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WRIT.

NEW JERSEY, ss. The State of New Jersey to the Honorable Frank S. Katzenbach, Jr., and (Seal) John B. Kates, Judge of the Court of Oyer and Terminer of the County of Camden.

Because in the judgment of the Court of Oyer and Terminer of the County of Camden upon a certain indictment against Guilford C. Young, late of the City of Camden, in the said county, that he did wilfully and maliciously and with malice aforethought, kill and murder one, Harry Garwood.

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Guilford C. Young, as it is said, manifest error hath intervened to the great damage of the said Guilford C. Young, 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 Guilford C. Young, 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 and concerning the same, to the Court of Appeals in the last resort in all causes of law to be held at Trenton on the seventeenth day of December, 1921, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey, ought to be done.

Witness, Edwin Robert Walker, our Chancellor, at Trenton, this 29th day of November, 1921.

THOS. F. MARTIN,
Clerk.

JOHN T. CLEARY,
Attorney of Plaintiff-in-Error.

The answer of Frank S. Katzenbach, Jr., and John B. Kates, Esquires, Judges of the Court of Oyer and Terminer, in and for the County of Camden and State of New Jersey within named:

The record and proceedings of the plaint whereof mention is within made, with all things touching and concerning the same, including the record of the proceedings had upon the trial of the said defendant, to the Court of Errors and Appeals in the last resort in all causes, within specified at the day and place within contained, we certify in a certain schedule to this writ annexed, as we are within commanded.

FRANK S. KATZENBACH, JR.,
JOHN B. KATES,
Judges.

JUDGMENT RECORD.

Indictment.

State of New Jersey, Camden County Court of Oyer and Terminer, holden before Frank S. Katzenbach, Jr., and John B. Kates, Judges.

April Term, 1921.

THE STATE OF NEW JERSEY, vs. GUILFORD C. YOUNG. } Sur Indictment Murder.

CHARLES A. WOLVERTON, ESQ.

JOHN T. CLEARY, ESQ.

CAMDEN COUNTY, to wit:

BE IT REMEMBERED, That at a Court of Quarter Sessions, holden at Camden, in and for the County of Camden, on the second Tuesday of April in the year of our Lord one thousand nine hundred and twenty-one before the Honorable John B. Kates, Judge of the said Court and of the Court of Common Pleas in and for said county, no Justice of the Supreme Court of the State of New Jersey being present in the Court House, and the grand jury being desirous of making presentment of sundry bills

of indictment, according to the form of the statute in such case made and provided, by the oath of Frank K. Bennett, Myer H. Black, George Barrett, W. Penn Corson, Charles Dubree, Paul Donahue, William D. Kenney, George P. Kroecker, Antonio Mecca, Charles J. Maxwell, William F. Morris, John A. Rogers, James S. Smith, Frank C. Somers, Charles L. Sharp, Lewis Shelhorn, Byard Stavely, Wilbert L. Sweeten, Theodore Tiedeken, Robert C. Taylor, William E. Wimer, Jr., Charles S. Wolverton, David A. Henderson, good and lawful men of the said County of Camden, duly summoned, and then and there sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Camden.

IT IS PRESENTED, in manner and form following, that is to say:

The bills herewith presented are true bills.

DAVID A. HENDERSON,
Foreman.
WM. D. BROWN,
County Clerk.

Filed Sept. 12, 1921.

IN THE
COURT OF OYER AND TERMINER
OF CAMDEN COUNTY.

April Term, A. D. 1921.

CAMDEN COUNTY, to wit:

The Grand Inquest of the State of New Jersey and for the body of the County of Camden, upon their respective oath, Present, That Guilford C. Young late of the Township of Delaware in the said County of Camden, on the twenty-third day of July in the year of our Lord one thousand nine hundred and twenty-one at the township aforesaid, in the county aforesaid, and within the jurisdiction of this Court, in and upon one Harry F. Garwood, in the peace of God and this state then and there being, wilfully, feloniously and of his malice aforethought did make an assault, and him, the said Harry F. Garwood, then and there wilfully, feloniously and of his malice aforethought did kill and murder to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of this state, the government and dignity of the same.

CHAS. A. WOLVERTON,
Prosecutor of the Pleas.

[ENDORSED]

CAMDEN COUNTY
COURT OF OYER AND TERMINER.
April Term, 1921.
INDICTMENT
for
MURDER.
THE STATE
vs.
GUILFORD C. YOUNG.
CHARLES A. WOLVERTON,
Prosecutor of the Pleas.

A TRUE BILL.

DAVID A. HENDERSON,
Foreman.
WM. D. BROWN,
County Clerk.

Plea.

Filed Sept. 12, 1921.

And Afterwards, to wit, on the tenth day of October in the year of our Lord one thousand nine hundred and twenty-one, at a session of the Court of Oyer and Terminer aforesaid, being now the September Term, 1921, of this Court, before the Honorable

Frank S. Katzenbach, Jr., Justice as aforesaid, and John B. Kates, Judge of the Court of Common Pleas in and for the said County of Camden, at Camden aforesaid, here cometh the said Guilford C. Young, under custody of Isaiah S. Hatch, sheriff of the County of Camden aforesaid, in whose custody in jail of the County of Camden aforesaid, he has been committed for the cause aforesaid, being brought to the bar and having heard the indictment read and forthwith being commanded of and concerning the premises in the said indictment aforesaid specified and charged upon him how he will acquit himself thereof, he says that he is not guilty thereof and puts himself upon the country.

And Charles A. Wolverton, Esquire, Prosecutor of the Pleas for the said County of Camden, who prosecutes for the State of New Jersey in this behalf doth the like.

Thereupon, the Court fixed the day for the trial of the said Guilford C. Young for the ninth day of November in the year of our Lord one thousand nine hundred and twenty-one.

And thereupon let a jury come before the Justice aforesaid, at Camden aforesaid, in the County of Camden at the September Term of the Court of Oyer and Terminer aforesaid on the ninth day of November, in the year of our Lord one thousand nine hundred and twenty-one, twelve good and lawful citizens of this state and whom reside within the County of Camden 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 Guilford C. Young, to recognize upon their oaths whether the said Guilford C. Young, be guilty of murder in the indictment aforesaid specified, or not guilty, because as well the

said Charles A. Wolverton, Prosecutor of the Pleas, for the County of Camden aforesaid, who prosecutes for the State of New Jersey aforesaid, as the said Guilford C. Young, have put themselves upon the said jury, and the same day is given to the parties aforesaid, at the same place at which time, that is to say, the ninth day of November, in the year of our Lord one thousand nine hundred and twenty-one, at the same Term of Oyer and Terminer, holden at Camden aforesaid, in the County of Camden, before the said Justice aforesaid, here cometh as well the said Charles A. Wolverton, Prosecutor of the Pleas aforesaid, who prosecutes as aforesaid, as well as the said Guilford C. Young, in the custody of the sheriff of the County of Camden, being brought to the bar here in his proper person by the said sheriff, and the trial of the indictment aforesaid being moved by the said Charles A. Wolverton, Prosecutor as aforesaid, and the jurors of the said jury by the sheriff of the county aforesaid for the purpose empanelled and returned, to wit: Carl Evered, Ida Kirkbride, Harold B. Woolston, Joseph Robbins, Bertha Rosenthal, May Benson, Andrew Henecke, Frank Stafford, John Keys, Bertha Frost, Henry C. Patrick, Fred Casario, being called, come, who being chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of the issue commenced and continued before the said Court and jury, from day to day, until the fifteenth day of November, in the year of our Lord one thousand nine hundred and twenty-one, at Camden aforesaid, the jury in the meantime having all that time been kept together and in the care of officers of the said Court, who were selected and duly sworn by the Court for that purpose at which last mentioned day the said issue after a charge from said Court was

submitted to the said jury, and the said jury in charge of the officers of the said Court duly sworn for the purpose, were taken to a private room to consider on the verdict, and afterwards, that is to say, on the day aforesaid, at Camden, 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, Charles A. Wolverton, and the said defendant, Guilford C. Young, do say that the said Guilford C. Young is guilty of murder in the first degree in manner and form as in and by the said indictment as charged against him; and upon being further demanded of them of and concerning the premises each one for themself says they find the defendant Guilford C. Young, guilty in manner and form as he stands charged, and of murder in the first degree; and thereupon the said Guilford C. Young, now, to wit, on the said fifteenth day of November, 1921, being produced before the said Court at Camden aforesaid in his proper person in the custody of the sheriff of the said county, whereupon all and singular the premises being seen and by the Court here being fully understood, it is considered and adjudged that the said Guilford C. Young be forthwith taken by the sheriff of the County of Camden to the state prison at Trenton, New Jersey, and delivered to the principal keeper of the said state prison, and there be confined until the week beginning Sunday the eighteenth day of December next, and during said week within the state prison enclosure the said Guilford C. Young shall be put to death by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, and the application of such current shall be continued until the said Guilford C. Young is dead.

Judgment entered and signed this fifteenth day of November, in the year of our Lord one thousand nine hundred and twenty-one.

FRANK S. KATZENBACH, JR.,
Presiding Judge of the Court of Oyer and Terminer.

10

Certification.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF CAMDEN, }

I, WILLIAM D. BROWN, clerk of the Court of Oyer and Terminer in and for the state and county aforesaid, Do Hereby Certify that the foregoing is true, full and complete copy of the record and proceed-
20 ings with all things touching and concerning the same in the trial and conviction of Guilford C. Young, of the crime of murder, as the same are now on file in my office.

Witness my hand and the seal of said Court this eighth day of December, A. D. nineteen hundred and twenty-one.

WM. D. BROWN,
Clerk.

(Seal)

30

ORDER TO STAY JUDGMENT.

CAMDEN COUNTY COURT OF OYER AND TERMINER.

10

THE STATE OF NEW JERSEY,
Defendant-in-Error,
vs.
GUILFORD C. YOUNG,
Plaintiff-in-Error.

Order to Stay Judgment.

A writ of error having been issued in the above 20
entitled cause, it is on this 29th day of November, nineteen hundred and twenty-one, ordered that execution of the sentence imposed upon the said Guilford C. Young, be stayed until the determination of the proceedings on said writ of error, or the further order of the Court.

FRANK S. KATZENBACH, JR.,
Justice of the Supreme Court.

On motion of: 30
JOHN T. CLEARY,
Attorney of Plaintiff-in-Error.

TESTIMONY.

Camden, N. J., Nov. 10, 1921.

Trial of the cause resumed at ten o'clock A. M., pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

The Court: The jury may be brought in and the defendant.

The Prosecutor: If the Court please, the first witness that I was about to call on behalf of the State was Edward Gray, a photographer of our city, who, under the direction of the Prosecutor and in the presence of County Detective Doran took views of the vicinity of the locality where this crime was committed. It has been very often the practice by consent of counsel for the defendant, to save the time of the Court, to permit these pictures to be introduced without calling the witness. Mr. Cleary consents to that and it will avoid the necessity of calling Mr. Gray.

The Court: As soon as the defendant is in court, then by the consent of counsel the photographs will be admitted in evidence and marked.

(The defendant was then brought into the court room.)

The Court: Now, Mr. Wolverton, you may enter on the record the admission of the photographs in evidence and have each of them marked by the stenographer.

The Prosecutor: Exhibit S1 is a picture of Marlton Pike looking out the pike from the direction of Ellisburg, showing indistinctly the by-road off of the pike.

(Said photograph is marked Exhibit S1 for the State.)

The Prosecutor: Exhibit S2 is a picture of Marlton Pike looking into the by-road off of the pike.

(Said photograph is marked Exhibit S2 for the State.)

The Prosecutor: Exhibit S3 is a photograph showing a part of the pike with a closer view of the by-road running off of the pike.

(Said photograph is marked Exhibit S3 for the State.)

The Prosecutor: Exhibit S4 is a photograph of the by-road where it is alleged the car stopped, some five or six hundred feet in from the main pike.

(Said photograph is marked Exhibit S4 for the State.)

The Prosecutor: Exhibit S5 is a picture of the spot some five or sixty feet in from the by-road where the body was found.

(Said photograph is marked Exhibit S5 for the State.)

HAROLD DOWNS, sworn.

By the Prosecutor:

Q. What is your name?
A. Harold Downs.
Q. Where do you live?
A. 217 North 42nd Street.
Q. Where were you on Sunday morning, July 31st, last?
A. Sunday morning, July 31st, I started out with a party of other friends for wild cherries and elderberries. We arrived in Marlton about eleven o'clock; we started from Marlton, down the Marlton Pike, riding slowly. We came to within about two miles, two miles and a quarter of Ellisburg, and there was a short wagon road there; we sort of hesitated before going down, it looked promising for our hunt, and it was a very wild path there, and I didn't know whether to take the road or not, so after going within about a quarter of a mile ——

The Court: I think, Mr. Downs, you had better speak a little louder. Can you members of the jury who are sitting furthest from the witness hear the witness? Speak a little louder, Mr. Downs, please.

The Witness: After going within about a quarter of a mile of the road, I noticed a very strong, pronounced odor. After going further in I noticed buzzards flying out from the woods, and so, for curiosity's sake I decided to get out and see what it was. As I went about fifty feet from the roadside, there I found the body. It was very decomposed, and I didn't bother looking over the body very much; but

the man's shoes were off, his face was gone, and part of his body, and I noticed his trousers; they were black with a white pin stripe. His coat was open, the rest of his remnants were very well decayed. So after going—after seeing that, I called the rest of the party, and one of the other boys, he came over and seen it; the rest of them didn't care to look at it. So after that I decided I would notify somebody, and I went about two blocks on the Marlton Pike to a country store there, and I asked them if I could find a constable ——

Q. Well, not anything that you said there, but you took steps to notify the public officials, did you?

A. Yes, sir.

Q. Now, I show you Exhibit S1 and ask if you can fix that as the locality of Marlton Pike where the road turned in?

A. Yes, sir, that is Marlton Pike.

Q. I show you Exhibit S2 and ask you to point out the by-road that you have referred to as having gone in off the Marlton Pike?

A. Yes, this is the one right here on the right.

Q. Just point to it now.

A. Right here (indicating).

Q. I show you Exhibit S3 and ask if that is a view of the by-road that you went in?

A. Yes, sir.

Q. I show you Exhibit S4 and ask if that is a view of the locality where your car stopped before going in the fifty feet to locate the body?

A. Yes, sir, that looks very much like it.

Q. I show you Exhibit S5 and ask if that is a picture of where the body was found?

A. Yes, sir.

Q. You have stated that there was a party of young men with you, who were they?

A. Edward Kelly, Elmer Manshure and Russell Downs.

ARTHUR HOLL, sworn.

By the Prosecutor:

Q. Where do you live?

A. 1401 Princess Avenue, Camden.

Q. Do you hold any official position in the County of Camden?

A. One of the coroners of the County of Camden.

Q. On Sunday, July 31st last, did you perform any duty as coroner?

A. Yes, sir.

Q. What was it?

A. I answered a call to come to a woods near Springdale on the Marlton Pike. Going there I was directed into this little by-road off of the Marlton Pike; going back in there as directed I came across this body.

Q. I show you Exhibits S1 to 5 and ask if they correctly portray the locality that you went to on the day that you have described and found the body?

A. Yes, sir.

Q. What time of the day did you go?

A. It was about two o'clock in the afternoon when we got there.

Q. Who went with you?

A. County Detectives Doran and Smith and an officer from the Haddonfield police.

Q. Did you examine the body?

A. As best we could.

Q. In what position was it lying?

A. Lying on its back.

Q. What was the condition of the body?

A. The condition was badly decomposed, all the flesh gone off of the face and head, and the trunk of the body was a mass of maggots.

Q. How was the body dressed?

A. The body was dressed in a white pin stripe suit of light cloth, a summer suit.

Q. Did you notice anything particularly about the condition of the clothing?

A. Well, the clothing was disarranged, the pockets turned inside out, no shoes on the body, and no hat could be found.

Q. Did you locate any valuables on the body?

A. There was nothing on the body at all.

Q. What did you do after you had found the body?

A. I notified the Camden County morgue keeper to come out and take the body into the Camden County morgue.

Q. What did you find upon examination of the body to indicate, if anything, the use of violence?

A. Well, after we got into the morgue we gave it a more thorough examination, and there I found two holes in the skull that apparently looked like bullet wounds.

Cross-examination.

By Mr. Cleary:

Q. You got there about two o'clock?

A. About two o'clock.

Q. And had three officers with you?

A. Yes.

Q. Mr. Doran, Mr. Smith and the Haddonfield police officer?

A. Yes, sir.

Q. Who was it directed you to this place?

A. The man that has the little store on the Marlton Pike about a quarter of a mile from where the little by-road goes off.

Q. Was there anybody else there at the time—beside this man who directed you?

A. Some natives standing around.

Q. Now, did you examine the body closely?

A. As best we could there.

Q. At that time where it was lying?

A. The best we could see in a place like that in the underbrush.

Q. When you say the pockets were turned inside out what pockets do you mean?

A. Pockets of the coat and pockets of the trousers.

Q. You don't know whether or not anybody made an examination of the pockets before you did?

A. I can't tell you anything about that.

MELVIN CAIN, sworn.

By Mr. Wolverton.

Q. Mr. Cain, where do you live?

A. 424 South 4th Street.

Q. Do you hold any position in the County of Camden?

A. County morgue keeper.

Q. On Sunday, July 31st, did you perform any duties in your official capacity?

A. Yes, sir.

Q. Will you describe what they were?

A. Sunday afternoon I was out and when I returned my wife said there was a call came to come

out to the Marlton Pike and stop at the Summerdale Road and the man would direct me to the place and I proceeded out the pike and I met Coroner Holl, Detective Doran and Detective Smith and they directed me in a little road off the Marlton Pike where the body laid. I walked down in the road and looked at the body and came back to the carry-all and got the rubber and took it down and put the body in the rubber and carried it up to the carry-all then I brought the body to the morgue.

Q. In what condition did you find the clothing?

A. The clothing and body were in a very decomposed condition.

Q. In what condition did you find the clothing?

A. The clothing was in a decomposed condition.

Q. With relation to the pockets?

A. The pockets were turned inside out.

Q. Did you find any valuables on the body?

A. No, sir.

Q. What else did you find on the body or any part of it?

A. On the left leg of the body there was a brace, a leather brace.

Q. Is that the brace?

A. Yes, sir, that is the brace.

Mr. Wolverton: I ask that it be marked Exhibit S6 and I offer it in evidence.

The Court: The brace will be marked Exhibit S6, and offered in evidence, there being no objections.

(Brace admitted in evidence and marked Exhibit S6.)

Cross-examination.

By Mr. Cleary:

Q. Now, Mr. Cain, what time did you arrive at this place?

A. Immediately after 7 o'clock.

Q. In the evening?

A. Yes, sir.

Q. And the body was still there on the ground?

A. Yes, sir.

Q. Now, you have testified that the pockets were turned inside out. Do you know whether or not any official or any other persons had examined the pockets for valuables before you did?

A. I couldn't say about that.

Q. And you got there at 7 o'clock?

A. A little after 7.

Frank O. Stem, sworn.

By Mr. Wolverton:

Q. Where do you live?

A. Berlin, New Jersey.

Q. Are you a practicing physician?

A. Yes, sir, I am.

Q. How long standing?

A. Since 1892.

Q. Do you hold any official position in Camden County?

A. County physician.

Q. On Monday, August 1st, did you perform any duties in your official capacity?

A. Yes, I examined a body in the Camden County morgue.

Q. What body?

A. Supposed to be Garwood.

Q. For what purpose did you make the examination?

A. To find the cause of death.

Q. After you had made your examination what did you find?

A. I found four holes in the skull.

Q. Will you describe to us where the holes were?

A. One at the base of the brain, at the base of the skull, another on top of the head, and one in each temporal region, on the right and left side.

Q. When you speak of temporal region what do you mean?

A. Why, just here (indicating).

Q. And where was the other one?

A. On the opposite side, directly opposite.

Q. Was there anything in your mind to indicate the course of the bullets?

A. Yes, sir, the holes here were in alignment. It looked as though the bullets entered the base of the skull and emerged at the top and in the temporal region the bullet entered the right side and emerged from the left, that is, the bullet was still in the tissues on the left side.

Q. Is that the bullet which was taken by you out of the fleshy tissue on the left side of the head?

A. Yes, sir.

Mr. Wolverton: I ask that it be marked Exhibit S7 and I offer it in evidence.

The Court: It will be so marked and received in evidence.

Q. What in your opinion was the cause of death?

A. These bullets wounds of the head.

Q. Were you able to locate a bullet in any other part of the body?

A. No, sir.

Q. For what reason?

A. Well, the body was badly decomposed, there may have been other wounds, originally but they were not in evidence at this time.

Q. You mean by that that the tissues had started to fall apart?

A. Oh, yes; yes, sir.

Cross-examination.

By Mr. Cleary:

Q. Doctor, if there had been a wound in the breast, is it possible that that wound or that bullet if there had been a bullet wound in the breast, I will say, is it possible that that bullet wound, that bullet, might have wounded some vital organ of the body in the breast and caused death?

A. Yes, sir.

Q. It is?

A. It is.

Q. What organ could it have touched?

A. Heart, lungs, great blood vessels.

Q. Now, as far as the bullet wounds in the head are concerned, can you tell me exactly what you mean by the bullet wounds which you say were at the bottom of the skull here?

A. Yes, sir.

Q. And another wound ——

A. Yes.

Q. Can you tell me exactly the position and the angle?

A. Yes, the wound at the base of the skull was at the base just back here.

Mr. Cleary: If your Honor please may I have these places demonstrated by showing the jury on my head exactly where the passage of the bullets were?

The Court: I have no objection to you using your head for that purpose.

The Witness: Right here.

Q. And where is the bullet ——

A. Right in the top a little to the left of the line, just about there (indicating).

Q. That was the course of the bullet from here to here (indicating)?

A. Yes, sir.

Q. Is it possible that that bullet wound might have gone from here and come out the base, just as well?

A. Yes, sir.

Q. As far as the bullet wound on the side is concerned?

A. It entered the right side of the temporal region and emerged on the left.

Q. Did it actually emerge there?

A. Yes, sir, I found the bullet there.

Q. And you didn't find the bullet of that wound?

A. No, I didn't find that bullet.

Q. So that, Doctor, so far as your knowledge is concerned of the actual wound which caused death, you couldn't positively say whether it was the wound in the breast or which one of these wounds in the head caused the actual death?

A. I found no wound in the breast, in the chest.

Q. If you had found a wound in the chest ——

Mr. Wolverton: If the Court please, it seems to me very improper to ask a hypothetical question of that character, of a witness who says he didn't find a wound in the breast because of the condition of the tissue.

The Court: Well, the question has been asked and answered. I think it can do no harm.

Q. Of the two wounds in the head is it possible to say whether either one of those caused death?

A. Either one could have caused death. Either one would have caused death.

WILLIAM T. MILLS, sworn.

By Mr. Wolverton:

Q. Mr. Mills, where do you live?

A. 1217 Hyde Park Avenue.

Q. What business are you in?

A. I am driving a taxicab for a living, at present.

Q. Did you know Harry Garwood?

A. Yes, sir.

Q. What business was he engaged in?

A. Driving a taxicab.

Q. Where do you conduct your business of taxicab driver?

A. At the Federal Street Ferry.

Q. Where did Harry Garwood conduct his business?

A. At Federal Street Ferry.

Q. Were you located on the north side or south side of the plaza?

A. On the south side.

Q. Where was Garwood located, on the north or the south side, with his car?

A. On the south side.

Q. On Saturday, July 23rd, did you see the defendant at the ferry?

A. You refer to Mr. Young?

Q. Yes.

A. Yes.

Q. Under what circumstances?

A. Why, I drove in on the fifth stand there and Harry's car had been on the fourth and Harry had moved his car out and drove it across the plaza to the restaurant and this man came to me.

Q. Will you speak a little louder, please?

A. This man, Young, came to me and asked me where the new sedan was, I said, to him, "Do you mean Harry Garwood, the crippled fellow?" and he said, "Yes." I said, "He moved his car out and went across to the restaurant I presume to get something to eat." I pointed across the plaza to it and this man, Mr. Young, walked across to the north side and looked around the car and went away from it and walked about nearly to the drug store at the terminal, so I saw the man walking away, and I went across the plaza myself and asked the man if he wanted to hire a car and he said he did, so I taken him back and invited him to get in the car.

Q. Into whose car?

A. Harry Garwood's, and the man got in the car and sat down. I went into the restaurant and told Harry that there was a passenger in his car; so Harry thanked me for it and I think bought me a cigar, and I went back across on the south side and I looked around and I saw Harry driving away with the man sitting in the back seat.

Q. Have you seen him since?
A. Who?
Q. Harry Garwood?
A. No, sir.
Q. And the defendant Guilford Young is the man whom you saw drive away in his car with him?
A. Yes, sir.

Cross-examination.

By Mr. Cleary:

Q. What is your first name, Mr. Mills?
A. William.
Q. William?
A. Yes.
Q. How long have you been driving at that stand?
A. Why, for a living since last June a year.
Q. And what is your usual hours that you work at the ferry, during what hours?
A. From eight o'clock in the morning until six in the evening.
Q. Do you remember this July 23rd?
A. Yes, sir.
Q. You remember this day particularly?
A. Yes, sir.
Q. How do you fix that—how do you fix that all these events occurred on July 23rd rather than some other day?
A. Well, I know it was Saturday, and the body of Harry Garwood was found, I read in the paper, on July 31st, and this was the Saturday week before that.
Q. Now then, Mr. Mills, what time did you arrive at the ferry on this morning, July 23rd?
A. Twenty minutes after nine.

Q. Twenty minutes after nine?

A. Yes.

Q. And about what time was it that this event took place that you have just described?

A. Quarter to ten.

Q. About quarter to ten?

A. Yes.

Q. Now, how did you fix that time, by any means?

A. By the time I usually go to work on Saturday.

Q. Now then, do I understand you correctly to say that you remember this man Young?

A. I do.

Q. And what did you say his first words to you were?

A. "Where is the man that drives the new Ford sedan?"

Q. Then what did you say to him?

A. I said, "Do you mean Harry Garwood, the lame fellow?"

Q. Yes; then what did you say and what did he say?

A. He didn't say anything—I said the car—he had moved his car out and went across to the restaurant.

Q. Across on the south side or the north side?

A. On the north side.

Q. What did he say to you then?

A. He didn't say anything direct to me.

Q. Did he tell you whether or not he wanted to hire a car?

A. No, sir.

Q. Did you direct him to this particular place yourself?

A. I did.

Q. Did you take him over?

A. Oh, no, he walked over.

Q. He walked over?

A. Yes.

Q. How did you get on the north side of the street —how did you come to be on the north side of the street?

A. Well, I saw him walk away from the car, and Harry being a friend of mine and a cripple, I did not want to see him lose any business, so I went over to do Harry a favor, so I thought, by getting him the business.

Q. Now, before you went over on the other side of the street, did you try to induce him to get into another car?

A. No, sir, I did not. If it had been anyone else's car except Harry's ——

Q. Did he attempt to ——

The Prosecutor: Wait; have you finished?

The Witness: If it had been anyone else except Harry Garwood's, I would possibly have tried to have gotten the business away from him.

Q. Well, did you see anyone else there attempt to get Mr. Young into a car?

A. On the north side?

Q. Either on the north or on the south side?

A. On the north side I seen two men talking to him.

Q. Do you know who those men were?

A. I have learned since it was a man by the name of Zinger and Patton, I believe the names are.

Q. Zinger and Patton—and what were they endeavoring to do?

A. I have been told they told him it was a private car; I didn't hear it, of course.

Q. When you got on the north side of the street did you have any more conversation with Mr. Young?

A. Yes, I asked him if he wanted to hire a car.

Q. Now, this is on the north side after you had crossed over for Mr. Garwood?

A. Yes.

Q. You again asked him whether he wanted to hire a car?

A. Yes.

Q. Why did you ask him that?

A. Because I was interested in Harry getting the business.

Q. Well, didn't he tell you that he wanted to hire a car on the south side?

A. No.

Q. How long was it before Mr. Garwood came out of the restaurant?

A. Three minutes more or less.

Q. Where was Mr. Young in the meantime?

A. He was sitting in the back of the car.

Q. And who directed him to the car?

A. I did.

Q. Did you hear Mr. Young say anything to Mr. Garwood when he came out?

A. No, sir, I didn't go near the car; I went on across to attend to my own business.

Q. Did you leave then before Mr. Garwood came out of the restaurant?

A. I came out of the door right just ahead of him, together.

Q. Just ahead of him, and did you wait until Mr. Garwood got in his car to drive away before you returned to the south side?

A. No, sir.

Q. You returned before that time?

A. I did.

Q. So that you don't know anything that occurred immediately before the car started?

A. No, sir.

GEORGE PATTON, sworn.

By the Prosecutor:

Q. What is your name?

A. George Patton.

Q. Where do you live?

A. 426 Linden.

Q. What business are you in?

A. Taxicab.

Q. How long have you been in that business?

A. About six years.

Q. Did you know Harry Garwood?

A. Yes, sir.

Q. On Saturday morning, July 23rd, did you see Garwood at any time in the company of this defendant, Young?

A. No, sir, only when he went out of the ferry with him.

Q. What time was that?

A. Well, I couldn't just say; it was just before noon.

Q. What attracted your attention to the defendant Young at that time?

A. Well, I was sitting in the first place on the north side, that is, in front of the restaurant, and Mr. Young came across, and he was looking at the license tag numbers from the rear of the cars, and I hollered, "Taxi," at him, and he said, "Where is

the driver of this car?'' I said, ''That is a private car, it belongs to''—there is a man down in the real estate office used to work there, had a Ford just like it, which I thought was his at the time. He said, ''No, I know this car because I have been out in it this morning.'' So Mr. Mills, the taxi driver from the south side came over and put Mr. Young in the car. So Mr. Young went in the car, and as he did, he went in to get Garwood, and Garwood came out, and he opened a box of cigars and he gave Garwood a cigar and took a cigar himself.

Q. Who did?

A. Mr. Young, and he looked over to us and laughed at me just because, I guess, I was trying to get the job. So then they went on out, I don't know which way they went, but I know they went on out. This was on Saturday, just before noon.

Q. You saw them drive away together?

A. Yes, sir.

Q. Who was driving the car?

A. Garwood.

Q. Who was in the back of the car?

A. Mr. Young.

Q. Have you seen Garwood since that time?

A. No, sir, that was the last I seen of him.

Q. Did Garwood have any physical deformity?

A. No, sir.

Q. Was he crippled?

A. Yes, sir.

Q. What part of his body was crippled?

A. His leg, his right leg.

Cross-examination.

By Mr. Cleary:

Q. How long have you been in the taxicab business, six years, you say?

A. Yes.

Q. Has your stand always been down at the ferry?

A. Yes.

Q. How did you fix this to be July 23rd as the day that this happened?

A. How do I fix it?

Q. Yes.

A. Well, there is two reasons; I paid a bill on the 23rd, a tire bill, for one thing, and it was eight days afterward before we ever heard tell of Garwood again.

Q. Well, you are positive in your mind it was July 23rd, are you?

A. Yes.

Q. Now, what time do you usually get to work in the morning on Saturday?

A. The time I usually get to work?

Q. Yes.

A. Well, I don't have no special time, sometimes I work at night, sometimes I work at day.

Q. Do you remember what time you got there this morning?

A. That I got there this morning?

Q. No, not this morning, the morning in question, July 23rd?

A. Well, in fact, I never got home; I went to work Friday, July 22nd and stayed there.

Q. Did you have any business carrying passengers at the time this happened?

A. I had a few jobs, yes.

Q. How long had you been standing there, though, on the north side of the street?

A. How long had I been standing there on the north side of the street?

Q. Yes, how long had you been standing there on the north side of the street continuously before Mr. Young appeared?

A. Why, from two o'clock in the morning until I met Mr. Young.

Q. You didn't have any other fare during that time?

A. No, sir, didn't have a job.

Q. You were waiting for them?

A. Yes, sir.

Q. Mr. Young was looking for a car, was he?

A. He was, from the rear, looking at the license tag numbers.

Q. Did you suggest any car to him to get in?

A. I didn't, I just simply hollered, "Taxicab," at him, which I thought he wanted a taxi.

Q. You were anxious to get the work, the business?

A. Sure.

Q. And this car that you said was a private car, was that Garwood's?

A. That was Garwood's car.

Q. And did you make any effort to get this man in your car?

A. No, I just simply hollered, "Taxicab," and he says, "No, I know this car, I had him this morning." That was before Mr. Mills put him in the car.

Q. Mr. Mills put him in the car?

A. Yes, put Mr. Young in the car.

Q. Who told Young that it was Garwood's car, Mr. Mills?

A. Well, I couldn't say; I wasn't that close enough to hear; I couldn't say.

Q. Were you there when Mr. Garwood came out of the restaurant if he did come out?

A. Yes, sir.

Q. Did he come out?

A. He came out of the restaurant.

Q. Were you there when they drove away?

A. Yes, sir.

Q. Did you hear any of the conversation?

A. No, sir, because they were in the car, and I was sitting in my car, it was about two paces away from them; I couldn't hear what they had to say.

LESLIE ZINGER, sworn.

By Mr. Wolverton:

Q. Where do you live?

A. Merchantville.

Q. Whereabouts?

A. Highland Avenue and Marlton Avenue.

Q. What business are you in?

A. Taxi.

Q. How long have you been in the business?

A. About five years.

Q. Did you know Harry Garwood?

A. Yes, sir.

Q. How long had you known him?

A. About eight years.

Q. What business was he in?

A. Taxi business.

Q. How long have you been in the taxi business at the Market Street Ferry?

A. Why, about five years off and on.

Q. Which side of the plaza would you park your car for business?

A. Market Street side.

Q. Which side did Garwood use for parking?

A. Federal Street side.

Q. On Saturday morning, July 23rd, did you see Garwood at any time in company with this defendant Young?

A. Yes, sir, I saw Garwood's car at the restaurant but I didn't know it was Garwood's car. I thought it was a private car, so Young came over and he asked Patton, he said, "Where is the driver of this car?" Patton said, "That ain't no taxi that is a private car." We didn't think it was a taxi because we never saw Garwood with it before. He just got it. He said, "Yes, I rode in that car this morning, I know it is a taxi," and then he went out toward the drug store and Mr. Mills came along from the south side and he went up and got this Mr. Young and he brought Young back and put him in Garwood's car then he goes in the restaurant to Garwood and brings Garwood out to his car. Well, Garwood got in the car and Young opened up a full box of cigars and gave Garwood cigars and then they drove off. That was about noon.

Q. When you made your remark to him that it was a private car and not a taxi and he replied that he knew that it was a taxi, he had been in it that morning, did you make any reply to him?

A. That is what he say to us, that he was in it that morning, so we said, all right, and he knew, he had the license number, he looked at the back of the car, I don't know whether he looked at the license number or not. He looked at the rear of the car.

Q. Have you seen Harry Garwood from the time you saw him drive off with this defendant?

A. No, sir.

Cross-examination.

By Mr. Cleary:

Q. You don't know whether he was looking at the license?

A. I couldn't say that, he looked at the rear of the car, down at the license tags.

Q. As a matter of fact he approached the car from the rear?

A. Yes, sir.

Q. That is the way he walked, the first thing he saw was the rear?

A. He couldn't help but see the rear, he came that way, right through by the back of the car.

Q. Now, you say what time was this?

A. Before noon on Saturday, July 23rd.

Q. About what time?

A. Saturday, July 23rd, before noon.

Q. How was that, you think before, was it an hour before noon or two or three hours?

A. About an hour I guess, I judge about that, I didn't put the time down.

Q. Would you say to the best of your recollection it was around 11 o'clock?

A. Yes, 11 or half-past, around that.

Q. Now, you say that you knew Harry Garwood?

A. Yes.

Q. How long have you known him?

A. About seven or eight years.

Q. And how long has Harry Garwood been in the taxicab business?

A. I couldn't say that, I guess he has been in it that long.

Q. As long as you have?

A. Longer than I have, I believe he has been in

seven or eight I judge, I have been in four or five years.

Q. Do you know whether or not Garwood had a car there all that time?

A. Yes, always had a car as far as I remember, he has always had a car of his own.

Q. You didn't hear the conversation between Garwood and this young man, Young, in the car, did you?

A. No, I didn't, well, all I saw, he gave him cigars and out they went.

Q. What is your first name Mr. Zinger?

A. Leslie.

Q. How long was Mr. Garwood in the restaurant before he came out?

A. Well, I don't know, see, when I noticed the car, it was about ten minutes, then they beat it, see, I didn't notice the car when they first pulled in there, and then when Young came they got Garwood right away and out they went.

Q. During the time Mr. Young was sitting in the car in the rear?

A. Yes, Mr. Young walked up toward the drug store and Mr. Mills got him and put him in Garwood's car and then he went in the restaurant and got Garwood and off they went.

KATE EICHMANN, sworn.

By Mr. Wolverton:

Q. Mrs. Eichmann, where do you live?

A. I live at Ellisburg, on the King's Highway and the Marlton Pike.

Q. What is your husband's name?

A. Louis Eichmann.

Q. What business is he in?

A. Why, the hotel.

Q. Where is the hotel located?

A. Right at the corner of the King's Highway and the Marlton Pike.

Q. At Ellisburg?

A. At Ellisburg, yes, sir.

Q. On Saturday, July 23rd, did this defendant Young come in your place of business?

A. Yes, sir.

Q. At about what time?

A. Sometime after nine o'clock in the morning.

Q. Who was with him?

A. Why a jitney man that stands at the ferry, Mr. Garwood.

Q. For what purpose did they come in your place?

A. Why, for something to drink.

Q. Who ordered the drinks?

A. Mr. Young.

Q. How long were they in your place?

A. Well, just about long enough to take a drink, not very long.

Q. Who waited on them?

A. I did at first. There was two men come in and I went out and I asked them what they wanted and Mr. Young said, "I want something." I said, "Well, we have beer and all soft stuff." Mr. Young said, "I will take a beer" and Mr. Garwood said, "I will take sarsaparilla." As I was going to give them their drink Mr. Eichmann came in and I said, "I said, here comes Mr. Eichmann and he will wait on you," and I got to the end of the bar. Mr. Eichmann came out and waited on them.

Q. Now, did you notice how they had reached your place, either by walking or riding?

A. Why, by riding.

Q. In what way?

A. Why, a Ford sedan.

Q. Did you see them again that morning?

A. No, sir.

Q. Did you see Young again?

A. One week after that Saturday, on a Saturday morning.

Q. And did you have a conversation with him?

A. Why, he came in and he asked for ginger ale and he said, "I was out on a tear last night and I have a swelled head and I told him, I didn't think it was nice for a young man like him. He turned around and he said, "I have a new car and that is the kind of car that you and Mr. Eichmann should have." I said, "Well, Mr. Eichmann and I don't care for a car." He turned around as he goes out and he says, "No, you would never get a car as cheap as that for I only paid $500 for it." I said, "That is a very cheap car," and he had gone out.

Q. What kind of car was it?

A. A Ford sedan.

Q. What kind of car was it that you had seen when he and Garwood came to the place the previous time?

A. A Ford sedan.

Q. Did this car resemble the one that had been there before?

A. Well, it was a new Ford sedan. I don't know if it was the same one or not.

Q. Well, were both new Ford sedans?

A. Yes, sir.

Cross-examination.

By Mr. Cleary:

Q. Now, Mrs. Eichmann, how long have you been in business at this particular place?

A. Well, as near as I can think, about eight years.

Q. Eight years?

A. Yes, sir.

Q. You know Mr. Young, don't you?

A. No, not Young particularly, I just seem him a few times at the place. He never did come over there very often.

Q. Well, before this particular time, do you know what day this was that this occurred, do you know the day this occurred, this event?

A. No, it was the 23rd day of July that he was in the place.

Q. Well, now do you fix that, on any other event?

A. No, just that he was in with the jitney man and I recognized the jitney man.

Q. It is in your mind it was the 23rd of July, is it?

A. Positive.

Q. Now, then, Mrs. Eichmann, how many times have you seen Mr. Young before this?

A. Before the 23rd?

Q. Before the 23rd day of July?

A. Oh, I haven't seen him I think for about a year before that.

Q. How many times had you seen him in your lifetime at that place?

A. I couldn't tell you that. He occasionally came over of an evening, took a walk over.

Q. You knew him?

A. I knew him by sight, but never knew him then.

Q. How many times would you say he has recently visited your place during the time you was there?

A. I never took particular ——

Q. Was he there more than twice?

A. Three or four times to my knowledge.

Q. Would you say he had been there twelve times?

A. No, I wouldn't say that.

Q. You say you knew him even though you didn't know him then.

A. I knew he lived in Haddonfield.

Q. How did you know Mr. Garwood?

A. I knew Mr. Garwood. I had occasion—I had a daughter very sick it took me in the city quite often and I always would go home in a jitney at the ferry to get home, because she has died since.

Mr. Wolverton: That answers the question.

Q. Now, you didn't know whether or not Mr. Young had a car before this 23rd of July?

A. No, I did not.

Q. You hadn't seen him for about a year previously?

A. Why, yes, about that time.

Q. Now, how long was it in actual time, period of time that Mr. Young and Mr. Garwood were in your place?

A. Just about five minutes.

Q. About five minutes?

A. Yes.

Q. Did they only have one drink a piece?

A. He had a beer and Mr. Garwood had a sarsaparilla.

Q. After they had finished their drinking, they immediately left?

A. Yes, sir, turned around and went out.

Q. How do you know this was nine o'clock in the morning?

A. Well, it was sometime after nine, I didn't say nine.

Q. I don't want to criticise what you said. I am just trying to find out how you fix that time?

A. We generally open up about seven o'clock and Mr. Eichmann does work outside while I do the dusting inside and if any one comes in occasionally I go out and Mr. Eichmann has always done his work by nine, about nine o'clock, and that's how I time it was after nine o'clock in the morning.

Q. Then that is how you fix this particular time, around 9 o'clock?

A. Yes, sir.

LOUIS J. EICHMANN, sworn.

By the Prosecutor:

Q. What is your name?
A. Louis J. Eichmann.
Q. Where do you live?
A. Ellisburg.
Q. What business are you in?
A. The hotel business.
Q. Where is the hotel located?
A. Marlton Pike and Kings Highway.
Q. At Ellisburg?
A. Ellisburg.

Q. On Saturday, July 23rd, was the defendant Young and Garwood in your place of business?

A. There was two men, there was Young and the man Garwood, I didn't know, but my wife said to me—"That is the man Garwood from the ferry."

Q. For what purpose were they in there?

A. Well, when I came in he asked for something and I said I had nothing but near beer and soft stuff, and he said, "Give me a beer," and Garwood got a sarsaparilla.

Q. About what time in the morning was it?

A. Well, I done my work, and as near as I can state, it was quarter after nine or half-past nine in the morning.

Q. Do you know how they reached your place?

A. Why, with a car.

Q. What kind of a car?

A. A Ford sedan car.

Q. Did you notice in what direction they went after they had left your place?

A. When they left they went toward Marlton.

Q. Did you see them again on that same morning?

A. I saw him about quarter after eleven to half-past, as near as I can come to the time, again.

Q. Saw who?

A. Them two, Garwood, as they said this man was Garwood, and Young.

Q. Where did you see them?

A. In the bar room again.

Q. Was the man whom you saw with Young the second time the same one who had been with him the first time?

A. Yes, sir, the man was ——

Q. Was there any distinguishing about him?

A. He was lame.

Q. What purpose did they have in coming into your place the second time?

A. I judge came in for a drink again; they asked again for it and I told them. I had near beer and soft stuff.

Q. And what took place?

A. Why, he took his beer, and Garwood took his sarsaparilla. Then he wanted a twenty dollar bill changed.

Q. Who wanted it changed?

A. Youngy.

Q. What took place about the changing of the money?

A. I gave him the change—he pulled a handful out and said he didn't want the change, and I threw the four fives back in the drawer again.

Q. How long were they in your place?

A. Well, now, according to what I can say, a man with a pair of mules came up and said he passed him at the school house and by the time he got there he was out. Now, that might have been about—it couldn't have been five minutes for a man with a pair of mules to come from the school house to my house, for I could walk up in three minutes.

Q. Was anything said by either of them about going?

A. About what?

Q. About going?

A. Garwood said, "Come, let's go." Now, that was Garwood, the man that was with him said, "Let's go."

Q. Did they go? Did he say for what reason?

A. Went right straight out and went toward ——

Q. Did he say for what reason he wanted to go?

A. No, the jitney man said, "I have got business to do, let's go." That is why that was said; that is what Garwood said both times, or the man they say was Garwood; I didn't know him.

Q. Now, did they go out?

A. They went out.

Q. Did you see them get in the car?

A. I saw them get in the car.

Q. And in what direction did they go?
A. Toward Marlton again.
Q. What kind of a car?
A. A Ford sedan.
Q. Have you seen Harry Garwood since that?
A. No, sir.
Q. Did you see Young, this defendant, since that time?
A. Yes, sir, I saw him on the following Monday, on the 25th, I think it was.
Q. Where?
A. Right in the hotel again.
Q. What took place?
A. He came in there and asked for a ginger ale that time.
Q. Did you have any conversation with him?
A. There was none at all outside of that car.
Q. What was the conversation?
A. He started to talk about it, and we spoke about it, and I asked him where he got the car from, and he said he bought it. I said, "What did you give for it?" He said, "Five hundred dollars." I said, "How are you going to keep that up?" I knowed he was a working man; I said, "How are you going to keep that up? You won't have that long before I will buy it for $300.00." That is all that was said, and he went out.
Q. What kind of car did he have with him?
A. A Ford sedan car.

Cross-examination.

By Mr. Cleary:

Q. Now, Mr. Eichmann, you are quite sure, aren't you, that this first occurrence happened at nine or nine-fifteen in the morning?

A. Now, I said between quarter after and half-past, though I am not sure.

Q. Well, that is to the best of your recollection?

A. That is as near as I can come to it.

Q. All right, that is satisfactory. Now, on the first occasion you say Mr. Young came in with a man that you didn't know, is that true?

A. A man I didn't know; Garwood; my wife came in and said, "This is a jitney man from the wharf." Now, that is all I know about that man.

Q. Now, how long had you known Mr. Young?

A. About six years.

Q. About six years?

A. Yes.

Q. And how well did you know him?

A. Well, he might come in my place maybe once, twice, three times a year; I wouldn't say how often, but he would come over there just when he had nothing to do, some evenings, he would walk over there sometime in the evening, and he was over there right about—in March was the last time he was there.

Q. You know him well enough to call him by name, didn't you?

A. Yes, I did at that time when he kept coming around there, but when he had not been there for a year I had forgot his name.

Q. But you did know him at one time well enough to call him by name?

A. Yes.

Q. Did you call him by his first name?

A. No, always called him Youngy.

Q. In other words, during the years that you have been there, he had been a visitor off and on at your hotel?

A. Yes, sir.

Q. And you knew where he lived in Haddonfield?

A. No, I did not.
Q. Didn't you?
A. No.
Q. But you knew he lived in Haddonfield?
A. I knew he lived in Haddonfield.
Q. He never tried to conceal his identity, did he, on any occasion?
A. Not to me, no.
Q. Now, on both of these occasions you say that it was Mr. Garwood who was anxious to go, is that right?
A. That is right, yes, sir.
Q. And they both had one drink apiece on each occasion?
A. That is right.
Q. Now then, on the following Monday he came in and he ordered a ginger ale, did he?
A. Yes, sir.
Q. Did he say why he wanted that ginger ale?
A. No, sir.
Q. Did he say anything about where he was the night before?
A. He said he had been out to a party.
Q. Did he say anything about his condition?
A. No.
Q. Was it then that you asked him as you have just testified, where he got the car?
A. That was my wife's suggestion; they were talking about it when I came in there, about this car, and I told him I wouldn't have the car if he gave it to me for nothing. He said, "Why don't you have one?" That was the argument; I told my wife she had better go in and not talk about cars.
Q. You asked him where he got the car, didn't you?
A. I asked him, yes.

Q. And he told you he had bought the car for $500.00?

A. $500.00.

Q. Now then, are you sure that the next time was about, as you have said in your direct testimony, eleven or quarter after eleven?

A. Now, I am not sure, I told you that it was about quarter after eleven to half-past, in that time.

Q. Is that to the best of your recollection?

A. That is the best to my recollection; I don't time myself.

Q. You are positive, however, that they were there between those times?

A. They were there twice.

GUSTEN COOPER, sworn.

By the Prosecutor:

Q. What is your name?

A. Gusten Cooper, G-u-s-t-e-n.

Q. Where do you live?

A. Haddonfield.

Q. By whom are you employed?

A. Bell Brothers Company.

Q. What is your occupation?

A. Engineer.

Q. On Saturday, July 23rd, did you see this defendant Young?

A. I did.

Q. Where?

A. In Ellisburg Hotel.

Q. About what time?

A. Why, something after eleven o'clock, I don't know just the minute, after eleven, though.

Q. Who was with him?
A. I don't know, some young man.
Q. Who else was in the hotel?
A. Not anyone.
Q. Was Mr. Eichmann there?
A. Yes, he was there.
Q. What were Young and this man doing in the hotel?
A. Why, I was standing in the hotel talking to Mr. Eichmann on some business matters, and Youngy and this man came in, and he came in and asked for drinks, and the bartender asked him what he would have, and Youngy said he would take a beer, and he asked the other fellow who was with him what he would have, and he said he would take a sarsaparilla.
Q. Who asked him what he would have?
A. Youngy.
Q. And by the bartender you refer to Mr. Eichmann, do you?
A. Yes, sir.
Q. He is the proprietor of the hotel?
A. Yes, sir.
Q. Did any further conversations take place while they were in the hotel?
A. Well, Youngy had drunk his beer and this fellow that was with him drunk the sarsaparilla and Youngy asked for the change of twenty dollars, asked Mr. Eichmann to change twenty dollars for him, could he change twenty dollars, and Mr. Eichmann told him he guessed so. So Mr. Eichmann reached back and pulled out a wooden drawer, reached back and opened up a wooden drawer and got twenty dollars change for him, and Youngy ran down his hand in his pocket and pulled out a bunch of notes, loose notes in his hand, and then Youngy says, "Never

mind," and when Youngy says, "Never mind," the fellow that was with him, said, "Oh, come on, let's go." Youngy says, "All right." Then they walked out of the hotel and got in the car and went on up the pike.

Q. Did you see them leave the place?

A. I did.

Q. In what direction did they go?

A. Went up the Marlton Pike toward Marlton.

Q. Were they riding or walking?

A. They were riding.

Q. What kind of car?

A. Ford sedan.

Cross-examination.

By Mr. Cleary:

Q. How long have you know Mr. Young?

A. Oh, I don't know, eight or ten years, ten or twelve years, such a matter.

Q. So that you knew him this day when he came in, didn't you?

A. How is that?

Q. You knew him this day when you saw him at the hotel?

A. Yes, sir, I did.

Q. And to the best of your knowledge it was sometime after eleven o'clock?

A. Sometime after eleven o'clock.

Q. Now, do I understand you correctly to say—do I understand you correctly that you said rather that Mr. Young pulled out a twenty dollar bill and asked to have it changed?

A. No, sir.

Q. Who asked to have the bill changed?

A. Youngy asked Mr. Eichmann could he change twenty dollars.

Q. Well, did he have the twenty dollars in his hand?

A. I don't know how much he had; he had a handful of notes, they were loose notes; I don't know whether they were twenties or what they were.

Q. What did Mr. Eichmann say?

A. Mr. Eichmann told him he thought he could.

Q. Then what did Mr. Young do?

A. Told him never mind.

Q. Did he pull out some notes then?

A. He had pulled the notes out, but he put them back in his pocket when he said, "Never mind."

Q. How many notes did he have in his pocket?

A. I don't know how many he had.

Q. How many notes did he have in his pocket?

A. I couldn't tell you how many.

Q. Quite a large roll?

A. Quite a bunch of loose paper notes, I don't know how many.

Q. Quite a bunch of them, were there?

A. Yes.

Q. Do you know what the denominations of the notes were?

A. No, I don't know.

Q. Did he seem to have plenty of money?

A. I don't know whether he had plenty or not; he had a handful of loose notes.

Q. He had a handful of loose notes?

A. Yes, I don't know whether it was plenty for him.

ADELAIDE MARTIN, sworn.

By Mr. Wolverton:

Q. Mrs. Martin, where do you live?
A. 152 Allen Avenue, Haddonfield.
Q. Do you know the defendant, Young?
A. Yes.
Q. On Saturday, July 23rd, did you see him?
A. Yes.
Q. Where?
A. At my home.
Q. About what time?
A. I think it was between 11.30 and 12 o'clock, noon.
Q. And what took place at your home?
A. Well, he came to my door and asked for my husband, and I told him he was not at home, he was working, and I noticed some blood spots on his face, and I asked him had he been in a fight, and he said, "Why?" and I said, "You have blood on your face" and he asked me if he might come in and wash his face, and I said yes, and after he washed his face he emptied a revolver on the table in the kitchen. My children were watching him and I took the children and left the room and I came back and tell him he better go on out and he went home or went somewhere.
Q. How did he arrive at your place?
A. In an automobile.
Q. What kind?
A. It was a new Ford sedan.
Q. Had you ever seen the car before?
A. No.
Q. What kind of car was it you say he had?

A. A new Ford sedan.
Q. What kind of revolver was it he had?
A. It was a black automatic revolver.
Q. Was it a gun like that which I hold in my hand?
A. It looks very much like it.

Mr. Wolverton: I ask that it be marked Exhibit S8.

The Court: Want it marked for identification?

Mr. Wolverton: It is immaterial.

The Court: You didn't state.

Mr. Wolverton: I thought I had offered it. Is there any objection?

Mr. Cleary: I haven't objection to it.

The Court: It will be marked Exhibit S8 and received in evidence.

(Revolver admitted in evidence and marked Exhibit S8.)

Cross-examination.

By Mr. Cleary:

Q. Now, Mrs. Martin, are you married?
A. Of course.
Q. Well, I mean you are married now at the present time?
A. Yes.
Q. Where is your husband?

Mr. Wolverton: If the Court please, I don't think that is any part of the cross-examination, as to where this lady's husband may be. She has testified ——

The Court: It seems to me to be immaterial.

Q. Were you alone on this day when Mr. Young came there?

A. My children were there.

Q. Your husband at that time was living with you, wasn't he?

A. Yes.

Q. But he wasn't home?

A. No, he was working.

Q. What is your husband's occupation?

A. Ice man.

Q. What time does he go to work in the morning?

Mr. Wolverton: If your Honor please, I don't think it is proper cross-examination.

The Court: I think it is perhaps admissible, Mr. Wolverton. She has testified as to the hour and she has said that her husband was not there and that Mr. Young inquired for her husband.

Mr. Wolverton: I withdraw the objection.

Q. What time does your husband usually go to work in the morning?

A. Between 6 and 7 o'clock.

Q. And what time does he usually return?

A. Well, his work is of such a nature that he never returns at the same hour, but on that day he reached home between one and two o'clock as near as I can remember.

Q. Well, what is the usual hour for him being home other days, days he came home, earlier than that, other days?

A. Well, that was in the summer and ice men are busy in the summer and he is never before twelve o'clock then.

Q. But his usual hour in the summer is somewhere around twelve o'clock?

A. After twelve, twelve o'clock or after.

Q. How old are your children?

A. My oldest child is seven. The next one is six. The next one is four, then there is one three and one two years old.

Q. Did Mr. Young ask for Mr. Martin on this day?

A. Yes, when he came to the door he asked for him.

Q. Did he state the nature of his errand?

A. No.

Q. How long did he stay at your place before he left?

A. Not longer than ten minutes.

Q. Did you afterward see him again, that day?

A. Yes, he came back in the afternoon.

Q. What time did he return in the afternoon?

A. Between two and three o'clock, I think.

Q. Was your husband home at that time?

A. Yes.

GEORGE WEBSTER, sworn.

By Mr. Wolverton:

Q. What is your name?

A. George Webster.

Q. Where do you live?
A. Trenton, New Jersey.
Q. What is your business?
A. I am in the textile business.
Q. Do you know the defendant, Guilford Young?
A. Yes, I know Mr. Young.
Q. How long have you known him?
A. Well, close to a year.
Q. Where did you get acquainted with him?
A. I met him at Mr. Green's house.
Q. Where is that?
A. 714 Spruce Street.
Q. And under what circumstances?
A. Just on a friendly turn, that is all, just was introduced to him.
Q. By whom?
A. By Mr. Green's daughter.
Q. What is her name?
A. Miss Amanda Green.
Q. Were you calling upon her?
A. I used to visit the house, yes, I had gone there before I met him.
Q. To visit her?
A. No, just to visit the house as a friendly turn.
Q. How did Young happen to be there?

Mr. Cleary. I don't think that is relevant. I object to it.

The Court: It might be relevant.

Mr. Cleary: I would like the Prosecutor to state why.

Mr. Wolverton: If the Court please, this witness was used by the defendant in a very important part

of this case and it is my desire to develop the fact that he has known him for a long time and that their intimacy was such that he was the natural one to whom he would go to use for the purpose which he did.

The Court: I think the question is allowable and I will allow the question.

Q. How did you happen to meet Young there?

A. Well, as far as I know, I can't say but I heard that Mr. Young was introduced by the next door neighbors, Smiths, by Smith's daughter, next door to that, as a very nice, quite young man.

Q. Introduced to whom, to you?

A. To Miss Green.

Q. To Amanda Green?

A. Yes.

Q. Well, then, he was there to see Amanda Green when you met him?

A. Yes.

Q. Is Amanda Green married or single?

A. Single.

Q. That's been about a year ago?

A. Yes, somewhere around there.

Q. You were calling on one sister as I understand it?

A. I used to visit the house.

Q. Well, there was a sister there that you were interested in?

A. Yes, I visited the house.

Q. And did you visit the house or the sister?

A. I visited the house, the family.

Q. And the sister was there?

A. I visited the family and the sister was there, yes.

Q. And he was visiting the other sister?

A. Well, I didn't say that he was visiting one sister. I visited the house, the family.

Q. And have you visited the house since then?

A. I have.

Q. Have you found anybody home?

A. Have I found anybody home?

Q. Yes.

A. Sometimes I went there they were home and sometimes they wasn't home.

Q. Have you seen Young there except that time that you met him about a year ago?

A. See Young there? Yes, when I went there Young was there.

Q. How frequently?

A. Well, I didn't keep tabs on him, because some nights he was there and I wasn't, but I was told he was there.

Q. How frequently have you seen him there?

A. Oh, yes.

Q. How frequently?

A. I would say about three or four times a week.

Q. Three or four times a week?

A. Yes.

Q. And that wouldn't include the times that you were not there, would it?

A. Well, I didn't keep tabs on that.

The Court: That is a little argumentative, Mr. Wolverton.

Q. For the past year then you have been in contact with Mr. Young three and four times a week by meeting him at the home of Amanda Green in Camden?

A. Yes.

Q. On the 16th of July last, did he request you to do anything for him?

A. On the 16th of July last? No.
Q. On the 15th?
A. On the 15th, yes, on Friday night he asked me if I would get his license for him.
Q. His license for what?
A. For a car that he had.
Q. Had you seen the car?
A. No, I hadn't seen the car, yes, I had seen the car, he had the car previous, a week before that.
Q. What kind of a car was it?
A. Well, I don't know much about a car.
Q. What kind was it?
A. But the car was supposed to be a Ford car, it was an old car.
Q. Is there any doubt in your mind as to what kind it was?
A. As far as the doubt concerns, I wouldn't want to say what kind of car it was. I didn't investigate.
Q. You saw it?
A. Yes, I saw it.
Q. And you couldn't say it was a Ford or not?
A. I can't tell you the reason why.

The Court: That is not responsive. Just read the question.

(Question repeated.)

The Witness: I can give you an explanation of that.

The Court: You want the answer from the witness, do you not?

Mr. Wolverton: Yes.

(Question repeated.)

A. I will make a statement on that——

The Court: You can tell whether it was or not a Ford car, that is, if you know a Ford car when you see one.

The Witness: Well, if you give me a chance I will explain that.

The Court: Will you please answer this question, Mr. Webster?

The Witness: I couldn't tell what was a Ford car just at that time.

Q. Do you know a Ford car when you see one?
A. Yes, I do after that.
Q. What is it?
A. Yes, I do now.
Q. Well, was that a Ford car?
A. The first car he had?
Q. Yes.
A. Well, it was a Ford car but you asked at the present time, when I saw the car I did not know it was a Ford car because Mr. Young told me previous to that that he was expecting to get some kind of car, and that wasn't the name of the car he got.
Q. You know that what you saw then was a Ford car?
A. Yes.
Q. Was it a closed car or open car?
A. It was a sedan, closed car.
Q. And did he tell you where he had gotten it?
A. No, he did not say.
Q. How long did you say he had had it?
A. I got the license for him on the 16th. It was Saturday before that.

Q. You had seen it the Saturday before that?

A. The first time, yes. It was newly painted.

Q. How did you happen to get the license for him?

A. Well, I was at the house and Mr. Young was getting ready to leave. That was somewhere around half-past ten.

Q. On Friday evening, July 15th?

A. Yes, and he said they were laying men off at his place and he didn't want to take time off to get his license and I was asked what I had to do tomorrow and as I wasn't working Saturday afternoon, Saturday morning, so he asked me if I wouldn't try to get his license for him. He gave me the money and I went up on Saturday, that was the 16th, to get his license for him, and I went up and asked for a license for Guilford Young and they gave me the license, the license, and a driver's permit.

Q. Did he give you a bill of sale to take with you?

A. He gave me a bill of sale and I delivered the bill of sale to the man I got the license from.

Q. Is that the bill of sale?

A. Yes, this is the bill of sale, James Brown.

The Prosecutor: I ask that it be marked an Exhibit S9.

Mr. Cleary: All right, I have no objection.

The Court: It will be marked S9 and received in evidence.

(Said paper was marked Exhibit S9 for the state.)

Q. I now show you an application card for an automobile license dated July 16th, 1921, and signed,

"Guilford C. Young," and ask who wrote the name, "Guilford C. Young."

A. Well, I wrote that; that is my handwriting.

Q. Is that the application card which you signed on July 16th, in accordance with the request that Young made the previous evening?

A. Well, if that card is marked July 16th, that is supposed to be the card.

Q. Look on it and make sure.

A. Yes.

The Prosecutor: I offer this in evidence and ask that it be marked Exhibit S10.

The Court: It will be marked Exhibit S10 and received in evidence.

(Said paper so marked.)

Q. I now show you a license card of the State of New Jersey under the name of William L. Dill, commissioner of motor vehicles, dated the 16th day of July, and ask if that is the license card that was given to you by the agent in charge in Camden, after you had signed the application card which has been marked Exhibit S10? If you wish to be certain——

A. Yes, that is the card.

The Prosecutor: I offer it in evidence and ask that it be marked Exhibit S11.

The Court: It will be marked Exhibit S11 and received in evidence.

(Said card so marked.)

Q. I now show you an application for a permit to drive a car, addressed to the commissioner of motor vehicles, signed Guilford C. Young, and ask if you signed that application on July 16th?

A. Yes.

The Prosecutor: I offer this in evidence and ask that it be marked Exhibit S12.

The Court: It will be so marked and received in evidence.

(Said permit so marked.)

Q. After you had made the application did you pay a fee, a license fee?

A. Yes, they took their license.

Q. From whom did you receive the money to make that payment?

A. Young.

Q. At the time you made the application for the license, did you receive a set of tags?

A. Two tags, yes.

Q. I ask you to compare these tags with Exhibit S11, and tell me whether they are the tags that you received on that day?

A. They are the tags, yes.

The Prosecutor: I offer these in evidence and ask that they be marked Exhibit S13.

The Court: They will be marked Exhibit S13 and received in evidence.

(Said tags so marked.)

Q. What did you do with the license card which is marked Exhibit S11, and the permit to drive which is marked Exhibit S12, and the tags which are marked Exhibit S13, after you had received them from the motor vehicle representative in Camden?

A. I took them to the house of Mr. Green, 714 Spruce Street, and when I got there Mr. Young wasn't there and I laid them on the table, saying to give them to Mr. Young, but Mr. Young came before I left the house, so they were laid there on the table there for him.

Q. Mr. Young came before you left?

A. Before I left, yes.

Q. What time?

A. Well, it must have been after his working hours.

Q. What is it?

A. I couldn't tell you just exactly the time it was; I didn't pay any attention to that.

Q. It was on Saturday?

A. It was on Saturday, yes, it was on the 16th, the same day.

Q. About what time?

A. Well, I didn't keep any tabs on the time at all.

Q. Was it morning, afternoon or night?

A. It was in the afternoon.

Q. What time, early afternoon or late afternoon?

A. Early afternoon.

Q. Was it shortly after noon, or toward the middle?

A. It was shortly after noon.

Q. And what did you say to Young and what did he say to you when you delivered these tags to him?

A. Well, he told me I done him a great favor; that is all he said.

Q. When did you see Young again after that?

A. Well, I saw Young on Saturday night.
Q. That same night?
A. That same night, yes, the night of the 16th.
Q. Where?
A. I met him there at Green's house.
Q. Had you stayed there all afternoon or had you gone away and come back?
A. Well, I went away and came back.
Q. Was he there when you left?
A. No.
Q. He had taken his tags and gone?
A. Yes, I can't give you the exact time or anything like that on that day.
Q. Did he tell you from whom he had bought the car that he wanted these tags for?
A. No, I had no conversation concerning that.
Q. Did he explain to you how, if it is, as you say, that he had a car a week before, that he was applying then for new license tags for that car?
A. I didn't get you on that.
Q. I say, did he explain to you, if it is as you say, that he had this car a week before you made this application, why he asked you, wanted you to get a new set of tags for it?
A. No, no explanation.
Q. Was Young there in the evening when you came back?
A. On the 16th?
Q. Yes.
A. I think he was, but I am not quite sure.
Q. Did he have his car?
A. Yes, sir.
Q. Did you ride in it?
A. I don't think I did on that night.
Q. Did you see him during the following week after the 16th?

A. Yes, I saw him during the following week.

Q. Did you notice whether those tags were on the car?

A. Yes, those tags were on the car.

Q. On what car?

A. On the car he had the 16th of July.

Q. Did you notice whether they were those tags or some other tags?

A. They were those tags he had on that car the 16th of July.

Q. How did you happen to notice that?

A. Well, I didn't have any ways particular of finding out, just going around the car I saw them.

Q. Well, did you carry the number in your mind?

A. No; well, the only thing I carried it by, the number in my mind, is when I received the numbers I looked at them and said, "Well, there is three 3's, a good poker number," that is about as far as I can remember of the numbers.

Q. Did you afterward see him with another car?

A. Did I afterward what?

Q. Did you at any time after that see him with another car?

A. Yes.

Q. When?

A. On July 23rd.

Q. What day of the week was that?

A. That was Saturday.

Q. And when did you see him?

A. Well, it was between the hour of one and two.

Q. Where did you see him?

A. At Mr. Green's house.

Q. And did he have a car with him?

A. He had a car outside, standing outside, didn't have it in the house with him.

Q. I am awfully glad you gave me that information, I might have been misled if you hadn't.

A. Well, you asked me.

Q. So he brought a car to Mr. Green's house and left it outside the door, did he?

A. I couldn't tell you whether Mr. Young brought the car or whether he didn't bring the car; when I went to Mr. Green's house a car was standing outside and Mr. Young was in the house; I did not know Mr. Young was there until I got into the house; he was standing in the dining room as I passed in. I brought a strap to fix—he had a strap broken on the old car, and I brought a piece of leather for him to put a strap on the old car; I said, "Young here is a strap I brought for you to fix the old car." He said, "Oh, never mind the old car, I got tired fixing it, and I got a new car." That is all I know of the new car.

Q. So then the car that he had the week before needed a strap on the door, did it?

A. Yes.

Q. And he had asked you to get a strap, did he?

A. Well, he didn't ask me to get a strap; I had a piece of leather and I told him I would give it to him for a strap.

Q. And you brought it for him that Saturday?

A. That Saturday, yes.

Q. And you offered it to him?

A. Yes.

Q. And he said he didn't need it now he had a new car?

A. That is it.

Q. Did he say where he had gotten it?

A. No.

Q. Did you ask him?

A. No.

Q. Did you ask him how much he had given for it?

A. No.

Q. No further conversation?

A. No further conversation.

Q. Except that now he had a new car?

A. That is all.

Q. Did you take a ride in it?

A. Yes, I took a ride in the car that Saturday night.

Q. Who else went along?

A. Mr. Green's two daughters, Young and myself.

Q. Did you go any place with it the following day?

A. The following Sunday?

Q. Yes.

A. Yes.

Q. Where did you go?

A. Well, the first stop we made was Pine Beach.

Q. Pine Beach, New Jersey?

A. Yes, from there to Ocean Gate.

Q. Who was in the car?

A. The four of us.

Q. What four?

A. Mr. Green's two daughters, Young and myself.

Q. Then what did you do after you got to Pine Beach?

A. Oh, we just spent the day there. We went down to Barnegat.

Q. On a picnic?

A. Well, yes.

Q. What did you say?

A. Yes, if you want to call it that.

Q. Did you then go with him again during that week at any time?

A. That was the last Sunday we went out.

Q. Well, during the week days, did you make any trips with him?

A. No, I didn't.

Q. Did you see him during that week?

A. No.

Q. Was the car in which you went to Pine Beach the following day the same car that you had seen him have on the 16th of July?

A. No, it is not the same car.

Q. But they were both Ford sedans, were they?

A. The last car he had was a Ford sedan, yes, I could swear to that.

Q. Well, didn't you swear that the other one was a Ford sedan?

A. I wouldn't want to.

Q. Well, what did you want to swear to if not that?

A. It was a car, an old car.

Q. And this was a new one, this last one?

A. Yes.

Cross-examination.

By Mr. Cleary:

Q. Now, Mr. Webster, what is your occupation?

A. Wool sorter, by trade, textile business.

Q. How long have you been a wool sorter?

A. Eleven years at least.

Q. During that time have you owned a car?

A. No, sir.

Q. Have you learned to drive a car?

A. No, sir.

Q. Never had anything to do with automobiles at all?

A. No, sir.

Q. Did you ever pay much attention to the different makes of automobiles?

A. No, sir.

Q. Now, you say that you met Mr. Young about a year ago?

A. Yes.

Q. How often would you go to the Green house a week?

A. Well, I never kept any tabs there.

Q. I mean just about how often, Mr. Webster?

A. Well, about three or four times a week.

Q. For how long a period? Has that just been recently?

A. No, I have known Mr. Green for five years and over.

Q. But as late as a year ago did you go that many times a week?

A. Yes, sir.

Q. You didn't always go that many times a week each week though, did you?

A. Yes.

Q. Weren't there some weeks you only went once or twice a week or three times a week?

A. Well, I never kept any tabs on that.

Q. Now, you didn't see Mr. Young on all the occasions you were there, did you?

A. Well, there were sometimes I was there that Mr. Young wasn't there.

Q. Sometimes you were there when he wasn't there, isn't that right?

A. Yes.

Q. As far as getting these license tags for Mr. Young is concerned, what was your object in doing that?

A. Well, I had no object at all, only Mr. Young asked me to go out for a ride with the rest of the company and I thought one kindness would deserve another. That was the only reason.

Q. You felt friendly toward him, did you?

A. That's all.

Q. It was because of that friendly spirit with him

you agreed to save him his time from work, is that right?

A. Yes.

Q. So he wouldn't loose any time from work?

A. He said he would have lost his job if he took any time off.

Q. Do you know whether Mr. Young did work?

A. No, I couldn't tell you that.

Q. You saw him Saturdays and Sundays, some time in the daytime, did you?

A. Yes.

Q. Now, this first car that you aren't so sure about what make it was, was that an old car or a new car?

A. That was an old car.

Q. Was there anything that distinguished that old car, the appearance of it, from the new car? Was there any parts of it that were different?

A. Yes.

Q. What parts of it were different from the new car?

A. Well, the whole thing, it was an old car, it was painted over.

Q. Well, was there any addition to this old car or anything left off that was different from the new car?

A. Yes.

Q. What was it?

A. The old car has an extra set of springs, and extra set of coil springs, and it had a bumper on the front.

Q. What do you mean by a bumper, one of these big steel rods, that project from the front to protect the machine and also the people?

A. It wasn't a rod, it was a curved bumper.

Q. A curved piece of steel, was it?

A. Yes.

Q. And did the new car have that on?

A. No.

Q. And that is what in your mind distinguishes the old car from the new car, is it?

A. Yes.

Q. And you had been riding in this car for about a week previous to the time you had got the license tag and had seen the car for about a week before that time?

A. Yes.

Q. Had you ever been in that car before you got the license tags, the new license tags?

A. Well, I can't state that.

Q. But you were in it after you got the new license tags?

A. Yes.

Q. And you were in the new Ford sedan car too, the second car?

A. Yes.

Q. Now, then, you are sure that it was on Friday the 15th of July, that he asked you and it was the 16th you got the tags, is that right?

A. Yes.

Q. And then it was the following Saturday that he got the new Ford sedan, is that true?

A. Yes.

Q. In the meantime between the 16th day of July and the 23rd day of July, you had seen the old car how many times?

A. Well, I can't give you any statement.

Q. Well, two or three times?

A. Yes.

Q. And the old car also had a strip broken on the door, didn't it?

A. Yes.

Q. Did the new car have a strap broken on the door?

A. No.

Q. On this Sunday that you were talking about, what was this, wasn't this just a little excursion into the country, it wasn't any picnic, was it?

A. What do you mean? July 23rd?

Q. No, the Sunday after it, wasn't it?

A. The 24th.

Q. Whenever it was you went down to Pine Beach?

A. That was in the new car.

Q. You wouldn't call that a picnic, would you?

A. No, I didn't call it a picnic.

Q. What would you call it, just a little trip into the country?

A. Just a little trip.

Q. You came back again the same day?

A. Yes.

RAYMOND E. WATSON, sworn.

By Mr. Wolverton:

Q. Where do you live?

A. Woodbury.

Q. What is your occupation?

A. Police officer.

Q. Do you know the defendant, Guilford Young?

A. I do.

Q. How long have you known him?

A. Fifteen years or more.

Q. Were you engaged in duties as a police officer on Sunday evening, July 31st?

A. I was.

Q. At what place?

A. Broad and Cooper.

Q. What were your duties?

A. Traffic officer.

Q. Did you see the defendant, Young, on that evening?

A. I did.

Q. Under what circumstances? Will you describe it to us, please?

A. Well, I was standing at the corner of Broad and Cooper at the semaphore, directing traffic, between the hours of ten and eleven. I seen this car come up, a Ford sedan car, on a reckless rate of speed. I was just about to call the man to a halt at Broad and Cooper and Guilford Young came back to me out of his car, "Hello, Watson," I said, 'Hello, Youngy," he said to me, "How is everything going?" I said, "All right," and I looked at the car and I said to Youngy, "You are coming up pretty strong aren't you?" he said, "Yes, Watson, I am making good money now. I am working in Philadelphia." I said, "Yes?" and I could just about see this lady in the car, that is to the rear of her. I couldn't see her face and I said, "Who is your friend?" and he said, "That is just a friend of mine." We have been out riding, and I shook hands with him and he said, "Watson, I have got to be going." I said, "All right, I will see you again." I said, "Where are you going?" he said, "I am going home."

Q. What kind of car was it?

A. A Ford sedan.

Q. Could determine whether it was a new car?

A. Well, the way it looked to me it was, yes.

Cross-examination.

By Mr. Cleary:

Q. Now, Mr. Watson, I didn't quite hear you, I didn't hear you when you said how long you had known Mr. Young.

A. Sixteen years or more.

Q. How did you know him? How did you know him? How did you meet him?

A. How did I meet him?

Q. Yes.

A. Well, Young and I pretty near grew up together at Paulsboro and I worked at the powder plant in Gibbstown with him.

Q. Before the time you met him on this Sunday?

A. That's before, yes.

Christian Fluger, sworn.

By the Prosecutor:

Q. Mr. Fluger, where do you live?

A. Ellisburg, New Jersey.

Q. What business are you in?

A. Grocery store, meat of all kinds, a general store, you might as well say.

Q. On Sunday, July 24th, did you see this man, this defendant, in your place of business?

A. Yes, sir.

Q. For what purpose was he there?

A. Getting a shovel.

Q. He wanted what?

A. Getting a shovel.

Q. What conversation did he have with you about a shovel?

A. Why, he asked me if I had one to sell or borrow one, and I told him no. I asked him what kind he wanted and he said he wanted a round sand shovel; I told him I didn't have any.

Q. Did you ask him what he wanted it for?

A. I did, but he never answered.

Q. Did he then leave your place?

A. Yes, sir.

Cross-examination.

By Mr. Cleary:

Q. What time of the day was it?

A. Why, that was right shortly before dinner.

Q. Before twelve o'clock?

A. Yes.

Q. And did he ask for any particular kind of shovel?

A. Well, he wanted a round, pointed sand shovel; that is the only kind he asked for.

Q. Did you have one that you could sell him?

A. No, sir, I did not.

Q. You didn't have any shovels at all?

A. Didn't have none to sell, no.

Q. No shovels to sell?

A. No, sir.

EDWARD B. HOUGH, sworn.

By the Prosecutor:

Q. What is your name?
A. Edward B. Hough.
Q. Where do you live?
A. Haddonfield.
Q. What is your occupation?
A. Police officer.
Q. Do you know the defendant, Guilford Young?
A. Yes.
Q. How long have you known him?
A. Twelve or fifteen years.
Q. On Tuesday morning, August 2nd last, did you see the defendant, Guilford Young?
A. Yes, sir.
Q. Where and under what circumstances?
A. Asleep in the back seat of a Ford sedan.
Q. Where was the sedan located?
A. On the Mill Road between the Kings Highway and Evans Mill.
Q. What kind of a locality is that with respect to Haddonfield generally?
A. Why, it is the lower end of Haddonfield, there are no houses there at all, it is right alongside of a piece of woods; the other side of it goes down into a meadow, Cooper's Creek runs through it.
Q. How did your attention become attracted to him?
A. Why, we was looking for him, and a young man told me that there was a car lying down the Mill Road.
Q. You went down to investigate it?
A. Yes.

Q. Who went with you?

A. Acting Chief Dennis, which is chief now.

Q. What did you find when you came to this Ford sedan car?

A. Well, found a Ford car there with this man asleep in it, and I hit the car with my hand and all six of the windows fell, kind of ran in rotation, like that, they dropped.

Q. Did you see any weapons?

A. Yes, he had a gun in his hand, in his right hand.

Q. I show you Exhibit S8 and ask you if that is the gun that he had in his hand?

A. I should say so, looked very much like it.

Q. It was that kind of gun?

A. Yes.

Q. What did you do with the gun that you got from him on this occasion?

A. I put it in my pocket and gave it to Mr. Doran.

Q. Did you open the revolver to see with what it was loaded?

A. No, sir.

Q. Did you at any time open it?

A. No, sir.

Q. You delivered it just as it was to Mr. Doran?

A. Yes, sir.

Q. What did you say to Guilford Young when you saw him in the car?

A. Well, I hit the car and then stepped up on the running-board of the car and put my head in the car and hollered at him; finally he awakened and dropped the gun, tried to cover it up with a blanket, and I says to him, "Guilford, what in the devil are you doing down here?" He said, "What in the hell are you doing here?" I said, "We got a phone message at the hall there was a man lying in the car

they thought possibly was dead, and," I said, "drive us to the hall as quick as you can, it is raining," and I got in the car and sat on the gun; he walked through the two open seats in front and sat down, and Dennis got in and sat alongside of him; and he drove up Main Street, went up the hill, up to the Main Street, up Mann's Hill.

Q. Where did you take him?

A. Took him to the hall, Haddonfield Fire House.

Q. You mean the police headquarters?

A. Police headquarters, yes.

Q. What did you do after you reached the hall with him?

A. Told him to follow Dennis in the Hall. He walked inside and we put him under arrest as soon as he got in.

Q. Then what did you do?

A. Well, I searched his pockets.

Q. What did you find?

A. I found steel jacketed bullets in both pockets, dipped in brass.

Q. Are they the bullets that you found in his pocket (showing witness cartridges).

A. Yes, sir, they look like the bullets, yes, sir.

The Prosecutor: I ask that they be marked Exhibit S14.

The Court: They will be so marked and received in evidence.

(An envelope containing said cartridges was marked Exhibit S14 for the state.)

Q. Where did you find those bullets?

A. In both of his coat pockets, on both sides of his coat.

Q. What else did you find?

A. I found a wallet in his coat pocket.

Q. Is that the wallet (showing witness wallet)?

A. Yes.

Q. Did it have papers in the wallet?

A. I couldn't tell you; I didn't open it at all; I just threw it on the desk.

Q. What did you do with it?

A. Handed it to Mr. Doran.

Q. How soon after you took it out of his pocket?

A. Well, we got Mr. Doran a very short time afterward, a very few minutes afterward.

Q. Mr. Doran was in Haddonfield at the time, wasn't he?

A. Yes, sir.

The Prosecutor: I offer that wallet to be marked Exhibit S15.

Mr. Cleary: Are all the contents in there just the same as it was?

The Prosecutor: Yes, except the driver's license.

The Court: It will be marked Exhibit S15 and received in evidence.

(Said wallet is so marked.)

The Prosecutor: The other papers were the driver's license and permit which were in it.

Q. What did you do after you brought him to headquarters and searched him—did I understand you to say you notified Mr. Doran?

A. Yes, we locked him up; we locked him up, then I went after Mr. Doran; Mr. Doran was up the main

street about where we should have been located; we passed Mr. Doran coming down and I waved at him, but he didn't see me, he said.

Q. Did Acting Chief Dennis assist you in the search that was made?

A. Yes, sir.

Q. Did he in your presence find anything on this defendant?

A. Yes, sir; he found a gun holster on his right side.

Q. Is that the holster that he found (exhibiting it to witness)?

A. That looks like it, yes, sir.

The Prosecutor: I ask that that be marked Exhibit S16.

The Court: It will be marked Exhibit S16 and received in evidence.

(Tag attached to said holster is marked Exhibit S16.)

Q. Then when Doran arrived there in a minute or two you turned the prisoner and the articles which I have offered in evidence over to Mr. Doran?

A. Yes, sir.

Q. And Mr. Smith?

A. No, Mr. Smith did not come in there with Mr. Doran; Mr. Doran came in and took him out.

Cross-examination.

By Mr. Cleary:

Q. Mr. Hough, you have been a police officer for quite a good many years, haven't you, in Haddonfield?

A. Eight years.

Q. Now, what time in the morning was this that you——

A. Just quarter of seven exactly.

Q. Quarter of seven on what day—what day of the week?

A. On Tuesday morning, the 2nd, I think, wasn't it?

Q. The 2nd day of August?

A. I think that was the day of the month.

Q. What week-day was it, do you remember?

A. It was on Tuesday.

Q. When did you receive the information that this man was down there, when did you receive the report?

A. That he was down the hill?

Q. That somebody was down there in the car?

A. Oh, two or three minutes before I went there.

Q. And you went immediately there?

A. Yes, there wasn't much further to go than the length of this room.

Q. Was he sound asleep when you got there?

A. Yes, I had to call him three times.

Q. You had to call him three times?

A. Three or four times.

Q. Now, what do you suppose caused those windows to fall?

A. I think he had them set there for a warning; that is what it looked like.

Q. You don't know that as a matter of fact, do you?

The Prosecutor: No, you asked him what he supposed.

Mr. Cleary: I can ask him whether he knows it as a matter of fact.

A. No, I don't know it as a matter of fact, but it looks very much like it; that is what an officer would think anyway.

Q. The windows fell immediately when you shook the car?

A. When I hit it like that, yes.

Q. You claim he had the revolver in his hand?

A. He did, yes.

Q. You are sure his hand was not near where the revolver was on the seat?

A. He had the revolver in his hand; I was standing on the running-board with my head that close to his.

Q. What seat was he on?

A. On the back seat.

Q. What else was on the back seat? What was he sitting on?

A. He was lying on the cushion and part of the blanket, and part of the blanket was on the floor.

Q. When you actually took that revolver you took it from underneath the blanket, did you not?

A. Yes.

Q. That is where it was when you took it?

A. Yes.

Q. And not from his hand?

A. No, not out of his hand.

Q. He was lying on the blanket right near the

place where you took the revolver from, isn't that right?

A. Yes, he was lying on the blanket, part of this blanket, that is, and the other part was on the floor.

Q. Now, then, Mr. Hough you say that you took some bullets from him in the jail?

A. Yes.

Q. How many bullets would you say you took in actual numbers?

A. I couldn't tell you; there was some in both pockets; I imagine there was in the neighborhood of thirty, somewhere along there, possibly.

Q. And they were bullets which fitted this gun, weren't they, this revolver?

A. I couldn't tell you, I didn't try them in the gun.

Q. Well, from your observation and knowledge of bullets do you suppose they would fit in the gun?

A. Yes, I don't think he would carry them for anything else.

Q. And they are the ordinary type of bullets for that gun, aren't they?

A. I believe they are, yes.

Q. Did you ever own a revolver like that before?

A. No.

Q. Or did you ever own a revolver like that?

A. No, sir.

Q. You have no knowledge of what kind of bullets it was necessary to use in a revolver of that size?

A. Only what I have seen.

Q. But your knowledge is very limited, isn't it?

A. I don't know, I have seen lots of those, seen lots of them opened, had them explained, people tried to sell them to me many times.

Q. All right; I mean as far as your knowledge of bullets is concerned, it is very limited, isn't it?

A. Why, I think the bullets were for that gun.

HARRY G. McCRACKEN, sworn.

By Mr. Wolverton:

Q. Mr. McCracken, where do you live?
A. My home is in Philadelphia, 1748 Marshall Street.
Q. Do you have a place in Camden County?
A. Springdale Road and Marlton Pike.
Q. How far from Ellisburg?
A. Three miles and a half.
Q. Do you remember on Sunday, July 31st, the finding of a body in that locality?
A. I do.
Q. Did you see the body?
A. I did.
Q. About how far is your place from the body?
A. Going direct through the woods I should say about 450 feet.
Q. How far by the road?
A. That would be about 400 feet up the road and about 200 feet in the road.
Q. By whom was your attention directed to the body?
A. By four young men in an automobile.
Q. About what time?
A. Quarter to twelve.
Q. Was Mr. Kelley and was Mr. Downs the young men, two of them?
A. I couldn't tell you their names, Mr. Prosecutor. I handed their names over to the authorities.
Q. Well you have seen them here this morning?
A. I have not seen the gentlemen.
Q. Is Mr. Kelley here? Is this one of the young men (indicating)?

New Jersey State Library

A. That's one of the young men.

Q. Mr. Downs (indicating)?

A. Yes.

Q. Did you go with them to the body?

A. No, there was only one when I went back, a tall light complected man and I went back to the body.

Q. With him to the body?

A. With him to the body, yes.

Q. And in what condition did you find the body?

A. Well, in decay.

Q. And what was noticeable about the clothing?

A. Well, at the time I walked into the place I said it looked as though it is another trimming, for the pockets were turned inside out. That was my first view.

Cross-examination.

By Mr. Cleary:

Q. What day of the week was this, did you say?

A. On a Sunday morning.

Q. And what time?

A. In the neighborhood of quarter to twelve.

Q. How far from your place was it?

A. Well, it is 400 feet up to the road and back in the road about 200 feet.

Q. Now, you can't positively testify of your own knowledge whether anybody else had seen that body before you?

A. The only knowledge I have is the man came down there and wanted a telephone.

Q. The only knowledge you have?

A. That's the only knowledge I have.

Re-direct examination.

By Mr. Wolverton:

Q. Was there anybody at the body when you went back?
A. Nobody at all.

———

WILLIAM DENNIS, sworn.

By Mr. Wolverton:

Q. Mr. Dennis, where do you live?
A. Haddonfield.
Q. What is your occupation?
A. Chief of police.
Q. Were you with Officer Hough on the morning of August 2nd, when Guilford Young, the defendant, was arrested?
A. Yes.
Q. Where was he located?
A. He was located in the Mill Road, I judge about 300 feet from the main street.
Q. Where was he when you saw him?
A. In an automobile, lying down.
Q. What kind of an automobile?
A. Ford sedan.
Q. You say he was lying down?
A. In the back of the Ford sedan, yes.
Q. Just describe what you saw when you looked into the car?
A. Well, we looked in the car and I saw him lying there, I didn't know who it was at first, until he

raised up, and when he raised up kind of raised up, back to me, and turned and I seen him have that automatic in his hand.

Q. With what?

A. With an automatic gun.

Q. With an automatic in his hand?

A. Yes, it wasn't pointing to me, it was pointing away from me and then he raised up, Mr. Hough, got in the car and I followed him, followed after him and made him get in the front of the car and run the car out of the lane to the hall.

Q. Where was he taken?

A. Where was he taken? To the jail at Haddonfield.

Q. What did you do?

A. Searched him.

Q. And what was found?

A. Wallet and a handful of bullets taken out of his pockets.

Q. Anything else?

A. Not there.

Q. I show you Exhibit S16 which is a leather holster, and ask where that was found?

A. That was hanging on a belt on the side.

Q. On the side of the defendant?

A. Yes, on a belt.

Q. After he had been brought from headquarters and searched, what was done with the defendant and these articles that you saw?

A. Why, we put him in a cell and Mr. Doran came, Detective Doran came there and took him to Camden.

Cross-examination.

By Mr. Cleary:

Q. Chief, will you show me just exactly where that was fastened on his person?

A. No, I couldn't show you exactly where it was fastened.

Q. About where was it? Was it here, back here, or on the side, or where?

A. I couldn't say what side it was on, it was hanging under his coat.

Q. Under his coat, like this (indicating)?

A. On a belt.

Q. I don't understand how you work these things myself, was it this way, looped in this way (indicating)?

A. Yes.

Q. Suppose that was the position of it (indicating)?

A. Somewhere around there.

Q. So that when he pulled open his coat anybody could see it?

A. No, I struck it when I was searching him?

Q. Anybody could see it if he pulled his coat open?

A. If he pulled his coat open, yes.

Q. Now, he was asleep when you first got there, eh?

A. Yes, he acted as if he was asleep.

Q. Well, he was to all intents, and purposes, as far as you knew, sound asleep?

A. Yes.

Q. He had himself sort of protected there by window glasses or something of that kind?

A. There was three of them, I think, that fell.

Q. Made a noise when you came?

A. No, no, not when we came.

Q. I mean when you touched them?

A. Yes.

Q. And immediately upon the windows falling you say he jumped up with the revolver in his hand?

A. No.

Q. What did he do?

A. He didn't jump up until Hough woke him up.

Q. When he woke up, did he have the revolver in his hand?

A. When he woke up he had the revolver in his hand.

Q. He was lying on a blanket?

A. Yes.

Q. And his hands were right near where the blanket was?

A. I couldn't see that.

Q. You or Officer Hough didn't take the revolver out of his hand?

A. No.

Q. You took it from underneath the blanket?

A. He dropped it on the blanket.

Q. He dropped it on the blanket or underneath?

A. Dropped it on the blanket.

Q. He was on the rear seat, wasn't he?

A. Yes.

EDWARD B. HOUGH, recalled.

By the Prosecutor:

Q. Mr. Hough, did you see the defendant, Young, at any time after his arrest on the morning of August 2nd?

A. Yes, sir.
Q. Where did you see him?
A. In the Camden jail.
Q. How long afterward?
A. I couldn't tell you just exactly, but it wasn't very many days.
Q. Did you have any conversation with him?
A. Yes, sir.
Q. What was it?
A. Well, the first thing he asked was he wanted to know how Martin was getting along, and I told him I didn't know.

Mr. Cleary: If the Court please, I object to this testimony unless the relevancy is shown. The question has been answered——

The Court: I think that that perhaps was not what Mr. Wolverton desired, and it will be stricken out.

The Prosecutor: Yes, I have no objection to that being struck out.

The Court: It will be struck out.

Q. What, if anything, did you say to Young or what was said by him to you in reference to himself, not anyone else?
A. Well, we had a little conversation there and he told me that I acted as if I was scared to death the morning I arrested him, and I asked him what the hell he thought I would be scared of him for. He said, "It is a good thing I was asleep, or you might have been scared."

No cross-examination.

HERMAN ENGLE, sworn.

By the Prosecutor:

Q. Mr. Engle, where do you live?
A. No. 9 Browning Road, East Collingswood.
Q. What is your business?
A. Gunsmith, dealer in sporting goods, firearms.
Q. Where is your place of business?
A. 313 Federal Street, Camden.
Q. Under what name is the business conducted?
A. Conducted under the name of William Stein & Company.
Q. Are you a member of that firm?
A. Yes, sir, a partner.
Q. How long have you been engaged in the business of a gunsmith, dealing with firearms, and so forth?
A. Twenty-one years.
Q. At your present location?
A. Yes.
Q. Where did you do business before that?
A. I was formerly employed with E. K. Tryon & Company, Philadelphia.
Q. Who also are dealers in firearms?
A. Yes, sir.
Q. So that for twenty-three years you have been in the business of gunsmith?
A. Yes, sir.
Q. I show you Exhibit S8 and ask if there are any identification marks on that revolver that would indicate to you the owner of the gun?
A. May I refer to my notes?
Q. Yes.

Mr. Cleary: Just a minute, if the Court please, I would like to know what the paper is that the witness is reading from. (To the witness.) Are you testifying from your own memory now?

By the Court:

Q. Have you a paper in your hand?
A. Yes, sir.
Q. Is that something to refresh your recollection?
A. Well, this is taken from my notes, from my record book of records of sales of firearms.
Q. Well, but are you using that to refresh your recollection as to what you yourself know?
A. In regard to the number.

The Court: Well, you had perhaps better examine him, Mr. Wolverton, on that subject first.

By the Prosecutor:

Q. What system do you have when you sell a firearm?
A. The law requires that we shall take the customer's name, age, occupation and address and make an entry thereof in the book of records.
Q. Did you take the name of the person?
A. Yes, sir.
Q. The date?
A. The date.
Q. The number of the gun?
A. Yes, sir.
Q. And the kind?
A. The kind, yes, sir.
Q. And the price paid?
A. Yes, sir.

Q. And did you have such a record in reference to the gun that you have in your hand?

A. I have.

Q. From your records or using them as a means of refreshing—could you testify to it without refreshing your memory from those records.

A. Well, I couldn't testify to the numbers, the exact numbers, because there is different numbers—

Q. So it would be necessary for you to look at your records to refresh your memory?

A. Yes.

Q. Having looked at your records to refresh your memory, can you say to whom that gun belongs?

A. Well, according to my records, this pistol, which is a Colt automatic, was purchased on March 15, 1921, by Guilford C. Young, 436 East Main Street, Haddonfield, New Jersey. The number is 339216, the price paid was $25.00. He gave his age as twenty-seven years and occupation a steamfitter.

Q. Mr. Engle, are you familiar with the different kinds of bullets and their caliber?

A. I am.

Q. What caliber automatic revolver is that, S8?

A. .32.

Q. I show you Exhibit S14, which is a quantity of bullets, and ask whether those bullets—what caliber they are?

A. .32, metal cased.

Q. Are they bullets that could be used in a Colt revolver as S8 is?

A. Yes, sir.

Q. And I show you Exhibit S7 and ask what that is?

A. That is a full metal cased bullet.

Q. Is it, in your opinion, similar to the bullets which have been marked Exhibit S14?

A. It is.
Q. And of the same caliber?
A. Yes, sir.
Q. I now show you a quantity of bullets which I will ask to have marked Exhibit S17 for identification and ask of what caliber are those bullets?
A. These are the same caliber.
Q. .32?
A. .32, yes, sir.
Q. What kind of bullets are they?
A. Those are .32 smokeless, full metal cased bullets, used only in automatic pistols.
Q. You say they are used only in automatic pistols?
A. Yes, sir.
Q. Are they similar to the bullets which have been marked Exhibit S14?
A. Yes, sir.
Q. Similar to the bullet marked S7?
A. Yes, sir.

The Court: Do you want to see those, Mr. Cleary?

Mr. Cleary: No, he hasn't offered them yet.

The Court: No, he hasn't offered them, just marked them for identification, but I don't think he has——

Mr. Cleary: I just wanted to know what they were, it doesn't make any difference to me, if the Court please, he can offer them in evidence.

The Prosecutor: Well, I will offer them in evidence.

The Court: I supposed you would have some other witness who would testify regarding them, and I think perhaps you had better wait until that time; it would be the more orderly procedure.

Cross-examination.

By Mr. Cleary:

Q. Now, Mr.—what is your name?
A. Engle.
Q. Mr. Engle, I heard you say that this, if I got you correctly, this gun, you call it?
A. Yes, sir.
Q. Or this pistol, you said?
A. Yes, sir.
Q. Is a Colt automatic?
A. Yes.
Q. Well, what is it, is it a pistol, or what is the usual name for it, revolver, pistol or gun?
A. A pistol, .32 automatic pistol.
Q. Is that what the Colt people call it, a pistol?
A. Yes.
Q. And those things are sometimes known as guns, or pistols, or revolvers, just as you want to term them, aren't they?
A. Well——
Q. Well, I say, whatever term you want to use you can use it?
A. The proper name is Colt Automatic Pistol.
Q. But it is sometimes referred to by people, even an expert like yourself, as a gun, isn't it?
A. Well, not exactly, no, sir.
Q. You did refer to it on the stand as a gun, didn't you?
A. Well, yes, sir.

Q. And you also called it a pistol. Now, are you the only employee of the Stein Company at that store, the only salesman?

A. No, sir.

Q. Is there anyone else there?

A. Mr. Stein.

Q. Who is Mr. Stein, the proprietor?

A. My partner, yes.

Q. Is he an elderly gentleman?

A. Mr. Stein and I are both equal partners in the——

Q. Well, is there any other clerk there?

A. Well, we have two clerks, but they are not permitted to sell firearms.

Q. Mr. Stein and you then are the only people who are allowed to sell firearms?

A. Yes, sir.

Q. Do you know whether or not you sold this particular revolver to Mr. Young?

A. That I am not sure, I am not sure of that.

Q. You are not sure of that?

A. No.

Q. Don't you keep a record of the clerk that sold it?

A. No, we have a record, a book of sales, and these slips, these names and addresses are taken on a slip and then they are filed later on, the bill clerk puts them in the book of records.

Q. But there is no record there kept of the person by whom it was sold, the clerk?

A. No, sir; well, there is at times.

Q. What?

A. There is at times; oft-times the clerk that sells the firearm makes the entry, but just on this particular case it was filed and then entered later by one of the clerks.

Q. And there is nothing to indicate who sold it?
A. Not at this time, no, sir.
Q. Is Mr. Stein an elderly gentleman?
A. Yes, sir.
Q. Now, have you testified the date of the purchase of this revolver?
A. Yes.
Q. Now, what was that date?
A. March 15th.
Q. March 15th, what year, 1921?
A. Yes.
Q. This present year?
A. Yes.
Q. March 15, 1921?
A. Yes.
Q. You are positive of that, that is no doubt about that, is there?
A. That is taken from the records, that is the record.
Q. Well, the records are correct, aren't they?
A. Yes, sir.
Q. Now, then, Mr. Engle, this revolver or this pistol as you call it has an automatic or rather a safety clutch here or something, hasn't it?
A. It has two safety clutches.
Q. Show me what you mean—this is not loaded, is it? You are an expert—I forgot that—I beg your pardon; you can say whether it is loaded?
A. No, sir, it is not loaded.
Q. Where is the safety on that—show me how you work the safety device?
A. The only time that the safety device will work is when the pistol is cocked. Now, the pistol is cocked and you lock it. Then there is this safety on the grip, which it comes naturally by the pressure of the hand to release. If you want to fire you put your thumb on there and release it.

The Court: Speak a little louder, Mr. Engle, please.

Q. I see; so there is a way of locking that pistol so it won't fire, isn't there?

A. Yes.

Q. Now then, these bullets that you have seen and were testified to, are they the ordinary bullets that are sold for revolvers of that kind?

A. Well, this particular pistol will carry two styles of cartridges which are made for this particular pistol; one is termed a soft nose bullet, and the other is a metal cased bullet.

Q. Do you sell both of them at your store?

A. Yes.

Q. Can you say whether or not these bullets were purchased at your store?

A. No, sir, I cannot.

Q. But they are similar to the kind you sell at your store for that purpose?

A. Yes.

Q. And there are only two kinds of bullets that are used in that particular revolver?

A. Yes.

Q. One a soft nose bullet?

A. Yes.

Q. Steel cased, is it?

A. Partly, it is partly soft nose.

Q. And the other is a hard nose bullet, stell cased?

A. Yes.

WALTER G. FLEXON, sworn.

By Mr. Wolverton:

Q. Mr. Flexon, where do you live?
A. 322 Hunter Street, Gloucester.
Q. What business are you in?
A. Automobile business.
Q. Are you a dealer in Ford cars?
A. I am.
Q. Did you on the 21st of July sell a Ford car to Harry Garwood?
A. On the 21st of July.
Q. What kind of car?
A. A Ford sedan.
Q. Do you know the number of it?
A. I do. 5121353.
Q. On the morning of August 2nd, at my office, 3rd and Market, did you see an automobile?
A. I did.
Q. Are you able to say whether that was the car that had been sold by you to Harry Garwood on the 21st?
A. Well, there are several accessories on there that in selling Mr. Garwood the new car I gave him permission to take off his old one.
Q. What was on the car that indicated to you was the car you had sold to Garwood on the 21st?
A. Large steering wheel, a new Leland lock I had sold him a Firestone Cord Tire that had been used and then the tools that he had in his old car I gave him permission to take those and put them in his new car and he took the tools out of the new car and put them in the old one.
Q. Was there anything about the pedals?

A. There was also some foot pedals with an extension on that I gave him permission to take.

Q. Did you look at the engine number on the car?

A. When? On July or August 2nd?

Q. Yes.

A. I did.

Q. Was the engine number the same as when it had been sold by you to Garwood or changed?

A. No, it wasn't, it had been changed.

Q. And what was the number that appeared there?

A. 3911518.

Mr. Cleary: Will you repeat that number again.

The Witness: 3911518, that's a 1920 number.

Cross-examination.

By Mr. Cleary:

Q. Now, Mr. Flexon, how long have you been in the automobile business?

A. 1916.

Q. That number 5121353, is that the maker's number?

A. That's the maker's number.

Q. Where do you find that number on the body of the car?

A. On the left-hand side of the motor, right over the water manifold.

Q. Are there any other numbers on that car that would identify it?

A. No, that is the only number on a Ford car.

Q. If a person was to change a number on a Ford car they would only have to change that one number?

A. That's all.

Q. Where do you say you saw this car?
A. At 2nd and Market, or 3rd and Market.
Q. What were you doing at 3rd and Market Streets?
A. I came up there to identify the car.
Q. Where was the car then?
A. Standing along the curb.
Q. Where?
A. Out in front of Mr. Wolverton's office.

WILLIAM McKEE, sworn.

By Mr. Wolverton:

Q. Where do you live?
A. 318 Cumberland Street, Gloucester.
Q. What business are you in?
A. Taxi business.
Q. Where do you operate from?
A. Federal Street Ferry.
Q. Did you know Harry Garwood?
A. Knew him well.
Q. What is it?
A. Yes, sir.
Q. How long have you known him?
A. Five years.
Q. How well have you known him?
A. Oh——
Q. How well have you known him?
A. Very well, I knew him very well.
Q. Have you lived together?
A. He boarded at my house for three years.
Q. Were you in business together?
A. Yes, we were both in business together.

Q. Describe the kind of man he was, as to his physical appearance.

A. Well, he was lame in the left foot from the hip down and he had broad shoulders and he had a extra large head, big pair of eyes.

Q. About how much would he weigh?

A. I judge he wouldn't weigh over 110 or 115 pounds on account of a defective leg.

Q. Do you know whether he wore any brace as a result of his crippled leg?

A. Yes, sir, he wore a brace around his ankle, and then he generally wore an arch supported in his shoe, wore a brace and it sort of had a stiffness in it.

Q. On Sunday, afternoon, August 1st, did you go to the Camden County Morgue, for the purpose of looking at a body?

A. Yes, sir, I did.

Q. Did you see a body there?

A. I seen the body there.

Q. Whose body was it?

A. I identified it as Harry Garwood's.

Q. I show you Exhibit S6 and ask what is that?

A. That's a brace that fits around an ankle.

Q. Can you identify that brace as belonging to Garwood?

A. Yes, sir, I can.

Q. On the day of August 2nd, did you see an automobile at 3rd and Market?

A. Yes, sir, I did.

Q. For what purpose did you look at the car?

A. To identify the car.

Q. What kind of car was it?

A. Ford sedan.

Q. Could you tell from the car to whom it belonged?

A. Yes, sir, I could.

Q. Whose car was it?

A. Harry Garwood's.

Q. I now show you a watch which I ask to be marked S18, and I ask you if you know whose watch that is?

A. That's is Harry Garwood's watch.

Q. For what reason do you recognize it as his?

A. My wife and I gave it to him as a Christmas present, Christmas about two years ago, I think it was.

Q. I now show you a chain with a crucifix charm attached and ask that it be marked Exhibit S19 for identification, and ask if you know whose that was?

A. That's Harry Garwood's.

Q. What about the charm?

A. The charm was a charm he got off his step-father in Haddonfield.

Q. Repeat your answer.

A. This chain belongs to Harry Garwood it was his father's, his father gave it to him and the crucifix he got from his step-father which he brought from Brazil.

Q. I now show you a pair of russet shoes which I ask to be marked Exhibit S20 and ask if you know whose they are?

A. I can't be any too positive of these because they are new shoes. Generally, when his ankle support fitted in there they wore out but this one looks something similar to his old shoe.

Q. Are you able to tell from the shoe where they were purchased?

A. Yes, sir, Klein's.

Q. Do you know where Harry Garwood usually purchased his shoes?

A. At Klein's, 4th and Kaighn Avenue.

Q. Did you see him wear shoes similar to those?
A. Yes, sir, I have.

Cross-examination.

By Mr. Cleary:

Q. Now, what makes you say, Mr. McKee, that these are Garwood's shoes? How can you be positive of that?
A. I said I wasn't positive that they were his shoes.
Q. You are not positive?
A. No, those are new shoes and they aren't broken in the way he generally wears them.
Q. Is there something there that seems to make you doubt that they are Mr. Garwood's shoes?
A. No, there is nothing there that makes me doubt.
Q. What about the fact they are not worn where the brace fits in or something?
A. That's the only thing makes me doubt.
Q. You seem to think there is a doubt in your mind because the brace hasn't worn the shoe?
A. Yes, sir.
Q. Did he ever have a pair of shoes like that?
A. Yes, sir.
Q. Exactly?
A. Not exactly.
Q. As a matter of fact, his shoes didn't have all this scroll work?
A. No, not all of them.
Q. The shoes you are referring to didn't have all this scroll work?
A. I don't remember that, I didn't get a good look at the shoes.
Q. How can you testify to-day then, that these

shoes look like the shoes? Do they look so much like them you would say so?

A. No.

Q. Why are you saying so?

A. I ain't saying so I said, I can't possibly identify them because of a mark in the shoe wasn't there.

Q. What size shoe did Mr. Garwood wear, do you know?

A. I couldn't tell you.

Q. You know where Klein's is?

A. Yes.

Q. Where is it?

A. 4th and Kaighn Avenue.

Q. Have you ever been to Klein's store?

A. Yes, sir.

Q. How big a store is it?

A. It is a large store.

Q. Very large store?

A. Very large.

Q. Did you ever buy any shoes there?

A. No, sir, not often, went with Mr. Garwood when he bought his shoes there.

Q. There is a doubt in your mind whether they are the shoes or not?

A. There is.

Q. You wouldn't swear positively they are?

A. I wouldn't swear positively, no, sir.

Q. How long have you been in the taxicab business, Mr. McKee?

A. Fifteen months.

Q. How long was Mr. Garwood in the taxicab business?

A. I judge around five years.

Q. Has Mr. Garwood owned a car during all that time?

A. No, sir.
Q. Has he been running a car all that time?
A. He has been running a car, yes, sir.
Q. How long have you known Garwood?
A. What?
Q. How long have you known Garwood?
A. Five years.
Q. Is that when you first met him five years ago?
A. Yes, sir.
Q. Where has he been living during that time?
A. Well, for two years he was living with his mother in Gloucester.
Q. Gloucester City?
A. Gloucester City, and a short while down in the country where they lived.
Q. For the last two years has he been living with you?
A. The last three years.
Q. Living entirely with you?
A. Yes, sir.
Q. Boarded there, did he?
A. Boarded there.
Q. Now then, as a matter of fact, Mr. Garwood wasn't such a slightly built man as to weigh 110?
A. He wasn't slightly built, no.
Q. He had big shoulders, didn't he?
A. He had big shoulders and big head.
Q. How many pounds do you weigh?
A. About 136.
Q. Was he as heavy as you are?
A. No, sir.
Q. Altogether was he as heavy as you are?
A. No, sir, because we both got on the scales together one time.
Q. When?
A. Oh, it has been quite a while ago.

Q. How many years ago?

A. About a year and a half ago or so.

Q. What time in the morning was it you went to 3rd and Market Streets?

A. I judge we was there around half-past nine.

Q. Did you see anybody there? Did you see Mr. Young there?

A. No, sir.

Q. Just looked at the car?

A. Just looked at the car.

Q. This watch that you have described the reason why you can identify that is because had Mr. Garwood's initials on it?

A. Mr. Garwood's initials and I knew it was an open face Elgin.

Q. And the chain you can describe that by the peculiar making of it, can't you?

A. The peculiar making of it, it has three chains in one and a thing to slide along.

Q. Both of them could be very easily identified by anybody that knew, couldn't they?

A. Yes, sir.

Re-direct examination.

By Mr. Wolverton:

Q. Where did you purchase the watch?

A. At Knerr's, near Broadway, on Kaighn Avenue.

LAWRENCE T. DORAN, sworn.

By the Prosecutor:

Q. Mr. Doran, where do you live?
A. 1115 Mechanic Street, Camden.
Q. Do you hold any official position in Camden County?
A. County detective.
Q. How long have you been a county detective?
A. Since 1910.
Q. Under what Prosecutors have you served?
A. Mr. Scovel, Mr. Boyle, Mr. Kraft, and the present Prosecutor.
Q. Was your attention called to the finding of a body on Sunday, July 31st?
A. It was.
Q. About what time?
A. I should judge somewhere around after twelve noon.
Q. Where did you go after receiving the information?
A. I accompanied Detective Smith and Coroner Holl to Mr. McCracken's place at Springdale Road and Marlton Pike.
Q. And then what did you do?
A. Mr. McCracken then directed us east on Marlton Pike, I should say about a thousand feet, and then to the right into the woods on a small road.
Q. What did you find?
A. About fifty feet from the road we found a body.
Q. From what road?
A. From the road leading into the woods, went about say five hundred feet into the road and then to the right, about fifty feet to the right of the road,

after we got in there there was a body lying there on its back.

Q. What kind of locality is it?

A. The entrance is woods on both sides of the entrance to this road, and the road all the way in is nothing but woods, and after you get in, on the left, some of the bigger trees have been cut down, but it is all brush; there is heavy brush on the right where the body was lying.

Q. About how far is this little road that runs in off the Marlton Pike from Ellisburg?

A. By speedometer on an automobile it is 2 6/10 miles.

Q. And did you measure the distanec in from the Marlton Pike to where the body was found?

A. I did; it is 532 feet from the edge of the concrete road.

Q. What township is it?

A. Delaware Township.

Q. What was the condition of the body when you arrived there?

A. The body was badly decomposed; there were several holes in the head, I saw two, not making a close examination—there were two that I could see. The pockets were turned inside out. The body was badly decomposed, covered with maggots. The clothes were pretty well rotted, but at the lower end of the trousers you could get a pretty good description of the clothes; they were of mohair, white pin stripe.

Q. Any shoes on the feet?

A. No shoes on the body and no belongings, no valuables.

Q. Was the spot where the body was found open to the elements or sheltered?

A. It was open more than it was sheltered, because the sun from the south got a clear ray on it

all the time. There was some brush to one side of it.

Q. Did you and Detective Smith then start an investigation to identify the body?

A. We did, we started an investigation that night and the next day, on Monday.

Q. When was the body identified?

A. The body was identified Monday, that was the 1st of August.

Q. As whose body?

A. As that of Harry F. Garwood.

Q. After that did you continue your investigation?

A. We did.

Q. Did you receive information——

A. We did; through investigation at Ellisburg we found it necessary——

Q. You are not privileged to tell what you learned, but through investigation made at Ellisburg——

A. We found it necessary to locate Guilford Young, and that night we proceeded to try to locate him.

Q. What steps did you take to locate him?

A. I went to Haddonfield, and I met a member of the family and through my investigation I learned that he was not at home. I then got officers from Haddonfield and covered all the roads leading to his home. We stayed there from somewhere around sun-down until about six o'clock in the morning, it started to rain; Officers Hough and Dennis was working on the upper end, the end toward Ellisburg. I had a short trip to make, and I was gone a short time; when I returned they had him under arrest.

Q. Where did you then see Guilford Young first?

A. At the Haddonfield police department.

Q. And who was there?

A. Officer Dennis and Officer Hough; Mr. Young, Detective Smith and myself.

Q. Were these exhibits which have been used here this morning and the automatic revolver, the bullets in Exhibit S14, the wallet, Exhibit S15, and the holster, Exhibit S16, turned over to you with the prisoner at Haddonfield that morning?

A. The car also, and they have been in my possession ever since.

Q. Did you on the morning of August 2nd, or the day of August 2nd, have a conversation with the defendant?

A. I did.

Q. What was the subject-matter of the conversation?

A. I asked him to explain to me how he came in possession of the car.

Q. What did he say?

A. He said that he had purchased it from a man by the name of James Brown whom he met in Daly's Saloon on Haddon Avenue, somewhere around the 15th or 16th of July—I am not sure about the date, but he said a week, two weeks or so previous to my questioning him, that he had purchased it from a James Brown. I asked him where James Brown lived and he said on Reed Street, but he did not know the number.

Q. Reed Street, what city?

A. Philadelphia. I then continued the investigation, and I showed to him that it could not be the truth, because Garwood——

Mr. Cleary: If the Court please, I ask that that be stricken out.

The Court: Well, yes, I think that is a conclusion.

The Prosecutor: Well, if the Court please, that is a conversation that he had with the defendant, and it would be very natural——

The Court: Well, Mr. Doran can say what he said to the defendant and what the defendant said to him.

The Prosecutor: That is what I understood he was saying; I understood him to say he said to him that could not be the truth.

Mr. Cleary: No, he said he showed him that wasn't true.

Q. What did you say or did you show him, Mr. Doran?

A. I told him the evidence we had—I may not have put it in the same words—I told him the evidence we had showed that the car he had in his possession was not sold until July 21st, and then he suggested that he had a bill of sale at home that could prove that he purchased the car. So on the 3rd I proceeded with an order written out and signed by Guilford Young to get this bill of sale, which I did.

The Prosecutor: Here is an order which I ask to be marked Exhibit S21.

(The paper produced by the Prosecutor is so marked.)

Q. I show you a paper which is marked Exhibit S21, and ask you if that is the order you have just referred to in your testimony, signed by the defendant?

A. It it.

Q. The order reads, "Sarah C. Young: Please give bearer bill of sale in bureau drawer for car (Signed) Guilford C. Young." Was that signed by the defendant in this case?

A. It was.

Q. For what purpose?

A. So I could get the bill of sale from his wife.

The Prosecutor: I offer this in evidence as Exhibit S21.

The Court: It will be received.

Q. Did you afterward go to the home?

A. I did; on the 3rd I went to the home.

Q. Did you get Exhibit S9 which purports to be a bill of sale for an automobile?

A. I did; it was given me by his wife out of the bureau drawer in my presence.

Q. Did you inform the defendant as a result of your further investigation the car had been sold to a man by the name of Garwood on the 21st of July?

A. Yes, we told him those facts, and then he admitted—he changed his story and admitted——

Q. Pardon me just a minute; you told him those facts?

A. Yes.

Q. Did you ask him whether he knew Garwood?

A. He denied ever knowing Garwood, denied ever being at the ferry on the morning of the 23rd, denied going to Ellisburg; said he did not know a man by the name of Garwood.

Q. Was anything said about a lame jitney man?

A. Not that I can recall at this time.

Q. As to whether he had ridden with one?

A. We described Garwood to him as near as we

could; now, whether I mentioned that or not I don't know, but he positively denied knowing Garwood.

Q. Did you ask him whether he had engaged a taxicab or jitney at the ferry on the morning of July 23rd?

A. He denied being there in his first story, denied positively being there.

Q. After you told him that the car which he had had belonged to Garwood and had not been sold until the 21st of July, what explanation did he then make after having said that it had been bought on the 15th with this bill of sale?

A. He said that James Brown, whom he met in Daly's, whom he purchased the first car from, he met him later on the street and complained to Brown about the car not operating properly, and Brown told him to meet him and he would give him a car in exchange for it, and he said this was the car he got in exchange for the first one that he purchased.

Q. Did you afterward, yourself and Detective Smith, make an investigation to locate if possible, the valuables that had belonged to Garwood?

A. We did.

Q. What did you and Detective Smith do?

A. We went to Guilford Young's home in Haddonfield and we made a search of the house; and we inquired for his bedroom and was directed to it by members of the family. On the washstand in his room I found this watch that I have on the desk.

Q. And which has been marked Exhibit S18 for identification?

A. That is it.

Q. Is that the watch?

A. That is the watch, been in my possession ever since.

The Prosecutor: I offer it in evidence.

The Court: It will be received in evidence.

Q. What else was found by either you or Detective Smith in your presence?

A. We found a quantity of bullets there, and Detective Smith in my presence pulled the bureau drawer open and under some underclothes in the bureau drawer we found a chain with a crucifix on, which Mr. Smith and I examined and we took it out with us.

Q. I show you Exhibit S19 for identification, and ask if that is the chain and crucifix which you have just testified to as having been found by you and Detective Smith?

A. It is, and been in my possession ever since it has been found.

The Prosecutor: I offer this exhibit in evidence

The Court: It will be received.

Q. I now show you a quantity of bullets marked Exhibit S17 for identification, and ask if they are the bullets you have referred to as having been found by you and Detective Smith in the room or bureau drawer of the defendant?

A. They are, they have been in the Prosecutor's office and in the possession of the state ever since they have been found.

The Prosecutor: I offer them in evidence.

The Court: They will be received.

Q. After finding these articles, the watch and chain with the crucifix charm, what, if anything, did you say to the defendant?

A. I came back and presented the evidence to the defendant. I asked him to explain to me how he got this watch and this chain. He told me that the same Brown who sold him the car, that he had gotten the watch and chain from him.

Q. Had he made any mention of that fact previously to you?

A. No, not until after he was showed the watch.

Q. I now show you Exhibit S20 for identification, which is a pair of shoes, and ask where these shoes were obtained and under what circumstances.

A. After the confession of Young, the defendant—

Mr. Cleary: Pardon me just a minute.

The Witness: I say after the confession was made——

Mr. Cleary: I object to your using the word "confession."

The Court: Yes, that is characterizing. After a statement, you can say.

The Witness: Well, in the statement on August 5th, Mr. Young informed us——

Mr. Cleary: I object to that, unless it is shown that this statement was voluntary and in accordance with the rules of evidence.

Mr. Wolverton: We are not offering this as a confession.

The Court: This is not a confession.

Mr. Cleary: I have a right to examine at this point.

The Court: This is a statement made to Mr. Doran.

Mr. Cleary: In the presence of anyone else?

The Witness: I am not sure whether Mr. Wolverton was present or not.

Q. What did you say to him and what did he say to you?

A. I questioned him about the shoes, told him that this man had no shoes on, so he told me that the shoes belonged to Harry Garwood were in the kitchen, under the ice chest. On the 6th I went to the home of Guilford Young and made those facts known to the members of the family. They made a search. They could find no strange shoes under there and they went upstairs and got me a pair. One of the family had taken them from the ice chest upstairs and they gave me this pair of shoes.

