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Writ of Error.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY:

*To the Hudson County Court of Oyer
and Terminer.*

(SEAL)

Greeting:

10

Because in the record and proceedings and also in giving of judgment in a certain indictment pending before you, in which said indictment Antonio Mangino was a defendant, which said indictment was for murder, and upon which indictment he is convicted of murder in the second degree as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial, to the great damage of the said Antonio Mangino, as by his complaint that we are informed, we being willing that speedy justice should be done in his behalf, do command you distinctly and openly to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and concerning the same, and also the entire record of the proceedings had upon the trial of said indictment to our New Jersey Court of Errors and Appeals, on the second day of March, 1931, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

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WITNESS, EDWIN ROBERT WALKER, Chancellor at Trenton, aforesaid on the tenth day of February, 1931.

JOSEPH F. S. FITZPATRICK,
Clerk.

LEWIS G. HANSEN,
Attorney for Plaintiff-in-Error.

40

Return.

10 The answer of Charles M. Egan, Esquire, Judge of the Court of Oyer and Terminer, holden in and for the County of Hudson, the record and proceedings of the plaint whereof mention is within made with all things touching the same I send to the Justices of our Court of Errors and Appeals in the last resort of all causes at Trenton, N. J., at the day and year within contained in a certain schedule to this writ annexed as within I am commanded.

CHARLES M. EGAN,
Judge.

Attest:

20 GUSTAV BACH,
Clerk.
(SEAL)

Filed Clerk's Office
Feb. 18, 1931
Hudson County, N. J.
GUSTAV BACH,
Clerk.

30

Indictment.

STATE OF NEW JERSEY, HUDSON COUNTY, To Wit:
Be it remembered, that at a Court of Oyer and Terminer holden at Jersey City, in and for the said County of Hudson, on the Tuesday of April in the year of our Lord one thousand nine hundred and thirty before Honorable Luther A. Campbell one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Charles M. Egan, Honorable

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Indictment.

Robert V. Kinkead and Honorable Daniel T. O'Regan and Honorable Thomas H. Brown, Judges of the Court of Common Pleas in and for the said County of Hudson, according to the form of the Statute in such case made and provided, by the oaths of

- | | | |
|----------------------------|------------------------|----|
| 1. William P. Fahy | Foreman and | 10 |
| 2. Charles Bach | 13. William Pfanner | |
| 3. William A. Cassidy, Sr. | 14. Peter Reis | |
| 4. Charles M. Dubbs | 15. Herman Rickhey | |
| 5. Dennis Harrigan | 16. John A. Robertson | |
| 6. Fred Holtje | 17. Bernard Sarnoff | |
| 7. Andrew Hopper | 18. Albert J. Stuerer | |
| 8. Maltby Jelliffe | 19. Nicholas A. Walsh | |
| 9. Frank Klem | 20. William M. Wauters | |
| 10. Edward A. Kuhlman | 21. Joseph Weber | |
| 11. Harriet Niese | 22. Robert White | |
| 12. Andrew L. Nunan | 23. Charles C. Wilson | |

good and lawful men of said County, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of Hudson, it is presented in manner and form following, that is to say, that the Bills following are true Bills.

WILLIAM P. FAHY,
Foreman.

And the foregoing being presented to the said Court on the Fifteenth day of September, in the year of our Lord One Thousand Nine Hundred and Thirty with bills of Indictment Nos. 548 to 626 inclusive, it is ordered by said Court that the said Bill of Indictment so as aforesaid included as Bill Number 553 for Murder, as charged upon Antonio Mangino remain in this Court of Oyer and Terminer for trial and disposal according to law, and said Bill is in words as follows:

Indictment.

HUDSON OYER AND TERMINER

April Term, A. D. 1930.

HUDSON COUNTY, To Wit: The Grand Inquest
of the State of New Jersey, in and for the body
of the County of Hudson, upon their respective
10 oath PRESENT, That Antonio Mangino late of the
Town of Guttenberg, in the said County of Hud-
son, on the fifth day of July in the year of Our
Lord one thousand nine hundred and thirty with
force and arms, at the Town of Guttenberg afore-
said, in the County aforesaid, and within the
jurisdiction of this Court one Maria Mangino in
the peace of God and of this State, then and there
being, did wilfully, feloniously and of his malice
aforethought, kill and murder, contrary to the
20 form of the Statute in such case made and pro-
vided, and against the peace of this State, the gov-
ernment and dignity of the same.

And the Grand Inquest aforesaid, upon their
oath aforesaid, do further PRESENT, That the said
Antonio Mangino on the fifth day of July in the
year of our Lord one thousand nine hundred and
thirty, at the Town of Guttenberg aforesaid, in
the County of Hudson aforesaid, and within the
jurisdiction of this Court, did feloniously kill and
30 slay one Maria Mangino 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.

And the Grand Inquest aforesaid, upon their
oath aforesaid, do further PRESENT, That the said
Antonio Mangino on the fifth day of July in the
year of our Lord one thousand nine hundred and
thirty, at the Town of Guttenberg aforesaid, in
the County of Hudson aforesaid, and within the
jurisdiction of this Court, in and upon one Maria
40

Indictment.

Mangino in the peace of God and of this State, then and there being, an assault did make, and the said Maria Mangino then and there did beat, wound and ill-treat, and other wrongs, to the said Maria Mangino then and there did, to the great damage of the said Maria Mangino contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same. 10

JOHN DREWEN,
Prosecutor of the Pleas.

Endorsed Bill No. 553 Hudson Oyer and Terminer, Term of April, 1930, The State *vs.* Antonio Mangino for Murder. 20

JOHN DREWEN,
Prosecutor of the Pleas.

A true bill.

WILLIAM P. FAHY,
Foreman.

PRESENTED

Sept. 15th, 1930

and it is thereupon ordered that this Bill of indictment remain in this Court of Oyer and Terminer for trial and disposal according to law. 30

GUSTAV BACH,
Clerk.

And afterwards to wit: to wit on the eighteenth day of September in the year of our Lord One thousand nine hundred and thirty at a Session of the Court of Oyer and Terminer of the County of 40

Judgment.

Hudson, aforesaid being now of the Term of Sep-
tember One thousand Nine hundred and thirty in
the said year before the Honorable Charles M.
Egan, Judge of the Court of Common Pleas in
and for the said County of Hudson, who doth con-
stitute and hold the Court of Oyer and Terminer
10 in and for the County of Hudson here cometh the
said Antonio Mangino under the custody of the
Sheriff of the County of Hudson in whose cus-
tody he had before been committed for the cause
aforesaid, who being brought herein in his proper
person by the Sheriff aforesaid, to whom he had
been committed and having heard the indictment
read and forthwith being demanded of and con-
cerning the premises in the said indictment above
specified and charged upon him, how he will acquit
20 himself thereof, he says he is not guilty thereof,
and therefore for good and evil he puts himself
upon the country, and John Drewen, Esq., Prose-
cutor of the Pleas of said County who prosecutes
for the State of New Jersey, in this behalf, doth
the like.

Therefore, let said indictment be continued until
January 19th, 1931, and let a jury come before
the Honorable Charles M. Egan, Judge of the
Court of Common Pleas in and for the County
30 of Hudson, constituting and holding the Court
of Oyer and Terminer for said County, being now
of the Term of December, 1930, One thousand nine
hundred and thirty of twelve good and lawful men
of this State and residents in the County of
Hudson, over 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 of the said defendant to recognize
on their oath whether the said Antonio Mangino
40 be guilty of Murder as in the indictment aforesaid
is charged against him, or not guilty thereof, be-

Judgment.

cause as well the said John Drewen, Prosecutor of the Pleas of the County of Hudson, aforesaid who prosecutes for the State of New Jersey in this behalf, as in the said indictment have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

10

At which time, that is to say on the 19th day of January in the year of our Lord One thousand Nine hundred and thirty-one, at Jersey City, aforesaid in the County of Hudson aforesaid, before the Honorable Charles M. Egan, Judge as aforesaid constituting and holding the Court of Oyer and Terminer as aforesaid, here come as well the said John Drewen, Prosecutor of the Pleas aforesaid who prosecutes as aforesaid, as well the said defendant under the custody of the Sheriff aforesaid, to whose custody he had hitherto been committed and who being brought to the bar in his proper person by the Sheriff and the jurors of the jury by the Sheriff of the County of Hudson, aforesaid, for the purpose, chosen, empanelled and returned to wit: John Hartung, Ephrian M. Musier, Henry C. Hamel, Carrigan Dorwood, Harry E. Bockoven, Otto Bucqula, Horace W. Seeley, Phillip Straub, Thomas Davis, Henry Magee, James M. Carnie, Henry Goodman, being called, come, who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury at which days the evidence of the parties is submitted and the Attorneys were heard thereupon and the said issue after a Charge from the Court was submitted to the said jury in charge of the said Officers of the Court, being duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit, on Janu-

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30

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Judgment.

ary 20th, 1931, the last aforesaid at the City of Jersey City aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said John Drewen, Esquire, Prosecutor of the Pleas as aforesaid and for the said defendant do say that the said defendant is guilty of Murder in the 2nd Degree.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and it is by the Court here considered and adjudged, that the said Defendant Antonio Mangino be and is hereby sentenced to be confined in State Prison at hard labor for a period of twenty (20) years and thence until the costs of prosecution is paid.

Judgment entered and signed this Sixth day of February A. D. 1931.

CHARLES M. EGAN,
Judge of the Court of Oyer and
Terminer, in and for the
County of Hudson.

30

40

Court Minutes.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

COURT OF OYER AND TERMINER

Holden in and for the said County.

<p>THE STATE, <i>vs.</i> ANTONIO MANGINO</p>	<p style="font-size: 3em;">}</p>	<p>Sur Indictment No. 553, Term of April A. D. 1930, for Murder.</p>	<p>10</p>
Sept. 18/30.	The Defendant being charged plead Not Guilty and is remanded for trial.	<p style="text-align: right;">Judge EGAN</p>	
Sept. 26/30.	Motion on Order for a Struck Jury. "Decision reserved by the Court."	<p style="text-align: right;">Judge BROWN</p>	20
Sept. 26/30.	Order for a Struck Jury signed by the Court.	<p style="text-align: right;">Judge BROWN</p>	
Oct. 31/30.	Proceedings for the striking of a Struck Jury.	<p style="text-align: right;">Judge BROWN</p>	
Jan. 19/31.	Trial commenced.		
Jan. 20/31.	The Defendant being tried, Jury find defendant Guilty of Murder in the 2nd Degree and he is remanded for sentence.		30
Feb. 6/31.	Application for arrest of judgment denied. The defendant being placed to the bar is sentenced to be confined in State Prison at hard labor for a period of twenty (20) years and thence until costs of prosecution is paid.	<p style="text-align: right;">Judge EGAN</p>	40

Clerk's Certificate.

STATE OF NEW JERSEY.

(SEAL)

HUDSON COUNTY, ss.:

10 I, GUSTAV BACH, Clerk of the County of Hudson
 aforesaid and also Clerk of the Circuit Court and
 Court of Common Pleas and Court of Oyer and
 Terminer, holden therein

20 Do HEREBY CERTIFY, That the foregoing is a true
 and correct copy of Pleadings, Proceedings, Con-
 viction and Sentence in the case of the State of
 New Jersey *vs.* Antonio Mangino, on Sur Indict-
 ment No. 553, Term of April, A. D. 1930 for Mur-
 der, with all things touching the same as the same
 is taken from and compared with the original as
 presented, filed and recorded in my office. This
 certificate is issued so that the said cause may be
 removed to the Court of Errors and Appeals of
 the last resort of all causes at Trenton, N. J., for
 adjudicature according to law.

30 IN TESTIMONY WHEREOF, I have hereunto set
 my hand and affixed the seal of said
 (SEAL) Courts and County, at Jersey City this
 Twenty-fifth day of February, 1931.

GUSTAV BACH,
 Clerk.

Certificate of Chancellor.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTONIO MANGINO,
Plaintiff-in-Error.

Sur Indictment
for Murder.

10

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for review of the judgment of the Hudson County Court of Oyer and Terminer in this state convicting the said Antonio Mangino who was indicted and tried for murder and was convicted of the crime of murder in the second degree, without exhibiting to me the record of the proceedings in the cause or any part thereof, and without alleging any error in those proceedings, and that I have refused to order a writ of error for the review of said judgment, solely because no cause arguable or otherwise is shown for the granting of such writ of error to the Supreme Court.

20

30

Dated, Feby. 10, 1931.

E. R. WALKER,
Chancellor.

A true copy.

FRED GARRETSON,
Clerk.

40

Testimony.HUDSON COUNTY COURT OF OYER AND
TERMINER.

10

THE STATE

*vs.*ANTONIO MANGINO,
Defendant.Indictment #553.
April Term,
A. D. 1930.
Murder.

Jersey City, N. J., January 19, 1931.

Before:

20

Hon. CHARLES M. EGAN, Judge, and a Jury.

Appearances:

For the State: HARLAN BESSON, Esq., First
Assistant Prosecutor of the Pleas; T.
BURTON COYLE, Esq., Assistant Prosecu-
tor of the Pleas.For the Defendant: LEWIS G. HANSEN, Esq.,
and ERIC H. JENTZ, Esq.

30

Mr. Besson: In the absence of a Supreme Court
Justice, I move that your Honor convene and hold
court of Oyer and Terminer.

The Court: I will grant the motion.

Mr. Besson: I now desire to move the case of
the State *vs.* Antonio Mangino on indictment for

40

Opening of the Case.

murder, on indictment number 553 of the April term, A. D. 1930, of the Hudson Oyer and Terminer, and ask that a jury be sworn.

Mr. Hansen: At this time, if the Court please, and without taking up any of your Honor's time, I just want to make a general objection to the impanelling of a struck jury at this time on the ground that the defendant is deprived of his proper rights under the constitution. I would like to have that objection on the record.

10

The Court: In what respect?

Mr. Hansen: The number of challenges and the notice of whom they are and what their occupation is. Of course, he does find out where they live,—but on these two grounds, that he doesn't know their occupation and on the ground he loses a certain number of challenges by reason of the peculiar wording of the struck jury law.

20

The Court: All right, your exception will be noted.

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN. (Seal)

The Clerk: Your Honor, I have a special struck jury panel of thirty-six names, numbered according to the veniremen of the case of the State of New Jersey *versus* Antonio Mangino, the prisoner at the bar.

30

The Court: Proceed.

The jury was then drawn and sworn.

40

William R. Harrison, for State—Direct.

WILLIAM R. HARRISON, sworn on behalf of the State, testified as follows:

Mr. Besson: I ask that these photographs be marked for identification as Exhibits S-1 to S-10 inclusive.

10 (Photographs so marked.)

Direct examination by Mr. Besson:

Q. What is your occupation, Mr. Harrison? A. Photographer.

Q. And you have been so employed for how long? A. Forty years.

Q. During the course of your employment as such have you been called in by the Prosecutor of the Pleas of Hudson County, New Jersey, on many occasions? A. Yes, sir.

Q. To take photographs of things for use at trials before the Court of Oyer and Terminer and the Court of Quarter Sessions? A. Yes, sir.

Q. Now I show you here some photographs which have been marked Exhibit S-1 to S-10 inclusive for identification. Will you state briefly to the court and jury what you know about these photographs and what they represent? A. These photographs were all taken by me. Exhibit S-1 is a photograph of the body of a woman that I photographed at Necker's Morgue on the 5th of July, 1930.

Exhibit S-2 is the body of the same woman taken the same date, same place, as I found it.

Exhibit S-3 is the interior of the store 320—26th Street, Guttenberg, front to rear, looking from the front to the rear.

William R. Harrison, for State—Cross.

Exhibit S-4 is a view looking south on Palisade Avenue near Farrell's Garage, Guttenberg.

Exhibit S-5 is a lane opposite Farrell's Garage, Palisade Avenue, Guttenberg, taken in October last year.

Exhibit S-6 is a view looking towards the lane from the Garden opposite Farrell's Garage, Guttenberg, taken the 30th of July, 1930. 10

Exhibit S-7 is a view looking from the interior of Farrell's Garage to Palisade Avenue. The address was 29-31 Palisade Avenue, Guttenberg.

Exhibit S-8 is the interior of a bedroom on the first floor left, 322—26th Street, Guttenberg, taken the 30th of July, 1930.

Exhibit S-9 is the interior of a store 320—26th Street, Guttenberg, New Jersey, looking from rear to front. This photograph was taken July 9, 1930. 20

Exhibit S-10 is a view of 320—26th Street, Guttenberg, showing the house, the exterior.

Q. Do each of these photographs correctly represent the objects taken at the time they were taken? A. Yes, sir.

Mr. Besson: Cross-examine.

Cross-examination by Mr. Jentz:

Q. When were these pictures taken, Mr. Harris? 30
A. July 5, last year, the body, and July 30th the exterior views.

Q. How about the interior of the store? A. The interior of the store was taken on the 9th day of July, 1930.

Mr. Jentz: Nothing further.

William R. Harrison, for State—Cross.

Mr. Besson: Have you any objection to these photographs going in evidence?

Mr. Jentz: Only the photographs about Farrell's Garage. I do not see that that has anything to do with the case.

10 Mr. Besson: We, of course, contend that these pertain—

Mr. Jentz: We do not know anything about Farrell's Garage. It is all right for the pictures of the store to go in, the picture of the house and the pictures of the rooms and the woman, but I don't see why any picture of any lane or of Farrell's Garage should be introduced.

20 Mr. Besson: You object to Exhibit S-4, Farrell's Garage?

Mr. Jentz: And the lane.

Mr. Besson: The lane we offer for the same reason.

Mr. Jentz: What reason?

Mr. Besson: I can state briefly the reason. The pistol with which the shooting was done was found in this lane, and it is opposite Farrell's Garage.

30 Mr. Jentz: I still object, no connection at this time. We might take a picture of the court house and Mr. Besson might say the pistol was found there. We admit all the other except Farrell's Garage and the lane. I think they ought to be connected up.

The Court: Of course if they are not connected up the objection is well taken.

Mr. Besson: I will press the offer of Exhibits S-7, S-6, S-5 and S-5 for identification later in the trial.

40 (Photographs marked for identification Exhibits S-1, S-2, S-3, S-8, S-9 and S-10 marked in evidence.)

(Witness excused.)

Frank Oleri, for State—Direct.

FRANK OLERI, sworn on behalf of the State, testified as follows:

Direct examination by Mr. Besson:

Q. What is your occupation? A. Civil engineer and surveyor.

Mr. Besson: I would like this map marked for identification. 10

(Map marked for identification Exhibit S-11.)

Q. Are you licensed to practice as a civil engineer in the State of New Jersey? A. Yes, sir.

Q. You are a graduate of what institution of learning? A. New York University.

Q. What degrees have you? A. I have several degrees, civil engineer. 20

Q. I show you Exhibit S-11 for identification and ask you if you will tell the court and jury briefly what you know about that. A. This is a map of a survey made of Guttenberg showing the details of number 320—26th Street, and also showing the detail at Palisade Avenue, and the arrangement of several of the streets between 24th and 26th Streets, and between Palisade Avenue and Hudson Avenue in the Town of Guttenberg. It shows the plot plan of a two story stucco building known as 322—26th Street, also a three story frame building known as 320—26th Street. It also shows a plan view showing the interior of the store at 320—26th Street, showing the general arrangement of the fixtures, shelving and counters and so forth of the interior, and also an elevation showing the front entrance of number 320 and number 322—26th Street, the elevation of one story of each one of those buildings and also shows a detailed section through the interior of 30
40

Frank Oleri, for State—Direct.

the store across the counter, showing the arrangement of the shelving and so forth in back of the counter.

Mr. Besson: That is all. Any cross-examination?

10 Mr. Jentz: No.

Mr. Besson: I desire to offer this map in evidence at this time with the representation to the court that it refers to the scene of the alleged crime and will be connected up by further testimony.

The Court: No objection?

Mr. Jentz: No.

The Court: It may be received.

20 (Map Exhibit S-11 for identification marked in evidence S-11.)

The Court: Pin the map to the black-board.

By Mr. Besson:

30 Q. Now will you take the pointer and explain in detail what this map represents? A. This map in detail shows the interior of the store with the entrance on the side. It is a plan view drawn to the scale of $\frac{3}{4}$ of an inch equals one foot. It shows the entrance from the street into the store represented by this door. It shows the general arrangement of boxes and the counter. This is the counter along here showing the two tables and there was a case here.

It also shows the line of shelving on the side and the front show window and the shelving along here.

40 It also shows the method of getting into the rear. There is a kitchen in the rear of the store, showing the general arrangement of the fixtures

Frank Oleri, for State—Direct.

in the kitchen, tables, closet, stove, and another table, another closet, and a toilet.

This section here shows a view cut through here looking out. In other words, you are standing here looking out. It shows this case marked here as this. It shows the walking space in between, which is this space in here. It shows the shelf in the front which is part of this shelf here. Also the shelving on each side, and it shows the arrangement of the windows.

10

This front elevation shows a view looking at the building. This is number 320. This would be the entrance to the store and this is the entrance to the interior of the building leading up to the upper floor, while number 322 has one entrance and it shows the arrangement of the entrance, the steps, the doorway, the two windows on each side. This shows the building itself, the front plan of the building 320 and 322. It shows the general size of the buildings.

20

This plan is drawn to the scale of one-quarter of an inch to the foot.

This sketch is a sketch drawn to the scale of one inch equals one hundred feet. It shows the location of 320 and 322-26th Street, the relative position with reference to Hudson Avenue and Palisade Avenue, and it shows 26th Street between Palisade Avenue and Hudson Avenue, 25th Street between Palisade Avenue and Hudson Avenue.

30

(Short Recess.)

FRANK J. OLERI, recalled.

Direct examination (continued) by Mr. Besson:

Q. Mr. Oleri, will you go on detailing the map?

A. Between 24th and 25th Streets, on Palisade

40

Frank Oleri, for State—Cross.

10 Avenue there are several buildings, number 29 and 31. Directly opposite is the garage number 30, a frame dwelling, alongside of which is a fence surrounding the property, and there is a fence that runs dividing the property of number 30 from the adjoining property, which is the corner; and this insert is a drawing to a detail of one inch equals ten foot on the side, which forms the garage numbers 29 and 31, which shows that fence running along the south side of the property and along the line of the street, and also shows that the warehouse at the corner—the corner warehouse, the outline of the warehouse on the corner, the northerly side, and the westerly side of the warehouse, and it shows a driveway going through separating the fence and the warehouse itself, and it shows a gate, shows a gate which was leaning up against the fence in this position (indicating).

20

Q. Now can you indicate approximately the distance from this house here, 320, to the garage or point at the garage on Palisade Avenue? A. About 560 feet.

Q. In order to reach it you would have to go in a northwesterly direction and then in a southwesterly direction? A. Yes.

30 Q. You would change directions at the corner of Palisade and 26th Street? A. Yes, sir.

Cross-examination by Mr. Hansen:

Q. I just want to ask you one question. Referring to the store, do I understand this is a diagram of the store as you go in—is that right? A. Yes, sir.

40 Q. And the show cases here—will you show where these show cases were? A. Right here (indicating).

Dr. Hovsep Tataryan, for State—Direct.

Q. And can you tell from looking at that sketch how high that show case is? A. Yes, you can scale that off.

Q. How high is that show case? A. This is drawn to a scale of one inch to one foot. Now the distance from the floor level to the level of the platform on which the show case rests is three feet and one and a half inches, and the show case is about fifteen inches high—fifteen to eighteen inches high. 10

Q. Making a total of how much? A. About four and a half feet to the top of the show case.

(Witness excused.)

DR. HOVSEP TATARYAN, sworn for the state. 20

Direct examination by Mr. Besson:

Q. What is your occupation, doctor? A. Physician.

Q. And you are licensed to practice as such in the State of New Jersey? A. Yes, sir.

Q. And you are a graduate of what institution of learning? A. American University of Baton Rouge, under regency of the New York State University. 30

Q. And what else? Where did you get your degree of Doctor of Medicine? A. From that college, under regency of the New York State University.

Q. How long have you been admitted to practice in the State of New Jersey? A. Eleven years.

Q. Now were you acquainted with Maria Mangino in her lifetime? A. No, sir.

Q. You did not know her? A. No, sir. 40

Dr. Hovsep Tataryan, for State—Direct.

Q. Well, I show you this photograph, or two photographs marked S-1 and S-2 in evidence. A. Yes, I only saw her when she was dead.

Q. That is the woman you saw dead? A. Yes, sir.

10 Q. Did you see that woman on the morning of July 5th, 1930? A. Yes, sir, I saw her dead.

Q. Where did you see her? A. I saw her behind the counter, between the counter and the eastern wall of the store there.

Q. And what was the condition of the body at the time you saw it? A. The face was downward, to look around (indicating).

20 Q. Yes. A. The head and the hair was full of blood and when I tried to lift her a little to turn her around to see her, I saw some bills between the hand and the ground, and the floor, and there was a penetrating wound on the forehead at the middle of the forehead.

30 Q. Now, I direct your attention to photograph S-9, offered in evidence in this case, and will you indicate on that photograph to the jury where it was that you saw this woman lying behind the counter? You are aware, of course, that that represents a view of the store looking from the rear to the street. There is the front window and there is the front door and this is the counter. A. It was between the counter and the wall, eastern wall.

Q. Right in there? A. Yes, sir, between the counter and the eastern wall.

Q. Will you mark that with a pencil with an X just where it was? (Witness complies.)

Q. Now, in which direction did her head lie? A. The head was directed towards the south.

40 Q. That is towards the street? A. Towards the street, yes, sir.

Dr. Hovsep Tataryan, for State—Direct.

Q. And her feet were directed toward the interior of the house? A. The interior of the house.

Q. Did you have any difficulty in raising her?
A. She was pretty heavy, yes, sir.

Q. Was the body cold or warm? A. It was warm; it was not very cold.

Q. But there was some coldness? A. Stiff, yes. 10

Q. Had what is known as rigor mortis set in?
A. Not quite, no, sir.

Q. From your judgment of the condition of the body, how long before that time had she met her death? A. At least two or three hours.

Q. And do you remember the precise time at which you arrived at the store to examine her?
A. Yes, sir, between seven and half past seven; I couldn't be exact.

Q. So you would say it was at least two or three hours before that time that she met her death? A. Yes, sir. 20

Q. And it was certainly more than two? A. Two or three hours, maybe more. They called me emergency. I was in bed and I didn't have time even to look at my watch, because they said somebody was dead.

Q. You are acquainted with the daughter, Mrs. Coppolo? A. Yes.

Q. You were attending her in her confinement?
A. Yes, sir. She is at the hospital. 30

Q. And she gave birth to a child today? A. Yes, sir, she couldn't come; she is in the hospital.

Q. Now what was the position of this woman's hands as she lay back of the counter? A. The hands were to the ground, the floor.

Q. Both hands? A. Yes, sir.

Q. Will you indicate to us just the position of those hands? A. Just like that (Indicating). The face was downwards. 40

Dr. Hovsep Tataryan, for State—Direct.

Q. She wasn't holding herself up on her hands, was she?

Mr. Hansen: I object to that as leading.

Mr. Besson: I am trying to have the witness explain to the jury to save time just how the hands rested.

10

The Witness: The hands were like that (Indicating), under the body, both of them like that, and between the hand and the ground there were some bills there on the floor.

Q. But the woman's body lay flat on the floor, didn't it? A. Yes, sir.

20

Q. Now assuming that her body was flat on the floor, where were her hands, that way or downward this way? (Indicating)

Mr. Hansen: Objected to as leading.

The Court: I can't see how that is leading.

Mr. Hansen: I withdraw the objection.

The Court: Go ahead.

30

Q. Now, were they extended upward that way or downward this way? A. Like that. The hands didn't pass beyond the head of the patient.

Q. Like this, you mean? (Indicating) A. Yes.

Q. In that position? A. Yes, sir.

Q. In that position (indicating)? A. Yes, the face was under her and I had great difficulty in turning her over.

Q. Her hands were rigid? A. Yes.

Q. And you couldn't move the hands and arms? A. They were rigid, yes.

40

Q. In other words, rigor mortis had set in? A. Not quite, but the body was not very cold.

*Dr. Hovsep Tataryan, for State—Direct—
Cross—Re-direct.*

Mr. Besson: That is all.

Mr. Hansen: No questions.

Mr. Besson: Just one other thing.

Direct examination (continued) by Mr. Besson:

Q. Doctor, did you notice anything on the counter in this store? A. No, sir, I didn't see anything on the counter at all. 10

Q. And you noticed no blood in any other part of the store but there? A. No, sir; there was some blood on the floor, of course, that come from the head.

Cross-examination by Mr. Hansen:

Q. Just one question. Do I understand, Doctor, that you were the first one to inspect the dead woman? A. To my knowledge; I can't tell of course. 20

Re-direct examination by Mr. Besson:

Q. I show you here Exhibit S-3 in the case which represents the interior of the same store as shown in S-9. Will you indicate the counter behind which this woman lay? That is looking from the front to the rear. A. When you enter from the front the counter was on the right side toward the east, and between the counter and the east wall the woman was lying. 30

Q. Now mark that with an "X", the point in here. In between here was where she lay? A. Yes, sir. (Witness marks as directed.)

Witness excused.

Dr. William P. Braunstein, for State—Direct.

DR. WILLIAM P. BRAUNSTEIN, sworn for the State.

Direct examination by Mr. Besson:

Q. What is your occupation, Doctor? A. Physician.

10 Q. You are licensed to practice as such in the State of New Jersey? A. Yes, sir.

Q. And you also hold an official position, do you not? A. Yes, assistant to the County physician, Hudson County.

Q. And in the course of your employment as such are you called upon from time to time to perform autopsies? A. Yes.

20 Q. Now, I show you here a photograph which has been offered in evidence, rather, photographs marked S-1 and S-2 as exhibits in this cause. Will you state briefly whether or not you performed an autopsy upon the person whose face is represented in each of those photographs, and if so when did you perform this autopsy? A. Yes, on July 5, 1930.

30 Q. Now, will you tell the Court and jury just briefly the result of the autopsy? A. The body was that of a white female measuring five feet two and a half inches in length, judged to weigh about 200 pounds, and about 59 years of age.

40 The skin over the forehead and nose for an area of about four and a half inches in diameter was powder burned. In the mid-line of the forehead about three-quarters of an inch above the eyebrow there was a circular-shaped wound of the skin about a third of an inch in diameter, having the appearance of a bullet wound of entrance. The upper eyelids were black and blue. The eyeballs presented small particles of powder; and about an inch above and to the right of the

Dr. William P. Braunstein, for State—Direct.

wound having the appearance of a bullet wound there was a small laceration about a quarter of an inch in diameter which just involved the skin; and half an inch below and to the left of the bullet wound there was an abrasion of the skin measuring about three-quarters of an inch in length and one-eighth of an inch in width.

10

There was a bruise about three-quarters of an inch in diameter which involved the lower nose and upper lip. The lower left teeth, specifically the canine, lower central and lateral, were loose.

There was also a superficial bruising of the skin on the left cheek-bone that measured about three-quarters of an inch in diameter and another similar bruise of the chin.

The top of the scalp, the back of the scalp, was boggy and soft, as if there was blood beneath it.

20

There were no other signs of recent violence upon external examination of the body. Upon reflecting the scalp an extensive hematoma was found beneath it and the skull was found to be fractured and in the right parietal region fragmented. There was a hemorrhage of fluid and clotted blood commonly known as a hematoma. This was noted over the top and back of the skull, that is, beneath the scalp. The skull seemed to be fractured and fragmented in the right parietal region. This region here (indicating). The fragment measured about two and a half by two or one and a half inches, triangular in shape. It could easily be lifted out from the remaining skull; and beneath it there was a leaden pistol bullet that was distorted and of apparent .38 calibre.

30

Upon removing the skull-cap at the site corresponding to the external wound in the mid-line

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Dr. William P. Braunstein, for State—Direct.

10 of the forehead the skull seemed to have been perforated. From this perforation a lineal fracture extended upward and backward to the area of the fragmentation previously mentioned and was also downward across the base of the skull into what is known as the sphenoid bone on the right and also involved the lesser wing of the sphenoid on the left.

Both orbital plates were fractured, that is, the area around the eye where the skull is rather thin; that is, back of the orbit.

20 The brain was lacerated through the frontal lobe, which was in contact with the area of perforation in front, and this was a continuous track that could be traced through the brain to where the bullet was found beneath the area of fragmentation in the right parietal region. There were fragments of bone carried along this track. There was also considerable hemorrhage about the brain and in the brain substance. The brain stem and the cerebellum were intact.

The other organs of the body were normal and in such condition as to be consistent with the continuance of life and health.

30 Therefore, from all the facts observed, I infer that death resulted from hemorrhage and laceration of the brain following bullet wound of the head.

Q. In the ordinary case, Doctor, how long is it before rigor mortis sets in after death? A. There is no definite time limit. The average case I would say between six and seven hours before it is firmly set in.

The Court: Doctor, pardon me. Will you tell the jury just what is meant by rigor mortis?

Dr. William P. Braunstein, for State—Direct.

The Witness: Rigor mortis is the term applied to the condition that occurs after death, which manifests itself in a stiffening of the muscles of the body. The muscles actually become rigid, and when the patient dies they are flaccid and soft, and after death rigor mortis sets in, which is a chemical change that sets in which causes an actual stiffening of the muscles, so that in moving the extremities or in moving the head it is found that there is a certain rigidity present. Even the joints are difficult to move because of the rigidity of the muscles. This process usually occurs in the average case in about six or seven hours, but in cases of severe diseases it often occurs sooner,—in death following wasting diseases. On the contrary, on battlefields, it isn't unusual for persons to be shot and have them remain in rigor immediately. Those are the exceptions, but it usually sets in in six or seven hours. When putrefaction occurs it loosens or releases the muscles and they become flaccid again. 10

Q. Did I understand you to say that in case of shooting or gunshot wound where there was an almost instant death that rigor mortis may follow immediately after? A. Almost immediately after, but in most cases about six or seven hours. 30

Q. Now, Doctor, did you extract from the skull of this woman the bullet? A. Yes, I have that bullet with me.

Mr. Besson: I offer that bullet in evidence, if the Court please. 40

Dr. William P. Braunstein, for State—Direct.

Mr. Hansen: No objection.

(Bullet admitted in evidence and marked Exhibit S-12 in evidence.)

Mr. Besson: That is all.

Mr. Hansen: No questions.

10 Mr. Besson: Just one minute.

Direct examination (continued) by Mr. Besson:

Q. Just one minute. What point in the skull was this bullet taken from? Can you indicate on my head? A. Yes, I spoke of an area of fragmentation of the skull in the right parietal region approximately there (indicating on Mr. Besson's head). And on removing that fragmented area beneath it was found the bullet, which had traveled from the mid-line here through the brain and did not emerge from the skull but caused fragmentation of the skull at that site.

20

Q. Would you indicate on my head, Doctor, where there were any other wounds or marks besides the wound of entrance? A. Yes, I will re-describe those now. In the first place, I spoke of an area of powder burning about four inches in diameter which involved the forehead up the nose; both upper right lids black and blue; the eyebrows presented particles of powder. An inch above this bullet wound which was about three-quarters of an inch above the eyebrow, was a small laceration, an incised wound. It looked like an incised wound about a quarter of an inch in length. A half inch below it to the left there was an abrasion of the skin. That is where the skin had been abraded, and that measured three-quarters of an inch in length and an eighth of an inch in diameter. This appeared on the lower nose and upper lip—the lower nose and upper lip was

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Thomas McDonald, for State—Direct.

bruised. There was a bruising of the left cheekbone, the zygoma, that measured about three-quarters of an inch in diameter. Another abrasion of the chin about three-quarters of an inch in diameter.

Q. And that was all? A. And then the area of fragmentation back of the skull, and on reflecting the scalp the blood—the hematoma was found beneath it and the skull was found to be fractured and in the right parietal region fragmented. 10

Mr. Besson: That is all.

Witness excused.

THOMAS McDONALD, SWORN for the State. 20

Direct examination by Mr. Besson:

Q. Mr. McDonald, what is your occupation? A. Policeman.

Q. And you were so employed on July 5, 1930? A. Yes, sir.

Q. Now, on that day did you have occasion at any time in the morning to visit the premises 322—26th Street, Gutfenberg? A. Yes, sir. 30

Q. And also 320—26th Street? A. Yes, sir.

Q. What if anything occurred there that morning that was unusual? A. Why, the morning of July 5, 1930, about seven o'clock I was called—the lieutenant of police there sent me up to this 320—26th Street, and on arriving there there was a big number of people outside and also inside, and when I went in there they told me Mrs. Mangino dropped dead; and upon investigating I asked if they had notified the doctor and they 40

Thomas McDonald, for State—Direct.

said yes; and in the meantime this Dr. Tataryan came there.

Q. Now, you didn't touch the body until the doctor came, did you? A. No, sir.

Q. Now, what was the position of Mrs. Mangino's body? A. She was laying behind the counter face down.

10 Q. And in which direction was her head extended? A. Towards the street.

Q. And her feet toward the rear? A. The rear.

Q. And what was the position of her hands as near as you could find them? A. She was lying on her hands; I couldn't see her hands.

Q. Did you see anything on the counter in this store? A. Yes, there was a ten-dollar bill lying on the counter.

20 Q. And will you indicate on this photograph S-3 the position of the ten-dollar bill on the counter? A. Right on top of that book—the order book.

Q. There was an order book there and it lay on top of the order book? A. Yes.

Q. I mark it with an "X," and that is the point where it lay? A. Yes.

Q. Now, did you remain there for any length of time? A. Why, I was there possibly about fifteen or twenty minutes.

30 Q. And were you there until the body was removed? A. Yes, sir.

Q. Who removed it? A. Necker, William Necker.

Q. Not William Necker himself, but some man representing him? A. Yes, sir.

Q. Who was the man that did that? A. I don't know what his name is.

Q. Did you make any note of that? A. No, sir, just the coroner—we called up the coroner.

40

Thomas McDonald, for State—Direct.

Q. Coroner Youngman? A. Yes.

Q. You called him up? A. Yes, and Necker came there with his wagon and took her away.

Q. And you made no arrest at the time? A. No, sir.

Q. Did you see young Joseph Mangino there?
A. Yes, sir. 10

Q. What was he doing? A. Carrying on hysterically.

Q. Were you there when the defendant Antonio Mangino arrived? A. No, sir.

Q. You don't know whether he came there or not? A. No, sir.

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

Q. Have you known him for any length of time?
A. Yes.

Q. Known him for how many years? A. Probably five or ten years—maybe longer. 20

Q. How long have you been a patrolman in Guttenberg? A. Fifteen years.

Q. During all the time you have been a police officer have you known Mangino? A. The biggest part of that time, yes, sir.

Q. And he had a store at that place with his wife? A. No, he never had the store there.

Q. How long has he had the store there? A. Probably eight or ten years, I guess. 30

Q. Have you ever had any occasion to go in the store before? A. No, sir.

Mr. Besson: That is all.

Mr. Hanson: No questions.

Witness excused.

James F. McCormack, for State—Direct.

JAMES F. McCORMACK, sworn for the State.

Direct examination by Mr. Besson:

Q. Mr. McCormack, what is your occupation?

A. Stenographer.

10 Q. In the course of your employment as such did you have occasion on the 16th of July, 1930, to take notes at a coroner's inquest? A. Yes.

Q. And did this inquest relate to the death of Mary Mangino? A. It did, yes.

Q. And where was it held? A. I think it was in the Town Hall of Guttenberg; I am not quite certain of that.

Q. Do you recall Antonio Mangino testifying? A. Yes, sir.

20 Q. Have you the original notes of his testimony? A. You mean the shorthand notes?

Q. Yes. A. No, I am sorry to say I can't locate them; I left them home.

Q. Do you make a practice of saving them? A. I do, yes.

Q. But in this case they are lost? A. I don't know whether they are lost.

Q. You don't know where they are? A. I don't know where they are.

30 Mr. Besson: Mr. Hansen, would you have any objection to using the minutes of the inquest here?

Mr. Hansen: Proving Mangino's testimony, you mean?

Mr. Besson: Yes.

Mr. Hansen: Yes, I think I will have to object to it.

40 Q. Now I show you here what has been marked for identification, five pages numbered 30, 31, 32, 33 and 34, taken from the record of the coroner's

James F. McCormack, for State—Direct.

inquest of the testimony of Anthony Mangino. Do you recognize the defendant Anthony Mangino in the court room, sitting in the prisoner's box? A. Oh, yes, yes.

Q. Is that the man who testified before the coroner's inquest? A. Yes.

Mr. Besson: I would like to have that marked for identification. 10

(Marked S-13 for identification.)

Q. Does that S-13 for identification represent the testimony taken from the original notes of Mangino's testimony at that inquest? A. Yes, sir, to the best of my knowledge and belief it is.

Q. That is to say, Anthony Mangino? A. Yes.

Q. And you actually typed that yourself, did you not? A. Yes, from my notes. 20

Q. And at the time you typed it from your notes you knew it to be correct? A. Yes.

Q. And have you looked for your notes this morning? A. Yes.

Q. And you can't find them? A. Can't find them.

Mr. Hansen: He didn't say that.

Q. Did you go home and look for your notes? A. No, I didn't; I telephoned. 30

Q. Had you looked for them before? A. No, because I didn't know I was going to be called; but I brought a number of books home some time ago and my youngster probably used them thinking they were unimportant.

Q. And you have looked for these notes before and you have been unable to find them, is that it? A. No, not up to this time. Up to this time I didn't know I was going to be called on. 40

Philip Oriolo, for State—Direct.

Mr. Besson: I would suggest to the court that this witness be sent home. I asked him to go home this morning and look for his notes.

10 The Witness: It would be useless. I had my daughter look for them only about an hour ago.

The Court: But that is not you. She might have failed and you may succeed.

The Witness: That may be so too.

Mr. Besson: I ask then that this witness be excused and that he go home and look for his notes. I further ask that Mr. McCormack return here at two o'clock or whatever time the court fixes.

20 The Court: Yes, be back at two o'clock.

(Witness excused.)

PHILIP ORIOLO, sworn for the State.

Direct examination by Mr. Besson:

Q. Do you speak English? A. A little bit, not much.

30 Q. How long have you been in United States of America? A. Oh, thirty years.

Q. Are you a citizen? A. No, sir.

Q. Do you know this man Antonio Mangino, the defendant? A. I see him a long time, this fellow. I know him. I was a working man; he gave me the job to make the garage. Him pay me.

Q. Do you know him? A. He was very nice with the men, very nice with the ladies. I see him long time as a working man.

40 Q. Just answer the question; you know him?
A. Yes, sir.

Philip Oriolo, for State—Direct.

Q. Now, do you remember the 4th of July last year? A. Yes, sir, and Saturday.

Q. And the next morning, July 5th? A. Yes, sir.

Q. Did you go to his store, Mangino's store, 320 26th Street, Guttenberg? A. Yes.

Q. What did you go there for? A. I go there, he tell me he got three or four loads of dirt for me to take away. I bring the horses there six o'clock in the morning. 10

Q. Six o'clock in the morning you went there? A. Yes, sir.

Q. Did you find Mangino there? A. No, sir; find nobody.

Q. What did you find? A. Well, the store was no open. An Italian fellow there, a coal man, he wanted a sandwich. 20

Q. The coal man? A. An Italian fellow; he is here in the court room, the Italian fellow, the water man; he has a white head.

Mr. Besson: Stand up.

Q. Is that the man? A. Yes, sir. I see this man and ask me what I am doing there for. He say: "Where is Mr. Mangino?" I said: "Maybe he goes to the toilet; maybe he is some place." He goes in the hall; I don't know where he go. Then he hollered: "There is nobody." 30

Q. All right. Was the door to the store open or closed? A. It was open.

Q. Did you see any bread or rolls there? A. No see nothing; nobody come in the store.

Q. The door was open? A. Yes.

Q. Did you see anybody in the store at all? A. No, sir.

Q. Where did you see this man that you have pointed out now in the court room? Was he in front of the store? A. No, sir; in the next house. 40

Philip Oriolo, for State—Direct.

Q. I show you a picture here, Exhibit S-10. Now, where did you see him? A. This is the store. This is the next house.

Q. You mean that store there? A. That store.

Q. He was at this door? A. Yes, sir; right here there is a window.

10 Q. And there is a little alley? A. Yes.

Q. And he was right there? A. Yes, sir; he was hollering, nobody comes down, and he said he goes to the corner to get a sandwich. Then down behind me came the bread man.

Q. This old man? A. Yes.

Q. Did you ever get a sandwich in this store? A. No, sir; I buy it at the next corner, American people.

20 Q. He was the only man you saw around there at six o'clock? A. Yes, sir. He wanted to buy a sandwich and nobody was there and he bought it next door.

Q. And you did not go in the store? A. No, sir.

Q. Where else did you go besides standing in front of the building? A. I stayed here in front of the building. I was just working for him. He had some dirt he wanted me to take away.

30 Q. How long did you stay there? A. Three-quarters of an hour to an hour. He find ten dollars. He came down behind, the bread man.

Q. Why were you buying the ten dollars? A. The bread man, ten dollars on the count's. He come down second.

Q. When did you see the bread man come there? A. Well, him go away. The water man go away and the bread man come down behind. He take one loaf of bread in one hand and another loaf of

Philip Oriolo, for State—Direct.

bread in the other hand. The bread man find ten dollars on the count's.

Q. Oh, the bread man found the ten dollars on the counter? A. Yes, sir.

Mr. Besson: Mr. Nelles, will you stand up?

10

Q. Is that the man you call the bread man? A. Nobody called him bread man. He come down on my behind.

The Court: Is that the man who went in there and delivered the bread, that man?

The Witness: Yes, sir.

The Court: That is the man, Mr. Nelles, who is standing up?

The Witness: Yes, sir.

20

Q. And the man Nelles is the man that found the ten dollars on the counter? A. Yes, he found the ten dollars on the counter.

Q. Now I show you these two pictures of Mrs. Mangino. Did you know her? A. Yes, sir.

Q. This is Mrs. Mangino, Exhibit S-1 and Exhibit S-2? A. Yes, sir.

Q. After the bread man did that, did you go in and look, too? A. I come down and he come behind, the bread man.

30

Q. Where did you see Mrs. Mangino then?

Mr. Hansen: He didn't testify he saw her.

Mr. Besson: He said he came behind the bread man and the bread man found ten dollars on the counter.

A. Well, the bread man finds ten dollars on the count.

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Philip Oriolo, for State—Direct.

Q. Did the bread man find Mrs. Mangino? A. Nobody find Mrs. Mangino.

Q. She had not been found yet? A. No, sir, nobody.

10 Mr. Besson: I think we ought to have an interpreter.

The Court: I think so.

(Examination continued through the Italian interpreter.)

Q. Did the bread man find Mrs. Mangino? A. No, sir.

Q. When did you first learn that morning that Mrs. Mangino was dead? A. Like today is the 4th of July, and tomorrow is Saturday. Then Mr. 20 Mangino said to me—

Mr. Hansen: I object to anything Mr. Mangino said to him.

Mr. Besson: I have not asked him anything about that. He is trying to bring out that Mr. Mangino wanted him to come there at six o'clock in the morning to do some work for him, to take some dirt.

30 Q. I am asking you, when did you first find out that Mrs. Mangino was dead? A. The morning that I was to take the dirt away, about six o'clock.

Q. And what time in the morning did you find that out? A. It might have been about seven, maybe seven thirty in the morning.

Q. How did you find it out? A. I was on the sidewalk when the baker came right behind me and he said good morning.

40 Mr. Hansen: I object to what the baker said.

Philip Oriolo, for State—Direct.

A. And the baker found ten dollars and an open book.

Q. Where? A. Right on the counter.

Q. I show you the picture, Exhibit S-3. Is this the counter? A. What do I know about the counter?

Q. But you know the bread man found it on the counter? A. I don't know how to read and write, therefore I am not competent. I work for him for quite some time. 10

The Court: Suppose you keep quiet and answer the questions and don't have so much to say. You just answer the questions and don't be volunteering any information whatever.

