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Certificate of Chancellor.

Filed June 11, 1931.

In Chancery of New Jersey.

THE STATE OF NEW JERSEY, Plaintiff, vs. EUGENE COMPO, Defendant.	Sur Indictment for Murder. 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 Essex County Court of Oyer and Terminer, convicting the said Eugene Compo, of the crime of murder in the first degree, without exhibiting to me the record of the proceedings in the cause or any part thereof, and without showing any error in those proceedings, and that I have refused to order a writ of error for the review of said judgment, solely because no cause, arguable or otherwise, is shown for the granting of such writ of error to the Supreme Court.

Dated at Trenton, New Jersey, this 11th day of June, Nineteen Hundred Thirty One.

E. R. WALKER,
Chancellor.

Writ of Error.

New Jersey, ss:

(Seal)

The State of New Jersey to WILLIAM S. GUMMERE, ESQ., one of the Justices of the Supreme Court of the State of New Jersey, and to the Judges of the Court of Common Pleas of Essex County, constituting the Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, of the term of April, 1931.

Because in the record and proceeding, and also in the giving of judgment upon a certain indictment against Eugene Compo, late of the City of Newark, in the County of Essex aforesaid:

> "For that said Eugene Compo, on the twenty third day of December, in the year of our Lord, one thousand nine hundred and thirty, at the City of Newark, in the County of Essex aforesaid, did wilfully, feloniously and of malice aforethought, kill and murder Eugene Lynch 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."

Pro ut the said indictment whereof, before you, he the said Eugene Compo, has been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Eugene Compo, as it is said, manifest error hath intervened to the great damage of the said Eugene Compo, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to

him, the said Eugene Compo, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, and the entire record of the proceedings had upon the trial, to our Court of Errors and Appeals, in the last resort in all causes of law, to be held at Trenton, on the first day of July next, and this writ, that the record and proceedings as aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, EDWIN ROBERT WALKER, ESQ., our Chancellor and the President Judge of our said Court of Errors and Appeals, at Trenton, New Jersey, this eleventh day of June, Nineteen Hundred Thirty One.

JOSEPH F. S. FITZPATRICK,
Clerk.

EDWARD R. MCGLYNN,
CHARLES BASILE,
Attorneys for defendant,
Eugene Compo.

Due and legal service of a certified copy of the within Writ of Error is hereby acknowledged this 11th day of June, 1931.

EDW. B. STONE,
Principal Keeper,
New Jersey State Prison.

Return to Writ.

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

I, Walter D. Van Riper, Judge of the Court of Oyer and Terminer and Court of Quarter Sessions in and for Essex County, 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 of said Court and County this 30 day of June, A. D. Nineteen Hundred and Thirty-one.

(Seal)

WALTER D. VAN RIPER,
Judge.

Indictment.

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

Be it Remembered, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the first Tuesday in April in the year of our Lord, One thousand nine hundred and thirty-one, by the Hon. William S. Gummere, Chief Justice of the Spreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Harry M. Friend, Samuel D. Chambers, Henry Jedel, George H. Irving, William Beckelman, Frank D. Heath, William H. Jenkins, William A. Dunlap, Harry Rich, Al-

fred L. Kirby, Alfred F. Frosch, Aladar Haas, William S. Jennings, Abe Reichenstein, George Goering, William C. Barkhorn, Charles C. Lurich, Nicholas Caputo, Winslow Zeliff, Joseph Aiello, William Klank, William H. Stevens, Samuel Smith, good and lawful men of the said County of Essex, duly summoned 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 Essex, it is presented in manner and form following, to wit:

Essex County, to wit: The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Eugene Compo, on the twenty-third day of December, in the year of our Lord one thousand nine hundred and thirty, at the City of Newark, in the County of Essex aforesaid did wilfully, feloniously and of his malice aforethought, kill and murder Eugene Lynch, 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.

JOSEPH L. SMITH,
Prosecutor of the Pleas.

Judgment Record.

And on the twenty-eighth day of April A. D. Nineteen hundred and thirty-one, on which day the said Indictment was presented by the Grand Jury aforesaid to the said Court of Oyer and Terminer, and the said Justice did then and there order the said Indictment to be delivered to the Clerk of the Court of Oyer and Terminer in and for said Court

and then and there the said Indictment was delivered and duly filed by said Clerk, and an entry of such 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, at the same session of the Court of Oyer and Terminer, holden at Newark on the twenty-eighth day of April, A. D. Nineteen hundred and thirty-one, before the Judge aforesaid, comes the said Eugene Compo in the custody of Harry L. Huelsenbach, Sheriff of the County of Essex aforesaid, in the above custody in the Jail of the County aforesaid, he has been before committed for the cause aforesaid being brought to the Bar of this Court in his own proper person by the said Sheriff to whom he is also committed and having heard the Indictment and being forthwith demanded of and concerning the premises in the above indictment specified and charged upon him how he would acquit himself thereof, he says that he is Not Guilty thereof, and therefore, for good and evil he puts himself upon the Country, and Joseph L. Smith, Prosecutor of the Pleas for the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

Therefore, let a Jury thereupon come before the Judge aforesaid, at Newark aforesaid, in the County of Essex, at the same session of the Court of Oyer and Terminer aforesaid on the first day of June, A. D. One thousand nine hundred and thirty-one, twelve free and lawful men, each of whom shall be a citizen of this State and a resident within the County of Essex 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 Eugene Compo, to recognize upon their oath, whether the said Eugene Compo is Guilty of the Murder in the indictment aforesaid specified or Not Guilty, because as well the said Joseph L. Smith, Prosecutor of the Pleas of the County of Essex aforesaid who prosecutes for the State of New Jersey in this behalf as the said Eugene Compo has put himself upon the Jury, and the same day is given to the parties aforesaid, at the same place. At which day, to wit, the first day of June, A. D. Nineteen hundred and thirty-one, at the same Term of Oyer and Terminer, holden at Newark, aforesaid, in the County of Essex, before the Honorable Walter D. Van Riper, Judge of the Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the said County of Essex, comes as well the said Joseph L. Smith, Prosecutor of the Pleas, who prosecutes aforesaid, and the said Eugene Compo in the custody of Harry L. Huelsenbach, Sheriff of the County Aforesaid, being brought to the bar in his own proper person, by the said Sheriff, and the Jurors of the Jury by the said Sheriff for this purpose empanelled and returned to wit, after the following challenges, by the State 10, by defendant 19, for cause, 18, by consent 3 and by the Court 12; 1, Robert Graham Huntington; 2, Daniel A. Hopper, Jr.; 3, George Gardner. After Juror No. 3 was sworn, the said Special Panel becoming exhausted, the Court order the remainder of the panel drawn from the General Panel, whereupon the following named persons were returned from the General Panel and sworn as jurors. The three jurors being called, all appeared and the trial progressed; 4, Malcolm A. L. Eales; 5, Maurice F.

Groner; 6, Frank J. Hawkins; 7, John H. Faas; 8, John Warner; 9, Charles Stanley Gridley; 10, George J. Ernst; 11, Herman Graff; 12, Horace Grobert, being called come and were sworn on that Jury who to speak the truth of and concerning the premises and thereupon the trial of the issue commenced and continued before said Court and Jury.

And further, that is to say on the second day of June, A. D. Nineteen hundred and thirty-one, the Jury being called all appeared, whereupon the Court by consent of counsel excused Juror No. 12 and the following named person was returned from the General Panel and sworn as Juror No. 12, Patrick J. Fitzgerald, and the trial of the issue commenced and continued before the said Court and Jury from day to day until the fifth day of June A. D. Nineteen hundred and thirty-one, at Newark aforesaid, the Jury in the meantime being all that time kept together and in the care of Officers of the said Court, who were selected and duly sworn by said Court for that purpose, at which last mentioned day the said issue after a charge from said Court was submitted to the jury, and the said jury in charge of said officers of said court for that purpose were taken to a private room to consider of their verdict, and afterwards, that is to say on the day aforesaid, at Newark, the said jury returned into and before the said Court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said prosecutor, Joseph L. Smith, and the said Eugene Compo, say that, "We find the prisoner at the bar, Eugene Compo, Guilty of Murder in the first degree in the manner and form as is set forth in the indictment," and so they say all.

By request of the Court, the jury was polled and

when the roll was called, each juror, for himself answered, "Guilty of Murder in the First Degree."

Judgment signed June 5, 1931. Walter D. Van Riper, Judge,

Whereupon, all and singular, the premises being seen, and by the Court now here fully understood, it is on this fifth day of June A. D. Nineteen hundred and thirty-one, ORDERED AND ADJUDGED that Eugene Compo be taken to the County Jail from whence he came, and there to be kept in strict custody and from thence that he be taken by the Sheriff within ten days after the issuing of the warrant to him, for that purpose, and delivered to the principal keeper of the State Prison, to be kept by him in solitary confinement until the week beginning Sunday, the twelfth day of July, A. D. Nineteen hundred and thirty-one, and upon some day within the said week, at his discretion, as to the time within the walls of the buildings provided, by the Board of walls of the buildings provided, by the Board of Inspectors of the State Prison for that purpose, or within the yard or enclosure adjoining thereto, the principal keeper of the State Prison shall execute the punishment of death upon the said Eugene Compo, by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, the application of such current to be continued until the body of the said Eugene Compo be dead.

"And may the Lord have Mercy upon your soul."

Testimony.

ESSEX COUNTY COURT OF OYER AND TERMINER.

Monday, June 1, 1931.

THE STATE OF NEW JERSEY, vs. EUGENE COMPO,		On Indictment No. 358 April T. 1931 for Murder.

Before—HON. WALTER D. VAN RIPER, Judge and a jury drawn from a Special Panel.

APPEARANCES:

SIMON L. FISCH, First Assistant Prosecutor of the Pleas, for the State.
EDWARD R. MCGLYNN and CHARLES BASILE for the defendant.
(A jury is called and sworn).

(A jury is called and sworn).

ESSEX COUNTY COURT OF OYER AND TERMINER.

SECOND DAY.

Tuesday, June 2, 1931.

THE STATE OF NEW JERSEY, vs. EUGENE COMPO,	On Indictment No. 358 April T. 1931 for Murder.

Continued pursuant to adjournment.
Present, counsel as before stated.
(Mr. Fisch opens in behalf of the State).

JOHN J. BRACKEN sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Mr. Bracken, you are a civil engineer and surveyor, are you not? A. Yes, sir.

Q. Did you, at the request of the Prosecutor's office, make the map which is on the exhibition board in the courtroom here? A. I did.

Q. Is it drawn to scale? A. It is.

Q. What is the scale? A. The scale is one inch on the map is equal to ten feet on the ground, and it is so marked.

Q. And the arrow is pointing in what direction? A. The arrow is pointing to the north.

Q. What locality is shown on the map? A. The locality shown is the intersection of Beach Street on the west side, Mulberry Street and Cot-

tage Street and Mulberry Place, in the City of Newark.

Q. What are the red outlines on the map? A. The red objects are the brick buildings along either side of Mulberry Street, and two of them going up on Beach Street.

Q. And the yellow objects? A. Yellow are the frame houses on either side of Mulberry Street.

Q. And are they marked as to their numbers, their street numbers? A. They are marked as to the street numbers, yes.

Q. What is the gray outline? A. Gray outline is the cement sidewalk along either side of the street, the cement or bluestone sidewalk.

Q. Have you shown the trolley tracks on Mulberry Street? A. I have, yes.

Q. Can you give us, please, the width of Mulberry Street from curb to curb in front of the place which you have marked as a two-story brick store on the corner of Beach and Mulberry Streets? A. I have. The distance between there is forty feet from curb to curb.

Q. Now, have you also shown the lights and the light poles? A. I have. I have shown all the objects on either side of the street along the curb line between Cottage Street and Mulberry Street opposite Beach Street, along Mulberry Street, at least Mulberry Place.

Q. Now, is there a light pole on—what will we call that—will we call this the easterly side of Mulberry Street? A. That is the easterly side of Mulberry Street, yes, the map is turned upside down to bring it in the location of the way the street runs.

Q. So that this would be east? A. That would be east, yes.

Q. And opposite that, of course, would be west? A. West; right.

Q. And north would be over toward the Judge? A. That is it; so marked.

Q. And south would be in the opposite direction, of course? A. Yes.

Q. Now, can you tell us, please, the distance of the electric light, the distance between the electric light and the corner of Mulberry and Beach Streets where this two-story brick store is? A. Do you want it from the light or from the light pole? The light extends out from the street as is shown.

Q. From the light, please. A. To the intersection of the corner there, the curb?

Q. Yes. A. That is forty-two feet, forty-two and a half feet.

Q. What kind of a light is that? A. It is an arc light extending out over from the large pole, one of the large arc lights, perhaps 2000 candle power, or something, whatever the conditions are in the city.

Mr. McGlynn: If the surveyor does not know that from his record, I ask that that be stricken from the record.

Q. Well, it is one of the large arc lights in the city, is that right? A. One of the large arc lights.

Q. Can you give us the number of that store, the two-story brick store? I notice that there is no number on that. A. Well, there wasn't any number on account of the door, but the next number is 301, so from that there, that is 299.

Q. So that the store on the corner is 299 and that is on the southwest corner of Beach and Mulberry Streets? A. Southwest corner of Beach and Mulberry streets.

Q. And can you tell us, please, Mr. Bracken, where the entrance to that store is located? A. It is located right on the corner, the intersection of the corner. It is so shown here.

Q. That is, it is cater-corner, is it? A. Yes, it is. It is cut off the corner.

Q. Now, can you tell us, Mr. Bracken, how many feet it is from the stoop in front of the house at No. 294 Mulberry Street to the sidewalk directly in front of the entrance to the store of 299 Mulberry Street? A. To any particular point or to the center?

Q. Right to this side. A. From the center to where the sidewalk starts at the turn in the curb it is sixty-nine feet.

Q. What is the width of the sidewalk from the westerly side of Mulberry Street? A. The width of the sidewalk is thirteen feet. It may vary an inch or two in different places.

Q. Now, you have given us the distance from the arc light to the westerly side of Mulberry Street. I wonder if you would be good enough to tell us, if you can, how far that arc light extends out from the easterly side of Mulberry Street where it is located? A. From the pole that arc light extends out ten feet, ten feet and a half.

Q. And the pole is at the curb, is it? A. The pole is at the curb. The pole is just within the curb about a foot inside so nothing will strike it going by.

Mr. Fisch: I offer the map in evidence.

(The map referred to is received in evidence and marked Exhibit S-1).

Cross-examination by Mr. McGlynn:

Q. When did you take the measurements which are reflected on that map? A. The measurements were made as of May 27, 1931.

Q. Have you any idea of the conditions in that vicinity on December 23, 1930? A. Yes, sir.

Q. Specifically or generally? A. Why, generally. I made some measurements shortly before that in 1930 at the corner of Cottage and Mulberry Street and along there.

Q. Did you make any measurements of the westerly side of Mulberry Street on or about December 23, 1930? A. No, but previous to that time, in 1930.

Q. Have you any personal knowledge whether there was any change in conditions in that locality between December 23, 1930, and when you made these measurements in 1931? A. No.

Q. Now, did you measure the distance that that electric light is suspended above the ground? A. I didn't measure the distance.

Q. Did you lower the electric light to find out how far it extended out from the curb? A. No, I didn't. I just observed it, getting under the electric light, and took the distance from the pole.

Q. Did you make any measurements of the entrance of the store itself? A. Yes.

Q. What is the distance from the easterly wall of the building to the doorway itself, this point in here? Does that make it plain? A. Yes.

Q. That point there? A. There is a distance of about two feet and a half.

Q. Did you actually measure that? A. Yes, I have got the measurements in the book.

Q. You say it is only two or two and a half feet?

A. Yes, sir; there is another little piece goes inside. There is a double measurement in there. There is one piece in there—I have got it right here—it is about 220—and then there is another jog. It is over there, it would be about four feet.

Q. About four feet? A. Yes.

Q. Then the door of the store in this little vestibule like that depicted on this map is about four feet from the outer wall of the building? A. Yes.

Q. And that etxends in both sides as pictured here? A. Extends both sides.

Q. And about the same respective distances? A. About the same respective distances.

Q. Did you make any observation or measurements with reference to the character of the store front on Mulberry Street? A. Yes. The store front is an open window on Mulberry Street side.

Q. Are you sure there is no, what you call it, store window with a back to it there? A. There is a store window. When I made the measurements there were different objects of groceries, cans and things on exhibition.

Q. Did the window have a back in it? A. I didn't observe that, what was on the inside, but there was cans, and other things in front.

Q. Did you notice whether there was any window on the northerly side, on the Beach Street side? A. Small window.

Q. Do you know whether that had a back? A. That had a back, the groceries. I didn't notice whether there was anything behind it.

Q. This as shown on here on the westerly side of Mulberry Street just south of the building on the corner is a tree? A. Yes, sir.

Q. And then this is shown right on the corner as a pole? A. It is, yes.

Q. What kind of a pole is that? A. A trolley pole.

Q. And this is an iron street sign? A. Yes, sir.

Q. How far away from the center of this sidewalk in front of the southwest corner is the light on Mulberry Place? A. About here?

Q. Yes. A. That would be 107 feet.

Q. I think the building Mr. Fisch referred to is 294? A. Right here (indicating).

Q. Can you tell us the distance from the curb back to the front line of the house? A. Practically the same distance, 13 feet and a fraction.

Q. How far does that porch extend out in front of the house? A. That porch extends out in front of the house approximately 5 feet.

Q. The next street west of Mulberry Street going west on Beach Street is what? A. Orchard Street.

Q. Do you know whether the building immediately south of the southwest corner is a house or a store? A. It is a house; it is a two-story frame with a basement under it.

Q. And the next building to the south is what? A. It is a house.

Q. The building on the east side of Mulberry Place, on the northeast corner, is a house? A. That is a store on that corner.

Q. And then a residence next? A. Yes.

Q. Going north? A. Yes.

Q. Then a residence? A. Yes.

Q. Then is there a store? A. There is a store shown there.

Q. Then a residence? A. Yes, then a residence.

Q. Next to the north is a house? A. There is a store there.

Q. And a corner store? A. Yes, it is another chain store.

Q. In each one of these buildings have you mentioned whether they are residences or stores? A. No, sir, I have not mentioned them.

Q. On the northwest corner of Beach and Mulberry there is an old frame building, isn't there? A. That's it.

Q. With a very small store in it? A. Yes.

Q. With rooms upstairs? A. Yes, three-story frame, as marked.

Q. Then next door is the battery store? A. Yes, it has tires outside. I would say it is a general auto supply.

Q. In that thing that I called the vestibule—I don't suppose you use the term vestibule in a store —but in here (indicating) are there windows on the sides as you go in? A. Yes, sir.

Q. Glass windows? A. Glass windows, yes.

Redirect-examination by Mr. Fisch:

Q. When you are on Mulberry Street in front of 299 and you were asked whether there was a back to this window, when you were in front of 299 could you look into the store?

Mr. McGlynn: I object to that. We don't know the conditions in May as compared with December.

The Court: I will let it go in for what it is worth. It does not show the conditions at that time, but I will let it go in for what it is worth.

Q. You were asked whether there was any change in this locality. Was there any change in this lo-

cality to your knowledge from the 23rd of December to the date when you made this map?

Mr. McGlynn: He said already in answer to my question that he didn't know of any changes.

The Court: He may answer it yes or no.

By the Court:

Q. Do you know whether or not there were any changes made from the time in December to the time you made the map? A. There wasn't any physical change. The ground in front of the buildings—as to the buildings and the street line there wasn't any change to my knowledge.

By Mr. Fisch:

Q. So to your knowledge the physical conditions on the day you made the map were the same as existed on the 23rd of December? A. They were, yes.

Recross-examination by Mr. McGlynn:

Q. Will you tell me from your own personal knowledge, not from any general idea, but from your own personal knowledge, whether that light, for instance, shown on your map in front of the southwest corner, was there in December, 1930? A. If you will let me refer to notes in my office made in March—

Q. You answered the Prosecutor's question that there was not any change to your personal knowledge. A. There isn't any change. The light was there.

Q. What makes you so sure? A. I made some locations in March, 1930, in that same locality for

a case that was down at the corner of Cottage Street.

Q. When did you look at those notes last? A. When I went down to measure this.

Q. Did you measure them on the date of your notes? A. I made the last measurements in May, 1931.

Q. Did you make them personally? A. Personally that afternoon with an assistant.

JACOB G. REUHL sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Mr. Reuhl, you are connected with the Newark Police Department, are you? A. I am.

Q. And you have been for how many years? A. 33 years.

Q. You are one of the official photographers of the Department, are you? A. I am.

Q. Did you make some photographs of the locality which we have been talking about in this case? A. I have.

Q. I show you a photograph and ask you whether this is one of the photographs you made. A. That is one I made.

Q. When did you make that? A. That was made on the 24th of December, 1930.

Q. Will you please refer to the map, Exhibit S-1, and show us on the map where your camera was when this photograph was taken, indicate by an arrow the direction in which it was pointed, and mark it, please, CS-2? A. Yes, sir (indicating).

Q. So that your camera was situated on the easterly curb line of Mulberry Street. A. It was.

Q. Opposite the southwest corner of Mulberry and Beach Street? A. That's right.

Q. And you have marked that point CS-2. A Yes, sir.

The Court: Better write camera under it. When the jury gets to the jury room it won't know what that means.

Mr. Fisch: I ask that this photograph be marked for identification.

(The same is marked Exhibit S-2 for identification).

Q. I show you another photograph and ask you whether you made that photograph. A. Isn't that the same one?

Q. You ought to know. A. That is the same one.

Q. That is the same as the one that has just been marked for identification? A. Yes, sir.

Q. It is a bit clearer, is it not? A. Yes, sir.

Q. Does the back of this photograph contain any writing? A. It does not.

Q. Does the photograph that has been marked for identification contain some writing? A. It does.

Q. The photograph I now show you, which you say is the same, is it a duplicate print of Exhibit S-2 for identification? A. Yes, sir, it is made from the same plate.

Q. It is made from the same plate and it is a clearer print? A. Yes, sir.

Mr. Fisch: I offer in evidence this photograph and ask that it be marked Exhibit S-2A.

(The same is received in evidence and marked Exhibit S-2A).

Q. Did you make a photograph of the interior of the store 299 Mulberry Street? A. I did.

Q. Is this the photograph you made? A. Yes, sir.

Q. Can you indicate on Exhibit S-1 the point where your camera was situated and mark it Cam., for camera, S-3? A. Yes, sir (indicating) right in the doorway.

Q. So that the camera was right in the doorway of the store facing into the store when the photograph was taken? A. Yes, sir.

Mr. Fisch: I offer it in evidence—the photograph—and ask that it be marked S-3.

(The same is received in evidence and marked Exhibit S-3).

Q. Did you make still another photograph of this locality? A. I did.

Q. I show you a photograph and ask you whether you made that. A. I did.

Q. Will you indicate on the map, Exhibit S-1, the place where your camera was located when the photograph was taken, indicate by an arrow the direction in which it was pointed, and mark it Camera S-4 or the abbreviation Cam.? A. Yes, sir (indicating).

Q. You have indicated on the map, have you, the northeast corner of Cottage Street and Mulberry Street, and the camera was pointing south on Mulberry Street, is that correct? A. Correct.

Mr. Fisch: I offer the photograph in evidence and ask that it be marked S-4.

(The same is received in evidence and marked Exhibit S-4).

Witness: Pardon me. Let me see that

once more, please. This is looking south, yes, that is correct. I thought I might be wrong. It is looking south.

Q. It is looking south in the right direction, is it? A. Yes, sir.

Q. Your camera was pointed straight south on Mulberry Street, was it, so that you got both sides of the street? A. It was pointing north. This is the north end.

Q. Well, now, just make sure, will you please, Mr. Reul, as to where your camera was when that photograph was taken? A. (The witness marks). Shall I cross this off?

Q. Cross off the number temporarily, just the four. You say now that this photograph shows a representation of Mulberry Street, your camera having been located on the southeast corner of Mulberry Place and Mulberry Street, is that correct? A. That is right.

Mr. Fisch: I offer the photograph in evidence and ask that it be marked Exhibit S-4.

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

Q. Now, did you make a photograph, Mr. Reul, from the point which you have previously marked on the map as C-S-4? A. I did.

Q. I show you a photograph and ask you if that is the photograph which you made. A. That is the one.

Q. And what does that represent? A. Mulberry Street, looking south, showing the corner of Beach and Mulberry Streets, taken from Cottage Street.

Q. Will you please mark that on the map, C-S-5? A. (Witness marks map).

Mr. Fisch: I offer the photograph in evidence and ask that it be marked Exhibit S-5.

(The photograph referred to is received in evidence and marked Exhibit S-5).

Q. I show you a photograph and ask you if you made that photograph. A. I did.

Q. When and where? A. 25th of December, 1930, at O'Mara's morgue.

Q. What does it represent? A. Body of a man.

Mr. Fisch: I ask that that be marked for identification.

(The photograph referred to is marked Exhibit S-6 for identification).

Q. Now, I wanted to inquire, just a moment, Mr. Reul, with regard to these two photographs, Exhibit S-2 for identification, and Exhibit S-2A in evidence. I believe you said that they represent the same locality, is that correct? A. They do.

Q. Well, now, I believe you also said that they were duplicate prints, is that correct? A. That is correct.

Q. I call your attention to the fact that the automobiles shown on the street are in somewhat different localities, and ask you, calling your attention to that fact, whether or not they are duplicate prints, or whether they are photographs of two different plates taken from the same locality. A. From two different plates.

Q. There were two exposures, weren't there? A. Two exposures. One of them went wrong or something, and I took another one.

Q. One was a little faint, is that it? A. A little faint.

Q. And that is the one that was marked Exhibit S-2, is that right? A. Yes.

Q. And then you took another one which came out a little clearer? A. Clearer.

Q. Were both of these photographs taken from the same position? A. Same position.

Q. That is, from the position which you marked on the map, C-S-2, camera, is that right? A. Yes.

Cross-examination by Mr. McGlynn:

Q. Are these all the pictures you took, Mr. Reul?

Objected to as immaterial.
Objection sustained.
Mr. McGlynn: No questions.

WILLIAM M. BRIEN sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Mr. McGlynn: May I ask your Honor to have the Prosecutor take the pictures which have not been put in evidence, but which have been marked for identification, and see that they are not in the view of the jury?
Mr. Fisch: Sure.

Q. Dr. Brien, you are a deputy medical examiner of Essex County? A. Yes, sir; assistant medical examiner.

Q. You have been for how many years? A. Well, I have been an assistant medical examiner about four years, but—

Q. About four years ago was the time when the law was changed so that a medical examiner's office was created, is that correct? A. Yes.

Q. Now, prior to that time we had a County physician's office, did we? A. Yes.

Q. Were you assistant County physician or deputy County physician? A. I was.

Q. For how many years? A. Since 1918.

Q. How long have you been practicing medicine? A. Forty years the 12th of October next.

Q. Now, doctor, did you perform an autopsy at O'Mara's morgue on December 25th, 1930? A. I did.

Q. I show you a photograph and ask you if you can tell me whether or not the person shown in that photograph is the person on whose body you performed the autopsy? A. It is.

Q. The photograph which I have shown you is Exhibit S-6 for identification, so marked? I say, the photograph is marked Exhibit S-6 for identification? A. Yes.

Q. Now, will you tell us, please, doctor, what your autopsical examination disclosed? First of all, what time did you make the autopsy? A. about three P. M. in the afternoon.

Q. How many hours after death? A. About six and a half hours.

Q. Now, tell us, please, doctor, what your autopsy revealed. A. It revealed that death was due to a 32 calibre bullet wound of abdomen, laceration of intestines, abdominal hemorrhage and shock.

Q. Can you tell us what the weight or height of the deceased was? A. Deceased was five feet seven and a half, hair brown, male and I estimate the weight about 135.

Q. Now, did you find anything, any foreign sub-

stance or object, in your performance of this autopsy? A. Over the left side of the abdomen there was a surgical wound six inches long, which had been sutured, and the operation was performed for the purpose of suturing the bowels and stopping the hemorrhage caused by the bullet.

Q. Well, did you find a bullet? A. Yes, sir.

Q. Tell us about it. A. The bullet was found underneath the skin at the back a half inch to the left of the spinal column, at the junction of the last vertebra and sacrum. The sacrum is the beginning of the rear part of the hip.

Q. Now, can you describe to us the course that this bullet took? A. Yes.

Q. Would it help any, doctor, if you illustrated on me or one of the court officers the direction and course that this bullet took? A. Well, it would make no difference; that is for you decide.

Q. Will you be good enough to show us, using Mr. Fennessy here? A. The course of the bullet was from front to back. It went upward from about—about one and a quarter inches to the left of the center of the abdomen and three inches below the edge of the ribs. It entered there was a wound on half inch by—an oval wound one half inch by one quarter inch, surrounded by a bluish discoloration, but no powder marks. From there it went downward, backwards and inward, from front to back, going through the pelvic cavity—that is, the cavity below the abdomen—and lodging at the junction of the last vertebra one half inch to the left of the spinal column, where it was found. With your finger on the outside you could feel it.

Q. It was just below the skin, was it? A. It was just below the skin.

William M. Brien—Cross.

Q. Now, I show you a bullet and ask you whether or not that is the bullet which you found in the place where you have described it. A. It is.

Q. Can you tell us what kind of bullet that is? A. It is supposed to be a thirty-two.

Q. A steel jacketed? A. So called steel jacketed.

Mr. Fisch: I offer the bullet in evidence.

(The article referred to is received in evidence and marked Exhibit S-7).

Cross-examination by Mr. McGlynn:

Q. Will you refer back to your notes that you were reading from, doctor? I am interested in the point which you described, where you said the bullet entered. A. Yes.

Q. Just read what you have on your notes.

Mr. Fisch: I object, if your Honor please. I object. The doctor referred to what he had in his notes.

The Court: He was using his notes in his testimony.

Mr. Fisch: I have no objection to his referring to his notes.

Q. The testimony you gave as to the location where the bullet entered, doctor, was read entirely from that paper you have in your hand, was it not? A. No, not entirely.

Q. A great part of it was read, was it not? A. Most of it, yes.

Q. Can you describe to me again where the bullet entered without referring to the notes, or would you rather refer to the notes? A. Of course, I re-

member that it was three inches below the edge of the ribs.

Q. Three inches below the edge of the ribs? A. Yes, the costal border, costal meaning ribs.

Q. Three inches below the edge, that would be of the lowest rib, is that right? A. Yes.

Q. Three inches below that, and how far from the center of the body in front? A. I will have to look at the notes.

Q. I have no objection, sir. A. It would be 1¼ inches to the left of the wound described previous to that, which would make it about 4¼ inches from the center.

Q. 4¼ inches from the center on the left side of his body, is that right? A. Yes.

Q. That is the point where the bullet entered? A. Yes.

Q. Could you tell from your examination where that was? I understood you to say that there was a surgical wound there. A. Yes, that is what I am describing. The surgical wound was 6 inches long and it was sutured.

Q. That means stitched? A. Yes. The surgical wound is about one inch to the left of the umbillicus, which is the center of the abdomen, and begins 4 inches below the center of the breast bone and extends down to 3 inches above the symphisis pubis; that is, the end of the bony part of the trunk of the body. When I say trunk, I mean body. It was 3 inches above that to the left of this wound and about 1¼ inches to the left and 3 inches below the free costal margin, there is a wound of entrance, one-half inch by one-quarter and discolored by bluish discoloration; not powder marks.

Redirect-examination by Mr. Fisch:

Q. So that as I understand it, the surgical wound was separate and distinct from the wound of entrance which you found, is that correct? A. Yes, sir, the wound of entrance being 1¼ inches to the left of the surgical wound.

Q. And the surgical wound is one inch to the left of the umbillicus, which is the center of the abdomen? A. Yes, sir.

Q. So that the surgical wound would be 2¼ inches from the umbillicus and to the left of it. A. That's right.

Q. And 3 inches below the free costal margin; that is, 3 inches below the last rib, is that right? A. That is right.

Q. The umbillicus, of course, is the navel, or belly button, as some people call it. A. That's it.

LAWRENCE LYNCH sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Mr. Lynch, where do you live, please? A. 64 South 10th Street, Newark.

Q. Was Eugene Lynch your brother? A. Yes, sir.

Q. How old was he? A. 35.

Q. Do you know where he was employed in December, 1930? A. Butler's chain stores.

Q. Whereabouts? A. Mulberry and Beach Streets.

Q. I show you a photograph, Exhibit S-6 for identification, and ask you whether or not you recognize that photograph. A. Yes, sir, I do.

Q. What does that photograph represent? A. My brother.

Q. Your brother, Eugene Lynch? A. Yes.

Mr. Fisch: I offer the photograph in evidence.

Mr. McGlynn: I object to it.

Mr. Fisch: I offer it for the purpose of proving the corpus delicti. Does your Honor want to see the photograph?

The Court: No, sir, I do not want to see the photograph. That is the reason why I do not want to let them in. I will sustain the objection.

Mr. Fisch: There is nothing gruesome about it, your Honor.

The Court: But my temperament is such that it becomes so to me.

Mr. Fisch: I beg your pardon, I am sorry.

The Court: But there isn't any question but that the man who was killed is Eugene Lynch, as I understand it, and there is no question but that the man on whom the autopsy was performed was Eugene Lynch.

Mr. McGlynn: No question about it.

By Mr. Fisch:

Q. How old was your brother Eugene? A. 35.

CROSS-EXAMINATION WAIVED.

ALLEN HAUG sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Mr. Haug, what is your business, please? A. Tool maker.

Q. Where do you now reside? A. At that time I resided—

Q. No, at this time. A. At this time, 221 Ferry Street.

Q. Now, in December, 1930, and particularly on December 23, 1930, where did you live? A. 294 Mulberry Street.

Q. I call your attention to this map, Exhibit S-1. Were you in the courtroom when this map was described? A. No.

Q. Well, now, it has been testified that this map shows the locality of Mulberry and Beach Streets. A. It does.

Q. And you lived at 294 Mulberry Street? A. 294 Mulberry Street.

Q. It has been testified that this yellow object, marked 294, is 294 Mulberry Street. A. It is.

Q. You recognize that as your house, do you? A. Yes.

Q. Do you know? Do you recognize the locality? A. Yes, sir.

Q. Do you recognize the southwest corner of Mulberry and Beach Street? A. Yes.

Q. What is located there? A. Butler store.

Q. And that is a grocery store? A. Grocery store.

Q. Now, do you remember the night of December 23, 1930? A. I do.

Q. About half past ten or quarter of eleven on that night were you in the front of your home? A. I was in the front of my home admiring the Christmas wreaths that I had put in the window, that I had made.

Q. You were admiring your handiwork, were you? A. That is what I was doing.

Q. While you were out in front of your home,

when you say you were in front of your home, were you on the sidewalk? A. On the sidewalk.

Q. While you were out there admiring the Christmas wreaths which you had made and which you had hung in your window, did you notice anybody on the other side of the street? A. I did.

Q. Whom did you notice? A. The prisoner at the bar.

Q. Do you see him here in court? A. Sir?

Q. Do you see him here in court? A. I do.

Q. Will you step down, please, and put your hand on his shoulder? A. (The witness leaves the stand and places his hand on the shoulder of the defendant).

Mr. Fisch: May we have it noted on the record that the witness puts his hand on the shoulder of the defendant?

The Court: Yes.

Q. Now, when did you see him, Mr. Haug? A. I saw him right in front of the Butler store previous to the time that the shot was fired. I went across the street to finish up my wreaths, to buy some sockets.

Q. What kind of sockets? A. Electrical sockets.

Q. Where were you going to buy these electrical sockets? A. At a hardware store about a little past Mulberry place.

Q. On what street? A. On Mulberry.

Q. On which side of Mulberry Street? A. On the west side.

Q. That is on the same side where the Butler store was? A. As the Butler store.

Q. Now, when you crossed the street from your house to go over and buy these electrical sockets,

where did you cross the street? A. Crossed from the house here to over here diagonally (indicating).

Q. That is, you crossed diagonally, which landed you in front of the Butler store? A. Right in front of the Butler store.

Q. When you got over there in front of the Butler store, did you see the defendant? A. Not exactly in front of the store, but I saw him at the house two houses away from the Butler store.

Q. That is, two houses south of Beach Street? A. Yes, about here (indicating). There is an alleyway here (indicating).

Q. That is, at the south of 303? A. Yes, sir.

Q. What did you see him doing? A. He attracted my attention by loitering—walking back and forth.

Q. From where to where was he walking back and forth? A. From that place to Butler's store.

Q. And back again? A. Yes, sir. Then I kept on walking my way.

Q. How many times did you see him walking back and forth from there to the Butler's store? A. About twice.

Q. What else did you see him do? A. I went to make my purchases—

Q. Before you went to make your purchases, what did you see him do? A. He was talking to a young fellow. I don't know whether he was acquainted with him. I wasn't close enough to tell.

Q. How long did that last? A. About 2 or 3 minutes.

Q. Then what did he do? A. He walked toward Kinney Street.

Q. Did you see him stop that man? A. No, that man was already stopped.

Q. When he was talking to this young fellow,

when you say you didn't know what he was doing, were they walking together or were they at a standstill? A. They were standing still.

Q. Then what happened to this other young fellow? A. I looked around and he started to walk toward me.

Q. That is, the young fellow, this fellow the man had been speaking to, started to walk toward you? A. Yes, sir.

Q. And you were then at what point? A. I was then around here (indicating).

Q. That is, around the locality of 307, is that right? A. Yes. There is a delicatessen store there.

Q. What if anything did you observe the defendant do when this other young fellow walked toward you? A. He kept walking down toward Beach Street.

Q. That is, toward the store? A. Toward the store.

Q. Did you see him do anything as he got to the store? A. No, I just seen him turn his head and look into the store.

Q. And then you went on to make your purchases? A. I went on to make my purchases.

Q. Did you get your sockets all right? A. I got them all right.

Q. How long did it take you to get the sockets? A. I guess ten minutes all told.

Q. After you purchased the sockets did you come back over Mulberry Street? A. I came back on the same side of the street, practically the same route.

Q. When you came back practically the same route on the same side of the street did you see the defendant again? A. I did.

Q. What was he doing? A. He was looking in the window.

Q. In what window? A. In the Butler store.

Q. Where was that window situated? A. That was situated on Mulberry Street at right angles with the counter.

Q. Was the store lighted? A. The store was lit.

Q. I show you a photograph Exhibit S-2A, and ask you whether or not the window is shown on that photograph. A. Right here (indicating).

Q. Will you please make a cross with this pen and ink on the photograph, Exhibit S-2A, where you say you saw the defendant looking in the window? A. Yes, sir.

Q. Making a cross underneath the sign which says, "Walnuts, 35 cents a pound." A. I didn't notice the sign.

Q. Did you observe him as he continued to look into the window? A. Then I began to take notice. That is how I really was able to identify him. The manager there was only a new man. I didn't know him very well, and he was counting change on the counter, which was just about closing up time.

Q. Did you look into the window too? A. Yes, that is what attracted my attention.

Q. Did you know what the manager's name was? A. I didn't know at that time because he had only been there a short time.

Q. And you found out since that his name was Eugene Lynch? A. Yes, sir.

Q. And you saw him in back of the counter counting change while the defendant looked into the window? A. Yes, sir.

Q. What did you next observe? A. I went across the street and put in my sockets and con-

nected up my wreaths and my wife said, "It's about time you went to bed. Give it up."

The Court: Never mind what your wife said.

A. (Continuing) I said, "I want to see how they look." So I went outside again—

Q. Did you go out of the house? A. Yes, sir.

Q. Down on the sidewalk? A. I went down on the sidewalk.

Q. Where were you then? A. I was practically here (indicating). There is a telegraph pole or an electric light and telegraph pole, and I was here (indicating).

Q. So that you were at the southerly end of the building, is that right? A. That is right.

Q. How near to the curb were you? A. I guess about 2 foot.

Q. Can you point out any of these letters that are on this map at the southerly end of the building where you say you were? There is a *p*, an *o*, an *l*, and an *e*. A. I was about where the *e* is.

Q. Did you look at the wreaths to see how they looked with the sockets in them and the lights burning? A. I did.

Q. While you were there looking at those wreaths, was there anything that attracted your attention to the other side of the street? A. Yes, I heard somebody make a remark, "Open up."

Q. And then when you heard that remark made, what did you do? A. I turned around.

Q. You turned around in which direction? A. Facing the Butler store west.

Q. What did you see? A. Then I saw two men in the doorway.

Q. Who were those two men? A. Well, the one

was the manager, Mr. Lynch, and the other was the defendant.

Q. What were each of them doing? A. The defendant was toward Beach Street, Mr. Lynch was locking the door, and he said, "Open up."

Q. Who said, "Open up,"? A. The defendant and Lynch says, "I won't open up." Bang.

Q. You say Lynch said, "I won't open up,"? A. And then the shot was fired.

Q. Now, who fired the shot? A. The defendant.

Q. Did you see what happened after the defendant fired the shot? A. Well, I run in the house and yelled to my wife that the manager had been shot over in Butler's and just as I turned around, I seen the defendant running up Beach Street.

Q. That is, as you turned around to run into the house? A. Yes.

Q. That is before you went into the house? A. Before I went into the house.

Q. You saw the defendant then run up Beach Street; that is, run westerly on Beach Street? A. Yes.

Q. Did he run on the sidewalk or in the middle of the street? A. On the sidewalk.

Q. What became of Lynch? A. Lynch, he staggered around for a while until the police officer—hollering, "Oh, oh, oh, I am shot," and then the police officers came around and I went across the street in the house. My wife wanted me to come in. So I went across the street in the house.

Q. Did you hear the sound of anything clinking while these two men were at the door there? A. Yes.

Q. What was it? A. It is like a chain.

Q. Do you know what kind of locks there were on this door? A. Well, yes, I do. There was

sort of a chain lock cross ways up on the door, both ways, and before the shot was fired, I heard the clinking of that chain.

Q. Now, can you tell us how the defendant was dressed on that night? A. He had a gray soft hat with a black band and a blue overcoat.

Q. Now, then, on the 24th of April of this year did you go to the Newark Police Headquarters? A. I was out at a meeting of the U. S. Grant Club, and when I returned I found a business card there of Sergeant Fallon, and my wife says she didn't know whether I would come home that night or not—

Mr. McGlynn: I object to all this.

Q. Not what your wife said. Did you go down to police headquarters? A. I did, yes.

Q. When you got down to police headquarters were you asked to view a line-up of men? A. I did.

Q. And in that line-up of men did you pick anybody out? A. I picked the defendant out.

Q. You picked the defendant out of that line-up, did you? A. Out of that line-up.

Q. And was Detective Fallon present at that time? A. No.

Q. Do you know Sergeant Conlon? A. I don't know.

Q. A great big tall fellow? A. I guess I do. I don't know.

Q. Can you tell us whether or not Sergeant Conlon was there? A. A big tall man was there, yes.

Q. And at the time you picked the defendant out of the line-up? A. Yes.

Cross-examination by Mr. McGlynn:

Q. What is the name of your occulist, optician?

Mr. Fisch: I object. What difference does it make?

Mr. McGlynn: This is cross-examination.

The Court: I will permit it.

By the Court:

Q. Go ahead, you may answer it, Mr. Haug. The question is: What is the name of your optician? A. Dr. Goldberg on Mulberry Street.

By Mr. McGlynn:

Q. Did he take care of your eyes or glasses in December? A. That is done in the factory. We have the doctor come around and examine our eyes every once in a while.

Q. Who is this doctor whose name you mentioned? A. I don't know his name.

Q. Did he prescribe the glasses you are wearing now? A. He prescribed the glasses I am wearing now.

Q. When? A. Oh, I guess roughly speaking in August.

Q. When? A. Last August.

Q. You have never worn glasses before then? A. Worn glasses all my life on account of my work.

Q. You wear them both at work and when you aren't working? A. Yes, sir.

Q. This Dr. Goldberg you mentioned, he gave you the prescription for the glasses you are wearing now? A. He did.

Q. Where did you have it filled?

Mr. Fisch: I object to that. How is that material?

The Court: I suppose a very important part of this witness' testimony is his ability to identify the defendant.

Mr. Fisch: What difference does it make where he had a prescription filled for glasses? How is that cross-examination?

The Court: I suppose it is proper to test the witness' credibility as to his power to see.

Q. Where did you have the prescription filled? A. Goldberg, 140 Mulberry Street.

Q. Were you wearing glasses on the night of December 23rd? A. For distance I don't need no glasses.

Q. Then you didn't have glasses on, did you? A. I had glasses on, yes.

Q. Why do you tell me that for distance you didn't need them on? A. I don't need them. I got two sets of glasses.

Q. Now, did you or didn't you have glasses on that night? A. I had these glasses on that night.

Q. Which pair are they? A. They are my distance glasses.

Q. When did you wear the other pair? A. Only when I am working.

Q. Are you sure you had glasses on that night? A. Perfectly sure.

Q. When were they repaired last? The distance glasses.

Mr. Fisch: I object to that. There is no evidence there were any repairs.

A. I have not had them repaired since I—

Mr. Fisch: Just a minute. Please do not answer the question when there is an

objection made until the Court rules upon it.

The Court: I will permit it. Go ahead.

A. I haven't had these glasses repaired since I got them.

Q. And you got them in August, 1930? A. I got them in August.

Q. Have you had your eyes examined since August? A. No, I expect to have them examined every

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Q. Have you had them examined? A. No, I have not.

Q. What time of the night of December 23rd, did you first see this man that you now identify as the defendant? A. Shortly after ten o'clock.

Q. How do you fix that time? A. Because I was told it was after ten o'clock and I should let my work drop.

Q. That was when you first saw him? A. Yes.

Q. And that was when you were standing over in front of your porch admiring your wreath? A. There was no porch. I was on the sidewalk.

Q. On the front of the sidewalk. Is that the first time you saw him? A. Yes, sir.

Q. Where was he then? A. He was on the other side of Mulberry Street.

Q. How far away from you? A. Oh, two feet. I passed him by. I could have rubbed elbows.

Q. When you stood over on your sidewalk. A. You asked me the first time I saw him. I told you on the west side of Mulberry Street.

Q. I didn't understand you so.

By the Court:

Q. Didn't you say on the other side of Mulberry Street? A. On the other side when I went to buy my sockets.

By Mr. McGlynn:

Q. Then you didn't see this man that you now identify as the defendant until you started across the street and were walking down on the west side of Mulberry toward this electrician's store; is that correct, sir? A. Yes.

Q. How long was that after you say somebody told you it was ten o'clock? A. Oh, that was fifteen or twenty minutes.

Q. What had you been doing in that fifteen or twenty minutes? A. I didn't say what time after ten o'clock. I said my wife said shortly after—it is after ten o'clock.

By the Court:

Q. Now, the question is what you had been doing for that fifteen or twenty minutes. A. Well, I was going over to a hardware store.

By Mr. McGlynn:

Q. What had you been doing before you went over to the hardware store? A. Fixing my wreaths.

Q. I thought you told me you were all through and you were out on the sidewalk looking at them. A. Why, did I be through? I didn't say I was through.

Q. Please don't argue with me. Just answer my questions. A. I would like to have you put the question right.

Q. All right. I will start over again. You finished your wreaths and you went out on the sidewalk and you were looking at them in the window; right? A. That is not my story.

Q. Tell me your story. A. That is not my story.

Q. Tell me your story, then. A. My story was

that I finished the wreaths and I went out to buy a socket. It is then when I saw the defendant on the west side of Mulberry Street; could have rubbed elbows with him.

Q. Now, are you through? Is that your story? A. Yes.

Q. When did you first come out of the house? A. The exact time I don't know. It was after ten o'clock. It was sometime between a quarter after ten and a quarter to eleven.

Q. How long did you stand in front of your house on the sidewalk, on the easterly side of the street before you went to the westerly side of the street? A. I went directly to the west side to make my purchases.

Q. Then you didn't stop on the sidewalk at all when you came out of the house. A. No.

Q. Did you cross the street directly from in front of your house to the other side of Mulberry Street? A. Directly.

Q. You then lived at number what? A. 294.

Q. That is the third house from the corner of Beach Street? A. Yes, sir.

Q. When you crossed over did you cross over to the northwest corner or to the southwest corner? A. To the southwest corner.

Q. You walked at a cater-cornered angle across the street? A. Yes, sir.

Q. You didn't see the man you now say was the defendant at that time, did you? A. Yes, sir.

Q. Where? A. Down here (indicating).

Q. Down at this alleyway? A. Yes, sir.

Q. Was he the only person on the west side of Mulberry Street? A. No, he was talking with another young fellow.

Q. When you first saw that he was talking to

a young fellow that was before you had come up to him, is that correct? A. Yes, sir.

Q. Before you got to him, as you got to the southwest corner of Beach and Mulberry and walked south on the westerly side of Mulberry Street, you saw this man you now say is the defendant, standing at that point you designate as an alleyway, talking to somebody? A. Yes, sir.

Q. You passed them? A. Yes, sir.

Q. And the two of them were then talking together? A. The other party left shortly after I passed. I guess I was past 5 feet.

Q. But when you passed the two of them were together and they were talking? A. Yes.

Q. So they had been talking together at this point you have designated on the map from the time you got to the corner of Beach and Mulberry Street and passed the grocery store and the next building and passed them. A. Yes.

Q. What made you turn around? A. I don't know.

Q. No reason at all that you can give me why you turned around? A. I turned around. I noticed the two people talking and it was just curiosity that I turned around.

Q. Describe this fellow you say the defendant was talking to. A. I guess he was about 5 feet 6 or 7, slim, with a gray overcoat on and a checkered suit.

Q. What kind of hat? A. He had a cap on.

Q. What color was his necktie? A. I didn't look that close.

Q. Did you notice whether he had a starched collar on? A. He had a soft shirt on.

Q. Did he have a vest on? A. I don't know.

Q. Was his overcoat open or closed? A. It was buttoned.

Q. What kind of weather was this? A. Very mild.

Q. Was it clear or stormy? A. Clear.

Q. No fog or mist of any kind? A. No.

Q. Did you have an overcoat on? A. No, I had a sweater jacket on.

Q. Did you stand still after you passed these two men and turned around, or did you continue to walk? A. After I turned around I continued on my way.

Q. How long did you remain looking at those two men after you turned? A. A few seconds.

Q. If curiosity impelled you to turn around, what made you continue to stand and look at them?

Mr. Fischer: I object to that as argumentative.

The Court: I will permit it.

Q. Do you understand my question? A. I wish you would repeat it again.

Q. You told me it was curiosity made you turn around and look at these two men after you passed them. A. Yes.

Q. And what made you continue to stand there looking at them? A. That neighborhood was pretty bad.

Q. How long had you lived there? A. Two years.

Q. Then you turned around again and went south on Mulberry Street? A. I only turned once.

Q. Then you turned back again? A. I went to the store and made my purchases and then I came back.

Q. I want to know and make sure of all you have told us. When you passed these two young men who were talking, after you had gone by a few

feet you turned around and saw them standing, and you stood there and watched them a second. A. Yes, sir.

Q. And one went one way and the other went the other way? A. Yes.

Q. And the one you have just described to me went the way you were going? A. Yes.

Q. Did he catch up to you? A. No.

Q. Did he pass you? A. No.

Q. Did he stay in back of you? A. Yes.

Q. How do you know that? A. As I went into the hardware store I saw him still in back of me.

Q. How far in back? A. 10 or 15 feet.

Q. How far were you away when you stopped to look at these men? A. At the last house (indicating).

Q. Next to the alley-way? A. At the stairway next to the alley-way.

Q. At the porch in front of 303? A. Yes.

Q. That is where they stood? A. Yes.

Q. You walked down how far before you stopped? A. I walked down to right about there (indicating).

Q. Do you know the scale of this map? A. No.

Q. 10 feet to an inch. Do you want to change the location?

Mr. Fisch: I object to that. He has not said anything about changing the location. I think this witness is entitled to be treated with courtesy and respect.

Q. Do you understand that every inch on this map represents 10 feet on the ground? A. I don't know what it represents.

Q. That is where you say you stopped? A. Yes, sir.

Q. In front of this second house from the point where you say they were stopped? A. Yes, sir.

Q. About in here somewhere (indicating)? A. Yes, sir.

Q. The second house going north from the porch in front of the house? A. Yes, sir.

Q. When you turned around and continued to the hardware store, were they still standing there? A. They had just parted.

Q. And you continued down—where was this store? A. It was two more houses.

Q. What is the next street below Beach on Mulberry? A. Mulberry Place.

Q. I want the next block. A. Kinney Street. That store is located about here (indicating).

Q. About the second building? A. One or two or three buildings. It is past Mulberry Street.

Q. It is past where Mulberry Place would be if it came across? A. Yes.

Q. When you got to that point, as you were going into the hardware store, you turned around and saw this man who had been with the other fellow, walking south on Mulberry Street, is that right? A. That's right.

Q. Were there any stores between the Butler grocery store on the corner and this hardware store into which you went? A. Yes.

Q. How many? A. Two, the delicatessen—

Q. Where is that? Next to the hardware store? A. No, this side.

Q. What is next to the hardware store? A. Then there is a little barber shop. I don't call that a store, and the hardware store.

Q. But there are two or three dwellings between the grocery store on the corner of Beach Street

and the first store in this row you have described, am I correct? A. Yes.

Q. Two or three buildings? A. Yes.

Q. Was it light or dark on the westerly side of Mulberry Street that night? A. It was light.

Q. What do you mean by saying it was light? A. Electric lights.

Q. The only lights were the ones in the street? A. No, the store lights.

Q. You said there were no stores between the grocery store and this chain of stores you have just told us about. A. I didn't get the question that way.

Q. In other words, there were no lights other than the street lights from the time you left this grocery store on the corner until you came to the first store you have described. Is that right? A. That is right.

Q. The delicatessen, the barber shop and the hardware store. A. Yes.

Q. Was it light where you say these two men were standing in front of this porch in front of this house? A. Yes.

Q. How many feet do you suppose you stood away from them when you turned around and looked back at them? A. About the three houses; I don't know exactly.

Q. Can't you give me some idea of what you think the distance was? A. Maybe 75 feet.

Q. The only time you saw this other man who was talking to the man you have identified as the defendant, as they stood there at that porch, was when you approached them and after you had passed them when you turned around and looked again as you walked into the hardware store, is that correct? A. Yes.

Q. That is the only time in your life that you saw this man that you saw was talking to this defendant on the street? A. Yes.

Q. Will you describe him again, please? A. About 5 feet 6 or 7. He had a sort of checkered suit on and a kind of gray overcoat and a cap.

Q. Did you notice particularly whether he had tan or black shoes on? A. No, I didn't.

Q. Were both of these men smooth shaven or did one or both of them have mustaches? A. Smooth shaven.

Q. Are you sure of that? A. Yes, sir.

Q. No question about it? A. No question about it.

Q. I understand that this other man whom you identified later as the defendant, you did not see again until April 24th, is that right? A. I did not.

Q. When you came back from the hardware store, where was this man that you identified as the defendant then? A. Looking in the Butler store.

Q. Looking in the store? A. In the store through the window.

Q. You couldn't see his face then, could you? A. The store was lit up.

Q. He had his back to you, didn't he? A. I got a side view.

Q. All you got was a side view. A. Then he turned around and faced me.

Q. He turned around and faced you? A. Yes. I was about 5 feet away from him.

Q. When he turned his back to the store, the windows in the store did not light him up as far as his face is concerned, did they?

Mr. Fisch: I object to that. There is no

testimony that he turned his back toward the store.

The Court: When he turned around.

Q. When he turned around there was no light on his face, was there? A. Yes, sir.

Q. Where did the light come from? A. The store was lit bright; plenty of lights in the store.

Q. You had been in that store before the night of December 23rd, hadn't you? A. No.

Q. Never in it? A. Never in it. My wife may have been in, but I wasn't.

Q. Did you ever see the locks on that store before the night of December 23rd? A. Lots of times.

Q. Yet you were never in the store? A. No, sir.

Q. But you saw these locks from across the street? A. Passing them by.

Q. Describe again to me this chain that you say was on this store. A. Well, it was a chain, small chain, and a lock.

Q. Where was the other lock? A. On the other side of the door. There were two chains.

Q. On the other side of the door? A. There were two chains, one from this side of that way, and one from that side this way (indicating).

Q. Now, let me get this. First look at Exhibit S-2A, Mr. Haug. That is the entrance to the store right there at the corner, isn't it? A. Yes.

Q. A little vestibule like; right? A. Vestibule like.

Q. Without looking at the picture, as you are facing that door, on which side of the door were the locks? A. (Witness indicates).

Q. What do you point to? The right hand side? A. Yes.

Q. The right-hand side of the door? A. The right-hand side.

Q. Sure of that? A. Sure of it.

Q. Just as sure of that, are you, as the man you saw that night?

Mr. Fisch: I object to that, if your Honor please.

The Court: I will permit it.

Q. All right. Now, the locks are on the right-hand side of the door as you face the door, is that correct? A. Yes.

Q. Now, describe to me the manner in which these chains are fastened to this door. A. They come this way, and one this way (indicating).

Q. What do you mean? You point from the top to the bottom? A. No, about midway up.

Q. Midway up in the door? A. Yes.

Q. What were they fastened to? A. Had some staples there.

Q. Staples in one side of the door? A. As near as I can describe it.

Q. And staples in the other side of the door? A. Yes.

Q. And a chain would go across it? A. Yes.

Q. And the same with the other? A. Yes. That is as near as I can describe it.

Q. Two separate chains? A. Two separate chains.

Q. What were they fastened to outside of these staples? A. I didn't look that close.

Q. I thought you told me you looked at it many times. A. Well, I saw it from a distance. I didn't go up there and examine it closely.

Q. What distance would you say you were when

you looked at this chain? A. Just passing on the sidewalk.

Q. You mean on this side, on the west side of Mulberry Street? A. Yes.

Q. Not way across on the other side? A. No.

Q. So your observations of these marks and these doors were made as you were walking on the west side of Mulberry Street? A. That is it.

Q. You looked at them quite a few times? A. Quite a few times, but I never paid no close attention.

Q. Were there any locks besides these locks that you say were fastened with those chains? A. That I don't know.

Q. After this man whom you have identified as the defendant, turned around from his position looking into the store window and faced you as you passed him on that sidewalk, where did you go? A. Crossed Mulberry Street, went over into the house.

Q. You went into the house. How long did you stay in the house? A. Oh, a few minutes.

Q. I thought you said you put the sockets in. A. Just long enough to put the sockets in. That is all.

Q. Did you do anything else besides put the sockets in? A. No.

Q. Didn't you fasten the wreaths to them? A. My wreaths were already up.

Q. You didn't have to do any work at all on the wiring or anything? A. I bought a three-way socket for a hang lamp in the center of the room. All I had to do was put the—had that all done.

Q. And after doing that you walked outside? A. I walked outside.

Q. And you stood on your sidewalk looking at

your lighted wreath? A. On my sidewalk.

Q. You then had your back to the grocery store, did you not? A. Yes.

Q. What was the first thing that you heard or saw after you came out, which attracted your attention to the other side of the street? A. I heard that remark, "Open up," then I heard the other remark, "I won't." Then I heard the shot.

Q. When did you turn? A. When I first heard that first remark, "Open up."

Q. Now, you turned around and you then stood in front of your house on the sidewalk, as I understand it? A. Yes.

Q. You picked out the letter "E"? A. The letter E.

Q. Right here (indicating)? A. Yes.

Q. About on the "E" with the end of the house? A. A little further. You said the end of the house. I said a little further.

Q. A little further from the window? A. Window. There is two windows.

Q. About on a line with that window there; correct? A. Yes.

Q. And about two feet east of the westerly curb? A. Yes.

Q. Correct? A. Right.

Q. Or the easterly curb? That would be the easterly curb. And you say you saw wherever this noise came from? A. At the entrance of the Butler store I saw two men.

Q. Now, were they inside the vestibule or outside the vestibule? A. Outside the vestibule.

Q. Sure of that? A. Well, right here at the door.

Q. But were they inside of the vestibule? A. Inside, close up against the door.

Q. Close up against the door? A. Yes.

Q. No question about that? A. No question about that.

Q. And were the lights in the store still lighted as brightly as they had been when you looked in before? A. No. He only left the one light burning.

Q. One light burning. Was that a bright light or a rather dim light? A. Well, about the power of one of them (indicating).

Q. One of these. Where was it in the store? A. What?

Q. Where was this light which was there in the store? A. About the center of the store.

Q. Now, when you looked across there, did these two men have their faces to you, or their backs to you? A. Backs.

Q. How was Lynch dressed? A. I didn't get that.

Q. How was Lynch dressed? A. Well, he had dark clothes on. I didn't know him very well. I didn't pay much attention to him. I didn't even know it was Lynch that was shot until they told me. A dark overcoat on. As near as I could see, dark suit.

Q. What kind of hat? A. Well, I didn't notice the hat.

Q. Couldn't you see that from where you were? A. Yes, I could see it, but I didn't notice the hat. My attention wasn't on Lynch.

Q. You say their backs were to you as you turned around? A. Yes.

Q. And they were close up against the door of this vestibule? A. Yes.

Q. Lynch, as I understand you to say, was to the left of the door? A. Yes.

Q. And the other man was to Lynch's right? A. Yes.

Q. Is that correct? A. That is correct.

Q. Were they close together or was there very much space between them as they stood there? A. They were pretty close.

Q. Were they up against one another? A. No.

Q. Did either one of them seem to be hitting the other? A. No.

Q. Was there enough space between their two bodies so that you could see in between? A. Yes.

Q. Well, how long did they remain in that position? A. Probably a few seconds.

Q. What was the next thing you saw? A. I saw the shot fired.

Q. Had you seen the pistol before the shot was fired? A. No.

Q. Which hand did the man hold the pistol in that shot him? Right or left? A. Right hand, I believe.

Q. Are you sure of it? A. I didn't look that close.

Q. You saw the pistol? A. I saw the fire. I couldn't see the pistol.

Q. How far away from Lynch's body was the pistol when the shot was fired? A. Oh, maybe a foot, a foot and a half.

Q. Surely as much as that? A. Yes.

Q. No question about that in your mind? A. No.

(At 1:10 o'clock P. M. the Court takes a recess until 2:20 o'clock P. M.)

AFTER RECESS.

ALLEN HAUG resumes the stand.

Cross-examination (continued) by Mr. McGlynn:

Q. What time of the day did you make this iden-

tification at police headquarters? A. April 24th at nine p. m.

Q. How many people were in this room where you made the identification? A. Three.

Q. Only three people in the room? A. That's all—in the line-up.

Q. I didn't ask you that. I asked you how many people were in the room. A. The detective, myself and the line-up.

Q. There were only three men in the line-up? A. That's all I seen.

Q. And only one detective with you? A. That's all.

Q. Who did you say he was? A. I don't know his name.

Q. Do you know him when you see him? A. Yes.

Q. Is he in the room? A. Yes, sir.

Q. Where is he? A. The gentleman sitting on the end of the second bench.

Mr. Fisch: Indicating Sergeant Luke Conlon.

Q. Where did you meet the police officer that night before you went into this room? A. I had to wait for him in the captain's office.

Q. Did anybody talk to you about the case that night before you went into the room? A. No, sir.

Q. Did you know what you were being taken there for? A. No, sir.

Q. They didn't tell you? A. No, sir.

Q. You had no idea? A. No idea.

Q. What did you do when you first went into the room? A. I sat down.

Q. Did anybody ask you to do anything? A. No.

Q. How long did you sit there? A. About three hours.

Q. Were there three men standing in front of you all the time? A. No.

Q. I am talking now about the room you went into when you say there were three men in the line-up. A. About two minutes.

Q. Did you know what you were going in there for? A. No, sir.

Q. Nobody asked you to do anything? A. No.

Q. Just what were you told? A. I was told to get on the elevator and go upstairs.

Q. What else were you told? A. As I stepped out of the door they said, "Do you see anybody in this room that looks like the man?"

Q. Who is "they"? A. What?

Q. You just said "they said." A. Lieutenant Conlon. That is a mistake. He said.

Q. Sure of that? A. Positive.

Q. What did you do then? A. I walked up, put my hand on the man.

Q. Are you sure you did that right away? A. Yes.

Q. Didn't you go down and come back? A. No.

Q. Didn't Conlon nudge you with his elbow? A. No.

Q. Did he say anything to you? A. No.

Q. Didn't you walk down this line and back before you picked anybody out? A. No.

Q. Did the man that you picked out have an overcoat on when you picked him out in this room? A. Yes.

Q. The same overcoat that he had on the night you saw him on Mulberry Street? A. Yes.

Q. Does this look like the overcoat? A. It does.

Q. Is that the blue overcoat you saw on Mul-

berry Street on the night of December 23rd? A. It does; very much like it.

Q. Well, look at it carefully, Mr. Haug. A. Yes.

Q. You say this looks very much like the overcoat you saw on that night on Mulberry Street? A. Yes.

Q. And he had this same overcoat on the night in police headquarters? A. Yes.

Mr. McGlynn: May I have this marked in some way?

(The article referred to is marked Exhibit D-1 for identification).

Q. Aren't you sure, Mr. Haug, when you first went into this room where you were asked to pick out somebody in the—if you knew anybody in the room, that you walked down past these three men and came back and said, "No." A. I did not.

Q. Don't you remember that Sergeant Conlon, or whatever his name is, nudged you? A. No.

Q. You went back and he said, "Oh, yes." A. He did not.

Q. But you did, didn't you? A. No, sir.

Q. You didn't say "Oh, yes"? A. No, sir.

Q. Had you been told by anyone prior to going to police headquarters on the night of April 24th, that they had arrested a man that they wanted you to look at for the purpose of identification? A. They did not. Nobody told me anything. I knew nothing about it.

Q. Did you get any direct message at all before you went to police headquarters that night? A. I did not.

Q. You didn't know what you were there for? A. No.

Q. You had no idea? A. No idea.

Q. How long were you in the courtroom this morning before you went on the witness stand? A. How long? Ten o'clock.

Q. Did you see the defendant brought in between the two guards? A. No, sir.

Q. Where were you when he came in? A. I don't know.

Q. Did you stay in the room from ten o'clock on? A. I wasn't in the courtroom.

Q. That is what I asked you, my very first question. A. I wasn't in the courtroom ten o'clock.

Q. What time were you in the courtroom? A. I guess about a half an hour before I was called on the stand.

Q. Did you talk to anybody before you came into the courtroom? A. No.

Q. On the night you made the identification in police headquarters, did the defendant have a hat on or was he bareheaded? A. He had a hat on.

Q. What kind of a hat did he have on? A. Gray felt hat with a black band.

Q. What sort of suit did he have on? A. I didn't notice the suit.

LUKE CONLON sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. You are connected with the Newark Police Department, are you? A. Yes, sir.

Q. And have been for how many years? A. 24 years.

Q. And you bear the rank of sergeant, do you not? A. Yes, sir.

Q. And are you attached to the Detective Bureau at headquarters? A. Yes, sir.

Q. And you are in charge of the Homicide Squad, are you not? A. Yes, sir.

Q. On the night of April 24, 1931, did you see Mr. Allen Haug at headquarters? A. I did.

Q. And at that time was the defendant in custody? A. He was.

Q. Did you meet Mr. Haug at headquarters? A. I did.

Q. In what part of the headquarters did you meet him? A. In Captain Sebold's office.

Q. What floor is that on? A. The third floor.

Q. Did you go to another part of the building with Mr. Haug? A. I did.

Q. To what part of the building did you go? A. The fourth floor.

Q. How did you go there? A. I went up in the elevator with him from the third to the fourth floor.

Q. Did you go into a room there? A. We walked off the elevator into a corridor.

Q. Up to that time had you said anything to Mr. Haug? A. I said to him I wanted him to look over a line that would be on the floor to see whether he could recognize anybody on the line.

Q. Did you say anything further to him? A. No, sir.

Q. Did you take him to a line of men? A. There were three men standing in the corridor as we got off the elevator.

Q. Who were the men that were in that line? A. A man by the name of Furfaro, the other a young man whose name I can't recall who was in custody on some other case and was put into the line-up, and the defendant.

Q. Do you know the position they held in the line-up? A. Furfaro, if I remember, was No. 1; the other man, whose name I can't remember, was

No. 2, and the defendant was No. 3; that is, counting from right to left.

Q. When Mr. Haug went into the presence of this line-up where did you stand with reference to Mr. Haug? A. I stood possibly 5 or 6 feet in back of him.

Q. Where did you stand with reference to the line-up? A. About 7 or 8 feet away.

Q. What did Mr. Haug do? A. He immediately, as soon as he stepped off the elevator, put his hand on the defendant and said, "That's the man." I asked him who was the man and he said, "That's the man I saw on Mulberry Street shoot the chain store man."

Cross-examination by Mr. McGlynn:

Q. Were these three men standing in the corridor alone and unguarded? A. No, sir, they weren't.

Q. Who else was there? A. Detective Fallon stood over by the stairway leading down from where they were standing.

Q. Who else was there? A. That was all.

Q. You and— A. (Interrupting) Myself and the three men and Haug and Fallon. I might say there was a doorman standing inside of a screen we have there.

Q. I mean where these three men were standing for the purpose of identification were the three men, you and Fallon and Haug? A. Yes.

Q. Was the defendant the nearest man to Haug as Haug walked toward the line, or the furthest away? A. He would be the farthest away.

Q. Didn't Haug walk down past these three men and come back and say, "No, sir"? A. He did not.

Q. Didn't you nudge and didn't he go back— A. No, sir, I did not.

Q. (Continuing) And say, "Oh, yes"? A. No, sir.

Mr. Fisch: I will call Detective Fallon.

Witness: (Leaving stand) Detective Fallon is before the Grand Jury testifying at the present time, if I may say so.

SOPHIE KROK sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Sophie, how old are you? A. Nineteen.

Q. Where do you live? A. 328 South West Street, Shenandoah, Pennsylvania.

Q. Did you formerly live in Newark? A. Yes.

Q. Where were you living in Newark? A. 397 South Clinton Street, East Orange.

Q. Were you working there? A. Yes.

Q. What was the name of the people you were working for? A. Garfinkle.

Q. Were you doing housework there? A. Yes.

Q. Now, while you were working for the Garfinkles as a maid doing housework, did you meet the defendant Eugene Compo? A. Yes.

Q. When was that that you first met him? A. I met him last year, the beginning of May.

Q. The beginning of May of last year? A. Yes.

Q. 1930, is that right? A. Yes.

Q. Did you become friendly with him? A. Yes.

Q. Did you go out automobile riding with him? A. Well, once in a while, not often.

Q. Did you go to shows with him? A. Yes, I went to shows with him.

Q. Did you meet a man by the name of Clarence Stern? A. Yes.

Q. How long had you been known him? A. Well, I met him this year, beginning of March.

Q. How did you come to meet him? A. I met Clarence Stern through Eugene Compo.

Q. That is, Compo introduced Stern to you? A. Yes.

Q. Do you know a girl by the name of Lillian Rys? A. Yes.

Q. How did you come to meet her? A. I met Lillian Rys through Eugene Compo.

Q. Did he introduce you to Lillian? A. Yes.

Q. Did you and Lillian and Clarence and Eugene Compo go out together? A. Yes.

Q. Did you go out automobile riding together? A. Yes.

Q. And you were friendly, were you? A. Yes.

Q. How did you come to meet Eugene Compo? A. I met Eugene Compo through my girl friend's sister. I don't know her second name, but her first name was Emma.

Q. Her first name was Emma? A. Yes.

Q. She introduced you to Eugene Compo, did she? A. Yes.

Q. And that was a year ago? A. Yes.

Q. Now, did Eugene come up to the house to see you? A. Yes, he did.

Q. Did you ever go to his house with him? A. Yes, I did.

Q. Did he ever talk to you about marrying you? A. Yes.

Q. What did he say about that? A. Well, I just don't remember what he said, but he often said it to me.

Q. He what? A. He often said it to me, but I don't just remember what he said.

Q. He often said to you what? A. That he would like to marry me.

Q. Did he ever talk to you about going away with you? A. Yes.

Q. Some time do you remember him having some talk with you in October of last year about going away with you? A. Yes, I do.

Q. Did he say something about getting some money?

Mr. McGlynn: If your Honor please, I have not objected up to this point because I did not think it was material, but from now on I would like to object on the ground that the Prosecutor is asking very leading questions.

The Court: I think it is quite leading.

Mr. Fisch: Preliminary, however.

The Court: I think the witness ought to be allowed to tell what he said.

Q. What, if anything, did he say to you about getting some money at that time and going away? A. Well, he just told me he wanted to get some money. I don't exactly remember what he said. He told me about going out, you know, stick-up jobs, and get money that way, and I told him, I said, "Listen here. Don't you go." I says, "You will be sorry some day." And I mentioned him about getting work. I seen work in the paper, and I mentioned it to him, and I said it would be better if he got work instead of going on a stick-up job, and he didn't say anything.

Q. Was that in October? A. It was somewhere around October. I can't remember just what time it was, when it was.

Q. Did he say where he wanted to go with you? A. No, he never said.

Q. Now, then, how often did you see him after October, 1930, when he had this talk with you? How often would you see him? A. Well, I seen him my days off.

Q. What were those days? A. Every Thursday and every second Sunday.

Q. Now, do you remember Christmas Day, 1930, last Christmas Day? A. Yes, I do.

Q. Did you see him that day? A. Yes.

Q. Where did you see him? A. I seen him at 397 South Clinton Street.

Q. That is where you were working, at Garfinkel's house? A. Yes.

Q. What time of day was it when he got there? A. It was somewhere around the afternoon, around two o'clock.

Q. Did he bring you anything? A. Yes, he brought me a Christmas present.

Q. What was it? A. It was a manicure set and some jewelry piece. I don't just remember what it was.

Q. Was it a necklace? A. Yes, a necklace, that is right.

Q. Did he tell you anything about the necklace? A. Yes, he told me about it.

Q. What did he say about it? A. He said that it was a guaranteed white gold chain.

Q. Now, how were these things wrapped up? Were they wrapped up? A. Yes, they were.

Q. How were they wrapped? A. Well, they were wrapped up with red paper and gold tinsel.

Q. Was there any kind of a card with them? A. What is it?

Q. Was there any kind of card with them, Christmas card or something? A. Yes.

Q. Now, when he came there and gave you those presents on Christmas Day, did you notice anything about him that was different from any other time? A. Well, I don't know. He seemed to be the same as the other times.

Q. Well, did he seem to be excited or not?

Mr. McGlynn: Why, if your Honor please, it seems to me that the witness having already answered the Prosecutor's question, what the defendant's condition was, he should not be allowed to lead her and ask the question he just asked. I object on the ground that it is very leading.

By the Court:

Q. What did he do? What did he say? How did he act? A. Well, he was a bit excited and I asked him what was the reason he was so excited.

By Mr. Fisch:

Q. What did he say? A. He told me, I asked him if there was anything the matter down home. He says no. He says, "Come on in the parlor and I will tell you what it is." So I went in the parlor with him and he told me about it.

Q. You went in the parlor with him and when you went in the parlor with him, where did you go? A. We sat on the sofa.

Q. When you sat on the sofa, what did he tell you? A. Well, he told me that he went on a stick-up job with about three or four fellows, and as he was entering the store, this man was closing it, and the man would not open the door for him, so he said he won't, and he put the gun on him, and the man wanted to grab the gun; so he went and he shot him.

Q. Now, did he tell you where this store was? A. He told me it was on Mulberry Street.

Q. Did he give you the names of any of the fellows that he said were with him? A. No, he didn't give me any names.

Q. Now, did he tell you anything more? Did he tell you what he did after he fired the shot? A. Well, he told me they ran away.

Q. And did he tell you what street he ran up? A. No, he didn't tell me.

Q. Did he tell you whether it was Mulberry Street or whether it was a side street? A. Well, he told me it was a side street, but he didn't name the street.

Q. He told you it was a side street, but he didn't name the street? A. Yes.

Q. Did he say anything further about what happened down there that night? Did he say anything as to whether he got any money or not? A. He told me he didn't have any money.

Q. What if anything did you say to him when he told you about this business down on Mulberry Street and his having shot this man? What did you say to him?

Mr. McGlynn: I don't see where we are concerned with what she told him.

The Court: There was a conversation between them and whatever she said was part of the conversation.

A. I told him he would be sorry some day for doing it; that he would never be lucky for doing it.

Q. What did he say? A. He said, "I'm sorry, but it's too late."

Q. Then what did he do? A. He asked me to go to the movies.

Q. Did he continue to sit on the sofa or did he get up? A. He got up.

Q. When he got up did you notice anything about him? A. He just brushed his coat aside and he seemed to be the same way as when he came in.

Q. When he brushed his coat aside did you see anything? A. Yes, I seen a belt, and a black handle of a revolver.

Q. You say a belt. What do you mean by that? A. One of those here belts they got the guns in.

Q. A holster? A. Yes.

Q. And you saw the black handle of a revolver? A. Yes.

Q. Did you say anything to him about that? A. I don't remember what I said to him about that.

Q. Did you have any conversation with him that you remember with regard to that gun that you saw? A. Oh, yes, that's right; I told him where he got the gun from and he says from a friend of his.

Q. What clothes did he wear that day? A. He had a gray hat and blue serge suit and a blue overcoat.

Q. Was it a soft hat or a stiff hat? A. A soft hat.

Q. What kind of a shirt did he wear? A. A blue shirt.

Q. A soft shirt or a stiff shirt? A. A soft shirt.

Q. This hat and coat that he wore on that day, had you seen him wear that hat and coat before? A. I seen him wearing the coat, but I believe he just got the hat that day.

Q. You don't know, do you? A. I don't know about the hat, but I know about the coat.

Q. After he told you this story about having

shot this man, did you remain in the same room or did you go into another room? A. I went into the kitchen.

Q. Did you get anything there? A. I got the newspaper there.

Q. What did you do with the newspaper? A. I brought it into the parlor.

Q. Where the defendant was? A. Yes.

Q. What did you do with the paper? A. I read it.

Q. Did you read it to him? A. Yes.

Q. What did you read to him? A. Well, it was written, "Eugene Lynch, manager of chain store, shot at Mulberry Street."

Q. When you read the paper to Compo, what if anything did he do or say? A. I don't remember what he said then.

Q. What did he do? A. He just read the paper and put it down on the sofa.

Q. What paper was it that you got in the kitchen? A. The Star Eagle.

Q. I show you a copy of the Star Eagle and ask you whether this is a copy of the paper that you got out of the kitchen and showed the defendant. A. I can't remember just what was in it. I know I got the paper; I can't just remember what paper it was.

Q. Look at the headline. A. Yes, I believe that was the paper.

Mr. Fisch: I offer it in evidence.

Mr. McGlynn: I object to it. I don't see how you can make this paper containing statements by some reporter from sources we cannot possibly check and have no control over, be evidential in this case and binding against the defendant.

