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CERTIFICATE OF CHANCELLOR

IN CHANCERY OF NEW JERSEY

STATE OF NEW JERSEY,
Defendant in Error,

vs.

JACOB JOHN CIEMIENGO AND
GEORGE HERMAN HILDE-
BRAND,

Plaintiffs in Error.

Sur Indictment for
Murder.

Certificate of
Chancellor.

10

This is to certify that application has been made to me for allowance of a Writ of Error to be issued out of the New Jersey Supreme Court for review of the Judgment of the Burlington County Court of Oyer and Terminer in this State, convicting the said Jacob John Ciemiengo and George Herman Hildebrand of the crime of murder in the first degree, without exhibiting to me the record of the proceedings in the cause or any part thereof, and without alleging any error in those proceedings, and that I have refused to order a Writ of Error for the review of said Judgment, solely because no cause, arguable or otherwise, is shown for the granting of such Writ of Error to the Supreme Court. 20

Dated: December 10, 1935.

30

LUTHER A. CAMPBELL,
Chancellor.

WRIT OF ERROR

THE STATE OF NEW JERSEY, TO FRANK A.
HENDRICKSON, ESQUIRE, Judge
of the Burlington County Court of
(Seal) Oyer and Terminer, holden at
Mount Holly, New Jersey, of the
term of September, A. D. 1935.

10 BECAUSE in the record and proceedings and also
in the giving of judgment upon a certain indictment
against Jacob John Ciemiengo and George Herman
Hildebrand, late of the Township of Florence, in the
County of Burlington, aforesaid, for that "on the
seventh day of October, in the year of our Lord, one
thousand, nine hundred and thirty-five, with force
and arms at the Township of Florence aforesaid, in
the County aforesaid and within the jurisdiction of
this Court, one Herman Eilers, in the peace of God
and of this State, then and there being, wilfully,
20 feloniously and with their malice aforethought did
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."

PRO UT the said indictment whereof before you,
the said Jacob John Ciemiengo and George H. Hil-
debrand have been indicted and are thereof con-
victed by a certain jury of the County, taken between
30 the State of New Jersey and the said Jacob John
Ciemiengo and George Herman Hildebrand, as it is
said, manifest error hath intervened to the great
damage of the said Jacob John Ciemiengo and
George Herman Hildebrand, as from their complaint
we have received information, and we being will-
ing in their behalf to correct the error in due man-
ner, if any there shall be, and that speedy justice be

done to the said Jacob John Ciemiengo and George Herman Hildebrand, command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same, and the entire record of the proceedings had upon the trial, to our Court of Errors and Appeals, in the last resort in all causes of law, to be held at Trenton on the thirty-first day of December, inst., 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 laws and custom of New Jersey ought to be done. 10

WITNESS Luther A. Campbell, Esquire, our Chancellor and the President Judge of our Court of Errors and Appeals at Trenton, New Jersey, this eleventh day of December, in the year of our Lord, one thousand nine hundred and thirty-five. 20

THOMAS A. MATHIS,
Clerk.

G. M. HILLMAN,

Attorney for Jacob John Ciemiengo.

STANLEY K. HEILBRON,

Attorney for George H. Hildebrand,
Plaintiffs in Error.

RETURN

The answer of Frank A. Hendrickson, Esq., Judge of the Inferior Court of Common Pleas of the County of Burlington, sitting, constituting and holding the Court of Oyer and Terminer of the County of Burlington, at the request of Honorable Joseph B. Perskie, one of the Justices of the Supreme Court of the State of New Jersey, within whose district the
10 Court of Oyer and Terminer of Burlington County is, holden at Mount Holly, in and for the County of Burlington, within named, the records and proceedings of the plaint whereof mention is within made, with all things touching the same, together with the entire record of the proceedings had at the trial, I certify to our Court of Errors and Appeals in the last resort in all causes of law, at Trenton, at the day and year contained, in a certain schedule to this writ annexed, as I am commanded.

20

FRANK A. HENDRICKSON,
Judge.

STATE OF NEW JERSEY

BURLINGTON COURT OF OYER
AND TERMINER

Holden before Frank A. Hendrickson, Judge, sitting alone by designation of Justice Joseph B. Perskie.

THE STATE

vs.

JACOB J. CIEMIENGO AND
GEORGE H. HILDEBRAND.

September Term, 1935. 10

Sur Indictment
for
Murder.HOWARD EASTWOOD, ESQ.,
GEORGE M. HILLMAN, ESQ.,
STANLEY K. HEILBRON, ESQ.

20

STATE OF NEW JERSEY,
COUNTY OF BURLINGTON, } ss.

BE IT REMEMBERED, that at the Court of Oyer and Terminer holden at Mount Holly, in and for the said County of Burlington, on Tuesday, September 10, 1935, before the Honorable Joseph B. Perskie, one of the Justices of the Supreme Court of the State of New Jersey, and Frank A. Hendrickson, Esquire, Judge for the Court of Common Pleas, in the said 30 County of Burlington, according to the form of the statute in such case made and provided, by the oaths of James Jaggard, Fred Dunfee, Walter Anderson, Joseph A. Wolfrom, James McChesney, Walter Sloan, James Marshall, W. Clarence Kashner, Luther M. Allen, James K. Hurff, William H. Metzger, Francis P. Gerry, Arthur R. Holloway, Clarence Asay,

Alexander Fraser, Gersham Cox, Edward Paulson, Horace T. Jones, Edward S. Aaronson, Harry Hammell and Pearl Bridegum, and the affirmations of Mary Taylor and Arthur L. Richie, alleging themselves to be conscientiously scrupulous of taking an oath, good and lawful men and women of the said County of Burlington, duly summoned, and then and there sworn and affirmed and charged to inquire for the State of New Jersey in and for the body of the
 10 County of Burlington, it is presented in manner and form following, that is to say:

The bills of indictment herewith presented are true bills.

FRANCIS P. GERRY,
 Foreman.

Filed October 10, 1935.

LAWRENCE G. MINGIN,
 County Clerk.

20

IN THE
 COURT OF OYER AND TERMINER
 OF BURLINGTON COUNTY

September Term, 1935.

BURLINGTON COUNTY, TO WIT:

THE GRAND INQUEST of the State of New Jersey, and for the body of the County of Burlington,
 30 upon their respective oath and affirmation,

PRESENT, THAT Jacob J. Ciemiengo and George H. Hildebrand, late of the Township of Florence, in the said County of Burlington, on the Seventh Day of October, in the year of our Lord one thousand nine hundred and thirty-five, with force and arms, at the

Township of Florence aforesaid, in the county aforesaid, and within the jurisdiction of this Court, one Herman Eilers, in the peace of God and of this State, then and there being, wilfully, feloniously and of their malice aforethought, did 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.

HOWARD EASTWOOD, 10
Prosecutor of the Pleas.

A true bill.

FRANCIS P. GERRY.

Filed October 10, 1935.

LAWRENCE G. MINGIN,
Clerk.

REQUEST

BURLINGTON COUNTY COURT OF OYER
AND TERMINER

THE STATE OF NEW JERSEY,

vs.

10 JACOB J. CIEMIENGO AND
GEORGE H. HILDEBRAND.On Indictment
for Murder.

I, Joseph B. Perskie, Justice of the Supreme Court, within whose district the Court of Oyer and Terminer of Burlington County is, do hereby request Frank A. Hendrickson, Esquire, Judge of the Inferior Court of Common Pleas of the County of Burlington, sitting alone, to constitute and hold the Court of Oyer and Terminer of the County of Burlington for the trial of the above indictment, and I
20 do order that this request be entered in the minutes of the said Court of Oyer and Terminer of the said County of Burlington.

Dated: October 11th, 1935.

JOSEPH B. PERSKIE,
J. S. C.

Filed October 14, 1935.

30 LAWRENCE G. MINGIN,
Clerk.

and afterwards, to wit, on the fifteenth day of October, A. D. nineteen hundred and thirty-five, at a session of the Court of Oyer and Terminer aforesaid, being as yet of the September Term aforesaid, before the Honorable Frank A. Hendrickson, Judge of the Inferior Court of Common Pleas of the County of

Burlington, sitting, constituting and holding the said Court of Oyer and Terminer of the County of Burlington, at the request of Honorable Joseph B. Perskie, one of the Justices of the Supreme Court, within whose district the Court of Oyer and Terminer of Burlington County is, as aforesaid, at Mount Holly aforesaid, here cometh the said Jacob J. Ciemiengo and George H. Hildebrand, under custody of the Sheriff of the County of Burlington, in whose custody in jail of the County aforesaid, they have been committed for the cause aforesaid, being¹⁰ brought to the bar and having heard the indictment read and forthwith being commanded of and concerning the premises in the said indictment aforesaid specified, and charged upon them how they will acquit themselves thereof, they say they are not guilty thereof, and put themselves upon the country.

And Howard Eastwood, Esquire, Prosecutor of the Pleas, for the said County of Burlington, who prosecutes for the State of New Jersey, in this behalf doth²⁰ the like.

Therefore, let the said indictment be continued until Tuesday, the twelfth day of November, A. D. nineteen hundred and thirty-five, and the trial of the said issue was continued by the Court until the eighteenth day of November, A. D. nineteen hundred and thirty-five.

TO JACOB J. CIEMIENGO:

30

TAKE NOTICE that the undersigned demands that you inform him within five days from the date of the service of this Notice whether you intend to rely in any way on an alibi as a defense at your trial in the above entitled matter. If you do intend to rely upon an alibi as a defense, demand is hereby

made that you furnish the undersigned Prosecutor of the Pleas of the County of Burlington a written Bill of Particulars signed by you, stating the specific place or places at which you claim to have been at the time of the murder of Herman Eilers, at Florence Township, in the County of Burlington, this State, on October 7th, 1935, for which murder you have been indicted and are to be tried on November 18th, 1935, and that you also furnish the names and addresses of the witnesses upon whom you intend to rely to establish such alibi.

In the event that you intend to rely upon an alibi at your trial and you fail to furnish said Bill of Particulars in writing, hereinabove demanded, within five days from the date of service of this Notice, then you will be excluded from presenting any evidence at your trial as to your absence from the scene of the alleged offense.

HOWARD EASTWOOD,
Prosecutor of the Pleas.

²⁰ Dated: November 12, 1935.

TO GEORGE H. HILDEBRAND:

TAKE NOTICE that the undersigned demands that you inform him within five days from the date of the service of this Notice, whether you intend to rely in any way on an alibi as a defense at your trial in the above entitled matter. If you do intend to rely upon an alibi as a defense, demand is hereby made that you furnish the undersigned Prosecutor of the Pleas of the County of Burlington a written Bill of Particulars signed by you, stating the specific place or places at which you claim to have been at the time of the murder of Herman Eilers, at Florence Township, in the County of Burlington, this

State, on October 7th, 1935, for which murder you have been indicted and are to be tried on November 18th, 1935, and that you also furnish the names and addresses of the witnesses upon whom you intend to rely to establish such alibi.

in the event that you intend to rely upon an alibi at your trial and you fail to furnish said Bill of Particulars in writing, hereinabove demanded, within five days from the date of service of this Notice, then you will be excluded from presenting any evidence at your trial as to your absence from the scene of the alleged offense. 10

HOWARD EASTWOOD,
Prosecutor of the Pleas.

Dated: November 12, 1935.

And thereupon let a jury come here before the said Judge at Mount Holly, aforesaid, on Monday, the eighteenth day of November, A. D. nineteen hundred and thirty-five, as yet of the term of September aforesaid, of twelve good and lawful men and women, each of whom shall be a citizen of this State and reside within the County of Burlington aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said Jacob J. Ciemiengo and George H. Hildebrand, to recognize upon their oaths whether the said Jacob J. Ciemiengo and George H. Hildebrand be guilty of murder in the indictment aforesaid specified, or not guilty, because as well the said Howard Eastwood, Prosecutor of the Pleas, for the County of Burlington aforesaid, who prosecutes for the State of New Jersey aforesaid, in that behalf, as the said Jacob J. Ciemiengo and George H. Hildebrand, have put themselves upon said jury, and the same 20 30

day is given to the parties aforesaid, at the same place, at which time, that is to say, on Monday, the eighteenth day of November, A. D. nineteen hundred and thirty-five, being as yet the term of September aforesaid, at Mount Holly aforesaid, before the said Judge aforesaid, here cometh as well the said Howard Eastwood, Prosecutor of the Pleas as aforesaid, who prosecutes as aforesaid, as well as the said Jacob J. Ciemiengo and George H. Hildebrand, in custody of the Sheriff of the County of Burlington, 10 being brought to the bar here in their proper persons by the said Sheriff, and the trial of the indictment aforesaid, being moved by the said Howard Eastwood, Prosecutor as aforesaid, and the Sheriff having returned the panel of eighty jurors, heretofore drawn by order of the Court, from the general panel of jurors, the Court ordered that fourteen jurors be empanelled, as provided for under Chapter 287 of the laws of 1935, thereupon, the following jury 20 was chosen, tried and sworn to speak the truth of and concerning the premises, that is to say:

1. Charles Moses
2. George L. Wurst
3. Betty Morton
4. Fannie G. Sleeper
5. Ellen C. Flynn
6. Henry H. Stiles
7. Reba Marren
8. Irving Gaskill
- 30 9. Belle D. Thompson
10. Elizabeth Rogers
11. Frank T. Buchanan
12. Arthur C. Stickel
13. Esther Sass
14. Lewis V. Hamilton

and thereupon the trial of the said issue commenced before the said Court and jury, and was continued before the said Court and jury, from day to day until the twenty-first day of November, A. D. nineteen hundred and thirty-five, at Mount Holly aforesaid, the said jury in the meantime being kept together in the care of the officers of the said Court, who were selected and duly sworn by the said Court for that purpose, at which said last mentioned day, after the charge of the Court, the Clerk of the Court, in the presence of the Court, placed the names of said jurors on slips, folded so as to conceal the names thereon, in a box, and drew therefrom twelve names, to proceed to determine the issue presented, as follows:

1. Reba Marren
2. Irving Gaskill
3. Arthur C. Stickel
4. Henry H. Stiles
5. Ellen C. Flynn
6. Esther Sass
7. Fannie G. Sleeper
8. Betty Morton
9. Elizabeth Rogers
10. George L. Wurst
11. Charles Moses
12. Frank T. Buchanan

20

and the said jury in charge of the officers of the said Court, duly sworn for the purpose, were taken to a private room to consider on their verdict, and afterward, to wit, on the twenty-first day of November, A. D. nineteen hundred and thirty-five, the said jury returned into and before said Court, in charge of said officers, sworn as aforesaid, and then and there in the presence of the said Howard Eastwood, Prosecutor of the Pleas, and the said defendants, Jacob J. Ciemiengo and George H. Hildebrand, do say that the said Jacob J. Ciemiengo and George H. Hilde-

30

brand, are guilty of murder in manner and form as in the aforesaid indictment is charged against them, and that the said murder is murder of the first degree; and upon being further demanded of them of and concerning the premises, each one for himself or herself, says that he or she finds the defendants, Jacob J. Ciemiengo and George H. Hildebrand guilty in manner and form as they stand charged and of murder of the first degree; and thereupon the defendants, Jacob J. Ciemiengo and George H. Hildebrand having been brought to the bar in their proper persons, in the custody of the Sheriff of said county, to receive the judgment of the law, whereupon, all and singular, the premises being seen and by the Court here being fully understood, it is considered and adjudged by the Court, that each of the said defendants, Jacob J. Ciemiengo and George H. Hildebrand, suffer death during the week commencing Sunday, the fifth day of January, nineteen hundred and thirty-six, at the time and place and in the manner provided by law.

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

FRANK A. HENDRICKSON,

Judge of the Inferior Court of Common Pleas of the County of Burlington, sitting, constituting and holding the Court of Oyer and Terminer of the County of Burlington, at the request of Honorable Joseph B. Perskie, Justice of the Supreme Court, within whose district the Court of Oyer and Terminer of Burlington County is.

STATE OF NEW JERSEY, }
COUNTY OF BURLINGTON, } ss.

I, Lawrence G. Mingin, Clerk of the Court of Oyer and Terminer in and for the State and County aforesaid, do hereby certify that the foregoing is true, full and complete copy of the record and proceedings with all things touching and concerning the same in the trial and conviction of Jacob J. Ciemiengo and George H. Hildebrand, of the crime of murder, as the same are now on file in my office. 10

(Seal) WITNESS my hand and the seal of
said court, at Mount Holly, New
Jersey, this sixteenth day of De-
cember, A. D. one thousand nine
hundred and thirty-five.

LAWRENCE G. MINGIN,
Clerk. 20

BURLINGTON COUNTY COURT OF OYER
AND TERMINER

Mount Holly, N. J.,
November 18th, 1935.

(Court convened at 10.10 A. M.)

MR. EASTWOOD: I move the trial of the indictment against Jacob J. Ciemiengo and George H. Hil-
10 debrand.

THE COURT: Is the defense ready?

MR. HILLMAN: Yes, sir.

MR. HEILBRON: Yes, sir.

THE COURT: The Sheriff will proceed to draw
20 the jury.

MR. EASTWOOD: In order that it may be a matter of record, I move that fourteen jurors be drawn under the law that permits it, in a case of this character.

THE COURT: The Court will order fourteen
30 jurors drawn.

(Sheriff proceeds to draw the jury.)

JOHN LYNCH, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

Q. Where do you live? A. Maple Shade, New Jersey.

Q. What is your employment? A. I am unemployed at present, I am a steam fitter by trade.

Q. What is your age? A. Thirty-eight. 10

Q. Mr. Lynch, have you read in the newspaper accounts concerning the alleged murder of one Herman Eilers. A. No, sir.

Q. Have you heard anything concerning it? A. I only heard it happened.

Q. Just state whether you have or not. A. Yes, sir.

Q. As a result of the information that you have received concerning this alleged murder, have you formed any opinion as to the guilt or innocence of these two defendants, charged with having committed the murder, Jacob John Ciemiengo and George Hildebrand. A. No, sir. 20

Q. Are you opposed to capital punishment? A. No, sir.

Q. If the evidence adduced from the witnesses convinces you of the guilt of these two defendants beyond a reasonable doubt that they murdered Herman Eilers, would you have any conscientious scruples or objections to imposing the penalty of the electric chair? A. No, sir. 30

MR. EASTWOOD. That's all.

THE CLERK: Defendant Ciemiengo.

MR. HILLMAN: No examination.

MR. EASTWOOD: The State challenges.

THE CLERK: Juror No. 1, John Lynch, excused.

JOSEPH VALENTINI, sworn on his voir dire, appeared and answered as follows:

10 EXAMINATION BY MR. HEILBRON:

Q. Where do you live? A. Bordentown.

Q. How old are you? A. Fifty-four.

Q. Have you read any account of this crime? A. I did.

Q. Have you formed any opinion of the guilt or innocence of the defendants in this case. A. Yes.

Q. In other words, from what you have read and what you have heard if the evidence in this case would prove the innocence of these defendants would that account of what you have read of the trial in anyway influence your opinion. A. Yes.

Q. As I understand you, the accounts of this murder, what you have read would influence your opinion after consideration of all the evidence if the evidence can prove the innocence of these two defendants, you would still be influenced by what you have read and heard about this murder. A. Yes.

30 MR. HEILBRON: That's all.

BY MR. EASTWOOD:

Q. Do I understand, Mr. Valentini, that you have formed some opinion about the guilt or innocence of these defendants from the newspaper accounts you have read. A. Yes, I did.

Q. Is the opinion that you have formed from reading the newspaper accounts of the murder of Herman Eilers such that it could be changed by the evidence of witnesses that may testify in this case.

A. I might testify.

Q. Probably you don't understand my question, You say that you have formed an opinion in this case because of the newspaper accounts you have read, is that right? A. Yes.

Q. Can that opinion be changed if the evidence of the witness satisfied you that the opinion you have formed is wrong. A. It might be wrong, I could not tell you that. 10

Q. Are you in favor of capital punishment, if the evidence would satisfy you of the guilt of these defendants of the murder of Herman Eilers, beyond a reasonable doubt. A. I don't—

Q. You don't what? Do you mean to say you are not in favor of capital punishment. A. Yes, in favor of capital punishment if he is guilty. 20

MR. EASTWOOD: That is all the questions, I have, if the Court please.

The State challenges.

HAROLD ROCKHILL, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows: 30

EXAMINATION BY MR. EASTWOOD:

Q. Where do you live? A. Columbus.

Q. What is your age? A. Thirty-three.

Q. What is your business? A. Plumber.

Q. Have you read any newspaper accounts concerning the alleged murder of one, Herman Eilers?

A. I have.

Q. Did you know Herman Eilers in his lifetime?

A. I would never have recognized him.

Q. Did you know either one of these defendants, Jacob John Ciemiengo or George H. Hildebrand? A. I don't seem to recognize them.

Q. I am not asking you that, I am asking whether you ever knew either of them? A. Not that I know
10 of.

Q. Have you formed any opinion as to the guilt or innocence of these defendants from the newspaper accounts or anything you have read concerning the murder of Herman Eilers? A. No, I have not.

Q. Are you opposed to capital punishment if the evidence convinces you of the guilt of these two defendants beyond a reasonable doubt of the murder of Herman Eilers? A. No.

Q. As I understand it, if the evidence warranted
20 it and convinced you of the guilt of these two defendants of the murder of Herman Eilers beyond a reasonable doubt you would have no conscientious scruples of imposing the penalty of the electric chair, is that right? A. Yes, sir.

Q. What is your religious affiliation, Mr. Rockhill? A. I am afraid I don't have any.

MR. EASTWOOD: That is all the questions I
30 have. Has the defense any questions?

MR. HEILBRON: No.

MR. HILLMAN: No.

MR. EASTWOOD: The State challenges.

NATHANIEL JOHNSON, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. HILLMAN:

Q. Mr. Johnson, have you read or heard of this alleged murder? A. Yes, sir.

Q. As a result of what you have read or heard have you formed any opinion of the guilt or innocence of the accused? A. Yes. 10

THE COURT: Any further questions?

MR. HILLMAN: No, sir.

BY MR. EASTWOOD:

Q. Have you any conscientious scruples to imposing the death penalty if the evidence satisfied you of the guilt of the defendants of the murder of Herman Eilers beyond a reasonable doubt. A. No, sir. 20

Q. What is your age? A. Fifty-five.

Q. What is your business? A. Superintendent of the water department, Burlington.

Q. Did you know Herman Eilers? A. No, sir.

Q. Do you know either of these defendants, Jacob J. Ciemiengo or George H. Hildebrand? A. No, sir.

MR. EASTWOOD: No further questions. 30

THE COURT: Defense?

MR. HILLMAN: The defense challenges.

WILLIAM GOODWIN, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

Q. Mr. Goodwin, how old are you? A. 64.

Q. Where do you live? A. Bordentown.

Q. What is your business? A. None.

Q. Mr. Goodwin, have you read newspaper ac-
10 counts of the murder of Herman Eilers? A. I have,
sir.

Q. And have you, as a result of the newspaper accounts that you have read, formed any opinion as to the guilt or innocence of these two defendants, Jacob John Ciemiengo and George H. Hildebrand?

A. I have.

Q. You have formed an opinion? A. I have.

Q. Is the opinion that you have formed such that
20 you could or would change the opinion if the wit-
ness' evidence has well satisfied you beyond a rea-
sonable doubt of the guilt or innocence of these two
defendants? A. No.

Q. You mean to say that the opinion you have formed, you would not change it even if the testimony of the witnesses convinced you that your opinion is wrong? A. I would change it.

Q. Oh, you would change it? A. Yes.

Q. In other words, as I understand it, if you are
chosen as a juror, you would be willing to exclude
30 from your mind the opinion you have formed from
the newspaper accounts and reach a decision based
on the evidence of the witnesses alone? A. I would.

Q. Are you opposed to capital punishment? A.
No, sir.

Q. In the event that the testimony of the wit-
nesses convinced you beyond a reasonable doubt of
the guilt of these two defendants of having mur-

dered Herman Eilers, would you have any conscientious scruples against imposing the death penalty?
A. I would not.

THE COURT: Any questions?

MR. HEILBRON: No questions. Defense challenges on behalf of Ciemiengo.

(Juror excused.)

10

CHARLES RITNER, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. HILLMAN:

Q. You live in Beverly City? A. Yes, sir.

Q. What is your occupation? A. Accountant. 20

Q. Have you heard or read of this alleged murder? A. I have.

Q. Have you formed any opinion as to the guilt or innocence of the accused? A. Not definite.

Q. You say "not definite." What do you mean by that? A. I would be governed by the evidence entirely.

Q. You have not formed any opinion? A. No.

Q. How old are you? A. 60.

30

EXAMINATION BY MR. HEILBRON:

Q. In other words, Mr. Ritner, you would be governed entirely by the evidence produced in this case, by the testimony of the witnesses, and what you have heard or what you have read would not influence you in the least? A. Not at all.

EXAMINATION BY MR. EASTWOOD:

Q. Have you any conscientious objections to imposing the death penalty if the evidence warranted it? A. Mr. Prosecutor, if the law is the law, I would appreciate it. If the evidence showed these men guilty, I would have to say "yes."

Q. I am speaking now particularly as to your state of mind on the question of capital punishment. Have you conscientious scruples to imposing the
10 death penalty if the evidence satisfied you in this case beyond a reasonable doubt that these two defendants murdered Herman Eilers? A. No.

MR. HEILBRON: On behalf of defendant Ciemiengo, I challenge.

(Witness excused.)

20

CHARLES MOSES, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

Q. Mr. Moses, where do you live? A. Edgewater Park.

Q. What is your age? A. 42.

30 Q. And you are in the contracting business? A. Yes.

Q. Have you read any newspaper accounts of the murder of Herman Eilers? A. I did at the time.

Q. Have you formed any opinion as to the guilt or innocence of these two defendants, Jacob J. Ciemiengo and George Herman Hildebrand, based upon newspaper accounts or what you may have heard

concerning the facts of the case? A. Well, I formed an opinion according to the newspaper reports, what I read in the paper.

Q. Is the opinion that you formed such that you could alter it if the evidence warranted it? A. Well, I would change it according to the evidence. I only formed an opinion according to what I read at the time.

Q. In other words, as I understand it, you would reach a conclusion based solely upon the evidence to which the witnesses might testify? A. Yes. 10

Q. Have you any conscientious scruples against imposing the death penalty if the evidence satisfied you of the guilt of the defendants of the murder of Herman Eilers beyond a reasonable doubt? A. Well, sometimes, to a certain extent.

Q. Confining it to this particular case, Mr. Moses, would you have any conscientious scruples to imposing the death penalty if the evidence showed that the defendants were guilty beyond a reasonable doubt of the murder of Herman Eilers? A. I don't think 20 so.

MR. HEILBRON: We have no questions. (This witness was passed and sworn as a juror.)

GEORGE L. WURST, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows: 30

EXAMINATION BY MR. HEILBRON:

Q. Mr. Wurst, have you heard anything about this alleged murder? A. Very little.

Q. How is that? A. Very little.

Q. Have you read accounts of it? A. No.

Q. Have you heard it discussed? A. No.

Q. What have you heard about it then? A. Not anything, only just what I have heard this morning, and that wasn't much.

Q. From what you have read or heard, have you formed an opinion as to the guilt or the innocence of the accused? A. No.

Q. How old are you, Mr. Wurst? A. 66.

EXAMINATION BY MR. EASTWOOD:

10

Q. Have you been represented in any legal matters by either Mr. Heilbron or Mr. Hillman, attorneys for the defendants? A. No; I don't think so.

Q. Have you any conscientious scruples against imposing the death penalty if the evidence satisfied you of the guilt of the defendants beyond a reasonable doubt in the murder of Herman Eilers? A. No.

20 (Accepted by both sides and sworn as a juror.)

CHARLES KLEMM, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

30 Q. Mr. Klemm, where do you live? A. Riverside, New Jersey.

Q. How old are you? A. 30.

Q. Are you employed? A. Unemployed.

Q. Have you read any newspaper accounts or heard anything concerning the murder of Herman Eilers? A. No, sir.

Q. I assume, therefore, you have formed no opinion about the guilt or innocence of these two defendants? A. No, sir.

Q. Are you opposed to capital punishment? A. No, sir.

Q. If the evidence in the case satisfied you of the guilt of the defendants of the murder of Herman Eilers beyond a reasonable doubt, would you have any conscientious scruples to imposing the death penalty? A. No, sir.

10

MR. HEILBRON: No questions.

MR. EASTWOOD: The State challenges.

(Witness excused.)

ANSON M. HERR, a prospective juror, being duly sworn on his voir dire, appeared and answered as 20 follows:

EXAMINATION BY MR. HILLMAN:

Q. Mr. Herr, have you read any newspaper accounts of this alleged crime? A. I have.

Q. And have you heard the case discussed? A. What's that?

Q. Have you heard people talking about it? A. Yes, sir.

30

Q. As a result of what you have read and what you have heard, have you formed any opinion as to the guilt or innocence of the accused? A. I have.

Q. Is the opinion that you have formed so strong that it could not be changed by the evidence which was presented here? A. It would not; no.

Q. It could not be changed? A. No.

MR. HEILBRON: Challenged for cause.

THE COURT: Do you desire to examine him?

MR. EASTWOOD: Yes.

EXAMINATION BY MR. EASTWOOD:

Q. Mr. Herr, if you were chosen as a juror and took the oath, of course, to return a verdict in accordance with the evidence, would the opinion that
10 you have formed be changed if the evidence satisfied you that the opinion you have already formed was wrong? A. I would change it.

Q. You would change it? A. According to the evidence.

Q. In other words, as I understand it, you would reach a conclusion as to the guilt or innocence of the defendants based upon the evidence alone? A. Yes.

20 Q. And you would disregard the opinion you have formed if the evidence satisfied you of the guilt or the innocence of the two defendants? A. Yes, sir.

EXAMINATION BY MR. HILLMAN:

Q. Didn't you tell me a minute ago that your opinion was so well fixed that no evidence could change it? A. No.

30 Q. You said— A. I said I would go according to the evidence. I said I had formed an opinion—yes.

Q. Didn't you tell me that no evidence would change that opinion? A. No, sir; I did not.

BY THE COURT:

Q. How old are you? A. 75.

MR. HEILBRON: We challenge for cause.

THE COURT: The juror will be dismissed for cause. (Juror dismissed.)

WILLIAM GALLAGHER, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

(Conference between Court and counsel.)

THE COURT: The juror is excused by consent of counsel.

BETTY MORTON, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

BY MR. EASTWOOD:

Q. Mrs. Morton, where do you live? A. Pemberton.

Q. You are married? A. Yes, sir.

Q. Do you have any family? A. Yes, a little girl. 30

Q. Is your situation—withdraw it. How old is your daughter? A. Eight.

Q. Is your situation such in your home that if chosen as a juror you would be able and willing to give whatever time might be required to serve as a juror in this case, which means, as you probably know, you would have to stay here day and night

until the case is finished. A. I could if I had to.

Q. You would be willing to? A. Yes.

Q. Have you any conscientious scruples about imposing the death penalty if the evidence warranted it? A. No.

Q. Have you read any newspaper accounts of the murder of the deceased, Herman Eilers? A. Yes.

Q. Have you formed any opinion as the result of reading those newspaper accounts. A. Not particularly.

10

MR. EASTWOOD: No further questions.

BY MR. HILLMAN:

Q. Have you discussed this case with anyone? A. A little bit.

Q. Have you formed any opinion as to the guilt or innocence of the defendants? A. More or less.

20 Q. Could that opinion be changed by the evidence produced in this case that would tend to show a difference in the opinion you have formed? A. Yes.

Q. Your opinion could be changed? A. Yes.

Q. You would be in other words entirely governed by the evidence in this case and you would not be prejudiced by what you have read and heard. A. I think not.

Q. Your mind would be open as to the guilt or innocence of the defendants. A. Yes.

30

MR. HILLMAN: No more questions.

MR. EASTWOOD: The State passes.

MR. HILLMAN: Pass.

THE COURT: The juror may be sworn.

(The juror was accepted by both sides and sworn as a juror by the Clerk.)

FANNY G. SLEEPER, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

BY MR. HEILBRON:

10

Q. You live in Mount Holly? A. Yes, sir.

Q. And your husband is Frank Sleeper? A. Yes.

Q. Have you read any account as to this alleged murder? A. Very little.

Q. In the newspapers? A. Very little.

Q. Have you discussed this case with anyone? A. No.

Q. Have you formed an opinion, concerning the guilt or innocence of the defendants in this case? 20
A. No.

Q. In other words you would be entirely governed by the evidence and the testimony of the witnesses produced in this case as to the guilt or innocence of the defendants. A. I would.

MR. HEILBRON: That is all.

BY MR. EASTWOOD:

30

Q. Have you any conscientious objections to imposing the death penalty if the evidence warranted it. A. No.

Q. In other words if the evidence in this case satisfied you beyond a reasonable doubt that the defendants are guilty of the murder of Herman Eilers you would have no conscientious objections to im-

posing the death penalty? A. No.

MR. EASTWOOD: No further questions.

THE COURT: Has the defense any further questions?

MR. HEILBRON: Pass.

10 MR. HILLMAN: Pass.

MR. EASTWOOD: Pass.

THE COURT: The juror may be sworn.

(The juror was accepted by both sides and duly sworn by the Clerk.)

20 HELEN C. FLYNN, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

BY MR. EASTWOOD:

Q. Mrs. Flynn, where do you reside? A. Mount Holly.

Q. Are you married? A. Yes.

30 Q. Your work is that of a housekeeper, is it not?
A. Yes.

Q. Have you read any newspaper accounts, Mrs. Flynn, of the murder of Herman Eilers. A. Just the headlines, not the details.

Q. Have you formed any opinion as the result of such reading of the newspaper accounts? A. No.

Q. Do you have any conscientious scruples against capital punishment? A. No.

Q. If you were chosen as a juror and the evidence of the witnesses satisfied you that the defendants murdered Herman Eilers, would you have any conscientious objection of imposing the death penalty and returning a verdict of guilty? A. No.

MR. EASTWOOD: No further questions.

MR. HILLMAN: No questions.

MR. HEILBRON: No questions. 10

MR. EASTWOOD: The State passes.

MR. HEILBRON: Pass.

MR. HILLMAN: Pass.

(The juror was accepted by both sides and was duly sworn by the Clerk.)

20

ANNA C. DAVIS, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

EXAMINATION BY MR. HILLMAN:

Q. You live in Beverly City? A. Yes, sir.

Q. Have you read any accounts of this alleged 30 murder? A. Yes.

Q. Have you discussed the matters with others?
A. To a certain extent.

Q. As the result of what you have read and heard have you formed any opinion? A. A very definite one.

Q. You have formed an opinion as to the guilt or innocence of these defendants. A. Yes, I have.

MR. EASTWOOD: No questions.

MR. HEILBRON: I challenge for cause.

BY THE COURT:

Q. Mrs. Davis, is your opinion such that if after
10 taking the oath to act as a juror the evidence produced warranted a change in that opinion, is that opinion such that you could not change it. A. I could change it, but it is a very definite opinion.

Q. In other words, if the evidence warranted the finding of a verdict contrary to this opinion you may have formed, do you feel you could not bring in such a verdict? A. I could change if the evidence warranted.

20 THE COURT: I will deny the challenge for cause.

MR. HEILBRON: I challenge for the defendant, Hildebrand.

HENRY H. STILES, a prospective juror, being duly sworn, on his voir dire, appeared and testified as follows:

30

EXAMINED BY MR. EASTWOOD:

Q. Mr. Stiles, where do you live? A. Moorestown.

Q. What is the nature of your business? A. Druggist.

Q. Have you read any newspaper accounts of the murder of Herman Eilers? A. No; I have not.

Q. Have you heard anything concerning it? A. No.

Q. I assume, then, you have formed no opinion concerning the guilt or innocence of these two defendants? A. No; I have not.

Q. Have you any conscientious scruples about imposing capital punishment if the evidence warranted it? A. Well, the evidence would have to warrant it. 10

Q. If the evidence produced from the witnesses satisfied you beyond a reasonable doubt that these two defendants, Jacob John Ciemiengo and George Herman Hildebrand, murdered Herman Eilers, would you then have any conscientious scruples to imposing the death penalty as part of your verdict? A. No.

MR. HEILBRON: No questions.

20

(Witness accepted by both sides and sworn as a juror.)

CHARLES RODMAN, a prospective juror, being duly sworn on his voir dire, appeared and testified as follows:

EXAMINED BY MR. HEILBRON:

30

Q. How old are you, Mr. Rodman? A. 64.

Q. Where do you live? A. Burlington.

Q. What is your occupation? A. Fruit and produce dealer.

Q. Have you read any accounts of this alleged murder in the newspapers? A. Yes, sir.

Q. Have you discussed the case with anyone? A. Yes.

Q. Have you formed an opinion as to the guilt or innocence of these defendants? A. Only from the newspaper accounts.

Q. Is that opinion such that from the evidence produced in this case, it could not be changed or altered? A. No, I should say not.

Q. In other words, Mr. Rodman, if the evidence produced in this case tended to show the innocence
10 of these defendants, or guilt, that opinion could be changed, according to the evidence? A. According to the evidence—yes, sir.

Q. You would be entirely governed by the evidence produced in this case? A. Yes, sir.

Q. Are you married? A. Yes, sir.

Q. Do you have a family? A. A wife—not very well.

EXAMINED BY MR. EASTWOOD:

20

Q. You say your wife is not very well? A. No.

Q. Is your situation at home such that if selected as a juror, you can and you will devote all the time necessary to hear this case to its conclusion? A. Well, it would inconvenience me a lot in my business.