Q. What else did the bread man find beside the ten dollars and the open book on the counter? A. He found just the ten dollars on the counter and the open book. Then the baker went over there, knocked at the window and called for Joe. 20

Q. And who is Joe? A. Mr. Mangino's son.

Q. And he didn't say anything to you? A. No, sir.

Q. Now, did Joe come? A. Yes, sir.

Q. Now what did Joe say when he came? 30

Mr. Hansen: I object to what Joe said unless the State places the defendant there at the time.

Mr. Besson: I will withdraw it.

Q. What did Joe do when he came? A. When Joe discovered that the mother was dead, then he went over and got the sisters.

Q. When did you first find out that the mother was dead? Was that before Joe came or afterward? A. The baker said so. 40

Philip Oriolo, for State—Direct.

Q. Well, now, you had been waiting in front of that place from six o'clock until the time the baker sent for Joe, hadn't you? A. No, sir. I was waiting for Mr. Mangino because I was going to load the dirt.

10 Q. How far from the store were you waiting?
A. About fifteen feet away.

Q. So that you could see who went in the store and who left the store from the time you got there at six o'clock until the time the baker found the body? A. I did not see anybody.

Q. You saw nobody go in the place? A. Nobody.

Q. Was the door of the store open all that time?
A. Yes, sir, it was all open.

20 Q. Why didn't you go in the store? A. I have no right to enter someone else's property.

Q. And you saw no one there and you didn't want to go in for that reason? A. I didn't see anybody.

Q. Did you call the name of Mr. Mangino? A. No, sir. I was waiting by the door, waiting for him.

Q. Did you knock at the door? A. No, sir.

Q. You just stood there with your horse and wagon and waited for him? A. Yes, sir.

30 Q. Now, you did not wait for him to come back that morning? A. I waited until eight or half past eight in the store with the police officers.

Q. Did he come back? A. No, sir.

Q. Did you see him that morning, July 5th, 1930, at all? A. No, sir.

Q. When did you see him next after that time?
A. I waited for Saturday and the police officers questioned me, and then four or five days later I heard that Mr. Mangino was arrested.

James F. McCormack, for State—Direct.

Q. But you did not see Mr. Mangino at all that day? A. No, sir.

Mr. Besson: Cross examine.

Mr. Hansen: No questions.

The Court: At this time we will recess until two p. m.

10

AFTER RECESS.

(The Clerk polled the jury.)

Mr. Besson: I would like to call Mr. McCormack.

JAMES F. McCORMACK, recalled.

20

Direct examination by Mr. Besson:

Q. Now, Mr. McCormack, did you make an examination of the papers at your home in Jersey City to discover whether or not you had your original notes of this coroner's inquest showing the testimony of Antonio Mangino, taken on July 16, 1930? A. I did. Unfortunately I cannot locate them.

Q. I call your attention, however, again to Exhibit S-13 for identification and ask you to examine it and see if that refreshes your recollection—I withdraw that question.

30

Q. Have you any independent recollection of what Mr. Mangino's testimony was at that inquest? A. No, not outside.

Q. It would be necessary either for you to refer to your notes or to the transcript? A. Yes, sir.

Q. Now, when you transcribed in typewriting from your notes the result of the testimony taken

40

James F. McCormack, for State—Cross.

in the inquest, was that done correctly? A. To the best of my knowledge.

Q. Well, you would not have done it incorrectly? A. Absolutely not.

10 Q. I show you Exhibit S-13 for identification, which represents a portion of the Coroner's inquest taken before Coroner Fred Youngman on July 16th, 1930, and ask you if you find it necessary to refer to that in order to state what the testimony of Antonio Mangino was at the inquest? A. I would, absolutely. I could not remember otherwise. I was not interested enough to remember.

Mr. Besson: I now ask that this witness be permitted to read this testimony.

20 The Court: For the purpose of refreshing his recollection?

Mr. Besson: For the purpose of refreshing his recollection.

The Court: I will permit it.

Mr. Hansen: May I ask one question, if your Honor please?

The Court: Yes.

Cross-examination by Mr. Hansen:

30 Q. Mr. McCormack, was this testimony which you are about to read given through an interpreter? A. I believe it was given through an interpreter, counsellor.

Q. Do you know as a matter of fact that it was? A. Yes, it was.

Q. Who was the interpreter, do you know? A. He was the constable employed by Coroner Fred Youngman to issue subpoenas and so forth in those cases.

James F. McCormack, for State—Re-direct.

Q. And what you did was to take down in your shorthand notes what the interpreter told you?

A. His replies, yes. What he told me.

Mr. Hansen: I object to the testimony, if your Honor please.

Mr. Besson: I would like to ask one more question.

10

Re-direct examination by Mr. Besson:

Q. Was the interpreter sworn along with you as stenographer?

Mr. Hansen: I object to that as immaterial.

The Witness: I could not say yes or no on that, Prosecutor.

Mr. Besson: If the Court please, I submit that he should be allowed to read from these notes at any rate because this was taken in a regular proceeding before the Coroner's inquest which is a legal tribunal in this state and if testimony of this kind were taken in an ordinary court of justice through an interpreter, the proper method of refreshing the recollection of the stenographer who took the testimony would be by referring to his notes, and I therefore submit that this is a proper thing to do in this instance.

20

30

Mr. Hansen: I object to it most strenuously, if your Honor please.

The Court: I think I will allow it and give you an exception.

(Exception signed and sealed accordingly.)

CHARLES M. EGAN,
Judge.)

40

Mr. Besson: Now will you read it?

The Witness: Yes, sir.

James F. McCormack, for State—Re-direct.
(Exhibit S-13.)

“ANTONIO MANGINO, being duly sworn, testified as follows:

“Question: What is your full name? A. Anthony Mangino.

10 “Q. Where do you live? A. 322-26th Street, Guttenberg, N. J.

“Q. Mr. Mangino, will you kindly tell the jury what you know concerning the death of Mary Mangino who died at 320-26th Street, Guttenberg, N. J. on July 5th, 1930?

“Q. Are you related to this woman who died? A. My wife.

“Q. What time did you go to market? A. Four o'clock A. M.

20 “Q. What time did you get back? A. After nine A. M.

“Q. What did you hear when you came back? A. When I got off the car a man approached me and asked me what happened at my house. I answered I don't know I just came back from the market, tell me what it is all about. The answer from my friend was that two people had a fight.

30 “Q. Who were the people? A. Two strangers, they didn't want to enlighten me that my wife was dead. When I reached the store a man came up to me and the man took the case from my shoulder and he started to cry. When I walked in the house I went in the kitchen and see my daughter. She said do you know if Mama had six or seven hundred dollars in her bosom.

“Q. The money was gone? A. Between six or eight hundred dollars she always carried in her bosom.

40 “Q. Didn't they find that when they found the body? A. No, my wife told my daughter that I was going to deposit that in the bank, my daughter says wait a few days and we will go together.

James F. McCormack, for State—Re-direct.
(*Exhibit S-13.*)

“Q. When they took the body from behind the counter she had the bag in her breast? A. No, I wasn't there, they told me they found nothing.

“Q. When they took the body from behind the counter didn't somebody take the bag and give it to the son? A. No.

10

“Q. In other words, it was not given to the son? A. No, he believes that the money was stolen when she was murdered.

“Q. Anybody in the family know she had this money with her? A. My big daughter.

“Q. No sons? A. Only one son I have, he never told me that my wife had money.

“Q. You knew your wife had money? A. I never interfered with her, she always did what she liked, I never interfered.

20

“Q. Did you know anybody she ever had any quarrels with? A. My wife is even a friend to the earth, the ground she walked on.

“Q. In your opinion do you know the money was stolen? A. My daughter told me that she had between six or eight hundred dollars, so naturally it must have been stolen. My family also told me that my wife's waist was torn by force and the money was extracted.

“Q. Did your son know your wife had this money on her? A. Not to my knowledge, I don't believe he did know that my wife ever carried money in her bosom.

30

“Q. Only your daughter? A. Yes, she told me that my mother had money in her bosom.

“Q. How did she collect this money or hold it in such large amounts? A. When she had a large amount she deposit it in the bank, she always carried large sums of money.

“Q. Did she collect rents? A. Yes, she collected \$142.00 a month rent and the rest of the money was proceeds from the grocery store.

40

James F. McCormack, for State—Re-direct.
(*Exhibit S-13.*)

“Q. You don’t know anybody that she ever quarreled with in the neighborhood? A. She was like the best woman on earth.

10 “Q. When you went to the market did your wife get up the same time with you? A. My wife got up before I did, every morning she got up before I did. After she was up she wake me.

“Q. Was the store opened when you got up? A. We both went to the store, opened the front door and she asked me to help her in with the milk can and I did and went up the street.

“Q. Where did you go then? A. She said hurry up and come right back.

20 “Q. When you left the store did you take any notice of any strangers around the place? A. No, I didn’t see a dog around the neighborhood.

“Q. Is that all you know about the case? A. Yes, sir.

“Coroner: Witness excused.”

Mr. Hansen: Are you offering it in evidence?

Mr. Besson: No. I simply offered it to refresh the recollection of the witness. I am willing to offer it in evidence if you will agree to it.

30 Mr. Hansen: No, I am going to object to the offer.

The Court: There is no offer being made.

Mr. Besson: No offer being made. I said I am willing to offer it if you will agree, that is all.

The Court: Any examination?

40 Mr. Hansen: No, I just want to make my objection to this testimony and ask that it be stricken out on the ground that it is absolutely hearsay. He is testifying to something somebody told him. He is tes-

James F. McCormack, for State—Re-direct.

tifying to what an interpreter told him. I do not know of anything—if this is not hearsay, I don't know what is hearsay. He does not know what the defendant said, and except by reason of what someone else told him, and that someone else could be here and is not here. I strenuously object and ask your Honor to strike out this testimony. 10

The Court: What do you say to that, Mr. Besson?

Mr. Besson: May it please the court, this was a sort of a judicial proceeding before a court, a coroner's court, really, and this man is the stenographer for that court. That is not a statement within the meaning of the hearsay rule. The man is other, other persons are there, it is a public hearing, a public inquest and what occurs there is part of that judicial proceeding, and I submit that this is the proper manner of proving it. 20

There is nothing here, of course, in this story, except to indicate what this man's state of mind was on July 16th. He has made certain statements as to what his position is and this really contradicts it. It is for the purpose of comparison with other statements made later. 30

Mr. Hansen: I know there is nothing in the statement to hurt my client, but it seems to me that the state should be compelled to abide by the rules of evidence. If he wants to introduce that statement in evidence to prove what this man said, there is a way of doing it. They can get the interpreter; with all the power of the prose- 40

James F. McCormack, for State—Re-direct.

cutor's office in this county, there is no reason why they could not have the interpreter here. This man does not know what Mangino said except from what somebody else told him.

10

Mr. Besson: I think I can produce authorities to show that I am correct.

The Court: I wish you would produce them. It is a new and novel question and smacks of hearsay.

Mr. Besson: Do you want to take a short recess for that purpose?

The Court: Yes, we will take a ten minute recess.

20

(After short recess.)

(Jury polled by the Clerk.)

JAMES F. McCORMACK, recalled.

Re-direct examination (continued) by Mr. Besson:

30

Mr. Besson: May it please the Court, on examining the law on that subject to which I have brought your Honor's attention there seems to be some uncertainty about the question, and I would ask the Court that the matter of striking this matter from the record be reserved until tomorrow morning in order that I may be given an opportunity to produce this interpreter; and in order to lay a foundation for his testimony I would further ask the Court that I may be permitted to ask this witness a couple of more questions.

40

The Court: I think I will permit that.

James F. McCormack, for State—Re-direct.

Mr. Hansen: If the Court please, inas-
 much as the matter is going over until to-
 morrow morning, I would like to urge an-
 other reason why I think this testimony
 shouldn't be permitted. As I understand
 Mr. McCormack's testimony,—as I under-
 stood him to testify, he said he didn't know
 whether the interpreter had been sworn
 or whether Mangino had been sworn or
 whether he himself had been sworn. Now,
 of course, if he hadn't been sworn— 10

The Court: He said the interpreter.

Mr. Hansen: I only say this now so the
 question won't come up again in the morn-
 ing, because if they weren't sworn, of
 course, there wasn't any—

Mr. Besson: I think he read right into
 the record that Mangino, being duly
 sworn— 20

The Court: Yes, I will bear that in mind.
 I have that thought myself.

Q. Do you recall the name of this interpreter?

A. No; offhand I don't know.

Q. You would recognize him if you saw him?

A. Yes.

Q. He was the constable in attendance? A. 30
 Yes; he worked for Coroner Youngman.

Q. And at the time did you correctly transcribe
 the testimony of Anthony Mangino as it was in-
 terpreted by this interpreter? A. Yes, sir.

Q. So that the notes which were read by you
 correctly represent what was interpreted at that
 time? A. Absolutely.

Q. And you also took an oath as stenographer
 to correctly report the minutes of these proceed-
 ings, did you not? A. Yes. 40

James F. McCormack, for State—Re-cross.

Q. And all of these witnesses there were sworn, were they not, all sworn— A. All sworn to by the man who acted as interpreter for Mr. Mangino.

Mr. Hansen: What was that?

10

Mr. Besson: That is, the interpreter held the Bible?

The Witness: Yes.

Mr. Besson: But the coroner really—they were sworn in the presence of the coroner.

The Witness: In the presence of the coroner, yes.

20

Q. And the proceedings were conducted by Coroner Youngman? A. Yes.

Re-cross examination by Mr. Hansen:

30

Q. Mr. McCormack, as I understand your testimony—I want to get it right—I understood you to say on direct examination that you couldn't be positive as to whether the interpreter had been sworn or not, isn't that your testimony? A. To answer—I doubt whether he was sworn, because he was handling the case for Coroner Youngman and swearing the other witnesses.

Mr. Hansen: That is all.

The witness excused.

40

Joseph Tedesco, for State—Direct.

JOSEPH TEDESCO, sworn for the State.

Direct examination by Mr. Besson:

Q. Where do you live, Mr. Tedesco? A. 501
9th Street, West New York.

Q. And what is your occupation? A. Under-
taker's helper. 10

Q. You were so employed on July 5, 1930? A.
Yes, sir.

Q. Now, I show you here two photographs S-1
and S-2 and ask you if you had anything to do
in connection with the body the face of which is
represented on those photographs on that day?

A. All I know was when I went up there—

Q. Speak up so the jury can hear you. A. I
was called from the undertakers to go to 26th
Street, Guttenberg, to pick this body up. 20

Q. What did you find? What was the position
of the body? A. Face down on the floor.

Q. Just tell us exactly where you found it. A.
Right in behind the counter on the floor with the
face down.

Mr. Hansen: Will your Honor instruct
the witness to talk a little louder?

The Court: Talk a little louder.

Q. And what was the place in which you found
it? You found the body behind the counter, but
was it in Guttenberg or where? A. Guttenberg. 30

Q. And in what place in Guttenberg? A. In
the store.

Q. And what place, 322-26th Street? A. 322
26th Street.

Q. And what was the position of the hands?
A. Why the hand, one was on the stomach and
one was wedged up against the wall. 40

Joseph Tedesco, for State—Direct.

Q. You heard the doctor testify the hands were like that (indicating)? A. I was the one that turned the body over. I turned the body over.

Q. You turned the body over.

Mr. Hansen: I object.

10

The Court: What is the objection?

Mr. Hansen: I object to the question that, "You heard the doctor testify the woman's hands were up." That is absolutely leading.

20

Mr. Besson: I am not trying to lead the witness; I am simply trying to find out what the fact was. I don't think there is anything leading about that. I think a leading question is one that suggests the answer to the witness; and of course it is in the discretion of the Court at any rate.

The Court: I think I will allow it. I will give you an exception.

CHARLES M. EGAN.

Q. Will you answer that question? A. I turned the body over and as I did I found money in her hand.

30

Q. Was the doctor there at the time you turned the body over? A. The doctor was standing about the foot of her when I turned the body over, and he came there and looked her over; that is all I seen him do.

Q. Now, in which hand did she have the money? A. The right hand.

Q. Did you count the money? A. No, sir, I laid it on the counter.

Q. It was clutched in her hand? A. It was clutched tight in her hand.

40

Q. You had to break her fingers open to get it out? A. Yes, sir.

Joseph Tedesco, for State—Direct.

Q. Did she have anything in her left hand? A. Nothing.

Q. What was the condition of her hands at the time? Any markings on them? A. No markings at all that I could see.

Q. Did you see anything on the counter in the store? A. Nothing, not a thing when I went in. 10

Q. There was no ten-dollar bill there? A. I didn't see that.

Q. Was there any blood marks on the money? A. That I didn't look at.

Q. It was simply clutched in her right hand? A. Clutched in her hand, that is all; I didn't even know how much it was or anything.

Q. What was the condition of her clothing at that time? A. I don't know.

Q. Well, now, you picked her up, you looked at her, you took her to the morgue? A. I didn't look at her clothes; I just turned her over. 20

Q. Were her clothes all right? A. Yes, everything was on her.

Q. That is what I mean, her clothing was on her, it wasn't torn or disarranged? A. No.

Q. She was quite a heavy woman? A. Yes, quite heavy.

Q. Did you have much difficulty in getting her out from behind— A. Yes, she was a very close fit. 30

Q. Are you familiar with the reading of blueprints? Do you know anything about blueprints? A. No, sir.

Q. Will you come down here anyway? A. (Witness goes to the map.)

Q. Now, I call your attention to State's Exhibit 11, and particularly to this detail here which represents the interior of the store at 320-26th Street, Guttenberg. There is the entrance. This 40

Joseph Tedesco, for State—Direct.

represents the counter. Here is marked "counter, till, case,"—that is the shelving, and this place in between here is the space in between the counter and the right-hand side of the store. Now, can you indicate there approximately where you saw this body? That is the counter there, marked "c-o-u-n-t-e-r." A. And the wall here?

Q. There is the wall on the right. Was it between the counter and the wall? A. Yes, sir.

Q. Now, if I take this pencil here and mark will you show me just about where to mark? A. Right here.

Q. Right here. You have got a scale here of three-quarters of an inch to a foot, so assuming these three-quarters of an inch,—assuming that is three-quarters of an inch, it is not much more than two and a half feet wide? A. Yes.

Q. And she was really wedged in there? A. Yes.

Mr. Besson: Resume the stand.

(Witness resumed the stand.)

Q. Did you find any other money on her person besides that which was clutched in her right hand? A. That is all that was in her hand; that is all I could see.

Q. There was no money in the bosom of her dress? A. No, sir.

Q. Did anyone instruct you to look in the bosom of her dress for money? A. No, sir.

Mr. Besson: All right, you may cross-examine.

Mr. Hansen: No questions.

(Witness excused.)

William F. Vogt, for State—Direct.

WILLIAM F. VOGT, sworn on behalf of the state.

Direct examination by Mr. Besson:

Mr. Besson: I will ask that these three sheets of paper be marked for identification.

10

(Papers marked as one Exhibit S-14 for identification.)

Q. Now, Mr. Vogt, I show you three sheets of paper which have been marked S-14 for identification, and at the bottom of which appears the signature "Witness William F. Vogt, Recorder". Is that your signature? A. Yes, sir.

Q. What was your official position in the Town of Guttenberg on July 21st, 1930? A. Recorder, in the Town of Guttenberg.

20

Q. I might ask you, you are ill today? A. Yes.

Q. You have come out of a sick bed to come here today? A. Yes, but I will do the best I can.

Q. Will you tell us briefly, Recorder, first if you are familiar with this other signature at the bottom of the third sheet of that paper, the signature Antonio Mangino? A. Yes, sir. I saw Mr. Antonio Mangino sign that paper.

Q. And the same thing applies to the second page where Antonio Mangino's name appears? A. Yes, sir.

30

Q. He signed that also? A. Yes, sir.

Q. And the first page? A. Yes, sir.

Q. Now, will you tell us briefly the circumstances under which that statement was taken? A. On the afternoon of July 21, I happened to be at police headquarters when the Captain of Police called me in and said Antonio Mangino—

Mr. Hansen: I object to what the Captain said.

40

William F. Vogt, for State—Direct.

The Court: Yes. You cannot tell what the Captain said.

Q. Just tell us what you did. Mangino was going to make a statement? A. Yes, and I was called in to take the statement.

10 Q. And you wrote those three sheets with the exception of— A. The top four lines were made by the late Joseph Puglia, official court interpreter.

Q. And he was there at that time? A. Yes, sir.

Q. That is the man who was the official interpreter in the courts of Hudson County for many years? A. Yes, sir.

Q. The man who is now dead? A. Yes, sir.

20 Q. Now, how was the statement taken? A. Just what do you mean?

Q. How did you get the information which you wrote down on this paper? A. The court interpreter, Mr. Puglia asked Mr. Mangino to tell the court just what had happened.

Q. Did he ask him that in English? A. He asked him that in Italian.

Q. How do you know? A. Well, I don't know the Italian language. It was Italian he spoke, it was not the American language.

30 Q. You mean he talked to him in Italian and then repeated after Mangino had spoke in Italian, in English to you? A. Yes.

Q. And you wrote that down A. Yes, sir.

Q. How long have you known this man Mangino A. I should judge I know Mr. Mangino and his family for at least five or six years.

Q. And has he ever transacted any business with you in your court before this time?

Mr. Hansen: Objected to as immaterial.

William F. Vogt, for State—Direct.

Mr. Besson: I am not asking it for the purpose of reflecting on the man's record, I am just trying to point out his ability to speak English.

Mr. Hansen: I object to it.

The Court: I will allow it.

Mr. Hansen: Exception. 10

(Exception allowed, signed, and sealed accordingly.)

CHARLES M. EGAN,
Judge.)

Q. Now, on these occasions that you had dealings with him, how was your conversation conducted, in English or in Italian?

Mr. Hansen: I object on the ground that it is absolutely immaterial and has no bearing on this case. Mangino might have been in the Recorder's court hundreds of times and he might have spoken English. The Recorder might say that Mangino always spoke English. That is not the question in this case. The question is: When this statement was taken, who took the statement? Did he testify in English, did he testify in some other language? If he was there one hundred times before that, how could that be material in this case? 20

The Court: I will allow it.

Mr. Hansen: Exception. 30

(Exception signed, allowed and sealed accordingly.)

CHARLES M. EGAN,
Judge.)

A. They were in English with an Italian dialect. 40

William F. Vogt, for State—Direct.

Q. And could the man understand you?

Mr. Hansen: I object. Calls for a conclusion.

The Court: Yes.

10 Q. Well, did you hold an intelligent conversation with him on each of these occasions? A. Yes.

Q. And you cannot talk any Italian at all, can you? A. No, sir, I cannot.

Q. You talk English, do you not? A. Yes, sir.

Q. And the man answered you? A. Yes, sir.

Q. Now, after this had been written, can you tell us whether or not this was read to Antonio Mangino in English before he signed it? A. It was read in English and Italian both.

20 Q. Do you know why it was read in English?
A. I do not.

Q. But it was read to him in English? A. Yes.

Q. Who was there besides you and Mr. Charlock and Mr. Puglia at the time it was read in English? A. Captain Henry Baum.

Q. And he is here in court today? A. Yes.

Q. Now, when it was read to Mangino in English, what, if anything, did he say about it?
A. Well, Mangino had nothing to say.

30 Q. Did he say it was good, bad or indifferent?
A. He didn't say anything.

Q. Did he say all right? A. Evidently all right.

Mr. Hansen: I object.

The Court: Strike it out.

Q. Did anyone ask him whether he understood it or not? A. Mr. Puglia asked him that.

Q. In English? A. In English, in Italian.

40 Q. He asked him in English if he understood it, as well as in Italian? A. Yes, sir.

William F. Vogt, for State—Cross.

Q. What did he say when he asked him in English if he understood it? A. He shook his head.

Q. How did he shake it? A. This way.

Q. Affirmatively? A. Yes, sir.

Q. And then after that he signed it? A. Yes, sir.

Mr. Besson: Cross-examine.

10

Cross-examination by Mr. Hansen:

Q. Now, Judge, how long was this man Mangino up there with you in Guttenberg before he signed this statement? I mean, how many days? A. Several days. To be exact I could not tell you.

Q. A week or more? A. Pretty nearly a week, I should say.

Q. And the Prosecutor of this county furnished you with an Italian interpreter, an official Italian interpreter to assist you in interrogating Mangino, didn't he? A. He furnished that to the police department.

20

Q. That is what I mean, Judge; the Prosecutor sent the late Mr. Puglia up to assist the police department in asking Mangino questions, is that right? A. To my knowledge, to the best of my knowledge.

Q. At any rate Mr. Puglia was there when the statement was signed? A. Yes, sir.

30

Q. And as I understand your testimony, you wrote the statement down in English? A. Yes, sir.

Q. After Puglia told you what Mangino had said? A. Yes, sir.

Q. And the conversation between Puglia and Mangino was un-understandable to you, was it? You could not understand it? A. I could not understand Italian, no.

40

William F. Vogt, for State—Re-direct.

Q. And you did not know what they were talking about until Puglia told you, is that right? A. That is right.

10 Q. And after Mangino signed the statement, as I understand you, it was read to Mangino both by you in English and by Puglia in Italian, is that right? A. It was read by Mr. Puglia in English and in Italian.

Q. Puglia read the statement to him in Italian and English? A. Yes, sir.

Q. And of course you could not understand what he was talking about in Italian? A. No, sir, I could not.

Mr. Hansen: That is all.

Re-direct examination by Mr. Besson:

20

Q. Have you produced with you here today a book which represents part of the record of the Recorder in Town of Guttenberg? A. Yes, sir, that is the book.

Q. Will you open the book and show whether or not a complaint was made by Antonio Mangino against his son Joseph Mangino? A. Yes.

30 Q. You have a record on January 21, 1927, of the arrest of Joseph Mangino as a disorderly person? A. John, yes, charged with being a disorderly person by his father. He was found guilty and sentence was suspended. At that time when that case was brought up, it was the father brought the son down to have him reprimanded for being abusive to him and to his wife, if I recall correctly, and when he came into court he was rather abusive in court and I had him remanded to jail and—

40 Q. What statement, if any, did Joseph Mangino make in court that day in the presence of his

William Charlock, for State—Direct.

father? What did he say? A. Well, my memory so far back as that, I could not tell you right off hand.

Q. Did he make any complaint against his father? A. He didn't make any complaints. He had some kind of an argument, if I recall correctly, with his father.

10

Q. At home in the house? A. Yes.

Q. And what, if anything, did the father say at that time? A. Well, the father had not much to say, whatever he had to say, simply said the boy was abusive to him, that is all I recall, and at that time he was abusive to the court and we committed him to jail where he tried to commit suicide by hanging himself in the local town jail.

Q. And that was January 21, 1927? A. There is the records.

20

Mr. Besson: That is all.

Mr. Hansen: That is all.

(Witness excused.)

WILLIAM CHARLOCK, sworn on behalf of the state.

Direct examination by Mr. Besson:

30

Q. Mr. Charlock, you are a lieutenant of detectives in the Hudson County Prosecutor's office? A. Yes.

Q. And as such you have charge of the investigation of homicide cases? A. Yes, sir.

Q. Did you have occasion to be in the police headquarters at Guttenberg, New Jersey, on July 21, 1930? A. I did.

Q. And do you know the defendant Antonio Mangino? A. I do.

40

William Charlock, for State—Direct.

Q. I show you here this paper which has been marked for identification Exhibit S-14. Will you tell the Court and jury briefly the circumstances under which that was taken? Speak up so all the jurors can hear you. A. On July 21 Mr. Mangino had a date made with Mr. Puglia to come up and take this statement. Mr. Puglia spoke to him in Italian and the Recorder wrote it down in English after it was taken. And after it was taken and signed by Mr. Mangino I requested Mr. Puglia to read it to him in English.

10

Q. And was it read? A. And Mr. Puglia read it to him in English.

Q. And what did Mangino do, if anything, at the time it was read to him in English? A. He came over and shook hands with me and said, "Thank you. You have helped me a whole lot."

20

Q. I know, but did he say that the statement was all right or did he say it wasn't all right?

Mr. Hansen: I object to that as leading—I withdraw the objection.

Q. When he read the English, read it in English that is all he said? A. When he read it in Italian he said it was all right, and he signed it.

Q. What did he say after it was read in English? A. "You helped me a whole lot."

30

Q. Did he speak any English to you up there? A. He spoke to me in English then.

Q. Was that the only English that he used in talking to you? A. That is all.

Q. You mean to tell us, Mr. Charlock, that all the time you were up there that day he didn't talk English to you? A. No, he said at that time.

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Mr. Hansen: I object to it. He is arguing with his own witness.

William Charlock, for State—Cross—Re-direct.

Mr. Besson: No, I am just asking the question.

Q. Had you ever talked to Mangino before this?

A. Yes, several times.

Mr. Hansen: Objected to on the same ground. 10

The Court: I will allow that. He said he spoke to him several times before.

Q. In what language did you speak to Mangino when you spoke to him on other occasions?

A. In English.

Q. You can't speak any Italian, can you? A. No, sir.

Q. Did you have any difficulty in understanding Mangino? A. No, sir. 20

Mr. Besson: Cross-examine.

Cross-examination by Mr. Hansen:

Q. As I understand it, Mr. Charlock, there was really no reason to have an interpreter there at this time at all, was there? As I understand your testimony, there was no reason for Mr. Puglia being there at all, was there? A. I always have an Italian interpreter when there is an Italian in the case. 30

Q. And this statement was taken, as you said, Mr. Charlock,—was taken by Mr. Puglia in Italian from Mangino, wasn't it? That is what you testified to, that is right, isn't it? A. Mr. Puglia asked the questions and spoke the English to Mr. Vogt, and Mr. Vogt wrote it down.

Re-direct examination by Mr. Besson:

Q. Was it absolutely necessary to have an Italian interpreter to take this statement? 40

William Charlock, for State—Re-cross.

Mr. Hansen: Objected to as calling for a conclusion, if your Honor please.

Mr. Besson: I would like to ask the question because I think there is an explanation which Mr. Charlock can give and which is important.

10 The Court: The form of your question calls for a conclusion.

Mr. Besson: I will withdraw it then and change the form of the question.

Q. Why did you have an interpreter there? A. To ask the questions in Italian.

Q. Was it impossible for this man to understand any English?

20 Mr. Hansen: Objected to as calling for a conclusion, if the Court please.

The Court: He has already said that he had conversations with him in English, but I think the form of the question itself is proper.

Q. Please answer the question. Be sure you understand it. Was it impossible for this man to understand English? A. No.

30 Q. Then why did you have an interpreter? A. Because he was an Italian.

Q. Was it because you wanted to make sure there would be no mistake? A. Yes, sir.

Mr. Besson: That is all.

Re-cross examination by Mr. Hansen:

40 Q. Just one question, Mr. Charlock. As I understand your testimony, after Mangino signed this statement, after he put his name on it the Judge, Judge Vogt, read the statement—oh, Judge

William Charlock, for State—Re-direct.

Vogt did not read the statement to him, did he, the Recorder, he didn't read the statement to Mangino, did he? A. No.

Q. Puglia, Mr. Puglia read the statement, didn't he? A. He did.

Q. In English and then in Italian? A. In Italian, and then he signed it and then he read it to him in English. 10

Q. And after he read it to him in English the only thing that Mangino said, as I understand your testimony, is that, "You saved me," or some such words as that,—he said that to you? A. To me.

The Court: That isn't what he said.

Mr. Hansen: What did he say?

The Court: "You helped me," or "You helped me a whole lot." 20

Q. And it wasn't until after the statement was read to him in Italian that he said anything about the statement at all, was it, as to its contents, whether it was true or not? After it was read to him in Italian he said it was all right, then he signed it.

Q. Yes, but after it was read to him in English he said nothing about the statement, did he? A. Nothing about the statement. He was arraigned then and held for murder. 30

Mr. Hansen: That is all.

Re-direct examination by Mr. Besson:

Q. Just a minute, Mr. Charlock.

Mr. Besson: I would like to recall this witness in connection with another statement to ask him some questions, and I

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Captain Henry Baum, for State—Direct.

wouldn't want to preclude my right to recall him at this time.

The Court: You have that right.

(Witness excused.)

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CAPTAIN HENRY BAUM, sworn for the state.

Direct examination by Mr. Besson:

Q. Captain, what is your occupation? A. Captain of police.

Q. In what municipality? A. Guttenberg.

Q. That is in the Town of Guttenberg, Hudson County, New Jersey? A. Yes, sir.

20 Q. Do you know this defendant, Antonio Mangino? A. Yes, sir.

Q. How long have you known him? A. I probably know him about ten or twelve years.

Q. Have you had conversations with him during the past ten or twelve years? A. Yes.

Q. Do you speak Italian? A. No.

Q. So your conversations were in English? A. Yes, sir.

Q. Did you understand him? A. Yes, sir.

30 Q. Did he understand you apparently? A. Yes.

Q. He replied to you intelligently? A. Yes, sir.

Q. Now, I show you here Exhibit S-14 for identification purporting to be a statement made by Antonio Mangino on July 21, 1930. It is in three pages. A. Yes, sir.

Q. Were you present when that was signed by Mangino? A. I witnessed it, yes.

40 Q. You were one of the persons who saw it signed. Now, what was done at the time this statement was secured? A. Well, I asked him several questions. Some of them he answered in

Captain Henry Baum, for State—Direct.

English as well as he could. Those he couldn't understand he asked Mr. Puglia for it.

Q. Mr. Puglia—he is the man that is dead? A. Yes, he interpreted it for him; and Mr. Mangino—Puglia was up there once before and Mr. Mangino asked me to have that man up here again, he wanted to speak to him, Puglia, and that is why we brought him up again. 10

Q. What was done? What did you then do? Was that read in English to this man? A. Yes, after.

Q. Who did that? A. Puglia.

Q. Puglia read it? A. Yes.

Q. And what did Mangino say after it was read to him in English? A. He said to Charlock that he helped him a lot, and he opened his chest—that was a whole lot of hair on his chest—he said, 'I feel better now; I'm glad I done it; I'm glad that I spoke out.' And he said, "I am glad I spoke out," and he went this way (illustrating). 20

Q. And he talked part of the time in Italian and part of the time in English? A. Italian, yes.

Mr. Besson: I would like to offer that now in evidence.

Mr. Hansen: I would like to cross-examine him.

The Court: All right; and you had better look in to the case of *State v. Roesel* on the question as to whether or not it was voluntary. That was what was held in that celebrated case, that it has to be voluntary. 30

By Mr. Hansen:

Q. Captain, as I understand your testimony, the late Puglia had been up to your headquarters in Guttenberg previous to the day when this state- 40

Captain Henry Baum, for State—Direct.

ment was taken, is that right? A. Yes, he was up there once before.

Q. And it was at the suggestion of Mangino, the defendant in this case, that you had Puglia come up the second time, is that right? A. Yes, sir.

10 Q. What time of day was it, night, morning or what? A. The second time he was up?

Q. Yes, the time this statement was taken. A. In the afternoon.

Q. And when Mangino requested you to get Puglia what did you do, get in touch with the Prosecutor's office and have Mr. Puglia come up? A. Yes.

20 Q. And up to that time Mangino had been in your custody for about eight days, hadn't he? A. Yes, about nine days.

Q. And when Puglia came up you say that you brought Mangino out and then Puglia questioned him, you questioned him and then— A. Yes.

Q. And when he couldn't understand you then Puglia would ask him the questions, is that right? A. Yes.

Q. In Italian? A. Yes.

30 Q. So as a matter of fact, Captain, he couldn't understand all your questions, could he? A. Not all. That is why he asked for Puglia.

Q. That is why he wanted the interpreter there? A. Yes.

Q. And you had to have the interpreter there because of the fact that Mangino couldn't understand some of your questions, could he, Captain? A. Probably not all.

40 Q. Not all. So when he couldn't understand your question you would have Mr. Puglia ask him the question? A. Yes, he would interpret for him.

Captain Henry Baum, for State—Direct.

Q. Yes, he interpreted. Now, after this was all done and the statement was signed, as I understand it, Mr. Puglia read it to Mangino in both English and Italian, did he? A. Yes.

Q. In both English and Italian? A. Yes.

Q. And then after he had read it to him he said what you said, that he was glad that he had said it? A. Yes. 10

Q. And what what else did he say? A. He said he was glad that he told us the truth, that he come out with it. He says, "I feel much better now".

Q. But that wasn't until after it had been read to him in Italian? A. After it had been signed by him it was read to him.

Q. And Puglia read this to him both in Italian and in English? A. Yes. 20

Direct examination (Continued) by Mr. Besson:

Q. You stated before that this man asked that Puglia be sent up because he wanted to make a statement, is that right? A. Yes, sir, he asked for him, yes.

Q. Was there anything done to compel him to make a statement? A. No, no, no.

Q. How was the man treated? A. I asked him most every day if he wanted to make a statement. I used to speak to him and ask him if he wanted to make a statement. 30

Q. Did you promise him anything? A. Absolutely not.

The Court: Did you force him?

The Witness: No, I never laid a hand on that man. I ordered my officers not to touch that man. That I am sure of, that the man was never bothered. 40

Captain Henry Baum, for State—Direct.

10 Q. Did you inform him as to whether he must or must not make a statement? In other words, you didn't tell him that he had to make a statement? A. No, no, the interpreter explained that to him. He couldn't understand what I said to him about that and I had the interpreter explain it to him.

Q. What did you have him explain to him? A. If he wanted to make a statement he could make one on his own account.

Q. That if he wanted to make a statement he could make one on his own account? A. Yes.

Q. And you told him that several times? A. Yes.

20 Q. And what did he tell you finally that he wanted to do? A. He said he wanted to make it, wanted to make a statement.

Q. And then you sent for Puglia? A. Yes. I called up the Prosecutor and asked him to send—I and Charlock and Mr. Patterson were working on the case,—and I told them to send them up and bring the interpreter with them.

Mr. Besson: I would now like to offer the statement.

30 Mr. Hansen: I would like to ask one more question.

The Court: You may.

By Mr. Hansen:

40 Q. Captain, as I understand it, I understood you to say the warning, the so-called warning that was given to Mangino was given to him by Puglia because he couldn't understand you, isn't that right? A. Well, partly he could and partly he couldn't.

Captain Henry Baum, for State—Direct.

Q. I mean, he couldn't understand the whole thing. You wanted to warn him as to his rights, didn't you? A. Yes,—wanted to what?

Q. You wanted to tell him as to his rights? A. Yes.

Q. And he couldn't understand that? A. Yes.

Q. And as a result of that you had Mr. Puglia warn him? A. Yes, he warned him. 10

Mr. Hansen: That is all.

Mr. Besson: Now I would like to offer the statement, if the Court please.

Mr. Hansen: Of course, the defense objects to the offer at this time, if your Honor please. It doesn't seem to me—I don't see how the Prosecutor himself can feel justified in offering this statement in evidence because of the fact that it is perfectly plain from all the testimony for the Prosecutor, the testimony of Judge Vogt, of Detective Charlock of the Prosecutor's office and of Captain Baum himself,—all of those witnesses say that Mr. Puglia was there; that he was the official interpreter and that the statement was made to him in Italian and afterwards interpreted by Mr. Puglia to Judge Vogt, who wrote down the statement,—they all say—Captain Baum has just said that there were times when this man Mangino couldn't understand him, couldn't understand his language, and he had to request Mr. Puglia to put questions. He says openly, without any question, that whatever warning was given to this man as to his rights was given to him by Mr. Puglia. 20 30

Now, there is a case in this state, in the Court of Errors and Appeals, a case right 40

Colloquy of Counsel.

10 to the point. I refer to the case of the State *v.* Abbatto, 64 N. J. L., at page 658. The question in that case related to the admission in evidence of a confession of the defendant; and it seems that in that case, as in this case, a man by the name of Abbatto, who was an Italian, was charged with murder, and as he was an Italian, unable to speak or thoroughly understand the English language, and, as the prosecuting attorney was ignorant of Italian, there was present one Amodei, to act as an interpreter between them. The questions and answers were translated by the interpreter, and the examination was taken down in shorthand by a stenographer, written out in English, and then read over to the prisoner and signed by him.

20 Before offering the confession in evidence, counsel for the state puts Amodei upon the witness stand, and, for the purpose of proving that the questions and answers had been accurately translated, asked this question: "Was the statement made by Mr. Jenkins (the prosecuting attorney) to you as interpreter, repeated by you as interpreter?" This question was objected to; the reason for such objection being that the paper, in other words the transcript of the stenographer's notes, must speak for itself. Except for the grave importance of the case, this assignment is so frivolous as not to merit mention, much less consideration. It was not only competent, but necessary, to prove by the oath of the interpreter, on the witness stand, that he had truly interpreted between the Prosecutor and the prisoner, in order to justify the

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Colloquy of Counsel.

subsequent admission of the stenographer's transcript of what was said by them at the examination that he reported; and this was so without regard to whether the stenographer's notes did or did not contain a statement that the witness had so interpreted. That is a court of errors and appeals case. It seems to be almost on all fours with this case. The facts are almost the same. This man was an Italian. The police themselves say it was necessary to call an interpreter in. Unfortunately for the state, the interpreter is dead. It is a very unfortunate happening, but under the decision of this case and testimony that has been given which is consistent with this case, it does not seem to me that the state should be permitted to introduce that statement in evidence. 10

Mr. Besson: There is this difference: in the first place this is not a proceeding in any court, but this man was in custody in police headquarters. He sent for this interpreter. He wanted this interpreter. He was a man who had been in this country for many years. He was a man who had been before the court, he was a man who had talked English on many occasions. He was apparently well enough versed in the English language to go before this court and make a complaint against his son and have him committed to jail without the interference of an interpreter. He talked with other people. Of course, in the interest of preventing any possible inaccuracy, the use of an interpreter on an occasion of this kind was more or less of a precaution, but I am satisfied that there is no question in 20 30 40

Colloquy of Counsel.

the court's mind that there was nothing here to indicate any coercion, anything here to indicate that there was anything involuntary about this statement, nor is there anything to indicate that it was not properly understood.

10 This is a matter of grave moment in this case, to the state, to the people of the state of New Jersey, and I feel, if the court please, that under all the circumstances in this case, which differs considerably from the case cited by counsel, that this statement should be admitted in evidence for whatever value it may have in consideration by the jury.

20 The Court: I think there is a distinction between that case and the other case. The leading cases on the question of confessions in this state are the cases of the State *vs.* Roselle, 62 Law, and the case of the State *vs.* Young, 67 Law. They contain the law which has been recognized as being the outstanding cases on confession for some years back.

30 Now, very true, an Italian interpreter was employed and he has since died. The Captain of Police stated he has known this defendant for a number of years, twelve or fourteen years, somewhere in that neighborhood, that he has had conversations with him in English; another witness who was brought here, the recorder, says he has had conversations with him in English, and the evidence is that Puglia, the interpreter, who died, read to him first in Italian and there is evidence from Recorder Vogt that he took the statement down in English and
40 that after it had been read to him and he

Statement by Antonio Mangino.
(*Exhibit S-14.*)

was asked if it were the truth, he nodded in the affirmative. You have that evidence. We have also the evidence of Detective Charlock. Of course it relates to what took place after he signed the statement. We have the evidence of Captain Baum here who says that this man said he wanted to make a statement after being up there eight or ten days and it was volunteered by him, and there is no evidence that there was any confession extorted from him by any threats nor was there any confession obtained from him through any hope or promise of reward, so that under the circumstances I feel that I will admit the confession in evidence and let the jury pass upon it. 10

Mr. Hansen: Exception. 20

(Exception, allowed, signed and sealed accordingly.)

CHARLES M. EGAN, Judge.)

(Paper marked in evidence Exhibit S-14.)

Mr. Besson: I will read the statement to the jury. 30

(Statement made by Antonio Mangino, interpreted by Joseph Puglia):

“Between myself and my wife for the last three years there was a bitter feeling. She tried to boss me in every way and I did not count for anything. She even denied me to have intercourse with her and that condition lasted for three years. On the night between July 4th and July 5th, 1930, at my home, 322-26th Street, Guttenberg, 40

Statement by Antonio Mangino.
(Exhibit S-14.)

New Jersey, in bed, I had the greatest fight of my life with her. I pleaded with her to let me have sexual intercourse and she repulsed me all the time and told me that she hated me.

10 My wife was a woman much stronger than myself; at times she would kick me off the bed and I would land on the floor. For the last few years she said that sometime she would cut my throat while asleep. She also told other people that sometime while I was sleeping she would cut my throat. A lady by the name Mrs. Healy, who lives at number 332-26th Street, Guttenberg, New Jersey, she could testify to that.

20

(Signature) ANTONIO MANGINO.

30 On the night in question, while we were in bed, and that was about 10:30 P. M., I tried to have sexual relation with my wife, but she refused me. I started to tear up her shirt (and I think in three years I tore about 10 shirts over her body and also her bloomers), then she took a revolver from under the pillow, she aimed at me and she pulled the trigger, but it did not go off. Then when I saw the gun I got a hold of her arm and I twisted it; she hollered and she said, 'You have broken my arm', and in saying so, she dropped the gun and I sat on it (in bed). At that time, fearing that I would shoot her, she put on her dress and she ran in the store, 320 26th Street. I followed her to the store. I helped her to place the forty-quarts milk can in the ice tub.

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Statement by Antonio Mangino.
(Exhibit S-14.)

She went in the back of the counter, and she offered to me ten dollars to go to the market.

I said to her, 'Do you want me to go to the market with ten dollars?' She said, 'Yes, that is enough, you only have to buy a few things.' I left the ten dollar bill on the counter. Then she looked at me and she said, 'Before you take the money you got to hand me back my revolver.' I took the gun, and I said to her, 'You tried to kill me with this gun and if I am not dead

(Signature ANTONIO MANGINO.)

it is not your fault; and now you want it back again, to kill me?' As she saw the gun in my hand she reached for it, and she tried to pull it away from me and in the struggle for the possession of the gun, it went off and as she leaned down a bit, the bullet struck her in the forehead. When this thing happened it was five o'clock in the morning. When I saw my wife wounded I was frightened and I hurried up to the market. On my way to Washington Market, while on the ferryboat, I threw the gun overboard.

Really, I never meant to kill my wife, and I am sorry that she is dead.

ANTONIO MANGINO.

July 21, 1930.

Witness: WM. F. VOGT,
Recorder."

(Witness excused.)

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Thomas Farrell, Jr., for State—Direct.

THOMAS FARRELL, JR., SWORN ON BEHALF OF THE STATE.

Direct examination by Mr. Besson:

10 Q. Mr. Farrell, where do you live? A. 319-27th Street, Guttenberg.

Q. What is your business in Guttenberg? A. I have a garage up there.

Q. Now I show you photograph Exhibit S-4 for identification and ask you what that represents, indicating the building on the right of the picture as you face it? A. That is my garage.

Q. That is what is known as Farrell's Garage? A. Yes.

20 Q. And does that correctly represent the street? A. Yes, sir.

Q. And is that approximately the same condition that existed in that street on July 5, 1930? A. Yes, sir.

Mr. Besson: I desire to offer it in evidence.

Mr. Hansen: No objection.

(Photograph marked in evidence Exhibit S-4.)

30 Q. I show you Exhibit S-7 for identification. Will you state what that represents? A. That is the inside of the garage.

Q. That is looking from your garage across the street, through the front door of your garage? A. Yes, sir.

Q. Across the street, in the center of the photograph, is an empty lot, or what is it? A. It is an empty lot.

40

Thomas Farrell, Jr., for State—Direct.

Q. Is it a back yard of somebody's property?
A. Just a garden.

Q. Does that correctly represent the appearance of it on July 5, 1930? A. Yes, sir.

Q. This photograph, it has been testified, was taken in October, 1930. Was there more foliage there in July, more leaves on the trees and on the bushes? A. Yes, sir. 10

Q. But that correctly represents the situation?
A. Yes, sir.

Mr. Besson: I would like to offer that in evidence.