Q. Mr. Doran, as a result of your further investigation, did you ascertain the identity of James Brown? That may be answered yes or no.

A. Yes.

Q. After your investigation and you had ascertained the identity of James Brown, what did you do with respect to the defendant and the person whom you had located?

A. Brought them face to face.

Q. Whom did you take before the prisoner for identification?

A. Benjamin Martin.

Q. What was said by you to Young or to Martin or by Martin in Young's presence?

A. Martin made the statement that he had signed the bill of sale at the request of Mr. Young, the defendant in this case, and under his directions he said——

Q. Was that in the presence of Young that Martin admitted he had signed the name "James Brown" to the bill of sale?

A. He did.

Q. Did he say how the information was obtained that was contained in the bill of sale?

A. I questioned him about where they got the number.

Q. Now, this is in the presence of the defendant?

A. Yes.

Cleary: Questioned whom?

The Witness: Both of them present.

Mr. Cleary: To whom are you directing the question?

The Witness: Martin and the defendant were present. I was trying to ascertain where they got the number, the engine number, to put on the bill of sale. Martin accused Young of raising a hood on a car in Philadelphia and copying a number from it.

Mr. Cleary: I object to this testimony on the ground it tends to show evidence of other transactions and transactions of a similar kind are not admissible in this case, because it prejudices the right of the defendant to a fair trial.

The Court: I think the evidence is admissible. The only thing is, the witness did use a word, "ac-

cused." That was improper, and if Mr. Doran will just state what he said to the defendant and Martin, and of course if you want to object to it——

Mr. Cleary: I want to object to it on the ground I have stated and ask for an exception.

The Court: I will overrule your objection and grant you an exception.

(Exception noted for the defendant.)

Q. I will ask you to eliminate the word "accused." Now, what was said by Martin to Young, in your presence?

A. Martin said Young obtained the number for the bill of sale from a car in Philadelphia, by raising the hood.

Q. What did Young say?

A. Young denied it and accused or stated that Martin had gotten it for him.

Q. What did the defendant say as to whether Ben Martin was in fact the person who had signed the name "James Brown"?

A. He admitted it after that, after Martin admitted that he signed, Young, the defendant, admitted that it was right that Martin had signed it.

Q. On the 5th of August or the 6th of August, did you accompany the defendant, at his request, on any trip?

A. We had several trips, yes, we had one on the 6th.

Q. For what purpose was the trip taken?

A. For the purpose of—on the 5th or 6th? You said on the 6th. That was Saturday.

Q. The 6th of August was Saturday.

A. No, we didn't take the defendant out. The 11th was the next that we took him out after the 5th.

Q. What was the purpose of that trip?

A. The purpose of that trip was his willingness to take us over the route he took with Garwood and we took him over that, asked him if he was willing to go, and he said yes.

Q. And on what route did he take you?

A. On account of the traffic rules here, we left the Court House and went out Market. When we got to the point, he said he came out Federal—that was the only point we didn't cover, from the Court House and Federal out, we went east on Federal to the Marlton Pike, out Marlton Pike to Springdale Crossing, and then a few hundred feet west of there he showed us where he turned into the woods. When he got about 500 feet in, he stopped the car and got out. He showed us the point where he shot Garwood and then showed us the direction in which he dragged him into the woods. He explained to us that there was a path about 20 feet north of where he stopped the car. We asked him if he dragged Garwood up the path into this place where he was found and he said no, he dragged him into the brush, and after we talked there a while about the shooting and how he did it——

Q. Just what did he say?

A. He said he was standing on the running-board——

Mr. Cleary: I object to this. It is in the nature of a confession and it must be voluntary and must have all the elements of a voluntary confession.

The Court: I don't think this is what this defendant said.

Mr. Cleary: It is what he is going to testify to, I presume.

Mr. Wolverton: If the Court please, my question was of a character that Mr. Doran, in answering it, would have stated what was said by the defendant.

The Court: Well, Mr. Doran should just simply state what the defendant said. Of course, if it is anything in the nature of a confession, why, of course, then I will give Mr. Cleary an opportunity to cross-examine Mr. Doran as to whether there was any threat made or any hope of reward held out, so as to determine, as a preliminary question, whether the confession was voluntary.

Q. Was it your intention, Mr. Doran, without stating what was said, to give a conversation that would be in the nature of a statement by the defendant as to how he had done the shooting?

A. The nature of the question and answer, as to how he did it, he seemed to be willing to explain, and as long as he was willing———

Mr. Wolverton: I assume probably it would, from what Mr. Doran has said.

The Court: I assume it is getting to the border line.

Mr. Wolverton: If there is any question, I prefer that Mr. Cleary examine him along that line, if he is satisfied it is not voluntary. Mr. Doran stated, I understand, his willingness to make this trip and wanted to make the explanation, and I assume that

it was voluntary. If Mr. Cleary thinks differently, I will cease my questioning.

The Court: I will give you an opportunity now. Mr. Doran said that the defendant expressed a willingness to go to this place and also went a little bit farther than that. There is no need of repeating it. You are familiar with it.

Mr. Cleary: My objection to this testimony will be the same objection that will be directed to any other statement or confession in the nature of a confession. It will cover a period of time from the time the man was first arrested, to show a system and course of conduct on the part of the officers of the law to either force the man to confess or to persuade him to confess by the way of promises. To do that will take considerable time and it will also cause me to request that the witnesses that I am going to examine, upon the part of the state, leave the room until they are called singly to be examined, because the cross-examination will be of such a nature that the witnesses should not have the opportunity of following one another in their line of testimony.

The Court: Your witnesses are under your control.

Mr. Cleary: I mean I am going to call the state's officers as witnesses.

The Court: Your witnesses will be under your control. Of course, if they are county officials, the Court will not exclude the county officials during the examination, because not only was that the agree-

ment but in my discretion and in the exercise thereof I would not grant that motion. Now, so far as to the length of time that is to be consumed here, of course, no matter how long it takes, you have a perfect right and I am according you the right, and we will sit here until the evidence is in and concluded on that subject. Now, you can examine this witness, but of course you must confine it to the question as to whether the statements made by the defendant on this occasion are statements made under the circumstances which you allege; in other words, whether they were voluntary or involuntary.

Mr. Cleary: To do that, it would be necessary for me to go back before this main question.

The Court: I don't care how far you go back on the subject, unless I think that you go back to something that is improper.

Cross-examination.

By Mr. Cleary:

Q. Now, Mr. Doran, did you warn this defendant at the time he was making this statement that the statement could be used in court against him?

A. This defendant was warned time and time again.

Q. Did you warn him on this particular occasion?

A. On the particular occasion of what?

Q. You are about to testify to, when he explained to you how the shooting occurred, when he took you over the route?

A. He knew who we were.

Q. Did you absolutely warn him at that time and actually warn him?

A. Why, he had made statements previous to that.

Q. I am not asking you that. I am asking you whether you warned him on this particular occasion on this day.

A. Yes, we always warned him.

Q. Well, did you do it on this day?

A. Yes, I am positive we did.

Q. Is there a doubt in your mind?

A. No, no doubt. I kept warning him.

Q. Why didn't you say so in the first examination?

A. I am saying it now.

Q. Now, then, Mr. Doran, when was the first time you ever saw Mr. Young in relation to this case?

A. On Tuesday morning, August 2nd.

Q. And where did you see him?

A. At the Haddonfield police department.

Q. And from there where did you take him?

A. To the Third and Market Street office of Mr. Wolverton.

Q. Is that Mr. Wolverton's private office?

A. Yes.

Q. Why didn't you take him to the public office up here in the Prosecutor's office?

The Court: That is rather immaterial.

Mr. Cleary: I am going to show later on why he was taken to that office. There is a reason for it.

The Court: All right.

Q. How long did he stay at that office that day?

A. He stayed there while we were questioning him, I think some few hours.

Q. What time did he arrive in the morning?

A. I should say about 8.30.
Q. What time did he leave there?
A. I am not sure about the exact time he left.
Q. He went there at 8.30 in the morning?
A. Somewhere around there.
Q. Was it midnight when he left?
A. Oh, no.
Q. Was it ten o'clock at night?
A. No.
Q. He stayed there all day, didn't he?
A. He was there in the evening. We took him out and brought him back.
Q. Where did you take him?
A. Out for the purpose of identification.
Q. Where did you take him?
A. Different places, Ellisburg and around.
Q. On that first day?
A. I am not sure about the first day now, but we did take him out at different times, but the biggest part of the 2nd of August was devoted mostly to questioning him in reference to this car.
Q. The biggest part of the 2nd day of August was devoted to questioning?
A. Yes, questioning him about the possession of this car and his whereabouts at different times since the day of the disappearance of this man.
Q. And during that time he was kept down at the private office of Mr. Wolverton at Third and Market Street, while the investigation was going on?
A. Yes, while the investigation was going on.
Q. That took from half-past eight in the morning until what time at night?
A. Oh, we didn't run until very late at night, we had lunch between times, things of that kind.
Q. Now, Mr. Doran, you can tell me sometime around the time.

A. Well, I am not positive about the time.

Q. Well, just to the best of your recollection.

A. We were there in the evening.

Q. I don't ask you to testify to any time in particular; I ask you to testify to the best of your recollection.

A. Well, I say we were there until late in the evening. Now, as far as the hour itself it concerned I don't know the exact time.

Q. You were there at nine o'clock, were you?

A. I think we were.

Q. Were you there at ten o'clock?

A. I am not sure about that, but I think we were, around about half-past.

Q. Might you have been there as late as eleven o'clock?

A. I tell you, from the time the body was found up until Friday night, see, I had three hours sleep, so I was out all the time.

Q. Well, I am not asking you about what time you slept, but I am asking you what time Mr. Young left the Prosecutor's private office down at Third and Market Street?

A. The time he left the Third and Market Street office he was brought to the county jail; now, what time that was I couldn't tell you.

Q. Well, it was after the usual time for putting prisoners in their cells, wasn't it?

A. That depends on what time that is.

Q. That is seven o'clock, as I understand it.

A. I have put them up there at eleven, twelve, one——

Q. Listen, Mr. Doran, can't you answer my questions a little more correctly?

A. Do you mean the regular hour for locking the prisoners up in their cells upstairs?

Q. Seven o'clock, I say, was it after seven?

A. Yes.

Q. Now then, who was examining Mr. Young on that first day?

A. Mr. Wolverton and myself.

Q. And was he the first one that examined him?

A. I may have asked him a few questions, but I think Mr. Wolverton was the first one to give him—

Q. Now, Mr. Doran, how long have you been a detective?

A. Since 1910.

Q. And you have had considerable experience in murder cases, haven't you?

A. I have.

Q. How many murder cases would you say, about, that you have investigated, if you know?

A. Well, we had thirteen with you in one year while you were in the Prosecutor's office.

Q. While I was Assistant Prosecutor?

A. I had thirteen, yes.

Q. You had a good many other years, haven't you?

A. I should judge about thirty.

Q. And you are familiar with the idea and purpose of getting confessions, aren't you?

A. Somewhat.

Q. And you are familiar with the procedure in relation to that, aren't you?

A. I am.

Q. Now, who did you say was the first one that examined him on this day?

A. Myself and Mr. Wolverton, I think were both present.

Q. Both present together?

A. Yes.

Q. Now, who was the first one asked questions of him and what was said?

A. Well, I am not positive of that, but I know—I think it was—I don't know whether I questioned him first or Mr. Wolverton. My line of questions was the possession of the car, trying to learn the possession of the car, but he was warned thoroughly before we started by Mr. Wolverton.

Q. Now, do you mean to say you warned him not to say anything?

A. He warned him that whatever he said would be used against him in court, and if he made any statement to us it would have to be voluntary.

Q. Then you asked him to make a statement?

A. We asked him questions to try to explain the possession of that car.

Q. After you made that statement then you endeavored to get him to make a statement, didn't you?

A. We asked him if he was willing.

Q. Well, I say, you endeavored to the best of your ability to get him to make a statement, didn't you?

A. I was endeavoring to make an investigation for the purpose of finding out——

Q. You were quite anxious to get a statement from him, weren't you?

The Court: Now, that is immaterial; of course it was this man's duty, the witness' duty to get a statement from him.

Mr. Cleary: That is what I asked him to say, if the Court please, it was his duty; I am not criticising him.

Q. Wasn't that your purpose?

A. My purpose was to gather all the evidence I could.

Q. Well, that is perfectly legitimate, I have no fault to find with that; wasn't that your purpose?

A. That is my purpose, to gather all the evidence presented here.

Q. What did you say to this man, did you threaten him in any way?

A. I did not.

Q. You are sure you did not threaten him?

A. I did not.

Q. Did you promise him anything?

A. I did not.

Q. You are sure about that?

A. Positive.

Q. Did you try to treat him in a nice manner, a pleasant manner?

A. I did, and was complimented by him for it.

Q. Did you try to do everything you could to advise him properly?

A. I did, yes.

Q. What did you do in that line?

A. I told him his rights, warned him; that is all I could do.

Q. Didn't you advise him what would happen to him in case he did not confess?

A. No, I did not.

Q. Didn't you advise him what would happen to him in case he did confess?

A. I did not.

Q. Were you there when Mr. Wolverton was talking to him?

A. Mostly all the time.

Q. What did Mr. Wolverton say to him?

A. Mr. Wolverton warned him thoroughly; there is not a time that Mr. Wolverton talked to him in my presence that he was not warned and told who was in the room at the time.

Q. And did Mr. Wolverton talk to him in a friendly fashion?

A. He talked to him along the lines of asking him to explain the possession of the different things at different times and of his whereabouts and movements.

Q. What I mean to say, it was quite a friendly talk to him, wasn't it?

A. It was.

Q. There wasn't anything about it that was objectionable as far as forcing him to answer was concerned, was there?

A. Oh, no, no.

Q. Quite a pleasing manner Mr. Wolverton used, didn't he?

A. Yes, he always does.

Q. Now, you heard everything Mr. Wolverton said there, did you?

A. Mostly all—well, there was a few things that I went out at different times to get, lunch and things of that kind, but the most of the investigation during that case I heard.

Q. Did Mr. Wolverton advise him of his rights?

A. He did every time he talked to him.

Q. Did he not tell him he would make a mistake if he didn't tell the truth?

A. No, I can't recall that language being used.

Q. Did he or didn't he?

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

Q. Didn't he tell him it would be better for him to tell the truth as far as the truth was concerned?

A. Well, that is what we tell everybody, it is best to tell the truth, the truth won't hurt.

Q. The truth won't hurt?

A. Yes.

Q. Did he or did he not tell him to tell the truth,

to make a clean breast of it, he would feel easier in his mind?

A. Well, I am not sure about the exact language, but our direct examination was to try to convince him——

Q. Well, that is what you usually tell them, isn't it?

A. We were trying to convince him to tell the truth.

Q. You don't threaten a man, do you?

A. No.

Q. You don't promise them anything?

A. No.

Q. All you do is to advise him to tell the truth about it?

A. Yes.

Q. To make a clean breast of it?

A. Yes.

Q. Isn't that right?

A. That is right, yes.

Q. That it will be easier for him?

A. No, no promises of that kind.

Q. Don't you say it will be easier for him?

A. No.

Q. But you tell him it is better for him to do it?

A. We tell them always it is better for them to tell the truth.

The Court: Those are questions, Mr. Cleary, that ought to be directed as to what Mr. Doran told the defendant. You are making it a very general examination as to what the custom is.

Mr. Cleary: No, I didn't; I am asking him about this particular case.

The Court: No, but your questions are——

Q. I am asking you about this particular case, Mr. Doran—isn't that what you told this man, the same as you told everybody else, that he didn't have to talk unless he wanted to and what he said would be used against him?

A. Yes.

Q. But it would be better for him to tell the truth about it?

A. We always tell them that, listen—not that it would be better for them to tell the truth; I said it was better to tell the truth.

Q. Well, "It is better to tell the truth"?

A. Yes.

Q. You mean as far as he was concerned?

A. I am not saying nothing about him; I said, "It is better for you to tell the truth."

Q. Now then, Mr. Doran, how many times did you tell him that that day?

A. Oh, I don't know about that day; I wasn't——

Q. You were trying to get him to tell the truth, weren't you?

A. Listen, this trip that I have in mind, he had made a statement of all the facts previous to this trip.

Q. No, I am not talking about then, this is the first day you met him.

A. I am talking about the 11th.

Q. No, I am not talking about the 11th.

A. You are talking about the 2nd?

Q. The 2nd; I haven't gotten to any other date yet, the 2nd, how many times on that day did you tell him it was better for him to tell the truth?

A. Oh, I am not sure; a warning was given to him each time we started to talk to him, the warning was given not in the matter of telling the truth; it was given in the matter that he was held for an investi-

gation and that whatever statement he made it would be used against him in court, and any statement he made would have to be voluntary; that is the way it was put to him.

Q. Then he had better make a statement, isn't that right?

A. No, I am not sure that that was put to him; we may have said something about it, it would be best if he did tell the truth, something like that.

Q. It would be best if he did tell the truth?

A. The statement that you told is not right.

Q. Then I will put it this way, best if he did tell the truth?

A. I may have said that; I talked to him three or four days off and on.

Q. You took him to the jail?

A. That night, yes.

Q. What time did you see him the next morning?

A. I judge about half-past eight or nine o'clock.

Q. Where did you take him then?

A. Out again for the purpose of identification.

Q. Where did you take him, Mr. Doran?

A. I think on the next day we drove him to Ellisburg and Mrs. Eichmann looked at him for the purpose of identification.

Q. From Ellisburg where did you take him?

A. I think we took him over to Haddonfield, I think, I am not sure now, we had him out for quite a while.

Q. Wait a minute; from Haddonfield where did you take him?

A. I am not sure about the route we took on that day.

Q. Well, how many places did you visit that day?

A. We spent some time in questioning him that day, I believe.

Q. What time did you arrive in Merchantville that day?

A. I should judge somewhere around about noon.

Q. Noon?

A. Yes.

Q. And how long did you stay at Merchantville?

A. We were at Merchantville for three or four hours.

Q. What time did you go from Merchantville?

A. Well, I left Merchantville on different commissions, I had an investigation which required me to go from different place to place, and then return to Merchantville.

Q. And when you left Mr. Young was still in Merchantville, wasn't he?

A. Yes.

Q. Now, what place in Merchantville was he?

A. We had him—I don't know whether it was the police—I guess it was the fire hall and the police headquarters.

Q. What part of the fire hall did you have him in?

A. Upstairs, I think.

Q. Upstairs?

A. Yes.

Q. Is that a private room up there?

A. It is a public room for the firemen of the borough.

Q. But it was made a private room for that purpose, wasn't it?

A. Well, not so private, there was myself and Chief Linderman, and Mr. Miller, the chauffeur, was sitting around quite a crowd.

Q. Well, the general public was not allowed in there, were they?

A. Oh, I guess you have to be a member of the fire company to get in there.

Q. The general public were not allowed by you and Chief Linderman to come in, were they?

A. There was everybody there; I guess there were two or three of the members came in, walking around.

Q. And you talked with Mr. Young from the time you arrived there, didn't you?

A. About noon.

Q. Until the time you left, three or four o'clock?

A. I didn't say that; I said I left three or four times in the afternoon to go to different places.

Q. What was the last time you saw Mr. Young in Merchantville?

A. I don't know, I guess about the time we brought him in, about the same time, somewhere about that.

Q. Where did you bring him to?

A. The county jail, I think.

Q. Where did you have him that night after supper?

A. I am not sure whether it was in the Prosecutor's office here or down Third and Market.

Q. It may have been down at Third and Market?

A. I think it was the Prosecutor's office here that night.

Q. But it may have been down at Third and Market?

A. I don't think so, because I think when we arrested him we brought him down here that night.

Q. Now, how many people questioned him the next day, that is the 3rd of August—the second day he was arrested?

A. I think Mr. Wolverton and myself.

Q. How about Mr. Smith?

A. I think Mr. Smith asked him some.

Q. How about Mr. Straw?

A. I think Mr. Straw questioned him, too.

Q. And what was it they said to him?

A. I don't know what they said to him.

Q. Weren't you present when they talked to him?

A. I am not sure, I may have been.

Q. Weren't you present there at any time when Mr. Smith talked to him?

A. I was at times, yes.

Q. Did Mr. Smith give him any warning before he talked to him?

A. Mr. Smith was present when I gave him the warning, I don't think Mr. Smith——

Q. Did Mr. Smith give him any warning when he talked to him?

A. I am not sure about that.

Q. What did Mr. Smith say about why he should make a statement or whether he should make a statement?

A. I didn't hear Mr. Smith tell him anything of that character.

Q. Didn't hear him say anything—did you hear him talking to Mr. Smith?

A. I heard him in conversation with Mr. Smith several times but just exactly the words Mr. Smith said to him, I don't think I could have told you.

Q. What time did you take the defendant back to the county jail on the night of August 3rd?

A. On the 3rd? We had him at Third and Market on the 3rd, too, because I think it was the 3rd I brought the watch up to him and showed it to him.

Q. How late at night did you have him down at Third and Market Street in the Prosecutor's private office?

A. We had him there before dinner, I think, and then in the evening a while, I think.

Q. Did you tell him on that day that it would be better for him to tell the truth?

A. Not better for him, no.

Q. Well, better to tell the truth?

A. I think that was the language, yes.

Q. You were constantly seeking to get him to make a statement?

A. I was constantly seeking to get him to tell the truth.

Q. Whatever words you express it in, you did?

A. In the right way, yes.

Q. What time that night, the 3rd, did you take him up to his cell?

A. I worked pretty late on him in cross-examination to get him to explain the possession of this watch. That was in the evening of the 3rd.

Q. How many people talked to him down there that night? I don't know whether Mr. Wolverton and I talked to him and I think Mr. Straw did too.

Q. Is that the night you showed him the watch and chain?

A. Yes.

Q. You remember that, do you?

A. I think so.

Q. Wasn't there another man present that time?

A. There were three or four.

Q. Wasn't Mr. Manning there?

A. There were several witnesses there.

Q. Well, was Mr. Manning there?

A. I think he was. I don't know whether he was there the 2nd or 3rd.

Q. He was there one night you were showing him the watch?

A. I think that was Thursday.

Q. All right. The second day was Wednesday. Tell me what time you took him to the jail that night. Did you testify to that?

A. No, it was pretty late that night.

Q. What do you mean by pretty late?

A. There were several witnesses down there we were questioning him about.

Q. What time? Twelve o'clock?

A. I should judge half-past ten.

Q. Not any later?

A. It might have been a little later.

Q. What time did you take him out of his cell the next morning?

A. On the 4th?

Q. Yes.

A. I don't think we took him out on the 4th. We may have taken him down to the office to question him but we didn't take him out on the 4th, I don't believe.

Q. Did you have him at Merchantville?

A. Not on the 4th.

Q. How many times did you have him in Merchantville, in the fire house?

A. Twice.

Q. What were those two days?

A. I think it was in the latter part of the 2nd, the afternoon of the 2nd, I think it was, part of the 3rd.

Q. Did you have him there part of the 4th?

A. I don't think so on the 4th.

Q. How about the 5th?

A. On the 5th he made a request——

Q. I am asking you about Merchantville. Did you have him at Merchantville on the 5th?

A. No.

Q. Coming back to the 3rd again where did you take him to first on the 3rd and what time?

A. On the morning of the 3rd either to Mr. Wolverton's private office or Merchantville, either one or the other.

Q. What time in the morning?

A. I should judge about nine o'clock.
Q. Was it as early as seven o'clock?
A. I don't think so.
Q. It might have been?
A. I wouldn't exactly state. I was out late and I don't think I got up that early.

The Court: Mr. Cleary, it is all right, I never attempt to control counsel in a case, but we have been over this. What relevancy has this to the question of whether this statement on August 11th was voluntary or involuntary?

Mr. Cleary: If your Honor please, I want to show a condition, I haven't been able to show yet, I haven't reached the point where I am going to show the condition of this man's mind induced by the officers having him in charge, taking him from place to place, without having a chance to have counsel, to show a condition of mind where a man would have said anything that these officers wanted. I am attempting to show the various places, first where they took him. I am going to show next what they said to him there. I am going to show what they did to him and when I am through it will reach to a logical conclusion from the fact this man's mind was in such a state during all this time that he was irresponsible for his statements.

Q. Now, you took him out early on the morning of the 4th of August, didn't you?
A. I don't know whether you will call it early or not, I judge around eight o' clock.
Q. Can you give me more direct answers?
A. You wanted me to give you the exact hour.
Q. I mean, if you are answering a question of that

kind, can't you give me to the best of your recollection?

A. I would say around eight or nine o'clock to the best of my knowledge.

Q. You took him to Merchantville, did you?

A. I am most positive we took him there.

Q. Then you kept him there how long?

A. I left him there in company with an officer and I went to Haddonfield to search the home. I was away from there several hours.

Q. And when you returned he was still there?

A. Yes.

Q. How long did he stay at Merchantville at this fire house?

A. I am not sure, I think we came in around five or six o'clock after we made some investigations.

Q. And he was there from early morning until five or six o'clock that night?

A. I am not sure about that. I think we took him out once or twice. He rode a good part of this time in the car with us.

Q. Then at night time on the 4th where did you take him?

A. The night of the 4th we had him in Wolverton's office here.

Q. In the Court House?

A. Yes.

Q. That is the first time you had him there?

A. No, I am not sure but I think we had him there once before. I am not positive. I know we had him there on the night of the 4th.

Q. Now then, how long did you keep him there on the night of the 4th?

A. I should judge about half-past nine we put him upstairs.

Q. And the next morning what time did you take him out?

A. The next morning he sent word requested us to take him out; we went up to see him, he asked us to take him out to see his wife.

Q. What time was it?

A. I guess we went up there, we got him down about nine o'clock.

Q. Nine o'clock?

A. And we took him in the car to Haddonfield. He said he wanted to see his wife. He said he didn't want to go home to his residence so we made arrangements for him to meet his wife on the road that leads to Hopkin's Lake off Potter Street; I sent another car to the residence for his wife; brought her up and put her alongside of him in the car and let them converse.

Q. He did have a conversation with his wife at that time?

A. He did.

Q. And what time did you take him back to the office or the jail again?

A. We didn't take him back, he wanted then to show us where he had gotten some cars and things and we took him around the route.

Q. What time did you get through that?

A. Took us a couple of hours.

Q. Then where did you take him?

A. Back to the Court House.

Q. Where did you put him?

A. In Mr. Wolverton's office.

Q. How long was he there?

A. Along about lunch time, about six o'clock.

Q. Then what?

A. Put him upstairs.

Q. How long did he stay there, was that six o'clock?

A. Yes.

Q. In the evening?
A. Yes.
Q. That night what did you do with him?
A. Left him up in jail.
Q. Was that after he had made the statement to his wife and to the Prosecutor in the presence of a stenographer?
A. Yes.
Q. Take him out the next day?
A. We didn't until he requested us to take him out for a ride and we did in the next week and he showed his willingness too to go.
Q. During all these times from the second of August when he was arrested until the 11th day of August when you took him out on this particular occasion how many officers of the law had talked to him to your knowledge?
A. Mr. Wolverton, Mr. Straw, Mr. Smith and myself.
Q. How about Mr. Norris?
A. I don't know whether Mr. Morris ——
Q. How about Chief Linderman?
A. I think the chief was with us at times. The conversation the chief had I don't know. The chief was present out in Hopkin's Road.
Q. Now, did you hear the chief say anything to him?
A. Not that I can recall of anything myself.
Q. Did the chief tell him what to say about his actions?
A. No, not to my knowledge.
Q. He was talking to the chief though?
A. He might have been, I didn't hear him.

By Mr. Wolverton:

Q. Mr. Doran, was the defendant told from the time of his arrest that he did not have to make any statement that he did not wish to?

A. We did not only once but several times.

Q. Was he told what he was held for?

A. He was.

Q. Was he told in whose custody he was?

A. He was.

Q. Was he told that if he made any statement it would be used against him in court?

A. He was.

Q. Was there any promise ever made to him to favor him or otherwise if he told the truth?

A. There was not.

Q. Were any threats ever made to him that if he did not tell the truth what might happen to him?

A. No.

Q. Was he told on each occasion that if he had anything to say it must be voluntary on his part?

A. A number of times, time and time again.

Mr. Cleary: If the Prosecutor will permit me, there is one question I overlooked.

By Mr. Cleary:

Q. Mr. Doran, when this man first arrived at Mr. Wolverton's private office on August 2nd or shortly after he had arrived, who was it that he asked to see?

A. I am not sure. The first one he ever asked to see was his wife to my knowledge.

Q. Who was the next person he asked to see?

A. I think along about the 12th or 14th he asked to see Marter.

Q. Now, didn't he ask to see Mr. Marter that day, the first day he was down there?

A. Not to my knowledge, no.

Q. Not to your knowledge?

A. No.

Q. While you were in there?

A. Where?

Q. In Mr. Wolverton's private office that day?

A. No, I did not hear him ask for Mr. Marter there. The first time I ever heard him ask for Marter was after he had made his statement and was confined in the jail, then he wanted to see Marter.

Q. Do you mean to say from the day he was first arrested up until the 13th he never asked for the privilege of seeing his attorney, Mr. Marter?

A. Didn't know he had one.

Q. Will you say that wasn't so?

A. No, it isn't so. I say he asked for Mr. Marter, but I think it was the week after his arrest.

Q. What date was that?

A. I judge around the 11th or 12th.

Q. Did he ask you that question?

Mr. Wolverton: Is this the one question you overlooked, Mr. Cleary?

Mr. Cleary: Yes, this is the one minor question.

The Witness: What was your question?

Q. What was the date that he asked you to see a lawyer?

A. I am not sure of the date, but it was somewheres following the next week after his arrest in the jail upstairs; he said that Mr. Marter had represented him in some previous matters and he would

like to see him in this matter. That was the way he put it.

Q. As a matter of fact, Mr. Doran, didn't he say on the day he was arrested in response to an inquiry by you, and in response to an inquiry by Mr. Wolverton as to whether there was anybody he wanted to see, didn't he say, "I want to see Mr. Marter, my lawyer, who lives in Haddonfield, and whose office is on Third Street."

A. I think he made some statement to that effect, but it was the week after his arrest.

Q. But did he that particular day?

A. No.

Q. Did he on the next day?

A. No, not to my knowledge.

Q. Did he at any time before the 13th?

A. I don't know whether it was the 13th, I said it was a week after his arrest.

Q. Well, whenever it was before the next week?

A. No.

Mr. Cleary: Now, if the Court please, it is quite an unusual thing to do, but in this case where a man's life is at stake, in order that the confession be proved properly, I will have to call Mr. Wolverton to the stand, since he was there. There is no discourtesy to Mr. Wolverton.

The Court: There is no objection to that course; Mr. Wolverton, you may be sworn.

The Prosecutor: Mr. Cleary does not have to make any apologies.

CHARLES A. WOLVERTON, ESQ., sworn.

By Mr. Cleary:

Q. Now, Mr. Wolverton, when did you first begin your duties as Prosecutor, what year?

A. I can remember when I go out better; I think it was sometime in March, nineteen ——

Q. Probably I remember better when you came in —I think it was in March, 1918.

A. Yes, I think that is the date.

Q. Now, you have been Prosecutor of the Pleas since March, 1918?

A. I have.

Q. Now, what other experience did you have in the Prosecutor's office prior to that time—what duties did you have there?

A. I first entered the Prosecutor's office as assistant under Henry S. Scovel, and served a term of about six years; when the office changed, due to the election that was held, and Judge Boyle was appointed Prosecutor, I continued for about a year under Judge Boyle as assistant Prosecutor until he was elevated to the county bench, and when Mr. Kraft took his place I served under Mr. Kraft for a period of two or three months at his request, and then went to Atlantic City and acted as an assistant under Attorney General Wilson in the Prosecutor's office of Atlantic County for a period of about a year and a half. Afterward I acted as Prosecutor in this county from March, 1918, until the present.

Q. Now, how many murder cases, can you estimate—how many murder cases have you participated in in the way of investigation and preparation for trial, Mr. Wolverton?

A. It would be difficult to give the number; I suppose in the different capacities that I have enumerated I have covered close on to one hundred, at the very least, if not more, say probably more than less.

Q. Now, Mr. Wolverton, what is your custom when the matter of securing a confession from a prisoner is concerned—what is your custom in relation to what you say to that man? Have you a regular custom of saying certain things?

The Court: Now, that is not really the question; it is what he said to this man.

Mr. Cleary: All right, if the Court please.

The Court: Mr. Wolverton has no counsel, so the Court will have to perhaps act in that capacity.

Q. Mr. Wolverton, what did you say to Mr. Young when he arrived at your office on the 2nd day of August in relation to any statement made by him?

A. I told Mr. Young, as I have told every defendant from whom ever I have taken any statement whatever in all my experience, as to the position I held; I informed him that I was the Prosecutor of Camden County; I then told him what the duties of the Prosecutor were, that they were to investigate crimes that are committed within this county. I then informed him that he was held in custody because of his possession of that particular car, and that I desired to ask him questions concerning it, that he did not have to make any answers whatever to any questions that I asked him, that if he did so they would be used against him in court, that if he had any answers he wished to make, it must be voluntary on his part. I asked him if he was willing to

make any statement to me concerning the possession of the car. He said, "I am." I then asked him the circumstances, and he related them to me without any questions being asked on my part, until he had first informed me as to how he came into possession of the car.

Q. That is on the second day?

A. That is on the first day of his arrest.

Q. I mean, on the 2nd day of August, the first day he was arrested?

A. That would be on the 2nd day of August, Tuesday.

Q. Now, then, after this statement was made and your detectives had found out that the statement was not in accordance with what they found, did you again question him on that same day?

A. I surely did.

Q. Did he refuse to change his story?

A. Did he refuse?

Q. Yes.

A. He did.

Q. He did refuse?

A. When we brought to him, to his attention, the fact that he could not have received that car on the 15th of July, as he stated he had received it, by a bill of sale, because in fact the car had not yet left the dealer's hands until the 21st of July, I do not think it is surprising that he changed his statement.

Q. Well, I say, did he then refuse to change his statement or did he change it?

A. When those facts were presented to him ——

Q. He changed it?

A. He changed his statement; prior to that he had insisted that he was telling the truth; he said that if we would get the bill of sale from his home in Haddonfield it would prove what he was saying to

be the truth, and it was because of his insistence to prove its truth by that bill of sale, that we asked him if he would give us an order on his wife for us to get it, which he did and which we got.

Q. And this was on the 2nd day of August?

A. Yes.

Q. And was the bill of sale brought back there that day?

A. I am not certain; in fact I doubt if it was for the reason that in the meantime we had this additional evidence through Mr. McKee, who identified the car of Garwood and also the testimony of Mr. Flexon whose records showed that the car had not been sold until July 21st, so we did not deem it necessary in my judgment to get the bill of sale at that particular time.

Q. After he had told you—I don't remember whether this was given in evidence, but I have a recollection that some one said here, that they had said he made the statement that the car had been exchanged—has that been produced in evidence—by James Brown, he had given another car.

A. Mr. Doran has testified to that.

Q. After he told you that, that it had been changed, did you then think that he was telling the truth about it?

A. Do you wish to have my personal opinion?

Q. Yes.

A. I certainly did not.

Q. You did not, and did you then ask him to tell you the truth?

A. I never asked him to tell the truth or an untruth, I asked him to answer my questions.

Q. Didn't you ever say to him that it would be better for him to tell the truth about it?

A. No, I can determine whether a man is telling

the truth; he doesn't have to tell me whether it is the truth or not.

Q. Now, isn't it a custom of yours—didn't you on this occasion say, "It would be better for you to tell the truth about it"?

A. No, as a matter of fact, Mr. Cleary, when a man is brought in and I want to get a statement from him, I don't care whether he tells me the truth or an untruth, if he will talk to me and explain it.

Q. I understand that, but that is not my question; I am asking you whether on this day you did not say to him, "It is better for you to tell the truth about it"?

A. No, sir.

Q. Or did you use words to that effect?

A. No words to that effect of any kind or character, for I could not determine how it could be better for him to tell the truth; I believed he was guilty and if he told the truth it would harm him rather than help him.

Q. Well, wasn't there a point when you were quite convinced that he wasn't telling the truth?

A. From the time he first spoke to me I was convinced he was not telling the truth.

Q. And wasn't there a point when you came to a place where he wouldn't change his story any more on that 2nd day of August?

A. Came to a point where he wouldn't change it

Q. Where you believed he was not telling the truth?

A. The only time that he spoke of changing his testimony was when, through our efforts for the day, we were enabled to present different facts to him that would cause him to change his story.

Q. But at that time you were still under the belief that he was not telling the truth?

A. Absolutely.

Q. And he refused at that time to say anything different from what he had been saying?

A. He has never refused to talk to me.

Q. But he refused to change his story at that particular moment?

A. I don't know whether he refused or not.

Q. He wouldn't do it, would he?

A. If you will pardon me, I don't think he changed it any further that day.

Q. That is it.

A. But I cannot say he refused.

Q. Then when you left that night you were under the belief that he was not telling the truth, and he had reached the point where he claimed a certain statement to be the truth and stuck to it, isn't that right?

A. When you say, "Stuck to it," that is a statement ——

Q. Well, I mean for some considerable time, an hour or so?

A. I did not measure it by minutes or hours; I took his statements as he gave them to me, and I think, if I remember correctly, at the conclusion of our first day's work, we had reached the point where we had located him, arrested him, and had his first explanation as to the car and the witnesses presented that would prove that to be untrue, and the changing of his statement then to, as Mr. Doran has testified, that he had received a second car from James Brown.

Q. Now, what time in the day did he say he had gotten the second car from James Brown?

A. I couldn't answer that question.

Q. Was it early in the evening, do you know?

A. There would be no use in pressing me, Mr. Cleary ——

Q. Have you any idea at all?

A. I have not, in justice to the defendant.

Q. I don't mean the hour of the day, but in reference to the time that you left the office?

A. I couldn't say; I don't count hours or minutes ——

Q. But there was a short interval, wasn't there?

A. I couldn't say whether it was short or long; I don't bother with immaterial matters of that kind; I have got too much to fill my mind with those things.

Q. I know, but there was an interval of that description, wasn't there?

A. An interval of what description?

Q. Where he said he had purchased this car or had been given this car in exchange?

A. The only interval, Mr. Cleary, was between the time that he first made the first statement as to how he came into possession of it, and the time it took us by investigation to ascertain the facts to be different from what he had said they were and then present them to him again.

Q. And then at that time he said he had a car in exchange, didn't he?

A. He had that explanation to give us as soon as we presented those facts to him.

Q. Now, I am asking you, Mr. Wolverton, how long before you left that night was that explanation given?

A. I might say in connection with that, Mr. Cleary, after he had made that explanation I asked him how it happened that the car which the defendant explained as having received as a second car on the 21st of July with a certain engine number on it happened to have the same engine number as the bill of sale which had been executed on the 15th of July, and he has not answered that yet.

Q. Well, Mr. Wolverton, you don't seem to quite understand what I mean.

A. If you will state the question again I will try to ——

Q. There was a time on that night, when through the detectives' efforts you had found out certain facts, and Mr. Young admitted that he had gotten the car in exchange, wasn't there? There was a certain point, whether that was in the daytime or evening when he finally made that ——

A. I am not able to say, Mr. Cleary.

Q. Well, after he made that statement, didn't you then say to him that that was not the truth and it would be best for him to tell the truth about it?

A. I told him it was not the truth.

Q. Didn't you tell him it would be best to tell the truth about it?

A. I have never said that to any living soul, either in a serious offense such as this, or even in a minor offense.

Q. Now, were you present when Mr. Doran was there?

A. Mr. Doran was present most of the time that I was there.

Q. And he was also examining him?

A. Mr. Doran talked to him as well as myself.

Q. Were you present at any time when Mr. Smith examined him?

A. No, Mr. Smith has been present when I have talked to him, but I can't recollect that Mr. Smith ever directed questions to him. Mr. Smith has been present and heard conversations between Young, and Doran and also myself, but as to directing questions to him, I don't know that I was present at any time when he did it.

Q. Now then, Mr. Wolverton, next day did you have a conversation with him, the next day?

A. That would be Wednesday?

Q. Wednesday?

A. I did.

Q. And where did that conversation take place?

A. I am not certain, I think it was in the evening, if I remember correctly, both Tuesday and Wednesday, I may be mistaken, but I think those days were very heavy showers, and I think the officers, for the purpose of saving witnesses being brought into the office, and also to save time, had taken the defendant out to the vicinity of the crime where people could meet him more readily than by bringing them into the city, and it is my recollection that I did not speak to him during that day, but did speak to him that night.

Q. Where, Mr. Wolverton?

A. At my private office, Third and Market, and the subject-matter of my conversation at that time, if you wish it, if I remember correctly, it was that afternoon in company with detectives Doran and Smith I went to Haddonfield and they located the watch and chain and the charm which has been introduced here in evidence, and on the basis of that I talked to the defendant.

Q. What time did he leave your office that night, Mr. Wolverton, do you know?

A. I couldn't tell you, Mr. Cleary; I did not keep any record of the time; I never do in these matters.

Q. You haven't any idea then as to the time?

A. I could not to the best of my recollection.

Q. Now, the next day was Thursday, did you talk to him on that day?

A. I talked to him on Thursday, yes.

Q. And what time and what place?

A. It is my recollection that I talked to him twice on Thursday.

Q. Where?

A. I think I talked to him at my office, Third and Market; I am not quite certain whether that was the place, or the Court House, but I know I did have a conversation with him on Thursday evening at the Court House.

Q. At the Court House?

A. In my office here in the Court House.

Q. Then you had a conversation with him the next day?

A. I did, sir.

Q. That was in the morning or the afternoon?

A. I talked to him in the morning and also in the afternoon.

Q. Now then, Mr. Wolverton, when Mr. Young was brought to your office the first day, did he or did he not ask to see a lawyer?

A. Not to me, sir.

Q. Did he to anybody else in your presence?

A. No, sir, he did not.

Q. Did he at any time before Saturday of that week make the same request?

A. Not to my knowledge, sir.

Q. Not to your knowledge?

A. No, sir. Mr. Young was under the impression that he could prove to us—I don't think he thought attorneys could help him—he was able to prove to us that he came rightfully into possession of the car.

Q. Did he mention Mr. Marter's name to you?

A. No, sir.

Mr. Cleary: That's all, unless you want to cross-examine yourself, unless you want to make a statement in justice to yourself?

Mr. Wolverton: In justice to myself?

The Court: I see no reason why Mr. Wolverton should make any statement.

Mr. Cleary: In relation to the explanation I have asked.

Mr. Wolverton: I only wish to say this, which you did not dwell on with me: That at no time did I have any conversation whatever with anyone, or anyone under me without my having first told this defendant, whether statements were taken stenographically or otherwise, of the serious offense with which he is charged, that he did not have to make any statement unless he wished to. I do that, not because the law requires it, but because I deem it for the best interests of the defendant, as well as of the State, because when a statement is introduced it is my thought it has more effect by the defendant having been told it, although the law does not require it; so that, following the practice, it has always been the custom and with which you are undoubtedly familiar the defendant was always told of the offense, that he had to make no statement whatever, that if he did so it would be used against him and that it must be voluntary on his part, and I think that you will find through the statements if they are subsequently introduced that the defendant time and again referred to the fact of the treatment he received at the hands of the Prosecutor of this county and at no time made any statement to me or any officer of mine or anyone else had made any promise to him or any threats of any kind or that he had been treated in anything but the kindliest way. His expression was, "You have treated me like a man, you have been square."

Q. Mr. Wolverton, you of course, don't know what occurred when you were not present with your assistants or your detectives?

A. Mr. Cleary, from the time that this body was reported to me as having been found, on Monday morning, until this defendant had made what I considered his final statement on Friday afternoon, I don't think there was hardly a time during all of that time that I was not with either Detective Doran or Detective Smith whenever the defendant was with them.

Q. Well, now, Mr. Wolverton, you were not out at Merchantville all the time?

A. I was at Merchantville during operations there just the same as I would sit in my office here.

Q. There was some time when you were not there?

A. There might be a minute or two or a few minutes, or a time of that kind for instance, I won't say I was with him every minute, but I will say it was so nearly so there hardly any exception from the rule.

Q. Might you not be away from him as long as an hour?

A. There may have been. In other words, there may have been times I would go from one room to another and I would have him in the custody of an officer and go and examine witnesses and return to him and give him the statements of those witnesses.

CHARLES STUART STRAW, ESQ., sworn.

By Mr. Cleary:

Q. Mr. Straw, you are one of the assistants in the Prosecutor's office?

A. I am an assistant to the Prosecutor, yes.

Q. You were present at a conversation between Mr. Young and some other people at Merchantville at the fire house one day immediately after he was apprehended, were you not?

A. A conversation between Mr. Young and myself.

Q. You were the one that examined him?

A. I did examine him.

Q. Who else was present at that time?

A. You said at the fire house; no, sir, I never did.

Q. Were you in Merchantville talking to him?

A. I was in Merchantville.

Q. Where was that? Well, it is immaterial, some place in Merchantville?

A. I think so.

Q. Was it a public place?

A. I think so.

Q. What was the subject-matter of your conversation with Mr. Young, was it in relation to some statements he was to make to you regarding this crime?

A. It related to the coming into possession of this automobile.

Q. Now, before making this statement did you say anything to him?

A. I did, sir.

Q. What did you say, Mr. Straw?

A. I told him my name, I told him that I was an assistant to the Prosecutor, that it was my business

to investigate matters of a criminal nature arising in the county, that he had talked to Mr. Wolverton on prior occasions with relation to this matter, that I desired to ask him further questions, but that it was my duty to say to him that he did not have to answer any of my questions, or make any statement to me unless it was with the entire and full knowledge that it was a purely voluntary statement on his part and that he did not have to answer any of my questions whatsoever.

Q. Did he make a statement to you?

A. He did, Mr. Cleary.

Q. Did he reach a point where he refused to talk any further to you?

A. Not to me.

Q. Did you say anything to him about the effect of this confession, what effect it would have upon the case?

A. I did not.

Q. Did you tell him at that time that it would better for him to make a statement?

A. I did not.

Q. Did he at that time ask to see Mr. Marter, his attorney?

A. He did not.

Q. Did he ever at any time ask to see Mr. Marter, his attorney?

A. Never.

Q. Have you been present at any time when he asked to have anybody else send for Mr. Marter, his attorney?

A. Never.

GUILFORD C. YOUNG, sworn.

Direct examination.

By Mr. Cleary:

Q. Mr. Young, on what day were you apprehended? Do you remember the date?

A. On the second of August it was.

Q. Now, Mr. Young, I want to tell you something. The ladies and gentlemen in the last seats over here won't be able to hear you unless you are able to make your voice a little more distinct, and I know you want them to hear what you have to say, so speak up. Where were you taken when you were first arrested?

A. At the Prosecutor's office on Third Street.

Q. Where were you taken when you were first arrested?

A. At the fire house in Haddonfield.

Q. From there where were you taken?

A. At the Prosecutor's office on Third Street.

Q. What time of day did you arrive at that office?

A. About eight o'clock in the morning.

Q. And what time at night did you leave that office?

A. About half-past eleven at night.

Q. From the time that you were there, from half past eight until half-past eleven, who spoke to you concerning this case?

A. Mr. Doran, Mr. Smith and Mr. Wolverton.

Q. What did Mr. Wolverton say to you regarding a statement to be made by you?

A. He asked me where I got the car from. I told him that I bought it, and he asked me who I bought it

from and I told him James Brown. He says, "Who is James Brown?" I said, a fellow that lives in Philadelphia, on Reed Street, but I don't know the number of the house. I told him that I had a bill of sale for the car and then he made a statement of that and then he didn't say any more to me for until sometime in the afternoon or evening. Mr. Doran then came in and told me that that car belonged to Garwood and wanted to know how I got the car and I told him that I bought the car, so then he said to me, he says, "You didn't buy that car. You know you didn't buy it." He says, "Why don't you tell me the truth about it? It will be much better for you." And I says, "I bought the car. I have a bill of sale for the car." And he says, "Why, where is the bill of sale?" I said, "At home on the bureau drawer." He says, "Can you get it?" I said, "Yes, I can get it." So he says is there any way he can get it. I says, "Yes, I will give you a note to get the bill of sale with." So he went out, I believe, and got it, which I have never seen the bill of sale until today, and in the evening, about six o'clock, Mr. Doran came in and said he came back without his supper and that it would be best for me to tell the Prosecutor all about it, because he was a fair, square man, and that he would help me a whole lot if I would tell him the truth and not to lose this opportunity of telling the facts of the case, and I told him there was nothing more to tell him than what I had told him, and he gave me one cigar and I smoked that up pretty well while we were talking, and he says, "Now, Guilford, you know that you didn't buy this car," and he says, "this man that owns the car is dead, he has been shot in the head. We found two bullet holes in the head," and he says, "now, it will be best for you to make a clear breast

of it and tell us," and he gave me another cigar, and after I told him he told me I wasn't fit to live. Later in the evening, Mr. Wolverton came in and he told me that he wanted to know if I wouldn't tell him the truth about the car and about Garwood, and that the man that owned the car was dead and that he could help me a whole lot more if I would tell him the truth and that he would get my people there, my mother, sisters, anybody I wanted in, all my relations, and I told him that I wanted Mr. Marter. He said, "Who is Mr. Marter?" I said, "A lawyer from Haddonfield and he has an office on Third Street." He says, "You can't have any lawyer," he says, "We haven't got any time to go after lawyers for you," and after I wouldn't tell him any statement at all, he says, "Well, if you think it is best for you to keep it, you can do it," in a sarcastic way, and he said, "Take him down to the hall." So then they took me down to the hall.

Q. Was not there anything said about getting bail for you that night?

A. Yes, I asked about bail in the morning, when they took me there.

Q. What's that?

A. I asked about bail in the morning, when they took me there, after I had told how I got the car, and he said, "Well, tell us about the car and then we will see if we can't fix it up so you can have bail." He says, "After I have a statement from you, then I can take into consideration about giving you bail."

Q. Now, then, did you have a conversation with Mr. Doran there at the same place on that day?

A. I did.

Q. What was the subject-matter of your conversation with Mr. Doran?

A. Why, in the morning, after Mr. Doran told me that the car had belonged to Harry Garwood, I asked to see Mr. Marter and he said, "Who is Marter?" I said, "He has an office up here on Third Street, just across the street from where we are." He says, "I don't know him." I said, "Well, he is a lawyer and lives in Haddonfield." "Well," he said, "you can't have any lawyer. We are not going around to get lawyers for you." And when Mr. Wolverton came into the office, he said, "This fellow wants a lawyer," and he laughed. He said, "He can't get any lawyer," and I asked if there was a phone there that I could phone to him and he said no.

Q. Now, then, did you have a conversation the next day with Mr. Wolverton?

A. The next day, that was on a Wednesday morning, he took me up to the Third Street office and they asked me if there was anything to tell. I said no. He said, "That's what you say, you have nothing to tell, you have nothing to say." I said, "No, I have nothing to say," and he took me from there to Chief Linderman's office, out in the country, and took me up over a fire house, in a hall there. There was two pool tables in there, if I am not mistaken. I won't say whether there is two or whether there is one.

Q. Yes.

A. And they kept me there for a little while and then they took me from there to Ellisburg at the hotel, and they had Mrs. Eichmann to come out and look at me, told me to stand up in the car, which I stood up in the car.

Q. Where did you go from Ellisburg?

A. I went from Ellisburg down by Springdale, a country store; there is a farmhouse ——

Q. Where did you go from there?

A. I went from there to Chief Linderman's again, to the fire house.

Q. What happened there?

A. They took me up in the hall and kept me there until about five or six o'clock, and I asked for something to eat, and if I am not mistaken, Mr. Straw was there, and Mr. Linderman asked him if he should give me something to eat; Mr. Straw shook his head yes and he gave me something to eat. Then they took me from there to the Third Street office here in Camden, and they asked me if there was anybody I wanted to see, anybody I would make a statement to. I told them I had nothing to say, the only man I wanted to see was Mr. Marter of Haddonfield, who was a lawyer. They said, "Well, you can't see no lawyer."

Q. Well, what did you do next? What day was this, was this Thursday?

A. This was on Wednesday.

Q. Well, what did you do on Thursday?

A. On Thursday morning they took me out here on the east side somewhere at a constable's house, I believe it was Constable Zinger, and then they took me from there back to—took me from there to Merchantville, or out to Chief Linderman's; I don't know exactly whether it was Merchantville or not.

Q. What happened there?

A. They took me up in the fire house and they asked me if there was anybody I wanted to see at all. Chief Linderman asked me, told me it would be best for me to tell these people, make a clean breast of it, how much the Prosecutor would help me, how much he could help me, if I would make a clean breast, and I told him that there wasn't anything to say. "Well," he said, "you may be sorry if you don't tell them; you have got an opportunity to tell them now," he says, "I don't see why you shouldn't, and," he says, "this is the first time that you have

ever been arrested or ever been in any trouble," he says, "you ought to come clean with it." And he asked me if I would like to see Harry Garwood; I said yes and they took me out on Marlton Pike and stopped on Marlton Pike, and Howard Smith and Chief Linderman walked back in the woods, but they did not take me out of the car. Then they turned around and returned at the fire house again, Chief Linderman's, and they took me upstairs and wanted to know if there was anybody at all that I would talk to, that I wanted to see. I said yes I wanted to see Mr. Marter. Chief Linderman said, "Who is he?" to Mr. Doran. Mr. Doran smiled and he says, "That is a lawyer he wants to see," and he says, "he thinks all we have got to do is to run around and hunt lawyers for him," and they said then, "Is there anybody else that you want to see?" I said, "Yes, I want to see Mr. Manning." They said, "Who is Mr. Manning?" I said, "A man I used to work for, it is a steamfitter and plumber, a tin roofer, he has a place of business in Haddonfield at Kings Highway and Tanner Street," and they said they were going to call him up. So finally they tok me out to Haddonfield, at Grove Street and Lake Street, they stood there for about fifteen or twenty minutes—I was accompanied by Mr. Smith and Chief Linderman—and Mr. Manning came up and said, "Hello, Guilford," he says, "what do you want to see me for?" I started to bluff him off first, my main intention was to get him so as to get in touch with Mr. Marter, which I seen they wouldn't get me no lawyer, no way, shape or form, none of them, and I told him that I wanted him to go down to the house and talk to my people a little while and try to satisfy their minds; and when I seen they wouldn't leave me have a word to say—about two or three of them

around, that is, Mr. Doran had came then and the Prosecutor had came, and there was Mr. Smith and Chief Linderman—so I had to come right out openly in the presence of Mr. Smith and Mr. Doran and the chauffeur and tell Mr. Manning what I wanted him for; I told him that I wanted him to go and get Mr. Marter for me, that they wouldn't allow me any lawyer and Mr. Doran says to Mr. Manning, "Who is Mr. Marter?" He says, "That is a lawyer lives here in Haddonfield." He says, "No," he says, "of course he can't go and get a lawyer for you," he says, "we are not going to allow any such thing," he says, "do you think we are going to go after people to get lawyers for you, to run around for you?" Then they took me up to Camden.

The Court: Mr. Cleary, I think the examination had better be suspended at this point, because it is the hour for the Court to adjourn. We will adjourn until tomorrow morning at ten o'clock.

Camden, N. J., Nov. 11, 1921.

Trial of the cause resumed at ten o'clock A. M., pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

GUILFORD C. YOUNG, resumed.

By Mr. Cleary:

Q. Now, Mr. Young, yesterday afternoon you had reached a point in your testimony where you were describing what you said to Mr. Manning in the presence of Mr. Doran, asking Mr. Manning to see Mr. Marter for you. Now, will you resume your testimony from that point, please?

A. Which Mr. Doran said to Mr. Manning, when I asked for to see Mr. Marter, a Haddonfield lawyer, he said, "You can't see Mr. Marter, we are not getting men here to go after lawyers for you, and Mr. Manning can't go and get any lawyer for you; we have something else to do besides running after lawyers." Then they took me from there over to Chief Linderman's at Merchantville, I think—I am not just certain whether it is Merchantville or Moorestown—and they took me up in the fire house, over the fire engines in the hall; they didn't allow anyone to come in; that was the third day I had been there, or the second day, I guess it was, on a Thursday; and they kept me there all the afternoon; and in the evening they took me down to Chief Linderman's private office, I believe, and they pulled down all the curtains—I am a little ahead of my story; they came

in and Detective Smith came in and showed me a diamond stickpin, and he says, "Do you recognize that stickpin?" I said, "Yes," and he said, "Whose is it?" I said, "It is mine." He said, "You are a God damned liar," which I was sitting in a chair this side of Mr. Doran with my hands cuffed together with handcuffs.

Q. Just a minute; what did you say, that your hands were what?

A. My hands was handcuffed together with handcuffs, sitting in a chair this side of Mr. Doran, the detective; I was talking to Doran when Smith hauled off and hit me a terrific blow on the jaw, which knocked me over on Doran. Doran grabbed me by the two arms, Smith grabbed me by the throat, cutting my throat with his finger nails, which I straightened up on them and they were not able to hold me down; I broke their hold, and I told them that they would be sorry for hitting me, that they had no right to hit me, and they said they had a good notion to take their jacks and knock my brains out, and Doran said, "I guess he will tell the truth now." The only person in the room was Chief Linderman, that was standing over in the far end of the room, and the chauffeur, but Chief Linderman said nothing, nor neither did he do anything; he acted more like a gentleman than any of the rest of them. And if I am not mistaken then Chief Linderman gave me something to eat, which he appeared to be the only one that gave me anything to eat. And then they took me down about seven o'clock in the evening, between six and seven o'clock in the evening they took me down to Chief Linderman's private office, and there they said, "I guess nobody will see him here," and they pulled down all the curtains and where the curtains didn't cover they put boards up

at the windows to keep anyone from seeing me to their view, and Chief Linderman and his son and a colored man was left in guard of me, and about nine or ten o'clock Prosecutor Straw came down with Mr. Berry, I believe, this gentleman here, and wanted a statement, which I give them a statement the same as I had stated before, that I had bought the car off of James Brown, and they wanted to know if that was all I had to say. I said, "Yes." They wanted to know if there was anything else I got off of James Brown. I said, "Not to my knowledge." And then they brought me from there up to the Prosecutor's office on Third Street, and the Prosecutor came in with a watch chain and crucifix, and he says, "Guilford," he says, "I want you to tell me the truth about this," he said, "this is going to be the last opportunity to help yourself," which, he says, "we all want to help you, but you ought to want—you will want after a while some consideration from someone, and we are not going to ask you much longer." I said, "I have nothing to say." He showed me a crucifix which he held in his hand; he said, "You can't lie before that," he says, "in the face of Jesus." I said, "I have nothing to say," and after a while Mr. Doran came in, and Doran said, "He has been running around with a girl," which he represented a name card, wanted to know who she was, and he says, "That is some whore that he has been running around with." I says, "That girl is not a whore; she is one of the most decentest girls that ever walked in shoe leather, and I would do anything to shield her name, that she is innocent of all—of this crime, that she knows nothing of it." The Prosecutor says, "That is the only thing that you have any principle about," he says, "you will stand up for that girl." I said, "Yes, because she

is an innocent girl, she is a good girl, and," I says, "if you have daughters of your own you would have a feeling for her," and he says, "Well, if you don't tell us all about this we are going to place her under arrest, and," he says, "if you do tell us we will not bring her name into this case, no way, shape or form," which he promised me faithfully, that he would keep her name out of the newspapers and would not go to see her or bring her up here. And then they brought in a watch, Mr. Doran did, and showed to me, and says, "Do you recognize that watch?" I said, "I have nothing to say." He said, "That watch belongs to Harry Garwood," he said, "here is the blood on the back of it." There was blood on the back of the watch where he had it in his hands. And then they took me from there—I am a little ahead again; they all went out of the room and there was two constables came in, left in charge of me; one of them was Constable Zinger, and the other one I just can't think of his name at the present time, which I was very tired from being out between one and two o'clock every morning, and three or four prisoners that was in Section E with me was questioning me the balance of the time.

Q. Just a minute, Mr. Young, what were the names of those two prisoners?

A. One of them was Ike Cherry; the other one was Bill Marshall; there was another one by the name of Martin, which I don't know his first name, and there was an Italian up there, but he didn't have much to say to me.

Q. Pardon me again, just a minute—were those prisoners in the same cell with you, the same section of cells?

A. Yes, the same section of cells.

Q. How many cells were there in that section?

A. There were three cells in there, two men in a cell, but the cell doors were not locked; we were locked in the compartment, but the lights was on all night.

Q. These cells were communicating, were they—there was a little corridor there or something they opened upon?

A. Yes, sir.

Q. So that you all could walk up and down this corridor together and talk with each other and see each other?

A. Yes, sir.

Q. All right; go on with your story.

A. So I was very tired, I laid down on the floor a while with the handcuffs on, which I had them on very near night and day, which—no, Narrish was the other constable, and he says, "Are you tired?" I said, "Yes." He said, "Go to sleep if you want to," which I was laying on the floor, and Mr. Smith had brought me in two sandwiches and a glass of water, which I was eating one of the sandwiches with the handcuffs on, which made it a little hard for me to eat. At that Miss Green appeared at the door and called Mr. Smith; that startled me when I seen her. I said to Mr. Smith, "It is a shame to bring this innocent girl into this case." He said, "It isn't Miss Green." I said, "Then it is her ghost." He said, "You are seeing things." I said, "No, I don't think I am seeing things." I left the room then, I made several excuses out of the room, which I made them take me to the toilet, to see if it was Miss Green, which he had her hid away in another room, and I told Mr. Narrish that they had broke their promise, that they had promised me faithfully that they would not bring her there, or would not put her under any arrest or question her, neither

would they put her name in the newspapers. Then they taken me from here—Mr. Manning came up about eleven o'clock in the evening and Mr. Doran came in and asked me to tell Mr. Manning the truth of the case, which I told Mr. Manning that I had told them all that there was to be told, and he says, "Guilford," he says, "you have worked for me a number of years," he says ——

Q. Well, just a minute; never mind what Mr. Manning said to you. Did you or did you not at that time ask anyone for the services of your attorney, Mr. Marter?

A. I had, I had asked Mr. Manning and all that was present in the room, and they said that they couldn't do anything for me, and Mr. Manning was cautioned in my presence not to get any lawyer for me, and Mr. Wolverton, the Prosecutor, came in later, and he says, "Guilford," he says, "I ask you again to tell me the truth about Harry Garwood, or tell me if you don't know who murdered him or how he come to die, who did." He says, "The bullets that was found fits your gun." I said, "I have nothing to say." He said, "Then I shall arrest Amanda Green," and I was taken from there to the Prosecutor's office here in the Court House; I was put in a room by myself in care of two constables. I was soon taken from there to another office which I believe is the Prosecutor's office, and the Prosecutor was in the room when I entered. He said, "Guilford," he says, "here is a paper with James Brown's name signed on it." I looked at the paper, which had his name signed on somewhere around fifty or seventy times, and he says, "Now, you see I have told you nothing but the truth," and I says, "I don't think you have told me anything but lies." He says, "I wouldn't lie to a man in your condition at the

present time," and I says, "Is Amanda Green in the Court House?" He studied then for about three minutes before he answered me; he said, "Yes," which I thought there was no one in the office but Prosecutor Wolverton and myself, which the office didn't look like as if there was anyone else in the room, and I said, "Can I see her a few minutes by myself?" He said, "You can." And he went out of the room and sent Miss Green in the room, but while he was gone, before Miss Green entered the room, I reached across the table to pick up a newspaper, which my hands were cuffed together with handcuffs, and the chains on the handcuffs struck the table and made a little noise. Behind the desk which was pulled in the corner of the room Prosecutor Straw jumped up behind it, and said he was asleep, and I said, "I am supposed to be in this room by myself." He said, "Well, I daresn't leave the room," he said, "You and Miss Green can step over in the corner of the room and talk if you want to and no one can hear you there." I said, "The Prosecutor told me that I could speak to her alone." So I knocked on the door for the Prosecutor; he came in and I said, "You told me there was no one in the room and I could speak to Miss Green by myself." He said, "We will then be forced to leave the door open." He left the door open. I told Miss Green, I asked her first if she was placed under arrest. She said, "No, not yet." I told her that they had treated me pretty rough, that they had taken me out night and day, and had kept me out in the country and they wouldn't allow me to have any lawyer, but I didn't ask her to get any for me. She asked me about my people; I didn't answer her on the question. Once the Prosecutor came in the room and said, "Are you through yet?" I said, "No, not

quite," and before the conversation was finished he came back again and he says, "Are you through?" I said, "Yes," and after she left the room he looked kind of worried and said, "What did you tell that girl, that we wouldn't let you have any lawyer or that we wouldn't give you anything to eat?" I said, "No," because I know Amanda Green would speak nothing but the truth; I know if I asked her to get me a lawyer, and they had asked her if I had, she would have said yes, that I had asked her to get a lawyer for me, and I know that the Prosecutor would place her under arrest at once, if he thought she was going to assist me in any way. That was the reason I didn't ask Miss Green to go and see a lawyer for me. Then he brought in—he said, "Would you recognize James Brown if you seen him?" I said, "I don't know whether I would or not." He then brought in a man which was Benjamin Martin, but he didn't mention any names; Martin said nothing to me, which he was brought in the room and stood aside of me, but was only left there for about a second and taken out. The Prosecutor said, "That is the man," he says, "James Brown." I didn't answer him. He says, "What have you to got to say to this?" I says, "Nothing." He said, "Guilford, tell the truth," he says, "which it will be the best for you to do," he says, "and then you will want some consideration off of some one," and Mr. Doran came in and said, "Guilford, you want some consideration off of somebody, and you want that man to help you after a while, don't let it go until it is too late; you will need a friend and then he will not be your friend; if you tell him the truth now, he can help you a whole lot, but I would say nothing. I was taken upstairs, which was between twelve o'clock and one o'clock, I think. It may have been later. I got up

to the prison office, when I was held there for a second with handcuffs on. They brought up Benjamin Martin. They said, "The Prosecutor has sent this man up, thinking that you didn't understand who signed the name of James Brown." Benjamin Martin said, "I promised the Prosecutor that I would speak the truth and do what was right, and he said he would help me then," and he says, "I signed the name of James Brown," and he left the room; and they didn't have the keys for the handcuffs and they said that they would leave them on me all night, which was somewhere between one and two o'clock in the morning then, which I said is against the law to leave handcuffs on me all night, which I didn't know whether it was or not, my first time of ever being arrested or ever being in any trouble, which I did not know what to do. Chief Linderman had the handcuffs, or had the keys of the handcuffs, in his pocket, and was at his home, and they said, "We cannot get him in here at this hour of the morning." So they looked at me again, which Mr. Doran squeezed the handcuffs on my wrist so tight that it meant great pain. They had links, and as he squeezed them they would slide together but could not be released without the keys, and he said, "I guess it won't do any harm to leave them on him all night and we can have them off in the morning." So they called up for the chief and he came in and took the handcuffs off me, and then I was put in the cell. The prisoners there cautioned me that it would be best to speak the truth, which I had found out later they had been told to tell me that, that then I would get off lighter, to tell the Prosecutor all that had happened and to ask him what he would do for me if I did tell him the truth and to think the thing over very well, that they were

going to pray for me that night. We talked unto daylight, very near. In the morning, in fear that they were going to put Miss Green under arrest, I asked if I could see the Prosecutor. They said yes. I was taken to the Prosecutor's private office.

Q. Where is that?

A. On Third Street.

The Court: Now, you had better fix this date.

Q. What date is this, what day of the week?

A. That was on a Friday.

The Court: That was Friday, August 5th. Is that the date?

Q. Then from there where were you taken?

A. From there I was taken to Haddonfield.

Q. In what? A conveyance of any kind?

A. In a car and I was left in what they call Hopkins' Lane, in the woods, where no one could see me.

Q. Go ahead.

A. And there was another car brought there, or the Prosecutor's car, it was a Ford sedan, which he went up himself, I believe, and got my wife and brought her down to the woods, in Hopkins' Lane, and brought her there to me.

Q. Go ahead. Tell what occurred.

A. So when she was brought in the car, she started to cry. I said, "Sarah, don't cry. It is too late to cry now."

Mr. Wolverton: If the Court please, I want to make this statement of my position at this time, with reference to this conversation that this man is about to relate. I will not object to it if Mr. Cleary

will permit me to put in the whole conversation, what was said by him and what was said by his wife. I am in the position, however, that as a state officer, under the law I cannot call Mrs. Young as my witness, which your Honor well knows. Therefore, this defendant is in a position where he can say anything under the sun he wishes, without any fear of contradiction whatsoever on the part of the wife, because the wife's hands are tied. She cannot offer or be permitted to testify, nor can I call her as a witness to testify, to deny anything that this man may say. So that I am at that disadvantage in relation to this conversation with his wife, and I want to know now whether Mr. Cleary, in giving this conversation, would prefer to have the stenographer's notes given and the entire conversation given.

Mr. Cleary: May I ask the Prosecutor whether he intends introducing in evidence the entire stenographic report of that conversation?

Mr. Wolverton: I will give it to you that you may do so.

Mr. Cleary: I only want in this case the entire truth to come out. I first want this man to tell, if the Prosecutor doesn't object, what his conversation was and his version of it, and then he can introduce the stenographic notes also. Let him continue his story in his own way and I am also willing to introduce the entire conversation, no matter whether harmful or beneficial to him, if that is the truth.

Mr. Wolverton: Do you prefer that the stenographer give that?

Mr. Cleary: I prefer first, if you have no objection, that he continue his story in his own way.

Mr. Wolverton: I cannot consent to what was said between this man and his wife unless it goes in as an entirety. As I have already stated to the Court, as a state officer, under the law of this state, I cannot do so, I cannot call Mrs. Young, I cannot use her, she cannot even come to offer herself as a witness to deny anything that this man says. She is at the same disadvantage that I am. It is entirely in the hands of this defendant. He can say what he pleases without any fear of contradiction, and I take it there is no indication on the part of the defense to call her as their witness, and therefore I must object unless the conversation as a whole goes in.

Mr. Cleary: If your Honor please, I first want to determine whether this man cannot give the entire conversation as a whole. It is my opinion he can give the entire conversation as he has narrated it to me. If he fails, then the stenographic report can be introduced. But I am perfectly willing, however he makes his statement, no matter whether he covers the entire ground or not, to have the stenographic report introduced in evidence to cover points that he hasn't covered.

Mr. Wolverton: Will you put the stenographer on the stand as your witness, to introduce that statement?

Mr. Cleary: If you will let me see the statement first.

Mr. Wolverton: You know the conversation.

Mr. Cleary: Yes, but I don't know anything about the warning parts, if there was anything of that sort said. It might make it invalid. I want to examine the first part of the conversation.

The Court: Gentlemen, let me direct your thoughts a minute to this situation, to say that the evidence that is being produced at this time is addressed to the Court. It is a question for the Court to decide whether this confession or alleged confession of the defendant is voluntary or involuntary. Now, there is a great deal of testimony being introduced here by this witness, in these conversations, that of course is admissible on the subject of whether the statements made to the public authorities were voluntary or involuntary. I do not know exactly what this witness may say, but as I understand it he is now about to relate a conversation that he had with his wife in the presence of Mr. Wolverton. Is that correct?

Mr. Wolverton: I was not present but there were others that were.

The Court: Well, that is, that there were others present.

Mr. Wolverton: Yes, sir.

The Court: Now, then, of course, if a part of this conversation is admitted on the subject, the whole of the conversation would have to be admitted.

Mr. Cleary: I am willing to do that, if your Honor please.

The Court: Because, of course, the Court must be apprised of everything that was said, or otherwise the Court cannot render an opinion upon the question which is at issue and which is not a jury question in the first instance. Now, then, you see the danger of this to your client.

Mr. Cleary: I am willing to assume that danger, if your Honor please, the responsibility for it.

The Court: And as I understand it, this interview between the defendant and his wife was taken down stenographically.

Mr. Wolverton: It was; yes, sir. You see, if the Court will permit me just to inject this thought at this time, I would be fearful that I would not be permitted to prove indirectly what I could not prove directly, so that I think my hands would be tied in a way that I could not call anybody to prove what had taken place in this conversation between this defendant and his wife. It is for that reason that I ask that Mr. Cleary offer it as his testimony, and not as mine.

Mr. Cleary: I consent to that, if being allowed to see the first part of the conversation, to determine whether or not the conversation itself does contain all the conversation or whether it started some time after a point where this man is going to narrate. In other words, I am willing to put that confession in evidence, whether it harms my client or is beneficial to him. I want the truth to come out. I am willing to do what the Prosecutor says. The only thing I ask is that in addition to that proof which will be stated by that stenographic report, that this man

be allowed to tell himself what the entire conversation was at this time, so that this jury can judge whether or not he is telling the truth. Also, this is not an examination in chief. It is merely an examination before your Honor to determine whether or not these things were done in an unlawful manner, whether this confession was unlawful, so far as the elements of fear or any other element is concerned. Now, then, this man should be allowed to state this conversation, state his state of mind at the time, state what he thought and did, things that are not stated in this confession. In other words, you will simply get the bare words, the bare conversation there, you won't get in that stenographic statement what the people did, how they acted and what he thought. That's a matter that is very pertinent to the inquiry now under discussion, what his state of mind was at the time he made the final confession. I think that is all proper evidence to be permitted. I want that evidence to be brought in from that point and I am willing, no matter what that confession may contain, I am willing that that go in in evidence as the truth. I don't think that I could do any more than that.

Mr. Wolverton: If the Court please, I take counsel at his word, that he wants it all to go in. Then why not let it all go in, and then if Mr. Young has anything different to say in connection with it, or any different construction to place upon it, then the stenographic notes of the stenographer would seem to me necessary to explain, then I would have no objection to him doing so. I state to your Honor that I cannot see, from the beginning to the end of the statement, however, that there is any bearing in it whatsoever on this question which is before

your Honor, but I have no objection to it going in, but I do want it to go in as a statement complete and whole, because of a fact that my hands are tied and I cannot, after this defendant has testified, rebut it in any way whatsoever so far as the witness' testimony is concerned.

Mr. Cleary: If your Honor please, in order that the jury will get the impartial evidence of this defendant, in order that his mind will not be controlled by that confession, in order that they will get the real truth of the situation, so that no ideas will be prompted in his mind as to what to say in relation to this matter, I am taking the responsibility of having this man do an unusual thing in having him testify to a conversation which took place which may be repeated by a stenographic report itself which is absolutely accurate, I take it. Thaet is a responsibility I am taking upon my own shoulders. The only injury that can come is to the defendant. The responsibility is upon me, not upon the Prosecutor. He has all the advantage of having that in and I say I will have it introduced in evidence myself if there is any question of any loss of evidence coming in.

The Court: Now, gentlemen, the situation is this: This evidence may be perfectly admissible for the purpose of the preliminary question as to whether this statement of the defendant is voluntary or involuntary; but the difficulty with the situation is that here is a line of testimony that is not admissible, probably. Of course, I couldn't tell until the questions were put, but I rather imagine that it would be.

Mr. Cleary: On what ground, if your Honor please?

The Court: Well, you are proceeding to have this witness tell what his wife said on this occasion, are you not?

Mr. Cleary: Yes. In other words, the Prosecutor says his hands are tied, that he cannot put in evidence what the wife has said or what she has denied about it. I know that to be a rule of evidence that the wife cannot testify directly or indirectly. I am assuming the responsibility of putting that conversation in myself, but I say I won't unless this man has the privilege of stating what occurred first in his own way, in his own mind.

The Court: You are assuming the responsibility of putting this evidence in, Mr. Cleary.

Mr. Cleary: Yes.

The Court: Which of course, is the evidence of this witness. The wife is not under oath, she is not testifying, you are getting it in indirectly and it is evidence that might be helpful to the defendant or it might be harmful to the defendant. It is only admissible upon the question at this time of whether this confession is voluntary or involuntary, but once admitted here of course you know that it might have a bearing upon some other features of the case and it might result that it might be harmful to your client.

Mr. Cleary: I ralize that. I am fully aware of that, but, as I said before, this defendant and myself

want absolute truth to come out in this case, regardless of what it is. That is our attitude in this case. We have come here and in our defence we will lay ourselves open to the Court and jury and it is my idea that Mr. Young himself would like to have that testimony produced, to show what his wife said. I know the Prosecutor is under that handicap. I am removing the handicap for the sake of justice. I don't what the jury to think for one minute that either I or this man want to conceal any fact, whether we are protected by the rules of evidence or not. We don't intend to do such a thing.

Mr. Wolverton: That speech sounds to me good if it will be carried out by acts. Will you call Mrs. Young as your witness?

Mr. Cleary: I will not, because there is nothing in this case that will require me to call her as a witness.

Mr. Wolverton: I cannot do so and he will not. That is the disadvantage I am at.

Mr. Cleary: When Mr. Wolverton first arose to object, he said that there were things in that confession, there were things in denial of what the wife said. I am going away out of my way. I am probably subjecting this man to damaging testimony, but I am willing to go to the extent of having this witness' testimony placed in evidence, in an indirect way, even though she isn't under oath at the time that she made that statement, but to have her come here as his witness, I cannot compel her to testify.

Mr. Wolverton: Will you call her? You have subpoenaed her.

Mr. Cleary: I have subpoenaed her for another point.

The Court: Now, Mr. Cleary, if you proceed on this line of examination of this defendant, you are subjecting yourself to having the whole conversation given by other witnesses, are you not?

Mr. Cleary: I am willing to do it.

The Court: Even though the statements that may come from this defendant's wife, in an indirect way, by his repeating what his wife said at the time that he and his wife were in the presence of officers of the county? You are making an agreement now that that entire conversation shall go in. That's what it amounts to.

Mr. Cleary: The stenographic report of it.

The Court: The stenographic report of it.

Mr. Cleary: Provided, if your Honor please, even that is no agrement, because I insist, as my legal right. I have no—there is no compulsion to make an agreement. I am willing to make it. I insist first, as my legal right, that this defendant, in order to get this question out of the way, I insist as the legal right of the defendant that he be allowed to tell this conversation as it took place in its entirety. Now, there is no reason on earth why it could be presumed this man couldn't tell it. Probably he could tell it just as that stenographic report tells it.

The Court: I am going to give him an opportunity to tell it. The thing that is most embarrassing to

the Court is whether, notwithstanding your desire to have this conversation take place in the presence of the jury, whether, in conserving certain rights which the defendant has, I ought to permit the jury to remain in the room while the conversation is being given.

Mr. Cleary: If your Honor please, you can act on that according to your own wishes.

Te Court: I expect that, according to my own wishes, Mr. Cleary, in the matter.

Mr. Wolverton: Just a moment, Mr. Cleary ——

The Court: Mr. Cleary, you cannot converse with the witness while on the stand.

Mr. Cleary: Can I take him from the stand?

The Court: No, not while under examination.

Mr. Cleary: The only thing I was asking him was whether he was willing to do what I said.

The Court: You can produce the question to him.

Q. Are you willing to allow me to produce that stenographic report in full, regardless of what your wife said?

A. Why, I cannot see why not.

Mr. Cleary: Are you willing, Mr. Young, to allow me to present that stenographic report in full regardless of what your wife said?

The Witness: Why, I can't see why not.

Mr. Cleary: Well, do you want me to do it?

The Prosecutor: Say yes or no.

The Witness: I can't see where it would—why it shouldn't, but it is in your hands, it is up to you; I leave the entire matter lay in your hands what to do.

Mr. Cleary: You have no objection to it?

The Witness: No, I have no objection.

By the Prosecutor:

Q. And you consent to it—do you consent to it?
A. I said I had no objections.

The Court: Well, that is not the same thing as whether you consent to it.

Mr. Cleary: If the Court please, I think that the whole thing in the Prosecutor's mind is an error for this reason, he is trying to, or at least not trying to, but he has in his mind preconceived my defense, and I think he is making a mistake, that is all.

The Prosecutor: Due to the fact that you said I was proving your case for you.

Mr. Cleary: I know, but you don't know in what particular you are proving my case.

The Court: Gentlemen, don't have any conversation of that kind.

Mr. Cleary: Well, this is perfectly good-natured.

The Court: Well, this is a very serious matter and it is a very serious situation. I take it that really what you want is to get this thing before the jury, isn't it, Mr. Cleary, to be perfectly candid about it?

Mr. Cleary: If the Court please, I have nothing to do ——

The Court: You want this conversation, not only for this purpose, but you would like the jury to hear it, wouldn't you?

Mr. Cleary: I don't care whether the jury hears it or not; my object in getting this testimony is to allow your Honor to judge whether or not this confession was voluntary; it is purely a matter with the Court; it is not a question for the jury. If the jury is not to hear it ——

The Court: Well, then, I am going to direct that the jury be withdrawn from the court room notwithstanding your offer, because I have very grave doubts about whether it might not have some effect prejudicial to the defendant, because it naturally would be applied, as I view it, to some other feature of the case than the one to which this testimony is directed. You have no objection to the withdrawal of the jury, have you?

Mr. Cleary: If the Court please, will you allow me to make a statement before that ruling?

The Court: Yes.

Mr. Cleary: My object in getting this testimony is for the purpose of convincing your Honor that the

confession was involuntary. Mr. Wolverton saw when he made the proposition about allowing the confession to come in, that there is nothing compulsory on my part about allowing that confession stenographically to come in, although it is immaterial to me; I want the Court and jury to understand that we are not attempting to conceal anything in this case, whether it is for or against the defendant.

The Court: No one has suggested anything of that kind. Now, there is one thing I want to ask you: Have you any objection to the withdrawal of the jury at this time while this testimony is being given?

Mr. Cleary: No, if the Court please, because I think it is entirely a matter for the Court alone.

The Court: Very well, then, you have no objection, of course.

The Prosecutor: No.

The Court: Then I will ask the jury—I suppose the jury would have no objection to taking a short recess.

Mr. Cleary: The only thing about it is, if the Court please, that in the last analysis, if the question as to a voluntary confession is before your Honor, it is alleged on one side, and denied by the other, eventually it will become a jury question.

The Court: Very well, then, the jury will remain; that settles it. But you are taking the risk of this

Mr. Cleary: I am not taking the risk of the jury remaining, if the Court please. If the Court please, it is immaterial to me whether you do that or not.

The Court: I am not, after your statement, going to let the jury retire.

Mr. Cleary: No, if the Court please, here is the idea in my mind—I withdraw that statement. The idea in my mind is this, not at the present time to tell you what to do in this case, but I do say this, that at some time after the end of this testimony your Honor will be compelled to decide whether or not this testimony is voluntary. If it is of such a character that in your mind there is no doubt about its being involuntary, then it is not a question for the jury; the jury could not have heard it. But if there is a question in your mind as to whether on one side it is denied and on the other side it is alleged, then, of course, it is a question for the jury. Possibly under the idea your Honor has at the present time I think it would be the better idea to withdraw the jury until your Honor comes to some conclusion about this, and if you want, you can have the stenographic report of this conversation put before the jury so they will have had the entire facts before the case is ended; I think that would be the better solution of this problem.

The Prosecutor: Will the Court grant me indulgence for just a moment?

The Court: Certainly.

The Prosecutor: Mr. Cleary has stated in numerous speeches his desire for the entire truth upon this

matter. I know of no way he could have the entire truth but for the defendant to call his wife as a witness. Does your desire to have the entire truth go that far?

Mr. Cleary: If the Court please, my desire would be to have it go that far if I was sure that the wife of this man was going to tell the truth, but I am not sure of that, for the reason that for the last two days ——

The Court: Wait a moment, I won't hear you on that question now, either of you. That is entirely apart from the question before the Court at this time.

Mr. Cleary: She is a hostile witness.

The Court: You may proceed, and the jury will remain and listen to this testimony.

Mr. Cleary: You will allow the jury to remain?

The Court: Oh, yes, I am going to permit the jury to remain.

Mr. Cleary: Now, then, if the Court please, I am going, since there has been so much dispute about the offer which I made—see what I mean—since there seems to be so many strings attached to it, to use the common expression, I am going to withdraw that offer at the present time; I am going to ask your Honor to rule upon the question as to whether or not this man cannot narrate the full circumstances of this alleged conversation which took place for the purpose of allowing your Honor to

judge whether the course and conduct of the officers of the law from the time he was arrested until the time he made his final confession on the same day was not such that would render his mind unfit perhaps in some cases to tell exactly what occurred, or, if it didn't do that, whether he wouldn't have been in a state of mind that he would have said anything at all that the officers suggested in this confession, thinking that perhaps by him doing so he would be gaining a benefit for himself. I think that is the law in relation to confessions.

The Court: That is exactly what the testimony is for; that is what I am going to listen to.

Mr. Cleary: Now, then, I am going to withdraw all the offers and all the statements and have them stricken out, if you want to, I am going to stand right on my legal rights at this time, since there seem to be so many extraordinary requests asked of me; I am going to withdraw them all and ask you to rule upon this question as a purely legal question.

The Prosecutor: If the Court please, would it be of any assistance to the Court in dealing with this question, which is purely a Court question and not a jury question, if I would submit to the Court the stenographic report of what that conversation was, in order that the Court may have that in mind in making the ruling? Would that be of any assistance?

The Court: Well, I think it would not be of any assistance. Of course, I am bound to hear this testimony upon this feature of the case, and I thought that I had ruled that I would hear the testimony, and it is my intention to hear the testimony, but

now I want to——. Do I understand you, Mr. Cleary, to withdraw the offer that the whole conversation can be given on rebuttal by whoever was the stenographer that took down the conversation at that time?

Mr. Cleary: Well, if the Court please, I withdraw all things of that nature, which probably you realize yourself the danger of it, as you said, which are not of a legal nature, and I doubt in my own mind, as your Honor probably does in yours, that even if I consented to it that the Court would not be doing something that it had no right to do, because the Court, as well as counsel for the defense is bound to look after the interests of the prisoner according to the law. Now, in order that there shall be no question about it in this case I am going to withdraw all those things that I think are of an extraordinary nature, no matter what my personal desire may be to have them introduced in evidence, I am going to go back to my legal testimony, that this man can testify to the entire conversation that occurred, and your Honor should have that conversation. Now, I ask that the testimony be resumed.

The Court: Yes, but then we are just back to where we were ten minutes ago.

Mr. Cleary: Well, that is where we had better get, your Honor.

The Court: And that is just why—if you are permitted to have this witness narrate things that were said by his wife, of course that throws open the door for the entire conversation to be given.

Mr. Cleary: Only so far as the stenographic report is concerned, doesn't it, that doesn't allow the Prosecutor to introduce other evidence of it?

The Court: No, I do not suppose he would want to introduce any other; you would not care to introduce any other?

The Prosecutor: That is just the objection I have; unfortunately I cannot call the wife, even to dispute anything he may say.

Mr. Cleary: Well, she had an opportunity to dispute it on that day.

The Court: Now then, if you examine this witness on this subject then you open the door for the entire conversation to be given, which includes statements of the wife.

Mr. Cleary: That is exactly what I want, if the Court please; I asked the prosecutor in the first place for the privilege of allowing this man ——

The Court: All right; now, you understand, Mr. Cleary, the effect of that, I mean to say, that you are now agreeing ——

Mr. Cleary: No, I am not agreeing to anything, if the Court please; you misunderstand me; I say ——

The Court: Then you agree to nothing?

Mr. Cleary: I agree to nothing; I am going to try this case in a perfectly legal way from now on, re-

gardless, as far as extraordinary agreements on my part are concerned; I am going to keep it down to my legal rights from this point on, because I realize that it would be probably dangerous, so far as even the defendant is concerned, but he doesn't object to it, neither do I, but I say, I think it would be better, to avoid these legal complications, to proceed in a legal manner.

The Court: Well, I expect to proceed in a legal manner, but there is nothing illegal in an agreement in reference to this matter.

Mr. Cleary: Well, if the Court please, I am not going to agree to anything then; I am going to ask that this testimony be introduced. If I object to the confession, the whole report, I have a right to do it.

The Court: Very well, I will then ask the jury to retire. I am fearful of this testimony.

(The jury was then withdrawn from the room.)

By Mr. Cleary:

Q. Now then, Mr. Young, will you relate the conversation that took place at the time you were brought to Haddonfield by the detectives from the Prosecutor's office, the conversation that took place in the presence of those detectives between your wife and yourself and the detectives?

A. Well, when I left the Third Street office, the Prosecutor's office is where we started from, I was guarded by Detective Doran and Detective Smith and the chauffeur; I was taken out the Marlton pike until we came to Grove Street; I was taken in Grove

Street until we came to what they call Hopkin's Lane, I was taken in Hopkin's Lane and left sitting there in the car, which I told Mr. Doran that I would like to have my suit of clothes and a clean shirt, and he wanted to know what suit I wanted, I told him, and I told him there was some rubber things in the bureau drawer, which I don't know the proper name of them, I have never used such things myself; I told him I wanted him to get them for me.

Q. Well, never mind that part.

A. Well, that is the whole thing.

The Court: Just get this down, Mr. Cleary, to the conversation that took place at this interview.

Q. Come down to the time that the conversation took place between your wife and yourself and the detectives out there in the woods at Haddonfield.

A. Well, my wife came to the car.

Q. Now, whose car were you in and who was in the car?

A. Detective Doran was out on the road.

Q. Well, who was in the car with you?

A. There was Detective Smith and Chief Linderman, and the chauffeur ——

Q. Well, now, just a minute; were they in the car or standing by the car?

A. They were in the car. When she came to the car Detective Smith stepped out of the car and left her get in the back seat and she sat down aside of me. Chief Linderman stepped down from the front seat of the car and left a clerk get in—I don't know who he was, a young fellow—which they didn't warn me of anything would be used against me in court. There was nothing said on those grounds. My wife started to cry, which she was unable to speak to me.

I said "Sarah, brace up, this is no time now to cry; you didn't cry when you had me; you didn't never think anything of me; now the best thing that you can do is to go out and go to work; you will not have me to keep you any longer." I said, "You only laughed at me when I told you to use me right a few years ago." She said, "I always used you right." I says, "You only laughed at me and took me to be a plaything."

The Court: Now, just wait a minute, Mr. Young. Now, what relevancy has this, Mr. Cleary, to the questions?

Mr. Cleary: Well, if the Court please, the Prosecutor wanted the entire conversation and I am not objecting to it.

The Court: No, but of course it must be directed to the point; this is all irrelevant. As far as the witness has gone so far what relevancy do you think it has?

Mr. Cleary: Well, if the Court please, just the state of his mind, that is all that I was getting to, what his state of mind is, the troubled state of his mind at that time, as to showing how susceptible he was to allowing other people to suggest to him what might have occurred. In other words, this conversation which he had with his wife was of a very dramatic and pathetic nature; it was of a nature that would influence the mind of almost any ordinary human being who took a part in it. Shortly after that, within an hour or so I believe—of course, I am not acquainted with that particular phase of it—the stenographic confession was taken from him in

detail as to the crime which is alleged to have taken place. I want to show what was said and what was done at this particular interview to show the state of mind that this man must have been in when he made this confession, that anything could have been imposed upon his will.

The Court: Who requested this interview, Mr. Young?

The Witness: If there was anyone I wished to talk to, any of my people, or if I would like to see my wife. I said I would.

The Court: Here is an interview that this witness, at his own request, had with his wife, Mr. Cleary. Now, of course, it is very remote. I think, perhaps, that you might be permitted to show that as a result of this interview he was prostrated or something of that kind.

Mr. Cleary: That is what I am going to do.

The Court: But it is going to have very little weight with me. I can't direct your case. I don't want to. I don't want to seem to do it, so you go ahead.

Mr. Cleary: It may be that some things will be said later on that would impress your Honor. Up to this minute it hasn't been of a nature that would.

The Court: We are building up a record here that is quite far afield. I suppose it will take less time to hear it than it will to discuss whether it should go in.

Q. Go ahead, Mr. Young.

A. So she started to cry again. I said, "You have had nice pretty things. You broke up three homes for me," and I says, "when I went and worked night and day, seven days a week for you, brought home my money and throwed down $54 and $70 a week on the table, you didn't take care of it, you didn't keep the house clean or neither did you have a pleasant smile for me, that you gave your mother $50 and $70 at a time." She denied that. I said, "You went out and run around with men." She denied that. I said, "Then I suppose that you would say that you didn't force me to marry you under a false wedding." She said, "I had a right to do it." I said, "You was not in the family way but you said you was. I was married fourteen months before there was a child born." "Well," she says, "look what you done." I said, "I didn't do anything," and I said, "at nights I have laid and told you not to get me started to running around but to use me right and treat me half decent, to talk to me at nights, try to show me that you love me, not turn your back on me." She said, "I never did, I always loved you, you are the only man that I love, I shall stick to you unto the last." I said, "That is a lie, you never stuck to me, you told me that you was going over——." I said, "You don't," I said,"I suppose you will say that you didn't tell me that you were going to leave me and go over into Philadelphia and go whoreing, eight years ago." She said, "No." She says, "I have always treated you right." I said, "Yes, running around with other men." I says, "I don't suppose that you will have any more good times with your friend." She said, "Who is that?" I said, "Harry Garwood." She says, " I don't know him." I said, "Then I suppose that you would say that you don't know Ed Julius,

or," I said, "in other words, Ed Dunphey." She thought for a couple of minutes and she said,"I know him." I said, "I suppose you will say you wasn't out with him neither, but," I said, "you will never go out with Harry Garwood again, for I killed him." Then she started to cry. She said, "Do I have to raise these two children in that distress, or disgrace?" I said, "You didn't mind disgracing them yourself." So I told her that I felt very sorry for her and the two children but to brace up and not cry, that I wasn't crying.

Q. Go ahead. Is that all the conversation?

A. No, that's not all.

The Court: Well, now, you see ——

Mr. Cleary: If your Honor please, that's enough to give you an idea, a general idea of the character ——

The Court: The thing is, and the only thing, of course, is as to ——. Well, you can conclude this in just a minute. You can ask him, if you want to, whether a leading question, what the effect of this conversation with his wife was. That's all I want to know.

Mr. Cleary: All right.

Q. Now, what was the effect upon your mind of the conversation with your wife?

Mr. Cleary: I will withdraw that.

Q. What time of day did this conversation occur?

A. About ten o'clock in the morning, I guess, which I don't know exactly.

Q. What time was it concluded?

A. Why in about a half-hour or three-quarters of an hour afterward.

Q. And what was the effect, if any, upon your mind by the conversation with your wife, afterward. What was the effect afterward?

A. Well, the effect of afterwards, my head felt very heavy and everything seemed to be a dazed condition to me.

Q. Did you or did you not feel disheartened and discouraged?

A. At that time I wanted to die.

Q. Did you or did you not care whether you died?

The Court: Well, now, that is immaterial.

A. I did not care.

Mr. Cleary: If your Honor please, he said that in his statement. That is one of the things the Prosecutor has down here.

Mr. Wolverton: Do you know what is in his statement?

Mr. Cleary: At least what he told me was in the statement.

Q. And where did you go from the place where this conversation took place?

A. Mr. Doran asked me to show him where some automobiles had been stolen, which Mr. Martin had shown me the previous week, and that where he had stolen two cars.

The Court: Now we are going into conversations

Mr. Cleary: All right.

Q. What time did you get back to the Prosecutor's office?

The Court: I think there is another reason. There is nothing further now of any conversation with the wife or what the wife said.

Mr. Cleary: I will get down as quickly as I can to the conversation that took place in the Prosecutor's office.

The Court: We better have the jury return.

Mr. Wolverton: Before the jury is brought back, I with to announce to your Honor that I have no other cross-examination on this particular point, which I presume, if I was to be ——

The Court: I should have to take the jury away again if you have.

Mr. Cleary: Do you want to introduce his confession in evidence now?

Mr. Wolverton: Go right on with your case, Mr. Cleary.

Mr. Cleary: All right. It is satisfactory to me. If you want to introduce it to the Court, I am willing to do it. If your Honor please, does the Court feel

——

Mr. Wolverton: I didn't understand what Mr. Cleary meant by saying, "I am willing to do it,"

by referring to himself, the personal pronoun "I." If he wishes to introduce the statement as his own, I have no objection to that.

Mr. Cleary: If there is any doubt in your Honor's mind, for the purpose of informing your Honor of it, I am willing to introduce it to your Honor.

The Court: I understand the conversation perfectly, Mr. Cleary.

Mr. Cleary: All right. Now, then, does the Court want the jury back?

The Court: Yes, the jury may come in.

(The jury then returned to the court room and took their seats in the jury box.)

Q. Now, Mr. Young, what time did you arrive in the Prosecutor's office?

A. I don't know the exact time. It must have been somewhere around one o'clock or two o'clock, which they stopped on White Horse Pike to get some water or medicine for me.

Q. All right. Never mind that. Now, you got there somewhere around one or two o'clock, to the best of your knowledge?

A. Yes, sir.

Q. But this other conversation took place between ten and eleven o'clock, if I understand you correctly?

A. Yes, sir; it might have been later than that. It might have been near twelve o'clock.

The Court: We better get the day of this again.

Q. What day was this?
A. It was on a Friday.

Mr. Cleary: If your Honor please, can I ask this witness the question as to whether or not the state of his mind, before the jury.

The Court: You can go into the other statement. You can have him describe what his symptoms were. I shortened that up a little.

Mr. Cleary: As far as the jury is concerned, don't you think I have a right to let them know that?

The Court: I don't object to that. There is no reason why the jury should not hear this testimony. You can ask that. Now you are down to one or two o'clock on Friday, August 5th.

Q. Now, Mr. Young, as a result of the conversation that you had with your wife, between ten and eleven o'clock on the same morning, the same day, what was the condition of your mind?

A. My mind was in a wavy condition. There were black figures rising and it seemed to me that the air was floating in front of me. I was very dizzy, which had to be steadied by Mr. Smith and Mr. Doran at times.

Q. You had to be steadied?

A. Yes, sir. One time they were going to put the handcuffs on me, said they thought I was going crazy.

Q. Were you or were you not in a very discouraged and low state of spirits at that time?

Mr. Wolverton: I object. That is a leading question.

The Court: That is leading. You are now leading up to a time when a statement was obtained from the defendant. Go on, Mr. Cleary.

Mr. Cleary: I don't know how I am going to ask that question unless I ask the different qualities of his mind. He stated as to one quality. There are several qualities of the mind.

Mr. Wolverton: He seems to be an intelligent witness.

Q. What was the character of your mind or quality or condition?

A. At that time I was disgusted. I didn't care whether I lived or died. My mind was in that state that death assumed to me to be much better than life.

Q. Now, Mr. Young, was that the condition of your mind? Was it or was it not the condition of your mind on that afternoon?

A. It was.

Q. Did you have a conversation with the Prosecutor that afternoon?

A. I did.

Q. Who was present at the time you had your conversation?

A. Mr. Doran, Mr. Smith and Mr. Berry.

Q. Did that conversation contain—well, before—who came in the room first? Who was in the room first?

A. Mr. Smith and Mr. Doran wanted me to lay down on the couch for a while.

Q. And how long were you in the room with Mr. Doran and Mr. Smith before the Prosecutor came?

A. About twenty minutes.

Q. And how long were you in the room when the Prosecutor came in, if at all, before Mr. Berry came in?

A. He came in with Mr. Wolverton, I believe.

Q. And did you have a conversation with Mr. Doran and Mr. Smith before Mr. Wolverton came in?

A. No, nothing particular. They were talking to me a little bit but just what was said I don't remember.

Q. Did you have a conversation with Mr. Wolverton before Mr. Berry came in?

A. Why, a few words, but just what they were I can't remember.

Q. Then you began to talk, did you?

A. Yes, sir.

Q. Were you questioned by Mr. Wolverton?

A. I was.

Q. Did you or did you not give that testimony as your own voluntary will?

The Court: Well, now, that ——

A. Well, I gave it, thinking that it would help me, which they told me it would.

Q. Was or was not any of your testimony suggested to you?

A. Why, they told me quite a bit. There was some parts of it.

Q. Do you remember any? What parts of it now?

A. Yes, sir.

Q. That there was anything that would suggest any irregularity to your mind?

A. Yes, sir.

Q. Tell what it was.

A. There was one part where Mr. Berry was writing. I said the man reached for his back pocket

with a wild dash towards me and I fired and I said the bullet struck the breast. The Prosecutor held out his hand and stopped Mr. Berry from writing. He said then, "You grabbed the man by the shoulders and drug him into the bushes and you thought for a few minutes and then you fired two more shots," and he told Mr. Berry to write that down.

Q. Did you say that?

A. I did not.

Q. Was there any other testimony that was suggested to you?

A. Why, there was on the shoe question. He asked me what I done with the man's shoes.

Q. Now, what other place was there of that description?

A. He asked me what I done with the man's shoes. I thought a while and he says, "Did you take them off?" I said, "Yes." He said, "What did you do it for?" I said, "I don't know." He said, "You thought that they were too good to leave there," he says, "Is that right?" I didn't answer him.

Q. Now, then, is there anything else about that testimony that you want to say?

A. There is something else, but I can't just remember what it was.

Q. Was there a third time that he stopped the stenographer?

A. Three times he stopped him, yes, two times I remember particularly what they were, but the other time I don't; my mind was in such a state that I can't remember.

Q. Was or was not your mind in a state that you would agree to say anything at that time in an effort to help yourself?

A. At that time I would have said anything that anyone told me to say, because I didn't know any different.

Q. Now, after you made this statement where were you taken?

A. I was taken up-stairs.

Q. And what happened then?

A. They took all the prisoners out of Section E. No, Narrish and Zinger which was the two constables that was in Section 2 with me, and finally they brought me up a supper of beefsteak, French fried potatoes and two or three slices of bread and some coffee.

Q. Did you get any dessert?

A. No.

The Court: This is not a matter that we want to consider lightly; this is a serious case. Now, you can tell what he had to eat, I suppose, and whether he ate it.

Mr. Cleary: If the Court please, that was not a light remark upon my part.

The Court: Never mind; do you think that the question whether he had dessert or not would have any bearing on this?

Mr. Cleary: Yes, if the Court please, it is very material to this case, for this reason—I am going to contrast that treatment with the treatment he received before.

The Court: Very well, if you think that is material you may ask the question.

Q. Did you have any dessert?

A. No, sir.

Q. What was the usual food that you had been given before from the time you were first arrested?

A. Dry bread, outside of what Chief Linderman gave me at one time, gave me something to eat in the morning, and when I came to the prison between twelve and one o'clock I was given two slices of dry bread to eat. The night watchman up there, which was a turnkey, gave me a piece of orange, that was all I had that day.

Q. Well, when you were out during the time you were at the Prosecutor's office, didn't you get something then that the detectives brought you in?

A. Once in a while they would bring me in a sandwich when I asked for it.

Q. Was that the first ordinary meal that you had from the time that you were first arrested up until the time of the confession?

A. Outside of what Chief Linderman gave me, and he fed me as good as anyone could.

Q. How many meals did you have with Chief Linderman?

A. I had one each day I was there; it was brought over to the hall to me, one meal a day.

Q. Now, will you describe to me just how you were treated when you returned to the jail after making this confession, so far as your opportunity to get a lawyer was concerned?

A. Why, I asked if there was any way to get a lawyer, and they said they supposed there would be one to see me some time, and the prisoners then was cautioned, which came in about—it was after dark—I don't know just what time it was—between nine and ten o'clock, maybe later—when the constables went out and the prisoners came in they was cautioned to give into me, but to try to pump me for all they could.

The Court: Now, wait a minute; let's see; is he

Mr. Cleary: If the Court please, I expect to prove the connection with that.

The Court: Very well.

Q. Was there any objection made to your writing letters to your attorney?

A. They wouldn't sell me any writing outfits, or neither could I get any of the prisoners to buy me one; they wouldn't allow not even a newspaper in, which I was going to get a writing outfit or piece of paper which I could write on, to drop it from the window to the street, and they wouldn't allow a lead pencil or anything else in Section E; the lead pencil that I had was taken away from me, and all the lead pencils that the prisoners had in there was taken out.

Q. Were you allowed to read a newspaper at all?

A. I was not.

Q. Were you allowed to see a minister of the gospel?

A. I was not; I asked for one on the first Sunday that I was there, and one man started to come over to the door to me, and I believe the man's name was Mr. Dunbar, and they said to him, "You are not allowed to stop there, come on." There was some more started to come on and they were nodded to, which I heard them pass a remark, "Don't stop there."

Q. Now, then, did Mr. Doran come up there while you were in the jail and have a conversation with you about an attorney?

A. Mr. Doran came up several times when he questioned me about Rogers.

Q. Were you allowed to have any visitors while you were in jail?

A. I was not.

Q. Up until what time?

A. Up until the time that I was left in the big cage.

Q. How long was that, do you know?

A. Why, that was a few weeks, but just how long, I don't know; it was something like four or five weeks, I think, just the exact time I couldn't say.

Q. Now, when you were allowed to have visitors under what conditions were you allowed to have them?

A. Only in the company of Detective Doran, or in the company of Detective Smith, and if I spoke anything loud or low they would say, "Speak out here, so everybody can hear; this isn't a private affair," and he spoke very rough and would oftentimes butt into the conversation that was being said, tried to agitate me and get me to say things I shouldn't say.

Q. Now, coming down to the 11th day of July, I think when Mr. Doran testified ——

The Prosecutor: August.

Q. August, when Mr. Doran testified that you took them out and showed them again the road and how the shooting took place, did he or did he not give you any warning as to the purpose of that trip?

A. I was not warned; I was in the big cage and the turnkey hollered, "Young," which I came to the door. He said, "You are wanted in the office." I walked out and Detective Doran and Detective Smith was there and immediately put the handcuffs on me, and I said, "Where are you going?" They said, "We are going to take you out for a ride." And that was all that they said to me, so they started off and went down Broadway to—I don't know just what street, and they rode over and turned down a couple of streets and then they started out again

and they struck Marlton pike, until they came to Springdale; they pulled in a road there and they said, "Is this the place where Harry Garwood was killed?" I said I didn't know.

Q. Now, just a minute; whatever you said there were you warned at that time that it would be used against you as evidence in the court?

A. I was not.

The Court: Of course, Mr. Cleary, it is not a question of warning.

Mr. Cleary: I know, but I am coming down to the next point, your Honor.

The Court: While generally a warning is given it is not required in the law. Hasn't the witness testified to this before?

Mr. Cleary: Well, if the Court please, the fact that no warning was given is some evidence tending to show that it was not voluntary even though it does not conclusively show that point. Then, if I can prove also that it was not voluntary or that there were threats those things altogether would make up a valid reason why ——

The Court: All right; now we are down to this question on August 11th.

Q. What was your state of mind on that occasion?

A. My mind was all in thinking that I might get a chance to see someone to get in touch with a lawyer.

Q. And what was your condition of mind as to whether or not you were discouraged on that occasion?

A. I was discouraged at that time.

Mr. Cleary: You may cross-examine.

The Witness: That is not all the places they took me though.

Mr. Cleary: Well, that is enough. If the Court please, I think the question when we first started was August 11th, wasn't it, when Mr. Doran was testifying and I objected to it.

The Court: Yes, it started on August 11th and is ended on August 11th.

Mr. Cleary: All right; we are back where we started from.

Cross-examination.

By the Prosecutor:

Q. Mr. Young, you never made any such statement to me at any time that you talked to me, that you have made here in this court room, did you?
A. Yes, sir.
Q. When?
A. At various times.
Q. Did you at any time ever say to me that you had been struck by an officer?
A. No, I didn't tell you.
Q. Why didn't you tell me?
A. Why, because I was afraid you might hit me, too.

The Court: Order must be maintained in the court room, and anyone that does not maintain order will be requested to leave.

Q. Was there anything in my personal treatment of you that would have indicated a fear on your part that you might be struck?

A. Yes, sir.

Q. What was it?

A. You spoke very rough to me at times; you had men hid behind doors, behind desks.

Q. You mean the time that Mr. Straw was in the Prosecutor's office, when you knew that he was there, is that what you mean?

A. I didn't know he was there until he jumped up from behind the desk.

Q. Then you know that he was there?

A. After I seen him, yes.

Q. And you could have seen him if you had walked to that part of the room, couldn't you?

A. I wasn't allowed to walk around.

Q. Just an ordinary desk in an office, wasn't it?

A. It was a rather large one.

Q. Yes, but you were alone in the room and could walk about where you pleased?

A. No, sir, I could not.

Q. Why not?

A. Why, because I know better than to walk around. My hands was cuffed together. I know that I had no right to walk around.

Q. You thought you were in the room alone did you?

A. You told me I was.

Q. Did you walk around the room?

A. No, sir.

Q. You could have done so?

A. Well, I don't know whether I could or not.

Q. Nobody was there to stop you to your knowledge?

A. Not to my knowledge at that time.

Q. So you were perfectly free to walk where you pleased? This desk sets in almost the middle of the room, doesn't it?

A. The desk at that time was in the corner of the room.

Q. And you thought because you did not see Mr. Straw there that he was not there, is that right?

A. That is right, because you told me that I was alone in the room.

Q. Then it is your thought that Mr. Straw was hiding behind the desk, is that right?

A. That is correct.

Q. Then if it is true that Mr. Straw in your thought was hiding behind the desk, how do you account for the fact that he stood up when you just rustled some newspapers?

A. Because he thought I was getting something when the chain of the handcuffs struck on the side of the table, and he jumped up to see what I was doing.

Q. I see, so that then your idea was that he was hiding behind the desk which was in an open room where you were alone and that he only revealed his identity when he thought that you were doing something that you should not do, is that true?

A. I know he was hiding there, yes.

Q. Now then, as a matter of fact, when you requested to be alone with Amanda Green you were permitted to do so, weren't you?

A. No, sir.

Q. Who was in the room with you?

A. Why, Mr. Straw insisted on staying there.

Q. You were alone in the room at the time except with Mr. Straw, is that right?

A. I was.

Q. And you wanted to see Amanda Green?

A. Alone.

Q. Alone? And you saw her alone, didn't you?

A. Yes, with you having the door open.

Q. So when you requested me to see her alone I granted the request, didn't I?

A. Well, you hesitated quite a bit, but you done it.

Q. I granted the request, didn't I?

A. Yes.

Q. The only thing that I did was to ask that the door be partly opened into the next room, and told you that you could go to the farthest corner of the room and talk in whispers if you wished to, didn't I?

A. Yes.

Q. Now, Mr. Young, the Tuesday morning that you were arrested out on the Mill Road in Haddonfield, you were brought to my office, were you not?

A. I was taken to the fire house in Haddonfield.

Q. And then brought to my office?

A. At Third Street.

Q. You told me that you wanted to tell me the truth, didn't you?

A. No, sir.

Q. What did you tell me?

A. I didn't tell you that.

Q. How did I learn that I had bought this car as you stated from James Brown on July 15th?

A. You asked me how I came into possession of the car.

Q. Did you have any objection to telling me?

A. You told me to tell you. You asked me these questions, and I asked if I could see a lawyer.

Q. To me?

A. To you.

Q. Do you mean to say, Mr. Young, that you asked me the morning you came in there if you could see a lawyer?

A. That is exactly what I said.

Q. What did I say?

A. You said I could not see any now.

Q. Isn't it true that you never mentioned a lawyer?

A. I mentioned a lawyer to you.

Q. And isn't it true that you said to me you wanted no lawyers, later in the week I am speaking of, no Courts, no juries or nothing, isn't that what you said?

A. No, that is not true.

Q. On Tuesday morning you tried to prove that you were innocent of taking that car, didn't you, you tried to prove to me that you were innocent of taking that car, did you not?

Mr. Cleary: If your Honor please, I object to the form of that question is objectionable.

The Court: No, this is cross-examination. The question will be allowed.

A. I don't know that I did; I told you—you asked me to tell you how I got the car.

Q. Did you tell me?

A. I told you what I wanted to.

Q. What is that?

The Court: He said he told you what he wanted to.

Q. What you wanted to tell me was not the truth then, was it?

Mr. Cleary: If your Honor please ——

A. The car I was telling you about was ——

Mr. Cleary: Just a minute, Mr. Young. This cross-examination is not a cross-examination of the defendant so far as the crime is concerned. This man has not offered himself yet as a witness; I think that the cross-examination should be confined to the object for which the witness was produced, the purpose of showing whether or not the confession was voluntary.

The Court: The question is allowed.

(Exception noted for defendant.)

Q. Did you say you only told me what you wanted to tell me?
A. I told you what I said I told you.
Q. What was that? What was that?
A. What was that? That I had bought the car.
Q. From whom?
A. From James Brown.
Q. Was that the truth?
A. I bought a car from—I bought a car having a bill of sale with James Brown's name on it.
Q. That is what you told me, isn't it?
A. Yes.
Q. Was that the truth?
A. No, it wasn't the truth.
Q. Where did you tell me you had seen James Brown?
A. At Haddon Avenue and Kaighns Avenue.
Q. Was that the truth?
A. I have seen him there, yes.

Q. Who, James Brown?

A. Not James Brown, but the man that was using James Brown's name.

Q. Where did you tell me that he lived?

A. I told you the address was Reed Street, Philadelphia.

Q. Was that the truth?

A. That was what was on the bill of sale.

Q. Was that the truth ?

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The Court: That can be answered yes or no, Mr. Young.

A. Not the man, that isn't the name of James Brown, James Brown didn't live there.

Q. Was it the truth that he lived on Reed Street, Philadelphia?

Mr. Cleary: If your Honor please, I think the
20 question is a little bit confusing. You see there is a man whose name is James Brown on Reed Street, Philadelphia, probably there might have been a man there. The question should be asked whether he means Martin or Brown.

The Court: The question couldn't be confusing to the witness, I think.

Q. Did James Brown, whom you told me you had
30 bought the car from and lived on Reed Street, Philadelphia, live where you said he did?

A. No.

Q. Well then, Mr. Young, in your very first statement you told me what was not the truth, did you not?

A. I told you I did tell you it wasn't true.

Q. I say what you told me in your very first statement was not the truth, isn't that true?

A. I told you it was not true.

Q. Well, it wasn't the truth, was it?

A. I told you it wasn't.

Q. When you told it to me?

A. I told you that it was not the truth.

Q. When did you tell me that it was not the truth?

A. On a Friday.

Q. In the meantime I had produced evidence to you, had I not, that the car which you said you bought on the 15th was not sold until the 21st, isn't that right?

A. No, I didn't tell you when I bought it.

Q. Didn't you tell me that you bought it on the 15th by bill of sale from James Brown whom you met in Daly's saloon on Kaighn Avenue near Haddon Avenue?

A. Not the car you were speaking of.

Q. Isn't that the first statement that you made and then after we ascertained and told you that the car had not come from the dealers until the 21st, then didn't you say, I will tell you the truth, this is the second car I had. I got one on the 15th as I told you, but it didn't run well and I met him on the street and told him so and he gave me another car in its place, and this is the car, isn't that what you told me?

A. I told you I had it changed, the cars.

Q. You didn't tell me that at first, did you?

A. You didn't ask me.

Q. I asked you where you got the car, didn't I?

A. Yes.

Q. And you told me didn't you, on the 15th from James Brown, and didn't you tell me that on the 16th you got tags for it, isn't that right?

A. I told you I got tags for a car.

Q. Then you didn't tell the second story until after we had told you had not come out of the dealer's hands until then, didn't you?

A. I don't remember you telling me that.

Q. Well, what caused you to change your story and tell this different situation later on?

A. Own volunteering.

Q. What is it?

A. I told you that myself.

Q. Voluntarily?

A. No, not voluntarily exactly.

Q. What caused you to tell it then?

A. Because I didn't know anything else to tell you.

Q. You knew what the truth was, didn't you, that you had taken that from Harry Garwood, you knew that, didn't you, you knew that, didn't you, the first morning?

A. I knowed where I got the car from.

Q. So that when you told me that you had gotten it from James Brown it was done to deceive me, was it not?

A. I had got a car from a man that used the name of James Brown.

Q. You had not gotten the car in which you were arrested that morning from James Brown, or anybody else other than Harry Garwood, had you?

A. You didn't ask me that.

Mr. Cleary: If your Honor please, I object to this line of question again; I don't see the relevancy of it, and I don't see that it is competent or material.

The Court: The objection is not sustained; it all goes to the question of whether these statements were voluntary or not.

(Exception noted for the defendant.)

Mr. Cleary: May I have the privilege of presenting my objection; it is based to every question the Prosecutor asks.

The Court: No, I will give you an exception to this line of testimony. You see, the Prosecutor has the opportunity of putting these questions to him as to what he said and what his answers were all bear upon the question of whether these statements were voluntary or involuntary.

Mr. Cleary: They might bear on the statement as to whether or not they are true.

The Court: Of course, we are not dealing with that question now. They are admissible for the purpose for which they are being admitted. In my opinion.

Mr. Cleary: Then your Honor will allow me an general exception to this line of testimony?

The Court: Yes.

Q. You knew that to be the fact, though, did you not?

A. You didn't ask me that question.

Q. Did I ask you where you had gotten the car?

A. You asked me how I got, you asked me where I got a car.

Q. Where you got the car you were arrested in?

A. No.

Q. You mean to say, Mr. Young, that you were arrested that morning in possession of a Ford car

and that I said to you where did you get a car, and I said, "Where did you get a car"?

A. You didn't say, "Where did you get that car?"

Q. So that——

The Court: Mr. Wolverton, you will bear with me just a minute. This, of course, as everyone knows, is a legal holiday, and it is very regrettable that it is necessary to hold court on this day, but the President in his proclamation has asked everyone in this country at noontime to spend a few minutes in sober thought and prayer. I feel that the least that we could do on this occasion would be to take a recess from five minutes of twelve to five minutes after twelve. It is now about five minutes of twelve, so the Court will take this recess for the purpose that we may have our minds directed from those things that are immediately present before us in this trial to those things that perhaps mean a great deal to the Nation in the future, because we should remember those who have fallen in the great war that is passed, no matter upon which side of the conflict they have fallen; we should remember that very often those who fall are in no way responsible for having entered a conflict, and therefore I wish that all of those in the court room would be quiet during this recess if they remain here, and spend these few minutes in sober thought and prayer; a prayer that this Nation lives, and a prayer that it may live, and the people may be happy and the future generations may be spared from that which the present generation has seen with the vast calamities that have followed that unfortunate World War, so the Court will now ask that the defendant be taken from the court room to be returned

at five minutes after twelve, and the jury may then retire, and then those of the audience who desire to retire at this time may do so. You will take the defendant from the room. The jury may retire. The Court will recess until the time I mentioned.

(A recess was then taken for ten minutes.)

GUILFORD YOUNG, resumed.

Q. Now, Mr. Young, you have just said that you told me that I asked you about a car and not that car, is that true?

A. Well, you asked me how I got the cars.

Q. How you got what?

A. You asked me how I got the cars.

Q. What cars?

A. Which I did not tell you the truth about the cars.

Q. So that you lied to me about that and endeavored to deceive me, didn't you?

A. I told you that I did not tell you the truth, and my reasons for not telling me the truth.

Q. I haven't asked any reasons; you lied to me, did you not?

A. Yes.

Q. You admit to-day that you lied to me on that occasion?

A. Yes.

Q. And yet you say in your testimony to-day that you are telling the truth when you asked me to get Mr. Marter, a lawyer for you?

A. Yes, sir.

Q. So some of the things you said that day you

admit to-day are lies and some are the truth, is that right?

A. That is right.

Q. After I said to you—remember me putting this question to you, "Where did you get that car?" Didn't you answer, "Bought it off a fellow by the name of James Brown"?

A. Yes, sir.

Q. Why did you change and tell me afterwards that the car that you were arrested in was not the one that you got when you first saw James Brown?

A. Why, because I couldn't get no lawyer and I didn't know what else to say; I told you to the best of my ability to protect myself.

