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New Jersey Court of Errors and Appeals

CERTIFICATE OF CHANCELLOR.

(Filed June 18, 1931.)

10

IN CHANCERY OF NEW JERSEY

THE STATE OF NEW JERSEY, Defendant-in-Error, vs. WILLIAM M. FRAZER, Plaintiff-in-Error.	}	Sur Indict- ment for Murder. Certificate of Chancellor.	20
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This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for review of the judgment of the Union County Court of Oyer and Terminer in this State, convicting the said William M. Frazer of the crime of murder in the first degree, without recommendation of life imprisonment, and wherein the defendant has been sentenced to death, and without exhibiting to me the record of the proceedings in the cause or any part thereof, and without showing any error in those proceedings, and that I have refused to order a writ of error for the review of said judgment, solely because no cause, arguable or otherwise, is shown for the granting of such writ of error to the Supreme Court. 30

Dated: June 17th, 1931.

40

E. R. WALKER,
Chancellor.

WRIT OF ERROR.

NEW JERSEY, SS:

10 (Seal) The STATE OF NEW JERSEY to CLARENCE E. CASE, Esq., one of the Justices of the Supreme Court of the State of New Jersey and to the Judges of the Court of Common Pleas of the County of Union constituting the Court of Oyer and Terminer, holden at Elizabeth, in and for the County of Union, of the Term of May, 1931.

20 Because in the record and proceedings, and also in the giving of judgment upon a certain indictment against William M. Frazer, late of the City of Rahway, County of Union aforesaid:

30 "For that William M. Frazer, late of the City of Rahway in the said County of Union, on the eighteenth day of February in the year of our Lord one thousand nine hundred and thirty-one at the City of Rahway in the said County of Union, and within the jurisdiction of this Court with force and arms one Phoebe L. Stader then and there being in the peace of God and of this State, did willfully and 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."

40 *Pro ut* the said indictment and the several counts therein, whereof, before you, he the said William M. Frazer, has been indicted and is thereof convicted by a certain jury of the County of Union, taken between the State of New Jersey and the said William M. Frazer, as it is said,

Writ of Error

manifest error hath intervened to the great damage of the said William M. Frazer, as from his complaint we have received information, we being willing in his behalf, to correct the error in due manner if any there be, and that speedy justice be done to him, the said William M. Frazer, commands you distinctly and openly send under your seal, the record and proceedings aforesaid with all things touching the same and the entire record of the proceedings had upon the trial to our Court of Errors and Appeals and the last resort in all causes of law to be held in Trenton, on the 8th day of July, 1931, and this writ, that the record and proceedings as aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done. 10 20

WITNESS, E. R. WALKER, Esq., our President Judge, at Trenton, this 18th day of June, 1930.

JOSEPH F. S. FITZPATRICK,
Clerk.

ALEXANDER SIMPSON,
Counsel for Plaintiff-in-error. 30

Endorsed:

True Copy
Writ signed and sealed
June 18, 1931.

A true copy
Joseph F. S. Fitzpatrick
Clerk. 40

RETURN.

In obedience to the command of the Writ to me, Clarence E. Case, Justice of the Supreme Court of Judicature of New Jersey, and Alfred A. Stein holding the Oyer and Terminer Court in and for the County of Union, New Jersey, directed, I Do
 10 **HEREBY** under my seal and hereunto annexed send the Indictment against WILLIAM M. FRAZER and the record and proceedings of the plaint whereof mention is made within, with all things touching and concerning the same, to our Court of Errors and Appeals the Court of last resort in this State, the Indictment, Judgment Record and Proceedings, as within I am commanded as appears by the schedule hereto annexed.

20

ALFRED A. STEIN,

Judge.

Holding the Oyer and Terminer
 of the County of Union.

The execution of this Writ appears by the schedule hereto annexed.

IN WITNESS WHEREOF, I, NEIL McLEOD, JR., Clerk of the Court of Quarter Sessions in and for
 30 said County, have hereunto subscribed my name and affixed the seal of said Court this 30th day of June, A. D. nineteen hundred and thirty-one.

NEIL McLEOD, JR.,
 Clerk.

RECORD.

UNION OYER AND TERMINER

May Term A. D. Nineteen hundred and thirty-one.

UNION COUNTY, to Wit:

10

THE GRAND INQUEST for the State of New Jersey, and for the body of the County of Union upon their oath

PRESENT, that William M. Frazer, late of the City of Rahway in the said County of Union on the eighteenth day of February in the year of our Lord one thousand nine hundred and thirty one at the City of Rahway in the said County of Union, and within the jurisdiction of this Court with force and arms one Phoebe L. Stader, then and there being in the peace of God and of this State, did willfully and feloniously and of his malice aforethought kill and murder, 20

State of New Jersey,
County of Union. ss:

BE IT REMEMBERED, That at the Court of Oyer and Terminer, holden at the City of Elizabeth, in and for the County of Union, on the second Tuesday of May in the year of our Lord one thousand nine hundred and thirty one, before the Honorable Clarence E. Case, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Alfred A. Stein and Lloyd Thompson, Judges of the Court of Common Pleas in and for the County of Union, upon the oaths of 30 40

Record

	Aubrey N. Smith	Walter S. Jacobus
	Anthony Lamy	Henry Nischwitz
	Richard L. Corby	Charles L. Parker
	Robert O. Thompson	Bert Y. Oldford
	R. A. Melenric	D. T. Magie
10	Abraham Rose	Fred Sleckman, Jr.
	Frederick T. Jacobs	George H. Holland
	C. W. Mink	Robert H. Keenan
	L. E. Starker	John D. Hood
	Harry H. Billings	Ellsworth W. Bennett
	W. Richmond Tracy	Fred L. Crane
	Byron M. Prugh	

good and lawful men of said County of Union,
 then and there sworn and charged to inquire on
 20 behalf of the State of New Jersey, in and for said
 County of Union, it is presented by at least twelve
 of said Jurors in the manner and form following,
 to wit:

The bills herewith presented are true bills.

FRED L. CRANE,
 Foreman.

ABE J. DAVID,

30 Prosecutor of the Pleas.

And afterwards, that is to say, at a Court of
 Quarter Sessions, holden at Elizabeth, in said
 County of Union, on Friday the fifteenth day of
 May, in the year of our Lord, One Thousand Nine
 Hundred and thirty-one, before Honorable Lloyd
 Thompson, Judge of the Common Pleas Court in
 and for said County of Union, according to the
 form of the statute in such case made and pro-
 40 vided, the Grand Jury presented the indictment
 aforesaid, which said Indictment was thereupon
 ordered by the Court of Oyer and Terminer of

Record

said County to be delivered to the Clerk of the Court of Quarter Sessions of said County who is directed to affile the same in the Court of Quarter Sessions according to the form of the statute in such case made and provided, and thereupon the said Indictment is delivered to the Clerk of said Court of Quarter Sessions of said County. 10

And afterwards, that is to say, at the same term of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid, on Saturday, the sixteenth day of May, in the year last aforesaid, comes the said William M. Frazer, in his own person and now here touching the premises in the said Indictment above specified and charged upon him being asked in what manner he would acquit himself thereof, says that he is "Not Guilty" thereof, and of this he puts himself upon the country, etc., and Abe J. David, who prosecutes for the State in this behalf doth likewise the same. 20

And afterwards, that is to say, at the same term of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid, on Monday, the fifteenth day of June, in the year last aforesaid, before Honorable Alfred A. Stein, Judge of the Court of Oyer and Terminer aforesaid, the said William M. Frazer being set to the Bar, Abe J. David, who prosecutes for the State moves the trial of the Indictment aforesaid. Wherefore let a jury thereupon come on this day last aforesaid, before this Court of Oyer and Terminer, aforesaid, of good and lawful men of the County of Union aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said William M. Frazer, to recognize upon their 30 40

Record

oaths whether the said William M. Frazer be guilty of Murder as in the Indictment aforesaid specified or not guilty, because as well as the said Abe J. David, who prosecutes for the State in this behalf as the said William M. Frazer, has
 10 put himself upon the said Jury and the Jurors of the said Jury by Frank R. Emmons, Sheriff of said County of Union for this purpose impanelled and returned agreeably to the statute in such case made and provided, to wit:

- | | |
|------------------------|-------------------------|
| 1. Alex. Deutsch. | 7. John J. Sullivan. |
| 2. Hersel L. Miller. | 8. James A. Woods. |
| 3. Raymond D. Krapff. | 9. Wm. Massa. |
| 4. Emory R. Miller. | 10. Charles Sellers. |
| 20 5. Harold McCusker. | 11. Charles J. Clauer. |
| 6. Benjamin F. Helwig. | 12. Louis F. McCartney. |

who being chosen, tried and sworn to speak the truth of and concerning the premises, on the sixteenth day of June, in the year last aforesaid, returned into Court, in charge of the officers sworn to attend them and then and there upon their oaths say they find the said William M. Frazer "Guilty of Murder in the First Degree"
 30 and so say they all. The Attorney for the Defendant asked that the Jury be Polled, whereupon each Juror as his name was called said, "I find the defendant Guilty of Murder in the First Degree," and so said they all.

And afterwards, that is to say, at the same term of the Court of Oyer and Terminer holden at Elizabeth aforesaid, in the County aforesaid, on Tuesday, the sixteenth day of June, in the
 40 year of our Lord, One Thousand nine hundred and thirty-one before Honorable Alfred A. Stein,

Record

Judge of the Oyer & Terminer Court in and for said County of Union, according to the form of the statute in such case made and provided the said William M. Frazer being set to the Bar, Abe J. David, who prosecutes for the State in this behalf moves for judgment on the said William M. Frazer. 10

Judgment signed
June 24, 1931.
Alfred A. Stein,
Judge.

WHEREUPON, all and singular, the premises being seen, and by the Court now here fully understood, it is on this sixteenth day of June, A. D. Nineteen Hundred and thirty-one, ORDERED and adjudged that William M. Frazer be taken to the County Jail from whence he came, and there to be kept in strict custody and from thence that he be taken by the Sheriff within ten days after the issuing of the warrant to him for that purpose, and delivered to the principal keeper of the State Prison to be kept by him in solitary confinement until the week beginning Monday, July twenty-seventh, A. D., Nineteen Hundred and thirty-one, and upon some day within the said week, at his discretion, as to the time within the walls of the buildings provided, by the Board of Inspectors of the State Prison for the purpose, or within the yard or enclosure adjoining thereto the principal keeper of the State Prison shall execute the punishment of death upon the said William M. Frazer, by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, the application of such current to be continued until the body of the said William M. Frazer, be dead. 20 30 40

And may the Lord have mercy upon his soul.

TESTIMONY.

UNION OYER AND TERMINER

MAY TERM, 1931

ELIZABETH, NEW JERSEY

10

<p style="text-align: center;">THE STATE OF NEW JERSEY, vs. WILLIAM M. FRAZER, Defendant.</p>	}
---	---

Before HON. ALFRED A. STEIN, Judge, and a
Jury, at the Union County Court House, Eliza-
20 beth, New Jersey, on the 15th day of June, 1931.

Appearances:

ABE J. DAVID, Esq., Prosecutor of the Pleas.

JOHN B. WALSH, Esq., Assistant Prosecutor of
the Pleas.

ALEXANDER SIMPSON, Esq., for the Defendant,
and

30 FRANK COHN, Esq., for the Defendant.

Mr. David: If your Honor please, I now move
trial of indictment number 1 in the May Term,
1931, against William M. Frazer, for murder.

The Court: The clerk will call the panel of the
jurors first.

(At this point the clerk called the jury panel.)

(A jury having been empaneled it was sworn in
and took its place in the jury box and the Prose-
40 cutor then opened the case for the State.)

Joseph Baker—Direct

JOSEPH BAKER, called as a witness on behalf of the State, being first duly sworn according to law, on his oath testified as follows:

Direct-examination by Mr. David:

Q. Where do you live, Mr. Baker? A. Bowling Green, Virginia, Caroline County. 10

Q. What is your business? A. I am deputy sheriff of the county.

Q. On the 22nd of February, 1931, did you go to a town by the name of Dawson, Virginia? A. Dawson?

Q. Yes. A. No.

Q. What was the name of the town, Sheriff? A. It is just a little filling station there, called Carmel Church. 20

Q. Carmel Church? A. Yes.

Q. What did you do there, Sheriff? A. Well, I was called there on the information that there was a body in the woods there, a dead body. I went in there to look after it.

Q. And did you find the dead body in the woods there? A. Yes, sir.

Q. How far from the highway? A. It is about 125 yards from the highway and 40 yards from a little by-road that went in. 30

Q. What condition was this body in? A. Well, the body was mutilated quite a good deal.

Q. Had it any clothing on? A. Not when—no, nothing at all, perfectly nude.

Q. What did you do with the body? A. I called—I had—I called the coroner and doctor and they started an inquest and adjourned it to Bowling Green and turned the body over to me and I took it to Bowling Green, Virginia, and put it in an undertaker's establishment. 40

Joseph Baker—Direct

Q. You took the body from the woods to Bowling Green? A. Yes, sir.

Q. Where in Bowling Green? A. Put it in Davis and Peck's place.

Q. Davis and Peck's, what place is that? A.
10 An undertaker's place.

Q. While the body was there at the undertaker's place, did you see this gentleman, Mr. Stader (Prosecutor indicates a man who arises in the audience)? A. Mr. Stader?

Q. Did you see that gentleman there at the undertaker's shop? A. Yes, sir.

Q. And did he, in your presence, identify that body? A. Yes, sir; I saw Mr. Stader before he
20 went to see the body and he made an absolute description of the body—

Mr. Simpson: I object to all this.

A. (Continuing)—and then he went over there and identified the body.

The Court: It is not responsive. Objection sustained. Do you wish the evidence stricken out?

Mr. Simpson: Yes, your Honor.

30 The Court: Not being responsive, I will strike it out.

Mr. David: Which portion of it do you wish stricken?

The Court: Read it.

(The stenographer read the last answer as follows: "Answer: Yes, sir; I saw Mr. Stader before he went to see the body and he made an absolute description of the body and then he went over there and identified
40 the body.")

Joseph Baker—Cross

Mr. David: I agree that the answer be stricken out.

The Court: Read the question again.

(The stenographer read the last question as follows: "Question: And did he, in your presence, identify that body?") 10

A. Yes, sir.

Mr. Simpson: I object, first calling for a conclusion and second, anything done out of the presence of the defendant with reference to this body would be incompetent.

The Court: I will allow it.

Mr. Simpson: I ask an exception. 20

(Exception allowed. Signed and sealed accordingly. Alfred A. Stein, Judge.)

Mr. David: Cross-examine.

Mr. Simpson: No questions.

The Court: Did he answer the last question?

Mr. David: Yes, sir; that he identified the body.

The Court: As whose?

Mr. David: I will prove that by Mr. 30
Stader.

CROSS-EXAMINATION by Mr. Simpson:

Q. You say the body was found how far from the road? A. About 125 yards.

Q. Did you measure it or is that your estimate? A. No, sir; I didn't measure it.

Q. That is your estimate? A. That is my estimate, that is from the main highway, sir. 40

Philip Stader—Direct

Q. 125 yards from the main highway? A. 125 yards from the main highway and about 40 steps from the side road that he drove in.

Q. There is a side road and this body, then, was about 40 steps from the side road; is that it?

10 A. Yes, sir; I measured that.

Q. This side road, what is the condition on each side of it? A. It is just a one-track road—

Q. I mean does it lead right into the woods or is it a clearing, or what is it? A. It is in the woods.

Q. It is in the woods? A. Yes, sir.

Q. It was about 40 feet away from the side road into the woods? A. Yes, sir.

20 Q. How far do the woods extend from the side road; how much is woods? A. The woods are right alongside there.

Q. I mean if you kept on past the 40 steps, is it woods for miles and miles? A. No, sir; I wouldn't say for miles and miles.

Q. Well, how far? A. Well, it might be a mile or two.

Q. Of woods? A. Yes, sir.

30 Mr. Simpson: That is all.
Mr. David: That is all.

PHILIP STADER, called as a witness on behalf of the State, being first duly sworn according to law, on his oath testified as follows:

Direct-examination by Mr. David:

40 Q. Where do you live, Mr. Stader? A. In South Amboy now.

Philip Stader—Direct

Q. New Jersey? A. Yes, sir.

Q. Where were you married? A. At Walden, New York.

Q. When? A. February 23, 1924.

Q. Whom did you marry? A. Phoebe Lillian Quick. 10

Q. After your marriage where did you go to live? A. We had an apartment in Walden for about two months and we went with the father for about another month and then we came to New Jersey.

Q. Where in New Jersey? A. First we lived in South Amboy, then Perth Amboy, and then we moved to Rahway and lived in Rahway for about five years. 20

Q. During the last five years? A. Yes, sir; about five years.

Q. In February of this year, 1931, were you living in Rahway with your wife? A. Yes, sir.

Q. When did you last see your wife alive? A. On Monday, February 16.

Q. Where did you see her? A. At Rahway.

By the Court:

Q. What year? A. 1931, your Honor. 30

By Mr. David:

Q. When did you next see your wife? A. In Davis and Peck's morgue at Bowling Green, Virginia.

Q. When was that? A. December 26—25.

Q. December? A. February 25.

Q. Of this year? A. Of this year.

Q. That is some nine or ten days after you saw her at Rahway? A. Yes. 40

Philip Stader—Direct

Q. In whose presence did you see her there?

A. Judge Conway, Sheriff Baker, the commonwealth attorney, Powers I believe his name was, and Mr. McNamara, Detective McNamara.

10 Q. Detective McNamara of the Prosecutor's office of this county? A. Yes.

Q. The Mr. Baker that you mentioned was the last witness on the stand? A. Yes, sir.

Q. When you saw your wife, or her body, in Bowling Green, what condition was it in? A. The features could not be recognized. There wasn't any skin on the face. There wasn't any skin on the chest, and the lower half of the stomach was gone. The right arm was whole, and so was the
20 right leg, but the left arm and leg were badly eaten.

Q. Was she dead or alive? A. She was dead.

Q. Did you positively identify that as the body of your wife? A. Positively; yes, sir.

Q. Were there any marks of identification that aided in making the identification of your wife? A. Yes, sir; there were two lower teeth on the left lower jaw that were gone. One of them had a root left in it when the tooth was pulled about
30 five years ago, and the dentist never took the root out. You can still see the root and two upper front teeth. Over between the side teeth, these teeth on the side were sharp and pointed, and the rest of them were irregular. There was a ring, a mark of a ring on the ring finger, which I did not notice at the time. I didn't think of it before when the Judge asked me the description, but as soon as I saw this mark, I could see where
40 the ring was torn off.

Philip Stader—Direct

Mr. Simpson: I object to that. He said he could see where the ring was torn off. It is for the jury to say, after he describes the condition of it.

The Court: Yes, he may describe what he saw in the finger; the balance of it is 10 a conclusion.

By Mr. David:

Q. You saw the mark of the impression on the finger where the ring had been? A. Yes, sir.

Q. What other marks of identification were there? A. There was a mark of a girdle around the stomach, where her girdle had been, and the toes, you could tell by the toes. There were corns on them, quite a few of them, and the little toe 20 on the right foot was turned under and I could also tell by the finger nails.

Q. What about them? A. I could tell by the way they were manicured, the way she always manicured them.

Q. Were there any marks on the body at all that you recognized, any bruises? A. A bruise on the right leg between the hip and the knee that I just noticed a few days before she left, and a big black and blue scar was right here on the 30 right leg (indicating).

Q. Anything about her hair? A. Her hair, I could tell by the front that it was badly discolored, but toward the back her hair was normal or natural.

Q. What was the shape of the impression on the finger that your wife wore her ring on? A. Octagon shape, just a little octagon shaped mark on the finger; octagon or hexagon, I don't know 40 which.

Philip Stader—Direct

Q. I show you a ring and ask you if you recognize that? A. Yes, sir; I do.

Q. That is what? A. That is the ring that my wife wore.

10 Mr. David: I ask that it be marked for identification.

Mr. Simpson: No objection.

(The object referred to was marked, "State's Exhibit 1 for identification.")

By Mr. David:

Q. Did you accompany the body of your wife from Bowling Green, Virginia, to Elizabeth? A. Yes, sir.

20 Q. Did you see the body of your wife at Martin's morgue in the City of Elizabeth? A. Yes, sir.

Q. When was that? A. On the 26th, in the presence of Mr. Freeman, Chief Martin, Mr. Houston and Mr. Martin. There was some other gentleman there, but I don't remember his name now.

Q. In their presence did you make identification of the body as that of your wife? A. Yes, sir.

30 Q. Do you know William Frazer, the defendant? A. Yes, sir.

Q. How long have you known him? A. I should say about four years.

Q. Have you ever had any conversation with him about his relations with your wife? A. Yes, sir.

Mr. Simpson: I object to that as incompetent and irrelevant.

40 The Court: What is the object of that question?

Philip Stader—Cross

Mr. David: While I apprehend that it is not absolutely necessary to prove any motive in this case, it may affect the question of motive, and I take it that it would be competent evidence.

The Court: As you say, it is not necessary to prove motive. 10

Mr. David: For the time being, I will withdraw the question, if your Honor please. Cross-examine.

CROSS-EXAMINATION by Mr. Simpson:

Q. This bruise that you saw on the body that you identified on the 26th of February was a bruise that you had seen on your wife before she left home; is that right? A. Yes. 20

Q. How long before she left home had you noticed this bruise? A. The day before or the night before.

Q. That is one of the marks by which you identified the body, is it not? A. Well, I would not say that.

Q. When you identified this body that was shown in Virginia as that of your wife, there was no skin on the face and there was none on the chest, as I understand you. A. That is right. 30

Q. And her hair was discolored? A. In the front only.

Q. The front? What was the condition of the arms and legs? A. The right arm was whole and so was the right leg.

Q. Whole? A. Yes, sir.

Q. What was the condition of the left arm and the left leg? A. It was as if it was eaten in spots. 40

Philip Stader—Cross

There was little flesh. The forearm or wrist was intact.

Q. As if some animal had eaten it? A. Yes, sir.

10 Q. You relied for identification on the presence of an unpulled root in the mouth? A. Yes.

Q. Where were the two teeth missing? A. Lower left.

Q. And a mark on the finger of where the ring had been? A. Yes, sir.

Q. And you then identified the body as that of your wife? A. In addition to the feet.

Q. The what? A. The feet.

20 Q. What was the condition of the feet? A. I could tell by the toes. She had a very high instep, for one thing.

Q. One of the toes was turned in? A. Turned under.

Q. Which foot? A. The right foot.

Q. Then you have given us all the grounds of identification, the missing two teeth, the presence of a root, the mark of the ring, the high instep of the feet, and the one little toe turned in on the right foot? A. Yes, sir.

30 Q. And that is the ground of your identification? A. And two prominent front teeth and two sharp side teeth.

Q. And also two sharp side teeth? And what else did you say? A. Prominent.

Q. Where? A. In the front here (indicating).

Q. The lower jaw? A. The upper jaw.

Q. And those are the marks upon which you identified her? A. Yes.

40 Mr. Simpson: That is all.

Philip Stader—Re-direct
George Freeman—Direct

RE-DIRECT EXAMINATION by Mr. David:

Q. As I understand you in the direct-examination, there was a mark along the abdomen where the belt had been? A. Yes.

Q. What about the corns? 10

The Court: We have been all over that. He mentioned corns, unless you want to ask him further.

Mr. David: No, but counsel had merely gone over part of it in his examination.

The Court: The jury are sitting here and they have heard all the other identifying marks.

Mr. David: That is all. 20

GEORGE FREEMAN, called as a witness on behalf of the State, being first duly sworn according to law, on his oath, testified as follows:

Direct-examination by Mr. David:

Q. Where do you live, Mr. Freeman? A. I live at 458 Park Avenue, East Orange. 30

Q. What is your business? A. I am assistant to one of the county morgue keepers, Mr. John F. Martin.

Q. Where? A. 1019 East Jersey Street, Elizabeth.

Q. Were you at the morgue on the 26th of February of this year when the body of Mrs. Stader was delivered there? A. I was; yes, sir.

Q. Was Mr. Stader there at the time? Was he there at the time he says he identified the body in your presence? A. Yes. 40

George W. Horre—Direct

Q. Were you there when he identified it? A. Yes.

Q. What did you do with that body? A. Why, it was shipped to—

10 Q. Before it was shipped? A. There was an autopsy performed.

Q. By whom? A. Dr. Horre.

Q. In your presence? A. Yes.

Q. On that body? A. Yes.

Q. When was that? A. On the 26th of February.

Q. This year? A. Yes, sir.

Mr. David: Cross-examine.

20 Mr. Simpson: No questions.

GEORGE W. HORRE, called as a witness on behalf of the State, being first duly sworn, according to law, on his oath, testified as follows:

Direct-examination by Mr. David:

Q. What is your business, please? A. Physician.

30 Q. How long have you been a physician? A. Ten years.

Q. Have you any official position in this county?

Mr. Simpson: I will admit his qualification, if you want to save time.

Mr. David: All right.

40 The Court: I suppose you want to show his official position?

George W. Horre—Direct

By Mr. David:

Q. What official position do you hold? A. Assistant to the County Physician.

Q. As such on the 26th of February last did you perform an autopsy on the body of Mrs. Phoebe Stader? A. Yes, sir. 10

Q. Where? A. At Martin's morgue, Elizabeth.

Q. Who turned that body over to you for autopsy? A. Mr. Freeman.

Q. The last witness? A. Yes, sir.

Q. Will you give us the result of the autopsy?
A. Do you want me to read the autopsy?

Mr. Simpson: I have no objection to his reading from his notes. 20

By Mr. David:

Q. As the result of the autopsy that you performed, were you able to decide from what Mrs. Stader met her death or not? A. Yes, sir.

Q. What was it? A. Bullet wound in the head.

Q. Where did the bullet enter? A. The bullet entered one inch to the left and one inch above the occipital protuberance.

Q. Have you a skull with you? A. Yes, sir. 30

Q. Will you let us have it? What is that you hold in your hand (indicating)? A. That is a skull.

Q. Of a human being? A. Yes, sir.

Mr. David: I offer it in evidence.

Mr. Simpson: I do not see the relevancy of it, unless the Prosecutor's idea is to make this case as grizzly as possible. I do not think it is at all helpful to the physi- 40

George W. Horre—Direct

10 cian. He is going to testify that he made the autopsy, and that the bullet entered a certain place and that he took it out at a certain place and what the result was. I cannot see any benefit, although I realize it is for your Honor to say, but I can see no benefit in putting in these grizzly exhibits unless the idea of the Prosecutor is to horrify the jury.

20 Mr. David: I ask that counsel withdraw his last statement. There is no idea or attempt to horrify the jury. The purpose of offering this in evidence is to ask the witness to demonstrate to the jury the place of entrance of the bullet and the course that it took in the head, which the State believes is an important element in the trial of this case.

Mr. Simpson: I object because this is not the skull of the deceased woman.

30 The Court: The objection is to the skull being admitted in evidence, and that objection I will sustain. If the Prosecutor desires to have the doctor point out on this skull the place at which the bullet entered, he may do that, or he may do that on his own head.

By Mr. David:

Q. Will you indicate on the skull which is before you the point of entrance of the bullet? A. Right about there (indicating).

40 Q. Will you tell us what part of the anatomy that is? A. That is about one inch to the left side and one inch above the occipital protuberance, the external occipital protuberance.

George W. Horre—Direct

By the Court:

Q. In common English that means what, Doctor? A. It means a place about here on the skull, right about here (indicating).

Q. About there (indicating)? A. Yes, sir.

Q. That is to the left? A. To the left. 10

By Mr. David:

Q. Will you point out that spot on my head, Doctor? A. Right about there (indicating).

The Court: You had better turn so the jury can see where you are indicating.

Mr. Simpson: You can hardly get the Prosecutor's skull on the record.

Mr. David: I will enlighten the jury a little bit. 20

The Court: The witness has already put on the record at what point the bullet entered the skull. If you want him to show on his own skull or on your skull or the defendant counsel's skull, it is all right to point out this spot.

By Mr. David:

Q. Doctor, would you mind leaving the stand and pointing out to the jury the point on my skull to correspond to the point where the bullet entered in the skull you autopsied? A. Yes, sir. 30

The Court: Please stand one side, Doctor, so that the jury can see.

A. Right about there (indicating).

By Mr. David:

Q. What course did the bullet take? A. Upward and to the right. 40

George W. Horre—Cross

Q. Did you locate the bullet in the skull when you autopsied? A. Yes, sir.

Q. Is this it (indicating)? A. Yes, sir.

Q. To whom did you deliver that? A. To Detective Reilly.

10 Q. Detective Reilly of the Prosecutor's office?

A. He is of the Prosecutor's office.

Q. Where did you find that bullet? A. In the right frontal lobe of the brain.

Q. Will you indicate on this skull where that is? A. The brain fits in this cavity, and this is the right frontal lobe where it fits in.

Q. How far would you say from the right of the bridge of the nose? A. It would be about an
20 inch.

Q. With reference to the point of entrance of the bullet, was it above or below? A. It was above.

Q. How far above? A. Well, the distance from here to—I imagine about two inches.

By the Court:

Q. Did you say one inch from the right of the nose? A. Yes, sir.

30 By Mr. David:

Q. Did you measure the body that you autopsied, Mrs. Stader's body? A. In height?

Q. Yes. A. Yes, sir.

Q. How high was it? A. 65 inches.

Mr. David: Cross-examine.

CROSS-EXAMINATION by Mr. Simpson:

Q. The bullet entered the back of the skull and
40 took an upward course? A. Yes, sir.

Q. Was it directly upward or at an angle? A. It went up at an angle.

George W. Horre—Cross

Q. A straight line or over to one side? A. It went in a straight line.

Q. How far did that travel from the point of entrance? If you measured straight over the skull, what distance would the bullet have gone from the point of entrance? A. It would have been about two inches. 10

Q. As I understand you, not in a direct line? A. Yes.

Q. Not a straight line but at an angle? A. Yes.

Q. Was it left or right as you looked at the back of the skull? A. The direction was from left to right.

Q. That way (indicating)? A. Yes. 20

Q. And it lodged where? Where did you take the bullet out? A. The right frontal lobe.

Q. Was there evidence of a cerebral hemorrhage there? A. There was a hemorrhage there.

Q. Could you tell from your operation whether or not the hemorrhage was immediate upon the lodging of the bullet or that it took some time? A. She must have bled as soon as she was struck.

Q. Would that be sufficient to cause death? A. In time. 30

Q. Would that hemorrhage in the brain cause death? A. In time.

Q. You could not tell what time, unless you were present at the time of the shooting as to the time of the death, could you? A. No.

Q. Definitely that would be impossible to tell? A. No, sir.

Q. You can only give us your opinion? A. Yes. 40

George W. Horre—Cross

Q. This condition that you found of cerebral hemorrhage, is that the medical term for it? A. That is right.

Q. Is that sometimes the cause of immediate death? Will it sometimes practically cause immediate death, that is, within a few seconds or a minute? A. If there is any evidence of hemorrhage there, it will cause death.

Q. What was the extent of the hemorrhage you found? Could you measure it? A. I could not.

Q. You have used the Prosecutor's skull as a demonstration. Is the configuration of his skull the same as that of a woman? Has a man's and a woman's skull the same configuration? A. About the same.

Q. You had no difficulty pointing out on his skull because of the difference of configuration the point of entry? A. That is right.

Q. The point of entry that you pointed out on the Prosecutor's skull, is that directly in line with the brain or below the brain? A. It is in line with the brain.

Q. Right in line with the brain? A. Yes, sir.

Q. What was the date you performed the autopsy? A. February 26, 1931, about 11:30 o'clock.

Q. And the condition of the body was normal as to a dead body, or was it true that some of the body had been eaten away, the left arm and the left leg, and the face was without skin and that the chest was without skin? A. That is right.

Q. As a matter of medical knowledge, would that condition that you found in the skull have changed, assuming that the date of the entry of

George W. Horre—Cross

the bullet—suppose this bullet entered the skull February 19, and that your autopsy was almost ten days after, would there have been any change in the condition of the interior of the skull which would have made it more difficult for you to determine the condition? A. The condition of what? 10

Q. Of the interior of the skull? A. Well, the brain had started to disintegrate.

Q. Would you have been better able, assuming that the autopsy was immediately after the death, to tell what was the nature of the hemorrhage? A. Yes, sir; certainly.