Q. But would you permit that to influence the verdict you reached? A. No, sir.

Q. Are you opposed to capital punishment? A.
30 No, sir.

Q. If the evidence of the witnesses satisfied you of the guilt of the defendants, that they murdered Herman Eilers, if that evidence satisfied you beyond a reasonable doubt, would you have conscientious scruples about returning the death penalty with the verdict? A. No, sir.

MR. HEILBRON: Defense challenges.

(Witness excused.)

CLIFTON TAYLOR, a prospective juror, being duly sworn on his voir dire, appeared and testified as follows:

EXAMINED BY MR. EASTWOOD:

10

Q. Mr. Taylor, where do you live? A. Palmyra, New Jersey.

Q. What business are you engaged in? A. Grocer.

Q. Have you read any newspaper accounts of this murder of Herman Eilers? A. Nothing, but the day it came out.

Q. Have you formed any opinion as to the guilt or innocence of the defendants from the newspaper accounts that you read? A. No, sir.

Q. Have you any conscientious scruples against imposing the death penalty if the evidence warranted it? A. I have.

Q. You have conscientious scruples against it? If the evidence produced from the witnesses satisfied you of the fact that these two defendants murdered Herman Eilers, would you then have conscientious objections to imposing the death penalty if the law provides that such penalty may be imposed with such verdict? A. I would.

Q. I ask what your religious affiliation is? A. The Methodist Church of Palmyra.

EXAMINATION BY MR. HILLMAN:

Q. Would your scruples against the utilization of

capital punishment be so strong that notwithstanding the evidence, you would still be unable to give a verdict of guilty if that verdict carried with it the imposition of the death penalty? A. I am certainly opposed to capital punishment. When it comes to returning a verdict of guilty or not guilty with the evidence, it puts me in a sort of a tough spot.

Q. You could give such a verdict? A. I might take me a long time to do it.

Q. But if the evidence was such that you believe
10 that it warranted the return of a verdict of guilty, would you have scruples against the utilization of capital punishment, would your scruples be so strong that you could not return the verdict according to the evidence? A. I am afraid in the end they would.

MR. EASTWOOD: Challenge for cause, if the Court please.

THE COURT: The Court will allow the chal-
20 lenge.

THOMAS T. KEYES, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. HILLMAN:

30 Q. Where do you live? A. Palmyra.

Q. What is your business? A. Salesman.

Q. Have you read any accounts of this alleged crime. A. I have not.

Q. Have you heard the matter discussed? A. No, sir.

Q. Have you formed any opinion as to the guilt or innocence of these defendants. A. No, sir.

BY MR. HEILBRON:

Q. How old are you? A. Forty-two.

BY MR. EASTWOOD:

Q. Have you any conscientious objections to capital punishment? A. I have.

Q. What is your religious affiliation? A. Presbyterian.

Q. If the evidence of the witnesses, Mr. Keyes,¹⁰ satisfied you beyond a reasonable doubt that the defendant, Jacob J. Ciemiengo and the defendant, George H. Hildebrand, murdered Herman Eilers, would you then have any conscientious scruples about returning a penalty of death with the verdict. A. I would, yes.

Q. If you were sworn as a juror to return a verdict in accordance with the law and the law gave you as a juror, the right to determine whether the death penalty should be imposed or life imprisonment²⁰ may be imposed, if you were satisfied of the guilt of the defendants beyond a reasonable doubt would you still have conscientious objections to returning a death penalty as part of the verdict. A. I am afraid I would.

MR. EASTWOOD: The State challenges for cause.

BY THE COURT:

30

Q. Is your objection to the death penalty a personal proposition or does it come from your religious belief? A. No, it is really conscientious I suppose.

Q. The death penalty you appreciate is part of the law of this State? A. I do, and in some in-

stances I could render a verdict of guilty.

Q. Then if you were sworn as a juror in this case and the testimony by the prosecution warranted in your opinion the finding of the death penalty would your scruples prevent you from so doing? A. I am afraid it would.

Q. Even in violation of your oath? A. I am afraid I could not render a verdict of guilty where there was a death sentence.

10 THE COURT: The Court will allow the challenge reluctantly.

MARY SIMONS, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

20 EXAMINATION BY MR. EASTWOOD:

Q. Is it Miss or Mrs. Simons? A. Miss.

Q. Where do you live, Miss Simons? A. Medford.

Q. Are you employed? A. I am not employed.

Q. Have you read any newspaper accounts concerning the murder of Herman Eilers? A. I glanced at it the first day.

Q. And from what you read in the newspaper have you formed any opinion as to the guilt or innocence of these defendants. A. None at all.

30 Q. Have you any conscientious scruples against capital punishment? A. No.

Q. Then as I understand if the evidence of the witnesses satisfied you of the guilt of the defendants in that they murdered one Herman Eilers, beyond a reasonable doubt, you would have no conscientious scruples against returning the death penalty with

your verdict of guilty. A. None at all.

MR. EASTWOOD: No further questions.

MR. HEILBRON: I have no questions.

MR. HILLMAN: No questions.

MR. EASTWOOD: The State passes.

THE COURT: Defense?

10

MR. HEILBRON: The defense challenges.

VERONA S. MEANEY, a prospective juror, being duly sworn on her voir dire, appeared and testified as follows:

EXAMINATION BY MR. HEILBRON:

20

Q. Mrs. Meaney, have you read any accounts of this alleged crime in the newspapers? A. I have—some.

Q. I beg your pardon? A. I have.

Q. And have you discussed the case with any person? A. Yes.

Q. Have you formed an opinion as to the guilt or innocence of the defendants in this case? A. I have.

30

Q. In other words, what you have read and what you have heard in this discussion of this case, would that influence you in any way if the evidence produced in this case showed to the contrary of what you had read or what you had heard? A. I don't think so.

Q. Your mind, in other words, would be open, and you would be governed by the evidence produced in this case? A. I think I would.

Q. You are married, are you not? A. Yes.

Q. Do you have a family? A. No; I haven't a family.

Q. Would you be inconvenienced in any way if you sat on this jury? A. It is not very convenient. I have a position.

Q. You have a position? A. I do.

10

EXAMINED BY MR. EASTWOOD:

Q. Mrs. Meaney, the fact that you have a position would inconvenience you if you were chosen as a juror. Would that in anyway influence you in reaching a hasty conclusion? A. I don't think it would.

Q. In other words, if selected, you would be willing to give your entire time to a proper consideration of the whole case and would not be influenced in any way or respect because of the inconvenience that you are suffering from the fact that you are not able to be at your place of employment? A. No.

Q. Are you opposed to capital punishment? A. No.

Q. If the evidence satisfied you beyond a reasonable doubt that the defendants murdered Herman Eilers, would you have any conscientious scruples to returning the death penalty with a verdict of guilty?
30 A. No.

MR. HEILBRON: Defense passes.

MR. EASTWOOD: The State challenges.

(Juror excused.)

JOSEPH S. TEES, a prospective juror, being duly sworn on his voir dire, appeared and testified as follows:

BY MR. EASTWOOD:

Q. Where do you live? A. Palmyra.

Q. What is your age? A. 58.

Q. And what is the character of your business?

A. Master printer.

Q. Have you conscientious scruples against imposing capital punishment? A. I have. 10

Q. What is your religious connection or affiliation? A. Methodist.

Q. How long have you held that conviction against capital punishment? A. Ever since I became of the age of understanding.

Q. And that mental attitude that you have towards capital punishment is not created merely for the fact of your possibly being excused as a juror in this case, is it? A. No, sir. 20

Q. It is a conviction that you have had for some time? A. Yes, sir.

Q. Would your conviction as to capital punishment still prevail if you were sworn as a juror and the evidence of the witnesses satisfied you beyond a reasonable doubt that the defendants murdered Herman Eilers, the law providing for the imposition of the death penalty in such instances? A. I consider that I am not my brother's keeper and could not change my opinion on capital punishment. 30

Q. Then, as I understand it, notwithstanding the provisions in the law, in the event that a verdict of guilty of murder in the first degree, you would not return the death penalty as part of the verdict? A. No, sir.

Q. Even if you were sworn as a juror to render such a verdict? A. I wouldn't care to be sworn, be-

cause it would be against my opinion.

MR. EASTWOOD: I challenge for cause.

THE COURT: The challenge will be allowed.

EDWIN B. TAYLOR, a prospective juror, being
duly sworn, on his voir dire, appeared and testified
10 as follows:

EXAMINATION BY MR. HEILBRON:

Q. How old are you, Mr. Taylor? A. 28.

Q. Where do you live? A. Burlington.

Q. Married? A. No.

Q. Single? A. Yes, sir.

Q. What is your occupation? A. Insurance.

Q. Have you read any account of this alleged
20 crime in the newspapers, or discussed the case with
anyone? A. I have.

Q. Is that opinion such that if the evidence produced in this case would tend to show the guilt or innocence of the defendants, could that opinion be changed? A. It could.

Q. In other words, you would be entirely governed by the evidence produced in this case alone? A. I would.

Q. You would not be swayed by any opinion that
30 you had heretofore formed or by any discussion that
you had entered into concerning this case? A. I
would not.

Q. Your mind would be entirely open and be governed according to the evidence produced in this case? A. It would.

BY MR. HEILBRON:

Q. Have you conscientious scruples against capital punishment? A. I have not.

MR. HEILBRON: I challenge for cause.

(Witness excused.)

10

GEORGE J. SPENCER, a prospective juror, being duly sworn, on his voir dire, appeared and testified as follows:

EXAMINED BY MR. EASTWOOD:

Q. Where do you live, Mr. Spencer? A. Palmyra.

Q. And in what business are you engaged? A. Borough clerk. 20

Q. Have you conscientious scruples against imposing capital punishment? A. I have not.

Q. Have you read any accounts or heard anything or discussed with others the facts or circumstances concerning the murder of Herman Eilers?

A. No; I have not.

Q. I assume, therefore, you have formed no opinion? A. None whatever.

Q. And if selected as a juror, will you decide the guilt or innocence of the defendants on the evidence alone? A. On the evidence submitted. 30

MR. HEILBRON: No questions.

MR. EASTWOOD: The state passes.

MR. HILLMAN: The defense challenges.

(Witness excused.)

JOSIAH CONWELL, a prospective juror, being duly sworn on his voir dire, appeared and testified as follows:

EXAMINED BY MR. HILLMAN:

Q. Mr. Conwell, where do you live? A. River-ton.

Q. What is your occupation? A. I am in the Postal Service, Philadelphia Post Office.

10 Q. Have you heard anything about this case? A. I have not.

Q. Have you read anything about it or discussed it? A. I have not.

Q. Consequently you have not formed any opinion as to the guilt or innocence of these defendants?

A. No, sir.

EXAMINED BY MR. EASTWOOD:

20 Q. Mr. Conwell, do you have conscientious scruples against capital punishment? A. I have.

Q. And would your conviction against capital punishment still hold good even if the evidence adduced before you satisfied you of the guilt of the two defendants of the murder of Herman Eilers beyond a reasonable doubt? A. It would.

Q. Is that conviction that you have held for some time or only recently? A. I have.

Q. That is, you have held it for sometime? A.
30 Yes; sometime.

MR. EASTWOOD: The State challenges for cause.

EXAMINED BY THE COURT:

Q. Is that conviction such that if you were sworn

as a juror in this case, you would not render a verdict of guilty of murder in the first degree? A. It is.

Q. Even though you were sworn to be guided entirely by the evidence. A. Yes, sir.

Q. If the evidence warranted it, you would still bring in a verdict that would not include capital punishment? A. Yes, sir.

THE COURT: Under those conditions, we don't want you as a juror, if you are going to violate your 10 oath. You will be excused for cause.

REBA MARREN, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

20

Q. Mrs. Marren, you reside here in Mount Holly? A. I do.

Q. Have you read any newspaper accounts concerning the murder of Herman Eilers? A. I have not.

Q. Have you discussed the matter of the murder of Herman Eilers with any person or persons? A. I have not.

Q. I assume you have formed no opinion as to the guilt or innocence of these two defendants in connection with his death. A. I have not. 30

Q. Have you any conscientious scruples against imposing capital punishment? A. I have not.

Q. Are you physically able to stay during the time that might be necessarily consumed in the trial of this murder case. A. I should try to.

Q. Your physical condition is such that you would be able to devote the time to it? A. I think so.

MR. HEILBRON: No questions.

MR. HILLMAN: No questions.

MR. EASTWOOD: The State passes.

MR. HEILBRON: Pass.

10

MR. HILLMAN: Pass.

(Juror having been passed by both parties was duly sworn by the clerk as a juror.)

IRVING GASKILL, a prospective juror being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. HILLMAN:

Q. You live in Mount Holly and your occupation is merchant? A. Yes, sir.

Q. Have you read any accounts of this alleged murder in the paper? A. Some.

Q. Have you discussed this case with any person? A. I have heard it discussed some little by people in the store, naturally, I didn't pay a whole lot of attention to it.

Q. From that discussion and from what you read in the newspaper have you formed any opinion? A. No, sir.

Q. You have formed no opinion as to the guilt or innocence of the defendants in this case. A. No.

30

Q. If you be sworn as a juror you will be entirely guided by the evidence produced in this case. A. Certainly so.

Q. And you have no opinion as to the guilt or innocence of these defendants. A. No.

Q. How old are you, Mr. Gaskill? A. Fifty-one.

BY MR. EASTWOOD:

Q. Mr. Gaskill, have you a conscientious objection to the imposition of capital punishment. A. 10
No.

Q. If the evidence of the witnesses satisfied you beyond a reasonable doubt that the defendants murdered Herman Eilers, would you have any conscientious objections to returning a verdict or rather imposing the death penalty with the verdict of guilty. A. Not if the evidence warranted it.

MR. HILLMAN: Pass.

20

MR. EASTWOOD: Pass.

THE COURT: The juror may be sworn.

(Having been accepted by both sides the juror was duly sworn in by the clerk.)

CHARLES ANDERSON, a prospective juror, being 30 duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

Q. Mr. Anderson, where do you live? A. Bridgeboro.

Q. In what business are you engaged? A. The plumbing business.

Q. Are you in business for yourself? A. Yes, sir.

Q. Are your business affairs such that you are able to leave your business if selected as a juror and devote the entire time that may be necessary for the complete consideration of this case. A. It is.

Q. Have you read any newspaper account concerning the murder of Herman Eilers? A. I did.

10 Q. And from what you have read in the newspaper account, have you formed any opinion as to the guilt or innocence of these defendants of the murder of Herman Eilers? A. I did not.

Q. Then you would be governed entirely on the evidence presented in this case. A. I would.

Q. Have you any conscientious scruples against imposing capital punishment? A. I have not.

Q. If the evidence warranted and convinced you beyond a reasonable doubt of the guilt of these de-
20 fendants of the murder of Herman Eilers would you have any objections to imposing the death penalty with the verdict of guilty? A. The only thing is I did know Herman Eilers.

Q. That was not my question; my question was, if the evidence warranted and convinced you beyond a reasonable doubt of the guilt of these defendants of the murder of Herman Eilers, would you have any objection to imposing the death penalty with the verdict of guilty? A. I don't know as I would have
30 any objection, I just wanted the prosecutor to know that I knew Mr. Eilers. I don't know whether I ought to bring that in or not. That is the reason I brought it in that way.

Q. I understand if the evidence warranted it you would have no conscientious scruple against bringing in the death penalty as a part of your verdict of guilty, provided the evidence convinced you of the

guilt beyond a reasonable doubt? A. No, sir, I would not, no.

Q. How long had you known Herman Eilers? A. I had only been in to see Eilers a couple of times. I am in the pump business and I went in to sell the man a pump, that was maybe two or three years back.

Q. Did you ever have any serious disagreement with him? A. No, just talked to him several times, as I was in the neighborhood.

Q. Would the fact that you knew him influence¹⁰ you in any way or would you return a verdict on the evidence? A. I would return a verdict based on the evidence.

MR. HEILBRON: The defense challenges.

THE COURT: That is all, Mr. Anderson.

BELIE D. THOMPSON, a prospective juror,²⁰ being duly sworn on her voir dire, appeared and answered as follows:

EXAMINATION BY MR. HILLMAN:

Q. Mrs. Thompson, have you heard anything about this case either by reading or by hearing it discussed? A. I have not.

Q. You have not formed any opinion as to the guilt or innocence of these defendants? A. Abso-³⁰lutely not.

BY MR. EASTWOOD:

Q. Have you any conscientious scruples against imposing the death penalty if the evidence warranted it. A. I have not.

MR. EASTWOOD: No further questions.

MR. HEILBRON: Pass.

MR. EASTWOOD: The State passes.

(The juror having been accepted by both sides was duly sworn by the clerk as a juror.)

10

JOHN GAYNOR, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

Q. Where do you reside, Mr. Gaynor? A. 207 East Pearl Street, Burlington.

Q. What is your business or employment? A. 20 Clerk for the Thomas Devlin Iron Works.

Q. Have you read any newspaper accounts of the murder of Herman Eilers? A. No.

Q. Have you discussed the case with anyone? A. No.

Q. Have you formed any opinion as to the guilt or innocence of these two defendants? A. Absolutely not.

Q. Have you any conscientious scruples against capital punishment. A. No.

30 Q. Is your business or employment such you are able to leave it to devote the entire time necessarily consumed in this case? A. It is very inconvenient.

Q. If chosen as a juror would the fact that it is inconvenient as to your business or employment, would that in any way affect the verdict you would reach? A. No, if chosen I would do my duty.

MR. HILLMAN: No questions.

MR. HEILBRON: No questions.

MR. EASTWOOD: The State challenges.

THE COURT: The prospective juror may be excused.

10

GEORGE J. ADAMS, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. HEILBRON:

Q. Where do you live, Mr. Adams? A. Edgewater Park.

Q. What is your business or occupation? A. Rope maker. 20

Q. Are you married? A. Yes.

Q. Have you read any accounts of this alleged crime in the newspapers or discussed this case with anyone? A. Just the headlines.

Q. By reading what you did did you form an opinion as to the guilt or innocence of the defendants in this case? A. No, sir.

Q. If you were sworn as a juror you would be entirely governed by the evidence produced in this case? A. Yes, sir. 30

Q. How old are you? A. Forty-six.

Q. Did you know the defendants? A. No.

Q. Or the deceased. A. No, sir.

Q. You are not acquainted with any of the parties concerned in this case? A. No, sir.

BY MR. EASTWOOD:

Q. Do I understand, Mr. Adams, that you do not know either defendant? A. No, sir.

Q. Have you any conscientious scruples against imposing the death penalty if the evidence warranted it? A. No, sir.

Q. If the evidence produced from the witnesses satisfies you that the defendants murdered Herman Eilers, do I understand you would have no conscientious objection to imposing the death penalty along
10 with your verdict of guilty? A. Yes, sir.

MR. HILLMAN: The defense challenges.

THE COURT: That's all.

NATHAN A. COOMBS, a prospective juror, being
20 duly sworn, on his voir dire, appeared and testified as follows:

EXAMINED BY MR. EASTWOOD:

Q. Where do you live, Mr. Coombs? A. Palmyra.

Q. What is your business? A. Grocer.

Q. What is your age? A. 66.

30 MR. EASTWOOD: Challenge for cause.

THE COURT: The challenge will be allowed.

(Witness excused.)

ELIZABETH ROGERS, a prospective juror, being duly sworn, on her voir dire, appeared and testified as follows:

EXAMINED BY MR. HILLMAN:

Q. Have you read any accounts of this murder?

A. No, sir.

Q. Have you heard the murder discussed by anyone? A. No, sir.

Q. And you have not formed any opinion as to the guilt or innocence of these accused? A. No, sir.

EXAMINED BY MR. EASTWOOD:

Q. Have you any conscientious scruples against capital punishment, Mrs. Rogers? A. No, sir.

Q. If the evidence of the witnesses satisfied you beyond a reasonable doubt that these two defendants murdered Herman Eilers, would you have any conscientious objections to returning as a part of your verdict of guilty the death penalty? A. No, sir.

Q. Your husband is engaged in what business, Mrs. Rogers? A. The hardware business.

Q. In Riverside? A. Yes, sir.

(Witness passed by both sides and sworn as a juror.)

30

FREDERICK FISTER, a prospective juror, being duly sworn, on his voir dire, appeared and testified as follows:

EXAMINED BY MR. EASTWOOD:

Q. Mr. Fister, where do you live? A. Maple

Shade, New Jersey.

Q. In what business are you engaged? A. General contracting business.

Q. General contracting business? A. Yes.

Q. Have you read any newspaper accounts of the murder of Herman Eilers? A. I have.

Q. Have you formed any opinion as a result of reading those accounts? A. No more than the opinion in the paper. Yes; I have formed an opinion.

10 Q. Is that opinion such it could be altered by the evidence? A. No; it isn't.

Q. You mean you would not alter your opinion—
A. Yes; alter it according to the evidence.

Q. In other words, you would return a verdict based upon the evidence and disregard the newspaper accounts? A. That's correct.

Q. Have you any conscientious scruples against capital punishment? A. I have.

Q. How long have you had such a conviction?
20 A. Since the World War, 1918.

Q. So, it was not recently formed, it was not formed for the purpose of escaping duty on this jury? A. No, indeed.

Q. If you were chosen as a juror and took the oath to return a verdict in accordance with the evidence, and the evidence satisfied you beyond a reasonable doubt that the defendants murdered Herman Eilers, you would still have conscientious scruples about returning the death penalty with the ver-
30 dict of guilty? A. I would.

MR. EASTWOOD: I challenge for cause, if the Court please.

THE COURT: Do you desire to examine?

EXAMINED BY MR. HILLMAN:

Q. Would your scruples be so strong that they would prevent you from rendering a verdict in accordance with the evidence? A. Yes, sir; they would.

BY THE COURT:

Q. Even though you had taken an oath to bring in a verdict according to the evidence, your scruples against capital punishment would still be so strong that you could not do it? A. Yes, sir. It would be something that would probably be on my mind forever. ¹⁰

Q. That is not necessarily a conscientious scruple against taking it? A. Probably I can't.

Q. Were you in the World War? A. Yes, sir.

Q. Did you get to the front? A. No, sir; I didn't. I was in the Navy.

Q. Did you take an oath of allegiance to the Navy? A. I did. ²⁰

Q. If it had become necessary to shoot the enemy, you would have proceeded to kill him, wouldn't you? A. I presume I would have.

THE COURT: It is rather hard to countenance the objection. However, the Court will allow the challenge.

30

CHARLES SCHMID, a prospective juror, being duly sworn, on his voir dire, appeared and testified as follows:

EXAMINED BY MR. HEILBRON:

Q. Where do you live? A. Riverside.

Q. How old are you? A. 43.

Q. Are you married? A. Yes, sir.

Q. What is your occupation? A. Hosiery business. I have a hosiery shop.

Q. Have you read any accounts of this alleged crime in the newspapers? A. Yes, sir.

Q. Have you discussed it with anyone? A. Yes, sir.

Q. Have you formed any opinion concerning the guilt or innocence of the defendants in this case?

10 A. Yes, sir; a pretty definite opinion.

Q. Is that opinion such that from all the evidence produced in this case it could not be changed? A. Well, it is possible for it to be changed, but I have formed a definite opinion.

Q. You have formed a definite opinion, but it is possible if, in accordance with the evidence it would intend to show otherwise, that opinion could be changed? A. It is possible; yes, sir.

20 MR. HEILBRON: I challenge for cause.

EXAMINED BY MR. EASTWOOD:

Q. Mr. Schmid, if chosen as a juror and you took the oath to return a verdict in accordance with the evidence, would you return a verdict in accordance with the evidence and disregard the opinion you have formed? A. Yes, sir.

30 Q. Then, if you were selected as a juror, the determination you reached after hearing all the evidence would be based on the evidence alone? A. Yes, sir.

Q. Have you any conscientious scruples against capital punishment? A. No, sir.

MR. HEILBRON: Defense challenges.

(Witness excused.)

FRANK T. BUCHANAN, a prospective juror, being duly sworn on his voir dire, appeared and testified as follows:

EXAMINED BY MR. EASTWOOD:

Q. Where do you live, Mr. Buchanan? A. Bordentown.

Q. What business are you engaged in? A. Nothing.

Q. What business or employment did you have 10 when you were last employed? A. Postmaster.

Q. Mr. Buchanan, are you opposed to capital punishment? A. Well, I have conscientious scruples against it.

Q. If chosen as juror and taking the oath to return a verdict in accordance with the evidence, and if the evidence satisfied you that the defendants murdered Herman Eilers, if that evidence satisfied you of that fact beyond a reasonable doubt, would you have conscientious scruples of returning the 20 death penalty with a verdict of guilty? A. I would be very hesitant about it. I don't say that I would not—

Q. Your conviction is an absolute one? A. No. The evidence would have to be very definite, very definite.

Q. If the evidence were such as to satisfy you definitely that the defendants murdered Herman Eilers, would you then have conscientious scruples against returning the death penalty with a verdict 30 of guilty? A. Well, I might hesitate very much about it.

Q. But you have not a positive, abiding conviction, though, against capital punishment, have you?
A. No, sir; I have not.

MR. HEILBRON: No questions.

MR. EASTWOOD. The State passes.

(Witness passed by both sides and sworn as a juror.)

ARTHUR C. STICKEL, a prospective juror, being
10 duly sworn, on his voir dire, appeared and testified as follows:

EXAMINED BY MR. HILLMAN:

Q. Have you heard of this case? A. I have.

Q. Have you formed an opinion as to the guilt or innocence of the defendants? A. Nothing definite.

EXAMINED BY MR. HEILBRON:

20 Q. In other words, Mr. Stickel, you would be governed entirely by the evidence produced in this case in your decision? A. Yes, sir.

Q. You have formed no opinion as to the guilt or innocence of the defendants? A. Not until I hear the evidence.

Q. How old are you? A. 37.

Q. Married? A. Yes, sir.

Q. What is your occupation? A. Paymaster.

30 Q. Paymaster? A. That's right.

Q. For what? A. Keystone Watch Case.

EXAMINED BY MR. EASTWOOD:

Q. Have you a family? A. One boy.

Q. How old is he? A. 13.

Q. Have you any conscientious scruples against capital punishment? A. None whatever.

(Witness passed by both sides and sworn as a juror.)

MARTHA MAGINLEY, a prospective juror, being duly sworn, on her voir dire, appeared and testified as follows:

EXAMINED BY MR. EASTWOOD:

10

Q. Where do you live, Mrs. Maginley? A. Indian Mills, New Jersey.

Q. Have you read any newspaper accounts of the murder of Herman Eilers? A. I have.

Q. Have those newspaper accounts in anyway created an opinion in your mind as to the guilt or innocence of these defendants, John J. Ciemiengo and George Herman Hildebrand? A. It has not.

Q. Then you will be willing, if chosen as a juror, to render a verdict based solely upon the evidence 20 adduced from the witnesses? A. Yes.

Q. Have you any conscientious scruples against the imposition of capital punishment if the evidence justifies it? A. I have not.

Q. What family do you have, Mrs. Maginley? A. A husband.

MR. HEILBRON: No questions.

MR. EASTWOOD: The State challenges.

30

(Witness excused.)

ESTHER SASS, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

Q. What family have you? A. Four children.

Q. What are their ages? A. The youngest is nine and the oldest is seventeen.

10 Q. Have you any conscientious scruples about capital punishment? A. No, I have not.

Q. If the evidence adduced before you from the witnesses convinces you of the guilt of these two defendants beyond a reasonable doubt of the murder of Herman Eilers, would you have any conscientious scruples to returning the death penalty with the verdict of guilty. A. No, I would not.

MR. HEILBRON: The defense passes.

20 MR. EASTWOOD: The State passes.

(The juror having been accepted by both sides was duly sworn by the clerk as a juror.)

ELLA GILBERT, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

30

EXAMINATION BY MR. EASTWOOD:

Q. Where do you live, Mrs. Gilbert? A. Hartford, New Jersey.

Q. You have a family? A. I have a boy thirty.

Q. What is your age? A. Fifty-eight.

Q. Have you formed any opinion by reading any newspaper accounts of the murder of Herman Eilers. A. No, sir.

Q. Have you read any newspapers? A. Some.

Q. Have you discussed the matter with anyone? A. No, sir.

MR. EASTWOOD: No further questions.

MR. HEILBRON: No questions.

10

MR. EASTWOOD: The State challenges.

ROSE M. HOWARD, a prospective juror, being duly sworn on her voir dire, appeared and answered as follows:

EXAMINATION BY MR. HILLMAN:

20

Q. Have you read any accounts of this alleged murder? A. In the "Daily Enterprise," when it come out.

Q. Have you heard it discussed? A. No.

Q. You have not discussed it yourself? A. No.

Q. As the result of what you have read, have you formed any opinion as to the guilt or innocence of the defendants? A. No.

BY MR. EASTWOOD:

30

Q. Where do you live, Mrs. Howard? A. Burlington, 55 Seaman Avenue.

Q. Have you a family? A. No.

Q. Have you any conscientious scruples against the imposition of capital punishment? A. I have not.

Q. If the evidence satisfies you beyond a reasonable doubt that the defendants murdered Herman Eilers would you have any conscientious scruples against returning a verdict of guilty with the penalty of death. A. No, sir.

MR. HEILBRON: The defense passes.

MR. EASTWOOD: The State challenges.

10

GEORGE HEATON, a prospective juror, being duly sworn on his voir dire, appeared and answered as follows:

EXAMINATION BY MR. EASTWOOD:

Q. What is your age? A. Fifty-three.

Q. Have you read any accounts of the murder of
20 Herman Eilers? A. Yes.

Q. Have you formed any opinion from the newspaper account you have read as to the guilt or innocence of the defendants? A. Only what I saw in the paper.

Q. Do I understand you base your opinion on what you read in the newspapers? A. Yes, I formed it from that.

Q. And is that opinion such as it could be changed if the evidence satisfies you that your opinion was
30 wrong? A. Yes.

Q. If selected as a juror your decision would be based on the evidence? A. Yes.

Q. Do you have any conscientious scruples against capital punishment? A. No.

Q. If the evidence satisfied you beyond a reasonable doubt that the defendants murdered Herman Eilers you would have no conscientious scruples

against the death penalty with the verdict of guilty.

A. No.

MR. HILLMAN: No questions.

MR. EASTWOOD: The State challenges.

LEWIS V. HAMILTON, a prospective juror, being duly sworn, on his voir dire, appeared and answered 10 as follows:

EXAMINATION BY MR. HILLMAN:

Q. Where do you live, Mr. Hamilton? A. Moorestown.

Q. How old are you? A. Thirty-seven.

Q. Are you married? A. Yes.

Q. What is your occupation? A. Clerk in C. A. Lippincott and Bros. 20

Q. Have you read the newspaper accounts concerning this alleged crime? A. I have not.

Q. Have you read any articles about it? A. I have not.

Q. Have you discussed this case with anyone? A. No.

Q. You have not formed any opinion as to the guilt or innocence of these defendants? A. No.

BY MR. EASTWOOD:

30

Q. Mr. Hamilton, have you any conscientious scruples against capital punishment? A. I have not.

Q. Then, if the evidence satisfied you beyond a reasonable doubt that the defendants murdered Herman Eilers, would you have any conscientious scruples

ples to returning a death penalty with the verdict of guilty? A. No, sir.

Q. Have you any family? A. Two boys.

Q. What are their ages? A. Eleven and four.

MR. HEILBRON: Pass.

MR. EASTWOOD: The State passes.

¹⁰ (The juror having been accepted by both sides was duly sworn as a juror by the clerk.)

COURT OF OYER AND TERMINER

STATE

vs.

JOHN JACOB CIEMIENGO AND
GEORGE HERMAN HILDE-
BRAND,

Defendants.

On Indictment for
Homicide

10

Mount Holly, N. J., November 18th, 1935

TESTIMONY

BEFORE HON. FRANK A. HENDRICKSON, JUDGE,
AND A JURY

APPEARANCES:

20

For the State—HOWARD EASTWOOD, PROSECUTOR.

For the Defendants—

GEORGE M. HILLMAN, ESQ.,
STANLEY K. HEILBRON, ESQ.

FRED H. SHULTZ, a witness produced on behalf 30
of the State, being duly sworn according to law, up-
on his oath testified as follows:

DIRECT EXAMINATION BY MR. EASTWOOD:

Q. Sergeant Schultz are you connected with the
New Jersey State Police? A. I am.

Q. In what respect? A. I am identification man in photography work.

Q. How long have you been so connected with the State Police? A. Around six years.

Q. Were you at the late residence of Herman Eilers in Florence Township subsequent to his death?

A. Yes, sir.

Q. Did you take any photographs or were any photographs taken while you were there? A. Yes, sir.

10 Q. I show you a photograph purporting to be a photograph of a room and ask you whether or not you were present when that photograph was taken? A. I was.

Q. Did you take it? A. No, sir.

Q. Who took it? A. That was taken by Trooper Dalton. I assisted him when he took it.

Q. It is a photograph of what? A. It is a photograph of the kitchen of Herman Eilers' home.

20 MR. EASTWOOD: Do you want to look at it?

(Photograph shown to counsel.)

Q. Will you look at this photograph here and tell me whether you were present when this was taken? A. Yes, sir. I was.

Q. When was that taken? A. That was taken on the night of October 7th.

30 Q. I show you another photograph and ask you when that was taken? A. That was taken about the same time.

Q. I show you another photograph and ask you when that was taken? A. That was also taken about the same time.

Q. I show you another photograph and ask when that was taken? A. That photograph was taken on the 9th of October.

Q. Were there any changes in the arrangement of the room and its contents other than the removal of the body of Herman Eilers when that photograph was taken? A. No, sir.

MR. EASTWOOD: I offer the five photographs in evidence.

MR. HEILBRON: May I see the one that was taken on October 9th, Prosecutor?

10

(Photograph shown to counsel.)

THE COURT: They may be admitted in evidence.

(Photographs marked in evidence Ex. S 1,
Ex. S 2, Ex. S 3, Ex. S 4, Ex. S 5.)

Q. Sergeant, I show you a photograph and ask you what that is? A. That shows the home and 20 outbuildings of the victim's property, Herman Eilers.

Q. I show you a further photograph and ask you what that is? A. That is the victim's home.

Q. I show you another photograph and ask you what that is? A. That is the same house.

Q. I show you another photograph and ask you what that is? A. This is a view from Herman Eilers' kitchen looking through to the dining room or the living room and showing the bullet hole in the 30 wall.

Q. Were you present when these photographs were taken? A. Yes, sir.

(Photographs shown to counsel.)

Q. Do you know when these photographs were taken, Sergeant? A. The last one you showed me was taken on the 9th.

Q. Were there any changes from the conditions that existed when you were there on the night of October 7th? A. No, sir.

MR. EASTWOOD: I offer these photographs in evidence.

10 THE COURT: They may be admitted in evidence.

(Photographs marked in evidence Ex. S 6,
Ex. S 7, Ex. S 8, Ex. S 9.)

Q. Sergeant Schultz, I show you three other photographs and ask you what they are? A. Those are photographs of the victim's body.

20 Q. When and where were they taken? A. They were taken at Slack's Morgue in Burlington on the morning of October 8th.

Q. Were you present when they were taken? A. Yes, sir.

MR. EASTWOOD: I offer these photographs in evidence.

THE COURT: They may be admitted in evidence.

30 (Photographs marked in evidence Ex. S 10,
Ex. S 11, Ex. S 12.)

CROSS EXAMINATION.

BY MR. HILLMAN:

Q. Sergeant, what time did you arrive at the Eilers residence? A. On the night of October 7th, around 10 o'clock.

Q. Around ten o'clock? A. Yes, sir.

Q. Was the body on the floor of the house at that time? A. Yes, sir.

Q. So far as you know had its position been changed? A. No, sir, not as far as I know. 10

Q. You don't know, do you?

MR. EASTWOOD: He said he didn't know.

Q. Who was there when you arrived? A. Detective Cain of the Prosecutor's office, Burlington County; Lieutenant Keaton of the State Police, County Detective Zeller, of the Burlington County Detective Force, Sergeant Zaploski, of the State Police, and Sergeant Carlson of the State Police. 20

Q. You arrived there about ten o'clock you say.

A. Yes, somewhere around ten o'clock, yes sir.

Q. How long were you there? A. Possibly half an hour or three-quarters of an hour.

Q. Then you returned the next day? A. Yes, sir.

Q. What did you do the next day? A. The next day we took some photographs outside of tire tracks.

Q. Have you those photographs there. A. I think they are. 30

Q. I understood you to say that you took some of those photographs on October 7th. A. Yes, sir.

Q. And some on October 9th. A. Yes, sir.

Q. And that you took some at Slack's Morgue on October 8th A. That's right.

Q. Then you didn't take any photographs there at the Eilers residence October 8th. A. Yes, I did.

Q. Which ones did you take. A. Photographs of some tire tracks.

Q. Did you bring those with you? A. Yes, sir.

Q. Have you produced them? A. No.

MR. EASTWOOD: Here they are if you would like to look at them.

10 Q. And they were photographs of what? A. They were photographs showing tire tracks between the house and the corn crib.

Q. Between the house and the corn crib. A. Yes, sir.

Q. Was Officer George Griffith there when you arrived? A. I don't know him.

MR. HILLMAN: That's all.