Q. Then you thought you could protect yourself by lying?

A. Well, I didn't know what else to do.

Q. You knew at the time you got it from Garwood, is that right?

A. Sir?

Q. You knew at the time you got it from Garwood?

A. Yes, sir.

Q. And you could have told me so if you had wanted to, couldn't you?

A. Yes, sir.

Q. You didn't tell me at the time that you had changed the number on the engine, did you?

A. I didn't.

Q. That is not the number that was on the engine when you took the car, is it?

A. No, sir.

Q. Why did you change the engine number?

A. I didn't change it.

Q. Why was it changed?

A. The man told me it would be best for the car number to be changed.

Q. You did it to conceal the identity of the car, was it not?

A. It was.

Q. And it was given the same number as the bill of sale was, did it not?

A. Yes, sir.

Q. Why did you get the license tags; why did you tell me that you got license tags?

A. To drive the car with.

Q. To drive what car?

A. The car that I got on the 16th.

Q. Had you bought it?

A. I had.

Q. From whom?

A. I think it is the 16th. From whom?

Q. From whom?

A. Benjamin Martin.

Q. Is that the car that you referred to in your bill of sale?

A. Yes, sir.

Q. And was that the number of the car?

A. That was the number that was on it.

Q. Now, Mr. Young, your whole thought was to deceive, was it not, from the very first?

A. Not— no, sir.

Q. Was it a desire to tell the truth?

A. I wanted to know how to tell the truth, but I didn't see any way.

Q. So that anything that was said to you that you have testified to you have testified that you were told it would be best to tell the truth, haven't you?

A. That you told me that it would be the best to tell the truth, to tell the truth.

Q. Did anybody say anything to you other than that if you were innocent it was best to tell the truth?

A. You told me I had the opportunity to tell the truth and to get some help and consideration off of some one, and if I would tell you how that I got possession of the car that you thought you would be able to help me, then that you could get my mother, sisters, and my friends there and you could fix things up for me and be able to give me bail, perhaps.

Q. When was that said to you?

A. Up in your office on Third Street.

Q. The first day you were arrested?

A. Yes, sir.

Q. But you didn't tell the truth, did you?

A. No.

Q. Isn't it true, Mr. Young, that after you were asked how you came into possession of the car and you told us that you had bought it from James Brown and Mr. Doran had learned that the car had not been sold until the 21st that then he said to you, "Young, if you are innocent of this you had better tell the truth about it, because you are lying now," isn't that what he said to you?

A. He told me.

Q. Now, did he say that or not?

A. No, he didn't say that.

Q. Didn't he tell you that if you were innocent it was best not to be lying about it as you had lied in the morning?

A. No.

Q. You had lied in the morning, hadn't you?

A. Yes, sir.

Q. And you found out through his investigation what he said to you that he knew you were lying, didn't you?

A. Yes, sir.

Q. And you then realized that it was best not to have lied, didn't you?

A. Yes, sir.

Q. So that when he said to you that if you are innocent don't lie about it it will be better to tell the truth and come clean with it, it was because he found you in a lie, and you were maintaining your innocence and he told you if you were innocent you better tell the truth, isn't that right?

A. No, sir, he never said that.

Q. What did he say?

A. He told me that you was the man that could help me, and not to lose this chance of telling you everything that happened, because I would need a friend later on and I would come to you for consideration and for a friend, and then you would not be my friend, it would be too late to get you for a friend then and to tell you how everything happened. I said, "I would like to see my lawyer, Mr. Marter," and he laughed, he said, "You can't get Marter; we are not runners to run around for lawyers for you."

Q. Then after he said that to you you continued to lie, didn't you?

A. Yes, sir.

Q. So that it didn't have any effect on you whatever, did it?

A. Yes, it did.

Q. What, to cause you to lie?

A. Well, I couldn't say; couldn't see any other way but to lie.

Q. So that you said Mr. Doran said a certain conversation which Mr. Doran has denied, now then, for the purpose of this question if it is true that you said if Mr. Doran did say it, it didn't have any effect on you, did it?

A. I don't quite understand you.

Q. You said he told you it would be best to tell the truth, or words to that effect, is that right?

A. He said to tell you the truth; that you was the man that would be able to help me, that I would need consideration from someone later on and that I would not have you for my friend then, that I would need you for my friend.

Q. All right; that is what you say he said to you?

A. Yes, sir.

Q. Now, if he did say that which he denied, you didn't follow that advice, did you?

A. No.

Q. You continued to lie?

A. Yes.

Q. Therefore you didn't believe that it amounted to anything what he had said to you?

A. I didn't think so, no.

Q. So that from Tuesday until Friday you continued to lie?

A. Yes, sir.

Q. And the only times you would admit the truth was when we would bring the witnesses before you and the facts, isn't that true?

A. I never admitted the truth until Friday.

Q. So that you didn't admit having known Garwood, you said you didn't know Garwood, didn't you?

A. Yes, sir.

Q. Now you say you did know him?

A. Yes, sir.

Q. You told us that you had received nothing but a car from Brown, didn't you?

A. Yes, sir.

Q. When we found the gold watch you told us you had gotten that from Brown, didn't you?

A. Yes, sir.

Q. So that that was the truth, wasn't it?

A. No.

Q. Didn't you get the gold watch from Garwood?
A. Yes.
Q. Well then, that was the truth?
A. Yes, sir.
Q. But that isn't what you told us at first?
A. No, sir.
Q. You told us you got it from James Brown, didn't you?
A. Yes, sir.
Q. So that anything that Mr. Doran might have said to you about it would be best to tell the truth didn't have any effect on you?
A. No, sir.
Q. So that you were casting aside what he said and you continued to lie, were you not?
A. Yes, sir.
Q. Now then, on Thursday you had said all along through the week that you didn't know James Brown, didn't you?
A. Yes, sir.

The Court: Do you mean didn't know James Brown?

Mr. Wolverton: Yes.

Q. From Tuesday until Thursday you had said that you didn't know James Brown, that you had met him in Daly's saloon, didn't you?
A. Yes, sir.
Q. You did know, didn't you, who James Brown was?
A. I knowed he, the man was who signed the name of James Brown.
Q. You didn't tell me that on Tuesday, did you?
A. No, sir.

Q. You didn't tell me that on Wednesday, did you?

A. No, sir.

Q. You didn't tell me that on Thursday, did you?

A. No, sir.

Q. You didn't tell me that until Thursday night when I brought Ben Martin before you, isn't that true?

A. I didn't tell you then.

Q. And yet you knew it was the truth, and that we knew it was the truth, didn't you?

A. I didn't know what you knowed.

Q. You knew when we brought James Brown to you that he was the man who had signed his name as James Brown that we brought Ben Martin before you; you knew then that we knew who James Brown was?

A. Well, I thought that you knowed.

Q. What is it?

A. I thought that you did know.

Q. So that even then you didn't tell us the truth, did you?

A. No.

Q. Notwithstanding, as you say, that during this week Doran and Smith had told you it was best to tell the truth, that didn't have any effect on you whatever, you continued to lie about it, didn't you?

A. Yes, sir.

Q. And you continued to lie right up until the afternoon that you made your statement to me in the Prosecutor's office, didn't you?

A. No, sir.

Q. Where did you tell the truth before that?

A. When I met my wife.

Q. Well, that is what I mean, considering all that?

A. In the morning.

Q. It was to your wife that you then first confessed what you had done?

A. Yes, sir.

Q. So that, when you came into my office you were making a confession to me of what you had previously made to your wife, isn't that true?

A. Not exactly.

The Court: I have a little doubt as to that; I think I will overrule that question.

Mr. Wolverton: I won't press it.

Mr. Cleary: If your Honor please, my objection still remains, doesn't it?

The Court: Not to that question, when I overruled it.

Mr. Cleary: I mean to this line of examination.

The Court: I understand that Mr. Cleary. You see these questions are admissible for several reasons; first as to whether these statements were voluntary or involuntary; secondly, upon the condition of the witness' mind at the time that he made the statements, and they meet the questions that you have raised in your direct examination; therefore I consider that it is proper cross-examination.

Mr. Cleary: But your Honor considers my objection to these questions?

The Court: Yes, I will give you an exception to this line of questioning.

Q. So that all through the week from the time of your arrest until Friday you were maintaining your innocence and in an effort to prove it to me were lying and withholding information, were you not?

Q. So that whatever you say that Doran may have said, and which he denies, was not having any effect on you whatever—you went right on in your course of lying and deceiving me, didn't you?

A. I done that thinking that I might have a chance to see a lawyer, or get one in some way to advise me what to do.

Q. But when we brought the evidence to you and showed you that we knew the truth, then you would change your statement, wouldn't you?

A. Somewhat.

Q. You changed it to tell us that you got a second car instead of the first car, didn't you—isn't that true?

A. Yes.

Q. Then you afterward changed that to say you did not get the car at all in the way that you said you had gotten the second car, didn't you?

A. Yes, sir.

Q. You told us that you didn't know Garwood, is that right?

A. That is right.

Q. Then afterward, when we showed the watch, and so forth, you finally admitted that you did know him, is that right?

A. Yes, sir.

Q. But you first told us that you got the watch and chain and crucifix from Brown, didn't you?

A. Yes, sir.

Q. Which was not the truth?

A. No, sir.

Q. And you said you got nothing from him but a car, didn't you?

A. Yes.

Q. When we produced the watch and chain then you said you got that from him, didn't you?

A. Yes, sir.

Q. But you didn't say that until we showed you the watch and chain, did you?

A. No, sir.

Q. You didn't admit knowing who James Brown was until we produced him, did you?

A. No, sir.

Q. So there was no point from Tuesday until Friday that you told the truth until we produced the evidence to you, isn't that right?

A. I told you the truth, yes, about the girl.

Q. About what girl?

A. Amanda Green.

Q. You did not tell us about Amanda Green until we found her, did you?

A. No.

Q. Until you knew we knew all about Amanda Green, isn't that true?

A. No, I told you the first day I was brought in, when you represented the name card and asked me who it was, I told you that she was an innocent girl, and there were no better girl that walked in shoe leather than she was, that there might have been girls just as good but none no better, that she was truthful, straight, and I didn't want her name brought into this, or neither did I want you to bother her, because she didn't know anything at all about the case, and you told me—you took an oath almost —you gave me your word of honor that you wouldn't bring her in.

Q. We got the name of the girl out of your wallet, didn't we?

A. Yes, sir.

Q. And it wasn't until you knew that we knew her name and address that you admitted knowing anything about Amanda Green, did you?

A. You didn't ask me anything about——

Q. All right, we will let it be that way, but when we spoke to you about Amanda Green we had her name and address, didn't we?

A. You had the name and address at the same time that you had me.

Q. So there was nothing you could conceal from us when you knew we had it, isn't that true?

A. That is true.

Q. So you told us the truth when you knew that we had it, isn't that right?

A. You didn't ask me nothing but the truth.

Q. And you told me nothing but untruths.

A. I am speaking of Amanda Green.

Q. Except that you knew Amanda Green, isn't that right?

A. Sir?

Q. Except that you knew Amanda Green, isn't that right?

A. I told you nothing but the truth about that girl.

Q. Was there any time that I ever spoke to you or take any statement from you that I did not tell you from the first day until the last, of that which you were charged with, that you were warned that you did not have to make any statement if you did not wish to, and that it would be used against you if you did?

A. No, sir, you did not.

Q. Did I never say that to you?

A. Only on a Friday.

Q. What, the final day?

A. Yes, sir.

Q. You know Mr. Straw?

A. Yes, sir.

Q. You have testified that he took a statement from you?

A. Yes, sir.

Q. Didn't he tell you the same thing that I have just said?

A. In Merchantville, one evening, yes, sir.

Q. So that on Tuesday, the first day, that you were arrested, when Mr. Straw took your statement, didn't he say to you this: "Mr. Young, my name is Straw. I am an assistant to the Prosecutor here in Camden County, and as Mr. Wolverton told you, you are detained in the matter of the investigation of the taking of the car belonging to a man by the name of Garwood, and I want to ask you questions. Of course, you understand that what you say to me would be used and will be used against you in court. If you are willing to answer I should like to ask you some questions," and didn't you reply, "I will answer them as near as I can"?

A. What night was this, or day?

Q. Tuesday, August 2nd?

A. No, sir.

Q. You say that Mr. Straw did not say that to you in the presence of a stenographer and taken down word for word?

A. Not Tuesday.

Q. Did he say it at any time?

A. One night at Merchantville.

Q. I believe this to be in Merchantville?

A. Well, that wasn't on Tuesday.

Q. No, this was at my office at Third and Market?

A. He didn't say it there.

Q. The first day that you were arrested?

A. No, sir, he did not.

Q. Didn't Mr. Straw say to you on the 3rd day of August, that is, the next day, at Merchantville, "Mr. Young, as you know, my name is Straw, and, as you know, I am an assistant to the Prosecutor of Camden County. This gentleman (indicating the stenographer) is Mr. Berry, the official court reporter, and this gentleman, as you know, is Mr. Linderman, the chief of police of Merchantville. As I told you before I want to ask you some questions about the automobile which you had in your possession, and as I told you before, the answers which you make, if you make them, will be used in court against you. Now, are you willing to answer some questions for me about this automobile"?

A. I think in Merchantville he told be the questions that would be asked me.

Q. Now, the point is this: Now, just wait a minute; did he say that to you or not?

A. Not all that is on there, I don't think so.

Q. Then there are some parts that have been added here by Mr. Berry or someone else other than what was said at that interview where Mr. Berry was acting as stenographer?

A. I wouldn't say so for sure.

Q. What part did he say and what part didn't he say?

A. He told me what he said would be used in court against me at that time, I think.

Q. And did he say to you, "as I told you before"?

A. No, sir, I don't think so.

Q. And you still say that he never told you any such thing until the 3rd day of August?

A. What day was the 3rd day of August?

Q. Wednesday.

A. On a Wednesday; where was that, at Merchantville?

Q. Merchantville.

A. He never told me anything resembling that until Thursday, or Wednesday then, in Merchantville, if that is the 3rd day of August, which I don't remember the dates very well.

Q. Now then, Mr. Young, didn't I on the morning of August 5th, say to you, this, "I am here"—this is at my office and this is directed to you; didn't I say to you, "I am here because you told the officers you wanted to see and to talk to me." Didn't you reply, "That is right"?

A. That is on Friday morning?

Q. Friday morning.

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Then didn't I say to you, "Have you anything you want to say to me; I am willing to listen to it, but it must be voluntary on your part, with the understanding that this is a serious charge made against you in regard to this Harry Garwood, and it can be used against you. I am not going to make any promises to you, because the law will not permit me to do so, and I couldn't with justice to you; there is no promise that I could make I could fulfil, and I have no promises to make, so if you have anything to say it must be voluntary on your part. Now, do you under the circumstances desire to make a statement?" Did I say that to you or not?

A. No, sir.

Q. Didn't I say to you the same morning, "Yes, I have told you I can make no promises; if you have any statement to make it must be voluntary on your part, and if I did make a promise I would be false to you and my duty as Prosecutor of this county. I must be honest and I must be fair and advise——"

and then you started to talk; didn't I say that to you?

A. No, sir.

Q. Didn't you say to me in that conversation, "Prosecutor, what can you do for me?" Didn't I answer, "What do you want me to say, Guilford?" And didn't you say, "I want you to tell me what you can do, can't you do nothing?" And I said to you, "Guilford, from the time I have first talked to you I have told you what my duty is and what your right is; I can't make any promise to you; I must be fair to you; I tried to be fair from the very first." Did I say that to you?

A. Not all of that.

Q. Didn't you in answer to me say, "Yes, sir, you have"?

A. No, sir.

Q. Didn't I say, "You know that, don't you?" And didn't you answer, "Yes"?

A. I don't understand you.

Q. Didn't you say in answer to my question, "I must be fair to you, I tried to be fair from the very first," didn't you answer, "Yes, sir, you have"?

A. No, sir.

Q. Didn't I then say, "You know that, don't you?" and didn't you say, "Yes"?

A. No, sir.

The Prosecutor: So that we will not forget where we were, in answer to what I said to you, "I must be fair to you, I have tried to be fair from the very first," didn't you answer, "Yes, sir, you have"?

A. No, sir.

Q. Didn't I say, "You know that, don't you?" and you said, "Yes"?

A. No, sir.

Q. Didn't I then say, "And haven't we all tried to be fair with you"?

A. I believe you did.

Q. And didn't you say, "Prosecutor, I want to say——" and I went on to say, "Now, all through this investigation I have been fair to you, all the way through; I have brought the witnesses before you, I have told you everything I had and proved to you I wasn't telling you an untruth; you admitted everything we brought before you is true. Isn't it the truth? I have spoken the truth to you, and I have every time that I have made a statement to you. When you have looked at me, I have said, 'I can prove everything.' I brought the proof of the man that saw you go away with Harry Garwood from the ferry, you know we found his watch and chain and the crucifix out in your home, you know that you told us you bought the car from James Brown, isn't that true"?

A. Yes.

Q. "Then after you told us"—didn't you answer, "Yes"?

A. Not to all that.

Q. Then didn't I say to you, "And then after you told us you bought it from James Brown and I told you you couldn't have bought it on the 15th of July because the car had not been stolen yet from Mr. Garwood, you said that was not the truth, you said, 'I got the car from James Brown at Daly's saloon; I finally met him on the street and told him the car wouldn't work and got him to give me another car for it and this is the one he gave me for.' Didn't you tell me that?"

A. Yes, sir.

Q. And didn't you answer, "Yes, sir"?

A. Yes, sir.

Q. And then I said to you, "Isn't that what you said?" and didn't you answer, "Yes, sir"?

A. About the car, yes, sir, that is right.

Q. And then I went on to say that you didn't know James Brown——

Mr. Cleary: Now, if the Court please, I object at this point.

The Court: I was going to say, Mr. Wolverton, we have been over that.

The Prosecutor: I am just right at the point where it takes up now the question where I laid this as a preliminary to him and then put the question to him.

The Court: Well then, you just put this question and I will rule on it.

Q. "And that you didn't know James Brown. We kept on with our investigation. I told you you had the bill of sale made out; I went and got the man who signed his name as James Brown, James Martin, he told you with his own lips, he told you you got him to sign the bill of sale, and all the way down I have taken you in and given you the opportunity of seeking all these things face to face, and you said you are up against a stone wall, or words to that effect. I have been fair, and you now ask me what I can do. The law will not permit me to make any promises, I can't. Any statement you make must be voluntary and it will be used in Court. I can't make any promises, and I want nothing but the desire on your part to tell the truth. I have listened

about your home life, all about your trouble at home, and now you come down to the very thing we are investigating and that which you are being held for, that is, the taking of the life of Harry Garwood, and when you come to that you say, 'What will you do for me, Prosecutor?' I want you to understand it is my duty as Prosecutor to investigate these crimes, I have put the evidence before you, I have played fair with you, and my conscience is clear, and all I ask now if you wish to tell me anything you may. You sent for me this morning; you told the officers you wanted to see me, I came here to give you that opportunity, it is up to you whether you wish to or whether you don't." Didn't I say that to you?

A. Not all of that, no, sir.

A. Yes, sir.

Q. Then didn't you say this to me: "Prosecutor, I don't know what to say," and didn't I say, "Guilford, I know what the truth is, so far as the facts are, as we have them. I have told you honestly and truly what those facts show. Now, there is only, to my mind, one thing—are they true or are they untrue, and if they are true, what was your reason, what led up to this? Those are circumstances that are locked up in your breast, in your own breast. If those circumstances are helpful to you in any way, and if you want to tell them, you have a right to, but I can't tell you to do it or not to do it. It is for you to decide what is best." Didn't you answer, "Yes, it is hard to decide, would be for you, wouldn't it?" and didn't I answer, "It would be," and didn't you answer, "By God, you are honest"?

A. No, sir.

Q. And didn't I then say to you, "I have always tried to be, and the more serious the case, the more honest I try to be. It is for that reason that I can't

make any promises, because the law will not permit me to do so. I would be taking an advantage of you if I did. I would be doing something that I could not carry out, no matter whether you tell me or whether you don't." Didn't I say that to you?

A. Not all that.

Q. Didn't you answer, "You wouldn't take advantage of anyone," and didn't I say, "I wouldn't take advantage of anyone, I would not," and didn't you say, "Not on these grounds." Didn't I say, "On these grounds I certainly would not," and didn't you say, "Well, Prosecutor, I can't say much, but I tell you it is a shame"?

A. No, sir; some of it, not all of it.

Trial of the cause resumed at 1.45 o'clock P. M., pursuant to the adjournment, in the presence of the defendant and counsel for the respective parties.

GUILFORD C. YOUNG, resumed.

By the Prosecutor:

Q. Do you remember the afternoon of August 5th, Friday afternoon, at which time you were in my office and made a statement to me?

A. Yes, sir.

Q. Did I say to you on that occasion, "Now, Mr. Young, you know I am the Prosecutor of the county whose duty it is to investigate crimes. We have investigated the death of Harry Garwood. You are held as charged with that death. Do you wish to make any voluntary statement to me concerning the crime? If you do, I am willing to hear it, but only

with the understanding that it can be used against you in court. Do you wish to make—and you do not have to if you don't wish to—do you wish to make a voluntary, truthful, honest statement?'' To which you replied, ''Yes, sir,''—is that true?

A. I think that is true.

Q. I then said, ''Proceed,'' and you started to set forth the satement, is that right?

A. I think so.

Q. So that on August 11th, when Mr. Doran was about to testify as to what you told him out at Marlton Pike these warnings had been given to you prior to that, hadn't they?

A. August 11th—what day was that on?

Q. I am not certain.

The Court: Thursday.

A. I don't quite understand.

The Court: I will have the stenographer repeat the question.

(Question repeated.)

A. On a Friday is the only time that I remember, on a Friday afternoon in the Prosecutor's office here in the Court House is the only time that I can replace of any warnings being given to me, outside of the warning that Mr. Straw gave me.

Q. So that after the warning was given to you in the Prosecutor's office on August 5th, as you say, by me, as I read to you here, you made a detailed statement, didn't you?

A. As far as I can remember.

Q. Was it an honest statement?

A. I think it was, some of it, which my mind was in the condition that day which I don't exactly realize everything that was said.

Q. You endeavored to make an honest statement?

A. I tried to.

Q. And you endeavored to tell us everything you knew?

A. I tried to,

Q. So that on August 11th, when you made this trip with Mr. Doran you had previous to that told the circumstances of the crime to the Prosecutor, after having given you this warning, hadn't you?

A. I just can't remember.

Q. Well, when this warning was given to you on August 5th, you made a statement concerning the crime, didn't you?

A. On August 5th?

Q. On Friday afternoon?

A. I think so.

Q. So that when you went with Mr. Doran over this route, you had previous to that made a full statement to me in the Prosecutor's office of the crime, hadn't you?

A. I think I did.

Q. And you were willing to answer any questions that were asked you, weren't you?

A. That day my mind was in the condition that I would have been very apt to have said anything at all.

Q. What you said was the truth, was it?

A. That I couldn't really say.

Q. Then after the statement was made, with Mr. Doran and Mr. Smith you went over on this route, didn't you.

A. On the Friday afternoon?

Q. The following Thursday, or so, August 11th?

A. Why, they took me out of here, which I didn't know where I was going, and they said they were going to take me out and give me a little airing, going to take me out for a ride.

Q. Did you make any different statement to them on August 11th than you did on August 5th?

A. I don't think that I made any statement to them at all.

Q. Did you have any objection to making the same statement on that day that you had previously made on August 5th?

A. I was not asked to make any.

Q. You would have made the same statement if you had been?

A. That I don't know.

Q. And you did not say anything about the crime at all to Mr. Doran then on that occasion?

A. I don't think so.

Q. You did not point out any place to him that you had previously informed him in your statement of August 5th?

A. I don't just remember.

Q. Who directed the course to be taken on August 11th?

A. I don't know whether the driver did or whether Mr. Doran or Mr. Smith.

Q. Did you show the road over which they were to go?

A. No, sir.

Q. After they reached the scence of the crime?

A. No, sir.

Q. You didn't?

A. I did not.

Q. Were you asked whether that was the way?

A. No, sir, they took me down the White Horse Pike, if I remember right.

Q. Then no questions were asked you by Mr. Doran at all on August 11th?

A. They asked me if I knowed a fellow in a garage; they brought a fellow out of a garage and asked me if I knowed him or he knowed me, and they asked me if I bought a bumper there, or something, and I said no. I don't quite remember just what was said that day.

Q. That was on a subsequent occasion, wasn't it, when you were taken to Mr. Nicholson's garage at the White Horse Hotel?

A. It was down by the White Horse Hotel.

Q. Well, that wasn't the same day that you went out over the scene of the crime?

A. That was the same day, if it is the day I mean, that is the only day I remember going out.

Q. Well, if you had made a full statement on August 5th, you would not object to making it on August 11th, would you?

A. I don't know.

Q. Mr. Doran was about to testify to what you told him; didn't you make such a statement?

A. I don't think I did, which I am not capable of saying just at present.

By Mr. Cleary:

Q. Now, Mr.——

The Court: Well, I will give you the privilege.

Mr. Cleary: It is in relation to matters brought out by the cross-examinatior

The Court: Well, you continue, and I will pass on it.

Q. How many trips did you make with the detectives, Mr. Young, if you know?

The Court: Now, Mr. Cleary, we have been over that.

Mr. Cleary: Did I ask him that before? This is brought out——

The Court: No, but that was exactly what you brought out; I think we covered every day and hour from August 2nd up to August 11th.

Mr. Cleary: It was just my purpose to ask him the bare question, how many trips he made.

The Court: All right; you may ask that.

Q. How many trips did you take without recounting them, how many altogether?

A. On a Tuesday we took——

Q. No, how many in number did you take, a half a dozen do you think?

A. I imagine so, about half a dozen.

Q. Now, you have testified to the Prosecutor that you made certain statements to him; you admit making certain statements to him?

A. Yes.

Q. Now, were those statements in relation to the killing of Mr. Garwood? Up until Friday was there anything said about——

The Court: Now, wait a minute, Mr. Cleary; there wasn't any[illegible]n the statement regarding the killing of Mr. Garwood.

Mr. Cleary: Well, I want to show, if the Court please, this is my idea, that all the testimony which has been obtained from this witness by the Prosecutor relates to the taking of cars, and that his confession on Friday was in relation to the killing; so that all this advice, or not advice, but all these instructions that Mr. Wolverton was directing to his mind were directions about and applying to the places where and when and how he obtained those cars and not in relation to the killing.

The Court: Well, I can't see that there was anything brought out in Mr. Wolverton's statements such as you claim, Mr. Cleary.

Mr. Cleary: Well, if your Honor thinks so, all right, I will withdraw it.

Q. In the course of the cross-examination by the Prosecutor it has appeared that he called you "Guilford," did you know the Prosecutor before this occurrence?

A. Never had seen him before.

Q. Was it the custom of the officers of the law to call you by your first name?

The Court: Well, wait a minute—Well, I will permit you to ask that; there is no objection, let it be answered.

Q. Was it the practice of those officers of the law to call you by your first name?

A. Why, none that I know of.

Q. But did they at some times?

A. They did at times.

Q. Now, this statement that you made this morning, the things that the Prosecutor asked you, the

questions he asked you that you said no, did you mean no, that you did not say those things?

A. Why, there might have been some questions asked me which there was days I don't remember; there were days which I may have said things or questions being asked which I don't remember; my mind was in such a state at that time there could have been some things asked me that I wouldn't realize what they were.

Q. Now then, as for as——

The Court: You see, this was to be but a bare question, and the witness testified substantially to the same fact upon direct examination, so you see we are going over the same ground.

Mr. Cleary: All right then, I will stop then, if the Court please.

The Court: Very well.

Mr. Cleary: I want to ask him a question now whether these warnings which the Prosecutor has read to him, or asked him about, whether the answer to those questions, whether or not that was such—whether he really meant that they were not made or whether he meant that he did not know that they were made, couldn't remember.

The Court: Well, I wouldn't allow that; the witness has said that he answered the questions in that way.

Mr. Cleary: He said no.

The Court: Now, certainly you can't permit a witness to say that he meant something else when he said a certain thing.

Mr. Cleary: Well, if the Court please, if the witness was under a misapprehension——

The Court: Well, he has testified to the misapprehension, so called, you see, on his direct examination.

Mr. Cleary: I didn't mean as to what was said, I mean as to the character of his answer. The word no—if this witness was told certain things by the Prosecutor and he was asked to-day whether he said them, of course it would be natural for him to say no if he did not remember those things, because in his mind it means no, but, as a matter of fact, he might have said them and does not remember them at the present time.

The Prosecutor: I understand then that the purpose of your question is to have the witness say, "I don't remember," instead of, "No."

Mr. Cleary: No, it is not; the purpose of my question is to obtain the truth from him. I don't care what he says, whether he still continues to say, "No," I want the benefit of whether he really knew what he was saying at that time when he said, "No." If he does, all right; if he doesn't he should have the privilege of explaining.

The Court: Well, he cannot have that privilege in that form. You see, the witness has testified to what has been termed his condition and state of

mind on his direct examination, and on all those occasions, and we are just going back where we started from, Mr. Cleary.

Mr. Cleary: All right, if the Court please, I will withdraw the question. That is all.

WILLIAM MARSHALL, sworn.

By Mr. Cleary:

Q. Mr. Marshall, were you in the county jail sometime after August 2nd?

A. Yes, sir.

Q. What time were you there—were you there from August 2nd to—say, for instance, August 11th?

A. Yes, sir.

Q. In what part of the county jail were you at that time?

A. Section E.

Q. What particular section?

A. Section E.

Q. Well, what is Section E—will you describe the character of Section E; what kind of cells were they there?

A. Well, the cells there are never locked.

Q. Are they communicating?

A. No, there is two in a cell.

Q. Two in a cell; but can the inmates of those cells walk up and down in front of their cells and talk to others and see other prisoners there?

A. Yes, sir.

Q. Now, sometime on or about August 4th, did you see Mr. Young here in that section of cells?

A. Yes, sir.

Q. Did you see anything in regard to his physical appearance that was not natural?

A. Well, I seen a scratch on his neck.

Q. What kind of scratch was it?

A. Well, just an ordinary scratch.

Q. Where was it?

A. On the back of his neck.

Q. Back there?

A. Yes.

Q. Did he or did he not make a statement to you at that time as to how it occurred, how that scratch came there?

The Prosecutor: If the Court please——

The Court: Well, I think that is not admissible; Mr. Young, I think, could testify to that himself, but this witness cannot.

Mr. Cleary: All right, I will withdraw it.

No cross-examination.

Isaac Cherry, sworn.

Direct examination by Mr. Cleary:

Q. Mr. Cherry, did you see Mr. Young in the county jail sometime around August 4th?

A. I did.

Q. Of this year?

A. Yes, sir.

Q. Did you notice anything about his physical appearance that was not natural?

A. No, sir.

Q. Did you notice anything about his neck that was not natural?

A. No, sir; only what he told me.

Q. What did you say?

A. Only what he told me. I didn't see anything.

Q. Didn't you look to see if anything was wrong with him?

A. That was the next day he told me.

Q. Didn't you look at his neck?

A. No, sir.

Q. He did tell you something was wrong, though, did he?

A. Yes, sir.

Q. Oh, did he say——

Mr. Cleary: If your Honor please, I don't want the witness to say what he said.

Mr. Wolverton: Not if you say it for him it isn't necessary.

Mr. Cleary: I have no such intention.

The Court: You expect this witness to testify to what Mr. Young told him?

Mr. Cleary: No, I do not, if your Honor please. I merely want him to say that Mr. Young made a complaint to him at that time, without saying what Mr. Young said about the details of it.

The Court: I think that is not admissible, that Mr. Young made a complaint to him. He wasn't an authority of any kind.

Mr. Cleary: Can I have the witness, then, testify that Mr. Young told him something was wrong with him?

The Court: No, if he couldn't observe it. He can testify what he saw and if there was anything the matter with Mr. Young that he saw. I have no objection to that testimony.

Mr. Cleary: Will your Honor please indulge me for a minute? There is no further question.

The Court: I don't suppose you want to cross-examine, Mr. Wolverton?

Mr. Wolverton: No, I have no cross-examination.

No cross-examination.

Mr. Cleary: The defense rests on the testimony submitted to show the confession wasn't voluntary.

Mr. Wolverton: If the Court please, I would like to call Mr. Doran.

LAWRENCE T. DORAN, recalled.

Direct examination by Mr. Wolverton:

Q. Mr. Doran, is it true, as testified to by this defendant this morning, that you and Mr. Smith beat and threatened and knocked down this defendant in the fire hall at Merchantville?

A. No.

Q. Is it true that he only had one meal a day?

A. No.

Q. How many did he have, do you know, to your knowledge?

A. He had it at all times at your office we got his meals and sent food for him from Staley's restaurant.

Q. Where did he get his meals in the morning?

A. In the jail, before he left it.

Q. And where would he get his noon-day meal if he was at my office?

A. In your office, we would get it at Staley's, and when we were in Merchantville, Chief Linderman fed him from his own home.

Q. Was there any time that he ate when the officers didn't?

A. Many a time.

Q. Was there any time during that period, from Tuesday until the 11th, that he was kept without food?

A. No.

Q. Was there at any time during that period any promise made to him?

A. None whatever.

Q. Was it true, as he testified, that from the morning that he was arrested, he asked for Mr. Marter, an attorney, either of you or myself?

A. Not to my knowledge, no.

Q. Did you say to him that it was best for him to tell the truth to Mr. Wolverton, the Prosecutor, that he was a person who could help him if he did, and that if he didn't take advantage of that opportunity then that he wouldn't have it again, or words to that effect, which you heard this morning in his testimony?

A. No, I did not.

Q. Did you say anything of that character to him?

A. I did on the first Tuesday when he declared that he was innocent. I talked to him on Tuesday and Tuesday night. He tried to prove to me by the bill of sale that he came in possession of the car honestly and that he was innocent of any crime. I told him if he was innocent—I told him if he was innocent of any crime, the truth would help him. That's the only time I used that phrase and that was on Tuesday.

Q. When was that?

A. That was on Tuesday afternoon, long after we brought him to the office at Third and Market Streets and then again in the evening, on the 2nd, the day he was arrested.

Q. And that was after his first statement about the car had been proven false?

A. Yes.

Q. And he was maintaining his innocence at that time?

A. He was, yes.

Q. And you brought to his attention that he lied in the morning?

A. I did that.

Q. It was then you said if he was innocent he had better tell the truth and not lie?

A. Yes, that is when I made the statement.

Q. Did you say anything about coming through at that time?

A. Not to my knowledge, I never used that word.

Q. Or a clean breast?

A. Never made that expression.

Q. Did the defendant at any time complain to you or anyone else in your presence about his treatment?

A. He did not.

Q. Were you present at a conversation between him and a man by the name of Manning in which

he said that he wanted him to get a lawyer for him, Mr. Marter, and that you told him he couldn't get a lawyer for him?

A. I don't believe that I entered into the discussion or conversations between them. He made a request to see Mr. Manning. I took him to see Mr. Manning and let Mr. Manning talk to him. The conversation they had I do not know.

Q. Where were you and with whom were you at the time the conversation was held?

A. With the Prosecutor.

Q. And where was I?

A. I guess some distance from the car in which—

Q. And in an entirely different car?

A. I was in the Ford sedan with you and Mr. Manning was talking to Mr. Young in George Miller's car some fifty feet away.

Cross-examination.

Mr. Cleary:

Q. Now, Mr. Doran, you are positive about everything you have just testified to, are you?

A. I think I am, yes, sir, Mr. Cleary.

Q. Well, why it is you don't think so now you are positive?

A. Well, I am.

Q. You are positive?

A. Yes.

Q. Remember yesterday when I cross-examined you as to whether or not the time that Mr. Young was in the Prosecutor's office——

A. What day are you speakng about?

Q. About the first day.

A. Tuesday?

Q. Yes.

A. Yes.

Q. You were not quite positive about that, were you?

A. Well, the days were mixed in reference to where he was on the different days, because——

Q. Why is it you are positive of some things and not positive of the other things? Is there any reason for it?

The Prosecutor: If Mr. Cleary wishes to press that point I will ask him to——

The Court: Now, if you want to question Mr. Doran upon any of these matters, you must question him as to the particular time and place. He has made certain statements. Now, if you will just confine yourself to those few statements, Mr. Cleary——

Mr. Cleary: If your Honor please, it is immaterial. I will withdraw the question.

Q. Mr. Doran, what is your idea of a meal? What do you mean by a meal? You said Mr. Young was given his meals at all times.

A. Well, in some instance right at the office at Third and Market Mr. Young had so much food that after he got done eating it laid there on the desk after he got through.

Q. What did that food consist of?

A. That food consisted of whatever we asked him he wanted, before we sent out for it.

Q. What did he have for breakfast?

A. I don't know.

Q. You are not positive of your own knowledge he had any?

A. No, they are supposed to feed them at the jail.

Q. Yet you said a minute ago you are positive of everything you said on your direct examination.

The Court: He never testfied to what he had for breakfast. He said, my recollection of it was his breakfasts were had in the jail. He didn't know anything about those.

Q. What did he have for noontime lunch on the 2nd day of August, when at the Prosecutor's office?

A. He had a meal from Staley's, what that consisted of I don't know, but it cost considerable.

Q. Did it consist of sandwiches there?

A. It may have. Whatever he ordered he got.

Q. What did he have that evening?

A. That evening he had lunch there.

Q. Did he have sandwiches?

A. I don't know; whatever he ordered we got.

Q. What did he have the next day for lunch?

A. For dinner, he was fed on the next day at Merchantville.

Q. He got a real meal that day?

A. Well, I don't know. Mr. Linderman brought it over to him.

Q. What did he get that evening for his meal?

A. He got a meal that evening.

Q. What did he get?

A. I couldn't exactly tell you. He was fed.

Q. You don't know how he was fed?

A. He was fed better than we were.

Q. Do you know whether it consisted of sandwiches?

A. It may have.

Q. The next day where did he get the noon-day meal?

A. At Merchantville.

Q. That was a whole meal, was it?

A. I think so.

Q. How about that evening?

A. I am not sure whether he got that at Merchantville or Mr. Wolverton's office.

Q. Was it sandwiches?

A. Whatever he ordered.

Q. What did he get the next day which I think was Friday, wasn't it?

A. Friday?

Q. At noontime what did he get Friday noontime?

A. He got a lunch here in the Prosecutor's office.

Q. What did that consist of, sandwiches?

A. That consisted of what he ordered.

Q. What did he get Friday evening?

A. He was up in the jail.

Q. Did he get a regular meal that night?

A. I don't know.

Q. Didn't you order it for him?

A. I may have, I took good care to order whatever he wanted.

Q. Didn't you say to him on that occasion that he could have, I think, some beefsteak, and potatoes, and coffee and pie and things of that kind, whatever he wanted you would get for him?

A. I don't remember that. Every time it came time to eat I asked Mr. Young what he wanted.

Q. Now, Mr. Doran, you have testified, I believe, that you said if he was innocent of any crime the truth would help him. That's true?

A. When that statement was made it was with reference to him being innocent, yes.

Q. That is what you said?

A. I said it in this manner, I said if he was innocent of this crime.

Q. Just a minute.

The Court: You asked the question and he is entitled to answer it.

Mr. Cleary: I think it is a question that can be answered yes or no.

(Question repeated.)

A. Yes.

Q. Now, what was your idea of innocence; what did you mean by the word innocent?

A. Meant that he had no connection with the crime.

Q. Suppose he had a connection with the crime?

A. It wouldn't have helped him.

Q. Suppose he had a connection with the crime which would have entitled him if he had a defense to the crime to kill this man probably.

The Prosecutor: It is not what Mr. Doran thought about it. It is what his words would carry.

Mr. Cleary: I want to show, that is, through words used were of the idea that if this man was engaged in it in any way as he has just testified now the idea was conveyed to the mind of this man. If it was in his mind the chances are that he conveyed it to the mind of this man.

The Court: That is hardly permissible itself but in the next place what is it cross-examination of upon this subject that has been testified to by Mr. Doran.

Mr. Cleary: On direct testimony he has said, if your Honor please, he made this statement to Mr.

Young, that if he was innocent of any crime the truth would help him. I want to cross-examine him on that statement.

The Court: You may cross-examine him on whether or not he made that statement.

Q. You made that statement to him?

A. I did.

Q. How many times did you make that statement to him?

A. I should judge two or three times on Tuesday, the 2nd.

Q. Now, Mr. Doran, you testified on your direct examination if I recollect properly that you saw this man Young in the county jail somewhere around the 13th, did you?

A. Around the 13th?

Q. Of August, or before that time, sometime the next week after this man was arrested.

A. On the 11th the day I took him out, you mean?

Q. No, another time you saw him in the jail and had a conversation with him about Mr. Marter.

The Court: Mr. Cleary, pardon me just a minute. You see that is bearing upon that portion of Mr. Doran's testimony that has not yet been finished by Mr. Wolverton. That is in his direct testimony which was interrupted because of the intervention of this question with reference to the character of the confession and therefore you will have an opportunity to cross-examine Mr. Doran on those matters later in the progress of the case.

Mr. Cleary: If your Honor please, that wasn't my recollection. It was my recollection it came out

subsequent to that. I don't know whether I am right or not and if you think I am wrong I will withdraw the question and ask it on further cross-examination.

The Court: I will give you the right on further cross-examination, but not on this branch of the case because my recollection is quite clear as to that.

WILLIAM H. LINDERMAN, sworn.

By the Prosecutor:

Q. Mr. Linderman, you are chief of Police of Merchantville, are you not?
A. Yes, sir.
Q. How long have you been chief of police?
A. Pretty near twenty-nine years.
Q. Twenty-nine years?
A. Nearly twenty-nine.
Q. In Merchantville?
A. Yes, sir.
Q. And how long have you been an officer there, any longer than that?
A. No longer than that, the only officer.
Q. And you were chief and only officer for a while?
A. Yes, sir.
Q. And you have continued there continuously all that time?
A. Yes, sir.
Q. You are still the chief of police of Merchantville?
A. Yes, sir.
Q. The defendant testified yesterday that you told him it would be best to tell these people, referring

to myself and the officers, to make a clean breast of it, how much the Prosecutor would help him, how much I could help him if he would make a clean breast, "And I told him that there wasn't anything to say, that he said well you may be sorry if you don't tell them, you have got an opportunity to tell them, now I don't see why you shouldn't and this is the first time you have ever been arrested or ever been in any trouble, you ought to come clean with it, and he asked me if I would like to see Harry Garwood." Did you say that to him or not?

A. I did not except Harry Garwood I asked him that question.

Cross-examination.

By Mr. Cleary:

Q. Now then, chief you did have a conversation with this man, didn't you?

A. I did, yes, sir.

Q. And what was the object of your conversation with him? What did you talk to him for?

A. Why, we were just questioning him with regards to the time he was arrested, before he was arrested and so forth.

Q. To find out some information regarding this crime?

A. Well, yes.

Q. To do your duty as an officer, that was the idea, wasn't it?

A. Yes, sir.

Q. Now, you did have some conversation with him about the statement he should make, didn't you?

A. In regards to no statement, no.

Q. When you talk to a prisoner, don't you usually

say something to him first about making a statement?

A. I wasn't questioning him on that. He was in my charge a while.

Q. What?

A. He was in my charge a while.

Q. Well, didn't you ever have a desire to advise a prisoner at any time——

The Court: That is a little bit too general. The question here with this witness is a rather narrow one. I don't want to cut you off on any proper cross-examination, don't think that at all, but just confine yourself to what was brought out in the examination-in-chief of this witness.

Q. How long ago has that been since you saw that man?

A. I think the last I saw him was on the 4th of August.

Q. Can you remember everything you said to him on that day?

A. Well, there might be some things I probably might not think of.

Q. There might be some things you said to him you might have forgotten by this time, isn't that right?

A. It may be.

Q. It may be and isn't that, Chief, barely possible, you might have forgotten what you said to him about this particular thing, is that right, Chief?

A. No, sir.

Q. You are positive you did not forget this—you haven't forgotten this, is that right?

A. What was the question?

Q. I say, you are positive that you haven't for-

gotten any conversation such as this that Mr. Wolverton has just read to you?

A. I had no conversation of that kind with him.

Q. But you are not positive whether you did not forget some other conversation you had with him?

A. Oh, I had conversation with him, talking to him.

Q. You can't remember everything he said to you and you said to him, can you?

A. It would be impossible.

Q. And your mind has never been directed to that point from the time that that happened sometime last August up to now, has it?

A. No, sir.

Q. Is that right?

A. No, sir.

Q. So there would have been no reason for you remembering it if it did occur.

A. That was——

Q. Isn't that right?

A. No.

Q. There is no reason for you to remember it——

The Prosecutor: Let the witness answer.

The Court: No, he hasn't quite had an opporunity to answer.

Mr. Cleary: I didn't know he answered; I thought he shook his head.

The Court: Yes, he did answer, but he was cut off.

Q. Then what was the answer to that?

A. I remember mostly everything that was said in conversation between us.

Q. But there has been no reason—there is no reason, rather for your remembering that conversation, every word of it from the time that it occurred up until now, is there? It has never been brought——

A. Sure, the most of it I can remember.

Q. I didn't say whether you can remember it or not, but I am asking you this question, Chief, has there been any particular reason ever been called to your attention before until this day——

The Court: Well, now, wait a moment, that is not clear to my mind; I don't know whether it is clear to the witness' mind or not.

Mr. Cleary: All right, if the Court please, I will withdraw the question and ask another one.

Q. Have you ever had this conversation called to your mind and memory from the time that it was first made up until to-day?

The Court: Wait a minute, Mr. Cleary; he testified, don't you see, that he did not have the conversation; now your question——

Mr. Cleary: Well, I meant the entire conversation; I didn't mean this particular point.

A. This particular point was never said at all——

Mr. Cleary: I will withdraw that question, if the Court please, and ask another one.

Q. You remember having had a conversation with him on this day, don't you?

A. I do.

Q. Now, has there been any time since that day to this that your memory or mind has been called to that conversation so that you would have to remember it?

A. It is not quite clear to me yet.

The Court: Well, what Mr. Cleary means is this: From the date that you had this conversation, which day was around August 4th, have you had occasion between August 4th and the present time to have your mind directed as to what conversation you had with Mr. Young on that day?

The Witness: Yes.

The Court: Is that it, Mr. Cleary?

Mr. Cleary: Yes.

Q. Have you?
A. I have, yes.
Q. When?
A. It was on the 4th.
Q. On the 4th?
A. Yes.
Q. You mean the 4th of August?
A. The 4th of August.
Q. Have you had it since that time?
A. I have not.
Q. Not since the 4th of August?
A. Had no conversation at all with him since that time.

Q. And Chief, do I understand you to say that you don't remember every word of that conversation?

A. Well, not word for word, but I know the biggest part of it.

Q. Now Chief, did you or did you not tell him on this day to make a clean breast of it?

A. I did not.

HOWARD SMITH, sworn.

By the Prosecutor:

Q. Mr. Smith, where do you live?

A. 933 Penn Street.

Q. Do you have any position in the City of Camden of an official character?

A. Yes, sir, acting county detective.

Q. You are a city detective assigned to the Prosecutor's office for service there, are you, by Mayor Ellis?

A. Yes, sir.

Q. How long have you been in the police department of the City of Camden?

A. Sixteen years.

Q. Did you strike, beat, knock down, or threaten the defendant, Guilford Young?

A. I certainly did not.

Cross-examination.

By Mr. Cleary:

Q. Did you ever see any marks upon Guilford C. Young?

A. I did not.

CHARLES STUART STRAW, ESQ., recalled.

By Mr. Wolverton:

Q. Mr. Straw, you are Assistant Prosecutor of Camden County, are you?

A. I am an assistant to the Prosecutor of Camden County.

Q. You at my direction took a statement of the defendant on the evening of August 2nd, didn't you?

A. I did.

Q. Preliminary to your taking that statement, did you say to him: "Mr. Young, my name is Straw, and I am an assistant to the Prosecutor here in Camden County, and, as Mr. Wolverton told you, you are detained in the matter of the investigation of the taking of the car belonging to a man by the name of Garwood, and I want to ask you questions. Of course, you understand what you say to me can be used and will be used in court against you. If you are willing to answer, I would like to ask you some questions." Did you say that?

A. I did.

Q. Was it taken down stenographically?

A. It was.

Q. And did he answer, "I will answer them as near as I can"?

A. He did.

Q. Did you on the 3rd day of August, in the evening, at Merchantville, take another statement of the defendant?

A. I did.

Q. Stenographically?

A. I did.

Q. Previously to the taking of the statement did you say this to him: "Mr. Young, as you know, my

name is Straw, and, as you know, I am an asssistant to the Prosecutor of Camden County. This gentleman (indicating the stenographer), is Mr. Berry, the official court reporter, and this gentleman, as you know, is Mr. Linderman, the chief of police of Merchantville. As I told you before I want to ask you some questions about the automobile which you had in your possession, and, as I told you before, the answers which you make, if you make them, will be used in court against you. Now, are you willing to answer some questions for me about this automobile''?

A. I did ask that question.

Cross-examination.

By Mr. Cleary:

Q. How many statements did you take from him altogether?

A. Two, Mr. Cleary.

Q. Just two?

A. Yes.

Q. And where were they taken?

A. One at Third and Market Street in Mr. Wolverton's office, the other in Merchantville.

Q. Were they both taken by stenographers?

A. They were.

Q. By whom?

A. Mr. William B. Macdonald and Mr. Edward I. Berry.

Q. Now, where was Mr. Macdonald when the statement was being taken—in the same room?

A. He was.

Q. With man?

A. He was.

Q. At Third and Market Street?

A. He was.

Q. Where was the stenographer in Merchantville, in the same room?

A. He was.

The Prosecutor: If the Court please, in view of the questions that I have asked the defendant this morning, as much as I regret the necessity of offering myself as a witness, yet, from the legal standpoint it is necessary that I should do so, to contradict the defendant. I thought it might save time and serve the same purpose, and there would be no objection on the part of the defendant if I should state in a general way that those questions and answers which I put to the defendant this morning were put by me and those answers given. On the other hand, if counsel for the defendant desires it, and wishes each question and answer put individually, which will take considerable time, I can say, "Yes," to them that way just as easily as I can as a whole. I offer this suggestion thinking it might save very valuable time.

Mr. Cleary: I am willing to save time and do as the Prosecutor suggests.

The Court: Very well, you can take the stand, Mr. Wolverton.

The Prosecutor: Do you want me to testify?

Mr. Cleary: Your statement is enough.

The Prosecutor: In other words, as I understand it, Mr. Cleary is willing to admit that if the Prosecutor testifies he would testify that the questions and answers put to the defendant this morning on the stand were put by him and those answers given at the time indicated.

Mr. Cleary: Yes, sir.

The Court: The ruling of the Court is that the statements made by the defendant at the various times mentioned in the testimony were voluntary statements and will be admitted in evidence.

Mr. Cleary: As to which time, if the Court please?

The Court: Well, as to—we have gone over them all.

Mr. Cleary: All of them?

The Court: Yes, you went over them all.

Mr. Cleary: On August 11th, too?

The Court: Oh, yes, on August 11th, also, that was the primary stumbling block, August 11th.

Mr. Cleary: All right. Now, I don't know whether I was cross-examining Mr. Doran at that time or not; I think I was.

The Court: No, you were not cross-examining Mr. Doran; Mr. Doran was on his direct examination and he was asked to state what the defendant, Mr. Young, said when he on this by-road.

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Mr. Cleary: That is true, I remember now.

The Prosecutor: If the Court please, there is one other feature that I will find it necessary in order that the defendant's testimony may not be taken without contradiction, and that is his testimony on page 3, Mr. Cleary, in which he says, "Later in the evening Mr. Wolverton came in and he told me that he wanted to know if I wouldn't tell him the truth about the car, and about Garwood, and that the man that owned the car was dead, and that he could help me a whole lot more if I would tell him the truth, and that he would get my people there, my mother, my sisters, anybody I wanted in, all my relations, and I told him that I wanted Mr. Marter. He said, "Who is Mr. Marter?" I said, "A lawyer from Haddonfield, he has an office on Third Street." He says, "You can't have any lawyer," he says, "We haven't got any time to go after lawyers for you," and after I wouldn't tell him any statement at all, he says, "Well, if you think it is best for you to keep it, you can do it," in a sarcastic way, and he said, "Take him down to the hall." So then they took me down to the hall. I wish to deny all that.

The Court: Well, the question can just be put to you, you can just ask yourself the question with reference to what has just been read, then you can make a denial by just standing where you are. There is no objection to that?

Mr. Cleary: That is all right.

The Prosecutor: I deny completely the testimony given by the defendant yesterday, insofar as it relates to any conversations with him related by him

in his testimony of yesterday, both as to the reference that it would be best for him to tell the truth, that he could not have a lawyer, that he could not have any bail until a statement had been made by him, and kindred testimony.

The Court: Very well.

Mr. Cleary: If the Court please, so that my objection to these confessions may be on the record, I wish to state the causes of my objection to them at this time. The law, as I view it upon this question of voluntary statements or confessions, is this, that it must not be done under any fear or upon any promise, but, in addition to that, it must not be done upon any advice from any officer of the law upon whom the defendant had reason to look with respect, and with a high regard for his authority; it must not come from any advice from such sources, because the defendant is in a position where, in a case of this kind, he had no attorney, but looks for advice to the person whom he thinks knows more than he does about this particular situation, so that if by their advice, and it has been testified in this case that Mr. Doran advised him if he was innocent to tell the truth about it——

The Court: Wait a minute, I don't want to interrupt, and I do not want to be in any sense discourteous, but you see you are going into an argument and it is not necessary to place that upon the record; it really is not necessary for the protection of the rights of your client to put your grounds upon the record, but if you feel that it is safer——

Mr. Cleary: I do, yes, sir.

The Court: If you will just state the grounds, not the things which you think support the grounds —if you will just briefly state the grounds I will permit you to enter them on the record.

Mr. Cleary: My reason for doing that was that I thought you would give me an opportunity to state them before you made the ruling.

The Court: You did not ask for one.

Mr. Cleary: I did not have an opportunity, if the Court please.

The Court: Very well; you could not charge my ruling, so there is no reason to state my views. The evidence satisfied me, and I purposely did not comment upon it; I think it would not be proper for me to comment upon the reasons for my views, I might state something that I shouldn't state; therefore I simply ruled on the question, but I did not know that either side wanted to argue it.

Mr. Cleary: Then, if the Court please, I will state the causes of my objection.

The Court: State your objections.

Mr. Cleary: That it was given upon the advice of an official of the law in such a way as to cause the mind of this defendant to be influenced by it, inasmuch as the man who made it had authority over the prisoner at the time; it gave him an impression of fear, or an impression of false hope or promise by which he would gain some reward, or something would not be done to him in case he made a confession.

The Court: Very well; then Mr. Wolverton may proceed.

Mr. Cleary: Your Honor will allow me an exception on that point?

The Court: Certainly.

LAWRENCE T. DORAN, recalled.

By the Prosecutor: With permission of the Court may I just read the last question and answer to refresh the minds of everyone?

The Court: Certainly.

The Prosecutor: "Q. And on what route did he take you? A. On account of the traffic rules here, we left the Court House and went out Market. When we got to the point, he said, he came out Federal—that was the only point we didn't cover, from the Court House and Federal out, we went east on Federal to the Marlton Pike, out Marlton Pike to Springdale crossing, and then a few hundred feet west of there he showed us where he turned into the woods. When he got about five hundred feet in, he stopped the car and got out. He showed us the point where he shot Garwood and then showed us the direction in which he dragged him into the woods. He explained to us that there was a path about twenty feet north of where he stopped the car. We asked him if he dragged Garwood up the path into this place where he was found and he said, no, he dragged him into the brush, and after we talked

there a while about the shooting and how he did it——" Then the next question is: "Q. Just what did he say? A. He said he was standing on the running-board—— Mr. Cleary: I object to this, it is in the nature of a confession and it must be voluntary and must have all the elements of a voluntary confession." That is the point where we diverted.

Q. Now, the question that I put to you Mr. Doran, is this: Just what did he say? You had gotten as far as saying he said he was standing on the running-board.

A. Young said he was standing on the running-board, looking into the car, Garwood got up, started to get up from the seat, he shot him and fell and in a side position and hung in the side of the seat, shot him in the breast. He said, "I reached in, pulled him out on the ground and he fell face down and then I shot him twice." I said, "What did you do then?" He said, "I dragged him in back to the woods," and I went over to the spot and pointed to the site, and he said, "Yes, over there somewhere." I asked him if he took the watch off him there and he said he did. I asked him if the watch I found in the home was the one he took from Garwood. He said it was. We stood there talking for a few minutes, talking with reference to the location, and I asked him if he would be willing to show me the route he took from the crime. He said he was.

Q. Then what did you do?

A. We proceeded on through the woods.

Q. Did you come back to the car?

A. We came back to the car and went on through the woods and as we went through the woods we bore to the right——

Q. Who was directing the course?

A. Mr. Young. He said, "I think we went to the right." The right brought us out on Springdale

Road. When we reached Springdale Road I said, "Which way did you go then?" He said, "Over to the left." We took the Springdale Road to the road leading from Haddonfield to Cresson. When we reached that we turned to our right into Haddonfield on his direction. When we entered Haddonfield we struck Potter Street at the bridge. He took us over Potter Street, over Kings Highway on up to the first street in what they call the Lippincott Tract.

Q. You didn't go along Kings Highway?

A. No, we did not. Right straight across on to Potter Street, up to the first piece in the Wood Tract. It is not an improved street. We crossed that right straight over Haddon Avenue and then he directed us in alongside of two little frame houses that led us in a lot and that led us into Martin's home, in front of Martin's house.

Q. How long would it take an automobile to go from the point where the body was to Martin's house?

A. I should judge in the neighborhood of about between half an hour and twenty-five minutes, something like that.

Q. Did he take the most direct route between those two points?

A. He did not.

Q. On reaching Haddonfield, which would have been the most direct route from Potter Street to the home of Martin?

A. Right down, right when he reached Potter and Kings Highway to the left, down Kings Highway and he could have turned right to his right and had an improved street all the way to Martin's door.

Q. So the way he showed you was a round-about way?

A. And over an unimproved street.

Cross-examination.

By Mr. Cleary:

Q. Mr. Doran, before you became detective, what were you?

The Prosecutor: Pardon me just a minute. I overlooked a question.

By the Prosecutor:

Q. In what township of this county was the body found?

A. Delaware Township, Camden County.

By Mr. Cleary:

Q. Before you became county detective what were you?

A. Fish and game warden of the State of New Jersey for three years.

Q. For how many years?

A. Three years.

Q. And was it in the line of your duty to patrol the roads around Camden County at that time?

A. It was.

Q. Could you say whether or not you have expert knowledge on roads in Camden County?

A. Not expert knowledge. The job never paid enough while I was connected with it to keep you working at it every day.

Q. You didn't work every day?

A. No.

Q. Since you have been in the Prosecutor's office you have had considerable experience in the proper manner and most direct route to different places?

A. I have, yes, sir.

Q. Do you know whether Mr. Young had as much knowledge as you did about the subject?

A. I don't know what he had.

Q. Now, this road which you say you took, there is a little lane which leads through a wood?

A. Yes, sir.

Q. And that leads on to another road?

A. Yes, sir.

Q. Continued out that road?

A. Until we struck the Springdale Road.

Q. And then you took that road?

A. No.

Q. Where did you go from there?

A. We went kind of south, southerly direction from there until we struck the Cresson Road leading from Haddonfield.

Q. Where did you go then?

A. Turned to our right, came into Haddonfield, struck Potter Street at the bridge.

Q. Where should he have started from, the most direct route from the little road in the woods?

A. He should have come to the bridge at the point of Potter Street and the Cresson Road. At that point he could have taken the road, the right-hand road and led him almost in a straight direction to Martin's house. Instead of that he went out Potter Street to the Wood Tract and came all the way around.

Q. It is in Haddonfield he took the wrong direction, is it?

A. It is, yes, sir.

Q. You haven't any knowledge, positive knowledge on your own part, whether he knew at the time of the shooting, what was the most direct route?

A. I can't tell what is in his mind.

Q. What was the condition of that underbrush or woods where this man's body was found? Was it a dense woods?

A. It wasn't a dense woods, but it was pretty thick, small brush.

Q. It wasn't such a woods you could run a car right through the trees?

A. No, it was not.

Q. You had to follow the wagon tracks?

A. Yes.

Q. And there is just barely enough room?

A. Yes.

Q. There is not enough room for two cars to pass each other?

A. Not unless you pulled up on the side.

Q. How do you know this is Delaware Township?

A. By the map downstairs.

Q. Do you know where the township line runs?

A. Not exactly. It takes in that section, takes in Springdale Road and extends along Marlton Pike, along the south side.

Q. Did you go to look the boundary up, where the boundary line fitted into that territory?

A. I saw the territory fitted in Delaware Township, where the body was found. I didn't bother about the outside boundary line.

Q. How could you identify the place where the body was found on the map?

A. By the Marlton Pike and Springdale Road.

Q. Now, these bullets you have testified to, are you positive you didn't get the two kinds of bullets mixed, the kind taken from his pocket and the kind taken from his home?

A. We did not get them mixed, they were taken at different times.

Q. You are sure you haven't got the packages mixed?

A. No.

Q. Would you say positively you haven't?

A. I would say positively and we were very careful of them.

Q. Did I remember you correctly to say Martin admitted in the presence of this man having signed the bill of sale?

A. He did.

Q. Now, then, will you tell me why you took the prisoner to the Third and Market Street office instead of to the County Court House?

A. Yes. This case had created a lot of notoriety. We didn't want the public to know that we had anyone in custody, under suspicion. If we worked here we would have been molested and interfered with. We held a consultation and decided to go to the Market Street office and work from there until we worked some of the facts out, and that was the only reason he was taken there.

Q. You didn't want to be molested or interfered with by anybody?

A. That's the idea. We didn't want anybody to know we had anybody in custody.

Q. You told people about the case?

A. No, not at that time.

Q. You told newspaper reporters?

A. No, I didn't, I never gave a statement to a newspaper man, not while the investigation was going on.

Q. You testified a week after the man was arrested you saw him at the county jail and had a conversation with him about Mr. Marter, his attorney, is that right?

A. Sometime after he made a statement to Mr. Wolverton, after the 5th, the following week.

The Prosecutor: I don't think there was anything in Mr. Doran's testimony relating to Mr. Marter in any way whatever. I think Mr. Cleary is cross-examining on something brought out in the examination relating to the admissibility of these confessions, but nothing as to Mr. Marter in the direct testimony.

Mr. Cleary: Your Honor stated a little while ago that it was during that time you would allow me to ask this question at this time.

Q. Now, the confession was taken on Friday, the 5th?

A. Yes, sir.

Q. The next Friday would be Friday, the 12th, and Saturday would be the 13th?

A. Yes, sir, somewhere along there.

Q. It was some time before Saturday, the 13th?

A. I am not sure it was the week, or a little while after the statement was made.

Q. Now, did you notify Mr. Marter for him?

A. I don't think I did. I told him if he would tell the jailors they would send for him.

Q. You didn't make any effort to tell Mr. Marter?

A. No, I never do.

Q. At no time?

A. At no time I am requested by a defendant. I let the jailors attend to that. They telephone for any lawyer they want up there.

Q. Suppose the prisoner is in your custody at the time and he isn't in jail. Don't you ever attend to his requests?

The Prosecutor: That isn't the situation here.

The Court: That is overruled.

A. I told him to see the jailors and they would send for him.

Q. You didn't see Mr. Marter?

A. No.

Q. Now, are you sure about everything you have testified to this afternoon since you have been recalled to the stand the last time?

A. Positive.

WILLIAM B. MACDONALD, ESQ., sworn.

By the Prosecutor:

Q. Mr. Macdonald, where do you live?

A. Camden.

Q. You are a member of the bar of Camden County?

A. I am.

Q. What other occupation do you have?

A. Shorthand reporting.

Q. How long have you been writing shorthand?

A. About fifteen years.

Q. Have you during that time acted as a stenographer in the courts?

A. I have.

The Prosecutor: The defendant's attorney admits the competency of Mr. Macdonald.

The Court: Very well.

Q. Mr. Macdonald, on the evening of August 2nd, did you take down stenographically a statement or questions and answers by Mr. Straw of the defendant, Guilford Young, in this case?

A. I did.

Q. By whom were the questions asked?

A. By Mr. Straw.

Q. And to whom were the questions directed?

A. Guilford Young.

Q. Did you take down a record of those questions and answers stenographically?

A. I did.

Q. Do you have the notes referring to that examination?

A. I have.

Q. Can you tell us from those notes what was said by Mr. Straw and the defendant?

A. I can.

Q. Have you the notes with you?

A. I have.

The Prosecutor: Mr. Cleary, would there be any objection to Mr. Macdonald using his typewritten copy of the notes to refresh his memory and to testify from rather than the originals?

Mr. Cleary: No, I have no objection to that, only with this one request, if the Court please, that if at the end of the statement there is anything that I want to ask him to go back to his original notes and look up, I may have that privilege.

The Court: Very well, you may have that privilege on cross-examination, and the original notes will be dispensed with on the direct examination, and the witness will testify from a transcript of his notes.

Mr. Cleary: First having him testify that they are a correct translation.

The Court: Oh, yes.

Q. The notes that you are about to read from, Mr. Macdonald, are they a correct and true translation of the stenographic notes taken by you at the time the statement was taken by Mr. Straw?

A. They are.

Q. Proceed, Mr. Macdonald. I would suggest that you raise your voice as much as possible, and not read too fast, so that it might carry to the jury box. Statement of Guilford C. Young, taken on Tuesday, August 2, 1921 at eight o'clock P. M.

Examination by Mr. Straw:

Q. Mr. Young, my name is Straw and I am an assistant to the Prosecutor here in Camden County, and as Mr. Wolverton told you, you are detained in the matter of the investigation of the taking of the car belonging to a man by the name of Garwood, and I want to ask you questions. Of course, you understand that what you say to me can be used and will be used in court against you. If you are willing to answer, I should like to ask you some questions.

A. I will answer them as near as I can.

Q. Now, the car which is out front, which is a Ford sedan, you purchased when?

A. Why, on the first starting off on that car, is that what you want?

Q. Yes, please.

A. I got a car somewhere around the sixth of July, I believe, off a fellow by the name of——I will tell you his name in a minute——(hesitation) Walter Brown, I believe.

Q. Where does he live?

A. I believe on Reed Street, Philadelphia, somewhere.

Q. Can you tell me what street it is near?

A. No, I can't.

Q. Where did you meet Mr. Brown?

A. He was in Jimmie Daly's hotel. He was there when I was, and when I came out he asked me if I knew anyone that wanted to buy a car, he said he would sell it cheap.

Q. Where is the hotel that you refer to?

A. Parkside, Kaighn's Avenue and Haddon Avenue. So I said no, I didn't know anyone that wanted to buy one, and he told me that he would sell it to me cheap. He said that he would sell me the car for $400, and there was another fellow with him which was a hundred dollars to be paid to him, and I told him I would think the thing over and see about taking it on the following night, and I seen him and I wouldn't take the car without a bill of sale for it and the car didn't turn out as it was supposed to be and he said he would take the car back and give me another one in place of it, and the car I received in place of that one.

Q. Now, this was the 6th of July, you say?

A. Yes.

Q. What kind of looking man was this man Brown?

A. He is a fellow about my height, about my build, and I believe, if anything, he is a little bit taller and is just about my build but just a little taller. I believe he is a little bit heavier than I am.

Q. What kind of looking man was the man with him?

A. He was a small fellow, thin, dark complected. He wasn't awfully thin. He was a pretty fair build fellow.

Q. What time of day was this, about?

A. Why, I imagine it was between six and seven o'clock, somewhere around there. It might have been later. That is when I seen him the second time. The first time was somewhere around eight o'clock in the evening.

Q. Was anybody with you when you went up to Daly's?

A. No, I was by myself. There was another fellow with him.

Q. Whom did you see the first time in the saloon, besides these two men and yourself, rather, who was there?

A. I didn't notice anyone. I think Jimmie Daly's son was tending bar.

Q. Did he hear anything of the transaction?

A. There was nothing said until we came outside. They said nothing to me until I came outside.

Q. How did you happen to run into him?

A. They walked out just before I did. I walked in. I was dry. It was a warm night, and I got a glass of this near beer, and when I came outside, he asked me if I knowed anyone that wanted to buy a car, they were going to sell their car. That's the way I came to get the car.

Q. Now then, that was on the 6th?

A. I don't say, it was somewhere around that. See, I am not real sure about that.

Q. Well now, what kind of car was that car, Young?

A. That was a car pretty near like this one.

Q. A new car, was it?

A. Why, I don't think it was as new as this. He said there wasn't any difference in them, though.

Q. You said you paid $400 for it?

A. Yes.

Q. Now, the next night, where was the car delivered?

A. Why, at Kaighn's Avenue and Haddon Avenue, where he met me, and he wanted me to take the car without any receipt or anything and I wouldn't do that and I went down to this notary public and had the bill of sale made out for the car.

Q. Where is the notary public's place?

A. Down on Kaighn's Avenue. It is on the other side of the electric railroad, towards Haddon Avenue. It is on the right-hand side going down toward the ferry and on the left-hand side coming towards Haddon Avenue.

Q. Do you know his name?

A. No, I don't. His name is on the bill of sale but I don't know his name.

Q. And where is the bill of sale, Mr. Young?

A. It was out home, in the bureau drawer. That is where I left it.

Q. Now then, when did you get your license for that car?

A. I got them right shortly after I got the car.

Q. Well, where did you take the car the night that you got it? That would be about the 7th, somewhere along in there. Did you take it down to your home?

A. The night that I got the car?

Q. Yes.

A. No, I took it around to the garage.

Q. Where is that?

A. That is around Eighth and Spruce.

Q. Who runs that garage?

A. Why, I couldn't tell you the fellow's name. I know it but it is a funny name. I think his name is on the receipt over there (indicating).

Q. Over here (indicating table)?

A. Yes, I think the receipt is there.

Q. This is a receipt dated July 18th. It says "Received of Mr. Young one month's rent from 18th of July to 18th of August, 1921, seven dollars." B. Harrigle, it looks like. Is that the receipt to which you refer?

A. Yes, that is the garage owner.

Q. You said you got it on the sixth or seventh and the receipt is not dated until the 18th of July.

A. Why, that was dated back, I think, on account of on a Sunday or Saturday.

Q. Yes, but this would be twelve days.

A. It was on a Saturday when I rented the garage, I think, and he dated that back.

Q. Saturday would be the 16th.

A. Or he dated it ahead.

Q. Well now, where was the car between the sixth and seventh and the sixteenth, when you took it down there?

A. I took it there on the sixth.

Q. Where is the receipt from the sixth to the eighteenth?

A. That is the receipt, only he dated it ahead. He gave me the privilege of Saturday and Sunday, see.

Q. You are speaking of the sixth. I wonder if you don't mean the sixteenth?

A. Yes, the sixteenth is what I do mean.

Q. All right. Now, when did you get your license tags?

A. I got them on the sixteenth, I think on Saturday morning.

Q. Now, this permit, No. 72313, bears date of sixteenth of July, issued in your name. Is that the permit to which you wrote your signature—about which you wrote your certificate to Mr. Kraft—"A.

C. Kraft, Motor Vehicle Department. This is to certify that I assume full responsibility for procuring the license for Ford car July sixteenth through George Webster and that he merely did it as a favor for me. The registration number given me, 233163, for Ford car, year 1919, model "T" body, Ford sedan, manufacturer's No. 3917518, horse power 22, registration dated July sixteenth," signed "Guilford C. Young." Do I understand a man by the name of George Webster got the permit for you?

A. Yes.

Q. And did he sign your name to the permit?

A. That I couldn't say.

Q. Well, is this your signature on the permit?

A. No, you see, I had to work that morning.

Q. How did he come to do that?

A. The way he came to do that, he wasn't working. He was off sick or something, and work looked so bad and slack where I was working, I was afraid to take the time off. Somewhere around a thousand was laid off that day and I was afraid to ask, for I was afraid they would tell me to stay off, and he wasn't working and I asked him to get them for me.

Q. Where was it that you were working?

A. Cramp's shipyard.

Q. What time did you quit Cramp's shipyard that day?

A. I got laid off there.

Q. What time?

A. Why, last week. Yes, last week, week before last.

Q. Which was it?

A. Saturday a week laid off.

Q. That was the sixteenth?

A. No. Was it?

Q. That was the twenty-third?

A. Saturday week I got laid off and about 800 more. There was six out of our department got laid off.

Q. Well then, you worked on the sixteenth?

A. Yes, yes, I worked.

Q. And what time did you quit work that day?

A. Twelve o'clock.

Q. Then did you meet Mr. Webster that day?

A. Yes, got the license.

Q. Where did you go that day with him?

A. Didn't go anywhere with him.

Q. Where does Mr. Webster live, Mr. Young?

A. That I couldn't tell you.

Q. Well, how did you know him well enough for him to get your permit for you?

A. Well, I have known him about a year. He used to work down at Croft's mill. He is a wool sorter.

Q. Where did you meet him on the sixteenth?

A. I met him at Green's, on Spruce Street.

Q. When was that?

A. On the sixteenth.

Q. I know, but I mean what time?

A. Why, that was about half-past one, I imagine.

Q. At the noon hour?

A. Yes, after I was coming home from work. It might not have been quite that late or it might have been a little later, for I was coming home from work. I came right straight over.

Q. Well now, Mr. Young, did you ever have any other car besides this car and the one you say you had?

A. No, never had any others.

Q. Well now, you said that on the sixteenth or about that, that this man sold you a car first for $400?

A. Yes.

Q. Was that car delivered, that you wouldn't accept?

A. I did accept it and I run into him again and I told him the car wasn't working right, it wasn't any good at all. He said he would take that car back and give me another one for it.

Q. When did he do that?

A. He done that last week.

Q. What day?

A. I don't really know what day it was.

Q. Was it the beginning or the end of the week?

A. I think it was near the end of the week.

Q. Where did he deliver that car?

A. Why, he met me down by(hesitation)—I will tell you the name of the street in a minute (hesitation). What is the corner of this place out her where the wholesale house was, used to be on Federal Street? Is that Fifth Street? The wholesale liquor house used to be there.

Q. Yes.

A. He met me there.

Q. And then he delivered this car?

A. That is where he delivered the car to me and he took the other car himself to the garage.

The Witness: My carbon copy at that point is bad, just a few lines here; the original you have, Mr. Wolverton.

(Another copy of the statement in question was then handed to the witness.)

The Witness: (Resuming. A. That is where he delivered the car to me and he took the other car. He took the other car himself to the garage.

Q. Well, Mr. Young, if you had your car registered, a bill of sale on the 16th, and then you changed a week later, how is it that this car out here bears the same registration number as the old car?

A. I don't know; he said all I needed to do was to use the same license on this car, it was all right.

Q. How would it bear the same manufacturer's number and so on?

A. How does it?

Q. It does?

A. I don't know.

Q. Where have you kept this car since you got it?

A. Down there in that garage.

Q. This same car?

A. Yes. I was going to move it out in the garage at home this month. I was going to get my license to-day, driver's license.

Q. And have you no driver's license?

A. That permit.

Q. I mean other than the permit?

A. That's all.

Q. Well, is this the car you were fixing down at the garage?

A. I fixed the generator on this, or undertook to. I don't know whether I fixed it or not.

Q. That's what I mean, undertook to. Wasn't that garage man up here to-day?

A. I didn't see him. He might have been here.

Q. Well now, you said you got that car in the latter part of the week following the sixteenth?

A. I think so, as near as I can come to it.

Q. That would be Thursday, Friday or Saturday of the following week, which would be the twenty-first, twenty-second or twenty-third. Now then, can't you fix it by some place you have been in the

car or something that you have done with the car, the day when that car was swapped by the man for the old car which you had bought?

A. I think it was on a Thursday or Friday, I seen him and told him that car didn't suit me, I didn't think it was what it ought to be and needed a general overhauling, and he said, well, if I wasn't satisfied with that car, he would be very glad to take it back and he would give me another one in place of it.

Q. Well now, can't you fix the date he gave it to you, by some place you had been or something that you did?

A. No, I don't really know the day.

Q. Well, let's start with Wednesday. That would be the 20th. Now, that is a week to-morrow. Do you recall what you did Wednesday night last? May be you can get at it that way.

A. Last Wednesday night?

Q. Yes.

A. No, I was out in this car.

Q. This particular car?

A. Yes.

Q. Well then, you must have gotten it before Wednesday?

A. Yes, I did.

Q. Well, how about Tuesday?

A. Well, I can't just say what day it was now, only it may come to me later on.

Q. Well, take plenty of time. I am just trying to help you fix the day, because I want to know, by thinking back as to where you were on various nights, what day it was that the car you got in exchange—what day it was that you got that car, and I thought the best way to do it was to figure on what particular night you were at a certain place or some

place else on the next night or something of the sort, maybe you could figure. Do you recall where you were on Wednesday night?

A. No, I don't.

Q. Well then, you are not sure that it was Wednesday night that you were in this car?

A. I think I was in this car Wednesday night but I don't know just where I was.

Q. I don't quite see, Mr. Young, I don't mean to argue with you at all, but I don't quite see how only a week back you could not remember just when this particular car came into your possession.

A. Well, I will tell you. I don't, as a rule, I don't run around much where there was any traffic, on account until I had my driver's license.

Q. Well, do you drive a car yourself, I mean do you know how to drive a car?

A. Yes, to know how, that is about all.

Q. Well, did you have a licensed driver with you?

A. Only this fellow showed me how to drive.

Q. Mr. Webster?

A. No, this here Brown.

Q. How many times did you see Brown?

A. I seen him the night that he was talking to me about the car.

Q. That was the 16th?

A. And he showed me all about the car, showed me how it run. The car seemed to be all right, and I seen him the following evening and gave him the money for the car.

Q. The following evening would be Sunday.

A. No, this was before that, before Sunday. I had this bargain before on Sunday, on Thursday night I think that I seen him.

Q. That is the 14th of July instead of the 16th?

A. Yes.

Q. Which car was delivered on Friday, the 15th, the other car, if it was the next night?

A. Yes.

Q. And the license gotten on the 16th, Saturday?

A. That's right, on a Friday night I got the—made him go down and give me a bill of sale for the car and I would give him the money and I got the bill of sale and then he delivered the car.

Q. Did you pay him in cash or by check?

A. In cash, I don't keep any money in bank.

Q. Well now, how many other times did you see him after that? May be that will fix the time when you got this new car. Now, we are up to Sunday.

A. I seen him about a week after that. Maybe it wasn't quite that long, and I told him the car wasn't working right.

Q. How did you see him before, and where?

A. I think I met him down on the corner again and I told him the car wasn't what it was supposed to be and he told me he would very gladly change the car for me.

Q. Did you meet him by accident?

A. By accident. Didn't have no engagement with him to meet him.

Q. Well now, was anybody with you, Mr. Young?

A. This here fellow was with him.

Q. No, I mean with you?

A. No.

Q. And you were driving the old car?

A. I didn't have the old car with me.

Q. That was down to the garage?

A. Yes.

Q. Yes.

A. I was going to have the old car overhauled.

Q. That was a week or not quite a week later you said?

A. Yes.

Q. Well now, you were just learning to drive, were you not?

A. Yes, sir.

Q. I am just going through the same stages and I can tell you every hay wagon and every truck that I have met on the road when I am trying to drive, because I know the feeling I have when I meet one on the road. Now, stop and figure, please, just for a minute, where you tried to drive the car and maybe that will help us to fix the days. Did he drive it down to the garage for you the first time or how did you get it down?

A. No, he didn't drive it down for me the first time.

Q. How did you get it down?

A. I drove it down myself, after he showed me how to drive and had me out for a while.

Q. Where did he take you to teach you?

A. He took me out on the pike.

Q. Which pike?

A. Out there in Red Hill. I am fairly handy around machinery, anyway, running all kinds of pipe machines and different things. I am used to clutches and so forth.

Q. Well now then, were you at Ellisburg on Saturday, the 23rd, in the morning?

A. No, sir; I was not.

Q. Do you know that man Eichmann that was in here?

A. Yes, sir.

Q. Did you ever have any trouble with him of any sort?

A. No.

Q. Well, he said you were there.

A. I wasn't there. I was there on Monday but I wasn't there on Saturday.

Q. Well, where were you on Saturday, Mr. Young? That's three days ago, four days ago.

A. Last Saturday?

Q. Yes.

A. Let's see. I don't know, I think I was cleaning up the car.

Q. Where?

A. I was around to the garage and if I am not mistaken there was another fellow in there, I was talking to, had his car down in the garage or two below me.

Q. Do you know who he was?

A. I don't know his name.

Q. What time did you get down there?

A. I don't know just what time it was.

Q. Morning or afternoon?

A. In the morning.

Q. And how long did you stay there?

A. I was there quite a little while. I don't know just how long.

Q. Were you there until noon?

A. I guess I was.

Q. I couldn't hear you.

A. I guess I was.

Q. Did you have your lunch in Camden?

A. I didn't eat any lunch.

Q. Where were you in the afternoon, after you left the garage?

A. I was down to Green's a little while.

Q. You refer to Green's. I don't quite know where you mean.

A. That's on Spruce Street.

Q. Whereabouts on Spruce Street?

A. 714.

Q. What did you do there at Green's? Is that a garage?

A. No, I go there once in a while. Friends.

Q. Private house, is it?

A. Private house.

Q. Did you have this car with you?

A. Yes.

Q. What did you do then? How long did you stay there?

A. I stayed there a while in the evening.

Q. Were you there for supper?

A. I think I was.

Q. Sir?

A. I think so, not real sure. I think I was, yes.

Q. Did you go out in the car in the evening?

A. Yes, a while.

Q. Where?

A. I don't know but I think I went down Mt. Ephraim Pike.

Q. To where?

A. As far as the good road run, and turned around and came back.

Q. I am not familiar with the Mt. Ephraim Pike.

A. Neither am I, but it runs down there quite a ways, several miles.

Q. To Mt. Ephraim?

A. Oh, it runs way past there to Mullica Hill or somewhere. I don't know that that's right. That may not be right.

Q. What time did you get back?

A. I don't know just what time it was.

Q. Were these folks you were visiting with you?

A. Yes.

Q. Then what time did you put the car up in the garage that night?

A. Yes.

Q. Was there anybody there when you put it up?
A. I didn't notice anyone.
Q. Is it a private garage or a public one?
A. It is a public garage and most of the garages are separate. That is, they are private in a way and in another way they are not.
Q. Each man has his key?
A. Each man has his own key.
Q. And his own compartment?
A. Yes.
Q. Did you get the car out on Sunday?
A. Yes.
Q. About what time?
A. About seven o'clock.
Q. In the morning?
A. In the morning.
Q. And where did you go on Sunday?
A. Last Sunday?
Q. Yes.
A. Drove down by Egg Harbor. Not Egg Harbor, neither. It was Cedar Brook.
Q. Anybody with you?
A. Yes.
Q. Who?
A. Miss Green and Webster and Miss Royal. Not Miss Royal. Miss Hoyle.
Q. Where does Miss Hoyle live?
A. Same address, sisters.
Q. Where did you meet this Mr. Webster?
A. There.
Q. And what time did you get back?
A. Around about half-past nine or ten o'clock.
Q. And then what did you do with the car?
A. Put it in the garage.
Q. About what time?
A. Around about ten.

Q. Now, did you get it out yesterday, Monday?

A. What time did I get it out? I don't know.

Q. Mr. Young, I think you and I have been talking about different dates. The Saturday that we referred to and the Sunday and the Monday—was that last Saturday, Sunday and Monday, July thirtieth, thirty-first and the first of August, or was it the week before, the twenty-third, twenty-fourth and twenty-fifth of July?

A. What do you mean by week before?

Q. I thought I was talking—what I have been saying was last Saturday, last Sunday and last Monday?

A. You are right.

Q. Well then, in other words, the places that you have had the car, that you were telling me, have been last Sunday——

A. Last Sunday.

Q. Saturday and Sunday and yesterday?

A. Yes.

Q. All right. Where were you yesterday with the car?

A. Just took a ride around the country.

Q. Where?

A. Well, I couldn't tell you where. Around all the back roads, went down White Horse Pike a ways.

Q. How far?

A. Oh, I imagine about ten or fifteen mile, pretty near to Clementon.

Q. What time did you get the car out?

A. Somewhere around two o'clock, half-past two yesterday afternoon.

Q. Was there anybody with you?

A. Miss Green was with me yesterday afternoon a while.

Q. How about last night?

A. I took the car out home last night, out to Haddonfield. I was going to get a garage there on Main Street, to put it in, a private garage. I seen there was one there for rent and I was going to put it in a garage there.

Q. Well, how does it come that you were asleep in the automobile?

A. Why, because I had no garage to put it in. It was late when I got there and I was afraid if I left the car alone, somebody might steal it. I thought the safest thing was to stay in it until daylight.

Q. That wasn't at your home?

A. Just below my home. You could stand and throw a stone from my home to where it was.

Q. Why didn't you take it up to the house?

A. On account of the traffic back and forth and I thought it would be out of the way there.

Q. Let's go back to the week before and see if we can figure out where the car has been at that time. Now then, on the twenty-third, Saturday, the twenty-third, Mr. Eichmann said you were in Ellisburg and you say you were not in Ellisburg?

A. No, sir.

Q. Now then where were you on that Saturday?

A. Well, I don't just know where I was. Maybe if he has got any idea of the time I was in Ellisburg, I may be able to find out where I was.

Q. Well, you were not working Saturday, the twenty-third, were you?

A. No, I was laid off.

Q. You were laid off the sixteenth?

A. Saturday, the twenty-third.

Q. That is a week ago last Saturday.

A. I wasn't to his place last Saturday.

Q. No. Saturday week.

A. Or, Saturday week.

Q. That is when he said you were there.

A. I wasn't to his place last Saturday week or last Saturday neither.

Q. Well, you told me where you were last Saturday. Where were you Saturday a week?

A. (Long hesitation.) I think I was down to the garage Saturday a week.

Q. That would be the first Saturday after you got the new car in exchange for the old one.

A. The first Saturday after I got it.

Q. You said you got the old car on the fifteenth and sent it up for a license tag on the sixteenth?

A. Yes.

Q. Now, that was on Saturday, that permit, I should say. Now, it is the Saturday after that I am talking about. Then you said you got the new car sometime the latter part of the following week. Now, it is the first Saturday after that that I am talking about.

A. I don't know.

Q. Can't you remember where you were on that Saturday?

A. I think I was around to Green's.

Q. All day?

A. I think so.

Q. In other words, I am wondering what made you so positive you were not in Ellisburg on Saturday, when this man, this neighbor out there, says you were. There must be some reason for you being so sure you were not, and that could only be because you know you were some place else. Now, to refute his statement, in other words, he says you were there. Now then, to refute that statement, you say you were not, there must be some logical reason in

your mind for knowing positively that you were not there, as he says, on Saturday morning.

A. Well, I think that I was——

Q. Because you know you were some place else? The question is, where were you?

A. Up on Spruce Street Saturday.

Q. In the morning?

A. I don't know just what time I was there. What time does he claim I was out to Ellisburg?

Q. In the morning.

A. And he claims I was there in the afternoon, too?

Q. No, he say you were there sometime in the morning with this car.

A. Well, I don't know. I think I can know pretty near where I was that morning.

Q. That is what I am asking you to explain to me.

A. I was at Green's, I think, somewhere about half-past eleven or twelve o'clock. Let's see where I was the other time. The rest of the time I was here in Camden somewhere.

Q. In the afternoon?

A. In the morning. I will try to think back and see where that was. As soon as I do, I will let you know.

Q. Now, how about Sunday? Wait a minute. Do you remember what you did that Saturday night?

A. I think I was at Green's Saturday night.

Q. How about Sunday?

A. I think I was there Sunday.

Q. When is the first time you took this car around to Green's?

A. As soon as I got it.

Q. The new one?

A. The new one.

Q. How about the old one?
A. Took the old one around too, around to the garage.
Q. I mean to Green's.
A. I think on a Saturday.
Q. Saturday, the sixteenth?
A. Yes.
Q. Well now, how about the new one?
A. I took that around when I got it, when this fellow gave it to me.
Q. Did you tell them about the swapping of the car?
A. Yes, I told them I traded this car in.
Q. Well now, how about Monday? Mr. Eichmann says you were out there on Monday with this car.
A. I was out there one day but I don't know whether it was Monday or not, but I know I wasn't there on a Saturday.
Q. Well, were you there on the following Monday?
A. I think I was out there two days, but just what days they was, I couldn't say, but I know they wasn't on a Saturday.
Q. Why are you so sure about Saturday, Mr. Young?
A. Because I was in Camden somewhere.
Q. Well, was Monday one of the days?
A. That I couldn't say. I might have been out on a Monday. It don't hardly run in my mind it was. It might have been.
Q. Didn't you have a conversation with him about the car on Monday?
A. I did one day when I was out.
Q. Do you recall what that conversation was?
A. No.
Q. Did you tell him you bought the car and the price?

A. I think I told him I bought it. I don't know whether I told him the price or not. I told him I bought it cheap.

Q. Wasn't that Monday that you told him that?

A. It may have been.

Q. He says it was.

A. I am not sure whether it was or not.

Q. Well now, can you recall where the car was the rest of the week?

A. No, I believe that is about all I can tell you about it.

Q. Don't you remember anything about where the car was the rest of the week?

A. On the outside, I had it out. Just where I was with it, I couldn't say. I never paid that much attention to it.

Q. Well now, Mr. Wolverton told you to-day, I think—if he didn't, correct me, please—did you see those boys who were out here?

A. No.

Q. Well, just what did Mr. Wolverton tell you, then, that made him feel that it was proper to detain you on the taking of this car?

A. That done which?

Q. That made him feel it was proper to detain you on the taking of the car?

A. It made him feel so? You mean it made him feel——

Q. That you had taken the car or knew something about the taking of the car.

A. What made him say, I don't know, outside of the car was stolen, by the looks of things, and being in my possession it more or less looks like if I had taken the car. That is the only way I could see.

Q. How do you explain that, Mr. Young? I don't quite understand just how you explain——

A. Not knowing anything about cars at all, it would be the only way it could occur. If I had known even as much about cars as I do this present day, such as my experience now, such a thing wouldn't have happened. No one would pull anything off like that on me. A man not being experienced in that line of dealing with people, why that's the only way that I can explain. It is the first time that I ever had a car and I didn't know any of the rules or regulations.

Q. Well, is it the first time you ever had a car?

A. Yes.

Q. Or ever drove a car?

A. The first time I ever drove a car.

Q. Well, I can't for the life of me, Mr. Young, understand how you could drive that car all around, with just the little bit of instruction you said you had.

A. Well, there is nothing about driving one of those cars that I can see.

Q. And yet, on the other hand, you say you didn't go very much in the car, and explain that is the reason you met Brown the second time without the car, because you said you were afraid to go in it. You didn't use the word "afraid." You said you didn't go in it because you hadn't got your license and were not familiar with it.

A. That's the idea. The car didn't work very good.

Q. Yet you told me that week you drove around the country with it.

A. Well, I didn't drive all around the country. I drove it out on the country road.

Q. Do you know the numbers on the engine of that car? Do the numbers on that car and the manu-

facturer's number conform with the card that you have?

A. I couldn't say about that.

Q. Did you never look at that?

A. No. He said they were all right, all I need to do was to put my tags on them.

Q. Who said that?

A. This Brown, I don't even know where the numbers would be.

Q. You said that you were at Ellisburg two days, one of them might have been Monday, with this car, Monday, the twenty-fifth, but it might have been before, that the other day was not Saturday. Now, just think a minute, please, and see if you can tell me what the other day was.

A. I think it was afterwards, middle of the week or latter part of the week.

Q. Did you see anybody there other than Mr. Eichmann?

A. I don't think he was there the second time I there. I think his wife was.

Q. Now, wasn't that Saturday?

A. No.

Q. That his wife was there?

A. No.

Q. Did you see anybody other than his wife there?

A. No.

Q. Was anybody with you?

A. By myself.

Q. Did you have any conversation with her?

A. That I couldn't say. I generally do talk to people when I stop where they are, but I couldn't really say whether I did or not.

Q. How often was Miss Green out with you in the car?

A. She wasn't out with me so often.

Q. How many times all told?

A. I couldn't say how many times.

Q. Well, you only had it a week—two weeks, rather—no, a little over a week, ten days. Had she been out every day?

A. No, I don't think so.

Q. Well, can't you strike an approximate average?

A. I guess that's about all I can tell you about the car.

Q. You tell me to-night, as I understand it, that on the fifteenth of July you met two men in Daly's hotel, one by the name of Brown, from Reed Street, Philadelphia, and another man, and that you bought an automobile, Ford automobile, sedan, for $400, which was delivered the next day, the 16th. That a man by the name of Webster got your permit on the sixteenth, for you?

A. Yes, sir.

Q. That later in the week, the following week, probably Thursday or Friday, you met these two men by chance, at Fifth and Federal Streets, complained to them that the car was not working, and they agreed to deliver the next day to you, the next night, to you, at Haddon and Kaighn Avenues, the car which is down front, a new Ford sedan. That they did deliver that Ford sedan to you, in exchange for the one which they had previously sold for $400. Now, that is what you told me tonight. Is that true?

A. As near as I can remember it.

Q. Why did you tell Mr. Wolverton this morning that you only had one car?

A. I thought he meant did I own two cars.

Q. Didn't you tell him you only had one car?

A. I have only the one car.

Q. Didn't you tell him you only had one car first, this morning?

A. One car is all I have got.

Q. Yes, but you told him—you didn't tell him about the two cars, when you first talked to him this morning, did you?

A. I told him I had one car.

Q. Why did you tell him that this morning? Why didn't you tell him the truth?

A. That is all I have got, one car.

Q. Yes, but you didn't tell Mr. Wolverton this morning that you met these two men and exchanged your car.

A. No.

Q. Why didn't you? Why did you deceive him or try to?

A. (Hesitation, long sighs, no answer.)

Q. Why did you do that, Mr. Young?

A. (No answer.)

Q. Was there any reason for it?

A. No, not that I know of.

Q. Well, then, why did you do it?

A. That's about all I can say.

Cross-examination.

By Mr. Cleary:

Q. Now, Mr. Macdonald, can you swear positively that every word that was spoken by this witness during that conversation is recorded in these notes?

A. Exactly every word, sir.

Q. Every word?

A. Every word.

Q. Now, how many typewritten pages does that cover?

A. Twenty-seven.

Q. Now, is there any chance at all of anything that the defendant said being left out of that statement?

A. No, sir, if he were going too fast for me I would stop him; I always do.

Q. Is there any chance of anything else being left out of that statement, made by Mr. Straw—was that by Mr. Straw?

A. That is absolutely correct.

Q. Did anybody else examine him except Mr. Straw?

A. Not that evening.

Q. Now, what time in the evening was that taken?

A. That was taken about half-past eight, somewhere around between eight and half-past.

By the Prosecutor:

Q. Mr. Macdonald, your instructions were to take everything that was said either by Mr. Straw or by the defendant, weren't they?

A Yes, sir

Q And you did so?

A I did.

Q. And there was nothing said by Mr. Straw or this defendant that does not appear in these notes that you have read?

A. Not a word, sir.

By Mr. Cleary:

Q. Were you expressly told to do so on this occasion?

A. I am always told to do that on every occasion.

Q. Can you testify whether or not you were expressly told that on this occasion?

A. I was told by Mr. Straw to take the statement, the questions and answers.

Q. That is all he told you, just to take the statement, isn't that right?

A. Well, naturally, I took everything that was said.

Q. I understand that, Mr. Macdonald, but I say, as far as what Mr. Straw told you to do, all he told you was to take the statement—that is all, isn't it?

A. I can't say as to that, whether he told me to take everything, or whether he told me to take just the statement.

By the Prosecutor:

Q. But it does contain everything that was said?

A. It does, from the time Mr. Straw began the examination of Mr. Young, until the last answer by Mr. Young.

By Mr. Cleary:

Q. That is, Mr. Macdonald, as long as you were there?

A. I was there during all the time that Mr. Straw was there.

Q. You both came in together?

A. Yes.

Q. And both left together?

A. Yes, sir.

EDWARD I. BERRY, ESQ., sworn.

By the Prosecutor:

Q. Mr. Berry, where do you live?
A. Merchantville, New Jersey.
Q. Do you have any official position in Camden County?
A. I have. I am the official stenographer of the second judicial district, of which district this county is a part.
Q. How long have you been the official stenographer for the second judicial district?
A. Since June, 1904.
Q. How long have you been a court stenographer?
A. Since the 1st of January, 1895.
Q. Have you held any positions as a stenographer?
A. I am a member of various shorthand societies.
Q. That is what I mean.
A. I am a member of the National Shorthand Reporters Association, an honorary member of the Pennsylvania State Reporters Association, and I am president of the New Jersey Court Reporters Association.
Q. Have you written papers on the subject of shorthand?
A. Yes, sir.
Q. And court reporting?
A. Yes, sir.
Q. On Friday, August 5, 1921, were you at the Prosecutor's office in this building?
A. Yes, sir.
Q. At about what time?
A. 4.30 P. M.

Q. Who was present?

A. Yourself, Prosecutor Wolverton, Assistant Prosecutor Straw, Detectives Doran and Smith, Guilford C. Young and myself.

Q. For what purpose were you there?

A. I was there to report a conversation between yourself and Mr. Young.

Q. How did you report the conversation?

A. Stenographically, verbatim, made a verbatim report of everything that was said by either you or by the defendant.

Q. Was there anything said by me that was left out?

A. There was not.

Q. Was there anything that was said by the defendant left out of your notes?

A. Nothing that I heard that occurred at that time.

Q. Were you told not to put any part of what he said in your notes?

A. I was not.

Q. Was there at any time anything that the defendant was stating, that you were told not to put it down?

A. I was not. I might say that I would not have done that had I been told to do so.

Q. And you were there for the purpose of recording everything that was said by the Prosecutor and the defendant?

A. I was.

Q. And you did so?

A. I did.

Q. You have the notes that you took at that time?

A. I have.

Q. Have you transcribed those notes in the form of a typewritten copy?

A. I have sir, and have compared the typewritten copy with my stenographic notes.

Q. And it is a true copy?

A. It is, yes, sir.

Q. Proceed, Mr. Berry.

A. Guilford C. Young was examined by Prosecutor Wolverton on the 5th day of August, at the Prosecutor's office, 4.30 o'clock P. M. The Prosecutor said before the statement was taken.

GUILFORD C. YOUNG, examined.

By the Prosecutor:

Q. Now, Mr. Young, you know I am the Prosecutor of the county, whose duty it is to investigate crimes. We have investigated the death of Harry Garwood, and you are held as charged with that death. Do you wish to make any voluntary statement to me concerning the crime? If you do, I am willing to hear it, but only with the understanding that it can be used against you in court. Do you wish to make—and you do not have to make it if you do not wish to—do you wish to make a voluntary, truthful, honest statement?

A. Yes, sir.

Q. Proceed.

A. Well, Harry Garwood has been running around with my wife, laughed at me, thinked he could screw her, do anything he wanted to and get away with it, but I got under the influence of liquor; it preyed on my mind so bad that I thought I would give him a good lacing, and the results was that I killed him.

Q. How did you kill him?
A. Shot him in the breast first.
Q. And then where?
A. In the head.
Q. Where did you shoot him, at what place?
A. At the Marlton Pike.
Q. Where the body was found?
A. Yes.
Q. How did you get him into that particular place?
A. I drug him some of the way.
Q. Was this on Saturday, July 23rd?
A. It was on Saturday, but the date I couldn't say.
Q. Saturday two weeks ago to-morrow?
A. Yes.
Q. How did you get him to come with you out to Marlton Pike?
A. I asked him to take me out to Marlton.
Q. Did he know you?
A. I don't think he recognized me. He told me—I asked him if he knowed me going out, and he said he had seen me before; I guess he had.
Q. Were you with him twice on Saturday?
A. Yes.
Q. Now, just tell me how you engaged him at the ferry and go right through with how it happened, what you said to him or what he said to you.
A. I asked him if he—when we got out on the pike, if he—after we had went out the second time I was under the influence of liquor at that time, and I asked him if he was satisfied to run around with married women, and get them in the family way and then laugh because he did it; I asked him if he thought he could get away with that. He said he never was out with my wife.

Q. Where did you have this conversation with him?

A. In the car.

Q. On your way out?

A. Yes.

Q. Did you stop any place?

A. We did stop then.

Q. You had stopped?

A. Yes.

Q. Where?

A. Right by that road.

Q. And had you stopped any place on your way there?

A. Not on the second trip.

Q. On the first trip did you stop any place?

A. Stopped at Ellisburg.

Q. Why did you make two trips?

A. Well, I was going to give him a beating, and I thought I wouldn't; I thought, "Here, I won't do anything, let him go."

Q. What time? That was on the first trip?

A. That was on the first trip.

Q. Then did he take you back to the ferry?

A. Took me back, yes.

Q. Didn't you get off on Federal Street?

A. Yes, got off on Federal Street.

Q. Why did you get off of his car on Federal Street?

A. I was going to leave him.

Q. Where did you go when you got off at Federal Street?

A. I went down Fourth Street.

Q. To where?

A. Prosecutor, it is not necessary for me to tell you where, is it?

Q. Not if you don't wish to.

A. These people aren't connected in it in any way.

Q. I know. Did you make any arrangements with him to meet him again later in the morning?

A. No, no arrangements.

Q. Did you tell him that you might want to see him again?

A. No.

Q. Well then, you went back to the ferry a second time, didn't you?

A. Yes.

Q. What time did you go the second time?

A. Why, I don't know just what time it was.

Q. Well, about what time?

A. Well, I guess it was somewhere around ten o'clock.

Q. What time did you see him the first time?

A. About 7 o'clock. I spied him from the train; I was going to work.

Q. Had you gotten off the train?

A. Yes, I got off the train to see him.

Q. And you came out of the ferry house?

A. Yes.

Q. And what did you say to him when you met him the first time?

A. I asked him if he was running a jitney and he said he was. I recognized him; I asked him if his name was Garwood and he said it was.

Q. Then what did you say?

A. I asked him to take me to Marlton.

Q. What did he say?

A. He said, "All right."

Q. Did you then start?

A. We started.

Q. Did you talk to anybody except him at the ferry?

A. No one but him.

Q. How far toward Marlton did you go on that first trip?

A. Well, we went down the road as far as Howard Shivers'.

Q. Is that past the Ellisburg Hotel?

A. Yes.

Q. Did you stop in the Ellisburg Hotel on your way?

A. I don't think so. Let's see—yes, I did, but he didn't, I don't think.

Q. Then you went down the road, you say, as far as Howard Shivers'?

A. Yes.

Q. How near is that to where this body was afterward found?

A. Well, that is quite a ways this side of it.

Q. Now, what reason did you give for turning back before you got to Marlton?

A. Well, I got thinking the thing over going out, and I thought, "Hell, there is no use of doing anything." My heart was pretty heavy, and I made up my mind that I would let him go; I didn't intend to kill him.

Q. Did you speak to him about going with your wife the first trip you made?

A. No.

Q. And what excuse did you give him for turning the car around and coming back to Camden?

A. I just walked into Shivers' on an excuse and turned around and came back.

Q. And did you pay him for the trip?

A. Yes.

Q. How much?

A. $3.00.

Q. Now then, you got off of his car on Federal Street at 4th and walked down 4th?

A. Yes.

Q. How long were you gone before you came back?

A. Two or three hours.

Q. Then where did you go to find him?

A. I walked up to the ferry; I was going across the river.

Q. Did you go to the ferry with the intention of seeing him?

A. No.

Q. Well, what changed your mind when you got to the ferry?

A. The further I went the madder I got.

Q. And when you went to the ferry, did you see him or see some one first?

A. I seen his machine.

Q. Did you ask for him?

A. I asked where he was.

Q. Who did you ask?

A. I don't know who it was.

Q. Who did you ask for?

A. I asked for Garwood, the jitney driver, I think, if I am not mistaken, as close as I can remember.

Q. And what were you told?

A I was told he was in the restaurant on the other side of the street.

Q. Did you go to the restaurant after him?

A. No, I went and got in his car; somebody said that was his car.

Q. And then what happened?

A. I told him I wanted him to drive me out again.

Q. Did he consent to do so?

A. Yes.

Q. Did he go right away?

A. Yes.
Q. What route did he take?
A. The Marlton Pike.
Q. Out Federal?
A. Yes.
Q. To Marlton Pike?
A. Yes.
Q. What did you talk about on your way?
A. Why, I don't know what we did talk about.
Q. Where were you when you first started to talk to him about your wife?
A. Where it was found.
Q. Didn't you talk to him until the car was stopped?
A. No.
Q. On what pretext did you stop your car?
A. I asked him to stop a minute, that I wanted to talk to him, and he stopped the car, and I asked him, I said, "Well——
Q. Did you ask him to get out?
A. I asked him out of the car.
Q. Did he get out?
A. No, he wouldn't get out.
Q. What did you say?
A. He didn't get out.
Q. Was he in the car when you shot him?
A. He was in the car, started to come back toward me.
Q. Well, was he in the car?
A. Yes.
Q. Were you in the car?
A. Yes.
Q. Where were you sitting?
A. I was standing on the running-board of the car.

Q. And where was he sitting?

A. He was starting to come out.

Q. Why was he coming out?

A. I told him I was going to give him a damn good lacing, and he said he wouldn't get out of the car.

Q. That is, you would give it to him if he didn't get out of the car?

A. Yes.

Q. And did he start to get out?

A. He started to get out.

Q. Did you tell him what you were going to give him a lacing for?

A. Yes.

Q. What did he say?

A. He said he hadn't been running around with my wife, which I knowed he had.

Q. Did he beg you not to hit him?

A. He didn't know what to say.

Q. Well, didn't he ask you not to hit him?

A. He just said he wasn't with her.

Q. Why was he starting to get out of the car?

A. I told him to get out, and he started to get out, and I don't know, I lost my head in some way.

Q. Did you have the revolver in your hand then?

A. No. I didn't have it in my hand then.

Q. Was he in the car or out of the car when you shot him?

A. He was in the car.

Q. When all the shots were fired?

A. No.

Q. The first shot you say you fired into his body?

A. Into his breast.

Q. Did he drop?

A. Not right away.

Q. What did he say after he was shot?

A. He didn't say anything.
Q. Did you say anything?
A. I said, "Yes, you will run around with somebody else's wife now."
Q. Where was he then, on the floor of the car?
A. He was hanging on to the side, I think.
Q. And did you pull him out of the car, or how did he get out?
A. I pulled him out of the car.
Q. And where else did you shoot him?
A. When he fell on his face down, I think I fired two more shots; I am not sure; my mind was completely gone.
Q. What part of his body did you shoot at?
A. I couldn't say just what part the bullets hit.
Q. Well, was it his body or his head?
A. I think it was his head.
Q. How many times did you shoot at his head?
A. I think I fired two shots, as near as I can tell. I may have fired more, but I think two.
Q. Did he say anything after he was on the ground?
A. No.
Q. Then what did you do?
A. Drove away with the machine.
Q. Didn't you drag him up the small road?
A. No, the machine was up the small road.
Q. Oh, you had that machine up near where the body was found?
A. Yes.
Q. How did you get him to go in that little bit of a road off the Marlton Pike?
A. I told him to drive in there; he drove in there.
Q. Then you told him where to stop?
A. I told him to stop the car, I wanted to talk to him.

Q. And how long after he stopped the car did the shooting take place?

A. In about five or ten minutes.

Q. And then you left him there?

A. I left him there.

Q. Did you drag him any distance?

A. No.

Q. As I understand, his body was found a little ways in from the road?

A. I dragged him in a little ways.

Q. What became of his hat?

A. I couldn't say.

Q. What became of his shoes, can you remember?

A. What became of his shoes?

Q. Yes, where did the shoes go? What did you do with the shoes?

The Witness: There was then a long pause in which the witness did not answer then the examination was resumed.

Mr. Cleary: Pardon me, Mr. Berry, what did you say?

The Witness: A long pause. The witness did not answer the question.

The Court: I think there was a long pause there. I think as this is past the hour of adjournment that perhaps it would be a good place to take the recess until to-morrow morning. I am going to commence, if it meets with the approval of the counsel and the jury, at a quarter of ten to-morrow; so the recess will be taken until quarter of ten. I will ask that the defendant before any of the audience leave the room or the jury leave their seats, be taken from the room. The jury may now retire. The Court will now rise.

Camden, N. J., November 12, 1921.

Trial of the cause resumed at 9.45 o'clock A. M., pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

EDWARD I. BERRY, resumed.

By the Prosecutor:

Q. Mr. Berry, will you proceed?
A. The last question was "Q. Yes, where did the shoes go? What did you do with the shoes?" There was a pause. The witness did not answer, then, Guilford, did you take his watch?
A. Yes.
Q. And did you take the chain with the crucifix on?
A. Yes.
Q. That I showed you?
A. Yes.
Q. And the watch that we have shown you, that is the one you took?
A. That is the one.
Q. Did you take any of his money?
A. He didn't have any money.
Q. Did you look for any?
A. Yes, I looked to see what he had in his pockets, if he had anything, any letters or anything.
Q. Did you turn his pockets inside out?
A. I don't think so.
Q. What did you do with the shoes? The witness did not answer the question. Then the examiner

proceeded. Have you a reason for not wanting to answer that question? Because you have hesitated so long, I wondered if you had any reason for hesitating?

A. Yes.

Q. Do you wish to give me the reason?

A. Well, that reason won't do any good.

Q. Well, I would have liked to have found the shoes, if possible.

A. All right, Prosecutor; I told you I would be honest and tell you the truth.

Q. Yes.

A. So I will; I will not lie one way or the other. I have his shoes.

Q. Where are they?

A. Home in the kitchen.

Q. Why did you take them home?

A. Well, I don't know why.

Q. Did you get any blood on your clothes?

A. No, sir.

Q. What suit did you have on, the one that you had when you were arrested?

A. Yes, sir.

Q. Have you told anyone what you have done before you told me?

A. No, sir, outside of my wife; I told her to-day that she would never go out with Harry Garwood again.

Q. What reason did you have for believing that she was going with Harry Garwood?

A. Because I know she was.

Q. How did you find it out?

A. She is going with Ed Julius, too.

Q. Who is he?

A. Why, I don't know just who he is, I only seen him once.

Q. Well, what I wish to know is how you know she was going with Harry Garwood; did you ever see them together?

A. Yes, I have heard her talk to him, too.

Q. To him?

A. Well, she spoke of him to me; she told me several different things; she told me about these different fellows at different times; she told me one time that she was going with Ed Julius, he had promised to marry her as soon as she got a divorce from me or when I died, or something like that. I think maybe if you will get in touch with him he will remember.

Q. Did you have any knowledge whatever of your own that she was going with Harry Garwood?

A. Yes.

Q. Did you see her with him?

A. I have seen her with him, I am sure.

Q. Well, are you sure?

A. Yes.

Q. Or do you think it was him?

A. No, it was him.

Q. Where did you see him?

A. Down past the bridge.

Q. In Haddonfield?

A. In Haddonfield.

Q. How long ago?

A. Well, I don't know just how long ago it has been.

Q. Did you ever speak to her about it?

A. No, I tried to catch her.

Q. Is that the only time you have ever seen them together?

A. I seen them together a couple or three different times.

Q. Where would you see them?

A. Well, one time he was at the house, I believe, and Allen Pierce came around there for me and he said—or first he told me about some one being at the house with her; then he came around after me one night and told me that there was someone around there, but the time I got around there I didn't see any one, but he went around with me; he stood at the back of the house.

Q. How long ago has that been?

A. That has been quite a while ago.

Q. Well, a month, two months?

A. No, it has been longer than that, two or three years.

Q. Two or three years?

A. Yes.

Q. Have you heard of her going with Harry Garwood at any time recently?

A. I believe so, yes.

Q. Well, who told you so?

A. Only what I seen.

Q. When was that?

A. Well, I don't know just how long ago it has been.

Q. Have you ever talked to your wife about it?

A. I haven't said much to her about anyone since I had the talk with Judge—— Then the witness hesitated.

Q. French?

A. French.

Q. Did you tell him about Garwood?

A. I don't remember whether I did or not, but I think I did.

Q. Well, why would it affect you if your wife was going with this Harry Garwood, if it is true, as you have told me, that you didn't care for your wife?

A. Well, I wanted to get free, always wanted to get free all my life.

Q. You mean, to be free of your marriage?

A. Yes.

Q. Well, it wasn't because you loved your wife that you killed Harry Garwood, was it?

A. No, I couldn't say exactly—it was in a frame of mind—in a drunken disposition, or I never would have done it.

Q. Had you been drinking that morning?

A. Yes.

Q. Where had you got your liquor?

A. Prosecutor, I will not lie to you; it is not necessary for me to tell you, is it?

Q. I only want you to tell me what you wish to tell me voluntarily.

A. These people I wouldn't want connected with it.

Q. I think I know, as a matter of fact, maybe where you might have gotten it. Did you drink very much?

A. I had quite a few.

Q. Why did you drink?

A. Trying to drown my sorrows.

Q. Well, you had no sorrows as far as your wife was concerned, had you?

A. In a way I did.

Q. In what way was that? Because I have gathered from the way you have talked to me at other times that you didn't like the idea of your marriage to her.

A. No.

Q. And never did feel that it was right?

A. No, if there had been a just law and New Jersey had given me justice, this thing would have

never occurred. The law of New Jersey gave me no chance whatever; they think they can force——

Q. Under those circumstances did you care for your wife?

A. I did, yes, at one time, but she would never do what was right.

Q. Well, I have understood you to say that because of the circumstances of your marriage that you have always wanted to get free from her?

A. So I did to a certain extent.

Q. Guilford, if you took him out there to lace him, why didn't you lace him instead of shooting him?

A. Well, it is a question that I can't explain.

Q. Did you ever go back with the idea of burying him?

A. No, sir.

Q. Did you go to Fluger's store and ask for a shovel?

A. Yes.

Q. When did you do that?

A. I don't know when.

Q. Who was with you when you went for the shovel?

A. No one.

Q. Do you remember how many days it was after the death of Harry Garwood?

A. No, I do not.

Q. Do you remember what day of the week it was?

A. No, I couldn't say that, but I know it was in the morning, I think.

Q. And why did you go there to get a shovel?

A. Well, I wanted a shovel, but I didn't want to bury him; I wanted the shovel for other purposes.

Q. What other purposes?

A. Well, I thought that I could use that, put him—Well, I will tell you what is right, in getting potatoes, I didn't find any dug, and I thought I would dig them.

Q. Why did you take—if you went out there to lace him, as you have said, why did you, after he was shot and dead, take his watch and chain with the crucifix on it?

A. I don't know just why I did.

Q. Didn't you take some of his money?

A. He had no money that I found.

Q. Didn't you give him money when you made the first trip?

A. Yes.

Q. Well, didn't he have that?

A. He did not; the money may be on him but I didn't find any.

Q. Well, why did you take his shoes off?

A. I don't know.

Q. Isn't it true that he carried his money in his shoes?

A. I don't know; he may have.

Q. Is that the reason you took his shoes off?

A. No.

Q. Well, what reason would there be for taking his shoes off?

A. Well, I figured that they were too good to leave there with him.

Q. Did you figure the same way with his watch and chain with the crucifix?

A. Yes.

Q. Did you take anything else from him?

A. Some papers that he had.

Q. What did you do with the papers?

A. Throwed them away.

Q. Where did you throw them?

A. If I am not mistaken I throwed them in the creek.

Q. Where was the creek?

A. Down the road there somewhere, just where I couldn't tell you.

Q. Are you sure you threw them in the water?

A. Yes.

Q. Where did you go after you had killed him?

A. I think I went to Martin's.

Q. Did you tell him what you had done?

A. No.

Q. Did you drive the car there?

A. Yes.

Q. Did you tell him that you were going to give him a lacing?

A. I don't think so.

Q. Had you ever spoken to anybody about Garwood?

A. I think I spoke to French, and I think I spoke to one of the police officers one time in Haddonfield.

Q. Do you remember which one?

A. If I am not mistaken it was Bill Dennis.

Q. Were there any marks in the car which you were able to see of the shooting that you had done?

A. In the car? Not that I know of.

Q. Was there any blood on the ground?

A. That I couldn't say.

Q. Now, did you drag him, did you take hold of his shoulders or his feet?

A. His shoulders, his arms, I think.

Q. He was a cripple, wasn't he?

A. That I couldn't say.

Q. Well, when you took his shoe off, didn't you find a brace of some kind on one of the feet?

A. I think there were in the shoe.

Q. And is the gun that the officers found on you the morning of your arrest the gun with which you did the shooting?

A. Yes.

Q. An automatic revolver?

A. Yes, sir.

Q. And was it loaded with the same kind of shells as those found in your pocket?

A. As far as I know.

Q. Did you reload it again after the shooting?

A. Yes.

Q. How many cartridges did you have to put in?

A. I think it holds nine.

Q. And how many did you have to put in to fill it up?

A. I think it was three.

Q. And when did you do that, at the time of the shooting?

A. At the time of the shooting.

Q. Before you left the scene?

A. I don't think so, I couldn't say sure.

Q. What became of his cap?

A. I don't know.

Q. Was that his cap that was in your machine the morning of your arrest?

A. No.

Q. Don't you think it was?

A. I don't think so.

Q. And are the keys that were in the car the same keys that were in the car while he was driving it?

A. Yes.

Q. And the bill of sale, dated July 15th, to Harry Garwood which you at first told me was the bill of sale for this car is not true, is it?

A. No.

Q. Did you ever speak of anyone about this?

A. No.

Q. Didn't Martin ask you where you got the car?

A. I don't think I told him.

Q. But he asked you, didn't he?

A. I think he did.

Q. Did Eichmann, the hotel keeper at Ellisburg, see you on the Monday following this shooting, and ask you where you got the car?

A. No, he didn't ask me.

Q. Did you tell him that you had bought the car?

A. Yes.

Q. What were you doing out there at that time?

A. I went out after gasoline, I think.

Q. At Fluger's store?

A. Yes.

Q. Did you ever go back to see if the body was found?

A. No.

Q. Did you read about it being found at the time of your arrest?

A. I can't read.

Q. Had anybody told you about the finding of the body?

A. No. Here is something else he had (handing Prosecutor paper parcel).

Q. What, this package?

A. Yes.

Q. Was this in his clothes, do you know?

A. In his pocket.

Q. At the time you shot him?

A. Yes, sir.

Q. Why did you go through his pockets?

A. To see what he had.

Q. Well, if the only reason that you had for doing this, Guilford, was what you have stated, why did you take his watch and chain and his car?

A. Well, just why I done that, I couldn't say.

Q. Guilford, after you took this car, that is, after the shooting, where did you go with it?

A. Went to Martin's, I think.

Q. Did you spend much time at Martin's with it?

A. No, I don't think I stayed there very long.

Q. Where did you go with the car after you left Martin's?

A. I just don't distinctly remember.

Q. Now, there is no misunderstanding about the date is there? It is Saturday two weeks ago, that is, two weeks from to-morrow?

A. I think that is right.

Q. That would be the 23rd of July?

A. I will tell you as near right as I can.

Q. And it happened before noon on that day, did it?

A. Yes.

Q. Where did you go after you had gone to Martin's with your car?

A. I think I drove around a while and went back to Martin's again.

Q. Then where did you go with it?

A. Went up to Green's.

Q. In Camden?

A. In Camden.

Q. And did you also go to your wife's mother's in Haddonfield?

A. Not on that day.

Q. Didn't you go there in the afternoon about 5 o'clock?

A. I don't think I did that afternoon.

Q. Didn't you first go home and ask your mother to take a ride and have supper?

A. Not that day.

Q. And you wife was down at her mother's, and didn't you go down there and ask them to take a ride?

A. I don't think it was that day, as near as I can tell you.

Q. Where did you spend the time, if you can remember?

A. I spent the afternoon with Martin.

Q. Where did you spend the evening?

A. I think at Green's.

Q. Where did you geep the car that night?

A. In the garage.

Q. Where is the garage?

A. Down here at 8th and Spruce, I think.

Q. Is it Harrigle's garage?

A. Yes.

Q. How long had you had that garage?

A. I don't know just when I rented it.

Q. For about a week?

A. Something like that, I guess.

Q. Is that receipt that you showed us when you were first arrested the receipt for the rent of the garage?

A. Yes.

Q. Well, I gathered from that that it was either the 16th or 18th of July that you got the garage, is that about right?

A. On the 16th, I think.

Q. That was Saturday?

A. Yes.

Q. That was the day after you had gotten the bill of sale from Harry Albert, wasn't it?

A. Yes.

Q. And that was the same day that you got George Webster to get your license?

A. Yes.

Q. Now, the bill of sale was gotten and also the license from Albert Kraft about a week previous to the taking of this car that belonged to Garwood; for what reason did you get that bill of sale?