Q. You say certainly? A. Yes, sir.

Q. I am trying to find out for these men in the jury box whether or not you can definitely state at the time you made the autopsy the nature of the hemorrhage and the extent and the time that elapsed between the lodging of the bullet and the hemorrhage? A. Well, if she was shot with a bullet, the hemorrhage must have started as soon as the bullet entered in the brain. 20

Q. And the bullet has already been produced by the Prosecutor. That is the bullet you took out, and that is in the condition it was when you took it out? A. Yes, sir; except my initials on the back of it. 30

Q. I mean as to general condition? A. Yes, sir.

Q. The body that you performed the autopsy on was the body of a lady? A. Yes, sir.

Q. Could you tell about what age? A. I could not just tell the age; no, sir. 40

George W. Horre—Re-direct, Re-cross
John Winder Bryan—Direct

Q. In your autopsy which you submitted as a matter of record, you gave the cause of death as a bullet wound of the head, hemorrhage and laceration of the brain tissue, is that right? A.
 10 That is right.

Q. That is the cause of death? A. That is the cause.

Q. But you could not tell from your autopsy within what time after the entry of the bullet death ensued? A. No, sir.

RE-DIRECT EXAMINATION by Mr. David:

Q. Could the person have lived an hour after
 20 the bullet entered the skull? A. Yes, sir.

Q. Two hours? A. Yes, sir.

Mr. David: That is all.

RE-CROSS EXAMINATION by Mr. Simpson:

Q. She could not live a day or two, but she could also die almost immediately? A. Yes.

Q. Then if it is possible to die almost immediately, it is possible to live a day or two, is
 30 that right? A. Yes, sir.

Mr. Simpson: That is all.

JOHN WINDER BRYAN, called as a witness on behalf of the State, being first duly sworn according to law, on his oath, testified as follows:

Direct-examination by Mr. David:

40 Q. Where do you live, Chief? A. Raleigh, North Carolina.

John Winder Bryan—Direct

Q. How long have you lived there? A. Practically all my life.

Q. On the 25th of February last did you hold any position in the City of Raleigh? A. Chief of Police.

Q. How long had you been Chief of Police? 10
A. About seven years.

Q. You were Chief of Police until when? A. About May 15.

Q. Of this year? A. Yes, sir.

Q. You know the defendant, William Frazer? A. Yes, sir.

Q. When and where did you first meet him? A. In the police headquarters in Raleigh.

Q. When? A. I have forgotten the date, about 20 the 24th or 25th of February.

Q. Of this year? A. Yes, sir.

Q. On the 26th of February of this year, were you present when the defendant in this case made a statement? A. I was.

Q. Where was that? A. Police headquarters at Raleigh, North Carolina.

Q. In whose presence? A. I was there, Mr. Wagner—

Q. When you say Mr. Wagner, you mean Mr. 30 William Wagner sitting at my right? A. Yes, Mr. Hoey, I think, Deputy Commissioner of New York State, Captain Saunders of the Raleigh police, yourself and myself.

Q. Before Frazer made any statement, what, if anything, was said to him by me? A. You warned him of his rights and told him any statement that he made could be used for or against him.

John Winder Bryan—Direct

Q. Anything else? A. Well, that is practically the preliminary.

Q. After I told him that, did he make a statement? A. He made three different statements.

10 Q. Were they reduced to writing? A. Yes, sir; two of them you took notes and later dictated them in his presence to the stenographer. I think the third statement she took down as he made it.

Q. Were all three of these statements signed by him? A. Yes, sir.

Q. And by you as a witness? A. Yes.

Q. And the others? A. Yes, sir.

20 Q. I show you this paper and ask you if that is the first statement which he made and signed? A. Yes, sir.

The Court: Have it marked for identification.

Mr. David: I offer the paper for identification.

(The paper referred to was marked "State's Exhibit 2 for identification.")

30 By Mr. David:

Q. I show you two sheets of paper and ask you whether or not they comprise the second statement which he made and signed? A. Yes, sir.

Q. Did you sign as a witness? A. Yes, sir.

Mr. David: I offer the papers for identification.

(The papers referred to were marked "State's Exhibit 3 for identification.")

40

John Winder Bryan—Direct

By the Court:

Q. Is that the second statement? A. Yes, sir.

By Mr. David:

Q. I show you another paper and ask you what that is? A. This is the third statement.

Q. Is that signed by the witness and by you? 10
A. Yes.

Mr. David: I ask that the paper be marked for identification.

(The paper referred to was marked "State's Exhibit 4 for identification.")

By Mr. David:

Q. Did Frazer, at the time of making the third statement, initial and date a map in your presence? A. Yes, sir. 20

Q. Is that the map (indicating)? A. That had my name on there. I will examine it to be sure. Yes, sir.

Mr. David: I offer the map for identification.

(The map referred to was marked "State's Exhibit 5 for identification.")

By Mr. David: 30

Q. I show you a ring and ask you if you ever saw that before? A. Yes, sir; I would say that is the ring taken from Mr. Frazer in the office.

Q. I show you a pair of pliers and ask you if you ever—

The Court: Has the ring been marked for identification?

Mr. David: Yes. 40

The Witness: These are the ones, or a pair similar.

John Winder Bryan—Direct

By Mr. David:

Q. What about these pliers? Did you ever see them before they came out of the automobile? Were these pliers shown to Mr. Frazer in your presence? A. Yes, sir.

10 Q. What did he say about them? A. He said he had the pliers and scissors in the car.

The Court: Keep your voice up so that defendant's counsel can hear you.

By Mr. David:

Q. Did he say anything with reference to the use of these pliers? A. He said he used the pliers to take the ring from Mrs. Stader's body or hand,
20 twisted it off her hand with the pliers.

Mr. David: I asked that the pliers be be marked for identification.

(The article referred to was marked "State's Exhibit 6 for identification.")

By Mr. David:

Q. I show you a pair of scissors and ask you if you have ever seen these before? A. Yes, sir; these came from the automobile.

30 Q. What, if anything, did Mr. Frazer say about these scissors? A. He said that he used the scissors to cut the clothing from the body.

Mr. David: I ask that they be marked for identification.

(The article referred to was marked "State's Exhibit 7 for identification.")

By Mr. David:

40 Q. I show you a rifle and ask you if you ever saw that before? A. Yes, sir; I saw that in police headquarters.

John Winder Bryan—Direct

Q. What, if anything, did Mr. Frazer say with reference to that rifle, in your presence? A. He said this was the rifle that he shot Mrs. Strader with.

Q. What? A. That this was the rifle that he shot Mrs. Strader with. 10

The Court: You will have to keep your voice up.

Mr. David: I ask that it be marked for identification.

(The article referred to was marked "State's Exhibit 8 for identification.")

By Mr. David:

Q. I show you a letter and ask you if you ever saw that before? A. Yes, sir; I think you had this with you in your office. 20

Q. In your presence was that letter shown to Mr. Frazer? A. Yes, sir.

Q. What did he say about it? A. He said he wrote the letter.

Mr. David: I ask that the letter, addressed to Mrs. Fred McLaughlin, 243 Orange Avenue, Walden, New York, in the envelope in which it is, be marked for identification. 30

(The letter referred to was marked "State's Exhibit 9 for identification.")

By Mr. David:

Q. After Frazer made his statements, to whom were the rifle, scissors, pliers, and the letter turned over? A. They were turned over to you.

Mr. David: Cross-examine. 40

John Winder Bryan—Cross

CROSS-EXAMINATION by Mr. Simpson :

Q. Was Frazer in custody when he made these three statements? A. Yes, sir.

Q. Had you arrested him or had the Department? A. He had been arrested by the Department.

10 Q. What date? A. I think it was on about the 24th; I am not positive.

Q. What was the date of these confessions? A. About two days after that, I think, sir.

Q. When you say three statements were made, or confessions, whatever you choose to call them, were they all made on the same day? A. All on the same day; yes, sir.

20 Q. Was anything said by Prosecutor David, after the first statement was made, as to the necessity of making a second statement? A. Well, after he—he went along with the first statement and Mr. David stopped him and called the stenographer in and dictated that down and had it signed.

Q. That is the first statement? A. Yes.

Q. About what time of the day was that? A. That was in the morning, I should say around ten

30 o'clock, such a matter.

Q. What happened after that? A. We talked on further and he took down some more notes.

Q. Did he talk at the same time that Mr. David, the Prosecutor, had the first statement signed, or was it in the afternoon or in the morning? A. I don't exactly get the question.

Q. I am trying to find out whether these two statements were made and signed at the same

40 time, although one was made before the other.

A. They were signed at different times.

John Winder Bryan—Cross

Q. What interval of time elapsed between the two statements? A. I should say probably an hour or such a matter.

Q. Where was this defendant during that time? A. Sitting right in the office.

Q. Your office? A. No, not my office, but the one adjoining there. 10

Q. Who was with him? A. Mr. David, Captain Saunders, and the other two gentlemen I named and myself.

Q. Were they questioning him? A. Just talking to him, going over the—

Q. They were asking him questions and he was answering? A. Yes.

Q. And then there was a third statement made? When was that? A. That was made in the afternoon after lunch. 20

Q. The other two statements were made in the morning? A. That is my recollection.

Q. Was there anything said by Prosecutor David or anyone for him, to the defendant, as to the necessity of making a third statement when the defendant had already made two statements? A. Well, I think the third statement, they were trying to determine—I sent out to my house to get a map, a Literary Digest map, in which he traced the route he went on that occasion. 30

Q. That was the third statement? A. That is my recollection.

Q. When was the rifle shown to him? You spoke of some statement made by him. Was that before? A. That was in the morning.

Q. Before he had made the written statement? A. I think it was, yes. 40

John Winder Bryan—Cross

Q. Who was present when the rifle was shown to him? A. The same gentlemen.

Q. Did you make any notation of what he said at that time? A. No.

Q. Did you write it down? A. No.

10 Q. When he identified the rifle did you write down so you could refresh your memory as to what he said? A. No, except in the statement that he signed, Mr. David was taking down.

Q. Yes, but you are testifying or have testified to another statement, evidently not reduced to writing, in which he identified the rifle and said something. When he identified the rifle, did he say, "This is the rifle with which Mrs. Strader was shot," or "This is the rifle Mrs. Strader was shot with," or, as you have said before, "This is the rifle with which I shot Mrs. Strader"? A. I don't remember the exact words, but he said that that was the rifle he had in the car and told why he got the rifle.

20

Q. But he identified the rifle as the rifle which had figured in the shooting? A. Yes, sir.

Q. But whether or not he said, "This is the rifle with which Mrs. Strader was shot," or—
30 A. I think he said, "This is the rifle I used." I think that is probably—

Q. Your memory is not clear about that? A. Not to the exact wording, no, sir; I would not say it to the exact wording.

Q. Did you make the arrest or did somebody in your Department? A. No, sir.

Q. Who made the arrest? A. Officer Peoples and Lowe.

40 Q. Where was the arrest made? A. At the post office.

Robert M. Saunders—Direct

Q. Was the automobile over at headquarters?

A. The automobile was stored in the garage.

Q. Who searched it at the time of the arrest?

A. I think Mr. Peoples and Mr. Lowe, possibly Captain Saunders went over.

Q. Was all this stuff taken out at the time of that search, the rifle and the scissors and so forth? A. Not right at the first time. I think the rifle was in the suitcase, that is my recollection, and the scissors and pliers were taken from the automobile later. 10

Mr. Simpson: That is all.

20

ROBERT M. SAUNDERS, called as a witness on behalf of the State, being first duly sworn according to law, on his oath testified as follows:

Direct-examination by Mr. David:

Q. Mr. Saunders, what is your business? A. In charge of the Plainclothes Department, Raleigh, North Carolina.

Q. As Captain of Police? A. Yes, sir; Captain of Detectives. 30

Q. And you have been for how long? A. Been connected with the Department thirteen years and had charge of the Plainclothes Department for six years.

Q. Were you present at a room at Police Headquarters in the City of Raleigh on the morning of February 26? A. Yes, sir.

Q. At which time the defendant, William Frazer, was there? A. Yes, sir. 40

Robert M. Saunders—Direct

Q. Who else were present at that time? A. Well, there was you and the officer sitting by you.

Q. You mean Mr. Wagner? A. Mr. Wagner, and the young man, I can't recall his name, from Orange.

10 Q. Orange County, New York? A. Yes.

Q. Mr. Hoey? A. Yes, and Chief Bryan and myself.

Q. Did Frazer at that time make statements which were reduced to writing? A. Yes, sir.

Q. Did he sign them in your presence? A. Yes, sir.

Q. I show you a paper marked Exhibit S-4 for identification and ask you whether Frazer signed that at that time in your presence? A. Yes, sir.

Q. And whether at the same time you signed as a witness? A. Yes, sir.

Q. I show you a paper marked S-3 for identification and ask you whether Frazer signed that in your presence and whether you signed it as a witness? A. Yes, sir.

Q. I show you exhibit marked S-2 for identification and ask you whether or not Frazer signed that in your presence and whether or not you signed it as a witness? A. Yes, sir.

Q. Before Frazer made and signed those statements what, if anything, was said to him? A. He was warned of his rights by you and told that any statement that he made could be used for or against him.

Mr. David: Cross-examine.

Robert M. Saunders—Cross

CROSS-EXAMINATION by Mr. Simpson:

Q. What is your office? A. I am Captain of Detectives.

Q. Where? A. Raleigh, North Carolina.

Q. Raleigh, North Carolina? A. Yes, sir.

Q. At the time that these statements were signed, were there other people present besides Proscutor David and his detectives? A. Chief Bryan and myself. 10

Q. Was there anybody from Orange County, New York, there? A. Mr. Hoey, I think his name is, was there.

Q. He was from Orange County, New York? A. Yes, sir.

Q. That is, he was from the Prosecutor's office in Orange County, New York? A. I could not say about that. He was from Orange County, he said. 20

Q. When you were describing the conversation that Prosecutor David had with this man, the defendant, and he told him, according to you, that he must sign this or make this statement of his own free will and accord, was there anything said by the representative of Orange County before these statements were made? A. No, sir; Mr.— 30

Q. Wait a minute, please; I have not finished the question. (Continuing)—before these statements were made, that, according to that statement, Orange County had jurisdiction, because if any crime was committed, it was committed between Walden and Newburgh, New York? Was there any discussion of that kind before these papers were signed? A. No, sir; not that I heard.

Q. You did not hear that? A. No, sir. 40

Robert M. Saunders—Cross

Q. Who was present from Orange County? A. Mr. Hoey, I think that is his name.

Q. Is the gentleman here in the court room? A. Yes, sir; he is here.

Q. Were you present at the time that each of
10 the three papers were signed? A. Yes, sir; each one.

Q. Do you say that each time before a paper was signed, Prosecutor David said to the defendant, "You must do this of your own free will and accord"? A. Yes, sir.

Q. The Prosecutor spoke of a map being produced. Did you produce the map? A. No, sir; Chief Bryan produced the map.

20 Q. You know nothing about the accuracy of the map or who made the map, or whether the map is correct or not, do you? A. I do not.

Q. You simply know what purports to be a map produced and used in the third statement? A. Yes, and his attorney was present at that time.

Q. Who was his attorney? A. Arthur Aaronson.

Q. Of South Carolina? A. Raleigh, North Carolina.

30 Q. That is, his attorney was present at each time a statement was made? A. No, sir; not at each time; the time that the map was produced.

Q. Was there discussion at the time the map was produced in which he was told in your presence that it was better for him to put the scene of the death either in Orange County or New Jersey, rather than be tried in North Carolina? A. No, sir.

40 Q. There was nothing of that kind that you heard? A. No, sir.

Michael Hoey—Direct

Q. What part did his attorney, Mr. Aaronson, take in the discussion before the third paper with the map was signed? A. He talked to Mr. Frazer a while in the office there, but word for word what he said, I could not say.

Q. You do not know? A. No. 10

Q. Did you hear him say anything about the map? A. No, sir; I did not.

Mr. Simpson: That is all.

MICHAEL HOEY, called as a witness on behalf of the State, being first duly sworn according to law, on his oath testified as follows: 20

Direct-examination by Mr. David:

Q. Where do you live, Mr. Hoey? A. Middletown, New York.

Q. What is your profession? A. I am a lawyer, assistant to the District Attorney of Orange County, New York.

Q. And you have been assistant to the District Attorney of Orange County, New York, for how long? A. We have just been in office since the 30 first of the year.

Q. On the 26th of February last, were you at Raleigh, North Carolina? A. I was.

Q. Were you present at Police Headquarters at the time that Frazer made and signed his statements? A. Yes, sir.

Q. Who else were present at that time? A. Yourself, Mr. Frazer, Chief Bryan, Captain Saunders and Mr. Frazer, of course. 40

Michael Hoey—Cross

Q. Was Mr. Wagner, the gentleman sitting at my right, present? A. Yes, Mr. Wagner.

Q. Did Frazer make and sign the statement marked Exhibit 2 for identification in your presence? A. He did.

10 Q. And did you sign it as a witness? A. I did.

Q. Did he also make and sign, in your presence, Exhibit 3 for identification, and sign it in your presence? A. Yes, sir.

Q. And did you sign it as a witness? A. I did.

Q. Did he also sign the statement marked Exhibit 4 for identification, in your presence, and make it? A. Yes, sir; he did.

Q. And did you sign it as a witness? A. I did.

20 Q. Before Frazer made those statements, and each of them, what, if anything, was said to him? A. You warned him of his rights and told him that anything he said might be used for or against him in any criminal action.

Mr. David: Cross-examine.

CROSS-EXAMINATION by Mr. Simpson:

Q. You are on the staff of the District Attorney in Orange County? A. Yes, sir.

30 Q. And were at the time of this occurrence? A. I was.

Q. What was the occasion of your presence there? A. I went down there to establish whether the crime had been committed in Orange County or elsewhere.

Q. Well, if this case, whether criminal or not, had occurred between Newburgh and Walden, would the crime, if any crime was committed, then
40 have been committed in your county? A. It would.

Michael Hoey—Cross

Q. What are the relative positions of Walden and Newburgh; which is north of the other, or east or west of the other? A. Newburgh is south of Walden, I would say about 11 miles.

Q. South of Walden? A. Yes.

Q. And anyone driving from Newburgh to Walden, then, of course, would be driving north? A. That's true. 10

Q. How far is Newburgh, if you know, from the border of New Jersey? A. I couldn't say.

Q. You don't know that? A. No.

Q. How large is Orange County? Does it come in contact with New Jersey? Does it border New Jersey? A. It embraces, yes, it does.

Q. It borders New Jersey; about how large in extent is your jurisdiction? A. I would say it is, roughly, around an area of probably—this is just a guess, really, I would say about 150 miles in area. 20

Q. What time did you get to Raleigh, North Carolina? A. I arrived there about seven o'clock in the morning.

Q. Had you been summoned there or did you go there by reason of some information of your own? A. Oh, no. 30

Q. You were summoned there? A. No, we weren't summoned there.

Q. I mean by information you had, you went to ascertain whether or not this alleged crime was committed in your jurisdiction? A. That's true.

Q. How long did you stay in Raleigh? A. I stayed in Raleigh all that day and left that night.

Q. Was there any discussion as to whether or not your office should take jurisdiction in the case 40

Michael Hoey—Cross

rather than the New Jersey authorities? A. Why, if we established the crime had been committed in Orange County, we would have taken charge.

10 Mr. Simpson: I didn't ask you that. I ask that be stricken out as not responsive.

By Mr. Simpson:

Q. Was there a discussion between you and the authorities in Raleigh, and the Prosecutor, as to whether or not his office should take jurisdiction or yours should? A. No, I would say there was no discussion.

Q. No talk about it at all? A. Yes, mention of the fact was made.

20 Q. There was a talk about whether you were satisfied that you should take jurisdiction or that he should take jurisdiction? A. I apprised Mr. David that I was satisfied that it had not happened in Orange County.

Mr. Simpson: I ask that be stricken out as not responsive. Did you?

30 Mr. David: Just a minute; counsel asked something be stricken out and then goes on making a statement. I object to it being stricken out.

The Court: Repeat the question preceding the answer which counsel asked be stricken out.

40 (The stenographer read the last question as follows: "Question: There was a talk about whether you were satisfied that you should take the jurisdiction or that he should take the jurisdiction?")

Michael Hoey—Cross

The Court: Strike it out. Answer that yes or no.

Q. Was there a discussion? A. Yes, there was a discussion.

Q. And at the end of that discussion Mr. David took jurisdiction by reason of his own judgment, which we do not question, as to what had happened in these statements; is that right? A. Mr. David had taken jurisdiction. 10

Q. I mean you didn't take jurisdiction? A. No, I didn't.

Q. And Mr. David did. And how long were you there, you say? A. I was there from seven o'clock in the morning till I would say eight-thirty that evening. 20

Q. You were present when each statement was made? A. I was, sir.

Q. What time was the first statement made? A. I would say the first statement was made at ten o'clock in the morning.

Q. Was this first statement the result of questions asked in counsel's presence, and afterwards reduced to writing? A. Yes, sir.

Q. That is, a summation of the questions and answers was reduced to writing and after the defendant had been properly warned, he signed it? A. Yes. 30

Q. That occurred again on the second statement? A. Yes, sir.

Q. About what time was the second statement taken, do you recall? A. That was shortly thereafter, I would say about eleven o'clock.

Q. Between the second and third, did you leave the place? A. Yes, I did. 40

Michael Hoey—Cross

Q. Then you and the attorney of the defendant (understand, I am not criticizing you at all), you and the attorney of the defendant and the Prosecutor and some others went to lunch together before the first statement was signed, didn't you?

10 A. That's right.

Q. Did say to the defendant's attorney, or anybody, in your presence (I want you to understand I am not criticizing you, I am trying to get the fact), did you or anybody in your presence say to the attorney of the defendant he should have his man locate this crime either in Orange County or in New Jersey? A. No, I didn't say anything to him or I didn't hear anybody say

20 it to him.

Q. Did you hear this defendant's attorney say to him he better locate this crime in New Jersey? A. No.

Q. But you were present all the time his attorney was there? A. That's true.

Q. Where did you lunch, you and Prosecutor David and the attorney of the defendant, where did you lunch that day? A. I didn't lunch with them.

30 Q. You didn't go with them? A. No, I didn't.

Q. You had your lunch alone? A. That's true.

Q. Did you see them at lunch? A. No, I didn't.

Q. You didn't lunch at the same hotel? A. Yes, I think we probably did.

Q. But you didn't see the attorney of the defendant and Prosecutor David and the detectives lunching with this man's attorney? A. No.

40 Q. How long after lunch was the third statement made and signed? A. I would say probably 15 minutes after the luncheon period.

William Wagner—Direct

Q. What time after did you leave? After the third statement how long did you stay there? A. I stayed there till that night.

Q. You came away that night? A. Yes.

Q. You didn't see the defendant again, did you, after he signed the third statement? A. Oh, yes, 10 I saw him; I rode up with him that night.

Q. Coming up here? A. Yes.

Mr. Simpson: That is all.

Mr. David: That is all.

WILLIAM WAGNER, called as a witness on behalf of the State, being first duly sworn according to law, on his oath testified as follows: 20

Direct-examination by Mr. David:

Q. Where do you live, Mr. Wagner? A. Rutherford, New Jersey.

Q. What is your business? A. Detective.

Q. With what agency are you connected? A. Pinkerton.

Q. And have been for how long? A. Twenty-five years. 30

Q. What position do you hold? A. Assistant superintendent.

Q. Did you, at my request, accompany me to Raleigh, North Carolina, on the night of February 25 last? A. I did.

Q. And did you, on the morning of the 26th, accompany me to the Police Headquarters in the City of Raleigh? A. Yes, sir.

Q. Did you see Frazer, the defendant, there? 40
A. Yes, sir.

William Wagner—Direct

Q. And were you present, in the presence of Chief Bryan, Captain Saunders, Mr. Hoey and myself, when Frazer made his statements, and signed them? A. I was.

10 Q. Did he make those statements in your presence? A. Yes, sir.

Q. And did he sign them in your presence? A. He did.

Q. And did you sign them as witness? A. I did.

Q. I show you exhibit marked 2 for identification and ask you whether that statement was made and signed in your presence and whether you signed it as a witness? A. Yes, sir.

20 Q. I show you Exhibit 3 for identification and ask you whether it was made and signed in your presence and whether you signed it as a witness? A. It was.

Q. I show you Exhibit 4 for identification and ask you whether that was made and signed in your presence and whether you signed it as a witness? A. Yes, sir.

30 Mr. David: I now offer in evidence Exhibit 2 for identification.

Mr. Simpson: That is the first statement?

Mr. David: That is the first.

Mr. Simpson: I think they are properly proven but I want to protect the defendant. I object to them as incompetent and irrelevant.

The Court: Is the objection made to all three?

40 Mr. Simpson: Yes.

Exhibits Offered in Evidence

The Court: Do you offer the three now?

Mr. David: Yes, your Honor. I offer in evidence Exhibit 2 for identification and Exhibit 3 for identification and Exhibit 4 for identification, as one exhibit.

The Court: No, you better mark them 10
as they are marked now.

Mr. David: Very well.

The Court: They will be received and an exception allowed counsel on his objection.

(Exception allowed. Signed, sealed accordingly. Alfred A. Stein, Judge.)

(The exhibits for identification on above 20
referred to were then marked in evidence as "State's Exhibits 2, 3, and 4," respectively.)

Mr. David: I now ask leave to read these statements.

The Court: You may read them.

Mr. Simpson: Are you finished with this witness?

Mr. David: No.

Mr. Simpson: I ought to have the right 30
to cross-examine him on these statements first, I think.

The Court: You have that right, but I understood when counsel offered them you were making your objection.

Mr. Simpson: I think they are properly proven, it seems to me, but I want to protect my client.

Exhibits Offered in Evidence

The Court: Do you want to cross-examine the witness before they are admitted in evidence?

Mr. Simpson: No, before they are read.

10

The Court: Well, if they are in evidence I cannot stop their being read, very well.

Mr. Simpson: Very well, I consent to that.

The Court: You can cross-examine him afterwards, of course. I cannot deny you that right.

20

You may read the statements to the jury and the witness may leave the chair, because after reading these statements we will take an adjournment.

Mr. David: I haven't finished with this witness, your Honor.

The Court: I understand that. We will call him after the adjournment.

(At this point Mr. David read Exhibit S-2 to the jury as follows:)

30

Mr. David: "Statement of William Moore Frazer, age thirty-one.

"Question by Mr. David:

This statement that you are now making you make voluntarily, of your own accord, without any promises, without any threats, without any fear, and with the knowledge that this statement can be used either for or against you, in any trial. Is that right?

40

"Answer: Yes.

Exhibits Offered in Evidence

“Question: This is the statement that you have just made; if there is anything you want to add or change, you may do so:

“ ‘I met Mrs. Stader on Monday, not last Monday but ten days ago. I took her and her sister June up to Walden. I took Phoebe out Monday night to a couple of roadhouses. I got some liquor. I remember where I got it, all right. I drank a good share of it but she did not drink as much as I did. I stayed at a hotel that night. Tuesday I had a date to meet her at 1:00 o’clock. We went to Newburg to a Chinese restaurant on the main drag and had something to eat. We had a quart of liquor and we drank. Then went to a moving picture show; then went back to the chop suey joint and had something to eat and drink. Then went to another moving picture show. We made up our minds to go to Florida. We started out—’ ” (the word ‘out’ is eliminated, your Honor.)

“ ‘but somewhere below Suffern in Jersey somewhere, I got nervous or something. I had a gun underneath the back seat of the car. I stopped the car and went in the back to get the gun. While I was getting the gun it went off accidentally somehow. I did not know what to do. I thought I would go to Rahway. I went there and stopped and told my cousin, and went over and told my wife. She asked me what I was going to do. I said, ‘I don’t know.’ There were only two

Exhibits Offered in Evidence

10 things to do—to tell the Police, and the other to commit suicide. Then I went out to the country to commit suicide but I did not have the nerve to do it. I went back to Rahway, then left Rahway and came on South.'

"Question: Is that a correct statement of what you have just said? Answer: Yes.

"(Signed) WILLIAM M. FRAZER.

"Witness: J. Winder Bryan, Chief.

"R. M. Saunders, Captain.

20 "M. A. Hoey, Asst. to D. A. Orange County.

"A. J. David. W. F. Wagner."

Mr. David: Exhibit 3:

"Additional Statement by William Moore Frazer.

"February 26, 1931, 11:15 A. M.

30 "I left Rahway Wednesday afternoon about 4 o'clock; drove in my Buick to Philadelphia. I stopped and wrote a letter to Mrs. McLaughlin, at Walden. The body of Mrs. Stader was in the car. I stayed in Philadelphia long enough to get something to eat. I can't say offhand where. I then came on South. My next stop was for gas—in Chester, I think—not positive. I stopped in Baltimore and rested up (that same night). From there I went to Washington, I can't say exactly

40 the time. I presume it was after midnight. I slept in Washington, in the car,

Exhibits Offered in Evidence

on the street. I left Washington about seven or eight o'clock in the morning. The body was still in the car—in the back of the car. I next stopped in Richmond—about noon time, I guess—can't say definitely. I stopped just to get gas. Then I 10 went toward Raleigh. I don't know where I stopped next, maybe in Virginia. I don't know how far I drove. It was on this road I took out the body. It was daytime; it was still light. I have no idea of the time. I stopped on the main road. I could not carry her around forever; so I stopped to remove the body. I dropped the body—I took the body out of the car. 20 I dragged the body maybe a block—I don't know. The ground was not paved—not a city, that is a cinch. It was a field; it was not bare—not many trees or shrubs. I then removed the clothing. I took the clothes off; I used a scissors. I suppose they were the scissors found in the car. I cut no labels off the clothing. I took the clothing off because it could be easier traced with them on. I think the scissors 30 were in the car. I am not positive. You use scissors for a patch if you get a blow-out. Then I came to Raleigh. I wrote no letters from Rahway; that slipped my mind. I wrote a letter to Devlin in New York. I do not know him. I wrote him and asked him to forward a letter to W. A. Jensen.

“(Shown a letter) I recognize my writ- 40
ing; that is the letter. I inquired for mail

Exhibits Offered in Evidence

10 at Raleigh, General Delivery, under the name of Devlin—H. G. I had a post office box in Baltimore in January. I think the number was 707. I had a safe deposit box at Commercial Trust, Jersey City, 1 Exchange Place. I had one in Rahway and in New York. I had an account at West Bergen Trust, Jersey City. I still have an account there. I recall a forgery charge against me in Union County in 1917 or 1918. I do not remember the disposition of the case. I found out Mrs. Stader was dead in New Jersey. I don't know how long after I shot her. I was so excited I did not know what I was doing. I wanted 20 the gun out in case anybody bothered us, to have it in the front seat in case anybody bothered us. I don't know where the bullet went. I know she was dead because she started to get cold. I put my hand on her. I did not take her to a doctor because I was excited and did not know what to do. It never occurred to me to take her to a doctor. It was a .22-calibre gun. I had 30 it, I cannot say how long. Right before the gun went off I do not know what we were talking about. We were half barrelled up. I could not tell you what she said right after I shot her. I had the gun in the car in case someone stopped us. I had it under the back seat for that reason. There is some blood in the car. I got out of the front seat and got the gun from the back of the rear seat. I started to turn 40 around and the gun went off.

Exhibits Offered in Evidence

“(Shown a gun, rifle .22-calibre) I say that is the gun I had in the car. I kept this gun in my car until I left Rahway, then I placed it in my suit case and had it in suit case in my room at 112 Halifax Street, Raleigh, North Carolina. 10

“I threw Mrs. Stader’s clothes on the road some miles from where I placed the body. I do not know how far from where I placed the body. Mrs. Stader was wearing an aquamarine ring and a necklace made of silver. I threw the necklace away. I took the ring from her finger, using a pair of pliers, which I had in the car. In removing the ring, I broke the ring. I have this ring in my pocket and now produce it and identify it as the ring which I removed from Mrs. Stader’s finger. I removed the ring from her finger so as to prevent identification of her body, and removed her clothing for the same reason. I destroyed Mrs. Stader’s pocket book by burning it up in the stove in my mother’s home in Rahway, New Jersey. It contained about one dollar and a half or two dollars, in money which I took. 20 30

“(Signed) WILLIAM M. FRAZER.

