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New Jersey State Library

WRIT OF ERROR TO SUPREME COURT.

(Filed January 6th, 1920.)

New Jersey Court of Errors and Appeals

NEW JERSEY, *ss.*

(L. S.) The State of New Jersey to the Chief Justice and Associated Justices of the Supreme Court of the State of New Jersey:

Because in the record and proceedings, and also in the giving of judgment of the said Supreme Court, affirming the conviction in the Court of Oyer and Terminer of the County of Hudson, upon a certain indictment against Ciro Matarazzo and Louis Fieore wherein the said Ciro Matarazzo and Louis Fieore in the County of Hudson, on the 28th day of October, in the year of our Lord One Thousand Nine Hundred and Eighteen, with force and arms, at the City of Jersey City in the County aforesaid, and within the jurisdiction of this Court, one John Joyce, in the peace of God and of this State, then and there being, wilfully, feloneously and of their malice aforethought, did kill and murder, whereof before you they hath been indicted, and are thereof convicted by a certain jury of the said County taken between the State of New Jersey and the said Ciro Matarazzo and Louis Fieore, as it is said, manifest error hath intervened to the great damage of the said Ciro Matarazzo and Louis Fieore, as from their complaint we have received information, we being willing in this behalf to correct the error in due manner and form, if any there be, and that speedy justice be done to them the said Ciro Matarazzo and Louis Fieore, in this behalf, do comamnd you that if judgment be thereupon given, then that you distinctly and openly send under your seal the record and proceedings aforesaid before you in the said case, with all things touching the same, to our Court of Errors and Appeals in the last resort in all causes, to be holden at Trenton on the 24th day of January next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws and customs of New Jersey ought to be done.

Return to Writ (Supreme Court).

WITNESS, EDWIN ROBERT WALKER, Chancellor of the said State of New Jersey, and President Judge of the said Court of Errors and Appeals, in the last resort in all causes, at Trenton aforesaid this 6th day of January, Nineteen Hundred and Twenty.

THOMAS F. MARTIN,
Clerk.

J. VICTOR D'ALOIA,
Attorney of Plaintiffs-in-Error.

RETURN TO WRIT.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WILLIAM S. GUMMERE,
Chief Justice,

Writ of Error.

Filed May 15, 1919.

New Jersey Supreme Court

NEW JERSEY, *ss.*

The State of New Jersey to Richard Doherty, Esquire, Judge of the Court of Common Pleas of the County of Hudson, constituting the Court of Oyer and (L. S.) Terminer holden at Jersey City, in and for the County of Hudson, of the term of September, in the year of our Lord, nineteen hundred and eighteen.

Because in the record and process and also in giving of judgment upon a certain indictment against Ciro Matarasso and Louis Feory, late of the City of Jersey City, and County of Hudson, for murder wherein the said Ciro Matarassa and Louis Feory in the County of Hudson aforesaid, on the twenty-eighth day of October, in the year of our Lord, one thousand nine hundred and eighteen, with force and arms at the city aforesaid, in the county aforesaid, one John Joyce, in the peace of God and of this state, then and there being, willfully, feloniously and of their malice aforethought, did kill and murder.

Pro ut the said indictment, whereof, before you, they hath been indicted, and are thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Ciro Matarasso and Louis Feory, as it is said, manifest error hath intervened to the great damage of the said Ciro Matarasso and Louis Feory, as from their complaint, we have received information, we being willing, in their behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to them, the said Ciro Matarasso and Louis Feory, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Justices of our Supreme Court of the State of New Jersey on the 28th day of April next, and this writ, that the record and proceedings aforesaid, being inspected, we may further cause to be done thereupon for correcting that error, what right and according to the laws and customs of New Jersey, ought to be done.

Return to Writ.

Witness William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton aforesaid, this 8th day of April, A. D., nineteen hundred and nineteen.

ENOCH L. JOHNSON,
Clerk.

J. VICTOR D'ALOIA AND CARL ABRUZZESE,
Attorneys.

Allowance.

Allowed April 17th, 1919.

RICHARD DOHERTY,
Judge.

Return of Writ.

STATE OF NEW JERSEY, HUDSON COUNTY, to wit: Be it remembered, that at Court of Oyer and Terminer holden at Jersey City, in and for the said County of Hudson, on the third Tuesday of September in the year of our Lord one thousand nine hundred and eighteen, before Honorable Francis J. Swayze, one of the Justices of our Supreme Court of Judicature of the State of New Jersey, and Honorable James W. McCarthy and Honorable Richard Doherty, Hon. John A. Blair, 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 Wilber E. Mallalieu, Samuel Bloomberg, John G. Butterfield, J. H. Cummings, William S. Davison, Robert F. Dennis, George Fielding, Dr. Charles F. Finke, Kenneth M. Forbes, James W. Gospill, George L. Harz, William O. Hefferman, Joseph Introcasso, Edward L. Jaekle, James A. Lester, Frank M. Miller, Wm. M. Obergfell, George F. Roberts, William C. Ryan, Rutherforf S. Seibel, Celestine Seyer, William G. Wilson, Harry S. Wynn, good and lawful men of said county, duly empanelled, sworn and charged to inquire for the state in and for the body of the County of Hudson, it is presented in manner

Indictment.

and form following, that is to say, that the bills following are true bills.

W. E. MALLALIEU,
Foreman.

And the foregoing being presented to the said Court on the nineteenth day of November in the year of our Lord one thousand nine hundred and eighteen, with bills of indictment, Nos. 236-259 inclusive, it is ordered by said Court that the said bill of indictment so as aforesaid included as Bill No. 236 for murder as charged upon Ciro Metarazzo and Louis Fiory should remain in the Court of Oyer for trial and disposal according to law, and said bill is in words as follows:

HUDSON OYER AND TERMINER.

September Term A. D. 1918.

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 oath present, that George Clinton, alias James Devlin, Louis Feory, Ciro Mattarazzo, Morris Klein, Felice Casale, and Ernest Petrucci, late of the City of Jersey City, in the said County of Hudson on the twenty-eighth day of October in the year of our Lord one thousand nine hundred and eighteen, with force and arms at the city aforesaid in the county aforesaid, and within the jurisdiction of the Court, one John Joyce 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 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 George Clinton, alias James Devlin, Louis Feary, Ciro Matarazzo, Morris Klein, Felice Casale and Ernest Petrucci, on the twenty-eighth day of October in the year of our Lord one thousand nine hundred and eighteen, at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, did feloniously kill and slay one John Joyce 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.

Plea.

And the Grand Inquest aforesaid upon their oath aforesaid, do further Present. That the said George Clinton, alias James Devlin, Louis Feary, Ciro Matarazzo, Morris Klein, Felice Casale and Ernest Petrucci, on the twenty-eighth day of October in the year of our Lord one thousand nine hundred and eighteen, at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this court, in and upon one John Joyce in the peace of God and of this State, then and there being an assault did make, and him the said John then and there did, to the great damage of the said John 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.

PIERRE P. GARVEN,
Prosecutor of the Pleas.

Endorsed Bill No. 236 Hudson Oyer and Terminer Term of September, 1919.

PIERRE P. GARVEN,
Prosecutor of the Pleas.

A true bill.

W. E. MALLALIEU,
Foreman.

Presented January 30th, 1918, and handed down to the Court of Quarter Sessions.

JOHN J. McGOVERN,
Clerk.

And afterwards to wit; on the twenty-seventh day of November in the year of our Lord one thousand nine hundred and eighteen, at a session of the Court of Oyer and Terminer of the County of Hudson, aforesaid, being now of the term of September one thousand nine hundred and eighteen, in the said year before Honorable John A. Blair, Judge of the Court of Common Pleas in and for the County of Hudson who doth constitute and hold the Court of Oyer and Terminer in and for the County of Hudson here cometh the said Ciro Matarazzo and Louis Feary under the custody of the sheriff in whose custody they had be-

Postea.

fore being committed for the cause aforesaid, who being brought here in their proper persons by the sheriff aforesaid to whom they are here committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charge upon them, how they will acquit themselves thereof, they say that they are not guilty thereof, and therefore for good and evil they put themselves upon the country, and Pierre P. Garven, Esq., Prosecutor 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 thirtieth (30), nineteen hundred and nineteen, and let a jury come before the Honorable Richard Doherty, Judge of the Court of Common Pleas in and for the County of Hudson, constituting and holding the Court of Oyer and Terminer for said county being now of the Term of December one thousand nine hundred and eighteen, of twelve good and lawful men of this state and residents in the County of Hudson, over the age of twenty-one and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said defendants to recognize on their oath whether the said Ciro Mattarazzo and Louis Feary be guilty of murder as in the indictment aforesaid, is charged against them, or not guilty thereof, because as well the said Pierre P. Garven, Prosecutor of the Pleas of the County of Hudson, aforesaid, who prosecutes for the State of New Jersey, in this behalf, as the said defendants have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

At which time, that is to say on the thirtieth day of January in the year of our Lord one thousand nine hundred and nineteen, at Jersey City aforesaid, in the County of Hudson aforesaid, before the Honorable Richard Doherty, Judge, as aforesaid, constituting and holding the Court of Quarter Sessions as aforesaid, here come as well the said Pierre P. Garven, Prosecutor of the Pleas aforesaid, who prosecutes as aforesaid, as well the said defendants under the custody of the sheriff aforesaid, to whose custody they have hitherto been committed and who being brought to the bar in their proper persons by the sheriff, and the jurors of the jury by the sheriff of the County of Hudson, aforesaid, for the purpose chosen and empanelled and re-

Postea.

turned, to wit: Fred Kruse, Samuel Greenwich, James Mulroy, Patrick Engels, Thomas Kelly, John J. Kelly, Fred Ainweg, John B. Anderson, Patrick Higgins, Alfred Trimbel, William Gramfort 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, and the said jury in charge of the said officers of the Court, duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit, at January thirtieth, 1919, 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 Pierre P. Garven, Esquire, Prosecutor of the Pleas as aforesaid, and of the said defendants and do say that the said defendants are guilty of murder in the Second Degree with a recommendation for mercy.

Therefore, the said indictment be continued until February 27th, 1919.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and it by the Court here considered and adjudged, that the said defendant, Ciro Mattarazzo be and he is hereby sentenced to be confined in State Prison at hard labor for a maximum term of of thirty year (30) and a minimum term of five (5) years and thence until the costs of prosecution are paid.

And the said defendant, Louis Feary, is hereby sentenced to be confined in State Prison at hard labor for a maximum term of thirty years (30) and a minimum term of five (5) years and thence until the costs of prosecution are fully paid.

Judgment entered and signed this eighteenth day of April, one thousand nine hundred and nineteen.

RICHARD DOHERTY,

Judge of the Court of Oyer and Terminer in and for the County of Hudson, State of New Jersey.

STATE OF NEW JERSEY, COUNTY OF HUDSON.
IN THE COURT OF OYER AND TERMINER.

THE STATE OF NEW JERSEY, *vs.* GEORGE CLINTON, alias JAS. DEVLIN, LOUIS FEORY, and CIRO MATTARAZZO, *Defendants.*	*Final Hearing.* *Indictment* 236. *Murder.*

Transcript of the stenographic report of the testimony of Harry W. Walsh and the three defendants, taken in the above entitled matter, at the court house in Jersey City, on January 29, 1919, before his Honor, RICHARD DOHERTY, Judge, and a Jury.

Appearances:

Pierre P. Garven, Esq., prosecutor, and James F. Clark, Esq., assistant prosecutor, for the State.

J. Victor D'Aloia, Esq., and Carl Abruzzese, Esq., for defendant, Ciro Mattarazzo.

James E. Erwin, Esq., for defendant, James Devlin.

Frank W. Heilenday, Esq., for defendant, Louis Feory.

ARTHUR HASKINS, sworn in behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q You are a practicing physician of this city, Doctor? A I am.

Q And do you hold any position for the county? A Yes.

Q What position? A Assistant county physician of Hudson County.

Q Did you make a post-mortem examination of the body of John Joyce? A I did.

Q When? A November 8th last.

Q Where? A In Gorman's Morgue, Jersey City.

Q Now, will you tell the Court and jury what sort of examination you made. Tell what you found and what, in your opinion, was the cause of his death? A I performed an autopsy on the body of John Joyce at Gorman's Morgue, on the 8th day

of November, 1918. The body was that of a man measuring about five feet nine and three-quarters inches in height, weighing approximately 160 pounds, and apparently about 57 or 58 years of age. I found over the right ear a longitudinal discoloration of the skin—a black and blue discoloration of the skin—with slightly raised portions due to hemitoma. I found over the right eye a discoloration of the skin, apparently due to bruises. I found no other marks of violence on the examination of the body. On turning back the scalp I found extensive hemorrhage had taken place in the right temporal region, that is, right above the ear, and in the temporal muscle, which is on the side of the head. At that point it had been lacerated and extensive hemorrhage had taken place into its substance. On removing the scalp I found, at a point beginning about an inch and three-quarters above the right ear, a linear fracture of the skull, about an inch and half above the right ear. It was a fracture of the skull without displacement or with slight displacement, and this extended downward. It is rather hard to describe it; the base of the skull is divided into, so called, three portions, and it extended down into that part which runs down the so-called petrous portion of the temporal bone—that is, the bone composing a part of the skull near the ear. It ran along that and then over across the base of the body of the sphenoid, which is the bone relating to the base of the skull. It went through that and through a small bony projection of the front jaw called the lesser wing. It then went forward over the orbital plate, that is, over the top of the eye, and that was extensively fractured in several directions. There was also a slight fracture passing from that over to the left eye; and the areas around the front part of the eye were black and blue. I found at about the point corresponding with the beginning of this fracture that the brain was extensively lacerated and torn; also, I found a similar condition, but much smaller, in the frontal lobe, about where I indicate here. I found that in the brain—the brain is in two portions; in the right half it is hollow in the center, called the ventricle; and this lacerated condition extended into that ventricle, and that was extensively filled with clotted blood. The other organs of the body were in such a condition as to be consistent with the continuance of life and health. Therefore, from all the facts observed I inferred that

death resulted from intracranial hemorrhage and laceration of the brain following fracture of the skull.

Q I show you a photograph and ask you if that is a photograph of the body of the man, Mr. Joyce, whom you examined? A Yes, sir.

Mr. Garven. I offer that for identification.

Mr. D'Aloia. I object to the use of the photograph, on the ground that that was taken some time after the death of the deceased and after the date of this alleged occurrence.

The Court. Suppose you reserve that.

Mr. Garven. I merely ask that it be marked for identification.

(The same is marked Exhibit S. 1 for identification.)

Cross examination by Mr. D'Aloia.

Q Doctor, will you please describe that injury here that you pointed out. A That was at that point there, a small abrasion of the skin, superficially involving the skin at this point.

The Court. You are now indicating over the right frontal bone? A Yes, sir.

Q What was the condition of that bone at that point? A All right.

Q You said there was a slight indication of fracture over the right eye? A No, I said the right ear.

Q How far did that fracture come forward? A It did not come forward of the ear.

Q Well, what was the condition of the bone from the ear to the eye? A Why, there was a linear fracture of the skull without displacement beginning about an inch and half above the right ear, and extending downward into the middle fossa and then it continued forward.

Q Forward toward the eye? A Yes, on the base of the skull.

John H. O'Neill, direct.

JOHN H. O'NEILL, sworn in behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q Doctor O'Neill, you are a practicing physician of this city? A I am.

Q Do you recall visiting the residence of John Joyce at 299 Barrow street on October 28th last? A I do.

Q About what time of the day or night did you call there? A About seven o'clock.

Q At night? A In the evening; possibly a few minutes before.

Q Did you see Mr. Joyce? A I did.

Q Just describe his condition. A I was called in there on this evening of October 28th about seven o'clock, and as I entered the room there was one or two of our officers there supporting Mr. Joyce in a chair and his wife was bathing him. Mr. Joyce was not conscious, or fully conscious; but he was not wholly unconscious. We got him to bed, carried him in, and made an examination that night; and I found upon physical examination a linear bruise or welt extending right over the right ear and a raised portion extending over the eye, with considerable swelling. The swelling continued over the right eye that night and so much so that that eye was closed, and it couldn't be opened only by forcible means. On the back of the head and about in the middle of the crown there was a raised lump, perhaps as large as a hen's egg. It was on the upper portion and just above that there was another contusion or bruise, just above this long linear welt, so called, extending to that. We put him to bed and he became unconscious. At that time he had lost the sight of his eyes, and we went through the usual procedure and put him to bed. The next morning that welt had extended down over the right ear and also extended to the left eye, and there was a great deal of discoloration; in fact, so much so that the whole front portion was completely discolored around this eye; and the next day, later on in the afternoon the discoloration had extended to the left eye and he was totally blind in both eyes.

Q Did you attend him after that? A I attended him right along after that.

John H. O'Neill, direct.

Q Until he died? A He was unconscious for about three days and then cleared up slightly, and then he became unconscious or partly conscious, or semi-conscious most of the time. He would recognize my voice, but he couldn't see me; and from that time on he was totally blind from all tests we could give him, and he was unable to remove himself from the bed—was totally incapacitated from any voluntary movement of his own.

Q And you were there until he died? A I was there constantly until he died, three or four times a day.

Q Did you know him before this? A Yes, I knew him very well.

Q You were his physician? A Yes, I had been for a number of years.

Q I show you a photograph marked S. 1 for identification, and ask you if that is a photograph of the body of John Joyce? A It is.

Q And does that correctly show the body of John Joyce? A It does; and also the physical damage done to that eye and face, as I recollect it.

Q Were you present at the autopsy? A No, I was not.

Mr. Garven. I offer the photograph in evidence.

Mr. D'Aloia. That is objected to. The time when that photograph was taken and the conditions under which it was taken are too remote from the day of the alleged occurrence. If I understand the prosecutor's direct examination correctly he admits or must admit that this was taken after the autopsy.

The Court. It is offered by the prosecutor as showing the condition of the deceased after his death. I overrule your objection. The photograph will be admitted in evidence.

Mr. D'Aloia. I ask for an exception.

No cross examination.

RICHARD DOHERTY,

J.

William D. Kelly, direct.

WILLIAM D. KELLY, called in behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q Mr. Kelly, where do you live? A I live in East Orange, but my business is in Newark, New Jersey.

Q What is your business? A Custom tailor.

Q Did you know John Joyce? A Yes, sir; I had known him for twelve and one-half years; he was in my employ from May 20 until October 28.

Q What was his employment with you? A He was a cutter,—took measure, drafted patterns, and drafted goods.

Q Was he in your employ on October 28? A He was.

Q And for how long a time previous to that? A Since May 20th previous.

Q Do you recollect seeing Mr. Joyce on the afternoon of that day,—October 28th? A October 28th he was employed in my place. I do.

Q And do you recollect when he left your place of business? A Yes, sir.

Q About what time? A He left there—I would say it was around about 20 minutes after six.

Q Now, you know where he lived? A Yes, sir.

Q At the time he left your place had you given him any directions as to where he should go? A Well, he was to take some goods over to New York to be made; he was to take them along with him that night and deliver them in the morning from his house in Jersey City.

Q Did he take the goods with him? A No; I met him at the tube station and gave them to him.

Q When you speak of the tube station are you speaking of the tube station in Newark? A In Newark; yes, sir.

Q Now, did you see the defendants—these three men—on the afternoon of that day at the tube station, or previous to that time? A No, sir.

Q Where was your place of business? A 863 Broad street.

Q How near to Market is that? A Well, you might say there is a real block between that and Market street. There is a small street intervening, called Branford place, but it is really one block away from Broad and Market.

William D. Kelly, direct.

Q I understand you to say that you saw Mr. Joyce leave your place of business and actually go out into the street? A Yes, sir.

Q Did you see any men out there at that time? A I didn't see anybody there when he left, but they were there, according to his statement before he left.

Mr. D'Aloia. I object.

The Court. Strike it out.

Q Now, when you went out on the street did you see any men standing about there? A I did not.

Q And from your place of business where did you go? A I boarded the car and rode up to opposite the tube station at Military Park.

Q And did you at that time have the goods you refer to? A Yes, sir; done up in a box.

Q Where did you see Mr. Joyce? A In the tube station.

Q About what time was that? A That, I would say, was pretty close to seven, as near as I could judge.

Q What did you do with the goods? A I handed the box to Mr. Joyce.

Q Did you see him go to the train? A No; I didn't wait for that.

Q Did you look around? Did you identify anybody that was standing there at that time? A No, there didn't appear to be really anybody in the station that I could see. I looked around to see if there was anybody there that might be there looking—

Q You did not know these three defendants? A No, I did not.

Q Did you ever see them before? A Not to my knowledge.

Q When was the next time you saw Mr. Joyce? A I saw him at his home the day after he was assaulted.

Q What was his condition then? A Very bad.

Q Well, describe it. A Well, his wife said she didn't think—

Mr. D'Aloia. I object.

Q No, just describe his condition as you observed it. A Well, he was lying in bed, pretty well battered up.

Q Describe the battered up condition. A All black across the head, and I couldn't see anything beyond the forehead. His

face was all black and blue, and his right eye was discolored and closed.

Q Was it dark at the time you left your place? A Yes, sir.

Cross examination by Mr. Heilenday.

Q What business are you in? A Custom tailoring business.

Q And Mr. Joyce helped you in that place? A Yes.

Q Was there any difficulty in regard to a strike in that business? A Yes.

Q Was Joyce one of the striking tailors? A He didn't have anything to do with the striking part of it; he was a cutter.

Q Do you employ Union or non-Union men? A I employ Union men now, because previous to this strike there was no such thing as Union men in Newark in custom tailoring establishments.

Q Do you know whether Joyce was warned? A One of the men warned him on the Saturday previous.

Q Do you know whether these men had asked him not to continue in his employment? A I don't know whether they asked him to do that or not.

Q Don't you know that a man named Nichola Monica had asked him not to work there? A No, I do not.

Q Isn't it a fact that you had a conversation with Joyce and that he told you that Nichola Monica had asked him not to continue working for you? A No; that conversation between Joyce and the man that you refer to took place between him and a man named James Mickere.

Q And after that conversation didn't Joyce tell you if the strikers came after him he would be able to take care of himself? A He told me that conversation with Meckere. That took place at noon when he went out from the place. I can relate that conversation.

Q Didn't he say that? A No, he did not.

Q Didn't he tell you that he had some strong-arm men around from New York and he would look out for himself if they came after him and he would be on the watch? A No.

Q Didn't tell you that? A No.

Q Didn't you testify to that at the coroner's inquest? A No, he said he would keep his eyes open to see that they didn't get him.

William D. Kelly, cross.

Q I want to know if you didn't testify to this at the coroner's inquest, that if they came after him he would be on the watch? A I testified that he said he would keep his eyes open that they didn't get him; that is what I remember that he said to me.

Q Keep his eyes open and that they wouldn't get him? A Yes.

Q And not that he would be on the watch? A I don't know that he used those words.

Q Now, why didn't Joyce deliver these suits himself from your place instead of your meeting him down at the railroad station? A Well, I didn't think it was safe for him to leave the place.

Q Why? A Because a number of men had been beaten up in Newark. One man, a cutter for Deerin had been beaten up in Newark on Friday night.

Q This was Monday? A This was Monday.

Q Before he left were there any strikers outside of your place? A He said there was.

Q Was that the reason he didn't take the package himself? A I advised him not to take it.

Q That you would meet him down to the railroad station? A Yes.

Q And you thought it was a prudent thing for you to take a chance yourself then to let him take it? A I would sooner take the chance than to have him take it.

Cross examination by Mr. D'Aloia.

Q Joyce was a cutter, wasn't he? A Yes.

Q He wasn't a tailor? A No.

Mr. Garven. One minute. Do I understand the counsel here represent different defendants?

Mr. Heilenday. Yes.

The Court. I think I will require the rule to be followed.

Mr. D'Aloia. That is the difficulty of trying two or three men at the same time. Each defendant has different counsel. Mr. Heilenday asked for a severance before this trial began, and that was objected to by the prosecutor. Mr. Heilenday represents Feory and I have nothing to do with Mr. Feory; Mr. Erwin represents Devlin

and I have nothing to do with Devlin, but I do represent Matterazzo, and Mr. Heilenday may have something to ask this witness on behalf of Feory which does not affect my client.

The Court. Maybe you misapprehend the application of the rule. I don't want to seriously restrict any counsel from doing everything in the interest of his client; the only thing I would like to avoid would be a traversing of the same ground that has been covered, and I think your disposition ought to be to aid the Court in facilitating the trial.

Q He was taking clothes over to Jersey City or to New York to have the tailoring work done on it? A That's right.

Q And you say he was never employed by you as a tailor? A Not as an actual tailor.

Q And that is what he was doing on this evening in question? A Yes, sir.

Re-direct examination by Mr. Garven.

Q Now, were the cutters out on strike? A No, sir.

Q And Joyce told you he had been threatened? A That he had virtually been threatened, yes.

Q And you were a little solicitous about the crowd standing outside, weren't you? A Yes, sir.

Q You had seen them standing outside?

Mr. D'Aloia. There is no testimony on direct examination that at the time Joyce left there there was a crowd outside at all. Unless he fixes the time I shall object.

The Court. I thought he said that Joyce told him that there was a crowd outside.

Mr. Garven. That was elicited on cross examination.

Q (The question is read by the stenographer.) A I didn't see the crowd standing outside myself.

Q Now, when Joyce told you that he had been threatened, or after Joyce told you that did you see a crowd standing outside in front of your place? A Well, that is, do you mean on this particular night or at any time afterwards? There was always some of them standing outside of my place.

Louis Montagna, direct.

Q I mean strikers? A Yes, strikers in front of the place, always.

Q When you went out, after Mr. Joyce had left you that night did you see any of these strikers standing out there? A I did not.

Q Had there been any previous to that time, so far as you know? A Not so far as I know, no, actually.

Q Not that you personally know? A No.

Re-cross examination by Mr. D'Aloia.

Q Did Joyce carry a revolver that night after he left your place? A No, sir, not that I know of.

Q Did you advise him to get a revolver? A I did not.

LOUIS MONTAGNA, sworn in behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q Where did you work on October 28th last? A For James J. McGuire.

Q Who is James J. McGuire? A Custom tailor, 859 Broad street.

Q Do you know Mr. Kelly? A Yes, sir.

Q How near to his place of business were you employed? A Two doors away.

Q And did you know Mr. John Joyce? A I knew him by sight; yes, sir.

Q Did you see him that night? A No, sir; I did not.

Q Didn't you see him on the evening of October 28th last? A No, sir.

Q Do you recollect when you did see him about that time? A I seen him in the morning.

Q You saw him in the morning? A Yes, sir.

Q Didn't you see him at any other time that day? A No, sir.

Q You know Mr. Kelley, don't you? A Yes, sir.

Q Didn't you tell Mr. Kelley—

Mr. Heilenday. I object.

Q Didn't you tell Mr. Kelley a day or two after October 28th that you saw Mr. Joyce leave his store that evening about half-past six, and that a crowd followed him?

Miss Freda Goldstein, direct.

Mr. D'Aloia. That is objected to.

The Court. How is that competent?

Mr. Garven. Why, first, on the ground of surprise; to neutralize evidence already given.

The Court. It could be used only to contradict any previous testimony that has been given.

Mr. D'Aloia. There hasn't been any evidence given by this witness to neutralize.

The Court. Joyce was employed by a neighboring tailor.

Mr. D'Aloia. We will admit he has worked for McGuire.

Mr. Garven. I went further and asked him if he saw Joyce that night about half-past six leave Kelley's shop and he said "No, he did not; he saw him that morning."

The Court. You insist you have the right to pursue the examination and elicit more evidence from this witness?

Mr. Garven. No, just that one question.

The Court. I think I will admit that question.

Mr. D'Aloia. I ask for an exception.

(L. S.) RICHARD DOHERTY,
J.

A No, sir.

No cross examination.

MISS FREDA GOLDSTEIN, sworn in behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q Where do you live, Freda? A 110 7th avenue.

Q Newark? A Yes, sir.

Q And were you living there on October 28th last? A Yes, sir.

Q Living with your parents? A Yes, sir.

Q Do you work? A No, sir.

Q Your parents have a store there? A Yes, sir.

Q What? A Hardware and paint store on one side and electrical supplies on the other.

Q What is that address? A 110 Seventh avenue.

Miss Freda Goldstein, direct.

Q Now, I show you a piece of paper and ask you if you have ever seen that paper before? A Yes, sir.

Q Where? A On a package.

Q What kind of a package? A A package with shoes inside.

Q And were those shoes yours? A No, sir.

Q Well, whereabouts did you see the package that you speak of? A Came from the post-office and I had it around a box in the store.

Q That is, the store of your father and mother; is that right? A Yes, sir.

Q 110 Seventh avenue? A Yes, sir.

Q When was the last time you saw that paper? A When the detective brought it in. We went to the Jersey City courts and they showed us the package.

Q Now, where was the last place you saw that paper? A In Jersey City.

Q No; I mean previous to October 28th, 1918? A It came on Monday and I unwrapped the package and put it on the counter with the other paper.

Q Monday was October 28th? A I don't remember the date.

Q Where did you put that paper after you had taken it from the box? A On the counter.

Q And that was the last you saw of it until you saw it in Jersey City; is that right? A Yes, sir.

Mr. Garven. I offer that paper in evidence.

Mr. D'Aloia. I object to it.

The Court. What is the relevancy of it?

Mr. Garven. Well, of course I have got to go one step at a time. There is a piece of paper—

Mr. D'Aloia (interrupting). I object to these statements. Here is a girl that testifies on some Monday—maybe October 28th—she saw a piece of paper around a shoe box and that she unwrapped the package and put the paper on the counter.

The Court. If the prosecutor will assure me that he can connect it up I will allow it to be marked for identification.

Mr. Garven. I propose to prove that that paper was wrapped around a pipe which was purchased in the store

of this young lady's mother and father, that was purchased by one of the defendants and was used by the other defendant to strike down Joyce, and this piece of paper was around that pipe.

The Court. I will allow it to be marked for identification.

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

No cross examination.

(Mrs.) SADIE GOLDSTEIN, sworn on behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q Mrs. Goldstein, where do you live? A I live at 110 Seventh avenue.

Q Newark? A Yes, sir.

Q And you have a place of business over there? A Yes, sir.

Q What is that business? A We have a hardware and paint store and keep a little plumbers' supplies.

Q Were you in business in October last? A Yes; we are in business for the last three years.

Q In the same place? A Almost the same.

Q But in October last you were running the hardware store on Seventh avenue, in Newark? A Yes, sir.

Q Now, I show you a piece of pipe and ask you if you ever saw that pipe in your store? A I might have saw it all alike.

Q I am speaking of this piece of pipe here, Mrs. Goldstein. A I sold a piece of pipe about 18 inches long, but I don't know exactly whether this is the pipe or not.

Q What kind of pipe was it? A Galvanized.

Q Three-quarter inch galvanized pipe? A Yes.

Q About that length? A I didn't measure it; I don't know.

Q And to whom did you sell it?

Mr. Heilenday. I object. She hasn't said she sold it to anybody. Oh, well, I have no objection.

A Two young fellows.

Q Speak up a little louder. A Two young boys.

Q Two or three? A Two.

Mrs. Sadies Goldstein, direct.

Q And just describe the boys, as far as you can recollect; what did they look like? A I don't remember the boys at all. I can't say that I took any notice of the boys.

Q Were they short or tall? A One was taller than the other. That is the way I remember it, as far as I can remember.

Q Could you tell whether they were Italians? A No, I couldn't tell you.

Mr. D'Aloia. That is objected to, if your Honor please.

Q Do you recollect what time of day that was sold? A Sold in the evening, but I don't know what time.

Q Can you say whether or not that was the pipe that you sold? A No, I could not say. Pipe is all alike; it looks all alike to me.

Q Now, do you recollect whether previous to that time you ever sold a piece of pipe without threads on it? A I did sell a piece of pipe without threads, but I don't remember the date.

Q Well, can you recollect the month? A I don't know exactly the month, but it was a couple of weeks after the detectives come, and I remember I sold that piece of pipe.

Q You sold a piece of pipe about two weeks before the detective came? A I suppose so; I don't know exactly whether it was two weeks before.

Q Was it very long before that? A It wasn't very long before that.

Q Now, do you recollect whether the pipe that you sold to these young men had threads on it? A No, it had no threads.

Q How much did they pay for it? A They paid between 20 and 25 cents; I don't remember exactly how much. I don't remember; something like that.

Q And did you wrap it up in that piece of paper that you speak of? A No, sir; I didn't wrap it up.