A. Martin said to get a bill of sale for a car.

Q. Did he say why?

A. He said he had a car for me.

The Court: Mr. Wolverton, will you just look at the next question?

Mr. Wolverton: Yes, sir.

The Court: Do you think that that is admissible?

The Prosecutor: I do, sir.

Mr. Cleary: I didn't hear that if your Honor please.

The Prosecutor: It explains the reason for the bill of sale.

Mr. Cleary: But, if your Honor please, I object to that question, on the ground—if your Honor wants me to state an objection at this time I would like to be heard on that, if your Honor please.

The Court: Mr. Wolverton, I have doubts about that. I think I will exclude that question.

The Prosecutor: Of course, the Court sees the fact that I can't argue my point without what Mr.

Cleary would claim to be a disadvantage to his client. There are several thoughts I would like to express to your Honor as to why I believe that to be admissible. In doing it it would be in the hearing of the jury and while I have no objection to that I feel Mr. Cleary would have; but, at the same time I have much to say as to why this particular line of questioning should be read by Mr. Berry.

Mr. Cleary: If there is any objection on it at all I think it should be at the side bar if the Court please.

The Prosecutor: I understand why Mr. Cleary feels that way and that is the reason I haven't made the argument.

The Court: Yes, I understand that. If the counsel will retire I think I will hear you on that question.

(The Court and counsel thereupon retire from the court room.)

The Prosecutor: If the Court please, one of the important pieces of evidence in this case is the bill of sale. The evidence shows that on the 16th of July a bill of sale was obtained for a car bearing the same number as appeared on the car which this defendant had in his possession at the time of his arrest and which has been proved to have been the car which had previously belonged to Garwood and that the number had been changed subsequent to the sale of the car to Garwood. The purpose of the State is to show that the motive of this crime was robbery. The defendant in this statement which

has already been read partially has laid a foundation to prove that the motive was not robbery, that it was a friendship existing between the deceased and the defendant's wife. To rebut that and to sustain the contention of the State that the motive was robbery we proved that a week preceding this crime he obtained a bill of sale for a car containing the same number of that with which he was found in possession of at the time of his arrest. In other words, that there were steps of preparation made by the defendant for the stealing of cars. The questions that are now directed to him in fact are not questions but explanations admitted by the defendant himself as to the reason for the bill of sale. The reason that he gave was that Martin, whom this statement shows he had been stealing cars with, had suggested to him the obtaining of a bill of sale for that purpose. The question was asked to him after he had replied Martin said to get a bill of sale for a car. My question to him then was did he say why? "A. He said he had a car for me." the question was, "Q. Had you and he been stealing cars at that time?" "A. Yes, he got me to help him steal some cars." "Q. And is that the reason you got the bill of sale?" "A. Yes."

In other words the statement then of this defendant made at the time of his confession corroborates, to my mind substantiates the motive alleged by the State and rebuts the motive which he has previously given that it was a question of revenge. Now, further along in this statement it will be noticed that the defendant at his own suggestion, through no question of mine whatsoever, but as he stated a desire to tell everything, suggested to me, himself, whether I wanted him to tell about other offenses he had been committing in the way of stealing cars.

I had not asked him the question. He asked if I wanted to hear about that. In other words, he volunteered it to me. I told him that I had started to examine him on the question of the death of Harry Garwood, but if there was anything else he wanted to say he had the right to say it if he wished to in the giving of this statement. I did not preclude him from saying anything he wanted but he did not have to say it if he did not want to and it would be used against him if he did so. He replied that he wished to tell the whole truth and proceeded to narrate other offenses that he had been engaged in. Whether the latter part which I have just referred to, whether the defendant had been engaged in the stealing of other cars, or any other offenses, is admissible, is to my mind far more questionable. While I don't deny it is admissible, yet, I think it is more questionable than the particular part of this confession we have now reached. I feel the part we have now reached is in perfect accord with the rest of the confession and it has such a direct bearing upon it as rebutting the motive alleged by the defendant, in sustaining the motive alleged by the State, that it becomes naturally a part of the confession. I feel that unquestionably this is admissible. As to the other part, I believe there could be more argument about it than this particular question and answer.

The Court: Now, of course, I think that with reference to this bill of sale that you can show anything with reference to that bill of sale, Mr. Wolverton, but he has answered, he said Martin said to get a bill of sale for a car. "Q. Did he say why?" "A. He said he had a car for me." Now, I think I will strike out the question "Q. Had you and he been stealing cars at that time?" and the answer "A.

Yes, he got me to help him steal some cars." and the question "Q. And is that the reason you got the bill of sale?" "A. Yes." I have so much doubt about it, that I feel it had better be stricken out.

Mr. Cleary: If your Honor please, not in relation to that, but in relation to another matter, I am at a disadvantage in the reading of this inasmuch as I don't know what the answer is going to be.

The Court: You don't seem to be at a disadvantage. I have protected you.

Mr. Cleary: I appreciate that fact. I don't know what there is in the other parts of the statement.

The Court: You must pay attention.

Mr. Cleary: Will you instruct the stenographer to give me a little time before he answers it so that I can watch him.

The Court: Yes. We will proceed with the question "Where did you get the description of the car which appears in that bill of sale," Mr. Wolverton I think.

(The Court and counsel thereupon returned to the court room.)

The Court: Mr. Berry, will you omit the two questions and answers following, "A. He said he had a car for me."

The Witness: Yes, sir.

The Court: Commencing, "Where did you get the description of the car which appears in that bill of sale?"

(The following are the questions and answers omitted in the reading of the confession before the jury: "Q. Had you and he been stealing cars at that time? A. Yes, he got me to help him steal some cars. Q. And is that the reason you got the bill of sale? A. Yes.")

The Witness: (Reading.) Q. Where did you get the description of the car which appears in that bill of sale?

A. That is his idea.

Q. Where did you get the number from that appeared in there, which I don't remember just exactly now, but it starts with a three?

A. Off of another car somewhere.

Q. Whereabouts was the car?

A. In Philadelphia, I think.

Q. Then you never had a car, that is, answering the description that appears in that bill of sale?

A. He gave me the description of his car, if I can remember right.

Q. Where had he gotten the car?

A. That I couldn't say.

Q. Well, did you have a car in the garage before you had this one which you got on the 23rd of July?

A. The 23rd? Now, let me get you right; when was the 23rd?

Q. Two weeks ago to-morrow; that was Garwood's car that you had then?

A. Yes, I had one there before.

Q. What kind of car was that?

A. A sedan.

Q. And Garwood's car was also a sedan, wasn't it, a Ford?

A. Yes, a Ford sedan.

Q. And was the other sedan a Ford?

A. Yes.

Q. Where had you gotten that car?

A. You want the first car that Martin got? Now, I want to know what point you want me to start from. I am going to tell you anything that I can tell you.

Q. What I want to get at is this: You had a Ford sedan in Harrigle's garage, as I understand it?

A. Yes.

Q. About the 16th of July?

A. That is right.

Q. Now, the one you had in there on the 16th was not the one that you got from Garwood?

A. That was one that Martin stole from Haddon Heights.

Q. How did you happen to have it in your garage?

A. He gave it to me.

Q. So that that is not the same car as the one you put in there on the 23rd, the night of the 23rd, is it?

A. The 23rd? The night of the 23rd I believe was Garwood's car.

Q. It was the 23rd you got it; did you put it in there the same night?

A. Yes.

Q. Who did the car belong to that was gotten from Haddon Heights?

A. I don't know, they say a doctor. I took these two men and showed them where the cars came from.

Q. That is, the previous cars?

A. The previous cars, two cars.

Q. Did the number that you have in that bill of sale correspond with one of those cars that was stolen?

A. No, I don't think so.

Q. Did Martin or anybody else know that you were going to take Garwood's car?

A. No, I didn't intend to take it myself.

Q. Where did you buy the bumper that appears on the car which you got from Garwood?

A. Martin got it down country or down the White Horse Pike somewhere.

Q. Was it Nicholson's garage at the White Horse Hotel?

A. Yes, I think it was.

Q. Who paid for it?

A. Martin did.

Q. Where was it taken after you got it?

A. Taken to his house.

Q. And how long did it remain there?

A. He put it on the car, and I think it stayed there a day or two.

Q. And did you afterward put it on your car, the one that you got from Garwood?

A. Yes; he did, I didn't.

Q. Now, Guilford, is this a true, honest statement of all that you know?

A. Absolutely the truth.

Q. Do you make it voluntarily?

A. Yes, absolutely the truth, nothing but the truth, this is.

Q. Would you care to tell me why you took the watch and chain and car if the only reason you had for taking Garwood out there was to give him a lacing?

A. I would tell you if I could, but why I took it I don't know. Now, that is straight.

Q. Did Garwood say anything to you when he saw the gun?

A. No, he didn't have time.

Q. How quick were the shots fired in succession?

A. Well, the first shot was fired and I guess the other two was fired about five minutes later.

Q. Why did you fire the other two after you had fired the first one?

A. Well, I seen there was nothing to do then but to fire the other two shots.

Q. Why, was he still living?

A. No, not that I know of.

Q. Well, why did you think it was necessary to fire the other two shots then?

A. Well, why was a question that I can't answer, which I don't know.

Q. Don't you remember what became of his cap?

A. I do not; his cap may be there; I couldn't say.

Q. What route did you take coming back?

A. I don't know what road I did take.

Q. Well, you went to Martin's, you say?

A. Yes, but I drove off through the woods somewhere.

Q. Did you keep going right on the same way that the machine was headed?

A. I think I did, as near as I can tell you.

Q. Well, it would have been a very bad road to have turned the machine around in, wouldn't it?

A. I think I went on through, but where that road went I couldn't say.

Q. Did you meet anybody?

A. I don't think so.

Q. Did you see anybody before you went in?

A. I don't think I did.

Q. Or while you were in there?

A. I don't think so, not to my knowledge.

Q. And did you go straight to Martin's from that place?

A. I think I did; Martin's wife was there.

Q. And are the tools that were in the car when you were arrested the same tools that Garwood had in it when he went out the Marlton Pike with you?

A. Yes, some of them, sir.

Q. When he went out the Marlton Pike with you?

A. Yes.

Q. Just some?

A. I think all his tools are there.

Q. Are there any additional tools?

A. I think there is, but what they are I couldn't say.

Q. Guilford, is there anything else in connection with this shooting of Harry Garwood out there at the Marlton Pike where his body was found, which you said was on July 23rd, that you wish to say? Is there any other detail that you would care to tell me in this statement?

The Witness: (Reading.) "A. No, nothing else I can tell you outside of he will never go with another man's wife. Now, would you like to know about these other cars?

Q. Why, if you would care to tell me; I want it to be voluntary on your part.

A. I am here to tell you everything that I know.

Q. I spoke to you about the charge that is made against you for the death of Harry Garwood when I started to take this statement; now, if there is any

other statement or any other thing, either the taking of cars or anything else, that you wish to tell me of at this time voluntarily on your part, with the understanding that it can be used against you, I am perfectly willing to listen to whatever you have to say, but I want it with the understanding that it must be voluntary on your part and can be used against you, and you do not have to say anything if you do not wish to."

Mr. Cleary: If your Honor please, I make the same objection.

The Court: Very well. Let me see, please. Mr. Wolverton, I think that what follows is not relevant.

The Prosecutor: I will abide by your Honor's judgment.

The Court: Mr. Wolverton, you have a copy of this, of course, and the question on page thirty starting——

The Prosecutor: If the Court please, in order that there may be a complete record of this, I think it is only right and proper that the stenographer's notes should at least show the questions and answers in this confession, which your Honor doesn't think has any bearing on this particular thing, so that the record may be complete as to the confession.

The Court: Yes, I will state for the purposes of the record that from the answer commencing on page twenty-nine——

The Prosecutor: If the Court please, I think the copy that Mr. Berry is reading from has a different page number from that and I think I would make a suggestion if it meets with your Honorable's approval—under the direction of the Court, Mr. Berry, go in the other room and read the questions and answers to the stenographer and under your Honor's ruling——

The Court: Well, it will take a little longer. I have no objection to that.

The Prosecutor: I know of no other way, it will get into the record.

The Court: I thought I could express it upon the record by having it copied in the record. I presume there would be no objection upon the part of Mr. Cleary, that commencing with the answer, "Well, I couldn't" that's the answer to the question you have just read?

The Witness: Yes, sir.

The Court: From that point down to the "Q. And who signed the name to your bill of sale, James Brown?" I will exclude those questions and answers.

The Prosecutor: I think that will appear upon the record but what those questions and answers are doesn't appear.

The Court: I will direct that the questions and answers be put upon the record and then the rul-

ing made that in the opinion of the Court they are not relevant.

The Prosecutor: And that applies equally as well to the two or three other questions previously objected at side bar?

The Court: Yes.

(The following answers and questions were excluded in reading the written confession:

"A. Well, I couldn't say what I did without bringing Martin into it; that is the reason I didn't tell you in the first place, for as soon as I spoke I would have to say Martin's name, if I told you the truth.

Q. You mean on account of the bill of sale?

A. Yes.

Q. Now, do I understand from what you say that you and Martin have been taking cars?

A. I helped Martin take two cars.

Q. How recently?

A. Well, one has been quite a while ago; that is the car he has at the present time.

Q. About how long ago was that?

A. How long ago has it been? Two or three months.

Q. And how long the second?

A. That was the car that I had, he took in Haddon Heights.

Q. You mean the car that you had in your garage on the 16th of July?

A. That is right.

Q. What became of that when you got Garwood's car on the 23rd of July?

A. Martin took it from the garage and took it out home with him, as far as I know.

Q. Do you know what he did with it?

A. I think he sold some of it to Happy Glenn; in Haddon Heights; whether that is right or not I don't know.

Q. Did you get any part of the proceeds?

A. I have not.

Q. Did he agree to give you any?

A. Yes.

Q. Why didn't he do it?

A. I don't know.

Q. Now, are those the only cars that you have taken, three cars, as I understand it?

A. That is right. Why, the first car that we took, I believe he took the wheels and axles and body and put on his car, what else, I don't know; I guess all that belongs to him on that car is the engine. I think he sold the rest; I think he sold some of the stuff down here on Kaighns Avenue, if I am not mistaken; that is what he told me now.

The Witness. Shall I proceed from that point?

The Court: Yes, you read the question, "And who signed the name to your bill of sale, James Brown?"

The Witness: (Reading.) "Q. And who signed the name to your bill of sale, James Brown?

A. He did.

Q. ——"

The Court: Now, he refers to Mr. Martin?

The Witness: "Q. Was that at your suggestion or his?

A. At his.

Q. Now, as I have already told you, Mr. Young, you do not have to answer any question if you do not wish to, and I am only going to suggest this because of your apparent willingness to be truthful and honest, and want to tell what you know about these different matters. Is there any other crime of any character that you know of that you have done, any other thing?"

The Court: Wait a minute. I will exclude that answer.

(The answer excluded is as follows "A. Yes.")

The Witness: (Reading.) "Q. Do you wish to tell me of it voluntarily with the understanding that you do not have to and it can be used against you in Court?"

The Prosecutor: I don't think that this answer is objectionable.

The Court: Well, there isn't anything in that that the defendant could object to.

The Witness: (Reading.) "A. I told you when I went out of here I would tell you everything that I knowed, didn't I?

Q. Yes.

A. I am going to do it.

Q. Is there anything further that you wish to tell me?''

The Court: Well, there can't be any objection on the part of the defendant to the next answer.

Mr. Cleary: If your Honor please, I haven't any thing to go by.

The Court: Have you any objection to that question?

Mr. Cleary: No.

The Court: If you haven't any objection to the question, of course, if the answer is improper you can move to strike it out.

The Witness: (Reading.) ''A. When I make a promise, that is what I mean.''

The Court: You haven't any objection to that?

Mr. Cleary: If your Honor please, I can't anticipate what the answer is going to be. As I understand the question he is asking him to tell something else.

The Prosecutor: ''Is there anything further that you wish to tell me?''

The Court: The same question. Just read the question, Mr. Berry.

The Witness: The last question?

The Court: No, the next question.

The Witness: (Reading.) "Is there anything further that you wish to tell me?"

The Court: Now, then, I am going to strike out

The Prosecutor: I think Mr. Cleary would object to the answer, it will follow your Honor's ruling.

The Court: Yes, and I will not permit the question to be answered.

The Prosecutor: I would assume, under your Honor's ruling and Mr. Cleary's objection to this line of questions I have put to him, that probably the next question that would be material would be at the end of page 32.

The Court: Well, I will exclude the statements, "Is there anything further that you wish to tell me?" down to the question, "Now, is all that you have told me the truth?"

Mr. Wolverton: On the bottom of page 32. You may read that question, "Now, is all that you have told me the truth?"

(The following questions and answers were excluded and not read:

"A. Yes, we stole some chickens out here on Marlton Pike in Mr. Bancroft's.

Q. Who did?

A. Martin and I.

Q. From the Italians?
A. Yes.
Q. What did you do with the chickens?
A. I sold them.
Q. Where?
A. Some of them down on Kaighns Avenue.
Q. Do you know the person to whom you sold them?
A. Yes.
Q. Who?
A. To some Jews, I think.
Q. Do you remember their names?
A. No, I don't know their names.
Q. Where about on Kaighn Avenue?
A. This side of the railroad toward Broadway.
Q. On the south side of Kaighn Avenue?
A. It is across from the fire house.
Q. Would you know the name if you heard it?
A. No.
Q. How did you know he would buy them?
A. Because I bought lots of chickens off of him; I used to buy a good many chickens.
Q. Now, is there anything else that you wish to speak of? Oh, by the way, did Martin go with you when you sold them?
A. No.
Q. Were the Jews named Bader?
A. I couldn't say; I don't know his name.
Q. Was it the one right opposite the fire house?
A. Now, let me get you right; there is one Jew has chickens just as soon as you cross the railroad; it wasn't him, it was the next one.
Q. Nearer Broadway?
A. Yes.
Q. Now, is there anything else that you have any desire to tell me, with the understanding that it can

be used against you and you do not have to say it if you do not wish to?

A. Well, nothing else outside of these two cars that I know of; Martin stole them, he suggested stealing them.

Q. What was done with the proceeds that you got for the chickens, the money?

A. I had it.

Q. And when were they taken?

A. I couldn't say just what night.

Q. Just about a week ago?

A. Something like that.

Q. Was it Friday night before you were arrested?

A. I think it was.")

The Witness. (Reading.) "Q. Now, is all that you have told me the truth?

A. Absolutely.

Q. Is there anything else that you could tell me that you would think that I should know, or that you would want to tell?"

Mr. Cleary: Wait a minute, Mr. Berry.

The Prosecutor: There is no objection to the next answer, Mr. Cleary.

The Court. You can show that answer, if you will, to Mr. Cleary. I can see no objection to it.

Mr. Cleary: No, there is no objection to that.

The Witness: (Reading.) "A. Not that I can remember, Prosecutor; if there is questions that you

want to ask me that I know I will tell you, that I can remember.

Q. Does this statement contain a full statement now of everything that you can think of?
A. Yes, sir.
Q. And it is all true?
A. It is all true."

Cross-examination.

By Mr. Cleary:

Q. Mr. Berry, do you remember exactly the hour that was taken or does it appear on your notes?
A. Yes, sir; it was taken at 4.30 P. M., that is within ten minutes of the time it was taken.
Q. What room was it taken in?
A. In one of the rooms of the Prosecutor's office.
Q. When you arrived in that room, who was there?
A. I remember that Mr. Wolverton was there when I arrived, and, I think, Assistant Prosecutor Straw. Whether Detectives Doran and Smith were in the room when I came in or not, I do not remember.
Q. Was Mr. Wolverton or Mr. Straw conversing with the prisoner when you arrived, before you started to take this statement?

The Prosecutor: How could the witness testify to that before he arrived?

Mr. Cleary: I didn't think I said when you arrived, I mean before you arrived.

Q. When you arrived.
A. My recollection, Mr. Cleary—I couldn't tes-

tify positively—but my recollection is that the prisoner was brought into the room after I got there.

Q. But you won't say positively about that?

A. No, sir.

Q. Now, I remember a part in there where you said in two places, I believe, there was a considerable pause.

A. Yes, sir.

Q. You mean the prisoner was silent during that time?

A. Yes, sir.

Q. And how long a pause would that be in minutes?

A. Oh, possibly a minute or two, I should say; maybe longer than that. In one case, I remember it was a very long pause.

Q. Do you remember positively, of your own knowledge, without reference to your notes, that during that pause there was nothing said by anyone?

A. I do.

JOSEPH MORRIS, sworn.

By the Prosecutor:

Q. Mr. Morris, where do you live?

A. 2115 Federal.

Q. Do you have any position in the County of Camden?

A. Constable.

Q. Do you know the defendant, Guilford Young?

A. I do.

Q. You hadn't known him previous to the commission of the—before this charge was made against him?

A. No, sir.

Q. On the afternoon of August 5th or the evening of August 5th, did you have any conversation with him in the county jail?

A. I did.

Q. What was that conversation?

A. Why, I was up-stairs in the jail, and in the jail with him.

The Court: Speak louder, Mr. Morris.

The Witness: In the same cell that he was in, and he started to talk. I was sitting on a bench; he was standing up toward the cell door, and I walked up there to him.

Q. You spoke of a cell, this is a series of cells, isn't it?

A. Yes, sir.

Q. It is a section?

A. Yes, sir.

Q. So that it isn't an individual cell that you are speaking of?

A. No, sir.

Q. It is a section that contains several cells?

A. Yes.

Q. And it was in this section and not in the individual cells that he was sitting?

A. That is right. He put his hands on my both shoulders and said, "You look like a pretty good fellow," he said, "I killed that rotten son-of-a-bitch for running around with my wife." I said, "Who do you mean?" He said, "Garwood." After he said this he walked away from me and came back again; and he said, "This fellow, Martin, is sending me to the chair, but," he says, "I will send that son-of-a-bitch

to State's Prison for what I know about him." Then he looked at me again; he put his both hands on my shoulders, and says to me, "You look like a pretty good fellow; you look as though you would do a man a favor." I says, "I would if I could." He says, "Will you go and tell my wife that I am sorry for what I said about her, that I didn't mean it; I only said it to help myself, and if she will come in and tell the Prosecutor that she ran around with this man, but don't have to say she had anything to do with him, it will help me out, and I will do the right thing by her."

Cross-examination.

By Mr. Cleary:

Q. Now, Mr. Morris, have you narrated the entire conversation that took place that day?

A. Sir?

Q. Have you narrated—have you given me the entire conversation that took place that day?

A. Pretty near everything I can think of.

Q. You are sure there wasn't anything else said?

A. Not as I can recall.

Q. Well, why can't you recall—you recall those things?

A. I don't remember anything else being said, Mr. Cleary.

Q. Now, might it have been possible that there was something else said by you?

A. I don't believe so.

Q. Have you ever been convicted of crime?

A. Not to my knowledge.

Q. Why, don't you know?

A. No, sir.

Q. Don't you know whether you have ever been convicted of crime?

A. Yes.

Q. Well, have you or haven't you?

A. No, sir.

Q. Didn't you, as a matter of fact, say on that day in that cell room to this man here that you felt sorry for him?

A. I might have said that after ——

The Prosecutor: Wait a minute.

Mr. Cleary: If the Court please, I am basing a line of contradictory testimony, testimony that will be introduced later.

The Prosecutor: I have no objection to that.

Mr. Cleary: It is the basis of my contradiction.

The Prosecutor: It is for that reason I make the objection. If it is to lay a basis for a contradiction, I want him to say directly to the witness, "Did you say so-and-so?" and give the conversation. I know he is only trying to say part of it at a time; give the conversation.

Mr. Cleary: All right, if the Court please, you will have to indulge me a few minutes until I get the full conversation from my client.

The Prosecutor: I heard what he said, and I thought that was only part of it.

Mr. Cleary: Well, it is quite a long conversation; I may not be able to repeat it all at one time.

The Court: Well, Mr. Cleary, you may ask him any single thing, repeating what it is and whether he said or did not say that at that particular time and place. I hope it will be brief.

Mr. Cleary: If the Court please, I withdraw that other question.

The Court: You may reframe your question.

Mr. Cleary: If the Court please, I am going to state this, not as a complete conversation, but sentences at a time, so it can be understood by this witness.

The Court: Very well.

Q. Now, did you say this to him on this occasion when he was locked up, "When I used to beat it all around the world, I was locked up so many different times I used to wish I was a fly and fly out of the windows when I got ready?"

A. No, sir.

Q. Now, did you say that to him?

A. No, sir.

Q. Did you say this to him, "You say that you killed him in self defense; as there wasn't anybody but you and him there you can say what you please"?

A. No such words were ever uttered by me.

Q. Didn't you say that?

A. No, sir.

Q. Did you say to him then, "But don't tell anybody I told you this"?

A. No, sir.

Q. Now, was there another constable somewhere around the cell room?

A. There were.

Q. What was his name?

A. Zinger.

Q. Now, did you say to this man—I don't like to use the language, but I have to—did you say to this man, "Don't you talk to Zinger, because he is a damned sucker"?

A. I never used such a word.

Q. Then didn't you say to him ,"Can't I do you a favor? Can't I go to your wife and tell her to say that she knows Garwood?"

A. I never used such words.

Q. You never did?

A. Never did.

Q. You are positive of that, are you?

A. Absolutely.

Q. And in answer to the question that I have just asked you, didn't you personally hear Mr. Young say—in answer to the statement by you, "Can't I do you a favor—can't I go home and ask your wife if she knows Garwood," didn't he say, "No, because she knows him"?

A. Never said the words, only the words that I have already said.

Q. Didn't you then say to him, "Give me your address and I will go out to-night and come back to-morrow and I will let you know what she says?"

A. No, I asked him to give me a note to take to his wife.

Q. What note?

A. Of what he had told me, to put it in writing, I would deliver his note.

Q. You didn't say that on direct examination, did you?

A. No, but you have asked me about it, and I have told.

Q. Didn't you say to him, "I will get you a lawyer"?

A. Never such words.

Q. Didn't you say to him then, "You should have a lawyer as soon as you can"?

A. Never said such words.

Q. Didn't you say to him then, "Harris & Harris are good lawyers and I will get them for you"?

A. I never said such a word.

Q. Now, did you afterward see Harris & Haris about this case?

A. No, sir.

Q. Do you mean to tell me that you didn't see Mr. Harris of Harris & Harris?

A. Up-stairs in the jail one day.

The Court: Now, let's see, Mr. Cleary ——

Mr. Cleary: Well, if the Court please, I will withdraw that question; the question is answered, though, I believe.

The Court: Very well.

Q. Didn't he personally, in answer to that statement by you, say to you, "Yes, get me lawyer, they won't give me an opportunity to get anyone here"?

A. He never said such words.

Q. Didn't you come to him on the following day after this conversation took place that you have narrated on your direct examination?

The Court: Well, that is not cross-examination, Mr. Cleary.

The Prosecutor: I did not ask him about the following day; my examination of this witness is entirely of August 5th.

The Court: Yes, the objection is well taken.

Q. Now then, you were present when his supper was brought in that night, were you?

A. Yes, sir.

Q. That was the same time this conversation took place?

(Witness nods affirmatively.)

Q. And didn't you say to him ——

The Prosecutor: Answer the question, Mr. Morris, not by a nod of the head, but by word.

The Witness: All right.

Q. Didn't you say to him on that occasion, "My, your supper looks real good"?

A. Yes, I did.

Q. You said that?

A. Yes.

Q. And didn't he say to you, "Won't you have some?"

A. That is right.

Q. "This is the first good meal I have had here since I came here"?

A. He didn't say that.

Q. Oh, he didn't say that?

A. No, sir.

Q. Now, your memory is quite positive on those points, isn't it?

A. Yes.

Q. You know positively he said one thing and did not say another thing?

A. Only what he said, Mr. Cleary, I am answering just what he said.

Q. I am asking you if you were positive about that?

A. Positive I didn't hear them words.

Q. You didn't hear them?

A. No, sir.

Q. Well, you were in a position to hear them, weren't you?

A. Yes, sir.

Q. Didn't Mr. Young in your presence pick up a newspaper there that was in the cell room when he came in?

The Prosecutor: If the Court please——. Well, I have no objection; it is immaterial, I suppose, and I do not think it is proper cross-examination, but I won't object.

The Court: Well, I can't see it is very material.

Mr. Cleary: It will be in a minute.

The Court: But it is an occurrence that took place at this interview.

The Prosecutor: Mr. Cleary, assures me it will be in a minute, so I will permit it.

The Court: Very well.

Q. Did he?

A. I think he did.

Q. Aren't you positive of that?
A. Well, I will say yes.
Q. Well, you will say yes, why do you say yes?
A. You asked me if I was positive.
Q. I know, but you said you think so?
A. I said I think so, yes.
Q. Well, why didn't you say yes, if that was so?
A. All right, I will say yes.
Q. Why was it you hesitated in saying yes about it?
A. I didn't hesitate.
Q. Well, why didn't you say yes right on the first question?
A. Well, I will say yes again.
Q. You are positive of it, aren't you?
A. I will say I am positive, yes.
Q. When you had this newspaper in your hand, didn't you say this to him, "Your head is full now, you don't want any more in there now, you have got more in there than you want," and you threw the paper out of the window?
A. I remember him reaching for the paper, and I got hold of the paper; I said, "I want to see the boxing news in that paper."
Q. You wanted to see the boxing news?
A. Yes.
Q. You took it right out of his hands?
A. No, we both reached for the paper at the same time and I got the paper first.
Q. Oh, I see, you both reached for the paper at the same time— what time of the night was this?
A. I should judge it was around six o'clock.
Q. What paper was it, do you know?

The Court: Now, how is that material?

Mr. Cleary: If the Court please, I wanted to show that this particular paper, that there probably wasn't any boxing news in it, and he is a man that knows about boxing, and he would know that there wasn't any boxing news in it, to discredit the fact that he was looking for boxing news.

The Prosecutor: Well, I can't see how it is material for this Court to determine whether the Post-Telegram, or the Courier or the Ledger had boxing news.

Mr. Cleary: Well, if he knows it.

The Court: The question is overruled; I cannot see any materiality, what paper it was.

Q. So when he went into this cell there was a paper there, was there?

A. There was a paper sticking in between the steam pipes of the cell, an old newspaper; it was only part of a newspaper.

Q. An old newspaper, was it yellow with age, was it yellow?

A. No.

Q. Did it look like an old newspaper to you?

A. Well, it was all crumpled up.

Q. But did it like an old newspaper to you when you first saw it?

A. Well, it might have been four or five days old, maybe older.

Q. And immediately when you saw that paper you wanted to know the boxing news in that old newspaper, did you?

The Prosecutor: If the Court please, I can't see what materiality, even by the widest stretch of the

imagination, it can have as to this newspaper; it certainly has nothing to do with the direct examination of this witness. Mr. Cleary can call this man as his own witness to testify to anything he wishes to about the newspaper.

The Court: Well, you object to it, do you, Mr. Wolverton?

The Prosecutor: I object.

The Court: I will overrule the question.

Mr. Cleary: If the Court please, I would like to state the ground, the reason why I insist it is material, so it will be on the record.

The Court: Very well.

Mr. Cleary: I insist that this is material to this cross-examination because it tends to bring out a fact which will show that the witness, the present witness is not telling the truth about the main matter in direct examination. You can always bring out facts and circumstances— there is wide latitude, as I understand it, in the discretion of the Court, as to how far you can go on cross-examination to show that the witness is untruthful, even by immaterial points.

The Court: I am not disputing that proposition, but it is within the discretion of the Court ——

Mr. Cleary: I understand that.

The Court: As to how far the examination shall proceed, and I feel that I was very gracious to you,

Mr. Cleary, in letting you go as far as you have gone; that was the only purpose that I could see, was to test the credibility of this witness in many of the questions that I have permitted you to ask and the witness to answer.

Mr. Cleary: If the Court please, will you allow me an exception?

The Court: Oh, yes, take an exception.

(Exception noted for defendant.)

Mr. Cleary: What question do you object to, Mr. Wolverton? What was the last question?

The Prosecutor: I think the witness got the answer out before I got my objection on the record.

Mr. Cleary: I will ask another question. I don't know whether it is the same question or not.

(Question repeated.)

Q. You reached for this paper, did you?

The Prosecutor: I object.

The Court: Mr. Cleary, I never believe in unduly hastening a trial but of course this time is very precious and while I want to accord you every opportunity, it seems to me to in no way test really the credibility of this witness. You see, he was asked certain questions by Mr. Wolverton and you really in your cross-examination ought to be confined to the interview there. Now, whether this man reached

for a newspaper or wanted to see some boxing news or something of that kind hasn't any real worth as to determine his credibility, according to my views, so that we had better just dispense with this reaching for the newspaper and I am going to overrule that question and let's get right down to what was said at this interview.

Mr. Cleary: Does your Honor realize the purpose of this is not cross-examination? The purpose of it is to show certain statements which the witness is denying, which will be the basis of a part of contradictory evidence later on. Now, coupled with that statement he is also alleged to have made is the fact, which can't be separated from it, that at the time he made the statement he threw the newspaper out of the window.

The Court: What bearing would that have upon what Mr. Young said at this interview, that a newspaper, during the interview was thrown out of the window?

Mr. Cleary: If this witness denies, denies he made the statement, and I can prove later on that he did those things, by other witnesses, it tends to show his direct testimony was not true, it discredits the witness.

The Prosecutor: I think the anxiety of the counsel to properly represent the defendant, which is very commendable, causes him to overlook the fact that if such a situation did occur and it was material to the issue, the defendant himself could testify to it and he could call Mr. Morris as his own witness, but on the basis he has stated, it is not cross-ex-

amination, but for the reason he has just stated, I think by his own statement, he has stated himself out of Court.

The Court: I am going to overrule the question.

Mr. Cleary: Will you let me put my objection on the record?

The Court: Very well.

Mr. Cleary: My reason for insisting that that question be answered is material in this way: It is material to show the witness did not make such statements which I intend to contradict later on and if they are contradicted later on, that will tend to show the untruthfulness of this witness. Does your Honor overrule it?

The Court: Yes, I overrule the question and allow you an exception.

(Exception noted for defendant.)

Q. Now, in answer to the statement which I had previously stated on that day, on the 5th day of August, is that so, did you say this to him, meaning this man, "I killed him in self-defense, there wasn't anybody there but you and him and you can say what you want to." Did you make that statement to him?

A. I did not.

The Court: Mr. Cleary, haven't you asked that question?

Mr. Cleary: I want to get his mind refreshed.

Q. Didn't this defendant say to you, in answer to that statement, "It is too late now, I have told the truth." Did he say that?

A. Put his hands on my shoulder.

Q. Did he say that?

A. Not to me at that time.

Q. Did he say it at that time, yes or no?

A. No.

Q. Did he say, "I did kill him in self-defense"?

A. No.

Q. Did he say to you then, "You don't know what I told them down-stairs, do you?"

A. What's that?

Q. Did he say to you then, "You don't know what I told them down-stairs"?

A. No, he did not say that to me.

Q. That is what time of night?

A. Around six o'clock.

Q. And you said to him, "No, I don't know what you told them."

A. No, I did not say that either.

Q. And didn't he then say to you, "I did kill the man in self-defense. If I wouldn't have shot him I would have been shot myself"?

A. No, sir.

Mr. Cleary: Now, this is back to cross-examination, if your Honor please.

The Court: What was that?

Mr. Cleary: I haven't completed my cross-examination of this witness yet.

The Court: Very well, go ahead, go right on, Mr. Cleary.

Q. Now, Mr. Morris, what were you up in that cell for?

A. Guarding the prisoner.

Q. Guarding the prisoner? And what are you, a constable?

A. Yes, sir.

Q. And with what office are you attached?

A. Prosecutor's office.

Q. And how long have you been attached to the Prosecutor's office?

A. About four years, going on four years.

Q. What are your duties there?

A. Just simply an attache, do as they want me to do, run errands.

Q. And you were quite anxious to get this man to talk to you, were you not?

A. No, sir.

Q. Didn't you think that might result in some benefit to the State if you did?

A. No, sir, because this was the first time I have ever been on the witness stand since I have been in the office.

Q. Well, I mean, any information that you could get from him, didn't you think that might be of some benefit to the State?

A. No, I couldn't say whether that would benefit the State, not only when he wanted me to go to his wife.

Q. Wait a minute. That is a question that can be answered yes or no.

A. No, sir.

Q. Were you up there talking to him because you felt friendly to him?

A. No, sir, I was up there doing my duty, guarding the prisoner.

ALLEN PIERCE, sworn.

By the Prosecutor:

Q. Mr. Pierce, where do you live?
A. Haddonfield.
Q. How long have you lived in Haddonfield?
A. About twenty-five years.
Q. Do you know the defendant, Guilford Young?
A. I do.
Q. And how long have you known him?
A. About fifteen years.
Q. What is your employment?
A. An officer of the Pennsylvania Railroad.
Q. A special officer for the Pennsylvania Railroad?
A. Yes, sir.
Q. Mr. Pierce, did you at any time ever tell the defendant—Mr. Cleary's attitude, I think, will indicate he wishes to object, so don't make any answer to my question until he first has an opportunity to object, if he wishes to—that Harry Garwood was at his house, or that anyone else was there with his wife, and that you went around and asked him to come around and see it, that there was someone there, but that by the time you got there, there was no one there and that you had gone around with him?

Mr. Cleary: If your Honor please, I object to that question as not pertinent, relevant, material or competent. This statement was made in the confession, or alleged confession, made by the defendant, and the Prosecutor is now endeavoring by the witness to show that statements which were made in that confession which are not made upon oath, are not

true. I don't think that is a proper way of proving them.

The Prosecutor: If the Court please ——

The Court: I don't think you need to say very much about it, Mr. Wolverton. I understand Mr. Cleary's position is that you are not at liberty to show any statement made by the defendant is untrue, isn't that your position?

Mr. Cleary: That is.

The Court: I think that, according to my view, is not a correct position. I think the State has the right to show the facts of the case. In other words, that the defendant has said one thing at one time, doesn't preclude the State from proving by other witnesses that the defendant did not say that statement to that person.

Mr. Cleary: If your Honor please, however, that may be very well, in my opinion, if the evidence is produced in Court by this defendant, under oath, saying that he told this man a certain thing——. Now, he wasn't under oath at that time and the statement may have been given to the best of his recollection at the time, and my idea is that it isn't the proper way of proving that to have this witness deny the statement before the defendant has had an opportunity to speak upon the subject.

The Prosecutor: The defendant might not speak upon it, and therefore I would have no basis to ask him.

The Court: The question will be allowed and an exception allowed for the defendant.

(Exception noted for defendant.)

(Question repeated.)

A. No, I never did, positively.

Q. Did you ever go to the defendant at any time and tell him that there was someone at his house with his wife, and to come around and see it?

A. Never.

Q. Either in reference to Harry Garwood or anybody else?

A. No, sir.

Q. Did you at any time, as he has stated, find him and take him around to the house?

A. No, sir.

Cross-examination.

By Mr. Cleary:

Q. Now, you don't know what time it was that this conversation is alleged to have taken place, do you?

A. It never took place with me.

Q. So therefore you are testifying to all times, are you?

A. Yes.

Q. Even though it went back as far as ten years?

A. Yes, sir.

Q. Now, in the year, 1914, do you remember a certain trial being tried in this Court wherein this man was a defendant for a desertion charge, for the resertion of his wife or something of that sort?

A. I do.

Q. Were you a witness at that trial?

A. I was.

Q. You were; before that trial took place, did you say to this defendant, and to his attorney, Mr. Roberts, that you had seen—just a minute until I get the correct language—did you say in the presence of the defendant and his counsel, or of either of them at that time, that you had seen Mrs. Young in the presence of Garwood?

A. No, sir.

Q. At the house of her mother?

A. No, sir.

Q. Now then, did you say to Mr. Young at that time that you had seen out of a window of a house where you were into a window of the house of Mrs. Young's mother, and had seen—did you say, "I saw Mrs. Young sitting on the lap of a man up as late as three o'clock in the morning"?

A. No, sir.

Q. You did not say that?

A. No, sir.

Q. You did not say that to this man or his attorney?

A. No, sir.

Q. Did you testify to that in this court room?

A. I testified against it.

Q. Testified against it?

A. Yes, sir.

By the Prosecutor:

Q. At this trial which is spoken of in 1914, what was that trial?

A. What do you mean, what it was?

Q. What was the nature of the trial—who was on trial?

A. Why, I think it was a support case, I am not sure, I think his wife had him ——

Q. In other words, it was a case of non-support of this defendant?

A. I think so.

Q. By his wife or by the State?

A. I am pretty sure of that, yes, sir.

Q. Was any effort made to get you to testify?

A. There was an effort made to get me to sign an affidavit which they had written up, which was wrong, positively wrong.

Q. And you read the affidavit over?

A. I did.

Q. And you refused to sign it?

A. I did.

Q. And you came to court and testified in that case against these very statements that are made now, did you?

A. I did.

Q. And refused to take the affidavit?

A. Yes, sir

Q. That any such thing had ever taken place?

A. Yes, sir

By Mr. Cleary:

Q. Now then, Mr.—what is your name—Pierce?

A. Pierce.

Q. Didn't you testify on behalf of the defendants in that case— you were not a State's witness, were you?

A. I was subpoenaed by Young.

Q. Now, you testified in Young's case, didn't you?

A. Yes, in his case.

Q. Yes, surely; you were not a witness for the State on that day?

A. No, I was a witness for him.

William H. Dennis, sworn.

By the Prosecutor:

Q. Mr. Dennis, you are the chief of police?
A. I am.
Q. Your name is Bill Dennis?
A. William H.
Q. You know the defendant, Guilford Young?
A. I do.
Q. Have you at any time ever spoken to the defendant about his wife being with Garwood, or has he ever spoken to you about her being with Garwood?
A. Never.

Cross-examination.

By Mr. Cleary:

Q. Has he ever spoken to you at all about his wife in relation to any man?
A. Any what?
Q. Has he ever spoken to you at all concerning his wife; did he ever mention his wife's name to you?
A. Only about his mother-in-law.
Q. Well, did he ever mention his wife's name to you?
A. In regard to what?
Q. In regard to anything?
A. No.
Q. Now, isn't it possible that he might have said something about his wife about some other matter?
A. I never paid no attention to what he did say.
Q. Oh, you never paid any attention to what he did say?
A. No.

By the Prosecutor:

Q. Mr. Cleary has said about any matter—you had your mind fixed on references to Garwood, I suppose, didn't you?

A. Yes.

Q. Now, when he says, "Did he ever speak to you about any matter about his wife," did you ever have a conversation with him on the Main Street, when he was in the company of someone about his wife?

A. No, I asked him one time ——

Q. What was that?

A. I asked him one time why he was locked arms with a woman.

Q. What did he say?

A. He said he wanted a divorce.

Q. Where was he when locked arms with this woman?

Q. Just relate that circumstance, where the defendant was and who was with him, and what was said by you to him and what he said to you?

A. Give it again, you mean?

Q. Yes, give us the whole circumstance, everything he said.

A. Well he came up Main Street several times, not only once, but several times, up the Main Street with this lady, I don't know who she was, I asked him specially one night about this woman.

The Court: Now, Mr. Wolverton, this is relevant, but it presupposes a certain defense, and it is a question in my mind whether it would not be evidence proper on rebuttal, so I think I will exclude it at this time.

The Prosecutor: Then, with the Court's permission, I will ask the privilege of withdrawing this witness at this time and calling him in rebuttal.

The Court: Yes.

Mr. Cleary: If the Court please, I would like to have the privilege of cross-examining a little further.

The Court: Not on this subject.

The Prosecutor: I am perfectly willing that he should do so.

Mr. Cleary: Not on this subject, but on another subject that was brought out in the direct-examination.

The Court: Upon what subject?

Mr. Cleary: In relation to the name of Garwood.

The Court: Very well, you may examine on that.

Q. Now, Mr. Dennis, you didn't know Mr. Garwood, did you?
A. I did not.
Q. You had never seen him in your life?
A. I had never seen him.
Q. And you just testified on your direct examination that you didn't pay any attention to what Mr. Young said, didn't you?
A. I was talking to him lots of times.
Q. Now, therefore, if he talked to you, say six months ago, about a man named Garwood, and you

didn't pay any attention to him at that time, is there any likelihood of your remembering it at the present time?

A. Remembering which?

Q. About the name of Garwood?

A. He never mentioned Garwood to me.

Q. Now, just a minute, Mr. Dennis, are you positive about that?

A. Yes.

Q. Now, was there any time when he talked to you when his mind was upset, either through drink or any other cause?

A. About Garwood?

The Prosecutor: If the Court please ——

Mr. Cleary: All right, I withdraw it, if the Court please, to save time.

Q. Has he ever talked to you about his wife at all in relation to any matter?

The Court: Now, you asked that question, Mr. Cleary, exactly in the same form before.

Q. Have you a good memory for names?

A. Yes, sometimes.

Q. Well, it is possible, isn't it, that sometime in your life you have forgotten a name?

A. Not of Garwood.

Q. Not Garwood? Well, why is there any more reason for you remembering Garwood's name than anybody else's?

A. Well, because he never mentioned it.

Q. He never what?

A. He never mentioned it to me.

Q. He never what?

The Court: He never mentioned the name of Garwood to him.

Q. Well, why is there any more reason for your knowing that he never mentioned Garwood's name to you than that he never mentioned the name of John Smith?

A. He never mentioned any name to me.

Q. Do you mean to say in all your conversations with him he never mentioned anybody's name?

A. In regard to him, no.

Q. No, in regard to anything?

A. No.

Q. Never mentioned anybody's name to you at all? Now, how long have you known this man?

The Prosecutor: If the Court please, we are only inquiring as to conversations with this defendant about the wife.

The Court: Yes, about the wife; I understand the answer relates to that, too.

The Prosecutor: Is that what your answer was intended to relate to, simply the conversations had with the defendant regarding his wife?

The Witness: That he ever said anything to me about his wife, is that what you mean?

The Prosecutor: Yes.

The Witness: He never said anything in regard to his wife.

By Mr. Cleary:

Q. How long have you known Mr. Young?
A. Me?
Q. Yes.
A. Ever since he has been there; I don't know how long that has been.
Q. How long has that been?
A. I don't know.
Q. How long have you been there?
A. I judge somewhere around twenty-four years.
Q. Have you known Mr. Young since he was thirteen years of age?
A. I don't know how old he was.
Q. What?
A. I don't know how old he was.
Q. Well, don't you know when he came there?
A. When who came there?
Q. Mr. Young.
A. I couldn't say I do know when he came there.
Q. How many years would you say that you have known Mr. Young, actually known him—you know that, don't you?
A. I wouldn't say that, I don't know.
Q. You won't say; well, you have known him more than two years, haven't you?
A. Yes.
Q. Have you known him five years?
A. Yes.
Q. Have you known him seven years?
A. Yes.
Q. Have you known him ten years?
A. I wouldn't say that.
Q. You can't remember how many years you have known him, is that right, actually?
A. About ten.

Q. But yet you can remember that he never mentioned the name of Garwood to you?

A. Oh, no.

Q. Now, your attention was never called to the name of Garwood until this killing occurred, is that right?

A. No, I never heard of it.

Q. You never heard of the name of Garwood before, did you?

A. No.

Q. When was your attention called to the fact that you were going to be asked to testify in relation to this matter? When was the first time that anybody asked about whether he had made this conversation with you?

A. Who had made the conversation?

Q. Mr. Young, whether Mr. Young had ever told you anything about Garwood and his wife?

A. When you came out there.

Q. When was that?

A. I didn't take no date.

Q. That was about three weeks ago, wasn't it?

A. Yes.

Q. So that from the time of the killing to three weeks ago, you never had any occasion to recollect in your memory anything that this man said to you about Garwood, is that right?

A. What he said about it? He never said Garwood to me.

Q. Speak a little louder, please.

A. He never mentioned Garwood's name to me.

Q. That is not the question; I say from the time that this killing occurred up to the time when I saw you three weeks ago ——

A. Yes.

Q. About three weeks ago, nobody had asked you about Garwood's name, had they?

The Court: Well, that question is not exactly right.

Q. Well, nobody had asked you whether or not this man had said anything to you concerning his wife and Garwood, is that right?

A. That nobody else had asked me?

Q. Yes, had anybody else asked you?

A. Only you.

Q. Only me; was there any other reason except that I talked to you that would cause you to remember back about the conversation with this man?

A. I don't think so.

Q. You don't know; do you remember when it was that I asked you about this conversation, how long before the killing did I ask you about it?

A. I don't know when he was killed.

The Court: Wait a minute, that question, Mr. Cleary, does not—I don't think you meant to ask that. (To the stenographer.) Just repeat the question.

(Question repeated.)

Mr. Cleary: I withdraw that question.

Q. When I spoke to you when was it that I said that this conversation took place between you and Garwood or between you and Young in relation to Garwood?

The Prosecutor: If the Court please, it is certain that the counsel for the defendant cannot go to Haddonfield and tell a situation here in this way and have it testified to in court.

The Court: No, the question is overruled.

Q. When was it I asked you ——

The Prosecutor: He has said and you have said on innumerable occasions about three weeks.

Mr. Cleary: No, if the Court please, I don't think the Prosecutor understands my question; perhaps I do not understand it myself, but here is what I am objecting to ——

The Court: Well, we will get along faster if you do not ask questions that you do not understand yourself. Let's just get this question. What question did you want to ask him, Mr. Cleary?

Mr. Cleary: I want to ask this witness, if the Court please—it is pretty hard; I am trying to frame it in a way so that he can understand; it is a pretty difficult proposition; I want to ask him whether when I saw him three weeks ago I did not call his attention to a conversation which occurred about six months before the killing; in other words, somewhere around January, 1921, in which Mr. Young had told him about his wife's relations with Garwood.

The Prosecutor: I am just going to say this, if it is the purpose to show that he made a different answer than the witness has testified to here in court, I have no objection if Mr. Cleary says, "Didn't I say so-and-so to you, and didn't you say so-and-so to me?" if it would tend to discredit what he says here today, if he wishes to lay that foundation.

The Court: The trouble with the question, Mr. Cleary, is that it assumes facts that have not been proven.

Mr. Cleary: Well, I will pursue a further line of testimony to bring out the facts that have not been proved.

Q. Did I come there three weeks ago, talk to you, and did I ask you on that occasion about a conversation, Mr. Young had with you in relation to his wife and Garwood?

The Court: Don't you see, that presupposes a conversation did take place.

Mr. Cleary: If your Honor please, my idea in this cross-examination is for the purpose of showing the conversation took place, and I want to show ——

The Court: You want to ask him whether a conversation did take place?

Mr. Cleary: I want to show you that the time I was directing his memory to was six months before the time that the killing occurred. In other words, I want to show that this witness, because of the great lapse of time between that conversation and the present day, may have forgotten what was said on that occasion. That is my purpose in showing this testimony.

The Court: You just ask him what you said to him on that occasion.

Q. What did I say or ask you upon that occasion?
A. I don't remember.

Q. You don't remember?
A. No, you asked me so much.
Q. Don't you remember whether or not Garwood's name was mentioned by me?
A. I won't say for certain, I don't know.

JOHN WILLIAMS, sworn.

The Prosecutor: If the Court please, this is for the benefit of the witness. Mr. Cleary informs me that he wishes to object to this testimony so don't answer any of my questions until Mr. Cleary has had that opportunity. He informs me that he will object to what you will testify to.

The Witness: All right, sir.

Q. Where do you live?
A. Gloucester.
Q. Do you know the defendant, Guilford Young?
A. Yes, sir.
Q. How long have you known him?
A. About seven years. I guess.
Q. Have you worked at the same places that he has?
A. Three years and a half in the powder mill, yes, sir.
Q. Where?
A. Gibbstown.
Q. Did you see him recently?
A. On the ferry-boat, yes, sir, him and a woman, about ——

Mr. Cleary: Wait a minute what was that question?

The Witness: Pardon me, I guess I got it wrong.

The Prosecutor: If the Court please, that surprised me as well as Mr. Cleary, I hadn't anticipated any such ——

The Court: The answer will be stricken out.

Mr. Cleary: What was the question?

Q. I mean, since he has been in the county jail?
A. Yes, sir.
Q. Under this charge, since he has been under arrest on this charge of killing Harry Garwood?
A. Yes, sir, I have seen him.
Q. How did you come to see him in the county jail?
A. Why, there was a fellow by the name of L. S. Geitz that sent me a letter and said for me to come up, that he had a job for me, that I just would do for it, and so when I came up here.
Q. Up where?

Mr. Cleary: I object to this as not responsive to the question.

Q. You received a letter from a man named Geitz?
A. Yes, sir.
Q. In answer to which you came to the county jail?
A. Yes, sir; after I came up here Geitz hollered for Young.

Mr. Cleary: I object to this unless the question is made more specific, so that I can object.

The Court: There isn't anything yet that is objectionable, so far as I can see.

Mr. Cleary: If your Honor please, this is a line of testimony that will be very prejudicial to the defendant if it were narrated by the witness and not true, and it were not proper evidence in this proceeding. I anticipate what he is going to say, and it is a matter such as we discussed at the side bar, and if it is in the same nature as that and if it is and the witness testifies to it, the harm is done and can't be remedied.

The Court: You have an opportunity to object, and, of course, I am going to rule on each question as it is asked.

Mr. Cleary: What was the question again?

The Court: The question is, "Did you come to the county jail?"

The Witness: Yes, sir, I did.

Q. What occurred when you reached the county jail?

A. What occurred when I reached it? You mean first when I came here, Prosecutor?

Q. Yes.

The Prosecutor: Now, Mr. Cleary wants to object to anything said by Young to you.

The Witness: So I brung a letter down to ——

Mr. Cleary: I object to anything you are going

to say about Mr. Young. Now, before you say it, give me a chance to object.

The Prosecutor: I think the witness understands.

The Witness: When I first came in here, when I was talking to Mr. Young—what do you want to know? You are working this here way, I don't know what way to start, you are asking me one thing ——

The Court: Wait a minute, Mr. Williams, you won't be confused at all. You just pay attention to Mr. Wolverton.

The Prosecutor: And when Mr. Cleary says anything just keep quiet, get the idea?

The Witness: All right.

Q. Now, you received a letter?

A. Yes, sir.

Q. Signed with the name of Geitz, did I understand it?

A. Yes, sir.

Q. Requesting you to come to the county jail?

A. Yes, sir.

Q. In answer to that letter you came to the county jail?

A. Yes, sir.

Q. Where did you first go?

A. Where did I first go? I came in to the sheriff's office and showed him the letter, and then I was showed the way up the back stairway.

Q. You were then granted permission to go to the county jail, were you?

A. Yes, sir.

Q. After you had been admitted to the county jail, where did you go?

A. I went up to the big cage like.

Q. To the big cage?

A. Yes, sir.

Q. Then what happened?

A. I met a man by the name of Geitz, which a man I never seen before, never knowed of him before.

Q. Then what happened?

A. Then he hollered for Guilford Young.

Q. And in answer to that did Guilford Young come?

A. Yes, sir, he did.

Q. Did you have a conversation with Guilford Young?

A. A small conversation, yes, sir.

Q. Now, don't answer this question. Wait a minute. I will ask the question, but don't answer it. What did Guilford Young say to you and what did you say to him?

Mr. Cleary: If your Honor please, I object to that, because the purpose of the Prosecutor, I believe——. Well, it is of a nature I wouldn't want to discuss here, unless it is at side bar, because the argument itself about the point would prejudice the defendant as well as the testimony, so if your Honor will grant me the request that we go to the side bar and argue this particular point.

The Court: Well, I will hear you gentlemen for a minute. I think I know from things that have transpired here in the court room what it is about, but I may be mistaken, so that I will listen to you.

(The Court and counsel then retired from the court room.)

The Court: Now, tell me, Mr. Wolverton, what you propose to show by this witness.

The Prosecutor: I had expected to show by this witness and by other witnesses as well that on different occasions, the defendant, after he had been charged with murder and subsequent to his confession made to the Prosecutor made efforts to escape from the county jail. The efforts had only reached the point, however, of inducements made to friends to bring in to him the tools by which an escape could be effected. This witness will testify that Young requested him to obtain for him hacksaws to be used on the bars. The other witnesses, and two or three more, will testify to the same line.

The Court: That is, that he said he wanted these hacksaws for the purpose of cutting the bars to escape?

The Prosecutor: Yes, sir.

Mr. Cleary: Will they say that, Mr. Wolverton?

The Prosecutor: Yes, sir, some of them will. I offer it on the theory on which it has been admitted in other courts as an indication of the consciousness of guilt.

Mr. Cleary: That is just what I want to talk about.

The Prosecutor: It has been admitted in, I think, other cases, this line of testimony, on that theory,

both where the defendant has not made any confession and where he has done so. There may be different arguments that can be advanced as to the value of the testimony, but I think there has never been a time when it wasn't recognized as admissible testimony. In this case it is particularly admissible in view of the fact that it is not an effort of an innocent man who might desire to escape, but one who had previously made a confession of his guilt.

Mr. Cleary: If your Honor please, the only case in New Jersey upon that point, that I was able to find, was——

The Court: State vs. Jaggers.

Mr. Cleary: I think that is the case, where a man attempts suicide or where he attempts suicide or makes an escape from jail, that it is relevant, it is relevant in the idea that the man has actually completed the act, showing that his guilty mind made him consummate that act, but in no case—some cases even go so far as to show where a man attempted to get out by sawing the bars, by doing some overt act, in showing intent but in no case whatever has it been decided where a man showed an intent to commit an act was it allowed to be put in evidence, for the reason that man may change his intent before the act was consummated. It doesn't show a guilty knowledge, because the only thing that could happen in that case would be that he had it at one time and which he later regretted and changed. There was nothing more here than an intent to procure the instruments, and I have a line of cases here which actually hold, not New Jersey cases, because it has never been decided in New Jersey, they ac-

tually hold that the procurement of weapons for the purpose of intending to escape from jail, is not sufficient to constitute an act, and show a guilty knowledge, because a man may change his mind afterwards and he wouldn't have that guilty knowledge at the time it is alleged. It also, to my mind, is objectionable on the ground it tends to show other crimes, to show a vicious nature or a vicious tendency, it also prejudices the defendant in that it cannot prove anything. It cannot prove the guilt in this case, because if it is necessary I will admit now that Mr. Young killed this man. Now, the only thing that testimony could produce would be a guilty knowledge that he killed the man. As to what degree of crime he is to be convicted of, that is a question for the jury, but this can in no way affect the degree of crime he is to be convicted of. If he is guilty of first degree, it won't prove it. It won't prove second degree. It won't prove manslaughter. It only proves a guilty knowledge which he has already admitted on the stand. If it is necessary I can make the admission on his part that he did kill Mr. Garwood, and therefore the reason for this testimony is gone, to show a guilty knowledge, since he admits his guilt. If your Honor please, will you let me suggest my objections?

The Court: Certainly.

Mr. Cleary: I object to the allowing of this testimony on the ground that it is not an escape nor is it an attempted escape. It is merely an intent to escape, which does not show a guilty knowledge, because that intent may later be changed before any act is done. I also object to it on the ground that it has a tendency to show the defendant was guilty

of other crimes and show a vicious nature. I also object to it on the ground that I now admit, for the purpose of disallowing this testimony, that Mr. Young killed Garwood, not as alleged in the indictment, but that he killed him. The mere fact that he killed him. If I admit that it shows that he was guilty of the crime of killing him, guilty of the homicide, it has no relevancy to show the degree of that crime and therefore has no relevancy at this time in view of the fact the killing is admitted.

The Prosecutor: If the Court please, I suppose Mr. Cleary wants the full benefit of the admissions he makes. He has said nothing that would be prejudicial to the defendant, so far as admissions of this testimony is concerned; or that would put him to a disadvantage with the jury on the legal side of it, but I don't think Mr. Cleary is in a position to make an admission of that kind at side bar in the absence of the defendant. I suggest this to Mr. Cleary, that if he feels it is important to his case or that he feels that it should be done in the presence of the defendant, I think he should do it in the open court room, if he wishes to, without prejudicing his argument on the details of this particular testimony.

The Court: I will not dispose of that question. That is entirely up to Mr. Cleary.

Mr. Cleary: What is your Honor's ruling?

The Court: I will rule in favor of the admission of the testimony.

(Exception noted for defendant.)

By the Prosecutor:

Q. What was said by Guilford Young to you and by you to Guilford Young?

A. Guilford Young said to me——

Mr. Cleary: I want to object to this, if the Court please, but I would like the Prosecutor to frame the question so it would bring out, subject to my objection——

The Prosecutor: I inform counsel for the defense that the purpose of the question is to prove that a suggestion was made by Young to this man to bring hacksaws to him into the jail.

The Court: For the purpose of——

The Prosecutor: An escape.

Mr. Cleary: If the Court please, I object to that line of testimony and the answer of this witness for the following reasons: That first it shows no escape from the jail; that second, it shows no attempt to escape from the jail, that at the most, if it is true, it can only show an intent to commit such an act, that an intent to commit such an act could be later changed by the mind of the defendant, and an act of that kind never committed, or an attempt never committed; that second, it exposes the defendant to testimony which would show a vicious nature or a tendency to commit other crimes; that third, in the presence of the defendant now, the defendant through me admits that he killed Garwood; he does not admit—I don't want this testimony admitted for the purpose of showing any guilty knowledge as

far as this crime is concerned, because it cannot show any degree of crime, or cannot show that the man did not have a defense to the crime; the only thing that it can show is that he had the knowledge in his mind that he killed a certain person, which he now admits; therefore the relevancy of the question is no longer at issue, it is an immaterial point and I object to it for all three of those reasons.

The Court: The question will be allowed.

Mr. Cleary: And exception noted.

The Court: On the ground that it is evidence of the consciousness of guilt of the defendant, and is admissible for that reason (to the witness). Now, Mr. Williams, you were asked what conversation you had, what Young said to you and what you said to Young.

A. Yes, Young says to me, "If you will get me six hacksaw blades, I will give you $900." The words that I says, "No, sir, I haven't got the nerve," or, "Not for all the money in the world." The words he said to me, "That is what I call a man," that is the words he said.

Cross-examination.

By Mr. Cleary:

Q. Now then, where do you work—where are you working now?

A. I ain't working nowhere, I am working for myself now.

Q. Where had you been working before you left your place of employment?

A. South yard.
Q. Where?
A. The South yard, right down here to Gloucester.
Q. Well, what company?
A. New York Ship.
Q. Do you feel unfriendly to me?
A. No, sir, not a bit.
Q. Well, why do you answer me in such a way?
A. I am not answering you in such a way.

The Court: Wait a minute, Mr. Cleary; I think there was nothing in the witness' manner that would indicate that he was unfriendly to you.

Mr. Cleary: Well, I am asking him.

The Court: Well, that is immaterial.

Q. Do you feel unfriendly to the defendant here?
A. Not a bit.
Q. Now, do you know this man whose letter you received?
A. No, sir, I just about know him if I see him now.
Q. What was his name?
A. L. S. Geitz.
Q. How do you spell it—Geitz—how do you spell that name?
A. L. S. Geitz, that is all it had on there.
Q. Well, how do you spell the name that was printed or written on there?
A. I couldn't tell you how it was spelled; that is all I took notice to it.
Q. Have you got a good memory?
A. Well, fair.
Q. Fair memory, not a very good one—your memory is not very good, is it? Is it, or isn't it?

A. Well, it is fair; that is about the best I can tell you.

Q. Now then, you can't remember how this name Geitz was spelled on that letter?

A. L. S. Geitz, that is all I can remember.

Q. How many times did you look at that letter?

A. Only once that I can remember.

Q. What did it say in that letter?

A. It told me if I would come up to the Camden County jail that he had a job he would do for me, and I would just do for it.

Q. Now, there wasn't anything said about Mr. Young in that letter, was there?

A. No, sir, not a word.

Q. Why would you go to the county jail to see a man that you never knew?

A. Well, there was a Geitz out on Division Street, that is the man I took it for.

Q. And when you got there it wasn't the man you thought it was, was it?

A. No, sir.

Q. What did Mr. Geitz say to you?

A. He called Young down.

Q. Now, before he called Young down didn't he have a conversation with you?

A. No, sir, not at first; he called Young first.

Q. Now, what was it that Mr. Geitz said to you? You told what Young said to you, now tell what Geitz said to you.

A. I asked Geitz what he was in there for, and he said, "Why, for taking automobiles," that is as far as I know.

Q. Who was in there for taking automobiles?

A. Geitz.

Q. Geitz was?

A. Yes.

Q. What else did Geitz say to you?
A. That was all of it.

The Court: Well, you are no objecting, Mr. Wolverton, and of course, I don't want to raise the objection, but it is not cross-examination.

Mr. Cleary: If the Court please, I want to bring out the fact to contradict this witness that it wasn't Young said this to him, it was Geitz said it to him.

The Court: Very well.

Q. Now, you were talking to Mr. Geitz all this time, weren't you?
A. Not all that time, no, sir.
Q. Now, where were you talking to him? Where were you standing—where were these two other men standing? Were you inside the cell?
A. No, sir.
Q. Where were you, at the door?
A. On that side of the cage (indicating); there was a door there and I was standing right over here.
Q. By the door?
A. Yes.
Q. On the outside of the door, of course?
A. On the outside of the door.
Q. And they were on the inside of the door?
A. Yes.
Q. How wide a door is that?
A. I couldn't tell you; I was never locked up in my life, never inside the jail.
Q. I know, take a glance at that door in back of you there; is it about as wide as that door?
A. Couldn't tell you that.
Q. You couldn't tell me how wide the door was?

A. I never have noticed; I was half scared to death.

Q. Was it that wide (indicating)?

A. I couldn't tell you whether it was that wide, or that wide, or that wide.

Q. You can't tell me anything about the door? Give me an idea of it?

A. I never took much notice to the door.

The Court: Wait, Mr. Cleary, that is pretty well exhausted, the subject as to the width of the door; the witness does not know.

Q. Who was standing at the door, inside?

A. Who was standing at the door inside?

Q. Yes.

A. At the door inside?

Q. Yes, inside the door.

A. Why, nobody was standing in the door inside as far as I know.

Q. How near the door were those two men?

A. They were standing on that side of the door (indicating).

Q. You mean to say they talked to you through the door without coming up to the door?

A. They were nowhere near the door; I told you they were on that side of the door.

Q. Were they in their cells?

A. They were right on that side of the door, in the cage, no, sir.

Q. How far away from the door were they?

A. Away from the door about two feet on that side.

Q. About two feet?

A. Yes, sir.

Q. Was there anything to prevent them from coming to the door?

The Court: That is, was there anything between where they stood and the door?

A. No, sir.

Q. If they had desired they could have walked right up to the door and talked to you, could they—there was nothing to prevent them?

A. I wasn't at the door.

Q. Where were you?

A. I was about two foot away from the door, right there where the cage was.

Q. You weren't up against the door?

A. No, sir.

Q. And they were two feet away from the door on the other side?

A. On this side (indicating). Not on that side, on this side.

Q. I know, but on the other side, so altogether you were about four feet away from them, were you?

A. How was I four feet away from them?

Q. They were two feet away from the door on their side, and you were two feet away from the door on your side?

A. No, you don't understand me.

Q. Then tell me in your words?

A. I was by the door there, they were standing about two feet away from the door; they were inside the cage and I was out there.

Q. How many feet actually away from there were you?

A. Away from them?

Q. Yes.

A. I guess a foot, not any more.

Q. You were only a foot away from them?

A. Yes.

Q. And how far away from the door were they, how many feet?

A. About two feet.

Q. Well, were you inside the door?

A. I was on the outside of the door.

Q. Well, how——

A. I wasn't on the outside of the door; I was on the outside of the cage.

Q. On the outside of the cage? There is a door there, isn't there?

A. Yes, but I wasn't outside of the door; I was on the outside of the frame work. There is a door here I told you was two feet away from me.

Q. Isn't there a door there, too?

A. Yes, sir, there is a door there, but I wasn't on the outside of the door.

Q. Were the two men there together?

A. Yes, sir, they were both there together.

Q. And you all three held a conversation, didn't you?

A. Yes, sir, for a little while.

Q. And you are quite positive of what was said, are you?

A. Yes.

Q. Is there any doubt in your mind about it?

A. No, sir, no doubt at all.

Q. No doubt whatever?

A. No, sir.

Q. Very well; now then, since there is no doubt in your mind, suppose you tell me exactly what Mr. Geitz said to you?

A. At first?

Q. Yes.

A. I asked him what he was in there for and he told me stealing automobiles; that is the only words I had with Geitz.

Q. What else did he say?

A. Nothing at all.

Q. You are sure he didn't say anything else?

A. As far as I can remember; that is all I can remember, no, sir, nothing at all.

Q. And Mr. Young said after you refused to get them that you were a man, is that right?

A. No, I am going to tell you about that——

Q. Wait a minute; I didn't ask you that.

A. All right.

Q. You said when the conversation ended Mr. Young said, "You are a man," because you would not get the saws, is that right?

A. Yes, then he asked me something else.

Q. Then he asked you something else; in other words, he complimented you for your attitude in not getting the saws, is that right?

A. He did what?

Q. He complimented you upon the fact that you were a man in not getting the saws?

A. Yes, sir.

Q. He did?

A. Yes, sir.

LEWIS SHAW, sworn.

By the Prosecutor:

Q. Mr. Shaw, where do you live?

A. Haddonfield.

Q. Do you know the defendant?

A. Yes, sir.

Q. How long have you known him?

A. Several years, I don't know just how long.

Q. Since the defendant has been arrested charged with taking the life of Harry Garwood and been in-

carcerated in the county jail, have you had a conversation with him, and if so, when was it?

A. Why, it was about the 1st of October, about the first week in October.

Q. Now, what was that conversation?

A. Why, I saw him in the cage, in the county jail, and he said—I just spoke to him, he knew me, and he asked me how things were outside. I told him, "Rather slow," and he said, "This is an awful fix I'm in, isn't it?" And I did not answer him the first time.

Mr. Cleary: I could not hear.

The Court: Will you speak a little louder, Mr. Shaw?

The Witness: Yes, he said, "This is an awful fix I am in," and I didn't answer him, and then he talked about outside conditions, asked me how things were outside, meaning——

Mr. Cleary: Just a minute, please; I am going to ask the Prosecutor if his purpose in proving this testimony is the same purpose as the other testimony that is just introduced.

The Prosecutor: The same general line.

Mr. Cleary: Then I object to it on the same three grounds, if the Court please.

The Court: Very well.

Mr. Cleary: Will you allow me an exception?

The Court: Certainly.

Q. Go ahead.

A. Then he remarked again, he said, "This is an awful fix I am in." I said, "Well, what did you kill him for?" And he said he had been drinking bad whiskey; that is all he said about it.

Q. Did he make any request of you?

A. Yes, he asked me to get him some hacksaw blades.

Q. Well, just what did he say he wanted them for?

A. He asked me to get four hacksaw blades, said he could get out if he had the blades. I didn't make him any answer.

Cross-examination.

By Mr. Cleary:

Q. Now, what is your employment, Mr. Shaw?

A. I work for the Victor Talking Machine Company.

Q. Had you known Mr. Young before this time?

A. Yes, sir.

Q. How long had you known him?

A. Several years.

Q. Now, before you went to see Mr. Young on this day, where had you been?

A. We had been out in the woods.

Q. Who sent you to see Mr. Young?

A. No one.

Q. Had you had any conversation with any officers of the law before that time?

A. I had taken them out in the woods.

Q. Taken who out in the woods?

A. Detectives Doran and Smith.

Q. And Detectives Doran and Smith sent you up there, didn't they, to question this man?

A. They did not, no, sir.

Q. Did you get paid for taking them out in the woods?

A. I was paid for my time that I lost from the Victor.

Q. How much did you get paid?

A. $4.00.

Q. How much time did you lose?

A. A half a day.

Q. Now, what was your reason for going up there to see Mr. Young on that day?

A. I hadn't any reasons.

Q. Hadn't any reasons?

A. The head jailor, Mr. Voight, lives in Haddonfield, and he and I were going home, and he was coming down Market Street, and he went in the sheriff's office, and I had some time to spare while he was in there, and whoever he had to see was not in there, and he asked me if I would wait for him. In the meantime he said, "Have you ever been in the county jail?" And I said, "No." He said, "Would you like to walk through it?" and he took me up; that is how I came to be in there.

Q. Yes, that is how you came there, but how did you come to talk to Mr. Young?

A. Because I knew him.

Q. Oh, you asked for him, did you?

A. No, I did not.

Q. How did you happen to meet him there?

A. I walked down the corridor to the cage, and the keeper asked me if I knew him, and I said yes; I don't know who——

Q. How many prisoners were in that cage?

A. I don't know how many is in there.

Q. Did the keeper ask you if you know anybody els in that cage?

A. No, sir.

Q. Do you know why the keeper should ask you that, was there any reason for it?

A. I do not.

Q. And why he should even have an intimation that you knew Mr. Young?

The Court: Well now, that is not material.

Q. If you know.

The Court: That is not material, Mr. Cleary.

Q. But you mean to say that you went up in the jail there, for no purpose than just curiosity, and that somebody, for no purpose, then asked you if you wanted to see Mr. Young, is that right?

A. Asked me if I knew him.

Q. If you knew him—what did you say?

A. I told him yes, I knew him.

Q. And did you tell him you wanted to have a conversation with him?

A. No, sir.

Q. Well, how did you happen to have a conversation with him?

A. Because he came down.

Q. Who did?

A. Mr. Young.

Q. At anybody's request?

A. The keeper called him down.

Q. The keeper called him down?

A. Yes.

Q. And didn't you request the keeper to do it?

A. No, sir.

Q. What keeper was it?

A. I couldn't say.

Q. What kind of looking man was he?

A. Well, I didn't take any notice to him; I wasn't interested in him.

Q. Oh, you didn't take any notice? How is your memory—have you got a good memory?

A. I have.

Q. How is it you don't remember what kind of a looking man this keeper was?

A. A stout man, an elderly man, but I didn't look at him particularly.

Q. Do you know his name?

A. I do not.

Q. Now, how long did you talk to Mr. Young that day?

A. Probably ten minutes.

Q. Are you sure it wasn't an hour?

A. Absolutely sure it wasn't an hour.

Q. Are you sure it wasn't over ten minutes?

A. I couldn't say exactly how long it was, but it was only a short while.

Q. Now, is it true or is it not true that you were sent to see Mr. Young by the county detectives, because you knew Mr. Young and they wanted to secure some information from him through you?

A. They had nothing to do whatever with sending me there.

Q. Were you working at the Victor during this time? Are you still working at the Victor?

A. I am.

Q. What day of the week was this?

A. On a Friday.

Q. What time on Friday?

A. Possibly two o'clock in the afternoon.

Q. What was the date of Friday—what was the day of the month, do you know?

A. I couldn't say.

Q. Was it the 1st of October?

A. The first week in October.

Q. Now, had you been working at all at the Victor during that week?

A. I had worked all that week, worked that morning.

Q. Worked all that week but that morning?

A. I worked that morning.

Q. Oh, you worked that morning? What time was it that you were talking to Mr. Young?

A. In the afternoon.

Q. Oh, in the afternoon; now, had you taken the afternoon of the day off the day previously?

A. I had taken the afternoon of that day off.

Q. Of Friday?

A. Yes.

Q. How about Thursday—did you work all day Thursday?

A. I did.

Q. Did you work all day Wednesday?

A. I worked all that week.

Q. Well now, if you worked all that week, when did you take the Prosecutor out in the woods—I mean the Prosecutor's detectives?

A. That same afternoon, the detectives, the same day.

Q. Took them out the same day?

A. At noontime.

Q. And then for the object of curiosity you went to this jail and talked to this defendant, and a man that you don't know asked you whether you knew him, is that right?

A. I had a half an hour to spend and I just walked through there out of curiosity.

Q. And didn't you spend the whole half hour with Mr. Young?

A. I couldn't say exactly how long it was; it was only a short while.

Q. It might have been half an hour?

A. I don't think it was that long.

Q. It might have been?

The Court: Now, we have gone into that pretty thoroughly, Mr. Cleary, about the length of time he was there.

Q. But you were paid $4.00 for a half-day by the county detectives?

A. Not for going in the jail, for going out in the woods.

Q. How long had you been out in the woods with them?

The Court: That has no materiality, how long.

Mr. Cleary: If your Honor please, it has this materiality: I want to show he spent longer than a half hour, and he was paid for that time. That is the reason he was paid for it.

The Court: The length of time that he spent with the detectives in the woods, how would that have any bearing on the length of time he talked to Mr. Young in the jail?

Mr. Cleary: It would show how much of the balance of the day was left.

The Court: I can't see it, but I guess the shortest way is to let you ask it.

Q. Now, how long had you been out with these detectives?

A. Well, I went out there at noontime.

Q. What do you mean by noontime, twelve o'clock?

A. When the whistle blew at the factory I came to the Court House, and we got in a machine and went out in the woods.

Q. Where did you go?

A. Ellisburg.

Q. What time did you come back?

A. Just as soon as we got through.

Q. What was your object in going to the woods at Ellisburg?

A. I had been out there the week——

The Court: He has answered that, I think.

Mr. Cleary: He hasn't answered that.

Q. What is the answer to that?

A. I had been out in the woods the week previously with the hunting dogs.

Q. What for?

A. To exercise the dogs.

Q. And did you get paid for that by the Prosecutor's office?

A. I did not.

Q. What time did you get back to the Court House on that day, on the day in question, when you talked to this man?

A. Possibly two o'clock, I can't say exactly what time.

Q. Did you go immediately to the sheriff's office then?

A. I didn't go to the sheriff's office.

Q. Where did you go when you came back to the Court House?

A. Came to the Court House outside on the street.

Q. Did you go into the Court House?
A. I did.
Q. Where did you go?
A. To the jail.
Q. Did you go immediately to the jail from the outside?
A. Within a couple of minutes.
Q. You didn't stop in the sheriff's office that day?
A. No, sir.
Q. You went immediately from the automobile to the jail, is that it.

The Court: Is this another day?

Mr. Cleary: No, on the same day.

Q. Didn't you?
A. Mr. Voight, the jailor, was in the automobile when we came up here, and he went in the sheriff's office on an errand and he lives in my town and we were going home together.
Q. Wait a minute. Let's get this straight. You were out in an outomobile. Who was in that automobile?
A. Mr. Smith, Mr. Doran, the driver, Mr. Voight (the night jailor), and myself.
Q. And was Mr. Voight also with you on this trip to Ellisburg?
A. He took a ride in from Haddonfield. He came in from Haddonfield.
Q. When you went into the Court House, where did you go?
A. In the corridor.
Q. Where did you go from there?
A. Stood there until Mr. Voight went into the sheriff's office.

Q. You didn't go in the sheriff's office?
A. I did not.
Q. Did he come back to you?
A. He did.
Q. Did he take you up in the jail?
A. He did. Asked me if I would like to go through; he said he was detained until someone came back.
Q. How long did you stay in that jail?
A. I can't say, not very long.
Q. Well, how long?
A. Just a few minutes.
Q. And then you came out, did you?
A. I did.
Q. In company with Mr. Voight?
A. Mr. Voight.
Q. Was Mr. Voight present at the time of this conversation?
A. He was not.
Q. Where did you go after you came out with Mr. Voight?
A. Went down to the bank at Third and Market and got a check cashed.
Q. What check was it?

The Court: That, Mr. Cleary—I don't want to seem to do anything that is improper in checking this cross-examination, but I must not let this record be filled up with things that I feel immaterial, now, that certainly is immaterial.

Mr. Cleary: I will withdraw it if your Honor please.

Q. Now, where did you go from the bank? Did you come back to the jail again?

A. No, sir.

Q. Did you come back to the Court House at all that day?

A. No, sir.

Q. Did you see Mr. Young any more that day?

A. No, sir.

Q. Is that the only conversation you ever had with Mr. Young?

A. Yes, sir.

Q. And you got paid for a half day's work, did you?

The Court: He has testified to that three times. We will adjourn at this time; the defendant will be taken out of the court room. The jury may retire. The Court will recess until 1.30.

Trial of the cause resumed at 1.30 o'clock P. M., pursuant to adjournment, in the presence of the defendant, and counsel for the respective parties.

JAMES LOCKWOOD, sworn.

By the Prosecutor:

Q. Where do you live, my boy?

A. 263 Sycamore.

The Court: James, can you speak a little louder than that?

The Witness: Yes, sir.

The Court: Yes, don't be afraid to speak out loud.

Q. Were you in the county jail a short time ago, a few days or weeks ago?
A. Yes, sir.
Q. How old are you?
A. Fourteen.

The Prosecutor: If you have any doubt, you may examine, Mr. Cleary.

By Mr. Cleary:

Q. When will you be fourteen?
A. I was fourteen last April 16th.
Q. Do you go to Sunday School?
A. No, sir.
Q. You don't go to Sunday School? Did you ever go to Sunday School?
A. Yes.
Q. How long have you gone to Sunday School?
A. About five years ago.
Q. Do you believe in God?
A. Yes, sir.
Q. Do you know what happens to boys if they lie and don't tell the truth?
A. No, sir.
Q. What does God do to them if they lie and don't tell the truth?
A. Punish them.
Q. How does he do it?
A. I don't know.

The Court: That is a pretty difficult question for anyone to answer.

Q. What is your belief in how he does it—what do you believe the punishment to be?

The Court: I hardly think that is a very fair question.

By the Court:

Q. You know that you took an oath, don't you?
A. Yes, sir.
Q. Yes; now, what did that oath say that you must do—you must tell what?
A. Tell the truth.
Q. Yes, tell the truth; and if you don't tell the truth you know that you will be punished by God in some way, don't you?
A. Yes, sir.

The Court: Is there anything more that you want, Mr. Cleary?

Mr. Cleary: No, that is all.

By the Prosecutor:

Q. James, did you have a talk one day with the defendant, Mr. Young, up in the jail?
A. Yes, sir.
Q. How did you meet him?
A. I was talking to my father, and he walked over near me.
Q. Speak just as loud as you can son. What was said by Mr. Young to you?
A. Mr. Young, he says, "Son, get me six hacksaw blades, and here is a dollar, you can get them at any hardware store around."

Q. Did he give you a dollar?
A. Yes, sir.

Cross-examination.

By Mr. Cleary:

Q. Now, what is your first name?
A. James.
Q. Where do you live?
A. 263 Sycamore.
Q. What were you doing in the jail on this day?
A. I come up to see my father.
Q. To see whose father?
A. Mine.
Q. Where was your father in the jail, what part of the jail?
A. He was in the last cell all the way back.
Q. Was it where there were quite a lot of men or only a few men?
A. There was a whole lot of them.
Q. In a great big cage, was it like?
A. Yes.
Q. Where there are cells up and down the sides of the cage, an upstairs part to it, is there?
A. Yes, sir, up top.
Q. Oh, that part of the jail? What is your father's name?
A. William Lockwood.
Q. William what?
A. Lockwood.
Q. Where about were you in relation to the door of that cage?
A. I was right on the side where the screen is at.
Q. Was your father on the other side talking to you?

A. Yes, sir.

Q. While you were talking to your father did Mr. Young come up to you?

A. Yes, sir.

Q. Was your father there?

A. Yes, sir, he was right over on the side, too.

Q. Did he hear what was said?

A. I don't know, I guess he did though.

Q. Now, will you tell me again what Mr. Young said to you in the presence of your father?

A. Mr. Young says, "Here is a dollar; you get six hacksaw blades and bring them up; you can get them at any hardware store around."

Q. How did he give you the dollar?

A. He just stuck it through the screen.

Q. And you took it?

A. Yes.

Q. How many other people were around when he did that?

A. All the rest of the fellows was back there playing checkers and sitting down.

Q. Where was the turnkey or jailor?

A. He was sitting down in the chair.

Q. How close to you?

A. Well, from here to that there desk.

Q. From here to there?

A. Yes.

Q. And were you talking in an ordinary tone of conversation, the same as I am talking?

A. No, sir, he was talking low.

Q. And how was your father talking?

A. He was talking loud.

Q. He was talking loud?

A. Yes.

Q. Have you any brothers?

A. Yes, sir.

Q. How many?
A. One.
Q. How old is he?
A. About eleven.

The Court: How is that cross-examination?

Mr. Cleary: I am going to show the connection between that and a statement that this boy made to the defendant in relation to his brother at that time, to show the likelihood that this conversation took place.

The Court: Well, it seems quite remote, but you ask the question.

Mr. Cleary: If your Honor please, I hope you will indulge me a few minutes. This testimony is a surprise to me and I will have to consult with my client.

The Court: Very well. Take as short a time as possible.

Q. Now, had your father been talking to Mr. Young before, when you first arrived there?
A. No, sir.
Q. When he first arrived there——

The Court: Was he talking?

Q. Was your father talking to Mr. Young?
A. He was upstairs cleaning out his cell.
Q. Now, do you remember everything that was said on that day?
A. Yes, sir.
Q. Have you given me the full conversation?

A. Yes, sir.
Q. Everything?
A. Yes, sir.
Q. Did you or did you not say this, make this statement on that day to Mr. Young, and your father, that your brother hadn't made much money that week and he didn't have anything to eat in the house?
A. No, sir.
Q. Did you say that to your father?
A. No, sir.
Q. Didn't your father ask you whether you had brought him any money for tobacco?
A. No, sir.

The Prosecutor: I can't see what materiality this has to the testimony of this child.

The Court: It is very remote, but he has testified this is all the conversation that he had with Mr. Young, and therefore these questions are put to him for the purpose, I presume, of contradicting him.

Q. And didn't Mr. Young then ask you whether you had anything to eat or not?
A. No, sir.
Q. And didn't you say, "No"?
A. No, sir
Q And didn't he say, "Son, take this dollar and you can get something to eat"?
A. No, sir.
Q. And didn't you return shortly afterward, the next day?
A. Yes, sir.
Q. And didn't you ask him for more money?
A. No, sir, I didn't go upstairs.

Q. Did you ever see Mr. Young after that time?
A. No, sir.
Q. And didn't you say on another occasion that if Mr. Young gave you more money you would go and buy him a hacksaw?

The Court: Well——

A. No, sir.

The Court: Of course, it is answered now, but you must fix the time.

Q. Wasn't it your father that asked you to go and get the hacksaws?
A. No, sir, it was Mr. Young.

LAWRENCE T. DORAN, recalled.

By the Prosecutor:

Q. I show you two license tags, Nos. 233163, the year 1921, of New Jersey, marked Exhibit S13, and ask whether you found those tags and where?
A. Those tags were taken from the car that Guilford Young admitted he was in at the time of his arrest, a Ford sedan.

No cross-examination.

HARRY F. RANDALL, sworn.

By the Prosecutor:

Q. What is your name?
A. Harry F. Randall, sir.
Q. Do you know the defendant, Guilford Young?
A. Just by being here before, sir. I was arrested for a furniture bill, and I was sent up here, and that is how I got acquainted with him.
Q. In the county jail?
A. Yes, sir.
Q. Did you have a conversation with him on August 30th? Did you have a conversation with him about his case?
A. Why, no, sir; he only asked me to write a letter for him and I did.
Q. Write a letter to whom?
A. To his wife.
Q. Is that the letter?

(Examining counsel shows letter to witness.)

Mr. Cleary: If your Honor please, I object to the introduction or reading of any testimony in relation to this letter before it is made, anticipating it, on the ground it is a confidential communication between husband and wife and cannot be introduced in evidence.

The Court: Mr. Cleary, it could hardly be a confidential communication between husband and wife, because it was not made to the wife. The confidential communication between husband and wife, as I understand it, is something the husband has told

the wife or the wife told the husband, and those confidences are protected, but where a person secures another to act, why it seems to me it is not a confidential communication. I will be very glad to hear you if you can show me authorities otherwise.

Mr. Cleary: If your Honor please, it is my idea of the law that a confidential communication consists either of communication by words, directly from the husband or the wife, or they can consist of a letter which is written either by the husband or the wife, through either himself or a confidential agent, to the wife or to the husband, and that that letter cannot be introduced in evidence by the wife or by anybody else through her connivance. The Statute of New Jersey, in relation to the introduction of evidence, says that no confidential communication can be introduced relating to a husband and wife, and the cases have held that the law that I have stated is the law.

The Court: Well, that's all very true where the statement is in the form of a letter written by the husband to the wife or vice versa, but here is a statement made by the defendant to this man. It may have been to be communicated to his wife, but doesn't that really destroy the confidential character of it? It would seem to me it did.

The Prosecutor: I am not offering this yet. I think I have a right to, but I am not offering this letter in evidence as a letter to the wife. I am inquiring from this witness as to the circumstances that took place between the defendant and himself.

The Court: That is what I understand, and that is, that this defendant made certain statements to this witness and that he would simply use something to refresh his recollection to state what the defendant told him at the time.

The Prosecutor: That is it exactly.

The Court: Even though they might have been intended for his wife.

The Prosecutor: That is my position.

Mr. Cleary: If your Honor please, I don't know what the next question is but I want to anticipate any answer by this witness.

Q. Mr. Randall, will you be so kind as not to answer any of my questions until Mr. Cleary has had an opportunity to object. When you had this conversation with Guilford Young, for what purpose was the conversation? Did he make any statements to you about his case?

A. Why, no, sir. He only just told me what to write on the letter and I wrote.

Q. Wrote a letter, you say?

A. Yes, sir.

Q. Is this letter that I show to you the one that you wrote at the time you are now testifying to?

A. I don't know that I can remember everything, but I will do the best I can remember, I have been gassed, and it is pretty hard to remember.

Q. I merely ask you is that letter in your handwriting?

A. That's it, sir.

Q. And that is the letter you wrote at the time

you had this conversation with Guilford Young, is it?

A. Yes, sir.

Q. And those words that are contained in that letter, are they your words, or that which was given to you by the defendant to say?

A. Given to me by him, sir.

Q. Then do I understand that he wanted you to write a letter for him, is that right?

A. That's it, sir. I wrote several letters, two letters for him.

Q. And this is one of them?

A. Yes, sir.

Q. And he told you what to say?

A. Yes, sir.

Q. And as he told you what to say, you wrote it down?

A. Yes, sir.

Q. Could you by looking at that letter, refresh your memory and tell us what he told you at that time?

A. I can read the letter if you want me.

Mr. Cleary: If your Honor please, I object to the witness refreshing his memory as to this letter, because I still claim it to be a confidential communication.

Q. And you could testify to the exact words he gave you to put in the letter by looking at the letter?

A. Yes, sir.

Q. And you could not do it without looking at the letter?

A. Why, no.

Q. But you could by looking at the letter and refreshing your memory?

A. I could, sir.

Q. Looking at the letter to refresh your memory can you tell us what the defendant said to you at that time?

The Court: Now, just wait a minute. I can't recall any case in this state, just at present, on that subject. Is there any case?

Mr. Cleary: Not in this state, I don't think, your Honor.

The Prosecutor: If the Court please, the basis or theory that justified your Honor this morning where the testimony of Mr. Morris was offered, where the defendant requested him to convey a communication to his wife, in that case it was oral. In this case, the same communication—I don't mean, by using the word "same" the same words Mr. Morris testified to but the same thing in a different way by requesting this witness to write a letter to the wife, so that we are introducing statements made by the defendant to this witness and for the same reason that we introduced the testimony this morning by Mr. Morris. It is no communication between a husband and wife. It is a statement made by the defendant to a fellow prisoner.

The Court: Well, that is the way it strikes me. I was just thinking, supposing that I dictated a letter to the stenographer, to be sent to my wife, as to whether that destroyed the confidential nature of that letter by the mere dictation of it to someone else. I am rather inclined to the view that it does; that the confidential communication must be one that is disclosed to no outside party. That seems to my mind to be logical. I think I will receive this.

Mr. Cleary: If your Honor please, will you allow me an exception?

The Court: Yes, I will allow you an exception.

Mr. Cleary: I make my objection on this ground: That if a man cannot write and he desires to send a letter to his wife, he must obtain the aid of some other person to do it. Now, the fact that he has obtained aid in a confidential manner will not destroy the confidential character of that letter, because it is a case of necessity, and I will attempt to show it was a necessity for this man to get someone else to write his letters. Furthermore I base it upon the ground as outlined in 40 Cyc. 2213, and the cases therein cited that third persons cannot testify as to confidential communications made between husband and wife, irrespective of whether they are done through a confidential agency or not. Furthermore I object to it on the ground that the Prosecutor has not proved that this letter was ever sent by the defendant or that the wife ever received it, as far as that is concerned. It is only an evasion of the rule to get the witness to refresh his memory by reading a letter, and it destroys the theory upon which I claim the letter should not be admitted. Furthermore, if this letter was obtained by the Prosecutor through the connivance of the wife of this defendant, it cannot be introduced in evidence. The Prosecutor should show where he received that letter before the letter can be even used to refresh the recollection of that witness.

The Prosecutor: If the Court please, the premise of Mr. Cleary's argument is not a fact. He states that the defendant could not read. There is nothing

before the Court to indicate such a fact. In the second place, we are not introducing it as having been received by the wife or not received by the wife.

The Court: That is what I understand. This witness is merely testifying to something he wrote down and he is using this letter or memoranda to refresh his recollection of what the defendant said at the time, and I am allowing it.

Mr. Cleary: I have a further ground, if your Honor please.

The Court: Now, if you think it will avail you, I will give you permission to state it.

Mr. Cleary: I want it for the purpose of the record.

The Court: They won't look at it in the appellate court, just purely upon the ground you put. Sometimes you are better off not to state any ground, very much upon the principle Lord Eldon once stated in telling students who made failures of their lives in England, and who were to be sent to Australia to be judges, to render their decisions promptly, but not to give the reasons for them, because the decisions would probably be correct but if they gave the reasons, the reasons would probably be wrong; but still I am not going to limit you. If you want to state any further grounds, please do so, and state them as briefly as you can.

Mr. Cleary: I am going to state the further ground that it is immaterial, irrelevant and incompetent.

The Court: You have everything in there now.

Mr. Cleary: If your Honor please, my objection to it next, another objection—that is only one of them—my next objection is that a person in a confidential relation with a person who dictated the letter cannot be compelled to disclose the contents of that letter, regardless of whether he is asked to read the letter or asked to refresh his memory by it. It is the same thing. It is destroying the confidential nature of the letter. May I have an exception upon these grounds?

(Exception noted for defendant.)

By the Prosecutor:

Q. Mr. Randall, look at the letter, and refreshing your memory from what the defendant said, will you tell us what he did say on that occasion?

A. Do you want me to read it?

Q. Refresh your memory from it.

Mr. Cleary: If the Court please, I don't want this witness to read the letter; he can refresh his memory from it.

The Court: Of course, he could only refresh his memory by reading it.

Mr. Cleary: I mean, if the Court please, I don't want him to read it aloud; that is what I meant to say.

The Witness: Do you want me to read it to myself?

Mr. Cleary: If your Honor will instruct the witness what you desire him to do——

The Court: You just read the letter to yourself, and then tell what Mr. Young said to you.

Mr. Cleary: But don't read the letter aloud; is that all right, your Honor?

The Court: Yes.

The Prosecutor: The witness has said because of his gassed condition it would be impossible for him to remember very well; would it be possible for him to read partly and then from recollection of what he has read say that, and so on? The letter is a rather lengthy letter, and I doubt if anyone, even if he had not been gassed, would be able to remember it all.

The Court: I think he may read the letter first and then refresh his recollection from each portion of the letter and state what Mr. Young said to him.

The Witness: He says for his wife to stick by him.

Mr. Cleary: Wait a minute; you are not reading that letter now, are you? Just tell from your own memory what it says.

The Witness: I just finished it.

The Prosecutor: If the Court please, I would like to say this; that it has never been my thought that where a witness makes a memorandum at the time

of what takes place, that he cannot go through it line by line, stating just exactly——

The Court: Oh, I am not holding that at all; I am giving him permission to read the letter first all the way through, and I think that he is entitled to; then I am going permit him to refresh his recollection, and state by referring to the letter as frequently as he wants to, just what Mr. Young said.

The Prosecutor: The exact words?

The Court: The exact words.

Mr. Cleary: If the Court please, do I understand you to mean then he can read the letter sentence by sentence, reading from the letter?

The Court: Well, he is not reading the letter; he is refreshing his recollection.

Mr. Cleary: If the Court please, I object to that procedure; may I have an exception?

The Court: You may have an exception to it.

Q. Proceed.
A. You want me to read it?

The Court: Just look at the letter and then say what Mr. Young said.

The Witness: You see, I don't understand like all you people; I am from the cow country, and I am a little ignorant, see, I don't understand.

The Court: We are going to make it just as easy for you as we can, Mr. Randall; don't be worried about that.

By the Prosecutor:

Q. Mr. Randall, you have told me that you wrote down word for word what he said?

A. Yes, sir.

Q. You or no other living man could remember that at this day word for word, could we?

A. Not so very well, sir.

Q. But we could remember it word for word if we looked at the letter and got each word, couldn't we?

A. Why, yes.

Q. The Court has ruled that you may look at the letter word by word to get the exact words the defendant said.

The Court: You just look at the letter.

The Prosecutor: Even though you have to look at each word at a time, to get just what he said.

The Court: Look at each word and then tell what he said.

The Prosecutor: You can give us one word at a time if you wish.

Mr. Cleary: If the Court please, I can't see any difference between that and reading the letter itself.

The Court: Well, you are the one that objected

to reading the letter. That is the proper way to do it.

Q. What was the first word he said?

A. "My dear wife."

Q. And what were the next words he said?

A. "I am dropping you a few lines to let you know that they had Martin and I together yesterday for cross-questioning. He had lied about everything; he said that I stole the automobiles, which is a lie. He said it is the truth and will stick to it until death, so there is only one thing for me to do, is for you to stick by me. Say it is the truth, dear wife, that Garwood had you and had been running around with you, for you are the only one that can save my life. Do you know that I am in an awful fix? But never mind the disgrace to the name, for they can't do nothing to you; they can't bring you into the case in any way. I realize now what a good wife you was to me; I used to think that you did not love me, but now I see that your whole heart and soul is in me, but now it is too late to realize it, for I love you, dear wife and always will, and will take you many miles where no one knows us and start life over, if I ever get free from this torture."

Q. Go on.

A. "So please, dear wife, do that for me. If it will save my life I will do everything in the world to make you happy; there will be nothing too much for me to do for you when I get out. Never mind what is said about you on the witness stand, for you know that I know different, for I know that you are a good wife, and I love you for now for no one will lead me astray again, I shall love you and the children only. In speaking of Garwood I know it would be awful hard to you, but you know my life is worth

a whole lot for you." There are some words put in that I didn't write.

Mr. Cleary: Some what?

The Witness: Some words here that I didn't write; it is not my writing.

The Court: Well, don't read anything—don't refer—you can't——

Q. Don't refer to anything—if anyone else helped you to write this letter up-stairs, don't read anything that they said, just what you put in.

A. "I will only have to serve a few years in prison and won't get the chair. I prayed for you all last night, for you, what to do all night, for God tells me to send you this message. You know when I get out of prison I will make a man of myself, I will have a good education, for they send all prisoners to school, and I will take up mechanical engineering so I can step out into the world and make good money to make you happy and trust in God that this letter gets to you, for I am sneaking it out so no one will know but ourselves. So God bless you and don't forget that my life is in danger. Your heart-broken husband. P. S. Burn it up as soon as you read it. I hope you and the children are all well. Good-Bye."

Q. Is that what he said to you in the county jail?

A. Yes, sir.

Q. Is there anything in there that he did not say to you in the county jail?

A. Why, he told me that Garwood was running around with his wife for eight years, and that is why he did this.

Cross-examination.

By Mr. Cleary:

Q. Now, will you show me what part of that is not your writing? Is that it, "to serve"?

A. Yes, sir.

Q. That is not yours?

A. No, sir.

Q. Do you know who wrote it in there?

A. I don't know, sir.

Q. Any place else that is not your writing?

A. All the rest is mine, sir.

Q. Now, your name is what?

A. Harry F. Randall, sir.

Q. Mr. Randall, you are not testifying from what you remember that day, are you, except from that letter?

A. That is all I remember.

Q. So if any parts of that letter had been changed you would not remember the difference, would you?

A. Why sir, I have my mind.

Q. I know, but if some part of that letter had been changed, you would not be able to say now what part had been changed, would you?

A. I don't know.

Q. You wouldn't know? Now, how many years schooling have you had, Mr. Randall?

A. Why, I have had just a few; I have been in the border sections all my life and among ignorant people that don't know nothing, and I picked it up here and there.

Q. What state do you come from?

A. Why, I am from the State of Texas.

Q. Texas?

A. Corpus Christi, Texas.

Q. I see, now, Mr. Randall, what time did you leave Texas, how old were you?

A. In 1912, my dad was killed, shot down there by Mexican outlaws.

Q. What happened to you?

A. I went across the border and I came back and I was abused by my stepfather; my mother was married over agan and I was abused and ran away and served my time in the American Army.

Q. Were you in France?

A. I was eighteen months; I was gassed and taken prisoner of war, which I remained eight months and twenty-seven days in prison.

Q. What time did you come back to this country?

The Court: This is interesting, but it is rather remote, Mr. Cleary. Of course, you have a perfect right, I think, if you want to press the questions, to have them answered to establish the identity.

Mr. Cleary: If the Court please, I would like to know enough about this young man's life to determine whether or not he is a truthful witness.

The Court: Well, of course, we can't go over everything in everybody's life to find that out.

Mr. Cleary: I promise your Honor to confine it to a few more questions.

The Court: All right, if you will confine it to a few more questions.

Q. What time did you get back to this country?

A. I came back here in 1919.

Q. What were you arrested for this time?

A. I was arrested for furniture which I wasn't guilty of; I got some furniture at Gately & Hurley—to tell you the truth I was staying with a woman that was married, and she was the whole cause of my being here to-day.

Q. Were you convicted?

A. Why, yes, sir, and they had kept me here.

Q. How long was your sentence?

The Court: That is immaterial.

The Witness: No, I was not convicted.

Mr. Cleary: If the Court please, I want to show whether or not he was in the jail at that time.

The Court: Just ask him that question—were you in the jail at that time?

Q. Were you in the jail at this time?

The Prosecutor: What time?

Q. That this letter was written.

The Court: He has already asked him that.

Q. Were you in the jail at the time this letter was written?

A. Yes.

Q. And were you serving time at that time?

A. I was waiting for trial.

Q. Waiting for trial at that time?

A. Yes.

Q. You had not been convicted?

A. No, sir.

Q. How much schooling have you had, Mr. Randall?

A. A few years.

Q. How many years as an actual fact?

A. I should say about four—what I have picked up among the American people.

Q. You are not a very good reader, are you?

A. Not so much.

Q. You are not a very good writer, are you?

A. You can see, sir, no.

Q. And if a person told you what to say in a letter you would not be apt to get the exact words down, would you?

A. Why, yes, I would, because I know nothing about his business; I know nothing about anybody's business.

Q. Now, do you know what Mr. Young wanted you to say on that occasion—you know what he wanted you to say, do you?

A. Why, he told me.

Q. Now, what was the purport of what he wanted to say in that letter?

The Prosecutor: Couldn't you use a different word from "purport"?

Q. What was the object—what were the things you wanted to tell in that letter—what was his idea about the letter?

A. Why, for his wife to stick by him.

Q. Why?

(Objected to.)

A. Why, to save him.

The Court: That question is not permissible; this witness could not give any better answer to that than anybody else could.

Mr. Cleary: All right, I will withdraw the question then.

Q. Now, Mr. Randall, wasn't your idea at the time that Mr. Young told you to write this letter, that he wanted his wife to tell the truth about the case?

(Objected to.)

The Court: No, I will overrule that question, that is a thing that is speculative.

Q. Did Mr. Young tell you to put in that letter that he wanted his wife to tell the truth about the matter?

A. Why, no, sir, it is all what is in this letter.

Q. Well, isn't that what he wanted you to put in the letter? Isn't that what is in the letter?

A. Everything in the letter what I wrote is just what he told me.

Q. All right; now, let's see that part of the letter which speaks about the truth. Now, doesn't he say, instead of the way that you read it, isn't this what he said—isn't this what I am reading here, and isn't this what is on here, he said, "Stick by me, say it is the truth"?

A. Yes.

Q. Now, isn't that what he said?

A. Yes.

Q. Now, didn't he mean by that——

The Prosecutor: I object, if the Court please.

The Court: Oh, no, no, Mr. Cleary, you can't ask this witness what he meant by that.

Mr. Cleary: I withdraw that question.

Q. What idea——wait a minute; don't answer this question: By the conversation with Mr. Young what idea was conveyed to your mind as to what he wanted to say?

The Prosecutor: I object to that.

The Court: No, that question is overruled.

Q. Is or isn't the statement in this letter incorrect if it means that Mr. Young told you to say that, told you to tell his wife not to tell the truth?

(Objected to.)

The Court: The objection will be sustained.

Mr. Cleary: May I have an exception to this ruling?

The Court: You may have an exception.

(Exception noted for defendant.)

Q. Isn't this statement here, "Say it is the truth," incorrect and not what Mr. Young told you to say?
A. By me say it is the truth.

Mr. Cleary: Now, if your Honor please, I don't know how I am going to frame a question that can get the idea into the mind of the witness as to what

I want but it certainly does seem to me that the witness here should be allowed to show that when he used these words, "Say it is the truth, dear wife," that he meant for his wife to tell the truth and not to tell a lie.

The Court: That is for Mr. Young to state, not this witness. This witness can't read Mr. Young's mind and interpret that.

Mr. Cleary: If your Honor please, the words, "Say it is the truth," that imports to my mind it may mean she is not to lie about it as far as not telling the truth is concerned, or it may have meant she was to lie about it when it wasn't the truth. Now then, the witness here know what idea was in Mr. Young's mind.

The Court: Oh, no, he doesn't. He is only testifying to what Mr. Young said. Now, you see, Mr. Cleary, that is a matter for you and Mr. Young to confer about. Mr. Young can better tell what was in his mind than this witness could tell what was in his mind.

Mr. Cleary: I withdraw all those questions, if your Honor please.

Q. Now, Mr. Randall, this is not word for word, what this man said?

A. Why, that's what he told me to put on the letter.

Q. I know. It isn't word for word. Didn't he say this thing to you in sentences and you put it down in sentences?

A. Why, yes.

Q. He didn't dictate the word, "I," and you wrote the word, "I." He didn't dictate the word, "am." He may have said this, "I am dropping you a few lines," and didn't you write them?

A. Yes, sir, that's the way.

Q. And it may be that there was even a little bit more said than you wrote down, isn't it?

A. Why, no, everything he told me to say I put down in the letter.

Q. I know, but he said it in a conversational sort of way, like I am talking to you. He didn't say it this way, "I," and you wrote the word down, "I," and he said the word, "am," and you wrote the word, "am," and the word, "dropping," and you wrote the word, "dropping," and you wrote the word. What he said was this, "Now, Randall, you write a letter to my wife and tell her that I am dropping her a few lines and that I have seen Martin and we have been cross-examined," isn't that the truth?

A. Why, he didn't say it so fast. He said it slower. Yes, sir.

Q. But you didn't write down each word as he said it though. Isn't that the manner in which he said it?

A. Why, yes, sir.

Q. And you are not a very good scholar, are you?

The Court: He said that he wasn't, about three times. The witness has been perfectly frank about that.

Mr. Cleary: I don't know that I asked him about the word, "scholar," it is the same thing as reading and writing and arithmetic, I left that out.

The Court: We assume that's in.

Q. Are you still in the county jail?

A. Yes, sir, I came in here the 7th of the month and the same night I was in the "E" section and the next night they run me in the cells in the back, and I was treated awful in there and it was dark.

Q. What cell?

A. The boy's section.

The Court: That is immaterial; whether he was in the jail, that you have a right to ask.

Mr. Cleary: I have been informed—I don't know whether it is the truth yet, I haven't had an opportunity to prove that, but I am going to take the risk of asking this witness that he was put in when he was arrested as a material witness in this case, about three month's ago, that he was put in a dark cell, as he has just testified to, and that he has been warned that if he comes down in this court room and testifies for Mr. Young, he will be put back in that dark cell.

The Court: As far as that is concerned, you can ask him that question, that is relevant.

Q. Did or did not you occupy a dark cell when you were first arrested in this case?

The Court: That isn't the question.

Mr. Cleary: I withdraw that.

The Court: The question is, what has been said to him, by whom, when and where, with reference to what he should do as a witness in this case.

Q. Has anybody said anything to you lately in relation to what you should say in this case?

A. Why, the runners told me up there, he said, "If you don't stick by them fellows down there, they will throw you back in the dark cell again," which I cannot stand it.

Q. Whom did they mean? Do you know whom they meant by "The fellows down there"?

A. Why, I guess they meant the keepers and the detectives.

Q. You had occupied a dark cell before?

The Court: That's not proper.

Q. Did you know what they meant by a dark cell?

A. Why, yes, where I was before.

Q. And how long ago was this said to you?

A. Why, it has been said right along. They had me most crazy up-stairs there and I can't stand no hardships, or anything like that. I could once stand it, but now I can't.

The Court: That is immaterial. Mr. Randall, have you said anything here to-day that was not the truth, under any fear?

The Witness: I told you everything the truth, sir.

The Court: The truth?

The Witness: Yes, sir.

Q. Now, wasn't there some things that he told you that day that you didn't put in the letter, that he told you to put in the letter?

A. Some things? He didn't.

Q. Did he tell you to put in the letter anything that you didn't put in? I mean, by accident or mistake?

A. No, I put in everything he said.

Q. Didn't he say to you on that occasion to put in that letter that the reason he was writing to her was because he knew about her and Garwood and he wanted her to tell the truth about it?

The Court: I think you have asked that question before.

Mr. Cleary: All right, I withdraw it. Never mind. That's all.

The Prosecutor: If the Court please, I think I have already done so, but I offer all these exhibits that I have introduced in evidence as exhibits. I make that offer so as to be certain I have offered them all as exhibits. Is there any objection?

Mr. Cleary: No, except that letter.

The Court: All of those exhibits that have been marked as exhibits, whether for identification or not, will be received in evidence at this time.

The Prosecutor: The State closes.

STATE RESTS.

GUILFORD C. YOUNG, recalled.

By Mr. Cleary:

Q. Now, Mr. Young, what is your full name?
A. Guilford Cass Young.
Q. How old are you?
A. Twenty-eight years old, born 1893 on the second day of June.
Q. Where were you born?
A. Bridgeton, New Jersey.
Q. Have you lived in New Jersey all your life?
A. Why, I have lived in New Jersey all my life, all but except a very short time.
Q. Until the time you was thirteen years of age, how many places did you live in, naming the places?
A. From the time I was thirteen?
Q. Until the time you were thirteen, from the time you were born, until the time you were thirteen?
A. As far as I can remember, the first place I remember was Blackwood, New Jersey. My parents were farmers. I lived there for somewhere between four and five years of age, I was then. We moved to Franklinville, New Jersey, not knowing how long they lived there, but not so awfully long. We moved from there to a place between Glassboro and Hurffville, a farm by the name of Moss' farm. Father stayed there a while but not very long. He moved from there to a farm along the Glassboro and Hurffville road. He stayed there for a while, not very long. He moved from there to another farm near Glassboro, which there I went to school in Glassboro a while.
Q. Never mind about your going to school. Just tell us the places, where you lived.

A. And we went from there to Port Indian, Pennsylvania, which he stayed a year. He moved there and from Port Indian to Paulsboro, New Jersey. From Paulsboro, New Jersey, he moved to Almonessen, New Jersey. From Almonessen, New Jersey, he moved back to Paulsboro again. There I was thirteen years old. Before we moved from Paulsboro I was between thirteen and fourteen years of age, when we moved to Haddonfield.

Q. Where did you move to from Paulsboro?

A. Sir?

Q. Where did you move to from Paulsboro?

A. Haddonfield.

Q. And have you lived in Haddonfield ever since, with the exception of a few months of the time?

A. I have up until I was married.

Q. Now, how many years schooling have you had?

A. Between about three seasons, not no summer season, that is off and on, not steady.

Q. And have you ever attended any church or Sunday School?

A. Once in a great while I would go to Sunday School, myself.

Q. Where, in Haddonfield?

A. I never went to Sunday School in Haddonfield. I went to church in Haddonfield, I went to Sunday School in Paulsboro, when I was a boy.

Q. And what the highest grade you ever attained in school?

A. Fourth grade.

Q. Now, what about your occupation? What is your occupation, or what was your occupation?

A. At the present time or before?

Q. Starting from the time you were thirteen years of age.

The Court: Couldn't we start a little later than that, Mr. Cleary, because these questions are all very preliminary questions and ought to be made just as brief as possible.

Mr. Cleary: All right.

Q. How many different occupations have you had in your life?

A. I first worked for Miller, in Almonessen, on a farm. From there, then my father on a farm.

Q. How old were you when you first started to work?

A. Eight years of age.

Q. Then what did you do? What was the first time you made any money by working?

A. For a farmer in Almonessen.

Q. And how much did you make then?

The Court: Mr. Cleary, I just want to say, of course, it is perfectly proper for a man to give a few sentences about his history, but we can't have an entire life history, you know, and just make it as brief as you can.

Mr. Cleary: If your Honor please, I know the object of that is just sort of preliminary but my object it not a preliminary matter. It is for another purpose altogether, if your Honor please, I wanted to show by his character of work. It is another point I want to bring out.

The Prosecutor: The only basis upon which I can see he might be continuing so thorough and complete an examination would be on the basis that he might want to lay some ground for insanity. Is that the case?

Mr. Cleary: No, there is no such intimation in the case and I don't think counsel is warranted in saying it.

The Court: There is nothing in the opening that would justify that. I can not see what relevancy to any matter that you presented, the different employments and the different schools and the different churches that this man went to, would have any bearing.

Mr. Cleary: If your Honor please, it will only take a few more questions to complete my examination.

Q. How many different occupations have you worked at and what were the occupations, without saying where you worked at and how much you made, just tell me what these occupations were.

A. One was laboring work, they were all laboring work. Well, I can't every well explain the question in that way.

Q. What were you, a steamfitter, plumber, or what?

A. Steamfitter and plumber.

Q. How long did you work at that?

A. From the time I was sixteen until the time I was arrested, outside of a few weeks driving rivets at the New York shipyard.

Q. Where were you working sometime in February this year?

A. I was working for McAndrews and Forbes Licorice Works, and later, after that, I was working for Cramp's shipyard.

Q. Do you know about when you became employed by Cramp's shipyard?

A. Why, not the exact date. I was laid off on account of being slack of work at the licorice works, McAndrews & Forbes; Friday, at one o'clock. I went over to Philadelphia the same day and rehired at half-past two at Cramp's shipyard and went to work there at once.

Q. And were you working there the day before this 23rd of July?

A. I was.

Q. Have you worked at Cramp's shipyard every day before this 23rd day of July?

A. All except one day or two afternoons which I took off to get my tools.

Q. Now, what time was the usual time for you to leave in the morning on your way to work from Haddonfield?

A. I left my home about half-past six in the morning and took the seven o'clock——

Q. How would you ride to your place of employment?

A. Most by steam train.

Q. From Haddonfield?

A. Yes, sir.

Q. Where does that steam train land you?

A. Camden ferry.

Q. Whereabouts?

A. Market Street Ferry.

Q. On which side of the ferry?

A. On the south side, I think. On the side toward the street, in other words.

Q. Did you on the 23rd day of July leave your house for your place of work?

A. I did.

Q. What time did you go?

A. About six-thirty in the morning.

Q. How did you travel from that time on?

A. I traveled up on the train.

Q. Where did you go, to Camden?

A. To Camden.

Q. Where did the train pull in?

A. At Market Street Ferry.

Q. On which side?

A. About two tracks over from the street.

Q. Is there a railing or is there not a railing at that particular point on the train shed or terminal there?

A. There is a railing.

Q. Can you see through that railing?

A. Yes, sir.

Q. Can you see across Federal Street?

A. Yes.

Q. Do you know Harry Garwood?

A. I have known Harry Garwood a few weeks before I got married.

Q. Now, will you tell me the first time that you saw Harry Garwood, when and where it was without showing under what circumstances?

A. I seen Harry Garwood driving with my wife one time.

Q. She was not your wife then, was she?

A. Not at that time.

Q. That was before you married your present wife?

A. That was before I was married.

Q. Where was he and she driving?

A. They were driving down East Kings Highway in Haddonfield.

Q. And when was the next time that you saw her?

A. The next time that I seen them together was at Rosedale Avenue, I think; it might have been at Green Tree.

Q. Was he with anybody at that time?

A. He was with my wife at that time.
Q. Was she married to you then?
A. She was.
Q. Where did you next see him?
A. Rosedale Avenue, in Haddonfield.
Q. Were you living on Rosedale Avenue?
A. I was not; my mother-in-law was.
Q. With whom was he at that time, if anybody?
A. In company with my wife, I believe.
Q. Did you see him again?
A. The next time that I seen Harry Garwood, he was coming out of my home on Ellis Street.
Q. Was he riding, or what did he do after he left your home?
A. Why, if I am not mistaken, he got in the car and went out Ellis Street.
Q. When did you next see him?
A. The next time I seen him I seen him out on a road toward Evans Woods.
Q. And with whom was he at that time, if anybody?
A. In company with my wife.
Q. Where did you next see him?
A. The next time that I seen him was down Grove Street in Haddonfield.
Q. Was he with anybody at that time?
A. In company of my wife.
Q. Where was the next time you saw him?
A. The next time I seen him was coming down—I just can't think of the name of the street, it was there by Tanner Street, but I can't think of the name of the street it was on.
Q. With whom was he at that time?
A. In company with my wife.
Q. Did or did not you ever see him out riding in the automobile?

A. Yes, sir, going down Broadway.

Q. Broadway where?

A. Broadway, Camden, New Jersey, toward Gloucester.

Q. Was he with anybody at that time?

A. In company with my wife.

Q. Now, sometime before the shooting, had you ever said anything to any attorneys about your wife and Garwood? If so, will you tell me the names of the attorneys?

The Prosecutor: If the Court please, I don't think any statement made by this witness to anybody else would be admissible; they would be self-serving declarations.

The Court: I think they are self-serving declarations.

Mr. Cleary: If the Court please, on that point I have a case in New Jersey, which holds this——

The Prosecutor: What is the name of the case, Mr. Cleary?

The Court: Let me see the case.

Mr. Cleary: I don't know the name of the case, if the Court please, but it is reported in 15 Atlantic Reporter, page 836.

The Court: Well, we will get the Atlantic Reporter.

Mr. Cleary: If the Court please, may I tell you my idea about that case at the present time?

The Court: Certainly.

Mr. Cleary: In that case—I think it was a homicide case, where the accused man was charged with having murdered his wife for a certain purpose; the State alleged one motive, and three months, I think, before the time that the crime was committed, the defendant had said certain things and performed certain acts which showed that he did not on the day in question have an intent to commit the crime for the motive alleged, and it was said by the Court in that case that the defendant, for the purpose of contradicting the motive of the prosecution, alleged by the prosecution, could show either another motive or no motive at all, and they admitted the testimony of the thing that had occurred at least three months before that time for the purpose of showing what was in the mind of the defendant on the day in question.

The Prosecutor: If the Court please, I would assume from the opening that Mr. Cleary made to the jury, using his exact words, almost, making a memorandum of them, as he said them, that he wished the jury to distinctly understand that this man was not killed by revenge or because he was going with Garwood's wife, but because this man acted in self defense. Now, if the theory of the defense is that this crime, if explainable at all, is on the basis of self defense, then certainly it seems to me there could be no relevancy whatever in any statements made by this man to attorneys about his wife, if he ever did make any such statement. In that case—I haven't it here—I would imagine the defense was probably what by some has been termed the Unwritten Law.