“Witness: J. Winder Bryan, Chief of Police.

R. M. Saunders, Capt of Detectives.

A. J. David.

W. F. Wagner,

M. A. Hoey, Asst. to D. A. Orange 40
County, N. Y.”

Exhibits Offered in Evidence

Mr. David: Exhibit 4:

“Further Supplemental Statement of William Moore Frazer.

10 “I make this statement freely, without promises, threats, or force of any kind, knowing that it may be used either for or against me, on trial:

20 “After looking over road map of the State of New Jersey, which I have initialed and dated, I am satisfied and I made statement to the effect that I reached for the gun and it went off after I passed Ramsey, New Jersey. I want to add that when the gun accidentally went off, and I could not say how long I had driven after leaving Ramsey, but I felt the body of Mrs. Stader and I heard her breathing; and I do know that she was alive when I passed the Durant plant on Frelinghuysen Avenue, Elizabeth, New Jersey; and I do know that when I got to Rahway and stopped the car she was dead, and so she must have died between the time I passed the Durant plant in Elizabeth and the time
30 I stopped the car in Rahway.

“The automobile in which Mrs. Stader died was a Buick, 1930 model, tan sedan, bearing New Jersey license plates U-4977-1931.

40 “The pliers which were found in my automobile are the pliers that I used to remove the ring from Mrs. Stader’s finger.”

William Wagner—Direct

The Court: We will now adjourn until one-thirty.

(End of morning session.)

Elizabeth, N. J., June 15, 1931, at 1:30, P. M. 10

Afternoon Session.

WILLIAM WAGNER, recalled as a witness on behalf of the State, testified further as follows:

Direct-examination by Mr. David (continued):

Q. In the statement offered in evidence there is mention made of an aquamarine ring. I ask you if you were present at Raleigh at police headquarters when Frazer produced this ring, marked S-1 for identification? A. I was. 20

Q. And did you take it in your possession at that time? A. I did.

Q. And have you had it under your jurisdiction ever since? A. I have had it and I marked it for identification with my initials.

Q. A little louder, please. A. I marked it for identification with my name, or initial. 30

Mr. David: I offer it in evidence.

The Court: It will be received.

(Exhibit previously marked S-1 for identification, entered in evidence and marked Exhibit S-1.)

Q. I show you a map with the initials W. M. F., 2-26-31, and ask whether you were present when Frazer, the defendant, put his initials and date on that map? A. I was. 40

William Wagner—Direct

Q. Have you had it under your jurisdiction ever since? A. I have.

Mr. David: I offer it in evidence.

10 Mr. Simpson: I object to it on the ground it is not proven as a map. There is no proof whatever that this is a correct map. The fact that Frazer put his initials on it does not make it evidence. I mean, if it purports to show it is a map of certain territory along which he passed there is no proof whatever that it is a correct map yet. It is a piece of paper, merely a piece of printed paper.

20 I object on the ground it is not properly proven as a map.

The Court: I don't understand the offer to be of the map as a correct map of the location shown on it but as a map on which the defendant made certain tracings. Is my understanding correct?

Mr. David: That's right, your Honor.

30 The Court: If it is admitted at all it will be admitted for that purpose, not for the purpose of proving the correctness of the map.

Mr. Simpson: I ask an exception.

(Exception allowed. Signed and sealed accordingly. Alfred A. Stein, Judge.)

The Court: It will be allowed.

40 (At this point the map above referred to was entered in evidence and marked Exhibit S-5.)

William Wagner—Direct

Q. I show you a rifle, marked S-8 for identification, and ask you if you were present when Frazer at Raleigh, at the time of making his statements, identified that rifle? A. I was.

Q. And it was turned over to you at that time by me? A. It was. 10

Q. And has it been under your supervision ever since? A. It has and is marked by me with my initials.

Mr. David: I offer it in evidence.

Mr. Simpson: No objection.

The Court: It will be received.

(The rifle above referred to entered in evidence and marked Exhibit S-8.) 20

Q. I show you a pair of pliers, marked S-6 for identification, and ask you whether you were present at Raleigh at the time that Frazer identified these as the pliers with which he took the ring off Mrs. Stader's finger? A. I was.

Q. And was it turned over to you by me at that time? A. It was.

Q. And has it been under your supervision ever since? A. It has been and it is marked.

Mr. David: I offer it in evidence. 30

Mr. Simpson: No objection.

(Pliers above referred to entered in evidence and marked Exhibit S-6.)

Q. I show you a pair of scissors, marked S-7 for identification, and ask you whether this is the pair of scissors that Frazer at Raleigh identified as those with which he cut the clothing off the body of Mrs. Stader? A. It is. 40

William Wagner—Direct

Q. And was that turned over to you by me at that time and has it been under your supervision ever since? A. It has.

Mr. David: I offer it in evidence.

10 The Court: It will be received.

(Pair of scissors above referred to entered in evidence and marked Exhibit S-7.)

Q. I show you a letter in an envelope, addressed to Mrs. Fred McLoughlin, 243 Orange Avenue, Walden, New York, marked S-9 for identification, and ask you whether this is the letter and envelope was identified by Frazer at Raleigh as the letter that he wrote Mrs. McLoughlin at
20 Philadelphia. A. It is.

Q. And has that been under your supervision ever since? A. It has.

Mr. David: I offer it in evidence.

Mr. Simpson: Objected to on the ground it is incompetent and irrelevant.

The Court: It will be received.

(Exception allowed. Signed and sealed accordingly. Alfred A. Stein, Judge.)

30 (Letter above referred to entered in evidence and marked Exhibit S-9.)

Mr. David: May I read the letter at this time, your Honor?

The Court: You may.

Mr. David (reading): "Philadelphia, Pa., 2-25-31. Dear Nan: I suppose you think we were lost or something but the other night we went out and we thought
40 we were only going to Newburgh but in-

William Wagner—Direct

stead we changed our minds. My wife is suing me for divorce, and so I won't have to answer it we are going on a trip. As you know this is the first one but it will be the one to remember. We sold the Buick and bought a Packard and some 10 new clothes and are on our way to California. How is that? If Phil inquires for Phoebe say she is working in New York and didn't send her address yet. Then if my wife asks him where Phoebe is he cannot tell her. We expect to take several weeks to get there and stay until the divorce is over.

"Hoping you didn't worry about us 20 but we got pretty well canned up and instead of going to Walden we landed in Philadelphia.

"Phoebe is sleeping it off now but she said to write you and let you know, and she will write later.

"BILL."

The Court: That is the letter marked 30 S-9.

Mr. David: Yes, sir.

Q. I call your attention to a letter addressed to Mr. Jack Dillon and with it a letter addressed to Mr. Ira Jansen. Are these the letters referred to in Frazer's statement, that he sent to Jansen, in care of Dillon, in New York? A. Frazer said that was the letter that he sent to Dillon to re-direct Jansen at Rahway.

William Wagner—Direct

The Court: Now, counsel over here are straining themselves to try and hear you. If you will talk over this way and talk louder—I can't hear you.

10 (The stenographer read the last answer as follows:

“Answer: Frazer said that was the letter that he sent to Dillon to re-direct Jansen at Rahway.”)

Q. Were these letters shown to Frazer at that time? A. They were.

Q. And have they been in your possession or under your supervision ever since? A. They
20 have.

Mr. David: I offer them in evidence.

The Court: To be marked together as one, or how?

Mr. Simpson: No objection.

Mr. David: I offer them as one exhibit, if your Honor please.

(Letters to Mr. Jack Dillon, and to Mr. Ira Jansen above referred to entered in evidence and marked as one exhibit, S-10.)
30

Mr. David: May I read them, your Honor?

The Court: Yes.

Mr. David (reading): The letter addressed to “Mr. Jack Dillon. Dear Jack: Please address the enclosed envelope to Ira Jansen, 67 Cherry Street, Rahway, and mail it right away. He will explain it to
40 you when he sees you.

“Thank you.”

No signature.

Exhibits Offered in Evidence

"Thursday. Ira, just a line to let you know everything is O. K. by me. How is the gossip in Rahway? If any news from Amboy or New York was in the papers, let me know. H. F. D.

"General post office, Charleston, North Carolina, in care of General Delivery. 10

"Did not get mother's letter yet. Be sure she sends it, for I am stuck here if she don't. Eating beans and sardines, one meal a day.

"Listen, how about your coming down here with me. We could get a job on a boat somewhere and have a chance to save some money. Write and tell me if you will and I will tell you where I meet you. 20

"How is Hilda and the kids? Tell her I will write her from C. Remind her all she knows is that I left her and she thinks I am with some woman.

"Try and figure some way of getting away. Send your answer aeroplane mail so I will get it early. If mother did not send that money yet, make her or I will be in the coop because I cannot pay the room bill past Saturday and I expect to get a letter by then. I cannot get out of town as I haven't any gas or money. If it comes by then I am going to Charleston to look for a job and have a good chance of getting one. Keep your ears open and get the news." 30

No signature. 40

William Wagner—Cross

CROSS-EXAMINATION by Mr. Simpson:

Q. Where did you first see that rifle, Exhibit S-8? A. In Raleigh, North Carolina.

Q. In whose possession was it? A. Captain of Detectives Saunders.

10 Q. You did not see it when it was in the car?
A. I did not.

Q. What time of the day did you see it? A. About ten o'clock in the morning.

Q. After you saw it, you say it was identified by the defendant as his rifle? A. It was shown to Mr. Frazer, and he said that was the rifle that he had in the car.

20 Q. Who showed it to him? The Chief of Police?
A. No, Prosecutor David.

Q. Was the Chief of Police there? A. Yes, sir.

Q. After that what became of the rifle? A. It was turned over to Captain Saunders, and that evening I received it from Mr. David just before we left Raleigh.

Q. Who is Captain Saunders? A. Captain of Detectives of Raleigh, North Carolina.

Q. Referring to this Exhibit S-5, the map, you say that you saw the defendant initial this map?

30 A. Yes, sir.

Q. What was it that he did to this before he initialed it? A. He indicated on the map the route that he took in coming from Newburgh down to Rahway.

Q. Was it marked on here? A. No, sir.

Q. He just showed the road? A. He showed the road that he followed.

40 Q. He just showed the road coming down from Newburgh? A. Newburgh, New York, to Rahway.

Ira Lee Jansen—Direct

Q. What was the talk that the Prosecutor said about Ramsey? A. Frazer said that he followed through the road that went through Tuxedo and Suffern and Ramsey.

Q. As this map was shown to him? A. Yes, he was given this map so he could designate the road. 10

Q. So that he could trace his road? A. Yes.

Q. Did he say about what time he started from Newburgh? A. I don't believe that he did.

Q. You say that Captain Saunders—is that the witness who was on the stand, who got this rifle? A. Yes.

Q. Did he say what time it was that he thought he reached Ramsey from Newburgh? A. I don't recall that he did. 20

The Court: Is there anything further?

Mr. Simpson: No, your Honor.

Mr. David: That is all.

IRA LEE JANSEN, called as a witness on behalf of the State, being first duly sworn according to law, on his oath, testified as follows: 30

Direct-examination by Mr. David:

Q. Where do you live, Mr. Jansen? A. 57 Cherry Street, Rahway.

Q. I must ask you to talk out loud to make sure that we all hear you. How old are you? A. Twenty-one.

Q. What is your business? A. Chauffeur.

Q. Are you in any wise related to the defendant Frazer? A. Yes, sir; he is my cousin. 40

Ira Lee Jansen—Direct

Q. On the 16th of February last, did you see the defendant Frazer? A. Yes, sir.

Q. Where did you see him? A. At 67 Cherry Street, Rahway.

Q. Whose home is that? A. His mother's.

10 Q. Is that where you were living at the time? A. Yes, sir.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. What was it? A. He said he was going up to Walden, New York.

The Court: I do not hear you.

The Witness: He said he was going up to Walden, New York.

20

By Mr. David:

Q. Is that all? A. That he was going to take Mrs. Stader up to Walden, New York.

Q. What day of the week was that? A. That was Monday.

Q. What time of the day? A. Before dinner time.

Q. Do you mean before noon? A. Yes, sir.

Q. When did you next see him, Frazer? A.

30 Early Wednesday morning, the 18th.

Q. What time of the morning? A. Around two o'clock.

Q. That is, two hours after midnight? A. Yes, sir.

Q. Where did you see him then? A. At his mother's house.

Q. Where were you? A. In bed.

Q. How do you know he was there? A. He
40 woke me up.

Ira Lee Jansen—Direct

Q. What did he say? A. He said he was in trouble.

Q. What else did he say? A. He said Mrs. Stader was dead.

Q. Go on and tell what else was said. A. That he either shot or killed her, and told me to get up and get my clothes on and go up to his wife's house with him. I got up and went out in the car, and he was sitting in the front seat. 10

Q. Where was the car? A. In front of his mother's house.

Q. Who was sitting in the front seat? A. Mrs. Stader.

Q. Was she dead or alive? A. She was dead, as far as I could tell. 20

Q. What did you then do? A. I got in the back seat, and he drove up to his wife's house on Jefferson Avenue, and he parked his car in the driveway, and he walked in the front door and went up to his wife's room.

Q. Jefferson Avenue where? A. Rahway, New Jersey.

Q. Did you go with him? A. Yes, sir.

Q. Where did you go with him in his wife's house? A. He went up and woke her up. She was in bed. 30

Q. Were you there? A. Yes, sir.

Q. Did she get up? A. Yes, sir.

Q. Then what took place? A. First she asked him where he had been.

Q. Who did? A. His wife, and he says, "Never mind that; you will hear plenty in a minute."

Q. Talk out louder, please. A. He said "Never mind that, you will hear plenty in a minute." And he said he killed somebody, and she said, "Who?" 40

Ira Lee Jansen—Direct

Q. Who said "who"? A. His wife, and he said to his wife, "You ought to know who."

She said, "Who? Phoebe Stader?"

And he said, "Yes."

Then he talked what he was going to do and
10 how, and what he should do, and his wife and I both told him that he should give himself up or commit suicide. I went out of the room for about ten minutes, and when I came back, he decided he was going up in the country.

Q. What did he say when you came back? A. That he was going up in the country to commit suicide, and I had to go with him. I got in the car with him, and I got in the back, and he rode
20 up to Bram Hall Road.

Q. Is that in Rahway? A. Yes, sir; on the outskirts, and he stopped his car about a couple of hundred feet this side of Leesville Avenue, Rahway, and he said he was going to kill himself, so I told him I was going to get out of the car, and he said when I heard the shots, I would know that he had killed himself. So I got out of the car and walked up the road about fifty yards or so, and I stood there ten or fifteen minutes.

30 The Court: If you gentlemen of the jury do not hear all that is said, you must let me know. We have to decide this case on the evidence, and you cannot do it if you cannot hear the witness.

Please raise your voice, Mr. Witness.

A. (continuing): When I heard the blowing of his automobile horn instead of a shot I walked
40 back, and he said he didn't have nerve enough to shoot himself, and he said he would try again,

Ira Lee Jansen—Direct

and again I walked up the road about the same distance and waited the same time, and this time he called me, and I went back, and he said he decided he would go home for the night and try to get away in the morning. Before he left there he decided he was going to put the body in the back of the car, so that people would not notice it so much, and he wanted me to help him, and I told him no, and he said he wasn't strong enough to lift it, and I said I would not help him, so I got out of the car, and I was about fifty feet away, and I could see him go through the movements of putting the body in the back of the car, and when I got in again, the body was in the back of the car, covered with a blanket. He then drove to 67 Cherry Street, his mother's house, and he sent me in for a small box to put between the knees of the body and chin to make it look even. I went in and got a small strawberry crate and gave it to him, and he put it between the knees and the chin of the body, and he put a blanket over it so it would look like suitcases. He then parked the car around the corner of Campbell Street in front of the old White icehouse and locked the doors in it and then went to his mother's house, and he went to bed. That was around four or five o'clock in the morning, and he put a pocketbook under the mattress before he went to bed.

Q. He did what? A. He put a pocketbook under the mattress before he went to bed. He woke up the following morning around dinner time, twelve o'clock noon, and called up his wife to let her know where he was. He burned the pocketbook and took around two dollars worth of

Ira Lee Jansen—Direct

change out of it and then sent me up to his wife's house to get her to come down and get some clothes, and his wife, she same back to 67 Cherry Street in a taxicab, and I came back in a bus, and when I got back there, she was there already.

10 She talked with him for a while, I imagine about an hour or so. That was around two o'clock. I then went up to his wife's house again. The next time I seen—before I went up to his wife's house the last time, he gave me a note, H. G. Devlin, Raleigh, North Carolina, Sir Walter Hotel, and he said if he got anywheres he would get that far, and I would have to get some money from his mother and send it to him. Then I went up

20 to his wife's house, and the next time I seen him was around three o'clock that afternoon across from the monument in Pierrepont Street in Rahway. He still had the body in the car and it was covered up with a blanket, and the last I saw of him that day he was heading toward Philadelphia. I then went back to his wife's house and told her I was going home.

Mr. Simpson: Never mind what you told his wife.

30

By Mr. David:

Q. When and where did you next see him? A. Down the Sir Walter Hotel, Raleigh, North Carolina.

Q. When did you go to Raleigh, North Carolina? A. I left New York Thursday morning, the 20th, 12:35, after midnight.

Q. Where did you see him in Raleigh? A. In the Sir Walter Hotel.

40

Ira Lee Jansen—Direct

By the Court:

Q. When was that? A. That was February 20th.

By Mr. David:

Q. Thursday morning? A. Friday morning, 10
early Friday morning.

Q. And you got down to Raleigh when? A.
Friday afternoon around five, five-thirty.

Q. Did you see Frazer down there? A. Yes,
sir.

Q. Did you give him anything when you got
down there? A. Yes, sir; I gave him \$200.

Q. Did you have any talk with him about what
he intended to do? A. Yes, sir.

Q. What was that? A. First he asked me for 20
the money and I gave it to him, and then he said
for me to go back to Rahway and wait until I
was twenty-one and come down and live with him,
and that he would go down farther and try to
get a job around Charleston or that neighbor-
hood, and that he would write to me and come
back to Rahway and get the bill of sale of his
car and have it turned over to me, so he could
sell the car.

Q. When you met him at the Sir Walter Ho- 30
tel, did you ask him what he had done with Mrs.
Stader's body? A. Yes, sir.

Q. What was it you asked him? A. I asked
him what he had done with Mrs. Stader's body.

Q. What did he say? A. He said it was none
of my business, that I knew too much already.

Q. I show you a pair of scissors, marked
State's Exhibit 7, and ask you if you have ever
seen those before? A. I believe I have. 40

Ira Lee Jansen—Direct

Q. Where? A. In his mother's house at 67 Cherry Street, Rahway.

Q. Whose mother's house? A. Mr. Frazer's mother's house.

10 Q. What is her name? A. Mrs. Edna Frazer.
Q. When was the last time you saw those scissors at his mother's house? A. Tuesday night, February 17, when I went to bed.

Q. Do you know what name Frazer registered as in Raleigh? A. H. G. Devlin.

By the Court:

Q. In Rahway? A. In Raleigh.

Q. H. G. Devlin? A. H. G. Devlin.

20 By Mr. David:

Q. Where did he stop in Raleigh? A. It was Craddock's boarding house.

Q. Did you visit the room that he was stopping at there? A. Yes, sir.

Q. Did you see anybody else there with him? A. Yes, sir; he had a young fellow with him. I believe his name was William McGrath.

Q. Will you point out Mr. McGrath? Is that the man (indicating)? A. Yes, sir.

30 Q. Do you know the license number of the automobile, the Buick, that the body of Mrs. Stader was in on that Tuesday night when he came up to Rahway and woke you up? A. Yes, sir.

Q. What was that license number? A. U-4977.

Q. I call your attention to an automobile in the court room and ask you if that is the automobile? A. Yes, sir; it is.

40 Mr. David: I offer in evidence a Buick sedan automobile, license number U-4977,

Ira Lee Jansen—Direct

1931, the car which is now in the court room.

Mr. Simpson: I have no objection.

(The car referred to was received in evidence and marked "State's Exhibit 11.") 10

By Mr. David:

Q. Will you please step down here and tell me whether or not that is the car that Frazer was in that night?

Mr. Simpson: I want to be sure that it is in the same condition now as it was when it was taken by the police.

Mr. David: If you want that, we will bring the man who drove it up. 20

The Court: The car is admitted in evidence simply as the car which this defendant says the body was in that night. If it comes to the point of showing the condition of the car that night with any particularity, of course, then I can see your point very clearly, but I do not believe this car is offered for the purpose of showing marks in it. 30

Mr. David: No.

Mr. Simpson: No blood or anything of that kind.

Mr. David: I think there is some, but it is not offered for that purpose.

The Court: That covers what you have in mind. It is admitted in evidence as the car which he says the body was in that day.

Mr. David: Cross-examine. 40

Ira Lee Jansen—Cross

CROSS-EXAMINATION by Mr. Simpson:

Q. What was the date you saw him the first time, February 16? A. Yes, sir.

Q. What time of the day? A. That was before twelve noon.

10 Q. Where? A. At his mother's house, 67 Cherry Street.

Q. Was he in the house or in the automobile?

A. He came in the automobile and he walked into the house.

Q. And in the house you had this talk with him? A. Yes, sir.

Q. What did he say to you and what did you say to him? A. He said he was going to take

20 Mrs. Stader up to Walden, New York.

Q. Mrs. Who? A. Mrs. Stader.

Q. That is the woman who subsequently died? A. Yes.

Q. Did he tell you where he was going to take her in Walden? A. Up to her sister's house.

Q. When did he say he was going to take her? A. That morning.

Q. The same day that you spoke to him? A. Yes, sir.

30 Q. When was the next time you saw him after he left the house? A. Wednesday morning, February 18.

Q. You say he woke you up. What room did you sleep in? A. I slept in the rear room on the first floor.

Q. Did he come right to your room and wake you up? A. He knocked on the door first.

Q. Of your room? A. Of the kitchen. My
40 room is right off the kitchen.

Ira Lee Jansen—Cross

Q. Did you get up and go to the door? A. Yes, sir.

Q. You had not been dressed yet? A. No, sir.

Q. Did you have any conversation with him in the house? A. Yes, sir.

Q. Is that the conversation you have told the 10
Prosecutor? A. Yes, sir.

Q. Were you dressed at that time? A. No, sir.

Q. Then you dressed and went out with him?
A. Yes, sir.

Q. What seemed to be his manner when you first saw him? Was it calm or agitated? A. He seemed calm.

Q. Calm? A. Yes.

Q. Did he indicate to you that he had been 20
drinking at all? A. He wasn't drunk at the time.

Q. Did he seem to have any drinks at all? A. I could not say that.

Q. What? A. I could not tell you that.

Q. Then you dressed and went out with him, is that right? A. Yes, sir.

Q. When he went out, did he get in the automobile or did he stand on the sidewalk and talk to you? A. Both got in the automobile. He got 30
in the driver's seat, and I got in the back.

Q. You got in the back? A. Yes.

Q. Before you got in the back, did you know that there was this dead woman in the automobile? A. Yes, sir.

Q. In what way did you become aware of that fact? A. He told me in the house before in the conversation.

Q. I mean, did you look at the woman and make 40
up your own mind whether or not she was dead?
A. Yes, sir.

Ira Lee Jansen—Cross

Q. Where was the body sitting or lying? A. She was sitting in the front seat on the right-hand side, and her head was against the window, the front window.

10 Q. In what position was she? Was she sitting upright or lying over against the window? A. Her head was lying against the window. She was sitting like this (indicating).

The Court: Please keep your voice up.

By Mr. Simpson:

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

Q. Will you please come down and show me in the automobile what you mean? Please show
20 me what position she was in. A. Yes, sir.

(The witness left the stand and sat in the automobile, marked State's Exhibit 11.)

A. (continuing) Her head was over like this (indicating).

By Mr. Simpson:

Q. Against the glass, in that position? A. Yes.

30 (The witness resumed the stand.)

Q. Did you notice that position of her body before you got in the car or after you got in the car? A. After I got into the car.

Q. You got in the rear seat? A. Yes, sir.

Q. How long after you got in the rear seat did the car start off? A. Right away, sir.

Q. Where did he drive to? A. His wife's house, 519 Jefferson Avenue, Rahway.

Ira Lee Jansen—Cross

Q. Where was it that he told you that he was going to kill himself? Where were you then? A. That was on Bram Hall Road, Rahway.

Q. After he left his wife's house? A. Yes.

Q. When he left his wife's house, how far did you go from the house before he said he would kill himself? A. He had mentioned it before he left. 10

Q. In what way had he mentioned it before he left? A. While he was talking over what he should do.

Q. You and himself and his wife? A. Yes, sir.

Q. As the result of that conversation, you and his wife advised him to give himself up or to kill himself? A. Yes, sir. 20

Q. Which did you tell him to do preferably, to give himself up to the police or to kill himself?

The Court: If he had any preference.

The Witness: No, he didn't.

By Mr. Simpson:

Q. You told him to do one thing or the other? A. He said he only had two things to do.

Q. You said he should do one thing or the other, "Give yourself up to the police, or kill yourself"? A. Yes, sir. 30

Q. And after that you went downstairs with him and got in the automobile? A. Yes.

Q. And he drove where? A. Up to Bram Hall Road, Rahway, New Jersey.

Q. How far is that from the wife's house? A. Around a mile.

Q. And then you got out, and he said he was going to kill himself? A. Yes. 40

Ira Lee Jansen—Cross

Q. How far away from the automobile did you walk? A. Around fifty yards.

Q. And you waited to hear the shot, which would announce to you that he had killed himself? A. Yes.

10 Q. But you did not hear the shot? A. No, sir.

Q. When he told you that he was going to kill himself, you say he was still very calm? A. (No answer).

Q. You said that when you first saw him, he was calm. Was he still calm when he said he was going to kill himself? A. He acted worried.

Q. He acted what? A. Worried; yes, sir.

20 Q. You walked away waiting to hear this shot, which would announce his self-murder? A. Yes.

Q. How long did you wait to hear the shot? A. About ten minutes.

Q. And you did not hear the shot? A. No, sir.

Q. Then what did you do? A. He blew the horn of the car and I came back to the car.

Q. Did you get into the car? A. Yes, sir.

Q. In the back seat? A. Yes, sir.

Q. And the dead body was still in the car? A. Yes, sir.

30 Q. Did he stay there or go away with the car? A. He said he was going to try to kill himself again.

Q. At the same spot? A. Yes.

Q. He did not move to a new spot? A. No.

Q. He was going to kill himself in the same spot? A. Yes.

Q. Did you get out of the car again? A. Yes.

40 Q. You walked fifty yards again and waited to hear the shot? A. Yes.

Ira Lee Jansen—Cross

Q. You did not hear the shot, and you walked back again, is that right? A. Yes.

Q. Was he still in the front? A. Yes.

Q. What did he say to you when you went back the second time, not having heard the shot that was to tell you that he had killed himself? A. 10
He said he could not kill himself, and that he would go home to sleep and try to get away in the morning.

Q. What did you say to that? Did you argue with him? A. He asked me to kill him.

Q. He wanted you to kill him? A. Yes.

Q. What did you say to that? A. No.

Q. Did he tell you what he wanted you to kill him with? A. No. 20

Q. He just wanted you to kill him? A. Yes.

Q. And you refused the invitation? A. Yes.

Q. And you still stayed in the car? A. Yes, sir.

Q. Where did the car go then after he had twice told you he was going to kill himself? He had asked you once, and when he and you did not do it, where did the car go then? A. Down to 67 Cherry Street, Rahway.

Q. Is that where his mother lived? A. Yes. 30

Q. Did you get out of the car there and go in with him? A. Yes, sir.

Q. And left the body still in the car? A. Yes, sir; but he had moved the body before he left Bram Hall Road.

Q. Where was he when he moved the body? A. In the same spot where he was going to kill himself.

Q. At that place in Bram Hall Road? A. Yes. 40

Q. That is where he moved the body, from the front seat to the back? A. Yes.

Ira Lee Jansen—Cross

Q. And he asked you to help him, and you would not help him? A. Yes.

Q. Did you go into details with him, you and his wife, about the shooting, as to whether or not the gun went off accidentally or how it went
10 off? Did you discuss that with him? A. (No answer.)

Q. Did you talk about that with him? A. Yes, sir.

Q. Didn't he tell you it was an accident? A. No, sir.

Q. Didn't he tell you that he was moving the gun from the rear seat to the front seat, and it went off without his knowing it? A. No, sir.

20 Q. Why did you tell him to kill himself? A. Why did I?

Q. Yes. A. There was one way, to give himself up or do what we told him.

Q. Had you and his wife talked the thing over with him? A. Yes, sir.

Q. Before you took the stand today, had you been in conference with the Prosecutor's office at all? A. Yes, sir.

30 Q. Had you been told that unless you testified today, that is, if you did not testify today in this way that you would be implicated in this alleged murder? A. No, sir.

Q. You had not been told that at all? A. No.

Q. And you told this story that you are telling now before you were interrogated by the Prosecutor? A. Yes, sir.

Q. You were riding around all the time with the dead woman? A. Yes.

40 Q. A woman whom you knew had been shot? A. Yes.

Ira Lee Jansen—Cross

Q. Why didn't you go to the police station and tell them that there was a woman who had been shot, and that you were riding around all night in the car with her? A. I was too scared.

Q. You were scared? A. Yes.

Q. According to you, this man was very agitated. You told him to give himself up, or to kill himself, and you knew that there was a woman in the car who had been shot, whether accidentally or intentionally, you did not know, and you never went near the police? A. He slept with me all night? How could I? He was in the same room with me all night. 10

Q. But he left you, did he not, to go away with the car? A. Yes, sir. 20

Q. After he left you, did you go to the police and say, "I was in the car with a dead woman last night that was shot"? A. No, sir.

Q. You did not say anything of that kind, but instead, you went down to Raleigh and gave him \$200? A. Yes, sir.

Q. Where was he when you last saw him before he drove the car away? A. At Pierrepoint Street and St. George Avenue, Rahway.

Q. Was the dead body still in the car? A. Yes, 30
sir.

Q. Where was it in the car? A. In the back on the floor.

Q. When you went down to Raleigh, North Carolina, as I understand you to go, why did you go down there? A. To give him the money.

Q. I mean, had he requested you to get some money and bring it to him or had he written to you? A. He had requested it before he left. 40

Ira Lee Jansen—Re-direct

Q. That you were to get the money and come to Raleigh, North Carolina? A. It wasn't exactly that way; he wanted me to send it to him.

Q. To send him the money? A. Yes.

Q. And instead of sending him the money, you
10 took it to him? A. Yes.

Q. Is that right? A. Yes, sir.

Q. When you got in the car, did you notice any blood stains around at all? A. No, sir.

Q. Was there a dress suitcase in the car when you got in there, in the back where you sat? Was there a dress suitcase there? A. When?

Q. When you got in the first time? A. No, sir.

Q. Did you see a dress suitcase there? A. Not
20 at that time; no, sir.

Q. When did you see it there? A. I thought he took it with him when he left Rahway to go down to Raleigh.

By the Court:

Q. You say he took it with him? A. Yes, sir.

Q. Did you see him take it?

By Mr. Simpson:

Q. When did you say you first saw the dress
30 suitcase? A. In Rahway before he left for Raleigh.

Q. Before he left to go to Raleigh, there was a dress suitcase in the car? A. No, he got it from his wife's house.

Q. He got the dress suitcase from his wife's house? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. David:

Q. To whom did you first tell the story that
40 you have just told on the stand? A. The Rahway Police Department.

Ira Lee Jansen—Re-cross

Q. When?

By the Court:

Q. Did you say Raleigh or Rahway? A. Rahway Police Department.

By Mr. David:

10

Q. When? A. Monday, February 23.

Q. That was after you had been down in Raleigh and returned? A. Yes, sir.

Q. On this Tuesday night, when you were with Frazer and his wife, did Frazer say anything to you and his wife in your presence about not telling about the woman being in the car? A. Yes, sir; there was some remarks passed that we were apt to get ten years out of it ourselves.

20

Q. What did Frazer say? A. Which way do you mean?

Q. What did Frazer say about your telling about that? A. He said that we would get ten years if we told.

RE-CROSS EXAMINATION by Mr. Simpson:

Q. Frazer told you that if you said there was a dead woman in the car that you would get ten years? A. He didn't exactly say about a dead woman in the car; he said, "say anything about it." 30

Q. You had not done anything wrong, and you knew that you would not get ten years if you told that there was a dead woman in the car, didn't you? A. I did not.

