pointed the car out, and I got in it and drove it away.

Q. Well, now, you say the garage attendant pointed the car out, and you got in it and drove away? A. Yes, sir.

Q. Just before that you said that the garage attendant wasn't there, that he had gone to a

tap-room with Morton? A. No, sir, that is before he left for the tap-room.

Q. Well, then, when you went in to get this car, the garage attendant was there, is that correct? A. Yes, sir.

Q. And he pointed—this garage attendant—pointed out the car to you? A. Yes, sir.

Q. And you got in and drove it out? A. Yes, sir.

Q. After you drove the car out of the garage, where did you go with the car? A. On Sixteenth Street, if I am not mistaken.

Q. Well, now, where on Sixteenth Street? That is a long street, isn't it? A. Just around the corner.

Q. When you got around the corner on Sixteenth Street, what did you do? A. I came back to the tap-room.

Q. Who did you meet in the tap-room? A. Morton and this fellow.

Q. Morton and the garage attendant? A. Yes, sir.

Q. How many garage attendants were there around this garage? A. Only one that I know of.

Q. What did you do when you came back to the tap-room? A. Got a few drinks.

Q. What else? A. I seen Morton there, and I seen this fellow there.

Q. What else? A. That is about all I can remember.

Q. Where was this tap-room with reference to the garage? A. Right around the corner.

Q. Was this where you parked the car? A. No, sir.

Q. Did you park the car in front of the tap-room? A. No, sir.

Q. Well, why did you drive the car around in another section and park it, and then go back to the tap-room? A. I was told to take it there by Morton.

Q. Who told you to take it there? A. Morton.

Q. Was the garage attendant there when Morton told you to take it there? A. He was a few feet away from me.

Q. Well, was he near enough so he could hear what Morton told you to do? A. Well, I wouldn't be positive.

Q. Now, you are positive, however, that the garage man was there, and that the garage man pointed out this Chevrolet coupe? A. Yes, sir.

Q. And that you got in and drove it out of the garage? A. Yes, sir.

Q. And that both the garage man and Morton were standing there when you drove it out of the garage? A. Yes, sir.

Q. They hadn't gone over to any tap-room? A. No, sir.

Q. And you were told to take the car around on Sixteenth Street, and then come back and meet them in the tap-room, is that correct? A. Yes, sir.

Q. Well, now, do you know any reason why you should take this car, which you say you borrowed, and drive it around on another street, and then walk a block or two to meet Morton and the garage man? A. No, sir, I was just told to take it there.

Q. And you were just following Morton's instructions entirely, weren't you? A. At that time I was.

Q. You had been frightened by Morton about October 8, hadn't you? A. No, I was all the time afraid of him.

Q. And you continued to still be afraid of him? A. (There was no answer.)

Q. Now, you say that on November 8, you and Morton together had about a dollar between the two of you, is that correct? A. Yes, sir.

Q. Did you have any other money? A. No, sir.

Q. None? A. No, sir.

Q. You had a bank account, didn't you? A. My wife did.

Q. No bank account in your name? A. It was in my name, but it wasn't mine.

Q. It was your wife's money, then? A. Yes, sir.

Q. Now, when you first came back to Philadelphia after leaving North Carolina, you lived with a fellow named Alec Karens, didn't you? A. Yes, sir.

Q. Where is Alec Karens now? A. I don't know.

Q. Well, now, Eddie, tell the truth. You know that Alec Karens——

Mr. Sedam: Just a moment. If your Honor please, "tell the truth," the man is under oath on the witness stand, and the Prosecutor says, "tell the truth." That is what we expect him to do.

Mr. Hicks: I know, but sometimes expectations are not realized, if it please the Court.

The Court: Proceed.

*By Mr. Hicks:*

Q. And this Alexander Karens is also known as Watson and Robert Kennedy, isn't he? A. I could not be positive of that.

Q. Well, after you stopped living with Alec Karens, you went back and lived at 1621 North Hutchinson Street, didn't you? A. Yes, sir.

Q. How long have you known Alec Karens? A. A short time.

Q. And you know, as a matter of fact, Eddie, that Alec Karens is in the State's Prison in Trenton, New Jersey, at the present time? A. No, sir, I am not positive of that.

Q. You are not positive? A. No.

Q. Where do you think he is? A. I don't know.

Q. Were you living with him on September 25? A. At that exact date, I could not say.

Q. Well, you made at least one or two trips over to New Jersey with Alec Karens, didn't you?

Mr. Sedam: If your Honor please—just a moment before you answer. May I, if your Honor please, interpose an objection to this line of testimony for this reason: A defendant cannot be any more guilty in a criminal case than the facts make it, and the defendant does not have to testify to any things that are incriminating, except insofar as he may care to testify to facts that are incriminating. He has told his record of convictions, which certainly pictures him darkly enough in this court and before this jury, and for the Prosecutor to be allowed to go ahead with and continue a minute description of details that do not in anywise affect this murder, this crime, this indictment, I think is highly prejudicial to the defendant's interests, and I respectfully ask that——

The Court: There is nothing in this question, Mr. Sedam, which involves any answer

which would incriminate the defendant. He simply asked him about his association with one Karens. So far as the question is concerned, there is nothing incriminating about that. Furthermore, the defendant himself, in relating his career up to the time when he started out on this trip which resulted in this death, gave facts and circumstances concerning that career. Now, this is merely cross examination, as the Court understands it, on that testimony in chief which he gave concerning his career. I think on that ground it is competent.

If the prosecutor asks any question which is not within the realm of cross examination or of testimony that has been given in chief, which will tend to incriminate this defendant, he may refuse to answer.

Mr. Sedam: But, if your Honor please, will you hear me just a moment further? The constant references by the Prosecutor to men who are in or have been in State's Prison, and all of that, certainly is prejudicial to this defendant, and it is not part of the res gestae at all. It does not have to do with this murder, and the Prosecutor, as the State's representative, has the duty of proving this defendant guilty of this crime.

The Court: Yes, but I take it that this has to do with his relations indirectly, perhaps—I suppose that is what it is intended for—indirectly, his associations with this Morton, who was with him. The Prosecutor, of course, may not go further than is proper under the circumstances.

Mr. Sedam: For the purpose of the record, may I have an exception entered?

The Court: Yes.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

Mr. Hicks: Read the last question.

(The last question was read by the reporter as follows: "Question: Well, you made at least one or two trips over to New Jersey with Alec Karens, didn't you?")

A. No, sir.

*By Mr. Hicks:*

Q. Never went to Mount Ephraim, New Jersey, with him? A. No, sir.

Q. And you have no idea where Alec Karens is today, is that correct? A. No, sir.

Q. When did you last see him? A. When I left home.

Q. And when was that? A. I just would not know exactly the date, but the place was—somebody entered the place and took all my clothes, and cut them up, and stole my shirts and stuff, and so I took the stuff and went to my wife.

Q. Then, you lived with Alec Karens after you were married? A. Yes, sir.

Q. Alec Karens lived in Philadelphia? A. Yes, sir.

Q. You were married on September 14, is that correct? A. Yes, sir.

Q. And, then, after your marriage, did you live with your wife at all? A. Yes, sir.

Q. For how long? A. Well, I left—I left her

for about—oh, I wouldn't know whether it was a week or so.

Q. Well, did you live with her at all after your marriage? And how long? A. Until the date of my arrest.

Q. Well, you went down to Georgia and North Carolina and Washington for awhile, didn't you? A. About a week.

Q. And then you went to live with Alec Karens for awhile, didn't you? A. No, sir.

Q. Well, you just said that you lived with Alec Karens in Philadelphia? A. Yes, sir.

Q. Now, how long did you live with him? A. Well, I would not be exact how long I lived with him, but I lived with him before I got married, and about a week after or ten days after I was married.

Q. Now, this tavern that was held up on Ridge Avenue—you know where Ridge Avenue is in Philadelphia, don't you? A. Yes, sir.

Q. And you have been in Philadelphia off and on ever since 1929, haven't you? A. Well, I have been in certain parts at times, yes.

Q. And you lived in Philadelphia before you were arrested down in North Carolina, didn't you? A. Yes, sir.

The Court: Is Ridge Avenue where the Palm Garden Cafe was located?

Mr. Hicks: Yes, your Honor.

*By Mr. Hicks:*

Q. And you lived in Philadelphia before you went to State's Prison in Trenton, didn't you? A. No, sir.

Q. Well, you lived in Camden before you went to State's Prison in Trenton, didn't you? A. Yes, sir.

Q. And Camden is right across the river from Philadelphia, isn't it? A. Yes, sir.

Q. And you know the names of the streets, and you know the locations of various saloons and other places in Philadelphia, don't you? A. No, not—maybe one or two places I might know, but I don't know a lot of places.

Q. And you know where the City Hall is, and the police department, and so on like that, don't you? A. Yes, sir.

Q. Now, on the night of November 8, 1935, did you and Morton go to this Palm Gardens Cafe? A. Yes.

Q. How many times were you in that place? A. Once is all I remember.

Q. Well, you would remember if you had been in there before, wouldn't you? A. I would not be positive, Prosecutor.

Q. Not even if it were the same evening, you wouldn't be positive? A. Well, I was doing a lot of drinking, and I don't—I could not be positive.

Q. Were you doing so much drinking that you would get mixed up as to whether you had a revolver in your hands or a flashlight? A. I didn't have no revolver.

Q. What? A. I never had no revolver.

Q. You never had a revolver? A. Not then, no, sir.

Q. Now, was this flashlight which you used as a revolver in the Palm Gardens Cafe, was that the same flashlight that you had in your pocket when you were arrested in Elizabeth? A. Yes, sir.

Q. And do you remember talking to me down in Elizabeth police headquarters on Saturday, Sunday, or Monday, after your arrest? A. I remember you being in the presence there, Prosecutor.

Q. Yes, and do you remember telling me that you had been in Newark on Friday afternoon, that you left Philadelphia by bus at twelve o'clock on Friday, November 8, twelve o'clock noontime, and that you had gone to Newark, and that you went to your mother's house in Newark? Do you remember telling me that? A. Yes, sir.

Q. That is not so, is it? A. No, sir.

Q. And do you remember telling me that in the afternoon of Friday, after you got to Newark, you wer walking around the streets in Newark, and you saw an automobile, and in the automobile you saw a flashlight? A. No, sir.

Q. What? A. I don't remember that, no, sir.

Q. Well, do you say that you didn't tell me that? A. I never remember saying anything like that, no, sir.

Q. Well, you would remember it if you told me that, wouldn't you? A. I never—I don't remember ever saying that, no, sir.

Q. Well, do you remember telling me that you stole this flashlight out of an automobile as you were walking around Newark? A. No, sir.

Q. On November 8? A. No, sir, I don't remember that.

Q. Well, would you say that you didn't tell me that? A. I don't remember.

Q. Well, now, you would not have told me something that was untrue, would you, Eddie? A. If I told you, it was untrue. I admit it now, yes, sir.

Q. Well, then, did you take this flashlight out of an automobile in Newark on November 8? A. No, sir.

Q. What? A. No, sir.

Q. And do you remember now whether you told me that or not? A. I don't remember, no, sir.

Mr. Sedam: If your Honor please—just a moment, Mr. Prosecutor, that is, if I may interrupt you.

If your Honor please, I question by way of objection to your Honor whether this is proper cross examination, unless the Prosecutor, as the chief law enforcement officer, can tell this Court and jury that in questioning this man whom they were charging with murder, he advised him that what he said might be used against him. I think the Prosecutor has that duty as well as a judge.

The Court: Well, now, what is the question?

(The last question and answer were read by the reporter as follows: "Question: And do you remember now whether you told me that or not? Answer: I don't remember, no, sir.")

The Court: Proceed with the next question.

*By Mr. Hicks*:

Q. Now, in the opening of your counsel, Eddie, and, I think, also in your own testimony, you said that you had been engaged in a crap game, or that you told the officer you had been in a crap game, is that correct? A. Yes, sir.

Q. Now, I am talking about the night of November 8, and the early morning of November 9. A. Yes, sir.

Q. And had you been in any crap game? A. No, sir.

Q. What? A. No, sir.

Q. Then, this story about a crap game was the first story that you could think of to explain this large amount of silver which you had in your pocket, is that right? A. No, sir, it wasn't that.

Q. Well, why did you tell him a story about the crap game? A. Because I didn't want to be locked up at the time, because I was a fugitive from justice at the time.

Q. You were wanted down in North Carolina? A. Yes.

Q. You were also wanted for jumping bail in Union County, weren't you? A. Yes, sir.

Q. And you didn't know, but you thought you might be wanted for this holdup in Philadelphia, didn't you? A. I didn't think about that, no, sir.

Q. Well, didn't you think that the police in Philadelphia would like to catch the fellows that commited this crime, or were you so certain that you would get away with it, and probably, Eddie, weren't there other reasons why police officers might want to arrest you?

Mr. Sedam: I object to that, if your Honor please, unless the Prosecutor develops that there are any other reasons.

The Court: Of course, that is what the Prosecutor is trying to do, I suppose.

Mr. Sedam: Yes, but that would most certainly be an incriminating answer.

The Court: This is a direct cross examination of the statements he made, as I recall it, as to the reason why he had this money in his pocket. I think it is competent, Mr. Sedam.

Mr. Sedam: Well, then, if your Honor please, if this defendant were to answer "yes" to that question, and the Prosecutor,

naturally, following up and asking, what were the other reasons, I respectfully submit that that would be extremely incriminating and prejudical to this defendant, and he is not compelled to tell any other reasons. They have got plenty now to deal with.

The Court: Very well. The witness—if the witness claims that the answer to this question will incriminate him, and prays the Court for protection from making that answer, the Court will sustain him in his refusal to answer.

Mr. Sedam: I pray an exception on the record as to the question itself.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

*By Mr. Hicks:*

Q. Well, does the witness refuse to answer on the ground it would incriminate him? A. Well, I just don't know, no, sir.

Q. Then you are perfectly willing to answer the question, is that right? A. To the best of my ability, yes.

Mr. Hicks: Read that question, Mr. Stenographer, please.

(The question referred to was read as follows: "Question: Well, didn't you think that the police in Philadelphia would like to catch the fellows that committed this crime, or were you so certain that you would get away with it, and probably, Eddie, weren't there other reasons why police officers might want to arrest you?")

A. Just what I stated there.

*By Mr. Hicks:*

Q. Well, now, what were the reasons, Eddie, in your own words, and as frankly as possible, why police officers might want to arrest you? A. Well, I was supposed to be in North Carolina, and I was out on bail.

Q. Yes. Any other reasons? A. No, sir. At the time, that is about all.

Q. This holdup down in Philadelphia, possibly? I mean, that would be a reason for a police officer to arrest you, wouldn't it? A. Yes, sir.

Q. And this murder of the State trooper?

Mr. Sedam: Now, if your Honor please, right there, sir, the witness testified on his direct examination that he didn't know at that time about the murder of a State trooper, and that he found it out later in day at the Elizabeth police headquarters.

The Court: Yes, this is cross examination on that very point.

Proceed, Mr. Prosecutor.

Mr. Hicks: Read the last question, please.

(The last question was read by the reporter.)

A. I never knew of any murder.

*By Mr. Hicks:*

Q. That is, you thought that Whitey Morton was just shooting out the window because he wanted to make a noise? A. No, sir.

Q. Well, now, Eddie, when Officer Geiger arrested you in Elizabeth, you told him this story about a crap game, didn't you? A. Yes, sir.

Q. And you stuck to that story, didn't you? I mean, you kept on telling that story about the crap game for some time after you were arrested, didn't you? A. Yes, sir.

Q. And you also stuck to that story about leaving Philadelphia by bus at twelve o'clock noon on Friday, didn't you? A. That was asked me later on.

Q. Well, that is your story, isn't it, that you left Philadelphia by bus at twelve o'clock Friday noon? A. Yes.

Q. And that was the story you told, wasn't it? A. Yes, sir.

Q. And you kept on telling that story until a woman named Marie Morton came in the room and said, "Eddie," in answer to questions, "you were at my home at eight o'clock on Friday night, November 8," and that is when you changed your story, isn't it? A. No, sir.

Q. When did you change your story? A. I was beat up.

Q. Now, Eddie, up to the time Marie Morton came into the police station in Elizabeth and pointed you out, and said Eddie was in my home at eight o'clock on Friday night, you had told a story to the police officers in Elizabeth that you left Philadelphia at noon on Friday, and that you had gotten in a crap game, and you didn't know anything about how you got to Elizabeth, hadn't you? A. I don't remember that, sir.

Q. Well, do you remember seeing Marie Morton down in Elizabeth police headquarters? A. They had her in there, yes, sir.

Q. Do you remember Marie Morton pointing you out and saying that you were at her home at eight o'clock on Friday night, November 8? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. You remember just what you want to remember, don't you? A. I was told——

Q. That is about right, isn't it? A. I was told if I didn't make the answers——

Q. Wait a minute, who told you this? A. The police officers.

Q. What police officers? A. The gentleman sitting behind you is one of them.

Q. Referring to Mr. Wight, Mr. Drosdick, Mr. Alexander, Captain Lamb, or who?

Mr. Sedam: He don't know the names of the men, Mr. Prosecutor.

Mr. Hicks: Well, he is pretty well acquainted with police officers, Mr. Sedam.

A. The gentleman right behind you.

*By Mr. Hicks:*

Q. Well, did I at any time tell you that you better make the proper answers or you would get yours, or anything of that kind? A. You left—every time that was made, you left.

Q. I left? A. Yes, sir.

Q. Wasn't I right there when you were telling the story about the crap game? Isn't that correct? A. Before you left——

Q. Wasn't I there when you were telling the story about being in the crap game? A. Yes, sir.

Q. And wasn't I there when Marie Morton picked you out and said, "Eddie, you were at my house at eight o'clock on Friday night, November 8"? A. I wouldn't know that, no, sir.

Q. Well, who asked Marie Morton who you were? A. I don't know.

Q. Now, this fellow Morton that you have been

talking about had only served one term in prison, hadn't he? A. I don't know.

Q. Well, the only time you ever saw him in prison was in Trenton, in the State Prison there, wasn't it? A. Yes, sir.

Q. And when you got out, when you escaped from North Carolina, Morton wasn't in jail, was he? A. I don't know, sir.

Q. What? A. I don't know, sir.

Q. Well, when you got to Philadelphia, he wasn't in jail, was he? A. When I escaped from Philadelphia—from down South?

Q. When you got to Philadelphia, after your escape from the prison in North Carolina, was Morton in jail or not? A. He didn't seem to be, no, sir, because I seen him later on.

Q. That is, when you saw him in this tavern at Ninth and Columbia, he didn't seem to be in jail, did he? A. He wasn't in jail then, no, sir.

Q. And he was living at this address on Sixteenth Street, under the name of Morton, wasn't he? A. Yes, sir.

Q. Albert Morton? A. Yes, sir.

Q. And he was working for his father in the sign painting business, wasn't he? A. Not that I know of, no, sir.

Q. Do you know what his job was, what he was working at down in Philadelphia? A. I never knew he was working, no, sir.

Q. And you have been in the habit, Eddie, of keeping in close touch with the acquaintances that you make in these prisons you have been in, haven't you? A. No, sir.

Q. Well, you made this trip down south to Georgia and North Carolina, for the purpose of renewing some of these old acquaintances?

Mr. Sedam: If your Honor please, I respectfully object to that. The Prosecutor makes a statement, and he says, "Yes," instead of asking this witness, Why did you make the trip down south? It is all prejudicial.

The Court: Mr. Sedam, I think the witness stated on his direct examination—certainly, he stated in his examination some place that he made this trip down south to call upon men he had met in prison, didn't he?

Mr. Sedam: I didn't understand him to say that the trip down south with the woman——

The Court: No, no. He didn't say with a woman. He made the trip down south to meet or in some way keep in touch with men whom he had met in prison. He made such a statement. I don't think there is any question about that. This is cross examination.

Mr. Sedam: Am I in error in understanding—perhaps I am—that he made more than one trip down south?

Mr. Hicks: Oh, yes, if it please the Court, we have plenty of testimony on that point, and I submit that the questions that have been asked have been proper questions, and that Mr. Sedam, in his objections, which he is making continually, is giving this witness too much of an opportunity to think about his answer to the next question.

Mr. Sedam: You will permit me to address the Court when I care to without asking you.

Mr. Hicks: Well, I object to these more or less indiscriminate and unreasonable objections.

Mr. Sedam: I shall object——

Mr. Hicks: Read the last question, please.

(The last question was read by the reporter as follows: "Question: Well, you made this trip down south to Georgia and North Carolina for the purpose of renewing some of these old acquaintances?")

*By Mr. Hicks:*

Q. Is that correct? A. I seen a couple of fellows, yes.

Q. And these couple of fellows that you seen you had previously met in prison, hadn't you? A. Yes.

Q. That is correct, and you kept tabs on Whitey Morton, your pal from State's Prison, didn't you? A. No, sir.

Q. You knew, as a matter of fact, Eddie, that he was just a one termer, didn't you? A. I didn't know that, no, sir.

Q. Well, now, was Whitey Morton in jail when you met him in 1931? A. No, sir.

Q. Was he in jail when you went to State's Prison? A. I think he was, yes, sir.

Q. Well, didn't Whitey Morton come in after you got there? A. Yes, sir.

Q. And left after you got out, too, isn't that correct? A. Yes, sir.

Q. And so far as you know, Whitey Morton had served only one term, isn't that correct? A. I could not be positive, no, sir.

Q. What? A. I could not be positive.

Q. Well, so far as you know? Did you ever hear of Whitey Morton being in any other jail? A. Yes, sir.

Q. You have. What jail? A. Rahway.

Q. Rahway? A. Yes, sir.

Q. Well, now, you know these police records are inclined to be rather accurate, aren't they, Eddie? A. Yes.

Q. They have been accurate in connection with your record, haven't they? A. Yes.

Q. And that is why you have admitted your record, isn't it? A. I am telling the truth.

Q. Oh, you are? A. Yes, sir.

Q. Well, now, would it surprise you to learn that Whitey Morton has only one conviction against him, and that was in State's Prison? He was sentenced to State's Prison. (After a pause.) Will you answer the question?

The Court: Read the question, Mr. Stenographer?

(The last question was read by the reporter.)

A. I didn't know that, no, sir.

*By Mr. Hicks*:

Q. And you have five convictions, correct? A. Around that.

Q. That you served time on? A. Yes, sir.

Q. And you want the jury to believe that although you have been in five different jails, and Whitey Morton had only one conviction against him, that Whitey Morton was the leader of your expedition on the night of November 8 and the morning of November 9.

*By Mr. Sedam:*

Q. Now, don't answer until the Court rules.

Mr. Sedam: If your Honor please, for the Prosecutor to put the question that way, "And you want the jury to believe when you had five convictions and the other man only had one conviction, that Whitey Morton was the ringleader of this affair," I say, if the Court please, the question put in that way is not a proper question. He doesn't want this jury to believe anything of the kind.

The Court: Objection sustained.

*By Mr. Hicks:*

Q. Well, was your friend Whitey Morton wanted at the time that you committed this robbery in Philadelphia?

Mr. Sedam: I object to that, if the Court please.

The Court: Objection sustained.

Mr. Hicks: Well, now, if it please the Court, the purpose of this question is to show that this defendant is the one who had the greatest possible motive in this case to escape arrest. He had much more of a reason to get away from the police than Morton had, and that is the exact purpose of this question. We certainly have a right to show in this case the motive for the crime for which this defendant is being tried.

The Court: Yes, but I think that the question is improper. I sustain the objection.

Mr. Hicks: Will you read the last question, please?

(The last question was read by the reporter as follows: "Question: Well, was your friend Whitey Morton wanted at the time that you committed this robbery in Philadelphia?")

*By Mr. Hicks:*

Q. You were wanted, weren't you? A. Yes, sir.

The Court: He has already said that—wanted on three different counts.

*By Mr. Hicks:*

Q. And if you had been apprehended or arrested by police officers at the time of this robbery or any other time, you were afraid you would have to go back to North Carolina, is that correct? A. No, sir.

Q. What? A. No, sir.

Q. Oh, you thought they were just going to let that go? A. No, they—they—any man down there that is a Northener, they bring that up pretty regular, they ever hardly go for him.

Q. Oh, they don't? A. No, sir.

Q. Then, you didn't think you would be returned to North Carolina at all? A. I wasn't wanted down there. I was always insulted about being a Yankee.

Q. So, you thought that the North Carolina authorities would be just as pleased if you didn't come back to their State, is that correct? A. Well, no, sir.

Q. And despite the fact that you still had about nine more years to serve of your minimum term

down there, and despite the fact that you had escaped from the prison down there, you thought they didn't want you down in North Carolina at all? A. I didn't have that much time. I only had about five years.

Q. What term were you sentenced to? A. I had eight to twelve years.

Q. Now, you said that you were fearful that Whitey Morton might turn you up? A. Yes, sir.

Q. And turn you up for what? A. For jail.

Q. For jail breaking? A. For that, and for jumping bonds.

Q. You say that North Carolina would not have brought you back anyhow? A. But jumping that bond, they would.

Q. But jumping that bond up here in Union County is a different matter. So the only thing you were afraid of was being brought back to stand trial in Union County, is that correct? A. Well, not only that; just locking me up.

Q. Well, how could Whitey Morton have had you locked up? A. Very easy.

Q. What ways? A. If he reported me, and they would lock me up.

Q. Lock you up for what? A. For that, and for jumping bail.

Q. What do you mean, "for that"? A. For North Carolina.

Q. And the North Carolina people didn't want you, and when they didn't send for you, the authorities would let you go? A. They wouldn't let me go, no, sir.

Q. Why not? A. My wife would find out everything.

Q. Oh, your wife didn't know you had a criminal record? A. I told her I had been in trouble, yes, but I didn't tell her where.

Q. You were fearful that your arrest might wreck your home, is that correct? A. At the time, yes.

Q. Did you have anything else to fear if Whitey Morton turned you up? A. I had him to worry about.

Q. What? A. I had him to worry about.

Q. Well, now, if he turned you up, and you were locked up, you didn't have to worry about Morton while you were in jail? A. That is, if he done it.

Q. What? A. If he just turned me, that is all I would have to worry about at the time.

Q. What else were you afraid of besides being turned up? A. Afraid of him getting even with me for what I done for him.

Q. Getting even, what? A. For what I done to him, yes.

Q. What did you think Whitey Morton might do to you? A. Why, pretty near anything.

Q. Well, I mean, besides turning you up? A. Well, he would hurt me.

Q. What? A. He probably would hurt me.

Q. He probably would hurt you. At the time of this holdup on Ridge Avenue, who went in the saloon first? A. I was.

Q. You went in first? A. Yes, sir

Q. Just how did you hold the flashlight when you went in the saloon? Just show the jury. A. I just—I just don't remember.

Q. Oh, you don't remember how you held it? A. No, sir.

Q. Well, now, if you wanted the jury to believe that this was a gun, how would you hold it? A. I just don't remember.

Q. Well, did you have the flashlight in your pocket when you went in the saloon? A. No, sir.

Q. Did you have it in your hand? A. Yes, sir.

Q. Which hand? A. The right hand.

Q. Did you point it at this waitress and these other people in the place, like this (indicating)? A. I don't remember what I done.

Q. I suppose that Morton told you to take the money out of this cash register, is that correct? A. I was told that, yes, sir.

Q. By Morton? A. Yes, sir.

Q. And he told you to go in the saloon in the first place, didn't he? A. Yes, sir.

Q. Now, did you do anything in the saloon other than what Morton told you to do? A. No, sir.

Q. What? A. No, sir.

Q. He knew more about robbing a place like this than you did?

Mr. Sedam: Objected to, if the Court please.

The Court: Objection sustained.

*By Mr. Hicks:*

Q. Well, did you know what to do, or did Morton tell you what to do? A. I was under compulsion.

Q. Oh, you were under compulsion? A. Yes, sir.

Q. Did you see the cash register yourself, or did Morton point it out to you? A. He told me where it was at, and I seen it.

Q. Oh, Morton told you where the cash register was at, and you seen it? A. I seen it, yes.

Q. Did you see it before he told you where it was? A. I could not say.

Q. It was Morton that told you to take this whisky, correct? A. Yes, sir.

Q. Did Morton tell you to grab this bag from Margie White, the waitress? A. He told me that there was a pistol.

Q. In Margie White's bag? A. He says, "Don't —he says, "Look around." He said, "That there is no pistol."

Q. Well, I am talking about Margie White's bag. Did Morton tell you to grab the bag, or was that your own idea? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Well, now, after you left this saloon, you started to go to New Jersey, didn't you? A. Taking him home.

Q. Well, after you started taking him home, then, you turned around and went to New Jersey. A. Yes, sir.

Q. And, of course, Morton made you come to New Jersey, is that correct? A. He was pretty abusive, and he said, "Take me there", and I took him.

Q. Did you pass any police officers in Philadelphia? A. Yes, sir.

Q. Well, why didn't you stop and ask them for help? A. I could not afford to stop. I had been in trouble, and it meant everything to me.

Mr. Hicks: What was the last answer?

(The last answer was read by the reporter.)

*By Mr. Hicks:*

Q. It would have been very serious if you had been arrested, wouldn't it, Eddie?

Mr. Sedam: I object to that, if the Court please.

The Court: Yes, I think we can assume that it would be.

Mr. Hicks: Well, now, if it please the Court, I have stated before to the Court that certain of the proofs for the commission of this crime which the State is attempting to show is the desire on the part of this particular defendant to escape, and not to be arrested, and not to suffer these consequences, and I am attempting to show that in this defendant's mind there was the feeling that his arrest would result very seriously. He says himself that it meant everything to him.

The Court: Yes, Mr. Hicks, but the trouble is, he has already said that a half a dozen or more times. What is the use of repeating it? He has made that very clear, that he was afaid of being arrested on two or three counts, North Carolina was one, jumping bail in Elizabeth was another; and then, of course, it will have to be presumed he was anxious to escape from this holdup.

*By Mr. Hicks:*

Q. All right. You drove this car, or you say you drove it, with Morton sitting alongside of you, and you came over here to New Jersey, didn't you? A. Yes, sir.

Q. And Morton made you do it? A. Yes, sir.

Q. You didn't want to come to New Jersey at all, did you? A. No, sir.

Q. What? A. No, sir.

Q. And you stopped at a lunch wagon, is that correct? A. Yes, sir.

Q. And, then, after you left the lunch wagon—you didn't have anything to drink there in the lunch wagon, did you? A. I don't remember.

Q. Did Morton have anything to drink? A. I didn't pay much attention.

Q. Whenever he took a drink, if he took any drinks, he was taking them out of the cognac bottle, wasn't he? A. I don't remember.

Q. Well, were you drinking out of the rye bottle? A. I don't remember.

Q. What? A. I don't remember.

Q. Do you know where your automobile was when you first heard a shot fired? A. Where?

Q. Yes. A. It was on the road.

Q. Yes. Was it in New Jersey or Pennsylvania? A. In New Jersey.

Q. Near Trenton or New Brunswick? A. I just —it had been somewhere on the road.

Q. But you are positive it was in New Jersey? A. It must be, yes, sir.

Q. What happened in your automobile immediately before this shot was filed? What did you do, or what did Morton do? A. I don't understand you, Prosecutor.

Q. Well, we will start off with the shot. You remember a shot being fired from this Chevrolet coupe that you were riding in? A. Yes, sir.

Q. And you have testified on direct examination that this shot was fired from the back window of that Chevrolet, is that correct? A. Yes, sir.

Q. And that prior to the firing of this shot, Morton broke out the glass in the back window, is that correct? A. It was after.

Q. After he fired the shot? A. Yes, sir.

Q. He broke the glass in the window? A. Yes, sir, I heard it busted.

Q. Was the glass broken in this window before he fired the shot? A. I don't know.

Q. Well, you were sitting in the automobile, were you? A. Yes, sir.

Q. And you just said that after he fired this first shot the glass was broken, is that correct? A. He was breaking glass.

Q. How did he break the glass? A. He was hitting it with something.

Q. Now, on direct examination, Eddie, you said that he broke the glass first, and then fired the shot. Now, which is correct? A. He fired a shot, and then busted the glass.

Q. Out of what window did he fire the first shot? A. Out of the back.

Q. Well, you mean, he shot right through the glass while the glass was still in the window? A. I would say that, yes.

Q. Well, you say you would say it. Is that what you are positive about now? A. That is what he done.

Q. Then, if you said on direct examination that he broke the glass out before he fired the shot, that was wrong, wasn't it? A. I don't remember that.