Mr. Cleary: If the Court please, the Prosecutor is, strange to say, entirely mistaken. There is no plea of the Unwritten Law in this case, and there is not going to be any such plea. The reason why I want this testimony introduced is for the purpose of showing that on the day in question when the Prosecutor alleges in his opening that it was the motive of the defendant in going to that car, to get that car out in the woods or in this lonely place for the purpose of robbing this man—I want to show that the idea and intent in this man's mind in taking Mr. Garwood, was not for the purpose of robbing him, but was for the purpose of talking to him about his wife; and in order to establish that state of mind or that intent, I think it is perfectly relevant to show that this man on previous occasions had complained to other people about the conduct that he wanted to explain or talk to Garwood about on that particular morning. Now, that is before the shooting, that is part of the res gestae in this case. When they get to the particular point of the shooting, however, there was no motive for the shooting, but there was a motive in asking this man to go out with him. Now, there is a distinction; it is not the motive for the shooting, but there was a reason, a justification why this man should ask Garwood to go out and talk about this particular thing. Now, this case, I think, establishes that a man can show either no motive at all—and that is what this man is going to do, show no motive at all, by rebutting the presumption of the Prosecutor, showing his state of mind was something else on the day in question.

The Court: Now, Mr. Cleary, let's just spend a minute or two while we are waiting for this case. What do you want this evidence for, to rebut, you say a motive——

Mr. Cleary: A motive, or an intent rather, an intent.

The Court: Very well, now then, your evidence of the reason that your client killed Garwood, it being admitted that he has done so—your reason for it can best be told by your client at the time that he did the shooting, can't it?

Mr. Cleary: It can, if the Court please.

The Court: Well then, how could any statement that he had made years before to an attorney in any way be relevant as to what induced him to do the act on July 23rd last?

Mr. Cleary: If the Court please, if you will go back to the opening of the State, it was the opening of the State, and the State was allowed to produce evidence to prove that the intent of the defendant started not at the place where the crime was committed, but down at the ferry on Market Street when he asked this man to hire the car, and the intent, according to the State, continued up until the time of the shooting, which was in consummation of that intent. Now, therefore, if the State is allowed to prove that the intent to rob existed at the time he hired the car why should not the defendant, in justice to him, be allowed to show that he had no such intent, but that his intent was to do something else?

The Court(after argument): Well, I do not object to that all; I have no objection to that, Mr. Cleary, at all, but I certainly have an objection to listening to what this man said five years or four years, or even four months ago to some attorney, what he told the attorney.

Mr. Cleary: Now then, if the Court please, here is the point—it is very vital to this man's case, because if your Honor rules out this testimony it is going to be very damaging to him; it is practically the main part of his case—I want to prove that at a time when this man had no idea, and could not have manufactured this testimony, at a time previous to the time of the killing, he did have trouble with his wife, to prove that there was a reason for that statement that he had trouble with his wife, to prove that as a result of that trouble with his wife, without alleging what it was, he went to see an attorney, to prove the idea that there was trouble in his mind about his wife, and the fact also that he knew Garwood at that time, which has been denied by the State; it has been intimated by the State that this man did not know Garwood. Now, if I can produce attorneys to whom this man mentioned Garwood's name before the shooting, it is certainly relevant matter to show that this man knew Garwood on the day of the shooting. And it will be further proved in this case that he told these attorneys he was going out west; that is another thing I want to prove by these attorneys; I want to prove by other people within the last six months, and I want to produce a man that he told within six weeks of the shooting that he was going out west. It seems to me, that would certainly show that his state of mind on that day when he talked to Mr. Garwood was not for the purpose of robbing him, but was, as he said, to talk to him about the troubles he had with his wife.

The Court (after further argument): Well, perhaps it might be that your witnesses might themselves testify to something that this man cannot tes-

tify to, but he certainly cannot testify to what he told somebody four years ago.

Mr. Cleary: Well, if the Court please, can I add this, without having him say what occurred on that date, can I have the bare fact that he saw those people?

The Court: I have no objection to your showing that he saw four or five attorneys several years ago; it is very remote.

Mr. Cleary: Have I the privilege of showing what he saw them for without saying what he said, what his object in seeing them was?

The Court: Well, it is very remote because you can see this, perhaps I had better find out, is your defense that the provocation, assuming there was one that existed of relations between this defendant's wife and Garwood, is a justification?

Mr. Cleary: No, your Honor please, it is not, it is one of self defense arising upon the fact this man was in fear of his life at the time and it is assumed the jitney man, he had a revolver, he presumed, like all jitney men.

The Court: Then you say the defense is self defense?

Mr. Cleary: At the time of the shooting.

The Court: Well then, how could anything that he said to an attorney four or five years ago be any evidence upon the subject of whether he was justified in shooting Garwood at the time he did?

Mr. Cleary: For this reason, at the time this shooting occurred, as your Honor well knows from testimony, there were but two people there. Out of the fact this man killed him, you can raise there the intent that he killed him to rob him, he did take this article, there is no denial of that. It is circumstantial evidence he intended to rob him, but out of the same state of facts a man kills a man and takes his goods away from him, there might be two inferences drawn, first, intent to rob and secondly the intent he took the articles to conceal a crime. It proves nothing. By the fact he shot him, as far as the State and the defendant are concerned, there are two circumstantial facts that can be produced. We have got to go back of that. We go back to the time, as the Prosecutor has been allowed to without objection on my part, he has been allowed to go back to the fact this man hired the car and why he hired the car, and why can't I have the same privilege as the Prosecutor, going back to the time of the car and showing why he hired that car, when a man's life is at stake?

The Court: I have no objection to you telling why he hired the car. I am objecting and holding you have no right to say what he told an attorney four or five years ago.

Mr. Cleary: Bear with me a moment, if your Honor please. The Prosecutor can say he hired the car for robbery, because he took the car. I can say he hired the car for another reason, because he took the car to remove the identity of the person he killed. There are two circumstantial facts that can be justified on the part of the State and on the part of the defendant, and once again, the State and the

defendant are on the same equal plane. Now then, we have to go back a little further than the intent at the time he hired the car. We have got to go back to the time when he said the reason for hiring that car arose and that is what I am going to do now. Then what was the reason for hiring this car? We have got to go back to concrete facts and get away from the circumstantial evidence. The reason was he said, because he had trouble with his wife, he wanted to talk to the man about the trouble. The jury will say is that what was in his mind? I am going to produce evidence for a period of six weeks or six years that he knew Garwood, that he complained to Garwood and that he was going out west on the day he said he was. If I can produce proof of that I can convince the jury to an extent that he hired that car for purposes other than robbery.

The Court: I am not overruling your defense. I am addressing myself to your question.

Mr. Cleary: This was in the year 1914.

The Court: Will you ask the witness the question again?

Q. Mr. Young, did you see an attorney in the year 1914, Mr. Roberts?

A. I did.

Q. Did you have a conversation with him at that time in which you disclosed you knew Garwood?

The Prosecutor: Don't answer that. I object to it, first, because it is immaterial and certainly is leading in its character.

Mr. Cleary: I understand in the opening of Mr. Wolverton, he was going to prove this man didn't know Garwood. I have a right to prove this man did know Garwood.

The Court: You can prove it by this man but how would what he told Mr. Roberts in 1914, be any evidence that he knew Garwood?

Mr. Cleary: Can I ask him how many attorneys he consulted, without regard to what he consulted them for?

The Court: Yes.

The Prosecutor: I can't possibly see what materiality it can have.

The Court: You ask the question, how many attorneys he has seen during his life.

Mr. Cleary: It does seem to me even though it is an immaterial question it might help this man.

The Court: Ask the question.

Q. How many attorneys have you consulted since the last nine years you were married?

A. Four different ones and seen one two times, I seen one squire, and I spoke to three police officers.

Q. And did you mention the name of Garwood to any of them?

The Prosecutor: I object.

The Court: That question is overruled.

Q. Have you consulted any private friends during that time about any troubles you have had?

The Prosecutor: I object to the question about any trouble he might have had.

The Court: That question is overruled.

Mr. Cleary: Will your Honor allow me an exception?

The Court: Yes, you may have an exception, Mr. Cleary.

(Exception noted for defendant.)

Q. Now, Mr. Young, did you have any domestic troubles during your married life?

The Prosecutor: I object.

The Court: Well, that question is overruled and an exception is allowed.

(Exception noted for defendant.)

Q. When were you married, Mr. Young?
A. I was married sometime in August about nine years ago when I was between nineteen and twenty years of age.
Q. What is the name of your wife?
A. Sarah C. Witherow.

Mr. Cleary: In order to save time, it is your Honor's ruling I cannot show anything about the domestic life of this man?

The Prosecutor: If the Court please, doesn't it seem as if it would be easier to deal with this situation as the question is asked rather than as a whole show all circumstances?

Mr. Cleary: If your Honor will give me his ideas on the subject, I want to save the time of the jury. I know that their time should be considered as well as mine and I am anxious to get the matter completed as soon as we can.

The Court: Well, I cannot see exactly what the domestic troubles of the defendant have to do except that of course he might show a state of mind at the time of the commission of this act that might have some bearing upon the degree of the homicide.

The Prosecutor: For that reason I suggest it be put in the form of question rather than as a statement of a general situation.

Mr. Cleary: If your Honor please, I only wanted to have an idea of what was in your Honor's mind so I could save time.

The Court: Well, now, you have it.

Mr. Cleary: All right, sir.

Q. Did your wife ever leave you?
A. She left me so many times——

The Prosecutor: If the Court please. Wait a minute.

The Court: Now, you see, Mr. Cleary, let me state something which I thing is in no way prej-

udicial to the defendant. The thing that you could show is that this man knew of something or had been told of something which would arouse in him a height of passion by which this killing might have been affected and anything that would show that I would admit.

Mr. Cleary: No, your Honor please, that is not my defense. My defense is the defense of self defense, and in order to prove and combat the motive of the Prosecutor alleged by him at the time he had this car it was with the idea of robbery, I want to prove the state of the man's mind on that occasion when he had the car, to prove there was no element of murder in his mind. I want to prove the state of his mind on that occasion. I want to prove how his mind was over wrought with domestic troubles to such an extent he thought it necessary to take this man out and have a conversation.

The Court: That is just the thing I told you that you could prove but you can't go back through the entire domestic life.

Mr. Cleary: Well, I am not doing that.

The Court: Well, pretty near it.

Mr. Cleary: I am asking him how many times his wife left him. That can be answered in one question.

The Court: That isn't the question, how many times a man's wife might have left him. That is not relevant. I will overrule the question.

Mr. Cleary: You mean it is not relevant with relation to his conversation with Garwood or not relevant to the idea he had domestic troubles?

The Court: Well, if he had domestic troubles, was that any justification in your mind?

Mr. Cleary: If I connect it with the fact it was through Garwood his wife left him, it would.

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The Court: And you could testify to that, no matter how remote?

Mr. Cleary: A man's mind is nothing but a state of circumstances. That can be proved.

The Court: Isn't it the state of the man's mind at the time the act occurred?

20 Mr. Cleary: No. It is part of the res gestae—if it can be shown what his mind was, the state of his mind, at the beginning of the res gestae. The Prosecutor has been allowed to come here and prove what the state of his mind was at the beginning of his acts, the hiring. Therefore, I should be able to prove the state of the mind. The state of the mind, the Prosecutor has tried to show, relates all the way back to the time he hired this car. That is the time the defense should combat that motive, not skip over it, not allow the Prosecutor to say it is admitted.

30

The Court: I will let you show the reasons why he hired the car. I have no objection to that.

Mr. Cleary: How am I going to show those reasons?

The Court: You just ask him what was the reason. Take him down to the ferry, at the time he met Garwood, and you may go right on through, and you can produce the state of mind from this man. Who else could better testify to a state of mind than the individual who had the state of mind?

Mr. Cleary: Yes, but we have a jury here who may or may not believe that state of mind. Can this man produce evidence to show he is truthful in that?

The Court: How could the fact that he had domestic troubles back in a period of his life eight or nine or ten years ago have any bearing on the state of his mind around about noon of July 23rd?

Mr. Cleary: It has this bearing: That it existed eight or nine years ago and continued on down to the shooting.

The Court: The state of mind?

Mr. Cleary: The state of mind about the domestic troubles, not the intent to kill.

The Court: That isn't the question. He might have had domestic troubles and everything of that kind, but that doesn't show his state of mind at the time this act was done.

Mr. Cleary: It does show the intent when he hired this car was to talk to Mr. Garwood about it.

The Court: I think it will show—well, I don't say it. I will overrule that question and you may take an exception.

(Exception noted for defendant.)

Q. What was the state of your mind—wait, I haven't got to that point yet. Mr. Young, what was the time you arrived, about, in the Camden Terminal, if you know?

A. Between quarter after seven and twenty minutes after seven in the morning.

Q. And did you have a conversation with a man out there that had a jitney?

A. Mr. Garwood.

Q. And what kind of automobile or jitney did he have?

A. He had a Ford sedan car.

Q. Now, will you relate the conversation that occurred between you and Garwood?

A. Well, now, am I to—I don't quite understand what I am to do. Am I to tell the feeling I had when I was on the train or what I said to Mr. Garwood?

Q. Yes, that's better. Tell me what feeling you had in your mind and what was the state of your mind when you saw Mr. Garwood.

Mr. Wolverton: Do you withdraw all other questions?

The Court: He said he wanted to know the state of mind when he saw Mr. Garwood. I will allow that.

A. Well, my mind was that morning, I would work until noon, which I was going to be laid off, and I thought I would go out west and leave my troubles behind, and I seen Mr. Garwood from the train, before I got off, from the window, which I was sitting on the right-hand side when the train pulled in.

I thought it must have been a godsend to see the man there who I had played hide and go seek with me for so many years, the man who I had tried to catch up to for a long while. I thought that was my opportunity then and my last chance to talk to him. I walked out and I hesitated, when I got out where the ferry-boats was, whether I would say anything to him or whether I would go on across the river, so I walked out to him. I said, "You are running a jitney?" He said, "Yes, sir." I said, "Your name is Garwood." He said, "Yes, sir." I said, "I want you to take me out by Ellisburg," or Marlton, which I just don't recall which I said. He said, "All right."

Q. Go ahead, Mr. Young.

A. So, I got in the car, or in fact, I said, "How much are you going to charge me?" He said, "Three dollars for taking you out." I said, "I want to come back into Camden again." He says, "It will be a dollar more." I said, "All right, that is four dollars for the trip." I got in his car, which I didn't intend to go to Ellisburg, but my intentions was to get outside of Camden a ways, not with the intention of beating him up, but with the intentions of talking to him about some family affairs that I had, which my intentions was, which I was disgusted, and I was going to ask him if he wasn't tired of running around with other men's wives, that he wanted someone else's wife so bad he may have one of his own, and I wanted him to take my wife and children, two children, and take them and live with them and keep them, seeing he wanted them, and the traffic was rather heavy that morning, which I thought I would make him go over and get her.

Q. Thought you would what?

A. The traffic was rather heavy on Marlton Pike that morning.

Q. What did you say you thought, you could make him do what?

A. I thought I could make him take her and keep her. And we rode out as far as Ellisburg, I got thinking the thing over, and I thought, "Well, is there any use of saying anything to him or not?" Which I did think quite a bit of the two children, and I thought, "Well, maybe it will be as well to go away and not say anything to him, because perhaps he will keep her anyway," and I invited him to have a drink at the Ellisburg Hotel, and I didn't know what to tell him when I got to Ellisburg, I couldn't very well tell him that I had taken him out there to buy him a drink, so I thought I would go down as far as Howard Shivers, which I know him, being a farmer there ever since I have been in Haddonfield, for the last thirteen years, fourteen or fifteen years; I told him to drive into that farmhouse, which he did, which was Howard Shivers'. I got out of the car, which Harry Garwood stopped in front of Shivers' house, which he meant to drive into the lane off Marlton Pike. I walked into the barn which Howard Shivers' son which I knowed was milking cows, and I asked him if there was a man there by the name of Jones, or some other name, which I don't quite remember whether it was Jones or not I asked for, which I think it was. He said, "No," and I said, "All right," and I stepped back and said to Harry Garwood, "Now, we will return to Camden." So we came back to Camden which then it was somewhere around eight o'clock in the morning when we came back into Camden, it wasn't quite eight, but pretty close on to it, and we got at Fourth and Federal, and I told him to let me out there, and I paid him $4.00 for the trip. I went down to a place where I know on Fourth Street——

Q. Now, wait a minute; where did Mr. Garwood go after you left him at Fourth and Federal, if you know?

A. I don't know where he went.

Q. Did you have any conversation with him about meeting him afterward or anything?

A. No, sir.

Q. Then where did you go?

A. I went down Fourth Street to a place and had several drinks of whiskey and beer.

Q. How many drinks did you have actually?

A. Between seven and eight drinks of whiskey and four or five glasses of beer I got.

Q. How long did you stay there?

A. I stayed there between an hour and an hour and a half, I think, it might have been more.

Q. Then where did you go?

A. I walked from there up toward the ferry, and stopped into a cigar store, which I can slightly remember.

Q. What happened in the cigar store?

A. I asked the fellow for some Henrietta cigars.

Q. Don't say anything he said; just what occurred.

A. He showed me a box of cigars, and he wanted $4.50 for them, or something—no, the first box he showed me he wanted, if I am not mistaken, $5.00 for them; he said they sold for eleven cents apiece, which I know the price of Henrietta cigars, and that is what they had sold for.

Q. Well, did you buy a box of cigars?

A. I bought a box of cigars for $4.00.

Q. Where did you go after you bought the box of cigars?

A. And I started to go on across the river to Cramp's shipyard to get the balance of my money, which I was going away.

Q. What was your condition at that time so far as intoxication was concerned?

A. Why, at that time, if I am not mistaken, the lipuor, which I hadn't been drinking anything for quite a while, had worked on me pretty good, which there is several of them said to me, "Where did you get it?" as I passed them, but I don't know whether I was staggering or not; I don't think I was, I might have been. So I started into the ferry house door and I seen Garwood's machine on the opposite side of the street, but did not see him. I got thinking, as I seen the machine, it kind of made me a little angry to think that the man who had played hide and go seek with me so many years was now in my hands, and I had a chance to talk to him. I started back to go and see him. I stopped, I thought, "Well, no, I will go on across the river." Well, I walked back again to another jitney, and I asked if that was Garwood's machine across the street, I think, and he said yes, and I started over there. I got over to his machine, and a couple of fellows said, "Are you looking for a car?" The answer I made to them I just can't remember, but I thought that I wouldn't bother, I would go on across the river and get my money and go on away, which my mind was in a rocky condition, whether I wanted to speak to him about my wife or whether I didn't, and someone came up to me, which I don't remember who now, and said, "This is Garwood's machine," and if I am not mistaken, got hold of me by the arm and helped me in the car, and about that time Harry Garwood came out and got in the car.

Q. What is that?

A. About that time Harry Garwood came out and got in the car.

Q. Now, wait a minute, you have just gone ahead

of me a little bit; when you walked over to the car, didn't you have a conversation with two jitneymen?

A. There were two jitneymen there, if I am not mistaken, tried to tell me it was a private car, wanted me to get out of the car, or before I got in it, which I don't remember just which, and wanted me to get another car, said they would take me anywhere I wanted to go, and I told him no, I knowed whose car that was, that it was Harry Garwood's.

Q. Why did you tell them that you knew, if you did tell them that, whose car it was?

A. Because they tried to tell me it wasn't a jitney, it was a private car.

Q. Then what did you do after they told you that, did you go away or stay there?

A. I stayed there, but Harry Garwood was there himself the same time I got in the car.

Q. Did you or did you not at any time on that occasion walk down as far as the drug store?

A. I don't know just how far I got, but I started toward the ferry.

Q. And you left Garwood's car?

A. I did.

Q. How did you happen to get back from the drug store into Garwood's car?

A. There was some man came and got me by the arm, I don't know who it was, and said, "If you want Garwood's car, here it is back here," and helped me in the car.

Q. Did he walk back with you to Garwood's car?

A. Yes.

Q. And at the time this man took you by the arm what was your intention as to where you were going?

A. My intentions then was to go over to Cramp's shipyard, get the balance of my wages, which was

coming to me which I think I had a full week coming to me, not sure, but I am sure that I did have a full week, and I was going away.

Q. Now then, what happened when you got in the car?

A. I got in the car and he said, "Where do you want to go?" I said, "Let's make the same trip again."

Q. What did you do then, did you start off with the car?

A. We started off.

Q. Then where did you go?

A. We went out Marlton Pike until we came to Ellisburg. There was quite a few machines on the road, which there seemed to be more——

Q. Now, just a minute, Mr. Young; did you stop any place at all on the road from Camden to Ellisburg?

A. We stopped going out, here across the bridge somewhere, and I said, "Let's get a drink," or I asked him where to get a drink or something, and he said, "We can get some here," and we drove a little ways further, and he said, "How much do you want?" He said, "Oh, half a pint or so." "Well," he says, "a half pint will cost you $2.00," he said "you can get a pint for $3.50." I said, "All right," and he got a pint of liquor which it was preying on my mind pretty well that morning that I was going away, I had no work any longer at Cramps, my troubles at home were so heavy that I thought there was nothing else to do. So as soon as we struck Marlton Pike I offered him the bottle, which I don't know whether he drank any or not, he put it to his lips anyway.

Q. Had you got to Ellisburg yet, is that the point?

A. We haven't got to Ellisburg yet. He offered me the bottle which I took a drink. We went on a

little ways further where the turn of the road, where the road leads over to Merchantville, I think, the Marlton Pike, and we had another drink there.

Q. Where did you go, what place was that?

A. We were going——

Q. What is the name of the place on Marlton Pike —whose place is it?

A. Nobody's place, it is a public road.

Q. In the hotel?

A. It is a public road.

Q. No, I mean the place—Oh, you mean you got a drink out of the bottle?

A. Yes.

Q. Oh, go ahead.

A. So before we got to Ellisburg, this side of the school house, there wasn't much liquor left in the bottle; I said, "Let's finish that and we will get some at Ellisburg, I know the fellow there, I don't know whether he sells any or not, but I think we can get some." We drank what liquor there was in the bottle, whether he drank anything or whether he didn't, I couldn't say, but the bottle was empty, and the bottle was thrown out to the side of the car along the road. We stopped at the Ellisburg Hotel, and we went in, and we ordered a drink, and I don't remember whether I asked the hotel keeper for whiskey or not, which I think I did, and if I am not mistaken he told me he didn't have any, and we went from there until we came to Springdale.

Q. Well now, just a minute; do you remember anything at all that occurred in that saloon?

A. Why, I don't remember anything much that happened in the hotel.

Q. All right; now, go on; what happened when you got to Springdale?

A. We got to Springdale, and I thought I would let him stop there and take the road across into

Haddonfield, and when we got there, said, "Harry, you can stop your car here, I want to talk to you." I said, "Harry, to-day you seem to enjoy running around with other people's wives." He said, "No, not that I know of." I said, "Well, maybe you don't know just who I am," I says, "I am the fellow who you have played hide and go seek with for nine years," and I said—— He says, "Well, I have seen you before." I says, "Well, my name is Young," or something resembling that, and I said, "I want to tell you to-day that you have got two things to do, which I am going away now, I am not going to stand this any longer; you can take my wife and children and take care of them, you can have a wife now of your own, you wanted someone else's so bad." He says, "I never ran around with your wife." I said, "Harry, there is two things for you to do; you can either take my wife and take care of her now or take a licking," and at that he said, "You are a God damned liar." I had opened the car door and he made a wild rush for me and grabbed for his hip pocket with his right hand. As he made a reach for his hip pocket, I thought that he was going to fire on me; I grabbed my gun, being an automatic, a Colt automatic, .32, a gun that is always cocked—when locked it has a safety on—a touch of the trigger, rapid fire, and him coming toward me, the bullet struck him somewhere in the breast, just where I don't know, and as he was falling, I didn't lower or raise my gun, his head was kind of sideways; the bullets, one struck him in the side of the head, I think, and the other one at the back of the head as he was coming on down. He fell from there to the floor of the car. I studied for a few minutes what I was going to do, whether—— The shock had kind of sobered me up, I realized the facts then of what

I had done; I studied whether I should hide the mystery or whether I should bring him into town with me. I thought, well, I didn't know what to do; I thought first I would turn the gun on myself, and I thought, "No, I have two children which I think a whole lot of." For the sake of my children I thought then I would live. The man whom I thought had destroyed my home was then dead. I drug him a piece into the bushes from the side of the road; he was dead; his watch was hanging on him in open sight which had pulled loose, which I thought I would take that so no one wouldn't identify him. I wanted to see whether he had any letters in there from my wife in his pocket, which I felt in his inside coat pocket, which he had some letters in there and some papers. But none was from her, they were typewritten. He had a pocket book in his pocket which contained three dollars and some change, I suppose it was the balance of the money that I had given him. I then wondered what I would do. I thought the thing over, which I looked at my gun, and I looked at him. I thought, "Well, you are dead and I might as well be with you." I raised the gun again, and I thought of my two children, which there were no one to raise them, and I thought, "No, I never run around with a man's wife myself, or never would," and I went over to where the car was standing in a dazed condition, I was wondering how I was going to hide the car, there were no way for anybody to get past. I knowed then I had to work quick if I wanted to conceal anything, if I intended to live myself, no car could pass. I wondered if anyone had heard the shot, I didn't know whether I was able to run a car or not, but I thought I would try for a very little experience had I ever had in driving a car, just a few days before. I got in the car and

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through some way, I don't know how, I managed to drive the car to Haddonfield, to Martin's home, and I knocked on the door and I asked if Martin was there and his wife said he was not. I asked what time he would be home. She said "In a few minutes," which I said, "Then tell him I would like to see him." I left there and went to Camden. How I got into Camden I don't know, but some way I got down to Green's, 714 Spruce Street.

Q. What time was that?

The Court: The court will now recess until Monday morning.

A. Why, because I thought it would help me, as the Prosecutor—as was suggested to me in that way before, and I wanted to please him in making the statement, and I thought I was doing right by making a statement in that way.

Q. Who do you mean, please whom?

A. The Prosecutor.

The Court: He means, as I take it—we had better get that—that he thought it would please the Prosecutor to make a false statement—is that what you mean?

Q. Is that you mean?

A. Not a false statement, I don't mean a false statement, but I was led by the Prosecutor to make these statements in the way I did.

Q. How do you mean, how were you led by him?

A. He practically told me what to say.

Q. What do you mean, by conversation or questions or how?

A. By conversation; he would say such and such a thing happened such and such a way, and I thought that was the way he wanted me to say them, which I had never been in trouble before, and I didn't know any different.

Q. Now, Mr. Young, did you or did you not intend to rob Mr. Garwood at that the time that you shot him?

A. I had no idea of such a thing.

Q. What was the state of your mind upon that occasion?

A. The state of my mind on that occasion, my mind was in a state that I don't know what it was.

Q. Now, what was the state of your mind when you first saw Garwood that day?

A. The state of my mind was this, that I was going away, I had talked to——

The Court: Didn't he testify to that on Saturday?

Mr. Cleary: No, if the Court please, he didn't have a full opportunity of testifying to that; there was some objection interposed, or something, and my mind got off the question, and I allowed the question to go without being answered. If the Court please, it can do no harm at this time to repeat it.

The Court: Well, that is just the question; I don't propose to repeat anything; I am fearful that we have repeated a little too much already. Now, if this is a repetition of what he said, as I understood it——

Mr. Cleary: It is not, if the Court please, it is something that he didn't have a chance to say.

The Court: Very well, ask the question.

Q. What was in your mind at the time that you saw Mr. Garwood on the first day, or what was the state of your mind?

A. The state of my mind was this, that I was going to be laid off, and I was going to go out west; I passed the home of Mr. Whaland, the man who tricked me, a lawyer——

Q. Was this on your way to work this morning, the 23rd day of July?

A. I was on my way to work, but this was in my mind when I saw Mr. Garwood.

Q. All right, now, go ahead and tell what was in

your mind when you saw Mr. Garwood, what you were thinking about?

A. I thought of the time I was tricked, and I spoke of Mr. Garwood to Mr. Whaland at that time, which was a few years ago.

The Prosecutor: I object.

The Court: No, that will be stricken out.

The Prosecutor: But I cannot believe but that the counsel for the defendant knows exactly what this man is going to say, even though he does not answer his question, and I think the question should be direct and the witness should answer direct.

The Court: He will have to answer the question direct, Mr. Wolverton, but he can testify as to what his state of mind was when he saw Garwood first on July 23, 1921.

Mr. Cleary: If the Court please, I understand just what he is doing. He is testifying to the thoughts in his mind. If the Court please, what is a state of mind—isn't it the thoughts in the mind? He is testifying to the thoughts in his mind on that day.

The Court: Very well; that is not a state of mind; he can testify just what passed through his mind when he saw Garwood.

Q. What passed through your mind when you saw Garwood?

A. I will tell you, it passed through my mind of the time that I had spoken to Mr. Roberts about Mr. Garwood, which I had seen then sitting in his

car; it passed through my mind of the time that I spoke to Mr. Marter of Garwood ——

The Prosecutor: Now, you see ——

The Court: Now, that is not responsive, that is not a state of mind. What did the sight of Garwood arouse in his mind?

Mr. Cleary: Well, if the Court please, he said that.

Q. What thoughts were aroused in your mind by the sight of Garwood?
A. That is what I am trying to tell you.

The Court: Just exactly how you felt when you saw Garwood, that is all that you need to ——

The Witness: My mind was recalled ——

The Court: Not what your mind recalled; just what was your state of mind?

A. Well, this was the state of my mind that day, the morning that I seen Mr. Garwood is this, that the officers that I had spoken to of Garwood, three police officers, and Mr. French ——

The Prosecutor: Now, if the Court please ——

The Court: Now, that will be struck out, that is not responsive.

The Prosecutor: This witness is intent on saying certain things which he knows that there is no possibility of anybody being called to deny, and it is

his purpose and the purpose of the question to get that before the jury legally or illegally, and I object.

Mr. Cleary: If the Court please, I object to that statement.

The Court: Wait a minute, wait a minute; the witness now, if he can answer the question—and I will give him one more chance to answer the question, as to how he felt when he saw Garwood, not everything that he says passed through his mind of these conversations, because that could not be. Now, he can just describe what condition his mind was in, the condition of his mind.

Mr. Cleary: Well, if your Honor please, I don't know whether your Honor ever had the unpleasant experience of thinking that he was going to be drowned, but if a man is in that state, in an instant in his mind can come thoughts that existed from the time that he was born down to the present time.

The Court: Very well, I won't admit it.

Mr. Cleary: A photograph in his mind ——

The Court: If we have got to have all the thoughts this man had from the time he was born to this time it is an utter impossibility.

Mr. Cleary: Well, if the Court please, the state of mind is only what transpired ——

The Court: We won't argue the question, Mr. Cleary.

Mr. Cleary: All right; will your Honor allow me an exception? Well, you haven't ruled on it. I don't know what question to ask the witness now, if your Honor can suggest ——

The Court: He can tell whether he labored under excitement and the condition of his mind at that time, not those things that go back years.

The Prosecutor: I will suggest a question: As a result of such thoughts that you had in your mind, what was the condition of your mind?

Mr. Cleary: Well, I will put it that way.

The Court: I think he can tell what the condition of his mind was.

Q. Now, can you tell, Mr. Young, what the condition of your mind was at that time?

A. I will try to. When I seen Mr. Garwood I thought that I would go out and talk to him, because I was going away that morning, my job would have been finished at Cramp's Shipyard at twelve o'clock, and I had spoken to Mr. Marter, which was in my mind at that time.

The Prosecutor: I object.

The Court: No, that is not responsive to the question and will be struck out. It is very evident that the witness cannot tell what the state of his mind was or the condition of his mind.

Mr. Cleary: Now, if the Court please, with all due respect to your Honor, I don't want to take up

any unnecessary time, but I must represent this man according to what I consider my duty. This man had certain thoughts on that day, those thoughts made up the state of his mind.

The Prosecutor: That is what we want, the state of his mind.

Mr. Cleary: If the Court please, how can we prove the state of his mind if we don't show what thoughts transpired in his mind? I will ask it this way: What were your intentions when you saw Mr. Garwood?

The Witness: My intentions was to talk to him about on the subject of my wife.

The Court: Now then, that is exactly what he testified to on Saturday, and he has been through this all.

Mr. Cleary: Now, if the Court please, can I ask him why he had such intentions—isn't that material?

The Court: I don't quite catch the question.

Mr. Cleary: May I ask him why he had the intention to talk to Mr. Garwood about his wife?

The Court: Why he had the intention?

Mr. Cleary Yes.

The Court: Well, you went into that, and the evidence was that he had seen Garwood with his wife, as he said.

Mr. Cleary: No, that is not the only reason, if the Court please, why is he allowed only to give one reason? He had more reasons than that. I want to let the jury have all the facts in this case, if possible I want to show the jury ——

The Court: Now, let's just get this question; the stenographer will just read this question.

(Question repeated as follows: "Mr. Cleary: Now, if the Court please, can I ask him why he had such intentions?")

The Court: Have you any objection to that question, Mr. Wolverton?

The Prosecutor: It is hard to object to the question, because of the apparent willingness of the defendant to make answers that do not respond to the question. I do object to the question in the form in which it is put.

Mr. Cleary: Mr. Wolverton is objecting on the ground of an anticipated answer, is that right? If the Court please, have you ruled on that question?

The Court: Well, this witness has told, and told in his examination upon Saturday, and commencing with the time that he met Garwood, and going on through this affair. All these questions seem to me to be going over the ground that we have already gone over; he has testified as to what his state of mind was.

Mr. Cleary: All right, if the Court please; I will ask the question again, so it can be properly ruled upon.

The Court: Very well.

Q. Why did you have the intention of talking to Mr. Garwood upon that occasion—don't answer this.

The Court: I will allow that question, but I think he has already answered it.

Mr. Cleary: If the Court please, he has only answered upon one phase of it.

The Court: All right; now, just ask it.

Q. Why did you have such an intention?

A. Why, I hadn't spoken to Mr. Garwood about my wife, which I had been waiting to give him plenty of rope to let him go as far as he wanted to, for I couldn't ——

The Court: Now he has answered the question why he wanted to speak to Mr. Garwood; that was his question.

Mr. Cleary: Now, if the Court please, isn't it possible that the man might have had some other intention beside that?

The Court: Well, you have asked him and he ——

Q. Now, did you have any other reasons why you had such an intention?

A. The reason was this; I never intended to say anything to him, because I was told if I couldn't live happy ——

The Prosecutor: Now ——

Q. Never mind what you were told.

The Court: That will be struck out.

Q. Did you have any intent to kill him at that time?

A. No, sir.

Q. Did you feel unfriendly to him at that time?

A. No, sir.

Q. What was your object—what was the idea or object of your talking to him then?

The Court: Well, now, he has testified to that.

Mr. Cleary: All right.

Q. When you talked to him, what was your idea of what you would say to him?

The Court: No, that is objectionable, and will be overruled.

Mr. Cleary: If your Honor please, anything as to what he was going to say to the man is very material. He might have changed his mind and said something else.

The Court: That is why it is inadmissible.

Mr. Cleary: May I have my objection stated?

The Court: It is what he said.

Mr. Cleary: I want to have my objection properly before the Court so that it can be reviewed if possible. My objection to your Honor's ruling is this,

that this man has a right to show, in rebutting the presumption of the State, that he went to this man with the intention to kill him or rob him, he has a right to show he went there with the intent to talk to him about a certain purpose, a certain object.

The Court: And he has testified to all that. I let a leading question be asked, did he intend to kill him, and he said no, and he has told the reasons why he wanted to speak to Garwood; so that we have covered that entire ground.

Q. Now, what was your state of mind before you had killed Mr. Garwood and before you had taken the automobile, the watch and chain?

A. The shock of the killing sobered me up. My mind was in a state which was almost impossible to tell, which I was very sorry such a thing had ever occurred.

Q. Did you have any intentions when you shot this man, of robbing him?

A. No, sir, I never had no intention of shooting him.

Q. Had you any intentions then of taking his automobile?

A. No, sir.

Q. Or his watch or chain?

A. No, sir.

Q. Why did you take his automobile, his watch and chain?

A. Why, so that he couldn't be identi—— so that he couldn't be found or identified.

Q. Do you know why you took his shoes?

A. No, sir, I have plenty of shoes of my own, his shoes wouldn't fit me, they were old shoes.

Q. How many pairs of shoes did you have home at that time?

A. Four high top shoes and about four or five pairs of low shoes.

Q. Now, what was your condition as far as intoxication was concerned at the time you shot this man, do you know?

A. Very drunk.

Q. Did you go to Cramp's Shipyard that day?

A. I never did, no, sir.

Q. When did you go there to get your wages?

A. On a Monday.

Q. Did you or did you not have any work or attempt to get any work at any other place on Monday?

A. I went to a rug factory and asked them for work.

The Court: How is that material?

The Prosecutor: I have no objections.

The Court: Very well, then, let it be answered. Of course, the Court doesn't want to make objection.

Mr. Cleary: If your Honor please, that was just my thought.

The Court: Never mind what your thought was, Mr. Cleary.

Mr. Cleary: Of course, it is pretty hard for the Court to see the relevancy of some of these questions before they are connected up with a relevant fact. They are very material in some respects.

The Court: Never mind. I will try and do it the best I can, see the relevancy of it.

Q. Now, Mr. Young, did you go to Philadelphia and attempt to get a position on Monday?

A. I did.

Q. Where?

A. At a rug factory.

Q. And how long did you offer to work for them there?

The Prosecutor: I object.

The Court: That is immaterial.

The Prosecutor: I want to say this, Mr. Young, repeatedly I have asked you to wait when I want to make an objection but notwithstanding that request you always answer the question. I will ask you again, don't answer when I object.

Mr. Cleary: Now have you an objection to make?

The Prosecutor: I have an objection to make. It is absolutely immaterial as to what was said by this defendant as to how long he wanted to work or how long he would work, or declarations of that kind. I can't even see how they would be self-serving declarations. They must have some such purpose or counsel would not offer them. I do not object to the fact that he did.

Mr. Cleary: May I state my ground?

The Court: You don't have to state your ground. The upper Court protects you without the statement of your ground. That is the trouble, the statement of your ground is longer sometimes than the answer to your question.

Mr. Cleary: I understand the rules of evidence to be that the grounds must be stated. It is my idea at the time of the objection is made, the Court must be fully informed of the ground of the objection before the ruling. I don't want to be deprived of my rights if that idea is correct.

The Court: That idea is not correct, so far as this question is concerned, I have ruled it out because it is immaterial.

Mr. Cleary: Your Honor hasn't given me an opportunity to state why it is material.

The Court: No, because perhaps you might state the same that that question would bring out.

Mr. Cleary: The question is very vital to this man's defense.

The Court: All right, you say it is and you have a chance to argue that before the higher Court if this case is review and the Court will protect you.

Mr. Cleary: Does your Honor state I can't state the grounds of my objection?

The Court: I do so, in this case.

Mr. Cleary: Will you allow me an exception?

The Court: Yes, I will allow you an exception.

(Exception noted for defendant.)

Q. How long before this occasion was it you met

Garwood, how long before this was it you met Garwood the last time?

The Court: Now, Mr. Cleary, didn't he say it was four months before?

Mr. Cleary: I didn't remember it, if he did, if your Honor please.

The Prosecutor: I don't think he stated it. I will be glad to hear it.

Q. How long was it before that time you had seen Garwood?

A. Why, it has been a few weeks before, just the exact date or day I couldn't say.

Q. Did you or did you not talk to him on that occasion?

A. I did not.

Q. Now, when you met Garwood in the past how have you been dressed?

The Court: When he met Garwood in the past, how Young had been dressed?

Mr. Cleary: How this man had been dressed.

The Court: That question is overruled. I can't see its materiality.

Mr. Cleary: I want to show why Garwood didn't recognize him on this occasion.

The Court: Just ask him whether Garwood recognized him upon that occasion.

Q. Did Garwood recognize you upon this occasion?
A. Not right away.
Q. How were you dressed upon this occasion?
A. In a blue serge suit.
Q. And had you been dressed that same way the last time he saw you?
A. No, in greasy overalls.

The Court: That is immaterial.

Mr. Cleary: I think it is material to show he was dressed in a different kind of clothing.

The Court: I don't think it is material. I will overrule it.

(Exception noted for defendant.)

Q. Now, do you remember what time it was that you arrived at the Gibbsboro Hotel—the Ellisburg Hotel—on the first time you went out with Mr. Garwood?
A. Not the exact time, no, sir.
Q. Can you tell me about the time?
A. Somewhere around eight o'clock, I think.
Q. Now, Mr. Young, you heard Mr. Morris testify on the stand, did you? You heard Mr. Morris, the constable, testify on the stand?
A. Yes, sir.
Q. Did you, on the 5th day of August, on the evening of the 5th day of August, or the afternoon of the 5th day of August, in the county jail, say to Mr. Morris this, make this particular statement, "You look like a pretty good fellow. I killed that rotten son-of-a-bitch for running around with my wife"?

A. No, sir.

Q. Did you say to him upon that occasion, "This fellow, Martin, is sending me to the chair but I will make that son-of-a-bitch—send that son-of-a-bitch to State Prison for what I know about him"?

A. No, sir.

Q. Did you say upon that occasion, "You look like a pretty good fellow, you look as though you would do a man a favor"?

A. No, sir.

Q. Did Morris then reply, "I would if I could"?

A. No, sir.

Q. Did you then say, "Will you go and tell my wife that I am sorry for what I said about her"?

A. No, sir.

Q. "That I didn't mean it"?

A. No, sir.

Q. Did you say that?

A. No, sir.

Q. "I only said it to help myself, and if she will come in and tell the Prosecutor she ran around with this man but don't say anything she had to do with him, that will help me out and I will do the right thing by her." Did you make that statement?

A. No, sir.

Q. Did Mr. Morris say this to you upon this occasion—did he say this, "When I used to beat it all around the world, I was locked up so many times I used to wish I was a fly and could fly out of the window when I got ready."

A. Yes, sir.

Q. Did he say to you, "You say you killed this man and there wasn't any one but you and him there, you can say what you please?"

A. Yes, sir.

Q. Did he say to you there, "But don't tell anybody I told you this?"

A. Yes, sir.

Q. Did he say to you, "Don't you talk to Zinger, because he is a damned sucker"?

A. Yes, sir.

Q. Did he say to you, "Can't I do you a favor, can't I go out to your wife and tell her to say she knows Garwood?"

A. Yes, sir.

Q. And did or did not you reply to him, "She does know him"?

A. I did.

Q. Did he say to you, "Give me your address and I will go out to-night and come back to-morrow and I will let you know what she says"?

A. Yes, sir.

Q. Did he ask you to give him a note to your wife?

A. Yes, sir.

Q. Did he say to you, "I will get you a lawyer"?

A. Yes, sir.

Q. Did he say to you, "You should have a lawyer as soon as you can"?

A. Yes, sir.

Q. Did he say to you, "Harris & Harris are good lawyers and I will get them for you"?

A. Yes, sir.

Q. Did you say to him, "Yes, get me a lawyer, they won't give me an opportunity to get anyone here"?

A. Yes, sir.

Q. Did he say to you, "My, your supper looks right good"?

A. Yes, sir.

Q. Didn't you say to him, "Won't you have some"?

A. Yes, sir.

Q. Didn't you say to him, "This is the first good meal I have had since I came here?"

A. Yes, sir.

Q. Did Mr. Morris pick up a newspaper that you had in your hands and throw it out the window?

A. He grabbed it out of my hands.

Q. What kind of newspaper was it?

A. Morning paper, I think.

Q. Was an old crumpled paper?

A. No, sir, it wasn't, the morning paper, I think it was the evening paper that just came in before we went in there.

Q. Did he say to you, "Your head is full now, you don't want any more there now, you have got more in there than you want"?

A. Yes, sir.

Q. Did he say to you, "I want to see the boxing news in that paper"?

A. No, sir.

Q. Did you and he reach for the paper at the same time?

A. No, sir.

Q. Was the paper sticking in the steam pipes of the cell, an old newspaper, only part of a newspaper?

A. No, sir, it was not.

The Court: Is that question, the question you have just asked, there?

Mr. Cleary: That is a statement by this man. I have the privilege of denying it.

The Court: You are just confining yourself to contradicting the statements or questions that you put to Mr. Morris? You are not putting in some of these questions in between?

Mr. Cleary: No, sir, but this last time wasn't a

conversation. It was something that I want to deny in contradiction.

The Court: Very well, we won't discuss it.

Q. Was this an old paper, yellow with age?
A. No, sir.
Q. Was it all crumpled up?
A. No, sir.
Q. Was it four or five days old?
A. No, sir.
Q. Did you say to him on that occasion, "It is too late now, I have told the truth"?
A. Yes, sir.
Q. Did you say to him, "I did kill him in self-defense"?
A. I did.
Q. Did you say to him, "You don't know what I told them downstairs, do you?"
A. I did.
Q. Was this occasion immediately after you had made the confession down-stairs?
A. Yes, sir.
Q. Did he then say, "No, I don't know what you told them"?
A. Yes, sir.
Q. Did you say to him, "I did kill this man in self-defense, if I wouldn't have shot him, he would have shot me"?
A. I did.
Q. Was Mr. Morris guarding you, or was he a prisoner in the cell with you?
A. Why, I believe, I don't know which, whether he was supposed to be a prisoner or supposed to be a guard.

The Court: If you don't know, just say you don't know.

Q. You knew he was attached to the Prosecutor's office, though, didn't you?

A. Yes, sir.

Q. Did or did not Allen Pierce, who has testified for the State, say to you, that Harry Garwood was out at your mother-in-law's house?

A. He did.

Q. Did or did not he say that Harry Garwood was there with your wife?

A. He did.

Q. Did or did not he come around and ask you to see it?

A. He did.

Q. That there was somebody there?

A. He did.

Q. And when you got there, there was no one there?

A. No one there.

Q. Did or did not he take you to your mother-in-law's house?

A. He did.

Q. Was or was not Mr. Pierce a witness in the case upon your part where you were arrested for non-support of your wife?

A. He was a witness.

Q. And did he testify in that case?

A. I don't remember.

Q. Was he summoned or subpoenaed for you as your witness?

A. He was summoned by Mr. Roberts and subpoenaed by Mr. Roberts.

Q. Did he or did he not say to Mr. Roberts in your presence that he had seen Mrs. Young in the presence of Garwood?

A. He did.

Q. At the house of her mother?

A. He did.

Q. Did or did he not say to you and to Mr. Roberts at that time that he had seen out of a window in the house where he was, into a window in the house where Mrs. Young's mother was and had seen Mrs. Young and had seen Mrs. Young sit in the lap of a man up as late as three o'clock in the morning?

A. He did.

Q. Did or did not you ever mention Garwood's name to Chief Dennis?

A. I did.

Q. How long ago was that?

A. Not very long ago, only a few months.

Q. A few months before the shooting?

A. Yes, sir.

Q. Did or did not you mention your wife's name at the same time?

A. I did.

Q. You heard John Williams testify on the part of the State, did you?

A. Yes, sir.

Q. Did or did not you send for John Williams to come to the county jail?

A. No, I didn't send for him.

Q. You did not?

A. No, sir.

Q. Did or did not you say, Mr. Young, to Mr. Williams—if the Court please, the date is not fixed in the State's case—but I will ask him—while you were confined in the county jail, did you or did you not say to him, make this statement, "If you will give me six saw blades I will give you $900.00"?

A. I did not.

Q. Did he then say, "No, sir, I haven't got the nerve, not for all the money in the world"?

A. He did not.

Q. Did you then say to him, "That is what I call a man"?

A. No, sir.

Q. Was there or was there not a door near where Mr. Williams was speaking?

A. There was.

Q. Do you know the charge on which Mr. Geitz was confined in the county jail?

A. Forgery.

Q. Did you compliment him upon the fact that he was a man in not getting the saws?

A. No, sir.

Q. Did you hear Louis Shaw testify for the State?

A. Yes, sir.

Q. Did you say to him that you had been drinking bad whiskey when this matter occurred?

A. Yes, sir.

Q. Did you request him to get you some hacksaw blades?

A. No, sir.

Q. How long have you known Mr. Shaw?

A. I have known him for about fourteen years, I guess, between twelve and fourteen years.

Q. And did he live in the same town with you?

A. Yes, sir.

Q. Did or did not the jailor call you to come down from your cell to see Mr. Shaw?

A. He did; Mr. Schauv is his name.

Q. What is his name?

A. Mr. Schauv is his right name.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. Do you or do you not know what time Mr. Voigt, the jailor, comes in upon his duties in the afternoon?

A. Why, he is supposed to come in at nine o'clock I think.

Q. In the morning?

A. At night, in the afternoon, sometime, I don't know just what time in the afternoon, or in the evening, I don't know just what time they come on, they come on earlier and later, sometimes, I notice.

Q. You heard Mr. Lockwood, the young boy Lockwood testify, did you?

A. Yes, sir.

Q. Did you or did you not say to this boy, "Son, get me six hacksaw blades, and here is a dollar, you can get them at any hardware store"?

A. No, sir.

Q. Was or was not his father in the jail with you at that time?

A. Yes, sir.

Q. How many men were in the cage at that time?

A. Between fifty and sixty men.

Q. And was his father in a position to hear what was said?

A. Yes, sir.

Q. How close to you was the jailor?

A. About four—three or four foot away from me.

Q. And where were you when this boy first came to the cell?

A. Standing near the steps within about three or four feet of the bars of the cage.

Q. What was your conversation with this boy at that time?

A. This boy said that his brother had only worked a couple or three days that week, and I overheard the conversation between the father and the boy, and the father asked the boy if he brought him up any money for tobacco; he said no, he had nothing to eat. And the father said, "You haven't got anything to

eat?" "No," the tears kind of came in the boy's eyes, which I had a couple of dollars in my pocket, and I gave him one of them.

Q. You heard Mr. Randall testify?

A. Yes.

Q. Upon the part of the State?

A. Yes.

Q. Did you ask him to write a letter for you?

A. Yes, sir.

Q. Did you tell him what to say in that letter?

A. Yes, sir.

Q. And how did you tell him what to say? Did you tell him word by word, or did you just tell him in general what to say?

A. In general, the same as I would talk, in a conversation.

Q. And do you know whether he ever mailed that letter?

A. The letter was mailed, I believe; I don't know.

The Court: Well, that is not responsive.

Q. You don't know; did you or did not you tell him to write these words: "I am dropping you a few lines to let you know that they had Martin and I together yesterday for cross-examination?"

A. I told him to write that, yes, sir.

Q. Did you tell him to write this: "He had lied about everything; he said that I stole the automobiles, which is a lie"?

A. I did.

Q. Did you?

A. Yes, sir.

Q. Did you say this, tell him to say this, "He said it is the truth and will stick to it until death, so there is only one thing for me to do," is that right?

A. Yes, sir.

Q. Did you tell him that—you did tell him that, you say?

A. Will you read that over again?

Q. Wait, I had better get the whole sentence for you, "He said it is the truth and I will stick to it until death, so there is only one thing for me to do is for you to stick by me."

A. Yes, sir.

Q. "Say it is the truth, dear wife, that Garwood had you and had been running around with you, for you are the only one that can save my life." Did you say that to him?

A. Not in that way.

Q. In what way did you say?

A. I said, "Dear wife, tell the truth, because you are the only one now can help me or save my life."

Q. Did you write this, "Do you know that I am in an awful fix?" or did you tell him to write it?

A. I told him to write this, that, "I am in an awful fix."

Q. Did you tell him to write this, "But never mind the disgrace to the name, for they can't do anything to you"?

A. Yes, sir, but not quite in that way.

Q. What way did you tell him?

A. I told him to write, I said to write—I will get it in a minute—I said ——

Q. Well, listen to the question again: Did you tell him to write this, "But never mind the disgrace to your name, for they can't do anything to you"?

A. Yes, sir.

Q. You did tell him to say that, did you?

A. Yes.

Q. Did you write this, "They can't bring you into the case in any way"?

A. Yes, sir.

Q. Did you say this, "I realize now what a good wife you was to me"?

A. I meant—I didn't mean that ——

The Court: Well, that is not the question; the question is, what did you say.

Q. What did you tell him to say?

A. I didn't say that.

Q. What did you tell him to say?

A. I told him to say, "That you have been a good wife to me."

Q. Well, that is what you said. Did you say at what time that she was a good wife to you?

The Court: No, that is a leading question.

The Prosecutor: Very leading.

The Court: And is overruled.

Q. Did you say anything in relation—anything more in relation to about your wife being good to you?

A. I don't think so.

Q. Did you or did you not tell him to write in there about your wife, whether or not your wife agreed to stick by you after you were arrested?

The Prosecutor: I object, if the Court please; if he wishes to deny the language in that, I have no objection to that being presented to him; in fact, I think it is proper for him to do so, but for counsel to say here, "Did you or did you not say so-and-so," is very leading.

The Court: The question is overruled.

(Exception noted for the defendant.)

Q. Did you say this, "I used to think that you did not love me"?

A. Yes.

Q. "But now I see that your whole heart and soul is in me"?

A. Yes.

Q. "But now it is too late to realize it"—did you say that?

A. I don't remember.

Q. "For I love you, dear wife, and always will"—did you say that?

A. I said, "I would love you."

Q. "And will take you many miles away where no one knows us and start life over if I ever get free from this torture?"

A. Yes, sir.

Q. Did you say this, "So, please, dear wife, do that for me"?

A. I said this, "Please do this for me."

Q. Well, that is what was here; is that what you said?

A. Yes, sir.

The Court: No, he discriminates; the question was, "Please do that for me," and he says that he said, "Please do this for me."

Q. Did you say this, "If it will save my life I will do everything in the world to make you happy"?

(No answer.)

Q. I will repeat it—did you say, "If it will save my life I will do everything in the world to make you happy"?

A. No, sir, I don't think so.

Q. "There will be nothing too much for me to do for you when I get out"?

A. No, I don't think I said that.

Q. Well, what did you say in relation to that.

A. I think I said, "I will do anything I could for you when I get out."

Q. Did you say this, "Never mind what is said on the witness stand"—did you say that?

A. I don't think I did; I think that I said ——

Q. "For you know that I know different"——

The Court: No, the witness has not answered.

A. I don't think that I said that.

Mr. Cleary: Where is the original letter; I can't read this very well.

The Prosecutor: I think you can read that better than the original letter.

Mr. Cleary: If the Court please, the Prosecutor suggested a certain way I should read it, and I said, to be perfectly fair I would read it from the original letter and see what the punctuation was. This has punctuation in it; I am reading it according to the punctuation.

The Court: Very well, you read it from the record.

Q. Did you say this, "For you know that I know different"? Has he answered in relation to this

other question I asked him about, "Never mind what is said on the witness stand"?

(The answer of the witness was then repeated by the stenographer.)

Q. Did you say this in that statement, "For you know that I know different"?

A. I don't think so.

Q. "For I know that you are a good wife."

A. I don't think so, no, sir.

Q. What did you say?

A. I said, "That you have been a good wife," or what I meant by that is this——

The Court: No, not what you meant; it is just what did you say.

Q. What did you say in relation to this part where it says, "I know different"?

Mr. Cleary: If the Court please, I think I had better read the part back there, so he can understand the context; I will read the whole thing to him.

The Court: Well, not the whole letter, just the sentence.

Mr. Cleary: Yes, I mean just this whole sentence, instead of parts of it, because the whole thing has to be taken together.

Q. Didn't you say this, "Never mind what is said about you on the witness stand, for you know that I know different, I know that you are a good wife, for I love you now, for no one shall lead me astray again, for I shall love you and the children only"?

A. I don't think so.
Q. What did you say?
A. I said that, "I would love you."
Q. What else did you say?
A. I don't remember just exactly what I did say.
Q. Well, did you say anything about any part where ——

The Court: Now, Mr. Cleary, the witness has answered the question; he said he don't remember exactly what he did say; that is an answer to the question.

Q. Did you say this, "In speaking of Garwood, I know it will be awful hard for you," did you say that?
A. Yes, sir.
Q. "But you know my life is worth a whole lot for you"?
A. No, sir.
Q. Didn't you say, "But you know my life is worth a whole lot for you"?
A. No, sir.
Q. What did you say?
A. I don't remember; I didn't say that, I am sure; at least, I don't think I did.
Q. Did you say this, "I will only have to serve a few years in prison and won't get the chair"?
A. No, sir.
Q. What did you say?
A. I said—I can't just remember exactly what I said.
Q. Did you say this, "I prayed for you all last night for you to do all right"?
A. Yes, sir, I pray every night for her to tell the truth.

Q. "For God tells me to send you this message"?

A. No, sir, I don't think so.

Q. What did you say?

A. I don't remember exactly.

Q. Did you then tell her to say, "You know when I get out of prison I will make a man of myself." Did you say that?

A. I don't think so.

Q. What did you say?

A. I don't remember.

Q. "I will have a good education, for they send all prisoners to school, and I will take up mechanical engineering, so I can step out in the world and make good money and make you happy," did you say that?

A. I don't remember.

Q. "And trust in God that this letter gets to you, I am sneaking it out so no one will know but ourselves." Did you say that?

A. I don't remember whether I did or not.

Q. Did you say this, "So God bless you and don't forget that my life is in danger"?

A. I don't know.

Q. "Your heart-broken husband." Did you write that?

A. I think so.

Q. Did you put, "P. S. Burn it up as soon as you read it"?

A. I don't think so.

Q. "I hope you and the children are all well. Goodbye."

A. I don't think so.

The Prosecutor: The question as put by counsel for the defendant. I don't think he meant it that way. He has been asking him, "Did you write,"

and the witness has been answering, "I don't think so." I presume he meant, "Did you state that."

Mr. Cleary: I didn't know that. What question does that start out with?

Q. Did you tell this man to write, "I hope you and the children are all well and good-bye"?

A. I don't think so. I understand what you say, Mr. Cleary.

Q. Did or did not you say to this man that Garwood was running around with your wife for eight years and that's why you did it?

A. I did.

Q. Now, then, what was in your mind, to tell this man to write in this letter?

The Court: No, that question is overruled.

The Prosecutor: I object to it.

Mr. Cleary: May I have an exception?

(Exception noted for defendant.)

Q. What did you tell this man to write in relation to your wife telling the truth?

A. I told him to write, I told him to write and say for her to tell the truth, that I wanted her to tell the truth and never mind the disgrace, but tell the truth.

Q. Now, was or was not—were or were not you put in a state of fear at the time you shot Garwood?

The Prosecutor: Now, if the Court please, I don't think it is for this witness to state whether he was

put in a state of fear, but state the facts which may be judged by the jury, whether he had a right to consider himself in fear.

The Court: The question will be overruled. You can take up the subject, Mr. Cleary.

Mr. Cleary: May I have an exception?

(Exception noted for defendant.)

Q. Was or was not your mind in a state of fear at the time you shot Garwood?

A. It was.

Q. And what if anything put your mind in a state of fear?

A. His hand was near his pocket.

The Court: Do you object to that question?

The Prosecutor: I don't object to that inasmuch as I didn't to the other. I was conversing with Mr. Harding here.

The Court: Well, let it be answered.

The Witness: Will you repeat the question?

The Prosecutor: I object to the form of the question and I understand the information Mr. Cleary wants. If he states what he did at that time I think we will get the same results.

Q. What took place at that time between you and Garwood?

A. At that time the whole conversation is what you want now?

Q. No, just what you did and what he did.
A. Well, at that time his hand was near his back pocket ——
Q. Did you see him put his hand near his back pocket?
A. No.
Q. Well, how did his hand get there?
A. I don't know.
Q. Was there anything significant with his hand near his back pocket that caused you to be in fear?
A. I was under the impression ——

The Prosecutor: I object.

The Court: Those questions are disallowed. Just have the witness state what occurred.

Q. What occurred, if anything, to you, when he had his hand in his back pocket?
A. Well, he was coming towards me, looked to be very angry, and I thought it would only be a second ——

The Court: Not what you thought, just what took place.

Mr. Cleary: If your Honor please, isn't a man's thought as to his state of fear, isn't it relevant, if a man states his mind is in fear? Can't he state what he thought?

The Court: He can state whether he was in fear.

Mr. Cleary: Will you allow me an exception?

The Court: All right. I will let you state whether he was in fear, as an actual fact.

Q. Were you?
A. I was.
Q. What put you in fear?
A. His hand near his pocket.
Q. Why did that put you in fear?
A. Because all jitneymen carry a revolver, very near.

The Prosecutor: That has no relevancy whatever, what jitneymen do, or what he thought they do. The fact is, he testifies he saw him put his hand to the pocket.

The Court: No, he didn't say that, he said he saw that his hand was behind him, near his pocket, or at his pocket.

The Prosecutor: And he was coming toward him. Now, he is asked what he thought that meant. There is nothing in the mind of this defendant as to what other jitneymen might or might not do that would have created a thought in this man's mind.

The Court: I have overruled it.

Q. Do you know whether or not Mr. Garwood carried a revolver?
A. I couldn't say.
Q. What was your belief as to that?

The Court: That question is overruled.

Q. Did the fact that he had his hand on his back pocket cause you to be in fear?
A. Yes, sir.

The Court: That question is overruled.

Mr. Cleary: Well it is answered. Mr. Young, don't answer these questions until an opportunity has ben afforded for objection.

Mr. Cleary: Cross-examine.

The Court: Now, before the cross-examination is commenced, because that will take a few minutes, I will permit the jury to retire and the defendant may be taken out of the room if he so desires and the Court will recess for about five or six minutes.

The Prosecutor: May I ask that the witness be considered as a witness on the stand, so there can be no opportunity to converse with him?

The Court: I don't think Mr. Cleary will converse with him. Mr. Cleary isn't there with him.

(A recess was thereupon taken for five minutes.)

Mr. Cleary: If your Honor please, when the Prosecutor comes in, there are a few questions that I overlooked. May I have the privilege of asking them at this time? Mr. Wolverton, there are a few questions I would like to ask this witness before you start. Now, don't answer these questions until I have asked you and Mr. Wolverton has a chance to object.

Q. Did you, in about July of 1920, consult Samuel French, a lawyer of this city, in relation to your wife and Garwood?

The Prosecutor: I object.

The Court: That question is overruled.

(Exception noted for defendant.)

Q. Did you for a period of four years last past, up until four months before the shooting, consult Cyrus Marter, a lawyer of this city, in respect to Garwood and your wife?

The Prosecutor: I object, and I would like the opportunity of stating my objection.

The Court: That question is overruled.

The Prosecutor: It is solely and entirely because the State can not call the wife to deny any statement this man makes and the defense will not call her as their witness so I feel, in justice to the State I feel I must object to every question of this character on every legal ground that may be raised, because I cannot call her without the consent of the defendant and he will not do so.

Mr. Cleary: If your Honor please, I would very much like to state my reason for the question.

The Court: You don't have to state your reason.

Mr. Cleary: Will your honor allow me an exception to the ruling that I don't have to state my reason.

(Exception noted for the defendant.)

The Court: You do not have to state your reasons.

Mr. Cleary: Will your Honor allow me an exception to the ruling that I do not have to state my reasons?

The Court: Yes.

Q. Did you in 1914 consult Samuel Roberts, a lawyer of this town, in relation to your wife and Garwood?

The Prosecutor: I object.

The Court: The same ruling.

(Exception noted for the defendant.)

Q. Did you or did you not complain to Officer Baxter of Haddonfield in relation to your wife and Garwood sometime about six months ago?

(Objected to.)

The Court: That question is overruled.

Q. Did you or did you not consult or complain to Officer Quinn of Haddonfield about six months ago in relation to your wife and Garwood?

(Objected to.)

The Court: That question is overruled.

Mr. Cleary: May I have an exception?

The Court: Oh, yes, you may have an exception in each one of these questions, for they are all similar.

Mr. Cleary: They are of the same nature.

Q. Did you or did you not tell Mr. Downs about

six weeks before the shooting that you intended to go out West?

(Objected to.)

The Court: That question is overruled.

Q. Did you or did you not tell Mr. Harker in Camden, complain to him about Garwood and your wife?

The Prosecutor: If the Court please ——

The Court: That is overruled.

The Prosecutor: It is very unfortunate the way that this defendant's counsel has of asking these questions; he asks them in such a leading way he assumes a situation to exist which I know in fact did not exist, no such conversation at all between this defendant and these people.

Mr. Cleary: Well, if the Court please ——

The Prosecutor: If he did have a conversation he could ask if he had a conversation, but this counsel continually states the subject matter of the conversation in a leading way, as though it was a fact that it had taken place. He has the benefit of that statement.

The Court: Well, the jury will be instructed as to that.

Mr. Cleary: If the Court please, is your objection to the form of the question or as to the fact that the testimony itself is not relevant?

The Court: Well, it would take me too long to state all the objections.

Mr. Cleary: Well, does it include the fact that the testimony is not relevant?

The Court: Yes, it includes that fact.

Mr. Cleary: What was the last question?

(Last question repeated by stenographer.)

Q. Did you or did you not tell Mr. Harker ——

The Court: Now, Mr. Cleary, you see you have these questions, and, of course, if I am in error in overruling them, and your client has suffered harm therefrom, why, I would be reversed, so that one or two of those questions is all that you need, because asking them you, you see, you are assuming in the questions certain things, and those assumptions ought not to be made; in other words, I would let you put those questions at side bar if I had thought that there were going to be so many of them.

Mr. Cleary: There is only one more, if the Court please.

The Court: So you see that you are not entitled to get before the jury anything which would make it appear that these conversations had taken place, and, in a sense, that might be the effect, or the construction of it, so that you see that one or two of these questions will suffice for that purpose.

Mr. Cleary: Well, if the Court please, I intend to produce those people themselves.

The Court: Very well.

Mr. Cleary: And I thought that this testimony would be ——

The Court: No, that does not bar you from producing them.

Mr. Cleary: All right, take the witness. May I have an exception to all these rulings, if the Court please?

The Court: You have an exception to all of them.

Cross-examination.

By the Prosecutor:

Q. Mr. Young, why did you kill Harry Garwood?

A. In fear.

Q. If you killed Harry Garwood in fear why didn't you so state at the time you made this alleged confession on the 5th of August, 1921?

A. Why, because of the condition of my health, physical conditions at that time, from the abuse that I had received from the detectives and the Prosecutor's office, and my nerves and conditions was in such a state that I would have been apt to have said most anything at that day.

Q. Did you know what the truth was on that day?

A. Well, my mind was in such a condition at times

Q. Just answer the question; did you know what the truth was?

A. Sometimes.

Q. Did you know what the truth was when you answered my questions?

A. I don't quite understand you.

Q. Did you know why you killed Harry Garwood, on the day of August 5th, when I asked you why you killed him?

A. Yes.

Q. Then why didn't you tell me that you killed him in self-defense instead of saying that you killed him because he was going with your wife?

A. Because I thought that I was telling it the way that you wanted me to tell it.

Q. You remember when I came into the office preceding the taking of this testimony, this statement, that you walked to me, and put your hand on my shoulder and said, "Prosecutor, I want to tell you the truth about this"—didn't you say that?

A. I don't think so.

Q. Didn't you in this confession to me, even when I didn't ask you questions, inform me that you had made up your mind to tell the truth, and wanted me to know it all?

A. I believed that was what you wanted.

Q. Didn't you suggest to me, "Prosecutor, I told you I will tell the truth and I will."

A. As near as possible.

Q. But you did not tell me that you did it in self-defense, did you?

A. You didn't ask me.

Q. My first question to you was, the first statement to you, "Now, Mr. Young, you know I am the Prosecutor of the county whose duty it is to investigate crimes. We have investigated the death of Harry Garwood, and you are held as charged with that death. Do you wish to make any voluntary statement to me concerning the crime? If you do, I am willing to hear it, but only with the understanding that it can be used against you in court. Do

you wish to make—and you do not have to make it if you do not wish to—do you wish to make a voluntary, truthful, honest statement?'' And didn't you answer, ''Yes, sir''?

A. I don't know whether I did or not.

Q. And didn't I then say, ''Proceed,'' and in answer to my word, ''Proceed,'' you started to narrate what you had done, didn't you?

A. I don't remember.

Q. Then if I did say, ''Proceed,'' as appears by the testimony of the stenographer, you could have made any statement you pleased in connection with it, couldn't you?

A. I don't know.

Q. Couldn't you have made any explanation of it that you wished when I said, ''Proceed''?

A. I told you as near as I possibly could at that time.

Q. You knew at that time it was done in self-defence, and in answer to my question ''Proceed,'' why didn't you say, ''Mr. Wolverton, I did it in self-defense''?

Mr. Cleary: If the Court please, I object to that question on the ground that it assumes that the witness knows what the legal defense of self-defense is.

The Court: Your objection is overruled; the question is permissible.

(Exception noted for defendant.)

A. Will you please repeat it again?

(Question repeated.)

A. Why, because I thought that I was saying a confession which I did not quite understand, because I thought I was saying it to suit you, as the conversation that I had with you; I said it as near as I could as the questions that you put at me.

Q. You didn't tell me anything about Harry Garwood and your wife, did you?

A. Yes.

Q. How did I know it unless you would state it?

A. Why, you had four days to find it out.

Q. Find what out?

A. About Harry Garwood and my wife.

Q. Did you at any time say anything about Harry Garwood being friendly with your wife until you made this so-called confession?

A. Yes, sir, on Friday morning.

Q. On Friday morning—that is the same day of this confession?

A. Yes, sir.

Q. So that on Friday, the day of this confession, was the first time you mentioned anything about Harry Garwood knowing anything about your wife, isn't it?

A. Yes.

Q. You knew it on Tuesday when I talked to you, didn't you?

A. Yes, sir.

Q. Now, if you say you said it on Friday because you thought I wanted you to say it, then why didn't you say it on Tuesday?

A. Because I had no lawyer or didn't know what to do.

Q. Well, then, why did you say it on Friday?

A. Because I wanted to tell you the truth as near as I possibly could.

Q. Well, then, you did attempt to tell me the truth

as near as you possibly could when I took this statement, did you?

A. I always mean to tell the truth if possible.

Q. Did you mean to tell the truth on Monday when you told me that you had bought the car from James Brown and had gotten it by a bill of sale on July 15th?

A. I meant to have protection by my counsel if possible.

Q. Did you mean to tell me the truth when you made that statement?

A. I couldn't get no counsel.

Q. Did you tell me the truth when you made that statement?

A. No.

Q. Did you tell me the truth when you said the car didn't work and you took it back and met him on the corner of Fifth and Federal and got him to give you another car in exchange for it? Was that the truth?

Mr. Cleary: I object to this as having been already testified to.

The Court: Oh, no; of course he has testified to it——

Mr. Cleary: On cross-examination of the Prosecutor upon the question of voluntary statements.

The Court: Oh, no, no, the cross-questions will be allowed.

Q. Did you tell me the truth when you told me that?

A. No, sir.

Q. You did not tell me about a second car until I first brought the evidence to you that you had the first car, did you?

A. I don't know whether I did or not.

Q. Now, you know that you did not tell me about changing the car, did you, by meeting them at Fifth and Federal—you didn't tell me that first, did you?

A. I don't quite understand.

Q. Where did you get—in your first statement to me where did you say you got the car?

A. Off of James Brown.

Q. Why did you afterward tell me that the car that you were arrested in was not that car but another one that you gotten off of James Brown?

A. Because I couldn't get any protection.

Q. Then you told the truth about it, did you?

A. No, sir.

Q. Then you lied about it?

A. Yes, sir, about the car.

Q. About the cars?

A. Yes.

Q. And you changed it to the second statement because we produced evidence that showed you that your first statement would not hold water, isn't that true?

A. I don't think you asked me.

Q. You don't think I asked you what?

Mr. Cleary: If the Court please, I remember this part was testified to before on cross-examination of the defendant in relation to the——

The Court: No, the defendant has not had any cross-examination as yet.

Mr. Cleary: As far as the confession is concerned he has.

The Court: Oh, no, no, the question was what the Prosecutor said and what the defendant said.

Q. After you were shown that your first statement was not true, you thought it necessary then to explain it to us on another basis, didn't you, and for that reason told us you had seen James Brown again and he had exchanged the car for this one—isn't that true?

A. That is true.

Q. You were asked if you got anything else from James Brown, didn't you?

A. I think you did.

Q. And you said no, didn't you?

A. I said I didn't think so so, I think; I am not sure.

Q. Afterward, when we presented you with the watch and chain and charm, you said you got that from James Brown, didn't you?

A. I don't remember.

Q. You didn't get it from him, did you?

A. No, sir.

Q. You knew when we asked you where you did get it, didn't you?

A. Sir?

Q. You knew at the time that we asked you the first time where you had gotten the watch and chain —you knew where you had gotten it, didn't you?

A. Yes, sir.

Q. But you did not tell us the truth about it, did you?

A. No, sir.

Q. When we asked you if you knew Harry Garwood, you said no, didn't you?

A. Yes, I did.

Q. When we asked you if you had hired a jitney

at the Federal Street Ferry on July 23rd you said no, didn't you?

A. I did say no.

Q. What did you say?

A. I said no.

Q. When we asked you if you had been at Mr. Eichmann's hotel on Saturday morning, July 23rd, you said no, didn't you?

A. Yes, sir.

Q. When we brought Mr. Eichmann in later you knew then that we knew the truth, didn't you?

A. I didn't know anything of the kind.

Q. You were taken out to Eichmann's to be identified by Mrs. Eichmann, weren't you?

A. I was taken to Ellisburg.

Q. Weren't you taken to Mrs. Eichmann to be identified by her?

A. I couldn't say.

Q. Didn't Mrs. Eichmann come out and look at you in the car?

Mr. Cleary: If the Court please, I object to this as not proper cross-examination; none of these subjects were brought out upon direct examination.

The Court: Oh, yes, he testified as to——

Mr. Cleary: Not as far as Mrs. Eichmann is concerned.

The Court: Well, he testified as to this trip to Ellisburg.

Q. You were taken out to Eichmann's to be identified by Mrs. Eichmann, were you not?

A. I was taken to Ellisburg.

Q. And were you not taken before Mrs. Eichmann to identify you?

A. I couldn't say.

Q. Didn't Mrs. Eichmann come out and look at you in the car?

Mr. Cleary: I object to this as not proper cross-examination. None of these subjects were brought out on direct examination.

The Court: Yes, he testified——

Mr. Cleary: Not as far as Mrs. Eichmann is concerned.

The Court: He testified to this trip to Ellisburg.

The Prosecutor: Aside from that there is a much broader ground.

The Court: There are a number of grounds.

Mr. Cleary: I want to say at this time my contention is a man on the witness stand for his own defense is not compelled to be subject to a cross-examination, upon the theory that a man cannot be compelled to be a witness against himself and that if he is permitting it that the defendant can only be cross-examined at his own will or pleasure on matters that relate to the direct examination. That is a question which has been raised in a recent case in New Jersey, as to whether or not a defendant can be even cross-examined unless he is perfectly willing to have it done.

The Court: We won't pass on that question except that I will allow this cross-examination but

your contention as I understand it is that if you offer the defendant as a witness and examine him on what you desire to examine him on, that the State has no right to say whether the statements that he has testified are correct or incorrect?

Mr. Cleary: That's right, if your Honor please, I make the motion on that ground.

The Court: Very well, it is overruled and you may have an exception.

(Exception noted for defendant.)

Q. You admitted that you had been to Eichmann's hotel, didn't you?

A. I don't remember whether I did or not.

Q. You were there, were you not?

A. I was, yes, sir.

Q. You knew when you made that statement to us the first day that you had been to Eichmann's hotel, didn't you?

A. Yes, sir.

Q. You knew you had been there with Harry Garwood?

A. Yes, sir.

Q. But notwithstanding that you told us you had not been and didn't know Harry Garwood, isn't that true?

A. Yes, sir.

Mr. Cleary: If your Honor please, I want to object on the ground this testimony as to what took place at Mr. Wolverton's office or some time prior to the confession, was not asked on direct examination.

The Prosecutor: If the Court please, I think your Honor understands, if Mr. Cleary does not, the basis on which this line of questioning is carried on by me. The defendant has made several statements. He has made a statement in court this morning upon which he bases his defense, that he acted in self-defense. I am now questioning or calling to his attention the different opportunities he had to have made that explanation if he so desired. The untruthfulness of his answers at that time, leading up to the confession, in which he said he would make an honest statement of what happened, so it seems to me it is bearing upon the credibility of the defendant and the testimony he has given. I have the right to call to his attention the many and conflicting different stories which he has told, and which are not told to-day.

Mr. Cleary: I object to that, as incompetent, irrelevant and immaterial.

(Exception noted for defendant.)

Q. You told us that you didn't know James Brown, didn't you?

A. Yes, sir.

Q. You never admitted knowing James Brown until we found him and produced him in the presence of Ben Martin?

A. No, sir.

Q. And Ben Martin, in your person, stated that he had signed the name James Brown, is that not true?

A. That is true.

Q. And that was on Thursday night, August 4th, was it not?

A. It was, I think.

Q. So that in all that time you knew from the time you told the officers to go to your house and get the bill of sale, that would show your ownership of the car, you knew as a matter of fact that the bill of sale didn't apply to that car at all, didn't you?

A. Yes, sir.

Q. And you knew that the name James Brown on the bill of sale was not the name of the person from whom you had got the car, didn't you?

A. Yes, sir.

Q. Then on Friday, when you came to my office, in answer to my questions, did you want to make an honest, truthful, voluntary statement, you said, yes, sir, didn't you?

A. I did, because you told me it would help me.

Q. When had I told you that it would help you?

A. Every time you ever spoke to me, that you would help me.

Q. I would do what?

A. That you would help me.

Q. You remember talking with me in my office on the morning of August 5th?

A. I don't know whether I do or not.

Q. You remember the conversation we had had the evening before, after Ben Martin had admitted in your presence that he was the owner or rather that he was the one that signed James Brown, do you remember what you said to me?

A. I didn't talk to you after he admitted to it.

Q. Prior to your going up to the jail, didn't you say that it was hard for you to decide what to do?

A. I don't remember.

Q. Didn't I say to you, "Yes, I know it is hard to decide," and didn't I then tell you all of the facts that we had presented which you had denied and

which you then had admitted to be true, with the exception that you had actually killed Harry Garwood, didn't I tell you to go up-stairs and think it over?

A. I don't remember.

Q. Didn't you tell me that you had prayed about it?

A. I don't remember.

Q. Didn't I tell you if you had ever prayed in your life that was the time to pray?

A. I don't remember.

Q. And the next morning at 7 o'clock or thereabout did you not request the jailors to send for Mr. Wolverton, that you had something which you wanted to say to him, isn't that true?

A. I think it is.

Q. And in answer to that did I not have you brought to my private office to talk to you?

A. Yes.

Q. And didn't I at that time say to you, "I am here because you told the officers you wanted to see and talk to me and didn't you say, "that is right?"

A. Yes.

Q. And you did want to see and talk to me, didn't you?

A. I wanted to talk to you.

Q. Did you have in mind to tell me the truth at that time?

A. I always wanted to tell the truth, but I never could get any attention. I never could get my counsel.

Q. You wanted to tell me something that morning, didn't you?

A. Yes.

Q. You wanted to tell me about this crime, didn't you?

A. I can't say.

Q. And when you had said that is right, then I said to you this, did I not, "Have you anything you want to say to me? I am willing to listen to it but it must be voluntary on your part with the understanding that this is a serious charge made against you in regard to this Harry Garwood, and it can be used against you. I am not going to make any promises to you, because the law will not permit me to do so, and I couldn't with justice to you; there is no promise that I could make I could fulfil, and I have no promises to make, so if you have anything to say it must be voluntary on your part. Now, do you under the circumstances desire to make a statement?" Did I say that to you?

A. I don't remember.

Q. And then again in the same conversation did I not say to you, "Yes, I have told you I can make no promises; if you have any statement to make it must be voluntary on your part, and if I did make a promise I would be false to you and my duty as Prosecutor of this county." Did not say that?

A. This is on Friday morning?

Q. Friday morning in my office at Third and Market, did I say that or not.

Mr. Cleary: If your Honor please, I object to this testimony on the ground it has been duly covered by the statements in relation to the voluntary character of the confession, and when I attempted to introduce evidence of the same character I think your Honor overruled it in relation to what he said to his wife.

The Prosecutor: We offered to put that in if you wanted it in.

The Court: No, the question is allowable. Of course that question was asked on the question of the confession, but it doesn't prevent this same question being asked for another purpose on the cross-examination.

Mr. Cleary: I assume I will have the same privilege on cross-examination of testing his memory?

The Court: You will have every privilege that I think you are entitled to.

Mr. Cleary: I know that, if your Honor please.

The Court: And I can't anticipate something. You may continue, Mr. Wolverton.

Q. Did I say that to you?
A. I don't remember.
Q. Did you say to me, "Prosecutor, what can you do for me?"
A. No, for you had already told me what you could do, I think.
Q. What had I told you?
A. That you would help me and get my sisters and mother and father and anybody I wanted there.
Q. Guilford Young, is it not true that you never asked for your mother, your sister, or any member of your family until you asked to see your wife and we immediately took you to her?
A. No, I didn't ask for them, but you told me that.
Q. Did you want to see them?
A. I would have liked to see them.
Q. And that was the promise I made to you?
A. You promised me many things.
Q. What else did I promise you?

A. So many things that I can't remember.

Q. Were you ever promised any protection, help, or any degree of leniency in connection with this matter?

A. From you?

Q. What?

A. You told me if I would tell you how this thing happened you would help me, make it easier for me, that you would get my mother, sisters, anybody that I wanted to come there.

Q. Make what easier for you?

A. To come there and see what you could do for me, and you would see if you couldn't give me bail.

Q. Make what easier for you?

A. My troubles, what they were, that was the way you were addressing me.

Q. How could I make that promise to you if you hadn't yet told me what you had done?

A. That's what you promised me.

Q. So when you said, "Prosecutor, what can you do for me," you already knew what I could do for you?

A. Yes, sir.

Q. Then why did you say, "Prosecutor, what can you do for me?"

A. I don't remember.

Q. And didn't I, in answer, say, "What do you want me to say, Guilford?"—and wasn't your answer, "I want you to tell me what you can do, can't you do nothing," isn't that what you said to me?

A. I don't remember.

Q. Will you say that you said it or didn't say it?

A. I won't say whether I did or didn't.

Q. Didn't I then say in answer to that, "Guilford, from the time I have first talked to you I have told you what my duty is and what your right is. I

can't make any promise to you, I must be fair to you, I tried to be fair from the very first"—didn't I say that?

A. I don't think so, I can't say for sure.

Q. Didn't you in answer say, "Yes, sir, you have"?

A. I don't think so.

Q. Then I said, "And you know that, don't you," and didn't you answer and say, "Yes"?

A. I can't remember, I don't think so.

Q. Didn't I say to you, "Now, all through this investigation I have been fair to you all the way through I have brought the witnesses before you, I have told you everything I had and proved to you I wasn't telling you an untruth; you admitted everything we brought before you is true. Isn't it the truth? I have spoken the truth to you, and I have every time that I have made a statement to you. When you have looked at me I have said I can prove everything. I brought the proof of the man that saw you go away with Harry Garwood from the ferry, you know we found his watch and chain and the crucifix out in your home, you know that you told us you bought the car from James Brown, isn't that true," and you answered, "Yes"?

A. I don't remember.

Q. And didn't I then say to you, "And then after you told us you bought it from James Brown and I told you you couldn't have bought it on the 15th of July because the car had not been stolen yet from Mr. Garwood, you said, 'That wasn't the truth,' you said, 'I got the car from James Brown at Daly's saloon. I finally met him on the street and told him the car wouldn't work and got him to give me another car for it and this is the one he gave me for it.' Didn't you tell me that?" Didn't I say that to you, and didn't you answer, "Yes, sir."

A. Yes, sir.

Q. You did answer yes, sir, there, did you?

A. Yes, sir, I think so, I am not sure.

Q. And then I said, "Isn't that what you said?" and didn't you answer, "Yes, sir."

A. I think so; my mind that day was in a terrible condition.

Q. Then I said to you, "that you didn't know James Brown. We kept on with our investigation. I told you you had the bill of sale made out; I went and got the man who signed his name as James Brown, James Martin, he told you with his own lips, he told you you got him to sign the bill of sale, and all the way down, I have taken you in and given you the opportunity of seeing all these things face to face, and you said you are up against a stone wall, or words to that effect." Didn't I say that to you?

A. I don't remember, Prosecutor, I might have said it, because my mind was in such a condition on Friday I would have been apt to have said almost anything.

Q. And didn't I go on to say, "I have been fair and you now ask me what I can do. The law will not permit me to make any promises, I can't. Any statement you make must be voluntary and it will be used in court. I can't make any promises, and I want nothing but the desire on your part to tell the truth." Didn't I say that to you?

A. I don't remember.

Q. And didn't I go on to say, "I have listened about your home life, all about your trouble at home, and now you come down to the very thing we are investigating and that which you are being held for, that is, the taking of the life of Harry Garwood, and when you come to that, you say, 'What will you do for me, Prosecutor?' I want you to understand it

is my duty as Prosecutor to investigate these crimes, I have put the evidence before you, I have played fair with you, and my conscience is clear, and all I ask now if you wish to tell me anything you may. You sent for me this morning; you told the officers you wanted to see me, I came here to give you that opportunity, it is up to you whether you wish to or whether you don't." Didn't I say that to you?

A. I don't remember.

Q. I said to you, "You know what the truth is, don't you?" and didn't you answer, "Yes, sir"?

A. I did.

Q. Didn't you tell in that conversation, say these words to me, "I am done lying, when I speak, I am going to speak the truth, everything I say."

A. I might have, I don't remember.

Q. Didn't you say, "Prosecutor, you can believe me, what I say to you now, I will not tell you another lie, if I can't tell you nothing, I won't say anything, if there is something I can't tell I won't tell you a lie in the place of it, I won't lie to anyone from to-day on I am going to lead a straight life," didn't you say that to me?

A. I don't remember, I might have said it.

Q. Didn't you say, "As far as I am saying I lied something, but as far as I am telling you now I am telling the truth. I want some help as to what to say under these conditions, they are hard, hard, hard." Didn't you say that to me?

A. I don't remember.

Q. And didn't you say, "Prosecutor, I don't know what to say," and didn't I say to you, "Guilford, I know what the truth is so far as the facts are as we have them. I have told you honestly and truly what those facts show; now, there is only to my mind one thing, are they true or are they untrue, and if

they are true, what was your reason, what led up to this? Those are circumstances that are locked in your own breast. If those circumstances are helpful to you in any way and if you want to tell them you have a right to, but I can't tell you to do it or not to do it, it is for you to decide what is best." Didn't I say that to you?

A. I don't remember; you might have.

Q. And didn't you say, "Yes, it is hard to decide; would be for you, wouldn't it," and I answered, "It would be." Didn't I make that answer to you?

A. I couldn't say what happened much on Friday.

Q. Then didn't you say to me in answer to that, "By God, you are honest"?

A. I don't remember saying it.

Q. Didn't I then say, "I have always tried to be, and the more serious the case the more honest I try to be; it is for that reason that I can't make any promises, because the law will not permit me to do so; I would be taking an advantage of you if I did, I would be doing something that I could not carry out, no matter whether you tell me or whether you don't,"—didn't I say that to you?

A. I don't remember you saying it.

Q. And didn't you say in answer to it, "You wouldn't take advantage of anyone," and didn't I say, "I wouldn't want to take advantage of anyone, I would not," and didn't you say, "Not on these grounds," and I said, "On these grounds I certainly would not," and didn't you answer me, "Well, Prosecutor, I can't say much, but I tell you, it is a shame"—wasn't that the conversation between us?

A. I don't think so, I knowed you took advantage of me.

Q. So that when this confession was made by you on the afternoon of August 5th, it was after a con-

versation in which those matters that I have just brought to your attention took place, wasn't it?

A. Will you repeat that, please?

(Question repeated.)

A. I think so; I am not sure.

Q. And that conversation was at your request, wasn't it?

A. I don't know.

Q. It was at your request that you should be taken to Haddonfield—— What do you mean, you don't know? Didn't you say a minute ago——

A. I don't remember; I don't remember a whole lot what happened on Friday.

Q. On Friday morning, didn't you say a few minutes ago that you asked the jailor to send word for me that you wanted to see me?

A. No, sir.

Q. You did, as a matter of fact, didn't you?

A. Officers, your own detectives came and took me out.

Q. All right then, the officers.

A. I didn't send for them, I didn't ask for them to come after me; they started to take me out, and did take me out on the street.

Q. Did you tell them or anyone else that you wanted to talk to me on Friday morning, August 5th?

A. I don't think so, I might have.

Q. In this statement, these questions, didn't I ask you, "I am here because you told the officers you wanted to see me and talk to me," and didn't you say, "That is right."

A. I don't remember.

Q. When I first asked you those questions a few

minutes ago you said yes; now, is it that you did or that you don't remember?

A. I don't remember, as I told you a whole lot of what happened on Friday; my mind was in such a condition——

Q. Now then, Friday morning was the morning following the time when everything that you had said to us up to that time had been proven by the officers to be untrue, isn't it?

Mr. Cleary: If the Court please, I think that is objectionable on the ground that it is a conclusion.

The Prosecutor: All right; I will change it for you.

Q. Friday morning you knew that we knew that your first statement about the car was not true, didn't you?

A. I don't know whether you did or not.

Q. You knew that you had told us a different story after we told you the car had not come out of the warehouse until the 21st, didn't you?

A. I don't know.

Q. Well, you knew that we knew that on Tuesday, didn't you?

A. I don't remember.

Q. You knew at that time that he had shown you the watch and the chain, isn't that true?

A. I know that you showed me a watch and chain, but when you showed it to me, that is, the exact time I can't just remember.

Q. It was before your confession, wasn't it?

A. Yes, sir.

Q. And you knew we had found out who Ben Martin was, didn't you?

A. Yes.

Q. And you knew that we knew you had changed the number of the car?

A. I didn't, no, sir.

Q. Well, you had told us that you had changed it, didn't you?

A. I didn't tell you I did.

Q. You told us that the number was changed?

A. I don't remember.

Q. So that on Friday morning when you came to me and wanted to know what could be done for you, it was because, as you stated, that you were up against a stone wall—isn't that true?

A. I was when I was in your hands.

Q. And you wanted to know what promises could be made to you, didn't you?

A. For you promised me everything.

Q. In the face of what I have read to you to-day and your answers as to what I said and the answers you gave, as to all of which mostly you have answered, "I don't remember," do you say that any promises were made to you?

A. Please repeat that, I didn't understand it, quite.

(Question repeated.)

A. Do I say there was any promises made to me—is that the question?

Q. In a way, yes.

A. Yes, you promised me everything that I told you before.

Q. Did I tell you that I couldn't make any promises as I have enumerated here to-day?

A. You might have; I don't remember whether you did or not.

Q. There is nothing there that was offering you anything, was there?

A. I don't know.

Q. Was there anything in those statements that I made to you to-day that offered you any promise or hope of any kind—was there?

A. I don't quite understand.

Q. Was there anything said by me when I asked you these—made these statements to you, that I could not make any promises to you that would raise any hope in your mind that I would?

A. There was before the statements was taken.

Q. So that when I made this statement you knew that there was no promise I could make to you that I could carry out, didn't you?

A. I don't know whether you did or not.

Q. Didn't you hear me say these things to you?

A. I don't remember your saying it.

Q. Didn't you say it was hard and asked me if it wouldn't be hard to decide what to do, and I said, "Yes," and didn't you say, "By God, you are honest"?

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

Q. So that after this conversation you asked if you might see your wife, didn't you?

A. I asked to see my wife; I don't know whether it was after the conversation or before.

Q. It was after the conversation in my office, wasn't it? Now, stop and think.

A. It was up in your office, I think, where you had taken me there, which I don't quite remember whether it was or not; I think it was.

Q. And we took you out to see your wife, didn't we?

Mr. Cleary: If the Court please, I object to that as very leading.

The Court: Well, a leading question is permissible on cross-examination, Mr. Cleary.

Mr. Cleary: I thought that was in the discretion of the Court.

The Court: If you feel that way, then I will exercise my discretion and allow it.

Q. And you were taken out to see your wife, weren't you?

A. You took me out to see my wife, yes.

Q. And after you had seen her you came back to my office at half-past four in the afternoon, and I was sent for, so I came in, and didn't you walk over to me and put your hands on my shoulders like that, and, looking right in my face, say "Prosecutor, I want to tell you the truth," and didn't I say, "Would you have any objection to it being taken down stenographically?" And you said, "No, sir," and I said, "Send for Mr. Berry—isn't that true?

A. No, sir.

Q. And Mr. Berry came in, didn't he?

A. Mr. Berry came in the room sometime after you were there, quite a while.

Q. And it was then that I said to you, "Do you wish to make a voluntary statement?" the same as I read here a few minutes ago, and you said, "Yes, sir,"—isn't that right?

A. I don't remember it; I may.

Q. And I then said, "Proceed," and in answer to my suggestion, "Proceed," you started to enumerate why you killed Harry Garwood in your own words and not by my questions, isn't that true?

A. No, sir, you led me.

Q. Do you mean to say that when you made this

answer to my question, "Proceed," that I led you in saying that?

A. You asked me if—what I mean by leading me, you told me practically, you told me what to say; you would say, "Didn't you do such and such a thing?" or "Didn't such and such a thing happen," and I thought by the way I told the confession, that that was the way you wanted me to tell it, and I wanted your help, which you promised me that you would do and you would help me, and I told it I thought to please you, the way I was telling it was pleasing you, which I didn't know to tell it any different.

Q. Well then, the story you are telling now is to please somebody else, is it?

A. Why, I thought that, not exactly.

Q. Well, if you would tell a story that you thought would please me, even though it would hurt you, for what reason are you telling the story now about self-defense, are you doing that to please somebody, or at somebody's suggestion?

A. No, sir.

Q. Now, you are acting on your own thought, are you?

A. Yes, sir.

Q. How did you figure it would please me to hear you say that Harry Garwood was killed for running with your wife?

A. I have got no idea.

Q. In answer to my question, "Proceed," you enumerated why you did it, didn't you, without my asking a question?

A. I don't remember.

Q. Didn't you say, "Well, Harry Garwood has been running around with my wife, laughed at me." and so forth, in your own words, not my words, your words?

A. I might have said so.

Q. So what you said then was your own thought and not any suggestion from me, was it?

A. You told me to say a good bit.

Q. Did I tell you in answer to the question, "Proceed," to say, "Harry Garwood has been running around with my wife"?

A. No, sir, I don't think you did.

Q. That was your own thought, is that right?

A. Yes, sir.

Q. So that the first statement you made after I said, "Proceed," was entirely your own thought and no suggestion from me, is that right?

A. It must be.

Q. So that if it was your own thought and you knew the truth to be self-defense, why didn't you say, "I acted in self-defense," then when you had that opportunity.

A. Why, because my mind was in such a condition that day from the abuse that I had received from you and your men that I wasn't responsible for what I was saying.

Q. Did anybody know that you shot Harry Garwood in the breast but yourself?

A. No.

Q. So that when I asked you the question, "How did you kill him," and you answered, "Shot him in the breast," you were telling me what you knew about it, weren't you?

A. Yes, sir.

Q. I didn't tell you to make that answer, did I?

A. You did not lead me on that, no, not on that one question.

Q. So that you did tell that on your own thought and own knowledge without being led, is that so?

A. Yes, sir.

Q. And my next question to you was, "Did anybody see you do it, did anybody see you shoot Harry Garwood?"

A. I don't know whether they did or not.

Q. And I asked you, "where? In the head?" Was there any suggestion about that from me?

A. Yes, sir.

Q. How could the suggestion be, when I asked you, "Where?" You could have said, the head, the feet, the arms or body, but you said in the head.

A. I was tell you as near as I could at that time.

Q. Then I asked you, "Where did you shoot him, at what place?" and you answered, "Out the Marlton Pike." I didn't tell you to say Marlton Pike, did I? You told me that in answer to my question, did you not?

A. I think so, I don't quite remember.

Q. And I then said, "Where the body was found?" and you said, "Yes," there is no suggestion about that, is there? I asked you, "Where," you could have said there or any place else, couldn't you? There is no leading there, is there?

A. I don't remember whether there was or not.

Q. And then I asked you, "How did you get him into that particular place?" and didn't you answer, "I drug him some of the way." I didn't suggest that to you, did I?

A. No, sir.

Q. You alone knew that you dragged him in after you shot him, isn't that true?

A. Yes, sir.

Q. So when I asked you the question, "How did you get him in that particular place?" I was seeking information from you, wasn't I?

A. Then you was.

Q. And you gave me the information I asked, without any leading on my part, didn't you?

A. I believe so.

Q. Then I said, "Was this on Saturday, July 23rd?" and the answer was, "It was on Saturday, but the date I couldn't say." Isn't that what you said?

A. I don't remember. I think it was, which I couldn't say clearly.

Q. And then I said, "Was it Saturday two weeks ago to-morrow?" and your answer was, "Yes," Now, there was an opportunity to make any answer you pleased, wasn't there?

A. Yes, I guess there was.

Q. Then I said to you, "How did you get him to come out with you to Marlton Pike?" I was seeking information then, wasn't I?

A. Yes, sir.

Q. And you answered, "I asked him to take me out to Marlton," is that the truth?

A. Yes, sir.

Q. So there was no leading there. You gave me the answer that I was asking the information about, did you not?

A. I guess I did.

Q. I asked you, "Did he know you?" You answered, "I don't think he recognized me. He told me—I asked him if he knowed me going out, and he said he had seen me before. I guess he had." That was your answer, wasn't it?

A. Yes, sir.

Q. There was no leading on my part with that, was there?

A. I don't think so.

Q. I asked you if you were with him twice on Saturday, and you said, "Yes," did you not?

A. Yes, sir.

Q. Then I said to you, "Now, just tell me how you engaged him at the ferry and go right through with

how it happened, what he said to you or what you said to him." Now, the door was open in any answer to that; you could have said anything you pleased, couldn't you?

A. I don't quite remember.

Q. There was no suggestion on my part as to how to answer that question, was there?

Mr. Cleary: If your Honor please, I object to this line of cross-examination as being argumentative.

The Court: No, the question is allowed.

A. I don't remember much, what taking place that afternoon.

Q. Then the answer you gave me was this, "I asked him if he—when we got out on the pike, if he, when we went out the second time I was under the influence of liquor at that time, and I asked him if he was satisfied to run around with married women, and get them in the family way and then laugh when he did it; I asked him if he thought he could get away with that. He said he was never out with my wife." I didn't suggest to you making that answer, did I?

A. No, sir.

Q. "He said he was never out with my wife." I didn't suggest that to you, did I?

A. I don't think you did.

Q. And then I asked you, "Where did you have this conversation with him?" Did I lead you in the the answer you make to that?

A. I couldn't say.

Q. You answered, "In the car." Was that the truth?

A. Yes, sir.

Q. So that there was no leading there and you told the truth?

A. Yes, sir.

Q. And I said, "On your way out?" and didn't you answer, "Yes"?

A. I don't remember.

Q. I then asked you, "Did you stop at any place?" and didn't you answer, "We did stop then"?

A. I think so.

Q. Was there any leading on my part for that answer?

A. Yes, you asked me if I stopped any place.

Q. Then when you said you did stop, you thought I wanted you to say you did rather than you didn't?

A. Yes, sir.

Q. How would you know whether I wanted you to say whether you did or didn't?

A. By the impression.

Q. What in asking the question, "Did you stop any place?" how could you tell from that whether I did or didn't?

A. By the impression at that time. I was liable to say anything.

Q. It was the truth you answered?

A. I think it was.

Q. So that if I gave you any impression at all, it was to tell the truth?

A. I tried to answer the truth.

Q. So if I gave you any impression it was to answer the truth, was that right?

A. I believe so.

Q. And didn't I say, you had stopped, and didn't you answer, "Yes," didn't I say, "Where?" and you answered, "Right by that road."

A. I don't remember; I don't think, I don't remember.

Q. Did you stop by that road?

A. By the road?

Q. Yes.

A. Pulled in to the road.

Q. What did you mean in answer to my question, when I said, "Where," referring to where you had stopped, and you said, "Right by that road"?

A. I don't quite understand.

Q. Didn't I then say to you, "And had you stopped any place on your way there?" and didn't you answer, "Not on the second trip"?

A. I didn't remember stopping anywhere.

Q. Then the answer you made was according to your remembrance and not by any leading on my part?

A. Yes, sir, I didn't remember that.

Q. But the fact is you did stop on your second trip, didn't you?

A. I don't know; I don't remember stopping, I might have stopped.

Q. I asked you on the first trip did you stop any place and you answered, "Stopped at Ellisburg." Was that the truth?

A. I think it was.

Q. So there was no leading on my part in bringing that answer out of you?

A. You asked me where we stopped.

Q. And is that all the leading character of all the information that I wanted you to testify to?

A. I don't remember.

Q. It is the truth, you stopped at Ellisburg?

A. I think so.

Q. I then asked you, "Why did you make two trips?" Did I lead you in the answer that you gave?

A. I don't remember.

Q. The answer was, "Well, I was going to give him a beating, and I thought I wouldn't; I thought,

'Here, I won't do anything, let him go.'" Is that your answer?

A. That was my answer but I had no intentions of beating him, I think I am not sure.

Q. I didn't lead you in that, did I?

A. I don't remember.

Q. I then said, "What time? That was on the first trip?" and your answer was, "That was on the first trip." Did you make that answer?

A. I can't remember. I might have.

Q. Then the question was, "Then did he take you back to the ferry?" and your answer was, "Took me back, yes." Did you make that answer?

A. I can't remember.

Q. Is it the truth he did take you back to the ferry?

A. No, sir, I don't think so. He didn't take me—That is on the first trip, is it?

Q. Yes.

A. No, he didn't take me to the ferry.

Q. Then didn't I say, "Didn't you get off on Federal Street?" and wasn't your answer, "Yes, got off on Federal Street." I suppose that is what you refer to as leading, the question on my part where I lead you to the answer?

A. I did get off on Federal Street.

Q. You did?

A. I think so.

Q. Well then, it was the truth you got off there?

A. I think so.

Q. Well then, that was the truth, you got off there?

A. I think so.

Q. So that if I lead you to make that answer it was the truth?

A. I think so.

Q. Was the question, "Didn't you get off at Federal Street?"—did that lead you to say, "Yes, got

off on Federal Street," which was the truth, is that right?

A. I think so.

Q. "Why did you get off of this car on Federal Street?" that reason was this, wasn't it?

A. I think so.

Q. And didn't you say, "I was going to leave him"?

A. I think so.

Q. No suggestion by me as to that?

A. I don't think so.

Q. And then I said to you, "Where did you go when you got off at Federal Street?" Did you know where you had gone?

A. Yes, sir.

Q. Did you tell me where you had gone?

A. No, sir.

Q. So that in answer to my question I neither lead you or you never told me where you went, did you?

Mr. Cleary: I think that is argumentative.

A. I think I told him.

Q. Where had you gone?

A. I just can't remember.

Q. Didn't you say, "I went down Fourth Street"?

A. Yes, sir.

Q. Didn't I say, "To where"?

A. I think you did.

Q. What did you answer?

A. I can't remember what the answer was.

Q. Didn't you answer, "Prosecutor, it is not necessary for me to tell you where, is it?" Didn't you say that?

A. I think I did.

Q. And didn't I say in answer to that, "Not if you don't wish to."

A. Yes, sir.

Q. I wasn't leading you there to tell anything you didn't want to tell, was I?

A. You tried to get me to tell.

Q. Didn't I say, "Not if you don't wish to"?

A. After—I think so, I don't know.

Q. Didn't you answer, "These people aren't connected in it in any way."

A. I think so.

Q. Didn't I then say, "I know. Did you make any arrangements with him to meet him again later in the morning?" and you answered, "No, no arrangements." Did you make that answer?

A. Yes, sir, I did.

Q. "Did you tell him that you might want to see him again?" and you answered, "No." Is that right?

A. That is right.

Q. The next question, "Well then, you went back to the ferry a second time, didn't you?" and you answered, "Yes." Is that right?

A. Yes, sir, I think I did.

Q. The next question, "What time did you go the second time?" Answer, "Why, I don't know just what time it was." Is that right?

A. That's right, I think.

Q. Did I say, "Well, about what time?" and you said, "Well, I guess it was somewhere around ten o'clock." Did you answer that?

A. I think so.

Q. "What time did you see him the first time?" Answer, "About seven o'clock. I spied him from the train; I was going to work." Did you make that answer?

A. Yes, sir.

Q. I asked you, "Had you gotten off the train?" and you answered, "Yes, I got off the train to see him." Didn't you?

A. Yes, sir, I got off the train to go to work.

Q. Did you answer, "Yes, I got off the train to see him"?

A. I couldn't say whether I did or not, I may.

Q. And the next question, "And you came out of the ferry house?" Answer, "Yes." Did you?

A. Yes, sir.

Q. "And what did you say to him when you met him the first time?" Answer, "I asked him if he was running a jitney and he said he was. I recognized him. I asked him if his name was Garwood and he said it was." Did that happen?

A. Yes, sir.

Q. Just as you related it there?

A. Yes, sir.

Q. And it is the truth?

A. Yes, sir.

Q. The next question, "Then what did you say?" Answer, "I asked him to take me to Marlton." Is that right?

A. I don't know whether it is or not. I couldn't say.

Q. Well, did you ask him to take you to Marlton?

A. I don't know whether I asked him to take me to Marlton or Ellisburg. I don't think I asked him to take me to Marlton. I don't know.

Q. Well, your answer here is, "I asked him to take me to Marlton," and you say you don't remember whether it was Marlton or Ellisburg?

A. I don't remember what I told you. This is the first trip, isn't it?

Q. This is the first trip.

A. I asked me to take me to Ellisburg. But what I said there Friday, I don't remember whether I said to take me to Ellisburg or Marlton.

Q. And you answered, "All right." Did you say that? I said, "Did you start then?" and your answer was, "We started." Is that true?

A. Yes, sir.

Q. "Did you talk to anybody except him at the ferry?" and you answered, "No one but him." Is that true?

A. Yes, sir.

Q. And the next question was, "How far toward Marlton did you go on that first trip?" Answer, "Well, we went down the road as far as Howard Shivers." Is that the truth?

A. Yes, sir.

Q. "Is that past the Ellisburg Hotel?" Answer, "Yes." "Did you stop at the Ellisburg Hotel on your way?" Answer, "I don't think so; let's see—yes, I did, but he didn't, I don't think." Was that the answer you gave?

A. I think it was.

Q. "Then you went down the road you say as far as Howard Shiver's?" Answer, "Yes." I then said, "How near is that to where this body was afterwards found?" Answer, "Well, that is quite a ways this side of it." Did you make that answer?

A. I think so.

Q. "Now, what reason did you give for turning back before you got to Marlton?" Answer, "Well, I got thinking the thing over going out and I thought hell, there is no use in doing anything; my heart was pretty heavy, and I made up my mind to let him go, I wasn't going to kill him." Did you answer that to me?

A. I think so.

Q. I said, "Did you speak to him about going with your wife the first trip you made?" What answer did you make?

A. No, I think, I don't know.

Q. That is the answer here?

A. I don't remember hardly what I said.

Q. "And what excuse did you give him for turning the car around and coming back?" Answer, "I just went into Shiver's on an excuse and turned around and came back." Is that right?

A. He drove the car into Shiver's, in the yard. I went out to the barn, and Shiver's son was milking cows.

Q. "And did you pay him for the trip?" Answer, "Yes." That's true?

A. Yes, that is.

Q. "And did you pay him for the trip? A. Yes." —that is true?

A. Yes.

Q. "How much? A. $3.00." Is that right?

A. I paid him $4.00, I think.

Q. You paid him $3.00 for taking you out and $1.00 for bringing you back, is that right?

A. Yes.

Q. "Now then, you got off his car on Federal Street at Fourth and walked down Fourth? A. Yes." Is that right?

A. Yes.

Q. "How long were you gone before you came back? A. Two or three hours." Is that right?

A. I don't remember.

Q. Then I asked you, "Then where did you go to find him? A. Walked up to the ferry; I was going across the river." Is that right?

A. I don't remember; I think it is, yes.

Q. Then my question to you was, "Did you go to

the ferry with the intention of seeing him?" and what did you answer?

A. "No," I think.

Q. That is right, you answered no. "Q. Well, what changed your mind when you got to the ferry?" What was your answer?

A. I don't remember, but I think seeing the car, or seeing him.

Q. Your answer was, "The further I went the madder I got." Did you make that answer to me?

A. I don't remember.

Q. "When you went to the ferry did you see him or see someone first?" What was your answer?

A. I don't remember, I think I seen the jitney driver first or something.

Q. Your answer was, "I seen his machine,"—is that the answer you gave me?

A. I don't remember.

Q. You saw his machine, didn't you?

A. Yes, sir.

Q. My next question to you was, "Did you ask for him?" and your answer, "I asked where he was." Is that right?

A. I don't think so, I don't remember.

Q. "Who did you ask? A. I don't know who it was." Is that right?

A. I don't remember.

Q. "Who did you ask for? A. I asked for Garwood, the jitney driver, I think, if I am not mistaken, as close as I can remember." Is that the answer you gave?

A. I think I asked someone up there for him.

Q. "And what were you told? A. I was told he was in the restaurant on the other side of the street." Is that right?

A. I think so, I don't remember clearly.

Q. "Did you go to the restaurant after him? A. No, I went and got in his car; somebody said that was his car." Is that the answer you made?

A. I don't remember.

Q. Well, there is no leading in those questions, is there?

A. I don't know.

Q. "Q. And then what happened? A. I told him I wanted him to drive me out again." Did you tell him that?

A. I think so.

Q. And is this answer right?

A. What is it?

Q. "A. I told him I wanted him to drive me out again"?

A. Yes, that is right, I told him that.

Q. "Q. Did he consent to do so?" and your answer was, "Yes"—is that true?

A. Yes.

Q. "Q. Did he go right away? A. Yes." Is that right?

A. I think so.

Q. "Q. What route did he take? A. The Marlton Pike." Is that right?

A. I think so.

Q. "Q. Out Federal? A. Yes." Is that right?

A. I think so.

Q. "Q. To Marlton Pike? A. Yes." Is that right?

A. I think it is.

Q. "Q. What did you talk about on your way? A. Why, I don't know what we did talk about." Is that right?

A. That is right.

Q. "Q. Where were you when you first started to talk to him about your wife? A. Where it was found." Is that right?

A. On the road out there, out there on the road, not going out.

Q. "Q. Didn't you talk to him until the car was stopped? A. No." Is that right?

A. That is right.

Q. "Q. On what pretext did you stop the car? A. I asked him to stop a minute, that I wanted to talk to him, and he stopped the car, and I asked him, I said, 'Well——' " and then I said, "Q. Did you ask him to get out? A. I asked him out of the car." Is that right?

A. I don't remember.

Q. "Q. Did he get out?" Your answer was, "No, he wouldn't get out"—is that right?

A. I don't remember.

Q. "Q. What did you say? A. He didn't get out." Is that the answer you made?

A. I don't remember; I think it was.

Q. "Q. Was he in the car when you shot him? A. He was in the car, started to come back toward me," —is that right?

A. Yes, sir.

Q. "Q. Well,was he in the car? A. Yes," is that right ?

A. Yes, sir.

Q. "Q. Were you in the car? A. Yes,"—is that right?

A. That is, on the ground and running-board together.

Q. Then I said, "Were you in the car?" and you answered, "Yes." Then I said, "Where were you sitting?" and you answered, "I was standing on the running-board of the car"—is that right?

A. Yes, sir.

Q. "Q. And where was he sitting?" and you said, "He was starting to come out." Is that right?

A. That is right, I think.

Q. "Q. Why was he coming out?" and your answer, "I told him I was going to give him a damn good lacing, and he said he wouldn't get out of the car." Is that the answer you made?

A. I think so.

Q. I asked you, "That is, you would give it to him if didn't get out of the car?" and your answer was, "Yes." Is that right?

A. I don't remember.

Q. You remember saying in answer to my question, "I told him I was going to give him a damn good lacing and he said he wouldn't get out of the car,"—you remember saying that, don't you?

A. I don't remember much that I did say that day.

Q. But you said a minute ago that you remember saying that and that was right; now, do you remember saying it? Is it right or is it wrong?

A. What is the question?

Q. I asked you whether you did not, in answer to my question, "Why was he coming out? A. I told him I was going to give him a damn good lacing, and he said he would not get out of the car." Is that what you said to him?

A. I don't know whether it is or not.

Q. What did you say to him?

A. I said this, "That you have got, as long as you want my wife, or want other peoples wives, you have got two things to do. I am going away, I am going out west, and I feel now that it is your duty to take care of her and the children, as long as you have been around so many years."

Q. Now, you can remember then what you said to him, and you say you don't remember whether you said that or not?

A. I said it.

Mr. Cleary: If the Court please, I object to that, because that is not the question; the question was whether he said that upon this particular occasion, not whether he says it now.

The Court: No, but he was then asked afterward what he did say, and he is now stating what he did say.

The Prosecutor: May I ask just one question which will conclude this part of it?

The Court: Certainly.

Q. If you remember saying that to him at that time, why didn't you make that answer to me when I asked you the question on the day that you gave this answer which I have read to you?

A. On account of the conditions of my mind, the abuse that I had received from the Prosecutor's office, the treatment that I had received in having no sleep or anything hardly to eat, and my nerves was practically a wreck; I was sick all over.

Q. That didn't stop you from telling me that you said, "I told him I was going to give him a damn good lacing, and he said he wouldn't get out of the car"—you could say that, couldn't you?

A. I would have been very apt to have said anything.

Q. Nobody told you to say that, did they?

A. I don't know.

Q. That was your language, wasn't it?

A. I couldn't say.

Q. Was there anything preceding this to indicate that that was the answer you were to make?

A. I couldn't say.

(At this point a recess was taken until 1.45 P. M.)

Trial of the cause resumed at 1.45 P. M., pursuant to adjournment, in the presence of the defendant, and counsel for the respective parties.

GUILFORD C. YOUNG, resumed in cross-examination.

By the Prosecutor:

Q. Mr. Young, what time did your train get into the terminal at Market Street on the morning of July 23rd?

A. Between quarter after seven and twenty minutes after seven.

Q. Then what did you do as soon as the train got in?

A. I was looking out the window when the train came in.

Q. What did you do when you got off the train?

A. I started to cross the river, but changed my mind after seeing Harry Garwood from the train window.

Q. Was anyone with you?

A. Not particular, no, sir.

Q. And you saw him you say from the inside of the ferry house?

A. I didn't say the inside of the ferry house.

Q. Inside the terminal?

A. Where the train pulls in to the ferry or into the terminal.

Q. I understood you to say that that was two or three tracks over?

A. Something like that, I don't know just how many.

Q. And where was he standing?

A. Sitting in his machine.

Q. When you came out did you go right to him?

A. Yes, sir.

Q. What is it?

A. Yes, sir, I think so.

Q. Did you know him?

A. Yes, sir.

Q. Why did you ask him then, if his name was Garwood?

A. To make sure.

Q. Then you were not sure?

A. I was sure, but it would do no harm to ask the name to make positive.

Q. Where did you learn the name of Garwood?

A. From my wife.

Q. When?

A. Before I was married.

Q. When was that?

A. Oh, a few weeks before I was married.

Q. When were you married?

A. Oh, I was married between eight and nine years ago.

Q. How old was your wife at the time of her marriage?

A. Why, I think she was sixteen.

Q. Was she sixteen or under sixteen?

A. Two or three days of being sixteen.

Q. How long had you known her before that?

A. For about a year and a half or more.

Q. And you had been going with her during that time?

A. I had.

Q. Then when you went up to him you said, "Is this Garwood?" Had you ever spoken to him before?

A. No, sir.

Q. Did he know who you were?

A. He had seen me lots of times.

Q. How would he know who you were if you had never spoken to him?

A. Because my wife told me that, she pointed him out to me.

Q. When did she tell you that?

A. Before I was married, and after I was married, too.

Q. So then you thought that he knew you, did you?

A. He did know me.

Q. And you knew him?

A. Yes, sir.

Q. Why was it, if you knew him so well, that when I took this statement from you and asked you if the man was lame, you said, "I don't know."

A. Why, because on that day I wasn't responsible for what I was saying.

Q. When I asked you whether Harry Garwood was lame or not, you said, "I don't know," didn't you?

A. You said to me, I think, "Harry Garwood is not lame, is he?" I don't know just what was said that day, which I can't say sure.

Q. What did you say?

A. I couldn't say.

Q. Was he lame?

A. Harry Garwood was lame a little bit.

Q. Why didn't you say so to me then when I asked you the question?

(No answer.)

Q. Didn't I say this to you: "Q. He was a cripple, wasn't he?" and didn't you answer, "That I couldn't say."

A. Well, I don't consider a man a cripple who is lame a little bit.

Q. Well, that is what you meant when I asked you whether he was a cripple and you said, "That I couldn't say."

A. The man was not a cripple to my knowledge; he was only lame.

Q. Then there is a difference in your mind between crippled and being lame?

A. Yes, sir.

Q. And that was the distinction you drew to me when I asked that question, when you say you didn't know what you were talking about, is that right?

A. I think so.

Q. Then you did know the difference between a cripple and a lame man when you talked to me in that confession, didn't you?

A. Well, a cripple is what I call a man that has got no use of himself.

Q. So that when you made this statement you were not in the confused state that you thought you were, were you?

A. Yes, sir.

Q. But you were not so confused that you could tell me that a man was not a cripple just because he was lame, were you?

A. I don't quite understand you.

Q. If you were in such a confused state of mind, how could you have drawn the distinction to me, when I asked you if this man was a cripple and you said you could not say, as you now say, because he was lame, you did not think he was necessarily a cripple?

A. Why, you didn't ask me; you didn't tell me to say he was a cripple.

Q. Didn't what?

A. You didn't tell me to say he was a cripple.

Q. I asked you if he was a cripple, didn't I?

A. I didn't consider him a cripple.

Q. You didn't the afternoon you made this statement to me, did you?

A. No, I did not consider the man a cripple.

Q. So when I asked you if he was a cripple you said no because you did not at that time consider him a cripple, did you?

A. Why, certainly, I did not consider him a cripple.

Q. So your mind was not too confused that afternoon to draw the distinction between whether a lame man was a cripple or not, was it?

A. Yes, it was.

Q. You drew the distinction, didn't you?

A. Not exactly.

Q. Well, to what extent didn't you?

A. That day I would have been very apt to have told you anything.

Q. You told me what you now say is the truth, that he was not a cripple, didn't you?

A. I told you I don't consider a man slightly lame to be a cripple.

Q. Is that the answer you gave?

A. I don't know; what is the answer I gave?

Q. The question I asked you was, "He was a cripple, wasn't he?" and your answer was, "That I couldn't say."

A. I might have said that, but I didn't mean that.

Q. Now, when you went up to him you said, "Is this Garwood?" He said, "It is." Did he not?

A. When I went up to him I asked him if he was running a jitney and he said he was. I said, "This is Harry Garwood, isn't it?" He said, "Yes."

Q. Then what did you say to him?

A. I said, "I want you to take me out towards—out to Ellisburg, I think, I am not sure.

Q. What did he say?

A. He said he would.

Q. Did you get in the car?

A. I did.

Q. What way did you go?

A. Went out Marlton Pike.

Q. Did you go right out?

A. Yes, sir.

Q. How do you account for the fact then that if you got off the train at 7.20 that you didn't reach Ellisburg until twenty minutes after nine?

A. Well, I think that we reached Ellisburg before twenty minutes after nine, which I can't say the time we reached there, but we did not stop on the road.

Q. Ellisburg is only about four miles out, isn't it?

A. Something like that.

Q. And if you left the ferry twenty minutes after seven, observing all the speed laws, you would have been there before eight o'clock, wouldn't you?