Q. Did you believe that if you told the police that there was a dead woman in the car, with whose death you were absolutely innocent, that 40

Ira Lee Jansen—Re-cross

you would get ten years? A. I was so nervous at the time, I didn't think.

Q. You were nervous? A. Yes.

Q. You had not done anything, but you were nervous, and he was very calm? A. Yes, sir.

10 Q. Did you make a statement to the police? The Prosecutor asked you about a statement to the police. How did you come to go to the police station? A. Lieutenant Close of the Rahway Police Department came down to his mother's house Monday, February 23, and told me that the Chief of Police wanted to see me.

Q. And you came up to the Chief of Police's office? A. Yes.

20 Q. And in the course of the conversation, didn't you say that the reason that you were helping him was that you thought it was an accident? A. I did not.

Q. Did you give the police any reason for helping him? A. To get away.

Q. I mean, did you tell the police why you helped him, and why you did not tell about this dead woman in the car, and why you helped this man to get away? Did you give any reason to
30 the police? A. Only the reason I gave you, about ten years.

Q. Only about getting ten years? A. Yes.

Q. You did not tell the police that you helped him because you thought it was an accident? A. No, sir; I did not.

Mr. Simpson: That is all.

Mr. David: That is all.

William T. McGrath—Direct

WILLIAM T. McGRATH, called as a witness on behalf of the State, being first duly sworn, according to law, on his oath, testified as follows:

Direct-examination by Mr. David:

Q. Where do you live? A. Allenhurst, New Jersey. 10

Q. How long have you lived there? A. About ten or eleven years.

Q. How old are you? A. Sixteen.

Q. Some time in the month of February this year did you start off for Florida? A. Yes.

Q. How were you going? A. Hitch-hiking.

Q. Did your folks know that you were going to hitch-hike to Florida? A. Yes, sir. 20

Q. Did you get on that trip somewhere down in Virginia? A. Yes, sir.

Q. And while down in Virginia did you meet the defendant Frazer? A. Yes, sir.

Q. Now, just where was that? A. It was where the Lynchburg Road joins Route No. 1, about two miles outside of Petersburg, Virginia.

Q. How did you come to meet him? A. I was standing on the side of the road asking for a ride, with my hand. 30

Q. And did he stop? A. Yes, he did.

Q. What was he in? A. A Buick sedan.

Q. Is that it, Exhibit S-11, in the court room here (indicating sedan in court room)? A. Yes.

Q. Now, will you just tell in your own way what he said and did from that time on? A. Every little thing?

Q. Well, the conversation that you had and what was done. A. Well, the first time he asked me, then I got in the car, he asked if I wanted 40

William T. McGrath—Direct

a cigarette and an apple and what not, then we rode on a little ways, and he started telling me how he got a girl in a family way and that she gave birth to a child in the back of the car and that he—then we went on a little ways and then
10 he told me about his cousin Jansen knew where to get a job on a boat, see? That he had been around the world and what not, on boats, and so he said he would write a letter or something to him and try to get him to go down and get us both a job on a boat. He gave me the impression that the girl and his people—

Mr. Simpson: I object to any impression that he gave you.

20

By Mr. David:

Q. Well, what did he say about the girl? A. He said that she gave birth to a child in the back of the car, that's all.

Q. Yes, go on. A. And then kind of, the way he talked seemed as if they were trying to fix it up between the two families, or something. Then we rode on a little ways and we got to South Hill, Virginia. We went in there and bought a
30 couple of cans of beans and then we went to a hardware store and bought a pot and a couple of knives and forks and spoons—just spoons, that's right. Then we rode on a little ways and we got down, it must have been about eight or nine miles outside of South Hill and we stopped beside a brook and went down there and he was standing up near the car, and he was fooling around the back, and I went down and got some
40 wood together and put the beans on the fire and started cooking them. He was still fooling

William T. McGrath—Direct

around the car up there and I called him down. He came down and we had some beans, I ate some beans, and then he went up to the car and brought down a box.

Q. What kind of a box? A. It was kind of slats like on the side, it was not boarded all the way up. 10

Q. A crate? A. Some kind of a fruit crate or something, yes.

Q. Yes. What was in the crate? A. Well, all I saw on the top was kind of brown, look like a brownish coat like. At first I didn't catch on to whose clothes they were, see? I thought they were his clothes and I said, "Are you going to burn them?" and he said, "Sure," and he looked at me and he said, "She bled like a pup," or something like that. So I picked the spoons and stuff up and went over to the brook to wash them. Then after I got done washing them I went up and sat on the running board of the car because there was a lot of red mud there. I took a stick and I was getting the red mud off my feet, off my shoes. He was still down near the fire poking around the box, or what not. Then he came up. 20 30

Q. Now, what did he do with the clothes in the box? A. Put them on the fire.

Q. What happened to them? A. Burned up, of course.

Q. All right, go on. A. Then he came up and put his coat on and we got in the car and rode on and we got to Wake-Forest, North Carolina. There is a college there, and we picked up two fellows asking for a hitch there. They got in the back of the car. We rode them into Raleigh 40

William T. McGrath—Direct

and we got into Raleigh and let them out. We stopped at the five-and-ten-cent store and he bought a big knife, to cut bread with. Then we went on an A. & P. store and got something up there.

10 Q. Now, where did you go to sleep in Raleigh?

A. I think it is Craddock's or Braddock's.

Q. Craddock's? A. Craddock's Rooming House.

Q. You and Frazer together? A. Yes, sir.

Q. What date was that? A. About the 19th of February, the 19th or 20th, something like that.

Q. Did you and he occupy the same room in
20 Craddock? A. Yes, sir.

Q. For how long? A. That day and—no, that night, and the next day, and that night and then I started out the next morning.

Q. Did you see under what name he registered?
A. Harry Devlin.

Q. While you were there did anybody come to visit you and he? A. Yes.

Q. Who? A. Ira Jansen.

Q. The last witness? A. Yes, sir.

30 Q. While you were there did you write a letter home? A. Yes, sir.

Q. And did Frazer address the envelope for you to put that letter in? A. Yes, sir.

Q. And did that letter reach home? A. Yes, sir.

Q. Have you got the envelope with you that Frazer addressed? A. Yes, sir.

Q. Is this it (handing envelope to witness)? A.
40 Yes.

William T. McGrath—Cross

Mr. David: I offer it in evidence.

Mr. Simpson: No objection.

(Envelope above referred to entered in evidence and marked Exhibit S-12.)

Mr. David: Cross-examine. 10

CROSS-EXAMINATION by Mr. Simpson:

Q. How old do you say you are? A. Sixteen.
I will be seventeen in—

Q. And you live where? A. Allenhurst.

Q. Allenhurst? A. Yes, sir.

Q. Did you live in Allenhurst when you met the defendant? A. Yes, sir.

Q. When did you leave Allenhurst? A. About 20
the 16th or 17th of February.

Q. And where had you stayed up till the time you met the defendant? A. At home.

Q. I mean, you left your home on the 16th? A. You mean at night, while I was traveling.

Q. No, you caught up with him, as I understand it, on the 20th? A. The 19th or the 20th, I am not sure.

Q. The 19th or the 20th. You left your home on the 16th? A. The 16th or the 17th. I am not 30
sure of that, either.

Q. Where were you in the interval between?
A. Where was I in the interval between?

Q. Yes, between the time you left home and the time you met the defendant. A. The first day I got to Philly, and stayed with my grandmother, and the second day I got a ride from Philadelphia into Richmond, Virginia.

Q. And where did he pick you up? A. At Pet- 40
ersburg, Virginia.

William T. McGrath—Cross

Q. And you rode with him how far? A. From Petersburg to Raleigh.

Q. How long did that take? A. It must have taken about three or four hours.

Q. He told you that he got mixed up with some
10 girl and she had had a child in the rear of the car? A. Yes, sir.

Q. And there was some trouble between the two families, is that what he told you? A. He didn't tell me there was some trouble between the two families, no.

Q. Well, he did tell you, however, that some girl had a child in the back of his car, is that right? A. Yes, sir.

20 The Court: He said they were going to try to fix it up between the two families, is that it?

The Witness: No, he didn't say that till the last night I was there.

The Court: But he said that, whenever it was?

The Witness: Yes, he said that later on.

30 Q. Where did you stop to get this dinner or meal that you had? A. It was an A. & P. store in South Hill and an A. & P. store at Raleigh.

Q. Where did you go after you got the beans, from there where did you go? A. We went on toward Raleigh and stopped along the road to eat it.

Q. Drive off the road? A. No.

Q. Just stopped the car right alongside of the road? A. Right along the highway.

40 Q. And you made a fire? A. Yes, sir.

William T. McGrath—Cross

Q. And cooked these beans on it? A. Yes, sir.

Q. It was there you say he put these clothes on the fire? A. Yes, sir.

Q. And they were burned? A. Yes, sir.

Q. Did you stay there after the clothes were burned or did you go on to a hotel? A. After 10
the clothes were burned we went on toward—
he stayed there till, I suppose, they were almost
out. I don't know, the fire was still smoking
when I was up on the running board of the car.

Q. When did you go out to Raleigh? A. When?

Q. You went to Raleigh? A. Yes.

Q. You say he registered under what name? A.
Harry Devlin.

Q. Harry Devlin. Was that the name he gave 20
you when you got in the car? A. He didn't give
me any name till that night in the rooming house.

Q. Then you never knew him by any name but
Devlin, is that right? A. Yes.

Q. You stayed in Raleigh, you say, two nights
and a day, or one day and night? A. Two nights
and a day.

Q. Then did you go on? A. I went on.

Q. Leaving him at Raleigh? A. Yes, sir.

Q. Did you go on down to Florida? A. Yes. 30

Q. Who did you first tell this to, about having
met him? A. I think it was Assistant Prosecu-
tor Houston, and Mr. Reilly was with him.

Q. Where did they find you, at your home in
Allenhurst? A. At my home, yes.

Q. In Allenhurst? A. Yes, sir.

Q. There you told them this story? A. Yes.

Q. You never saw the woman, of course, in the
car, did you? A. No. 40

William T. McGrath—Re-direct
Harold J. Seymours—Direct

Q. He was the only one in the car when you saw him? A. Yes, sir.

Q. You never saw this woman in the car at all?

A. No, sir.

10 Q. Is that right? A. Yes.

Q. All you know is he picked you up and he told you about a woman having a child and then you saw the clothes burned and that's all you know? A. Yes, sir.

Q. And the additional fact that he registered under the name of Devlin, is that right? A. Yes, sir.

Mr. Simpson: That's all.

20 RE-DIRECT EXAMINATION by Mr. David:

Q. At Craddock's, you registered under your right name of William McGrath and your residence as Allenhurst, New Jersey, is that right?

A. Yes, sir.

Mr. David: That's all.

30 HAROLD J. SEYMOURS, called as a witness on behalf of the State, being first duly sworn according to law, on his oath, testified as follows:

Direct-examination by Mr. David:

Q. Where do you live, Mr. Seymours? A. 1117 Bayway, Elizabeth.

Q. What is your business? A. Municipal engineer and land surveyor.

40 Q. In the City of Elizabeth? A. In the City of Elizabeth.

Harold J. Seymours—Direct

Q. And you made measurements of the Buick sedan car, Exhibit S-11? A. Yes, sir.

Q. Can you tell me the length of the car? A. The inside dimension or along over all?

Q. Yes.

The Court: Inside? Is that what you want, the inside measurement? 10

Mr. David: Well, I will ask him both.

A. From the instrument board to the inside rear it is 91 inches.

Q. Where is the instrument board? A. Why, just below the windshield.

Q. On the inside of the car? A. Yes, sir.

Q. What is the distance from the floor of the car to the inside top? A. 46 inches. 20

Q. And the width of the car between, half-way between the back of the front seat and the front of the back seat? A. 52½ inches.

The Court: What was that again?

(Question and answer repeated by the stenographer.)

The Court: I think that is rather confusing. I don't get it. 30

Mr. David: The question is the automobile's width, of that car half-way between the back of that front seat and the front of the back seat.

The Court: The width?

Mr. David: Yes, the width of the car at that point.

By Mr. David:

Q. What is the distance between the back of 40

Harold J. Seymours—Cross

the front seat and the front of the back seat?

A. The top of the back of the front seat?

Q. Yes. A. $14\frac{1}{2}$ inches.

Mr. David: That's all. Cross-examine.

10

CROSS-EXAMINATION by Mr. Simpson:

Q. What is the distance from the back of the front seat to the front of the back seat, on the floor, I mean? A. Oh, on the floor? $23\frac{1}{2}$ inches.

Q. And have you given us the depth of the back of the front seat, that is, from the floor right up to the top, in the center? A. $26\frac{1}{2}$ inches.

Q. What is the depth of the rear seat, the front of the rear seat? A. Above the floor?

20

Q. Yes. A. It is about 16 inches.

Q. 16 inches? A. Yes.

Q. And have you given us the front seat, the floor of the front seat from right in front of the front seat on the floor, what it is right to the dashboard in the front of the car there? A. To the instrument board?

Q. Yes. A. $11\frac{1}{4}$ inches.

30

Q. That is how much less, you say, than the rear, from the seat in the rear? You said the rear was 23, didn't you? A. Yes, that is on the floor.

Q. The floor measurement was 22 and on the front seat up to the instrument board is about what, did you say? A. About $11\frac{1}{4}$ inches.

Q. Have you given us the outside measurements, the wheel base and all that? A. No.

Q. What is that? A. I don't know.

Q. You didn't do that? A. No.

40

Exhibits Offered in Evidence

Mr. Simpson: That's all.

Mr. David: That's all. I will now call Mr. Reilly—maybe we won't have to put Mr. Reilly on. I am going to put the bullet in evidence, and Dr. Horre. He turned it over to Reilly. It is merely to establish that. 10

Mr. Simpson: That's all right. The doctor identified it, he said he turned it over to him.

Mr. David: I offer in evidence the bullet identified by Dr. Horre.

(Bullet above referred to received in evidence and marked Exhibit S-13.)

Mr. David: I now offer for the use of the jury the skull used by Dr. Horre in his testimony, that it might convenience the jury in their deliberation. 20

Mr. Simpson: I object to it as not being proven that it is the same kind of a skull as the skull of the deceased or it is the same in measurement or the same in particular form.

The Court: The object of the offer, I suppose, is to have the jury consider it together with the doctor's testimony, that the bullet entered the skull of this woman at a certain point. If there is objection to it, I won't allow it. 30

Mr. David: I offered it because I believe it will facilitate the summation and consideration of the case by the jury.

The Court: Well, the jurors saw the place the doctor indicated where the bul- 40

Discussion

let entered, both in that skull and on the Prosecutor's head, which he kindly loaned us for the purpose. I think they have a pretty fair idea of just where it entered.

10 Mr. David: Very well. State rests.

Mr. Simpson: I have some motions to make which I think ought to be made in the absence of the jury.

20 The Court: I will excuse the jury now for the balance of the day. You are not interested, of course, in any motions counsel for the defense makes, and he requests it to be made in the absence of the jury and I will allow that. I will declare a recess for five minutes.

(At this point a recess was taken and the jury left the court room.)

The Court: You may proceed, Mr. Simpson.

30 Mr. Simpson: May it please the Court, reserving the right of the defendant to put in a defense, I desire to move the Court to direct a verdict on the ground this Court is without jurisdiction to try this case. There is no proof at all in this case that the death occurred within the County of Union, which is the limit of the jurisdiction of this Court. I, of course, know that under Section 59 of the Criminal Procedure, and 60, and the State against James, 96 Law, that where the striking is
40 in one county and the death is another, or

Discussion

the striking is without the state and the death in a county in the state, that the Court of that county would have jurisdiction to try it. But the point I make, however, is there is no proof here that the death did occur within the County of Union, which is the limit, as I say, of your Honor's jurisdiction. The State may say that there is proof in the statement made by the defendant, but my argument is you have to prove the *corpus delicti* outside of the statement. In other words, you cannot use the statement to prove an evidential fact which is a part of the *corpus delicti*, and a part of the *corpus delicti*, especially as far as venue is concerned, is to show by proof that the death occurred in that county in which your Honor is sitting. I say the case is absolutely barren of any such proof, unless you take the statement of the defendant, the third statement, that he thinks that she was alive, as I remember it, when they passed a certain filling station. My point is that that is not enough to send it to the jury, because as proof rests now the State is certainly bound by the confession of the defendant, the alleged confessions, they cannot put in these statements and say they are worthy of proof and then go away from them, and on those statements it is a clear case of manslaughter, if anything, on the statements they offer. In addition to the fact they cannot go to them to prove the *corpus delicti*. It has been held that this sec-

Discussion

10 tion where there is a striking in one state and death in another does not apply to manslaughter, and only applies to murder, so I say as a question of law that as the proof now stands there is not anything to go to the jury to show that this Court has jurisdiction.

20 In other words, there is not a pretense, as I take it, of any proof that the shooting, whether intentional or accidental, was in the county of Union, the only proof they claim is there is some statement made by the defendant, out of that you can state that the woman was still living when the automobile entered the County of Union. I say they have to go outside of their confession, they have to show by proof outside of the statement a jurisdictional fact, and therefore our contention is that your Honor should at this time direct the jury to find a verdict of not guilty on this indictment, because this Court is without jurisdiction to try the matter.

30 The Court: Does that complete your motion?

Mr. Simpson: That is the whole of the motion. Of course, these cases your Honor is familiar with.

The Court: There is no other ground?

40 Mr. Simpson: No, excepting, your Honor, the ground of failure to prove beyond a reasonable doubt, the wilfull, premeditated, and felonious slaying, with malice aforethought. The burden on the State is to raise it to first degree and that

William M. Frazer—Direct

they have not done, and the State has failed to prove the facts which would warrant the jury finding a verdict of guilty of murder in the first degree, or in the alternative, murder in the second degree.

The Court: The motion will be denied, 10
and an exception allowed.

(Exception allowed. Signed and sealed accordingly. Alfred A. Stein, Judge.)

The Court: We will now recess until tomorrow morning at 9:30 sharp.

(At this point the Court recessed for the day.)

20

June 16th, 1931.

DEFENDANT'S CASE.

(Mr. Simpson opened the defense to the jury.)

WILLIAM M. FRAZER, the defendant, called as a witness on his own behalf, being first duly sworn according to law, on his oath, testified as follows: 30

Direct-examination by Mr. Simpson:

Q. How old are you, Frazer? A. Thirty-one years old.

Q. Where did you live at the time of your arrest in Raleigh? A. 519 Jefferson Avenue, Rahway, New Jersey. 40

William M. Frazer—Direct

Q. How long had you lived in Rahway, New Jersey? A. About twenty years.

Q. Is your mother alive? A. Yes, sir.

Q. Does she live in Rahway? A. Yes, sir.

Q. Are you married? A. Yes, sir.

10 Q. How long have you been married? A. Thirteen years.

Q. What family have you? A. A wife and two children.

Q. How old are the children? A. One girl is ten years old and the other is eight.

Q. And at the time of the war did you volunteer in the American Army? A. Yes, sir.

Q. And how soon after the declaration of war 20 did you volunteer and join the Army? A. I joined the Army the first part of 1918.

Q. Did you go overseas? A. Yes, sir.

Q. What regiment were you connected with? A. 4th Engineers, 4th Division.

Q. Were you engaged in any major battles? A. Yes, sir.

Q. How many? A. Four.

Q. What were those battles? A. Ascene-Marne, Meuse-Argonne, I believe San Miehle, and 30 the other I forget the name.

Q. Was gas used against your army in any battles you were in? A. Yes, sir.

Q. Did you see men gassed all around you? A. Yes, sir.

Q. And shell-shocked? A. Yes, sir.

Q. Were you at all wounded yourself? A. I was just hit in one hand.

Q. What battle was that in? A. Meuse-Ar-
40 gonne.

William M. Frazer—Direct

Q. When you came back, were you honorably discharged from the Army? A. Yes, sir.

Q. Who has your honorable discharge? A. My wife.

Q. And you attempted to obtain it? A. Yes.

Q. Have you been able to obtain it? A. No, 10
sir.

Q. When did you return? A. In 1919.

Mr. Simpson: Have you got his honorable discharge, Mr. Prosecutor?

Mr. David: No, you subpoenaed it and Mrs. Frazer is here with it, as I understand it, Senator.

Mr. Simpson: Yes, but I thought you 20
had it.

Q. When did you return to America? A. In the latter part of 1919.

Q. Did you inherit any money from your father? A. Yes, sir.

Q. How much? A. About seventeen thousand dollars.

The Court: You will have to talk louder than that because I hardly hear you here.

The Witness: All right. 30

Q. Of that seventeen thousand dollars did you give anything to your family? A. Supported them.

Q. I mean, did you invest any for your wife and children? A. I invested about eight thousand dollars in a house.

Q. How long had you known this lady who was killed, at the time of her death? A. Two years or over. 40

William M. Frazer—Direct

Q. Were you living with your wife during those two years? A. Yes, sir.

Q. When did you separate, if you did separate from your wife? A. I hadn't been in the house since the Friday preceding the accident.

10 Q. Where did you meet this woman—what is this lady's name? A. Stader.

Q. Stader. Where did you meet her? Had you been meeting Mrs. Stader for any period of time before her death? A. Practically every day.

Q. For how long a period of time? A. About eighteen months.

20 Q. And had there been any discussion about she and you getting a divorce and you marrying her? A. Yes, sir.

Q. Did you want to marry her? A. Yes, sir.

Q. On the 16th of February where did you meet her? A. I met her on the road from Belleville to Passaic, a place called Rutt's Hut.

Q. With her sister? A. Yes, sir.

Q. Was that by prearrangement? A. Yes, sir.

30 Q. Was she then living with her husband or had she separated from her husband? A. They had broken up house.

Q. Where was she going? A. To her sister's, in Walden.

Q. What time did you meet her on the 16th of February? A. About eleven o'clock.

40 Q. Now, you take the recital there and tell these gentlemen what happened from eleven o'clock on the 16th of February until this accident. A. I was having my breakfast in Rutt's Hut, when Mrs. Stader drove up in a car and

William M. Frazer—Direct

her brother came in the restaurant to see if I was there because he seen the car was in front, and I went out with him and got in my car and Mrs. Stader and her sister June came and sat in my car and rode in it all the way up to Walden.

The Court: My attention is called, Mr. Simpson, that juror number 8, says that he cannot hear the defendant. Now, this is a serious matter for the defendant. I have twice requested him to speak so even I could hear him. 10

Mr. Simpson: Now, these men have to hear your story to either believe it or disbelieve it. They cannot do either if they don't hear you. So instead of facing me, face around here and tell these men what happened and look at them when you tell them. 20

A. (Continuing.) Mrs. Stader's brother came in the restaurant to see if I was there and he went out with me and I got in my automobile and Mrs. Stader and her sister got out of the automobile they were in and came in and sat in the front seat with me and we drove up to Walden, within several thousand yards of her sister's house, where she got out with her sister and got in the other car. Before she got out I made an arrangement with her to meet her at three o'clock in the afternoon. I picked her up at three o'clock in the afternoon and we took a ride to a roadhouse outside of Walden and we were there drinking and had our supper, till possibly eight or nine o'clock in the evening. From there we went to see an acquaintance at Florida, New 30 40

William M. Frazer—Direct

York. We stayed there till—we stayed there a short time, we were drinking there. From there we rode back to Walden and Mrs. Stader got out in front of her sister's house and I had an arrangement to meet her at one o'clock the following afternoon. I got up the next morning—I stayed in a hotel in Walden that evening and the next morning I got up about ten or eleven o'clock and went out and had my breakfast and came back to the hotel with some newspapers to read until one o'clock, and I finished up what cigarettes I had and went out to get more and I was on the street in Walden when her sister June spoke to me and I talked to her a while, took her to several stores where she had to go and rode her within a short distance of where she was staying.

Q. Are you talking about the 16th or the 17th now? A. The 17th.

Q. You haven't told them about the 16th. Have you told the gentlemen about the 16th, what you did on the 16th, when you went to the moving pictures, and drank? A. The 17th.

Q. What did you do on the 16th? A. I picked Mrs. Stader up in the morning and rode her up to Walden.

Q. Did you get out with her to a restaurant or drink with her on the 16th? A. From the afternoon of the 16th I was out till ten o'clock at night, drinking with her.

Q. Where did you drink with her? A. Drank at a roadhouse in Walden.

Q. What did you drink? A. Applejack highballs.

William M. Frazer—Direct

Q. How long were you drinking? A. From about half-past three continuously until about half-past nine.

Q. Then you delivered her at her home? A. I did.

Q. Then the next day what time did you see her? A. One o'clock in the afternoon. 10

Q. Where did you see her? A. Practically in front of her sister's house in Walden.

Q. What happened, did she get in the car? A. She got in the car.

Q. Then tell these gentlemen what happened. A. Then we rode to Newburgh and she said she hadn't had her breakfast yet so we went to a Chinese restaurant there and she ordered breakfast and I ordered a sandwich, because I had already eaten. While we were sitting there talking and she was eating, we ordered ginger ale and we drank highballs. 20

Q. Highballs of what? A. Applejack and ginger ale.

Q. What time of the day was that? A. About half-past one o'clock Saturday.

Q. How many highballs do you think you drank? A. We had over a quart of liquor. 30

Q. That was in the Chinese restaurant? A. We drank about a pint and a half of liquor in the Chinese restaurant.

Q. Is that where she had her breakfast? A. Yes, sir.

Q. When you came out of the Chinese restaurant, where did you go? A. We went to a moving picture.

Q. Where? A. In Newburgh. 40

William M. Frazer—Direct

Q. Do you know the name of the theatre? A. No.

Q. You know the name of the picture was at the theatre? A. It was "The Right to Love," Ruth Chatterton featuring.

10 Q. And how long did you stay at that picture, "The Right to Love"? A. Until the show was finished.

Q. About what time was that? A. About three-thirty or four o'clock.

Q. Then what did you do? A. Then we got in the car and drove back to the Chinese restaurant and went in again and drank more highballs and got our supper.

20 Q. How long were you in the Chinese restaurant when you came out around three o'clock from the moving picture? How long did you stay in the Chinese restaurant? A. Until seven o'clock.

Q. That is, from about three to seven? A. (Witness nods head negatively.)

Q. Four to seven, five to seven, or what? A. No, about four-thirty till seven o'clock.

Q. Then what did you do? A. Then we went to see Richard Dix in "Cimmaron."

30 Q. "Cimmaron"? A. Yes, "Cimmaron."

Q. The same theatre? A. A different theatre.

Q. How long were you there at that theatre? A. The end of the first show.

Q. Well, what time did you get out? A. About nine o'clock.

Q. Then what did you do? A. We went and got in the car and drove towards Walden.

Q. From Newburgh? A. From Newburgh.

40 Q. That is in a northerly direction? A. I guess so.

William M. Frazer—Direct

Q. How long did you drive on the road from Newburgh to Walden? A. The road was covered with snow and there was only enough room on it for two cars to go and we had to go slow because it was slippery and rainy. It took us practically a half an hour to go from Newburgh toward Walden and we wanted to talk some things over so we turned up a side road. 10

Q. A country road? A. A country road, up there, till there was a crossroad off there and we turned and stopped on the crossroad.

Q. Is that a left or a right turn on your way from Newburgh? A. Turned to the right.

Q. On this country road? A. Yes, sir.

Q. How far did you go into it? A. Possibly 20 a quarter of a mile.

Q. Then what did you do? A. Turned to a spur that went to the left.

Q. Did you park your car? A. Yes, sir.

Q. Did you and she get out of the front seat and go on the back seat? A. She climbed over the front seat and sat in the back seat and I got out of the front door and got in the left-hand rear door and sat down.

The Court: You will have to keep your voice up if you want me to hear you. What was that answer? 30

(At this point the stenographer repeated the former answer as follows: "Answer: She climbed over the front seat and sat in the back seat and I got out the front door and got in the left-hand rear door and sat down.")

William M. Frazer—Direct

Q. What were you and she doing in the rear seat? A. We were talking over what we were going to do.

Q. Did you have any liquor in the car? A. Yes, sir.

10 Q. Where was the liquor? A. In the rear of the car.

Q. What kind of liquor did you have? A. Applejack.

Q. Where have you gotten it? A. In Florida, New York.

Q. How much did you have in the car? A. Had a pint in the car then.

20 Q. While you and she were talking in the rear seat did you drink the liquor? A. Yes, sir.

Q. How much of it did you drink? A. About a half a pint.

Q. And how did you drink it, straight or— A. Straight.

Q. Out of the bottle or out of glasses? A. Out of the bottle.

Q. Now, how long were you and she talking in the rear seat? A. Well, we must have been there quite a while.

30 Q. What were you talking about? A. Mrs. Stader had said previously that they had been evicted from their house in Rahway because they had not paid the rent, and I was intending to go in business in a restaurant in Westfield, New Jersey, and she knew that, and she had made up her mind to live in New Jersey and board in New Jersey, Irvington, New Jersey, while I was running this restaurant until I had secured a di-
40 vorce.

William M. Frazer—Direct

Q. Your wife agreed to give you a divorce? Did you tell in this conversation—did you tell this woman that you thought you could get a divorce? A. Yes.

Q. What did she say about the effect of that divorce? Did she or did she not say anything about being married to you if you got your divorce? A. She was willing to be married to me. 10

Q. How old a woman was she? A. About 33, 34.

Q. Was she a blond or a brunette? A. A brunette.

Q. After you talked to her about marriage, did you talk about going to Florida? A. I expected to take this restaurant over within three or four weeks and we had decided to take a trip to Florida previous to taking the restaurant because after I had been there, after I had taken it over, I would not have time to spend my time elsewhere. 20

Q. How long were you in the rear seat with her? A. A half or three-quarters of an hour.

Q. Did she finally leave the rear seat and go in the front seat? A. Yes.

Q. How did she get in the front seat? A. Climbed over the front seat. 30

Q. Where did she sit in the front seat, to the left or right? A. On the right-hand side.

Q. When she got out, was there a rifle in the back seat? A. Yes, sir.

Q. About what position was the rifle in? A. It was between the cushions in the rear of the back seat and the bottom of the back seat.

Q. Between the cushions? What do you mean by that? A. Shoved down. 40

William M. Frazer—Direct

Q. Just come down and show me. I do not understand you.

The Court: Do you want the jurors to see that, Mr. Simpson?

10

Mr. Simpson: Yes, your Honor.

The Court (to the jury): The jurors will step over there to the automobile. You will have to talk loud enough for the stenographer to get it and for the Court to hear it.

Mr. Simpson: Will the Court and the stenographer come down here?

: 0

The Court: The stenographer can but the Court won't. You will have to talk loud enough so we can hear you over here.

(The witness left the witness stand and went to the automobile.)

(The jury went to the automobile, State's Exhibit 11.)

By Mr. Simpson:

Q. The Judge says that you will have to talk loud. Show me where that rifle was in the sedan.

30

A. (The witness indicated.)

Mr. Simpson: The witness put the rifle between the cushions at the extreme rear of the car.

By Mr. Simpson:

Q. Then what was the next thing that happened after she got in the seat? What did you do? A. I was sitting in that position—

40

Mr. Simpson: He says he was sitting in this position.

William M. Frazer—Direct

Mr. David: I insist that the witness tell his story.

By Mr. Simpson:

Q. Tell where you were seated. A. I was sitting on the left-hand side of the rear seat.

Q. Where was she sitting? A. She was sitting in the front seat on the right-hand side. 10

Q. Was there anything else near the back of the car in front of her? A. There was a traveling bag and a blanket.

Q. Where were they located with reference to the rear seat? Were they up against the back of the front seat? A. They were up against the back of the front seat.

Q. What, if anything, did you do with the rifle when you sat in the position you say you did? A. Mrs. Stader asked for another drink and while I was hunting for the bottle to hand it to her, I said I didn't like the neighborhood. It was dark and lonesome and I was unacquainted with the neighborhood and I didn't want to stay there and she said, "Get the rifle that you have in the car and put it up front." So I proceeded to pick the rifle out from underneath the seat and get the liquor bottle. 20 30

Q. Where was the liquor bottle? A. It was on the floor.

Q. Then what happened while you were doing either of those things? Did anything happen? A. I started to open the left-hand door, preparing to open the door to get out.