Q. Well, you don't remember saying it, or you don't remember whether he broke the glass out first? A. I don't remember saying that.

Q. But if you did say it, it was wrong, wasn't it? A. Mistaken.

Q. Mistaken, not wrong, just mistaken, is that correct? A. (There was no answer.)

Q. Now, you say he fired one shot, and he fired this shot right through the glass of the back window of your car, is that right? A. Yes, sir.

Q. Now, did you know who Morton was shooting at at the time? A. No, sir.

Q. Do you know whether or not he was shooting at anybody? A. No, sir.

Q. Did he say anything to you, "We are being chased. Drive faster," or anything of that kind? A. No, sir.

Q. Did he say anything to you at all before he fired this first shot ? A. No, sir.

Q. What? A. No, sir.

Q. This fellow that was sitting alongside of you just suddenly picked up this shotgun and fired a shot out the back window, is that right? A. Yes, sir.

Q. Without making any remark; without saying anything? A. No, sir.

Q. Was there any car in back of you at the time? A. I didn't see none.

Q. Well, you have a mirror in this Chevrolet? A. I don't know if there was one in there or not.

Q. Well, were they any lights—did you see any lights coming at you from your rear, from in back of your automobile? A. I didn't notice any.

Q. Did you see any lights reflected in your windshield or in any mirror which may have been in the car, or anywhere else in the car? A. No, sir.

Q. Was the curtain pulled down on your back window? A. No, sir.

Q. What? A. I don't think so.

Q. Did you look to see who Morton was shooting at? A. I could not look.

Q. Well, did you look? A. No, sir.

Q. Did you ask Morton who he was shooting at? A. No, sir.

Q. Did Morton fire any more shots? A. I don't remember.

Q. Well, then, there is only one shot that you are positive of, is that correct? A. Well, yes, sir.

Q. What? A. Yes, sir.

Q. Did you hear any shots fired at you from another car? A. No, sir.

Q. Did you ever see any other automobile? A. I might have passed some automobiles, I don't know.

Q. Well, at the time Morton was shooting, did you pass any other automobiles? A. Not that I know of.

Q. Now, do you know where the highway is torn up, just west of New Brunswick, where they are moving a section of the highway? A. No, sir.

Q. Well, when you were driving the car on the morning of November 9, you came to a place where there was one two-lane traffic, didn't you? A. I don't remember.

Q. Well, were you driving the automobile, or were you sitting alongside of the driver? A. I was driving the automobile.

Q. And, yet, you don't remember whether there was a lot of construction work going on on that highway or not? A. No, sir.

Q. You know where New Brunswick is, don't you? I mean, this town where this Court House is located? A. I know where the town is, yes.

Q. You lived here until you were nine or ten years old, didn't you? A. Yes, sir.

Q. And you have visited here since, haven't you? A. Yes, sir.

Q. And you have ridden along the super-highway, haven't you? A. Yes, sir.

Q. Now, did you stop your automobile at any time between this lunch wagon that you stopped at near Plainsboro and when you got to Elizabeth? A. The traffic signal, if I am not mistaken.

Q. What? A. At the traffic signal, if I am not mistaken.

Q. Well, did you stop at any other place other than a traffic signal? A. I stopped to eat in a place.

Q. Yes, that is this lunch wagon, Stewart's lunch wagon, at Plainsboro. After you left there, did

you stop anywhere with this automobile between that lunch wagon and Elizabeth? A. No, sir.

Q. No, sir. Now, you say you stopped at a traffic light. Where was that traffic light you stopped at? A. It seems to me like it was Linden.

Q. That is where you saw the two police officers, isn't it? A. Yes, sir.

Q. Now, at any time between this lunch wagon and Elizabeth, did any automobile start to chase you, chase your car? A. Not that I know of.

Q. Did you hear anyone blow a whistle, a police whistle, at you? A. The motor was making a lot of noise. I didn't hear nothing.

Q. Well, you didn't hear it if it was blown. That is your answer? A. I don't remember hearing anything.

Q. Now, you were proceeding at this time to 48 Lentz Avenue in Newark, is that correct? A. Yes, sir.

Q. And you were in an awful hurry to get there, weren't you? A. No, sir.

Q. What? A. No, sir.

Q. You weren't? A. No, sir.

Q. Well, I thought on direct examination you said you were in a hurry because you were afraid of Morton? A. Yes, I was in no hurry. I had to drive.

Q. You had to drive? A. Yes, sir.

Q. Well, you said Morton was getting violent, Morton was getting vicious—I think you used the word "vicious", and you were afraid of him, weren't you, Eddie ? A. Yes, sir.

Q. And you wanted to get him to 48 Lentz Avenue and this girl, Dot Johnson, as quickly as you could, didn't you? A. He told me to drive.

Q. Now, going to Newark, you proceeded along the super-highway, is that correct? A. Yes.

Q. And you had been along that highway before, you just said, and where had you turned off that highway to go to 48 Lentz Avenue? A. Well, there is different places you can turn off.

Q. What is the quickest way to go to 48 Lentz Avenue? A. Well, I just wouldn't know exactly the quickest way, but I would get there if I had to get there.

Q. Well, you would continue on the highway until you got to Newark, and then you would turn off and find 48 Lentz Avenue, wouldn't you? A. Yes, sir.

Q. And 48 Lentz Avenue is on which side of the super-highway when you get to Newark? A. It is on the end of the town.

Q. On the left side as you are going through towards New York, right? A. Yes, sir.

Q. And is it near the highway? A. About two blocks away from there.

Q. About two blocks away from the super-highway. So the quickest and shortest way to go to 48 Lentz Avenue from Philadelphia is to go right along the super-highway until you get to Newark, correct? A. Yes, sir.

Q. And then you turn off, and 48 Lentz Avenue is only a few blocks away, right? A. Oh, you can't turn off the highway and get there.

Q. No, but you turn off as you come into Newark? A. You have got to get about ten or so blocks away from there.

Q. Do you mean, turn off that highway from South Street? A. Yes.

Q. How far is 48 Lentz Avenue from that South Street turn off? A. I could not exactly say.

Q. Well, is it a matter of a block, two blocks, three blocks? A. More than that.

Q. It is only a short distance, isn't it? A. Around ten blocks, eight or ten blocks.

Q. Now, Eddie, will you tell the Court and jury why you turned off on Wood Avenue? You didn't know any trooper had been shot, did you? A. No, sir.

Q. And, yet, when you got in Linden, you turned to the left, and you went over Wood Avenue, didn't you? A. I had to do it.

Q. You had to turn off? A. Yes.

Q. Why did you? A. Morton told me, "Turn here."

Q. When Morton told you, you turned? A. Yes.

Q. No one was chasing you, were they? A. Not that I know of, no, sir.

Q. Well, you didn't see anybody chasing you, did you? A. No, sir.

Q. And you turned to the left, and you went across Wood Avenue, and then you came to Elizabeth Avenue, didn't you? A. I just don't know if that is Elizabeth Avenue or not.

Q. No, but you know where the bank is, don't you? A. That is in Linden.

Q. Yes? A. Yes.

Q. Yes? A. Yes, sir.

Q. You don't know the name of the street, but you know there is a bank there on the corner, isn't that correct? A. Yes.

Q. That is the bank that your counsel thought, when you were talking to him about it, might be a sand bank, isn't that correct? A. I don't know.

Q. What? A. I don't know.

Q. Well, this is the bank that you were telling Mr. Sedam about when Officer Malsam was on the stand? A. Yes.

The Court: You might identify it by calling it a bank building.

Mr. Hicks: A bank building.

*By Mr. Hicks:*

Q. And your automobile was stopped right at that traffic light there, wasn't it? A. Yes, sir.

Q. Near the bank building? A. Across the street, if I am not mistaken.

Q. And after the light went green, where did your automobile go? A. Straight on.

Q. What? A. Straight on.

Q. Straight on Wood Avenue, across Elizabeth? Right across Elizabeth Avenue? A. If that is the name of it, yes, sir.

Q. And you went over to the old Lincoln highway, didn't you? A. I don't remember.

Q. St. George's Avenue, do you know that street? A. I don't remember.

Q. Well, you say you were driving the automobile at the time? A. Yes, sir.

Q. You were on your way to 48 Lentz Avenue? A. No, sir.

Q. Did Morton ever go to 48 Lentz Avenue with you before? A. Not with me, no, sir.

Q. Well, do you know whether or not he had ever been there with anybody else? A. Well, I don't know.

Q. Yes, although you knew where to go and how to go, it was Morton that was telling you to turn off on Wood Avenue, is that right? A. I was going to turn off there, yes, sir.

Q. Did you say to him, "Why, this is not the right way to go. We want to keep right straight on"? A. I didn't say nothing.

Q. And you continued along Wood Avenue. Now, where did you turn off Wood Avenue? A. One of those streets. Just which one, I don't remember.

Q. Did Morton tell you to turn off? A. Yes, sir.

Q. Morton ever live in Elizabeth, so far as you know? A. I don't know.

Q. Well, whenever you had seen Morton, it was down in Philadelphia, or Camden, or State's Prison? A. Yes, but he knew the State pretty good.

Q. How do you know that? A. Because he had been talking about it.

Q. Been over here with you before, had he, in New Jersey? A. No, sir.

Q. Then, that statement was just made from what Morton told you, is that correct? A. Well, he knew the State good. He was talking about it a lot, and he was talking about Newark at times, so I presume he knew what he was talking about.

Q. Although you had lived in Newark since the age of ten, you thought Morton might know just as much about it as you did? A. Well, I didn't know everything about Newark.

Q. Well, Morton told you to turn off on some street, off Wood Avenue? A. Yes, sir.

Q. Where did you go after you turned off? A. Straight down.

Q. Straight down where? A. Straight down that street, whatever the name of it is.

Q. Where did straight down that street take you? A. Into Elizabeth.

Q. Did you know any of the streets in Elizabeth, and the names of the streets? A. I knew the main street there.

Q. What is the name of that street? A. Broad Street.

Q. Did you cross Broad Street? A. I just—I am not positive.

Q. Well, do you think you did, or do you think you didn't? A. Well, I could not say.

Q. Oh, well, you came out of West Jersey, and you crossed over Broad Street to East Jersey, didn't you? A. I don't know them streets.

Q. Do you remember seeing two police officers on a street corner, the officer that arrested you later in Elizabeth—in the Elizabeth railroad station? A. No, sir.

Q. You don't remember seeing those officers? A. No, sir.

Q. Do you remember a taxi cab pursuing your automobile? In Elizabeth? A. No, sir.

Q. You were still on your way to 48 Lentz Avenue when you were in Elizabeth, weren't you? A. Yes, sir.

Q. Well, Eddie, why did you go down there near the water front in Elizabeth, down there in the meadows? A. I was told to go there.

Q. Oh, Morton told you to drive down there? A. He just told me to turn here, turn there, turn here, and I just followed instructions.

Q. You knew that wasn't in the direction of Newark, didn't you? A. I didn't know. I don't know Elizabeth so good.

Q. Well, you got down there at a dead end street, didn't you? A. I don't remember.

Q. Well, was there any Elizabeth police radio automobile of any other automobile chasing you at any time in Elizabeth? A. Not that I know of.

Q. You just rode down around these side streets in Elizabeth, because Morton told you to do it, is that correct? A. Yes, sir.

Q. What did you stop for? A. I had to—a sanitary call to make.

Q. Did you get out of the car? A. Yes, sir.

Q. Did Morton get out of the car? A. He got out first, yes, sir.

Q. He got out first, and then you got out, is that correct? A. Yes, sir.

Q. What did you do after you got out? A. Started to run.

Q. Just as soon as you got out, you started to run, is that right? A. Well, I just couldn't say right there, but I started to run—as soon as I went in the alley.

Q. You ran through—between two houses, didn't you, jumped a fence, and ran through between two houses? A. There was some kind of alley there, yes.

Q. Between two houses, and there was a fence and a gate there, wasn't there? A. I don't remember.

Q. Well, do you remember whether you ran straight ahead, or whether you had to climb over something? A. I don't remember.

Q. Did Morton go with you? A. I don't remember.

Q. Did Morton go with you? A. I don't remember.

Q. Well, why did you start to run, Eddie? A. I wanted to get away from Morton.

Q. Oh, you were running away from Morton? A. Yes, sir.

Q. You weren't running from any police, were you? A. I didn't see any.

Q. Was Morton shooting at you? A. No, sir.

Q. What? A. No, sir.

Q. Was anybody shooting at you? A. I heard a shot.

Q. You didn't see any officer in uniform around there, did you? A. No, sir.

Q. Did you see any other automobile anywheres near there? A. I didn't pay no attention.

Q. Well, then, you were just running away from Morton, is that correct? A. Yes, sir.

Q. You weren't running away from any police officers, correct? A. Not that I know of, no sir.

Q. Did you shoot at Morton? A. No, sir.

Q. What? A. No, sir.

Q. Did you ever see this gun before, Eddie? A. No, sir.

Q. Are you sure about that? Do you recognize that silver wadding, tinfoil in one of the chambers? A. I would not be positive.

Q. Well, does it look like any gun you have ever seen before? A. It looks like a pistol all right.

Q. Yes. Well, what does it look like? Any pistol you have ever seen before? A. I might have seen it, yes.

Q. Well, where do you think you might have seen it? (After a pause) Where do you think you might have seen this gun? A. What would you say—do you say, seen on it?

Q. I am asking you questions. Where did you see this gun before? A. I don't know positively if that is the gun.

Q. Well, what gun does it look like to you? A. The one that was taken away from me.

Q. When? A. When I escaped from here.

Q. Isn't this the gun you had with you in the early morning of November 9, 1935? A. No, sir.

Q. Isn't this the gun you went into the Palm Gardens Cafe with in Philadelphia?

Mr. Sedam: Now, if your Honor please, obviously this gun—here is a gun that the

Prosecutor produces, and the defendant identifies it as the gun that was used over here in the jail when he escaped, and he is asked, isn't this the gun that he had in Philadelphia?

The Court: Yes.

Mr. Sedam: And the man has been in jail in the meantime in Elizabeth and here in New Brunswick, and obviously that could not be so.

The Court: Oh, no, Mr. Sedam. It is very evident the purpose of this examination. I admit it.

*By Mr. Hicks:*

Q. Now, Eddie, you have had a chance to think about this matter. Do you want to change your testimony any now? Did you have this gun with you when you went in the Palm Gardens Cafe? A. I never had no gun.

Q. You are positive about that? A. Yes, sir.

Q. Wasn't this gun in your Chevrolet coupe the night the trooper was shot, the morning, I mean, the trooper was shot? A. I never had no gun. I never seen no gun at that time.

Q. Did you have this gun in your hand, and did you fire this gun when you shot at the Elizabeth police officer in Elizabeth? A. I never shot at no officer.

Mr. Sedam: Now, if your Honor pleases, there is no testimony that he shot at the police officer.

Mr. Hicks: There is testimony of the Elizabeth police officer that was shot at, that the shorter of these two men fired at him with the revolver.

Mr. Sedam: Well, you know where you got this gun.

Mr. Hicks: I ask that this gun be marked for identification.

(The article referred to was marked "Exhibit S-32 for identification.")

*By Mr. Hicks:*

Q. Mr. Sedam, your attorney, in his opening, stated that your companion, Morton, had a shotgun, and also had a revolver in his pocket on the occasion of this holdup in the Palm Gardens Cafe, and afterwards. Now, did you tell your attorney that Morton had a gun with him in addition to the shotgun? A. I don't remember.

Q. You don't remember whether you did or not? A. I don't remember ever seeing him with one.

Q. Ever seeing what? You don't remember ever seeing what? A. What you just said there, that he was—had a gun, I don't remember seeing any.

Q. Then, your testimony is that on this night at the Palm Gardens Cafe, and later on in the automobile, so far as you know, Morton had no revolver, is that correct? A. I could not say one way or the other, but I didn't see any myself.

Q. Well, did Morton fire any shots out of the back window of your automobile with a revolver? A. I never seen any.

Q. What? A. I didn't see any.

Q. Did you hear any shots? A. The motor was making too much noise. It had something wrong with the motor.

Q. You say that you were sitting next to Morton in this car. If Mortor fired any shots, he had to fire them while he was sitting right next to you, is

that correct? A. He would not have to sit next to me, no.

Q. Well, how many seats were there in this Chevrolet coupe? A. There was just a big seat.

Q. He didn't get out on the running-board, did he, at any time? A. I didn't notice.

Q. Well, are you sure that Morton was in the automobile at all with you when these shots were being fired? A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. Well, was he sitting on the seat alongside of you? A. Yes, sir.

Q. And you say that because of the noise that was made by the engine, you can't tell whether there were any shots fired or not, is that correct? A. I knew he fired one shot.

Q. And that is all that you heard? A. Yes, sir.

Q. And that one shot that was fired was fired from what kind of a gun? A. Well, it must have been a shotgun.

Q. Did you see the shotgun in the automobile? A. I was watching the road.

Q. Well, did you see a shotgun in the automobile that night at all? A. Yes, sir.

Q. Did Morton have a shotgun or a flashlight when he went in the Palm Gardens Cafe? A. He had a shotgun.

Q. So, when you were arrested in Elizabeth, you gave the name of Edward Lewis, didn't you? A. I might have.

Q. Well, is this your handwriting, Edward Lewis? A. Yes, sir.

Q. And afterwards, when the police found out your right name, did you write Metalski there? Is that your handwriting? A. My handwriting here.

Q. Is 244 North Franklin Street your address in Philadelphia? A. I have lived there.

Q. Who did you live there with? A. By myself.

Q. When did you live at 244 North Franklin Street? A. When I first came to Philadelphia.

Q. Is there where you and Alec Karens lived or not? A. No, sir.

Q. Now, I show you an automobile license issued in the name of John Fanning, 2827 Boudinot Street, Philadelphia, Pennsylvania, marked Exhibit S-16. Did you ever see that automobile license before? A. Yes, sir.

Q. And where? A. I had it.

Q. You had it in your pocket when you were arrested, didn't you? A. Yes, sir.

Q. Was that the license you were using to operate an automobile? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Whose license is this? A. I don't know.

Q. Well, how did you get possession of it? A. Found it.

Q. Where? A. On the street in Philadelphia.

Q. Oh, it was just on the sidewalk? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Do you remember what street it was on? A. It was in Kensington, or Kensington Avenue.

Q. You were walking along the street, and this license was lying on the pavement, and you stooped and picked it up? A. It was in the wallet with some papers, and I took the license.

Q. Then, it was in a wallet, was it? A. Yes.

Q. You had the address, of course, of John Fanning on the license, 2827 Boudinot Street. Did you take the wallet back to Mr. Fanning? A. No, sir.

Q. Was there anything else in the wallet besides the license? A. Papers.

Q. Any money? A. No money.

Q. What did you do with the papers? A. I just don't remember.

Q. Do you remember when it was that you found this license? A. I would not know exactly the date I found it.

Q. Well, can you tell us approximately? A. It must be some time in September or August—or September.

Q. Of what year? A. This year.

Q. Well, now, as a matter of fact, you got this license from Alec Karens, didn't you? A. No, sir.

Q. Are you sure about that? A. Yes, sir.

Q. You know John Fanning, don't you? A. No, sir.

Q. Are you sure about that, too? A. Yes, sir.

Q. And you still think that you found this license in a pocketbook lying on a street in Philadelphia? A. I did find it.

Q. Do you know Mary Truchanoircz? A. Yes, sir.

Q. You do. How long have you known Mary? A. Well, I know her folks pretty near——

Q. Well, how long have you known her? A. Well, pretty near all my life.

Q. Do you know her signature when you see it? A. No, sir.

Q. Did you ever get any letters from her or notes from her? A. No, sir.

Q. Did she ever talk to you over in the jail? A. Yes, sir.

Q. And she came there on several occasions, didn't she? A. Yes, sir.

Q. On the second occasion when she came to the jail, did you tell her about the holdup in Philadelphia? A. No, sir.

Q. Did you tell her about it at any time? A. No, sir.

Q. Are you sure about that? Now, didn't you tell Mary that, "I had the thirty-eight, and Al had the shotgun?" A. No, sir.

Q. Was Mr. Sedam always present when you were talking to Mary? A. Yes, sir.

Q. Did you always talk in English? A. I have talked in Polish.

Q. Did you have any conversation about this holdup with Mary in English? A. Well, she had newspaper clippings of the case.

Q. Yes, and the newspaper clippings told about the holdup, didn't they? A. Told different things, yes, sir.

Q. And one of the things they told was the holdup, wasn't it? A. I would not be positive. She just had the clippings, that is all I know.

Q. And you talked to her about these clippings, didn't you? A. She read everything on the clippings.

Q. Read them to you? A. Read them herself.

Q. Well, did you, in the presence of your attorney and Mary, tell anyone that at the time of the holdup you had the thirty-eight and Al had the shotgun? A. No, sir.

Q. Now, this Mary Truchanoircz speaks Polish, doesn't she? A. Yes.

Q. And you speak Polish? A. Yes.

Q. And when you wanted to say anything to her that you didn't want your attorney to hear, you talked in Polish, didn't you? A. Not exactly.

Q. Well, you talked to her in Polish, didn't you? A. I have, yes, sir.

Q. And some of those conversations were carried on while your attorney was present, is that correct? A. While he was doing some work, yes, sometimes.

Mr. Hicks: That is all.

*Redirect examination by Mr. Sedam:*

Q. Edward, you were shown a revolver by Prosecutor Hicks a few minutes ago? A. Yes, sir.

Q. Is that the revolver you had when you got away from the jail over here? A. It looks to me like the one.

Q. Does that look like the one you had then? A. Yes, sir.

Q. That was in your possession, was it not, when you were retaken? A. Yes, sir.

Q. Did you have that revolver in your possession in Philadelphia at any time? A. No, sir.

Q. You have been asked about this young woman, Mary Truchanoircz, being present at the jail at times when you were being interviewed by me. Was there or was there not an occasion on the Friday prior to your going away when I was there interviewing you, when I went out of the room to see the doctor? A. Yes, sir.

Q. Did I go out once or twice, do you remember? A. You went out a few times.

Q. Well, was it once or twice? A. Well, twice or three times. You went out, and you interviewed the Warden about the papers, and you went to another room there looking up files.

Q. Files of the doctor's report, wasn't it? A. Yes, sir.

Q. Then I went out and talked with Dr. Rowland? A. Yes, sir.

Mr. Hicks: If it please the Court, there is no contention on the part of the State that Mr. Sedam speaks Polish, or that he had anything to do with this matter.

The Court: He is a brilliant man. He may speak Polish.

*By Mr. Sedam:*

Q. Edward, you have been taken along the road by the Prosecutor to the Linden section, and I understand you to say that when you came to Linden, you turned—that is where you turned off? A. I was told to turn off, yes, sir.

Q. You were told to turn off? A. Yes, sir.

Q. Well, wasn't any reason given to you why you should turn off there? A. Just turn off there, no, sir.

Q. Why did you use the name of Edward Lewis in Elizabeth? Frankly, tell us why you used it? A. Well, I just, I guess, put it down, and said it was the name I had.

Q. Where were you headed for? What was your destination? Where were you going? A. Newark, New Jersey, to my home—my mother's home.

Q. Why were you going there? A. To bring this fellow Morton to his girl friend.

Q. Yes. Now, the Prosecutor asked you this: He said, when you got out of the car in Elizabeth, whatever point this was—did I understand, somewhere down near the water?

The Court: Schiller and Trumbull Streets.

*By Mr. Sedam:*

Q. All right, sir, but down in the poor section, I believe that is, isn't it? When you got out of

the car there, Morton got out at the same time, didn't he? A. He went out first, and then I went out.

Q. Now, you were asked the question, whether Morton went with you, and I understood your answer to be that you didn't know or you didn't remember. A. I didn't pay no attention to him.

Q. Well, as a matter of fact, did Morton go where you went? A. No, sir.

Q. Where did you go? A. The railroad station.

Q. Well, did Morton go to the railroad station? A. No, sir.

Q. Have you found out since where he did go? A. Yes, sir.

Q. Where did he go? A. He went to Newark, to my mother's home.

Q. Went to this Dorothy Johnson, didn't he? A. Yes, sir.

Q. And you found out since that he went back to Philadelphia with Dorothy Johnson on that same day, isn't that so? A. Yes, sir.

Q. Now, how frequently have you traveled along this super-highway between Philadelphia and New Brunswick? A. Well, I have driven it a few times a few years ago.

Q. Yes, but take, for instance, within this past year, you having gotten away from the prison camp in North Carolina on August 16, how many times in between August 16 and November 9 had you been on the stretch of highway between Philadelphia and New Brunswick? A. Well, I remember one time—with a fellow in Philadelphia who is a policeman.

Q. Who is a policeman in Philadelphia? A. Yes.

Q. Friendly to your wife's family, isn't he?

A. The girl he was going with is a girl friend of my wife's.

Q. Well, you remember one time with him, and what other occasion since August up until November? A. I don't remember any.

Q. That is the only one time, is that right? A. Yes.

Q. Then, you wouldn't remember whether the highway was torn up at some stretch in between there, and only two lanes instead of four? A. No, sir.

Q. Now, you were asked about whether you knew about a taxicab pursuing your car in Elizabeth. Your answer was, no. Isn't that correct? A. Yes, sir.

Q. That is, that is what your answer was, isn't that so? A. Yes.

Q. I ask you again, Did you know when Officer Geiger, the man who appeared on the witness stand here yesterday, when he came in the station in Elizabeth, did you know then that a trooper had been either shot or killed? A. No, sir.

Q. And were you advised of that fact by him? A. No, sir.

Q. You were asked the question by Prosecutor Hicks, why didn't you stop the police officers in Philadelphia and ask for help? Now, what is your answer to that? A. I just could not.

Q. Well, you could not, why, Eddie? A. Well, I had been arrested before, and was then wanted for a charge here in Elizabeth.

Q. And you didn't want to get caught, did you? A. No, sir.

Q. And you were asked about some visits to the Morton apartment in Philadelphia, and, as I understand your answer, you said that you were

there, I think you said, twice before the night of November 8, is that correct? A. Yes, sir.

Q. Twice, is that so? A. About twice, yes, sir.

Q. And you were asked whether you went into that apartment when you went there. Did you? A. At that time, no, sir.

Q. On either one of the first two occasions, did you go in the apartment? A. No, sir.

Q. What did you go there for? A. To see Morton. He wanted to see me.

Q. Did you see a woman there whom you have been told is Mrs. Morton? A. Well, there was a button on there with the name of Morton on it, and I pressed the button, and this woman came out and asked me who I wanted, and I asked her if this fellow was here, and she said, "No," so I went out.

Q. Well, you didn't even go in the house? A. No, it was downstairs. There is a buzzer system there.

Q. So, this night of November 8 is the first time you were in Morton's apartment? A. Inside of it, yes.

Q. Inside of the apartment, I mean. Who is this man Karens that the Prosecutor has been talking about so much? Who is he? Is he a character—a crook, or is he—who is he, Eddie? Tell me who he is. A. Well, I guess I am no judge.

Q. Well, that is a modest statement, that you are no judge, Eddie, but is he a man who has been in trouble? Is he a man who has been in difficulty with the law? A. I just could not say.

Q. Well, frankly, the Prosecutor has talked to us about him. I want to know who Karens is, if you know. Do you know who he is? A. I knew he was—he had a wife that was a nurse. That is all I knew at the time.

Q. Did you meet him in prison? Has he been in prison? A. I never met him in no prison, no, sir.

Q. Do you know whether he has been in prison or not? A. I don't know.

Q. You don't know? A. To my knowledge, no, sir.

Q. Well, during the time that you have known him, he has not been in prison, so far as you know? A. No, sir.

Mr. Sedam: I thought he must be some terrible man, Eddie. That is all.

*Recross examination by Mr. Hicks*:

Q. Just one question, one or two. You know that Karens has been arrested, don't you, Eddie? A. No, sir.

Q. Well, weren't you with him when he was arrested? A. No, sir.

Q. I mean, you could see that he had been arrested; you were near enough to see them, weren't you? A. No, sir.

Q. On September 25? A. No, sir.

Q. You say you came over here to Newark with a policeman from Philadelphia? A. Yes.

Q. Did he know your name? A. He knew where my wife was. He knew I was married.

Q. Did he know your name, Eddie Metalski? A. That is the way I understood it, he did.

Q. But you weren't afraid of this particular officer, were you? A. Well, I never said nothing to him, no, sir.

Q. Did you come over here to Jersey with him in his automobile? A. Yes, sir.

Q. Was it on the day before Labor Day this year? A. I just don't know exactly the day I was over, no, sir.

Q. Was it around Labor Day? You know when Labor Day is, Eddie, don't you? A. The first Monday in September, isn't it?

Q. Yes. Was it around that time? A. No, sir.

Q. Was it earlier than that or later than that? A. Later.

Q. Well, where did you go when you came over here with that police officer? A. Well, I rode on the old—the old Lincoln highway.

Q. Oh, you came over on the old Lincoln highway, not the new one? A. No, sir.

Q. Where did you go to? A. I went to Newark.

Q. Where in Newark? A. 48 Lentz Avenue, where my home is.

Q. Did you see your mother? A. Yes, sir.

Q. Did you see her? A. No, sir, she was not home.

Q. Who went with you? A. My wife went, and this policeman, his girl friend, and her sister.

Q. You had been here before that? You had been her around the first of September, hadn't you, around Labor Day? A. I could not positively say.

Q. You don't remember whether you were here or not around Labor Day?

Mr. Sedam: Do you mean here in New Brunswick, Mr. Hicks?

Mr. Hicks: Well, in New Jersey, and in along this highway, and in New Brunswick and South River.

*By Mr. Hicks:*

Q. Do you remember that? A. I don't remember.

Mr. Hicks: That is all.

The Court: We will take a recess at this time of three minutes.

(A short recess was had.)

The Court: You may proceed. Have you any further witnesses?

Mr. Sedam: If your Honor please, I was about to call Mrs. Frances Metalski, the mother of the defendant, on the one point, the presence of Dorothy Johnson at her home in Newark on November 9, and five weeks preceding that date. In speaking of that to Prosecutor Hicks, he says that it is conceded by the State, and may well be made part of the record for my purposes.

The Court: Very well.

Mr. Sedam: With that, I rest.

The defendant rested.

Mr. Hicks: I have several witnesses to call in rebuttal, if it please the Court.

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JOHN J. MATEY, recalled as a witness on behalf of the State, in rebuttal, testified further as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Trooper Matey, you have been sworn. Was there any glass broken in the automobile in which you and Yenser were riding at all? A. There wasn't.

Q. Were there any other bullets or pellets found in the inside of the car? A. No, sir, there wasn't.

Q. And the one bullet was in the radiator? A. That is all.

Mr. Sedam: Now, if your Honor please, I object to this testimony. It is not rebuttal to anything. That is testimony that is already in, and has not been contradicted.

The Court: I think that is true. The trooper, as I recall it, said that.

Mr. Hicks: Well, I don't recall exactly the witness's testimony on his first examination, but the reason for calling him now was because of the defendant's testimony that this shot was fired from the rear window of the car at something apparently in back of the car, although he doesn't know what it was; and that is the reason that I am calling this witness, to show that there was no glass in the windshield of this State Police car broken.

The Court: But, I think he did testify to that on his direct. Anyway, it is in, and that settles it.

Mr. Hicks: That is all.

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WILLIAM BOLAND, called as a witness on behalf of the State, in rebuttal, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Mr. Boland, you live in Philadelphia, and you were the night attendant at a garage where a man named Jack Cuttler used to keep a Chevrolet coupe? A. That is right.

Q. Were you on duty the night of November 8 and the early morning of November 9? A. I was.

Q. Do you know Whitey Morton, or did you know Whitey Morton? A. I did.

Q. Did you know this defendant, Edward Metalski? A. Never saw him before in my life.

Q. Did he and Whitey Morton come to your garage on the evening of Friday, November 8? A. No.

Q. Did Metalski come to your garage at any other time? A. No.

Q. Did you give Whitey Morton or Metalski, or both, or one of them, permission to use a Chevrolet coupe on the night of November 8? A. No.