20 MR. HEILBRON: That's all.

MR. EASTWOOD: That's all, Sergeant.

BY MR. EASTWOOD:

Q. Just a moment, Sergeant, just one more question. Will you return to the stand? A. (Witness complies.)

30 Q. Sergeant, I show you a photograph and ask you what that is? A. That is a photograph of the victim's property between the house and the corn crib showing tire tracks.

MR. EASTWOOD: Is there any objection to it?

(Photograph shown to counsel.)

THE COURT: No objection, they may be admitted in evidence.

(Photograph marked in evidence Ex. S 13.)

Q. I show you some other photographs and ask if you will state what they are, please? A. They are photographs taken by Trooper Camp of the New Jersey State Police, showing—

Q. Were you present when they were taken? A. No, sir. 10

Q. Trooper, did you make a plaster cast of the tire tracks of the car alleged to have been driven by Ciemiengo and Hildebrand. A. No, sir, Trooper Camp made those.

RE-CROSS EXAMINATION.

BY MR. HILLMAN:

Q. What time in the day was it when you made 20 these photographs of the automobile tracks? A. That was about nine o'clock in the morning of October 8th.

Q. Were there any other tracks but this one pair in the yard? A. So far as I could see, no, sir.

Q. No other automobiles had been driven in there apparently? A. No, that point was blocked off and protected.

Q. When was it blocked off? A. The night of the crime. 30

Q. Did you block it off? A. No, I don't know who did it, but it was blocked when I got there.

Q. You got there some time around ten o'clock? A. Yes.

Q. You don't know when it was blocked off? A. No, I don't.

Q. And when you went there to investigate it was the following morning, October 8th? A. That was the second visit.

Q. What time was that, about ten o'clock? A. No, sir, that was somewhere around nine o'clock.

Q. How many pairs of automobile tracks did you see in the yard there? A. It looked to me like tracks of a car pulling in, backing out, and then pulling out again.

Q. That is the only track you noticed? A. Yes, 10 that's the only track I noticed.

Q. Would you say there were others there? A. I could not say.

BY MR. EASTWOOD:

Q. Where was the location of the tracks as shown on Ex. S 13. A. Those tracks were between the corn crib and the victim's home.

Q. And where was the barrier between where 20 you photographed these car tracks and the rest of the property you referred to? A. This barrier I would assume was about even with the front porch and protected all the way back.

Q. And where the barrier was placed was it possible for an automobile to get in where these tire tracks were that you photographed. A. No, sir.

CROSS EXAMINATION.

30 BY MR. HILLMAN:

Q. What was the condition of the ground there, had there been a rain there recently? A. It appeared to me the following morning that the ground was a little damp, but it was hard ground, it was hard gravel.

Q. Were these tracks distinct? A. Very distinct.

Q. Although the ground was hard? A. I don't mean that it was hard clay.

Q. What do you mean? Was it hard or wasn't it? A. It was just about soft enough to leave those tracks.

Q. Could you tell how long the tracks had been there? A. No.

Q. Could you form any opinion as to that?

10

MR. EASTWOOD: Object, to asking the witness what his opinion was.

MR. HILLMAN: I will withdraw it and ask him if he could form an opinion.

THE COURT: If he could he may so state.

A. No, sir.

20

MR. EASTWOOD: That's all, Sergeant.

ARTHUR S. THERRIEN, a witness produced on behalf of the State, being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION BY MR. EASTWOOD.

30

Q. Where do you live, Mr. Therrien? A. I live on Cedar Street, in Florence Township.

Q. Do you know where Herman Eilers lived? A. Yes, sir.

Q. How far away from Herman Eilers' did you live? A. I should say about three-eighths of a mile.

Q. Did you know Herman Eilers? A. Yes, sir.

Q. How long have you known him? A. About two years.

Q. He lived on the same road you lived on, did he not? A. Yes, sir.

Q. Did you see Herman Eilers on the early evening of October 7th, last? A. No, the last time I saw him was on Sunday afternoon, he stopped at my house.

Q. I am asking whether you saw him on the evening of October 7th, Monday night. A. Yes, I saw
10 him when I went there.

Q. For what purpose did you go there? A. I went there to buy some eggs.

Q. Was anyone with you? A. No.

Q. How did you go from your home to his? A. I drove down.

Q. What time did you arrive there? A. I guess it was around quarter past seven, maybe ten minutes past seven.

Q. And as I understand it, no one was with you.
20 A. No.

Q. Now, Mr. Therrien, when you got to Herman Eilers' home, what did you do and what did you find? A. Well, I went in the yard and I blew my horn, there was no light there and I had an idea he was over to a neighbors, he used to go over there often, and I was just going to back out when I saw the door was open half way.

Q. Which door, Mr. Therrien? A. The back door, and then I had an idea he was home because
30 when he went away he would lock the back door, so I thought—

Q. Don't say what you thought, but tell us what you saw. A. So I decided to go in, and as I went up the steps I hollered: "Hey, Dutch," we used to call him that for short. The moon was shining nice and bright, and through the screen door I saw something that looked like legs and I wondered why he would

be lying there and I opened the screen door and stepped over him and lit a match and I saw blood on his face, so I went out and went over to a neighbors and told him about it.

Q. What neighbors did you tell? A. Bill Sampson.

Q. As related to the Eilers home, where did Sampson live? A. Why, he lived right across the way.

Q. How far did the house sit back from the road?

A. Oh, I guess a good stone's throw. 10

Q. You told Mr. Sampson what you had seen?

A. Yes, sir.

Q. And then did you tell anybody else? A. Yes, we called up Bill Malseed.

Q. He is another farmer that lives near there?

A. Yes, sir.

Q. How far does he live from Eilers'? A. Just a little further than I do, about a fourth of a mile.

Q. After you called Malseed, what did you and Mr. Sampson do? A. We went out in the road, and 20 I saw Bill coming down. He come down with his son, and we all went together.

Q. When you four got together, what did you do?

A. We went in the house and one of the boys had a flashlight.

Q. When you say the "boy" do you mean Baird Sampson? A. Yes; put the flashlight on him, and we went back to Sampson's again.

Q. When you put the flashlight on him, in the presence of these other people, what did you see? 30

A. We saw him lying down there with the blood on his face.

Q. Did you examine him to see whether he was alive or dead? A. No.

Q. Was there any movement of his body when you looked at him the second time? A. No, sir.

Q. Any motion to indicate there was any life there? A. No, sir.

Q. Did you speak to him and try to get an answer? A. When I first went in, I did.

Q. When the four of you went back, did you attempt to speak to him? A. No.

Q. Then answer that, what did you do, after the four of you looked him over? A. Well, we went back to Bill Sampson's and we called the State Police, and Mr. Griffith, of Florence.

10 Q. Chief Griffith, of Florence? A. Yes, sir.

Q. Did he come there? A. Yes.

Q. Were you there when he came? A. Yes, sir.

Q. What time did he arrive? A. I don't know what time he arrived. I imagine he got there—well, between half past seven and eight, somewhere around there. I couldn't say just exactly.

Q. When you went in there the first time or the second time with the Malseeds, father and son, and Mr. Sampson, did you notice anything on his body
20 which indicated whether he had been injured in any way? A. There was just a place on his face, on his temple.

Q. Did you notice any other wound? A. No, sir.

Q. What was the position of his body when you first went in there? A. He was laying on his right side, with his head reclining on that bag, and his legs was kind of bent up towards his body a little bit.

30 Q. I show you a photograph, which has been marked Exhibit S-3, and ask you if that is the position in which you found him? A. Yes, sir.

Q. Is that the same position in which he was in when you returned on your second visit with these three men? A. That was the same position.

Q. Had he moved? A. No—the same thing.

Q. Now, you say you saw some blood on his face?

A. Yes, sir.

Q. And where was that blood on his face? A. Why, it had run down from his temple down along his chin, down his cheek and the side of his face to the chin.

Q. You say it was running down? A. It had run down. It wasn't running at the time.

Q. Are you sure of that? A. As near as I can remember, the blood—it wasn't wet or it wasn't dry. I didn't pay an awful lot of attention to it. 10

Q. Was it running the first time you saw Eilers? A. No, sir.

Q. Or the second time? A. No; it was the same thing both times.

Q. You made a statement, did you not, to the State Police on October 8, 1935? A. Yes, sir.

Q. I call your attention to this statement. Is that your signature (indicating)?

MR. HILLMAN: If the Court please, I object to 20 his cross-examining his own witness.

MR. EASTWOOD: If the Court please, I think I am entitled to do it because of the testimony the witness has just given being a surprise. I believe under such circumstances counsel is entitled to cross-examine his own witness on any point on which testimony is given which is surprising, and this testimony, if the Court please, is a surprise to the State. 30

MR. HILLMAN: I object to his impeaching the credibility of his own witness or contradicting his testimony.

MR. EASTWOOD: I am not seeking to do that, if your Honor please. I believe in a situation like this

that counsel can call attention to a statement previously made in order to refresh the recollection of the witness when counsel is surprised by any testimony of the witness that he calls.

THE COURT: I believe that is right. I will permit it.

The defendants John Ciemiengo and George Hildebrand pray an exception to this ruling of the
10 Court

Exception allowed; let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

BY MR. EASTWOOD:

Q. Is that your signature (indicating)? A. Yes, sir.

20 Q. Is that the statement that you gave and signed to the Troopers concerning your knowledge of the circumstances surrounding the finding of Mr. Eilers' body? A. Yes, sir.

Q. I call your attention to the statement: "I stepped over his legs and I lit a match and then I saw it was "Dutch." I saw blood running down the left side of his face and blood on the floor and on a feed bag." A. I saw the blood on the floor but I said—
30 what I really meant at the time, I saw the blood on his face, but I couldn't really say whether it was dry or wet.

Q. I am not asking you that. I am asking whether you made that statement at that time: "I saw blood running down the left side of his face."? A. I have got it written in that statement here (indicating.)

Q. Well, it was true whatever you said at that time, wasn't it? A. Yes, sir.

Q. Did you make an observation as to whether or not there were any tire marks between the house and the corn crib? A. Well, yes; I saw them.

Q. I show you a photograph marked Exhibit S-13, and ask you whether or not you can observe any tire marks on that photograph; and if so, are they the ones that you saw? A. I see the tire marks.

Q. I call your attention to what purports to be 10 tire marks here and there (indicating), and ask you whether or not that is the location of those that you saw, to which you have testified? A. Well, the ones I saw was between the corn crib and the house.

Q. I see, all right. And were the tire marks that you saw there made by your automobile? A. No, sir.

CROSS EXAMINATION.

20

BY MR. HILLMAN:

Q. Now, Mr. Therrien, you said when you arrived there at the house it was about 7.15? A. Yes.

Q. Was it dark? A. No, it wasn't dark. It was nice, moonlight.

Q. Moonlight. Was it dark in the house? A. Yes, sir.

Q. How did you find your way around in the house? A. What do you mean, how— 30

Q. Well, did you go into the house the first time you went there? A. No; I went in the yard and I blew my horn, and I saw the door was open, so then I went in the house.

Q. The house, you had to go up several steps or stairs to get there? A. Yes.

Q. You went in the back door? A. Yes, sir.

Q. Was the door open or shut? A. The door was partly open. That's how I knew he was there.

Q. A screen door there? A. Yes, sir.

Q. That was closed? A. That was closed.

Q. And the other door was partly open? A. Yes, sir.

Q. Did you go in the house then or just looked in? A. I just looked in first and then I went in.

Q. Then what did you see? A. Why, I stepped over him and I took a match and lit it and then I saw
10 him and I saw he was hurt. So, I went out of there and went over to Bill Sampson's.

Q. And then you came back with the others? A. Yes, sir.

Q. Did you undertake to light the lamp there? A. No, sir.

Q. Did you see anyone undertake to light the lamp? A. After we come back?

Q. After you came back; yes. A. The lamp was lit.

20 Q. Who lit it? A. I couldn't say who lit it, but I know it was dry of kerosene and somebody did.

Q. Had filled it and lit it? You mean it was dry of kerosene? A. Yes.

Q. The light was burned out, you mean? A. Yes, sir.

Q. And you lit it? A. I didn't light it. Somebody else lit it.

Q. It had burned out? A. Sure.

Q. How could you light it if there was no oil in
30 it? A. I think somebody put oil in it.

Q. But when you got there the oil had been entirely burnt out? A. Yes.

Q. Did you examine the wick? A. No, sir.

Q. Did you take the chimney off the lamp? A. No; I don't know whether I did. I think I did take the chimney off the lamp.

Q. Was the chimney warm yet? A. No, sir.

Q. Entirely cold? A. Yes, sir.

Q. When did you make the statement to the State Troopers? A. I believe it was the next day, October 8th, the next evening.

Q. Where was that statement made? A. At the State Police Station.

Q. Did you write the statement? A. No, sir.

Q. Who did write it? A. They wrote it on a typewriter.

Q. And then you signed it? A. Yes, sir.

Q. Was your attention called to that portion¹⁰ there about his bleeding when you signed it? A. Now, I just couldn't remember.

Q. What is the truth about it? When you went in there was he bleeding or had the bleeding stopped. A. Well, I guess he had been bleeding. I couldn't really say just what it was but—

Q. Was he bleeding at the time you saw him? A. No; I don't think so.

Q. Did you touch the blood? A. No, sir.

Q. You don't know whether it was dry or not? ²⁰
A. No, sir.

Q. Couldn't tell from its appearance? A. No, sir.

Q. Did you see the blood on the floor? A. Yes, sir.

Q. Did you touch that? A. No, sir.

Q. Did you examine it? A. No.

Q. How much blood was there? A. Oh, I could see there was a spot of it.

Q. How much? A. Just a spot of it on the floor. ³⁰

Q. It soaked in? A. I don't know.

Q. Was it fresh or— A. I didn't pay enough attention to it.

BY MR. HEILBRON:

Q. After you came back the second time with Mr.

Malseed and Mr. Sampson, you remained there until the officers arrived? A. Yes, sir.

Q. Who was the first officer to arrive there? A. Chief Griffith.

Q. Chief of Police Griffith, of Florence? A. Yes, sir.

Q. And when he came in, do you recall what he did, if anything? A. No; I don't.

Q. You have no recollection if he made any examination or not? A. I don't remember—I don't
10 remember.

Q. Were you there at the time the body was removed from the house? A. I was outside.

Q. You were outside? You were not inside? A. No.

Q. Did you see anybody touch the body? A. No, sir.

Q. You don't recall seeing anyone? (No answer.)

Q. The body of the deceased was in the kitchen at the time? A. Yes.

20 Q. Did you see any dishes there? A. Oh, yes; a lot of pots and pans around there.

Q. Where were they? A. Well, I just don't remember; some on the stove.

Q. Were there any dishes on the table or anything? A. No; I don't think so.

RE-DIRECT EXAMINATION

BY MR. EASTWOOD:

30

Q. Mr. Therrien, what time did the moon rise that night? A. Oh, gosh—I couldn't say. I know it was up quite high, it was nice and light.

Q. At quarter after seven when you first arrived there? A. Yes.

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

Q. What time did the sun set? A. Oh, I couldn't say.

Q. Were you talking to Mr. Hillman and Mr. Heilbron this noon about this case? A. Mr. who?

Q. In Mr. Hillman's office? A. Yes; I was over there.

Q. With anybody else? A. With Bill Malseed and Baird, and young Abrams and myself.

Q. Who asked you to go there? A. Why, they didn't really ask me to go. I went over with the rest of the boys. 10

Q. Were you present when anybody was requested to go there? A. Yes.

Q. Who requested him? A. That gentleman over there (indicating). I don't know his name.

Q. Who; Mr. Heilbron? A. Yes, sir.

Q. I show you a photograph marked Exhibit S-7 of the Eilers house, and ask you if you will point out to the jury just which way you went in. Will you turn around? A. Well, the road is down there, comes down that way, see, and I pulled right in about 20 here (indicating).

Q. Where is the entrance? A. Right down here; down there (indicating).

Q. You can't get in the front way, can you? A. You mean the front way of the house?

Q. Yes. A. No; the entrance is at the end of the house, more or less. It is just about here somewhere (indicating).

BY THE COURT:

30

Q. Will you hold that up, Mr. Therrien, so that the jury can see it? A. The entrance is here (indicating).

BY MR. EASTWOOD:

Q. That brings you to the rear of the house? A. Yes, sir.

Q. Where did you park your car? A. I parked my car right about here (indicating).

Q. Then where did you go? A. I came around the car and went up the steps here (indicating).

Q. Which is the door that you entered? A. This one right here (indicating).

10 Q. Was there a screen door there at that time? A. Yes, sir.

Q. And that one, you said, was closed? A. Yes, sir.

Q. And the door to the kitchen itself was partly open? A. Partly open; yes.

RE-CROSS EXAMINATION.

20

BY MR. HILLMAN:

Q. Mr. Therrien, were you subpoenaed here as a witness on the part of the defendants? A. Well, I got two, one from the State Police and one from over here (indicating).

Q. You got one signed by me as attorney? A. Yes.

30 Q. And did you do any talking to Mr. Eastwood about this case at anytime? A. You mean today?

Q. Anytime? A. Yes.

Q. Talk to Mr. Parker? A. I don't know Mr. Parker.

Q. Ellis Parker? A. No. I have heard of him but I don't know him.

BY MR. EASTWOOD:

Q. You talked with me today after you had talked with Mr. Hillman and Mr. Heilbron, didn't you? A. Yes, sir.

Q. Did you know that Mr. Eilers made his living largely out of raising chickens? A. Yes, sir.

Q. Were his chickens put up that night when you arrived there? A. I don't know about that, when I arrived there, but afterwards the Trooper and I looked at them. 10

Q. Were they up? A. Yes; the doors were locked. The doors were all locked.

BY MR. HILLMAN:

Q. Do you know how long they had been fastened up? A. No.

20

WILLIAM MALSEED, a witness called on behalf of the State, after first being duly sworn on his oath, was examined and testified as follows:

BY MR. EASTWOOD:

Q. Where do you live, Mr. Malseed? A. Florence Township.

Q. And what is your business? A. Farming.

Q. Did you know Herman Eilers? A. Yes, sir. 30

Q. How far did he live from your place? A. Oh, I imagine right around a half a mile.

Q. Did you live on the same road? A. My farm goes right down to his place. The house was about that far above (indicating).

Q. How near do you live to the home of the defendant, Ciemiengo? A. He goes right through the place, down the back; about the same distance.

Q. Did the father rent a part of your place or was that another property altogether? A. No; he owns his own property.

Q. Now, Mr. Malseed, did you go with Mr. Sampson, your son and Mr. Therrien to the Eilers home on the early evening of October 7th. A. Yes, sir.

Q. From whom did you first receive a message?

10 A. Why, the call come from Mr. Sampson at Sampson's home.

Q. And then what did you do after you got the call? A. My son was coming up the lane and we got in the car and went down there, we met the other two and we go over there.

Q. Did you all go in the house together? A. I could not say how many went in, but I went in.

Q. Who else was with you when you went in? A. My son and Mr. Therrien, and Mr. Sampson.

20 Q. Was there nobody else there at that time? A. No.

Q. When you went inside what did you see? A. I don't know whether I had the spotlight or not, but somebody did and I was nearer to him, and I saw he had been shot and I said, "He is gone," and we went right out of there and went and got the State Police as soon as we could.

Q. What did you mean by "He is gone." A. I meant that you could see that he was dead.

30 Q. I show you a photograph marked Ex. S-3 and ask if that is the position Mr. Eilers was in when you saw him? A. Yes.

Q. I show you another photograph marked Ex. S-7 and ask if that is a photograph of the door where you entered. A. Yes.

Q. Is that the position that he was in when you entered? A. Yes.

Q. Did you make an examination of Mr. Eilers?

A. Yes, I did.

Q. You had a flash light? A. Yes.

Q. Were you able to see Mr. Eilers by the light of that flashlight? A. Yes, sir.

Q. And when you looked at him what did you see? A. I saw he had been shot.

Q. Where did you see any evidence of his having been shot? A. In the right temple—the left temple I mean.

Q. What else did you see connected with that? 10

A. There was some blood lying on the floor and just a little at his nose.

Q. Was the blood running out of his nose or down his nose. A. Not so you could see it running, but there was some there.

Q. Mr. Malseed, you made a statement to the State Police on October 9, 1935, did you not? A. Yes, sir.

Q. Is that your signature? A. Yes, sir.

20

MR. HILLMAN: Object to that, Your Honor, please.

MR. EASTWOOD: I think I have a right to ask it on the ground that the State is surprised with the testimony of this witness that he saw no blood running.

THE COURT: I will permit it on that ground.

MR. HILLMAN: I will take an exception, if Your Honor please. 30

THE COURT: You may have an exception.

The defendants, John Jacob Ciemiengo and George Herman Hildebrand, pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

Q. I call your attention to that portion of the statement which reads, "We could see blood running out of his nose and there was blood on the floor there," did you say that. A. I think I did, if it is there.

10 Q. Did you read the statement before you signed it? A. Yes.

Q. If that statement at that time that you could see the blood running out of his nose, it was true then. A. Yes, but not so heavy.

Q. I am not asking for the quantity, I am asking if there was any blood running. A. Yes, there was some.

Q. You were at Mr. Hillman's office and talked this matter over with Mr. Heilbron and Mr. Hillman
20 this noon, were you not? A. Just a little while.

Q. And the first time you had talked with me was after you talked with them, did you not? A. Yes.

Q. What did you do when you saw this body on the floor? A. We went to the officers.

Q. What officers? A. The State Police.

Q. You called for the State Police to come. A. We called Mr. Griffith, and he came.

Q. What time did he get there? A. I don't believe it was over fifteen minutes before he was there.

30 Q. Mr. Malseed, did you make any observation as to whether Mr. Eilers' chickens were put up for the night when you got there? A. Why not until real late.

Q. What time? A. I imagine about ten or half past when all the officers went out.

Q. And were you there the entire evening after you found the body up to the time that you made the

observation that the chickens had been put up? A. It was one of the officers that walked around to see if anything was stolen.

Q. And where were the chickens, were they on the roosts? A. They were sitting in the coops.

Q. And had anybody been out to the chickens between the time you arrived and the time you made this investigation? A. I don't think anybody had put them up.

CROSS EXAMINATION.

10

BY MR. HILLMAN:

Q. With regard to the blood on the face and nose of Mr. Eilers when you went there, did you touch this blood? A. No.

Q. Was the blood running or had it been? A. It was on the floor.

Q. Did you see the blood trickling on his face when you went there? A. It was just between running and dry.

Q. Was part of it dry? A. Some on the outside seemed to be and the rest of it was not. There was like a line went down on the outside, where it was dry, and in the middle it was damp.

Q. How about the blood on the floor? A. It looked pretty fresh.

Q. Did you test that blood? A. No.

Q. You just saw it on the floor? A. I just saw it on the floor.

30

Q. Did you undertake to light the lamp when you went in there? A. No.

Q. Did you see anybody undertake to light the lamp while you were in there? A. Yes, somebody lit the lamp because when Mr. Griffith came there he said: "Let's have a light."

Q. When was the lamp lighted, after Mr. Griffith got there? A. Yes, it was lighted after Mr. Griffith got there.

Q. Did you notice anything about the condition of the lamp? A. There was no oil in it.

Q. How about the wick? A. I don't know about the wick, but I know there was no oil, because they had to go outside to get some.

Q. Do you know what time Mr. Eiler ordinarily fastened up his chickens? A. It would be about 10 dark, because it would be a pretty hard job to get them in after that.

Q. What time did it get dark then? A. I could not say, maybe half past five or five o'clock.

Q. Do you fasten your chickens up or just let them go to bed when they get ready. A. I don't fasten them up, they do as they please, I don't have many.

Q. Mr. Eilers did have a lot of chickens? A. Yes.

20 Q. And he looked after them? A. Yes, fine.

Q. When did you make this statement before the State Troopers? A. The next night.

Q. Where? A. At the Columbus barracks.

Q. Did they write out the statement or did you write it? A. They wrote it out when they was questioning me.

Q. And then you signed it? A. Yes, they read it and it was satisfactory I guess.

30 Q. Was there anything said in that statement or when they were talking to you about the blood running? A. I guess it was mentioned.

Q. Do you remember whether anything was said about it? A. I don't know.

Q. Counsel asked if you came over to my office. You were subpoenaed by me, weren't you? A. Yes, sir.

Q. I came out before and talked to you, didn't I?

A. Yes, a little bit.

Q. And you told us what you knew about it? A. Yes.

Q. Did you tell us anything different from what you told us today? A. I don't think so.

Q. Was any attempt made by Mr. Heilbron or myself to get you to change your testimony? A. No.

MR. EASTWOOD: Object, if the Court please,¹⁰ there has been no suggestion of anything of the kind.

MR. HILLMAN: I don't know what you would call it.

THE COURT: I will sustain the objection.

RE-DIRECT EXAMINATION.

BY MR. EASTWOOD:

20

Q. What time did you arrive there that night?

A. It was something after seven o'clock when we first went down, I imagine. I could not say the exact time.

Q. What kind of weather was it that night? A. I don't think it was a real clear night. It was half cloudy and half moonlight.

Q. Was it a cold night? A. Yes.

Q. Was there any heat in the kitchen? A. No,³⁰ it was as cold as ice.

RE-CROSS EXAMINATION.

BY MR. HILLMAN:

Q. Did you examine the stove in Eilers' house?

A. What did you say?

Q. I asked you, if you examined the stove in the kitchen of Mr. Eilers' house? A. Yes, it was cold, it had not had any fire in it.

Q. Was there any fuel there? A. I think he used an oil stove that sat on the back of the stove. I think he used that to hurry up.

Q. What did he burn, coal or wood? A. He burned wood.

Q. Was there any fire in that wood stove? A. There had not been any fire in that stove, it was cold.

Q. There had been no fire for how long? A. I could not say.

Q. Did you notice any ashes in there? A. There was some ashes in there, but it did not seem as if there had been any fire in that stove for quite awhile.

Q. What do you mean by quite awhile, several hours or what? A. Yes, several hours, because the stove was cold.

20 Q. But there might have been a fire there twenty-four hours before? A. I could not say about that, but the stove was cold.

Q. And the room was cold? A. And the room was cold.

Q. Had it been cold that day? A. Yes, very cold.

CROSS EXAMINATION.

30 BY MR. HEILBRON:

Q. In other words, there was no evidence of any fire in that stove at all? A. No, not that I could see.

Q. What time did you say you arrived at the Eilers home? A. Some time after seven, I don't know exactly.

Q. Was it shortly after seven? A. Yes, shortly after seven.

Q. Was it before seven-thirty? A. I heard the clock strike seven before I thought of starting down there, so I know it was after seven.

Q. You know it was after seven o'clock, but just what time it was you could not say? A. No, I cannot tell in the hurry. I didn't notice.

Q. While you were there did you see anyone touch the body? A. Not that I saw until after the detectives got there. 10

Q. What did you see then? A. I did not see anything until they rolled him over.

Q. What did you notice when they rolled the body over? A. Just about the same only I could see he had plugs of blood in his nose, that were bleeding a little.

Q. Was the body limber or stiff? A. Very stiff.

Q. Very stiff? A. Very stiff, yes.

Q. Was there anything else you noticed when they rolled him over? A. No, that is all. 20

RE-DIRECT EXAMINATION.

BY MR. EASTWOOD:

Q. Mr. Malseed you say that the body was stiff, when was that, when it was turned over, around ten o'clock?

MR. HILLMAN: Object as leading. 30

THE COURT: I think you better ask him what time it was turned over.

Q. What time was Mr. Eilers' body turned over, Mr. Malseed. A. That was between twelve and one.

Q. Is that when you discovered that the body was quite stiff? A. When they turned it over it looked awful stiff.

Q. That was between twelve and one o'clock at night? A. I don't know the exact time.

Q. But when you made this statement that the body was very stiff, you observed that when they turned the body over, around midnight? A. Yes, somewheres around then.

Q. Were you present at the post-mortem at
10 Slack's Undertaking establishment? A. Yes.

Q. I think you testified you had known Herman Eilers for some time? A. Yes.

Q. And was the man you saw examined by Dr. Conroy and his assistant the same man that you had seen at the Herman Eilers' home and was it Herman Eilers? A. Yes, sir.

CROSS EXAMINATION.

20

BY MR. HEILBRON:

Q. While you were there did you touch the body?
A. No.

Q. Did you see any one? A. Any one?

Q. Did you observe any one? A. You mean any one touching the body.

Q. Yes. A. Not until they got ready to turn him over and look him over.

30 Q. Did they search the body then? A. I could not say, there was so many of the real guys around there, there was not much chance for an outsider to see what was going on. I didn't see, I don't know what they done.

DR. JOHN S. CONROY, a witness produced on behalf of the State, being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION BY MR. EASTWOOD:

Q. Doctor, where do you reside and where do you practice? A. I reside in Burlington, New Jersey, and I practice in Burlington, New Jersey.

Q. How long have you been practicing your profession? A. For twenty-five years. 10

Q. You are a medical doctor? A. Yes, sir.

Q. From what institution did you graduate? A. From Jefferson College, Philadelphia.

Q. Did you make a post-mortem examination of the body alleged to have been that of Herman Eilers? A. I did.

Q. Where was that examination made? A. At Slack's morgue, Burlington, New Jersey.

Q. On what date? A. May I refer to my notes?

Q. I think if they were made at the time there will be no objection. 20

MR. HILLMAN: No objection, if they were made at the time.

A. They were made at the time. I think it was October 8th, but I want to make sure. (Witness consults notes.) The autopsy was performed October 8th, 1935, at ten thirty A. M.

Q. Doctor, did you state the time of day? A. 30 Ten thirty A. M.

Q. Who was present when the autopsy was performed? A. Dr. Edward J. Muldoon, of Florence, worked with me. We did it together.

Q. Who else was present? A. Detective Zeller, of the Burlington Prosecutor's office; Coroner Edward Green, of Florence; Lieutenant Arthur Keat-

ing, of the State Police; Sergeant John Wallace, of the State Police; Sergeant Edward Hulse of the State Police, and Sergeant Carlson, of the New Jersey State police; William Malseed, of Florence Township, and George Walmsley, of Burlington, now Coroner; George Slack, Eldon Slack, William Moor and Casper Moor, attaches of the Slack morgue at Burlington, New Jersey. That is they are attaches of the Slack morgue.

Q. Did any one identify this body to you? A.
10 Yes.

Q. Who? A. Mr. William Malseed and Mrs. Anna Reschke, a relative, of 609 Williams Street, Trenton, New Jersey. She was his niece.

Q. I don't think you mentioned her name as being present. A. She was not present at the autopsy, but Mr. William Malseed was present before we opened the body. Mrs. Reschke identified the body that evening at Slack's morgue.

Q. Whom did they identify the body as? A.
20 Herman Eilers', of Cedar Lane, Florence Township, Burlington County, New Jersey.

Q. What examination did you make of the body of Herman Eilers? A. We made a complete examination. We inspected it first carefully and then opened the body and examined it.

Q. Doctor, what did you find by way of any wounds or injuries as a result of your examination of Herman Eilers? A. There were two gun shot wounds both capable of causing death, one wound
30 was made by a bullet of 22 calibre which entered the skull one and one-half inches externally to and three-eighths of an inch above the outer campus of the left orbit, that is the left corner of the eye, passing around the brain without lacerating the brain tissue, and fracturing the squamous portion of the left temporal bone and the greater wing of the left sphenoid bone and coming to the opposite side of the

skull where it lodged in the greater wing of the right sphenoid bone there, from which point it was removed. The bullet destroyed both optic nerves in its course and the skin at the point of entrance was badly burned by powder.

Q. You have used certain medical terms, doctor, as indicating the course this bullet took in certain parts of the head. Will you simplify that for the jury or at least for me. I don't know, the jurors might have understood you better than I did. A. The bullet entered the skull one and one-half inches externally to the outer campus of the left orbit of the eye which is this (indicating on witness face.) That is the outer corner of the eye. It entered one and one-half inches externally to that and three-eighths of an inch above it and went straight through, passing under the brain without lacerating or tearing the brain tissue and fractured a portion of the skull, going into the squamous portion of the left temporal bone. This bone is known as the sphenoid (indicating on witness face), it penetrated the left temporal bone and the greater wing of the left sphenoid bone and went to the opposite side of the skull and we removed it from the right sphenoid bone where it was imbedded in the greater wing of the right sphenoid bone. That is where it lodged and that is the point from where it was removed.

Q. Did you extract the bullet? A. I did.

Q. Will you describe the other wounds or injuries? A. Another bullet entered the outer portion of the sup-clavicular space one-half inch above the left clavicle.

Q. Can you indicate where that was, doctor? A. The clavicle is the collarbone running from here to here (indicating shoulders of witness), the sup-clavicular space means the space above the clavicle, sort of a little depression that most people have right above the clavicle, more marked in some people than

others. It entered there one-half inch above the left collarbone and the skin at the point of entry was badly burned by powder. The bullet took a slight downward and inward course, shattered the clavicle and severed a large artery, the left sup-clavicular artery, under the collar bone, causing an extensive hemorrhage into the left thoracic cavity, that is, the chest has a left and a right thoracic cavity, and the left thoracic cavity was filled with blood. The bullet was badly flattened and was removed A. It was
10 found free, not imbedded, in the bottom of the left thoracic cavity.

Q. Did you recover that bullet, doctor? A. I did.

Q. Were there any other wounds or injuries that you found upon the decedent? A. There were no other marks of violence on the body.

Q. Doctor, as I understand it is your opinion that either one of these injuries could have caused death? A. I think so.

20 Q. What did cause death? A. You mean which of the two wounds?

Q. Not necessarily, but what was the cause of the death of Herman Eilers? A. Gun shot wounds.

Q. Doctor, did you make any other examination of the body of Herman Eilers to determine its condition? A. I did.

Q. And aside from the gunshot wounds what did you find as to the physical condition of Herman Eilers? A. With the exception of very foul condition
30 of his mouth—he had an upper plate and a lower plate with two teeth missing from the lower plate and there was one old snag of a tooth under the plate imbedded in the gum—with the exception of the poor hygiene of his mouth we found him to have been in excellent physical condition.

Q. I show you an envelope dated October 8th, 1935, bearing the signatures of John S. Conroy, M. D., and Edward J. Muldoon, M. D., and ask you whether that is your signature? A. That is my signature, yes, sir.

Q. Was there anything placed in that envelope by you at the time? A. Yes.

Q. What was it? A. The bullet which was removed from the left thoracic cavity of Herman Eilers.

Q. Is that the envelope in which you placed it at 10 the time. A. It is.

Q. Will you look at it and see whether or not you can identify that as the bullet you removed from Eilers as you testify. A. That is the bullet.

MR. EASTWOOD: I offer this envelope and its contents in evidence.

THE COURT: It may be marked in evidence.

(Envelope marked in evidence Exhibit S-14.) 20

THE COURT: I suppose you will connect it up later.

MR. EASTWOOD: Yes, sir, as to its custody since that time.

Q. Doctor, I show you another envelope bearing the signatures of John S. Conroy, M. D., and Edward J. Muldoon, M. D., and ask you whether that is your 30 signature? A. It is. That is my signature at the bottom.

Q. And was it signed by Dr. Muldoon in your presence? A. It was.

Q. I ask you if you will tell me what that envelope contained. A. This envelope contained the bullet taken from the skull of Herman Eilers by Dr.

Muldoon and myself in Slack's morgue on October 8th, 1935.

Q. Will you look at that and tell me if you can identify that as the bullet taken from Herman Eilers' skull. A. It is.

MR. EASTWOOD: I offer this envelope and its contents in evidence.

10 THE COURT: It may be marked in evidence.

(Envelope marked in evidence Exhibit S-15.)

Q. Doctor, I show you a photograph which is marked Exhibit S-11, and ask if you can identify whom that photograph represents. A. Herman Eilers.

Q. He is the one upon whom you performed the post-mortem examination with Dr. Muldoon? A. Yes, sir.

20 Q. And I ask you, Doctor, if you will point out to the jury the location of the two wounds, concerning which you have testified?

THE COURT: You may go down.

THE WITNESS: The one wound which entered the left side of the skull is represented here in this photograph (indicating). This point here (indicating) represents the point at which the other bullet
30 entered the thoracic cavity.

BY MR. EASTWOOD:

Q. All right, Doctor. You may resume the stand. Doctor, to whom did you give these bullets after you had put them in those envelopes and marked them?

A. Sergeant Fred Shultz, of the State Police.

CROSS EXAMINATION.

BY MR. HILLMAN:

Q. Doctor, will you indicate on your own person how far the bullets travelled?

MR. EASTWOOD: That is objected to, if the Court please. There was no testimony in the direct examination concerning the Doctor's opinion on any question, except what caused his death. 10

MR. HILLMAN: I asked him to indicate, sir, where the bullet entered and how far it travelled.

MR. EASTWOOD: I beg your pardon.

THE COURT: I will permit the question.

A. The first bullet went from this side over to a point a little—at the base of the skull, I would say, 20 oh, probably a fourth of an inch; stopped about a fourth of an inch, and came out at the corresponding point—it didn't come out at the corresponding point, but it enlarged.

BY MR. HILLMAN:

Q. That is, it penetrated the skull? A. Yes; it did.

Q. The other bullet, how far did it travel? A. 30 Travelled from about here (indicating) down to the bottom of the thoracic cavity. The diaphragm, which is the muscular membrane structure which separates the thoracic cavity from the abdominal cavity, this was found in the left thoracic cavity.