Q Did you see any of them wrap it up? A I didn't see it, because we had two stores and I was all alone on the floor, and I might turn around and they wrap it up themselves. I don't know; I wouldn't say yes or no.

Q Well, was there any paper on the counter? A Yes.

Q Did you see this piece of paper on the counter? A I didn't see that paper, but we had paper on the counter.

Q You didn't see any paper on the counter? A I don't say it wasn't there; I didn't see it.

Harry W. Walsh, direct.

Q Do you remember seeing that paper before? A No, I didn't, because my daughter opened the package. I didn't see it; still I saw it in Jersey City when they brought it to me in the police court.

Q But you don't recollect seeing it on that day? A No; I didn't see it.

No cross examination.

HARRY W. WALSH, called on behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q What is your business, Mr. Walsh? A Detective of the Jersey City Police Department.

Q How long have you been connected with the police department? A Four years and eleven months.

Q Were you on duty on November 16th, 1918, last? A Yes, sir.

Q Where? A Well, I was investigating the murder of John Joyce.

Q And on that day did you see Ciro Mattarazzo, one of these defendants? A Yes, sir.

Q Where did you see him? A In Newark, first, in the morning of November 16th, 1918.

Q Whereabouts in Newark? A In the Second Precinct police station police court. He was on trial for assault.

Q And when next did you see him that day? A He was discharged for that assault in Newark, and he was ordered by Judge D'Alcia to leave the city. We followed him down from the court to the Park Place tube station and on the train to Jersey City, and when he arrived at Grove street, feeling that he knew something of this crime, we arrested him and took him from the train to the police station.

Mr. D'Aloia. I move to strike out his feelings.

The Court. Yes, it may be stricken out.

Q You took him to the police station; about what time was that? A Well, it was somewheres between 12 and 1.

Q (*By the Court.*) What was the date? A November 16, 1918.

Q Between 12 and 1, at noon? A Yes, sir.

Harry W. Walsh, direct.

Q What did you do with him then? A Why, we questioned him in regard to the murder of Mr. Joyce. The assault was committed on October 28.

Q When you say "we questioned him," who do you mean? A My partner and myself, Detective Brady.

Q Is Brady in court here? A Yes, sir.

Q And at that time Mattarazzo was in Police Headquarters? A Yes, sir.

Q Who was present besides you and Mr. Brady at the time you questioned him? A Well, we had him there probably for an hour. There was several present coming in and going out, and I couldn't say who was present at the time.

Q Were there any others besides you asking questions? A Detective Brady.

Q Any others? A Well, he came in and asked him a few questions, but he had to go out on business.

Q Now, then, did you take a statement from this man? A Yes, sir.

Q Where was he when you took the statement? A In Police Headquarters in Jersey City.

Q And who was present besides Detective Brady? A Detective Brady and Mr. Davis.

Q William J. Davis? A I don't know the gentleman's name, but I could point him out.

Q And were there any others present? A Capt. Prescott and Detective Daily.

Q Now, before you took the statement, just tell the Court and jury what was said by you and any others to this defendant. A Well, I asked him several questions relating to the assault upon Mr. Joyce, and I confronted him with a piece of pipe that he was assaulted with, and he denied any knowledge of the assaulting or having seen that piece of pipe before. Upon searching him I found a memorandum book in his possession, in which there was an item, "gas pipe, 25 cents." After being confronted with that again and further questioning he finally admitted that he did commit that assault with a man named Devlin and a man named Feory, both of New York. He also gave us a statement telling us just how it occurred.

Q Was there anything else said by you to him before he attempted to make the statement that you speak of? A He was then questioned relative to that assault on Mr. Joyce.

Q Did he make any objection to making that statement? A No, sir; he didn't.

Q Did you promise anything to him if he would make a statement to you? A Positively not.

Q Did you threaten him in any way? A No, sir.

Q Well, before you asked the questions did you say anything further to him? A We brought him to Police Headquarters from the train, and he asked what he was being taken there for. I says, "You have committed an assault on a tailor in Newark, and upon being apprehended for that and discharged now we have had an assault in this city, upon a man who lived in this city, and we feel that you know something about it." I questioned him along those lines, and he denied any knowledge of that.

Q Did you tell him that you were a detective or police officer, or anything of that kind? A Yes, sir.

Q Did he make any objection to your then questioning him? A No, sir; he did not.

Q (*By the Court.*) Was he under arrest? A Yes, sir.

Q Did you tell him that he was under arrest? A Yes, sir.

Q Did you say anything to him about answering any questions that you might ask him? A Why, we told him that it must be voluntary and what he did say would be used against him at his trial.

Q What did he say then? A He said nothing at all. After the statement was completed it was read to him, and he was asked if there was anything that he wanted taken out or anything that he wanted to add to the statement to Mr. Davis.

Q Was that in your presence? A Yes, sir.

Q Did you ask him certain questions after you told him you wanted a voluntary statement? A Yes, sir.

Q Did he answer them? A Yes.

Q Did he object to answering them? A No, sir.

Q Who asked these questions; did you? A I asked the questions.

Q And who took down the answers? A Detective Daily in typewritten form.

Q Were you present when he took down the questions and answers? A Yes, sir.

Q Were you standing where you could observe him? A I was sitting directly next to Mattarazzo.

Harry W. Wash, direct.

Q And how close to the man who was typewriting or writing the questions and answers? A He was on the other side of Mattarazzo.

Q When you say "on the other side," what do you mean? A Mattarazzo was between us.

Q Right alongside? A Yes, sir.

Q Was Mattarazzo in a position where he could see this man write? A Yes, sir.

Q Was this man using a typewriting machine or writing in long-hand? A He was using a typewriting machine.

Q And could you see the questions and answers as they were typewritten or put on the sheet? A Yes, sir.

Q Now, I show you a paper and ask you if that is the signature of Matarazzo, the defendant on trial here? A Yes, sir.

Q And is that also his signature (counsel indicating the first page of the sworn statement)? A Yes, sir.

Q And did you see Mr. Brady sign his name to it? A Yes, sir.

Q And also see Mr. Davis sign his name? A Yes, sir.

Q Now, when these answers were typewritten on this sheet before he signed did the defendant or anyone read those questions and answers to him? A After it was complete.

Q After it was complete? A Yes; Mr. Davis.

Q Now, when these questions were asked did you or those other men correctly transcribe the answers given by this man on this statement? A Yes, sir.

Q You are positive about that? A Yes, sir.

Q And then it was read to this defendant before he signed it? A Yes, sir.

Q Did he make any objections? A No, sir.

Q After the statements were read to him did he make any objection to signing the paper? A No, sir; he did not.

Mr. Garven. I offer the statement in evidence.

Q (*By the Court.*) Were any threats expressed? A No, sir.

Q Any hope held out to him at any time? A No, sir; not in my presence.

Mr. D'Aloia. Before the paper is admitted I would like to cross examine him on it.

The Court. You may do so.

Harry W. Walsh, cross as to statement.

Examination as to statement by Mr. D'Aloia.

Q What time was it that you made this arrest? A What time? I can't give you the time exactly. It was somewhere between 11:30 and 1.

Q What time was it when that statement was made out? A Probably about 2:30.

Q Probably 2:30? A Yes.

Q How long did it take to write that? A An hour and half or so.

Q So that you began at 2:30 and finished around four o'clock? A Somewheres around that time.

Q "Somewheres around that time;" it has got to be made a little more definite. Was it four or after four? A After four.

Q How long after four? A I don't know.

Q Was it near five? A No, sir.

Q Sure about that? A Yes.

Q Now, for how long a time after half-past two was it that Mattarazzo denied knowing anything about the assault? A He didn't deny it at all.

The Court. Was half-past two the time of the arrest?

Mr. D'Aloia. Right after the statement was begun when they first asked him about this he said he didn't know anything about it.

Q For how long did Mattarazzo maintain that he didn't know anything about it? A From the time of the beginning of that statement until it was finished—probably an hour and half.

Q During that hour and half where was he? A In Police Headquarters.

Q You kept asking him about it for about an hour and half? A I asked him quite a few questions, and Detective Brady asked him some and also Capt. Prescott.

Q The first question that each man asked was "Do you know anything about this Joyce affair" and he said "no"? A Yes, he denied any knowledge.

Q Did you have any black-jack with you? A I had a police billy.

Q Did Brady have any instrument of that kind with him? A I don't know; I didn't see it.

Harry W. Walsh, cross as to statement.

Q Does Brady carry one? A He should, according to the rules of the department.

Q You have seen it lots of times? A Not lots of times.

Q You saw it on this day, did you? A No; I didn't.

Q For an hour and a half he answered you and answered Capt. Prescott and said he didn't know anything about that Joyce affair? A Yes.

Q What made him change? A I don't know, except that book.

Q After you found this book, what was the first question you put to him? A I went all through that book until I came upon that item, and after coming upon that item I confronted him with it.

Q What did he say? A Well, for awhile he denied it, but he finally admitted it.

Q How long a time? A Maybe five or ten minutes.

Q During that five or ten minutes did you lay hands on him? A No, sir.

Q Did Brady? A No, sir.

Q Did Capt. Prescott? A No, sir.

Q Anybody use a black-jack on him? A No, sir.

Q What did you say to him? Give us your words now. A As near as I can remember I says, "What's the use of telling us you don't know anything about this assault; why, you have got it marked in your book here."

Q What did he say to that? A Well, he remained quiet for awhile. "Isn't it a fact that this piece of pipe is a piece that you bought," and I showed him the pipe and the paper it was wrapped in. "You came all the way up here and hit that man?" He says, "No, I didn't; a fellow by the name of Devlin did it. I will tell you everything."

Q What was his condition at that time? A Normal, I guess.

Q Did he have any disfigurements about his face—any marks? A No, sir.

Q Had any punishment been inflicted, between 11:30 in the morning and 3 o'clock in the afternoon? A No, sir.

Q None at all? A No, sir.

Q Now, after he told you he would tell you everything, this man Davis came in and sat down and got that statement? A Setting at the typewriter he took the statement.

Harry W. Walsh, cross as to statement.

Q And that took an hour and half? A Probably about an hour and half; I wouldn't say exactly.

Q And you want to tell us here that it was a voluntary statement? A Yes, sir.

Q Is that in question and answer form or narrative form—the form of the statement? A Is it in question form?

Q Yes. A Yes.

Q In the form of question and answer? A Yes, sir.

Q Do you know how many of these questions you asked and how many were asked by Capt. Prescott? A No, I don't know.

Q Do you recognize any of these questions asked by Brady when he had some instrument in his hand? A He had no instrument in his hand when I was there.

Q What questions did he ask? Look at the first page (handing statement to witness)? A I couldn't tell you what questions Brady asked.

Q What question did you ask? A I can't tell you that, either.

Q What question did you ask on the second page? A Several of them.

Q Pick one out. A Why, it may be impossible for me to do that. (Witness looks at paper and continues.) It may be impossible for me to do that, Counsellor.

Q Is that the only statement you got from Mattarazzo? A I believe there was a continued statement—a further statement made the following day in the Sixth Precinct.

Q Where is that? A I suppose the prosecutor has got it; I don't know.

Q Who took that? A I took that.

Q Didn't you have enough when you got that? A We had better.

Q The second statement is better than the first? A It may not be better.

Q From a police standpoint is the second statement better than the first? A So far as implicating somebody else, yes.

Q Where is that statement? A So far as I know it is in the prosecutor's office.

Q You wrote that after? A Yes.

Q In typewriting? A No, sir; long-hand.

Q In what way does it differ from the first statement? A The first statement that we got from Mattarazzo, Mattarazzo

told us that he was to pay the other two men for their part as gopher in Newark, or for strong-arm man.

Q That is in the first statement? A Yes.

Q Now, find that word "gopher" in there? A I don't know—

Q You have made the statement; now find that word in there. A It may not be in here, Counsellor; I don't know.

Q Look at it carefully now; I don't want to take you by surprise.

Mr. Garven. The gentleman is now questioning as to what the paper contains, and therefore I shall insist that that go in evidence.

The Court. I apprehend that will be so if you examine now as to the contents of the paper. You cannot afterwards impeach it.

Mr. D'Aloia. I am attempting to prove that that statement is not a statement made by this defendant. That is one of the reasons for my cross examination of him; secondly, I am trying to show that the statement was not made voluntarily. He says that nobody touched the defendant when he made this statement. I am cross examining now in an attempt to show that this statement is not the statement that he made.

The Court. All right; I overrule the objection of the prosecutor and will say that perhaps my own suggestion is anticipatory. You may go ahead.

Mr. Garven. I am not through with my direct examination of this witness. As I understand it, I have offered that statement and this gentleman wanted to cross-examine to see if it was made voluntarily.

Q Do you recall any other word that might have been used in the interview on the first day when that statement was made? A No particular word. I just remember that Mattarazzo told me that with the money that he got from Casale he would pay Devlin.

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

Q (Question read by the stenographer.) A No, sir; I do not.

Exhibit S. 3, Statement of Ciro Matarazzo.

Q Did anyone there, just about the time that that statement was being transcribed—either you or Brady or anyone else—take out a club from a closet on the left-hand side of this room in which you were examining him at Police Headquarters and threaten to kill Mattarazzo with it? A No, sir.

Q Nobody did have it? A No, sir.

Q Were you absent from that room at any time between 11:30 and 4 o'clock? A No, sir.

Q Was Brady absent from that room at any time between 11:30 and 4? A Not to my knowledge.

Q You were there, weren't you? A Yes, sir.

Q Was Brady there all the time? A I guess he was.

Q Are you guessing? A Many occurrences have happened since October 28th last, up to the present time.

Mr. Garven. Now I offer that statement in evidence.

The Court. I don't care to rule on that, unless you have testimony to offer in contradiction of it.

Mr. D'Aloia. I want to object to the statement going in evidence, because we have had some admissions by this witness that he and two others called gophers were over in Newark and something was said about paying them, and it is not in the statement.

The Court. We are now dealing with the competency of the statement. Its weight as evidence is for the jury. I am going to admit the statement in evidence now and subsequently instruct the jury that they may consider its voluntary character.

Mr. D'Aloia. I ask that your Honor allow me an exception on the record.

(L. S.) RICHARD DOHERTY,
J.

(The statement is marked Exhibit S. 3, and is read by Mr. Garven as follows:)

Exhibit S. 3:

CIRO MATARAZZO, 185 Grand street, New York City, made to Harry Walsh.

I am detective Harry Walsh, of Jersey City Police Department. I am going to ask you some questions in ref-

erence to the crime for which you are arrested. You may answer them or not just as you wish, but what you do say must be of your own free will a voluntary statement, as it will be taken down in writing and used at your trial.

Q What is your name? A James Mattarazzo.

Q Where do you live? A 185 Grand street, New York City.

Q How old are you? A 20 years.

Q What is your occupation? A Printer.

Q How long have you worked there? A Five years.

Q You are charged with murder, in that you in company with one James Devlin, of New York City, and one Louis Feory, 235 West 46th street, New York City, N. Y., on Monday evening of October 28th, at 7:15 P. M. did assault one John Joyce, of 299 Barrow street, Jersey City, N. J., with a gas-pipe, wrapped in brown paper, on Wayne street, in the vicinity of Barrow street, inflicting injuries which caused the death of said John Joyce, some days later; what have you to say to the charge? A I did not assault him.

Q What do you know about this crime? A On or about October the 18th, 1918, Felice Casale, 267 Academy street, Newark, N. J., called at my home at 185 Grand street, New York City, and left word with my mother that he wanted to see me at his shop at 192 Market street, Newark, N. J. I called at his shop on October 21st, and he told me that the tailors were on strike; I had with me James Devlin, of New York City, and Louis Feory, 235 West 46th street, New York City, and he told us that he wanted us to take care of the strike and scare anyone from going to work by intimidation.

Q What was he to pay you for doing this work for the Union? A Felice Casale told me that Kline would pay us $4 a day; and after the strike is over he promised to give us a good present.

Q Who is Klein? A I do not know who Klein is, but Casale told me that he was connected with the Union and was to pay Casale the money for us. Devlin followed Mr. Joyce up the street and assaulted him in the middle of the block with the gas-pipe. He then ran around the other street and after waiting awhile we went back to Grove

street tube station, and met Devlin there. He told me that after he hit Joyce that his hat flew high in the air.

Q Where did you go from the Grove street tube station? A Devlin, Feory and myself went to our home in New York City.

Q Have you seen Devlin or Feory since? A I saw Feory.

Q Have you received any money from Casale for the work already done? A No, sir, but I paid out of my own pocket Devlin and Feory $28 cash up to the night of the assault.

Q Why did you pay your own money to these men? A I was sure of getting it back from Casale, who is a distant relative of mine.

CIRO MATARAZZO.

Sworn and subscribed to before me, William J. Davis, a Master in Chancery of New Jersey, at Jersey City this 16th day of November, 1918.

WILLIAM J. DAVIS,
Master in Chanc'y of New Jersey.

Direct examination by Mr. Garven resumed.

Q Now, I show you a piece of pipe and ask you whether or not that pipe was shown to Mattarazzo and that he identified that as the pipe which was purchased in Newark from an old woman? A Yes, sir.

Q Do you recognize that paper marked S. 2 for identification? A Yes.

Q Where did you first see that paper? A Well, I first saw that paper in the First Precinct on November 7.

Q Did you show the paper to Mattarazzo? A Yes, sir.

Q Now, I show you a memorandum book and ask you if that is the book you referred to in your cross examination by counsel as having been found on the person of Mattarazzo? A Yes, sir.

Q And I call your attention to an item—well, I call your attention to a page where there are three items, and ask you if those particular items were called to the attention of Mattarazzo? A Yes, sir.

Harry W. Walsh, cross.

Q What did he say in reference to the item "gas pipe 25 cents"? A Well, he said that he put that in that book for the purpose of getting it back from Casale; he kept a memorandum of his expenses. There is a memorandum also in that book that he incurred—

Q I call your attention to the car-fare item of 15 cents; and another item of car-fare of 25 cents. Did he explain what that was? A Yes, expenses incurred while working for Casale.

Q When you called his attention to that gas-pipe item did he say anything as to that item, referring to this particular piece of pipe? A Yes, sir.

Cross examination by Mr. D'Aloia.

Q What did he say about it? A He just told me after he purchased the piece of pipe for 25 cents he made a memorandum of it.

Q What did he say which enables you to answer the prosecutor's question regarding the 25 cents mentioned here, and to which you made answer "yes, sir"; what did he say? A He said, that after he purchased that piece of pipe for 25 cents he made that item in that book, for the purpose of collecting it back from Casale.

Q Now, in this statement that has been read to the jury by the prosecutor there is an answer to the second question—long question—and it is in this statement as follows: "I called at his shop (meaning Casale's) on October 21, and he told me that the tailors were on strike. I had with me James Devlin of New York City and Louis Feory, 235 West 46th street, New York City, and he (meaning Casale) told us that he wanted us to take care of the strikers and scare anyone from going to work by intimidation." Now, did Mattarazzo use that word "intimidation"? A Well—

Q Yes or no? A Well, I don't remember.

Q Do you know how that word got into this statement? A Sure; it was wrote in there, I suppose.

Q Well, now, who said it? A Well, if it is in there Mattarazzo must have said it.

Q You don't remember his saying it? A I don't remember back that far.

Q Now, at what particular juncture while this statement was being made out was the word "gopher" used? A I don't know

whether it was used in there or not; in fact, I don't remember it. I didn't say it was.

Q My question is, at what particular juncture in this statement was the word "gopher" used? A I don't know whether he used it or not.

Q Didn't you tell me a moment ago that he used the word? A I used the word "gopher"; I don't remember whether he said that or not.

Q Didn't you say that Mattarazzo was telling you that he and two other men were to go to Newark and work for Casale as gophers? A I don't know; I would like to have that answer read.

Q You don't remember it? A No; I don't remember my making that answer.

Q Your memory isn't quite well today, is it? A Yes, it is very well.

Q Very clear as to what words he used? A It is pretty clear.

Q Was the word "intimidation" used by Mattarazzo? A Yes.

Q Was the word "gopher" used by Mattarazzo? A I guess it was.

Q Are you guessing? Do you know? A I don't know.

Q Then your memory isn't very good as to what happened at Police Headquarters? A Well, I don't know.

Q You remember using the word "gopher" here on the stand? A Yes, I remember it.

Q Was that word used by Mattarazzo? A I use that word quite often.

Q Was it something you invented here in Court or was it something that was used by Mattarazzo on October 28? A I don't know whether he used it or not.

Q Did he say it at Police Headquarters or didn't he say it? A I don't know whether he did or not.

Cross examination on behalf of Devlin by Mr. Erwin.

Q In respect to this statement in typewriting: You are on the detective force, aren't you? A Yes.

Q And whenever you apprehend a man who is supposed to have committed a crime you try to get a statement such as this out of him? A If it is possible.

Thomas F. Kenney, direct.

Q And this part of the statement that is typewritten here as to his making it voluntarily— A That is a printed form.

Q That part is all printed and is there on the statement before you ask him anything about it? A This is a printed statement.

Re-direct examination by Mr. Garven.

Q And the whole statement was read to him before he signed it? A Yes.

By Mr. Erwin.

Q And the printed part was read to him, too? A Yes, sir.

THOMAS F. KENNEY, sworn in behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q You are a police officer of Jersey City? A Yes, sir.

Q And have been a police officer a number of years? A Thirteen years.

Q And were you doing duty on November 17th last? A Yes, sir.

Q Do you know Louis Feory? A Yes, sir.

Q Can you point him out to the Court and jury? A Yes, sir.

Q Where is he? A This gentleman on the left.

Q The first one? A Yes.

Q Do you know the second fellow? A Yes, Joseph James Devlin.

Q Who is the third man? A Ciro Mattarazzo.

Q Did you see Louis Feory on the 17th? A Yes.

Q Where? A At his home, 236 W. 46th street, New York.

Q And was he placed under arrest at that time? A At about one o'clock in the morning.

Q On the 16th or 17th? A 17th.

Q (*By the Court.*) You are referring now to Feory? A Yes, sir.

Q I understood you to say that he was arrested at his home in New York City? A Yes, sir.

Q Now, did you take a statement from Mr. Feory as to the killing of Mr. Joyce in Jersey City? A I took it at the New York police headquarters.

Thomas F. Kenney, direct.

Q What day was that? A On the night of the arrest—on the night of the 17th of November.

Q And at that time had he been apprehended and taken to the police headquarters? A Yes, sir.

Q Who was present besides you when this statement was taken? A Gorman, Kane and myself.

Q Did he make a statement then? A Yes.

Q Before he made the statement, tell the Court and jury what you said to him and what he said. A I told him he was arrested for a serious crime in connection with the murder of a man named John Joyce, of 288 Barrow street, Jersey City. First, he says "What am I arrested for?" I said, "You are arrested in connection with this crime; do you know anything about it?" He says, "Did the other fellows squeal?" "What other fellows," I said. "Jimmie Clinton and Ciro Mattarazzo"? Then I said, "Did you know those two men?" and he said "Yes." "How did you come to know them"? and he replied: "Why, I met them in Pennsylvania; we worked there in a railroad shop. We worked there for two weeks and then we came to New York and then we became friends." Later on he said "Ciro Mattarazzo wanted us to go to Newark, because he said he had a good job there," and then he goes on with the statement as it is here.

Q At that time were there any others besides the officers and yourself you speak of? A Why, there were New York men in and out with prisoners.

Q Did he say he wanted to make a voluntary statement with reference to this matter? A Yes, sir.

Mr. D'Aloia. Of course, this conversation with Feory in the absence of Mattarazzo is not binding on Mattarazzo, and I suppose your Honor will instruct the jury to that effect.

Q Now, at that time was anything said by him in the way of making a protest against the making of the statement? A No, sir.

Q Did you threaten him in any manner? A No, sir.

Q Or hold out any hope or encouragement to him in reference to the matter? A No, sir.

Q Did you say anything about making a voluntary statement? A Did he say anything?

Thomas F. Kenney, direct.

Q Did you? I am asking you. What I am trying to find out is exactly what you said to him before you started to take the statement from him. A Why, I told him about the information contained in the police statement, that Ciro Mattarazzo had made, implicating him in this case of John Joyce. Mattarazzo had already made a statement at Police Headquarters in Jersey City, and the captain of the precinct sent for me and said "Tom, go over to New York and see what you can find out."

Q He did make a statement? A Yes, and it was all voluntary.

Q Was it typewritten or written out? A Written in my own handwriting.

Q Now, before you started to take down the statement in your own hand writing did you say anything to him in reference to making this statement? A No, sir.

Q Nothing at all? A No more than you can see in the statement there, which reads it is all voluntary—it must be voluntary to be used at his trial and is taken down in writing.

Q What did he say? A He says, "All right, go ahead."

Q Did he answer the questions freely? A Yes, sir.

Q Did he object any? A No, sir.

Q Did you pull out any black-jack or anything of that kind? A No, sir.

Q Did he see any? A No, sir.

Q Now, I show you a paper and ask you if that is the paper you refer to with the signature of Louis Feory? A Yes, sir.

Q Did you ask him the questions? A Yes, sir.

Q And he answered them? A Yes, sir.

Q Did you correctly put upon this paper the questions that you asked? A Yes, sir.

Q And did you accurately place upon this paper the answers that he gave to those questions? A Yes, sir.

Q And this paper shows accurately the questions and answers that were made by you and given by him at that time, is that so? A Yes, sir.

Q And did you have these questions and answers read to him before he signed it? A Yes.

Q Did he object to signing it? A No, sir.

Q And that is his signature on there? A Yes, sir.

Mr. Garven. I offer that paper in evidence.

Thomas K. Kenney, cross as to statement.

Mr. Heilenday. I would like to have the opportunity of cross examining him about the paper before it is admitted in evidence.

The Court. You may do so.

Examination by Mr. Heilenday regarding Feory's statement.

Q You say the questions and answers were read to him before he signed it? A Yes.

Q You read them, did you? A Yes, sir.

Q That is right; you read statement to him? A I let him read it, too.

Q You let him read the questions and answers? A Yes.

Q And that is all he did read, isn't it? A Yes.

Q You didn't read the first part at all? A He read it all.

Q Don't you know that the first question is "What is your name?" and the answer is "Louis Feory"? A Yes.

Q You say he read all the questions and answers? A Everything in that statement.

Q What did you mean by the answer when you said that he read the questions and answers A You might question me in that way. Possibly I don't understand you.

Q You say now that he read the entire statement? A As it stands, yes.

Q And he signed it? A Yes, sir.

Q In your presence? A Yes, sir.

Q And who else was present when he signed it? A Detective Gorman and Kane.

Q What time did you say you arrested him? A About one or one-thirty in the morning.

Q And you went and got him out of bed? A No, sir; we found him at his home.

Q And then you took him to the police station? A Yes.

Q What time did you arrive there? A Possibly ten minutes to 2.

Q Did you arrest him before you got to the police station or after you got there? A After we got to the Police Headquarters.

Q How long did you question him before you took his statement? A Five or ten minutes.

Q What did he say to you when he got to the police station? A He didn't say anything. I told him what my mission was.

Thomas K. Kenney, cross as to statement.

Q What led you to write a statement if he didn't say anything? A I told him what Mattarazzo had said in Jersey City and that it was up to him to make a statement.

Q You told him you wanted a statement from him, didn't you? A Certainly, in his own favor.

Q Why, didn't you say so just now? You said he didn't say anything when you got to the police station and you told him that Mattarazzo made a statement? A Yes.

Q And that he had squealed? A Yes.

Q And you had already made up the paper? A I had already written his name and address in it.

Q You had this all ready? A No, I asked him those questions there and then prepared it.

(Recess until 2 o'clock.)

Q Mr. Kenney, you say you went to this man's house at one o'clock in the morning? A Yes, sir.

Q Whereabouts is the police station in relation to his house? How far away? A Why, I couldn't say that.

Q Is it a mile or a hundred feet? A You mean the Police Headquarters?

Q Yes, where you got this statement. A The station is in the Police Headquarters.

Q Where did you get this statement? A Police Headquarters.

Q Where did you bring this man? A To Police Headquarters.

Q Where did you arrest him? A At Police Headquarters.

Q Three of you went at one o'clock in the morning and got him? A Four of us.

Q And you took him out of his house at one o'clock in the morning? A We went there previous to one o'clock; we went there at ten o'clock.

Q And four of you walked together with him to Police Headquarters? A We went in an automobile.

Q How far away was that? A You mean the headquarters?

Q Yes, from his house? A He was arrested at Forty-sixth street.

Q Where is the Police Headquarters? A Why, downtown at the corner of—I can't just recall the street.

Thomas K. Kenney, cross as to statement.

Q What kind of an automobile was it, a limousine? A Small taxi.

Q Were you all sitting inside? A I was sitting with the driver.

Q And the other three men were inside? A Yes, sir.

Q You didn't hear any conversation that transpired while you were going from his house to Police Headquarters? A No, sir.

Q So you don't know what words were used, if any at all were used, by this prisoner until you got down to headquarters? A No, sir.

Q When you got to headquarters what was the first thing you did? A I told him who I was; I told him about the crime he was about to be arrested for; and I told him if he was going to make a statement it must be a voluntary statement of his own free will, as it would be used at his trial.

Q Are you sure it was a voluntary statement? A Yes, sir.

Q Do you remember that you said anything to Feory about a voluntary statement? A I told him he must be careful what he said.

Q Did you tell him, "I am going to take a statement from you; it must be voluntary and you must be careful?" A Yes.

Q And right away he gave you all these details? A Yes, sir.

Q What was the first thing you said to him A I asked him what his name was and how old he was.

Q Did he ask you if the others had squealed on him? A After I asked him those questions.

Q When did he ask you if the others had squealed on him? A He started off with that statement as soon as I told him what the charge was against him.

Q What did you say, that they had squealed or not? A He asked me whether the other fellows had squealed on him. Then I asked him how old he was, where he lived, what is business was, and then I told him, as you will see in the statement there, that he was about to be charged with the crime of murder.

Q After you had started with these questions as to how old he was and where he lived, then you told him about being charged with murder? A Yes, sir.

Q Then you went on with the rest of the statement? A I asked him the next question.

Thomas K. Kenney, cross as to statement.

Q What is the next question? A How old he was and where he lived and what his business was.

Q When was it you told him it must be voluntary? A Before I asked him those questions at all.

Q Before you asked him anything? A Yes, sir.

Q You are sure of that? A Yes, sir.

Q When was the time that he asked you if the other fellows had squealed on him? A As soon as I mentioned the name of Mattarazzo.

Q What did you say to him? A I told him that he had made a statement at the Jersey City Police Headquarters in Jersey City.

Q Did you show him the statement? A I did not.

Q Did he ask you what Mattarazzo had said? A Yes.

Q What did you say? A Why, I told him that he had implicated him and James Devlin.

Q Implicated him in what way? A I as much as said that Devlin was the man that had done the slugging, as he described it to me.

Q And didn't Mattarazzo tell you that Feory was back about a half a block? A No, he didn't say that.

Q Isn't it a fact that it appears in Mattarazzo's statement that Feory was back a block or two?

Mr. Garven. This man isn't testifying about Mattarazzo's statement; we are talking about Feory.

Q Hadn't they told you what Mattarazzo had said about Feory? A Yes.

Q And didn't they tell you that Feory was a half a block away when the blow was struck? A No, sir.

Q What did you tell Feory about that? A He was there when the crime was committed.

Q You don't know whether any other force was used by any of the other men on your way down in the taxi-cab, or any threats made? A We had no conversation on the way down.

Q How long did it take you to go from his house to the police station? A Twenty minutes, possibly.

Q And the first thing you did was to get out this paper and start to write? A Yes, sir.

Q Who else was there? A Detective Kane and Gorman.

Thomas K. Kenney, cross as to statement.

Q All of you together at the time? A Yes.

Q Did you see one of them punch Feory in the jaw? A There was no punching done.

Q Were you there all the time? A Yes.

Q What time did you go home? A We arrived home, at least I did, about four in the morning.

Q What time did you leave New York? A Possibly 3:15.

Q Were you in police headquarters until 3:15? A I would say from half-past 1 to 3:15.

Q Was Feory there during all of that time? A Yes.

Q What time did he sign the statement? A It was about 3 o'clock.

Q What did you do with Feory from half-past 1 to 3 o'clock? A I was taking his statement.

Q It took you an hour and a half to take the statement? A I didn't say it took us an hour and a half. I should say it took us one solid hour.

Q One solid hour? A Yes.

Q Now, during this hour while you were writing, what was Feory doing? A Answering my questions.