Q. With your left hand as you sat in the car? A. Yes, I was bringing the gun from underneath the seat and preparing to get out of the car. 40

William M. Frazer—Direct

Q. For what purpose? A. To get in the front seat, and whether or not I fell over the suitcase or tripped on the footrail, or my hand slipped on the door, I do not know, but I know the gun went off and I fell partly out the car.

10 Q. After the gun went off and you had fallen partly out of the door what, if anything, did you notice about the young woman? Did you hear her say anything or see her do anything? A. She said either "Ah" or "Oh." It wasn't finished, whatever it was.

Q. Then what did you do? A. I got up and jumped in the front seat.

20 (The witness returned to the witness stand. The jury returned to the jury box.)

Q. What did you do with reference to her? A. I seen that her body had relapsed and it was leaning up against the window.

Q. Which window? A. The right-hand front door.

Q. Then what did you do? A. I started to back the car out.

Q. Did you speak to her? A. I spoke to her.

30 Q. Did you feel her? A. I spoke to her and shook her.

Q. Did she answer? A. She didn't answer.

Q. Where did you touch her on her body when you shook her? A. On her breast.

Q. Do you know whether or not her body or hands were cold? Did you try them at all? A. Not then.

Q. You did back out, finally? A. I backed out.

40 Q. In what direction did you point your car?
A. Towards Walden, the way I had entered.

William M. Frazer—Direct

Q. Did she speak to you from the time that the gun went off until you got to Rahway? A. No, sir.

Q. What position, if any, was she in until you got to Rahway? A. She was sitting practically straight up, with her head leaning toward the front right, resting on the front window pane. 10

Q. About how long was it from the time you left the moving picture until you started for Rahway? A. (No answer.)

Q. Do you remember? If you do not, say so. A. I don't know.

Q. About how much applejack had you drunk during that time, up to the time you started home for Rahway? A. A quart and one-half. 20

Q. That is, between the two of you? A. Between the two of us.

Q. When you got to Rahway, do you know what time it was? A. I believe it was a little after midnight; I am not sure.

Q. Where did you go when you got to Rahway? A. To my mother's house, 67 Cherry Street.

Q. What did you do? A. I woke Mr. Jansen out of bed. 30

Q. Then what did you do? A. I went into his room and he got back in bed and was sitting in the bed and I sat at the foot of the bed and he said, "Where have you been?"

I says, "I have been up to Walden."

He says, "What is the matter?"

I said, "I am in a beautiful mess now."

He asked me what it was and I said that Phoebe was dead out in the car. 40

He said, "How did it happen?"

William M. Frazer—Direct

I said, "I don't know."

He said, "What are you going to do?"

I said, "I don't know; what is there to do?"

He says, "There is only a couple of things to do; either commit suicide or turn yourself in."

10 I said, "Well, we better go up to my house and talk to my wife."

We stayed in my mother's house possibly an hour talking and he got dressed and got in the rear seat of the car and drove up in back of my own house on Jefferson Avenue. He and I got out of the car and went in my house. We went upstairs to the bedroom my wife was sleeping in and woke her up and she started—wanted to know where I had been and I told her never mind,
20 I was in some trouble and she said, "What is it?"

I said, "There is somebody dead out in the car."

She said, "Who is it?"

I said, "You know well who it is."

She said, "Phoebe Stader?"

I said, "Yes."

Then she got up and put her bathrobe on and sat on the head of the bed and I sat on the foot
30 of the bed and we went over a discussion what there was to do, and both she and Jansen said that there was practically nothing else to do but either commit suicide or turn myself in, so I stayed there a while and Jansen and I went out in the car and drove out in the country.

Q. With the dead body still in the car? A. In the front seat.

Q. You were sitting alongside of this— A. Yes,
40 and Jansen sat in the back seat and when we got out in the country I stopped and told him to go

William M. Frazer—Direct

ahead and get out of the car. I was going to try and commit suicide and if he heard a shot explode to come back and go on home, and I was there fifteen or twenty minutes trying to do it, but I could not do it, so I honked the horn and he came in and said, "What is the matter?" 10

I said, "I haven't nerve enough to do it" and he stood there and talked a while and I said, "Take another walk and I may be able to do it this trip," and again I was unsuccessful.

Q. What was your idea in committing suicide? What was your purpose? A. There wasn't much sense in living. I had loved Mrs. Stader and she was dead through an accident.

Q. That was your reason for wanting to commit suicide? A. Yes. 20

Q. Then you say you did not get nerve enough to do it the second time. Then what did you do? A. Jansen came back to get in the car. He came to the car and we wondered what we were going to do, what I was going to do. He said, "The only other thing left is either turn yourself in or take it on the fly." One looked as bad as the other. So I thought I might as well try and take a chance to beat it and prolong it as long as I 30 could.

Q. Then where did you go? A. I picked Mrs. Stader up from the front seat and put it on the floor of the rear seat.

Q. Did you cover it? A. With a blanket.

Q. Then what did you do? A. Jansen got in the front seat and drove down to his mother's house.

Q. Who drove? A. Drove down to my mother's house. 40

William M. Frazer—Direct

Q. Who drove? A. I drove. There he got out and he went in the house and got a box which I put over Mrs. Stader and covered it with a blanket and went back in the house. I went in the house and stood up a few minutes and then went
10 to bed.

Q. Where was the car with Mrs. Stader's body? A. On Campbell Street.

Q. Rahway? A. Rahway.

Q. Then what happened? What is the next thing you did? A. The next thing, I woke up in the morning and somebody was telephoning. It was my wife wanting to know where I was, speaking to Jansen.

20 Q. Your wife? A. Yes, he said I was there, and she wanted to talk to me, so I told her not to talk on the telephone, to come on down, and she came down. I asked her to get me some clothes and bring them down so I could go away and she went back to the house and got them and brought them down and I packed them up and left.

Q. Where did you go first? A. I—previous to leaving I sent Jansen up to my house to get a
30 flashlight that was there and he went up and got the flashlight and met me on the corner of St. George Avenue and Pierrepont Street and handed me the flashlight and I left him there and went towards Philadelphia.

Q. Did you get to Philadelphia? A. I got to Philadelphia.

Q. What date? A. February 18.

40 Q. Then what did you do? A. I stopped on the outskirts of Philadelphia and got gasoline and went on to Baltimore and Washington.

William M. Frazer—Direct

Q. Did you stay all night in Baltimore or Washington? A. I rested up half an hour or so in Baltimore and I parked the car on a street in Washington for three or four hours.

Q. What time did you finally arrive at Raleigh? What date did you arrive at Raleigh? A. February 19. 10

Q. What date were you arrested in Raleigh? A. Without a calendar I could not tell you.

Q. You do not know what date you were arrested? A. No, sir.

Q. I show you a map marked State's Exhibit 5. Did you see that map in Raleigh? A. Yes, sir.

Q. Was anything done by you with reference to that map? A. Nothing but give a general outline which way I came down from Jersey. 20

Q. Did you have an attorney in Raleigh? A. Yes, sir.

Q. Referring to the third statement made here by you, you signed that third statement, did you not? A. I signed three statements, yes.

Q. I mean the last statement which is referred to as the one signed in the afternoon. Did you sign that after a talk with your attorney? A. Yes, sir. 30

Q. What was that talk with your attorney?

Mr. David: I object to that as incompetent.

Mr. Simpson: It is offered as a voluntary statement. If that statement was made by this man as a result of an inducement held out to him by his attorney after a conference with the Prosecutor of Union 40

William M. Frazer—Direct

10 and others, then it is not admissible in evidence because it was made under a promise. The purpose of this question is to show that a promise had been made to his attorney, which was conveyed to him of benefit to him if he made this third statement. In other words, it was a statement made under a promise of immunity.

The Court: How can the State be bound by any promise that some attorney might make?

Mr. Simpson: Because the State had used him as an agent.

The Court: There is no such evidence.

20 Mr. Simpson: Well, the evidence will come from this witness that in the presence of the Prosecutor and the other officers, that this man, who was his attorney, said before he made the third statement—

Mr. David: Just a minute. I object to counsel attempting to put in the record anything that some witness may say who— if there is any such witness, let him be produced.

30 The Court: Objection sustained.

Mr. Simpson: Exception.

(Exception allowed. Signed, sealed accordingly. Alfred A. Stein, Judge.)

By Mr. Simpson:

40 Q. Who was present before you signed this third statement in Raleigh at the time you were being interrogated about the third statement by the Prosecutor? A. Mr. David, myself, Mr. Aaronson, Mr. Wagner, a gentleman from Orange County, and two officials from Raleigh.

William M. Frazer—Direct

Q. Was Mr. Aaronson—is that the name of your attorney? A. Yes.

Q. Did he say anything to you in the presence of the Prosecutor before you made a third statement as to why you should or should not make that statement in the presence of the Prosecutor? 10

A. The three of us were sitting—

The Court: Answer yes or no.

By Mr. Simpson:

Q. Did he make a statement? A. Yes.

Q. What did he say to you in reference to your having or not having an advantage in this proceeding if you made that third statement in the presence of the Prosecutor of Union County? 20

The Court: The Prosecutor and the other persons you mentioned.

By Mr. Simpson:

Q. Yes, the other persons you have named. A. Mr. Aaronson said I would get a break if I had the death in Union County.

Q. You would get a break? A. Yes.

Q. Is that the reason that you made the third statement and traced the route on the map? A. 30
Yes.

Q. When you were brought back from Raleigh, where were you brought? To Rahway? A. Elizabeth.

Q. How long were you—

By the Court:

Q. Let me ask you a question at that point. You say that Mr. Aaronson said you would get a break? A. Yes, sir. 40

William M. Frazer—Direct

Q. You say this shooting was accidental? A. Did I say?

Q. You say that the shooting was accidental? A. Yes, sir.

Q. What break did you want? A. Just a fair
10 break, that's all.

Q. What do you mean by that? A. (No answer.)

Q. Can you tell me? If you cannot tell me, say so. A. All right.

Q. Can you tell me? If you cannot, say you cannot. A. Well, I had the impression they may be a little more lenient than otherwise.

Q. Why did you look for leniency? A. No
20 special reason.

The Court: All right.

By Mr. Simpson:

Q. When you said in answer to the Judge that you would get a break, did you mean in that statement that you would not be prosecuted as if you had committed first degree murder, but they would give you a fair investigation as to whether or not this was accidental?
30

Mr. David: I object to the question.

The Court: Objection sustained. He has answered. The question is objectionable as put.

Mr. Simpson: Exception.

(Exception allowed, signed, sealed accordingly. Alfred A. Stein, Judge.)

By Mr. Simpson:
40

Q. What time did you say you were brought back to Elizabeth? A. I believe it was a Friday.

William M. Frazer—Direct

Q. Do you know the date of the month? A. No, sir.

Q. The Prosecutor, in opening to the jury, said that he would prove that you wilfully, premeditatedly, and with malice aforethought discharged this gun in and upon the body of this woman, intending to kill her. Did you have any reason whatever to kill this woman? 10

Mr. David: I object.

The Court: Yes, the Prosecutor's statement to the jury is not evidence.

By Mr. Simpson:

Q. Did you, when the gun went off, intend to have it go off or was it accidental? A. It was accidental. 20

Q. Up to the time the gun went off, what were your relations with this woman? Were they pleasant and affectionate, or otherwise? A. Pleasant and affectionate.

Q. Before the gun went off, while you were in the rear seat, had either of you manifested affection toward each other by kissing or embracing? A. We did a little necking.

Q. By that, you mean embracing? A. Yes, sir. 30

Q. How long was that?

The Court: Suppose you let him tell what he means.

Mr. Simpson: I have no doubt what he means by necking, although I would not use the term myself. The jury may not know what necking means.

William M. Frazer—Cross

By Mr. Simpson:

Q. The Judge has very properly said, suppose you say what you mean by necking. A. Hugging and kissing.

10 By the Court:

Q. That is what counsel asked you. You said you did a little necking. You did do hugging and kissing, is that right? A. Yes.

By Mr. Simpson:

Q. How long have you been on friendly terms with this woman who was shot, Mrs. Stader, up to the time of her death? A. About two years.

20 Q. At the time that you have described reaching for this rifle to bring it out from between the cushions, when it went off, did you notice what position, if any, this woman was in the front seat? A. (No answer.)

Q. I mean, was she sitting erect or how? A. I believe she was sitting in the front seat, fixing her stockings, leaning over.

Q. Leaning over toward the front? A. Yes, sir.

30 Mr. Simpson: Cross-examine.

CROSS-EXAMINATION by Mr. David:

Q. Frazer, you have told us pretty much in detail what you did from the time you met Mrs. Stader on February 16, all through that day and night, and you have told us what you did on the 17th, including the fact that at the time the gun went off, she was leaning over, fixing her stockings, haven't you? A. Yes, sir.

40

William M. Frazer—Cross

By the Court:

Q. Speak up, please. A. Yes, sir.

The Court: I will ask you again to speak so your counsel and the Court and jury can hear you. Your counsel may want to object to something, but if he cannot hear you, he won't do it, and the jurors won't consider your testimony. They are not obliged to, if they do not hear it. Keep your voice up. 10

By Mr. David:

Q. So your mind was clear enough that night so that you do recall now every detail of where you went, what you ate, what you drank, backing out your car, stepping in the back seat, getting the gun, including the fact that at the time the gun went off, Mrs. Stader was reaching over, fixing her stockings. Your mind was that clear so you remember all those details, was it not? 20

Mr. Simpson: I object to the question as argumentative, and secondly, it is not a question so much as a summing up. He is arguing with the witness that he remembers clearly because of this and that and according to the other thing. 30

The Court: To say the least, the intimation is given by the testimony offered concerning the drinking that the man's mind was affected by the drinking, and this is cross-examination upon that very point, recalling to his attention now the minuteness of the details, which he relates 40

William M. Frazer—Cross

concerning his movements and what he did on that occasion.

Mr. Simpson: Yes, but the defense is not insanity. We simply say he had been drinking.

10 The Court: I understand that. This is directed to the clarity of mind, notwithstanding the drinking. I think it is perfectly proper, and I will allow it.

(The stenographer read the last question as follows:

20 "Question: So your mind was clear enough that night so that you do recall now every detail of where you went, what you ate, what you drank, backing out your car, stepping in the back seat, getting the gun, including the fact that at the time the gun went off, Mrs. Stader was reaching over, fixing her stocking. Your mind was that clear so you remember all those details, was it not?")

A. Yes, sir.

30 By Mr. David:

Q. You were not drunk in the Chinese restaurant, were you? A. I had been drinking in the Chinese restaurant.

Q. I say, you were not drunk in the Chinese restaurant, were you? A. That depends what you mean, drunk.

40 Q. Well, what do you mean by drunk? A. You can still be drunk and have your—know what goes on. You can be drunk without falling down.

William M. Frazer—Cross

Q. You walked all right in the Chinese restaurant when you went out, didn't you? A. I wasn't carried out.

Q. You walked all right, didn't you? A. I walked out, yes.

Q. The same as any other person would walk out? A. Maybe not as straight. 10

Q. And you talked all right in the Chinese restaurant, didn't you? A. I could not tell you.

Q. Would you recognize the owner of that restaurant, if you saw him? A. I don't know who owns it.

Mr. David: Will the proprietor stand up? 20

(A man stood up in the court room.)

By Mr. David:

Q. Do you recognize that man (indicating)? A. I don't know.

Q. Did you see him there that night? A. I could not tell you.

Q. When you got to Rahway and had your talk with Jansen, did you tell him that the shooting was accidental? A. Yes. 30

Q. What did you say to him about the shooting being accidental? A. I said that Mrs. Stader had been accidentally shot and was dead.

By the Court:

Q. Just a moment. Didn't you say a while ago, "I told my nephew when he asked me how did it happen, I said I didn't know." Did you testify to that a while ago? A. Yes, sir; but I meant that I— 40

Q. You did testify that way? A. Yes, sir.

William M. Frazer—Cross

By Mr. David:

Q. Where were you when you said, as you now say, to your cousin, Ira Jansen, that the shooting of Mrs. Stader was accidental? A. When I was talking with him at my mother's house.

10 Q. What time was that? A. It must have been some time Wednesday morning early.

Q. About what time? A. I could not say.

Q. And you are sure that you said to Jansen at that time and in your mother's house that the shooting of Mrs. Stader was accidental, is that right? A. Yes.

Q. You are positive of that? A. Yes.

20 Q. You are on good terms with your cousin, Ira, aren't you? A. Yes.

Q. He came down to Raleigh and brought you your get-away money, didn't he?

Mr. Simpson: I object to the "get-away money."

The Court: Yes, the characterization is objectionable. The testimony is that he brought two hundred dollars.

30 Mr. David: The witness has already testified himself that his object was to get away.

Mr. Simpson: Yes, but that is not the objection. It is the characterization by the Prosecutor of the "get-away money."

Mr. David: If your Honor please, I do not know any better way to characterize it.

40 The Court: That is for the jury to say whether or not it was "get-away money." It is a question of fact to determine. I think that as put, it is objectionable.

William M. Frazer—Cross

By Mr. David:

Q. He did bring you down two hundred dollars with which you were going to get away from the authorities, didn't he? A. He brought me down two hundred dollars.

Q. For that purpose, wasn't it? A. Yes. 10

Q. So it was "get-away money"? A. (No answer.)

Q. Did you say to your wife that the shooting of Mrs. Stader was accidental?

Mr. Simpson: Will you fix the time?

A. I don't remember.

By Mr. David:

Q. When you left your mother's home with Jansen and went to see your wife at her home, did you tell her that the shooting was accidental? A. She asked what happened, and I told her none of her business. 20

Q. What else did you say to her? A. I don't remember.

Q. Isn't it so that there wasn't any person in the world that you said this shooting was accidental to until after you saw your lawyer in Raleigh and made your statement? 30

Mr. Simpson: I object to that.

(The stenographer read the last question as follows: "Question: Isn't it so that there wasn't any person in the world that you said this shooting was accidental to until after you saw your lawyer in Raleigh and made your statement?")

A. No. 40

William M. Frazer—Cross

By Mr. David:

Q. Who is there that you said to that this shooting was accidental? A. Jansen.

Q. Is he the only one? A. Outside of my attorneys.

10 Q. I say, until you got to Raleigh and had your attorney, Aaronson, the only person that you ever spoke to that this shooting was accidental was Jansen? A. He is the only person I had seen, besides my wife.

Q. You saw McGrath, didn't you? A. Why should I discuss it with him?

Q. I say, you saw McGrath, didn't you? A. Yes, sir.

20 Q. And you had him in your car down in Virginia, didn't you? A. Yes.

Q. And you told him that what happened in your car was that a woman gave birth to a child, didn't you? A. Yes.

Q. That was a lie, wasn't it? A. Yes.

Q. Well, if the shooting was accidental, why didn't you tell him that there was an accidental shooting in your car? A. Why should I?

30 Q. Is that the best answer you can give to that question? Is it? A. Why should I discuss my affairs with a stranger?

Q. Is that the best answer you can give to that question? A. At present.

Q. Do you want a little more time to think over another answer? A. No, sir.

Mr. Simpson: I object to that as not proper cross-examination.

40 The Court: I think it is proper. There is a wide latitude allowed—

William M. Frazer—Cross

By Mr. David:

Q. Then why did you say to McGrath that what happened in your car was that a woman had given birth to a child? A. Because there was blood and clothes in the car.

By the Court:

10

Q. Did you mean bloody clothes or blood and clothes? A. Both.

By Mr. David:

Q. You did not want him to know that a woman had been shot in your car, did you? A. No, sir.

By the Court:

Q. Where was the blood in the car? A. There was some on the right-hand front door and on the rear of the floor. 20

Q. Who removed it? Who removed the blood on the car? A. It is there yet.

Q. It is there yet? A. Yes, sir.

Q. Can it still be seen there? A. I believe so.

Q. Do you know? A. I haven't looked at it.

By Mr. David:

Q. You say that the reason you went out on the road with Jansen to commit suicide was that there was no use of living; is that so? A. Yes, sir. 30

Q. Because Phoebe Stader was dead; is that right? A. Yes, sir.

Q. Have you any children? A. Two.

Q. Weren't they some reason why you should want to live? A. Indirectly.

Q. What do you mean by that? A. If I had died, they would have been taken care of, though. 40

William M. Frazer—Cross

Q. Your money was all gone, wasn't it?

Mr. Simpson: May I have that last answer, please?

10 (The stenographer read the last answer as follows: "Answer: If I had died, they would have been taken care of, though.")

The Court: Won't you please talk loud enough so that your counsel can hear you?

By Mr. David:

Q. Your money was all gone, wasn't it? A. No, sir.

20 Q. What money did you have at the time you went away? A. What do you mean?

The Court: How much money?

By Mr. David:

Q. Plain money? A. Quite a bit.

Q. How much? A. I could not tell you off-hand.

Q. Give me any idea that you have about how much money you had? A. I wasn't broke.

By the Court:

30 Q. Can you give any idea how much you had? A. I can't give an estimate.

Q. You cannot tell within a thousand dollars of what you had? A. I had over a thousand.

Q. Can you tell whether or not you had five? A. Five thousand dollars cash?

Q. Yes. A. No, I didn't have \$5,000 cash.

Q. Three? A. Possibly two.

By Mr. David:

40 Q. Where did you have it? A. In a safe deposit box.

William M. Frazer—Cross

Q. Where? A. I don't know where it was.

Q. Was it in the State of New Jersey?

Mr. Simpson: I object to that as not proper cross-examination.

The Court: I will allow it.

Mr. Simpson: There is no financial element in this thing at all whether or not he had \$2 or \$200,000, of where he had it. 10

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

Mr. Simpson: Exception.

(Exception allowed. Signed, sealed accordingly. Alfred A. Stein, Judge.)

By Mr. David: 20

Q. Was it in the State of New Jersey? A. Yes.

Q. Where? A. There was some in a safe deposit box in Rahway.

Q. What is the number of the box? A. I don't know.

Q. Where is the key? A. I don't know.

Q. Where else was there any money? A. There was several small check accounts.

Q. Where? A. In New Jersey.

Q. Where in New Jersey? A. One in Jersey City and one in Rahway. 30

Q. What is the name of the bank in Jersey City? A. West Bergen Trust Company.

Q. How much was there? A. A small amount.

Q. How much? A. I don't know.

Q. \$9, \$90, \$900 or \$9,000? A. I don't know.

Q. Can you give me any idea? A. I said it was a small amount; I don't know.

Q. What do you mean by a small amount? A. 40
Less than \$100.

William M. Frazer—Cross

Q. What was the name of the bank in Rahway?

A. Citizens National Bank.

Q. How much was there? A. There wasn't much there, either.

Q. How much? A. There was an account I
10 had not used there for quite a while. I think there was four or five dollars there.

Q. You say you loved Mrs. Stader very much?

A. Yes.

Q. Why, then, didn't you give her a burial?

Mr. Simpson: I object to that as not
proper cross-examination. He does not say
he loved a dead body; he loved a live
woman. In the second place, it has no part
20 on any murder. He is being tried under
an indictment for murder and it does not
help the jury to ask him why he did not
inter the remains of this woman.

The Court: Well, he gives his reason
for wanting to commit suicide that there
was nothing more to live for after Mrs.
Stader died, he loved her so much, and that
going to the jury, I think the Prosecutor
has a perfect right to cross-examine him
30 to see how much he did love her by his acts
and conduct after her death. I think that
is proper.

(The stenographer read the last question
as follows: "Answer: Why, then, didn't
you give her a burial?")

A. What opportunity did I have outside of
what you spoke once in your office?

William M. Frazer—Cross

By Mr. David:

Q. Is that the only answer you can give to this question? A. My attorney advised me not to write to anybody from the jail.

Q. I now ask you before you got to Raleigh at any time why didn't you give her a decent burial? 10

A. What excuse could I have for having a dead body?

Q. Why did you cut the clothing off her body? A. To help myself.

Q. Why did you drag her nude body out in the woods and leave it there? A. The same reason.

Q. What reason is that? A. To assist myself. 20

By the Court:

Q. What did you expect by way of assistance to yourself by placing her body in the woods, nude? A. To remove marks of identification.

Q. To remove marks of identification? How did you hope or expect to have those marks of identification removed by placing her nude body in the woods? A. I misunderstand you.

(The stenographer read the last question as follows: "Question: To remove marks 30 of identification? How did you hope or expect to have those marks of identification removed by placing her nude body in the woods? A. I don't know.

By the Court:

Q. You must have had some idea, if that was your purpose, to remove the marks of identification. Did you expect anything to happen to her body? A. No, sir. 40

Q. Nothing? A. (No answer.)

William M. Frazer—Cross

By Mr. David:

Q. You were acquainted down in Virginia, weren't you? You had been there before? A. Yes.

10 Q. You knew that if that nude body were left out in the woods where you left it, that the vultures and the buzzards would come and pretty well peck it away? A. No.

Q. You didn't have any such idea at all? A. No, sir.

Q. Why did you rip this ring off the dead body with these pliers? A. So it could not be identified.

20 Q. In other words, you did not want anybody to know, if that body were found later, that it was the body of Mrs. Stader, did you? A. Naturally not.

Q. When this gun went off, as you say, were you in or out of the car? A. I was in the car.

Q. Were both of your feet in the car? A. Yes, sir.

Q. You are sure of that, are you? A. I believe so.

30 Q. While you were in the car, and you were in the act of turning around, the gun went off? A. While I was in the act of getting out of the car.

Q. I say, while you were in the act of turning around, the gun went off, didn't it? A. While I was preparing to get out of the car, the gun went off.

Q. I say, you were in the act of turning around when the gun went off, didn't it? A. I was turning to get out of the door.

40 Q. I say, you were in the act of turning around to get out of the door when the gun went off? A.

William M. Frazer—Cross

I was in the act of facing the door to get out.

Q. You were in the act of turning around, I say, weren't you? A. (No answer.)

By the Court:

Q. Do you understand the question? A. I don't understand what he means. 10

Q. He asked you if you were in the act of turning around, whether you were in the act of turning around when you came out of the car. A. I had been sitting on the seat and I had to turn to get out the door.

By Mr. David.

Q. And it was while you were turning around that the gun went off; is that right? A. When I stumbled or fell, yes. 20

Q. I say, you were in the act of turning around when the gun went off; is that right?

Mr. Simpson (to the witness): I can not hear a word you say, unless you talk louder. I do not think the back juror can hear a word you say.

The Court: I have told this man several times that you could not protect him if you did not hear him, but he won't raise his voice. 30

The Witness: I was turning towards the door to get out.

By the Court:

Q. Listen, did you hear what your counsel said to you a moment ago? A. Yes, sir.

Q. Well, that is of the first importance for you that both he and the jury hear you. Please keep your voice up. 40

William M. Frazer—Cross

Mr. David: May I have the last answer read, if your Honor please?

(The stenographer read the last answer as follows: "Answer: I was turning towards the door to get out.")

10

By Mr. David:

Q. While you were turning towards the door to get out, the gun went off; is that right? A. When I stumbled or fell.

Q. I say, while you were in the act of turning around toward the door to get out, the gun went off; is that right? A. I don't know my exact position when it went off.

20

Q. But you were in the act of turning around at the time the gun went off; is that right? A. I don't know whether I turned around or was beginning to turn around.

Q. You say you stumbled at that time, or fell? A. I don't know which.

Q. Why didn't you say that when you made your statements down in Raleigh?

30

The Court: Mr. David, when you say, "Why didn't you say that?" what do you mean?

By Mr. David:

Q. That you stumbled or fell? A. Mr. Aaronson said not to tell you everything. If I wanted to make a statement not to tell you everything.

Q. And, therefore, because your lawyer said not to tell me everything, you did not include that part that you stumbled or fell in the statement that you made? A. Yes, sir.

40

Q. That is the reason? A. Yes, sir.

William M. Frazer—Cross

Q. Isn't the reason that you have added that that you have been talking this over, preparing for the trial? A. No, sir.

Q. You did not say that, though, to me and the other gentlemen down in Raleigh when you made your statement, did you? A. On the advice of my counsel. 10

Q. I say you did not say it? A. On the advice of my counsel.

By the Court:

Q. He asked you that you did not tell him that? A. No, sir.

By Mr. David:

Q. You held that back; is that it? A. Yes, sir. 20

Q. When you were turning around, were you turning from right to left to go out of the car? A. Yes.

Q. You wrote this letter (showing the witness Exhibit S-9) to Mrs. McLoughlin, did you not? A. Yes.

Q. Mrs. McLoughlin is a sister of Mrs. Stader, isn't she? A. Yes.

Q. You said, "Your wife is suing you for divorce," was that so? A. I was under the impression she had started to. 30

Q. No papers had been served on you, had they? A. No.

Q. Your wife is here in court, isn't she? A. Yes.

Q. You wrote, "We sold the Buick." That was a lie, wasn't it? A. Yes.

Q. You say, "We are on our way to California." Did you say that? A. Yes. 40

William M. Frazer—Cross

Q. At the time you wrote this letter, the dead body of Mrs. Stader, Mrs. McLoughlin's sister, was still in your car, wasn't it? A. Yes, sir.

By the Court:

10 Q. Why did you do that? Why did you say that when the dead body was in the car? A. I misunderstand you.

Q. Why did you write such a letter about going to California with Mrs. Stader when you knew her body was in the car, dead? A. Well, I knew she would be wondering as to where—about her whereabouts if she didn't write.

20 Q. Well, if you shot her accidentally, why didn't you say so in the letter? A. Why try to get away?

Q. I am not asking you to ask me questions; I am asking you to answer me, if you will. A. I didn't want to publish it any more than necessary.

Q. It was to your benefit, however, to make it known that it was an accident, wasn't it? A. Yes, sir.

By Mr. David:

30 Q. I show you a letter marked Exhibit S-10 and ask you if you wrote this letter to Jansen? A. Yes, sir.

Q. In that letter you said, "How is Hilda?" Who was Hilda? A. My wife.

Q. "And the kids. Tell her I will write her from C." Where was that? From Charleston, did you mean? A. Wherever I happened to be.

Q. You say, "Tell her I will write her from C." Did you mean from Charleston? A. C?

40 Q. Look at it (handing paper to the witness). A. I don't know what I meant by that now.

William M. Frazer—Cross

Q. "Remind her all she knows is that I left her and she thinks I am with some woman." Did you write that? A. Yes.

Q. Why? A. Because I didn't want to be arrested.

Q. Did you buy any bullets for this rifle on the 16th or 17th of February? A. No, sir. 10

Q. Didn't you buy some bullets at Walden on either February 16 or 17? A. No, sir.

Mr. David: Is Mr. Evans in court?

(A man stood up in the court room.)

By Mr. David:

Q. Do you know that man (indicating)? A. No, sir. 20

Q. Didn't you buy .22 calibre bullets for this rifle on either February 16 or 17 at Walden, New York? A. No, sir.

Q. When and where did you buy that rifle? A. I bought it in Rahway.

Q. When? A. I don't know what time.

Q. Was it ten years ago, five years, three years, two years, or a week before the shooting? A. Some time after New Year's.

Q. Of what year? A. 1931. 30

Q. This year? A. Yes, sir.

Q. Where in Rahway? A. At Way's.

Q. What is the name? A. Way's.

Q. Where is his place located? A. On Milton Avenue.

Q. Didn't you tell Mrs. Stader that if she wanted to quit you you would kill her? A. No, sir.

Q. Or words to that effect? A. No, sir. 40

William M. Frazer—Re-direct

Q. She wanted to get away from you, didn't she? A. She never voiced it to me.

Q. She wanted to break away the relations that you were having, did she not? A. Not to my knowledge.

10 Q. What were your relations with her? A. Friendly.

Q. What do you mean by friendly? A. I saw her practically every day.

Q. You had intercourse with her, didn't you? A. Yes.

Q. When did that break off? A. What do you mean?

Q. When did that stop? When was the last?

20 A. I don't remember.

Mr. David: That is all.

RE-DIRECT EXAMINATION by Mr. Simpson:

30 Q. When did you see the attorney? The Prosecutor said something to you about your not having made any statement that this was an accidental killing until you saw the attorney in Raleigh. What time of the day did you first see the attorney in Raleigh? A. On the afternoon of the day I was arrested.