Mr. Fisch: I will not press the offer so far as it relates to the paper itself, if counsel will agree that there may be read into the record the date of the paper, the name of it and the headline.

Mr. McGlynn: I object to the headline.

The Court: Let me see the article.

Mr. Fisch: Yes, sir.

The Court: I will sustain the objection.

Q. Sophie, after you had shown him the paper, did you sit there with him or did you go out somewhere? A. We went out.

Q. Where did you go? A. We went to the theater.

Q. What if anything did he say to you while you were on your way to the theater? A. He just talked about the gun.

Q. What did he say about the gun? A. He said that I should sit at the side where the gun was so that no one else would sit at that side, because he would be caught, or something like that.

Q. When you went into the theater, what side did you sit alongside of? A. The right-hand side.

Q. Was that the side where the gun was? A. Yes.

Q. On your way back from the theater did you talk to him about this shooting?

Mr. McGlynn: If your Honor please, I must object to counsel's continually leading this witness. It seems to me it is most material and I think it should be stopped.

The Court: Yes, I think the witness ought to be asked what they talked about.

Q. On your way from the theater did you talk

to Compo? A. No, we didn't talk anything about that.

Q. Did he talk to you? A. No.

Q. What if anything did he say to you about telling anybody what he had told you?

Mr. McGlynn: That is the same thing, if your Honor please, and I object to the question. The witness should not be reminded about conversation, the subject-matter of which is given to her in the question.

The Court: I don't think the answers ought to be suggested.

Q. Did you ever tell anybody about what he told you? A. No, I haven't.

Q. Why not?

Mr. McGlynn: I object to what she didn't.

The Court: Sustained.

Q. Did you ever have any conversation with him? Did he ever talk with you about the question of telling anybody what he had told you? A. Yes.

Q. What did he say to you?

Mr. McGlynn: I object to that on the same ground. It is only framed in another way.

The Court: Objection sustained.

Mr. Fisch: The examiner must be allowed some latitude to direct the witness' attention to a particular point. The examiner can't say, "What was the conversation," and let it go at that.

The Court: I appreciate the difficulties you are under with a witness of this kind. I think an effort ought to be made first to get from the witness what the conversation was,

without leading. We have to observe some of the rules of evidence.

Q. What conversation, if any, did you have with him afterward about telling anybody about it?

Mr. McGlynn: I object to that on the same ground. It is reframing the words.

By the Court:

Q. What conversation did you have with him afterward, if any, about the matter? A. It was two days before I left for home—two days before I went back to Pennsylvania—and he told me about not telling anyone, and he said if I would tell I would be sorry.

By Mr. Fisch:

Q. He told you not to tell anyone and if you told you would be sorry? A. Yes.

Q. Where was that conversation? A. At 54 Spruce Street.

Q. Was anybody there when he told you that? A. Yes. Clarence Stern and Lillian Rys.

Q. Who was living at 64 Spruce Street with you? A. I was living with Lillian Rys.

Q. In a furnished room there? A. Yes.

Q. How long had you and Lillian been living together there? A. A week.

Q. Had you quit your job up there in East Orange? A. Yes.

Q. Tell us, please, just what happened there in that room at that time. A. Well, when he told me about it then I says, "What do you mean being sorry?" He says, "You will see." So he put the gun up against me and he said, he says, "Here is just what I mean." And I didn't say anything be-

cause I was ascared that night and I didn't feel so good. So I just figured out, well—

Mr. McGlynn: I object to what she figured out.

The Court: Yes, just tell us what he said and what he did.

Q. You say he put the gun up against you? A. Yes.

Q. Just what do you mean by that? Just what did he do? A. Well, he put the gun up against me and he says, "Here is what I mean."

Q. How did he hold the gun when he put it up against you? A. Like he just hold it straight and put it side of me.

Q. And he said, "Here is what I mean," when he did that? A. Yes.

Q. Now, then, did you have any conversation with him that night with regard to any other appointment? A. Well, I didn't have any conversations with him that night, but he said that he will be there the next morning and we went away the next morning.

Q. Who is "we"? A. Lillian Rys and I.

Q. Where did you go? A. I went to Hay Street.

Q. And from Hay Street where did you go? A. I went to Pennsylvania.

Q. Shenandoah? A. Yes.

Q. Why did you go away the next morning?

Mr. McGlynn: I object, if your Honor please, I do not see how we are concerned with the motive that compelled her to leave and go away.

The Court: Objection sustained.

Q. Did you see Compo after that? A. No.

Q. When was the next time you saw him? A. Well, down at police headquarters.

Q. When did you come back from Shenandoah, Pennsylvania? A. I don't remember the date.

Q. Well, what month was it? A. April.

Q. When you came back from Shenandoah, Pennsylvania, where did you go? A. Police Headquarters.

Q. Did you make a statement at that time? A. Yes.

Q. Now, had you ever been out automobile riding with Clarence Stern and Lillian Rys and Compo? A. Yes.

Q. Was there a conversation which took place between Clarence Stern and Compo and Lillian?

Mr. McGlynn: If your Honor please, I think the time should be fixed with reference to this conversation. Nothing has been said about that.

Q. Sometime in March of this year? A. I don't remember.

By the Court:

Q. You don't remember what? The time or the conversation. A. No, I don't remember the time or the conversation.

By Mr. Fisch:

Q. Well, I am not asking you now whether you remember the details of the conversation, but I want to know whether you were riding in an automobile with them sometime in March. A. Yes, I was.

Q. And during the course of that automobile trip—I am not inquiring from you now whether

you remember the conversation, that took place. I want to know whether during the course of that automobile trip there was a conversation between Compo and Stern and Lillian. A. Yes. We often had conversation among ourselves.

Cross-examination by Mr. McGlynn:

Q. You knew where Gene lived too? A. I don't remember the street.

Q. You were there, weren't you? A. Yes.

Q. How many times did you go there to try to see him?

Mr. Fisch: I object to that, if your Honor please. There is no testimony that she ever went there to try to see him.

The Court: Sustained.

Q. How many times were you over to Hudson Street? A. I never was to Hudson Street. I didn't even know he was living there.

Q. You knew he had a wife? A. He told me—she spoke to me and she told me she wasn't his wife at all.

Q. Where did she speak to you? A. I don't remember the street, but it wasn't on Hudson.

Q. Was it the same street where he was living? A. Yes.

Q. Was it Hunterdon Street? A. I don't remember the street. I can't remember that.

Q. But you went to some house where he was living? A. Yes.

Q. Near Springfield Avenue? A. I can't remember that. I couldn't tell you.

Q. You knew he had two children, didn't you? A. Well, he told me he had one child, but the first child bore his name, but it wasn't his child.

Q. But you knew that this woman with whom he was living and whom he told everyone was his wife, had two children by him, don't you?

Mr. Fisch: I object to that. There is nothing said about having told everyone that this woman was his wife.

The Court: I think it is objectionable in that form.

Q. You knew that he was living with some woman, didn't you? A. Yes, I did.

Q. And that he held her out as his wife? A. Yes.

Q. She was known as Mrs. Compo? A. Yes.

Q. And you knew that she had two children, didn't you? A. Well, I knew that one was his child, but the other one didn't bear his name though.

Q. But you knew there were two children there? A. Yes.

Q. Did you know that his wife was about to have another baby, or this woman? A. No.

Q. You didn't know that. When did you leave Newark for Shenandoah? A. It was in March, the end of March.

Q. What day? A. Somewhere around the 25th or the 26th. The end of March.

Q. The 25th or 26th? A. Yes.

Q. And you weren't back in Newark again until the police brought you back? A. Yes.

Q. When did they bring you back? A. In April.

Q. What date? A. I can't remember that date.

Q. Why not? A. Well, I just don't remember.

Q. Well, how long had you been home before you came back? A. I have been there about three weeks.

Q. About three weeks? A. Yes.

Q. How long have you been back here now? A. Well, I am seven weeks here.

Q. Seven weeks here? A. Seven weeks tomorrow.

Q. Seven weeks tomorrow? A. Yes.

Q. And did you ever write Gene any letters? A. Yes, I have wrote him letters.

Q. Did you write him a long letter one time, about twenty pages? A. Yes.

Q. Did you see that letter down at Police Headquarters? A. Yes, I seen it.

Mr. McGlynn: Has the prosecutor got that letter?

Mr. Fisch: I don't know anything about it.

Q. You were shown that letter in Police Headquarters, weren't you, about twenty pages? A. He showed it to me, but I didn't read it.

Q. But you saw the letters that I am talking about? A. Yes, I seen it.

Q. In police headquarters, since you have been back in Newark? A. Yes.

Q. In whose possession was it then? Who had it? A. Captain Sebold showed it to me.

Q. When was that letter written to Gene?

Mr. Fisch: I object to that as being entirely immaterial and not cross-examination.

Mr. McGlynn: If your Honor please, the contents of a letter which this woman said she wrote can be used to affect her credibility and show her interest, her motive, her bias. I say it is very important.

The Court: I will permit it.

Q. When did you write that letter? A. Somewhere around July. I think it was July last—I don't remember what day.

Q. July, 1930? A. Yes.

Q. You were very much in love with Gene, weren't you? A. Yes, I was.

Q. You went with him quite a lot? A. Of course I did.

Q. Every Thursday you say and every second Sunday? A. Yes.

Q. Did you leave this place on South Clinton Street where you were employed, or were you discharged? A. I wasn't discharged, I left the place.

Q. When did you leave? A. In February of this year.

Q. What date? A. I don't remember the date.

Q. When was your month up? A. My month wasn't up there. I left before my month was up.

Q. You left before your month was up? A. Yes.

Q. When was your month up? A. The 13th of March. I left in February.

Q. Do you remember what date you left in February? A. No, I don't remember.

Q. Why did you leave?

Mr. Fisch: I object to that as being entirely immaterial and not cross-examination.

The Court: Sustained.

Q. You say that when you saw Gene on Christmas Day, that he had a blue overcoat on, is that right? A. Yes.

Q. Does this look like the overcoat he had on? A. No, that ain't the overcoat.

Q. What? A. That ain't the overcoat.

Q. That is not the overcoat he had on Christmas

Day? A. No, a different blue overcoat. That isn't the overcoat.

Mr. Fisch: Showing the witness D-1 for identification.

Q. What sort of overcoat did he have on that day? A. Blue serge overcoat.

Q. What kind of overcoat did you say? I didn't get it. A. It was a blue overcoat, but it had a different collar than that. It had sort of a velvet collar on it.

Q. How long, to your knowledge, had he had that overcoat? A. Well, he had it when I met him.

Q. When did you meet him? A. I met him around May.

Q. Was this a light overcoat or heavy overcoat? A. It was a winter coat. As soon as winter started he wore it. He had the overcoat, the one I am talking about.

Q. He had it all during the winter? A. Well, no, he didn't. He just got this overcoat lately.

Q. He got this overcoat in March, didn't he? A. Yes.

Q. Do you remember the date he bought it? A. No, I don't remember it, but I remember him coming up to the place and showing it to me. He had it on.

Q. Do you know whether he got it on Central Avenue and Norfolk Street? A. He told me he got it from a second-hand store.

Q. He paid $3 for it? A. Yes.

Q. In March? A. Yes.

Mr. Fisch: That is the overcoat marked Exhibit D-1 for identification?

Mr. McGlynn: Yes, sir.

Q. You gave him money quite frequently, didn't you, Sophie? A. Well, yes, I did.

Q. Do you remember being down to Philadelphia with him in March? A. Yes, I was.

Q. You saw a sister of yours down there that day, didn't you? A. Yes.

Q. At some hospital? A. Yes.

Q. Do you remember going with him in a pawn shop with him down there? A. No.

Q. Do you remember him going in a pawn shop in Philadelphia while he was with you? A. No, I don't remember.

Q. Do you remember him going in a store and coming out with the gun he bought? A. No, I don't remember.

Q. You gave him the money to buy the gun, didn't you, that day? A. I did not.

Q. You only made one trip to Philadelphia and that was in March, wasn't it? A. Yes.

Q. You gave him the money to buy the automobile, didn't you? A. Yes, I did give him that.

Q. When was that? A. I didn't give it to him at the same time; I gave him, well, oftentimes. I gave him $15 and $10—I gave him $20 for the car.

Q. You gave him $20 to buy a second-hand automobile? A. Yes.

Q. When was that? A. I don't remember.

Q. It was after Christmas—this year, wasn't it? A. Yes.

Q. So that when he told you that you didn't believe it, did you?

Mr. Fisch: I object to that as immaterial.

The Court: Objection sustained.

Q. If you believed it, how is it you kept going with him?

Mr. Fisch: I object to that.

The Court: Objection sustained.

Q. You didn't tell anybody about this story? A. No, I didn't.

Q. Did you ever call up police headquarters from a pay station in Newark before you left for Shenandoah? A. No.

Q. Are you sure? A. No, I didn't call anybody up.

Q. You were quite anxious to have Eugene leave this woman with whom he was living, weren't you? A. No, I wasn't.

Q. Did you say anything in that letter you wrote to him about it?

Mr. Fisch: I object to that. The letter is the best evidence.

Mr. McGlynn: I would like to see the letter.

Mr. Fisch: We haven't been called upon to produce it.

Mr. McGlynn: I ask for it now.

Mr. Fisch: We haven't it here.

Mr. McGlynn: Has Captain Sebold the letter? Is Captain Sebold here?

The Court: You can subpoena the letter.

Mr. McGlynn: I will subpoena the letter. I would ask that this witness be called back for cross-examination on that particular point when I get the letter.

The Court: Very well.

Q. Was the letter you are referring to attached to the statement that you signed down at police headquarters? A. No, it wasn't. I don't just remember what I wrote in that letter.

Q. I am not asking you what you wrote in that letter. I am asking you about the letter which you wrote to him in July, 1930, which I have described as a 20-page letter, which you say you saw in police headquarters when you were down there and whether it was attached to the statement which you signed. A. No, sir.

Q. But it was in the possession of Captain Sebold when you last saw it? A. Yes.

Q. Did you ever see Eugene have a gun before Christmas day? A. No.

Q. Did you ever see him have a gun after Christmas Day? A. Yes.

Q. Every day after that? A. No.

Q. How many times did you see him have a gun after Christmas Day? A. I didn't see it until two days before I left home.

Q. Two days before you left for home, you mean. A. Yes.

Q. And the first gun you say you saw him have on Christmas Day is the only look you got at it, of the butt looking out of the belt. A. Yes.

Q. You never handled it? A. No.

Q. You never saw the whole gun? A. No.

Q. You never had a chance to examine it in any way? A. No.

Q. You just saw the handle sticking out of his coat when he brushed his coat aside? A. Yes.

Q. Where was it in his belt? A. I think it was on the right-hand side.

Q. Outside of his trousers or inside of his trousers? A. Outside.

Q. Outside of his trousers? A. Yes.

Q. What was it in? Hanging loose or in something? A. It was right in the holster belt.

Q. How much of it was exposed on the outside

of his trousers on the right-hand side. How long was it? A. I just don't remember how long it was; it was about that long (indicating).

Q. You mean the holster was that long? A. Yes.

Q. You couldn't see the gun? A. No, only the handle.

Q. But you could see the holster on his trousers on the belt on the right-hand side? A. Yes.

Q. Did he have a vest on? A. Yes.

Q. Was the handle underneath the vest or outside the vest? A. When he showed it to me it was outside the vest, but I don't know how it was after that.

Q. When he brushed his coat back was it in full view? A. Yes.

Q. Was it still in that position when you sat down with him in the theater? A. I don't know.

Q. Did he take his overcoat off in the theater? A. No, he didn't.

Q. You never saw a gun on him again, you say, until two days before you went home? A. Yes.

Q. You saw him undressed between Christmas and two days before you went home, didn't you? A. Seen what?

Q. You saw him undressed between Christmas and two days before you went home, didn't you? A. No.

Q. Didn't you all stay in this Spruce Street room? A. Lillian and I lived there.

Q. Didn't Clarence and Eugene stay there? A. No, sir.

Q. They didn't have their clothes off there? A. No, never.

Q. Was the gun which you saw two days before you left for Shenandoah the same gun or did it

have the same handle that you saw on Christmas Day? A. No, it was a different gun.

Q. Describe to me why you say there was a difference. A. It didn't have no black handle on it.

Q. What did it have? A. It was a nickel plated gun; it didn't have no black handle on it, though.

Q. You saw just the handle? A. I saw the whole gun, but it didn't have the black handle on it.

Q. How did you come to see the whole gun? A. Because he put it up against my side.

Q. Where did he take it from? A. When he came in he had it in his pocket.

Q. Which pocket? A. I don't know, but he took it from the buffet and put it against my side.

Q. It was laying on the buffet? A. Yes.

Q. Was the whole gun nickel plated? A. Yes.

Q. Did it look like a new gun? A. I don't remember what kind of looking gun it was.

Q. Did you ever see it again after that? A. No, not after that I didn't see it.

Q. Do you remember driving back from Philadelphia on this day in March when you say you were down there with him? A. Yes.

Q. There were you and Lillian Rys and Clarence Stern and Eugene, is that right? A. Yes.

Q. Do you remember having a puncture in Trenton or near Trenton on the way home? A. Yes.

Q. Do you remember while they were fixing the tire you held the gun that had been purchased in Philadelphia? A. No, sir.

Q. Wasn't there a policeman there? A. Yes, sir.

Q. Wasn't the gun given to you to hold while the tire was being repaired? A. No.

Q. Are you sure of that? A. Yes.

Q. Didn't you see the gun then? A. No.

Q. Did you see a gun then? A. No.

Redirect-examination by Mr. Fisch:

Q. You were asked whether you saw the defendant undressed. Did you ever see him undressed? A. No, I did not.

Q. Did he ever stay at your rooms all night? A. No, he did not.

Q. Did you ever have any intercourse with him? A. No, never.

Recross-examination by Mr. McGlynn:

Q. What did you give him this money for? A. He told me he wanted to go away from this woman and that's why I gave him the money.

Q. When did you start giving him money? A. It was after Christmas, somewhere around Christmas.

Q. Before Christmas? A. After Christmas.

Q. Are you sure you didn't give him any before? A. No.

Q. And you kept on giving him money up to the time you went home? A. Yes.

Mr. McGlynn: That is all, your Honor, with the reservation that your Honor allowed me.

The Court: Yes.

LILLIAN RYS sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Lillian, where do you live? A. 37 Nelson Place.

Q. Newark? A. Newark, yes, sir.

Q. How old are you? A. 20.

Q. Do you know a man by the name of Clarence Stern? A. Yes, I do.

Q. Is he a friend of yours? A. Yes.

Q. Your boy friend? A. Yes.

Q. How long have you known Clarence? A. Since last July.

Q. Do you know the defendant in this case, Eugene Compo? A. Yes, I know him.

Q. When did you meet him? A. Through Clarence Stern.

Q. You mean Clarence introduced you to him? A. Yes.

Q. When was that? A. It was the beginning of March of this year.

Q. Do you know Sophie Krok? A. Yes.

Q. When did you meet her? A. The same time I met Eugene Compo.

Q. Did you and Sophie become friendly? A. Yes, sir.

Q. Where was it that Clarence introduced you to Eugene Compo? A. It was on New Street.

Q. Did you go anywhere after you met Eugene Compo and Sophie Krok? Did you go anywhere with them? A. Yes, we went for a ride.

Q. In whose car? A. Clarence Stern's.

Q. At that time and prior to that time where had you been living? A. It was on Goldsmith Avenue, Newark.

Q. What number? A. 30.

Q. Whom were you living with? A. I was working, doing general housework.

Q. You were doing general housework there on Goldsmith Avenue, is that right? A. Yes.

Q. After you met Compo and Sophie Krok, did you move? A. Yes.

Q. Where did you move to? A. 205 New Street.

Q. What kind of a place is that? A. I don't know what kind of a place is that.

Q. Did you move to a furnished room there? A. Yes, a furnished room.

Q. Whom did you live there with? A. Sophie Krok.

Q. You had a room together, did you? A. Yes.

Q. After you went to live there at New Street with Sophie did you and Sophie and Clarence and Compo go out riding together? A. Yes.

Q. In whose car? A. In Clarence Stern's.

Q. Now, do you remember one night about the middle of March of this year whether or not you went riding in Clarence's car with Sophie and Clarence and Compo? A. Yes.

Q. Where did you go to? A. Why, we were riding around Springfield Avenue.

Q. And then, while you were out riding, did you stop anywhere? A. Yes.

Q. Where did you stop? A. In Hudson and Central Avenue.

Q. Did you get out of the car or did you stay in the car? A. Stayed in the car.

Q. Just parked there, did you? A. Yes.

Q. While you were parked there did you have a conversation? A. Yes.

Q. Whom did you have that conversation with? A. Why—

Mr. Fisch: Give her a drink, will you please.

Q. Are you all right now, Lillian? A. Yes, I am all right.

Q. Now, whom did you have that talk with? A. Sophie Krok and Eugene Compo, Clarence Stern and me.

Q. What did Gene Compo say? A. Why, he was telling Sophie Krok how much he cared for her.

Q. What did he say? A. He said he couldn't, that he couldn't marry her, on account of that—he had two children and he had another woman he was living with.

Q. Yes, what else? A. And he was telling me about the—the job he done on Mulberry Street.

Q. Yes. What did he say about that? A. Why, he said he, he shot a man on Mulberry Street.

Q. What else did he say about it? A. That is all I remember.

Q. Well, did he say whereabouts on Mulberry Street, or what kind of store it was? A. I remember it was a grocery store.

Q. Now, what else, if anything, did he say about Sophie or caring for her, or going with her? A. Well, I don't remember.

Q. Did he say anything about whether he cared for her or not? A. Why, yes, he told her.

Q. Did he say anything about whether or not he could leave her? A. Yes.

Q. What did he say about that? A. He just told her that he couldn't leave her.

Q. Did he say why? A. Because he done the—because he shot the man on Mulberry Street.

Q. Did he say anything about having told her about that?

Mr. McGlynn: If your Honor please, it seems to me—I do not mind a little leading, but I object to this question as being extremely leading on the most important, it seems to me, phase of the case as far as the defendant is concerned.

By the Court:

Q. And what did he say about leaving Sophie and about shooting a man on Mulberry Street? What connection did they have, those two things? What did he say about them? A. Why, they had a conversation.

Q. When? There? A. Yes, right in the car.

Q. But what did he say? What did Compo say about shooting? You said that he said he couldn't leave her and that he shot the man on Mulberry Street. Now, what did the two have to do with each other, if you know? What did he say about it? A. Why, he said he could not—I just don't remember what he said.

Mr. Fisch: Now, try to think, Lillian.

Q. What was his conversation? what words did he use? A. First conversation was that he told her how much he cared for her.

Q. What did he say? Can't you remember what he said? A. No, I don't remember.

Q. What did he say after that? A. He said that he can't marry her on account of the woman he was living with.

Q. Yes, go on, and what else did he say? A. In other words, he said—

(The Court and the witness hold conversation inaudible to the stenographer).

The Court: For the benefit of the record.

I have not been interrogating the witness as to the case. I was just inquiring as to whether or not she wanted a recess because of her physical condition.

By Mr. Fisch:

Q. Will you tell us, please, what he said about Sophie, about caring for her a lot, whether or not he could leave her and why? A. He said he couldn't leave her on account of that she knows too much about it, that he shot a man on Mulberry Street.

Q. Now, then, after he said that, what, if anything, did he say to you? That is, to you and Clarence, the others in the automobile there. A. Why, he said, "Don't say anything to anybody because if the cops get me, I will probably get life."

Q. Did anybody answer him? A. No.

Q. Then what did you do? A. Why, we went home.

Q. Who got out of the car first? A. Gene Compo.

Q. And after he got out of the car, where did he go? A. He went home. I don't know where.

Q. Not where he went. Where did you go? A. We went to 205 New Street.

Q. When you got to 205 New Street, who got out of the car there? A. Sophie Krok and myself.

Q. Then what became of Clarence after you and Sophie got out of the car? A. He went home.

Q. What is that? A. He went home.

Q. With the automobile? A. Yes.

Q. And you went up to your room, did you? A. Yes.

Q. And now, on the following morning did you see Compo, the next morning? A. Yes.

Q. About what time? A. About 7:30.

Q. Where did you see him? A. At New Street.

Q. Well, upstairs in your room? A. Upstairs, yes.

Q. After he got there did you hear anything outside that attracted your attention? A. Yes.

Q. What was it? A. Why, Clarence Stern blew the horn downstairs.

Q. And then did you look out? A. Yes, we looked out through the window.

Q. Whom did you see? A. My boy friend, Clarence Stern.

Q. In an automobile? A. Yes.

Q. Then what did you do? A. We got dressed and walked downstairs.

Q. Did you get into the automobile? A. Yes.

Q. Who got into the automobile, please? A. Sophie Krok and Eugene Compo and myself.

Q. Clarence was already in the machine? A. Yes, he was.

Q. Where did you go? A. Went to Philadelphia.

Q. What did you go to Philadelphia for? A. To see Sophie Krok's sister in a hospital.

Q. Did you all go into the hospital when you got to Philadelphia? A. No, only Sophie Krok.

Q. Now, did you come back to Newark that same day? A. Yes, the same night.

Q. Do you remember the night of Tuesday, the 24th of March, about ten o'clock at night? A. Yes.

Q. Where were you and Sophie living at that time? A. At 32 Spruce Street.

Q. You had moved from the New Street address, had you? A. Yes.

Q. While you were there at 32 Spruce Street on that night, did you see Compo? A. Yes.

Q. Was anybody with him? A. Clarence Stern.

Q. They both came there, did they? A. Yes.

Q. Did they come up into your room? A. Yes.

Q. Now, what, if anything, happened there that night between Gene Compo and Sophie? A. Why, that night they had an argument.

Q. What was it about? Do you know? A. I don't remember.

Q. You don't remember what the argument was about? A. No.

Q. Where was Sophie? A. She was sitting on the side of the bed.

Q. Where was Compo? A. Standing alongside of the bed.

Q. What if anything did you see him do? A. I just heard that Gene Compo was saying to Sophie Krok that if she ever leaves him or squeals at him he will shoot her.

Q. What if anything did you see him do when he said that? A. He put the gun on the side of her body.

Q. After he did that what did he do with the gun? A. I don't remember.

Q. Did you see where he got the gun from just before he pressed the gun alongside of her body? A. No.

Q. After he had done that, was anything further said? A. No.

Q. Then what happened? A. Why, Sophie Krok, she got kind of scared and she started to cry.

Q. Then what happened? A. Then—I don't remember.

Q. Did Clarence, your boy friend Clarence and Gene, continue to stay there or did they go home? A. No, they went home.

Q. After that did you continue to stay at the Spruce Street address? A. No.

Q. What did you do? A. We left the next morning.

Q. Where did you go? A. I lived at 74 Hayes Street, Newark.

Q. Where did Sophie go, if you know? A. Pennsylvania.

Q. Sometime in April, about the 22nd of April of this year, were you arrested by the police? A. Yes.

Q. And taken down to police headquarters? A. Yes.

Q. And were you questioned about this matter? A. Yes.

Q. Did you see the defendant Compo there? A. Yes.

Q. And did you then make a statement to the police? A. Yes.

Q. And tell them the same story that you have told here? A. Yes.

Cross-examination by Mr. McGlynn:

Q. Was Goldsmith Avenue the last place that you worked? A. Yes.

Q. When did you leave there? A. I don't remember when I left.

Q. In February, or March? A. That was in February.

Q. About the same time that Sophie quit her job in East Orange? A. Yes.

Q. Did you leave or were you discharged?

Mr. Fisch: I object to that as entirely immaterial.

The Court: Sustained.

Mr. McGlynn: I think it is relevant on the question of cross-examination.

The Court: No, I don't think so.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. How many places did you live in after you left Goldsmith Avenue? A. Three places.

Q. The first one was New Street? A. Yes, sir.

Q. The second one was Spruce Street? A. Yes.

Q. And the third one was Hayes Street, is that right? A. Yes.

Q. Were you living at Hayes Street when you were arrested? A. No.

Q. Where were you then? A. 37 Nelson Place.

Q. That is four places, then. A. Yes, four places.

Q. There weren't any more, were there? A. No.

Q. You say that Compo and Sophie were quarreling? A. Yes.

Q. How long had they been quarreling? A. I don't remember.

Q. And the reason they were quarreling, if I understand your testimony correctly, was that she wanted him to leave this woman he was living with.

Mr. Fisch: I object to that. There is not a scintilla of evidence with regard to that.

The Court: I don't think there is any testimony as to why they were quarreling. You can't incorporate that into the question that way. I will sustain the objection.

Q. What were they quarreling about? A. I don't know.

Q. You heard the conversation, didn't you? A. Well, I don't remember. I heard that they was quarreling, but over what I don't know.

Q. Didn't you say that he was telling her that he thought so much of her that he could not leave her because of this woman he was living with? A. Yes.

Q. They talked about it at Spruce Street, didn't they? A. No, they didn't.

Q. What did they talk about there? A. They just talked about if she ever squealed on him he would kill her.

Q. What was the first part of the conversation about? Those were not the first words when he came into the room, were they? A. They were quarreling, but I don't know what they were quarreling about.

Q. You don't know what they were quarreling about? A. I don't know. I was talking to Clarence Stern then.

Q. You were going with Eugene Compo and Sophie and Clarence Stern? You had been going around together for how long? A. Since the beginning of March.

Q. Of 1931? A. Yes.

Q. And this conversation that you told the Prosecutor about, which happened on the corner of Hudson Street and Central Avenue, was it— A. Yes.

Q. It happened, as I understand you to say, about the middle of March, is that right? A. Yes.

Q. You knew that Gene was living on Hudson Street just in from Central Avenue, didn't you? A. No, I didn't.

Q. You knew why the machine stopped at Hud-

son Street and Central Avenue, didn't you? A. I didn't know.

Q. Where were you seated in the car on that night? A. In the front.

Q. Clarence Stern was in the front seat with you? A. Yes, sir.

Q. And the other two were in the back seat? A. Yes.

Q. What kind of a car was it? A sedan or a touring car? A. A sedan.

Q. A closed sedan? A. Yes.

Q. Then you saw him the next morning about half past seven—Compo came into your rooms on New Street at that time? A. Yes, sir.

Q. And you heard an automobile horn and you and Sophie then got dressed so that you were undressed when he came in, is that right? A. Right.

Q. Did he stay in the room while you dressed? A. Why, no.

Q. Where did he go? A. We were dressed when he walked in.

Q. This trip to Philadelphia—did you know Sophie's sister? A. No.

Q. Did you ever meet her? A. Never.

Q. You didn't see her the day you went to Philadelphia? A. No.

Q. What did you and Clarence do while Sophie was in the hospital? A. Waited in the car for Sophie Krok to come out.

Q. You never left the car? A. No.

Q. How long did you stay in Philadelphia? A. I don't remember.

Q. Where did you meet Sophie and Eugene?

Mr. Fisch: I object to that. There isn't any reference in this testimony thus far that this witness and Stern met Sophie and Eugene somewhere.

Mr. McGlynn: She said they stayed in the car in Philadelphia and Sophie went to the hospital and visited her sister.

Mr. Fisch: Sophie did, yes.

Q. Did Eugene leave the car while Sophie was in the hospital? A. He helped her with the packages she was supposed to take to her sister.

Q. Then he left the car? A. Yes.

Q. Where did you meet Sophie and Eugene? A. In front of the hospital.

Q. How long was Sophie up there? A. About 20 minutes.

Q. Then did the four of you drive around Philadelphia? A. We came home.

Q. Did you do any driving around Philadelphia? A. No.

Q. None at all? A. No.

Q. Did Stern get out of the car in Philadelphia and buy anything? A. No.

Q. Did Compo get out of the car in Philadelphia and buy anything? A. No.

Q. Did your car have a puncture in Trenton on the way back. A. Yes.

Q. Do you remember the incident? A. Yes.

Q. Do you remember a policeman being near the car while the puncture was being fixed? A. I remember he was crossing the street and staying on the same block where the car was parked.

Q. Did you see Eugene Compo hand Sophie a gun to hold while the policeman was near the car then? A. No.

Q. Did you see a gun then? A. No.

Q. Neither one of the boys had a gun then? A. No.

Q. Down in this Spruce Street—was it the

Spruce Street room where the quarrel was held the day afterward? A. 32 Spruce Street.

Q. When they started to have the quarrel, or right after they started the quarrel, didn't you and Clarence go out for a ride or a walk and come back afterward? A. No.

Q. Are you sure of that? A. Yes.

Q. Can you tell me the first part of the conversation in the car at the corner of Hudson Street and Central Avenue? A. We had a conversation in the car.

Q. What? A. Sophie Krok and Eugene Compo had a conversation in the car.

Q. Do you remember the first part of the conversation? A. No, I don't remember.

Q. All you remember about the conversation is something he said about he couldn't leave her because of this woman he was living with, with the two children, because she had something on him? A. Yes, he wasn't sure that the one was his or not.

Q. I am not so much interested now in the children as I am in—

Mr. Fisch: You want to know what she remembers and she is telling you.

Mr. McGlynn: Is the Prosecutor attempting to put any statements in the record?

Mr. Fisch: I object to counsel shutting off the witness' answer.

Mr. McGlynn: I say the Prosecutor should not make statements.

The Court: I do not know that he did, and I have not heard any objection.

Q. (Read by the stenographer). I am not so much interested now in the children as I am in the question of what was said by Compo to Sophie

Krok in the first part of the conversation in the car on that night in March. What was the first thing you heard said? A. The first thing I heard said was that he cared for her a lot.

Q. What? A. That he loved her and he couldn't leave her on account of the—on account of the work he done on Mulberry Street.

Q. He couldn't leave her? A. Yes.

Q. He couldn't leave her on account of the work he done on Mulberry Street? A. Yes.

Q. That was the first thing he said that you remember? A. Why, yes. They were talking, some conversations, but I don't remember the first words of what he said.

Q. That is the first thing you remember? A. Yes.

Q. And you don't remember much after that, do you? A. Well, after he was telling that he had a woman, he was living with, he had two children.

Q. You knew that, didn't you? A. Well, he was just telling in the car. I didn't know that.

Q. You didn't know? A. No.

Q. Did you know what he and Clarence had been doing? A. No.

Q. Are you sure you didn't know? A. What do you mean?

Q. What he and Clarence Stern had been doing in the early part of March when you first knew them? A. No, I don't.

Q. You don't know now what they were doing?

Mr. Fisch: I object to that unless it is of her own knowledge.

Mr. McGlynn: That is what I am asking about. I am not asking anything else.

The Court: Do you know?

Mr. Fisch: I do not see how it is material, if your Honor please.

The Court: Well, you can answer that yes or no. Don't tell us what they were doing. Do you know what they were doing? Not what some one told you. Do you know yourself?

Mr. McGlynn: If she can tell what the defendant or Clarence Stern said.

The Witness: Just lately I just found out in the newspapers. I read it in the newspapers.

The Court: She only knows what she read in the newspapers.

(Counsel argue).

Q. Just one or two more questions about Philadelphia, Miss Rys, please. A. Yes.

Q. How long were you in Philadelphia, do you think? A. We started early in the morning, and he—I don't remember just how long we were there, but we came at night, early in the evening.

Q. Didn't you stop to eat in Philadelphia at some spaghetti place? A. Yes, sir; we went to a restaurant.

Q. Near the Reading Railroad station? A. I don't remember where we was.

Q. But you remember going in there to eat? A. Yes, we went to a restaurant.

Q. And don't you remember now that on the same day the four of you went to another store? A. No, I don't remember.

Q. You won't say now that you did not go into

another store, the four of you, besides the restaurant? A. No.

Redirect-examination by Mr. Fisch:

Q. Just one question I would like to clear up, this last. Did you go into any other store in Philadelphia besides this restaurant? A. No, we did not.

Q. You did not? A. No.

Q. You are sure about that? A. Yes.

(Adjourned until tomorrow Wednesday, June 3, 1931, at ten o'clock A. M.)

ESSEX COUNTY COURT OF OYER AND TERMINER.

THIRD DAY.

Wednesday, June 3, 1931.

THE STATE OF NEW JERSEY, vs. EUGENE COMPO,	On Indictment No. 358 April T. 1931 for Murder.

Continued pursuant to adjournment.
Present, Counsel as before stated.

HOWARD H. FALLON, sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Detective Fallon, you are connected with the Newark Police Department, are you? A. I am.

Q. You have been for how many years? A. I will complete my thirteenth year the 6th of this month.

Q. You are attached to the Detective Bureau at Headquarters, are you not? A. I am.

Q. On the 24th of April last, were you at Police Headquarters about nine o'clock that night? A. I was.

Q. Were you in the corridor of police headquarters when there was a line-up of some men there? A. I was.

Q. Did you see Mr. Allen Haug at police headquarters that night? A. I did.

Q. Where did you see him? A. On the 4th floor of police headquarters in the corridor.

Q. Who, if anyone, was with him? A. Sergeant Conlon.

Q. Where were you in the corridor? A. I was standing at the head of the stairs guarding the prisoners.

Q. How many men were in the line-up? A. Three.

Q. What, if anything, did you see Mr. Haug do when he got up to the fourth floor there? A. He came up to the fourth floor in company of Sergeant Conlon and stepped from the elevator, looking over a line-up of men, he positively identified one of these men who were in the line-up, by the name of Eugene Compo, and who is defendant in this case, as the man that he had seen in Mulberry Street and as the man who killed the deceased, Eugene Lynch, on the 23rd of December, 1930.

Q. And you were present then when he identified him, were you? A. Yes.

Q. Did anyone speak to Mr. Haug from the time he got off the elevator until the time he made the identification? A. Not as I heard anybody, no.

Q. You were there, weren't you? A. I was there yes.

Q. Where was Sergeant Conlon standing with reference to Mr. Haug when this identification was made? A. He stepped away from Mr. Haug. Mr. Haug walked right up to the defendant, as I said before, and he identified him.

Cross-examination by Mr. McGlynn:

Q. Where had you been for the three hours previous to this occasion you have described? A. I was home and had supper and to different places.

Q. When did you get back to headquarters previous to this incident you have just described? A. Seven or a little after.

Q. What time was this identification made by this man Haug? A. About nine o'clock, April 24, 1931.

Q. Did you see Haug before he was taken upstairs by Conlon? A. I ain't sure. I don't think I did.

Q. Did you or didn't you? A. No, I didn't.

Q. Where had you been in headquarters previous to going upstairs guarding the three men in the line-up? A. I was in the assembly room of the Detective Bureau.

Q. It was no part of your duties to guard the three men in the line-up, was it?

Mr. Fisch: I object to that.

The Court: I will permit it.

A. Yes, it is the duty of the officers in the Detective Bureau to guard the men in the line-up until they are returned back to their cells.

Q. You worked with Sergeant Conlon in this case, you and he together? A. From the 12th of April on, yes, I did.

Q. This incident you are now describing happened when? A. April 24th.

Q. Do you remember going down to Haug's house to get him that evening?

Mr. Fisch: I object to that on the ground that it is not cross-examination and there isn't anything in the testimony to show that he did.

The Court: I will permit it.

A. I went down that afternoon.

Q. Did you see Haug? A. He wasn't there, no, sir.

Q. Did you see Haug after that and before you saw him make this alleged identification? A. I don't think I did; no.

Q. When you were at his house you left your card, didn't you? A. I did.

Q. Did he see you when he came to police headquarters that night? A. No, he did not.

CLARENCE STERN, sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Mr. Stern, where do you live? A. 67 Cabinet Street.

Q. Newark? A. Newark.

Q. And how old are you? A. Twenty-four.

Q. Do you know the defendant Eugene Compo? A. I do.

Q. How long have you known him? A. Known him since the 27th of December, 1930.

Q. Where did you meet him at that time? A. At the Crosstown Garage 211 Norfolk Street, Newark.

Q. Did you go back there later on after the 27th of December? A. I have been in the habit of keeping my three cars there for the past six years.

Q. You kept your cars there? A. Yes, sir.

Q. Did you ever have a talk with him there at the shop? A. I did.

Q. What was this conversation? A. The beginning of the conversation?

Q. Yes. A. Why, I met him there the first time on the 27th of December. That was at about the

time that he was to take over the repair shop of the Crosstown Garage.

Q. Yes. A. On that day he showed me a 32 automatic that was in a holster suspended from his pants belt on his right-hand side.

Q. Did you talk to him about it? A. I did.

Q. What did you say to him and what did he say to you? A. He told me that he wanted to sell the gun.

Q. What did you say? A. I didn't say anything about the selling of the gun, because I wasn't interested in it.

Q. Did you ask him anything further about it? A. Not that day.

Q. At that time? A. Not at that time; no, sir.

Q. Now, Mr. Stern, did you continue to see him at that garage subsequent to that time? A. I did, off and on.

Q. Did you become frienly with him? A. Yes, sir.

Q. Now, sometime in the latter part of February of this year did you have a talk with him at the garage? A. I did.

Q. By that time had you become friends? A. I had.

Q. Now, what was the conversation that you had with him at that time? A. At that time he told me that the gun that he had sold previously to Johnny Turfaro, Wilsey Street, was the gun with which he had killed the grocery store man on Mulberry Street.

Q. What else, if anything, did he tell you about that killing? A. He told me how he at that time, he was pressed for money, and that he was about to take over the repair shop of the Crosstown Garage, and had planned the stick-up alone so that in

order to obtain the money of $40 which he was supposed to pay for one months' rent in advance for the repair shop, he decided on taking across this store.

Q. He decided on what? A. On taking across this store.

Q. What else did he tell you? A. He told me how he had gone down there on the night of December 23rd and waited for Lynch to close the store, as he had been playing a lone hand in this stick-up and had—didn't want anybody there to interfere with him.

Q. Then what did he tell you? A. He told me how he had waited for Lynch, and as Lynch was about to close up the store, had gone across to stick him up. While he was over there Lynch gave him a battle, and he pulled the trigger of the 32 automatic which he had previously sold to Johnny Furfero, and the shot entered Lynch's body.

Q. What, if anything, did he say as to why he pulled the trigger? A. Well, he said it was either Lynch or him, so he gave it to Lynch rather than be caught.

Q. What else, if anything, did he tell you about this man? Did he mention his name? A. He did. He had asked me if I had seen a clipping of it in the paper.

Q. And that was the end of February he was talking to you about it? A. That was the end of February.

Q. When he asked you if you had seen a clipping of it in the paper, what did you say about it? A. I told him I had.

Q. What else, if anything, did he say about this man whom he had killed? A. In what way is that, Prosecutor?

By the Court:

Q. Any way. A. He told me he had no use for an Irishman or a Nigger and he found a pleasure in shooting Lynch, because Lynch happened to be an Irishman.

By Mr. Fisch:

Q. Where did this conversation take place? A. Crosstown Garage, 211 Norfolk Street.

Q. Now, after he had told you this, what happened? A. I left there.

Q. You left there? A. I left there. I had been in the custom of being there different intervals during the day.

Q. Now, do you know a girl by the name of Lillian Rys? A. I do.

Q. She is your girl friend, isn't she? A. Yes, sir.

Q. How long have you known her? A. July 13, 1930.

Q. Do you know a girl by the name of Sophie Krok? A. I do.

Q. How long have you known Sophie? A. Up until the present time, for about two and a half, about three months.

Q. When did you first meet her? A. About the middle of March.

Q. How did you come to meet her? A. I met her through Eugene Compo.

Q. Did you and your girl friend Lillian, and Sophie and Eugene become friends? A. We did.

Q. Did you go out together? A. Yes, sir.

Q. Do you remember an occasion on the 18th of March, on a Wednesday night, being in the company of the defendant, Compo, and his girl friend Sophie, and your girl friend Lillian, in an automobile? A. I do.

Q. Whose automobile was that? A. It was my car.

Q. Where did you start from? A. From 205 New Street.

Q. Whose house was that? A. Lillian and Sophie had been living there.

Q. Who was driving the car? A. I was driving the car.

Q. Who was sitting next to you? A. Lillian.

Q. Where was Eugene, the defendant? A. In the back seat.

Q. And Sophie? A. In the back seat alongside of him.

Q. Where did you go to? A. We took a short ride up through Springfield, I believe, and we turned back to Central Avenue and Hudson Street.

Q. When you got to Central Avenue and Hudson Street did you stop the car there? A. I did.

Q. Did you shut off the motor? A. Yes.

Q. After the motor was shut off and the car was standing still, what happened? A. A conversation started.

Q. What was that conversation? A. In that conversation Compo told her in the presence of the four of us how he had killed a man in a Butler chain store on Mulberry Street.

Q. What did he say? A. He said that he had gone down there to the store and went to stick him up, and in the fight that followed he shot the manager.

Q. Was there any conversation there with regard to Sophie and himself? A. There was.

Q. What was that? A. He told Lillian and I that Sophie and he could never part because if they did and Sophie opened up on him he would be sure to burn.

Q. What happened after that? A. He got off there and went over home. I drove the two girls back to 205 New Street.

Q. When you got to New Street did the girls get out of the machine? A. They did.

Q. Then where did you go? A. I went home.

Q. How about the next morning? What did you do the next morning? A. The next morning I arrived down at the same address, 205 New Street, about half past seven or a quarter of eight.

Q. Did you have an appointment to be there? A. I did.

Q. With whom? A. With both girls and the defendant.

Q. When was that appointment made? A. It had been made during the early part of the week, about Monday.

Q. What was the appointment for? A. The appointment was to go down to see Sophie's sister who was at that time in a hospital in West Philadelphia.

Q. When you got to the New Street address at that time in the morning, who was there? A. Miss Rys, Miss Krok and the defendant.

Q. Did you go upstairs? A. No, I didn't; I remained in the car.

Q. What did you do? A. I blew the horn three times and they came down.

Q. The three of them came down? A. Yes.

Q. Did they get into the car? A. They did.

Q. What part of the machine did Lillian get into? A. In the front.

Q. How about Compo? A. In the back.

Q. How about Sophie? A. Alongside of Compo in the back.

Q. Where did you go? A. We went down to Philadelphia.

Q. When you got to Philadelphia did you go to some hospital there? A. We did.

Q. Who went into the hospital, if anyone? A. Sophie went into the hospital.

Q. What about you and Lillian when Sophie went into the hospital? A. We remained in the car.

Q. How about Compo? A. He carried some suitcases across the street to the hospital and he remained there a few minutes and then returned and Sophie went upstairs.

Q. How long did Sophie remain in the hospital? A. About 25 minutes.

Q. And you three waited until she came down? A. Yes.

Q. Then where did you go? A. We came back to Newark.

Q. Did you make any stops in Philadelphia? A. For dinner.

Q. Where did you eat your dinner? A. That I don't know. I am not very well acquainted with Philadelphia.

Q. Outside of dinner did you make any other stops? A. No.

Q. Then you came back to Newark? A. We did.

Q. Do you know a man by the name of Mickey Tenore? A. I do.

Q. About a week after this day when you had gone to Philadelphia, did you see Tenore? A. I did.

Q. Was Compo there at the same time? A. He was.

Q. Whereabouts was that? A. It was one night when I was bringing Mickey Tenore home.

Q. How were you bringing him home? A. In my car.

Q. Where was Compo? A. He was in the car also, together with Mickey.

Q. Did you hear Compo say anything to Tenore that night? A. I did.

Q. What did he say? A. He told Mickey Tenore also of the shooting on Mulberry Street.

Q. Just give us the conversation, as near as you can recollect, as to what Compo told Tenore in your presence. A. He told him how he had gone down to Mulberry Street to take across a manager of a store down there and that during an argument when the man attempted to grapple with him, he fired the shot.

Q. Do you remember Tuesday night, on the 24th of March, being at the room occupied by Sophie and Lillian at 32 Spruce Street? A. Yes, sir.

Q. Who was there that night? A. Miss Rys, Miss Krok, the defendant and myself.

Q. What happened there that night? A. Compo took a gun which was in that same holster as I had first seen the thirty-two in—he took a gun from the same holster and put it at Sophie's side and said that if she ever gave him up or gave information about the shooting at Mulberry Street that he would just as soon shoot her as not.

Q. What did you say? A. I told him to put the gun down.

Q. What happened then? What did he do? A. He put the gun back in the holster.

Q. Did you stay there after that? A. About an hour or an hour and a half.

Q. Then what did you do? A. We went home.

Q. Before Compo had said this to Sophie, before he had pointed this gun at her, had there been any argument between them? A. The beginning of the argument I don't remember. Lillian and I had been standing to one side. I wasn't interested.

Q. Was there an argument? A. A little argument.

Q. Can you tell me what about? A. No.

Q. Did you have your automobile then? A. Well, it was parked downstairs in front of the house.

Q. Did you drive him home? A. I drove him home.

Q. Now, did you have any conversation with him in the car as you were driving home? A. I did.

Q. What conversation, if any, did you have with him? A. In regards to the threats that he had made to Miss Krok.

Q. What did you say to him and what did he say to you? A. I asked him if he wasn't afraid of that gun going off, and he said no, that he would just as leave let her have it as not.

Q. What else? A. He said it would be safer to have her out of the way than to have her go back and tell on him for the shooting on Mulberry Street.

Q. What else, if anything, did he say? A. That is all I can recall.

Q. Did he mention the chair? A. He had often mentioned that.

Q. Well, did he mention the chair in that conversation? A. I believe he did.

Q. What did he say about that, if you recall? A. He said that he was sure of the chair if he was ever caught.

Q. Now, had you been out with Compo on other occasions besides the ones that I have questioned you about? A. I have.

Q. On numerous occasions? A. Yes, sir.

Q. How friendly were you with Compo? A. Very friendly.

Q. Did you go out on enterprises with him together? A. Yes, sir.

Q. What kind of enterprises? A. The ones in question, I guess.

Q. What? A. The ones in question, I guess.

Q. I don't know what you mean by that. What ones in question? A. The charges I am being held on now.

Q. You are being held on some charges, are you? A. Yes, sir.

Q. What are those charges? A. Stick-up charges.

Q. Now, you are being held on this charge, or this murder? A. No, sir.

Q. Did you have anything to do with this? A. No, sir.

Q. How many charges, stick-up charges, are you being held on? A. Three.

Q. Did you engage in those enterprises with the defendant? A. I did.

Cross-examination by Mr. McGlynn:

Q. Are you sure of the number of charges you are being held on, young man? A. Yes, sir.

Q. As a matter of fact, aren't there six charges? A. No, sir; I am indicted on five, three being stick-ups, the question that he asked.

Q. Perhaps my choice of language was not good. The word "enterprises" may have mislead me. What other enterprises besides stick-ups did you engage in with this defendant? A. None other.

Q. Well, you say you are indicted on five charges? A. I did.

Q. How many of them stick-ups, as you call it? A. Three.

Q. What are the other two? A. One conspiracy, one gun charge.

Q. What? A. One conspiracy and one gun charge.

Q. Conspiracy as to what? A. Conspiracy to rob.

Q. And there are others besides you and the defendant charged with these same crimes? A. There is.

Q. How old did you say you were? A. Twenty-four.

Q. I understood you to say on your direct-examination that for the past six years your two cars have been kept at this Crosstown Garage, is that correct? A. Three cars.

Q. For the past six years? A. Yes, sir.

Q. What business have you been in in the last six years? A. Plumbing business.

Q. Where were you so engaged? A. Well, all over. My work takes me all over the County, and sometimes out of the County.

Q. Where was your office? A. I wasn't in business for myself. I worked.

Q. Whom did you work for? A. Samuel Watermaker from Bloomfield.

Q. What is his address? A. 16 Valentine Road, Bloomfield.

Q. Where did you work for him? A. I have done work for him for the last six years.

Q. What? A. I have been working for him for the last six years.

Q. When did you work for him last? A. That I don't recall.

Q. You what? A. That I do not recall. The date I do not recall.

Q. Can you tell me whether it was a month ago

or six months or a year ago? A. Maybe three months ago.

Q. Where did you work for the three months? A. I did. I have been working for the last six years. I have not been discharged.

Q. Where did you work for the three months? A. Where did I work? I believe it was on 32 Spruce Street, if I am not mistaken.

Q. You what? A. 32 Spruce Street was the last plumbing job I done for him.

Q. Here in Newark? A. Yes.

Q. What was the work you did? A. I installed seven wall basins.

Q. How long were you engaged there for him? A. For about six or seven days.

Q. Why was it necessary for you to have three cars if you were just a journeyman plumber?

Mr. Fisch: I object as being entirely immaterial.

Mr. McGlynn: It is very material.

The Court: I will permit it.

Q. What was the necessity for you to have three cars if you were a journeyman plumber? A. I always made good money.

Q. What is that? A. I always made good money.

Q. What do you mean you made good money? How much did you make? A. Well, I never drawed less than $30 a week since I have been eighteen years old.

Q. When did you start to work, did you say? A. Started to work when I was fifteen years old.

Q. Your folks lived here in Newark? A. Yes, sir.

Q. Were you born in Newark? A. Yes, sir.

Q. Well, where did you keep these three cars? A. Crosstown Garage.

Q. You stored them there? A. I did.

Q. During these entire six years? A. Yes, sir.

Q. What kind of cars were they? A. First car was a Hupmobile, 1924. The second was a Pontiac, 1927, and the last is a 1929 Pontiac, new car.

Q. Do you mean that you had owned three cars at once or you owned on different occasions three different cars? A. At different occasions.

Q. You bought them new or second-hand? A. Oh, two second-hand and one new.

Q. Which one was new? A. The 1929 Pontiac.

Q. When did you buy that? A. May 22, 1929.

Q. Now, how long have you been in custody? A. Forty-nine days.

Q. What date were you taken into custody? A. April 16th.

Q. You knew when you were taken into custody that Eugene Compo was in custody, didn't you? A. I did, but I wasn't taken into custody.

Q. Well, when you surrendered? A. Yes, sir.

Q. Your folks made you surrender, didn't they? A. No, sir.

Mr. Fisch: I object to that.

The Court: Objection sustained.

Q. Your family are quite friendly with Chief McRell, aren't they?

Mr. Fisch: I object to that.

The Court: Sustained. How is that material?

Mr. McGlynn: That is a question I should be able to bring out on cross-examination.

The Court: I do not see how it is material whether they are or not.

Mr. McGlynn: I may want to find some motive or some reason for this man's testimony that he has given here in court.

The Court: Well, I think that is too far-fetched.

Q. Do you know Chief McRell? A. I do.

Q. How long have you known him? A. I object, your Honor.

By the Court:

Q. Well, I will do the objecting, you answer the questions. How long have you known him? A. He has known me since I was a baby.

By Mr. McGlynn:

Q. Are you related to him? A. No, sir.

Q. Now, you have told us of incidents, conversations and so forth, that happened on specific occasions, giving the date. Am I correct? A. You are.

Q. Now, what is there that makes you able to tell exactly what happened on March 18, 1931? A. Well, if you were in for as many days as I have been in with nothing else to do but think of dates, perhaps you would be able to name the dates as I have.

Q. I disagree with you. I would not have any memory at all.

Mr. Fisch: Let us not have any argument between this witness and counsel.

The Court: Go ahead.

Q. But you gave this statement to the police, sir, before you were in custody. A. I did.

Q. And this testimony that you have given here

this morning under the questions propounded to you by Mr. Fisch, have followed the statements you gave to the police, have they? A. Yes.

Q. When did you give them that statement? A. I believe it was about the 22nd of April.

Q. 22nd of April. Now, I ask you how are you able to remember that on April 22nd, when you made this statement, that there was a certain conversation which happened on March 18th? A. I had already been in Headquarters them five days.

Q. Well, had you told them in Headquarters when you first went in, this story? A. No, not this story. This story was taken later on by the Homicide Squad, not by the police squad.

Q. How does the fact that you were in Headquarters for five days help you to remember that on April 22nd, or whatever date it was, just exactly what happened on March 18th? A. Because I had five days to think over lots of things.

Q. But what was there about this incident that brought back the date that it happened to your mind? A. The things that had occurred on that date, which I knew I would be questioned about when I was brought down.

Q. Do you know of anything else which happened on March 18th except what you have told us? A. Not that I can recall.

Q. Do you know of anything else that happened on any of these other dates you have told us except what you have already told us? A. Not that I can recall.

Q. Those are the only things that you can remember that happened on those five or six occasions? A. Pertaining to this.

Q. Can you tell us anything else that happened on March 18th? A. I drove my car.

Q. You did that every day of the week, didn't you? A. Yes, sir.

Q. What else happened? Is there any one single thing that you can tell us that happened on March 18th? A. The same day I had picked up my mother.

Q. Where? A. At High Street.

Q. You did that every day of the week, didn"t you? A. Yes, sir.

Q. That is the reason you remember it, isn't it? A. Yes.

Q. Do you remember everything that happened in Philadelphia? A. I do.

Q. What time did you get there? A. About one o'clock in the afternoon.

Q. Who was driving? A. I was.

Q. Where did you go to? A. St. Vincent's Hospital.

Q. Where? A. West Philadelphia.

Q. What is the street? A. I don't know.

Q. How long did you stay there? A. Half an hour.

Q. Where did you go from there? A. Over to a restaurant.

Q. Where was that? A. Near a railroad station.

Q. How far from the hospital? A. Three or four miles.

Q. Did you go anywhere else? Did you make any stops? A. No, sir.

Q. Did anybody get out of the car except you, except the time when you went to the restaurant? A. No, sir.

Q. Did you buy a gun in Philadelphia? A. I did not.

Q. Didn't you pay $10 for a gun in Philadelphia? A. No, sir.

Q. Didn't Compo buy a gun that day? A. No, sir.

Q. Do you remember coming back from Philadelphia? A. I do.

Q. Do you remember a puncture in Trenton? A. Yes, sir.

Q. Who was around the car besides you people? A. There was a policeman near the car.

Q. You all got worried about the policeman, didn't you? A. No, sir, in fact, I stopped and asked him the way back to Newark.

Q. Did you carry on a conversation with him? A. No, sir.

Q. You knew the way back to Newark, didn't you? A. No, sir.

Q. Why? A. Because I had taken a different road out and I was coming back by a different road.

Q. What time was it when you spoke to the policeman? A. Somewhere about half past four.

Q. What was the first date you said that Compo told you this story about the Mulberry Street shooting? A. The latter part of February.

Q. The first time he ever told you? A. Of the shooting, yes.

Q. Where were you when he told you that? A. At the Crosstown Garage.

Q. What was he doing there? A. Doing little minor repairs on automobiles.

Q. Was he there when you got there that day? A. Yes, sir.

Q. What did you go there for? A. I always made it a habit of being around there for the last six years. Friends of mine own the place.

Q. What was the first thing he said to you that day? A. A conversation had started.

Q. Who started it? A. Compo.

Q. What did he say? A. He started the conversation and it went on and then finally he showed me the gun.

Q. What was the first thing he said in the garage? A. He had been talking about a stick-up.

Q. What was the first thing he said in the garage? A. He had been talking about a stick-up.

Q. I am not interested in that. What was the first thing he said that day? A. About a stick-up.

Q. But what did he say?

By the Court:

Q. What were his words? A. He had mentioned a stick-up that he had previously done.

By Mr. McGlynn:

Q. What were the words so far as you you can recall, the very first words that he used to you that day? A. He told me how scared the nigger looked at 67 Cabinet Street when he made the stick-up.

Q. You saw that yourself, didn't you? You drove the car, didn't you? A. I was a block and a half away.

Q. What was the next thing he said to you? A. He told me that he had had an argument with the fellow that his sister was living with.

Q. What was the next thing he said? A. He said he would like to give him the same thing that he had given Lynch.

Q. He mentioned the name? A. The name of who?

Q. Lynch. A. He did name Lynch.

Q. You didn't know the name, did you? A. I had seen it in the paper.

Q. You had seen it in the paper and recalled in

February who it was when he mentioned the name? A. I recall seeing it in the paper, yes.

Q. You remembered when he told you that in February that you had read something in the paper about it in December? A. I did.

Q. Tell me just what he said to you about Lynch. A. He told me how he needed $40. He was about to take over the ownership of the repair shop of the Crosstown Garage and he needed $40 for the rent in advance. Needing that, he went out to do a job along to get $40 to get the first month's rent. He planned this stick-up himself and went down there to take the place across, and while doing so he told me he had killed the manager of the store.

Q. When was the first enterprise or stick-up or robbery or hold-up that you had participated in with him? A. I refuse to answer the question.

Mr. McGlynn: I don't see that he has the right to refuse.

The Court: No, it was brought out on dirict examination. You will have to answer the question.

Witness: I have never been found guilty yet, your Honor.

The Court: You will have to answer the question.

A. February 2nd.

Q. What was the date of the last one? A. Somewhere in the middle of March.

Q. From February to March how many did you participate in with him? A. Three.

Q. How many more did you know of that were participated in by him with other members of your—with other friends of yours? A. I don't know.

Q. You do know don't you? A. I don't know.

Q. Didn't you tell the Police Department in your statement how many you knew about? A. Just three.

Q. Didn't they ask you about any other men?

Mr. Fisch: I object to that.

The Court: Sustained.

Q. You are what is known as a "finger man?" A. No, sir.

Q. You don't know what it means? A. I know what it means, yes, sir.

Q. What does it mean? A. It means to point out a job.

Q. Isn't that what you were? A. No, sir.

Q. Didn't you point out jobs to these people to take over? A. No, sir, I haven't been charged with that crime.

Q. I didn't ask you whether you had been charged with that crime. I am asking you whether you didn't do it. A. I said no.

Q. What happened on December 27, 1930? A. I met the defendant at the Crosstown Garage.

Q. What time? A. Sometime during the afternoon.

Q. Was that the first you had ever met him? A. That was the first I had ever met him.

Q. You never saw him in your life before that? A. I had seen him, yes.

Q. Where? A. At the Crosstown Garage.

Q. Had he worked on your car? A. No, sir.

Q. Never? A. No, sir.

Q. Had you seen him working on cars there before that? A. I did.

Q. Do you remember any specific occasion prior

to December 27, 1930, that you saw him working on cars in the Crosstown Garage? A. I do not.

Q. When you saw him working on cars he was doing automobile mechanic's work, is that what you mean? A. Trying to, yes, sir.

Q. How long did you see him around that garage working that way? A. For about a week.

Q. Only a week before December 27th? A. Yes.

Q. So that before a week before December 27th you never saw him, so far as you can recall, in your life? A. Not in that garage.

Q. Did you ever see him anywhere else? A. No.

Q. You never saw him or knew who he was before a week prior to December 27th? A. That's right.

Q. How did you meet him? A. He was introduced to me by the owner of the garage.

Q. That is the first you ever met him? A. Yes.

Q. What happened on December 27th when you met him? A. He was standing at one of the show windows where they had accessories placed, with a partition that led up about 5 feet from the floor. He at that time pulled back his coat and showed me a thirty-two automatic which was suspended in a holster from his pants belt.

Q. You mean he voluntarily pulled back his coat and showed you the gun? A. He did.

Q. He pulled back his coat just as I am pulling back my coat? A. Yes.

Q. Bragging about it? A. Yes.

Q. And this was just after you had met him? A. Yes.

Q. How soon after you met him was it he did that? A. About an hour after.

Q. What did you talk about in that first hour? A. He told me how some people were trying to

break into his house and he showed me the gun which he carried for protection.

Q. What did he tell you about it? A. He told me about his family affairs and family troubles and the baby being sick and an infected tooth and about taking over the garage.

Q. What else did he talk about? A. That's all that I can recall.

Q. And then, without any reason and with out any conversation at all, he threw back his coat and showed you the gun?

Mr. Fisch: I object to that. He didn't say that; that is not the testimony. The witness has, as a matter of fact, said that there was a reason; that there was a conversation about it.

The Court: Sustain the objection.

Q. How long were you with him that day? A. About an hour and a half.

Q. When did you see him next? A. I saw him the following days.

Q. The following day? A. The following days off and on during the course of the day.

Q. What was the next occasion after December 27, 1930, that you can remember specifically having met him? A. The 1st of January, 1931.

Q. Where did you meet him then? A. At the Crosstown Garage.

Q. Why do you pick out that day? A. Because I happened to be present at the garage on that day.

Q. What makes you recall that you were present at the garage on that date? A. I was waiting for a telephone call.

Q. From where ? A. From Miss Rys.

Q. It was New Year's Day? A. Yes.

Q. What was the next occasion? A. I met him off and on around the garage. He was doing different work around the cars there. Some days I had conversation with him and some days not.

Q. Do you know Joseph Rapucci? A. I do.

Q. You say you know John Furfaro? A. I do.

Q. Do you know Nunzio Nizzari? A. I do.

Q. Do you know Michael Racanelli? A. Yes, sir.

Q. Do you know Joseph Rocco? A. No, sir.

Q. Do you know Frank Bagala? A. No, sir.

Q. Do you know Dominick Monganello? A. No, sir.

Q. Did you ever hear of the address 35 Orchard Street, Summit? A. No, sir.

Q. Did you ever hear the name Frank Albertino? A. No, sir. I heard them read in the indictment.

Q. Sir? A. First heard it read in the indictments.

Q. You first heard those names. A. That name Albertino read in the indictment.

Q. That is one of the indictments that was found against you? A. That conspiracy charge; yes, sir.

Q. Did you know when that was read to you that you were charged with conspiracy as having happened on January 1, 1931?

Objected to as not cross-examination.
Objection sustained.

Q. Now, I understood you gave us on direct testimony that it happened in February. Do you recall that? A. Yes.

Q. What date did that happen? A. Happened the latter part of February.

Q. Is that the best you can give me? A. Yes, sir.

Q. When did it happen? A. That happened in the Crosstown Garage.

Q. Who was there? A. Compo and myself.

Q. Just the two of you? A. Yes sir.

Q. Can you tell me anything else that happened on that day? A. No, sir; I cannot.

Q. Then the next time was March 18th, is that right? A. Conversation?

Q. Yes. A. Yes.

Q. And the next was the next day to Philadelphia? A. Yes.

Q. Now, when did you overhear this conversation with Tenore? A. When I had brought Tenore home one night in my car.

Q. When was it? A. That was, that was about the 24th of March.

Q. 24th of March? A. About the 24th of March.

Q. Sure of that? A. Positive.

Q. What day of the week was it? A. That I don't recall.

Q. Was it before or after his conversation that you heard down in the Spruce Street room? A. That was after.

Q. One day after or two or three days after? A. A couple of days after.

Q. Don't you know just a few minutes ago you told the conversation in Spruce Street happened on March 24th in this very room? A. I don't recall the date right now; no, sir.

Mr. McGlynn: May I ask the stenographer to go back and read that?

Mr. Fisch: So that it will save time, if it will help Mr. McGlynn any, I will agree that I asked the question whether he was present in the room on Tuesday night, March 24, 1931, and that the witness answered that he was and that the conversation took place at that time.

Mr. McGlynn: Thank you, sir.

Q. Now that you have been reminded that upon your direct testimony you gave a conversation that happened in the room in Spruce Street on March 24th, when do you say the conversation happened with Tenore? A. Following that. That was after Miss Krok had left.

Q. How long following that? A. About three or four days.

Q. How do you figure that out? A. Well, at that time the defendant was planning to go back to Philadelphia, go back to Shenandoah, Pennsylvania, and force Miss Krok to come back to Newark with him.

Q. Oh, he was going back to force her to come back? A. He was.

Q. You heard him say that? A. I did. So did Mickey Tenore.

Q. What is his name? A. Tenore.

Q. That is the last conversation you heard in which the defendant is supposed to have admitted his participation in this Mulberry Street affair, isn't it? A. That is about the last, yes, sir.

Q. That would bring that down almost to March 27th wouldn't it? A. About that.

Q. That was the last thing that happened before you were taken into custody? A. About two weeks previous, yes.

Q. Yet when I asked you just a minute or two ago when it happened, you had it happening before March 24th, didn't you?

Mr. Fisch: I object to that.

Mr. McGlynn: It is a perfect question on cross-examination.

Mr. Fisch: It may be a perfect question, but I object to it as not the testimony.

(Counsel argue).

(A portion of the previous testimony is read by the stenographer).

(The last question is read by the stenographer as follows: "Yet when I asked you just a minute or two ago when it happened, you had it happening before March 24, didn't you?")

Mr. McGlynn: On March 24th.

The Court: All right. On March 24th, yes.

Mr. McGlynn: With that correction?

Mr. Fisch: I object to that, if your Honor please, because the witness said about March 24th.

The Court: I think I will permit it.

By the Court:

Q. Go ahead. You can answer that, Stern? A. I never knew anything about this conversation given by Mickey Tenore until this time. That is the reason that date I misplaced.

By Mr. McGlynn:

Q. You never knew anything about what? A. About Mickey Tenore being as a witness in this case.

Q. I wasn't asking anything about his testimony. I was asking you about a conversation that you testified about in this room this morning, that you said you overheard between the defendant and Tenore. A. You asked me about the date.

Q. Of course I did, and you told me March 24th, didn't you? A. I did.

Q. Then I reminded you that the Spruce Street conversation that you have testified to happened on March 24th, didn't I? A. Yes.

Q. Then you changed the Tenore conversation to March 27th, didn't you? A. Because it was previous to the argument on March 24th—it was after, rather.

Q. Now, which was it? A. After.

Q. Are you sure now? A. Positive.

Q. How is it, Mr. Stern, that you did not tell the police this story that you told them on April 22nd, before that time?

Objected to as highly immaterial.

Objection overruled.

A. Perhaps I would have got the same Lynch got.

Q. What? A. Perhaps I would have got the same Lynch got.

Q. And yet from the 1st of January up to March you were out with this man in stick-ups and hold-ups, weren't you? A. I was.

Q. And there were plenty of guns taken out on those hold-ups by you and your participants? A. Not by Compo.

Q. He never used a gun? A. A black jack.

Q. I asked you, did he ever use a gun?

Mr. Fisch: I object to that question unless it is confined to some particular time.

Mr. McGlynn: I am talking about stick-ups that they participated in.

Mr. Fisch: These particular ones, does counsel mean, if your Honor please?

The Court: I understand the question to mean from the time this conversation took place on December 27th.

Mr. McGlynn: Sure.

Mr. Fisch: No, if your Honor please. That is the point I would like to have cleared up in the question, as to whether that is meant or whether it is meant that Compo did not use a gun on these particular stick-ups that were participated in by this witness and Compo.

The Court: Well, fix the date in your question, Mr. McGlynn.

(A previous question is read by the stenographer as follows: "And yet from the first of January up until March you were out with this man in stick-ups and hold-ups, weren't you? A. I was.

Question: And there were plenty of guns taken out on those hold-ups by you and your participants? Answer: Not by Compo.")

Mr. McGlynn: Withdraw the last question.

By Mr. McGlynn:

Q. And from the early part of February, I think it was you said that you and he started on these jobs? A. Yes, sir.

Q. Until sometime in March, you don't know of a single one that he went out on alone, do you? A. Of one alone? Not that I know of; no, sir.

Q. Now, do you happen to know why it is that your trial on your indictments have been postponed to June 10th?

Mr. Fisch: I object. How is that material on cross-examination?

Mr. McGlynn: It may be very. I do not know. I have a right to inquire.

The Court: I will let him answer if the witness knows why.

By the Court:

Q. Do you know why? A. No, sir; I don't.

By Mr. McGlynn:

Q. Has anything been said to you by anybody connected with the Prosecution? A. There has not.

Q. How do you know what I am going to ask you?

Mr. Fisch: I object, that was a complete question.

Mr. McGlynn: It was not.

The Court: It might have been. It was not intended to be, but it might have been. All right. Go ahead.

Q. Has anything been said to you by anybody connected with the State that you would receive any benefit for the testimony that you are giving in this trial? A. There was not.

Q. Have you talked to anybody connected with the Prosecution since you have been in custody, about this trial? A. No, sir.

Q. You expect some consideration, don't you, sir? A. If I am to get any—if I am to get any, that will remain to be found out. So far I have heard nothing.

Q. But you expect some consideration, don't you? A. No, sir.

Q. When did you first find out that Compo had squealed on you?

Mr. Fisch: I object to that. There is not anything in the case that indicates any such testimony.

The Court: Sustained.

Mr. McGlynn: Withdraw the question.

Q. Did you find out that Compo had squealed on you? A. No, sir.

Q. You never found it out? A. No, sir.

Q. You were never told that? A. No, sir.

Q. Do you remember meeting Compo down in police headquarters? A. I do.

Q. Weren't you confronted with Compo in police headquarters and told that he had implicated you in these hold-ups? A. No, sir.

Q. And didn't you spit in his face on that occasion? A. No, sir.

Q. And call him a rat? A. No, sir.

Q. Was anything said when you met him down there in police headquarters? A. No, sir.

Redirect-examination by Mr. Fisch:

Q. Mr. Stern, I just want to clear up one thing on redirect-examination. You talked about keeping your three cars at this Crosstown Garage for the last six years. Did you at any time during the last six years own three cars at one time? A. Not at one time, no, sir.

Q. So that you owned one car in 1924? A. In 1924. I sold that, purchased a 1927, and sold that and purchased a 1929.

Q. So that during the last six years you have kept three different cars at that garage, is that right? A. Yes, sir.

Q. Keeping one car at a time there, is that right? A. At a time; yes, sir.

(At 1:10 o'clock P. M. the Court takes a recess until 2:10 o'clock P. M.)

After Recess.

CLARENCE STERN resumes the stand.

Redirect-examination by Mr. Fisch:

Q. You testified on cross-examination that in the hold-ups you participated in with the defendant, that he always carried a black jack. Was there any talk about that?

Mr. McGlynn: I object to that. I can't see the materiality of the conversation about that particular phase of it.

Mr. Fisch: It was brought out on cross-examination.

The Court: It was not brought out in response to a question.

Mr. Fisch: Yes, it was.

The Court: No, it was a voluntary statement by this witness. The question was, "Did Compo carry a gun?" He said, "No, a black jack."

Mr. Fisch: There was no motion made to strike it out as not being responsive, and there were further inquiries along that line by counsel after that information—

The Court: There were inquiries with reference to getting an admission as to whether or not the defendant carried a gun. However, if the carrying of the black jack pertains to the Lynch case, I will admit it; if it is in reference to other cases, I do not see that it is material.

Mr. Fisch: It was brought out on cross-examination. It was something new to me.

The Court: Don't you know what it pertains to?

Mr. Fisch: No, sir.

Mr. McGlynn: I don't see what further materiality it can have with reference to the charge we are now trying, which happened in December. This all happened between February and March, 1931.

The Court: After the shooting.

Mr. McGlynn: Yes, sir.

The Court: It makes it material so far as the time is concerned. Whether or not the testimony is material to this case I don't know, but I will permit you to ask him a question as to whether or not he had a conversation with Compo about a black jack with reference to the Lynch case.

Q. Was there any conversation between you and Compo, or between anyone else and Compo in your presence, with reference to the carrying of a black jack by him? A. No.

Mr. McGlynn: I object to that.

The Court: He has answered, "No."

Mr. McGlynn: I didn't hear that.

By the Court:

Q. Is that what your answer was? A. Yes.

By Mr. Fisch:

Q. Do you know why Compo carried a black jack?

Mr. McGlynn: I object.

The Court: Sustained.

Q. Did Compo ever tell you why he carried a black jack?

Mr. McGlynn: I object.

The Court: Sustained.

Q. Did you ever have any conversation with Compo with reference to the black jack?

Mr. McGlynn: I object to that.

The Court: He may answer that yes or no.

A. Yes.

Q. What was it?

Mr. McGlynn: I object to the conversation on the ground that it has absolutely nothing to do—

By the Court:

Q. When was this conversation? A. This conversation was during the time he told me of the shooting of Lynch.

Mr. McGlynn: There were about four or five of those.

Q. Was it with reference to the Lynch shooting? A. Yes, your Honor. That was the end of February.

Q. A minute ago when the Prosecutor asked you whether you had any conversation with Compo with reference to carrying a black jack you said, "No," didn't you? A. I did.

Q. Did you have any conversation with him or didn't you? A. I did have a conversation, but when the question was sustained before I took it for granted I was not to answer.

Q. Don't you remember my turning to you a minute ago and asking you whether your answer was "no" to the Prosecutor? A. I didn't hear you.

The Court: I will permit the question.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

By Mr. Fisch:

Q. What was that conversation? A. That he felt safer with a black jack than he did with a gun because he had shot Lynch with a gun, and for the time being carried a black jack.

Recross-examination by Mr. McGlynn:

Q. When was this particular conversation that you just gave us? A. That was dring the time he told me of the lunch shooting, which was at the end of February, 1931.

Q. Since you were on the stand this morning, has anybody spoken to you about this case? A. No, sir.

Q. Was what you have just testified to in your statement that you made to the police? A. No, sir.

Mr. Fisch: I object as being entirely immaterial.

Q. It is not in it?

Mr. Fisch: I object.

The Court: Sustained.

Q. Did anybody speak to you since you were on the stand this morning and tell you that you were going to be recalled and what you were going to be recalled for? A. No, sir.

Q. Why didn't you tell us this morning?

Mr. Fisch: I object to that.

The Court: Sustained.

Mr. McGlynn: I ask for an exception. I think on cross-examination I am entitled to go into why he did not give it to us this morning.

The Court: He was not asked this morning. Now, if this witness was asked, or was asked a question and gave a different answer, or gave an incomplete answer, why, then you would be entitled to it.

Mr. McGlynn: He was asked this morning the conversation that he had in February. I naturally supposed he gave us the entire conversation. If he did not, I want to know why he did not. I want to know some of these other conversations whether they are only partial and not complete.

The Court: I think you are right about that. I will change my ruling and permit it.

A. It did not come to my mind at that time.

Q. What has happened since this morning that made it come to your mind? A. Nothing has happened.

MICHAEL N. TENORE sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Tenore, where do you live? A. 67 Rodwell Avenue.

Q. Is that in Newark? A. Yes.

Q. Do you know Clarence Stern, the man who was just on the stand? A. Yes.

Q. Do you know the defendant, Eugene Compo? A. Yes, sir.

Q. How long have you known Compo? A. About two months.

Q. How long have you known Stern? A. Same length of time.

Q. Where did you meet Compo? A. In a pool room.

Q. Whereabouts? A. In Bergen Street.

Q. In Newark? A. Yes, sir.

Q. Did you ever go out with him in an automobile? A. Yes, sir.

Q. Do you remember any occasion when you were out in Stern's automobile, Stern driving his car, and you and Compo being in the automobile, some time in the latter part of March? A. Well, I don't know no dates. I remember when they took me home. That is all.

Q. Was Compo in the automobile? A. Yes, sir.

Q. Was Stern driving? A. Yes, sir.

Q. Where were you seated? A. In the back.

Q. With whom? A. With Compo.

Q. Did you have a conversation with Compo at that time? A. Well, I didn't have no conversation with him. He was just talking to me.

Q. He was talking to you. What did he say? A. Well, he told me about his girl left him, and I told him not to worry about it. So he says, "Well, if you had a girl like that, why, you would worry too."