Q. Did you meet this defendant, Eddie Metalski, and Whitey Morton, over in a saloon in Philadelphia on the night of November 8? A. No.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. What is the name of this garage at which you are an attendant? A. Boland's Garage.

Q. What? A. The same name as mine, Boland's Garage.

Q. Are you related to the proprietor? A. Father and son, yes.

Q. You were actually in charge on the night of November 8? A. I was.

Q. Do you know a man by the name of Cuttler? A. I do.

Q. Is it Cuttle or Cuttler? A. Cuttler.

Q. Did he keep his car in storage in your garage? A. Yes.

Q. As of that time, I mean. A. Yes.

Q. And was the car in the garage on the night of November 8, 1935? A. Yes.

Q. Do you know when it was brought in there? A. Yes.

Q. When? A. About ten-thirty.

Q. By whom? A. By Jack Cuttler himself.

Q. And where was that car located in the garage in storage, or, I mean, in stall? A. About twelve yards from the center door.

Q. Twelve yards? A. From the center door.

Q. You mean, about thirty-five or thirty-six feet, don't you? A. If you figure it out in feet, yes.

Q. Were you the only one in charge of the garage that night? A. Yes.

Q. How large a garage is this? How many cars can the—can be stored there? A. About a hundred and three or five.

Q. What? A. About a hundred and three or five.

Q. A hundred and three or five? A. That is it.

Q. Is that daily storage, coming in and going out each day? A. Well, it is not full to capacity, no, but that is the capacity of it.

Q. You say that you knew Whitey Morton in his lifetime? A. I did.

Q. How long had you known him? A. About eight or ten years.

Q. How old a man are you? A. Twenty-six.

Q. How old a man is Morton, do you know? A. Thirty-two, at least, he claimed.

Q. Was Morton a frequent visitor at your garage? A. Occasionally he would stop around.

Q. That is, to stop in and chat? A. That is all.

Q. You had no other association with him in any way? A. None whatsoever.

Q. You knew something of Morton's private life, did you? A. I knew he was locked up once before, yes, but for what, I didn't.

Q. Once before what? A. He was locked up.

Q. Well, was Morton in your garage on the night of Friday, November 8? A. He was.

Q. At what time? A. Eleven-thirty.

Q. Who was with him? A. No one that I seen. He was by himself.

Q. What did he come there for? A. Why, as a matter of fact, he stopped around when he didn't have anything to do, and just chewed the rag for awhile.

Q. Whenever he didn't have anything to do, he would come in and see you? A. Exactly.

Q. Well, didn't he indicate any purpose in coming in there on this particular Friday night? A. He asked me to go around the corner and have a beer with him. I told him I was on my good behavior, and I couldn't do that; so he offered to buy me a pack of cigarettes, and I had a few cigarettes left, so I though I would take advantage of it, because I had a few coming to me, I thought.

Q. You say the Cuttler car was brought into the garage around ten-thirty that night? A. That is right.

Q. And Morton arrived there about eleven-thirty? A. Exactly.

Q. And he was alone? A. Alone.

Q. When did you first see this defendant, Edward Metalski? A. When I walked in this courtroom.

Q. Here today? A. Yesterday.

Q. Oh, yesterday. Never saw him before? A. Never saw him before.

Q. You didn't go to Elizabeth to identify him or anything? A. No.

Q. What is your theory of this thing, Mr. Boland? How did that car get out of there that night? A. Why, I thought I was just brought down

to the saloon for the purpose of the car being taken out.

Q. You thought that your friend, Whitey Morton, put one over on you by inducing you to go away from the garage to this saloon a few doors away, where you say he gave you some cigarettes? A. He bought me a pack of cigarettes, yes.

Q. And that while you were out of the garage, somebody—you don't know who—went in there and took the car out, is that so? A. That is it.

Q. Do you deny the statement that you told your friend, Whitey Morton— A. No.

Q. Now, wait a minute. A. All right.

Q. Do you deny the statement that you told your friend, Whitey Morton, that he might take the car out, borrow the car, if he was sure to have it back there in the early morning? A. I do, and he is no friend, either.

Q. He is no friend? A. I wouldn't classify him as a friend after doing a thing like that.

Q. No, I wouldn't either, but you classified him as a friend before, didn't you? A. No, just an acquaintance.

Q. But he used to come around there every time he didn't have anything to do, and stop and talk to you? A. Very seldom, though; once or twice a week.

Q. Once or twice a week? A. Yes.

Q. And you were willing to spend your time talking to somebody like that? A. I didn't spend much time talking to him. I was pretty busy, in fact.

Q. But, in any event, you didn't give permission for the car to be taken out? A. That is right.

Q. And Whitey Morton, through a ruse, through a fake—we will call it that—got you to go away

from there, and your thought is that Metalski or somebody else—or Metalski went in there while you were down in the saloon and took the car out, and the next thing you knew about it was when you found out it had been involved in this mix-up, isn't that so? A. No. I reported a car stolen at one-twenty in the morning.

Q. One-twenty in the morning? A. Exactly.

Q. Well, did it take you from half past eleven to one-twenty in the morning to find out a car had been stolen? A. No, but the man that brought the car in, I thought maybe he would come after it again. He didn't say anything after he went out. As a rule, he is always back by one or one-thirty.

Q. So, it was only the reason that you thought that the man who owned the car might come back by one or one-thirty that caused you to report the car as a stolen car, althought it had been out of the place from approximately half past eleven, isn't that so? A. That is right.

Q. Is that the way you do in the conduct of your business, Mr. Boland, if a car——

Mr. Hicks: Well, now, if it please the Court——

The Court: Yes.

Mr. Sedam: Well, now, let me finish my question, and let the Court rule on it.

Mr. Hicks: Well, is the question for the witness or for the jury?

Mr. Sedam: What do you think?

The Court: Proceed.

Mr. Sedam: Will you read that question, please, as far as I got with it?

(The last question was read by the reporter as follows: "Question: Is that the

way you do in the conduct of your business, Mr. Boland, if a car——'')

*By Mr. Sedam:*

Q. If a car is discovered by you to be stolen, taken out of there without your knowledge or consent, you simply let the matter drift along for a couple of hours? A. Certanly. It is often done.

Mr. Hicks: If it please the Court, that question is clearly improper. The witness has stated that he thought there was a possibility that the owner may have taken this car out.

Mr. Sedam: Oh, no, he didn't say that at all.

The Court: Yes, I think he did, but it is in, and let it stand. Proceed with your next question.

Mr. Sedam: If your Honor please, the witness didn't say that. He said he thought there was a possibility of the owner coming back for it at one or one-thirty.

The Witness: I said, the owner would be back with the car at one or one-thirty, if he was back with it.

*By Mr. Sedam:*

Q. Oh, you thought the owner had come in and gotten it? A. Yes.

Q. While you were out? A. Yes, in the meanwhile.

Q. But, anyway, it was out, and you didn't know who had taken it, did you? A. That is right.

Mr. Sedam: That is all.

*Redirect examination by Mr. Hicks*:

Q. Now, Mr. Boland, when you were questioned on November 9, 1935, about this car, you told the police that you went down to a cigar store at Sixteenth and Oxford Street, run by Louis Honing? A. I went down—no, I didn't go down to no cigar store. I was—I am——

Q. Oh, you live with Louis Honing? A. That is right.

Q. And you went to the garage, and you went upstairs in the garage, didn't you? A. That is right.

Q. And wasn't it while you were upstairs in the garage that you heard the automobile go out? A. I did.

Q. Then, when you got back from your excursión with Whitey Morton, was this Chevrolet in the garage or not? A. No.

Q. Well, when was it that you were upstairs, and you heard this car go out? A. Oh, I came back from the saloon with this Louis Honing, and I went directly upstairs, and I came down within about three minutes, and while I was upstairs I heard this Chevrolet start.

Q. And was Whitey Morton upstairs with you at the time you heard the Chevrolet start? A. He was in the saloon.

Q. You had left him at the saloon? A. Exactly.

Q. And you came back to the garage? A. Exactly.

Q. And you had gone upstairs? What were you doing upstairs in the garage? A. Bringing another car down.

Q. While you were upstairs, bringing this other car down, you heard this Chevrolet start; and when you came back, it was gone? A. Exactly.

Mr. Hicks: That is all.

*Recross examination by Mr. Sedam:*

Q. Now, Mr. Boland, when I questioned you, why didn't you tell me that? A. Tell you what?

Q. The very thing that you are now telling to Mr. Hicks as the explanation of this situation. Didn't you say on the witness stand a few minutes ago that Morton came there at about eleven-thirty, that he got you to go down the street to a saloon where he treated you to cigarettes, and that it was while you were out of the garage that this car was taken? A. Yes.

Q. Didn't you say that? A. Yes, I did.

Q. Which is the fact: That is was taken while you were out of the garage, based upon this ruse that Morton worked on you; or was it taken while you were upstairs in the garage getting another car out? A. I don't recall which one is the truth.

Q. You don't recall which one is true, do you? A. No.

Q. Well, they can't both be true, can they? A. No.

Q. Well, now, you don't know which is true? A. The one is true about me going upstairs and hearing the car start.

Q. Well, then, why did you tell me the other? Why did you give me the other version of it, then? A. Because I didn't think before I spoke, that is all.

Q. Oh, you didn't think before you spoke. You are under oath on the stand, aren't you? A. I think so.

Q. Well, you know so, don't you, and, yet, you didn't tell me the truth, did you? A. Yes.

Q. What? A. I told you the truth.

Q. What? A. I told you the truth.

Q. Didn't you say the car was taken while you were down the street with Morton in a saloon, and he was treating you to cigarettes? Didn't you tell me that? A. I don't recall whether I did or not.

Q. You don't recall whether you did or not. All right, sir. Now, let me ask you this: Were you arrested in this case in connecting with permitting that car to be taken out of there? A. I was.

Q. Has that case been disposed of? A. Yes.

Q. It has been? A. Yes.

Q. You were charged by the owner of the car with permitting the car to be taken without the owner's consent, weren't you? A. No.

Q. What were you charged with? A. Accessory to the fact.

Q. Oh, an accessory to the fact. The fact of what? A. The car being stolen, and a murder.

Q. Accessory to the fact? A. That is is.

Q. Of a car being stolen, and being used in connection with a murder, is that right? A. That is right.

Q. And you, of course, knew nothing about the car being stolen? A. I knew it was stolen, certainly.

Q. Did you know who by? A. No.

Q. Well, you had a pretty good idea who by, didn't you? A. No.

Q. You knew Whitey Morton had engineered it, didn't you? A. No.

Q. You didn't? Why, didn't you just get through telling me— A. He had a hand in it, certainly.

Q. Then, I just asked you, you knew Whitey Morton had a hand in it, and that he engineered a plan whereby you would be gotten out of the

New Jersey State Library

way, and the car taken, isn't that so? A. That is so.

Q. And they no longer think down in Philadelphia that you are an accessory, do they? A. No.

Mr. Sedam: Good.

Mr. Hicks: That is all, Mr. Boland.

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MARIE MORTON, called as a witness on behalf of the State, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. Now, Mrs. Morton, you have been living with Albert Morton up to the time of his death? A. That is right, yes.

Q. For how long a period of time had you been living with him? A. About a year and a half.

Q. That is, a year and a half prior to his death? A. Well—yes, that is right.

Q. You and he lived together in a furnished room at 18 North Sixteenth Street? A. That is correct.

Q. Now, what business was Mr. Morton engaged in? A. In the sign business.

Q. For whom did he work? A. Well, he worked for his father, and his brother, and at different times he had jobs outside.

Q. Prior to November 9, did you know this defendant, Edward Metalski? A. No.

Q. Well, prior to November 9, 1935, had you ever seen him? A. Only that time he came to the house in September, just that once. He just came to the door, that is the one time.

Q. Did he talk with you on that occasion? A. Yes, he just asked for Mr. Morton.

Q. Was Mr. Morton there at the time? A. No, he wasn't home.

Q. What message did Metalski give you for Morton? A. He just said, "Tell Al Eddie was here."

Q. Did Metalski come to your house on any other occasion after that time? A. Only the time, that Friday night.

Q. Only the what? A. The Friday night that they went out together.

Q. November 8, 1935? A. That is right.

Q. What time Friday evening did he come to your house? A. I judge it was around seven o'clock, a little after seven.

Q. How long did he stay there? A. About an hour.

Q. During that hour, did you have any conversation, the three of you? A. No, I didn't say anything at all. They were talking between themselves.

Q. Did you hear what they were talking about? A. Well, nothing in particular, only sort of talking about a gunning trip, places they had been, and people they knew that I didn't know.

Q. Places they had been together? A. Yes, before I knew them.

Q. Your husband and Eddie? A. Yes.

Q. Do you remember any particular place that Morton and Eddie had been together? A. No, I do not.

Q. Did they have any argument while you were there? A. Not at all. They seemed rather friendly.

Q. Did Morton make any threats against Eddie? A. Not at all, no.

Q. You say, they seemed to be rather friendly? A. Yes.

Mr. Sedam: If your Honor please, I object to this as not being rebuttal. It is not rebuttal at all.

The Court: I think that is true, Mr. Hicks, because it confirms exactly what Metalski himself said. Upon what ground is it rebuttal?

Mr. Hicks: Well, as I understand it, the defendant in this case claims that Morton had threatened him, and that Morton had frightened him, and that Morton had demanded that he go to Newark with him, and that Morton had gone around to his house in Philadelphia. He also claims that he never went out with Morton on any other occasion than this one time, and this witness says that they talked about frequent occasions when they had been out together. I can't think of any examination or any testimony which would be more clearly proper in rebuttal than the testimony of this witness.

The Court: That part of it would be, and it has not been objected to, but as to the hour's conversation in the house, that is exactly as Metalski himself testified to, that they were sitting there talking about general matters, and that he didn't want to talk about Dorothy Johnson while this lady was present. Now, that is just exactly what she said.

Mr. Hicks: Well, if it please the Court, what I am trying to bring out from this

witness, and what this witness has testified to is that there was no animosity, no threatening attitude, that they were on very friendly terms.

The Court: That is in, and went in without objection.

Mr. Hicks: All right. Read the last question, please.

(The last question and answer were read as follows: "Question: You say, they seemed to be rather friendly? Answer: Yes.")

*By Mr. Hicks*:

Q. Now——

Mr. Sedam: She can only testify, if your Honor please, as to what was said there in her presence.

Mr. Hicks: If it please the Court, there is no question before the Court at the present time.

The Court: Proceed.

*By Mr. Hicks*:

Q. About what time of the evening did they leave your room? A. I judge it was about eight o'clock.

Q. Did they leave together? A. Yes.

Q. Now, did Morton own an automobile while you were living with him? A. No.

Q. Had he owned an automobile before that?

Mr. Sedam: I object to that, if your Honor please. There has been no ground laid for that. It is not rebuttal, and she

doesn't say that she knew him or knew of his habits or associations or of his life at all before this year and a half that she lived with him.

Mr. Hicks: Well, the defendant in this case testified that he drove the car, and that he had never seen Morton drive an automobile, and didn't know whether he could drive an automobile or not. Now, that is part of the defendant's case. Now, in rebuttal, I am proposing to show that Morton did drive an automobile, that this witness had ridden with him in an automobile, and that he was perfectly capable of driving this car on the night of November 8 and the morning of November 9.

Mr. Sedam: She doesn't know whether he was capable of driving it.

The Court: Well, I admit it.

Mr. Sedam: I pray an exception.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

Mr. Hicks: Read the question, please.

(The last question was read by the reporter as follows: "Question: Had he owned an automobile before that?")

A. Yes.

Mr. Sedam: Well, now, I would like to know, if your Honor please, whether she knows that of her own knowledge or whether it is hearsay. This is rebuttal testimony.

*Marie Morton, for State—Rebuttal—Cross.*

*By Mr. Hicks:*

Q. Did you ever ride with him in any automobile? A. Yes, I did.

Q. Was he driving the automobile? A. He was driving, yes.

Q. On how many occasions did you ride with him? A. I think it was twice.

Q. How recently before the 8th of November did you ride with him? A. Last summer.

Q. That is, the summer before— A. The past summer, yes.

Q. The summer of 1935? A. 1935.

Q. What kind of driver was Morton? A. He was very——

Mr. Sedam: Oh, I object to that, if your Honor please.

The Court: I admit it.

Mr. Sedam: What does that rebut?

The Court: I admit it.

Mr. Sedam: I pray an exception.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

*By Mr. Hicks:*

Q. What kind of driver was he? A. Very fast driver, reckless.

Q. What? A. He was a fast driver, and sort of a reckless driver.

Mr. Hicks: Cross examine.

*Cross examination by Mr. Sedam:*

Q. Now, you say, Madam, that you were living with Morton for about one and a half years prior

to his death, is that correct? A. That is right.

Q. Are you his legal wife? A. I am not, no.

Mr. Hicks: If it please the Court, that doesn't seem necessary.

Mr. Sedam: You opened the door.

The Court: I admit it.

*By Mr. Sedam:*

Q. Are you? A. No, I am not.

Q. And you took up with Morton after he was released from State's Prison in Trenton, isn't that so? A. I didn't know at the time, no.

Q. What is that? A. I didn't know about that at the time that I met him.

Q. Well, you found it out subsequently, didn't you? A. Later, yes.

Q. After you had been with him how long? A. About six months or more.

Q. You didn't leave him, then, when you found out? A. No.

Q. You say that Morton is in the sign business with his father, or was in the sign business with his father? A. That is right.

Q. And that he sometimes took outside jobs? A. That is right.

Q. How often did he work with his father? A. He was not working steady, maybe two or three times a week, sometimes less than that, sometimes not at all during the week.

Q. He didn't work very steadily, did he? A. No, he didn't. When he had an order, that is when he would have work to do.

Q. And you say that Metalski, this defendant, did come to your house on either one or two occasions— A. That is right, he did.

Q. (Continuing) when Morton wasn't at home? A. He came there just the one time he wasn't at home.

Q. One time? A. The first time.

Q. And rang, and asked for Morton? A. That is right.

Q. And you answered the door? A. That is right.

Q. And told him he wasn't—that Morton wasn't at home? A. That is right.

Q. Then, on this night, November 8, as Metalski says, he came there to your home about seven o'clock? A. That is right.

Q. Did you eat while he was there? A. We did.

Q. Did Metalski drink a cup of coffee? A. He did.

Q. And then Morton and he went out? A. That is right.

Q. Did they tell you where they were going? A. No, they didn't.

Q. Did they tell you anything about any purpose that they may have had in mind? A. None whatsoever.

Q. Now, during the time that you have lived with Morton, he didn't own any automobile, did he? A. No, he didn't.

Q. And you don't know, as a matter of personal knowledge, whether he ever owned an automobile? A. No, I could not swear to that, but I heard that he did.

Q. You heard that he did? A. Yes.

Q. And during the time that you were with him, over a period of a year and a half, you were with him on two occasions— A. That is right.

Q. (Continuing) in a car, when he was driving? A. That is right.

Q. And when you use the expression that he was a fast, reckless driver, do you mean under ordinary circumstances, when he was with liquor, or when he was without liquor? A. Well, without liquor.

Q. He was a fast, reckless driver when he was without liquor? A. He was a fast driver, yes.

Q. Pardon me? A. He was a fast driver, yes.

Q. Yes, under ordinary circumstances? A. Yes.

Q. Now, did you ever drive with him on either one one of these two occasions when he had been drinking? A. No.

Q. He was a drinking man, wasn't he? A. He was, yes.

Q. But on neither one of these two occasions did he take any drink? A. No, he had nothing to drink.

Q. But on both occasions he drove fast and reckless? A. He did.

Q. Referring to November 9, were you living with Morton then? A. Yes, I was.

Q. Did he come back to the place where you lived, on November 9? A. After he left the house that night, that was the last I saw him.

Q. He came back to Philadelphia that Saturday, didn't he? A. Yes, he did.

Q. You found that out? A. I found that out, yes, afterwards.

Q. And he went back to Philadelphia with this Dorothy Johnson on that Saturday, didn't he? A. He did.

Q. Where was he, if you know, at the time that he killed himself?

Mr. Hicks: Well, now, I submit, this witness can't testify to that as of her own knowledge.

Mr. Sedam: I asked her if she knows.

*By Mr. Sedam:*

Q. Well, was he in your own home? A. No, he positively was not. I said that was the last I saw him, when he left the house that night.

Q. Do you know, as a matter of fact, where he was? A. I don't know nothing about it.

Mr. Hicks: Objected to.

The Court: Objection sustained, because, I suppose, it would be hearsay.

Mr. Sedam: I think, if the Court please, where this woman says that she is his associate and his friend, that she would be likely to have found out where the body was found.

The Court: It could only be found out by hearsay evidence, and so long as it is objected to, I will have to sustain it on the ground that it is hearsay.

*By Mr. Sedam:*

Q. But it was not in your apartment? A. Positively not, no.

Q. Did you see the body afterwards? A. No.

Mr. Hicks: Now, I object to that, if your Honor pleases.

The Court: Objection sustained. She said no, anyway.

Mr. Sedam: It is a perfectly proper question, your Honor.

Mr. Hicks: Well, the witness has answered the question.

Mr. Sedam: Yes, she said she didn't see it.

That is all.

*Marie Morton, for State—Rebuttal—Redirect—Recross.*

*Redirect examination by Mr. Hicks:*

Q. Now, Mrs. Morton, when Mr. Morton left on the evening of November 8, 1935, this Friday evening, did he take any of his clothes or personal belongings with him? A. Not a thing, no, nothing.

Mr. Hicks: That is all.

*Recross examination by Mr. Sedam:*

Q. Just one minute. We are calling you Mrs. Morton. You are not Mrs. Morton, are you? A. No.

Mr. Hicks: She has already answered that question, if it please the Court.

Mr. Sedam: Just a minute.

The Court: Proceed, Mr. Sedam.

*By Mr. Sedam:*

Q. Do you know, as a matter of fact, Mrs. Morton, or don't you know, as a matter of fact, that Morton liked hunting? A. Certainly he liked hunting, yes.

Q. And don't you know, as a matter of fact, that he owned several guns? A. Not that I know of. No, he didn't own any guns that I know of.

Q. What is that? A. He didn't own any guns that I know of.

Q. That you know of? A. No.

Mr. Sedam: That is all.

Mr. Hicks: That is all.

*By Mr. Sedam:*

Q. Well, let me ask you this: In your apartment, wasn't there a box of shells found in your apart-

ment? A. Yes, for gunning, yes. They were going to go gunning.

Q. He had the shells and no gun there? A. I don't know. He didn't have the gun there.

Q. Well, do you know when he went hunting where he got his gun to go hunting? A. I don't know. I suppose he borrowed it.

Q. You suppose he did? A. Yes.

Mr. Sedam: That is all.

*By Mr. Hicks:*

Q. You didn't see the shells that were found in the Chevrolet coupe? A. No.

Q. Did you? A. No.

Q. Do you know what kind of shells they were that your husband had? A. No, I really don't know. I didn't notice them.

Mr. Hicks: That is all.

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WALTER L. SIMPSON, called as a witness on behalf of the State, in rebuttal, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Mr. Simpson, you are a detective in the Prosecutor's office of New Brunswick, Middlesex County? A. Yes, sir.

Q. You went to the home of Mrs. Morton on November 9, 1935? A. Yes, sir.

Q. You heard Mr. Sedam, after talking to the defendant, ask the question of the witness about a hunting jacket? A. Yes.

Mr. Sedam: A hunting jacket? I didn't ask anything about a hunting jacket.

*By Mr. Hicks:*

Q. And some shotgun shells? A. Yes.

Q. Well, you heard him ask about a box of shotgun shells, is that correct? A. Yes.

Q. You have seen, Detective Simpson, these Exhibits, S-23, and S-22, and S-30? A. Yes, sir.

Q. Did you find in Whitey Morton's room in Philadelphia any shells which were of the same make or similar to these shells? A. Yes, sir. They were shells of the same size, but not of the same manufacture and shot size; the same gauge, but not of the same manufacture and shot size.

Q. Then, you say, you found no Winchester Ranger number 6C shells down there at all? A. No, sir.

Q. Did you find any shells of a sixteen gauge down there? A. I didn't find any shells of a sixteen gauge down there.

Q. Were there any shells of sixteen gauge found? A. I don't think so. I don't recall.

Mr. Hicks: That is all.

*Cross examination by Mr. Sedam:*

Q. Did you go alone to this Morton's house to make this search? A. No, sir.

Q. With the Philadelphia policemen? A. I was with the Philadelphia police.

Q. Were you present at the Metalski house, too, when they went there? A. No, I wasn't.

Mr. Sedam: All right, that is all.

*Frank Long, for State—Rebuttal—Direct—Cross.*

FRANK LONG, called as a witness on behalf of the State, in rebuttal, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks*:

Q. You are a detective in the New Jersey State Police, Mr. Long? A. Yes, sir.

Q. And I show you this Exhibit, S-32 for identification, this revolver. Have you seen that revolver before? A. Yes, sir.

Q. Is it marked in any manner by you? A. Yes, sir, two Xs on the left of the butt of the gun.

Q. Where did you first see this gun? A. When I had taken it from Edward Metalski on West Kinney Street on the night of the 18th.

Mr. Hicks: That is all.

*Cross examination by Mr. Sedam*:

Q. Are you one of the gentlemen who was at West Kinney Street that night? A. Yes, sir.

Q. When Metalski was captured? A. Yes, sir.

Q. You are one of the men who gave him that beating that was given to him?

Mr. Hicks: I object to that, if it please the Court. Wait a minute, I will withdraw my objection.

*By the Court*:

Q. Answer the question. A. I just used the necessary amount of force to effect the arrest.

Mr. Sedam: I see. Thank you very much.

Mr. Hicks: That is all, Mr. Long.

WILLIAM A. JONES, called as a witness on behalf of the State, in rebuttal, being first duly sworn, testified as follows:

*Direct examination by Mr. Hicks:*

Q. Now, Captain Jones, where do you live? A. 329 East 201st Street, New York City.

Q. What is your business? A. Firearms expert.

Q. For how long a period have you been acting as a firearms expert? A. Since 1895.

Q. For what police departments have you been an expert? A. For the New York Police Department.

Q. For the City of New York Police Department? A. Yes, sir.

Q. And have you also acted in an expert capacity for other police departments? A. I have, yes, sir.

Q. At various times? A. Yes, sir.

Q. Do you act occasionally as an expert here in New Jersey? A. I do.

Q. And have you ever testified in court before, Captain? A. A great many times.

Mr. Hicks: If Mr. Sedam desires to cross examine on the qualifications——

Mr. Sedam: Go right ahead, sir.

*By Mr. Hicks:*

Q. I show you Exhibit S-24, being the bullet which was taken out of the radiator of the troopers' automobile, and ask you, have you seen that bullet before, Captain? A. I have.

Q. Who turned that bullet over to you? A. It was brought to me by Sergeant Schultz of the New Jersey State Police at my home.

Q. Did he also bring to you this exhibit, S-32 for identification? A. Yes, sir.

Q. And did you fire any test shots from that exhibit, S-32? A. I did.

Q. Now, I show you another bullet in an envelope marked, "Test bullet fired from Hopkins and Allen thirty-eight caliber revolver," number so and so, "by Captain William Jones, New York City." Was that bullet fired by you from that revolver? A. Yes, sir, it was.

Mr. Hicks: I ask that it be marked for identification.

(The envelope referred to was marked "Exhibit S-33 for identification".)

*By Mr. Hicks:*

Q. Now, Captain, did you compare those two bullets, the test bullet and the bullet which was taken out of the radiator of the troopers' automobile after the murder of Yenser on November 9? A. I did, and in the comparison microscope——

Q. Have you your comparison microscope here with you? A. I have.

Q. As a result of your comparison, what have you to say, Captain, as to whether or not the bullet that was found in the radiator of the troopers' car on November 9, 1935, and the bullet which you fired as a test bullet from that gun, were fired from the same gun? A. They were fired from the same gun.

Q. Then, as I understand your testimony, Captain, it is that this gun here, which is Exhibit S-32 for Identification, was the gun from which your test bullet was fired, and also the bullet which is State Exhibit S-24? A. Yes, sir.

Q. Now, will you just tell the Court and jury exactly how or why you arrived at that conclusion? A. The microscope will pick up any marks left by the condition of the rifling of the gun that the bullet passes through. On one side of this bullet it shows one grove and two landmarks not quite whole, but it does show the condition of the rifling, I mean, the condition of the rifling of the gun, and it shows those marks perfectly true. I can show them in photographs, too. They are perfectly true.

Q. Captain, have you those photographs with you? A. I have.

Q. Were they taken under your supervision? A. I took them myself.

Q. Well, using those photographs, will you show these identifying marks to the jury? A. (To the jury) When I took these photographs, first, I took three photographs of the bullet to show the damage that had been done by the circumference of the bullet. In this position here, I find the marks, as I told you, that we found the true line of the condition of the rifling. Then I took a photograph of the very same space on the test bullet, and on the test bullet there is the whole test bullet, which was extremities over the bullet to show that the lines and the condition of the rifling of the gun carried right on through. Now, there is one goes right through here. Here is several that follow all the way up through. There is one in here that follows through (indicating).

Q. All right, Captain. A. (The witness resumed the stand.)

Q. Now, Captain, you used a microscope in making this comparison, did you? A. Yes, sir.

Mr. Hicks: Well, I hardly think it is necessary——

*By Mr. Hicks:*

Q. You have the microscope with you? A. I have it right here in the back.

Mr. Hicks: I will offer these photographs in evidence.

Mr. Sedam: If your Honor please, I object to the admission of these photographs for the reason that on the face of it this gun which the Captain now says made these impressions, bullets, obviously could not be in the possession of the Prosecutor and be the gun that was used on that night, if it were used on that night, because Metalski was arrested in Elizabeth, and kept in custody, and searched, and no gun found in his possession, and they haven't accounted for the finding of this gun or connected it up in any way.

The Court: I know, Mr. Sedam, but this is the very purpose of connecting it up. It is quite clear the purpose of it.

Mr. Sedam. All right, an exception.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

The Court: I admit it.

(The photographs referred to were received in evidence and marked "Exhibits S-34 to S-38," inclusive.)

Mr. Hicks: I believe the gun was marked for identification, but not in evidence, and

I will offer that, and also offer the test bullet in evidence.

The Court: Let them be marked.

Mr. Sedam: I object to the admission of the gun, because there is no proof whatsoever that it was ever owned by Metalski or used by him until his attempt, his successful attempt, to escape from jail, which occurred after the charge in the indictment.

The Court: The objection is overruled.

Mr. Sedam: I pray an exception.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

(Exhibit S-33 for identification was received in evidence and marked "Exhibit S-33".)

(Exhibit S-32 for identification was received in evidence and marked "Exhibit S-32".)

*Cross examination by Mr. Sedam:*

Q. Where do you live, Captain Jones? A. 329 East 201st Street, New York City.

Q. Where is your place of business? A. At my home, and I have an office in 302 Broadway.

Q. Well, the experiments that you conduct, where are they conducted? A. In my home.

Q. In the basement of your home? A. Yes, sir.

Q. Is that where you fire the bullets and make your tests? A. Yes, sir.

Q. You say that you have done work for numerous police departments, and have been in numerous courts? A. Yes.

Q. Have you been doing that work recently? A. Yes, sir.

Q. When was the last time that you appeared in any court? A. I think, in Mount Holly, in a case they had down there.

Q. How long ago was that? A. About two months. It is not quite two months, I guess. About a month.

Q. You are an expert in firearms? A. Yes, sir.

Q. You have seen a great many revolvers of this type, have you not? A. Yes, sir.

Q. Nothing very particular about this type of revolver? A. No, it is a cheap revolver.

Q. A cheap revolver, and had you ever conducted experiments with this particular type of revolver before? A. Yes, sir.

Q. What? A. Often.

Q. Of the same cheap type? A. Yes, sir.

Q. I mean, the revolver. What kind of revolver is this, do you know? Is there any name on it? A. Yes, sir. It is a thirty-eight double action.

Q. I know that much, but what make? A. It is made by the Hopkins and Allen Arms Company in Norwich, Connecticut. Previous to that, it was the Forhand and Wadsworth. This one is marked Forhand on there to show that it is one of their old models.

Q. This is one of the old models? A. In 1881. This factory has been out of commission entirely since 1915. It was sold to Russia, and all of the machinery taken over to Russia.

Q. That is very interesting. Now, Captain, you say Detective Schultz is the man who turned over this gun to you? A. He brought it to me.