Q Sitting down or standing up? A Sitting down.

Q Don't you know that when he sat down you made him stand up? A Positively not.

Q Don't you know that somebody punched him on the head right there and told him he has got to answer these questions? A Positively not.

Q What did Feory tell you about his participation in this crime before you started to write anything? A He didn't tell me anything direct.

Q How did you come to write these answers? A From my questioning him.

Q What was your first question? A Where he lived.

Q Didn't you ask him if he had anything to do with this crime? A After I took these preliminary questions.

Q What was the first thing that he said?

Mr. Garven. It seems to me that the statement speaks for itself.

Mr. Heilenday. The point I am trying to prove is what the conversation was that took place between these two men that isn't in the statement.

Thomas K. Kenney, cross as to statement.

Mr. Garven. I understand this is merely a preliminary examination to find out whether this was a voluntary statement.

The Court. They are trying to impeach the integrity of the statement and I will allow it.

Q What was the first thing said to him regarding his participation in this crime? A I asked him if he was in Jersey City on the night of October 28th, and he said he was not. I said, "Where were you"? He said, "I was in Newark." In company with whom? And he told me in company with Mattarazzo and Devlin. I said, "Whereabouts in Newark," and he said "in along Broad street and along there." I said, "What was your purpose over there, and what was your business over there?" "Well," he said, "I don't know the man's name, but we were brought over to Newark; there was some trouble over there in among the tailors, and we were brought over there to Newark to scare those fellows, and after this thing was over with we were going to get a good job."

Q Was this in the statement that you are telling us now? A That is an outside affair.

Q That is what I am driving at: You didn't put everything in that statement that transpired between you? A I don't know as that had any bearing on the case.

Q You asked him a whole lot of questions and received a whole lot of answers, but you only put in such answers as you thought was material? A Well, that is, in connection with the crime.

Q What did he say about participation in that? A Then he goes on to tell me the story.

Q What story did he tell you? A He said he was going to Newark on two or three different days, and Mattarazzo—(the witness pauses).

The Court. Proceed.

A —and Mattarazzo had told him, but he couldn't mention the man's name to me who was going to hire him and give him $4 a day; and I asked him had he received any money, and he said "no, not yet"; that he hadn't received it but he was going to receive it. I said, "Who was the man who was going to pay you?" and he said, "I don't know him name, but we all met in a

cobbler shop over in Newark." I asked him on what street, and he said "I don't know that; I'm a stranger in Newark."

Q What did he say about his participation in the crime? That is what I am driving at. Did Feory say he hit this man? A No.

Q Why don't you tell me? A I am answering your questions.

Q Go ahead and answer them. A He said that he was in company with Mattarazzo and they came in on the train with this man now dead, Mr. Joyce, and Mr. Joyce got off at the Grove street station and he traced Mr. Joyce over to some street he didn't know what, and turned over into another block which he didn't know.

Q Did he turn to the west or to the east, or to the south? A Turned to the east. I wouldn't say positively he said "east."

Q You know positively about what was said about warning him as to being a voluntary statement? A Yes.

Q Do you know now whether or not he said he turned to the east? A I think he did.

Q Did you ask him whether he knew which way east was? A I says, are you sure about that, and he says "Yes, I turned to the right."

Q And just because he said "to the right" you thought he must mean to the east? Why did you put down "east" if he said "to the right"? A Because he went to the east according to his diagram to me of the city.

Q Why didn't you use that diagram in making up his statement? A I don't know why I didn't.

Q How far away was he when Joyce was struck? A He said that the three of them trailed this man up the street.

Q Did he use the word "trail"? A Follow.

Q Why did you use the word "trailed this man?" A That is a word that I use sometimes.

Q Can't you give me a correct version of what he said? A He said "we followed him."

Q One block east? A One block over to some street.

Q And you put down one block east? A Yes. Then he said, when he got up in front of some house, he didn't know where it was. Devlin struck him with the pipe.

Q Where did he say Feory was at the time Devlin struck him? A Right behind.

Exhibit S. 4, Statement of Louis Feory.

Q Is that what the statement says, "right behind him"? A Yes.

Q You are sure he didn't tell you he was a block away? A I didn't hear that.

Q Did you see Mattarazzo's statement? A I didn't see his statement.

Q You didn't know that Mattarazzo had made a statement? A No, sir.

Q You are positive that Feory said he was right behind? A Yes.

Q Did he say how many feet? A No, sir; no dimensions at all.

Mr. Heilenday. Now, if the Court please, I object to this statement being introduced in evidence, on the ground that the witness has said that he had conversations with Feory —various questions were put and answers given and that this witness transcribed only such questions and answers as he thought material. Feory said he turned to the right and this witness concluded that "to the right" meant to the east, and, therefore, this statement does not state the conversation he had with Feory with any degree of accuracy.

The Court. Your argument might hold good as to the credibility of the statement, but that wouldn't destroy its voluntary character. It will be admitted in evidence as a previous statement and I will charge the jury that they have the right to pass upon the voluntary part of it.

Mr. Heilenday. I ask for an exception.

(L. S.) RICHARD DOHERTY,
J.

(The statement is admitted in evidence, marked Exhibit S. 4, and is then read by Mr. Garven, as follows:)

EXHIBIT S. 4.

November 17, 1918.

I am Thomas F. Kenney, detective of Jersey City Police Department. I am going to ask you some questions for the crime of which you are arrested. You may

answer them or not just as you wish, a voluntary statement taken in writing to be used at your trial.

Q What is your name? A Louis Feory.

Q Where do you live? A 235 W. 46th St., New York City.

Q How old are you? A 21 years.

Q What is your occupation? A Ladies cutter.

Q You are charged with murder in as much as you in company with Ciro Matarazzo of 185 Grand street, New York, and George Clinton, alies James Devlin, of New York City, address unknown; that on the evening of October 28, 1918, about 7:15 p. m., in front of house number 60 Wayne street, Jersey City, did strike over head with a piece of ¾ in. galvanized iron pipe one John Joyce, age 50, of 299 Barrow St., Jersey City, which caused his death. What have you to say to this charge? A About 2 weeks ago I met Ciro Matarazzo at my home with Jimmie Devlin. We three left my house and went to the P. R. R. station at 7th avenue and 34th St. Matarazzo said to me, "come over to Newark, N. J.; the tailors are on strike. All you have to do is to stop the men and tell them not to go to work. If they work we will lose the strike." That night we three came back to New York. The next day the three of us went back to Newark, N. J. Matarazzo gave Devlin and myself $4. for our trouble. That night we came back to New York City. The third day three of us went over to Newark, N. J. Matarazzo gave Devlin and me $4. each for our day's work. That night we came back to New York. The next day we did not go to Newark, but the following day we did. That night Matarazzo was arrested in Newark, N. J., for punching a fellow. Me and Devlin came back to New York that night. Matarazzo got bailed out the next day. He came to my house and told me he punched a fellow and was out on bail. The second day after Matarazzo, Devlin and myself went back to Newark, N. J., and stayed there all day. Late in the afternoon Matarazzo, Devlin and myself crossed a long railroad bridge to 7th avenue. I met a friend and was talking to him. Devlin and Matarazzo said "Wait a minute; we will be back in a little while". They then came back with a piece of

pipe in a paper. The three of us then went back to Broad and Market streets where all the strikers was. About six o'clock in the evening there was 6 or 8 strikers on a corner. They said "go after that man; he lives in Jersey City". The three of us followed the man to the tube station in Newark. Two or three of the strikers pointed the man out to us. He was carrying a box. The strikers got on the train too. Me and Devlin and Matarazzo got off the tube train at Grove St. Jersey City; came upstairs to the street and followed the man with the box over one block and turned up a street to the right. About the middle of the block Devlin left Matarazzo and myself and walked ahead and struck the man who was carrying the box with the pipe. I heard the noise when the box fell. I then ran away; went down into the tube station at Grove Street. I met Devlin and Matarazzo. Devlin and me came back to New York and Matarazzo went to Newark, N. J.

Q Who struck the man that was carrying the box? A Devlin did.

Q Did you see Devlin strike the man who was carrying the box? A I did not see him strike the man, but I know Devlin was carrying the pipe in the paper. Me and Matarazzo was about 20 feet behind. We heard the noise of the box falling. We ran back to the tube.

Q What did Devlin say to you when you all three met down in the Grove St. tube? A He said, "I hit that man over the head".

LOUIS FEORY.

WITNESS:

James Kelliher, Det. 1st Precinct. Above statement taken by me Thomas F. Kenney, Detective of Jersey City Police Department at 1:30 A. M., Nov. 17, 1918, at Police Headquarters, New York City.

Direct examination by Mr. Garven resumed.

Q Did Feory identify the pipe that was used? A I didn't have the pipe at that time.

Thomas F. Kenney, re-direct.

Q Well, at any subsequent time? A No, sir, he did not.

Cross examination by Mr. Heilenday.

Q Do you recall now that Feory did say he was alongside of Devlin? A I said behind him.

Q Right behind him? A I don't say right behind him.

Q I asked you if any distances were mentioned and you said "no"; in this statement you say "right behind him." A I don't know as that question was asked.

Q The statement was that Feory was right behind Devlin; is that true or not true? A It is true.

Q What did you mean when you say here that he was 20 feet behind? A I asked him that question and that was the answer, I suppose.

Q Well, then, you concluded that 20 feet meant right behind the man; is that so? A Yes.

Q Your testimony throughout this entire confession is based on how you interpret this man's words; isn't that it? A It is just as he answered the questions.

Re-direct examination by Mr. Garven.

Q You put down in this statement practically the language used by this man?

Mr. Heilenday. I object to the word "practically." He said he used his own interpretation and that is highly important in this case.

The Court. It goes only to the question of credibility. He says he used virtually his language. The jury may determine that.

Q Now, Mr. Kenney, did you ever see Devlin? A Yes, sir.

Q Where was he the first time you saw him? A Police Headquarters, New York.

Q Did you take a statement from Mr. Devlin? A I did.

Q Where? A At Police Headquarters, New York.

Q Was that the occasion when Feory was there? A No, sir; two days after; it was on the 19th.

Q And who was present when this statement was taken? A At the time the statement was taken those that were present were Detective Kane, German, Keleher and myself.

Thomas F. Kenney, re-direct.

Q Had Devlin then been apprehended? A Yes, sir, and was at that time at Police Headquarters.

Q You had taken him to Police Headquarters? A Detective Kane brought him there. I saw him, but I didn't bring him.

Q You were there? A Yes.

Q What time of the day was this statement taken? A Half-past nine at night.

Q Who was present besides you and Detective Kane? A Detective Gorman and Detective Kelleher.

Q Was this statement taken by you? A Yes, sir.

Q Did you ask the questions? A I informed him of the charge.

Q I say, first, did you ask him questions? A Yes, sir.

Q And he gave the answers to those questions to you? A Yes, sir.

Q Before you asked the questions just tell the Court and jury what was said to him, if anything. A I told him about the crime; that he was about to be arrested. I told him who I was and my title in the Jersey City Police Department, and told him he was about to be arrested for the crime and whatever statement be made it must be of his own free will as it would be taken down in writing and used at his trial.

Q When that was said to him did he say anything? A Yes.

Q What? A He said he was willing to tell everything.

Q And then you asked him the questions? A Yes.

Q And he answered them? A Yes, sir.

Q And are those questions and answers shown on this paper? A Yes, sir.

Q And the questions and answers that are there are the questions and answers made by him and you? A Yes, sir.

Q And the answers given, are they accurately stated in this statement? A Yes.

Q Written down by you in your own handwriting? A Yes, sir.

Q After this statement was taken by you did you read it to him or did you let him read it himself? A I read it first and then gave it to him to read.

Q Did he make any objection to it? A None whatever.

Q Did he sign it? A Yes.

Q Is this his signature (exhibiting paper to witness)? A Yes, sir.

Thomas F. Kenney, cross as to statement.

Q And that was signed in the presence of yourself and Keleher? A Yes, sir.

Mr. Garven. I now offer that statement in evidence.

Mr. Erwin. It is objected to, if your Honor please, on the same general grounds as were made to the other statement.

The Court. Do you want to examine on it?

Mr. Erwin. Yes, your Honor.

Examination by Mr. Erwin as to statement.

Q You say this statement was made on November 19th? A Yes.

Q Two days after you had the talk with Feory? A Yes, sir.

Q Was Feory there when this statement was made by Devlin? A No, sir.

Q Just you and the other officers? A Yes.

Q Was Mattarazzo there? A No, sir.

Q Now, where did this take place? A At Police Headquarters in New York.

Q At Police Headquarters in New York? A Yes, sir.

Q And you asked the questions? A Yes, sir.

Q And you wrote down the answers? A Yes, sir.

Q Now, as you asked the questions did you write them out? A Yes, sir.

Q Did you write out the questions and then put them down or did you get his answers and then put them both down at one time? A I asked him the questions first and then wrote it down.

Q And then get the answer? A Yes.

Q And then wrote it out afterwards? A Yes, sir.

Q You say before you started to ask Devlin these questions you told him that he was about to be placed under arrest? A He was already placed under arrest.

Q Then you went to change your statement, made in answer to the prosecutor's question, that he was about to be arrested? A He was in Headquarters at the time under arrest.

Q I understood you to say you told him he was about to be arrested? A I told him he was about to be charged with the crime of murder.

Thomas F. Kenney, cross as to statement.

Q Did you tell him what crime he was about to be charged with? A Yes.

Q What? A Murder.

Q What did he say? A He said, "What murder is that?" I told him the murder of John Joyce, the tailor, residing at 288 Barrow street, Jersey City.

Q Does this that you are telling us now appear on the statement? A No, sir.

Q What did he say then? A Well, he said "I guess I am in sweet."

Q Those were the words he used, were they? A Yes. I said, "What do you mean by sweet." He said, "I guess I am in Dutch." Then I asked him again what he meant by that, and he says, "I was over there with those fellows." "What fellows?" He said, "I was over there with Matarazzo and Feory." I says, "What do you mean when you say you were over there?" He says, "I was over in the City of Newark."

Q Do you mean to tell this Court and jury that with no more preliminary than that this man that had been charged with murder came forward and told you all? A Yes, sir.

Q After he had been told that he was about to be charge with the crime of murder? A Yes, he sat down and told the whole story and told it without any trouble.

Q You didn't tell him that the others had peached? A No, sir.

Q He had no reason to believe that anybody had peached, so far as you know? A No, sir.

Q Did you mention the names of Mattarazzo and Feory at the time this statement was taken? A No, sir.

Q Didn't mention those two names at all? A No, sir.

Q The answers that you put down are in your own language? A They are in his language to me.

Q I mean as interpreted by you? A They are answers to my questions.

Q They are not absolutely verbatim? A No, sir; they are as I asked them.

Q Put in better language, I suppose? You were careful, of course, not to leave out anything that you thought wasn't important? A And also I didn't put in anything that would injure the man.

Thomas F. Kenney, cross as to statement.

Q In other words, you didn't want to take advantage of this boy? A No, sir.

Q You were there acting in the capacity of a confessional because he wanted to confess? A Yes.

Q That is the situation? A Yes, sir.

Q There isn't anything in here about the answers being given voluntarily? A No, sir; outside of the usual form which reads that way.

Q And you memorized that? A And also I would like to inform the Court and prosecutor the difference in the two statements.

Q I don't care for that.

The Court. Don't volunteer anything.

Q These statements that are made to you and other members of the force are always protected? A Yes.

Q You wouldn't hand in a statement unless there was something in it about being voluntary. A I wouldn't hand in a statement that was not voluntary?

Q Yes. A No, I would not.

Q Now, at the time this statement was made just tell us, as near as you can remember, what you said to him about what appears in this statement. A I told him I was Thomas F. Kenney, detective of the Jersey City police department, and I said "You are about to be arrested for the crime"—

Q About to be arrested? A About to be charged.

Q Did you lay your hand on this man when he was making answer to the questions? A No, sir.

Q Did any of the New York policemen touch him? A No, sir.

Q He didn't make any objection at all— A (Interrupting.) None whatever.

Q —to giving these statements? A No.

Q What did you do with that statement after it was completed and signed? A I left it at the Police Headquarters and it was put in the safe.

Mr. Erwin. I would like to move that this statement be excluded, on the ground that it doesn't appear that it was voluntarily made.

Exhibit S. 5, Statement of James J. Devlin.

Q (*By the Court.*) Mr. Kenney, when the draft of that statement was finally completed, was it read over to him again? A Yes, sir; I read it and then gave it back to him to read.

Q According to your recollection of it, did you read that introductory part to him? A Yes, that is my own.

Q And the specific questions and answers? A Yes, sir; all that was in the statement.

The Court. This statement will be admitted in evidence, on the understanding that there will be no conflict of evidence as to its voluntary character.

Mr. Erwin. I ask for an exception.

RICHARD DOHERTY,
J.

(The statement of James J. Devlin is admitted in evidence, marked Exhibit S. 5, and is read by Mr. Garven as follows:)

I am Thomas F. Kenney, detective of the Jersey City police department. I am going to ask you some questions for the crime of which you are arrested. You may answer them or not just as you wish, a voluntary statement taken in writing to be used at your trial.

Q What is your name? A James Joseph Devlin.

Q Residence? A 965 Fox street, Bronx, New York.

Q How old are you? A Twenty.

Q What is your occupation? A Laborer.

Q How long have you worked there? A (No answer.)

Q You are charged with murder inasmuch as you, in company with James Matarazzo, age 20, residing at 185 Grand St., New York City, and Louis Feory, age 21, residing at 235 West 46th St., New York, you did strike on head with a piece of ¾-in. galvanized iron pipe one John Joyce, age 50, residing at 299 Barrow St., on the evening of October 28, 1918, in front of house No. 60 Wayne St., inflicting wounds which caused his death; what have you to say to this charge? A About one month I was working at Renora, Pa., for the Pennsylvania Railroad Co. I met Jimmie Matarazzo and Louis Feory there We became friends, as we all came from New York. We left Renora,

Exhibit S. 5, Statement of James J. Devlin.

Pa., on October 20, 1918, and arrived at New York October 21, 1918. I stopped at Louis's house until the 23d of the month, as I owed him $20 and wanted to pay him on the 23d of the month. Jimmie Matarazzo said to me, do you want to go to work; I got a job for you. I said what kind of a job is it? He said it was a strike; it's easy money. I asked him where it was. He said over in Newark, N. J., and his brother was boss of the Union. Went to Jimmie's brother's store but it was closed. We went back to the big store where the strike was. I was then introduced to Jimmie's brother. He told me Jimmie was to be the boss over Louis and me. Jimmie handed me over to one of the men on strike. He said to me, when I talk to this man you bang him. I did not strike him, but told him not to go to work again. That's what I did all day. Jimmie stayed in Newark, N. J. Louis and I came back to New York on the 24th. Me and Louis went back to Newark, N. J., and me and Jimmie we held up different men and told them not to go to work. At six o'clock that evening Jimmie was arrested in Newark by a policeman for striking a man. He got out because he was with me. The next day, Thursday night, me and Louis and Jimmie slept in Jimmie's brother's tailor shop in Newark. On Friday the 25th we did the same thing, held up people and told them not to work. Louis punched a fellow that night but did get arrested. That Saturday the 26th we done the same thing, held up people; told them not to go to work. The 3 of us came back to New York that night about 10 o'clock. The 3 of us slept at Louis's house. The three of us went to Newark, N. J., to Jimmie's brother's tailor shop. Jimmie got some money of his brother. He gave me $4. Jimmie gave me $12 in all, $4 for each day. Jimmie stayed in Newark. Me and Louis came to New York at 1 o'clock in the afternoon. We stayed around New York. That night I slept at Louis's house Monday the 28th. Me and Louis went back to Newark, N. J. Me, Louis and Jimmie went to Jimmie's brother's shoemaker shop. We met some little Italian, some friend of Jimmie's. They went out the store and said "We will be back in a little while. They came back with a piece of pipe rolled up in paper. Jimmie carried the pipe until

Exhibit S. 5, Statement of James J. Devlin.

about 6 in the evening. Then he gave it to Louis while we went over to the tailor shop to see his brother. The brother came back with Jimmie. He pointed out a man who was carrying a box. Jimmie said to me and Louis, this is the man we got to get. We 3 followed the man with the box to the Newark tube station, got on a train at Newark, N. J., and got off the same train at Grove street, Jersey City. That was about 7 o'clock in the evening. Came up on the street. Followed man with the box over one block. We turned to our right up the next street; near the corner Jimmie handed me the pipe and said hit that man over the head, he has got a gun. I said, no I will hit him with my hands. Jimmie said no, take this pipe and hit him over the head. My brother told me he got a gun. Jimmie and Louis went to the other side of the street. We followed the man with the box to the middle of the block. Jimmie came across the street, handed me the pipe. He said give it to him we are with you. I then struck him over the head with the pipe that was rolled up in paper. The man I hit he fell to the sidewalk and I walked away. Jimmie and Louis hollered run, there's someone after you. The three of us run to the tube. We all met downstairs at the station. We met. Jimmie said to me did you make a good job of it? I said I hit the man; I know he fell. I walked away. The three of us came back to New York, but Jimmie went back to Newark again. I slept in Louis's house that night. The next day the three of us met in Newark, N. J. I told Jimmie I would not work any more.

(Signed) JAMES JOSEPH DEVLIN.

WITNESS:

James Keleher, Det. 1st Precinct. Statement taken by Thomas F. Kenney, detective of the Jersey City Police Department at the Police Headquarters New York City, Nov. 19, 1918.

Q Did you show Devlin the piece of pipe? A No, sir.

Mr. D'Aloia. Now that that statement has been read I would like to have your Honor warn the jury whatever

Devlin said about Mattarazzo in Mattarazzo's absence at the Police Headquarters in New York when that statement was made is not competent as against Mattarazzo.

The Court. The jury will receive instructions to that effect.

Cross examination by Mr. Erwin.

Q Mr. Kenney, you were with the other officers that took Feory's statement, weren't you? A Yes, sir.

Q And you knew what was in Feory's statement, didn't you? A Yes, sir.

Q And similarly the things that are in Feory's statement are in this statement that Devlin signed? A Yes.

Q Practically in the same language? A That is what you say.

Q Did you show Devlin Feory's statement? A He wasn't there. Two or three days had elapsed between that and the arrest.

LESTER J. LOCKWOOD, sworn in behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q Where do you live, Mr. Lockwood? A 306 Montgomery street, Jersey City.

Q Do you recollect being in the vicinity of Wayne and Barrow streets on the 28th of October last? A I do.

Q Did you know John Joyce? A No, sir; not before that time.

Q Did you see him on that particular night? A I did, sir.

Q About what time? A About 7:15 p. m.

Q Where was he when you first saw him? A On the corner of Barrow and Wayne.

Q What was he doing? A He was being supported by a woman and a crowd was gathering around.

Q Now, just tell the Court and jury what his condition was as you saw him at that time. A Well, I came out of the drug store about 7:15 and walked to the corner of Barrow and Wayne, and across the street a crowd was gathering, and a friend of mine and myself walked over and we saw this Mr. Joyce being supported by a woman. I thought he was under the influence of

liquor, and we seen that he was quite bruised up and cut over the right eye, and I asked him did he want to go and see a doctor and he says "no, I only live right across the street here." And so we started to assist him and brought him over; and I said again, "Do you want a doctor?" "No," he said, "take me right home." And so we took him up to 299 Barrow street and brought him in, and after we brought him in Capt. O'Neill was summoned and also the sergeant and a patrolman came.

Q Now, just describe the condition of his head at that time as you observed it. A Why, he was cut here (indicating) and had a bruise up here also (indicating). While he was in the home the doctor came, and the doctor put his hand on the back of his head here (indicating).

Q Did he have a hat on when you saw him? A I can't recollect. He had a bundle or box with him, and that is about the only thing I can remember.

Q Was that right on the corner of Wayne and Barrow streets? A Wayne and Barrow.

Q And about how far is that from the tube station at Grove street? A Just an even two blocks.

No cross examination.

JOHN UNDERWOOD, sworn in behalf of the State, testified as follows:

Direct examination by Mr. Garven.

Q You are a police officer of Jersey City? A Yes, sir.

Q Were you on duty the night of October 28th last? A Yes, sir.

Q And were you in the vicinity of Wayne and Barrow streets? A Within one block, yes, sir.

Q About what time? A Seven fifteen.

Q At that time did you know John Joyce? A No, I did not; no, sir.

Q Now, describe what you saw in that vicinity about that time. A At 7:15 in the evening, while walking north on Grove street passing Wayne I happened to look down Wayne street and saw a crowd of people standing on the northeast corner of Wayne and Barrow street. I went up there and went in among the crowd and asked them what the trouble was, and they told me that a man had been assaulted. I asked them by whom and

they said they didn't know. At that time a small boy, probably six or seven years old, reached up to me and said "Mister, see what I have found."

Mr. Heilenday. I object.

Q What did the boy do? A Handed me a piece of pipe.

Q Is this the pipe (exhibiting pipe to the witness)? A Yes, sir; that's the pipe.

Q And was it wrapped in paper at that time? A Yes, sir; a piece of brown paper.

Q And do you identify that paper (exhibiting paper to witness)? A Yes, sir; that's the paper.

Mr. Garven. Now I offer this pipe and this paper in evidence.

Mr. Heilenday. No objection.

(The same are admitted in evidence.)

Q What did you then do? A I still kept in the crowd and tried to find out whether anybody saw this assault committed, and everybody I asked said no.

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

The Court. Strike it out.

Q Don't tell what anybody else said, but what you did. Where did you go? A After that I was informed that two boys had taken his man across the street, which turned out to be 299 Barrow street. I went into that house on the first floor to the right, and a woman came to the door that turned out to be Mrs. Joyce, and I asked her if the man belonged there and she said "Yes, it is my husband." I went in there, and saw that the man had a laceration over the right eye, and in here (indicating) there was a lump right over the right ear. In the meantime Dr. O'Neill came in, and previous to that the wife had been wiping off his face. So Dr. O'Neill looked over Mr. Joyce and he ordered him to bed. I questioned Mr. Joyce as to how he came to be assaulted and he couldn't tell me anything about it. I asked him where he was employed or what his occupation was and he said he was a tailor in Newark.

No cross examination.

Mr. Garven. Now, I offer so much of this memorandum as relates to this matter,—the three items that have been referred to.

(The same is designated Exhibit S. 7.)

THE STATE RESTS.

JAMES JOSEPH DEVLIN, sworn in his own behalf, testified as follows:

Direct examination by Mr. Erwin.

Q What is your full name? A James Joseph Devlin.

Q Where do you live? A 965 Fox street, the Bronx, New York City.

Q With whom do you live? A With my mother.

Q How old are you? A Twenty years of age.

Q Speak up so that everybody can hear you. You remember the time immediately preceding the 28th of October, 1918? A Yes, sir.

Q And for about a week, or a few days, previous to the 28th of October what were you doing? A Working picket duty.

Q Where? A In Newark.

Q What was the occasion of your doing picket duty? Was there a strike on? A Yes, sir.

Q Tailor's strike? A Yes, sir.

Q And you were doing picket duty in relation to that strike? A Yes, sir.

Q Now, who introduced you to this job? A James Mattarazzo.

Q And what were you to be paid per day for this work? A $4 a day.

Q And what did you understand you were to do and what did you do as a picket? What do you understand to be the duties of a picket? A To walk up to a man and ask him not to go to work; that he is taking the bread and butter out of somebody else's mouth.

Q And did you do that? A Yes, sir.

Q Did you approach different strike-breakers from time to time? A Yes, sir.

Q And try to persuade them not to break the strike? A Yes, sir; not to break the strike.

Q Now, do you remember the 28th of October? A Yes, sir.

James Joseph Devlin, direct.

Q On that day with whom were you? A James Mattarazzo, and Louis Feory, and myself.

Q You three were together? A Yes, sir.

Q Now, was anybody pointed out to you on that day? A No, sir.

Q Nobody was directly pointed out on that day? A No, sir.

Q About the latter part of the afternoon what did you do? A James Mattarazzo brought me and Louis over to Casale's store in Newark.

Q About where is that? A I don't know what the street is.

Q What did you do then? A Jimmie Mattarazzo took the Italian boy out of the shoe store and told him he was going to come right back. Meanwhile we were in the store with the shoemaker, and ten minutes later they came back with the gas-pipe done up in paper.

Q Then what did you do? A I opened the package and wrapped it up again.

Q And then where did you go? A Went up to Market and Broad street.

Q Were there any strike-breakers around there? A No, sir.

Q What did you do? A Jimmie Mattarazzo met me on Broad street and he said he was going to see Casale, and we waited there. In a little while he came back.

Q What did you do and where did you go then? A James Mattarazzo and Louis and myself went to the Newark tube station.

Q Was anybody pointed out to you then? A No, sir.

Q What did you do when you went to the tube station? A The three of us went on the train.

Q For Jersey City? A Yes, from Newark.

Q Now, when you went on that train you went to Jersey City, did you? A Yes, sir.

Q Where did you get off? A Got off at Grove street.

Q You knew this man Joyce? A No, sir.

Q When did you first see Joyce? A James Mattarazzo told me that this is the man and that I go up and speak to him.

Q Where was that, on the train? A On the train, yes.

Q What did you understand by that? A Because he told me he was a strike-breaker.

James Joseph Devlin, direct.

Q Did he tell you anything about Joyce, as to whether you could talk to him? A He told me to find out where he is going with the package.

Q He told you to find out where he was going to take the package? A Yes.

Q Now, did you know whether or not Joyce was armed? A James Mattarazzo told me he had a gun.

Q Did he say anything else? A No, sir; that's all.

Q He said that he had a gun? A Yes.

Q Did he tell you to look out? A Yes, and take the pipe for protection.

Q And you took the pipe? A Yes.

Q When you got off at Grove street you followed this man Joyce? A Yes. James Mattarazzo, Feory and myself came to a corner—

Q You all got off at the tube station at Grove street to follow Joyce? A Yes, sir.

Q Now, you were going to speak to Joyce? A Yes, sir.

Q And you went up to Joyce? A I went up to Joyce.

Q What did you do then after that? A I says, "Hey, Buck, where are you going with that package"? He says, "Who are you?" and he had his hand in his hip pocket.

Q What did you do then? A I struck him with the pipe; I thought he had a gun.

Q Did you hit him more than once? A Only hit him once.

Q What did you do then? A I dropped the pipe and ran down into the tube station.

Q Why did you strike him with this pipe? A I was afraid of getting shot.

Q You thought he had a gun? A Yes, sir.

Q Now, what did you do after you hit him? A Oh, I hit him and ran away—dropped the pipe and ran back to the tube station.

Q Where did you next see Feory and Mattarazzo? A I met them down at the tube station.

Q Where did you go after you met them at the tube station? A James Mattarazzo went back to Newark and me and Feory went back to New York City. He gave me my pay.

Q Mattarazzo gave you your $4 pay? A Yes, sir.

Q Did he say anything about your interview with Joyce? A He asked me, and I said "Where are you going with the package," and I—

Q You told him what happened? A Yes, sir.

Q And he gave you the $4 your day's pay and you went to New York? A Yes, sir.

Q Now, you heard the officer, Kenney, testify to a statement that you made on the 17th of November? A Yes, sir.

Q When were you arrested? A I was arrested November 19th, 1918.

Q And who arrested you? A A detective.

Q You don't know who it was? A No, sir.

Q Was it this man who testified on the stand? A No, sir.

Q It wasn't he? A No, sir.

Q Where did he take you from when he arrested you? A I was working for the American Express Company.

Q Now, when you were arrested by the officer on the 19th of November where were you taken? A Taken to Police Headquarters.

Q In New York City? A Yes, sir.

Q That is down around Spring street? A Yes, sir.

Q And when you got in there tell us what happened. What did they do to you? A The New York detective asked me—

Q Wait a minute; who was present? A I don't remember.

Q You didn't know whether they were New York detectives or Jersey detectives? A They showed me their shield.

Q How many of them were there? A About six of them.

Q Men in the room with you, you mean? A Yes sir.

Q At what time of the night was it? A About half-past 9.

Q What? A About nine o'clock.

Q About nine o'clock at night? A Yes, sir.

Q And were you standing or sitting? A Sitting down.

Q Were they close to you? A They were close to me; yes, sir.

Q Sitting right alongside of you? A Yes, sir.

Q And they were asking you questions? A Yes, sir.

Q Did they tell you anything about being charged with the crime of murder when they arrested you? A I was arrested when they found me at the American Express Company.

Q You knew James Mattarazzo was under arrest for holding up a sailor with a gun? A Yes.