So I says, "What for?" He said, "Well, if she gets caught and squawks, I will burn up."

Q. Did you ask him why? A. Well, I asked him why, and he says he shot somebody.

Q. Did he say who? A. No, sir.

Q. Did he say where? A. In Newark. That is all.

Q. Did he tell you anything further about it? A. Not that I know of.

Cross-examination by Mr. McGlynn:

Q. What is your business, sir? A. I work with my father.

Q. What business is he in? A. Contracting.

Q. How long have you been working for him? A. Ever since he was in business.

Q. You say you have known Stern about two months? A. That is about all.

Q. Where did you meet him? A. Up in the pool room.

Q. Did you meet Stern and Compo together? A. Yes, sir.

Q. How did you come to meet them? A. Well, through the pool room there. He came down there, fellow runs the pool room there, why, introduced me to him.

Q. Have you any idea when you met him? A. No. It is just about nine weeks ago the most.

Q. At the most nine weeks ago? A. Yes, sir.

Q. How long after you met him did this conversation take place that you have told us about? A. Well, about two or three weeks.

Q. About two or three weeks? A. That is about all.

Q. And on the two or three weeks that you knew him before you had this conversation, how many times had you seen him? A. Well, I seen him quite often down in the pool room.

Q. Every time you saw him was in the pool room? A. Yes, sir.

Q. The only place you saw him? A. No, sir; on Wilsey Street.

Q. What number? A. I don't know the number.

Q. No. 36? A. I don't know if it is 36 or what it is. It is down the hole.

Q. Down the hole? A. Yes, sir.

Q. Do they call it the dug-out? A. I don't know what they call it.

Q. How many more men did you meet there besides these two on Wilsey Street?

Mr. Fisch: I object to that. I do not see how this is cross-examination or material.

The Court: It is probably proper to test his credibility. Go ahead.

A. There was two more men.

Q. What were their names? A. Lombardi and some fellow by the name of Blackie. I don't know his name.

Q. Blackie? A. Yes.

Q. How many times did you meet those two men? A. Well, Lombardi, I used to meet him every day in the pool room, every other day.

Q. When would you meet him in the pool room, during the day or at night? A. During the day if I went there days, or if they were there nights, I would go there nights.

Q. Weren't you working there then? A. No, sir.

Q. Didn't you ever go out with these four at night? A. No, sir.

Q. Anywhere? A. No, sir; outside of my home when he took me home. That is all.

Q. Is this the only time he took you home? A. No, sir.

Q. What time was it when he took you home that night? A. I should judge around ten o'clock.

Q. And you had known him then about two weeks? A. Two or three weeks.

Q. How many times do you say you think you had seen Compo in that two or three weeks? A. Maybe about five or six times.

Q. Would you know Blackie's name if you heard it? A. I don't think so, no.

Q. Did you ever hear the name of Michael Racanelli? A. No, sir.

Q. Have you ever been convicted of crime? A. Yes, sir.

RALPH CAPADANO, sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. You are connected with the Newark Police Department? A. I am.

Q. And have been for how many years? A. 13 years June 6th of this year.

Q. You are attached to the Detective Bureau at headquarters? A. Yes, sir.

Q. You are also a member of the Homicide Squad are you? A. Yes, sir.

Q. Did you see the defendant, Eugene Compo, at headquarters on the 15th of April of this year? A. I did.

Q. Did you have a talk with him? A. I did.

Q. Did you take a statement from him? A. I did.

Q. I show you a paper writing and ask you whether or not that is the statement you took from him. A. It is.

Q. Who wrote this paper? A. It was written by me.

Q. Where did you get the information that was put into this paper? A. Eugene Compo.

Q. After you had gotten the information from him and had written it, what did you do with it? A. It was read to the defendant and the defendant read it himself and then signed it.

Q. When you say he read it himself, did he read it out loud? A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. Did he sign it in your presence? A. Yes, sir.

Q. Did he sign each sheet of it? A. Yes, sir.

Q. Is this his signature on each page? A. Yes, sir.

Q. And at the conclusion of it? A. Yes, sir.

Q. Did anybody witness it? A. Yes, sir.

Q. Who witnessed it? A. Deputy Chief Brex, Captain Sebold, Lieutenant Linarducci, Sergeant Conlon, Sergeant Coccoza and myself.

Q. Who was present when you were getting the information which you put in it? A. Captain Sebold, Sergeant Conlon, Detective Fallon and myself.

Q. After you got the information and before Compo signed it, did you take him into another room? A. He was taken into the office of Deputy Chief Brex. That is where the statement was read to him aloud and where he read it aloud and then he signed it.

Q. Did you make any promises to him at the time he signed the statement? A. No, sir.

Q. Did you make any threats at the time he signed the statement? A. No, sir.

Q. Did you hold out any hope of reward to him? A. No, sir.

Mr. Fisch: I offer the statement in evidence.

Mr. McGlynn: I object to it.

The Court: You may cross-examine on it.

By Mr. McGlynn:

Q. When did you first meet Compo? A. About seven o'clock that evening.

Q. Have you any idea how long he had been in custody before you met him? A. No, sir.

Q. You don't know what, if anything, was said or done to him before he made this statement? A. Nothing more than I know what happened while I was there.

Q. All you know is what happened while you were there? A. That's all.

Q. You didn't participate in any questioning of this man before you arrived in this room where you say you took this statement? A. I did.

Q. What time? A. Seven o'clock.

Q. Prior to that time you had not participated in any questioning of him? A. No, sir.

Q. You don't know how long he had been in custody before that? A. I don't know how long.

Q. You were called in to take this statement and that was all you did, to write down what was said? A. I was not called in to take the statement; I was present when he made the verbal statement and then it was reduced to writing.

Q. All you did was to write down what he said. A. I was there when he was being questioned at seven o'clock.

Q. On that one occasion at seven o'clock? A. That's all.

Q. You don't know how many times he had been questioned before that? A. No.

Q. When you were called in, or when you got there, or whatever happened at seven o'clock, you were told by somebody, were you not, that you were

going to take a statement from Compo, or that Compo was going to make a statement? A. No, sir.

Q. Were you told why you were to be there? A. I had just returned from another mission, and I came back and reported to the Captain, and while in the Captain's office, Compo made a statement that he was going to tell what happened. Then the Captain asked him if he wanted anything to eat and then he sent out and got him supper, and after he ate, the statement was made and reduced to writing by me.

Mr. McGlynn: I still object to the introduction of the paper which is offered, on the ground that it does not appear on the record that no hope was held out to him, or any fear or threats, and so forth, had been used in getting the defendant to make a statement; and on the further ground that, not having seen the paper, if it contains statements about crimes or actions other than the one we are now engaged in the trial of, at least that portion is inadmissible.

The Court: The rule is that it is admissible if it is a voluntary statement. So far as the record now stands, it appears to be voluntary. On the other point, it is admissible as a statement made at the time. Of course, I don't know what it contains, but if it contains statements with reference to other crimes, I will have to call the attention of the jury to the fact that it is only admissible as regards this case. Of course the Court of Errors and Appeals in the Buccodora case have ordered otherwise, that being the one case I can recall.

Mr. McGlynn: It is the only one I can recall.

The Court: That happened to be mine. That is the only reason I remember.

Mr. Fisch: As well as mine.

The Court: I will admit it.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

(The statement referred to is received in evidence and marked Exhibit S-8).

Cross-examination (Continued) by Mr. McGlynn:

Q. How many statements did you take of this defendant? A. Just the one.

Q. Do you know whether any other statements were taken? A. Not to my knowledge.

Q. Who did you say was present again? I didn't get the names. A. Captain Sebold, Sergeant Conlon and Detective Fallon and myself.

Q. Did you notice the defendant's condition at that time? A. I did.

Q. What was it? A. It appeared to be normal, O. K., and nothing wrong with him.

Q. Any bruises on him? A. No, sir.

Q. Did he eat this meal you say was ordered? A. He did.

Q. Did he keep it? A. He did.

FRANK E. BREX, sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. You are connected with the Newark Police Department? A. Yes, sir.

Q. You have been for how many years? A. Going on twenty-eight.

Q. And you bear the rank of Deputy Chief? A. Yes.

Q. As such you are in charge of the Detective Bureau, are you not? A. Yes, sir.

Q. Were you present at Police Headquarters on the 15th of April, 1931? A. I was.

Q. I show you Exhibit S-8 and ask you whether you witnessed the taking of that statement. A. I didn't witness the taking of it.

Q. The signing of it? A. The signing of it.

Q. Now, where were you when you witnessed the signing of it? A. In my office at Headquarters.

Q. Who was present? A. Why, Sergeant Conlon, Captain Sebold, Detective Fallon, Joseph Linarducci of the Homicide Department of the County, and Detective Cocozza.

Q. How about the defendant? A. And the defendant, of course.

Q. What was done in your presence with reference to that statement, Exhibit S-8? A. All of the aforesaid mentioned men walked into my office, headed by the defendant and Captain Sebold immediately in the rear of him, and he sat down at the end of my desk. The captain handed me this paper.

I said to Compo, I said, "Compo did you dictate this statement to Capodanno?"

He said, "Yes."

I said, "Is everything in there true and correct?"

He said, "Yes."

I turned it over to Captain Sebold and I said, "Captain, read it to him," and Captain read the statement to him, and while the Captain was reading this statement, Lieutenant Linarducci checked over the Captain's shoulder. After the Captain concluded, the Captain then handed it to the defendant Compo, and I said, "Compo, you read this too, out loud," which he did, and Lieutenant Linarducci then stepped over in the rear of him and checked him as he was reading it, and he read it loud.

At the termination of the reading I said to Compo, I said, "Is everything true and correct?" I said, "Do you wish to add or subtract anything from that?"

He said, "No." I said, "Do you wish to sign it?" He said, "Yes."

Q. Did he then sign it? A. He signed it.

Q. In your presence? A. In my presence.

Q. Did you sign it as a witness? A. I did.

Q. Did these other gentlemen then sign it as witnesses? A. They did, on each page.

Cross-examination by Mr. McGlynn:

Q. This all happened in your office, Chief Brex, after these other men in your department, who were working on this case, had had this defendant give them the material facts that are in that written statement verbally? A. Well, as I described it.

Q. Now, what happened in your presence you have described? A. Yes.

Q. But what happened in your presence occurred subsequent to your men, who were under you, getting from this defendant some or most or all of

the material facts that are in that written statement in a verbal form? A. Yes. There was one incident that I didn't mention—

Q. I am not interested in that. I am just interested in the question that I asked you. A. Yes. This was in this shape when they brought it in to me.

Q. You said nothing to him, as I gathered, from your direct conversation, about his rights before he signed it?

Mr. Fisch: I object to that.

Mr. McGlynn: I think it is perfectly material.

Mr. Fisch: It is not necessary to say anything to anybody about any rights, under our law.

The Court: I will permit it.

A. No. I asked him if he wished to sign it and he said, "Yes."

Redirect-examination by Mr. Fisch:

Q. Deputy Chief, you have said something in response to Mr. McGlynn's question that there was one incident that you didn't mention. What was that? A. About an hour prior to these detectives and the defendant coming into my office, I happened to have occasion to walk into Captain Sebold's office, and the Captain was seated at his desk with Detective Capodanno at an adjoining table, and the defendant at that time was dining, and Detective Capodanno was speaking to him and writing.

Q. He was speaking to him and writing? A. And writing.

Q. And the defendant was eating? A. The defendant was eating.

Q. And that was in Captain Sebold's office? A. Captain Sebold's office.

The Court: Dining, he said.

Mr. Fisch: Dining.

The Court: Considerable difference.

Witness He had a big meal in front of him.

By the Court:

Q. That is the difference, isn't it? A. Sir?

Q. I say, that is the difference, whether it was a big meal or not? A. Well, he seemed to have quite an outlay there, big pot of coffee and sandwiches.

Mr. Fisch: May I read this to the jury at this time, if your Honor please?

The Court: Yes.

(Mr. Fisch reads the statement, Exhibit S-8).

Mr. McGlynn: What was the date of the statement?

Mr. Fisch: April 15, 1931.

PHILIP SEBOLD, sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Captain Sebold, you are connected with the Newark Police Department? A. Yes, sir.

Q. And you have been for how many years? A. 25 years.

Q. And you are attached to headquarters, are you not? A. Yes, sir.

Q. With reference to Exhibit S-8, the statement of the defendant Compo, did you question him before the statement was made? A. I did.

Q. Did you elicit the information which was containing in this statement? A. I did.

Q. At the time you questioned him did you show him a photograph? A. I did.

Q. I show you Exhibit S-2 for identification and ask you whether or not that is the photograph you showed him? A. This is.

Q. There is a writing on the back of that, is there not? A. Yes, this was written by Compo.

Q. In your presence? A. In my presence.

Q. Is that the photograph that is mentioned in Exhibit S-8? A. Yes, sir.

Mr. Fisch: I offer the photograph, Exhibit S-2 for identification, in evidence.

The Court: Let it be marked.

(The same is received in evidence and marked Exhibit S-2).

Mr. Fisch: On the back of that photograph appears: "This looks like the store where the man was shot. E. Compo."

Q. While you were questioning the defendant and eliciting this information did you show him a gun? A. I did.

Q. Did you also show him an automatic? A. I did.

Q. I show you an automatic and ask you whether or not that is the automatic which you showed him. A. This is the automatic I showed him.

Q. Is this the magazine of the automatic? A. This is.

Q. Was it loaded at the time you showed it to him? A. It was.

Q. Are these the bullets that were in it? A. They are.

Q. When you showed him that automatic with those bullets, what, if anything did he say about it? A. He said, "That looks like the gun that Blackie had the night of the stick-up that he shot Lynch with."

Mr. Fisch: I offer the gun and the bullets in evidence.

The Court: How many bullets are there? Seven?

Mr. Fisch: No, there are eight.

The Court: Let them be marked as one exhibit.

(The same are received in evidence and marked Exhibt S-9).

Q. You say he said it looked like the gun that who had? A. That Frank had.

Q. Frank who? A. Frank Furfaro.

Q. You said a minute ago, "Blackie." A. If I did, I made a mistake. I meant to say Frank Furfaro.

Q. Did he mention the man's name? A. Yes, Furfaro.

Q. Because I notice in the statement Furfaro is referred to as Johnny Furfaro. A. When he mentioned Furfaro, I am not so positive whether it was Frankie or Blackie, or some nickname he had.

Q. Well, it was Furfaro? A. Furfaro was the name he used.

Q. Now, I show you another gun. I show you a gun and ask you whether or not you showed the defendant that gun. A. I did.

Q. Was the gun loaded? A. I don't know wheth-

er that was loaded now or not. I am not positive of that. I know this is the gun, because he identified it, with the tape on the handle.

Q. I show you four bullets and ask you whether you have ever seen these before. A. Yes, I did, and I recall, to refresh my memory now, that the gun was loaded at the time I showed it to him.

Q. Did these bullets that I have showed you, do they help to refresh your memory? A. They do, because of the marks.

Q. Did you mark them? A. Yes, I did.

Q. Are those the bullets that were in the gun? A. Those are.

Q. What if anything did the defendant say with reference to this gun? A. He said that is the gun that he had, that he had up against the side of Sophie Krok at the house in Spruce Street when he threatened her and told her if she ever gave him away, he would use this on her.

Mr. Fisch: I offer the gun and the bullets as one exhibit.

The Court: Let them be marked.

(The articles referred to are received in evidence and marked Exhibit S-10).

Q. Now, at the time that you were questioning him, did you show him a hat? A. I did.

Q. I now show you a hat and ask you whether or not that is the hat that you showed him? A. This is the hat.

Q. What, if anything, did he say about that? A. He said this is the hat he wore the night that he shot the man—that he stuck-up the man on Mulberry Street.

Mr. Fisch: I offer this in evidence.

The Court: Let it be marked.

(The article referred to is received in evidence and marked Exhibit S-11).

Q. Did you interview Clarence Stern and Lillian Rys? A. I did.

Q. Did you get statements from them? A. Yes.

Q. Did you interview them and get statements from them before or after you had gotten the statement from Compo? A. I believe it was—Lillian Rys' statement was gotten after Compo's.

Q. How about Sterns? A. Stern's was gotten after Compo's.

Q. How about Sophie Krok? A. Her statement was gotten before Compo's statement.

Q. Now, then, this man Furfaro that Compo spoke to you about and referred to in his statement, was he subsequently apprehended? A. Yes, he was.

Q. Did he confront the defendant Compo? A. He did.

Q. Was there a conversation between them in your presence? A. No, not in my presence there wasn't.

Cross-examination by Mr. McGlynn:

Q. When was this man Compo taken into custody by the police, Captain? A. I think about the 3rd or 4th of April, probably the 5th of April.

Q. And between that time and the 15th was he permitted to see anybody? A. Yes, he saw—in fact, he was out with some detectives. As far as I know he had been interviewing people who had been to see him.

Q. Who? A. Well, I think this woman that is living with him has been to see him.

Q. Sure of that? A. Yes, sir.

Q. After the statement was taken or before? A. Before and after.

Q. Don't you know as a matter of fact that he wasn't permitted to see anybody until after that statement was made? A. That is not true.

Q. Whom did he see? A. I just told you.

Q. Only that one? A. As far as I know. I granted her permission myself, to see him. I know his mother has been here to see him.

Q. That was all after the statement, wasn't it? A. I believe his mother saw him after the statement.

Q. And the occasion of your permitting his wife to see him or this woman that lives with him, as you describe her, was when you were trying to get this letter written by Miss Krok wasn't it?

Mr. Fisch: I object to that on the ground that it is not cross-examination.

Mr. McGlynn: I do not understand that I am so limited on cross-examination.

The Court: I will permit it.

A. It was prior to my getting the letter that I let her see him.

Q. And you got the letter after he made the statement, didn't you? A. I got the letter before, I believe he made the statement, before.

Q. Sure of it? A. Yes.

Q. Any records, or any notations made by you concerning this case which would assist you in refreshing your memory? A. No. That is the best my best recollection, that I got the letter before the statement.

Q. How many times did you see his wife, requesting her to get the letter of her or bring the letter

down to you? A. I saw her one day, one morning.

Q. Is that the same day that you permitted her to see her husband? A. She saw him before that, the day before.

Q. Sure of that? A. Yes, I am positive of that.

Q. And the next day you saw her she handed you the letter? A. The next day she came down again she denied she had such a letter.

Q. She denied having such a letter until she was permitted seeing her husband? A. She saw her husband.

Q. It was after she saw her husband that she produced this letter? A. Yes, sir.

Q. And that is the letter you produced this morning in response to my subpoena? A. After she saw Compo. That is what I mean, not her husband.

Q. I mean the same person you mean. This is the letter? A. Yes.

Q. This was handed to you? A. Yes.

Mr. McGlynn: I ask that it be marked for identification.

(The same is marked Exhibit D-2 for identification).

Q. This statement of April 15, 1931, was not the first statement that Compo had made, was it? A. In reference to what do you mean?

Q. I don't mean anything. I said this was not the first written statement that he had made, was it? A. This was the first written statement in reference to this crime—

Q. That isn't what I asked you. A. I answered it—

Q. But that isn't what I asked you.

Mr. Fisch: I don't think the witness should be shut off.

The Court: He may answer if he did not complete it.

A. That is the first written statement he made pertaining to this murder.

Q. I didn't ask you that, sir. I asked you if this was the first written statement that Compo made. A. Are you referring to this case?

Q. I am referring to no case. A. He might have made a thousand statements prior to that.

Q. Didn't he make two statements from the time he was taken into your custody to the time he made this statement? A. He made statements in reference to stick-ups and arson cases.

Q. How many statements did he make? A. He might have made one or half a dozen verbal statements.

Q. You know that he made two written statements, don't you? A. I don't know.

Q. And you know that the girl Krok was taken into custody after he had made one of those written statements, don't you? A. I don't quite follow you. I don't know what statements you are referring to now. You mean about this case?

Q. You told me a minute ago that he made a statement concerning the stick-ups. A. Yes.

Q. You know that the statements about the stick-ups was made before Miss Krok was taken into custody, don't you? A. Yes, sir.

Q. When she was taken into custody she was told that he had made a statement concerning the stick-ups.

Mr. Fisch: I object to that as not cross-examination. I have not asked him a single thing on direct-examination about any conversation with Miss Krok.

The Court: How is the question competent, Mr. McGlynn?

Mr. McGlynn: The Captain is the one that was in charge of the defendant from the time he was taken into custody.

The Court: You are trying to prove something affirmative. It should be brought out by way of defense, not on cross-examination.

Mr. McGlynn: I think it is perfectly competent to show what happened from the time he was taken into custody until the time the statement was made.

The Court: That is for you to prove. I will sustain the objection.

Q. Did you give me the date that Miss Krok was taken into custody? A. I didn't give you the date, no.

Q. You did say that her statement was made; you said Miss Krok made a statement before Compo, didn't you? A. I did.

Q. Before Miss Krok made that written statement you say she made, was she informed that Compo was in custody and was she informed that he had made a statement regarding these hold-ups and stick-ups?

The Court: That statement is not in evidence.

Mr. McGlynn: But he has referred to it in his direct testimony and there is only one inference and that is that the same statement and the same facts she testified to here for the State—

The Court: There is no testimony as to what her statement to the police was.

Mr. McGlynn: Yes, sir. She was asked

whether this testimony was the same as the statement she gave to the police.

Mr. Fisch: Suppose she was?

Mr. McGlynn: I am entitled to show on cross-examination that she knew that this defendant had squealed or told about those things of which she was interrogated.

The Court: Did you ask her that question, do you recall, on cross-examination? Was she asked whether she knew that Compo had talked?

Mr. McGlynn: I don't remember that I asked her. But this witness has testified that Miss Krok made a written statement and it is the only statement, as I recall it, that he testified was made other than this one of April 15th which is now in evidence.

The Court: I don't think it is proper cross-examination, but to save time, if you want to get an answer to the question I will let you make him your witness for that purpose.

Mr. McGlynn: No, sir, I don't mean to be disrespectful, but I must refuse your offer. I am trying this case for the best interests of my client and I think the question is proper on cross-examination.

The Court: I will hold to my original ruling.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. You, of course, took pictures of this defendant when he was taken into custody.

Mr. Fisch: I object to that. It is not cross-examination, and furthermore the question assumes that there were pictures taken.

The Court: I will permit it and see where it leads to.

A. Yes, there were pictures taken of him.

Q. Do you recall whether they were taken when he was first taken into custody or after he made the statement? A. I am not sure about that.

Q. But sometime while he was at headquarters? A. While he was in our custody at headquarters we took the photographs.

Q. I assume those are part of the official records of the Police Department. A. Yes, sir.

Q. Was it after this statement that you say Compo made with regard to the stick-ups that these other men were taken into custody? A. Yes.

JOHN FURFARO, sworn in behalf of the State.

By the Court:

Q. Don't you speak English? A. No.

Q. How long have you been in this country? A. Seven years.

Q. Seven years? A. Yes.

The Court: I am not so sure he cannot speak English. I saw him smile back there a while ago. He evidently heard what was being said. Let us try, anyhow.

Direct-examination by Mr. Fisch:

Q. Where do you live, Furfaro? A. I don't understand. I want interpreter.

By the Court:

Q. Where do you live? A. I no understand. I want Italian.

Q. You understood me all right a while ago. A. Just a little bit.

Q. You understand me now, don't you? A. Just a little bit understand.

Q. All right. Where do you live? A. 36 Wilsey Street, Wilsey Street, 36.

Q. 36 Wilsey Street? A. Yes.

Q. Where, in Newark? A. Yes.

Q. Now, you try to speak English. A. I no can't speak.

By Mr. Fisch:

Q. Do you know Eugene Compo? Do you know this man here, Compo, (indicating the defendant)?

Mr. McGlynn: Stand up.

(The defendant stands up in the court-room).

A. Yes.

Q. When did you first meet him? A. I don't know, don't understand.

Q. When was the first time you met him? A. I don't understand. I don't know.

Mr. Fisch: If your Honor please, I know as a matter of fact that in our investigation we have had difficulty in understanding and in having this man understand us.

The Court: Well, all right. Let us use the interpreter. It will save time, anyhow, I suppose.

(The balance of the testimony of this witness is taken through the official Italian interpreter).

A. I met him December 27, 1930.

Q. Where? A. While he was fixing an automobile—he is a mechanic—on Wilsey Street.

Q. Did you know him on December 23, 1930? A. No, sir.

Q. Did you go down to Mulberry and Beach Streets with him on December 23, 1930, for the purpose of holding up a chain store grocery man? A. No I have proofs where I was all that day and all that night.

Q. Now, I show you Exhibit S-9, and ask you whether or not you have ever seen that before. A. Engene Compo sold me this revolver on the first of January, 1931.

Q. Where? A. On Wilsey Street in the back of the garage.

Q. How much did you pay for it? A. $5.

Q. Now, you were arrested, were you not? A. Yes, they locked me up. I am arrested now.

Q. When were you arrested? A. If I recall it well, it was on April 16th.

Q. And when you were arrested, was this gun found by the police? A. Yes, it was found in a coat hanging on the wall in a room.

Q. When you were taken into custody, did you see the defendant Compo at the Newark Police Headquarters? A. I saw him after eight days. That is the time they let me see him.

Q. Were you informed at that time that he had made a statement? A. Yes, he had made a statement and the detectives read the statement to me.

Q. Did they read it to you in English or Italian? A. First they read the statement in English and then in Italian.

Q. Did you say anything to Compo about it? A. I didn't say nothing. I told them to bring me face

to face with him, that I had not been with him at any place on Mulberry Street where he had done some shooting.

Q. Did they bring you face to face with him? A. Yes, sir.

Q. After they brought you face to face with him, what happened?

Mr. Basile: If your Honor please, may I ask at this time that the interpreter give this question without repeating another question to him? He answered the question. Let us have the answer.

The Court: What was the answer?

Mr. Basile: He said, "Nothing happened." if I understand it right.

Interpreter: "Nothing happened". He apparently did not understand "What happened?"

The Court: What did the witness say? What did he say before? "Nothing happened"?

The Interpreter: "Nothing happened."

Q. After you were brought face to face with Compo in police headquarters, what took place there? A. After Detective Capodanno read the statement to him, I said, "Now speak and tell him whether I was with him or not," and he said, "No."

Q. As I understand it, then you said to Compo, "Now speak and tell him whether I was with you or not? Is that correct? A. Yes, I told him this.

Q. And Compo then said, "No," is that correct? A. Yes, he answered, "No."

Q. Now, after that were you placed in a line-up with Compo and another man? A. Yes, sir.

Q. While you were placed in that line-up, did

you see Mr. Haug come in there? A. I saw a man come into the room and he placed his arm on the shoulder of Compo.

Mr. Fisch: Did he say "He placed his arm on the shoulder of Compo"?

A. He placed his hand on his arm, on Compo's arm.

Q. Did you ever talk with Compo and tell Compo that it was too bad that the man was shot down there in Mulberry Street? A. No, I didn't know anything about this.

Q. Did you ever go out and buy a Newark Evening News and read the paper and say to Compo, "Jesus, that is too bad"? A. No, sir; I don't know how to read.

Q. And did you say to Compo, "Keep your mouth shut and don't let it leak out?" A. No, sir; I wasn't there.

Q. Did you ever say to Compo, "Christ's sake. I didn't mean it the guy grabbed my gun and it went off." A. No sir; I wasn't with him.

Q. Where were you on the 23rd of December, 1930? A. I was at 39 Wilsey Street all that day.

Q. With whom? A. I was there with the whole family of Mike Tomanelli and also with a man named Michael Tomanelli.

Q. Up to what time were you there? A. I was there until about half past ten at night.

Mr. Fisch: Just what did he say, Mr. Berardi? Just get the answer correct, please.

Interpreter: About half past ten to eleven o'clock.

Q. From there where did you go? A. I went to sleep.

Q. Where? A. At 36 Wilsey Street.

Q. That was your home, was it? A. That was the home of Mike Racanelli, as I slept there. I had no room and I was staying there until I could find work.

Cross-examination by Mr. McGlynn:

Q. Mike Racanelli is the man that is known as Blackie? A. Yes.

Q. Did you know another man Nunzio Nizzari? A. Yes, I had a room there with his mother-in-law, but I don't know who he is.

Q. Do you know a man whose nickname was Nunzio or Nunzi? A. No, sir.

Q. Did you know Clarence Stern? A. Yes, I saw him the first time with Eugene Compo.

Q. When did you meet Clarence Stern first? A. I met him on December 27, 1930.

Q. Where were you when you met Clarence Stern on December 27, 1930? A. I was at Wilsey Street. He came there with Compo.

Q. What time of the day? A. It was in the afternoon, but I don't recall the hour.

Q. What is there now that makes you remember that it was December 27th when you first met Stern? A. I remember that it is the first time that I saw him and it was two days after Christmas.

Q. How long were they with you that afternoon? A. They remained there about one or two hours, because Compo was repairing cars there.

Q. Did you know Compo before that? A. No, sir.

Q. And you didn't know Stern before that? A. No, sir.

Q. Why did they go to Wilsey Street to see you?

Mr. Fisch: I object to that unless he knows.

Mr. McGlynn: I am asking him.

The Court: You may ask him whether he knows why.

Q. Do you know why they came to Wilsey Street to see you? A. They came there because Compo was fixing an automobile and he came there with Compo.

Q. I thought you said you met them at Wilsey Street where you lived. A. I met them on the street when they arrived—on that street.

Q. Where did you meet them, at 37 Wilsey Street or at 36 Wilsey Street? A. I met them between 39 and 37 Wilsey Street. There is a driveway there.

Q. Did anybody introduce you to them or did they speak to you? A. No, he was fixing the car. I don't know who the car belonged to, and they were talking there.

Q. How did you come to meet them? A. I was there while they were fixing the car and I spoke to them.

Q. What did you say to them? A. I didn't say anything to them.

Q. What did they say to you? A. They were not talking to me; they were talking to the owner of the automobile.

Q. When did you see them again after that? A. I saw them on January 1, 1931, when they sold me this revolver.

Q. When they sold you this revolver? A. Compo sold me the revolver, but Clarence Stern was also there.

Q. Did you go anywhere with either one of them on January 1st? A. No, sir.

Q. Did you see them after January 1st? A. I always saw Compo there because he came there to repair cars.

Q. Did you ever see Compo anywhere else except at this garage? A. No, I haven't seen him any other place.

Q. How many times in your life have you seen Compo? A. I saw him most every day when he came to Wilsey Street to fix cars.

Q. Are they the only occasions on which you ever saw him, when he came to fix cars? A. Yes, that's the first place where I saw him.

Q. After the first time you say you saw him on December 27th, fixing a car on Wilsey Street, is that the same place you saw him on every occasion after that? A. Yes, he always came there and he also came to the house.

Q. Where would you see him in the house? A. At 36 Wilsey Street, because he would come there to repair the automobile of Michael Racanelli.

Q. Would he come there at night to repair the automobile? A. No, he came there during the day, but at night he would go away. He would say he had to go to see a woman he was living with, but he wasn't married to her.

Q. Where did he repair this automobile of Michael Racanelli? Was it at 36 Wilsey Street in the garage or in the street, or in a yard, or where? A. First he started repairing it in the yard, then he brought it out in the street and then he broke it up and then he took it to a to fix it.

Q. When was that? A. I don't remember the date when this happened.

Q. What month was it? A. I believe it was in the month of February.

Q. Did you ever go in an automobile with Com-

po and Stern anywhere? A. Yes, I went to a place.

Q. Where? A. On Stone Street.

Q. What number Stone Street? A. I don't know the number.

Q. What did you go there for? A. To commit a stick-up.

Q. How did they explain to you, if you couldn't speak English, what they were taking you there for? A. They told me that there was a lottery game there, and that this Compo carried a gun with a No. 13 on, and a revolver.

Mr. Fisch: Did he say a gun or a badge, Mr. Berardi?

Interpreter: A badge, No. 13, and a gun.

Mr. McGlynn: May I have the answer as amended?

(The Stenographer reads as follows: "Answer: They told me that there was a lottery game there, and that this Compo carried a badge with the No. 13 on, and a revolver").

By Mr. McGlynn:

Q. How many of you went to Stone Street? A. Myself, Compo, and another person named Joe.

Q. What was the other fellow's name? A. Joe.

Q. Joe what? A. I don't know the last name.

Q. Rocco? A. I don't know the last name.

Q. What did you do there? A. No, we entered there and he told me he was going to get some money in this lottery game as he was carrying a police badge.

Q. What did you do? I am interested in.

Mr. Fisch: I object to that as being entirely immaterial. I want to give counsel full latitude. We hold no brief for any of

these witnesses, but what this man did on another occasion over on Stone Street does not seem to me to relate to this issue at all, nor does it tend to break down his testimony in any degree.

The Court: I do not quite see the competency of that.

Mr. McGlynn: Here is a witness, if your Honor please, who tells this Court that he cannot speak English and wants the use of an interpreter. The Prosecutor says that in his investigation in this case he has had trouble with this witness in getting him to talk English and understand English. I want to know how it is that a man of that kind goes to a place—

Mr. Fisch: I do not like to interrupt counsel, but I do not know that there is any necessity for making a speech. If he wants to know that, why doesn't he ask him a question.

The Court: You are at perfect liberty to interrogate along that line. You asked him a minute ago, started to at least, how he understood what was said, and I don't think you got a responsive answer.

Mr. McGlynn: That is what I am trying to get at.

The Court: You can follow that up, but I don't think you necessarily have to bring out what they were doing there.

Q. (Read by stenographer). What did you do? I am interested in.

Mr. Fisch: I object.

The Court: I will sustain the objection to that.

Q. What other places did you go to besides Stone Street?

Mr. Fisch: I object.

The Court: He has not said they went to any other place.

Q. Did you go to any other place?

Mr. Fisch: I object.

The Court: I will permit it.

A. No, I didn't go with Clarence any other place.

Q. Did you go with Compo to any other place? A. I went with Compo to Bergen Street to a saloon.

Q. Does Compo speak Italian? A. No, Compo didn't speak Italian, but the other could speak English and Italian.

Q. What other? A. The one called Joe. I don't know his second name.

Q. Who told you why you were going to a saloon on Bergen Street with Compo?

Mr. Fisch: I object to that, if your Honor please. There is not any testimony that anybody told him anything as to why he went there.

The Court: Well, did he have any conversation with anyone about going there?

The Witness: (Speaking through the interpreter). No.

Q. Why did you go to Bergen Street?

Mr. Fisch: I object to that as being entirely immaterial.

The Court: I will permit it.

A. He went there because he was going to take this saloon, as he carried the police badge.

Q. Did you go in with him? A. Yes, I did go in.

Q. Well, who told you what to do on this occasion? A. He told me the other person, the other person told me that we were going to get money in there?

Q. Did you get in?

Mr. Fisch: I object. How is that material to this issue?

The Court: Sustained.

Q. Now, how do you know where you were December 23rd? A. I know because Christmas is coming.

Q. That is the only reason you can give me for knowing where you were on the 23rd? A. Certainly, I remember that well.

Q. Do you remember where you were on the 24th? A. On the 24th in the morning I was to the home of Joe Barrone, and then I went to the market to buy some stuff for Christmas.

Q. You say this gun was found in a coat in some room?

Mr. Fisch: Referring now to Exhibit S-9.?

A. Yes, it was found in a coat while Detective Capodanno was there.

Q. In whose room? A. It was in the home of Michael Tomanelli.

Q. Whose coat was it in? A. The coat belonged to Michael Raganelli.

Q. Did you put the revolver in Michael's coat? A. Yes, sir.

Q. When did you put it there?

Mr. Fisch: I object to that. How is that material?

The Court: Well, I don't know. I will permit it.

A. I don't remember a day. It was on the day that we were arrested.

Q. Did you use this gun between January 1st, when you say you bought it and the time the police took it from your coat pocket?

Mr. Fisch: I object as immaterial.

Mr. McGlynn: That is proper cross-examination, if your Honor please.

Mr. Fisch: What difference does it make?

The Court: Well, the testimony is that the defendant says that he had this gun on a certain occasion after January 1st.

Mr. Fisch: And this witness said that he bought the gun from the defendant for $5 on January 1st. Now, what difference does it make what he did with it after January 1st, so far as this case is concerned?

The Court: He says he bought this gun, yes. The other gun was the gun that he had used with the girl, wasn't it?

Mr. Fisch: Yes.

Mr. McGlynn: It would make a lot of difference on the question of the jury's idea of the credibility of this witness.

Mr. Fisch: What difference does that make?

The Court: I sustain the objection.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. Did you use that gun after January 1, 1931?

Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. Do you know where Mulberry Street is in Newark? A. No, sir.

Q. Did you ever hear of the corner of Mulberry and Beach Street in Newark? A. No, sir.

Q. Did the police take you down to the corner of Mulberry and Beach Street after you were in custody? A. No, sir.

Q. How long have you lived in Newark? A. Two years.

Q. Before that where? A. In Pennsylvania.

Q. What town? A. Uniontown, Pennsylvania.

Q. Were you born there? A. No, I was born in Italy.

Q. What part of Italy? A. Reggio Calabria.

LUKE CONLON, recalled in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Sergeant I show you Exhibit S-11 and ask you whether you have seen that before. A. Yes, sir.

Q. Where did you first see it? A. The home of the defendant at 67 Hudson Street.

Q. Whereabouts? A. Second floor in a bedroom closet.

Q. Did you take it from that closet? A. With Detective Fallon, yes. Detective Fallon took it out of the closet in my presence.

Q. Then did you take it down to Police Headquarters? A. Yes, sir.

Q. And it was subsequently identified by the defendant as his? A. Yes.

Q. Were you present when the witness Furfaro was brought into police headquarters and confronted the defendant? A. Yes, sir.

Q. Who else was present on that occasion? A. I think Detective Capadano and Detective Fallon.

Q. What took place? A. Detective Capadano read a statement in Italian. We then confronted him with Compo, the defendant, but anything that was said to Furfaro was said in Italian. I couldn't say what it was.

Q. Who did the saying? A. Detective Capadano.

Q. Capadano then said something to Furfaro in Italian, did he? A. Yes.

Q. Then what took place with regard to Capadano? A. Then he said to Furfaro in Italian—I couldn't say what the answer was, and then he said to Capadano, "You said that this man was with you when you were on Mulberry Street—

Q. Who said that? A. Capodanno said that to Compo.

Q. He said that in English, did he? A. In English, yes.

Q. What did Compo say? A. He said, "No." And that was all he said.

Q. That was in the presence of Furfaro, was that? A. Yes, sir.

Q. Was that after the 15th of April, when he

made this statement? A. Yes, that was a week after.

Cross-examination by Mr. McGlynn:

Q. Where has this hat been since you got it? A. In Police Headquarters, and it was turned over to the Prosecutor's office.

Q. Can you tell us the date you got it, Sergeant? A. On the 12th of April.

Q. This hat has never been on the defendant since you have had it, has it? A. Yes.

Q. When? A. The night he was identified by this witness who was on the stand yesterday.

Q. Was it in the same condition it is in now? A. Yes, sir, the same condition.

Q. Are you sure he didn't have a derby hat on? A. The night he was identified?

Q. Yes. A. He had a derby hat on the night he was arrested, but this hat I put on him the night he was identified.

Q. Are you sure he didn't have a derby hat on when Mr. Haug identified him? A. No, sir, he did not.

Adjourned until tomorrow Thursday, June 4, 1931, at ten o'clock, A. M.

ESSEX COUNTY COURT OF OYER AND TERMINER.

FOURTH DAY.

Thursday, June 4, 1931.

THE STATE OF NEW JERSEY, vs. EUGENE COMPO,	On Indictment No. 358 April T. 1931 for Murder.

Continued pursuant to adjournment.

Present, Counsel as before stated.

Mr. Fisch: If your Honor please, Mr. McGlynn reserved the right to further cross-examine the witness Sophie Krok. I have just sent for her so that he may at this time continue his cross-examination.

SOPHIE KROK, recalled.

Further Cross-examination by Mr. McGlynn:

Q. A day or so ago when you were on the stand I asked you this question, page 113 of the record, "You were quite anxious to have Eugene leave this woman with whom he was living, weren't you?" A. No, I wasn't.

Q. That is the same answer that you gave the other day? A. No, I wasn't.

Q. I say, that is the same answer you gave the other day in answer to that question? A. Yes.

Q. Now, you say you thought the letter that I referred to by describing it as a twenty page letter

was written in July? A. I can't remember just when it was written.

Q. You said July, though, didn't you, the other day? A. I think it was in July.

Q. Where was it written from? A. From my sister's home in Pennsylvania.

Q. When you had gone to Pennsylvania on that occasion? A. Well, I went to see my mother.

Q. When was that? A. Well, I can't remember just when it was.

Q. I don't mean the exact day of the month, but was it in June or July or August or when? A. I believe it was in July. I can't remember it.

Q. How long did you stay home that time? A. I can't remember how long I stayed.

Q. Do you know when you came back to Newark? A. Yes.

Q. When did you come back? A. I think about three or—about a month after that.

Q. You were home about a month? A. Yes. I am not sure.

Q. Do you remember that on August 15th, that this second baby of Gene's was born? A. No, I don't remember that.

Q. You don't remember that. You knew when you were home in Pennsylvania, however, before you wrote this letter to which I referred, that there were two children? A. Yes, I did.

Q. And you knew that one of these two children was very young when you wrote that letter? A. Yes, I seen the children.

Q. You saw both children? A. Just the one.

Q. Just the one. You had seen the second child when you wrote that letter, had you? A. No.

Q. Where did you see the first child? A. I don't remember where it was.

Q. Well, now, you just told me that you saw one. Now, where did you see it? A. Well, in Eugene Compo's house, but I don't remember where it was.

Q. At Engene Compo's house? A. Yes.

Q. How many times had you been to his house? A. Quite a few times, about three times.

Q. I show you Exhibit D-2 for identification. Is that the 20-page letter to which I referred the other day? A. Yes.

Q. Is that in your handwriting? A. Yes.

Q. Has it a date on it?

Mr. Fisch: I object to that. It speaks for itself.

The Court: I will permit it.

A. September 5th.

Q. Any year? A. 1930.

Q. Do you remember the contents of that letter? A. Yes, I do.

Q. Did you say anything in that letter about wanting Gene to leave this woman?

Mr. Fisch: I object to that on the ground that the letter speaks for itself.

The Court: It is true that it does, but the letter is not yet in evidence. I assume counsel has a right to cross-examine on what is in the letter.

Mr. Fisch: Counsel cannot cross-examine on the contents of a letter which is not in evidence.

The Court: He can't offer the letter at this time.

Mr.McGlynn: But I may cross-examine about it.

Mr. Fisch: He can't cross-examine as to

the contents of a letter which is not in evidence.

The Court: I think he can ask the witness whether she did not say certain things in a letter for the purpose of attacking her credibility.

Mr. Fisch: Yes, he can ask her that, but that isn't the question.

Mr. McGlynn: That is what I am leading up to.

Mr. Fisch: Why not get to the point?

The Court: The question is whether she didn't say anything in that letter about wanting him to leave this woman. I will permit it.

A. I don't remember what I said in the letter.

Q. How is it you don't remember? A. There is only one thing I remember in that letter that is the imporantest thing in the letter, but the other things I can't remember.

Q. What is to you the most important thing in that letter that you can remember? A. Eugene Compo wrote to me that he wanted to come and visit me but he couldn't come, because Eugene Compo's sister—he thought she gave him poison. That's the reason he was sick and couldn't come to see me.

Q. Were you very angry when you wrote this letter? A. Yes, I was.

Q. Angry because he wouldn't come up to see you? A. No, I was angry because I cared for him and seen what his sister did to him.

Q. What did you see her do to him? A. I mean what I heard.

Q. Whom did you hear from? A. From Eugene Compo's letter that she gave him poison.

Q. Is that the only thing you remember? A. That's the only thing I remember.

Q. Do you remember writing this in that letter: "Don't be so soft—

Mr. Fisch: I object to that as improper.

The Court: I don't think that is proper cross-examination and getting it in in that way.

Q. You mailed this letter to Gene, didn't you, the letter I just showed you now? A. Yes. I did.

Q. Did you at any time write to Gene Compo and say this (I am going to read the contents of the letter)—

Mr. Fisch: I object.

Mr. McGlynn: I certainly think I am entitled to do it.

The Court: Are you going to prove the receipt of the letter?

Mr. McGlynn: Yes, sir.

Mr. Fisch: I object to that on the ground that the rules of evidence distinctly provide that the contents of a written instrument cannot be read into a record unless the instrument is put in, and the letter may not be evidential when it is offered.

Mr. McGlynn: If it is not, I will consent that it be stricken out.

Mr. Fisch: The damage will already have been done.

The Court: I think we can decide the question right now. The witness said she wrote and mailed the letter to the defendant. I understand the defense will show the receipt of the letter and then they will offer it. Why isn't it admissible?

Mr. Fisch: That does not make it admissible. Suppose I wrote a letter to your Honor about the weather last week. Would that be evidential as to whether or not the defendant is guilty of murder?

Mr. McGlynn: I assure your Honor, there is no connection—

The Court: It probably would not have any bearing on whether or not he is guilty of murder, but it might have a bearing on the credibility of the person who wrote the letter.

Mr. Fisch: I am perfectly willing that a copy of the letter should be submitted to your Honor so that your Honor will have an opportunity to read it and determine whether or not it is evidential.

The Court: Well, if Counsel will come up here and tell me briefly what is in it.

(Counsel argue).

Mr. Fisch: I understand that your Honor, after a perusal of the letter and an explanation as to its contents, feels that the letter is evidential.

The Court: I feel that I will admit it when it is offered in evidence.

Mr. Fisch: So long as your Honor feels that it is evidential, I will raise no further objection, to any line of testimony with regard to the contents of the letter provided that the letter in its entirety is admitted in evidence and provided the letter may be read to or by this witness at this time.

The Court: Of course the letter, counsel has said that he intends to offer it, and I assume that that promise will be made good.

Mr. McGlynn: Yes, sir.

Mr. Fisch: I will consent that it be offered in evidence at this time.

The Court: All right, I assume the defense has no objection. They want to get it in any how.

Mr. McGlynn: I do not know of any reason why—

The Court: It is a little out of the regular procedure, but as long as it is consented to, it may be put in evidence.

(The papers previously marked Exhibit D-2 for identification, are received in evidence and marked Exhibit D-2).

Mr. McGlynn: May I withdraw the last question and read this to the jury?

The Court: You want to read the letter to the jury?

Mr. McGlynn: That is what I understand the procedure is to be.

(Mr. McGlynn reads the letter, Exhibit D-2 to the jury).

Mr. McGlynn: That is all.

Mr. Fisch: I thought counsel wanted to interrogate this witness about this letter.

Mr. McGlynn: There is no necessity. The letter is in evidence.

Further direct-examination by Mr. Fisch:

Q. Now, Sophie, you have heard this letter read, haven't you? A. Yes.

Q. I believe you testified that you loved Compo, is that right? A. Yes.

Q. Do you still love him? A. I care for him but I realize that I have been a fool.

Q. Will you please tell us what you meant by the contents of this letter?

Mr. McGlynn: I object to that. The letter speaks for itself. The jury makes the inferences—

The Court: I will permit it.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. Tell us what you meant by the contents. A. I didn't mean any harm by the letter. I felt so bad that day I didn't know what I was writing in that letter.

Q. You say you didn't mean any harm. What did you mean? A. I mean I didn't want him to go away from that woman; I meant good by that letter, not bad.

Q. Did the fact that you had received the letter from Compo stating that his sister tried to poison him, have anything to do with your writing this letter? A. No, the only thing is it hurt me badly because I cared and he wanted to come to see me and she did that thing to him.

Q. She did what thing to him? A. She gave him the poison, but I don't know how true it is. I wasn't there.

Q. Is this the letter you wrote to him in answer to the letter you had received from him about the poisoning? A. Yes.

Q. He was to come to see you out in Pennsylvania? A. Yes.

Q. And he didn't come? A. No.

Q. Did he write you the letter that his sister tried to poison him? A. Yes.

Q. Did he write you also something about Ruth?
A. I don't remember what he wrote about Ruth.

Q. Now, did the fact that he did not leave this woman that he was living with and go off with you, did that fact have anything to do with your telling the police the story which you told them and with the story which you told on the witness stand in this case?

Mr. McGlynn: I object, if your Honor please. It is absolutely leading. Why, it is putting the very words in the witness' mouth. There could not be a more leading question in my opinion. I absolutely object to it.

The Court: I do not think it is a leading question. I will admit it.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

A. No, I didn't mean anything by it. I didn't even mean to say anything, but when they came, they make me tell. I didn't want to get mixed up with the law. That is the reason I went away, to forget.

Q. You say they made you tell? A. They made me tell, and they said I would be better off if I said the truth.

Q. Was it then you told the police the truth?
A. Yes. At first I didn't want to say the truth.

Sophie Krok—Recalled—Recross.

Recross-examination by Mr. McGlynn:

Q. Why, Gene took you to Shenandoah, didn't he? A. Yes, he did.

Q. He drove you up there? A. What is that?

Q. He drove you up there, didn't he? A. Yes.

Q. And you were at his house before you went, weren't you? A. Yes, I was.

Q. And you had a talk with Ruth, the woman he was living with, didn't you? A. Yes.

Q. She asked you to leave him alone, didn't she? A. She did not.

Q. What were you there for? A. Well, I went to see the children and meet his family.

Q. Didn't you have a talk there at the house and didn't Ruth, this woman— A. Yes, I had a talk with her.

Q. Didn't she ask you and didn't she plead with you to stay away from Gene? A. No, she did not.

Q. And didn't his sister ask you to stay away from Gene? A. No, she did not.

Q. And didn't he take you back to Shenandoah in order to get you out of Newark? A. No, he did not.

Q. So that this friendship could be broken up? A. No, he did not.

Q. And you were angry with him that he did not leave this woman? A. No, I was not. I said, "If you want to stay with her, you can stay," I said.

Q. Who were the police officers who came to Shenandoah for you? A. Sergeant Conlon and the detective sitting there.

Q. Sitting where? A. Sitting next to him.

Q. Fallon? A. Yes.

Mr. McGlynn: She points at Detective Fallon.

Q. And you came from Shenandoah to Newark with them? A. Yes.

Q. Did they talk to you on the way down? A. Well, they didn't talk very much.

Q. They told you Gene was in custody, didn't they? A. Yes.

Q. In jail? A. Yes.

Q. Did they tell you what for? A. Yes, they told me there.

Q. What they had him for? Did they tell you what they had him in there for? A. Yes, they did.

Q. And asked you if you knew about this band of men on Wilsey Street who were out on these stick-up jobs? A. No, I told them I wasn't on any.

Q. No, but they asked you about them? A. Yes, I told them, that I know about this here murder.

Q. I am not asking you about the murder. I am asking you if you did not tell them you knew who were out on these stick-up jobs. A. No, I didn't know.

Mr. Fisch: I object to that.

The Court: It does not go to the letter. This witness was recalled for cross-examination on the basis of the letter.

Mr. McGlynn: Mr. Fisch has gone into more than the letter. He has inquired into her feelings, her motive that actuated her.

The Court: All right. Let us not get too far afield from the purpose for which the witness was recalled, and a cross-examination on the questions which the Prosecutor asked. Of course you can do that, but your question was answered.

Q. What made you use the word, in answer to Mr. Fisch's question, that they made you tell?

What did you mean by that? A. Well, they told me if I didn't tell I would only make it worse for myself.

RALPH CAPODANNO recalled in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Detective Capodanno, were you at police headquarters at a time when John Furfaro and Eugene Compo were also there? A. I was.

Q. Did you speak to Furfaro? A. I did.

Q. What language did you speak to him in? A. Italian.

Q. At that time did you have in your possession Exhibit S-8, the statement of Eugene Compo? A. I did.

Q. What if anything did you do with that? A. I first asked Compo in English whether this was the statement that he made and whether that was his signature on the statement, and he said, "Yes." Then I asked Furfaro if he understood English and he said, "No." I said, "I am going to read this statement in English to you, and then I read the statement in English, and then read it in Italian.

Q. You translated it into Italian? A. Yes.

Q. After you translated it into Italian what happened? A. Furfaro denied any knowledge of the shooting.

Q. That is, he denied it in Italian? A. Yes, in Italian, and the same was translated to Compo.

Q. That is, you translated to Compo into English what Furfaro had said in his presence in Italian, is that right? A. Yes.

Q. What did you say to Compo? A. I told Compo after I had read this here and asked him if he understood the statement, he said yes. I asked him, "Do you realize you are accusing this man of the shooting on Mulberry Street?" He said, "I know what you read, but I don't know anything about it. I didn't know Compo at that time; I only met him a few days after Christmas."

Q. That is what Furfaro said? A. Furfaro, yes.

Q. Did you translate that into English to Compo? A. Yes, and then Compo said Furfaro didn't know nothing about it and he didn't.

Q. That is what Compo said to you? A. Yes.

Q. Then did you translate that into Italian to Furfaro? A. I did.

Cross-examination by Mr. McGlynn:

Q. Are you sure of the exact words that were used on that occasion? A. Those are the words I just used.

Q. Why are you so sure that those are the exact words that you used? A. Those are the only words that could be used, unless you want to speak it different.

Q. I am not asking you for any conclusions. What were the exact words Compo used on that occasion? A. That Furfaro didn't know nothing about it and he didn't.

Q. He didn't or did it? A. He didn't. He said Furfaro didn't know nothing about that, "neither do I."

Q. Denying that he knew anything about his own statement?

Mr. Fisch: I object to that.

The Court: I will permit it.

Ralph Capadano—Recalled—Cross.

By the Court:

Q. He denied to you then that he knew anything about his own statement? A. At that time he did but before he didn't.

By Mr. McGlynn:

Q. How long was that after he signed the statement that you have before you, Exhibit S-8? A. That was on the night of the 24th of April.

Q. Is that statement of Furfaro's participation in this hold-up, as described in the statement, Exhibit S-8, the only fact in the statement that you endeavored to check up or to verify or to substantiate?

Mr. Fisch: I object to that.

The Court: Do you mean the endeavor to substantiate or verify the conversation with Furfaro at that time or at any time?

Mr. McGlynn: I didn't use Furfaro's name.

The Court: I didn't exactly understand your question.

Mr. McGlynn: Will the stenographer please read it?

The stenographer read the question as follows: "Question. Is that statement of Furfaro's participation in this hold-up, as described in the statement, Exhibit S-8, the only fact in the statement that you endeavored to check up or to verify or to substantiate?")

Mr. Fisch: I object to that on the ground that it is not cross-examination and it is not a proper question at all. We are not concerned with what this witness may have endeavored to check up or verify or substanti-

ate. This witness was simply called for the purpose of testifying as to what took place at a time when this defendant was confronted by Furfaro.

The Court: That is true, but he may answer it yes or no.

Witness: I don't quite understand the question myself.

Mr. McGlynn: I will withdraw the question. That is all for cross-examination.

Redirect-examination by Mr. Fisch:

Q. You say he denied it and he admitted it? A. At first he admitted the statement and then he denied it.

Q. Did he admit the statement at the same meeting when you read it to him? A. Yes, sir, before I read the statement in the beginning.

Q. Then after he was confronted with Furfaro — A. After receiving Furfaro's answer he made the denial.

Q. And he said that Furfaro didn't know anything about it and that he didn't know anything about it? A. That Furfaro didn't know anything about it and he didn't know anything about it.

THOMAS F. McHUGH sworn in behalf of the State.

Direct-examination by Mr. Fisch:

Q. Sergeant McHugh, you are connected with the Newark Police Department, are you? A. Yes, sir.

Q. How long have you been connected with the

Department? A. 15 years next December.

Q. You are in charge of the Gangster Squad, aren't you? A. Yes, sir.

Q. Did you apprehend—did you arrest—the defendant in this case? A. Yes, sir.

Q. When and where? A. The 9th of April at the Crosstown Garage at Academy and Norfolk Streets.

Q. In Newark? A. Yes.

Q. After you placed him under arrest did you get a statement from him? A. Yes, sir.

Q. Did that statement relate to the killing in this case? A. Only the gun; that it was a thirty-two gun.

Q. I show you a statement and ask you whether or not this is the statement that you obtained from him at that time. A. Yes, sir, it is.

Q. And he signed it? A. Yes, sir.

Q. And you witnessed it? A. Yes, sir.

Q. Did you read it to him before he signed it? A. Yes, sir.

Q. And did he read it himself? A. Yes, sir.

Mr. Fisch: I want to be perfectly frank about this, if your Honor please. In my judgment this statement is not evidential in this case by reason of the fact that it does not relate to this crime. Counsel for the defense, however, yesterday, I believe, made a point about this defendant having made some other statement. I therefore produce the statement.

Mr. McGlynn: May I look at it?

Mr. Fisch: Yes.

Mr. McGlynn: No objection to its introduction.

(The statement referred to is received in evidence and marked Exhibit S-12).

Q. Now, Sergeant McHugh, at the time that you arrested the defendant did you find anything in the garage there? A. Not at the time I arrested him.

Q. Well, subsequently? A. Three days afterward.

Q. I show you Exhibit S-10 and ask you whether or not you have seen that before. A. Yes, sir.

Q. Where did you first see it? A. In a water pail in the Crosstown Garage.

Q. Is that the place where you had arrested the defendant? A. Yes.

Q. And then you took him to headquarters, did you? A. Yes.

Q. Now, at the time that you found Exhibit S-10, in this pail in this garage, will you tell us whether or not it contained any ammunition? A. Yes, sir; loaded.

Q. It was loaded? A. Yes, sir.

Q. I show you the other portion of Exhibit S-10, some bullets, and ask you whether these four bullets were in the gun. A. Yes, sir; these four were in there.

Q. Now who, if anyone, accompanied you at the time that you arrested the defendant? A. Detective Burkhardt and Selzer.

Q. Who, if anyone, accompanied you when you found Exhibit S-10? A. What is that?

Q. This gun. A. That was Burkhardt and Selzer.

Mr. Fisch: Now, if your Honor please, I ask that I may be permitted to read Exhibit S-12 to the jury.

The Court: All right.

Thomas F. McHugh—Cross.

(Mr. Fisch reads the statement Exhibit S-12).

Cross-examination by Mr. McGlynn:

Q. You took him in custody on the 9th? A. The 9th of April.

Q. The statement was made on the 13th? A. Yes, sir.

Q. What did you do in the meantime between the 9th and the 13th? A. Didn't do anything to him.

Q. Talk to him? A. Talked to him.

Q. Very long? A. Different times.

Q. How many of you at once? A. Sometimes one, other times two.

Q. How long at a time? A. Sometimes half an hour, three quarters of an hour, an hour.

Q. Day time and night time? A. Mostly day time.

Q. Did anybody see him? A. His wife, I believe.

Q. When? A. Well, I ain't just sure of the date.

Q. You know as a matter of fact that his wife didn't see him until after that statement was made, don't you? A. It was after the statement was made that his wife seen him.

Q. That is all. A. I didn't seen his wife until then.

Mr. McGlynn: That is all, sir.

STATE RESTS.

(A brief recess is taken).

(Mr. Basile opens in behalf of the defendant).

EUGENE COMPO, the defendant, sworn in his own behalf.

Direct-examination by Mr. Basile:

Q. Eugene, how old are you? A. Twenty-one.

Q. Where were you born? A. I was born in North Westport, New York.

Q. What nationality are you? A. I am French Canadian.

Q. Was your father a French Canadian? A. Yes.

Q. Are your father and mother living?

Mr. Fisch: I object to that. How is that material?

The Court: I will permit it.

A. My father is dead; my mother is living.

Q. You say you were born in New York? A. Yes, sir.

Q. Where did you live before you came to New Jersey? A. Bridgeport, Connecticut.

Q. Before that. A. New York State.

Q. Whereabouts in New York State? A. Rome, New York.

Q. How old were you when you left school?

Mr. Fisch: I object to that as immaterial.

The Court: I don't know that it is material. I don't think it is, as a matter of fact, but I think that it is permissible in all fairness to allow them to bring in the defendant's background.

A. When I was 13 or 14.

Q. What grade were you in in school? A. I

passed into the sixth grade, but I didn't enter into the sixth grade.

Q. Did you go to work? A. I did.

Q. How long did you stay in Rome after that? A. I stayed in Rome until I was 15 years old.

Q. Then what did you do? A. I joined the U. S. Army.

Q. How long did you stay in the army? A. One year, one month and seven days.

Q. After that what did you do? A. I returned back to my home.

Q. During this time that you were out of the service were you living with your people? A. I was supporting my mother, sisters and brothers.

Q. When did you come to New Jersey? A. Two years ago.

Q. What did you work at here? A. I worked as a mechanical inspector in the Weston Electric. I also worked in the Western Electric as a stockkeeper. Then I started in as an automobile mechanic.

Q. When you were working as an automobile mechanic, was that when you first became acquainted with some of these men that have been mentioned in the course of this trial? A. I had been an automobile mechanic quite a while before I became acquainted with them.

Q. Will you tell us with reference to your arrest on April 9th, was it— A. April 8th.

Q. (Continuing) just what took place when the officer came there for you? A. The officers came to the Crosstown Garage. I was on my way to buy some soap and stuff for my wife to do her washing with. I had a check from Kresge's Department Store, I believe it was, and Sergeant McHugh walked into the garage and they asked me

where they could get some water. There was a pail of water setting there and I showed them where it was, and George, the driver of the flying squad car, took the pail of water and put some into the radiator. Sergeant McHugh came in and said, "What is your name?" I said, "Eugene Compo." He said, "You are the man we want." So he frisked me, and they took me to headquarters. Before that they took me to 201 Morton Street, where Harry Hersh, a constable of Essex County, has his office, and they had some men there waiting for me and after they took me to headquarters.

Q. Did they ask anything of you at the time they took you before the constable? A. They did not take me before the constable.

Q. Was he there? A. He was in his office, but they didn't take me out of the car nor he wouldn't come out.

Q. Well, do you know whether or not it was as a result of something they took from you that they went there to see the constable with you?

Mr. Fisch: Yes or no.

A. They went there.

By the Court:

Q. Do you know or don't you? A. Yes.

By Mr. Basile:

Q. What was it? A. I had a bill of sale coming from the constable, three months, and he had not got it, and one day he introduced me to his girl friend on the way to Trenton, and he had an argument with her. So—

Mr. Fisch: Now, if your Honor please, how is that material?

Q. Well, they took you to headquarters. Now, what was the first thing they did down there? A. First thing they did to headquarters they took me into the little room there.

Mr. Fisch: I object to the use of the word "they".

By the Court:

Q. Tell us who, if you know. A. I don't know their names, only one as Seltzer, Freddie, and the flying squad. They took me into this little room where there is no windows and only a tight wall.

Mr. Fisch: If your Honor please, I still further object to the use of the word "they". I think the witness should be confined to describing these persons or pointing them out. He has given the name of Seltzer.

Q. Do you see any of them here in the courtroom? A. Yes.

Q. All right. Point them out. A. There is one sitting there, the first one on the first bench.

Q. That man (indicating)? A. Yes.

The Court: What is your name?

Voice: Charles Grauley.

Witness: The man sits directly back of him.

Mr. Basile: What is your name, please?

Voice: Frederick Burkhardt.

Witness: And the man sits next to him, Frederick Burkhardt.

The Court: Sergeant McHugh.

By the Court:

Q. Are they the men that took you into the room?

A. And Seltzer, an officer by the name of Seltzer.

Q. All right. Go ahead. A. So he says, "Take off your overcoat."

By Mr. Basile:

Q. Who said that? A. Sergeant McHugh said that. And I took off my overcoat. I had on a derby hat. Sergeant McHugh didn't say anything about the derby hat. And there was a chair, a chair familiar with this chair, to those chairs that are down there, and I stood in front of that. He says, "Come on, now," he says, "I want you to tell me everything." I says, "What do you mean tell you everything?" and he says, "Well," he says, "We have got the dope on everything what you have been doing." He says, "Where is your gun?" I says, "I have no gun." He says, "You haven't a gun?" and as I went to say, "I have no gun," he hit me in the stomach with his fist.

By Mr. McGlynn:

Q. Who did? A. Seltzer, and I went down in the chair, and Seltzer, the same man, hit me in the ribs with his fist, and so Freddie, Freddie says, "Wait until I get the rubber hose." He went out and he got two rubber hose. One is a small one and one is a larger one. He put one inside of the other one; and he had me in the corner. They pulled my derby hat down over my ears, and Sergeant McHugh said, "Don't do that, you will bust his ears loose." So he says to me, "Take off this derby hat." And I took it off and I laid it on the table and they got me into the corner and they started lacing me with this double rubber hose.

By Mr. Basile:

Q. Just how did they do it? A. Well, they took hold of one end of the hose.

By Mr. Fisch:

Q. Who is "they"? A. Freddie. Took hold of the end of the hose, and he says, "Well," he says, "You won't tell us, well, we are going to make you tell us, or we are going to kill you right here."

I says, "Well, you will have to kill me" I says, "Because I don't know nothing."

And Freddie started hitting me with the hose across the back and they started to—Seltzer started hitting me in the stomach and in the chest and those two beat on me for about a half an hour straight. Then I told them, I says, "What can I tell you? What do you want me to tell you?"

And they told me a lot of stuff that I didn't know, about a drug store man being killed.

Q. Who is "they"? A. Sergeant McHugh, Freddie and Seltzer, and this other officer. I didn't know nothing about the drug store. I didn't even know where it was. And they got me a drink of water, because I was very thirsty and dry. I couldn't talk. They was beating me so hard. And after I got the drink of water I felt better. It was cold water and they says, "Well, we will give you a couple of minutes to rest and make up your mind," and they let me sit down. And after I sat down Sergeant McHugh, Freddie and Seltzer and this other officer—

Q. Isn't Freddie, Seltzer? A. No, sir.

Q. Which one is Freddie? A. Freddie Burkhardt. They started asking me questions, something that I didn't know nothing about, the places that I didn't know anything about, and I told them I didn't know anything about it, and they started beating me again.

Seltzer left the room then, Officer Seltzer, and Freddie Burkhardt then started beating me some

more with a rubber hose across the back until my back was like a blister when they got through. They beat me for about an hour and a half straight.

Then I told them, I said, "I will sign the statement. I will sign anything if you will let me alone and stop beating me."

And they said, "All right."

And they drawed up a statement and I signed it of stick-ups, and after I signed it they said, "Now, do you want something to eat?"

And I said, "Yes."

They went out and they got me a steak. I don't know who got it, but it was brought upstairs to the cage to me, and I ate the steak. I had it down only a couple of minutes when it came up again. I couldn't lay on my back, nor I couldn't lay on my side, nor on my stomach. My leg was all black and blue where they had kicked me, and there was blood coming from my back through my skin where they had beaten me. They put me in the cell with some other man—

By Mr. Basile:

Q. Just a minute. When you made that first statement, how long had you been in custody? A. I had been in custody about four hours.

Q. All right. A. They put me in the cell with some other man. I don't know who he is, but he looked at my back and he says, "This is the worst back I ever seen."

Mr. Fisch: I object as to what anybody else said.

The Court: Don't tell us what he said.

Q. When did they question you again after that? A. They took me down that same night to show them where the dug-out was.

Q. Did these same officers take you out? A. Yes, sir. They had the flying squad car and they had one of the other officer's cars. I don't know whose it was.

Q. Two cars? A. Yes, had two cars.

Q. Did you take them up to the dug-out? A. I took them up because they threatened to beat me.

Q. Where was that? A. That was on Wilsey Street on the corner of New Street.

Q. What happened there? A. I said, "I don't know where there is any dugout." He said, "You are going to tell us where the dugout is or we are going to kill you," and they pulled out their blackjacks and I told them, after they had hit me twice in the chest with the blackjacks.

Q. Describe the dugout, will you? A. It is a red brick building and it has two stories and the dugout is into the cellar. It is a three room place where Blackie and Johnny Furfaro lived.

Q. Go ahead. A. That is the place where they used to meet—where we all met.

Q. Did they take you back to headquarters after that? A. They took me back to headquarters. We stayed there—they was waiting to catch Johnny Furfaro and Blackie and any of them that came around. So we left—

Q. When did they question you again after that? A. That same night, about twelve o'clock, they took me back down into this little room and they said, "You are going—

Q. Who was present? A. Freddie Burkhardt and Sergeant McHugh and George—that is the driver of the flying squad's car—and there was some other officer I don't know.

Q. What was said and done? A. This other officer came in to me and said, "Tell them every-

thing, kid, and prevent the beating." I said, "What can I tell them? I don't know." Sergeant McHugh said, "Oh, the boys are just disgusted with you. You are just giving us a good run-around," and they said, "We will tend to you in the morning." So they took me back upstairs and put me in a cell.

Q. Did they come the next day? A. They came the next morning, I should judge, half past five or six o'clock, and they took me down into this room again and these same officers were present, and Seltzer was present at that time the next morning. He said, "You are just giving us a good chase around. We have been there all night long. You are just giving us a good run-around." Just then Seltzer gave me a punch in the eye. I didn't dare move to hit him back because they would have killed me.

Mr. Fisch: I object to that.

The Court: Strike it out.

Witness: And they hit me in the lip and cut my lip open.

Q. And they continued questioning you? A. Yes, where we had stuck up places.

Q. In the act of striking did he use any words to characterize the blow? A. I don't get the question.

Q. While in the act of striking did he use any words? A. He used slang words.

Q. Let us have them. A. He said, "You bastard, you will tell me."

Q. Anything else? A. I said, "What do you want me to tell you now? I have told you everything I know." He said, "You are going to tell me where these men live." I said, "I don't know

where they live." I said, "I have taken you to the dugout and I gave you a statement to stop beating me." He said, "That's nothing. You are just giving us a run-around." He said, "We want to know the truth about this." I said, "I have told you the truth." Freddie Burkhardt said, "I will get the rubber hose again," and he went out after the rubber hose and he came in with one hose this time, which was a large hose about an inch.

Q. You mean an inch around? A. Well, it was about an inch and a half on the outside.

Q. How long about? A. About 2½ or 3 feet long, and they got—Freddie and Seltzer got me into the corner again. Seltzer started beating me from the front and Freddie beat me with the hose from the back. I told them about the stick-up charges and the places where we were and I told them about the attempts to stick up. I told them I didn't have any gun and because they didn't find one, and I told them where these fellows were and where their addresses were and that they would find them with guns on them, because these Italian fellows always carried guns. They took me back upstairs and they gave me some ice cold water to drink. Then Sergeant McHugh, Freddie, and George—the driver of the car—and this other officer—the first officer that I point out—took me into the flying squad car. They bought me a dinner in a restaurant and the fellow into the restaurant said to them, "Who is this?" and they said, "This is a man we are breaking in—

Mr. Fisch: I object to what he said.

The Court: Sustained.

Witness: I took them around to the places where these fellows live and where I knew they hung out.

Q. You said they took you to a restaurant. A. Yes, sir.

Q. And in your presence the restaurant man asked a question of the police officers? A. Yes, sir.

Q. And as a result of that question what did the police officers say?

Mr. Fisch: I object to that as immaterial.

The Court: If it is a conversation between the police officer and the other man, it is not material; if it was something he said to the defendant, I will admit it.

Mr. Basile: It is something that concerns the defendant and it was for the purpose of indicating who the defendant was that the question was asked by the restaurant man of the police officer, and it seems to me material in my estimation.

The Court: Go on and put it in.

A. He said, "This is a new man we are breaking in to the flying squad." The officer said that—that was Sergeant McHugh.

Q. Go on. A. So I ate my dinner and I asked them where the bath room was because I couldn't keep it down, and he says, "We have no bath room here." So I went out of the side door and I threw it up, and so they took me into the car again and we went to Bergen Street. It was 208 Bergen Street. There is a pool room there. The pool room was closed. So we went around to the restaurant on South Orange Avenue just above Bergen. It was named Jean's Restaurant—and they picked up Johnny—

Q. On this trip you were making you pointed out various places, is that the idea? A. Yes, sir.

Q. After you did that, did they take you back

to headqarters again? A. They took me back to headquarters. It was late.

Q. Did you make another statement at that time? A. After they had beat me some more I made another statement.

Q. Was that in writing? A. They took one in writing and they typewrote it afterward with a typewriter.

Q. The second statement you made was the one that was read here this morning? A. No, sir.

Q. Exhibit S-12. This is the statement you heard read here this morning? A. Yes, sir.

Q. Is this the first or second statement? A. That is the first statement that was made.

Q. You say you made a second statement? A. Yes, sir.

Q. What was that about? A. That was about stick-ups and arson charges.

Q. After you made this statement what happened?

Mr. Fisch: Is that the statement in writing you are talking about?

Mr. Basile: The second statement.

Mr. Fisch: I would like to know.

Mr. Basile: He said it was typewritten.

The Court: Is that the statement that is in evidence?

Mr. Basile: I don't believe it is.

By Mr. Basile:

Q. Before you go ahead, do you know whether this is the first or the second statement you made?

Mr. Fisch: He said it was the first statement.

Mr. Basile: I want to be sure about it.

A. This is the first statement that was made. I am pretty positive about it.

The Court: Referring to what?

Mr. Basile: Exhibit S-12.

Q. Then if the second statement was made four or five days after you were taken into custody and this statement contains the date of—that is, Exhibit S-12 contains the date of April 13th, would you say that this was the second statement or the first statement?

Mr. Fisch: I object to that, if your Honor please. This is his own witness. This witness has repeatedly stated that S-12 was the first statement which he made.

Mr. Basile: I think we should have regard for the events that took place down there, if your Honor please, and the time that it was taken, and what had transpired between the time of his arrest and the time he was sent up to jail.

Mr. Fisch: The statement has been shown to the defendant.

The Court: The witness has seen this statement and said it is the first statement that he made.

Q. I want to make positive about this, because I do not want to have any confusion about it. I want to be satisfied in my own mind. Look at that statement again. A. This is the first and second statement that was made.

Q. First and second? A. Yes, sir. When they made the statement they did not put any date on to it.

Q. So that you say now that the statement, the

statements which you made, were written twice or more than once? A. Yes, sir.

Q. All right. I think that explains it. Now, after the second statement was made, what happened after that? That is, after this particular statement, S-12, was made and signed by you, after that what happened in Headquarters, if anything? A. Well, they took me upstairs to the cell and they came back up after me.

By Mr. Fisch:

Q. Who is "they"? A. Well, it was Seltzer and this first officer that I pointed out.

By Mr. Basile:

Q. What is this officer's name? Let us have it on the record.

The Court: Grauley.

Witness: And he says, "Well, we are going to take you for a good long ride now."

By Mr. Fisch:

Q. Who said that? A. Mr. Grauley, and I said, "Well, where to?" I said, "To Newark Street?" He said, "No". He said, "You won't be there for a long time yet."

And they took me downstairs and I said, "Give me some cigarettes. I am out of cigarettes." And they gave me cigarettes. George, the driver, gave me the cigarettes. And we went to Milburn. There was Sergeant McHugh, George, the driver of the car, Mr. Grauley and Seltzer and myself—for me to point some places out to them up there, or to identify some men.

By Mr. Basile:

Q. Well, did you do that? A. I did.

Q. Did you point out the places specifically? A. Well, the place that we had—that had been attempted to rob.

Q. And did you identify anybody for them up there? A. Yes, sir.

Q. Whom did you identify for them? A. A fellow by the name of Bill.

Q. What is his full name? Do you know? A. I don't know.

Q. What was he? In what capacity did he act in this place that you pointed out. A. He was finger man.

Q. Did he work there? A. No, sir; but he always hung around there.

Q. He is the one that fingered that particular job? A. He and Domonick Mongonelli.

Q. Mongonelli? A. That is it.

Q. Anybody else that you picked out there? Were there more than two? A. Why, I didn't pick out only two. I don't remember any more.

Q. All right. Did you immediately go back to Headquarters? Was there only one place you picked out up there? A. No, there was, we went to Summit and he notified the Summit police there, the police officers that was with me, to get Domonick Mongonelli out of a pool room and to get a fellow in Millburn by the name of Chichi, his first name is Frank, but he goes under the name of Chichi.

Q. Is his last name Bogala, do you know? A. I don't know his last name.

Q. What happened after that? A. And they went up to some little town above there. I don't remember the name.

Q. New Providence? A. New Providence; and they notified the officer up there.

Q. Pick somebody up? A. Yes, and we came back to Newark. They had me, well, they locked me into the Summit—not Summit, but Millburn Police headquarters whilst they went over to find this Chichi after I had shown them the house. And they came back to me and we returned to Newark.

Q. What time of the day was that? A. That was about 4:30 or five o'clock.

Q. Did they get these men that you pointed out for them? A. They didn't get him out.

Q. Now, you are back in Headquarters. What happened there? A. So back in Headquarters they put me back into my cell and I tried to get some rest, and I only had my overcoat to lay on, to lay on to the floor. So I couldn't lay on my back because it was all sore. It was like a blister, and my hip and my side was all sore where they had beaten me. And they brought in some of the other fellows.

By Mr. Fisch:

Q. Who is "they"? The same officers? A. I don't know if it was the same officers or not.

By Mr. Basile:

Q. Who was the first person to be brought in and confronted with you? A. Johnny Lombardi was the first one brought in.

Q. What was said and done at that time? A. And they asked me if I knew him. I said "Yes", and they took him into the little room.

By Mr. Fisch:

Q. Who is "they"? A. Officer Seltzer, Sergeant McHugh and Freddie and George, and this other officer.

Q. Grauley? A. Grauley.

By Mr. Basile:

Q. And they took this man in there, Lombardi? A. Yes.

Q. Did you go into that same room with him? A. They put me back into my cell until later.

Q. Now, when was the next step after that, as far as you are concerned? A. About a half hour they came to my cell and they got me and they said to me, they said, "Tell this man to his face."

By Mr. Fisch:

Q. Who is "they"? A. Seltzer and Sergeant McHugh. They said, "Tell this man to his face what you have told us."

By Mr. Basile:

Q. Did they ask that question of you? A. Yes, sir.

Q. And to whom was it directed; that is, after they asked you that question, referring to whom? A. To Johnny Lombardi.

Q. Did you tell them something then about these stick-ups? A. I didn't want to tell them anything.

Q. What did you say? A. I did. I told them, I says, he had been with us.

Q. And you told the places that he had been with you? A. Yes.

Q. Then what happened? A. And I told them that he had a gun, but it didn't belong to him, and that it was left in his possession, and I helped Johnny Lombardi to his cell, and I went to my cell.

Q. What did you help him for?

Objected to.

Objection sustained.

Q. All right. What happened after that? A. And they kept bringing me these steak suppers, or anything I wanted, anything I wanted to eat they would bring it to me, but I couldn't keep it down. So I gave Sergeant McHugh this check and told him to go and give it to my wife and tell her where I was, and to let my folks know where I—

Q. Where did you ask all that? How long after you were arrested? A. Well, I don't just remember how many days it was, but it was in the first week.