Q. For the purpose of making these experiments? A. Yes, sir.

Q. When was that, sir? A. On the 28th of December.

Q. 28th of December, just a few days ago? A. Yes, sir.

Q. I see, and you, or course, don't know anything about who this gun belonged to? A. No, sir.

Q. To whom the gun belongs? A. Only what Schultz told me.

Q. You are willing to say, based upon your experiments, that the bullet which was extracted from the radiator, that is, was brought to you and represented to you as being the bullet which was extracted from the radiator of the Ford sedan, was fired from out of this particular gun? A. I can prove that to you, to your satisfaction, I think, by putting it in the microscope.

Q. I see. Well, you are familiar with the general allegations in this case, about a trooper having been murdered on the night of November 9, the early morning of November 9, aren't you? A. Yes, sir.

Q. You know of that fact? A. I read of it in the paper, and talked to the troopers since.

Q. Have you read of the fact that this defendant, Edward Metalski, was arrested in Elizabeth, New Jersey, in the Pennsylvania Railroad Station, on the morning of November 9? A. Yes, sir, I read it at the time of the arrest.

Q. And have you read about the fact that he was apprehended there at the station by a policeman, and that he was searched, and certain loot found upon him, all of which has been exhibited here in court, and that he was taken by the policeman to the police station in Elizabeth, and there put in the hands of the authorities of the law, and that from there he was brought under guard to the New

Brunswick, New Jersey, jail, that building right over here, and placed in confinement there, and presumably searched when he was handled by these different officers, and that this is the gun with which he now is alleged to have made his escape from jail here on December 14 of this year, after he had been confined there from around November 11, 12, or 13, something like that—by what magic do you know that this gun could be the same gun? A. He knew where he left it, and went back and got it, possibly, after he got out.

Q. Do you think, sir, that this is a logical answer, that the man who was arrested in Elizabeth station, and then brought here to jail, and he escaped from jail, and he had this gun and used it in the escape from this jail, went back and got it when he got out of jail? Now, what do you mean by that? A. Let us see. Now, you are going too fast for me.

Q. I don't want to go too fast.

*By the Court*:

Q. The trouble with your answer, Captain, was this: That you said "Perhaps when he got out of jail he went back and got it." Well, he didn't get out of jail. The question of counsel is based upon the fact that he was in custody all the time from the time he was arrested after this shooting up until the time he escaped from jail.

Mr. Hicks: Of course——

A. I could not cover that for you. I don't think that this gun was in the jail with him, but after the shooting that night, this gun was put somewhere, and was gotten afterwards. That is the only way it could be.

The Court: Well, that is for the jury to say under the circumstances. It is not for this witness to say.

*By Mr. Sedam:*

Q. That is the only possible solution you can give to show that this is the same gun—was the same gun that was used on the morning of November 9, and also was the gun he used when he got out of jail? A. Yes, sir, that is the way I think it was.

Mr. Sedam: That is all.

*Redirect examination by Mr. Hicks:*

Q. Now, Captain, you have been asked to give your theory as to how this revolver could possibly have gotten into the hands of Edward Metalski at the time or immediately after his escape. You have said that you thought he might have gotten out of the jail, and gone and gotten it.

Mr. Sedam: The Court has ruled on that.

The Court: Yes. That is not important in the case. The only testimony this witness has given which is important here is that in his expert knowledge the bullet found in the radiator of the troopers' car was fired from the revolver that was found in the pocket or was found upon the defendant when he was arrested there in Newark.

Mr. Hicks: Well, I had thought, if it please the Court, that in view of Mr. Sedam's opening the door by asking this witness as to his theories as to how that could have happened, that I might be——

The Court: That is a matter entirely for the jury under the evidence of the case. It is not a matter for expert opinion by this witness, that is sure.

*By Mr. Hicks:*

Q. Now, Captain, you have that microscope here with you? A. Yes, sir.

Mr. Hicks: Well, I think it is hardly necessary to take the time to set that up and show the jury the two bullets in comparison.

That is all, then, I have.

The Court: That is all, Captain.

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Mr. Hicks: That is all the rebuttal.

The Court: Anything in sur-rebuttal?

Mr. Sedam: No.

The Court: Both sides rest.

We are about to take a recess now. We will take a recess until twenty minutes to two.

Let the defendant be taken into custody, and after he is taken out, then the jury may retire, and after that the audience.

(The defendant was removed; then the jury retired.)

Afternoon Session.

The Court: How much time do you want? Do you want to limit yourself?

Mr. Sedam: Whatever the Court's ruling on that is as to the limit of time.

The Court: I won't limit it.

Mr. Hicks: I think, if your Honor please, in the nature of the case, there should be no limitation.

The Court: All right. Take as long as you please.

Mr. Sedam: I would like to, if the Court please, if I am in my rights, call upon the Prosecutor at this time to open to the jury for the purpose of making known to the defense counsel the chief points upon which he will rely in his summation.

The Court: I suppose he made them known in his opening. They probably, undoubtedly, are the same.

Mr. Hicks: I don't mind informing Mr. Sedam that I am going to go over the testimony of the various State's witnesses, and, naturally, to emphasize the proofs of the witnesses which show that Metalski was in the automobile; that Morton had a light hat on, and that Metalski fired or, rather, that the shot was fired which killed the trooper, and the testimony of the witnesses who identified Metalski as the passenger in the automobile, and all the other testimony that was developed during the course of the trial.

Mr. Sedam: I think that I am entitled to know at the beginning whether the allegation is still persisted in that Metalski fired the shot that killed the man. Is that the theory upon which the State will ask a conviction?

Mr. Hicks: Insofar as the State is concerned, the State feels that they have established beyond a reasonable doubt by the proofs submitted here that Metalski was the man who actually fired the shot that killed Trooper Yenser. The State is also of the opinion, however, that the killing of Yenser took place at the time when Metalski and his as-

sistant, Morton, were engaged in attempting to cover up their robbery in Philadelphia; that they realized that if they were apprehended with a sawed off shotgun and a revolver in the car, and this silver, and these bottles of liquor, that they probably would be taken back to Philadelphia to answer to this holdup charge; and the killing was committed in an attempt to cover up and protect themselves in the possession of that loot from the robbery; and, certainly, it follows, also, just as clearly, that Morton was aiding and abetting and assisting Metalski, and Metalski, naturally, was aiding and abetting and assisting Morton, but the State is satisfied with its proof that Metalski was the man who actually fired the shot, but the State also states that on any theory that counsel can suggest, this defendant is guilty of murder in the first degree.

Mr. Sedam: Well, in answer to that, if your Honor please, it is absolutely essential and incumbent upon the State to name a principal before there can be somebody named as an aider and abettor.

Mr. Hicks: The defendant can be called such on all these theories, if it please the Court. I mean, there is no question about this robbery in Philadelphia, and there is no question but that the arrest of the defendant, Metalski, and his companion, Morton, would have resulted in the discovery of that robbery, and that the shooting was a natural and logical thing for them to do to avoid that discovery. I don't know of any principle of law which says that the State shall say, "We are only going to consider at this time a portion of our testimony."

Mr. Sedam: My answer to that, if your Honor please, is that there are two theories advanced by the Prosecutor. One is that Metalski fired the shot which killed Yenser, in which event, if Morton were alive, he would be held as a principal because of aiding and abetting. Now, the converse is equally true. If they were charging that Morton fired the fatal shot, I assume that Metalski would be held as a principal on the theory of aiding and abetting; and I think that the defense is entitled to know, when the State is going before a jury with a case of this kind, whether they are insisting the Metalski fired the shot.

Mr. Hicks: Now, if it please the Court, if Mr. Sedam can cite any decision of any Court in the State of New Jersey which gives any judicial, legal reason to make any such demand or to make any such statement as he made, why, I would certainly like to see it.

The Court: This case will have to go before the jury, as the Court will charge the law later, upon one or more of three propositions that have been brought out in the evidence: First, that Metalski wilfully, deliberately, and with premeditation, fired the shot which killed the trooper; secondly, the Metalski was in the act of perpetrating a robbery, and that he was fleeing with the loot, and, under the statute, if that were true, and a killing resulted, he would be guilty of murder in the first degree; and thirdly, that if it appears that someone, whether the defendant or his companion, committed a murder such as has been suggested under the first two propositions, then it would be for the jury to say whether or not—if they should find that the murder was committed by

Morton, whether or not the defendant was present and aiding and abetting in the murder.

(Mr. Sedam made a closing address to the jury on behalf of the defendant.)

The Court: Let the jurors, only, take a brief recess.

(The jurors had a short recess.)

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## SUMMATION FOR STATE.

Mr. Hicks: Now, if it please the Court, Madam Forelady, and Members of the Jury:

Listening to the summation of counsel for the defendant, as is usual, has given me a number of other thoughts in connection with the evidence in this case than I had before. I don't think it is necessary for me to make this summation in any detail to show you the fallacies or inconsistencies or mistakes that were made in the presentation of the facts from the defendant's standpoint. I think that you, and each of you, from your remembrance and recollection of the testimony, due to the very careful attention which you gave every witness that was on the stand, have a very vivid and correct recollection of what the testimony of these witnesses has been in this particular case.

It is, I suppose, necessary in a case of this kind, and probably one of the few defenses that can be offered, for counsel to belittle witnesses who have appeared for the State, and to attempt to attribute to them some improper motive, either of a desire for promotion on the part of a police officer, or something of that kind, and to shout that these officers went upon the stand in this case and have

attempted to and have favored the State's side of the case in their testimony. I suppose it is all right for counsel in one breath to say that Trooper Matey is a fine, square shooter, and then in the next breath go after him because he says that the operator and driver of this Chevrolet coupe had a light-colored hat on, and then to criticize all the officers who introduced any testimony that counsel can recall, such as Officer Malsam, Officer Geiger, Officer Schultz, and then even go after Captain Jones, an expert of many years standing.

Mr. Sedam has in this case, I think, done the best that he could possibly do with the kind of defendant which he had to work with and for, and with the facts with which he had to contend.

Now, the duty of the Prosecutor and the Prosecutor's office is to present the evidence which has been gathered in this investigation to you, Ladies and Gentlemen of this Jury, and to attempt to assist you in your deliberations, to assist you in reaching a verdict in this case, by in this summation detailing to you, refreshing your memory, if necessary, upon certain particular parts or points which have been brought out in this case, and which appear to me to be important and necessary when you consider what your decision should be.

We have a number of facts which are admitted, and counsel in his summation for the defendant practically said here, "All that I am asking you ladies and gentlemen of the jury to do is to go out and bring in a verdict of guilty of murder in the first degree, but with that verdict bring in a recommendation of mercy". While it is hard for me to see how you could possibly consider any other verdict than murder in the first degree, yet, that

statement of counsel at the close of his summation helps somewhat, and shortens the summation which I am making at this time.

We have the defense admitting certain facts. They admit that this defendant, Eddie Metalski, was convicted on at least five occasions, and he served terms on each of these convictions in as many prisons; and as Mr. Sedam has detailed those prisons to you and told you about that, I am not going into that. It is admitted that he escaped from North Carolina and came up here, north. It is admitted, too, that the defendant and this other man, Morton, were in the automobile from which this shot was fired which killed Trooper Yenser. It is admitted that prior to the murder of Yenser, this defendant, Metalski, and Morton, held up a cafe in Philadelphia.

Now, let us take the testimony of the State's witnesses. The doctors, you will recall, on Monday, testified that death was practically instantaneously. Doctor Wilentz, when called to the stand, said that there were fifty or more pellets or bullet wounds on Yenser's face, and his face was badly torn. You have these pictures of Trooper Yenser, which were introduced in evidence, and I am sure that these pictures bear out in very vivid detail the testimony of Doctor Wilentz. Those pictures show another thing which is quite important in this case, and that is that the shot which killed Trooper Yenser on the morning of November 9, 1935, was fired at very close range. You will recall along those lines that Trooper Matey testified that there were no other bullets or no other pellets in this trooper's automobile; no glass was broken; and that the only other bullet in the car was in the front of the car, in the radiator.

Now, let us take Trooper Matey. You remember how he got on the stand here, and he told a very coherent, very sensible story of exactly what happened on the morning of November 9. He testified that on two occasions the automobile which he was driving drew up alongside of this Pennsylvania Chevrolet coupe. Now, mind you, these troopers had no idea that Eddie Metalski and Morton were in this car. They had no idea that the two men in the automobile had a sawed-off shotgun and a revolver. They went after that Pennsylvania car because it was speeding; and when they got up close to that Pennsylvania car the first time, got up alongside of it, Trooper Matey says that Yenser blew his whistle when they were right alongside of that Chevrolet coupe. That is contradicted by the defendant.

You have got to expect, Ladies and Gentlemen, that in some respects the defendant will contradict the State's witnesses. You will find that those contradictions refer to matters which are of great importance to the case. In other words, if there is something that is of somewhat minor importance and the defendant knows that the State can prove it anyway, and the State shows that by putting the witnesses on the stand, such as we did in the case of—well, we will mention Mr. Hanson, who was going to testify as to the button. When Mr. Hanson gets on the stand, and he tells who he is and what he has done, why, it is admitted that the button came off the coat of Metalski.

He blew this whistle the first time. The second time when he drew up alongside of this automobile, Trooper Matey says they were exactly opposite the front seat, or the front seat was opposite this Chevrolet. The shot was fired, and Yenser slumped

against Matey, killed almost instantly by that shotgun charge fired at very close range, three or four feet. It was about that time that Matey looked at this Chevrolet coupe and saw that the driver had a light-colored hat on. There isn't a man or woman on this jury, or in the courtroom, including Mr. Sedam, who, if someone had fired a shot, or there had been an explosion right within two or three feet of your automobile, whether you were going ten miles an hour or eighty miles an hour or a hundred miles an hour, you could not have helped looking to the right to see what had happened. I would have done it, and I am sure anybody else would, and that is exactly what Matey did.

There is no testimony that I can recall at all in the record on the part of Matey or anyone else that he identified this light hat up near Spilatore's Garage or any other place, except on the one or two occasions when he drew up alongside of this Chevrolet down near where the murder was committed. You remember the condition of the troopers' automobile. How in the world could this crime have been committed in the way this defendant said? If the troopers' automobile never drew alongside of the Chevrolet coupe, and a shot had been fired, there isn't any other way that Yenser could have been killed except that shot came through the windshield of his automobile. There isn't any testimony to the effect that he was standing out on the running board or anything of that kind. He was sitting in the front seat of that automobile, and the window on his right was open, and the only way for that shot to come in that car and kill Yenser without breaking up the glass in the troopers' car was for that shot to be fired when the Chevrolet was right alongside of Yenser,

and fired right through that open window. He had lowered the window so as to be in a position to blow his whistle at this Pennsylvania car.

Now, the shotgun and the revolver shots. Trooper Matey says that there was one shot fired first from a shotgun, and that was when they were alongside; that after this shot was fired or as the shot was fired, he dropped back and spoke to Yenser, and called him by name, and asked him to answer, and there wasn't another word said because Yenser was dead at the time. Matey dropped back. As soon as he dropped back and spoke to Yenser, the glass in the back of this Chevrolet coupe was broken out, and there were some other shots fired. Matey says the first one or two shots were from a shotgun, and the rest of the shots were from a revolver, and they found in this Chevrolet coupe, when it was abandoned down in Elizabeth, two empty shotgun shells, thereby absolutely confirming everything that Trooper Matey said in his testimony about those shots.

You have the revolver bullet, which has been introduced in evidence, which was found in the radiator of the troopers' automobile—the automobile that was being operated by Matey and Yenser on the morning of the murder. I am going to take up Metalski's story as to the breaking of the glass and the firing of these shots later.

Now, Officer Malsam. The defendant does not like his testimony. In his opening to the jury the defendant's counsel said that when they got to Linden, they saw two police officers. Those two police officers were on the stand. One of them was lighting a cigar, you will remember. Officer Kopec, who was the man who was on foot patrol, got in

Malsam's car down at the intersection of Wood and Elizabeth Avenues; and as soon as he got in, he pulled out a cigar and started to light it; Malsam, on the other hand, saw him when he was in this car, I think you may recall correctly. He showed us here on this desk, how his automobile was coming down Elizabeth Avenue going towards Rahway, and there was a call box over here on this corner, and he pulled in with his automobile, parked on the wrong side of the street, and that his lights were headed right straight towards Wood Avenue at an angle, and that this Chevrolet coupe came down and stopped within ten or twelve feet of his car and right in front of his lights, and that the man sitting nearest to him in this Chevrolet coupe was this defendant, Edward Metalski, and that he went down to Newark Police Headquarters, if I recall correctly, his identification was made in Newark Police Headquarters—before this fellow Morton was caught, or, I mean, before he had committed suicide, and I think his identification was a good one, too. He was absolutely positive as to Metalski. He picked him out of the lineup, and he didn't know anybody else in the lineup. No frameup or anything of that kind in connection with the lineup.

He said that Metalski was this man that was riding in this automobile, and he had a dark slouch hat on. He did state the other fellow had a light hat. Now, there is certainly in your minds and in my mind a great deal of difference between a light hat and a hat like this (indicating); between a light gray hat and a dark blue or dark gray, or whatever you want to call that hat such as was worn by Metalski, and he admits that that is his hat. He says that Metalski lighted a cigarette, and with the

evidence which was found on Metalski at the time of his arrest, you will find a pack of cigarettes, or what is left of a pack of cigarettes.

Do you recall that as Malsam was testifying, Mr. Sedam was aided in his cross examination of him by some remarks from the defendant, Edward Metalski, who apparently said, "Ask him about the bank." Now, I don't know why this defendant, having resided in Philadelphia for such a long time —I mean, a long time compared to the time that he was out of jail—should know so much about a bank building down here in Linden, on the corner of Elizabeth and Wood Avenues, but he apparently did.

We come to the testimony of Officers Keck and Carolan and the other Elizabeth police officers, you will recall; and when you think of their testimony, I want you to remember that this defendant says, "Why, there was no one chasing the automobile at all." He was going seventy-five or eighty miles an hour, because he was frightened, or you will remember whatever explanation he gave. There was no one chasing him along the super-highway. He turned off on Wood Avenue because Morton told him to, and no one chased him through Elizabeth; and when he stopped in Elizabeth finally, he stopped because he had to go to the toilet. Now, that is his testimony.

Officers Keck and Carolan say that one of these men had a light hat or a light cap, and that he was the taller of the two. There we get that light hat, light cap in there again. He was the taller of the two, and I think it was Carolan that was chasing the two down the street after they came out of this car. He went around the corner, and attempted to cut them off, and the taller of the two cut across

the railroad yards, and this other man, Edward Metalski, continued to run on down the street. He had a dark hat and a dark overcoat on; and that Metalski—if you believe that he was the man that was running there down the street—the defendant himself says somebody was shooting at him—turned around and fired one shot at that Elizabeth officer. Now, who had that gun? Who had a revolver? According to the defendant, nobody had a revolver. According to the Elizabeth police officer, the shorter of the two, and that means Eddie Metalski, had a gun, and attempted to shoot the police officer.

Now, that is this unfortunate, very gentle appearing chap that we have on trial here on this indictment. Then, we have the button, the button which came off his coat, and which I mentioned before. Officer Geiger, in his search of Metalski, and you will remember that in his cross examination, Mr. Sedam tore at him—if Geiger could identify Metalski and did identify him as the passenger in the automobile; and we introduced the evidence which Officer Geiger found on the person of Metalski at the time of his arrest.

You have the testimony of Barlow, Hullfish, and Lepp, who were out in this diner, and all along the line the fact which has been stated before, that Morton had a light colored hat on, and that issue, Ladies and Gentlemen, is very important in your effort to determine exactly who fired the shot and who was the passenger in the automobile. Now, it is suggested that these defendants—or, at least, Morton, were quite drunk, although these witnesses do not say so. They say that Metalski and Morton, I believe both had some drinks, apparently. Nobody saw them take any drinks in

this lunch wagon, and you will remember that this stuff was stolen from the tavern down on Ridge Avenue in Philadelphia, and that these bottles had the price of the drinks marked on them, and you will see those pencil marks on the bottles. Morton was drinking out of the cognac bottle, and just look at the large quantity that he must have drunk out of that bottle, unless, of course, Mr. Lepp's story is true, that he had a drink out of it, and, probably, also, some drinks may have been sold out of it in the tavern before it was ever stolen by these two defendants.

So, I submit to you, Ladies and Gentlemen, that no one in this party was drunk at all—either Morton or Metalski. Morton and Metalski had just pulled a highly successful holdup. They thought they had gotten away. They had money. They were going away for the week-end, I guess, it being a Friday night, and Morton was apparently a rather jovial individual at that particular time. He was highly congratulated over the success of this holdup, and the fact that he had such an enterprising and successful companion as this defendant, Eddie Metalski.

In connection with this tavern, I think one of the best witnesses that was produced here before you on the part of either the State or the defense was James Burns of Philadelphia, the insurance investigator. He gave a very vivid description of that holdup of the tavern on Ridge Avenue, at about two o'clock or 2:05 A. M. on the morning of November 9, 1935. He says that this defendant, Eddie Metalski, had a revolver in his hand when he came in that place. Margie White says he had a revolver; and Eddie says it was this flashlight here; and when you go into the jury room, if you

will just take this flashlight and take that revolver and see how closely they look alike, I think you will agree with me that Mr. Burns and Miss White were telling the truth about that holdup.

And, then, we have James Burns here on the stand under oath, telling you, Ladies and Gentlemen, of this story of the defendant. This defendant said in connection with that holdup, when he came in there, he said to Morton, the man with the shotgun, "If they make any noise, blow their God damn brains out," and that statement on the part of James Burns has never been contradicted or denied by this defendant, and he was on the stand, with plenty of opportunity to say. The only thing he said about that holdup was, "Why, I went there, I was frightened, I was scared. I was out with a vicious companion." He has been in jail five times. Morton has been in jail one time, but he was out with a very vicious companion, and all he did was to do exactly what Mr. Morton told him to do.

You remember the very gentle way in which this defendant struggled with Margie White for the possession—the poor waitress—for the possession of her handbag; and, yet, it is suggested that he never commits any crimes of violence. The defense that has been put in in behalf of him is almost the same kind of defense that you would put in for the owner of a dog. A dog is always entitled to one bite. Apparently, the defense in this case is that Metalski never having murdered anyone before should be acquitted in this case.

Now, as to the finger prints. Much ado has been made of this shotgun, and that there were no prints found on this shotgun, and if you will recall the testimony of Sergeant Schultz, you will remem-

ber that this examination of this shotgun was made on a Saturday morning, November 9, 1935, about the time or shortly after the arrest of Edward Metalski; and who were the police trying to find then? They were trying to find out who was the man who was with Eddie Metalski at the time of the murder of Trooper Yenser. That is what they were trying to find out, and there was no one more anxious than Sergeant Schultz and the other police authorities who worked on this case to find the finger prints on that shotgun and find out who was with Eddie Metalski at the time of the commission of this serious crime; and Sergeant Schultz came in here and very honestly testified, just as he reported at that time, within a few hours after the commission of the crime, that there were no prints, either of Edward Metalski, and no prints of Morton or anybody else which could be deciphered.

What happened after this holdup in Philadelphia? It is true enough that at that time Morton had the shotgun. He had this sawed-off shotgun, and Metalski had the revolver. Now, we have come out of that tavern, and Morton didn't put that shotgun in his pocket. It was too big. He couldn't do that, and he put that shotgun, or Metalski put that shotgun probably on the shelf which is back of the front seat of that automobile, the only place where he could have carried it; and Metalski put this revolver, the very same revolver that is in evidence in this case, in his pocket, and they started away with Morton driving the automobile.

Take the witnesses more or less in the order that they appeared on the stand. You will recall that after the finger print experts, the Sheriff testified as to the escape of Metalski, and, certainly, if Metalski had a good defense, if Metalski

were innocent, he didn't need to attempt any such escape; and we have the testimony of Lawrence Offenbacker, who was seriously injured by this very kind, gentle Metalski, and there was absolutely no need for that assault.

Then, Detective Arthur. Go back to Philadelphia. Detective Arthur got on the stand, and there seemed to be no insinuations or no statements which can be made about him, and he testified that he found in Metalski's home, wrapped up in a man's shirt, two shotgun shells. You are going to take those shotgun shells in the jury room with you, and you will find that they are exactly similar in every respect with the shells that were found in the Chevrolet coupe, and with the two empty shells which were found in the same automobile. You will find that there are two shells here which, apparently, are a little darker color than the shells that were found down in Mr. Metalski's room in Philadelphia, and I want you to remember when you compare the color of those shells, if you think such comparison is important, and I think it is, that those two shells were the shells that were taken out of the shotgun, and when you put fresh shells in the shotgun, there is usually some powder or yellow or something of that kind which assumes the color of the shells somewhat, and particularly, I want you to know that this shotgun had been recently fired.

Now, we take Mr. Metalski. He had an eight to twelve year sentence in North Carolina, which he had just begun to serve. He says he saw Morton about a month before the murder, that being about October 8, but he is not certain about the time, and he says Morton was very sore at him, and continued to be sore, and that Metalski himself

was very frightened, and was still frightened a month later. Metalski was persuaded by force and by threats to go out with Morton on the night of November 8, and to drive him around to the various places where Morton wanted to go, and where Morton had friends.

It takes a very clever defendant or a very clever witness to lie about so many things and not to get mixed up at one time or another, and I am going to read to you from Metalski's testimony on direct examination by Mr. Sedam:

"Question: Now, Edward, you tell us what happened in the tap-room, tell us frankly?

"Answer: Well, he went to a number of places, friends of his, and tried to borrow some money to go to Newark"—he being Morton—"so he finally came down to this neighborhood. He knew the town good, and knowing that I was—been in trouble before, and he had been complaining to me about my being indebted to him, he told me I better help him, so he drove by this place, and he said, 'Come on with me,' so I went in with him."

Now, the part of the testimony that I want to emphasize to you is that part in which this defendant, speaking of Morton, and riding around in the automobile on Friday night, November 8, said—and the stenographer has it so recorded—"So he drove by this place."

In another part of this defendant's testimony, getting down to Elizabeth now, and, of course, they were not being chased down there, Metalski said, "And I really wanted to get away from him, so I told him I had to stop at a—well, I would say, lavatory, and he stopped and got out, and I got out." Metalski says that he, Metalski, was driving the car. In his own testimony he refers to

Morton as the driver of the car on at least two occasions in the course of his testimony.

You have Metalski telling what it would have meant to him if he had been turned up; that he was afraid Morton might turn him up, tell the police about it; and when you consider why anyone should shoot this trooper on the morning of November 9, you have got to consider and take into consideration in reach your conclusion which one of these two men had the greatest interest in staying free. Which one of these two men is more likely or was more likely to commit this crime in order to stay out of the clutches of the law? Morton—not wanted anywhere. He served his term and had been discharged; been living down in Philadelphia with Marie Morton for a year and a half, working for his father in the sign business; apparently not going entirely straight, or he would never have been out with Metalski that night, and he probably would not have been out with Metalski on any other time, for Marie Morton said that they were talking about having been out before, and which Eddie denies.

Metalski says, "Oh, they wouldn't take me back to North Carolina." No, they weren't interested in whether Eddie completed that eight to ten years' sentence down there. Well, he would have to go back to Elizabeth to answer a charge there, and, of course, he had the possibility of being arrested for this stickup in Philadelphia, because if any police officer should arrest these two men in this Chevrolet coupe and find in the coupe a sawed-off shotgun, a revolver, and about seventy or eighty dollars, or whatever it was, in silver, and other things, the police officers would be very likely to ask questions, and they would be very likely

to find out what happened in Philadelphia, and where Eddie Metalski really belonged.

Metalski said, in answer to what it meant to him if he were arrested, he said that his wife, that he had married on September 14, just a few days after he returned from down in North Carolina, he said, "It meant everything to me. It meant everything to me." Morton—what would it have meant to him? He was not wanted in North Carolina. He didn't jump bail in Elizabeth. He had this holdup rap with Metalski down there in Philadelphia, true enough, but as between the two, Morton had much less to expect and much less to fear from the law than did the defendant on trial before you.

None of you ladies and gentlemen have had the experience on the witness stand, and many of the State's witnesses have not had the experience on the stand that this defendant has. He is almost an actor. He gets on the stand, and he sits down, and he acts so meek and mild, it is very hard, probably, for us to believe that when Metalski is out somewhere in the night time and has a gun in his hand, that he is on entirely different type of person, although if you had been in Trooper Matey's shoes, and you had been riding along in that automobile, you would have seen a different side of Metalski. If you had been sitting down there in the cafe in Philadelphia, you would have seen a different side of Metalski from what you saw here on the stand. If you had been in Lawrence Offenbacker's place over here in this garage on Jelin Street, in New Brunswick, on the day of his escape, you would have seen a different side of Metalski from what you have seen here in the courtroom.

He has had no work since 1929. He always managed to get along. He said he did a little gambling. He owned an automobile. When you ask him any question that he doesn't want to answer, he just says, "I don't remember." I would like to take the time to count that many "I don't remembers" that this jury and this Court heard today and yesterday. We have Morton giving the directions as to what was to be done by Metalski, and we have this very unusual route which was taken on this trip after the shooting of the trooper. Now, mind you, they didn't turn off the super-highway because they thought that after shooting this trooper somebody might be looking for their car. No, no, there was no trooper's car ever in back of their automobile, according to Metalski. There was no one pursuing them. They just turned off because it was some fancy of Morton's, and they just continued along, and no one pursued them through Elizabeth at all.

There was no reason for this shooting. Why, Metalski didn't know, and never asked, and Morton never told him why he broke the window out and he started to shoot out the back of the automobile. That is Metalski's story: He doesn't know. He didn't know until one of the police officers down in Elizabeth told him that a trooper got shot. That is the first time he knew, and then he didn't know anything about any trooper's automoble, and then when you get down to the point where these two men left the automobile, Metalski, in one part of his examination said, when asked about leaving the automobile, "I didn't pay no attention to Morton. He went along by himself"; and in another part of his testimony, he said, "I ran to get away from Morton."

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You can take his testimony, Ladies and Gentlemen, and you can find almost any story that you want most of the time, but find the truth. This Fanning automobile license, which this confessed criminal had with him—he tells you the story about finding that. He is denying, Ladies and Gentlemen—he is denying this charge against him—this charge of murder—just as he denied other charges in other courtrooms, and he has been convicted of those other charges and served sentences in connection with them.

It is not necessary for me to go over this rebuttal testimony very much with you, but I want you to remember that Mrs. Morton's testimony was to the effect that when Morton left there the night of November 8, he showed no signs of going back with Dot Johnson or anybody else. He didn't take any of his clothes or possessions with him. He merely went out with Eddie Metalski, and I want you to remember this, too, that Mrs. Morton had been living with this man, as his wife, for a year and a half. He had been getting along with her apparently all right—no testimony to the contrary. Morton was apparently happy, and so forth, and when Metalski came over to see him on November 8, before they went out, there was no argument, there was no fight, there was no bitter feeling between them; and they went out together.

I am inclined to be sympathetic. I am inclined to feel sorry for the relatives, the family of this defendant, Edward Metalski. He has certainly caused them a lot of sorrow and a lot of trouble in the past, hasn't he? I am also inclined to feel sorry for this fine young man, Trooper Yenser, shot down, with a fine future ahead of him in the

New Jersey State Police, and for his family; and I say to you that if there is any feeling of sympathy in this case, that sympathy should be with the wife and family of Trooper Yenser, as well as with the family of this defendant, and the kindest thing that can be done for the family of Edward Metalski is for you ladies and gentlemen of the jury to dispose of this case against him once and for all by your verdict in this case. When you consider this revolver, and this bullet, which was introduced in evidence today, was fired from that revolver, and was found in the radiator of the troopers' automobile, and that the revolver was in Metalski's possession when he was arrested in Newark, there isn't any question about it.

Now, who can explain that? Metalski can, and he has not done it. He is the only man in this courtroom and anywhere else that knows what he did with that revolver after he fired a shot at Patrolman Carolan down in Elizabeth, and then he went to the Elizabeth railroad station, because I don't believe he had it with him, because it is hard for me to believe that after all these searchings that he went through, that he could still carry that gun down here to the jail and keep it until the time of his escape. I don't believe Mr. Sedam can answer that question, but his client certainly can.