Q That is what they told you you were under arrest for? A Yes.

Q And they took you down to the police station? A Yes.

Q And when they got you there what did they say to you? A They said that was a bluff game.

Q To get you down to the station house? A Yes, sir.

Q Now, after they took you there what did they do then? A Asked me if I ever worked in Newark on a strike.

Q What did you tell them? A I told them the whole story.

Q Did they say anything about your being charged with murder? A Yes, sir.

Q Told you that you were charged with murder? A Yes.

Q Then what happened? A They started to hit me; got me all excited.

Q Started to hit you? A Yes.

Q Were you hit? A I was hit in the back.

Q You were punched in the back? A Yes.

Q What for? A Wanted me to speak up the truth.

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

Q Did they tell you that what you said was going to be used in your trial? A No, sir.

Q Never said anything like that? A No, sir.

Q When you were punched in the back what did you do? A Well, I covered up myself like that (witness illustrating).

Q Covered up your face with your arms? A Yes, and they were going to hit me in the face, too.

Q Now, I show you this statement that has been introduced in evidence; is that your signature? A Yes, sir.

Q Was this paper read over to you before you signed it? A No, sir; it wasn't read over to me at all.

Q You know what is in this statement now? A Yes, I heard it.

Q From hearing it read here to-day? A Yes, sir.

Q That is the first you knew what was in the statement? A Yes, sir.

Q It wasn't read over to you? A No, sir.

Q Positive of that? A Yes, sir.

Q And further than that, you are positive that this clause was not read over to you: "I am Thomas F. Kenney, a detective of Jersey City police department. I am going to ask you some questions in reference to the crime for which you are arrested; you may answer them or not just as you wish, but what you do say must be of your own free will a voluntary statement as it will be taken down in writing and used at your

trial." Was that ever read to you over there in the New York police station or when you signed this paper? A No, sir.

Q You told them your story, did you, over there ? A Yes.

Q Did you tell them what you have just told here now? A No, sir.

Q What did you tell them? A I told them the story that is in there.

Q You told them the story that is in this statement? A Yes.

Q You knew this story wasn't right? A Yes.

Q What did you tell them that story for? A They got me excited when I told them.

Q What were they doing to you? A They were beating me.

Q And that is the reason you told them this story? A Yes.

Q And in order to escape the beating you signed your name to that paper? A Yes, sir.

Q Was Jimmie Mattarazzo's name mentioned to you when this statement was taken? A Yes.

Q Did they show you a statement made by Jimmie Mattarazzo? A No, sir.

Q Did you ask to see it? A Yes, sir.

Q And they said they didn't have it? A Yes, it was in Jersey City.

Q Did they show you a statement made by Louis Feory? A No, sir.

Q Did they tell you that the story that Jimmie Mattarazzo had told was put in a statement? A No, sir.

Q Didn't they tell you that the story that is in here that Jimmie Mattarazzo had said was what he said in one statement? A Yes.

Q So they tried to make you believe that the story Jimmie had told was the one in this statement? A Yes, sir.

Q There is nothing further you want to tell us about your encounter with Mr. Joyce? A No, sir.

Q That is the whole story and the whole truth in the matter? A Yes, sir.

Cross examination by Mr. Garven.

Q Who was it that arrested you? A The detective arrested me.

Q What did he tell you you were arrested for? A Holding up a sailor with a gun.

Q And you did hold up a sailor? A No, sir; I told the detective I was the wrong man.

Q You were the right man, weren't you? A No, sir; I didn't hold up no sailor at all; that was a false charge to get me on this murder case.

Q But you had held up a sailor, hadn't you? A No, sir.

Q Are you sure about that? A No, sir.

Mr. Erwin. What difference does it make if he has held up a sailor?

The Court. He has a right to cross examine him. You brought it out.

Mr. Erwin. That is what the policeman told him.

Mr. Garven. I want to find out now whether the charge was true or false.

Q Isn't it a fact that you did hold up a sailor? A No, sir; I was working Sunday night at the American Express Company.

Q Don't you know that the saloon keeper pointed you out as the man who held up a sailor in his saloon? A No, sir; no saloon keeper pointed me out.

Q Sure about that? A Yes, sir.

Q Now, you were very much excited when you informed the officer of what is contained in that statement, weren't you? A Yes, sir.

Q Very much excited? A Yes.

Q Didn't know what you were saying? A No, sir.

Q Why did you say a few moments ago that you made this statement? A The New York detective hit me.

Q Although it wasn't a truthful statement? A It wasn't a truthful statement.

Q And you knew at that time that it wasn't a truthful statement? A I didn't know what I was saying. I was all mixed up.

Q Did you know what you did say? A Yes.

Q Did you say what is in this statement? A Yes.

Q This statement is true? A Yes.

Q You remember what was said? A Yes, sir.

Q You remember seeing them write it down in this statement? A Yes, sir.

Q Were you so excited that you can't recall what was said? A No, sir.

Q You weren't excited at all, were you? A I was excited, yes, sir, when he questioned me. He took my finger prints and all that.

Q Were you excited when you told him that you had been working about a month before up in Pennsylvania with these two men? A No, sir; I wasn't excited.

Q When they asked you your name and you gave James Joseph Devlin you weren't excited then, were you? A No.

Q When you told him you lived at 965 Fox street, the Bronx, New York City, you weren't excited? A No, sir.

Q When you told them your age you weren't excited? A No, sir.

Q When you gave them your name, address, and age you told them the truth? A Yes.

Q When you said that you were a laborer you were telling the truth? A Yes.

Q When you told them that a month before you had met these two other defendants in Pennsylvania and became friends you weren't excited? A No, sir.

Q And you told the truth? A Yes.

Q And you came back from Pennsylvania and you called him "Jimmie," didn't you? A Yes.

Q Did you say that Jimmie told you that he could get you a job over in Newark? A Yes.

Q Was that the truth? A Yes, sir.

Q Jimmie said he could get you a job in Newark? A Yes.

Q And you told the officer that? A Yes.

Q You weren't excited at that time? A No, sir.

Q You were telling the absolute truth? A Yes.

Q And didn't you tell the officers that you went over to Newark two or three days before the 28th day of October and you got $4 a day for it over there as a picket? A Yes.

Q Is that right? A Yes.

Q You weren't excited then? A No, sir.

Q And you told them the truth, didn't you? A Yes.

Q And then on the 28th day of October—you remember that distinctly, don't you? A Yes, sir.

Q You told the officers that you went over to Newark and was on the corner of Market and Broad and there were some strikers gathered there—isn't that so? A No, sir.

Q Didn't you tell them that? A No, sir.

Q Didn't you tell them that Jimmie handed you over to one of the men on strike? A Yes, sir.

Q Did Jimmie do that? A Yes, Jimmie—

Q That is, this Jimmie here? A Jimmie Mattarazzo.

Q And Jimmie had told you to go with this other man; is that right? A Yes.

Q And you told the officers that; isn't that so? A Yes.

Q You weren't excited at all, were you? A No, sir.

Q And you knew what you were talking about? A Yes.

Q And it was the truth? A Yes.

Q And you said, "When I talk to this man you bang him"? A Did the fellow tell you to bang him? A The man talked to this man first and he went over and told the man not to work that day.

Q Did he tell you to bang him? A If he went to work.

Q He used the word "bang"; isn't that so—bang him, hit him; is that right? A Yes.

Q And you told him not to go to work again that day? A Yes.

Q You weren't excited when you told that? A No, sir.

Q You were telling the truth? Is that so? A Yes, sir.

Q And you told the officers that? A Yes, sir.

Q And that was the truth? A Yes, sir.

Q Did you tell the officers that Jimmie stayed in Newark and Louis and you came back to New York on the 24th? Did you say: "Me and Louis went back to Newark, New Jersey, and me and Jimmie we held up different men and told them not to go to work at six o'clock that evening." Is that right? A Yes, sir.

Q And did you do that? A Yes.

Q And you told the officers that? A Yes.

Q And that was the truth, wasn't it? A Yes.

Q And then at six o'clock that evening Jimmie was arrested over in Newark? A Yes.

Q Was Jimmie arrested? A Yes.

Q And you told the truth about it, did you? A Yes.

Q And he got out because he was with you. The next day, Thursday night, you and Louis slept in Jimmie's brother's house or tailor shop, and Jimmie was with you that night? A The next day?

Q You told the officers that, did you? A Yes.

Q You saw them write it down and it was the truth, wasn't it? A Yes.

Q Now, on Friday, the 25th, you did the same thing; you held up people and told them not to go to work? A Yes.

Q You say Louis punched a fellow that night; that is Louis, this fellow here? A Yes.

Q Did he punch a fellow that night? A I don't know; I wasn't with him.

Q Did Louis say "I punched a fellow"? A Yes.

Q And you told the officer that? A Yes.

Q But he wasn't arrested? A No.

Q Now, on Saturday you did the same thing; you held people up and told them not to go to work; is that right? A Yes.

Q You told that to these officers over in New York and you told the truth? A Yes, sir.

Q You weren't a bit excited? A No, sir.

Q You knew what you were talking about? A Yes, sir.

Q Then you came back to New York that night about ten o'clock and you slept at Louis's house? This was Saturday night. Is that right? A Yes, sir.

Q And then the three of you went to Newark to Jimmie's brother's tailor shop. Jimmie got some money of his brother and gave you $4. Is that right? A He gave me $4.

Q You got $12 all together? A He paid me $4 a day every day I was out there.

Q How many days? A Seven days.

Q Then you got $28. A Yes, sir.

Q Now, on Monday you and Louis went back to Newark? A Yes, sir.

Q Is that right? A Yes, with Jimmie Mattarazzo.

Q And Jimmie, too? A Yes, sir.

Q And you and Louis and Jimmie went to Jimmie's brother's shoemaker shop; is that right? A Yes, sir.

Q Now, you and Louis and Jimmie did that, didn't you? A Yes.

James Joseph Devlin, cross.

Q And that was the truth when you told these officers and made that statement? A Yes, sir.

Q You and Louis did go back to Newark on that day? A Yes.

Q And you met a little Italian at that time? A Yes.

Q Jimmie's friend? A Yes.

Q Did you tell the officers that there was a little Italian out there, Jimmie's friend? A Yes.

Q And that Jimmie and his little Italian friend went to a store? A Yes.

Q And when they came back they had a piece of pipe with them, didn't they? A Yes.

Q It was in a paper? A Yes.

Q This is the paper, isn't it (exhibiting paper to witness)? A Yes.

Q Sure about that? A Yes, sir.

Q And that is the pipe? A Yes, sir.

Q And that is the paper it was wrapped in? A Yes, sir.

Q And did you unwrap it? A No, sir; Jimmie Mattarazzo unwrapped it.

Q And Louis was there all the time, wasn't he? A Yes, sir.

Q Louis was with you all the time? Every time you went to Newark Louis was with you; is that right? A Yes, sir.

Q And you slept together nights? A Yes, sir.

Q And you were paid together? A Yes.

Q Louis was with you all the time evenings up to the time when this man was hit; is that right? A Yes, sir.

Q Now, you told the officers that you met a little Italian, some friend of Jimmie's? A Yes, sir.

Q You weren't excited? A No, sir.

Q You were telling the truth, isn't that so? A Yes, sir.

Q They went out of the store and said "We will be back in a little while," and they came back with a piece of pipe rolled up in paper. Jimmie carried the pipe until about six in the evening; is that right? A Yes, sir.

Q That is this Jimmie here? A Yes.

Q And that is the truth, isn't it? A Yes.

Q And then he gave it to Louis? A No, he gave it to me.

Q Well, listen: Did you say to the officers that then he gave it to Louis while he went over to the tailor shop to see his brother? A No, sir.

Q Whom did he give it to? A James Mattarazzo told me to hold the pipe while he went to see Casale.

Q Was that the one he called his brother? A Yes, sir.

Q Now, did you say to the officers the brother came back with Jimmie? Did he come back with Jimmie? A James Mattarazzo went over to see Casale.

Q And did Casale come back with Jimmie? A Yes, sir.

Q And you told that to the officers, didn't you? A Yes, sir.

Q And Casale pointed out the man who was carrying a box? A Yes, sir.

Q Is that right? A Yes, sir.

Q Who was that, the old man Joyce? A Joyce, yes, sir.

Q Now, was Joyce a big man? A Wasn't so big; no, sir.

Q He was an old man? A Yes.

Q Grey haired? A Grey haired.

Q Stoop shoulder? A Yes, sir.

Q Was he bent over? A He wasn't so far bent over.

Q He was a thin man? A Yes.

Q (*By the Court.*) Where were you when Casale pointed him out? A On Market street.

Q And Joyce was a thin man, wasn't he? A Yes, sir.

Q Was he carrying a box at that time? A Carrying a box to the tube station.

Q I mean when you saw him on the corner of Broad and Market was he carry a box? A He was carrying a box; yes, sir.

Q Louis and Jimmie were there, weren't they? A Yes, sir.

Q And who else? A And this man Casale and Jimmie Mattarazzo.

Q And Casale told James, this defendant here, "there, that's the man"? A Yes.

Q What else did he say? A Find out where he is going with the package.

Q And you told the officers that, didn't you? A Yes.

Q I means the officers over in New York? A Yes, sir.

Q And that is the truth, isn't it? A Yes, sir.

Q And then you saw this man going down Broad street and you followed him, didn't you? A Yes, sir.

Q Who then had the pipe? A I was carrying the pipe.

Q And where were Louis and Jimmie? A Louis and Jimmie were walking with me.

Q Right with you? A Yes, sir.

Q What were you talking about? A James Mattarazzo was telling me—I wanted to talk to the man in Newark and he said "no, he might have somebody with him there to beat us up." I was supposed to speak to the man with the package, and he said "We will follow him home."

Q What was the reason you didn't want to tackle him in Newark; was it because you thought somebody might beat you up? A Yes.

Q And then what did you decide to do? A The three of us went on the tube station train.

Q You got there before Joyce did? A Yes, sir.

Q Mr. Joyce didn't come in the tube station until after you got there? A He was in the tube station before us.

Q Sure about that? A Yes, sir.

Q How close behind were you? A Oh, a half block away from him.

Q Did you see him? A Yes, sir.

Q All the way into the tube station? A Yes, sir.

Q And these two men were with you? A Yes, sir.

Q And you were carrying the pipe? A Yes.

Q What were you carrying the pipe for? A Protection.

Q What protection? A James Mattarazzo told me he had a gun.

Q Did he tell you how he knew? A He heard from Casale.

Q What did you people decide to do with this club here? A We were supposed to protect ourselves.

Q Now, then, you saw him get on the train, didn't you? A Yes, sir.

Q Did you know he was going to Jersey City? A I didn't know that he was going to Jersey City, but we followed him on the train and he got off at Grove street.

Q You three intended to follow him no matter where he went? A Yes.

Q And where were you going to get him? A Joyce went off at Grove street tube station in Jersey City and James Mattarazzo—

Q Now, listen. You were going to get old man Joyce that night, weren't you? A Yes.

James Joseph Devlin, cross.

Mr. Erwin. There is no testimony that he was going to get this man. He is putting words in the mouth of this witness; he is misleading him and it isn't fair.

Mr. Garven. I will turn it around the other way: Were you going to get the old man that night?

Mr. Erwin. What do you mean by "getting"?

A He just told James Mattarazzo to follow the man up the street and find out where he was going with the package. James Mattarazzo and Louis walked to the corner, and we left Louis staying on the corner, and James Mattarazzo walked with me for a little ways and said, "walk up to that man and ask him where he is going with the package."

Q You three were following this man from Newark? A Yes.

Q You had the piece of pipe in your hand? A Yes, sir.

Q And then you two men made up your minds to hit this man over the head with the pipe, didn't you? A No, sir.

Mr. Erwin. Now, I object. I think it is unfair for the prosecutor with his dominating personality to rule this boy.

The Court. Let the prosecutor continue his examination.

Q Was it then that you made up your minds? A No, sir.

Q You didn't make up your minds to hit this man at all, did you? A No, sir. Didn't speak to him.

Q Did you tell the officers in New York when this statement was taken that you got off the same train at Jersey City and that it was about seven o'clock? A Seven o'clock; yes, sir.

Q You said that? A Yes, sir.

Q And you weren't excited when you said it? A No, sir.

Q You were telling the truth? A Yes, sir.

Q You came up the street and followed the man over one block; that's right, is it? A Yes.

Q Then you turned to your right up the next street; is that right? A Me and Mattarazzo left Louis on the corner—

Q What corner? A As we turned up.

Q Why did you leave him there? A He told me to go up and speak to the man and find out where he was going with the package, and he says, "Watch yourself, he's got a gun."

Q (*By the Court.*) When did he tell you that, in Jersey City at the corner? A Yes.

Q You told the officers that you turned to your right up the next street; near the corner Jimmie handed me the pipe? A I had the pipe.

Q Did you say that Jimmie handed you the pipe? A I was all mixed up at that time. I was carrying the pipe.

Q Then that isn't true, is it? A No, sir.

Q You made a mistake there? A Yes.

Q You weren't excited? A No.

Q Then Jimmie said, "Hit that man over the head." Did Jimmie tell you to do that? A No, he said to go up and speak to the man.

Q Did you tell the officers that Jimmie told you to hit the man over the head? A No, sir.

Q You didn't tell the officers that? A No, sir.

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

Q You began to get excited during that time? A Yes.

Q "He has got a gun. I said, no I will hit him with my hand." Did you say that? A Yes, I was excited when I told that.

Q You didn't say that at all to Jimmie, did you? A No, sir.

Q You didn't intend to hit him with your hand at all? A I was just going up to speak to him.

Q And your hand hit him with the pipe? A No, I intended to hit him with my hand.

Q Did you say that you intended to hit him with the hand? A No, sir, I told him that afterwards.

Q Why did you tell this? A I was excited then.

Q When you got down to where this pipe was used you said that Jimmie told you to hit him over the head with it, but you said, "No, I will hit him with my hand"; did you say that afterwards? A Yes.

Q Why did you say it? A I was excited.

Q You knew you were lying, though? A Yes.

Q You knew that you were talking to the police officers? A Yes.

Q And deceived them? A Yes.

Q And you knew you lied to them? A Yes, sir; they had me excited.

James Joseph Devlin, cross.

Q And you knew at the time you said it that you were lying to them? A Yes, sir.

Q Did you say this: "Jimmie said, no, take this pipe and hit him over the head; my brother told me he got a gun." Did Jimmie say that? A I didn't say that; no, sir.

Q Did Jimmie say that? A No, sir; he just told me to go up and speak to the man.

Q Didn't you tell the officers that Jimmie said to go and hit him on the head because his brother told him he had a gun? A He told me he had a gun.

Q Did you tell that to the officers? A Yes.

Q Why did you tell that to the officers? A I was excited when I was questioned.

Q Did you lie to them? A Yes, sir.

Q You knew you lied to them; is that right? A Yes, sir.

Q And Jimmie and Louis went to the other side of the street; did they? A Yes, they went to the other side of the street.

Q You were pretty close to that man at that time? A Yes.

Q How close? A Eight feet away.

Q About as far as I am to you? A A little further away.

Q About here (counsel standing about ten feet away)? A Yes.

Q What is that, ten feet? A Yes, ten feet.

Q Were Jimmie and Louis that close to him? A Jimmie and Louis was on the other side. I left Louis on the corner on the other side.

Q How far were they away from you when the old man went across the street? A About ten feet away.

Mr. Erwin. I object. He said, "I left Louis on the corner."

Mr. Garven. Now, I am examining him.

The Court. This is cross examination.

Q How close to Mr. Joyce was Louis and Jimmie when they started across the street? A I left Louis on the corner and Jimmie Mattarazzo walked up and was about ten feet away from Mr. Joyce. Jimmie went on the other side, and I followed him up and said, "Where are you going with the package," and he turned around.

James Joseph Devlin, cross.

Q All right; then Louis was back further? A I left him on the corner.

Q How far back? A Fifteen or twenty feet.

Q (*By the Court.*) And did Mattarazzo continue to walk up with you following Joyce? A Yes; he was on the other side, across the street.

Q After leaving Louis down at the corner did Mattarazzo walk along with you? A Yes, sir.

Q How far? A About ten feet from Louis; and then Mattarazzo went over on the other side of the street.

Q And you continued to follow Joyce? A Yes.

Q Now, you hit this man Joyce when he was about on the corner, didn't you? A No, sir.

Q Where was he? A In the middle of the block. I walked up to the man and I said—

Q No, no; how far from the corner was he? A Twenty-five feet away from the corner.

Q And Louis was back there on that corner and Jimmie was with you? A Yes, sir.

Q That's right? A Yes, sir.

Q Did you say to the officers, "Jimmie came across the street and handed me the pipe and said give it to him, we are with you"? A I said I was excited when I said that.

Q Did Jimmie say that to you? A No, sir.

Q You have been talking to Jimmie, haven't you? A Yes, I have been talking to him.

Q When were you talking to him last? A Lots of times before I got arrested.

Q I mean here a short time ago you were talking with Jimmie, weren't you? A Yes, I was talking with him.

Q And didn't Jimmie ask you to deny that you made this statement? A No, sir.

Q Sure about that now? A Yes, sir.

Q Did Louis tell you to say that he was standing on the corner? A No, sir.

Q Have you and Louis and Jimmie been talking together? A We have been talking together, yes.

Q You are over in the jail together every day? A Louis is only with me.

Q Jimmie was with you? A No, sir; he wasn't with me.

James Joseph Devlin, cross.

Q Did you say to the officers, "The man I hit he fell to the sidewalk and I walked away"? A I ran away.

Q Now, did you say to the officers, "Jimmie and Louis hollered run"; did they? A Yes, they told me to run. Jimmie Mattarazzo told me to run.

Q And he ran? A Yes, sir.

Q And Louis ran? A Yes.

Q And you ran? A I ran down to the tube station.

Q Now, was there anybody around there but you three? A Nobody else only us three.

Q You waited until there was nobody around? A Yes.

Q Is that right? A I walked up to the man.

Q I say, you waited until there was nobody around and then you walked up to the man? A I just walked up to the man and told him—

Q I know, but there wasn't anybody around? A No, sir; only a few children.

Q And didn't you wait until there was nobody around? A No, sir.

Q You just followed him up to the street? A Yes.

Q And what did you say to him? A I said, "Hey, buck, where are you going with the package?"

Q How far were you away from him? A Three feet.

Q Behind him? A Yes, behind him.

Q You were behind him about three feet when you said, "Hey, buck, where are you going with that package?" A Yes.

Q Is that right? A Yes.

Q Where was the pipe then? A I had it in my hand.

Q And you say—oh, by the way, did you go up against Joyce in the car on the way over to Jersey City? A No, sir.

Q And feel his pockets? A No, sir.

Q You were told that he had a gun? A Yes, by James Mattarazzo.

Q You were very much afraid of it, weren't you? A Yes.

Q Afraid he was going to shoot you? A Yes.

Q Why didn't you keep away from him? A Well, I talked with the man—

Q I say, why didn't you keep away from him when you knew he had a gun?

Mr. Erwin. Let him answer, Prosecutor.

Mr. Garven. I am asking him.

Q Why didn't you keep away from him if you knew he had a gun? A I wanted to speak with him.

Q You wanted to speak to him? A I didn't intend to hit him with it.

Q But you wanted to speak with him with this club? A I asked him where he was going with his package, and he turned around and put his hand in his hip pocket.

Q And then what did you do? A I struck him.

Q You whaled him with this piece of pipe? A Yes, sir.

Q Now, you saw Mr. Joyce over in Newark? A Yes, I saw Mr. Joyce.

Q You saw him on the corner of Broad and Market street; is that right? A Yes, sir.

Q And that is five blocks from the tube station? A Yes, sir.

Q And he was ahead of you on his way to the tube station? A Yes, sir.

Q Why didn't you talk to him over there? A Jimmie Mattarazzo told me that he had some people backing him.

Q Who had? A Joyce.

Q You were only going to speak to him? A Yes, but James Mattarazzo said for me to follow him home.

Q You weren't afraid anybody was going to do anything to you simply because you were going to talk to this man? A No.

Q Why didn't you talk to him in the station? A James Mattarazzo told me not to speak to him.

Q Why? A He said, "Speak to him when he goes home on the street in Jersey City.

Q Why didn't you talk to him on the train? A I didn't want to.

Q Too many people around, weren't there? A Yes.

Q You and Jimmie and Louis wanted to talk to him alone? A Yes.

Q And you wanted to talk to him with that pipe? A No, sir; I didn't want to hit him with that pipe.

Q (*By the Court.*) Did you say on your direct examination that after the trouble you met Louis and Jimmie down at the tube station again and you explained to them what you had done? A Yes.

Q Did you do that? A Yes.

James Joseph Devlin, re-direct.

Q And did you tell them that you knocked him down, although they were near by when you did it; is that true? - A James Mattarazzo was with me—

Q And Louis was down at the corner? A Yes.

Q Notwithstanding that you got to the tube station and you told them what had occurred? A Yes, sir.

Re-direct examination by Mr. Erwin.

Q This was dark, wasn't it? A Yes.

Q About seven o'clock at night? A Yes.

Q And Louis was a block away, wasn't he, or a half a block away? A A half a block away.

Q And before you made this statement to the New York police they said that Jimmie Mattarazzo had said that you had murdered someone; did they tell you that? A Yes, sir.

Q You didn't see all this written out in front of you, did you? A Yes, that was all wrote out in front of me.

Q How was it you got excited with these officers over there; what were they doing there? A The policemen were hitting me.

Q Prodding you all the time? A Yes, sir.

Q And you were afraid of getting beat up if you didn't say these things? A Yes, sir.

Q What was the reason you made these lying statements? You were there with these six police officers, were you not? A Yes, sir.

Q You are positive that you had no instructions at any time, on this day or any other day, to get anybody, or to hit anybody? A No, sir.

Q Or to kill anybody? A No, sir.

Examination by Mr. Heilenday.

Q Now, do you remember when you were arrested in the Tombs and seeing your mother there? A Yes, sir.

Q Do you remember saying, "I don't know whether Louis Feory had anything to do with this case?" A Yes.

Q You hadn't framed this up on Louis before you ever came to the jail? A No, sir.

Examination by Mr. Erwin.

Q You say that this man Joyce had a package? A Yes, sir.

Louis Feory, direct.

Q And you wanted to find out where that package was going? A Yes, sir.

Q And that is the reason you followed him? A Yes, sir.

LOUIS FEORY, sworn in his own behalf, testified as follows:

Direct examination by Mr. Heilenday.

Q Feory, sit down and be comfortable. Where do you live? A New York with my family.

Q What does your family consist of? A My brother and my mother.

Q What do you do for a living? A Ladies' cutter.

Q Do you know Jimmie Mattarazzo? A Yes, sir.

Q Do you remember his engaging you to do some picket work? A Yes, sir.

Q And where were you to do that work? What city was it in? A I was in New York at that time I was engaged.

Q Where were you going to do the work? In what city? A In Newark.

Q And did you do some work before the day of this crime—picket work? A Yes, sir.

Q Now, as a picket what were your duties; what were you supposed to do? A Just go by the people and tell them to give other people a chance and don't go to work.

Q What kind of people would you stop and speak to? A Those people who continued work and wouldn't go on a strike.

Q Now, the day that this murder was committed you were with Mattarazzo and Mr. Devlin? A Yes, sir.

Q And somebody brought in a piece of pipe? A Yes.

Q Who was it that brought in that pipe? A Mattarazzo, and another fellow; I don't know his name.

Q You didn't have anything to do with it? A No, sir.

Q The three of you followed Joyce in Newark? A Yes.

Q At the time you followed him he didn't have any package? A No, sir.

Q Did he subsequently have a package on the train? A He subsequently had a package and we didn't know where it came from.

Q What were you going to follow him for? A To find out where he was going with the package.

Q Was there any talk about killing him or hitting him? A No, sir; none at all.

Q Now, when you got off the tube station you and Mattarazzo and Devlin got off together? A Yes, sir.

Q Did you follow Joyce for a distance? A Yes, sir.

Q How far did you follow him? A About a half a block.

Q And did he turn up one of the streets then? A He turned a corner.

Q Now, what happened to the other fellows after that? What did you do and what did the other fellows do? A When he turned the block Devlin walked away from us and Mattarazzo went across the street, and I remained at the corner, and Devlin spoke to the man.

Q Did Devlin tell you anything about hitting him with the pipe before you left him? A No, sir.

Q Did you have any idea that he was going to hit him? A He said that he was going to speak with the man and if the man produced a gun he would protect himself with the stick.

Q After that you heard him strike? A Yes.

Q You didn't see him? A No, sir; and I ran.

Q You met Devlin at the tube station? A Yes, sir.

Q And then you were arrested at one o'clock in the morning? A Yes, sir.

Q Did you sign this confession here? A No, sir; not exactly.

Q I mean, you signed this paper, whether it contains the truth or not? You wrote that name "Louis Feory"? A Yes, I signed that paper, because they asked me how I spelt my name.

Q Now, when the man put down the statements on that paper did he tell you that you could make a voluntary statement and anything you said would be used against you? Did he say anything like that to you? A Nothing at all.

Q As a matter of fact, did he write down everything or did he only put in half of it? A I don't know what he did; I only saw him write.

Q You know there was about an hour and a half conversation? A Yes, sir.

Q And in that time he only got three and one-half pages? A I don't know how many pages.

Q This is all there is to it (counsel exhibiting paper to the witness)? A I don't remember how many pages there were.

Louis Feory, cross.

Q Now, you haven't framed this thing up with Devlin over in the jail? A No, sir.

Q Have you seen Mattarazzo at all in the jail? A No, sir.

Q What floor was he on? A Jersey City.

Q I say, what floor was he on over in the jail? A The floor above.

Q And you were downstairs? A Yes.

Q You couldn't see him at all to talk with him? A No, sir.

Cross examination by Mr. Garven.

Q You met Devlin and Matarazzo about a month before, didn't you, up in Pennsylvania? A We both went up there in the Pennsylvania station.

Q What? A Mattarazzo and I went up to the Pennsylvania station.

Q No, I mean about a month before the 28th you had been working up in Pennsylvania somewheres? A Yes, we both went up there to work.

Q Who? A Mattarazzo and I.

Q And you met Devlin up there? A Yes, sir.

Q And you came back together? A Yes, sir.

Q And became friends? A Yes, sir.

Q What were you doing up there? A Car repairers.

Q How long did you work up there? A Six weeks, more or less.

Q Then you came back to New York? A Yes, sir.

Q And were out of a job? A Yes.

Q Were you laid off up there? A Not laid off.

Q Just quit? A Yes, sir.

Q That was October 28th, or the first of October, wasn't it? A I don't remember the dates.

Q Well, was it four weeks before October 28th? A No, sir; I guess less than that—about that much, yes, sir.

Q About a month before? A A little over that, too, I guess.

Q A little over a month? A Yes.

Q That was before the armistice was signed, wasn't it? A That was about—I have no idea. That was about October, somewheres in October, that we came back, and it was too cold up there and that is why we came back.

Q That was around the first of October, wasn't it? A Yes, somewheres around that date.

Louis Feory, cross.

Q This was government work you were on? A Yes.

Q And we were at war at that time? A Yes, sir.

Q And then you three fellows were pals around New York until October 28th? A No, sir.

Q Until you went over to Newark? A No, sir.

Q Where did you next meet Devlin? A Devlin in Newark. We knew him in Pennsylvania, and we told him where we were living, and he says he would like to come with us, but he says, "I have no money," and I says "I will lend you $12 for fare and $2 for meals," and the three of us arrived in New York; and he says, "I don't like to go home because I haven't got any money; I wish I could have a position first and then I will make a little money." I says, you can stay home with me and I won't charge you a penny until you get in a position and make some money.

Q How long had you known this fellow Devlin? A Up to this time?

Q No, up to the time you went to Newark? A I only knew him about six weeks.

Q And you took him to your home? A Yes.

Q And he slept in your home? A Yes, sir.

Q A number of nights? A Yes, sir.

Q And you and he and Mattarazzo went over to Newark for several days previous to October 28th, didn't you? A Yes, sir.

Q And then before October 28th had you ever seen Mr. Joyce? A No, sir.

Q Now, where was he the first time you saw him? A I didn't see him exactly. They showed me this man; they pointed out this man.

Q That was Joyce, wasn't it? A Yes.

Q Where? A In Newark.

Q Whereabouts in Newark? A I know it is a big wide street.

Q Broad and Market? A Yes.

Q And who showed Joyce to you? A A man by the name of Casale showed him to Mattarazzo, and Mattarazzo showed him to us.