Q. How soon after your arrest did anybody from your family come to see you or were permitted to see you. Do you know? A. They wasn't permitted to see me until—

Mr. Fisch: I object to that unless he knows of his own knowledge.

The Court: He can tell how soon afterwards they saw him.

Q. Answer that. A. It was around the 20th or the 22nd before I could see my wife, somewheres around in there.

Q. All right. Now, Lombardi was taken to his cell, and you are upstairs, are you? A. Yes.

Q. Now, after that what happened? Were you confronted with anybody else? A. Not that night.

Q. Well, when was it? A. I had been. I had been confronted by Clarence Stern.

Q. When was that? A. That was on the 18th night, I believe.

Q. The eighteenth night that you were in custody? A. No, the 18th day of the month. It was

around the 18th day of the month.

Q. Of April? A. Yes.

Q. That is when you were confronted with Stern? A. Yes.

Q. Now, what happened after? A. They asked me to tell Stern what jobs he had been on.

Q. Did you do it? A. I did; yes, sir.

Q. What else happened at that time? A. I told him what jobs he had been on because they had hit me with the blackjack.

Q. What say? A. I told him what jobs he had been on because they had been hitting me with blackjacks.

Q. You told? A. Yes.

Q. And you repeated it in the presence of Stern? A. Yes, sir.

Q. And did Stern say anything in your presence at that time? A. He did, yes.

Q. What did he say? A. He said, "You are a lying bastard."

Q. What else was said? A. And so there was nothing else said because they took me away from him there.

Q. Did you answer that remark of his? A. I did not.

Q. Now, whom else were you confronted with? A. Pete Reagen.

Q. Who? A. Pete Reagen.

Q. Do you know what his right name is? A. I do not.

Q. Would you know it if you heard it? A. I would.

Q. Is it Peter Rigionni? A. I believe that is it, yes.

Q. What happened at that time? A. The officers asked me to tell what jobs he had taken part into.

Q. Did you do it? A. I did, yes, sir.

Q. Was there anything said or done then? A. No, sir. As quick as I told them they took me right back to my cell.

Q. What happened after that? A. After that they heard the fellows into the place, Mickey Tenore and Clarence Stern, talking about this murder on Mulberry Street.

Q. Who heard it? A. The officers did.

Mr. Fisch: How can he testify to that?

Q. Did you hear that? A. Yes, sir.

Mr. Fisch: Let us get when it was.

Q. This was while they were in the cells? A. Yes, they were in cells alongside of me.

Q. And you heard what they said? A. Yes, sir.

Q. What did you hear them say? A. They were calling me all kinds of killers. They said, "You bastard, we will frame you for this, you rat."

Q. Who said that? Did you recognize who said it? A. Clarence Stern said it.

Q. What else did he say? A. I don't just remember just what was said then.

Mr. Fisch: May we have the date on that?

By the Court:

Q. Do you know what the date was? A. I do not, no, sir.

Q. How long after you were arrested? A. That was around ten or eleven days.

By Mr. Basile:

Q. When were you confronted with Sophie Krok? A. It was the latter part of April, but I don't remember the date. They didn't bring her

in front of me; they only brought her around so that I could see that she was there.

Q. Let us get around to where you are supposed to have made this statement which has been introduced here and marked Exhibit S-8, dated April 15th. I want you to look at that. Do you remember what was in the statement? A. I do not remember all that was in the statement, no.

Q. Do you remember that this was a statement which has reference to this shooting on Mulberry Street? A. Yes, sir.

Q. Tell us how you came to make this statement. A. It was about seven o'clock one night. I don't remember what day it was or the date, but there was two officers came upstairs to the cell for me.

Q. Do you remember who they were? A. Yes, sir.

Q. Who were they? A. I don't know them by names.

Q. Are they in the court room? A. Yes.

Q. Pick them out. A. Those two officers sitting right there (indicating).

The Court: Sergeant Conlon and Detective Fallon.

Q. Go ahead. A. They came up to the cell and they said to me, "Come on, Compo." I said, "What's up now?" They said, "You heard them talking about this murder in here, haven't you?" I said, "I don't know nothing about it." They said, "Come on," and these two officers took me into a room across from the cage where there are a lot of seats, and I only had on just the coat and no overcoat or nothing on. They gets me into this room and they closed the door. There is a hallway between this room and another hall and be-

fore the cage, and these two officers said to me, "We want you to tell us about this murder." I said, "I don't know anything about it. I don't know where the place is or where the street is, because I never never been down there." They said, "You aren't going to give us a chase around like Sergeant McHugh." I said, "What chase around did I give him? He got all the information he wanted." So at that time Sergeant Luke Conlon hit me into the stomach. I was standing up and he knocked me down on one of these seats.

Q. What did he say when he did it? A. He says, "Why, you dirty bastard, you are going to tell us." He said, "You know and you aren't going to get out of it." I told him, "I don't know anything about it. I said that it was just a frame-up between those fellows because I had talked at police headquarters.

By Mr. Fisch:

Q. Is this what you told him? A. Yes.

By Mr. Basile:

Q. Go on. A. Then the other officer that was with him, after I had sat down, he picked his foot up and he kicked me here over into the chest, and I couldn't talk, and I could hardly breathe after he had kicked me. Then Sergeant Luke Conlon started punching me into the face and the other officer said, "Don't punch him into the face because we have to take his picture again," and my eye was swollen and both lips were cracked where they had hit me, and this eye was swollen where they had hit me, and Sergeant Luke Conlon pulled out his blackjack from his pocket. It is a little round ball with a leather lace and he started hitting me with it, and the other officer started hit-

ting me into the lips, and he took the skin off the lips with his knuckle and the skin went into my mouth, and I took the skin out and threw it on the floor. He said, "You are going to talk or we will kill you." I said, "What do you want me to say?" He said, "We want you to tell us about the murder." I said, "I don't know anything about it," and they started beating me again into the chest and into the stomach and onto the legs with blackjacks. So they beat me so hard and so much that I gave in to them that I would sign and give them anything they wanted me to say, and they told me what to say when I got downstairs.

By Mr. Fisch:

Q. Who is they? A. These two officers.

By Mr. Basile:

Q. Where were you taken then? A. I was taken down to Captain Sebold's office.

Q. Who took you there? A. These officers.

Q. And who talked to you then? A. Captain Sebold and Sergeant Luke Conlon and this other officer that was with him.

By the Court:

Q. Fallon? A. Fallon. And the other man I do not know. They called this man from the Prosecutor's office; they said he was from the Prosecutor's office.

By Mr. Basile:

Q. Lieutenant Lenarducci? A. Yes.

By Mr. Fisch:

Q. Which man are you indicating? A. The second man here (indicating).

Mr. Fisch: Detective Joseph Cocozza.

Witness: And they brought a gun in to me, an automatic, and they told me they wanted me to put my initials on it and swear that I had owned the gun at one time, and I told them I had never seen the gun. He said, "Put your initials on there," and then this sergeant drawed his blackjack from his pocket. I said, "You can kill me, but I won't put my initials on it." I said, "You can kill me, and I am pretty near dead now and you can finish me." He said, "The girl put her initials on it and the rest of the fellows." I said, "I don't care what they done. I am not going to." So he put the blackjack back into his pocket. Captain Sebold said, "It is not necessary for his initials to be on the gun," and Captain Sebold said to me, "Do you want something to eat?" I said, "Yes, I am hungry." He said, "All right, I will send out and get you a nice steak. Will that be all right?"

By Mr. Basile:

Q. Was that before or after this statement was written? A. That was before the statement was written.

Q. It was before the statement was written that he sent out for the food? A. Yes, and then they started writing the statement out right then.

Q. Had you already told them verbally what is written in that statement before they sent out for the food? A. I told them what the officer had told me to tell them in front of Catain Sebold.

Q. It had not been reduced to writing yet? A. No.

Q. And before it was reduced to writing they

asked you about this food and sent out for it, is that right? A. Yes, and then they wrote up this statement here.

Q. When that statement was written it was written by Detective Capodanno, wasn't it? A. Yes, sir.

Q. Was that the first time that you saw Detective Capodanno in this case? A. No, sir.

Q. How many times before that had you seen him? A. I had seen him come upstairs different times, but he never—

Q. He never interviewed you? A. He never interviewed me, no, sir.

Q. After you were given something to eat this statement was taken in writing? A. Yes, sir.

Q. And you signed it? A. I did not sign it right there, no, sir.

Q. How long after it was written did you sign it? A. It was about half an hour or three quarters of an hour.

Q. Then what happened after that? A. Why, after the statement was drawn up they took me into the Chief's office down there, and then there was a bunch of men in there that I did not know, and they put me—

Q. Do you know whether or not among those men was the director himself, Mr. Egan? A. Mr. Egan was not there then. They said to me, "Sign this statement." I said, "Why should I sign that statement if it is nothing but a lie?"

By Mr. Fisch:

Q. Who is they? A. Captain Sebold and the Chief of the Detective Department.

By the Court:

Q. Chief Brex, you mean? A. Brex, yes, sir. I

told them right there that it was nothing but a lie; that the officers told me to say that and that is why I said it, for them to stop beating me. I said, "I wish to see some attorney before I sign that statement," and there had been an attorney there to see me. I don't know who he was, but—

By Mr. Fisch:

Q. How do you know? A. Because it was told to me by an officer.

Mr. Fisch: I object to it.

By the Court:

Q. Do you know by what somebody told you? A. One of the officers told me; yes, sir.

Q. Who told you? A. I don't know his name.

The Court: All right.

By Mr. Basile:

Q. Go ahead. A. And I argued with the Chief Brex there for not to sign the statement. I didn't want to sign the statement; when Sergeant Luke Conlon and another officer got in back of me with blackjacks under their hands, and when I see that there was another beating coming to me, I signed the statement.

Q. Now, was that the time that you were shown a picture of a store? A. Yes, sir.

Q. Now, when they showed you the picture of the store, what did they say and who said it? A. He said, "Is this the place?"

By Mr. Fisch:

Q. Who is "he"? A. Captain Sebold, I believe.

By the Court:

Q. Yes, go ahead. A. He says, "Is this the place?" I said, "I don't know." And he says, "Why don't you know?" I says, "Because I have never been in that district. I don't know where it is."

By Mr. Basile:

Q. Did they mention the name of the street? A. He did.

Q. What reference to the street? What did he say? What names did he mention as far as the street were concerned? A. Well, he only mentioned Mulberry Street and Beach or Bleach Street, Beach Street.

Q. Did you sign the back of that photograph at that time? A. I did; yes, sir.

Q. Now, Furfaro was confronted with you? A. Yes, sir.

Q. Brought in by Detective Capodanno? A. Yes, sir.

Q. Now, at that time did Detective Capodanno —what language did he speak in the presence of Furfaro? A. He spoke in Italian.

Q. To whom? A. To Furfaro.

Q. Did he speak in English also? A. He did; yes, sir.

Q. Do you understand Italian? A. No, sir.

Q. And did he ask you in the presence of Furfaro whether or not the statement that you made was true? A. He did.

Q. What did you say? A. I told him that it wasn't true, that it was nothing but a bunch of lies.

Q. That is, insofar as you and he were concerned? A. Yes, sir.

Q. Now, are these other facts in this particular confession true?

Mr. Fisch: I object to that, if your Honor please. That is too general.

The Court: What one are you referring to?

Q. Is anything in this confession true that you made, S-8, dated April 15th? Is anything in this statement in reference to this shooting true? A. No, sir.

Q. Were you ever at the corner of Beach Street and Mulberry Street? A. I was never there.

Q. Were you there on the night of December 23, 1930? A. No, sir.

Q. Do you remember when this man Haug was brought into police headquarters and you were placed in the lineup? A. Yes, sir.

Q. And who was present at that time? A. There was myself, Johnny Furfaro and another man in the lineup.

Q. Now, tell us what happened at that time? A. And there was this officer, I don't know his name.

Q. Detective Fallon? A. Detective Fallon. He was standing there a little off to the side of us where you go to go upstairs, where you go upstairs.

Q. And who came in? A. First a woman came in and we was all facing the wall, and Sergeant Luke Conlon says, "Now", he says, "Look over this line-up and see if you see the man here." So we all had our arms stretched right out straight, three of us in the line-up. And she says, "No". So he says, "All right," and he took her downstairs.

Then Officer Fallon told us, "Now, change po-

sitions." He says, "All of you." And I stood number three, and Sergeant Luke Conlon came up on the elevator with this man and he was talking to him, and when they got off of the elevator, this man walked down and he looked at me and he walked back. He walks over and he stood beside Sergeant Luke Conlon and says, "No". Sergeant Luke Conlon nudged him with his elbow and pointed like that toward me, and he walks back down, and he gets close to me and he looks up at my face and he says, "Yes", he says. "That is the man," he says. And Sergeant Luke Conlon says to him, "Where did you see this man?" He says, "I seen him on Mulberry Street," he says, "On the night of the murder."

He says, "Well, put your hand on his shoulder." The man put his hand on my shoulder and he says, "I seen this man on Mulberry Street the night of the 23rd."

So he says, "All right," and he took him back downstairs, and they put us back into the cells.

Q. Now, then, how were you dressed at that particular time that he put his hand on your shoulder? A. I had on this blue suit, a blue shirt and a polka dot blue tie, and they brought in this gray felt hat for me to put on, and I had on that blue overcoat.

By Mr. McGlynn:

Q. The one that has been marked? A. Yes, sir.

Mr. Basile: Exhibit D-1 for identification.

By Mr. Basile:

Q. Is this your coat? A. Yes, sir.

Q. Is that the one you had at police headquarters? A. Yes, sir.

Mr. Basile: I think this would be the time to introduce this in evidence.

Mr. Fisch: No objection.

(The article referred to, previously marked Exhibit D-1 for identification, is received in evidence and marked Exhibit D-1).

Q. Where did you buy that coat? A. I bought that on the corner of Norfolk and Central Avenue in a second-hand store.

Q. When? A. It was the last week in February on a Monday morning.

Q. Now, when Haug came in and placed his hand on your shoulder, were you as smooth shaven as you are now? A. No, sir; I had whiskers all over my face.

Q. Did you have a mustache or not? A. No, not at that time, no.

Q. Was this after Easter that Haug came in to pick you out of the line-up? A. I don't remember.

Mr. Basile: I think the record will show that.

Q. Now, on December 23rd, did you have a mustache? A. Yes, sir.

Q. When did you shave that off? A. I shaved that off after I was arrested in Police Headquarters.

Mr. Basile: Does your Honor think it is necessary at this time to go on with this letter. It has been introduced in evidence and it has been admitted. Is it necessary to do what we said we would do?

The Court: You have already done what you have promised to do. It has been put in evidence.

Eugene Compo—Direct.

By Mr. Basile:

Q. Whom had you been living with here in Newark? A. I had been living with my brother-in-law, my sister and the woman I call my wife.

Q. What is her first name? A. Ruth.

Q. How long have you known her? A. I have known her ever since I went to school.

Q. How long have you been living with her? A. Four years.

Q. Have you any children? A. Yes, sir.

Q. How many? A. Two.

Q. How old are they? A. One is two years old this month and the other one will be a year old in July.

Q. Do you expect any others? A. Yes, sir.

Mr. Fisch: I object to that. What difference does it make?

The Court: Sustained.

Q. Are you the father of both of these children? A. I am.

Q. When did you meet Sophie Krok? A. I met her June, I believe, last year.

Q. Did you see her very often? A. I did.

Q. Did you go to the house in East Orange where she was working on Christmas Day to see her? A. I did go there that day, yes.

Q. Did you have a revolver with you at that time? A. No, sir.

Q. Did you have a holster with you at that time? A. No, sir.

Q. Did you show her a gun? A. No, sir.

Q. Did you talk to her and did she say anything to you about being nervous? A. No, sir.

Q. What did you go there for? A. I went there to hand her two presents.

Q. Did you tell Sophie that you were nervous because you had shot a man on Mulberry Street— A. (Interrupting) No, sir.

Q. (Continuing) in a grocery store? A. No, sir.

Q. Did you go to the movies with her? A. No, sir.

Q. I show you a hat marked Exhibit S-11. Is this your hat? A. It don't look like the hat that they got at police headquarters. It is my hat.

Q. When did you buy that hat? A. That I don't remember, but it was after Christmas, I believe.

Q. How long after? A. It was a week or two— it was about eight or ten days. I wouldn't be positive on that.

Q. When did you meet Stern and Lillian Rys? A. I met Stern in the latter part of December.

Q. Before or after Christmas? A. It was after Christmas.

Q. Where did you meet him? A. At the Crosstown Garage.

Q. How did you meet him there? A. I was introduced there with—Mr. Monrowski introduced me to him.

Q. Who was he? A. He was the owner of the garage.

Q. What was he doing there at that time? A. You mean Clarence Stern?

Q. Yes, Clarence Stern. A. He always hung around the garage there.

Q. Was he just hanging around there? Did he have any particular business there? A. No, sir.

At one o'clock P. M. the court takes a recess until two-fifteen P. M.

AFTER RECESS.

EUGENE COMPO resumes the stand.

Direct-examination (continued) by Mr. Basile:

Q. Do you remember the occasion of being at the Spruce Street house that was testified to by Stern and Sophie when you went to Philadelphia, just before you went to Philadelphia? A. That was at 205 New Street.

Q. 205 New Street. Do you remember a day or two before Sophie left for Pennsylvania, that you were in a room in Spruce Street with Sophie, the Rys girl and Stern? A. Yes, sir.

Q. At that time did you threaten Sophie with a gun if she told the police that you shot the man on Mulberry Street? A. No, sir.

Q. What was the quarrel about? A. The quarrel was she wanted me to leave my wife and children and to go with her, and I told her I would never leave them, and I have often quarreled with her.

Q. Now, on the occasion of being out automobile riding and stopping at Hudson Street and Central Avenue, and the four of you were supposed to be in this car, was there any threat at that time? A. No, sir.

Q. Directed to Sophie? A. No, sir.

Mr. Fisch: There was not any threat alleged or testified to.

Q. Was there any admission on your part to Sophie at that time that you had shot a man on Mulberry Street? A. No, sir.

Q. Did you ever admit to anyone before your arrest that you had shot a man on Mulberry Street? A. No, sir.

Q. Or that you had shot this man Lynch on Mulberry Street. A. No, sir.

Q. Did you go to Philadelphia after that, the day that you were at Hudson Street and Central Avenue? A. Yes, sir.

Q. Where did you go in Philadelphia? A. We went into a five and ten cent store.

Q. Who? A. Clarence Stern, Sophie Krok, Lillian Rys and myself.

Q. What did you go to Philadelphia for? A. We went to Philadelphia to see Sophie Krok's sister into the hospital and also—

Q. Do you know what she was there for? A. Yes.

Q. What?

Mr. Fisch: I object. What difference does that make?

The Court: Sustained.

Q. Did you go into the hospital too? A. I took a satchel into the hospital, yes.

Q. Did you all go into the hospital? A. No, sir.

Q. Now, did you leave Sophie at the hospital with the other girl? A. I left Sophie into the hospital with the nurse, with the sister there.

Q. Did the other girl go into the hospital with Sophie, the Rys girl, Lillian? A. No, sir.

Q. How long did Sophie stay in the hospital? A. She stayed in there about a half an hour, three-quarters of an hour.

Q. What did you do in the meantime, you, Stern and Lillian? A. We was into the automobile.

Q. Waited there? A. Yes, sir.

Q. Now, after Sophie came out of the hospital, where did the four of you go? A. We started back for Newark and on the way back we stopped to

a second-hand store and asked him if he had any guns for sale, which he said no, and we went down a little further and we stopped to another one, and the man only had one gun in there, and I bought the gun with the money that Sophie Krok had given me.

Q. Who went into the place with you? A. I went into the place and the man showed me the gun and then I went out and asked Clarence Stern to come in and see whether the gun was worth the money.

Q. Did Clarence come in there? A. He came in.

Q. I show you Exhibit S-10. Is this the gun? A. That is the gun.

Q. Would you remember the man that sold you the gun if you saw him? A. Yes, sir.

Q. Do you see him in the court room? A. I do.

Q. Can you point him out? A. He is right over there (indicating).

Mr. McGlynn: Nathan Brooks.

Q. Is that the only time you went to Philadelphia with these three? A. Yes, sir.

Q. After you left there where did you go—that day A. We went to an Italian restaurant and had lunch. This was before we went to the hospital that we had the lunch.

Q. I am talking now about after the hospital episode. By the way, when you bought this gun, what name did you give? A. I gave the name of Billie Welch.

Q. What address? A. 293 Hunterdon Street.

Q. Newark? A. Yes, sir.

Q. Then where did you go after you got through there in Philadelphia? A. We came back to Newark.

Q. Before you left Philadelphia did you go to any other store? A. Yes, sir.

Q. What kind of a store? A. We went into—well, a larger pawn shop into Philadelphia.

Q. Who went in there? A. Clarence Stern, Lillian Rys, Sophie Krok and myself.

Q. Did anybody buy anything there? A. Yes, sir.

Q. What was bought and who bought it? A. Clarence bought a new thirty-eight nickel plated gun and he paid $10 for it.

Q. Then where did you go? A. We was into the Reading Terminal.

Q. After you left Philadelphia how did you come back home? A. We came back through Trenton.

Q. Did anything happen in Trenton? A. Yes, we had a puncture.

Q. At the time of the puncture what other thing happened, if anything? A. There was an officer came across the street to call up from the box, and Clarence Stern grabbed the guns for the girls to hold the guns, and Clarence Stern and I fixed the tire.

Q. Then you came on to Newark? A. Yes, sir.

Q. Did you ever own any gun besides this one? A. No, sir.

Q. Was this the first gun you ever owned? A. Yes, sir.

Q. Did you ever carry a gun before that? A. No, sir.

Q. What did you have with you when you went on these stickups? A. I didn't have anything.

Q. Did you ever sell a gun to Furfaro? A. No sir.

Q. When did you meet Furfaro? A. I met him after the first of the year; around the first of the year.

Q. Did you ever admit to Clarence Stern that

you shot Lynch on Mulberry Street? A. No, sir.

Q. Did you ever say to him, "It was either him or me, and I let him have it"? A. No, sir.

Q. Did you ever mention the name of Lynch to Clarence Stern? A. No sir.

Q. Do you know Tenore? A. I do.

Q. Did you ever ride with him in an automobile and take him home and say to him in the automobile that you had shot a man on Mulberry Street? A. No, sir.

Q. At Christmas time, what kind of an overcoat did you have? A. I had a dark blue overcoat with a velvet collar.

Q. How long had you had that coat? A. I have had that coat four years.

Q. Did you use that coat until you bought this one? A. I did.

Q. Now, were you in the habit of going to any particular barber shop around that time? A. Yes, sir.

Q. What barber shop did you go to? A. Well, I don't remember the man's name, but it is around the corner from Avon Avenue on Peshine Avenue.

Q. Now, where did you live at that time when you patronized that particular barber shop? A. What was that?

Q. When you used to go to this particular barber shop. A. Well, I did live on Jeliff Avenue and I lived on Hunterdon Street and also Hudson Street.

Q. Where did you live around Christmas time? A. On 392 Hunterdon Street.

Q. When did you move from there? A. It was about the 15th of January.

Q. Now, on the 23rd day of December, what time did you leave the house that night? A. It was about eight or 8:30.

Q. Had you been working that day? A. I don't believe so.

Q. Now, when you left the house did anybody go with you? A. Yes, sir.

Q. Who? A. My wife.

Q. Is that Ruth? A. Yes, sir.

Q. Now, where did you go from there? A. We went over Hunterdon Street, down Springfield Avenue to the stores.

Q. What stores did you go to? What kind of stores? A. Well, we went into a shoe store. We went into a five and ten cent store, two of them on Springfield Avenue, and we went into a men's clothing store. We also sent into a stocking store.

Q. Now, with reference to High Street and Springfield Avenue, where were these stores? A. They were all above High Street.

Q. Did you come down below High Street that night? A. No, sir.

Q. Were you together with Ruth all the time? A. Yes, sir.

Q. Do you remember some of the articles that you purchased? A. I do.

Q. I show you this box. Do you ever remember seeing these before? A. Yes, sir.

Q. Where did you get them? A. I got them in the five and ten cent store.

Q. Where? A. On Springfield Avenue.

Q. Near where? A. Well, I don't know the streets there very well.

Mr. Basile: I ask that this box be marked for identification.

(The box referred to is marked Exhibit D-3 for identification).

Mr. Basile: There is also a tag on the in-

side of this box that we will probably need to check up later.

Q. I show you a shirt. Did you ever see this shirt before? A. Yes.

Q. Whose shirt is it? A. That is my shirt.

Q. When did you buy that? A. I bought that on December 23rd.

Q. And on this same shopping expedition? A. Yes, sir.

Q. Where? A. In a men's clothing store.

Q. On Springfield Avenue? A. Yes, sir.

Mr. Basile: I ask that this be marked.

(The article referred to is marked Exhibit D-4 for identification).

Q. I show you this smoking set, we will call it that. Did you ever see this before? A. Yes, sir.

Q. Did you purchase this? A. I did.

Q. On this same trip? A. Yes, sir.

Mr. Basile: I ask that these four articles be marked.

(The articles referred to are marked Exhibit D-5 for identification).

Q. I show you these sox. Did you ever see these before? A. Yes, sir.

Q. Did you purchase those? A. I did.

Q. On this same trip? A. Yes, sir.

Mr. Basile: I ask that these be marked.

(The articles referred to are marked Exhibit D-6 for identification).

Q. Now, after you purchased these articles, that is, Exhibit D-6 and D-5 for identification, did you keep these? A. I kept them until in January.

Q. What did you do with them? A. I took them to my step-father in Bridgeport, Connecticut.

Q. And as far as you know have they been in the possession of your step-father since that time? A. Yes sir.

Q. Who went with you at the time you took these articles up there? A. Mr. and Mrs. DeSantis my wife, myself and the two children.

Q. Do you remember purchasing any other articles that night? A. I do.

Q. What if anything was there? A. There was a petticoat and some stockings.

Q. I show this petticoat. Do you know whether this is the one you purchased that night? A. Yes, sir.

Mr. Basile: I ask that it be marked.

(The same is marked Exhibit D-7 for identification).

Q. I show you these stockings. Did you purchase these that night? A. Yes, sir.

Mr. Basile: I ask that they be marked.

(The same are marked Exhibit D-8 for indentification).

Q. Do you recognize this muffler or kerchief? A. Yes, sir.

Q. Did you purchase this that night? A. I believe so, yes, sir.

Mr. Basile: I ask that it be marked.

(The same is marked Exhibit D-9 for identification).

Q. After you got through on this shopping expedition, where did you go? A. I went back to my home.

Q. While you were on this shopping trip where were the children? A. They were home with my sister.

Q. Was your sister taking care of them? A. Yes, sir.

Q. What time did you get through shopping that night? A. It was about a quarter to eleven or eleven o'clock.

Q. After you arrived at home did you go out again? A. No, sir.

Q. So that between the hours of eight or 8:30, and when you returned home at 11:15—

Mr. Fisch: He didn't say 11:15.

Q. A quarter to eleven, you were in the company of Ruth? A. Yes, sir.

Q. And you remained home thereafter? A. Yes, sir.

Q. And you didn't go out again? A. No, sir.

Q. When you got home who was at home? A. My sister and my brother-in-law.

Q. The day after the 23rd did your sister stay in town? A. No, sir.

Q. Where did she go? A. She went to Rome, New York.

Q. When did she return home? A. I believe it was the following Monday.

Q. When did you become associated with the rest of the members of this outfit that made these hold-ups? A. It was in January.

Q. Do you remember the first job that you went out on? A. Yes, sir.

Q. When was that? A. That was in the first week of February—in January.

Q. Do you remember what place that was?

Would you remember it if I gave you the name of the place? A. Yes, sir.

Q. Was it the name of Jacob Bornstein, on January 4th? A. Yes, sir.

Q. Did you ever go out alone on any job? A. No, sir.

Mr. Basile: If your Honor please, at this juncture,—I may be a little out of order—but before the Prosecutor goes into the cross-examination, I would like to ask, with the Court's consent and the Prosecutor's, to permit this man we brought here from Philadelphia to take the stand.

Mr. Fisch: I can't consent to that, your Honor. I do not think the course of this trial should be interrupted.

The Court: Unless there is some real good reason.

Mr. Basile: The reason is, if your Honor please, that he must return to his place of business and it was at the urgent request of the defense that he came here. Your Honor well knows we have no right to subpoena him, and he has been very accommodating to us, and I think that we ought to show some courtesy for his coming here.

The Court: That is true.

Mr. Basile: A man's life is at stake. We tried to get all of the persons that knew anything about the offense that were discussed here at the trial, and I think we ought to have his testimony, and I don't think it is going to harm the Prosecutor to have him go on at this time.

The Court: I would like to help accommodate any one can, but is considerably out of

the regular course of procedure to withdraw a witness and put another witness on in the midst of the trial.

Mr. Basile: I appreciate that myself, your Honor, and that is the reason I am asking for permission at this time.

The Court: I guess you will have to wait.

Mr. Fisch: Well, if it is going to accommodate this man any, I will consent that he testify now.

The Court: All right.

NATHAN BROOKS, sworn in behalf of the Defendant.

Direct-examination by Mr. Basile:

Q. What is your address, please? A. 4816 Woodland Avenue, Philadelphia.

Q. What is your business? A. Pawn broker.

Q. I show you Exhibit S-10 and ask you whether you ever saw that before? A. I did.

Q. Where did you see it? A. In our place.

Q. Did you sell this gun? A. I did.

Q. Do you remember whom you sold it to? A. I do.

Q. Do you recognize the person, if you see him? A. I believe I would.

Q. Is he in the court room? A. He is.

Q. Will you point him out, please? A. (The witness indicates).

By the Court:

Q. You mean the man who was just on the stand? A. Yes.

The Court: Indicating the defendant.

By Mr. Basile:

Q. When did you sell it to him? A. I believe it was March 12th.

Q. I show you a book. Did you ever see that book before? A. That is March 12th.

Q. Is that your book? A. That is my book.

Q. Is that the book that the entry was made of the sale? A. That was.

Q. Is it made in your handwriting? A. Yes.

Q. What is the entry on there?

Mr. Fisch: I object.

The Court: That is not material, what the entry is. The witness can use the book for the purpose of refreshing his memory if it appears that his memory needs refreshing. It does not seem to, as a matter of fact.

Mr. Basile: I would like to have this marked for identification.

(The book referred to is marked Exhibit D-10 for identification).

Mr. Basile: Now, if your Honor please, I offer the book in evidence.

Mr. Fisch: I object.

The Court: No, it is not admissible.

Mr. Basile: If your Honor please, we want to show by this witness that he sold this gun, as he has testified to. We want to show that the record was made out fixing the date.

The Court: All right. He can testify to the fact that the record was made. He has testified to that effect, but any memorandum that he made at the time is not admissible. He cannot put that memorandum in evidence.

Q. Mr. Brooks, what name did he give when he purchased this gun? A. Welch.

Q. What address did he give? A. In Newark.

Q. Do you remember the street and number? A. Yes, it is in the book there.

Q. Do you remember the number of the street? A. I don't remember it. I remember it as I wrote it down.

Q. Will it refresh your recollection to look at it? A. 372 Hunterdon Street, Newark, New Jersey, (referring to paper).

Q. When he came into that store was there anybody with him? A. He was by himself.

Q. Did he purchase the gun after you showed it to him immediately? A. No, he did not.

Q. What did he do or say?

Mr. Fisch: I object to what he said.

The Court: Sustained.

Q. What did he do? A. He brought in somebody else to look at the gun.

Q. He brought in another man? A. From outside, yes.

Q. And you fixed a price with them? A. We did.

Q. And it was after this price was fixed and the other man had come in that he purchased it? A. No, the other fellow came in and he made the price.

Mr. Basile: I ask that Stern be brought down into the court room.

Q. At the time of the purchase of this gun did you have any discussion with him as to guns in general that he wanted to buy? A. That I don't remember.

Q. Did he appear as though he knew anything about guns?

Mr. Fisch: I object.

The Court: Sustained.

Mr. Basile: I have no other questions except the one when Mr. Stern comes down.

Cross-examination by Mr. Fisch:

Q. The only recollection you have of having sold this gun is this memorandum of yours, is that right? A. Well, the memorandum made me remember the fellow and the transaction.

Q. And that was the only recollection you had; the memorandum, isn't that right, Mr. Brooks? A. I remember the fellow and I remember the gun.

Q. How much did you get for the gun? A. $5.

Q. He didn't show you any license to carry a gun, did he? A. That don't interest us—

Q. I am asking you a question. A. No, he didn't.

Q. You didn't know who he was? A. He identified himself.

Q. Under the name of Welch? A. He showed us something where this address and name was on. I don't remember it exactly.

Q. The name of Welch? A. Yes.

Q. What was it? A. I don't remember. He showed some identification.

Q. What was the identification? A. I don't remember.

Q. Was it an automobile license? A. I don't recall.

Q. You don't know what it was, do you? A. I don't recall.

Q. Your only recollection, then, of this transaction is what your book shows isn't it? A. And what I remember.

Q. What do you remember in addition to what your book shows? A. I just explained to you I sold him a revolver.

Q. And your recollection on that subject comes from this entry in this book of yours, doesn't it? A. Yes.

Q. And that is the only recollection, isn't it? A. No.

Q. What makes you look over there? Look at me when I am asking you a question.

Mr. Basile: I object to that. He didn't look over here, as a matter of fact.

Q. What did this other man look like that you say came there? A. I don't remember.

Q. You don't remember what he looked like? A. No, I don't.

Q. Was he light or dark? A. I don't remember.

Q. Did he wear glasses or didn't he? A. I don't remember.

Q. Was he heavy or thin? A. I don't remember.

Q. Was he short or tall? A. I don't remember.

Q. Do you see anybody in the court room that looks like him? A. No, I don't.

Q. Did he look anything like this man (indicating). A. No.

Mr. Fisch: What is your name?

A voice in the audience: Wolf.

Mr. Fisch: Indicating Mr. Wolf.

Q. Did he look anything like this man (indicating)? A. No.

Q. Did he look anything like this man (indicating)? A. I don't remember.

Mr. Fisch: What is your name?

A voice in the audience: Stern.
Mr. Fisch: Clarence Stern, is it not?
A voice in the audience: Right.
Mr. Fisch: That is all.

By Mr. Basile:

Q. Is your firm in the habit of selling guns? A. No, sir.

Q. Had you sold any guns or many guns before this one? A. No, we didn't.

Q. Does that in any way help you with reference to the sale of this gun? A. Yes, it does. It was the only gun we sold in the last twelve months.

By Mr. Fisch:

Q. When did you come into the court room here? A. Thirty minutes ago.

Q. During the recess, did you not? A. Yes.

Q. And when you came into the court room this defendant was seated in the chair alongside of the jury box, wasn't he? A. Yes.

Q. And he was pointed out to you? A. Yes.

Q. Who pointed him out to you? A. One of the fellows there (indicating).

Q. That is, one of the men associated with the defense in this case, wasn't it? A. Yes.

Q. And that is what gave you a recollection of this man? A. Yes.

Q. But without anybody pointing him out, did you recognize him? A. I remembered him as soon as he walked in. He looked at me and I looked at him.

Q. But you didn't pick him out, did you? A. I did.

Q. Did you pick him out before anybody pointed him out to you? A. I did.

Q. To whom? A. To myself. As soon as I saw him I know he was the fellow.

Q. Somebody connected with the defense in this case asked you if that wasn't the man? A. Yes.

Q. And pointed out the defendant, didn't they? A. Yes.

Redirect-examination by Mr. Basile:

Q. Wasn't that after you said that was him? A. Yes.

Mr. Fisch: I object on the ground that it is leading.

The Court: There is no testimony that he said that was him.

Q. Well, did you say as soon as he came in to us, that that was the man? A. Yes.

Mr. Fisch: I object.

The Court: Sustained.

EUGENE COMPO, the defendant, recalled.

Cross-examination by Mr. Fisch:

Q. Now, Compo, the overcoat that you had around Christmas time was a blue overcoat with a velvet collar on, wasn't it? A. Yes.

Q. And as far as the color of the coat was concerned, it was very much like this one, Exhibit D-1, wasn't it? A. Why, it is not like that coat; no, sir.

Q. The color of it? A. The color.

Q. What? A. Yes.

Q. The color is the same, you say? A. Well, it is a darker coat.

Q. A little darker blue? A. Yes.

Q. But that is blue, isn't it? A. Yes.

Q. And the one you had around Christmas time was blue, wasn't it? A. Yes.

Q. Where did you buy the hat, Exhibit S-11? A. I bought that hat on Clinton Street.

Q. What number Clinton Street? A. I don't know the number.

Q. Whereabouts on Clinton Street? A. By Bergen Street.

Q. You mean Clinton Avenue? A. Clinton Avenue, yes, sir.

Q. Did you look at this hat in the court room yesterday? A. I did not.

Q. Or the day before? A. No, sir.

Q. Did you look at the label in it? A. No, sir.

Q. When did you look at that sweat band last? A. Just a little while ago.

Q. And the sweat band has the name Clinton Avenue on, hasn't it? A. Yes.

Q. And is that what gives you your recollection of the fact that you bought it on Clinton Avenue? A. No, sir.

Q. Who is the man you bought it from? A. I do not know his name.

Q. Got any record of it when you bought it? A. I have not.

Q. What makes you say that you bought it after Christmas? A. Because I was depending upon going to Connecticut.

Q. What is that? A. I was going to go to Connecticut and I did not want to wear the derby.

Q. What makes you say that you bought it after Christmas? A. That is when I did buy it.

Q. What day of the week did you buy it? A. I bought it on a Monday.

Q. What Monday? A. First Monday in January.

Q. What date was that? A. First of January.

Q. The first of January? A. Yes, sir.

Q. Don't you know as a matter of fact that Gruber's hat store was closed on January 1st, New Year's day? Don't you know that, Compo? A. Yes, sir.

Q. And it is not true, is it, that you bought it on the first of January? A. Well, I bought it the day after New Year's.

Q. That is not true, is it?

Mr. McGlynn: Let the witness finish his answer.

Mr. Fisch: I want a responsive answer.

Mr. McGlynn: I think before the Prosecutor starts to wave his arms and starts to shout, the witness should be permitted to answer.

The Court: He can answer yes or no.

Q. That isn't true, is it? A. No, sir.

Q. What day were you arrested? A. I was arrested on April 8th.

Q. And at the time that you were arrested on April 8th, the police questioned you, didn't they? A. They did.

Q. And they asked you if you were implicated in any hold-ups, didn't they? A. Yes.

Q. And they asked you to tell the truth, didn't they? A. Positively.

Q. And you didn't tell them the truth, did you, when you were first arrested? A. No, sir.

Q. You told them that you were not implicated in any hold-ups, didn't you? A. Yes.

Q. And you told them that you didn't have any gun, didn't you? A. Yes.

Q. And the reason you told them that you didn't have any gun was because they did not find a gun on you when they arrested you, isn't that true? A. Yes, sir.

Q. Now, when did you begin to tell them the truth? A. After they had beaten me so.

Q. So that you say that it took a beating to get the truth out of you? Is that it? Is that it? A. Not necessarily.

Q. Why didn't you tell them the truth when you were arrested? A. I don't know.

Q. You don't know. Now, isn't it a fact that the police did not beat you? A. They did beat me.

Q. And that it wasn't only until after you were in custody for a couple of days and you saw that other people were going to identify you, that you then told the truth? A. No, sir.

Q. Well, now, this statement, Exhibit S-12, that is the truth, isn't it? A. Not all of it.

Q. What is there in there that is not true? A. These jobs that was done before New Year's.

Q. What is that? A. Them jobs that were done before New Year's is not true.

Q. Not true? A. Positively.

Q. Is that what you told the police? A. I told them anything.

Q. Did you tell the police what is in this statement? A. Not all of it.

Q. What is there in the statement that you did not tell the police? A. Where Johnny Lombardi went on a job with us. He never went on a job with me.

Q. And you didn't tell the police that, did you? A. They put that in there.

Q. You didn't tell that to the police? A. I did.

Q. Oh, you did tell that to the police? A. Yes.

Q. But you told them a lie, is that it? A. Yes, but it is not true.

Q. Why did you tell them a lie about Johnny Lombardi? A. I told them anything—

Q. Why did you tell them a lie about Johnny Lombardi?

Mr. McGlynn: I insist that the Prosecutor let the witness answer his questions before he starts these tirades of his.

The Court: I don't think that the question had been answered, had it?

Mr. McGlynn: No, sir; it had not.

The Court: All right. Go ahead.

Mr. McGlynn: About the third time.

By the Court:

Q. The question is, why did you tell them a lie about Johnny Lombardi? A. Because he owed me money, so the police insisted upon me giving them anybody that I knew.

By Mr. Fisch:

Q. Did the police know that he owed you money? A. No, sir.

Q. And you told a lie about Johnny Lombardi because he owed you money, and you wanted to get square with him, is that it? A. Yes, sir.

Q. So that the police did not make you tell that story about Johnny Lombardi, did they? A. They asked me who my friends was.

Q. Will you answer my question, sir, and stop making speeches?

Mr. McGlynn: If your Honor please, I insist that the Prosecutor—

Mr. Fisch: I insist, if your Honor please, that I have a right to an answer to my questions.

Mr. McGlynn: I insist that the Prosecutor has no right to say to a witness that he must answer the questions the way he wants them answered.

The Court: No, he has not, but the witness must answer them responsively.

Mr. McGlynn: That he must object and let your Honor tell the witness.

The Court: All right, go ahead.

Q. (Read by stenographer.) So that the police did not make you tell that story about Johnny Lombardi, did they? Yes or no. A. Yes.

Q. They made you tell that story about Johnny Lombardi because Johnny Lombardi owed you money? A. Not because he owed me money.

Q. Why then, sir, do you say that the police made you tell the story about Johnny Lombardi that was not true? A. They asked me who my friends were and I told them the fellows that I know and they put them down on these jobs.

Q. You told them about Johnny Lombardi? A. Yes, sir.

Q. And you told them he was your friend? A. Yes, sir.

Q. Even though you knew he owed you money? A. Yes, sir.

Q. Didn't you tell them Johnny Lombardi went on a job with you? A. Yes, sir; I told them that.

Q. They didn't make you tell them that, did they? A. They made me tell them statements.

Q. They made you tell the truth, didn't they? A. No, sir.

Q. Did they put in the statement out of their own minds Lombardi's connection with this hold-up? A. After they picked up Lombardi they did.

Q. Did they put in this statement out of their own minds Lombardi's connection with that hold-up? A. No, they didn't.

Q. You told them about it. A. I told them that he was with me.

Q. And after you told them that he was with you on that job, that is when they put it into the statement, wasn't it? A. Yes, sir.

Q. It was true, wasn't it? A. No, it was not true.

Q. It was true, wasn't it, that you met this gang in a dugout on Wilsey Street? A. I did not meet them there.

Q. But you met them there on occasions. A. Yes sir.

Q. That was a meeting place, wasn't it? A. Yes, sir.

Q. And when you were first arrested and the police asked you to take them to the dugout you told them you didn't know where the dugout was, didn't you? A. Yes, sir.

Q. That wasn't true, was it? A. No, it was not.

Q. Why did you tell them that you didn't know where the dugout was when you did know and that it was a hangout and a meeting place for you and your gang? A. I didn't quite get that.

Mr. Fisch: Read the question.

(The stenographer reads the pending question).

Mr. McGlynn: There is no testimony that it was a meeting place and a hangout for the gang.

The Court: Strike out the words "for you and your gang."

Mr. Fisch: I will make it "for you and your friends" then.

Q. Now, why did you tell them that you did not know where the dugout was when you did know, and that it was a hangout and a meeting place for you and your friends? A. Why didn't I tell them?

Q. Yes. A. I did tell them of the place.

Q. Why didn't you tell them of the place in the beginning; or, to put it another way— A. Because I didn't want to be a rat.

Q. What do you mean by that? A. A squealer.

Q. You didn't want to be a squealer, is that it? A. Yes.

Q. You wanted to play the part of a hero, did you? A. No, sir.

Q. You didn't want to tell about the dugout because you didn't want to be a squealer, is that your answer? A. I didn't want to be a squealer; that is my answer.

Q. And you didn't want to tell the police about your own connection with them, did you? A. I did tell the police about my own connection.

Q. You didn't tell the police in the beginning about your own connection, did you? A. No, sir.

Q. And was it because you didn't want to be a squealer that you didn't tell them in the beginning about these stick-ups? A. No, sir.

Q. Why was it? A. Because I didn't want to leave my wife and children.

Q. This woman isn't your wife, is she? A. She is my lawful wife.

Q. Your what? A. Lawful wife.

Q. You are not married to her, are you? A. No, sir.

Q. And she is a married woman, isn't she? A. Yes, sir.

Q. And she has a husband living up in Rome, New York, hasn't she? A. I don't know whether he is living or not.

Q. Don't you know that she has her husband living up in Rome, New York, and he is now serving time in jail in Rome, New York? A. I don't know.

Q. What is her name? A. Ruth.

Q. Ruth what? A. Ruth Austin.

Q. So that she isn't your lawful wife, is she? A. I take her as my lawful wife.

Q. You knew when you started to live with her that she was a married woman, didn't you? A. I did.

Q. And that she had a husband living at that time, didn't you? A. Yes, sir.

Q. And you told Sophie that you were not married to her, didn't you? A. No, sir.

Q. Didn't you tell Sophie that you were not married to Ruth? A. No, sir.

Q. Didn't you tell Sophie that you were only living with her; that she had a husband living up in Rome, New York? A. No, sir.

Q. Didn't you tell Sophie about the relationship between you and this woman Ruth? A. No, sir.

Q. You loved Sophie, didn't you? A. I cared for her.

Q. You cared for her a lot, didn't you? A. No, sir.

Q. You cared for her enough to go out with her on automobile rides, didn't you? A. I don't quite get the question.

Q. You cared for her enough to go out on automobile rides with her, didn't you? A. That isn't a sign I have to love her.

Mr. Fisch: I ask that that be stricken out.

The Court: Strike it out.

Mr. Basile: That is a responsive answer to the question.

The Court: It is very hard to tell what is responsive to these love questions. I will strike it out.

Q. You cared for her enough to go out with her on automobile rides, didn't you? A. I did.

Q. And you cared for her enough to give her Christmas presents, didn't you? A. Yes.

Q. And you packed the Christmas presents up in a nice Christmas package, didn't you? A. I did not.

Q. Who did? A. The storekeeper.

Q. You directed him to pack it up in a Christmas package, didn't you? A. Yes, sir.

Q. With red paper? A. Yes, sir.

Q. And tinsel? A. Yes, sir.

Q. And a card in it? A. Yes, sir.

Q. And you wrote the card, didn't you? A. Yes.

Q. And you gave her your love and Christmas greetings, didn't you? A. I don't remember.

Q. You don't remember? Didn't you write a card "With love and Christmas greetings"? A. I don't remember what was on the card.

Q. What is your recollection as to what is on the card? A. I don't know.

Q. You have no recollection as to what was on that card? A. No, sir.

Q. Give us your best recollection of what was on it.

Mr. McGlynn: He said he had none.

Mr. Fisch: I am trying to find out whether he has or not.

A. I don't know what was on it.

Q. Were there Christmas greetings on it? A. I don't know what was on it.

Q. You wrote a card, didn't you? A. I believe I did.

Q. And you don't know what was on it? A. I don't know.

Q. Where did you write the card? A. In the store.

Q. What store? A. Greenfield's auction sale room.

Q. Where? A. On West Market Street.

Q. When did you buy the Christmas present? A. The 24th of December.

Q. What time of the day? A. About two o'clock.

Q. How many presents did you give her? A. Two.

Q. How much did you pay for them? A. $3.

Q. For both of them? A. Yes, sir.

Q. Or $3 a piece? A. $3 for the both.

Q. Did she give you a Christmas present? A. She did.

Q. And you cared enough for her to take a Christmas present from her, didn't you? A. Why shouldn't I take one?

Q. Answer my question. You cared enough for her to take a Christmas present from her, didn't you? A. Not exactly.

Q. Not exactly, eh? But you took it, didn't you? A. I did.

Q. And you cared enough for her to take her down to Philadelphia to see her sister in the hospital, didn't you? A. I did not take her.

Q. You went with her, didn't you? A. I went with her.

Q. And you carried a bag for her into the hospital, didn't you? A. I did.

Q. And you cared enough for her to take her out to Shenondoah, Pennsylvania, didn't you? A. No, sir.

Q. Didn't you take her at that time? A. Yes.

Q. And you wrote her a letter while she was out there, didn't you? A. I did.

Q. And you told her that you could not come to see her because you were sick, didn't you? A. I did.

Q. And you told her that your sister poisoned you, didn't you? A. I did not.

Q. Didn't you tell her that there was some poison in your food? A. No, sir.

Q. And that you thought it was your sister poisoned you? A. No, sir.

Q. Did you tell her you were sick? A. Yes.

Q. Did you tell her what from? A. No.

Q. Wasn't it in response to the letter that you wrote to her that you received or that was sent to your home the letter which has been marked in evidence in this case referred to as the 20 page letter? A. That I don't know.

Q. You knew about this 20 page letter, didn't you? A. I did.

Q. You knew that this woman you choose to call your wife had intercepted it, didn't you? A. What do you mean by intercepted it?

Q. Had you got the letter before you got it. A. Yes, sir.

Q. When did you find out about that? A. When I got home.

Q. And that made trouble at home, didn't it? A. No, sir.

Q. It didn't make any trouble? A. No, sir.

Q. You don't mean to say that this woman whom you choose to call your wife knew that you were carrying on a correspondence with Sophie. A. She did not know that.

Q. She didn't know that. And you were going to Sophie surreptitiously, weren't you?

Mr. McGlynn: Maybe he doesn't know the word.

Mr. Fisch: Well, if he doesn't know what it means he can change it.

A. I don't know what it means.

Q. You were going with Sophie on the side, weren't you? A. I was.

Q. You cared enough for her for that, didn't you? A. Not that.

Q. What? A. Not exactly; no, sir.

Q. Why were you going with her on the side if you didn't care for her, care enough for her not exactly? A. Because she kept giving me money.

Q. And you kept taking her money, didn't you? A. I did.

Q. Why did you keep taking this Polish servant girl's money? A. Because she begged me to take her money.

Q. She begged you. Did she beg you real hard? A. She did.

Q. How much money did she give you? A. She gave me altogether about $85.

Q. Over what period of time was she giving you this money? A. Since last June.

Q. And you knew that she was working as a servant girl? A. I did.

Q. You knew how much money she was getting, didn't you? A. I did not.

Q. And you just took the money to accommodate

her and please her because she begged you to take it? A. No, sir.

Q. Why did you take it? A. Because she told me to buy a car and to buy guns and go out and hold ups.

Q. Oh, she told you to go out and hold up, did she? A. Positively.

Q. When did she tell you that? A. When did she tell me that?

Q. Yes. A. She told me that in last September.

Q. Last September? A. Yes.

Q. And that was when she gave you money to buy guns, was it? A. Yes.

Q. And that was when she gave you the money to buy an automobile, wasn't it? A. No, sir.

Q. When did she give you the money to buy an automobile? A. In January.

Q. And you bought the automobile, didn't you? A. I did.

Q. Did you buy the gun in September? A. No, sir.

Q. Did you buy it in October? A. No, sir.

Q. Did you buy it in November? A. Pertaining to what year?

Q. Did you buy it in November, 1930? A. No, sir.

Q. Did you buy it in December? A. No, sir.

Q. Did you buy it in January? A. No, sir.

Q. Did you buy it in February? A. No, sir.

Q. In spite of the fact that you say that she kept giving you this money to go out and buy guns, is that right? A. Not only guns, but automobile.

Q. Yes, but you bought the automobile, didn't you? A. Yes.

Q. Didn't she ever complain to you about your not buying guns for this money which you say she

gave you for that purpose? A. No, sir.

Q. Never complained to you about that? A. No, sir.

Q. But just kept on giving you money on top of it all the time? A. She asked me what I was doing with the money.

Q. Did you tell her? A. Yes.

Q. What did you tell her? A. I told her that I had paid a deposit on this car.

Q. How much did you pay for the car? A. Altogether the car has cost me $55.

Q. Did you tell her what you did with the balance of the money? A. No, sir.

Q. What? A. No, sir.

Q. Did she ask you? A. No, sir.

Q. Did she ever ask you why it was you didn't go out and buy a gun? A. No, sir.

Q. Now, you knew where she was living up there in East Orange with the Garfinkels, didn't you? A. I did.

Q. And you went up there and visited her, didn't you? A. I did.

Q. And you remember her going out to the kitchen on Christmas day and bringing in a newspaper? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. Did you see the Star Eagle? A. No, sir.

Q. Did you see a story in a paper about a man being shot and killed on Mulberry Street? A. No, sir.

Q. And you never saw that, did you? A. No, sir.

Q. When was the first time that you say you ever heard of this shooting and killing on Mulberry and Beach Streets A. At Police Headquarters.

Q. Never heard of ot it until then? A. No, sir.

Q. And who was the first one you heard it from? A. From Clearence Stern.

Q. Where? A. At Police Headquarters.

Q. Whereabouts in police headquarters? A. In the cells up there.

Q. And was that before you made the statement which has been marked in evidence in this case, Exhibit S-8? A. That was before I made that statement.

Q. Don't you know as a matter of fact that Clarence Stern wasn't in police headquarters and had not surrendered himself to the police up to the date when you made the statement? A. When I made that statement there was no date upon it.

Q. I am not talking about the date on the statement. I am talking about up to the date when you made the statement. Don't you know that? A. What was that again?

Q. (Read by stenographer: "Don't you know as a matter of fact that Clarence Stern wasn't in police headquarters and had not surrendered himself to the police up to the date when you made the statement?") A. He was in headquarters before I made that statement.

Q. Don't you know that Clarence Stern wasn't in police headquarters until several days after you made the statement, Exhibit S-8? A. No, sir.

Q. You say that is not true? A. That is not true.

Q. Now, do you remember Tenore being in police headquarters? A. I do.

Q. Who came into police headquarters first, Tenore or Stern? A. I believe Tenore did.

Q. How many days before Stern? A. I do not remember.

Q. You don't remember? A. No, sir.

Q. You don't know whether it was a day or five days? A. I don't remember.

Q. How many days do you say Stern was in Police Headquarters before you made this statement, Exhibit S-8? A. He was there two days.

Q. Two days before you made the statement, is that right? A. Yes, sir.

Q. Now, I understand also, I now understand you to say that when you made and signed this statement, it didn't have any date on it? A. It did not.

Q. Sure about that? A. When I signed that statement there was no date upon it.

Q. What makes you so sure about that? A. Because I watched him when he drawed up the statement.

Q. You watched who? A. The sergeant, the captain that drawed up the statement.

Q. Who was the captain that drawed up the statement? A. I don't know his name.

Q. Do you see him here? A. No, sir; I don't.

Mr. Fisch: Is Detective Capodanno in Court?

(A man stands up in the court room).

Q. Is this the man that drew up the statement? A. That is the man that wrote up the statement.

Q. You say that when that man wrote up the statement, he did not put any date on it? A. There was no date on the top of those pages.

Q. On the top of any of the pages? A. No, sir.

Q. None at all? A. None at all.

Q. And you noticed that particularly? A. I did. I watched him when he wrote out the top of those pages and when he wrote that whole statement.

Q. Did you watch to see whether or not he put in the hour of the day when the statement was taken? A. The hour of the day wasn't put on there when he drew up the statement.

Q. That wasn't put on there, was it? A. No, sir.

Q. Did he put your name on it? A. He put my name in it.

Q. Did he put your name on it? A. Just what do you mean?

Q. At the head of it? A. He did.

Q. Did he put your name at the head of each sheet? A. I believe he did.

Q. Sure about that? A. I am not positive.

Q. But that is your recollection? A. It is.

Q. Is your recollection as good on that subject as it is with regard to the date, the fact that there was no date on it? A. Well, I don't know just what you mean by that.

Q. Well, you say that you believe that Detective Capodanno put your name at the head of each of these pages. Is that right? A. I believe he did.

Q. And you say also that there was no date put on the statement. A. Yes, sir.

Q. Now, are you sure that there was no date put on the statement? A. Not at the date that it was drawed up.

Q. Are you sure that your name was put at the head of each sheet at the time it was drawn up? A. Well, that I wouldn't be positive on.

Q. You wouldn't be positive on that, would you? A. No, sir.

Q. And you know now as a matter of fact, don't you, that your name isn't at the head of each sheet, don't you?

Mr. Basile: I object, if your Honor please,

the statement speaks for itself. It is in evidence.

The Court: I will permit it.

Q. Answer the question. A. Yes, sir.

Q. How many days after you signed the statement, Exhibit S-12, was it that you signed the statement, Exhibit S-8? A. I don't remember how many days it was.

Q. You don't know whether it was ten days or not? A. No, I don't.

Q. Now, don't you know as a matter of fact it was only a question of a couple of days between the time that you signed the statement, Exhibit S-12 and the time that you signed the statement, Exhibit S-8? A. It was more than two days.

Q. Well, now, this statement, Exhibit S-12, did that have a date on that when you signed it?

Mr. McGlynn: If your Honor please, I think the witness should be shown the statement; referring to by exhibit number does not seem to be enough.

Mr. Fisch: Well, the first statement that you say you signed.

Mr. McGlynn: I still think, if your Honor please, that the witness should be permitted to—

The Court: Well, if the witness does not know, why, that is one thing, but at this juncture, there does not seem to be any reason why the question should not be asked.

Mr. McGlynn: Well, if he knows, I am satisfied. I have not heard him say so yet.

By the Court:

Q. Can you answer the question? A. No, sir; I can't.

By Mr. Fisch:

Q. Why not? A. I don't remember.

Q. Because your counsel has objected? Is that why you can't? A. No, sir.

Mr. McGlynn: I object, if your Honor please. That is a very unfair, absolutely unfair—

Mr. Fisch: I have a right to ask that question.

The Court: Sustain the objection.

Q. You don't remember now whether it had a date on it or not, is that it? A. I don't remember; no, sir.

Q. Can you tell us then what makes you remember with particularity that there was no date on the statement, Exhibit S-8, when you signed it? A. Because I sat right front.

Q. What? A. I sat right front of this captain and I read that statement when I signed it.

Q. You read that when you signed it, did you? A. Well, before I signed it.

Q. And you knew what was in it, didn't you? A. I did.

Q. Didn't you read the statement, Exhibit S-12 before you signed it? A. I did not.

Q. You did not read that? A. No, sir.

Q. When was the first time you read that? A. When was the first time?

Q. Yes. A. I did not read it.

Q. When was the first time you read it? A. I did not read it.

Q. Never read it? A. No, sir. It was read to me.

Q. Oh, it was read to you? A. Yes, sir.

Q. And then you signed it? A. I signed it.

Q. You signed two sheets, did you? A. I did.

Q. And you told the police about Clarence Stern, didn't you? A. I did.

Q. And you told the police about Lombardi's brother-in-law and about Lombardi, didn't you? A. I did.

Q. And you told them about these stick-ups that you were in? A. Yes.

Q. And about the stick-ups that you were going to go on but that failed? A. The stick-ups. There was one.

Q. Which one was that? The New Providence job? A. Yes.

Q. You were going to stick up a building and loan, weren't you? A. Yes, sir.

Q. And on these jobs you went unarmed, did you? A. I did.

Q. You weren't afraid of being shot, were you? A. I don't just quite get your question.

Q. You weren't afraid of being shot when you went on a stick-up, were you? A. I was compelled to go on them stick-ups.

Q. You weren't afraid of being shot when you went on a stick-up, were you? A. I was.

Q. And still you went unarmed? A. Yes, sir.

Q. Now, you say you were compelled to go on a stick-up? A. Yes.

Q. Who compelled you to go on a stick-up? A. This bunch.

Q. Which bunch? A. This gang from the dug-out on Wilsey Street.

Q. Which gang? A. Nunzi, Johnny Furfaro and Blackie.

Q. Is that the same gang that made you—compelled you—to take Sophie's money? A. It is not.

Q. They didn't have anything to do with that, did they? A. No, sir.

Q. Did you tell your so-called wife that you were going on these stick-ups? A. No, sir.

Q. Why not? A. I don't know.

Q. Did you tell Sophie? A. No, sir.

Q. Didn't you tell Sophie that you had been on stick-ups? A. I told her of one.

Q. Yes. And when did you tell her that? A. The night the Stone Street place was stuck up.

Q. And you told her about that, didn't you? A. She was with us.

Q. You told her about that, didn't you? A. She was with us.

Q. Where was she with you?

Mr. Basile: If your Honor please, I think it is highly improper and very unethical for the Prosecutor to try to rush the witness off his feet and browbeat him. This man is under a charge of murder and is fighting for his life, and we will not permit him to be railroaded by the Prosecutor's examination.

Mr. Fisch: We are not trying to railroad him. We want to see justice done. I state that I have a right to try my case as I see fit within the rules of evidence and decorum.

The Court: No one will be railroaded in this court.

A. Into the automobile.

Q. Who else was in the automobile? A. Clarence Stern.

Q. Who else? A. Lillian Rys.

Q. Where? A. In the front of the automobile.

Q. Where was the automobile? A. It was on Stone Street.

Q. Where was it? A. On the night the Stone Street store was stuck up.

Q. Who was on that stick-up with you? A. Clarence Stern, Johnny Furfaro, one fellow—all I know is by the name of Joe—Blackie, the two girls, and there was two other fellows.

Q. Did you tell the police that these girls were with you in an automobile while you were sticking up the place? A. No, I didn't.

Q. Why not? A. I don't know.

Q. Isn't it a fact that you didn't tell the police that these girls were out in an automobile with you because it was not true? A. They were out with us.

Q. You thought enough of Sophie to tell her about that stick-up, didn't you? A. Because she was with us.

Q. You thought enough of her to take her with you on the stick-up, didn't you? A. Not exactly, no.

Q. But you took her. A. I took her, yes.

Q. You didn't take your so-called wife, did you? A. No, sir.

Q. You didn't take her into your confidence. A. What do you mean by confidence?

Q. You didn't take your so-called wife into your confidence and tell her you were going out on a stick-up, did you? A. No, sir.

Q. But you took Sophie into your confidence and you took her with you, according to your testimony, on this stick-up, didn't you? A. She went because they wanted to go.

Q. Answer my question.

Mr. McGlynn: He has answered it.

Q. How many other stick-ups did you tell Sophie about? A. That is all.

Q. When did you first discuss with her that stick-up? A. The same day it was done.

Q. When was that? A. I don't remember.

Q. What month? A. I believe it was in February; I'm not sure.

Q. The early part of February? A. I don't remember.

Q. Did you tell her about the Berkeley Heights job? A. No, sir.

Q. Did you have a gun on that job? A. No, sir.

Q. Who had the gun? A. On which job?

Q. On the job that you say you took Sophie with you on. A. Well, a fellow by the name of Joe.

Q. Who else? A. Johnny Furfaro and Blackie.

Q. They all had guns, eh? A. Yes, sir.

Q. Did Clarence Stern have a gun? A. I don't remember if he did or not.

Q. He was on the job with you, wasn't he? A. I don't remember. He drove the car.

Q. Did he go into the place? A. No, sir.

Q. Did you? A. I did.

Q. And the other men that went into the place had guns and you didn't have any weapon at all? A. I did not have any weapon.

Q. As I understand your testimony, this statement, Exhibit S-8, is a pack of lies, is that right? A. That is nothing but lies.

Q. And there isn't a bit of truth in it, is that right? A. I wouldn't say as there isn't some truth in it. I wouldn't say it is entirely all lies.

Q. Didn't you just say that it is nothing but lies? A. I did.

Q. Is that what you mean? A. I didn't say that it is entirely all lies.

Q. Didn't you say in response to your counsel's

question this morning that there was no truth in this statement?

Mr. McGlynn: Which one are you referring to?

Mr. Fisch: Exhibit S-8.

Mr. McGlynn: That doesn't mean any thing. May I have the date of it? I object to the question unless the date is given.

Q. This statement, Exhibit S-8, the one you say was undated when it was signed by you, which is the one dated April 15, 1931, at 8:15 P. M., taken at police headquarters, and written by Detective Capodanno and signed by you, didn't you in response to a question by your counsel this morning say there was no truth in it? A. I didn't say there was no truth in it.

Q. Do you say now there is some truth in it? A. I wouldn't be positive about that.

Q. Let us get down to positiveness, sir. Is there any truth in it or not? A. I don't know.

Q. Now, let us see. You have testified, have you not? A. Yes, sir.

Q. And you have testified to the fact that everything in that statement was put in there after you told this story to Detective Capodanno, is that right? A. I told the story just as the detectives told me to tell in front of the captain.

Q. You say also, do you not, that you told Detective Capodanno to put in that statement just what Sergeant Luke Conlon and Detective Fallon told you to tell Capodanno, is that right? A. I didn't get all of that.

Q. You say also, do you not, that you told Detective Capodanno to put in that statement just what Sergeant Luke Conlon and Detective Fallon

told you to tell Capadanno, is that right? A. Yes.

Q. Did you tell Capodanno anything other than what Conlon and Fallon told you to tell them? A. I don't remember.

Q. You remember pretty much everything else, don't you? You remember all the other details, don't you? A. Not all of them, no, sir.

Q. You don't remember all of them? A. No, sir.

Q. You remembered this morning, didn't you, about signing one statement, and signing another statement, and saying that Exhibit S-12 was the first statement you signed? A. Yes, sir.

Q. And you remember telling all the details to this Court and jury about Detective Seltzer beating you, and the other detectives beating you, and punching you in the jaw and kicking you in the shins and beating you with rubber hose? A. Yes, because they didn't give me a doctor.

Q. You remember those details? A. Yes, because I still suffer from them.

Q. And you remember just when those beatings took place, according to your testimony. A. I remember when they took place, yes.

Q. Can't you remember whether you told Capodanno anything other than what you say Conlon and Fallon told you to tell him? A. About Christmas Day going up there and seeing the Krok girl and giving her the presents, that is so.

Q. That is true, is it? A. It is.

Q. Did Conlon and Fallon tell you to tell that to Capodanno? A. They did not.

Q. Why did you tell it to him, then? A. Because it is true.

Q. And isn't that why you told Capodanno the rest of the things that are in this statement, because they are true? A. No, sir.

Q. What else, if anything, did you tell Capodanno that Conlon and Fallon did not tell you to tell them? A. I don't remember.

Q. What makes you remember about the Christmas Day incident? A. What makes me remember about the Christmas Day incident?

Q. Yes. A. Because I went there at twelve o'clock and returned home at three.

Q. What makes you remember about having told Capodanno about the Christmas Day incident, when Fallon and Luke Conlon had said nothing to you about it? A. They asked me where I went that day.

Q. Who asked you? A. Sergeant Luke Conlon.

Q. Conlon asked you that, did he? A. Yes, sir.

Q. I thought you told us that Conlon told you what to say. A. He didn't tell me that—to say that.

Q. So that it is a fact, isn't it, that Conlon asked you questions and you answered his questions, isn't it? A. Not all of them.

Q. Didn't you answer his questions as to where you went on Christmas Day? A. I did.

Q. And you told Conlon you had been up to Sophie's house. A. Yes, sir.

Q. And you told Conlon, didn't you, that you had given Sophie these presents? A. I did.

Q. He didn't tell you about it, did he? A. No, sir.

Q. Do you want to look at the statement and see whether you want to tell us that there is anything else in there that is true, that Conlon and Fallon didn't tell you to say? A. I wish to have the statement read because I cannot read it good enough to read it fast enough.

Q. Very well. Did Conlon and Fallon tell you

to tell Capodanno that it was about the 15th of January, 1930, that you were introduced to a fellow by the name of Johnny on Wilsey Street? A. Yes, sir.

Q. They told you that, did they? A. Yes, sir.

Q. And didn't they tell you to tell Capodanno what Johnny's last name was? A. I didn't know Johnny's last name.

Q. Oh, you didn't know it. I understand. You didn't know it, but didn't Conlon and Fallon tell you what last name to give? A. They told me his last name; yes, sir.

Q. Well, why then did you tell Capodanno that you met a fellow by the name of Johnny? A. I didn't know Johnny's last name.

Q. Didn't you tell me just a minute ago that Fallon and Conlon told you his last name? A. They did afterward, yes.

Q. What? A. After they did.

Q. What was his last name? A. Furfaro.

Q. You didn't know his last name? A. I did not.

Q. What? A. I did not.

Q. Did they tell you to tell Capodanno that you saw him a number of times after that? A. They did.

Q. Well, now, as a matter of fact, you did see Johnny a number of times, didn't you? A. I didn't know him then.

Q. What? A. I didn't know Johnny until January.

Q. Didn't you tell Fallon and Conlon that you were introduced to Johnny by John Lombardi? A. No, sir.

Q. Well, weren't you introduced to him by John Lombardi? A. Not to Johnny Furfaro, no.

Q. Whom were you introduced to by John Lombardi? A. To Nunzio.

Q. What? A. To Nunzio.

Q. Did you tell that to Fallon and Conlon? A. I told them that I had been introduced to Nunzio.

Q. Didn't you tell them that at times he would come over to the garage where you worked? A. That Nunzio did, yes, sir.

Q. And didn't you tell them that you worked at the Bennett Service Garage at 151 Avon Avenue? A. I did.

Q. That was true, wasn't it? A. Yes.

Q. And didn't you tell them that at times you saw him about Blackie's place at No. 37 Wilsey Street. A. No, sir.

Q. What? A. No, sir.

Q. Now, I am not talking about—I am talking now about Johnny, not Nunzio. I am talking ing about Johnny. A. What was the question?

Q. Didn't you tell Fallon—isn't it true that Johnny used to come over to your garage at the Bennett Service Garage, 151 Avon Avenue? A. He did not.

Q. And didn't you see him at Blackie's place at No. 37 Wilsie Street? A. I did.

Q. Didn't you tell that to Conlon and Fallon? A. I did.

Q. They didn't tell you that, you told them that, didn't you? A. I did.

Q. Didn't you tell them that you met Johnny at Blackie's house and that Johnny asked you to go on a job with him? A. I didn't tell them that.

Q. You didn't tell them that? A. No, sir.

Q. Didn't you tell them—isn't it a fact that

Johnny asked you to go on a job with him. A. He did.

Q. And didn't he tell you that he had a place spotted where he could get four or five hundred dollars, where you could get four or five hundred dollars apiece? A. He did not.

Q. What job was it that he asked you to go with him on? A. On the Stone Street job.

Q. Didn't you tell him that you didn't want to go? A. I told him that I didn't want to go on the Stone Street job.

Q. Didn't he say to you that it was easy money? A. No, sir.

Q. And didn't he say to you that it would not be much of a job? A. No, sir.

Q. And didn't you go on the job because you needed the money? A. What job are you preferring to?

Q. The job that you went on with Johnny. A. I don't remember.

Q. What is the matter with your memory, sir? What is the matter with your memory? A. Nothing.

Q. What? A. Nothing.

Q. Well, why is it that you can't remember that? Do you think there is any reason you can't remember it? Didn't you go on a job because you needed the money? A. I went on jobs because I needed the money, yes.

Q. That is the question I asked you a minute ago, and wasn't it the fact that you needed the money because your wife and children didn't have any clothes or anything to eat? A. What was that question?

Q. (Read by stenographer). And wasn't it the fact that you needed the money because your wife

and children didn't have any clothes or anything to eat? A. No, sir.

Q. Well, that was why you needed the money, wasn't it? A. No, sir.

Q. What did you need the money for? A. Because I owe bills.

Q. Oh, you needed the money to pay bills, is that it? A. Positively.

Q. What? A. Yes, sir.

Q. Whom did you owe bills to? A. I owe for this suit I have on.

Q. Whom do you owe for that suit? A. People's Credit Clothing Company.

Q. And that was what you needed the money for, is that right? A. Yes, sir.

Q. Not to feed your children? A. My children had eats.

Q. You didn't need the money to feed your children, did you? A. I did, yes.

Q. You didn't need the money to clothe your children, did you? A. I did.

Q. Didn't you tell the police that Johnny Furfaro, that Johnny went with you on the job down to Mulberry Street? A. I didn't tell them that.

Q. What? A. I didn't tell them that.

Q. You didn't put him in it at all? A. They told me to put him in it.

Q. They told you to put him in it? A. Yes.

Q. Now, who is "they"? A. Sergeant Luke Conlon and the other officer that was with him.

Q. Was Mr. Furfaro in Newark police headquarters at that time, do you know? A. At what time was that?

Q. At the time when you say they told you to put him in. A. He had been picked up in Staten Island.

Q. Was he in the Newark police headquarters at that time? A. He was not.

Q. Don't you know as a matter of fact that Furfaro had not been arrested and was not arrested until after you made the statement, Exhibit S-8, and implicated him in the killing of Lynch? A. He had been arrested when I had made that statement.

Q. You say he had been? A. He had been.

Q. How do you know? A. Because they called up from Staten Island.

Q. Who called up? A. The Staten Island Police.

Q. Did they speak to you over the telephone? A. They did not. They spoke to Captain Sebold.

Q. How do you know what was said over the telephone? A. I sat there and heard it.

Q. You heard it? A. Yes.

Q. Did you hear what the police from Staten Island said? A. I didn't know what the police from Staten Island said, but I heard what Captain Sebold said.

Q. What did Captain Sebold say? A. He said, "All right," he says, "As long as you have got him," he says, "We will get papers and get him over here."

Q. That was, was it not, on the same day when you made this statement? A. That was before I made that statement.

Q. How long before? A. Well, I don't remember how long before it was.

Q. Isn't it a fact that it was on the same day when you made the statement and after you had implicated Furfaro that he was arrested in Staten Island and brought back to Newark? A. What was that question again?

Q. (Read by stenographer). Isn't it a fact that it was on the same day when you made the statement and after you had implicated Furfaro that he was arrested in Staten Island and brought back to Newark? A. He wasn't brought back to Newark on that day; no, sir.

Q. But he was arrested on that day, wasn't he? A. That I don't know.

Q. Well, you have told us, haven't you, that you did know, that you heard this telephone conversation on that day? A. That he had been arrested in Staten Island.

Q. Yes, and that was the same day on which you made the statement, wasn't it? A. No, sir; that was before I made the statement.

Q. How long before? A. I don't remember. It was a couple of days or so.

Q. A couple of days? A. Yes, sir.

Q. Sure about that, that Captain Sebold was entertaining you in his office, was he? A. He was speaking to me in his office, yes.

Q. About this case? A. Yes.

Q. About this shooting? A. Yes.

Q. About this killing? A. Yes.

Q. And isn't it a fact that the police did not speak to you about this killing until the 15th of April, the day when you made this statement? A. Yes, they did.

Q. Why, only two days before you had made a statement about your stick-ups, hadn't you? A. I don't know as it was two days or not.

Q. Well, they had not spoken to you about this killing when they took this statement from you, Exhibit S-12, had they? A. They did not.

Q. So that it was after Exhibit S-12 was taken from you that they first spoke to you about the

killing of Lynch, isn't that so? A. Yes, sir.

Q. And how many days after? A. I don't remember how many days it was, but it was after Clarence Stern and Micky Tenore was arrested.

Q. It was what? A. After Clarence Stern and Micky Tenore was arrested.

Q. Well, was it more than two days after? A. Yes, it was.

Q. What? A. Yes, it was.

Q. How many days? A. After I made this first statement that you have there, it was somewhere around ten days.

Q. Ten days? A. Yes, sir.

Q. That is your best recollection of it, isn't it? A. Yes, sir.

Q. Now, what is your brother-in-law's name? A. Philip DeSantes.

Q. Did you ever see him over in the Bennett Service Garage? A. I have seen him there.

Q. Did you see him there day before Christmas? A. No, sir.

Q. Did you speak to your brother-in-law over there the day before Christmas? A. No, sir.

Q. Didn't you tell the police that you saw your brother-in-law over in the Bennett Service Garage and that you asked him if he had seen the paper? A. Did I tell the police that?

Q. Yes. A. I did not.

Q. And didn't you tell the police that he said that he would get it in a little while? A. No, sir.

Q. And didn't you tell the police that he went out and bought a Newark Evening News? A. No, sir.

Q. And that after he read the funny page of the paper, he turned it over to you? A. No, sir.

Q. Did Luke Conlon tell you to tell that to the

police? A. He told me to say that to the police.

Q. Now, how long did it take Conlon and Fallon to tell you what to tell Capodanno. A. How long did it take them?

Q. Yes. Don't repeat my questions, please. You are just wasting time. A. Well, they drilled me for two hours and a half.

Q. How long did it take him to tell you what to tell Capodanno? A. I don't know just how long it took.

Q. About how long? A. That I don't know.

Q. Well, was it ten minutes? A. No, it was quite a while.

Q. Well, an hour? A. Well, I weren't—I wouldn't say positive of the time.

Q. Well, was it more than a half hour? A. It was.

Q. Was it an hour? A. I don't know.

Q. Well, was it between a half hour and an hour? A. Well, that I couldn't say.

Q. Well, was it more than an hour? A. I don't know.

Q. What is there about this thing that you don't know? A. Because I didn't—

Q. You say that it was more than a half hour, is that right? A. Yes.

Q. Now, was it more than an hour? A. Well, I don't know.

Q. Well, was it more than three quarters of an hour? A. I don't know.

Q. Was it more than thirty-five minutes? A. I don't know.

Q. Was it between a half hour and three-quarters of an hour? A. I don't quite get that question.

Q. Was it between a half hour and three-quarters of an hour? A. I don't know.

Q. Now, isn't there anything that can refresh your recollection as to how long it took Conlon and Fallon to tell you this story? A. Well, I had no watch.

Q. No, you didn't have any watch, but you know it was more than a half hour, don't you? A. It was more than a half hour.

Q. How much more than a half hour was it? A. That I don't know.

Q. You don't know whether it was three-quarters of an hour, an hour, or two hours, do you? A. No, sir.

Q. Was it nearer to a half hour than it was two hours? A. It was a good long time.

Q. Well, now, how long? A. Well, I don't know how long it was.

Q. Well, now, you say it was a good long time. What do you mean by a good long time? A. Well, they kept me there talking to me.

Q. How long? A. I don't know how long.

Q. What do you mean by a good long time? A. Well, I don't know.

Q. You don't know what you mean by a good long time? Is that what you want us to understand? A. I don't know how long they had me there.

Q. What do you mean by a good long time? A. Well, I mean that they kept me there quite a while.

Q. How long? A. I don't know how long.

Q. Surely more than a half hour? A. It must have been more than a half hour.

Q. Must it have been more than an hour? A. I can't say on the time.

Q. Did you take any notes of what they were

telling you? A. Did I take any notes of what they were telling me?