Fear? Metalski was afraid. He was afraid of Morton in the tavern. He was afraid, I suppose, when he escaped from the jail. If there is any characteristic that Metalski lacks when he has a gun in his hand, at least, it is fear. Who was afraid in this case? What lesson, what conclusion do you draw from the suicide of Whitey Morton? Whitey Morton, a petty criminal, he had gotten

in too fast company. He was a local boy down there. He had not been in jail down in North Carolina, in St. Louis, and other places; and when he saw that apparently he was going to take part of the blame for the killing of Trooper Yenser, he couldn't stand the gaff. He didn't have the same opinion that this defendant has, that "I can get out of any jail there is. I have done it before, and I can get out again."

Life imprisonment—what does that mean to this defendant? Just another jail that he can attempt to and try to figure a way out of. Morton didn't have that same feeling. He didn't have the feeling of confidence; he didn't have the experience in crime that this defendant had, and he took what seemed to him the easiest way out. There isn't any doubt in my mind, but that this defendant, Eddie Metalski, while sitting alongside of Morton in this coupe the morning Trooper Yenser was murdered, saw that State trooper's car come alongside; that he saw the troopers in uniform in the car, and he hard that whistle blow; that he told Morton, probably, to speed up and get away from the car; that when he saw the car was coming up alongside, he reached in back of him, and he took down that sawed off shotgun; that as the trooper's automobile came up alongside, he put that shotgun right out in back or in front of Morton and fired that shot that killed Trooper Yenser; that after he fired that shot, he knocked out—this defendant, Eddie Metalski—that window in the back of that car, and he fired another shot from that shotgun; and you have the two shells in evidence that were discharged at that time; and then he took that revolver out

of his pocket, and he continued to shoot at the troopers' car with that revolver.

That is the testimony, and those are the facts upon which you, Ladies and Gentlemen of the Jury, should find Eddie Metalski guilty of murder in the first degree—guilty of murder in the first degree without any recommendation. Certainly, society has given him plenty of opportunities to reform, and there is no reason why we should allow a man like that to be supported for the rest of his life by society, and to be given a chance, possibly, of committing other crimes of violence, of injuring other people. The people who are entitled to consideration are the family of this trooper who was so foully murdered in Middlesex County, in November, 1935.

## Court's Charge.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

December Term, 1935.

STATE OF NEW JERSEY,

*vs.*

EDWARD METALSKI.

New Brunswick, N. J., January 8, 1936.

Court's charge to the jury by HON. ADRIAN LYON, Judge, as follows:

Members of the Jury: The defendant, Edward Metalski, has been indicted for murder by the Grand Jury of this county. The indictment is phrased in the usual form of indictment for that crime, and it is in words as follows: "That the defendant, Edward Metalski, did on the 9th of November, in the Township of Woodbridge, in this county, wilfully, feloniously and his malice aforethought did kill and murder one Warren G. Yenser."

Warren G. Yenser was the victim of this deed. It happened on the 9th of November last. It cannot avail very much for the Court to go into detail upon all the testimony in the case, which has taken the larger part of three days. You are to be the judges of the facts, and the Court must rely upon your memory and construction of the facts to find the defendant either guilty or innocent as you construe and find the facts to be, and in accordance with the law which the Court will presently lay down for you.

Suffice it to say that the circumstances which are closely connected with this occurrence which resulted in the death of Yenser began in the State's Prison, in New Jersey. Metalski had been guilty of and had been convicted of many crimes, the effect of which in this case the Court will later advise you. He was in the State's Prison, in New Jersey. He met there one known as Whitey Morton, who was also an inmate of that institution, they both having been sent there for crimes that had been committed.

Metalski had known Morton prior to this time, and Morton said to him that inasmuch as his term would expire before his, Morton's, term would, if Metalski would go to the home of one Dorothy Johnson, she would help him in some way; that Metalski's time did expire, and he was released, and he went to the house of Dorothy Johnson, and because of what ensued, the intimacies of which have not been revealed, he and Dorothy Johnson went on a trip to the West and landed in Canton, Ohio, and finally went down to North Carolina.

There in North Carolina or in the State of West Virginia just over the line from North Carolina, Edward Metalski and Dorothy Johnson were taken into custody, because of some crimes which it had been alleged they had been guilty of in North Carolina; so that they were both sent to prison in North Carolina, the woman to the women's ward, and the defendant to the men's ward, which finally resulted in his being put out on the prison farm, his sentence being from eight to twelve years. After he had been there upon the prison farm for a little while, he managed to fall into a ditch and hide, and as a result escape from the custody of the prison authorities in North Carolina and come North.

Later, Morton was released from the prison. He had sent word to Metalski, whom he casually had seen in Philadelphia, asking him what he was doing out, and having sent word at that or a later time that he wanted to see Metalski.

Metalski went to Morton's house on one occasion, as he testifies, and as the woman who was living with Morton also testified, to inquire for Morton, but found that Morton wasn't home. He went there again on Friday evening, November 8, and remained there in the home of Morton, Mrs. Morton, so called, being present, and stayed there about an hour, being engaged in casual conversation, which, the so-called Mrs. Morton said, was of a friendly nature.

Later, these two persons went out together. It is testified that they went to several places. The defendant says that there was a conversation, not in the presence of the woman, Mrs. Morton, but in her absence, when Morton told Metalski that Metalski must take him to the place where Dorothy Johnson lived, which Metalski had told him was his mother's home, at 48 Lentz Avenue, in the City of Newark; that they didn't have any money and didn't have any car. It was suggested by Morton that they go to this garage that has been mentioned and there get a car.

There is a dispute, of course, as to just what happened, which resulted in the getting of that car. The defendant said that the car was obtained by Morton's getting permission from the keeper of the garage to use the car upon condition that it be returned before daylight the next morning, inasmuch as it belonged to a man who was having his car kept there in the garage. You have heard the dispute about that.

The garage keeper was produced and said that Morton did come to him; that he had known Morton some time and was rather familiar with Morton, as he came to the garage, perhaps, two or three times a week; that Morton invited the garage keeper out to have a drink, and as the garage keeper said he was not drinking at the time, he was persuaded by Morton to go for a pack of cigarettes; and that he did go for this pack of cigarettes.

The garage keeper left Morton at the place where the cigarettes were purchased and came back and went upstairs to get a car down; and, as he corrected his testimony afterwards by saying, that when he was upstairs, he heard the car being taken out, the inference being, as he said or he presumed, it was taken out by Metalski; and that Morton didn't come back. The car was gone. He reported it to the police as being stolen at one-twenty in the morning.

It is testified by Metalski that they drove around the City of Philadelphia in the direction of Morton's home; that Morton asked Metalski where he was taking him to, and Metalski said he was taking Morton to his home; that Morton said he didn't want to go home, but he wanted to go to Newark to see Dorothy Johnson. They didn't have any money. It is stated by the defendant that Morton knew the conditions in Philadelphia, and they finally landed in this Palm Garden Cafe, on Ridge Avenue.

It appears by the testimony of those who were in this cafe that these two men entered that cafe; that the bar ran along the side of the building, presumably with the front of the bar by the door and the rear of the bar out toward a men's room;

that Morton had the sawed-off shotgun and stood at the front of the bar, pointing it in the direction of these people who were there. Metalski went around to the end of the bar. As he was doing so, he snatched or attempted to snatch the purse of this young woman who was the waitress in the place. There was some dispute about that.

Mr. Burns, I think his name is, said, "Give this girl a break," and, finally, she was given a break, which meant, I suppose, that they would not take her pocketbook, but let it go. Metalski then went around the bar and took money out of the cash register, which was found in his possession, or a large part of it, at the time that he was afterwards apprehended.

Those who were there testified that Metalski had a revolver; and that he said something to one of the inmates there, that if he didn't go back there, he would blow his brains out, or similar words. Metalski also took from the bar the two bottles of liquor which have been identified and which are before you. They then left.

Of course, the principal dispute, I suppose, or one of the principal items of dispute in the case is as to who was driving the car. Metalski insists that he was driving the car; that he took it out of the garage at the suggestion of Morton; and that he was driving it along the road. It is suggested on the part of the State that Morton was the one who was driving the car.

Suffice it to say, they went along the principal highway from Philadelphia to New York. I believe Metalski testified that they stopped at one place for gas. They finally came to this diner near Plainsboro, in this county, into which they entered. They were there a half hour or more,

ordering some food and eating it. One of them, presumably Morton, took these two bottles of liquor into the diner with him and offered a drink to some of those who were there, the testimony being, I think, that two of the people who were in the diner did accept his invitation and did drink from the liquor which he produced in these bottles.

It is testified by the patrons in this diner that Morton was rather noisy and boisterous; that Metalski was rather quiet. They went out of this diner and proceeded north along the highway toward the City of Newark.

It is admitted in the case by both sides that the trip was a fast one. The trooper says that the car was being driven at a very fast rate, and Metalski, himself, says that the car was being driven at a very rapid rate. I think his words were "very fast". He gave his reason for the car being driven as fast as it was, the reason being, as you have heard, that it was the command, as he says, of Morton in his attitude of mind in reference to this trip, which was to take him to this girl, Dorothy Johnson, in Newark.

The rate of speed of the car and the fact that it was steaming attracted the attention of these troopers. It was first noticed by one of the troopers at Spilatore's Garage, somewhere not far from this place. They started later in chase.

It appears that the car in which the defendant was riding must have gone off upon another road or made some stop, so that the troopers went past and later turned around and were on their way back. When they were near the Bonhamton road, they met this car still going on its journey toward Newark. They then turned around and gave chase, both going very fast.

The chase, according to one of the troopers, continued for the space of about three and a half miles. It is testified by Trooper Matey that on one occasion Yenser blew his whistle for the car to stop. It didn't stop. They proceeded on to the scene of the shooting, when the troopers' car drove up, as Trooper Matey says, by the side of the car in which the defendant was riding. Trooper Matey says that the two cars were parallel; that Trooper Yenser had his whistle in his mouth and was about to blow a signal for them to stop, and that at that moment a blast came from the car in which the defendant was riding right in the face of Trooper Yenser and killed him almost instantaneously.

Of course, such an occurrence to the car in which the troopers were riding would have an occasion, I suppose, to slow it up. At least, the car in which the defendant was riding seemed to shoot ahead, and at once began to outdistance the car in which the troopers were riding, and did outdistance it so that Trooper Matey could not catch it. When the trooper saw that it was impossible for him to catch this car, he went into a place to give the signal, and the signal was immediately given by the police to catch this car which had been described.

When the car in which the defendant was riding proceeded ahead of the troopers' car, it was observed that the rear window of the car was broken. As this car in which the defendant was riding was proceeding on, with the purpose as set forth, to go to the home of his mother in Newark, instead of proceeding on in the usual way that one would go to get to Newark by the shortest route, the car turned to the left on Wood Avenue, in Linden,

and went to the left to Elizabeth Avenue, I think it was, where there were two police officers, of Linden, there in the performance of their duty.

It is stated by these officers that they observed the car; that one of them recognized one of the persons in the car; that he was called to make an identification, and made that identification upon the alleged recognition, because he said the lights from his car which was parked there were pointed in such a direction that they lighted the side face of this man who was sitting on the right of the car and who, of course, was not the driver; that, also, at the same time, this person lighted a cigarette, the light from the match lighting up his face, which helped the officer's being able to observe the person who was there in the car.

This car proceeded on; shortly afterward these Elizabeth officers had obtained the signal that this car was wanted, because a State trooper had been killed. The next time anyone saw the car, as the testimony here shows, was when it came to the corner of Broad and East Jersey Streets, in the City of Elizabeth, a corner well lighted, because it was one of the principal corners of the City of Elizabeth; and there one of the officers in particular noticed the car, having already received the warning, and said to his fellow officer that he thought that this was the car coming now. The car proceeded out East Jersey Street in an easterly direction and turned down Jefferson Avenue.

In the meantime, the officer there in Elizabeth—I have forgotten his name—commandeered a taxicab, woke up the taxi driver, being early in the morning and being dark, and started to give chase, and chase was given to this car through the streets

of Elizabeth. The car finally wound up at a place known as the corner of Schiller and Trumbull Streets, I think, where the car was abandoned, and the two occupants, the defendant and his companion, got out of the car and started to run away. It is said by one of the officers who was there that Metalski, that is to say, the shorter man of the two, fired a shot in his direction. They ran in an alley, and it being dark, not yet light, they were lost to the officers, and the officers could not catch them at that place; that that place was near the meadows, in Elizabeth, or down, I think, near the railroad. You will remember what the testimony was with reference to the place where this car was abandoned, and from which the two occupants fled.

Later in the morning, the officer found Metalski at the Pennsylvania Railroad station in Elizabeth, where he had purchased a ticket for Philadelphia. He accosted Metalski and asked him what he was doing there, and Metalski told the officer that he had come from Newark, and gave the officer some other answers. The officer then took him to the police station where he was searched and the articles found in his possession which were introduced in evidence here today and yesterday.

These articles consist of a large amount of cash, small silver and some bills, totaling more than forty dollars, I think. He also had the flashlight and some other articles which were produced. Metalski had a dark coat and a dark hat, which are in evidence, and which are admitted by him as his. Near the place where this car was abandoned a button was found, which button corresponds to other buttons on the coat, and it is admitted by Metalski that it is a button off his

coat. There was found in the car this shotgun and the two bottles of liquor and some shells.

It has been testified by certain witnesses that Morton wore light clothes; that he had a light overcoat, a light suit, and a light hat. Metalski said that Morton wore a dark suit, a dark overcoat, and a light hat, so it is agreed by both sides that Morton wore a light hat.

Metalski was arrested and charged with murder. Morton escaped that early morning; went on to Newark to the house of Metalski's mother, where Dorothy Johnson was; and they together, by bus, returned to Philadelphia. The next day, Morton committed suicide.

Metalski was brought here to the county jail and was charged with and indicted for murder. About a month after his incarceration here, he escaped from the jail, and was later found and brought back into custody, the legal effect of which escape the Court will charge you in a moment.

Now, those are the highlights in the picture surrounding this occurrence which resulted in the death of the officer. The State claims that this car, among other things, was driven by Morton. The defense claims that it was driven by the defendant, Metalski. Therein is one of the disputes which you will have to solve from the testimony. The defendant in his testimony said that he did not believe that Morton knew how to drive; that he thought Morton could not drive a car. The woman who lived with Morton said that Morton did drive a car; that she had ridden in a car with him on two occasions, and that he was a fast and reckless driver.

The State claims that three witnesses—I think, three—have identified the one who sat in the

driver's seat as a man with a light hat, and because of that identification the State claims that Morton was the one who was driving this car, and the result of that claim on the part of the State is the fact that it must have been the man who was the passenger in the car who fired the gun which resulted in the death of the officer, inasmuch as the inference is that the man who was driving the car at such a rapid rate of speed could not be the one who could use the gun as effectively as it was used, which resulted in the death of the officer.

It is also disputed in the case by the defendant, as against the charge of the State, that Metalski had a revolver. He says that when he entered this cafe in Philadelphia, he didn't have a revolver, but he had a flashlight, which was exhibited here, and that was the only thing that he used. Another important question which will arise and which the Court will also refer to again is the statement by the defendant that when this shooting occurred, he didn't know why the shot was being fired; that he didn't know they were being pursued by troopers; that when the shot was fired, he didn't ask the man whom he claims fired it, why he fired it; that he didn't know that the trooper, the victim of the shot, was dead or had been injured until later in the day after he had been apprehended; and that he didn't know why Morton had told him that he should go to the left through Wood Avenue, into Linden, rather than keep on in the way that one would naturally go if intending to go where they set out to go, to the mother's house, in Newark. There are other minor matters of dispute, but those are some of the important things which you will have to consider in determining the main questions in the case to which I shall presently refer.

The claim of the State is that the defendant is guilty of murder in the first degree, and the State makes that claim upon any one of three grounds. As you heard the Court say earlier in the day, those three grounds are as follows:

First, that the defendant was guilty of wilful and premeditated murder in that he wilfully and deliberately fired the shot which killed Trooper Yenser.

Secondly, that these men were engaged in the perpetrating of a robbery; that they were fleeing with the loot from officers who might apprehend them for this crime; and that in the perpetration of this robbery under our statute, which I shall read to you, he was guilty of murder in the first degree on that ground.

Thirdly, inasmuch as he claims that he was the driver of the car and that Morton was the one who fired the shot which killed the trooper, then, if that be true, he is guilty of murder in the first degree, because under our statute he aided, abetted, counselled, and procured the death of the officer by the man who did kill him.

Upon the first proposition urged by the State, the statute of this State reads as follows: "Murder which shall be perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premeditated killing shall be murder in the first degree."

What is wilful and premeditated murder? Our Courts have described that in language as follows: "In order to constitute murder in the first degree, and to justify a conviction of that crime, it must appear by evidence, beyond a reasonable doubt, not only that there was an unlawful killing, but that the defendant intended to take the life of

the deceased, and that the intent was carried into execution wilfully, deliberately and with premeditation. The term 'wilfully,' as here used, means the same as intentionally, the inquiry being, did the defendant intend to take the life of the deceased? The next inquiry is, was the killing done deliberately and with premeditation? By 'deliberately' and 'premeditation,' however, the law does not mean that any particular length of time need intervene between the formation of the purpose to kill and its execution. It is not necessary that the deliberation and premediation should continue for a day or an hour or a minute. It is enough that the design to kill be fully and clearly conceived in the mind and purposely and deliberately executed."

Members of the Jury, it is for you to say under the circumstances of this case, whoever did kill this man, whether or not he conceived the design to kill and purposely and deliberately executed it. As the quotation which I have just read to you shows, even if that purpose was formed only a part of a minute before it was executed, so long as it was fully conceived in the mind of the person who did it, and he, in pursuance of his conception to kill, did deliberately and with premeditation kill the trooper, then he is guilty of murder in the first degree, and it would be your duty to so find.

In connection with this you will take into consideration the varying testimony as to just how the shot was fired. It is stated by Trooper Matey that they were alongside of the car when the gun was discharged immediately in the face of Yenser. The defendant claims, and, I think, you will find that there is testimony to that intent, that his companion knocked out the back window of the car in

which they were riding and put the gun out or shot through that opening in the back window. Therefore, if that be true, according to the testimony of the defendant himself,—the fact that he broke out the window by way of preparation in order that he might fire more effectively,—it is for you to say whether that does not show a premediation and a deliberation sufficient to bring the act within this section of the law which I have read to you.

Secondly, it is claimed by the State that even if there were no premeditation within that provision of the law which I have read to you, then the defendant or the one who did fire this shot that killed the trooper is guilty under this provision of the law, namely: "Murder which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, * * * * shall be guilty of murder in the first degree."

The crime of robbery had been committed. There is no dispute about that. The State claims it, and the defendant admits it. It was committed at this Palm Gardens Cafe, where these two persons held up the persons there and stole this money and this whisky, and were fleeing across the State of New Jersey in possession of the loot.

It has been suggested in the case by the defendant, perhaps in the opening or some time during the progress of the case, I don't recall which, that inasmuch as these parties had stopped at this lunchroom near Plainsboro, that the robbery had been completed; that they had made their escape; and that, therefore, there was no escape from a robbery and from the officers of the law which would bring it within this provision which I have read to you; and, further, it was suggested on

behalf of the defense that this trip across the State was not to flee from the officers of justice after they had committed this robbery, but was a trip to the mother's house to see Dorothy Johnson.

I charge you, however, Members of the Jury, that it is for you to consider whether because those two things entered into the defense, these two men were not after all escaping from this crime. They had the loot in their possession. Metalski had the money in his pocket. The two bottles of liquor were in the car. The shotgun, at least, with which this place was held up was in their possession, and the question for you to decide is whether or not these parties were not escaping from the officers of justice because, among other things, they were engaged in robbery.

The law states, in connection with such a condition as that, "If the killing was done in an attempt to conceal the crime and get away with the loot or an attempt at flight, then the killing would be murder committed in the perpetration of the robbery within the meaning of our statute, and so murder in the first degree."

Therefore, if you find the defendant was the one who did the killing under either one or the other of the conditions I have stated, that is, either premeditated or in perpetration of a robbery, then he is guilty of murder in the first degree. But the State advances still another proposition, which is very important in the case, and which, of course, you will be called upon to consider.

Suppose you should find that while such a killing had been committed, as I have stated and outlined to you, it was committed not by the defendant but by his companion, Morton, then you

must find upon the third condition submitted by the State, namely, did the defendant aid and abet the one who did commit the crime so as to make as guilty as the one who did actually do the shooting?

Our law provides as follows upon that proposition: "Every person convicted of murder in the first degree, his aiders"—that is, those who help him,—"his aiders, abettors, counsellors and procurers, shall suffer death unless the jury"—and the rest has to do with another consideration to which I shall later refer. That means that every person convicted of murder in the first degree, and those who help him, who aid him, and abet him, shall be guilty.

The principle, in other words, being stated in our law that those who are present aiding and abetting in the commission of a felony, that is, a crime of this nature, shall be principals, and guilty as well as the one who actually does the act.

Such a condition is frequently illustrated by this: In the case of a burglary, the man who breaks into the house and actually steals the goods, and the man who stands on the sidewalk watching to see that nobody comes, and the man who is a block off in a car waiting to receive the two burglars and the loot, are all principals in the case, and are all just as guilty as the man who actually did go in and steal the goods.

Therefore, if a murder was committed by Morton under the circumstances that I have outlined, and Metalski was by his act present aiding and abetting in the perpetration of the murder, then, of course, Metalski would be guilty of murder in the first degree just as well as Morton would be; and, of course, in your decision upon

this very important point in this case, you will take into consideration, if you do find that Metalski was driving the car, whether or not the driving of that car, the controlling and operating of it, was not a very important point in the commission of the crime of murder.

The car raced across the State. It was going very fast. It didn't stop when this shooting occurred. It is for you to say, Members of the Jury, whether you can believe such a story as Metalski told, in that he didn't know what the shooting was all about; that he didn't ask Morton why he was shooting; and that he went on and never made, apparently, any attempt to find out from Morton why this shooting occurred. That is the story which he has told, and it is for you to say, Members of the Jury, whether you believe such a story as that.

There is another provision in the law to which it is necessary for me to call your attention, and that is this other proviso which relates to murder in the second degree: "Any person who, in committing or attempting to commit arson, burglary, rape, robbery, sodomy, or any unlawful act against the peace of this State, of which the probable consequence may be bloodshed, shall kill another; or if the death of anyone shall ensue from the committing or attempting to commit any such crime or act as aforesaid; or if any person or persons shall kill any judge, magistrate, sheriff, coroner, constable, or other officer of justice,"—this trooper was an officer of justice,—"either civil or criminal, of this State, or the marshal or other officer of justice, either civil or criminal of the United States, in the execution of his office or duty, or shall kill any of his assistants, whether

specially called to his aid or not, endeavoring to preserve the peace or apprehend a criminal, knowing the authority of such assistant, or shall kill a private person endeavoring to suppress an affray, or to apprehend a criminal, knowing the intention with which such private person interposes, then such person or persons so killing as aforesaid shall be guilty of murder."

The effect of that without any qualification means murder in the second degree. I have read to you this section which provides for murder in the second degree. Where there is no premeditation or deliberation, one can only be found guilty of murder in the second degree.

You could only find the defendant guilty of murder in the second degree in the event that you should find him guilty of murder and should also find that the killing was done without premeditation. If you should so find, then it would be your duty to find him guilty of murder in the second degree. Your inquiry and decision in this respect must be governed by the law as I have charged you, that being the quotation which I gave you from the law, which says that the premeditation need not be for any extended length of time, but that if the crime was fully conceived in the mind and deliberately carried out, it would be murder in the first degree,, the important point of this being, was the design to kill fully and purposely and deliberately executed? If so, it would be murder in the first degree and not murder in the second degree.

The Court charges you to consider whether a killing such as this has been shown by the evidence to be could have been other than a fully conceived and a wilful and deliberate and premedi-

New Jersey State Library

tated attempt to take the life of a trooper, and so prevent the capture of this defendant and his companion by the troopers.

I stated a moment ago that I would call your attention to another provision with reference to the verdict of murder in the first degree. The full reading of that provision is as follows: "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed; and every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty years."

As you have just heard from this section, your duty would not fully be performed if you merely found this defendant guilty of murder in the first degree, if you should so find him, because you will recall from this statute that every person so convicted of murder in the first degree shall suffer death unless the jury shall by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed. You will observe that it is your duty to consider whether or not, if you find the defendant guilty of murder in the first degree, you shall recommend imprisonment for life instead of the death penalty. Therefore, after such consideration of the evidence, if you determine that you would be justified in recommending life imprisonment instead of death, then it will be your duty to so find. If you do not find in favor of

the imprisonment for life, and find him guilty of murder in the first degree, then, when you render your verdict, you will simply say, "Guilty of murder in the first degree," and you need not refer to the subject of imprisonment unless you recommend it.

Members of the Jury, it has been brought out in the testimony that this defendant after he had been incarcerated in the jail and was awaiting trial, made his escape and was afterwards apprehended. Our law provides that the flight of one accused of crime or his escape from custody under a criminal charge may be given in evidence upon the trial of an indictment for the crime charged. Such evidence is deemed when unexplained to raise some question of guilt akin to the presumption deemed to arise upon the fabrication of false evidence or the suppression of true evidence. The rule concerning the suppression or fabrication of evidence is as follows: "The suppression or fabrication of evidence or any attempt to destroy or withhold evidence may justify an inference by the jury that such evidence if produced would have been unfavorable to him."

Therefore, the escape of the man from the jail may justify an inference by you that evidence produced at his trial, if he had been tried, would have been unfavorable to him.

It has been brought out in the testimony by the defendant himself and also upon cross examination that he has been convicted of crime many times and has suffered imprisonment for those crimes. The fact that a man has been convicted of crime is no evidence of his guilt of the crime for which he is being tried. The fact that he did commit other crimes which are not connected with

this crime at all is no evidence of guilt of this crime, and you cannot so consider it.

The reason why that testimony is given is because under the Evidence Act of this State, it is provided that a man may be asked on cross examination whether or not he has been convicted of crime, and he may be asked what that crime was or anything else which could be proven by the production of the record, but that is allowed only for the purpose of affecting his credit as a witness.

The defendant has gone on the stand as a witness in his own behalf, and that rule applies to any witness whether he is the defendant in a case or not. It simply has application to the credit which you would give to his testimony, and that is the only weight that that conviction or those convictions could have in this case.

The Court has recited some of the facts in the case, but you must distinctly understand that the Court has done that only to help you in the consideration of your verdict, because you are the sole judges of the facts, the Court being here to advise you only upon questions of law. If your memory of the facts, your version of the facts, or your interpretation of the facts differs in anywise from that of the Court's, you are to take your memory and your version and your interpretation of the facts and not the Court's, as well as any inferences which may be drawn from any unlawful facts which have been introduced into evidence.

You are to draw from those facts which you find to be proved such reasonable and lawful inferences as you think those facts will bear. You are to take into consideration the testimony that has been given by the witnesses, and give to their testimony such credit as you think their testimony

will bear. You are the judges of how far you can credit the testimony of any witness in the case. You have seen them on the stand. You have observed their demeanor. You will consider all the testimony in the case, and then at the end make up your minds as to how much credit you can give to the testimony of the various witnesses who have testified before you.

The burden of proof in any criminal case is upon the State to prove the defendant guilty beyond a reasonable doubt. Every criminal before a court is presumed to be innocent until he is proved guilty, and the proof in order to prove him guilty must be beyond a reasonable doubt.

Now, what is a reasonable doubt? Our courts have described it in language as follows: "This does not mean that every doubt must be disspelled; it does not mean that every possible hypothesis of innocence must be excluded by the evidence. What the law refers to as a reasonable doubt is such a doubt as would exist if the jury, after a careful review of all the evidence, rejecting that which they considered unreliable, and retaining that which they considered reliable, and weighing all the facts and circumstances, find that its judgment is not convinced of the guilt of the person; if on the whole of the evidence such reasonable doubt exists in your minds with respect to his guilt, it is your duty to give him the benefit of it."

That is to say, if your consideration leaves your minds in that condition that you cannot say you feel an abiding conviction to a moral certainty of the truth of the charge,—if you have such a doubt, —it would be your duty to give the benefit of that doubt to the defendant. If you don't have such a doubt, then it would be your duty to find him guilty.

Counsel for the defendant has asked the Court to charge the following requests, which I will, and which it is my duty to read to you, and upon which I may or may not comment.

Mr. Sedam: If your Honor please, I am willing to expedite this, and where you think you have covered certain——

The Court: Very well.

(To the Jury.)

1. "Malice aforethought is the essence of the crime of murder. If there was no malice,"—that is, no legal malice, within the terms I have just read to you,—"it would not be murder. Malice must have existed before the killing, acting as a cause of the killing," but as I have already advised you, it need only exist for a short length of time, and malice would be implied from the act as it has been given to you in the evidence in the case.

2. "Deliberation and premeditation are necessary elements to be proved by the State before the defendant can be convicted of first degree murder. 'Premeditation, as an element of murder, means entertainment by the mind of a design to kill.' 'Deliberation means the weighing of consideration.' "

"While it is true that it is not necessary that deliberation and premeditation should exist for any particular length of time, and that it is enough that the design to kill be fully formed and purposely executed, it is equally true that the jury cannot convict the defendant of murder unless it believes

that the defendant did fully form a design to kill and did deliberately carry out such design and purpose."

Well, I have already advised you substantially in those same words.

3. "It is the accepted law in this State that 'if one, without malice, kills a human being, either on sudden quarrel, not in self defense, or unintentionally, while in the commission of an unlawful act, it is manslaughter.' "

4. "Before a jury would be legally entitled to convict this defendant, or any other defendant, of murder in the first degree, it is incumbent upon the State to prove intent, upon the part of the defendant, to take human life, and the State must prove that the act was done wilfully, deliberately, and with premeditation, although it is not necessary that the premeditation shall have continued for any special length of time."

I add to that, but the intent is for the jury to determine from the facts in the case. Of course, a man cannot deliberately point his revolver at another and shoot him down, and then say, "I didn't intend to do it." It is for you, under the circumstances of the case, to say whether or not there was an intent by the defendant in this case to commit the crime charged.

5. "In order to justify a conviction of murder in the second degree, it is not necessary to prove that the murder was wilful, or that it was with premeditation and de-

liberation. Also, in order to justify a conviction for manslaughter, it is not necessary to prove that the killing was wilful, or that it was done with premeditation and deliberation, or with malice."

6. "There is a presumption in law that all homicides are murder in the second degree. The State does not have to prove malice where a deadly weapon is used.

"It is not open to question or doubt but that the deceased met his death from wounds inflicted by the use of a deadly weapon. It is contended by the defendant, and in his behalf, that he did not own, possess, or use a deadly weapon at any time, and that he did not fire the shot or shots which resulted in the death of the deceased; that the shotgun with which deceased was killed was owned, possessed, and used by Morton, the other occupant of the car which the defendant was then operating, and that Morton acted suddenly and upon the spur of the moment, without deliberation or premeditation, and without saying anything to the defendant; that the defendant had no part in either planning or executing the killing. If, under the evidence produced before you, and excluding any and all other information otherwise in your minds, you have a reasonable doubt in your minds as to who actually fired the fatal shot or shots, or if you believe that Morton did it, and that, under the existing conditions at that time, Metalski did not know of Morton's intention, and had no opportunity to interfere or to withdraw, then you would not be justified in finding

the defendant guilty. No defendant is or can be any more guilty than the facts in evidence make him."

7. "It is the law of our Country and our State that every defendant in a criminal case is presumed to be innocent until he is proven guilty beyond a reasonable doubt. The State has the burden to thus prove the defendant's guilt, and that burden never shifts."

8. "The State must show beyond a reasonable doubt that this defendant formed a fixed design to take life. The indictment directly charges him as being the murderer, and the State must prove this. All of the essential elements of the crime charged, namely, wilfulness, deliberation and premeditation, must exist to the satisfaction of all of the jurors in order to convict the defendant of first degree murder. The jury cannot guess the defendant into guilt."

I must charge you, in connection with what I have already charged you, that if he aided, abetted, counselled or procured the murder of another, then he would be guilty.

9. "The law of New Jersey provides as follows——"

I have already charged that.

Mr. Sedam: Well, except the last part. The last part: "The jury is free to determine this question"— that is, the question of recommending imprisonment for

life—"without instruction from the Court. It is solely discretionary with the jury, and does not require the support of evidence, as it is not a finding of fact."