Q. When did you make these statements that have been offered in evidence? A. The following day.

40 Q. The Prosecutor asked you whether or not you did not say the killing was accidental because of the advice of your attorney. Did you tell the attorney all the facts about this killing before he gave you any advice, about the shooting as

William M. Frazer—Re-direct

you have described it here? Did you tell that to the attorney as you have told us? A. Not all of it.

Q. I mean did you tell him about as you have described the picking up of the gun and the gun going off? Did you tell him that? A. Yes. 10

Q. Before he advised you at all? A. Yes, sir.

Q. The Prosecutor asked you whether or not this lady had not indicated that she wanted to get away from you.

Mr. Simpson: I will withdraw the question.

Q. The Prosecutor asked you about your intimacy with this lady. You understand what he means, don't you? A. Yes, sir. 20

Mr. Simpson: That is all.

Mr. David: That is all.

The Court: We will take a recess for five minutes at this time.

(A recess was had for a brief time.)

(After recess.)

30

Mr. Simpson: That is the case, your Honor. The defendant rests.

40

Ira Jansen—Direct

STATE'S REBUTTAL TESTIMONY.

IRA JANSEN, recalled as a witness in rebuttal, by the State, testified as follows:

10 Direct-examination by Mr. David:

Q. The defendant Frazer has testified that when he was with you in his mother's house at Rahway, when he returned to Rahway with the body of Mrs. Stader, that he told you that the shooting was accidental. Is that true or false?

Mr. Simpson: I object to that, as it calls for a characterization of this witness as to the truth or falsity of a statement.

20

The Court: Objection sustained.

Q. Did you make such a statement to him?

Mr. Simpson: I object to that unless he frames the question to get the whole conversation, otherwise it is calling for a conclusion from this witness.

The Court: He may direct the witness's attention to a specific matter which he desires to rebut.

30

Mr. Simpson: My objection, of course, is to its calling for a conclusion, did he say this. It seems to me this, that it is for the jury to say, after they hear the testimony, as to what the conversation was, whether he said that, yes or no.

The Court: No, he may ask him whether or not the defendant did say to him that the shooting was accidental.

40

Ira Jansen—Cross

Q. Jansen, on cross-examination I asked the defendant Frazer this question: "Are you sure that you said to Jansen at that time and in your mother's house, that the shooting of Mrs. Stader was accidental?" and in answer to that question Frazer said, "Yes." Did he say to you at that time the shooting was accidental? A. No, sir; he did not. 10

Mr. David: That's all.

CROSS-EXAMINATION by Mr. Simpson:

Q. You have already testified before as to what he said, haven't you? A. Yes, sir.

Q. Didn't you say on your direct testimony, that he told you that Mrs. Stader was out in the car, that she was dead, that she had been shot with this gun, accidentally? A. He said she was dead but he didn't say what she was shot with or he didn't say it was accidental. 20

Q. He didn't say she was shot; simply said she was dead? A. He didn't say with what gun; he simply said she was shot.

Q. He didn't tell you how she was shot? A. He said he didn't know how.

Q. He said he didn't know how she was shot? A. Yes, sir. 30

Q. What time of the day was that? A. That was about two o'clock Wednesday morning, February 18.

Q. And how long was he talking to you? A. Half an hour or so.

Q. And have you given us the whole conversation? A. I have. 40

George F. Evans—Direct

Q. And he said he didn't know how it happened; is that it? A. Yes, sir.

Mr. Simpson: That's all.

10 Mr. David: Now, if your Honor please, I ask the Court at this time to adjourn a little early so I may go over some notes for the purpose of deciding what other, if any witnesses, I would like to put on in rebuttal.

Mr. Simpson: There is no objection to that.

The Court: Well, we will adjourn now, gentlemen, until twenty minutes after one.

20 (The Court at this time adjourned until one-twenty P. M.)

Elizabeth, N. J., June 16, 1931,
at 1:20 P. M.

(Afternoon session.)

30 STATE'S REBUTTAL TESTIMONY (Cont'd).

GEORGE F. EVANS, a witness on behalf of the State, in rebuttal, being first duly sworn according to law, on his oath testified as follows:

Direct-examination by Mr. David:

Q. Where do you live, Mr. Evans? A. Walden, New York.

40 Q. What is your business? A. Well, run a service station, gasoline, oil and accessories, sporting goods in general.

George F. Evans—Cross

- Q. Do you know the defendant William Frazer?
 A. I met him once, yes.
- Q. Where? A. At my place.
- Q. At Walden? A. Yes, sir.
- Q. When? A. The 17th day of February,
 about two o'clock in the afternoon. 10
- Q. What year? A. This year.
- Q. At that time and place did you sell him a
 box of .22 calibre cartridges? A. I did.

Mr. David: That's all. Take the witness.

CROSS-EXAMINATION by Mr. Simpson:

- Q. They would fit this .22 rifle here? A. Yes,
 sir. 20
- Q. What time of the day did you sell them
 to him? A. About two o'clock in the afternoon.

Mr. Simpson: That's all.

Mr. David: That's all. The State rests.

Mr. Simpson: I ask your Honor to exclude from the testimony statement number three, on the ground that it now appears it was obtained by a promise to the defendant of some favorable action on his behalf, and not contradicted by the State, and second, I ask your Honor now to withdraw from the consideration of the jury any charge in the indictment except that of involuntary manslaughter. 30

The Court: Motion denied.

Mr. Simpson: Exception.

(Exception allowed. Signed, sealed accordingly. Alfred A. Stein, Judge.) 40

Court's Charge

May I proceed to sum up now?
The Court: You may proceed.

(At this point Mr. Simpson summed up the case for the defendant.)

10 (At this point Mr. David summed up the case for the State.)

(The Court then charged the jury as follows):

COURT'S CHARGE.

STEIN, ALFRED A., J.:

20 Gentlemen of the Jury, the function of the Court is to instruct the jury with reference to the principles of the law which govern the case, and that law you must take from the Court and you may not take it from either counsel or from a member of your body, and the reason for this is that if the Court commits an error in explaining the principles of the law, that error may be corrected by an appeal, whereas, if you take your law from either counsel or from a member of
30 your body and a mistake is made, that error can never be corrected.

You, however, are the sole judges of the facts and the weight of the testimony, the credibility of the witnesses, and the inferences to be drawn from the evidence, and the ultimate conclusions to be reached upon all the facts.

40 The Court, in referring to evidence, if it does so, is not to be understood as deciding any facts, for it merely is attempting to elucidate the evi-

Court's Charge

dence for the convenience or assistance of you gentlemen, or to illustrate or explain the application of the principles of the law, and for no other purpose. If, according to the recollection of the jury, the Court errs in his statement of any evidence, whether disputed or undisputed, or assumes the existence or presence in the case of evidence that is not actually before the jury, the jury should disregard the recollection of the Court and be guided by its own recollection. If any part of the evidence is referred to seemingly giving it particular emphasis, the jury are not to disregard other evidence which they may deem of equal or greater importance. 10

It is the duty of the jury to consider and weigh all of the evidence and pertinent proof bearing upon the questions involved in this matter, not only that which is mentioned by the Court, but all that is presented here before you. 20

The defendant at the bar is charged with the crime of murder. The law presumes the defendant is innocent and that presumption continues until overcome by proof on the part of the State establishing his guilt beyond a reasonable doubt. 30

By reasonable doubt is not meant a mere possible doubt, because everything relating to human affairs and depending upon oral evidence is open to some possible or imaginary doubt, so that in law, by the term reasonable doubt, we mean that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they can not say they feel an abiding conviction to a moral certainty of the truth of the charge. 40

Court's Charge

The burden of proof is on the State to satisfy you that the defendant is guilty beyond a reasonable doubt, and if, upon such proof, there be reasonable doubt remaining in the minds of you jurors, the defendant is entitled to the benefit of that doubt by an acquittal. The evidence, in other words, must establish the facts to a moral and reasonable certainty, a certainty that convinces and directs the understanding and the judgment of you, who are bound to act conscientiously upon it.

The State has presented to you the evidence upon which it relies to prove the guilt of the defendant, and on the other hand, the defendant has produced witnesses and given his own testimony to establish his defense.

The Crimes Act passed by the Legislature of this State covering the crime of murder, among other things, provides that wilful, deliberate, and premeditated killing shall be murder in the first degree, and that all other kinds of murder shall be murder in the second degree, and that the jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, designate by their verdict whether or not it be murder in the first degree or murder in the second degree.

To constitute murder in the first degree there must be an intention to take life, coupled with premeditation and deliberation. Premeditation or intention to kill need not be for a day, nor for an hour, or even for a minute, for if there was a design, a determination to kill, distinctively

Court's Charge

formed in the mind at a moment before and at the time of the shooting, it would be murder in the first degree.

If the design and intention formed be only to do grievous bodily harm and not to take life, it would be murder in the second degree. 10

The presumption of the law is that all homicides are murder in the second degree, and the burden rests on the State, by competent proof beyond a reasonable doubt, to move the case up from second degree to murder in the first degree by establishing beyond a reasonable doubt that there was intention to take life coupled with premeditation and deliberation. 20

Premeditation means the design and determination to kill distinctly formed in the mind, that is, the mental operation of forming the intent to kill and the determination to execute the intent. The idea or plan may have been conceived for months, weeks, days, hours, or even moments. Therefore, sufficient time, however slight, to form the design, understand its nature and execute it, is required to bring the act within the definition of premeditation. 30

Deliberation is the weighing of the considerations pro and con after which the killing, being determined on, becomes wilful, deliberate, and premeditated in the sense intended by the statute.

Manslaughter is the unlawful and felonious killing of a human being without malice expressed or implied. Involuntary manslaughter is the unlawful killing of a human being without malice 40

Court's Charge

either express or implied and without intent to kill or inflict the injury causing death committed accidentally in the commission of some unlawful act not felonious or in the improper or negligent performance of an act lawful in itself.

10 Having defined the grades of crime of which the defendant, if found guilty, may be convicted under an indictment like this, you are now prepared to consider the testimony in this case with a view of determining first, whether the defendant is guilty of any crime included in the indictment or not, and secondly, if guilty, whether he is guilty of murder in the first or second degree or manslaughter.

20 The prosecution claims that this was a wilful, deliberate, and premeditated murder, and it is the State's contention, as the Court understands the testimony, that the defendant and the woman, Mrs. Stader, carried on an illicit love affair, and that both the defendant and the deceased woman were married.

30 The defendant says he met Mrs. Stader almost every day for a considerable period prior to this shooting. As I understand his testimony, he admits illicit relations with her, and something was said by him—you will remember just what it was—with reference to the home of Mrs. Stader having been broken, and that there was talk between the deceased and himself concerning divorce proceedings.

40 It is the State's claim that on the day in question—I think it was the 18th of February, 1931—the defendant shot Mrs. Stader, and that he did

Court's Charge

that after deliberation and with premeditation, and that he formed in his mind a design to kill her, and that he did kill her. The State claims that the woman was alive while being driven in the car from some point in New York across to the Jersey line and into this State, and that she was still alive when she was being driven past the Durant plant on North Broad Street in the City of Elizabeth in this County. 10

Of course, the State is bound to prove what is known in the law as *corpus delicti*, just as it is bound to prove every other element going to make up a crime which it alleges occurred. One of the things that it must prove to the satisfaction of the jury beyond a reasonable doubt is that the shooting either took place in this county or that she died here as the result of a shot or a wound inflicted in some other county, or some other state, for that matter. 20

The Legislature of this State has enacted into the Criminal Procedure Act a section which reads in part that, "Whenever any person shall be feloniously stricken in one county and shall die of the same stroke in another county, an indictment thereof found either in the county where such person shall be feloniously stricken, or in the county where the death shall happen, or shall have happened, shall be as good and effectual in the law as if the stroke had been given, committed or done and the death had happened all in one and the same county where such indictment shall have been found." 30

Court's Charge

The law is further that, "The Judges of the Court of Oyer and Terminer in the county where such an indictment shall be found and the Justices of the Supreme Court where such indictment shall be taken or removed before them, shall
10 and may proceed upon the same in all points as they might or could do in case such felonious stroke and death thereby ensuing had been committed and had happened all in one and the same county."

So you must find as a fact in this case beyond a reasonable doubt before the State can be said to have proven that portion of the *corpus delicti* which requires it to show that the death occurred
20 in this county that the deceased, Mrs. Stader, was alive, and that she did die from gunshot wound inflicted by the defendant, and that she died in this county, no matter where the wound was inflicted.

There is another section that reads, "Where any person shall be feloniously stricken or poisoned upon the sea or at any place out of the jurisdiction of this State"—so that if she was
30 shot in New York State—"and shall die of the same stroke or poisoning within the jurisdiction of this State"—that is, within the County of Union—"an indictment found in the County within the jurisdiction of this State in which such death, stroke or poisoning shall happen, shall be as good and effectual in the law, as well against the principal or principals in any such murder as against the accessory or accessories thereto."

40 So that if she was shot by this defendant in the State of New York and she died from that

Court's Charge

gunshot wound in this County, the jurisdiction of the Court would be full and complete and of this jury to decide this case, and the State claims that it has proven that she died in this County.

The defendant claims in his defense that this killing was accidental. He says that at a point which he mentioned—you will remember where it was—in a lonely road which he selected, according to himself, and into which he drove for the purpose of talking over with the deceased certain matters—what they were does not appear—that there he sat with her in the back seat of the automobile; that she climbed over the front seat and got into the rear; that he got out of the car and stepped into the rear; that they sat and talked; and that before the shooting, she again climbed over the front seat, and that because he was in a lonely road—that is the reason he gives for picking up this shotgun which he says was in the rear of the car—he took up the gun, and that he either stumbled or slipped, and the gun was accidentally discharged.

So he says in his defense that the killing, having been accidental, was a killing by misadventure, and he asks acquittal. If the killing was through misadventure, and the jury so finds, he is entitled to a verdict of acquittal.

Was it accidental? Is his story true? It is for you to say.

The rifle is here. You may take it into the jury room. You may make your own examination of it and determine from what you see of it whether that rifle could be accidentally dis-

Court's Charge

charged, and if it cannot be accidentally discharged, it might aid you in determining whether or not he is telling the truth. Determine whether or not it is necessary to withdraw the hammer of that rifle and necessary to pull the trigger in order to make it discharge. That is the reason these things are in evidence, for you to determine the credibility of the testimony of any or all of the witnesses, using such things as are in evidence in aid of that inquiry.

He says that he proceeded with this woman, whom he accidentally shot, from some point in New York State, which he mentioned—I think this side of Newburgh, but you will recall where it was—along the highways and byways through the City of Rahway in this County, and there he announced that he would commit suicide and asked for suggestions, asking his mother, his cousin, and his wife. Whatever that testimony was, you will remember it. Certain suggestions were made, one that he give himself up to the police, and another that he commit suicide. His reason given before you for the notion of suicide was that he loved Mrs. Stader so much that there was no use of living. Is that true? Did he have suicide in mind for that reason? You may inquire into his actions after shooting. Recall those things to your aid, in order to determine whether or not he loved her so much, and whether or not, if he loved her so much, he would have done the various things that he did, one of them being to drive from New York down into Union County without attempting at any place to obtain any medical aid for the woman whom he

Court's Charge

loved but shot accidentally. Ask yourselves whether or not that is consistent, and such other things as are in evidence as to his conduct subsequent to the shooting, including the attempt to destroy the body to hide identification. As I understand it, he frankly says he did these things 10 in order to hide identification. Ask yourselves why, if the shooting was accidental.

I shall not say anything further to you, gentlemen, about the evidence in this case. The case was very expeditiously and very thoroughly tried both on the part of the State and the defendant counsel.

The defendant alleges further in his defense 20 that he had been drinking. I do not recall that there is any claim made that he was intoxicated. If there is such a claim or any such evidence, you will remember it. My understanding is that he relates the amount of liquor that he consumed on the 16th with the deceased woman, and on the 17th and on the 18th, recalling with precision the quantities at different times that were consumed. He says that they went to see several moving picture productions. I think he said two of them. 30 He remembers the kind of picture he saw, together with the title. He remembers, according to himself, the hour at which he entered the theatre and came out, the time when he left a certain place to go to another, the approximate arrival, the time of arrival at Rahway, but he says he was affected by drink. Was his mind affected by drink or not? That is for you to say.

Gentlemen, drinking or intoxication is no ex- 40
cuse for crime, and one may not be heard to ex-

Court's Charge

cuse himself because of the commission of a crime on the ground that he was intoxicated. Intoxication is a voluntary thing. One may become drunk or remain sober as he chooses, and if it were true that intoxication is an excuse for crime
10 or a justification, then men might preceed to become intoxicated first in order to commit crime nextly, and that is not the law, but intoxication has a bearing, if proven, upon the condition of the mind and the intent which may be in that mind to do certain things, and the law to be deduced from a mass of authorities is that there is a situation in which the fact of drunkenness is entitled to weight, not as an excuse for crime
20 nor in extenuation of it, but as a fact tending to show that the crime imputed was not committed.

Here the State claims that this is murder in the first degree and that there was deliberate intent to take life, and that there was premeditation and deliberation. So, when the crime and the extent of the crime is made by law to depend upon the state and condition of the defendant's mind at the time, and with reference to the act done, circumstances affecting such state and
30 condition of mind are proper subjects for inquiry and consideration by the jury.

If, by law, deliberation and premeditation are essential elements of the crime, and by reason of drunkenness or any other cause, it appears that the prisoner's mental state was such at the time of the commission of the crime that he was incapable of such deliberation and premeditation,
40 then the crime has not been committed. There is a failure on the part of the State to prove the

Court's Charge

crime, in other words, in which premeditation must enter, namely, murder in the first degree. That is to say, intoxication is a mere circumstance to be considered in determining whether or not premeditation was present or absent, but—and mark this well—as between the two offenses of murder in the second degree and manslaughter, voluntary intoxication cannot be a legitimate subject of inquiry, for what constitutes murder in the second degree or manslaughter by a sober man is equally murder in the second degree or manslaughter if committed by a drunken man. So that the question of whether or not there was any affectation of the mind due to drink is only pertinent to the question of whether or not the condition of the mind of the defendant was such from drink that he could not premeditate, deliberate, and form an intent to kill. If the evidence is sufficient to satisfy the jury that the accused was intoxicated at the time of the homicide and that such intoxication was so great as to prostrate his faculties and render him incapable of forming the specific intent to kill, which is an essential ingredient of murder in the first degree, the prisoner will not be entitled to an acquittal, but his offense may be murder in the second degree or may be manslaughter. In other words, you should carefully discriminate between that excitable condition of the mind, produced by drink, which is not incapable of performing an intent, but determined to act on a slight provocation, and such prostration of the faculties by intoxication as put the accused in such a state that he is incapable of forming an intention from which he shall act to kill.

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Court's Charge

This rule, gentlemen, should be applied with caution and no undue or dangerous immunity or license be given to crime by persons whose passions are inflamed by drink.

- 10 So long as the mind of the person is capable of conceiving the purpose to kill, he must be held to the responsibility of one who is sober. So that even if there be testimony in the case from which you gentlemen may find that the defendant was drinking, so long as his mind was capable of conceiving the purpose to kill, you should find that he be held responsible just the same as if he was sober. If the faculties of the accused were not so far prostrated by intoxication as to
20 render him incapable of forming an intention to kill, the jury would have no right to find that, merely by reason of the intoxication, the intention to kill was not present.

I think I have covered the principles of the law which are to guide you in determination of this case, and the principles of law which you are to apply to the facts as you find them.

- 30 Now, as to the penalty, the Legislature of this State has passed an act which reads in part as follows: "Every person convicted of murder in the first degree shall suffer death unless the jury shall, by their verdict, and as a part thereof, upon and after consideration of all of the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

- 40 So, if you jurors convict this defendant of murder in the first degree and conclude that there

Court's Charge

shall be a recommendation of life imprisonment, you must say so by your verdict. In other words, you say: "We find the defendant guilty of murder in the first degree and recommend life imprisonment."

If you determine that there shall be a conviction of murder in the first degree without recommendation, your verdict will simply be "Murder in the first degree."

In other words, you will say, "We find the defendant guilty of murder in the first degree," whereupon the Court, in such event, will impose the death penalty. So if your verdict is murder in the first degree without a recommendation of life imprisonment, the defendant will be sentenced to death, and if you recommend, together with your verdict of murder in the first degree, that he be imprisoned for life, then this and no greater punishment can or will be imposed.

You jurors are the final arbiters in all cases where the law seeks to convict and punish for crime. You can readily understand that unless crime is detected and vigorously prosecuted and proper punishment therefor made sure, there can be no peace, and there will be no security for our people. Punishment for crime, gentlemen, has a two-fold purpose, namely, punishment of the offender, and by that punishment to deter others from doing the like. The underlying purpose of it all is to make it unsafe for persons to commit crime and to secure to people in a civilized community, the unhampered pursuit of their business and pleasure without danger of loss of

Court's Charge

life or bodily injury or deprivation of their possessions. It follows from what I have just said that the security of the individual in a given community is only as safe as the jurors in that community will make it by their unbiased, impassionate and just verdicts.

You are not to try this case, gentlemen, or to render a verdict predicated upon any passion or prejudice. You are not to be swayed or persuaded in the finding of your verdict because of any evidence which to you might seem of a gruesome character.

After all, as you are now constituted in that jury box, you are a part and parcel of the administration of justice in this county, and everything depends on how jurors will function with Courts in dispensing justice.

After all, if there be any one of the three branches of the government more important than the other, it is the judicial branch. Your executive and your legislative branches may make laws and the executives may seek to execute them, but without the power of enforcement inherent in the Courts justly administered, governments will crumple and fall. It cannot be otherwise. The judicial branch is the mainstay of your government. And so, whether it be a matter between individuals of a civil nature, where parties are seeking right and justice, or whether it be the State of New Jersey complaining that some individual has offended against its laws and its government and its dignity, or whether it be a defendant who stands charged with crime, the im-

Requests to Charge

portance in every case is, I am sure, realized by you.

Before retiring I find that I am requested by defendant's counsel to charge you specially in certain particulars.

10

The Court: Mr. Simpson, will you take up your requests to charge?

Mr. Simpson: I think you covered them practically, except the one about the statements. I think you have covered all requests that I can see.

(The Court charged the jury further as follows):

The fifth request of counsel for the defendant is as follows:

2)

"The State has introduced in evidence a certain statement or statements. The truth and circumstances of the statements, the methods by which it was adduced, whether voluntary or by any act of coercion, persuasion or threat, or any act of violence, and the veracity of the officers who reduced it to writing, and the methods which they employed in securing the said confession are for your consideration. If you find that the statement was the result of a promise made in the light of hope of a reward, or that it was made involuntarily, or by any act of coercion, persuasion, threat or violence on the part of any of the officers taking the said confession, you should disregard such confession."

30

I so charge you, except that I do not recall any evidence of any threat.

40

Mr. Simpson: No.

Requests to Charge

The Court: Or any coercion that was used. I have charged you in the language of the request.

Mr. Simpson: Your Honor has covered all the other requests.

The Court: You do not require me to charge
10 any others?

Mr. Simpson: No, sir.

(The Court charged the jury further as follows):

The Prosecutor has asked me to charge you specially, and I do now charge you as follows:

“Proof of motive is not an essential element in
20 conviction of murder in the first degree.”

That is true, gentlemen.

“If the proved facts establish that the defendant in fact did the killing wilfully, that is, with intent to kill, and as the result of premeditation and deliberation, thereby implying pre-consideration and determination, it is murder in the first degree, no matter what the defendant’s motive may have been, and nor although he in fact
30 had no motive whatsoever.”

That is true, gentlemen. It is not incumbent upon the State in this case to prove that there was a motive.

The Court: I think that the second matter, Mr. Prosecutor, I have already referred to or practically charged.

Mr. David: I believe your Honor has covered
40 it in his charge.

Verdict

The Court (to the jury): Gentlemen, the case is now in your hands.

Mr. Simpson: I note a general exception and an exception to his Honor's charge charging what the Prosecutor requested.

(Exception allowed. Signed, sealed accordingly. Alfred A. Stein, Judge.) 10

(The jury retired.)

VERDICT.

The jury having signified to the Court they had agreed upon the verdict, they were brought into the court room and the Clerk called the roll. 20

The Clerk: Gentlemen of the Jury, have you agreed upon a verdict?

The Foreman: Yes, sir.

The Clerk: Who shall say for you?

The Foreman: The foreman.

The Clerk: Mr. Foreman, what say you?

The Foreman: Your Honor, we find the defendant guilty of murder in the first degree. 30

The Clerk: You say you find the defendant guilty of murder in the first degree and so say you all.

The Foreman: Yes, sir.

The Court: Thank you, gentlemen. You are discharged.

Mr. Cohn: I would like to have the jury polled.

The Court: The Clerk will poll the jury. 40

Verdict

The Clerk: Each juryman, as his name is called, will answer and say what he finds. Alex Deutsch.

Mr. Deutsch: Guilty of murder in the first degree.

10 The Clerk: Hershell L. Miller.

Mr. Miller: Guilty of murder in the first degree.

The Clerk: Raymond D. Krapff.

Mr. Krapff: Guilty of murder in the first degree.

The Clerk: Emory R. Miller.

20 Mr. Miller: Guilty of murder in the first degree.

The Clerk: Harold McCasker.

Mr. McCasker: Guilty of murder in the first degree.

The Clerk: Benjamin F. Helwig.

Mr. Helwig: Guilty of murder in the first degree.

The Clerk: John F. Sullivan.

30 Mr. Sullivan: Guilty of murder in the first degree.

The Clerk: James A. Woods.

Mr. Woods: Guilty of murder in the first degree.

The Clerk: William Massa.

Mr. Massa: Guilty of murder in the first degree.

40 The Clerk: Charles Sellers.

Mr. Sellers: Guilty of murder in the first degree.

Sentence

The Clerk: Charles J. Clauer.

Mr. Clauer: Guilty of murder in the first degree.

The Clerk: Louis F. McCartney.

Mr. McCartney: Guilty of murder in the first degree. 10

The Court: I will excuse you, gentlemen, from further service until tomorrow at 9:30.

At this point the jury left the court room and after a short interval of time the defendant was brought back to the bar and the Court resumed the bench.)

 20
SENTENCE.

Mr. David: If your Honor please, I move for sentence.

The Court: Frazer, the jury having found you guilty of murder in the first degree, the sentence of the law is that you be put to death in the manner prescribed by law in the week commencing July 27th, 1931. 30

Let the prisoner be remanded.

40

EXHIBIT S-2.

STATEMENT OF WILLIAM MOORE FRAZER, aged 31

Question by Mr. David:

10 This statement that you are now making, you make voluntarily, of your own accord, without any promises, without any threats, without any fear, and with the knowledge that this statement can be used either for or against you, in any trial. Is that right?

Ans. Yes.

This is the statement that you have just made; if there is anything you want to add or change, you may do so:

20 "I met Mrs. Stader on Monday, not last Monday but ten days ago. I took her and her sister June up to Walden. I took Phoebe out Monday night to a couple of road houses. I got some liquor—I remember where I got it, all right. I drank a good share of it but she did not drink as much as I did. I stayed at a hotel that night. Tuesday I had a date to meet her at 1:00 o'clock. We went to Newburg to a Chinese restaurant on the main drag and had something to eat. We
30 had a quart of liquor and we drank. Then went to a moving picture show; then went back to the chopsuey joint and had something to eat and drink. Then went to another moving picture show. We made up our minds to go to Florida. We started but somewhere below Suffern in Jersey somewhere, I got nervous or something. I had a gun underneath the back seat of the car. I stopped the car and went in the back to get the
40 gun. When I was getting the gun it went off accidentally somehow. I did not know what to do.

Exhibit S-3

I thought I would go to Rahway. I went there and stopped and told my cousin, and went over and told my wife. She asked me what I was going to do. I said "I don't know. There were only two things to do—to tell the Police, and the other to commit suicide. Then I went out to the country to commit suicide but I did not have the nerve to do it. I went back to Rahway, then left Rahway and came on South." 10

Question: Is that a correct statement of what you have just said?

Answer: Yes.

(Signed) WILLIAM M. FRAZER. 20

Witness:

J. Winder Bryan Chief

R. M. Saunders Capt.

M. A. Hoey Asst to D. A. Orange
County

A. J. David W. F. Wagner

EXHIBIT S-3.

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ADDITIONAL STATEMENT BY WILLIAM MOORE
FRAZER

February 26, 1931—11:15 A. M.

I left Rahway Wednesday afternoon about 4 o'clock; drove in my Buick to Philadelphia. I stopped and wrote a letter to Mrs. McLaughlin, at Walden. The body of Mrs. Stader was in the 40

Exhibit S-3

car. I stayed in Philadelphia long enough to get something to eat. I can't say off-hand where. I then came on South. My next stop was for gas—in Chester, I think—not positive. I stopped in Baltimore and rested up (that same night).

10 From there I went to Washington, I can't say exactly the time. I presume it was after midnight. I slept in Washington, in the car, on the street. I left Washington about 7 or 8 o'clock in the morning. The body was still in the car—in the back of the car. I next stopped in Richmond—about noon time, I guess—can't say definitely. I stopped just to get gas. Then I went toward Raleigh. I don't know where I stopped next, may-

20 be in Virginia. I don't know how far I drove—it was on this road I took out the body. It was day time—it was still light. I have no idea of the time. I stopped on the main road. I could not carry her around forever; so I stopped to remove the body. I took the body out of the car. I dragged the body maybe a block—I don't know. The ground was not paved—not a city, that is a cinch. It was a field; it was not bare—not many trees or shrubs. I then removed the clothing. I

30 took the clothes off; I used a scissors. I suppose they were the scissors found in the car. I cut no labels off the clothing. I took the clothing off because it could be easier traced with them on. I think the scissors were in the car—I am not positive. You use scissors for a patch if you get a blow-out. Then I came to Raleigh. I wrote no letters from Rahway—that slipped my mind. I wrote a letter to Devlin in New York. I do

40 not know him. I wrote him and asked him to forward a letter to W. A. Jansen.

Exhibit S-3

(Shown a letter) "I recognize my writing; that is the letter. I enquired for mail at Raleigh, General Delivery, under the name of Devlin—H. G. I had a post office box in Baltimore in January. I think the number was 707. I had a safe deposit box at Commercial Trust Jersey City, 1 Exchange Place. I had one in Rahway and in New York. I had an account at West Bergen Trust, Jersey City. I still have an account there. I recall a forgery charge against me in Union County in 1917 or 1918. I do not remember the disposition of the case. I found out Mrs. Stader was dead in New Jersey. I don't know how long after I shot her. I was so excited I did not know what I was doing. I wanted the gun out in case anybody bothered us, to have it in the front seat in case anybody bothered us. I don't know where the bullet went. I knew she was dead because she started to get cold. I put my hand on her. I did not take her to a doctor because I was excited and did not know what to do. It never occurred to me to take her to a doctor. It was a 22 calibre gun. I had it, I can not say how long. Right before the gun went off I do not know what we were talking about. We were half barrelled up. I could not tell you what she said right after I shot her. I had the gun in the car in case some one stopped us. I had it under the back seat for that reason. There is some blood in the car. I got out of the front seat and got the gun from the back of the rear seat. I started to turn around and the gun went off.

(Shown a gun—rifle 22 caliber) "I say that is the gun I had in the car. I kept this gun in my car

Exhibit S-3

until I left Rahway, then I placed it in my suit case and had it in suit case in my room at 112 Halifax Street, Raleigh, North Carolina.

10 I threw Mrs. Stader's clothes on the road some miles from where I placed the body. I do not know how far from where I placed the body. Mrs. Stader was wearing an aquamarine ring and a necklace made of silver. I threw the necklace away. I took the ring from her finger, using a pair of pliers which I had in the car. In removing the ring, I broke the ring. I have this ring in my pocket and now produce it and identify it as the ring which I removed from Mrs. Stader's
20 finger. I removed the ring from her finger so as to prevent identification of her body, and removed her clothing for the same reason. I destroyed Mrs. Stader's pocketbook by burning it up in the stove in my mother's home in Rahway, New Jersey. It contained about one dollar and a half, or two dollars, in money which I took.

(Signed) WILLIAM M. FRAZER

30 Witness:

J. Winder Bryan
Chief of Police
R. M. Saunders
Capt of Detectives
A. J. David
W. F. Wagner
M. A. Hoey
Asst to D. A. Orange County NY

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EXHIBIT S-4.