Q. Then, it travelled from a point a little below the top of the shoulder bone—you will excuse me for

using the words of a layman? A. That's right.

Q. Down to a point a little above the waist? A. Well, if you are high waisted. Right down to the end of the ribs, Mr. Hillman.

Q. Did it strike the ribs? A. It very badly fractured, shattered the left clavicle, the left collar bone.

Q. It had gone by the ribs? It didn't scrape anything? A. No; we could find no injury there. It went immediately into the thoracic cavity.

Q. You said that the skin where the bullet had
10 entered the temple was badly burned? A. Badly burned, yes, sir. That is what my testimony was.

Q. You mean by that burned by the powder? A. Yes, sir.

Q. Now, did that indicate to you how far the muzzle of the weapon was from the body when it was fired?

MR. EASTWOOD: That is objected to if the Court please. This witness is not qualified to answer
20 that question.

THE COURT: I will permit him to answer the question. If he cannot, he will say so.

Read the question.

(Question read.)

THE WITNESS: You mean the wound here (in-
30 dicating)?

BY MR. HILLMAN:

Q. Yes, sir. A. I believe it was very close.

Q. What do you mean by "very close"? A. Just very close. Now, my impression would be—I couldn't just say that the barrel of the gun or the

revolver was held firmly against there, but I would say it was either held against it or very close to it. I couldn't say exactly.

Q. Do you mean either very close to it or just a few inches of it? A. Very close; yes.

Q. By "very close" you mean a few inches? A. I would say within a very few inches; yes.

Q. What do you mean by "very few"? Do you mean two or three or four? A. I can't stipulate any—

Q. Indicate with your hand. A. I can't. I am 10 telling you I don't know anymore than—

MR. EASTWOOD: If the Court please, I raise the further objection because there is no proof that this witness has had any experience with the discharge of firearms or is qualified to state the distance a firearm would have to be held to leave powder marks.

THE COURT: I will permit it.

20

BY MR. HILLMAN:

Q. How many inches, Doctor? A. I am under oath, Mr. Hillman. I can't say how many inches. It would be my impression—

MR. EASTWOOD: I object, if the Court please, to his testifying. He said that he can't say, if the Court please, and now counsel is persisting in asking him. I respectfully submit that he said that he can't say.

MR. HILLMAN: If your Honor please, he said a few inches, and I would like to know what he means by a few inches.

THE WITNESS: From what I have seen of gunshot wounds, and I have had considerable experience in the United States Army in gunshot wounds, I would say it was very close. I would say within four or five inches anyhow—probably closer.

BY MR. HILLMAN:

Q. Now, with regard to the wound in the clavicle—is that correct, Doctor? A. The clavicle.

10 Q. You don't know whether there was any clothing over that? A. When I saw the body it had been stripped, of course, of clothing. It was nude.

Q. But it was in a part of the body which was ordinarily clothed?

MR. EASTWOOD: I object to that, if the Court pleases. He testified that there was no clothing there.

20 MR. HILLMAN: I said "ordinarily."

(Objection sustained.)

The defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,

30

Judge.

THE WITNESS: It is not ordinarily clothed at post-mortems.

BY MR. HILLMAN:

Q. But the flesh or the skin was badly powder

burned? A. The skin was badly burned.

Q. Now, in your opinion, how close was the muzzle of the weapon to the body when it was fired? A. The burn there wasn't so bad as the other burn; not so marked. I would say it was at a greater distance.

Q. Now, Doctor, would the fact that there might have been clothing between the muzzle of the weapon and the skin of the body account for the less pronounced powder burn?

MR. EASTWOOD: I object to that if the Court please. There is no evidence in the case that this man had any clothing on that particular part of his body and the bullet penetrated it.

THE COURT: It is a hypothetical question, I presume. I will permit it.

MR. EASTWOOD: If the Court please, may I submit to your Honor that if a hypothetical question is asked, it must include facts that are already in the testimony and there is no testimony in the case that this decedent was clothed at the time the bullet penetrated the body.

THE COURT: I will permit the question.

THE WITNESS: Will you please repeat the question?

(Question read.)

30

THE WITNESS: Yes.

BY MR. HILLMAN:

Q. Now, Doctor, I show you photographs which have been marked Exhibits S-4, S-3, and S-2, and ask

you whether those photographs show the deceased to have had clothing over the part of the body where the wound was inflicted? A. I couldn't identify the deceased from that photograph. That body there (indicating) has clothing on it—yes.

Q. Well, now, assuming that that is the deceased, would you say that the presence of that clothing as shown by the photograph caused any difference in the intensity or severity of the powder burn? A. As I see it, there's very little clothing on it. It looks
10 to me like the man's bare skin and with some flimsy or thin material in here, isn't it?

Q. Will you answer the question?

MR. EASTWOOD: I think the Doctor is entitled to find out—

THE COURT: He is entitled to know.

THE WITNESS: There is a very thin film, a very
20 flimsy covering in front and it looks to me like in the back and the shoulders—?

BY MR. HILLMAN:

Q. I am not on the stand, Doctor. Do those photographs show there was clothing over the part of the body where this wound was inflicted? A. There is a very thin covering there, what looks to me like a thin covering—yes.

30 Q. All right. Would that make a difference in the powder burn? A. It would make some difference, yes, sir; a slight difference, I would think.

Q. Doctor, can you tell me, from your medical experience, what would have been the effect of these bullets, when he was struck; would he have collapsed instantly? A. In my opinion, yes. You said "collapsed"?

Q. Yes. A. Yes. In my opinion, yes.

Q. Well, now, Doctor, see if we understand the word "collapsed". Suppose he had been sitting in a chair, would he have fallen to the floor?

MR. EASTWOOD: I object, if the Court please. There is no testimony in the case that he was sitting in a chair.

THE COURT: I think that is going a little bit astray, Mr. Hillman.

10

BY MR. HILLMAN:

Q. What do you understand by the word "collapse"? A. To fall through—to fall.

Q. If the man had been standing, he would have fallen? A. Yes.

Q. Instantly? A. That would have been my impression. That is my definition of "collapse" I mean.

Q. You have no way of saying which wound was inflicted first, have you, Doctor, or have you not? A. 20
I can only give an opinion.

Q. All right, that's all I want. A. I cannot definitely say, but it was my impression that this one up here (indicating).

Q. And what is the reason that prompts you to give that opinion, Doctor? A. Because while it is my opinion that either of those wounds may have caused death, I think that death from the first wound would not have been immediate. I think that death from the second wound would not have been 30
immediate either, but it would be very much more rapid. I think the facts from the post-mortem bear out that neither wound caused immediate death, that he probably lived a few minutes, because he bled so much into the thoracic cavity. So, I believe this was the first wound and this was the second one (indicating). That's an opinion.

Q. What do you mean by the bleeding? A. Because I found such a large quantity in the left thoracic cavity, which proved to me he lived a few minutes after the second wound was inflicted.

Q. In other words, a body don't bleed after it is dead? A. That is a much mooted question, Mr. Hillman.

Q. Isn't that what you base your opinion on? A. It doesn't bleed to any extent after death but it does bleed a little bit.

10 Q. But a great amount of bleeding does occur before death? A. Oh, yes; ante-mortem bleeding is always greater.

RE-DIRECT EXAMINATION.

BY MR. EASTWOOD:

20 Q. Doctor, have you ever made any actual tests of firing a gun at a target at a certain distance to determine how close it would be to leave powder marks? A. No; I haven't.

Q. So that your testimony concerning how close this gun might have been to the deceased is based on examination of bodies that have suffered from gunshot wounds, without having seen the guns discharged that caused those wounds? A. That's true.

30 Q. And you have never made any practical test as to what powder marks might be left by a gunshot wound based on the distance that the gun was away from the target? A. I never have; no, sir.

Q. So that your testimony is based purely on your opinion, is it not? A. Yes, sir.

Q. Now, you don't know which of these bullets was fired first? A. A matter of conjecture, Mr. Eastwood.

Q. It is possible that the one just above the clavicle might have been the first? A. It is possible—yes, sir.

Q. Now, as to the blood you say you found in the thoracic cavity, if the decedent had not died immediately there would have been a flow of blood there, would there not, until he did die? A. Yes, sir.

Q. Is it possible, Doctor, in your opinion that the decedent might have collapsed to the floor when the bullet wound penetrated his body just above the clavicle? A. Yes.

10

Q. As I understand it, the wound in the head was right—a fracture in the back of the left eye? A. Yes, sir—may I refer to my notes again? I don't attempt to carry that from memory.

Q. Yes. A. One and one-half inches external to a three-eighths inch above the outer canvas of the left orbit—one and a half inches external, two and three-eighths inches above.

Q. Assuming that the first bullet that penetrated the decedent was the one that entered just above the 20 clavicle bone, is it possible then, in your opinion, that the bullet that penetrated the left side of the temple could have been fired while he was prostrate on the floor after having collapsed from the other bullet wound? A. It is possible if the man leaned over and put his gun very close to his head.

Q. Assuming, Doctor, that the first bullet that penetrated the decedent was the one that entered his body just above the clavicle bone and he collapsed and laid in that position, was it then possible for the 30 second bullet to have been fired right against his left temple? A. It was.

Q. You have testified concerning powder marks around the area of the wound above the clavicle bone. I understand that they were less than the others? A. Yes; they were not so marked, but they were pretty badly burned.

Q. Is it possible that might have been because the gun that fired the bullet was farther away than the one that entered the left temple? A. Yes.

RE-CROSS EXAMINATION.

BY MR. HILLMAN:

Q. With regard to the powder burns, as I understand it, you have not shot a man yourself? A. No.

10 Q. But you have had experience in your service in the United States Army and had seen a number of men who had been shot? A. Yes, sir.

Q. And your testimony was based upon your experience largely gathered in that way, is that right? A. No; not entirely. It is——

Q. I said “largely”? A. I would say more on what I have read on it and to an extent what I have seen in my military service.

Q. When you say “read” you mean you have read
20 established medical works and established authorities? A. I have read some but just as a matter of passing the time—not to make a real study of it.

BY MR. HEILBRON:

Q. Doctor, may I ask if you have the height of the decedent? A. May I refer to my notes?

Q. Yes. A. I think it was five feet, eight inches. (referring to a paper). The body was that of a male
30 adult five feet, eight inches in height by actual measure.

BY MR. EASTWOOD:

Q. Did you at any time measure the height of John Ciemiengo? A. I believe I did.

Q. Have you any notes as to what his height is?

A. I think I have.

MR. HILLMAN: That is objected to.

THE WITNESS: John Ciemiengo; I have John Ciemiengo.

THE COURT: What is the objection?

MR. HEILBRON: We can't see where this is any 10
direct examination of the Doctor.

MR. EASTWOOD: It was brought out on cross examination the height of the decedent, which I think is intended for a very definite purpose, and I am meeting something that was brought out in cross examination.

THE COURT: I will permit the question and grant an exception. 20

The defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

30

THE WITNESS: Five feet 11½ inches in height. Joseph Ciemiengo?

BY MR. EASTWOOD:

Q. Yes. Is he here in Court? A. He is.

Q. Where? A. The young man with the white shirt without a coat.

Q. Five feet, 11 and a half inches? A. Five feet, 11 and a half inches. The second fellow with the white shirt (indicating).

GEORGE F. GRIFFITH, a witness called on behalf of the State, having first been duly sworn on his oath, testified as follows:

BY MR. EASTWOOD:

Q. Mr. Griffith, are you connected with the police department of Florence Township? A. I am.

Q. And in what capacity? A. Chief of Police.

Q. How long have you been connected with the police department of Florence Township? A. 11 years.

20 Q. Did you know Herman Eilers? A. Yes, sir.

Q. Do you know the defendant Ciemiengo? A. Yes, sir.

Q. Do you know George Hildebrand, the other defendant? A. No; I didn't—did not.

Q. On the evening of October 7th, last, Mr. Griffith, did you receive any message to come to the Eilers home? A. I did.

Q. And from whom did you receive the message? A. William Malseed.

30 Q. In what way? A. Well, he told me—

Q. No; I mean by telephone or personally? A. Telephone.

Q. And what did you do after you received the message? A. Why, I went out there.

Q. And how did you go? A. By automobile.

Q. Anyone accompany you? A. No, sir.

Q. What time was it when you received the message? A. 7.25.

Q. And what time was it when you arrived at the Eilers home? A. 15 minutes of eight.

Q. When you got there who was there? A. Mr. Malseed and Mr. Sampson and the gentleman that discovered the body. They stood out in the road when I got there.

Q. When you got there, what did you do and what did you see, Mr. Griffith? A. Well, I pulled into the yard and those men came in and they told 10 me about—

Q. Don't say what they told you; just state what you did, and where you went and what you saw? A. Well, I went in the house and found Mr. Eilers.

Q. What part of the house did you enter? A. The back of the house, the side door in the back of the house.

Q. Where did you put your car when you came in? A. I run right in the driveway.

Q. When you say "driveway" where did you 20 leave it? A. Well, it was out opposite the side porch.

Q. Did you drive it in between the corn crib and the house? A. No, sir.

Q. Was there any barrier placed at that point at any time? A. Not as I know of.

Q. You didn't place any there? A. No, sir.

Q. Then you went in the house? A. Yes, sir.

Q. What did you see when you went in the house? A. I saw Mr. Eilers on the floor. 30

Q. I show you a photograph, Mr. Griffith, marked Exhibit S-3, and ask you who that is lying on the floor and what it represents? A. This is Mr. Eilers.

Q. Will you state whether or not that is the position in which you saw him when you entered the house? A. It is.

Q. Did you make any observation of his position?
A. I did.

Q. And what did you do in that respect and what did you see? A. Well, I started to look around to see what I could find—if I could find the gun.

Q. No; I am referring to the body. Did you look at Eilers' body to see if he was suffering from any wounds? A. I noticed a wound up in his head.

Q. Did you notice any blood there? A. Yes, sir.

Q. What did you notice about that? A. Well,
10 I noticed the blood, some of the blood on the floor had clotted and turning dark, but towards the end of the, the last of the bleeding, it looked pretty fresh.

Q. Was there any blood running or moving on his face? A. Well, no; I couldn't say it was running.

Q. Had you previously seen people suffering from gunshot wounds? A. Yes, sir.

Q. A number of times? A. Plenty of times.

Q. And the examination of the blood around this wound in his head, did it have the appearance of be-
20 ing fresh or otherwise? A. Yes; I would said it hadn't been done long.

MR. HEILBRON: Objected to. The witness is not qualified to state his opinion.

THE COURT: The objection comes a little late, Mr. Heilbron. The witness has answered it. We will permit it to stand and allow you an exception. Let it be sealed.

30

FRANK A. HENDRICKSON,
Judge.

BY MR. EASTWOOD:

Q. Did you make any observation of Eilers at that time to see whether he was dead or alive? A. I did.

Q. Was he dead or not? A. I was satisfied he was dead—yes, sir.

Q. Have you had experience previously in examining where death had occurred? A. Yes.

Q. In your work as an officer? A. Yes, sir.

Q. What did you do then, Chief? A. Well, I asked a few questions of the different ones that stood around there.

Q. Don't state what you said, but what did you do? A. Well, that's one thing that I did.

Q. All right, and you stayed around there? Did¹⁰ anyone else come while you were there? A. You mean officers?

Q. Yes. A. No.

Q. No detectives? A. Not at the start.

Q. I mean while you were there? A. Oh, yes; while I were there.

Q. How long after you were there? A. Well, I imagine 15 or 20 minutes.

Q. And who came? A. Two troopers.

Q. Do you know who they were? A. I don't²⁰ know who they were, but there is one of the gentlemen there (indicating).

Q. Are they here in court? A. Yes, sir.

Q. To whom are you pointing; this trooper here? A. Yes, sir.

Q. And who is the other? A. The gentleman back there with the glasses (indicating).

Q. Did any of the county detectives come there later? A. Yes.

Q. When? A. They came there after the troop-³⁰ers.

Q. Do you know what time? A. Well, I imagine they got there around eight o'clock, a little later.

Q. And whom did you notify concerning the matter? A. I notified Mr. Parker and the coroner.

Q. How long after you had been there did you notify them? A. I imagine 14 or 15 minutes.

Q. Before the troopers and county detectives arrived, Mr. Griffith, was the body of Herman Eilers moved? A. No, sir.

Q. Was there anything else moved from the position that you saw it when you arrived there? A. No, sir.

Q. That is the position of Eilers' body, is it not, when you arrived (indicating)? A. Yes, sir.

Q. At the time did you notice any blood on the feed bag on which his head was resting? A. I did.
10

CROSS EXAMINATION.

BY MR. HILLMAN:

Q. Mr. Griffith, when you got there you say you examined the body, did you do that? A. No; I didn't say that I examined the body.

Q. Well, did you examine the body? A. No.

Q. Didn't you say that you looked to see whether
20 he was dead? A. Yes.

Q. Well, what examination did you make to determine whether or not he was dead? A. I could tell by the looks of him.

Q. Well, did you go near him? A. Yes; right over him.

Q. Did you touch his body? A. Yes.

Q. Was it warm or cold? A. Well, it was rigid.

Q. The body was rigid? A. Yes, sir.

Q. Cold? A. Yes, sir.

30 Q. You say you have had experience with dead bodies. In your opinion, how long had the man been dead? A. Well, that depends—I imagine on the condition of the weather and the body—

Q. No; I am asking you from what you saw, how long you think he had been dead? A. Well, I couldn't say.

Q. Can't you form an opinion? A. I wouldn't like to.

Q. Well, you say you have had experience with dead bodies and you examined this man and you found the body cold and rigid. Now in your opinion, how long had he been dead?

MR. EASTWOOD: That is objected to, if the Court please. This witness is not qualified as witness to show that he has had any experience with the question of how long a person has been dead by merely making an observation such as he did. I respectfully submit that this witness is not qualified to testify as to the length of time that had elapsed before this man died. 10

MR. HILLMAN: I asked him if he had had any experience in examining dead bodies and he said yes.

THE COURT: I will permit the question to be answered, if he can answer it. 20

BY MR. HILLMAN:

Q. In your opinion, how long had he been dead?

A. Well, I would say, the weather conditions, it was cool and the man laid in the draft—he could stiffen up very quickly.

Q. What do you mean by "very quickly"? A. Well, within an hour or an hour and a half, I would say. 30

Q. You think that man had only been dead an hour or an hour and a half when you saw him first?

A. Well, he hadn't been dead long. I could tell by the blood.

Q. Answer the question.

MR. EASTWOOD: If the Court please, he has answered that question. He said that in his opinion he had been dead an hour or an hour and a half.

THE COURT: Read the question and the answer.

(Question and answer read.)

MR. EASTWOOD: If the Court please, I respectfully submit that he has answered the question.

10 MR. HILLMAN: Your Honor, do you overrule that question?

THE COURT: No. I think he has answered that question.

MR. HILLMAN: May I ask him the present question?

20 THE COURT: You may ask him in a different form. He said that he had not been dead very long.

BY MR. HILLMAN:

Q. You said that this man in your opinion, had not been dead very long, is that your opinion? A. Yes, sir.

Q. What do you mean by "very long?" A. Well, I would say he hadn't been dead over a couple
30 of hours.

Q. Not over a couple of hours? A. No.

Q. You are positive about that? A. Oh, well—

THE COURT: You are asking him for his opinion?

MR. HILLMAN: I am asking him for his opinion and I am asking him for his positive opinion.

THE WITNESS: I would say that I wasn't positive about it.

BY MR. HILLMAN:

Q. Did you make any further investigation there? Did you look into the mail box? A. Yes, sir.

Q. What did you find in the mail box? 10

MR. EASTWOOD: That is objected to. There was no direct testimony on that.

THE COURT: He testified that he made certain examinations around there. I do not see any harm in permitting him to state what he found. I will permit him to state it.

THE WITNESS: I found the daily paper. 20

BY MR. HILLMAN:

Q. What did you do with it? A. I put it in my car.

Q. What did you do with it then? A. Well, it disappeared.

Q. Do you know where it went? A. No; I do not.

Q. Did you look at the date of the paper? A. I 30 did.

Q. What was it? A. October 7th.

Q. Morning paper? A. Yes, sir.

Q. And where was it? A. Where was it?

Q. Yes, where was it when you found it? A. In the mail box.

Q. Where was the mail box? A. Out in front of the house.

Q. Anything else in the mail box but this one paper? A. No.

Q. Sure of that? A. Yes.

Q. Were you there when the body was moved to the undertaker's? A. I was.

Q. When was that done? A. That was done that night.

Q. What time? A. Well, I don't know exactly 10 the time. I imagine around—

Q. What did you— A. 10 o'clock or somewhere around there; it may have been later.

Q. Did you help to put the body in the undertaker's box? A. No, sir.

Q. You saw them put it in? A. No; I was out in the front room when they put it in the box.

Q. Didn't you notice them doing it? A. No; I didn't pay much attention.

Q. Well, now, didn't you notice them doing it? 20 A. No.

Q. Didn't you notice that the body was stiff? A. No.

MR. EASTWOOD: That is objected to, if the Court please, as being several hours after this occurred. I can't see where it has a bit of relevancy.

THE COURT: He has answered it, so I think we will let it stand.

30

BY MR. HEILBRON:

Q. Mr. Griffith, can you tell me if the body was fully clothed or what clothing there was on the body, if any? A. He didn't have any coat or hat on.

Q. His trousers and shoes, of course? A. And shirt.

Q. Can you recall what kind of shirt it was? A. I believe it was one of those blue denim working shirts.

Q. A blue denim working shirt? A. Yes.

Q. In your examination, after you got there, was there a light in the house when you got there? A. No.

Q. Was there a light made after you got there? A. There was.

Q. Do you know whether or not there was a lamp in the kitchen that was lighted? A. No light in the 10 kitchen. There was a lamp on the table.

Q. Can you tell me whether or not anybody went over to light that lamp while you were there? A. Yes; I went over to it myself.

Q. You went over to it? A. Yes.

Q. What was the condition concerning that lamp? A. The lamp was dry—no oil in it.

Q. Was the chimney hot? A. No.

Q. The chimney was cold. Was there a stove in this room? A. Yes. 20

Q. Was it a wood stove? A. Well, it was a cook stove and an oil stove.

Q. Where was the oil stove? A. Well, it was on the back of the cook stove.

Q. Were any of those burning or have any fire in them? A. No, sir.

Q. Neither the cook stove or the oil stove was burning? A. No, sir.

Q. Had they burned out, do you know? A. Well, I don't know. 30

Q. Did you look inside of the wood stove? A. No—you mean in the cook stove?

Q. Yes. A. No.

Q. And did you investigate to find out whether it was cold? A. Yes; I investigated enough to know there wasn't any fire in it.

Q. The stove was cold, in other words? A. Yes.

RE-DIRECT EXAMINATION.

BY MR. EASTWOOD:

Q. You don't know when the stove had last been used, do you, Chief? A. No.

Q. You didn't make an examination to find out, did you? A. No.

Q. It had an oil stove on top of it, didn't it? A. On the back of it.

10 Q. What? A. Yes; on the back of the stove.

Q. It is not likely there was any fire in it if the oil stove was on top of it? A. No. I would hate to do it.

MR. HEILBRON: I object to that.

BY MR. EASTWOOD:

Q. You don't know how long before that oil lamp
20 had last been lit, do you? A. No.

Q. You don't know whether it had been burned out the night before? A. No.

Q. It might have burned out the night before; nothing to indicate when it was last filled? A. No.

Q. Or when it was last burning? A. No.

Q. Did you take any notice of the chickens that were owned by Eilers? A. No, sir; I didn't.

Q. You didn't make an examination to see whether they were penned up when you arrived? A. I
30 asked some of the men and they said the chickens were locked up.

RE-CROSS EXAMINATION.

BY MR. HEILBRON:

Q. Was there any wick in that lamp? A. Yes.

Q. What was the condition of that wick? Can you tell me? In other words, did any burns show on it? A. Well, it had been burned, yes. It wasn't a new wick.

Q. Would you say there was a long nap on it, I think it is called? A. There was what? 10

Q. A long nap? A. I don't know anything about that.

Q. The part that burned, the long burned part. Was there a long burned part to the wick? A. I didn't examine it that close.

MR. HILLMAN: That's all.

MR. EASTWOOD: That's all, Chief.

20

Recess to tomorrow morning, Tuesday,
November 19th, 1935, at 10 A. M.

COURT OF OYER AND TERMINER

STATE

vs.

JOHN JACOB CIEMIENGO and
GEORGE HERMAN HILDE-
BRAND,

Defendants.

On Indictment for
Homicide.

10

Mount Holly, N. J., November 19th, 1935.

TESTIMONY

BEFORE HON. FRANK A. HENDRICKSON, JUDGE,
AND A JURY.

20

(Court reconvened at 10.05 A. M.)
(November 19th, 1935.)JAMES BARTON, a witness produced on behalf
of the State, being duly sworn according to law, up-
on his oath testified as follows:

DIRECT EXAMINATION BY MR. EASTWOOD:

30 Q. Mr. Barton, where do you live? A. State
Highway, Kinkora.Q. What employment do you have? A. I am
employed by the government, I am a mail carrier.Q. Out of what post office do you operate? A.
Bordentown.Q. Did you serve the rural route that included
the residence of Herman Eilers? A. I did.

Q. Did you know Herman Eilers? A. I did.

Q. How long had you served the route including Herman Eilers' residence? A. About two years.

Q. Do you recall whether or not on the 7th of October last you left any mail in the box in front of his place of residence? A. I did.

Q. And where was the mail box located? A. In front of the house on the side of the road.

Q. That is, it was out in the road. A. It was on the side of the road to be served from the mail car right along side the edge of the road. 10

Q. How far away from his house? A. Probably twenty-five feet, or something like that.

Q. And along the edge of the road? A. Along the edge of the road.

Q. Did you leave any mail that day? A. I left a paper that day.

Q. On previous occasions when you had served the Eilers' mail, Mr. Eilers' mail, did you see newspapers that were still in there from the previous day or days? 20

MR. HILLMAN: Object.

MR. HEILBRON: Object.

A. On rare occasions—

THE COURT: Just a minute, until we rule on the objection. The objection will be sustained.

30

MR. EASTWOOD: If the Court please, it seems to me it is a relevant matter. The matter of whether a newspaper on some other occasion—in other words the defense has injected into the case by the testimony of police officer Griffith that he found a newspaper in the box that night. It seems to me perfectly relevant to introduce in evidence the habits

of this man concerning the removal of his mail from that box, as evidenced by what has occurred on other occasions. It seems to me it is a very vital and relevant matter in view of the issue that the State has raised and the evidence brought out in the examination of the police officer Griffith.

THE COURT: I don't feel that what this man may have done on previous occasions is necessarily binding.

10

MR. EASTWOOD: It is not binding, if the Court please, but at the same time it is indicative of his habits, because the defense undoubtedly seeks to leave an inference by the testimony of officer Griffith which it seems to me the State is entitled to have explained as evidenced by the conduct of the deceased on other occasions. It seems to me very relevant and admissible under the circumstances, the defense having injected the issue in to the case.

20

THE COURT: The Court does not feel so; I will sustain the objection.

Q. On other occasions, Mr. Barton, when you have been delivering mail to Mr. Eilers have you seen Mr. Eilers remove mail that was in the box delivered on a previous occasion or occasions?

MR. HILLMAN: I object on the same ground, Your Honor please, that is the same question.

30

THE COURT: This is what the man saw, it is a little different situation, this is not a question of habit. What is your objection based on?

MR. HILLMAN: It seems to me to be the same question in a little different form. The idea is to show what this man did on some other occasions.

THE COURT: This is what the man saw; I will permit him to testify to what he saw. I will overrule the objection.

MR. HILLMAN: Your Honor will allow me an exception?

THE COURT: You may have an exception.

The defendants, John Jacob Ciemiengo and George Herman Hildebrand, pray an exception to 10 this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

Q. (Repeated by stenographer). On other occasions, Mr. Barton, when you have been delivering 20 mail to Mr. Eilers, have you seen Mr. Eilers remove mail that was in the box delivered on a previous occasion or occasions? A. I have handed him mail from the box at times, newspapers.

Q. Did that include mail that had been in the box the day before? A. Yes.

CROSS EXAMINATION.

BY MR. HILLMAN:

30

Q. Mr. Barton, what time did you get to Mr. Eilers' home on your mail deliveries? A. Between one and half past one. There's no definite time. It all depends on the mail.

Q. Ordinarily you would arrive around— A. Around half-past one.

Q. One or half-past one? A. Yes, sir.

Q. Do you know what time you got there on Monday, October 7th? A. I couldn't tell exactly; between those hours.

Q. Did you see Mr. Eilers when you were there October 7th? A. No, sir.

Q. Did you very often see him when you delivered mail?

MR. EASTWOOD: That is objected to, if the
10 Court please, it being the same objection that counsel made before as to his habits on other occasions.

THE COURT: I will permit him to answer the question yes or no.

A. I saw him on various occasions, not regularly.

BY MR. HILLMAN:

20 Q. You say you have handed him mail from the box? A. I did.

Q. Because he was out there to get the mail? A. Yes, sir. He saw me coming.

Q. He was out there to get his mail? A. Positively.

Q. There was some other mail in the box, you say? A. Some newspapers.

Q. That had been delivered the day before? A. Yes, sir.

30 Q. How many times did that occur? A. Why, it didn't occur very often. At times maybe the man was away and I served the newspaper, and I just handed it to him over the fence.

Q. Because he had been away? A. Probably.

Q. Was there anything else besides the newspaper on October 7th? A. No, sir; just the newspaper. He very seldom got mail.

Q. Never mind what he very seldom got. Are you positive there wasn't anything else besides the newspaper? A. The newspaper was the only thing I served.

Q. There was not an advertisement? A. There probably had been an advertisement, but I served a newspaper that day.

Q. No— A. The newspaper was all I served.

BY MR. HEILBRON:

10

Q. Mr. Barton, you say that Mr. Eilers often met you when you delivered mail at his house? A. Yes, sir.

Q. On quite a number of occasions he met you at the mail box, and came out while you were delivering the mail? A. Just when he happened to be home and he saw me coming, he would ask me for the paper so he wouldn't have to come around and go outside to get it.

20

RE-DIRECT EXAMINATION.

BY MR. EASTWOOD:

Q. Then, as I understand it, there were a number of occasions when you were delivering mail there when you did not see Mr. Eilers? A. Yes, sir.

Q. Were there as many occasions when you did not see him when you were delivering mail as when you did see him? A. Far more. I would probably 30 see him once or twice a week at times.

Q. And there were other times when you did not see him at all? A. Yes, sir.

ANDREW ZAPOLSKY, a witness produced on behalf of the State, being duly sworn according to law, upon his oath, testified as follows:

DIRECT EXAMINATION BY MR. EASTWOOD:

Q. Mr. Zapolsky, you hold the rank of Sergeant in the State Police? A. Yes, sir.

Q. And how long have you been connected with the New Jersey State Police? A. Eight years.

10 Q. Were you at the home of Herman Eilers on the night of October 7th, last? A. Yes, sir.

Q. What time did you arrive there? A. I should judge about 9.10.

Q. How long did you remain there? A. Why, I remained until the body was removed from there to the morgue.

Q. And who removed the body? A. The Undertaker Slack.

20 Q. Sergeant, while you were there did you place any barrier of any kind in front of the corn crib? A. I did.

Q. And where did you place it? A. I placed it—logs to protect the tire marks along from the house to the corn crib, so a car couldn't pull in there and destroy the marks.

Q. What time did you place it there? A. Why, immediately when I arrived there, our attention was called that there were fresh, new tire marks.

30 MR. HILLMAN: Objected to.

MR. EASTWOOD: It has been testified as an exhibit in evidence, if the Court please, showing the tire marks.

THE COURT: Let him see the exhibit.

BY MR. EASTWOOD:

Q. I show you Exhibit S-4, and ask you if you will point out to the jury where you placed these barriers. A. The barriers were placed from the edge of the, the end of the porch to the corn crib. The marks were between the house and the corn crib.

Q. What kind of a barrier did you place there? A. Regular fence posts. There were a pile of them there and I just placed them across so— 10

Q. How long did they remain there? A. They were left there for the night.

Q. Were there any officers stationed about there that night? A. Yes, sir.

Q. What officers? A. Officers Geren and Atkinson of the Columbus Station.

Q. If you know, were those barriers removed before a photograph was taken? A. I do not.

Q. What? A. I don't know.

Q. Sergeant Zapolsky, were you at the Columbus 20 Barracks of the State Police later that night or the following morning? A. Yes, sir.

Q. While you were there was the defendant, John Jacob Ciemiengo there? A. Yes, sir.

Q. As a result of any statement made by him, did you go anywhere? A. Yes, sir.

Q. Where did you go? A. To Ciemiengo's home, to get the gun.

Q. I show you what purports to be a 22-calibre revolver and ask you if you have seen that before? 30
A. Yes, sir; I have.

Q. Where did you first see it? A. Why, I picked this up in the bureau drawer, the left top drawer in the dining room of Ciemiengo's home, just where he told me it would be.

Q. Did you examine the barrel at the time? A. Yes, sir.

Q. What did you find in it? A. I found it was freshly fired.

Q. How did you discover that? A. The odor of the powder.

Q. How did you discover that it had the odor of powder? A. I smelled it. I also passed it to Trooper Case, who was with me at the time and he also smelled the barrel.

Q. Did you open the barrel and look at it? A. Yes, sir; we found three discharged shells in it.

10 Q. Will you examine—open and examine the barrel please?

(Witness complies.)

(Witness complies by opening barrel.)

Q. Will you state what it contains? A. Three discharged shells.

20 Q. Can you say whether they are the same discharged shells that were in it at that time? A. Yes, sir.

Q. Are they the same shells? A. They are.

Q. What did you do with the gun after you got it? A. I turned it over to Sergeant Shultz, of the Identification Bureau.

Q. Before that what did you do with it? A. We had Ciemiengo identify it as the gun he used in killing Herman Eilers.

30 MR. HEILBRON: I object, Your Honor, and ask to have it stricken out.

THE COURT: Yes, that will be stricken out at the present time.

Q. After you got the gun from Ciemiengo's home as you testified, where did you go? A. I came back to the station.

Q. Did Trooper Jacobs accompany you? A. Yes.

Q. Did you see Ciemiengo? A. Yes.

Q. Did you have any conversation with him concerning the gun you had in your hand? A. I did.

Q. What was that conversation?

MR. HEILBRON: Object to any statement made by Ciemiengo as having no bearing on the part of the defendant, Hildebrand, not binding and hearsay. 10

MR. EASTWOOD: I think counsel is right in that. I will ask one more question.

THE COURT: All right.

Q. Was the defendant Hildebrand present when you had this conversation with Ciemiengo? A. He was.

20

MR. HEILBRON: Object, as still the same, it has no bearing.

THE COURT: Let us get the next question.

Q. What was the conversation that you had with the defendant Ciemiengo in the presence of Hildebrand in connection to that gun.

MR. HEILBRON: Object, Your Honor.

30

THE COURT: The conversation will be admitted, as having taken place in the presence of the other defendant but not chargeable against him so far as what Ciemiengo said is concerned. He cannot be charged with what the other defendant said.

Q. What conversation did you have with the defendant Ciemiengo in the presence of the defendant Hildebrand, in connection with that gun? A. I asked him if this was the gun he used—

MR. HILLMAN: Object, Your Honor, this conversation would seem to be in the nature of a purported confession. I submit that before that can be testified to it must appear that this man was warned and that it was voluntary.

10

MR. EASTWOOD: If the Court please, as the case appears at the present time there was no charge of any kind lodged against the defendant at that time. I think counsel is correct in his statement of the law, provided the defendant has been charged with the offense. He must then, of course, make a voluntary statement and be warned of his rights, but that does not hold good so far as any conversation or questions that may be asked and answered before
20 any formal charge of crime is preferred against a person in conversations concerning these particular matters.

THE COURT: I think counsel for the defendants is correct. I think it would be necessary to show that any statements made by the defendant were voluntary when he was in the custody of the officer.

Q. Sergeant, at the time you had a conversation
30 with Ciemiengo and Hildebrand at the police barracks concerning the gun, that is in your hands, had there been any warrant issued against the defendants? A. No, sir.

Q. Had either of one of them been formally charged with any crime at that time? A. Not at that time.

Q. Was the statement that was made by Ciemiengo or Hildebrand voluntary? A. Yes, sir.

MR. HILLMAN: Object as calling for a conclusion. The circumstances under which it was made should be shown.

THE COURT: I will sustain the objection.

Q. Sergeant Zapolsky, did you see the bullets that were removed from the body of Herman Eilers? A. 10 No, sir.

Q. Did you make any examination of the house for any further bullets? A. No, sir.

Q. As I understand it, afterwards you gave this gun to Sergeant Shultz? A. Yes, sir.

Q. Sergeant Zapolsky, prior to the conversation had with the defendant Ciemiengo in the presence of the defendant Hildebrand, was anything said to either of them or both concerning the charge, if any, concerning with which they were being questioned. 20 A. Yes.

Q. What? A. That they were being charged with murder.

Q. What murder? A. The murder of Herman Eilers.

Q. What further was said? A. That any statement they made must be voluntary on their part.

Q. Anything further? A. Yes, sir.

Q. What? A. They agreed to do so of their own free will without any force or promise of any 30 kind.

Q. Was that prior to your talking with them concerning this gun you had gotten and brought back to the station? A. No, sir, that was after the gun was brought into the station.