Q What did Mattarazzo say to you when he pointed to Joyce? What did he say? A He said, "We must follow that man."

Q Anything else? A And he says, "See where he goes."

Louis Feory, cross.

Q What did you say? A I went right ahead.

Q You went right ahead and followed him? A Yes, sir.

Q Did he have a bundle? A No, sir; not at that time.

Q Why were you following him? A Devlin was supposed to go and speak to him and tell him why don't he leave work and give somebody else a chance to get a job if we succeed.

Q You knew the cutters were not on a strike, didn't you? A I didn't know what he was.

Q You knew he wasn't going to strike? A Yes.

Q He didn't have the bundle with him at that time when you were told to follow him? A No, sir.

Q Sure about that? A Positive.

Q And therefore you weren't following him to find out where he was taking any bundles, were you? A No, sir.

Q Then you followed him to the tube station in Newark? A Yes, sir.

Q And who was going to talk to him? A Devlin.

Q What was Devlin going to say to him? A I knew that he was going to say to him "Why don't you give other people a chance and go on a strike so that the strike will be successful, and then we can have a chance to go to work again."

Q Devlin didn't say that to him in Newark, did he? A No, sir.

Q Why not? A I don't know why.

Q You were there? A Yes.

Q Did you speak to him? A No, sir.

Q Who suggested that Devlin do the speaking? A Mattarazzo says, "You speak to Devlin."

Q Who did he mean? A Devlin.

Q And he told you to go with him? A No, the whole three of us went with him, and Devlin had to go alone.

Q Devlin didn't go alone, did he? A He did, yes.

Q Where did you meet Mattarazzo in following this man down to the depot? A You mean in Newark?

Q Yes. A In Newark we didn't go alone.

Q But you all three met at the tube station in Newark? A Yes, sir.

Q Wasn't it true that you were afraid he had some friends over there in Newark and that is why you didn't speak to him there? A Yes.

Louis Feory, cross.

Q You didn't want to speak to him when anybody was around? A No, that ain't the reason.

Q The reason you didn't speak to him over in Newark was because you didn't want to talk when anybody was around? A No, sir.

Q You saw him on the train? A Yes, sir.

Q Did you wait for him at the tube station or was he there? A We followed him into the tube station.

Q And you followed him in the train? A Yes, sir.

Q Why didn't you speak to him on the train? A It wasn't my place to speak to him.

Q You were with the two men who were to speak to him? A Yes, but they didn't tell me to speak to him.

Q You didn't speak to him because there were so many people around there? A No, sir.

Q You understand my question? A I understand you. You mean the reason why I didn't speak to him was because there were too many people around?

Q Yes. A That wasn't the reason at all.

Q Then you followed him to the Grove street station? A He got off at Grove street and we followed him.

Q You followed him up the stairs and out into the street? A Yes, sir.

Q And then you followed him about a block from the station? A Yes, sir.

Q Nobody around there, was there? A No, sir.

Q And then what happened when you got to the corner? A When I got to the corner a man came out and pointed to Mattarazzo.

Q Where is this, in Jersey City? A In Jersey City, yes.

Q A man came out from where? A I don't know where he came from.

Q What did he say to him? A I didn't hear him.

Q Where was he? A I was with him and walked about three steps, but Joyce saw him point.

Q What became of the man? A I didn't see him since.

Q Was it this man Joyce that spoke? A No, I don't think so; he was a half block away.

Q Joyce was ahead of him? A Yes.

Louis Feory, cross.

Q And you three were on this block behind? A Yes. Then I heard him say, "Don't speak to the man any more; just see where he takes that box."

Q Who said that? A Mattarazzo.

Q Sure about that? A Positive.

Q In your statement to the police detective did you say that you got off the tube train at Grove street, Jersey City, and came up the stairs to the street and followed the man with the box over one block and turned up a street to the right? A Yes, sir.

Q And about in the middle of the block Devlin left Mattarazzo and myself; is that right? A Yes, sir.

Q Left you two? A First Devlin left me and Mattarazzo and then Mattarazzo left me, and they went on and Devlin went right straight ahead to speak to Joyce.

Q Devlin was only about twenty feet away from you? A No, sir, I told the detective that I was on the corner and they insisted I was about twenty feet away.

Q Why did you stand on the corner? A Because I was afraid he had a gun on him. That is what I heard.

Q Where did you hear that he had a gun? A I heard Mattarazzo say, "Be careful; the man has a gun."

Q Where did you hear that? A When he wanted to speak to the man about the box.

Q Did you hear Mattarazzo tell Devlin that he had a gun? A He heard it from someone in Newark.

Q But you had suspected that he had a gun? A I had suspected that he had a gun, and that is why I didn't care to talk with him.

Q You weren't afraid to talk to him? A No.

Q You weren't afraid to come to the Grove street station? A No, sir.

Q And yet you knew he had a gun? A Yes, sir.

Q Why did you stay on the corner if you were afraid? A Because I just wanted to find out where he was going, to see where it was.

Q (*By the Court.*) You said a minute ago that at the corner there Mattarazzo told Devlin not to speak to him but just follow him and find out where he went? A Yes.

Q How do you reconcile that testimony with what you say now that you stood on the corner because you knew Devlin was

going to talk to Joyce? A Devlin was going to talk to him in Jersey City, and when I heard that this man had a gun I stayed back at the corner. I didn't care to be any nearer.

Q As a matter of fact did Mattarazzo say that not to speak to him? A Mattarazzo said in Newark to speak to him and find out where he took the box, but in Jersey City he said to find out where he takes the bundle.

Q Where did he tell him not to speak to him? A In Jersey City.

Q Who struck the man? A I know Devlin went over there with the iron pipe.

Q Did you make the following answer at the time you were arrested and taken before the police detective: "Did you see Devlin strike the man who was carrying the box? A I did not see him strike the man, but I know Devlin was carrying the pipe in the paper. Me and Mattarazzo was about twenty feet behind." Is that right? A I told him I was at the corner.

Q I am asking you if it is true that you made that statement, that Mattarazzo and you were twenty feet behind when Devlin struck that man? A I wasn't twenty feet; I was at the corner.

Q How far away in feet? A I don't know where he went to when he struck this man.

Q About as far as from here to the end of the room? A I suppose so; I couldn't see him any more.

Q Was it not a straight street there? A Yes, but I couldn't see him.

Q Why not? A I don't know.

Q You mean because he was running away? A The block was dark, for one thing.

Q You mean because he was running away? A He was walking much faster than when he left me.

Q You were running, weren't you? A No, sir.

Q Weren't you running towards the tube station? A I was when all at once I heard the noise of the box falling. Then I started to run.

Q Then the particular place where the man was struck was very dark? A I don't know about that.

Q You say it was so dark you couldn't see Devlin? A It wasn't wholly dark; it was partly dark.

Q It was a quarter after seven? A I guess it was later than that.

Louis Feory, re-direct.

Q Did you say it was so dark you couldn't see Devlin? A I don't know whether it was so dark I couldn't see Devlin any more.

Q Do you know whether it was dark or not? A Just like any other block; not exactly dark.

Q Did you see the old man fall? A No, sir.

Q Why? A I was at the corner.

Q Was the old man around the corner? A I don't know where the man was.

Q You heard him fall? A I heard the noise, that's all.

Q Didn't you say you heard the box fall? A I said I heard the noise and I heard him yell, and I ran.

Q You heard him yell? A I don't know who; I heard somebody yell.

Q What did they yell? A Sounded like somebody groaning.

Q And then you ran? A I ran; yes, sir.

Q Now, you were in Newark when that pipe was purchased, weren't you? A Yes, sir.

Q This is the pipe in the paper? A Yes.

Q And the paper that it was in? A Yes. But that pipe didn't come in that paper, though.

Q What did it come in? A In an ordinary piece of paper and so he re-wrapped it again.

Q You mean it was wrapped in an ordinary piece of paper in the store? A Yes.

Q Who picked this up in the store? A Mattarazzo, and he wrapped that over again.

Q (*By the Court.*) Were you there? A Yes, sir.

Q When the pipe was purchased? A Yes, sir.

Q Why was it purchased? A He told me that he had a thief in mind.

Q Who told you that? A Mattarazzo.

Q And up to that time had Joyce been pointed out to you? A Up to that time? It was near Market street.

Q No conversation at all about Joyce? A No conversation at all.

Re-direct examination by Mr. Heilenday.

Q Do you know when the pipe was purchased? A Yes, sir.

Louis Feory, re-cross.

Q Now, you stood at the corner when Joyce was struck and you then started to run? A Yes, sir.

Q Did you run along the same street? A I run right towards the tube station.

Q Did Devlin run in the same direction that you did? A I never saw Devlin.

Q And did you see him after that? A No, sir.

Re-cross examination by Mr. Garven.

Q Now, you went to a coffee house in Eighth avenue in Newark, didn't you? A Yes, sir.

Q And on your way to the coffee house you were with Devlin and Mattarazzo? A I was.

Q The three of you together? A Yes.

Q What did you plan to do way up there? A I couldn't remember.

Q You did talk about Joyce, didn't you? A No, I didn't know Joyce.

Q But this particular man that you were intending to follow; you were talking about him, weren't you? A No, sir.

Q Now, in that coffee house you met another Italian, didn't you? A Not in the coffee house; no, sir.

Q Where did you meet him? A I believe there were a plenty of Italians there, but I had nothing to do with any of them.

Q I mean the young fellow that went into the store to buy the pipe; where did you meet him? A I met him at the shoemaker's.

Q And was it there where Mattarazzo said he would be back in a few minutes? A They only excused themselves and they both went out, and then they came back in fifteen or twenty minutes later.

Examination by Mr. Heilenday.

Q When they went out and came back in fifteen minutes you didn't go with them, did you? A No, sir.

Examination by Mr. Abruzzese.

Q On this day, October 28, you and Mattarazzo were not together all day long, were you? A No, sir.

Q There were times when he went off and left you and then he would come back? A I didn't get you.

Louis Feory, re-cross.

Q During the day, during the morning or during the afternoon and other times he left you and went somewheres? A Where is that, in Jersey or New York?

Q In Newark; he left you on several occasions, did he not? A I don't remember.

Q He might have left you and you not remember it? A He left me once, if I am not mistaken.

Q Are you sure he didn't leave you twice? A I don't remember about that.

Q You weren't always along with Mattarazzo, were you? A No, sir.

Q While you were doing this picketing work? A No.

Q So you don't know whether Joyce was pointed out that day or not? A No, sir.

Q You don't know whether Joyce was pointed out prior to this day? A No, sir.

Q And you don't know what information Mattarazzo had as to Joyce? A No, sir.

Q Nor to Joyce's activities? A No, sir.

Q Now, when you came to Jersey City what did you hear Mattarazzo say to Devlin, if you heard anything? A He says, "Don't stop that man and talk to him any more; just go by him and find out where he takes that package, and be careful because this man carries a gun."

Q Where was this said? A Near the corner after the fellow pointed him out.

Q What corner? A The corner where I stood.

Q In Jersey City? A Yes, sir.

Q Now, when you got off the train did you all get off together, you and Devlin and Mattarazzo? A Yes.

Q After Mattarazzo and Devlin got off did they remain separate and apart from you for a time, so that you couldn't hear what they were saying? A I don't remember.

Q It might have happened? A I couldn't give you no answer on that because I don't remember.

Q You wouldn't say that it wasn't so? A I wouldn't say it wasn't so and I wouldn't say it was.

Q Now, just before Devlin went away and left you and Mattarazzo what did Mattarazzo say to Devlin, if you heard it? A All he says was, "You see that man with a box; go with

that man and find out where he is taking that box and be careful, this man carries a gun." And so Devlin says, "I will."

CIRO MATTARAZZO, sworn in his own behalf, testified as follows:

Direct examination by Mr. Abruzzese.

Q What do they call you in English? A James Mattarazzo.

Q Where do you live? A 185 Grand street, New York.

Q Whom do you live with? A With my father and mother.

Q And how old are you? A Twenty.

Q What is your regular occupation? A Printer.

Q And you have been a printer how long? A Five years.

Q Do you know Devlin and Feory? A Yes, sir.

Q How long have you known Feory? A About two or three years.

Q Two or three years? A Yes, sir.

Q Do you know what his business is? A Yes, sir.

Q How long have you known Devlin? A About a month or a month and half.

Q Are you calculating your time from today or from the 28th of October? A 28th of October.

Q You had known him about a month or month and half before that? A Yes, sir.

Q Where did you first meet him? A In Pennsylvania.

Q You worked there together? A I was working with Feory and we met Devlin at the commissary where we were boarding.

Q And then after you left that position, the three of you came to New York? A Yes, sir.

Q And you had occasion to see Devlin off and on during the time you were in New York? A I had the occasion because—

Q Did you have occasion, yes or no? A Yes. Occasion? What do you mean?

Q Did you have occasion to see Devlin in New York? Did you see him in New York? A We came here together from Renora.

Q And after you got to New York did you see him? A Yes, I did.

Q In company with Feory? A Yes, sir.

Ciro Mattarazzo, direct.

Q Now, around October 20 or 21 how did you come to Newark with Devlin and Feory? A They came to my place on Twenty-first street and wanted employment. That is the U. S. employment office. They were looking for a job, and they were given a postal card to go to the American Can Company in New Jersey. They told me about it, and I says I am going—

Q You weren't working at that time? A No, sir.

Q The three of you were looking for a job, you, Feory and Devlin? A Yes.

Q And did you decide to go to the American Can Company and ask for this job? A Yes.

Q Where is that, in Newark? A That is in New Jersey.

Q Well, is it in Newark? A No, that is in New Jersey over here.

Q Where is it? A In Kenilworth.

Q Where they made ammunition? A Yes.

Q A small town, is it? A Yes, sir.

Q In Kenilworth? A Yes. They told us it was an easy job and they paid 45 cents an hour.

Q What is the name of the place where you went? A American Can Company.

Q Kenilworth, New Jersey? A Yes.

Q And you had to go through Newark to get this job? A Yes.

Q Did you get the job in Kenilworth, with the American Can Company? A No, sir.

Q There were no positions for you? A Yes.

Q Then why did you decide to come to Newark? A The reason is—

Q Wait, I will ask you first, what made you come to Newark? A I had my cousin there.

Q What is his name? A Billy Casale.

Q Then did the three of you come on to Newark to see Casale? A Well, no, sir; because we wanted to get the job and then when we didn't get the job we went over to see Casale.

Q That is what I mean; I asked you if you did not get the job with the American Can Company did you come to Newark to see your cousin? A Yes.

Q Did you see him? A Yes, sir.

Q Did you have any conversation with him? A Yes.

Ciro Mattarazzo, direct.

Q When was it? A I went up to see him up to the shop and he said he had a lot of trouble, and he told me about the strike. He says for eight weeks they were on a strike and only about four or five people that are working.

Q Did he ask you if you were working? A Yes, sir.

Q Now, when Casale told you that only four or five people were working did he tell you what they were working at? A Yes, and said all the people around, and only about four or five people are working.

Q What did he mean? A They went on a strike, and these people wouldn't go out and they were eight weeks standing like that, see?

Q Did he tell you because these others wouldn't go out the strike couldn't be won?

Mr. Garven. I object to that. Don't lead.

Q What did Casale say? A He said, "Are you working?" and I told him no, and he said "Who is these other fellows," and I told him they were friends of me working together, and then he offered us a job as a picket.

Q Now, was it explained to you what your duties were as picket? A Yes, sir.

Q What were you to do? A Go over to men and say, "This thing has gone on for eight weeks and people are out of work, and only for you they would win the strike." We were supposed to tell them that.

Q You were to try to persuade them not to go to work? A Yes.

Q And did you accept his proposition? A Yes.

Q Did your two friends, Feory and Devlin, accept it? A Yes.

Q How much were you to get a day? A $4 a day.

Q And did you start work as a picket? A Yes, sir.

Q How long did you work as a picket? A One week.

Q Now, during this week you acted as a picket? A Yes.

Q And do you remember the 28th day of October, Monday? A Yes, sir.

Q Did you have occasion to do any picketing on Broad street in Newark? A Yes, sir.

Q Did you have occasion to do any picketing in front of the tailor establishment of a man named Kelly? A Well, there

were about five or six stores of tailors on Broad street, one after the other—about five or six stores or tailor shops, and I was to walk up and down there, see?

Q About how many other strikers would walk up and down Broad street during the day? A According to the hour; sometimes 15 and sometimes 20, because some of them was to go from 5 to 7, see? and some was to go away at 7, and somebody else was to come in their place, see?

Q There were not less than 15? A More than that sometimes.

Q You didn't know all the strikers, did you? A No, sir.

Q And what happened on the 28th? A On the 28th?

Q I think it was Monday the 28th. What happened while you were picketing up and down Broad street? A Well, we were walking in front of a tailoring establishment and asking the men not to go to work, and I stopped one man and this man says "all right," I have got to finish one coat a day, and finally—

Q Never mind about that. Did you hear the name of Joyce mentioned on this particular Monday? A No, sir.

Q Was a man by the name of Joyce pointed out to you as being the man who was taking work to Jersey City, or out of town to have it done? A Yes, sir.

Q And who pointed him out? A He says, "there's a scab and he is a fellow that won't go on strike; he is protected with a gun; he had a permission to carry a gun."

Q Who said that, do you know? A The fellow over there, the other crowd that I was in with.

Q What are their names? A I don't know.

Q Had you ever known those strikers before? A No.

Q Everybody spoke up at once; is that it? A What?

Q Everybody that was there spoke up at once? A Yes; they said "there's a scab over there" and we looked at him.

Q And they told you that he carried a gun? A Yes, carried a gun.

Q What time was that? A That was,—well, about—you mean when he told us about carrying a gun? That was about when he was going.

Q You don't know the time of day? A No, sir.

Q Did anybody hear you mention the fact that any work was being carried out of town? A Yes.

Ciro Mattarazzo, direct.

Q Any of these strikers? A Yes, these strikers were out; there wasn't one that takes work out of town, and he gets work done over in New York and he brings it over into Jersey and all that.

Q And did you then make up your mind, as a picket, to find out where this work was being done? A Yes, sir.

Q Now, when you were told that he carried a gun did you have any gun at all? A No, sir.

Q Did you have any gun or any knife? A No, sir.

Q The first time you were told that he carried a gun did you have any pipe? A What do you mean?

Q When did you buy this pipe, before or after you were told that he carried a gun? A Before. You know that was about 12 o'clock, and those people were going to dinner and they pointed him to us, and they said "he works in this place here"; he says, "there is where he goes and now he is from dinner and he is going back to work," and then we went away.

Q That is the time you were told he was protected by a gun and had a permit to carry a gun? A Yes, sir.

Q Now, where did you go from there? A Then, you know, in the afternoon after 12 o'clock everybody goes to work, so that we didn't have no place to go, and we took a walk around 7th avenue and Garside street.

Q Was that the time you decided to buy this pipe? A Yes.

Q Why did you want to buy this pipe? A Well, just, you know, for protection.

Q Against Joyce? A I didn't know Joyce at all that time.

Q You wanted to protect yourself because he carried a gun, is that it? A Yes.

Q And you went in to buy this pipe and you left Feory and Devlin in the shoemaker shop; is that it? A Yes, sir.

Q And after you went and purchased this pipe did you go to the shoemaker store again? A Yes, sir.

Q And picked up Devlin and Feory? A Yes.

Q And then when it got to be about quitting time, at six or half-past six, did you then go downtown, down towards Broad and Market street? A Yes.

Q You did? A Yes, sir.

Q What did you do then? A Then we followed this man to see where he was to bring the work, see? The strikers they

say "that's the man that's taking work out of town" and he goes down Broad street and we followed him.

Q You had been told by this crowd of strikers that day, that you were picketing that Joyce ordinarily had been carrying work out of the city? A Yes.

Q But that he didn't carry this work along Broad street to the tube station because he didn't want anybody to know about it; is that it? A Yes, sir.

Q And he got a package sometime afterwards when you got into the tube station at Park place? A Yes.

Q And you followed Joyce to find out where he was carrying the package; is that it? A Yes, sir.

Q Mattarazzo, going back to the 28th day of Octoker, 1918, when was the first time that you saw Mr. Joyce? A At dinner time.

Q How did you happen to see him then? A Well, I was standing on the corner with a couple of other strikers and Mr. Joyce passed there coming back from his dinner.

Q What was said and done at that time? A It was said that he was a strike-breaker and he wouldn't go on strike, and that he carried a gun in his pocket.

Q What else did he do? A That he would take work out of town in New Jersey and in New York.

Q What did you do after you saw Joyce go back to work? A After I met Feory and Devlin we went for our dinner.

Q Did you talk on the way going up for dinner with Devlin and Feory? A Yes, sir.

Q What did you talk about? A I was talking about these people that had the gun, see? and I told them so. While I was talking Devlin said, "Why don't we get a piece of junk?"

Q What for? A For protection, because these fellows they got a gun and we didn't have nothin'.

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

Q (*By the Court.*) Who said that? A Devlin.

Q It was then that you went out and bought this piece of pipe? A Yes.

Q Now, after you bought the piece of pipe was it then that you got Devlin and Feory? A Yes, right after.

Q Where did you go after that late in the afternoon? A Well, we had a sandwich, and then we went into the coffee place

and had a coca cola, and about a quarter to six we walked down Broad street.

Q When you got down did you see any strikers? A Yes, sir.

Q There was quite a crowd, wasn't there? A Yes, sir.

Q What did you say when you got down? What happened? A While we were standing over there this man passed, you know, and they said, "follow that man up."

Q Who passed? Who do you mean? A Mr. Joyce passed.

Q And somebody said "follow this man up"? A Yes, because we see his boss Kelly with a package, "and see if he gives it to him."

Q And was it then that you made up your minds to follow Mr. Joyce? A Yes, sir.

Q Did you have any intention or any idea when you bought the pipe of following up Mr. Joyce? A No, sir.

Q It was only then when somebody in the group of strikers at about six o'clock at night— A Yes, sir.

Q —suggested or said that Mr. Joyce was taking suits to be made out of town and he was taking packages for Mr. Kelly? A Yes.

Q After you decided to follow up Mr. Joyce? A Yes, sir.

Q Now, what were you going to follow up Mr. Joyce for? A To see where he used to bring the work.

Q Did you follow him? A Yes, sir.

Q Where did he go? A Mr. Devlin and Feory and me, we found him and he went into the tube station, and he stopped there, and so we waited.

Q Did he go into the tube station? A Yes.

Q And you went after him? A Yes, sir.

Q Did you see anybody give him anything in the tube station? A Yes.

Q What was given to him? A A bundle about that big (indicating).

Q A bundle? A A box and package.

Q Do you know who gave it to him? A Yes.

Q Did you know the gentleman at the time he gave Mr. Joyce the bundle at the time in the tube station? A No, sir.

Q You didn't know who he was? A No, sir.

Q Have you seen him since? A Yes.

Q Who is he? A The man who was here yesterday.

Q Mr. Kelly? A Yes.

Ciro Mattarazzo, direct.

Q What did Mr. Joyce do after he got the bundle? A He got in the train—took the bundle and run in the train, and we went with him.

Q Did Mr. Joyce stand or was he sitting down? A Standing up.

Q Now, what did you do? A He took the box and put it under his left arm in his coat pocket this way (illustrating).

Q Which hand did he have in his coat pocket? A Right hand, and he had his hand in his pocket like that (again illustrating).

Q What did you do? A I got right by him standing up right close to him, and I felt a— (the witness pauses).

Q What did you feel? A Something like a gun.

Q Where was it? A In the right coat pocket.

Q And Devlin and Feory at that time were with you? A Yes, sir.

Q Now, did you speak to Devlin? A Yes, sir.

Q Now, wait a minute: Did you speak to Devlin in the train about this gun? A Yes, sir.

Q What did you say to Devlin? A I told Devlin, "Listen," I said, "you see the man there?" I said "You had better go."

Q Wait a minute: Did you tell him he had a gun? A Yes.

Q And then Mr. Joyce got off the train? A Yes.

Q And you and Feory and Devlin followed him out of the station at Grove street? A Yes, sir.

Q Now, what was the last thing you said to Devlin before he left you? A I told him, "Don't talk to him"; I said, "just see where he brings that box."

Q Why did you tell him that? A Because he has got a gun.

Q Did you tell Devlin that he had a gun? A Yes, sir; I showed him when he had his hand like that (indicating).

Q That is, you pointed it out to him in the train? A Yes, sir.

Q Then Devlin said what? A Devlin said "all right."

Q And he followed Mr. Joyce? A Mr. Joyce went out and Devlin went right after him.

Q Devlin went right after him? Now, when you got out of the Grove street station which way did you turn, to your right or to your left? A I didn't even go so far, only to the corner.

Q Did you get out of the station at Grove street? A Yes, sir, and then turned to the right.

Q Did you get up as far as the next corner? A No, sir.

Q Did you get up to the next corner on Grove street? A You mean as I got out of the station?

Q Yes. A Yes, sir.

Q Was that the place where Devlin left you and Feory? A Yes, Devlin followed right after Mr. Joyce and he turned around and I saw nothing else.

Q (*By the Court.*) Did I understand that you walked a block after you got out of the tube station? Did you walk to the next corner? A I stood right at the corner.

Q Did you stand outside of the tube station or walk down one block? A Down to the next block on Green street.

Q And then Joyce and Devlin went up that street? A Yes, sir.

Q And you stood on the corner at Grove street? A Yes, sir.

Q Now, after Mr. Joyce and Devlin went up the street did they turn any other corner, so far as you could see? A Yes, they turned to the left.

Q That was the last you saw of them? A Yes, sir.

Q After they turned did you go back to the Grove street station? A Yes, sir.

Q And you waited there about how long? A I waited there about two or three minutes.

Q And then who came? A Feory came.

Q And after Feory came who came? A After Feory came I asked Feory—

Q Never mind what you asked Feory; after Feory came who came? A Devlin.

Q Now, when Devlin came did you ask him anything? A Yes.

Q Did you ask him what he had done? A Yes.

Q What did he tell you? A "I followed the man and I stopped him and I wanted to tell him 'where are you going with that' "; he says he put his hand in his pocket and "I hit him."

Q That is all? A Yes, sir.

Q And then you went back to New York? A Yes.

Q You signed a statement when you were arrested? A Yes, sir.

Q At the Police Headquarters? A Yes, sir.

Q You were brought over to the Police Headquarters? A Yes, sir.

Q That was about what time? A That was about 11 o'clock.

Q What time did they get through with you about making this statement? A Well, they got through—

Q All together, I mean, when they were finally through with you? A About half-past five.

Q Did you have any lunch during that time? A No.

Q You were there continually being asked questions by the police? A Yes, sir.

Q Now, tell us who placed you under arrest, if you can, Mr. Mattarazzo? A A fellow over in Newark.

Q In Jersey City, I am talking about. A Well, there is where they placed me under arrest.

Q Who placed you under arrest? A Two detectives.

Q Is one of them the man who testified—

Mr. Abruzzese. His name is Walsh, isn't it?

Mr. Garven. Yes, Walsh.

Q And they took you into a room in the Police Headquarters here in Jersey City? A Yes, sir.

Q Who else was present besides Walsh? A Well, there was a kind of a red-headed detective also, and he had a case with four kids and he was standing over there.

Q Did anybody else come in between 11 and 5 o'clock? A Yes, sir.

Q Who else came in, if you remember? A The captain came in and also a fellow by the name of Davis, you know.

Q Did they read to you what I am going to read to you now before they started to ask you other questions: "Statement, Police Department, Jersey City, N. J., December 16, 1918; statement of Ciro Mattarazzo, residence 185 Grand street, New York City, made to Harry Walsh. I am Detective Harry Walsh of the Jersey City Police Department. I am going to ask you some questions in reference to the crime for which you are arrested. You may answer them or not just as you wish, but what you do say must be of your own free will a voluntary statement as it will be taken down in writing and used at your trial"? A No, sir.

Q They started to ask you questions about what was your name and address and what you knew about the death of Mr. Joyce; is that right? A Yes, sir.

Ciro Mattarazzo, direct.

Q Did you tell them what you knew about it? A Yes, sir. Well, I wanted to tell them the truth, but they only wanted me to say what they wanted me to say.

Q How did they go about it? A They would say "yes."

Q Let me see if I understand you correctly: They would say something like this: You did this and that, is that so or not, and if you were to say "yes" they would put it down; and supposing you would say "no" what would they do? A They would beat me.

Q Hit you? A That was 11 o'clock until half-past five.

Q Did they hit you? A Yes; Walsh held my hair while the other detective took out a bat out of the closet and then he got tired and said "I am going for dinner."

Q Is there a closet in that room? A Yes, sir.

Q On which side of the door was it? A This is the door and this is the closet (witness illustrating).

Q He took a bat out of that? A Baseball bat, and he says, "If this fellow don't say it when I come back I will kill him. You know what I am going to do to you down cellar. You see all these people; you get killed by us all together."

Q Did you tell that story as you have told it on the stand yesterday and today? A Yes, sir.

Q And would they put it down as you told it to them? A No, sir.

Q They would only put down what they asked you to say "yes" to? A Yes, sir.

Q And they wouldn't put down anything that would agree with what you said had happened? A No.

Q You say in your statement: "Devlin followed Mr. Joyce up the street and assaulted him in the middle of the block with the gas-pipe"; did you use the word "assault"? A No, sir.

Q Did you see Devlin strike Mr. Joyce? A No, sir.

Q Did you tell him that Devlin had said to you when he came back that he had struck Joyce because Mr. Joyce had placed his hand in his hip pocket and he thought he was going to draw the revolver? A Yes, sir.

Q You told him that? A Yes, sir.

Q Did you tell them that he then ran around the other street and after waiting awhile you went back to Grove street tube station and met Devlin there? A No, sir.

Q Did you tell them that Devlin had told you that after he hit Joyce Joyce's hat flew high in the air? A No, sir.

Q On what day after this 28th of October were you arrested—how many days afterwards, about? A What do you mean by arrested?

Q When you were arrested and brought to Headquarters in Jersey City? A How many days after?

Q How many days after the 28th day of October? A About two weeks after.

Q Mr. Walsh has testified that you had made two statements, one statement other than this one; I want you to look at this one—this is marked Exhibit S. 3; this was taken on November 16, 1918; is this the first statement that was taken from you at Police Headquarters? A Yes, sir.

Q Did you make two statements? A Yes, sir.

Q How many days after you made this one did you make the second one? A I made that during the week.

Q About how many days after, if you can remember? A Well, I made the second statement when I was down at the station house when the prosecutor came.

Q Who took the second statement? A The prosecutor.

Q Which one? A That fat one.

Q You mean Mr. Charlock? A Yes.

Q Did he tell you why he wanted a second statement from you? A He didn't tell me why.

Q Did he tell you that he wanted a statement from you? A Yes, sir.

Q Did he tell you why he wanted it? A Yes, sir.

Q What did he say? A He wanted to put somebody else in there.

Q What do you mean when you say "he wanted to put somebody else in there"? A Put this Klein and all that; and I told him that wasn't the truth; that Klein wasn't over there and I never saw Klein, and he made it himself like that.

Q And then he asked you to sign that? A Yes, sir.

Q Did you tell him that that statement did not contain the truth? A I didn't want to sign it.

Q Did you sign it afterwards? A I had to sign it. Why, the first thing they kept me a week in the station house without coming out and I didn't see my folks the whole week that I was

in there; and they told me they would starve me out if I didn't sign that statement, if I didn't do what they say.

Q Is that the reason why you signed it? A Yes, sir.

Cross examination by Mr. Garven.

Q You are very much afraid of a gun, aren't you? A Yes, sir.

Q Very much so? A Yes, sir.

Q You wouldn't go near a man that carries a gun, would you? A No.

Q Why did you go near Joyce? A Just to follow this man to see where he used to take the work.

Q Is that the reason of it? A Yes, sir.

Q You knew he had a gun? A Well, I seen his hand in his pocket like that (witness illustrating) and felt that he had a gun.

Q Didn't you tell the other two men that he had a gun? A Yes, sir.

Q Then you are sure he had a gun? A Yes, sir.

Q And yet you followed him to Jersey City? A Yes, sir.

Q And you are very much afraid of a gun? A Yes, sir.

Q Is that right? A Yes, sir.

Q Why did you follow him if you were afraid of a gun? A Just to see where he took the work.

Q You were afraid of this man because he was carrying a gun? A We wasn't going to kill him and he couldn't shoot me for nothing; we just wanted to see where he would take the work.

Q Weren't you afraid he would shoot you? A Yes, sir.