Mr. Hansen: No objection.

(Photograph marked in evidence Exhibit S-7.)

Q. Will you state what this photograph represents, indicating Exhibit S-5 for identification?
A. That is a gore behind Heinz' warehouse. 20

Q. That is right alongside this lot which you pointed out in the last picture? A. This is the lot right here.

Q. The lot right opposite the entrance to your garage? A. Yes, sir.

Q. That correctly represents that? A. Yes, sir.

Mr. Besson: I offer that in evidence. 30

Mr. Hansen: No objection.

(Marked in evidence Exhibit S-5.)

Q. I show you photograph Exhibit S-3 for identification. What does that represent, Mr. Farrell? A. That is that lot.

Q. That is the inside of the lot opposite the entrance to your garage? A. Yes, sir.

Q. And correctly represents the condition as it appeared about July 5, 1930? A. Yes, sir. 40

Thomas Farrell, Jr., for State—Direct.

Mr. Besson: I offer that in evidence.

Mr. Hansen: No objection.

(Photograph marked in evidence Exhibit S-6.)

10 Q. Now, Mr. Farrell, I show you here a Hopkins and Allen pistol and ask you to examine that and see if you are familiar with it? A. Yes, sir, that is a gun that was handed to me.

Q. You put an identification mark on it, or identified it, did you not? A. Yes, sir.

20 Q. When it was handed to you? A. Well, there were a couple of boys playing ball on the street and the ball happened to go over the fence and the boys went over after it, and I happened to be standing in front of the door, not only me, but another fellow by the name of Heinz, and the boys were fighting over this pistol, and it drew the attention of Heinz, being so big, so he walked over to the boys and he took it off them. He looked at it. It was loaded, so he handed it to me and I put it inside in the office.

Q. Are the boys in the court room that found it? A. Yes, sir, down in the back there.

30 Mr. Besson: Will the two boys please stand up?

Q. Are those the two boys that found the gun? A. To tell you the truth, I didn't take the gun off the boys.

Q. But Heinz took it? A. Yes, sir.

Q. Who is Heinz? A. He is a moving man up there.

Q. Is he here? A. No, sir.

40 Q. But it was handed to you in the presence of the boys, was it? A. Yes.

Thomas Farrell, Jr., for State—Direct.

Q. That is, you were right there and Heinz took it away from the boys and gave it to you? A. Yes, sir.

Q. And what condition was the gun in when you got it? A. It was fully loaded and at the time that we found it we didn't know who it belonged to, it was all rusty, as you see, and of course we didn't think it was any good, and I and a couple of other fellows up there started pulling it apart to get the shells out so that nobody would be hurt, then later in the day we heard people talking that that might be the gun that was used in the murder on 26th Street, so I decided to hand it to Captain Baum. 10

Q. So on the same day you took it around to Captain Baum? A. Yes, sir.

Q. And gave it to him? A. Yes, sir. 20

Q. And at that time there was one exploded shell in it? A. Yes, sir.

Q. And four loaded shells? A. Four loaded shells.

Q. And you gave it to Captain Baum in substantially the condition you got it? A. Yes, sir.

Q. Had anybody requested you to try to extricate the loaded cartridges from it? A. No, sir.

Q. The boys, though, had been working with it, hadn't they? A. The boys had been fooling with it, pulling at it, one claiming he found it and the other claiming he found it, and they were fighting over it, so Heinz took the gun off them for safety. 30

Mr. Besson: Cross-examine.

Mr. Hansen: No questions.

(Witness excused.)

George Miller, for State—Direct.

Mr. Besson: Call George Miller.

The Court: How old are you?

The Witness: Ten.

The Court: Do you know what an oath is?

10 The Witness: Excuse me, I didn't hear you.

By Mr. Besson:

Q. Have you ever gone to Sunday school? A. Yes, sir.

Q. Do you know who God is? Do you know anything about God or Jesus? Do they teach you about Jesus in Sunday school? A. Yes, sir.

Q. Told you to tell the truth? A. Yes, sir.

20 Q. What happens to boys who do not tell the truth? A. Telling a lie, and they do everything wrong.

Q. And they teach you in Sunday School to tell the truth? A. Yes, sir.

Q. Do you know what the Bible is? A. Yes, sir.

Q. God's book? A. Yes.

Q. Now if you were to put your hand on the Bible and swear to tell the truth would you tell the truth? A. Yes, sir.

30 Q. You would not tell anything that was not true? A. No, sir.

Q. How long have you been going to Sunday School? A. A couple of weeks.

Q. You go to Sunday School and you go to grammar school? A. Public school.

The Court: If you don't tell us the truth when you die what happens to you? Where do you go?

40 The Witness: Go down to the devil.

The Court: All right, go ahead.

George Miller, for State—Direct.

GEORGE MILLER was thereupon sworn on behalf of the State.

Direct examination by Mr. Besson:

Q. Now, George, do you know Mr. Farrell, the man who was just sitting in that chair a few minutes ago? A. I don't know him. 10

Q. Do you know where he has a garage? A. Yes.

Q. You see this picture, Exhibit S-4, is that his garage? A. Right here.

Q. That is where he works? A. Yes.

Q. Do you know where that little yard is in this picture? A. Yes.

Q. How near the garage is that? A. Across the street. 20

Q. And this is the outside of that yard across the street? A. Yes, sir.

Q. Now I show you this pistol here. Do you remember seeing that before? A. Yes, sir.

Q. Where did you see it? A. In the yard by a tree, like a little tree with branches on it and leaves.

Q. Do you remember the day when you found it? A. No, sir.

Q. How long ago was it? A. I don't know, a couple of weeks. 30

Q. At least a couple of weeks? A. Yes.

The Court: Was it in the summer time or winter time when you found it?

The Witness: It was summer.

The Court: When you were on your vacation or after?

The Witness: It was on a Saturday.

The Court: During the summer? 40

The Witness: Yes.

George Miller, for State—Direct.

Q. Had you been going to school? A. Yes.

Q. School had opened? A. Yes, sir.

Q. How near was it to Columbus day, do you remember Columbus day? A. I don't know.

Q. Where did you find this gun? A. I found it over here. There was a tin can there.

10 Q. In the grass? A. Yes, sir.

Q. If I show you the picture and indicate with my pencil, can you tell just about where it was? Is that right, right in there? A. Yes, sir.

(Picture marked by Mr. Besson.)

Q. Now, that is the place where you say you found it? A. Yes, sir.

20 Q. Who was with you when you found this gun?
A. I was sitting on the fence and I called my brother over and I told him to go in and get the gun.

Q. That is the little boy here? A. Yes, and he went in and got the gun and handed it to me and I handed it to my big brother.

Q. Where is your big brother? A. They didn't give him a summons.

Q. How old is your big brother? A. Thirteen.

30 Q. Then what happened to this gun? A. Heinz took it off my brother and he gave it to—

Q. To Mr. Farrell? A. Yes, and Mr. Farrell took it apart then.

Q. Were you trying to do something with the gun, take the cartridges out of it? A. No, sir.

Q. You just had it. How long had you had it before Heinz took it away from you? A. I had it a little while and I gave it to my brother and my brother gave it to Heinz and Heinz gave it to Mr. Farrell.

40 Q. Now look at this picture, Exhibit S-7. Where were you sitting on the fence at the time you

Charles Miller, for State—Direct.

looked down and saw the pistol? A. Right up in here.

Q. Where I am marking it with a pencil? A. Yes. That little thing there.

Q. That little pole there? A. Yes, sir, I was sitting there watching my brother playing.

Q. In other words, you were sitting on that? 10
A. Right here.

Q. And this mark on Exhibit S-5, that is the place there? A. Yes, sir.

Q. Now, where were you standing when the pistol was taken away from you? A. Right about here.

Mr. Besson: That is all.

Mr. Hansen: No questions.

20

Mr. Besson: Call Charlie Miller.

By Mr. Besson:

Q. How old are you? A. Seven.

Q. Do you go to school? A. Yes.

Q. What is your full name? A. Charlie.

Q. Charlie, you are the brother of Georgie? A. Yes, sir.

Q. Do you go to Sunday School? A. Yes, sir.

Q. How long have you been going to Sunday School? Have you been going every Sunday? A. Yes. 30

Q. Do you know what it is to tell a lie? A. (No answer.)

Q. Do you know what it is to tell a lie? A. It is bad.

Q. What would happen to you if you told a lie?
A. When you die you go down to the devil.

The Court: I think he is pretty young. 40
Where do you go to school?

Charles Miller, for State—Direct.

The Witness: Guttenberg.

By the Court:

Q. What school do you go to? A. Number one.

Q. How long have you been going to school?
Can you remember? A. No.

10 Q. What grade are you in? A. A-2.

Q. What do you do on Sundays? A. Go to
Sunday School.

Q. What Sunday School do you go to, do you
know the name of it? A. No.

Q. Do you know where it is? A. Yes.

Q. Where is it? A. Up the block.

Q. Who is your teacher in Sunday school, do
you know? A. No.

20 Q. When do you go to Sunday school? In the
morning or in the afternoon? A. Morning.

Q. What do you learn in Sunday school? A.
About Jesus.

Q. And where is Jesus, do you know? A. Up
in Heaven.

Q. And if you are a good boy where do you
go when you die? A. Up by God.

Q. And if you are a bad boy, where do you go?
A. Down to the devil.

30 Q. Do you know what an oath is? When you
put your hand on a Bible do you know what the
Bible is? A. Yes, sir.

Q. All about Jesus and God? A. Yes.

Q. And when you put your hand on there, do
you know what you are going to do? You prom-
ise to tell the truth. A. Yes.

Q. And if you don't tell the truth, what is going
to happen to you? A. Go to the devil.

The Court: I think I will try him.

Charles Miller, for State—Direct.

CHARLES MILLER, sworn for the State.

Direct examination by Mr. Besson:

Q. Now, Charlie, do you remember ever seeing this pistol before? A. Yes.

Q. You and Georgie? A. Yes, sir.

Q. Where did you find that? A. In the yard by a tree.

Q. Now, is that place there which I am pointing out with my finger the yard? A. Yes.

Q. And over here is the garage? A. Yes.

Q. Now, do you know that man who was here this afternoon just before Georgie was in this chair? He sat in the chair just before Georgie, the man that runs the garage. Do you know him?

Mr. Besson: Stand up, Mr. Farrell.

Q. You know him, don't you, that man down there? A. Yes, sir.

Q. Where did you see him? A. He was over here (indicating).

Q. In this building, indicating the garage? A. Yes.

Q. Now, tell us about this gun, where you found it in the yard. A. Right over here (indicating).

Q. And what was Georgie doing when you found the gun? A. He was sitting on the fence.

Q. And did he tell you to do anything?

Mr. Hansen: Object to what he told him.
The Court: Yes.

Q. Well, what did you do, anyway, while he was sitting on the fence? A. I went in and got the gun.

Q. And after you got the gun, what did you do with it? A. I gave it to Georgie.

Thomas Farrell, Jr., for State—Direct—Cross.

Q. And what did Georgie do? A. He gave it to my other brother.

Q. Do you know Mr. Heinz? A. Yes.

Q. What did he do? A. He took it off my brother.

Q. And you and Georgie were there together?

10 A. Yes, sir.

Q. Then he gave it to Mr. Farrell? A. Yes, sir.

Q. And that is all you know about it? A. Yes.

Mr. Besson: That is all.

Mr. Hansen: No questions.

Witness excused.

20 THOMAS FARRELL, Jr., recalled.

Direct examination by Mr. Besson:

Q. I would just like to ask you one more question. On the same day that this gun was taken from Heinz by you in the presence of these two little boys, did you give the gun to Captain Baum?
A. Yes, sir.

30 Q. The same day? A. Probably two or three hours after.

Q. About three hours after the boys gave it to Heinz? A. Yes.

Mr. Besson: That is all.

Cross-examination by Mr. Hansen:

Q. What day was this, Mr. Farrell? A. I could not say. I have forgotten.

40 Q. With reference to the 4th of July, 1930, when was it? Was it around the 4th of July or around Columbus Day? A. It was quite a while after the

Peter Rizzuto, for State—Direct.

4th of July. It was quite a while after that murder happened.

Mr. Hansen: That is all.

The Court: We will recess now until tomorrow morning at ten a. m.

Gentlemen of the jury, in these cases provision is usually made for the jury to stop at one of the hotels and arrangements have been made to accommodate you tonight over at the Plaza Hotel. Of course you understand that you are not to discuss the case with anybody. 10

Jersey City, N. J., January 20, 1931. 20

Trial of the case resumed pursuant to adjournment.

(Jury polled by the Clerk.)

PETER RIZZUTO, sworn for the State.

Direct examination by Mr. Besson: 30

Q. Mr. Rizzuto, what is your occupation? A. Constable of Hudson County.

Q. And were you so employed on the 10th of July, 1930? A. Yes, sir.

Q. And also at the time of the coroner's inquest taken in the matter of the death of Mary Mangino? A. Yes, sir.

Q. Now, where was that held? A. That was held in the Guttenberg police headquarters, Park Avenue, Guttenberg. 40

Peter Rizzuto, for State—Direct.

Q. Do you remember the precept date? A. No, sir, I don't recall it.

Q. Does this precept here refresh your recollection? A. Yes.

Q. What was the date, if you recall? A. It was in July, about the 16th or 17th.

10 Q. The precept here is a precept for the 10th day of July, for a jury on the 10th day of July? A. Well, that may be correct; of course, I don't recall the exact day. I know it was in July.

Q. The date at the outset is July 16, 1930. You don't know the exact date? A. No, I don't know the exact date.

Q. You know you were there, however? A. Yes.

20 Q. Now, what part did you play besides acting as the constable to summon the jurors and also to summon the witnesses? A. I swore in the witnesses before they took the stand.

Q. Do you speak the Italian language? A. Yes, sir.

Q. In case of witnesses who are unable to speak the English language well and who are of Italian descent did you do anything? A. I was called upon to interpret by the coroner.

30 Q. Now, in the case of the defendant Anthony Mangino were you called on to interpret? A. Yes, sir.

Q. What happened before you were called on to interpret? A. Why, he was called to the stand and I swore him in and the coroner asked him his name and he said his name was Antonio Mangino, and he asked him his address and he gave his address and his age, and then he asked him what he knew about his wife's death.

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

Peter Rizzuto, for State—Direct.

The Court: Why, Mr. Hansen?

Mr. Hanson: He is testifying to something—certainly the best evidence of what Mr. Mangino said at that coroner's inquest is the minutes of the proceedings. Now I understand the State's theory is that the State's object is to introduce those minutes into evidence. 10

Mr. Besson: I think perhaps I can clear up the question, because I don't attempt to prove the minutes in this way. I just simply wanted to show the circumstances under which an interpreter was called for Mr. Mangino, and he said that he answered two questions in English and then—

Q. And the third question, what happened? A. He tried to answer the third question in English and the coroner was unable to understand him and he asked me to interpret. 20

Q. Was he speaking in English? A. He was speaking in English but he fumbled.

Q. Fumbled English? A. Yes, fumbled English.

Q. I show you here five sheets of typewritten matter numbered 30 to 34, inclusive, which have been marked S-13 for identification. Will you examine that, and before you examine it have you any independent recollection of what this man testified to without referring to the exhibit? A. I have a very slight recollection. 30

Q. Now, did you interpret what this man said honestly and truly at the time? A. I did.

Q. You didn't interpret it falsely in any way? A. No, sir.

Q. Will you examine that (Exhibit S-13 for identification)? A. (Witness complies.) 40

Peter Rizzuto, for State—Cross.

Q. Does that refresh your recollection as to the testimony which was given on that date? A. Yes, sir.

Q. And does it clearly represent the testimony?
A. Yes, sir.

10 Mr. Besson: I think that is all.
 Mr. Hansen: Are you introducing it?
 Mr. Besson: Have you any objection?
 Mr. Hansen: I would like to ask the witness one question with the Court's permission.
 The Court: Go ahead.

Cross-examination by Mr. Hansen:

20 Q. You were acting as interpreter for Mr. Mangino, were you, Mr. Rizzuto? A. Yes, sir.

 Q. You are a constable from Bergen County?
A. Hudson County.

 Q. Oh, Hudson County. Who was the coroner?
A. Fred Youngman.

 Q. Is he in court? A. I haven't seen him this morning, no, sir.

30 Q. Were you there to act as interpreter or how did you come to get there? A. Because the coroner didn't understand Mr. Mangino's talk and he asked me to interpret.

 Q. You happened to be hanging around there, did you? A. No, I swear in the witnesses as they go on the stand.

 Q. So that is your duty at those inquests? A. Yes.

 Q. And were you sworn by the constable to act as interpreter? A. I don't recall.

40 Q. You wouldn't say you were? A. I wouldn't say I was and I wouldn't say I wasn't.

Colloquy of Counsel.

Mr. Hansen: Then of course, if the Court pleases, I want to object to the offer of this testimony as an official record of legal proceedings, because I don't think it is proper because this man admits he wasn't sworn to act as interpreter. I have no objection to him testifying what he remembers this man saying. Of course, he has already looked at the minutes and I think as a matter of law these minutes are not properly admissible because this man should be sworn to act as interpreter, and it seems to me it lacks the necessary essentials of a legal proceeding because of the fact that this man wasn't sworn to act as interpreter. As I say, however, I have no objection to him testifying. I know he has refreshed his memory now, and I have no objection to him testifying to what he remembers this man Mangino said, but I do object to the offer of these minutes as the minutes of an official legal proceeding.

Mr. Besson: In response to that I have not as yet presented the original minutes themselves for the attention of the Court. I am introducing this testimony merely on the theory of an admission. Now, if this defendant were to have made an admission to any one stating or suggesting the inferences that he committed a crime, which admission was interpreted from Italian into the English language, that admission would be binding against him, and the question really for the jury there would be the question of the credibility of the interpreter and the credibility of the admission as such; so that I am not treating this as an official

Colloquy of Counsel.

10 record, and there is only before the Court the reading of the stenographer's minutes by the stenographer, which has now been certified by this testimony before the Court this morning, so the jury has already heard what this testimony was. I therefore respectfully submit that the motion which Mr. Hansen made yesterday and which has been carried over, which I asked your Honor to reserve your ruling on,—that that motion be denied and the record be permitted to stand as it is. I will not actually offer the written minutes of the proceedings at all, but what is in the record only.

20 The Court: The very case called to my attention yesterday by Mr. Hansen, with which I am very familiar, having gone over it many times within the last eight or nine years here, is one that fits the present situation. Where an interpreter has been used the authenticity of the stenographer's testimony has got to be corroborated to a certain extent by the interpreter; but here the interpreter has read that testimony and he said that it is correct; and in the Abbatto case it not only says that he has got to prove by the witness on the stand that it was truly interpreted,—but as in 30 this case, he says now here under oath that he well and truly interpreted the testimony that was taken at that time.

Mr. Hansen: Will your Honor allow me an exception?

40 The Court: I will permit the introduction of the record for the purposes as have been mentioned by the Prosecutor and I will allow you an exception.

Colloquy of Counsel.

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN, Judge.)

Mr. Besson: And you will allow it to go in evidence?

The Court: You have offered it, haven't you? 10

Mr. Besson: Yes, I did originally.

The Court: It is offered for the purposes you have already stated?

Mr. Besson: Yes.

The Court: And I also will allow the testimony of the stenographer to go in.

Mr. Hansen: And I believe I had an exception noted on the record to that yesterday. 20

The Court: Yesterday.

(Exhibit S-13 for Identification admitted in evidence, retaining the same exhibit number.)

The Court: So in addition to the testimony of Mr. MacCormack yesterday and as to the admission of this evidence, I give you an exception.

(Exception allowed, signed and sealed accordingly. 30

CHARLES M. EGAN, Judge.)

The Court: Anything further with this witness?

Mr. Besson: No.

Mr. Hansen: No.

WITNESS EXCUSED.

Joseph De Angelo, for State—Direct.

JOSEPH DE ANGELO, sworn on behalf of the State.

Direct examination by Mr. Besson:

- 10 Q. Where do you live? A. 326 26th Street, Guttenberg.
- Q. Were you living there in Guttenberg on the fifth day of July, 1930? A. Yes, sir.
- Q. Do you know the defendant Antonio Mangino? A. Yes, sir.
- Q. How long have you known him? A. I have known him as far back as I can remember. About twelve years.
- Q. What was your business on the morning of July 5, 1930? A. Driving a truck.
- 20 Q. Was it a motor truck? A. Yes, sir.
- Q. Where was this truck garaged? A. At Farrell's garage.
- Q. Was it your own truck or was it somebody else's? A. No, sir, I was working for some Italian fellow at the time.
- Q. And did you have occasion to leave the garage early on the morning of July 5th with that truck? A. Yes, sir. I left at all hours in the morning.
- 30 Q. But on that particular morning, July 5, 1930, what time did you leave there? A. It was the same as any other morning. It was a case of getting out an hour or two earlier and getting done.
- Q. What time did you leave? A. I left the garage between five-thirty and quarter of six.
- Q. Now on that morning can you state whether or not you saw the defendant, Mangino? A. Yes, sir.
- 40 Q. Where did you see him? A. I seen him right opposite the garage when I pulled the truck out.

Joseph De Angelo, for State—Direct.

Q. Well, what time of the morning would you say that was? A. Well, I would say about twenty-five minutes of six or quarter of six.

Q. Twenty-five minutes of six or quarter of six in the morning of July 5, 1930? A. Yes, sir.

Q. I show you Exhibit S-7 in evidence in this case which I assume is familiar to you? A. Yes, 10
sir.

Q. What does that represent? A. This side represents Farrell's garage.

Q. That is the entrance? A. Yes, and that is the yard directly across from the garage.

Q. Now, Mr. De Angelo, will you indicate the point where you saw Mr. Mangino that morning? Was he on the opposite side of the street? A. Yes, he was on this side of the street coming up.

Q. Oh, he was going in a direction on Exhibit S-7 from the left of the picture as you face it, to the right of the picture? A. Yes, sir. 20

Q. Now at the moment that you saw him, where was he on that picture? A. He was standing directly about there.

Q. And what if anything did you say to him? A. I bid him the time of day, good morning, in Italian.

Q. What were the words used? A. Bon journie, Mr. Mangino. 30

Q. Did he say anything? A. That I could not say. The moment I said good morning to him I had the truck making a turn.

Q. How was he dressed at that time? A. He had a sort of a dark cap on, a light shirt, a dark pair of pants.

Q. What else? A. I really don't remember if he had a package or a jacket under his arm. He was walking along.

Q. What was the condition of the weather at the time? A. It was pretty nice out that morning. 40

Joseph De Angelo, for State—Cross.

Q. Was it cold weather or hot weather? A. It was summer time, pretty warm out. He was in summer attire.

Q. So that whatever the man was carrying, he was carrying on his arm? A. Yes, sir.

10 Q. You do not know whether it was a coat or a package? A. No, sir.

Q. When you say a light shirt, what do you mean, a white shirt? A. Really, I could not say it was white. Not the color you and I are wearing. It may have been a shirt that was faded, a faded blue shirt that made it look light. It looked white to me anyway. It looked rather light. Not knowing what it was all about until later on, just like other mornings I see him, I just went about my business and didn't take any interest in him.

20 Q. It looked white to you? A. It looked white, sort of. I could not say whether it was white or whatever it was.

Q. And was the man walking rapidly or slowly? A. He was walking the same as he ever walked.

Q. The ordinary walking speed of a man? A. Yes, just as if he was going some place. Where he was going I don't know.

Mr. Besson: Cross-examine.

30 *Cross-examination by Mr. Hansen:*

Q. Mr. De Angelo, what do you do? A. Drive a truck.

Q. Where do you live? A. 326 26th Street, Guttenberg.

Q. And Mangino lived at 320? A. Yes.

Q. How old are you? A. 21.

Q. How long have you been at that address? A. I have lived at 326 about two and one-half or
40 three years.

Joseph De Angelo, for State—Cross.

Q. Did you know Mr. Mangino before you moved there? A. Yes, sir.

Q. What brought you out so early in the morning, your work? A. Well, my work did. I was working for a boss. I went out in the morning at all hours. It all depended upon where we went. This particular morning we had to go to Kearney.

10

Q. What particular morning? A. The particular morning of July 5.

Q. What makes July 5 significant to you? A. Well, it was the morning of the murder and the morning I had to get out early, being the sales open up at eight o'clock and my boss wants to get down early during the day. Naturally I like to get done early, so I got up out of bed an hour earlier thinking I would call him and be out there early.

20

Q. When did you first find out about the murder? A. Later during the day.

Q. You used to meet Mangino quite often? A. I have seen him quite often in the mornings walking around. Sometimes I have seen him in front of his store and other mornings I would see him walking up the street.

Q. Yes. And you are quite sure it was on July 5th that you happened to see him in front of this garage? A. Yes, sir.

30

Q. You could not be mistaken about that? A. I am positive it was July 5.

Q. You are positive it was July 5? A. Yes, sir.

Q. Did you see him on July 4th? A. Well, that I really would not say because I have not spent very much time at the house on July 4th. I was out visiting friends.

Q. Did you see him on July 3rd? A. That I could not say either, because I don't hang around the house very much. I may be in and out.

40

Joseph De Angelo, for State—Cross.

Q. Did you see him on July first? A. That I could not say. I may have seen him at times every day in the week, then again I might not see him for a week.

10 Q. Could you tell us what he wore the time before you saw him on July 5th? A. What do you mean before July 5th?

Q. You say on July 5th he had a cap, a white shirt and a dark pair of pants on. What did he have on when you saw him the time before that? A. I don't know what you mean the time before.

20 Q. You are sure you know just what he wore on July the 5th. Now when you saw him before that what did he wear? A. When I bumped into him accidentally around the store other times, a week before, like that?

Q. I am asking you now the time before July 5th when you saw Mangino? A. Any time before I seen him?

Q. Yes, the previous time, the time you saw him before July 5th, what did he have on on that day? A. Well, it was some days I have seen him without a cap and with a shirt and sweater on. Maybe he wore a cap sometimes in the store and times I seen him with glasses on.

30 Q. You never took much particular notice of him, did you? A. I would not say that; it was a man I have seen quite often. I used to bid him good day when I went into his store.

Q. You did not take any particular notice of the man any other time, did you? A. Well, I could not say what he was wearing. Sometimes he wore a red sweater and I could not help seeing that.

40 Q. You do not know what he wore the time before when you saw him? A. What do you mean?

Joseph De Angelo, for State—Re-direct.

Q. You saw him on July the 5th, you say? A. Yes.

Q. You are positive about that? A. Yes, sir.

Q. Can you tell us how many days before that you had seen him? A. How many days before July 5?

Q. Yes. A. It may be that I seen him a couple of days before, maybe five days before. 10

Q. All right. Whenever it was, a couple of days before or three or four days before, where did you see him then? A. I have seen him, it was in front of his store.

Q. What did he have on? A. Well, he had on a—that would be pretty hard to say. I have often seen him with light shirts on and shirts, being it was summer time, with half sleeves on, and there was several times in particular I have noticed a red sweater on him, and with a cap on in the store. 20

Q. You say he was walking along in a normal way when you saw him? A. Just the way I have seen him walking many a time.

Mr. Hansen: That is all.

Re-direct examination by Mr. Besson:

Q. Can you recall when you first found out about this murder? A. I recall sometime during the afternoon when I got home. 30

Q. Did you read any report of it? A. No, sir. not during the day.

Q. Was there any report which you later learned or read about which caused you to remember the fact that you had seen Mr. Mangino at that hour in the morning? A. What is that again?

Q. (Repeated by the stenographer.) A. It was during the day when I got back home from my business. We were out all day in Jersey City. 40

Herbert Hohneker, for State—Direct.

When I got home I learned about it through my mother and the people in the vicinity telling me. Naturally, when I got home everybody was talking about it.

10 Q. What caused you to give information that you saw this man between twenty-five minutes of six and a quarter of six that morning? A. Really I don't recall just how I went about it, but talking to a couple of fellows around on the street, one fellow had this to say and another fellow had that to say. I really don't know how to explain it myself. Later on I was called down to the town hall, to headquarters and asked about it.

20 Q. In other words, you did not volunteer it, you were asked? A. I was asked, yes, sir. Really, I didn't know what it was all about.

Q. Had you heard anywhere of Mr. Mangino making a statement that he left his home at four o'clock in the morning? A. No, sir.

Q. You simply had made this statement to somebody, and in some way the police learned of it? A. That is it.

Mr. Besson: That is all.
(Witness excused.)

30

HERBERT HOHNEKER, sworn for the State.

Direct examination by Mr. Besson:

Q. Mr. Hohneker, what is your business? A. Milkman.

40 Q. What was your business on July 5, 1930? A. Delivering milk to Mangino's store.

Herbert Hohneker, for State—Cross.

Q. Who were you employed by? A. By my father.

Q. At what hour that morning did you make a delivery of milk? A. Two o'clock.

Q. How much milk did you deliver? A. A full can.

Q. What sort of a container was that? How big a can? A. A regular milk can. 10

Q. Is that what you call a 40 quart can? A. Yes, sir.

Q. Did you deliver anything else besides this can of milk? A. A piece of ice.

Q. Now, a 40 quart milk can is a little over two feet high, isn't it? A. Yes, sir.

Q. And how much does it weigh when filled? A. About 115 pounds.

Q. Where did you put this can of milk and the piece of ice? I show you a photograph marked Exhibit S-10 and indicate on the right of the front of the store? A. About here. 20

Q. Right by the door? A. Yes, sir.

Q. See if I mark this at the point you put it? A. Right there.

Q. What was the condition of the door of the store at the time? Was it closed or open? A. It was closed.

Q. No signs of life about the place? A. No, sir. 30

Q. Are you sure it was two o'clock? A. Yes, sir.

Q. What makes you sure of that? A. Well, that is always my time of getting there.

Mr. Besson: Cross-examine.

Cross-examination by Mr. Hansen:

Q. You got to the store at two o'clock on that morning, you say? A. Yes, sir. 40

Henry Baum, for State—Recalled—Direct.

Q. And you left the milk outside? A. Yes, sir.

Q. That is what you always did, isn't it? A.
Yes, sir.

Mr. Hansen: That is all.
(Witness excused.)

10

HENRY BAUM, recalled for the state.

Direct examination by Mr. Besson:

Mr. Besson: If the court please, I ask to have this revolver tagged for identification. It is the one which has been identified yesterday by the two boys and by Mr. Farrell.

20

(Marked for identification Exhibit S-15.)

Q. Now, Captain, I show you a revolver which has been marked Exhibit S-15 for identification. Will you tell the court and jury briefly what you know about that revolver? A. I will see if it is the same number as the one I received. Yes, this gun was handed over to me on October the 13th, 1930, by Thomas Farrell.

30

Q. You were in court yesterday, weren't you? A. Yes, sir.

Q. And the Thomas Farrell who handed it over to you was the Thomas Farrell who was on the witness stand? A. Yes, sir.

Q. What did you do with it when you received it? A. I opened it up and there was one cartridge exploded and the other four were loaded. I took them out.

40

Q. What did you do then with the revolver and the cartridges? A. I turned them over to Lieutenant Charlock.

H. Baum, for State—Recalled—Cross—Re-direct.

Q. On what day? A. Probably two or three days after.

Q. You know you turned it over to him and that is the last you have seen of the revolver until today? A. Yes, sir. I have never seen it since.

Mr. Besson: Cross-examine.

10

Cross-examination by Mr. Hansen:

Q. Did you make any further investigation about the revolver, in the way of getting in touch with Mr. Charlock and finding out anything about it? A. I tried to trace the gun, but it was such an old make, it was a Hopkins and Allen, H. and A., which stands for Hopkins and Allen, and I found that firm is out of business quite a number of years and I could not trace it.

20

Mr. Hansen: That is all.

Re-direct examination by Mr. Besson:

Q. On the day of the murder did you go to the Mangino store at 320 26th Street? A. Yes, sir.

Q. Did you make a search of the premises? A. I looked around the premises, yes, and went upstairs to inquire of the people upstairs if they heard the shot. I worked with Mr. Charlock on the case.

30

Q. Did you find any money there that day? A. No, not that day.

Q. You heard the testimony yesterday that this woman had some bills either clutched in her hand or lying underneath her? A. Yes, sir.

Q. What became of those bills? A. When I got up there to look, the woman was taken away already.

Q. You did not get there immediately? A. No, sir.

40

Lieutenant John Lawler, for State—Direct.

Q. Did you detail anyone to go there? A. Well, no, they only called me up at about nine o'clock. This happened early.

Q. Who is Lieutenant Lawler? A. He is a lieutenant in the Guttenberg Police Department.

Q. Under your command? A. Yes.

10 Q. Did he go there that morning, if you know?
A. That I could not tell you. Lieutenant Lawler is here in court.

Q. But you did not detail him to go there? A. No.

Q. If he went there he went there without your knowledge? A. Yes, sir.

Mr. Besson: That is all.
(Witness excused.)

20

LIEUTENANT JOHN LAWLER, SWORN for the State.

Direct examination by Mr. Besson:

Q. What is your occupation, Lieutenant? A. Lieutenant of police.

Q. Of what municipality? A. Guttenberg, New Jersey.

30 Q. And you have been employed there how long? A. Over fifteen years.

Q. Now, in the course of your employment as such did you have an occasion to make an investigation into the cause of the death of Maria Mangino which occurred on premises 320 26th Street, Guttenberg? A. On the morning of July 5 about seven A. M. I received a call from Mr. Kovana, saying that Mrs. Mangino had dropped dead behind the counter there in the store, and I
40 detailed Patrolman McDonald there. He called

Lieutenant John Lawler, for State—Direct.

back and said Mrs. Mangino was laying behind the counter and she had a wound in her forehead, so I immediately called up the County physician and the coroner, and the coroner took charge of the body.

Q. Was that the end of your investigation? A. Yes, sir. 10

Mr. Besson: I ask that this box of cartridges and the cartridges be marked for identification, if the Court please.

The Court: Very well.

(Box of cartridges and cartridges marked Exhibit S-16 for identification.)

Q. Now, I show you this box of cartridges and the cartridges in it, which have been marked S-16 for identification. Did you ever see this before? A. Yes, sir, I seen that box of cartridges. 20

Q. Where? A. I found them in the top drawer of the dresser in Mr. and Mrs. Mangino's bedroom.

Q. So you did make a further investigation then? A. That was after.

Q. Tell me when you made it. A. I think that was about the 12th of July.

Q. Now I show you a photograph S-8. What does that represent, if you know? A. That represents the bedroom. 30

Q. And is that the bedroom in which you found these cartridges? A. Yes, sir.

Q. Will you indicate to the jury if you can in that photograph where you found the cartridges marked S-16 for identification? A. Right here in this left-hand corner of this top drawer.

Q. Will you mark that? A. (Witness complies.) 40

Lieutenant John Lawler, for State—Direct.

Q. What was the condition of that room at the time you examined it? A. Well, the bed clothes—they were all tossed around, and so forth.

Q. You didn't examine it on the morning of July 5, did you? A. No, sir.

Q. You don't know of any one else that did?
10 A. I don't know if Lieutenant Charlock did. He examined it previous. He was there the morning I found the cartridges, and his assistant.

Q. How many cartridges were in that box at the time you found it? A. Forty-six.

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

Mr. Hansen: I am perfectly willing to admit that this box of cartridges was found in this drawer.

20 Mr. Besson: Then I offer this in evidence.

The Court: There being no objection they will be admitted.

(Box of cartridges previously marked S-16 for identification, admitted in evidence and retaining the same exhibit number.)

Q. Did you take any other part in this investigation, Lieutenant? A. No, sir.

Q. That was the only part? A. Yes.

30 Mr. Besson: That is all.

Mr. Hansen: No questions.

WITNESS EXCUSED.

Giobbe Ranato, for State—Direct.

GIOBBE RANATO, sworn for the State, testified as follows through the Italian interpreter:

Direct examination by Mr. Besson:

Mr. Besson: Could I tell the interpreter, if the Court please, that this man is hard of hearing? 10

The Court: All right.

Q. Do you remember the day on which Maria Mangino was killed? A. No.

Q. You knew that she was killed, did you not? A. Because I went in the store to buy some lunch.

Q. Did you go in the store at 320 26th Street, Guttenberg, New Jersey, on the morning she was killed? A. Yes. 20

Q. What time in the morning did you go in the store? A. About 6:20 in the morning.

Q. Who was there at the time you went in the store? Who was outside the store at the time you went in the store? A. In front of the store there wasn't anybody, but someone was walking along the street.

Q. Do you know Philip Oriolo? A. I don't know as I know him by name, but if I see him I may recognize him. 30

Q. Well, did you see him yesterday in the courtroom? A. Yes.

Q. And he sat in that chair, didn't he? A. Yes.

Q. And he was the man that you saw in front of the store that morning, was he not? A. Yes.

Q. What was he doing there? A. He wasn't doing anything. I tried to go in the store; I knocked at the door, but he was not doing anything. 40

Joseph Mangino, for State—Direct.

Q. Did you see anybody in the store? A. No.

Q. Did you notice anything at all outside of the store? A. I did say that I did not see anything on the outside.

10 Q. Did you call for anybody? A. Only that someone said that they might have been in the toilet.

Q. Well, what were you trying to do in the store that morning? A. I used to go in the store every morning to buy lunch.

Q. That is, breakfast? A. Yes.

Q. And other mornings you could have bought breakfast at that time in the store? A. Yes.

Q. Did you go elsewhere to buy breakfast? A. I went to another store down further.

20 Q. How long did you stay there that morning?
A. A minute, maybe two minutes.

Q. And you say you saw someone passing the store? A. No, not while I was there.

Q. Was the only person you saw while you were there Philip Oriolo, the man who sat in this witness-chair yesterday? A. I don't know his name, but it was he.

Q. All right, that is all. Cross-examine.

Mr. Hansen: No questions.

30 (Witness excused.)

JOSEPH MANGINO, sworn for the State.

Direct examination by Mr. Besson:

Q. Joseph, this photograph which I show you, S-1— A. That is my mother.

40 Q. That is a photograph of your mother? A. Yes, that is my mother.

Henry Kortrey, for State—Direct.

Q. Maria Mangino? A. (Witness breaks down crying.) That is the only best friend I had.

Mr. Besson: I think I will ask that this witness be excused for the time being and I will recall him.

The Court: Very well.

10

(Witness excused.)

HENRY KORTREY, sworn for the State.

Direct examination by Mr. Besson:

Q. Where do you live, Mr. Kortrey? A. 112 8th Street, West New York.

Q. How long have you lived in West New York? A. Last ten years. 20

Q. What is your occupation? A. Chauffeur.

The Court: What is it?

The Witness: Chauffeur.

Q. I show you S-1 in evidence. Do you know—
A. I do not know that; I was just passing in the morning.

The Court: You haven't been asked anything yet. Wait a minute. 30

Q. Do you know whom is represented in that photograph? A. I don't know the woman, no.

Q. Now, did you have occasion on the morning of July 5, 1930, to pass the store 320 26th Street, Guttenberg, New Jersey? A. I passed there, yes.

Q. What if anything did you notice when you passed the store that morning? 40

Henry Kortrey, for State—Cross.

Mr. Hansen: I thing the time should be fixed, if the Court please.

Mr. Besson: I asked him if he passed that morning.

Mr. Hansen: How about asking him what time?

10

Mr. Besson: I will ask him that.

Q. Will you state the time as near as you recall it when you passed this store? A. Five or a quarter after five.

Q. Now, what did you notice at the time you passed the store? A. I seen an old lady standing in front of the store taking a piece of ice off a can.

Q. And was it a regular milk can? A. Yes.

20

Q. Forty-quart milk can? A. Forty-quart milk can.

Q. And how did this woman appear to be? A. Looked like an old woman to me; I just passed there.

Q. And what was the build of the woman? How much would she weigh, apparently? A. She was a heavy woman.

Q. She was a heavy-built woman, an elderly woman? A. Yes.

30

Q. And you didn't know her? A. No.

Q. And you just happened to notice that going on as you passed? A. Yes.

Q. Were you driving rapidly or slowly? A. About twenty miles—fifteen or twenty miles.

Q. And that was between five and 5:15 in the morning? A. Yes.

Cross-examination by Mr. Hansen:

40

Q. You were driving in an automobile, were you? A. Automobile—and milk wagon, too.

Henry Kortrey, for State—Re-direct.

Q. Where were you going? A. Down to Hudson Avenue to the store. I have got a store there.

Q. You have never been in this store there of Mangino's, have you? A. No, I just passed by and saw an old lady in front of the store.

Mr. Hansen: That is all.

10

Re-direct examination by Mr. Besson:

Q. Just one other question. I show you this photograph, S-10. Does that represent the store you passed that morning? A. Yes.

Q. And about where did you see the old lady? A. I seen her right here (indicating).

Q. Where that "X" is? A. No, on that side. She was standing right there.

Q. Where was the can? A. Right here (indicating). 20

Q. Right in front of the store? A. Yes.

Q. And was any one helping her? A. No one.

The Court: What was she doing?

Mr. Besson: Lifting the can.

The Witness: No, not the can, a piece of ice.

Q. How big a piece of ice was it? A. A square piece. 30

Q. And the can wasn't being moved when you passed there? A. No, not when I passed there. I just passed there.

Mr. Besson: That is all.

(Witness excused.)

40

Mrs. Anna Schutz, for State—Direct.

MRS. ANNA SCHUTZ, sworn for the State.

Direct examination by Mr. Besson:

Q. Mrs. Schutz, where do you live? A. 140
26th Street, Guttenberg.

10 Q. Did you have occasion on the morning of
July 5, 1930, to pass along 26th Street? A. Yes,
sir.

Q. And in which direction did you go? A. Up
towards the Boulevard, west.

Q. That is in a westerly direction? A. Yes.

Q. Do you know the location of Mangino's store
at 320 26th Street? A. Location?

Q. That is, you know that Manginos had a
store on 26th Street, didn't you? A. Yes, sir.

20 Q. And did you pass that store that morning?
A. Yes, sir.

Q. At approximately what time that morning
did you pass the store? A. 5:15.

The Court: 5:15?

The Witness: Yes, 5:15.

Q. Were you going to work at that time? A. I
was on my way to the hospital.

30 Q. You were on your way to the hospital? A.
Yes, sir.

Q. Were you walking? A. Yes, sir.

Q. Were you alone? A. Yes, sir.

Q. And when you passed the Mangino store, did
you notice anything? A. Yes, sir.

Q. What did you notice? A. I seen Mrs. Man-
gino standing behind the counter waiting upon a
man.

40 Q. And how was the man dressed and what was
his appearance? A. Well, he had a white shirt
on, that is all I seen.

Clifford Taylor, for State—Direct.

Q. You don't know who the man was? A. No, sir.

Q. And you are sure it was Mrs. Mangino behind the counter? A. Yes, sir.

Q. Was there a milk wagon in front of the place at the time that you recall? A. No, sir.

Q. Was there anything else in front of the store? A. No, sir. 10

Mr. Besson: That is all.

Mr. Hansen: No questions.

(Witness excused.)

CLIFFORD TAYLOR, SWORN for the State.

Direct examination by Mr. Besson: 20

Q. Mr. Taylor, what was your occupation on the morning of July 5, 1930? A. Bread foreman, of the Ward Baking Company.

The Court: Bread foreman?

The Witness: Yes, sir.

Q. And were you engaged that morning in making deliveries? A. Yes, sir.

Q. And where were you making deliveries about five o'clock that morning? A. About five o'clock would be on the Boulevard. 30

Q. Did you know Mrs. Maria Mangino? A. Not very well.

Q. Well, you knew who she was? A. Yes.

Q. And was the Mangino store at 320 26th Street, Guttenberg, New Jersey, on your route? A. Yes, sir.

Q. And did you have occasion that morning to make a delivery there? A. Yes, sir. 40

Herman Gans, for State—Direct.

Q. What time did you make the delivery? A. Around 5:25.

Q. Was there anything in front of the store at the time you made the delivery? A. I didn't notice anything.

Q. Did you enter the store? A. Yes, sir.

10 Q. Did you notice anything unusual in the store? A. Just the ten-dollar bill on the counter.

Q. That is all? A. Yes, sir.

Q. You didn't see any person in there? A. No, sir.

Q. What did you deliver? A. Bread.

Q. What did you do with the bread? A. Just laid it on the counter and walked out.

Q. And that was at what time? A. Around 5:25.

20 Q. 5:25, and you say that approximately from memory? A. Yes, sir.

Q. Now, where did you lay this bread that you took in there? A. On the far end of the counter where she always kept it.

Q. How much bread did you lay there? A. Two loaves.

Mr. Besson: That is all. Cross-examine.

Mr. Hansen: No questions.

(Witness excused.)

30

HERMAN GANS, sworn on behalf of the State.

Direct examination by Mr. Besson:

Q. Where do you live, Mr. Gans? A. 1509 13th Street, West New York.

Q. On July 5, 1930, by whom were you employed? A. Joe Beers, 119 Madison Street.

40 Q. He is in the baking business? A. Yes, sir.

Herman Gans, for State—Direct.

Q. What is the nature of your work? A. Delivering bread.

Q. Did you know Maria Mangino? A. Yes, sir.

Q. Did you have occasion on the morning of July 5, 1930, to deliver bread to her store? A. Yes, sir.

Q. What time did you make your delivery? A. 10
Between half past five and quarter of six.

Q. What did you do with the bread which you delivered? A. Left it outside in a bag.

Q. Was anything upon which you left it, or did you leave it on the ground? A. On the ground.

Q. You did not go in the store? A. No, sir.

Q. Did you see any signs of life around there at the time you came? A. No, sir.

Q. Did you see anybody around there? A. No, 20
sir.

Q. Did you see Philip Oriolo? A. No, sir.

Q. Did you see him here yesterday? A. Yes, 20
sir. I was here.

Q. Did you see this man with a horse and wagon? A. No.

Q. You did not notice him? A. I didn't see him in front of the store.

Q. Was there a milk can there at the time you got there? A. No.

Q. The milk can was gone? A. Yes. 30

Q. There was no piece of ice there? A. No, sir.

Mr. Besson: Cross-examine.

Mr. Hansen: No questions.

(Witness excused.)

Charles Nelles, for State—Direct.

CHARLES NELLES, sworn on behalf of the State.

Direct examination by Mr. Besson:

Q. What is your occupation, Mr. Nelles? A. Salesman.

10 Q. And where were you employed on the morning of July the 5th, 1930? A. I was employed as a salesman by the Continental Bakery.

Q. On that morning did you have occasion to visit the Mangino store? A. Yes, sir.

Q. And at what hour of the morning did you visit there? A. Between ten minutes of seven and seven o'clock.

20 Q. At the time you arrived at this store, which is located, as I understand it, at 320 26th Street, Guttenberg, New Jersey, you saw whom outside the store? A. This fellow, I don't know what his name is, who was on the stand yesterday.

Q. Philip Oriolo? A. Yes. He was out in front of the place.

Q. Who else did you see there? A. That is all there was out in front of the place and the door was half closed.

Q. Did you enter the store? A. I did.

Q. What did you take in with you? A. Bread.

Q. How many loaves? A. Five loaves.

30 Q. What occurred after you went in the store? A. I put it on the counter and I said, "Forty-one cents, Mama", and I looked around, looked back in the kitchen and I could not find anybody. I came out and I looked behind the counter and I seen her lying there.

Q. What was her position back of the counter? A. Her head was toward the front of the store and her feet toward the rear. I didn't take notice how her hands were.

40

Charles Nelles, for State—Direct.

Q. Was she lying face up or face down? A. Face down.

Q. What did you do then, when you discovered that? A. I walked out and told this fellow. I asked him where they lived, and he told me where they lived, so we went up to get Joseph.

Q. I show you here a photograph exhibit S-10. Did Philip Oriolo indicate to you the house on that photograph the place where they lived? A. Yes, sir, right there. 10

Mr. Besson: I mark that with an X.