The Court: I have also charged section 10, have I not?

Mr. Sedam: Yes, sir.

The Court: All of section 10?

Mr. Sedam: I think so. That last paragraph of section 10, your Honor, where is says, "Of which the probable consequence might be bloodshed," did your Honor charge that?

The Court: That is a quotation from the Crimes Act, isn't it? I have already read it.

Mr. Sedam: The last part of number 10 isn't any quotation from the Crimes Act. No, that is a law, too.

The Court: Which I have charged, have I not?

Mr. Sedam: Yes, I think so.

The Court (To the Jury):

11. "If the jurors, or any of them, believe that the testimony here introduced by the State does not prove beyond a reasonable doubt that Edward Metalski fired the shot or shots which resulted in the death of the deceased; and further, if the jury believes the statement of Metalski that he was driving the coupe at a fast speed, and that he did not know of Morton's plan or intent to fire at their pursuers, then you would be justified in returning a verdict of not guilty as to the defendant."

Mr. Hicks: If it please the Court——

The Court: Hold up a minute.

I cannot charge you that under the circumstances of this case except to say that it was the duty of the defendant if he found out that his companion was engaged in an unlawful act to repudiate the act as quickly as possible. That is quoting to you, Members of the Jury, from one of the decisions of our courts, if one would escape the penalty for a crime committed by his companion, he must cease to act in complicity as soon as he had knowledge of the criminal character of the conduct of his companion.

12. "The defendant alleges that he has related to the Court and jury a frank and complete statement of his life and career, including his admitted criminal record and convictions, but alleges that he has never committed or been convicted of any crime of personal violence. He denies that he committed, or had any knowledge of or part in the commission of the crime of murder with which he is charged in the present indictment. It is the duty of every juror to consider and weigh the evidence produced here, and to dismiss from your minds all outside consideration. If you believe the defendant's story, then he would not be guilty under the law."

The Court: I suppose that is true, if you do believe it.

13. "While it is unquestionably true, under our law, that any person who is present aiding and abetting a principal in the commission of any felony is equally as guilty as the principal, nevertheless, the State has the burden of establishing beyond

a reasonable doubt who was the principal and what overt act was committed, and by whom, by way of aiding and abetting."

The Court: There is no question here about the overt act. It was committed by one or the other of the men in this car.

"The evidence produced in this case indicates that the deceased died from gun shot wounds inflicted by either the defendant or the other occupant of the coupe which the two troopers were pursuing. The defendant denies that he owned, possessed or handled the shotgun from which the fatal shot or shots were fired, and he alleges that Morton, the other occupant of the coupe, owned, possessed, and fired the shotgun, after first breaking out the rear window of the coupe in which they were riding; that the defendant did not know of Morton's intention to fire the gun at their pursuers, because Morton did not say anything before he fired; that the defendant was driving the coupe at a very fast speed, which he estimates as being from 60 to 70 miles per hour, and that in the darkness his entire attention was being given to the operation of the car."

14. "The past record of the defendant, as recited to you by the defendant himself, and as checked by the authorities, does not reveal any previous charge or conviction for any crime involving murder or other personal violence; the past record of offenses committed by the defendant

cannot be considered by the jury as proof that the defendant committed the crime of murder, for which crime he has been indicted and is now being tried in this court; the only purpose for which the State can count upon or use the past record of the defendant is for attacking his credibility."

I have already so advised you.

Are there any exceptions before the jury goes out? If not, let the jury retire.

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The Court: Counsel has called the Court's attention to one statement in the Court's charge, in which the Court said that it would be the duty of the defendant to repudiate the act of his companion. Of course, if such a condition arose, and you should find that he was in such a condition where it would be impossible for him to repudiate it, of course, that would alter the situation.

Now, let the jury retire.

One moment. Let the prisoner be taken to the jail before anybody leaves the courtroom.

(The defendant was removed.)

(The jury retired at 5:35 P. M.)

Mr. Sedam: With the Court's permission, I would like to enter a general exception to the Court's charge.

The Court: All right.

Exception allowed—sealed accordingly.

ADRIAN LYON,
Judge.

## Requests to Charge.

As originally submitted on behalf of Defendant.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

| | |
|---|---|
| STATE, *vs.* EDWARD METALSKI. | On Indictment for Murder. No. 19085. |

To the HONORABLE ADRIAN LYON, Presiding Judge:

Counsel for the above-named defendant hereby respectfully requests your Honor to charge the trial jury as follows:

1. The indictment, upon which the defendant is being tried, charges that on the 9th day of November, 1935, with force and arms, at the Township of Woodbridge, within the jurisdiction of this Court, he "wilfully, feloniously and of his malice aforethought did kill and murder one Warren G. Yenser." Murder is defined as the killing of a reasonable being with malice aforethought. Malice, under the legal meaning, "is manifested by the intentional doing of a wrongful act to the injury of another, without just cause or excuse."

*State* vs. *Silverio,* 76 A. 1069, 79 L. 482.

Malice aforethought is the essence of the crime of murder. If there was no malice, it would not be murder. Malice must have existed before the killing, acting as a cause of the killing.

2. Deliberation and premeditation are necessary elements to be proved by the State before the

defendant can be convicted of first degree murder. "Premeditation, as an element of murder, means entertainment by the mind of a design to kill."

"Deliberation means the weighing of consideration."

*State* vs. *Mangano,* 72 A. 366, 77 L. 544.

While it is true that it is not necessary that deliberation and premeditation should exist for any particular length of time, and that it is enough that the design to kill be fully formed and purposely executed, it is equally true that the jury cannot convict the defendant of murder unless it believes that the defendant did fully form a design to kill and did deliberately carry out such design and purpose.

3. It is the accepted law in this State that "if one, without malice, kills a human being, either on sudden quarrel, not in self-defense, or unintentionally, while in the commission of an unlawful act, it is manslaughter."

*State* vs. *Agnew,* 10 N. J. L. 165.

4. Before a jury would be legally entitled to convict this defendant, or any other defendant, of murder in the first degree, it is incumbent upon the State to prove intent, upon the part of the defendant, to take human life, and the State must prove that the act was done wilfully, deliberately, and with premeditation, although it is not necessary that the premeditation shall have continued for any special length of time.

5. In order to justify a conviction of murder in the second degree, it is not necessary to prove that the murder was wilful, or that it was with pre-

meditation and deliberation. Also, in order to justify a conviction for manslaughter, it is not necessary to prove that the killing was wilful, or that it was done with premeditation and deliberation, or with malice.

6. There is a presumption in law that all homicides are murder in the second degree. The State does not have to prove malice where a deadly weapon is used.

It is not open to question or doubt but that the deceased met his death from wounds inflicted by the use of a deadly weapon. It is contended by the defendant, and in his behalf, that he did not own, possess, or use a deadly weapon at any time, and that he did not fire the shot or shots which resulted in the death of the deceased; that the shotgun with which deceased was killed was owned, possessed and used by Morton, the other occupant of the car which the defendant was then operating, and that Morton acted suddenly and on the spur of the moment, without deliberation or premeditation, and without saying anything to the defendant; that the defendant had no part in either planning or executing the killing. If, under the evidence produced before you, and excluding any and all other information otherwise in your minds, you have a reasonable doubt in your minds as to who actually fired the fatal shot or shots, or, if you believe that Morton did it, and that, under the existing conditions at that time, Metalski did not know of Morton's intention, and had no opportunity to interfere or to withdraw, then you would not be justified in finding the defendant guilty. No defendant is or can be any more guilty than the facts in evidence make him.

*Requests to Charge.*

7. It is the law of our Country and our State that every defendant in a criminal case is presumed to be innocent until he is proven guilty beyond a reasonable doubt. The State has the burden to thus prove the defendant's guilt and that burden never shifts.

8. The State must show beyond a reasonable doubt that this defendant formed a fixed design to take life. The indictment directly charges him as being the murderer, and the State must prove this. All of the essential elements of the crime charged, namely, wilfulness, deliberation and premeditation, must exist to the satisfaction of all of the jurors in order to convict the defendant of first degree murder. The jury cannot guess the defendant into guilt.

9. The law of New Jersey provides as follows: "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed; and every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty years."

*Sect. 108 Crimes Act,* S. C. S. 52-108.

It is therefore within the province of the trial jury to recommend imprisonment at hard labor for life, if they conclude from the circumstances of the case, or for any other reason, that such action would be justified.

*Carrigan,* 93 L. 268; Aff. 111 A. 927.

The jury is free to determine this question without instruction of the Court. It is solely discretionary with the jury, and does not require the support of evidence, as it is not a finding of fact.

10. The law of New Jersey, relating to crimes involving private injury to the persons of individuals, provides as follows: "Any person who, in committing or attempting to commit arson, burglary, rape, robbery, sodomy, or any unlawful act against the peace of this state, of which the probable consequence may be bloodshed, shall kill another; or if the death of anyone shall ensue from the committing or attempting to commit any such crime or act as aforesaid; or if any person or persons shall kill any judge, magistrate, sheriff, coroner, constable, or other officer of justice, either civil or criminal, of this state, or the marshal or other officer of justice, either civil or criminal, of the United States, in the execution of his office or duty, or shall kill any of his assistants, whether specially called to his aid or not, endeavoring to preserve the peace or apprehend a criminal, knowing the authority of such assistant, or shall kill a private person endeavoring to suppress an affray, or to apprehend a criminal, knowing the intention with which such private person interposes, then such person or persons so killing as aforesaid shall be guilty of murder."

*Sect. 106 Crimes Act.*

If the evidence produced before you does not show beyond a reasonable doubt that the defendant, Edward Metalski, was engaged in committing or in attempting to commit, either as principal or as aider and abettor, any of the crimes referred to in the above section, i. e. arson, burglary, rape,

robbery or sodomy; or that he was engaged in any unlawful act against the peace of this State, of which the probable consequence might be bloodshed, then the only question for the jury to decide is whether this defendant killed an officer of justice of this State in the execution of his office or duty.

11. If the jurors, or any of them, believe that the testimony here introduced by the State does not prove, beyond a reasonable doubt, that Edward Metalski fired the shot or shots which resulted in the death of the deceased; and further, if the jury believes the statement of Metalski that he was driving the coupe at a fast speed, and that he did not know of Morton's plan or intent to fire at their pursuers, then you would be justified in returning a verdict of not guilty as to the defendant.

12. The defendant alleges that he has related to the Court and Jury a frank and complete statement of his life and career, including his admitted criminal record and convictions, but alleges that he has never committed or been convicted of any crime of personal violence. He denies that he committed, or had any knowledge of or part in the commission of the crime of murder with which he is charged in the present indictment. It is the duty of every juror to consider and weigh the evidence produced here, and to dismiss from your minds all outside considerations. If you believe the defendant's story, then he would not be guilty under the law.

13. While it is unquestionably true, under our law, that any person who is present aiding and abetting a principal in the commission of any felony, is equally as guilty as the principal, nevertheless the State has the burden of establishing, beyond a reasonable doubt, who was the principal

and what overt act was committed, and by whom, by way of aiding and abetting.

The evidence produced in this case indicates that the deceased died from gun-shot wounds inflicted by either the defendant or the other occupant of the coupe which the two troopers were pursuing. The defendant denies that he owned, possessed or handled the shot-gun from which the fatal shot or shots were fired, and he alleges that Morton, the other occupant of the coupe, owned, possessed and fired the shot-gun, after first breaking out the rear window of the coupe in which they were riding; that the defendant did not know of Morton's intention to fire the gun at their pursuers, because Morton did not say anything before he fired; that the defendant was driving the coupe at a very fast speed, which he estimates as being from 60 to 70 miles per hour, and that, in the darkness, his entire attention was being given to the operation of the car.

14. The past record of the defendant, as recited to you by the defendant himself, and as checked by the authorities, does not reveal any previous charge or conviction for any crime involving murder or other personal violence; the past record of offenses committed by the defendant cannot be considered by the jury as proof that the defendant committed the crime of murder, for which crime he has been indicted and is now being tried in this Court; the only purpose for which the State can count upon or use the past record of the defendant is for attacking his credibility.

Respectfully submitted,

Walter C. Sedam,
Attorney for Defendant.

## Verdict.

(The jury returned to the courtroom at 7:30 P.M.)

The Clerk: Madam Forelady, how do you find?

Ursula Downes: We have found the defendant guilty of murder in the first degree.

The Clerk: You say you have found the defendant, Edward Metalski, guilty of murder in the first degree, and so say you all?

Ursula Downes: Yes, we do.

Mr. Sedam: May I request that the jury be polled?

Mr. Hicks: What is the request of counsel?

Mr. Sedam: That the jury be polled.

The Court: Any object to it?

Mr. Hicks: No, no objection.

The Clerk: Ursula Downes, how do you find?

Ursula Downes: Guilty of murder in the first degree.

Joseph Delishi: Guilty of murder in the first degree.

Thomas G. Radics: Guilty.

Frank Delaney: Guilty of murder in the first degree.

Edward N. Bowen: Guilty of murder in the first degree.

Chester R. Barbour: Guilty of murder in the first degree.

Harold Applegate: Guilty of murder in the first degree.

Salvatore Chibbaro: Guilty of murder in the first degree.

James R. Quaid, Jr.: Guilty of murder in the first degree.

Mary A. Walters: Guilty of murder in the first degree.

John J. Ryan: Guilty of murder in the first degree.

James A. Casey: Guilty of murder in the first degree.

Mr. Hicks: May it please the Court, I move for sentence of the defendant.

The Court: Stand up.

(Edward Metalski stood.)

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## Sentence.

The Court: Edward Metalski, the jury have found you guilty of murder in the first degree without any recommendation of mercy. The law fixes the punishment, which is that you shall suffer death in the electric chair.

The sentence of the Court is that you shall suffer death in the electric chair in the week beginning February 17.

Let the prisoner be removed.

(The prisoner was remanded into custody.)

## Certificate of Stenographer.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

December Term, 1935.

STATE OF NEW JERSEY,

*vs.*

EDWARD METALSKI.

I HEREBY CERTIFY that the foregoing is a true, complete, and accurate transcript of the proceedings in the above-entitled cause as taken stenographically befor HON. ADRIAN LYON, Judge, and a jury, at the Middlesex County Court House, in the City of New Brunswick, New Jersey, on the sixth, seventh, and eighth days of January, 1936.

GEORGE D. ZIEGLER,
Official Stenographic Reporter.

## Certificate of Judge.

MIDDLESEX COUNTY COURT OF OYER AND TERMINER.

December Term, 1935.

| | |
|---|---|
| STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* EDWARD METALSKI, *Plaintiff-in-Error.* | In Error. |

I, ADRIAN LYON, Judge of the Court of Quarter Sessions in and for the County of Middlesex, duly appointed by Clarence E. Case, Esq., presiding Supreme Court Justice of said County, to hold the Court of Oyer and Terminer in and for said County, and who presided over the trial of the aforesaid cause, DO HEREBY CERTIFY that the foregoing constitutes the true and entire record of the plaint, judgment of the Court and all proceedings in the said cause, and the entire record of all the testimony and proceedings had upon the trial of said cause, and that the same is returned by the Plaintiff-in-Error therein with the Writ of Error, bringing up the bill of exceptions as signed and sealed in the said cause, together with all things touching and concerning same and all other papers and matters upon which the said cause should be heard and determined.

Dated this twenty-eighth day of February, A. D. 1936.

ADRIAN LYON,
Judge.

## Specification of Causes for Reversal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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|---|---|
| THE STATE OF NEW JERSEY,<br>*Defendant-in-Error,*<br>*vs.*<br>EDWARD METALSKI,<br>*Plaintiff-in-Error.* | On Writ of Error to Middlesex County Court of Oyer and Terminer. |

And now comes the said Edward Metalski, by Walter C. Sedam, his counsel, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error, and the said Edward Metalski says that the judgment should be reversed and assigns the following reasons or causes for reversal:

1. Because the trial court erred in permitting the State's attorney to introduce in evidence, at the very beginning of the trial, five photographs showing the condition of the deceased at the time the body was examined by the County Physician and at the time when he later performed the autopsy. The corpus delicti was admitted in the opening to the jury in behalf of the defendant, and the introduction of the photographs prior to any attempt to prove the defendant guilty either as principal, or as an aider and abettor, was prejudicial to the defendant and naturally incited the minds of the jurors against him.

2. Because the record does not disclose that the defendant actually fired the fatal shot, nor is

there any evidence to show, beyond a reasonable doubt, that the killing, by whomever done, was done with deliberation and premeditation, or with intent to take life.

3. Because the trial court erred in permitting the witness, Lawrence Offenbacker, to testify as to an alleged assault by the defendant, said to have been committed after the defendant escaped from the Middlesex County Jail on December 14, 1935. The crime of murder, as charged in the indictment, relates to November 9, 1935, and proof of subsequent acts, other than the actual escape from jail, was prejudicial error.

4. Because the trial court erred in stating to the jury, "Yes, but, Mr. Sedam, the escape of one from jail who is under a charge of a crime is competent evidence of guilt. There are many cases, as you know, that hold that, and this testimony that is offered is in pursuance of proof that this defendant did escape from jail. Therefore, I can allow it. You may have an exception."

5. Because the trial court erred in overruling the question asked of the defendant by defense counsel, viz., "What did you complain of to the doctor?", said question being directed to the claim made by the defendant that he was beaten by the police after he was arrested in Elizabeth, N. J., and taken to the Elizabeth Police Station on November 9, 1935. The defendant testified as to the beating received and the effects therefrom, and he was entitled to show what he complained of to the doctor.

6. Because the trial court erred in permitting the Prosecutor to examine the defendant on the details of his several prior convictions for crime,

the defendant having directly admitted said prior convictions on his direct examination.

7. Because the trial court erred in ruling, "The Court has held, Mr. Sedam, that you may bring out on cross examination anything that could be shown by the record, and I take it that that is what the Prosecutor is attempting to do, that is, to show the character of the crime, the punishment, and so forth."

8. Because the trial court erred in permitting the Prosecutor to propound the question, "And Dot Johnson was an inmate in a disorderly house operated and under the guidance and control of Shooey Bonner, isn't that correct? When you met her?" The Prosecutor admitted in open court that the defendant denied the above reference to him, and the Prosecutor did not follow through in any attempt to prove to the contrary. The question was therefore prejudicial to the defendant.

9. Because the trial court erred in permitting the Prosecutor to question the defendant about his alleged dealings and relations with one Shooey Bonner, said questions having no connection with the crime charged in the indictment, and said relations not pertaining to any of the offenses for which the defendant had previously and admittedly been convicted.

10. Because the trial court erred in requiring the defendant to answer the question, over objection, "Well, you made at least one or two trips over to New Jersey with Alec Karens, didn't you?". The record shows that the question was clearly intended to convey to the jury the impres-

New Jersey State Library

sion that the defendant was associated with Karens in some crime here in New Jersey, of which claim there was no proof.

In this connection the trial court erred in ruling, "There is nothing in this question, Mr. Sedam, which involves any answer which would incriminate the defendant. He simply asked him about his association with Karens. So far as the question is concerned, there is nothing incriminating about that. Furthermore, the defendant himself, in relating his career up to the time when he started out on this trip which resulted in this death, gave facts and circumstances concerning that career. Now, this is merely cross examination, as the Court understands it, on that testimony in chief which he gave concerning his career. I think on that ground it is competent. If the Prosecutor asks any question which is not within the realm of cross examination or of testimony that has been given in chief, which will tend to incriminate the defendant, he may refuse to answer."

11. Because the trial court erred in permitting the Prosecutor, over objection of counsel, to make constant references to men who were then confined in, or had been confined in State's Prison, there being no established connection between the activities of these men and the activities of the defendant in this case or any other case. Such references were prejudicial to the defendant, as not being part of the res gestae.

12. Because the trial court erred in stating, after objection interposed by defendant's attorney, "Yes, but I take it that this has to do with his relations indirectly, perhaps—I suppose that

is what it is intended for—indirectly, his associations with this Morton, who was with him. The Prosecutor, of course, may not go further than is proper under the circumstances.''.

13. Because the trial court erred in admitting questions by the Prosecutor over the objection of defendant's counsel, which questions related to the questioning of the defendant at the time of his arrest, without the Prosecutor establishing the fact that he first warned the defendant as to his legal rights and that any statements made by him might or could be used against him.

14. Because the trial court erred in permitting the Prosecutor, over objection of defendant's counsel, to attempt to prove by Marie Morton, admittedly the common-law wife of Whitey Morton, that Morton was capable of driving an automobile on the night of November 8, 1935, and the morning of November 9, 1935, the said Marie Morton not being in a position to testify as to Morton's condition on the occasion in question.

15. Because the trial court erred in permitting the question and answer, ''What kind of driver was he?'', referring to Morton. Answer: ''Very fast driver, reckless.'' The obvious purport of this question and answer was an attempt to influence the minds of the jurors to believe that Morton must have been the reckless operator of the car in which Morton and the defendant were occupants at the time of the commission of the crime charged in the indictment.

16. Because the trial court erred in permitting the State's witness, one William A. Jones, who alleged that he is a fire-arms expert, to give testi-

mony that the marks on a bullet, which bullet it was represented to him had been taken from the radiator of the trooper's automobile, bore the same marks as those on a bullet which the witness fired in an experiment from the revolver which was in the possession of the defendant when he was captured on December 18, 1935, after his escape from the Middlesex County Jail on December 14, 1935. No gun was found in the defendant's possession when he was first arrested on November 9, 1935. The State failed to show how the gun found on the defendant on December 18, 1935, could possibly have been in the defendant's possession on November 9, 1935.

17. Because the trial court erred in admitting the revolver in evidence, except for the purpose of proving that it was the gun possessed by the defendant when he escaped jail on December 14, 1935, and also when he was apprehended on December 18, 1935. The State did not prove, by competent evidence, that the gun found on the defendant on December 18, 1935, was owned, possessed or used by the defendant in connection with the crime charged in the indictment.

18. Because the trial court erred in permitting the witness Jones to answer, referring to the gun: "He knew where he left it, and went back and got it, possibly, after he got out." This was mere conjecture, not substantiated in any way, and the trial court should have instructed the jury accordingly.

19. Because the trial court erred in failing to instruct the Prosecutor, in connection with the request made by the defendant's counsel before summation, that the Prosecutor should make

known to defense counsel the chief points upon which the Prosecutor would reply in his summation.

20. Because the trial court, after charging the jury on the law relating to wilful and premeditated murder, used the words, "Members of the Jury, it is for you to say under the circumstances of this case, whoever did kill this man, whether or not he conceived the design to kill and purposely and deliberately executed it. As the quotation which I have just read to you shows, even if that purpose was formed only a part of a minute before it was executed, so long as it was fully conceived in the mind of the person who did it, and he, in pursuance of his conception to kill, did deliberately and with premeditation kill the trooper, then he is guilty of murder in the first degree, and it would be your duty to so find." The trial Judge erred in the above, in that, after seeming to leave the question to the jury as to who killed the deceased, and whether the killer had conceived the design to kill and had purposely and deliberately executed it, he used the words, "and he, in pursuance of his conception to kill, did deliberately and with premeditation kill the trooper, then he is guilty of murder in the first degree, and it would be your duty to so find." These last words could only refer to the defendant, since Morton, the other person present at the killing of the trooper, had committed suicide, and therefore was not indicted and could not be tried or convicted. The language used was prejudicial to the defendant since there was no other person on trial, and the Court erred in failing to charge the jury that they must first determine from the evidence who killed the de-

ceased, before applying to the defendant the language used.

21. The trial court erred in charging the jury: "In connection with this you will take into consideration the varying testimony as to just how the shot was fired. It is stated by Trooper Matey that they were alongside of the car when the gun was discharged immediately in the face of Yenser. The defendant claims, and, I think, you will find that there is testimony to that intent, that his companion knocked out the back window of the car in which they were riding and put the gun out or shot through that opening in the back window. Therefore, if that be true, according to the testimony of the defendant himself—the fact that he broke out the window by way of preparation in order that he might fire more effectively—it is for you to say whether that does not show a premeditation and a deliberation sufficient to bring the act within this section of the law which I have read to you." The Court, in using this language, clearly gave to the jury the impression that the defendant had done the very things which the defendant charged Morton had done, and it was prejudicial to the defendant to use the words premeditation and deliberation in this connection, as relating to the defendant.

22. Because the trial court erred in charging the jury: "Therefore, if you find the defendant was the one who did the killing under either one or the other of the conditions I have stated, that is, either premeditated or in perpetration of a robbery, then he is guilty of murder in the first degree. But the State advances still another proposition, which is very important in the case, and which, of course, you will be called upon to consider."

The State had the duty to prove, beyond a reasonable doubt, not only an intent to take life, but that the killing was both deliberate and premeditated, in order to convict of murder in the first degree. Therefore, the use of the word "premeditated", standing alone in the above connection, was judicial error.

23. Because the trial court by charging, "Suppose you should find that while such a killing had been committed, as I have stated and outlined to you, it was committed not by the defendant but by his companion, Morton, then you must find upon the third condition submitted by the State, namely, Did the defendant aid and abet the one who did commit the crime so as to make him as guilty as the one who did actually do the shooting?" erred in that he permitted the jury to speculate as to who actually killed the deceased.

24. Because the defendant was deprived of a constitutional right in being compelled to defend himself on three different theories of guilt, especially when there was no direct evidence offered by the State of anyone who saw the defendant have a gun in his hands either before or when the shot was fired, and because a careful examination of the shotgun failed to reveal the defendant's fingerprints thereon.

25. Because the trial court erred in charging the jury as follows: "The Court charges you to consider whether a killing such as this has been shown by the evidence to be could have been other than a fully conceived and a wilful and deliberate and premeditated attempt to take the life of the trooper, and so prevent the capture of this defendant and his companion by the troopers."

26. Because the trial court erred, in supplementing the first request to charge on the subject of malice, in using the words: "but, as I have already advised you, it need exist only for a short length of time, and malice would be implied from the act as it has been given to you in the evidence in the case."

27. Because the trial court erred in supplementing the fourth request to charge on the subject of intent, in using the words: "I add to that, but the intent is for the jury to determine from the facts in the case. Of course, a man cannot deliberately point his revolver at another and shoot him down, and then say 'I didn't intend to do it.' It is for you, under the circumstances of the case, to say whether or not there was an intent by the defendant in this case to commit the crime charged."

28. The trial court erred in refusing to charge the eleventh request of the defendant, as follows: "If the jurors, or any of them, believe that the testimony here introduced by the State does not prove beyond a reasonable doubt that Edward Metalski fired the shot or shots which resulted in the death of the deceased; and further, if the jury believes the statement of Metalski that he was driving the coupe at a fast speed, and that he did not know of Morton's plan or intent to fire at their pursuers, then you would be justified in returning a verdict of not guilty as to the defendant." The Court, after reading the above request to the jury, stated: "I cannot charge you that under the circumstances of this case except to say that it was the duty of the defendant if he found out that his companion was engaged in

an unlawful act to repudiate the act as quickly as possible. That is quoting to you, Members of the Jury, from one of the decisions of our courts, if one would escape the penalty for a crime committed by his companion, he must cease to act in complicity as soon as he had knowledge of the criminal character of the conduct of his companion." The trial court erred in failing to qualify his additional charge to the jury on this point, by referring to the defendant's testimony that he was afraid of Morton and was present through fear of and compulsion on the part of Morton.

29. Because the trial court erred, after charging the twelfth request, in using the words: "I suppose that is true, if you do believe it."

30. Because the trial court erred in charging the jury as follows: "Secondly, it is claimed by the State that even if there were no premeditation within that provision of the law which I have read to you, then the defendant or the one who did fire this shot that killed the trooper is guilty under this provision of the law, namely: 'Murder which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, * * * * shall be guilty of murder in the first degree.'" The murder of the trooper, regardless of by whom the fatal shot was fired, did not occur in connection with perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, as enumerated in the statute (Section 107 of the Crimes Act—P. L. 1917, page 801). The robbery at the Palm Gardens Cafe, in Philadelphia, had occurred three hours before the trooper was shot, and the evi-

dence shows that the troopers did not even know that such robbery had been committed. The robbery was completed. Trooper Matey admits, in his testimony, that the defendant and Morton were pursued by the deceased and him only for speeding.

31. Because the trial court erred in charging the jury as follows: "Therefore, if a murder was committed by Morton under the circumstances that I have outlined, and Metalski was by his act present aiding and abetting in the perpetration of the murder, then, of course, Metalski would be guilty of murder in the first degree just as well as Morton would be; and, of course, in your decision upon this very important point in this case, you will take into consideration, if you do find that Metalski was driving the car, whether or not the driving of that car, the controlling and operating of it, was not a very important point in the commission of the crime of murder."

"The car raced across the State. It was going very fast. It didn't stop when this shooting occurred. It is for you to say, Members of the Jury, whether you can believe such a story as Metalski told, in that he didn't know what the shooting was all about; that he didn't ask Morton why he was shooting; and that he went on and never made, apparently, any attempt to find out from Morton why this shooting occurred. That is the story which he has told, and it is for you to say, Members of the Jury, whether you believe such a story as that."

32. Because the Court's charge precluded the presumption of innocence to which every defendant is entitled in a criminal case, which presump-

tion continues until the State establishes guilt beyond a reasonable doubt.

33. Because the verdict was contrary to law and against the weight of evidence.

WHEREFORE, because the aforesaid reasons, or some of them, constitute error prejudicial to the said Edward Metalski, the plaintiff-in-error, he prays that the said judgment and sentence be reversed and annulled and for nothing holden, and that he may be restored to all things which he has lost by occasion thereof.

WALTER C. SEDAM,
Attorney for Plaintiff-in-Error.

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## Assignments of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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| THE STATE OF NEW JERSEY,<br>*Defendant-in-Error,*<br>*vs.*<br>EDWARD METALSKI,<br>*Plaintiff-in-Error.* | In Error. |

Afterwards, to wit, on the return day of the Writ of Error, before the Justices of our said Court of Errors and Appeals, in the last resort in all cases, comes the said Edward Metalski, by Walter C. Sedam, his counsel, and says that in the records and proceedings aforesaid, also in the matters re-

cited and contended in said bill of exceptions, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the State's attorney to introduce in evidence, at the very beginning of the trial, five photographs showing the condition of the deceased at the time the body was examined by the County Physician and at the time when he later performed the autopsy. The corpus delicti was admitted in the opening to the jury in behalf of the defendant, and the introduction of the photographs prior to any attempt to prove the defendant guilty either as principal, or as an aider and abettor, was prejudicial to the defendant and naturally incited the minds of the jurors against him.

2. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the case to be submitted to the jury without there being any positive evidence that the defendant fired the fatal shot, and without there being any evidence to prove, beyond a reasonable doubt, that the killing, by whomever done, was done with deliberation and premeditation, or with intent to take life.

3. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the witness, Lawrence Offenbacker, to testify as to an alleged assault by the defendant, said to have been committed after the

defendant escaped from the Middlesex County Jail on December 14, 1935. The crime of murder, as charged in the indictment, relates to November 9, 1935, and proof of subsequent acts, other than the actual escape from jail, was prejudicial error.

4. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, stated to the jury:

> "Yes, but, Mr. Sedam, the escape of one from jail who is under a charge of a crime is competent evidence of guilt. There are many cases, as you know, that hold that, and this testimony that is offered is in pursuance of proof that this defendant did escape from jail. Therefore, I can allow it. You may have an exception."

5. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, overruled the question asked of the defendant by defense counsel, viz., "What did you complain to the doctor?" said question being directed to the claim made by the defendant that he was beaten by the police after he was arrested in Elizabeth, N. J., and taken to the Elizabeth Police Station on November 9, 1935. The defendant testified as to the beating received and the effects therefrom, and he was entitled to show what he complained of to the doctor.

6. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the Prosecutor to ex-

amine the defendant on the details of his several prior convictions for crime, the defendant having directly admitted said prior convictions on his direct examination.

7. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, ruled:

> "The Court has held, Mr. Sedam, that you may bring out on cross examination anything that could be shown by the record, and I take it that that is what the Prosecutor is attempting to do, that is, to show the character of the crime, the punishment, and so forth."

8. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the Prosecutor to propound the question,

> "And Dot Johnson was an inmate in a disorderly house operated and under the guidance and control of Shooey Bonner, isn't that correct? When you met her?"