Q. I mean the statement you have made concerning the information that was given to them, that they

were charged with the murder of Herman Eilers, was that statement made after or before they were questioned concerning the gun you had brought back from Ciemiengo's? A. Yes.

Q. What do you mean, was that statement made to them before they were questioned concerning the gun? A. Yes.

Q. And what, if anything, did Ciemiengo say concerning the gun after that statement was made?

10 MR. HEILBRON: Object.

MR. HILLMAN: Object. I think the circumstances surrounding this conversation should be shown. I think we should have an opportunity to cross examine.

THE COURT: You may cross examine as to the voluntary statement.

20 BY MR. HILLMAN:

Q. What time was Ciemiengo brought to the barracks at Columbus. A. We picked him up about twelve-thirty.

Q. Where did you pick him up? A. We got him out of bed at his home.

Q. Who arrested him? A. I did, with Trooper Case.

Q. You went to his house at twelve-thirty? A. 30 Yes, he was in bed.

Q. What time did you get Hildebrand? A. He was at the station at that time.

Q. When did you get him? A. I didn't get him.

Q. Do you know what time he was brought in? A. No.

Q. Did you question Hildebrand before you went after Ciemiengo? A. Yes, partly.

Q. What did you say to him before you went after Ciemiengo? A. We asked him who had any guns in that neighborhood, and who had no tires on their cars.

Q. At that time did you tell him he was charged with a crime. A. No.

Q. You got this information from him about guns and about tires before you told him? A. That's right.

Q. What time did you say he was brought into the barracks? A. We picked him up about twelve- 10
thirty—

Q. No, I'm asking you what time Hildebrand was picked up. A. I didn't pick him up, I don't know.

Q. Do you know what time he was brought in? A. No, I don't know.

MR. EASTWOOD: He told you he didn't know what time Hildebrand was picked up.

Q. Do you know what time he came in? A. No; 20
I later came in and he was there already.

Q. You didn't see him there when you came back with Ciemiengo? A. Yes, I saw him, before I went after Ciemiengo.

Q. What time did you first see him in the barracks? A. Around twelve o'clock.

Q. That was just before you went after Ciemiengo. A. Yes.

Q. Did you see him before that? A. I saw him at the home of Eilers when he was brought there. 30

Q. When was that? A. About half-past ten or eleven o'clock, I am not certain of the time, but I saw him there.

Q. Is that the first time you saw him? A. Yes.

Q. What did you say to him when you got him back to the barracks? A. I didn't bring him back to the barracks.

Q. What did you say to him when he was in the barracks before you went after Ciemiengo. A. I asked him who had guns in the neighborhood and who had cars with no tires on them.

Q. How long did you question him? A. Just long enough to find out who had guns and who had no tires on their car.

Q. Did he tell you who? A. Yes.

Q. Did he tell you more than one person? A. Yes.

10 Q. He told you a number of persons, didn't he? A. Two or three.

Q. Did you have them brought in? A. Yes.

Q. You brought in everybody that had no tires or had guns? A. We only found one car that corresponded in the mark.

Q. Didn't you say he told you a number of people in the vicinity had no tires on their cars? A. I remember two.

Q. Did you bring all those in? A. All what?

20 Q. Did you bring in all those people in the neighborhood who he told you had no tires on their car? A. We brought in those two.

Q. Which two? A. Bayard Malseed and Ciemiengo.

Q. He only mentioned two? A. That's all I remember.

Q. And you brought both of them in? A. Yes, sir.

Q. And at the time he gave you the information
30 you had not told him that he was charged with participation in this murder? A. Not at that time; no, sir.

Q. When Ciemiengo was brought in there, did you tell him what he was charged with? A. When he was brought in?

Q. Yes? A. He was questioned—

Q. I asked you, when he was brought in there whether you told him he was charged with this murder? A. When he was brought into the station?

Q. Yes. A. No; not until after we—

Q. Not until after you questioned him? A. Not until we questioned him; yes.

MR. HILLMAN: I object. If the Court—

MR. EASTWOOD: He has testified that when the statement was made concerning this gun, he had 10 warned him. All these questions had been prior to that.

THE COURT: I think that is right.

BY THE COURT:

Q. The testimony is when you came back with the gun you then warned him, is that right? A. When I asked him to make a voluntary statement, if he 20 wanted to make a statement and put it in writing.

Q. When did you ask him that? What time was it? A. I asked him that in the morning when the statement was made, around 6.45, on October 8th.

BY MR. HILLMAN:

Q. What time? A. October 8th, about 6.45 a. m.

BY THE COURT:

30

Q. Was that after you had gone out and gotten the gun and shown it to him? A. Yes, sir.

THE COURT: The testimony will be excluded.

MR. EASTWOOD: If the Court please, the testimony shows that the witness showed the defendant that gun and before questioning him concerning it, warned him as to any statement he might make. Now, as I understand the cross examination, before that time they questioned him, before there was any charge against the defendant or anybody else. These people were brought in and questioned, leading up to what might be obtained as to information as to who might be suspected or charged with the crime.

10 Now, after that the defendants are asked if they care to make a voluntary statement concerning this particular gun and warned that any statement they make must be voluntary and made without any fears or threats or promises of any kind. I respectfully submit that is all that is required under the law. All the decisions hold that a statement must be voluntary, and if it is voluntary that is all that is necessary. Now, there is nothing in this evidence to show that it was not voluntary, and all the decisions hold

20 a statement must be a voluntary statement.

THE COURT: Maybe I misunderstood the witness, but I understood that he saw Ciemiengo about this gun about 6.30 in the morning and the first time he warned him was in the morning, is that right?

THE WITNESS: The gun we got was after 1 o'clock, around 1.40 or 1.45, when we got the gun out of his home, because when we brought Ciemiengo to

30 the Station—we searched his room and he didn't have a gun at the station, but after we brought him to the station with Hildebrand—

MR. HILLMAN: Objected to.

THE COURT: I think that has been testified to.

THE WITNESS: Then Ciemiengo told me where the gun was at his home, and then we brought it back and showed it to him.

BY THE COURT:

Q. Wait a minute. That is the part we do not want to admit. Before that you had not warned him of any statement to be used— A. No, sir; not before that.

10

THE COURT: I will exclude the statement.

MR. EASTWOOD: If the Court please, there is nothing to prevent a later statement made at a later time when a warning was given?

THE COURT: That is right, but there is nothing to show that the statement was voluntary.

MR. EASTWOOD: But, if your Honor please, the statement which they are objecting to, which the witness says was made around 6.45, was a voluntary statement.

THE COURT: All right. Are you referring to the one around 1 o'clock?

MR. EASTWOOD: No, your Honor, I am referring to the one around 6 o'clock.

30

THE COURT: Then there is a misunderstanding somewhere.

MR. HILLMAN: I want to examine him, if the Court please, about the statement made at 6.45.

BY MR. HILLMAN:

Q. Where did you keep the two men there, Ciemiengo and Hildebrand, from the time they were brought in the barracks until 6.45 the next morning?

A. They were at the barracks, in a bedroom in the quarters.

Q. Who was in there with them? A. Myself, Detective Lambertson, Detective Stockberger, Trooper Case, and there were others present. Lieutenant
10 Keaton was there.

Q. Who else was there? A. Lieutenant Keaton, and Sergeant Carlson and I think Sergeant Wallace was there.

Q. And you questioned them all that time? A. Not all that time.

Q. Well, practically all the time, didn't you? A. No; we talked to one.

Q. They were in there together or separately? A. At times we had them together and at times sepa-
20 rately.

Q. They didn't go to sleep? A. We found them in bed.

Q. I mean, they didn't go to sleep in the barracks? A. Oh, no. We didn't sleep ourselves. We was up all night.

Q. And you continually questioned them? A. Not continually; no, sir.

Q. Well, practically, didn't you? A. No, sir.

Q. Weren't you all taking part in this question-
30 ing? A. Yes; at times.

Q. All of you six or eight troopers were gathered around firing questions? A. No, sir.

MR. EASTWOOD: If the Court please, I don't think it has been shown that there were six or eight troopers and counsel is magnifying it when he says six or eight.

THE COURT: I will permit the question.

THE WITNESS: The answer is "no, sir."

BY MR. HILLMAN:

Q. What's that? A. No, sir.

Q. All of them were taking part in this questioning? A. Not at the same time; no, sir.

Q. But all of them were taking part in the questioning? A. Not all of them. 10

Q. One of you would start in, and then another one would start in, and then another would take it up, is that correct? A. No, sir. Then it would be all bawled up and we wouldn't know what it was all about.

Q. You did question them for awhile, didn't you? A. I done most of the questioning; yes, sir.

Q. And then some of the other troopers? A. Yes; Detectives Lambertson and Stockberger.

Q. And you kept at it the whole time? A. No, 20
sir; not the whole time.

Q. How much of an interval would you give them? A. Well, we would question one and leave the other one sit by himself or with others for an hour and a half or two hours, maybe.

Q. Before you started in with this questioning, what did you tell them? A. We wanted to find out what it was all about, what happened.

Q. What did you tell them? A. What do you mean, Mr. Hillman? 30

Q. It think it is plain. What did you tell these men before you commenced questioning?

MR. EASTWOOD: If the Court please, are we now dealing with this later statement at 6.45?

THE COURT: I think so.

THE WITNESS: Which time, Mr. Hillman, do you mean?

BY MR. HILLMAN:

Q. Well, you all came in there at sometime before 12 o'clock? A. Yes, sir.

Q. And you started in to question them then? A. Yes.

Q. And you kept it up for how long? A. Well, 10 we asked them for some information, and whatever information we got was sent out and checked to see if it was true.

Q. How long did you question them? A. Well, we talked to them an hour or so at a time.

Q. How much altogether? A. That's hard to say at this time.

Q. You were there from six o'clock? A. Yes.

Q. When you started in to question them, what did you say to them?

20

MR. EASTWOOD: If the Court please, I ask that counsel limit that question to the time he is referring to.

THE COURT: I think so.

MR. HILLMAN: If the Court pleases, the witness has testified that they started to question them when they were brought in there and that was somewhere 30 around 12 o'clock.

THE WITNESS: Yes.

BY MR. HILLMAN:

Q. Did you say anything to them?

MR. EASTWOOD: That is objected to. I understand that counsel's examination at this particular time is dealing with the statement that was alleged to have been made at 6.45. I think he should be limited in his examination at this time to that particular statement.

MR. HILLMAN: We have a right to know all the circumstances surrounding it.

THE WITNESS: Do you want the answers that 10 they may have given from 12.30 to six?

MR. HILLMAN: Well, I have not asked that question. I am asking him what was said to the accused before they started on this station questioning.

THE COURT: What time?

MR. HILLMAN: 12 o'clock.

20

THE COURT: All right, 12 o'clock. I think that is part of the leading up.

MR. EASTWOOD: I have no objection just so the witness understands what time counsel is directing his attention to.

BY THE COURT:

Q. All right, Sergeant. A. Well, I asked him 30 where was the gun?

BY MR. HILLMAN:

Q. Not what you asked him; what you told him; not what you asked him.

MR. EASTWOOD: If the Court please, is counsel making a distinction?

THE COURT: It will have to be the conversation.

BY MR. HILLMAN:

Q. Well, what was the conversation? A. I asked him where he got the gun and he told me it was his father's gun.

10 MR. HEILBRON: If your Honor please, at this time I understand the statement of Ciemiengo or anything he may have said had no bearing—

THE COURT: That is understood. I might state to the jury that anything said, or any statement made by one of these defendants is not necessarily binding on the other, so they will be considered entirely separately.

20 MR. EASTWOOD: If the Court please, may I ask your Honor to qualify that unless the testimony shows that Hildebrand was present, unless he denied it or refuted it in some way, it is certainly binding upon him?

THE COURT: I don't think so. I won't so instruct the jury at the present time.

BY MR. HILLMAN:

30 Q. Now before you asked him anything about the pistol at all, or the revolver, did you tell him that he was charged with a crime? A. Before I asked him whether or not—

Q. Before you asked him anything about the revolver did you tell him that he was charged with a crime? A. I did not.

Q. Did anybody in your presence? A. I don't know. I haven't heard anybody tell him.

Q. You didn't hear anybody? A. No, sir.

Q. When did you first tell him that he was charged with it? A. Why, when he wanted to make a statement.

Q. When was that? A. Early in the morning.

Q. About what time? A. Around six.

Q. That was the first time you told him that he was charged with a crime? A. Yes.

Q. Did you warn him before six o'clock that anything he said must be voluntary? A. Not until the statement was taken. 10

Q. Did you tell him that anything which he said would be used against him or could be used against him? A. Not until the statement was taken.

Q. And that was around six o'clock? A. Yes.

MR. HILLMAN: If your Honor please, I object to any statements made before 6.15.

20

MR. EASTWOOD: If your Honor please, I am not seeking to introduce any statements before this time.

THE COURT: Do you desire to present any testimony as to whether or not the statement made after six o'clock was voluntary?

MR. HILLMAN: I want to hear about that.

30

THE COURT: You have just examined him about that?

MR. HILLMAN: Yes; until 6.15.

THE COURT: Now, then, if you want to examine him about that, go ahead.

BY MR. HILLMAN:

Q. Now then, did you make any threats against either of these men? A. No, sir.

Q. Did you or any of the other troopers in your presence tell him you would throw him through the door? A. No, sir.

Q. You are laughing about it? A. That sounds ridiculous.

Q. You didn't make any threats? A. No, sir.

10 Q. Did you tell him that it would be better for him to tell you? A. No, sir.

Q. You didn't say anything like that? A. No, sir.

Q. Now, at 6.15, what did you tell him? A. Asked him if he wanted to make a voluntary statement.

Q. Yes; what else? A. And if he did, it must be made voluntarily, it must be of his own free will.

20 Q. Did you tell him anything else? A. I told him I wouldn't promise him anything.

Q. You told him that? A. Absolutely.

Q. Did you tell him what they were charged with? A. Absolutely.

Q. What did you tell him they were charged with? A. Charged with the murder of Herman Eilers.

Q. Did you tell him—when? A. Yes, sir.

Q. When? A. On the night of October 7th.

30 Q. Did you tell them it would be used against them? A. Yes, sir.

BY MR. HEILBRON:

Q. Sergeant, when Hildebrand was brought to the barracks—you say he was brought to the barracks prior to the time young Ciemiengo was brought there? A. Yes, sir.

Q. And had been there for some time, but you don't know just when he was brought in? A. Yes, sir.

Q. And from the time he was brought in or the time you returned to the barracks, you were questioning Hildebrand with Ciemiengo, were you not? A. Yes, sir.

Q. And this questioning up to 6.45, up to that time you had not made any statement to Hildebrand warning him that anything he might say could be used against him, and it must be voluntary— A. 10
That's right.

Q. Up until the time he made the statement? A. That is right.

Q. That is correct? A. That's correct.

Q. And from the questions you asked prior to the time he had made that statement, you had obtained information from those questions which were contained in the statements of the boys, which they made later than 6.15 or 6.45? A. I didn't under- 20
stand your question.

Q. In other words, the information that you obtained by questioning these boys prior to the making of this statement was such information that was contained in the statements that they afterwards made, wasn't it? A. Not the same information.

Q. Prior to their making these statements, you say that you charged them with the murder of Herman Eilers, did you not? A. Yes.

Q. So that the information you elicited from them prior to the making of these statements was 30
such that it would charge them with the murder of Herman Eilers, wasn't it? A. Yes.

Q. And up to that time you had not warned them that any statements that they made would be used against them, that the statements had to be voluntary? A. When I asked them if they wanted to

make a statement, they were willing to make it and I told them it must be voluntary.

Q That was around 6.45 or around that time in the morning? A. Yes.

Q. Prior to that time and the questioning of these young men, you had not said anything about any statement that would be used against them which must be voluntary? A. At that time we were gathering information from all sources until we thought we had enough on them, then we asked them if they
10 wanted to make a statement.

Q. Yes. In other words, the questions you asked them prior to that time was information that you desired, but you gave them no information up to the time they made that statement? A. Well, they was held under suspicion at that time. They were charged with murder then.

Q. Nor was anything said to them concerning any statement they made up to that time would be used against them, and that it must be voluntary on their
20 part? A. They were questioned, they weren't making any statements.

Q. Do you call an answer to a question a statement? A. We call a statement written statements.

Q. A written statement was the result of what you had obtained to these questions and answers prior to that time, was it? A. I didn't get that question right.

Q. The written statement they made at 6.45 was the result of information you obtained from them—
30 A. Not exactly from them—

Q. Prior to that time? A. Not exactly from them.

Q. By questioning, isn't that true? A. Not all the information from them. We had information coming from other sources.

Q. Well, the information you got from these boys prior to the time they made the written statement

was the information with which you in turn charged them with the murder of this man? A. Not entirely; no, sir.

Q. The major part of it, wasn't it? A. I wouldn't say that.

Q. The statement that was made was written out, wasn't it? A. Typed; yes, sir.

Q. Typewritten by one of the— A. Detectives.

Q. —of the members of your force? A. That's right.

Q. Who wrote the statement? A. Detective 10 Lambertson.

Q. Anybody dictate it to him? A. Why, Ciemingo and Hildebrand.

Q. Were you questioning them when you made out the statement? A. Yes; I asked them questions and then in the body—first, we told them to go ahead with whatever they wanted to say in their own way and then later we asked them questions.

THE COURT: Does defense counsel desire to offer any testimony in rebuttal? 20

MR. HEILBRON: Not at this time. I object to the admissibility of the statement, because I think it has been plainly shown that these young men were apprehended and questioned largely without any warning being given to them and the information obtained, and then afterwards put in the form of written statements, were of the same purport or effect as the questions and answers prior to that time, and on that ground I object to the admission of any 30 written statements made subsequent to that time, being information elicited to the making of the written statement and on the ground that prior to that time no warning was given to these young men. It must be voluntary. They were under arrest. It must be of their own free will. On that ground I object to the admission of the statements.

THE COURT: The Court will admit any statements made after the defendants were warned.

The defendants pray an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

MR. HILLMAN: Just one question. Does your
10 Honor rule that they were sufficiently warned?

THE COURT: The Court rules that the statement was voluntary.

MR. HILLMAN: Your Honor will allow me an exception?

THE COURT: You may have an exception.

20 The defendants, Jacob John Ciemiengo, and George Herman Hildebrand, pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

Q. As I understand it, Sergeant, the statements
30 were made somewhere around 6.45 A. M., and that prior to that the two defendants had been questioned at intervals and at times there was as much as an hour or an hour and a half intervening before one of them would be questioned. A. Yes, sir.

Q. And during that time were they given any cigarettes or refreshments? A. They were given sandwiches and coffee about four o'clock, there was

coffee brought up and sandwiches and then in the morning they were given breakfast, they had breakfast with me and the rest of the officers at the same table with us.

Q. At the time the statements were taken at 6.45 as you stated, they were warned, as you have testified, were those statements reduced to writing? A. I beg your pardon.

Q. Were those statements written statements? A. Yes.

Q. How were they taken? A. They were typed 10 on the typewriter.

Q. Who typed them? A. Detective Lambertson.

Q. Were Hildebrand and Ciemiengo both present when both of their statements were taken, after the warning given them that you testified to? A. They were.

Q. I show you a statement dated October 8th, 1935, consisting of three typewritten pages and ask you what that is? A. This is the statement of 20 Jacob John Ciemiengo.

Q. Whose signature appears on the statement?

A. It appears of Jacob John Ciemiengo and witnessed by me and Trooper Caisse and Detective Stockburger.

Q. Where does the signature of Jacob John Ciemiengo appear? A. On every page of the statement.

Q. Before the statement was signed by Ciemiengo, was it read through to him or did he read it?

A. He read it himself. 30

MR. EASTWOOD: I offer the statement in evidence.

MR. HILLMAN: Object.

MR. HEILBRON: Object.

THE COURT: It will be admitted and an exception allowed.

Let it be sealed.

FRANK A. HENDRICKSON,
Judge.

(Statement marked in evidence Exhibit S-16.)

Q. Will you read the statement, please, Detective 10 Zapolsky?

THE COURT: Do you have another copy so that counsel might check off that it was read properly?

MR. EASTWOOD: Yes.

(Copy of statement supplied defense counsel.)

A. "Columbus, New Jersey, October 8th, 1935, 20 6.45 A. M. I, Jacob John Ciemiengo, aged sixteen years, of Cedar Lane Road, R. D. No. 1, Bordentown, New Jersey, do make the following voluntary statement of my own free will and accord without fear, threat, or promise of reward, knowing that same can be used against me in court.

This statement is being made in the presence of Sergeant A. Zapolsky, Corporal H. Lambertson, Detective H. Stockburger, Trooper Caisse, of the New Jersey State Police and also in the presence of 30 George Herman Hildebrand of Columbus-Burlington Road, R. D. No. 1, Bordentown, New Jersey.

Q. What is your full name? A. Jacob John Ciemiengo.

Q. How old are you? A. Sixteen years.

Q. Are you living with your parents at the above address? A. Yes.

Q. Jacob, you are being charged with the murder of Herman Eilers, are you willing to give us a voluntary statement, knowing that you have been warned of your right, that you don't have to say anything that you don't want to? A. Yes.

Q. Now tell us in your own words just what you did, what you know, and who was with you when you committed this crime. A. I do not know how long ago we first thought of this thing. "How long ago was that, George."

10

MR. HEILBRON: Object to that, your Honor, please.

THE COURT: Isn't that what the statement said?

WITNESS: Yes, sir.

MR. HEILBRON: Yes, but anything that might have been in there regarding matters prior to this will have no bearing on the case. 20

THE COURT: It is part of the statement and will be admitted.

MR. HEILBRON: Your Honor will allow me an exception?

THE COURT: You may have an exception.

The defendants, Jacob John Ciemiengo and 30 George Herman Hildebrand, pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

A. He asked George, "How long ago was that, George?" and then the answer by George Herman Hildebrand, "Some time—

MR. HEILBRON: Object.

MR. EASTWOOD: That is in the statement, your Honor please.

THE COURT: How can Hildebrand be charged
10 with that.

MR. EASTWOOD: Hildebrand was present and they were both present at the same time and Ciemiengo signed this statement.

THE COURT: I don't see how this reference to Hildebrand can be incorporated in this statement.

MR. EASTWOOD: Hildebrand was present and
20 Ciemiengo turned to him and asked this question and it was put in the statement. It is signed by Ciemiengo, as part of the statement.

THE COURT: Was not the statement made question and answer?

MR. EASTWOOD: Yes.

WITNESS: Yes, he was asked questions and he
30 turned around to Hildebrand and asked "How long ago, was that?"

MR. EASTWOOD: He asked his co-defendant that question and Hildebrand answered. It seems to me that is necessarily part of the statement.

THE COURT: I don't see how Ciemiengo would be charged with Hildebrand's answer. You may read it in the statement for the continuity, but it is not evidential as against Hildebrand.

MR. EASTWOOD: I think your Honor is right on that.

A. (Continued.) A few months ago George Hildebrand and I were figuring on getting some money.

MR. HEILBRON: Object on the same ground as already stated. It has no bearing on what Ciemiengo may have said. 10

THE COURT: This is Ciemiengo's statement, anything he said or had in his mind—

MR. HEILBRON: What is stated here cannot bind the defendant Hildebrand.

MR. EASTWOOD: Your Honor please, I don't agree with the theory of the law, with Hildebrand present. As I understand the law, when a co-defendant is present when a statement is made, and he does not repute or deny such statement, I think he is bound by it. 20

THE COURT: I will allow it.

MR. HEILBRON: And your Honor will allow me an exception?

THE COURT: You may have an exception.

The defendants, Jacob John Ciemiengo and George Herman Hildebrand, pray an exception to this ruling of the Court. 30

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

A. (Continued.) A few months ago George Hildebrand and I were figuring on getting some money and so we thought we would holdup Herman Eilers. About six weeks ago George Hildebrand and I were intending to holdup Herman Eilers. We went to his place by walking across fields, and I had a 22-calibre revolver that my father gave to me. Suddenly we got to Herman Eilers' house and seen we couldn't hold him up because we were afraid of getting shot, knowing that he had a shot gun. So we turned
10 around and started back to home.

Last night, Monday evening, October 7th, 1935, about 6.00 o'clock I had supper at my home and got in the car and went over to get George Hildebrand, who works at Scattergoods, on Columbus Stone Road. George came out of the house to the car, got in the car and we drove about a mile through Cedarlane where we stopped in the woods and talked it over about holding up Herman Eilers. George and I planned to get some money. We was going to
20 shoot him so he couldn't recognize us. I had my 22-calibre revolver "Young America" with me and it had three bullets in it, so we finally drove up to Herman Eilers place and got out of the car, went in the house by opening the kitchen screen door and house door, leading into the kitchen. I took my gun out of my pants pocket and put it in my right hand, I led the way into the house, and George was in back of me. We were in the doorway and then Herman Eilers coming out of the room towards us. I
30 walked up to Herman Eilers and then I tried to hold him up. I shot Herman Eilers in the chest and then the head and he dropped to the floor. George Hildebrand reached down and went through his pockets while Herman was kicking on the floor. Then we thought we would better move along in case of being caught. We started for Burlington to go to the Schlams Baker shop on Broad Street. We stopped

on our way to Burlington and met Baird Malseed and Norman Abrams who were parked along the road in an automobile, about four miles from Burlington. We talked to them for about five minutes and then went to Burlington. When we shot Herman Eilers we did not get any money from his pockets, and George tried to borrow ten cents from Baird Malseed, but he didn't have it. So we went in town and got our bread and cigarettes and come back home to Joe Ciemiengo's house. When we got home we talked for an hour and then George got ready to go home. So I took him home and come back and put my 22-calibre revolver in the bureau drawer in the dining room and then went to bed.

Q. When you planned to hold up Herman Eilers did you think he had a large sum of money on his person or in the house? A. Yes, Mr. Richardson an insurance man came to my father's house to collect insurance. He could not change a twenty dollar bill so we went to Herman Eilers house (Richardson and I.) Herman changed the twenty dollar bill and I saw a roll of money in his wallet and I thought I would try to get some of it.

Q. Where does Mr. Richardson live? A. Burlington, N. J.

Q. Is this the revolver you used in killing Herman Eilers? (Sgt. A. Zapolsky showing Jacob Ciemiengo 22-calibre Young America Double Action Revolver, Number 25579.) A. Yes, that is the gun I used, and it was given to me by my father about a year ago.

Q. Jacob you told us you shot Herman Eilers twice, once in the chest and once in the head. This revolver shows it has three exploded shells in the chamber, what happened to the third shot? A. It had exploded during the excitement. I think it went wild.

Q. How is it you had only three shells in the re-

volver? A. I didn't have any more to put in.

Q. What distance was you from Herman when you fired the shots? A. Within three feet of him.

Q. Did Herman at any time get his hands on the revolver? A. No.

Q. At the time of the shooting of Herman Eilers where was George Hildebrand? A. George Hildebrand was alongside of me close to the door.

Q. Did you touch the body of Herman Eilers after he had fallen to the floor? A. No.

10 Q. Did you witness George Hildebrand searching pockets of Herman Eilers while he laid on the floor after he had been shot? A. Yes.

Q. Did George Hildebrand tell you that Herman Eilers had no money on his person? A. Yes.

Q. When had you and George Hildebrand made the final arrangements to hold up Herman Eilers?

A. On Monday afternoon, October 7th, 1935, about quarter after four, while I was visiting George Hildebrand at the Scattergood's Farm, I told George that
20 I would be up in the evening as it would be a good time to holdup Herman Eilers and get the money.

Q. Did George Hildebrand agree to accompany you on this holdup? A. Yes.

Q. How long have you known Herman Eilers? A. About four and a half years.

Q. Did you have knowledge of Herman Eilers having large sums of money either in the house or carried on his person? A. Yes.

Q. How long have you known George Hildebrand? A. About three and a half years.
30

Q. Have you ever had any quarrels with George Hildebrand? A. No.

Q. Did you ever have a quarrel or any trouble with Herman Eilers? A. No.

Q. Are you any relation to George Hildebrand? A. No.

Q. Does George Hildebrand keep company with

your sister Blanche Ciemiengo? A. Yes, for about seven months.

Q. How long has George Hildebrand worked at Scattergood's? A. Over a year.

Q. Did George Hildebrand ever work for Herman Eilers? A. Yes, in 1932, on Eilers' Poultry Farm.

Q. Do you know whether or not George Hildebrand had any ill feeling toward Herman Eilers? A. No.

Q. About how often would you visit Herman Eilers? A. Every couple of weeks, we would also play cards at his home, and he would drive my father's car and I would accompany him, as I had no license.

Q. Had you ever planned to hold up Herman Eilers along the highway while you accompanied him in your father's car? A. Yes, about a year ago I was planning a fake holdup, where I would shoot Herman Eilers and let it look like a real holdup.

Q. Have you ever been convicted of a crime? A. 20 No.

Q. Have you ever been committed to any State Institution? A. No.

Q. During your incarceration at the Columbus State Police Barracks have you been threatened, or received any promises of immunity to give this statement? A. No.

Q. Are all the aforementioned questions answered correctly to the best of your knowledge? A. Yes.

30

Signed,
JACOB JOHN CIEMIENGO."

Witnesses:

A. Zapolsky,
Tr. Fels Caisse,
H. Stockburger.

Q. I show you a document consisting of three pages of typewriting dated Columbus, New Jersey, October 8th, 1935, and ask you whether that is the statement to which you have referred that you took from George Hildebrand? A. Yes, sir, that is the statement of George Herman Hildebrand.

Q. Was that statement taken after the one that was taken from Ciemiengo? A. Yes, sir.

Q. What time was that statement taken? A. 8.45 A. M.

10 Q. Was Hildebrand present during the time that the statement you have just read of Ciemiengo's was made. A. Yes, sir, and Ciemiengo was present when Hildenbrand's statement was taken.

Q. Is that the statement taken from Hildebrand? A. It is.

Q. Does a signature appear thereon? A. On every page.

Q. Were you present when he signed it? A. I was.

20 Q. Were you present when it was taken? A. Yes.

MR. HEILBRON: The same objection, your Honor please, as to the admission of the other statement.

THE COURT: I assume, Mr. Eastwood, that the testimony on cross examination of this witness as to whether this statement and the other was voluntary covered this statement pretty thoroughly, didn't it?

30

MR. EASTWOOD: I understand it did.

THE COURT: Is that your recollection, that your cross examination of this witness applied to both statements.

MR. HEILBRON: Yes.

MR. HILLMAN: Yes.

THE COURT: The Court will make the same ruling that this statement will be allowed in evidence as voluntary.

MR. HEILBRON: Your Honor will allow me an exception?

THE COURT: You may have an exception.

The defendants, Jacob John Ciemiengo and 10 George Herman Hildebrand, pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

MR. EASTWOOD: I offer in evidence this statement signed by George Hildebrand.

20

THE COURT: It may be marked in evidence.

(Statement marked in evidence Exhibit S-17.)

Q. Sergeant Zapolsky, I show you a statement you have identified as that made by George Herman Hildebrand, marked Exhibit S-17, and I ask you whether that statement was either read to Hildebrand or read by him before he signed it? A. It was read by him.

30

Q. Will you proceed to read it, please? A. I, George Herman Hildebrand, aged 26 yrs., of Columbus-Burlington Road, R. D. No. 1, Bordentown, N. J., do make the following voluntary statement of my own free will and accord, without fear, threat or promise of reward, knowing that same can be used against me in court.

This statement is being made in presence of Sgt. A. Zapolsky, Cpl. H. Lambertson, Det. H. Stockburger and Tpr. Caisse of the New Jersey State Police, and Jacob John Ciemiengo, of Cedarlane Road, R. D. No. 1, Bordentown, N. J.

Q. What is your full name? A. George Herman Hildebrand.

Q. How old are you? A. Twenty-six (26) years.

Q. Where were you born? A. Freiburg, Ger-
10 many.

Q. How long have you been in this country? A. Seven (7) years.

Q. Did you enter the United States legally? A. Yes.

Q. Are you a citizen? A. No.

Q. Where do you live at the present time? A. Mr. E. R. Scattergood's farm, on Burlington-Columbus Road.

Q. George you are being charged with the murder of Herman Eilers, are you willing to give us a
20 voluntary statement, knowing that you have been warned of your rights, that you don't have to say anything if you don't want to? A. Yes.

Q. Now will you tell us in your own words what you did and whom you were with in committing this crime? A. In the middle of the summer, a few months ago I decided to steal some money from Herman Eilers. I told "Jack" Ciemiengo about it and one night about two or three months ago we went
30 down to his house. (Herman Eilers.) We figured on going inside the house to get the money, as I knew Herman Eilers had money in his house and carried a large amount of money in his pocket. When we got down to Herman Eilers house we changed our mind about it and went back home. At that time we knew Herman Eilers was away, and we were scared he would come home and find us in the house.

Q. On how many occasions did you discuss the plans with Jacob Ciemiengo about holding up or robbing Herman Eilers? A. About five times.

Q. Will you tell us in detail about the five discussions you had with Jacob Ciemiengo about getting money from Herman Eilers? A. Four of the five times we wanted to get the money when he was away. The other time we thought maybe to go into the house at night when Eilers was sleeping and try to get the money.

Q. Were you with Jacob Ciemiengo on Monday¹⁰ night, October 7th, 1935? A. Yes.

Q. Where did you meet Jacob Ciemiengo? A. At Scattergood's farm where I work.

Q. At what time did you meet Jacob Ciemiengo? A. About quarter after or twenty minutes after six P. M.

Q. Did he come there with his car? A. Yes.

Q. Did you accompany him in his car on any trip that night of October 7th, 1935? A. Yes.

Q. What time did you leave the Scattergood²⁰ Farm? A. Around twenty after six P. M.

Q. Now tell us in your own words just what took place after you left the Scattergood Farm with Jacob Ciemiengo in his car? A. It was about fifteen or twenty minutes after six P. M. we drove away from the Scattergood Farm towards Herman Eilers Farm. We stopped on Cedarlane in the woods about half way between Scattergood's and Eilers' farms. While stopped, we talked over what we were going to do. We planned to go into Herman Eilers house and rob³⁰ him of his money and if he showed any resistance, we were going to shoot him. Jacob Ciemiengo at this time told me that he had his gun with him. From there we went down to Herman Eilers' house. We drove into the yard got out of the car and went up the back porch steps. Jacob Ciemiengo opened the screen door and house door and I held the screen

door open. Herman Eilers started to come out of the other room into the kitchen and walked towards us as we were standing in the kitchen door. When he got about three or four feet from us Jacob Ciemiengo aimed his gun at Eilers and fired it three times. Herman Eilers dropped down on the floor and then I went through his pockets searching for money. I didn't find any money so we went out to the car and then left. We then drove along the Columbus-Burlington Road and met Baird Malseed and Norman
10 Abrams, who were parked along the road in an automobile about four miles from Burlington. We talked to them about five minutes and I tried to borrow ten cents from them to buy a pack of cigarettes. They did not have any money, so we continued on to Burlington. Jacob Ciemiengo went to Schlams Baker Shop on Broad Street and got some bread. I then went to Miller's Cigar store and bought a pack of "Wings" Cigarettes paying for them with a nickel and a five cent stamp. We returned to Ciemiengo's
20 house direct from Burlington, getting there about twenty minutes to eight P. M. We sat there and talked for a while and then Jacob Ciemiengo drove me back to the Scattergood farm where I went to bed.

Q. Is this the gun Jacob Ciemiengo used to shoot Herman Eilers? (Sgt. Zapolsky showing Hildebrand 22-calibre "Young America Double Action" revolver, Number 25579.) A. Yes.

Q. You say you heard three shots fired in Herman Eilers' house? Describe the shots to the best of
30 your knowledge? A. I saw Ciemiengo lift the gun and point it at Eilers chest and shoot. Eilers kind of dropped down a little bit and he shot again. Eilers then dropped to the floor and I heard another shot fired, but I did not see where that shot went.

Q. How long have you known Herman Eilers, and where did you make his acquaintance? A. I've known him for three and a half years. I met him on

a farm owned by George Priedel at Columbus-Hedding Road, just outside of Columbus. While working there we became acquainted and he used to take me out in his car and take me to the movies. After about six months Herman Eilers didn't like it there any more so we decided to go back on his place and start raising chickens. We made an agreement that he put up the money and I would do most of the work and if there was any profit we would share fifty-fifty. I stayed there about five or six months and he never paid me any money except forty cents a 10 week for cigarettes, so I figured on leaving him. In December, 1933, I got my job back with George Priedel. After that I went to visit Herman Eilers once in a while. I went to work for Mr. E. R. Scattergood in September of 1934 and have worked there from that time until now.

Q. Did you have knowledge of Herman Eilers having large sums of money on his person or in his home? A. Yes, I often seen him have large sums of money while I was living with him during our 20 partnership.

Q. Did you ever attempt to borrow any money from Herman Eilers? A. Yes.

Q. When? A. Last spring (1935.)

Q. Did you get this loan, and how much was it? A. Yes, two dollars.

Q. Was this money paid back? A. Yes, I paid back one dollar, and worked out the other dollar carting wood.

Q. Was this the only money that was ever loaned 30 to you by Eilers? A. Yes.

Q. Had you ever attempted to make a loan of money from Eilers at a later date? A. No.

Q. If you had been successful in robbing Eilers what did you intend to do with the money? A. I wanted to get a suit of clothes and shoes and a coat for winter time.