A. He told me they lived in that part of the house.

Q. What did you do? A. We called Joseph.

Q. That is the young man who was on the stand before this morning? A. Yes, sir. 20

Q. What did he do? A. He jumped through the front window and came running down the street in his stocking feet. He walked around the counter and he says, "Oh, she is dead". He closed the drawer behind the counter and he touched his mother and started to holler. After he started hollering all the people started coming in the store. I called to them to get an ambulance and notify the police and I told them I would stop around on my next trip around and make out my report. 30

Q. Then you went on about your business? A. Went on with my deliveries.

Mr. Besson: That is all. Cross-examine.

Mr. Hansen: No questions.

(Witness excused.)

William Charlock, for State—Direct.

WILLIAM CHARLOCK, recalled.

Direct examination by Mr. Besson:

Q. Mr. Charlock, did you have occasion to visit the premises adjoining and to the west of 320 26th Street, Guttenberg? A. I did.

10 Q. When did you visit them? A. On the 16th of July, 1930.

Q. Now I show you this exhibit S-16. Were you with Lieutenant Lawler when he found those cartridges? A. No.

Q. Did you find anything else in that place which you searched for? A. I did.

20 Mr. Hansen: I object to anything that was found there on the 16th of July, being too remote.

Mr. Besson: I think I can connect it up. I just want to identify something, if the Court please.

Mr. Hansen: If you can, I am willing to withdraw the objection. But the way it stands now, I press it.

The Court: If it is not connected up I will strike it out.

30 Q. I show you here what I shall ask to have marked for identification, Exhibit S-17, a shirt wrapped in a package. A. I didn't mind that. Mr. Reilley found that.

Q. Were you with Officer Reilley when he found that? A. I was.

Q. Were you in the same room with the officer when he found it? A. In the next room.

Q. Was that shirt which has been marked S-17 for identification exhibited to you on July 16th? A. By Officer Reilley, yes.

40 Q. Where? A. In the bedroom.

William Charlock, for State—Direct.

Q. That is the bedroom represented here in Exhibit S-8? A. Yes.

Q. And have you had that in your custody since that time? A. Yes.

Mr. Besson: I ask, if the Court please, that this statement which has three sheets to it be marked for identification.

10

(Statement marked Exhibit S-18 for identification.)

Q. Now I show you here three sheets of paper, partly printed and partly written, which have been marked Exhibit S-18 for identification, at the bottom of each sheet of which appears the name "Antonio Mangino". Will you tell us briefly what you know about those three sheets and the circumstances under which they were written, if you know?

20

Mr. Hansen: We might save a lot of time if Mr. Besson will let me see the statement. Maybe we can put it in and save a lot of time.

Mr. Besson: That is irregular, but I will permit it.

(Handing statement to counsel.)

Mr. Hansen: Now, if you are going to introduce the statement, I will object to it.

30

(Question repeated by stenographer.)

A. On July 14th I had Mr. Mangino, the defendant, brought into Guttenberg town hall. I had Mr. Puglia there and Mr. Patterson with me, and I stated to Mr. Mangino I had interviewed all his family and had been investigating on this case and I would like to have him make a statement.

40

William Charlock, for State—Direct.

I asked him if he would and he said yes. So I told him that I had brought Mr. Puglia with me in case there was anything that he didn't understand, so he said all right. Puglia started to ask him the questions and Mr. Patterson wrote them down. Then after he made the statement he signed it and Mr. Patterson read it to him in English and he said it was all right.

10 Q. Was anything done to compel him to make this statement? A. No, sir.

Q. Who was in the room at the time he made it besides you and Puglia? A. Captain Baum was in and out and the recorder was in and out, and the policemen.

Q. Did any of them take any part in this? A. No.

20 Q. Now, what if anything did you say to him about the necessity of his making such a statement? A. That is all I said to him.

Q. You did not tell him he had to make a statement? A. No.

Q. Did he indicate in any way that he was willing to make a statement? A. He seemed to be perfectly willing.

30 Q. How did he act that caused you to believe that he was perfectly willing to make the statement? A. As soon as I asked him whether he would, he said yes, I will.

Q. At that time you had not charged him with this crime, had you? A. I had not.

Q. First had you investigated all the other members of the family? A. I had.

Q. And a number of other persons? A. Yes, sir.

Q. And he was simply called there for an explanation? A. Yes, sir.

40 Q. And it was explained to him in English as well as in Italian? A. Yes.

William Charlock, for State—Cross.

Q. Could you hear him when he spoke? A. Yes, sir.

Mr. Besson: Cross-examine.

Cross-examination by Mr. Hansen:

Q. You say, Mr. Charlock, that you could hear Mangino when he spoke? A. Yes. 10

Q. You could not understand everything that he said, though, could you? A. Not all of it, no.

Q. Why was that? A. Because I could not hear good.

Q. Well, was it because you could not hear good or because you could not understand his broken English? A. Oh, there were some words I could not understand. That is the reason I had Puglia there. 20

Q. And that was the very reason you had Mr. Puglia there? A. Yes, in case anything like that happened.

Q. As a matter of fact, it did happen, didn't it? A. I always have an Italian interpreter with me, when an Italian makes a statement.

Q. As a matter of fact, in this case you needed Puglia, didn't you? A. No more than in any other case.

Q. Did you or didn't you? Could you have gotten along without him? A. He could talk. 30

Q. Could you have gotten along without him and taken this statement without Puglia being there? Tell the truth? A. Yes.

Q. How? A. Talking English to him and letting him answer it.

Q. You could not understand all the English he spoke, could you? A. I could have put different easier words to him.

Q. You could have put different easier words to him? A. Yes. 40

William Charlock, for State—Re-direct.

Q. What do you mean by that? A. Put simple words to him and he could answer it very clearly.

Q. Well, are those all simple words in that statement? A. Those are Puglia's questions.

Q. All this is Puglia's statement? A. Yes.

10 Q. Who wrote that statement? A. Mr. Patterson.

Q. Who is Mr. Patterson? A. Detective Patterson of the Prosecutor's office.

Q. He was up there that day, he wrote out the statement? A. Yes.

Q. And he wrote out just what Mr. Puglia told him, didn't he? A. That is right.

Q. Mr. Puglia asked Mangino questions in Italian, didn't he? A. Yes, sir.

20 Q. And Mangino answered him in Italian? A. Yes, sir.

Q. And when Puglia got through asking a question and Mangino had answered it, then Puglia told Mr. Patterson what to write in that statement, didn't he? A. Yes.

Q. Isn't that his writing? A. That is right.

Mr. Hansen: That is all.

Re-direct examination by Mr. Besson:

30 Q. When you found this shirt marked Exhibit S-17 for identification in the room which was shown in Exhibit S-8,—at least when Reilley found it, and delivered it to you in the room marked on Exhibit S-8, what did you do with that shirt? A. I had Mrs. Capola, that is, the daughter of Mr. Mangino—she is sick now—I had her mark it on the collar and I gave her my pen to mark it with, and Mr. Reilley held it, then I brought it down to the Prosecutor's office.

40 Q. Did you ever show that shirt to Mr. Mangino? A. I did.

William Charlock, for State—Re-direct.

Q. When? A. On the 19th of July.

Q. And where were you when you showed it to him? A. In the Recorder's room, Guttenberg.

Q. What, if anything, did he say about it? A. He admitted it was his shirt.

Q. Did he say anything else about it beside that it was his shirt? A. No.

10

Q. Did you ask him at that time whether or not that was the shirt that he wore on the morning of July 5, 1930? A. I asked him if that was his shirt and if that was the shirt that he wore. He took it up and looked it all over and there was a yellow spot on the tail of it. I said to him, "What are you doing, looking for blood?" and he said yes.

Q. What else did he say? A. That is all.

Q. You asked him a question but you never let him answer it? A. He did not answer it.

20

Q. Besides merely asking him about looking for blood—did he tell you what time he wore this shirt on the morning of July 5, 1930?

Mr. Hansen: That is objected to as leading.

The Court: It is leading, I sustain the objection.

Q. Did you ask him anything further? A. No.

Q. Did I understand you to say that Mangino told you that he wore this on the morning of July 5, 1930?

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Mr. Hansen: I object, leading.

Mr. Besson: I asked him a question which he did not answer.

Mr. Hansen: He has already testified to everything that was said.

Mr. Besson: I have some difficulty, if your Honor please, and I ask your Honor's

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William Charlock, for State—Re-direct.

indulgence. I think it goes to some extent to the discretion of the Court. I want to find out whether he asked this man if that was the shirt he wore. Will the stenographer repeat the question and answer?

10 (Question and answer repeated by stenographer.)

Mr. Besson: He didn't answer the question according to the record.

Mr. Hansen: The Prosecutor has already asked this witness, who is a vitally interested witness, a lieutenant in the Prosecutor's office for years, just what happened, was anything else said by you, and he said no. I think that closes the matter up.

20 Mr. Besson: I appeal to your Honor's discretion in the matter.

The Court: I will sustain the objection on that. Suppose you put it in another form.

30 Q. Did you ask the defendant Mangino on the morning that you had him there, the morning of July 19, 1930, when you were with him in the Recorder's room in the Guttenberg police station, whether or not this shirt Exhibit S-17 for identification was the shirt which he wore on the morning of July 5, 1930?

Mr. Hansen: Same objection.

A. I did not.

The Court: He says he didn't ask him.

Mr. Hansen: I withdraw the objection.

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William Charlock, for State—Re-direct.

Q. Did you at any time ask him whether or not he wore that shirt on the morning of July 5, 1930?

A. No.

Q. Now I show you a revolver marked Exhibit 15 for identification, and ask you to tell us briefly what you know about that. A. This gun I received from Captain Baum of Guttenberg police department, and I took it down to Captain Gunther, an expert on bullets. 10

Q. Professor Gunther of Stevens University?

A. An expert on ballistics in Stevens Institute. I also took the bullet that was removed from Mrs. Mangino's head and gave it to him to see if he could find out whether that bullet ever came from that gun.

Q. The bullet that you refer to is this bullet that has been marked in evidence, S-12? A. That is right. 20

Q. You delivered that bullet and the revolver to Professor Gunther. Do you remember when you did that? A. I won't be positive about the date, no.

Q. Now, were there any cartridges given you with this revolver? A. Only what was in the chambers.

Q. Well, there were five cartridges, weren't there, one empty and four loaded? A. Yes. 30

Q. What became of those? A. I took those down to Professor Gunther.

Q. Do you know where they are now? A. He might have them.

Q. You haven't. You don't know where they are? A. The Professor might have them. If he hasn't I will find them.

Mr. Besson: That is all.

Mr. Hansen: No questions.

(Witness excused.) 40

Edward K. Patterson, for State—Direct.

EDWARD K. PATTERSON, SWORN on behalf of the State.

Direct examination by Mr. Besson:

10 Q. Mr. Patterson, what is your occupation? A. Detective in the Prosecutor's office.

Q. You are employed with Mr. Charlock in the investigation of homicide cases? A. Yes, sir.

Q. Now, Mr. Patterson, I show you three papers which have been marked for identification as S-18 and ask you if you will state briefly to the Court and jury what you know about those three papers.

20 A. I went with Lieutetnant Charlock to Guttenberg, met Mr. Mangino; Mr. Puglia was with us at the time. Mr. Charlock said to Mr. Mangino, "I have got a statement from everybody else in this case, all your family." He said, "I would like to get a statement from you."

Mr. Hansen: Talk louder.

A. (Continuing) Mr. Mangino said, "All right." So then we talked a while and Puglia started in to ask questions. Mr. Mangino told his story and Puglia would tell me and I would write it down.

30 Q. Was this paper read to Mangino in English at any time? A. Yes, sir, this paper was read in English by me.

40 Q. And will you describe the manner in which you read it? A. I would read along four, five or six lines at a time and look at Mr. Mangino and he would say, "That is right; that is right." And I would continue on and each time I would look at him he would say, "That is right." And then I handed the paper to Mr. Puglia and he read it in Italian to Mr. Mangino, and as he read each sheet he would sign it.

Edward K. Patterson, for State—Direct.

Q. Did Mr. Mangino tell you how long he had been in the country?

Mr. Hansen: I object to that, if the Court please. The statement is the best evidence.

Q. Did you have a conversation with Mr. Mangino in English? A. Yes, sir, quite a conversation. 10

Q. Did you have any difficulty in understanding him? A. No, not at all.

Q. And his signature is the signature which appears at the bottom of these three paper sheets? A. Yes, sir.

Mr. Besson: I now desire to offer this statement in evidence, if the Court please.

Mr. Hansen: I want to make the same objection, if the Court please, that I did to the statement offered yesterday, but I think in this case the defense is in a stronger position, because as I understand Mr. Charlock's testimony and Mr. Patterson's testimony everything in this statement was put down as a result of what somebody else said. Absolute hearsay. There can't be any question about that. This man at no time knew what Mangino was saying, as far as what is in that statement is concerned, not one word. Not one word that is in that statement was intelligible to this man who wrote down the statement. He simply wrote down what somebody else told him, a third party who isn't here. It seems to me, as I said yesterday, that this is absolute hearsay. In the statement offered yesterday there were some parts at least that were taken in English. Captain Baum and Recorder Vogt said that Man- 20
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Edward K. Patterson, for State—Direct.

gino spoke in English, in answer to one or two questions, but here every word in this statement is spoken in Italian. Unfortunately for the State the person to whom that was spoken to in Italian isn't here, but this is a very important matter for the defendant in this case. It is a very serious proposition. He is on trial for his life. The mere fact that it is unfortunate that the State lost its witness,—if the State had an eye-witness, that is, an eye-witness who saw Mangino kill his wife and the witness had died, certainly somebody couldn't come in and testify to what the eye-witness told them. That would be hearsay, and it would be the same kind of hearsay as this; and I insist that the defense is right this time, that this statement is hearsay and should not be admitted in evidence.

Mr. Besson: May I be heard on that?

The Court: No. I don't want to be abrupt with you, but I hardly think it is necessary. It is very clear to me.

The questions and answers were translated to Mr. Patterson, and Mr. Patterson said that he read the statement to him six lines at a time and asked him if it was correct and he said yes. In any event, the jury is the sole judge of the credibility of the witnesses and of the facts and the weight it might have. I will admit it and give you an exception.

(Exception allowed, signed and sealed accordingly.)

Edward K. Patterson, for State—Direct.
(*Exhibit S-18.*)

Mr. Besson: May I now be permitted to read this to the jury?

The Court: Yes.

Mr. Besson: I now ask that this statement which has been marked Exhibit S-18 for identification be marked in evidence, retaining the same exhibit number. 10

(Exhibit S-18 for identification admitted in evidence and marked Exhibit S-18 in evidence.)

Mr. Besson: This statement, Exhibit S-18, reads as follows:

“Exhibit S-18. Page 1.

“Statement made to Wm. J. Charlock & Edward K. Patterson. Interpreted by Jos. Puglia, July 14th, 1930. 20

“Statement of Antonio Mangino, age 62 yrs. 322—26th st., Guttenberg, N. J. The first time I came to America was in the year 1905. I came alone. I was in this country one year and then I went back to Italy. Once more I came back to America. Then I brought with me my daughter Agatha. My wife Maria and two of my daughters Anna and Rosa remained in Italy. A year after that my wife and my two daughters above mentioned came to America and made their home with me. My three daughters are all married. I never had any trouble with any of my daughters’ husbands nor did I ever have any trouble with my wife. My wife never had any trouble with any of my daughters’ husbands. 30

“My son Joseph never had any serious trouble with his mother. 40

Edward K. Patterson, for State—Direct.
(*Exhibit S-18.*)

“On July 5th, 1930, I got out of bed before 4.00 A. M. and when I left the store I noticed it was ten minutes to four.

10 “As a general rule my wife would get up before I do so on this morning in question she called me up and said, here, get up, you must go to the market. I got up. I dressed. Both went out together. She opened the store door and I helped her bring in milk can which contained forty quarts of milk which

“(Signed) ANTONIO MANGINO.

“Page 2

20 “we placed in the ice tub. The only thing my wife told me was to hurry back. I had ten dollars of my own money to buy stuff in the market. I did not get any money from my wife as I only intended to buy a few things. I then left the store at ten minutes to four and walked up 26th st. to Bergenline ave., as soon as I got to Bergenline ave. and 26th st. a car came along. I got on it and rode to Hoboken and went to N. Y. City on the Barclay St. Ferry. I am not sure of the time I arrived at the
30 Hoboken Ferry, as I did not look at the time as I went to the market. I looked all around for the car which delivers stuff to me twice a week but I could not find it. Then I bought one barrel of potatoes, one barrel of cabbage, and a bushel of peas, and a box of prunes. I left the stuff there to be delivered but I carried on my shoulder the
40 box of prunes. The stuff is still there. I came back home and when I reached my store it was half past nine. I remember

Edward K. Patterson, for State—Direct.
(*Exhibit S-18.*)

when I got on the car at Bergenline ave. and 26th st. I gave the conductor a fifty-cent piece and got ten tokens. I wore a dark grey cap. A red sweater and black pants. Under the sweater I wore a light blue shirt.

10

“(Signed) ANTONIO MANGINO.

“My clocks are set by daylight saving time.

“(Signed) ANTONIO MANGINO.

“Page 3

“I have three houses. One is a four-family house frame, 322—26th street, Gutt., with stucco outside, another is a two-family house, 320—26th st., Gutt., with a store under it also frame covered with stucco. Then I have a brick house on 241—25th st. Guttenberg. It has four garages but only two are complete. The other two will be completed within the next three or four days. Two of these houses (the two on 26th st. Guttenberg, 320 & 322) were in both names, the one in 25th st. I bought myself and was in my name.

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“The four-family house 322 26th Street, Guttenberg is free and clear. The house at 320 26th Street, Guttenberg, has a mortgage of \$1,500 on it.

“The cartridges you show me I bought I think on the Plank road near Bergenline Avenue, about twenty years ago. I bought them for a gun I had at the house. About one year ago my son Joseph had a fight with another boy for which both paid a fine

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Herbert Hohneker, for State—Direct.

of eleven dollars in Guttenberg. And as my son was looking for the gun my wife said that said gun should be suppressed from the house. What my wife did with the gun I do not know.

10 “When I left home at ten minutes to four on July 5th, 1930, it was not daylight but beginning to clear up.

 “(Signed) Antonio Mangino.”

Q. Now, Mr. Patterson, I show you this box of cartridges which is marked S-16. Was that the box of cartridges which you exhibited to Mr. Mangino at the time the statement was made? A. Yes, sir.

20 Mr. Besson: Cross-examine.
 Mr. Hansen: No questions.
 (Witness excused.)

HERBERT HOHNEKER, recalled.

Direct examination by Mr. Besson:

30 Q. Mr. Hohneker, on the morning of July 5, 1930, you have already testified that you delivered a forty-quart milk can and a piece of ice to the Mangino store? A. Yes, sir.

 Q. Did you return to the store later that day? A. Yes, sir.

 Q. For what purpose? A. Just to see if she needed any extra milk.

40 Q. And what did you actually do when you got there? A. Well, when I come back the store was locked. It was about nine o'clock and some man which I don't know let me in the store. He told

Frederick Garr, for State—Direct.

me Mrs. Mangino was dead. I went in the store; he let me in. I took the milk out and took it back out and went on about my business.

Q. Where did you find the milk you took out?

A. In the tub.

Q. I show you the interior of the store here. Is there anything in the store here to indicate the location of this tub? A. That is the back of the store. 10

Q. The tub was in the front of the store? A. That is it.

Q. And was the milk intact, that is, had any of it been taken out? A. I don't remember that.

Q. But you at any rate took it out? A. Took it out again.

Q. Took the milk can out with the milk in it and took it away? A. Yes, sir. 20

Mr. Besson: That is all.

Mr. Hansen: No questions.

(Witness excused.)

FREDERICK GARR, sworn on behalf of the State.

Direct examination by Mr. Besson: 30

Q. Mr. Garr, where do you live? A. 948 Gillis Avenue, North Bergen.

Q. And what was your occupation on the morning of July 5, 1930? A. Supervisor, Public Service Coordinated Transport.

Q. And what were your duties as supervisor? A. That is taking charge of the cars that operate at West New York car house and West Shore terminal. 40

Frederick Garr, for State—Cross.

Q. And you are familiar with the schedules of the cars that operate in North Bergen? A. Yes, sir.

Q. And in Guttenberg? A. Yes, sir.

10 Q. Was there any car leaving Guttenberg and passing along Bergenline Avenue on the morning of July 5, 1930, at 4:10 a. m.? A. No, sir.

Q. Or ten minutes to four, rather, in the morning? A. No, sir.

20 Q. What was the earliest car that passed from Guttenberg in the direction of Hoboken or in a southerly direction that morning? A. There is a twelve o'clock; that is midnight on the 4th; 12:23 and 12:53 that go to Hoboken. There is a 1:10, a 1:34 and a 2:04 which pull into the car house; and between the hour of 2:04 and 2:53 there are no cars on the Bergen Avenue line at all.

Q. So there were no cars on the morning of July 5, 1930, that left Guttenberg and went down in a southerly direction on Bergenline Avenue at ten minutes to four or any time near then, was there? A. 4:53—no, sir; none.

Cross-examination by Mr. Hansen:

30 Q. Is that standard time? A. It is daylight saving time.

Mr. Hansen: That is all.

(Witness excused.)

Charles O. Gunther, for State—Direct.

CHARLES O. GUNTHER, sworn on behalf of the State.

Direct examination by Mr. Besson:

Q. What is your occupation, Professor? A. Professor of mathematics.

Q. At what institution of learning? A. Steven's Institute of Technology. 10

Q. Located in Hoboken, New Jersey? A. Yes, sir.

Q. Were you in the military service during what is known as the World War? A. Yes, sir.

Q. And what rank, if any, did you hold in the United States Army at that time? A. I wasn't commissioned during the war. I was on some special work for the Ordnance Department in experimental and development work on small arms and ammunition. 20

Q. So you were connected with the Ordnance Department in the World War? A. Yes, sir.

Q. And since that time you have been given rank in the Reserve Corps in the United States Army? A. Yes, sir.

Q. What rank do you now hold? A. Major.

Q. In the Ordnance Department? A. Yes, sir.

Q. Have you made a special study of small arms and a study of ballistics? A. Yes, sir. 30

Q. And are you able to tell the identity of a weapon by examination and comparison of the bore of the weapon and the bullets which pass from it? A. If the bullet is still in sufficient condition to recognize it.

Q. Now, I show you here a revolver which has been marked in this cause for identification S-15 and a bullet which has also been marked in evidence in this cause as S-12. Have you ever ex- 40

Charles O. Gunther, for State—Direct.

amined the bullet and the revolver before? A. That is the revolver and that is the bullet.

Q. When did you make this examination? A. It was first brought to my attention on October 20, 1930.

Q. You know Lieutenant Charlock, do you not?

10 A. Yes.

Q. And did he deliver the bullets and the revolver to you? A. He delivered the bullet and the revolver to me.

Q. Can you state from your examination of the bullet and the revolver, whether or not in your opinion that bullet came from that revolver? A. Yes. I made an examination. The bullet was discharged from this revolver.

20 Q. Will you state briefly the method employed by you in arriving at that result? A. First investigation shows that the discharged shell that still remains in the chamber is manufactured by the Peters Cartridge Company. A comparison of such a bullet with this bullet, Exhibit S-12, indicates that it was loaded in a shell manufactured by the Peters Cartridge Company. Then an examination of this bullet further discloses that it was fired in a cartridge loaded with either black or semi-smokeless powder. From test shots fired
30 in this revolver—comparison of such bullet with this bullet—indicate a certain agreement of engraving of the bullet which is still evidence on this, and in other parts which agree to such an extent that there is only one conclusion, that in all probability the bullet was fired through this particular gun.

40 It also will be noted that this particular arm has a right hand twist rifling with six grooves, whereas the American weapons today for this particular type of weapon, have only five grooves and a right hand twist.

Charles O. Gunther, for State—Direct.

Q. Now, Professor, I show you here five photographs which have been mounted on a black surface. Will you explain briefly what those photographs represent? A. The first one is a photograph of this bullet. The one on the right is a photograph of the test bullet. The middle one at the top, the central photograph, indicates an agreement of the number of teeth of the greased cannula and those which are so recognizable in this bullet. 10

I might say at this point that every manufacturer of ammunition uses some distinct knurling in these greased cannulas, so that no two manufacturers will agree exactly in the spacing of those teeth.

The other two photographs are made through two microscopes connected by what is known as a comparison eye-piece, which enables one to produce an image which is part of one bullet under one microscope, with a portion of another bullet in another microscope; and those two lower photographs indicate the agreement of these markings on both the fatal bullet and the test bullet which I have here. 20

Q. Now, Professor, those photographs were taken by you and correctly represent the objects which you have described? A. They were taken by me and the same— 30

Q. And these others also represent the same objects? A. Yes.

Q. They are merely duplicates, are they not? A. Yes, all made by me and mounted and printed by me. That work was all done by me.

Mr. Besson: I desire to offer them in evidence at this time.

Mr. Hansen: No objection. 40

Charles O. Gunther, for State—Direct.

(Thirteen photographs marked as one exhibit, Exhibit S-19.)

10 Q. Let me draw your attention to the photograph in the lower left hand corner. Does that represent a comparison between the fatal bullet and the test bullet? A. Yes. The fatal bullet is on the left in both pictures.

Q. And they are compared there in order to show both bullets have the same characteristic markings? A. Yes.

20 Q. The upper portion is to show that the cannulas have the same knurling? A. Yes. This on the right hand is the fatal bullet and this on the left is this one, just a small portion of it, where it is still possible to obtain a picture of the teeth. It shows that the teeth match up perfectly in spacing, which would not happen if it were a different make bullet.

30 Q. Now will you please explain briefly to the jury what is meant by the term cannula? A. That means nothing more than a ring. Here are two photographs which illustrate four bullets of a particular make, made by American manufacturers, and the cannulas are shown here, the greased cannulas, and you can see in each one that the spacing is different, the number of teeth is different, so that there is no possibility of any agreement of spacing, and even in the spacing you can see that each space is different. So that if the base is intact, you can positively identify it. Each manufacturer uses a different spacing, and there is even some difference in width and so forth in the cannulas. That is what is meant by the greased cannulas.

40 Q. When you were given this revolver, professor, you were also given with the revolver some cartridges, were you not? A. Yes.

Charles O. Gunther, for State—Direct.

Q. How many? A. There were four.

Q. Four loaded cartridges? A. Yes, sir.

Q. And there was the empty shell which is still in the chamber? A. Yes.

Q. At the time that you were given these four loaded cartridges, did any of them bear the imprint of a firing pin? A. None of these four. The only one that the firing pin imprinted is the one that is in the chamber. 10

Q. Now these four that you have, did you use any of these four for a test bullet? A. No, sir.

Q. Those are still intact? A. Yes. Three of them are intact.

Q. The fourth one, what is the condition of that? A. The fourth one had been badly mutilated in trying to remove it from the chamber, so that in order to identify it it was necessary to cut the case and remove the bullet. 20

Q. In other words as if somebody had been trying to push the bullet out of the chamber; that mutilation might have been sustained in that way? A. Yes.

Q. Have you got that mutilated bullet? A. Yes.

Q. That was all that you got, what is represented here? A. Yes, sir.

Q. So that you were not able to determine from looking at this bullet whether the firing pin had made an imprint on the cartridge or not? A. The face was entirely gone. There was not any primer or any part of the base left. 30

Q. The base was destroyed at the time you got it? A. Yes, so that it was impossible to tell.

Mr. Besson: I would like to offer these cartridges in evidence.

(Cartridges marked Exhibit S-20 in evidence.) 40

Charles O. Gunther, for State—Cross.

10 The Witness: I might say that of those cartridges three of them, two were intact and the third one which was mutilated was Peters, the same manufacturer as the discharged shell, and the fifth one was of a foreign manufacturer. It may have been German or it may have been Belgian; I cannot tell.

Mr. Besson: Cross-examine.

Cross-examination by Mr. Hansen:

Q. I understand, professor, that you teach mathematics at Stevens University? A. Yes, sir.

Q. And you testified here on previous occasions for the Prosecutor in murder cases? A. One case.

20 Q. And if I understand your testimony, professor, you took the bullet and checked it up with this revolver, is that the idea? A. Which bullet are you referring to? You mean the fatal bullet?

Q. Yes. A. Yes, the fatal bullet and this revolver.

Q. And you find that as a matter of mathematics that that bullet in all probability came out of that revolver, is that right? A. Yes.

30 Q. Now, you don't mean to tell us, professor, with all your knowledge, and all your experience in the Ordnance Department, you are not going to tell this Court and jury that as a matter of mathematical certainty this bullet could not have come out of another gun, are you? A. Yes.

Q. It could not? A. No, sir.

Q. Did you ever try it with any other gun? A. Ever try what?

Q. Did you ever try to find out whether it ever did come from another gun? A. I don't have to.

40 Q. Why don't you have to? A. For the reason that there are not any other guns that would have exactly the same dimensions.

Charles O. Gunther, for State—Cross.

Q. No two guns exactly alike, in other words?
A. I say, of other makes.

Q. All right. We will say there was another gun of this make. A. All right.

Q. Would that change your story any, professor? A. Not a particle.

Q. What make is this gun? A. Forehand, arm. 10

Q. How old is this gun? A. I think they went out of business about 1901.

Q. Had you ever seen a similar gun to this before? A. Yes.

Q. When? A. I have seen numbers of them.

Q. When? A. In the New York Police Department I see all kinds right along.

Q. Have you ever seen a gun like this? A. Yes, probably ten turned in every month.

Q. Where was this gun manufactured? A. I don't know. It is marked on the gun. 20

Q. I am asking you, you are the expert. A. You can read it just as well as I can.

Q. All right, tell me where it was made, you know all about these guns. A. According to the stamping it was made in Worcester, Massachusetts.

Q. You never knew—you are very familiar with this make of gun, but despite your great familiarity with the make of the gun, you never knew where it was manufactured, did you? A. That is a matter which has very little importance to me. 30

Q. You mean to say it has no importance, professor, is that so? A. What?

Q. You say that has no importance? A. Whether it is made in Worcester, Springfield or where.

Q. All right. You do not know where it is manufactured. Will you tell us now, as a matter of mathematical certainty, that there were no two 40

Charles O. Gunther, for State—Cross.

guns manufactured by this concern that were exactly alike? A. I will answer that by saying that as far as research has determined, they have no two barrels alike.

Q. As far as research has determined? A. Yes.

10 Q. I asked you before, will you say positively as a matter of mathematical certainty, with all your experience as professor of mathematics, your experience in the Ordnance Department, your experience as a major since you got out of the regular service, will you say as a matter of mathematic certainty on your oath that there cannot be two guns manufactured by the same company absolutely alike?

20 Mr. Besson: I object to that question. I think that is a matter which goes to the question of, really, the law of probabilities. The witness has already pointed out that the basis for his statement is research. Now, Mr. Hansen wants to go into the realm of possibility, not based upon actual investigation or discovery, but on something which becomes merely speculative, on which there could be no basis.

30 The Court: Let me hear the question again.

(Question repeated by stenographer.)

The Court: I think the form of the question is improper. In one instance you ask him whether as a matter of mathematical certainty such and such a thing would be so, and then you call upon his experience. I think you had better reframe it.

Mr. Hansen: I will withdraw it.

40 The Witness: I am willing to answer it. Based upon the law of probability I will

Motions.

say that there are no two barrels exactly alike. Is that satisfactory?

Q. That is as a probable proposition? A. The law of probability, yes. The law of probability is a mathematical proposition and there are billions of dollars of business being done on it every day in the week. 10

Q. Well, Professor, you and I of course know that two and two make four. A. I hope so.

Q. And we don't have to prove it to ourselves, we know that? A. Yes.

Q. And there is nothing improbable about that, is there? That is absolutely a mathematical certainty, isn't that so?

The Court: Let's not go into that.

The Witness: That two times two are four? 20

A. I presume so.

Q. Now, I say, distinguished from that, you cannot say just as you could say that two and two are four, that no manufacturer manufactures two guns that are exactly alike, can you?

Mr. Besson: I object to that as an improper question. 30

Mr. Hansen: He is the expert here.

The Court: Can you answer that question?

The Witness: Not that way.

Mr. Hansen: I will withdraw the question. That is all.

Mr. Besson: That is all.

Mr. Hansen: At this time I want to move to set aside all the testimony given by the Professor, unless it is shown later 40

Motions.

on that there is some connection with this gun, which has not been shown as yet.

The Court: It has not been offered in evidence yet.

10 Mr. Besson: I now propose to offer this gun in evidence and submit that it has been connected with the case in this way, that we have shown that the defendant was seen on the morning of July 5—

20 The Court: Just a minute. We might save time. You have established from the evidence that there is a certain bullet, which is in evidence, found in the brain of this woman, and through the evidence of Professor Gunther you have shown that that bullet went through this gun. Now I will hear you, Mr. Hansen.

30 Mr. Hansen: It does not seem to me, if your Honor please, that there is any evidence at all. Here is a gun found in a garage three or four months after the alleged happening. There is nothing to identify it as his gun. This evidence of the Professor, of course, I will admit, if your Honor takes it on its face value, if there is such a thing as any man attempting to testify to any such state of facts as the professor pretends to testify to—I will admit for the sake of argument that the gun has been connected up. It has not been connected up with the defendant in any way, shape or manner, and there is no identification made, there is no witness put on the stand to prove that this gun is the gun that Mrs. Mangino had in her house. The only evidence which the state can possibly avail itself of at this time is the professor's testi-

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Joseph Reilley, for State—Direct.

mony, which I say, until the gun has been connected up, is not admissible. On the further ground that such testimony is highly unbelievable.

The Court: Now, Mr. Hansen, on the statement in which he says he fired the shot, the evidence in the case that the bullet was taken from Maria Mangino's brain, the evidence that this bullet went through the revolver that has been offered here by the State, and the evidence on the part of the professor connecting up the bullet found in her brain with the gun—under those circumstances I will admit it and give you an exception. 10

(Exception allowed, signed and sealed accordingly. 20

CHARLES M. EGAN, Judge.)

(Gun marked Exhibit S-15 in evidence.)

(Witness excused.)

JOSEPH REILLEY, SWORN for the State.

Direct examination by Mr. Besson: 30

Q. What is your occupation, Mr. Reilley? A. Patrolman.

Q. Where? A. Guttenberg, New Jersey.

Q. Were you so employed on July 5, 1930? A. Yes, sir.

Q. Did you have occasion on a date later than July 5, 1930, and during the month of July, 1930, in company with Lieutenant Charlock, to visit the premises 322—26th Street, Guttenberg? A. Yes. 40

Joseph Reilley, for State—Direct.

Q. This photograph, Exhibit S-8, represents the rooms in the premises 322—26th Street, Guttenberg, New Jersey? A. Yes, sir.

Q. Then the marking on the back of the photograph here which says 226—26th Street is not correct, is it? A. No.

10 Q. Now, then, what time of the day did you visit that room? A. Well, that room, it was after one o'clock, about one-thirty.

Q. What were you doing there? A. I went up there with Lieutenant Charlock to search the premises, to look for a white shirt.

Q. Did you find a shirt?

Mr. Hansen: What day was that?

The Witness: July 16th.

20 Mr. Hansen: I object to it; too remote. This thing happened July 5.

The Court: I will allow it.

Mr. Hansen: A lot of things may have happened in that room between July 5th and July 16th.

The Court: Of course. You may show that.

Mr. Hansen: Exception.

30 (Exception allowed, signed and sealed accordingly.)

CHAS. M. EGAN, Judge.)

Q. Now, is this shirt which has been marked Exhibit S-17 for identification the shirt which you found there? A. Yes, sir.

Q. What does that little X mark there represent? A. Why, that was marked there by Mrs. Mangino's daughter.

Q. Mrs. Capolo? A. Yes, sir.

40 Q. That is the woman who is sick? A. Yes, sir.

Joseph Reilley, for State—Direct.

Q. Under what circumstances was it marked?

A. We went up there to search the place. We started in the kitchen. The shirt was supposed to be put in the clothes bag. Mrs. Capolo said that the shirt had been put in the clothes bag. We searched the clothes bag; we didn't find it. The daughter was perfectly sure that she had put it in the clothes bag. 10

Q. Where did you find it? A. We searched the room and found the shirt in Mr. Mangino's bedroom, Mr. and Mrs. Mangino's bedroom.

Q. Can you indicate—is it possible for you to indicate on that photograph where you found the shirt? A. Yes, sir.

Q. Where? A. Right here in the corner underneath this drawer, in the corner of this first shelf. The shirt was covered over with a lot of patches in a little sort of a basket. The shirt was rolled up. 20

Q. I put a circle with a point in the center. Will that indicate about where it was? A. Yes, sir, right in the back.

Q. How was it rolled? A. Just rolled up like that (indicating) and stuck in the corner.

Mr. Besson: I offer that in evidence, if the Court please.

Mr. Hansen: No objection. 30

(Exhibit S-17 for identification admitted in evidence, retaining the same exhibit number.)

Q. Now, this Mangino had been in custody, that is the defendant Mangino had been in custody at the Guttenberg police headquarters for how long prior to that, prior to the time you found the shirt? A. Oh, he was in there for three or four days. 40

Joseph Reilley, for State—Cross.

Joseph Mangino, for State—Direct.

Q. Three or four days? A. Yes, he was in there before we found the shirt, a couple of days before we found the shirt.

Mr. Besson: That is all.

10

Cross-examination by Mr. Hansen:

Q. You say, as I understand, that Mrs. Coppolo told you she had put that shirt some place? A. She said that she put the shirt in a clothes bag.

Mr. Hansen: That is all.

(Witness excused.)

20

JOSEPH MANGINO, recalled.

Direct examination by Mr. Besson:

Q. How old are you, Joseph? A. Twenty-two.

Q. And you are the son of the defendant, Antonio Mangino? A. Yes, sir.

Q. And the son of Mary Mangino? A. Yes, sir.

Q. Who was killed. Now, where were you, or rather, what time did you come home on the morning of July 5, 1930? A. I got home between one and two o'clock.

30

Q. And in what part of your house did you sleep, that is, your parents' home? A. They sleep in the first and I sleep in the second, right next to them.

Q. Now, I show you a photograph marked S-10. Does this represent the part of the place where you were living? A. Living on the bottom floor, the first floor there.

40

Joseph Mangino, for State—Direct.

Q. Did you sleep in the front or rear room? A. The rear room. This is the front room. Then comes the bedroom and then comes mine.

Q. I see. You sleep in the rear? A. Yes, sir.

Q. And that was at 322, was it, 26th Street? A. Yes, sir.

Q. Now, were your mother and father at home at the time that you got home that night? A. Yes, sir. 10

Q. Where did you see them? A. I rang the bell and Ma came to the window and she see it was me and she went and opened the door and let me in, and when I got in my Ma—when I got in my own room I got to pass through her room. I got to pass through this room.

Q. That is the room indicated in S-8? A. That is my mother's room, and there is the front room, and I got to pass through this room to get in my room, and as soon as I got in bed my mother—she has got a light here with a piece of string on it from the light on to the bed,—and when I got in my own room my mother said, "Are you in bed?" and I said, "Not yet." And when I got in bed I said, "All right, Mom." And she pulled the string and I fell asleep. 20

Q. Now, when you passed through that room your mother and father were in bed? A. Yes, sir. 30

Q. Now, which part of the bed did your father occupy? A. My father sleep on the inside.

Q. That is, toward the wall? A. Yes, sir.

Q. And your mother on the outside? A. Yes, sir.

Q. Now, was there anything in that room to indicate that there had been a struggle? A. No, sir, everything was all—

Q. What was the— A. My father was in bed there. 40

Joseph Mangino, for State—Direct.

Q. Was he asleep or awake? A. He was rolling around.

Q. What kind of a night was this? Was it a hot night or a cool night? A. Hot night.

Q. Unusually hot night? A. Yes, sir, unusually hot night.

10 Q. And what had you been doing before you came home? A. I was out with some fellows riding around in my car.

Q. Trying to keep cool? A. Yes, sir; riding around.

Q. You had a Ford car, did you? A. Yes, sir.

Q. And where were you employed at that time? A. I had worked at the golf course on Paterson Plank Road, across the street from the Elk's, on the golf course there.

20 Q. And how much were you earning? A. As many hours as I put in that was as many hours as I got paid.

Q. How much did you get an hour? A. I would get fifty cents an hour.

Q. And what did you do with your earnings? A. Well, whatever I get I bring, sometimes I give it and turn it in. She would hold it for me.

30 Q. Your mother would hold it for you? A. She don't want any of my money; she tells me to save it.

Q. And did you have any money saved at that time? A. Yes, I had money. I give my mother that Fourth of July, that July the Fourth I give my mother \$25 and I kept some for myself, \$15 for myself—\$15 or about \$20.

Q. Had you been attending school before this? A. Very little.

Q. How many years did you go to school? A. I went about six years—seven years.

40 Q. And then after that you went to work? A. I went to work.

Joseph Mangino, for State—Direct.

Q. Do you remember the last class that you were in in the grammar school? A. About the fourth, or something like that; I don't remember.

Q. The fourth grade? A. Yes, sir.

Q. As you remember that night, your mother slept on the outside of the bed and your father slept on the inside? A. Yes, sir. 10

Q. And there was nothing to indicate that the contents of the room had been disturbed or that there was a struggle of any kind in the room? A. No, sir.

Q. Now, after you got into your own room did you hear any struggle going on inside? A. No, sir.

Q. Did you hear any sounds of any kind during the rest of the night? A. No, sir, sleeping. 20

Q. What was the first thing that was brought to your attention that caused you to know that your mother had been killed? A. Well, there was a bread man outside and there was a woman there with a milk can.

Q. Is that Mr. Nelles—

Mr. Besson: Stand up, Mr. Nelles.

(A man in the courtroom stood up.)

Q. Is that the gentleman? A. Yes, sir, with the horse and wagon. There was a lady out there and there was another fellow, his name is Tony that lives on the opposite side, and there was that old fellow there that was on the stand yesterday. And so they called me. The lady called me and Tony called me, and they said, "Joe, get up. Your mother has took a spell. She is laying in back of the counter." So I didn't believe it. I just stayed in bed. And then the lady called me and she said, "Joe, get up. There is something 30 40

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the matter with your mother. She must have taken a spell or something.” And when I heard that I jumped up without dressing, one shoe on, with a sock and no shoe on the other foot, and I rushed down and saw my mother—I ran in the store and I hollered, “Mom! Mom!” and there was no answer. I went in the back room and I didn’t see anybody. I went in the store again and in front I looked and on the counter I saw a ten-dollar bill. I looked behind the counter and I seen my mother stretched out with one hand laying on the side and her other hand on the bottom, and I felt of her hands and her hands were cold and I looked up and saw a big spot of blood and I said, “Somebody shot my mother. Somebody killed my mother”, and everybody was running around in the street to see what is the matter, and I run out and got in my car and went to get my sister, and I got my sisters, and we were all crying there in the store. They wanted to take my mother away—not only me but my brother-in-law. We stopped them from taking our mother from back of the counter, and made them leave her there to examine her to see what was done to her. And then they took her away and my sister Anna—she got the money with the blood on it and she brought it in back. It was \$21 and—

30 Q. You saw her count it? A. Yes, sir; she counted it in the back room. It was \$21.

Q. What character of bills was it? A. All one dollar bills.

Q. All singles? A. All singles. That is all I seen her count.

Q. Was it afterwards given to your father? A. That I don’t know. I don’t know if they gave that to my father. I was all upset.

40 Q. How long after you found your mother there was this money counted? A. Well, when I came

Joseph Mangino, for State—Direct.

back—they didn't touch my mother from back of the counter when I come back; then the undertaker and a few others, they picked my mother out of there.

Q. When you saw your mother early in the morning between one and two o'clock did she have any marks of any kind on her face? A. No, she come to the door and open the door for me. 10

Q. Was her clothing torn or disarrayed in any way? A. No, sir.

Q. There were no marks of violence on her at all? A. No, sir.

Q. She looked normal and the same as she always did? A. Yes, sir.

Q. Did she make any complaint to you or say anything to you at any time in the presence of your father? A. No, sir. 20

Q. As to whether there had been any struggle between her and your father? A. No, sir.

Q. Now, how had your father been treating your mother during the two or three years before July 5, 1930? A. Well, they were always squabbling.

Q. And what was the subject of the quarrels? A. They squabbled because my father always used to leave my mother in the store all the time, and my mother was tired, and my father used to go out and work and she wanted my father to stay in the store; and if a salesman would come in my mother wouldn't know to speak to them so good, but my father would go around and tell them everything he wanted. 30

Q. Could your father speak pretty good? A. He couldn't speak as good as I can, but he spoke broken English and he could speak pretty good.

Q. And he used to transact business with the salesmen? A. Yes, sir. 40

Joseph Mangino, for State—Direct.

Q. Can you recall any occasion when your father struck your mother? A. Yes, sir.

Q. When? A. It was 1917.

Mr. Hansen: Objected to, if the Court please.

10

Q. How long ago was it? A. It was 1917.

Q. Was that ten years ago? How many years ago? A. We will say about five years.

Q. Now, can you fix the time by anything that happened to you? A. Yes, sir.

Mr. Hansen: I object to any testimony about what happened five years ago.

20

Mr. Besson: May it please the Court, I propose to show this, that in 1927, on the day that was identified yesterday by Recorder Vogt from that book as January, some time in January, 1927, this blow was struck, and because of something that transpired between the father, mother and the son the son was arrested on the father's complaint and taken into the police station where he was confined for a time; and I understand that Mr. Hansen's objection is that this is too remote.

30

The Court: He said it was five years ago. He didn't say it was in 1927.

The Witness: That is what I meant.

40

Mr. Besson: That is a difference of only a year or a year and a half. Now, with reference to the remoteness of threats of death I would like to call your attention to *State v. Rosa*, 72 N. J. L. 462. Also I think Wells on circumstantial evidence is authority for the proposition that even threats of that kind which are quite remote are admissible in evidence, and the weight

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of them is for the jury. Perhaps that case may be cited there, *State v. Rosa*.

The Court: What was the time you said your father hit your mother, when you say he struck her?

The Witness: 1917.

The Court: 1917?

10

The Witness: I mean 1927.

Mr. Besson: This man can't count and is illiterate.

The Court: Was it 1927 or was it 1925?

The Witness: I am not sure; it was about 1927.

The Court: Go ahead. I will allow it and give you an exception.

(Exception allowed, signed and sealed accordingly. CHARLES M. EGAN,
Judge.)

20

Q. Now, you fix this time by what? How do you fix the time that this thing happened, that this blow was struck? A. How it happened—

Mr. Hansen: I object.

The Court: We don't want to know how it happened. Tell us how you fix the time.

Q. Tell us how you fix the time. A. How I fix the time?

30

Q. Yes, were you arrested? A. Yes.

Q. Is that the only time you were arrested on your father's complaint? A. Yes, it was the first time.

Q. Do you remember Recorder Vogt who sat in this chair yesterday? A. Yes, sir.

Q. The man with the big book? A. Yes, sir.

Q. And was he the man you appeared before?
A. Yes.

40

Joseph Mangino, for State—Direct.

Q. What did he do? A. He wanted to put me away.

Q. Did he have you put back in the cells? A. Yes, sir.

Q. And how long were you there? A. I was there for that whole night.

10 Q. How long was it before the day that Recorder Vogt put you back in the cell that your father struck your mother? A. That was that same night. I was trying to explain—

Q. Now tell us what happened that night. A. Well, I went in the house, put the car in front of the door and went in the house and my mother and father were arguing, and I said, "Cut out the argument. What are youse always arguing for?"