Q Then why did you follow him? A Just to see where he took the work.

Q And yet you knew he carried a gun? A Yes.

Q You knew he carried a gun and you followed him? A He had it in his pocket; he didn't take his gun out and show it to me. I seen it in his pocket like that (witness illustrating); I felt it.

Q You were satisfied he had a gun, weren't you? A I wasn't satisfied.

Q Didn't you tell the other two men that he carried a gun? A Yes; I said "look out for yourselves."

Q Who did you say that to? A To Feory and Devlin. I said, "Look out; don't say nothing to him; just see where he takes the work."

Ciro Mattarazzo, cross.

Q Why did you say "look out" if he didn't intend to do anything? A I said, "Just look out; don't stop him; don't speak to him; just see where he takes that box, that's all."

Q Did they say they were going to stop him? A No, sir.

Q Why did you say "don't stop him"? A To make sure. I says, "Devlin, he has got his hand like that (illustrating); look out," and I felt it some way and saw it was a gun, and the best thing to do is not to stop him at all."

Q What were you going to stop him for? A To find out where he took the work. "There was four or five hundred people on a strike and only for a couple of youse working the strike would be lost."

Q You were going to tell him that, were you? A Yes, sir.

Q Who was going to tell him, you or Devlin? A The three of us.

Q I thought you said a moment ago that you weren't going to stop him and ask him these questions that you have just stated? A Yes.

Q And then when you felt that he had a gun in his pocket you said to these fellows, "Look out, he's got a gun"? A I didn't say "don't speak to him; just see where he takes the box of work."

Q And who had this little persuasive instrument at that time (counsel referring to the gas-pipe). A Devlin.

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

Q What for? A When we saw Mr. Joyce pass at dinner time and these people, the strikers, told us he had a gun with him, that he carried a gun and carried the work out of town, and I met them, two or three other fellows at that time and I told them, "Listen, these fellows have got a gun" and I said "we ain't got nothing," and so Devlin said, "Why don't we get a piece of junk," and I even didn't know of no place to get it. I met a fellow and this fellow said he would show me a hardware store.

Q You didn't intend to do anything at all to this man? A No, we never knew that man.

Q He was pointed out to you over in Newark? A Yes.

Q And you were paid $4 a day to do that sort of work? A That is all; a picket.

Ciro Mattarazzo, cross.

Q And to follow this man Joyce and see where he was going and to stop him if necessary, and you were to get $4 a day for that? A We never knew that this man was Joyce.

Q You didn't care anything about his name, did you? A No, sir.

Q You didn't know his name? A No, sir.

Q You were standing there on the corner of Market and Broad when somebody said, "There is the man; get him"; is that so? A Not "get him"; "there is the man, he is a strike-breaker; he won't come down and strike and he takes work out of town."

Q Then what did you do? A And he told me about his carrying a gun; had permission from his boss to carry a gun.

Q You didn't intend to do anything with this man? A No, sir.

Q Then why were you concerned about his carrying a gun? A Then I met the other two fellows and I told them about it, and I says, "This fellow carries a gun," and Devlin said, "Why don't we get a piece of junk"?

Q Why? What for? A For protection.

Q So you procured this piece of pipe and carried it wrapped in brown paper so that the cops wouldn't catch you? A No, sir.

Q Wasn't that the reason you didn't carry a gun? A No, sir.

Q Sure about that? A Yes, sir.

Q Did the other fellows have a gun? A No, sir.

Q How do you know? A We were together all day and I never saw anything.

Q You don't know whether they carried a gun or not? A No, they never told me or showed it to me.

Q You didn't frisk them to see whether they had a gun? A No, sir.

Q After Joyce was pointed out to you the other two fellows and you agreed to buy this pipe? A Yes, sir.

Q And you didn't intend to do anything to Mr. Joyce? A No, sir.

Q And yet you bought that pipe; is that right? A Yes, sir.

Q Now then, this was about what time that Joyce was pointed out to you, two o'clock? A No, sir; around dinner-time.

Q Around 12 o'clock? A Between 12 and 1.

Ciro Mattarazzo, cross.

Q What time did you buy the pipe? A In the afternoon.

Q In the meantime you had gone to the coffee house? A Yes.

Q When you went to the coffee house who went with you? A The three of us.

Q These two defendants and yourself? A Yes, sir.

Q What did you go there for? A We went to take a drink over there.

Q Of what? A Coca cola, to kill time, because it was noon time and we had to wait until about six o'clock.

Q You knew what time Joyce left his place of business? A I didn't know the man.

Q This man that was pointed out at noon; you knew what time he was to leave his place of business? A No, it wasn't only Joyce working, but a couple of other fellows.

Q Joyce was pointed out to you at 12 o'clock? A Yes.

Q And you went to the coffee house? A Yes.

Q And there is where you decided to buy this pipe? A Yes.

Q What conversation did you have with the two fellows at the coffee house? A I didn't have no conversation at all.

Q Didn't you decide to buy the pipe while you were there? A Yes, sir.

Q What did you say to Devlin and what did Devlin and the other fellow say to you about the pipe? A He said we would carry that for protection.

Q Against whom? A Against that fellow.

Q Against the man who was carrying the gun? A Not the man; we never knew this fellow Joyce.

Q He had been pointed out to you, hadn't he? A Yes.

Q And they had said he carried a gun? A Yes.

Q Now, when you heard that you went to the coffee house and you and these other two men here decided to buy this pipe? A Yes, sir.

Q Who was it that asked the other fellow where he could get the pipe? A Devlin said, where is a junk shop.

Q Whom did he say that to? A To a boy.

Q Who was the fellow? A His name is Patruchi.

Q He is over in the jail? A Yes. Patruchi said, I don't know; there's a hardware store over there, and I went with him over to the hardware store.

Q And you are the man that bought the pipe? A Yes, sir.

Ciro Mattarazzo, cross.

Q It was wrapped up in this paper, was it, when it was handed to you? A Yes, sir.

Q Did you hear Devlin say and Feory say, it was wrapped up in an ordinary piece of paper? A What do you mean?

Q When you bought this pipe here was it wrapped up in this paper or in another piece of paper? A In that paper.

Q Didn't you hear him say it was in another piece of paper and you picked it off the counter? A No, sir.

Q Didn't you hear both Devlin and Feory testify that you did? A What do you mean by "testify"?

Q Did you hear Feory testify that you wrapped it up in this paper here and had taken the other off? A No, sir.

Mr. Abruzzese. I don't think there is any such testimony by Feory, that Mattarazzo wrapped this particular piece of pipe in that paper.

Q Now, did you get this pipe out of a store? A I did.

Q You saw that old lady that was on the stand yesterday? A Yes, sir.

Q Is that the woman you bought it from? A Well, there was a kid over there.

Q Was it that little girl that testified? A Yes, sir.

Q Did you buy it from her? A She was with the mother.

Q Was it the old lady that testified yesterday the person that you bought this pipe from? A Yes, sir.

Q And the little girl that testified was in the store at the time? A Yes, sir.

Q And you bought that pipe in that store? A Yes, sir.

Q And then you and this other fellow, Petruchi, as you call him, came out and where was Feory and Devlin at that time? A Feory?

Q Yes. A We met him in my cousin's shop.

Q Who is your cousin? A Shoe shop.

Q Who is your cousin? A He has got a shoe shop.

Q What is his name? A Nicholas Mattarazzo.

Q Isn't that name Casale? A No, sir.

Q Do you know Casale? A Yes.

Q Is he a distant relative of yours? A Yes, sir.

Q Is he the fellow that pointed out Joyce? A No, sir.

Q Sure about that? A Yes, sir.

Ciro Mattarazzo, cross.

Q What time of the day was it that you bought the pipe? A In the afternoon.

Q About what time? A About four o'clock.

Q Who carried it from 4 to 6? A Devlin.

Q What were you doing in the meantime? A What were we doing?

Q Yes. A We walked around; walked to the coffee stand to buy a sandwich, the three of us, and a quarter to six or six o'clock we went down to Broad and Market street.

Q When you were arrested the police showed you this piece of pipe? A Yes, sir.

Q And you said that was the pipe? A Yes.

Q And that was before you were hit with the bat that you speak of? A Before I got hit?

Q Yes. A Yes, sir.

Q Did you say anything after you were hit with the bat? A What do you mean, did I say?

Q Didn't I understand you to say that the policeman had a bat that he had taken out of a closet and hit you with it? A Yes.

Q Did you say anything after that? A I couldn't say anything; they done all the saying themselves.

Q What time was it when you first saw Mr. Joyce,—not at noon time; I mean after noon-time? A In the night?

Q Yes. A Well, it was about ten after six.

Q Where was he then? A He passed Broad street.

Q You knew him then, didn't you? A What?

Q Did you know him then? A They said, we didn't know this is the man we showed you at 12 o'clock. This is the man; follow him up.

Q Who said that? A Them strikers.

Q Casale? A No, sir.

Q Sure about that? A Yes, sir. The strikers said, "see where he picks that up and follow him up."

Q Follow who up, Kelly or the other man? A Follow up Joyce.

Q And you did follow him up? A Yes.

Q The three of you? A Yes, sir.

Q In the meantime after you had bought the pipe you and Feory and this other fellow and yourself stayed around all the

afternoon until you saw Mr. Joyce going down Broad street? A No, sir; we went down Broad street.

Q Three of you together, I mean? A Not three of us together; we were between the crowd.

Q And the three of you then followed Mr. Joyce? A Well, when he passed we followed him because they told us, "we saw Kelly his boss with a package; just go after him and see where he brings it."

Q You said a little while ago that you were going to talk to Mr. Joyce; is that right? A I was not going to talk to him, I was just going to see where he was taking that box.

Q Didn't you say a little while ago that you were going to talk to him? A I wasn't going to talk to him; I was just going to see where he would take that box.

Q But you said a little while ago, didn't you, that you were going to talk to him and say to him that he ought to go on a strike? A Yes.

Q Why didn't you talk with him over in Newark? A He didn't have no box at that time.

Q You didn't know he was going to have a box, did you? A Yes, sir.

Q How did you know that? A They told us Kelly every night used to give him a box with some work inside and it was not given to Joyce himself when he came out of the store.

Q Why did you want to wait until he had the box in his hands? A Just to see where he took the work.

Q You said you wanted to talk to him, didn't you? A We wanted to talk with him, but we found out it was better to find out about the work, and so we followed this man and saw where he took the work.

Q And not to talk to him? A No, sir.

Q Was there any reason why you shouldn't talk to him over in Newark? A That was the reason.

Q What? A That was the reason, because he didn't have no work with him—the box that he had after he reached the tube station he didn't have until Kelly brought it over there.

Q Now, he had the box when he arrived in Jerey City, didn't he? A Yes, sir.

Q You saw him get off the train in the tube station? A Yes.

Ciro Mattarazzo, cross.

Q Why didn't you talk with him in the station? A Because he had the gun that I told the other fellows about, and I said to them, "Don't stop him but just see where he takes the box."

Q How far behind him did you follow him? A About from here to there (witness indicating about 20 feet).

Q About this distance? A Yes.

Q 20 feet? A About that.

Q And were you about that distance going up the street behind him? A This is the tube station (witness illustrating), Mr. Joyce walked up with Devlin right after him, because the last word was I told Feory "you tell Devlin himself not to stop him; don't speak to him; just see where he takes the box," and Feory said, "All right."

Q But you were to talk to Joyce? A Yes, I had told Devlin to talk to him.

Q Why did you tell Devlin to talk to him? A I didn't tell him to talk; I said just see where he brings the work.

Q Now, you said a little while ago that you were going to talk to him? A Yes, sir.

Q And then after you found out he had a gun you told Devlin to do the talking? A I didn't tell Devlin to do the talking; I just told Devlin to follow the man to see where he was going to take the box.

Q But when you got over to the tube station in Jersey City why didn't you speak to him down in the tube station? A Because we seen the gun and we didn't want to speak to him at all; we just wanted to see where he would take the box.

Q When you went up the street you followed him about 20 feet behind him? A Yes, sir.

Q And it wasn't dark? A Yes.

Q Very dark? A Well, it was in October about 7 o'clock then.

Q You could see Mr. Joyce, couldn't you? A Yes, sir, when he came out of the tube station.

Q But it was light enough to see him? A Yes, by the light of the tube.

Q And you could see him when he was walking up the street? A Yes, sir.

Q And his back was towards you? A Yes, sir.

Q You were behind him, in other words? A Yes.

Q You three were together? A Yes, sir.

Ciro Mattarazzo, cross.

Q And Devlin had the pipe? A Yes.

Q You told the police all that you are saying now? A Yes, sir.

Q Now, by the way, Mr. Mattarazzo, do you remember seeing that man?

Mr. Garven. Mr. Kinney, stand up.

(Mr. Kinney stands.)

A Yes, sir.

Q Did you see him on the afternoon of the day that you made this statement? A Yes, sir.

Q Did you tell him where he could find Devlin, and did you describe this other defendant to him? A Yes, sir.

Q And you told him what sort of looking fellow Devlin was, and you told him his name was Clinton, didn't you? A No, sir.

Q What did you tell him his name was? A James Devlin.

Q And you described him to him? A Yes.

Q And told him where he could find him? A Yes.

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

Q Why did you give those two names? A Just to let him know what the truth was.

Q In other words, you wanted to tell the truth? A Yes, sir.

Q That is what you tried to do when they asked these questions of you? A Yes, sir.

Q How close were you to Joyce when Devlin hit him? A I didn't see Devlin hit him.

Q You heard a noise? A No, sir.

Q Where were you? A Down at the tube station.

Q You mean you had run down to the tube? A No, sir, that was this way: Joyce went out of the tube with Devlin right after him, and me and Feory were together with Feory a little up, and I was this way when we walked up the street. Then Joyce turns to the right and then Joyce turns to the left and that is where Devlin went after him, and Feory went to the other corner and stayed there and I didn't see them; I went down to the tube.

O (*By the Court.*) Why did you do that? A I went down to the tube and I stayed down there.

Q You told us that your instructions were to follow him; if that was what you expected Devlin to do why was it when you

turned the corner you turned back? When he turned on Wayne street why was it that you turned back? A I said to myself, "what's the use of my going over?"

Q Did you see Feory when you turned back? A Feory?

Q Yes. A No, I saw Feory when he came down to the tube.

Q Where did Feory leave you just before Mr. Joyce was hit? A Well, Mr. Joyce went away from there and turned around the block, and then I ran right back and Devlin was around the corner, and it was a little dark, and I expected him back every minute or so and I went back to the tube.

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

Q What happened in that minute or so? A I walked down to the tube.

Q You didn't see Feory? A Yes, he was standing on the corner.

Q Why didn't you look for Joyce? A He turned the block.

Q Why didn't you look for Devlin? A He turned the block.

Q I say, why didn't you look for him? A Why should I look for him; he wasn't going to do anything.

Q You were there for the purpose of following Joyce, weren't you? A Yes, sir.

Q Why didn't you follow him? A I didn't have to follow him; I said Devlin could go and follow him.

Exemaintion by Mr. Heilenday.

Q Feory stood down at the other corner? A Yes.

Q Feory didn't have anything to do with the pipe at all? A No, sir.

Q He didn't buy it? A No, sir.

Q He didn't handle it at all? A No, sir.

Examination by Mr. Abruzzese.

Q Was there anything said to anyone that went to the hardware store as to what the pipe was to be used for? A No, sir.

MRS. AGNES DEVLIN, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Erwin.

Q Mrs. Devlin, where do you live? A 965 Fox street, the Bronx.

Mrs. Agnes Devlin, direct.

Q What relation are you to James Devlin, one of the defendants here? A I am his step-mother.

Q When did you become his step-mother? A When he was four years old.

Q Did he live with you from that time on? A He has lived with me ever since, until he ran away last August. About the 19th he ran away from home.

Q Now, just tell the Court and jury what kind of a boy he was? A I think he was a sort of weak-minded fellow.

Q Was he a good boy? A Yes, sir; he was a real good boy.

Q Ever cause you any trouble? A No, he never did. He kept his first position for four years until he ran away.

Q Did he turn his money in every week? A Yes; he was just weak-minded and got out into this bad company and ran away.

Q You say he ran away from home? A He went out to work one morning and he didn't return at night as usual, and I thought some accident had happened to him and I made some inquiries and found that he had been discharged from his position through neglect of his work on some previous days.

Q Did you know where he went? A I really didn't; I could find no address at all where he had gone until the draft board gave it to me. He came all the way up to Jersey to the local board and gave my address to them and gave me as his dependent, and of course they sent his questionnaire home and that was the first I knew that he was even alive.

Q Now, tell us more particularly of his conduct during his youth. A He was eratic.

Mr. Garven. One minute; I object to this, on the ground as irrelevant. I can't see what the basis may be for this sort of testimony. It doesn't make a particle of difference what this boy did previous to this event, and it seems to me this going back into his early days is absolutely irrelevant.

The Court. This sort of evidence might be admissible to lay the foundation of an expert opinion as to the sanity of the defendant, if the issue were as to his sanity by this indictment. In my judgment it is only admissible for that purpose, for what purpose do you offer it?

Mr. Erwin. I am only introducing her as a character witness.

Gaetano Feory, direct.

The Court. Then you will have to confine her testimony to general reputation. I sustain the objection.

Q Until James ran away from home, as you say, you had had no trouble with him?

Mr. Garven. I object to that on the same ground.

The Court. Objection sustained.

Q Do you know his reputation in the community? A Very good always. He had never quarrelled with anybody. I can bring any number of witnesses from any part where we lived for twenty years. We never had a particle of trouble with him.

Direct examination by Mr. Heilenday.

The Court. Is this on behalf of another defendant?

Mr. Heilenday. Yes, sir.

Q Do you remember when he was arrested and brought to the Tombs, when he had some conversation about Feory?

Mr. Garven. I object to it as a self-serving declaration.

A He said "I don't know what they got Feory for, because he didn't have anything at all to do with it.

The Court. The objection is sustained, on the ground that there is no foundation previously laid for the contradiction.

Mr. Heilenday. Your Honor will allow me an exception.

The Court. You may have an exception.

[SEAL] RICHARD DOHERTY,
J.

GAETANO FEORY, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Heilenday.

Q What is your business, Mr. Feory? A Musician.

Q Where do you live? A At present?

Q Yes. A I used to live at 235 West 46th street, New York, but I have moved since then.

Miss Rose Palazzoolo, direct.

Q You are a brother of Louis Feory, one of the defendants? A Yes, sir.

Q Did he associate with you a good deal? A All the time.

Q What kind of a boy was he? A Good boy.

Q Do you know his reputation in the community where he resided? A Yes.

Q What was his reputation?

Mr. Garven. I object.

A Very good.

MISS ROSE PALAZUOLO, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Heilenday.

Q Do you know Louis Feory? A Yes.

Q How long have you known him? A Two years.

Q You are his girl, aren't you? A Yes.

Q And have associated with him during these two years you have known him? A Yes.

Q Do you know his reputation?

Mr. Garvin. I object, on the ground that the proper foundation has not been laid. I didn't object to it when the brother was on the stand.

The Court. Yes; I sustain that objection.

Mr. Heilenday. Do I understand there is an objection to the question: "Do you know his reputation in the community in which he lives"?

Mr. Garven. Yes.

By the Court.

Q Do you know the people in the community where he resides? A No.

By Mr. Heilenday.

Q You have been associated with him for two years? A Yes, I know him and his family.

Q You know his family? A Yes.

Q But you don't know any of the neighbors around there? A No.

Mrs. Rose Feory, direct.

Mr. Heilenday. I understand that the objection is sustained?

The Court. Yes.

MRS. ROSE FEORY, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Heilenday.

Q You are the mother of Louis Feory, one of the defendants? A Yes, sir.

Q And he has been living with you, hasn't he? A Yes, sir.

Q You know his reputation in the community in which he lives, do you?

Mr. Garven. The same objection, on the ground that the foundation has not been properly laid.

The Court. I will allow that. It is the usual preliminary question: Do you know the people in the neighborhood of where he lives?

Q Do you know the people in the neighborhood of where he lives? A Yes.

Q Do you know his reputation among those people?

The Court. For what purpose? You can only inquire into his reputation for certain particular traits or virtues. Direct the attention of this witness to that.

Q Do you know his reputation for peaceableness and truthfulness in the neighborhod in which he lives? A Yes.

Q What is it, good or bad? A Good.

DEFENDANTS REST.

Mr. Heilenday. Mr. Feory's brother tells me that there are two more character witnesses, and I will proceed to put them on now.

The Court. You have some rebuttal, have you?

Mr. Garven. Yes, sir.

The Court. Then we will open up the defense in order that the character witnesses may be put on.

Frank Esposito, direct—cross.

FRANK ESPOSITO, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Heilenday.

Q Where do you live, Mr. Esposito? A 143 West 48th street.

Q Do you know Louis Feory, one of the defendants in this case? A Yes, ever since he was a child.

Q Do you know the neighborhood around the place where he lives? A No, I do not.

Q Well, you were one of his neighbors, weren't you? A Yes, sir.

Q Do you know any more of them? Do you know any more people who live around Feory's place? A I have a business on 48th street. They live in 46th street and I live in 48th street.

Q Do you know his reputation among the people around the neighborhood for peaceableness and truthfulness?

Mr. Garven. I object to it, on the ground that the proper foundation has not been laid. This man says he lives only two blocks from where Feory lives, but two blocks is a considerable distance in New York City. He says he doesn't know anybody in that immediate vicinity or neighborhood where Feory lived.

The Court. His reputation is particularly bad over here; we don't know how it is in New York. I think two blocks is a safe distance.

Q What is that reputation; is it good or bad? A Good.

Cross examination by Mr. Garven.

Q Who are the neighbors of Mr. Feory? A I said that I did not know the neighbors.

Q You don't know anybody that lives on that street at all around Feory, do you? A Not 46th street.

Q And did you hear anybody say that Mr. Feory was a nice boy? A Yes, always.

Q Who? A When they lived downtown.

Q How long ago was that? A About seven years.

Q Did you know anybody living down there? A Yes, sir.

Q When he moved up to 46th street did you hear anybody say that he was a good boy? A Downtown when he was living with his brother, and then they came to my house.

Biagio Iorio, direct—cross.

Q Will you please answer my question. A I do not know the neighbors there.

Q And you never heard anybody up there say he was a good boy? A I heard that from his brother's friends.

Q Where? A When they came to my store, in my place of business.

Q When was that? A Always, and even up to six months ago.

Q And who were the men that came to your store and said he was a good boy? A People who came and dined with the brother.

Q What is your business? A I have a restaurant.

Q Do you know whether those friends live in 46th street, or in that immediate neighborhood? A I do not know.

Q How long have you been in this country? A 12 years.

Q You don't speak any English, do you? A A little.

BIAGIO IORIO, sworn in behalf of the defendants, testified through an interpreter as follows:

Direct examination by Mr. Heilenday.

Q Where do you live? A Mulberry street, 179 New York.

Q Do you know any of the neighbors of Feory up there? A I know all of the family.

Q Well, do you know any of the neighbors? A Yes.

Q Do you know his reputation for peaceableness and truthfulness among those neighbors? A Yes, I know him ever since he was a boy.

Q What is his reputation, good or bad? A Good.

Cross examination by Mr. Garven.

Q What is his reputation? A He carries on good.

Q That is reputation, you think? A He always carried on good.

Q Suppose he carries a gun; is that reputation? A No, he never carried a gun.

DEFENDANTS REST.

William D. Kelly, direct—cross.

WILLIAM D. KELLY recalled, testified as follows:

Direct examination by Mr. Garven.

Q Mr. Kelly, you saw Mr. Joyce as he was leaving the store on the 28th of October last, did you? A Yes, sir, I was the last one with him.

Q Now, do you remember that time he was around the store? A Yes, sir.

Q Did he have his coat off? A Yes.

Q Did he have any gun about him?

Mr. D'Aloia. I object. Yesterday he testified he didn't know whether the man had a gun or not.

The Court. Well, you may confront him with that on your cross examination. I overrule the objection.

Q Did you so testify yesterday that you didn't know whether he had a gun? A No, sir, I did not.

Q Did you say you didn't know anything about it?

Mr. D'Aloia. If your Honor please, this is rebuttal.

The Court. You may ask him whether at the time he was leaving the store he had a gun.

Mr. D'Aloia. That question was put to this witness yesterday on cross examination and he said he didn't know.

The Court. That may or may not be so. Suppose he was in error? I think I will overrule the objection.

A I saw no gun or heard anything about it.

Q As I understand you, his coat was off just before he left the building? A Certainly; he worked with his coat off.

Cross examination by Mr. D'Aloia.

Q So far as you know he had no gun? A No, sir.

Q You didn't look in his coat pocket? A No.

Q When he left the store that night how many days had the strike been on?

Mr. Garven. I object. It is not cross examination.

The Court. Objection overruled.

A Oh, I think the strike had been on about six weeks or seven weeks.

Q And Joyce had been in your employ all that time? A Yes, sir.

Q And he had been accustomed to taking these packages somewhere, hadn't he?

Mr. Garven. I object as immaterial and irrelevant and not cross examination.

The Court. What has his custom got to do with it?

Mr. D'Aloia. The question is directed to the tendency of this man, working for this witness, to have a gun, because of the conditions that had been created by the deceased and by this witness himself and by the strikers. Now, I am trying to find out whether it was the custom for Joyce to leave his place of work during those six weeks and take packages out of town when the strikers had been menacing him for those six weeks.

The Court. Well, the question is whether at the time this blow was struck defendant Devlin had reasonable apprehension that he stood in bodily harm, and I consider this evidence remote from that question. I shall sustain the objection.

Q How long before this night in question had you warned Joyce about the strikers outside?

Mr. Garven. That is objected to as immaterial and irrelevant, and as not proper cross examination.

The Court. I sustain the objection.

Mr. D'Aloia. I ask for an exception.

[SEAL] RICHARD DOHERTY,
J.

Q On that day in question, the 28th of October, did you talk to Joyce about going to Jersey City or any place else that night with clothes? A Yes.

Q Now, in the conversation did the subject of the strike and the strikers come up? A Well, there was some goods to go to a tailor in New York.

Q Did this subject come up about the strike and the strikers? A I can tell you what was said.

Q Was that subject mentioned? A The strike or the strikers?

Q Yes. A No, sir.

Q Was there anything mentioned about the danger to Joyce in carrying these clothes out of town, yes or no? A I did say something about that.

Q What did you say on that subject to Mr. Joyce? A I said to him when he told me that there was a dozen strikers out in front that he had better let it lay. The clothes were wanted, but a day or two more wouldn't make any particular difference.

Q What was Joyce's answer? A He says, "I don't believe they will bother me; I will take them."

Q Didn't he say "I will take care of myself"? A No, sir.

Q Wasn't his answer to you "I will be on the watch"? A No, sir.

Q Didn't you say so yesterday? A No, sir.

Q What did you say yesterday? A He said he would keep his eyes open if the gunman went for him.

THOMAS W. KENNEY, recalled in behalf of the State, in rebuttal, testified as follows:

Direct examination by Mr. Garven.

Q You went to the house of Mr. Joyce the night he was assaulted? A I did.

Q And how soon after the assault? A Possibly an hour or an hour and fifteen minutes.

Q And you were in his house? A Yes, sir.

Q Did you see Joyce? A Yes, sir.

Q Was he dressed? A No, sir.

Q Did you see his clothes? A Yes, sir.

Q Did you see any gun there? A No, sir.

Cross examination by Mr. D'Aloia.

Q What did you mean by "there"? Did you see any gun anywhere? A No, sir

Q Did you look for one? A I searched his clothes.

Q Did you look for one? A I didn't look for a gun.

Q Did you ask about a gun? A No, sir.

Q Did you know anything about a gun when you went to that house? A No, sir.

William J. Davis, direct.

Re-direct examination by Mr. Garven.

Q Now, in searching the clothes did you find any gun? A No.

Re-cross examination by Mr. D'Aloia.

Q What clothes did you search? A His own clothes, where anybody would search.

Q Never mind; what clothes did you search? A The clothes that Mr. Joyce took off.

Q What were they? A Black suit of clothes, black coat, and black overcoat.

Q What time was it? A Between 20 and half-past eight.

Q Do you know who removed that coat from his body? A I don't.

Q Did you ask anybody there who removed the clothing? A No.

By the Court.

Q What was the object of your search? A I didn't know whether the man was held up or why he was assaulted or anything.

Q You thought he was robbed? A That was my opinion. I got $2.35 and that particularly convinced me that the man wasn't held up or robbed.

WILLIAM J. DAVIS, sworn in behalf of the State, in rebuttal testified as follows:

Direct examination by Mr. Garven.

Q Mr. Davis, where do you live? A Harrison.

Q You are counsellor at law of this State? A Yes, sir.

Q And also Master in Chancery? A Yes, sir.

Q Were you in police headquarters on the 16th day of November last when Ciro Mattarazzo made a statement? A Yes, sir.

Q Was that sworn to by him before you? A It was.

Q Who was present at the time? A The chief of the detectives, Mr. Walsh, and I forget the names of the gentleman who testified here, and the typewriter, and myself.

Q And Mattarazzo? A Yes, sir.

Q And how long had you been there before the statement was signed? A I was there about two hours.

Q Right in the presence of Mattarazzo? A Yes, sir.

Q During that time did you see any baseball bats or blackjack or threatening of this young man by the police or anybody else?

Mr. D'Aloia. That is objected to. When the prosecutor yesterday put in his direct case he proved the voluntary character of these statements and the voluntary character of these statements was contradicted by the defendants. Now there is no rebuttal at this stage.

The Court. The voluntary character was shown by *prima facie* testimony.

Mr. D'Aloia. It had to be gone into before those statements were admissible.

The Court. The rule of law is that a confession actually made by a defendant is admissible unless there are circumstances to show that it was forced. I overrule the objection.

A I did not, not while I was present.

Q Did such a thing take place?

Mr. D'Aloia. Well, he answered.

Q And you were present two hours? A Yes, sir.

Q Until that statement was completely written? A Yes, sir.

Q And you had heard the questions asked and the answers given? A Yes, sir.

Q And did you hear any threats or see any bats or anything of that kind? A I did not.

Q At that time? A No, sir.

Q Did you read over this statement to this man before swearing him? A Yes, sir.

Q How many times? A It was read three times.

Q To this young man? A Yes, sir.

Q Before he signed it? A I wish to correct that. The young man read it over once himself and then he handed it back again to the chief of the Detective Bureau and then it came to me and he read it and I read it.

Q Aloud? A Aloud, and I asked the young man if it was right, and he said it was correct. I cautioned him and asked him if he had any lawyer and he said, "They've got the goods on me and I might as well tell it."

William J. Davis, cross.

Q And then he signed it and you swore him? A Yes.

Cross examination by Mr. D'Aloia.

Q Did you see Mr. Brady there? A Which is Mr. Brady?

Q One of the detectives. Didn't you know everybody there? A Yes, I saw him.

Q You remember his going out to lunch? A Not while I was there.

Q You didn't get there until sometime in the afternoon? A Yes, I guess I got there half-past three.

Q You don't know that he had this young man in since 11 o'clock in the morning? A They told me they arrested him in the morning.

Q Don't you know that they had been working on this young man since 11 o'clock in the morning? A I didn't know anything about working on him.

Q Did anybody ask you to stay and watch this proceeding? A I thought it was my duty.

Q Are you connected with the Police Department? A No, except I am always interested in ferreting out a crime.

Q You are a Park Commissioner? A Yes.

Q Why was it necessary for you to interest yourself in the case? A Because we had trouble in the park and people had been held up, and I was interested in getting rid of that.

Q And so you proceeded against this man? A No, not at all.

Q And you thought it was necessary to see that everything was just right? A It is my duty as a lawyer to see that things are done right.

Q You just said that you warned the young man there? A I wasn't his lawyer.

Q But you were a lawyer? A Yes.

By the Court.

Q Has your interest in the profession ever induced you to do anything like this before? A Yes, sir.

Q To ferret out a crime in which you were not retained? A Yes, sir; we had trouble in the town, and as a citizen I deemed it my duty to take an interest in the matter.

Q What town? A In the Town of Harrison.

William J. Davis, cross.

By Mr. D'Aloia.

Q What did this have to do with Harrison? A This didn't happen in Harrison.

Q Did you go there alone or were you accompanied by a woman? A By a woman.

Q Who was that woman? A Mrs. Goldstein.

Q During that proceeding did you say there to Mattarazzo that Mrs. Goldstein was your wife? A My wife? (witness smiling audibly).