Q. Yes. A. No, I didn't.

Q. And this story they were telling you was all brand new, wasn't it? A. It was.

Q. You had not heard it before, had you? A. I had not.

Q. And you took no notes? A. No, sir.

Q. Then you went right down to Capodanno, didn't you? A. I went down there after they had beaten me up and told me that story.

Q. Then after they had told you this story of what you had to tell, you were beaten? A. I was beated before that.

Q. Which was it? Before or after? A. Before they told me the story they beat me.

Q. And then after they told you this story did they beat you again? A. Yes.

Q. So that there was a beating before and a beating after the story? A. All through the story, to make me say the words.

Q. So that Conlon and Fallon beat you before they told you what to say? A. They told me some words to say, and they said to me, "Are you going to say them?" I said, "No, because they are not true."

Q. I asked you: Conlon and Fallon beat you before they told you what to say? A. Yes, sir.

Q. And they beat you while they were telling you what to say? A. Yes, sir.

Q. And they beat you after they told you what to say? A. Yes, sir.

Q. How long after they had finished telling you what to say was it that you went down to Capodanno and told him what you say Conlon and Fallon told you? A. I didn't tell him everything down

there because they helped with the statement too.

Q. How long after they had finished telling you what to say was it that you went down to Capodanno and told him what you say Conlon and Fallon told you? A. I don't know how long it was.

Q. Was it two hours after? A. No, it wasn't very long.

Q. An hour afterward? A. I don't know how long a time it was afterward.

Q. Half an hour afterward? A. It is possible.

Q. Can't you give us some idea of how long it was? A. I can't.

Q. Then you went in to Capodanno and you told him the story? A. With them telling the story too.

Q. So they told the story, did they? A. They told the story to me in front of Capodanno and they told me to tell that and they kept helping me to make up the story.

Q. So they helped you to make up the story in Capodanno's presence, did they? A. Yes, sir.

Q. You didn't tell us about that before, did you? A. I did not.

Q. Why not? A. I don't know.

Q. And you didn't tell us about it before because it isn't true, isn't that a fact? A. It is true.

Q. Didn't you tell us on your direct-examination and also on cross-examination that you went to Capodanno and you told him this story alone? A. I didn't tell it to him alone.

Q. Didn't you tell us that on direct-examination? A. Not that I recall.

Q. And didn't you tell it to me on cross-examination? A. Not that I recall, no, sir.

Q. And that took place today, didn't it? Your

testimony here took place only this day. A. What testimony do you mean?

Q. All of your testimony. A. Yes.

Q. And you don't recall, do you? By not recalling you mean you don't know whether you said it or not, don't you? A. No, I don't mean that.

Q. What do you mean? A. I don't remember if I said it or not.

Q. That is what you mean; that you don't remember if you said it. A. Yes.

Q. Yet you want this Court and jury to believe that you know where you were on the night of December 23rd and what articles you purchased? A. And I will prove it to the Court.

Q. Answer my question. You want this Court and jury to believe that you now remember where you were on the night of December 23rd and the articles you purchased, don't you? A. I do.

Q. Do you know the names of the people that you bought these things from? A. I do not.

Q. Had you ever bought anything in those stores before? A. I have in the five and ten cent stores.

Q. Had you bought anything from the same clerks before? A. That I don't remember.

Q. You don't know of any reason why they would particularly remember you, do you? A. No, sir.

Q. And you don't know of any particular reason why you would remember them, would you? A. Why I would remember them?

Q. Yes. A. No.

Q. Do you remember how much you paid for these articles? A. Pretty close to it.

Q. Do you remember whether you paid in bills or in change? A. Some in bills and some in change.

Q. Whom did you buy the smoking set from, from a man or a woman? A. From a woman.

Q. Do you remember what she looks like? A. I don't remember.

Q. Whom did you buy the shirt from, from a man or from a woman? A. From a man.

Q. What did he look like? A. I don't remember.

Q. When was the first time that your attention was directed to the night of December 23rd? A. I don't understand the question.

Q. What is there about it you don't understand? A. What was the question? May I have it again?

Q. When was the first time that your attention was directed to the night of December 23rd? A. I don't know what you mean by that question.

Q. Look here. When was the first time that you began to cast about and try to learn or ascertain where you were on December 23rd? A. I told the police at police headquarters where I was on the night of December 23rd; the night that they beat me up.

Q. Whom did you tell that to? A. To Sergeant Luke Conlon and the detectives that was with him, and also Captain Sebold.

Q. You told them where you were on the night of December 23rd, did you? A. I did.

Q. And you didn't put that into the statement, did you? A. They did not put it into the statement, no.

Q. Did you tell them about the articles that you purchased? A. I did.

Q. Did you tell them about the stockings that you purchased? A. I did.

Q. And about the petticoat? A. I did.

Q. And about the box? A. I did.

Q. And about the socks? A. I did.

Q. And about the smoking stand? A. I did.

Q. And about the shirt? A. I did.

Q. You told them all about those things? A. Yes, sir.

Q. When did you tell them that? A. The night they was drilling me in headquarters.

Q. What night was that? A. The night they told me to tell that story and that statement.

Q. That was the night you signed Exhibit S-8, is that right? A. I told them that night, yes.

Q. So that between the 23rd of December and the 15th of April, 1931, you had no reason at all, did you, to have recalled to your mind where you were on the night of December 23rd? A. I had no reason to recall? Yes, I did.

Q. What reason did you have? A. Because it was the next day that my sister and brother-in-law left for New York State.

Q. I am talking about this fact: that between December 23rd and April 15th, when you say that you told the police where you were on December 23rd, you had no reason to recall that particular night or the events of that night, did you? A. I don't know what you just mean by the question.

Q. What is there you don't understand about the question? Can you tell me what there is about the question that you don't understand? A. Well, when you tell me I have no reason to recall or to tell them where I was that night.

Q. The fact that you bought a shirt on December 23rd, or any other time, was not an important thing in your life, was it? A. It was not.

Q. And the fact that you bought a pair of socks was not an important thing, was it? A. It wasn't an important thing, no.

Q. And the fact that you bought a smoking set, that wasn't an important thing, was it? A. No.

Q. Or the fact that you bought a petticoat or some stockings, those events were not important, were they? A. No.

Q. And the 23rd of December, when you say you bought those, up to the time of April 15, 1931, there was nothing to recall the purchase of these articles to your mind, was there? A. Yes.

Q. What? A. I had the blue shirt on and they asked me where I got the blue shirt and I told them.

Q. That was when you were arrested? A. That was when I was arrested.

Q. That was when you made this statement? A. That was before I made that statement.

Q. But between the 23rd of December and the time you made this statement, or just prior to the time you made the statement, there was nothing with regard to these events or these purchases that would recall them to your mind, was there? A. I don't know what you mean by the question. You are using too big words for me.

Q. I will try to use simpler language for you. Between the date when you bought these articles and the date when you first told the police about them, there wasn't anything that had happened—there wasn't anything about these purchases—that stood out in your mind to ever recall them to your attention between the time that you bought them and the time when you made this statement, was there? A. Well, yes.

Q. What was there? A. Some of them I took to Bridgeport, Connecticut.

Q. When did you take them? A. I took them there in January.

Q. Was there anything between January and the time you made this statement to recall these events to your mind? A. I don't know.

Q. Was there? A. I don't know.

Q. And the fact that you took some of them to Bridgeport in January, there wasn't anything about that that would recall to your mind particularly that you had bought them on December 23rd, was there? A. Yes.

Q. What? A. Because the next day my folks left for Rome and I bought the presents—they expected to go to Connecticut, and instead of going to Connecticut they went to Rome, and I bought those presents so that we could take them there on the 24th.

Q. Can you tell us where you were on the 21st of December? A. If you will tell me what day it is on, I probably can.

Q. Suppose you tell me what day it is on. A. What day of the week it is on, I mean.

Q. Suppose you tell me what day of the week it is on. A. I don't know.

Q. What day of the week was December 23rd? A. I believe it was on a Tuesday.

Q. You have looked up that day since you were arrested, haven't you? A. Have I looked it up?

Q. Yes. You have discussed it with your counsel, haven't you? A. He told me it was on a Tuesday.

Q. Oh, your counsel told you it was on a Tuesday? A. Yes.

Q. And that was when you were preparing this alibi, wasn't it? A. No, sir.

Q. When was it that your counsel told you it was on a Tuesday? A. That I don't remember.

Q. You don't remember that. Where were you

on the 18th of December, 1930? A. I don't know.

Q. Where were you on the 30th of March, 1931? A. I don't remember.

Q. Where were you on the 28th of March, 1931? A. Well, it was around the 28th of March—

Q. I am not talking about around the 28th. I am talking about the 28th. You don't remember that, do you? A. No, I don't.

Q. Where were you on the 4th of April, 1931? A. I was home.

Q. What day of the week was it? A. I don't know what day of the week it was.

Q. What makes you remember that you were home? A. Because I stayed home pretty near every day in April.

Q. Pretty nearly every day in April, and that is why you say you were home on the 4th of April, is that it? A. Yes, sir.

Q. That is the only reason you say that, is that right? Is that correct? A. Not exactly.

Q. What? A. Not exactly.

Q. Not exactly. Well, what is it exactly? Let us have it exactly. A. Well, because I wasn't working. Because I wasn't working, I was home.

Q. But you have no definite recollection of what you did on the 4th of April, have you? A. No.

Q. Now, this moustache that you say you had, that was just one of these little light affairs, wasn't it? A. It wasn't so very light. It could be seen.

Q. Well, you have a light beard, haven't you? A. Why, no, not exactly.

Q. Have you a light beard? A. What do you mean?

Q. Light in color? Blond? A. Blond, yes.

Q. And the moustache that you say you had was

so light that you could hardly notice it, isn't that right? A. No, sir.

Q. Good, heavy growth, wasn't it? A. It wasn't a good heavy growth.

Q. What? A. It wasn't a good heavy growth.

Q. Now, you say you had that moustache when you were arrested? A. I did.

Q. And you say the beatings that you got, you got before you made this statement, is that right? A. Yes, sir.

Q. And you got a poke in the eye, didn't you? A. Yes.

Q. And your eye was swollen? A. Yes.

Q. And for how many days was it swollen? A. Well, I don't know how many days it was swollen.

Q. What? A. I don't know how many days it was swollen. I didn't count the days.

Q. Is this the photograph that was taken of you down at Police Headquarters? A. It is.

Q. And that was taken on the 9th of April, wasn't it? A. I wouldn't swear to what date it was taken on.

Q. Well, do you see a date on it? A. I do.

Q. What is the date on it? A. 9th of April. 4th, 9th and 1931.

Q. Now, looking at that date, does that tell you anything about whether it was taken on that date or not? A. Yes, sir.

Q. Well, was it taken on that day? A. It was.

Q. Do you see any marks or bruises on that photograph? A. No, sir.

Q. Is that a correct representation of the moustache that you had? A. It is.

Mr. Fisch: I ask that that photograph be marked for identification.

(The photograph referred to is marked Exhibit S-13 for identification).

Q. Now, there was another photograph of you taken down at Police Headquarters, wasn't there? A. I believe so.

Q. And isn't this the one that was taken? A. It was.

Q. That was taken on the 18th of April, wasn't it? A. I don't know if it is 18 or 16.

Q. You mean you can't see whether it is an 18 or 16? Is that what you mean? A. Positively.

Q. But it was taken after the 15th, wasn't it? A. I don't remember if it was or not.

Q. But it was taken, wasn't it? A. By the date on there, yes.

Q. Is that a representation of the moustache that you had? A. It is, but still so you could notice it.

Q. So you could notice it, but very slightly so? A. Well, I don't know.

Q. Do you see any signs or any evidence of any marks or bruises on that photograph? A. Well, one eye.

Q. Do you see any? A. Yes.

Q. Where? A. There (indicating).

Q. Where? A. That eye (indicating).

Q. Where? Which eye? A. The one on this side (indicating).

Q. That is on the right hand side of the picture? A. Yes.

Q. What do you see on that picture? A. It is swollen up.

Q. You say that that eye is swollen, according to that picture? A. Yes.

Mr. Fisch: I ask that that picture be marked for identification.

The Court: Let it be marked. Indicating which eye?

Mr. Fisch: The left eye.

(The photograph referred to is marked Exhibit S-14 for identification).

Q. Did you ever have a fight with Tenore? A. No, sir.

Q. You met him in a pool room, didn't you? A. I did.

Q. You used to take him home once in a while in an automobile? A. I never did; no, sir.

Q. You never rode with him in the automobile in your life? A. I did.

Q. You and Stern? A. Me and Stern and other fellows.

Q. Weren't there occasions when you and Stern and Tenore went in the automobile and nobody else? A. No, sir.

Q. Never any such occasion? A. No.

Q. Always somebody along? A. Yes, sir.

Q. Who? A. Well, there was most always Johnny Furfaro.

Q. John Furfaro was most always along? A. Yes, sir.

Q. Now, Tenore, you say, that you and Tenore had no fights? A. No, sir.

Q. No quarrel of any kind, is that right? A. That is right.

Q. Now to get back to Sophie a minute, you used to go up to her house on New Street, didn't you? A. I did.

Q. You spent some time with her there? A. I did.

Q. You didn't tell your so-called wife about that, did you? A. No, sir.

Eugene Compo—Recalled—Cross.

Q. And you also went up to her house on Spruce Street, didn't you? A. I was up there; yes, sir.

Q. Did you have a quarrel with her there? A. I did.

Q. And Clarence Stern was there that night, wasn't he? A. I believe he was.

Q. How about the Rys girl? A. She was there also.

Q. You never had any fight with the Rys girl, did you? A. No, sir.

Q. After that quarrel that you had with her, with Sophie, that night, she left Newark, didn't she? A. Well, I don't know when she left.

Q. That was the last time you saw her in Newark, wasn't it? A. It was.

Q. Did you look for her after that? A. Did I look for her?

Q. That is what I asked you. A. Yes, I did.

Q. When? A. I sent a telegram to her home town.

Q. Why? A. To find out if she was there or where she was.

Q. Why? A. Why?

Q. Yes. A. Because I wanted to know where she was.

Q. Why did you want to know where she was? A. Well, she wanted me to pay her back $42.00.

Q. What is that? A. She wanted me to pay her back $42.

Q. When did she ask you to pay her back $42? A. When did she ask me? She asked me that night that we had the quarrel.

Q. Was Lillian there? A. Lillian was there.

Q. Was Lillian right alongside her when she asked you to pay her back the $42? A. No, she wasn't.

Q. Where was Lillian when Sophie asked you to pay the $42? A. Her and Clarence Stern was off one side of the room.

Q. Did Sophie ask you loud enough so that they could hear it? A. That I don't know.

Q. You don't know that. Well, did she ask you in a loud tone of voice or did she whisper it? A. She didn't whisper it to me.

Q. Did she ask you in a loud tone of voice? A. Well, just talked the same as anybody would talk.

Q. Did you have the forty-two to pay her? A. I did not.

Q. When did you send her the telegram? A. I believe it was on a Sunday.

Q. And did you have the forty-two to pay her then? A. No.

Q. What were you sending her the telegram for? A. So as to find out where she was.

Q. What did you want to know where she was for? A. Well, I was depending on selling the car and sending her the money.

Q. But you didn't need her to sell the car, did you? A. No, but if—

Q. Then why did you send her the telegram to find out where she was? A. So I would know where to send the money to.

Q. But you didn't have the money to send, did you? A. No, but I was expecting the money, expecting to have it.

Q. And you knew her address, didn't you? A. I did.

Q. You had written to her out in Shenandoah, Pennsylvania before that, hadn't you? A. I had.

Q. Then what was the necessity for your sending a telegram, sir? A. I didn't know if she was there.

Q. Why did you send the telegram? A. I sent the telegram to her sister to find out if she was there.

Q. Why did you send the telegram to her sister on a Sunday out in Shenandoah, Pennsylvania to find out where she was when you say that you did not have any money to pay back to her at that time?

Mr. Basile: If your Honor please, it seems to me that this is simply repetition of the question. The defendant has answered the question by saying he wanted to find out whether the girl was there and sent a telegram to her sister. It seems to me it is a superfluous question.

The Court: I will permit the question.

A. What is that question?

Q. (Read by stenographer). Why did you send the telegram to her sister on a Sunday out in Shenandoah, Pennsylvania to find out where she was when you say you did not have any money to pay back to her at that time? A. Well, because the man was coming to buy the car that day.

Q. On Sunday? A. Yes, sir.

Q. Who was the man? A. Mr. Brown.

Q. Did he buy it? A. He did not buy it.

Q. Have you still got the car? A. The car is still in the garage.

Q. Still in the garage? It still belongs to you? Right? A. Yes, sir.

Q. And isn't it a fact that you were anxious to know where Sophie was because you were afraid she might squeal on you? A. No, sir.

Q. You knew that she knew that you had been out on stick-ups, didn't you? A. She knew of the one.

Q. And weren't you afraid she might squeal? A. No, sir.

Q. Because you had had a quarrel with her? A. No.

Q. You trusted her, did you? A. Not exactly.

Q. Well, now, never mind about not exactly. Did you trust her or didn't you? A. No.

Q. And you were afraid that she might squeal on you, weren't you? A. No, sir.

Q. Well, didn't you tell us just a minute ago that you did not trust her? A. I did.

Q. You told us the truth when you told us that, didn't you? A. Just what do you mean by the question?

Q. Didn't you tell us the truth when you told us that? Didn't you? A. But when I told you what?

Q. When you told us that you did not trust Sophie. A. I never trusted her.

Q. You never trusted her? A. No.

Q. And you told us the truth when you said that you did not trust her, is that right? A. Yes.

Q. And because you did not trust her, that was why you wanted to know where she was, because you were afraid that she would squeal on you, weren't you? A. No, sir.

Q. In spite of the fact that you say that you did not trust her? A. No, sir.

Q. You did not part good friends, did you, you and Sophie? A. Sir?

Q. Did you part good friends, you and Sophie, did you? A. We were friends; yes, sir.

Q. Didn't you have a scrap? A. Yes, sir.

Q. Did you make up after the scrap? A. We made up; yes, sir.

Q. Oh, so that after this quarrel that you had, you stayed there long enough to make up, is that right? A. Yes, sir.

Q. Did you kiss and make up? A. I did not kiss her.

Q. Didn't you? A. No, sir.

Q. Hug her? A. No, sir.

Q. What? A. No, sir; we just talked. That is all.

Q. How long did you stay there and talk after this quarrel was over? A. Possibly about a half an hour.

Q. So that everything was apple-pie between you and Sophie before you left her? A. Yes. Well, not everything, no.

Q. Well, what was there that was not apple-pie? A. Well, she wanted me to go away from my wife and children, and I would not.

Q. And that is the only thing that wasn't apple-pie? A. And she said, well, she was going away, and I asked her where she was going. She did not say.

Q. Oh, then she told you that night that she was going away, did she? A. She did.

Q. But you stayed there a half an hour with her to make up with her, is that right? A. She told me that after we had made up.

Q. You didn't want her to be angry with you, did you? A. No, sir.

Q. Why not? A. I don't know.

Q. You did go out in an automobile and park at Central Avenue and Hudson Street, didn't you? A. I did.

Q. And Sophie was in the car, wasn't she? A. Yes, she was.

Q. And in the back seat with you? A. She was.

Q. And Clarence was at the wheel, wasn't he? A. Yes.

Q. And Lillian was sitting alongside? A. Yes.

Q. And you stopped and you talked, didn't you? A. For a couple of minutes.

Q. You had a conversation, didn't you? A. Yes.

Q. Didn't you tell them how much you cared for Sophie? A. No.

Q. Didn't you talk about Sophie at all? A. I told her the best thing was that she should go her way.

Q. You wanted to get rid of her, didn't you? A. I did, yes.

Q. You didn't want to have any part of her, did you, except her money? A. I didn't want nothing from her.

Q. And in spite of the fact that you didn't want anything from her, when you found she had gone away you sent a telegram out to Shenandoah to find out where she was. That is a fact, isn't it? A. So that I could send the money she had gave me.

Q. Even though you didn't have money. A. Well, I was expecting to get money.

Q. You said something about some arson charges too, didn't you? A. Sir?

Q. You said something about some arson charges on your direct-examination. Were you implicated in some of those too? A. I was not.

Q. Didn't you tell us on your direct-examination that you made some kind of a statement about some arson charges? A. About the other fellows.

Q. You didn't mind squealing about them, did you? A. After I was under the beating I would have done anything to save my life.

Q. Did you tell the truth about it? A. I did.

Q. And you are willing to do anything on the witness stand here in court today to save your life, aren't you? A. I am.

Q. Can you tell us, Compo, whether you know of any reason why Sergeant Conlon and Detective Fallon should have told you to mention the fact that Furfaro was in this stick-up in Mulberry Street?

Mr. Basile: I object to that.

The Court: I will permit it.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

A. Yes.

Q. What? A. Because that was the only automatic into the bunch.

Q. What was the automatic? A. The one that he owned.

Q. The one that you sold him? A. I did not sell it to him.

Q. Can you tell us any reason why Sergeant Conlon and Detective Fallon, who were telling you what to say and telling you to say something that was not true, would tell you to say that it was Furfaro that fired the shot, and not you? A. They told me if I would swear that Furfaro fired the shot, that they would put me onto the street and let me walk the streets a free man.

Q. When did they tell you that? A. When they told me of the statement.

Q. You have never told us about that before, have you? A. No, sir.

Q. Why not? A. I don't know as anything was mentioned about it.

Q. You want the Court and jury now to believe that Sergeant Conlon and Detective Fallon told

you that if you would say in this statement that you were with Furfaro in the stick-up— A. (Interrupting) Yes, sir.

Q. (Continuing) but that Furfaro was the one who fired the shot, that they would let you out on the streets a free man? A. Yes, sir.

Q. And you believed that? A. I did not believe it.

Q. But you said it just the same? A. I did.

Q. Even though it was not true? A. I said it under compulsory.

Q. You have been convicted of crime before, haven't you? A. A motor vehicle violation.

Q. Weren't you convicted of crime up in Rome, New York? A. Not that I remember.

Q. Now, let us see whether you can't remember. Do you remember the 19th of January, 1921? A. No, I do not.

Q. Weren't you convicted of third degree burglary in Rome, New York? A. No, sir.

Q. And put on probation up there because of your age at that time? A. I was not put on probation for burglary.

Q. What were you put on probation for? A. I do not remember.

Q. What was it for? A. I do not remember.

Q. It was for the commission of some crime, wasn't it? A. No, sir, not for no crime.

Q. What were you put on probation for? A. I don't remember what I was put on probation for.

Q. And weren't you convicted in Oneida County, in 1928, and sent to the Oneida County Jail? A. A motor vehicle violation.

Q. You were sent to the county jail for 25 days, weren't you? A. No, sir, 15 days and $25 fine.

Eugene Compo—Recalled—Cross.

Q. What were you put on probation for? Can't you tell us that? A. I don't remember.

Q. You don't remember what it was? A. No, sir.

Q. You were in Rome, New York, in January, 1921, weren't you? A. Rome, New York, was my home town most of my life.

Q. And you were known as Eugene Compo at that time, weren't you? A. I was.

Q. Back in November, 1930, you were receiving aid from the Overseer of the Poor of Newark, weren't you? A. I don't know if it was in November or not.

Q. Didn't you start to get $5 a week beginning November 13, 1930? A. I don't know whether it was the 13th or not, but I started last year getting something from the city.

Q. Sometime in November, wasn't it? A. I don't know if it was November or not.

Q. And you continued up to the time of your arrest? A. Until the time I saw Commissioner Murray; after I seen him I continued getting it.

Q. And you got it up to the time you were arrested, didn't you? A. I did.

Q. And you are getting it up to the present time, aren't you? A. I don't know.

At 4:50 P. M. the court takes a recess until tomorrow, Friday, June 5, 1931, at ten o'clock, A. M.

ESSEX COUNTY COURT OF OYER AND TERMINER.

FIFTH DAY.

Friday, June 5, 1931.

THE STATE OF NEW JERSEY, vs. EUGENE COMPO.	On Indictment No. 358 April T. 1931 for Murder.

Continued pursuant to adjournment.
Present, counsel as before stated.

RUTH COMPO sworn for the defendant.

Direct-examination by Mr. Basile:

Q. How old are you, Mrs. Compo? A. Twenty-three.

Q. Where do you live? A. Newark, New Jersey.

Q. Where? A. 67 Hudson Street.

Q. You have been living with Eugene, have you? A. Yes, sir.

Q. How long? A. Four years.

Q. Any children? A. Yes, sir.

Q. How many? A. Two.

Q. Do you remember the 23rd day of December, 1930? A. Yes, sir.

Q. What recalls it to your memory? A. Because they wanted to go Christmas shopping, and Eugene was working on an automobile and he had $10.00, and we wanted to do Christmas shopping the 23rd.

Q. What time did you go out shopping? A. It was a little after eight, I remember.

Q. Where did you go? A. On Springfield Avenue.

Q. Did you go in more than one store? A. Yes, sir.

Q. How many? A. We went in a shoe store, into a man's shirt store, and two Five and Tens.

Q. Did you make purchases at these places? A. Yes, sir.

Q. I show you a pair of shoes and ask you whether you recognize those shoes. A. Yes, sir. We got these December 23rd.

Q. Have you worn these shoes since? A. Yes, sir.

Mr. Basile: I ask that these be marked.

(The articles referred to are marked Exhibit D-11 for identification).

Q. I show you Exhibit D-3 and ask you whether you ever saw this box before. A. Yes, sir. There is two pairs of socks came in that box for Christmas.

Q. Do you remember where you bought them? A. Five and Ten Cent store.

Q. On Springfield Avenue? A. Yes, sir.

Q. Now, this Five and Ten Cent Store that you speak of, did they sell articles for five and ten cents only? A. No. To a dollar.

Q. Up to a dollar? A. Yes, sir.

Q. Where has this box been since you bought the articles? A. 67 Hudson Street.

Q. Have you lived there ever since you bought the articles? A. No.

Q. Was this box in the other places that you lived? A. Yes, sir.

Q. How did you remember that you had this box? A. I gave this box to my brother-in-law and

afterwards the box was laying around, and I picked it up and kept the box.

Q. How did you remember that you had it now? A. You asked me—someone came to the house and asked me if I had anything to remember that we done that Christmas shopping, and I said yes, and I went and got the Christmas box.

Q. And you handed it to whom? A. Mr. McGlynn, I think it was.

Q. I show you this tag. Was this tag— A. (Interrupting) It was in the box.

Mr. Basile: I don't know whether we should mark this separately or make it part of Exhibit 3.

The Court: Either way you please.

(The same is marked Exhibit 3-A for identification).

Mr. Basile: If your Honor please, at this time I would like to offer the box and the tag in evidence.

Mr. Fisch: No objection.

(The same are received in evidence and marked Exhibit D-3 and D-3A).

Q. I show you Exhibit D-4 for identification and ask you whether you ever saw that shirt before. A. Yes, sir.

Q. Where did you get this shirt and when? A. On Springfield Avenue in a men's store.

Q. When? A. December 23rd.

Q. At the same time you went out shopping for these other articles? A. Yes, sir.

Mr. Basile: I offer the shirt in evidence.

Mr. Fisch: No objection.

(The same is received in evidence and marked Exhibit D-4).

Q. Have you been in the store where these were purchased within the last week? A. I went to find out if the man would identify his shirt.

Q. Have you also been in the store where the socks were purchased? A. Yes, sir; we went there to see if they would identify the box.

Q. Did you go to see at which counter you bought it? A. Yes, sir.

Q. I show you Exhibit D-5 for identification and ask you where you purchesed that. A. In the five and ten cents store.

Q. That same night? A. Yes, sir.

Mr. Basile: I offer it in evidence.

Mr. Fisch: No objection.

(The same is received in evidence and marked Exhibit D-5).

Q. I show you Exhibit D-6 for identification and ask you whether you recognize these socks. A. Yes, sir.

Q. Did you purchase them on that night? A. Yes, sir, in the five and ten cents store.

Q. I show you Exhibit D-7 for identification. Did you purchase that? A. Yes, sir, in the five and ten cents store.

Mr. Basile: I offer Exhibit D-6 for identification and Exhibit D-7 for identification in evidence.

Mr. Fisch: No objection.

(The same are received in evidence and marked Exhibits D-6 and D-7).

Q. I show you Exhibit D-8 for identification and ask you whether you ever saw those before. A. Yes, sir.

Q. Where did they come from? A. On Springfield Avenue in the hosiery shop.

Q. On this same trip? A. Yes, sir.

Q. I show you Exhibit D-9 for identification. A. Bought at the five and ten cent store.

Q. On the same trip? A. Yes, sir.

Mr. Basile: I offer these in evidence.

(The same are received in evidence and marked Exhibit D-8 and Exhibit D-9).

Q. Now you say you left the house about eight o'clock that evening. A. It was a little after eight.

Q. With Gene? A. Yes, sir.

Q. Was there anybody else with you? A. No, sir.

Q. What did you do with the children? A. My sister-in-law watched the two children.

Q. How long were you on this shopping tour? A. Until about eleven o'clock.

Q. Did Gene go out after he came home with you? A. No, sir.

Q. Did he stay home with you all the time after that? A. Yes, because he went to bed.

Q. Now do you know what was done with Exhibit D-5, the petticoat, Exhibit D-7, the socks, Exhibit D-6, Exhibit D-8, the stockings, and Exhibit D-9? A. Yes, sir.

Q. What did you do with them? A. Took them to Bridgeport, Connecticut.

Q. When did you do that? A. It was after Christmas.

Q. Whom did you take them to? A. To Gene's mother and stepfather.

Q. Who went with you at that time? A. My sister-in-law, brother-in-law, Gene and I and the two children.

Q. Was that the last you saw of them until today? A. Yes, sir.

Q. What happened to Exhibit D-4, this shirt? A. Eugene had been wearing that shirt.

Q. And the articles that were in this Exhibit D-3A and D-3? A. I gave the socks to my brother-in-law. He wore them.

Q. Now, do you recall what kind of overcoat Gene wore on that trip? A. Yes, sir. A blue overcoat with a velvet collar.

Q. Did you bring that coat in court? Did you bring that down here? A. Yes, sir.

Q. I show you a coat and ask you whether you recognize that coat. A. Yes, sir.

Q. Is this the coat? A. He wore Christmas, December 23rd.

Q. And did he wear it after that? A. Until he bought a second-handed coat.

Mr. Basile: I ask that that be marked in evidence.

The Court: Let it be marked.

(The article referred to is marked Exhibit D-12).

Q. Do you know a girl by the name of Sophie Krok? A. Yes.

Q. When did you see her before she was in court here? A. On Sherman Avenue.

Q. Is that where you live? A. Yes, sir.

Q. When was that? A. I don't just remember when it was.

Q. Well, was it in the summertime or wintertime? A. Summertime.

Q. Of what year? A. I think it was 1930.

Q. When was your second child born? A. August 15th.

Q. Does that help to fix the time in your mind? Did you see her before or after the child was born? A. Seen her before the child was born.

Q. Did you have any talk with her there? A. Yes, sir.

Q. What was it?

Objected to.

Objection sustained.

Q. What was said there between you and Sophie?

Mr. Fisch: I object.

The Court: Sustained.

Mr. Basile: I want to show that the witness Sophie Krok—

Mr. Fisch: I object to counsel's making a speech.

The Court: You can't get a statement before the jury in that way after the question has been ruled out.

Mr. Basile: I want to show that Sophie Krok went to a particular place to see the children and I want to show what happened at that time.

The Court: She was not asked on cross-examination whether she went there for that purpose which you are now trying to bring out, was she?

Mr. Basile: I think so, your Honor.

The Court: You didn't ask her on cross-examination whether she said so and so.

Mr. Basile: I think the record is very clear on that, your Honor.

The Court: You asked Sophie Krok on cross-examination if when she visited this woman she said so and so and so and so, and she denied it, it would be permissible to put

it in, but I do not recall that you asked her any such question.

Mr. Basile: I am quite certain that we did, your Honor.

The Court: Why don't you go on with some other line of questioning until that is looked up, and then go back to it?

Mr. Basile: Very well.

Q. Did you say anything to Sophie with reference to coming to the house? A. No, sir.

Mr. Fisch: I object to that.

Objection sustained.

Mr. Basile: You may cross-examine, except that we want to verify this one thing.

Cross-examination by Mr. Fisch:

Q. Do you know whether or not Sophie came there with Gene? A. Yes, sir.

Q. He brought her there, did he? A. No, he didn't. She came in a taxicab.

Q. She came with him? A. No, sir.

Q. Didn't you tell me just a moment ago that she came there with him? A. I didn't say she came with him.

The Court: You asked her whether she knew whether or not Sophie came with Gene. The answer was ambiguous.

Q. How many times did she come to the house? A. A couple of times.

Q. Was Gene there? A. The first time she came Gene was eating dinner.

Q. Was he there on the other occasion when she came? A. I don't remember.

Q. What is your right name? A. Ruth Compo.

Q. You are not married to Gene, are you? A. No, I am not married to him.

Q. What is your right name? A. My right name that I am going by here is Ruth Compo.

Q. Never mind what name you are going by here. What is your right name? A. Ruth Austin.

Q. You are married, aren't you? A. Yes.

Q. To a man named Austin? A. Yes.

Q. What is his first name? A. Bernard Austin.

Q. Where is he now? A. I don't know.

Q. You know whether he is living, don't you? A. No.

Q. When did you see him last? A. I don't remember.

Q. You don't remember when you last saw your husband? A. No, sir.

Q. How many years ago? A. I don't remember.

Q. Where was the last place you saw your husband? A. In Rome, New York.

Q. That is where you lived with him, isn't it? A. That is where I always lived.

Q. And you lived there with him, didn't you? A. Yes, sir.

Q. When did you leave Rome, New York? A. About four years ago.

Q. And when you left Rome, New York, your husband was in Rome, New York, wasn't he? A. I think he was at the time.

Q. And you left him there, didn't you? A. Yes, sir.

Q. And don't you know, as a matter of fact, that he is now in jail in Rome, New York? A. No, sir.

Q. You don't know that? A. No, sir.

Q. Was he in jail when you left Rome, New York? A. No, sir.

Q. And then you came down to Newark here—you left your husband and came down to Newark —to live with Gene, didn't you? A. I did not come to Newark.

Q. Where did you go to? A. Bridgeport, Connecticut.

Q. You went to Bridgeport, Connecticut, to live with Gene, didn't you? A. Yes, sir.

Q. And you have lived with him ever since, haven't you? A. Yes, sir.

Q. Now the only reason, as I understand your testimony on direct-examination, the only reason that you give for remembering that these goods were purchased on the date when you say they were is that you wanted to go Christmas shopping and Gene had $10 and he was working on an automobile; is that right? A. Yes, sir.

Q. There is nothing else that calls that date to your mind except those facts? A. Yes, sir.

Q. What is that? A. Yes, sir.

Q. What? A. My sister-in-law and brother-in-law was going on a holiday and we wanted to buy their Christmas presents before they went.

Q. And is that the only thing? A. Yes, sir.

Q. Now do you know what day of the week this date was? A. No, sir.

Q. You don't know that. You didn't look it up? A. No, sir.

Q. You have not inquired? A. No, sir.

Q. Do you know what day of the week it was that you went Christmas shopping? A. No, sir.

Q. You don't know that either? A. No, sir.

Q. You don't know whether it was a Monday, Tuesday, Wednesday, Thursday, Friday or Saturday? A. No, sir.

Q. Did you try to refresh your recollection about that? A. No, sir; I didn't try to remember the day.

Q. You didn't try to remember the day? A. No, sir.

Q. And without trying to remember the day, you mean to tell this Court and jury that you know definitely that it was on the 23rd of December that these goods were purchased? A. Yes, sir.

Q. Now, then, you say that you purchased them, irrespective now of when they were purchased, you purchased them before Christmas anyhow, didn't you? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You gave a lot of these things away as Christmas presents? A. Yes, sir.

Q. Shortly after Christmas? A. Well, the ones that we got for my sister-in-law and brother-in-law, we gave them to them the night we got them.

Q. You gave them to them then before Christmas? A. Yes, because they were leaving the 24th.

Q. How do you know that date? A. Because I know they were going to leave the house the 24th of December.

Q. How do you know that date? A. Because I remember. I was living with them.

Q. But you remember that, do you? A. Certainly.

Q. Do you remember what day of the week that was? A. No, sir.

Q. Do you know where these articles have been since that time, this kerchief, for example, Exhibit D-9? A. In Bridgeport, Connecticut.

Q. How do you know that? A. Because we took them there.

Q. Do you know whether it was used? A. I don't remember if it was used or not.

Q. You don't remember? A. No, sir.

Q. You mean you don't remember or you don't know? Which is it? A. I don't know.

Q. How about the stockings? A. They was given to Mrs. Van Schoik.

Q. Who is she? A. Eugene's mother.

Q. Do you know whether they were used or not since last Christmas? A. I think they have.

Q. You think they have been. Do you know whether they were ever washed? A. No, sir.

Q. You mean you don't know? A. Yes, sir.

Q. What? A. I don't know if they had.

Q. You have washed stockings, haven't you? A. I certainly have.

Q. You know that when you wash stockings, that if there is any number on them, that that number is eradincated and eliminated, don't you? A. I washed enough stockings.

Q. I call your attention to the fact that there is a number 277 on the heel of that stocking. Does that indicate to you whether or not they were washed? A. I don't think they have.

Q. Now these socks, Exhibit D-6, do you know whether or not they have been washed? A. I don't know.

Q. Could you tell by looking at them? A. Yes, sir.

Q. Look at them. A. No, sir.

Q. They have not been washed or worn, have they? A. No, sir.

Q. Since last Christmas. When did you get these articles back? A. They asked me if I had anything—

Q. When did you get them back? A. I don't remember what day it was.

Q. Well, how long ago?

Mr. Basile: If your Honor please, I object at this time. There is no evidence that she did get them back.

Mr. Fisch: Well, she just said she did not remember what day they came.

Q. How long ago? A. I don't know.

Q. Well, a month ago? A. No, sir.

Q. Less than a month ago? A. Yes, sir.

Q. A week ago? A. I don't remember when they came back.

Q. Don't you know whether it was more or less than a week ago? A. It wasn't a week anyways.

Q. What is that? A. It has not been over a week anyways.

Q. It has not been over a week, and did you get them by mail or not? A. No, sir.

Q. How did you get them? A. Well, I really did not get them.

Q. Oh, you did not. Who got them? A. They were delivered to Mr. McGlynn.

Q. Who delivered them? A. I think Mrs. and Mr. Van Schoik brought them back.

Q. That is Compo's stepfather and mother, is that it? A. Yes, sir.

Q. And you have not seen any of those articles since last Christmas, have you? A. No, sir.

Q. What? A. Not until I seen them right here.

Q. Now, do you see any of these storekeepers in court, or whom you say you bought these articles from? A. I would know them if I seen them.

Q. Do you see them? A. No, I don't see them.

Q. What? A. No, I don't.

Q. But you say you would know them if you saw them? A. Yes, sir.

Q. And you have gone out to look for them? A.

Yes, sir; I took the things, see I could make them identify them.

Q. And you went out to look for the people whom you say sold you these articles on the 23rd of December; right? A. Yes, sir.

Q. Did you find the people? A. Yes, sir.

Q. Did you report that fact to Gene Compo's counsel? A. Yes, sir.

Q. Did you give them their names? A. He has them I think.

Q. What is that? A. He has them.

Q. But you don't see these people in court now, is that right? A. Yes, sir.

Q. What is that? A. Yes, sir.

Q. You do see them in court? A. I don't see them here now.

Q. Have you seen them? A. I don't remember if I seen them in here or not.

Q. Now, Gene would often go out at night, wouldn't he? A. No, sir.

Q. Wouldn't he often be out at night when you wouldn't know where he was? A. No, sir. Sometimes he would work on a car.

Q. And sometimes he would go to work on a stick-up, wouldn't he? A. No, sir.

Q. Don't you know that? A. No, sir.

Q. Then he would often be out nights. A. I know sometimes after supper he used to go out.

Q. And when he used to go out sometimes after supper you didn't know where he was, did you? A. No.

Q. Do you know where he was on the 19th of December? A. No, sir.

Q. Do you know where he was on the 20th of December? A. No, sir.

Q. Do you know where he was on the 15th of March, 1931? A. No, sir.

Q. Do you know where he was on the 1st of April, 1931? A. No, sir.

Q. And when was the first time that you learned that he was accused of the murder of Eugene Lynch on December 23, 1930? A. When I seen him down the police headquarters.

Q. When was that? A. I don't remember when it was.

Q. It was after he was arrested? A. Yes, sir.

Q. And sometime after the 8th of April, wasn't it? A. Yes, sir.

Q. So that between the time when you say you purchased these articles, and the 8th of April, 1931, almost four months, you had no occasion to remember the day or the date when you purchased these articles, did you? A. No, sir.

Q. And when did it first come to your mind as to what date you purchased these articles on? A. When the attorney came to our house and wanted to know if I had anything that reminded me of the time that we were Christmas shopping, and I told him yes.

Q. And when was that? A. I don't remember just when that was.

Q. How long ago was it? A. I don't remember.

Q. Within the last week? A. I don't remember when it was.

Q. Was it two weeks ago? A. I don't think it has been two weeks.

Q. It was under two weeks ago, was it? A. Yes.

Q. And when you were asked whether you had anything that you had purchased for your Christmas shopping, then these articles were recalled to your mind, is that right? A. Yes, sir.

Q. And that is all that was recalled to your mind, wasn't it? A. I think it was.

Mr. Basile: If your Honor please, on page 256 of the record, about the center of the page, it says: "Question by Mr. McGlynn: And you had a talk with Ruth, the woman he was living with, didn't you? Answer: Yes. Question: She asked you to leave him alone, didn't she? Answer: She did not. Question: What were you there for? Answer: Well, I went to see the children and meet his family. Question: Didn't you have a talk there at the house and didn't Ruth, this woman— Answer: Yes, I had a talk with her. Question: Didn't she ask you and didn't she plead with you to stay away from Gene? Answer: No, she did not."

The Court: Very well. You may examine this witness on that.

Redirect-examination by Mr. Basile:

Q. What did you say to Sophie? A. I asked her if she would stay away from Eugene on account of the childrens' sake.

Q. What was her answer to that? A. She said she would have nothing more to do with him.

Recross-examination by Mr. Fisch:

Q. Did you know that after that time your Eugene went up to see her? A. No, sir.

Q. And after that time your Eugene was taking money from her? A. No, sir.

Q. And that after that time your Eugene went out in an automobile with her? A. No, sir.

Q. And that after that time your Eugene went to Shenandoah, Pennsylvania, with her? A. No, sir.

Q. And that after that time your Eugene went to Philadelphia with her? A. No, sir.

Q. And that after that time your Eugene went out to stick-ups and told her about them? A. No, sir.

Q. And that after that time your Eugene went up to her house and bought or gave her a couple of Christmas presents? A. No, sir.

FLORENCE DESANTIS sworn in behalf of defendant.

Direct-examination by Mr. Basile:

Q. Mrs. DeSantis, where do you live? A. 67 Hudson Street.

Q. Are you the sister of Eugene? A. I am.

Q. How old are you? A. 24.

Q. Do Ruth and Eugene live at your house? A. They do.

Q. Have they been living with you right along? A. For the last two years.

Q. Were they living with you during the last December? A. Yes, they did.

Q. Do you recall the 23rd day of December last? A. I do.

Q. What recalls that to your mind? A. Because I was leaving for Rome on the 24th day of December.

Q. How far is Rome, New York, from here? A. Better than 300 miles.

Q. How did you go there? A. By automobile.

Q. How long did it take you? A. I left on the morning of the 24th and I got there on the morning of the 25th.

Q. Whom did you go to see there? A. My in-laws.

Q. Did you take anything with you when you went there? A. We did.

Q. What did you take there? A. We took a few things to my mother-in-law.

Q. Did you get any Christmas presents from Gene or Ruth? A. I did.

Q. When was that? A. I got it on the night of the 23rd.

Q. How do you know it was the 23rd? A. It was the night that they bought them.

Q. What else fixes that in your mind? A. They gave them to me because they said they didn't think there would be—

Mr. Fisch: I object to what they said.

The Court: Objection sustained.

Q. Did you see any of the articles that they purchased on the 23rd day of December? A. I did.

Q. Do you know what time they left the house? A. Yes, sir.

Q. What time was it? A. A little after eight.

Q. Did you stay home? A. I did.

Q. Were you taking care of the children? A. Yes, sir.

Q. What time did they come home? A. Exactly eleven o'clock.

Q. How do you know that? A. Eleven o'clock was the time for the baby's feeding, and I didn't know how to fix the bottle and he was crying.

Q. Anything else? A. He was crying for the bottle and I couldn't give it to him until they got home.

Q. You say you did not see these articles that were purchased? A. Yes, sir.

Q. I show you Exhibit D-5 and ask you whether you ever saw that before? A. Yes, sir; I have.

Q. When did you see that? A. December 23rd.

Q. Where? A. In my house.

Q. Were they yours? A. No, sir.

Q. Whose were they? A. They belonged to Eugene and Ruth Compo at that time.

Q. When had they gotten them? A. They got them on the 23rd.

Q. On that shopping trip? A. Yes, sir.

Q. Do you remember seeing D-7 (exhibiting article to witness)? A. Yes, sir.

Q. When did you see that? A. The same night.

Q. And D-6 (exhibiting article to witness)? A. Yes, sir.

Q. And D-8 (exhibiting article to witness)? A. Yes, sir.

Q. And D-9 (exhibiting article to witness)? A. Yes, sir.

Q. Do you know what became of those articles? A. Yes, sir.

Q. What became of them? A. Took them to Bridgeport, Conn.

Q. Who did? A. We did.

Q. Who is "we"? A. Eugene Compo, Ruth Compo, my husband and I and the two babies.

Q. For what purpose? A. To give them to my mother, my step-father and brothers.

Q. Did you do that? A. Yes, sir.

Q. And you left them there then? A. Yes, sir.

Q. When did you see them again? A. Easter.

Q. How did you see them again? A. I was in Connecticut at Easter.

Q. When did you see them since that time? A. When they were brought here.

Q. Who brought them here, if you know? A. My mother.

Q. Do you know how they were brought here? A. No, sir.

Q. Do you remember seeing D-4 (exhibiting article to witness). A. Yes, sir.

Q. And D-3 and D-3a (exhibiting articles to witness)? A. Yes, sir.

Q. When did you see those? A. Christmas.

Q. On Christmas day or— A. The 23rd.

Q. Where did you see them? A. My house.

Q. Were they brought in as a result of this shopping tour by Eugene and Ruth? A. Yes, sir.

Q. Where were you living at that time? A. Hunterdon Street.

Q. Do you know the number? A. I think it is 392.

Q. Now then, with reference to D-3 and D-3a which is the box and tag, when last did you see these things before it was brought into court? A. At my house.

Q. How long before that had you seen it in the house? A. I don't remember.

Q. To your knowledge has it been in the house with you ever since December 23rd? A. It has.

Q. Do you know how it came into court? A. Yes, sir.

Q. How? A. It was asked in my house if we had anything to make us remember the 23rd.

Q. Then what happened? A. The box was found.

Q. Whom did you give it to, if you did, or anybody else? A. I gave it to Mr. McGlynn.

Q. When was that? A. I believe it is a week ago last Wednesday.

Q. Was anybody else with Mr. McGlynn when he came there? A. Yes, sir.

Q. Who? A. You.

Cross-examination by Mr. Fisch:

Q. Now, Eugene, the defendant here, did not go to Rome with you, did he? A. No, sir.

Q. Whose automobile did you go in? A. Mine.

Q. And who went? A. My husband and I.

Q. And that was all; right; just the two of you? A. No, sir.

Q. Who else? A. My brother-in-law.

Q. What is his name? A. Larry DeSantes.

Q. And when you went to Bridgeport Easter time, your brother didn't go with you, did he? A. At Easter?

Q. Yes. A. No, he did not.

Q. Did this woman whom he was living with, did she go? A. No.

Q. Now you say you saw these articles Christmas time; right? A. I did.

Q. And then you saw these articles again Easter time when you went to Bridgeport? A. I did.

Q. Well, did you go up there for the purpose of seeing these articles? A. No, sir.

Q. Did you go through the bureau drawers up there to see the socks and the stockings and the petticoat? A. No, sir.

Q. Will you tell us how you came to see those things Easter time? A. I didn't say which ones I seen.

Q. Oh, you did not. A. No, sir.

Q. Well, now, which ones did you see? A. I seen the smoking set.

Q. That was all, was it? A. I believe it is, outside of the handkerchief.

Q. Where did you see the handkerchief? A. My brother had it.

Q. Where? A. In his pocket.

Q. He was using it Easter time, is that right? A. He had it sticking out of his coat pocket.

Q. And he was using it in his coat pocket, carrying it in his coat pocket Easter time, is that right? A. Yes, sir.

Q. And the other articles you did not see, did you? A. No, sir.

Q. Now, you testified on your direct-examination that the thing that made you remember that the date when these things were purchased, was, that you saw them the night that they brought them? A. Yes, sir.

Q. That is correct, isn't it? A. Yes, sir.

Q. And that is the only thing, isn't it, that causes you to remember that? A. No, sir.

Q. That you saw them the night that he bought them? A. No, sir.

Q. What else? A. Because I was leaving for Rome the next morning, and they also had a present for me and my husband.

Q. What makes you recall that you saw these articles the night before you left for Rome? A. I did see them.

Q. What makes you recall that it was the night before you left for Rome? A. Because I helped do them up.

Q. And you could have done them up two nights before you left for Rome, couldn't you? A. No, sir.

Q. Couldn't you have done them up two nights before? Couldn't you, Mrs. De Santes? A. I could have if they had been in the house.

Q. Yes, if they had been in the house two nights before you could have done them up two nights before, isn't that right? A. If they had been in the house.

Q. And you never had any further occasion to remember when you first saw these articles from the time when you first saw them until a week or two ago, isn't that right? A. I don't get that quite clearly.

Q. What is it that you don't get clear about it? A. Just what you said.

Q. What is there about what I said that you don't get clear? A. Something about recall seeing them. I don't know just how you said it.

Q. You never had occasion to remember the time when you first saw these articles from that time up to about a week ago, isn't that right? A. I can't get that clear.

Q. Well, was there anything between Christmas time of 1930 and a week ago that called to your mind a time when you first saw these articles? A. I don't know.

Q. You don't know? Why not? A. I don't know.

Q. Can't you tell us Mrs. DeSantes whether there was anything that happened between Christmas, 1930, and a week ago that would have called to your mind the fact that you had seen these articles at Christmas time? A. Certainly.

Q. What was there? A. When I heard my brother.

Q. What is that? A. When I heard of my brother's arrest, that made me remind.

Q. When was that? A. When was it?

Q. Yes. A. When it came in the papers, I knew what he was arrested for.

Q. How did you know that? A. How did I know that? It was in the paper, and I read it.

Q. When was that? A. In April.

Q. So that as soon as you read in the paper that your brother was arrested and charged with the

murder of Mr. Lynch, then immediately and without any further thought you remembered having seen these articles Christmas time? A. I don't say that; no, sir.

Q. Well, is that so or isn't it? A. Not immediately, no.

Q. When? A. It came to my mind after I read it.

Q. How long after you read it? A. I don't remember how long after.

Q. Well, an hour after? A. I don't know.

Q. The same day that you read it? A. The same day maybe, I don't know.

Q. Well, never mind about "maybe". Was it or wasn't it the same day? A. I don't know.

Q. The next day? A. I don't know.

Q. A week after? A. I don't know.

Q. Two weeks after? A. I don't know.

Q. That is the best answer you are going to give me, isn't it? A. Yes, sir.

Q. Isn't it a fact that it never came to your attention till Mr. McGlynn and Mr. Basile, who is associated with him, suggested to you that there might be some articles that had been purchased around Christmas time?

Mr. Basile: I object if your Honor please.

Mr. Fisch: I do not mean that in any derogatory manner at all.

The Court: It is a perfectly proper thing for counsel to have done, as a matter of fact.

Mr. Fisch: Absolutely. I have no objection to that.

The Court: Go ahead. You can answer the question.

A. Well, I know before they told me if they never said anything to me about it.

Q. When? A. When? I had a green set in my kitchen and all the time that they bought me.

Q. When did you first know? A. I don't get what you mean.

Q. You say you knew it all the time and that it was not first called to your attention by any suggestion which may have been made by Mr. McGlynn or Mr. Basile. When was it? A. I knew it when I read it in the paper.

Q. At the same time that you read it in the paper? A. Certainly.

Q. The same moment you read it? A. I don't say the same moment.

Q. The same day? A. I don't know as it was the same day.

Q. The next day? A. It may be, I don't know.

Q. You are not going to give me any more definite answer than that? A. I can't say.

Q. So it was either the same day you read in the paper that your brother was accused of killing a man, or the day following it, that there first sprung up in your mind the fact that he was not there; that he was out on Springfield Avenue purchasing articles, is that right? A. No.

Q. What do you mean by it, then? A. I don't know.

Q. You don't know? A. No, sir.

Q. Didn't you testify on your direct-examination that the first occasion you had to remember anything about Christmas time and about these articles was when you were asked by counsel about it? A. Yes, sir.

Q. And that is true, isn't it? A. I remembered it when he asked me.

Q. And wasn't it true when you testified a few minutes ago on direct-examination that the first occasion that you had to remember these articles from the time that they were purchased, was when you were asked about them by counsel in this case? A. He asked me if I had anything to remind me of it and I said yes.

Q. And wasn't that the first occasion you had to think about it at all, or to have it come to your mind? A. I don't know.

Q. You don't know? A. No, sir.

Q. How do you square that with your answer to me a few minutes ago that you thought about it and it came to your mind on the same day that you read in the paper that your brother was accused of killing a man, or the day after you read it? A. I answered the question you asked me.

Q. I am asking you another question. How do you square that with your answer to me that the first time it came to your mind since Chrismas, 1930, was on the day, or the day following the time that there was published in the paper the article about your brother murdering Lynch? A. Every time I saw the set in the kitchen it brought the fact to my mind.

Q. It brought the fact to your mind that you had got it at Christmas time? A. Yes, sir.

Q. It didn't bring to your mind the fact that you got it at four o'clock in the afternoon or at six o'clock or at eleven o'clock at night? A. No.

Q. And it didn't bring anything to your mind except the fact that you got it from your brother and at Christmas time? A. Yes, that I got it from him.

Q. And that you got it for Christmas and that you got it from him. A. Yes, sir.

Redirect-examination by Mr. Basile:

Q. When did you get that set? A. I got that set the 23rd day of December.

Q. What time? A. After eleven o'clock.

Q. Eleven o'clock in the morning? A. At night.

Q. Who gave it to you? A. My brother and sister-in-law.

VIOLET VAN SCHOICK, sworn in behalf of Defendant.

Direct-examination by Mr. Basile:

Q. Where do you live, Mrs. Van Schoick? A. I live in Connecticut.

Q. Is Eugene your boy? A. Yes, sir, one of mine.

Q. One of nine children? A. Yes, sir.

Q. How old is he? A. He will be 22 years old the 27th day of this June.

Q. How old was he when he left school?

Mr. Fisch: I object to that as immaterial.
The Court: Sustained.

Q. Where were you living at Christmas time, 1930, or January or February of this year? A. I was living where I am still living.

Q. Where is that? A. 925 East Main Street.

By the Court:

Q. Where? What city? A. Bridgeport, Connecticut.

By Mr. Basile:

Q. Were you requested to bring anything to court? A. I was asked if I had any—

Mr. Fisch: Yes or no, please.

Witness: Yes.

Q. Did you bring the articles to court? A. I did.

Q. When? A. A. I brought them here Monday morning.

Q. Whom did you give them to? A. I don't remember whether I gave them to Mr. McGlynn or to you.

Q. What did you give him? A. I gave him the set—the smoking set.

Q. I show you Exhibit D-5 and ask you whether you have reference to that? A. Yes, sir.

Q. What else did you give him? A. A pair of sik hose.

Q. I show you Exhibit D-6 and ask you whether you have reference to those. A. Yes, sir.

Q. What else did you give him? A. A white under skirt.

Q. I show you Exhibit D-7 and ask you whether that is what you have reference to? A. Yes, sir.

Q. What else? A. A pair of light colored silk hose.

Q. I show you Exhibit D-8. Is that the articles? A. Yes, sir.

Q. Anything else? A. I think there was a handkerchief.

Q. I show you Exhibit D-9. Is that it? A. Yes, sir.

Q. Where did you get them and when? A. I got them between a week and ten days after Christmas.

Q. Whom did you get them from? A. Eugene Compo and Ruth.

Q. Where? A. At my home.

Q. Bridgeport? A. Yes, sir.

Q. Did they bring them there? A. Yes, sir.

Q. And you have had them ever since? A. Yes, sir.

Cross-examination by Mr. Fisch:

Q. You are this man's mother, aren't you? A. Yes, sir.

HARRIET FISHBEIN, sworn in behalf of Defendant.

Direct-examination by Mr. McGlynn:

Q. Miss Fishbein, where do you live? A. 136 Livingston Street.

Q. Where do you work? A. The F. & W. Grant, 192 Springfield Avenue.

Q. What sort of store is it? A. Five and ten.

Q. Do you sell articles there for more than ten cents? A. Up to a dollar.

Q. Were you working there last Christmas time? A. Yes, sir.

Q. Have you been interviewed about this box recently (indicating)? A. Yes, we got a—

Mr. Fisch: Yes or no.

Q. Have you been interviewed about this box recently? A. Yes, sir.

Q. Within the last week or so? A. Yes, sir.

Q. Did you ever see this box before it was shown to you about a week ago? A. Yes, sir.

Q. Where did you see it? A. In the store.

Q. Whereabouts in the store? A. In the rear of the store in my department.

Q. What was that department? A. Well, we carried all kinds of things, holly boxes, toys—

Q. Do you know what was sold in boxes of that kind? A. Ties.

Q. Were you also shown this tag, Exhibit D-3-a? A. When?

Q. A week or so ago when the young man was up to see you? A. Yes, sir.

Q. Do you recognize that tag? A. I recognize the name, but not the writing.

Q. Do you recognize the tag itself? A. Yes, sir.

Q. Is that the kind of tag you used in that store? A. Yes, sir.

Q. Did the goods which were sold by your firm in your department at Christmas time come already packed in these boxes? A. I don't know what you mean.

Q. Did those boxes come with merchandise in them for sale, or was merchandise put into them after they got to the store? A. The merchandise was put into the boxes after they got to the store.

Q. Where was the merchandise put into the boxes? A. In the basement.

Q. And where was the merchandise sold? A. On the main floor.

Q. Do you know how the boxes came into the store? A. Yes.

Q. Did they come individually or in packages? A. They came in packages, about four boxes in one.

Q. Did you have anything to do with taking the boxes individually out of these packages? A. Yes, sir, to mark them.

Q. To mark them? A. Yes, sir, to make the price on them.

Q. Did you have many boxes of this particular type? A. No, sir.

Q. Do you know how many shipments of that particular kind of box you had about Christmas time, 1930? A. The last shipment we got in was about a week before Christmas.

Q. And in that last shipment that you got in the week before Christmas, do you know whether or not any boxes of this character were in that shipment? A. Yes, sir.

Q. Do you know, have you any idea how long it was after the boxes arrived that they were unpacked and the merchandise was put in them for the purpose of putting on the counter for sale? A. About two days.

Q. Now, if two days after the shipment arrived was on a Sunday, would there be any work done in the store on a Sunday?

Mr. Fisch: I object.

Mr. McGlynn: It is a perfectly proper question.

The Court: I will permit it.

Q. Do you remember my question, Miss Fishbein? A. No.

Q. If two days after the shipment arrived happened to be a Sunday, was there any work done in that store on Sunday? A. I don't recall.

Q. Do you know whether you were opened the Sunday before Christmas? A. I don't recall.

Q. Do you work on Sunday? A. We don't work on Sundays, but we usually do some extra work on Sundays.

Q. Did you do some extra work on the Sunday before Christmas? A. I don't recall.

Q. Did you personally handle any of these, carry any of these boxes that were put on display?

A. I brought them up from the stock room, but them on my counter in the back.

Q. Were you present in the store recently when Mrs. Compo, this lady (indicating), was there with a young man? A. I don't recall.

Mr. McGlynn: It must have been somebody else.

Mr. Fisch: I object to that remark.

Mr. McGlynn: There is nothing prejudicial about it that I can see.

The Court: It is not material and it is not evidential, but we will strike it out.

Cross-examination by Mr. Fisch:

Q. Now, Miss Fishbein, these boxes, the boxes that you got into the store, they weren't made up specially for your store, were they? A. No, sir.

Q. Do you know who the manufacturer of them was? A. No, sir.

Q. Boxes similar to these could have been purchased and were purchased—that is, boxes similar to these—had merchandise in them and were delivered with merchandise in stores other than your store, weren't they? A. Yes.

Q. Is that right? A. Yes.

Q. And there is not anything on this box that has been marked in evidence here by which you could positively identify it as being one of the boxes that was in your store before Christmas, is there? A. No, sir.

Q. And the tag you identify as being one of the tags that was on merchandise that was sold from your store; is that right? A. Yes, sir.

Q. The tag does not tell you what the merchandise was, does it? A. No, sir.

Q. And you have thousands of those tags, haven't you? A. Yes, sir.

Q. And thousands of them go out of the store on various articles of merchandise? A. Yes, sir.

Q. There is not any way of telling from this tag what this tag was attached to, is there? A. No, sir.

Q. And you say that these boxes came in a week or so, the boxes that you have in your store, which were similar to this box, Exhibit D-3, came into your store, the last shipment, a week or so before Christmas? A. Yes, sir.

Q. You don't know whether there were any left over after Christmas? A. No, sir.

Q. And you don't know when they were all disposed of, do you? A. No, sir.

Q. And you have no way of ascertaining whether or not this is the particular box out of your store? A. No, sir.

Q. And you have no way of ascertaining whether or not, it is the particular box out of your store, it left your store on the 23rd of December or on the 18th of December, have you? A. No.

Q. Or the 15th of December? A. No, sir.

Q. And you sold neckties in these boxes? A. Sometimes we sold hosiery—glove boxes too.

Q. What is that? A. Gloves we used to sell in these boxes.

Q. Gloves and neckties? A. Yes, sir.

Mr. McGlynn: Hosiery, she said.

Mr. Fisch: She started to say hosiery and then stopped.

The Witness: No, not hosiery.

Q. Neckties and gloves, is that right? A. Yes.

Redirect-examination by Mr. McGlynn:

Q. Just one other question. Of all the Christmas boxes that you had up there last Christmas, did you have many of this particular kind? A. No, sir.

Mr. Fisch: She answered that. She said she did not have many of that particular kind.

Mr. McGlynn: All right. Excuse me.

FLORENCE OKNER, sworn in behalf of Defendant.

Direct-examination by Mr. McGlynn:

Q. Miss Okner, where are you employed? A. F. & W. Grants, 192 Springfield Avenue.

Q. Were you working in that same store Christmas time, last Christmas, 1930? A. Yes, sir.

Q. I show you a tag which has been marked here Exhibit D-3, and ask you if you recognize that tag. Look at it please. A. I recognize it.

Q. Have you seen that tag in the last week or so, Miss Okner? A. Yes, sir.

Q. Is there anything familiar about that tag? I believe my writing is on it.

Q. Your writing is on it? A. Yes, sir.

Q. What have you got on it? Will you read what is on there? A. 10-1/2.

Q. And what else? A. That is a ten and a two.

Q. A ten and a two means ten and a half? A. Yes, sir.

Q. Were you in the store up on Springfield Avenue about a week or so ago when this lady (indicating) was brought in? A. Yes, sir.

Q. Were you present when she was asked if she could point out—

Mr. Fisch: I object to what this woman may have been asked.

The Court: I do not think it is competent.

Mr. McGlynn: I certainly can bring into this record, she has already said that she pointed out the counter where she purchased these goods, and I want to know if this young lady was there present.

The Court: Supposing she was. That is virtually equivalent to a statement of some other witness made out of court at some other place.

Mr. McGlynn: I do not want a statement.

The Court: It is the same rule that would apply to it.

Mr. McGlynn: I don't want conversations. I want occasions that indicate the veracity and truth and substantiate the story.

The Court: The same rule of evidence would apply.

Q. Were you present when this lady, pointing to Mrs. Compo, was brought into your store a week or so ago and asked in your presence to point out the counter?

Mr. Fisch: I object.

Mr. McGlynn: I am going to finish my question.

The Court: Don't answer this until I tell you to.

Q. (Continuing) Where she was supposed to have purchased some merchandise in your store?

Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. Did this lady in your presence, this lady that I have just pointed out in the court room, in your presence in this store at 192 Springfield Avenue within a week or ten days from now, point out in your store any particular counter?

Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. Did you ever see a box similar to this one that I show you? A. No, sir.

Q. You don't remember? A. No.

Q. Do you know what tags of this kind were put on in your store? A. Most anything, hosiery, underwear, infants' wear.

Q. Hosiery, underwear, infants' wear? A. Neckwear, gloves.

Q. Does neckwear have a size 10-1/2? A. We just put a tag.

Q. I mean, would a 10-1/2 indicate— A. With the hosiery, mostly.

Q. What? A. With the hosiery.

Mr. Fisch: Hosiery mostly she said.

Q. There would not be 10-1/2 on neckties, would there? A. I guess not.

Q. Well, I don't know. I am supposed to be a lawyer and you are supposed to be a sales lady. Would neckties have 10-1/2 on them? A. No, sir.

Cross-examination by Mr. Fisch:

Q. Now, Miss Okner, irrespective of what merchandise might have a tag similar to the tag which you have been shown here in the court room, all you know about this whole matter is that this tag is one of the tags that was in the F. & W. Grand 5 and 10 cent store, is that right? A. Yes, sir.

Q. And that the numerals on it are numerals which were written by you? A. Yes, sir.

Q. And you don't know when you wrote the numerals? A. I couldn't tell you that.

Q. You may have written them only a few weeks ago so far as you know, is that right? A. Yes, sir.

Q. And on the other hand you may have written them several months ago, isn't that right? A. Yes, sir.

Q. How long have you been employed there altogether, Miss Okner? A. About a year and a half.

Q. And you may have written them a year or a year and a half ago? A. Might have.

Q. Is that right? A. Yes, sir.

Q. You don't know of your own knowledge what merchandise this particular tag was attached to, do you? A. No.

Q. And you don't know of your own knowledge when the merchandise to which this tag may have

been attached, or when the tag itself, left the store where you are employed? A. No, sir.

FRANK FERGUSON, sworn in behalf of Defendant.

Direct-examination by Mr. McGlynn:

Q. Ferguson, where do you work? A. At F. W. Grant Five and Ten Cent store.

Q. Springfield Avenue, Newark? A. Yes, sir.

Q. Were you working there Christmas time, 1930? A. Yes, sir.

Q. What were your duties? What did you do there? A. Receiving clerk.

Q. Do you recall the receipt by that store of cardboard boxes in which merchandise was put on the counter? A. I looked up my records and they were received on the 19th.

Q. You mean the last shipment before Christmas? A. Yes, sir.

By the Court:

Q. The 19th of what? A. Of December.

Cross-examination by Mr. Fisch:

Q. That is all you know about them? A. That is what the records show.

Q. You don't know how quickly your company got rid of the boxes, do you? A. No, I do not.

RAYMOND F. ARMSTRONG, sworn in behalf of Defendant.

Direct-examination by Mr. McGlynn:

Q. Mr. Armstrong, I understand you are manager of this five and ten cent store we are talking about. A. Yes, sir.

Q. At 192 Springfield Avenue, Newark, is that it? A. That's right.

Q. That is located on Springfield Avenue between what streets? A. Between Prince and Rankin.

Q. Is that east of Belmont Avenue? A. It is this side of Belmont Avenue.

Mr. Fisch: This is east.

Q. Were you manager in charge of this store at Christmas time, 1930? A. Yes, sir.

Q. Have you any personal recollection as to the character of boxes used by your firm in displaying merchandise and selling merchandise from your counters? A. Pretty close.

Q. Did we show you this box within the last week or ten days and ask you whether you could identify it? A. Yes, sir.

Q. Could you identify it? A. Yes, sir.

Mr. McGlynn: Showing the witness Exhibit D-3.

Q. Did boxes of that kind come to the store with merchandise in them ready for sale? A. No, sir.

Q. What was the procedure? A. The boxes came empty and we put merchandise in them.

Q. How long did it take from the time the boxes were received before they were put on the counter with merchandise in them? A. About two days.

Q. Would any of that packing of merchandise in that kind of boxes be done on Saturday? A. No, sir, the boxes would be received on Friday and the goods put in on Saturday.

Q. When were the boxes with the merchandise put on sale? A. They would be put on sale on Monday. Sunday we were closed.

Q. Friday was the 19th? A. Yes, sir.

Q. And they were put in on the 20th? A. Yes, sir.

Q. And Sunday was the 21st and you were closed? A. Yes, sir, we were closed.

Cross-examination by Mr. Fisch:

Q. Of course, Mr. Armstrong, you don't mean, do you, that you could positively identify this box as being one of the boxes that came from your store? A. That is a funny coincidence about that box.

Q. Never mind about the funny coincidence about the box. A. This specific box we remember.

Q. What was there about the box that made you remember it? A. Because there was only a dozen of that kind of box in the shipment. It was not our kind of box.

Q. But you don't mean to say that the dozen boxes in this shipment that came to you were the only boxes of this kind in the country like it, do you? A. No, I didn't say that.

Q. Who was the manufacturer of this box? A. I think it was the Modern Paper Box Company in Brooklyn.

Q. As a matter of fact, being manager of this store with your knowledge of the business, you know, don't you, that the Modern Paper Box Company that made up the boxes which you receiv-

ed, also sold boxes similar to that to other dealers, is that right? A. Yes, sir.

Q. And you can't tell with any degree of definiteness, looking at this particular box, that this particular box came from your store? A. No, sir, that I can't say.

Q. That is what I mean when I say that you didn't mean that you could positively identify this particular box as being one that came from your store? A. No, sir, I can't.

Q. The best you can say is that it looks like one of the boxes of which you had a dozen in your store which came in before Christmas, 1930? A. Yes, sir.

Q. When these boxes came into your store and after they came into your store you had no further interest in them, did you? A. No.

Q. And you don't know when you got rid of them, do you? A. No, sir.

Q. You don't know whether you got rid of all of them on the Saturday before Christmas. A. All I can say definitely is that they were put on the counter on Monday. After that I can't tell you what happened.

Q. You can say that definitely? A. If this is the box, if this is the box that was on that counter.

Q. Assuming for the sake of this question that this is the box that was received in your store. Why do you say it was put on the counter on Monday? A. Because on Saturday we are so busy we can't put merchandise on the counter.

Q. The store was open Friday night, wasn't it? A. That's right.

Q. And if the boxes had been received early on Friday morning they would have been put on the counter on Friday afternoon. If you had a de-

mand for fancy boxes you would have opened the packages and put them on the counter. A. But there was merchandise put in the boxes.

Q. But if you had a large demand for merchandise in fancy boxes and these boxes were in your store early on Friday morning you would have opened them and put the merchandise in them so that you could sell them Saturday—before your Christmas days. A. They were put on sale on Monday.

Q. You have a definite and distinct recollection of that? A. Yes, sir. The item in that kind of boxes with that pin ticket would be two pair of hosiery.

Q. You don't know anything about this pin ticket, do you, other than that it is one of your pin tickets? A. That's right. That is what goes on hosiery.

Q. But you don't know anything about whether the merchandise that went into that box that was sold in that box had this pin ticket attached to it, do you? A. No, sir.

Q. You don't know whether the merchandise which was sold in this box was a necktie or a pair of gloves or two pairs of hosiery or what it was. A. That's right.

Q. So that if it was—the— A. (Interrupting) The only kind of merchandise in those kind of boxes would be hose.

Q. Then Miss Fishbein is mistaken about it. A. It was a different kind of box. It would not have that kind of decoration.

Q. Did you have a particular kind of decoration for a paritcular kind of merchandise? A. Yes, sir.

Q. What kind of a particular decoration did you have for gloves? A. I can't tell you right offhand.

Q. Describe it. A. There was two kinds; one with silver paper on and one with holly.

Q. What was the design? A. Holly leaves and holly berries.

Q. Made by the same manufacturer? A. No, we had two or three manufacturers.

Q. Did you have a specific rule that only gloves were to be sold in the fancy boxes that had holly berry on them? A. No.

RUDOLPH LAUFER, sworn in behalf of Defendant.

Direct-examination by Mr. McGlynn:

Q. Do you live in Newark, Mr. Laufer? A. Yes, sir.

Q. What address, please? A. 2 Osborn Terrace.

Q. You have a store on Springfield Avenue and you had it at Christmas time, 1930? A. Rudolph's Men's Shop, 250 Springfield Avenue, Newark.

Q. Are you familiar with the merchandise you had in stock? A. I certainly was.

Q. I show you a shirt which has been marked Exhibit D-4 and ask you whether you had shirts of that particular type and style on sale on or about Christmas time, 1930. A. Yes.

Cross-examination by Mr. Fisch:

Q. How long before Christmas time, 1930, did you have merchandise like that in stock for sale? A. I should judge six or eight months steady.

Q. Six or eight months before that? A. Yes, steady.

Q. How long after Christmas, 1930, did you have merchandise like this for sale? A. It is a staple article being sold all the time.

Q. It is a staple article which you had on hand all the time, is that right? A. Yes, sir.

Q. And you sold them when business was good practically every day in the week. A. Yes, sir.

Q. And you have no recollection or no way of determining when this particular shirt came into your stock. A. No, sir.

Q. Nor when it went out of your stock. A. No, sir.

Q. Around Christmas time, 1930, you were the salesman in your store, weren't you? A. It was my own business.

Q. It was your own business and you worked behind the counter and sold merchandise, didn't you? A. My clerk sold it, maybe.

Q. I didn't ask you that. You were working behind the counter weren't you? A. Yes. But the clerk may have sold it. He is not here now.

Q. I didn't ask you that. Who was the clerk? A. Meyer, Louis Meyer.

Q. And you and Louis Meyer were the people who were working in your store around Christmas time, 1930? A. Yes, sir.

Q. And selling merchandise? A. Yes, sir.

HENRY SELTZER, sworn in behalf of defendant.

Direct-examination by Mr. McGlynn:

Q. Mr. Seltzer, at Christmas time, 1930, or about that, were you in business on Springfield

Avenue or working on Springfield Avenue? A. Yes.

Q. What kind of business? A. Shoe business.

Q. What shoe store was it? A. 210 Springfield Avenue.

Q. Whose store was it? A. It is operated by the concern of Stern & Kelner.

Q. Have you been shown this pair of shoes which is marked Exhibit D-11 for identification? Have you been shown those shoes in the last week or ten days? A. The lady asked me if they were bought in my store.

Q. Did you, on or about Christmas time, 1930, have shoes of that type in stock? A. On that order; yes, sir.

Q. Now, just before Christmas, 1930, did anything happen at the store which interfered with the business? A. We closed down for about a week, that is, four or five days. There is no record there to show just how many days. I was closed there from the 14th until the 21st.

Q. When was the first time you opened for business after this fire? A. The 21st.

Q. I understand you are the father of Officer Seltzer of the Newark Police Department? A. Yes, sir.

Mr. McGlynn: I offer these shoes in evidence.

(The shoes referred to, previously marked Exhibit D-11 for identification, are received in evidence and marked Exhibit D-11).

Cross-examination by Mr. Fisch:

Q. You say you are Detective Seltzer's father? A. Yes, sir.

Q. Now, is there anything on these shoes by which you can identify these particular shoes as having been sold in your store? A. Any particular point?

Q. Yes. Is there any mark of identification by which you can say that these shoes are the shoes which were sold in your store? A. No, sir.

Q. Is there anything on these shoes or anything by your recollection by which you can tell us when shoes like this, or whether, if these shoes were sold in the store, when these shoes were sold in your store? A. I have no record to show.

Q. How long before Christmas did you have shoes similar to this in stock? A. Well, merchandise on that order generally came in about August or September.

Q. And you have them on your shelves and ready for sale in August and September? A. We had at times, and sometimes they are transferred to some other store. We have three other stores on Springfield Avenue carry the same line.

Q. So that so far as your recollection goes, this merchandise, similar to this, was in your store and on your shelves ready for sale and sold anywheres from August to September, 1930, right down to and including the past Christmas? A. If they were in the store we would sell them; yes.

Q. Did you have shoes like this in your store after Christmas, 1930? A. After Christmas?

Q. Yes. A. I have no record to show. They were transferred after the 16th of January, they were transferred out.

Q. Oh, after January 16th they were transferred somewhere else? A. Yes.

Q. But shoes of this type could have been purchased in your store here anywhere from August

and September, 1930, right straight through to January, 1931? A. That is possible.

Q. And shoes similar to this type could have been purchased in other stores? A. At some other store. We have three other stores.

Q. This woman who came in to speak to you about these shoes, did you recognize her? A. No, sir, I did not.

Q. Did you ever see her before? A. Not to my recollection; no, sir.

Q. Did you ever see her on any other occasion in your store buying shoes? A. Never.

Q. Or buying shoes like this? A. Something I couldn't swear to; no, sir.

Q. You don't ever remember having seen her in your life before she came into your store last week? A. No, sir.

Redirect-examination by Mr. McGlynn:

Q. How many clerks did you have in the store, Mr. Seltzer, around Christmas time, about? A. How many clerks? Well, I think there was about seven of them.

Q. Now, is there a complete record made by your store of the sales, which record is sent on to the New York store of your company? A. Well, there is a sales slip made out with every purchase.

Q. What is on that sales slip? A. The number of the merchandise the party buys.

Q. You mean there is a number on each pair of shoes? A. Yes.

Q. And that record was sent by you to the office? A. Yes.

Q. Where is that office? A. 108 Reade Street, New York.

Q. Have you any personal knowledge as to how long those records are kept? A. That I have no idea of; no, sir. See, we have an inventory every month, and if our inventory checks up, there is a possibility that the checks are destroyed, because the qualifications come right up to the mark.

Q. You take the inventory of what you have on hand, and you would have a receiving record of what you have? A. Yes.

Q. And the sales record of what goes out? A. Yes.

Q. And at the end of the month it should balance? A. Must balance.

Recross-examination by Mr. Fisch:

Q. Now, these clerks, I suppose there is a record of their names and their addresses, the clerks who were in your employ at that time? A. No, sir.

Q. Wouldn't there be? A. Because they come and go.

Q. But wouldn't there be a record on the payroll? A. There is a possibility.

Q. Have you been asked to look up such a record by counsel for the defense? A. No, sir.

Redirect-examination by Mr. McGlynn:

Q. Were you asked—we certainly asked you about the record of sales, didn't we, Mr. Seltzer? A. About the record of sales, yes, but not about the salesmen.