20 Q. What were they arguing about, if you know? A. So my mother just slipped out, it just slipped out of her, she said, "Papa was hugging up another woman in the store, was kissing her, was hugging and kissing her by the counter". And I said, "The only thing, Mama, if you can't trust him separate; I will go with you and let papa go his way". And he turned around and said, "I shoot you and I shoot your mother and I shoot myself"; and so I wanted to raise my hand to him when he said, "Don't you think there is any law here"? and he said, "I am going to report you";

30 I said, "Go on down"; and he went down and I followed him down.

Q. And as a result of that you were arrested?

A. Yes, for taking my mother's part.

Q. As I understand he had already struck your mother? A. Yes.

40 Q. Where did he hit your mother and what with? A. He hit her with his hand and after a while he was going to get one of those milk cans, one of those little jars of condensed milk, and he just missed her shoulder.

Joseph Mangino, for State—Direct.

Q. Did he throw that at her? A. Yes.

Q. Now, what was it, a half pint bottle? A. No, these cans of milk, these condensed milk cans.

Q. A can of condensed milk? A. Yes, sir.

Q. He threw that at your mother? A. Yes, sir.

Q. How far away from her was he when he threw the can of condensed milk? A. Could I show you a picture here? 10

Q. Can you indicate here? You tell me to stand how far. I will represent him and you represent your mother. A. He was about where that man is sitting right there.

Q. Your father was standing there? A. Yes, at the end of the table there, the other end of the table, right about there (indicating).

Q. He threw it all that distance? A. Yes, sir.

Q. Where was he? Where did this happen? A. He was in back of the counter putting up cans, The order come in from the grocery and he was putting up cans, and that is the time I was going to hit him, going to punch him. 20

Q. And he threw that at her? A. Yes.

Q. And where did that land? A. On the side of that show-case.

Q. That was in the store? A. Yes, sir, in the store.

Q. And your mother was completely across the store. Now, here is a map of this store. Come down here. 30

(Witness leaves stand and goes to the map.)

Q. This is what is called Exhibit S-11. This part I am pointing to now represents the inside of the store. The scale is three-fourths of an inch to a foot. Now that is the counter and the case and the place behind the counter, the shelves. 40

Joseph Mangino, for State—Direct.

Now, you used the same store in 1927 that you did at the time of your mother's death? A. Yes.

Q. Now, was your mother behind the counter?

A. No, sir, she was by the door.

Q. Way over there? A. Right by the back door, and father was in back of the counter right here, and the mother was standing over here in this corner.

Q. Where I am now indicating? A. By the door.

Q. Now, if I put a circle with a dot, that would indicate where your mother was standing, is that right? A. Yes, sir.

Q. And your father was in here? A. Yes, sir.

Q. And I will make a circle there with an "X" in it. And how long after you got in there did he throw the can? A. I just come in when he threw it.

Mr. Besson: All right, take the stand.

(Witness resumes the stand.)

Q. Now, how many other quarrels did your father and mother have after the throwing of this milk can up to the time of your mother's death?

A. Had one quarrel that he was dying in bed, and there came a fellow to make a will out for the property, and he says to me that I wasn't his son, and my mother came by and he turned around and said that wasn't his wife, and from that—I couldn't stand to resist, you know, from crying, from what he says to me that I wasn't his son and my mother wasn't his wife—so that not until he got better and got on his feet—dead to the world—he couldn't raise a hand out of bed—and then he says she wasn't his wife—dying there in bed—and he come through.

Joseph Mangino, for State—Direct.

Q. And your mother nursed him through all that? A. Nursed him right through, and the mother with tears in her eyes could stand it, but I couldn't stand it there. As long as I could stand it, but when I got such resistance I couldn't stay there in the house and I went to pack my clothes and left home, and that was the first time in my life I left home and I wasn't even sixteen years old and I had to leave home.

10

(Witness breaks down and cries.)

The Court: At this time we will take a recess until 2.15 p. m.

2.15 P. M.

20

(Jury polled by the Clerk.)

JOSEPH MANGINO recalled.

Direct examination by Mr. Besson:

Q. Mr. Mangino, between the time that this quarrel occurred which resulted in your arrest, can you remember any other occasions, special occasions, when you mother and father quarreled?

A. When he threw that can?

30

Q. After that time and before your mother died? A. They had been quarreling all the time about my father would never be home, and leaving my mother in the store all the time.

Q. Did you father spend much time attending to business in the store? A. Some days he would, some days he wouldn't.

Q. How much of the time would your father be in the store? A. Well, like when he would be feeling sick he would be in the store. When he was feeling well he was out working somewhere.

40

Joseph Mangino, for State—Direct.

Q. Working, what kind of work did he do? A. Fixing the property somewhere.

Q. Repairing the property? A. Yes.

Q. How large a building was this other building which he owned and which was not on 26th Street? A. It was a two family brick house.

10 Q. Did that require very much repairs? A. Yes, sir, the garages.

Q. How many garages were there? A. There were two and he dug some more. He dug a lot of dirt out.

Q. Were they underground? A. Well, there was a big pile of dirt and he took all that dirt out. That fellow over there was digging it out.

Q. Philip Oriolo? A. Yes, sir.

20 Q. What was the last quarrel that you know of between your father and mother before your mother died? A. About staying in the store, that he was never in the store there.

Q. How many days before? A. It was during the summer while they were digging that, they were quarreling ever since, and my father used to go home, he used to cook his meals, never saw my mother to sit down and eat.

30 Q. That is, your father would cook independent, cook separate meals for himself? A. Yes, sir, he used to cook his own supper.

Q. Cook his own meals? A. Yes.

Q. How long had he been cooking all his own meals before your mother died? A. He had been doing that ever since they had been quarreling, ever since they got the store.

Q. How long have you had the store? A. About ten years.

Q. So that for ten years your father has been cooking his own meals? A. Not steadily. Some-

Joseph Mangino, for State—Direct.

times they quarreled, he would not eat with her, he cooked his own.

Q. Why did your father cook his own meals?

A. I don't know.

Mr. Hansen: That is objected to as a conclusion.

The Court: I will sustain the objection.

10

Q. Did your mother ever refuse to cook meals for your father? A. No, sir.

Q. What, if anything, happened to cause your father to cook his own meals? Do you understand that, Joe? A. I didn't get you.

(Question repeated.)

A. Well, I heard through my mother that my father was planning—

20

Mr. Hansen: I object.

Q. Was your father there when your mother told you that? A. Yes, sir, my father was in the other room.

Q. Could he hear what your mother said? A. Yes.

Mr. Hansen: Objected to, calling for a conclusion.

30

Q. Well, was he within sight of your mother at the time your mother told you that? A. My father was in the other room and I was in the store and my mother was telling me that my father—

Mr. Hansen: I object to what the mother said to Joe unless there is some proof that the father could hear it.

40

Joseph Mangino, for State—Direct.

Q. How far was your father standing, or how far was your father from your mother when she was telling you this? A. My father was in the other room.

10 Q. You do not know whether he could hear what your mother said, do you? A. Yes, he could hear everything.

Q. Now what did your mother say?

Mr. Hansen: I object to it. It is simply a conclusion on his part that his father could hear it.

The Court: Yes, I think so.

20 Mr. Besson: It is a very small place, if the court please. It would be very easy to hear what was said in here by the father in there, and I think it is a matter for the jury.

The Court: I think it is for the court to determine whether or not under the rules of evidence it is proper to admit it, and unless the defendant was present I will not allow it. I sustain the objection.

30 Q. At any time did your mother, while your father was present, while your father was standing in the room and could hear what your mother said, did your mother tell you anything about the reason why your father cooked his own meals? A. It was the reason because—

Mr. Hansen: I object.

Q. Did she or did she not? A. My mother told me about why my father—

Mr. Hansen: Objected to.

Joseph Mangino, for State—Direct.

Q. Just a minute. I have got to find out whether your father was there when your mother told you that? A. Yes, sir.

Mr. Hansen: He said his father was in another room.

Mr. Besson: This is another time.

Mr. Hansen: Then fix the time and place.

10

Q. Was your father there when your mother told you?

Mr. Hansen: When was that?

Mr. Besson: Just a minute. I ask, if the court please, that I be permitted to conduct my own examination.

The Court: I will allow it.

20

Q. Was your father there when your mother told you? A. Yes.

Q. When was it that your mother told you this when your father was present? When was that? How long before her death? A. Well, the last time it was, was about two weeks before my mother was dead.

Q. Now just tell us what she said. A. She told me in Italian.

Mr. Hansen: Where was this?

30

Mr. Besson: He has already said the father was present.

The Court: Yes, he did.

A. My mother told me in Italian, she said,—do you want me to say it in Italian, or American?

Q. No, say it in American. A. She said "Papa don't want to eat with me because we have been quarreling," and she was afraid all the time. When she used to drink my mother used to look

40

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10 at him because my father was trying to put something in the glass and sometimes my mother would walk into the other room, she used to walk into the store and go back and used to see a glass and on top of the glass there was white stuff floating inside the glass. My mother would not drink that, she would throw that away. Sometimes she would even throw a plate away, she would not eat it.

Q. Was she afraid she would be poisoned? A. Yes.

Mr. Hansen: I object, calling for a conclusion. Please be a little fair to this defendant, Mr. Besson.

20 The Court: Yes, strike it out. He could not tell whether she was afraid or not.

Q. What did your mother say about this powder which was in the liquid which she was to drink? A. My mother told me, "See what Papa is trying to do? Trying to get me away out of this earth."

The Court: Was he present when she said that?

The Witness: No, sir.

The Court: Your father was not there?

30 The Witness: No, sir.

The Court: Strike it out.

Q. Did your mother ever say anything in the presence of your father about any of this stuff that was thrown in what she was going to drink?

A. No, sir.

Q. Never? A. No, sir.

Q. Never complained about it? A. No, sir.

40 Q. Did you ever say anything to your father about it? A. No, but I was waiting for a chance for me to get it, and I was going to show it to him.

Joseph Mangino, for State—Direct.

Q. You watched for it? A. Yes, sir, I watched for it.

Q. But you never found any yourself? A. No, sir, but in bed he put stuff.

Q. How do you know he put stuff in bed? A. Well, my mother, she got a piece of paper and she went to the bed and she took that stuff off the bed and she put it in a piece of paper. If I could find that, if I knew where that was— 10

Mr. Hansen: I think that ought to be stricken out.

Q. Just a minute, was your father there when your mother took that stuff from the bed? A. No, sir.

Mr. Besson: I consent to its being stricken out. 20

Q. Now, try to tell us things that happened while your father and mother were together. A. You see, most of the times while I ain't home and my mother tells me when I come home a lot of things, because I am always out working nights or something.

Q. What was the cause of this bad feeling between your father and mother? The fact that your father wouldn't work in the store was given as one reason. 30

Mr. Hansen: I object as calling for a conclusion, what the reason was.

The Court: Yes. If he knows he can state.

Q. Do you know what the cause of the bad feeling was between yor father and mother? A. Because he had been fooling around with other 40

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women and my father wanted to get my mother out of the way.

Q. Did she know that? A. Yes, sir.

10 Q. Did you ever see him fooling around with other women? A. I seen him in the store grabbing other women's hands, and when he seen me coming he grabbed his hand away, and in keeping women out of the store—my mother kept plenty of women out of the store on account of that, and told them not to come in that store, not to buy anything in that store any more.

Q. How often did that happen? A. Ever since they bought the store.

Q. You never saw your father in company with any other woman, did you? A. No, sir.

20 Q. And the only time these things happened was in the store? A. In the store.

Q. Did you ever hear your father talking to any strange women in the store?

Mr. Hansen: Objected to as absolutely immaterial.

The Court: Sustain the objection.

30 Q. Did anything ever happen that you know of in your presence and in your mother's presence which your father did in relation to any strange women? A. I didn't see them. I didn't see nobody, only I seen one grabbing the hand, and when I come in he let go.

Q. Did your father at any other time besides the time he threw the can of condensed milk do anything to strike your mother? A. Yes, sir.

40 Q. When? A. He did it when he was making wine downstairs. He tried to send my mother upstairs, and there was a big piece of wood like this (indicating) and he threw it at her, and I got in front of him and told him, "Try to do it again".

Joseph Mangino, for State—Direct.

Q. Did the wood hit your mother? A. No, sir—just missed her.

Q. What kind of temper did your father have around the house?

Mr. Hansen: Objected to as immaterial and calling for a conclusion.

The Court: Objection sustained.

10

Q. What disposition otherwise did your father display toward your mother when you were around the house when the two of them were together? A. He would treat her all right when I was around after I told him he had better treat my mama good and treat her all right when I am around.

Q. Now, do you know whether or not your father kept a revolver in the house? A. Yes, sir.

20

Q. Do you know where he kept that revolver? A. Yes, sir.

Q. Can you indicate in this room which has been shown as your father's bedroom, S-8? A. In this drawer here.

Q. In the top drawer of the little dresser shown in the center of S-8? A. Pardon me. In here he had some cartridges, cartridges for a revolver and he had cartridges for one of these hunting guns.

30

Q. Big shells for a shotgun? A. Yes, sir.

Q. Your father had a shotgun as well as a revolver? A. Yes, sir.

Q. Could you recognize the revolver? Do you know the revolver? A. I know it had a U. S. on it.

Q. How often had you seen this revolver? A. I didn't see it for over a year.

Q. Then how did you know he kept it in that little drawer? A. Because I used to go in there for things and I used to see it in there.

40

Joseph Mangino, for State—Direct.

Q. And you handn't seen it for over a year before your mother was killed? A. Yes, sir, and the trigger was up just a little ways.

Q. Now, I show you this gun which has been offered in evidence and admitted as S-15. Do you recognize that gun? A. (No answer.)

10 Q. You say there is a U. S. on it?

Mr. Hansen: Will you let him answer the question, Mr. Besson?

A. It had a U. S. on it somewheres.

Q. Can you see in the dark there or do you want to go where it is light to look at it? A. Yes, sir, that is the gun. When my father had it it was all shiny, but that is it.

20 Q. When did you first see your father after your mother was killed? A. I seen him—I think it was about 9:30 when he come home from the market.

Q. What did he say to you if anything that morning? A. He came in the door and I heard somebody say in the room—I was lying on my mother's bed crying, all upset—and he come in and I heard somebody that seen him come, said, "Here comes Papa", so I went in the front room by the door and I grabbed him and I said, "Papa, mama is killed; somebody killed mama".

30 Q. What did he say? A. He grabbed his hair and went like this, and sat down.

Q. What else did he do? A. He says he wanted to go over and see—wanted to go over and see his wife—wanted to go over and see my mother.

Q. Where? A. Over to the undertaker's.

Q. Did he remain at home every night after that? A. No, sir. I wanted to sleep in the house the first night when my mother was dead, after they took her away. He didn't want to sleep in the house. He was afraid.

40

Joseph Mangino, for State—Direct.

Q. Why? Did he tell you that? A. I don't know.

Q. Did he tell you why he was afraid? A. No, —the way he grabbed me over at my sister's house, and grabbed me and holds me and pushes me.

Q. What did he say? A. I said, "What do you grab me? You always afraid". And he couldn't sleep in the bed right, always rolling around. 10

Q. How many nights did he sleep in your sister's house? A. Three nights or four nights.

Q. And who did he sleep with? A. With my nephew, with my sister's kid, the biggest one.

Q. Was anything said by him about having someone sleep with him? A. Yes, sir.

Q. What? A. He told my sister he wanted Freddie to sleep with him when I was working nights at the golf club, to be a night watchman. He told my sister he wanted Freddie to sleep with him. 20

Q. Did he say why? A. He said he was afraid.

Q. When he slept that night was the room lighted or dark? A. When I slept with him I put the light out.

Q. How many nights did you sleep with him? A. About two nights—two nights—I was working nights, and then I went back and got my job. 30

Q. Did you ever have any talk with him as to how this thing happened? A. No, sir, but I said to him it was too bad I wasn't there.

Q. What did he say? A. He didn't answer.

Q. Did he ever tell you about where he had been that morning? A. No, sir, he said he went to the market, is all I know.

Mr. Besson: All right. Cross-examine.

*Joseph Mangino, for State—Cross.**Cross-examination by Mr. Hansen:*

Q. Joe, how old are you? A. Twenty-two—I was twenty-one and I made my birthday in the jail twenty-two.

Q. You are subject to epileptic fits, are you?
A. Sir?

10 Q. Do you get fits once in a while? A. No, sir.

Q. You don't? A. No.

Q. Never get them? A. No, sir.

Q. And you have been in jail since when? A. Since July 14—six months—over six months.

Q. Pretty sore at your father on that account, aren't you? A. Sir?

Q. You are pretty sore at your father on that account? A. No, sir.

20 Q. Are you sore at your father? A. Sore at my father for what?

Q. Are you sore at him, angry with him? A. I am not angry with my father.

Q. You are not angry with him? You always lived with your father and mother? A. Yes, sir.

Q. What? A. Yes, sir.

Q. And you say that the night before your mother was killed you got home about one o'clock or two o'clock in the morning? A. I come in.

30 Q. I mean, you got home, is that right? A. Yes, sir.

Q. And your mother opened the door? A. Yes, sir, my mother came to the window first to see who it was. She won't let nobody in unless she sees who it is, not even in the store. She won't open the door for nobody at all unless she knows who it is.

40 Q. But she did open the door? A. Yes, but she looked out the window first to see who it was. If she don't open the door I lift up the first window.

Joseph Mangino, for State—Cross.

Q. Where do you live, on the first floor? A. Yes, sir.

Q. Where were your mother and father sleeping, in the first room? A. No, first comes the front room and then comes the bedroom.

Q. The bedroom—the front room you use for a parlor? A. Yes. 10

Q. And then comes the bedroom? A. Yes, that is my mother and father's room, and then comes mine.

Q. Is there a kitchen in the back there? A. Yes, sir.

Q. When you came in what room did you go in first? A. I have got to go in the parlor and then go right through their room.

Q. You went through their room? A. Yes, sir.

Q. Your father was in bed? A. Yes, sir. 20

Q. He was rolling around, you say? A. Yes, he rolled over.

Q. And it was about two o'clock? A. Between one and two.

Q. Between one and two, and then you went to bed, did you, Joe? A. Yes, sir.

Q. And the next thing you remember is that when you were waked up about seven o'clock in the morning, isn't it? A. I told my mother to wake me up in the morning; she didn't wake me. 30

Q. She didn't wake you? A. No.

Q. I mean, the next thing you remember is somebody woke you up in the morning? A. Yes, sir.

Q. What time was that? A. That was around seven o'clock.

Q. And you didn't hear anything? You were sleeping all the time in the meantime? A. Yes, sir, it is in the next house. The store is here and we have got the next house. 40

Joseph Mangino, for State—Cross.

Q. I mean you were asleep from the time you went to bed until they woke you up in the morning? A. Yes.

Q. And the first you knew somebody woke you up and then you rushed in the next door? A. Yes, sir, I didn't believe it at first.

10 Q. And then you went in and found your mother in there, is that right? A. Yes, sir.

Q. And who was in the store when you got in there? A. There was nobody inside; they were all outside.

Q. Were all outside, you say? A. Yes, sir.

Q. Did you go in the store? A. Yes, I went in the store.

20 Q. Were you the first one to go in? A. I don't know. They woke me up, they say my mother is lying back of the counter.

Q. Was there anybody in there when you got in? A. I didn't see nobody in there. They followed me in when I went in there.

Q. You testified on your direct examination that about two years before your mother was killed that your father took you over to Guttenberg and had you before Recorder Vogt, is that right? A. It wasn't two years; it was 1927.

30 Q. Well, that is three years ago. How many years ago is 1927? A. Five years.

Q. What year is this? A. '31.

Q. And your father took you over to Guttenberg in 1927? A. Yes, sir.

40 Q. And you say that is five years ago. And as I understood your testimony he took you over there because you upbraided him for hollering at your mother or some such testimony as that. Is that the reason he took you over? A. No, sir, he took me over there because I was disorderly with him at home.

Joseph Mangino, for State—Cross.

Q. You were disorderly with him at home? A. Yes, because he threw that thing and I was going to hit him and he said he was going down to police headquarters and lock me up, and I went down there, I went right down and told the police officer. No police officer had to come and get me.

Q. Did you tell Recorder Vogt— A. I tried to explain; they wouldn't let me. 10

Q. Judge Vogt wouldn't let you explain? A. They wouldn't let me say much. He went down there and said I was breaking dishes.

Q. You weren't there when he said that, were you? A. Yes, I was there.

Q. When you got in there he said that, is that right? A. That is what he was telling the Judge, I was breaking the dishes.

Q. Let me ask you this, Joe, what time of day were you arrested? A. At night. 20

Q. And the Judge was sitting in court? A. Beg pardon?

Q. Was court in session? Was Judge Vogt there? A. He was there.

Q. Was Captain Baum there? A. I don't know whether it was Captain Baum; there was one of the officers sitting at the desk.

Q. And when you went to the police station— A. Then they lock me up, until the trial come up. 30

Q. When was the trial? A. That same night.

Q. How long were you locked up before the trial? A. About half an hour or an hour or so.

Q. And then you went in before Judge Vogt? A. Yes, sir.

Q. And you told him just what happened? A. I tried to explain but mostly they would take my father's word.

Q. You say they took your father's word and wouldn't take yours? A. Yes. 40

Joseph Mangino, for State—Cross.

Q. What happened to you? A. What happened to me? Well, he was going to put me on parole.

Q. Yes, what happened? Why didn't he put you on parole? A. Because I said I would be bad if he put me on parole, because I worked nights and if I come home any time at night maybe the officer would get me; and I said I didn't see why he should put me on parole, and he wouldn't listen. He took my father's part.

Q. You got pretty fresh with the Judge, didn't you? A. He brought me to this jail.

Q. Never mind. I mean this night we are talking about there he said he was going—

Mr. Besson: I object to that.

20 Q. All right. What happened to you? Instead of putting you on parole what happened to you? A. He arrested me.

Q. And put you in a cell? A. Yes, sir.

Q. How long did you stay in the cell? A. Stayed there all night.

Q. You tried to commit suicide in the cell, didn't you? A. Yes.

Q. You tried to hang yourself? A. Yes, for trying to take my mother's part.

30 Q. For trying to take your mother's part? A. Yes.

Q. Didn't the officer have to come and rush to you and save you from hanging and being killed? A. Who, my father.

Q. Didn't one of the jail officers have to come in and save you? You tried to hang yourself, didn't you? A. I was not trying to hang myself, I was faking down there.

Q. You are not faking here today, are you? A. No, sir.

40

Joseph Mangino, for State—Cross.

Q. Isn't it a fact, Mangino, you are charged with three different offenses of carnal abuse at the present time?

Mr. Besson: I object.

Mr. Hansen: Wait until I finish my question.

Mr. Besson: I certainly object to his asking such a question. 10

Mr. Hansen: I have not finished the question.

Mr. Besson: If he wants to ask him "have you ever been convicted of crime," all right.

The Court: If your purpose is to show a conviction of crime, all right.

Mr. Hansen: I want to show—

The Court: If you want to show that this boy has been convicted of crime, you are within your rights, to affect his credibility, but to give the jury the impression that he is bad, no, I will not allow it because every man is entitled to his day in court. 20

Mr. Hansen: That is not an impression. This man is testifying for the state. I want to show that his case was on last Friday. I am going to show that the case was put off by the prosecutor until this case was disposed of. That may readily lead the jury to believe that this boy is giving testimony for the state to save his own skin. I think I have a right to prove that. 30

Mr. Besson: I object to that.

The Court: I will sustain the objection and you can have an exception. If I am wrong you can very easily correct me. That is a little far-fetched. 40

Joseph Mangino, for State—Cross.

(Exception allowed, sealed and signed
accordingly. CHARLES M. EGAN,
Judge.)

Q. Have you ever been convicted of crime? A.
What kind of crime?

10

The Court: Have you ever been convicted of crime? Crime? Any kind of crime? Have you been found guilty?

The Witness: I was never up to the Grand Jury, this is my first time. I was always in a smaller court house, like for ticket for speeding or something.

The Court: That is not such a crime.

20

Q. Now, you remember when your father was arrested and brought down to the county jail, don't you? A. When was father was arrested?

Q. When he was brought down to the county jail here? A. Yes.

Q. You were brought down too, weren't you? A. I was locked up before him.

Q. You were arrested first? A. Yes.

Q. You testified before the Coroner's inquest too, didn't you? A. (No answer.)

30

Q. You testified at the coroner's inquest, didn't you? A. In the Guttenberg police headquarters?

Q. Yes. A. I testified about, they asked me what I said—

The Court: You were asked if you testified. Either you did or you didn't. Did you testify, yes or no?

The Witness: They questioned me down there.

The Court: You were asked under oath to answer questions.

40

The Witness: To tell the truth, yes, sir.

Joseph Mangino, for State—Cross.

Q. And when you were present before the coroner, did you tell the coroner about these quarrels that your mother and your father had? A. Well, I didn't know my father did it.

Q. I asked you whether you told the coroner at the inquest about these quarrels that you have told this court and jury? A. They didn't ask me anything about my father ever having a quarrel or anything. 10

Q. But you did not tell them? A. They didn't ask me and I didn't tell them.

Q. You have two sisters, haven't you, three sisters? A. I have three sisters.

Q. How many children were there in the family? A. Four. With my mother and father there were six of us.

Q. Did any child die? A. Yes. 20

Q. How many? A. One brother.

Q. And at the present time there are three sisters and yourself, is that right? A. Yes.

Q. Mrs. Sabola? A. Yes.

Q. Mrs. Mullaca? A. Yes.

Q. And the other? A. Rose Coppolo.

Q. Who is the other sister? A. There is Anna Coppolo and Rose—I mean Mullaca and the other is Tena—I don't know, I cannot pronounce it, it is an Italian name, Sabola. 30

Q. It is a fact, isn't it, Mangino, that you and your sisters have started an action in the Court of Chancery to—

Mr. Besson: I object.

Mr. Hansen: Wait until I finish the question. I have been fair with you, I let you ask your questions.

Mr. Besson: I think you have always allowed me to ask what I was entitled to ask. 40

Joseph Mangino, for State—Cross.

Mr. Hansen: There is no question now before the Court.

10 Q. It is a fact, isn't it, Mangino, that you and your sisters have started an action in the Court of Chancery to assume ownership of the property that your father now owns?

Mr. Besson: I object, if the Court please, to that. I don't see how that has any relation. Of course, if it should be established that this man killed his wife so that he could profit by his own wrong—I don't see how this can be introduced into this case nor is it the proper way of proving it.

20 Mr. Hansen: I want to show he is an interested witness. The Prosecutor in his opening inferred or gave the jury the impression that the motive behind the killing, according to the State's version, was because of this very situation. He said that in his opening. I think I have a right to show that this man is interested. He has testified against his own father here and I have a right to show, if I can, that he is an interested witness, that he started a suit
30 against his own father to divest his father of title to the property that he worked and slaved for for years, he and his sisters. I think I have a right to show that this is a material element in leading this jury to say whether this man is interested in giving his testimony as he has.

40 Mr. Besson: I object to it on several grounds. First, it is improper cross-examination. There was no testimony on the direct which related in any way to this subject.

Joseph Mangino, for State—Cross.

Of course there are reasonable limits to the showing of bias, but it seems to me that the proper method of proving such a case, of proving such a situation, is by the production of the best evidence which would be the records of the Court of Chancery containing a recital of the pleadings in that cause, and the basis of bringing it. The conclusion which the jury would draw from such pleadings is something which in fairness belongs to them. And in a question of this kind nobody knows what those pleadings allege. It is a matter of conjecture. The Court can surmise because the Court is experienced and learned in the law. The natural inference would be that a suit of this kind was started to prevent a man from benefiting from his own wrong. If he did kill his wife, he certainly should not become a beneficiary of his criminal acts if it is a criminal act. 10

Now of course, what that proceeding is is a matter of surmise, but for counsel to endeavor to state that in his question, something which would require perhaps 15 minutes of reading of the bill of complaint or the answer in the Court of Chancery, I think is entirely unfair and improper. It may be that it is proper for counsel to introduce the pleadings, certified under the hand and seal of the Court. 20 30

The Court: We will not go into the details of the suit, but I think I will allow it, Mr. Besson.

(Question repeated as follows: "It is a fact, isn't it, Mangino, that you and your sisters have started an action in the Court 40

Joseph Mangino, for State—Cross.

of Chancery to assume ownership of the property that your father now owns?")

A. Because we are trying to stop him from thinking he could take his share. We want to try to see if we can get our mother's share.

10 Q. You are trying to get your mother's share for yourself, isn't that right? A. No, sir, not for me.

Q. Who are you trying to get it for? A. No, sir, there are four sisters—four of us.

Q. Your sisters and yourself? A. Yes, sir.

Q. You have started this action in the Court of Chancery, is that right? A. Didn't start it.

20 Q. Didn't you start an action? Isn't Mr. Castellano your lawyer, and didn't you start an action through him?

The Court: Did you start suit in the Court of Chancery? Either you did or you didn't?

The Witness: It is a stop to the property, that is all.

The Court: You started a suit in the Court of Chancery against your father. That is what counsel wants to know. We are not going into any of the details of it.

30 The Witness: No, sir, we are not suing my father; we are stopping him from selling the property until after—

The Court: Stopping him from selling the property.

The Witness: If I had that piece of paper I would show it to you.

Q. The night before your mother was killed do you know where your father and mother were?

40 A. Yes.

Joseph Mangino, for State—Cross.

Q. Where were they? A. They were over at my sister's house.

Q. You were not there, were you? A. Yes, sir, I was there in the afternoon.

Q. That was the fourth of July, a holiday, wasn't it? A. (No answer.)

Q. Well, the fourth of July is a holiday, isn't it? A. Yes. 10

Q. And your mother was killed on the fifth of July, wasn't she? A. Yes.

Q. And it was the day before, the fourth of July, you went to see your sisters, isn't that right? That is what I understood you to say. Is there any doubt about that? A. I don't get you right.

Q. Your mother was killed on July 5th in the morning? A. Yes. 20

Q. The day before that was the day before? A. Yes.

Q. A holiday? A. Yes, sir.

Q. I asked you where your father and mother were the day before and you said they were at your sister's and you knew that because you were there in the afternoon, is that right?

The Court: You knew it, you were there in the afternoon, is that your answer?

A. That is where I am puzzled up, Judge. Just a second. The 4th of July my mother had the store open in the afternoon. 30

Q. Well, answer the question. A. Excuse me—

Mr. Hansen: I will ask the court to instruct the witness—

The Court: What is the question?

(Question repeated by stenographer as follows: "I asked you where your father 40

Joseph Mangino, for State—Cross.

and mother were the day before and you said they were at your sister's and you knew that because you were there in the afternoon, is that right?")

10 A. It was on the third we were over to my sister's house because my little nephew graduated from school and they were all over there, it was not the 4th they were there, they were not there on the 4th.

Q. Which sister? A. My sister Tina. The kid graduated from school.

Q. What is your sister's name? A. Sabola. And they were down to my sister Rosie's, Rose Mullaca's house. Then my brother-in-law, Mullaca, rode my mother home in the car.

20 Q. How do you know that? A. How do I know it?

Q. Yes, were you with them? A. No.

Q. How do you know all these things? A. Everything goes all through the family.

Q. All these things go right through the family? A. Yes.

Q. Is that true about the rest of your testimony that has been given here today?

Mr. Besson: I object to that.

30 The Court: That calls for a conclusion. I will sustain the objection.

Q. Do you know where your father and mother were the night before your mother was killed?

Mr. Besson: I object to that. The witness has said he was away from the house until half-past one.

40 The Court: Well, either he knows or he does not know. Do you know where your father and mother were the night before?

Joseph Mangino, for State—Cross.

The Witness: The night before they were down at my sister's house.

Q At Mrs. Mallaca's? A. Yes.

Q. The day before that they had been at Mrs. Sabola's? A. At Sabola's. They were in Savella's house and the next day they went down to Mullaca's house and Mullaca rode them home in the Buick. 10

Q. Your father and mother were in the habit of visiting your sisters almost every day, almost every night? A. Yes, my mother liked to go there and would tell my father.

Q. Your father always went with her? A. Yes, sir.

Q. On the third of July you went down to your sister's house and your father and mother were there, there was no trouble there, was there? A. I just went in and got two sandwiches and I came outside and went away with the car. 20

Q. While you were there there was no trouble? A. No, sir.

Q. About the only trouble that you remember is something that happened about two weeks before your mother was killed, isn't that right? A. It had been going on ever since she got killed.

Q. Ever since she got killed? A. Yes, sir. It had been going on for two weeks before, but they had not been talking to each other for them two weeks. 30

Q. Every once in a while they would have a squabble, a quarrel? A. Yes.

Q. Where were you born, in Guttenberg? A. Yes, sir.

Q. You were born in this country? A. Yes, sir.

Q. Did you have anything to do with the running of this store? A. I didn't have anything to do in that store. 40

Joseph Mangino, for State—Cross.

Q. What is your business? A. Laboring. Anything at all that came along.

Q. Now, the Prosecutor showed this pistol, this gun, and he asked you whether that was your father's gun, and you looked it at for quite a while and finally said it was his gun. What makes
10 you say that, Joe? A. Because I had that gun around the house, fooling around, playing with it.

Q. What made you look at it so long? A. Because it is rusty.

Q. Because it is rusty now? A. Yes, sir.

Q. You wanted to look at it to see if there was some mark on it, didn't you? A. Yes, sir.

Q. What mark did you want to see? A. U. S.

Q. Is that the only reason you say it is the gun, because you see U. S. on it? A. No, sir.

20 Q. Well, if you did not see U. S. on there would you say it was the gun? A. There is the U. S. there and I know by this trigger and by this thing here.

Q. When did you see this gun, how long ago did you see that gun? A. I seen that gun a year ago and I wanted it once before.

Q. You have not seen it for a year? A. No, sir. I wanted to shoot it on the 4th of July and I could not get it, a year ago.

30 Q. And you could not get it? A. No.

Q. Why? A. My mother would not give it to me.

Q. Well, you did not see it then, did you? A. That was the last time, she had it and she put it away because she used to carry it to the other house.

Q. Your mother was in the habit of carrying this gun, is that the idea? A. Yes, she used to carry it to the house.

40 Q. From the store? A. Yes.

Joseph Mangino, for State—Cross.

Q. And when she got up in the morning she would take the gun and carry it down to the store?

A. My father would carry it back.

Q. Who carried it down, who carried it back?

A. Sometimes my father, sometimes my mother.

Q. Sometimes your father and sometimes your mother? A. Yes, sir.

10

Q. How do you know that? A. Because when I used to feel tired I had the car parked in front of the house and my mother before she came into the house would say, "Put the car in the garage and come home and sleep." And sometimes she would tell me, "Go inside and turn the light on," and I used to go inside and after I went in she came in.

Q. Did she have the gun with her? A. Sometimes she had the gun, sometimes my father had the gun.

20

Q. When was the last time you saw your father with the gun? A. Well, they had not been carrying it back and forth a long while. They kept it in the store in back of the counter.

Q. On the 4th of July you wanted this gun, you say, to shoot it off? A. Yes, sir.

Q. But you did not get it? A. It was not this 4th of July.

Q. Well, the 4th of July before, it was a year ago, your mother would not give you the gun? A. No, sir.

30

Q. What did you say or what did she say to you when you asked her for the gun? A. Well, I was looking for it. She knew I was looking for it.

Q. Then you did not find it? A. No, sir, she had it.

Q. All right. You did not see it, did you? A. No, sir.

40

Joseph Mangino, for State—Re-direct.

Q. Well, when did you see it? You say you saw it a year ago. You did not see it then? A. She took it. I seen her take it.

Q. Where did she have it? A. She had it back of the counter.

Q. And how long before that had you seen it?

10 A. That was the last time I seen it.

Q. Before then how long ago had you seen it?

A. When she used to carry it back and forth.

Q. Well, from just seeing it occasionally like that—you never had it in your hands, did you, until today? A. I had it in my hand once before.

Q. When? A. When the Prosecutor showed it to me.

Q. When the Prosecutor showed it to you? A. Yes.

20 Q. And you told the Prosecutor at that time that you could not recognize it, didn't you? A. I told him that looks like the gun.

Q. You told him you could not say it was the gun, didn't you? A. I said it looks like the gun.

Q. But you did not tell him it was the gun, did you? When the Prosecutor showed you the gun, tell the jury what you told the Prosecutor at that time. I wasn't up there. Tell the jury what you told him. A. I told him it looks like the gun.

30 Q. And that is the best you could tell him? A. Yes.

Q. That is the best you can say now, is that right? Can't you answer that question? A. I said that looks like the gun.

Mr. Hansen: That is all.

Re-direct examination by Mr. Besson:

Q. Well, is that the gun?

40

Mr. Hansen: I object, improper redirect examination. He has already said it looks

Joseph Mangino, for State—Re-cross—Re-direct.

like the gun. That is all he can say. He has been examined on direct examination.

The Court: I will permit the question and give you an exception.

(Exception signed, sealed and allowed accordingly. CHARLES M. EGAN,
Judge.)

10

A. The same gun.

Q. What is your answer? A. It looks like the gun and that is it.

Mr. Besson: That is all.

Re-cross examination by Mr. Hansen:

Q. How many guns have you handled? A. This is the first I ever handled. I never handled a gun in my life.

20

Q. Is it a fact, as I said before, when the Prosecutor's detective, Mr. Charlock, showed you this gun, you said you could not tell whether it was the gun or not? A. No, I said that looks like the gun.

Mr. Hansen: That is all.

Re-direct examination by Mr. Besson:

Q. Well, didn't Mr. Charlock show you—you know Captain Devine? Captain Devine and Mr. Charlock showed you this gun and some other guns? A. Yes, and I told him about the trigger.

30

Q. And you picked this gun out of four other guns? A. Yes, sir.

Mr. Besson: That is all.

Re-cross examination by Mr. Hansen:

Q. Out of how many other guns? A. There were four or six guns there.

40

Joseph Mangino, for State—Re-direct.

Q. What kind of guns were they? A. They were mixed in, pearl handles, broken handles, all kinds of guns.

10 Q. And you knew that a gun with a broken handle or with a pearl handle was not your father's gun, didn't you? A. They had all kinds of guns mixed together.

Mr. Hansen: That is all.

Re-direct examination by Mr. Besson:

Q. Who collected the rent for the property which your mother and father owned together?

Mr. Hansen: Objected to. Improper re-direct examination.

20 The Court: How is it material?

Mr. Besson: Just to show that there was some dispute going on between the father and the mother about who was entitled to the rent of the property. They were joint owners. I overlooked that on my direct examination.

The Court: I will allow it and give you an exception.

30 (Exception signed, sealed and allowed accordingly. CHARLES M. EGAN,
Judge.)

Q. Who collected the rent? A. My father.

Q. Did your mother ever collect the rent? A. She followed my father around where the people lived in the house and said, "If you give my wife the rent"——

Q. How do you know that? A. My mother was telling me that, she was crying.

40 Q. Did you ever hear your father and mother when they were discussing rent? A. Yes, sir.

Joseph Mangino, for State—Re-direct.

Q. Quarreling over who would collect? A. Yes, sir.

Q. How long did that happen before your mother was killed? A. About three months ago.

Q. Just tell us what took place.

Mr. Hansen: I object to that as not proper re-direct examination, if your Honor please. 10

The Court: I will allow it.

Q. Just tell us what took place.

The Court: I will give you an exception.

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN,
Judge.) 20

A. He went around to the——

Q. No, just tell us what your father said to your mother and your mother said to your father.

A. That they had been quarreling—I was supposed to get the money—they were quarreling about the money.

Q. You don't remember what they said? A. They were quarreling about the money and about the rent.

Q. The day that your father came in from the market, the day that your mother was killed, how was your father dressed? A. How was he dressed? He had a black pair of pants and white shirt, because I grabbed him. I grabbed him by the jacket. He had a brown jacket on. 30

Q. I show you here this white shirt which has been offered in evidence as Exhibit S-17. Do you recognize that shirt? A. (No answer.)

Q. Do you know the shirt? A. I don't recognize this shirt. 40

Joseph Mangino, for State—Re-direct.

Q. You don't know this shirt? A. No, sir.

Q. You wouldn't say whether or not that was your father's shirt? A. No, sir, I don't know.

Q. Is it your shirt? A. No, sir.

Q. You never wore a shirt like that? A. No.

10 Q. Did you ever have any disputes—or did you ever hear any conversation, rather, between your father and mother about the money which your father was to take to the market? A. I used to hear it once in a while. Once in a while I used to to hear it.

Q. When was the last time before your mother's death that you heard a discussion about that? A. About four months or five months.

20 Q. Well, what was it? A. Because sometimes my mother and father—you know they get me out of bed early in the morning sometimes and I go over with my car—and I used to go with my car sometimes to the market,—and I could prove that by one of the cops—

Q. Never mind that. You went to the market with your car? A. Yes.

30 Q. Before that I want to know what your mother and father said about it. A. My mother used to give him some money, see, about \$35 or \$40, and he wanted more all the time, and my mother said that was enough because he used to lose a lot of money in his pocket.

Q. How did he lose it? A. Pulled it out with a handkerchief.

The Court: That is immaterial.

40 Q. Were there any quarrels about taking this money to the market? A. Yes, he used to go in the drawer and take money out of the drawer, and she wouldn't have enough money to pay other people off that would come in the store.

Joseph Mangino, for State—Re-direct.

Mr. Hansen: I object to that.

Q. Then what would happen? A. Then there would be a quarrel.

Mr. Hansen: I am willing to admit these people are no different from anybody that has lived together for forty years, that there was quarreling about money matters. We will be here all day,—fighting about money.

10

Q. Can you remember the exact conversations on any of these occasions? A. I am just after telling you, he used to come in the store and take money out of the store and mother would tell him not to, and when I would come home she would say, "See, papa took all the money."

20

The Court: You didn't hear the conversation or see him take it?

The Witness: What?

The Court: Did you hear the conversation between your mother and father?

The Witness: About the money?

The Court: Yes.

The Witness: Yes, he would take the money out of the drawer.

The Court: Did you hear the conversation between your mother and father?

30

The Witness: They would quarrel.

The Court: I didn't ask you if they used to quarrel. I am asking you if you heard the conversation between your mother and father.

The Witness: Yes, the argument.

Mr. Besson: That is all.

(Witness excused.)

40

William J. Eyper, for Defendant—Direct.

Mr. Hansen: At this time with the permission of the Prosecutor I would like to call a Mr. Eyper, who is a real estate man in Guttenberg.

The Court: Have you any other witnesses, Mr. Besson?

10 Mr. Besson: Yes, I have another witness.

Mr. Hansen: I am in this position, if your Honor please, that Mr. Eyper, a former town clerk of Guttenberg, is here to testify as to the good character of the defendant, and he has a very important engagement at four o'clock, and I would like, with the permission of the Prosecutor, to put him on at this time.

Mr. Besson: I have no objection.

20 The Court: You may call him then.

WILLIAM J. EYPER, sworn on behalf of the defendant.

Direct examination by Mr. Hansen:

30 Q. Mr. Eyper, where do you live? A. I live in the Borough of Fort Lee now; I am in business in Guttenberg.

Q. Guttenberg, New Jersey? A. Yes.

Q. Did you formerly live in Guttenberg? A. I lived there for about forty years, yes.

Q. You were formerly town tax collector or town clerk, were you, of Guttenberg? A. I was.

Q. By the way, Guttenberg is a municipality of four or five blocks square, isn't it? A. About four or five blocks running north and south and about ten blocks east and west.

40 Q. With a population of about how many people? A. About six or seven thousand.

William J. Eyper, for Defendant—Cross.

Q. And have you known Mr. Mangino for a number of years, the defendant? A. Yes, I should say I have known him about fifteen years.

Q. Did you know his wife? A. I knew his wife also.

Q. And of course you knew the people in the community, in Guttenberg? A. Yes.

10

Q. And practically everybody in town, did you, when you were living there and in business? A. Yes, practically.

Q. What would you say about the defendant's reputation as far as honesty and veracity is concerned? A. In his dealings with me—

Mr. Besson: I object to that.

Q. What was his general reputation in the town? A. Good.

20

Mr. Hansen: That is all.

Cross-examination by Mr. Besson:

Q. You were in politics there, weren't you? You were mayor of the town? A. I was collector of taxes thirty years ago.

The Court: I don't know what counsel is going into.

Q. Your brother was the mayor? A. My brother was the mayor.

30

Mr. Hansen: Objected to.

Mr. Besson: That is all—no, one more question.

Q. Have you been living there for the last three years? A. No, but I have been in business there for the last thirty-five years.

Mr. Besson: All right. That is all.

(Witness excused.)

40

Agnes Healey, for State—Direct.

AGNES HEALEY, sworn on behalf of the State.

Direct examination by Mr. Besson:

Q. Mrs. Healey, where do you live? A. 332
26th Street, Guttenberg.

10 Q. Did you know Maria Mangino in her life-
time? A. Yes, I knew her three and a half years.

Q. And do you know this defendant? A. Yes,
sir.

Q. Did you ever hear Mrs. Mangino threaten to
cut her husband's throat? A. No, sir.

Mr. Hansen: Objected to as leading.

20 Mr. Besson: In Mr. Mangino's state-
ment he charges that Mrs. Healey heard his
wife threaten to cut his throat, and that is
why I am asking it, and I submit it is a
proper question, because the purpose of it
is to show that he has made a statement
which is false.

Mr. Hansen: The Prosecutor should ask
if she ever heard Mrs. Mangino say any-
thing about her husband, without putting
the words in the witness's mouth.

30 Mr. Besson: The statement made by Mr.
Mangino is that Mrs. Healey heard his
wife make that threat.

The Court: I think he is permitted to
contradict the statement, even though the
statement is the statement of the defend-
ant. I think he is permitted to contradict.
I will allow it and give you an exception.
I don't think there is any question about it.

(Exception allowed, signed and sealed
accordingly.)

Motion for a Direction of Verdict.

Mr. Besson: The question was answered.
She said no, sir. That is all.

Mr. Hansen: No questions.

(Witness excused.)

10

 THE STATE RESTS.

Mr. Hansen: I move now, if your Honor please, for direction of a verdict on the ground no evidence has been offered—that is, there hasn't been sufficient evidence offered by the State which would warrant the jury in finding this man guilty of either murder or manslaughter. It doesn't seem to me that from the way this case stands at the present time, from the character of the evidence that is before your Honor and the jury, that it would be within the province of the jury to find this man guilty of murder or manslaughter; and I ask that your Honor direct them to find the defendant not guilty.

20

The Court: I deny your motion and give you an exception.

(Exception allowed, signed and sealed accordingly.)

30

CHARLES M. EGAN,
Judge.)

40

Antonio Mangino, the Defendant—Direct.

ANTONIO MANGINO, sworn as a witness in his own behalf, testified as follows through the official Italian interpreter:

Direct examination by Mr. Hansen:

10 Q. Mr. Mangino, you are the defendant in this case, are you? A. Yes.

Q. Where were you born, Mr. Mangino? A. Agi St. Antonio.

Q. In Italy? A. Yes.

Q. And how long have you been in this country? A. Since 1903.

Q. Were you married in this country? A. In Italy.

Q. And did you bring your wife here when you came here? A. No, sir.

20 Q. Did she come later? A. Yes.

Q. How long after you came here did your wife come here? A. When I first came to America I stayed here nine months and then I went back to Italy because I wanted to see my wife.

Q. And did you bring your wife back with you then? A. No.

Q. When did your wife come here?

(Witness breaks down crying.)

30 Q. When did your wife come here, Mr. Mangino? A. Then I came here in America all by myself.

Q. When did your wife come here? A. Then I sent for my wife.

Q. Then she came over? A. Some time passed before I sent for my wife.

Q. How long have you been married? A. Forty years.

40 Q. And how many children have you? A. We had five children altogether, one of them died.

Antonio Mangino, the Defendant—Direct.

Q. And were all of your children born in this country? A. Only one was born in America.

Q. The other four were born in Italy? A. Yes.

Q. How long have you lived in Guttenberg? A. During the whole time.

Q. Since you came to this country? A. Always 10
in Guttenberg.

Q. And what was your business? What did you do for a living when you first came to Guttenberg? A. When I first came from Italy I was a bricklayer.