FURTHER SUPPLEMENTAL STATEMENT OF WILLIAM
MOORE FRAZER

I make this statement freely, without promises, threats, or force of any kind, knowing that it may be used either for or against me, on trial: 10

After looking over road map of the State of New Jersey, which I have initialed and dated, I am satisfied and I make statement to the effect that I reached for the gun and it went off after I passed Ramsey, New Jersey. I want to add that when the gun accidentally went off, and I could not say how long I had driven after leaving Ramsey, but I felt the body of Mrs. Stader and I heard her breathing; and I do know that she was alive when I passed the Durant plant on Frelinghuysen Avenue, Elizabeth, New Jersey; and I do know that when I got to Rahway and stopped the car she was dead, and so she must have died between the time I passed the Durant plant in Elizabeth and the time I stopped the car in Rahway. 20

The automobile in which Mrs. Stader died was a Buick, 1930 model, tan sedan, bearing New Jersey license plates U-4977—1931. 30

The pliers which were found in my automobile are the pliers that I used to remove the ring from Mrs. Stader's finger.

(Signed) WILLIAM M. FRAZER

Witness:

J. Winder Bryan Chief of Police
R. M. Saunders Capt of Detectives
M. A. Hoey
A. J. David
W. F. Wagner 40

CERTIFICATE OF ENTIRE RECORD.

UNION COUNTY COURT OF OYER AND
TERMINER

10	STATE OF NEW JERSEY vs. WILLIAM M. FRAZER, Defendant.	}	Sur Indictment for Murder
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I, Alfred A. Stein, Judge of the Union County Court of Oyer and Terminer, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the above mentioned indictment and is returned with the bill
 20 of exceptions signed and sealed in the cause.

Dated: July 16, 1931.

ALFRED A. STEIN,
 Judge, Union County Court
 Of Oyer & Terminer.

ASSIGNMENTS OF ERROR.

NEW JERSEY COURT OF ERRORS AND
APPEALS

THE STATE OF NEW JERSEY, Defendant-in-Error, vs. WILLIAM M. FRAZER, Plaintiff-in-Error.	}	Sur Indict- ment for mur- der. On Error. 10 to Union County Court of Oyer and Terminer.
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Afterwards, to wit, on the return day of said writ of error before our Judges of our Court of Errors and Appeals in the last resort at Trenton, come the said William M. Frazer, plaintiff-in-error, by Alexander Simpson, his attorney, and prays the reversal of the judgment of the Court below and say, that in the record and proceedings aforesaid and also in the giving of judgment as aforesaid, there is manifest error and herein assigns error in the record therein as follows:

1. Because the Trial Court permitted the witness Baker to be asked and answer the following question: 30

“Q. And did he in your presence identify that body?”

2. Because the Trial Court admitted into evidence over the objection of defendant's counsel three statements purported to have been made by the defendant.

3. Because the Trial Court admitted into evidence over the objection of defendant's counsel, 40
a certain map.

Assignments of Error

4. Because the Trial Court admitted into evidence over the objection of defendant's counsel, a certain letter and envelope, addressed to Mrs. Fred McLoughlin, 243 Orange Avenue, Walden, N. Y.

10 5. Because the Trial Court denied defendant's motion made at the conclusion of the State's case to direct a verdict of acquittal:

(a) On the ground that the Court was without jurisdiction, and

(b) On the ground that the State had failed to prove beyond a reasonable doubt that the slaying was wilful, deliberate and premeditated.

20 6. Because the Trial Court refused to permit the defendant to answer the following question:

“Q. What was that talk with your attorney (Aaronson)?”

7. Because the Trial Court refused to permit the defendant to answer the following question:

30 “Q. When you said in answer to the Judge that you would get a break, did you mean in that statement that you would not be prosecuted as if you had committed first degree murder, but that they would give you a fair investigation as to whether or not this was accidental?”

8. Because the Trial Court permitted the defendant to be asked and answer the following question:

40 “Q. Was it in the State of New Jersey?”

Assignments of Error

9. Because the Trial Court denied defendant's motion made at the conclusion of the trial to strike out the third statement purported to have been made by the defendant and which was marked Exhibit S-4.

10. Because the Trial Court denied defendant's motion made at the conclusion of the trial to withdraw from the consideration of the jury any charge except that of involuntary manslaughter.

10

11. Because there was no proof in the case that the deceased was stricken in the State of New Jersey.

12. Because there was no proof in the case that the deceased died in Union County, New Jersey.

20

13. Because there was no proof in the case that the slaying was deliberated.

14. Because there was no proof in the case that the slaying was wilful.

15. Because there was no proof in the case that the slaying was premeditated.

30

16. Because there was no proof in the case of an intent to take human life in the mind of the defendant.

17. Because the defendant was incapable of forming the specific intent to kill by reason of intoxication.

18. Because the trial was conducted generally in a manner prejudicial to the rights of the de-

40

Assignments of Error

defendant and in a manner that must have incited the prejudices of the jury, viz:

- (a) The exhibit of an automobile in the court room prior to the selection of a jury.
- 10 (b) The exhibit of an automobile in the court room and later introduced in evidence.
- (c) The presentation of a human skull in the presence of the jury though not introduced in evidence.
- (d) The introduction in evidence of a certain pliers.
- 2) (e) The introduction in evidence of a pair of scissors.
- (f) The introduction in evidence of a certain letter addressed to one, Jack Dillon.
- (g) The testimony relating to remarks made by Ira Jansen and Mrs. Hilda Frazer in the presence of the defendant and after the defendant had returned to Rahway.
- (h) The testimony of William T. McGrath.
- 30 (i) The prejudicial cross-examination of the defendant and the inflammatory remarks by the Prosecutor of the Pleas.

19. Because the Trial Court charged the following requests to charge submitted by the Prosecutor of the Pleas:

- 40 "Proof of motive is not an essential element in conviction of murder in the first degree."

Assignments of Error

“If the proved facts establish that the defendant in fact did the killing wilfully, that is, with intent to kill, and as the result of premeditation and deliberation, thereby implying preconsideration, and determination, it is murder in the first degree, no matter what the defendant’s motive may have been, and nor although he in fact had no motive whatsoever.” 10

20. Because the Trial Court charged the jury as follows:

“To constitute murder in the first degree, there must be an intention to take life, coupled with premeditation and deliberation. Premeditation or intention to kill need not be for a day, nor for an hour, or even for a minute, for if there was a design, a determination to kill, distinctively formed in the mind at a moment before and at the time of the shooting, it would be murder in the first degree.” 20

“One may become drunk or remain sober as he chooses, and if it were true that intoxication is an excuse for crime or a justification, then men might proceed to become intoxicated first in order to commit crime.” 30

“This rule, gentlemen, should be applied with caution and no undue or dangerous immunity or license be given to crime by persons whose passions are inflamed by drink.” 40

Assignments of Error

- 10 “You jurors are the final arbiters in all cases where the law seeks to convict and punish for crime. You can readily understand that unless crime is detected and vigorously prosecuted and proper punishment therefor made sure, there can be no peace, and there will be no security for our people. Punishment for crime, gentlemen, has a two-fold purpose, namely, punishment of the offender, and by that punishment to deter others from doing the like. The underlying purpose of it all is to make it unsafe for persons to commit crime and to secure to people in a civilized community, the unhampered pursuit of their business and pleasure without danger of loss of life or bodily injury or deprivation of their possessions. It follows from what I have just said that the security of the individual in a given community is only as safe as the jurors in that community will make it by their unbiased, impassionate and just verdicts.”
- 20
- 30 21. Because the verdict was against the weight of evidence.
22. Because the verdict was the result of mistake, passion, prejudice and partiality.
23. Because the proof could not satisfy a considerate mind beyond a reasonable doubt that the defendant was guilty of the crime of murder in the first degree.
- 40 Plaintiff-in-error prays that the judgment of his conviction may be reversed for the aforesaid reasons.

ALEXANDER SIMPSON,
Attorney for Plaintiff-in-error.

Specification of Causes for Reversal

4. Because the Trial Court admitted into evidence over the objection of defendant's counsel, a certain map.

10 5. Because the Trial Court denied defendant's motion made at the conclusion of the State's case to direct a verdict of acquittal:

(a) On the ground that the Court was without jurisdiction, and

(b) On the ground that the State had failed to prove beyond a reasonable doubt that the slaying was wilful, deliberate and premeditated.

20 6. Because the Trial Court refused to permit the defendant to answer the following question:

“Q. What was that talk with your attorney (Aaronson)?”

7. Because the Trial Court refused to permit the defendant to answer the following question:

30 “Q. When you said in answer to the Judge that you would get a break, did you mean in that statement that you would not be prosecuted as if you had committed first degree murder, but that they would give you a fair investigation as to whether or not this was accidental?”

8. Because the Trial Court permitted the defendant to be asked and answer the following question:

40 “Q. Was it in the State of New Jersey?”

Specification of Causes for Reversal

9. Because the Trial Court denied defendant's motion made at the conclusion of the trial to strike out the third statement purported to have been made by the defendant and which was marked Exhibit S-4.

10. Because the Trial Court denied defendant's motion made at the conclusion of the trial to withdraw from the consideration of the jury any charge except that of involuntary manslaughter. 10

11. Because there was no proof in the case that the deceased was stricken in the State of New Jersey.

12. Because there was no proof in the case that the deceased died in Union County, New Jersey. 20

13. Because there was no proof in the case that the slaying was deliberated.

14. Because there was no proof in the case that the slaying was wilful.

15. Because there was no proof in the case that the slaying was premeditated. 30

16. Because there was no proof in the case of an intent to take human life in the mind of the defendant.

17. Because the defendant was incapable of forming the specific intent to kill by reason of intoxication.

18. Because the trial was conducted generally in a manner prejudicial to the rights of the de- 40

Specification of Causes for Reversal

defendant and in a manner that must have incited the prejudice of the jury, viz:

- (a) The exhibit of an automobile in the court room prior to the selection of a jury.
- 10 (b) The exhibit of an automobile in the court room and later introduced in evidence.
- (c) The presentation of a human skull in the presence of the jury though not introduced in evidence.
- (d) The introduction in evidence of a certain pliers.
- 20 (e) The introduction in evidence of a pair of scissors.
- (f) The introduction in evidence of a certain letter addressed to one, Jack Dillon.
- (g) The testimony relating to remarks made by Ira Jansen and Mrs. Hilda Frazer in the presence of the defendant and after the defendant had returned to Rahway.
- (h) The testimony of William T. McGrath.
- 30 (i) The prejudicial cross-examination of the defendant and the inflammatory remarks by the Prosecutor of the Pleas.

19. Because the Trial Court charged the following requests to charge submitted by the Prosecutor of the Pleas:

- 40 "Proof of motive is not an essential element in conviction of murder in the first degree."

Specification of Causes for Reversal

“If the proved facts establish that the defendant in fact did the killing wilfully, that is, with intent to kill, and as the result of premeditation and deliberation, thereby implying preconsideration, and determination, it is murder in the first degree, no matter what the defendant’s motive may have been, and nor although he in fact had no motive whatsoever.” 10

20. Because the Trial Court charged the jury as follows:

“To constitute murder in the first degree, there must be an intention to take life, coupled with premeditation and deliberation. Premeditation or intention to kill need not be for a day, nor for an hour, or even for a minute, for if there was a design, a determination to kill, distinctively formed in the mind at a moment before and at the time of the shooting, it would be murder in the first degree.” 20

“One may become drunk or remain sober as he chooses, and if it were true that intoxication is an excuse for crime or a justification, then men might proceed to become intoxicated first in order to commit crime.” 30

“This rule, gentlemen, should be applied with caution and no undue or dangerous immunity or license be given to crime by persons whose passions are inflamed by drink.” 40

Specification of Causes for Reversal

10 “You jurors are the final arbiters in all cases where the law seeks to convict and punish for crime. You can readily understand that unless crime is detected and vigorously prosecuted and proper punishment therefor made sure, there can be no peace, and there will be no security for our people. Punishment for crime, gentlemen, has a two-fold purpose, namely, punishment of the offender, and by that punishment to deter others from doing the like. The underlying purpose of it all is to make it unsafe for persons to commit crime and to secure to people in a civilized community, the unhampered pursuit of their business and pleasure without danger of loss of life or bodily injury or deprivation of their possessions. It follows from what I have just said that the security of the individual in a given community is only as safe as the jurors in that community will make it by their unbiased, impassionate and just verdicts.”

20
30 21. Because the verdict was against the weight of evidence.

22. Because the verdict was the result of mistake, passion, prejudice and partiality.

23. Because the proof could not satisfy a considerate mind beyond a reasonable doubt that the defendant was guilty of the crime of murder in the first degree.

40

ALEXANDER SIMPSON,
Attorney for Plaintiff-in-error.

JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND
APPEALS

THE STATE OF NEW JERSEY, Defendant-in-Error, vs. WILLIAM M. FRAZER, Plaintiff-in-Error.	}	In Error.	10
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And thereupon, afterwards, to wit, on the 30th day of July, 1931, the said State of New Jersey, by Abe J. David, Prosecutor of the Pleas of the County of Union, comes into Court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

ABE J. DAVID,
Prosecutor of the Pleas,
Union County. 30

Walter C. Tenney,
Asst. Prosecutor of the Pleas,
Of Counsel with Defendant-in-Error.

TABLE IN ERROR

NEW JERSEY COURT OF ERRORS AND APPEALS

In Error

Delaware in Error

Harmon M. Harmon

And further alleged to act on the 2nd day of January, the said state of New Jersey, County of Essex, under the Court and said that there is no error either in the record and proceedings or in the judgment of the Court and may proceed to examine as well the record and proceedings as the matters therein stated as against the writ and that the judgment there and the proceedings thereon are in all things

APPEAL

John J. David

John J. David

John J. David

John J. David

John J. David

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

WILLIAM M. FRAZER,
Plaintiff-in-Error.

On Indictment for Murder.

On Error to Union County Oyer and Terminer.

BRIEF OF DEFENDANT-IN-ERROR.

Plaintiff-in-Error was convicted June 16th, 1931, in the Union County Court of Oyer and Terminer of murder in the first degree (Case, p. 8). The jury did not recommend life imprisonment.

Hon. Alfred A. Stein, Judge, presiding at the trial, imposed the death penalty (Case, p. 9).

Statement.

On February 16th, 1931, William M. Frazer, the Plaintiff-in-Error, met Phoebe Stader, the deceased, and drove her in his automobile to a town called Walden, New York. The Plaintiff-in-Error stopped overnight at a hotel there. On February 17th, 1931, Frazer joined Mrs. Phoebe Stader and went to Newburgh, New York, where they visited a motion picture show and a Chinese restaurant, and started back with her.

At a point south of Ramsey, in the State of New Jersey, the Plaintiff-in-Error shot Phoebe Stader.

He continued to drive his automobile and felt and listened to ascertain if Phoebe Stader was

still alive. When he passed the Durant Automobile Plant in Elizabeth, New Jersey, Phoebe Stader was still breathing and was alive, and when he arrived at his mother's home in Rahway, New Jersey, Phoebe Stader was dead, having died between the Durant Automobile Plant in Elizabeth and the City of Rahway.

Frazer told his cousin, Ira L. Jansen, and his (Frazer's) wife that he had killed Phoebe Stader and was deliberating whether he would surrender himself to the authorities or commit suicide. He decided to commit suicide and drove to the outskirts of Rahway, New Jersey, for that purpose but did not have nerve enough to do it. Later he moved the body of Phoebe Stader from the front seat to the rear of the automobile, and then drove his car to the vicinity of his mother's home, got a crate, placed it over the body, then covered it with a blanket, locked the car, left it parked on a nearby street, entered his mother's home, hid the pocketbook belonging to Phoebe Stader under the mattress and went to bed.

He slept until the afternoon of that day, when he took the money out of the pocketbook and burned the pocketbook and its contents. Then he arranged with Ira L. Jansen to secure a sum of money to be delivered to him at Raleigh, North Carolina, where he would be known under the assumed name of H. G. Devlin.

Frazer drove to Philadelphia, where he stopped and wrote a letter to Mrs. McLaughlin, a sister of Phoebe Stader. He then drove to Washington, D. C., where he slept in his automobile; then drove south to Doswell, Virginia, where he took the body of Phoebe Stader out of the automobile, cut and removed the clothing from the body and left the body in a field.

He then drove to Saint Petersburg, Virginia, picked up a hitch-hiker, William McGrath, on the route, and later burned the clothing that he had taken from the body of Phoebe Stader. He then with William McGrath drove to Raleigh, North Carolina, where he registered in a rooming house under the assumed name of H. G. Devlin.

Later Ira L. Jansen went to Raleigh, North Carolina, and delivered Two Hundred (\$200) Dollars to Frazer.

On February 22nd, 1931, the body of a nude, dead woman was found at Doswell, Virginia, and this body was identified as that of Phoebe Stader. On February 25th, 1931, Frazer was apprehended at Raleigh, North Carolina.

The automobile which Frazer drove and the rifle with which the fatal shot was discharged were recovered at the time of Frazer's arrest and used as exhibits at the trial.

Facts.

William M. Frazer, the Plaintiff-in-Error, age thirty-one (31) years, married thirteen (13) years, with a wife and two children living (Case, p. 101, l. 35 and Case, p. 102, ll. 1-12), met Phoebe Stader, the wife of Philip Stader, at Rahway, where all the parties resided, and carried on with her a clandestine or more or less open relation for a period of about two years, so that Philip Stader, the husband of Phoebe Stader, left his wife and moved to South Amboy, New Jersey (Case, p. 14, l. 40), and the wife of the Plaintiff-in-Error left him and threatened to obtain a divorce (Case, p. 111, l. 4 and Case, p. 104, ll. 1-5).

On February 16th, 1931, about 11 A. M. the Plaintiff-in-Error met Phoebe Stader at Rutt's Hut on the road from Belleville to Passaic (Case, p. 104, ll. 24-40 and Case, p. 105, ll. 1-10), and drove with her in his car to Walden, New York. He drove up to Walden within several thousand yards of her sister's house, where Phoebe Stader got out with her sister and got in the other car (Case, p. 105, ll. 25-35). He was with Phoebe Stader the remainder of that day (Case, p. 105, ll. 30-40 and Case, p. 106, ll. 1-10).

On February 17th, 1931, Frazer met Phoebe Stader at 1 P. M. (Case, p. 107, ll. 1-16); she got in his auto and they drove to Newburgh, New York (Case, p. 107, l. 20), where they went to a Chinese restaurant and later went to a moving picture (Case, p. 107, ll. 30-40 and Case, p. 108, ll. 1-40).

Frazer and Phoebe Stader returned to the Chinese restaurant and remained there until 7 P. M. on that day (Case, p. 108, l. 23), and they then went to see Richard Dix in "Cimmaron" (Case, p. 108, l. 29), and remained there to the end of the first show, which was about 9 P. M. (Case, p. 108, ll. 30-38); he then got in the car and drove towards Walden (Case, p. 108, l. 36).

Frazer was not intoxicated because he remembered all of the details (Case, p. 126, ll. 20-30).

He denied the purchase of .22 calibre bullets for his rifle on either February 16th or February 17, 1931, at Walden, New York (Case, p. 141, ll. 21-23), but George F. Evans, a witness for the State, testified that he met the Plaintiff-in-Error at the place of business of **George F. Evans** at Walden, New York, about 2 P. M. on February 17th, 1931, and sold the Plaintiff-in-

Error a box of .22 calibre cartridges (Case, p. 147, ll. 1-15).

Frazer wrote to Mrs. McLaughlin, the sister of Phoebe Stader, that "We sold the Buick" and "we are on our way to California" (Case, p. 139, ll. 30-40).

He had exhausted his financial reserves, was not working and had a small amount of money in the bank (Case, p. 133, ll. 10-40). Phoebe Stader had left the Plaintiff-in-Error and intended to reside in Walden, New York, and the Plaintiff-in-Error realizing that Phoebe Stader had decided to terminate their illicit relations determined to kill her, and planned to kill her when he purchased the bullets for his rifle at Walden, New York, on the afternoon of February 17th, 1931.

The State respectfully submits that the Plaintiff-in-Error did wilfully and deliberately and with premeditation conceive and plan the killing of Phoebe Stader upon her refusal to return to Rahway with him and that he subsequently endeavored to conceal his act by disposing of the body in Virginia, destroying all marks and means of identification and by writing to Mrs. McLaughlin, the sister of Phoebe Stader, that Phoebe Stader had left with him for California.

Corpus Delecti.

Ira L. Jansen, a cousin of the Plaintiff-in-Error, saw Phoebe Stader sitting in the front seat of the automobile and she was dead. This was at the time Frazer drove to his home in Rahway (Case, p. 69, l. 19).

Dr. George W. Horre testified that Phoebe Stader could have lived for two hours after the

bullet entered the skull and possibly a day or two (Case, p. 30, ll. 20 and 29). And also that death was the result of a bullet wound in the head (Case, p. 23, l. 25).

Frazer said that Mrs. Stader was alive at the time he passed the Durant plant in Elizabeth, Union County, New Jersey, and dead when he reached Rahway in that county, Exhibit S. 4 (Case, p. 173).

Counsel in his brief, Point I, "the Court was without jurisdiction," attempts to argue that the *corpus delicti* was not proven. The proof of *corpus delicti* is merely the body of the offense, the essence of the crime. Bouvier's Law Dictionary, Volume 1, page 686. The real question raised by counsel in this respect is not one of *corpus delicti* but that the verdict of the jury should have been for manslaughter. That question is not directed to the jurisdiction of the Court but to the degree of the crime. If the jury accepted the entire confession of Frazer as true, and particularly that part of the confession which says that the shooting was accidental, the verdict would have been one of acquittal or manslaughter, but it is apparent that the jury took into consideration not only the confession of the defendant, but the various facts and circumstances proven in the case that established to the satisfaction of the jury, without any reasonable doubt, that the shooting was not accidental, and was therefore done with intent, premeditation and deliberation.

In the case of the *State v. James*, 96 N. J. L., p. 132 at p. 147, the Court said, "and in this situation, namely, proof of the death of a person by foul means and the confession of a party that he murdered the man whose death is so

proved, the law in this State is entirely settled, for, in the *State v. Kwiatkowski*, 83 N. J. L., p. 650, this Court held that the only limitation upon the use of evidence against him of a prisoner's confession of murder, voluntarily made, is the want of proof of *corpus delicti*. If death through criminal agency be proven and a man confesses to have caused that death, he may be convicted of murder on his confession; furthermore, in the *State v. Baunsik*, 84 N. J. L., p. 640, this Court held that in a prosecution for murder, the *corpus delicti* may be proven by the confession made by the defendant which is corroborated by other evidence. The law does not require full proof of the body of the crime independent of such confession. These two authorities are entirely dispositive of the contention of Plaintiff-in-Error concerning the *corpus delicti*.

The entire evidence showed that the Plaintiff-in-Error did wilfully, deliberately and with premeditation shoot Phoebe Stader.

Phoebe Stader expected to be driven back to Walden from Newburgh, New York (Case, p. 108, l. 37), and after Frazer started his automobile Phoebe Stader, who had drank plenty of liquor (Case, p. 108, l. 18, and Case, p. 171, l. 30), which had been supplied by the Plaintiff-in-Error, was sleeping in the front seat.

Frazer owned a .22 calibre rifle for a long time (Case, p. 171, l. 28), and purchased ammunition for this rifle on the afternoon of February 17th, 1931 (Case, p. 147, ll. 1-15). He testified, "I got out of the front seat and got the gun from the back of the rear seat. I started to turn around and the gun went off" (Exhibit S. 3,

Case, p. 171, l. 34). "I was bringing the gun from underneath the seat and preparing to get out of the car" (Case, p. 113, l. 40, and Case, p. 138, ll. 10-30).

When Frazer reached Rahway he told Jansen and his wife that he had shot or killed Mrs. Stader, but did not say the shooting was accidental (Jansen's testimony, Case, p. 145, ll. 1-11). When his wife asked him what happened he said, "None of your business" (Case, p. 129, l. 23).

Frazer decided to commit suicide (Case, p. 117, ll. 1-10), but he did not have nerve enough to do it (Case, p. 117, l. 11).

He rode back to his house and covered the body of Phoebe Stader, locked the car and went to bed (Case, p. 118, ll. 1-10).

He then arranged to get away and escape; he testified, "I asked her (Mrs. Frazer) to get me some clothes and bring them down so that I could go away, and she went back to the house and got them and brought them down and I packed them up and left" (Case, p. 118, ll. 23-27). Jansen obtained a flashlight and delivered it to Frazer, who then left Rahway, went towards Philadelphia (Case, p. 118, l. 32), and continued on to Baltimore, Washington and Raleigh, North Carolina (Case, p. 118, l. 40, and Case, p. 119, l. 10).

He cut the clothes off the body of Phoebe Stader (Case, p. 135, l. 12), and in the presence of McGrath took the clothes from the automobile and burned them in the woods while traveling towards Raleigh, North Carolina (Case, p. 89, ll. 10-30).

He had previously dragged the nude body of Phoebe Stader into the woods and left it there without planning for burial (Case, p. 135, ll. 10-20); he ripped off the ring from the finger of the deceased with a pair of pliers so that the body could not be identified (Case, p. 136, l. 15), he cut the clothes from the deceased, burned them and dragged her body into the woods for the purpose of destroying all means of identification of the body (Case, p. 135, ll. 19 and 23), and he did not want anybody to know if that body were found later that it was the body of Mrs. Stader (Case, p. 136, l. 19).

He tried to avoid arrest (Case, p. 135, ll. 10-20), registered at Raleigh, North Carolina, under an assumed name (Exhibit S. 3, Case, p. 171, l. 3) and concealed the facts from McGrath while riding in the automobile by telling McGrath that "A woman gave birth to a child in the car" (Case, p. 131, l. 23).

The instant case is on all fours with the case of the *State v. Abbato*, 64 N. J. L., p. 658. We quote from that case on p. 663:

"If the deceased (DeFeo) came to his death at the hands of Abbato, as the jury has found, it seems almost impossible, in the face of the facts above cited, to resist the conclusion that his death was the result of the wilful, deliberate and premeditated act of the latter, and that the crime was murder in the first degree. Certainly it cannot be said as a matter of law that these facts will not support a conviction of that offense."

The defense was that the shooting of Phoebe Stader was accidental.

Until after his arrest in Raleigh, North Carolina, and after he had retained and consulted with counsel, Frazer never told anyone that the shooting was accidental (Case, p. 138, ll. 20-40 and Case, p. 131, ll. 1-20).

Frazer testified that he told Ira L. Jansen, "I said that Mrs. Stader had been accidentally shot and was dead" (Case, p. 127, l. 32), but Ira L. Jansen denied this (Case, p. 145, ll. 1-11). Jansen is a cousin of Frazer and is friendly with him (Case, p. 67, l. 40 and Case, p. 128, l. 19).

Frazer did not tell his wife the shooting was accidental, but when she asked what happened he said, "I told here none of her business" (Case, p. 129, ll. 20-25). He concealed the fact that a woman had been shot in the car from McGrath, while riding with him in the automobile and told McGrath a woman gave birth to a child (Case, p. 130, ll. 20-30).

Frazer admitted on the stand that he cut the clothing from the body of the deceased to help himself (Case, p. 135, l. 14) and dragged her nude body into the woods and left it there to assist himself (Case, p. 119, ll. 15-19), and that all this was done to remove and destroy all marks of identification (Case, p. 135, l. 23), and he cut off the ring from the finger of the hand of the deceased, intending to leave no material means of identification on the nude body (Case, p. 136, l. 16).

The rifle belonging to Frazer was offered in evidence and is Exhibit S. 8 (Case, p. 61, l. 19).

The automobile used by Frazer on his drives was offered in evidence and was physically pres-

ent in the court room as Exhibit S. 11 (Case, p. 75, l. 10).

It was a physical impossibility for the shooting of Phoebe Stader to have occurred in the manner that the Plaintiff-in-Error testified to and as set forth in his statement (Exhibit S. 2, Case, p. 168, l. 38).

The rifle is 31 inches long. It is not automatic, must be cocked before firing and requires some pressure to pull the trigger back.

The measurements of the automobile are the following:

The width between the front and the rear seat on the floor is 23½ inches (Case, p. 96, l. 13).

The distance between the back of the front seat and the front of the back seat is 14½ inches (Case, p. 96, l. 3).

The bullet discharged from the rifle entered the head of the deceased one inch to the left and one inch above the occipital protuberance (Case, p. 23, l. 26 and Case, p. 24, l. 39), passing from the left to the right side of the head of the deceased. Phoebe Stader, the deceased, sat in the front seat on the right side of the automobile (Case, p. 111, l. 33).

It was a physical impossibility for Frazer under these conditions to have fired that rifle while he was turning around or stumbling in the automobile, and for the bullet to enter the head of the deceased and take the course it did from left to right and upward.

Frazer must have reached in the back seat for the rifle, stepped out of the car and from that position on the pavement aimed and fired the rifle for the bullet to have entered the head of

the deceased on the left side and take a course from left to right and upward.

The jury had an opportunity of inspecting the interior of the automobile, and there is no doubt that as part of their deliberation they so did, and found as a result that the rifle was fired by Frazer, not accidentally, but with premeditation, deliberation and intent to kill.

Frazer endeavored to conceal and denied the purchase of .22 calibre bullets on the afternoon of the day preceding the commission of the crime (Case, p. 141, ll. 21-23).

The State proved on rebuttal that he did purchase the bullets at Walden, New York at that time, just prior to the time he left Walden, New York, with Phoebe Stader on his trip to Newburgh (Case, p. 147, ll. 1-15), and the purchase of the bullets by him was for the purpose of carrying out his plan to kill Phoebe Stader.

The Assignments of Error and the Specification of Causes for Reversal are the same, and reference hereafter is made to the Specification of Causes for Reversal.

Specification 1.

The question asked of Joseph Baker (Case, p. 12, l. 18) was harmless; Philip Stader, the husband of the deceased, proved the identification of the body of Phoebe Stader (Case, p. 15, l. 32), and the witness was examined upon this identification by the counsel for the Plaintiff-in-Error (Case, p. 19, l. 28).

Specification 2.

The three statements admitted into evidence are Exhibits S. 2, S. 3 and S. 4 and are printed in the State of the Case at pages 168 to 173, inclusive.

These statements constitute the confession made by the Plaintiff-in-Error, and were properly proved and admitted in evidence as voluntary confessions.

Counsel for Plaintiff-in-Error said, "I think they are properly proven but I want to protect the defendant. I object to them as incompetent and irrelevant" (Case, p. 50, l. 34).

John Winder Bryan testified: Q "Before Frazer made any statement, what, if anything, was said to him by me?" A "You warned him of his rights and told him any statement that he made could be used for or against him" (Case, p. 31, l. 35). "He made three different statements" (Case, p. 32, l. 4). This evidence was corroborated by Robert M. Saunders (Case, p. 40, ll. 18-40), and also by Michael Hoey (Case, p. 44, ll. 10-25), and also by William Wagner (Case, p. 50, ll. 1-40).

Counsel for Plaintiff-in-Error consented to the reading of the statements (Case, p. 52, l. 13) and cross examined Robert M. Saunders relative to any conversation before the three statements were made (Case, p. 41, ll. 20-40).

Specification 3.

The letter and envelope addressed to Mrs. Fred McLaughlin, sister of the deceased, was identified by Frazer as the letter that he wrote to her from Philadelphia (Case, p. 62, ll. 12-20), and also part of the *res gestae*, and was an

attempt to conceal from her the death of Mrs. Stader.

Specification 4.

The map was initialed by Frazer at Raleigh, North Carolina, at the time he made his statements and he indicated on it the route he had taken from Newburgh to Rahway (Case, p. 59, l. 38 and Case, p. 60, ll. 10-20), and is part of the *res gestae*.

Specification 5.

Division "A"

The State proved a prima facie case; the facts of the proof are set forth under the heading "Facts" and there outlined.

Division "B"

The State proved beyond a reasonable doubt that the slaying was wilful, deliberate and premeditated, and the proof of these elements of murder in the first degree are set forth under the heading above. "The entire evidence showed that the Plaintiff-in-Error did wilfully, deliberately and with premeditation shoot Phoebe Stader."

Specification 6.

The alleged talk of the Plaintiff-in-Error with his attorney (Aaronson) at Raleigh, North Carolina, was clearly not admissible because it was a self-serving declaration (Case, p. 119, l. 30). Frazer could have produced the witness if he desired the testimony of such witness (Case, p. 120, l. 28).