A. I couldn't say.

Q. You have driven an automobile before, have you not?

A. A little bit, not very much.

Q. And you know how far it is to Ellisburg?

A. About six mile, I think.

Q. You are in full possession of your faculties now, are you not?

A. I think I am.

Q. And do you mean to tell me you don't know how long it would take to drive out to Ellisburg?

A. No, I don't know how long it took to drive out.

Q. Well, how many miles is it?

A. I don't know exactly, I imagine somewhere about six miles.

Q. Supposing six miles, how long would it take you to get therein your estimation?

A. About three-quarters of an hour.
Q. To go six miles?
A. Yes, sir.
Q. Were you running at the rate of nine miles an hour all the way out there?
A. I don't know how fast we was running.
Q. Well then, if it took you three-quarters of an hour, you were there shortly after eight o'clock, were you not?
A. I don't know what time we was there.
Q. Did you stop any place on the way?
A. Not that I know of, going out.
Q. Did you have any conversation with him on the way?
A. Yes, some.
Q. What did you talk to him about?
A. I don't know. I have forgotten.
Q. Had you agreed how much to pay him when you started out from the ferry?
A. Yes.
Q. How much?
A. $3.00 for going out and a dollar for bringing me back, which was $4.00.
Q. So then, the quicker he made the trip, the quicker he had his money, didn't he?
A. I don't know, I suppose so.
Q. Under those circumstances do you say it took him three-quarters of an hour to go six mile?
A. I won't say how long it took him; I don't know.
Q. You don't know what you talked about?
A. No, sir.
Q. You don't remember whether you stopped at any place?
A. No, sir.
Q. You stopped at Ellisburg, didn't you?
A. Yes, sir.

Q. For what purpose?

A. To get a drink.

Q. Did you get a drink?

A. I think we did.

Q. Who waited on you?

A. I think the proprietor's wife, or the proprietor, I don't know which.

Q. How long were you in the place?

A. I don't know.

Q. Then you went out on your way?

A. To Howard Shiver's.

Q. Why did you go there?

A. Because I wasn't going to say anything to the man.

Q. Why did you go in to Howard Shiver's?

A. For an excuse to go back.

Q. What excuse did you use?

A. I asked if there was a party worked there, I just don't remember the name, whether I gave the name of Jones, or what name I gave, I think it was.

Q. Had you finished?

A. Yes, sir.

Q. Did you have an excuse to tell the man to turn around and bring you back to Camden?

A. I didn't want the man to distinctly recognize who I was.

Q. I thought you said he knew who you were when you left the ferry?

A. He didn't say so.

Q. I understood you to say so.

A. I didn't understand your question to be that way.

Q. I asked you how he knew you and you said he had been pointed out to you. Did he know you or didn't he?

Mr. Cleary: That is a conclusion in the man's mind.

The Court: That is perfectly proper; he has a right to show in the cross-examination whether the witness said something else.

(Exception noted for defendant.)

Q. You say you didn't want him to know who you were, is that right?

A. I didn't want him to know I was Mrs. Young's husband.

Q. Couldn't you have told him to turn around and come back to Camden without telling him who you were?

A. I suppose I could.

Q. Well, why would telling him to turn around and come back to Camden inform him who you were?

A. I guess he would think I wanted to hire the car to go out to Ellisburg to get a drink.

Q. So all this went through your mind, did it, and you thought if you told him to go back to Camden he would know that you were Mrs. Young's husband, is that right?

A. I didn't want the man to recognize me.

Q. For that reason you made an excuse of going in the Shiver's farm?

A. Yes, sir.

Q. And you thought that would throw him off the track as to who you were?

A. Why, I don't see what else it would do.

Q. You didn't want him to think then that you had just changed your mind about going out there and had decided to come back?

A. How is that? Will you repeat that?

(Question repeated.)

The Witness: Well, I didn't. I had to give some reason for going out there, at least I thought. I didn't want to tell the man I took him out to buy him a drink, that wouldn't—I didn't want him to recognize who I was.

Q. Very well then; so he wouldn't recognize who you were you thought it best to go into Howard Shiver's farm?

A. Yes, sir.

Q. That was done to deceive Mr. Garwood, wasn't it?

A. Well, if you want to have it that way.

Q. Then you came back to Camden?

A. Came back to Camden.

Q. How long did it take you to get back to Camden?

A. I don't know.

Q. Did you come right straight back?

A. I believe so.

Q. Did you stop any place on your way?

A. I don't think so, only Fourth Street.

Q. What is it?

A. I don't think so, until we got to Fourth Street, Camden.

Q. Then who stopped the car?

A. Mr. Garwood.

Q. Did you order him to?

A. Yes, sir.

Q. For what purpose?

A. To get out.

Q. Did you get out?

A. I did.

Q. Where did you go?

A. Down Fourth Street.

Q. Where?
A. Down Fourth Street.
Q. Where?
A. Well, I don't consider that necessarily to tell you.

The Court: Yes, you answer the question, where did you go, Mr. Young.

The Witness: I went down Fourth Street.

Q. Where?

The Court: Do you remember where you went on Fourth Street, Mr. Young? If you do, just answer the question, if you don't know just say that you don't know.

The Witness: Somewhere on Fourth Street.

Q. Do you know where you went or don't you remember?
A. I went on Fourth Street.
Q. Do you remember where you went on Fourth Street?
A. I think I went into a cigar store.
Q. Where is the cigar store? Where is the cigar store?
A. I am just trying to think what block it is in.
Q. Oh, excuse me.
A. On the right-hand side of the street, I think.
Q. How far below Federal?
A. Two or three squares; I don't know the name of the street.
Q. Is that the only place you went in on Fourth Street?

New Jersey State Library

A. Well, I don't want to tell where I went on Fourth Street.

Q. Why not?

A. Well, I have a reason.

Q. What is your reason?

The Court: You must tell where you went, Mr. Young, on Fourth Street.

The Witness: My reason is that——

The Court: Never mind what your reason is. If the question is asked you, you must tell where you went.

The Witness: In a hotel.

Q. What is it? What was your answer?

A. In a hotel.

Q. Where was the hotel?

A. On Fourth Street.

Q. Where?

A. On Fourth Street, somewhere.

Q. Where?

A. I am not very well acquainted with the streets.

Q. Whose place was it?

A. A friend of mine.

Q. What is his name?

A. Well, I don't want to tell you what his name is.

Q. What is it?

A. I don't want to tell you what his name is.

Q. I would like to know the name of the hotel man that you went to see on Fourth Street, when you got out of Garwood's car?

The Court: If you know, you must tell. Of course, if you don't know, you don't have to tell, because you can't tell.

The Witness: I don't know what that man's name is.

Q. What is that? What is that?

The Court: I think he answered, first, read the answer.

The Witness: I didn't answer.

The Court: What is the question?

The Prosecutor: I said, what is the hotel keeper's name.

Mr. Cleary: If your Honor please, this witness seems to have something on his mind, some reason.

The Court: I perceive that, Mr. Cleary, perfectly well, and of course, Mr. Young, you must answer these questions.

Mr. Cleary: If your Honor directs him to tell it.

The Court: See, Mr. Young, you are sworn to tell the truth, and if you know the proprietor of this hotel you must tell.

Mr. Cleary: Mr. Young, if you know the proprietor of the hotel state it, no matter what your objection is, because the Court will compel you to.

The Witness: Mr. Timmons.

Q. Whom did you see?
A. The person who was tending bar.

Q. Was Mr. Timmons?
A. It was at Timmons'.
Q. How long were you in there?
A. I don't know just how long.

The Prosecutor: Will you call Mr. Timmons to the door there? (A man comes inside the court room.) Stand right there.

Q. Is this the Mr. Timmons whose hotel you say you were in on the morning of July 23rd, before noon?
A. It was his hotel.

The Prosecutor: That's all, Mr. Timmons.

Q. Now, you went in his place, how long were you in there?
A. I don't know just how long, somewhere around an hour and a half, maybe longer.
Q. Was it in his place that you bought the liquor you testified to?

Mr. Cleary: If there is anything on your mind, any reason why you should not tell——

The Court: The witness will answer the question.

A. Why, I don't care to tell where I bought the liquor.

The Court: Well, but you must tell.

Mr. Cleary: If your Honor please, I think if the Court directs him to tell it, he will tell it.

The Court: The Court is directing Mr. Young to tell the Prosecutor, who has a right to know. You see, you testified on your direct examination, Mr. Young, that you had several drinks of liquor, and the Prosecutor has a right to cross-examine you upon that subject; so you tell where you got it and answer the question.

A. I got some liquor in Mr. Timmons' hotel.
Q. How much?
A. I don't know just how much.
Q. Did you buy it or was it given to you?
A. I don't distinctly remember.
Q. You can't remember at the price liquor is now, whether you paid for it or whether it was given to you?
A. I think it was given to me, some of it.
Q. By whom?
A. By the bartender.
Q. Who was he?
A. Mrs. Timmons.
Q. Mrs. Timmons? How many drinks did she give you?
A. I don't know just how many.
Q. Did you pay for them?
A. No, I can't say I did.
Q. Whatever you had to drink was given to you then?
A. No, not all I had to drink wasn't given to me.
Q. You paid for some and she gave you some?
A. No, I paid for some beer.
Q. Oh, you bought a beer and the liquor was given to you?
A. I said that I paid for some beer.
Q. How much did you pay for the beer?
A. I don't know just how much beer I bought.

Q. How much did you pay for it?

A. I think ten cents a glass.

Q. And with each glass of beer a glass of whiskey came along, is that right?

A. I didn't say that.

Q. Where did you get it, in the barroom?

A. Tom Timmons' hotel.

Q. Well, was it in the bar room or in the back room?

The Court: Now, Mr. Wolverton, the main question is whether he got the liquor and the details of it while, of course, to some extent are admissible for the purpose of testing the accuracy of his memory and his condition, yet don't go too far with them, please.

Q. Then if you don't remember whether you paid for it or whether it was given to you, can you remember how many you had?

A. I had a few.

The Court: Now Mr. Wolverton, the main question is whether he got the liquor. The details of it, of course, while to some extent they are admissible for the purpose of testing the accuracy of his memory and his condition, yet do not go too far with it, please.

The Prosecutor: Very well, sir.

Q. Then if you don't remember whether you paid for it or whether it was given to you, can you remember how many drinks you had?

A. I had a few.

Q. Then you left the place?

A. I left the place sometime.
Q. Where did you go when you left the place?
A. Started to go over to Cramps shipyard.
Q. And what route did you take?
A. Right straight up to the ferry.
Q. Which side of the ferry did you go, the Federal Street or Market Street side?
A. On the Federal Street side, I think, on the left-hand side, if that is the Federal Street side.
Q. Did you talk to anybody on your way down?
A. I stopped there in a cigar store.
Q. Where was that?
A. Somewhere, I think, on Federal Street, if it is Federal Street where the street cars run.
Q. On the way to the ferry?
A. On my way to the ferry.
Q. For what reason did you stop in the cigar store? For what purpose did you go in the cigar store?
A. To buy some cigars.
Q. How many did you buy?
A. I bought fifty.
Q. What kind were they?
A. I believe they were a Henrietta cigar.
Q. How much did you pay for them?
A. $4.00, I think.
Q. How much did he ask for them?
A. I am not sure, I think $4.50.
Q. And you got him down to $4.00, did you?
A. I don't know distinctly.
Q. But you paid $4.00 for them?
A. I think so.
Q. What did you do with the cigars?
A. I took them with me.
Q. Did you speak to anybody else on your way to the ferry?

A. I think I did when I got near the ferry.

Q. Whom did you speak to?

A. A jitney driver, I think.

Q. Who was it?

A. I don't know his name.

Q. Is he one of the men who has testified in this case?

A. Yes, sir.

Q. Was it Mr. Ellis?

A. I don't know his name.

Q. A man with a heavy mustache?

A. The man had a mustache, I think.

Q. What did you say to him when you saw him?

A. I don't remember exactly what I did say to him.

Q. What did he say to you?

A. That I can't distinctly remember.

Q. Then why do you remember the fact that you spoke to him?

A. I think I remember someone talking to me there.

Q. What did you say to them?

A. I don't remember.

Q. Well, you remember that you got a box of cigars a square or two up the street; now, how is it you can't remember what you said to him or what he said to you? You have only gone as far as the ferry now?

A. I don't remember; the ferry was quite a ways from where I got the cigars.

Q. Well, the cigars, you got them on Federal Street between Fourth and the ferry some place, didn't you?

A. Yes, sir.

Q. So it could not have been over four squares at the very most, could it?

A. No, sir.

Q. Yet you remember——

A. I don't know, I think the ferry is more than four squares, or they are pretty long squares. They are not over four squares, but they are very long.

Q. So that you remember the conversation you had in the cigar store, but you do not remember the conversation you had with Mills when you got to the ferry?

Mr. Cleary: If the Court please, I don't think the witness has testified to that; that is a conclusion of fact; he has not testified to that.

The Court: No, he has just asked him whether he does remember the conversation.

Mr. Cleary: No, he says, "You have said you remembered the conversation in the cigar store." He hasn't said that; that is a false premise of fact.

The Court: Just read me the question, Mr. Stenographer; I thought I understood it, but maybe I didn't.

(Question repeated.)

The Court: That question is proper. The question is, "Do you remember this conversation that you had with this man at the ferry?"

The Witness: No, sir.

Q. Did you speak to anyone else at the ferry?

A. There was a couple of jitneymen there on the opposite side of the street, I think.

Q. Did you go across the street?

A. I did.

Q. For what reason?

A. To speak to Harry Garwood.

Q. How did you know he was over there?

A. I seen his machine.

Q. So by being out with him once in his machine you, coming along Federal Street, could look across that plaza to the north side, and pick his machine out, could you?

A. I don't see why I couldn't.

Q. How did you pick it out, in what way?

A. Why, it was a new machine.

Q. A new Ford sedan, wasn't it?

A. Yes.

Q. And you, as soon as you came to the ferry, looked over and saw his car, didn't you?

A. No, not as soon as I came to the ferry.

Q. Well then, you looked for his car first on the south side, did you?

A. No, sir.

Q. Well, what reason did you have to speak to Mills before you went over on the north side?

A. I don't know what my conversation was with Mills, if that was his name.

Q. Then when you came to the ferry, you came with the intention of looking for Garwood's car, didn't you?

A. No, sir.

Q. What did you go there to look for?

A. I went to the ferry with the intention of going over and getting my week's wages at Cramp's shipyard.

Q. Then why didn't you go over?

A. There is where I started to go.

Q. Why didn't you go on over?

A. The reason why, I didn't go on over and get my wages was this, that I was going away out west, and I wanted Mr. Garwood to take care of my wife and children.

Q. You had talked to him in the morning, hadn't you?

A. Yes.

Q. You had gone out, you say, to talk to him, is that right?

A. Yes, sir, that is right.

Q. You did not talk to him?

A. No, sir.

Q. You made up your mind you would not talk to him, didn't you?

A. Yes.

Q. And you made up your mind you would go over to Philadelphia and get your wages?

A. Yes.

Q. And you were on your way to do so?

A. Yes.

Q. Did anybody stop you from going?

A. Yes, sir.

Q. Who stopped you

A. Mr. Mills, if that is his name.

Q. He told you not to go?

A. Not exactly.

Q. What did he tell you?

A. I didn't tell him where I was going.

Q. What did Mr. Mills say to you or do that stopped you from going?

A. When I started to go across the ferry Mr. Mills got me by the arm and put me in Garwood's machine.

Q. Now, a few minutes ago you told me you didn't know what Mr. Mills said to you on the south side of the street?

A. I do not.

Q. You don't? Did Mr. Mills take you by the arm and lead you across the street?

A. I don't know, I don't think so.

Q. Well then, nobody stopped you from going right straight in through the ferry house entrance to the boat, did they?

A. I don't remember.

Q. Why did you say that Mills stopped you?

A. He did.

Q. Then he stopped you on the south side and took hold of your arm, did he?

A. On the north side, I guess.

Q. Well, you were on the south side on your way to the ferry, weren't you?

A. Yes, sir.

Q. Then who stopped you from going through the ferry house?

A. I don't know that anyone did.

Q. So that if you were on your way to Philadelphia, you could have gone right straight through, couldn't you?

A. Yes, sir, I guess so.

Q. But you saw Harry Garwood's car across the street, didn't you?

A. Yes, sir.

Q. And you went over to it?

A. Yes, sir.

Q. And you asked for Harry Garwood?

A. I think so; I am not sure.

Q. Or did you ask for the driver of that Ford sedan?

A. I don't remember distinctly.

Q. Do you remember them saying to you that it was a private car, and you said, "No, I was out in it this morning"?

A. I think they did, but I couldn't exactly say.

Q. Then Mr. Mills came over and told you it was Garwood's car and you got in, didn't you?

A. I think I had started across the river then.

Q. And he went and brought you back?

A. Yes, sir.

Q. And put you in the car?

A. I believe so.

Q. Against your will?

A. Well, I don't know, I don't remember what had taken place that day very much.

Q. Well, you remember buying a box of cigars and paying $4.00 for it, don't you?

A. Yes.

Q. And you remember coming down Federal Street and that Mr. Mills spoke to you and then you saw Garwood's car across the street, and that you walked over to it, and you remember walking down the street, and Mr. Garwood taking hold of you and putting you in the car, don't you?

Mr. Cleary: If the Court please, I think this is all repetition; this is a matter that has been thoroughly gone over.

The Court: The question is permissible; of course, it is allowable, but it is a subject upon which the witness has been examined.

The Prosecutor: Very well, I won't press it too far.

The Court: And yet, of course, there is a purpose, as I can see, in the question, and I think the question is allowable.

Q. You remember all that, but you don't remember whether you got into the car?

A. I said——

Mr. Cleary: If the Court please, has the witness answered that other question?

The Court: I have allowed this question.

Mr. Cleary: Mr. Wolverton has assumed that he has answered it.

The Court: He has answered it.

The Witness: Will you repeat it, please?

(Question repeated.)

A. I don't remember much what happened that day.

Q. Where does Harry Garwood come from?

A. I couldn't say.

Q. In the confession that you made to me on August 5th, you told me he came from the restaurant, didn't you?

A. I might have.

Q. And your counsel, in opening this case to the jury, said he came from there, didn't he?

Mr. Cleary: If the Court please, I don't think that has anything to do with the witness, what I said.

The Prosecutor: All right; I was going to ask him whether he had given you that information or not?

Mr. Cleary: Well, that was a confidential communication.

The Prosecutor: What, stated openly in a court of justice?

The Court: Never mind, gentlemen, never mind; the question is allowed.

Mr. Cleary: What, about counsel's opening?

The Court: Yes, that is all right, if it is a statement that you made.

Mr. Cleary: It does not bind him.

The Court: I think it does.

Q. Didn't you in answer to Mr. Cleary's question on direct examination say this: "Q. What is that?" and you answered, "About that time Harry Garwood came out and got in the car"? Now, you said, Mr. Young, that when Mr. Cleary asked you the question where Garwood came from, in answer to him, when he asked you, you say you were so confused that day you don't remember?

A. I didn't tell—I don't remember telling him or you either one, where Mr. Garwood came from.

Q. This is your answer, "And some one came up to me, which I don't remember who now, and said, 'This is Garwood's machine,' and if I am not mistaken, got hold of me by the arm and helped me in the car, and about that time Harry Garwood came out and got in the car," and Mr. Cleary then said, "What is that?" and you said, "About that time Harry Garwood came out and got in the car."

A. Well, that is not saying whether he come out of the restaurant or not.

Q. Where did he come out of?

A. I told you I didn't know.

Q. Do you remember him coming out of any place?

A. I remember him getting in the car.

Q. What did you mean in answer to Mr. Cleary's question then when you said, "About that time Harry Garwood came out and got in the car"?

A. I meant Harry Garwood got in the car.

Q. Well, what did you mean by saying he came out —came out where?

A. I meant that he got in the car.

Q. Well, where did you mean that he came out of?

A. Came out of?

Q. Yes.

A. I don't know where he came out of.

Q. Well, you said, "About that time Harry Garwood came out and got in the car"?

A. Well, Harry Garwood came and got in the car.

Q. All right, you don't know where he came from, do you, when you answered Mr. Cleary's question?

A. I can't say where he came from.

Q. Was it Harry Garwood that got into the car?

A. Yes, sir.

Q. What did you say to him?

A. I think I asked him to take me over the same road.

Q. Did you tell him where you wanted to go?

A. I don't know; I think I told him I wanted to go to Marlton.

Q. Did you tell him what your purpose was in going to Marlton?

A. No, sir.

Q. Where did he sit?

A. In the front seat.

Q. What is it?
A. In the front seat.
Q. Where did you sit?
A. On the seat.
Q. Which seat?
A. The back seat, I think that was the only seat that was there to sit on; the other one was not up.
Q. You remember that the front seat was not up?
A. I don't think so.
Q. The front seat of a Ford is a little seat that pulls over, isn't it?
A. I think so.
Q. And that was folded over and down by the floor, was it?
A. I think so.
Q. So you remember sitting on the back seat, is that right?
A. That is correct.
Q. Did you have the cigars?
A. I think I did.
Q. What did you do with them?
A. I don't know.
Q. Did you open the box?
A. I couldn't really say whether I did or not; I think I did.
Q. Did you give him cigars?
A. I couldn't say.
Q. What did you talk about on your way out?
A. I don't remember.
Q. Did you stop any place on your way out?
A. I don't remember whether we did or not.
Q. Where was the first stop that you made? You say you don't remember whether you stopped on your way out or not?
A. I might have; I don't distinctly remember that day.

Q. Didn't you say yesterday in your cross-examination that you stopped at a place and got a pint of whiskey?

A. Yes, sir.

Q. Now, why did you answer that for Mr. Cleary, and when I ask you the question you say you don't remember?

A. I thought you meant out at Marlton.

Q. You thought I meant Marlton?

A. Yes.

Q. Have you at any time ever said you went to Marlton?

A. No, sir.

Q. Then why would you think——

A. You didn't ask me if I stopped anywhere in Camden.

Q. I asked you if you stopped any place on your way out?

A. Yes, in Camden.

Q. Then you did stop some place?

A. Yes.

Q. You remember that, do you?

A. Yes.

Q. Why didn't you remember it when I asked you before I told you what you had testified to yesterday?

A. I thought you were speaking of the country.

Q. Did I say anything about the country?

A. Not as I know of.

Q. I said on the way out there, didn't I?

A. Yes, sir.

Q. Well, in answer to Mr. Cleary's questions, you said you stopped at a place, didn't you?

A. Yes.

Q. Why couldn't you make the same answer to me?

A. I could, if I understood you.
Q. Then you didn't understand it?
A. No, sir.
Q. Now, where did you stop?
A. We stopped the other side of the bridge somewhere.
Q. Where?
A. I don't know just exactly where, at a hotel.
Q. Which side of the street?
A. On the left-hand side, I think.
Q. How far out?
A. Not so terrible far.
Q. Did you go in the place?
A. I did not.
Q. Who paid for it?
A. I did.
Q. Who did you give the money to?
A. Harry Garwood.
Q. And he came out with some liquor, you say?
A. Yes.
Q. You remember all that?
A. Yes, sir.
Q. You are sure of that?
A. I think so.
Q. How is it you can't remember, then, what you talked about on the way out?
A. Well, I wasn't paying any attention to the conversation so much.
Q. But you can remember how many drinks you had?
A. I don't know that I remember telling you how many drinks I had.
Q. Well, he got a bottle, did he?
A. He did.
Q. And you resumed your journey?
A. Yes, sir.

Q. How far did you go then before you stopped again?

A. I don't remember stopping any more.

Q. Well, did you or didn't you?

A. I couldn't say.

Q. Did you stop at Eichmann's?

A. I don't know whether I did or not.

Q. Did you go in Eichmann's?

A. I couldn't say whether I was or not.

Q. You know Gusten Cooper?

A. Yes, sir.

Q. Did you see him?

A. Not that I know of.

Q. Then you don't remember anything on your way out there other than you stopped and got some whiskey; is that right?

A. That is correct.

Q. When do you first remember what happened?

A. I wanted to talk to Mr. Garwood.

Q. You remember that you wanted to talk to Mr. Garwood—is that the reason you got in his car?

A That was my business of going out there.

Q. Then when you got out the road, how far did you go before you stopped?

A. Out by Springdale.

Q. Did you stop in the main road?

A. Stopped in the road.

Q. In the main road?

A. Marlton Pike? No, sir.

Q. What is it?

A. No, sir.

Q. Then how did you get Garwood to go into this little off-shoot of a road?

A. There is a driveway.

Q. What did you say to him to get him to go in?

A. I told him, "Drive in here."

Q. You had told him you wanted to go to Marlton, hadn't you?

A. I don't know where exactly I told him I wanted to go; I think so.

Q. Didn't you tell us a few minutes ago, in answer to my question, that you told him you wanted to go to Marlton?

A. I told you I thought I did.

Q. All right, you think that you told him you wanted to go to Marlton?

A. I think so, yes.

Q. What excuse did you give him for not going to Marlton, but going in this side road instead?

A. I told him I wanted to talk to him.

Q. So that after you had engaged him to go to Marlton or Ellisburg once and turned around and came back, and engaged him again to go to Marlton and got to this little road, you merely said, "Turn in here, I want to talk to you." Is that right?

A. That is correct.

Q. Did he say, "What do you want to talk to me about?"

A. No, sir.

Q. Didn't he say anything?

A. He said, "All right."

Q. "All right"?

A. I think so.

Q. Didn't he say to you, "Well, you can talk to me here"?

A. No.

Q. Did you tell him why you wanted him to go in the side road to talk to him?

A. No, sir.

Q. What is it?

A. No, sir.

Q. You could have have talked to him on Marlton Pike, couldn't you?

Mr. Cleary: If your Honor please, I think that is argumentative. Mr. Wolverton's line of examination seems to be that way.

The Prosecutor: It will be a very strong argument later on.

The Court: The question is allowed.

Q. Could you have talked to him on Marlton Pike?
A. I believe so.
Q. Why didn't you?
A. I don't know.
Q. You mean you wanted to talk to him, as you say, about your wife?
A. Yes, sir.
Q. Why didn't you talk to him on Marlton Pike?

The Court: Mr. Wolverton, he has answered that question.

The Prosecutor: I didn't think he had.

The Court: My recollection is that he did, that he could have talked to him on Marlton Pike.

Q. I ask you why didn't you?
A. I said I didn't know.
Q. What is it?
A. I said that I didn't know.
Q. You don't know why you didn't talk to him on Marlton Pike?
A. That is correct.
Q. Then why did you ask him to go in the side road and and talk to him?
A. Well, it was shady there.

Q. It was shady on the south side of Marlton Pike, where you were, too, wasn't it?

A. I don't know.

Q. There is a picture of Marlton Pike where you turned in (examining counsel hands picture to witness).

A. I don't know whether that is Marlton Pike or not, it looks like it.

Q. And there were trees along both sides of the road, were there not?

A. Somewhat, yes, sir.

Q. So that there was shade out on the Marlton Pike, is that right?

A. There might have been.

Q. Well then, the reason you turned in the road, the side road, was not entirely because of the shade, was it?

A. No particular reason for turning in in the side road.

Q. Just turned in?

A. Yes, sir.

Q. How far did you go in the road?

A. Oh, I don't know just how far that was.

Q. Where did you stop the car?

A. In the road.

Q. There was no shade where you stopped the car, was there?

A. I don't remember.

Q. You have been there since and saw that there were no trees there, haven't you?

A. I don't remember whether there was or wasn't.

Q. Well then, it wasn't shade that you were interested in?

A. I didn't say exactly shade.

Q. Well, to be exact was there anything else but shade that took you into the side road?

A. Well, there wasn't anything particular that took me into the side road.

Q. Well, if there was nothing in particular that took you into the side road, why didn't you talk to him on the main road?

A. Only that I wanted to talk to him, that was all.

Q. Was there anybody or any thing that stopped you from talking to him on the main road?

A. Well, I don't know that there was anything particular.

Q. How soon after you got inside this out of the way road did you start to talk to him?

A. As soon as I got there.

Q. What is it?

A. As soon as I got there.

Q. Did you stay in the back of the car or get out of the car?

A. I sat in the car.

Q. Why did you get out on the running-board?

A. I told him——

Q. Go ahead?

A. I had then invited him out of the car.

Q. Before you had invited him out of the car, how soon after you got there did you invite him out of the car?

A. I don't know just how soon.

Q. What language did you use in inviting him out of the car?

A. I asked him to get out of the car.

Q. For what reason?

A. For what reason? Why, because he objected to keeping my wife and family.

Q. Why did you ask him to get out of the car?

Mr. Cleary: If your Honor please, he has just answered that question.

The Prosecutor: I submit that isn't an answer to a question why he asked him to get out of the car.

The Court: Just read the last two questions and the answers.

(The two previous questions and answers repeated.)

The Court: Now, what question do you want to ask?

The Prosecutor: My question was—will you read it?

(Previous question repeated.)

The Court: The question now is, "Why did you ask him to get out of the car?"

A. Because he objected to keeping my wife and family.

Q. Why did you want him to get out of the car if that was the reason?

A. Why, he told me I was a God damned liar.

Q. That he didn't know your wife?

A. He did.

Q. And then you asked him to get out of the car, didn't you?

A. Yes, sir.

Q. Now, why did you ask him to get out of the car?

A. He told me that I was a God-damned liar.

Q. Why did you want him then to get out of the car after he said that?

A. Because I knowed he was a liar.

Q. What reason did you have for wanting him to get out of the car?

A. I wouldn't allow any man to call me a God-damned liar.

Q. So that then when you asked him to get out of the car it was for the purpose of beating him, was it?

A. Not so much, necessarily.

Q. Then what did you have in mind?

A. I didn't intend to let a man call me a God-damned liar when I knowed that I wasn't.

Q. Well then, what were you going to do to him?

A. Let him take it back.

Q. What were you going to do to make him take it back?

A. That was a question yet to be decided.

Q. What did you have in mind when you said, "Get out of this car"?

A. I told him to get out of the car. I would show him whether I was a God-damned liar or not.

Q. So that you wanted to get him out of the car so as you could beat him?

A. I didn't say that.

Q. Is that the reason?

A. Not necessarily.

Q. Did you intend to make him take it back?

A. I didn't intend to let him get away with it.

Q. What did you intend to do to stop him from getting away with it?

A. That was a question that was undecided.

Q. What did you have in mind when you said, "Come out of that car"?

A. Well, I had it in mind to make him take it back.

Q. What were you going to do to make him take it back?

A. Well, I don't know.

Q. You told him to get out of the car you would give him a beating or a lacing?

A. Yes, sir.

Q. You did say that to him?

A. Yes, sir.

Q. You knew he was crippled at the time, didn't you?

A. I didn't consider him a cripple, no.

Q. You knew he was lame?

A. Yes.

Q. You knew he had difficulties shifting his feet around?

A. Not very much.

Q. Had to have a special pedal to operate the car?

A. Not that I know of, I don't think he had to have a special pedal, no.

Q. He did have, didn't he?

A. He did have a pedal on there, yes.

Q. And you were then out of the car?

A. No.

Q. Were you still in the car when you told him to get out?

A. I wasn't all the way out of the car.

Q. You were part of the way out?

A. Yes, sir.

Q. Why had you gotten out of the car or part way out?

A. Why had I? Why, to let him get out.

Q. So then you told him to get out and you got out to let him get out. Did he make any effort to get out?

A. I don't know what his efforts was.

Q. Did he try to get up out of the seat?

A. He was up out of the seat, yes, sir.

Q. After you told him if he didn't get out you would beat him?

A. After he told me that I was a God-damned liar.

Q. And you told him to get out?

A. I told him to come out.

Q. And he tried to get out, didn't he?

A. I don't know.

Q. Then he was still sitting in his seat?

A. No.

Q. Where was he?

A. Standing on his feet.

Q. Can you stand up in a Ford car?

A. You can stand on your feet.

Q. Was he standing straight up?

A. He was standing on his feet. No.

Q Was he walking to get out?

A. He had moved toward the door.

Q. How far toward the door?

A. I don't know just how far.

Q. Where were you then? You say you were partly out. How much of the door were you out, or how much were you in?

A. By the door.

Q. Then he was within arms reach of you, wasn't he?

A. Pretty near.

Q. Where were you standing when you shot him?

A. One foot on the ground and one foot on the running-board, I think.

Q. Where was he?

A. Coming towards me or looking towards me.

Q. Looking toward you?

A. Coming towards me, or something.

Q. How near out of the car was he?

A. I don't know exactly.

Q. What did you say to him as you shot?

A. I didn't say anything.
Q. Did he say anything to you?
A. He told me I was a God-damned liar and he would show me.
Q. That was before, wasn't it?
A. It was all done about the same time.
Q. Did you have the revolver in your hand when you told him to get out?
A. No, sir.
Q. After you shot him what did you do?
A. Pulled him out of the car.
Q. You pulled him out of the car? Why did you pull him out of the car?
A. Because he was in the car. I wanted to see how bad he was hurt.
Q. What did you do with him as you pulled him out?
A. He was on the ground.
Q. Where did you put your revolver while you pulled him out?
A. I don't distinctly remember.
Q. Did you put it in your holster or your pocket or put it on the running-board?

Mr. Cleary: I think he has answered the question.

The Court: No, this is very material. He has not, Mr. Cleary. You see this is really the crucial point, the crucial time in the case. The question is allowed.

Q. Where did you put the revolver?
A. I don't remember.
Q. You remember reaching in the car and taking hold of him, don't you? Do you remember that?

A. I remember taking him out of the car.

Q. And you took him out by the shoulders, didn't you?

A. I think so.

Q. And you pulled him out, didn't you?

A. I think I took him out of the car.

Q You pulled him out, didn't you?

A. I took him out of the car.

Q. Did you pick him like a person that had been wounded and took him out of the car, or did you pull him out?

A. I didn't pull him out roughly.

Q. Was it carefully and with consideration for him that you lifted him out of the car?

A. I don't know.

Q. Well, did you put your arms under him and lift him out or did you put your arms up and catch him by the shoulders and pull him out?

A. I don't think I lifted him up. He was a pretty heavy man to lift up in that position. He was a man that would weigh about 150.

Mr. Cleary: I think the witness has answered the question. He says he took him out of the car.

The Court: You cannot interrupt at this point, Mr. Cleary. Of course, you have a right to object to a question.

Mr. Cleary: I object to the question.

The Court: Just read me the question.

(Question repeated.)

Q. When you got him out of the car, did you take

him and put him on the ground, or did he fall an the ground as the result of being pulled out?

A. I don't think he fell on the ground.

Q. How did he get on the ground?

A. He was partly lifted on the ground.

Q. By whom?

A. By me, I guess.

Q. Now, will you just stand up and show me how you lifted him out of the car and put him on the ground?

A. Well, that would be a pretty hard thing to do.

Q. Well, just imagine that open part of the witness stand is the door of the Ford car. Now, show me how you brought me out of the car to the ground.

A. Well, that is easily done. The man was laying there. I pulled him out a ways and laid him on the ground.

(The defendant left the witness stand and indicated as he gave the answer.)

Q. He was entirely in the car then, was he?

A. Pretty near, yes.

Q. And did you pull him head down to the ground?

A. As I brought him out his head was up off the ground as near as I can remember.

Q. His legs dragging behind him?

A. Well, as far as I know, it is a question I can't answer very well any different from that.

Q. Well, when you pulled him out, where did you put him?

A. On the ground.

Q. Was he face up or face down?

A. I turned him face up.

Q. What did you do then?

A. I seen that the man was dead, and the shock of the shooting sobered me up.

Q. Then you are sober from this point on, are you?

A. I can't say that.

Q. I thought you said the shock of the shooting sobered you up?

A. I did for the time being, it refreshed my mind; I realized what had happened.

Q. Then for the time being it sobered you up; do you mean to infer that after a while you got unsobered again?

A. Well, I don't know what you would like—what you would want to call it.

Q. Well then, after you were sobered up, and you looked into his face, and you saw that he was dead, what did you do?

A. I was wondering what to do.

Q. I said, what did you do?

A. What did I do? I was going to shoot myself.

Q. I said, what did you do?

A. Drug him off in the bushes a ways.

Q. And then what did you do?

A. Then I looked for some letters.

Q. Where was he when you shot twice into his head?

A. In the car, falling.

Q. Then he was in the car while you shot him three times?

A. I believe so.

Q. Did you hear the opening of your counsel yesterday, Saturday, as you sat here in the court room —did you?

A. I suppose I did.

Q. Did you hear him describe to this jury how, after you shot him in the breast and he came falling out of the car, you shot at him twice as he fell in quick succession?

Mr. Cleary: If the Court please; I object to that; that was not said by me.

The Prosecutor: I have your opening here.

Mr. Cleary: Well, if it was, it was a mistake; I said he was shot in the car.

The Prosecutor: I think it was a mistake; there is no doubt about it.

The Court: Well, never mind, gentlemen, don't, please, pass any remarks.

Mr. Cleary: Well, I think that is unfair to this witness; I am not as conversant with the facts as the witness is.

Q. So then he was shot three times in the car before you laid him out, or before you, or before you brought him out, is that right?

A. That is correct.

Q. These questions and answers that you gave on the afternoon of August 5th, when you made what we have termed a confession in the Prosecutor's office, didn't I say to you, "Did you tell him what you were going to give him a lacing for——" No, "Q. That is, you would give it to him if he didn't get out of the car? A. Yes. Q. Did he start to get out? A. He started to get out. Q. Did you tell him what you were going to give him a lacing for? A. Yes. Q. What did he say? A. He said he hadn't been running around with my wife, which I knowed he had. Q. Did he beg you not to hit him? A. He didn't know what to say. Q. Well, didn't he ask you not to hit him? A. He just said he wasn't with her.

Q. Why was he starting to get out of the car? A. I told him to get out, and he started to get out." Is that right?

Mr. Cleary: If the Court please, I object to the question; what does he mean, "Is that right"?

Q. Were those questions and those answers given?

A. That might have been the answers which were given that day, which I am not responsible, don't hold myself responsible for what I said that day, for the condition of my mind from the abuse I had received from the Prosecutor's office and his detectives.

Q. Was this question and answer given to you: "Q. Did you have the revolver in your hand then? A. No, I didn't have it in my hand then. Q. Was he in the car or out of the car when you shot him? A. He was in the car." Did you make that answer?

A. I think so.

Q. "Q. When all the shots were fired? A. No." Did you make that answer?

A I don't remember it.

Q. "Q. The first shot you say you fired into his body? A. In his breast. Q. Did he drop? A. Not right away. Q. What did he say after he was shot? A. He didn't say anything." Is that right?

A. I believe so.

Q. Now, this: "Q. And did you pull him out of the car, or how did he get out? A. I pulled him out of the car." Did you make that answer?

A. I might have.

Q. "Q. And where else did you shoot him? A. When he fell on his face down, I think I fired two more shots; I am not sure, my mind was completely gone." Now, what was right, in the car or on the ground?

A. In the car. What I meant by "face down" I can explain that to you, if you would like me to.

Q. Just a minute. "Q. What part of his body did you shoot at? A. I couldn't say just what part the bullets hit. Q. Well, was it his body or his head? A. I think it was his head. Q. How many times did you shoot at his head? A. I think I fired two shots, as near as I can tell. I may have fired more, but I think two. Q. Did he say anything after he was on the ground? A. No." Were those questions and answers given to you?

A. Well, what was the question?

The Prosecutor: I say, were those questions and answers given in the Prosecutor's office on August 5th when this statement was taken—were they or weren't they?

The Court: Mr. Young, were those questions and answers given by you to the Prosecutor on August 5th?

The Witness: I don't distinctly remember whether they were or not; I couldn't say they were, and I couldn't say they wasn't, for that day my mind was in the condition that I did not realize what I was saying.

Q. Now, after he was on the ground and had been shot three times, and he was dead, what did you do?

A. What did I do with him, or do you want me—I don't understand the question that you expect from me.

Q. What did you do?

A. I started to shoot myself.

Q. What stopped you?

A. What stopped me? Why, the sobering up of the shots.

Q. Well, did you start to shoot yourself before you sobered up or after you sobered up?

A. After I seen that he was dead.

Q. Then you decided you would shoot yourself?

A. Yes, sir.

Q. What stopped you from doing it?

A. My two children.

Q. Why didn't you think of them before?

A. I always thought of them.

Q. Did you think of them at all times?

A. Yes, sir.

Q. Then if you thought of your children, why did you go to the home of Amanda Green instead of your own home, after you had done this?

A. Because I was told by Mr. French if I couldn't live happy, why, to do the same as my wife was doing.

Q. So that is your excuse then for going to see Amanda Green, was it?

A. Yes, sir.

Q. You say Amanda Green was a pure, innocent girl?

A. Yes, sir, absolutely.

Q. Is there any doubt in your mind that your wife is, then?

A. I know it.

Q. What is it?

A. I care not to say anything about my wife; I have two children which I love.

Q. I didn't ask you anything about those children; we will come to that in a minute.

Mr. Cleary: If the Court please, I object to the question because this man does not have to disclose anything about his wife, a confidential relation.

The Court: Well, it is a little bit late to object to it, but even if you had, I would have allowed the question.

(At this point a recess was taken for five minutes.)

Q. Now, Mr. Young, as I understand it, you say that the three shots were fired while he was in the car?

A. Yes, sir.

Q. Did you not make these answers to me in answer to my questions on Friday afternoon, August 5th? "Did Garwood say anything to you when he saw the gun?" Answer, "No, he didn't have time." Did you make that answer?

A. I believe I did.

Q. "How quick were the shots fired, in succession?" Answer, "Well, the first shot was fired and I guess the other two was fired about five minutes later." Did you make that answer?

A. I might have. I don't remember it, but if I did, I can explain why.

Q. "Why did you fire the other two after you fired the first one?" Answer, "Well, I seen there was nothing to do then but to fire the other two shots." Did you make that answer?

A. I don't remember.

Q. Now, a few moments ago in answer to my question whether you had stopped at the Ellisburg Hotel or any place on your way out you said you did not remember. I am now reading from your direct testimony in answer to a question of Mr. Cleary's, "We stopped at the Ellisburg Hotel and we went in and we ordered a drink, and I don't remember whether I asked the hotel keeper for whiskey or not, which I think I did, and if I am not mistaken he told me he

didn't have any and we went from there until we came to Springdale." Why did you say, in answer to Mr. Cleary's question, that you did stop at Ellisburg, and when I ask you——

The Court: Is your question directed to the first or second trip?

The Prosecutor: Second trip.

The Court: I think you should embody that in the second trip.

The Witness: If I understand right, the way the question was put at me, I understood you meant the day I made the confession to you, if I told you I stopped at the Ellisburg Hotel the second trip.

Q. Mr. Young, you were talking just a few minutes ago. I was asking you questions as to what took place on your way from the ferry out to where this shooting took place. I asked you if you had stopped at any place. You told me no, and then I asked you if it was not true, as you had testified in your direct testimony, you had stopped some place and gotten whiskey, and you said yes, and you thought I had meant out in the county. Didn't you say that?

A. Yes, sir.

Q. Then I asked you if you stopped any place else on your way out and you said no. I asked you if you stopped at the Ellisburg Hotel and you said no. Now, I direct your attention to what you did say in answer to the same question by Mr. Cleary and ask why you didn't give me the same answer?

A. Why, because I understood you was asking me if I made that in my confession.

Q. We were not talking about confessions then?

A. Well, I misunderstood you.

Q. Why is it that so often to these questions that you have answered to Mr. Cleary, that you tell me you don't remember?

A. If I understood you right I may be able to answer your questions right, but when you are reading off the confession I thought that was what you meant.

Q. Have I asked anything about the confession since the afternoon session started? I have not asked anything for that purpose since the afternoon session started. Now, after you have had your mind refreshed as to what you said to Mr. Cleary on direct examination, and what you now say to me, you say you misunderstood me. Is that right?

A. That's correct.

Q. Now then, you have told that all of these shots took place in the car. I have read to you the questions that were put to you and the answers that you gave me in my office on August 5th when you said there was a lapse of maybe five minutes before the second shots were fired. Now, which is true? What you say now or what you said then?

A. He was shot three times in the car, rapid fire.

Q. Then if he was shot three times in the car, why didn't you tell me so, instead of saying it was five minutes after?

A. Well, the reason I didn't tell you was that my mind was in such a condition that day from the abuse I had received from you and you officers, so that in another way you told me you would help me if I made a confession, and I thought by the way our conversation had led that I was to say in that way to please you to get your help.

Q. Well then, if you said it to please me then, you

are saying it now the other way to please somebody else?

A. I am saying what occurred.

Q. Before this afternoon I took up by question and answer all this confession. Was there any place up to that point where I had led you what to say?

A. I don't understand what you mean.

Q. You said you made the answers because you thought I wanted you to make them that way. What was there in my questions to you when I said this, "Did Garwood say anything to you when he saw the gun?" Was there anything that I was suggesting to you to answer?

A. Not then, no.

Q. So you answered, "No, he didn't have time." That was your answer, wasn't it?

A. Yes, sir.

Q. Then I said, "How quick were the shots fired, in succession?" You could have made any answer you pleased to that, couldn't you?

A. I don't remember, but I don't think so. I don't remember exactly, but our conversation that we had before——

Q. Just answer my question.

(Question repeated.)

Q. Yes or no?

A. I answered the way I thought you wanted me to.

Q. Did I suggest to you how to answer it?

A. You had been talking.

Q. Did I suggest to you how to answer it?

A. I don't know. I was not responsible for what had taken place.

Q. Then your answer, "The first shot was fired and the other two was fired about five minutes later," was your answer, wasn't it?

The Court: The witness has said that, Mr. Wolverton.

Q. Is that what you say I led you to say?
A. You led me to say a good bit.
Q. Did I lead you to say that?
A. I don't know exactly what you done.
Q. "Why did you fire the other two after you had fired the first one?" Your answer, "Well, I seen there was nothing to do then but to fire the other two shots." Is that your answer?
A. I couldn't say.
Q. After you had dragged him into the bushes, what did you do?
A. What did I do?
Q. To him?
A. Looked for letters.
Q. Did you go through his clothes?
A. In his inside coat pocket were letters.
Q. Did you go through his clothes?
A. In his inside coat pocket.
Q. Just answer my question?

The Court: He means all his clothes, Mr. Young.

A. I don't think I did
Q. Did you take his watch?
A. Yes, sir.
Q. Did you take his chain?
A. It was on the watch, yes, sir.
Q. Did you take his shoes off?
A. I guess I did.

Q. Why?

A. No reason whatever. The reason that I can give only I was drunk. I didn't need the shoes, nothing that he had.

Q. Did you in answer to my question say first, when I asked you why you took his shoes, make no answer at all?

A. I don't know, I might have.

Q. This question was asked you, "What did you do with the shoes?" and, as Mr. Berry testified, a long pause, and you made no answer, and I then said, "Have you a reason for not answering that question, because you have hesitated so long, I wonder if you have any reason for hesitating." Your answer was, "Yes." Was that question and answer put in that way?

A. I think it was.

Q. I then said, did I not, "Do you wish to give me the reason?" and the answer was, "Well that reason wouldn't do any good." Is that right?

A. I think so.

Q. And I said, "Well, I would have liked to find the shoes, if possible." And didn't you answer, "All right, Prosecutor, I told you I would be honest and tell you the truth," and I said, "Yes," and didn't you say, "So I will, I will not lie one way or the other. I have his shoes."

A. That's right.

Q. I said, "Where are they?" did I not, and did you not answer, "Home in the kitchen." Is that right?

A. I think so.

Q. Did I not then say, "Why did you take them home?" and didn't you answer, "Well, I don't know why"?

A. I did.

Q. Now then again the same afternoon, the same time, "Q. Well, why did you take his shoes off? A. I don't know. Q. Isn't it true that he carried his money in his shoes? A. I don't know, he may have. Q. Is that the reason you took his shoes off? A. No. Q. Well, what reason would there be for taking his shoes off? A. Well, I figured that they were too good to leave there with him." Is that the answer you made to me?

A. I might have gave you that answer, but that wasn't the reason.

Q. Why do you say today you took his shoes off?

A. Why do I say today? I have no reason, his shoes, just a drunken idea; I don't know why I took them. They are no good to me; they were old shoes; I had plenty of good shoes myself.

Q. Did you take his car?

A. Yes.

Q. Was that any good to you?

A. No; not necessarily; I had a car.

Q. Then why did you take his car?

A. I had to take the car to conceal the crime.

Q. Is that the reason you took his shoes?

A. No, I had no reason to take them.

Q. Why did you take his watch?

A. So as to identify—I had practically no reason for taking that.

Q. When I took this statement from you, when you told me you wanted to tell me the truth, I asked you this question, didn't I: "Guilford, did you take his watch? A. Yes. Q. And did you take the chain with the crucifix on? A. Yes. Q. That I showed you? A. Yes. Q. And the watch that we have shown you, that is the one you took? A. That is the one. Q. Did you take any of his money? A. He didn't have any money. Q. Did you look for any?

A. Yes, I looked to see what he had in his pockets, if he had anything, any letters or anything." Were those questions asked you and those answers given?

A. Were you speaking to me?

Q. Yes, sir.

A. I might have.

Q. Why did you take the watch and chain?

A. I told you I had no direct reason for taking that, outside of they were laying there; I had took them for identity, so he could not be identified.

Q. Then if you took them so he couldn't be identified, why didn't you answer that to me when I asked you the question on August 5th, "If you went out there to lace him, as you have said, why did you, after he was shot and dead, take his watch and chain with the crucifix on it?" And your answer, "I don't know just why I did." Did you make that answer?

A. I did.

Q. Then why do you say now that you did it to hide his identity?

A. Well, I really don't know why I took them.

Q. Well, then you didn't take it to hide his identity?

A. To a certain extent.

Q. Well, then, why didn't you say so to me when I asked you why you did it?

A. Why, because I thought I was telling the way that you wanted me to, to please you, you were going to help me.

Q. Then you thought that is the way I wanted you to answer, is it?

A. According to our conversation that we had had.

Q. Then your idea is that I was telling you by my questions what answers I wanted you to give, is that right?

A. Practically, yes, sir.

Q. What was there in my question that I just asked you, "Why did you, after he was shot and dead, take his watch and chain with the crucifix on it?" What is there in that to indicate what your answer should be?

A. Because you kept asking me so much for why I took them, which I told you distinctly which I had no particular reason, but you kept insisting for a reason, and I had no reason to give you.

Q. And you have no reason today, have you, to give?

A. Only so he could not be identified.

Q. When did you get that reason—how long have you had that?

A. Well, I have always had that reason, but if I had told you, I didn't know that you would believe me.

Q. Well, you did have that reason when I took this statement on August 5th—is that right?

A. Well, that was the only reason that I can give, the only reason that I have.

Q. That is a reason that you have gotten since you gave this statement, isn't it?

A. Oh, no, no, sir.

The Court: You have covered that subject pretty well, Mr. Wolverton.

The Prosecutor: Yes, sir.

Q. Then you went into the machine and drove away?

A. That is true.

Q. Where did you go?

A. To Martin's.

Q. Why did you go to Martin's?

A. I wanted to see him.
Q. Why?
A. To take his machine.
Q. To do what?
A. I wanted to see him.
Q. For what purpose?
A. For what purpose? Why, to get his machine.
Q. What machine?
A. The machine I had bought off of him.
Q. The machine that you bought off of him?
A. Yes, sir.
Q. When did you buy a machine off of Martin?
A. When? I don't know the exact date.
Q. Was that the bill of sale?
A. Yes, sir.
Q. What kind of a machine was it you bought off of Martin, a Ford touring car or sedan?
A. Why, I don't know which you would call it, whether you would call it a sedan or touring car; it was a five passenger car.
Q. And is that the car that you had on the 16th of July at Harrigle's Garage?
A. Yes, sir.
Q. And you say you bought it?
A. Yes, sir.
Q. Off of Ben Martin?
A. Yes, sir.
Q. As a matter of fact, it was Dr. Shaw's car and you helped him steal it, didn't you?
A. No, sir.

Mr. Cleary: I object to that question; the Prosecutor knows that that is incompetent.

The Court: I will overrule that question.

The Prosecutor: If the Court please, in the opening to the jury, in his statement, in his direct testimony, he says that the car he had for the bill of sale was a car that he bought on the 15th day of July from Ben Martin, whereas, as a fact, in his confession to us, he has stated that he stole it with Ben Martin in Haddon Heights.

Mr. Cleary: If the Court please, I object to that; there is nothing in his confession before the Court that says that.

The Court: I think I will overrule that question, Mr. Wolverton.

Mr. Cleary: Why, certainly there is nothing in the confession at all, and Mr. Wolverton knows it.

The Prosecutor: If the Court please, all the way through this case, counsel for the defendant in his opening, and in the testimony of this defendant, if it goes unchallenged, it goes before this jury that the car for this bill of sale on the 15th of July was bought by him from Ben Martin, and we can prove the direct opposite.

Mr. Cleary: Well, now, if the Court please, the Prosecutor knows that the rules of evidence would not permit any such thing to be stated, and I think it is a very unfair and prejudicial way of getting this matter to the jury; it is absolutely unfair; there is nothing in the confession that says so.

The Prosecutor: I say it is; if there is any doubt about it, we will go in the side room and read it to the Judge.

Mr. Cleary: That is the way to do it.

The Court: Wait a minute, Mr. Cleary; is that part of the confession that has been admitted in evidence?

Mr. Cleary: No, your Honor, it has not.

The Court: Has it, Mr. Wolverton?

The Prosecutor: No.

The Court: Mr. Wolverton, I am going to overrule that question.

The Prosecutor: If the Court please, I hope that

Mr. Cleary: If the Court please, I ask that this argument be heard at side bar.

The Court: No, I have overruled the question.

Mr. Cleary: If the Court please, will you hear argument at side bar?

The Court: No, I am not going to hear any argument because it is not necessary.

Q. How much did you give Ben Martin for the car?
A. I was supposed to pay him $300.00 for the car.
Q. Did you pay him?
A. I paid him some.
Q. How much?
A. I paid him some.

Q. How much?

A. I don't know exactly how much.

Q. Then after you got this other car you took that one back to him, didn't you?

A. I took it back, yes.

Q. How does it happen that the car that you had that belonged to Garwood has the same number on it as the car you got from Ben Martin?

A. Ben Martin put it on there.

Q. Why did Ben Martin put it on?

A. He asked me where I got the car from.

Q. Did you tell him?

A. No.

Q. Why not?

A. Why not? I didn't consider it any of his business.

Q. Then why did you change the number on the car?

A. That can easily be explained. He asked me where I got it, I wouldn't tell him; he said, "You bugger, you, I believe you stole it." I said, "No, I bought it." He said, "I believe you stole it the same as I did with these others." That was the first time I knowed that Ben Martin had stole any cars.

Q. Go ahead.

A. I said, "No, I didn't steal it." He said, "Well," he says, " if it is a stolen car or if you think it is a stolen car," he says, "I will fix it up for you," and he says, "have you got——." He says, "Are those licenses yours on there?" That is the way he started. I said, "No, they are not mine." He said, "Then put the license off the other car on there," he said, "I am going to take the car back," and he changed the license for me, and what he done inside I don't know.

Q. Then, if I understand it correctly, you would not have gotten in the car at the ferry if Mill's hadn't

put you in, and you wouldn't have changed the numbers on this car or tags if Martin hadn't told you to?

A. No, I wouldn't have knowed enough about a car to do it.

Q. You knew enough, as you have said now, to take the watch so the man would not be identified, didn't you, but you didn't know enough that you would have changed the number on the car so that would not be identified, did you?

A. No, sir, I didn't know anything at all about a car.

Q. And you didn't know why Ben Martin was suggesting to you to change the number on the car, did you?

A. No more than what he said.

Q. So that you thought it was a pretty good idea after Martin put it into your head, didn't you?

A. Why, I let him do what he wanted to.

Q. Now, Mr. Young, if you were so anxious to hide the identity of the crime that you had committed, what steps did you take to hide the identity of Garwood himself?

A. Why, I was going to bury him.

Q. You had made up your mind to bury him?

A. Yes, sir.

Q. You didn't do it, did you?

A. No, I couldn't get no shovel.

Q. Was that during—from the time you committed this crime on the 23rd of July, up until the time of your arrest, you were carrying his watch and his chain and the crucifix and driving his car around so as to keep everyone from knowing what had become of Garwood, weren't you?

A. His watch and chain was in the bureau drawer.

Q. And you were keeping them in your custody so as to hide his identity, weren't you?

A. Why, certainly, I couldn't do anything else with them.

Q. And the body of Garwood was lying out there in the woods face up for anybody that came through to see it, wasn't it—isn't that true?

A. I guess it is.

Q. If you were so anxious to hide the identity of Garwood by taking his watch and his chain and his charm and his car, how is it that you didn't do something to hide his identity where his face if found would reveal who he was?

A. I undertook to.

The Court: I think he answered that question.

Q. You say you undertook to?

A. Yes.

The Court: No, he said he couldn't get a shovel.

Q. Is that the only reason ?

A. Yes.

Q. You did try to get a shovel then, did you?

A. Yes, sir.

Q. At Fluger's store?

A. Yes, sir.

Q. And is that what you went there for?

A. Yes, sir.

Q. What changed your mind?

A. He had none.

Q. And you did not want to inquire any place else?

A. He didn't have any shovel.

Q. Did you inquire any place else?

A. I don't remember.

Q. Whom did you pay for the car that you say you got from Martin?

A. Him.

Q. In the presence of anybody?

A. I don't think so.

Q. Did you tell anyone that you had killed Garwood until you confessed on August 5th?

A. I didn't tell anyone until I told my wife on August 5th.

Q. On August 5th.

A. Yes, sir.

Q. In the meantime his watch was at home?

A. Yes, sir.

Q. The watch had the initials of Garwood on the back, had it not?

A. I think so.

Q. And you say you left it on the bureau?

A. In the bureau drawer.

Q. If you were so anxious to hide the identity of Garwood and you said your wife had been friendly with him, why would you leave the watch with the initials on it in her presence?

A. Her? I didn't care if she knowed it.

Q. Why didn't you tell her?

A. I would have told her. I did tell her.

Q. When?

A. On the 15th.

Q. On the 5th, you mean, of August?

A. Yes, sir.

Q. Garwood had been dead then from the 23rd, and you told her on the 5th, after all this network of evidence had been presented to you, didn't you?

A. Yes, sir.

Q. Why did you go straight to Ben Martin's?

A. So he could get his car out of the garage and I could put this one in.

Q. What was your idea in taking that one out and putting this one in?

A. Why, because I didn't want that one any longer.

Q. You were going to give it back to him?

A. Yes, sir.

Q. After buying it?

A. Yes, sir.

Q. If you were so anxious to hide the identity of the man you had killed, why didn't you take the watch and the chain, the same as you took the letters and thrown them in the creek?

A. Why, because I didn't know enough to do it.

Q. You threw the letters and papers you found in his pocket in the creek, didn't you?

A. Yes, sir.

Q. And you told me so in that confession, did you not?

A. Yes.

Q. And that was a true answer?

A. I believe so.

Q. Why didn't you throw the watch and the chain?

A. Didn't have sense enough.

Q. Why didn't you take the car into the woods and destroy it by fire or otherwise?

A. I might have if it had went much longer.

Q. When you got the tags on the 15th or the 16th, you got a man to go and sign your name for you, didn't you?

A. Yes, sir.

Q. And you took Garwood's tags off?

A. I didn't, no.

Q. Who did?

A. Ben Martin.

Q. Why did he take them off?

A. To put these other ones on.

The Court: Mr. Wolverton, I don't want to unnecessarily interrupt you, but I think we have gone over

that, and I don't want to go over anything that we have gone over more than a few times, and so that if you will just for a minute—don't you recall just about fifteen minutes ago asking this entire line of questions about his going to Martin's house, and Martin telling him that "you stole that car" and suggesting about putting the tags, doesn't that refresh your recollection?

The Prosecutor: Yes.

Q. So that who drove the car into Camden?
A. Martin.
Q. Were you with him?
A. Yes, sir.
Q. Did you see him when you first went to his house?
A. Not when I first went there, no.
Q. Who did you see?
A. His wife.
Q. Did you wash the blood off your face?
A. I don't know if I did.
Q. Remember her saying so? Remember her telling you there was blood on your face?
A. Not then, no.
Q. Did she ask you if you had been in a fight?
A. Not then.
Q. When did she?
A. Never knowed her to ask me if I had been in a fight.
Q. You say she didn't ask you that?
A. No, I hadn't been in a fight ever with anybody.
Q. Then you didn't go in the house with blood on your face, according to her statement, and go in and wash it off?
A. I don't remember.
Q. Did you go in the house?

Mr. Cleary: I think it is probably in the discretion of the Court to ask these leading questions.

The Court: That is the right of a cross-examiner, to ask leading questions.

Q. Did you go in the house?
A. I might have, not that I remember.
Q. Do you remember going in?
A. I don't remember.
Q. Do you remember taking your gun out in that house, and Mrs. Martin ordering the children to get out of the way and to go in another room?
A. I don't remember.
Q. Do you remember whether Ben Martin was home?
A. I think she said he wasn't home but would be home in a few minutes. I don't remember distinctly whether she did or not.
Q. You remember distinctly talking to her?
A. I remember talking to her.
Q. That's all you can remember?
A. That's all.
Q. Where did you go from there?
A. I think I went from there to Green's.
Q. Who drove the car?
A. I did.
Q. Where was Green's place?
A. 714 Spruce Street.
Q. Why did you go there?
A. Well, I had no reasons for going there, no particular reasons.
Q. Did you take the car with you?
A. Yes.
Q. Did you tell them where you had gotten it?
A. No.

Q. Did you tell them you had bought it?
A. Yes.
Q. Did you tell them from whom you bought it?
A. No.
Q. Did you tell them when you bought it?
A. I don't know whether I did or not.
Q. Did you eat lunch there?
A. I don't remember.
Q. What time did you get there?
A. Somewhere around half-past eleven, I guess. I don't know the exact time.
Q. What time did you leave there?
A. I don't know the exact time, somewhere around two o'clock.
Q. Did you have lunch?
A. I don't remember.
Q. To whom did you talk?
A. Why, I guess I talked to who was in the house.
Q. And who was in?
A. I don't exactly remember all that was there. I think there was two daughters there and Mr. Webster.
Q. Anyone else?
A. A little girl.
Q. You heard Mr. Webster's testimony that he did not get there until after dinner?
A. I think so.
Q. Is that true, or was he there when you got there?
A. I don't think he was there when I was there.
Q. As a matter of fact, you didn't get there until afternoon, did you?
A. I think I did.
Q. What makes you think it was about half-past eleven?
A. Why, because I think it was before noon that I got there.

Q. How do you fix your mind as to that?
A. How do I? Why, I think I was asked to have something to eat; I am not sure.
Q. How do you think it was half-past eleven when you got there?
A. I am only guessing, as I told you, I am only guessing at the time. I couldn't tell you the exact time.
Q. Well, it may have been in the afternoon, sometime early in the afternoon?
A. No, it wasn't in the afternoon.
Q. Did you see a clock?
A. I don't remember whether I did or not.
Q. Had Webster been to work when he showed up at Green's?

Mr. Cleary: If your Honor please, I object to that; that calls for a conclusion of fact.

The Court: Had Webster been to work? Of course he couldn't answer from anything Webster might have told him, but if he has any way of forming an opinion from anything that he saw, he can answer the question.

Mr. Cleary: I object to the form of the question, if your Honor please.

Q. Didn't Webster bring to you some license tags?
A. When?
Q. When you were at Green's?
A. Not that day, no.
Q. It had happened the Saturday before, had it?
A. Yes, sir.
Q. Now, can you tell me whether he was there that afternoon when they asked you to have lunch?

A. What afternoon?

Q. July 23rd?

A. July 23rd, that was on the Saturday of the killing of Garwood?

Q. Yes.

A. I could not say; I don't think he was.

Q. Where was the car while you were inside, in the garage or at Green's house?

A. Outside, I think.

Q. Did you take any of them on a ride?

A. Not then, no.

Q. Later in the afternoon?

A. I think in the evening or sometime in the afternoon, which I am not real sure. I think I did.

Q. When you left Green's, where did you go?

A. I went to Martin's.

Q. Why did you go back to Martin's?

A. So he could get his machine out of the garage.

Q. Couldn't you put your other car in the garage with the other one there?

A. No, sir.

Q. Couldn't you have run his out and put yours in?

A. I suppose I could, but I didn't want it standing blocking up the driveway there. There isn't a whole lot of room there.

Q. Was it true—as your attorney said in the opening—you didn't want two of them around there so you could conceal the identity of your car?

A. Well, I have no exact reason, no one certain thing. The car I had bought off Martin I had no use for it then, which I didn't feel I wanted to leave this car of Garwood's on the street to be found.

Q. Well, if it is true that when you went to Martin's house, Mrs. Martin told you he was not home but would be in a few minutes, and you were anxious for him to get his car out of the garage in Camden,

why didn't you stay there those few minutes instead of coming into Green's?

A. I don't know.

Q. Then you went back to Martin's did you?

A. Yes, sir.

Q. Did you find him?

A. Yes, sir, I did.

Q. Did he ask you where you got the car?

The Court: Haven't we been over this, Mr. Wolverton? We have gotten back to Martin's a couple of times, and don't let's make the third trip.

Q. After you got to Martin's the second time, was it then the tags were changed and the engine number changed?

A. No, sir.

Q. Did you come back into Camden before that was done?

A. Yes, sir.

Q. And got the other car?

A. Yes, sir.

Q. And then took it back?

A. Yes, sir.

Q. That was the third time you were at Martin's then?

A. Yes, sir.

Q. How long did you stay there then?

A. I don't know just how long.

Q. What time in the afternoon was it?

A. I don't know what time it was; it was late, I guess.

Q. Where did you go from Martin's?

A. I think I went to Green's.

Q. For what reason?

A. Well, no particular reason.

Q. Who drove the car?

A. I did.

Q. Did you take them out for a ride?

A. I don't remember. I think so.

Q. Did you stay there for supper?

A. I couldn't say for sure whether I did or not.

Q. When did you take the ride, late in the afternoon or in the early evening?

A. I think late in the afternoon or early in the evening, which I am not sure.

Q. Where did you take the car that night?

A. I just don't remember. Oh, you mean where did I put it up or where did we go, where I put the car up at?

Q. Yes.

A. In the garage.

Q. And did you get it out the next day?

A. I think so.

Q. Where did you go with it on Sunday?

A. I am not exactly sure, out in the country, I think, somewhere.

Q. With whom?

A. With Mr. Webster, Miss Hoyle, Miss Green and a little girl.

Q. Where did you go with it on Tuesday?

A. I don't know exactly.

Q. With whom did you ride?

A. I don't know whether Mr. Green was with me or not.

Q. How about Wednesday?

A. I don't know.

Q. Well, did you take rides with it on Wednesday?

A. I think I had it out trying to learn how to run it.

Q. Who was teaching you how to run it?

A. Teaching myself.

Q. And you had it out each day that week, did you?

A. I think so.

Q. Were you out with it on Friday night?

Mr. Cleary: I object to this question; this has no relevancy to the charge before us—how many times he took the car out.

The Court: Oh, yes, it has relevancy, Mr. Cleary.

Q .Were you out with the car on Friday?

A. I am not sure; I think so.

Q. Who was with you?

A. I don't really know whether Mr. Webster was with me or not.

Q. Did you take a trip in it Friday night?

A. I am not sure, I think so.

Q. Where did you go?

A. I couldn't tell you.

Q. What is it?

A. I couldn't tell you exactly.

Q. Who was with you?

A. I couldn't tell you exactly.

Q. Didn't you go out into the country?

A. I always went out into the country, for I didn't know how to run a car enough to run it in the city of any account.

Q. Was Ben Martin with you that night?

A. I don't know, I don't think so.

Q. Don't you remember where you went with the car Friday night?

A. No.

Q. Remember where you went with it on Saturday?

A. No, I can't say that I do.

Q. Remember going to Bancroft's on Friday night?

The Court: What was that question?

(Question repeated.)

Mr. Cleary: I object to the form of the question, unless he specifies where Bancroft's is.

The Court: If the witness know's where Bancroft's place is it is perfectly permissible.

Q. Were you?
A. No, sir.
Q. You know where I mean by Bancroft's?
A. Bancroft's? I understand that is right across from my home.
Q. Were you out to an Italian's place?
A. I don't know, I couldn't say.
Q. You know what I mean, don't you?
A. I guess I do, which I won't ——
Q. Who was with you?
A. I don't know.
Q. Why did you go there?

The Court: I don't know about the materiality of that question, Mr. Wolverton. You see, I am allowing these questions, I just don't know exactly your purpose in asking them, but I know my reason for allowing them, and that is just a little bit beyond it.

Q. On Saturday were you out again taking trips?
A. I don't know, I think I was.
Q. And on Sunday?

A. I think so.
Q. Who was with you on Sunday?
A. I think Mr. Webster, Miss Hoyle, Miss Green and myself and a little girl.
Q. Did you have any of your children along?
A. Not on Sunday.
Q. Did you have them with you on Saturday?
A. I don't know whether I did or not.
Q. Where did you go on Sunday in the car?
A. I don't remember the exact place.
Q. Did you go to Pine Beach and Barnegat on a picnic?
A. I never went on any picnic.
Q. Did you go to Pine Beach and take your lunch, and a whole crowd of you?
A. I think we did.
Q. Where were you going with the car on Monday, the day before your arrest?
A. I don't know exactly.
Q. Were at 714 Spruce Street again?
A. I might have been.
Q. Did you make trips from there that day and that night out into the country?
A. I might have.
Q. Who was with you?
A. I don't know whether anyone was or not.
Q. Did Miss Green go with you on the first trip out into the country?
A. Not that I know of, I can't say.
Q. Did you make a trip out into the country?
A. I don't distinctly remember.
Q. Did you come back to their house and then go back to the same place in the country?
A. I can't just say where I went.

The Prosecutor: If the Court please, I could bring it to his mind very vividly if I thought it was within

the ruling of your Honor, but I am afraid it would not be, and I do not want to take that advantage.

The Court: Well, I guess, as long as you are such a good mind-reader, Mr. Wolverton, you had better not ask the question.

Q. Monday night you didn't go home, did you?
A. I dont' think so.
Q. Why didn't you?
A. Why, because I was going to put the car in a garage in Haddonfield.
Q. Well, you had been in Camden that day, hadn't you?
A. Well, I guess I had.
Q. And your garage was in Camden, wasn't it?
A. Yes.
Q. Why didn't you put it in then?
A. I was going to rent a garage in Haddonfield.
Q. What time of night were you going to rent the garage?
A. In the morning.
Q. Then you brought it home with you late at night to rent a garage the next morning, is that right?
A. That is right.
Q. Now, then, where did you go with the car?
A. A little ways from my home.
Q. On the Mill road?
A. Yes.
Q. And you slept in the car?
A. Yes.
Q. Why didn't you put the car in front of your house?
A. I was afraid someone might take it and to keep it out of the way of traffic.

Q. Kings Highway is a very broad highway, isn't it, there?

Mr. Cleary: If the Court please, I object to this line of testimony; it was not brought out on direct examination.

The Court: This is a direct line of testimony on several grounds, as I view it.

Mr. Cleary: Will your Honor allow me an exception to that?

The Court: Yes, certainly. You see, your contention is that this car was not taken in a robbery, isn't it?

Mr. Cleary: Yes, it is, if the Court please.

The Court: And that it was taken merely to conceal identity?

Mr. Cleary: That is true.

The Court: Then the use of the car, what use it was put to, is all relevant on the question as to whether the motive was robbery or not.

Mr. Cleary: Yes, if the Court please, that may be shown by the Prosecutor by any witness that he pleases to call, but not by cross-examination of this defendant.

The Court: Oh, yes, he can show it by cross-examination.

Mr. Cleary: Upon matters that were not brought out by direct examination?

The Court: I think that the whole thing was brought out on direct examination. You got him to testify that his motive was not robbery, that his motive was to conceal the identity of the car, didn't you?

Mr. Cleary: I did.

The Court: Well, then, why isn't it relevant to show what he did with the car? If he wanted to merely take the car from this place where the killing occurred for the purpose of concealing the identity ——

Mr. Cleary: But it is so remote, your Honor.

The Court: Then, of course, even on the subject of the credibility of that statement, whether he ran the car around the street and in Haddonfield and all these other places, is relevant, but it is also relevant upon the question as to whether the motive was robbery. Am I stating your ideas, Mr. Wolverton, on that?

The Prosecutor: Yes, exactly.

Mr. Cleary: All right, I ask an exception.

The Court: You see, gentlemen, there are a great many of these questions—I might as well say it now —it is not a question of their admissibility; the only thing is that sometimes two or three questions will answer on a point just as well as two or three dozen questions, and I fear that I did not make it clear

to counsel, that point, but, of course, they are admissible.

Q. You say you were afraid of the traffic on Kings Highway at one o'clock in the morning?

A. Well, I didn't want to leave the car on Kings Highway.

Q. Is there any broader highway than Kings Highway in Camden County, to your knowledge?

A. I couldn't say.

Q. It is an exceptionally wide street in front of your house, isn't it?

A. That I couldn't say, that it is much wider than any other one.

Q. And you preferred to take it up the Mill Road and sleep with the revolver in your possession, did you?

A. The revolver was in the car.

Q. Why were you carrying a revolver?

A. Why, there was several people watching me from Cramp's Shipyard.

Q. You think that someone was watching you; as I understand, you had quit work, hadn't you, the week before at Cramp's, is that right?

A. Yes, sir.

Q. You had been laid off?

A. That is correct.

Q. And you hadn't worked there for over a week?

A. That is correct.

Mr. Cleary: If the Court please, I object to this line of testimony; this is not relevant, not brought out on direct examination.

The Court: Oh, yes, that was a question that you went into very extensively, as to when he was laid off at Cramp's Shipyard, and so forth.

Q. Why did you have the gun a week afterward if you were afraid of somebody—why didn't you go home?

A. Why, I wasn't afraid of anyone in the country, but when you enter Camden, a couple or three different times I had been tackled over here in Camden.

Q. Then you had the gun out there to protect yourself with it, had you?

A. I didn't have the gun out there to protect myself, no.

Q. Then why did you have the gun out in your hand when these officers came to arrest you?

A. I never said the gun was in my hand.

Q. Well, was it?

A. It might have been, but I think the gun was under the blanket; of course, it is very ——

Q. And you went to sleep with it in your hand?

A. I don't think so.

Q. Well, you went to sleep with it out of the holster, then?

A. I certainly did.

Q. If you had the gun for protection, why did you carry such a stock of ammunition in your pockets?

A. Why, I don't know that I had such a stock.

Q. The gun held nine bullets, didn't it?

A. I believe it did.

Q. And you had a quantity of these steel-jacketed bullets in your pockets?

A. I had a few.

Q. What was your idea in carrying them?

A. My idea in carrying them was for a purpose of practicing with the gun.

Q. Of what?

A. Practicing.

Q. When did you do your practicing, before or after you shot Garwood?

A. I was not going to practice with the gun.
Q. What is that?
A. I was not going to use it myself for practicing.
Q. Well, who was?
A. I was going to learn Miss Green how to fire a gun.
Q. You were going to do what?
A. Learn Miss Green how to shoot a gun.
Q. When had you talked about giving Miss Green shooting lessons?
A. Oh, several different occasions.
Q. Before you shot Garwood or afterward?
A. Before.
Q. How long before?
A. Oh, I don't know just how long.

The Court: I am not going to allow this line very much, Mr. Wolverton, because it is quite remote.

The Prosecutor: No, I understand.

Q. So that you had these bullets in your pocket with the idea of sometime showing Miss Green how to shoot a revolver, is that the idea?
A. Yes, and I didn't have all the bullets you have got there, neither; some of the bullets you have there I think you got from my home and put in there.
Q. We have those that we got from your home there.
A. Yes, and you have some in the other bag, too, that you put there.
Q. Was it your idea then to keep some of the bullets home to show your wife how to shoot?
A. No, I didn't have the practice of carrying so many bullets with me.

Q. You just carried a few to show Miss Green?
A. That is enough.
Q. Do you remember seeing a police officer at Woodbury?
A. Yes.
Q. On Sunday night before you were arrested?
A. I don't know what night it was.
Q. Did you tell him you were doing fine, that you had just bought a car?
A. I don't think I did; I might have.
Q. Who did you have with you on that trip?
A. Miss Green.
Q. Where do you live?
A. 436 East Kings Highway.
Q. Whose home is that?
A. Father's home.
Q. Does your mother live there?
A. I believe she does.
Q. Who else lives there?
A. My wife.
Q. How long has your wife lived there?
A. Oh, I don't know just how long.
Q. Well, about how long?
A. I couldn't say just how long.
Q. How many years?

Mr. Cleary: If the Court please, I do not see that it is relevant in this case how many years his wife lived at his mother's house; I think that is very remote.

The Court: No, it is quite relevant, in my opinion. It has relevancy on the truthfulness of the defendant's statements regarding his wife. Is that the purpose that you are asking it?

The Prosecutor: That is, yes, sir.

Mr. Cleary: If the Court please, this defendant has not made any statement about his wife.

The Court: Well, I don't know what he has been doing for several days then, if he hasn't, Mr. Cleary.

Mr. Cleary: I mean about where his wife lived.

The Court: Oh, well, that doesn't make so much difference as to where his wife lived; the statements made by the defendant have related to actions of his wife. Now, the circumstance of whether his wife lived at the home of this man's parents, and their willingness to have her in the home, while quite remote in one sense, yet they have a sufficient bearing upon that question to, in my mind, make them admissible. Now, Mr. Wolverton, is there any other purpose that you are asking those questions for?

The Prosecutor: Yes, if the Court please, that is the direct purpose. In addition to that, this witness has testified in his direct examination at certain times he had seen this woman with Garwood, and I feel ——

The Court: Yes, it is along that line?

The Prosecutor: It is along that line.

The Court: That is the way it struck me when the questions were asked.

Mr. Cleary: If the Court please, this witness' statements were not directed toward his wife, but were directed toward Garwood; I asked him on his examination whether he had seen Garwood; that is

the testimony that was produced in this case; it was not directed toward his wife at all.

The Court: Now, Mr. Cleary, that is a pretty fine distinction. He said that Garwood was running around with his wife, didn't he?

Mr. Cleary: The subject matter of the inquiry was Garwood.

The Court: Well, it takes two people in the way that that is used to do the running around; it would take the defendant's wife and it would take Garwood, wouldn't it?

Mr. Cleary: If your Honor please, I think that statement of his running around with his wife did not take place in this court room, that took place in this confession.

The Court: Oh, well, it is a statement made; the witness has said so several times.

Mr. Cleary: He said he saw her with him.

The Court: That is all right; then I think he used the expression "running around," and expressions that were perhaps even more uncouth than that, but that is the way I look at it; I think the questions are admissible.

Mr. Cleary: Will your Honor allow me an exception?

The Court: Certainly, you may have an exception. Do not make them too long, though, Mr. Wolverton.

Q. How long has your wife and yourself lived with your folk's in Haddonfield?

A. My wife, I believe, has lived there, the biggest majority of the time after I broke up housekeeping the third time.

Q. How long ago has it been since she went there to live?

A. Well, I couldn't say just how long ago; I haven't lived home until a short while ago.

Q. For several years, Mrs. Young, your wife, has lived with your folks, even when you didn't, hasn't she?

A. Off and on she has.

Q. She is living there today, isn't she?

A. I don't know.

Q. She was living there the day you were arrested, wasn't she?

A. As far as I know.

Q. And for several years past she has continued to live there, hasn't she?

A. Oh, no, no, no.

Q. How long has she been living there?

A. Why, it has not been so awful long since I broke up housekeeping the third time.

Q. Has it been three years?

A. Three years? No, it has not been three years.

Q. Has it been two years?

A. I don't know just how long it has been. Why, it hasn't been much over two years, if it has been two years.

Q. Then will you say it has been between two and three years?

A. I wouldn't say exactly.

Q. Why won't you say?

A. Why, because I don't know; I ain't going to say something I don't know.

Q. Have you lived there all during that time?

A. No, sir.

Q. What is it?

A. No, sir.

Q. So that when you were away from home, she still stayed with your folks, didn't she?

A. Sometimes, and when I was there she was away.

Q. She has lived with your folks from the time you broke up housekeeping on Potter Street, or Ellis Street, hasn't she?

A. No.

Q. How long has she lived there?

A. I was housekeeping on Ellis Street and she broke ——

Q. How long ago?

A. Why, that has been in the neighborhood of seven years ago, maybe longer.

Q. Hasn't she lived there for years?

A. Where?

Q. With your folks?

A. No, no, not for years; she has lived there off and on.

Q. Where did she live when she was not living with your folks?

A. I couldn't tell you all the times, various places, but I don't know where she lived; I didn't consider it any of my business.

Q. Young, how long continuously has she lived with your folks?

A. Why, I don't think over two years, if she has that.

Q. So that for the last two years at least, she has been living right with your father and mother?

A. As far as I know; I can't say for certain.

Q. Why, haven't you been living home?

A. No, not all the time.

Q. Where did you live?
A. I lived in Wood-Lynne, sometimes.
Q. Where did you tell Amanda Green you lived?
A. In Wood-Lynne; that is where I did live when I told her that.
Q. Where did you tell her your wife was?
A. At various places.
Q. Didn't you tell her she had died with the flu?
A. Yes, yes, I never denied it.

The Prosecutor: I have no further questions.

The Court: Does that finish the cross-examination?

Mr. Cleary: I would like to have the privilege of re-examining the witness upon some matters brought out in the cross-examination.

The Court: You may, of course, take up any question that is in a sense re-direct examination. I will have to pass upon it.

The Prosecutor: If the Court please, I did overlook a question or two, I am very sorry.

The Court: I am surprised to hear that, Mr. Wolverton. I will give you an opportunity of correcting that mistake. Go ahead then.

Q. Have you since told her the truth?
A. Yes.
Q. How long has she known it?
A. Oh, I don't know just how long.
Q. For several months, hasn't she?
A. I don't know just how long she has knowed it.

Q. For several months?

A. I said I didn't know, I ain't going to say something I don't know.

Q. And haven't you time and again gone to Haddonfield, on the Main Street, with her on your arm, and paraded in front of your house, as you have said to Dennis, to enable your wife to see you, so she would get a divorce from you?

Mr. Cleary: I don't think that is relevant. It is immaterial.

The Prosecutor: I was prevented by the objection of counsel for the defendant from asking that question, and I was led to believe I could use it in rebuttal.

The Court: You may ask it in rebuttal, because I think it is relevant cross-examination, because of the statements of this defendant as to the purpose with Garwood on this occasion.

Mr. Cleary: If your Honor please, that is not material as to his trip with Garwood, because this man admits he went with Amanda Green, he admits he didn't leave his wife at that time. He admits it wasn't because of any feeling of animosity.

The Court: The Prosecutor has a right to bring out all those things in his own way. You see, it isn't always necessary for the State's attorney to avail himself of the admissions of the counsel for the defense. He can use his own methods in proving a point.

(Question repeated.)

Mr. Cleary: I object to that, on the ground that the time and place is not specified.

The Court: I think it is at Haddonfield.

Mr. Cleary: Time and time again, he said.

The Court: Well, time and time again. The question is whether you did.

The Witness: Answer the question?

The Court: Yes.

The Witness: No, I didn't have her on my arm.

Q. Did you have her alongside of you?
A. She was walking on the street.
Q. Why did you go out there with her to your home town where your wife and children were living?

Mr. Cleary: I object, on the ground it is incompetent, irrelevant and immaterial.

(Objection overruled.)

(Exception noted for defendant.)

A. I had no fear of where I should go.
Q. Didn't Bill Dennis ask you, "Youngy, what are you doing here?" Didn't you say, "I want my wife to see me so she will get a divorce from me."?

Mr. Cleary: I object, it is irrelevant, incompetent and immaterial.

The Court: He has the right to ask that question for the purpose of contradicting him. While I think the questions are admissible, I wouldn't take too much time on them.

The Prosecutor: No, I would not. I am very anxious to close up.

(Question repeated.)

A. I went out for some laurels at the time I went out.

By Mr. Cleary:

Q. Now Mr. Young, you have been cross-examined four and one-half hours today, you have heard the questions of the Prosecutor and his manner of asking them. I am going to ask you if that was the same line of questions and the same manner of questions he asked you for four or five days he asked you before you made that confession?

A. Yes, sir, practically. I don't mean to say yes, sir, no, not in the same matter of form.

Q. But the same line of questioning, question after question?

A. It was question after question he was pressing on me all the time, it was continuous, torture, I had no peace at night, I would go to his office between seven or eight in the morning, I would be taken from there all over the country. I would reach my cell two or three in the morning.

The Court: Just a minute, Mr. Young. This is not re-direct examination. This is something that has been gone over I would not like to say how many times.

Mr. Cleary: If your Honor please, on the cross-examination Mr. Wolverton made it appear to the jury—what he said to him was perfectly above board—but he wanted to show this man that he wasn't compelled to answer these questions that he did, but that he did it as his own voluntary free will. He brought that out on cross-examination. He took these particular statements and read all the parts where he warned this man.

The Court: That is all right, but you were trying to show upon your direct examination that these statements that he made were not voluntary.

Mr. Cleary: No, if your Honor please, I think your Honor ruled me out on that question. You wouldn't allow me to go back to that point.

The Court: No, I didn't rule you out altogether, of course, on the question of whether the confession was voluntary, I did. Just ask the next question.

Q. Was there a difference in his manner? Did he speak to you in a much gentler tone?

A. Yes, he spoke to me in a much gentler tone at times.

Q. Did he call you Guilford?

A. He did.

Q. Now, these conversations which you have stated, where Mr. Wolverton told you it would be best for you if you told him all about it ——

The Court: I am not going to let you go into that question, because we have exhausted that subject.

Mr. Cleary: Mr. Wolverton was allowed to go into it. He spent, I think, about a period of an hour here on his cross-examination going into it. I just want to ask one question.

The Court: All right, just ask this one question.

Q. Was this statement as to whether or not it would be easier for you, made when the stenographer was present or not present?

A. I didn't see any there when he asked me that question. He always asked me that before anyone came in. He would always tell me that.

The Court: Now, Mr. Cleary, how many more witnesses have you? I am going to let the case go over until to-morrow at a quarter of ten.

Camden, N. J., Nov. 15, 1921.

Trial of the cause resumed at 9.45 A. M., pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

The Court: Now, Mr. Cleary, you may call your next witness.

Mr. Cleary: I was on the re-direct examination of Mr. Young, I think.

The Court: No, we had concluded the examination.

Mr. Cleary: No, your Honor adjourned Court when I asked three questions.

The Court: If you will look at your record you will find, I think, we had concluded the examination of Mr. Young.

Mr. Cleary: Well, that wasn't any intention, if the Court please; I had no such idea in my mind. The last question was: "Now, these conversations which you have stated, where Mr. Wolverton told you it would be best for you if you told him all about it —— The Court: I am not going to let you go into that question, because we have exhausted that subject." A remark by Mr. Cleary, a remark by the Court. "Now, Mr. Cleary, how many more witnesses have you? I am going to let the case over until tomorrow morning at a quarter of ten." So

you see, I hadn't even an opportunity to finish that question.

The Court: Well, Mr. Cleary, that is not my understanding of it, but if there is any mistake about it you may recall Mr. Young, but I want nothing gone into that has previously been the subject of examination.

Mr. Cleary: No, if the Court please.

The Court: I will listen to the question, but my understanding certainly was that Mr. Young had finished all of his testimony.

Mr. Cleary: No, the question was not even finished, if the Court please.

GUILFORD C. YOUNG, recalled.

By Mr. Cleary:

Q. Mr. Young was there anything asked you in the statement when the Prosecutor questioned you and when you made the statement on August 5th to him in his office—was there anything asked by him to you about self-defense?

A. No, sir.

Q. Did he in that confession ask you to relate the conversation?

The Prosecutor: If the Court please, may I ask this question: Has counsel for the defendant conferred with the defendant since he was on the stand yesterday?

Mr. Cleary: I saw him last night, yes.

The Prosecutor: And talked to him?

Mr. Cleary: Not about this matter, no.

The Prosecutor: Well, about his testimony?

Mr. Cleary: No, only about his previous testimony.

The Prosecutor: I think everybody was under the impression that the examination of this defendant had ended yesterday, and after he had gone back to his seat we entered into a discussion as to whether to hold a night session or to go on today, and it was taken for granted it was finished. Now, since he has gone off the stand he has had an opportunity to converse with counsel, and comes back this morning and says, "I am not finished."

The Court: That is a thing that is improper, Mr. Cleary; I don't mean to say that in any offensive sense; I mean to say that that prompts me to rule that you are not entitled to go into the further examination of this witness, it having appeared that you had a consultation with him last evening.

Mr. Cleary: I gave it no thought in relation to the matters ——

The Court: And then furthermore, I am so firmly convinced in my own mind that the examination was concluded yesterday by both you and the State that it was a surprise when I was informed otherwise by you. Then these questions that are now the sub-

ject of examination are matters that are not re-direct, because they have been gone into both upon your direct examination and upon the cross-examination; therefore it is not re-direct examination because you went into the subject of self-defense on your direct examination.

Mr. Cleary: I will withdraw the witness, if the Court please.

The Court: Mr. Wolverton cross-examined, and, of course, you can't bring that matter up again.

Mr. Cleary: Well, in order to save the time of the jury I will withdraw the witness, if the Court please.

The Court: Very well, Mr. Young, you may take your former seat.

Samuel M. Roberts, Esq., sworn.

The Prosecutor: Mr. Roberts, of course, you will not make any answer to any questions until I have had an opportunity to object.

The Witness: I guess I know how.

The Prosecutor: I would like to ask Mr. Cleary if this witness, who is his witness, has not been in the room during the entire trial of this case, regardless of the order of the Court that witnesses for the State and the defense are to remain out of the room?

Mr. Cleary: I saw him in the court room, if the Court please; I didn't tell him to stay in the court room. I don't know whether he knew of the order.

The Prosecutor: The fact is that he has been in this room since the trial started, and has conversed with you and assisted with the defense.

The Witness: I never heard of any such order.

Mr. Cleary: He hasn't assisted me; he has given me some suggestions.

The Court: Of course, it is discretionary with the Court to exclude the testimony of the witness, but I will not take that course, Mr. Wolverton. You ask your questions ——

Mr. Cleary: I think the reason he came in here ——

The Court: Well, never mind. This is hurry up day, you know.

Mr. Cleary: I will try to hurry.

By Mr. Cleary:

Q. Mr. Roberts, have you ever been consulted by Mr. Young as an attorney?
A. I have.
Q. When was that, do you know?
A. 1914.
Q. What time in 1914?
A. Now, I have forgot the exact date.
Q. Was it in the latter part of the year?

A. Yes, in the fall.

Q. Now, at that time, what did he consult you about?

(Objected to.)

The Court. You have a number of witnesses, I take it, from the questions that you asked Mr. Young yesterday, and I think I perhaps had better take you and Mr. Wolverton in the side room, and then you may freely state just exactly what you expect to prove by those witnesses, and we can perhaps dispose of the matter more quickly that way, because you will be freer to make the statement, and it will have no affect upon the jury.

(Court and counsel then adjourn to the side room and the argument was there resumed.)

The Court: Now, Mr. Cleary, just what do you propose to prove by Mr. Roberts?

Mr. Cleary: I propose to prove by him that in the year 1914, which is the starting of this series of troubles of this man with his wife, that Mr. Young came to him and complained to him that Mr. Garwood at that time was running around with his wife, and I intend to show by other witnesses, clear up to six weeks from the shooting—this is the first start of it, and the others follow it—Mr. Marter will testify to it within, I think four months of the shooting, as to the same state of facts. Now, that testimony will tend to prove that the man not only knew Garwood, but there was some connection between Garwood and his wife, and that he had on this day when he met him sufficient facts in his mind which would

justify him in asking Mr. Garwood to go with him and have a conversation about keeping his wife, since he had been going with her for such a long length of time.

The Prosecutor: If the Court please, I would suggest that in view of the fact that Mr. Cleary has stated that he has other witnesses beside Mr. Roberts, that for the purpose of this record, so that it will not be necessary for us to go into this side bar conference with the calling of each witness, that he state under the name of each witness whom he is about to call, what his purpose is to prove by that particular witness, starting with Samuel Roberts. (After further argument.) I think the Court could more properly rule upon it, and I certainly could more properly answer or object if I knew what your offer was with each particular witness. If you are just putting them on in a haphazard way, hit or miss, and don't know what they are going to testify to, it is very difficult to object.

Mr. Cleary: No, I am not; I know what I fully believe and confidently expect they are going to testify to. Mr. Roberts is going to testify to the fact that in the year 1914, Mr. Young came to him and complained that he had been arrested on a non-support order, and the reason he had not been supporting his wife was that she had been running around with Garwood, and he did not think it was right that he had to support his wife, when she was running around with Garwood. He remember's Garwood's name distinctly, because of the fact that Garwood is his cousin's name, and he remarked at that time that it was the same name as his cousin, or some relative, and that is the reason he fixes Garwood's name in

his mind, that the case went to trial in Judge Boyle's time and he was convicted, I think, by the Judge or jury, I don't know which, and he was sentenced. Sentence was suspended, he was put in care of the probation officer. Mr. Roberts produced testimony which intended to show that it was not a criminal case but it was a civil case, inasmuch as the woman had done certain things, gone away from him, which would entitle him to refuse to support her. The Court ordered a new trial upon those facts, and they had a new trial, and then upon the new trial I have never been able to find out, the record does not seem to show—in the clerk's office—whether he was guilty on the new trial or on the first trial, but anyway the man was let go; he was either suspended or was not punished in any way. That is what I am going to prove by that witness.

The next witness is Mr. Marter who was the personal counsel of this man for about four years. He will testify that on numerous occasions this man came to him and complained about the same state of facts. Now, Young would have testified on the stand, and I had hoped that your Honor would have let me get that ——

The Court: No, now just state ——

Mr. Cleary: Wait just a minute; I want to show the connection between the two; Young would have testified on the stand, if he had been permitted, that it was about Garwood that he went to Marter, and complained to him. Now, unfortunately, Mr. Marter, like all other attorneys, is a man who has a number of other business cares, and he did not write down what this man told him, and he can't remember the name of the man, but Mr. Young will

testify, if he was permitted, that it was Garwood that he went to see him about, and he will testify that for a period of four years this man has been coming to him with stories about his wife, and wanting to know what he could do about it, whether there was not something he could do. He will testify further that the man has told him on numerous occasions he was going to leave the whole thing and he was going to go out west and Mr. Marter at that time advised him, "If you go out west, do the right thing by her anyway, and support her until you get a divorce from her." Then I will have another witness to testify ——

The Court: Now, just name the witness and what he will testify to.

Mr. Cleary: Mr. Harker will testify that he was a friend of Mr. Young's to whom Mr. Young divulged his family troubles. He likewise, because of the lapse of time, can't sincerely and honestly remember the name of the man. He will testify that because of that trouble he sent him to see Judge French. Sam French will testify that Judge French was not there, and that he saw this man. He will testify that the man told him he came from this Mr. Harker; he remembers the occasion distinctly, and he remembers Young, but he likewise cannot remember what the name of the man was, but the fact that he consulted him is there.

We have two police officers in Haddonfield; I can't remember their names. What is that chief's name?

The Prosecutor: Dennis.

Mr. Cleary: It wasn't Dennis; it was Quinn. He will testify that he told him something about his

trouble with his wife, but I don't think Quinn can testify the man's name, because he has forgotten it. That happened four or six months before the shooting.

Mr. Baxter will testify to the same thing, and he can't remember the name of the man, but he will testify that this man told him about four or six months before the shooting on four different occasions that he intended to go out west, and go out to New Mexico or Mexico, or some place in Texas, something like that.

Mr. Downs will testify that within six weeks of the shooting this man told him he was going out west, and leave everything. That in the purport of the testimony, if the Court please.

The Court: (After argument.) Now, you have any objections to this evidence?

The Prosecutor: We do, yes.

The Court: Will you just state your objection.

The Prosecutor: My objection to it is that conversations by this defendant with individuals that did not in any way relate to Garwood are inadmissible; and there is nothing to indicate that Garwood's name was ever mentioned, and that even if it had been mentioned it was entirely too remote and has no bearing on this case in view of the fact that the defendant has by his confession in court, by his testimony in court, by the statement and admissions of his counsel both in opening and arguing questions before the jury, stated that the killing of Garwood was not in any way due to any friendship between Young's wife and Garwood, but was solely and entirely a matter of self-defense.

The Court: The offer of the testimony will be overruled.

Mr. Cleary: If the Court please, don't you want to hear my grounds for it? I would like to have an opportunity of changing your mind before it is made up.

The Court: I thought I had heard you; but go ahead.

Mr. Cleary: If the Court please, I say that this testimony is material for this reason; that this man killed a man and took his goods, and the question is what was his intent at the time he took them. From those circumstances it may be inferred by the state to be robbery and by me to be the concealing of the goods, neither of which can be proved except by some other fact back of it. The fact back of it is, "What was his intent when he hired the car?" And nobody can say that unless they can find his intent back of the time that he hired the car. Now, then, I want to show this testimony for this purpose; to show that on this day as he alleged, that it was in his mind, and he was talking and thinking about it at the time he saw Mr. Roberts and Mr. Marter, and talking and thinking about the time he had to marry this girl, thinking about his family difficulties and the way this man had gone around with his wife. That was the intent in his mind, he wanted to speak to this man, not to kill the man because he was going around with his wife, but to tell the man because he had been running around with his wife and using her as a wife, it was time for him to keep her. That is what he said in all his testimony. Now, the fact that Mr. Roberts will testify that he made complaint to

him as far back as 1914 will help to corroborate that intention which he says was in his mind at that time, regardless of whether it was true or false.

The Court: (After further argument.) Now, Mr. Cleary, I am going to overrule this line of testimony.

Mr. Cleary: Mr. Roberts', too?

The Court: Mr. Roberts' testimony, too; it is too remote, it is in my opinion a self-serving declaration and is irrelevant.

Mr. Cleary: Well, if the Court please, will you overule the point that he was going out west, too?

The Court: Yes, I overrule it all. I cannot admit this testimony, as I am firmly convinced that it is not admissible testimony.

Mr. Cleary: All right, if the Court please.

Mr. Cleary: I will ask a question so that your Honor can rule on it.

The Court: Well, you have stated fully, Mr. Cleary, what you propose to show by these witnesses, and I have held that the testimony that you propose to offer is inadmissible.

Mr. Cleary: That the testimony is inadmissible?

The Court: Inadmissible, that it cannot be admitted and I have given you my ground for it and I will now overrule it and grant you an exception.

Mr. Cleary: If your Honor please, it is my intention to call each witness and let you overrule the testimony of each witness as they come to the stand.

The Court: I hardly think that will be necessary, because I gave you an opportunity inside, Mr. Cleary, to tell the name of each witness and tell exactly what you proposed, and you see, that was very advantageous for you, because you couldn't tell whether the witnesses would testify to it or not, so that it is in the most favorable light that you can possibly get it in. As I explained to you at side bar, that in a review, you get the benefit of it whether you would be able to do it or not. You get the benefit of having—as if you had proved it—everything that you expect to get from these witnesses.

Mr. Cleary: Well, if your Honor please, it is only the impression that it gives to the jury, when I said to them in my opening that I would call all these lawyers and all these police officers.

The Court: I will permit you to state the names of the witnesses, if you desire to do that.

Mr. Cleary: If your Honor please, it is the impression it leaves on the minds of the jury, after I said these things, and I don't do it. I want them to understand it is ruled out.

The Court: I don't think the jury have any impression that you have left undone anything that you ought to do.

Mr. Cleary: If your Honor please, I want the jury to know that I did call these witnesses here and it

is because of the rule of evidence I can't, and if your Honor please, I want it noted on the record that I have Roberts, an attorney-at-law, Samuel French, an attorney-at-law, to testify in this case, I have Cyrus Marter, an attorney-at-law to testify in this case, I have Officer Quinn, of Haddonfield, to testify in this case, I have Officer Baxter to testify in this case, I have Mr. Harker, a friend of the defendant, and I have Mr. Downs, a friend of the defendant, to testify to certain facts in this case, which I have stated in the inside bar, and which I will not state because it might prejudice the State. I ask that an exception be granted to me on the understanding that we had at side bar, because of the fact that your Honor has overruled the testimony of these witnesses upon the rules of evidence.

The Court: Yes, very well, you may have that exception, Mr. Cleary.

(Exception noted for defendant.)

Mr. Cleary: Oh, if your Honor please, I want another witness I forgot, to testify in relation to those very things. I will just mention his name, it is the same character, a justice of the peace from Haddonfield, Squire Harrison, I think it is William Harrison.

The Court: Very well.

The Prosecutor: And his testimony would be no more direct that those you mentioned?

The Court: That is what I understand, exactly the same testimony.

Mr. Cleary: The same as Mr. Roberts and the others. If your Honor please, I forgot something. Mr. Roberts is going to testify to something else. He is going to contradict the testimony of Mr. Pierce, for which I laid a foundation.

The Court: Very well, you may recall Mr. Roberts and direct him to the testimony of Mr. Pierce.

Q. Mr. Roberts, you were the attorney for Mr. Young, in 1914, upon the trial of a certain issue in this court, were you not?

A. Yes, sir.

Q. Do you know a man named Mahlan Pierce, who was a witness in the case?

A. I remember a Pierce who was an officer out at Haddonfield station.

Q. An officer of Haddonfield?

A. Yes, sir.

Q. Did Mahlan Pierce tell you at the time of that trial that Harry Garwood was at the house of the mother of this man's wife and that he had asked Mr. Young to come around to his mother-in-law's house and see for himself what was taking place?

The Prosecutor: When was this conversation?

The Court: Is that the exact ——. You take it from the record and tell me the page.

Mr. Cleary: I see that isn't an answer, that is a a question. I beg your Honor's pardon.

The Court: 430. Just reframe that question.

Mr. Cleary. I mistook that question for an answer. I see it is one of Mr. Wolverton's questions.

Q. Did Mr. Pierce say to you—this is page 434—that he had seen Mrs. Young in the presence of Garwood?

A. Yes.

Q. He did?

A. Yes.

Q. At the house of the mother of the defendant's wife?

A. Well, he said he saw her with him lots of times.

Q. Did he say that she was with Garwood?

A. With Garwood.

Q. Did he say at that time that he had seen out of the window at his house, where he was looking, into the house of Mrs. Young's mother, and that he said he had seen Mrs. Young sitting in the lap of a man up as late as 3 o'clock in the morning?

The Court: Where do you get that?

Mr. Cleary: Page 434, the second question.

The Court: Well, now, just let us see. You, of course, are entitled to put this one question, because you asked Mr. Pierce regarding whether he had told Mr. Roberts that, but now, this question which you have just read, that is what Mr. Pierce denies having told Mr. Roberts.

Mr. Cleary: If your Honor please, I will withdraw that question. That isn't quoted there. You only want the quoted part?

The Court: Only just exactly what did ——

Q. Did he say to you at that time, I seen ——

A. I am not sure if he used those exact words, but

he gave an account of several instances, several family jars.

The Court: The question is whether Mr. Pierce said anything to you.

The Witness: It was seven years ago; I couldn't say he used those exact words, but he used words to that affect.

Cross-examination.

By the Prosecutor:

Q. Mr. Roberts you have been a very busy practitioner since 1914?

A. Well, I have been around like you have.

Q. And, of course, as you just said a minute ago, you couldn't remember everything that happened?

A. No.

Q. But you do remember very distinctly that you represented this defendant in this trial for desertion and non-support in this court, do you not?

A. Why, no, until Mr. Cleary called my attention to it and I examined the public records.

Q. You mean to say you even forgot you had ever represented him until it was called to your attention?

A. No, sir, I did not.

Q. And you had to convince yourself that you did?

A. To refresh my memory, sir.

Q. So that your memory that you had appeared in this case before Judge Boyle to represent the defendant was so faulty, that you, to make sure of it, went and looked up the records?

A. No, sir, that is not the truth.

Q. I understood you to say you went to look at the records?

A. I can't help what you understood. You heard it. It is in the record.

Q. Will you object to repeating it?

A. I will repeat anything I remember. It is down in the record. Read it off.

Q. And notwithstanding the fact that you represented him, he was convicted, was he?

The Court: Well, now, that question I overrule.

Mr. Cleary: If he is going to say that, I think he ought to show the man had a new trial.

The Witness: I will tell all I know. I am ashamed of nothing.

Q. You want Mr. Pierce to testify?

A. I wanted Mr. Pierce to testify?

Q. Yes.

A. In what particulars?

Q. In this trial.

A. This trial? This trial?

Q. In 1914, back in 1914?

A. Oh, he did testify.

Q. And he refused to testify as you wanted him to?

A. He did testify.

Q. I say, he refused to testify as you wanted him to?

A. I never asked him to testify to anything but the truth.

Q. Did he testify in the particular you expected to?

A. Absolutely; he came to my office and said what he would say.

Mr. Cleary: How could this witness tell whether the man was telling the truth?

The Court: That's all right. The question is allowable. He has a right. He is now stating, Mr. Cleary, that Mr. Pierce did not say such and such a thing, and anything that is relevant to show that he did say it.

Mr. Cleary: I object to the form of the question.

The Court: The question is allowed but I think this examination should be very brief, Mr. Wolverton.

(Exception noted for defendant.)

The Witness: I have no objection. Go on.

(Question repeated.)

The Witness: He came to my office and said what he was going to say.

Q. He did testify in your office, did he?
A. He testified in the case?
A. He testified in court exactly as I expected he would.
Q. And you heard his testimony here in this court?
A. Yes.
Q. And when he said he had never seen Mrs. Young sitting on the lap of any man or any man in her lap and that he never told you so?
A. He said just exactly the reverse.
Q. What? In this court?
A. Yes, sir, before Judge Boyle.

Q. You mean to say, Mr. Roberts, that he didn't testify in this court as he testified here the other day?

A. I mean to say he testified exactly the reverse, that is what I mean to say.

Q. And your man was convicted?

A. He was convicted and then sentence was suspended. Now, I will tell you all about it if you let me.

The Court: No, that is all.

Mr. Cleary: I want to re-examine him on the points brought out by the Prosecutor.

The Court: What point was brought by the Prosecutor that you think you are entitled to re-examine him on?

Mr. Cleary: What this man said at the trial that time. I think I have the right to show this man was given, by the testimony of Mr. Roberts', this defendant, Mr. Young, was given a new trial by the Court at that time.

The Court: That has no bearing on this question. The Prosecutor's questions were allowable upon another theory. He was testing the credibility of this witness and the subject upon which he questioned him can't be made an issue in this case, and therefore I will not permit that line of examination.

NARIA YOUNG, sworn.

By Mr. Cleary:

Q. Mrs. Young, you are the mother of this defendant, Guilford Young?
A. Yes, sir.
Q. And did he on July 23rd live with you at your house in Haddonfield?
A. Yes, sir.
Q. Is your husband living?
A. Yes.
Q. Did you on the 23rd of July, on Saturday morning, July 23rd, see the defendant, Guilford Young, leave your house in the morning?
A. I did.
Q. Can you tell me what time he left?
A. About half-past six.
Q. Can you tell me whether or not he was dressed in his ordinary working clothes?
A. He was.

Cross-examination.

By the Prosecutor:

Q. Mrs. Young, how long has he lived there at your house?
A. Well, since he came back this time, it has been close on to three years. I don't know just exactly.
Q. And is his wife, Mrs. Young, living there with you folks?
A. She is.
Q. And at the present time?
A. Yes, sir.
Q. And has been continuously?
A. Yes.

JOSEPH F. SHIVERS, sworn.

By Mr. Cleary:

Q. Mr. Shivers, where do you live?
A. Ellisburg.
Q. Where?
A. Ellisburg.
Q. How close to the Ellisburg Hotel do you live?
A. About a half a mile.
Q. Your place is on the Marlton Pike, the same pike as the hotel is?
A. Yes.
Q. Do you remember on the morning of July 23rd an automobile driving up to your place with two men in it?
A. I couldn't say whether it was July 23rd or not.
Q. Do you remember that occurrence, however?
A. I remember the occurrence.
Q. Do you know whether or not this man was one of the men?
A. I couldn't swear to it.
Q. Did he look like him?
A. I couldn't say.
Q. Do you remember what the man in that automobile said or did?
A. No.

The Prosecutor: If the Court please, this witness cannot tell whether this is the man, whether he even looks like him.

Mr. Cleary: Well, if the Court please, I am going to get him to testify as to the facts there to try to recollect, his memory, to get the size of the man and what was his general build, and so forth.

The Court: (After argument.) I have no objection to your showing that this witness knows whether the defendant was at his house at a certain time.

Mr. Cleary: On Saturday morning, July 23rd.

Q. Was it a man that resembled this man?
A. Somewhat.
Q. There is nothing about him that looks different, is there?

(Objected to.)

A. I couldn't say.

The Court: That is a leading question; that question is overruled.

Q. How many men came to you that day?
A. One man came to the barn.
Q. And how did they come, in an automobile or otherwise?
A. Came up the lane in an automobile.
Q. Was there another man driving the car?
A. Yes.
Q. And what did that man say to you?

The Prosecutor: Now, if the Court please, I object on the ground that there is nothing to show that it was this defendant.

The Court: You must first, before you can produce anything that was said by this defendant, show that it was this defendant that was there. That must be established first. (After argument.) Just ask this witness, Mr. Cleary, if he knows the defen-

dant, and then if he recognizes him as the person that was there.

Q. Did you know the defendant, Guilford Young, before this time?

A. I did not.

Q. You had never seen him before?

A. I had seen him before but did not know his name at the time.

Q. Can you say whether or not it was this man?

A. From things that you have told me I can say it, sure.

Q. You remember the instance ——

The Court: No, it is not from what Mr. Cleary told you; it is, do you recognize the defendant, Mr. Young as the man that was at your house on this Saturday morning, July 23rd; not from what anybody has told you, but from what you actually saw?

The Witness: I believe it is the same man.

The Court: You think it is the same man? All right. Now, wait a minute; you must get him to say when it was that he saw him, what day it was.

Q. What were you doing at the time that this man came up?

(Objected to.)

Mr. Cleary: If the Court please, what he was doing will fix the date in his mind.

The Court: Excuse me, Mr. Cleary, but, of course, it makes a very great deal of difference—I do not

know yet what you want to draw from this witness, but, of course, you can see that it must be, in the first place, upon this day; the witness must testify that it was upon this day in question.

Q. Do you remember the day that the body was found in the woods?

A. I do not.

Q. Do you remember the day that Mr. Young was arrested?

A. No.

Q. Do you remember the day that the killing occured?

A. No.

Q. Can you say whether or not it was on the 23rd day of July, 1921, when you saw this man at your place?

A. I am not positive.

Q. Well, may it have been?

The Court: No, that question is overruled. The other was pretty leading, but it is answered.

Q. Do you know whether or not it was on Saturday?

A. I am not positive.

Q. Is there anything that fixes in your mind the day?

A. No.

Q. Can you tell by whether or not ——

The Court: Now, he says there is nothing in his mind that can fix the date, Mr. Cleary.

Q. Might it not have been the 23rd day of July?

The Court: Now, that question I will not allow, Mr. Cleary, because you know yourself, to make any evidence of this kind admissible, it has got to be within a very short period; I am not saying what period exactly. That question has more vices than that of being a leading question and I can not allow it.

(Witness withdrawn.)

Mr. Cleary: If the Court please, before I forget it, I overlooked one objection to the exclusion of the witnesses, those police officers and lawyers and so forth, that I would like to have upon the record.

The Court: Very well, just tell it to the stenographer now.

Mr. Cleary: My objection is based upon the fact as outlined in the case set forth in the Atlantic Reporter to which I have previously given a reference, 15 Atlantic Reporter, 836, which holds that a man may show what he did or what he said at any time previous to the commission of any offense to show that the state of his mind upon that occasion was something else than what the State has attempted to show to be the motive of the crime.

The Court: Well, all right; I will let you put it down that way.

Mr. Cleary: I also object to it, or not object to it, but I also say it is material, competent and relevant in this case.

FLORENCE HOYLE, sworn.

By Mr. Cleary:

Q. Your name is what?
A. Florence Hoyle.
Q. Now, were you at the house of Amanda Green on the 23rd day of July, 1921?
A. I was.
Q. Will you speak so that this last lady and gentleman back here can hear you?
A. I was.
Q. What time in the morning were you there?
A. I was there all morning.
Q. You were there all morning—you will have to speak a little louder. Did or did not you see Mr. Guilford C. Young there on that day?
A. I did.
Q. Do you know what time he arrived at that house?
A. Between 11.30 and twelve.
Q. And what was his condition at the time he arrived there as to intoxication?
A. Very, very intoxicated.
Q. What did he do after he arrived there with regard to his intoxication?
A. Well, he stumbled into the house and sat down on a chair.
Q. Do you know whether or not he went to sleep on that occasion?
A. Two or three times he dozed.

The Court: Do not lead the witness, Mr. Cleary; that is a leading question. Just let the witness state what she saw.

Q. Now, if you will speak loud enough so that lady down here can hear you and the gentleman in back of her, I think there wouldn't be any difficulty, but I can hardly hear you myself, Miss Hoyle.

A. Do you wish me to state everything from the time he came to the house?

Mr. Cleary: Well, if your Honor wants it done that way.

The Prosecutor: I think it would be better for you to ask questions.

The Court: No, you ask questions, Mr. Cleary.

Q. Do you know what his condition in regard to intoxication was on that occasion?

The Prosecutor: She has already answered that question.

Q. If so, state the acts which led you to believe he was intoxicated.

A. When he drove up to the house I noticed the car, the standing car, and he opened the car door and stumbled out of the car; then he staggered into the house, and as he entered the room I could smell his breath. Then he came in, bumped up against the table and sat down on a chair and two or three times during the morning he fell asleep, and I aroused him.

Q. Now, did you see the car he had on this morning?

A. I did.

Q. Do you know whether he had a car before that time?

A. Yes, sir.
Q. Was the car he had on this morning the same car he had on other mornings?
A. No, sir.
Q. How do you know that?
A. Because the car he had last was all shiny, and it didn't have a bumper on it.
Q. Not on that morning?
A. On Saturday morning.

Cross-examination.

By the Prosecutor:

Q. What is your name?
A. Florence Hoyle.
Q. Is it Miss or Mrs.?
A. Miss now.
Q. What is it?
A. It is now Miss.
Q. Miss what?
A. Florence Hoyle.
Q. Have you been married?
A. I have.
Q. Are you the sister of Amanda Green?
A. I am.
Q. You live at 714 Spruce Street?
A. Yes, sir.
Q. How long have you known Guilford Young?
A. Why, about a year and a half.
Q. Has he been coming to your house for a year and a half?
A. About that.
Q. For what purpose?
A. To see my sister and family.
Q. To see the sister and the family, including yourself?
A. Well, no, just on friendly terms.

Mr. Cleary: I object to this line of testimony. It is irrelevant and immaterial.

The Prosecutor: If the Court please, this young lady, in answer to a leading question of counsel for the defendant, says he was there on the 23rd. I would like to go into the question as to how she fixes this as the 23rd.

The Court: On that line, it is perfectly correct, but you were going back a year and a half.

The Prosecutor: I was laying the basis for the fact he had been calling there for a year and a half, and how she could pick out one particular Saturday, in view of the numerous times he had been calling.

Mr. Cleary: If it is the purpose of the Prosecutor to show by this witness that the defendant was going with Amanda Green ——

The Court: No, he has a right to test the recollection of this witness.

Q. You say he has been going there for a year and a half?

A. Yes, sir.

Q. How frequently?

A. Well, when he first came, he came about once a week, then it went on about twice a week and the last few months it was about three times a week.

Q. So that it was no unusual thing to see Guilford Young walk into your house at any hour of the day?

A. He never came in the day. He worked steady. It was in the evening.

Q. He had never been in the daytime before?
A. Only on Sundays.
Q. How about holidays?
A. I couldn't remember about holidays.
Q. How about Saturdays that he didn't work?
A. Well, Saturday afternoon sometimes he called to tell her he would be around in the evening or sometimes he came to say he was going to work that evening.
Q. So that he has been there in the daytime as well as the night?
A. Yes.
Q. And it wasn't unusual for him to come there on holidays or days that he wasn't working, was it?
A. Well, I can't remember about the holidays, because I was always ——
Q. You have been home each day he came?
A. On the last Saturday I was there.
Q. Now, who else was there when you say he came in?
A. Just my sister and I was there. My father and mother were away for the day. I was keeping house.
Q. Why did he come there?

Mr. Cleary: If your Honor please, I object to that. That is a conclusion of fact. I object to the form of the question.

The Court: No, the form of the question is all right. If the witness knows why he came, she can state it, if she knows.

A. Well, I don't know why he came.
Q. Well, if it was so unusual for him to come in the daytime, as you say it was, did you ask him why he came?

A. No, I didn't ask him.

Q. So he didn't say why he came, when you didn't ask him why, this unusual thing, coming in the daytime?

A. Well, I didn't think it was.

Q. And you didn't say, "Hello, Guilford! What are you doing here?"

A. Oh, yes; I said, "Hello, Guilford!"

Q. What did he say?

A. He said, "Hello, Florence!"

Q. Didn't you say, "What are you doing here?"

A. No, I didn't. I may have thought it but I didn't say it.

Q. Didn't ask him why he was there?

A. No, sir.

Q. Did you ask him why he wasn't at work?

A. No; because he didn't work on Saturday afternoon.

Q. I thought you said it was between half-past eleven and twelve?

A. Well, I don't know about that. He may have worked early in the morning. I don't know.

Q. Well, then, it was in the afternoon he came?

A. No, it was between 11.30 and twelve.

Q. I thought you just told me you didn't ask him why he wasn't working was because it was the afternoon.

A. I said he didn't work in the afternoons.

Q. But this was in the morning?

A. Well, even at that, he might have taken off a little time.

Q. But you didn't ask him whether he had worked that morning?

A. No, I didn't ask him.

Q. Did you ask him where he had been?

A. Of course not.

Q. Did you ask him where he had gotten the car?
A. I did not.
Q. Did he tell you where he had gotten it?
A. No.
Q. You noticed it was a different car than the one you had been riding around in?
A. Yes.
Q. It was very apparent to you, when you looked out of the door, that Guilford had a new car?
A. I saw it through the window.
Q. It was very apparent to you he had a new car?
A. Yes.
Q. And yet when he came to the door, you didn't ask him where he had gotten it or why he had a new car?
A. No.
Q. Has he told you he was going to get one?
A. No.
Q. So that it was a surprise to you to see the new car?
A. Yes, a little.
Q. And it was a surprise to you to see Guilford Young on Saturday morning at your house?
A. Yes.
Q. And on neither of these things did you think any reason to ask him about it?
A. Well, I may have asked him later in the day; that is if he had stayed, I may have asked him.
Q. But you didn't ask him?
A. I didn't ask him, no.
Q. After he came into the house, what did you say to him?
A. I just said hello to him and walked out in the kitchen.
Q. And left him standing?
A. Oh, he sat down in a chair himself.

Q. But he did sit down?

A. Yes.

Q. By your invitation?

A. No. My sister was there in the room and I left it to her.

Q. Because the sister was there, then you walked out and left him alone?

A. Yes.

Q. Did you ask him why he wasn't home instead of at your house?

A. No, I didn't.

Q. You knew where his home was?

A. I had heard him say something about it being in Haddonfield but I wasn't sure.

Q. And you didn't think it strange for him to come there then that morning?

A. I might have thought it a little strange but I just forget, it has been so long.

Q. Now, if it has been so long ago, how do you fix it that it was the 23rd of July?

A. I don't think I mentioned any date, did I?

Q. What is it?

A. I didn't mention the date, did I?

Q. No, I don't think you did, young lady. Mr. Cleary mentioned it for you.

A. Well, I mean the last Saturday I saw him.

Q. Well, now, when was the last Saturday you saw him?

A. I think it was the 23rd.

Q. Well, what makes you think it was the 23rd?

A. Well, just from reading it in the newspapers and I know that, know it has been impressed on my mind.

Q. You think it was the last Saturday you saw him?

A. Yes.

Q. The last Saturday that you saw him was the day he brought the chickens to your house, wasn't it?

A. I don't remember the chickens at all.

Q. You remember going to Pine Beach?

A. Yes.

Q. And you went on a Sunday, didn't you?

A. Yes.

Q. Now, the day before Sunday was Saturday, was it not?

A. Yes.

Q. Did Guilford Young come to your house that morning with chickens, to supply the "eats" for the next day at the picnic?