Q. We asked you about the inventory, didn't we?

Mr. Fisch: What has that got to do with it?

Mr. McGlynn: You have been intimating

we did not check up, and I want to show you we did.

Mr. Fisch: I am not criticising. You worked very hard.

JOSEPH WEINTRAUB, sworn in behalf of defendant.

Direct-examination by Mr. McGlynn:

Q. Weintraub, are you a member of the Bar of the State of New Jersey? A. I am.

Q. Connected with my office? A. I am, sir.

Q. Have you been assisting me in the investigation of the facts in this case? A. I have.

Q. Did you at my request examine the door of the store on the corner of Mulberry and Beach Streets? A. I did.

Q. When was that examination made? A. Well, it was the day that Mr. Haug testified, which was Tuesday, I believe the first day.

Q. After his testimony was given? A. Yes.

Q. And what side of the entrance door to that store are the locks?

Mr. Fisch: I object to that, if your Honor please, as being entirely immaterial and irrelevant and in no way contradicting any testimony which Mr. Haug gave, because at the time that Mr. Haug gave his testimony as to the physical condition existing on December 23, 1930, and this young man has gone down there in June, 1931.

The Court: Is there any way in which you can connect up the condition there today, or the other day, and the condition it was at the time of the shooting?

(Counsel argue).

Mr. McGlynn: I will withdraw the question for a moment.

Q. Did you examine the door itself? A. I did.

Q. Was there any indication on your examination of that door of any changes being made on it?

Mr. Fisch: I object.

Mr. McGlynn: Certainly he can tell from the door if there were any changes made on it.

The Court: It might not be the same door as far as that is concerned. Sustain the objection.

Q. On what side of the door, referring to that grocery store, are the locks located?

Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. What kind of locks are on the door?

Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

(A brief recess is taken).

LEON GRUBER sworn in behalf of defendant.

Direct-examination by Mr. McGlynn:

Q. Mr. Gruber, you own a hat store at 452 Clinton Avenue in Newark? A. Yes, sir.

Q. Did you run that store on the first of the year? A. Yes, sir.

Q. Were you open or closed on January 1st? A. I was open half a day.

Cross-examination by Mr. Fisch:

Q. Is this one of the hats that came from your store (indicating)? A. Yes, sir.

Q. Do you know when it was sold by you?

Mr. McGlynn: I object to that as not cross-examination.

Witness: I don't know.

The Court: The witness said he didn't know.

Mr. McGlynn: I objected before he answered it.

The Court: I will permit it.

Q. Did you have hats like this in your store in October and November and the whole month of December, 1930?

Mr. McGlynn: I object to that as not cross-examination.

The Court: Sustained.

Mr. Fisch: I would like to make him my own witness.

The Court: Very well.

A. I have had those hats in my store since the Prince of Wales was in this country.

By the Court:

Q. Did you sell him the hat? A. I don't know. I have had them for the last six or seven years. They had the same style hats all that time.

By Mr. Fisch:

Q. And you have sold that kind of hat all along? A. Yes, sir.

Q. There isn't any way of knowing whether you sold that hat? A. It can't be told.

Q. And you had them in your stock in October and November and the whole month of December, 1930? A. For the last six or seven years, a pearl gray with a black band.

DEFENDANT RESTS.

ALBERT SELTZER sworn in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Detective Seltzer, you are connected with the Newark Police Department attached to Detective Bureau at police headquarters? A. I am.

Q. And you are the son of the man who testified for the defense in this case, Mr. Henry Seltzer? A. I am.

Q. Did you strike the defendant Compo while he was at Police Headquarters? A. I did not strike the defendant at Police Headquarters or any other place.

Q. Did you punch him in the jaw? A. I did not.

Q. Kick him in the stomach? A. I did not.

Q. Kick him about the legs? A. No, sir.

Q. Punch him in the eye? A. No, sir.

Q. Take a rubber hose and beat him on the back? A. I did not.

Q. Did anyone in your presence lay any hand on him whatever? A. I didn't see anybody touch him.

Q. Did you see any bruises on him while he was at Police Headquarters? A. I did not. I took his pictures.

Q. What? A. I took him down to have his pictures taken.

Q. You took him down to have his pictures taken? A. There was no bruises on him then.

Q. Were there any bruises on him at any time that you saw? A. No, sir.

Q. Did he make any complaint to you or anybody else that he was being mistreated? A. He did not make any complaint to me.

Q. Or to anybody else in your presence? A. Not in my presence.

Q. When you say you took him down to have his pictures taken, I show you Exhibit S-13 for identification. Is that one of the pictures you took him down to have taken? A. That is one of them.

Q. I show you Exhibit S-14 for identification and ask you if that is one of the pictures you took him down to have taken. A. Yes, sir; both of his pictures.

Q. Did you pull his hat down over his ears? A. No, sir.

Q. Did Detective McHugh say to you, "Take that hat off. You will pull his ears off"? A. No, sir.

Q. Did you say to the defendant, "We are going to kill you right here?" A. No, sir.

Q. Did you punch him in the stomach and the chest for a half hour straight or for any time? A. No, sir.

Q. Did the defendant ever say in your presence that he would sign anything if you and the other police officers would let him alone? A. No, sir.

Cross-examination by Mr. McGlynn:

Q. How many times did you interview him? A. Several times.

Q. Where? A. At Police Headquarters.

Q. Where in Police Headquarters? A. At the Captain's office.

Q. Where else? A. Deputy Chief's office.

Q. Where else? A. Upstairs in the witness room.

Q. What floor is that on? A. Fourth floor.

Q. Is that the floor the cages are on? A. Yes, sir.

Q. Any benches in that room? A. Sir?

Q. Any benches or chairs in that room? A. Talked to him out in the hall through the cell.

Q. Didn't you just say you had him in the witness room? A. Yes.

Q. Are there any benches or chairs in that room? A. Yes, sir.

CHARLES GRAULEY, sworn in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. You are connected with the Newark Police Department attached to the Detective Bureau at Headquarters, are you not? A. Yes.

Q. Were you present at Police Headquarters in

Newark when the defendant Compo was there? A. I was.

Q. Were you present at the same time when Detective Seltzer and Detective Burkhardt and Sergeant McHugh were there? A. I was.

Q. Did you hear Sergeant McHugh say to this defendant that he should take his coat off and tell him everything, otherwise he was going to be beaten? A. I did not.

Q. Did you see Detective Seltzer hit the defendant with his fists in the ribs? A. I did not.

Q. Did you see Detective Seltzer get two rubber hoses and pull the defendant's hat down over his ears? A. I did not.

Q. Did you hear Sergeant McHugh tell Detective Seltzer to take Compo's hat off, otherwise, he would pull his ears off? A. I did not.

Q. Did you see Detective Seltzer beat the defendant with a hose across the back? A. I did not.

Q. Did you hear Detective Seltzer say to the defendant, "We are going to kill you right here?" A. I did not.

Q. Did you see Detective Seltzer punch the defendant in the stomach and the chest for a half hour straight? A. I did not.

Q. Did you see Sergeant McHugh strike the defendant? A. No.

Q. Did you see Detective Burkhardt beat the defendant across the back? A. I did not.

Q. Until his back was like a blister? A. I did not.

Q. Did you see Detective Burkhardt beat him at all? A. No, sir.

Q. Did you see anybody beat him? A. No, sir.

Q. Did you see anybody lay a hand on him? A. No, sir.

Q. Did you lay a hand on him? A. No, sir.

Q. Did you strike him in any way? A. No, sir.

Q. Did you hear the defendant say he would sign anything, if you would let him alone? A. No, sir.

Q. Did you ever hear Sergeant McHugh say to the defendant, "We will tend to you in the morning"? A. No, sir.

Q. Did you ever see anybody crack his lip open? A. I did not.

Q. Did you see any bruises on him? A. No, sir.

Q. Any marks about his face or body? A. No, sir.

Q. Or his lips? A. No, sir.

CROSS-EXAMINATION WAIVED.

FREDERICK W. BURKHARDT sworn in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. You are connected with the Newark Police Department and attached to the Detective Bureau at headquarters? A. Yes, sir.

Q. Were you present when Detective Seltzer, Detective McHugh, and Sergeant Conlon were present? A. Yes, sir.

Q. Did you strike the defendant? A. No, sir.

Q. Did you see anybody strike him? A. No, sir.

Q. Did you see any marks or bruises on his body? A. No, sir.

Q. Did he make any complaints to you or to anyone in your presence about being beaten? A. No, sir.

Q. Did you get a rubber hose and did you or anybody beat him with a rubber hose? A. No, sir.

Q. Did you see anybody beat him with a rubber hose across the back? A. No, sir.

Q. Did you beat him with a rubber hose across the back? A. I did not.

Q. Did you go out after a rubber hose and then come in with one hose? A. I did not.

Q. Did you ever see Detective Seltzer pound the defendant from one side and have you beat him on the back? A. No, sir.

Q. Did he ever make any complaint to you or to anyone in your presence about being beaten? A. No, sir.

CROSS-EXAMINATION WAIVED.

THOMAS McHUGH recalled in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Did you strike the defendant Compo at any time? A. No, sir.

Mr. McGlynn: If your Honor please, if these police officers are all going to testify to the same thing, I will agree that that is what they would testify to if called.

The Court: Do you want to call them just the same, Mr. Prosecutor?

Mr. Fisch: Yes, sir.

Q. Did anyone in your presence ever strike him? A. No, sir.

Q. Did Detective Seltzer ever hit him in the chest with his fists? A. No, sir.

Q. Did Detective Seltzer ever pull his hat over his ears? A. No, sir.

Q. And did you tell Detective Seltzer, "Don't pull his hat down like that or you will pull his ears out"? A. No, sir.

Q. Did you tell the defendant to take off his hat? A. No, sir.

Q. Did you hear anyone in your presence say, "We are going to kill you right here"? A. No, sir.

Q. Did Detective Burkhardt beat him across the back? A. No, sir.

Q. Did the defendant say to you, "I will sign anything if you will let me alone"? A. No, sir.

Q. Did he complain to you or to anybody in your presence about being struck or beaten? A. No, sir.

Q. Did you pull out a blackjack and hit him with a blackjack? A. No, sir.

Q. Did anyone in your presence ever say to him, "Tell them everything and prevent a beating"? A. No, sir.

Q. Did you ever say to him, "We will tend to you in the morning"? A. No, sir.

Q. Did you ever take him into a room where Detective Seltzer hit him in the eye with his fist and cracked his lip open? A. No, sir.

Q. Did he give you some kind of a check to give his wife and to let his folks know where he was—to give this woman he calls his wife a check? A. I can't recall now what stuff he did have. There may have been some little note there. He mentioned something about some note.

Q. Did you see that it was delivered? A. I believe it has been delivered.

Q. The statement, Exhibit S-12, was that taken on the day when it bears date? A. Yes, sir.

Q. April 13, 1931? A. Yes, sir.

Q. Did you put the date on it at the time that it was written up? A. Yes, sir.

Cross-examination by Mr. McGlynn:

Q. Who used the typewriter? A. I did.

Q. How soon after you received this check or paper from the defendant did you give them to his wife? A. A couple of days.

Q. A couple of days? A. I think so.

Q. What is your idea of a couple of days? A. I figure two days.

JOHN L. DAY sworn in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. You are connected with the Newark Police Department? A. I am.

Q. Are you one of the photographers of the Department? A. I am.

Q. I show you a photograph, Exhibit S-13 for identification, and ask you whether you made that photograph. A. I did.

Q. Is it a true representation of the defendant? A. It is.

Q. When did you make it? A. April 9, 1931.

Q. At the time you made that photograph were there any marks or bruises on this defendant? A. There was none.

Mr. Fisch: I offer Exhibit S-13 for identification in evidence.

The Court: Let it be marked.

(The photograph referred to, previously marked S-13 for identification, is received in evidence and marked Exhibit S-13).

Q. I show you another photograph, Exhibit S-14 for identification, and ask you if you made that photograph. A. I did.

Q. When did you make it? A. On the 16th of April, 1931.

Q. At the time that you made that photograph, were there any marks or bruises on this defendant? A. There was none.

Q. Was there any representation of any marks or bruises on that photograph? A. No, sir.

Q. Can you see—do you see any swelling of the left eye shown in that photograph? A. No, sir.

Mr. Fisch: I offer Exhibit S-14 for identification in evidence.

(The photograph referred to, previously marked F-14 for identification, is received in evidence and marked Exhibit S-14).

Q. Can you tell the Court and jury why it was that the photograph which I have just marked in evidence, S-14, was taken after you had taken the photograph, Exhibit S-13?

Mr. McGlynn: I object. We are not concerned with the motive of why those pictures were taken, either one of them.

The Court: I do not see how that is material.

Mr. Fisch: Well, if counsel does not want to know I am satisfied.

Mr. McGlynn: I am relying on the rules of evidence, not on my wishes.

Mr. Fisch: If he don't want the jury to know, all right.

Mr. McGlynn: I ask that counsel's remarks be stricken from the record and the jury instructed to disregard them.

The Court: If the question is improper, it is perfectly proper for counsel to object to it.

Cross-examination by Mr. McGlynn:

Q. Can photographers touch up the negatives or plates so that the picture which is printed is different than the plate itself?

Mr. Fisch: I object, your Honor.

The Court: Sustained.

Q. How long have you been a photographer, Mr. Witness? A. 20 years.

Q. For the Police Department? A. No, sir. I have been ten years in the Police Department doing photographic work.

Q. You have been doing this, taking pictures for the Police Department, for the last ten years then? A. Yes, sir.

Q. And is it possible in the art of photography for pictures to be taken and for the printed picture from the negative or plate to have spots or marks which may be on the plate or negative removed?

Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Redirect-examination by Mr. Fisch:

Q. Was there any touching up done on these photographs or negatives from which these photographs were made? A. No, sir.

Q. Are they a true representation of the original plate and negative? A. They are.

Q. And have you that original plate and negative? A. I have.

Q. In your possession? A. Not here.

Q. At Police Headquarters? A. Yes.

Q. Can you produce it and turn it over to counsel for the defense if he wants it? A. Yes.

Mr. Fisch: Do you want it, Mr. McGlynn.

Mr. McGlynn: I refuse to answer. I won't answer the question.

Recross-examination by Mr. McGlynn:

Q. What is touching up?

Mr. Fisch: I object.

Mr. McGlynn: You brought it up.

Mr. Fisch: All right. I will withdraw the objection.

Q. What is touching up? A. Well, there is no such a thing as touching up. There is retouching.

Q. You were asked if there was any touching up, and you said no. What did you mean? A. Retouching.

Q. What does that mean? A. Well, retouching is done on a negative to remove pimples, and also to take marks, which is caused by scratching in development, out.

By Mr. Fisch:

Q. Was there any such retouching done in this case? A. No, sir.

Q. Is there any retouching done on police photographs?

Objected to.

Objection sustained.

PHILIP SEBOLD, recalled for the State in rebuttal.

Direct examination by Mr. Fisch:

Q. Captain Sebold when Exhibit S-8 was signed in your presence, did it bear a date? A. It did.

Q. And was the date at the head of each page? A. It was.

Q. And was it dated on the day when it was taken? A. Dated April 15th, the day it was taken.

Q. Now, at that time did the defendant have any marks or bruises on him? A. No.

Q. Did he make any complaint to you about any marks or bruises? A. No.

Q. Or about any beatings? A. No.

Q. Did he refuse to sign that statement? A. No, he did not.

Q. Did he say in your presence that it wasn't true? A. No, sir.

Q. Did he refuse to sign the statement in your presence and then did Lieutenant Conlon pull out a blackjack, and was it then that the defendant signed the statement?

Mr. McGlynn: I object.

The Court: I will permit it.

A. No. No blackjack drawn there.

Q. Now, did he ever tell you during the course of the time when you questioned him, that he was out buying Christmas presents on the night of December 23rd? A. He did not.

Q. Now at any time, either while he was making this statement or while he was being questioned by the police in your presence, was he beaten or were any hands laid on him? A. There was not.

Q. Did the defendant in response to a request by you to sign the statement say, "Why should I? It is nothing but a lie. I told this because they told me what to say"? A. No.

Q. When you showed him the photograph Exhibit S-2, did he say to you that he did not know if this is the place because he had never been in that district? A. No, he did not say that.

Q. What did he say to you?

Objected to as not rebuttal.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

A. He said, "This looks like the place."

Cross-examination waived.

LUKE CONLON, recalled for the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Lieutenant Conlon, did you go to the cell where the defendant was lodged at Police Headquarters with Detective Fallon and say to the defendant, "You heard them talking about this murder in here, haven't you?" A. No, sir; I did not.

Q. Did you then take him into a room and say, "We want you to tell us about this murder," and then hit him in the stomach and knock him down under a seat? A. No, sir, I did not.

Q. Did he, when you were questioning him about this case, say that he did not know anything about it? A. No, sir.

Q. Did you see Detective Fallon kick him in the chest? A. No., sir.

Q. Did you punch him in the face? A. No, sir.

Q. And did Detective Fallon then say to you, "Don't punch him in the face"? A. No, sir.

Q. Did you see Fallon lay hands on him at all? A. No, sir.

Q. Did you call him "a lousy, lying bastard?" A. No, sir.

Q. Did you beat him over the legs with the blackjack? A. No, sir.

Q. Did Fallon hit him in the mouth? A. No, sir.

Q. Did you hear Fallon say to him, "You talk or we will kill you"? A. No, sir, I did not.

Q. Did you or Fallon, or you and Fallon, then tell the defendant what to say when he got downstairs to make a statement? A. No, sir, we did not.

Q. Did you tell him or did anyone in your presence tell him that if he made the statement, Ex-

hibit S-8, that you would put him on the streets? A. No, sir, we did not.

Q. Did you use a blackjack on him or pull out a blackjack when he was at Captain Sebold's office when this statement was about to be signed? A. No, sir.

Q. Did he refuse to sign the statement? A. No, sir, he did not.

Q. Did he say to Captain Sebold, "It is a lot of lies?" A. No, sir.

Q. And did you then pull out a blackjack and then he signed it? A. No, sir, I did not pull out no blackjack at all.

Q. Did you give the defendant any of the information which is contained in this statement, Exhibit S-8? A. I did not. I couldn't give it to him.

Q. Where was the information obtained that was put into this statement? A. From the defendant.

Q. Did you tell Detective Capodanno while he was writing this statement, Exhibit S-8, what to put into the statement? A. I did not.

Q. Or did you tell the defendant at that time to tell Capodanno what to put into the statement? A. I did not.

Q. Did you interfere in any way with the taking of the statement? A. I did not. I just sat there as a witness.

Q. Did you have a conversation with Mr. Haug when he appeared at police headquarters and identified the defendant in a line-up wherein at first you nudged Mr. Haug and that he then said, "Yes?" A. I did not, I wasn't standing within ten feet of Haug.

Q. Did you say to Mr. Haug in the presence of the defendant and in the presence of that line-up

of men, "Where did you see this man?" A. Yes, I said them words, but Mr. Haug had already identified him.

Q. Did the defendant ever tell you at any time that this statement was a pack of lies? A. He did not.

Q. Did he ever tell you at any time that he had been out shopping on Springfield Avenue on the night of December 23rd? A. He did not.

Cross-examination by Mr. McGlynn:

Q. How many different rooms did you have this man in in headquarters? A. One room is the only room I had him in.

Q. Where was that? A. Captain Sebold's room.

Q. Where did you do the questioning? A. In the Captain's office.

Q. All the questioning you did you did in the Captain's office? A. All that I done with him, yes.

HOWARD FALLON recalled for the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Detective Fallon, did you go to the cell where the defendant was confined at Police Headquarters with Sergeant Conlon and say to the defendant, "You heard them talking about this murder in here, haven't you?" A. I did not.

Q. Did you take him into a room and say to him, "We want you to tell us about this murder?" A. I did not.

Q. Did Conlon hit the defendant in the stomach and knock him down? A. He did not.

Q. Did you kick him in the chest? A. I did not.

Q. Did Conlon punch him in the face? A. He did not.

Q. Did you say to Conlon, "Don't punch him in the face?" A. I did not.

Q. Did you see any swollen eye on the defendant? I did not.

Q. Did you at any time see any marks or bruises on him? A. I did not.

Q. Did he ever complain to you or to anyone in your presence about being beaten? A. No, sir.

Q. Did Conlon hit him over the head with a blackjack? A. He did not.

Q. Did you say to him, "We will kill you?" A. I did not.

Q. Did you beat him before he began to tell his story? A. I did not.

Q. Did Sergeant Conlon in your presence, or did you, say to him that you will put him on the streets if he tells about this murder? A. I did not.

Q. Did you or Sergeant Conlon or both of you tell him what to put into this statement, Exhibit S-8? A. I did not.

Q. Did you tell him what to tell Detective Capodanno to write? A. I did not.

Q. Did you interfere in any way in the taking of the statement? A. I did not.

Q. Were you present when the statement was signed? A. I was.

Q. Was it dated? A. Yes, sir.

Q. Was each page dated April 15, 1931? A. It was.

Q. Was it dated before the rest of the statement was written? A. It was dated at the top.

Q. And was it dated at the time he signed it? A. It was.

Q. Did he say in Captain Sebold's office that the statement was a pack of lies? A. He did not.

Q. And did he refuse to sign it? A. He did not.

Q. And did Sergeant Conlon then pull out a blackjack before the defendant signed it? A. He did not.

Q. I should have said in Deputy Chief Brex's office. A. He did not.

Q. Did he ever tell you or anyone in your presence that he was not on Mulberry Street on December 23rd but that he was out shopping? A. He did not.

Q. Did anyone in your presence ever say to him that they were going to kill him? A. They did not.

Cross-examination by Mr. McGlynn:

Q. What floor in headquarters is the room you call the assembly room where all your desks are? A. The third floor.

Q. Is there a room on that same floor near the assembly room, a small room? A. There is a number of rooms there. I don't know the one you are referring to.

Q. A small room. A. There are different sized rooms.

Q. Is there a witness room on the same floor? A. On the prison floor, yes, there is witness rooms.

At one o'clock, p. m. the court takes a recess until two o'clock, p. m.

After Recess

RALPH CAPPODANNO, recalled in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Detective Cappodanno, I direct your attention to Exhibit S-8, this statement, and ask you whether or not the date appearing on that statement on each page of that statement was put on it at the time the statement was written? A. It was.

Q. And was it put on it before Compo signed it? A. That was the first thing that was on the statement, was the time, followed by the date, and then his name, address, occupation, age, and to whom the statement was made.

Q. Was the statement dated on the day when it was taken? A. Yes, sir.

Q. That is, it was taken on the 15th of April, wasn't it? A. It was.

Q. Now, while that statement was being taken by you, was being written by you, did Sergeant Conlon in any way interfere in the taking of the statement? A. No, sir; never interferred.

Q. Did Detective Fallon in any way interfere? A. No, sir.

Q. Did either of those gentlemen tell you what to put into the statement? A. No, sir.

Q. Did anyone other than the defendant tell you what to put into that statement? A. Nobody but he.

Q. At the time that you took that statement, were there any bruises or marks on the defendant? A. There was not.

Q. Did he complain to you about having been beaten? A. No, sir.

Q. Did you see any evidence of violence upon him at all? A. No, sir.

Q. Now, you apprehended Furfaro, did you not? A. I did.

Q. When?

Mr. Basile: I object, if your Honor please. That is not proper rebuttal.

The Court: Yes it is, because the defendant testified that Furfaro said, he heard Furfaro talking about something in jail about this matter.

Mr. Fisch: No, your Honor, I am sorry.

The Court: No, I think you are right about that. That was someone else he heard talking, but he did say that the police got the information from Furfaro to put in the statement which he signed.

Mr. Fisch: Yes, the purpose of this statement is to show that Furfaro was not apprehended until after the defendant had told this story on the 15th.

The Court: Yes, that is the purpose of it, but I mean it becomes competent because I think the defendant said that in answer to a question as to why they put in Furfaro's name, that they had gotten it from Furfaro before that.

Mr. Fisch: Yes, your Honor.

The Court: I will admit it.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Q. When did you apprehend Furfaro? A. At 5:45 P. M., April 15th.

Q. Was that before or after Compo had mentioned Furfaro's name in connection with holdups, and so forth, so far as you know? A. That was after his name had been mentioned in reference to holdups and arson and other—

Q. That was when you went out to get Furfaro? A. Yes, sir.

Q. And then the gun, Exhibit S-9, was that the gun that was found in Furfaro's coat? A. This was.

Cross-examination Waived.

MICHAEL TENORE recalled in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Tenore, when was the first time after you were arrested when you saw or spoke to Clarence Stern? A. The night before we were arraigned.

Q. When was that? A. We were arraigned on a Saturday morning and we were there on Friday.

Q. What date? A. I don't know.

Q. And you saw him the night before you were arraigned? A. Yes, sir, on Friday night.

Q. Did you have any conversation with Stern in a cell in police headquarters and call Compo a dirty rat? A. No, sir.

Q. Did you have any conversation with Stern in police headquarters in a cell and say that you were going to frame Compo on this murder charge or on any other charge? A. No, sir.

Cross-examination Waived.

CLARENCE STERN recalled in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Stern, on what date did you surrender to the police? A. April 16, 1931.

Q. What time? A. 4:30 in the afternoon.

Q. When was the first time that you saw Tenore after that? A. Four o'clock the following morning—Friday morning.

Q. Did you have any conversation with Tenore or with anyone else in the cell at police headquarters wherein you called the defendant a dirty rat? A. No, sir.

Q. Or wherein you said that you were going to frame him on this murder charge? A. No, sir.

Q. Had you been in police headquarters up to the date which you now mention, the afternoon of April 16th? A. No, sir.

Q. Did Sophie Krok and Lillian Rys accompany you and the defendant in an automobile to Stone Street on a stick-up job? A. No, sir, no stick-up job, nor any stick-up job on any street.

Q. Were you on that stick-up job on Stone Street? A. I was.

Q. Who else was there? A. Johnnie Furfaro, another fellow by the name of Joe and myself.

Q. How about the defendant? A. And the defendant.

Cross-examination Waived.

John Furfaro—Rebuttal—Direct.
Lillian Rys—Rebuttal—Direct.

JOHN FURFARO recalled in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch (through the interpreter in Italian):

Q. Furfaro, did Lillian Rys and Sophie Krok go with you on a stick-up job on Stone Street? A. No, sir.

Q. Who were on that job? A. Myself, Eugene Compo, another fellow called Joe, and Clarence stayed outside.

Cross-examination Waived.

LILLIAN RYS recalled in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Lillian, did you go in an automobile with Sophie and Clarence Stern and Compo to Stone Street on a stick-up job? A. No.

Q. Did you ever go to Stone Street in the automobile? A. No.

Cross-examination by Mr. McGlynn:

Q. Do you remember being in Petty's drug store and having sodas with the two boys and having Gene cash a $5 gold piece in payment of the sodas? A. No.

Q. You don't remember that at all? A. No, sir.

SOPHIE KROK recalled in behalf of the State in rebuttal.

Direct-examination by Mr. Fisch:

Q. Sophie, did you ever go in an automobile with the defendant and Lillian and Clarence Stern to Stone Street on a stick-up job? A. No, never did.

Q. Did you ever go to Stone Street with him? A. No, I never did.

Q. Did you ever ask him for any money? A. No, I did not.

Q. Did you ask him for the return of $43? A. No.

Q. Did you have any argument with him over money? A. No, I never did have any argument.

Q. Did you beg him to take your money? A. No.

Q. Did you ever give him any money to buy guns? A. No, I did not.

Q. Or did you ever give him any money to buy guns to go out on stick-ups with? A. No, I didn't.

Q. Did you ever tell him to go out and stick up any place? A. No, I didn't.

Cross-examination by Mr. McGlynn:

Q. Do you remember this $5 gold piece? A. No, I don't remember it.

Q. Do you remember giving him the ring with the $5 piece fastened to it? A. No.

Q. Didn't you give it to him? A. No.

Q. Do you remember who gave it to him? A. No, I don't remember anything.

Q. You don't remember anything? A. No.

Redirect-examination by Mr. Fisch:

Q. You mean you don't remember anything about this ring? A. No, I don't remember anything about it.

State rests in rebuttal.

Defendant rests.

Mr. McGlynn: I am wondering, your Honor, under the statute which I read during recess, whether or not the defendant is not entitled to an opening by the State before the defendant closes to the jury on just what theory the State contends for a conviction. Of course, I have the benefit of the Prosecutor's opening before the case started. As I read the statute, we are entitled to know, I think, and if I am, I would like a ruling on it—I want to know whether they contend that this alleged murder was committed in an attempted burglary or in an attempted robbery.

The Court: Do you mean the statute which defines the degree of murder?

Mr. McGlynn: The statute which is applicable to this situation.

The Court: Are you talking of the statute which defines the opening or the statute which defines the degree of murder?

Mr. McGlynn: The statute that defines the degree of murder. It seems to me it is discretionary and that in view of the fact this statute—

The Court: It is my understanding that the State has been contending that the de-

ceased, Eugene Lynch, was shot in the course of a hold-up or a robbery.

Mr. McGlynn: I would like to know which one it is, because I understand there are two different crimes that could have been committed by the alleged hold-up men; one, by the holding up of Lynch, which would be robbery; or by the breaking and entering of the store, which would be burglary. It may make some difference in my requests to charge to your Honor as to just which the State contends was done by this alleged murderer.

The Court: Do I understand correctly, Mr. Prosecutor, that it is your contention that it was a murder committed in the course of a robbery?

Mr. Fisch: Yes, sir.

The Court: That has been my understanding. The Prosecutor says that that is the contention of the State.

Mr. McGlynn: That is what I wanted on the record.

Mr. Fisch: I will also have it go on the record that it doesn't make any difference whether it was in the perpetration of a robbery or in the perpetration of a burglary.

The Court: I will charge the jury on that point.

Charge of the Court.

The Court charges the jury as follows:

VANRIPER, *J.*

Gentlemen of the jury. All defendants in criminal cases come into court presumed to be innocent, and that presumption of innocence continues throughout the case until the State has proven to you the guilty of the defendant beyond a reasonable doubt.

The burden of proving the guilt of the defendant is always upon the shoulders of the State, and that burden is to prove his guilt beyond a reasonable doubt.

By a reasonable doubt, gentlemen, is not meant any mere possible or imaginary doubt, for, as you may well conceive, everything connected with human affairs is susceptible of some possible or imaginary doubt; but by a reasonable doubt is meant such a doubt that after a consideration of all the evidence in the case, both on behalf of the State and on behalf of the defendant, the minds of the jurors are left in such a state that they cannot say to a moral certainty that they have an abiding conviction as to the truth of the charge. In other words, if, after a consideration of all the evidence in the case, you are not morally certain as to the guilt of the defendant, you have a reasonable doubt as to his guilt; and if you have a reasonable doubt as to the guilt of the defendant, whether that doubt be engendered by the alibi defense of the defendant or by a failure to believe the testimony of the State's witnesses or for any other reason,—if after considering all the evidence in the case you have a reasonable doubt and you are not morally certain as to the guilt of the defendant, then the defendant is entitled to the

benefit of that doubt and should be acquitted. On the other hand, of course, if, after considering all the evidence in the case, you are satisfied beyond a reasonable doubt as to the guilt of the defendant, then the defendant should be convicted.

This defendant is presented here on an indictment found by the Grand Jury of this County. Of course the mere fact that the Grand Jury has found an indictment is not evidence of guilt. The finding of an indictment is merely a step in the legal machinery in order that the defendant may be placed on trial before a petit jury such as yourselves. He is presented here on an indictment which charges that he did, on the 23rd day of December, 1930, in the City of Newark, wilfully, feloniously and with malice aforethought kill and murder Eugene Lynch. In other words, it is an indictment which charges him with the crime of murder.

Our statute says that murder which shall be perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premediated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree. Now, I read that to you, gentlemen, because the testimony in this case justifies the jury in finding that Eugene Lynch, who was shot on the 23rd day of December as he was about to close the store where he worked, which testimony is uncontradicted, was shot by a person who was committing or perpetrating the commission of a robbery or burglary. That being the case, the person who shot and killed Eugene Lynch is guilty of murder, and guilty of murder in the first degree. Therefore, so

far as this defendant is concerned and so far as this case is concerned, your verdict must either be guilty of murder in the first degree or not guilty.

The question for you to determine, gentlemen, is the simple question of fact whether or not the man who shot and killed Eugene Lynch at the time that he was shot and killed is the defendant Compo in this case.

Now, you as the jurors are the sole judges of the facts in the case. If counsel for either side, or if the Court itself in referring to the testimony, in any way refers to the testimony in a way that differs from your recollection of it, you are to disregard our recollection of the testimony and consider only the testimony as you recall it.

Of course, gentlemen, you are to decide this case upon the evidence in the case and in accordance with the law as charged to you by the Court. The evidence in the case is the sworn testimony of the witnesses as it has been given to you from the witness stand. It is not the argument of counsel on either side, it is not intimations or insinuations, it is entirely and solely the sworn testimony of the witnesses.

You have heard all of the witnesses in this case. It is your duty to consider carefully the testimony of every witness in this case, to sift it out and decide whether or not that witness or those witnesses have told the truth. In considering the testimony of the witnesses, it is proper for you to consider the testimony of other witnesses on the same point, and to consider whether or not there is any conflict in that testimony, in determining whether or not any one witness or all of the witnesses are telling the truth. If you believe as a matter of fact any particular witness is not telling the truth

but is testifying falsely as to any essential part of his or her testimony, you may consider that they are doing the same as to all of the testimony.

If you find after a consideration of all of the testimony in this case that there are two theories equally consistent, equally supported by testimony, and that one of those theories points to the innocence of the defendant, he is entitled to the benefit thereof as he is by the benefit of any reasonable doubt.

Again I say, gentlemen, the question for you to decide is whether or not Compo, this defendant, was the man who was there and shot and killed Lynch.

I am not going to refer in great detail to the testimony because that has been done most ably by both counsel, who have just finished, and I am sure that their summations as well as the testimony itself are fresh in your mind. But the State has produced testimony, first by the witness Haug, who says that he saw the shooting of Lynch and that he was an eye witness to it. He says that the man who did it was Compo. If you believe his testimony, if you believe that he is correct in identifying Compo as the man who was there that night and who did the shooting, then of course he is guilty.

The State has produced the witness Sophie Krok who says that Compo said to her that he had shot a man and that he had shot a man on Mulberry street. They have produced the witness Stern who was an accomplice with Compo in other crimes, which have been mentioned here, and to which I will call your attention in a moment; and they have also produced the witness Lillian

Rys, who, together with Stern, says that on one occasion at least Compo, in professing his love for Sophie Krok, said that he could not leave her because she knew about his killing a man or shooting a man on Mulberry street. It is for you to decide, after considering that testimony, whether or not those witnesses are telling the truth. If you believe that they are telling the truth, decide whether or not Compo was telling them the truth at the time; and if he was, if you believe he was telling them the truth at the time, of course he is guilty as charged in this indictment.

The State has produced the testimony of police officers who have produced here a statement made by Compo at police headquarters, in fact, two statements I believe. There is some question as to the voluntariness with which those statements were given. It is for you to decide whether or not, when Compo gave those statements, he gave them voluntarily and whether the things which are in those statements are the truth.

Now, there has been testimony here as to other crimes of which this defendant is guilty but on which he has not yet been tried, referring particularly to the hold-ups or stick-ups that have been mentioned and which were participated in by this defendant, by Stern, Furfaro and other people. While that testimony is before you, it is not to be considered by you in connection with determining the guilt or innocence of this defendant in this case. What you are to decide is whether or not the defendant did or did not shoot Eugene Lynch, and the fact that he may or may not have participated in other hold-ups is not evidence against him either one way or the other.

The defendant on the other hand has produced

himself as a witness and has denied that he was present at the time that Lynch was attempted to be held up and shot. He has denied that he was there at all, denied that he shot Lynch, denied that he made the statement to the police, voluntarily at least, that he was there and that Johnny Furfaro did the shooting. He has made other denials of those allegations which have been made against him as to his guilt.

The defendant has also produced a woman with whom he was living as his wife, and his sister and some other witnesses, who testify that on the day in question at the time of the murder or appproximately at that time they were buying goods in a store on Springfield avenue.

The defendant is not obligated to prove to you his innocence, gentlemen. The State is obligated to prove to you beyond a reasonable doubt, as I said before, the guilt of the defendant. It is for you, when you retire to the jury room in a minute or two, to consider all of this evidence in the case, to consider all of the testimony which has been presented here, and decide for yourselves what the truth is.

You have many exhibits which will go with you into the jury room, this map showing the location, the statements made to the police department and the guns,—and let me say on that point that while the guns are in evidence, it has not been contended by the State by expert testimony that either one of these guns was the particular gun that was used in the killing of Lynch. It is for you to determine whether or not Compo shot and killed Lynch. It is not necessary for you to determine which of these guns or what guns he did shoot and kill Lynch with. The question for

you to decide is whether or not he is the man who was there who shot Lynch and who killed Lynch.

If you believe from the testimony in this case, if you believe from the testimony of the eye witness who was there, if you believe from the testimony of the other witnesses who say that Compo made admissions to them, that he is the man who shot Lynch, then he is guilty, and he is guilty of murder in the first degree. If you do not believe that he was the man who shot Lynch, why, of course he is not guilty.

Now, gentlemen, there is just one other question. If you find the defendant guilty of murder in the first degree, this is the one kind of case in this State in which the jury has the option of fixing a penalty, one of two different penalties. If you should return a verdict of guilty of murder in the first degree and just return a verdict of murder in the first degree, the defendant automatically would be sentenced to suffer the penalty of death in the electric chair. The law says, however, that the jury may, in case they find the defendant guilty of murder in the first degree, after and upon a consideration of all the evidence in the case, determine whether or not to recommend life imprisonment, in which case that and no greater sentence may be imposed. In other words, gentlemen, if you find this defendant guilty of murder in the first degree, you by your verdict may designate whether he shall suffer the penalty of death in the electric chair as provided by law, or whether he shall suffer the penalty of life imprisonment. If you return a verdict of guilty of murder in the first degree and say nothing more, the penalty of death will be imposed. If you return a verdict of guilty of murder in the

first degree and desire to have the life imprisonment sentence imposed, your verdict should be guilty of murder in the first degree with a recommendation of life imprisonment.

You may take the case.

(The jury retires.)

Defendant's counsel prays a general exception to the charge of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Defendant's counsel prays an exception to the denial by the Court of the defendant's requests to charge except insofar as they are charged.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

Defendant's counsel prays an exception to the following portion of the Court's charge: "Now, I read that to you, gentlemen, because the testimony in this case justifies the jury in finding that Eugene Lynch, who was shot on the 23rd day of December as he was about to close the store where he worked, which testimony is uncontradicted was shot by a person who was committing or perpetrating the commission of a robbery or burglary. That being the case, the person who shot and

killed Eugene Lynch is guilty of murder, and guilty of murder in the first degree. Therefore, so far as this defendant is concerned and so far as this case is concerned, your verdict must either be guilty of murder in the first degree or not guilty."

Exception allowed; let it be sealed and it is signed and sealed accordingly.

WALTER D. VAN RIPER,
Judge.

DEFENDANT'S REQUESTS TO CHARGE

1. The defendant in this case is presumed to be innocent and the burden of proof is upon the State to prove him guilty of the charge contained in the indictment beyond a reasonable doubt, and if the evidence fails to convince you beyond a reasonable doubt of guilt is raised, even by incon- your duty to acquit, and you must acquit.

2. In order for the jury to reach a verdict either of guilty or of not guilty, each and every juror must agree to such verdict, as the verdict must be unanimous and not by a mere majority vote of the jurors. It is the duty of each juror to vote to acquit if such juror is not convinced beyond a reasonable doubt of the defendant's guilt.

3. In determining the innocence of the defendant, you may take into consideration not only the evidence in the case, but also the lack of such evidence as you deem to be essential in determining beyond a reasonable doubt the defendant's innocence.

4. The defense in this case is that of complete innocence of the commission of the crime charged in the indictment and in conjunction with and in support thereof, the defendant has testified that he was not at the place where it was committed when it was committed, and this feature of the evidence is termed in law an alibi, and if a reasonable doubt of guilt ir raised, even by inconclusive evidence of an alibi, the defendant is entitled to the benefit of that doubt and must be acquitted.

5. In considering the question of the guilt of the defendant, I charge you that you are not to take into consideration the fact that the defendant has been previously convicted of crime, some eleven years ago, except so far as this fact may in your opinion affect his credibility as witness in this case, and under no circumstances may you take it into consideration as creating any probability that the defendant was guilty of the crime charged in the indictment, nor should it influence you in any way in passing upon his conduct or action at the time mentioned in the indictment.

6. In this case, the presence of the defendant at the scene of the commission of the crime must be proven beyond a reasonable doubt, and if you have a reasonable doubt as to his presence at such scene of the crime then the defendant must be acquitted.

7. The jury is instructed that the indictment in this case is of itself a mere accusation or charge against the defendant and creates no presumption whatever of his guilt and is not of itself any evidence of the guilt of the defendant who is presumed to be innocent in spite of the indictment.

Defendant's Requests to Charge.

8. The circumstances of this case are such that Farfaro's testimony may be the testimony of an alleged accomplice and the jury has the right to exercise care and caution in convicting upon the testimony of such alleged accomplice, and the jury has the right and it is its duty to scrutinize with great care, the motives which may have actuated him and his general credibility as a witness before accepting his testimony as true.
complice, and the jury has the right and it is its duty to schutinize with great care, the motives which may have actuated him and his general credibility as a witness before accepting his testimony as true.

9. The Court instructs the jury that the law does not require that the defendant sustain the burden of proving him innocent, but the law imposes upon the prosecution the burden of proving that the defendant is guilty in manner and form as charged in the indictment beyond a reasonable doubt.

10. In the investigation of all matters of fact and in the weighing of evidence, the jury has no right to assume the guilt of the defendant, and then try to reconcile the testimony with such theory, but it is the sworn duty of the jury to presume the innocence of the defendant and to give him the benefit of such presumption all through the trial and at every stage of the investigation of the evidence in the jury room until it is overcome, if it shall be overcome, by proof beyond a reasonable doubt, and the evidence in order to establish the guilt of the defendant must not only be consistent with the theory of guilt but must be inconsistent with and exclude every reasonable theory

of innocence, and as long as the jury are able to reconcile the evidence with any reasonable theory of the innocence of the defendant, the law makes it their duty so to do; and if, upon a full consideration of all the facts in this case, the jury entertain a reasonable doubt as to whether the defendant is guilty of the crime charged against him in the indictment, then you should find him "Not Guilty."

11. The jury are further instructed that if, upon a fair and impartial consideration of all of the evidence in the case, they find that there are two reasonable theories equally supported by the testimony in the case, and that one of such theories is consistent with the innocence of the defendant, then it is the policy of the law, and the law makes it the duty of the jury to adopt that theory which is consistent with the innocence of the defendant, and to find the defendant not guilty.

12. The jury may take into consideration as affecting the credibility and accuracy of each witness, the conflicts between the testimony of such witness and the various other witnesses for the State.

13. You may take into consideration in determining the credibility to be given to the testimony of any witness, the probabilities and reasonableness of the truth of all of his statements in evidence, and if you find that the testimony of any witness is improbable in any essential part and is not believed by the jury, the jury has the right to reject the remainder of such witness' testimony if it believes him unworthy of belief.

14. If, as a result of the foregoing, you are in

doubt as to whether the defendant was at the scene of the crime at the time it occurred, then you must acquit.

15. The only witness of the State who states that he saw the defendant at the scene of the crime is the witness Haug. In considering his testimony, you should take into consideration the fact that there is testimony in the case to the effect that he did not recognize or identify the defendant the first time he saw the defendant in the police line-up at police headquarters and identified him only after he (the witness) was nudged by the police officer who accompanied him. Furthermore, you should take into consideration that there is evidence that the crime is alleged to have taken place at night, that Haug said he saw the defendant only for a short period and never saw him again until the police line-up.

16. In considering the testimony of the State's witnesses you must take into consideration the motive or any motive which may have an influence on such testimony. In this connection you may take into consideration the fact that there is proof of jealousy on the part of the witness Sophie and that she may have testified as she did in order to "get even" with the defendant. You may also take into consideration that there is testimony that witnesses Stern and Furfaro and Tenore came into the clutches of the police as a result of information which the defendant gave to the police and that they may be testifying in this case in order to "get even" with the defendant as well as to get into the good graces of the police themselves, and thereby secure lighter punishment for themselves. If in considering this testimony there remains a doubt in your minds as to the truth

of their testimony, then you must disregard it entirely.

17. The State had it within its power to offer expert proof with respect to the fact that the bullet which killed Lynch was fired from the guns in evidence, and the failure of the State to prove or even attempt to prove this, justifies you in concluding that the bullet was *not* fired from either gun.

18. There is no proof whatsoever in the case that the bullet which was taken from the body of the decedent was shot from either of the two revolvers in evidence.

19. The mere fact that the defendant possessed a gun which was not used in the crime, is not evidence of his guilt and must not be given any consideration in determining his guilt in this case.

20. The killing of Lynch did *not* occur while the person who killed him was perpetrating or attempting to perpetrate arson, burglary, rape, robbery or sodomy. Therefore, you cannot find the defendant guilty of first degree murder.

21. The only direct testimony placing defendant at the scene of the crime is that of Haug. I have already commented upon possible defects in his testimony. I have pointed out that the testimony of Sophie, Stern, Fufaro and the others may be influenced by a desire to get even or get into the good graces of the police. I have stated that the State has failed to prove and has not even attempted to prove that the bullet which killed Lynch was fired from the guns in evidence. I have pointed out to you the circumstances under which

the defendant's confession may be disregarded entirely. If after considering all these things, you feel that you are not satisfied beyond a reasonable doubt that the defendant is guilty, you must acquit.

22. If you believe that any part of the testimony of any witness is false, you may disregard the entire testimony of that witness.

23. If you find the defendant guilty of murder in the first degree, you may by your verdict and as part thereof, recommend life imprisonment at hard labor for life, in which case no greater punishment can be imposed upon him.

24. There is testimony that Compo was kept in custody and was not permitted to communicate with anyone. This testimony can be considered by you as supporting his story that the confession was extorted from him by threats and violence.

25. You have heard the testimony of Compo and of the police officers as to the circumstances in connection with the making of the confessions. If these confessions were extorted by *any* sort of threats or violence, they are not voluntary confessions and must be disregarded and excluded from your consideration.

26. It is the duty of the State to prove that the confessions were *voluntary* and obtained without *any* sort of threats or violence. If you are not convinced beyond a reasonable doubt that the confession was entirely voluntary and obtained without any threats or violence, then you must entirely disregard the confessions and all of the statements contained in them.

Certificate of Stenographers.

ESSEX COUNTY COURT OF OYER AND TERMINER.

THE STATE OF NEW JERSEY, vs. EUGENE COMPO.	On Indictment No. 358 April T. 1931 for Murder.

We, Joachim Wichmann and Saul H. Kirschenbaum, official stenographers of the Essex County Court of Oyer and Terminer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by us at the trial of the above mentioned case, which trial was held before the Honorable Walter D. Van Riper, Presiding Judge of the Essex County Court of Oyer and Terminer in and for the County of Essex, and a jury, on Monday, June 1, 1931, to Friday, June 5, 1931, inclusive, at Newark, New Jersey.

JOACHIM WICHMANN
SAUL H. KIRSCHENBAUM.

Dated June 24, 1931.

Certificate of Judge.

ESSEX COUNTY COURT OF OYER AND TERMINER.

THE STATE OF NEW JERSEY, vs. EUGENE COMPO.	On Indictment No. 358 April T. 1931 for Murder.

I, Walter D. Van Riper, presiding in the Essex County Court of Oyer and Terminer, and the Judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff in error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

WALTER D. VAN RIPER,
Judge.

Dated June 24, 1931.

Exhibit S-8.

8:15 P.M.

DEPARTMENT OF PUBLIC SAFETY

POLICE DIVISION

Newark, N. J., April 15, 1931

Voluntary Statement of: Eugene Compo.

Residence: 67 Hudson St.
Occupation: Automobile Machanic.
Age: 21 years.

Statement made to: Captain Philip Sebold, Sgt. Conlon, Det's R. Capodanno, H. Fallon and Det's. Joseph Cocozza, of the Prosecutor's Office.

About November 15, 1930 I was introduced to a fellow by the name of Johnie on Wilsey Street by John Lombardi, and I saw him a number of times after, at times he would come over to the garage where I worked at the Bennat Service Garage at 151 Avon Ave. and at times would see him at Blackie's place at number 37 Wilsey St.

About noon December 23, 1930 I met Johnie at Blackie's house and Johnie asked me to go on a job with him that he had a place spotted where we could get four or five hundred dollars apiece. I told him that I did not want to go and he said it was easy money. He said it wont take much meaning that it would not be much of a job. I needed the money very bad because my wife and children did not have any clothes or anything to eat. So I hung around Blackie's home until five or six o'clock in the evening and then Johnie said "let's go. We will only need my gun that carries nine shot and I told him that if there was any shooting to be done I was not going and he said," there won't be any shooting so we started and walk-

ed over Wilsey St. down West Market Street to Mulberry Street south on Mulberry Street to a short distance beyond Walnut Street where he pointed out a Grocery store on the west side of Mulberry Street and he said, "that is the place and we will have to wait because we are early" and we were then standing near the store on the same side of the street. It was then about 8:00 o'clock, and we hung awhile near the store and then on the other side of the street and Johnie said, "the longer we wait, the more money we will get."

We stayed in the vicinity of the store till about 10:00 or 10:30 P. M. watching the customers going in and out of the store and the man in the store and then we saw the man putting out the lights in the store. I told him no shooting and he said, "alright come on." At that time Johnie and I were standing on the corner about ten feet away from the door on Mulberry Street when I saw the same man that I saw in the store from the time we arrived there. Johnie then pulled out his revolver from his trousers, at the right waist line and rushed over and I rushed over with him, Johnie pushed the revolver in the man's side and said, "stick your hands up and open up," the man said, "No I wont," and made a grab for Johnie's gun and the gun went off. Johnie said, "let's beat it," and we started on a run Johnie ran up the side street off at Mulberry Street on the side where the store was on and I ran up Mulberry Street towards Market Street on the same side of the street and I went home at 392 Hunterdon Street.

I got up about noon the next day December 24th 1930 and I went over to the Bennat Service Garage to see my brother-in-law Philip DeSantis and I

asked him if he had the paper and he said, "No," and he said, "I will get it in a little while," and about one half hour later he went out and bought a Newark Evening News after he read the funny page of the paper he turned it over to me.

I picked up the paper and looked at it and then I read the story about the store keeper that Johnie shot the night before and I went over to Johnies house at 37 Wilsey Street. Then I said to Johnie "Jesus Christ look what you have done," and Johnie said, "Christ sakes I didn't mean it the guy grabbed my gun and it went off," so I asked him if he had seen the paper and he said, "not yet," Johnie was cleaning his gun it was a 32 caliber automatic and it looks exactly like the gun Captain Philip Sebold showed to me at Police Headquarter tonight while I was making this statement.

I asked Johnie to loan me a gun because there had been two or three colored fellows trying to break into my house and I wanted the gun for protection and he gave me the 32 caliber automatic that he was cleaning and then he went out and bought a Newark Evening News it was then about three or four o'clock in the afternoon and he read the paper and he said "Jesus, that's too bad," and threw the paper aside and said to me, keep your mouth shut and don't let it leak out," and I said, "alright" and went home.

When I got home I put the gun in a brown leather holster that was given to me by a man named Mickie about a week or two before. I stayed home that night.

The next day which was Christmas Day I stayed in all morning. About 2:00 o'clock in the afternoon I took the gun and holster and put it on my

belt on my right side and went to 397 South Clinton Street in East Orange, N. J. I rang the door bell and my girl friend Sohia Krok opened the door and we went upstairs where she was working and I gave her two Christmas presents which were a manicuring set and a necklace which was a white gold chain with a blue stone pendant after she received the presents she looked at me and said, "What is the matter," and I said, let us go in here meaning the parlor and set down. Sophia and I sat on the settee and I told her what happened on the night of December 23, 1930 that Johnie and I had went down to Mulberry Street to rob a grocery store and that while the man was closeing the store, Johnie and I rushed up on him and Johnie stuck the gun to his side and ordered him to open the door and the man refused and grabbed the gun and it went off and we ran away while the man was calling for "help." While I was setting on the setee telling Sophia about what happened my coat opened and Sophia saw the gun in the holster on my right side.

Sophia went out into the kitchen and came back with my present which was three linen handkerchiefs with the initial E in the corner. She also brought in a news paper I don't remember if it was a Star Eagle or a Newark Evening News and showed me the head line of the paper which contained the story about the man being shot at the Grocery store where Johnie and I attempted to rob, and I told her that was the job that Johnie and I done.

Sophia and I had lunch at the house and about 6:30 P. M. we went to the Stanley Theater on So. Orange Ave. In the Theater I told Sophia to set on my right side because that was the side I had

the gun on and I was afraid that if a stranger would set along side of me they would brush up against the gun and I would get into trouble.

After the show I took Sophia home and left her about 11:00 P. M.

The next day I went to Bennat Bays Garage and while I was in the garage Johnie and Nunzio drove up to the garage in Nunzio's Chrysler coach and they called me out it was then about noon time. Nunzio asked me to take a ride with them to Milburn, N. J. I got into the car with them and they drove up to an empty store in Milburn, N. J.

We got out of the car and went into the store Johnie and Nunzio spoke in Italian to some old man and I don't know what they were talking about and it was after dark when we left the place and we started back for Newark, N. J. On the way to Newark Johnie said, "he wanted his gun back because he wanted to celebrate the New Year by firing a couple of shots on New Year's Eve. I told him I had the gun at my house and we drove to 392 Hunterdon Street. They stopped the car in front of my house. I got out while they waited in the car. I went into my house and got the gun from under the mattress and brought out the gun and gave it to Johnie and they drove away and I went back into my house and went to bed.

I did not discuss the case with Johnie again until about three week later at 36 Wilsey Street in the dug-out and I asked him if he had told anybody and he said, "No, did you," and I said "No." He said "well keep your mouth shut anyway," we are liable to get in trouble," and about middle of March while Clarence Stern had his car parked on Central Ave. near Hudson Street Lillian Rys,

Exhibit S-8.

Clarence Stern my girl friend Sophia and myself were setting in the car I told them the story about the stick up on Mulberry Street where the man was shot in which Johnie and I attempted.

Clarence Stern told the girls that they better not tell anyone about this, and I told them if they told I would be in jail for the rest of my life. Then I got out of the car and went home to where I now live at 67 Hudson Street.

About three and a half weeks ago Clarence Stern and I went to 32 Spruce Street and visited Sophia and Lillian at there rooming house. While we were all in there room on the third floor Clarence and Lillian had an argument. Clarence took his 38 caliber revolver from the top of the bureau where he layed it when he came in and pointed the revolver at her and he said, "If we ever break and you open your mouth watch out for this," and then I took my gun off the top of the bureau where I had layed it and I pointed it towards her and said, "If you ever squeal on me watch out for this thing" and I layed it back onto the bureau. Sophia said, "don't point that at me." After talking for a short time we made up with our girl and we both left the house about 11:00 P.M. and I went home.

The revolver shown me by Captain Sebold is the revolver that I pointed at Sophia. I can identify it by the tape on the handle.

I did not see Sophia since that time and did not talk about the case to anyone until this afternoon until I made this statement.

The photograph shown me by Captain Sebold looks like a picture of the store and corner where we attempted the hold up and where Johnie shot the man. I have marked the back of picture as

follows—This looks like the store where the man was shot. E. Compo.

The gray felt hat with black band and with blue and white linning is the hat that I wore on the night of the hold-up on Mulberry Street.

On the night that Johnie and I held-up the manager of the grocery store I wore a blue serge suit which I am wearing now, the gray felt hat which I just indentified and a dark overcoat, black oxford's.

Johnie wore a blue pencil striped suit, light felt hat a little lighter in shade than mine and a blue overcoat and black oxford's.

EUGENE COMPO.

Jos. Linarducci, Jr.
Joseph Cocozza.
Raffaele Capodanno.
F. E. Brex, Deputy Chief.
Philip Sebold, Captain Detective Bureau.
Luke Conlon.
Howard H. Fallon.

Exhibit S-12.

DEPARTMENT OF PUBLIC SAFETY

POLICE DIVISION

Newark, N. J., April 13th, 1931.

Voluntary Statement of: Eugene Compo.
Residence 67 Hudson St.
Occupation Mechanic (Auto)
Age 21.

Statement made to: Sergt. T. F. McHugh, Dets. Burkhardt, Bauer, Grauley. At Police Headquarters. April 13, 1931. at 2 P. M.

I have been in Newark, N. J. about six years and I have known the gang about three months, we used to meet in the dug out at 36 Wilsey St. and the store across the Street 39 Wilsey St, the names of the men was Clarence Stern, 67 Cabinet St., John Lombardi 204½ Bergen St., John Lombardi's brother-in-law Joe. and lives at the same address, 204½ Bergen St., and a man by the name of Nunzzio who lives at 30 Aqueduct Alley, and one by the name of Angelone who lives in Milford, N. J., and one by the name of Giovia of 522 Valley Brook Ave, Lynhurst, N. J. one by the name of Mickey who lives at Dassing Ave. Newark and a man by the name of Blackie and another by the name of Johnny Blackie and Johnny lived at the dug out at 36 Wilsey St. and another who they call Pete who used to come from New York, we all used to meet in the dug out and plan robberies, about three months ago me and Blackie and Nunzzio robbed a store at Hawthorne and Hillside Ave. we got about $78.00 the next one was at Madison and Peshine Ave. Johnny, Nunzzio and my self robbed this store and got $125.00 and Blackie got a cut and another man who used to be in the dug out with us called Pappose got a cut from this job,

this was about two weeks after the Hawthorne job, the next one was a gambling house in New Providence, N. J. two men one from Summit, N. J. called Dominick and another called Bill used to come to the dug out and plan robberies with us, we planed the gambling house robbery in the dug out on Wilsey St. Nunuzzio, Blackie, Johnny, Dominick, Bill, and myself and two fellows I did not know, Dominick worked in the gambling House as table man and Dominick and Bill made arrangements when to rob it and gave us the information how we could stick it up, two other robberies planned in the dug out, one was fingered by Dominick and the other by Bill, Dominick gave information and fingered a $1700.00 job in Berkely Heights, and drove the car to this place on this job was Nunzzio, Johnny, the man by the name of Joe, and myself we did not pull it as we were scared away, the man by the name of Bill fingered and gave information on the building and loan job in New Providence, N. J. this was planned in the dug out we went up to try to take this building loan, on this job was Clarence Sterns, Nunzzio, Johnny, and myself. Bill sent a false fire alarm in. The reason we did not get the money was that the Policeman in the Building Loan did not go to the fire, this was planned to take the Building Loan in New Providence, N. J. by the men who went that night to New Providence, N. J. after arrangements had been made in the dug out on Wilsey St. about a week before the crap game stick up, the man by the name of Pete planned with me Johnny, Blackie, Nunzzio, and Clarence Sterns. this was an Italian Grocery Store on Adam St. near Walnut St. which was planned to be robbed arrangements were made in the dug out, about two

months ago, the same gang that planned it went to this store twice and both times we were scared away Pete was the finger man on both trips to this place, the second time we attempted this robbery our car license number was taken by a man from a club near by, the next job I think was an apartment house janitor in in his apartment at 67 Cabinet St, where we got $55.00 and this job was fingered by Clarence Sterns, with me on the robbery was Johnny, Blackie, and Clarence Sterns drove his Pontiac Car on this job, Nunzzio and Papoose got a cut on this job, the next job was Stone St. I believe Nunzzio was the finger man on this job and with me was Blackie, Johnny, the fellow by the name of Joe, and Clarence Sterns, this was a gambling house and we got $125.00 this was about two months ago, the next one was on 14th. Ave and this was an Italian American Store, with me on this job was Blackie, Johnny, Pappoose, and two strangers, this was also about two months ago and we got about $29.00, the next robbery was the saloon on Bergen St. on this job with me was Johnny. Blackie, the fellow by the of Joe, Chichie, John Lombardi, Mickey and the fellow who used to take care of our guns and who runs the pool room at 208 Bergen St. by the name of Pete. The guns that were used belong to Johnny, a 32 Automatic this gun was used on all the robberies I was on and I also had my 32 with me, Blackie had a 38 Cal. and a 32 Cal. on all the jobs. Clarence had a 38 Cal. which he had on the jobs. John Lombardi had a 38 Cal. Nunzzio had two 38 Cal. long and a 38 Cal. Giovio had a 32 and a 38 Cal. The man by

the name of Pete from New York use to use a gun loaned by from Blackie. About a week ago we gave our guns to Gene DeVito on So. Orange Ave and told him to mind it for me, these guns belonged to Johnny and me and he hid them in his place until Johnny and I called for them, and we thanked him for it.

I have read this statement and it is the truth and I made this statement of my own free will and volition.

Signed: EUGENE COMPO.

Witnessed: Thomas F. McHugh
Frederick Burkhardt.

Exhibit D-2.

Sep. 5, 1930

Dear Jean,

Recieved your most welcome letter, and was glad to hear from you.
Well if Ruth send a letter I didn't get it, and if I do I'll burn it before opening it.

She has no claim on you any how, the big bum, I suppose she wants so you be a fool for her, and support the babys and her, well let her go to her husband, what the hell does she think the dirthey rat, by me she says different and away from me different.

Hell of a lot her letter will do me, and her, she could go to hell, her and the whole bunch, they are not worth 2 cents, and I'd like to tell everyone if I come to face with them. Well, I hope the hell she reads this letter, for this is what I mean, and its not so pleasant for her.

As for Ruth and your sister opening your mail, I would cut their troath, I would like to see my people dope me too, I would do something they would never forget.

Don't be so soft with them, you have been a fool so long for them, and they took you for one, but now show the whole bunch, fight and win back, belive me if I where in your place, I would cut all their troaths, the sneakes in the grass.

If she dope you go ahead and dope her, for never to get up again, I think you are old enought to have brains, and not let people trap all over you, just show them how much you could do.

Kill her if she wants to kill you, why eat at their have brains, and not let people crap all over you, house or don't go their to help Ruth out, Let her go to work like the rest has to do, only she lookes around for someone to support her, and thath's

you, for she knows youre soft, and why shouldn't she stick, I would do the same if I was in her condition, so if you want to be so soft and a fool for the whole bunch to laugh at you go ahead, and don't listen to what I say, if Ruth interested you more than me, Explain that for yourself.

As for you not caring for that Kid, why the hell don't you do this, what I told you a million times before I left, Don't give it to Phil for the hell don't he kept his own that he has starving and the father jumping around trying to do the same to some ones baby as he did for his own, he can't be a father to any child, If she wants it let her kept it and support it, If she wants it bad, for she was old enough to know what she was doing and your'e not married to her, and want it for the sake of you supporting the 2 and her, she wise thaths why she had it, just so you stay with her, for her husband don't want her because she's a bum, and trys to make a fool out of you, let her support it now.

And if she doesnt want to support it, let her give it to you, and you give it away for you don't care for it, and it don't belong to you, you will have your own someday that will fully belong to you, if you want to do as I say, and what to be interested with me, If you cant support someone else baby because it wouldnt be right going with a respected clean girl, You think it over.

Well she is well but only pretending, so you stay with her, well you have rights to leave her. Why be worried about Ruth and interested in her and me nothing then how do you expect us not to brake up, for you'r alwayes thinking of her, don't stay around them, then they wont cause no trouble, you could stay in Newark for awhile, but don't

Exhibit D-2.

come to them for your own good and mine, and my worriement to hear how they treat you.

Well if you want to be interested in me, and come with me youll be too far away to cause you trouble or seprated us, thaths what I want so you go away from Newark, The farther away the less trouble, I mean ait now immeadtly.

And how is that, you don't stay their, and she gets the mail, well I know your not workining so you have to have a place to stay, but come around for the mail, around the hour he brings it, and get it first, or let the mail be send to one of your friend's, or garages and if they get make it so they wouldnt touch it again, Listen Gene your older than me, and I should think you would think about those thinges, only making me tell you a million times, only to get me cross, and worried of which I don't like to be cross.

I think you should try to help me out. Now I want you to understand to true facts of which will bring you more happiness and joy, and strive you to be with me for the future. But will only bring me sadness for I can't tell you anything thats true for your sake, so you wouldn't get sore and not listen to me, So beware if you want my company and my love.

So you be happy and try to understand me, and not misunderstand me, you see. For this is not the first time, and don't you it worries me, and hurts me to hear them treat you like that, I can't stand it, I don't sleep nights thinking about it. and then you don't understand me, and listen to me. For Honey I want to see you happy, and alwayes thing and crap it, for you don't want anyone to see it,

Exhibit D-2.

So do this for your sake and your happiness, and mine. Careful

Do the thinges you where to do, if you can't do it straight then crooked, this requires money.

So you have enough to buy a second hand car, and plentey money to have extra in case your without work, leave town immediatley, Buy car in other town or State in case your not safe their, go that limit by train to me here, and if I get my job in Newark, I'll stay awhile and join you in another state, for my Mrs didn't answer and I don't belive I will get a answer, Im not sure if I am here that means I'll stay here if I don't get the job in Newark, you will join me here, we will leave town immeaditley when you arrive, if Im there so you go somewhere else, and I'll join you from Newark, but I will not be here, you understand. In case thinges should change. I'll writ the factes later, So Im giving you weekes to do this, and get away from them, and misery to be with me, I want you to be happy, and thaths now, Please give me a diffrent address the next time, so they would n't get the mail. For I cant write personal letters for you.

For I shouldnt tell you what to do, for your a man, but why complain to me you know wath is best for you, I have plentey of my troubles out here, and Im so discusted, I'll commited sucide someday, if thinges don't turn, so do it your way, any way you think or what to do, but don't complain to me, for you knew what to do you a man.

Now don't get discoridge and discusted and worried only think and be patient For rember Im alwayes your friend and what to be more than a friend, and only thing I hope I could make you happy, For you turned a few bad thinges of mine to happiness, and I want to reward you, more

than that, but just now Im unhappey to hear those thinges, For Im a respected girl and there nothing but bums,

So By By Dear my happiness and all the world until I hear and hope and except to hear from my Dear Monday, So please answer soon, and tell me all the facts, and your understanding, I knew I should'nt tell you all this, for I knew you are worried, because there is no work, but why not look forward for your happiness, So By By my Derest best friend of all

Your always is mine even if we drift apart, Hoping and wishing you the best of Luck with, Love from your loving friend

Sophie,

I never had a friend but you only and the happiness from you.

Bill of Exceptions.

ESSEX COUNTY COURT OF OYER AND TERMINER.

THE STATE vs. EUGENE COMPO.	On Indictment. Bill of Exceptions.

JOSEPH L. SMITH, Prosecutor of the Pleas, and SIMON L. FISCH, Assistant Prosecutor.

EDWARD R. MCGLYNN and CHARLES BASILE, attorneys for Defendant.

Be it remembered, that on the first day of June, 1931, at the trial of the indictment of the above named Eugene Compo, in said Court of Oyer and Terminer, before Walter D. Van Riper, Esq., Judge of the said Court, whereby the said Eugene Compo was charged with, that on the twenty-third day of December, in the year of Our Lord, One thousand nine hundred and thirty, at the City of Newark, in the County of Essex aforesaid, he did wilfully, feloniously and of his malice aforethought, kill and murder Eugene Lynch, 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; the trial of said indictment came on to be tried by a jury for that purpose duly impanelled;

And thereupon (1) the said Edward R. McGlynn and Charles Basile, counsel for the defendant, did offer to cross-examine one Sophie Krok, a witness called on behalf of the State, in the manner following:

By Mr. McGlynn:

"Q. Was Goldsmith Avenue the last place that you worked? A. Yes.

Q. When did you leave there? A. I don't remember when I left.

Q. In February, or March? A. That was in February.

Q. About the same time that Sophie quit her job in East Orange? A. Yes.

Q. Did you leave or were you discharged?

Mr. Fisch: I object to that as entirely immaterial.

The Court: Sustained.

Mr. McGlynn: I think it is relevant on the question of cross-examination.

The Court: No, I don't think so.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (2), the Prosecutor of the Pleas, to maintain the said issue on his part, offered the testimony of one Clarence Stern, concerning an alleged conversation between Stern and the defendant concerning the possession by the defendant of a black jack, which question was propounded to the said Clearence Stern in the following language:

By Mr. Fisch:

"Q. Was there any conversation between you and Compo, or between anyone else and Compo in your presence, with reference to

the carrying of a black jack by him? A. No.

Mr. McGlynn: I object to that.
The Court: He answered, "No."
Mr. Glynn: I didn't hear that.

By the Court:

Q. Is that what your answer was? A. Yes.

By Mr. Fisch:

Q. Do you know why Compo carried a blackjak?

Mr. McGlynn: I object.
The Court: Sustained.

Q. Did Compo ever tell you why he carried a blackjack?

Mr. McGlynn: I object.
The Court: Sustained.

Q. Did you ever have any conversation with Compo with reference to the blackjack?

Mr. McGlynn: I object to that.
The Court: He may answer that yes or no.

A. Yes.

Q. What was it?

Mr. McGlynn: I object to the conversation on the ground that it has absolutely nothing to do—

By the Court:

Q. When was this conversation? A. This conversation was during the time he told me of the shooting of Lynch.

Mr. McGlynn: There were about four or five of those.

Q. Was it with reference to the Lynch

shooting? A. Yes, your Honor. That was the end of February.

Q. A minute ago when the Prosecutor asked you whether you had any conversation with Compo with reference to carrying a blackjack you said, 'No,' didn't you? A. I did.

Q. Did you have any conversation with him or didn't you? A. I did have a conversation, but when the question was sustained before I took it for granted I was not to answer.

Q. Don't you remember my turning to you a minute ago and asking you whether your answer was no to the Prosecutor? A. I didn't hear you.

The Court: I will permit the question.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (3), the said Prosecutor of the Pleas offered in evidence an alleged statement or confession of the defendant and offered to introduce the same into evidence, upon the following testimony of Ralph Capadano, sworn in behalf of the State:

By Mr. Fisch:

"Q. You are connected with the Newark Police Department? A. I am.

Q. And have been for how many years? A. 13 years June 6th of this year.

Q. You are attached to the Detective Bureau at headquarters? A. Yes, sir.

Q. You are also a member of the Homocide Squad, are you? A. Yes, sir.

Q. Did you see the defendant, Eugene Compo, at headquarters on the 15th of April of this year? A. I did.

Q. Did you have a talk with him? A. I did.

Q. Did you take a statement from him? A. I did.

Q. I show you a paper writing and ask you whether or not that is the statement you took from him. A. It is.

Q. Who wrote this paper. A. It was written by me.

Q. Where did you get the information that was put into this paper? A. Eugene Compo.

Q. After you had gotten the information from him and had written it, what did you do with it? A. It was read to the defendant and the defendant read it himself and then signed it.

Q. When you say he read it himself, did he read it out loud? A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. Did he sign it in your presence? A. Yes, sir.

Q. Did he sign each sheet of it? A. Yes, sir.

Q. Is this his signature on each page? A. Yes, sir.

Q. And at the conclusion of it? A. Yes, sir.

Q. Did anybody witness it? A. Yes, sir.

Q. Who witnessed it? A. Deputy Chief Brex, Captain Sebold, Lieutenant Linarducci, Sergeant Conlon, Sergeant Coccoza and myself.

Q. Who was present when you were get-

ting the information which you put in it? A. Captain Sebold, Sergeant Conlon, Detective Fallon and myself.

Q. After you got the information and before Compo signed it, did you take him into another room? A. He was taken into the office of Deputy Chief Brex. That is where the statement was read to him aloud and where he read it aloud and then he signed it.

Q. Did you make any promises to him at the time he signed the statement? A. No, sir.

Q. Did you make any threats at the time he signed the statement? A. No, sir.

Q. Did you hold out any hope of reward to him. A. No, sir.

Mr. Fisch: I offer the statement in evidence.

Mr. McGlynn: I object to it.

The Court: You may cross-examine on it.

By Mr. McGlynn:

Q. When did you first meet Compo. A. About seven o'clock that evening.

Q. Have you any idea how long he had been in custody before you met him? A. No, sir.

Q. You don't know what, if anything, was said or done to him before he made this statement? A. Nothing more than I know what happened while I was there.

Q. All you know is what happened while you were there. A. That's all.

Q. You didn't participate in any questioning of this man before you arrived in this room where you say you took this statement? A. I did.

Q. What time? A. Seven o'clock.

Q. Prior to that time you had not parti-

cipated in any questioning of him? A. No, sir.

Q. You don't know how long he had been in custody before that? A. I don't know how long.

Q. You were called in to take this statement and that was all you did, to write down what was said? A. I was not called in to take the statement; I was present when he made the verbal statement and then it was reduced to writing.

Q. All you did was to write down what he said. A. I was there when he was being questioned at seven o'clock.

Q. On that one occasion at seven o'clock. A. That's all.

Q. You don't know how many times he had been questioned before that? A. No.

Q. When you were called in, or when you got there, or whatever happened at seven o'clock, you were told by somebody, were you not, that you were going to take a statement from Compo, or that Compo was going to make a statement? A. No, sir.

Q. Were you told why you were to be there? A. I had just returned from another mission, and I came back and reported to the Captain, and while in the Captain's office, Compo made a statement that he was going to tell what happened. Then the Captain asked him if he wanted anything to eat and then he sent out and got him supper, and after he ate, the statement was made and reduced to writing by me.

Mr. McGlynn: I still object to the introduction of the paper which is offered, on the ground that it does not appear on the record that no hope was held out to him, or any fear or threats, and so forth, had been used in getting the defendant to make a statement; and on the further ground that, not having seen the paper, if it con-

tains statements about crimes or actions other than the one we are now engaged in the trial of, at least that portion is inadmissible.

The Court: The rule is that it is admissible if it is a voluntary statement. So far as the record now stands, it appears to be voluntary. On the other point, it is admissible as a statement made at the time. Of course, I don't know what it contains, but if it contains statements with reference to other crimes, I will have to call the attention of the jury to the fact that it is only admissible as regards this case. Of course the Court of Errors and Appeals in the Buccodoro case have ordered otherwise, that being the one case I can recall.

Mr. McGlynn: It is the only one I can recall.

The Court: That happened to be mine. That is the only reason I remember.

Mr. Fisch: As well as mine.

The Court: I will admit it.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (4) the said counsel for the defendant offered to cross-examine Philip Sebold, a witness for and on behalf of the State in the manner following:

By Mr. McGlynn:

"Q. You told me a minute ago that he made a statement concerning the stick-ups. A. Yes.

Q. You know that the statement about the stick-ups was made before Miss Krok was taken into custody, don't you? A. Yes, sir.

Q. When she was taken into custody she was told that he had made a statement concerning the stick-ups.

Mr. Fisch: I object to that as not cross-examination. I have not asked him a single thing on direct-examination about any conversation with Miss Krok.

The Court: How is the question competent, Mr. McGlynn?

Mr. McGlynn: The Captain is the one that was in charge of the defendant from the time he was taken into custody.

The Court: You are trying to prove something affirmative. It should be brought out by way of defense, not on cross-examination.

Mr. McGlynn: I think it is perfectly competent to show what happened from the time he was taken into custody until the time the statement was made.

The Court: That is for you to prove. I will sustain the objection.

Q. Did you give me the date that Miss Krok was taken into custody? A. I didn't give you the date, no.

Q. You did say that her statement was made; you said Miss Krok made a statement before Compo, didn't you? A. I did.

Q. Before Miss Krok made that written statement you say she made, was she informed that Compo was in custody, and was she informed that he had made a statement regarding these hold-ups and stick-ups?

The Court: That statement is not in evidence.

Mr. McGlynn: But he has referred to it in his direct-testimony and there is only one inference and that is that the same statement and the same facts she testified to here for the State—

The Court: There is no testimony as to what her statement to the police was.

Mr. McGlynn: Yes, sir. She was asked whether this testimony was the same as the statement she gave to the police.

Mr. Fisch: Suppose she was?

Mr. McGlynn: I am entitled to show on cross-examination that she knew that this defendant had squealed or told about those things of which she was interrogated.

The Court: Did you ask her that question, do you recall, on cross-examination? Was she asked whether she knew that Compo had talked?

Mr. McGlynn: I don't remember that I asked her. But this witness has testified that Miss Krok made a written statement and it is the only statement, as I recall it, that he testified was made other than this one of April 15th which is now in evidence.

The Court: I don't think it is proper cross-examination, but to save time, if you want to get an answer to the question I will let you make him your witness for that purpose.

Mr. McGlynn: No, sir, I don't mean to be disrespectful, but I must refuse your offer. I am trying this case for the best interests of my client and I think the question is proper on cross-examination.

The Court: I will hold to my original ruling.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant

made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (5) the said counsel for the defendant offered to cross-examine John Furfaro, a witness sworn on behalf of the State in the manner following:

By Mr. McGlynn:

"Q. You say this gun was found in a coat in some room?

Mr. Fisch: Referring now to Exhibit S-9?

A. Yes, it was found in a coat while Detective Capadanno was there.

Q. In whose room? A. It was in the home of Michael Tomanelli.

Q. Whose coat was it in? A. The coat belonged to Michael Raganelli.

Q. Did you put the revolver in Michael's coat? A. Yes, sir.

Q. When did you put it there?

Mr. Fisch: I object to that. How is that material?

The Court: Well, I don't know. I will permit it.

A. I don't remember a day. It was on the day that we were arrested.

Q. Did you use this gun between January 1st, when you say you bought it and the time the police took it from your coat pocket?

Mr. Fisch: I object as immaterial.

Mr. McGlynn: That is proper cross-examination, if your Honor please.

Mr. Fisch: What difference does it make?

The Court: Well, the testimony is that the defendant says that he had this gun on a certain occasion after January 1st.

Mr. Fisch: And this witness said that he bought the gun from the defendant for $5 on January 1st. Now, what difference does it make what he did with it after January 1st, so far as this case is concerned?

The Court: He says he bought this gun, yes. The other gun was the gun that he had used with the girl, wasn't it?

Mr. Fisch: Yes.

Mr. McGlynn: It would make a lot of difference on the question of the jury's idea of the credibility of this witness.

Mr. Fisch: What difference does that make?

The Court: I sustain the objection.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And whereupon (6), the said counsel for the defendant offered to cross-examine the same witness referred to in the bill of exceptions No. 5 in the manner following:

By Mr. McGlynn:

"Q. Did you use that gun after January 1, 1931?

Objected to.
Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And whereupon (7), the Prosecutor of the Pleas offered the testimony of one Sophie Krok, upon the subject of a letter written by the said Sophie Krok and introduced into evidence by the defendant, which testimony was as follows:

By Mr. Fisch:

"Q. Now, Sophie, you have heard this letter read, haven't you? A. Yes.