The Prosecutor admitted in open court that the defendant denied the above reference to him, and the Prosecutor did not follow through in any attempt to prove to the contrary. The question was therefore prejudicial to the defendant.

9. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the Prosecutor to question the

defendant about his alleged dealings and relations with one Shooey Bonner, said questions having no connection with the crime charged in the indictment, and said relations not pertaining to any of the offenses for which the defendant had previously and admittedly been convicted.

10. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, required the defendant to answer the question, over objection,

> "Well, you made at least one or two trips over to New Jersey with Alec Karens, didn't you?"

The record shows that the question was clearly intended to convey to the jury the impression that the defendant was associated with Karens in some crime here in New Jersey, of which claim there was no proof.

In this connection the trial court ruled, as follows:

> "There is nothing in this question, Mr. Sedam, which involves any answer which would incriminate the defendant. He simply asked him about his association with Karens. So far as the question is concerned, there is nothing incriminating about that. Furthermore, the defendant himself, in relating his career up to the time when he started out on this trip which resulted in this death, gave facts and circumstances concerning that career. Now, this is merely cross examination, as the Court understands it, on that testimony in chief which he gave concerning his

career. I think on that ground it is competent. If the Prosecutor asks any question which is not within the realm of cross examination or of testimony that has been given in chief, which will tend to incriminate the defendant, he may refuse to answer."

11. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the Prosecutor, over objection of counsel, to make constant references to men who were then confined in, or had been confined in State's Prison, there being no established connection between the activities of these men and the activities of the defendant in this case or any other case. Such references were prejudicial to the defendant, as not being part of the res gestae.

12. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, stated, after objection interposed by defendant's attorney:

"Yes, but I take it that this has to do with his relations indirectly, perhaps—I suppose that is what it is intended for—indirectly, his associations with this Morton, who was with him. The Prosecutor, of course, may not go further than is proper under the circumstances."

13. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, admitted questions by the Prosecutor

over the objection of defendant's counsel, which questions related to the questioning of the defendant at the time of his arrest, without the Prosecutor establishing the fact that he first warned the defendant as to his legal rights and that any statements made by him might or could be used against him.

14. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the Prosecutor, over objection of defendant's counsel, to attempt to prove by Marie Morton, admittedly the common-law wife of Whitey Morton, that Morton was capable of driving an automobile on the night of November 8, 1935, and the morning of November 9, 1935, the said Marie Morton not being in a position to testify as to Morton's condition on the occasion in question.

15. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the question and answer, "What kind of driver was he?", referring to Morton. Answer: "Very fast driver, reckless." The obvious purport of this question and answer was an attempt to influence the minds of the jurors to believe that Morton must have been the reckless operator of the car in which Morton and the defendant were occupants at the time of the commission of the crime charged in the indictment.

16. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the State's witness, one

William A. Jones, who alleged that he is a firearms expert, to give testimony that the marks on a bullet, which bullet it was represented to him had been taken from the radiator of the trooper's automobile, bore the same marks as those on a bullet which the witness fired in an experiment from the revolver which was in the possession of the defendant when he was captured on December 18, 1935, after his escape from the Middlesex County Jail on December 14, 1935. No gun was found in the defendant's possession when he was first arrested on November 9, 1935. The State failed to show how the gun found on the defendant on December 18, 1935, could possibly have been in the defendant's possession on November 9, 1935.

17. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, erred in admitting the revolver in evidence, except for the purpose of proving that it was the gun possessed by the defendant when he escaped jail on December 14, 1935, and also when he was apprehended on December 18, 1935. The State did not prove, by competent evidence, that the gun found on the defendant on December 18, 1935, was owned, possessed or used by the defendant in connection with the crime charged in the indictment.

18. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, permitted the witness Jones to answer, referring to the gun:

> "He knew where he left it, and went back and got it, possibly, after he got out."

This was mere conjecture, not substantiated in any way, and the trial court should have instructed the jury accordingly.

19. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, failed to instruct the Prosecutor, in connection with the request made by the defendant's counsel before summation, that the Prosecutor should make known to defense counsel the chief points upon which the Prosecutor would rely in his summation.

20. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, after charging the jury on the law relating to wilful and premeditated murder, used the words:

> "Members of the Jury, it is for you to say under the circumstances of this case, whoever did kill this man, whether or not he conceived the design to kill and purposely and deliberately executed it. As the quotation which I have just read to you shows, even if that purpose was formed only a part of a minute before it was executed, so long, as it was fully conceived in the mind of the person who did it, and he, in pursuance of his conception to kill, did deliberately and with premeditation kill the trooper, then he is guilty of murder in the first degree, and it would be your duty to so find."

The trial Judge, after seeming to leave the question to the jury as to who killed the deceased, and whether the killer had conceived the design to kill

and had purposely and deliberately executed it, used the words:

> "* * * and he, in pursuance of his conception to kill, did deliberately and with premeditation kill the trooper, then he is guilty of murder in the first degree, and it would be your duty to so find."

These last words could only refer to the defendant, since Morton the other person present at the killing of the trooper, had committed suicide, and therefore was not indicted and could not be tried or convicted. The language used was prejudicial to the defendant since there was no other person on trial, and the Court failed to charge the jury that they must first determine from the evidence who killed the deceased, before applying to the defendant the language used.

21. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, charged the jury:

> "In connection with this you will take into consideration the varying testimony as to just how the shot was fired. It is stated by Trooper Matey that they were alongside of the car when the gun was discharged immediately in the face of Yenser. The defendant claims, and, I think, you will find that there is testimony to that intent, that his companion knocked out the back window of the car in which they were riding and put the gun out or shot through that opening in the back window. Therefore, if that be true, according to the testimony of the defendant himself—the fact that he

broke out the window by way of preparation in order that he might fire more effectively—it is for you to say whether that does not show a premeditation and a deliberation sufficient to bring the act within this section of the law which I have read to you."

The Court, in using this language, clearly gave to the jury the impression that the defendant had done the very things which the defendant charged Morton had done, and it was prejudicial to the defendant to use the words premeditation and deliberation in this connection, as relating to the defendant.

22. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, charged the jury:

"Therefore, if you find the defendant was the one who did the killing under either one or the other of the conditions I have stated, that is, either premeditated or in perpetration of a robbery, then he is guilty of murder in the first degree. But the State advances still another proposition, which is very important in the case, and which, of course, you will be called upon to consider."

The State had the duty to prove, beyond a reasonable doubt, not only an intent to take life, but that the killing was both deliberate and premeditated, in order to convict of murder in the first degree. Therefore the use of the word "premeditated", standing alone in the above connection, was judicial error.

23. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, by charging,

> "Suppose you should find that while such a killing had been committed, as I have stated and outlined to you, it was committed not by the defendant but by his companion, Morton, then you must find upon the third condition submitted by the State, namely, Did the defendant aid and abet the one who did commit the crime so as to make him as guilty as the one who did actually do the shooting?"

erred in that he permitted the jury to speculate as to who actually killed the deceased.

24. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, deprived the defendant of a constitutional right in compelling him to defend himself on three different theories of guilt, especially when there was no direct evidence offered by the State of anyone who saw the defendant have a gun in his hands either before or when the shot was fired, and because a careful examination of the shotgugn failed to reveal the defendant's fingerprints thereon.

25. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, charged the jury as follows:

> "The Court charges you to consider whether a killing such as this has been shown by the evidence to be could have been

other than a fully conceived and a wilful and deliberate and premeditated attempt to take the life of the trooper, and so prevent the capture of this defendant and his companion by the troopers."

26. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, supplemented the first request to charge on the subject of malice, in using the words:

" * * * but, as I have already advised you, it need exist only for a short length of time, and malice would be implied from the act as it has been given to you in the evidence in the case."

27. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, supplemented the fourth request to charge on the subject of intent, in using the words:

"I add to that, but the intent is for the jury to determine from the facts in the case. Of course, a man cannot deliberately point his revolver at another and shoot him down, and then say 'I didn't intend to do it.' It is for you, under the circumstances of the case, to say whether or not there was an intent by the defendant in this case to commit the crime charged."

28. That the said Court before whom, etc., at and upon trial of the said issue joined between the State of New Jersey and the said Edward

Metalski, erred in refusing to charge the eleventh request of the defendant, as follows:

> "If the jurors, or any of them, believe that the testimony here introduced by the State does not prove beyond a reasonable doubt that Edward Metalski fired the shot or shots which resulted in the death of the deceased; and further, if the jury believes the statement of Metalski that he was driving the coupe at a fast speed, and that he did not know of Morton's plan or intent to fire at their pursuers, then you would be justified in returning a verdict of not guilty as to the defendant."

The Court, after reading the above request to the jury, stated:

> "I cannot charge you that under the circumstances of this case except to say that it was the duty of the defendant if he found out that his companion was engaged in an unlawful act to repudiate the act as quickly as possible. That is quoting to you, Members of the Jury, from one of the decisions of our courts, if one would escape the penalty for a crime committed by his companion, he must cease to act in complicity as soon as he had knowledge of the criminal character of the conduct of his companion."

The trial court erred in failing to qualify his additional charge to the jury on this point, by referring to the defendant's testimony that he was afraid of Morton and was present through fear of and compulsion on the part of Morton.

29. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, after charging the twelfth request, used the words:

> "I suppose that is true, if you do believe it."

30. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, charged the jury as follows:

> "Secondly, it is claimed by the State that even if there were no premeditation within that provision of the law which I have read to you, then the defendant or the one who did fire this shot that killed the trooper is guilty under this provision of the law, namely; 'Murder which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, * * * * shall be guilty of murder in the first degree.' "

The murder of the trooper, regardless of by whom the fatal shot was fired, did not occur in connection with perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, as enumerated in the statute (Section 107 of the Crimes Act—P. L. 1917, page 801). The robbery at the Palm Gardens Cafe, in Philadelphia, had occurred three hours before the trooper was shot, and the evidence shows that the troopers did not even know that such robbery had been committed. The robbery was completed. Trooper Matey admits, in his testimony, that

the defendant and Morton were pursued by the deceased and him only for speeding.

31. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, charged the jury as follows:

> "Therefore, if a murder was committed by Morton under the circumstances that I have outlined, and Metalski was by his act present aiding and abetting in the perpetration of the murder, then, of course, Metalski would be guilty of murder in the first degree just as well as Morton would be; and of course, in your decision upon this very important point in this case, you will take into consideration, if you do find that Metalski was driving the car, whether or not the driving of that car, the controlling and operating of it, was not a very important point in the commission of the crime of murder."
>
> "The car raced across the State. It was going very fast. It didn't stop when this shooting occurred. It is for you to say, Members of the Jury, whether you can believe such a story as Metalski told, in that he didn't know what the shooting was all about; that he didn't ask Morton why he was shooting; and that he went on and never made, apparently, any attempt to find out from Morton why this shooting occurred. That is the story which he has told, and it is for you to say, Members of the Jury, whether you believe such a story as that."

32. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Edward Metalski, in his charge precluded the presumption of innocence to which every defendant is entitled in a criminal case, which presumption continues until the State establishes guilt beyond a reasonable doubt.

33. Because the verdict was contrary to law and against the weight of evidence.

WHEREFORE, the said Edward Metalski prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that he may be restored to all which he has lost by occasion thereof.

WALTER C. SEDAM,
Attorney for Plaintiff-in-Error.

102FEB.T.1936

Filed after the Oral Argument
by leave of Court.

# New Jersey Court of Errors and Appeals

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| THE STATE OF NEW JERSEY,<br>*Defendant-in-Error,*<br>*vs.*<br>EDWARD METALSKI,<br>*Plaintiff-in-Error.* | On Writ of Error to Middlesex County Court of Oyer and Terminer.<br>On Indictment, December Term, 1935, For Murder. |

## BRIEF OF PLAINTIFF-IN-ERROR.

The plaintiff-in-error, hereinafter referred to as the defendant, was tried in the Middlesex County Court of Oyer and Terminer, before the Honorable Adrian Lyon and a jury, upon an indictment charging him with the murder of one Warren G. Yenser, a State Trooper, on November 9, 1935, and was found guilty of murder in the first degree, without any recommendation of life imprisonment. He was, accordingly, sentenced to death. The present writ brings up the entire record for review by this Honorable Court under Section 136 of the Criminal Procedure Act, together with the bill of exceptions signed and sealed.

### Abstract or Statement of the Case.

On the early morning of November 9, 1935, two State Troopers, Yenser and Matey by name, were engaged in patrolling the Super-Highway No. 25, at a point a few miles west of New Brunswick, N. J. They were using a Ford Sedan, which Trooper Matey was driving. Yenser was seated

beside his (Case, p. 85). They noticed a coupe, bearing Pennsylvania license plates, proceeding easterly along that highway at a high rate of speed (Case, p. 86). The troopers pursued the coupe, but temporarily lost track of it. The coupe made a peculiar sound, due to a defective exhaust. The troopers pursued the car a second time, and Trooper Matey says that they pulled up alongside of the coupe and that Trooper Yenser blew his whistle; that the coupe again shot forward, and that the troopers again pulled up alongside of the coupe, and that just as Yenser was about to blow his whistle, a shot was fired; that the troopers' car was traveling (Case, p. 87) at a speed between 70 and 80 miles an hour (Case, p. 88), and that, after Yenser was shot, the coupe gained on the troopers' car. Dr. William C. Wilentz, the County Physician, testified that he performed an autopsy on the deceased on November 9, 1935, and that the latter died from suffocation as a result of multiple fractures of the jaw, multiple displacements of his teeth, which were thrown backward into his throat, causing him to actually strangle to death (Case, p. 81).

Trooper Matey admitted (Case, p. 96) that they pursued this car because of its speed, and not because they had any knowledge that a crime had been committed by the occupants of the coupe, or that the occupants of the coupe were doing anything at the moment which might cause bloodshed. He testified (Case, p. 99)—"We traveled between seventy-five and eighty miles an hour until we caught up to it."

Trooper Matey was asked (Case, p. 89) on direct examination, "Could you identify those two men or either one of them?" Answer: "No, sir." Question: "Did you notice any articles of clothing that were worn by either of these two men?"

Answer: "I noticed the driver had a light hat on."

He admitted (Case, p. 91) that it was a dark night and that dawn had not yet broken; he admitted (Case, p. 93) that there were no lights in the Chevrolet; that, when the car first went by him, he was 20 to 25 feet away from it (Case, p. 92), but that he could nevertheless see that the driver had on a light colored hat; he admitted (Case, p. 105), that at the time the shot was fired he didn't see the faces, but again stated that he observed the hat. Trooper Matey insisted (Case, p. 105), that he had not previously testified to seeing the hat before the shot was fired, whereas the record shows (Case, pp. 93-94), that he did so testify; he testified that with both cars traveling at about 70 to 75 miles per hour, parallel to each other and only three feet apart, he looked over to the other car "at about the time the shot was fired" (Case, p. 104); he admitted (Case, p. 107), that his car was traveling at about eighty miles an hour when he gave up the chase at Linden, and that the other car was going at the same speed. He testified (Case, p. 112), that the chase covered about three and a half miles. He testified that he could not identify, either by photograph or in reality, the occupants of the Chevrolet coupe.

Officer Malsam, of Linden, N. J., testified (Case, p. 116), that he was sitting in his parked automobile, at the intersection of Elizabeth Avenue and Wood Avenue, in Linden, and he later identified the defendant as the man who was sitting on the right hand side of the coupe; that he saw him light a cigarette (Case, p. 119). He testified (Case, p. 128), that he was able to observe, at a distance of ten to twelve feet, the face and features of the defendant who was sitting in the car, although it was still dark at 5:07 A. M. This

officer testified (Case, p. 129), that in a line-up held at Elizabeth Police Headquarters a few days later, he could identify the defendant by "the face; the side of the face." A reading of this officer's testimony on cross examination reveals that he had no definite picture of this defendant in his mind. He simply described him (Case, p. 131) as "a dark complected fellow." He couldn't describe whether he had a beard, or the color of his hair, or the color of his eyes, or the shape of his nose, or the color of his coat, or the exact color of his hat, or whether he was tall or short. He testified (Case, p. 134), that the lights of his car were pointing right at the Chevrolet, yet he admitted (Case, p. 137) that he didn't see the faces of both men in the car and that he could not identify Morton. Officer Kopec, who was seated in the car with Officer Malsam, testified (Case, p. 164) that he didn't look to see how many persons were in the car; that he couldn't identify anybody in the car; that he was present with Malsam at the line-up of Metalski with the others in the Elizabeth Police Station and that he couldn't identify anyone there; that Malsam did not say anything to him about the occupants of the car when the car passed them in Linden (Case, p. 165).

Officer Geiger testified (Case, p. 181) that he observed two men in the car in Elizabeth, of whom Metalski was one, and that he later identified Morton, from a Rogues Gallery picture, as the driver of the car. Officer Geiger arrested Metalski in the P. R. R. Station in Elizabeth around 7:00 A. M. on November 9, 1935. Metalski had purchased a ticket to Philadelphia, and this was found in his pocket, together with $40.40 in bills and change, a driver's license in the name of John Fanning, and a flashlight (Case, pp. 174-175-176). Officer Geiger admitted (Case, p. 184) that no

weapon of any kind was found on the defendant when he was arrested.

The Elizabeth police officers pursued the Chevrolet car in Elizabeth. Morton and Metalski abandoned the car. The shot-gun with two loaded shells, some empty shells, and two whiskey bottles partly filled, were found in the car. Metalski was apprehended in Elizabeth; Morton continued on to Newark, N. J., where he met his former sweetheart, one Dorothy Johnson, after which Morton and the girl returned to Philadelphia on the same day, November 9th. On the following Monday, November 11th, Morton committed suicide by taking gas in Philadelphia (Case, p. 261). No intelligible finger-prints were found on the shot-gun (Case, pp. 243-244). Detective Arthur, of the Philadelphia Police Department, testified (Case, p. 257) that he visited Metalski's home on Saturday, November 9, 1935, and, in searching the apartment, found three shot-gun shells inside of a shirt in the middle bureau drawer (Case, p. 258), same being of the same make and caliber as the shells found in the shot-gun and the empty shells found in the abandoned Chevrolet.

The State charged and proved that Morton and Metalski had participated in holding up and robbing a cafe in Philadelphia, about 2:00 A. M. on November 9, 1935; that, in so doing, Morton used a shot-gun and Metalski used a revolver (Case, pp. 214-231). The Chevrolet car used by Morton and Metalski was obtained through a ruse worked by Morton at a garage in Philadelphia where Morton was a frequent visitor, but where Metalski was not known at all. (See testimony of William Boland, Case, pp. 394-404.)

The State sought Metalski's conviction for first degree murder and the case was submitted to the jury on three different theories, viz.: That the

defendant deliberately and with malice aforethought killed the deceased; or, that he aided and abetted in the killing; or, that the deceased was killed by the defendant, or by Morton, while they were attempting to escape from a robbery, with the loot therefrom in their possession. (Court's Charge, Case, p. 463.)

The State produced a witness, William A. Jones (Case, p. 418), who testified that he is a firearms expert; that he had seen and examined a bullet (Exhibit S-24) allegedly extracted from the radiator of the troopers' car on November 9, 1935, and that the markings thereon were identical with the markings on a test bullet (Exhibit S-33) fired by him from the revolver (Exhibit S-32) which was admittedly the revolver found in Metalski's possession when he was captured in Newark, N. J., a few days after he escaped from the Middlesex County Jail on December 14, 1935.

## Defense: (Case, pp. 270-392.)

The defendant, at his trial, denied that he fired the shot which resulted in the death of Trooper Yenser. He asserted that Morton fired the fatal shot (Case, p. 297), after first breaking out the rear window of the coupe; that Morton gave no warning or intimation that he intended to shoot at anyone, and that he did not willingly or knowingly aid or abet Morton in the act, and, further, that he did not learn, until several hours after his arrest, that anyone had been hurt or killed; that the trip to Newark was being made for the definite purpose of taking Morton to his girl, a purpose formed before the robbery was committed in Philadelphia, and that they were not fleeing from the robbery, as evidenced by his attempt to return

to Philadelphia, as well as by Morton's actual return to Philadelphia on the same day.

The defendant divulged to the Court and jury his entire career and record of convictions of crime, none of said convictions involving any crime of personal violence. He testified, without being contradicted, that he had never been involved with Morton in the commission of any crime, until the robbery of the cafe in Philadelphia early in the morning of November 9, 1935, and that he was with Morton on that occasion solely because Morton had sent for him and demanded to know where his (Morton's) girl friend was (Case, p. 287); that Morton threatened him, as follows: Question: "Did he say anything by way of threat to you?" Answer: "He said that if I didn't bring her around, like—talked at me like I done him a dirty deal, one day, why, he would make me feel sorry."

The defendant further testified that Morton procured the shot-gun in Philadelphia; that Morton engineered the procuring of the Chevrolet coupe at the garage; that Morton tried to borrow money to make the trip to Newark to see the Johnson woman, and, failing, that Morton engineered the cafe robbery, in which the defendant assisted through fear and compulsion; that the defendant started to drive Morton home, but the latter said (Case, p. 294)—"No, we are not going home. We are going to see Dorothy".

The defendant contended that he drove the car all the time; that he drove fast because "I wanted to take Morton and get it over with, and take him to my home"; that Morton was "getting boisterous and threatening" (Case, p. 297). He admitted the details of his apprehension by the police officer in the P. R. R. Station in Elizabeth, N. J., as set forth in the printed case. He admitted

that he had escaped from a prison camp in North Carolina in August, 1935, and was a fugitive from that State on the date charged in the present indictment. He admitted that he escaped from the Middlesex County Jail on December 14, 1935, while waiting trial on the present indictment.

The verdict was gulity of murder in the first degree, and the defendant was sentenced to the death penalty.

NOTE: The following Specifications of Causes for Reversal and Assignments of Error, correspondingly numbered in the State of Case, are hereby abandoned: Numbers 1, 2, 3, 4, 5, 13, 19, 24, 26, 29, 30, 31 and 32.

## Questions of Law Involved.

1. The trial court erroneously permitted the prosecutor to examine the defendant on the details of his several prior convictions for crime, the defendant having directly admitted said prior convictions on his direct examination; and, further, that the trial court permitted questioning of the defendant, on cross-examination, relating to his alleged association with alleged disreputable and criminal minded persons, some of whom had been confined in prison, but none of whom were in anywise connected with the present charge against the defendant, or with any other crime for which he had been previously convicted.

(Assignments of Error and Specifications of Causes for Reversal Numbers 6, 7, 8, 9, 10, 11 and 12.) (Case, pp. 309-324.) (Exceptions sealed, Case, pp. 312, 314, 316, 325.)

2. There was error in permitting Marie Morton, the common-law wife of Morton, to testify

in rebuttal, over the objection of counsel, that Morton was capable of driving a car on the night of November 8, 1935, and the early morning of November 9, 1935, she not having been present to observe; and, further, it was error to permit the question "What kind of driver was Morton?", to which answer was made "Very fast driver, reckless", said question having been objected to. The obvious purport of this last question and answer was an attempt to influence the minds of the jurors to believe that Morton must have been the reckless operator of the car in which Morton and the defendant were occupants at the time of the commission of the crime charged in the indictment, whereas Metalski alleged he was the driver of the car.

(Assignments of Error and Specification of Causes for Reversal 14, 15.) (Case, pp. 408-409.) (Exceptions sealed, pp. 408-409.)

3. The trial court erroneously permitted witness, William A. Jones, who testified that he is a firearms expert, to give testimony that the marks on a bullet, which bullet it was represented to him had been taken from the radiator of the troopers' car, bore the same marks as those on a bullet which the witness fired in an experiment from a revolver which was in the possession of the defendant when he was captured on December 18, 1935, after his escape from the Middlesex County Jail on December 14, 1935. No gun was found in defendant's possession when he was first arrested on November 9, 1935, and he was in actual custody until he escaped on December 14, 1935. The State failed to show how the gun found on the defendant on December 18, 1935, could possibly have been the same gun alleged to have been used by him on November 9, 1935. The

trial court erred in admitting in evidence, over objection of counsel, the photographs of the bullets. The Court erred in admitting the gun for any other purpose than as being the gun found on, or in the possession of, the defendant when he was captured after his escape from jail. There was no proof whatever that this gun was owned, possessed or used by the defendant, Metalski, in connection with the crime charged in the indictment. The trial court erred in not voluntarily striking out the conjectural answer of the witness, "He knew where he left it, and went back and got it, possibly, after he got out". Obviously this answer was both untrue and without foundation in fact, as the gun in question was the gun used by the defendant when he escaped from jail on December 14, 1935, and even this witness stated (Case, p. 425, l. 37), "I don't think that this gun was in the jail with him, but after the shooting that night, this gun was put somewhere, and was gotten afterwards. That is the only way it could be."

(Assignments of Error and Specification of Causes for Reversal 16, 17, 18.) (Case, pp. 418-427.) (Exceptions sealed, pp. 421-422.)

4. There was error in the charge of the trial judge in charging the jury as follows:

> "Members of the Jury, it is for you to say under the circumstances of this case, whoever did kill this man, whether or not he conceived the design to kill and purposely and deliberately executed it. As the quotation which I have just read to you shows, even if that purpose was formed only a part of a minute before it was executed, so long as it was fully conceived in the mind of the person who did it, and he, in pursuance of his conception to kill,

did deliberately and with premeditation kill the trooper, then he is guilty of murder in the first degree, and it would be your duty to so find."

(Assignments of Error and Specification of Causes for Reversal, 20.) (Case, p. 513.)

5. There was error on the part of the trial judge in charging the jury as follows:

"In connection with this you will take into consideration the varying testimony as to just how the shot was fired. It is stated by Trooper Matey that they were alongside of the car when the gun was discharged immediately in the face of Yenser. The defendant claims, and I think, you will find that there is testimony to that intent, that his companion knocked out the back window of the car in which they were riding and put the gun out or shot through that opening in the back window. Therefore, if that be true, according to the testimony of the defendant himself—the fact that he broke out the window by way of preparation in order that he might fire more effectively—it is for you to say whether that does not show a premediation and a deliberation sufficient to bring the act within this section of the law which I have read to you."

(Assignments of Error and Specification of Causes for Reversal, 21.) (Case, pp. 514-515.)

6. There was error on the part of the trial judge in charging the jury as follows:

"Therefore, if you find the defendant was the one who did the killing under either one or the other of the conditions I have

> stated, that is, either premeditated or in perpetration of a robbery, then he is guilty of murder in the first degree. But the State advances still another proposition, which is very important in the case, and which, of course, you will be called upon to consider."

(Assignments of Error and Specification of Causes for Reversal, 22.) (Case, p. 515.)

7. There was error on the part of the trial judge in charging the jury as follows:

> "Suppose you should find that while such a killing had been committed, as I have stated and outlined to you, it was committed not by the defendant but by his companion, Morton, then you must find upon the third condition submitted by the State, namely, did the defendant aid and abet the one who did commit the crime so as to make him as guilty as the one who did actually do the shooting?"

(Assignments of Error and Specification of Causes for Reversal, 23.) (Case, p. 516.)

8. There was error on the part of the trial judge in charging the jury as follows:

> "The Court charges you to consider whether a killing such as this has been shown by the evidence to be could have been other than a fully conceived and a wilful and deliberate and premeditated attempt to take the life of the trooper, and so prevent the capture of this defendant and his companion by the troopers."

(Assignments of Error and Specification of Causes for Reversal, 25.) (Case, pp. 516-517.)

9. There was error on the part of the trial judge in charging the jury as follows, by way of supplementing the fourth request to charge on behalf of the defendant on the subject of "intent":

> "I add to that, but the intent is for the jury to determine from the facts in the case. Of course, a man cannot deliberately point his revolver at another and shoot him down, and then say 'I didn't intend to do it.' It is for you, under the circumstances of the case, to say whether or not there was an intent by the defendant in this case to commit the crime charged."

(Assignments of Error and Specification of Causes for Reversal, 27.) (Case, p. 517.)

10. There was error on the part of the trial judge in refusing to charge the eleventh request of the defendant, without qualification, same being as follows:

> "If the jurors, or any of them, believe that the testimony here introduced by the State does not prove beyond a reasonable doubt that Edward Metalski fired the shot or shots which resulted in the death of the deceased; and further, if the jury believes the statement of Metalski that he was driving the coupe at a fast speed, and that he did not know of Morton's plan or intent to fire at their pursuers, then you would be justified in returning a verdict of not guilty as to the defendant."

The Court, after reading the above request to the jury, stated:

> "I cannot charge you that under the circumstances of this case except to say that

> it was the duty of the defendant if he found out that his companion was engaged in an unlawful act to repudiate the act as quickly as possible. That is quoting to you, Members of the Jury, from one of the decisions of our courts, if one would escape the penalty for a crime committed by his companion, he must cease to act in complicity as soon as he had knowledge of the criminal character of the conduct of his companion."

The trial court erred in failing to qualify his additional charge to the jury on this point, by referring to the defendant's testimony that he was afraid of Morton and was present through fear of and compulsion on the part of Morton.

(Assignments of Error and Specification of Causes for Reversal, 28.) (Case, pp. 517-518.)

11. There was error because the verdict was so contrary to the weight of the evidence as to obviously be the result of mistake, passion or prejudice.

(Assignments of Error and Specification of Causes for Reversal, 33.)

## POINT I.

**Error of trial judge in permitting prosecutor to cross examine defendant on details of admitted prior convictions of crime, including his association with alleged criminals and disreputable persons who were not involved in present case.**

The defendant admitted, on his direct examination, that he had previously been convicted of crime several times (Case, pp. 270-285). The rec-

ord shows that none of these crimes involved any personal violence.

This admission made it unnecessary for the State to prove the fact of said prior convictions, which proof, under the law, would have been competent only for the purpose of affecting the credibility of the defendant, and not as evidence of his guilt in the present case. The prosecutor was permitted to cross examine the defendant on the details of these convictions (Case, pp. 309-324). The objection of defendant's counsel to this line of questioning was overruled by the trial judge and exception allowed (Case, p. 312).

The general rule is that evidence of other specific crimes committed by the defendant is inadmissible.

> *State* vs. *Boccadoro,* 144 A. 612; 105 N. J. L. 352.

The State cannot prove that the defendant commited one crime in order to prove that he would be likely to commit the crime for which he is being tried.

> *Clark* vs. *State,* 47 N. J. L. 556;
> *Bullock* vs. *State,* 65 N. J. L. 560.

The Court erroneously permitted the prosecutor to question the defendant on his alleged association with one Shooey Bonner and one Bill Pernier (Case, pp. 314-319), and also one Alec Karens (Case, pp. 344-345), none of whom were connected with the defendant in any way in this case or any other case. In (Case, p. 313), the prosecutor asked the question, "And Dot Johnson was an inmate in a disorderly house operated and under the guidance and control of Shooey Bonner, isn't that correct? When you met her?" This was objected

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to as incompetent and as being prejudicial to the defendant. The trial judge questioned its competency, but then admitted it. An exception was allowed (Case, p. 314). No effort was made by the Court to correct error of admitting this allegedly illegal evidence.

## POINT II.

### Error in permitting witness, Marie Morton, the common-law wife of Whitey Morton, to testify as to the capability of Morton to drive car at time of commission of crime charged.

There was error in permitting Marie Morton, the common-law wife of Morton, to testify in rebuttal, over the objection of counsel (Case, pp. 408-409), that Morton was capable of driving a car on the night of November 8, 1935, and the early morning of November 9, 1935, she not having been present to observe; and, further, it was error to permit the question, "What kind of driver was Morton?", to which answer was made "Very fast driver, reckless", said question having been objected to. The obvious purport of this last question and answer was an attempt to influence the minds of the jurors to believe that Morton must have been the reckless operator of the car in which Morton and the defendant were occupants at the time of the commission of the crime charged in the indictment, whereas Metalski alleged he himself was the driver of the car. The only purpose that this evidence served was to prejudice the minds of the jurors against Metalski.