Q Yes. In order to induce him to admit some of the statements to Brady and Walsh? A No.

Q The only interest that you had was because you were a lawyer and you were ferreting out crime? A This Mrs. Goldstein saw me and told me that the detective had been to her and she had told the detective the whole truth about recognizing this young man who bought this pipe, and in the afternoon Mr. Goldstein rang me up and said his wife was in the City Hall and he told me to go down there, and I went down there and Mrs. Goldstein was in the room; and I told her if she knew anything about this at all it was her duty to tell it.

Q Did you bring her in on your arm? A Oh, no.

Q You didn't do that? A No. I am not ashamed to take a lady on my arm, though.

Q You took this affidavit? A I took the affidavit.

Q This confession? A Yes, and he said he swore to it.

Q And you read it over to him? A Yes, sir; I read it over to him.

Q Now, you heard him say this, when you read it over to him after he made that statement to you, "They've got the goods on me and I am going to tell the truth?" A He said he would swear to it; and I asked him.

Q Did anybody there stop to take down that statement made by Mattarazzo to you? Did they stop this proceeding to swear him and put that in here? A No, it wasn't put in there.

Q You remember it? A Certainly.

Q You didn't put it down? A No.

Q You don't know why it wasn't put in here? A No.

Q It was a pretty good admission on the part of Mattarazzo? A Yes.

Q And that wasn't put in here? A No, sir.

Examination by Mr. Heilenday.

Q Which one of these defendants made that statement? A This young man that swore to it.

Q What is his name? A I don't know what now.

Q Can't you point him out? A (The witness points out one of the men.)

Q Stand up. Is that Mattarazzo? A Yes.

Q And Feory on this side? A I never saw one of those fellows until in court.

CASE CLOSED.

Charge to Jury.

Gentleman of the Jury:

The recent interruptions of the prosecutor in the course of his remarks induces me, at the outset, to instruct you that you are the sole and ultimate judges of the facts that have been proven in this case as well as of the credibility of the witnesses by whom these facts are shown. You have heard recitations of the evidence by counsel for the defense and by the prosecutor, and, during the course of these instructions it may be necessary, for the purpose of illuminating the legal principles, for myself to refer to some portions of the testimony. In that connection I want to tell you that you are not bound by the resume that either counsel or the Court may resort to; you are the sole and ultimate judges of what the facts in this case are.

Now, the indictment upon which this trial has proceeded charges, in the first instance, that these three defendants, together with others who are not on trial, committed the crime of murder, against the life of John Joyce. The same indictment charges, also, (and this is in conformity with established legal practice) that they committed the crime of manslaughter against John Joyce; and also that they committed upon the person of Joyce an assault and battery. The three defendants are charged equally in this indictment as principals.

Many of the facts in this case are not the subject of any dispute and, therefore, I wish to instruct you that there can be no verdict in this case of either manslaughter or assault and bat-

tery, for the reason that the testimony is harmonious on the point that there was no sudden outburst of passion which would be necessary to reduce the offense to manslaughter; and the evidence is also undisputed that the defendant Devlin, who was the actual perpetrator, provided himself with a deadly weapon in order that he might secure for himself the advantage in the event of any combat arising. This harmonious evidence precludes any verdict of manslaughter.

Neither can there be any verdict under the count charging assault and battery, because the evidence is undisputed that the killing of Joyce resulted from the use of a deadly weapon employed in a deadly manner, and, therefore, your verdict must relate either to one of the degrees of murder in this case, or else it must be a verdict of acquittal.

There are three principal questions which will engage your attention: The first is, whether Devlin, the actual assailant, is guilty of any degree of murder. The second is, whether Mattarazzo and Feory, or either of them, are guilty of any degree of murder by reason of having aided or abetted Devlin in the commission of the crime; and, the third question is, whether Devlin acted lawfully in self-defense. In the event of your finding that he did, then he and the other defendants would be entitled to an acquittal at your hands.

The crime of murder may be defined as the unlawful killing of one reasonable being by another, with malice aforethought and without any justification or excuse. I must confess that this definition is not very enlightening unless I go further and define for you what malice is, and also tell you what constitutes justification or excuse:—

A justified murder is the taking of the life of a subject, under the authority of the law or by reason of the exercise of a lawful public power such as would be exercised by a policeman in the killing of an escaping criminal who committed a higher degree of crime, or the lawful execution in accordance with the judgment of a court. There are several forms of excusable homicide, one of them being homicide committed in self-defense; another being homicide committed as the result of pure accident. And this is what is referred to in the definition of murder when it speaks of a malicious killing that is unjustified or inexcusable.

Malice may be defined as the dictate of a wicked and depraved heart regardless of human life and social duty, and fatally bent

on mischief; and malice may either be express malice or it may be implied malice.

Express malice is where one with a calm, deliberate and sedate mind and a formed design takes the life of another without any circumstances of mitigation, justification, or excuse. And implied malice is the malice which is inferred from the circumstances of the killing or the method whereby it is perpetrated.

These definitions of malice which, to the lay mind, are probably perplexing have been greatly simplified and rendered intelligible by adjudications in this State, it having been ruled by our courts that malice consists of an intent to take life or inflict grave bodily harm, and in this case if you find that there was a taking of human life accompanied by an intent to take that life, or to inflict grave bodily harm, that would be a malicious killing and murder, unless it was attended by circumstances of mitigation, justification or of excuse.

The legislature has gone further in defining the crime of murder, and it is the law of this State that any person who in committing or attempting to commit arson, burglary, rape, robbery, or sodomy, or any unlawful act against the peace of this State of which the probable consequence may be bloodshed, shall kill another, is guilty of murder; and you are to exclusively judge the truth of the evidence in this case.

You have heard the confession on the stand here of Devlin, that he struck the deceased on the head with this piece of iron pipe that he recognizes. I must charge you that in doing so he committed an act against the peace of this State the probable consequence of which was bloodshed, and that he by that circumstance is guilty of murder, unless you find from the evidence that his act was justified or excused by the other circumstances which he relates.

The law presumes that every homicide is a malicious killing and that it is murder, but that it is murder in the second degree, and one cannot be found guilty of murder in the first degree unless along with having committed the offense of murder as defined by the statute he commits it amid certain special circumstances that the statutory law refers to. And that law reads:—

> "Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing shall be murder in the first degree."

So, while according to the presumption of the law every homicide is a malicious homicide and murder in the second degree, it is not elevated to murder in the first degree unless it shall be perpetrated by means of poison, or by lying in wait, or unless you are satisfied beyond a reasonable doubt that it was a wilful, deliberate, and premeditated killing.

It may be allowable, in the light of this testimony, for me to allude to the feature of lying in wait: There is testimony from which you may, if you believe it and attribute such significance to it, find that earlier in the day there was a design formed by these men to inflict some harm upon the deceased John Joyce. There may be some evidence from which you might find that they kept Joyce under their observation, and followed him about in Newark from the place of his employment, or from the place where they saw him, to the tube station; that they then lingered near him during the journey on the train, and after his departure from the train that they followed him to a point on Wayne street where, according to the testimony of one or more of the defendants, the spot was dark.

Now, in connection with that testimony, if you find it exists in the case, you may give some consideration to the question of whether there was a lying in wait. You are not obliged to find, in order that one may lie in wait, that he himself should remain motionless and await the coming of the victim. There would be a lying in wait if one, having formed the intention to kill another thereafter, and still clinging to that intention, purposely bided a favorable chance and awaited a favorable opportunity to carry that homicidal intent into effect.

If this defendant, or one of these defendants, or more of them, intended to, not necessarily kill Joyce but to inflict upon him any injury, the probable consequence of which would be bloodshed, and thereafter they lay in wait for him, under the requirements of our law there should be a verdict of guilt of murder in the first degree. Independent of the feature of lying in wait, you are at liberty, in fact required, to bestow attention upon whether there was a willful, deliberate, or premeditated killing in this case.

Premeditation in this connection consists of the entertainment by the mind of a design to kill. Deliberation consists in weighing the consequences in the mind as to whether or not that design should be carried into effect; and willfulness is where

one having premeditated and deliberated on the question of the killing finally designs and concludes to take life. Where those three distinct mental operations have occurred and afterwards a killing is perpetrated, the killing is willful, deliberate, and premeditated, within the contemplation of this statute.

In reaching a conclusion as to the willful or premeditated or deliberate nature of this crime, you may take into consideration, and must, all of the evidence that has been presented to you relating to the procuring of the weapon and the purposes for which it was procured, and the purpose for which these defendants remained in the vicinity and followed Joyce from Newark to Jersey City.

Now, it is admitted by himself that Devlin was the one who caused the death of Joyce, and no one other than an actual perpetrator of a crime can be held to a responsibility for it, unless within the contemplation of the law such other is guilty as a principal or as an accessory. The claim of the State here is that Feory and Mattarazzo were guilty as principals, because they were present at the time of the commission of the crime and aided and participated in its commission. Their mere presence would not constitute them principals or subject them to any responsibility. Their failure to interfere would not make them principals; nor would their failure to disclose the perpetration of the offense, or actually concealing it, make them perpetrators. It would be necessary for them to actually aid and participate in the commission of the crime.

This has been the subject of consideration by the higher court of this State, which lays down as our law that the mere presence at the scene of the perpetration of a crime does not render a person *particeps criminis,* that is, a party to that crime. To constitute him a party to the criminal act there must be not only presence upon the scene but an actual participation—an aiding and abetting in the crime committed. Nor does the failure of the spectator to interfere make him a participant in the crime. It is a circumstance to be considered with the other evidence in determining whether he was present as an aider and abettor, but is not in itself conclusive evidence of the fact.

To that ruling I would add my own conception, that one who is present and who knowing the unlawful intent of the other who commits an offense, aids or encourages by his words and

acts, is a principal; but it is necessary, to hold such person responsible, that he must be present or within aiding distance.

You may consider that instruction in connection with the testimony of some of these defendants, that they were not there in sight of the crime when it was committed, nor were they at all connected with the encouragement or participation of it, if you believe their testimony in that regard.

If there was a common design formed by these three men to injure Joyce, by committing an act against the peace of this State the probable consequence of which would be bloodshed, and all three agreed that that act should be committed by one of them, and in actual pursuance and continuation of that design all three were present, one of them acting and the others aiding and encouraging him by word, act, or gesture of theirs, all three in that event would be guilty of murder in the second degree.

If, however, their design and agreement was to kill Joyce and that design continued in the minds of all of them, and they were present when the killing took place aiding and participating, in that event all three of them would be guilty of murder in the first degree.

But it is altogether conceivable, and it has the countenance of the law, that having entered into a common design to commit an act, anyone before its actual commission might withdraw from the complicity.

In this case there is some evidence offered on behalf of some of the defendants that there was a variation of design after the young men got off the tube train; that there was some talk as to what they should do henceforth. Now, if, at that point, any one of these men withdrew from the complicity to seriously injure Joyce, or to take his life, and having withdrawn from it actually desisted from aiding, or abetting, or encouraging the commission of any crime in the future, that person so withdrawing would be guiltless and innocent.

Coming down, now, to the actual facts, Devlin says that he approached Joyce for the purpose of asking him where he was taking the bundle, and that immediately Joyce made a menacing gesture as if to take a weapon from his pocket. The theory of Devlin's defense is, that that conduct on the part of Joyce placed him in apprehension of serious bodily harm, and that it was in order to avoid the infliction of that harm on him that he struck

Joyce. In other words, he interposes in his own behalf the defense of justification or self-defense; and if that defense is to prevail, if he did strike Joyce in order to save himself from actual destruction or grievous bodily harm, he should be acquitted and the others should be acquitted along with him. But the success of that defense is affected by several limitations which the law prescribes: The right of self-defense may arise from circumstances justifying a reasonable apprehension of grave bodily harm.

And before we go any further we might bestow a little attention upon whether the gesture of Joyce in the circumstances was such as to engender a reasonable apprehension in Devlin's mind that he was in peril of grave bodily harm. According to some of the testimony the street was deserted; nobody was around and the spot was dark; Joyce was engaged in an employment which had been vexed by some labor trouble, and he was in the class that was known as a strike-breaker, keeping his employment notwithstanding the progress of the strike was six weeks. Joyce was carrying home a bundle, and at this time and place he was approached by a young man carrying in his hand a tubular object which afterwards proved to be the weapon in this case; and this young man said to him, "Hey, Buddy, where are you going with the bundle?"

Now, Devlin would not be justified in employing any force against the person of Joyce, unless Joyce in respect of himself was a wrong-doer; and you are entitled to give some consideration to the fact whether Joyce acted as a wrong-doer when having been accosted by Devlin in this manner he did resort to a menacing position, because it is altogether inconceivable, according to how you find the evidence to be, that Joyce was justified in conveying to the person who accosted him in some measure that he was prepared to protect himself against a personal attack.

And there is another principle of law which has a very pointed application to this case: One who unlawfully provokes a conflict cannot if overcome justify the use of a deadly weapon to extricate himself from the danger into which his own misconduct has brought him; but he must first abandon the prosecution of his unlawful purpose and retreat and put his adversary in the wrong before his right of self-defense arises.

And, accordingly, I am obliged to instruct you that Devlin having made the first advance towards Joyce, he cannot invoke the right of self-defense in any quarrel that started subsequently, unless the evidence satisfies you, at least to the degree of a reasonable doubt, that Devlin retreated, and that he was wrongfully followed up by Joyce, in a manner that would make Joyce a wrong-doer. This instruction is subject to a more elaborate discussion of the topic in one of our cases, which lays down the following principle:

> "Taking life in the course of the necessary defense of one's person is a legal defense upon an indictment for murder, but the law, from the highest considerations of public policy, circumscribes the right of one person to take the life of another within narrow limits, and allows it to be exercised only under extraordinary circumstances. The burden of proof of self-defense is upon the prisoner. He must show to the satisfaction of the jury a situation and circumstances under which that right may be lawfully exercised, and before his defense is complete those facts and circumstances must appear to bring the act done by the prisoner within the prescribed limits.
>
> The foundation of the right to take life by way of self-defense is necessity. There must exist a necessity for resorting to the violence for self-protection and necessity for using the means that were used to secure the defense of the person. An accused is justified in using force to defend his person only when force is necessary to accomplish that end. If the injury apprehended could be otherwise avoided, the prisoner was bound to avoid the danger without resorting to violence, and even if the circumstances be such as to require the use of force to repel the assault he will be inexcusable if he carried his defense beyond the bounds of necessity. The danger must be immediate and must be actual or else apprehended on reasonable grounds, of which the jury is the judge. The accused could not make his judgment of the necessity of the slaying the deceased in order to defend himself a justification of his act. Whether the necessity for taking life exists must be determined from the situation of the accused at the time, and it is the province and duty of the jury to determine that question."

Now, gentlemen, the import of that quotation is, that the fact that Devlin may have apprehended, at the time when he struck Joyce, that his life was in danger, or that he was in danger of serious bodily harm, does not constitute a justification, or does not go to prove the right of his defense. You are to judge, from all the circumstances and from the situation of the parties at the time, whether Devlin, by force of those circumstances, was reasonably justified in apprehending any such danger. As this ruling says, the prisoner himself cannot make his own judgment the criterion of whether he should kill or not.

There have been produced here no eye-witnesses to the perpetration of this crime. The fact of the violent death of Joyce is established and the complicity of these defendants is shown chiefly by their own confessions. These confessions are evidence, under certain circumstances. They are not to be regarded by you as constituting evidence unless you are satisfied that they were voluntarily made. And the law on that point is:—

> "A confession by an accused to one in authority, to be admitted in evidence, must be voluntary. By this is meant that the confession must not be extorted by threats or obtained by any direct or implied promises. A confession obtained either by the flattery of hope or by the impression of fear is not admissible in evidence. The promise of hope excited must relate to some benefit to be derived by the prisoner in the criminal prosecution. The ground on which confessions made by a party accused under promise of favor or threats of injury are excluded as incompetent, is not because any wrong is done to the accused in using them, but because he may be induced by the pressure of hope or fear to admit facts unfavorable to himself without regard to their truth."

In the discussion of this topic an eminent commentator has furnished us with the following reflections:

> "From the moment of his arrest an accused person is surrounded by shrewd and experienced police officials, whose daily business it is to deal with hardened criminals, and whose interest it is, not to secure the acquittal of the innocent, but to bring the guilty to justice. The fact that the person under arrest has been proved to be innocent of the crime charged, is often regarded as showing a lack of judgment or experience on the part of the officials caus-

ing or procuring his arrest. Hence it commonly happens that detectives, policemen, and others entrusted with the detection and apprehension of criminals, assume that everyone who is placed under arrest is guilty of the crime. Such a mental attitude often leads to a willful, and sometimes even to an unconscious and involuntary suppression, of those facts which indicate that the prisoner is innocent, and to an exaggeration of those which point to guilt."

In this case at the outset I admitted these confessions in evidence because at that time there was no serious imputation made against the manner in which they were obtained. Since that time, the evidence on behalf of the defense has raised the question as to whether those confessions were voluntary, and whether they are true; and in that situation I am going to relinquish to you the right to say whether or not those confessions made by these defendants were voluntary confessions.

If they were not voluntary, then you are not to consider them any further, beyond the point of determining that they were unlawfully extorted from the defendants. If they were voluntary confessions, the next thing for you to consider is, are they true. Because, although a confession made by a defendant under a criminal accusation is a serious and solemn and binding admission, nevertheless the law does not countenance the idea of a person lying himself into prison. And those confessions are not to be regarded as probative of anything unless you are satisfied that what they contain is true.

The fact that there are several confessions in this case renders it necessary for me to warn you that no statement made in any one of those confessions is to be taken against anybody except the defendant who made that particular confession and except as to his own conduct, as recited therein. And the references that one defendant may have made to the conduct of another defendant do not bind that other defendant, because one can obligate himself only by his own confessions.

The law presumes these defendants to be absolutely innocent, and this presumption is favorable to them throughout the entire course of this prosecution and until you are satisfied by the evidence in this case beyond a reasonable doubt that they are guilty.

Now, the term "reasonable doubt" imports very much what it expresses. It means a lack of conviction as to the guilt of the defendants for which a reason exists. It does not mean a mere surmise, or guess, or supposition that they may be innocent, but it means a fair doubt entertained by the mind after a careful and dutiful survey of all the facts in this case, and based upon the evidence or lack of evidence in this case. If you have such a reasonable doubt in your minds as to whether these defendants were guilty of any crime you are to give them the benefit of that doubt and acquit them.

This same rule as to reasonable doubt relates to the different degrees of murder. If you are satisfied that there was an unlawful and malicious killing in this case and that the defendants are guilty in some degree of murder, but doubt in what degree, you are not to find them guilty of murder in the first degree. If you have any reason to doubt, from the evidence or the lack of evidence, that it was a wilful, deliberate, and premeditated killing, or a killing by means of lying in wait, that doubt is to be resolved in favor of these defendants, and they can be convicted of murder in the second degree only.

I wish to repeat what I have said here, that you are the sole judges of the credibility of the witnesses. In judging their credibility you may take into consideration the inherent probability of the stories that they tell, the manner of telling them, and what their possible interest in the outcome of this case might be; and in that connection it would be proper for me to tell you that these defendants themselves are the ones most vitally interested in this case, and you are to keep that in mind when you are passing upon the credibility and truthfulness of their testimony.

A book has been introduced in evidence and I understand that it will be among the exhibits that you will take into the jury-room with you, because it is property that was taken from one of the prisoners at the time of his arrest. By stipulation of counsel, you are to use and refer only to certain entries in that book, and you are not to refer to anything else in that book except that which has been the subject of special agreement by counsel.

I am requested by counsel of one of the defendants to charge you, that if the jury is satisfied that Ciro Mattarazzo, on arriving at the Grove street station at Jersey City, or at any time

prior, gave instructions to James Devlin not to assault and beat John Joyce, the deceased, with the iron pipe, it must bring in a verdict of not guilty as to Ciro Mattarazzo.

The other requests to charge, handed to me by this defendant, are refused, except as I have already charged.

On behalf of Feory, I charge you that nothing contained in the confession made by Clinton is binding on Feory and cannot be used against Feory. Anything contained in the confession made by Matarazzo is not binding on Feory and cannot be binding on Feory. I decline to charge the other requests, except as already charged.

Now, if there is any matter that I have omitted, if counsel will bring my attention to it I will consider it.

Although these three defendants have been charged in one indictment, that does not mean that you must pass upon the question of their guilt or innocence jointly in every event. You are to examine into the culpability of each one separately, and it is allowable for you to find one guilty of any of the offenses that I have charged you and the others not guilty; or you may find two of them guilty and one not guilty. You are to apply the evidence and these instructions separately in determining the guilt or innocence of each defendant.

A recent legislative enactment, gentlemen, has placed it within the power of a jury in homicide cases, in the event of the rendition of a verdict of murder in the first degree, to state whether or not the punishment shall be that of life imprisonment. The operation of the law is, that where the jury prescribes life imprisonment as the penalty for murder in the first degree that that will be the penalty; whereas, if they are silent on the question of the penalty, another form of punishment may be imposed.

The defendant Mattarazzo prayed and is allowed a general exception.

RICHARD DOHERTY,
J.

Mr. Heilenday. I desire to note exception to the charge of the Court, where you say there can be no verdict of manslaughter. I desire also to note exception to the charge of the Court where you said that if the jury does not recommend life imprisonment some other form of punishment may be inflicted. I think the

words "may be" are not correct. The rule is, that some other punishment must be given, which is death.

RICHARD DOHERTY,
J.

Mr. Erwin. I desire to have noted a general exception to your Honor's charge on behalf of Devlin.

RICHARD DOHERTY,
J.

Judge's Certificate.

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

I, Richard Doherty, presiding Judge of the Court of Oyer and Terminer in and for the County of Hudson, State of New Jersey, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the "*State of New Jersey* v. *Ciro Matarazzo and Louis Fiory*" upon the indictment for murder under the indictment hereinbefore set forth, and is returned herewith upon the application of the plaintiff made in that behalf.

Witness my hand and seal of the said Court and County at Jersey City, New Jersey, this 9th day of April, nineteen hundred and nineteen.

(Signed) RICHARD DOHERTY,
Judge.

Assignments of Error.

Filed May 15, 1918.

Afterwards, to wit, on the return day of said writ, before the Justices of the Supreme Court of Judicature at Trenton, come the said Louis Fiore and Ciro Matarazzo, by J. Victor D'Aloia, their attorney, and said that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

First:—In that upon the trial of said cause the prosecutor of the pleas offered in evidence a photograph of John Joyce which was taken long after the death of the said John Joyce and did not correctly represent the conditions of the said deceased at the time of his death, which said photograph was admitted in evidence by the Court to the great injury and prejudice of the defendants in maintaining their defense on the merits of the case, and against the objection of defendants' counsel.

Second:—In that upon the trial of said cause, the Court before whom it was tried permitted the State's witness, Louis Montagna, to testify, on direct examination, as to what he had told Mr. Kelley a day or two before October 28th, 1918, with reference to a crowd which had followed Mr. Joyce upon Mr. Joyce's leaving Mr. Kelley's store at about half-past six P. M., in the absence of the defendants and against the objection of defendants' counsel, to the great injury and prejudice of the defendants in maintaining their defense on the merits of the case.

Third:—In that upon the trial of said cause, the Court before whom it was tried admitted a certain paper writing alleged to be a statement made by the defendant, Ciro Matarazzo, and left it to the jury to determine its voluntary character without the Court itself passing upon the same and despite the fact that the same was not a complete recital of the statement theretofore alleged to have been made by the said defendant, Ciro Matarazzo, to the officers who attested the signature of the said Ciro Matarazzo to the said statement; the said paper writing was admitted in evidence against the objection of the defendant's counsel and to his, the said Ciro Matarazzo's great injury and prejudice in maintaining his defense on the merits of the case.

Fourth:—In that upon the trial of said cause, the Court before whom it was tried admitted a certain paper writing

alleged to be a statement made by the defendant, Louis Fiore, and left it to the jury to determine its voluntary character without the Court itself passing upon the same and despite the fact that the same was not a complete recital of the statement theretofore alleged to have been made by the said defendant, Louis Fiore, to the officers who attested the signature of the said Louis Fiore to the said statement; the said paper writing was admitted in evidence against the objection of defendant's counsel and to his, the said Louis Fiore's great injury and prejudice in maintaining his defense on the merits of the case.

Fifth:—In that upon the trial of said cause, the Court before whom it was tried refused to permit the defendants' witness, Agnes Devlin, to testify as to what James Devlin had stated to her on the night that he, the said James Devlin, was arrested in the Tombs at the City of New York as to the participation, if any, in the alleged attack upon John Joyce of the defendant, Louis Fiore, against the objection of the defendant's counsel, and to his great injury and prejudice in maintaining his defense on the merits of the case.

Sixth:—In that upon the trial of said cause, the Court before whom it was tried refused to permit defendants' counsel to find out upon cross examination of the State's witness, William D. Kelley, whether or not he had warned the deceased, John Joyce, about the strikers outside the store, so that the defendants' counsel was precluded from showing at the trial of said cause that the said deceased, John Joyce, was in the habit of carrying a revolver as a result of the warning given him by the said William D. Kelley; the refusal to permit said question to be asked by the defendants' counsel was against the objection of defendants' counsel and to their great injury and prejudice in maintaining their defense on the merits of the case.

Seventh:—In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, charged and instructed the jury contrary to law and the evidence in the case.

Eighth:—In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, erroneously charged and instructed the jury that there could be no verdict in said cause of either manslaughter or assault and battery because the Court erroneously construed the evi-

dence in said case; to which said charge counsel for the defendants duly excepted.

Ninth:—In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, erroneously charged the jury that if in bringing in a verdict of murder in the first degree it would not recommend life imprisonment, some other form of punishment might be inflicted, thereby misleading the jury into the belief that some other form of punishment might have been inflicted other than death; to which charge the defendants' counsel duly excepted.

Tenth:—In that the judgment and sentence of the said Court of Oyer and Terminer against the said defendants, Louis Fiore and Ciro Matarazzo, was given and passed against the said Louis Fiore and Ciro Matarazzo, whereas by the laws and customs of New Jersey no judgment and sentence ought to have been given or passed on the said defendants upon the indictment, record and proceedings.

Wherefore, the said defendants Louis Fiore and Ciro Matarazzo pray that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record or proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, should be reversed, annulled and for nothing holden and that the said Louis Fiore and Ciro Matarazzo, defendants as aforesaid, may be restored to all things they have lost on occasion thereof.

CARL ABRUZZESE,
J. VICTOR D'ALOIA,
Of Counsel with Defendants.

Specification of Causes.

Specification of Causes.

Filed May 17, 1917.

Louis Fiore and Ciro Matarazzo, the plaintiffs-in-error, by J. Victor D'Aloia and Carl Abruzzese, their attorneys, hereby specify the causes in the record relied upon for the relief or reversal in the aforesaid cause as follows:

First:—In that upon the trial of said cause the prosecutor of the pleas offered in evidence a photograph of John Joyce which was taken long after the death of the said John Joyce and did not correctly represent the conditions of the said deceased at the time of his death, which said photograph was admitted in evidence by the Court to the great injury and prejudice of the defendants in maintaining their defense on the merits of the case, and against the objection of defendants' counsel.

Second:—In that upon the trial of said cause, the Court before whom it was tried permitted the State's witness, Louis Montagna, to testify, on direct examination, as to what he had told Mr. Kelley a day or two before October 28th, 1918, with reference to a crowd which had followed Mr. Joyce upon Mr. Joyce's leaving Mr. Kelley's store at about half-past six P. M., in the absence of the defendants and against the objection of defendants' counsel, to the great injury and prejudice of the defendants in maintaining their defense on the merits of the case.

Third:—In that upon the trial of said cause, the Court before whom it was tried admitted a certain paper writing alleged to be a statement made by the defendant, Ciro Matarazzo, and left it to the jury to determine its voluntary character without the Court itself passing upon the same and despite the fact that the same was not a complete recital of the statement theretofore alleged to have been made by the said defendant, Ciro Matarazzo, to the officers who attested the signature of the said Ciro Matarazzo to the said statement; the said paper writing was admitted in evidence against the objection of the defendant's counsel and to his, the said Ciro Matarazzo's great injury and prejudice in maintaining his defense on the merits of the case.

Fourth:—In that upon the trial of said cause, the Court before whom it was tried admitted a certain paper writing alleged to be a statement made by the defendant, Louis Fiore, and left it to the jury to determine its voluntary character

without the Court itself passing upon the same and despite the fact that the same was not a complete recital of the statement theretofore alleged to have been made by the said defendant, Louis Fiore, to the officers who attested the signature of the said Louis Fiore to the said statement; the said paper writing was admitted in evidence against the objection of defendant's counsel and to his, the said Louis Fiore's great injury and prejudice in maintaining his defense on the merits of the case.

Fifth:—In that upon the trial of said cause, the Court before whom it was tried refused to permit the defendants' witness, Agnes Devlin, to testify as to what James Devlin had stated to her on the night that he, the said James Devlin, was arrested in the Tombs at the City of New York as to the participation, if any, in the alleged attack upon John Joyce of the defendant, Louis Fiore, against the objection of the defendant's counsel, and to his great injury and prejudice in maintaining his defense on the merits of the case.

Sixth:—In that upon the trial of said cause, the Court before whom it was tried refused to permit defendants' counsel to find out upon cross examination of the State's witness, William D. Kelley, whether or not he had warned the deceased, John Joyce, about the strikers outside the store, so that the defendants' counsel was precluded from showing at the trial of said cause that the said deceased, John Joyce, was in the habit of carrying a revolver as a result of the warning given him by the said William D. Kelley; the refusal to permit said question to be asked by the defendants' counsel was against the objection of defendants' counsel and to their great injury and prejudice in maintaining their defense on the merits of the case.

Seventh:—In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, charged and instructed the jury contrary to law and the evidence in the case.

Eighth:—In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, erroneously charged and instructed the jury that there could be no verdict in said cause of either manslaughter or assault and battery because the Court erroneously construed the evidence in said case; to which said charge counsel for the defendants duly excepted.

Specification of Causes.

Ninth:—In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, erroneously charged the jury that if in bringing in a verdict of murder in the first degree it would not recommend life imprisonment, some other form of punishment might be inflicted, thereby misleading the jury into the belief that some other form of punishment might have been inflicted other than death; to which charge the defendants' counsel duly excepted.

Tenth:—In that the judgment and sentence of the said Court of Oyer and Terminer against the said defendants, Louis Fiore and Ciro Matarazzo, was given and passed against the said Louis Fiore and Ciro Matarazzo, whereas by the laws and customs of New Jersey no judgment and sentence ought to have been given or passed on the said defendants upon the indictment, record and proceedings.

Wherefore, the said defendants Louis Fiore and Ciro Matarazzo pray that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record or proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, should be reversed, annulled and for nothing holden and that the said Louis Fiore and Ciro Matarazzo, defendants as aforesaid, may be restored to all things they have lost on occasion thereof.

CARL ABRUZZESE,
J. VICTOR D'ALOIA,
Of Counsel with Defendants.

OPINION.

Filed November 7, 1919.

NEW JERSEY SUPREME COURT.

June Term, 1919.

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* LOUIS FIORE and CIRO MATARAZZO, *Plaintiffs-in-Error.*	*On Writ of Error.*

Submitted June Term 1919.
Decided Nov. 5, 1919.

Before Gummere, Chief Justice, and Justices Minturn and Black.

The rule is established, that counsel cannot take the chance of testimony-making in his favor, and if it happens to be adverse, then interpose an objection.

It is not legally objectionable for a trial judge to express to the jury his opinion, as to the grade of the prisoner's crime under the evidence, in case the jury shall find the prisoner guilty.

It is not open to the jury, in a case of criminal homicide, to find the prisoner guilty of manslaughter or assault and battery, when the record is barren of any proof tending to support such a finding. It is not error for the trial judge to so state, in the charge to the jury.

For the State of New Jersey, Pierre P. Garven, Prosecutor of the Pleas.

For the defendants, Mr. J. Victor D'Aloia and Mr. Carl Abruzzese.

The opinion of the Court was delivered by BLACK, *J.*

The plaintiffs in error, Louis Fiore, and Ciro Matarazzo, with James Devlin and others, were indicted by the Hudson County

Grand Jury for the murder of John Joyce, on the evening of October 28, 1918. They were tried in the Hudson Oyer and Terminer. The two defendants named and James Devlin were found guilty of murder in the second degree. The others were acquitted. The two defendants prosecute their writ of error to review the judgment against them. The whole record is brought up under the 136th Section of the Criminal Procedure Act. The assignments of error and the specifications of causes for reversal are identical. There are ten of each. But by a stipulation in writing, the counsel have confined the argument to the first, seventh and eighth.