Q. On your return from Burlington to Ciemiengo's home did you and Jacob discuss the shooting of Herman Eilers. A. Yes.

Q. Did you or Jacob have any knowledge of Herman Eilers having died as a result of injuries received by shots fired by Jacob? A. No.

Q. During the shooting of Herman Eilers by Jacob Ciemiengo did you witness any attempts made by Herman Eilers to wrestle the gun away from Jacob? A. No.

10 Q. What pockets did Herman Eilers usually keep his money and valuables in? A. In the rear pants pockets.

Q. When you searched Herman Eilers for money, what pockets did you go into? A. Just the two rear pants pockets.

Q. In accompanying Jacob on this holdup you were aware that it may be necessary to take Herman's life to avoid both you and Jacob being identified? A. Yes.

20 Q. You accompanied Jacob on your own free will, without any fear, force or threats? A. Yes.

Q. Neither you or Jacob were under the influence of any intoxicating liquors or drugs? A. I wasn't, I don't know about Jacob.

Q. You have known Jacob for about three years, and did he appear to be mentally normal last evening, Monday, October 7th, 1935? A. Yes.

Q. Have you ever seen Jacob in an intoxicated condition? A. Yes, once, during the summer of
30 1934 when we were at a party.

Q. Have you ever been convicted of a crime? A. No, sir.

Q. This statement that you have just given is the truth? A. Yes, it is the truth.

Signed,
GEORGE HERMAN HILDEBRAND.

A. Zapolsky,
H. Stockburger,
A. W. Geran,
Tp. Fels Caisse.

BY MR. EASTWOOD:

Q. Trooper, I again show you a revolver and ask you whether or not that is the revolver that you showed to Ciemiengo and Hildebrand at the time you took these two statements that you have just referred to? A. Yes, sir; that's the revolver. 10

Q. Is that the gun that Ciemiengo identified as being the gun that he fired at Eilers? A. Yes, sir.

Q. And is it the gun that Hildebrand identified as the one he had seen Ciemiengo fire? A. Yes, sir.

MR. EASTWOOD: I offer it in evidence.

THE COURT: It will be admitted.

20

(Gun in question marked Exhibit S-18.)

BY MR. EASTWOOD:

Q. And is that the same gun that you testified you got from the bureau drawer in the dining room of Ciemiengo's house? A. Yes, sir.

Q. And what did you do with the gun afterwards, Sergeant? A. I turned it over to Sergeant Shultz, of the Identification Bureau. 30

CROSS EXAMINATION.

BY MR. HILLMAN:

Q. Sergeant, you have been a state trooper for eight years? A. Yes, sir.

Q. How long have you been stationed at Columbus? A. I have not been stationed at Columbus at all.

Q. Where are you stationed? A. Trenton headquarters.

Q. And where is your home? A. Right in Trenton.

Q. You lived there at the time? A. My family does; yes, sir.

Q. What's that? A. My family lives there and I
10 live there.

Q. Did you live there at the time you were appointed to the State Police force? A. No, sir; in Pennsylvania at that time.

Q. Where in Pennsylvania? A. Shenandoah.

Q. In Shenandoah; then you were appointed to the state force and came over to New Jersey? A. Yes, sir.

Q. Now, you say you arrived at the home of Herman Eilers about ten minutes after nine? A. About
20 that; yes, sir.

Q. And did you observe anything about the premises there? A. I didn't make any examination of the premises, because while—when we arrived there—

Q. Did you go in the house? A. Yes; walked in the house.

Q. See the kitchen there? A. Yes, sir.

Q. Was there a table there? A. Yes.

Q. Set for supper? A. What?

30

MR. EASTWOOD: If the Court please, I want to interpose an objection to this line of examination. As I recall it, the witness was not questioned on any matter of examination or observation at the house.

THE COURT: I think it was outside that this witness testified to.

MR. EASTWOOD: He testified, I think, to having seen tire marks outside of the house and then he was questioned as to the questions and the statements. There is no examination so far as the interior of the house was concerned by the state.

MR. HILLMAN: He said he was in the house and I want to find out what he saw in the house.

THE COURT: As I understand it, Mr. Hillman, that is not proper examination. On his direct examination I don't think he was asked anything about the inside of the house and for that reason I will sustain the objection. 10

The defendants pray an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

BY MR. HILLMAN:

20

Q. Now, did you see Chief Griffith? A. Yes, sir.

Q. Did he have a newspaper with him? A. I didn't see that.

MR. EASTWOOD: That is objected to, if the Court please. There was no testimony of any conversations with any of the officers in the State's case.

THE COURT: He did not ask him about any conversation. He asked him if he saw a newspaper. 30

MR. EASTWOOD: Nor was there any testimony in the state's case concerning a newspaper.

THE COURT: I will permit it to save time.

BY MR. HILLMAN:

Q. Did you see a newspaper in Mr. Griffith's possession? A. No, sir.

Q. Did you take the newspaper from his car? A. No, sir.

Q. I think you said in your direct examination that while you were having these men questioned that you went out and checked up on some things?

A. Yes.

10 Q. Did you go to Camden? A. Where?

Q. Camden? A. No.

Q. Did you go to Philadelphia? A. No.

Q. That night or any other time? A. Oh, I was in Philadelphia the other day.

Q. I know. Did you go there and visit Ciemiengo's sister in Camden? A. I did.

Q. When was that?

MR. EASTWOOD: That is objected to, if the
20 Court please, as not being within the scope of the state's examination.

THE COURT: I will permit it to save time. I don't think it makes much difference.

THE WITNESS: I am not positive of the date, but I think it was on the 9th of October.

BY MR. HILLMAN:

30 Q. And you went down there and you questioned her, did you not, as to where Ciemiengo was on Sunday night?

MR. EASTWOOD: That is objected to. The state certainly cannot be bound by any statement or questions that this witness may have asked any other person or persons.

MR. HILLMAN: He said he went down there and questioned her as to Ciemiengo's doings the day before this.

THE COURT: I will sustain the objection and allow an exception.

The defendants pray an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON, 10
Judge.

BY MR. HILLMAN:

Q. Did you see this lady (indicating)? A. I did.

Q. In Philadelphia? A. Yes, sir.

Q. Who was with you? A. Detective Horn of the New Jersey State Police and a Philadelphia officer; I don't recall his name now.

Q. Was she living in Philadelphia at the time? 20
A. Yes.

Q. Did you question her about this case? A. I did.

Q. Now did you go to see his other sister living in Camden, this lady here (indicating)? A. No, sir; I didn't.

Q. You did not go to see her? A. No, sir.

Q. I notice one of these statements is at 6.45 A. M. and the other at 8.45 A. M. Did it take two hours to get one down? A. Well, we had breakfast in the 30
meantime.

Q. Is that the first meal? A. No; we had coffee and sandwiches around 4 o'clock and then we had some cigarettes and stuff.

Q. And then you adjourned for breakfast, I presume? A. Yes, sir.

Q. Are the answers that are written down here just as they gave them or did you frame the answers? A. They answered them themselves.

Q. You did not frame the answers? A. No, sir.

Q. Are you sure? A. Absolutely.

Q. Anyone else there frame the answers for them? A. No, sir.

Q. Now, you have testified concerning this revolver, that you found it in the drawer of the bureau in the dining room? A. Yes, sir.

10 Q. Was it covered up with anything or just laying there? A. Yes; there was a lot of odds and ends in there, papers and stuff, and it was under the paper.

Q. Underneath? A. Yes, sir.

Q. And did you form any opinion as to when it had last been fired? A. I couldn't say when it was last fired, but it was freshly fired. You could smell the odor of powder on it.

Q. Was there anything else about it? A. Noth-
20 ing else.

Q. Where did you smell that powder? A. Right in the house there.

Q. I know— A. From the barrel.

Q. From the barrel? A. Yes.

Q. Did you examine it to see whether there was any powder in there? A. I didn't touch any—I didn't do any further examination of it.

Q. You just sniffed at the barrel? A. Yes.

Q. And you smelled the powder? A. Yes, and
30 then I passed it on to—

Q. Do you know how long the odor of powder will remain in a weapon after it has been fired? A. That I couldn't say.

Q. There was nothing there to enable you to say positively when it was fired? A. I couldn't say exactly when it was fired.

Q. When did you see it? A. When I first picked it up?

Q. Yes. A. In Ciemiengo's home.

Q. When? A. Between 1.45 and 1.50 on the morning of October 8th.

Q. And that is when you smelled the powder? A. Yes.

Q. Know anything about revolvers, trooper? A. Well, I know enough to use them.

Q. Is this a powerful shooting revolver? A. As far as that goes, I am not an expert on revolvers. 10

Q. All right, then, if you are not an expert. I thought you said you were. Do you know anything about power—the shooting power of pistols or revolvers? A. No, sir.

BY MR. HEILBRON:

Q. Sergeant, when you went to the Ciemiengo house, did Mr. Ciemiengo get the gun for you and hand it to you? A. No, sir. 20

Q. You went to the bureau yourself? A. Right to the spot where I was told it would be, and I picked it up myself.

Q. During the course of your questioning the defendants Hildebrand and Ciemiengo, prior to the time they made the statements, did you ask them about their whereabouts on Sunday evening? A. Yes.

Q. You questioned them as to where they had been? A. Yes. 30

Q. What they had done on Sunday? A. Yes.

Q. And why did you do that?

MR. EASTWOOD: That is objected to, if the Court please—why he did it. That is a conclusion. The state, of course, is not bound by any conversation that this witness may have had in asking ques-

tions. He can testify to what he said and what he did, but he certainly can't say why he did it. That is a conclusion for the jury to reach.

THE COURT: I will permit it to save time.

THE WITNESS: It was my duty to do so.

BY MR. HEILBRON:

10 Q. It was your duty to do so. Well, had you formed an opinion that the killing of Herman Eilers was done on Sunday?

MR. EASTWOOD: That is objected to. Certainly the state cannot be bound by any conclusion that this witness reached.

THE COURT: I will sustain that objection.

20 BY MR. HEILBRON:

Q. You carefully questioned them, however, about their movements on Sunday, October 6th; asked them where they had been and took down the names of the persons that they told you they saw on Sunday, October 6th?

MR. EASTWOOD: That is objected to, if the Court please, because of the characterization by
30 counsel. Now, he can ask him what he questioned them concerning, but I must object to his asking: "Did you carefully question them?"

MR. HEILBRON: I will reframe the question.

THE COURT: Reframe the question, Mr. Heilbron.

BY MR. HEILBRON:

Q. Sergeant, you questioned them about their whereabouts on Sunday and Sunday night, the two defendants? A. Yes, sir.

Q. And you asked them for the names of persons whom they saw on Sunday? A. Yes, sir.

Q. And you noted those names and addresses? A. I did.

Q. And you visited those persons? A. When?

Q. Later. A. Later, yes; some of them—not all 10 of them.

Q. You visited some of them. When did you say you visited Jacob Ciemiengo's sister, do you recall?

A. I believe it was on the 9th of October.

Q. On October 9th? A. Yes.

Q. When did you notify the prosecutor's office of this murder? A. The prosecutor's men were there when we arrived at the scene.

Q. I beg your pardon? A. The prosecutor's men were there when we arrived at the scene. 20

Q. At the scene of the— A. Murder.

Q. Did you ever notify them? A. No, sir.

RE-DIRECT EXAMINATION.

BY MR. EASTWOOD:

Q. Sergeant, did you question Ciemiengo and Hildebrand as to where they were on the night of 30 October 7th? A. Yes, sir.

Q. Did you ascertain from them the names of any persons that they had seen on the night of October 7th? A. I did.

Q. Did you take statements of the persons whose names they gave you as the ones they had seen on the night of October 7th? A. I didn't take the state-

ments myself, but the statements were taken by members of our department.

Q. And were those the names of the persons they said they had seen on the night of October 7th? A. Yes, sir.

Q. In the statements of Hildebrand and Ciemiengo that have been identified by you, this gun was referred to by name, I believe, wasn't it? A. Yes, sir.

Q. Before you went to get the gun were you told
10 by Ciemiengo what name, if any, was on the gun?

A. "Young America".

Q. Is that the name on the gun (indicating)? A. Yes, sir; that is the name on the gun.

Q. What calibre is it? A. .22.

RE-CROSS EXAMINATION.

BY MR. HILLMAN:

20 Q. Did he tell you what the number of the revolver was? A. No, sir; I took the number down myself.

FRED SHULTZ, recalled.

DIRECT EXAMINATION BY MR. EASTWOOD:

Q. Did you make any examination of the home
30 of Herman Eilers in an attempt to locate the third bullet? A. Yes, sir.

Q. Did you find the third bullet anywhere? A. Yes, sir, I did.

Q. Where did you find it? A. That bullet was in the wall of the dining room down near the floor. It was on a direct line from the kitchen.

Q. And as related to the kitchen was there any opening of any kind from the point or place where the bullet was leading into the kitchen? A. Yes, sir, there was a doorway.

Q. I show you Exhibit S-6, Sergeant, and I am wondering if you would step down here and point out to the jury where you found this other bullet? A. (Witness complies.) The bullet was right down near the base board (indicating on photograph.)

10

BY A JUROR:

Q. Is that the kitchen on this side? A. This is the kitchen back here and this is the living room.

BY MR. EASTWOOD:

Q. Can you point out whether this picture shows where the body of Herman Eilers laid. A. The body of Herman Eilers was back in here, it does not 20 show in this picture.

Q. Does it show there? (offering another picture.) A. Yes, sir.

THE COURT: What is the number of that picture, Mr. Eastwood?

MR. EASTWOOD: Exhibit S-2.

THE COURT: Is the witness pointing out the body? 30

MR. EASTWOOD: Yes, sir, pointing out the body of Herman Eilers.

A. (continued.) Back in here would be the doorway leading to the dining room, and this goes through to where the bullet was found.

Q. As related to the position where Eilers' body was and the place where you found the bullet in the wall, what kind of line was that? A. The bullet would have been lower.

Q. I am referring now to the line or angle at which you face the room where the bullet was found in the wall, standing at the kitchen door at the point or place where Herman Eilers' body was, what would be the direction? A. It would be a straight line.

10 Q. Assuming you are standing where the body of Herman Eilers is in that picture and looking toward the wall where the bullet was found, will you indicate the direction? A. The door would be here and the bullet in the wall right here. (indicating on photograph.)

Q. And the door between the two was the opening on a direct line, was it not? A. Yes, sir.

Q. Did you make any identification of this bullet when you took it out of the floor. First, let me ask
20 you, did you remove it from the wall? A. Yes, sir.

Q. And from the point or place you have indicated? A. That is right.

Q. What, if anything, did you do with it afterwards? A. I placed it in a box immediately.

Q. Is that the box you have in which you placed it? A. Yes, sir.

Q. Will you open the box, please, and state whether or not the bullet contained therein is the one you removed from the wall? A. It is.

30

MR. EASTWOOD: I offer the box and the contents in evidence.

THE COURT: It may be admitted.

(Box marked in evidence Exhibit S-19.)

Q. Sergeant, I show you Exhibit S-14 and Exhibit S-15, previously identified by Dr. Conroy as the two bullets he removed from the body of Herman Eilers, and ask if you saw them before today? A. Yes, sir.

Q. When and where did you first see them? A. I saw them as they were removed from the body of the victim at Slack's morgue.

Q. Did you receive possession of them? A. I did.

Q. From whom? A. From Dr. Conroy.

Q. Have they been in your possession since that time? A. They have been in my possession ever since that time up until last Friday.

Q. What did you do with them last Friday? A. I turned them over to Mr. Matthews, who is connected with the firearms section of the State Bureau of Identification.

Q. Do you know what he did with them? A. He took them—

Q. Do you know of your own knowledge what he did with them? A. No, I didn't go with him. 20

Q. Then you don't know of your own knowledge? A. No, sir, I only know what he told me.

Q. Is Mr. Matthews in court? A. He is, yes.

Q. Did you receive them back later? A. No, sir.

Q. Will you look at those bullets, Sergeant, and state whether or not they are the bullets that were delivered to you by Dr. Conroy after having been removed from Herman Eilers' body? A. Yes, sir.

Q. I show you what purports to be a 22-calibre revolver with the name "Young America, double action," on it marked Exhibit S-18 and ask if you have seen that before today? A. Yes, sir. 30

Q. When and where did you first see it? A. I received that gun from Sergeant Zapolsky on the morning of October 8th.

Q. Has it been in your possession since that time? A. Up until last Friday—

Q. Do you know of your own knowledge what was done with it, at that time? A. Yes, it was turned over to Mr. Matthews.

Q. And has it been in your possession since that time? A. No.

CROSS EXAMINATION.

BY MR. HILLMAN:

10 Q. When did you discover this bullet? A. Which one do you have reference to?

Q. The one that was imbedded in the wood work there. A. That was discovered on October 9th.

Q. You took it out of the wood work on October 9th? A. Yes, sir.

Q. Did you take it out as soon as you discovered it? A. I did.

Q. You didn't see it in there before? A. No, sir, it was pointed out to me by Trooper Welsare.

20 Q. And you didn't find it. A. No, sir.

Q. Did you notice anything else about the house when you were there making this investigation? A. I don't understand that question.

Q. Did you notice the conditions there in the house, while you were making your investigation? A. I didn't look around the house much.

Q. How long were you in there? A. I was in there on several visits.

Q. When were you first there? A. The night
30 of October 7th.

Q. How long were you there then? A. Fifteen or twenty minutes.

Q. Did you make any observation of the house? A. Not especially.

Q. Did you examine the furniture? A. No, sir.

Q. Did you examine the lamp? A. No, sir.

Q. Did you examine the stove? A. No, sir.

Q. Did you examine the table? A. No, sir.

Q. What did you observe? A. I took these photographs and left.

Q. You just took these photographs? A. That is all.

Q. You didn't touch the body? A. No, sir.

Q. Did you see Mr. Griffith there? A. I didn't know Mr. Griffith at that time.

Q. You know him now, did you see him there?
A. I didn't see him there. There were quite a few people there.

10

Q. Did you see a newspaper in Mr. Griffith's possession? A. No, sir.

Q. Did you take the newspaper away? A. I did not.

Q. Sergeant, what is the character of your work in the State Police Department? A. Our line is identification work and takes in photographs and finger prints.

MR. HILLMAN: That is all.

20

MR. EASTWOOD: That is all.

ALFRED MATTHEWS, a witness produced on behalf of the State, being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION BY MR. EASTWOOD: 30

Q. Mr. Matthews, are you connected with the New Jersey State Police? A. I am, sir.

Q. With what Department of the New Jersey State Police are you connected? A. I am employed in the firearms section, Bureau of Identification, sir.

Q. I show you a revolver with the name "Young America, double action", 22-calibre, marked Exhibit S-18 and ask if you have seen that before today. A. Yes, sir, I have.

Q. And was it in your possession at any time? A. I received it from Sergeant Shultz last Friday.

Q. What, if anything, did you do with it? A. I was ordered to take it to Captain Jones, firearms expert in New York City.

Q. Did you take it to New York City to Captain 10 Jones? A. I did.

Q. Did you deliver it to him? A. I took it there.

Q. Have you had it in your possession since that time? A. It was in my possession while he examined it.

Q. Did you bring it away with you? A. I did, sir.

Q. Has it been in your possession up to the trial of this case? A. Yes, sir, I turned it over yesterday.

20 Q. You turned it over to whom? A. To you, sir.

Q. Mr. Matthews, I show you Exhibits S-14, S-15, and S-19, and ask you whether or not you have seen those exhibits consisting of three bullets before today? A. I have, sir.

Q. When did you first see them? A. They were turned over to me by Sergeant Shultz on Friday.

Q. What, if anything, did you do with them? A. I took them to Captain Jones, our firearms expert, in New York City.

30 Q. Were you there while he made the examination of them? A. Yes, sir.

Q. Were they out of your possession? A. They were not, sir.

Q. Except during his examination of them? A. That is the only time.

Q. And you were present when the examination was made? A. I was, sir.

Q. You brought them away with you? A. I did, sir.

Q. What did you subsequently do with them? A. I turned them over to you, sir.

Q. When? A. Yesterday at noon, sir.

MR. EASTWOOD: Cross examine.

MR. HEILBRON: No questions.

MR. HILLMAN: No questions.

10

(Recess to one-thirty P. M.)

FRANCIS CAISSE, a witness produced on behalf of the State, being duly sworn according to law on his oath, testified as follows:

BY MR. EASTWOOD:

20

Q. You, of course, are a member of the New Jersey State Police, are you, Trooper? A. Yes, sir.

Q. How long have you been connected with the New Jersey State Police? A. Six years.

Q. Trooper, were you at the home of Herman Eilers on the night of October 7th, 1935? A. Yes, sir.

Q. What time did you arrive there? A. About a quarter to eight.

Q. At anytime while you were there, Trooper, did you assist in placing any barriers on a line between the house and the corn crib? A. Yes, sir.

Q. I show you a photograph marked Exhibit S-8 and ask you if you will indicate on that photograph where you may have placed any barriers? A. Across from the corn crib to the porch here, directly across, in between (indicating).

Q. What time was it you placed the barriers there? A. Oh, around—I stood guard until Sergeant Zapolsky and Lieutenant Keaton came, and then it was after that; shortly after 9 o'clock, I would say.

Q. While you were standing guard, did any automobiles enter that space between the corn crib and the house? A. No, sir.

Q. Do you know how long those barriers were placed there? A. No; I don't, because I left after 10 that.

Q. What time did you leave? A. I left around—after we had placed the barrier there, somebody else was standing there.

Q. Who took your place? A. Trooper Geren.

Q. Trooper, did you make any observation at any time of the space or ground between the corn crib and the house to observe whether there were any tire marks of any kind? A. Yes; I observed tire marks.

20 Q. I show you Exhibit S-13, and ask you whether or not that photograph shows any tire marks that you observed? A. Yes, sir; it does.

Q. Will you indicate to the jury where they are, please? A. The tire marks—

Q. Come down here, please? A. The tire marks are right here, coming right down here and here's the other mark over here (indicating). The barrier was placed about here (indicating).

Q. Trooper, did you at any time see the automobile of Ciemiengo in which he was alleged to have been that night, the defendant Ciemiengo? A. Yes, sir.

Q. Where did you see it? A. At the home of Ciemiengo.

Q. And when? A. That night and the following day.

Q. Did you operate it for any purpose? A. Yes, sir; I got in the car and backed it up and drove it forward to cause tire marks.

Q. Did you look at the tire marks that were made? A. Yes, sir.

Q. Will you state whether the tire marks made by the operation that you have described were or were not similar to those shown on this photograph?

A. Yes, sir; they were.

CROSS EXAMINATION.

10

BY MR. HILLMAN:

Q. Trooper, you spell your name C-a-i-s-s-e? A. Yes, sir.

Q. How many tracks were there? A. There was one set of tracks where it pulled in and you could see where it backed out again.

Q. You could see where it backed in and had gone out again? A. Yes, sir.

20

Q. Two sets of tracks? A. Yes.

Q. Was the ground soft? A. Well, it was soft enough so that the marks of the tires would be left there.

Q. I know, but was the tire mark there? A. Yes, sir.

Q. Was it rather soft there? A. Well, it wasn't real soft and it wasn't real hard.

Q. Kind of medium? A. Yes, sir.

Q. When did you first see the tire marks? A. I 30 saw the tire marks probably 10 minutes after I got there.

Q. That was at night? A. Yes, sir.

Q. Did you have a searchlight? A. Yes, sir.

Q. And did you see tire marks anywhere else? A. No, sir.

Q. Did you see any tire marks leading in from the road? A. No, sir; because there was a car parked in the driveway and we pulled our car right in back of the other car.

Q. How's that? A. There was a car parked in the driveway and we pulled our car right in back of it.

Q. Did you see where the tire marks went, which you saw between the house and the corn crib, you say? A. Yes, sir.

10 Q. And where did they go from there? A. That's the only place they showed.

Q. Then you couldn't tell whether they led to the road or not? A. No, sir; I couldn't tell.

Q. You didn't notice any tire tracks in the driveway? A. No, sir.

Q. Did you look? A. No, sir.

Q. You just saw these and devoted your attention to them. A. Yes, sir.

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

20 Q. What did you see in the house? A. Herman Eilers lying on the floor, his head on a feed bag as you entered.

Q. What did you notice about the furniture in the house? A. There was a stove.

Q. Was there any fire in it? A. No, sir.

Q. Did you touch it? A. Yes, sir.

Q. Was there any warmth to it? A. No, sir.

Q. Stone cold? A. Yes.

Q. Did you look inside?

30

MR. EASTWOOD: I have no serious objection to this cross examination, Your Honor please, if counsel wants to pursue it, it is not on the direct examination.

THE COURT: I will let it go and get it over with.

Q. Was there a table there? A. Yes, sir.

Q. Any dishes on it? A. Not that I noticed.

Q. Was there any food there? A. Not that I noticed, no sir.

Q. Did you touch the dead body. A. No, sir, I did not.

Q. Did you see anybody else touch it? A. Yes, I did.

Q. Who touched it? A. The undertaker.

Q. What time did he get there? A. Around eleven-thirty or quarter to twelve when they moved 10 the body.

Q. You didn't see anybody touch it from the time you got there until the undertaker did? A. No, sir.

Q. You didn't touch it yourself? A. No.

Q. You made no examination of the body? A. I examined the body and looked it over.

Q. But you didn't touch it. A. No, sir.

Q. Did you see any blood trickling down? A. Yes, sir, one drop, I saw it drop and it hit the bag and fell on the floor. 20

Q. Had you done anything to start it? A. No.

Q. Did you see anybody else do anything to start it? A. Not that I know of.

Q. Did you see Officer Griffith there? A. Yes, sir.

Q. Did you see him have a newspaper? A. No, sir.

Q. Did you take the newspaper away from him? A. No, sir.

Q. Did you take a newspaper out of his car? A. 30 No, sir.

Q. Or see anybody else do it? A. No, sir.

RE-DIRECT EXAMINATION

BY MR. EASTWOOD:

Q. Did you take any newspaper at all from anybody's car? A. No, sir.

Q. I think you were asked whether these tire marks were between the corn crib and the barn. A. No, sir, it was between the corn crib and the house.

10 BY MR. HILLMAN:

Q. Which was it? A. Between the corn crib and the house.

Q. You were mistaken then when you said between the corn crib and the barn.

MR. EASTWOOD: That is the way counsel asked that question. I think counsel was mistaken when he asked the question.

20

MR. HILLMAN: I only know what I heard the witness testify.

THE COURT: What was counsel's last question?
Q: (Repeated by stenographer) You were mistaken then when you said between the corn crib and the barn?

THE COURT: He may answer.

30

A. If I said that, I was. It was between the corn crib and the house.

Q. How near the house? A. A good pace and a half.

Q. Two paces and a half. A. One and a half.

BY MR. EASTWOOD:

Q. Which tire mark were you referring to, Trooper? A. The tire mark nearest to the house.

Q. What was the character of the road or entrance between the place where you saw the tire marks and the entrance from the road? A. Where I saw the tire marks it was dirt, and the other road was blocked up with cars.

Q. What was the character of the top soil, do you recall? A. No, sir, I do not. 10

MR. EASTWOOD: That's all.

ALBERT H. WELFARE, a witness produced on behalf of the State being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION BY MR. EASTWOOD: 20

Q. Trooper, how long have you been a member of the New Jersey State Police? A. Four years.

Q. At any time after the murder of Herman Eilers were you at his house? A. No, sir, I didn't arrive there until the next morning.

Q. Possibly you did not understand my question. I asked you if at any time after the murder of Herman Eilers you were at his house? A. Yes, sir.

Q. You arrived there the first time when? A. 30 On the following morning around ten fifteen.

Q. Did you make any examination of the interior of the house? A. Yes, sir.

Q. Were you looking for anything in particular? A. Yes, sir, my instructions were to look for the third bullet.

Q. Did you find it? A. I did.

Q. Where did you find it? A. We were instructed—

Q. No, not what you were instructed, but did you find it? A. Yes, sir.

Q. Where did you find it? A. In the adjoining room.

Q. To which room are you referring? A. I think you would call it the sitting room, just off the kitchen.

Q. I show you a photograph and ask you whether
10 you are able to identify it. A. Yes, sir.

Q. What is it? A. This is the room the bullet was found in.

Q. Will you indicate where the bullet was found to the jury. A. (Witness complies) The bullet was found right here, where the indication on the wall is.

MR. EASTWOOD: I will offer this photograph in evidence.

20

MR. HILLMAN: Hadn't it been offered before?

MR. EASTWOOD: I thought it had, but apparently not.

THE COURT: It may be admitted.

(Photograph marked in evidence Ex. S-20.)

30 Q. When did you find the bullet, Trooper? A. On the morning of October 9th.

Q. The 9th? A. The 9th, yes, sir.

Q. You say you went there the day following his death? A. Yes, sir.

Q. Are you sure of the date, Trooper? A. Yes, sir.

Q. Were you there when Detective Shultz took the bullet out? A. Yes, sir.

Q. Was he there when you first went there for the examination to find the bullet? A. No, sir.

Q. How long after you found it was it that he came there and removed it? A. Possibly about an hour and a half.

Q. When Detective Shultz removed the bullet, were you present? A. Yes, sir.

Q. Was it in the same location where you found it? A. Yes, sir. 10

Q. And where was it in the wall? I mean, can you indicate? A. It was approximately a foot off the floor and four inches above the baseboard and directly in line with the door which leads from the sitting room into the kitchen. The measurements were all taken by Sergeant Shultz.

Q. Were you there when Shultz removed it? A. Yes, sir.

CROSS EXAMINATION

20

BY MR. HILLMAN:

Q. Was the bullet imbedded in the wood? A. It was a plaster wall.

Q. Oh, it was not in the washboard? A. No, sir, it was just about four inches above the baseboard.

Q. Well, how deep was it? A. Just about in the plaster.

Q. What? A. Just about in the plaster. 30

Q. Could you see it readily from outside? A. Yes, sir.

Q. When were you there, the day after the murder or the next day? A. I was there the next day, October 8th.

Q. October 8th. Were you there October 9th. A. Yes, sir.

Q. When did you take it? A. On the morning of October 9th.

Q. Did you see Mr. Griffith while you were there?

A. No, sir.

THE COURT: Have you any questions?

MR. HEILBRON: No; I have not.

10 FRED H. SHULTZ, recalled.

BY MR. EASTWOOD:

Q. Sergeant, after the three bullets and gunpowder which you have previously identified, were turned over to you, did you at any time take them anywhere? A. Yes, sir.

Q. Where? A. They were taken up to Captain Jones' office in New York City.

20 Q. Do you recall when that was? A. That was on the night of October 8th.

Q. And did you remain there while Captain Jones examined the bullets in the gun? A. Yes, sir.

Q. And did you retain possession of them and return them home? A. I did.

Q. Then you retained possession of them until you turned them over to Mr. Matthews, as you previously testified? A. That's right.

30 Q. Was the third bullet at that time taken over there? A. No sir.

Q. Just the two bullets that were found in his body? A. Just the two fatal bullets.

Q. When you delivered them to Mr. Matthews, how many bullets did you deliver to him? A. I gave him the three.

(No cross examination)

WILLIAM N. RICHARDSON, a witness produced on behalf of the State, being duly sworn according to law upon his oath, testified as follows:

BY MR. EASTWOOD:

Q. Where do you live, Mr. Richardson? A. Burlington.

Q. What is your business? A. Insurance salesman.

Q. And by whom are you employed? A. At the 10 present Colonial Life.

Q. How long have you been employed by the Colonial Life? A. Since March.

Q. Prior to that time by whom were you employed? A. Metropolitan Life.

Q. Do you know this defendant, Jacob J. Ciemiengo? A. Yes, sir.

Q. How long have you known him? A. Since around eight or nine years old.

Q. Did you know Herman Eilers? A. Yes, sir. 20

Q. How long had you known him before his death? A. About six months.

Q. About three months prior to the death of Herman Eilers, did you go over to Herman Eilers with the defendant, Jacob John Ciemiengo? A. Yes, sir.

Q. And for what purpose? A. To collect insurance.

Q. From whom? A. His father.

Q. Whose father? A. Young Ciemiengo's father. 30

Q. While you were there that afternoon to collect insurance, did you then go anywhere with the defendant, Jacob John Ciemiengo? A. Yes, sir.

Q. And where did you go? A. Over to Eilers'.

Q. For what purpose? A. To change a bill.

MR. HILLMAN: I object to that, if the court please, as irrelevant and immaterial. It is something which occurred three months before the crime.

MR. EASTWOOD: If the Court please, this is corroborative of a statement made in the defendants' statement in which they stated about having seen money at the time Richardson was over there with the defendant Ciemiengo to change a \$20 bill about three months ago, and that was one of the reasons
10 that prompted them to plan this crime.

THE COURT: I will permit it.

The defendants pray an exception to this ruling of the Court. Exception allowed: let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,

Judge.

BY MR. EASTWOOD:

20

Q. And what size of a bill? A. A \$20 bill.

Q. Where did you go to change it? A. Herman Eilers'.

Q. Were you there when he changed it? A. Yes, sir.

Q. For whom did he change it? A. Young John Ciemiengo.

Q. That is, the defendant here in this case? A. Yes, sir.

30 Q. At the time he changed it, did you see any money in Eilers' possession? A. Yes, sir.

Q. Did you see where he got it? A. Yes, sir.

Q. Where? A. Out of his rear hip pocket.

Q. You were not able to tell how much he took out? A. No; I couldn't vouch how much, but he had quite a sum there.

CROSS EXAMINATION

BY MR. HILLMAN:

Q. Did you know Eilers before this? A. Yes, sir.

Q. Was he in the habit of carrying money with him? A. Yes, sir.

JEAM R. SCATTERGOOD, a witness produced on 10
behalf of the State, being duly sworn according to
law, upon his oath testified as follows:

BY MR. EASTWOOD:

Q. Where do you live, Mr. Scattergood? A. I live on the Burlington-Columbus Road, between Burlington and Columbus.

Q. You are engaged in farming and have been there a great many years? A. Been there all my 20 life; yes.

Q. Was the defendant, George Herman Hildebrand employed by you? A. Yes, sir.

Q. Do you remember the night of October 7, 1935? A. Yes, I do.

Q. And did anyone come for Hildebrand while you were there that evening? A. There was a car drove in the yard while Hildebrand was eating his supper, and after he finished eating his supper he got up and went out in the car and drove out. 30

Q. You don't know who it was who came for him? A. No; it was dark and I didn't go out and I didn't notice.

Q. Did you see Hildebrand later that night? A. Yes.

Q. When did you next see him? A. When he came down stairs with the trooper.

Q. Didn't you see him when he returned home?

A. No.

Q. Are you sure of that, Mr. Scattergood? A. Yes.

Q. You gave a statement to the troopers, did you not, Mr. Scattergood, on the 10th of October? A. Yes, sir.

Q. Is that your signature? (Indicating). A. It is.

Q. Is that the statement that you signed? A. 10 Yes.

Q. I call your attention, Mr. Scattergood to a statement: "Mr. Scattergood, were you still up when George returned home—"

MR. HEILBRON: Objected to your Honor. I don't know what the purpose is.

MR. EASTWOOD: If your Honor please, this is a situation where the witness has surprised me with 20 the testimony that he has given, that he was not up and did not see the defendant until the trooper came there.

MR. HEILBRON: He is trying to impeach his own witness.

THE COURT: I will permit the testimony and note an exception there.

30 The defendants pray an exception to this rule of the Court. Exception allowed: let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

BY MR. EASTWOOD:

Q. I call your attention, Mr. Scattergood, to a question: "Mr. Scattergood, were you still up when George returned home?" "A. Yes. George came in and went right upstairs, and didn't speak to me."

A. That's correct.

Q. That is in the statement? A. That is correct.

Q. Then you did see him when he came home?

A. No; I didn't see him, but I heard him come in the kitchen and I heard him come in the other room, and the communicating door was closed at that time.

Q. Is that the reason you mean he didn't speak to you? A. Well, yes. I didn't go out in the kitchen where he was and actually didn't speak to him.

Q. What time did he return? A. Why, it was right around 10 o'clock or shortly after.

Q. Did he ordinarily return at that time of night?

MR. HEILBRON: That is objected to.

THE COURT: Objection sustained.

20

BY MR. EASTWOOD:

Q. You say you didn't see him, Mr. Scattergood?

A. I didn't see him when he came in—no.

Q. Are you sure of that? A. Yes; positive.

Q. At no time? A. Until he came downstairs later.

Q. Mr. Scattergood, I call your attention to a further statement here that you have made in which you were asked the question:

30

"Q. Did you notice anything out of the ordinary that George did when he returned home on the night of October 7, 1935, that he was not in the habit of doing on other nights?" and your answer:

"A. Yes; he locked the door to the kitchen, which he wasn't in the habit of doing."

Did you make that statement? A. Yes.

Q. Well, did he lock the door? A. Yes.

Q. You didn't see him? You heard him do it?

A. I heard him do it; yes.

CROSS EXAMINATION

BY MR. HEILBRON:

Q. Mr. Scattergood, what time did you have your dinner that night, do you recall? A. About six 10 o'clock.

Q. Around six o'clock? A. Yes, sir.

Q. Do you recall whether George Hildebrand after this car came into the yard, left the dinner table and then came back and finished his dinner and then went out again? A. I think he did; yes.