Q. How long were you a bricklayer? A. In Italy for the whole time.

Q. I mean here in Guttenberg. A. In Guttenberg I conducted a business for the past ten years, and prior to that I was a bricklayer. 20

Q. You mean you have been in the grocery business for ten years? A. Yes, sir.

Q. And did your wife help you in the grocery business? A. Yes, sir.

Q. And as a result of your business did you make enough money to buy some property in Guttenberg? A. Yes, I bought quite some property. After laboring I did purchase quite some property.

Q. And have you that property today? A. I have had four parcels of property and I have three at the present time. 30

Q. Now, did you live happily with your wife? A. Yes, sir.

Q. And did your wife help you in your business? A. Yes, sir.

Q. And who lived with you and your wife, this boy Joe? A. Yes, this boy.

Q. Your daughters are all married, are they? A. Yes, they are all married and I have given them a dowry also. 40

Antonio Mangino, the Defendant—Direct.

Q. Did you and your wife visit your daughters all the time up to the time that your wife died?

A. Yes, sir, always.

Q. Do you remember the time that you had Joe arrested and took him to Guttenberg to the town hall? A. Yes, sir.

10 Q. Why did you do that, Mr. Mangino? A. Because he used to pull me—he used to pull me.

Q. He used to pull you? A. Because he used to grab me, and of course he could do so much better than I could.

Q. Then you took him to the police court in Guttenberg? A. No, I went over to the police station in Guttenberg and made a complaint, and then he came, and when he came he was arrested by the police.

20 Q. At what time, or just before you had him arrested, had you been having any trouble with your wife? A. No, with my wife I never had any trouble.

Q. Did you ever throw a can of condensed milk at your wife? A. No, no, never.

Q. Did you ever throw a piece of wood at your wife? A. I did not. I loved my wife better than my own soul.

30 Q. Now, coming down to the time of the happening, Mr. Mangino, the night before your wife was killed, before she died, where were you and your wife on the fourth day of July? A. On the fourth day of July we closed the store. We both agreed to close the store. We both fixed a bag and I carried one bag and she carried the other bag, and then we went over to our daughters.

Q. You each packed a bag full of what, groceries? A. We had fruits and candies for the children.

Antonio Mangino, the Defendant—Direct.

Q. And then you went over to your daughter's house? A. We went over to our daughter's at 19th Street.

Q. Which daughter is that? A. That is Rosie Mullaca.

Q. How long did you stay there? A. Up to eleven o'clock. 10

Q. And did you have any trouble there with your wife? A. Oh, no, we drank together; we were talking; everything went along nicely.

Q. Then did you go home? A. Then my son-in-law had a car and he brought us home.

Q. And what time was that, eleven o'clock? A. It was eleven o'clock.

Q. And then what did you do, go to bed? A. Yes.

Q. Go in the house? A. Yes. 20

Q. What happened after that? A. Then we undressed before we went to bed.

Q. Tell the story from then on. A. I am ashamed of myself.

Q. Go ahead, tell the story. A. (Witness breaks down and cries.)

Q. Go ahead, Pop. What is the story now? A. (No answer.)

Q. When you got to bed what happened? A. I was looking for my wife. 30

Q. What do you mean by that? A. Don't you understand what I mean? I wanted to have connection with her.

Q. And did she refuse you?

Mr. Besson: I object to the question as leading.

The Court: Yes.

A. She said to me, "No more; with me you can have nothing to do any more." 40

Antonio Mangino, the Defendant—Direct.

Q. All right. What happened then? A. Then she went into another room and I fell asleep.

Q. What happened then? A. Then my son got home about two o'clock.

Q. That is Joe? A. Yes.

10 Q. Tell the story from then on. A. I am telling it to you. And my son came home and wanted to go to bed. When I heard that my son was snoring then I went near to my wife and tried to feel her the same as I did before; and then she says to me: "You rotten old man, you can't touch me any more. You are no good any more." Then she shoved me away from her and then I went along and tried to shove her, and then she pushed me in my stomach. Then I turned around and I sat on the edge of the bed and didn't have
20 any covers, because it was so warm. Then while I was staying on the edge of the bed then she kicked me off the bed. Then I got up from the floor and after I had a broken rib; and then I said to her: "Is that the way you are treating me? You threatened to kill me." Then she got hold of a revolver from under the pillow and threatened to kill me, and then she said to me with the revolver in her hand, "I will kill you so you will not trouble me any more." Then I jumped on
30 the bed and I grabbed the revolver off her hand and the revolver fell to the ground. Then I sat on the revolver and the bed. Then she got ahold of her dresses and went away. And before she went away I said to her: "I am too good, because I have a revolver under me and I could kill you if I wanted to." Then she went to the store. She took the dresses along with her and went to the store. Then I got dressed. I put the revolver into my pocket and I went to the store, and in the store I met her by the door, and she
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Antonio Mangino, the Defendant—Direct.

asked me to help her in lifting the can of milk and to put the can of milk into the ice tub; and then she said to me: "Aren't you going to the market?" And then I said yes. Then I said to her: "Give me the money." And then she gave me \$10 and then I said: "Ten dollars?" Then I said: "It is true that I am not going to buy much but it is only \$10." Then I said to her, "You think it is nice for a man to go with only \$5 or \$10?" I said, "This \$10, I think it is too little." Then I said to her, "I will leave the \$10; I have \$10 in my own pocket"; and I left the 10 and went away. When I reached the front of the store only about a passing from the front of the store, then she called me in. Then I went back and I asked her what she wanted, and she said to me, "Before you go away I want you to return to me my revolver." Then I said to her, "The revolver is here." Then I placed the revolver on something that was kind of high. Then I placed the revolver on there and when I put the revolver on there then she grabbed the revolver. Then I also grabbed the revolver, and then the two of us grabbed the revolver at the same time. Then she said, "Give me my revolver," and then I said to her, "I will not give it to her, because if you didn't kill me before you will kill me now." And then she was pulling and then she was trying to grab the revolver and I was trying to do the same thing. Then all of a sudden a shot blew off. Then I remained scared. Then the revolver was left in my hand. I put the revolver in my pocket. Then I went away and I went for the car, and I got off in Hoboken. In Hoboken I took the ferryboat. Then when I got on the ferryboat I got hold of the revolver and threw it off the ferryboat. Then when I reached the market the

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Antonio Mangino, the Defendant—Direct.

man that used to carry my supplies hadn't reached the market yet. Then I said: "Well, I will buy the stuff now and when the truckman comes then I will give it to him." Then after I bought the stuff I went back to the place where I had bought the stuff and the truck driver hadn't yet come;
 10 and it had got kind of late and I was thinking; and I had a receipt for the goods that I had purchased.

And with the receipts I had I could have gone back on Monday to take the supplies. I had a box of prunes, and being the prunes would go bad until Monday, that I took the prunes and placed them on my shoulder. Then I took the ferry boat for Hoboken. Then when I reached Hoboken I took the car.

20 Q. You went home then? A. When I reached 26th Street, somebody asked me what happened in your house. Then I said, "Tell me what happened".

Mr. Besson: I object to what somebody told him unless it is specified who it is.

The Court: You object to what somebody told him?

Mr. Besson: I don't want him to bring in a conversation with some strange person.

30 The Court: Of course he cannot go into that. He cannot tell what some other people told him.

The Witness: He did not say anything to me.

The Court: Go ahead.

The Witness: When I reached the front of the door then I saw a lot of people. One took a box from my shoulder, and then I heard crying, then my children embraced me and said to me, "Somebody killed
 40

Antonio Mangino, the Defendant—Direct.

mother." I have nothing else to say. I was ashamed to tell the court just how it started. I was ashamed to tell the court just how it started.

Q. Did you know when you left for the market that your wife was dead? A. No, I did not. 10

Q. Were you frightened when you heard the shot go off? A. Yes, I got a scare. I have been sick ever since. And I have my leg swollen ever since that time. My blood turned to water.

Q. Mr. Mangino, did you ever intend to kill your wife? A. In God I swear I did not.

Q. Were you ever in any kind of trouble before? A. No, sir, never. We always loved each other and she was the boss of everything.

Q. And you got along nice with your children? A. Always. Every eight days or fifteen days we used to visit our children. 20

Q. Now just tell the judge and the jury why you did not tell the truth right in the beginning, Mr. Mangino? A. Because I was ashamed to tell the truth, to tell that I wanted to have intercourse with my wife because I thought being an old man I should not have asked for anything like that.

Q. You did not tell the truth then, Mr. Mangino, until about seven or eight days afterwards when you told Mr. Charlock and you told Judge Vogt and the late Mr. Puglia, you told them the truth then, didn't you? A. Yes, sir. 30

Q. And when you told Mr. Charlock and Judge Vogt and Mr. Puglia, it was the truth, wasn't it? A. Yes, sir.

Q. Now, Pop, I show you this revolver, Exhibit S-15 in this case, and ask you whether that is the gun that your wife had? A. I am going to be truthful to you. I have only had one revolver and that revolver I threw in the Hudson River. 40

Antonio Mangino, the Defendant—Direct.

Q. And is that the revolver that you had? A. No, sir. Because I threw that one in the river. I only had one revolver.

Q. You made some other statements, Mr. Mangino, that have been offered in evidence here, before you told Mr. Charlock, as you say, the truth.
 10 You told them that you did not know anything about this. You did that, didn't you? A. Yes, sir. And the purpose of that was because I didn't want to tell. I was ashamed to tell the reason. I was ashamed to tell that I wanted to have intercourse with my wife.

Q. Now, Mr. Mangino, when you went into the store that morning, you had the gun in your pocket, didn't you? A. Yes, sir.

Q. And what was the first thing that you did?
 20 Was it to take the milk can in, or what did you do first? A. Yes, to take the milk can in.

Q. Did your wife and you take it in together, or did you take it in alone? A. I could not do it alone because it was too heavy, there were two of us lifted it.

Q. Then what was the next thing that you did, Mr. Mangino? A. Nothing. Then we got talking about the market.

Q. Then you were going to leave for the market? A. Yes.
 30

Q. And what was it she said, "Come back, I want my gun"? A. I first said to her, "I have to go to the market. Will you give me the money?"

Q. And it was then that she gave you ten dollars? A. Yes. I told you that before.

Q. And after that when you laid the gun down, just tell the court and jury here what happened when you laid the gun down. A. The show-case
 40 was about this high, right up to my chin.

Antonio Mangino, the Defendant—Direct.

Q. The show-case was on the counter, was it?

A. Can I lift that revolver?

Q. Yes. A. Then I got hold of the revolver and I said, "I will show it to you for the last time," and I placed it on the counter. I took hold of the revolver in the same manner I am holding it now.

10

Q. And you laid it up on the show-case? A. Yes, sir.

Q. And then what happened? A. And in placing the revolver there, then she grabbed the revolver in this manner. Then she was pulling the revolver and I was pulling it and she said it was her revolver. She said it was her revolver, and then I said to her, "I will not give it to you because the first time you tried to kill me, now you will surely kill me."

20

Q. Then what did you do? A. Then we were pulling at each other. Her hand was here and my hand was here.

Q. Where was her hand and where was your hand on the revolver? A. My wife's hand was here and this was my hand. Then she was pulling it and I was pulling it, then when the shot blew off I was scared.

Q. Who was in the habit of keeping that gun? A. I had not had it for six months.

30

Q. Where did your wife keep the revolver at nights? A. At first she had it in a cigar box.

Q. Where did she have it after that? A. Then since my boy had a dispute with some other boy and the other boy hit my boy, then my boy came to my house with the intentions of taking the revolver—

Q. Where did you wife keep the revolver, is the question. A. She had it in a cigar box on a shelf in the store.

40

Antonio Mangino, the Defendant—Direct.

Q. Where did she have it the night before she was killed? A. I don't know. I had not seen the revolver for six months.

Q. When you had this argument in bed, where did she get the revolver from? A. From underneath the pillow.

10 Q. And do you know whether she was in the habit of taking that revolver to the store in the morning and bringing it back to the house at night? A. Yes. She was the boss. She was carrying it from one place to the other. But for six months prior to that I had not seen the gun.

Q. Mr. Mangino, did you ever pay any attention to any other women? A. No, I did not. In the name of God I have only my one, and I always respected her.

20 Q. Your boy Joe testified that one day when he came into the store he saw you take your hand away from the hand of a woman who was in the store. Is that true? A. It is not true. My son is against me because his intention is to take whatever I have.

Q. Did you ever have any serious trouble with your wife about money matters? A. My wife was the boss. Whenever I made money I used to give it to my wife, just like a boy.

30 Q. And your property was in the name of you and your wife, wasn't it? A. I have that one in my name.

Q. And the others were in both names? A. Yes. The others were in both names. I bought some property in Italy, and I bought that property in her name solely.

Q. And did she collect the rents from the tenants of these houses? A. I used to make out the receipts and she used to collect the money.

40 Q. Then as I understand it, outside of this trouble or squabbling you had with your wife be-

Antonio Mangino, the Defendant—Cross.

cause she would not let you have sexual intercourse with her, there was practically no other trouble between you and your wife, is that right?

A. No, sir, never. My wife was my soul. What happened to her I would rather have happen to me.

Mr. Hansen: That is all.

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Cross-examination by Mr. Besson:

Q. I show you Exhibit S-17. Is that your shirt? Look at it. A. No, my shirt was blue.

Q. You know Lieutenant Charlock? A. Yes, sir.

Q. Did you tell him that this shirt, Exhibit S-17 was your shirt? A. No, I did not tell him.

Q. Is that your shirt? A. Will you see the size of the shirt I am wearing.

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Q. Look at it. A. I used to wear a blue shirt.

Q. Well, you wear white shirts too, don't you? A. Sometimes I wear white shirts, but I never went to the market without wearing a blue shirt.

Q. Do you know what that is on the shirt? A. That is not my shirt, no, sir. If I went to the market I would not wear those shirts because I used to carry stuff on my shoulder.

Q. Did you ever wear a white shirt? A. Yes, on Sundays.

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Q. But that is not your shirt? A. No.

Q. And on the morning of July 5, 1930, when you went to the market how were you dressed? A. I was wearing a blue shirt, a pair of pants and I was wearing a sweater.

Q. What color? A. It was a red sweater.

Q. Were you wearing a hat or a cap? A. Wearing a cap.

Q. What color? A. It was a gray color.

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Antonio Mangino, the Defendant—Cross.

Q. What time did you leave the store on the morning that you shot your wife? A. I am going to tell you the truth, being that my watch was stopped, I don't know whether it was four o'clock or a little after or before.

10 Q. You think it was four o'clock? A. No, I think it was a little later because it was quite late.

Q. When you saw that your wife was shot, why didn't you get a doctor? A. When the shot blew off I ran out and I didn't know just what had happened.

Q. If your wife was your soul, as you say, why didn't you try to help her? A. I didn't see my wife get hit.

20 Q. Do you mean to tell us that you saw this gun shot off in her face and you did not know what struck her? A. I didn't know just what happened. Otherwise I would not have gone to the market.

Q. You want this jury to believe that pistol powder marks burned your wife's face when it went off—that it was fired in such a way that you did not know what happened to your wife? A. No.

30 Q. How far was the muzzle or the mouth of the pistol from your wife's head when the pistol went off? A. About five or six feet away.

Q. Your wife used both hands to pull the pistol from you, didn't she? A. One hand.

Q. Didn't you tell us first that you had one hand on the pistol, and your wife had a hand on the pistol and you put your two hands on the pistol and then she put her two hands on it? A. No. I put one hand on the pistol and then she put the other hand.

40 Q. Just what route did you take when you left the house that morning? A. You mean what route I took when I left the house?

Antonio Mangino, the Defendant—Cross.

Q. Yes, what way did you go? A. I told you I went through Bergenline Avenue.

Q. Through Bergenline Avenue? A. Yes, sir.

Q. And what street did you take to get to Bergenline Avenue? A. 26th Street.

Q. Were you on Palisade Avenue at any time that morning? A. No. When I left the store I went through direct to Bergenline Avenue. 10

Q. Between the time that you left the store and the time you got to Bergenline Avenue did you see anybody that you knew? A. Nobody.

Q. You did not see Mr. DeAngelo? You know him, don't you? A. Yes, I do.

Q. Did you see him that morning? A. I did not see him. I can swear to it I didn't see him.

Q. You are under oath now? A. Yes.

Q. Now, you went right to Bergenline Avenue on 26th Street, didn't you? A. Yes, sir. 20

Q. And you took the car there? A. Yes, sir.

Q. And what hour in the morning did you take the car? A. It was about five o'clock.

Q. Five o'clock in the morning? A. Five o'clock in the morning.

Q. And where did you go in this car? A. To Hoboken.

Q. And what ferry boat did you take to cross the river? A. The Cortlandt Street Ferry. 30

Q. How many cartridges were in the pistol at that time in your pocket? A. I didn't look into it. When I got aboard the boat I threw the revolver.

Q. Where were you standing on the boat when you threw the revolver over? A. You know the ferry boat is quite long as you enter, and when I had practically passed the ferry boat, then on the far end I threw the revolver into the river.

Q. Did you wait until the boat was out in the river or was it still in the slip? A. The boat had not started to go yet. 40

Antonio Mangino, the Defendant—Cross.

Q. Now, you did not know how many cartridges were in the gun, did you? A. No, I did not know.

Q. That is your box of cartridges, exhibit S-16 in this case, isn't it? A. I have had this in the house.

Q. For how long? A. For over twenty years.

10 Q. And how long did you have the revolver?
A. When I bought the revolver I bought the cartridges.

Q. Where did you buy the revolver? A. In New York.

Q. What make of revolver is it? A. That I don't know.

Q. Where did you buy the cartridges? A. I bought the cartridges in Union Hill.

20 Q. Did the cartridges fit the revolver? A. At that time I put the cartridges in. Since then we have never had any occasion to use it.

Q. You put four cartridges from the box into the revolver? A. To be truthful to you, I have never handled this gun. My wife was the one always had the gun.

Q. Did you have one cartridge of your own before you got this box of cartridges? A. No.

Q. Did you buy a cartridge with the revolver? A. No, sir.

30 Q. You are sure about that? A. Yes, I am positive.

Q. You took the cartridges from this box and put them in the revolver, didn't you? A. I don't know whether that is the box or not.

Q. Well, that is the box that was in your house? A. I did have a box in the house.

40 Q. And would you say that that box marked Exhibit S-16 was not the box? A. I want to be truthful with you. I have not handled this gun for many years, so I don't know if that is the box or not.

Antonio Mangino, the Defendant—Cross.

Q. What calibre was this revolver which you threw in the river? A. It was white.

Q. Not the color. What calibre was the revolver which you threw in the river? A. I don't know.

Q. How did you know what size cartridges to buy for the revolver? A. Twenty years ago, of course, I knew it then, but now I do not know. 10

Q. Did you take the revolver to the store to have the man give you cartridges to fit it? A. Yes.

Q. And then you brought them home? A. Yes.

Q. Did the man in the store give you an extra cartridge? A. He just gave me one package.

Q. That is all? A. Just one package.

Q. When your revolver went off that morning did you stop in the store at all to see what happened to your wife? A. I went just like a crazy man. I was so scared. 20

Q. Is that why you threw the revolver away? A. I took the revolver with me because if I had taken the revolver to the house again then of course she would shoot me.

Q. You knew you had shot her, didn't you? A. The shot went off, but I did not shoot her.

Q. You were standing right up against the counter, weren't you? A. Yes. 30

Q. And your wife was standing right up against the counter? A. Yes, sir.

Q. And that is how close you were when the gun went off? A. Yes.

Q. How long did you struggle with your wife for the gun? A. About four or five times.

Q. Four or five pulls back and forth? A. Yes, four or five pulls.

Q. Did you try to get any money away from your wife that morning? A. No, only the money 40

Antonio Mangino, the Defendant—Cross.

to go to the market, but then I left the money on the counter.

Q. Did your wife have any other money besides the ten dollar bill that morning? A. I didn't see anything. All I saw was the ten dollar bill.

10 Q. Did you have any money? A. I had ten dollars.

Q. You only had ten dollars? A. Only ten dollars I had.

Q. Now, your wife was the boss, wasn't she? A. Yes, she was the boss.

20 Q. Why didn't you put the last house that you bought in your name and your wife's name? A. We had sold one house and the money was divided, half to her and half to me. She invested her money and with my money I bought another house.

Q. Where did she invest her money? A. She placed that money on mortgage.

Q. And that is why? A. There was no dispute whatever.

Q. Did your wife handle all the money in the store? A. Yes.

30 Q. Then when you wanted any money you got it from your wife? A. When I was to go to the market she would give me money, the money that I needed.

Q. What was the largest amount she ever gave you to go to the market with? A. She gave me \$75, \$125, as much as \$150.

Q. Did you ever lose any of that money? A. I never lost any money.

Q. Never lost a cent? A. Never.

Q. On which side of the bed did you sleep in your bedroom? A. The bed was on this side.

40 Q. Did you sleep against the wall or did you sleep away from the wall? A. She was to the side of the wall.

Antonio Mangino, the Defendant—Cross.

Q. And you were on the outside? A. Yes, I was on the outside, because I complained with kidney trouble, and I could not lay on my left side.

Q. Was that the first time that night that you had ever had a quarrel with your wife? A. That was the first time. 10

Q. You had never quarreled with your wife before that night? A. No.

Q. Now, Mr. Mangino, why did you bring back a box of plums from the market if you knew that you had shot your wife?

Mr. Hansen: I think that is based upon a false assumption of fact as I recall his testimony; he didn't know whether he shot her, he was frantic and ran away. He didn't know what happened. I think it is very improper for the prosecutor to even insinuate that. 20

The Court: There is evidence here that the revolver went off in the struggle and that his wife was shot or went down in the excitement. I will allow it and give you an exception.

(Exception signed, sealed and allowed accordingly. CHARLES M. EGAN, Judge.) 30

A. I did not know that I had shot my wife, and when I got to the market then I thought better to take the plums with me, otherwise they would rot.

Q. The ten dollar bill which lay on the counter and the other one which your wife had in her hand on the floor you got, did you not? A. I didn't get anything. 40

Q. Well, who did get it? A. I don't know.

Antonio Mangino, the Defendant—Cross.

Q. You heard your son Joseph testify that you got the money? A. After then all the money that was found in the house was given to me.

Q. And you saw no money in your wife's hand that morning besides the ten dollar bill? A. No.

10 Q. How much time did you spend at the market? A. For ten years I went twice a week.

Q. When your wife kicked you off the bed in the struggle in the room you made quite a noise, didn't you? A. I said to her, "Why do you do this to a poor old man?"

Q. And what did she say? A. Then she said to me, "You are no good to me any more."

Q. What else did she say? A. Then she got hold of the revolver and she said to me, "I will shoot you if you bother me again."

20 Q. Was that the first time your wife had ever threatened you with the revolver? A. Yes, sir.

Q. She never threatened to cut your throat, did she? A. She said that to somebody and that person repeated it to me.

Q. I mean, to you? A. No.

Q. And that night was the first time you ever had a quarrel with your wife? A. Yes, sir.

Q. Had your wife ever refused before to have sexual relations with you? A. Several times, but we never quarreled over it.

30 Q. You never tore up ten different shirts over her refusal to have sexual intercourse with you, did you? A. No, only once.

Q. When was the one time that you tore a shirt from your wife because she refused to have sexual intercourse? A. Only once.

Q. What became of the shirt? A. She repaired it. She fixed it up again.

40 Q. Wasn't the shirt torn the night before you shot her? A. Yes, it was torn.

Jacob J. Kirschner, for Defendant—Direct.

Q. Well, what became of that shirt? A. I don't know what became of that shirt because I went to the market.

Q. You did not look for it? A. My God, no.

Q. You never quarreled with your wife about money matters, did you? A. No.

Mr. Besson: That is all.

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Mr. Hansen: I forgot to ask one or two questions on direct examination.

The Court: We are trying to get through. Mr. Hansen, and have these men go back to their homes.

Mr. Hansen: Then I will not ask them. I am satisfied.

The Court: If you have any questions, go ahead.

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Mr. Hansen: No, I am satisfied.

(Witness excused.)

JACOB J. KIRSCHNER, sworn on behalf of the defendant.

Direct examination by Mr. Hansen:

Q. Where do you live, in Guttenberg? A. Yes.

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Q. Now long have you lived there? A. About seventeen years.

Q. You are at present tax collector up there? A. Yes.

Q. How long have you been tax collector? A. Seven years.

Q. I suppose by reason of your office you are familiar with almost all the people in the community there? A. Yes, I guess everybody in town.

Q. A small town? A. Yes.

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Jacob J. Kirschner, for Defendant—Cross.

Q. Do you know Mangino, the defendant in this case? A. Very well.

Q. Did you know his wife? A. Very well.

Q. How long have you known them? A. Well, I have known him over twelve years anyhow.

10 Q. Do you know what Mangino's reputation was before this happening as to peacefulness in the community? A. Well, I know him as a very good reputable citizen, that is all.

Q. Do you know what his reputation is for honesty and veracity? A. Very good.

Q. Did you ever hear of him being in any kind of trouble at all up there?

Mr. Besson: I object.

The Court: Sustain the objection.

20 Mr. Hansen: That is all.

Cross-examination by Mr. Besson:

Q. How well did you know Mr. Mangino? A. I used to see him quite often, I met him almost every morning.

Q. You were not a customer of his store, were you? A. No.

Q. Never went near his store? A. Yes, I did, that is, I passed it every morning.

30 Q. You often conversed with him? A. Yes.

Q. Talked with him? A. Yes.

Q. You could understand him and he could understand you? A. Yes.

Mr. Besson: That is all.

(Witness excused.)

Mr. Hansen: The defendant rests.

Motion for a Direction of Verdict.

Mr. Hansen: I want to renew my motion for a direction of verdict at this time on the same grounds stated when I made my motion when the State's case was concluded. I want to make the same motion at this time on the same grounds.

I feel the same as I did then, if your Honor please, that the State has failed to make out any kind of a case. The evidence before the Court and jury at this time would not warrant the jury in finding this man guilty of wilfully, feloniously and deliberately killing his wife, or even of killing her in the heat of passion, which is manslaughter. I say there is no evidence, as far as I can see, that would warrant the jury in finding this man guilty of either murder or manslaughter. The assault and battery count I understand has been abandoned; and I respectfully urge your Honor to direct a verdict at this time.

The Court: I think I will let the jury pass upon the question. It is purely a question of fact, one that is for them to handle. I will deny your motion and give you an exception.

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN,
Judge.)

The Court: We will take a recess at this time until seven o'clock p. m.

(Recess until seven o'clock p. m.)

Court's Charge.

The Court thereupon charged the jury as follows:

10 The Court: Gentlemen of the Jury, the defendant at the bar, Antonio Mangino, was indicted by the Grand Jury of this county in the April, 1930, term for the crime of murder. There are three counts in the indictment, one count for murder, another count for manslaughter and another count for assault and battery. The first count charges that the defendant, Antonio Mangino, on the 5th day of July, 1930, did murder his wife, Maria Mangino. The second count charges manslaughter in that the defendant did kill and slay Maria Mangino in the town of Guttenberg on the 20 5th day of July, 1930, and the third count of the indictment charges that the defendant Mangino did on the 5th day of July, 1930, in the Town of Guttenberg, commit an assault and battery upon the said Maria Mangino.

The crime of murder in this State is defined by statute, and is as follows: Any person who, in committing or attempting to commit any unlawful act against the peace of the State of which the probable consequence may be bloodshed shall kill another shall be guilty of murder.

30 In this State murder is divided into two separate degrees, murder of the first degree and murder of the second degree.

Murder of the first degree is the more grievous form of murder, and it is that form which is perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premeditated killing. All other kinds of murder are declared to be murder of the second degree.

40 Murder of the second degree is the lesser form of murder. So that it is for you, gentlemen of

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the jury, at all times to bear in mind the elements which constitute the two degrees of murder as I have defined them to you, and then to bear in mind and distinguish between these two degrees. It will be your duty in this case if you find the defendant guilty of murder to indicate by your verdict whether you find him guilty of murder of the first degree or murder of the second degree. As to the two degrees of murder you will bear in mind that in the definition of murder of the first degree the law prescribed as necessary elements to that degree of murder the wilfulness, the deliberation, and the premeditation of the killing. In other words, the law says that murder of the first degree shall be perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate or premeditated killing, and that murder committed without these elements which I have already indicated to you, that is to say, without deliberation, without wilfulness and without premeditation, falls into the lesser degree of murder, or into the class of murder of the second degree.

You will note, gentlemen, that there are three elements, three distinct points in first degree murder: first, wilfulness; second, deliberation; and, third, premeditation.

An unlawful killing does not amount to murder of the first degree unless it is found by the jury that the accused contemplated the killing, that is, premeditated it; then determined upon this killing, that is, intended it; and then weighed such intent before carrying it into execution, that is, deliberated upon it.

Now, while I have dealt with these terms, wilful, deliberate and premeditated, in such a way as to indicate to you that they signify three separate and distinct functions or operations of the

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human mind engaged in the perpetration of the killing, I also charge you that the taking place of these functions of the human mind does not require necessarily any prescribed period of time, that the mental acts to which I have referred are capable of being performed with that degree of speed with which the human mind is proverbially capable of acting.

10 In other words, premeditation and intent to kill need not be for a day, or an hour, or even a minute, for if you gentlemen of the jury believe that there was a design and a determination to kill, distinctly formed in the mind of this defendant at any moment before the time of the shooting, which design was deliberately and with premeditation carried out, it was a wilful, deliberate and premeditated killing and therefore murder of the first degree.

20 Now, as to murder of the second degree: The law is that any person who in committing any unlawful act against the peace of the state of which the probable consequence may be bloodshed shall kill another shall be guilty of murder; and I charge you now, gentlemen, that the shooting of a revolver at the body of the deceased, by this defendant, was an unlawful act against the peace of this state likely to be attended by the consequence of bloodshed, so that the killing here is presumed to be malicious and is therefore murder, unless and until the defendant produces facts and circumstances from which justification, excuse or extenuation may arise.

30 If all that you find in this case is that the defendant is guilty of murder only because the killing was the unlawful act of this defendant which I have just indicated to you, and because you find no evidence in the case to justify, excuse or
40 extenuate the killing, you can only find the degree

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of murder in the second degree. The burden is upon the state to raise the degree from the second to the first degree by proving to you that the killing was not only the result of the intentional doing of that unlawful act of shooting the dead woman, but, in addition, that the killing of the decedent was wilful, deliberate and premeditated; and these terms I have already explained to you. 10

Now we come to the count in the indictment which charges this defendant with the crime of manslaughter. For the purpose of this case it is sufficient to say to you that manslaughter is where a person kills another upon a sudden transport of passion or heat of blood, upon a reasonable provocation and without malice.

I would suggest to you gentlemen that you first consider the charge of murder, and should you fail to find that the defendant is guilty of either the first or the second degree of murder under the rules which I have already laid down to you that you then proceed to consider the count for manslaughter. You will note in the definition of the crime of manslaughter which I have given to you that the killing must have been done upon a sudden transport of passion or heat of blood, upon a reasonable provocation and without malice, for you see, gentlemen, if the elements of malice are present the killing cannot be manslaughter but is murder of one or the other degree. Of course, if you find in your deliberations that the state has proven to you that the defendant is guilty of murder there will be no need on your part to give consideration to the count of manslaughter; and, in this state, before you can find that the crime of which the defendant is guilty is manslaughter, you must satisfy yourselves that there was present the reasonable provocation for any transport of passion or heat of blood on the 20 30 40

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part of the defendant. Observe that the mere fact that the defendant in killing the deceased may have had his blood up, as the saying goes, or may have been in a passion, would not place his act within the definition of manslaughter unless there were acting upon him the influence of reasonable provocation, something adequate to provoke hot blood or transport of passion. I say this to you, gentlemen, because unless you find that there was such reasonable provocation and that upon that provocation the defendant was seized with a sudden transport of passion or heat of blood, the crime is not manslaughter but murder of either the first or second degree, unless of course you find from the evidence that the defendant had excuse or justification for the killing.

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In viewing the count for manslaughter in this case weigh and consider carefully the circumstances attending upon the shooting, the chain of events that lead up to the shooting. Examine the conduct of the deceased wife toward the defendant, and the conduct or attitude of the defendant toward the decedent as expressed in the actions and words of either or both of these people insofar as it may have had to do with the shooting, and ascertain whether or not from all the attendant circumstances there was anything present which might be calculated to your minds to provide a provocation by which the defendant was reasonably thrown into a passion or heat of blood, and in which passion or heat of blood he shot his wife.

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Now, the third count in the indictment, that for assault and battery has been abandoned by the prosecutor, therefore you need not consider it.

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Now, gentlemen of the jury, the defendant in this case, as well as every defendant who comes

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into court and is placed on trial is presumed by the law to be innocent and the burden is placed upon the state to prove each and all of the essential elements of the crime charged against him beyond a reasonable doubt. The defendant is not required to come into court and prove that he is innocent. The burden is placed upon the state to prove him guilty beyond a reasonable doubt. Our law, gentlemen, aims to be just and humane, and whenever a person charged with crime is placed on trial, the law casts about him a shield in the form of a presumption of innocence, and that shield is not removed, it is not penetrated and it is not destroyed until each and all of the essential elements of the crime charged against him have been established beyond a reasonable doubt.

Your natural inquiry will be: what does the court mean by this term reasonable doubt which he has used so frequently during the course of his instruction to the jury? A reasonable doubt, gentlemen, is not a mere possible doubt. It is not a fanciful doubt. It is not a capricious doubt. It is not something that is taken out of the air and cast into this case for the purpose of confusing the minds of the jurors. It is rather 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. If, therefore, after you have carefully compared and considered all the evidence in this case, your minds are in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge, you have what the law says is a reasonable doubt, and it is your duty to give the defendant the benefit of that

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doubt; but you are not required to give him the benefit of anything except such a reasonable doubt.

10 Now, if at any time throughout your deliberations in this case, you feel that you have a reasonable doubt as to any essential or material elements of the case produced before you by the state you will in every such case give to the defendant the benefit of that doubt and you shall follow that rule throughout all your deliberations and in your entire consideration of the case, having in mind that the burden of proof here is upon the state and that that burden is to prove the defendant guilty beyond a reasonable doubt as I have explained it to you.

20 Now, if the state has failed to prove beyond a reasonable doubt that the defendant is guilty either of murder of the first degree or murder of the second degree or manslaughter, then it is your duty to return a general verdict of not guilty and acquit the defendant. If on the other hand the state has proved to you beyond a reasonable doubt that the defendant did commit this crime of either first degree murder or second degree murder or manslaughter, then it is your duty to find by your verdict that the defendant is guilty of this crime, be it either murder of the first degree or murder of the second degree or manslaughter.

30 Let me add, gentlemen, that when I say to you that the state's burden is to prove the defendant guilty beyond a reasonable doubt, I mean that the state must prove to you beyond a reasonable doubt each and every material element of the crime.

40 Now the defendant in this case, gentlemen of the jury, has offered evidence as to his general reputation in the community where he lives for

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integrity, honesty and peacefulness. Several witnesses have testified that his reputation for those virtues and qualities is good. It was proper and competent for the defendant to offer that evidence because the evidence of previous good character or reputation tends to render it improbable that one possessing such virtues and qualities would be likely to permit such a crime as is charged against him; but evidence of previous good character or reputation manifestly ought not to prevail against a convincing belief that the defendant committed the crime as charged if such belief is established by the evidence in the case beyond a reasonable doubt, because it is quite possible that even a person of the highest character and reputation in the community might fall from his lofty position and estate and commit the meanest crime at a time when he possesses in the opinion and estimation of the community, a good reputation for those virtues and qualities which ordinarily would repel such a belief. If you should be convinced by this evidence that the defendant's general reputation for honest, integrity and peacefulness in the community in which he lived prior to the time of the alleged commission of the crime was good, but in spite of that fact you are also convinced beyond a reasonable doubt from all the evidence in the case that he committed the crime as charged, it is your clear duty to convict him. You will therefore take this evidence of previous good character and reputation of the defendant and carefully consider it in connection with all the other evidence in the case, giving to all the evidence such weight and credit as you believe it is entitled to, and if upon such consideration there exists in your minds a reasonable doubt of his guilt, even though that doubt be engendered

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merely by his previous good character or reputation, you should give him the benefit of that reasonable doubt and acquit him.

10 Now, gentlemen of the jury, you are the sole and exclusive judges of the facts in this case. I cannot determine the facts for you. Counsel cannot determine the facts for you. It is wholly and solely your province to determine where the truth lies in this case. And how can you determine that from the evidence? You cannot go beyond the sworn testimony, gentlemen of the jury. You have heard the testimony here. You have had an opportunity of judging the different witnesses who appeared here. How did they impress you? Whom do you believe was telling the truth? Did the witnesses for the State have any particular reason for testifying as they did? Did they tell the truth? Did they have any reason for testifying against this defendant? Was there any reason in the world for these witnesses who appeared here for the State to pick out this old man and charge him with this crime? Was there any reason for picking this man out of the entire community and charging him with this crime? That is for you to determine. You may also take into consideration that there is no person in the entire world more interested in the outcome of this case than the defendant. Has that interest caused him to color his testimony and to depart from the paths of truth? I cannot tell you that. Counsel cannot tell you that. We may have our opinion and we can express it, but there is no person who can determine that but you. After all, gentlemen of the jury, you are the judges of the credibility of the witnesses, and it is for you to say whether or not they have told the truth.

40 Now, in the event, gentlemen, that your verdict shall be that the defendant is guilty of murder in

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the first degree it will be necessary for you to have in mind a statute of this State which I shall now read to you. This statute gives to you as the jury in this case if you find the defendant guilty of murder in the first degree the power to make a recommendation to the Court relative to the punishment which shall be inflicted upon the defendant. The statute I refer to reads as follows: "Every person convicted of murder of the first degree, his aiders, abettors, counsellors and procurers, shall suffer death, unless the jury shall by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment for life at hard labor, in which case this and no greater punishment shall be imposed."

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Now, gentlemen, that is the statute. So that if upon returning a verdict of murder of the first degree you make no recommendation the penalty meted out to this defendant shall be death, and if in the event of your returning a verdict of murder of the first degree you shall determine that the penalty to be imposed upon this defendant shall be imprisonment at hard labor for life it will be necessary by your verdict, and as a part thereof, for you to recommend imprisonment at hard labor for life, in which case that will and must be the punishment imposed. In this case, however, gentlemen, I feel it is incumbent upon me to inform you that the Court of Pardons in this State now have the power to change or reduce or quash or set aside whatever result you may have arrived at in this manner; whether you fix the penalty at life imprisonment or not, they can reduce or change it; but they cannot make the punishment any greater than you fix it.

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Counsel for the defendant during the course of the trial, made certain motions, for a direction

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Court's Charge.

of a verdict and a dismissal of the indictment, which motions I overruled and denied. You are not to take that into consideration, gentlemen of the jury, that he made those motions and that I denied them. The mere fact that I did deny them was no indication of the bend or inclination of the
10 mind of the Court. Those were mere technical points that the defendant had a right to take advantage of and I felt and still do feel that this is a case entirely for your consideration, it being a fact, and this defendant had a right to a trial before a jury of his peers. For that reason I left it to you.

Now, gentlemen of the jury, there is nothing further that I can say other than to express to
20 you the appreciation of the Court for the patience you have displayed and the attention you have exhibited throughout this entire case. I was anxious to see the case concluded tonight because I know you are all busy men and that you have made a sufficient sacrifice and I think that you all will be pleased to return to your homes tonight.

Now, gentlemen of the jury, the last word I have got to say to you is this: that when you entered
30 this jury box each one of you raised your hand to Almighty God and declared that you would render a true and just verdict. Gentlemen of the jury, I know that you are going to do that and when you have done it you will have fully performed the measure of duty which the law imposes upon you and in that event you cannot but satisfy the State of New Jersey, you cannot but satisfy the defendant, and you cannot but satisfy your own consciences.

An officer may be sworn.

Court's Charge.

Mr. Hansen: May I have a general exception to the charge?

The Court: Yes.

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN, 10
Judge.)

At 10:25 P. M. the jury returned to the Court room.

(The jury was polled by the clerk.)

The Court: I understand, gentlemen, that there is some question you want to take up with the Court about some testimony? 20

The Foreman: May it please your Honor, some of the jurymen would like to hear the testimony of the young truck driver this morning in the early part of the testimony.

The Court: Is that De Angelo?

The Foreman: Yes.

The Court: It will all have to be read. You can't read part of it.

(Thereupon the complete testimony of the witness Joseph De Angelo was read to the jury by the Court stenographer from the transcript of the record, pages 154 to 165 inclusive.) 30

The Court: Is that all you wanted, gentlemen?

The Foreman: Yes, your Honor, thank you.

The Court: All right, you may retire.

(Thereupon the jury returned to the jury room.)

40

Verdict.

(Note by the Stenographer: Counsel for the defendant and for the State, as well as the defendant, were present in the Court room during the above proceeding.)

10 At 11:45 P. M. the jury returned to the Court room.

(The jury was polled by the clerk.)

The Clerk: Gentlemen of the jury, have you agreed upon your verdict?

The Foreman: We have.

The Clerk: What say you, Mr. Foreman, do you find the prisoner at the bar, Antonio Mangino, guilty or not guilty, and if so, of what?

20 The Foreman: We find the prisoner guilty of murder in the second degree.

The Clerk: You say you find the defendant Antonio Mangino, guilty of murder in the second degree?

The Foreman: We do.

The Clerk: So say you all?

The Foreman: We do.

The Court: All right, gentlemen, you are discharged with the thanks of the Court.

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Certificate.HUDSON COUNTY COURT OF OYER
AND TERMINER.

STATE OF NEW JERSEY,

vs.

ANTONIO MANGINO.

On Indictment. 10
Certificate.

I, CHARLES M. EGAN, Judge of the Hudson County Court of Oyer and Terminer, before whom the above indictment was tried, do certify that the foregoing is the entire record of the proceedings, including the testimony of the witnesses had and taken upon the trial of the indictment in the above-stated cause in the case of the State against Antonio Mangino. 20

Dated March 2nd, 1931.

CHARLES M. EGAN,
Judge.

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40

Assignments of Error.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	<p style="text-align: center;">STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">ANTONIO MANGINO, Plaintiff-in-Error.</p>	<p style="font-size: 3em; line-height: 1;">}</p> <p>On Writ of Error. Assignments of Error.</p>
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20 Afterwards, to wit, before our Judges of our said Court of Errors and Appeals, at Trenton, comes the said Antonio Mangino, by Lewis G. Hansen, his attorney, and says that in the record and proceedings aforesaid and also in the matter recited and contained in said bill of exceptions and also in the giving of judgment upon the indictment there is manifest error in this, to wit:

30 1. Because the Trial Court permitted defendant to be tried by a struck jury, thereby compelling defendant to stand trial without being in a position to avail himself of the requisite number of peremptory challenges.

2. Because the Trial Court permitted defendant to be tried by a struck jury, compelling defendant to stand trial before a jury whose occupations were unknown to him.

3. Because the Trial Court permitted the witness McCormick to read aloud from the Coroner's minutes to refresh his memory.

40 4. Because the Trial Court permitted the witness Tedesco to answer the following question:

Assignments of Error.

“You heard the doctor testify the hands were like that (indicating)?”

5. Because the Trial Court permitted the witness Vogt to answer the following question:

“And has he ever transacted any business with you in your Court before this time?” 10

6. Because the Trial Court permitted the witness Vogt to answer the following question:

“Now on these occasions that you had dealings with him how was your conversation conducted, in English or in Italian?”

7. Because the Trial Court admitted in evidence an alleged confession of the defendant.

8. Because the Trial Court admitted in evidence alleged testimony taken at Coroner’s inquest. 20

9. Because the Trial Court admitted in evidence an alleged statement of the defendant.

10. Because the Trial Court admitted in evidence a certain gun alleged to have belonged to defendant.

11. Because the Trial Court permitted witness Reilly to answer the following question: 30

“Did you find a shirt?”

12. Because the Trial Court permitted witness Joseph Mangino to answer the following question:

“What was the time you said your father hit your mother when you say he struck her?”

The Witness: 1917.”

Assignments of Error.

13. Because the Trial Court refused to permit witness Joseph Mangino to be asked the following question on cross-examination:

“Isn’t it a fact, Mangino, you are charged with three different offenses of carnal abuse at the present time?”

10

14. Because the Trial Court permitted the witness Joseph Mangino to answer the following question:

“Well is that the gun?”

15. Because the Trial Court permitted the witness Joseph Mangino to answer the following question:

20

“Who collected the rent for the property which your mother and father owned together?”

16. Because the Trial Court permitted the witness Joseph Mangino to answer the following question:

‘Just tell us what took place.’

17. Because the Trial Court permitted the witness Agnes Healy to answer the following question:

30

“Did you ever hear Mrs. Mangino threaten to cut her husband’s throat?”

18. Because the Trial Court refused to direct a verdict of acquittal at the close of the State’s case.

19. Because the Trial Court permitted the defendant Antinio Mangino to answer the following question:

40

Assignments of Error.

“Now, Mr. Mangino, why did you bring back a box of plums from the market if you knew that you had shot your wife?”

20. Because the Trial Court refused to direct a verdict of acquittal at the close of the entire case.

10

21. Because the Trial Court in charging the jury defined murder in the second degree as follows:

“All other kinds of murder are declared to be murder in the second degree.”

22. Because the Trial Court in charging the jury stated to the jury as follows:

“So that it is for you gentlemen of the jury at all times to bear in mind the element which constitutes the two degrees of murder as I have defined them to you.”

20

23. Because the verdict of the jury was against the weight of the evidence.

24. Because the Trial Court in charging the jury stated to the jury as follows:

“And I charge you now, gentlemen, that the shooting of a revolver at the body of the deceased by this defendant was an unlawful act against the peace of this State likely to be attended by consequence of bloodshed.”

30

LEWIS G. HANSEN,
Attorney for and of Counsel with
Plaintiff-in-Error.

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Specification of Causes for Reversal.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTONIO MANGINO,
Plaintiff-in-Error.

} On Writ of Error.
} Specification of
} Causes for
} Reversal.

20

And now comes the said Antonio Mangino by Lewis G. Hansen, his attorney, and says that in the record and proceedings aforesaid and also in the giving of judgment aforesaid, there is manifest error and said Antonio Mangino says that said judgment should be reversed and assigns the following reasons or causes:

30

1. Because the Trial Court permitted defendant to be tried by a struck jury thereby compelling defendant to stand trial without being in a position to avail himself of the requisite number of peremptory challenges.

2. Because the Trial Court permitted defendant to be tried by a struck jury compelling defendant to stand trial before a jury whose occupations were unknown to him.

3. Because the Trial Court permitted the witness McCormick to read aloud from the Coroner's minutes to refresh his memory.

40

4. Because the Trial Court permitted the witness Tedesco to answer the following question:

Specifications of Causes for Reversal.

“You heard the doctor testify the hands were like that (indicating).”

5. Because the Trial Court permitted the witness Vogt to answer the following question:

“And has he ever transacted any business with you in your court before this time?” 10

6. Because the Trial Court permitted the witness Vogt to answer the following question:

“Now on these occasions that you had dealings with him how was your conversation conducted, in English or in Italian?”

7. Because the Trial Court admitted in evidence an alleged confession of the defendant.

8. Because the Trial Court admitted in evidence alleged testimony taken at Coroner's inquest. 20

9. Because the Trial Court admitted in evidence an alleged statement of the defendant.

10. Because the Trial Court admitted in evidence a certain gun alleged to have belonged to defendant.

11. Because the Trial Court permitted witness Reilly to answer the following question: 30

“Did you find a shirt?”

12. Because the Trial Court permitted witness Joseph Mangino to answer the following question:

“What was the time you said your father hit your mother when you say he struck her? 40

The Witness—1917.”

Specifications of Causes for Reversal.