Q. I believe you testified that you loved Compo, is that right? A. Yes.

Q. Do you still love him? A. I care for him but I realize that I have been a fool.

Q. Will you please tell us what you meant by the contents of this letter?

Mr. McGlynn: I object to that. The letter speaks for itself. The jury makes the inferences—

The Court: I will permit it.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge

would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (8), the said Prosecutor of the Pleas offered to examine the said Sophie Krok, witness sworn on behalf of the State, in the manner following:

By Mr. Fisch:

"Q. Now, did the fact that he did not leave this woman that he was living with and go off with you, did that fact have anything to do with your telling the police the story which you told them and with the story which you told on the witness stand in this case?

Mr. McGlynn: I object, if your Honor please. It is absolutely leading. Why, it is putting the very words in the witness' mouth. There could not be a more leading question in my opinion. I absolutely object to it.

The Court: I do not think it is a leading question. I will admit it.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (9) the said Prosecutor of the Pleas offered to cross-examine the defendant sworn in his own behalf, in the manner following:

By Mr. Fisch:

Q. Can you tell us, Compo, whether you know of any reason why Sergeant Conlon and Detective Fallon should have told you to mention the fact that Furfaro was in this stick-up in Mulberry Street?

Mr. Basile: I object to that.

The Court: I will permit it.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (10) the said counsel for the defendant offered the testimony of Florence Okner, a witness sworn on behalf of the defendant, which testimony was as follows:

By Mr. McGlynn:

Q. Were you in the store up on Springfield Avenue about a week or so ago when this lady (indicating) was brought in? A. Yes, sir.

Q. Were you present when she was asked if she could point out—

Mr. Fisch: I object to what this woman may have been asked.

The Court: I do not think it is competent.

Mr. McGlynn: I certainly can bring into this record, she has already said that she pointed out the counter where she purchased these goods, and I want to know if this young lady was there present.

The Court: Supposing she was. That is virtually equivalent to a statement of some other witness made out of court at some other place.

Mr. McGlynn: I do not want a statement.

The Court: It is the same rule that would apply to it.

Mr. McGlynn: I don't want conversations. I want occasions that indicate the veracity and truth and substantiate the story.

The Court: The same rule of evidence would apply.

Q. Were you present when this lady, pointing to Mrs. Compo, was brought into your store a week or so ago and asked in your presence to point out the counter?

Mr. Fisch: I object.

Mr. McGlynn: I am going to finish my question.

The Court: Don't answer this until I tell you to.

Q. (Continuing) Where she was supposed to have purchased some merchandise in your store?

Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of

exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (11) the said counsel for the defendant offered to continue the examination of the said Florence Okner, a witness sworn on behalf of the defendant in the manner following:

By Mr. McGlynn:

"Q. Did this lady in your presence, this lady that I have just pointed out in the courtroom, in your presence in this store at 192 Springfield Avenue within a week or ten days from now, point out in your store any particular counter?

Objected to.
Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (12) the said counsel for the defendant offered the testimony of Joseph Weintraub, a witness sworn on behalf of the defendant, which testimony was as follows:

By Mr. McGlynn:

"Q. Did you at my request examine the

door of the store on the corner of Mulberry and Beach Streets? A. I did.

Q. When was that examination made? A. Well, it was the day that Mr. Haug testified, which was Tuesday, I believe the first day.

Q. After his testimony was given? A. Yes.

Q. And on what side of the entrance door to that store are the locks?

Mr. Fisch: I object to that, if your Honor please, as being entirely immaterial and irrelevant and in no way contradicting any testimony which Mr. Haug gave, because at the time Mr. Haug gave his testimony as to the physical conditions existing on December 23, 1930, and this young man has gone down there in June, 1931.

The Court: Is there any way in which you can connect up the condition there today, or the other day, and the condition it was at the time of the shooting?

(Counsel argue).

Mr. McGlynn: I will withdraw the question for a moment.

Q. Did you examine the door itself? A. I did.

Q. Was there any indication on your examination of that door of any changes being made on it?

Mr. Fisch: I object.

Mr. McGlynn: Certainly he can tell from the door if there were any changes made on it.

The Court: It might not be the same door as far as that is concerned. Sustain the objection.

Q. On what side of the door, referring to that grocery store, are the locks located?

Objected to.
Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (13) the said counsel for the defendant offered the further testimony of the said Joseph Weintraub, a witness sworn on behalf of the defendant, which testimony was as follows:

By Mr. McGlynn:
"Q. What kind of locks are on the door?

Objected to.
Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (14) the said counsel for the defendant offered to cross-examine John L. Day, a

witness sworn on behalf of the State in the manner following:

By Mr. McGlynn:

"Q. Can photographers touch up the negatives or plates so that the picture which is printed is different than the plate itself?

Mr. Fisch: I object, your Honor.
The Court: Sustained.

Q. How long have you been a photographer, Mr. Witness? A. 20 years.

Q. For the Police Department? A. No, sir. I have been ten years in the Police Department doing photographic work.

Q. You have been doing this, taking pictures for the Police Department, for the last ten years then? A. Yes, sir.

Q. And is it possible in the art of photography for pictures to be taken for the printed picture from the negative or plate to have spots or marks which may be on the plate or negative removed?

Objected to.
Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (15) the said Prosecutor of the Pleas offered the testimony of Philip Sebold, a wit-

ness sworn on behalf of the State in rebuttal, which testimony was as follows:

By Mr. Fisch:

"Q. When you showed him the photograph Exhibit S-2, did he say to you that he did not know if this is the place because he had never been in that district? A. No, he did not say that.

Q. What did he say to you?

Objected to as not rebuttal.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this Bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (16) the said Prosecutor of the Pleas offered the testimony of Ralph Cappodanno, a witness sworn on behalf of the State in rebuttal, which testimony was as follows:

By Mr. Fisch:

"Q. Now, you apprehended Furfaro, did you not? A. I did.

Q. When?

Mr. Basile: I object, if your Honor please. That is not proper rebuttal.

The Court: Yes it is, because the defendant testified that Furfaro said, he heard Furfaro talking about something in jail about this matter.

Mr. Fisch: No, your Honor, I am sorry.

The Court: No, I think you are right about that. That was someone else he heard talking, but he did say that the police got the information from Furfaro to put in the statement which he signed.

Mr. Fisch: Yes, the purpose of this statement is to show that Furfaro was not apprehended until after the defendant had told this story on the 15th.

The Court: Yes, that is the purpose of it, but I mean it becomes competent because I think the defendant said that in answer to a question as to why they put in Furfaro's name, that they had gotten it from Furfaro before that.

Mr. Fisch: Yes, your Honor.

The Court: I will admit it.

Defendant's counsel prays an exception to this ruling of the Court."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (17), the Honorable Walter D. Van Riper, the Judge of the said Court charged to the Jury as follows:

"Now, I read that to you, gentlemen, because the testimony in this case justifies the jury in finding that Eugene Lynch, who was shot on the 23rd day of December as he was about to close the store where he worked, which testimony is uncontradicted, was shot

by a person who was committing or perpetrating the commission of a robbery or burglary. That being the case, the person who shot and killed Eugene Lynch is guilty of murder, and guilty of murder in the first degree. Therefore, so far as this defendant is concerned, and so far as this case is concerned, your verdict must either be guilty of murder in the first degree or not guilty."

Whereupon counsel for the defendant made both a general and a special exception to the said charge of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception; and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (18), the Honorable Walter D. Van Riper, the Judge of the said Court, charged to the Jury as follows:

"The question for you to determine, gentlemen, is the simple question of fact whether or not the man who shot and killed Eugene Lynch at the time that he was shot and killed is the defendant Compo in this case."

Whereupon counsel for the defendant made a general exception to the said charge of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception; and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (19), the Honorable Walter D. Van Riper, the Judge of the said Court, charged to the Jury as follows:

> "Again I say, gentlemen, the question for you to decide is whether or not Compo, this defendant, was the man who was there and shot and killed Lynch."

Whereupon counsel for the defendant made a general exception to the said charge of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception; and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (20), the Honorable Walter D. Van Riper, the Judge of the said Court, charged to the Jury as follows:

> "The State has produced the testimony of police officers who have produced here a statement made by Compo at police headquarters, in fact, two statements I believe. There is some question as to the volunteriness with which those statements were given. It is for you to decide whether or not, when Compo gave those statements, he gave them voluntarily and whether the things which are in those statements are the truth."

Whereupon counsel for the defendant made a general exception to the said charge of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception; and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (21), the Honorable Walter D. Van Riper, the Judge of the said Court, charged to the Jury as follows:

"It is for you to determine whether or not Compo shot and killed Lynch. It is not necessary for you to determine which of these guns or what guns he did shoot and kill Lynch with. The question for you to decide is whether or not he is the man who was there who shot Lynch and who killed Lynch."

Whereupon counsel for the defendant made a general exception to the said charge of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception; and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (22), the Honorable Walter D. Van Riper, the Judge of the said Court, charged to the Jury as follows:

"If you believe from the testimony in this case, if you believe from the testimony of the eye witness who was there, if you believe from the testimony of the other witnesses who say that Compo made admissions to them, that he is the man who shot Lynch, then he is guilty, and he is guilty of murder in the first degree."

Whereupon counsel for the defendant made a general exception to the said charge of the said Judge and prayed that said Judge would set his hand and seal

to this bill of exception; and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (23), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"2. In order for the jury to reach a verdict either of guilty or of not guilty, each and every juror must agree to such verdict, as the verdict must be unanimous and not by a mere majority vote of the jurors. It is the duty of each juror to vote to acquit if such juror is not convinced beyond a reasonable doubt of the defendant's guilt."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (24), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"3. In determining the innocence of the defendant, you may take into consideration not only the evidence in the case, but also the lack of such evidence as you deem to be essential in determining beyond a reasonable doubt the defendant's innocence."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (25), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"5. In considering the question of the guilt of the defendant, I charge you that you are not to take into consideration the fact that the defendant has been previously convicted of crime, some eleven years ago, except so far as this fact may in your opinion affect his credibility as witness in this case, and under no circumstances may you take it into consideration as creating any probability that the defendant was guilty of the crime charged in the indictment, nor should it influence you in any way in passing upon his conduct or action at the time mentioned in the indictment."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (26), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"8. The circumstances of this case are such that Farfaro's testimony may be the testimony of an alleged accomplice and the jury has the right to exercise care and caution in convicting upon the testimony of such alleged accomplice, and the jury has the right and it is its duty to scrutinize with great care, the motives which may have actuated him and his general credibility as a witness before accepting his testimony as true."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (27), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"10. In the investigation of all of the matters of fact and in the weighing of evidence, the jury has no right to assume the guilt of the defendant, and then try to reconcile the testimony with such theory, but it is the sworn duty of the jury to presume the innocence of the defendant and to give him the benefit of such presumption all through the trial and at every stage of the investigation of the evidence in the jury room until it is overcome, if it shall be overcome, by proof

beyond a reasonable doubt, and the evidence in order to establish the guilt of the defendant must not only be consistent with the theory of guilt but must be inconsistent with and exclude every reasonable theory of innocence, and as long as the jury are able to reconcile the evidence with any reasonable theory of the innocence of the defendant, the law makes it their duty so to do; and if, upon a full consideration of all the facts in this case, the jury entertain a reasonable doubt as to whether the defendant is guilty of the crime charged against him in the indictment, then you should find him "Not Guilty."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (28), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"15. The only witness of the State who states that he saw the defendant at the scene of the crime is the witness Haug. In considering his testimony, you should take into consideration the fact that there is testimony in the case to the effect that he did not recognize or identify the defendant the first time he saw the defendant in the police line-up at police headquarters and identified him only after he (the witness) was nudged by the police officer who accompanied him. Fur-

thermore, you should take into consideration that there is evidence that the crime is alleged to have taken place at night, that Haug said he saw the defendant only for a short period and never saw him again until the police line-up."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (29), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"16. In considering the testimony of the State's witnesses you must take into consideration the motive or any motive which may have an influence on such testimony. In this connection you may take into consideration the fact that there is proof of jealousy on the part of the witness Sophie and that she may have testified as she did in order to "get even" with the defendant. You may also take into consideration that there is testimony that witnesses Stern and Furfaro and Tenore came into the clutches of the police as a result of information which the defendant gave to the police and that they may be testifying in this case in order to "get even" with the defendant as well as to get into the good graces of the police themselves, and thereby secure lighter punishment for themselves. If in considering this testimony there remains a doubt in your

minds as to the truth of their testimony, then you must disregard it entirely."

Whereupon counsel for the defendant made exceptions to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (30), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"17. The State had it within its power to offer expert proof with respect to the fact that the bullet which killed Lynch was fired from the guns in evidence, and the failure of the State to prove or even attempt to prove this, justifies you in concluding that the bullet was *not* fired from either gun."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (31), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"18. There is no proof whatsoever in the

case that the bullet which was taken from the body of the decedent was shot from either of the two revolvers in evidence."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (32), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"19. The mere fact that the defendant possessed a gun which was not used in the crime, is not evidence of his guilt and must not be given any consideration in determining his guilt in this case."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (33), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"20. The killing of Lynch did not occur while the person who killed him was perpe-

trating or attempting to perpetrate arson, burglary, rape, robbery or sodomy. Therefore, you cannot find the defendant guilty of first degree murder."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (34), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"21. The only direct testimony placing defendant at the scene of the crime is that of Haug. I have already commented upon possible defects in his testimony. I have pointed out that the testimony of Sophie, Stern, Furfaro and the others may be influenced by a desire to get even or get into the good graces of the police. I have stated that the State has failed to prove and has not even attempted to prove that the bullet which killed Lynch was fired from the guns in evidence. I have pointed out to you the circumstances under which the defendant's confession may be disregarded entirely. If after considering all these things, you feel that you are not satisfied beyond a reasonable doubt that the defendant is guilty, you must acquit."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge

would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (35), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"22. If you believe that any part of the testimony of any witness is false, you may disregard the entire testimony of that witness."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (36), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"24. There is testimony that Compo was kept in custody and was not permitted to communicate with anyone. This testimony can be considered by you as supporting his story that the confession was extorted from him by threats and violence."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge

would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (37), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"25. You have heard the testimony of Compo and of the police officers as to the circumstances in connection with the making of the confessions. If these confessions were extorted by any sort of threats or violence, they are not voluntary confessions and must be disregarded and excluded from your consideration."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (38), the Honorable Walter D. Van Riper, Judge of the said Court, denied the following request to charge submitted by counsel for the defendant:

"26. It is the duty of the State to prove that the confessions were voluntary and obtained without any sort of threats or violence. If you are not convinced beyond a reasonable doubt that the confession was entirely voluntary and obtained without any

threats or violence then you must entirely disregard the confessions and all of the statements contained in them."

Whereupon counsel for the defendant made exception to the said ruling of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

And thereupon (39), the Honorable Walter D. Van Riper, Judge of the said Court omitted and failed to charge to the Jury the essential elements of murder in the first degree, murder in the second degree, and manslaughter, and omitted and failed to charge to the Jury that the Jury could find the defendant guilty of murder in the first degree, or murder in the second degree, or manslaughter, according to the evidence in the case and the charge of the Court.

Whereupon counsel for the defendant made a general exception to the said charge of the said Judge and prayed that said Judge would set his hand and seal to this bill of exception; and it is signed and sealed accordingly.

WALTER D. VAN RIPER (L.S.)
Judge.

The within bills of exceptions are hereby settled, signed and sealed by me in accordance with 2 C. S. 1910, page 1862, sec. 135, this 30th day of June, 1931.

WALTER D. VAN RIPER (L.S.)
Judge.

Assignment of Errors.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE Defendant-in-Error, vs. EUGENE COMPO. Plaintiff-in-Error.	In Error	Assignments of Error.

Afterwards, to wit, on the third Tuesday of October in the year of Our Lord, Nineteen Hundred and Thirty One, at the October Term of the New Jersey Court of Errors and Appeals, in the last resort in all causes, comes the said Eugene Compo, by Edward R. McGlynn, his attorney, and Charles Basile, 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 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 so joined between the State of New Jersey and the said Eugene Compo, erroneously refused to permit counsel for the defendant to cross-examine Sophie Krok a witness called on behalf of the State, in the manner following (Stenog. Min. page 112)

Q. Did you leave or were you discharged?

Mr. Fisch: I object to that as entirely immaterial.

The Court: Sustained.

Mr. McGlynn: I think it is relevant on the question of cross-examination.

The Court: No. I don't think so.

2. There is also error, in this, that the said court, before whom, etc., erroneously permitted Clarence Stern, a witness for the State, to testify as follows, over the objection of counsel for the defendant (Stenog. Min. page 171):

Q. Was there any conversation between you and Compo, or between anyone else and Compo in your presence, with reference to the carrying of a black jack by him? A. No.

Mr. McGlynn: I object to that.

The Court: He has answered, "No".

Mr. McGlynn: I didn't hear that.

By the Court:

Q. Is that what your answer was? A. Yes.

By Mr. Fisch:

Q. Do you know why Compo carried a black jack?

Mr. McGlynn: I object.

The Court: Sustained.

Q. Did Compo ever tell you why he carried a black jack?

Mr. McGlynn: I object.

The Court: Sustained.

Q. Did you ever have any conversation with Compo with reference to the black jack?

Mr. McGlynn: I object to that.

The Court: He may answer that yes or no.

A. Yes.

Q. What was it?

Mr. McGlynn: I object to the conversation on the ground that it has absolutely nothing to do—

By the Court:

Q. When was this conversation? A. This conversation was during the time he told me of the shooting of Lynch.

Mr. McGlynn: There were about four or five of those.

Q. Was it with reference to the Lynch shooting? A. Yes, your Honor. That was the end of February.

Q. A minute ago when the Prosecutor asked you whether you had any conversation with Compo with reference to carrying a black jack you said, 'No,' didn't you? A. I did.

Q. Did you have any conversation with him or didn't you? A. I did have a conversation, but when the question was sustained before I took it for granted I was not to answer.

Q. Don't you remember my turning to you a minute ago and asking you whether your answer was no to the Prosecutor? A. I didn't hear you.

The Court: I will permit the question.

3. There is also error, in this, that the said court, before whom, etc., erroneously admitted into evidence an alleged statement or confession of the defendant, marked Exhibit S-8, although a proper foundation for admitting the same was not established. (Stenog. Min. page 184).

4. There is also error, in this, that the said court, before whom, etc., erroneously refused to permit counsel for the defendant to cross-examine

Philip Sebold, a witness on behalf of the State, in the manner following, (Stenog. Min. page 202)

Q. Before Miss Krok made that written statement you say she made, was she informed that Compo was in custody, and was she informed that he had made a statement regarding these hold-ups and stick-ups?

The Court: That statement is not in evidence.

Mr. McGlynn: But he has referred to it in his direct-testimony and there is only one inference and that is that the same statement and the same facts she testified to here for the State—

The Court: There is no testimony as to what her statement to the police was.

Mr. McGlynn: Yes, sir. She was asked whether this testimony was the same as the statement she gave to the police.

Mr. Fisch: Suppose she was?

Mr. McGlynn: I am entitled to show on cross-examination that she knew that this defendant had squealed or told about those things of which she was interrogated.

The Court: Did you ask her that question, do you recall, on cross-examination? Was she asked whether she knew that Compo had talked?

Mr. McGlynn: I don't remember that I asked her. But this witness has testified that Miss Krok made a written statement and it is the only statement, as I recall it, that he testified was made other than this one of April 15th which is now in evidence.

The Court: I don't think it is proper cross-examination, but to save time, if you want to get an answer to the question I will let you make him your witness for that purpose.

Mr. McGlynn: No, sir, I don't mean to

be disrespectful, but I must refuse your offer. I am trying this case for the best interests of my client and I think the question is proper on cross-examination.

The Court: I will hold to my original ruling.

5. There is also error, in this, that the said court, before whom, etc., erroneously refused to permit counsel for the defendant to cross-examine John Furfaro, a witness for the State, in the manner following, (Stenog. Min. page 220):

Q. Did you use this gun between January 1st, when you say you bought it and the time the police took it from your coat pocket?

Mr. Fisch: I object as immaterial.

Mr. McGlynn: That is proper cross-examination, if your Honor please.

Mr. Fisch: What difference does it make?

The Court: Well, the testimony is that the defendant says that he had this gun on a certain occasion after January 1st.

Mr. Fisch: And this witness said that he bought the gun from the defendant for $5. on January 1st. Now, what difference does it make what he did with it after January 1st, so far as this case is concerned?

The Court: He says he bought this gun, yes. The other gun was the gun that he had used with the girl, wasn't it?

Mr. Fisch: Yes.

Mr. McGlynn: It would make a lot of difference on the question of the jury's idea of the credibility of this witness.

Mr. Fisch: What difference does that make?

The Court: I sustain the objection.

6. There is also error, in this, that the said Court, before whom, etc., erroneously refused to permit counsel for the defendant to cross examine John Furfaro, a witness for the State, in the manner following, (Stenog. Min. page 221)

> Q. Did you use that gun after January 1st, 1931?
>
> Objected to.
> Objection sustained.

7. There is also error, in this, that the said Court, before whom, etc., erroneously permitted Sophie Krok, a witness for the State, to answer, over objection of defendant, the following question (Stenog. Min. page 236)

> Q. Will you please tell us what you meant by the contents of this letter?
>
> Mr. McGlynn: I object to that. The letter speaks for itself. The jury makes the inferences—
> The Court: I will permit it.

8. There is also error, in this, that the said Court, before whom, etc., erroneously permitted Sophie Krok, a witness for the State, to answer, over objection of defendant, the following question (Stenog. Min. page 238)

> Q. Now, did the fact that he did not leave this woman that he was living with and go off with you, did that fact have anything to do with your telling the police the story which you told them and with the story which you told on the witness stand in this case?
>
> Mr. McGlynn: I object, if your Honor please. It is absolutely leading. Why it

is putting the very words in the witness' mouth. There could not be a more leading question in my opinion. I absolutely object to it.

The Court: I do not think it is a leading question. I will admit it.

9. There is also error, in this, that the said Court, before whom, etc., erroneously permitted the Prosecutor of the Pleas to cross-examine the defendant, sworn in his own behalf, in the manner following, (Stenog. Min. page 392)

Q. Can you tell us, Compo, whether you know of any reason why Sergeant Conlon and Detective Fallon should have told you to mention the fact that Furfaro was in this stick-up in Mulberry Street?

Mr. Basile: I object to that.
The Court: I will permit it.

10. There is also error, in this, that the said Court, before whom, etc., erroneously refused to permit Florence Okner, a witness for the defendant, to answer the following question, (Stenog. Min. page 443),

Q. Were you present when this lady, pointing to Mrs. Compo, was brought into your store a week or so ago and asked in your presence to point out the counter?

Mr. Fisch: I object.
Mr. McGlynn: I am going to finish my question.
The Court: Don't answer this until I tell you to.

Q. (continuing) Where she was supposed to have purchased some merchandise in your store?

Objected to.
Objection sustained.

11. There is also error in this, that the said Court, before whom, etc., erroneously refused to permit Florence Okner, a witness for the defendant to answer the following question, (Stenog. Min. page 444),

Q. Did this lady in your presence, this lady that I have just pointed out in the court room, in your presence in this store at 192 Springfield Avenue within a week or ten days from now, point out in your store any particular counter?

Objected to.
Objection sustained.

12. There is also error, in this, that the said Court, before whom, etc., erroneously refused to permit Joseph Weintraub, a witness for the defendant, to answer the following question (Stenog. Min. page 462),

Q. On what side of the door, referring to that grocery store, are the locks located?
Objected to.
Objection sustained.

13. There is also error, in this, that the said Court, before whom, etc., erroneously refused to permit Joseph Weintraub, a witness for the defendant, to answer the following question, (Stenog. Min. page 462),

Q. What kind of locks are on the door?

Objected to.
Objection sustained.

14. There is also error, in this, that the said Court, before whom, etc., erroneously refused to permit counsel for the defendant to cross-examine John L. Day, a witness for the State, in the manner following, (Stenog. Min. page 478):

> Q. And is it possible in the art of photography for pictures to be taken for the printed picture from the negative or plate to have spots or marks which may be on the plate or negative removed?
>
> Objected to.
> Objection sustained.

15. There is also error, in this, that the said Court, before whom, etc., erroneously permitted Philip Sebold, a witness for the State, to testify as follows; over objection of the defendant (Stenog. Min. page 481):

> Q. When you showed him the photograph Exhibit S-2, did he say to you that he did not know if this is the place because he had never been in that district? A. No, he did not say that.
> Q. What did he say to you?
>
> Objected to as not rebuttal.
> Objection overruled.

16. There is also error, in this, that the said Court, before whom, etc., erroneously permitted Ralph Cappodanno, a witness for the State, to testify as follows, over objection of the defendant, (Stenog. Min. page 490):

> Q. Now, you apprehended Furfaro, did you not? A. I did.
> Q. When?

Mr. Basile: I object, if your Honor please. That is not proper rebuttal.

The Court: Yes it is, because the defendant testified that Furfaro said, he heard Furfaro talking about something in jail about this matter.

Mr. Fisch: No, your Honor, I am sorry.

The Court: No, I think you are right about that. That was someone else he heard talking but he did say that the police got the information from Furfaro to put in the statement which he signed.

Mr. Fisch: Yes, the purpose of this statement is to show that Furfaro was not apprehended until after the defendant had told this story on the 15th.

The Court: Yes, that is the purpose of it, but I mean it becomes competent because I think the defendant said that in answer to a question as to why they put in Furfaro's name, that they had gotten it from Furfaro before that.

Mr. Fisch: Yes, your Honor.

The Court: I will admit it.

17. There is also error, in this, that the said Court, before whom, etc., erroneously charged the jury as follows, (Stenog. Min. page 502):

"Now, I read that to you, gentlemen, because the testimony in this case justifies the jury in finding that Eugene Lynch, who was shot on the 23rd day of December as he was about to close the store where he worked, which testimony is uncontradicted, was shot by a person who was committing or perpetrating the commission of a robbery or burglary. That being the case, the person who shot and killed Eugene Lynch is guilty of murder and guilty of murder in the first degree. Therefore, so far as this defendant is concerned, and so far as this case is con-

cerned, your verdict must either be guilty of murder in the first degree or not guilty."

18. There is also error, in this, that the said Court, before whom, etc., erroneously charged the jury as follows, (Stenog. Min. page 502):

"The question for you to determine, gentlemen, is the simple question of fact whether or not the man who shot and killed Eugene Lynch at the time that he was shot and killed is the defendant Compo in this case."

19. There is also error, in this, that the said Court, before whom, etc., erroneously charged the jury as follows, (Stenog. Min. page 504):

"Again I say, gentlemen, the question for you to decide is whether or not Compo, this defendant, was the man who was there and shot and killed Lynch."

20. There is also error in this, that the said Court, before whom, etc., erroneously charged the jury as follows, (Stenog. Min. page 505):

"The State has produced the testimony of police officers who have produced here a statement made by Compo at police headquarters, in fact, two statements I believe. There is some question as to the voluntariness with which those statements were given. It is for you to decide whether or not, when Compo gave those statements, he gave them voluntarily and whether the things which are in those statements are the truth."

21. There is also error, in this, that the said Court, before whom, etc., erroneously charged the jury as follows, (Stenog. Min. page 507):

"It is for you to determine whether or not

Compo shot and killed Lynch. It is not necessary for you to determine which of these guns or what guns he did shoot and kill Lynch with. The question for you to decide is whether or not he is the man who was there who shot and who killed Lynch."

22. There is also error, in this, that the said Court, before whom, etc., erroneously charged the jury as follows, (Stenog. Min. page 507):

"If you believe from the testimony in this case, if you believe from the testimony of the eye witness who was there, if you believe from the testimony of the other witnesses who say that Compo made admissions to them, that he is the man who shot Lynch, then he is guilty, and he is guilty of murder in the first degree."

23. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge, submitted by counsel for the defendant (Stenog. Min. page 511):

"In order for the jury to reach a verdict either of guilty or of not guilty, each and every juror must agree to such verdict, as the verdict must be unanimous and not by a mere majority of the jurors. It is the duty of each juror to vote to acquit if such juror is not convinced beyond a reasonable doubt of the defendant's guilt."

24. There is also error in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 511):

"In determining the innocence of the de-

fendant, you may take into consideration not only the evidence in the case, but also the lack of such evidence as you deem to be essential in determining beyond a reasonable doubt the defendant's innocence."

25. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 512):

"In considering the question of the guilt of the defendant, I charge you that you are not to take into consideration the fact that the defendant has been previously convicted of crime, some eleven years ago, except so far as this fact may in your opinion affect his credibility as witness in this case, and under no circumstances may you take it into consideration as creating any probability that the defendant was guilty of the crime charged in the indictment, nor should it influence you in any way in passing upon his conduct or action at the time mentioned in the indictment."

26. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 513):

"The circumstances of this case are such that Furfaro's testimony may be the testimony of an alleged accomplice and the jury has the right to exercise care and caution in convicting upon the testimony of such alleged accomplice, and the jury has the right and it is its duty to scrutinize with great care, the motives which may have actuated him and his general credibility as a witness before accepting his testimony as true."

27. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 513):

> "10. In the investigation of all of the matters of fact and in the weighing of evidence, the jury has no right to assume the guilt of the defendant, and then try to reconcile the testimony with such theory, but it is the sworn duty of the jury to presume the innocence of the defendant and to give him the benefit of such presumption all through the trial and at every stage of the investigation of the evidence in the jury room until it is overcome, if it shall be overcome, by proof beyond a reasonable doubt, and the evidence in order to establish the guilt of the defendant must not only be consistent with the theory of guilt but must be inconsistent with and exclude every reasonable theory of innocence, and as long as the jury are able to reconcile the evidence with any reasonable theory of the innocence of the defendant, the law makes it their duty so to do; and if, upon a full consideration of all the facts in this case, the jury entertain a reasonable doubt as to whether the defendant is guilty of the crime charged against him in the indictment, then you should find him "Not Guilty".

28. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 515):

> "15. The only witness of the State who states that he saw the defendant at the scene of the crime is the witness Haug. In consid-

ering his testimony, you should take into consideration the fact that there is testimony in the case to the effect that he did not recognize or identify the defendant the first time he saw the defendant in the police line-up at police headquarters and identified him only after he, (the witness) was nudged by the police officer who accompanied him. Furthermore, you should take into consideration that there is evidence that the crime is alleged to have taken place at night, that Haug said he saw the defendant only for a short period and never saw him again until the police line-up."

29. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 516):

"16. In considering the testimony of the State's witnesses you must take into consideration the motive or any motive which may have an influence on such testimony. In this connection you may take into consideration the fact that there is proof of jealousy on the part of the witness Sophie and that she may have testified as she did in order to "get even" with the defendant. You may also take into consideration that there is testimony that witnesses Stern and Furfaro and Tenore came into the clutches of the police as a result of information which the defendant gave to the police and that they may be testifying in this case in order to "get even" with the defendant as well as to get into the good graces of the police themselves, and thereby secure lighter punishment for them-

selves. If in considering this testimony there remains a doubt in your minds as to the truth of their testimony then you must disregard it entirely."

30. There is also error, in this that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 516):

"17. The State had it within its power to offer expert proof with respect to the fact that the bullet which killed Lynch was fired from the gun in evidence, and the failure of the State to prove or even attempt to prove this, justifies you in concluding that the bullet was not fired from either gun."

31. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 517):

"18. There is no proof whatsoever in the case that the bullet which was taken from the body of the decedent was shot from either of the two revolvers in evidence."

32. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 517):

"19. The mere fact that the defendant possessed a gun which was not used in the crime, is not evidence of his guilt and must not be given any consideration in determining his guilt in this case."

ering his testimony, you should take into consideration the fact that there is testimony in the case to the effect that he did not recognize or identify the defendant the first time he saw the defendant in the police line-up at police headquarters and identified him only after he, (the witness) was nudged by the police officer who accompanied him. Furthermore, you should take into consideration that there is evidence that the crime is alleged to have taken place at night, that Haug said he saw the defendant only for a short period and never saw him again until the police line-up."

29. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 516):

"16. In considering the testimony of the State's witnesses you must take into consideration the motive or any motive which may have an influence on such testimony. In this connection you may take into consideration the fact that there is proof of jealousy on the part of the witness Sophie and that she may have testified as she did in order to "get even" with the defendant. You may also take into consideration that there is testimony that witnesses Stern and Furfaro and Tenore came into the clutches of the police as a result of information which the defendant gave to the police and that they may be testifying in this case in order to "get even" with the defendant as well as to get into the good graces of the police themselves, and thereby secure lighter punishment for them-

selves. If in considering this testimony there remains a doubt in your minds as to the truth of their testimony then you must disregard it entirely."

30. There is also error, in this that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 516):

"17. The State had it within its power to offer expert proof with respect to the fact that the bullet which killed Lynch was fired from the gun in evidence, and the failure of the State to prove or even attempt to prove this, justifies you in concluding that the bullet was not fired from either gun."

31. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 517):

"18. There is no proof whatsoever in the case that the bullet which was taken from the body of the decedent was shot from either of the two revolvers in evidence."

32. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 517):

"19. The mere fact that the defendant possessed a gun which was not used in the crime, is not evidence of his guilt and must not be given any consideration in determining his guilt in this case."

33. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 517):

"20. The killing of Lynch did *not* occur while the person who killed him was perpetrating or attempting to perpetrate arson, burglary, rape, robbery or sodomy. Therefore, you cannot find the defendant guilty of first degree murder."

34. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 517):

"21. The only direct testimony placing defendant at the scene of the crime is that of Haug. I have already commented upon possible defects in his testimony. I have pointed out that the testimony of Sophie, Stern, Furfaro and the others may be influenced by a desire to get even or get into the good graces of the police. I have stated that the State has failed to prove and has not even attempted to prove that the bullet which killed Lynch was fired from the guns in evidence. I have pointed out to you the circumstances under which the defendant's confession may be disregarded entirely. If after considering all these things, you feel that you are not satisfied beyond a reasonable doubt that the defendant is guilty, you must acquit."

35. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant, (Stenog. Min. page 518):

> "22. If you believe that any part of the testimony of any witness is false, you may disregard the entire testimony of that witness."

36. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 518);

> "24. There is testimony that Compo was kept in custody and was not permitted to communicate with anyone. This testimony can be considered by you as supporting his story that the confession was extorted from him by threats and violence."

37. There is also error, in this, that the said Court, before whom, etc., erroneously refused and denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 518);

> "25. You have heard the testimony of Compo and of the police officers as to the circumstances in connection with the making of the confessions. If these confessions were extorted by *any* sort of threats or violence, they are not voluntary confessions and must be disregarded and excluded from your consideration."

38. There is also error, in this, that the said Court, before whom, etc., erroneously refused and

denied the following request to charge submitted by counsel for the defendant (Stenog. Min. page 519);

> "26. It is the duty of the State to prove that the confessions were *voluntary* and obtained without *any* sort of threats or violence. If you are not convinced beyond a reasonable doubt that the confession was entirely voluntary and obtained without any threats or violence, then you must entirely disregard the confessions and all of the statements contained in them."

39. There is also error, in this, that the said Court, before whom, etc., erroneously omitted and failed to charge to the jury the essential elements of murder in the first degree, murder in the second degree, and manslaughter, and omitted and failed to charge to the jury that the jury could find the defendant guilty of murder in the first degree, or murder in the second degree, or manslaughter, according to the evidence in the case and the charge of the court.

40. There is also error in this, that the verdict of the jury is against the weight of the evidence.

41. There are divers and other errors in the record and proceedings aforesaid and in the giving of judgment and in the passing of sentence aforesaid by reason of which the said judgment and sentence should be reversed and set aside.

Therefore, because the aforesaid reasons, or some of them, constitute error prejudicial to the said plaintiff-in-error, he, the said Eugene Compo, prays

that the judgment and sentence may be reversed, annulled and altogether for nothing held, and that he may be restored to all things which he has lost by occasion thereof.

EDWARD R. McGLYNN,
Attorney for the Plaintiff-in-Error.

CHARLES BASILE,
Of Counsel.

Service of a copy of within Assignments of Errors, acknowledged this 3rd day of August, 1931, as of time.

JOSEPH L. SMITH,
Prosecutor of the Pleas, Essex County.

Specification of Causes for Reversal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE Defendant-in-Error, vs. EUGENE COMPO. Plaintiff-in-Error.	In Error. Specification of Causes for Reversal.

And now comes the said Eugene Compo, by Edward R. McGlynn, his attorney, and Charles Basile, his counsel, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and said Eugene Compo says that said judgment should be reversed, and assigns the following reasons or causes:

1. Because the said trial court erroneously permitted Clarence Stern, a witness for the State, to testify as follows (Stenog. Min. p. 141):

> Q. Did you go out on enterprises with him together? A. Yes, sir.
>
> Q. What kind of enterprises? A. The ones in question, I guess.
>
> Q. What? A. The ones in question, I guess.
>
> Q. I don't know what you mean by that. What ones in question? A. The charges I am being held on now.
>
> Q. You are being held on some charges, are you? A. Yes, sir.

Q. What are those charges? A. Stick-up charges.

Q. Now, you are being held on this charge, of this murder? A. No, sir.

Q. Did you have anything to do with this? A. No, sir.

Q. How many charges, stick-up charges, are you being held on? A. Three.

Q. Did you engage in those enterprises with the defendant? A. I did.

2. Because the said trial court erroneously admitted into evidence an automatic gun, and eight bullets, marked Exhibit S-9 (Steno. Min. p. 193).

3. Because the said trial court erroneously admitted into evidence a certain gun and four bullets, marked Exhibit S-10 (Stenog. Min. p. 195).

4. Because the said trial court erroneously permitted John Furfaro, a witness for the State, to testify as follows: (Stenog. Min. p. 206).

Q. Did you know him on December 23, 1930? A. No, sir.

Q. Did you go down to Mulberry and Beach Streets with him on December 23, 1930, for the purpose of holding up a chain store grocery man? A. No, I have proofs where I was all that day and all that night.

Q. Now, I show you Exhibit S-9, and ask you whether or not you have ever seen that before. A. Eugene Compo sold me this revolver on the first of January, 1931.

Q. Where? A. On Wilsey Street in the back of the garage.

Q. How much did you pay for it? A. $5.

Q. Now, you were arrested, were you not? A. Yes, they locked me up. I am arrested now.

Q. When were you arrested? A. If I recall it well, it was on April 16th.

Q. And when you were arrested, was this gun found by the police? A. Yes, it was found in a coat hanging on the wall in a room.

Q. When you were taken into custody, did you see the defendant Compo at the Newark Police Headquarters? A. I saw him after eight days. That is the time they let me see him.

Q. Were you informed at that time that he had made a statement? A. Yes, he had made a statement and the detectives read the statement to me.

Q. Did they read it to you in English or Italian? A. First they read the statement in English and then in Italian.

Q. Did you say anything to Compo about it? A. I didn't say nothing. I told them to bring me face to face with him, that I had not been with him at any place on Mulberry Street where he had done some shooting.

Q. Did they bring you face to face with him? A. Yes, sir.

Q. After they brought you face to face with him, what happened?

Mr. Basile: If your Honor please, May I ask at this time that the interpreter give this question without repeating another question to him? He answered the question. Let us have the answer.

The Court: What was the answer?

Mr. Basile: He said, "Nothing happened," if I understand it right.

Interpreter: "Nothing happened." He apparently did not understand "What happened?"

The Court: What did the witness say? What did he say before? "Nothing happened?"

Interpreter: "Nothing happened."

Q. After you were brought face to face with Compo in police headquarters, what took place there? A. After Detective Capodanno read the statement to him, I said, "Now speak and tell him whether I was with him or not," and he said "No."

Q. As I understand it, then you said to Compo, "Now speak and tell him whether I was with you or not?" Is that correct? A. Yes, I told him this.

Q. And Compo then said, "No," is that correct? A. Yes, he answered, "No."

Q. Now, after that were you placed in a line-up with Compo and another man? A. Yes, sir.

Q. While you were placed in that line-up, did you see Mr. Haug come in there? A. I saw a man come into the room and he placed his arm on the shoulder of Compo.

Mr. Fisch: Did he say "He placed his arm on the shoulder of Compo?"

A. He placed his hand on his arm, on Compo's arm.

Q. Did you ever talk with Compo and tell Compo that it was too bad that the man was shot down there in Mulberry Street? A. No, I didn't know anything about this.

Q. Did you ever go out and buy a Newark Evening News and read the paper and say to Compo, "Jesus, that is too bad"? A. No, sir; I don't know how to read.

Q. And did you say to Compo, "Keep your mouth shut and don't let it leak out?" A. No, sir; I wasn't there.

Q. Did you ever say to Compo, "Christ's sake, I didn't mean it, the guy grabbed my gun and it went off." A. No, sir; I wasn't with him.

Q. Where were you on the 23rd of December, 1930? A. I was at 39 Wilsey Street all that day.

Q. With whom? A. I was there with the whole family of Mike Tomanelli and also with a man named Michael Tomanelli.

Q. Up to what time were you there? A. I was there until about half past ten at night.

Mr. Fisch: Just what did he say, Mr. Berardi? Just get the answer correct, please.

Interpreter: About half past ten to eleven o'clock.

Q. From there where did you go? A. I went to sleep.

Q. Where? A. 36 Wilsey Street.

5. Because the said trial court erroneously permitted Luke Conlon, a witness for the State to testify as follows: (Stenog. Min. p. 223).

Q. Were you present when the witness Furfaro was brought into police headquarters and confronted the defendant? A. Yes, sir.

Q. Who else was present on that occasion? A.I think Detective Capadano and Detective Fallon.

Q. What took place? A. Detective Capadano read a statement in Italian. We then confronted him with Compo, the defendant, but anything that was said to Furfaro was said in Italian. I couldn't say what it was.

Q. Who did the saying? A. Detective Capadano.

Q. Capadano then said something to Furfaro in Italian, did he? A. Yes.

Q. Then what took place with regard to Capadano? A. Then he said to Furfaro in Italian— I couldn't say what the answer was, and then he said to Capadano, "You said that this man was with you when you were on Mulberry Street—

Q. Who said that? A. Capadano said that to Compo.

Q. He said that in English, did he? A. In English, yes.

Q. What did Compo say? A. He said, "No." And that was all he said.

Q. That was in the presence of Furfaro, was that? A. Yes, sir.

Q. Was that after the 15th of April, when he made this statement? A. Yes, that was a week after.

6. Because the said trial court erroneously permitted Ralph Capodanno, a witness for the State, to testify as follows: (Stenog. Min. p. 242).

Q. Detective Capodanno, were you at police headquarters at a time when John Furfaro and Eugene Compo were also there? A. I was.

Q. Did you speak to Furfaro? A. I did.

Q. What language did you speak to him in? A. Italian.

Q. At that time did you have in your possession Exhibit S-8, the statement of Eugene Compo? A. I did.

Q. What if anything did you do with that? A. I first asked Compo in English whether this was the statement that he made and whether that was his signature on the statement, and he said, "Yes." Then I asked Furfaro if he understood English and he said "No." I said, "I am going to read this statement in English to you, and then I read the statement in English, and then read it in Italian.

Q. You translated it into Italian? A. Yes.

Q. After you translated it into Italian what happened? A. Furfaro denied any knowledge of the shooting.

Q. That is, he denied it in Italian? A. Yes, in Italian, and the same was translated to Compo.

Q. That is, you translated to Compo in English what Furfaro had said in his presence in Italian, is that right? A. Yes.

Q. What did you say to Compo? A. I told Compo after I had read this here and asked him if he understood the statement, he said yes. I asked him, "Do you realize you are accusing this man of the shooting on Mulberry Street?" He said, "I know what you read, but I don't know anything about it. I didn't know Compo at that time; I only met him a few days after Christmas".

Q. That is what Furfaro said? A. Furfaro, yes.

Q. Did you translate that into English to Compo? A. Yes, and then Compo said Furfaro didn't know nothing about it, and he didn't.

Q. That is what Compo said to you? A. Yes.

Q. Then did you translate that into Italian to Furfaro? A. I did.

7. Because the said trial court erroneously permitted the Prosecutor of the Pleas to cross-examine the defendant, sworn on his own behalf, in the manner following: (Stenog. Min. p. 394).

Q. You have been convicted of crime before, haven't you? A. Motor vehicle violation.

Q. Weren't you convicted of crime up in Rome, New York? A. Not that I remember.

Q. Now, let us see whether you can't remember. Do you remember the 19th of January, 1921? A. No, I do not.

Q. Weren't you convicted of third degree burglary in Rome, New York? A. No, sir.

Q. And put on probation up there because of your age at that time? A. I was not put on probation for burglary.

Q. What were you put on probation for? A. I do not remember.

Q. —What was it for? A. I do not remember.

Q. It was for the commission of some

crime, wasn't it? A. No, sir, not for no crime.

Q. What were you put on probation for? A. I don't remember what I was put on probation for.

Q. And weren't you convicted in Oneida County, in 1928 and sent to the Oneida County Jail? A. A motor vehicle violation.

Q. You were sent to the county jail for 25 days, weren't you? A. No, sir, 15 days and $25.00 fine.

Q. What were you put on probation for? Can't you tell us that? A. I don't remember.

Q. You don't remember what it was? A. No, sir.

Q. You were in Rome, New York, in January, 1921, weren't you? A. Rome, New York, was my home town most of my life.

Q. And you were known as Eugene Compo at that time, weren't you? A. I was.

8. Because the trial court erroneously permitted the Prosecutor of the Pleas to cross-examine the defendant, sworn on his own behalf in the manner following: (Stenog. Min. p. 395).

Q. Back in November, 1930 you were receiving aid from the Overseer of the Poor of Newark, weren't you? A. I don't know if it was in November or not.

Q. Didn't you start to get $5. a week beginning November 13, 1930? A. I don't know whether it was the 13th or not, but I started last year getting something from the city.

Q. Sometime in November, wasn't it? A. I don't know if it was November or not.

Q. And you continued up to the time of your arrest? A. Until the time I saw Commissioner Murray; after I seen him I continued getting it.

Q. And you got it up to the time you were arrested, didn't you? A. I did.

Q. And you are getting it up to the present time, aren't you? A. I don't know.

9. Because the verdict of the jury is against the weight of the evidence.

10. Because there are divers and other errors in the record and proceedings aforesaid, in the admission and exclusion of evidence, in the charge to the jury, and in the refusal to charge the requested charges submitted by the defendant, and in the giving of judgment, and in the passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

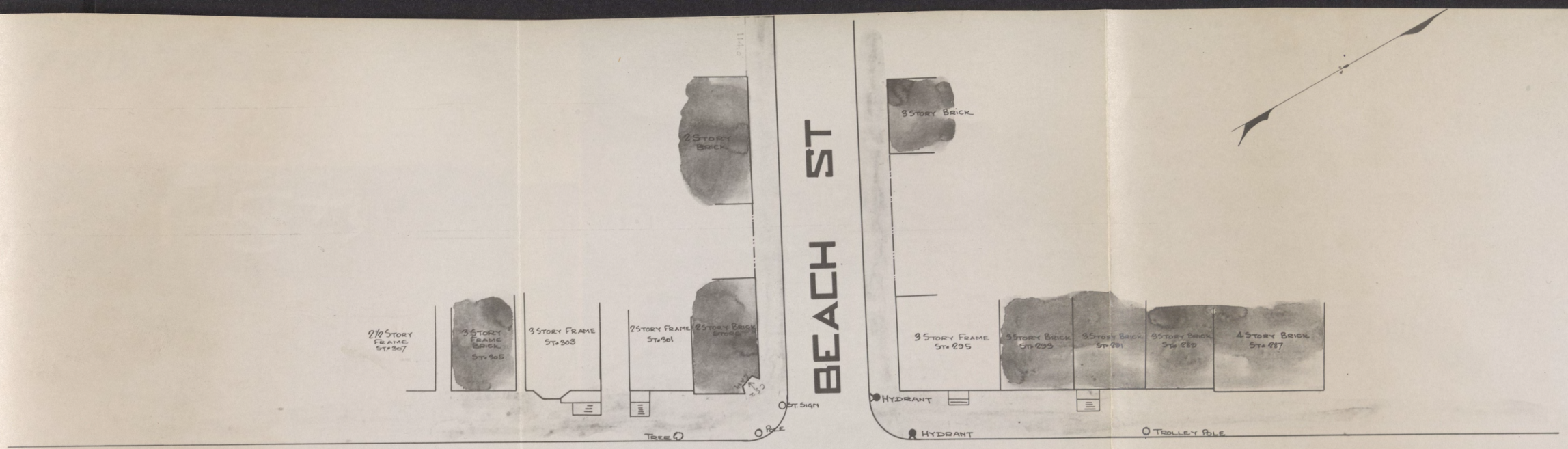
WHEREFORE, Because the aforesaid reasons, or some of them constitute error prejudicial to the said plaintiff-in-error, he, the said Eugene Compo, prays that the said judgment and sentence may be reversed and annulled and altogether for nothing held, and that he may be restored to all things which he has lost by occasion thereof.

EDWARD R. McGLYNN,
Attorney for the Plaintiff-in-Error.

CHARLES BASILE,
Of Counsel.

Service of a copy of the within Specification of Causes for Reversal is hereby acknowledged as of time, this 3rd day of August, 1931.

JOSEPH L. SMITH,
Prosecutor of the Pleas, Essex County.



MULBERRY ST

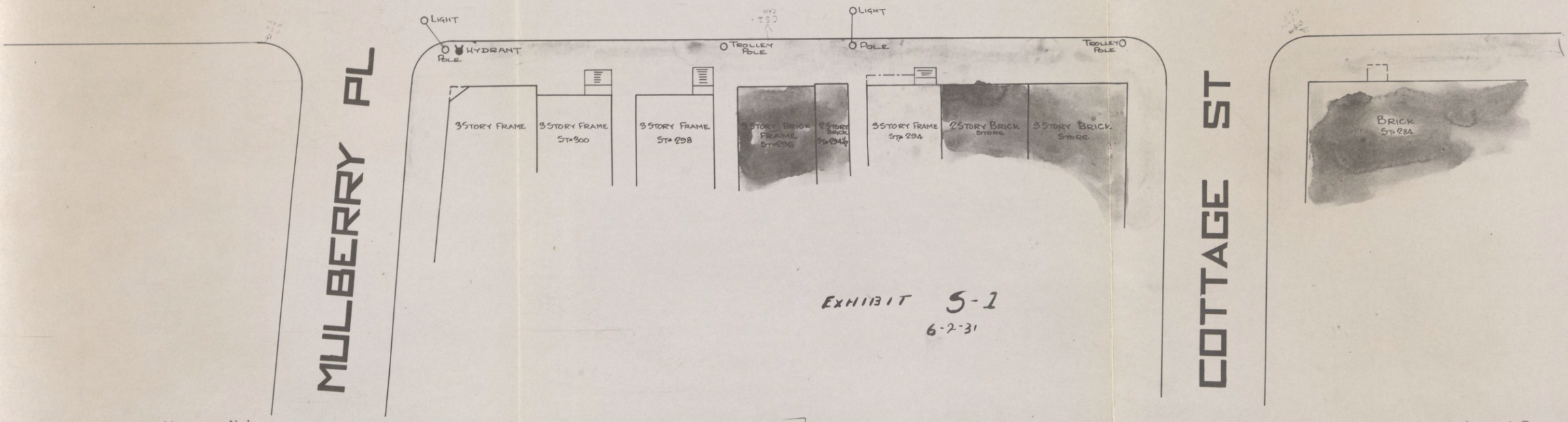
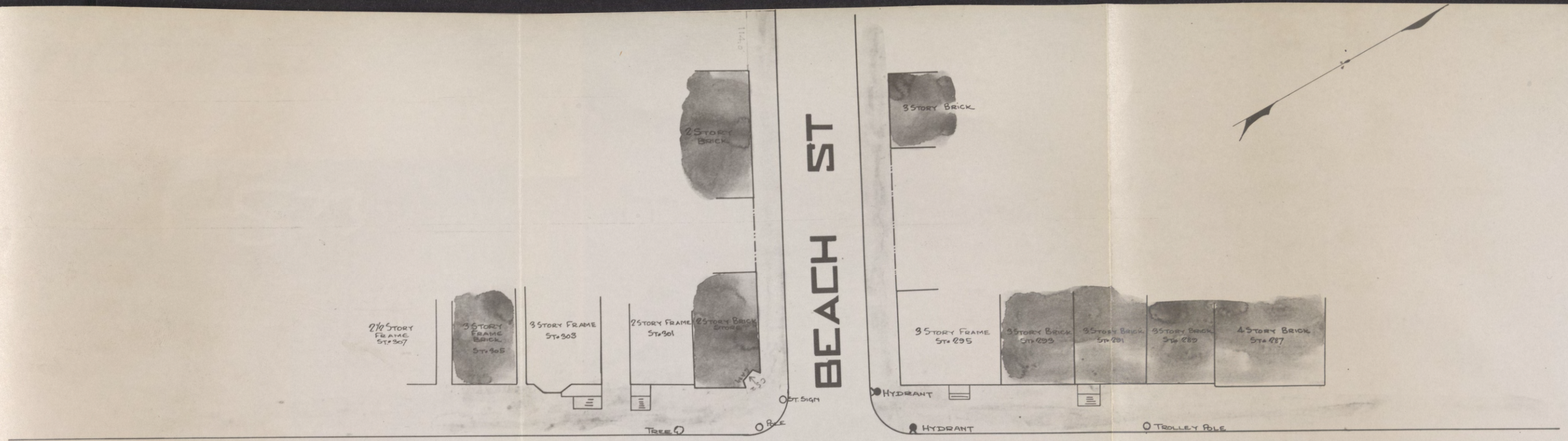


EXHIBIT S-1
6-2-31

NEWARK, N.J.

SCALE 1" = 10 ft.

JOHN J. BRACKEN - SURVEYOR
776 BROAD ST, NEWARK, N.J.
MAY 27-1931.



MULBERRY ST

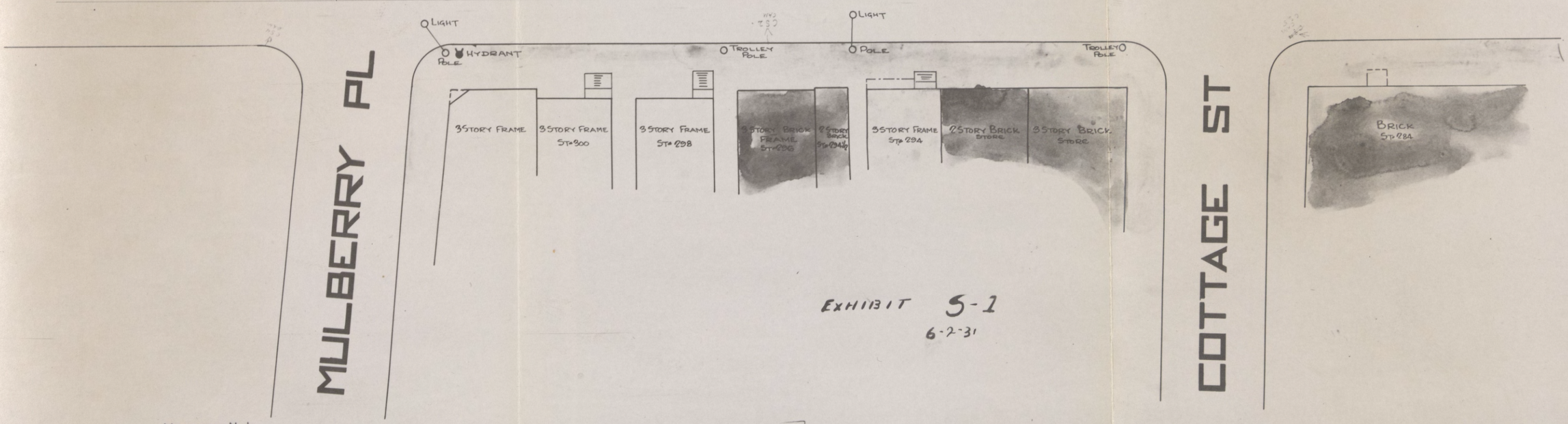


EXHIBIT 5-1
6-2-31

NEWARK, N.J.

SCALE 1" = 10 ft.

JOHN J. BRACKEN - SURVEYOR
776 BROAD ST, NEWARK, N.J.
MAY 27-1931.

EXIBIT S 2



EXHIBIT S 2A



EXHIBIT S 3

EXHIBIT S 4

EXHIBIT S 5

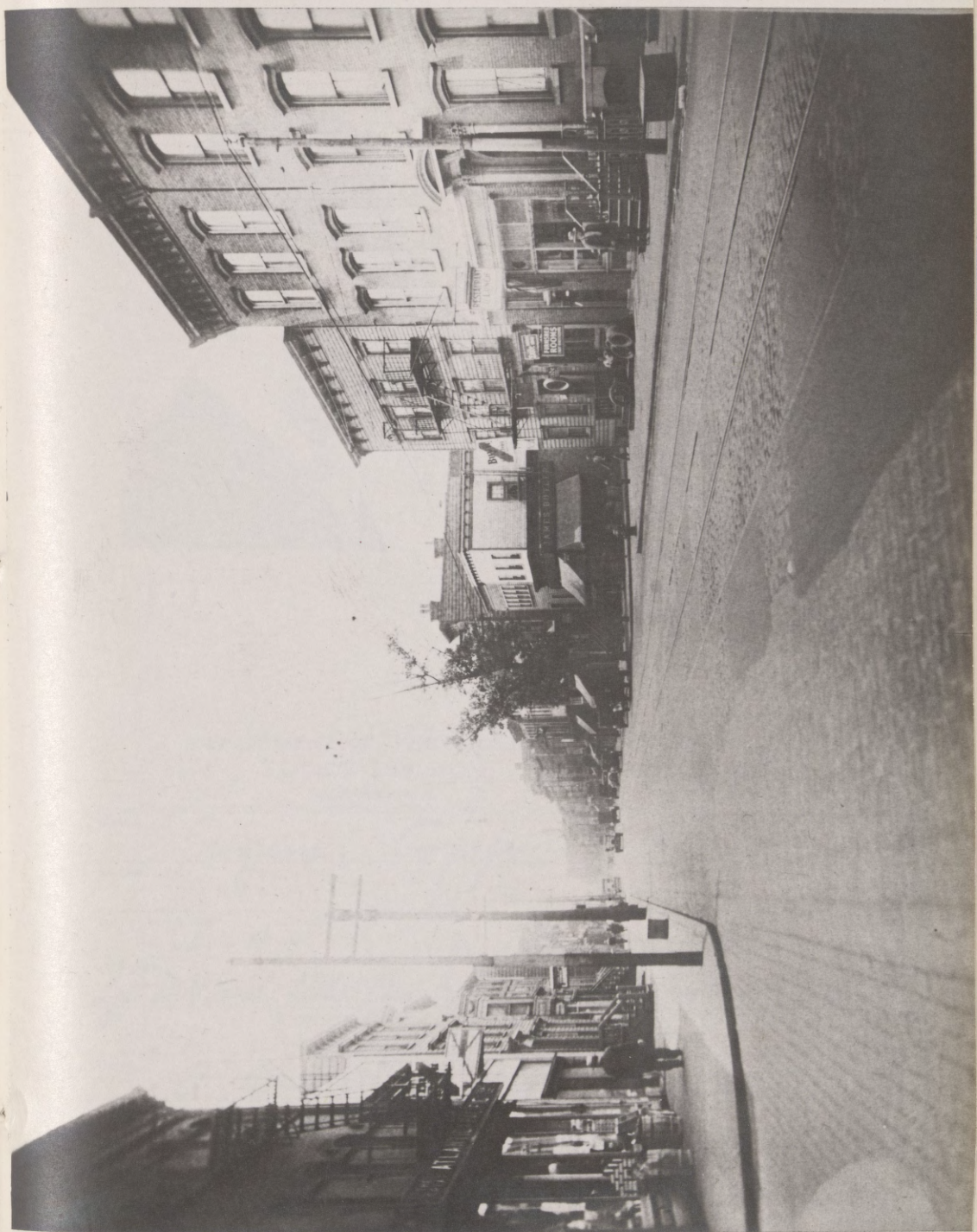


EXHIBIT S 13



DEPARTMENT OF PUBLIC SAFETY
POLICE DIVISION
NEWARK, N. J.

No. 13995

NAME Eugene. Compo Ex S 13 Ed.

ALIAS 6-4-31 JW

DATE OF ARREST 4-9- 1931

CRIME Dangerous Weapon (Gun)

OFFICER Sgt McHugh Dets. Burkhardt. Bauer Gatty

PRECINCT D. B.

AGE 21

HEIGHT 5 FT. 6 5/8 IN.

WEIGHT 128 1/2

BUILD med

HAIR Lt. Br.

EYES Blue

COMP. Fair

NATIVITY Northwestern N. Y.

OCCUPATION Mechanic

REMARKS

F NO. 531 5M 2-31 HM

EXHIBIT S 14



136

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, Defendant-in-Error, vs. EUGENE COMPO Plaintiff-in-Error.	On Writ of Error.

BRIEF FOR PLAINTIFF IN ERROR.

Facts.

On December 23rd, 1930, Eugene Lynch, manager of a Butler's chain grocery store located at the corner of Mulberry and Beach Streets, Newark, N. J., was critically wounded, as a result of which he died shortly thereafter. It was the contention of the State that the shooting occurred about 10:30 P. M., while the deceased was in the process of closing the store, and that a lone-wolf assailant killed him during an attempted holdup.

The evidence in this case will be discussed in detail later on, but it may be briefly summarized as follows: Months after the murder, to wit: on April eighth or ninth, 1931, the plaintiff-in-error was arrested and held on a charge of possessing a weapon. He was at first interrogated concerning hold-up and arson activities of a group of men of whom he was one, and finally gave to the police a statement which implicated and led to the arrest of a number of that group of men. At that time, the plaintiff-in-error was not suspected of the

murder of Lynch, but subsequently the police charged him with that crime, and obtained an alleged confession from him.

The testimony of the State consisted of the alleged confession, the testimony of an eye witness to the murder, and that of a former sweetheart of the plaintiff-in-error, members of the gang whom the plaintiff-in-error had revealed and the girl friend of one of them, all of whom testified that the plaintiff-in-error had admitted the murder to them.

The plaintiff-in-error protested his innocence of the murder, and claimed that the murder charge was concocted by the men who had been arrested as a result of the first confession of the plaintiff-in-error, and who sought to "put him on the spot," both to retaliate for his "squealing" and also to curry the favor of the state by turning state's evidence. The plaintiff-in-error denied that the alleged confession was voluntary or true and charged that it was beaten and sweated out of him, and that shortly after making it, he repudiated it in its entirety, which repudiation is testified to by the police themselves. The plaintiff-in-error, his wife, and sister, all testified that the plaintiff-in-error, at the time of the murder, was engaged in a Christmas shopping expedition preparatory to a long trip to visit relatives, which the sister and her husband, were to make and actually did make on the 24th day of December, 1930, the day following the fatal shooting.

The jury returned a verdict of guilty of murder in the first degree without a recommendation of life imprisonment, and the plaintiff-in-error was thereupon sentenced to suffer the penalty of death.

This case comes before this Honorable Court both on a strict bill of exceptions, upon which forty-one errors are assigned, and also upon the

entire record, under Section 136 of the Criminal Procedure Act, under which ten causes for reversal are specified, and the various assignments and specifications will be argued as assignments and specifications respectively, pursuant to the authority of

State vs. *Lyons,* 70 N. J. L. 635 (Err. & App. 1904) and
State vs. *Merkle,* 83 N. J. L. 677 (Err. & App. 1912).

POINT I.

There was no evidence to justify the finding of the jury that the shooting of Lynch occurred in the perpetration or attempt to perpetrate a felony.

The argument on this point is based upon Assignment of Error No. 33 (State of Case, p. 462), Assignment of Error No. 40 (State of Case, p. 464) and Specification of Cause No. 9 (State of Case, p. 474). Insofar as the argument is based on the contention that the verdict is against the weight of evidence, counsel, for the sake of clarity, takes the liberty of dividing the argument into two parts, one part concerning the question of the commission of a felony, which will be argued at this time, and the other part concerning the question whether the plaintiff in error committed the homocide, which will be discussed later on.

The plaintiff-in-error was prosecuted under an indictment in statutory form which charged that the plaintiff-in-error "did wilfully, feloniously and of malice aforethought, kill and murder Eugene Lynch" (State of Case, p. 2). The sufficiency of

an indictment in that general form has been established and is not here questioned. But naturally, its generality requires that the prosecution state the theory of its case, so that the defense may be conducted with some degree of certainty. Counsel for plaintiff-in-error accordingly called upon the prosecutor to state his theory of the case. The trial Judge thereupon stated that it was his understanding that the state contended that the killing occurred in the process of a *robbery,* and the prosecutor concurred in that statement (State of Case, p. 375-6).

A homocide committed in the perpetration or attempt to perpetrate a robbery is, by statute, made murder in the first degree, and nothing less. (1 Cum. Supp. Comp. Stat. (1911-24) "Crimes," Sec. 52-107).

> "Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premediated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree."

It is apparent from the wording of the statute, that one of the essential ingredients of murder under that section is the felony during the course of which the homocide occurred. The various authorities on the subject will be considered later under another point, but counsel at this stage desire to refer to the case of *State* vs. *Mowser,* 92 N. J. L. 474 (Err. & App. 1919), wherein this Honorable Court, speaking through Mr. Justice Kalisch, said at p. 479:

> "The conspicuous salient fact is, that the

> perpetration or the attempt to perpetrate any of the crimes mentioned in section 107, resulting in the killing of another, is an essential and integral part of murder in the first degree, in that class of cases."

It therefore became the burden of the state to establish beyond a reasonable doubt that the killing of Lynch occurred in the perpetration or attempt to perpetrate a felony and the state elected to establish that that felony was *robbery*. The only testimony relating to the *res gestae* is that of the eye-witness, Mr. Haug. He testified that Lynch was closing his store, and in the process of locking the door (State of Case, p. 38). The door apparently had already been closed by the snap lock, and according to Haug, a chain lock, which he claims to have existed, was being adjusted (State of Case, pp. 38, 51). Lynch and his murderer were outside the door (State of Case, p. 54). Although standing across the street from where the shooting occurred, with his attention fixed upon a Christmas wreath which he had suspended in his window, and his back to the men (State of Case, pp. 43-4), and a distance of some 70 or 75 feet between him and them (State of Case, p. 14), yet Mr. Haug swears that he heard the murderer say "Open up" (State of Case, p. 37).

The words, "open up," assuming that they were uttered and heard, indicate clearly that there was no effort to take anything from Lynch. Robbery is defined as follows (2 Comp. Stat. "Crimes," Sec. 120):

> "Any person who shall forcibly take *from the person of another*, money or personal goods and chattels, of any value whatever, by violence, or putting him in fear, and his aiders, procurers and abettors, shall be guilty of a high misdemeanor * * *"

The plain import of the words "open up" is that the assailant sought to break and enter, using Lynch as his means of making the entry, and that if, and *only if, the intent of the invader was felonious,* the accomplished offense would have been burglary. The words negative any intent to take anything from the person of the decedent, and since they in themselves establish that if the offense had been completed, it would not have been a robbery, the conduct of the assailant cannot be deemed to amount to an attempt to commit that felony. It is therefore respectfully submitted that the trial court should have granted the requested charge, and that the verdict of the jury on this essential of the state's case, is against the weight of the evidence.

POINT II.

The trial court erroneously excluded from the jury the question whether the plaintiff-in-error was committing a felony, at the time of the homicide, and further erred in failing to charge the jury that if the State had established only the homicide, the presumption would be murder in the second degree.

The argument under this point is based on Assignments of Error, numbers 17, 18, 19, 21, 22 and 39 (State of Case, pp. 455-7, 464).

As already stated, when the theory of the prosecution is that a homocide was committed during the perpetration or attempt to perpetrate a felony, there are two essential elements which must be established by the State beyond a reasonable doubt: (1) that the defendant was perpetrating or attempting to perpetrate a felony and (2) that while so engaged, the defendant committed a homocide. Both questions are obviously for the jury, so long as the contentions of the state and defense place those questions in issue.

Both questions were at issue in this case. The plaintiff-in-error denied that he ever went out on a holdup alone (State of Case, p. 237); he denied that he ever went out on a holdup prior to January, 1931, (State of Case, p. 236); he denied that he ever carried a gun before March, 1930, (State of Case, p. 231); he denied that he was at Mulberry and Beach Streets on December 23rd, 1930, and asserted that at the time when the felony and homocide were committed, he and his wife were on a Christmas shopping tour (State of Case, p. 232, *et seq.*) That was a denial by the

plaintiff in error that he shot Lynch; it was equally a denial that he was the man who perpetrated or attempted to perpetrate the felony during which Lynch was killed. Both issues were squarely raised; both became jury questions.

The uniform practice, as revealed by the decisions, has been to leave to the jury the question whether the defendant was committing a felony and whether the shooting occurred in the course of the same. Thus, in the case of *Roesel* vs. *State*, 62 N. J. L. 216 (Err. & App. 1898), wherein the defendant was charged with murder during the course of a robbery, Mr. Justice Depue, writes as follows, at p. 221:

> "*The trial Judge charged the jury that if they found from the evidence that Manshande and Roesel agreed to go to the house of Pitts for the purpose of robbing the house, and that they went there on the 9th of September, in pursuance of that agreement and purpose,* and that they were together at the door of Pitt's house for that purpose, and while there together Pitts received from one of these men a blow that caused his death, they are both guilty of murder in the first degree, no matter which one struck the blow."

In *State* vs. *Young*, 67 N. J. L. 223 (Err. & App. 1902), Chancellor Magee says at p. 232:

> "The Court then proceeded to instruct the jury in regard to the degree of crime of which plaintiff in error should be found guilty *if the jury found that he took part in and was guilty of the crime of burglary or of attempted robbery.* Their attention was drawn to the provisions of our statute which expressly declare that any person who, in committing or attempting to commit, burglary or robbery, kills another, such person is guil-

> ty of the crime of murder ("Crimes Act of 1898, Sec. 106; Pamph. L. 1898, p. 824), and the further provision that murder committed in perpetrating burglary or robbery is murder in the first degree. (Crimes Act of 1898, Sec. 107; Pamph. L. 1898, *ubi supra*). The Trial Court then charged that *if the killing of Hunter was done in the committing of a burglary or in the attempt to commit a robbery, those who were accomplices engaged in and chargeable with the burglary or the attempt at robbery,* would all be guilty of murder in the first degree, as well those who, though they were not within the house and struck no blow upon the victim, were present aiding and abetting the crime committed or attempted. The Court then added: 'So there cannot be any other verdict *against* this defendant than that of murder in the first degree, the only other verdict must be not guilty' ".

In *State* vs. *Lyons,* 70 N. J. L. 635 (Err. & App. 1904), Chancellor, Magee, speaking for the Court of Errors and Appeals, again says, at p. 645:

> "The Court was led to define the crime of robbery, because it was contended by the state that the killing of John Christian, which was charged against plaintiff in error, was committed in the commission of, or in the attempt to commit, a robbery. The circumstances upon which the charge was based, as they appeared in the evidence so as to justify the jury in finding, were these: (Court goes on to detail the crime) * * Under the statute which makes killing in the perpetration or attempt to perpetrate the crime of robbery murder in the first degree, the court properly proceeded to define what robbery is."

In *State* vs. *Lynch,* 103 N. J. L. 64 (Err. & App. 1926), an opinion by Chief Justice Gummere, appears the following at p. 70:

> "We are urged to reverse this conviction on the further ground that the evidence did not warrant a conviction of a higher crime than murder of the second degree, for the reason that the killing of Brannon was not done in the perpetration of a robbery. We think this contention is without merit. *It was open to the jury to find, on the proofs submitted, that Lynch, before he shot Brannon, had made up his mind to perpetrate a robbery, if the money could not be obtained otherwise, and that he killed Brannon in order to prevent any interference by him in the carrying out of this scheme.* They evidently concluded that this was the case, and, having so found, they were justified in fixing his crime as murder of the first degree."

In *State* vs. *Gimbel,* 8 A. R. 561, 151 Atl. 756 (Err. & App. 1930), it appears at p. 758, that the trial court, even though the defendant did not testify at all, charged the jury as follows:

> "'In view of the testimony that this murder was committed in the perpetration of a robbery, the defendant is either guilty of murder in the first degree or he is not guilty. As I said to you a moment ago, *if you believe* the testimony of the state's witnesses, which testimony is uncontradicted, *that the defendant Gimbel held up and robbed* the grocery store and ran away, and in the course of being pursued shot and killed Paul Bohrer, he is guilty of murder in the first degree.'"

In commenting upon that charge, Chancellor Walker says at page 759:

> "Nor is there any error in the charge of

> the court numbered 2, above, *that if the defendant held up and robbed the grocery store and* ran away, and in the course of being pursued shot and killed deceased, he was guilty of murder in the first degree."

Chancellor Walker further adds, at p. 759:

> "It may, however, be appropriate to remark that this court held in *State* vs. *Kisik*, 99 N. J. L. 385, 125 A 239, *that a defendant in a criminal case is entitled to have the jury consider all of the facts in evidence, even if he does not deny those which concern his own acts, as he is entitled to the presumption of innocence,* unless and until, the jury have agreed on a verdict of conviction upon a consideration of all the evidence, and that beyond a reasonable doubt."

In *State* vs. *Mowser*, 92 N. J. L. 474, (Err. & App. 1919), the problem before the court was somewhat different, but the ruling thereon is particularly applicable to our situation. In that case, there were two indictments, one for robbery and the other for murder. The defendant pleaded guilty to the first indictment, and then pleaded *autrefois convict* to the second. In upholding the plea, Mr. Justice Kalisch says at p. 479:

> "Section 107 of the Crimes Act (Comp. Stat. p. 1780), a much later statute, declares that murder 'which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree.' * * *
>
> *"The conspicuous salient fact is, that the perpetration or the attempt to perpetrate any of the crimes mentioned in section 107, resulting in the killing of another, is an essential and integral part of murder in the first degree, in that class of cases."*

and again at p. 483:

> "The legislature has made the crime of robbery a constituent element of murder in the first degree, where death ensues from the perpetration or attempt to perpetrate the robbery * * * "

In *Commonwealth* vs. *Comporto,* 81 Atl. 906 (Pa. 1911), at p. 907, the trial Judge charged the jury as follows:

> "In the general charge the jury were expressly instructed that in order to convict defendant the 'must find that there was a robbery committed, or an attempt to commit a robbery.' The judge further said that whether a robbery was committed was one of the first facts for the jury to settle and determine. 'You will determine whether or not the shooting was with intent and in the attempt to commit a robbery, because, if you find that the shooting was done in the perpetration of a robbery, or in the attempt to perpetrate a robbery, then you would be warranted in finding the contention of the commonwealth to be correct that there was a murder committed here by some one in the attempt to perpetrate a robbery.' "

In 30 C. J. "Homicide" at p. 148, appears the following:

> "Under a statute making a homicide committed in the attempted perpetration of a felony murder in the first degree, *the prosecution must establish the fact that accused attempted the felony, and that death occurred as the outcome of such attempt.* * * *

Under the above authorities, it became the duty of the trial judge to leave both issues to the jury.

Instead, the Court charged as follows (State of Case, p. 378):

> "Now, I read that to you, gentlemen, because the testimony in this case justifies the jury in finding that Eugene Lynch, who was shot on the 23rd day of December as he was about to close the store where he worked, which testimony is uncontradicted, was shot by a person who was committing or perpetrating the commission of a robbery or burglary. *That being the case, the person who shot and killed Eugene Lynch is guilty of murder, and guilty of murder in the first degree. Therefore, so far as this defendant is concerned and so far as this case is concerned, your verdict must either be guilty of murder in the first degree or not guilty. The question for you to determine, gentlemen, is the simple question of fact whether or not the man who shot and killed Eugene Lynch at the time that he was shot and killed is the defendant Compo in this case.*"

The Court later on, in its charge, again says (State of Case, p. 380):

> "*Again I say, gentlemen, the question for you to decide is whether or not Compo, this defendant, was the man who was there and shot and killed Lynch.*"

At page 382 of the State of Case, the charge continues:

> "*It is for you to determine whether or not Compo shot and killed Lynch.* It is not necessary for you to determine which of these guns or what guns he did shoot and kill Lynch with. *The question for you to decide is whether or not he is the man who was there who shot Lynch and who killed Lynch.*
>
> "If you believe from the testimony in this case, if you believe from the testimony of the

> eye witness who was there, if you believe from the testimony of the other witnesses who say that Compo made admissions to them, *that he is the man who shot Lynch, then he is guilty of murder in the first degree. If you do not believe that he was the man who shot Lynch, why, of course he is not guilty.*"

There are other portions of the charge which were excepted to generally, but not specifically assigned as error, but which counsel takes the liberty of calling to the attention of this Honorable Court, particularly since they are repetitions of the above, and do not raise any new issue. They are as follows (State of Case, p. 380):

> "But the State has produced testimony, first by the witness Haug, who says that he saw the shooting of Lynch and that he was an eye witness to it. He says that the man who did it was Compo. *If you believe his testimony, if you believe that he is correct in identifying Compo as the man who was there that night and who did the shooting, then of course he is guilty.*"

And (State of Case, p. 381):

> "*What you are to decide is whether or not the defendant did or did not shoot Eugene Lynch,* and the fact that he may or may not have participated in other holdups is not evidence against him one way or the other."

The portion of the Court's charge first quoted above begins properly; the trial court at that point apparently is merely commenting upon the evidence. The right of a trial court to express its opinion is not disputed; it is conceded that the Court could, within its discretion, tell the jury that in the Court's opinion, a felony was being

committed by the murderer of Lynch when he fired the fatal shot. But it is equally well settled that the trial court may only comment upon the testimony and may not take the issue of fact from the jury. The law is thus summarized by Newman in his work, *New Jersey Criminal Law and Procedure* (2nd. Ed. 1926), at p. 721:

> "It may also comment upon the facts in the case as well as give expression to its opinion upon certain lines of testimony, *provided it does not invade the province of the jury by taking from it its right to decide disputed questions of fact* (citing many cases)".

It is manifest from the Court's charge that it stepped out of the realm of mere comment. Although the trial judge says at the outset that the evidence "justifies the jury in finding" that Lynch was shot during the commission of a felony, he promptly proceeds to limit their duty to the determination of whether Compo fired the shot, that is, whether Compo committed the homocide. Nowhere in the charge of the Court is the jury instructed to determine whether a robbery was being perpetrated or attempted. No where in the charge of the court appears a definition of the crime of robbery or any other felony so that the jury could determine whether the homocide occurred during the commission of such a crime. The sole problem left to the determination of the jury (and this single problem was constantly repeated by the Court) was whether Compo committed the homocide.