## POINT III.

**Error in permitting witness, William A. Jones, alleged firearms expert, to testify regarding bullets and gun, which were introduce in evidence, without first proving that the gun in question was actually owned or possessed or used by the defendant at the time the crime in question was committed.**

The trial court erroneously permitted witness, William A. Jones, who testified that he is a firearms expert, to give testimony that the marks on a bullet, which bullet it was represented to him had been taken from the radiator of the troopers' car, bore the same marks as those on a bullet which the witness fired in an experiment from a revolver which was in the possession of the defendant when he was captured on December 18, 1935, after his escape from the Middlesex County Jail on December 14, 1935. No gun was found in the defendant's possession when he was first arrested on November 9, 1935, and he was in actual custody until he escaped on December 14, 1935. The State failed to show how the gun found on the defendant on December 18, 1935, could possibly have been the same gun alleged to have been used by him on November 9, 1935. The trial court erred in admitting in evidence, over objection of counsel, the photographs of the bullets. The Court erred in admitting the gun for any other purpose than as being the gun found on, or in the possession of, the defendant when he was captured after his escape from jail. There was no proof whatever that this gun was owned, possessed or used by the defendant, Metalski, in connection with the crime charged in the indictment. The trial court erred

in not voluntarily striking out the conjectural answer of the witness, "He knew where he left it, and went back and got it, possibly, after he got out." Obviously this answer was both untrue and without foundation in fact, as the gun in question was the gun used by the defendant when he escaped from jail on December 14, 1935, and even this witness stated (Case, p. 425, l. 37), "I don't think that this gun was in the jail with him, but after the shooting that night, this gun was put somewhere, and was gotten afterwards. That is the only way it could be."

## POINT IV.

### Error on the part of the trial judge in charging the jury in connection with the law relating to wilful and premeditated murder.

The trial Judge, after charging the jury on the law relating to wilful and premeditated murder (Case, p. 463), used the words:

> "Members of the Jury, it is for you to say under the circumstances of this case, whoever did kill this man, whether or not he conceived the design to kill and purposely and deliberately executed it. As the quotation which I have just read to you shows, even if that purpose was formed only a part of a minute before it was executed, so long as it was fully conceived in the mind of the person who did it, and he, in pursuance of his conception to kill, did deliberately and with premeditation kill the trooper, then he is guilty of murder in the first degree, and it would be your duty to so find."

The trial Judge, after seeming to leave the question to the jury as to who killed the deceased, and whether the killer had conceived the design to kill and had purposely and deliberately executed it, used the words:

> "* * * and he, in pursuance of his conception to kill, did deliberately and with premeditation kill the trooper, then he is guilty of murder in the first degree, and it would be your duty to so find."

These last words could only refer to the defendant, since Morton, the other person present at the killing of the trooper, had committed suicide, and therefore was not indicted and could not be tried or convicted. The language used was prejudical to the defendant since there was no other person on trial, and the Court failed to charge the jury that they must first determine from the evidence who killed the deceased, before applying to the defendant the language used.

## POINT V.

**Error in charge of trial court in applying to defendant certain acts indicating premeditation and deliberation, which acts were allegedly committed by Morton, who was dead and therefore not on trial.**

There was error in the charge of the trial judge in charging the jury as follows:

> "In connection with this you will take into consideration the varying testimony as to just how the shot was fired. It is stated by Trooper Matey that they were alongside of the car when the gun was dis-

charged immediately in the face of Yenser. The defendant claims, and, I think, you will find that there is testimony to that intent, that his companion knocked out the back window of the car in which they were riding and put the gun out or shot through that opening in the back window. Therefore, if that be true, according to the testimony of the defendant himself—the fact that he broke out the window by way of preparation in order that he might fire more effectively—it is for you to say whether that does not show a premeditation and a deliberation sufficient to bring the act within this section of the law which I have read to you."

The Court, in using this language, clearly gave to the jury the impression that the defendant had done the very things which the defendant charged Morton had done, and it was prejudicial to the defendant to use the words premeditation and deliberation in this connection, as relating to the defendant.

## POINT VI.

**Error in charge of the trial judge with respect to language used in defining first degree murder.**

There was error on the part of the trial judge in charging the jury as follows:

"Therefore, if you find the defendant was the one who did the killing under either one or the other of the conditions I have stated, that is, either premeditated or in

perpetration of a robbery, then he is guilty of murder in the first degree. But the State advances still another proposition, which is very important in the case, and which, of course, you will be called upon to consider."

The State had the duty to prove, beyond a reasonable doubt, not only an intent to take life, but that the killing was both deliberate and premeditated, in order to convict of murder in the first degree. Therefore, the use of the word "premeditated", standing alone in the above connection, was judicial error.

*State* vs. *Turco*, 98 N. J. L. 61; Affirmed 99 N. J. L. 16.

## POINT VII.

**Error in charge of the trial judge in charging the jury in the alternative as to whether the defendant or Morton actually committed the killing, including the query as to whether the defendant aided and abetted the actual perpetrator, so as to make him equally guilty, thus permitting the jury to speculate as to who actually killed the deceased.**

There was error on the part of the trial judge in charging the jury as follows:

"Suppose you should find that while such a killing had been committed, as I have stated and outlined to you, it was committed not by the defendant but by his companion, Morton, then you must find upon the third condition submitted by the State, namely, did the defendant aid and abet

the one who did commit the crime so as to make him as guilty as the one who did actually do the shooting?''

It is conceded that if the defendant was present, aiding and abetting, he is guilty even if he did not himself fire the fatal shot.

*State* vs. *Orraye,* 84 N. J. L. 556.

It is apparent that the trial judge, in the case at bar, left it to the jury to convict on the theory that the defendant was present, even if driving the car, and therefore able to assist or aid or abet Morton, even though he might not have been present for the purpose of giving aid and assistance.

*State* vs. *Giberson,* 99 L. 85.

It is urged that Metalski might have been present and acting concertedly with Morton in escaping arrest by the troopers, but, if he was driving the car and did not aid in the killing of the trooper through any overt act, then he is not guilty as a principal. It is further urged that if Metalski was driving the car, as he alleges he was, then he was not able to interfere with Morton, and his failure to interfere, under the circumstances, does not make him a participant in the crime.

## POINT VIII.

**Error on the part of the trial judge in charging the jury in a manner which clearly conveyed his personal opinion of and belief in the guilt of the defendant.**

There was error on the part of the trial judge in charging the jury as follows:

> "The Court charges you to consider whether a killing such as this has been shown by the evidence to be, could have been other than a fully conceived and a wilful and deliberate and premeditated attempt to take the life of the trooper, and so prevent the capture of this defendant and his companion by the troopers."

The language thus employed by the trial judge is prejudicial error toward the defendant, because the Court virtually charges his belief that the killing of the trooper was a fully conceived and a wilful and deliberate and premeditated attempt to take the life of the trooper, for the purpose of preventing the capture of the defendant and his companion. In connection with this strong language by the Court, it is contended that the Court should have emphasized the importance of the doctrine of the reasonable doubt to which the defendant is entitled.

## POINT IX.

### Error on the part of the trial judge in charging the jury on the subject of intent.

There was error on the part of the trial judge in charging the jury as follows, by way of supplementing the fourth request to charge on the subject of intent:

> "I add to that, but the intent is for the jury to determine from the facts in the case. Of course, a man cannot deliberately point his revolver at another and shoot him down, and then say 'I didn't intend to do it.' It is for you, under the circumstances of the case, to say whether or not there was an intent by the defendant in this case to commit the crime charged."

The error charged consists in the use by the Court of the words, "It is for you, under the circumstances of the case, to say whether or not there was an intent by the defendant in this case to commit the crime charged." This language by the Court presumed that the defendant had committed the crime charged, subject only to the question of his intent so to do. This was erroneous, because the Court had the duty, under the triple theory of the State, to prove, beyond a reasonable doubt, whether the defendant, Metalski, committed the crime, or aided and abetted therein.

## POINT X.

**Error on the part of the trial judge in refusing to charge the eleventh request of the defendant relating to the defendant's lack of knowledge of his companion's intention.**

The trial Judge erred in refusing to charge the following, without qualification:

> "If the jurors, or any of them, believe that the testimony here introduced by the State does not prove beyond a reasonable doubt that Edward Metalski fired the shot or shots which resulted in the death of the deceased; and further, if the jury believes the statement of Metalski that he was driving the coupe at a fast speed, and that he did not know of Morton's plan or intent to fire at their pursuers, then you would be justified in returning a verdict of not guilty as to the defendant."

The Court, after reading the above request to the jury, stated:

> "I cannot charge you that under the circumstances of this case except to say that it was the duty of the defendant if he found out that his companion was engaged in an unlawful act to repudiate the act as quickly as possible. That is quoting to you, Members of the Jury, from one of the decisions of our courts, if one would escape the penalty for a crime committed by his companion, he must cease to act in complicity as soon as he had knowledge of the criminal character of the conduct of his companion."

The trial court erred in failing to qualify his additional charge to the jury on this point, by referring to the defendant's testimony that he was afraid of Morton and was present through fear of and compulsion on the part of Morton.

It is therefore urged that, in the absence of evidence of deliberation on the part of Metalski, which it is claimed is totally lacking in this case, there could not properly be a verdict of murder in the first degree.

*State* vs. *Donnelly,* 26 N. J. L. 463;
*State* vs. *Deliso*, 75 N. J. L. 808.

## POINT XI.

**The verdict of guilty or first degree murder cannot be sustained because it is not supported by the evidence.**

It is respectfully urged that there was not sufficient evidence submitted to the trial jury to justify the conviction of the defendant of murder in the first degree.

It must be remembered that the only person who gave any direct evidence against the defendant was Trooper Matey, he being the only surviving witness at the scene of the crime. His evidence has been referred to at length. Morton, who was in the death car with the defendant, killed himself two days after the murder. Consequently he could not be questioned, so that the defendant was deprived of the opportunity to prove Morton's act and his motive.

The defendant told the Court and jury his entire career, including the events which transpired on the night of November 8, 1935, and the early morning of November 9, 1935, and he has protested his

innocence of the crime charged. He claims that he drove the car in question and that he had no knowledge or intimation of the intent of Morton to fire a shot from the car, and that his sole purpose in being with Morton was to take him to Newark, N. J., to the place where Morton's former girl was living, namely to the home of Metalski's mother. Metalski never reached there, but Morton went there, and, after contacting his girl, Dorothy Johnson, returned with her on November 9, 1935, to Philadelphia. The defendant urges that Morton killed himself because of fear.

The defendant urges that the verdict against him is and must have been the result of mistake, passion or prejudice.

**For the several reasons herein urged, it is respectfully submitted to this Honorable Court that the judgment should be reversed.**

WALTER C. SEDAM,

Attorney and Counsel for
Plaintiff-in-Error.

Hudson Dispatch Printers, Union City, N. J.

NEW JERSEY COURT OF ERRORS
AND APPEALS

| | |
|---|---|
| THE STATE OF NEW JERSEY,<br>*Defendant-in-Error,*<br>vs.<br>EDWARD METALSKI,<br>*Plaintiff-in-Error.* | *On Writ of Error to Middlesex County Court of Oyer and Terminer.*<br>*On Indictment for Murder.* |

## BRIEF FOR DEFENDANT-IN-ERROR

For the purpose of this brief the Defendant-in-Error will hereinafter be referred to as the State and the Plaintiff-in-Error will be referred to as the defendant.

### STATEMENT OF THE CASE

Defendant, Edward Metalski, was convicted of the crime of murder in the first degree without any recommendation. In accordance with the statute he was sentenced to be put to death. Defendant brings this writ and sets forth thirty-three assignments of error (S. C. p. 505).

Defendant in the statement of the case contained in his brief has gone quite fully into the facts, and in view of this and also because it has been necessary to consider the facts as testified to in the trial in the argument on Point 11 of defendant's brief relative to the sufficiency of evidence, only a brief statement appears necessary at this time.

The defendant, Edward Metalski, had been convicted

of crime on a number of occasions and had served sentences in five different penal institutions. He admitted that he had escaped from a prison farm in North Carolina in the summer of 1935 (S. C. p. 283). After his escape he made his headquarters in Philadelphia and was there on November 8, 1935. In the early morning of the following day, November 9, 1935, this defendant and one Whitey Morton held up a tavern on Ridge Avenue in Philadelphia. This was about 2 A. M. After this holdup they drove over to New Jersey in a Chevrolet coupe which they had obtained from a garage in Philadelphia without the knowledge of the garage attendant (S. C. p. 403, 1. 28).

Because of the excessive speed at which this Chevrolet was being operated it attracted the attention of two state troopers, John J. Matey and Warren G. Yenser, (S. C. p. 86). The two troopers started in pursuit of the Chevrolet and followed it from the point where it was first observed by them, which was on the Super Highway about three or four miles west of New Brunswick, to a point in Woodbridge Township near the intersection of Green Street and the Super Highway. The automobile in which the troopers were riding was being operated by Trooper Matey, and at this point when they came up alongside of the Chevrolet, Trooper Yenser put his police whistle in his mouth (S. C. p. 87, 1. 28). At this moment a shot was fired from the Chevrolet and the whole charge struck Trooper Yenser in the face, killing him almost instantaneously.

After this shot was fired Trooper Matey continued to follow the Chevrolet and there were a number of shots fired from the Chevrolet at Matey and the automobile which he was driving. Somewhere near Linden, New Jersey, he lost the Chevrolet and stopped at a lunch wagon to make a call for assistance.

The Chevrolet continued down the Super Highway after the murder of Trooper Yenser until it reached Lin-

den, where it turned off to the left and was observed by Officer Malsam of the Linden police at the intersection of Elizabeth and Wood Avenues, Linden (S. C. p. 116-117-118). Officer Malsam identified the defendant as being the person seated alongside of the driver on the right-hand side of this Chevrolet (S. C. p. 118). The officer at that time knew nothing of any state trooper having been murdered, and after the traffic light changed at the intersection where the officer saw the Chevrolet it continued on towards Elizabeth. By the time this Pennsylvania Chevrolet had reached Elizabeth the alarm had gone out and it was observed by several of the Elizabeth police officers and was finally pursued by Officers Keck and Carolan in a radio patrol car. The automobile was abandoned at Schiller Street and the two occupants, Metalski and Morton, ran away, with the radio patrolmen in pursuit. About an hour later Officer Geiger of the Elizabeth Police Department went to the Pennsylvania Railroad Station and arrested the defendant. On being searched he was found to have in his possession a railroad ticket for Philadelphia, a flashlight and a large quantity of silver.

The above facts are in the main uncontradicted and in general the defendant has admitted them to be true. The defense in this case was based entirly upon the theory that the defendant, Metalski, was acting under coercion and that he was compelled to take part in the holdup of the tavern in Philadelphia and subsequently compelled by Morton to drive the Chevrolet coupe from Philadelphia to New Jersey. The defendant claims that the reason for this was because Morton wanted the defendant to drive him to his home in Newark to get a girl known as Dot Johnson, this girl being one with whom Morton had formerly lived and who more recently had been living with the defendant. Defendant admits that he was in this Chevrolet coupe at the time of the murder of

Trooper Yenser but says that he was driving the automobile and did not know that Morton was shooting at any trooper or at anyone else, and further that he did not assist or aid Morton in any manner and that during the entire morning of November 9th he was in fear of Morton and acting under Morton's direction and influence.

The State introduced several witnesses to show that as a matter of fact Whitey Morton was driving the Chevrole coupe and that Metalski was the passenger, and the State's contention was that Metalski was the person who actually fired the shotgun which resulted in the death of Trooper Yenser. Whitey Morton was not apprehended and subsequently committed suicide at Philadelphia.

## ARGUMENT

### POINT 1

Defendant alleges that there was error in trial judge permitting prosecutor to cross-examine defendant on details of admitted prior convictions of crime, including defendant's association with alleged criminals and disreputable persons who were not involved in the present case (Assignments of Error 6-7-8-9-10-11 and 12, S. C. p. 507-510).

When the defendant took the stand in his own behalf on direct examination (S. C. p. 270) he began to tell the story of his life and included in his narrative a list of offenses of which he had been convicted. On cross-examination (S. C. p. 309) defendant was questioned about these various convictions, nature of the offense, name under which he was sentenced, term of sentence, and matters which would have been disclosed in the production of the record of conviction.

In *State vs. Silver,* 101 N. J. L., 232, the Court said:

> "It is contended that the court erred in permitting the state to cross-examine the defendant Silver with relation to the number of times that he had been con-

> victed of crime. Under the Evidence Act, the state may show a conviction either by cross-examining a witness, or by producing the record, and if there are several convictions, the state is at liberty to produce the records in each case. That being so, a witness may be cross-examined as to his record in each case."
> (Underlining ours.)

In the case of *State vs. Rusnak,* 108, N. J. L., 84, the defendant admitted a prior conviction and the prosecutor of the pleas on cross-examination asked where this prior offense was committed. Defendant alleges error. The Court said:

> "That question was proper, the rule being that after a defendant has admitted on cross-examination his prior conviction of crime, it is not improper for the trial court to permit the State by further cross-examination to show such facts as would have been brought out if his conviction had been proved by the production of the record thereof."

The Court also cited as authority the decision in *State vs. Merra,* 103, N. J. L., 361, and a number of other New Jersey decisions as plainly justifying the cross-examination in question.

At first no objection was made to these questions and it was not until this cross-examination had proceeded for some time that counsel for the defendant objected thereto (S. C. p. 312). The Court properly overruled the objection, stating that the prosecutor could bring out on cross-examination anything that could be shown by the records of the convictions. This is in accordance with the New Jersey decisions cited above.

Defendant also objects to certain questions relative to his association with various persons and also a question as to where and when the defendant met a girl known as Dot Johnson. The entire defense offered in this case rests upon the theory that the defendant at the time of the murder of Trooper Yenser was acting under compulsion. It was therefore certainly proper to cross-examine him in de-

tail as to his relationship with Whitey Morton and also with Dot Johnson. In his direct examination he testified at length about both of these persons and told of having met Morton in 1931 at Camden (S. C. p. 276, 1. 37) and of later renewing his acquaintanceship with Morton in State Prison (S. C. p. 277, 1. 11). He further testified that he had met Dot Johnson through Morton (S. C. p. 277 1. 23). All the matters upon which he was cross-examined had been brought out in his direct examination.

In the opening of the attorney for defendant it was stated that the defendant was in fear of what Morton might do to him, and in the defendant's direct examination and all his testimony relative to the evening of November 8th and the morning of November 9th he constantly referred to the fact that he was being compelled to do these various things and that Morton was the leader and was directing the activities of both of them.

The State was certainly entitled to interrogate the defendant as to his past relationship with Morton and to disprove, if possible, from his cross-examination his claim that he was in fear of Morton. It was also just as proper for the State to show the relationship of the woman Dot Johnson with the defendant and with Whitey Morton in order to disprove the claim of the defendant that Morton was "mad" at him because of the fact that the defendant had gone off with Morton's girl. This was along the same line as the testimony of Marie Morton (S. C. p. 404) when she, called as a witness for the State, testified that she had been living with Morton and was living with him at the time of his death and had been for a year and a half prior thereto.

As the questions on cross-examination were all directed to matters about which the defendant had testified on direct examination, any cross-examination having as its purpose the attack on the credibiliy of the witness was proper, and contradictions or inconsistencies in his testi-

mony could be shown by such cross-examination.

The Court has said in *State vs. Hogan,* 13 Misc. R., 117; 176 Atl., 709, that any fact that bears against the credibility of a witness is relevant.

In *State vs. Barth,* 114 N. J. L., 112; 176 Atl., 183, the defendant was cross-examined and made various admissions as to crimes in which he had participated after the commission of the murder for which he was being tried. The defendant had expressed remorse over this murder and yet admitted the commission of other crimes after the murder. Objection was made to the proof of these later disconnected crimes. Mr. Justice Parker in the opinion of the Court of Errors and Appeals said:

> "The argument now is that proof of these later and disconnected crimes was improper; and that as defendant had at first denied using the gun after the Friedman murder, that answer closed the legal cross-examination on that point. As to this last, we had never understood that a witness giving a wrong answer on cross-examination—in this case, apparently a false one—may not be further questioned with the results of eliciting the true answer;"

## POINT 2

It is alleged that there was error in permitting witness, Marie Morton, to testify as to the capability of Morton to drive car at time of commission of crime charged.

In the first place, we wish to call attention to the fact that there is no such testimony given, on her part or anyone else, relating to Morton's capability to drive at the time of the murder.

Defendant in his direct examination gave the following testimony:

> "Q—Do you know whether or not Morton was an automobile driver?
>
> A—To my knowledge, I don't know.

Q—Did you ever see him drive an automobile?

A—No, sir."

(S. C. p. 290).

This testimony was apparently elicited for the purpose of strengthening defendant's contention that defendant was driving the automobile at the time of the murder. This was done by attempting to cast doubt on Morton's ability to drive, therefore on rebuttal Marie Morton, who had lived with Whitey Morton for a period of a year and a half, was asked if she had ever ridden in an automobile with Morton driving, and she replied she had (S. C. p. 409). She gave no testimony, however, as to who was driving at the time of the murder.

Objection was made to one question addressed to Mrs. Morton, the objection being apparently on the ground that the testimony was not proper rebuttal. Permitting the State to offer testimony in rebuttal is within the trial court's discretion, (*State vs. Landecker,* 100, N. J. L., 195).

There was much testimony, both by State witnesses and by the defendant himself, relative to speed and reckless manner in which the Chevrolet was being operated during the chase by the state troopers and at the time the fatal shot was fired. In view of this there was no error in the testimony as to the manner in which Morton drove, and certainly it cannot be said to have been harmful error. Moreover, as has been stated before, there was no objection made to the question except on the ground that it was not proper rebuttal.

## POINT 3

Defendant contends that there was error in permitting William A. Jones, a firearms expert, to testify regarding bullets and gun without first proving that the gun was actually in the possession of the defendant at the time of the commission of the crime in question.

At the time of the murder of Trooper Yenser several

shots were fired from a shotgun and also some other shots from what was apparently a revolver. One of the bullets from the revolver was found in the trooper's automobile (S. C. p. 89 and 90). At the time of Metalski's arrest after his escape from the Middlesex County Jail a revolver was found in his possession, which was introduced in evidence. Detective Long of the State Police identified this gun as being the one taken from Edward Metalski on West Kinney Street on the night of December 18th (S. C. p. 417). The witness William A. Jones, a firearms expert, performed certain tests with this revolver and testified that in his opinion the bullet found in the radiator of the trooper's car had been fired from it (S. C. p. 418 and 419). The only person who could have completely explained this situation, namely, how the gun which had been used on the night the trooper was murdered again came into possession of the defendant, was the defendant himself, and he failed to do so. Based upon the testimony of the State's expert, it would appear conclusively that the gun which Metalski used in his escape from the Middlesex County Jail was the same gun which he had with him at the time of the shooting of Trooper Yenser. Where that revolver was between the murder of Yenser and Metalski's escape from the Middleesex County Jail the State did not know, and the one person who could have testified about it with complete knowledge was the defendant himself.

Defendant complains of a statement made by the witness Jones referring to defendant, "He knew where he left it, and went back and got it, possibly, after he got out." (S. C. p. 425). Defendant says that this answer was obviously untrue and without foundation and fact. This witness did not have any knowledge nor did he testify as to anything except the comparison of test shots fired by him from the revolver and the bullet found in the trooper's automobile.

Attorney for the defendant, on cross-examination, in a question beginning on page 424 of State of Case and con-

tinuing over to page 425, ended the question with these words, "by what magic do you know that this gun could be the same gun?" and it is this question which brought forth the answer to which defendant now objects. Obviously such a question could only call for a guess or a theory on the part of the witness, and the defendant got just that.

## POINTS 4, 5, 6, 7, 8, 9 and 10

These points all relate to alleged errors in the charge of the Court. Each point refers to a separate portion of the charge which has been set forth in the defendant's brief and argued separately.

Taking the charge as a whole as it appears in the State of Case, pages 452-481, it would appear that the Court has correctly covered the law applicable to the crime charged and has clearly stated to the jury the Court's remembrance of the testimony, emphasizing the fact that the jury's recollection of the testimony is to control and not the Court's (S. C. p. 472, 1. 22). The definitions and other law laid down in the charge have been taken in the main from charges to juries in similar cases in which the identical wording has been used and approved by appellate courts on appeal.

The defendant cannot take a single sentence or paragraph and construe it without regard to the context in which it appears, and there is certainly no error, either harmful or otherwise, when the entire charge is read as a whole (*State vs. Banusik,* 84 N. J. L., 640).

While in our opinion it is unnecessary to do so, nevertheless, we wish to include the following comments relative to the points raised in connection with the charge of the Court:

## POINT 4

This is based upon Assignment of Error No. 20 (S. C. p. 513).

The law is correctly stated by the judge in the same language which was used and approved in *State vs. Zdanowicz,* 69 N. J. L., 619, at page 626. Apparently what the Court intended to do was to explain to the jury that no particular length of time need intervene between the formation of the purpose to kill and its execution. Certainly, considering the other parts of this charge and this paragraph itself, no error or injury was done the defendant. Similar words in charge of the Court were also approved in *State vs. Sage,* 99 N. J. L., 229, at page 234.

POINT 5

This is based upon Assignment of Error No. 21 (S. C. p. 514).

It must be remembered that the contention of the State was that the defendant fired the fatal shot and was also the one who broke out the back window of the car in which he was riding. There was ample testimony introduced on this point. Defendant claimed that he was the driver of the automobile and also said that all shots were fired out of the back of the car, whereas the testimony of Trooper Matey was to the effect that the trooper's automobile was alongside of the defendant's auto at the time Yenser was shot.

The charge was correct insofar as the law involved is concerned (*State vs. Sage,* supra); and as to the facts in the sentence just preceding the portion of the charge complained of, the Court made a statement which very clearly left the question of whoever did kill Yenser to the jury (S. C. p. 464, l. 21).

POINT 6

This is based upon Assignment of Error No. 22 (S. C. p . 515).

A single sentence cannot be construed without regard to the context in which it appears (*State vs. Banusik,* 84 N. J. L., 640). The Court was obviously referring back

to its charge as to wilful, deliberate and premeditated murder. It certainly is not necessary for the Court to include a definition every time the words "premeditated" or "murder in the first degree" are mentioned.

POINT 7

This is based upon Assignment of Error No. 23 (S. C. p. 516).

This portion of the charge in which it is alleged there was error clearly leaves to the jury to find as a matter of fact whether under the evidence presented the defendant was an aider and abetter in the commission of this murder.

Defendant's objections are somewhat similar to those made in *State vs. Giberson,* 99 N. J. L., 85, in which the Court, at page 89, stated that this question was clearly and correctly left to the jury to decide.

POINT 8

This is based upon Assignment of Error No. 25 (S. C. p. 516).

In connection with the above we wish to quote from the opinion of the Court in *State vs. Giampietro,* 107 N. J. L., 120, where it was said, (citing *State vs. Randall,* 95 N. J. L., 452) :—

> "The right of a court of this state to comment on evidence, and even to state its view thereof, so long as the jury's right to decide all questions of fact is preserved, is too well established in this state to be successfully controverted."

In *State vs. Seifert,* 86 N. J. L., 706, the Court told the jury that in the opinion of the Court the defendant was guilty, but left the question of his guilt or innocence to the jury accordingly as they believed or disbelieved the defendant's testimony.

The language used by the Court in the last mentioned case was very strong,—certainly much stronger than any

meaning that could possibly be placed upon the words of the trial judge in this case.

POINT 9

This is based upon Assignment of Error No. 27 (S. C. p. 517).

The addition by the Court to the charge requested by the defendant is so obviously correct that no argument on this point is required.

POINT 10

This is based upon Assignment of Error No. 28 (S. C. p. 517 and 518).

It is respectfully urged that the charge of the Court wherein the request to charge of the defendant is modified and explained is correct, and that the decisions cited by the defendant do not in any way bear out the error alleged.

POINT 11

The verdict of: guilty of murder in the first degree, is amply supported by the evidence.

Defendant, in Assignment of Error No. 33 (S. C. 521), alleges that the verdict was contrary to law and against the weight of evidence. This point has already been argued verbally at some length before the Court. In the first place, the defendant himself admits in his testimony that Trooper Yenser was murdered and that he was present in the Chevrolet automobile at the time the shot was fired which resulted in the death of Yenser. He claims that the shot was fired by his companion Morton and that he did not know at whom Morton was shooting.

We wish to quote from the defendant's testimony on cross-examination (S. C. p. 369, et seq.):—

> "Q. Now, you say he fired one shot, and he fired this shot right through the glass of the back window of your car, is that right? A. Yes, sir.

Q. Now, did you know who Morton was shooting at at the time? A. No, sir.

Q. Do you know whether or not he was shooting at anybody? A. No, sir.

Q. Did he say anything to you, 'We are being chased. Drive faster,' or anything of that kind? A. No, sir.

Q. Did he say anything to you at all before he fired this first shot? A. No, sir.

Q. What? A. No, sir.

Q. This fellow that was sitting alongside of you just suddenly picked up this shotgun and fired a shot out the back window, is that right? A. Yes, sir.

Q. Without making any remark; without saying anything? A. No, sir.

Q. Was there any car in back of you at the time? A. I didn't see none.

Q. Well, you have a mirror in this Chevrolet? A. I don't know if there was one in there or not.

Q. Well, were they any lights—did you see any lights coming at you from your rear, from in back of your automobile? A. I didn't notice any.

Q. Did you see any lights reflected in your windshield or in any mirror which may have been in the car, or anywhere else in the car? A. No, sir.

Q. Was the curtain pulled down on your back window? A. No, sir.

Q. What? A. I don't think so.

Q. Did you look to see who Morton was shooting at? A. I could not look.

Q. Well, did you look? A. No, sir.

Q. Did you ask Morton who he was shooting at? A. No, sir.

Q. Did Morton fire any more shots? A. I don't remember.

Q. Well, then, there is only one shot that you are positive of, is that correct? A. Well, yes, sir.

Q. What? A. Yes, sir.

Q. Did you hear any shots fired at you from another car? A. No, sir.

Q. Did you ever see any other automobile? A. I might have passed some automobiles, I don't know."

This testimony of the defendant as recited above is so ridiculous as to hardly require any comment. His other testimony, both on direct and on cross-examination, requires a great stretch of the imagination to believe any part of it.

We wish to also refer to the testimony of the defendant on page 377 of the State of Case, where he says he did not notice any Elizabeth police radio automobile pursuing the automobile in which he was riding, and also on page 378 where he says that he ran because he wanted to get away from Morton and that he did not see any police.

Defendant in his testimony offers the defense that at all times, both before, at the time and after the murder of Yenser, he was acting under compulsion and that because of the defendant's relationship with one Dot Johnson, Morton, who was his companion at the time of the shooting "had it in for him" and that he was fearful of bodily harm unless he did as Morton wished.

By his own admission this defendant has served terms in at least five penal institutions. Morton, on the other hand, did not have as long an experience in prison and it was probably hard for the jury to believe that this defendant could be easily frightened or scared by anyone. The defense presented was therefore extremely weak. On the other hand, the evidence produced on behalf of the State was clear and conclusive. Several witnesses testified that the driver of the automobile wore a light-colored hat, and also two witnesses, officer Malsam (S. C. p. 118 and 119) and officer Geiger (S. C. p. 181) identified this defendant as the passenger and not the driver. Shotgun shells exactly similar in make, calibre and gauge to those

found in the Chevrolet automobile were found by Detective Arthur of the Philadelphia police when he searched Metalski's room (S. C. p. 258). There could hardly be more conclusive evidence than this.

With further reference to the defendant's contention that he was in fear of his life, we wish to point out that in the holdup of the Philadelphia tavern, according to the testimony of the witnesses to this crime and particularly that of James Burns, the defendant was the ringleader and that the defendant said to this one witness, "I will blow your God damn brains out if you make a noise." (S. C. p. 216, l. 18).

It must be remembered that Metalski had a number of reasons which made it very desirable that he escape arrest. If he had been caught he would have been called upon to answer for the holdup in Philadelphia, for the stolen automobile in which he was riding, for the sawed-off shotgun and revolver which were in the automobile with him. Also, he knew that he was wanted for escaping from the North Carolina prison and for jumping bail from Union County, New Jersey.

In view of all this testimony it is respectfully submitted that the verdict returned by the jury in this case was the only verdict that could properly have been rendered and that it was not in any way the result of mistake, passion or prejudice.

IT IS THEREFORE RESPECTFULLY URGED THAT THE CONVICTION OF THE DEFENDANT, EDWARD METALSKI, OF MURDER IN THE FIRST DEGREE, WITHOUT ANY RECOMMENDATION, SHOULD BE AFFIRMED.

DOUGLAS M. HICKS

*Attorney and Counsel for the State of New Jersey, Defendant-in-Error.*