Q. Was the horn sounded? A. I can't tell about that; I don't remember.

Q. But you could plainly see a car in the yard?

A. Yes; I heard the car and I saw the lights. It was 20 getting dark at that time.

Q. George came out and then went back and finished his dinner? A. Yes; that's right.

Q. George worked for you how long, Mr. Scattergood? A. A little over 13 months.

Q. And do you recall whether or not he worked on Monday afternoon; that is the afternoon of the evening that you have testified to? A. Yes; he was over at a neighbor's helping to fill silos, Mr. Lewis'.

30 MR. EASTWOOD: That is objected to, if the Court please. This witness was not there.

THE COURT: The question has been answered, Mr. Prosecutor.

MR. EASTWOOD: I object to any further examination along that line.

BY MR. HEILBRON:

Q. He was at Mr. Lewis', you say? A. Yes; the adjoining farm towards Columbus.

Q. Towards Columbus? A. That's right.

Q. Were you working over there? A. No, sir.

Q. Did you see Jacob John Ciemiengo there that afternoon— A. No.

Q. —at your farm? A. No; I did not.

Q. Do you know as a matter of fact whether George, when he came home, ever locked the kitchen 10 door, could you say positively? A. Some other times, but not as a rule.

Q. He did lock it at other times? A. Yes.

Q. Do you know what time the officers came there that night? A. Why, it was shortly after George came home; I suppose about 15 or 20 minutes later.

Q. 15 or 20 minutes later? A. Yes.

RE-DIRECT EXAMINATION

20

BY MR. EASTWOOD:

Q. What time did you have supper that night?

A. About six o'clock.

WILLIAM A. JONES, a witness produced on behalf of the State, being duly sworn according to law, 30 up his oath, testified as follows:

BY MR. EASTWOOD:

Q. Captain, where do you live? A. 329 East 201st Street, New York City.

Q. What is your business? A. Fire arms expert.

Q. How long have you been a fire arms expert? A. Since 1895.

Q. Have you had any police experience, Captain? A. Yes, sir.

Q. Where and with what department? A. I was with the New York City Police Department for 32 years.

Q. And when did you sever your relationship with the New York Police Department? A. On the 18th of February, 1919.

Q. Captain, during the time you were connected with the Police Department did you specialize in any particular subject or work? A. I did.

Q. And will you explain the character of that work and your duties in connection with it? A. In 1895 when Theodore Roosevelt was police commissioner, he organized a school for pistol practice for the department and I was picked as instructor. In 20 that work we loaded our own cartridges and I was in charge of it until 1911. In the latter part of the time that I was in the shooting school I had over ten thousand men to instruct, and we used on an average of six thousand cartridges a day, or a little better. In 1908 along with my duties as instructor I was assigned to the homicide bureau of the detective bureau to investigate shooting cases and in that work I went to the scene of the crimes, observed conditions there, attended autopsies, and in a great many cases 30 I made experiments for conditions found, such as powder stains on the body or clothing, or marking on the bullets or shells caused by some condition of the arm they were fired from, and in that work I performed a great many experiments, attended a good many autopsies and testified in a good many cases.

Q. In connection with this work you did in the Homicide Department and your other assignment of the New York Police Department and since that time have you made any study of the comparison of bullets. A. Yes, sir.

Q. Fired from a particular gun in order to determine whether bullets that have been discharged from such gun were actually fired from that gun? A. Yes, sir.

Q. Over what period of time and what was the character of your work in that respect? A. About 10 ten years ago I had a microscope built for that purpose. It was called a comparison microscope.

Q. Will you speak a little louder, Captain, so that the jurors in the back row can hear you? A. Yes, sir. It is two separate microscopes tied together with the eye peek of the two microscopes six and a quarter inches apart, and when the eye peek is put on two they will fuse the images into one. The bullets are set on gears and are rotated either independently or together, and the microscope will show instantly 20 whether the width and twist of the rifling or of the rifling marks left on the bullet by the rifling of the gun barrel are the same. The rifling in an arm is put in like a screw thread, that is to give the bullet a spinning motion when it leaves the firearm, that is so that it will travel nose on. If the rifling were straight the bullet would go end over end, but the spinning motion makes it travel nose on all the time and stabilizes the flight of it.

Q. When you say that by looking through the eye 30 piece fastened onto your microscope the bullet fuse— A. Yes, sir.

Q. To what bullets do you refer when you say that the bullets fuse. A. I take the bullet in evidence and I put it under the right hand microscope generally, and a test bullet fired from the arm suspected of having been used from the left hand one.

When you fuse them together the microscope shows the front half of the left hand bullet and the rear half of the right hand bullet.

Q. And practically as you look into the microscope it looks like one bullet? A. Yes, sir, it looks like one bullet, with a cross-line in it, that is provided the two bullets have been fired from the same gun.

Q. If the two bullets have been fired from the same gun you can determine that fact from the similarity of the marks on the bullet? A. Yes, sir, if the marks are there the microscope will show that.

Q. Is that the accepted method of ballistic experts to determine whether a given bullet is one fired from a given gun? A. Yes, sir.

Q. And how many tests of that character have you made during your experience? A. A good many, that would be hard to say.

Q. Can you say approximately? A. It would be up in the thousands.

20 Q. Have you testified in court as a result of your examinations and given your opinion as to whether a certain bullet was fired from a certain gun? A. Yes, sir, many times. I have testified all over the United States, I have been out to the coast and in Maine and Canada.

Q. In how many cases have you testified, would you say, concerning your findings in that particular phase of your business? A. That would be very hard to say.

30 Q. Can you approximate it? A. It would be a way over a thousand.

Q. A thousand did you say? A. Yes, more than that.

Q. More than a thousand? A. Yes, sir.

Q. Captain, I show you exhibit S 18 and ask you whether you have seen that gun previously? A. Yes, I have.

Q. When and where did you first see it? A. I first saw it on the 8th of October, I guess we might call it the 8th, because it was after midnight when the officers got up to my home with it.

Q. Did you make an examination of the gun at that time? A. I looked at the gun at that time, yes, sir.

Q. I show you also, Captain, two exhibits marked Ex. S 14 and Ex. S 15, and ask you whether on that same occasion you saw those bullets. Will you look at them please? A. (Witness complies) Yes, 10 sir, those are the two bullets.

Q. Captain, at that time did you make any examination of these bullets and of the gun? A. I did, I placed them in the microscope with—

Q. Were there other bullets that were furnished you at that time that had been fired from the gun? A. Yes, sir, Mr. Matthews brought two other bullets with him and I placed them in the microscope against these bullets.

Q. You had not fired those bullets that were 20 brought there for comparison purposes had you, at that time? A. No, sir, I had not.

Q. Later, Captain, did you have in your possession the two bullets that you have already identified and the gun? A. Yes, sir.

Q. When and where did you have them subsequently? A. Mr. Matthews brought them to my home last Saturday, the 17th, and at that time I caused some tests by shooting into cotton.

Q. Did you fire bullets from this gun? A. Yes, 30 sir, I fired two.

Q. What did you do with the two bullets you fired from this gun as well as the bullets you identified as having seen them previously and also last Friday? A. I placed them in my microscope and compared them and I found that both of these bullets were fired from this gun.

Q. I show you Ex. S 19 and ask you whether you will look at that please, and state whether you have seen that previously? A. Yes, sir.

Q. Did you make an examination of that bullet, Captain, to determine whether it had been fired from the— A. No, sir, I did not. I looked at it with a magnifying glass and it was too badly upset—

Q. What do you mean by too badly upset— A. It was misshapen by coming in contact with some hard substance which had split and distorted it so
10 you could not get a satisfactory examination.

Q. It would not be possible to state whether or not it was fired from that gun on account of its coming into contact with some hard substance? A. No, sir, there was plaster adhering to it and it had come in contact with some hard substance which had distorted it.

Q. Can you state what calibre the gun was from which that was fired? A. It is a 22 calibre cartridge, a short cartridge.

20 Q. Could you say whether or not this cartridge was fired from this gun? A. I could not say. I know it was a 22-calibre short.

Q. What can you say as to the other two? A. That one I can establish the make of it by the channel mark, by the crease around the bullet.

Q. As I understand from your examination of these two bullets, marked Ex. S 16 and Ex. S 17, compared with the two bullets of a similar character that you discharged from the gun, that those
30 two bullets marked Ex. S 14 and Ex. S 15, were discharged from the gun which is marked Ex. S 18. A. Yes, sir.

CROSS EXAMINATION

BY MR. HILLMAN:

Q. Captain, is a 22-calibre cartridge rare or a common size? A. It is common.

Q. There are a quite many of them manufactured. A. Yes, sir, there are a great many of them manufactured.

Q. And they are made by more than one concern. A. Yes, sir.

Q. About how many different manufacturers of this type cartridge are there? A. There are five in the United States.

Q. Five? A. Yes, sir.

Q. You said awhile ago something about the effect of rifling upon a bullet? A. Yes, sir.

Q. Is that weapon there rifled? A. Yes, sir.

Q. A rifle which has a longer barrel would have a tendency to make a more pronounced depression on a bullet than a short one, would it not? A. In 20 some cases it will and in others not.

Q. There is no rule about that? A. No, sir, it is a good deal the way the pressure of the amount of powder will force the bullet into it.

Q. Now, Captain, this bullet which I show you which I have taken out of the envelope Ex. S 15, that is not in the same condition as it was in the cartridge, is it? A. No, there is not half of the bullet there hardly.

Q. Tell us how you identified that as a bullet 30 fired from that revolver. A. I can set up the machine.

Q. No, I want you to tell me A. You mean—

Q. I am dumb and I want you to tell me. A. I set this bullet on the right hand base of the microscope on a stand. I set the test bullet on the left hand base.

Q. What do you mean by test? A. The test I fired. It is in my pocket.

Q. You took a bullet and fired it from this revolver and then you compared that bullet with Exhibit S-15, is that right? A. Yes, sir.

Q. And what point of similarity was there? A. Around the base of it there is a small portion only in length of the true rifling that is left by the barrel of this gun on the bullet. I fused them together and the marks left by the condition of this barrel—I am
10 saying the condition of it—this barrel is very rusty but it leaves true marks both of rust and rifling marks on the bullets.

Q. The fact that this barrel was rusted, did that indicate anything as to the length of time since it was fired? A. When that gun was brought to me the powder residue that was in the barrel was fresh.

Q. It was? A. Yes.

Q. What do you mean by fresh? A. It was black and showed it had been recently fired.

20 Q. What do you mean by recently? A. Within a short time.

Q. How long would you say? A. That is hard to say.

Q. How close can you tell? A. It was within a day or two of when it came to me.

Q. Now, there were three shells in there? A. Yes, sir.

Q. And you put other shells in and fired them? A. Yes, sir.

30 Q. Did you disturb those shells in any way? A. No, sir. No; I took the cylinder out and replaced them with the others. If you want to see it, take these (indicating).

Q. Now, Captain, you said that when you performed your tests you fired into cotton? A. Yes, sir.

Q. And that was for what reason? A. To preserve any marks on the bullet.

Q. Then, in other words, it is easier to determine whether the bullet is fired from a certain revolver if the bullet is not mashed up? A. Yes, sir.

Q. And when a bullet is mashed up and bent and flattened, is it not more difficult to determine whether it was fired from that revolver? A. Yes, sir.

Q. And as a matter of fact, one of the bullets that was brought to you, you refused to testify concerning? A. Yes, sir. 10

Q. Because it was so mashed up? A. Yes, sir.

Q. But you still adhere to your opinion that those two bullets, both of them, came from that revolver? A. Yes, sir.

Q. And the reason that you say that is because under the microscope you noticed certain points of similarity between these and between other bullets which you had fired from that revolver? A. Yes, sir.

Q. Now, the bullets that you fired from the revolver, where did you get them? A. From a box of cartridges. I have the box with me. 20

Q. Where did you get that box? Where did you get those cartridges? A. I have a great many cartridges at home and this is one of the boxes that I have.

Q. That is one of the boxes you have? A. Yes, sir.

Q. Would you say whether or not the bullets that you examined were from the same sort of cartridge as this (indicating)? A. Yes, sir; exactly the same. 30

Q. The same manufacture? A. Yes, sir. The cartridges that are in this (indicating), from the residue, I know was smokeless powder. Now, that's a smokeless cartridge powder (indicating.)

Q. Is there more than one smokeless cartridge powder manufactured? A. Yes; they all manufacture them.

Q. Then, you don't know who the manufacturer of those cartridges was? A. That are in there (indicating)?

Q. Yes. A. I can prove one that was made by that company in the microscope.

Q. How can you prove it? How can you prove one when you can't prove the others? A. I started
10 to tell you a little while ago, it was from the fusing of the knurling marks in the channeling in the microscope that brings them together and shows they are exactly the same width apart, and each company have a width that they use, and we can always determine what company it is from by the width of the knurling and the channeling in the microscope.

Q. Each one of them is different? A. Yes.

Q. I show you the bullet which has been marked Exhibit S-14. It is pretty badly broken and bent and
20 mashed, isn't it? A. Yes, sir.

Q. Notwithstanding that you could still identify it? A. Oh, yes, sir. There is one side of this that is very good. It shows parts of the two grooves in the whole landmark in it that are clear in the microscope, very clear, and shows the true markings made by the barrel of that gun.

Q. Does every gun make a distinctive mark on the bullet that is fired from it? A. Yes, sir.

Q. Every one? A. Yes, sir.

30 Q. How many guns do you suppose there are in the world? A. That's very hard to say.

Q. But every one which you have ever examined has been different from every one that you have examined? A. Yes. We have found some that were very, very close, but by studying it we find which one is the right one.

Q. Do you have any way of proving the truth of your investigation? A. By having you or anyone else look into the microscope with me. My microscope is made so you can look into it with me and see it operated.

Q. That is not exactly what I asked you.

MR. EASTWOOD: If the Court please, I think that is the answer, and that it is responsive.

THE COURT: I don't see any sense in arguing 10 about it.

BY MR. HILLMAN:

Q. You have made these deductions. You examine the bullet and come to the conclusion it has been fired from a certain gun or rifle or revolver. Now, how do you prove the actual truth of your opinion? A. By making the test from the gun and comparing that bullet in evidence with the test. 20

Q. But it is all part of the same test made by you? A. What's that?

Q. I said, it is all the test made by yourself? A. Yes, sir.

Q. That is the way you demonstrate it? A. Yes, sir.

Q. There is no other way of checking it up? A. I would be perfectly willing to catch it right here.

Q. I am not asking you that, Captain. I say, that is the only way you check it up? A. Yes, sir. 30

Q. Captain, do I understand you to say, that the rifling in each gun or revolver is different? A. Yes, sir; the marks left,—now, when the rifling is placed in the gun, it is done with a hook-shaped cutter, and it is steel cutting steel and every successive cut changes the edge of the cut some, and I have photographed cuts that planes it out. Now, they roll them up, and

I have unrolled them and have photographed them, and the photographs show where it breaks off in different places and changes in one cut after the other. They do change.

Q. I know they do change sometimes, but is there always a change? Is there a dissimilarity? A. Yes. It is wearing all the time. It is a wear, because it is steel cutting steel.

Q. And the variance is sufficiently marked for you to detect it? A. Yes, sir.

10 Q. Now, Captain, you say you account for the difference in the fact that the second time the cutting instrument is used, it is dulled a little bit, is that right? A. They are dulling all the time, yes, sir.

Q. Then, suppose two new ones are used? A. What's that?

Q. Well, now, suppose I make a rifle one day and I use a new tool? A. Yes.

Q. And then the next day I make another rifle and use a new tool? A. Yes, sir.

20 Q. Would there be any difference between them? A. There will be a difference, yes, sir. You won't get the cutting edges the same.

Q. You won't find the two exactly alike? A. No, sir.

Q. Then, in the first place, you start off by having every cutting tool different and then as they are used you still have differences? A. You get the variation by the wear; you have to get it.

30 Q. Captain, did you form an idea as to the force with which that revolver that would propel a bullet? A. Well, that's a very loose barrel, I wouldn't want to say it would shoot as strong as some others.

Q. Well, your opinion and your examination of that gun, it would not shoot very far? A. Well, I don't think it would, because I found discrepancies in it. The bullet doesn't go out real true.

Q. It was a cheap revolver, wasn't it? A. Yes, sir.

Q. And they are not supposed to carry very far, are they? A. They are not made to; no, sir.

Q. And with the 22-calibre bullet, 22 short, it wouldn't carry very far? A. Well, they do a lot of damage.

Q. That is not what I asked you. I said, it wouldn't carry very far? Will you answer that question, please? A. Of course, there isn't the force in this that a better make of revolver has. 10

Q. And there isn't the same force there would be in a weapon of larger calibre, is there? A. Oh, no.

Q. And there isn't the same force that there would be in a rifle? A. No, sir. There isn't very much volume in the powder that is in one of these. It is very small.

Q. A 22-calibre bullet or cartridge fired from a rifle would go out with much greater force than from that pistol, wouldn't it? A. Yes, sir; for the reason there is a space between the barrel and the 20 cylinder and you get a leak of gas there, where in the rifle you have the full force carrying it out, because it is all in one barrel.

Q. And the length of the barrel has something to do with it? A. It might some, but not with a real short cartridge like this (indicating).

Q. Captain, do you know whether or not revolvers of the general character as the one in question, whether or not they are made in quantities or mass production? A. Well, they do make a great many 30 of them; yes, sir, because these will sell for about—

Q. What did you say? A. These will sell in the factory at possible \$1.50. They are a very cheap pistol.

Q. And they are made apparently carelessly, are they not? A. Well, I wouldn't want to use it to shoot with.

Q. The same care is not expended on the manufacture on one of those as on a high priced weapon?

A. No, sir.

Q. Mass production, as it is called? A. Well, they make a great many of them.

RE-DIRECT EXAMINATION

BY MR. EASTWOOD:

10 Q. In making them in mass production, Captain, would that cause the difference that you have testified to in the rifling marks of the barrel? A. No, sir; it is being loosely made.

Q. Loosely made that causes the rifling marks? A. Oh, that causing the rifling marks?

Q. I am asking you if the fact that they are made in mass production, would that, in your opinion, cause different rifling marks in different ones of the same— A. No, sir. Of course, a barrel on one like
20 this isn't finished like a better grade of gun.

Q. Yes; and what is it that would cause the difference in the rifling of the barrel with that kind of a gun? A. It might be finished a little better than this one is (indicating).

Q. That is what makes the difference in the markings on it? A. Yes, sir.

Q. Captain, could you kill anyone with that gun if it was placed close enough to them? A. Yes, sir.

Q. Is there any doubt about it? A. None at all;
30 no, sir.

Q. Would it be possible, Captain, to kill some one with one bullet from that gun if placed a short distance from the left eye and the left temple and the bullet passing through the skull and lodging on the right side of the head? A. It would.

Q. So, even if it is loosely constructed, it is possible to kill some one with it? A. Yes, sir.

Q. You spoke of the powder in the bullets being smokeless powder? A. Yes, sir.

Q. Would that gun if fired close enough to a person leave any powder burns? A. It would; slight, not—there isn't very much volume to a little cartridge like one of these (indicating).

Q. But it would leave an area of powder burns around the area of the entrance of wound if fired close enough? A. Yes, sir; if the muzzle was held close enough. If you keep the muzzle of the gun away six inches, you don't get any burn at all. You get a little bit of black and you do get grains of powder that strikes the skin. Now, if the person were living, those grains of powder would produce a little purple mark where the powder strikes.

Q. You don't mean to say that if smokeless powder was used, it would not leave any powder burns if fired close to a person? A. No, sir. It would leave the smudge like on him.

Q. Have you at times examined the different kinds of cartridges that are manufactured? A. Yes, 20 sir.

Q. All of them? A. I guess I have. I have quite a collection. I have foreign bullets at home as well as domestic.

Q. I forgot to ask you, since 1919, when you left the New York Police, what your business has been?

A. I do this work altogether.

Q. You specialize in this and have been since 1919? A. Yes, sir.

30

RE-CROSS EXAMINATION

BY MR. HILLMAN:

Q. Captain, one question with regard to powder marks. Would that bullet fired from that revolver at a person leave any powder marks? A. Yes, sir.

Q. If it were fired from any distance? A. Not beyond six inches.

Q. If it were fired a distance of six inches, it would leave powder marks? A. You will get the grains of powder if it strikes on the face, you will get the grains adhering on the face, but if it is washed it will wash off beyond that.

Q. Well, would it make powder burns if it was fired a distance of six inches? A. A little—not much.

10 Q. Not much? A. No, sir.

Q. Suppose it were fired at a man who had a shirt on, would there be powder marks on his skin underneath that shirt? A. No, sir.

BY MR. EASTWOOD:

Q. As I understand it, Captain, if the gun were farther than six inches away, it would leave grains of powder, however, in the face or where it struck?

20 A. Yes, sir.

ANNA E. BADING, a witness produced on behalf of the State, being duly sworn according to law, upon her oath, testified as follows:

BY MR. EASTWOOD:

Q. Mrs. Bading, you are employed in the Burlington County Detectives' office, are you not? A. I am.

Q. How long have you been employed there? A. Almost 16 years.

Q. And during that time, Mrs. Bading, have you taken down stenographically the statements of persons that were interrogated? A. I have.

Q. Can you say how many you have taken? A. I guess probably thousands.

Q. On the 9th of October, 1935, did you see the defendants, Jacob John Ciemiengo and George Herman Hildebrand? A. I did.

Q. Where did you see them? A. In the jury-room on the third floor of the—on the 2nd floor of the court house.

Q. And Jacob John Ciemiengo was present and you saw him there; who else was present? A. Ellis H. Parker and yourself.

10

Q. Did you take a statement of Jacob John Ciemiengo? A. I did.

Q. Before that statement was taken, was any warning of any kind given to Jacob John Ciemiengo? A. There was.

Q. And what warning was given and who gave it to him? A. Detective Parker informed him of the charge when it occurred, and instructed him that he did not have to make a statement unless he wanted to, and any statement he made was voluntary and 20 of his own free will, and asked him if he wished to make a statement.

Q. When he asked him if he wished to make a statement, after that warning, what did he say? A. He said he did.

Q. And did he make a statement? A. He did.

Q. How did you take the statement down? A. Stenographically.

Q. You have your stenographic notes of the statement that was taken by you of the defendant Jacob 30 John Ciemiengo? A. I have.

Q. What time was that statement taken? A. 11:45 a. m.

Q. And how soon after you came into the room and saw Jacob John Ciemiengo there, did he commence to give the statement? A. Immediately.

Q. Were you in the room when he was brought in? A. I believe I was.

Q. And the statement was taken immediately? A. Immediately.

Q. Will you read your statement from your notes, please? A. I will.

Q. Before you do that, may I ask you, Mrs. Bading, was the defendant George Hildebrand in the room at the same time that this statement was taken from the defendant Ciemiengo? A. He was not.

10

MR. HILLMAN: To save time, if the Prosecutor will let me have a copy, I will be perfectly willing to have Mrs. Bading read it from the transcript.

MR. EASTWOOD: I have one copy here.

BY MR. EASTWOOD:

Q. Have you any extra copies that you can give
20 to counsel? A. I only have just the original. I don't have a copy of the onion skin copy of Hildebrand.

Q. Have you typewritten stenographic notes that—rather, have you made a stenographic transcript of your notes? A. Yes, sir.

Q. Do you have that? A. I have.

Q. Will you read it? A. (Reading) Statement
of Jacob John Ciemiengo, taken at the Court House,
Mount Holly, N. J., on October 9, 1935, in the pres-
30 ence of Howard Eastwood, Ellis H. Parker and Anna
E. Bading, at 11:45 A. M.

By—Ellis H. Parker. Stenographer—Anna E. Bading.

Q. What is your full name? A. Jacob John
Ciemiengo.

Q. How old are you? A. Sixteen (16).

Q. When were you sixteen? A. July 16, 1919.

Q. You mean 1935? A. 1935, I mean.

Q. Where do you live? A. Cedar Lane.

Q. Between Jacksonville and Bustleton? A. Yes, sir.

Q. How far off of Cedar Lane do you live? A. Why, it is—from the stone road it is about a mile from Jacksonville.

Q. My name is Ellis Parker, Chief of County Detectives and this is Mr. Eastwood, Howard Eastwood, Prosecutor of the Pleas and this is Mrs. Bading, stenographer, taking down what we are going to talk about. You, together with another fellow by the 10 name of George Hildebrand, are charged with having killed a man by the name of Herman Eilers, on Monday night, this week, October 7th. You don't have to make any statement unless you want to and any statement you make, must be of your own free-will and must be voluntary. Now, do you want to tell us exactly what occurred, as near as you can remember? A. Yes, sir.

Q. Go ahead? A. I ate supper at 6 o'clock. I left home about ten (10) minutes after, went up to 20 Scattergood's and got George Hildebrand and came down to Cedar Lane about a mile.

Q. Did you have an automobile? A. Yes, sir.

Q. Whose? A. Pop's.

Q. Your father's automobile? A. Yes.

Q. What kind? A. A Chevrolet Coach, 1927.

Q. Now, go ahead. A. We stopped down Cedar Lane about a mile and talked about this murder case, getting some money, so finally we got started, went down to Herman Eilers', pulled in the yard, got out 30 of the car, went on the porch. George Hildebrand opened the screen, I opened the door and Herman Eilers came toward the door and he asked us what we wanted.

Q. Did he know you? A. Yes, sir. I shot three times and he fell down. George Hildebrand searched

his two back pockets and then George said, "We better get going".

Q. Did he find anything? A. He didn't find anything. So we got in the car, went toward Burlington about two miles and a half and seen Baird Malseed and Norman Abrams parked along the road with a car. So we went on.

Q. Did you talk to them? A. Yes, talked to them about five minutes. So we went on into Burlington. I made a mistake, I forgot something.
10 George Hildebrand asked Baird Malseed and Norman Abrams for 10c and they said they didn't have any money, so George asked them for a cigarette and Norman Abrams gave us a cigarette, so we went on into Burlington to Schlam's Bakery and I got a half dollar's worth of bread, on credit, and which my mother told me to get and so George and I went to the tobacco store and had a five cent stamp and five cents. He asked Mr. Miller if he could give him a pack of "Wing" cigarettes. Mr. Miller said, "Yes",
20 so he gave him a pack of cigarettes. So George and I got in the car and came back home, that is my father's place, Joe Shemeley's and my sister was home and we talked for about an hour and George asked me whether I would take him home, so I told him "Yes" and I took him home and came back and put the revolver in the dining room bureau and went to bed. That is all.

Q. Did you shoot the man after he was down?

A. No, sir.

30 Q. Did you shoot at him three times? A. I shot at him three times.

Q. I show you a revolver and ask you if that is the revolver you used? (Is shown a revolver) A. That is the one.

Q. That is the one? A. Yes, sir.

Q. Where did you get it? A. My father gave it to me about a year ago.

Q. Had you planned or intended to do this before?

A. Yes.

Q. Tell me about it. A. George, he was short of money. When he lived with Herman Eilers, he was only getting forty cents (40c) a week and so he thought he would quit that job and go to Preidel's in Columbus. So one night he planned this out to get some money. He came down and George and I went over to Herman Eilers', we got afraid that he was going to shoot us, so we turned around and went back. That is all.

10

Q. Did you know that he had a gun in the house?

A. Yes, sir, a shot gun.

Q. Who told you? A. I shot it before and seen it.

Q. And George knew it? A. Yes.

Q. And when was that? A. That was last year. Last summer.

Q. That is last summer? A. 1934 I shot the shot gun.

Q. When did you plan to go there and rob him 20 before? When you went and got scared? A. Yes, that is the time.

Q. How long ago was that? A. That has been a year all right. It was in 1934.

BY PROSECUTOR EASTWOOD:

Q. Did you take your gun with you that time?

A. No, we didn't take it that time.

Q. Did you start out without this? A. Yes, we 30 thought we would get in the house while he is away, or asleep and get the money.

BY MR. PARKER:

Q. Going to rob the place? A. Yes.

BY PROSECUTOR EASTWOOD:

Q. Did you go as far as the place that time? A. Yes.

Q. Was Eilers there? A. No. Turned around.

Q. Got cold feet and went back? A. Yes.

BY MR. PARKER:

Q. You and George had been in his home together, hadn't you? A. Yes.

Q. How many times? A. A good many times, I guess. We have been there, playing pinochle and doing such things, talking.

Q. Did you or George know he kept money? A. I didn't know how much money he had, or where he kept it, but George Hildebrand knew he always had money.

Q. Did he tell you so? A. Yes.

Q. Tell you where he kept it? A. No. Didn't tell me where he kept it.

Q. This man lived alone? A. Yes.

BY PROSECUTOR EASTWOOD:

Q. The night this occurred, John, Monday night, did George know you had this gun with you? A. I had told him. He hadn't seen it.

Q. Didn't he see it in your hand before you fired it? A. Yes.

Q. When did he first see it that night? A. When I did fire.

Q. Say anything to you when he saw the gun in your hand? A. No.

BY MR. PARKER:

Q. When you went there, did you go to kill him and get the money? A. Yes, sir.

BY PROSECUTOR EASTWOOD:

Q. Did you and George, in talking it over, say anything about killing him if you had to, in order to get the money from him? A. Yes.

Q. What did you talk about when you planned it that night? A. We planned it if we couldn't get it some other way, we would have to shoot him, to get it.

BY MR. PARKER:

10

Q. And he knew both of you very well? A. Yes, sir.

Q. And was there a light in the house? A. There wasn't.

Q. Was it early in the evening? A. It was around half past six. From quarter to half past six, yes, sir.

Q. Did you search in the house for money or anything? A. No, sir.

20

Q. What did he say to you when he opened the door? A. He asked us what we wanted.

Q. And then what did you say? A. I shot.

Q. You shot him? A. Yes, sir.

BY PROSECUTOR EASTWOOD:

Q. Did either of you answer him and tell him what you wanted? A. No, sir.

Q. Did he have any gun in his hand at that time? 30
A. I didn't see any.

BY MR. PARKER:

Q. Where were you born? A. In Burlington.

Q. How many children are there in the family?
A. Six.

Q. Give us their names? A. Albert, Mary, Sophie, Blanche, myself and my sister Wanda.

Q. What is your father's name? A. Joseph.

Q. And your mother's name. A. Catherine.

BY PROSECUTOR EASTWOOD:

Q. How long have you known Hildebrand, John?

A. About three or three and a half years.

Q. Know any of his people, where he comes from?

10 A. I do not. Never seen them.

BY MR. PARKER:

Q. How long have you known Mr. Eilers? A. About four or four and a half years.

Q. How long have you lived out there with your father, at this place? A. About seven (7) I guess.

BY PROSECUTOR EASTWOOD:

20

Q. Where did you get the bullets from for this gun, John? A. When my father gave me the gun last year, that is 1934, I bought two boxes to target with and had these three left.

BY MR. PARKER:

Q. Where did you buy them? A. In Lippincott's hardware store.

30 Q. Burlington? A. Yes.

Q. How much did you give for them? A. Twenty cents (20c) a box.

Q. Anybody with you when you bought them? A. No, sir.

Q. Did you practice much with the revolver? A. Yes, sir, at tin cans down on the ground.

Q. This story that you have told us, is it the truth?
A. It is the truth.

Q. And you have told it of your own volition, haven't you? A. Yes, sir.

Q. What grade are you in, in school? A. Sixth.

Q. Do you go to school now? A. I don't.

Q. When did you quit school? A. About two years ago.

BY PROSECUTOR EASTWOOD:

Q. What school did you attend, John? A. Roeb-
ling.

Q. Florence Township school, at Roebling? A.
Yes, sir.

BY MR. PARKER:

Q. Do you live in Florence Township? A. Yes,
sir.

Q. Were you ever to Mr. Eilers' house by your-
self? A. No, sir.

Q. Whenever you went there, you went with
George? A. Yes, sir.

Q. How many days previous did you and George
talk it over about doing it? A. Just Monday night.

Q. That Monday night? A. Yes, sir.

Q. Who suggested it, you or him? A. George.

Q. How did you come to take the gun with you?
A. He suggested and I thought we better take the
gun if he is going, because no use of coming back 30
home again.

Q. You went to Scattergood's to get him? A. Yes.

Q. Had you seen him before you went to Scatter-
good's to get him that day? A. I certainly had not.

Q. And you went home and got the gun? A. I
got the gun when I left home.

Q. Before you went after him? A. Yes, sir.

Q. And you had talked about doing it before that?
A. Yes, sir.

BY PROSECUTOR EASTWOOD:

Q. Did you say George needed some money? A. Yes, sir.

Q. What for? A. Clothing.

Q. Know what he was getting from Scattergood's?

A. Yes.

10 Q. How much was he getting? A. \$6 a week.

Q. That was beside his board, was it? A. Yes, sir.

BY MR. PARKER:

Q. Did you decide that whatever money you got, to divide it up? A. Yes.

Q. And now, Mrs. Bading, subsequent to the taking of the statement of Jacob John Ciemiengo, did you take down stenographically the statement of George Herman Hildebrand. A. I did.

Q. When and where was that statement taken?

A. That also was taken in the grand jury room on the 2nd floor of the court house.

Q. At what time. A. At 12.10 noon.

Q. Who were present? A. Ellis H. Parker, yourself, and George Herman Hildebrand, and myself.

Q. Before the statement was taken of George Herman Hildebrand, was he given any warning of any kind. A. He was.

Q. By whom? A. By Detective Parker.

Q. What warning was given to Hildebrand. A. He was informed of the charge against him and when it was committed and that he did not have to make a statement unless he wanted to but anything he might say might be used against him and must be of his own free will and voluntary.

Q. How soon after he arrived in the room where Mr. Parker, yourself and I were gathered did you commence to take the statement of George Herman Hildebrand. A. Immediately.

Q. And is the man you took the statement from, is he the same one that is here in court as one of the defendants? A. He is.

Q. How did you take this statement? A. Stenographically.

Q. Have you made a typewritten transcript of it.

A. I have.

10

Q. Will you read it, please?

THE COURT: We will take a short recess at this time.

ANNA E. BADING, direct, resumed the stand.

DIRECT EXAMINATION

20

BY MR. EASTWOOD: (continued)

Q. Mrs. Bading, will you proceed to read the statement, of the defendant, George Herman Hildebrand? A. "Statement of George Herman Hildebrand, taken at the Court House, Mount Holly, N. J., on October 9th, 1935, in the presence of Howard Eastwood and Ellis H. Parker, at 12.10 noon. By—Ellis H. Parker. Stenographer—Anna E. Bading.

Q. What is your full name? A. George Herman Hildebrand.

Q. How old are you? A. 26.

BY PROSECUTOR EASTWOOD:

Q. Where do you live, George? A. Burlington-Columbus Road.

Q. And do you live with some one there? A. I work on a farm.

Q. Whose farm? A. E. R. Scattergood.

Q. How long have you been working there with him? A. A little over a year.

Q. What pay do you get from him? A. \$5. a week.

Q. That is beside your lodging and board? A. Yes.

Q. My name is Parker, Ellis Parker, Chief of Detectives and this is Mr. Howard Eastwood, the Prosecutor and this is Mrs. Bading, stenographer, taking down what we are talking about. A. Yes, sir.

Q. You, together with this other Boy, Ciemiengo, have been arrested charged with the killing of Herman Eilers over in Florence Township, on Cedar Lane Road, on Monday night, of this week. You don't have to make any statement unless you want to, and any statement you do make, must be of your own free-will and voluntary. Now, do you want to tell us just what occurred in your own way? You used to live there with Mr. Eilers didn't you? A. Yes, sir.

Q. How long has that been? A. 1933.

Q. And how long did you live there? A. About seven (7) months, seven and a half months.

Q. Do you want to go ahead and tell us just what happened that night, as near as you can remember? I understand you worked at Mr. Scattergood's? A. Yes.

30 Q. Go ahead. A. Well, Jack Ciemiengo came around, came over about quarter after six in the evening and we went down Cedar Lane, when we went in the house and when he came out, why Jack had the gun and he shot him.

Q. When he came to the door, you mean? A. Yes.

Q. And then what happened? A. Then I searched his pocket and we didn't find anything, and we left. And after that we went to Burlington, and then we came back home.

Q. Who did you see on the way to Burlington.
A. We seen two boys.

Q. Who? A. Baird Malseed and Norman Ab-rams.

Q. Talk to them? A. Yes, sir, we stopped there for awhile and I asked him to loan me a dime, I wanted to get some cigarettes in Burlington 10

Q. Did they let you have it? A. No, they didn't. Said they didn't have any and we went on. Stopped for about five minutes, just pulled along side of them and talked to them and we left and when we came back from Burlington, I went over to Ciemiengo's home.

BY PROSECUTOR EASTWOOD:

Q. Stay there a while? A. Stayed for a while 20 and talked—one of his sisters were there and we talked about different things and then Jack took me to Scattergood's and he went home.

Q. Where did you stop in Burlington? A. We stopped at the Bakery shop and cigar store.

Q. Is that Schlam's Bakery. A. Yes.

Q. Whose cigar store? A. Miller's.

Q. Where is that? A. It is about, I think it is High street, or Broad Street—the street that the rail-
road tracks is on. 30

BY MR. PARKER:

Q. Had you talked this over before you went there? A. No, we didn't talk anything over about shooting him. We had talked over to see if we could get some money.

Q. You went there to rob him? A. Yes.

Q. And had you gone there before to do it any time? A. We went there once before and see, he used to leave his money in the house and we figured going in the house when he wasn't home and see if we could get some money.