A. I can't remember that.

Q. Where did the chickens come from?

A. Well, the chickens he brought came from him I suppose.

Q. Yes, the chickens that he brought. Now, he brought them on a Saturday morning, didn't he?

A. That I can't remember.

Q. Well, now, young lady, you can remember some Saturday mornings. Can't you remember that those chickens were brought on Saturday morning?

A. Yes, I can remember one Saturday he brought them, but I don't know what Saturday that was.

Q. And the Sunday that you went to Pine Beach was the Sunday preceding the last Saturday that you had seen him, wasn't it?

A. Yes, I believe it was.

Q. So that then it was Saturday, the 31st of July, that he was there and was drunk, wasn't it?

The Court: That wouldn't be Saturday, the 31st. The 30th.

Q. Saturday, the 30th, isn't that right?

Mr. Cleary: If your Honor please, that is a very leading question. It is perfectly apparent this witness is confused as to dates and I think there ought to be some discretion used in that matter.

The Court: The question is allowable.

The Prosecutor: I don't wonder she is confused.

Mr. Cleary: I don't wonder either.

The Court: Gentleman, don't pass any remarks. We have gotten along pretty pleasantly and with some promptness. Now, the question is admitted. Will you please read the question again to the witness?

(Question repeated.)

A. I don't remember whether he was drunk on that Saturday or not.

Q. You said that you remembered the date—not the date—but that it was the last Saturday that you saw him, didn't you?

A. Yes.

Q. Now, he was arrested on Tuesday morning, wasnt' he, August 2nd? That was Tuesday, wasn't it?

A. Yes.

Q. Now, Monday was the day before. Sunday, the day before that, was the 31st of July, and you went on a picnic to Pine Beach and Barnegat, didn't you?

A. Yes.

Q. And you had chickens which had been brought by the defendant, for the lunch on that day, didn't you?

A. I believe we did, but I can't say for sure.

Q. And he brought them on the day before, to be prepared for the picnic, didn't he?

A. I can't remember that. It has been too long.

Q. Well, then, that was the Saturday that you refer to, wasn't it?

A. Yes.

Q. Just two or three days before his arrest?

A. I can't remember that.

Q. So you don't remember now on what date it was, do you?

A. What?

Q. Except that it was the last Saturday that you saw him?

A. The last Saturday I saw him.

Q. The last Saturday you saw him was the day you say he was drunk. Is that right?

A. Yes.

Q. Now, then, the last Saturday that you saw him was the day before you went on the picnic to Pine Beach and Barnegat?

A. Yes.

Q. So that you went on the picnic to Pine Beach and Barnegat just two days before he was arrested, didn't you?

A. Yes, sir.

Q. So that it was the Saturday, then, three days before he was arrested, that you saw him at your house drunk?

A. Yes, sir.

Mr. Cleary: If your Honor please, I have a right to cross-examine the witness on my examination-in-chief, which has been confused by the Prosecutor.

The Court: What has the Prosecutor dealt upon in his cross-examination that is new matter?

Mr. Cleary: I had this witness testify to the fact it was the 23rd. The witness is confused as to dates in my mind. I know positively that she knows differently.

The Court: No, no, you mustn't state that. You put the question to the witness and I will rule on it.

Re-direct examination.

By Mr. Cleary:

Q. Now, you remember the day that he was drunk was the day that your sister saw this car the first time?

The Court: That question is overruled. It is not re-direct examination.

The Prosecutor: Young lady, please don't answer while there is an objection pending or while we are trying to talk.

Q. You did see him on the Saturday before he was arrested?

(Objected to as leading.)

(Objection sustained.)

Q. Can you tell me whether you saw him on the Saturday before that?

The Court: That question is overruled.

Q. How many Saturdays have you seen him when he came there before noon time?

(Objected to.)

The Court: Mr. Cleary, you are conducting a line of examination that is not upon matter that didn't pertain to your direct examination.

Mr. Cleary: I don't say it is, but I insist it is my right, that I have the right, after the Prosecutor has shown something different in his cross-examination from what I have shown in my direct examination—in other words, has gotten the witness to say something else—I have a right to recollect that witness' memory to testify again.

The Court: The same thing?

Mr. Cleary: Yes.

The Court: I think not, and the line of examination will be overruled.

Mr. Cleary: I will withdraw the witness.

(At this point a recess was taken for five minutes.)

GEORGE WEBSTER, recalled.

By Mr. Cleary.

Q. What is your name?
A. George Webster.
Q. Mr. Webster, were you at the home of Mr. Green on July 23, 1921?
A. Yes, sir.

Q. Were you there in the morning or afternoon?

A. I was there between half-past one and two o'clock, as near as I can remember.

Q. When you went in that house, did you or did you not observe any automobile standing outside?

A. Yes, sir.

Q. Did you or did you not see Mr. Young in that house on that day?

A. Yes, sir, I saw Mr. Young in that house.

Q. Do you know whether Mr. Young had an automobile before the 23rd day of July?

A. Mr. Young had an old machine before the 23rd day of July, yes.

Q. Was or was not that machine which was outside the house on the 23rd day of July the same machine that he had on previous occasions?

A. No, sir.

Q. What difference was there between the two machines?

A. One was a new one and the other was an old one.

Q. Any other difference?

A. Well, the old machine had a bumper on the front and had an extra pair of springs; the new one hadn't.

Q. Did this machine?

A. No, sir.

Q. And is that the first day that you saw this machine at that house?

A. The first day I saw the new machine was the 23rd day of July.

Q. Now, how do you fix that, Mr. Webster?

A. Well, on the 16th—that was when I got the license for him, and the following Saturday was the 23rd, one week apart.

Q. Was it the following Saturday after he got the license tag that you saw the new machine?

A. Yes, sir.
Q. Is that the day that you were there and saw Mr. Young at the house?
A. Yes, sir.

No cross-examination.

AMANDA GREEN, sworn.

By Mr. Cleary:

Q. Miss Green, where do you live?
A. 714 Spruce Street.
Q. Do you remember the 23rd day of July, 1921?
A. Yes, sir.
Q. Can you tell me whether or not Guilford Young was at your house on the morning of that day?
A. He was.
Q. Do you know what time he arrived there?
A. Between half-past eleven and 12 o'clock.
Q. Can you tell me what his condition was with regard to intoxication on that day?
A. He was very drunk.
Q. Can you tell me by what acts or what he did that led you to believe he was intoxicated?
A. Well, he staggered when he got out of the machine, then he fell over a chair when he came in the house.
Q. Did he remain awake all that time?

The Court: Well, wait a minute; that is a leading question.

Q. What did he do—what else did he do that convinced you he was drunk upon that occasion?

A. Well, he didn't talk plain.

Q. Was there anything else that he did?

A. Yes, he was very quarrelsome.

Q. What else did he do? Did he sit on a chair or where did he sit?

A. No, he lay down.

The Court: No, just have the witness describe just what he did.

Q. He did what, did you say?

A. He laid down; I tried to get him to go to sleep.

Q. Now, how do you fix the 23rd day of July?

A. Well, the 16th is when he got the license, and the following Saturday is when he came with a new car, and the following evening, that evening we went to Pennsgrove.

Q. Where did you go the next day?

A. We started to find Browns Mills, but we couldn't find it, and went to Mt. Holly.

Q. Do you know where you went the next Sunday, the 30th?

A. The 30th we went to Browns Mills.

Q. Do you know when he was arrested—was it shortly after that?

A. Yes, it was after the 30th.

Cross-examination.

By the Prosecutor:

Q. You say that Young came to your house on the 23rd?

A. He did.

Q. Was that the only day that he came since you knew him?

A. Oh, no.
Q. How long have you known him?
A. About a year.
Q. And during that time, he has been calling quite frequently, hasn't he?
A. Oh, I don't know; sometimes he came once a week, sometimes came twice a week, sometimes didn't come for two or three weeks.
Q. And sometimes three and four times a week?
A. I don't remember his coming three or four times.
Q. Then you would notice when he would come and when he wouldn't come, wouldn't you?
A. Well, I don't know.
Q. What is it?
A. I don't know.
Q. I understood you to say that you did. Who did he come to see?
A. He came to see me.
Q. Were the other members of the family there?
A. I guess they were.
Q. And was it a usual thing for him to come into the house?
A. Oh, I don't know whether it was usual or unusual.
Q. Well, who opened the door for him on this day?
A. Anybody that went to the door—on what day?
Q. On the 23rd?
A. I opened the door.
Q. He rang the bell?
A. I don't remember that.
Q. Did you ask him what he was doing there?
A. I don't remember.
Q. Did you ask him where he had been?
A. No.

Q. Did you ask him where he had gotten the new car?

A. I don't remember.

Q. What is that?

A. I don't remember.

Q. How was he dressed?

A. In his working clothes.

Q. How did you know they were his working clothes?

A. Well, because they were dirty and soiled.

Q. What color was the suit?

A. I don't know that.

Q. You don't remember?

A. I don't remember.

Q. What time did he leave?

A. About two o'clock.

Q. What did he say when he came in?

A. I don't remember that; he was too drunk to say much of anything.

Q. What did he say?

A. I don't remember.

Q. What did you say to him?

A. I don't remember that.

Q. Who saw him first, you or your sister?

A. I don't remember; I think I did.

Q. Where were you when he came in?

A. At the front window, for I was there when he drove up with the car, and I was at the door when he came in.

Q. You were—did you go right in the parlor with him?

A. No.

Q. Where did you go?

A. In the dining room.

Q. Did he go with you?

A. Well, he was there already when I came in.

Q. Did you speak to him about why he was there on a Saturday morning?

A. No, I spoke to him about him being drunk.

Q. It was an unusual thing for him to come on Saturday?

A. I don't remember that.

Q. Had he been there on other Saturdays?

A. I don't remember.

Q. Did you ask him if he had been to work that morning?

A. I don't remember.

Q. Did you ask him why he wasn't at work?

A. I don't remember that.

Q. Did you ask him whether he had bought the car or where he got it?

A. I don't remember.

Q. Where were you the following Friday night, in the car with him?

A. The following Friday night to what?

Q. To the Saturday that we are speaking of?

A. I don't remember.

Q. Where were you with him in the car the night before he was arrested?

A. I don't remember.

Q. Now, Miss Green, you remember making a statement to me?

A. I don't know.

Q. In my office—you remember my examining you on Tuesday, August 2nd in the afternoon?

A. I don't remember what ——

Q. In my office at 3rd & Market?

A. I don't remember what date it was; you had me up there so much that I don't know when I was there and when I wasn't there.

Q. Did I ask you this question: "You stopped work at the factory on Friday afternoon, July 22nd, didn't you?" and didn't you answer, "Yes"?

A. I think I did.

Q. "Q. And then on Monday following that, which would be Monday July 25th, is when Young came to your house in the afternoon with a car, is that right?"

A. I don't remember.

Q. And didn't you answer, "Yes"?

A. I don't remember.

Q. "Q. That would be Monday, July 25th; that would be one week ago yesterday; yesterday was the first of August, is that right?" and didn't you answer, "Yes"?

A. I don't remember.

Q. In other words, was I not examining you at that time to determine when he had been to your house, and when I asked you if it was Saturday, July 23rd, you said no, it was Monday, July 25th, didn't you?

A. I don't remember.

Q. "Q. How long has he had this car? A. About two weeks, I guess. Q. Do you remember when he got it? A. No, I don't remember the date. Q. When you say two weeks ——"

A. I didn't say that.

Q. You didn't say that? "Q. When you say two weeks, has it been longer than that or shorter than that? A. No, it has been just about two weeks. Q. Wasn't it Saturday week ago that he got it? See, today is Tuesday; now then, go back one week to Tuesday, and go back to the Saturday before. When did you stop work at the Victor? A. We have two weeks off. Q. Yes; when did you start to take them, what date—wasn't it Saturday a week ago? A. No, we stopped on Friday night. Q. Well, Friday a week ago? A. Yes, I know I go in to work on Monday. Q. This coming Monday? A. Yes. Now, go

back to Friday a week ago, you stopped in the afternoon? A. No, I stopped quarter to five. Q. That is what I mean, quarter to five in the afternoon; you didn't go to work the next day, Saturday; did you see him the next day? A. I saw him on Saturday, but I don't think he had his car on Saturday." Did you make that answer?

A. I don't remember.

Q. "Q. When did he get it? When did you first see it? Monday? A. Monday. Q. When had he ever had a car before? A. I don't know whether he had one or not. He said he drove a car in Pennsylvania, before I knew him. Q. He hasn't had any car since you knew him? A. Not as I know of. He never brought it around to the house." Did you make that answer?

A. No.

Q. "Q. The first you knew of it was the Monday after you finished work? A. Yes. Q. What did he say to you about the car? A. Just said he bought a car." Did you make that answer?

A. I don't remember.

Q. "Q. Say where he had bought it? A. No." Did you make that answer?

A. I don't remember.

Q. "Q. Say how much he gave for it? A. No, I never asked him." Did you make that answer?

A. I don't remember.

Q. "Q. Wouldn't he be likely to say how much he gave for it? Was it a new car or second-hand car. A. It looked like a new one. I didn't ask him where he bought it or how much he paid for it." Did you make that answer?

A. I don't know.

Q. What is it?

A. I don't know.

Q. "Q. What time on Monday did you see him with the car? A. Monday afternoon." Did you make that answer?

A. I don't remember.

Q. "Q. What did he say to you when he came to the house? Were you surprised to see him with a car? A. Yes, I was surprised to see him with a car and he said he just bought a new car and asked me if I would like to have a ride." Is that right?

A. I don't remember.

Q. "Q. Where did you go with him on the Monday he came with the car? A. We just took a ride out Kaign Avenue and back. We didn't go very far. Q. Did he come around on Tuesday with the car? A. No. Q. Wednesday? A. Yes, he was around Wednesday. Q. In the daytime or night? A. It was in the evening. Q. Did you see him on Thursday? A. No. Q. On Friday? A. No, I saw him on Saturday, last Saturday. Q. Last Saturday? What time did you see him? A. Yes, I think it was about five o'clock. Q. Did he come with the car to the house? A. Yes. Q. Did he say where he had been? A. No."

The Court: You haven't asked the witness whether she made those statements.

Q. Now, after reading those questions and answers to you, which I have stated were taken at my office, on August 2nd, can you say whether it was Saturday or Monday that he was at your house with this new car for the first time?

A. He was there on Saturday.

Q. Then if he was there on Saturday, why did you tell me, in answer to my questions on August 2nd, which was only about ten days after this had happened, that it was on Monday?

A. I don't know that I did say it. I was in such a nervous condition, I don't know what I did say.

Q. Now you remember that it was a Saturday that he was at your house?

A. Yes.

Q. You tried to answer my questions truthfully, did you?

A. To the best of my knowledge.

Q. And you told me it was Monday?

A. I don't remember.

Q. Well, doesn't this reading to you refresh your mind as to what you said?

A. I don't know.

Q. What is it?

A. I don't know.

Q. Didn't I say this to you: "Q. You stopped work at the factory on Friday afternoon, July 22nd, didn't you? A. Yes. Q. And then on Monday following that, which would be Monday, July 25th, is when Young came to your house in the afternoon, with the car? Is that right? A. Yes. Q. That would be Monday, July 25th, that would be one week ago yesterday. Yesterday was the 1st of August. Is that right? A. Yes." Now was it Monday or Saturday?

A. It was Saturday.

Q. Then you were mistaken when you told me it was Monday?

A. I guess I was.

Q. To whom have you talked about whether it was Saturday or Monday, since that time?

A. Oh, I don't know.

Q. Have you talked to Young?

A. No.

Q. Have you had conversations with him since he has been arrested?

A. You ought to know. You had me up there from half-past nine at night until half-past one the next morning.

Q. Have you talked to Young since he has been arrested?

A. You had me up there.

The Court: Just answer that question.

Mr. Cleary: She is trying to say she saw Mr. Young in his office.

The Court: The question is, have you seen Mr. Young since August 2nd? You mustn't suggest it. That can be answered yes or no.

The Witness: I don't know what date it was, it was after he was arrested, I saw him for five minutes.

Q. How many times have you seen him?

A. Twice.

Q. Have you talked to anyone just before you came on the stand, about your testimony, as to whether it would be the 23rd or not?

A. I knew it was the 23rd without talking to anybody.

Q. Did you talk to anyone just outside of this court room, after your sister had been on the stand and before you were called, as to the date, whether it was the 23rd or Monday?

A. I knew it was the 23rd.

The Court: That isn't the question, Miss Green. It is just whether you have talked with anyone regarding it, before you came in the court room this morning, as to the date.

The Witness: Well, I have talked about it many times, about the date.

The Court: No, but did you talk to anyone this morning about the date?

The Witness: Well, I talked to my father.

The Court: Anybody else?

The Witness: I don't know whether I talked to my sister or not.

Q. Did you talk to your sister?
A. To my sister?
Q. Yes.
A. I don't remember.
Q. About this testimony you are giving now?
A. About the 23rd?
Q. Yes, and she told you what she had said on the stand?
A. No, she didn't.
Q. Well, did you know what she had said?
A. No.
Q. Did you know she had said it was Saturday, July 30th?
A. She didn't tell me.
Q. Did anyone tell you?
A. I don't remember anybody telling me.
Q. Just outside there?
A. I don't remember; not about the 30th.
Q. Did they tell you she had made a mistake on the Saturday and what you were to testify to was the 23rd?
A. They didn't tell me what to testify to.
Q. How do you fix it as the 23rd now, when you say so positively it was the 23rd?

A. Well, because the 16th is when he got the license.

Q. How do you know it was the 16th he got his license?

A. How do I know? Because that was the day it was brought up here, the week before he got the new car.

Q. What is that?

A. The week before he got the new car.

Q. Well, then, you fix the 16th by the day he got the new car and you fix the date when he got the new car by the date when he got his license, on the 16th. Is that right?

A. I remember the 23rd, because on the 23rd we went to Pennsgrove in the evening.

Q. You did what?

A. We went to Pennsgrove, the 23rd, in the evening.

Q. Did you keep a diary of your different trips with the defendant?

A. I don't know as I kept a diary.

Q. What day did you go down through Woodbury, when you stopped and talked to the officer?

A. I never stopped and talked to any officer.

Q. Did Guilford Young stop the car? He said so.

A. No, he did not. I didn't see him.

Q. He said you were with him. Were you or not?

A. I didn't see him talk to any officer.

Q. Did you go through Woodbury with him in this car?

A. I don't remember.

Q. Tell me the other trips that you took, that you remember the date of.

A. On Sunday week, following the 23rd, we went to Browns Mills.

Q. Yes, that was the Sunday following the 23rd you went to Browns Mills, is it? Is that right?

A. Yes.
Q. Who was in the car?
A. George, my sister, myself and Mr. Young.
Q. Were any of Mr. Young's people in the car with you?
A. No.
Q. Did you know his wife?
A. No.
Q. You knew he was married?
A. I know it now.
Q. You knew it then, too, didn't you?
A. I don't remember.
Q. You mean to say that then you didn't know he was married?

Mr. Cleary: I don't see that this is relevant.

The Court: I think that was not touched on. I am going to overrule these questions.

Q. Now, can you fix any other dates on which you took trips with him?
A. I don't remember.
Q. Then you can just remember certain one or two points and everything else you don't remember. Has anybody told you to say, "I don't remember"?
A. No.
Q. How is it that your memory is good on one or two points and not on anything else that I ask you?
A. I couldn't explain that.
Q. What is it?
A. I don't know.

Re-direct examination.

Mr. Cleary: I would like to examine on the matter of the statements made to the Prosecutor.

The Court: You can have re-direct examination but, of course, it will have to touch upon ——

Mr. Cleary: Only on the alleged statements made to the Prosecutor, which were not brought out on my examination, whether or not she said those things.

The Court: She has said she doesn't remember.

Mr. Cleary: Under what circumstances she made them.

The Court: If she can't remember whether she said them or not, how could she remember under what circumstances?

Mr. Cleary: Well, then, I will show why she couldn't remember them, the state of her mind, the length of time she spent in the Prosecutor's office, the cross-examination she was subjected to, how many times she was there, to show no witness could remember anything she said upon an occasion of that kind.

The Court: You would have a right, upon these questions that Mr. Wolverton asked as to her conversations on August 2nd with him. I will permit you to have her testify as to why she now says that she doesn't remember them, but it must be limited to that, and as soon as you go over the mark——

Mr. Cleary: If your Honor will call my attention to it, I will stop.

Q. Now, Miss Green, how many times were you in the Prosecutor's office, after Mr. Young was arrested?

A. A good many times.

Q. How many times?

The Court: There was no question that you asked this witness, Mr. Wolverton, that was not made, as you contend, on August 2nd, was there?

The Prosecutor: These questions and answers were made on August 2nd.

The Court: Now, then, Mr. Cleary, just confine yourself to that date.

Mr. Cleary: Is that the only thing you are asking about, August 2nd? Haven't you asked about other conversations than August 2nd?

The Prosecutor: No. All on August 2nd.

Mr. Cleary: Are you sure about that?

The Prosecutor: There are one or two I asked outside of August 2nd, at one o'clock, P. M.

Q. Now, then, on August 2nd, at two o'clock in the afternoon, you remember that time in the Prosecutor's office? How long did the Prosecutor keep you in his office upon that occasion, questioning you?

A. He had me in there until half-past four.

Q. Half-past four? Questioning you about this case? What was the state of your mind when you were questioned?

A. Goodness only knows. I don't.

By Mr. Wolverton:

Q. Were you ever more nervous than you are now, young lady?

A. I don't know.

JACOB A. HARRIGLE, sworn.

By Mr. Cleary:

Q. Mr. Harrigle, are you the owner of a garage at 8th and Division Streets?

A. No, sir.

Q. Well, where is your garage?

A. I have no garage.

Q. Well, do you operate one?

A. I look after one.

Q. Do you remember the midnight of July 16th?

A. Yes, sir.

Q. You remember that occasion?

A. Yes.

Q. Can you tell me whether or not the defendant Guilford C. Young came to your garage on that occasion?

A. He came to the house.

Q. As a result of the conversation he had with you, can you tell me whether or not a car was placed in your garage?

A. Yes, sir.

Q. By whom?

A. By Mr. Young.

Q. Can you tell me what kind of a car that was?

A. A sedan.

Q. What kind of sedan?

A. A Ford sedan.

Q. And what was the character of it; was it a brand new car or an old one?

The Prosecutor: I object to the character of the question.

The Court: The question is leading.

Q. Can you tell me the character of the car that was brought to you on that day?
A. A second-hand car; it wasn't no new car at all.
Q. A second-hand car?
A. Yes.
Q. Did you give him a receipt for the money he paid for the use of the garage?
A. Yes.
Q. What day did he pay you this money?
A. Sunday.
Q. Did you give him a receipt?
A. I gave him a receipt.
Q. Will you look at this receipt and say whether or not that is the receipt you gave him?
A. That is the receipt.
Q. And why is that receipt dated the 18th?
A. The following day was Sunday, and I dated it Monday.
Q. You didn't want to date it that Sunday?
A. No, sir.
Q. So you dated it on Monday the 18th?
A. Yes.
Q. But the car was actually put there on the midnight of the 16th, wasn't it?
A. Yes.

Mr. Cleary: Have you any objection if I offer this receipt in evidence?

The Prosecutor: No.

The Court: We will receive the receipt in evidence and it will be marked Exhibit D1.

No cross-examination.

Mr. Cleary: If the Court please, there is a question I forgot to ask Mrs. Young, Sr. and Amanda Green in relation to the shoes, as to whether or not those are Mr. Young's shoes.

The Prosecutor: If the Court please, I think it is distressing for counsel for the defendant to bring that old lady in here again.

Mr. Cleary: All right, I will bring Amanda Green.

The Court: Do you want to recall Miss Green?

Mr. Cleary: I do.

The Court: Very well, then, just call Miss Green.

AMANDA GREEN, recalled.

By Mr. Cleary:

Q. Miss Green, are you familiar with the shoes that Mr. Young wore when he came to see you? Have you ever seen the shoes, noticed his shoes before?

A. Yes.

Q. Can you tell me whether or not he had a pair of shoes like that?

(Exhibiting shoes to witness.)

The Court: Not whether he had a pair of shoes like that, but whether she knows they are the shoes of Mr. Young.

Q. Are they the shoes of Mr. Young?

A. They look like that, because they are pointed toes, and he couldn't wear them because they hurt his feet, and he took them to the shoemaker's to have them stretched.

Q. Is that the reason why your attention was called to the shoes, because they hurt his feet and he took them to the shoemaker to have them stretched?

A. Yes.

Q. Is it a pair of shoes just like that?

A. Yes.

Q. Did it have all this scroll work?

The Court: Wait a minute; these are very leading questions.

Q. Did it or did it not have scroll work on it?

A. If you call that scroll work; I call that perforations.

Q. That is a better word than I can use; did it have perforations on it?

A. Yes.

Q. And did it have the same character of perforations?

A. Yes.

Cross-examination:

By the Prosecutor:

Q. So you have seen Young wear these shoes, have you?

A. I have.

Q. Of course, you don't know whether he got them from the dead man or not, do you?

A. I know that he had them before this ever happened.

Q. How long did he have them?

A. He got them around Easter time.

Q. Away back last April or March?

A. Yes.

Q. And he has worn them every day since?

A. No, he couldn't wear them, they hurt his feet.

Q. Did he take them off in your house?

A. I don't remember that.

Q. But you do remember that he told you that those shoes hurt his feet?

A. Yes.

Q. And you knew back in last Easter what he was getting for his Easter toggery, both in shoes ——

A. No, I remember him saying they hurt his feet, and he would never buy a heavy pair of shoes like that again.

Q. Where did he say he had bought them?

A. On Broadway, I think, a shop on Broadway.

Q. Whose place?

A. I don't know what they call it, but I think Mr. Kline is the proprietor of it.

Q. Now, you know, as a matter of fact, young lady, that Mr. Kline has no establishment on Broadway?

A. He has one on Kaighn's Avenue, and I have seen him in this one on Broadway, whether he owns it or not I don't know.

Q. He has a store on Kaighn Avenue, hasn't he?
A. He has.
Q. So you have seen Guilford Young so much that you can even remember the shoes that he wore?
A. I remember it on account of him always complaining about them hurting his feet.
Q. And you can remember seeing perforations in the shoes?
A. Yes.

By Mr. Cleary:

Q. You are sure it was Kline's, was it, where he bought the shoes?

The Court: Wait a minute; that is not re-direct examination.

Q. Is this the same name that is on the bottom of the shoes, Kline, is that the name you mean?

The Court: No, Mr. Cleary, that is not re-direct examination.

The Court: Mr. Cleary, have you any witness you desire to call now?

Mr. Cleary: Yes, sir, myself, if the Court please, if the Prosecutor will be that gracious with me, I will say now what I was going to say in regard to Officer Dennis' testimony without going on the stand.

The Prosecutor: Oh, yes, the same courtesy you accorded me I will accord to you.

Mr. Cleary: If the Court please, I would testify if I were under oath that I saw officer Dennis—I think that is the man, the chief of police of Haddonfield, anyway—I saw him three weeks ago on the 31st day of October, and I asked him upon that occasion whether he knew Garwood and whether he knew Garwood was running around with the wife of the defendant; I mentioned Garwood's name to him. That testimony is given to rebut the testimony that I either did not ask him that name upon that occasion or that he did not remember the name on that occasion.

The Court: Very well; you have no witness now to call, Mr. Cleary?

Mr. Cleary: No other witness. As I understand it, my testimony is taken under my oath in this case, that those questions and answers were made.

The Prosecutor: I will waive the cross-examination. Then my own testimony, which I presume Mr. Cleary will be as gracious about as he was when it was previously necessary for me to do so, and that is, that I testify under my oath which I have already taken in this case that the statements made by the defendant Young as to any promises being made by me either as to his father or mother or anybody else, either directly or indirectly were never made, and I did make to him the statements which I read to him in question and answer form, and that he did make the answers that I submitted to him on the stand.

The Court: Yes; now do you desire to call any one with reference to Miss Green's testimony?

The Prosecutor: Yes, Mr. MacDonald, who is out of the court room.

Mr. Cleary: I will admit that Mr. MacDonald took those statements and they are the questions and answers.

The Court: Very well, that admission will be put upon the record.

The Prosecutor: Of course, that admission means that Mr. MacDonald will testify that I put those questions and Miss Green made those answers?

Mr. Cleary: Yes.

The Court: Now, then, that disposes of that matter. Now, then, Mr. Cleary, there was some testimony upon the subject of the confession which I admitted in evidence which was taken after the jury withdrew from the room. I will give you an opportunity at this time to have that testimony read by the stenographer to the jury if you wish it.

Mr. Cleary: I wish the testimony of Guilford C. Young on the stand to be admitted in evidence and read to the jury as to that conversation.

The Court: Well, I meant as to the testimony taken while the jury were out of the room.

Mr. Cleary: That is it, as to whatever the stenographer took while the jury were out of the room.

The Court: Very well. Of course, I assume that is acceptable to the State.

The Prosecutor: It was at the time and it is now.

The Court: Then the defendant enters into an agreement that the testimony of Mr. Young taken at the time that the Court directed the jury to retire be read.

Mr. Cleary: If the Court please, I will also allow the stenographer, if it is convenient for him, to read it from the daily copy furnished us.

The Court: Very well. Now, this was taken partly by Mr. MacDonald, of course, and partly by Mr. Berry. Mr. Berry can read the part that he took and if there is no objection—is there any objection to Mr. Berry reading the part that Mr. MacDonald took?

Mr. Cleary: Why, no; just read it from the daily copy, it doesn't make any difference to me.

Edward I. Berry, recalled.

By the Prosecutor:

Q. Now, Mr. Berry, will you read the testimony?

A. (Reading). "By Mr. Cleary: Q. Now, then, Mr. Young, will you relate the conversation that took place at the time you were brought to Haddonfield by the detectives from the Prosecutor's office, the conversation that took place in the presence of those detectives, between your wife and yourself and the detectives? A. Well, when I left the Third

Street office, the Prosecutor's office is where we started from, I was guarded by Detective Doran and Detective Smith and the chauffeur; I was taken out the Marlton Pike until we came to Grove Street; I was taken in Grove Street until we came to what they call Hopkins' Lane, I was taken in Hopkins' Lane and left sitting there in the car, which I told Mr. Doran that I would like to have my suit of clothes and a clean shirt, and he wanted to know what suit I wanted. I told him, and I told him there was some rubber things in the bureau drawer, which I don't know the proper name of them, I have never used such things myself; I told him I wanted him to get them for me. Q. Well, never mind that part. A. Well, that is the whole thing. Q. Come down to the time that the conversation ——"

The Prosecutor: Hadn't we better have the complete record put in, what the Court said? Mr. Berry is just reading the questions and answers. I think that the entire proceeding that took place at this time ——

The Court: Very well. It will only take a minute or two longer, I suppose.

The Witness: (Continuing.) "The Court: Just get this down, Mr. Cleary, to the conversation that took place at this interview. Q. Come down to the time that the conversation took place between your wife and yourself and the detectives out there in the woods at Haddonfield. A. Well, my wife came to the car. Q. Now, whose car were you in and who was in the car? A. Detective Doran was out in the road. Q. Well, who was in the car with you? A.

There was Detective Smith and Chief Linderman and the chauffeur——. Q. Well, now, just a minute; were they in the car or standing by the car? A. They were in the car. When she came to the car, Detective Smith stepped out of the and left her get in the back seat and she sat down aside of me. Chief Linderman stepped down from the front seat of the car and left a clerk get in—I don't know who he was, a young fellow—which they didn't warn me of anything would be used against me in court. There was nothing said on those grounds. My wife started to cry, which she was unable to speak to me. I said, 'Sarah, brace up, this is no time now to cry; you didn't cry when you had me; you didn't never think anything of me; now the best thing that you can do is to go out and go to work; you will not have me to keep you any longer.' I said, 'You only laughed at me when I told you to use me right a few a years ago.' She said, 'I always used you right.' I says, 'You only laughed at me and took me to be plaything.' The Court: Now, just wait a minute, Mr. Young. Now, what relevancy has this, Mr. Cleary, to the question? Mr. Cleary: Well, if the Court please, the Prosecutor wanted the entire conversation and I am not objecting to it. The Court: No, but of course it must be directed to the point; this is all irrelevant. As far as the witness has gone, so far, what relevancy do you think it has? Mr. Cleary: Well, if the Court please, just the state of his mind, that is all that I was getting to, what his state of mind is, the troubled state of his mind at that time, as to showing how susceptible he was to allowing other people to suggest to him what might have occurred. In other words, this conversation which he had with

his wife was of a very dramatic and pathetic nature; it was of a nature that would influence the mind of almost any ordinary human being who took a part in it. Shortly after that, within an hour or so, I believe—of course, I am not acquainted with that particular phase of it— the stenographic confession was taken from him in detail as to the crime which is alleged to have taken place. I want to show what was said and what was done at this particular interview to show the state of mind that this man must have been in when he made this confession, that anything could have been imposed upon his will. The Court: Who requested this interview, Mr. Young? The Witness: If there was anyone I wished to talk to, any of my people, or if I would like to see my wife. I said I would. The Court: Here is an interview that this witness, at his own request, had with his wife, Mr. Cleary. Now, of course, it is very remote. I think perhaps, that you might be permitted to show that as a result of this interview he was prostrated or something of that kind. Mr. Cleary: That is what I am going to do. The Court: But it is going to have very little weight with me. I can't direct your case. I don't want to. I don't want to seem to do it, so you go ahead. Mr. Cleary: It may be that some things will be said later on that would impress your Honor. Up to this minute it hasn't been of a nature that would. The Court: We are building up a record here that is quite far afield. I suppose it will take less time to hear it than it will to discuss whether it should go in. Q. Go ahead, Mr. Young. A. So she started to cry again. I said, 'You have had nice, pretty things. You broke up three homes for me,' and I says, 'when I went out

and worked night and day, seven days a week for you, brought home by money and throwed down $54 and $70 a week on the table, you didn't take care of it, you didn't keep the house clean or neither did you have a pleasant smile for me, that you gave your mother $50 and $70 at a time.' She denied that. I said, 'You went out and ran around with men.' She denied that. I said, 'Then I suppose that you would say that you didn't force me to marry you under a false wedding.' She said, 'I had a right to do it.' I said, 'You was not in the family way but you said you was. I was married fourteen months before there was a child born.' 'Well,' she says, 'look what you done.' I said I didn't do anything, and I said, 'At nights I have laid and told you not to get me started to running around but to use me right and treat me half decent, to talk to me at nights, try to show me that you love me, not turn your back on me.' She said, 'I never did, I always loved you, you are the only man that I love, I shall stick to you unto the last.' I said, 'That is a lie, you never stuck to me, you told me that you was going over——' I said, 'You don't,' I said, 'I suppose you will say that you didn't tell me that you was going to leave me and go over into Philadelphia and go whoreing, eight years ago.' She said, 'No.' She says, 'I have always treated you right.' I said, 'Yes, running around with other men.' I says, 'I don't suppose that you will have any more good times with your friend.' She said, 'Who is that?' I said, 'Harry Garwood.' She says, 'I don't know him.' I said, 'Then I suppose you would say that you don't know Ed Julius or,' I said, 'in other words, Ed Dunphey.' She thought for a couple of minutes and she said, 'I know him.'

I said, 'I suppose you will say that you wasn't out with him neither, but,' I said, 'you will never go out with Harry Garwood again, for I killed him.' Then she started to cry. She said, 'Do I have to raise these two children in that distress, or disgrace?' I said, 'You didn't mind disgracing them yourself.' So I told her that I felt very sorry for her and the two children but to brace up and not cry, that I wasn't crying. Q. Go ahead. Is that all the conversation? A. No, that's not all. The Court: Well, now you see——. Mr. Cleary: If your Honor please, that's enough to give you an idea, a general idea of the character ——. The Court: The thing is, and the only thing, of course, is as to ——. Well, you can conclude this in just a minute. You can ask him, if you want to, whether a leading question, what the effect of this conversation with his wife was. That's all I want to know. Mr. Cleary: All right. Q. Now, what was the effect upon your mind of the conversation with your wife? Mr. Cleary: I will withdraw that. Q. What time of day did this conversation occur? A. About ten o'clock in the morning, I guess, which I don't know exactly. Q. What time was it concluded? A. Why, in about a half-hour or three-quarters of an hour afterward. Q. And what was the effect, if any, upon your mind by the conversation with your wife, afterward. What was the effect afterward? A. Well, the effect of afterwards, my head felt very heavy and everything seemed to be a dazed condition to me. Q. Did you or did you not feel disheartened and discouraged? A. At that time I wanted to die. Q. Did you or did you not care whether you died? The Court: Well, now, that is immaterial. A. I did not care. Mr. Cleary: If your Honor please, he said

that in his statement. That is one of the things the Prosecutor has down here. Mr. Wolverton: Do you know what is in his statement? Mr. Cleary: At least what he told me was in the statement. Q. And where did you go from the place where this conversation took place? A. Mr. Doran asked me to show him where some automobiles had been stolen, which Mr. Doran had shown me the previous week, and that where he had stolen two cars. The Court: Now, we are going into conversations —. Mr. Cleary: All right. Q. What time did you get back to the Prosecutor's office? The Court: I think there is another reason. There is nothing further now of any conversation with the wife or what the wife said. Mr. Cleary: I will get down as quickly as I can to the conversation that took place in the Prosecutor's office. The Court: We better have the jury return. Mr. Wolverton: Before the jury is brought back, I wish to announce to your Honor that I have no other cross-examination on this particular point, which I presume, if I was to be ——. The Court: I should have to take the jury away again if you have. Mr. Cleary: Do you want to introduce his confession in evidence now? Mr. Wolverton: Go right on with your case, Mr. Cleary. Mr. Cleary: All right. It is satisfactory to me. If you want to introduce it to the Court, I am willing to do it. If your Honor please, does the Court feel ——. Mr. Wolverton: I didn't understand what Mr. Cleary meant by saying, 'I am willing to do it,' by referring to himself, the personal pronoun, 'I.' If he wishes to introduce the statement as his own, I have no objection to that. Mr. Cleary: If there is any doubt in your Honor's mind, for the purpose of informing your Honor of it, I am willing to introduce it to your Honor. The

Court: I understand the conversation perfectly, Mr. Cleary. Mr. Cleary: All right. Now, then, does the Court want the jury back? The Court: Yes, the jury may come in.''

The Court: Now, the State rests on rebuttal, does it not?

The Prosecutor: Yes, sir.

BOTH SIDES REST.

(The noon recess was then taken.)

CHARGE OF THE COURT.

KATZENBACH, J.

Ladies and gentlemen of the jury: In the indictment in this case the State charges Guilford Young with the murder of Harry Garwood in Camden County on July 23, 1921. It now becomes your duty to render a verdict upon the question of the innocence or guilt of Guilford Young. In arriving at your verdict, you must be governed by the principles of law bearing upon the case that I will now give you. In the determination of all questions of fact the sole responsibility is with you. You are the sole judges of the evidence, of the weight of the evidence, and of the credibility of the witnesses. Any comments I may make upon the evidence will not be made for the purpose of controlling you in your views, but only to aid you in applying the principles of law to the facts as you may find them. You must not rely upon my quotations from the evidence as being accurate, but you must rely upon your own recollection. You must not consider only the evidence to which I shall refer but you must consider all of the evidence in the case.

The defendant comes into court with the presumption of innocence. The burden rests upon the State. The defendant is presumed to be innocent of the charge until he is proved to be guilty. To convict the defendant the State must prove facts sufficient for that purpose by evidence which satisfies you of the guilt of the defendant beyond a reasonable doubt. If there be in your minds a reasonable doubt whether the defendant is guilty or innocent you must acquit

the defendant. Reasonable doubt is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt; it is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. The evidence must establish the truth of the fact to a moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

If, after carefully reviewing the evidence, giving the defendant the benefit of reasonable doubt, you are led to the conclusion that the defendant is guilty, you should by your verdict declare the defendant guilty.

Under this indictment it will be lawful for you to render a verdict that the defendant is not guilty, or that the defendant is guilty of murder in the first degree with or without the recommendation I shall hereafter mention, or guilty of murder in the second degree, or manslaughter.

To support the indictment the evidence on the part of the State tends to show that on the 31st day of July, last, Harry Garwood was found by a party of four men traveling in an automobile through a narrow wooded road off the Marlton Pike, near a place called Springdale, dead. The body of Garwood was lying on its back, in an open place about fifty feet from the road, exposed to the rays of a summer sun. The attention of the party was directed to the spot by the odor which emanated from the body, which was decomposing, and had been in part devoured by the fowls of the air. The body was later on that

day taken to the Camden County Morgue, and on August 1st, the day following its discovery, was identified by William McKee, a business associate of Garwood, and with whom Garwood had lived for approximately three years. The identification was made in part by a leather brace which Garwood, who was lame, used on his left ankle. Garwood's body when found had four bullet holes in the head, one at the base of the skull, one at the top of the skull, one in the right templar region and one in the left templar region, where a bullet was lodged. Dr. Stem testified in his opinion the death of Garwood could have been caused by the bullets which produced the wounds. This testimony is uncontradicted and unimpeached. The State charges that Young is the perpetrator of this crime.

Garwood was the owner of a taxicab, a Ford sedan, which he had purchased as a new car on July 21st, last, two days before his disappearance. His stand was on the Federal Street side of the Pennsylvania Ferry in this city. The State alleges that Young, between 8 and 9 A. M. on Saturday, July 23rd, last, engaged Garwood to take him to Marlton or vicinity in Garwood's Ford sedan taxicab; that upon the journey they stopped for refreshments at Eichman's Hotel at Ellisburg, and after continuing their journey for a short distance, Young stopped at a farm house and then directed Garwood to drive back to Camden, which Garwood did. Young left the car at 4th and Federal Streets. About an hour or so later, Young sought Garwood at the ferry entrance and engaged him again to take him to the same locality or thereabouts as on the former trip. They proceeded on their trip, again stopping at the same hotel, and then Young directed Garwood to drive through the narrow wooded road before re-

ferred to. As they were passing through this road, Young ordered Garwood to stop the car and get out, and as Garwood was doing so, Young, who was standing on the running-board of the car pulled from his pocket an automatic revolver and fired at Garwood, who fell, and as he lay prostrate, Young fired at least two shots at Garwood which entered his head; that Young then carried Garwood's body some fifty feet from the road, took from Garwood's body a watch, chain and crucifix, and the shoes which Garwood wore, and then drove away in the Ford sedan of Garwood; that Young had secured a fictitious bill of sale for a Ford car, and on July 16th last, through a friend, had obtained for the car mentioned in the bill of sale a license and tags, and for himself a driver's permit; that Young used these tags on Garwood's car and changed or caused to be changed the engine number of the car to correspond with the number designated in the fictitious bill of sale; that from July 23rd, to August 2nd, Young used Garwood's car for pleasure trips with acquaintances; that Young on August 2nd, was arrested while asleep in the car. He was holding in his hand or had in the car an automatic revolver. The claim of the State is that the purpose or motive of Young in enticing Garwood to the unfrequented spot, where the State alleges Garwood met his death at the hands of Young was robbery.

The statute of the State of New Jersey provides that if the death of any one shall ensue from the committing or attempting to commit a robbery, the person or persons so killing shall be adjudged guilty of murder, and that all murder which shall be committed in perpetrating or attempting to perpetrate any robbery shall be murder in the first degree.

Robbery is stealing property with violence from the person or personal custody of another person.

It is necessary in order to constitute that crime that the goods shall be on the person of the owner or possessor or shall be in his presence and in his custody.

To support this charge the State has produced evidence of the occupation of Garwood, of the purchase by Garwood on July 21st, last, of a new Ford sedan, of Garwood's being at his stand at the ferry entrance on the morning of July 23rd, last, of Young and Garwood taking a trip towards Marlton between 8 and 9 o'clock A. M., of the return of Young and Garwood to Camden, of a second trip towards Marlton at about 11 A. M., of the killing of Garwood by Young, the removal from the person of Garwood of his watch, chain, crucifix and shoes, of the taking by Young of Garwood's car, of the fictitious bill of sale secured by Young, of the securing on July 16th, 1921, of the license tags and driver's permit for Young by a friend, of the use of the car of Garwood after July 23rd for pleasure trips by Young. The State has further produced evidence of blood spots on the face of Young about noon on July 23rd, of Young washing his face when his attention was called to these spots, of his re-loading a revolver at this time, of the finding of Garwood's watch, chain and crucifix in the home of Young, of the identification of the car found in the possession of Young as the car Garwood had purchased of Walter S. Flexon, at Gloucester, on July 21st, by the large steering wheel taken from the old car of Garwood and put in the new Ford sedan, the extension on the left hand pedal to keep Garwood's crippled foot from slipping, rubber pads on the pedals taken from the old car, the old set of tools in the new car, the Firestone tire on the back of the new car retained by Garwood at the time of the purchase of the new car.

Some of the evidence to which I have referred comes from sources other than Young. Some of the evidence comes from the alleged confession of Young, made to Mr. Wolverton and taken down stenographically at the time by Mr. Berry and testified to in this court by Mr. Berry. Confessions are always to be received with caution; but when they are freely and voluntarily made and clearly proven, they are entitled to weight, and juries have a right to convict upon such confessions when the fact that the crime has actually been committed is otherwise proved and when they are corroborated by circumstances which serve to impress the jury with the belief that they are true, because it is presumed that a rational man will not make admissions which will put his safety in peril unless they are true.

Is this confession of Young's supported by the probabilities of the case? Has not the State proved by evidence other than the confession that Young and Garwood were together at Eichman's Hotel in Ellisburg at about 9 A. M. Saturday, July 23rd, that they drove away in a new Ford sedan car; that the same morning at about 11 A. M. Young was looking for Garwood at the ferry where Garwood had his stand, and stated at that time he had been out in Garwood's car earlier in the morning; that Garwood drove Young away from the ferry at about 11 A. M.; that they stopped again at Eichman's Hotel about 11.15 or 11.30; that they again drove away in the new Ford sedan; that at or before noon, Young, unaccompanied by Garwood, was at the house of one Martin at Haddonfield, and Mrs. Martin spoke to him about blood spots on his face which he washed off and Young also emptied an automatic revolver of cartridges? Has not the State proved otherwise

than by the confession that Young had a new Ford sedan about 2 P. M. on July 23rd at the house of a Mr. Green whose daughter Young frequently called upon; that Young took one George Webster and Miss Green and two others in a new Ford sedan to Pine Beach and Sea Gate on a pleasure trip? Has not the State proved otherwise than by the confession of Young that this new Ford sedan was the car purchased at Gloucester by Garwood on July 21st; that its manufacturer's number had been changed? Has not the State proved otherwise than by the confession that a watch identified by the donor thereof to Garwood as Garwood's watch, and also a chain given to Garwood by his father and a crucifix given Garwood by his stepfather were found in the house of Young at Haddonfield? Has not the State proved otherwise than by the confession that upon the person of Young were found steel bullets of the same calibre as the one found in the head of Garwood? Has not the State otherwise shown that cartridges with steel bullets, usable in the Colt automatic revolver taken from Young and purchased by him on March 15, 1921, at the store 313 Federal Street were found in Young's home? Do these facts proven by the State support the probable truth of the confession of Young?

If you find from the evidence that Young hired Garwood to drive him into an unfrequented spot in the country for the purpose of robbing Garwood of his new Ford sedan car and the personal property on Garwood's person and in the pursuit of this purpose Young killed Garwood, then Young is guilty of murder in the first degree.

The defendant contends that his motive in hiring Garwood to take him on these trips to the country was not robbery, as the State claims, but either to

"lace," that is, to beat Garwood for the attentions Young claims Garwood paid his wife, as stated by Young in his confession, or statement of August 5th, or to talk with Garwood and arrange for Garwood's taking and supporting Young's wife and children, as he intended to go away as testified to by Young. The defendant also contends that he had been drinking intoxicating liquor before he met Garwood the second time and after meeting him procured with Garwood more liquor and was seized with the impulse, upon reaching the unfrequented spot to which he had directed Garwood to go, to attack Garwood and that he was too intoxicated to form an intent to kill Garwood. The defendant further contends that during this attack he thought Garwood was going to draw a revolver so that he shot him with his revolver in self-defense.

Our statute provides for two degrees of murder, one murder of the first degree, and the other of the second degree. If a human life be taken under circumstances which justify an inference that the act which occasioned the killing was perpetrated with intent to inflict a serious bodily injury, the probable consequence of which would be bloodshed, and no justifiable excuse for the act appears, the person proven to have perpetrated the act is guilty of murder in the second degree. If, however, the killing was perpetrated by means of poison, or lying in wait, or by any wilful, deliberate and premeditated act, then the offence would be murder of the first degree. Before you will be justified in finding a defendant guilty of murder of the first degree, the State must satisfy you beyond a reasonable doubt that before slaying his victim the accused had formed in his mind a specific intent to take life, that is, he premeditated it, and that he then, after considering

whether he would carry out such premediated intent finally determined to and did wilfully and intentionally execute it. No particular time need elapse between the formation of the design to take life and its wilful and deliberate execution. All that is required is that there be sufficient time to fully and clearly conceive the design to kill and then to consider and deliberate the question whether to kill or not, and thereafter to determine to execute the previously formed intent. If there was a sufficient time for the accused to consider and decide each of these requirements, it is enough. If the evidence does not convince you that the act which resulted in the killing was wilful and perpetrated with the premeditation and deliberation necessary to constitute murder of the first degree, but does satisfy you that the defendant intended to do a serious bodily injury to the deceased, the probable consequence of which would be bloodshed, but in carrying out his intentions acted without deliberation and premeditation, then the grade would not rise above that of second degree.

When a human life is taken without malice, and in a sudden transport of passion, or in heat of blood, upon a reasonable provocation, the crime is reduced to the grade of manslaughter.

Manslaughter is the unlawful and felonious killing of a human being without malice, express or implied. If a man without malice kills a human being, either upon sudden quarrel not in self-defense, or unintentionally while in the commission of an unlawful act, it is manslaughter.

I have instructed you that if Young's motive for the hiring of Garwood and Young's direction to Garwood to take his car to this unfrequented road was robbery and the death of Garwood occurred in the

commission or attempting to commit a robbery by the act of Young, Young would be guilty of murder in the first degree.

If the motive of Young in hiring Garwood to take this trip was to lace Garwood or even to talk with Garwood on the subjects mentioned, and during the trip Young formed in his mind a specific intent to take the life of Garwood, that is, premeditated it, and then, after considering whether he would carry out such premeditated intent, finally determined to and then did wilfully and deliberately execute it, Young is guilty of murder in the first degree, in that aspect of the case.

Young maintains that he did not premeditate the killing of Garwood and then after reaching a decision to kill, wilfully and deliberately execute it. He says in the first place that he was intoxicated, and, therefore, could not form the specific intent to kill, which is necessary to a first degree murder. The intoxication necessary to have rendered Young incapable of forming the specific intent to kill, which is the essential ingredient of murder of the first degree, must have been an intoxication at the time of the killing so great as to prostrate the faculties of Young. You should discriminate between that excitable condition of the mind produced by drink, which is not incapable of forming an intent, but determines to act on a slight provocation, and such prostration of the faculties by intoxication as puts the accused in such a state that he is incapable of forming an intention from which he shall act. Intoxication which prostrates the faculties does not entitle a defendant to acquittal. It would make the offence murder in the second degree. In considering the question of Young's intoxication, you may consider the fact that he directed the movement of

Garwood's car to a heavily wooded by-road, that when he drew his revolver his aim was unerring,—each of the three bullets fired entered the body of Garwood,—that immediately after the killing he took from Garwood's body the valuables thereon and concealed the body and drove the automobile, and took an unfrequented road to Haddonfield, washed the blood from his face when his attention was called to it and reloaded his revolver, and then drove to Camden. If you believe that Young's faculties at the time of the homicide were prostrated by drink so that he could not form the specific intent to kill then your verdict should be murder in the second degree.

Young says that he was seized with a sudden frenzy and killed Garwood suddenly, and as I gather from his testimony, without intending to do so, or without having formed an intent to kill as I have defined it. If you believe this statement of Young's then upon applying the definitions I have given you of murder in the second degree and manslaughter you will find that under these circumstances Young's offense is murder in the second degree or manslaughter, depending on the facts as you shall find them. But you should also bear in mind that in defining murder in the first degree I stated that no particular time need elapse between the formation of the design to take life and its wilful and deliberate execution; that all that is required is that there be sufficient time to fully and clearly conceive the design to kill and then to consider and deliberate the question whether to kill or not, and thereafter to determine to execute the previously formed intent.

I will now state to you the law with reference to the plea advanced by the accused that he killed Garwood in self-defence. The law on this subject is that no man is justified or excusable in taking the

life of another unless the necessity for so doing is apparent as the only means of avoiding his own destruction or some great injury. The defendant must satisfy you by a preponderance of the evidence that the necessity of taking Garwood's life was apparent as the only means of avoiding his own destruction or some great injury. In considering this question you should bear in mind that the ride was instigated by Young. Young was armed, of the physical proportions you see. Garwood weighed 110 pounds, Young says 140, and was crippled. Young was armed with an automatic Colt revolver loaded with steel jacketted bullets. It does not appear from the evidence that Garwood was armed. Did under these circumstances an apparent necessity exist for Young to take the life of Garwood to avoid his own destruction or some great injury? This is for you to determine. If you believe that such an apparent necessity did exist you should of course, acquit Young.

If, however, you believe that Garwood had reason to believe at the time Young was committing this act, that he was going to be robbed, Garwood had, under those circumstances even the right to take Young's life. Our statute declares that any person who shall kill any person attempting to commit robbery shall be guiltless and totally acquitted and discharged. The act which Garwood did, as Young says, which caused him (Young) to shoot was to put his (Garwood's) hand to his back. If Young was in the act of robbing Garwood, Garwood had the right to make use of any weapon if he had a weapon, and a movement to draw the weapon, if that is what Young means by his testimony, would be no justification for Young to take the life of Garwood under those circumstances.

If you believe in this case, the relations between

Young's wife and Garwood were improper, this affords no ground for the acquittal of Young.

Now, I have requests to charge here, some fifty-two in number, and, Mr. Cleary, it will expedite matters very much if you will just look at each one.

Mr. Cleary: I haven't any copy of it, here, if the Court please.

The Court: The first request will be denied because it is covered in the charge. The second request I will charge: "2. The words of an indictment charging murder in the statutory language, do not control the degree of crime for which the defendant may be convicted. The indictment is made broad enough to cover manslaughter, second degree murder and first degree murder, and it is for the jury to say what degree of crime the defendant is guilty of or whether he should be acquitted."

The third I will charge: "3. In determining the degree of crime the defendant is guilty of, if any, we must start with the presumption of the law that every killing is presumed to be a murder in the second degree. In other words, we must start with the presumption that the killing in this case was a second degree murder."

The fourth will be declined on the ground that it has been covered by the charge; the fifth will be declined because covered by the charge; the sixth will be denied because covered by the charge. I will charge the seventh: "7. If the State proves beyond a reasonable doubt that the defendant shot the deceased for the purpose of robbing him, then you must find him guilty of murder of the first degree, regardless of the elements of premeditation and deliberation. The State, however, must prove the

act of robbery or attempt to rob beyond any reasonable doubt."

The eighth is denied; I think it is covered by the charge; the ninth will be denied, I think it is covered by the charge. The 10th will be denied because covered by the charge.

Mr. Cleary: If the Court please, do you want me to object to any of these?

The Court: Oh, no, I will let you take an exception to anything when I conclude.

Mr. Cleary: Some of them I don't think are covered by the charge; I did not know whether you wanted me to object now or later on.

The Court: You may object later on. Of course, it would shorten it very much if you had a copy of these.

Mr. Cleary: I have at the office, but it was left there, if the Court please.

The Court: The 11th will be denied because it is substantially covered by the charge. The 12th will be denied because it is substantially covered by the charge, likewise the 13th and 13a. The 14th is denied because I think it is fully covered by the charge. The 15th is covered by the charge, I think, and will be denied. The 16th is covered by the charge. The 17th I will charge: "17. Deliberation means the weighing of the consideration and consequences of the killing both for and against."

The 18th I will charge: "18. Malice is a word used to express an intent to kill or do bodily harm.

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It does not necessarily mean premeditation or deliberation but it means that the act was intentional as opposed to accidental."

The 19th is denied, as I think it is covered by the charge. The 20th request is denied. The 21st is denied. The 22nd is denied; I think that is covered by the charge. The 23rd I think was covered by the charge, but I will charge it: "23. The burden of proof is upon the State to show beyond a reasonable doubt that a crime is first degree murder and not second degree murder."

The 24th is denied as covered by the charge. The 25th I will charge: "25. Although the law presumes the killing to be second degree murder, this presumption is not conclusive. The presumption may be overcome by proof by the defendant of facts which would justify a conviction for manslaughter or an acquittal."

The 26th is denied, covered by the charge. The 27th I decline to charge; it is also covered by the charge. The 28th I decline, the 29th I decline to charge; it is covered by the charge, as I conceive. The 30th I refuse; it has been covered, I think, by the charge. I decline to charge the 31st request; I decline to charge the 32nd request; I decline to charge the 33rd request. The 34th I decline to charge; I think it is covered by the charge.

I will charge a portion of the 35th: "35. The testimony of the defendant is entitled to consideration, and the fact that he is the defendant should not alone cause you to presume that he is not telling the truth." The balance of the request I decline.

The 36th I decline because I will cover it in a subsequent portion of the charge which I intend to read.

I decline to grant the 37th; it is covered by the charge. I decline the 38th; I decline to charge the

39th; I decline to charge the 40th; I decline to charge the 41st; I think that has been covered by the charge also. The 42nd I decline to charge; I think it is covered by the charge. I will charge part of the 43rd. "43. In order that a confession may be introduced in evidence and used against the defendant, the State must prove that the confession was obtained voluntarily, that is without threats or promises being made to the defendant to induce him to make a confession." The balance of the 43rd request I decline.

The 44th I will charge: "44. The testimony of the defendant and his witnesses in relation to how the confession was obtained should be considered by you in determining whether or not the confession was voluntary, and if you believe that the confession was not voluntary in accordance with the above-stated rule then you should not consider the facts set forth in the confession as part of the evidence set forth in this case."

The 45th I decline to charge; the 46th I decline; it is covered by the charge, I think. The 47th is also covered by the charge and I decline to charge it. The 48th I decline; it is covered by the charge as I think. I decline to charge the 49th. The 50th I decline; I think it is covered by the charge. I decline to charge number 51; I decline to charge number 52.

Mr. Cleary: If the Court please, do you know how many there are that you have allowed?

The Court: I cannot tell you now, but if you will just wait until I have concluded, I will give you an exception to any and also a general exception.

In this case, your verdict may be either, first, "Not guilty," or second, "Guilty of manslaughter,"

if you find in your investigation of the facts such facts as constitute manslaughter, third, "Guilty of murder in the second degree," or fourth, "Guilty of murder in the first degree" with or without the recommendation I shall now mention.

In connection with the guilt of murder in the first degree, the Court charges you that there was a statute passed in 1916 and amended in 1919, Chapter 134, page 303, which as amended reads in part as follows: "Every person convicted of murder in the first degree * * * shall suffer death unless the jury by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed * * * ."

Before this act was on the statute book the duty of the jury was merely to determine from the evidence whether or not the defendant was guilty, and if so, whether he was guilty of murder in the first degree, second degree or manslaughter, or whatever the evidence warranted, and the statute provided that if a verdict of murder in the first degree was rendered by the jury the Court had no option whatever but to impose the penalty of death in the electric chair. The statute now provides that the jury may render a verdict of murder in the first degree, if they find a person guilty of murder in the first degree, and in that case the defendant shall suffer the death penalty, but that if they shall recommend imprisonment at hard labor for life then the Court must impose that sentence. The very important duty is therefore placed upon the jury of deciding, after consideration of all the evidence, whether to render a verdict of murder in the first degree, carrying the death penalty, or to render a verdict of murder in the first

degree with a recommendation of imprisonment at hard labor for life. Your verdict can, therefore, in this case be either, first, not guilty, second, guilty of manslaughter, third guilty of murder in the second degree, fourth guilty of murder in the first degree, or fifth, guilty of murder in the first degree with a recommendation of imprisonment at hard labor for life.

Now, ladies and gentlemen, I have told you that the credibility of the witnesses and the conclusions of fact which you will draw from the evidence are questions which you must settle. The law of the case you must take from the Court. If the Court states the law incorrectly, the defendant has his remedy. If jurors disregard the law as stated by the Court, the administration of justice would soon become a sham and the person and property of no man would be safe.

I leave the case in your hands. Your duties are responsible. You are to take care on the one hand that the defendant shall not be convicted contrary to law; and on the other hand you are to see that the law is executed.

Mr. Cleary: If the Court please, I want to take exception to the portion of your charge where in your comments you say that the man was seized with an impulse to attack Garwood, also to another part where you say he was seized with a sudden frenzy and killed Garwood; also a separate exception to each refusal to charge the separate requests to chrge; in other words, I want a single exception to each refusal of a request to charge and also a general exception to the whole charge.

The Court: You may have an exception to that portion of the charge that you have specifically referred to—I think I was quoting the testimony of Mr. Young at the time—and then you may have a general exception, and you may have a specific exception to each thing that you have requested and which I have refused to charge.

DEFENDANT'S REQUESTS REFUSED.

1. The defendant is charged with having killed one Harry Garwood on July 23, 1921, by shooting him with a revolver. The indictment charges him in the language authorized by statute, with having wilfully, feloniously and of his malice aforethought killed and murdered the deceased. Upon an indictment of this character, it is possible to find a verdict of first degree murder or second degree murder or manslaughter and upon the defense offered by the defendant, it is possible to find that the defendant should be acquitted, if the facts warrant such a verdict under the rules of law that shall be hereafter explained to you in relation to the defense of self-defense.

4. Second degree murder is a murder which is intentional on the part of the defendant and which is unprovoked by the deceased.

5. Second degree murder has been defined to be a killing of a human being in a passion or heat of blood, but without any premeditation or deliberation. It is a murder which is committed without any preconceived entertainment by the mind of a

design to kill and without any deliberation of the effect and consequences of such an act. The intent to kill is present, and this distinguishes second degree murder from a homicide which was committed by accident or mistake. It is the absence however, of the elements of a premeditation and deliberation that distinguishes second degree murder from first degree murder. An illustration of a second degree murder is where a defendant shoots and kills a deceased in a heat of blood or passion and without any previous premeditation of the purpose of killing and without having deliberated said act. In a case of this kind second degree cases, the intent to kill is presumed by the use of the weapon, but the premeditation and deliberation are never presumed.

6. Murder in the first degree is defined by statute. There are two classes of murder in the first degree. One class is where the defendant has killed a person while the defendant was in the act of perpetrating or attempting to perpetrate a robbery, arson, rape, burglary or sodomy. The other class is where the defendant has killed a person wilfully, with premeditation and with deliberation.

8. The law presumes every defendant to be innocent of the crime charged until he is proved guilty, and where the State seeks to prove an intent to rob, such an intent is not presumed by law but must be proved by the State beyond a reasonable doubt. The presumption of the law is that the defendant is innocent of any intent to rob, and he is entitled to the benefit of this presumption of his innocence until the State has proved his guilt beyond any reasonable doubt.

9. If you are satisfied that there was no intent to rob at the time of the killing, or you have a reasonable doubt that such an intent to rob existed, or that any attempt was made to rob, then you should not find the defendant guilty of first degree murder, in relation to the class of first degree murder cases where the State relies upon the fact of robbery or attempted robbery.

10. If you find that the defendant did not intend to rob the deceased at the time of the killing, then you must consider the second class of first degree cases to ascertain whether or not the defendant was guilty of a wilful, premeditated and deliberated killing for any other motive or intent.

11. In second degree cases there must be an intention either to harm the person attacked or to take his life. In first degree it is necessary that the intention be to take the life of the person attacked.

12. In addition to the intent to take life that is required in first degree cases, two other elements must be present, premeditation and deliberation.

13. The elements of premeditation and deliberation are never presumed. They must be proved by the State beyond a reasonable doubt.

13a. Reasonable doubt is that which makes the jury hesitate as to the correctness of its findings.

14. The defendant is presumed to be innocent of the crime charged until he is proved guilty, and where the State seeks to prove the elments of premeditation and deliberation, it must do so beyond a

reasonable doubt. The presumption of the law is that the defendant is innocent of any premeditated intent to kill, or any deliberation of the intent to kill, and that he is entitled to the benefit of the presumption of his innocence until the State has proved his guilt beyond any reasonable doubt.

15. The burden is upon the State to show that the defendant acted with premeditation and deliberation. The State must prove these two elements beyond a reasonable doubt.

16. Premeditation means a preconceived entertainment by the mind of a design to kill.

19. It is necessary, in order to convict the defendant of first degree murder, to find that all three of the elements of intention, premeditation upon such an intent and deliberation in relation to such an intent, be present and proved beyond a reasonable doubt.

20. While it is true that the law presumes an intent to kill when weapons are used, this presumption does not mean a premeditated or deliberated intent to kill. The use of weapons shows an intent to do bodily harm or even to kill, but this intention standing alone does not prove any premeditation or deliberation. There must be something more than the intent to kill as shown by the use of the weapon. Premeditation of the intent and deliberation of the intent must be shown beyond a reasonable doubt.

21. The presumption that there is an intent to kill when weapons are used is not conclusive. This presumption may be overcome by proof of the defen-

dant that the weapon was accidentally discharged or used in self-defense.

22. Where only an intent to kill is shown by the use of weapons and no premeditation or deliberation is also shown, there cannot be a verdict of first degree murder upon the charge that the defendant premeditated and deliberated said crime.

24. If you are not satisfied beyond a reasonable doubt that the defendant wilfully premeditated and deliberated the killing then you cannot find him guilty of first degree murder.

26. Manslaughter is the killing of another by a person in a sudden passion or heat of blood where there is reasonable provocation and where there is no intention to do bodily harm or take life. Manslaughter is distinguished from second degree murder in that there is provocation in manslaughter while there is no provocation in second degree murder, and that in manslaughter there is no intent to kill while in second degree murder there is an intent to kill, or such an intention is presumed.

27. Self-defense in homicide cases means that the defendant killed the deceased because he was in fear of his life, that the acts of the deceased in threatening bodily harm to the defendant were such as would put an ordinary man in fear of his life and that an ordinary man would have acted as the defendant did to protect his own life.

28. Where the deceased has threatened the defendant with serious bodily injury or death it is necessary for the defendant to attempt to evade or pre-

vent such injury by removing himself from the place of danger or take any other means that an ordinary man would take under the same circumstances to prevent the injury. The question of the weapons used by the deceased enters into the question to determine just how far the defendant had an opportunity to evade or escape the injury. If the deceased was attacking the defendant with a stick or club it would perhaps be an easy matter for the defendant to prevent the injury by removing himself from the place of the assault or threatened assault. Where, however, the deceased uses or attempts to use a revolver in attacking the defendant there is not, of course, the same opportunity to prevent the injury to defendant by removing himself from the place of the attack, because it is a matter of common knowledge that the use of a revolver is usually accompanied by instantaneous results.

29. The question to be determined in the defense of self-defense is whether a reasonable man would have been justified in taking the life of the deceased under the same circumstances, in an effort to protect his own life.

30. In this case the State has endeavored to prove that the defendant committed the killing while in the act of robbing or attempting to rob the deceased. The defendant is presumed to be innocent of this crime.

31. In addition to the presumption of innocence, the defendant has the right to affirmatively show that the shots were fired for another purpose.

32. The defendant's testimony in this case is to the effect that the shot was fired to protect a threat-

ened injury to the life of the defendant. The mental condition of the defendant at the time of the shooting therefore becomes important. You should determine whether or not the intention in his mind was to rob the deceased or whether the intention was to prevent injury to himself. This condition of the mind is a part of the res gestae. The defendant's conduct therefore both before the time of shooting, at the time of shooting and after the time of shooting can be proved by evidence in order to prove his state of mind at the time of the shooting. It is claimed by the defendant that he brought the deceased to the place where the killing occurred to talk with him about his relations with his wife, and that the shooting occurred while they were engaged in a conversation or quarrel about this matter. It is therefore important for you to ascertain what the reason of defendant was in bringing the deceased to the place where he was killed. Was it robbery or was it some other motive? The State has inferred from the testimony or attempted to infer that the motive was robbery. The defendant has the right to rebut this motive by proof or testimony that he had no motive in killing the deceased and that he acted in self-defense. You should carefully distinguish between the fact that the defendant claimed that there was no motive for the shooting, but that there was a reason for bringing the deceased to the place where the conversation and shooting occurred.

33. The defendant has the right to bring evidence to show that at the time that he engaged the deceased with his automobile he had no intention of robbing the defendant and that he had no intention of robbing the defendant at the time of the shooting. In order to prove that the object of defendant in

hiring deceased with his automobile was for the purpose of talking to him about his wife, the defendant has produced witnesses to prove that for a considerable length of time prior to shooting, defendant had stated that he was having trouble with his wife and that he intended to leave for the western part of the United States. The defendant states that on the day of the killing he was on his way to work at the Cramps Ship Yard, and that he knew that it was his last day of employment there and that he intended to leave for the West and he desired to talk to the deceased about defendant's wife before he left. This evidence can be considered by you in determining what the intentions or the state of mind of the defendant was on the day of the shooting. There are other facts produced by the defendant for the same purpose. The testimony that the crime was committed at an early hour in the morning can be considered by you in determining whether or not the defendant would likely have entertained the idea of killing the deceased in the daytime; the fact that the defendant did not attempt to conceal himself or disguise his identity when he met and engaged the deceased on the day of the shooting. The testimony that the defendant took the deceased to a hotel where the defendant and deceased were both known on two occasions the same morning that the shooting occurred, and that said place was within a few miles of the place where the shooting occurred, are also facts to be considered in this regard. All these things were alleged to have occurred before the shooting, in addition to which defendant has shown several other facts which occurred after the shooting, such as his desire to conceal his crime by removing the goods which might identify the body of the deceased and the testimony that he did not sell or attempt to

sell any of the articles he took from the deceased in his effort to conceal said killing.

34. You are to determine which of the witnesses are telling the truth. You can judge this from their testimony, their manner of testifying, their general appearance and their general conduct. So far as the defendant is concerned you can take into consideration his testimony, his previous education, his occupations, his residences and habits of life, in determining whether or not he is telling the truth in relation to this case.

35. The testimony of the defendant is entitled to consideration, and the fact that he is the defendant should not alone cause you to presume that he is not telling the truth. Whether or not he is telling the truth should be judged in the same manner as that of the other witnesses and if you believe he is telling the truth his testimony must be considered as direct evidence and can be used to rebut any circumstantial evidence that the State has produced.

36. The law in relation to the punishment of murder in the first degree now provides that the jury may if they find any extenuating circumstances in relation to the killing recommend to the Court mercy for the defendant and the punishment of the law will then be life imprisonment instead of the death penalty. This finding must be made a part of your verdict.

37. If you do not believe that the defendant intended to rob the deceased at the time of the shooting or if you have a reasonable doubt that such was the fact, then you should not convict him of

murder in the first degree upon the theory of robbery.

38. To negative the motive of intent to rob, the defendant has testified that he was on his way to work at seven o'clock in the morning when he met the deceased, that he was sober at the time and took the deceased to a spot near where the shooting occurred and changed his mind about talking to him in relation to his wife, came back to Camden and discharged the deceased at Fourth and Federal Streets, and allowed the deceased to go on about his own business affairs. He further testified that he had purchased the revolver in March of this year, about four months before the shooting, for the purpose of defending himself from the attack of strickers at the place where he was employed and that he carried the revolver in a holster beneath his coat and not concealed in his back pocket. He further testified that he drank some whisky before he met the deceased the second time at the ferry and that on his way to the scene of the shooting he purchased some more whisky and drank it, and that at the time of the shooting he had no intention of harming the deceased by the use of any weapon. All of these facts may be considered by you and if you are satisfied that the intention of the defendant was not to rob the deceased or if you have a reasonable doubt about his intention to rob the deceased then you must find him not guilty of murder in the first degree upon the theory of robbery.

39. The defendant claims that he did not rob the deceased or attempt to rob him at the time of the shooting and that he did not premeditate or deliberate said shooting for any other purpose. His con-

duct is likewise material in ascertaining whether or not he premeditated and deliberated the shooting. He has testified that he was on his way to work at the usual hour in the morning when he met the deceased, that he exposed himself to the view of many people on his way to the place of the shooting, that he allowed Garwood to leave his company on the same morning and go about his own affairs; that he did not intend to shoot Garwood but only intended to have an understanding with him about his wife's affairs before the defendant left for the West.

40. It is not necessary for the defendant to show a motive for the crime. He has not undertaken to do so but in order to prove his statement that there was no motive for the crime he shows his reasons for bringing the deceased to the place of the crime. Whether or not his reasons for bringing the deceased to the place of the crime were founded upon a correct state of facts or whether the defendant imagined such facts or whether his mental attitude in relation to said facts was irresponsible makes no difference in this case. The sole question to be decided is whether or not that was his reason for bringing the deceased to the place of the shooting, and even if his reason was unfounded or incorrect it is testimony tending to prove that the defendant had no intention of killing the deceased at the time of the shooting.

41. Intoxication is not an excuse for crime or a justification for crime. If, however, the defendant was intoxicated to such an extent that his mind was prostrated and that he could not entertain in his mind the thought of premeditation and deliberation and intent to kill, then, of course the defendant is

not guilty of any crime and should be acquitted on the ground that it is necessary to prove an intent to commit crime and that the defendant at that time was unable to form such an intent.

42. If, however, the defendant had sufficient faculties to form and commit the crime, you should consider whether or not he was not so intoxicated as to prevent him from forming the premeditated and deliberated intent to commit crime. If his intoxication was such that he could not premeditate and deliberate the crime, the highest crime he could be guilty of is second degree murder.

43. In order that a confession may be introduced in evidence and used against the defendant, the State must prove that the confession was obtained voluntary, that is without threats or promises being made to the defendant to induce him to make a confession. The law is very careful to guard the rights of the defendant in relation to confessions alleged to have been made by him, because the law recognizes the fact that the prisoner under certain circumstances where he is either threatened or promised something of value will make a statement that is untrue and may be damaging to him. The conduct of the person to whom the confession is made must be such that it will not create in the mind of the defendant the idea that if he makes the confession that he will either prevent some wrong from being done to him or that it will result in some benefit to him. This question has been decided in the courts of this State in many cases. The law is that the conduct of the authority who obtains the confession must be such that no false hopes, anxiety or fear be produced in the mind of the prisoner and that it must not be

obtained by flattery or impressions of fear. It has therefore been decided that it is not lawful, in order to obtain a valid confession for an authority to advise a prisoner to make a confession and make a clean breast of the matter because it would help him. This statement renders the confession invalid because it holds out some hope to the defendant, especially in view of the fact that it comes from a person in authority whose word has weight with the prisoner. The mental attitude of the prisoner at the time of the confession is a proper subject of inquiry.

45. More weight should be given to direct testimony than to circumstantial testimony and you should consider the fact that the testimony of the defendant himself in many instances is direct testimony.

46. If you believe that the defendant, in the heat of passion or blood intended to kill deceased by shooting him, but had not premeditated or deliberated said act, then he is guilty of murder in the second degree.

47. If, however, you do not believe that the defendant is guilty of murder in the second degree, and you find that he did the shooting without any intent to kill and with sufficient provocation, then he is guilty only of manslaughter.

48. If you find that the defendant acted in self-defense and that he was reasonably put in fear of his life by the act of Garwood in reaching for something in his back pocket as testified to by the defendant and that the defendant reasonably feared for his life and that he acted as a reasonable man would

have done under the same circumstances in firing the shots to save his own life, then of course, he is not guilty of any crime and should be acquitted.

49. The jury is not here to represent the State in the enforcement of the laws of the State. The duty of the jury is only to find determined facts. It has nothing to do with the enforcement of the law or the punishment meted out by the law after conviction although it has the privilege of recommending mercy to the Court with the conviction. You are to decide the case according to the evidence presented and you are not to find any verdict because it is the request of the Prosecutor or the request of the attorney for the defense.

50. The jury is bound to protect the defendant so far as his presumption of innocence is concerned and also by compelling the State to prove him guilty beyond a reasonable doubt.

51. The duty of the jury is to weigh the facts fairly and impartially, and if, after the examination of all the evidence, you do not find the defendant guilty of any certain degree of crime, you should not convict him. If you decide that he is guilty of any degree of crime but that if there is any reasonable doubt remaining in your mind after such finding, then you should not convict the defendant of that degree of crime. You should not be swayed by prejudice against the defendant. The defendant is entitled to a fair trial according to the evidence and with the presumptions of the law as to innocence in his favor, and if you cannot clearly find him guilty of any degree of crime beyond a reasonable doubt, you should not convict him merely because you think he should be punished in some manner.

52. The presumption of innocence and the burden placed upon the State to prove the defendant guilty beyond a reasonable doubt have been called the mercy or charity of the law in State vs. 41 Atlantic, 697.

I hereby certify that the foregoing is the entire record of the proceedings had upon the indictment of the State vs. Guilford C. Young, for murder.

FRANK S. KATZENBACH, JR.,
Judge.

SPECIFICATION OF CAUSES FOR REVERSAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* vs. GUILFORD C. YOUNG, *Plaintiff-in-Error.*	On Indictment and Conviction for Murder. Specification of Causes for Reversal.

The plaintiff-in-error specifies the following causes in the record relied upon for the reversal of this judgment:

1. The Court permitted the Prosecutor to cross-examine the defendant as to whether or not statements the defendant had made to the Prosecutor upon previous occasions were true, when the question before the Court was only whether the statements were voluntarily made.

2. The Court permitted the State to introduce in evidence certain statements made by the defendant to the Prosecutor on occasions previous to the trial. Such statements were not voluntarily made and should not have been admitted as evidence.

3. That the Court erred in refusing to allow counsel for the defendant to cross-examine Joseph Morris as to certain acts of the said Joseph Morris at the time of an alleged statement to him by the defendant.

4. That the Court erred in allowing Allen Pierce to testify to certain facts contradicting a statement of defendant alleged to have been made upon occasions previous to the trial.

5. That the Court erred in allowing the testimony of John Williams, Lewis Shaw and James Lockwood, as to certain request alleged to have been made by the defendant to secure for him certain hack saw blades.

6. That the Court erred in allowing the testimony of John Williams and James Lockwood because the purpose of the defendant in making the alleged request for the hack saw blades was not shown by said testimony.

7. That the testimony of the said John Williams and James Lockwood was incompetent, irrelevant and immaterial to show guilty knowledge because counsel of the defendant admitted in open court that the defendant did kill Harry Garwood and the only question before the Court was whether the defendant was justified in killing the said Harry Garwood, or whether he was guilty of any degree of murder.

8. That the Court erred in allowing Harry F. Randall to testify by refreshing his memory from a letter which he held in his hand and read word by word.

9. That the Court erred in allowing the said Harry F. Randall to read a letter which had been sent by the defendant to his wife. This letter was a confidential communication between husband and wife and the contents should not have been disclosed in the trial of the husband for murder.

10. That the Court erred in allowing Harry F. Randall to testify as to his recollections of the contents of said letter, because the letter was written by the said Harry F. Randall in a confidential capacity and the said Harry F. Randall should not have been permitted to divulge its contents.

11. That the Court erred in not allowing the defendant to state the thoughts that were in his mind at the time he met Harry Garwood on the day of the shooting and hired the said Harry Garwood to convey him to the place where the shooting occurred.

12. That the Court erred in refusing to allow the defendant to state the thoughts in his mind at the time of the shooting of the said Harry Garwood.

13. That the Court erred in not allowing the defendant to state what his thoughts were upon the day of the shooting. The thoughts of the defendant constituted his state of mind and should have been admitted in evidence.

14. That the Court erred in refusing to allow the defendant to testify as to his actions following the killing of Harry Garwood.

15. That the Court erred in allowing the defendant to be cross-examined by the Prosecutor upon matters that were not brought out in direct examination.

16. That the Court erred in refusing to allow the defendant to show that he had consulted attorneys about his domestic affairs.

17. That the Court erred in refusing to allow the defendant to testify as to his relation with his wife.

18. That the Court erred in refusing to allow the defendant to testify that he believed the said Harry Garwood carried a revolver.

19. That the Court erred in refusing to allow the defendant to testify that he believed that his life was in danger.

20. That the Court erred in refusing to allow the testimony of Samuel M. Roberts, Esquire.

21. That the Court erred in refusing to permit Cyrus Marter, Esquire, to testify for the defendant.

22. That the Court erred in refusing to permit the defendant to introduce the testimony of Samuel French, Esquire, George Harker, Officer Quinn, Officer Baxter, Evered Downs and Justice William H. Harrison.

23. That the comments of the trial Judge upon the evidence prejudiced the rights of the defendant in that the Court in six pages of his charge sets forth in detail the case of the State and the testimony tending to corroborate same and the arguments in favor thereof and in his charge devoted a very small part thereof to the evidence presented by the defendant and the inferences to be drawn from his testimony.

24. That the verdict was against the weight of the evidence.

25. That the Court erroneously quoted the defendant to have said that he killed the said Garwood in a frenzy of mind and upon a sudden impulse.

26. That the Court erred in refusing to charge the fifth, eighth, ninth, eleventh, thirteenth, fourteenth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third, forty-fifth, forty-eighth, forty-ninth, fiftieth and fifty-first request of the defendant's requests to charge.

27. That the Court erred in his charge when he stated that the defendant was presumed to be innocent of the "charge." The defendant was charged with first degree murder. The Court should have charged the jury that he was presumed to be innocent of the entire charge and the various degrees and elements of said charge.

28. The Court erred in instructing the jury that if they had a reasonable doubt as to the defendant's guilt of the charge, that they should acquit. The defendant was entitled to an instruction that reasonable doubt could exist as to the entire charge or any intent, motive, element or degree making up said entire charge.

29. The Court erred in stating that the State claimed that Young was the perpetrator of this "crime," when no crime in fact had been proved and the defendant could only have been guilty of crime after the conviction by the jury.

JOHN T. CLEARY,
Counsel for Defendant.

[ENDORSED]

Specification of Causes for Reversal and Notice of Argument were served on Mr. Burling on Feb. 17, 1922.

JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant-in-Error,
vs.
GUILFORD C. YOUNG,
Plaintiff-in-Error.

In Error.
Joinder in Error.

And thereupon, afterwards, to wit, on the seventeenth day of February, in the year of our Lord one thousand nine hundred and twenty-two, the said State of New Jersey, by Charles A. Wolverton, Prosecutor of the Pleas of the County of Camden, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the court here may proceed to examine as well the record and proceedings as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

CHARLES A. WOLVERTON,
Prosecutor of the Pleas.

VOLUME II

Camden, N. J., November 14, 1921.

Trial of the cause resumed at 9.45 A. M., on the above date, pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

GUILFORD C. YOUNG, resumed.

By Mr. Cleary:

Q. Mr. Young, when you were on the stand on Saturday afternoon, you were relating some facts in relation to this matter, and you had reached a point where you had left Martin's for the first time and gone to a place on Spruce Street, 714 Spruce Street. Will you kindly tell the jury from that point on your story, what time you arrived at Green's and what happened after that time?

A. I don't know just what time I got at Green's, somewhere about half-past eleven, I imagine, and the exact time I left there I can't say, somewhere around two o'clock, I think.

Q. Just a minute; do you know what your condition was at that time with regard to intoxication?

A. Why, I believe that I was under the influence of liquor, because they said if I ever came there in that condition——

The Court: No, no.

Q. Not what they said to you, but what your own knowledge of what your condition was?

A. Well, I was drunk at the time.

Q. How long did you stay there?

A. I stayed there about two hours and a half.

Q. Now, continue your story in your own way.

A. I went from there out to Martin's and told him that he could get his machine.

The Court: No, don't——

Mr. Cleary: Never say anything what anybody said.

The Court: I think you had better just examine him, because the witness will tell everything that he said to everybody, probably, and we had better just confine it to questions and answers, Mr. Cleary.

Mr. Cleary: My only object in doing that was not to lead the witness.

The Witness: I think I can go through with it.

Q. Just a minute; now, I will ask you questions, Mr. Young. What time did you leave Green's, do you know?

A. About two o'clock or half-past two.

Q. And you had this automobile of Garwood's at Green's on that first occasion?

A. Yes, sir.

Q. And from Green's, where did you go?

A. To Martin's.

Q. What time did you arrive at Martin's, do you know?

A. That I couldn't say; I went there from Green's.

Q. And what happened at Martin's, without relating any conversation that took place, what happened down at Martin's?

The Court: Well, what did he do?

Q. What did you do at Martin's, and what did Martin do?

A. We went to Camden and got the machine out of the garage, and Martin drove the machine back into Camden.

Q. Why did Martin drive the machine back to Camden for you?

A. Because I was drunk.

Q. When you arrived in Camden, where did you go?

A. Went to 8th and Spruce, at the garage.

Q. And is that the garage where you had kept the first car?

A. Yes, sir.

Q. What did you do with relation to the first car?

A. That was Martin's car, the car I had bought off of Martin.

Q. And what did you do with that car?

A. Martin took it.

Q. Did you go with him?

A. I went with him to Haddonfield.

Q. And did you take the new car with you, too?

A. Yes, sir.

Q. And what happened at Haddonfield in relation to that new car?

A. Martin wanted to know where I got the car.

Q. Well, don't testify to any conversation that took place; what did Martin do or what did he not do in relation to the car?

A. He changed a number on the car somewhere and he took the license tags off the old car and put them on Garwood's car, and he put——

Mr. Cleary: Just a minute. If the Court please, I think that this conversation of Martin and Young

is relevant, for this purpose: It is part of the res gestae; I think it is sufficiently after the time to show the acts of the defendant, what he did and what he said.

The Court: How could it be part of the res gestae? He may tell what Martin did and what he did with reference to this car of Garwood's.

Mr. Cleary: Well, if the Court please, can't I show by conversations why Martin did it? Isn't the conversation a part of the res gestae?

The Court: No, I think you cannot show conversations of Martin; you can show what was done.

Mr. Cleary: May I have an exception to that ruling?

The Court: You may have an exception, possibly you had better just ask—— No, he cannot testify as to conversations which he had with Martin at this time; they would be self serving declarations.

Mr. Cleary: If the Court please, it is material why Martin did this particular thing, and we can't tell the state of Martin's mind, except by his conversation.

The Court: Well, the state of Martin's mind is nothing, as I can see, that is relevant to this case.

The Prosecutor: And, if the Court please, if it is relevant what Martin said, it seems to me that Martin could be called as a witness in the case by the defense.

Mr. Cleary: He could be?

The Prosecutor: Yes, by subpoenaing him.

Q. After Martin had changed the number of this car, what became of this car that you had originally, that was given you by Martin?

A. Martin had it.

Q. Did you ever have that car after that time?

A. No, sir.

Q. What did you then do with Garwood's car?

A. Took it up to Camden.

Q. Where did you put it?

A. Eighth and Spruce Street garage.

Q. Is that the car that was taken from you at the time that you were arrested?

A. Yes, sir.

Q. Now, what day had you rented this garage?

A. I rented it on a Saturday night on the 16th, I think, of July, I am not sure.

Q. From whom did you rent it?

A. I just can't pronounce the fellow's name I rented it off of. I have this receipt with the name on it.

Q. Do you know where he lies?

A. He lives on Haddon Avenue.

Q. For what purpose did you rent that garage on that day?

The Prosecutor: I think that is immaterial, if the Court please, for what purpose he rented it on the 16th. It is in evidence that he did so.

Mr. Cleary: If your Honor please it, Mr. Wolverton's opening contention I believe that the garage was rented for the purpose of putting Garwood's

car in the week beforehand. I am going to show by this witness that he actually had another car in it on the 16th of July.

The Court: I am going to allow the question.

Q. For what purpose did you rent that garage on the 16th of July?

A. For the car I bought off Martin.

Q. And did you put that car in that garage on that day?

A. I did.

The Court: That is immaterial whether he put the car in the garage on that day.

Mr. Cleary: If your Honor please, it shows the garage was rented for that purpose.

The Court: He says it was rented for that purpose. I gave you permission to show it. Now, if it was rented for that purpose, what difference does it make whether the car was put in that garage on that day or some other day?

Mr. Cleary: If there was no car put in there from the 16th to the 23rd, it would be some evidence for the State. If there was actually another car in it, it shows he didn't rent it for the purpose of putting Garwood's car in. But he has answered the question, now, I think.

Q. Was it in relation to the old car that this bill of sale was made out?

A. It was made out for the old car.

Q. And was it in relation to the old car that the license tags were procured on the 16th day of July?

A. The license tags were gotten for the old car that I bought off Martin.

Q. And were those license tags put on the old car?

A. They were.

Q. Now, what happened to the license tags of Garwood's car, do you know?

A. I don't know.

Q. Were or were not the license tags of the old car put on Garwood's car?

A. They were.

The Court: He has testified to that.

Mr. Cleary: No, if your Honor please, not to that point.

The Court: I think when he went out to Martin's house.

Mr. Cleary: No, the engine number was changed.

Q. You mean the engine number was changed at Martin's?

A. He changed some kind of number under the hood. I don't know what it was.

Q. Did he put the tags on the new car at that time? Did he change the tags?

A. Yes, sir.

Q. Now, when did you get this revolver, Mr. Martin, that you had on this day—I mean Mr. Young?

A. I don't know the exact date I bought it. I bought it at Stein's. I think it was in March. It might have been later. It was after I went to work in Cramp's shipyard.

Q. Do you know when you went to work in Cramp's shipyard?

A. That I couldn't say.

Q. Was it February or March?

A. That I couldn't say. I went there from the licorice works.

Q. Was that the first revolver you had?

A. I had on old .38 before that.

Q. Did you dispose of that other revolver?

A. I sold it to a workman in Cramp's shipyard.

Q. Did you then purchase this new revolver?

A. I did.

Q. And for what purpose did you purchase that revolver?

A. Because I had been attacked several different times by strikers and Mr. Budd of Cramp's shipyard told me to carry a revolver and protect myself.

The Court: Don't say what anybody told you.

Q. Were you advised by anybody in Cramp's to buy a revolver to protect yourself?

A. By one of the Governor's men, Mr. Budd. He told me to buy it.

Q. Have you actually been attacked?

The Court: That is immaterial.

Mr. Cleary: If your Honor please, in relation to these questions which are held immaterial, I think that with all due respect to your Honor, I want to state what my opinion of that question is. When the State outlined its case and spent two days in establishing its case, I had no objection to some questions which I considered absolutely immaterial. It seems to me that in a civil case, probably the question of whether or not—whether or not a question

is material, is not so very important, but in a criminal case, when a man's life is at stake, I think it has been the practice of the Court to extend the widest latitude in allowing questions and statements of the defendant; because in the ordinary procedure, before examinations of witnesses were held, it was the practice for a man to get up before the Court and make a statement of anything he wanted to say. That is the idea of putting a defendant on the stand to-day. He is allowed to say anything whatever, in theory, of a statement of the defendant. Now then, because he has submitted now to the rules of cross-examination and the rules relating to witnesses, it does strike me as being a reason why he should not be subjected as closely as other witnesses, because the idea is different, the idea of witnesses is to testify to certain facts, only those. The idea of a defendant being on the stand is to testify to anything material which will establish his innocence or guilt. These facts are material for this reason——

The Court: Now, Mr. Cleary, I don't want to seem to be discourteous to you, but of course we can't go back to the rules of the dark ages, with reference to the examination of witnesses and I don't propose to do it. This question I have overruled and therefore, I am going to, if you desire it, give you an exception, and then you may ask the next question.

Mr. Cleary: At this time I want to make an announcement——

The Prosecutor: If the Court please, I want to object at this time to any statement by counsel for the defendant of what he intends to do hereafter.

At the present time there is a witness who is under examination by him, and I am fearful that the purpose of the statements that the defendants' attorney is now making is not so much for the benefit of your Honor, whom he knows to be, or rather to have a legal mnd, as it is for the benefit of some others whom he would like to hear his purposes and so forth whether they can be gotten into the evidence or not. I object very much and it is only because of the attitude assumed in this particular case that I find it necessary to do so, and that is, to object as often as I do. It is because of the theory which the defendant's counsel has just expressed——

The Court: Mr. Wolverton, I don't want to interrupt you either, but you needn't apologize for objecting. That is your business to object and if there would be any criticism, you haven't objected enough. Now, Mr. Cleary, you will have to ask the next question. I overrule the question whether this witness had ever been attacked.

Mr. Cleary: In justice to myself, I want to say to Mr. Wolverton, I have no fault to find when Mr. Wolverton makes his objections. He has been very courteous.

The Court: I am not going to listen to this at all. We have consumed a great deal of very valuable time, and I am going to be quite firm. Now, Mr. Cleary, you may ask the next question.

Mr. Cleary: All right, if your Honor pleases.

The Prosecutor: Don't answer, Mr. Young, until I have had an opportunity to object if I wish to.

Q. At the time you bought this revolver you also bought some bullets?

A. Yes, sir .

Q. Where did you buy them, at the same store?

A. At Stein's.

Q. And are they the bullets ordinarily used for that kind of revolver?

A. Yes, sir.

Q. Sold to you for that purpose?

A. Yes, sir.

Q. Mr. Young, when did you finally see Mr. Marter, your attorney, in this case?

A. Why, it is between eight months and a year ago, the first time.

Q. No, not the first time, I mean after you were arrested?

A. Why, I asked to see him right away.

Q. I don't mean that. When did you finally see him?

A. Why, after I was arrested, about six weeks or longer.

Mr. Cleary: If your Honor please, I would like to have your Honor's idea about a certain line of questioning I will ask and save time for the jury and I want to save as much time as possible, as to whether or not any testimony is relevant in this case as to whether the confession, at this time, how it was procured?

The Court: We have been over that subject and it has been exhausted and the confession has been admitted.

Mr. Cleary: It was my idea that testimony on that side which tended to show a confession was not

voluntary and testimony on the other side, that it was, became a jury question, as to whether the confession was voluntary.

The Court: It was a Court question and we have exhausted the question.

Mr. Cleary: I would like to know whether you decide that to be a jury question at the present time?

The Court: I am not going to decide that at this time because it isn't necessary.

Mr. Cleary: I was going to examine this man on testimony that was not produced before the jury when the jury—rather when we were in the other room and we were talking about a conversation with his wife.

The Prosecutor: I would suggest, instead of counsel for the defendant at all times asking the opinion of the Court in the first instance, that he propound his question and let the Court and the Prosecutor deal with it, deal with that particular question as it is propounded.

Mr. Cleary: It was only an opinion of the Court which has no weight in the case, so that I may save the time of the jury.

The Prosecutor: An opinion of the Court?

Mr. Cleary: I mean it would have nothing to do about the decision in the case. It is outside the case.

The Court: The witness was examined on the sub-

ject of the confession and therefore that has been exhausted. We won't go into that again.

Mr. Cleary: As to one phase of that, the conversation with his wife, the jury were not present.

The Court: Do you want that testimony read to the jury?

Mr. Cleary: I would like the defendant to testify to it.

The Court: Do you want the testimony which I simply did not let the jury hear, because I felt from the trend of it, it would be very harmful to your client. I did it for the protection of your client at that time because I felt that there might be something that would be indirectly stated, as there was. Now, then, do you want that testimony read to the jury?

Mr. Cleary: I am going to decide that later. I want your Honor's opinion upon it.

The Prosecutor: I might say, if it will be helpful to the defendant's counsel, as to whether it shall be read or not, I will have no objection.

Mr. Cleary: Will you let me see it first?

The Court: Gentlemen, I thought we would all have a good rest and we would proceed rapidly this morning. Now, we are not. You ask this witness the next question, Mr. Cleary.

Q. Now, Mr. Young, at the time you were arrested, you made such statement to the Prosecutor in rela-

tion to how you obtained Garwood's car, did you not?

A. Yes, sir.

Q. Were those statements true or untrue?

A. Untrue, some of them.

Q. Why did you make those statements?

A. Why, because I had no lawyer, they wouldn't let me have any.

Q. Did you have any lawyer after the time you made this confession?

A. No, sir.

Q. This last one, 5th day of August?

A. No, sir.

Q. And what was the state of your mind at the time you made those untrue statements?

A. At the time, my mind was in such a state, not having any sleep and being abused by the detectives, Prosecutor, and from not having anything to eat of any account, from having handcuffs on, practically night and day, and my mind was absolutely a wreck from talking to my wife in the morning, and coming in they had to stop at Collingswood to get—

The Prosecutor: This defendant has a story to tell, whether questions are asked him or not. There is no question pending.

The Court: You can testify as to what the state of your mind was when you told these untruthful statements to the Prosecutor.

Q. What was the condition of your mind in on the 5th day of August, at the time you made these untruthful statements.

The Court: You must specify which untruthful statements.

Q. The untruthful statements made about the car on the first day you were arrested.

A. Because I had no lawyer to find out what to do. They wouldn't let me have any.

Q. And did or did not you think that the means of protecting yourself?

The Court: Wait a minute. That question is overruled.

Q. How many trips did you make with detectives while you were confined between the 2nd of August and the 5th day, do you know?

A. They took me out to Morristown or Merchantville, several times.

Q. How many?

A. They took me out in some——

Q. Just in number, Mr. Young?

A. About eight times.

Q. And were you left at the Court House here, at the office of the Prosecutor, or at the Prosecutor's private office?

A. Private office.

Q. Now, what was your physical and mental condition on August 5th when you made this last statement to the Prosecutor?

A. My mind was a wreck, and everything was black in front of me, which I was very dizzy.

Q. Go ahead.

A. That I was very dizzy at that time and they gave me medicine in the Prosecutor's office to settle my nerves and to straighten my heart up, after they laid me on the couch.

Q. Was that shortly before you made the statement?

A. Yes, sir.

Q. What medicine was given you, if you know?

A. Why, spirits of ammonia I think.

Q. What was your condition of mind as to whether or not you should make a statement at that time?

A. My mind in that time was that the Prosecutor said he was going to help me, and, the conditions of my mind, I thought he would help me, which he told me he would, he would make it much easier and better for me, that that was the best and only thing to do.

Q. Now, was there anything in that statement on August 5th, which was not absolutely true?

A. Yes, sir.

Q. Can you tell me why you made that statement if it was not absolutely true?

The Court: Well, you had better just tell what it was; that is not at all helpful; you may call the witness' attention to the statement that he made on August 5th.

Mr. Cleary: If the Court please, I don't want to lead him, that is all.

The Court: I think it is better to lead him a little; I will let you do it; it is discretionary with the Court, and I think we will save more time by it.

Q. What statement was it in that confession of August 5th that you say is not accurate or true?

A. Why, the statement of the shooting is not accurate; the statement of the shovel is not true.

Q. What else?

A. The statement of the shoes or why I took the stuff is not accurate.

Q. Why did you say those things if they were not accurate or not true?

NEW JERSEY COURT OF ERRORS AND APPEALS.

The State of New Jersey, *Defendant-in-Error,* and Guilford C. Young, *Plaintiff-in-Error.*	On Indictment and Conviction for Murder in the Camden County Court of Oyer and Terminer.

BRIEF FOR DEFENDANT-IN-ERROR.

STATEMENT OF THE CASE.

The plaintiff-in-error was charged by indictment with the commission of the crime of murder of one Harry Garwood, in the Township of Delaware in the County of Camden and State of New Jersey, on the twenty-third day of July, in the year of our Lord one thousand nine hundred and twenty-one. He was tried in the Camden County Court of Oyer and Terminer, and convicted of murder in the first degree on the fifteenth day of November, in the year of our Lord one thousand nine hundred and twenty-one, and upon the same day sentenced to death. A writ of error was issued out of this court. The entire record and proceedings had upon the trial have been returned, and are before this Honorable Court.

The State requested a verdict of murder in the first degree upon the basis that the evidence showed that the death of Harry Garwood resulted from bullet wounds inflicted while being robbed by the defendant.

The Crimes Act of this state is very plain and explicit in this class of cases, stating that whenever the evidence in any case shows that death has resulted in perpetrating the crime of robbery, it shall be murder in the first degree.

THE FACTS.

The defendant, Young, on Saturday, July 23rd, last, went to the Federal Street entrance of the Pennsylvania Railroad Ferry in the City of Camden and engaged Harry Garwood, a jitney driver to take him to Marlton, New Jersey.

They left the ferry entrance in Garwood's car, a new Ford sedan, about nine o'clock in the morning and went out the Marlton Pike in the direction of Marlton. When they reached Ellisburg, a distance of four or five miles from Camden, they stopped at the hotel and each had a soft drink paid for by Young. They resumed their journey and after going a short distance further out the pike, Young directed Garwood to stop the car. Young on the pretext of business went in the direction of a farm house. He returned to the car and told Garwood to drive back to Camden instead of Marlton. When they reached Camden, Young left the car at Fourth and Federal Streets and Garwood went on to the ferry.

Later in the morning Young went again to the ferry entrance and inquired for the fellow who had

the new Ford sedan. He was told that Garwood, to whom the car belonged, was in the restaurant located on the Market Street side of the ferry, close by the entrance. Young crossed the plaza and after locating the car entered it and sat on the rear seat.

Garwood was notified by a friend that there was some one in his car who desired to see him. He thereupon left the restaurant and went to his car, where he found Young who then engaged him again to go to Marlton.

They left the ferry on this second trip, shortly before noon, and went out Federal Street to the Marlton Pike, and out the pike to Ellisburg, where they again stopped in the hotel for soft drinks. After leaving the hotel they drove out Marlton Pike, a distance of probably two and a quarter miles, until they reached a little by-road running off from the right-hand side of the pike. When they reached this road, which was merely a wagon road out through the trees and bushes and little frequented, Young directed Garwood to turn into it. After going in off the pike, a distance of about five hundred feet, Young ordered Garwood to stop the car. The place was isolated with no houses or other signs of habitation and having every indication of being seldom frequented.

When the car was stopped, Young ordered Garwood to get out. As Garwood, who was a cripple, endeavored to comply with the demand and made an effort to get out of his seat, Young, who was standing on the running-board of the car, suddenly drew an automatic revolver loaded with steel jacketed bullets and fired directly at Garwood, the bullet striking him in the breast. As Garwood fell partly forward, Young took hold of his shoulders and pulled him forward. As Garwood fell from the car, Young

fired two more shots. Both of these bullets took effect in Garwood's head. One bullet went entirely through the skull and the other likewise, except the bullet in the latter case after passing entirely through the head lodged in the flesh on the outside of the skull. Young then dragged the body of Garwood through the bushes a distance of fifty feet, where he dropped him to the ground.

Young then commenced his search for valuables. The pockets were turned inside out, the shoes taken off in an effort to locate Garwood's money. Everything of value was taken—a gold watch, chain, crucifix, the money he had, and, even the shoes that he wore, defendant explaining the taking of these by saying, "They were too good to leave out there."

The job completed, the car and everything of value now his, and Garwood dead, Young drove off in Garwood's new Ford sedan car, leaving the body without shelter of any kind, exposed to all elements.

Young went to Haddonfield, not using the most direct course, but choosing instead the by-roads and back roads which were little frequented. He called at the home of a friend, Ben Martin, in Haddonfield, where he washed off a few blood stains from his face. Not finding Martin at home, he went to Camden to the home of the young lady with whom he was keeping company. To the people in this home and to several others, during the week following the murder, and prior to his arrest, he explained his possession of the car, by saying that he had just purchased it cheap. To some, he endeavored to sell it for five hundred dollars.

It is also the purpose of the state to show as a part of defendant's plan to steal that a week prior to the murder, he procured a fictitious bill of sale to be executed purporting to sell to him a Ford car.

This bill of sale was obtained on July 15th, and was signed "James Brown." The defendant then used this bill of sale as the basis to procure a set of auto tags and a driver's permit from a representative of the motor vehicle department in Camden. To conceal his identity, Young induced a friend to obtain them for him, and, this was accomplished by the friend using the bill of sale and signing the application as Guilford C. Young.

After the murder of Garwood, and the stealing of his car, Young, in an effort to conceal the identity of the car, changed the engine number so as to correspond with the number appearing in the bill of sale and in the application for auto tags that had belonged to Garwood and in their place used those which had been obtained by him the week prior to the murder.

During the week following the murder, and up to the time of his arrest, Young used the car in pleasure trips, taking his young lady friend, her family, and others on different trips.

The body of Garwood was found by a party of young men on Sabbath morning, July 31st. It was in a badly decomposed state, due to the fact that it had laid exposed to the elements and the unusual summer heat of that particular week. The flesh of the face and body had been partly eaten away by buzzards. The shoes were gone, no valuables on the body, or in the clothes, the pockets turned inside out and bullet holes in the head.

On Monday, August 1st, the body was identified as that of Garwood, and an investigation immediately started to ascertain the circumstances of his death. The preliminary investigation brought forth certain information that made it necessary to interview Guilford C. Young. He was located on Tues-

day morning about quarter of seven, sleeping, with an automatic revolver in his hand, in a Ford sedan car on the Mill road on the outskirts of Haddonfield. He was awakened and placed under arrest by officers Dennis and Hough, of Haddonfield Police Department. He endeavored to hide the revolver under a blanket. He was taken to police headquarters and searched. A leather revolver holster was found strapped about his body and in his pockets a quantity of steel-jacketed bullets similar to those with which the automatic revolver was loaded, and, which corresponded with the bullet found in the skull of Garwood.

Young immediately, after his arrest, was brought to Camden by Detectives Doran and Smith, and interviewed as to how he came into possession of the car that he had at the time of his arrest. He stated that it had been purchased by him, July 15th, from a man by the name of James Brown, whom he did not know, but had casually met in the saloon of James Daly, on Kaighn Avenue, near Haddon Avenue, Camden; that he had paid four hundred dollars for it, and had received a bill of sale for it at the time of the sale, and that if the officers would go to his home, they could obtain it, and thus see that he was telling the truth.

Later developments in the investigation revealed the fact that the number on the engine of the car had been changed, and, that the car was in fact the same one that had been sold by Flexon, an auto dealer, in Gloucester City, to Garwood, on July 21st, and therefore could not have been received by Young on or about July 15th, as stated by him, and as appeared in the bill of sale.

These facts were presented to the defendant, and he then explained that his first statement concerning

the circumstances under which he obtained the car was not the truth, but, that he had purchased a car from James Brown, as appeared by the bill of sale, and that after a few days, he found it did not run well, and when he again happened to meet Brown on the street, he had told him of this, and Brown had then promised to obtain another car for him, in place of the first one, and that a day or so thereafter, this present car, and the one he was in when arrested, had been delivered to him in place of the first car which was then returned. Young, however, was unable to make any explanation of how the engine number on the alleged second car was identical with the first car, as appeared in the bill of sale, executed more than a week before the alleged second car came into his possession. Young also denied knowing Garwood or that he had ever hired a jitney at the ferry, and also denied having stopped at the Ellisburg hotel on Saturday morning, July 23rd.

Subsequently, a search was made of Young's home and in the bureau in his room was found the watch, chain, and crucifix that had belonged to Garwood. These articles were brought to Young, and he was asked to explain how he came into possession of them. He denied knowing that they belonged to Garwood, and said they had been given to him by the James Brown, who had sold him the car.

The investigation by the State's officers showed that James Brown, whose name appeared on the bill of sale was in fact Ben Martin, the particular friend of Young, and whom Young had gotten to sign the name James Brown. When this fact was ascertained and presented to Young, he finally admitted that it was true, and that the bill of sale was fictitious, and had been signed by Ben Martin, instead

of James Brown, and, that the purpose of the bill of sale had been to give apparent title to stolen cars, and to enable Young to get a driver's license and auto tags for stolen cars.

The day following this admission by Young, he indicated a desire to tell the truth about how he had come into possession of the car, and personal belongings of Garwood. He thereupon on the afternoon of August 5th, gave a detailed statement or confession which was offered in evidence. In this confession the defendant admits having engaged Garwood to take him to Marlton, and that they made a second trip, and, that on this trip he got Garwood to drive the care to the secluded spot. He shot Garwood in the breast while in the car, and then shot him twice in the head after pulling him from the car. He then dragged him into the bushes and took all of his valuables and drove off in the car. The defendant in his confession explains the killing of Garwood by saying, "He thought he had been meeting his wife," but made no explanation of why he took the valuables and car belonging to Garwood.

The State denied any intimacy between Garwood and Young's wife, and, in fact that they did not know each other, and alleged the motive to have been robbery, and the jury rendered a verdict of murder in the first degree.

BRIEF OF THE ARGUMENT.

No assignments of error have been filed, and the plaintiff-in-error relies therefore only upon specified causes for reversal, being twenty-nine (29) in number.

POINT I.

Scope of cross-examination of defendant upon voluntary character of confession.

The plaintiff-in-error specifies as a cause for reversal under this point, the following:

> "The Court permitted the Prosecutor to cross-examine the defendant as to whether or not statements the defendant had made to the Prosecutor upon previous occasions were true, when the question before the Court was only whether the statements were voluntarily made."

This cause or reason for reversal, like many others specified by the plaintiff-in-error and hereinafter referred to is indefinite and does not apprise the Court and counsel for the State with sufficient precision of the injury, of which he complains, to make the point intelligible and determinable, and it is submitted for that reason it should be dismissed.

> *State vs. Herron*, 77 N. J. L. 523 (C. of E. 1908), p. 525;
> *State vs. Ruberstone*, 89 N. J. L. 285 (C. of E. 1916).

There does not appear to be any merit in the point probably meant by this cause, as shown by the fact that the plaintiff-in-error has not presented any argument relating thereto in his brief, but merely states the page of the testimony alluded to.

Before the introduction of a confession or a statement in the nature thereof, the preliminary question must be determined by the Court as to whether

such statement was voluntary in character, and the scope of such inquiry is within the discretion of the trial Judge. The judicial policy in capital cases, as set forth in,

> *State vs. Hill*, 65 N. J. L. 626 (C. of E. 1900), at p. 630,

was declared as follows:

> "When a confession is offered by the State in a criminal case it is the right of counsel of the prisoner before it is admitted, to cross-examine the witness who proposes to testify to it as to the circumstances surrounding the making of it, and the defense may also call at the same time, independent witnesses and examine them, going thoroughly into the whole matter as to how the confession came to be made, the parties present, the physical condition and state of mind of the prisoner at the time it was made, and then the Court with all these facts before it is to pass upon its admission."

The trial Court ruled that the questions asked by the Prosecutor on cross-examination of the defendant were admissible on the following grounds, as stated by the Court on page 233 of the Record, to wit:

> "The Court: I understand that, Mr. Cleary. You see these questions are admissible for several reasons; first, as to whether these statements were voluntary or involuntary; secondly, upon the condition of the witness' mind at the time that he made the statements, and they meet the questions that you have raised in your di-

rect examination; therefore I consider that it is proper cross-examination."

As a further declaration of the policy of this Court and as an indication of the great latitude permitted in the examination of witnesses to ascertain the voluntary character of statements, we have the further language of this Court in the above cited case at page 631, as follows:

> "It is the safer rule for the Court in cases where the life of a prisoner is at stake, to require a complete disclosure of all the facts and circumstances surrounding the confession, and to call upon the counsel of the State, and of the prisoner to give to the Court the fullest information possible to aid the Court in its decision upon the admission of the testimony, but no adjudication in this State so requires as a preliminary requisite to its admission."

The plaintiff-in-error contends, however, that the examination in this case was objectionable because the Prosecutor,

> "Was permitted to cross-examine the defendant as to whether statements previously made by the defendant were true."

It is claimed, however, that the truth or falsity of the statements contained in the confessions sought to be introduced had a direct bearing upon the voluntary character thereof. As stated by Justice Depue in the case of

> *State vs. Roesel,* 62 N. J. L. 216 (C. of E. 1898), at p. 227.

In quoting from 1 Greenl. Evid. Section 231.

> "The object of all the care which is taken to exclude confessions which are not voluntary is to exclude testimony not probably true."

It is therefore respectfully submitted that "as the question of the voluntary character of a statement is addressed in the first instance to the Judge, and since his discretion must be controlled by the attendant circumstances, the Courts have wisely forborne to mark with absolute precision the limits of admission and exclusion," and have permitted the widest possible latitude to ascertain the voluntary character of the statement.

> *Underhill, in Criminal Evidence,* Second Edition, p. 244, Sec. 126;
> *Hopt vs. People,* 110 U. S. 574 (583).

POINT 2.

Statements of Defendant.

The second cause for reversal set forth by the plaintiff-in-error is as follows:

> "The Court permitted the State to introduce in evidence certain statements made by the defendant to the Prosecutor on occasions previous to the trial. Such statements were not voluntarily made and should not have been admitted as evidence."

This cause for reversal, like the preceding one, is indefinite and subject to dismissal as being too general and not specific in character. It refers to state-

ments introduced by the State made to the Prosecutor. If it refers alone to statements made by the defendant to the Prosecutor it is then limited to the statement introduced by the State as having been made to the Prosecutor on August 5th (p. 319). This statement or confession was made verbally by the defendant in answer to questions directed to the defendant by the Prosecutor, and which questions and answers were reported stenographically by Edward I. Berry, the official court stenographer of the Second Judicial District of New Jersey.

Before the introduction of the proof of such questions and answers, said Edward I. Berry testified that the Prosecutor previous to the taking of said statement had stated to the defendant the following (319):

"By the Prosecutor:

"Q. Now, Mr. Young, you know I am the "Prosecutor of the county, whose duty it is to "investigate crimes. We have investigated the "death of Harry Garwood and you are held as "charged with that death. Do you wish to make "any voluntary statement to me concerning the "crime? If you do I am willing to hear it, but "only with the understanding that it can be "used against you in court. Do you wish to "make—and you don't have to make it if you "do not wish to—do you wish to make a volun-"tary, truthful, honest statement?

"A. Yes, sir.

"Q. Proceed."

Again at a point toward the close of the statement (348) the following questions and answers were testified to:

"Q. Now, Guilford, is this a true, honest "statement of all that you know?

"A. Absolutely the truth.

"Q. Do you make it voluntarily?

"A. Yes, absolutely the truth, nothing but "the truth this is."

Again at p. 350:

"Q. Why, if you would care to tell me; I want "it to be voluntary on your part.

"A. I am here to tell you everything that I "know.

"Q. I spoke to you about the charge that is "made against you for the death of Harry Gar- "wood when I started to take this statement; "now, if there is any other statement, or any "other thing, either the taking of cars or any- "thing else, that you wish to tell me of at this "time voluntarily on your part with the under- "standing that it can be used against you I am "perfectly willing to listen to whatever you "have to say, but I want it with the understand- "ing that it must be voluntary on your part and "can be used against you, and you do not have "to say anything if you do not wish to."

It may not be amiss to refer to a short history of the case leading up to the confession of August 5th, which was admitted by the Court as a voluntary statement by the defendant. The defendant upon his apprehension first denied any knowledge of the facts of the crime or the identity of Garwood, and made a false statement as to the means by which he had acquired the automobile which was found in his possession at the time of his arrest.

On the day of his arrest the prisoner was asked to explain when and where he had obtained the Ford sedan car which was in his possession and which was afterward proved to be the car of Garwood whom he had killed. He stated that he had purchased it from James Brown on July 15th, and had received a bill of sale for it which could be obtained at his home. It was afterwards ascertained that the car belonged to Garwood, having been identified by several witnesses and by numerous means of identification. The defendant continued to deny any knowledge of the car belonging to Garwood and insisted that he had purchased it on July 15th. Further investigation revealed the fact that the car in question had not been sold nor left the warehouse of Flexon, the Ford dealer (p. 100), until July 21st. When this circumstance was brought to the attention of the defendant he then admitted that his first statement was not true and that the car in question was a second car he had received from the same James Brown after returning the first car. He was then asked why this alleged second car, which was the one found in his possession at the time of his arrest, happened to have the same engine number as the first car as appeared in the bill of sale. The defendant was unable to make any answer to that inquiry, for the reason that there was only one car in fact and that the numbers on it were made to correspond with the numbers in the fictitious bill of sale after the defendant had killed Garwood and taken his car. The following day county detectives located in the home of the defendant the watch, chain and crucifix which had been the property of Garwood, and when these were presented to him and an explanation asked, he stated he had received them from the James Brown from whom he purchased the car. A day or two follow-

ing this it was ascertained that the James Brown who was alleged to have signed the bill of sale was a fictitious person and was in fact one, Ben Martin, a close personal friend of the defendant. He admitted in the presence of the defendant that he had signed the bill of sale as James Brown at the request of the defendant and that there was in effect no such car as was called for in the bill of sale, and that it had been executed merely to enable the defendant to procure license tags and driver's license for automobiles that he or they would in the future steal. This revelation by Martin was brought to the attention of the defendant on Thursday evening, August 4th, and the following morning, August 5th, the defendant sent word to the Prosecutor through the jail attendants that he desired to speak to him. Upon the defendant being brought to the office of the Prosecutor on the morning of August 5th, the following statements were made to the defendant by the Prosecutor, as testified to by the Prosecutor (p. 275).

When the Prosecutor testified at page 275 in rebuttal by consent his testimony related to the statements by the defendant at pages 239, 240, 241, 242, 243 and 244, and the testimony of the Prosecutor by said consent was to be considered as a rebuttal of said testimony of the defendant and to be in effect as follows:

> "Have you anything you want to say to me; I am willing to listen to it, but it must be voluntary on your part, with the understanding that this is a serious charge made against you in regard to this Harry Garwood, and it can be used against you. I am not going to make any promises to you, because the law will not permit me to do so, and I couldn't with justice to

you; there is no promise that I could make I could fulfil, and I have no promises to make, so if you have anything to say it must be voluntary on your part. Now, do you under the circumstances desire to make a statement?''

Again:

''Yes. I have told you I can make no promises; if you have any statement to make it must be voluntary on your part, and if I did make a promise I would be false to you and my duty as Prosecutor of this county. I must be honest and I must be fair and advise——.''

Again:

And that the defendant said to the Prosecutor in that conversation:

''Prosecutor, what can you do for me?''

And that the Prosecutor answered:

''What do you want me to say, Guilford?''

And that the defendant said:

''I want you to tell me what you can do, can't you do nothing?''

And the Prosecutor said to the defendant:

''Guilford, from the time I have first talked to you I have told you what my duty is and what your right is; I couldn't make any promise to you; I must be fair to you; I tried to be fair from the first.''

And that the defendant answered:

"Yes, sir, you have."

And that the Prosecutor then said:

"You know that, don't you?"

And the defendant replied:

"Yes."

And that then the Prosecutor said:

"And haven't we all tried to be fair with you."

And that the Prosecutor then said:

"Now, all through this investigation I have been fair to you, all the way through; I have brought the witnesses to you, I have told you everything I had and proved to you I wasn't telling you an untruth; you admitted everything we brought before you is true. Isn't it the truth? I have spoken the truth to you and I have every time that I have made a statement to you. When you have looked at me, I have said, 'I can prove everything.' I brought the proof of the man that saw you go away with Harry Garwood from the ferry. You know we found his watch and chain and crucifix out in your home. You know that you told us you bought the car from James Brown, isn't that true?"

And the defendant answered:

"Yes."

And that the Prosecutor then said to the defendant:

> "And then after you told us you bought it from James Brown and I told you you couldn't have bought it on the 15th of July, because the car had not been stolen yet from Mr. Garwood, you said that wasn't the truth, you said, 'I got the car from James Brown at Daly's saloon; I finally met him on the street and told him the car wouldn't work and got him to give me another car for it, and this is the one he gave me for,' didn't you tell me that?"