Specification 7.

The question was clearly not admissible because it was self-serving and called for a conclusion. The witness answered the point in question as follows: Q "Why did you look for leniency?" A "No special reason" (Case, p. 122, ll. 19-30). Plaintiff-in-Error signed the statements admitted in evidence in which he said that the statements were made voluntarily without any promises, threats or force of any kind (Exhibits S. 2 and S. 4, Case, pp. 168 and 173).

Specification 8.

The answer to the question, "Was it in the State of New Jersey?" was relative to the money the Plaintiff-in-Error alleged he had. Frazer answered similar questions (Case, p. 133, ll. 1-33) and no objection was made to these questions. The purpose of the question was to test the credibility of Frazer and the defense opened the door for this cross examination regarding the money of Frazer when questions were asked on direct regarding \$17,000 Frazer is alleged to have inherited and questions regarding the investment of the money (Case, p. 103, ll. 23-35).

Specification 9.

The third statement made by Frazer marked Exhibit S. 4, Case, p. 173, was completely proyed as a voluntary confession by the witnesses John Winder Bryan, *supra*, Robert M. Saunders, *supra*, and Michael Hoey, *supra*, and William Wagner (Case, p. 50, ll. 1-40), and Frazer at no time denied making this statement, but did admit that he did make this statement voluntarily and without any promise of any kind.

Specification 10.

There was ample proof of murder in the first degree and this proof is set forth under the heading, "Entire evidence showed that the Plaintiff-in-Error did wilfully, deliberately and with premeditation shoot Phoebe Stader," *supra*.

Specification 11.

There was proof that the deceased was stricken in the State of New Jersey, and is the evidence given by William M. Frazer as set forth in his statement, Exhibit S. 4, Case, p. 58 and Case, p. 173, as follows: "After looking over road map of the State of New Jersey, which I have initialed and dated, I am satisfied and I make statement to the effect that I reached for the gun and it went off after I passed Ramsey, New Jersey."

State v. Lang, decided May 18th, 1931, Court of Errors and Appeals, 154 Atlantic Reporter, reported at page 864.

Specification 12.

There was proof that the deceased died in Union County, New Jersey, and the evidence is supplied by Frazer in his statement (Exhibit S. 4, Case, pp. 58 and 173). "But I felt the body of Mrs. Stader and I heard her breathing; and I do know that she was alive when I passed the Durant plant on Frelinghuysen avenue, Elizabeth, New Jersey; and I do know that when I got to Rahway and stopped the car she was dead, and so she must have died between the time I passed the Durant plant in Elizabeth and the time I stopped the car in Rahway.

State v. Lang, supra.

Specifications 13, 14, 15.

There was proof that Frazer did wilfully, deliberately and with premeditation and intent kill Phoebe Stader and this proof is set forth under the heading, "The entire evidence showed that the Plaintiff-in-Error did wilfully, deliberately and with premeditation shoot Phoebe Stader," *supra*.

Specification 16.

Specification 16 is as follows: "Because there was no proof in the case of an intent to take human life in the mind of the Plaintiff-in-Error."

In *State v. Ehlers*, 98 N. J. Law at page 236 the Court said:

"We do not agree with either of these contentions. As to the first one, proof of motive is not an essential element in a conviction of murder in the first degree. If the proved facts established that the defendant in fact did the killing wilfully, that is, with intent to kill (which is presumed from the proof of the killing until the contrary appears, *State v. Zellers*, 7 N. J. Law 220; *Brown v. State*, 62 N. J. Law 666, 42 Atl. 811), and as the result of premeditation and deliberation, thereby implying preconsideration and determination, there is murder in the first degree, no matter what defendant's motive may have been, nor although he in fact had no motive (using word in its usual sense of self-serving reason) whatsoever."

In *State v. Close*, 106 N. J. Law, page 321, and 148 Atlantic Reporter, page 764, the Court said:

"Where a criminal act is charged and proved the establishment of a motive is not necessary to support a conviction; motive may be presumed from the proven facts."

Specification 17.

There was no proof in the case by Frazer of intoxication; and he did not offer any defense that he was intoxicated and by reason thereof unable to form any specific intent.

The proof in the case is that Frazer was able to recall with minuteness the details of everything that happened during the afternoon and the night when he shot Phoebe Stader. Frazer did say that he had been drinking in the Chinese restaurant but he did not at any time testify or offer a defense that he had been intoxicated or unable to form an intent by reason of intoxication (Case, pp. 124, 125, 126 and Case, p. 127, ll. 1-11).

In *State v. Close*, 106 N. J. Law, page 321, and 148 Atlantic Reporter, page 764, the Court said:

“Deliberation and premeditation are essential elements of the crime of murder in the first degree, and, if by reason of drunkenness, or any other cause, it appears that a prisoner’s mental estate is such that he is incapable of such deliberation and premeditation, then the crime has not been committed; but this only goes to the question of degree.

‘If the evidence is sufficient to satisfy the jury that the intoxication of the accused, at the time of the homicide, was so great as to prostrate his faculties and render him incapable of forming the specific intent to kill, which is the essential ingredient of murder of the first degree, the prisoner will not be entitled to acquittal, but his offense will be murder in the second degree.’ This is to be found at page 185 of 60 N. J. Law, 37 A. 958, and is an excerpt from the charge of Mr. Justice Depue in *State v. Martin*, in the Essex Oyer and Terminer in 1881; affirmed in Supreme Court 1883. It

is pertinent to remark that the learned Justice proceeded further to say: 'You should carefully discriminate between that excitable condition of the mind produced by drink, which is not incapable of forming an intent, but determines to act on a slight provocation, and such prostration of the faculties by intoxication as puts the accused in such a state that he is incapable of forming an intention from which he shall act.' 4 N. J. L. J. page (325), 339 (1881).

Mr. Justice Van Syckle wrote the opinion in *Wilson v. State*, and he went on to say, at page 185 of 60 N. J. Law, 37 A. 959: 'As observed by the learned Judge in the *Martin Case*, this rule should be applied with caution, that no undue or dangerous immunity or license be given to crime by persons whose passions are inflamed by drink.' And, further: 'so long as the mind of the criminal is capable of conceiving the purpose to kill, he must be held to the responsibility of one who is sober, and that is the language of the cases upon this subject.' "

The above-cited syllabus and the citations in the case are found in the case of *State v. Close*, 148 Atlantic Reporter, page 764, Court of Errors and Appeals. The syllabus is on page 764, paragraph 1, and the quotation from the case will be found on page 769 in the first and second paragraphs.

Specification 18.

Subdivision "A."

The automobile in the court room was an exhibit in the case (Exhibit 11, Case, p. 74, l. 39 and Case, p. 79, l. 10), and properly part of the State's case.

Subdivision "B."

The automobile was proper evidence because the crime was committed in the automobile, was part of the *res gestae*, and properly identified as the car Frazer used at the time of the shooting.

Subdivision "C."

The human skull was produced for the purpose of showing the course of the bullet in the head of the deceased; it was not allowed in evidence (Case, p. 97, l. 35). Counsel for Plaintiff-in-Error made no objections to the use of the skull for this purpose (Case, p. 24, l. 34).

Subdivision "D" and "E."

The pliers and the pair of scissors were properly introduced in evidence as part of the *res gestae*, and to show that the Plaintiff-in-Error made use of them to cut the ring from the finger and to cut the clothes from the body of Phoebe Stader for the purpose of destroying identification of the deceased.

In *State v. Catania*, 102 N. J. Law, page 569, and 134 Atlantic Reporter, page 110 at page 112, the Court said:

"the articles were admitted in evidence because they had some bearing upon whether or not DeFrancesco was in Vineland. A trial court in such matters is vested with a discretion. It is impossible to lay down any general rule that will be sufficiently definite to solve each question which may be presented. We think the trial judge acted within the latitude of the discretion with which he was vested in admitting the can in evidence."

Subdivision "F."

The Plaintiff-in-Error wrote a letter to H. G. Devlin and identified the letter as his (Exhibit S. 3, p. 171, ll. 1-10), and was offered in evidence as part of the *res gestae*.

Subdivision "G."

The testimony relating to the conversation between Frazer and Ira L. Jansen and Mrs. Hilda Frazer was properly admitted in evidence and the same testimony was given by the Plaintiff-in-Error on direct testimony (Case, pp. 30-40; Case, p. 116, ll. 1-40).

Subdivision "H."

The testimony of William T. McGrath (Case, p. 87; Case, p. 91) was proper evidence as part of the *res gestae* and showed that the Plaintiff-in-Error burned the clothes of the deceased for the purpose of concealing the commission of the crime.

Subdivision "I."

The Prosecutor of the Pleas respectfully submits that the cross examination of the Plaintiff-in-Error was proper cross examination.

Specification 19.

The request charged as set forth under this specification is the exact language quoted in the case of *State v. Ehlers*, 98 N. J. Law, page 236, and is set forth *supra*, under Specification 16.

Specification 20.

The trial court charged the jury according to law in the language set forth under this specification. The first paragraph is in accordance

with the principle laid down by Chief Justice Green in the case of *Donnelly v. State*, 26 N. J. Law 463, 510.

In *State v. Bonofiglio*, 67 N. J. Law 239, at page 243 the court cited with approval the case of *Donnelly v. State*, *supra*.

The second paragraph of the court's charge is an excerpt from the charge of Mr. Justice Depue in *State v. Martin*, 60 N. J. Law, page 185, and is cited with approval in the case of *State v. Close*, 148 Atlantic Reporter, page 764 at page 769, and is set forth above under Specification 17.

Weight of Evidence.

The weight of evidence was clearly with the State. The Plaintiff-in-Error had illicit relations with Phoebe Stader for a period of eighteen months. She was leaving Rahway to reside in Walden, New York, and on February 16th, 1931, the Plaintiff-in-Error met her in New Jersey by prearrangement and drove her to Walden, New York. The Plaintiff-in-Error arranged to meet her on the afternoon of February 17th, 1931, and did meet her at Walden and drove with her to Newburgh, New York. He purchased bullets for his rifle that afternoon in Walden, New York.

He took deceased to a Chinese restaurant at Newburgh in the afternoon and the evening of February 17th, 1931, and plied her with liquor on both occasions. He testified that they attended two moving picture shows and left the last show about 9 P. M. on February 17th. He then took the deceased to the auto presumably to return to her home in Walden. There was

snow and sleet on the road; she fell asleep, presumably from the effects of the liquor.

He started to drive the automobile towards Rahway, and at a point near Ramsey, New Jersey, shot Phoebe Stader.

The possibility of shooting a person at the base of the brain, having the bullet travel from left to right and upward through the head, while that person is sitting or sleeping in the front seat of the auto, is too remote to be considered as an act of misadventure, or an accident. It could not be done by a mere turning around or reaching for the rifle in the auto, and which rifle was not automatic, and with a trigger that had to be cocked to be fired. The Plaintiff-in-Error deliberately aimed the rifle and fired to kill Phoebe Stader, and that is the way she was shot.

Frazer intended to kill Phoebe Stader, and that was the reason for the purchase of the bullets on that afternoon; it was the reason for taking her to the Chinese restaurant on two occasions on that day and plying her with liquor. It was not a farewell parting, but the sequence of acts for the consummation of his plan to kill her.

Frazer did not take Mrs. Stader to a doctor, but after his conference with his wife and cousin, he decided to escape arrest and destroy the body. He was told by his wife and cousin that he should surrender to the authorities or commit suicide, because they knew that he had committed the crime of murder.

He covered the body of Phoebe Stader in his auto, drove south to Raleigh, North Carolina, and on the way, in an isolated part of Virginia,

dragged the body in the woods, stripped it of clothes and ring in order to destroy all marks of identification, for the purpose of concealing the commission of the crime. In a short time the body would have been consumed by vultures.

He burned Mrs. Stader's pocketbook and clothes. He had his cousin bring him \$200 to Raleigh, for the purpose of getting away. He used an assumed name.

All of the acts of the Plaintiff-in-Error from the inception of the crime to the time of his arrest were acts done in the commission of a murder and the concealment of the crime.

Plaintiff-in-Error purchased the bullets in the afternoon, plied Phoeber Stader with liquor, waited until she felt secure of returning to her home and fell asleep, then deliberately shot her; failed to seek a doctor, turned to his wife and cousin for protection, and then fled and tried to destroy the body and all marks of identification for the purpose of hiding the crime, writing at the same time to Mrs. McLaughlin, sister of the deceased, that they had gone to California.

In the brief in behalf of Plaintiff-in-Error, page 9 (under subdivision (c) statements of defendant), counsel makes point that the State by offering in evidence the statements of the Plaintiff-in-Error (Exhibits S. 2, 3 and 4), is bound by the contents thereof.

This is not the law in this State.

We quote from the case of *State v. Abbato*, 64 N. J. Law, page 661:

“The next assignment or error relates to the admission of testimony offered by the prosecution for the purpose of contradicting a statement made by the prisoner in his

confession. There was no error in admitting this evidence. The rule is elementary that if, after the whole statement of the prisoner is given in evidence, the prosecutor can contradict any part of it, he is at liberty to do so; and then the whole testimony is to be left to the jury for their consideration, precisely as in other cases where one part of the evidence is contradictory of another. 1 *Greenl. Evid.* 218; *Rex v. Jones*, 2 *Car. & P.* 629."

We also quote from the case of *Ingersoll v. English*, 66 N. J. Law, page 465:

"While the rule is well settled that a party who offers a witness will not be permitted afterwards to impeach his character for truth and veracity, or to impugn his credibility by general evidence tending to show him to be unworthy of belief, but it is equally well established that the party will not be precluded from proving the truth of any particular fact, by any other competent testimony, in direct contradiction to what such a witness may have testified. I *Greenl. Evid.* (16th ed.) 442, 443b."

We also quote from the case of *Moebius v. Williams*, 84 N. J. Law, page 542:

"But passing this point, and treating the admission of the defendant's testimony on cross examination as proper, the court erred in regarding the plaintiff as concluded thereby. The idea that a party calling a witness is 'bound' by his testimony is a prevalent one, but it is none the less a fiction. He may not impeach his character for veracity, nor impugn his credibility by general evidence to show him unworthy of belief, but he may prove the truth of any particular fact by any other competent testimony, in direct contradiction to what such a witness may have testified."

We also quote from the case of *State v. Kubaszewski*, 86 N. J. Law, page 255:

“The complaint was that the state was contradicting its own witness; something it had every right to do.”

In contradiction of the statement of Plaintiff-in-Error that the shooting was accidental the State offered in evidence the many facts referred to in this brief, tending to prove that the shooting by Frazer was with intent to kill and was done with premeditation and deliberation.

The proof negatives Frazer's defense. The entire evidence showed preparation and premeditation for the commission of the crime, and that Frazer was equipped to commit the crime.

The State proved the commission of the crime charged in the indictment. The jurors saw the witnesses for the State and the defense and had a right to determine which witnesses they would believe. The number of witnesses is immaterial (*State v. Grace*, 99 N. J. L., page 341).

The verdict was entirely in accordance with the weight of evidence.

“In *State v. Treficanto* (N. J. Err. & App.) 146 A. 313, it was held *inter alia* that to justify setting aside a verdict as against the weight of the evidence, that fact must be so clear as to give rise to an inference that it was the result of mistake, passion, prejudice or partiality; and that the court should not set aside a verdict even though in its opinion the jury might, upon the evidence, have found otherwise. According to these tests the verdict, and judgment rendered thereon, are to be held unassailable.”

This citation appears in *State v. Close*, 148 Atlantic Reporter, page 764 at top of page 768.

In *State v. Treficanto*, 146 Atl. Rep., page 313, Errors and Appeals (syllabus by the Court), 3 (e), this Court said:

“The competency of the evidence is not to be considered; it is not to be weighed after eliminating such testimony as the Court, upon review, might feel was improperly admitted, but is to be weighed as it was presented to the jury in its totality.”

The weight of evidence produced by the State and not discredited was ample to support the verdict returned by the jury, and whether the proofs could not satisfy a considerate mind beyond a reasonable doubt was exclusively for the jury, and which they decided on proper evidence.

State v. Lang, 154 Atl. Rep., page 864 at page 867 under Point 12 and Point 13.

We respectfully submit that the verdict of the jury was justified by the evidence adduced.

It is respectfully submitted that no error was committed either in the charge of the Court or in the entire proceedings had upon the trial by which the Plaintiff-in-Error suffered manifest wrong or injury.

We respectfully submit that the conviction should be sustained.

ABE J. DAVID,
Prosecutor of the Pleas,
Attorney for the Defendant-in-Error,
Of Counsel.

WALTER C. TENNEY,
Assistant Prosecutor of the Pleas,
Of Counsel.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

v.

WILLIAM M. FRAZER,
Plaintiff-in-Error.

Sur Indictment for
Murder

On Error to
Union County
Court of Oyer and
Terminer

BRIEF FOR PLAINTIFF-IN-ERROR

Statement

William M. Frazer, the plaintiff-in-error (hereinafter called the defendant), was convicted of murder in the first degree in the Union County Court of Oyer and Terminer and on June 16, 1931, was sentenced to death.

The facts briefly stated are as follows:

William Moore Frazer, age 31, was indicted on May 12, 1931, for the murder of one Phoebe Stader. On February 22, 1931, a body was found in the woods near a town known as Carmel Church, Va. This body was later identified as that of Phoebe Stader. On the 26th day of February, 1931, the defendant was apprehended at Raleigh, North Carolina, and arrested for the murder of the said Phoebe Stader. On the same day, at

about 11:30 A. M., an autopsy was performed by Dr. Horre, and he testified that the bullet entered the skull of the deceased at the rear thereof, and, as a result, the deceased contracted a cerebral hemorrhage of the brain, which *may or may not have caused immediate death.*

On the day of his arrest, the defendant signed and made three statements, which were introduced in evidence at the trial. In the third statement, which was introduced in evidence and marked Exhibit S-4, the defendant stated that the gun went off accidentally somewhere below Ramsey, New Jersey, and that the body of Mrs. Stader was alive and he heard her breathing as he passed the Durant plant on Frelinghuysen Avenue, Elizabeth, N. J.

The defendant testified in his own behalf to the following effect: On February 17, 1931, after partaking of a great deal of liquor, the defendant parked his automobile on a side road between the towns of Newburgh and Walden, N. Y. The deceased and the defendant then went to the back seat of the automobile, which was a five-passenger Buick sedan. After about a half to three-quarters of an hour during which time they indulged in hugging and kissing, the deceased climbed over the front seat and seated herself on the right-hand side thereof. She made a remark to the defendant to the effect that the gun which he carried in the back of the car should be placed in the front seat. He started to open the left-hand door and whether or not he fell over the suitcase on the floor or tripped on the foot rail or his hand slipped on the door, he does not know, but he does know that the gun went off. He heard a sound like "ah" or "oh," emanating from the deceased. He fell partly out of the car and then jumped into the front seat. Her body had relaxed and she

was leaning against the window. He spoke to her and shook her and touched her, but she did not respond. He then drove the automobile towards Walden and later reached Rahway, N. J. He then relates the conversation with his cousin, Ira Jansen, and his wife Hilda Frazer, in which they advised him to commit suicide or to give himself up to the police. He then relates his trip south with the body and his apprehension in Raleigh, North Carolina.

He also testified that prior to his signing the third statement, marked Exhibit S4, he consulted an attorney of Raleigh, N. C., by the name of Aaronson, who, in the presence of the Prosecutor of Union County, advised him that he would get a break if the defendant located the death in Union County. He then signed the third statement.

Summary of Argument

Point I—The Court was without jurisdiction.

Point II—The verdict was against the weight of evidence.

Point III—The trial was generally conducted in a manner prejudicial to the rights of the defendant.

POINT I

The Court was without jurisdiction (Assignments 5A, 11 and 12, Specifications 5A, 11 and 12).

Before the defendant could have been convicted of the crime of murder in the first degree, the jury must have found beyond a reasonable doubt that

either the deceased was stricken within the confines of Union County or that she died in Union County as a result of a fatal blow inflicted elsewhere. Sections 59 and 60 of the Criminal Procedure Act (2 Compiled Statutes, 1910, p. 1839). After a thorough examination of the entire testimony adduced in the trial of this case, there is not a scintilla of evidence to the effect that the deceased was stricken in Union County or died in Union County, except the statement in Exhibit S4, to the effect that the gun went off after the defendant had passed Ramsey, N. J. and that the deceased was still alive when he passed the Durant plant on Frelinghuysen Ave., Elizabeth. Outside of this statement, there is no proof, either documentary or oral, to the effect that Phoebe Stader was alive when the defendant passed in his automobile through Union County, N. J.

It has been held by our Courts that the *corpus delicti* cannot be proven by the confessions of a defendant alone, but that they must be necessarily corroborated by some oral testimony (*State v. James*, 96 Law 132; *State v. Banusik*, 84 Law 640; *State v. Geltzeiler*, 101 Law 415). While there may be in this case corroborative testimony of the confessions establishing the *corpus delicti* of the crime, there is no corroborating testimony to the effect that the Court might have jurisdiction. Inasmuch as the *corpus delicti* of a crime cannot be sustained without some corroborating proof, it is the contention of the defendant that jurisdiction of a crime cannot be conferred upon the Court by a mere statement in a confession offered in evidence without some outside corroborative proof. Especially is this so when even jurisdiction must be first established beyond a reasonable doubt.

Even the testimony of Dr. Horre who testified that he was the assistant to the county physician and had performed the autopsy on the body of Phoebe Stader on February 26, 1931, does not confer or establish jurisdiction in the Union County Courts. His testimony reflects that as far as he knew, the deceased may have died almost instantly, or had died two or three days after the wound had been inflicted. Outside of the doctor's testimony, there is no evidence whatsoever to substantiate the statements in Exhibit S4 to the effect that the Court had jurisdiction of this alleged crime.

The statements introduced in evidence are replete with facts showing that if any crime was committed, the only crime that the defendant could have been charged with was involuntary manslaughter. The statements show that the defendant had no intention whatsoever of committing the crime charged in the indictment, but they do unequivocally assert that the shooting and the discharging of the gun was accidental.

These statements were introduced in evidence at the request of the Prosecutor of the Pleas, and he did not introduce any testimony whatsoever to dispute the contents of these statements. Accordingly, it necessarily follows, that on the statement alone, the defendant could only have been convicted of involuntary manslaughter and it has been held in the case of *State v. Carter*, 27 Law 499, that Sections 59 and 60 of the Criminal Procedure Act do not apply to the crime of manslaughter. It therefore necessarily follows that this Court cannot have jurisdiction of the crime charged in the indictment, nor of the crime of which the defendant was convicted.

The motion made by defendant's counsel at the conclusion of the trial to strike out the third statement which had been marked Exhibit S4, should have been granted inasmuch as the defendant testified that he only signed such statement after a conference with an attorney from Raleigh, North Carolina. This attorney had stated to the defendant in the presence of the Prosecutor of Union County that the defendant would get a break if he located the crime in Union County. After this conversation with this attorney, he signed and made this third statement and the signature of the Prosecutor of the Pleas is affixed as a witness thereto. It is respectfully submitted that this statement was made in the light of hope of a reward, and by a promise to the defendant of some favorable action on his behalf. This was therefore a statement made under a promise transmitted by an attorney from one in charge, under a promise or encouragement of some hope or favor and was therefore in accordance with the case of *State v. Guild*, 10 Law, 163, inadmissible.

In its charge to the jury on the jurisdiction of the Court, the trial Court in a perfunctory manner read to the jury Sections 59 and 60 of the Criminal Procedure Act and then charged that the State must prove beyond a reasonable doubt that the death occurred in Union County. This important matter touching to the crux of the entire case should have been elaborated upon by the trial Court in order to make the same understandable to the jurors. He should have charged that the statement marked Exhibit S4 was the only evidence in the case that might establish jurisdiction.

It is therefore respectfully submitted that the trial Court was without jurisdiction.

POINT II

The verdict was against the weight of evidence (Assignments and Specifications 5B, 10, 13, 14, 16, 17, 21, 22 and 23).

(a) Premeditation, Wilfulness, and Deliberation.

The crime of murder in the first degree is defined as murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing. It is necessary, therefore, before the defendant could have been convicted of murder in the first degree, the jury must have found beyond a reasonable doubt that the killing was premeditated, that the killing was willful and that the killing was executed after deliberation. It is necessary that all three of the elements of the crime be present before the defendant could have been found guilty. *State v. Mack*, 86 Law 233; *State v. Deliso*, 75 Law 808.

It has been also held that an unlawful killing does not amount to murder in the first degree unless it should be found by the jury that the accused contemplated the killing, that is, premeditated it, then determined upon the killing, that is, intended it, then weighed such intent before carrying it into effect, that is deliberated upon it. *State v. Sage*, 99 Law 229; *State v. Turco*, 98 Law 61.

There is not the slightest testimony in the case that might place the accidental shooting of Phoebe Stader in any of these categories. The statements introduced in evidence show that the shooting was accidental. There is no testimony of premeditation. There is no testimony of delibera-

tion, there is no testimony of willfulness. The testimony of the defendant on direct and cross examination shows, that the killing was accidental.

The defendant testified that while they were seated in the automobile parked on the roadside, the deceased requested the defendant to "get the rifle that you have in the car, and put it up front." The defendant was bringing the gun from under the seat and preparing to get out of the car, "to get in the front seat," and whether or not the defendant fell over the suitcase or tripped on the foot rail or his hand slipped on the door, he does not know, but he knows the gun went off accidentally, and he fell partly out of the car. *There is no testimony adduced by the prosecution to dispute either the statements introduced in evidence or the defendant's own testimony at the trial, to the effect that the shooting was accidental, and that he had no intention whatsoever of committing the crime of which he was convicted. Prior to the accidental shooting, he had been discussing with the deceased the prospects of his getting a divorce from his wife and his marrying the deceased. He also testified that he loved the deceased very much. What reason therefore, could there have been for him willfully and intentionally killing the deceased?*

(b) Intoxication of the defendant

There was testimony throughout the trial, and especially on the part of the defendant, that he and the deceased had been drinking liquor from the time he met the deceased at a place known as Rutts Hut until the time of the accidental shooting. He and the deceased had engaged in drinking a great deal of liquor. They drank between

them more than a quart of liquor and while in a Chinese restaurant in Newburgh, they drank about a pint and a half. If the defendant had not been actually drunk, there is no doubt that his mind was in such a maudlin condition of drinking liquor to such excess, that he could not be charged with intention to commit the crime. Without such intention, he could not be convicted of the crime of murder in the first degree, because, in the case of *State v. Wilson*, 60 Law 171, it is held that if the defendant was so intoxicated that his faculties were prostrated, he would be thus rendered incapable of forming a specific intent to kill. Without this element, the crime could not have been committed and whatever crime he was convicted of, should have been set aside inasmuch as if the intent to commit the crime was omitted, he would only have been convicted of the crime of murder in the second degree or manslaughter.

(c) Statements of defendant

At the trial, there was introduced in evidence over the objection of defendant's counsel three statements which the defendant signed and made after he was apprehended in Raleigh, North Carolina. These statements were made in the presence of various officers both of Union County and North Carolina and in the presence of the Prosecutor of Union County and an assistant district attorney of the State of New York, and of the county of which Walden and Newburgh is a part. These statements are the only evidence of the commission of the crime. The prosecutor, by offering these statements in evidence, insists therefore that they are worthy of proof and submits them to the jury, because he believes that the jury should take these statements into con-

sideration. It would seem therefore, that *by his offering these statements in evidence, he is bound by the contents thereof*. He has primarily submitted these statements in evidence so that jurisdiction might be attached to the crime. He is therefore stating to the jury that you must believe the statements therein to the effect that the crime was committed in Ramsey, N. J. and that the deceased died within the confines of Union County. He cannot separate from the whole a part of the evidence and thus state to the jury, while I insist that you believe that this crime was committed in Union County, yet you must disbelieve those statements to the effect that the crime was accidental. On the statements alone, the only crime the defendant could have been convicted of was involuntary manslaughter. It was an accidental shooting, and he should not have been convicted of the crime of murder in the first degree.

(d) Testimony of Jansen

The principal witness for the state was the cousin of the defendant, Ira Jansen. He testified on direct examination that after the defendant had arrived in Rahway, with the body of the deceased, he stopped at the home of his mother, where Jansen was living. When the defendant had arrived at Raleigh, North Carolina, this witness visited him at his hotel, and delivered to him the sum of \$200. He had previously assisted the defendant in removing the body from the front seat and placing it in a box in the rear of the automobile. Jansen had been held in the Union County Court House under bail as a material witness to this alleged crime. He gave as his reason for not telling anyone about the fact that

there was a dead woman in the car, that the defendant had told him that he would get ten years. He later testified in rebuttal examination that Frazer had never said to him that the shooting of Mrs. Stader was accidental, though he does testify that the defendant said to him that he didn't know how the deceased was shot.

This testimony is the only testimony in the case to the effect that the shooting was not accidental. Jansen having assisted and abetted the defendant in his escape, must be considered in the eyes of the law as an accomplice of the defendant, and his testimony therefore must necessarily be scrutinized very carefully.

No undue weight must be given to the testimony of the witness Jansen inasmuch as he was in *participis criminis*. Upon the uncorroborated testimony of Jansen, to the effect that it was his opinion that the defendant told him that the shooting was not accidental, but told him that he did not know how the shooting happened, the defendant could not have been convicted of the crime charged in the indictment.

It must necessarily follow that the verdict rendered by the jury was against the weight of evidence, as there was no foundation in law or equity for such a verdict.

POINT III

The trial was conducted in a manner prejudicial to the rights of the defendant (Assignments and Specifications 1, 2, 3, 4, 6, 7, 8, 9, 19 and 20).

(a) Exhibits

The introduction in evidence of the automobile and other exhibits and the exhibit to the jury of

the skull, it is respectfully submitted, worked manifest wrong and injury to the defendant.

(b) Charge to the Jury

1. Motive.

At the request of the prosecution, the Court charged the jury as follows:

“Proof of motive is not an essential element in conviction of murder in the first degree.”

It is respectfully submitted that, this, in accordance with the cases of *State v. Jagers*, 71 Law 236, and *State v. Ehlers*, 98 Law 236, this charge was erroneous inasmuch as the Court should have charged that if all the elements of the crime of murder in the first degree were present, then motive was not an essential element necessary for conviction.

2. Murder in the First Degree.

The Court charged the jury as follows:

“To constitute murder in the first degree, there must be an intention to take life coupled with premeditation and deliberation. Premeditation or intention to kill need not be for a day, nor for an hour, or even for a minute, for if there was a design, a determination to kill distinctively formed in the mind, at the moment before and at the time of the shooting, it would be murder in the first degree.”

It is respectfully submitted that this charge was erroneous for in the case of *State v. Turco*, 96 Law 61, in order to constitute murder in the first degree, a killing must have been not only willful, but also deliberated and premeditated.

3. *Security of the Individual in a Community.*

The Court charged the jury that:

“You jurors, are the final arbiters in all cases where the law seeks to convict and punish for crime. You can readily understand that unless crime is detected and vigorously prosecuted and proper punishment therefore made sure, there can be no peace and there will be no security for our people. Punishment of crime, gentlemen, has a two-fold purpose, namely, punishment of the offender and by that punishment to deter others from doing the like. The underlying purpose of it all is to make it unsafe for persons to commit crime and to secure to people in a civilized community, the unhampered pursuit of their business and pleasure without danger of loss of life or bodily injury or deprivation of their possessions. It follows from what I have just said that the security of an individual in a given community is only as safe as the jurors in that community will make it by their unbiased and sound jurisdiction.”

It is respectfully submitted that this charge was erroneous inasmuch as it places too great a burden on the shoulders of the defendant, who, it was brought out at the trial, was a war veteran, a clean-living individual and a model member of that community prior to his acquaintance with the deceased. While this charge may be necessary, in impressing the jury, if the person on trial was a hardened criminal, or public menace, nevertheless, this charge is prejudicial to the rights of the defendant inasmuch as the defendant was not of the type and calibre that is often brought before the bars of justice.

CONCLUSION

Defendant claims, because of the above errors in the trial of his case, he was harmed. The errors made were prejudicial to him and that the judgment against him should be reversed and a *venire de novo* should be issued.

Respectfully submitted,

ALEXANDER SIMPSON,
*Attorney for and of Counsel
with Plaintiff-in-Error.*

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