It is respectfuly submitted that under the statute and under the decisions above referred to, the instructions of the trial judge were erroneous. The possibility of prejudice to the defendant is apparent. The testimony indicating the fact of a

felony was as follows: *First,* the confession. The plaintiff-in-error testified that the confession was hammered and sweated out of him. Shortly after it was signed, he denied the truth of it, and the state's witnesses so testified. The state itself repudiated most of the confession. The confession named one Furfaro as the actual murderer and the plaintiff-in-error as his accomplice. The State denied that Furfaro had any connection with the crime, and actually placed Furfaro on the stand to support that denial. It is perfectly possible and highly probable that the jury, because of the facts recited above, and other considerations which will be detailed later on under the contention that the verdict was contrary to the weight of the evidence, refused to believe any portion of the confession and discarded it in its entirety. The second class of testimony consisted of alleged admissions by the plaintiff-in-error that he held up or "stuck-up" the deceased. The defense contended that these admissions were never made, that they were concocted by former friends of the plaintiff-in-error who had been arrested as a result of the latter's "squealing" of their criminal activities, and that these alleged admissions were the instruments whereby the disgruntled witnesses sought to avenge themselves for their betrayal and at the same time attarct the gentle treatment of the prosecution when they themselves would stand before the bar for sentence. It is possible and decidedly probable that the jury refused to believe one scintilla of their testimony, and rested their verdict entirely on the third class of testimony, to wit, the testimony of Haug, the eye witness.

Now the testimony of Haug, might be believed in part and discredited in the remainder. He testified that prior to the shooting, he passed close by the plaintiff-in-error, and later saw him fire the

fatal shot. The jury probably believed that Haug was accurate in identifying Compo as the one who fired the shot. But that portion of Haug's testimony which related to the fact that the shooting occurred in the process of a felony was highly incredible. As already pointed out, Haug was some seventy feet away from the place of the shooting. He was standing in front of his home, which was diagonally opposite the scene of the shooting, with his back toward Lynch and his assailant, and with his attention concentrated upon a Christmas wreath which he had suspended in the window. Under those circumstances, Mr. Haug claims to have heard the murderer say "Open it." His testimony in this regard is unbelievable. It is absolutely incredible that any hold-up man would shout "open up" with such force and volume that it would carry seventy feet to a man whose mind was undividedly concentrated upon another matter. The jury could easily have discredited that portion of his testimony and believed that it was prompted by a desire to assist the prosecution in establishing the fact of a felony, or that it was the product of a fertile imagination, bolstered by the deductions which the witness made from his observations of the fact of a shooting.

It is therefore possible that on the evidence of the state, the jury was satisfied that the plaintiff-in-error fired the shot but was not convinced beyond a reasonable doubt that the shooting occurred in the process of a felony, and had the jury been properly instructed, it might have so found. It is submitted that such error by the trial judge was therefore prejudicial and warrants a reversal and new trial. Any other conclusion would lead to intolerable consequences. If the state, in a prosecution for murder, can, after establishing that a homocide was committed, compel a jury to

find that the homocide was murder in the first degree, simply by charging that the homocide occurred during a felony of which fact there is but some evidence, the very fundamentals of the law of this state would be overturned. It is established beyond argument that proof of a homocide is proof of murder in the second degree only, and that the burden is on the state to raise it to murder in the first degree. And that burden of the state is a *burden of proving* and not merely a *burden of alleging,* that a felony was being committed by the defendant; and that burden must be sustained by state to the satisfaction of the jury. The difference between charging and proving is all-important; it is the difference between life and death.

Closely connected with argument that the trial court erred in taking from the jury the question of whether the homocide occurred in the process of a felony is the contention of the plaintiff in error, that the court erroneously failed to charge the jury that if they were convinced beyond a reasonable doubt that a homocide was committed by the defendant, but were not satisfied that he was at the time engaged in the perpetration of a felony, then the presumption would be murder in the second degree, and the burden would be on the state to raise the offense to murder in the first degree and on the defense to reduce it to manslaughter.

As already stated, there were two issues in the case, (1) whether the plaintiff-in-error was committing a felony and (2) whether the plaintiff-in-error committed a homocide in the course of the felony. The jury was to decide both. The jury might have been satisfied of the homocide alone. Under those circumstances, its verdict could only be murder in the second degree, and the punish-

ment thereon, of course, could not have been death. A verdict of second degree murder was therefore squarely within the issues of the case, and a charge on that subject should therefore have been given by the Court.

The controlling authority on this point is the decision of this Honorable Court in the leading case of *Brown* vs. *State,* 62 N. J. L. 666 (Err. & App. 1899), wherein, Mr. Justice Depue says, at p. 699:

> "The judge instructed the jury that if the act of killing was not excusable or justifiable on the ground of self-defense and was not reduced to manslaughter, then it would be murder of the first or second degree; the act of killing being established, the presumption was that it was murder of the second degree. 'If the defendant seeks to reduce it to a lower degree of homicide he must establish that by the evidence in your minds to your satisfaction, and if the state demands a verdict of murder of the first degree the burden is upon the state to establish it beyond reasonable doubt.' Murder is, by the one hundred and seventh section of the Crimes Act (Pamph. L. 1898, p. 824, Sec. 107), classified into two degrees—murder of the first degree and murder of the second degree. That section enacts that all murder which shall be perpetrated by means of poison or lying in wait, or by any other kinds of willful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate certain specified crimes, shall be murder of the first degree, and that all kinds of murder shall be murder of the second degree. The legislature, in declaring what shall constitute murder of the first degree and what murder of the second degree created no new crimes but merely made a distinction with a view to the differ-

> ence in the punishment. *Graves* vs. *State*, 16 Vroom 347, 358. The act of killing being such as, at common law or under the statute, would amount to murder, *the judge properly charged the jury that the presumption was of murder of the second degree, and that if the state proposed to raise the degree of criminal responsibility to that of murder of the first degree it must accept the burden of proving beyond a reasonable doubt that the killing was such as, by the section just referred to, would constitute murder of the first degree."*

This charge, being required by the evidence and issues of the case, the plaintiff-in-error was entitled to it, with or without request, and the failure of the trial judge so to charge was prejudicial error. (16 C. J. 1055).

POINT III.

The trial court erred in admitting into evidence an alleged confession of the plaintiff-in-error, although there was no evidence before the court that the statement was made voluntarily, without threats or fear or promise of reward.

This argument is based upon assignment of error No. 3 (State of Case, p. 448). Counsel wish to point out at this time that the argument under this head is based on an exception and an assignment of error thereon. The law seems to be fairly well established that where there is a legal evidence to support the finding of a trial judge that the confession was voluntary, such finding is not subject to review on exception, since it involves a matter of discretion. Where, however, *there is no legal evidence* to support such a finding, the admission of a confession is error which may be reviewed on a bill of exception. *State* vs. *Monich,* 74 N. J. L. 522 (Err. & App. 1906); *State* vs. *More-Hous,* 97 N. J. L. 285 (Err. & App. 1922). It is the contention of the plaintiff-in-error, that the state offered no legal evidence whatsoever upon which the ruling of the trial judge could be predicated. The argument will be divided into three parts.

First: The only testimony offered by the State was that of Detective Capando (State of Case, p. 144, *et seq.*) Capadano testified as follows (State of Case, p. 147):

> "Q. Were you told why you were to be there?
>
> A. I had *just* returned from another mission, and I came back and reported to the

> Captain, and while in the Captain's office, Compo made a statement that he was going to tell what happened. * * *"

He further testified that he was the stenographer who drew up the statement S-8, and that there were present at the time when the information was given to him three others, namely, Captain Sebold, Sergeant Conlon, Detective Fallon, and that the signing of the statement was witnessed by Deputy Chief Brex, Captain Sebold, Lieutenant Linarduccu, Sergeant Conlon, Sergeant Cocozza and the witness himself.

The plaintiff-in-error had been arrested on April 8th or 9th, 1931. The statement bears the date, April 15th, 1931, which, assuming it to be correct, indicates that the prisoner was in custody for fully six or seven days before he made the so-called confession. The witness knew nothing of what had transpired between the time of the arrest and time of the statement. He testified (State of Case, p. 146):

> "Q. Have you any idea how long he had been in custody before you met him? A. No, sir.
>
> Q. You don't know what, if anything, was said or done to him before he made this statement? A. Nothing more than I know what happened while I was there."

and as already pointed out, the witness had *just* returned from another mission, when Compo said that he was ready to make a statement.

The question is therefore raised whether the state sustains its burden of establishing that a confession was voluntary by offering the testimony of a mere stenographer, who either chanced to enter upon the scene, or was intentionally summoned, in time to take down a statement of a man charged

with murder; a witness who can say nothing whatsoever about what transpired prior thereto, and what conversations or conduct led the prisoner to the point of talking. Counsel have been unable to find any case in this jurisdiction or any other jurisdiction where a confession has been offered and accepted in evidence upon so flimsy and so hollow a foundation.

The authorities dealing with the question of who must testify before a confession can be received in evidence are remarkably few, but the decisions that do exist definitely condemn the practice pursued in this case.

In the case of *Adkisson* vs. *State,* 104 So. 674 (Ala. 1925), appears the following:

> "*In the absence of any evidence tending to prove the presence of other persons at the time of a statement in the nature of a confession,* a proper predicate is laid by showing that the person to whom the statement was made made no threats, held out no inducement and made no promises to induce the statement. *Austin* vs. *State,* 18 Ala. App. 160, 89 So. p. 854."

In our case, three or five men were present in addition to the witness. It is clear that the Alabama court would have held that in our case a proper predicate was not established.

In *People* vs. *Rogers,* 136 N. E. 470 (Ill. 1922), the Illinois court, by way of dictum said at p. 475:

> "It is the duty of the trial judge in every case, when he has reason to suspect that a confession has been extorted from the defendant, to absolutely refuse to permit any evidence as to the confession, until the state has examined every police officer and everyone present at such examination, so that the full truth may be disclosed."

In 1929, the same court decided the very point. In the case of *People* vs. *Holich,* 169 N. E. 169 (Ill. 1929), the opinion discloses that the confession was received in evidence on the following predicate (p. 171):

> "A witness for the prosecution testified that he was one of the police officers who made the arrest; that the statement which is claimed to be the confession was made and typewritten in his presence and in the presence of four other police officers, a stenographer, and the plaintiff in error, between 3:00 and 4:00 in the morning following the arrest; that it was then read to and signed by the plaintiff in error; that no inducement, threat, or promise was made to procure it; that no one twisted the arms of the plaintiff in error; that witness saw no marks on his person; and that they did not book him until three days after he was arrested. This was all of his testimony and all of the evidence offered by the prosecution."

The defendant, following the above testimony of the state, elected to tell his version of how the statement was obtained. The prosecution did not undertake to rebut his testimony. The court on review held that the admission of the statement was erroneous and rested its conclusion on two grounds; *first*: that the specific testimony of the defendant charging improper conduct had not been denied by state's witness; and *second*: that the state had failed to produce all of the officers present at the examination of the prisoner. In the language of the opinion (p. 171):

> "No evidence was offered in rebuttal, and there was no specific denial of the facts testified to by the plaintiff in error. It is true that the police officer denied that any inducement, threat, or promise was made to procure the alleged confession, but such de-

nial was in the form of a categorical answer made by him to a leading question volunteered by the court. This was but a conclusion of the witness and not the denial of any specific fact. He also said that 'no one twisted the arms of the plaintiff in error,' but this was also in the form of a like categorical answer to a leading question not confined to any particular time. *It does not appear that this witness knew all that had transpired between the time of the arrest and the time the statement was signed. There was therefore no proper foundation for his conclusion. Before the statement was signed the plaintiff in error had been in the custody and under the constant surveillance and questioning of other police officers for more than 10 hours. The testimony of this witness covers only the time of the arrest and the period of about an hour while the statement was made. The remaining 8 or 9 hours are not accounted for. For all that appears, this witness was the one who knew the least about what had taken place.* We have repeatedly held that a court is warranted in excluding a confession unless all of the police officers engaged or present at the sweating of the accused are called as witnesses, and that the court has no right to disregard the testimony of the accused showing that a confession was forced by threats and physical violence, without a specific denial of the facts to which he testified. * * * The statement itself shows that five police officers and a stenographer were present while the statement was made. Only one of these six persons was called to testify * * * "

Another authority sustaining the position of the plaintiff-in-error is the early English case of *Rex*

vs. *Swatkins,* 4 C. & P. 549 (1831), in which appears the following:

> "A constable was called to prove a confession made to him by the prisoner Swatkins. This constable stated that he went into a room in a public house at Imley, where he found the prisoner Swatkins, in the custody of another constable, and that, as soon as he (the witness) went into the room, the other constable left it, and the prisoner immediately made a statement.
>
> *Godson and Carrington,* for the prisoner Swatkins, objected, that, before this statement was receivable, the other constable must be called, to prove whether he had held out any inducement to the prisoner to make this statement, and that if, without calling that constable, the evidence were receivable, the most dangerous consequences would ensue, as nothing would be more easy than for one constable to hold out the inducement to confess, and another to come into the room and receive the confession'.
>
> *C. Phillips and Talbot,* contra.—If we call the person to whom the confession is made, and he did not hold out any inducement to the prisoner to confess, that is all that is necessary on the part of the prosecution, and if it is to be suggested, that any one else held out any such inducement, it is incumbent on the prisoner to show that—If it were not so, it would never be possible to prove a confession with out calling every constable in whose custody the prisoner had been.
>
> *Mr. Justice Patteson.* - It appears, that the constable, who had this prisoner in *custody,* left the room immediately on this person's coming in, and the prisoner at once began to make a statement. Now, I think, as the witness did not caution the prisoner not to confess, it would be unsafe to receive such evidence. *It would lead to collusion between constables.*

> Another witness was called, who stated, that, at the time of the confession before mentioned, the prisoner was not kept in custody as an accused party; but that all the servants of Mr. Williams had gone to Imley, to be examined as witnesses respecting this fire; and that the prisoner Swatkins having attempted to run away, the constable had caught him, and was detaining him as an unwilling witness.'
>
> *Mr. Justice Patteson* - If he was not under any charge, that varies the case. As he was at that time attending there as a witness, and was not in custody on any charge, I shall receive the statement in evidence, without putting the prosecutor to call the other constable."

It is not contended by the plaintiff-in-error that the prosecution should be compelled to produce every officer who in any way came in contact with the prisoner. A burden of that character could not be sustained. But a state should produce every officer connected with the procedure whereby the prisoner is finally led to make a statement wherein he apparently acknowledges guilt for an offense that carries with it the penalty of death. In this case, it would seem that the state should have called the three men who were present when the statement was dictated and the two others who were present when it was signed. If a state can secure the admission of a statement upon the testimony of a mere stenographer, who just happens to come in in time to record a statement, there immediately appears a subterfuge whereby the prosecution can relieve itself of its burden of proving a confession to be voluntary. It will be a very easy matter for the police, after pummeling, beating and sweating a prisoner to the point where he is willing to admit anything to be relieved of his

torturers, to call in another offcer, who will take the statement, and, of course, innocently testify at the trial that to his knowledge no threats, no force, no violence, and no promises were inflicted upon or offered to the prisoner. If the testimony of Capadano is a sufficient foundation for the admission of a confession, our well established law that the state must prove a confession to be voluntary may well be overruled in favor of a new rule which presumes every statement to be voluntary, and burdens the defendant with the task of establishing otherwise. In the instant case there were other witnesses whom the state could have summoned, who were conversant with all the facts, but instead the state chose to use the man who knew absolutely nothing of what transpired. It may have been an intentional subterfuge to get around the existing law, or it may not. At any rate the practice adopted did have the effect of shifting to the defense the burden of proving the confession to be involuntary; this burden the defense refused to assume, and, it is submitted, properly so.

SECOND: The testimony of Capadano disclosed that the statement of the plaintiff-in-error was first given to him orally and thereafter reduced to writing by him. The only testimony as to voluntariness of the statement is the following (State of Case, p. 145):

> "Q. Did you make any promises to him *at the time he signed the statement?* A. No, sir.
>
> Q. Did you make any threats *at the time he signed the statement?* A. No, sir.
>
> Q. Did you hold out any hope of reward to him? A. No, sir."

Now, it is well settled law that an oral confession may be admitted in evidence. Hence the statement of Compo when orally made was a completed confession. The reduction to writing was simply a method of facilitating the proof of what his statement contained. Yet, there is not a particle of evidence offered by the state as to whether any promises, threats or hope of reward were made at the time when the defendant made the confession proper. The testimony of the witness is carefully limited to what took place when the statement was signed. For all that appears, the four officers, including the witness, who were present when the oral statement was made, may have at that time, in order to secure the statement, whipped and beaten the defendant or promised him some reward. Such testimony cannot be said to be any evidence whatsoever that the confession was voluntary.

THIRD: The testimony of Capadano falls short of establishing a proper foundation in another most material respect. The testimony quoted above is confined entirely to the conduct of the witness himself and not a bit of it relates to the conduct of the three officers who were present when the oral confession was made or the five officers who were present when the written statement was signed. It is well settled law that where one of several officers present when a confession is obtained testifies that he did not make any threats or promises, but does not negative improper conduct on the part of others, such testimony is not, for obvious reasons, a proper predicate. The law is thus stated in 16 C. J. 734:

> "A proper predicate for the admission of a confession is laid where the witness to

> whom it was made testifies that neither he, nor any one else in his presence or hearing, made any promises or threats to defendant; but testimony that the witness alone did not make any threats or promises is not sufficient where other persons were present. In some jurisdictions it is sufficient for the witness to state that the confession was made freely and voluntarily to him by the accused, but the contrary is held in other jurisdictions. * * * "

It is respectfully submitted that the testimony of a witness that shows that he knows nothing about what occurred before the prisoner announced his willingness to make a statement, and which negatives improper conduct on the part of the witness only at the time of the signing of the written statement, and does not refer to the conduct of other officers with him, presents no legal evidence upon which a trial judge can conclude that the statement was voluntary.

POINT IV.

The trial court erroneously charged the jury as to its function in considering the alleged confession and erroneously failed to charge the jury to disregard the confession if it determined the statement to be involuntary.

The argument on this point is based upon assignments of error numbers 20, 37 and 38 (State of Case, pp. 456, 463).

The precise function of the court and jury as to the treatment of a confession is still somewhat unsettled in this state. In the case of *Roesel* vs. *State,* 62 N. J. L. 216 (Err. & App. 1898), this Honorable Court, speaking through Mr. Justice Depue, held that where the evidence as to the voluntariness of a confession is conflicting, the trial judge *may* leave the question to the jury with an instruction that if the jury was satisfied that the confession was improperly obtained, they shall disregard and reject it. Two years later, in the *Bullock* vs. *State,* 65 N. J. L. 557 (Err. & App. 1900), the same justice held that where the evidence is thus in conflict, the question *should* be left to jury with the instruction already mentioned. The *Roesel* case treats the practice as permissive, while the *Bullock* case goes further and regards the practice as mandatory, a practice which the defendant may insist upon as a matter of right.

In the case of *State* vs. *Young,* 67 N. J. L. 223 (Err. & App. 1902), the court speaking through Chancellor Magie, treated the decisions of Mr. Justice Depue as dicta and stated that the question of the jury's function was still an open one, and since it was not then before the court, would

not be decided at that time. The next case on the subject is *State* vs. *Monich,* 74 N. J. L. 522 (Err. & App. 1906). The question there under consideration was the jury's function in treating a dying declaration. In the course of the opinion the dicta of Mr. Justice Depue are commented upon. Since a dying declaration was there involved and not a confession, the comments there made are also dictum. The court in that case stated that the trial judge cannot be *required* to submit the question of the voluntariness of a confession to the jury.

In *State* vs. *Kwiatkowski,* 83 N. J. L. 650 (Err. & App. 1912), in an opinion that must also be regarded as dictum, the court confirmed the view of the *Monich,* case, but construed the same to mean that a trial court *may not* leave the question with the jury. It is submitted that the *Monich* case merely holds that the trial judge cannot be *required* to do so, and in no way passes on the question whether the trial judge may, as a *permissive practice,* submit the matter for a jury determination. This construction of the *Monich* case is confirmed by the opinion in *State* vs. *Morehous,* 97 N. J. L. 285 (Err. & App. 1922), wherein Mr. Justice Katzenbach points out that the *Monich* case holds that the defendant is not *entitled* to have the matter submitted to the jury. The *Morehous* opinion, which is also dictum since apparently no request to charge was made, goes no further than the *Monich* decision.

In the case of *State* vs. *Yarrow,* 104 N. J. L. 512 (Err. & App. 1928), the defendant contended that the court erred in not submitting the question of voluntariness to the jury. It appears that the trial court (p. 518) had not "been requested to instruct the jury on the subject of the confession at all," and hence the opinion of the court on this question is also dictum. At any rate, the opinion

of the court seems to go no further than the prior dicta and merely indicates that the trial court cannot be *compelled* to submit the question to the jury.

The net result of this battle of dicta, assuming that the later dicta are to be preferred to the dicta of Mr. Justice Depue, is the proposition that a defendant is not entitled, as a matter of right, to have the jury pass upon the question of the voluntariness of a confession. But the further problem, whether the court may, as a *permissive* practice, leave that question with the jury is still open, and the dictum in the *Roesel* case that the court may do so, stands unchallenged.

In the instant case, the trial judge charged the jury as follows (State of Case, p. 381):

> "There is some question as to the voluntariness with which those statements were given. It is for you to decide whether or not, when Compo gave those statement, he gave them voluntarily and whether the things which are in those statements are the truth."

The evidence upon which the charge was based was as follows: The testimony of Capadano has already been detailed. As already pointed out, the foundation offered by the state was inadequate and amounted to an attempt to shift the state's burden to the defense, which burden the defense refused to assume. Hence all of the testimony as to how the statement was obtained did not appear until after the statement had already been admitted in evidence. Thereafter, as part of the defense, counsel established that the witness had been beaten and abused for the period elapsing between his arrest and the statement, and was finally offered a reward. The state denied these charges on re-

buttal, and state itself on direct had already, after the admission of the confession, denied the truth of most of the statement, principally by the testimony of Furfaro, the man who was named in the confession as the actual murderer. Under these circumstances the Court's ruling had been made without any evidence before it. Naturally and properly, the Court left to the jury the question which it had not properly decided before. This practice, if not a matter of right on the part of the defendant, was within the court's discretion and is authorized by the *Roesel* case, and not denied by any prior or subsequent decision.

The crux of the plaintiff-in-error's disagreement with the court's charge, is that the instruction is vague and improper. The Court leaves it to the jury to determine whether the statement was involuntary, but fails to tell the jury what it should do if it does conclude that the confession was improperly obtained. The defense requested a proper charge, as follows: (State of Case, p. 391):

> "You have heard the testimony of Compo and of the police officers as to the circumstances in connection with the making of the confessions. If these confessions were extorted by *any* sort of threats or violence, they are not voluntary confessions and must be disregarded and excluded from your consideration."

To the same effect is request to charge number 26 (State of Case, p. 391). These requests set forth the proper test and practice and should have been granted.

It is further significant that the decisions referred to above which hold that the submission of this issue to the jury is not one of right, and which rest that conclusion on the purported difference

between the function of judge and jury, are based on a distinction which does not exist. It is conceded as therein contended, that the admissibility of evidence is a problem for the court. It is conceded that the state must establish a foundation of volntariness before the court will admit the confession. It is further true that a jury may not "admit" or "reject" evidence. But it does not follow from any of these premises that the question of voluntariness is not also a jury question. A trial judge is to exclude an involuntary confession, because an involuntary confession is unreliable, and fraught with the dangers described in those decisions. Is an involuntary confession any more reliable or any less fraught with danger when in hands of the jury? If a jury feels that a confession is involuntary, there seems in principle to be one thing that it should do: It cannot *reject* testimony, but it certainly is a proper jury function to *disregard* evidence, and any cause which warrants a court to reject testimony should also warrant a jury to disregard it.

At any rate, the court in the instant case, as a permissive, if not mandatory, function did leave the issue with the jury. It's failure to do so properly was erroneous, and obviously prejudicial.

POINT V.

The trial judge erroneously admitted into evidence two guns offered by the prosecution, the relevancy of which was not established by the prosecution, and certain testimony about one of the guns which assumed, but failed properly to establish, that that gun was the weapon with which Lynch was killed.

The argument under this head is based upon specification of causes numbers 2, 3 and 4 (State of Case, p. 467).

The prosecution offered in evidence two guns and certain bullets. Counsel for the defense were assigned to represent a man who denied all complicity in the crime. Naturally counsel knew nothing of what the state proposed to prove, and assumed that the weapons would, in some way, be connected with the offense for which the defendant was being tried. The state introduced into evidence Exhibit S-9, consisting of a 32 calibre automatic gun, and eight bullets (State of Case, p. 154) and another gun, a 38 calibre weapon, and four bullets marked Exhibit S-10. No effort was made by the state to in any way establish the relation between the guns and the crime. As to Exhibit S-10, it later appeared that the gun was not purchased by the prisoner until March 12th, 1931 (State of Case, p. 238, *et seq.*) and this testimony was not in any way contradicted. As to Exhibit S-9, there was some evidence to connect that gun with the fatal shooting, but the failure of the state to procure expert testimony, definitely established, as will presently be shown, that to the knowledge of the prosecution, neither Exhibit S-9 or Exhibit

S-10 had anything to do with the murder. Neither gun was found in the possession of the defendant, and although he admitted the ownership of S-10, it was established that he did not acquire it until months after the murder was committed. Exhibit S-9 was found in the coat of one Ragonelli, in the home of a Michael Tomanelli (State of Case, p. 173) and at that time it was admittedly the property of one Furfaro. It is submitted that the production of this young arsenal, entirely irrelevant to the issue upon which a human life was dependent, was highly prejudicial and manifestly injurious to the fair trial of the case.

Particularly harmful was the testimony woven about Exhibit S-9. The confession of the plaintiff-in-error Exhibit S-8, named John Furfaro as the actual murderer and the defendant himself as his accomplice. The theory of the state was that Compo, as a lone robber, had held up and killed Lynch. No indictment was found against Furfaro, and in fact, promptly after the introduction of the confession, the state placed Furfaro on the stand to deny that he was in any way implicated in the murder (State of Case, p. 162, *et seq*). It was further testified that when Furfaro confronted Compo, Compo declared the confession to be false, both as to Furfaro and as to Compo himself (See also State of Case, p. 190).

The state was therefore in the position where it was itself repudiating most of the confession upon which it relied, and nevertheless insisting that the remaining portion was true. The reconciliation of its position was based on the underlying theory that Compo had framed Furfaro from the start, and his naming him in the confession was the result of a plan concocted well in advance.

The testimony disclosed that the fatal bullet was a 32 calibre, steel jacketed bullet, which the

state produced in evidence (State of Case, p. 28). Furfaro had admitted that he owned Exhibit S-9, which automatic gun fired the same calibre bullet as the one with which Lynch was killed. Furfaro thereupon testified that that gun had been sold to him by Compo on January 1st, 1931, about one week after the murder (State of Case, p. 164). The only other link which was necessary to establish this theory of a preconceived frameup was some evidence that that was the gun with which Lynch was killed. This link was supplied by that obliging state's witness, Clarence Stern, whose criminal activities had been exposed by Compo's earlier statement, and whom Compo charged to be the creator of the conspiracy that resulted in the murder charge against him. Stern testified that on December 27th, 1930, Compo tried to sell him a 32 automatic gun, although he had met him only an hour before (State of Case, pp. 106, 126), and that in the latter part of February, the following conversation took place between Compo and himself (State of Case, p. 107):

> "Q. Now, what was the conversation that you had with him at that time? A. At that time he told me that the gun that he had sold previously to Johnny Furfaro, Wilsey Street, was the gun with which he had killed the grocery store man on Mulberry Street."

Again at p. 108, he volunteered the same statement:

> "Q. Then what did he tell you? A. He told me how he had waited for Lynch, and as Lynch was about to close up the store, had gone across to stick him up. While he was over there Lynch gave him a battle, *and he pulled the trigger of the 32 automatic which he had previously sold to Johnny Furfaro,* and the shot entered Lynch's body."

The prosecution unquestionably knew that the automatic in evidence was not the gun with which Lynch was killed. The state had the fatal bullet; the state also had the gun in its possession from the time of Furfaro's arrest until June, when the case was tried. The state had ample time in which to make ballistic tests, and it is absurd to suppose that such tests were not made. It is significant that while the gun holds nine bullets, and was loaded when found (State of Case, p. 153), yet but eight bullets were offered in evidence (State of Case, p. 154). The answer to the question of what was done with the other bullet is obvious. The state nevertheless did not introduce any ballistic testimony. The unavoidable inference is that the testimony would have established the fact that that gun was not the one which fired the fatal shot.

In spite of the fact that the state knew that the automatic gun had no relation to the case, it nevertheless offered it in evidence, and coupled with it the testimony of Furfaro that Compo sold it to him about a week after the murder, and the patently false testimony of Stern that Compo had prior thereto tried to plant a gun on him and later admitted that he had succeeded in planting on Furfaro the gun with which he killed Lynch. The prosecution thereby intentionally created a smoke screen that clouded the entire case; intentionally painted to the jury the picture of a cagey, crafty, scheming defendant who first murdered a man, then sought to find some victum upon whom to pin the fatal gun, failed in his attempt to pin it on Stern, finally succeeded in planting it on Furfaro, and then, when apprehended, carried out his earlier design, and named Furfaro as the murderer. The conduct of the prosecution in introducing that testimony and that gun, was legally questionable. With such testimony before it, the

jury cannot be said to have arrived at a fair and justifiable verdict. The introduction of such testimony was manifestly harmful and requires a reversal and new trial.

POINT VI.

The verdict of the jury is against the weight of the evidence.

The argument under this head is based on assignment of error No. 40, (State of Case, p. 464) and specification of cause No. 9, (State of Case, p. 474).

The murder was committed on December 23, 1930. The plaintiff-in-error was arrested on April 8th or 9th and first charged with this murder about April 15th. He was therefore in the unfortunate position of a man who was picked up by the police some months after a crime and asked to explain where he was on the night it occurred. That is a difficult task. It so happened that the time of the murder was so close to Christmas that the plaintiff-in-error, and his family, were able to recall that the sister of the plaintiff-in-error had made a trip to Rome, N. Y., on December 24th, and that the plaintiff-in-error, together with his wife, had on the evening before made an extensive Christmas shopping tour, and that some of the articles then purchased were taken by the sister-in-law to Rome on the morning of the 24th. The sister-in-law testified that the accused and his wife left the house where all of them lived at about 8 P. M. on the evening of the murder, leaving their two children in her care, and that they returned together, bringing with them the merchandise pur-

chased, and that the time of their return was approximately eleven o'clock. Compo and his wife testified to the same effect, and furthermore that they remained in each other's company throughout the shopping trip, and at no time went below High Street, a point which is about a mile away from the scene of the crime.

The alibi, perforce of circumstances, could be supported only by the testimony of the accused, and the members of his family, already mentioned. It is obviously impossible, months after the happening of an event, to get disinterested testimony to corroborate details of the alibi, even where it would have been possible to do so, had the prisoner been arrested a day or two after the commission of the offense charged against him. The testimony of the accused was obviously subject to attack from the point of view of interest, and so also was the testimony of his wife and his sister. The alibi could just as easily be disbelieved, ~~and~~ as it could be believed. Consequently the question of the guilt or innocence of the accused could be determined solely from the state's case. The very reasons which compel this conclusion also compel the conclusion that in cases of this character the burden of the state must be all the more carefully and faithfully sustained. A person in the position of the plaintiff-in-error cannot convince a jury of his innocence by affirmative proof; his innocence can be adjudged only by the weaknesses of the state's case against him.

The principal witness for the State was Mr. Haug, an elderly, bespectacled man, who lived at 294 Mulberry Street, his home being on the east side of Mulberry Street, that is, across the street from where the Butler store was located, the distance from the stoop of his home to the curb in front of the entrance to the store being 69 feet.

He testified on direct that on the night of the murder, he was engaged in hanging a Christmas wreath in the window of his home, and in that connection with that operation, he left his house sometime after 10 P. M. to purchase a three-way electrical socket at a hardware store located on the West side of Mulberry Street and some distance beyond the Butler store. He crossed the street diagonally to the front of the Butler store, and then saw the defendant "loitering—walking back and forth" (State of Case, p. 34). The defendant was talking to a young fellow at a point between Beach and Kinney Sts., and the conversation lasted about 2 or 3 minutes, and then the young fellow walked behind Haug toward Kinney Street, while the defendant walked in the opposite direction to Beach Street where he looked into the window of the Butler store. Ten minutes later, after making the purchase, Haug retraced his steps and again saw the defendant looking into the window of the Butler store, the deceased at that time being engaged in counting money. The witness then crossed the street, entered his home and after adjusting the socket, returned to the sidewalk so that he might admire his finished handiwork.

It was while the witness was thus standing on the sidewalk in front of his home, a distance of 70 feet from the cater-corner entrance into the Butler store, that the fatal shot was fired. Haug testified that he heard some one make a remark,, "Open up," and, turning around, he saw Lynch and his assailant standing in the "doorway." The shot was then fired, and the sound of a falling "chain lock" heard. Haug immediately ran into his house, as the murderer fled down Beach St. He identified the man who fired the shot as the defendant Compo.

On cross-examination it appeared that as he passed the two men who were conversing, he, Haug, turned to look at them and continued to look for but a second or two after he passed them. His reason for looking at them was first given as "curiosity" and later that the neighborhood was pretty bad; yet he had no reason to suspect that anything was wrong. Certainly, Haug, during the two years in which he lived in that neighborhood did not, simply because of the character of the place, suspect everyone whom he saw standing there holding a conversation. In fact, it does not appear that his seeing the defendant, as he says, peering into the window as Lynch was counting the money, aroused any suspicion in him, for Haug apparently continued on his business as if nothing had occurred. Nevertheless, the witness swears that the man whom he had thus noticed so casually was the defendant, and that the defendant was the man who thereafter shot Lynch.

Now, when the shot was fired, both men had their backs toward Haug, and they were both close up to the door (State of Case, p. 55). It was late at night, visibility was accordingly poor, particularly for a man wearing glasses who is hampered by the reflection of light. It does not appear that Haug ever saw the face of the murderer after the shot was fired, for Haug immediately turned to run into his home, as the murderer dashed up Beach Street, his back accordingly being toward the witness. The witness had never seen Compo before that evening, nor did he again see him thereafter until the 24th day of April, 1931, when he says that he picked the defendant out of a line-up. (State of Case, p. 50).

It is not contended that the witness, Haug, deliberately lied, or was consciously dishonest in the story he told. But the conclusion seems irresist-

ible that the witness was afflicted with a terrific imagination that so overpowered his memory that he could not distinguish between them. The overrunning imagination is conspicuous throughout his examination. For example, the story about the chain locks which he claims Lynch was adjusting at the time of the holdup. The witness insisted that there were two chains which were drawn from side to side and acted as a lock, a form of lock which is unheard of. The answer is that the chains which he heard clinking were not even attached to the door but were attached to the building, were used to prevent the theft of milk and bread boxes, and had nothing to do with the locking of the door, as an inspection of the original Exhibit S-2 will indicate. Again the witness claims that he saw the man who was there with the intention of holding up the deceased, not walking by the store and glancing in, but actually standing there, with his face to the window, and gazing at the manager as he counted the proceeds of the day. No hold-up man would deport himself that way. No neighbor would let such conduct go on without calling a policeman or himself watching closely for the further developments that such conduct promises. Nor would a gunman shout "Open up" as Mr. Haug claims; Mr. Haug never heard that command, or any other like it.

The cardinal illustrations of his weird imaginative power is his description of the young fellow whom he saw speaking to the man who shot and killed Lynch, and his identification of a certain blue coat at the trial as the coat worn by the murderer. Haug said that he saw a man, identified by him as Compo, speaking to some young fellow. The two were standing still. Haug says he walked by and turned to look at them for a second or two

and continued on his way. He never before saw, nor did he again see that young fellow; he had no reason in particular to observe him, and yet note the remarkable description which he gives at the trial, about six months later. (State of Case, p. 45).

> "Q. Describe this fellow you say the defendant was talking to. A. I guess he was about 5 feet 6 or 7, slim, with a gray overcoat on and a checkered suit.
>
> Q. What kind of hat? A. He had a cap on.
>
> Q. What color was his necktie? A. I didn't look that close.
>
> Q. Did you notice whether he had a starched collar on? A. He had a soft shirt on.
>
> Q. Did he have a vest on? A. I don't know.
>
> Q. Was his overcoat open or closed? A. It was buttoned.

Again at p. 50:

> Q. That is the only time in your life that you saw this man that you say was talking to this defendant on the street? A. Yes.
>
> Q. Will you describe him again, please? A. About 5 feet 6 or 7. He had a sort of checkered suit on and a gray overcoat and a cap.
>
> Q. Did you notice particularly whether he had tan or black shoes on? A. No, I didn't.
>
> Q. Were both of these men smooth shaven or did one or both of them have moustaches? A. Smooth shaven.
>
> Q. Are you sure of that? A. Yes, sir.
>
> Q. No question about it? A. No question about it.

At the trial, Haug testified that the defendant was wearing a blue overcoat. He was shown a blue overcoat, worn by the defendant at the time of his arrest, but which he had not purchased

until some time in February or March, (State of Case, p. 80), and asked by the defense if that was the coat worn by the murderer of Lynch. Nine hundred and ninety-nine witnesses would have replied, "I don't know." But not Mr. Haug. The suggestion that that might have been the coat was all he needed, and with but a trifle wavering, he identified that coat as the one worn by the murderer of Lynch (State of Case, p. 58).

There are two features in that testimony which, if Haug were accurate at all, establish the error in his identification. There were two items in Compo's appearance on December 23rd, which were outstanding and which, if he had been down at Mulberry and Beach Streets, a ~~particular~~ meticulous witness like Haug could not have missed. The first was that the overcoat he wore, which was a dark blue, approaching a black, had a velvet collar, and the second was that Compo had a moustache, which, no matter what size, shape, or color, is always an outstanding feature. On both of these, Haug was wrong. He identified a light blue overcoat, without a velvet collar as the coat worn by the killer, and swore that the murderer of Lynch did not have a moustache and was smooth shaven. It is significant that the testimony of Haug in this respect reproduces Compo's condition at the time of the lineup.

The lineup, at which Compo was picked out by Haug, was ideally arranged for a man of his make-up. There were three men (1) the defendant, a light complexioned, light-haired, slightly built French-Canadian; (2) John Furfaro, a dark, rugged-appearing Italian; and (3) a third man, whom no one could remember. Through a perverted sense of terminology, that was referred to by the police, as a "lineup." Who could he select? Any other light-complexioned man of the general stat-

ure of the murderer of Lynch, had he been in that lineup, would undoubtedly have had an accusing finger pointed at him. A suggestion from the police that in the lineup was a man who either confessed or was suspected of the crime was all that a man like Haug would need.

Of course, Haug testified that he didn't know why he was summoned to headquarters; that he didn't have the faintest idea what it was all about; that no one asked him to do anything, and that when taken into a room, he immediately recognized Compo as the man he saw the night of the murder. (State of Case, p. 59). He apparently feared some dire consequences might result if he admitted that the police explained to him why he was called to headquarters. Even the guarded testimony of Sergeant Conlon belies him (State of Case, p. 61). Haug's testimony on that point is obviously incredible.

There is one thing about the line-up which the State failed to explain. The defendant testified in detail about the treatment by the police, and about the line-up. Every charge that he made, including the charge that Conlon nudged Haug when he failed at first to pick out Compo, was denied by the police with drum-like monotony. But there was one part of his testimony which stands undenied (State of Case, p. 223).

> "Q. And who come in? A. First a woman came in and we was all facing the wall, and Sergeant Luke Conlon says, 'Now' he says, 'Look over this line-up and see if you see the man here? So we all had our arms stretched right out straight, three of us in the line-up, and she says 'No'. So he says, 'All right,' and he took her downstairs."

Now the police knew who this woman was. She

must have been an eye witness to the murder, or else she would not have been called to headquarters to attempt an identification. Yet the State did not produce her, and maintained a sphinx-like silence as to her identity and the reason why she was not produced at the trial. The inference can only be that her testimony would have harmed the State's case, and offset the testimony of Haug.

And now we come to the alleged confession, Exhibit S-8, the storm center of much of the testimony. Compo testified graphically to the punishment inflicted upon him by the police, which resulted in his making the first statement, S-12, whereby he implicated himself and others, including the state's main witnesses, in various criminal activities. Then came the charge of murdering Lynch and a renewal of the sweating and beating, as a result of which he finally signed the statement about the Lynch murder. The police denied catergorically all of his charges. It will therefore be of no avail to detail that phase of the testimony.

The confession itself, as already stated, named Furfaro as the murderer and Compo as the accomplice. Thereafter Furfaro and Compo were brought face to face, and Compo denied that either Furfaro or he had anything to do with the murder. This appears as undisputed testimony, and is averred to by both sides. Herein lies the hitch that questions the veracity of the police testimony.

The testimony of the police indicates apparently that the confession was obtained without any difficulty at all. It would seem that Compo was just anxious to talk and tell anything. Hence the first statement, S-12. Why a member of a group of men engaged in criminal activities should be glad to expose his companions when their revenge is certain to be inflicted, is hard to understand. It cannot be attributed to a heavy conscience. The pris-

oner's conscience had never led him to surrender. If conscience be the cause, why didn't the prisoner tell of the killing of Lynch in the first statement? And if for any reason at all, obtaining confessions from Compo was such an easy matter, why did the police cease their activities with the signing of S-8? Shortly after it was signed, Compo repudiated it. The police themselves at some time before the trial became convinced that Furfaro did not fire the fatal shot. It should have been a simple matter for the police to have obtained another statement in which the defendant assumed the full responsibility for the murder, in accordance with the theory of the prosecution at trial. It does not appear that any such effort was made, at least, there are no indications of success. The answer is that no matter how the police beat him, all that they could get from Compo was the story which they themselves had constructed from the statement of Haug, that before the murder two men were there, and the concocted story of the other prisoners about the admission.

The only other evidence in the case connecting Compo with the murder was a series of alleged admissions. The first of the witnesses was Sophie Krok, a former sweetheart of the defendant. This trial presented the weird spectacle of a young girl testifying against her sweetheart in an effort to send him to the chair. Sophie's motives certainly wasn't a desire to see justice done. She knew of Compo's stickups, claims to have been told by him of the murder of Lynch, and yet she continued to go with him, and even give him money. On her direct testimony, she was portrayed by careful questioning as a demure, unfortunate child, the plaything of a reckless sweetheart.

Sophie testified that Compo often said he wanted to marry her and go away with him, but she re-

fused. In order to get money, he planned to commit some holdups but she warned him not to do that. She suggested that he find work and apparently the suggestion fell on deaf ears. That was in October, 1930.

In so testifying, Sophie had forgotten about a remarkable twenty-page manuscript, a letter bearing date September 5, 1930 (Exhibit D-2) written by her to Compo, and intercepted by Mrs. Compo. That letter reveals the true Sophie, and true grievance she bore against him. Compo was living with a married woman, whom he nevertheless called his wife and treated as such, and by whom he had two children. Sophie wanted him to leave his wife and go away with her, but this he refused to do. When Sophie testified that Eugene Compo wanted her to run away with him but she refused, and that she warned him away from anything criminal, she forgot that she had written:

> "Don't be so soft with them, you have been a fool so long for them, and they took you for one, but now show the whole bunch, fight and win back, belive me if I where in your place, I would cut all their troaths, the sneakes in the grass.
>
> "If she dope you go ahead and dope her, for never to get up again. I think you are old enought to have brains, and not let people trap all over you, just show them how much you could do * * *
>
> "Well she is well but only pretending so you stay with her. Well you have rights to leave her. Why be worried about Ruth and interested in her and me nothing, then how do you expect us not to brake up, for you'r alwayes thinking of her * * *
>
> "Well if you want to be interested in me, and come with me you'll be too far away to cause you trouble or seprated us, thaths what I want so you go away from Newark.

> The farther away the less trouble, I meanait now immeadtly.
> " * * * Listen Gene your older than me, and I should think you would think about those thinges, only making me tell you a million times, only to get me cross, and worried of which I don't like to be cross * * *
> "Do the thinges you where to do, *if you can't do it straight then crooked, this requires money.*

and then follows a detailed plan of how he should leave Newark and meet her elsewhere, and the closing remark, "Your always is mine, even if we drift apart."

Upon just such testimony was the conviction based. Throughout the state's case run unmistakable indicia of the plot carefully prepared by the state's witnesses. The guiding figure in that conspiracy was Clarence Stern, who, prior to the arrest of the members of the group, had been Compo's closest friend. Compo testified that about ten or eleven days after his arrest, he heard Stern talking to Tenore, and at that time Stern said (State of Case, p. 215), "You bastard, we will frame you for this, you rat." Now, the prosecution denied this, and claimed that Stern did not surrender until April 16, a day after the date appearing on statement S-8. Compo on the other hand denied that the statement S-8 was signed on the 15th of April, and insisted that Stern was in custody before the charge of murder was made against him.

The co-operation of the various state's witness is manifested by the testimony of Stern, Sophie, and Stern's girl friend, Lillian Rys, concerning a trip to Philadelphia made by them and the defendant. All agreed that the trip was made, and that Sophie after their arrival visited her sister who

was confined in a hospital there. All agreed that they stopped at a restaurant, and all agreed that on the return trip, a tire was punctured outside of Trenton, and that a policeman was near while they repaired it. But they denied the testimony of Compo that while in Philadelphia Stern purchased a gun in a pawn shop and that Compo did the same in another shop, and with money furnished him by Sophie, and that after the puncture the girls held the guns so that the policeman could not see them while the repairs took place. Their testimony about the guns was pretty much shattered by the testimony of one Nathan Brooks, an impartial witness who testified that on March 12, he sold to Compo the gun marked Exhibit S-10, and that at the time of the purchase Compo was accompanied by another man. This testimony by brooks tallied perfectly with Compo's; it was not contradicted, nor was there any suggestion made by any of the witnesses that Compo had made a second trip to Philadelphia.

Throughout their testimony, the witnesses lost no opportunity to prejudice their former friend. There was a constant, sneering, and voluntary reference to the fact that the woman whom he called his wife was living with him in adultery. Thus Furfaro inartistically volunteered (State of Case, p. 169):

> "Q. Would he come there at night to repair the automobile? A. No, he came there during the day, but at night he would go away. He would say that he had to go to see a woman he was living with, but he wasn't married to her."

The testimony by which it was sought to be established that the defendant had planted on Furfaro the gun which killed Lynch, has already been

detailed under ~~Part~~ Point V. The part played by Stern in this ~~trend~~ branch of the case reveals the plot. He testified that the first time that Compo told him of the Lynch killing was the latter part of February and that on that occasion he told the witness that he had planted the fatal gun on Furfaro. Stern repeated that a second time: (State of Case, p. 107-8). Thereafter, however, on cross-examination, Stern testified that on that very occasion Compo showed him *the gun* (State of Case, p. 123):

> Q. What did he (Compo) say? A. He started the conversation and it went on and then finally *he showed me the gun.*

That was a bit of forgetfulness on Stern's part. He had forgotten that he had testified that Compo had planted that gun on Furfaro almost two months before.

Thereafter his memory failed him again. He testified on cross-examination (State of Case, p. 132):

> Q. And there were plenty of guns taken out on those holdups by you and your participants. A. Not by Compo.
> Q. He never used a gun? A. A blackjack.

Now the reference to a black jack didn't help the state's case at all. It was rather inconsistent with the theory of a Jesse James. But a recess took place immediately thereafter and afforded the crafty Stern an opportunity to weave this error of his into some very effective testimony. On redirect he was asked to elaborate on the subject of the black jack. This was objected to, but the prosecutor urged that it was new matter to him (State of Case, p. 136):

> Mr. Fisch: It was brought out on cross-examination. It was something new to me.

Now, Stern was the state's most enthusiastic witness. He testified with the gush of a political campaigner. It is fair to presume that he had told the prosecutor all he knew before he went on that stand. The only inference is that the black jack story was invented while on the stand, the inspiration being the irritation of cross-examination.

Note how cleverly he worked it in (State of Case, p. 139):

> Q. What was that conversation? A. That he felt safer with a blackjack than he did with a gun because he had shot Lynch with a gun, and for the time being carried a blackjack.

But once again Mr. Stern forgot his earlier story. The very first question on recross spiked this testimony:

> Q. When was this particular conversation that you just gave us? A. That was during the time he told me of the Lynch shooting, which was at the end of February, 1931.

Stern forgot that he had already testified that on that occasion, Compo had showed him "the gun." He was as palpable a liar as ever took the stand.

Why should these witnesses testify against a former friend? The reason can only by either a desire for revenge or a desire to get a break from the police. The girls naturally went with them. Sophie had her pet grievances and in addition admitted that she was being forced to testify (State of Case, p. 188):

> Q. What made you use the word, in answer to Mr. Fisch's question, that they made you tell? What did you mean by that? A. Well, they told me if I didn't tell I would only make it worse for myself.

Lililan Rys was in love with Stern, she would have backed any story that Stern gave, in order to help him in a deal with the police. Those witnesses certainly were not prodded on, by any abstraction like justice.

Counsel do not seek to portray the plaintiff-in-error as a model young man. He admittedly participated in a number of crimes, and should be punished for them, but, beyond argument, he should be punished for his offenses alone. He is but twenty-one years old, a young man who was denied the benefits of an education, and at an early age compelled to stand on his own. He is not a confirmed criminal; and if he is innocent of the Lynch murder he is entitled to a chance to reform.

It is significant that he did not meet Stern and Furfaro, and the other members of the gang until after Christmas, that he is not charged with any crime, other than the murder, which occurred before January, 1931 and that in all other offenses charged against him, he was acting in concert with others. Even Stern, who knew him more intimately than anyone else, testified that to his knowledge Compo never went out on a "job" alone.

It is respectfully submitted that the verdict is against the weight of the evidence. The issue in the case was constantly befogged by prejudicial conduct; the production of a small arsenal, the testimony about the planting of the gun which was supposed to have killed Lynch, the constant references to the "woman he calls his wife," the reference to a statement attributed to Compo that he had no use for, not simply an Irishman, but an "Irishman or a nigger," (State of Case, p. 109). The cross-examination conducted by the prosecutor concerning two convictions attributed to the defendant, but which were neither proved nor prov-

able, to wit, a motor vehicle probation, and a third degree burglary conviction, which, if true, was imposed on Compo when he was eleven years old, (State of Case, p. 298) and the unfair reference to the fact that Compo was receiving alms from the City of Newark (State of Case, p. 299). The evidence was not conducive to a fair decision of the issue whether Compo killed Lynch. The verdict of the jury, which carried with it the penalty of death, could not have been fairly reached; it is contrary to the evidence produced by the state and warrants a reversal.

CONCLUSION.

It is respectfully submitted that from the errors assigned it appears that the plaintiff-in-error was greatly prejudiced, and from the causes for reversal specified, it appears that he suffered manifest wrong and injury. The conviction should be reversed and a new trial granted.

Respectfully submitted,

EDWARD R. McGLYNN,
Attorney for Plaintiff-in-error.

CHARLES BASILE,
Of Counsel.

E. W. Stillman, Pompton Plains, N. J., Tel. Pompton Lakes 500

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* EUGENE COMPO, *Plaintiff-in-Error.*	*On Writ of Error.*

BRIEF FOR THE STATE.

Statement of the Case.

The plaintiff-in-error, hereinafter referred to as the defendant, was indicted and tried (the trial lasting from June 2 to June 5, inclusive) for the murder of Eugene Lynch, committed on the 23rd day of December, 1930, in the City of Newark.

The defendant was found guilty of murder in the first degree, the verdict containing no recommendation; and on the 5th day of June, 1931, the defendant was sentenced to death.

This writ of error was taken on bill of exceptions and on assignments of error and specifications of causes for reversal; so that it brings the entire record of the case for review.

ARGUMENT.

The argument of the defendant is divided into six points. Under Point VI it is argued that the verdict was against the weight of the evidence. In order to familiarize the Court with the facts in the case, before we take up the purely legal assignments of error, we shall take up Point VI.

POINT VI.

It is argued under this point that the verdict was against the weight of the evidence. Most of counsels' arguments under this point are arguments which properly belong to a summation before the jury and not to an argument on the legality of a verdict made before an appellate court.

Under this argument, at the outset, it will be borne in mind that on the point whether the verdict was against the weight of the evidence this Court will only consider the question of whether there was sufficient evidence to go to the jury, and will not disturb the verdict unless it finds that there was such lack of evidence that the verdict must have been the result of prejudice, mistake or passion.

State v. *Grace*, 98 N. J. L. 341.

In considering this question of the sufficiency of the evidence, this Court does not act as a jury and does not decide whether or not the jury reached the same decision which the Court would have reached had they been jurors. The rule is laid down in *Queen* v. *Jennings*, 93 N. J. L. 353, that the Court should not set a verdict aside even although in its opinion the jury might, upon the evidence, have found otherwise. And in *State* v. *Krupin*, 100 N. J. L. 7, it is held, "It is an elementary rule that where there is evidence from which the jury might properly find the defendant guilty the issue is only for the determination of the jury, and the Court will refuse to direct a verdict of acquittal on the ground that there was no legal evidence of the defendant's guilt."

In the instant case it is not even contended by counsel for the defendant that the verdict of the

jury was the result of prejudice, mistake or passion, one of which, at least, is essential in order to justify setting aside the verdict on this ground.

State v. *Grace, supra.*

It is respectfully submitted that there was ample evidence which justified the verdict of the jury.

The State's case was proven by an eye-witness to the killing, and by associates of the defendant who testified to his admission of the killing, and by a written statement of the defendant wherein he admitted having been an accomplice to the killing but attempted to lay the blame of the actual firing of the shot on the shoulders of his alleged accomplice, thinking, no doubt, that such a shift of the responsibility of the actual shooting would help his cause.

Eugene Lynch, the deceased, was manager of the James Butler chain grocery store at 299 Mulberry street, corner of Beach street. He was killed on the night of December 23, 1930, directly in front of the store, at about 10:30, as he was about to leave the store, having already locked the same.

Allen Haug, an eye-witness to the killing, lived at 294 Mulberry street. He testified that at about 10:30 on the night in question, he was in front of his home looking over and admiring some Christmas wreaths which he had just placed in his windows. As he was doing this he saw the defendant, whom he identified in court, pace in front of the Butler store, which was almost directly opposite Mr. Haug's house (see Exhibit S. 1). Mr. Haug crossed the street to the side of the grocery store to buy some electric sockets for his Christmas wreaths. Crossing diagonally

he landed directly in front of the store. The defendant, who was loitering in front of the store, attracted Mr. Haug's attention. Mr. Haug saw the defendant speak to another young man. He noticed that the defendant was looking into the grocery store (p. 35, l. 26). Mr. Haug went on to make his purchases, and returned by the same route. On his return he saw the defendant still in front of the Butler store. He observed the defendant as the latter continued to look into the window while the deceased was counting change on the counter (p. 36, l. 21, etc.). Mr. Haug returned to his house, placed the sockets in the wreaths and walked out to the street again. He then heard someone command "open up." He turned around in the direction of the Butler store, where he saw Mr. Lynch, the deceased, and the defendant, in the doorway. The defendant repeated the words, "open up." Mr. Lynch said, "I won't open up." Then a shot was fired. Mr. Haug saw the defendant fire the shot, saw him run up Beach street immediately thereafter and saw Lynch stagger and fall. Mr. Haug had no difficulty in identifying the defendant in a line-up at police headquarters, nor had he any difficulty in identifying him at the trial. P. 37-38

On page 42 of their brief, at line 10 from the bottom, counsel for the defendant state that the witness, Haug, saw the defendant from a distance of 70 feet, and thus attempted to dispute the accuracy of his identification. On his cross examination Haug stated that he was so close to the defendant that he could have rubbed elbows with him (p. 44, l. 3).

Defendant's counsel attempt to make much of the fact that Haug stated that the defendant was clean-shaven at the time of the killing; whereas,

in fact, they allege, the defendant had a mustache (middle of p. 46 of defendant's brief). Defendant was only 21 years old and had a very thin, light-colored mustache, if any, at the time of the killing.

Sophie Krok testified that she was a friend of the defendant, and that he frequently called to see her; that on Christmas Day, 1930, two days after the killing, the defendant called to see her and gave her some Christmas gifts, he receiving a Christmas gift from her in return, and that they then went in the parlor, where the following conversation took place (p. 67, l. 30, etc.):

> "Q You went in the parlor with him and when you went in the parlor with him, where did you go? A We sat on the sofa.
>
> Q When you sat on the sofa, what did he tell you? A Well, he told me that he went on a stick-up job with about three or four fellows, and as he was entering the store, this man was closing it, and the man would not open the door for him, so he said he won't, and he put the gun on him, and the man wanted to grab the gun; so he went and he shot him.
>
> Q Now, did he tell you where this store was? A He told me it was on Mulberry street."

Thereafter Miss Krok and the defendant went to a moving picture theatre, at which time the defendant asked her to sit on his right side so that the gun, which was hanging on his right side, would not be exposed to view. Some time after this incident the witness Sophie Krok was with the defendant at 54 Spruce street, Newark, together with one Clarence Stern and Lillian Rys, at which time the defendant put up a gun against Miss Krok's ribs and said, in effect, that

should she ever tell on him he would kill her (pp. 73 and 74).

Lillian Rys testified to overhearing a conversation between the defendant and Sophie Krok, when the defendant stated that he had shot a man on Mulberry street (p. 89, l. 22). She also corroborated Miss Krok concerning the threat made by the defendant to kill Sophie, if Sophie should ever leave him or disclose his crime (p. 93, l. 20).

Clarence Stern, who was an accomplice of the defendant in many robberies and burglaries, testified that on the 27th of December, 1930, the defendant showed him a 32 calibre automatic gun suspended in a holster from his belt, which the defendant wanted to sell. Stern saw the defendant again in February, 1931, when the defendant told him that the gun which he had sold to one Johnny Furfaro was the gun with which he had killed the grocery store man on Mulberry street (p. 107, l. 30). At that time the defendant related to the witness Stern the circumstances under which he had killed the deceased with his .32 calibre automatic (p. 100, l. 32).

Clarence Stern corroborated Lillian Rys and Sophie Krok concerning the threat made by defendant to Sophie, heretofore mentioned (p. 113, l. 20).

Defendant, in a voluntary statement given to the police (Exhibit S. 8, p. 394), stated that he, with one Johnny (Furfaro) went to the James Butler store on the day in question, for the purpose of robbing the manager. He claimed that while they were attempting to rob the deceased Johnny's gun was discharged; whereupon they escaped, and that on the following

day he went to Johnny's house, at 27 Wilsey street, and reported to him that the victim had died. This statement is corroborated in part of the testimony of Sophie Krok.

The evidence produced by the defense related to two matters:

One, That the statement, Exhibit S. 8, was given by the defendant as the result of ill-treatment and rough handling by the police.

Two, The usual one of alibi.

The defendant testified that just before he gave the statement to Officer Capadano, he had been drilled by Lieutenant Conlon and Officer Fallon for two and one-half hours, and that they told him what statement to make to Capadano (p. 278, l. 60). Defendant said it took him an hour to made the statement to Capadano. The defendant admits that he took no notes on what Conlon and Fallon had told him and contended that he had never heard the story before. A perusal of the statement (Exhibit S. 8) consisting of six printed pages (pp. 394 to 400) will at once convince this Court that such a statement, containing numerous addresses, conversations, etc., could not possibly have been absorbed in these two hours and a half of interview with Conlon and Fallon. The statement, with all its details, speaks for itself, and shows clearly that it is a product of the defendant's own mind.

The statement contained one prominent falsehood. The defendant, no doubt under the misapprehension that if he could successfully place the actual firing of the shot into the hands of someone else he would benefit his cause, stated that the shot was fired by one Johnny Furfaro. Had the officers originated this story and drilled

it into him, they certainly would have no reason for implicating Furfaro. The statement itself contains matters relating to Johnny Furfaro and Clarence Stern, both of whom were apprehended after making the statement.

Now, as to the story of beatings and ill-treatment, which are absolutely denied by the officers, defendant offers no corroboration. He claims that on one occasion he was taken to a restaurant after one of these beatings; that the restaurant keeper took special notice of him; that a dinner was ordered by the officers for him and that he ate the same but that he could not keep it; that the restaurant keeper was a witness to all this; that on another occasion, after a beating he had received at the hands of the officers his cellmate remarked that defendant's back was the worst back he had ever seen. It is remarkable that the defense went to untold trouble to bring numerous salespeople for the purpose of offering most inconclusive evidence on the question of alibi but made no effort to produce this restaurant keeper or the cellmate. The story of the beating was an invention of the defendant.

As to the defense of alibi, defendant claimed that on the night in question, up to about 11:00 o'clock, he was on a shopping tour. He attempted to corroborate this by the testimony of storekeepers, sales-people, managers, etc., none of whom could state that the articles alleged to have been purchased by the defendant were theirs, or that, if they were, they were sold on that day. The articles in question were articles of merchandise sold by any number of stores, at any time of the year. The jury were of course justified in discrediting the story of alibi.

The testimony is replete with contradictions and with illogical and unreasonable statements. To go over every one of these would necessitate analyzing every page of his testimony. We deem it sufficient to mention a fair sample of it. The defendant admitted that he had been on numerous robberies and burglaries with his "gang," which held regular meetings in a certain "dug-out," but wanted the jury to believe that he went on these ventures entirely unarmed, although he admitted that his sweetheart, Sophie Krok, gave him money for the purpose of purchasing guns.

In the face of the overwhelming evidence produced by the State and the inconsistencies of the defense, the jury were more than justified in rendering the verdict which they returned.

POINT I.

The defendant was tried and convicted under the statutory form of indictment for murder. The circumstances under which the deceased met his death have heretofore been related.

The contention of counsel for the defendant is that according to the facts proven by the State, the deceased was shot in the perpetration of or attempt to perpetrate a burglary and not a robbery, and that the contention of the State being that Lynch was killed during an attempt to perpetrate robbery, the State failed to sustain its contention. This is a distinction without a difference for, whether the killing was done in the perpetration of a robbery or a burglary, either would constitute first degree murder.

We submit, however, that the evidence adduced by the State clearly showed an attempt to

rob. Counsel in defining robbery seeks to confine it to the forcible taking from the physical person of the victim. This is not the definition of robbery as given by the Courts of this State.

This precise question was discussed and decided in *State* v. *Lyons*, 70 N. J. L. 635 (Court of Errors and Appeals). In that case the defendant was charged with the murder of one John Christian, night watchman of a silk mill containing a considerable amount of silk locked in closets of the mill. The mill was entered by persons who broks open the locked closet where the silk was stored and removed it, and were wrapping it for the purpose of taking it away. Christian, the watchman, with a lantern, was moving in the direction of the room in which the silk was, and before he reached the room, he was struck down by one of the persons, was bound, gagged, and kicked about, from which blows he later died. The same argument that is raised in the instant case was raised in the Lyons case, namely that no goods were being taken or attempted to be taken *from the person* of the deceased. The Court on this point said, "The watchman was in custody of the property and the taking of the property from him or from his personal custody by violence or putting in fear was robbery." It was further argued that the silk which was being removed was in a room not within the presence of Christian the watchman, and therefore the silk was not being removed from the presence or custody of the watchman. The facts in the Lyons case and in the present case are identical, and in the Lyons case the Court held that the striking down of the watchman was violence in perpetration or attempt to perpetrate a robbery.

No error is shown under this point.

POINT II.

The contention by counsel for the defendant under this point is that it was error for the trial court not to submit to the jury the question of whether or not Lynch met his death in the perpetration of or attempt to perpetrate a robbery.

Numerous cases have been cited by counsel. If the purpose of these citations and quotations is to establish the rule that in order to constitute first degree murder there must be present the element of robbery or attempted robbery, we concede the point, and submit that the element of robbery or attempted robbery having been shown by the State and not disputed by the defense, it was entirely proper to exclude that question from the consideration of the jury.

Since the decision in *State* v. *Boccadoro*, 105 N. J. L. 352, this point has been a closed question in this State.

In the Boccadoro case, defendant was charged with the murder of one Thompson while attempting burglary, and as in the present case, the defense denied the killing. The evidence of burglary in the Boccadoro case was far more meager than the evidence of robbery in the instant case. In the Boccadoro case, the sole evidence of burglary being the testimony of deceased's wife (who was deaf), that she deduced from her husband's actions that her husband had descended from the second floor of their home to the first floor apparently for the purpose of investigating some noises he had heard. When he did not return she descended and found him on the porch of their home wounded and bleeding to death.

On this point this Court in the Boccadoro case said:

> "It is next contended that the court erred in making the following statement to the jury: 'Now, gentlemen, the question which you must decide in this case is simply this: Did Boccadoro kill Thompson?' The argument is that this instruction was improper because the jury should have been told to find not only that fact, but also that the killing occurred during the perpetration of a burglary. The answer to this contention is that the court had already instructed the jury that the facts proved in the case showing that Mr. Thompson came to his death as the result of a bullet fired into his body by a person who had forced his way into the Thompson house in an attempt to commit burglary, were uncontroverted, and that, under the statute which the court read to the jury, the person who fired the shot was guilty of murder in the first degree. Taking the two statements together, the law upon this question was correctly expounded to the jury, the meaning of the instruction being that, as it was practically conceded that the killing was done by a man attempting to commit a burglary, the only question left for determination was whether the defendant was or was not that man."

In the present case, we have the positive testimony of Haug as to the holdup, and the commission of the robbery or attempted robbery was not at issue, the sole issue being whether or not the man who attempted the robbery was this defendant.

While we deem it unnecessary to answer or explain each of the cases quoted or cited by the defense under this point, the apparent seriousness, however, with which the defense has dis cussed this point leads us to explain each case quoted.

The quotation from the case of *State* v. *Roesel,* 62 N. J. L. 216, stands merely for the rule that where two or more participate in a robbery, and one of these participants commits a murder during such robbery, the rest are equally guilty of murder.

State v. *Young,* 67 N. J. L. 223, enunciates the same rule.

State v. *Lyons,* 70 N. J. L. 635, has heretofore been discussed and is strongly in favor of the State's contention.

In the case of *State* v. *Lynch,* 103 N. J. L. 64, Lynch contended that he with members of his party had arranged to go through the motions of a holdup without any intention of taking the money of the express company unless they were able to get it peacefully from the deceased. It thus appears that in the Lynch case the defendant admitted his participation in the crime but denied that it was really a robbery. Therefore, in the Lynch case, the question of robbery was at issue.

In the case of *State* v. *Gimbel,* 8 Adv. Report 561, the question raised by defendant was that the killing occurred not in the perpetration of a robbery but that after the robbery was completed and the defendant was attempting to escape; that is, that the killing was committed in an attempt to accomplish an escape, the defendant having admitted the killing.

The quotation from *State* v. *Kisik,* 99 N. J. L. 385, given on page 11 of defendant's brief has nothing to do with the element of robbery, and merely refers to the rule that even where a defendant remains silent, the burden of proof is on the State to prove the guilt beyond a reasonable doubt.

The case of *State* v. *Mowser,* 92 N. J. L. 475, is certainly not in point. The point involved in that case being the plea of autrefois convict.

In the case of *Commonwealth* v. *Comporto*, 81 Atl. 906, quoted by the defense, the presence of the defendant at the scene of the crime was admitted, the defendant contending that he had no part in the robbery. Therefore it became an essential question to determine whether or not he had taken part in the robbery duing which the killing occurred.

It is submitted that in the case at bar the State did establish the fact that the killing occurred in the perpetration of a robbery, this fact not having been denied by the defense, and the sole issue raised by the defense being that the defendant was not the man who killed Lynch. It was proper, therefore, to exclude the question of robbery from the consideration of the jury.

A semblance of an argument is made by counsel, that the jury may have believed Haug in identifying Compo as the one who killed Lynch, but that they may not have believed that Compo commanded the deceased to "Open up the door."

No such issue was raised in the case, and the discussion of it is purely speculative.

In the case of *State* v. *Brown,* 62 N. J. L. 666, relied upon by counsel the defendant admitted the killing but claimed he didn't know the deceased was an officer; the element which would determine whether or not the killing was first degree murder. There again the degree of the murder was in question which is not the issue in the case at bar.

It is respectfully submitted that no error was committed under this point.

POINT III.

It is argued by the defense under this point that the Court erred in admitting into evidence the statement of the defendant (Exhibit S. 8), on the ground that there was no evidence that the statement was made voluntarily. The defense concedes the rule on this point to be that where there is legal evidence to support the finding of a trial judge that the confessions were voluntary, such finding is not subject to review.

The defense complains, however, that there was no legal evidence to support the finding of the trial court as to the voluntariness of the statement for the State examined only the officer who actually took the statement and did not examine other officers who had interviewed the defendant prior to the making of the statement.

This Court, in the recent case of *State* v. *Leonor,* 9 N. J. Adv. Rep. 331, restated the rule that under Section 136 of the Criminal Procedure Act this Court will not disturb the finding of the trial court unless it finds the evidence relating to the making of the confession was not sufficient in weight to justify the finding of the trial court.

It is by virtue of Section 136 of the Criminal Procedure Act that the defense is allowed to go beyond the strict bill of exceptions and rely upon the entire record of the case to argue the question of whether or not the evidence sustains the finding of the Court. It follows therefore, that we must look to the entire record to determine whether or not the evidence justified the submission of the statement to the jury.

Before the Court allowed the statement to be read to the jury, Officer Capadano and Deputy Chief Frank E. Brex were examined. Both testified that the defendant gave the statement voluntarily, that no promises or threats were made to the defendant, nor was any hope of reward held out to him; that he stated that everything in the statement was true and correct and that the defendant read the confession aloud and further stated that he had nothing further to add or subtract, and signed the same in the presence of these witnesses (pp. 145-152).

Thereafter, before the case was finally submitted to the jury, the State produced all other witnesses who were present at the time of the signing of the statement or had any interviews with the defendant. They not only denied the use of any threats, force, or promises, but corroborated Capadano and Brex as to the manner in which the statement was given. The testimony of these officers (Capt. Sebold, Lieut. Conlon, and Det. Fallon) is to be found on pages 362-368.

The defendant contended that the statement which he gave to Capadano and which Capadano took down in writing was not of his own making, but that he was coached to make this statement in all its details by Lieutenant Conlon and Officer Fallon. In connection with this, the defendant related a fantastic story of beatings, kickings, and use of black-jacks, etc. The statement contains details which neither Lieut. Conlon, Officer Fallon, nor anyone, other than the defendant himself, could have known and disclosed. In this connection, we believe the discussion of this Court made in the case of *State*

v. *Morehouse,* 97 N. J. L. 285, page 292, is very apt.

> "The evidence was in conflict. That given by the defendant will be considered, although not before the court when the confession was admitted. If believed, it made the confession the product of threats, abusive language and rough treatment, and for these reasons involuntary and inadmissible. We do not, however, credit the defendant's version of the making of the confession. Officers of experience know that a statement from an accused person obtained by threats or promises is involuntary and will not be received in evidence. With this knowledge they generally keep their statements and actions within the limits of the law. On the other hand, the sense of guilt usually weighs heavily on the accused if guilty of committing the crime. It produces wakefulness, loss of appetite, fear and despondence, until the mind is so tortured that the accused to relieve his mind from the strain confesses. When the mind is relieved and strength returns to both mind and body, then the confession is regretted and the accused, as a rule, invents the promise and threats which he thinks or hopes will eliminate the confession or destroy its evidential weight. In the present case, the defendant's version of the obtaining of the confession is discredited by the confession itself. It contains statements which only the defendant could have known and which could not have been invented by Officer Donnelly, as the defendant states."

In the instant case, the defendant in his statement admitted a part in the hold-up and the killing, but sought to lay the blame of the firing of the shot upon the shoulders of one "Johnny," evidently under the misapprehension that by so doing he would save himself. Had he been coached by officers to make this statement there

certainly would have been no such implications in it.

This statement wherein the defendant implicates one Johnny and Clarence Stern was made before either of these two men were arrested by the police. Certainly, therefore, they could not have suggested this.

As to the alleged beatings, the defendant states that after one of these mistreatments, he was taken to a restaurant and that the restaurant keeper (page 206) took special notice of him; that a dinner was ordered for him by the police which he ate, but by reason of the alleged beatings he had received, he could not keep same. Defendant testifies that after one of these beatings, he was put in a cell with another man who looked at him and remarked, "This is the worst back I have ever seen" (p. 202, l. 30). It is remarkable that no effort whatsoever was made by the defense to produce this restaurant keeper and this cell-mate to corroborate such an essential point, although they went to immeasurable trouble to call numerous storekeepers, salesgirls, and store managers to give entirely inconclusive evidence on the issue of alibi.

In the words of the Morehouse case pertaining to the defendant's version of the obtaining of the confession, the story is discredited by the confession itself for it contains matters which he alone could have disclosed, and the stories of the beatings are not only contradicted but remain uncorroborated by witnesses who could corroborate.

Taking the case as a whole, the submission of the statement to the jury as voluntarily made was more than justified.

The point is made by the defense that even though the defendant may have *signed* the statement voluntarily, it was not shown that he made the oral statement prior to signing, voluntarily.

This point was covered by the testimony of Captain Sebold, Lieutenant Conlon, and Officer Fallon who had the oral interviews with the defendant and all of them testified that during these interviews, the defendant made statements to them voluntarily, which were subsequently reduced to writing. On this point we deem the following excerpt from *State* v. *Genese,* 102 N. J. L. 123 (p. 140) relevant:

> "The statement was first made by the defendant orally on Friday night, February 6, 1925, at the state troopers' headquarters at Pluckamin, to a stenographer. It was transcribed, and the following afternoon (Saturday, February 7th, between four and five P. M.) it was read and signed by him on every page, and sworn to before a justice of the peace in the presence of several officers and troopers of the state police, who all testified that no threats or promises were made. The sole contention of the defendant was that the confession was extorted from him by threats and violence upon the part of the troopers, not at the time it was signed, but on Friday night when it was given orally. The defendant testified to the effect, but there was very slight, if any, corroboration of his story. On the other hand, the numerous witnesses present at the time of the oral confession all denied emphatically that there was any violence or threats. Our conclusion, therefore, is that the evidence was amply sufficient in weight to justify the finding that the confession was voluntary and that it was properly admitted."

It is submitted that no error is shown under this point.

POINT IV.

The following portion of the charge is assigned for error:

> "Case, page 381. The State has produced the testimony of the police officers who have produced here a statement made by Compo at police headquarters, in fact, two statements I believe. There is some question as to the voluntariness with which those statements were given. It is for you to decide whether or not, when Compo gave those statements, he gave them voluntarily and whether the things which are in those statements are the truth."

Counsel for the defense starts out with the accepted rule that the trial court may, if it so desires, leave the question of voluntariness of the confession with the jury. The complaint of the defense is that the Court did not instruct the jury to "disregard" the statement if they found it to have been given involuntarily.

The charge of the Court was directly in line with the rule laid down in *State* v. *Roesel*, 62 N. J. L. 216, and *State* v. *Bullock*, 65 N. J. L. 557 (p. 567) and followed by this Court in *State* v. *Morehouse*, 97 N. J. L. 285 (p. 291) that:

> "If there be a conflict of evidence as to whether the confession was or was not voluntary, if the court decides that it is admissible, the question may be left to the jury, with the direction that they should reject it, if upon the whole evidence they were satisfied that it was not the voluntary act of the defendant."

The trial court in the instant case having left the voluntariness and truthfulness of the statement to the jury, it is inconceivable to think that any jury could do anything else but disregard the statement if they decided that it was not given voluntarily or that it was not truthful. To

submit a matter to the decision of the jury means to leave it to the judgment of the jury whether to accept it or to reject or disregard it. The attempted distinction between the words "to reject" and "to disregard" made by the defense counsel, is without foundation.

It is submitted that the Court, not being bound to leave the matter to the jury, committed no error in doing so, and the language used was proper and substantially in accord with the ruling of this Court.

POINT V.

It is argued under this point that it was error to admit into evidence two guns offered by the State (Exhibits S. 9 and S. 10). No objections were made by the defense to receiving these guns in evidence. There was, therefore, no judicial action which can be made the ground of a reversal.

In *State* v. *Mohr,* 2 N. J. Misc. 261, decided by Chief Justice Gummere and Justices Minturn and Black, the Court said:

> "It is settled that a judgment may be reversed for the erroneous admission or rejection of evidence, where the ruling is not excepted to, applies only where judicial action has been taken upon the question presented and has been excluded or omitted over the objection thus taken. Where the court takes no action upon the question there is neither a judicial rejection or reception of evidence."

The same ruling was made in *State* v. *Hammer,* 81 N. J. L. 430; *State* v. *Wardy,* 77 N. J. L. 348; *State* v. *Sweet,* 81 *Id.* 250.

We submit, however, that the admission of these two guns was proper.

The defendant in his statement said that John Furfaro had done the actual shooting. When the police confronted the defendant with John Furfaro, he admitted that that portion of his statement was not true. As heretofore stated, the defendant was attempting to absolve himself by putting the blame for the actual shooting into the hands of someone other than himself, and he, no doubt, selected John Furfaro as the most logical person because on or about January 1st, 1931 a week after the killing he had sold to Furfaro the gun which he admitted having used in the killing. This was testified to by Furfaro and by Clarence Stern.

The defendant testified that he carried no weapon with him on any of his robberies, burglaries, and other crime ventures and that he possessed no gun until after February of 1931. He denied Sophie Krok's statement that on Christmas day 1930, two days after the killing, he had a gun with him. It was therefore entirely relevent to show first that the defendant did carry a gun with him, and second that he had one in the latter part of 1930, and to produce the gun which the state claims that the defendant sold to John Furfaro. The defense contends that the failure of the State to produce ballistic experts to connect the fatal bullet with Exhibit S. 9 showed that it could not link the gun with the shooting. The State proved its case by direct evidence and the testimony of an eye-witness, and of associates of the defendant who heard him admit the crime and the killing. It was, therefore, unnecessary for the State to produce indirect and circumstantial evidence.

The gun was in evidence, so was the fatal bullet. If the defense contended, as it now con-

tends, that the fatal bullet did not come from the defendant's gun, the defense could in turn have proven the point by expert testimony which it did not undertake to do.

It is submitted that the two guns were relevant to explain untrue portions of the defendant's statement, Exhibit S. 8. It is further submitted that no objection having been made to the admission of guns, defense cannot now make that the ground of error.

No error is shown under this point.

It is respectfully submitted that the judgment of the Court below should be affirmed.

Respectfully submitted,

JOSEPH L. SMITH,
Prosecutor of the Pleas.

SIMON L. FISCH,
First Assistant Prosecutor.

~~HF:IB~~