13. Because the Trial Court refused to permit witness Joseph Mangino to be asked the following question on cross-examination:

“Isn’t it a fact, Mangino, you are charged with three different offenses of carnal abuse at the present time?”

10

14. Because the Trial Court permitted the witness Joseph Mangino to answer the following question:

“Well is that the gun?”

15. Because the Trial Court permitted the witness Joseph Mangino to answer the following question:

20

“Who collected the rent for the property which your mother and father owned together?”

16. Because the Trial Court permitted the witness Joseph Mangino to answer the following question:

“Just tell us what took place.”

17. Because the Trial Court permitted the witness Healy to answer the following question:

30

“Did you ever hear Mrs. Mangino threaten to cut her husband’s throat?”

18. Because the Trial Court refused to direct a verdict of acquittal at the close of the State’s case.

19. Because the Trial Court permitted the defendant Antonio Mangino to answer the following question:

40

Specifications of Causes for Reversal.

“Now, Mr. Mangino, why did you bring back a box of plums from the market if you knew that you had shot your wife?”

20. Because the Trial Court refused to direct a verdict of acquittal at the close of the entire case. 10

21. Because the Trial Court in charging the jury defined murder in the second degrees as follows:

“All other kinds of murder are declared to be murder in the second degree.”

22. Because the Trial Court in charging the jury stated to the jury as follows:

“So that it is for you gentlemen of the jury at all times to bear in mind the elements which constitute the two degrees of murder as I have defined them to you.” 20

23. Because the verdict of the jury was against the weight of the evidence.

24. Because the Trial Court in charging the jury stated to the jury as follows:

“And I charge you now gentlemen, that the shooting of a revolver at the body of the deceased by this defendant was an unlawful act against the peace of this State likely to be attended by consequence of blood shed.” 30

LEWIS G. HANSEN,
Attorney for and of Counsel with
Plaintiff-in-Error.

Joinder in Error.NEW JERSEY COURT OF ERRORS
AND APPEALS,

MAY TERM, A. D. 1931.

10

 THE STATE OF NEW JERSEY,
Defendant-in-Error,
*vs.*ANTONIO MANGINO,
Plaintiff-in-Error.
 In Error to
Hudson Oyer
and Terminer.

Joinder in Error.

20

And now comes the said State of New Jersey, by John Drewen, Prosecutor of the Pleas of the County of Hudson, 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 aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

30

 JOHN DREWEN,
Prosecutor of the Pleas,
County of Hudson.

40

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, Defendant-in-Error,	}	In Error.
<i>vs.</i>		
ANTONIO MANGINO, Plaintiff-in-Error.		

BRIEF OF PLAINTIFF-IN-ERROR.

The defendant, Antonio Mangino, was indicted for murder of his wife, Maria, and tried before Hon. Charles M. Egan, Common Pleas Judge, and a struck jury sitting in the Hudson County Court of Oyer and Terminer. He was found guilty of Murder in the Second Degree and was on February 6th, 1931, sentenced to be confined in State Prison for twenty (20) years, which sentence he is now serving.

Facts.

The facts of the case according to the contention of the defendant (and practically conceded by the State) are as follows:

Defendant was an Italian living in the Town of Guttenberg since 1903 where he and his wife conducted a grocery store. He had been married to his deceased wife for forty (40) years. He had five children by this marriage, four of whom are still living (p. 200, l. 40). He had always lived happily with his wife and family except that he was compelled to have his son, Joseph, arrested once (p. 202, l. 10). On July 4th, 1930, he accom-

panied his wife to the home of one of their daughters and stayed till 11 P. M. One of his sons-in-law drove them home. He and his wife then went to bed and he made a request that they have sexual intercourse which she refused. He then went to sleep. His son, Joseph, arrived home about 2 A. M., July 5th. This woke him up and he then again sought intercourse with his wife which she refused (p. 204, l. 10). She shoved him away from her and kicked him in the stomach, he fell on the floor. She then seized a revolver which she had under the pillow and said to defendant "I will kill you so that you will not trouble me any more." He took the revolver away from her. She then got dressed and went down to the store. Then he dressed and went down to the store. He helped her lift a can of milk into an ice tub when his wife suggested that he go to market (p. 205, l. 5). Then there was an argument between them over \$10.00. As he was leaving the store his wife called him back and demanded that he return the revolver to her. He placed the revolver on the counter in the store and she made a grab for the revolver (p. 205, l. 20). He also grabbed the revolver and they both had hold of it at the same time. She then said, "Give me my revolver". He replied, "I will not give it to you, because if you didn't kill me before you will kill me now." They were both pulling at the revolver when suddenly it went off. He was scared, put the revolver in his pocket and proceeded to Hoboken where he took a ferry boat (p. 205, l. 40). He threw the revolver into the Hudson River. He then proceeded to the market where he bought and paid for certain articles among which was a box of prunes. He carried this box of prunes on his shoulder and returned to Guttenberg. When he arrived home he found that his wife was dead. This was the first he knew that his wife had been shot (p. 207, l. 10). A coroner's

inquest was held on July 16th, 1930, at which defendant was called as a witness. He testified through an Italian interpreter and denied all knowledge of the alleged crime (p. 43, l. 20).

Defendant was arrested and charged with murder and confined in the Town Jail of Guttenberg, N. J. While there it is alleged that through one Joseph Puglia, official interpreter of the Hudson County Courts, on July 14th he made a statement denying any part in the crime (Ex. S-18, p. 133, l. 20). This statement was made in Italian through said Joseph Puglia to William Charlock and Edward K. Patterson, prosecutor's detectives.

On July 21st, 1930, while still in custody, defendant made another statement through Joseph Puglia, Official Italian Interpreter, to Chief Baum of the Guttenberg Police, William Charlock, prosecutor's detective and William F. Vogt, the Recorder of the Town of Guttenberg, N. J. (Ex. S-14, p. 77, l. 30).

In this latter statement, defendant gave his version of the killing which is substantially what he told on the witness stand at the trial, claiming that the gun went off accidentally in a struggle over its possession.

Between the time of the taking of the above statements and the trial (Exhibits S-14 and S-18) Joseph Puglia, the official Italian Court Interpreter who interpreted both statements, died (p. 58, l. 20).

Specification of Errors.

1. The verdict was against the weight of the evidence.
2. Defendant's motions to direct verdict of acquittal should have been granted.
3. The Court erroneously charged the jury as follows:

“And I charge you now, gentlemen, that the shooting of a revolver at the body of deceased by this defendant was an unlawful act against the peace of this state likely to be attended by consequence of bloodshed.”

4. The Court erred in receiving in evidence an alleged confession of the defendant and a statement alleged to have been made by him.

5. The Court prevented defendant from showing interest of State's principal witness in the outcome of the case.

6. The Court erred in permitting the Coroner's Minutes to be admitted in evidence.

ARGUMENT.

The Verdict Was Against the Weight of the Evidence.

The State in this case attempted to prove that defendant had wilfully and feloniously murdered his wife. The burden was upon the State to prove each of the ingredients of this crime to the jury and establish his guilt beyond a reasonable doubt.

This the State has failed to do.

What the State did prove was this:

It attempted to prove by an alleged confession of the defendant (Ex. S-14, p. 77, l. 30) that deceased died as a result of wound received while defendant and deceased were grappling for the possession of a gun (Ex. S-14, p. 79, l. 20), and that the killing was accidental. This alleged confession was introduced in evidence by the State and was a part of the State's case and is the only evidence in the case which the jury could have legally considered in determining how the shooting occurred.

There was no other testimony introduced to show that the killing occurred in any other way and that testimony stood unimpeached before the Court.

The State then attempted to prove that the defendant had lied about the case on other occasions:

1. It called one James F. McCormack, a stenographer, and through him attempted to prove that at the Coroner's inquest defendant (Ex. S-13, p. 46) did not tell the same story of the crime as he told in his alleged confession. A careful reading of his statement before the Coroner does not disclose that the Coroner or anyone else asked the defendant whether he shot his wife or whether he even knew how she came to be shot. He did not deny that he knew how she was shot. He answered every question as put to him and probably if he had been asked he would have explained how it happened. This statement did not aid the State in anyway proving the defendant guilty. It merely showed that defendant did not volunteer the truth at the Coroners inquest.

2. It called William Charlock and Edward Patterson, county detectives, and they testified that on June 14th, 1930, the defendant made a statement to them through Joseph Puglia, an Italian interpreter (Ex. S-18, p. 133, l. 20), in which statement the defendant did not admit the crime.

3. It attempted to prove that in his alleged confession (Ex. S-14, p. 79, l. 30) defendant had lied about the disposal of the weapon, by producing as witnesses, Thomas Farrell, Jr. (p. 80, l. 1), George Miller (p. 85, l. 1), Charles Miller (p. 87, l. 20), who testified that on or about October 15th, 1930, a gun was found in a vacant lot near the scene of the crime. This gun the State attempted to prove was the gun of the defendant by the testimony of

one Charles O. Gunther (p. 139, l. 1) who testified that the gun found had fired the fatal bullet.

By the negative proof as above set forth the State attempted to show that the defendant lied in his confession as to the disposal of the gun and when first questioned the defendant did not immediately volunteer the truth but failed to voluntarily reveal it although he was not directly questioned on this point by either the Coroner or the detectives.

So much for the evidence adduced by the State to prove guilt. At the close of the State's case we find this situation with regard to guilt:

The alleged confession of the defendant giving the only version of the details of how the shooting occurred contradicted only in the particulars of the disposal of the gun and standing uncontradicted as a part of the State's proof in all other essentials. So up to that point the State itself proved that deceased had met her death by the accidental firing of a revolver during a tussle over its possession.

The defense put the defendant on the stand and he testified practically to the same story as told in his confession (p. 200) thus corroborating the proof of the State that the shooting had been accidental. Submitted to vigorous cross-examination by the prosecutor his story remained unchanged. The defense produced two character witnesses (William J. Eypper, p. 196, and Jacob Kushner, p. 219), and the case was closed and submitted to the jury.

The verdict of guilty based on such testimony was clearly against the greater weight of the evidence.

The State's proof and the defendant's evidence coincided on the manner in which the shooting occurred. This was the only evidence on that point.

Therefore, it became the duty of the jury to find that the shooting was accidental as the proof of both sides was that it was accidental.

Even if the jury believed that the defendant had lied as to the disposal of the gun and that thereby his confession and his testimony at the trial were discredited this would leave the case barren of any proof whatsoever sufficient to justify a verdict of murder in the second degree.

The only conclusion which can be drawn from such a verdict is that it was the result of passion, prejudice or *mistake*.

Defendant's Motions to Direct Verdict of Acquittal Should Have Been Granted.

At the close of the State's case (p. 199) a motion was made in behalf of the defendant for a directed verdict of acquittal.

It is felt that based on the testimony adduced by the State up to that point in the case the State had failed in its duty to make out even a *prima facie* case against the defendant. Without reviewing at great length the testimony produced by the State (which was done under the next preceding heading) suffice it to say that what the State had proved when it rested was that the shooting was accidental. This was strengthened and corroborated by the defense. The essential facts were practically agreed on by both sides.

When there are no disputed essential facts the Court should direct a verdict.

At the close of the entire case the defense was even in a more favorable position, the defense by its testimony having corroborated the evidence adduced by the State that the shooting was accidental.

The Court Wrongfully Charged the Jury By Removing From Them, Consideration of An Essential Fact.

The Court said in its charge:

“And I charge you now, gentlemen, that the shooting of a revolver at the body of deceased, by this defendant, was an unlawful act against the peace of this state likely to be attended by consequence of bloodshed” (p. ~~227~~²²⁴, l. 26).

It is contended by the defendant that by so charging the jury the Court took away from their consideration and deliberation a vital fact in the case.

Here one of the main points for the jury to consider is, “Did Mangino wilfully and feloniously kill his wife?” and the Judge charges them as a *fact* that there was a shooting and that the shooting was an unlawful act. If the death occurred in the manner both the State and Mangino said it did, that is, accidentally, it was not a shooting and was not an unlawful act, and if the jury believes Mangino they could not but then say that the shooting was accidental. The Judge should have told the jury that if they did not believe the defendant, then the shooting was an unlawful act. The Judge, however, decided this question for the jury and said that the shooting (no matter what its circumstances) was *ipso facto* unlawful.

This clearly took away from the jury their right to determine a question of fact.

This is not cured by that part of the Judge's charge (p. 230, l. 7) wherein he says, “I cannot determine the facts for you”, when in truth the Judge has already determined an essential fact and deliberately and definitely charged the jury that there was a shooting and said shooting was

unlawful. When the Court charges a jury correctly in one part of its charge and incorrectly in another there is reversible error, for then the jury cannot determine which part is correct and which is wrong.

State v. Guarino, 105 N. J. L. 549;

State v. Topack, 78 N. J. L. 208;

State v. Parks, 96 N. J. L. 361.

The jury could have found and should have been permitted to find that the shooting was not unlawful.

The jury might have believed the defendant's story. It was not unlawful for defendant or his wife to have a revolver on their premises; it was not unlawful for him to have this gun in the grocery store; it was not unlawful for the wife to request her husband to hand her the gun and it was not unlawful for them to grapple over its possession and there was nothing unlawful on the part of the defendant in attempting to wrest the gun from the grasp of his wife. There is no evidence who fired the shot. There is no evidence that the defendant fired the shot. The Court in charging the jury said that "the shooting of a revolver at the body of deceased was an unlawful act". That certainly was a fact question to be left to the jury.

This is not a case where the Judge expressed his opinion as to the evidence or explained to the jury how certain phases of the testimony impressed him, or where the Judge by his peculiar experience commented on the effect of certain testimony if believed. Here the Judge charged the jury as a fact that defendant shot a revolver at the body of the deceased and that such shooting was unlawful.

Authorities in New Jersey have held that even where a fact is undisputed the Judge must leave to the jury whether or not it should be believed.

“In a statutory rape prosecution the mere fact that the mother of the prosecutrix testified that she did not become 16 years of age did not import absolute verity which the jury was bound to accept.

As age of the prosecutrix and defendant is the essence of the crime alleged there can be no good reason why it was only necessary that the jury should be convinced beyond a reasonable doubt that the act was committed before November 17th and not necessary to be convinced beyond a reasonable doubt that both prosecutrix and defendant were of an age which brought their act within the application of the statute.

We therefore think that this instruction was error harmful to the defendant. Firstly, because it took from the decision of the jury the question of the age of the prosecutrix and, secondly, because it limited the jury's province solely to the finding of whether or not the act charged in the indictment was committed before November 17th; and, thirdly, because *it excluded the defendant from having the benefit of a reasonable doubt on all the testimony adduced in the case to establish his guilt.*”

State vs. Pitman, 119 Atl. 438 (not officially reported).

“In a prosecution for carnal abuse of a girl under 16 years, where the testimony of the girl and her father that she was only 15 years of age was not contradicted, it was nevertheless error to give instructions which assumed that she was under the age of 16 since the credibility of those witnesses was a question for the jury.”

State vs. Lanto, 98 N. J. L. 401, 121 Atl. 139.

By charging the jury as above set forth the Trial Court prevented the defendant from having the benefit of a reasonable doubt on all the testimony adduced in the case to establish his guilt.

This deprived defendant of his legal rights and was harmful error.

The Court Erred in Receiving in Evidence An Alleged Confession of the Defendant and a Statement Alleged to Have Been Made By Him, Because Such Evidence Was Hearsay.

On July 14th, 1930, while the defendant was confined in the jail at Guttenberg, N. J., he was visited by one William Charlock and Edward Patterson, county detectives. They brought with them Joseph Puglia (the Official Italian Interpreter of the Hudson County Courts) and came there for the purpose of getting the defendant to make a statement about the case (p. 123, l. 35) Charlock stating that he had interviewed all the other members of the family and wanted him to make a statement.

The interpreter asked the questions in Italian and translated them into English and Patterson wrote them down in English. Neither Charlock nor Patterson understood Italian. Charlock's testimony (p. 126, l. 10) on this point is as follows (indicating Ex. S-18, p. 133, l. 20):

“Q. All this is Puglia's statement? A. Yes.

Q. Who wrote that statement? A. Detective Patterson of the Prosecutor's Office?

Q. He was up there that day he wrote out the statement? A. Yes.

Q. He wrote out what Puglia told him, didn't he? A. That is right.

Q. Mr. Puglia asked Mangino questions in Italian didn't he? A. Yes, sir.

Q. And Mangino answered him in Italian, didn't he? A. Yes, sir.

Q. And when Puglia got through asking a question and Mangino had answered it, then Puglia told Mr. Patterson what to write in that statement, didn't he? A. Yes."

Patterson's testimony (p. 130, l. 8) is along the same lines. He just acted as an amanuensis, writing down in English what Puglia told him in English after Puglia had conversed with the defendant in Italian. Puglia read the statement over to defendant in Italian and in English and defendant signed it (p. 130, l. 40).

Puglia, the interpreter, did not testify at the trial, he having died between the time of the taking of the statement and the trial.

The Court, after objection, exception and argument, admitted the statement in evidence and it was marked (S-18, p. 133, l. 20) and read to the jury by the Prosecutor. In it the defendant does not admit the crime.

It might be well to note at this time that the statement itself sets forth that it was interpreted by Joseph Puglia.

On July 21st, 1930, a week after making the previous statement and while the defendant was still in the Guttenberg jail, the defendant made what is called a confession, in the presence of Chief Baum of the Guttenberg police, Recorder Vogt of Guttenberg, Detective Charlock and Joseph Puglia (the latter two being the same men who took the previous statement on July 14th, 1930 (S-18).

From the testimony it will be observed that this statement (S-14, p. 77, l. 30) was taken under the following circumstances:

Defendant told Chief Baum he wanted to make a statement so Baum sent to the Prosecutor's office and Charlock and Puglia came up. Puglia

acted as interpreter in Italian. The defendant could not understand questions propounded by Baum (p. 70, l. 10). The interpreter asked questions in Italian and translated the answers into English which answers were reduced to writing by Recorder Vogt.

Vogt testified in part as follows (p. 61, l. 10):

“Q. As I understand your testimony you wrote the statement in English? A. Yes, sir.

Q. And the conversation between Puglia and Mangino was un-understandable to you? You could not understand it? A. I could not understand Italian, no.

Q. And you did not know what they were talking about, is that right? A. That is right.”

Charlock testified in parts as follows (p. 64, l. 10):

“Mr. Puglia spoke to him in Italian and the Recorder wrote it down in English after it was taken.”

Baum testified that it was necessary for the interpreter to warn defendant as he could not understand (p. 73, l. 10).

This statement was then received in evidence over the objection and exception of the defendant (marked S-14) and read to the jury (p. 77, l. 30).

This statement was the one in which defendant stated the gun had gone off while he and his wife were grappling for it.

The reason the defense objected to the admission of these statements in evidence was that they were based on hearsay.

The first statement (S-18) was taken entirely in Italian by Puglia and reduced to writing in English by Patterson. Not one word of English was spoken by Mangino. When Patterson testified that the statement was Mangino's he was only testifying to what Puglia had told him regarding

what Mangino had said in Italian. As far as Patterson or Charlock knew Puglia might not have been translating correctly. He might have not been talking Italian at all. We cannot presume that it was correctly translated. When Patterson read the statement to the jury he was reading Puglia's language, not the language of the defendant. He might just as well have been permitted to testify as to what some other witness had told him regarding what the defendant had said.

Suppose Mangino had made the statement to Puglia and the next day Puglia had met Patterson and Charlock and told them in English what Mangino had told him in Italian. Certainly no more flagrant violation of the hearsay rule could be imagined.

The same thing applies to the second statement, the so-called confession. Whatever warning defendant had of his legal rights was given by Puglia in Italian. None of the other witnesses knew what was being said. The statement itself was given by Mangino in Italian and Puglia told Vogt what to write down in English. There is no proof in the taking of either statement that what Mangino told Puglia in Italian was what Puglia told Patterson and Vogt in English. A link in the chain is missing.

The State made much of the fact that defendant understood some English and that the statement was read to him in English as well as in Italian. Defendant claims that this is immaterial, the statement was actually given in a foreign language and read to the jury in English without any proof being offered that the English version was a correct interpretation of what the defendant had said.

Of course it is unfortunate that the only person in the world who knew what defendant said had died but that occurrence should not be used by the

Court to put the defendant in a position where testimony otherwise clearly illegal is used as evidence against him.

This is not a situation where testimony was given at a former trial may be read to a jury at a second trial where the witness has since died.

Suppose B was the eye witness to a murder and made a statement to detectives that he had seen the murder. Then between the time of the making of the statement and the trial B died. Could the State put a detective on the stand who would be permitted to say "B told me this and I wrote it down. He is now dead but this is what he told me". The situation here is similar. A man has been sentenced to 20 years in State Prison on such testimony. For without this testimony the State could not have tried the defendant.

Every defendant has the right to be confronted by the witnesses against him and the right to cross-examination.

Here we have the words of a dead man being read into the record and used against a defendant without him being confronted with the witness or the defendant being given an opportunity to cross-examine.

The courts of New Jersey have decided what is necessary to prove a statement given in a foreign language.

Our Court of Errors and Appeals has said as follows in an opinion by the present Chief Justice:

"It was not only competent but *necessary* to prove by the *oath* of the interpreter on the witness stand, that he had truly interpreted between the prosecutor and the prisoner in order to justify the subsequent admission of the stenographer's transcript of what was said by them at the examination that he reported and this was so without regard to whether the stenographer's notes did or did

not contain a statement that the witness had so interpreted.”

State vs. Abbabato, 64 N. J. L., 658 at page 660.

Puglia's oath on the witness stand was not only competent it was necessary in order to justify the subsequent admission of the statements taken in English by Vogt and Patterson.

The Court of Errors and Appeals has approved the practice laid down in the Abbabato case in an opinion also by the Chief Justice.

State vs. Banusik, 84 N. J. L. 640.

Several other States have passed on this question.

Rhode Island—(Supreme Court) :

“On a prosecution for perjury where defendant alleged false testimony was given in a foreign language and interpreted by a court official the testimony of a witness who *did not understand* the foreign language as to statement made by the interpreter was hearsay.”

State Terline, 22 R. I. 530, 51 Atl. 205.

Tillinghast, J. (in his opinion in the above case in granting a new trial) says:

“While it is true that the interpretation of the words of a witness testifying in a foreign language by one who is sworn in Court and translates the testimony to the tribunal is not obnoxious to the hearsay rule because both the original witness and the interpreter are under oath and subject to cross-examination yet where a witness is offered to testify to the statements of another person, spoken in a language not understood by him but translated for him by an interpreter such witness

is not qualified because he does not speak from personal knowledge.”

(1 Greenleaf Ev. 16th Ed. 162 p.)

And the Court in commenting on the effect of this testimony says:

“And while we cannot say that the evidence which was offered outside of this testimony was not sufficient to have warranted the jury in finding the defendant guilty yet as this was improperly admitted and might have influenced the jury it is sufficient grounds for a new trial.”

New York:

The Court of Errors and Appeals of the State of New York has passed upon this question:

“In prosecution for murder evidence of third parties as to communication alleged to have been made by accused to interpreters, *without authentication by interpreters* held hearsay and inadmissible.

Hearsay evidence given by third parties as to communications made by accused to interpreters, containing false statements as to his reason for whereabouts on the morning after the murder, held prejudicial error, as tending to establish accused had guilty knowledge and was attempting to escape”.

People v. Chin Sing, 242 N. Y. 419, 152 N. E. 248.

California:

“In a prosecution for perjury in charging another with larceny, in a complaint filed with a justice, the stenographer at the examination of the person charged, testified to the statement of the defendant as to the identity of the person examined with the party charged and that afterward an interpreter was called in an examination continued through him *held*

that the Court properly refused to permit defendant to examine witness as to what was said through interpreter."

People vs. Jan John, 77 Pacific 950, 144 Cal. 284.

"A witness is incompetent to testify to a declaration made by a party when it is necessary to have it translated before it can be understood by the witness. It is clearly hearsay as the witness necessarily testifies to what the interpreter declares the other party has said."

People vs. Petruzo, 13 Cal. App. 569, 110 Pac. 324.

"By an act of the Legislature the reporter's notes taken before a committing magistrate upon a preliminary examination for a felony are made *prima facie* evidence of the testimony given. Held that such notes were inadmissible when the testimony was taken through an interpreter."

People vs. Lee Fat, 54 Cal. 527.

In the above case the Court says such testimony is hearsay and that defendant was deprived of his right to cross-examine the interpreter. This doctrine was affirmed in the case of

People vs. Ah Yute, 56 Cal. 119.

Texas:

"Evidence given through an interpreter before the Grand Jury is hearsay when given before the trial court by a member of the Grand Jury who could not understand the conversation between the witness and the interpreter and is inadmissible."

Cervantes vs. State, 52 Tex. Cr. 82, 105 S. W. 499.

The Court Prevented Defendant From Showing Interest of State's Principal Witness in the Outcome of the Case.

Joseph Mangino, the son of the defendant, was called as a witness by the State. His testimony was highly colored and given in a hysterical manner. He broke down and had to step aside (p. 113, l. 2). A persual of his testimony shows that although it was a very unnatural thing to do, he seemed to go out of his way to testify against his father. Under the skillful guidance of leading questions put by the prosecutor he recalled slight incidents out of the remote past to try and convict his father of the crime charged.

There must have been some reason for his eagerness to testify. In endeavoring to find this reason and to show that this witness was interested in the outcome of the case, he was asked the following question on cross-examination:

“Isn't it a fact, Mangino, you are charged with three different offenses of carnal abuse at the present time?” (~~p. 19, l. 10~~). (p. 179, l. 10)

The Court refused to permit the witness to answer this question although defendant's counsel stated as his reason that the witness was before the Court for trial on three charges of carnal abuse two days before the trial of the murder case and that the witness's cases were postponed at the request of the prosecutor from that day to a date subsequent to the trial of the murder case.

The defendant, by a line of questions of which the disputed question was the first, intended to show the facts from which the jury might reasonably infer that the witness was biased in his eagerness to aid the State and testify against his father by the hope of leniency from the State in the three

serious charges pending against him. Defendant's contention was borne out by the fact that the prosecutor had requested the adjournment until after the murder case. All of which he was prevented from proving to the jury to show that the witness was interested.

"No person shall be disqualified as a witness in any suit or *proceedings at law* or in equity by reason of his interest in the event of the same as a party or *otherwise* but such interest may be shown for the purpose of affecting his credit."

Compiled Statutes, 1910, page 2218, sec. 3.

"A witness may be asked as to his interest in giving testimony favorable to the party by whom he is called or in the result of the suit it may also be proper to interrogate him as to the extent of such interest. The inquiry may be extended to particular facts tending to prove the existence of an interest on the part of a witness."

40 Cyc., 2663.

"A witness in a criminal case may be asked whether his bail has not been increased by the District Attorney where it is sought thereby to affect his credibility by showing that he is testifying under duress so as to save himself."

People vs. Glennon, 175 N. Y. 45; 67 N. E. 125.

The Trial Court Erred in Permitting the Coroner's Minutes to Be Admitted in Evidence.

The State in its endeavor to prove that defendant made conflicting statements regarding his part in the alleged murder called one McCormack, the stenographer who had taken the testimony at the

Coroner's inquest (p. 43, l. 20). This witness had lost the original notes and had no recollection of the testimony taken. It was then sought to permit him to read the testimony although it had been given through an interpreter and there was no testimony that the interpreter was sworn. In spite of these deficiencies in the proof, the Court, over the objection of the defendant, permitted the defendant to read the complete testimony aloud to the jury. This we contend was prejudicial error, first, because the transcript from which the witness read aloud was not in evidence at the time it was read aloud before the jury by the witness (Exhibit S-13, p. 46, l. 1). The State attempted to correct this grievous injustice by the next day of the trial producing a man, Rizzutto (p. 91, l. 29), who was employed as an interpreter. He testified upon reading the transcript (he had *no* independent recollection) that he had translated correctly. Although he admits he was not sworn as interpreter, the Court thereupon admitted the transcript in evidence over defendant's objection (p. 96, l. 40).

Here we are confronted with a situation where neither the stenographer nor the interpreter remember anything of what transpired. The interpreter admits he cannot even remember if he was sworn. The record is silent as to whether or not the interpreter was sworn. But neither can remember what was said, without referring to the transcript which is presumed by both to be correct, although there was no proof of its authenticity produced.

In a case where a similar situation arose, except that the stenographer remembered the testimony, the Court reversed the conviction on the ground of hearsay.

In that case the Court held as follows:

“There is hearsay testimony of what defendant testified to where the interpreter testified that he stated in English all that defendant testified to and the official stenographer to every word which the interpreter had testified to.

In its opinion the Court in discussing the facts said, ‘A person charged with a crime makes a confession to John Doe (the interpreter). John Doe meets Richard Roe (the stenographer) and relates to him what defendant has said. At the trial John Doe (the interpreter) is called as a witness and testifies that he truly narrated to Richard Roe (the stenographer) what defendant had said. Then it is sought to have Richard Roe state what John Doe had said instead of asking John Doe such questions.’

To admit such testimony would make a new rule of evidence.”

People vs. John, 137 Cal. 220.

The violation here was even more flagrant because here neither the stenographer nor the interpreter could remember what was said without refreshing their recollection from a transcript which the stenographer says was correct only for the reason that he would have not transcribed it incorrectly (p. 44, l. 3).

Résumé.

1. The verdict was against the weight of the evidence. All the testimony shows that the shooting was accidental.
2. The Court should have granted motions for direction of verdict at close of State's case and at close of entire case, because the only evidence showed that the killing was accidental.
3. The Court took away from the jury the determination of an essential fact in the case. The

fact of whether or not there was a shooting, which shooting was unlawful.

4. The Court admitted testimony given through an interpreter without authentication and barred defendant of his right of cross-examination.

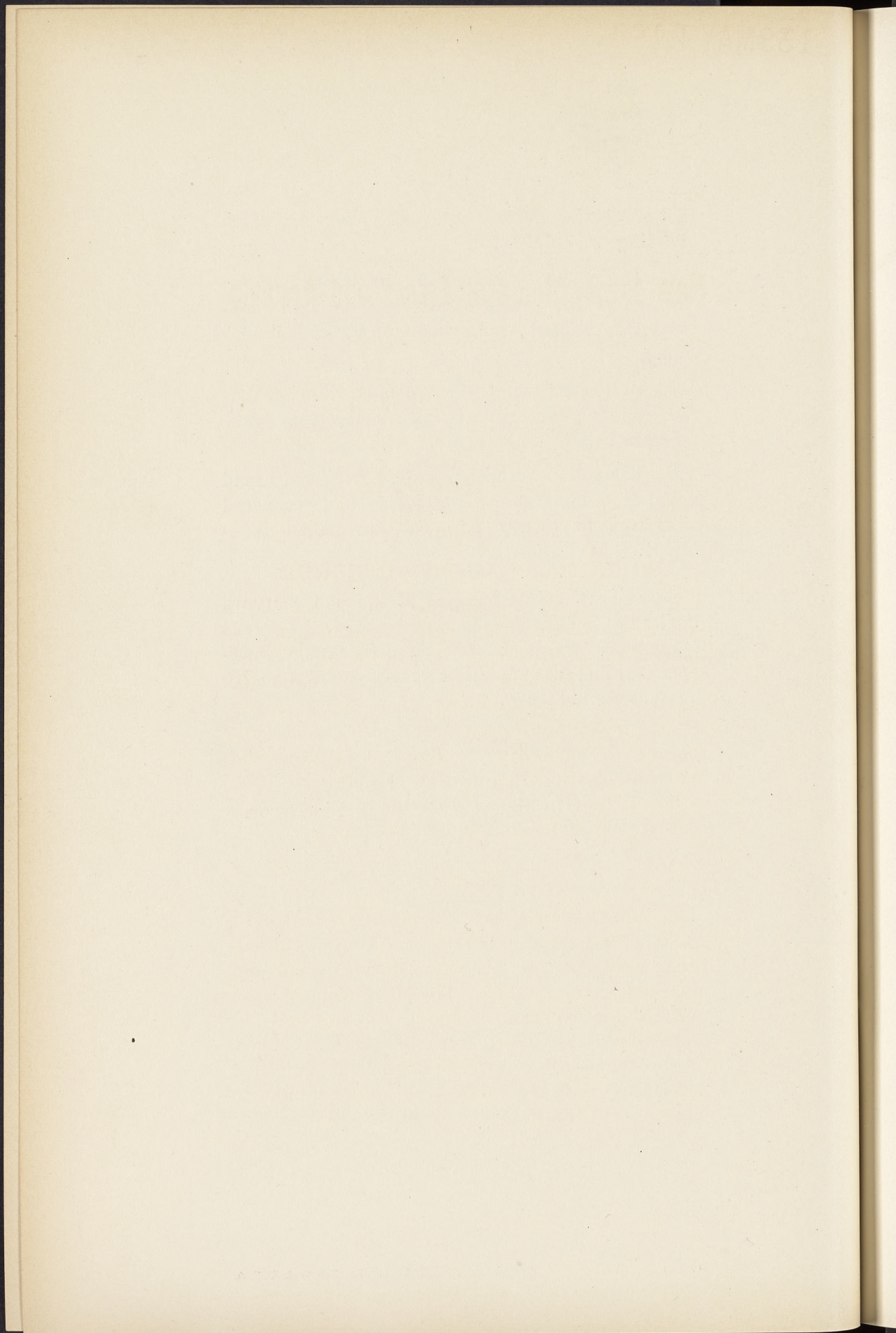
5. Defendant was prevented from showing that the State's main witness had an object in testifying in behalf of the State.

6. The Court permitted a stenographer to read aloud from minutes not in evidence and permitted witnesses to testify from an unverified transcript.

Defendant claims because of the above errors in the trial of his case he was harmed, the errors made were prejudicial to him and that the judgment against him should be reversed and a venire *de novo* should issue.

Respectfully submitted,

LEWIS G. HANSEN,
Of Counsel with Plaintiff-in-Error.



New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

v.

ANTONIO MANGINO,
Plaintiff-in-Error.

} In Error.

BRIEF OF PLAINTIFF-IN-ERROR.

The defendant, Antonio Mangino, having been indicted for murder of his wife, Maria Mangino, by the Hudson County Grand Jury of the April Term, 1930, and having been tried before the Honorable CHARLES M. EGAN, Common Pleas Judge, and a struck jury in the Hudson Oyer and Terminer, was found guilty of murder in the second degree, and was sentenced on the 6th day of February, 1931, to be confined in State Prison for 20 years. This sentence the defendant is now serving.

Facts.

Antonio Mangino, the defendant, a native of Italy, in 1903 came to live in the Town of Guttenberg, where he and his wife, Maria, owned and operated a grocery store. The Manginos had been married for a period of about 40 years and out of this marriage there were five children born, four of them still living. The domestic life of the defendant and his family was substantially a happy one. His daughters were married and he

would visit them together with his wife up to the time of her death (p. 201, l. 33; p. 202, l. 5). His son Joseph used to attack him, and on one occasion the defendant caused his arrest for one of these attacks (p. 202, ll. 5-15). On the night of July 4, 1930, the defendant and his wife agreed to close their store, both fixed a bag apiece, that is, they filled them with fruits and candies for the children to take them to them; after which they closed the store and went to their daughter's home at 19th Street, that is, the home of Rosie Mullaca (p. 202, l. 29 to p. 203, l. 8). The defendant and his wife remained at his daughter's home until about 11 o'clock. There was no trouble between them during that stay, in fact, they drank together and were talking and everything went along nicely. Then about 11 o'clock their son-in-law, who had a car, brought them home (p. 203, ll. 11-18).

Upon retiring to bed, the defendant requested his wife to have sexual intercourse with him, which she refused, and he fell asleep. Joseph, their son, came home about 2 A. M. on July 5. He was awakened by his son's homecoming, he remained awake until his son fell asleep, and thereupon he again requested his wife to have intercourse with him, but she refused and said to him, "You rotten old man, you can't touch me any more," and shoved him away and pushed him in the stomach (p. 204, ll. 10-20). He remained sitting on the edge of the bed. She kicked him off and then she got a revolver from under the pillow and threatened to kill him, and brandishing the revolver said to him, "I'll kill you so you will not trouble me any more." His wife dressed and went down to the store and he did likewise.

At the store, after helping her put a can of milk into a tub, she suggested that he go to the market

to buy stuff. He asked her for money to pay for the same and she gave him \$10. He deemed this too little and said that he had \$10 of his own and gave her back the \$10, and as he was about to leave for the market, she called him back and demanded her revolver, which he had put into his pocket when he took it from her in the bedroom (p. 204, l. 38). She said, "Before you go away, I want you to return to me my revolver," and he said to her, "The revolver is here," placing it "on something that was kind of high." She grabbed for the revolver and he did likewise, and in the struggle she said, "Give me my revolver," and he said, "I will not give it to you, because if you didn't kill me before, you will kill me now." The revolver suddenly went off in the struggle between the two. The revolver was left in his hand, and he put it in his pocket. He was scared, put the revolver in his pocket and proceeded to Hoboken where he took a ferry boat. While on the ferry boat he threw the revolver into the Hudson River. He proceeded to the market and did his shopping. Upon his return to Guttenberg, he found his wife was dead. This was the first he knew that his wife had been shot (p. 207, l. 10).

On July 16, 1930, an inquest was held at which the defendant was a witness and at which he testified through an Italian interpreter that he knew nothing of the alleged crime (p. 43, l. 20).

While the defendant was confined to the town jail of Guttenberg, after his arrest, and charged with the murder of his wife, it is alleged that he made a statement denying any part in the crime, such statement having been made through one Joseph Puglia, official interpreter of the Hudson County Court, on July 14; this statement having been made in Italian through the interpreter mentioned, to William Charlock and Edward K. Patterson, prosecutor's detectives (Exhibit S-18,

p. 133, l. 20). . On the 21st day of July, 1930, the defendant made another statement through the same interpreter to Chief Baum of the Guttenberg Police and Charlock, detective, and recorder of Guttenberg, William F. Vogt (Exhibit S-14, p. 77, l. 30). It was in this statement that the defendant gave his version of the shooting which is substantially similar to the story he told on the witness stand at the trial, that the gun went off accidentally over the struggle of its possession.

Joseph Puglia, the official Italian interpreter through whom he made these statements, died in the meantime, that is, between the time the statements were taken and the trial (p. 58, l. 20).

Specification of Errors.

1. The verdict was against the weight of the evidence and was the result of passion, prejudice or mistake.

2. Defendant's motion to direct verdict of acquittal should have been granted.

3. The Court erroneously charged the jury as follows:

“And I charge you now, gentlemen, that the shooting of a revolver at the body of the deceased by the defendant was an unlawful act against the peace of this State lightly to be attended by consequence of bloodshed.”

4. The Court erred in receiving in evidence an alleged confession of the defendant and a statement alleged to have been made by him.

5. The Court prevented the defendant from showing interest of State's principal witness in the outcome of the case.

6. The Court erred in permitting the coroner's minutes to be admitted in evidence.

ARGUMENT.

The verdict was against the weight of the evidence.

The State's burden in this case was to prove the defendant guilty of willful and felonious murder. Although it made several attempts, it failed to carry that burden, and, what is more important, it failed to establish the guilt of the defendant beyond a reasonable doubt. It is for this reason that it is claimed that the jury, in finding the defendant guilty, did so because of passion, prejudice or mistake. A brief résumé of what the State produced, to prove its case will not be amiss at this time. First, the State relied on the alleged confession of the defendant (Exhibit S-14, p. 77, l. 30). This alleged confession tells of the defendant and his deceased wife grappling for the possession of a gun and that the gun went off accidentally and this is the only evidence which the State produced in its own case dealing with the actual shooting. It may therefore be said that the State proved accidental shooting. The State also called on one James F. McCormick, a stenographer who read a statement taken before the coroner, the said statement being that of the defendant. The admission of this testimony was objected to at the trial and with reference to this testimony, the exception taken on the ruling of the Court is dealt with in another part of this brief. However, from a perusal of the statement of the defendant taken before the coroner (Exhibit S-13, p. 46), it can be readily seen that nothing was added or detracted from the statement in the confession; that is, there were no discrepancies with the exception that the questions and answers were not parallel and did not cover fully the same ground. This

certainly cannot be blamed upon the defendant who merely answered the questions put to him at the coroner's inquest, and he cannot be blamed for not answering questions which were not asked of him.

The State then called on William J. Charlock and Edward K. Patterson, county detectives, and they testified that the defendant, through Joseph Puglia, an Italian interpreter who died prior to the trial of this cause, made a statement to them in which he did not admit the crime. The testimony is vague as to the manner in which the statement was gotten (p. 130, l. 25). The witness Patterson says: "So then we talked awhile and Puglia started in to ask questions. Mr. Mangino told his story and Puglia would tell me and I would write it down." It is quite apparent from this and also from the form of Exhibit S-18, page 133, line 20, that Puglia, the interpreter, asked questions himself and interpreted the answers given by the defendant, and that Puglia did not ask questions directly pertaining to the shooting or the death of the deceased, is also quite apparent. This probably explains the failure on the part of the defendant to give an explanation dealing with the shooting or death. This line of evidence in no way helps the State's case, and it still remains a case of accidental shooting.

The defendant stated that he disposed of the gun in the Hudson River on the way to the market while on the ferry. This the State controverted by testimony of witnesses who found a gun a certain distance away from a spot near which the defendant was alleged to have been seen by another witness. This attempt on the part of the State to discredit the defendant did not avail them of the missing evidence which is lacking in the whole of the case, viz., willful and felonious

murder. Very little else was proved by the State which had a direct bearing upon the actual shooting and the surrounding circumstances and which helped it to carry its burden successfully. It is for that reason that the verdict found by the jury could only have been the result of passion, prejudice or mistake. It may also be said that the alleged discrediting testimony against the defendant in the light of his confession which was uncontroverted gave rise to a reasonable doubt which the jury should have considered and therefore should have found the defendant not guilty. The failure on the part of the jury to do this further manifests that its verdict was the result of passion, prejudice or mistake.

Defendant's Motions to Direct Verdict of Acquittal Should Have Been Granted.

The grounds for this argument are practically identical with the first argument. If the jury could not have found the defendant guilty at the conclusion of the entire case, as is argued in the prior specification, *a fortiori*, the Court should have directed a verdict for an acquittal at the conclusion of the State's case. Throughout the whole of the case, one strong and undenyng feeling was ever present, and that was that the shooting was accidental. This was not only brought out by the State, in its own case, but was perceptibly corroborated by the defense, and when there are no disputes as to essential facts as in this case, the Court should direct a verdict of acquittal.

**The Court Wrongfully Charged the Jury by
Removing from Them Consideration of
an Essential Fact.**

In its charge the Court included the following:

“And, I charge you now, gentlemen, that the shooting of the revolver at the body of the deceased, by this defendant, was an unlawful act against the peace of this State lightly to be attended by consequence of bloodshed” (p. 227, l. 26).

The defendant contends that this was in effect a conclusion by the Court and took away from the jury its duty ^{of} ~~of~~ province and privilege to consider the facts and deliberate thereon according to law and practice. The underlying question of the whole case was,—was the defendant guilty of willful and felonious murder of his wife? The Judge practically answered that question in his charge by saying, “that the shooting of a revolver at the body of the deceased by the defendant was an unlawful act.” By the proof of both sides the shooting was accidental, while in the Judge’s conclusion in his charge, Mangino committed criminal shooting; nothing that the Judge said in his charge later on or prior thereto obviated the wrong thus done to the defendant. Even if the Court did later on charge the jury with respect to the shooting of the defendant’s wife, correctly, the damage already has been done and according to the cases of *State v. Guarino*, 105 N. J. L. 549; *State v. Topack*, 78 N. J. L. 208; *State v. Parks*, 96 N. J. L. 361, the jury could not determine which part was correct and which was wrong. It was, therefore, reversible error on the part of the Court in assuming the province of the jury, in placing in their hands the choice of two charges, one correct and one in-

correct, and in finding a fact which does not exist in the testimony, viz., "the shooting of the revolver at the body of the deceased," although there was no testimony that the defendant himself fired the shot.

The Court Erred in Admitting Into Evidence an Alleged Confession of the Defendant and a Statement Alleged to Have Been Made by Him, Because Such Evidence was Hearsay.

Detective Charlock's testimony, one of the witnesses for the State on this point, is as follows (p. 126, l. 10; with reference to Exhibit S-18, p. 123, l. 20):

"Q. All this is Puglia's statement? A. Yes.

"Q. Who wrote that statement? A. Detective Patterson of the Prosecutor's office.

"Q. He was up there that day he wrote out the statement? A. Yes.

"Q. He wrote out what Puglia told him, didn't he? A. That is right.

"Q. Mr. Puglia asked Mangino questions in Italian, didn't he? A. Yes, sir.

"Q. And Mangino answered him in Italian, didn't he? A. Yes, sir.

"Q. And when Puglia got through asking a question and Mangino had answered it, then Puglia told Mr. Patterson what to write in that statement, didn't he? A. Yes."

Detective Patterson, also of the prosecutor's office, testified substantially to the same effect (p. 130, l. 8). Puglia, the interpreter in both instances, that is, on July 14, 1930, when the alleged statements were supposed to have been made by the defendant (p. 123, l. 35), and on July 2, 1931, was the interpreter. Puglia died before the trial came up and of course he did not testify. So that what

we have here are two statements substantially written by one man dictated by another who is now deceased and the dictation purporting to be a true interpretation of what the defendant had said in Italian. State's witness, Vogt, testified in part as follows (p. 61, l. 10) :

"Q. As I understand your testimony you wrote the statement in English? A. Yes, sir.

"Q. And the conversation between Puglia and Mangino was un-understandable to you? You could not understand it? A. I could not understand Italian, no.

"Q. And you did not know what they were talking about, is that right? A. That is right."

Charlock testified on page 64, line 10, as follows in part:

"Mr. Puglia spoke to him in Italian and the Recorder (Vogt) wrote it down in English after it was taken."

It is difficult to look upon these so-called statements, that is, S-14 and S-18, as anything but hearsay. What Patterson had written and what Vogt had written were the words uttered by Puglia, the interpreter who was not sworn at the time and who having died could not appear at the trial to be cross examined. To assume that the interpretation by Puglia and that the dictations by him to Patterson in one instance and to Vogt in another instance were letter-perfect is a presumption upon which the law should look with disfavor. No one can say however, with the definiteness and certainty which the law demands that the interpretations and dictations made by the deceased, Puglia, were letter-perfect or were even substantially true. How else can we classify the words spoken in English by Puglia in either instance excepting that they were hearsay, because they were said in a language

not understood by the defendant, and although he was present, that does not help the State in any way? Cannot we go one step further and say that because Mangino could not understand English dictation, *i. e.*, alleged interpretation of his own words to the witnesses who wrote the respective statements, can't we go one step further and say that he was not present? Is that not the effect of it? It is logical and substantially the case. Now then, Puglia was not sworn nor was he cross examined as to the veracity of the interpretation. If his statements are allowed in, why couldn't any statement he made concerning the defendant and taken down in writing by any of these witnesses be put in? The effect would be the same.

The evidence also discloses that none of the witnesses to these statements understood or spoke Italian. So that none of them could definitely say that Puglia actually warned the defendant of his rights in making these statements.

The State in order to support its contention tried to show that the defendant understood some English. Of course this is both immaterial and questionable. The important thing is that there was no proof that the statements to the jury and admitted into evidence were the words uttered by the defendant and correctly translated in English. I firmly believe that this evidence is illegal and a distinct violation of the rules of evidence with respect to the hearsay rule. The Court of Errors and Appeals has said through Chief Justice:

"It was not only competent but *necessary* to prove by the *oath* of the interpreter on the witness stand, that he had truly interpreted between the prosecutor and the prisoner in order to justify the subsequent admission of the stenographer's transcript of what was said by them at the examination that he reported and this was so without regard to whether the

stenographer's notes did or did not contain a statement that the witness had so interpreted."

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State v. Banusik, 84 N. J. L. at page 640.