To which the defendant replied:

> "Yes, sir."

And again the Prosecutor said to the defendant:

> "And that you didn't know James Brown. We kept on with our investigation. I told you you had the bill of sale made out; I went and got the man who signed his name as James Brown, James Martin, he told you with his own lips, he told you you got him to sign the bill of sale, and all the way down I have taken you in and given you the opportunity of seeing all these things face to face, and you said you are up against a stone wall, or words to that effect. I have been fair, and you now ask me what I can do. The law will not permit me to make any promises, I can't. Any statement you make must be voluntary and it will be used in court. I could not make any promises, and I want nothing but the desire on your part to tell the truth. I have listened about your home life, and all about your trouble at home, and now you come

down to the very thing we are investigating, and that which you are being held for, that is, taking the life of Harry Garwood, and when you come to that, you say, 'What will you do for me, Prosecutor?' I want you to understand it is my duty as Prosecutor to investigate these crimes, I have put the evidence before you, I have played fair with you, and my conscience is clear, and all I ask now if you wish to tell me anything you may. You sent for me this morning; you told the officers you wanted to see me, I came here to give you that opportunity, it is up to you whether you wish to or whether you don't. Didn't I say that to you?''

And the defendant answered:

''Yes, sir.''

And that the defendant then said to the Prosecutor:

''Prosecutor, I don't know what to say.''

And that the Prosecutor then said to the defendant:

''Guilford, I know what the truth is, so far as the facts are, as we have them. I have told you honestly and truly what those facts show. Now, there is only to my mind, one thing—are they true or are they untrue, and if they are true, what was your reason, what led up to this? Those are circumstances that are locked up in your breast, in your own breast. If these circumstances are helpful to you in any way, and if you want to tell them, you have the right to,

but I can't tell you to do it or not to do it. It is for you to decide what is best."

To which the defendant replied:

"Yes, it is hard to decide, would be for you, wouldn't it?"

And to which the Prosecutor answered:

"It would be."

And that the defendant replied:

"By God, you are honest."

And that then the Prosecutor said:

"I have always tried to be, and the more serious the case the more honest I try to be. It is for that reason that I can't make any promises, because the law will not permit me to do so. I would be taking an advantage of you if I did. I would be doing something that I could not carry out, no matter whether you tell me or whether you don't."

And to which the defendant replied:

"You wouldn't take advantage of anyone."

And that then the Prosecutor replied:

"I wouldn't take advantage of anyone, I would not."

To which the defendant replied:

"Not on these grounds."

And that the prosecutor said to the defendant:

"On these grounds I certainly would not."

The attention of the Court is directed to the fact that throughout the defendant's testimony relating to this conversation with the Prosecutor it was only occasionally that he denied the statements, and in many cases stated that part or all of the statements made by the Prosecutor were made.

At the close of the above conversation the defendant requested an opportunity to see his wife and have a conversation with her. This request was granted by the Prosecutor and the wife was brought into the presence of the defendant, and he thereupon had a conversation with her in which he admitted for the first time having killed Garwood (pages 200-201).

After the conversation with his wife the defendant returned to the Prosecutor's office and made the confession of August 5th, page 319, etc.), subsequent to being warned by the Prosecutor as previously stated.

While the language used by the plaintiff-in-error, confines the alleged cause of reversal to statements made by the defendant to the Prosecutor on occasions previous to the trial, it may be however the intention to refer to a statement made by the defendant to Assistant Prosecutor Straw (page 289), on August 2nd, and also to a statement made by the defendant to County Detective Doran (pages 279, 280, etc.), on August 11th. For this reason the attention of the Court is further directed to the warning given to the defendant by Mr. Straw, which appears on page 289, as follows:

"Examination by Mr. Straw:

"Q. Mr. Young, my name is Straw, and I am an assistant to the Prosecutor here in Camden

County, and as Mr. Wolverton told you, you are detained in the matter of the investigation of the taking of the car belonging to a man by the name of Garwood, and I want to ask you questions. Of course, you understand that what you say to me can be used and will be used in court against you. If you are willing to answer, I should like to ask you some questions.

"A. I will answer them as near as I can."

And attention is further directed to the fact that this statement is in no sense a confession, but merely an examination of the defendant concerning his possession of the car in question, and the surrounding circumstances.

The answers made by the defendant in this statement were untrue as was subsequently admitted in later statements made by the defendant, and also by his testimony at the trial.

In view of the fact that it is not a confession, it is respectfully submitted that there was no basis on which a warning was necessary to the defendant, but that notwithstanding such lack of necessity, a warning was given that would have been sufficient even though the statement had been in the nature of a confession.

The plaintiff-in-error in his brief mentions particularly the testimony of Detective Doran, which he claimed was to the effect that they (the Prosecutor's office) "tell everybody that it is best to tell the truth, the truth won't hurt—to make a clean breast of it," and that "he tried to convince him to tell the truth," as an intimation that the statement of the defendant could not under such circumstances have been voluntary.

This alleged quotation of testimony of Detective Doran is not accurate nor in full, and if the entire

testimony of the detective is considered, it presents an entirely different aspect, and from which the plaintiff-in-error would not be entitled to draw the inference or conclusion that he seems to draw from the isolated, partial and incorrect quotation contained in the brief.

In this respect the Court's attention is respectfully directed to the testimony of Detective Doran, as follows:

At page 124:

> "By Mr. Cleary:
>
> "Q. Now, Mr. Doran, did you warn this defendant at the time he was making this statement that the statement could be used in court against him?
>
> "A. This defendant was warned time and time again."

And at page 125:

> "Q. I am not asking you that. I am asking you whether you warned him on this particular occasion, on this day?
>
> "A. Yes, we always warned him.
>
> "Q. Well, did you do it on this day?
>
> "A. Yes, I am positive we did.
>
> "Q. Is there a doubt in your mind?
>
> "A. No, no doubt. I kept warning him."

And at page 129:

> "Q. Now, do you mean to say you warned him not to say anything?
>
> "A. He (referring to Prosecutor Wolverton) warned him that whatever he said would be used against him in court, and if he made any statement to us, it would have to be voluntary."

And at page 130:

"Q. Did you try to do everything you could to advise him properly?

"A. I did, yes.

"Q. What did you do in that line?

"A. I told him his rights, warned him; that is all I could do.

"Q. Didn't you advise him what would happen to him in case he did not confess?.

"A. No, I did not.

"Q. Didn't you advise him what would happen to him in case he did confess?

"A. I did not.

"Q. Were you there when Mr. Wolverton was talking to him?

"A. Mostly all the time.

"Q. What did Mr. Wolverton say to him?

"A. Mr. Wolverton warned him thoroughly; there is not a time that Mr. Wolverton talked to him in my presence that he was not warned and told who was in the room at the time."

And at page 131:

"Q. Did Mr. Wolverton advise him of his rights?

"A. He did every time he talked to him."

And at page 144:

"By Mr. Wolverton:

"Q. Mr. Doran, was the defendant told from the time of his arrest that he didn't have to make any statement that he didn't wish to?

"A. We did not only once, but several times.

"Q. Was he told what he was held for?

"A. He was.

"Q. Was he told in whose custody he was?

"A. He was.

"Q. Was he told that if he made any state-

"A. He was.

ment it would be used against him in court?

"Q. Was there any promise ever made to him to favor him, or otherwise, if he told the truth?

"A. There was not.

"Q. Were any threats ever made to him that if he didn't tell the truth, what might happen to him?

"A. No.

"Q. Was he told on each occasion that if he had anything to say, it must be voluntary on his part?

"A. A number of times, time and time again."

And at pages 257 and 258:

"Q. Did you say to him that it was best for him to tell the truth to Mr. Wolverton, the Prosecutor, that he was the person who could help him if he did, and that if he didn't take advantage of that opportunity then that he wouldn't have it again, or words to that effect, which you heard this morning in his testimony?

"A. No, I did not.

"Q. Did you say anything of that character to him?

"A. I did on the first Tuesday that he declared that he was innocent. I talked to him on Tuesday and Tuesday night. He tried to prove to me by the bill of sale that he came into possession of the car honestly, and that he was in-

nocent of any crime. I told him if he was innocent—I told him if he was innocent of any crime, the truth would help him. That's the only time I used that phrase, and that was on Tuesday.

"Q. When was that?

"A. That was on Tuesday evening, long after we brought him to the office at Third and Market Streets, and then again in the evening, on the second, the day he was arrested.

"And that was after his first statement about the car had been proven false?

"A. Yes.

"Q. And he was maintaining his innocence at that time?

"A. He was, yes.

"Q. And you brought to his attention that he lied in the morning?

"A. I did that.

"Q. It was then you said if he was innocent he had better tell the truth and not lie?

"A. Yes, that is when I made the statement.

"Q. Did you say anything about coming through at that time?

"A. Not to my knowledge, I never used that word.

"Q. Or a clean breast?

"A. Never made that expression."

In addition to the testimony of Detective Doran denying the holding out of any promise or hope to the defendant is the testimony of the Prosecutor in which he likewise denies explicitly that any promise or hope was held out to the defendant as appears by his testimony already quoted in this brief, anl by his further testimony as appears on page 151, as follows:

"By Mr. Cleary to Prosecutor Wolverton:

"Q. I understand that, but that is not my question; I am asking you whether on this day you didn't say to him, 'It is better for you to tell the truth about it.'

"A. No, sir.

"Q. Or did you use words to that effect?

"A. No words to that effect of any kind or character, for I could not determine how it could be better for him to tell the truth; I believed he was guilty and if he told the truth, it would harm him rather than help him."

And at page 154:

"Q. Well, after he made that statement, didn't you then say to him that that was not the truth, and it would be best for him to tell the truth about it?

"A. I told him it was not the truth.

"Q. Didn't you tell him it would be best to tell the truth about it?

"A. I have never said that to any living soul; either in a serious offense such as this, or even in a minor offence."

And at page 157:

"Mr. Wolverton:

"I only wish to say this, which you did not dwell on with me: That at no time did I have any conversation whatever with any one, or any one under me without my having first told this defendant, whether statements were taken stenographically or otherwise, of the serious offence with which he is charged, that he did not have to make any statement unless he wished to. I

do that, not because the law requires it, but because I deem it for the best interests of the defendant, as well as of the State, because when a statement is introduced it is my thought it has more effect by the defendant having been told it, although the law does not require it; so that, following the practice, it has always been the custom and with which you are undoubtedly familiar, the defendant was always told of the offence, that he had to make no statement whatever, that if he did so, it would be used against him and that it must be voluntary on his part, and I think that you will find through the statements that they are subsequently introduced that the defendant time and again referred to the fact of the treatment he received at the hands of the Prosecutor of this county, and at no time made any statement to me or any officer of mine, or any one else had made any promise to him or any threats of any kind or that he had been treated in anything but the kindliest way. His expression was, 'You have treated me like a man, you have been square.' ''

The attention of the Court is called to the fact that the statement (pages 279 and 280), made by the defendant to Detective Doran on August the eleventh, in the nature of a confession and which was objected to on the ground that it had not been shown to be voluntary in character, was merely a reiteration of the same statements made by the defendant to the Prosecutor in the main confession of August 5th. It was made by the defendant at a time subsequent to his complete confession, and at a time when he was directing the officers in person as to the route he had taken on the day he killed Garwood, and as to

what was said and done at the different points on the trip.

It is therefore respectfully submitted that the statements made by Doran did not have any effect in influencing the defendant to make the confessions of August 5th or of August 11th. The alleged statement of Doran was made on August 2nd, and at a time when the defendant was being examined merely as to the ownership of the car found in his possession, and at which time as testified by Doran the defendant was maintaining his innocence in the possession of the car and upon his statements being found false, he was informed as testified to by Doran that if he was innocent, it would be better for him to tell the truth than to lie, that if he were innocent the truth could not hurt, but lies would. In addition to which there was the testimony of Doran and the Prosecutor, as previously stated, informing the defendant that any statement he made would be used against him in court, and that he did not have to make any statement at all if he did not wish to, and that no promise could be made to him, and that if he did wish to make a statement, it must be voluntary on his part. There was also intervening the conversations between Assistant Prosecutor Straw and the defendant, when the defendant was advised that he did not have to make any statements if he did not wish to, and that anything he said would be used against him in court. The statements alleged to have been made by Detective Doran could not have had the effect attributed to them by the plaintiff-in-error, in view of the other statements made by Doran at the time, and, the subsequent warnings and statements given to the defendant by the Prosecutor and the Assistant Prosecutor.

Furthemore, the defendant admits in his testimony at the trial that the statements of Doran did

not have any effect upon or in any way influence him (page 230), as follows:

"Cross-examination of Guilford C. Young, defendant.

"Q. All right; that is what you say he said to you?

"A. Yes, sir.

"Q. Now, if he did say that which he denied, you did not follow that advice, did you?

"A. No.

"Q. You continued to lie?

"A. Yes.

"Q. Therefore you did not believe that it amounted to anything what he had said to you?

"A. I didn't think so, no.

"Q. So that from Tuesday until Friday you continued to lie?

"A. Yes, sir.

"Q. And the only times you would admit the truth was when we would bring the witnesses before you and the facts, isn't that true?

"A. I never admitted the truth until Friday."

And at page 231:

"Q. So that anything that Dr. Doran might have said to you about it would be best to tell the truth did not have any effect on you?

"A. No, sir.

"Q. So that you were casting aside what he said and you continued to lie, were you not?

"A. Yes, sir.

The plaintiff-in-error further contends that the statements of the defendant were inadmissible as voluntary confessions because of the course of treat-

ment to which he was subjected by the officers from the time of his arrest. He testified that he had been struck and kept without food and without the opportunity to consult an attorney. The only testimony to sustain this contention comes out of the mouth of the defendant, and is not only uncorroborated, but was emphatically denied by all of the officers concerned, including Detectives Doran and Smith and Prosecutor Wolverton, as appears by their testimony on pages 260, etc., 271 and 157. Each of the above officers as appeared by their testimony had many years of service in official positions in Camden County.

The testimony showed that all of the officers in question had served long and faithfully in their several communities, and in their different official capacities.

It is therefore not strange that the Court preferred to take their statement of the proper treatment of the defendant in preference to his statement, especially in view of the fact that the defendant had lied continuously from the time of his arrest until the accumulation of proof produced by the officers made further falsehood unavailable.

The defendant undoubtedly had a feeling of resentment against those who had brought him to justice, and this undoubtedly prompted him to make the charge of ill treatment, and to benefit his own case and escape, if possible, the effect of his confession.

The statement in the brief of the plaintiff-in-error that the defendant was refused counsel was likewise denied by those to whom the defendant stated he had made the request, and they likewise denied that he had ever intimated or requested the desire to have the benefit of counsel until a week or more after his confession (page 145).

But even so, in *State vs. Murphy,* 87 N. J. L. 515 (C. of E. 1915), at page 530, it is held:

> "By no stretch of the imagination can the provision be construed that one accused of crime shall have the benefit of counsel to advise him as to whether or not he shall confess. Confession is a thing entirely apart from defense upon the trial."

The record discloses that the trial Court exercised extraordinary and painstaking care to ascertain all of the circumstances leading up to and surrounding the statements in question, and to that end exercised the greatest laxity and indulgence in behalf of the accused.

In conclusion upon this subject, it is respectfully submitted that the judgment of the Court in admitting the statements of August 5th and 11th, which were in the nature of confessions was justified from every legal standpoint. Notwithstanding the fact that the law does not require a warning to be given previous to the making of a confession, *State vs. Hernia,* 68 N. J. L. 299 (C. of E. 1902); nevertheless, as stated by the Prosecutor in his testimony (page 157), this was done in fairness to the defendant, and in order that in the event of a confession, it would have greater weight with the jury.

The testimony shows that from the time the defendant was first interviewed until the final statement of August 11th, there was never a time that he was not told of the seriousness of the charge, and that he did not have to make any statement if he did not wish to, and that if he did, whatever he said, would be used against him. The confession was in no way induced by threats, or obtained by any direct

or implied promises, relating to any benefit to be derived by the prisoner in the criminal prosecution, and, every requisite preliminary to the introduction of a confession as set forth in the declared judicial policy of this state was complied with.

State vs. Roesel, 62 N. J. L. 216 (C. of E. 1898);
State vs. Dolan, 86 N. J. L. 192 (C. of E. 1914);
State vs. Bullock, 65 N. J. L. 557 (C. of E. 1900);
State vs. Kwiatkowski, 83 N. J. L. 650 (C. of E. 1912).

POINT 3.

Alleged Limitation of Cross-Examination of Witness Morris.

Plaintiff-in-error alleges in his third cause for reversal:

> "That the Court erred in refusing to allow counsel for the defendant to cross-examine Joseph Morris as to certain acts of the said Morris at the time of an alleged statement to him by the defendant."

The reference in the brief of the plaintiff-in-error to this cause is as follows:

> "The Court should have allowed this cross-examination to show that the witness was acting as an officer of the law and the statement of the defendant was not voluntary."

The testimony of this witness (page 361) is to the effect that he was a constable of the County of Camden and that on August 5th, after the confession made to Prosecutor Wolverton, while in the county jail, the defendant, without any solicitation or questions being asked by the witness came forward to the witness and put his hands on his shoulders and said:

> "You look like a pretty good fellow. I killed that rotten ——— for running around with my wife."

To which witness said:

> "Who do you mean?"

And the defendant replied:

> "Garwood."

That the defendant then walked away and came back and said:

> "This fellow, Martin, is sending me to the chair, but I will send that ——— to State's Prison for what I know about him."

And then after putting his hands on the shoulders of the witness again the defendant said:

> "You look like a pretty good fellow; you look as if you would do a man a favor."

To which the witness replied:

> "I would if I could."

The defendant then said:

> "Will you go and tell my wife that I am sorry for what I said about her, that I didn't mean it; I only said it to help myself and if she will come in and tell the Prosecutor that she ran around with this man, but don't have to say she had anything to do with him, it will help me out and I will do the right thing by her."

This was the extent of the testimony of the witness. Counsel for the defendant on cross-examination after questioning the witness minutely as to what was said by the defendant and also what was said by the witness then sought to cross-examine him as to whether there was a newspaper in defendant's cell. He pursued this examination without objection to the point of asking the witness as to whether he had thrown the paper out of the window, and finally asking the question (page 370).

"Q. What paper was it, do you know?"

On objection the Court overruled the question on the ground that it was immaterial.

Subsequently, counsel for the defendant asked the question:

> "Q. And immediately when you saw that paper you wanted to know the boxing news in that old newspaper, did you?"

An objection was made and the Court overruled the question.

The two instances above enumerated are the only times that counsel for the defendant was limited in his cross-examination of the witness. There was no limitation of the cross-examination of the witness on

the fact that he was an officer of the law, nor any limitation in the examination of the witness as to the manner in which the defendant made the statement testified to by the witness, nor as to the statement being voluntarily made.

The only objection during the examination was to the scope of the cross-examination upon collateral matters. The line of questions relating to the alleged presence of a newspaper in the cell at the time of the conversation was limited because it had no relation to the subject-matter or direct testimony of the witness, and the citation of the following authorities disposes of this objection.

In the following quotation from *Greenleaf on Evidence*, 1896, Article 499, the learned author enunciates the following rule which in our judgment is dispositive of this cause.

> "But it is a well settled rule that a witness cannot be cross-examined as to any fact which is collateral and irrelevant to the issue merely for the purpose of contradicting him by any other evidence, if he should deny it, thereby to discredit his testimony. And if a question is put to a witness which is collateral or irrelevant to the issue his answer cannot be contradicted by the party who asks the question, but it is conclusive against him."

And in an adjudication in this state found in *Record vs. Pennsylvania Railroad*, 67 Atl. Rep. 1041, Supreme Court, 1907, page 1042, the law on this subject was likewise laid down:

> "It is further urged on behalf of the Lehigh Valley Railroad Company that the trial Judge erred in arresting the further cross-examination of the plaintiff's witnesses, Noble and Flanagan.

> They were being questioned at the time upon collateral matters, for the purpose of testing the credibility of the witness, when the trial Judge of his own motion overruled the questions. We think the action of the trial Judge was within his discretion and that there was no palpable abuse of that discretion. The Court's action in that respect is therefore not subject to review."

POINT 4.

Pierce Testimony.

The defendant in his statement of August 5th (page 332) stated that Allen Pierce on one occasion came for him and told him that there was someone in the house with his wife, but that when they reached there they had gone, and that Allen Pierce had stood at the back of the house.

Allen Pierce was called as a witness for the State to contradict this statement (page 378) and was permitted to testify that no such circumstances had ever happened. The plaintiff-in-error by his fourth cause for reversal states:

> "That the Court erred in allowing Allen Pierce to testify to certain facts contradicting a statement of the defendant alleged to have been made on occasions previous to the trial."

This point has been expressly decided in favor of the trial Court's ruling in *State vs. Abbato,* 64 N. J. L. 658, Court of Errors, 1900, in the following manner:

"The next assignment of error relates to the admission of testimony offered by the Prosecution for the purpose of contradicting a statement made by the prisoner in his confession. There was no error in admitting this evidence. The rule is elementary that if, after the whole statement of the prisoner is given in evidence, the prosecution can contradict any part of it. He is at liberty to do so; and then the whole testimony is to be left to the jury for their consideration precisely as in other cases where one part of the evidence is contradictory of another."

POINTS 5, 6, 7.

Relating to Testimony of John Williams, Lewis Shaw and James Lockwood on the Subject of Escape.

The fifth, sixth and seventh causes for reversal are considered by the State collectively, because they relate to the same subject matter.

The State introduced into evidence the testimony of John Williams, Lewis Shaw and James Lockwood, whom the defendant, while confined in the county jail awaiting trial, had requested to secure for him certain hack-saw blades.

The witness, John Williams, testified that he had known the defendant for several years, and upon receiving a letter signed with the name of Geitz, containing a request for him to call at the county jail that he do so, and that as soon as he made himself known Geitz called for Young, who immediately came and held a conversation with him as follows (p. 403):

"Q. What was said by Guilford Young to you and by you to Guilford Young?

"A. Yes, Young says to me, 'If you will get me six hack-saw blades I will give you $900.00.' The words that I says, 'No, sir, I haven't got the nerve,' or 'Not for all the money in the world.' The words he said to me, 'That is what I call a man,' that is the words he said."

Lewis Shaw, another witness called by the State testified that he had known the defendant for several years and that he had occasion to visit the county jail during the time the defendant was confined there, and that the defendant when he saw him entered into a conversation to which he testified (page 411), as follows:

"Q. Since the defendant has been arrested charged with taking the life of Harry Garwood and been incarcerated in the county jail, have you had a conversation with him, and if so, when was it?

"A. Why, it was about the 1st of October, about the first week in October.

"Q. Now, what was that conversation?

"A. Why, I saw him in the cage, in the county jail, and he said—I just spoke to him, he knew me, and he asked me how things were outside. I told him, 'Rather slow,' and he said, 'This is an awful fix I am in, isn't it?' and I did not answer him the first time.

"Q. Go ahead.

"A. Then he remarked again, he said, 'This is an awful fix I am in.' I said, 'Well, what did you kill him for?' and he said, he had been drinking bad whiskey; that is all he said about it.

"Q. Did he make any request of you?

"A. Yes, he asked me to get him some hack-saw blades.

"Q. Well, just what did he say he wanted them for?

"A. He asked me to get four hack-saw blades, said he could get out if he had the blades. I didn't make him any answer."

The testimony of James Lockwood (page 421), is to the effect that his father was confined in the county jail during a part of the time the defendant was confined there, and that the witness called to see his father, and while talking to him the defendant came over and said:

"Son, get me six hack-saw blades, and here is a dollar, you can get them at any hardware store around."

The plaintiff-in-error alleges as his fifth cause for reversal:

"That the Court erred in allowing the testimony of John Williams, Lewis Shaw and James Lockwood as to certain requests alleged to have been made by the defendant to secure for him certain hack-saw blades."

The plaintiff-in-error in his brief contends that the above testimony was inadmissible because it showed no escape or attempt to escape from jail, but only an intent.

There is apparently no direct adjudication in this state on this subject, although in *State vs. Jaggers*, 71 N. J. L. 281 (C. of E. 1904), evidence of an attempt to commit suicide was held admissible and the rea-

soning therein contained would apply with equal force to an attempt by the defendant in this case to procure the means for his escape from jail.

In the above mentioned case the Court held:

> "It has always been recognized that the flight of one accused of crime or his escape from custody under a criminal charge may be given in evidence upon the trial of an indictment for the crime charged. Such evidence is deemed when unexplained to raise some presumption of guilt akin to the presumptions deemed to arise upon the fabrication of false evidence or the suppression of true evidence. Whart. Cr. Prac. Par. 724. Wills Cri. Ev. Par. 78, et seq. The principle upon which such evidence is admitted against an accused person, we deem applicable to evidence that the accused when in custody charged with the crime attempted to take his own life, and thereby escape further prosecution."

Upon this principle the evidence objected to in this case was plainly admissible.

The principle upon which this class of evidence is admitted is not particularly the overt act, but the disclosing of a consciousness of guilt. In 16 *Corp. Juris*, 564, it has been held that:

> "Evidence against accused after his arrest, escape or attempt to escape, that he had tools in his possession for that purpose, that he offered a guard or other officers a bribe to permit him to escape, or that he intended to escape, is relevant and may be considered by the jury as tending to show consciousness of guilt. Evidence of an attempt to escape is admissible, although its

proof necessarily tends to prove a designated crime, although the accused admits that he committed the crime of which he stands charged."

In *Underhill on Criminal Evidence,* Second Edition, page 218, it is said:

> "The attempts of the accused to escape while confined in jail may be shown as circumstances proper to be considered, and to be given such weight as they are fairly entitled to, with the other evidence, in determining the guilt or innocence of accused. The prosecution may show by questions put to the accused on his cross-examination, or by other witnesses that he had attempted flight, or that he had by concealment or by other means attempted to escape from arrest or custody; that he had offered a bribe to procure his escape, that he had requested a fellow prisoner or some other person to bring him tools for that purpose, or that he was actually in possession of such tools."

In *State vs. Bradford,* 41 So. 462, Ala. 1906, a letter was admitted into evidence wherein the defendant declared an intention to escape as warranting an inference of a consciousness of guilt. In *State vs. Jackson,* 8 Southwestern, Rep. (Missouri, 1888), a fellow prisoner's testimony of a request of the defendant to assist him in escaping from jail, with the following declaration by the Court at page 761:

> "Such testimony rests upon the same fact as escape or attempts to escape."

In *People vs. Shafer,* 119 Pacific, Rep. 920 (Cal. 1911), a letter written by the defendant while in

jail, was admitted into evidence, which contained a request to the addressee to bring to the jail a steel saw. In the appellate court the admissibility is shown in the following declaration:

> "It contained written declarations by appellant that his purpose and intention to escape from jail, if possible, and also that which might be reasonably considered as an admission of his guilt. If similar oral statements had been made by appellant testimony concerning them could certainly be received. That he reduced them to writing makes them no less admissible. They are received as tending to reveal a consciousness of guilt, and the fact that the appellant was not furnished the saw, and therefore he made no attempt to carry his purpose into execution, does not affect the question."

The sixth cause for reversal states:

> "That the Court erred in allowing the testimony of John Williams and James Lockwood, because the purpose of the defendant in making the alleged request for the hack-saw blades was not shown by said testimony."

The reason advanced in this cause was not advanced at the time of the trial nor was there a motion to strike out the testimony of Williams and Lockwood upon this basis, or any requests to charge relating to its effect. Consequently there was no ruling or action of the trial Court of which the defendant might avail himself. There were, however, circumstances given in the testimony from which the jury would be justified in determining the purpose of the defendant.

The seventh cause for reversal states:

> "That the testimony of the said John Williams and James Lockwood was incompetent, irrelevant and immaterial to show guilty knowledge, because counsel of the defendant admitted in open court that the defendant did kill Harry Garwood, and the only question before the Court was whether the defendant was justified in killing the said Harry Garwood, or whether he was guilty of any degree of murder."

Even though the defendant through his counsel admitted killing Garwood the State was not thereby restricted to any mode or line of evidence in proving its case, and had a right to resort to any legal evidence at its command.

In *State vs. Garrison,* 49 S. W. 509, Missouri, 1898, it was held:

> "No error was committed in refusing to strike out the testimony of the witness Dillingham, to the effect that the defendant escaped from jail of Platte County in September, 1897, although defendant may have never denied the killing, as claimed by him. The State was not restricted to any one mode or line of evidence in proving its case, and in so doing had the right to resort to any legal evidence at its command; and as flight by a person accused of crime in order to avoid arrest always raises a presumption of guilt, such evidence was properly admitted for that purpose, notwithstanding his guilt might have been sufficiently proved by other evidence."

POINTS 8, 9, 10.

Testimony of Harry Randell relating to statements made to him by defendant to be put in the body of a letter from the defendant to his wife.

These points will be considered collectively by the State because they relate to the same subject matter. These several causes for reversal are as follows:

> "8. That the Court erred in allowing Harry F. Randell to testify by refreshing his memory from a letter which he held in his hand and read word by word."
>
> "9. That the Court erred in allowing the said Harry F. Randell to read a letter which had been sent by the defendant to his wife. This letter was a confidential communication between husband and wife, and the contents should not have been disclosed in the trial of the husband for murder."
>
> "10. That the Court erred in allowing Harry F. Randell to testify as to his recollections of the contents of said letter because the letter was written by the said Harry F. Randell in a confidential capacity and the said Harry F. Randell should not have been permitted to divulge its contents."

The defendant by his statement of August 5th had intimated that his reason for killing Garwood was because of an alleged intimacy between defendant's wife and Garwood. He made this statement to refute the theory of robbery that naturally arose from the fact that immediately after the killing of Garwood he took the automobile belonging to the de-

ceased and all things of value from his person. The State tried the case upon the theory that this claim was false and merely a subterfuge to escape a just punishment, and in this connection produced as a witness Harry F. Randell (page 429). This witness testified that while confined in the county jail the defendant requested him to write a letter to his wife and made certain statements which the witness testified to by refreshing his memory from the letter which was in his handwriting and written at the time the statements were made to him by the defendant. These statements were to the effect of the following (page 440):

> "My dear Wife: I am dropping you a few lines to let you know that they had Martin and I together yesterday for cross-questioning. He had lied about everything; he said that I stole the automobiles, which is a lie. He said it is the truth and will stick to it until death, so there is only one thing for me to do, is for you to stick by me. Say it is the truth, dear wife, and that Garwood had you and had been running around with you, for you are the only one that can save my life. Do you know that I am in an awful fix? But never mind the disgrace to the name, for they can't do nothing to you; they can't bring you into the case in any way. I realize now what a good wife you was to me; I used to think that you did not love me, but now I see that your whole heart and soul is in me, but now it is too late to realize it, for I love you, dear wife and always will, and will take you many miles where no one knows us and start life over, if I ever get free from this torture. So please, dear wife, do that for me. If it will save my life I will do everything in the world to make

you happy; there will be nothing too much for me to do for you when I get out. Never mind what is said about you on the witness stand, for you know that I know different, for I know that you are a good wife, and I love you for now for no one will lead me astray again, I shall love you and the children only. In speaking of Garwood I know it would be awful hard to you, but you know my life is worth a whole lot for you. I will only have to serve a few years in prison and won't get the chair. I prayed for you all last night, for you, what to do all night, for God tells me to send you this message. You know when I get out of prison I will make a man of myself, I will have a good education, for they send all prisoners to school, and I will take up mechanical engineering so I can step out into the world and make good money to make you happy, and trust in God that this letter gets to you, for I am sneaking it out so no one will know but ourselves. So God bless you and don't forget that my life is in danger. Your heart broken husband. P. S. Burn it up as soon as you read it. I hope you and the children are all well. Goodbye."

The admissibility of the subject matter of the above conversation was not questioned, but only its method of disclosure. The defendant made the statement to the witness who in turn placed it in writing for the purpose of transmission to the wife of the defendant. There was no evidence before the Court that the defendant was unable to write.

For the purpose of refreshing the mind of the witness he was allowed to testify from the memorandum (not read word for word as alleged in the brief of

the plaintiff-in-error) which he (the witness) reduced to writing at that time. This procedure was fully justified by adjudications in this state of which one of the leading cases is *Myers vs. Weger*, 62 N. J. L. 432 (C. of E. 1898), page 440, wherein the Court held:

> "The use by a witness of his own memorandum made at or near the time of the events recorded, is not merely to refresh the memory by reviving first impressions, but also to supplement the memory by preserving details that would otherwise be forgotten. In a case of the latter class, the witness is able to prove the details not by remembering the particulars that confuse them, but because the circumstances under which the memorandum was made afford satisfactory assurance that at the time of the entry its contents were known by the witness to be true. It follows that a witness in using his own memorandum may not merely refer to it, but may also testify from it. It may be added that the use of a memorandum rests very much in judicial discretion."

The letter was not offered as evidence itself nor does it appear in the case that the same ever reached the defendant's wife, nor how it came into custody of the witness. There is a line of cases which has held admissible a letter even written by the defendant when produced into Court by a third person.

In *State vs. Wallace*, 78 S. E. 1, North Carolina, 1913, at page 3, it was held:

> "The authorities seem to be uniform that a third person may testify to an oral communication between husband and wife, although his

presence was not known; but there is much diversity of opinion as to the right to introduce a writing from one to the other in the hands of a third person. The cases are collected in the notes to Gross vs. State, 33 L. R. A. (N. S.) 478, and Hammons vs. State, 3 Ann. Cas. 915. It is difficult to find a satisfactory reason for the distinction. The rule of the common law is based on the confidential relationship existing between husband and wife, and the importance to the public of maintaining this relationship, deeming it wiser and to the public interest for some particular evidence to be suppressed than to require the husband or wife to disclose a communication between them, as to do so 'might be a cause of implacable discord and dissension between the husband and wife, and a means of great inconvenience' (State vs. Brittain, 117 N. C. 785, 23 S. E. 433, 434); but the inhibition is as to the husband or wife and not to a third person, and if the communication by the husband is in writing, and is procured by a third person, without the consent or privity of the wife, the reason for the exclusion of communications at common law no longer exists. In our opinion the rule is stated correctly in Whar. Cr. Ev. Par. 398: 'Confidential communications between husband and wife are so far privileged that the law refused to permit either to be interrogated as to what occurred in their confidential intercourse, during their marital relations, covering, therefore, admissions by silence as well as admissions by words. The privilege, however, is personal to the parties; a third person who happened to overhear a confidential conversation between husband and wife may be

examined as to such conversation. A letter, also, written confidentially by husband to wife, is admissible against the husband, when brought into court by a third party.'"

The common law privilege as to confidential communications between husband and wife is personal to the parties, and it has been frequently held that a third person may even testify to a conversation between husband and wife that he may unintentionally have heard.

Whart. on Criminal Evidence, Par. 398, page 815; 10 Ed. Vol. 1;
Taylor vs. Winsted, 129 N. E. 259, Id. 1920;
State vs. Randall, 87 S. E. 227;
And in *Com. vs. Wakelin*, 120 N. E. 209 (Mass. 1918),

it was held:

"The circumstances that the conversation was between a husband and wife while they were physically alone is no ground for objection. There is no rule of law that third persons who hear a private conversation between a husband and wife shall be restrained from testifying what it was. Commonwealth vs. Griffin, 110 Mass. 181. It is of no consequence whether such conversation is overheard by a witness nearby concealed from observation, or by one at a distance enabled to overhear by means of electrical or other devices which carry the sound of the voice. The provision of R. L. C. 175, Par. 20, Cl. 1, simply prohibits either the husband or the wife from testifying to private conversations with one another. It forbids one method of proof, but does not exclude proof by other

means. Sampson vs. Sampson, 223 Mass. 451, 458 to 460, 112 N. E. 84."

POINTS 11, 12, 13.

State of Mind of Defendant on Day of Shooting.

These points relate to causes for reversal 11, 12 and 13, which are as follows:

> "11. That the Court erred in not allowing the defendant to state the thoughts that were in his mind at the time he met Harry Garwood, on the day of the shooting and hired the said Harry Garwood to take him to the place where the shooting occurred.
>
> "12. That the Court erred in refusing to allow the defendant to state the thoughts in his mind at the time of the shooting of the said Harry Garwood.
>
> "13. That the Court erred in not allowing the defendant to state what his thoughts were upon the day of the shooting. The thoughts of the defendant constituted his state of mind and should have been admitted in evidence."

These causes for reversal are subject to attack by virtue of their indefiniteness, and in that they are too general and do not point out with precision the evidence which it is claimed was erroneously rejected; and the brief upon these points is likewise indefinite and general and leaves counsel and the Court to surmise, and therefore should not be of avail to the plaintiff-in-error.

State vs. Herron, hereinbefore quoted, 77 N. J. L. 523 (C. of E. 1908, at page 525):

"The object of this section is plain. It was to apprise the Court and the counsel for the State of the cause for reversal with sufficient precision to make the point intelligible. It should, therefore, where the objection is to the admission or rejection of evidence, point out the precise evidence which was erroneously admitted and the precise offer which was erroneously rejected. If this is not done it becomes incumbent upon the counsel for the State and the Court to examine the whole of a record which may be very voluminous, and the object of the act is not achieved."

These causes are also not well grounded in fact. The Court was very patient with the defendant in the trial of the case and allowed a broad examination of the defendant upon the question of the state of his mind upon the entire day of the shooting. The Court did not refuse to admit testimony to the extent claimed by the defendant but on the contrary permitted the defendant to testify thereto. In this particular, the attention of the Court is directed to the testimony of the defendant, on direct examination, at pages 474, 475, 476, which is in part as follows:

"Q. Now, will you relate the conversation that occurred between you and Garwood?

"A. Well, now, am I to—I don't quite understand what I am to do. Am I to tell the feeling I had when I was on the train or what I said to Mr. Garwood?

"Q. Yes, that's better. *Tell me what feeling you had in your mind and what was the state of your mind when you saw Mr. Garwood?*

"Mr. Wolverton: Do you withdraw all other questions?

"The Court: He said he wanted to know the state of mind when he saw Mr. Garwood. I will allow that.

"A. Well, my mind was that morning, I would work until noon, which I was going to be laid off, and *I thought* I would go out West and leave my troubles behind, and I seen Mr. Garwood from the train, before I got off, from the window, which I was sitting on the right-hand side when the train pulled in. *I thought* it must have been a godsend to see the man there who I had played hide and go seek with me for so many years, the man who I had tried to catch up to for a long while. *I thought* that was my opportunity then and my last chance to talk to him. I walked out and I hesitated, when I got out where the ferry boats was, *whether I would* say anything to him or *whether I would go on* across the river, so I walked out to him. I said, 'You are running a jitney?' He said, 'Yes, sir.' I said, 'Your name is Garwood.' He said, 'Yes, sir.' I said, 'I want you to take me out by Ellisburg,' or Marlton which I just don't recall which I said. He said, 'All right.'

"Q. Go ahead, Mr. Young.

"A. So I got in the car, or in fact, I said, 'How much are you going to charge me?' He said, 'Three dollars for taking you out.' I said, 'I want to come back into Camden again.' He says, 'It will be a dollar more.' I said, 'All right, that is $4.00 for the trip.' I got in his car, which *I didn't intend to go to Ellisburg, but my intentions was* to get outside of Camden a ways, *not with the intention* of beating him

up, *but with the intentions* of talking to him about some family affairs that I had, which my intentions was, which I was disgusted, *and I was going to ask him* if he wasn't tired of running around with other men's wives, that he wanted someone else's wife so bad he may have one of his own, and I wanted him to take my wife and children, two children, and take them and live with them and keep them, seeing he wanted them, and the traffic was rather heavy that morning, which I thought I would make him go over and get her.

"Q. Thought you would what?

"A. The traffic was rather heavy on Marlton Pike that morning.

"Q. What did you say you thought, you could make him do what?

"A. *I thought I could make him take her and keep her.* And we rode out as far as Ellisburg, I got thinking the thing over, and I thought, 'Well, is there any use of saying anything to him or not?' Which I did think quite a bit of the two children, and I thought, 'Well, maybe it will be as well to go away and not say anything to him, because perhaps he will keep her anyway,' and I invited him in to have a drink at the Ellisburg Hotel, and I didn't know what to tell him when I got to Ellisburg; I couldn't very well tell him that I had taken him out there to buy him a drink; so I thought I would go on down as far as Howard Shivers, which I know him, being a farmer there ever since I have been in Haddonfield, for the last thirteen years, fourteen or fifteen years; I told him to drive into that farmhouse, which he did, which was Howard Shivers'. I got out of the car, which Harry

Garwood stopped in front of Shivers' house, which he meant to drive into the lane off Marlton Pike. I walked into the barn which Howard Shivers' son which I knowed was milking cows, and I asked him if there was a man there by the name of Jones or some other name, which I don't quite remember whether it was Jones or not I asked for, which I think it was. He said, 'No,' and I said, 'All right,' and I stepped back and said to Harry Garwood, 'Now, we will return to Camden.' So we came back to Camden which then it was somewhere around eight o'clock in the morning when we came back into Camden, it wasn't quite eight, but pretty close on to it, and we got at Fourth and Federal, and I told him to let me out there, and I paid him $4.00 for the trip. I went down to a place where I know on Fourth Street——."

Also on page 478, as follows:

"Q. What was your condition at that time so far as intoxication was concerned?

"A. Why, at that time, if I am not mistaken, the liquor, which I hadn't been drinking anything for quite a while, had worked on me pretty good, which there is several of them said to me, 'Where did you get it?' as I passed them, but I don't know whether I was staggering or not; I don't think I was, I might have been. So I started into the ferry house door and I seen Garwood's machine on the opposite side of the street, but did not see him. *I got thinking, as I seen the machine,* it kind of made me a little angry to think that the man who had played hide and go seek with me so many years was now in my hands, and I had a chance to talk to

him. I started back to go and see him. I stopped, *I thought, 'Well, no,* I will go on across the river.' Well, I walked back again to another jitney, and I asked if that was Garwood's machine across the street, I think, and he said yes, and I started over there. I got over to his machine, and a couple of fellows said, 'Are you looking for a car?' The answer I made to them I just can't remember, *but I thought that I wouldn't bother,* I would go on across the river and get my money and go on away, *which my mind was in a rocky condition, whether I wanted to speak* to him about my wife *or whether I didn't,* and someone came up to me, which I don't remember who now, and said, 'This is Garwood's machine,' and if I am not mistaken, got hold of me by the arm and helped me in the car, and about that time Harry Garwood came out and got in the car.''

The defendant was further examined by his counsel, as to the state of his mind at the time he shot Garwood, as follows:

''Q. What was the state of your mind upon that occasion?

''A. The state of my mind on that occasion, my mind was in a state that I don't know what it was.''

The defendant was also allowed to testify as to the intent of his actions upon the day of the shooting, in order to rebut the motive of the State of robbery, as follows (page 501):

''Q. Now, Mr. Young, did you or did you not

intend to rob Mr. Garwood at the time that you shot him?

"A. I had no idea of such a thing."

Again at page 511:

"Q. Did you have any intentions, when you shot this man, of robbing him?

"A. No, sir, I never had no intentions of shooting him.

"Q. Had you any intentions then of taking his automobile?

"A. No, sir.

"Q. Or his watch or chain?

"A. No, sir."

The case of *State vs. Agnew*, 10 N. J. L. J. 169 (Burlington County Oyer, 1887), dealt principally with the condition or state of mind of the defendant as the result of intoxication, and the reference quoted from the case was a portion of the charge of the Court dealing with the state of mind as the result of intoxication. This was not the point involved in the present cause.

An examination of the testimony of the defendant, on direct examination, at pages 474 to 478, removes any doubt that the defendant was not given every opportunity to state the thoughts that were in his mind on the day of the shooting, also his intentions with respect to the deceased; and the latitude permitted to the defendant in this respect was so great that there can be no justification in his complaint that he was prevented from testifying as to the state of his mind on the day of the shooting.

POINT 14.

Testimony of Conduct of the Defendant Subsequent to the Shooting, Relating to Attempt to Secure Employment.

The cause for reversal under this point is stated by the plaintiff-in-error as follows:

> "14. That the Court erred in refusing to allow the defendant to testify as to his actions following the killing of Harry Garwood."

This cause is also subject to attack by virtue of the fact that it is too general and does not precisely point out the evidence claimed by the plaintiff-in-error to be erroneously excluded.

The brief of the plaintiff-in-error, however, refers to the testimony of the defendant on page 513. The defendant was questioned as to his attempt to obtain a position on Monday, the second day after the commission of the crime, as follows:

> "Q. Now, Mr. Young, did you go to Philadelphia and attempt to get a position on Monday?
> "A. I did.
> "Q. Where?
> "A. At a rug factory.
> "Q. And how long did you offer to work for them there?"

An objection was interposed by the Prosecutor, on the ground that it was immaterial as to what was said by the defendant as to how long a time he offered to work. The question was overruled on the ground that it was not material.

It is very difficult indeed to see on what basis the inquiry as to whether the defendant, two days subsequent to the commission of the crime, had applied for a position in Philadelphia, could be material; but if this was material, the defendant was given the benefit thereof without objection and there was no error committed, neither was the defendant prejudiced in his defense, by the refusal of the Court to permit him to testify as to the length of time he offered to work.

POINT 15.

Cross-Examination of Defendant.

The 15th cause for reversal is as follows:

> "15. That the Court erred in allowing the defendant to be cross-examined by the Prosecutor upon matters that were not brought out in direct examination."

This cause is also subject to the same attack as has been directed to many of the causes preceding this, in that it does not specify with preciseness the particular evidence which it is claimed the Court erroneously admitted, and is therefore too general and indefinite to be properly discussed.

The contention of the plaintiff-in-error, however, is without merit, because the cause assumes an erroneous premise, namely, that the defendant was cross-examined on matters not brought out in direct examination.

The defendant took the stand in his own behalf and was examined upon his direct examination in detail, as to the particulars of the crime and his con-

duct on the day in question and his conduct subsequent thereto and with relation to the truth of statements which he had made to the representatives of the state. The cross-examination was fully within the scope of this examination-in-chief.

It would seem that the facts in this case are well within the decision of this Court in the case cited in plaintiff-in-error's brief, *State vs. Zdanowicz,* 69 N. J. L. 619 (C. of E. 1903); and even though there has apparently been no declared adjudication by this Court on the question of the scope of the cross-examination of a defendant in a criminal case, on matters not opened on direct examination, that fact does not affect the present case, because the facts herein do not raise the question. It may, however, not be amiss to refer to the following:

In *State vs. Disque,* 49 N. J. L. 249 (Supreme Court, 1887), it was held, in an opinion by Chief Justice Beasley:

> "The subject of interrogation was clearly relevant, as it tended to show the malice of the defendant toward the deceased, and the extent of the cross-examination of a witness into pertinent facts not touched by the direct examination is a matter resting entirely in the discretion of the trial Court. Since the passage of the statute capacitating parties as witnesses it has been the general practise, both with respect to civil and criminal procedure, to permit such testifying party to be cross-examined on the whole case, and such judicial action being founded in discretion, is not a matter on which error can be assigned."

One of the theories of the object of cross-examination is to bring out facts suppressed or undevel-

oped in the examination-in-chief, which diminish the trustworthiness or impeach the credit of the witness, and in 40 *Cyc.* 2510, it was held:

> "The examination of a defendant in a criminal prosecution who testifies in his own behalf is subject to the same rules as competent in the cross-examination of another witness, and the extent to which it shall be allowed rests in the discretion of the trial Court, although it has been considered that a very wide latitude should be allowed in the cross-examination of a defendant who takes the stand in his own behalf and denies commission of the offense."

POINT 17.

(Not briefed by plaintiff-in-error.)

The plaintiff-in-error, by his 17th cause for reversal, states:

> "17. That the Court erred in refusing to allow the defendant to testify as to his relation with his wife."

This cause is eliminated from the brief of the plaintiff-in-error and it is therefore assumed that it has been abandoned.

The facts of the case are that throughout the entire direct examination and cross-examination of the defendant, he testified fully and completely as to the relationship existing between himself and his wife, from a time previous to their marriage until after the commission of the crime, and it is therefore thought that counsel for the plaintiff-in-error, after examining the record more carefully, was con-

vinced that there was no foundation in fact for this cause of reversal and did not therefore brief the same for argument.

POINTS 16, 20, 21, 22.

Relating to alleged prior consultation with attorneys and others, concerning domestic affairs.

These points will be dealt with collectively, as they relate to the same subject-matter. They relate to causes Nos. 16, 20, 21 and 22, which are as follows:

> "16. That the Court erred in refusing to allow the defendant to show that he had consulted attorneys about his domestic affairs."
>
> "20. That the Court erred in refusing to allow the testimony of Samuel M. Roberts, Esquire."
>
> "21. That the Court erred in refusing to permit Cyrus Marter, Esquire, to testify for the defendant."
>
> "22. That the Court erred in refusing to permit the defendant to introduce the testimony of Samuel French, Esquire, George Harker, Officer Quinn, Officer Baxter, Evered Downs and Justice William H. Harrison."

These causes are likewise subject to attack by virtue of their indefiniteness and that they do not inform the Court or the State's counsel of the precise evidence which it is alleged the Court erroneously rejected, nor does the brief of the plaintiff-in-error amplify or clarify the subject-matter or come within the rules of this court relating to briefs.

The brief of the plaintiff-in-error, in dealing with these causes for reversal, alleges that the testimony

in question was offered for the purpose of rebutting the theory of robbery advanced by the State, and to corroborate the testimony of the defendant that he intended to talk to the deceased upon his domestic affairs, and as to the state of his mind on that occasion.

The defendant testified fully, without any interruption whatsoever, as to his thoughts on the day of the shooting, from the time he saw Garwood at the ferry and until the crime had been completed.

A reading of his testimony, pages 474 to 483, shows that the widest latitude possible was permitted to the defendant in stating all of the thoughts he had concerning his domestic difficulties and the relation of Garwood thereto and as to the purpose of his meeting Garwood and of his purpose in engaging Garwood for a trip in his automobile.

It is difficult indeed to see how a conversation with an attorney, in 1914, concerning his domestic affairs, could have any bearing upon his state of mind on July 23, 1921, the day of the shooting.

The attention of the Court is further directed to the fact that aside from the testimony of Roberts, which related to a conversation in 1914, no other witnesses offered by the defense, and whose exclusion is the subject-matter of these causes for reversal, could in any way testify that the defendant had mentioned the name of Garwood to them in any conversation they had had with him.

And the attention of the Court is also directed to the fact that the witness Downs, offered by the defense, would have only testified to the effect that the defendant, some six weeks before the shooting, had indicated an intention to go West and leave everything.

The offer of counsel for the defendant, as to the

extent of the testimony of these several witnesses, is to be found on pages 678 to 684.

It is respectfully urged that the action of the trial Court in refusing to permit defendant to introduce proof as above stated, was justified both from the standpoint that it was too remote to have had any bearing whatsoever upon the state of mind of the defendant on the day of the shooting, and for the further reason that such conversations were self-serving declarations.

These alleged statements of the defendant were, in each instance, made a considerable length of time before the commission of the offense, the minimum of which was four months. Under similar circumstances, Courts have uniformly refused to admit such testimony.

In *Kahlenbeck vs. State,* 119 Ind. 118, the defendant was on trial for the murder of a peddler. To explain his possession of articles which were supposed to have belonged to the deceased, the accused offered statements made by himself, before the homicide, to the effect that he had bought such articles from a peddler. But these were held inadmissible.

In *Ex parte Albitz,* 15 S. W. 173 (Court of Appeals of Texas, 1890), the defendant offered to prove by a witness that several months prior to the homicide, the defendant had told said witness how the deceased had broken up his family, adding that many of his friends had advised him to kill the deceased, but that he had refused and would continue to refuse to do so; that he did not want deceased's blood on his hands; and that he had made every effort to avoid meeting the deceased. The Court held that these statements were not admissible.

In *State vs. Swift,* 18 Atl. 664 (Conn. 1888), the defendant offered the testimony of his mother to

prove, by stating the declarations the defendant had made to her from time to time, that he was greatly attached to his wife. The State objected to such evidence and the Court rejected it and this action of the Court was made the subject of complaint. The Court held:

> "The declarations of a party in his own favor are never evidence of the truth of what is declared, unless made so by statute. This claim is without merit."

In *Baker vs. State*, 50 N. W. 518 (80 Wis. 416), the Court held that on a prosecution for the larceny of money, evidence of a remark made by defendant before the larceny, on exhibiting a roll of bills, is not admissible in his behalf, the remark being a declaration in his own interest.

In *State vs. Jefferson*, 28 N. C. 305, it was held, on a trial for rape, the prisoner cannot give in evidence his own declarations, made at a time previous to the alleged crime, to prove that the woman was his concubine.

In *State vs. Holcomb*, 86 Mo. 371, it was held, on the trial of one for murder, it is not competent for him to show by his statement, made at the time he purchased the pistol with which he killed the deceased, that his purpose in buying it was to kill mad dogs. The Court, in this case said:

> "It is true the declarations here offered were made in connection with the purchase of the pistol, but they were no part of the litigated act, the homicide. They were prior thereto and wholly disconnected. While incidents and declarations, unconsciously associated with the matter directly in issue may be received, yet, to admit the declarations offered in this case, is

to open wide the door to the party to make evidence for himself."

In *State vs. Schaffar,* 70 Iowa, 371 (30 N. W. 639), it was held, on an indictment for larceny of harness, which the accused claims to have purchased, evidence by him of a conversation alleged to have been had by him with the alleged seller, two days prior to the date of the sale, is not admissible.

In *Harrell vs. State,* 45 S. W. 581 (Texas, 1898), evidence that defendant, on an occasion previous to the murder with which he was charged, when informed of threats of deceased to kill him, had stated that he wanted to go home to avoid meeting deceased, as he did not want to have any trouble with him, was inadmissible as being hearsay and self-serving.

In *U. S. vs. Milburn,* 2 Cranch, C. C. 501 (Federal Cases No. 15764), it was held, upon the trial of an indictment for offering a bribe to a witness, the previous declarations of the defendant of his motives for offering it cannot be given in evidence by the defendant.

The action of the trial Court in refusing to permit the introduction of the evidence offered, was ~~judicial~~ justified and wise, in view of the fact that it tended to involve, indirectly, the wife of the defendant, who was precluded by law from testifying at the instance of the State to deny any unfounded accusations against her and which she was willing to do but was prevented from doing by the law of the State. Neither did the defendant offer to call her upon his part as a witness, although she was under subpoena by him. Furthermore, there was no proof, other than that offered by the defendant himself, to show that the wife and Garwood ever knew each other;

and to the contrary was the statement of the defendant, in his direct examination, page 482, that when he had his alleged conversation with Garwood, immediately preceding the shooting, and then accused Garwood of being friendly with his wife, he (Garwood) denied knowing her; and likewise the denial of the wife, when accused by the defendant, in the conversation held with her, preceding the making of the confession, page 747.

POINTS 18 and 19.

With respect to possession of revolver by deceased.

The plaintiff-in-error, under these points, alleges error as follows:

> "18. That the Court erred in refusing to allow the defendant to testify that he believed the said Harry Garwood carried a revolver."
>
> "19. That the Court erred in refusing to allow the defendant to testify that he believed that his life was in danger."

Neither the causes for reversal nor the brief of the defendant set forth with the requisite precision the particular evidence, the exclusion of which is complained of.

The defendant was permitted, on his direct examination, to testify as follows (page 534):

> "Q. Was or was not your mind in a state of fear at the time you shot Garwood?
>
> "A. It was.
>
> "Q. And what, if anything, put your mind in a state of fear?
>
> "A. His hand was near his pocket."

At page 536:

"Q. What put you in fear?
"A. His hand near his pocket.
"Q. Why did that put you in fear?
"A. Because all jitney men carry a revolver, very near."

To that the Prosecutor objected for the reason that it was not relevant, as to what other jitney men did, and the Court sustained the objection.

"Q. Do you know whether or not Mr. Garwood carried a revolver?
"A. I couldn't say.
"Q. What was your belief as to that?
"The Court: That question is overruled."

The further direct testimony of the defendant, concerning this matter, is found on page 482, as follows:

"I had opened the car door and he made a wild rush for me and grabbed for his hip pocket with his right hand. As he made a reach for his hip pocket, I thought that he was going to fire on me. I grabbed my gun," etc.

The recital of the above evidence indicates that the defendant was permitted to testify to every fact concerning the putting of him in fear by reason of the alleged actions of the deceased at the time of the shooting.

The defendant did not know, by his own admission, whether the deceased had a revolver or not, and it would have been clearly improper to have permitted him to testify as to his belief in the matter. He testified fully as to the actions of the defen-

dant and the fear that arose within him as a result thereof, and it was for the jury, and not for him, to pass judgment upon whether he was justified in his subsequent conduct As a matter of fact, the deceased was not in possession of a revolver.

(Points 23, 25, 26, 27, 28 and 29 relate to charge of Court.)

POINTS 23 and 25.

Comments of trial Judge on evidence.

The plaintiff-in-error, by his 23d and 25th causes for reversal, alleges:

> "23. That the comments of the trial Judge upon the evidence prejudiced the rights of the defendant in that the Court in six pages of his charge sets forth in detail the case of the State and the testimony tending to corroborate the same and the arguments in favor thereof, and in his charge devoted a very small part thereof, to the evidence presented by the defendant and the inferences to be drawn from his testimony."
>
> "25. That the Court erroneously quoted the defendant to have said that he killed the said Garwood in a frenzy of mind and upon sudden impulse."

These causes are subject to attack and dismissal, in that they are too general and the brief of counsel for the plaintiff-in-error has not complied with the following rule of this Court:

> "When the error alleged is to the charge of the Court, the specifications shall set out the

part referred to *totidem verbis*, whether it be in instructions given or instructions refused."

These objections may be answered, however, on their merits, by the opinion of this Court in *State vs. Hummer*, 73 N. J. L. 714 (Court of Errors, 1906, at page 719):

> "The point is made that the trial Court stated to the jury that the testimony of the doctors and of the child herself seemed to establish the fact that she had at some period of time been assaulted. Whether this criticism of the charge be directed to such comment as a legal error or to a review of the Judge's discretion, in either case the complete answer it (to adopt the language of Chancellor Zabriskie): 'It is the right and duty of a Judge to comment upon the evidence, and in cases where he thinks it required for the promotion of justice to give his views upon the weight of it, provided he leaves it to the jury to decide upon their own view of it.' The notion that it is any part of our judicial system that the jury, whether in civil or criminal cases, must be kept in ignorance of the impression made by the testimony upon the mind of the trial Judge, is absolutely devoid of foundation. What our judicial system does require is not that jurors should be kept in ignorance of the impression made by the testimony upon the mind of the Judge, but that they should be informed that it is their right and duty to decide for themselves all disputed questions of fact according as to the weight of the testimony appeals to them. 'So long as the duty of the jury to decide disputed questions of fact for themselves is pointed out in the charge,' said

> Justice Dixon, in *Engle vs. State*, 21 Vroom, 272, 'the Judge's comments and expressions of opinion upon the testimony are not assignable for error.' 'A Judge has an undoubted right to make such comments upon the testimony as he thinks necessary or proper for the direction of the jury,' is the earlier declaration of this Court, in *Bruch vs. Carter*, 3 *id.* 554. 'He may intimate an opinion as to the weight of evidence. But whether he will exercise all or any of these rights in a given case depends entirely upon his judicial discretion.' 'It is competent for the Judge presiding at a criminal trial to lay before the jury for their consideration his own views and inferences from the proofs, and such expressions, no matter how ill-advised or erroneous, can be reviewed on a motion for a new trial, but not on a writ of error,' is Chief Justice Beasley's statement, in *Smith and Bennett vs. State*, 12 *id.* 370. In view of these expositions of the law, it must be obvious that legal error cannot be based upon the comments in question, and that even under the broader scope of the proceedings before us they cannot be deemed to be an abuse of judicial discretion for which a reversal can be had."

The charge of the Court in several places expressly directed the jury upon its duty with respect to the facts, of which the following is a marked example (page 746):

> "Any comments I may make upon the evidence will not be for the purpose of controlling you in your views, but only to aid you in applying the principles of law to the facts as you may find them. You must not rely upon my quota-

tions from the evidence as being correct, but you must rely upon your own recollections. You must not consider only the evidence to which I shall refer, but you must consider all of the evidence in the case."

POINT 26.

Denial of Requests to Charge.

Certain requests which were denied by the trial Judge are set forth in the cause for reversal by reference to numbers only. The plaintiff-in-error has not briefed this cause and it is subject to dismissal and to be disregarded by the Court, in that the rule relating to contents of brief, on this subject, heretofore quoted, has not been complied with. In passing, however, it may be said that the charge of the Court in this case was carefully worded, clear, lucid and contained a sound and logical exposition of the law relating to the facts of the case and a fair and comprehensive review of the same, and the failure of the plaintiff-in-error to discuss the cause at length would seem to indicate that there is no merit in this cause for reversal.

POINTS 27 and 29.

Exceptions to Charge.

These assignments relate to the use of the words "crime" and "charge" by the Court, and are merely exceptions to verbiage used by the trial Court in referring to the indictment. The weakness of these

alleged errors is evidenced by the fact that the brief of the plaintiff-in-error does not set forth any particular in which the defendant could have been prejudiced thereby, and a reading of the entire charge makes further argument unnecessary.

POINT 28.

Further Exception to Charge.

This relates to cause for reversal No. 28, and takes exception to the charge of the Court as to reasonable doubt.

This exception is likewise subject to attack by virtue of its indefiniteness and failure to refer to the precise words of the Court excepted to. The charge of the Court with relation to reasonable doubt was well within the adjudications.

State vs. Linker, 111 Atl. 35 (Court of Errors, 1920);
Donnelly vs. State, 26 N. J. L. 615.

POINT NO. 24.

"That the verdict was against the weight of the evidence." [Being Cause 24.]

It is respectfully submitted that a review of the evidence in this case shows the guilt of the defendant was proven beyond a reasonable doubt. Counsel for the State takes the liberty to quote at length from the argument presented to the jury on behalf of the State in the trial of the case to support this contention which was partially, as follows:

"The testimony in this case has unfolded a crime so horrible in its details and so cruel in its method of execution that it shocks our sensibilities.

The facts show unmistakably and without any doubt whatever that Guilford C. Young deliberately planned to rob Harry Garwood, and steal his car, and, that the death of Garwood at the hands of Young was the climax or culmination of that illegal enterprise. To consider that his death was due to any other cause is so preposterous, unnatural, and unthinkable, that no one could believe otherwise.

To examine the details of this crime is to be convinced of the fact that it was the result of carefully laid plans, and, its execution was in perfect accord with the plans previously made. Furthermore, that the purpose to steal was not the result of a sudden impulse or a weak yielding to an unexpected temptation, but, on the contrary was the result of a carefully devised scheme, previously considered with the details so complete as to stamp this defendant with unusual criminal instinct and foresight.

The preliminary steps of this crime were enacted during the week prior to the murder. Young conceived the idea of having a bill of sale, driver's permit and a set of auto tags in his name, to be placed upon any car he might thereafter be successful in stealing, and, by the bill of sale and license tags in his name, make detection more difficult of accomplishment.

Consequently, the defendant in pursuance of his plan to conceal the identity of stolen cars had a fictitious bill of sale executed by one Ben Martin, his particular friend, under the assumed name of James Brown. The defendant with unusual regard for detail did not overlook the necessity of giving

the fictitious car a real engine number and thereupon procured the same by lifting the hood of a car in Philadelphia, of the same general description and taking the number therefrom.

In an effort to further fortify himself and make detection less likely the defendant on Saturday, July 16th, just one week prior to this crime, procured from the motor vehicle department, a set of new auto tags which he had issued in the name of Guilford C. Young, and, likewise a driver's license. The new tags were obtained on the basis of the fictitious bill of sale and were to be placed on the stolen car in the place of those that would properly belong to the car. These tags and the driver's license together with the bill of sale could then be used as evidence of ownership in case explanation should ever be required.

Another circumstance that shows the unusual thought and care for detail that characterized every act of this defendant was the using of a friend to procure the license tags and driver's license for him, but in his name. To do this, it was necessary for the friend to assume the name of Guilford Young and sign as such. Thus Young was enabled to remain in the background.

The next step taken by the defendant by way of preparation for the stealing of cars was to procure a garage where they could be stored. He thereupon on Saturday, July 16th, engaged a garage in the vicinity of 8th and Spruce Streets for one month, and paid for it in advance. Again we see the unusual foresight of this defendant in not selecting a public garage where each car taken in would come more or less under the direct observation of the attendant in charge, and, to whom it would be noticeable if the defendant had different cars at different

times as would be likely in case he carried out his scheme of stealing cars, but, instead a semi-private garage was obtained where each owner has his own individual garage and consequently afforded a better opportunity to take cars in, leave them out, change them, or in fact do what he pleased with much less likelihood of creating suspicion.

The preparatory steps being complete, all that remained was to locate a car that afforded an opportunity for theft. A week went by before that opportunity presented itself, but, finally as the defendant was on his way to work on Saturday morning, July 23rd, he saw a Ford car at the ferry terminal. It instantly attracted his attention. The fact that it was a new car increased its desirability.

The desire to possess the car immediately took possession of him and controlled his thoughts and actions. He did not proceed to his work at Cramps shipyard, and report for duty at eight o'clock, but, his thoughts were so completely dominated by the vision of the car he had seen at the ferry, the very object to possess which he had planned and thought for days, that the ordinary, though honest toil of that shipyard could no longer interest or hold him. The intense desire to possess the car made him fearful of delay, and, rather than wait until the noon hour when his work at the yard would be completed for the day, and, possibly lose the chance to possess it, he did not go to work.

With breathless haste the defendant hurried from thoughts of honest to dishonest occupation. Covetousness controlled his thoughts, directed and quickened his steps. The hands that should have been holding the implements of honest toil were soon to grasp the deadly weapon of murder. Sudden though the outward change may seem from honesty

to dishonesty, yet, there had been no such sudden change in the inward thoughts or heart of this defendant. His thoughts were dishonest more than a week before, when he prepared a fictitious bill of sale and procured a set of auto tags for use when he succeeded in stealing cars. His thoughts had been dishonest during the week following these acts of preparation as he sought the opportunity to steal. Thus the dishonesty that became so apparent from the time defendant saw the Ford car at the ferry terminal until the completion of the crime was but the outward evidence of what the inward thoughts of the defendant had been for more than a week before.

The defendant waited about the ferry from a little after seven until nearly nine o'clock, when he engaged Garwood to take him in the car to Marlton. The defendant made no explanation of what he was doing during this time, and that if he wanted to speak to Garwood about his wife, why he did not do so. The State argued that he probably waited about the place to steal the car by stealth, but failing in this, he hired Garwood to take him out into the country, so he might there by violence take the car.

As the car sped rapidly out Marlton Pike, there is nothing in the outward demeanor of the two occupants that revealed even in the slightest degree the vastly different thoughts that actuated each in the trip they were taking. Garwood had no thought other that the making of an honest living. Young, no thought other than how he could most safely and surely rob Garwood and steal his car. Garwood was intent upon safely transporting his passenger to the place of his supposed destination. Young was occupied in considering how, when and where he

could best complete the crime. The real thoughts and intentions of Young, however, were hidden beneath a pleasant conversation, and with apparent sociability, Young to still further conceal his real intentions invited Garwood to drink with him in the Ellisburg Hotel.

When they resumed their trip, they went but a short distance when Young on a pretext of business, entered the Howard Shivers' farm. Upon his return, he directed Garwood to return to Camden. Why this sudden change on the part of Young? Is it not probable that notwithstanding all his planning and ingenuity he realized that the car could not be stolen except by violence, and, that his nerve deserted him in the thought of such a possibility? It is not surprising if it did. The human heart rebels at the thought of murder and can be driven and compelled to a crime so black only by the utmost determination, and absolute abandonment of principle. The struggle that goes on within the heart at such a time as this, when every true instinct seeks to prevent the murder, and every wicked and diabolical instinct struggles equally hard for its accomplishment, cannot be described by mere words. It was such a conflict as this that undoubtedly went on within the breast of this defendant as the realization came to him that violence and death were necessary to accomplish his purpose, and, for a time he hesitated.

The hesitation, however, was neither permanent nor even of a long duration, for little more than an hour elapsed between the time that Young left Garwood at Fourth and Federal Streets, on their return to Camden, until he was again on his way to the ferry terminal to engage Garwood for another supposed trip to Marlton.

When Young arrived at the ferry, he immediately sought Garwood's car and not being able to locate

it, where it had stood when he first engaged it that morning, he made inquiries. He learned that the car was on the north side of the terminal and he went and sat in the car until Garwood came out of the restaurant where he was eating, and then engaged him for the second trip to Marlton.

What a picture we have presented to us as the car again sped along the Marlton Pike! We see one young man, strong of body, well-built, and physically perfect. With him one of small stature, deformed, crippled and physically weak. The thoughts of the two were as different as the bodies they have. Outward appearances would indicate that they both were pleasant and agreeable. Could we but see the heart of each on that memorable day, it would have revealed that the pleasantry of the cripple was but the outward expression of a heart that was sincere and could smile even though the body was crippled, while the smile and pleasantry of the other was but a mask of deceit to hide the cruel and vicious thoughts and intentions that lurked in the dark recesses of his heart.

Whatever hesitation the defendant may have had when the thought of violence first occurred to him it had now entirely disappeared and in its place a grim determination to proceed. Continuing the deceit that had characterized the defendant in all his acts of preparation, completion and effort to escape, the punishment of this crime, he gained the confidence and friendship of Garwood by his kindly treatment. He furnished him with cigars on the way out the pike and finally stopped again at Ellisburg Hotel to enjoy a social drink. Has such diabolical deceit ever been surpassed?

Garwood as unsuspecting as a child and anxious to proceed on the journey finished his drink and said,

'Let's go.' Little did he realize it, that to go meant his death and a journey to the Distant Land Beyond. Young immediately responded and they left the place and continued out the pike in the direction of Marlton.

When they had gone a distance of about two miles beyond Ellisburg, they reached a little side road, a road that could hardly be described even as a wagon road. It was on the right-hand side of the pike and was cut through trees and a dense undergrowth of bushes. There were no dwellings or other signs of habitation in the vicinity. After they reached this road, Young directed Garwood to drive in, which he did, until stopped by Young some five or six hundred feet in from the road and entirely out of the sight of passing vehicles or pedestrians.

After they reached this desolated and unfrequented locality, Young was ready to complete the tragedy. The spot selected was perfect for the purpose he had in mind. You can search the County of Camden from centre to circumference and nowhere will you find a more desolate and forsaken place than where this defendant directed Garwood and shot him to death. No crowded thoroughfares nor passing pedestrians were here to disturb him in his dastardly work. The very character and isolation of the place seemed to give encouragement to him. Here is this locality that has the very appearance of death itself, so unattractive as almost to be avoided by honest citizens, Harry Garwood was shot to death.

Words can never express the horror of the scene enacted in that lonely place. There was completed the most fiendish crime the imagination can possibly think of. The defendant with a strong, robust body, armed with a deadly automatic revolver loaded

with steel-jacketed bullets, his victim, weak, deformed and crippled. Age, childhood, and weakness due to physical deformity appeal strongly to the average individual with natural instincts. The helplessness of childhood, reverence for age, and sympathy for the crippled prompt us to be more kindly disposed to them than to any other class. This disposition finds expression in kindness to the child, respect for age and helpfulness to the infirm and crippled. But, none of these usual and ordinary instincts prompted this defendant to have either mercy or sympathy for the poor, weak, cripple whom he had chosen for his victim for no other reason than he possessed a car, and other valuables that the covetous heart of this defendant demanded for himself.

The picture of Harry Garwood, a helpless cripple in the hands of a strong, robust and determined murderer, armed with a deadly automatic revolver, with no chances whatever of his cries for help being heard, and, certainly no chance for sympathy from the murderer, vividly portrays the cruel and heartless murderer this defendant was. The unfairness of the unequal struggle, the strong against the weak, leaves a lasting impression upon the mind. Turn where you will in this case, and at no time can the cowardly scene be forgotten. The defendant not satisfied with his superior physical strength, but so intent that the victim should make no resistance and his murder work be well done, he used the most deadly weapon with which any one could be armed, an automatic revolver with steel-jacketed bullets. The picture cannot be forgotten. No eye can be closed to it. It stands out so vividly that memory refuses to forget. The grim determination of this defendant to take the life of Harry Garwood, crip-

pled, weak and helpless, will ever stamp this atrocious crime as one of the most heartless in all the annals of crime in Camden County.

There can be only one reason why the life of Garwood was taken, and that was, so long as he lived there was someone who could tell of the crime, but, "dead men tell no tales," so Garwood must die in order that this defendant might enjoy in security and safety his ill-gotten property.

If the defendant had the slightest charitable instinct, it would have asserted itself as he saw that crippled and helpless body endeavoring to get out of the car in answer to his demand. Why did he not take the watch and chain, the car and other valuables of Garwood, and leave him tied and gagged until he made his escape? To have done this would have meant that he would have to become a fugitive. He would have been unable to return to his friends. He would have had to give up the company of the young lady in Camden, who engaged his attentions so completely. He was too selfish for this. He preferred murder rather than become a fugitive. Had he been satisfied with plunder alone, Garwood might yet be living. But, this was not to his liking. He preferred to work upon the principle, that "dead men tell no tales," and consequently, Garwood was killed that Young might be secure.

After the defendant had made certain of the death of Garwood by repeated shots in the body and head of his victim, he dragged the body some fifty feet into the underbrush and there in the security of death and isolation completed the crime by searching the clothes of the dead for the valuables he possessed. Covetousness such as this defendant exhibited is seldom seen. In the wild endeavor to possess all that he had in fear that something of value

might be overlooked, the pockets were turned inside out and even the shoes taken off. Was there ever a more depraved and unconscionable greed than this, that even the body of the dead was not respected and even the shoes taken for the reason as given by defendant "that they were too good to leave there"? With the watch, chain, crucifix, shoes and such money as Garwood may have had, the defendant leaves the body, without shelter, exposed to the elements, the heat of summer and the birds of prey, and returns to the car and drives off with the thought that as no earthly eye had seen the crime and the victim was cold in death, he was safe and secure.

Why was Garwood killed? For robbery or in self-defense? What would a robber do? Everything that the defendant did. On the other hand, a man who is actuated by self-defense, a man who is actuated because of an injury he thinks he has suffered at the hands of another, isn't tempted by a watch and a chain and a crucifix, or an automobile, or property of any kind belonging to the deceased. Such a one, in his own mind at least, considers that he had a right to do the thing which he did. How often it has come to our attention of men being found cold in death, with everything of value upon them! In such cases, the thought at once arises, "This was not robbery. There was another motive." But when Garwood was found with his pockets turned inside out and everything gone, there is only one conclusion that we can come to, and that is robbery. Any other conclusion would be strained and unnatural.

Why did the defendant take the watch of the deceased? The defendant, in his confession of August 5th, to the Prosecutor, in answer to the question,

"Why did you take the watch?" replied that he didn't know why he took it, and the same answer was given as he was asked why he had taken the chain and the crucifix and the automobile. It was only with relation to the shoes of the defendant that he volunteered a reason, and that was, "They were too good to leave." After the defendant had time to reflect and prepare a defense, he realized the importance of making, as far as possible, some excuse for the doing of a thing that had every indication of robbery. He therefore changed his former statement that he did not know why he had taken these articles, and said that it was done in order to hide the identity of Garwood. Could any excuse have been more ridiculous or appeal less to the reason, than that he took the watch to conceal the identity of the man? Consider that he left the body of Garwood, with his face looking upward, to be seen by anyone who might happen to pass through those particular woods. Anyone who found him could have sounded the alarm and he could have been identified by his personal appearance immediately. To take a watch, therefore, to conceal his identity, and leave the man himself there, open to personal identification, presents a reason which, we repeat, is ridiculous. Furthermore, consider that the defendant took this watch to his home and left it on the bureau in his bedroom. The initials of Harry Garwood, the one whom he said had been friendly with his wife, were upon the back of the watch, in large, bold letters, clear and distinct. If he had taken the watch to hide the identity of the person whom he had killed, he would not have taken it to his home and laid it on the bureau, where the wife could have asked the question, "What does this mean?" If there had been the friendliness existing between his wife and

Garwood, those letters would have immediately brought to her mind the fact that the watch was the property of Garwood. She would immediately have realized that it was Garwood's watch and would have asked her husband, "What does this mean?" and the defendant would have then to explain to the wife his possession of Garwood's watch. It is, we repeat again, ridiculous to suppose for a moment that a man who has killed another in a quarrel, would have taken into the very presence of the wife, a watch with the initials of the deceased upon it, when, if his statement be true, he was endeavoring to hide the identity of Garwood.

Furthermore, if it be true that the articles of value were taken to hide the identity of the deceased, what explanation can be given for the taking of the shoes off the feet of the dead man and the defendant taking them to his home and afterwards wearing them? Such conduct is absolutely unexplainable on the basis of the defendant's contention that it was done to hide the identity of the deceased. It could only have been explained on the theory of robbery or, as expressed in the words of the defendant when he was asked to explain why he had taken the shoes, he said, "They were too good to leave." These words, given by the defendant in answer to that inquiry, at the time of his confession, show unmistakable evidence of the thought that was dominating his mind at the time these articles were taken, namely, the thought of robbery.

As a further indication of the falsity of the defendant's explanation that he took the valuables of the deceased to conceal the identity, is the fact that by his own admissions, he took out of the pocketbook of the deceased the sum of $3.50, all the money that he had. What necessity could there have been for the

taking of money to further his plan of hiding the identity of the deceased? There was nothing in connection with the money that would have enabled the deceased to be identified, and the taking of it leads irresistibly to the conclusion that the defendant intended to rob the deceased and take everything of value.

If it had been true that the defendant had acted in self-defense, there would have been no necessity for him to have made any effort whatsoever to hide the identity of the deceased. There would have been no guilty conscience that would create the thought of the necessity to hide the identity of the deceased. His conduct in taking everything of value from the deceased refutes beyond any peradventure the claim of the defendant that he had acted in self-defense; and the fact that he took the watch, with Garwood's initials, into the presence of his wife, refutes any idea of an alleged intimacy between her and the deceased. It would have been unnatural for the defendant, in an effort to conceal the crime, to take that which would determine the identity, into the very presence of the person who he had alleged knew the deceased and because of which the conversation and quarrel had ensued.

An indication of the vicious character of the defendant is the fact that when arrested he was in possession of an automatic revolver and had a large quantity of deadly steel-jacketed bullets in his pocket. The only explanation advanced by him of this was to the effect that in March preceding the crime, there was danger of an attack by strike sympathizers at the plant where he was employed; but this explanation could have no weight, in view of the fact that for the week succeeding the commission of this crime, the defendant had not worked and in fact had

given up his employment at the place mentioned, and there was then no necessity for him to be in possession of such a deadly weapon.

After killing Garwood, the defendant, with the same care and regard for the smallest detail, again showed his cunning and well-laid plans, by avoiding the usual route of travel and took the most unfrequented way possible, to the home of his friend, Martin, in Haddonfield, who had signed the fictitious bill of sale at his request. His thought that no one knew of his crime was rudely shattered when he appeared at Martin's house, for Mrs. Martin detected the blood spots on his face and asked him what they meant, but he made no reply. To have answered truthfully would have meant confession and for this there was no occasion at that time.

The next step taken by the defendant to hide his crime was to conceal the identity of the car he had stolen. A week before, he had made provision for this very contingency, when he procured a set of auto tags in his name, although he possessed no car at the time. Accordingly, now that the occasion had arisen for which the tags were procured, he placed them on the stolen car, in place of the tags that were there in the name of Garwood, and then, with the same unusual care and regard for detail, he changed the engine number on the car, from that which was originally there, and in its place affixed the fictitious number that appeared in the bill of sale, likewise procured the week before for the purpose of showing ownership to stolen cars. Never had any criminal more completely prepared every detail and contingency than this defendant.

With a courage born of the thought that no one had seen the commission of the crime, and the only lips that could have told were silenced in death, the

defendant proceeded at once, after he had changed the tags and the engine number on the stolen car, to the home of the girl with whom he had been keeping company. Pleasure and the companionship of the girl was then his dominating thought. How cruel and heartless must be the individual who, like this defendant, could so easily and so shortly after the commission of an atrocious murder, cast off the thought of it and in the place thereof give himself over entirely to pleasure! From the day the crime was committed until the arrest of the defendant, his days and nights were used by him in pleasure trips. The whole attitude and conduct of the defendant was that of a care-free, pleasure seeking fellow who preferred to steal rather than work for an honest living.

The self satisfying security of the defendant was short indeed, for within ten days after the commission of the crime the body of Garwood was found and identified and within another twenty-four hours the defendant was taken into custody.

Immediately after the arrest of the defendant, he was questioned by the Prosecutor as to how he came into possession of the car in which he was sleeping at the time of his arrest. He replied that he had purchased it from a James Brown, on July 15th (the date of the murder was July 23rd), and that he had procured a bill of sale for the same. To corroborate this statement, he suggested that the officers go to his home in Haddonfield, where they could procure the bill of sale. During the same day, as a result of the investigation of the officers, it was learned that the car found in his possession was in fact the car of Garwood and that it had not left the dealer's hands in Gloucester City until July 21st and therefore could not have been the subject of a bill

of sale on July 15; and furthermore, that the engine number on the car had been changed and in its place a fictitious number given which corresponded with the engine number appearing in the defendant's fictitious bill of sale. It was also ascertained that the defendant had been in Garwood's company on July 23rd, at Eichmann's Hotel. When these facts were presented to the defendant, he stated that he did not know Garwood nor had he ever hired him at the ferry for a trip, nor was he with him on July 23rd at Eichmann's Hotel, but when informed of the impossibility of having purchased the car on July 15th and that it was in fact Garwood's car, the defendant replied that his former statement was untrue to the extent that this was the car he had obtained from James Brown on July 15th and he then said the truth was that it was a car which he had, subsequent to July 15th, procured from James Brown, because the first car did not run well, and that he received the car found in his possession as a second car in place of the first one. He could not account, however, for the fact that if this was true, how did it happen that it had the same engine number as appeared in the fictitious bill of sale and which was supposed to describe the first car. He further denied any knowledge as to how the car came into the possession of James Brown or whether or not it belonged to Garwood.

On the second day after defendant's arrest, the officers located, in the bedroom of defendant's home, the watch, chain and crucifix which had been the personal property of the deceased. He was asked to explain how these came into his possession and he said that he had received them from the James Brown who had sold him the car, although he had previously stated that he had purchased nothing from James Brown other than the automobile.

On the fourth day ofter the defendant's arrest, it was ascertained that the name James Brown to the fictitious bill of sale had been signed by one Ben Martin, who was a close personal friend of the defendant, and that the defendant had procured Martin to execute the fictitious bill of sale for the purpose of making a plausible evidence of ownership of cars stolen by these two men. The defendant, in his confession of August 5th, admitted that he and Martin had stolen other cars and that a fictitious bill of sale to show title to them had been the idea of both and out of which came the bill of sale of July 15th. These facts, however, the trial Judge did not permit the State to introduce in evidence, but which the State thought had a direct bearing upon the motive of the defendant in stealing the car of the deceased and should therefore have been admitted.

The defendant was informed of the identity of James Brown, in the presence of Ben Martin, by bringing into the presence of the defendant the said Ben Martin, who then and there stated all of the circumstances that led up to the signing of the fictitious bill of sale by him on July 15th.

The following day, August 5th, the defendant requested an interview with the Prosecutor, during which interview, as testified to by the Prosecutor, the defendant informed him that he was up against "a stone wall" and wanted to know what could be done for him, to which the Prosecutor, as appears by his testimony, informed him that no promises could be made; that if he wished to tell the truth concerning the crime, it must be voluntary on his part and that he did not have to do so if he did not wish to, but that if he did, whatever he said would be use against him in court, as he was held for the

murder of Harry Garwood. The defendant then requested the privilege of an interview with his wife, which was immediately arranged. In the presence of the wife, the defendant, for the first time, admitted the killing of Harry Garwood. Upon his return to the court house, after this conversation with his wife, he informed the Prosecutor that he wanted to tell him the entire truth about the crime; and thereupon, Edward I. Berry, official court stenographer of the Second Judicial District, was sent for, and he reported stenographically all that transpired between the Prosecutor and the defendant, and at which time the defendant confessed the killing of Harry Garwood. This confession corroborates in every detail all of the proof submitted, procured by the State and presented to the defendant before the making of the confession, and which testimony was afterwards introduced at the trial of the defendant.

In this confession, the defendant did not claim that he had acted in self-defense, but on the contrary, that he had taken Garwood to the secluded spot to talk to him and give him a "lacing." In said confession, the defendant was asked the following:

> "Q. Guilford, if you took him out there to lace him, why didn't you lace him instead of shooting him?
>
> "A. Well, it is a question that I can't explain."

The State contended that there had been in fact no conversation concerning Garwood and defendant's wife, at the time of the shooting, but that if there had been, it was merely a pretext, and the defendant admitted, in said confession, that the deceased had denied knowing the defendant's wife, and a like denial was made by the wife of the defendant, at the time of his conversation with her.

After the making of the confession, the defendant, on August 11th, left the county jail, in the company of county detectives, and went with them over most of the route taken by him with the deceased, pointing out and giving every detail concerning the crime, including the location of places where he, in company with Martin, had stolen cars and other articles of value, but which latter fact, although in the confession of the defendant, the State was not permitted to introduce and such part of the confession was likewise eliminated from that given to the jury, over the objection of the State and against the claim of the State that such testimony was admissible.

Notwithstanding the complete confession of August 5th, the defendant, on his trial, contradicted many of the statements therein made and alleged that it had been procured from him by means of abusive treatment, all of which was denied by the officers in whose custody he was during the investigation, all of whom were men of reputation and who had served in official capacities in the County of Camden for many years.

The statements of the defendant last above referred to were without corroboration of any kind whatsoever. He furthermore stated that the stenographers, who were Edward I. Berry, the official court stenographer of the Second Judicial District, and William B. Macdonald, also a court stenographer, and neither of whom was connected with the Prosecutor's office, had not faithfully and truly transcribed the questions and answers, and that Edward I. Berry had permitted the Prosecutor to change answers given by the defendant and place in the confession statements as desired by the Prosecutor, instead of the answers given by the defendant. Nothing could indicate more clearly the desperate

effort being made by the defendant to upset an honest and truthful confession, than the fact that he would make these charges, unfounded in fact and uncorroborated in any way, not only against the officers of the law but against the official court stenographer of this district. This claim of the defendant was even too much for his counsel, who, in his argument to the jury, in reference to this claim of the defendant, stated, "He says it, so I have got to say it, but I don't believe it is true." This false statement about Edward I. Berry is characteristic of every other false statement that the defendant made against every public official and against his wife. There were only two persons in the whole trial, that defendant said were truthful and honest and in whom he had confidence, and they were his sweetheart, Amanda Green, and her sister, Mrs. Hoyle. As to the testimony of every other witness in the case, the defendant claimed that they had either partially or wholly lied about him. This included George Patton, who testified to having had a conversation with the defendant at the ferry, previous to the defendant's second trip with Garwood; Leslie Zinger, as to a conversation at the same time; Kate Eichmann, Louis J. Eichmann and Gusten Cooper, as to the incidents at the hotel; Mrs. Martin, who said she saw blood spots on the defendant's face; Edward B. Huff, who said he found the defendant with a gun in his hand at the early hour of the morning on which he was arrested; Chief of Police Dennis, of Haddonfield, who testified to the same effect as Huff; Charles Stuart Straw, Assistant Prosecutor; Lawrence T. Doran, county detective; Howard Smith, a city detective; William H. Linderman, chief of police of Merchantville for 29 years; William B. Macdonald, court stenographer; Edward I. Berry

The wife could not testify for the State because the law would not permit her, and, she would not for the defendant to sustain a false attack on her virtue. Had it been true, she would certainly have done so to save his life. But, as a further vindication of her and establishing the falseness of defendant's claim of intimacy with Garwood was the testimony of defendant's mother, (P. 695), that the defendant and his wife had lived with her and defendant's father in their home and that the wife was still living with her even then at the time of the trial of defendant. If the reflection cast by defendant on the name and honor of his wife had been true, his father and mother would never have permitted her to remain under their roof.

court stenographer; Joseph Morris, a constable of Camden County, who testified to the defendant requesting him to see his (defendant's) wife and explain to her why he had said she was friendly with Garwood and for her to stand by it; Allen Pierce, who denied ever having told the defendant that he had seen defendant's wife with Garwood; John Williams, Louis Shaw and James Lockwood, who each testified that the defendant requested them to bring hack saws to him in the county jail; Harry B. Randell who testified as to the request made by the defendant to him to write a letter to defendant's wife, explaining that his charge against herself and Garwood was made by him in an effort to escape the penalty for his deed; and Charles A. Wolverton, Prosecutor, who had examined the defendant on different occasions, after defendant was taken into custody, and to whom the confession of August 5th was made.

The defense offered by the defendant was built around two silent witnesses; one, Harry Garwood, whose lips were silenced by death; and the other, the defendant's wife, whose lips were silenced by the law of the State. (See Insert) →

For the plaintiff-in-error to prevail in his plea that the verdict was contrary to the weight of the evidence, it would be necessary to take his uncorroborated and untruthful statements in preference to a long list of reputable and honest citizens of Camden County whose only interest in the case is that justice might prevail.

In the consideration of this case, the Court will no doubt be impressed, as was the jury, that the murder of this crippled and unsuspecting taxi driver, Garwood, was cruel, brutal and atrocious. The defendant had a full, fair and impartial trial and the Court

exercised the utmost patience in the extended trial, and a verdict that was just and fully warranted by the evidence was rendered.

It is respectfully submitted that from an examination of the entire record, no errors were committed which were prejudicial to the interests of the accused and that he has suffered no manifest wrong or injury, and that the judgment of conviction should be confirmed.

Respectfully submitted,

CHARLES A. WOLVERTON,
Prosecutor of the Pleas of Camden County,

ALBERT E. BURLING,
Assistant Prosecutor,
Attorneys for and of Counsel with the Defendant-in-Error, State of New Jersey.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* vs. GUILFORD C. YOUNG, *Plaintiff-in-Error.*	On Indictment and Conviction for Murder.

FACTS.

The facts are fully set forth in paragraph 24 of this brief.

THE PARAGRAPHS OF THIS BRIEF REFER TO THE PARAGRAPHS OF THE SPECIFICATIONS OF CAUSES FOR REVERSAL.

1. This testimony is found on pages 218, 219, 223.

2. Detective Doran, on pages 132, 133, testified that "They (the Prosecutor's office) tell everybody that it is best to tell the truth, the truth won't hurt —to make a clean breast of it," and that he told this to the defendant before he asked him to make any statement; that "He tried to convince him to tell the truth."

The defendant testified on pages 162 to 176, 205 to 214, that the officers of the law had examined him

for four days previous to the taking of the final statement; that he was not allowed to have the assistance of counsel; that he was illegally taken out of the custody of the sheriff and taken to various places in the county; that he was beaten while handcuffed; that he was kept without sufficient food; that his mind was so confused as the result of this treatment that he was given aromatic spirits of ammonia shortly prior to the time the last statement was made; that the officers of the law told him on numerous occasions that they would help him if he would tell the truth and that it would be better for him; and that the statement he made was not the truth but what he thought the officers of the law expected and wanted him to say; that he was promised the assistance of counsel if he would make a statement to the Prosecutor first.

It therefore clearly appeared that the confessions were advised by the officers and that the defendant was influenced by fear and promises made to him.

> "The question as to whether a confession is voluntary is a mixed one of law and fact and it is a question for the Court." **State vs. Roesel,** 62 L. 216, 41 Atl. 408.
>
> "A confession obtained from a defendant by flattery, hope or impressions of fear, however slight the emotion may be, makes the statement inadmissible in evidence for the law cannot suffer a person to be made the deluded instrument of his own conviction. The expressions, 'It is better for you to confess'; 'It will be better for you to tell the truth'; 'It will be better for you to tell the Prosecutor about it'; 'It will be better to make a clean breast of it,' have all been held to be such advice as to render the statement inadmissible in evidence." **State vs. Roesel,** 62 L. 216, 41 Atl. 408.

"A confession made to a county detective and the public prosecutor after the defendant was told that it would be better to make a clean breast of the matter, have been held as holding out hope of advantage to the accused." **State vs. Mowser,** 103 Atl. 805.

"Advising defendant to confess and insisting upon the defendant making a confession, makes the confession involuntary." **State vs. Guild,** 10 N. J. L. 172.

3. The Court should have allowed this cross-examination to show that the witness was acting as an officer of the law and that the statement of the defendant was not voluntary, pp. 371, 375.

4. The statement was involuntary and the truth of same was therefore immaterial. Even in a voluntary statement the truth of the matters contained therein are immaterial when the confession is introduced in evidence by the State. The State cannot expressly contradict statement made by the defendant in a confession introduced in evidence by the State, p. 378.

5. The Court allowed evidence to be introduced pp. 393, 410, 421, as to certain requests made by the defendant to certain persons to secure for him hack-saw blades. The purpose of the testimony was to show that the defendant had attempted to break jail and flee, and to show a guilty knowledge on his part.

Upon the question of flight or attempt to evade arrest or the inferences to be drawn therefrom,

"It should be remembered that some men are naturally of weak nerve and have not the cour-

age to face a judicial tribunal when the circumstances in which they find themselves makes it seem to indicate a higher degree of crime than what they deem themselves guilty of. This evidence has very little bearing upon the grade of crime committed by the accused. He might endeavor to conceal, evade, flee or deceive and yet not be guilty of the higher degree of crime. Such conduct arises from conscience guilt of a lower grade of crime." **State vs. Agnew**, 10 N. J. L. J. 167.

"Mere acts preparatory to escape, such as the procuring of tools adapted to effecting an escape, are not sufficient evidence to show an escape." 21 **Corpus Juris**, 834, paragraph 27.

"To constitute an attempt to escape there must be more than a general design to escape." **State vs. Harley**, 79 Vt. 28, 64 Atl. 78.

It is therefore important to distinguish between intent to escape, attempt to escape, and actual escape. The mere request of the defendant to secure certain hack-saw blades does not show any guilty knowledge upon his part because he may have requested these blades for another purpose than escape or he could have changed his intent if he had actually secured these tools. No tools were ever procured by the defendant. Therefore the Court allowed evidence of an attempted escape to be presented to the jury when the evidence only related to an alleged intent. The only effect of this testimony was to prejudice the defendant by endeavoring to show that he was a man of vicious tendencies.

The introduction of this evidence deprived the defendant of a fair trial. He was surprised by the introduction of same and had no opportunity to pre-

pare a defense to this evidence. He had no notice, indictment or allegation served upon him of the charges of the State in relation to the alleged escape. He had no opportunity to produce witnesses to contradict the statements made by the State's witnesses and the introduction of said evidence raised collateral issues which he was not prepared to meet. It was not competent evidence to show guilty knowledge.

> "The State cannot show other crimes for the purpose of showing likelihood of guilt of the crime for which the defendant is being tried." **Clark vs. State,** 3 Atl. 427.

6. No statement was made by the witnesses, John Williams, p. 393, and James Lockwood, p. 421, about the purpose for which the defendant requested the hack-saw blades, and their testimony was therefore incompetent, immaterial and irrelevant to show any guilty knowledge of crime because the defendant may have wanted the hack-saw blades for another purpose than escape.

7. If the testimony of the three witnesses, John Williams, Lewis Starr and James Lockwood, were proper to submit to the jury to show guilty knowledge, said evidence became incompetent, irrelevant and immaterial when counsel for defendant admitted in open court that the defendant did kill the said Harry Garwood, pp. 402, 403. The only question then before the Court was whether the defendant was guilty of any degree of murder.

8. The witness practically read the letter in his hand word for word, pp. 429 to 441. He did not testify from his memory, but gave an actual transcript of

the letter. This testimony therefore had the same effect of introducing in evidence the letter itself, although the letter was not formally offered by the State. The Court should not have allowed the letter to be read verbatim unless the letter was introduced in evidence.

9. That the letter read by Harry F. Randall was a confidential communication between the wife of the defendant and the defendant, and this evidence should not have been introduced in evidence against the husband.

> "Where a husband or wife is incompetent to testify the rule cannot be evaded by allowing third parties to testify to his or her acts or statements with reference to the matter under investigation." 40 **Cyc.** 2213, paragraph "B."
>
> "No husband or wife can be compelled to disclose a confidential communication made by one to the other during the time they are married." P. L. 1900, page 363.
>
> "A confidential letter from one spouse to the other is privileged." 40 **Cyc.** 2357.

10. The defendant requested Harry F. Randall to write a letter for him to his wife because the defendant was unable to write. This fact therefore made the said Harry F. Randall the confidential agent of the defendant, and it has been held in **Mahner vs. Linck**, 70 Mo. App. 380-388, that "We think the policy of the law will be best subserved by refusing to admit written communications whenever they have come to the possession of a third part by the agency of the husband or the wife or where such third party has claimed possession of them by reason of his respective character, agency or other fiduciary relation to the husband or wife."

A letter written by a business man to his client through his stenographer is privileged, and a letter written by a husband to a wife through a confidential agent, where the husband is unable to write or where he is compelled to write through a third party by necessity, renders that person incompetent to testify to the contents of the letter or to his remembrance of the contents of the said letter. If the rule applies to a stenographer, then it also applies in this particular case.

11, 12 and 13. The state of mind of the defendant at the time of the shooting and at the time he hired the said Harry Garwood is very important, pp. 460 to 474, 502 to 514. "The most important evidence upon the question of the degree of crime is that evidence which relates to the state of mind of the defendant at the time the blow was struck." 10 N. J. L. J. 169. **State vs. Agnew.**

The state of mind of a man consists of certain intentions and these intentions are made up and result from thoughts. The Court allowed the State to introduce in evidence testimony tending to show that the intent in the defendant's mind was to rob. The defendant therefore has the right in order to rebut the proof of this intent to rob to show what the actual thoughts in his mind were upon that occasion and to show the resulting state of mind. The Court allowed the defendant to testify to his motive in hiring Harry Garwood but would not allow him to testify to his thoughts upon that occasion to show the truth of his alleged intention and motive.

14. The Court should have allowed the defendant to testify as to his attempting to secure employment after the shooting. This testimony was relevant to

rebut the motive of robbery alleged by the State, p. 513.

15. The defendant on cross-examination, p. 550, etc., cannot be examined on matters upon which he was not examined in chief. 26 N. J. L. 463.

The question is raised in **State vs. Zbanowicz**, 69 L. 619, 55 Atl. 743, whether or not the defendant can be compelled to testify at all upon cross-examination. The rule is that generally a defendant cannot be compelled to testify against himself.

16. The State alleged that the motive of the defendant in shooting Garwood was robbery. To rebut this motive that defendant should have been permitted to testify as to whether he had a motive or not, and as to his state of mind. The state of his mind consisted of his intention and thoughts. The defendant was about to testify that he was thinking of the advice of the lawyers whom he had consulted for many years about the relations of Garwood with his wife and that he desired to talk to Garwood on this day about the same matters. This testimony was very material to establish the real state of the mind of the defendant.

In **Schlemmer vs. State**, 15 Atl. 836, the Court permitted the defendant to show acts which he had performed before the alleged crime in order to rebut the motive of robbery alleged by the State and to show that he said and did things that were inconsistent to the motive alleged by the State. The question in this case was the same as in the present case, the state of mind of the defendant and his intention, and the Court said, "Neither the State nor the defense could establish the intention except by showing the conduct of the defendant. A state of mind

is inscrutable to the direct perception of the senses and resort must, of necessity, be had, when it is in question, to its manifestations as exhibited in words and acts; and consequently the legal rule is that all conduct that is reasonably evinsive of such mental condition is admissible in evidence——. Failure to allow this testimony left the irresistible inference that the defendant intended to commit murder." The testimony of the defendant as to his words and acts and the judgment of the lower Court was reversed. (See also cases cited **Rex vs. Whitehead,** I Car. and p. 7.)

18 and 19. Defendant should have been allowed to testify that he believed the deceased carried a revolver in order to show as a reasonable man that he was in danger of his life and that he was put in fear, p. 535.

20, 21 and 22. These witnesses were called to prove pp. 678 to 689, that the defendant had made certain statements to them for a period starting nine years before the shooting up until the time of the shooting. The purpose was to corroborate the testimony of the defendant that he intended to talk to the deceased about his domestic affairs, and that that same condition of mind had existed not only on the day of the shooting but for many years previous to the shooting, and that it was a continuous state of mind. As the state of his mind was very material, the evidence and proof of his state of mind was also very material and these witnesses should have been heard by the jury. The state of his mind can be proved by facts in his favor as well as facts in favor of the State.

23. A reading of the charge will show that the State's case was refreshed in the minds of the jury,

and that this resulted in an unfair advantage of the State over the defendant.

24. The State proved that a man was killed, that goods were taken and found in possession of the defendant. From these facts the State infers a motive and intention of robbery. There is no direct evidence either in the confession or upon the part of any witnesses to establish the motive of robbery. The defendant admits the above facts and states that he did not intend to rob the deceased but took his goods in an effort to conceal the fact that he had killed Garwood. Resting at this point, neither the State nor the defendant have proved anything excepting by circumstantial evidence and the State did not attempt to prove anything further. The defendant however, by a preponderance of facts overcame the inference of the State. His testimony was direct testimony and is entitled to more weight than circumstantial testimony. No one but the defendant could testify as to his own intentions and his testimony is entitled to consideration. In addition, the defendant established the following facts which rebut the circumstantial inference of robbery.

(a) That he was employed at the time of the shooting and left his home at the usual hour in the morning to go to his place of employment.

(b) That he saw the deceased when he arrived at the Camden Terminal.

(c) That on the following Monday he intended to leave and go out west to another place of employment.

(d) That he desired to talk to the deceased about the support of defendant's wife before the defendant left this State.

(e) That his purpose in hiring defendant's car to talk to him about his domestic affairs and compel him to support the defendant's wife, and to give him a "lacing," if he would not do so.

(f) That he changed his intention after hiring deceased and that he paid and discharged the deceased and went about his own affairs.

(g) That he was too late for his work and visited a saloon where he became partially intoxicated.

(h) That in an intoxicated condition he bought a box of cigars and passed the place where the deceased was eating his breakfast.

(i) That he did not seek deceased but continued on his way until one of Garwood's friends ran after him and compelled him to walk about thirty feet back to the place where Garwood's car was, and wait for Garwood.

(j) That he visited a saloon where he was known by the bartender for many years, twice on that day in company with Garwood.

(k) That he visited a lonely spot for the purpose of talking with Garwood and to thrash him if he did not do what he wanted him to do.

(l) That in the quarrel which resulted, he became in fear of his life and shot Garwood, by firing three quick successive shots from an automatic revolver.

(m) That he was lawfully carrying this revolver for the purpose of protecting himself from strikers at the place where he worked and had purchased same in his own name four months before the shooting.

(n) That the defendant tried to conceal the body, and took the goods of the deceased for that purpose.

(o) That the defendant never sold nor attempted to sell any of the goods taken from the deceased and made no profit from the crime.

25. No such statement appears in the record; the statement of the Court although innocently made, gave the jury a wrong impression as to the manner in which the defendant shot Garwood.

26. Plaintiff-in-error relies upon the law stated in his requests to charge.

27. No crime was committed. A homicide had been committed and until the defendant was convicted, the Court should not have used the word "crime" and prejudiced the minds of the jury.

28. The Court should have stated that the State not only must prove the entire charge beyond any reasonable doubt but must also prove each intent alleged by the State beyond any reasonable doubt.

29. The defendant until convicted was guilty of no crime.

JOHN T. CLEARY,
Counsel for Plaintiff-in-Error.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant-in-error,

vs.

GUILFORD C. YOUNG,
Plaintiff-in-error.

On Indictment and Conviction for Murder.

SUPPLEMENTAL BRIEF FOR PLAINTIFF-IN-ERROR.

A STATEMENT OF THE FACTS QUOTED FROM THE RECORD.

The defendant, Guilford C. Young, is twenty-nine years of age (p. 453). He lived on various farms until he was thirteen years of age, when he began working and earning sufficient money to support himself. His education is limited, consisting of four years in a country school (p. 454). From the time he was sixteen to the time he was arrested he worked continuously as a steamfitter (p. 456). He was employed at Cramps' shipyard on the day of the shooting and worked there the day before the shooting (p. 452).

On the day of the shooting, July 23, 1921, he left his home in Haddonfield at the usual hour, 6.30 o'clock A. M. and boarded the 7.00 o'clock A. M. train to Camden (p. 457). He arrived at the Market Street Ferry in Camden on a track near the terminal railing. It is possible to see through this railing in the train shed across Federal Street in Camden (p. 458).

Defendant knew Harry Garwood before he married his present wife nine years ago (p. 458). He saw him at Haddonfield with his wife before her marriage (p. 458), and on seven specific occasions he saw Garwood and his wife together (pp. 459-460).

Defendant arrived in Camden at 7.20 o'clock A. M., and looked through the railing across Federal Street and saw Garwood (p. 474). Garwood had a jitney, a Ford sedan, on the Federal Street side of the ferry. Defendant's work at the shipyard was to be completed that day and he intended to go out west and leave his troubles (p. 474). When he saw Garwood he thought it was a god-send to have an opportunity to talk to him before he left for the west because he had been for sometime "trying to catch up with him" (p. 475). He hired Garwood to go to Ellisburg, intending to beat Garwood, if Garwood would not take the defendant's wife and children and live with them and keep them (p. 475). He thought this matter over during the journey and not wanting trouble and thinking that Garwood would perhaps keep his wife anyway, he changed his mind about talking to him about his wife, took him to a saloon at Ellisburg and bought him a drink, made an excuse for his trip by stopping at a farm house and returned to Camden with Garwood, and left Garwood at Fourth and Federal Streets, Camden, after eight o'clock A. M. paid him $4.00 for the trip, dis-

charged Garwood, and went to a saloon at Fourth and Federal Streets (p. 476). Defendant did not know where Garwood went or did he have an engagement to meet him (p. 477). Defendant drank seven or eight glasses of whiskey and stayed in the saloon an hour and a half (p. 477), then bought a box of cigars on his way to the ferry and started on again on his way to the ferry for the purpose of going to the shipyard for his salary that was due him (p. 477). Defendant at that time was staggering from the effects of the whiskey (p. 478). He saw Garwood's car on the Market Street side of the ferry but did not see Garwood. He then thought he would talk to Garwood before he went west. He asked a jitney driver whether the car across the street was Garwood's and walked across the street toward it. Two other jitney drivers tried to get Young to hire their cars instead of Garwood's car (pp. 478, 33-35), Young was looking for Garwood and not for Garwood's car. He did not stop at the car, because Garwood was in a restaurant nearby eating his breakfast (p. 25). Young continued on walking toward the ferry and had reached a drug store near the ferry when a friend of Garwood's, seeing Young walk away from Garwood's car, and desiring to help Garwood get a passenger, walked after Young, took him by the arm and brought him back and invited him in Garwood's car (pp. 25, 29, 37, 478, 479), and put him in the car (pp. 31, 479). This occurred about 9.45 o'clock A. M. Young did not ask for a new car as the State claims in its brief, but asked "Where is the man that drives the new Ford sedan?" (p. 27.) The driver asked him if he meant Harry Garwood and Young said, "Yes (p. 27). Young asked two other drivers the same question, "Where is the driver of this car" (pp. 31, 35), when he found the

car was empty. A driver went in the restaurant to get Garwood (p. 21). Young gave away cigars and took one himself at the ferry. Young is corroborated by three jitney drivers' testimony on these points. Garwood came out of the restaurant and got in the car (p. 478). Young's intentions before he was brought back and placed in Garwood's car was to go to Cramps. When Garwood asked him where he was to go, Young said the same place, Ellisburg (p. 480). On the way to Ellisburg they bought a pint of liquor at a saloon in Camden (p. 480), and Young drank the whiskey before he got to Ellisburg and threw away the bottle (p. 481) and stopped again at the Ellisburg Hotel and got some soft drinks. Defendant did not remember what occurred in the hotel (p. 481), but it was testified to by the proprietors that on the first trip to his place Young asked for "something" and the proprietor said he had only soft stuff (p. 43) and they each took a drink (p. 43), that they returned about eleven o'clock and got more soft drinks (p. 43), that Young wanted a twenty dollar bill changed and then pulled out a handful of money and said he did not want the change. Garwood asked Young to hurry (p. 44). The proprietor's wife knew Garwood (p. 46) and the proprietor knew Young for six years (p. 46). Young came to his place during that time, and had been there a few month's before the shooting. He knew Young well enough to call him "Youngy."

The proprietor's wife's testimony is the same (pp. 38 to 42) as is also the testimony of a man named Cooper who was in the bar room (pp. 48 to 51).

When Young and Garwood got to the Springdale Road, Young told him to stop the car and the following conversation took place, "Harry, you can stop your car here, I want to talk to you," I said, "Harry,

today you seem to enjoy running around with other people's wives." He said, "No, not that I know of." I said, "Well, maybe you don't know just who I am," I says, "I am the fellow who you have played hide-and-go-seek with for nine years," and I said—he says, "Well I have seen you before," I says, "Well, my name is Young," or something resembling that, and I said, "I want to tell you today that you have got two things to do, which I am going away now, I am not going to stand this any longer, you can take my wife and children and take care of them, you can have a wife now of your own, you wanted someone else's so bad." He says, "I never ran around with your wife," I said, "Harry, there is two things for you to do; you can either take my wife and take care of her now or take a licking" and at that he said, "You are a God damned liar."

Young then describes his actions as follows: "I had opened the car door and he made a wild rush for me and grabbed for his hip pocket with his right hand. As he made a reach for his hip pocket, I thought that he was going to fire on me; I grabbed my gun being an automatic a Colt automatic, .32, a gun that is always cocked—when locked it has a safety on—a touch of the trigger, rapid fire and him coming toward me, the bullet struck him somewhere in the breast, just where I don't know, and as he was falling, I didn't lower or raise my gun, his head was kind of sideways; the bullets, one struck him in the side of the head, I think, and the other one at the back of the head as he was coming on down. He fell from there to the floor of the car. I studied for a few minutes what I was going to do, whether—. The shock had kind of sobered me up, I realized the facts then of what I had done; I studied whether I should hide the mystery or whether I should bring

him into town with me. I thought, well, I didn't know what to do; I thought first, I would turn the gun on myself, and I thought, 'No, I have two children which I think a whole lot of.' For the sake of my children I thought then I would live. The man whom I thought had destroyed my home was then dead. I drug him a piece into the bushes from the side of the road; he was dead; his watch was hanging on him in open sight which had pulled loose, which I thought I would take that so no one wouldn't identify him. I wanted to see whether he had any letters in there from my wife in his pocket, which I felt in his inside coat pocket, which he had some letters in there and some papers. But none was from her they were typewritten. He had a pocket book in his pocket which contained three dollars and some change, I suppose it was the balance of the money I had given him. I then wondered what I would do. I thought the thing over, which I looked at my gun, and I looked at him, I thought, 'Well you are dead and I might as well be with you.' I raised the gun again, and I thought of my two children, which there were no one to raise them, and I thought, 'No, I never run around with a man's wife myself, or never would,' and I went over to where the car was standing in a dazed condition, I was wondering how I was going to hide the car, there were no way for anybody to get past. I knowed then I had to work quick if I wanted to conceal anything, if I intended to live myself, no car could pass. I wondered if anyone had heard the shot, I didn't know whether I was able to run a car or not, but I thought I would try for a very little experience had I ever had in driving a car, just a few days before. I got in the car and through some way, I don't know how, I managed to drive the car to Haddonfield, to Martin's

home, and I knocked at the door and I asked if Martin was there and his wife said he was not. I asked what time he would be home. She said, 'In a few minutes,' which I said, 'Then tell him I would like to see him.' I left there and went to Camden. How I got into Camden I don't know, but some way, I got down to Green's, 714 Spruce Street."

The place where the shooting occurred is a narrow lane. The lane is too narrow to allow space for more than one car because trees border each side (p. 284). Young took the car because he could not hide it. It would block the road (p. 483).

Young had purchased the revolver from a gunsmith in Camden on March 15, 1921, and gave his correct name and address (p. 94). The revolver was automatic firing and the bullets sold to Young at the time he purchased same were the ordinary steel cased bullets used in the revolver (p. 99). Defendant was working that time at Cramp's Shipyard and at the time of this purchase had been attacked by strikers. His superior workmen told him to carry a revolver to protect himself. He carried this revolver at all times on a holster underneath his coat and not concealed about his person (p. 89).

The defendant when he met Garwood had no intention of killing him (p. 510). He wanted to talk to him about his wife (p. 509).

He had no intention of shooting him (p. 511) before the time he shot him. He was sorry after the shots sobered him (p. 511), that it had occurred.

Garwood was angered by the conversation and had his hand near his back pocket (p. 535). Young did not know how his hand got there but Young thought that all jitney men carried revolvers and it put Young in fear (p. 536) and he fired the shots (p. 536).

When Young reached Green's house he was under the influence of liquor. He stumbled into the house and sat on a chair (p. 701) and dozed (Hoyle's test. p. 701). He stumbled out of the car (p. 702) and staggered in the house and bumped into table and fell asleep (p. 702). He staggered when he got out of the machine (p. 715) and fell over a chair (Green's test. p. 715), he didn't talk plain (p. 716) and laid down (p. 716) and went to sleep.

Young stayed at Green's until two o'clock when he went to see a man named Martin who lived at Haddonfield. Martin had sold Young a car of the same type as Garwood's car, a ford sedan (p. 487) which Young was paying for (p. 642). Young for a week previous to the shooting kept the car in a garage at Eighth and Spruce Streets in Camden (pp. 487-490). Martin had made out a bill of sale for the old car on July 15, and Young had secured license tags for same on July 16, one week before the shooting (p. 490). He had a friend do this for him because he could not leave his work on that Saturday morning (p. 61).

Young could not keep two cars in the garage and wanted to conceal Garwood's car. For this reason he determined to give back to Martin the car he was purchasing from him. Martin was at home when Young called and Martin drove Young back to Camden because Young was under the influence of liquor (p. 487). They went to the garage and Young gave the old car back to Martin (p. 487), and Martin took it to Haddonfield. Martin changed the numbers on Garwood's car to correspond with the numbers on the old car (p. 487) and changed the license tags from the old car to Garwood's car. The Court would not allow the defendant to state why Martin did this (p. 488).

Young never again had possession of the car he was purchasing from Martin. Young put Garwood's car where he had kept the old car (p. 488). Martin asked Young where he got the new car and Young would not tell him. Martin accused Young of stealing it and told Young for the first time that the car which he had sold to Young had been stolen (p. 643). Martin said Young would get caught and fixed up the license and engine number without suggestion from Young (p. 643).

On the day following the shooting, Young endeavored to conceal the body by burial (p. 644), but was unable to purchase a shovel to do so (pp. 645, 75 and 76), and the body was found before he again returned.

Young had taken the car to Green's house after the shooting. He had promised the Green's to take them out in his own car that night and when the cars were exchanged he had no reason for refusing to keep his promise. He therefore took them out in the new car of Garwood's (p. 654), and afterward used it on other occasions in the place of his own car (p. 655).

Young was afraid of arrest and slept in the woods in the car the night before he was arrested (p. 78), and was found asleep in car by the officers (pp. 78 and 88). Young had the windows of the car so fixed that no one could molest him and also carried his revolver.

The body of Garwood was found on July 31 (p. 14). The persons who discovered the body did not examine it or look for identification marks (pp. 14 and 15). The testimony of the coroner (p. 16) and the morgue keeper (p. 18) was that the pockets were turned inside out. Before the witnesses saw the body, the detectives had investigated the scene of the

shooting and examined the body of the deceased (p. 109).

The head showed two bullet wounds one from side to side and another from the top of the scalp to the back of the neck (pp. 21 and 23).

Young was arrested and taken to the Prosecutor's private law office at Third and Market Streets, and not to the county jail or Prosecutor's office in the Court House (p. 125) and was kept there and questioned all day until late at night (p. 126) by Detective Doran and the Prosecutor and that they usually tell everybody "It is best to tell the truth." The truth won't hurt (p. 131) and they were trying to convince him to tell the truth (p. 132), and advised Young to tell the truth (p. 132) and make a clean breast of it and it would be better for him to tell the truth (pp. 132-133-134), and that he (Young) may have been told that three or four days (p. 134). That night Young was taken to the jail and the next day at an early hour was taken from the jail by Doran and conveyed to Haddonfield, Ellisburg and Merchantville and then to the Prosecutor's private law office (p. 137) and that four officers questioned Young that day (p. 136). At night he was told it would be better to tell the truth (p. 138) and the detective was constantly seeking to get the defendant to tell the truth.

He was taken to the jail at eleven o'clock at night (p. 139) and on August 4, he was taken at an early hour to Merchantville to the office of the Chief of Police and questioned. While he was there, handcuffed, he was beaten by detectives. At evening he was again taken to the Prosecutor's office and questioned (p. 169).

On August 5th, he asked for his wife and had a conversation with her in which he told her he had

killed Garwood and that she could not run around with Garwood any more (p. 740) and talked for three-quarters of an hour with her (p. 743), and was taken again to the Prosecutor's office. Young was so weak and ill that when he arrived at the Prosecutor's office he was given aromatic spirits of ammonia and placed on a couch (p. 206) and his mind was dazed (p. 743).

Young when first arrested was told by Detective Doran that it was best to tell the Prosecutor about the case (p. 162) and he would be helped and was told by Doran that Garwood was dead and that it was Garwood's car that Young had (p. 162). Doran then said (p. 162) that it was best for Young to make a clean breast of it (p. 163). Young asked for his attorney when he was before the Prosecutor and the Prosecutor told him he had not any time to get his lawyer (p. 162), Young asked for bail and was told he would get it if he made a statement (p. 163). Young was refused permission to telephone to his lawyer (p. 164) and again refused at Merchantville (p. 165) and was persuaded to confess (p. 165) and asked a witness to communicate with his lawyer (p. 167) but the witness was instructed not to do so (p. 167), and was beaten by detectives (p. 169) and kept in handcuffs (p. 176). That as a result of this treatment Young did not care whether he lived or died on the day he confessed (p. 206). That he made a statement in which the Prosecutor asked leading questions (p. 208) and after he confessed he was given a good meal (p. 209) although he had very little to eat previously (p. 210). That he could not get a writing outfit nor could anybody buy him writing paper, he was not allowed to read newspapers or have a lead pencil, that his pencil was taken from him (p. 211) and all the pencils of the prisoners with him were taken (p. 211). He was not allowed

to have any visitors or converse with any one (p. 211).

Corroboration of Young's injuries to his neck was given by a fellow-prisoner (p. 254).

Detective Doran admitted (p. 261) that all Young had to eat "may have been sandwiches."

Young's confession was to the effect that Garwood had been having sexual intercourse with Young's wife (p. 319) and Young intended to lace him and it resulted in the shooting (p. 319). He accused Garwood of this conduct with his wife before the shooting (p. 320). Two trips were made by them (p. 320), on the first trip Young was going to beat him and changed his mind (pp. 321-323) and left Garwood at Fourth and Federal Streets and made no arrangements to meet him (p. 322). That he was on his way to work when he spied Garwood (p. 322). When Young was at the ferry the second time, he inquired for Garwood (p. 324), and was told he was in the restaurant. That Garwood had started to come toward him when he shot (pp. 325-326). That Young lost his head and fired (p. 326). Garwood fell and Young thought he fired two more shots, but he was not sure, his mind was completely gone (p. 327), and said the reason he took the shoes wouldn't be any good (p. 330) that he had consulted Lawyer French about his wife's relations with Garwood (p. 332), that he killed Garwood in a drunken condition (p. 333), that he had endeavored to bury the body (p. 334), that he did not know why he had taken the shoes (p. 335). That the Prosecutor obtained a different answer to the question about the intervals between shots after persistent leading questions (p. 349).

JOHN T. CLEARY,
Counsel for Defendant.