Succinctly stated the essential facts are as follows: The defendants were engaged as pickets in a garment workers' strike in the city of Newark. The deceased John Joyce was, or was believed by the defendants to be a strike breaker, having at the time of his death been employed as a tailor in a clothing manufactory in Newark. On the evening of October 28, 1918, the defendants met in Newark with a number of strikers, at about the time when the garment workers were leaving their places of employment, at the end of the day's work. Joyce, the deceased, was pointed out to the defendants by a number of strikers and the defendants were told to "go after that man; he lives in Jersey City." Accordingly they followed Joyce. They boarded the same tube train with him at Newark, when he left the train at the Grove Street Station in Jersey City, they did likewise. The three defendants named followed Joyce for a distance of two or three blocks, when Devlin hastened ahead of his two companions and from behind struck Joyce on the head with a piece of iron pipe, which Ciro Mattarazzo, the defendant, purchased that afternoon in company with the other two defendants and which had been provided for the purpose. Fiore and Matarazzo knew that Devlin has possession of the iron pipe. They knew that it was purchased and intended for use in doing violence to Joyce. Nine days after Joyce died as the result of injuries to his head inflicted by the blow.

The first error alleged is in admitting in evidence a photograph of the body of the deceased. The record shows that the photograph was identified and marked for identification, when the counsel for the defendant cross examined the witness, making direct use and references in his cross examination to the photograph itself. The Court will not permit counsel to speculate in the use and introduction of evidence and if it happens to be

adverse then interpose an objection. Cunningham *v.* State, 61 N. J. L. 67; State *v.* Hummer, 75 *ib.* 714, after this Dr. John H. O'Neill, a witness for the State, who had known the deceased "very well" and who had been his physician for a "number of years" testified, that the photograph was a true representation of the body of John Joyce. It was then admitted in evidence. This ruling of the trial court in admitting the photograph was not error.

The stress of the argument of the defendant, however, is aimed at the trial judge's charge to the jury and that part of it in which he said:

> "Many of the facts in this case are not the subject of any dispute and, therefore, I wish to instruct you that there can be no verdict in this case of either manslaughter or assault and battery, for the reason that the testimony is harmonious on the point that there was no sudden outburst of passion which would be necessary to reduce the offence to manslaughter; and the evidence is also undisputed that the defendant Devlin, who was the actual perpetrator, provided himself with a deadly weapon in order that he might secure for himself the advantage in the event of any combat arising. This harmonious evidence precludes any verdict of manslaughter. Neither can there be any verdict under the count charging assault and battery, because the evidence is undisputed that the killing of Joyce resulted from the use of a deadly weapon employed in a deadly manner, and, therefore, your verdict must relate either to one of the degrees of murder in this case, or else it must be a verdict of acquittal."

An examination of the record amply demonstrates, that the above statement by the trial judge in the charge to the jury was accurate. The State's case bearing on the circumstances attending the assault of Joyce is found in the voluntary confession of the three defendants, James Devlin, Louis Fiore, and Ciro Matarazzo. They substantially agree. They each testified on the defense, with no material difference. Devlin, the defendant, who committed the assault, was the only eye witness, but there was little or no variation from the details, which led up to the assault, as testified to by each of the defendants. In this state of the evidence, the trial judge was justified in charging the jury

as he did, as was pointed out in the case of State *v.* Pulley, 82 N. J. L. 584. The complete answer to the contention of the defendants' counsel is if they had been convicted, either of manslaughter or assault and battery, such a finding would rest, not upon any proofs in the cause, but upon mere conjecture. This could never be accepted, as a fulfillment by the State, of its obligation to satisfy the jury beyond a reasonable doubt, by the proofs in the cause, that death was produced by the criminal act of the defendants. This is in harmony with all the cases in our Courts on this point. State *v.* Biango, 75 N. J. L. 284, affirmed 79 *ib.* 523; Genz *v.* State, 58 *ib.* 482; State *v.* Moyniham, 106 Atl. 817; State *v.* Valentina, 71 N. J. L. 555; State *v.* Agnesi, 92 *ib.* 638. This disposes of all the assignments and specifications in the cause, argued by the defendant's counsel.

Finding no error in the record the judgment is therefore affirmed.

REMITTITUR.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* LOUIS FIORE and CIRO MATARAZZO, *Plaintiffs-in-Error.*	*On Error.* *To the Hudson Oyer and Terminer.* *Rule on Affirmance.*

This cause having been duly argued before this Court at the June Term A. D. 1919, by Pierre P. Garven, Prosecutor of the Pleas of the County of Hudson, counsel for the State of New Jersey, and by J. Victor D'Aloia, Counsel for the Plaintiffs in Error, and the Court having considered the same, and having examined the records and proceedings of the Hudson Oyer and Terminer in the said cause, and finding no error therein:

IT IS HEREBY ORDERED AND ADJUDGED, that the judgment of the Hudson Oyer and Terminer in the above entitled cause be and the same is hereby affirmed with costs.

On motion of

PIERRE P. GARVEN,
Prosecutor of the Pleas,
Attorney for the State of New Jersey
Defendant in Error.

ASSIGNMENTS OF ERROR.

(Filed January 17th, 1920).

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* LOUIS FIORE and CIRO MATARAZZO, *Plaintiffs-in-Error.*	*On Error to Supreme Court.*

Afterwards, in the New Jersey Court of Errors and Appeals, come Ciro Matarazzo and Louis Fiore, by J. Victor D'Aloia and Carl Abruzzese, their attorneys, and say that in the record of the Supreme Court, and proceedings aforesaid, and also in the matters recited in the bill of exceptions, and in the giving of the verdict and judgment aforesaid, there is manifest error in this respect, to wit:

1. That the Supreme Court affirmed the judgment of the Hudson County Oyer and Terminer, whereas said Court should have reversed said judgment.

2. In that upon the trial of said cause the prosecutor of the pleas offered in evidence a photograph of John Joyce which was taken long after the death of the said John Joyce and did not correctly represent the conditions of the said deceased at the time of his death, which said photograph was admitted in evidence by the Court to the great injury and prejudice of the defendants in maintaining their defense on the merits of the case, and against the objection of defendants' counsel.

3. In that upon the trial of said cause, the Court before whom it was tried permitted the State's witness, Louis Montagna, to testify, on direct examination, as to what he had told Mr. Kelley a day or two before October 28th, 1918, with reference to a crowd which had followed Mr. Joyce upon Mr. Joyce's leaving Mr. Kelley's store at about half-past six P. M., in the absence of the defendants and against the objection of defendants' counsel, to the great injury and prejudice of the defendants in maintaining their defense on the merits of the case.

4. In that upon the trial of said cause, the Court before whom it was tried admitted a certain paper writing alleged to be a statement made by the defendant, Ciro Matarazzo, and left it to the jury to determine its voluntary character without the Court itself passing upon the same and despite the fact that the same was not a complete recital of the statement theretofore alleged to have been made by the said defendant, Ciro Matarazzo, to the officers who attested the signature of the said Ciro Matarazzo to the said statement; the said paper writing was admitted in evidence against the objection of the defendants' counsel and to his, the said Ciro Matarazzo's, great injury and prejudice in maintaining his defense on the merits of the case.

5. In that upon the trial of said cause, the Court before whom it was tried admitted a certain paper writing alleged to be a statement made by the defendant, Louis Fiore, and left it to the jury to determine its voluntary character without the Court itself passing upon the same and despite the fact that the same was not a complete recital of the statement theretofore alleged to have been made by the said defendant, Louis Fiore, to the officers who attested the signature of the said Louis Fiore to the said statement; the said paper writing was admitted in evidence against the objection of defendants' counsel and to his, the said Louis Fiore's great injury and prejudice in maintaining his defense on the merits of the case.

6. In that upon the trial of said cause, the Court before whom it was tried refused to permit the defendant's witness, Agnes Devlin, to testify as to what James Devlin had stated to her on the night that he, the said James Devlin, was arrested in the Tombs at the City of New York as to the participation, if any, in the alleged attack upon John Joyce of the defendant, Louis Fiore, against the objection of the defendants' counsel, and to his great injury and prejudice in maintaining his defense on the merits of the case.

7. In that upon the trial of said cause, the Court before whom it was tried refused to permit defendants' counsel to find out upon cross examination of the State's witness, William D. Kelley, whether or not he had warned the deceased, John Joyce, about the strikers outside the store, so that the defendants' counsel was precluded from showing at the trial of said cause that the said deceased, John Joyce, was in the habit of carrying

a revolver as a result of the warning given him by the said William D. Kelley; the refusal to permit said question to be asked by the defendants' counsel was against the objection of defendants' counsel and to their great injury and prejudice in maintaining their defense on the merits of the case.

8. In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, charged and instructed the jury contrary to law and the evidence in the case.

9. In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, erroneously charged and instructed the jury that there could be no verdict in said cause of either manslaughter or assault and battery because the Court erroneously constructed the evidence in said case; to which said charge counsel for the defendants duly excepted.

10. In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, erroneously charged the jury that if in bringing in a verdict of murder in the first degree it would not recommend life imprisonment, some other form of punishment might be inflicted, thereby misleading the jury into the belief that some other form of punishment might have been inflicted other than death; to which charge the defendants' counsel duly excepted.

11. In that the judgment and sentence of the said Court of Oyer and Terminer against the said defendants, Louis Fiore and Ciro Matarazzo, was given and passed against the said Louis Fiore and Ciro Matarazzo, whereas by the laws and customs of New Jersey no judgment and sentence ought to have been given or passed on the said defendants upon the indictment, record and proceedings.

12. Because in other respects the said verdict and judgment are erroneous.

J. VICTOR D'ALOIA,
CARL ABRUZZESE,
Attorneys for Plaintiffs-in-Error.

CAUSES FOR REVERSAL.

(Filed January 17th, 1920.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* LOUIS FIORE and CIRO MATARAZZO, *Plaintiffs-in-Error.*	*On Error to Supreme Court.* *On Indictment for Murder.*

Plaintiffs-in-error assign the following reasons for reversal of the judgment of the Supreme Court sustaining the verdict and judgment of conviction in the above stated cause, upon the whole record.

1. In that upon the trial of said cause the prosecutor of the pleas offered in evidence a photograph of John Joyce which was taken long after the death of the said John Joyce and did not correctly represent the conditions of the said deceased at the time of his death, which said photograph was admitted in evidence by the Court to the great injury and merits of the case, and against the objection of defendants' counsel.

2. In that upon the trial of said cause, the Court before whom it was tried permitted the State's witness, Louis Montagna, to testify, on direct examination, as to what he had told Mr. Kelley a day or two before October 28th, 1918, with reference to a crowd which had followed Mr. Joyce upon Mr. Joyce's leaving Mr. Kelley's store at about half-past six P. M., in the absence of the defendants and against the objections of defendants' counsel, to the great injury and prejudice of the defendants in maintaining their defense.

3. In that upon the trial of said cause, the Court before whom it was tried admitted a certain paper in writing alleged to be a statement made by the defendant, Ciro Matarazzo, and left it to the jury to determine its voluntary character without the Court itself passing upon the same and despite the fact that the same was not a complete recital of the statement theretofore alleged to have been made by the said defendant, Ciro Matarazzo, to the

officers who attested the signature of the said Ciro Matarazzo to the said statement; the said paper writing was admitted in evidence against the objection of the defendants' counsel and to his, the said Ciro Matarazzo's great injury and prejudice in maintaining his defense on the merits of the case.

4. In that upon the trial of said cause, the Court before whom it was tried admitted a certain paper writing alleged to be a statement made by the defendant, Louis Fiore, and left it to the jury to determine its voluntary character without the Court itself passing upon the same and despite the fact that the same was not a complete recital of the statement theretofore alleged to have been made by the said defendant, Louis Fiore, to the officers who attested the signature of the said Louis Fiore to the said statement; the said paper writing was admitted in evidence against the objection of defendants' counsel and to his, the said Louis Fiore's great injury and prejudice in maintaining his defense on the merits of the case.

5. In that upon the trial of said cause, the Court before whom it was tried refused to permit the defendants' witness, Agnes Devlin, to testify as to what James Devlin had stated to her on the night that he, the said James Devlin, was arrested in the Tombs at the City of New York as to the participation, if any, in the alleged attack upon John Joyce of the defendant, Louis Fiore, against the objection of the defendants' counsel, and to his great injury and prejudice in maintaining his defense on the merits of the case.

6. In that upon the trial of said cause, the Court before whom it was tried refused to permit defendants' counsel to find out upon cross examination of the State's witness, William D. Kelley, whether or not he had warned the deceased, John Joyce, about the strikers outside the store, so that the defendants' counsel was precluded from showing at the trial of said cause that the said deceased, John Joyce, was in the habit of carrying a revolver as a result of the warning given him by the said William D. Kelley; the refusal to permit said question to be asked by the defendants' counsel was against the objection of defendants' counsel and to their great injury and prejudice in maintaining their defense on the merits of the case.

7. In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, charged and instructed the jury contrary to law and the evidence in the case.

8. In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, erroneously charged and instructed the jury that there could be no verdict in said cause of either manslaughter or assault and battery because the Court erroneously construed the evidence in said case; to which said charge counsel for the defendants duly excepted.

9. In that upon the trial of said cause, the Court before whom it was tried, after the evidence was closed, erroneously charged the jury that if in bringing in a verdict of murder in the first degree it would not recommend life imprisonment, some other form of punishment might be inflicted, thereby misleading the jury into the belief that some other form of punishment might have been inflicted other than death; to which charge the defendants' counsel duly excepted.

10. In that the judgment and sentence of the said Court of Oyer and Terminer against the said defendants, Louis Fiore and Ciro Matarazzo, was given and passed against the said Louis Fiore and Ciro Matarazzo, whereas by the laws and customs of New Jersey no judgment and sentence ought to have been given or passed on the said defendants upon the indictment, record and proceedings.

Wherefore, the said defendants, Louis Fiore and Ciro Matarazzo, pray that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record or proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, should be reversed, annulled and for nothing holden and that the said Louis Fiore and Ciro Matarazzo, defendants as aforesaid, may be restored to all things they have lost on occasion thereof.

J. VICTOR D'ALOIA,
CARL ABRUZZESE,
Attorneys of Plaintiffs-in-Error.

MAR. 1, 1920

New Jersey State Library

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New Jersey Court of Errors and Appeals

THE STATE,
Defendant-in-Error,

vs.

CIRO MATARAZZO and LOUIS FIORE,
Plaintiffs-in-Error.

On Error to the New Jersey Supreme Court.

BRIEF FOR PLAINTIFFS-IN-ERROR.

This case comes on for review on bill of exceptions and also under Section 136 of the Criminal Procedure Act (Case, p. 137).

The plaintiffs-in-error were convicted of murder in the second degree and recommended to the mercy of the Court.

The Supreme Court affirmed the conviction in an opinion to be found on page 145.

In the latter part of October, 1918, the plaintiffs-in-error, being out of work, were engaged as pickets in a tailors' strike in the City of Newark. With one James Devlin and four others they were indicted for murder in connection with the death of John Joyce, a cutter employed by one of the tailoring concerns located on Broad street, Newark. Joyce was suspected, by the strikers, of taking clothing out of town to be finished. The plaintiffs-in-error and Devlin, as pickets, were detailed to ascertain where Joyce took the clothing and to find out where the work was being done. They were informed that Joyce carried a gun (Case, p. 93, l. 39). On October 28th, 1918, they were instructed to follow Joyce. They went from Newark to Jersey City on the same train with Joyce, and during the trip Devlin, alone, was selected to trail Joyce, but was warned to be careful not to molest Joyce nor speak to him, because Joyce was armed; he was to simply find out where Joyce was taking the bundles of clothing (Case, p. 61, l. 1). At the Grove Street Station in Jersey City, Joyce alighted, and Devlin, following instructions, trailed him. The plaintiffs-in-error, Matarazzo and Fiore, remained behind (p. 61, l. 39). A block or so away from the tube station, after turning a corner, Devlin spoke to Joyce; Joyce turned about and brought his hand to his pocket; Devlin struck Joyce one blow, which was in self defense (Case, p. 61, l. 20 to l. 35). Neither Matarazzo nor Fiore was near Joyce at the time.

Upon this argument, in behalf of the plaintiffs-in-error, counsel will rely on two points; the first, set forth in the 2nd assignment of error (Case, p. 150), and specified in the 1st cause for reversal (Case, p. 153), relates to the erroneous admission of evidence; the second, embodied in the 8th and 9th assignments of error (Case, p. 152), and specified in the 7th and 8th causes for reversal (Case, p. 154, p. 53), deals with such part of the Trial Court's charge to which exception was taken.

POINT 1.

The Trial Court erred in permitting a photograph of the head and torso of the deceased, John Joyce, taken after the autopsy had been performed, to be received in evidence and considered by the jury. (Case, p. 11, l. 32.)

There was no evidence to verify the photograph. No photographer was produced to show when and where and under what circumstances it had been taken. It showed the head and portion of the torso of a dead man, a very ghastly and grewsome picture, to say the least. The prosecutor tacitly admitted the charge made in the objection by counsel that it had been taken at a time long after the date of the assault charged to the defendants and after the autopsy had been performed (Case, p. 11) . The injury was alleged to have been inflicted October 28, 1918; the autopsy was performed November 8, 1918, ten days later, and there was no evidence as to when, after November 8, 1918, the photograph had been made. The testimony of Dr. Arthur Haskins, who performed the autopsy, shows that, in order to determine the cause of death, he had removed the scalp (Case, p. 8, l. 19), which operation naturally altered the appearance of the head. Both physicians, called as witnesses for the State, had minutely described the wound and had established fully the actual condition of the deceased, therefore the photograph was not instructive and wholly unnecessary to a description of the injury. The identity of the deceased was not in question. No reason was given by the prosecutor when he offered the photograph in evidence; the Court admitted it because it showed the condition of John Joyce, the deceased, *after his death.*

It is earnestly contended that the learned opinion of the Supreme Court (Case, p. 146) erroneously sets forth that "counsel for the defense cross examined the witnesses, making use and reference in his cross examination to the photograph."

The witness, Arthur Haskins, assistant county physician, testified as to the autopsy performed by him, and illustrated on *his head and body* what injuries the deceased had sustained (Case, pp. 7, 8, & 9). The brief cross examination consisted of five questions (Case, p. 9, l. 20), and counsel for the defense indicated on his head what he meant by the questions without using or referring to the photograph.

We respectfully submit that the condition of the deceased, after his death, without any evidence to establish the responsibility of any of the defendants for such condition, and in the face of positive evidence showing that said condition had been contributed to by some agency other than the defendants, rendered the photograph inadmissible because it was of such a character as to arouse the sympathy and indignation of the jury and to divert their minds to improper considerations highly prejudicial to the defendants.

It was erroneously received in evidence and should have been excluded.

Goldsboro v. *Central R. R. Co.,* 60 N. J. L. 49;
Selleck v. *Janesville,* 104 Wis. 570.

POINT 2.

(A) The Court charged the jury contrary to law and contrary to the evidence in the case.

At page 125, beginning in line 36, will be found that part of the charge, covered by the 8th and 9th assignments of error (Case, p. 152), and specified in the 7th and 8th causes for reversal (Case, pp. 154-155), which reads as follows:

> "The same indictment charges, also (and this is in conformity with established legal practice), that they committed the crime of manslaughter against John Joyce; and also that they committed upon the person of Joyce an assault and battery. The three defendants are charged equally in this indictment as principals.
>
> Many of the facts in this case are not the subject of any dispute, and, therefore, *I wish to instruct* you that there can be no verdict in this case of either manslaughter or assault and battery, for the reason that the testimony is *harmonious* on the point that there was no sudden outburst of passion which would be necessary to reduce the offense to manslaughter; and the evidence is also *undisputed* that the defendant Devlin, who was the actual perpetrator, provided himself with a deadly weapon in order

that he might secure for himself the advantage in the event of any combat arising. This *harmonious* evidence precludes any verdict of manslaughter.

Neither can there be any verdict under the count charging assault and battery, because the evidence is *undisputed* that the killing of Joyce resulted from the use of a deadly weapon employed in a deadly manner, and, therefore, your verdict must relate either to one of the degrees of murder in this case, or else it must be a verdict of acquittal."

The indictment (Case, p. 3, l. 20) contains a count charging manslaughter and also a count charging assault and battery. The manslaughter count charges the defendants, in the words of Section 36 of the Criminal Procedure Act (P. L. 1898, p. 879) that they did "feloniously kill and slay" one John Joyce.

It is evident that the Court understood what was clearly the function of the jury by declaring the evidence to be *harmonious* and by deciding, for the jury, important questions of fact. The words quoted are so framed that they could only be undertsood by the jury as a statement of fact and conclusion established by the evidence in the case. The Court concludes that Devlin provided himself with a *deadly* weapon in order that he might secure for himself the advantage in the event of any combat arising. Devlin's testimony (Case, page 71) is to the effect that he took the piece of pipe with him for protection, because he had been told that Joyce carried a gun.

There is absolutely nothing to warrant the Court's conclusion that the evidence is *undisputed* so as to preclude the conviction for manslaughter or assault and battery of Matarazzo or Fiore, the plaintiffs-in-error. The Court's charge deprived the jury of the right to discredit the alleged confessions, and to believe the testimony of the defendants as given on the trial. It was for the jury to determine which version of the alleged occurrence was true, and the Court could not harmonize the evidence for them. The Court, in saying that there could be no verdict under the count charging assault and battery, "*because the evidence is undisputed that the killing of Joyce resulted from the use of a deadly weapon employed in a deadly manner, and, therefore, your verdict must relate either to one of the degrees of murder in this case, or else it must be a verdict of acquittal,*" certainly failed to take into consideration that neither Matarazzo nor Fiore had used any deadly weapon, and neither had laid hands on Joyce. Both, Matarazzo and Fiore, in their testimony, disputed the fact that they had previous knowledge of any contemplated attack on the part of Devlin upon Joyce. The Court evidently

had in mind only the alleged confessions, which had been repudiated by the testimony of the defendants in their behalf. The evidence clearly indicates that none of the defendants intended to bring about the assault upon Joyce, or his death by premeditation or design. The altercation between Devlin and Joyce was something which came about through the independent act of Devlin. If it can be said, upon the evidence, that there was a common design joined in by the defendants it did not contemplate the commission of a homicide and was of such a nature that homicide would not be a natural or probable result. To be engaged, as they were, as pickets, and to follow a man to find out where he was taking a certain package, are not unlawful acts. That was the common undertaking and participation in that design is not in itself sufficient to make one liable for a homicide committed, concurrently with the execution of the common plan, by an independent act of the other who has some difficulty or altercation with the deceased. The cause of the blow was Devlin's fear of harm to himself. There was sufficient evidence for the jury to consider and to conclude therefrom that both Matarazzo and Fiore acted without knowledge of the malice of Devlin, and, although present, they could be found guilty of manslaughter. Then again, the jury could have taken the theory of the prosecution as correct, and they would have been justified, under the evidence, in concluding that Matarazzo and Fiore had knowlege of an intent on the part of Devlin only to beat Joyce, but not to kill him, in which event they, or either of them, as principals in the second degree, would only be guilty of manslaughter.

Brown v. *State,* 28 Ga. 199;
State v. *Munchrath,* 78 Iowa 268.

It is a general rule that all accessories in a homicide are not necessarily guilty of the same degree of crime. The accomplice may have a different intent from the purpose or intent of the actual perpetrator, and in such case will be guilty according to his intent.

Red v. *State,* 39 Tex. Cr. 667.

The Court itself, in charging as follows (Case, p. 130, l. 30):

> "In this case there is some evidence offered on behalf of some of the defendants that there was a variation of design after the young men got off the tube train; that there was some talk as to what they should do henceforth. Now, if, at that point, any one of these men withdrew from the complicity to seriously injure Joyce, or take his

> life, and having withdrawn from it actually desisted from aiding, or abetting, or encouraging the commission of any crime in the future, that person so withdrawing would be guiltless and innocent,"

admits of the possibility of a change of mental attitude on the part of either Matarazzo or Fiore, or both, at the Grove Street Station, as to what they would do or participate in doing from that point on. The conduct of the defendants, after their arrival at the station in Jersey City, is a matter of considerable doubt, and, under the evidence, the jury could have taken into consideration that, thereafter, Matarazzo and Fiore were not near enough to the deceased to lay hands upon him; that they were not at the scene of the encounter between the deceased and Devlin; that they did not participate in the intent of Devlin when he struck the deceased, and find them guilty, if at all, of one of the crimes of the lesser degree charged in the indictment. The evidence certainly permits of a conclusion that there was no *common design* to inflict murderous or felonious violence and a verdict of manslaughter or of assault and battery would have been proper.

The case at bar can easily be distinguished from the case of "*State* v. *Pulley*, 82 N. J. L. 579," and "*State* v. *Orraye*, 84 N. J. L. 556." In the Pulley case the Trial Judge instructed the jury that "there would seem to be no middle ground in this case which would reduce the crime from murder in the second degree to that of manslaughter." He concluded his charge as follows: "If you find the defendant guilty, you must designate in your verdict of what degree you find him guilty, whether of the first degree or of the second degree, *or of manslaughter.*" The Court of Errors and Appeals held that the Trial Judge's statement, immediately following that instruction, viz: "Although, as I have said to you, I see no reason why you should find him guilty of manslaughter," was only a mere declaration of the impression the testimony had made upon his mind upon this point, and the conclusion drawn by him from it. It is not the contention of the plaintiffs-in-error that the Court cannot comment upon the evidence and give his conclusions, but the plaintiffs-in-error contend that the Court cannot coerce the jury into adopting his conclusion by withdrawing from their consideration the counts of assault and battery and manslaughter, as was done in the case at bar. From the testimony of all three defendants in open court the jury had the right to find that Matarazzo and Fiore were guilty only of assault and battery or manslaughter, despite the

written confessions of all three defendants. It was within the province of the jury to reject the confessions of the three defendants as untrustworthy, from the circumstances under which they had been obtained, and the jury had the absolute right to accept, as the truth, the testimony given by the three defendants in open court. It will, therefore, be seen that in the Pulley case the jury could have rendered a verdict of assault and battery or manslaughter, because the Trial Judge had not withdrawn either of the two counts from their consideration, whereas in the case at bar, even though the jury had believed the testimony of Matarazzo and Fiore, they could not bring in a verdict of assault and battery or manslaughter, because the counts for these two charges had been, by the Court's instruction, withdrawn from their consideration.

In the case of "*State* v. *Orraye,* 84 N. J. L. 556," the Supreme Court again held that the Trial Court made no error if, *after giving proper instructions on the question of manslaughter,* the Trial Judge told the jury he could recall no evidence justifying a conviction of manslaughter. The Supreme Court in that case again held that such a statement by the Court was mere comment by the Trial Judge upon the evidence and not error. There the Trial Judge had properly instructed the jury on the question of assault and battery and manslaughter, and had not withdrawn the counts for those two charges from their consideration.

The Supreme Court in its opinion (Case, p. 145) stated as follows:

> "The complete answer to the contention of defendants' counsel is if they had been convicted either of manslaughter or assault and battery, such a finding would rest, not upon any proofs in the case, but upon mere conjecture. This could never be accepted as a fulfillment by the State of its obligation to satisfy the jury beyond a reasonable doubt, *by the proof in the case,* that death was produced by the criminal act of the defendants."

It is earnestly contended by the plaintiffs-in-error that the testimony was not so harmonious as to exclude from the jury's consideration the propriety of bringing in a verdict of manslaughter or of assault and battery with reference to either or both of the plaintiffs-in-error. If they believed the testimony of Matarazzo and Fiore, as given on the stand, it was within their right to bring in a verdict of assault and battery or manslaughter, and such a verdict would not be based upon mere conjecture, but upon the facts as testified to, and as set forth in a preceding paragraph of this brief.

The Supreme Court based its opinion upon the following cases: "*State* v. *Biango*, 75 N. J. L. 284," affirmed in 79 N. J. L. 523; "*Genz* v. *State*, 58 N. J. L. 482;" "*State* v. *Moynihan*, 106 Atlantic 817;" "*State* v. *Valentina*, 71 N. J. L. 552;" "*State* v. *Agnesi*, 92 N. J. L. 639." In the case of the *State* v. *Agnesi*, the Court did charge that the prisoner must be found guilty of at least *manslaughter* on his own admission. In the case at bar, however, there were three defendants, and if their admissions *as given in open court* are to be believed, then it is contended that they could not be found guilty of at *least murder in the second* degree, which was practically the charge of the Trial Court. The Court held in the *State* v. *Agnesi* (*supra*), although affirming the conviction, that,

> "Numerous decisions in our State hold that the Judge, in commenting upon the evidence, may express his own opinion of its import, providing he does not coerce the jury into finding a verdict in a case where the facts are in dispute, or where reasonable minds might draw different conclusions from admitted or controverted facts. And it is, I think, settled law, that a Trial Judge may not direct a verdict of guilty in a criminal case."

The Court further held that the instructions of the Trial Judge in the Agnesi case really amount only to a resumé of the contentions of the State and the defense to the effect that if the jury took defendant's version of the facts, for he had pleaded not guilty to the charge—they could not under any circumstances acquit him, but must find him guilty of manslaughter at least. So that in the Agnesi case it was again left to the jury to bring in a verdict of manslaughter if they accepted the defendant's version of the charge as given in open court.

In the case of "*State* v. *Moynihan*, 106 Atl. 817," the Court excluded the charge of manslaughter because the case consisted solely of a denial by the defendant that he was in any way connected with the combat, and that he did not claim to have exercised the right of self-defense or that he had acted upon such provocation as in view of the law would render the homicide manslaughter. In the case at bar the defendant Devlin testified that he had acted in self-defense and in the heat of combat while in fear of his own life.

In the case of "*Genz* v. *State*, 58 N. J. L. 482," the defense was insanity, and there was absolutely no denial of the facts.

In the case of "*State* v. *Biango,* 75 N. J. L. 284," the defendant had killed the deceased in the heat of combat, although from all the testimony in the case, while it was admitted that the defendant was in heat and passion, and that his act lacked premeditation, it was nevertheless undisputed that his act also lacked justifiable provocation by the deceased or anyone else, so that *from the defendant's own version of the case as given on the stand* there could not be a verdict of manslaughter.

In the case of the "*State* v. *Valentina,* 71 N. J. L. 552," the Court of Errors and Appeals held that if at the trial of a person for murder, the *undisputed* testimony clearly established the fact that the defendant is guilty of that crime, it is not error for the Court to instruct the jury that the question of self-defense and manslaughter are not open for the jury's consideration. This latter case can be distinguished from the case at bar because the testimony here is not undisputed, and it is the earnest contention of the plaintiffs-in-error that because the facts are in dispute it was to be left to the jury to decide which version they would accept. The circumstances of the death of Joyce, as testified to in open court by Matarazzo, Fiore and Devlin, do not harmonize so as to constitute an undisputed version of such facts.

On the contrary, the testimony presents a situation which, if left to the jury, would give them the right to bring in a verdict of manslaughter or of assault and battery as to either or both plaintiffs-in-error. The Trial Court's charge deprived the jury of that right. It was in so many words a specific *instruction,* not at all justified by the evidence, withdrawing from the consideration of the jury the counts of manslaughter and assault and battery. It is not mere comment upon the evidence by the Trial Judge, *after giving proper instruction on the question of manslaughter,* as in the cases of "*State* v. *Orraye* (*supra*)" and "*State* v. *Pulley* (*supra*)." In those cases the jury were left free to bring in a verdict of manslaughter because that count was not withdrawn from their consideration by the charge of the Trial Court. In the case at bar the langage of the Trial Court, at page 125, line 43, "I wish to instruct you that there can be no verdict in this case of either manslaughter or assault and battery," cannot be classified as mere comment. It was an improper charge, based upon an erroneous and unwarranted conclusion that the evidence was harmonious and undisputed. It was prejudicial to plaintiffs-in-error, whose testimony, corroborated by Devlin, controverted all the main facts alleged by the prosecution. It was an attempt to

control and did control the jury in exercise of their function. It was an absolute instruction as to what their verdict must declare as a matter of law.

The Trial Court erred in precluding the jury from considering a verdict of manslaughter or assault and battery as to Ciro Matarazzo and Louis Fiore, the plaintiffs-in-error.

For the reasons above set forth the undersigned respectfully urge that the conviction be set aside and a new trial ordered.

Respectfully submitted,

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