Other states have passed on this question. Rhode Island Supreme Court, in the case of *State v. Terline*, 22 R. I. 530, 51 Atl. 205. Judge TILLINGHAST in his opinion in this case, granting a new trial, said:

"While it is true that the interpretation of the words of a witness testifying in a foreign language by one who is sworn in Court and translates the testimony to the tribunal is not obnoxious to the hearsay rule because both the original witness and the interpreter are under oath and subject to cross-examination yet where a witness is offered to testify to the statements of another person, spoken in a language not understood by him but translated for him by an interpreter, such witness is not qualified because he does not speak from personal knowledge."

(1 *Greenleaf Ev.*, 16th Ed., 162 P.)

And the Court in commenting on the effect of this testimony says:

"And while we cannot say that the evidence which was offered outside of this testimony was not sufficient to have warranted the jury in finding the defendant guilty yet as this was improperly admitted and might have influenced the jury it is sufficient grounds for a new trial."

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The Court of Errors and Appeals of the State of New York has passed upon this question:

"In prosecution for murder evidence of third parties as to communication alleged to have been made by accused to interpreters, *without*

authentication by interpreters held hearsay and inadmissible.

"Hearsay evidence given by third parties as to communications made by accused to interpreters, containing false statements as to his reason for whereabouts on the morning after the murder, held prejudicial error, as tending to establish accused had guilty knowledge and was attempting to escape."

People v. Chin Sing, 242 N. Y. 419, 152 N. E. 248.

California:

"In a prosecution for perjury in charging another with larceny, in a complaint filed with a justice, the stenographer at the examination of the person charged, testified to the statement of the defendant as to the identity of the person examined with the party charged and that afterward an interpreter was called in an examination continued through him, *held* that the Court properly refused to permit defendant to examine witness as to what was said through interpreter."

People v. Petruzo, 13 Cal. App. 569, 110 Pac. 324.

"By an act of the Legislature the reporter's notes taken before a committing magistrate upon a preliminary examination for a felony are made *prima facie* evidence of the testimony given. Held that such notes were inadmissible when the testimony was taken through an interpreter."

People v. Lee Fat, 54 Cal. 527.

In the above case the Court says such testimony is hearsay and that defendant was deprived of his right to cross examine the interpreter. This doctrine was affirmed in the case of

People v. Ah Yute, 56 Cal. 119.

Texas:

“Evidence given through an interpreter before the Grand Jury is hearsay when given before the trial court by a member of the Grand Jury who could not understand the conversation between the witness and the interpreter and is inadmissible.”

Cervantes v. State, 52 Texas Cr. 82, 105 S. W. 499.

Erred **from**
The Court in Preventing the Defendant ~~in~~
Showing Interest of the State's Principal
Witness, Joseph Mangino, in the Out-
come of the Case.

Compiled Statutes 110, page 2218, Section 3, states as follows:

“No person shall be disqualified as a witness in any suit or proceedings at law or in equity by reason of his interest in the event of the same as a party or otherwise, but such interest may be shown for the purpose of affecting his credit.”

40 Cyc., 2663.

“A witness may be asked as to his interest in giving testimony favorable to the party by whom he is called for in result of the suit it may also be proper to interrogate him as to the extent of such interest. The inquiry may be stated to particular facts tending to prove the existence of the interest on the part of the witness.”

In the case of *People v. Glennon*, 175 N. Y. 45, the Court said:

“A witness in a criminal case may be asked whether his bail has not been increased by the District Attorney where it is sought thereby to affect his credibility by showing that he is testifying under duress so as to save himself.”

In this proceeding in an endeavor to attack his credibility the question put and this Court ~~at-~~ **dis**allowed was as follows:

“Isn’t it a fact, Mangino, you are charged with three different offenses of carnal abuse at the present time?” (p. 19, l. 10).

This the Court refused to permit the witness to answer despite the defendant’s clear explanation that the witness was at that time under three indictments for carnal abuse, and two days prior to this cause, was about to be tried for these offenses. The manner in which Joseph Mangino testified, the details which he supplied, the bias and prejudice which he manifested against his own father seemed so unnatural, so inexplicable; but in the face of the three indictments, the reason for his attitude on the stand could not be overlooked or missed. There is no question that there was hope for lenience. There was no question that the witness was trying by his testimony to save himself, but the jury could not be affected because they did not get the missing facts so that the purpose which the defendant set out for, *i. e.*, to attack the credibility of this witness was lost, because the Court refused to allow the question.

The Trial Court Erred in Permitting the Coroner’s Minutes to be Admitted in Evidence.

That State tried to prove that the defendant made conflicting statements with respect to his part in the alleged murder and in doing so, called witness McCormick, the stenographer who had taken the testimony at the coroner’s inquest (p. 43, l.

20). Although this witness lost the original notes, and had no recollection of the testimony taken at the coroner's inquest, he was permitted to read the testimony of the coroner's minutes which had been interpreted in so far as the defendant's testimony was concerned. There was no testimony that the interpreter was sworn in at that time, although an interpreter did translate the defendant's answers. This testimony, though not yet admitted in evidence, was permitted to be read to the jury. This obviously was reversible error on the part of the Court. The State endeavored to correct this by producing one Rizzupto, the alleged interpreter at the inquest, who, upon taking the stand and reading the minutes, testified that he interpreted them correctly. But he did not say that he was sworn in at the time of the interpreting of them. It was then that the Court permitted the minutes to go in evidence (p. 96, l. 40). This created a situation where the minutes of the coroner's inquest were allowed in evidence despite the lack of authenticity and the lack of the oath of the interpreter at the time of the interpretation, and the lack of any memory as to the correctness of the minutes at the time of the trial, the original notes having been lost.

In the case of *People v. John*, 137 Cal. 220, the Court in effect said that to admit such testimony would make a new route of evidence:

“There is hearsay testimony of what defendant testified to where the interpreter testified that he stated in English all that defendant testified to and the official stenographer to every word which the interpreter testified to.

“In its opinion the Court in discussing the facts, said:

“‘A person charged with a crime makes a confession to John Doe (the interpreter).

John Doe meets Richard Roe (the stenographer) and relates to him what defendant has said. At the trial John Doe (the interpreter) is called as a witness and testified that he truly narrated to Richard Roe (the stenographer) what defendant had said. Then it is sought to have Richard Roe state what John Doe had said instead of asking John Doe such questions.’”

It would indeed be a flagrant injustice to the defendant to permit this case, even stronger than the above cited one, a case in which neither the stenographer nor the interpreter could remember anything of the record without refreshing their recollection from a *transcript*, the said transcript being vouched for by the stenographer as correct, because as he says, he would not have transcribed it incorrectly.

Résumé.

1. The verdict was against the weight of the evidence. All the testimony shows that the shooting was accidental.
2. The Court should have granted motions for direction of verdict at close of State's case and at close of entire case, because the only evidence showed that the killing was accidental.
3. The Court took away from the jury the determination of an essential fact in the case. The fact of whether or not there was a shooting, which shooting was unlawful.
4. The Court admitted testimony given through an interpreter without authentication and barred defendant of his right of cross examination.
5. Defendant was prevented from showing that the State's main witness had an object in testifying in behalf of the State.

6. The Court permitted a stenographer to read aloud from minutes not in evidence and permitted witnesses to testify from an unverified transcript.

Defendant claims because of the above errors in the trial of his case he was harmed, the errors made were prejudicial to him and that the judgment against him should be reversed and a *venire de novo* should issue.

Respectfully submitted,

ALEXANDER SIMPSON,
Of Counsel with Plaintiff-in-Error.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTONIO MANGINO,
Plaintiff-in-Error.

In Error.

SUPPLEMENTAL BRIEF FOR STATE.

After Louis G. Hansen, Esq., Attorney for and of Counsel with the plaintiff-in-error, Antonio Mangino, had served his brief upon the Prosecutor of the Pleas in and for the County of Hudson, and had served upon him the brief for the State of New Jersey, prepared by the Prosecutor of the Pleas in and for the County of Hudson, application was made to this Court at the May Term A. D. 1931, by Alexander Simpson, Esq., to submit a supplemental brief on behalf of the plaintiff-in-error. Leave to do so was granted by this Court upon condition that the Prosecutor be permitted to file a reply thereto within ten days after it had been served. This brief has been prepared and served upon the Prosecutor by Mr. Simpson, and all of the briefs have been filed with the Sergeant-at-Arms of the Court of Errors and Appeals.

It is respectfully submitted that the brief presented to the Court by Mr. Simpson has added nothing to the one already submitted by Mr. Hansen. At pages 9 to 11 inclusive Mr. Simpson

dwells upon a statement signed by the defendant, Mangino, contending that it was inadmissible because it was taken as the result of an interpretation by an Italian interpreter who died before the trial took place, and that in his absence the statement was inadmissible. He overlooks the fact, however, which has already been pointed out in the brief for the State at pages 20 to 23 inclusive, that Captain Henry Baum, who was present when the statements were taken, testified that he knew Mangino for years, that Captain Baum could not speak Italian, but conversed with Mangino frequently in English, and he was understood by him and he could understand Mangino, and he also testified that the statement was read to Mangino in English as well as in Italian, and that after the statement was signed Mangino said in English "I feel better now; I am glad I done it; I am glad that I spoke out" (see C. B., pages 68-69). The testimony of Recorder Vogt of Guttenberg shows that Mangino could speak English quite well and carried on conversations with Vogt on various occasions. The Recorder also testified that the statement which was written by him was read to Mangino both in English and in Italian before he signed it (see page 60). The authorities submitted by Mr. Simpson on this point are all predicated upon the notion that Mangino could not speak or understand English and that the statement was taken from him entirely in Italian. This argument fails because it is predicated upon a false premise of fact. The Court held in admitting the statement that Mangino could speak and understand English and that the contention that the statement was hearsay was of no merit for this reason.

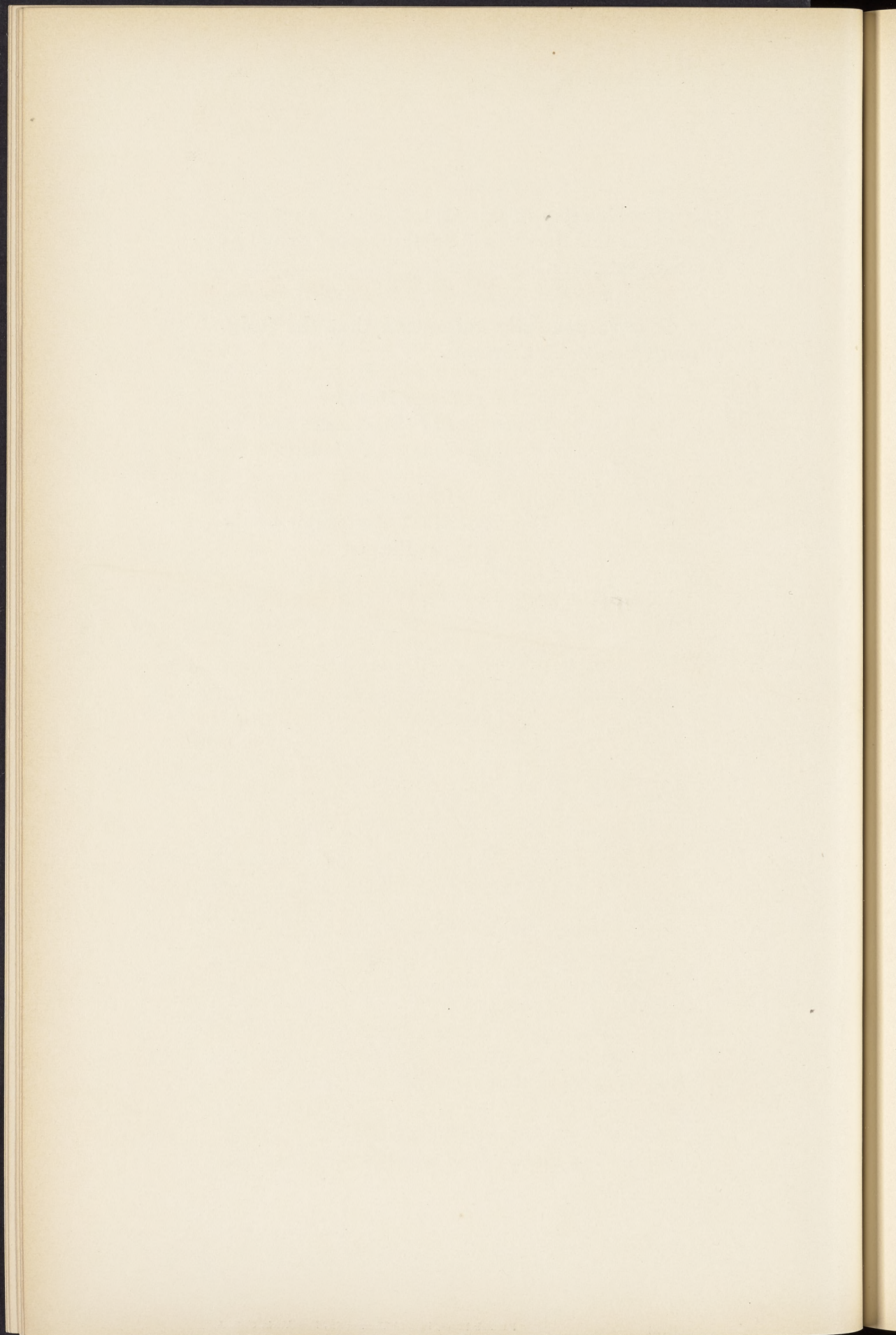
The law and the facts from the State's point of view have been covered in the State's brief orig-

inally submitted to this Court, and it is not proposed at this time to add anything more except as above set forth.

It is respectfully submitted that the judgment below be affirmed.

JOHN DREWEN,
Prosecutor of the Pleas in and for
the County of Hudson.

HARLAN BESSON,
First Assistant Prosecutor of the
Pleas.



New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTONIO MANGINO,
Plaintiff-in-Error.

} On Writ of Error.

BRIEF FOR THE STATE.

This Writ of Error brings up for review the record and proceedings of the trial, conviction and sentence of Antonio Mangino, in the Hudson Oyer and Terminer on an indictment for the murder of Maria Mangino, his wife. The trial of this cause was commenced in the Oyer before Judge Charles M. Egan and a struck jury on January 19, 1931, and completed on January 20, 1931, with a verdict of guilty of murder in the second degree. Mangino was subsequently sentenced by Judge Egan sitting in the Oyer on February 16, 1931, to serve twenty years at hard labor in State's Prison (C. B., p. 9). In addition to filing assignments of error, counsel for Mangino has also availed himself of the provisions of Section 136 of the Criminal Procedure Act, and filed a specification of causes for reversal (C. B., p. 240) based upon a return of the entire record and proceedings had below (see C. B., p. 235).

Counsel for plaintiff-in-error has set forth in his brief a statement of facts which he alleges constitutes the facts in the case which he says are

“practically conceded by the State”. The facts presented by the State in support of a conviction reveal a much stronger case against the defendant than appears from an examination of the brief submitted on his behalf and the Court is respectfully requested to disregard the assumption of his counsel, that the State concedes, in effect, the correctness and completeness of the statement of facts set forth in his brief.

Facts.

The testimony offered by the State showed that Maria Mangino, five feet two and one-half inches in height, weight about two hundred pounds and about fifty-nine years of age (pp. 26-27), at about seven o'clock on the morning of July 5, 1930, was found behind the counter of a little grocery store located at 322 26th Street, Guttenberg, New Jersey, by Charles Nelles, a salesman for the Continental Bakery. He went to the store to deliver five loaves of bread and found the door of the store open. As he left the bread on the counter, he said, “Forty-one Cents Mama”, and then looked around, and seeing no one, made a search and found Maria Mangino lying face down in the back of the counter, with her head facing toward the street and her feet toward the rear of the store (pp. 120 and 121). He summoned Joseph Mangino, the son of Maria Mangino, and gave an alarm which resulted in Thomas McDonald, a Guttenberg Policeman, coming to the scene (pp. 21, etc.). McDonald examined the body carefully and noticed a Ten Dollar bill lying on the counter on top of an order book (p. 32), and while he was there, Dr. Hovsep Tataryan, who had been summoned by someone, reached the scene and examined Mrs. Mangino (pp. 21 to 25). He observed that she lay face down with her head toward the

street and her feet toward the rear of the store, and that the body was still warm. He also noticed that there were some bills between her hands and the ground (p. 22, lines 17, etc.).

About 9:30 o'clock in the morning Antonio Mangino, the defendant, appeared upon the scene, carrying a box of prunes which he brought from the market in New York (p. 172, l. 20). At the time he pretended to have no knowledge of the occurrence. His conduct was not abnormal at the time except later he was afraid to sleep home at night (p. 172, ll. 30 to 40).

At first the matter was a complete mystery to the authorities and a checkup was made on the movements of various members of the family and others in the vicinity, and a statement was taken from the defendant, Antonio Mangino, on July 14, 1930. He gave this statement voluntarily to Lieut. William J. Charlock and Edward K. Patterson, County Detectives, and it was made in the presence of Joseph Puglia, a court interpreter, and Captain Henry Baum of the Guttenberg Police. Joseph Puglia died before the trial, but both Mr. Charlock and Mr. Patterson testified that it was read in English and Captain Henry Baum of the Guttenberg police force testified that it was read to Mangino in English, as well as in Italian, and that Mangino understood English as well as Italian (pp. 68 and 69). This statement given by Mangino was as follows (p. 133, ll. 18, &c.):

“Exhibit S-18.

“Statement made to Wm. J. Charlock & Edward K. Patterson. Interpreted by Joseph Puglia, July 14th, 1930.

“Statement of Antonio Mangino, age 62 years, 322-26th St. Guttenberg, N. J. The first time I came to America was in the year 1905. I came alone. I was in this country one year and then I went back to Italy. Once more I came back to America. Then I

brought with me my daughter Agatha. My wife Maria and two of my daughters Anna and Rosa remained in Italy. A year after that my wife and my two daughters above mentioned came to America and made their home with me. My three daughters are all married. I never had any trouble with any of my daughters' husbands nor did I ever have any trouble with my wife. My wife never had any trouble with any of my daughters' husbands.

"My son Joseph never had any serious trouble with his mother.

"On July 5th, 1930, I got out of bed before 4:00 A. M. and when I left the store I noticed it was ten minutes to four.

"As a general rule my wife would get up before I do, so on this morning in question she called me up and said, here, get up, you must go to the market. I got up. I dressed. Both went out together. She opened the store door and I helped her bring in milk can which contained forty quarts of milk which we placed in the ice tub. The only thing my wife told me was to hurry back. I had ten dollars of my own money to buy stuff in the market. I did not get any money from my wife as I only intended to buy a few things. I then left the store at ten minutes to four and walked up 26th St. to Bergenline Ave., as soon as I got to Bergenline Ave. and 26th St. a car came along. I got on it and rode to Hoboken and went to N. Y. City on the Barclay St. Ferry. I am not sure of the time I arrived at the Hoboken Ferry, as I did not look at the time as I went to the market. I looked all around for the car which delivers stuff to me twice a week but I could not find it. Then I bought one barrel of potatoes, one barrel of cabbage, and a bushel of peas, and a box of prunes. I left the stuff there to be delivered but carried on my shoulder the box of prunes. The stuff is still there. I came back home and when I reached my store it was half past nine. I remember when I got on the car at Bergenline Ave. and 26th St. I gave the

conductor a fifty-cent piece and got ten tokens. I wore a dark grey cap. A red sweater and black pants. Under the sweater I wore a light blue shirt.

"My clocks are set by daylight saving time. I have three houses. One is a four-family house frame, 322—26th Street, Guttenberg, with stucco outside, another is a two-family house, 320—26th Street, Guttenberg, with a store under it also frame covered with stucco. Then I have a brick house on 241—25th St. Guttenberg. It has four garages but only two are complete. The other two will be completed within the next three or four days. Two of these houses (the two on 26th St., Guttenberg, 320 & 322) were in both names, the one in 25th St. I bought myself and was in my name.

"The four-family house 322 26th Street, Guttenberg, is free and clear. The house at 320 26th Street, Guttenberg, has a mortgage of \$1,500. on it. The cartridges you show me I bought I think on the Plank Road near Bergenline Avenue, about twenty years ago. I bought them for a gun I had at the house. About one year ago my son Joseph had a fight with another boy for which both paid a fine of eleven dollars in Guttenberg. And as my son was looking for the gun my wife said that said gun should be suppressed from the house. What my wife did with the gun I do not know. When I left home at ten minutes to four on July 5th, 1930, it was not daylight but beginning to clear up.

(Signed) ANTONIO MANGINO."

Lieutenant Charlock, who was in charge of the investigation, immediately began a checkup of Mangino's story. He found first that no trolley car was operating along Bergenline Avenue in the neighborhood of 4:10 o'clock A. M. daylight savings time, and this was established at the trial by the testimony of Frederick Garr, Supervisor of the Public Service Coordinated Transport, in

charge of cars operated from the West New York car house and West Shore terminal in Hudson County. He testified that no car left Guttenberg and passed along Bergenline Avenue on the morning of July 5th, 1930, at 4:10 A. M. and said that there was no car until 4:53 A. M. daylight saving time (p. 138).

It was also found that Antonio Mangino was seen that morning by another witness at between five-thirty and a quarter of six in the morning by Joseph De Angelo, a chauffeur who was driving a truck out of Farrell's Garage, located at 319 27th Street, Guttenberg, N. J., at a point about ten minutes' walk from the Mangino store located at 322 26th Street, Guttenberg, N. J. (p. 98, l. 30, p. 99, l. 10, &c.). At the time Mangino was wearing a dark cap, a light shirt and a dark pair of pants (p. 99, l. 34, &c., p. 100, l. 11, &c.). This contradicted his own statement that he wore a red sweater, black pants and a light blue shirt under the red sweater. At the time he made the statement, he was shown the box of forty-six cartridges, which was found in a drawer in his room by Lieutenant Lawler of the Guttenberg Police (p. 109, l. 20; Exhibit S-16). Mangino admitted that the cartridges were in his room, but said that he did not know what his wife had done with the gun.

This first statement which he made to the Police indicated innocence on his part, and it wasn't until the police checkup indicated discrepancies that suspicion began to point toward the defendant.

On July 16th, 1930, Mangino appeared before the Coroner's Inquest and gave testimony. Here he again reiterated his innocence and suggested the notion that his wife might have been robbed (pp. 46 to 48, inc.). In the course of this testimony he expressed a very high opinion of his

wife, and in response to the question (p. 47, l. 20) "Did you know anybody she ever had any quarrels with?", he answered, "My wife is even a friend to the earth, the ground she walked on". And again (p. 48, l. 7) when he was asked "You don't know anybody that she ever quarreled with in the neighborhood?", he answered, "She was like the best woman on earth".

In the meantime Lieutenant Charlock's investigation developed that on the morning of July 5th, 1930, Joseph Mangino, the son of the deceased, had come home between one and two o'clock in the morning and had passed through the bedroom where his mother and father were sleeping in the premises next door to the store, and observed that his mother slept on the outside of the bed and that his father was sleeping near the wall, and passed into his own bedroom beyond his parents' room. He heard no quarrel or disturbance of any kind during the night and there was no evidence of any quarrel when he arrived home.

The investigation further developed that Herbert Hohneker, a milkman, had arrived at the Mangino store about two o'clock in the morning and left a forty-quart milk can and a large cake of ice. Hohneker testified that this can when filled with milk was about two feet high and weighed about one hundred and fifteen pounds. He saw no signs of life about the place at the time of the delivery and left the can outside the store near the front door (p. 105).

The investigation further disclosed that Henry Kortrey, a professional chauffeur, passed the store at 320 26th Street on the morning of July 5th, 1930, between 5:00 and 5:15 o'clock. He was driving his car slowly at the time and observed a heavily built old lady standing in front of the store and taking a piece of ice off a forty-quart

milk can, and he so testified at the trial (p. 114, l. 17, &c.).

The investigation further disclosed that Mrs. Anna Schutz passed along in front of the store at 320 26th Street, Guttenberg, about 5:15 A. M. July 5th, 1930, in a Westerly direction and she saw Mrs. Mangino in the store standing behind the counter with a man in front of the counter, wearing a white shirt, and she so testified at the trial (pp. 116 and 117).

The investigation further disclosed that about 5:25 A. M., Clifford Taylor, a bread foreman for the Ward Baking Company, went to Mangino's store at 320 26th Street on the morning of July 5, 1930, for the purpose of delivering bread. He observed no one in the store and saw a Ten Dollar bill on the counter. He left two loaves of bread and went out. He so testified at the trial (pp. 117 and 118).

The investigation further developed that Herman Gans, a bread salesman employed by Joe Beers, No. 119 Madison Street, Hoboken, went to the Mangino store at 320 26th Street, to deliver bread on the morning of July 5th, 1930, arriving there between half past five and a quarter to six. At the time he got there the milk can and the ice were gone. He saw no one around the place and left the bread which he came to deliver outside of the store (pp. 118-119).

The investigation also disclosed that about six A. M. on the morning of July 5th, 1930, Philip Oriolo came to the store at 320 26th Street, Guttenberg, with a horse and wagon to do some work for the defendant, Antonio Mangino, and found no one at home. He observed that the door of the store was open, but did not enter and stood outside some distance from the store waiting for the defendant (p. 36 &c.). He did not see Mangino or Mrs. Mangino.

The investigation further disclosed that Giobbe Ranato, an old man, came to the store located at 320 26th Street, Guttenberg, about 6:20 o'clock on the morning of July 5th, 1930, for the purpose of getting something to eat and saw no one in the store (pp. 111-112).

The next person who visited the store was Charles Nelles, the Continental Bakery Salesman, already mentioned. He arrived there about 6:50 A. M. and he discovered the body of Mrs. Mangino and gave the alarm (p. 120 &c.).

It was evident from this checkup of the facts that Mrs. Mangino was alive up to 5:15 on the morning of July 5th, 1930, and it was also evident that Mangino himself had been seen at a point about ten minutes walk from the store at about 5:35 A. M. on July 5th, 1930, and that Mangino at the time he was seen was wearing a white shirt and dark pants and the man who was seen by Mrs. Schutz in the store about 5:15 A. M. on the morning of July 5th, 1930, was also wearing a white shirt.

On July 21, 1930, the defendant, Antonio Mangino made another statement in which he admitted the killing of his wife. This statement was made in the presence of Lieutenant William F. Charlock, a Lieutenant of County Detectives of Hudson County, Edward K. Patterson, a County Detective, Captain Henry Baum of the Guttenberg Police Force and Joseph Puglia, an Italian Court Interpreter, who died between the time the statement was made and the time of the trial. This statement was offered and admitted in evidence as Exhibit S-14, (p. 77, l. 27) and is as follows:

“Between myself and my wife for the last three years there was a bitter feeling. She tried to boss me in every way and I did not count for anything. She even denied me to have intercourse with her and that condition

lasted for three years. On the night between July 4th and July 5th, 1930, at my home, 322 26th Street, Guttenberg, New Jersey, in bed, I had the greatest fight of my life with her. I pleaded with her to let me have sexual intercourse and she repulsed me all the time and told me that she hated me.

My wife was a woman much stronger than myself; at times she would kick me off the bed and I would land on the floor. For the last few years she said that sometime she would cut my throat while asleep. She also told other people that sometime while I was sleeping she would cut my throat. A lady by the name Mrs. Healy, who lives at number 332-26th Street, Guttenberg, New Jersey, she could testify to that.

On the night in question, while we were in bed, and that was about 10:30 P. M. I tried to have sexual relation with my wife, but she refused me. I started to tear up her shirt (and I think in three years I tore about 10 shirts over her body and also her bloomers), then she took a revolver from under the pillow, she aimed at me and she pulled the trigger, but it did not go off. Then when I saw the gun I got a hold of her arm and I twisted it; she hollered and she said, 'You have broken my arm', and in saying so, she dropped the gun and I sat on it (in bed). At that time, fearing that I would shoot her, she put on her dress and she ran in the store, 320 26th Street. I followed her to the store. I helped her to place the forty quarts milk can in the ice tub. She went in the back of the counter, and she offered to me ten dollars to go to the market.

I said to her, 'Do you want me to go to the market with ten dollars?' She said, 'Yes, that is enough, you only have to buy a few things', I left the ten dollar bill on the counter. Then she looked at me and she said, 'Before you take the money you got to hand me back my revolver'. I took the gun, and I said to her, 'You tried to kill me with this gun and if I am not dead it is not your fault; and

now you want it back again, to kill me?' As she saw the gun in my hand she reached for it, and she tried to pull it away from me and in the struggle for the possession of the gun, it went off and as she leaned down a bit, the bullet struck her in the forehead. When this thing happened it was five o'clock in the morning. When I saw my wife wounded I was frightened and I hurried up to the Market. On my way to Washington Market, while on the ferryboat, I threw the gun overboard.

Really, I never meant to kill my wife, and I am sorry that she is dead.

ANTONIO MANGINO.

July 21, 1930."

Meanwhile, the police had found a white shirt concealed in the defendant, Mangino's bedroom on July 16, 1930 (p. 151). This shirt was shown to Mangino by Lieutenant Charlock, and he admitted that it was his shirt (p. 127, l. 10, etc.).

Some months after July 21, 1930, when this last statement was made, two small boys, George and Charles Miller, found a revolver in a lot opposite the Farrell Garage at a point near the place where Antonio Mangino had been seen on the morning of July 5, 1930, by Joseph De Angelo (pp. 98-99). The testimony of these two small boys is set forth in the record at pages 85 to 90, inclusive. Mr. Thomas Farrell, Jr., the owner of the garage, observed the boys playing with the revolver and took it from them, and a few hours later delivered it to Captain Baum, of the Guttenberg Police, who, in turn, delivered it to Lieutenant Charlock (pp. 80 to 83, incl.). Lieutenant Charlock took the revolver to Professor Charles O. Gunther, of Stevens Institute of Technology. He also took to Professor Gunther the bullet which was taken from Mrs. Mangino's brain at the time of the autopsy (see testimony of Dr.

Braunstein, p. 29, l. 37, etc.) Professor Gunther's examination of the revolver and of the bullet in conjunction with various scientific tests and studies made by him of the revolver and the bullet, convinced him that this bullet was fired from the revolver found in the lot in front of Farrell's Garage by the Miller boys, and he so testified at the trial (p. 139, etc.).

Joseph Mangino, the son of the defendant, testified for the State, and told the Court and jury that his mother and father frequently quarreled about his father's attention to other women, and he described one occasion in the following language:

“Q. Now tell us what happened that night.

A. Well, I went in the house, put the car in front of the door and went in the house and my mother and father were arguing, and I said: “Cut out the argument. What are youse always arguing for?”

Q. What were they arguing about, if you know? A. So my mother just slipped out, it just slipped out of her, she said, ‘Papa was hugging up another woman in the store, was kissing her, was hugging and kissing her by the counter.’ And I said, ‘The only thing, Mama, if you can't trust him separate; I will go with you and let papa go his way’. And he turned around and said, ‘I shoot you and I shoot your mother and I shoot myself’, and so I wanted to raise my hand to him when he said, ‘Don't you think there is any law here?’ and he said, ‘I am going to report you’; I said ‘Go on down’, and he went down and I followed him down.

Q. And as a result of that you were arrested? A. Yes, for taking my mother's part.

Q. As I understand he had already struck your mother? A. Yes.

Q. Where did he hit your mother and what with? A. He hit her with his hand and after awhile he was going to get one of those milk

cans, one of those little jars of condensed milk, and he just missed her shoulder.

Q. Did he throw that at her? A. Yes.

Q. Now, what was it, a half pint bottle?

A. No, these cans of milk, these condensed milk cans.

Q. A can of condensed milk? A. Yes, sir.

Q. He threw that at your mother? A. Yes, sir."

The time of the foregoing quarrel was fixed by Recorder Vogt from the record book of his Court, which indicated the time of the Mangino boy's arrest in January, 1927, a little more than three years before the murder.

Young Mangino also identified the revolver which was found in the lot in front of the Farrell Garage by the Miller boys (p. 172, l. 15). He recognized it as his father's revolver. At the time this revolver was found it had four loaded cartridges in it and one empty shell (p. 83, l. 20 &c.), and the loaded shells were of the same manufacture and type as the forty-six shells found in the box in the defendant Mangino's bedroom, with the exception of one of these shells which was of different manufacture.

None of Mangino's children took the stand in his behalf. In his own testimony he followed the last statement made by him in which he admitted shooting his wife and claimed that the killing was accidental (p. 205, l. 30). He stuck to the story that he had thrown the revolver in the river and gave no satisfactory explanation of why he left his wife after she was shot, without attempting to get her any medical attention. His testimony on this point (p. 212, l. 11) was as follows:

"Q. When you saw that your wife was shot, why didn't you get a doctor? A. When the shot blew off I ran out and I didn't know just what had happened.

Q. If your wife was your soul, as you say, why didn't you try to help her? A. I didn't see my wife get hit.

Q. Do you mean to tell us that you saw this gun shot off in her face and you did not know what struck her? A. I didn't know just what happened. Otherwise, I would not have gone to the market.

Q. You want this jury to believe that pistol powder marks burned your wife's face when it went off—that it was fired in such a way that you did not know what happened to your wife? A. No.

Q. How far was the muzzle or the mouth of the pistol from your wife's head when the pistol went off? A. About five or six feet away.

Q. Your wife used both hands to pull the pistol from you, didn't she? A. One hand."

It is manifest from the foregoing statement that Mangino told so many lies about the murder that it would be difficult for a jury to give any weight whatsoever to his testimony. He attempted to conceal his connection with the crime for more than two weeks after it happened and his story when told was without corroboration in almost any particular. He had first attempted to conceal the crime entirely and finally, when he realized his discovery was inevitable, he then endeavored to mitigate it by showing it to be either in self defense or an accident. His guilt was plainly established by the evidence and the verdict of the jury was well founded.

Questions Involved.

Counsel for plaintiff-in-error challenged the legality of the judgment of conviction on the following grounds which are urged and argued in the brief:

“1. The verdict was against the weight of the evidence.

2. Defendant’s motions to direct verdict of acquittal should have been granted.

3. The Court erroneously charged the jury as follows:

‘And I charge you now, gentlemen, that the shooting of a revolver at the body of deceased by this defendant was an unlawful act against the peace of this state likely to be attended by consequence of bloodshed.’

4. The Court erred in receiving in evidence an alleged confession of the defendant and a statement alleged to have been made by him.

5. The Court prevented defendant from showing interest of State’s principal witness in the outcome of the case.

6. The Court erred in permitting the Coroner’s Minutes to be admitted in evidence.”

These points will be considered and discussed in turn.

POINT I.

The verdict was not against the weight of the evidence.

In considering this question the Court is governed by the rule that there will be no reversal of a judgment of conviction in a criminal case on the ground that the verdict is against the weight of the evidence unless it is established that the verdict has resulted from mistake, passion, prejudice or partiality. *State v. Karpowitz*, 98 N. J. L. 546, 550; *State v. Von der Linden*, 105 N. J. L. 618; *State v. Morehouse*, 97 N. J. L. 285.

A review of the testimony previously set forth in this brief indicates a clear case of circumstantial evidence against the defendant Antonio Mangino, supplemented by his own confession. Maria Mangino was last seen alive about a quarter past five on the morning of July 5th, 1930, standing behind the counter of her store talking to a man dressed in a white shirt who was standing in front of the counter. Mrs. Anna Schutz, who testified to this, lived in the neighborhood, a short distance from the Manginos' store, and was personally acquainted with Mrs. Mangino. A woman who answered the description of Mrs. Mangino had been seen a few minutes before this by Henry Kortrey, a chauffeur, who saw this woman lifting a cake of ice from the milk can which stood in front of the Mangino store. Mangino himself was seen about ten minutes walk from the scene of the crime at about thirty-five minutes past five o'clock in the morning and within a few feet of the spot where the revolver subsequently identified to have been his was found. At first he concealed his knowledge of the crime, an attitude which is not consistent with innocence, and finally, when the situation so developed that the finger of guilt pointed directly at him, he then admitted the killing, but sought to explain it either as an accident or an act of self-defense. There was not one scintilla of evidence in the case to corroborate the defendant in his explanation. The bare reading of the testimony offered by the State justifies the verdict and shows nothing before the Court to indicate that this verdict had its origin in mistake, passion, prejudice or partiality.

POINT II.

The Trial Court properly refused to direct a verdict of acquittal.

There is no merit in the contention of counsel for the plaintiff-in-error that the Trial Court should have directed an acquittal. In this case the killing of Maria Mangino by the hand of the defendant Antonio Mangino was established even by his own admission and thereupon the burden fell upon him to either mitigate the decree of the crime, or justify or excuse it.

In the leading case of *State v. Brown*, 62 N. J. L. 666, at page 703, former Chief Justice Depue, delivering the opinion of the Court said:

“In every charge of murder, the fact of killing being first proven, all the circumstances of action, necessity or infirmity are to be satisfactorily proven by the prisoner, unless they arise out of the evidence produced against him; for the law presumeth the fact to have been founded in malice until the contrary appear. The matters tending to justify, excuse or alleviate must appear in evidence before he can avail himself of them. Fost 255 * * *. This doctrine was declared to be the law in this state as early as *State v. Zellers*, 2 Halst. 220, 243.”

In the case at bar the determination of the issue was peculiarly one for the jury. The evidence indicated that the defendant, Mangino, had first tried to conceal the crime and then to justify or excuse it. To show motive there was some evidence to indicate that he had been friendly with other woman, and that this had been a source of dissatisfaction to his wife, that he quarreled with, and struck his wife, and also that they were owners as tenants by the entirety in some real estate

which would become his in the event of her predeceasing him. This last appeared from his own original statement to the Police. Under the facts in this case the Court properly submitted the case to the jury for its consideration and his action in so doing affords no basis for reversal.

POINT III.

The Trial Court's charge to the jury was correct.

Counsel for the plaintiff-in-error has selected from the Trial Court's charge a portion of a paragraph, and charges that its deliverance constitutes reversible error.

The language used by the Court to which objection has been made is as follows:

“And I charge you now, gentlemen, that the shooting of a revolver at the body of deceased, by this defendant, was an unlawful act against the peace of this state likely to be attended by consequence of bloodshed” (p. 227, l. 26).

In the brief of Counsel for plaintiff-in-error, he cites this objection to this portion of the charge as having been set forth at page 227, line 26. An examination of the printed record will indicate that it does not appear at that point in the charge, but instead it appears on page 224 at line 26, and the attention of the Court is now directed to the entire language of the paragraph in which this excerpt is included, which is as follows:

“Now, as to murder of the second degree: The law is that any person who in committing any unlawful act against the peace of the state of which the probable consequence may be bloodshed, shall kill another, shall be guilty

of murder; and I charge you, now, gentlemen, that the shooting of a revolver at the body of the deceased, by this defendant, was an unlawful act against the peace of this state likely to be attended by the consequence of bloodshed, so that the killing here is presumed to be malicious and is therefore murder, unless and until the defendant produces facts and circumstances from which justification, excuse or extenuation may arise."

It is well settled that in considering the sufficiency of any portion of a Trial Court's instructions to the jury, that it must be read in connection with the remainder of the charge. The bare reading of the foregoing paragraph as delivered by the learned Trial Court indicates its legal sufficiency, and when considered in connection with the opinion of this Court in the case of *State v. Brown*, 62 N. J. L. 666, at page 703, previously cited in this brief, the correctness in law of the instruction given becomes readily apparent. According to the theory of the defense, Mrs. Mangino had threatened to kill Mangino early in the morning of July 5th, 1930, when the shooting occurred, and the shooting had taken place in a struggle for the possession of the revolver. In the light of all the facts in the case there was nothing erroneous in the Court's charge. It has been repeatedly held that an instruction is not erroneous, where, in view of the entire charge the jury could not have been misled thereby. See *State v. Drake*, 53 N. J. L. 23; *State v. Hanrahan*, 88 N. J. L. 391; *State v. Pittman*, 98 N. J. L. 626; *State v. Friedman*, 98 N. J. L. 577.

It is respectfully urged that there is no justification for a reversal in this contention on the part of counsel for plaintiff-in-error.

POINT IV.

The Trial Court committed no error in admitting in evidence the defendant's confessions.

Counsel for the plaintiff in error points out that on July 21, 1930, the defendant, Mangino, made a statement to Lieutenant William Charlock and Edward Patterson, County Detectives, while he was confined in the jail at Guttenberg, New Jersey. At the time this statement was given, Captain Henry Baum of the Guttenberg Police was present and Joseph Puglia, an Italian Court Interpreter, was also present. Between the time of the making of this statement and the time of the trial, Puglia died, and because he was not available at the trial, it is now contended by counsel for the plaintiff in error that the statement should not be admitted because he talked with Mangino in Italian at the time the statement was being written down. There is no force in this contention and the authorities cited on this point can be of no avail to the plaintiff in error because it appeared from the testimony of Captain Baum at page 69, lines 20, &c., that he had known Antonio Mangino for about ten or twelve years and conversed with him many times in English, and that he carried on his conversations intelligibly. Captain Baum said that the statement was read aloud to Mangino in English and that after Mangino had signed, he said: "I feel better now; I am glad I done it; I am glad that I spoke out" (p. 69, l. 21, &c.). Recorder Vogt of the Town of Guttenberg, who witnessed the confession of July 21, 1930, also testified that the statement was read in both English and Italian, and that he, Recorder Vogt, knew Mangino for five or six years and talked with him in English, and that Mangino had

no difficulty in understanding or speaking English and more particularly that the statement was read to Mangino both in English and in Italian by Mr. Puglia (see p. 58, l. 35, &c.). Lieutenant Charlock testified that it was read to Mangino in English and in Italian (p. 63, &c.).

It is particularly important at this point to call attention to the the language used by the learned Trial Court in admitting the confession in evidence. See page 76, line 19, at which he said:

“I think there is a distinction between that case and the other case. The leading cases on the question of confessions in this state are the cases of State *vs.* Roselle, 62 Law, and the case of the State *vs.* Young, 67 Law. They contain the law which has been recognized as being the outstanding cases on confession for some years back.

Now, very true, an Italian interpreter was employed and he has since died. The Captain of Police stated he has known this defendant for a number of years, twelve or fourteen years, somewhere in that neighborhood, that he has had conversations with him in English; another witness who was brought here, the recorder, says he has had conversations with him in English, and the evidence is that Puglia, the interpreter, who died, read to him first in Italian and there is evidence from Recorder Vogt that he took the statement down in English and that after it had been read to him and he was asked if it were the truth, he nodded in the affirmative. You have that evidence. We have also the evidence of Detective Charlock. Of course it relates to what took place after he signed the statement. We have the evidence of Captain Baum here who says that this man said he wanted to make a statement after being up there eight or ten days and it was volunteered by him, and there is no evidence that there was any confession extorted from him

by any threats nor was there any confession obtained from him through any hope or promise of reward, so that under the circumstances I feel that I will admit the confession in evidence and let the jury pass upon it."

There would have been some merit in the contention that the confession might be treated as hearsay, if it had not been read in English to Mangino in the presence of the witnesses, as pointed out by the Court, and if it did not appear that Mangino was accustomed to carry on conversations in the English language with people whom he had known for many years, such as Captain Baum and Recorder Vogt.

The same state of affairs prevail with respect to the admissibility of the statement of July 14, 1930 (see Case, pp. 132 and 133, s. 18). The learned Court, before admitting that statement in evidence, said (see p. 132, l. 27):

"The Court: No. I don't want to be abrupt with you, but I hardly think it is necessary. It is very clear to me.

The questions and answers were translated to Mr. Patterson, and Mr. Patterson said that he read the statement to him six lines at a time and asked him if it was correct and he said yes. In any event, the jury is the sole judge of the credibility of the witnesses and of the facts and the weight it might have. I will admit it and give you an exception."

In the light of this explanation, it did not appear that an interpreter was necessary to the making of the statements. It was a mere precaution so that there could be no possible misunderstanding. The defendant Mangino was a man who had been in the country for about twenty-five years and was accustomed to the daily use of the English language and readily made himself understood in conversations with persons who had no knowledge

of Italian. Had this been a case in which the defendant had no knowledge of the English language and an interpreter was necessary and indispensable in the taking of his statements, or confessions, and was unavailable at the trial because of death, the authorities cited by counsel would, no doubt, be controlling. In the case at bar, however, it is contended that the course followed by the Trial Court was correct.

POINT V.

The learned Trial Court did not prevent defendant from showing interest of State's principal witness in the outcome of the case.

During the course of the cross-examination of Joseph Mangino, one of the State's witnesses, defendant's counsel propounded the following question to him:

“Isn't it a fact, Mangino, you are charged with three different offenses of carnal abuse at the present time?” (p. 19, l. 10).

(See p. 179, l. 1).

This question was overruled upon objection by the First Assistant Prosecutor, who was trying the case. This objection, it is submitted, was well taken and finds its support in the rule adopted by the New Jersey Court of Errors and Appeals in the case of *State v. Young*, Opinion by Mr. Justice Swayze, delivered after a rehearing (see *State v. Young*, 93 New Jersey Law at 404):

“* * * A mere charge of crime cannot affect a witness' credibility, since, even if it take the solemn form of an indictment, the accused is presumed innocent. It has even been ques-

tioned whether a plea of *nolo contendere* to an indictment made the fact admissible as a conviction. *State v. Henson*, 66 *id.* 601. All the argument in that case was wasted if the mere indictment was admissible for the same purpose. The matter is regulated by statute. Comp. Stat., p. 2217, §1. The statute provides that the conviction of crime may be shown on the cross-examination or by the production of the record thereof. The admission of the testimony was in violation of every branch of the statutory rule. It was not proof of a conviction; it was not shown on cross-examination of the defendant, but on redirect examination of the state's own witness, whose credibility the state could not legally impeach; and what was shown was not by the production of the record but by parol testimony."

See also:

State v. Bossone, 89 New Jersey Law 724,

and

State v. Wendel, 96 New Jersey Law 495.

The question as propounded had no bearing on the trial before the Court, nor did it in any way show that Joseph Mangino had any interest whatever in the outcome of the trial before the Court. It is contended that the Trial Court committed no error in overruling this question.

POINT VI.

The Trial Court committed no error in permitting the Coroner's minutes to be admitted in evidence.

It has already been pointed out in the brief that the defendant Antonio Mangino testified at the coroner's inquest. He called for an interpreter and a man by the name of Peter Rizzuto acted as such. He examined the notes (see p. 93 at l. 28) and testified they correctly represented the testimony given by Antonio Mangino at the inquest. Mr. McCormack testified that he was the stenographer who took down Mangino's testimony as translated by Rizzuto. He said that this testimony was correctly transcribed, but that he had lost his original notes (see pp. 34 to 36, inclusive). The Trial Court directed that he go home and search for them, which he did, and returned later and announced that he was unable to find them, but he was able to say that the notes as typed by him correctly represented what was said at the hearing. The notes of Mangino's testimony were read in evidence as set forth at pages 46 to 48, inclusive. In this testimony the defendant disclaims all knowledge as to how the crime was committed, but suggested that Mrs. Mangino might have been robbed. The testimony in the case subsequently developed that Mrs. Mangino had not lost any money at the time and was not robbed by anyone. There was no error in the admission of this statement because both the man who interpreted it and the man who transcribed the notes were both present in Court and testified as to the correctness of the testimony. Under these circumstances there was no error, within the meaning of Section 136 of the New Jersey Criminal Procedure Act, which

could be construed to have prejudiced the defendant in maintaining his defense upon the merits. It is contended that the case of *People v. Johns*, 137 California 220, has no application because the interpreter was permitted to examine the questions and answers and had them before him and was specifically asked as to whether these questions and answers were correctly transcribed as translated by him.

It is contended, therefore, that this argument affords no basis for a reversal.

It is respectfully submitted that the judgment below should be affirmed.

JOHN DREWEN,
Prosecutor of the Pleas in and for the
County of Hudson.

HARLAN BESSON,
First Assistant Prosecutor of the Pleas.

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