Q. How long ago was that? A. That was about three months ago, I guess. Three or four months ago and when we went down that time we didn't go in, he wasn't home, but we didn't go in. We changed
10 our mind and thought we better not do it.

BY PROSECUTOR EASTWOOD:

Q. Did Jack have the gun with him at that time?

A. No.

BY MR. PARKER:

Q. Did you know he had the gun with him this
20 night—the Monday night? A. He told me about it.

Q. And you saw it? A. I didn't see it until he had it there and shot him.

Q. When was it he told you he had the gun? A. It was on our way down.

Q. What did you tell him you wanted the money for? A. Well, we both needed some clothes and little things and that is why we wanted to get some money.

Q. On the way down, when Jack told you he had
30 the gun, was there anything said by you or him, if you had to, you would use the gun on him in order to get the money? A. No.

Q. Didn't you both agree if you had to, you were going to shoot him to get it? A. Well, we didn't intend to kill him. We didn't agree on it but when we got there, he came out and he pulled out the gun and shot him.

Q. Well, this man knew you both, didn't he? A. Yes.

Q. Did he speak to you when you went there? A. No.

Q. Ask you what you wanted? A. Well, when Jack opened the door he was coming out and didn't say anything.

BY PROSECUTOR EASTWOOD:

Q. Didn't he say, "What do you want?" A. See,¹⁰ he didn't recognize us first. It is dark in there, only has an oil lamp in the room.

Q. Did you have any covering over your faces, either one of you? A. No.

BY MR. PARKER:

Q. Had an oil light in the other room? A. Yes.

BY PROSECUTOR EASTWOOD: 20

Q. How many times did Jack shoot the gun? A. Three times.

Q. Did he shoot him after he was down? A. No, he didn't shoot him after he was down. He shot them all at once, I guess.

Q. After you searched his pockets, did you move his body? A. No.

Q. Just let him stay there where he had fallen? A. Yes, sir. 30

Q. Did you have to turn him over to search his pockets? A. No.

BY MR. PARKER:

Q. When you lived with him, you knew he carried money, didn't you? A. Yes.

Q. You have seen him have money, didn't you?

A. Yes.

Q. And you told Jack about it, didn't you? A. Yes, I told Jack about it and Jack knew he had money.

Q. You both had been there and played cards with him? A. Yes.

Q. Several times? A. Yes, when I was living there we played quite a few times.

Q. After you went away, you went back and
10 played cards? A. Yes, after I went away we used to go down there and talk to him, but we played cards only once, but not Jack.

Q. You talked several times, didn't you, to Jack, about getting ahold of some of his money, he always had money around there. A. Yes, I told Jack he had money in the house. Jack, he went there and had some money changed once or twice and he told me he certainly had a lot of money on him.

Q. Where were you born? A. In Germany.

20 Q. Where? A. Freiburg.

Q. Have you got any relatives living in this Country? A. No.

Q. When did you come here? A. November. October or November, 1928.

Q. Don't you remember the exact date? A. A few days before the Presidential election in 1928.

Q. What boat did you come on? A. Mauretania.

Q. No relatives at all in this country? A. No.

Q. Where did you land? A. New York.

30 Q. Where did you first go to live? A. Albany.

Q. When did you come down this way? A. I stayed in Albany for about a year and then went to Schenectady, to the General Electric, and worked there a while and then came to Philadelphia, and from Philadelphia I went to Paulsboro, in South Jersey and worked for I. P. Thomas Fertilizer people.

Q. How long did you work there? A. A year or a little over a year, and from there—they closed the place down and I went to Philadelphia and tried to get a job and couldn't get a job there and so I came down to Columbus and got a job in George Preidel's on the Columbus-Hedding Road.

Q. Is that when you got to know Mr. Eilers? A. Yes, sir.

Q. What year was that? A. When I started there with Mr. Preidel?

Q. Yes. A. Must be 1931. 1930 or 1931. I stay- 10
ed there for close to two years, then Mr. Eilers came and he didn't like it so well there and he told me about going back to his place on Cedar Lane and both together starting in the chicken business.

Q. How much did he pay you? A. He didn't pay me anything, he made an agreement before we started, that he would put up the money, invest for equipment and baby chicks and if he would make any profit on it, I was supposed to get half—fifty-fifty. 20

Q. How long did you stay there? A. I stayed there from March, 1933 until December.

BY PROSECUTOR EASTWOOD:

Q. The same year? A. Yes.

Q. And then where did you go? A. Then I went to Preidel's on the Columbus-Hedding Road. I left there after a few months and went to live with Ciemiengo's and worked all summer on John Moller's 30
farm, on the Columbus-Burlington Road and then I got my job with Mr. Scattergood.

Q. Your parents living in Germany, Herman? A. Yes, sir.

Q. Any brothers or sisters. A. One brother and three sisters.

Q. What is your father's name? A. Herman Hildebrand.

Q. His address is what in Germany? A. Silesia, Germany.

Q. Are you known as Junior? A. No, my name is George.

Q. What is your mother's name? A. Loni.

Q. Your brother's name? A. Gerhart.

Q. Your sister? A. One of my sister's is Elsie, Mia and Ruth.

10 Q. What grade were you in, in school? A. I went to public school, and then I started to learn a trade as a mechanic and went to school at night—three times a week.

Q. In Germany? A. Yes, sir.

Q. Did you complete your course as a mechanic?

A. Yes, sir.

Q. What trade? A. Machinist.

BY MR. PARKER:

20

Q. Then, if I understand you, you and Jack went down to Herman Eiler's with the intention of robbing him. A. Yes.

Q. And Jack, when he opened the door, shot him? A. Yes.

Q. And you went through his pockets? A. Yes.

Q. You didn't find no money? A. No.

Q. Did you search the house? A. No.

Q. Why? A. I didn't want to stay there any

30 more. Told him we better go and leave.

Q. Did you get scared? A. Yes, sir.

Q. Is this story you have told us, true? A. Yes, sir.

BY PROSECUTOR EASTWOOD:

Q. Did you see the gun in Jack's hand before Mr.

Eilers came to the door? A. He pulled it out, yes, sir.

BY MR. PARKER:

Q. Would you know the gun if you saw it? A. I know the gun he had over at his place, yes.

Q. Did you ever shoot it? A. I did.

Q. I show you a gun. Is that the gun? (Is shown gun) A. Yes.

Q. And that is the gun he had Monday night when 10 he shot Mr. Eilers? A. Yes.

Q. How many times did you ever shoot it? A. About ten (10) times. Ten or fifteen.

Q. When was the last time you shot it? A. Last summer.

Q. Could you hit anything with it? A. No.

Q. Did he have the gun when he came after you at Scattergood's, or go back to his house and get it? A. He had the gun.

Q. He told you he had it? A. Yes, he told me 20 he had it.

Q. And that is before you went down to Herman's? A. Yes.

Q. To rob him? A. Yes.

Q. What were you going to do with this money when you got it—divide it up? A. Yes.

Q. Each take half? A. Yes, sir.

Q. How much did you think you would get? A. Well, Jack told me he went down about three weeks ago to change a \$20 bill, and said he had about two 30 or three hundred dollars in his pocket.

Q. And you knew when you lived there he carried money on his person, in his pockets? A. Yes.

Q. And you told Jack that? A. I did.

Q. Mrs. Bading, I hand you a 22 calibre revolver marked Ex. S 18 and ask you whether or not that is the gun that was shown to the two defendants Jacob

John Ciemiengo and George Herman Hildebrand as referred to in each of their statements as you have read them. A. That is the gun.

Q. And is that the gun that they both identified as the one that was used to shoot Herman Eilers? A. It is.

MR. EASTWOOD: I offer the two statements in evidence.

10 THE COURT: They have been read into the testimony.

MR. HILLMAN: They don't go to the jury.

THE COURT: I don't think so.

MR. EASTWOOD: We have other statements signed by them which have been admitted in evidence, I thought it might be helpful to the jury to
20 compare them.

THE COURT: I don't think it is proper to present an unsigned statement to the jury.

CROSS EXAMINATION

BY MR. HILLMAN:

Q. Mrs. Bading, was there any conversation in your presence before you started to take these state-
30 ments. A. There was not.

Q. Have you everything in your notes from the time you came into the room? A. I have.

Q. There was not greeting or salutation or anything of that sort. A. No.

Q. Did Mr. Parker have with him any statements which these young men were alleged to have made before the State Troopers. A. He did not.

Q. Did he have any paper with him? A. He did not.

Q. Do you know whether or not he had seen that paper. A. I know he had not.

Q. How do you know? A. We waited all the day previous to take these statements, but the men were not brought down until late that afternoon and they were taken immediately to the jail and the statements were not taken until 11.45 the next morning. I know we had not received any statements prior to that time from the State Police. 10

Q. Did you see them later on? A. I know there were statements, but I didn't see them.

Q. Do you know whether Mr. Parker had seen them. A. I don't think he had, because they were delivered later.

Q. Do you know whether Mr. Eastwood had seen them. A. I don't know.

Q. He did not have them in the room. A. He did not have them in the room.

Q. And everything that was said there was re- 20
corded by you in this transcript. A. Yes, sir.

MR. HILLMAN: That's all.

ELLIS H. PARKER, a witness produced on behalf of the State, having duly affirmed, according to law upon his oath testified as follows:

DIRECT EXAMINATION

30

BY MR. EASTWOOD:

Q. Mr. Parker, you are Chief County Detective of Burlington County? A. Yes, sir.

Q. And have been for how many years? A. Forty-two.

Q. Were you present when the statements just read by Mrs. Bading were taken of the two defendants, Jacob John Ciemiengo and George Herman Hildebrand. A. Yes, sir.

Q. Prior to the taking of these statements had you seen any statements taken by the New Jersey State Police. A. I have never seen them as yet until they was read here today.

Q. You had not seen them that day before you took your statements? A. No, sir.

10 Q. Did you know when you took those statements what were in the statements taken by the State Police? A. Positively, no.

CROSS EXAMINATION

BY MR. HILLMAN:

Q. Didn't you know there had been a statement made by them before the State Troopers? A. I did
20 not, no.

Q. Had you been told that? A. I was not.

Q. You didn't know there had been anything of the kind. A. No, sir.

Q. Where did you first see these young men. A. I sent over to the jail for them. I first asked the Prosecutor, when they got here, when he would be ready for them and he said not before eleven o'clock.

Q. What time did they arrive here, if you know? A. They arrived as quick as—

30 Q. What time did they get to the jail. A. They got to the jail that evening, but I had gone away.

Q. That is the afternoon of the 8th. A. Yes.

Q. And you took this testimony on the 9th. A. We took this testimony on the 9th in the morning.

Q. Did you talk to them at all after they came in to the grand jury room? A. No, sir.

Q. You didn't have anything to say to them at all?

A. No.

Q. Do you know whether anybody in your office had had anything to say to them? A. No, I don't think they did, unless when my officers were over there when they was arrested they may have said something to them.

Q. But you yourself did not talk to them before.

A. No.

Q. You have not done any work in this case? A. What did you say?

10

Q. You have not done any work in this case? A. No; I just directed it.

Q. What did you say? A. I directed it.

CLINTON ZELLER, a witness called on behalf of the state, being duly sworn upon his oath, testified as follows:

20

BY MR. EASTWOOD:

Q. You are a member of the Burlington Detective force? A. Yes, sir.

Q. And how long have you been connected with the detective department of this county? A. Five years.

Q. Were you at the home of Herman Eilers on the night of October 7th last? A. I was.

Q. What time did you arrive there? A. Ap- 30 proximately about 10 minutes after eight.

Q. I show you what purports to be a single barrel shot gun. I ask you if you have seen that before? A. I have.

Q. Where did you first see it? A. First saw it in back of the kitchen door in the home of Herman Eilers.

Q. As related to the position of the body of Herman Eilers, what door was it? A. The back door leading into the kitchen. Herman Eilers' body was right what I would say—if the body was north of that door, this gun was behind that door and would be south then.

Q. I show you a photograph marked Exhibit S-4 and ask you whether you can indicate on that photograph to the jury the door to which you are referring?

A. Yes, sir. This door right here leading into the—
10 this is the back door leading into the kitchen (indicating); right back of that door.

BY A JUROR:

Q. Is that the door (indicating)? A. That's right. The door opens inward toward the house.

BY MR. EASTWOOD:

20 Q. Did you examine the gun at the time? A. Yes I did.

Q. Was it loaded? A. It was.

Q. What did you do with the shell that was in it? A. I took the gun out in the yard and then opened it up to see if it was loaded, and as I opened it up the shell flew out and hit me on the shoulder, and I picked it off the ground and put it in my pocket.

Q. Have you the shell that you took from the gun? A. I do.

30 Q. Will you produce it, please? A. (Witness complies).

Q. In whose possession have the gun and the shell, to which you have just directed your testimony been since that time? A. It has been in my possession. I brought it home in my car that night.

MR. EASTWOOD: If the Court please, I offer the gun and the shell in evidence.

MR. HEILBRON: If the Court pleases, I don't see what evidential value they have. There is no question about this shot gun. I don't see what evidential value it has in this case.

MR. EASTWOOD: Except it is corroborative of statements made by the defendants that they went there with a gun prepared to meet the situation, because they knew that the decedent had a shot gun. I think one of them testified he had fired it.

THE COURT: It will be admitted for whatever value it may have.

(Shot gun marked Exhibit S-21 and the shell S-22)

CROSS EXAMINATION

20

BY MR. HILLMAN:

Q. Mr. Zeller, who was there when you got there?

A. Chief Griffith of the Florence Township police department, Coroner Greene, Trooper Caisse and Trooper Geren.

Q. How long did you stay? A. I stayed until approximately a few minutes after 11 o'clock.

Q. Had the body been removed before you left?

A. I went with the body to the morgue in the hearse. 30

Q. How far was the body from the door, the entrance door of the kitchen? A. Well, it was part way in the doorway, I would say.

Q. The door which leads out on the porch, that door? A. No; the doorway leading into the kitchen. Right next to that doorway was where the body was, according to those photographs (indicating).

Q. That is the door between the two rooms, is it not? A. No; the door leading into the kitchen.

Q. From outside? A. From outside.

Q. Was the door open when you arrived there or closed? A. When I arrived there the door was open at that time.

Q. Do you know if Mr. Griffith had a newspaper there? A. No; I didn't see one there. I can't recall it.

Q. Did you see a newspaper in his car? A. No; 10 I didn't watch for such.

Q. Did you see anybody take a newspaper from his car? A. No.

Q. Did you examine that body? A. No; I made no examination other than I could tell by looking at it the man was dead. I made the suggestion that nobody touch it until the photographers could get there.

Q. Until who? A. The photographers could get it.

Q. What time did they get there? A. I can't 20 say. I could only estimate, probably.

Q. How long after? A. Well, I would approximate it about 9 o'clock to 9:30.

Q. You didn't touch the body at all? A. Yes; I did. I took the back of my left hand and just put it up against his hand; that's all.

Q. Was the hand cold? A. Yes; the hand was cold. He was dead. I could tell there was no life in it.

Q. When did you do that? A. When I first 30 walked in the room. I knew, unconsciously, the man was dead, and I just put the back of my hand on the back of his hand.

MR. EASTWOOD: As I understand, if the court please, the photographs, as well as the bullets and the gun have been offered in evidence.

THE COURT: I understand they have all been offered and admitted.

MR. EASTWOOD: And the signed statements of the State Police, I think they were all introduced and admitted as exhibits.

THE CLERK OF THE COURT: That's right; 16 and 17.

MR. EASTWOOD: If the Court please, that closes 10 the state's case except we move that sometime before the case is concluded that the jury be permitted to visit the scene of the crime. I think it might be helpful to the jury in the light of all the testimony that has been given here.

THE COURT: Do you suppose it would save time to go now? How far is it?

MR. EASTWOOD: It is only about six miles from 20 here, I understand. I think if the jury—if your Honor would want to adjourn the session now and permit them to, they would be willing to go. They would still have plenty of daylight.

THE COURT: Would the sheriff be able to furnish sufficient cars?

THE SHERIFF: I think so.

THE COURT: How many are there—14. They 30 should have an officer in each car, shouldn't they?

MR. EASTWOOD: Yes; I think there should be.

THE COURT: Do either counsel for the defense desire to go along?

MR. HILLMAN: Mr. Heilbron will go along.

THE COURT: So that there won't be any misunderstanding, the jury is just to examine the premises on their own initiative and not ask any question of anybody or discuss the case among themselves as they go through. They may observe the premises simply for the location of the doors and things like that. I think we had better throw in a couple of more constables, because there should be one in each
10 car.

MR. EASTWOOD: I think so.

THE COURT: Do you think a bus would be better?

MR. EASTWOOD: I think so.

THE COURT: There are—there is one more
20 question. The jury have requested that they be allowed to attend the movies.

MR. HILLMAN: I think that is a very good idea.

MR. HEILBRON: I have no objection, your Honor.

MR. EASTWOOD: I have no objection, if the Court pleases, but I think the character of the picture ought to be determined before they see it. I recall a case that was set aside because the jury visited a movie and the character of the picture was such that the case had to be tried all over again. There is a decision of the Court on that and I think the character of the picture should be determined first.
30

THE COURT: Do you understand what the character of the picture is?

MR. EASTWOOD: I understand it is "Dr. Socrates", which is a gang picture here at Mt. Holly. I have no objection to it, but with the expense that is involved in a case like this, there should be no cause for any necessity for a retrial.

THE COURT: No, most of the jury thinks they 10
do not want to go.

MR. EASTWOOD: There may be pictures in some other community of a different character.

THE COURT: Well, if we give them an automobile ride, maybe they will be satisfied. The Court is about to adjourn and the officers may remove the prisoners. The audience will remain seated.

(Adjourned until Wednesday at 10 o'clock a. m.) 20

COURT OF OYER AND TERMINER

STATE

vs.

JACOB JOHN CIEMIENGO and
GEORGE HERMAN HILDE-
BRAND,
Defendants.

On Indictment for
Homicide.

10

Mount Holly, N. J., November 20th, 1935

TESTIMONY

BEFORE HON. FRANK A. HENDRICKSON, JUDGE,
AND A JURY.

20

(Court reconvened at 10.10 A. M. November 20th,
1935)

MR. EASTWOOD: If the Court please, yesterday
afternoon when the jury was at the scene of the
crime there was a police dog there. I have discussed
30 the matter with counsel and I believe they are agree-
able to stipulating that at the time Mr. Eilers lived
there, at the time of his death, he had no dog at all,
and that this dog was brought there since by the
caretaker.

THE COURT: That will be stipulated on the
record.

MR. EASTWOOD: The State rests.

THE COURT: The defense may proceed.

WILLIAM K. SAMPSON, witness produced on behalf of the defendant, being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION

10

BY MR. HILLMAN:

Q. Mr. Sampson, where do you live? A. Cedar Lane.

Q. You are a farmer? A. Yes, sir.

Q. How long have you lived there? A. About nine years.

Q. Were you acquainted with Herman Eilers in his life time. A. As long as he lived there, yes. 20

Q. How long did he live there? A. About eight years.

Q. How far is his residence from your farm? A. Right across the road.

Q. From your place, can you see over about the Eilers place? A. Yes.

Q. Did you go over to Mr. Eilers' place on the evening of October 7th, 1935? A. Yes, sir.

Q. In whose company were you A. (No answer) 30

Q. Who went with you? A. Mr. Malseed, his son, Skip Griffith and my son, and I don't know, one or two of the girls.

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

Q. What did you see in the house? A. I seen him laying there in the doorway.

Q. By him you mean Mr. Eilers? A. Mr. Eilers.

Q. Did you look at the body? A. I just looked at him when I went in.

Q. What, if anything, did you notice about any blood on his face. A. I didn't see any.

Q. Any at all? A. No, sir.

Q. Was there any blood running from his wounds?

MR. EASTWOOD: Object, he has already said he did not see any blood.

10

THE COURT: I will permit him to answer although it is practically the same question.

Q. Was any blood running from his wounds? A. No, sir.

Q. What did you notice about the condition of the room, there, if anything? A. The room was all right.

Q. Was there a stove in that room? A. Yes, sir.

20 Q. Was there any fire in the stove? A. No, sir.

Q. Did you examine the stove, put your hand on it? A. Yes, I guess I did. I was up against it, yes.

Q. Was it warm or cold. A. Cold.

Q. Was there any lamp in the room? A. Lamp?

Q. Yes. A. Yes, sir.

Q. Did you light it or was it lit while you were there? A. No, sir.

Q. Did you examine the lamp? A. No, sir, I didn't.

30 Q. Did you see Mr. Eilers around the place during the day of October 7th? A. No, sir.

Q. You looked over there? A. Yes, sir.

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

Q. Did you notice anything about the chickens on Monday? A. I only seen a few out on Monday.

Q. I understand he had a chicken yard there? A. Yes.

Q. And he had a chicken house or coops? A. Yes, sir.

Q. And ordinarily the chickens were fastened up? A. Yes, sir.

Q. Did you see any chickens around there, any of them, on Monday? A. Only a few.

Q. Only a few? A. Only a few.

Q. Do you know who took care of the chickens on the following day? A. Well, I guess Mr. Malseed did.

Q. Did you go there with him? A. Yes, sir. 10

Q. What did you notice about the chickens?

MR. EASTWOOD: That is objected to, if the Court please, the following day being too remote from the time of the alleged crime.

MR. HILLMAN: I want to show what the condition of the chickens was the following day.

MR. EASTWOOD: The chickens are not alleged 20 to have had anything to do with the crime, are they? I think it is irrelevant and too remote.

THE COURT: I will permit him to answer, if counsel can connect it up.

BY MR. HILLMAN:

Q. What was the condition of the chickens the next day, on Tuesday? A. I didn't notice anything 30 about them.

Q. Were they fastened up? A. Yes, sir.

MR. EASTWOOD: That is objected to. He said he didn't notice anything about them.

THE COURT: I will permit him to answer the question.

BY MR. HILLMAN:

Q. What, if anything, did you do for the chickens?

A. Well, we put in some water and put some feed in.

Q. Did they have any water? A. No, sir.

Q. How about feed? A. No, sir; they didn't have no feed.

Q. How did they appear, hungry or not? A. Yes, sir.

10

MR. EASTWOOD: That is objected to, and I move that it be stricken out.

THE COURT: I will sustain that objection.

The defendants pray an exception to the above ruling of the Court.

Exception allowed; let it be sealed and it is signed
20 and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

BY MR. HILLMAN:

Q. Did you gather any eggs? A. A few.

Q. Anyone help you? A. Yes, sir.

Q. Who helped you? A. Mr. Malseed and his son.

Q. What time did you gather the eggs? A. I
30 don't know.

Q. Well, about what time? A. I don't know—
along about seven or eight, I guess.

Q. In the morning? A. No; at night.

Q. What did you say? A. At night.

Q. On Tuesday night? A. Yes.

Q. Did you look for any eggs when you went over
there Tuesday morning? A. No, sir.

Q. Do you know whether Mr. Malseed did or not?

A. No, sir.

Q. Was there any way that you could see where the chickens could have gotten out of the coop? A. No way. The only way where the wire was fastened across the window, it wasn't nailed down at the bottom, and they could get underneath; that's the only way.

Q. Did you see any place of that kind? A. There was no place, no. That was the only place they could come out. 10

Q. Did you see any place where the wire was not fastened? A. Yes; where the window was.

Q. Yes? A. Yes; that's where they could get out.

Q. Do you know Jacob Ciemiengo? A. I have known him; that's all.

Q. How's that? A. I know him.

Q. How long have you known him? A. Oh; I don't know; a few years.

Q. You have children yourself? A. Yes, sir.

Q. And some of your children are about his age? 20
A. Yes, sir.

Q. Did he ever come over to your house there?

A. No, sir.

Q. Did he and your children go to school together? A. They did when they were small—yes.

Q. Are you acquainted with the young man's reputation in your community for peace and good order? A. No, sir.

Q. Ever hear anything against him? A. No, sir. 30

MR. EASTWOOD: If the Court please, that is objected to. He said he was not acquainted with him.

THE COURT: Objection sustained.

BY MR. HILLMAN:

Q. Do you know Hildebrand? A. Not very well.

BY MR. HEILBRON:

Q. Do you know his reputation for peace and good order in the community? A. No, sir.

Q. You say you don't know George Hildebrand very well? A. No, sir.

CROSS EXAMINATION

BY MR. EASTWOOD:

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Q. Mr. Sampson, you don't mean that you went over there first to Eilers' house that night with "Skip" Griffith, do you? A. There was Mr. Malseed and his son, my son, Skip Griffith, and we went over there in the house then.

Q. Did you wait for Skip Griffith before you went in? A. Yes, sir.

Q. And the others waited for Skip Griffith before you went in the house? A. Yes, sir.

20 Q. What time were you notified that something had happened over there by Mr. Therrien? A. A quarter after seven.

Q. How long did you wait before Skip Griffith arrived? A. Well, we called up—we called up Mr. Malseed, and we called up the State Troopers, and we called up Skip Griffith. It was twenty-five after seven when we called the State Troopers.

Q. Did you call up Skip Griffith after that? A. Right after that; yes, sir.

30 Q. How long did you wait there before Skip Griffith arrived? A. It was just a few minutes.

Q. Well, what time was it when he got there? A. In about 10 minutes.

Q. About 10 minutes? A. Yes.

Q. And, he got there about 25 minutes to eight? A. Somewhere around there; yes.

Q. Well, you called the State Police at 25 minutes after seven? A. 25 minutes after seven; yes.

Q. You called Griffith right after that? A. Yes, sir.

Q. And Griffith arrived there about 10 minutes after you called him? A. Yes, sir.

Q. So that was at least 25 minutes to eight or possibly 20 minutes to eight? A. Somewheres along there; yes, sir.

Q. And then all of you went in the house? A. I didn't.

Q. I mean by "you" your son, Malseed, Therrien, and yourself. You waited outside of the house? A. We waited outside of the house.

Q. You didn't look at Eilers until Skip Griffith arrived? A. No.

Q. What is your son's name? A. Richard.

Q. Richard Sampson? A. Yes, sir.

Q. When you went into the house, who went in first? A. Well, I don't know. Skip, I think.

Q. And the others followed, didn't they? A. Yes.

Q. Did you make any close observation of Eilers as he laid on the floor? A. No; I didn't. We had to step over him and we could look at him as we stepped over him.

Q. Did you stop there and bend over and look at him? A. Yes.

Q. You did? A. Yes.

Q. Did you make any observation of him? A. Just kind of looked at him. That was all.

Q. In other words you stepped over him and as you stepped over him you turned and looked at him and walked on, and that is the only observation you made of him. A. Yes, sir.

Q. And that is the reason you cannot tell whether there was any blood on his face. A. That's the reason.

Q. You cannot tell, can you, whether there was any blood on his face. A. No.

Q. The blood you saw was on the floor? A. Yes, it was on the floor.

Q. And you cannot say whether any blood was running from his head or not, because you did not make any close observation. A. That's right.

Q. It may have been running and you not notice it. A. It may have been running and I not notice it.

10 Q. You spoke about a range in the kitchen, wasn't there an oil stove also? A. Yes, sir.

Q. Where was that? A. Sitting right up on top of the back of the cook stove.

Q. Did you examine that to see if there was any oil in it? A. No, sir.

Q. Did you examine the lamp to see if there was any oil in it? A. No, sir.

Q. When you looked at Eilers as he laid on the floor, there was no light in the room at that time as
20 I understand? A. No, sir.

Q. Was anybody else looking at Eilers at the time you stepped over his body and looked at him. A. Only what went in there.

Q. Did they look at him too as they walked over him? A. Yes.

Q. I show you Ex. S 6, Mr. Sampson, and ask if you can tell me what that photograph is. A. I guess that is the other room.

Q. Isn't that the kitchen? A. No, that's not the
30 kitchen.

Q. I am asking you what room it is. A. He did not have no lantern there.

Q. That is the living room, is it? A. It shows the kitchen where he has his heat, but he did not have his chunk stove in that room, it was in the other room.

Q. Isn't that the oil stove in that room? A. No, that is the chunk stove.

Q. What do you mean by a chunk stove? A. That is a stove to put wood in.

Q. You refer to this little stove here. A. Yes.

Q. Where is the oil stove to which you are referring? A. That is on the back of the cook stove.

Q. I show you Ex. S 5— A. Yes, that's the kitchen, there is the oil stove and there is his table and there is his chair and there is his lamp.

Q. That lamp was not lighted when you arrived 10 there. A. No.

Q. I show you a picture, Ex. S 3, was Mr. Eilers in that position shown in that picture when you went in there? A. Yes, sir, right that way.

Q. And it is the chunk stove to which you refer as the stove that you said was cold. A. No, the cook stove.

Q. Is that the cook stove here, referring to the left side of the photograph Ex. S 6. A. I don't know what that is. This is the cook stove you showed me 20 on the other picture.

Q. I show you Ex. S 5, is that the cook stove to which you refer? A. Yes.

Q. That is the cook stove in the kitchen and there is the oil stove right on top of it. A. Yes.

Q. And in back of it there is a little table and a chair. A. Yes.

Q. And this little stove is what is called a chunk stove? A. This is the chunk stove in the other stove.

Q. Wasn't that stove there that night? A. It was 30 in the other room.

Q. Not in the kitchen? A. No, sir, not in the kitchen.

Q. You are sure of that? A. I am sure.

Q. When you were asked if this coal range was cold you said, first, "I guess it was". A. No, I don't think I did. It was cold.

Q. Did you touch it? A. Yes.

Q. Why did you touch it? A. I just went around there and leaned up against it.

Q. You don't know how long since it had been used or burned. A. No, sir.

Q. You don't know how long before you went there and found Eilers' body that the kerosene stove had been lighted. A. No, sir.

Q. Or that the oil lamp had been burning. A. No, sir.

10 Q. You said that you didn't see Mr. Eilers that day. A. No, sir, I didn't see him.

Q. What were you doing that day? A. I was digging out a few potatoes and I went down and hulled some corn.

Q. Where was the field where you were working. A. One was right alongside the house and the other was down in the field.

Q. Which field was that where you say it was down in the field. A. The corn field.

20 Q. That is some distance from the Eilers place, isn't it. A. I could not see his place from there.

Q. How long were you working in that field? A. All afternoon.

Q. From what time. A. Maybe half past one I went down.

Q. What time did you come back. A. Just before sundown.

Q. And during all that time you were too far away to have seen Mr. Eilers if he had been over at
30 his place. A. In the morning I could have seen him.

Q. I am not asking you about the morning, I am asking you about the time you were down in the field as you say from about one o'clock to sundown.
A. Yes.

Q. Could you see Mr. Eilers if he had been on his place where you were working all that afternoon?
A. No, sir.

Q. When you were working in the morning where were you working? A. Right across the road, right around the corner there.

Q. In what direction from the Eilers home? A. I worked like here in the field, and his was right across the road.

Q. Are you able to draw me a sketch showing what you mean by around the corner. A. Here is 10 the road, here is Eilers' chicken house, over here, here is his house, and I worked right out here in the field. (Indicating on sketch)

Q. That is where you worked in the morning.
A. Yes, digging out a few potatoes.

Q. As I understand your sketch this is intended as Mr. Eilers' house. A. That's the chicken house.

Q. And your place is over here. A. Right across the road.

Q. Your house does not face on the same part of 20 Cedar Lane Road that Eilers' house does. A. Yes.

Q. Doesn't the front of your house face around the bend of Cedar Lane Road. A. Yes.

Q. Isn't it a fact that the road, Cedar Lane Road, is in front of Eilers' place, comes up here a short distance and then bends to the right. A. Yes, sir.

Q. And around that bend is a lane that leads into your house. A. Yes, sir.

Q. It don't go into the part of the road over here to Mr. Eilers' place. A. Yes, it goes on the other 30 side of the house.

Q. Does your house itself face the Cedar Lane Road around the bend. A. Yes.

Q. And the main entrance to your house is on Cedar Lane Road around this bend. A. Yes, sir.

Q. You were working in this field around this corner of the road, as I understand it. A. Yes, sir.

Q. And you were working there all morning? A. No, not all morning.

Q. What time did you go out to work in that field. A. It was around ten o'clock.

Q. What time did you come back from working there. A. I came up at noon and got me dinner.

Q. And after you had your dinner about one o'clock you went down in the corn field, you said, and were working where you could not see Mr. Eilers.

A. No, I couldn't see him from there.

10 Q. What kind of work were you doing in the field around the bend of the road? A. Digging sweet potatoes.

Q. And your attention was taken by the work you were doing. A. Yes.

Q. You had no occasion to make any observation of Eilers' place. A. (No answer)

Q. There was nothing that attracted your attention to look over there at all. A. No, sir.

Q. As a matter of fact, were not there other days
20 when you did not see Eilers all day long. A. Yes, that's right.

Q. This was not unusual. A. Some times he is away.

Q. And the fact that you were engaged in your own work where you were would account for the fact that you might not have seen him too, wouldn't it? A. Yes, sir.

Q. When did you first notice that the chickens were penned up. A. Why, it was some time in the
30 morning.

Q. In the morning of what day? A. The 7th.

Q. At what time in the morning. A. Around about eight o'clock, I guess.

Q. Is that anything unusual. A. He generally gets them out early.

Q. Have there been other times when they were

not out at that time? A. He generally leaves them out about six or half past.

Q. Were there other occasions when they were not out at that time of day? A. Yes, there was a few days.

Q. That didn't cause you any concern or attract your attention as being unusual. A. No, sir.

Q. You didn't go over to see anything about it. A. No, sir.

Q. Where were you when you noticed they were penned up at that time. A. Up to the barn. 10

Q. Your barn? A. Yes.

Q. And was there anything that caused you to look over particularly. A. No, sir.

Q. You just happened to look over. A. I just happened to look that way and I seen they were not out.

Q. As you looked over there you were looking at the back of the chicken coop. A. The sides are toward my place.

Q. These sides are solid wood construction. A. 20 Yes, sir.

Q. You couldn't see through them. A. No, sir.

Q. It is possible that the chickens could have been out without your knowing it. A. Well, they have to open the doors and the lid for them to come out.

Q. You could not see a door from your field, could you? A. Yes, I could see one.

Q. That door was not opened. A. No.

Q. You don't know whether any of the other doors of the chicken coops were open or not. A. No. 30

Q. When did you first find these chickens were penned up by going over there? A. They was penned up Monday night.

Q. Did you look? A. Yes, sir.

Q. What time? A. It must have been about half past seven, somewheres around there.

Q. With whom, if anybody, did you go and look to see if they were penned up? A. Cassie over there (indicating), and Mr. Malseed, his son and my boy and two or three girls was around there.

Q. When did you first give them feed and water? A. Tuesday morning.

Q. Tuesday morning, what time? A. Oh, I don't know. It must have been about half past seven or eight o'clock.

Q. Didn't I understand you to say that you didn't
10 feed them or water them until 7 o'clock that night, Tuesday night? A. No, sir.

Q. Are you sure of that? A. We fed them the next morning.

Q. You fed them the next morning? A. Yes, sir.

Q. I probably misunderstood you, but I thought you said it was 7 or 8 o'clock the following night? A. No; we didn't feed them then.

Q. Did you see any chicken feed that night when you looked? A. No, sir.

20 Q. Did you make any examination to see? A. No, sir; there was none there.

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

Q. Then why didn't you feed them? A. Because it was too late to feed chickens. They were all on the roost.

Q. Isn't that the time you fed them Tuesday? A. No, sir.

Q. You fed them in the morning? A. We fed them in the morning.

30 Q. How long does feed stay in the chicken coop after you feed them? A. Oh, it don't stay very long if they eat it up.

Q. If there wasn't any feed in the chicken coops that evening, when you looked at them that Monday evening, wouldn't that indicate these chickens had been fed shortly before that? A. If there was any feed there?

Q. Yes. A. Yes.

Q. How close do you live to Ciemiengo's? A. About a mile, I guess.

Q. What? A. About a mile.

Q. His place is entered from the Cedar Lane Road too, is it not? A. Yes.

Q. But a short distance beyond your place on the left side of the road is the lane that goes into his place, is it not? A. Yes. It goes into Mr. Malseed's and from Mr. Malseed's on across.

Q. But the entrance to his place is not a mile to 10 the entrance leading to the front of your house, is it? A. Oh, no; not quite.

Q. How much is that? A. Oh, it ain't more than a half mile, I guess.

Q. Mr. Eilers lived there alone, didn't he? A. Yes, sir.

Q. And looked after the chickens alone? A. Sir?

Q. He looked after his chickens alone? A. Yes, sir.

20

Q. And occasionally he would be gone from there all day? A. Yes, sir.

Q. And there were days when you did not see him at all besides this day? A. Yes, sir.

Q. Even when you could see all day long, there were days when he was not there? A. Yes, sir.

RE-DIRECT EXAMINATION

BY MR. HILLMAN:

30

Q. When he was away all day, you could see his chickens? A. Some of them, if they got out.

Q. What's that? A. If they got out; if any got out through the wire.

Q. Mr. Eastwood asked you if there were occasions when Mr. Eilers would be away from home and

you could not see him all day for that reason? A. Yes, sir.

Q. And on those days, when he was away from home all day, could you see the chickens those days?

A. If he got out and left them out before he went away, they would be out.

Q. Do you know what his custom was about leaving them out? A. No.

Q. Now, from your sweet potato field, the field where your sweet potatoes were, could you see Mr. 10 Eilers' home? A. Yes, sir.

Q. See his house? A. Yes, sir.

Q. See the chicken yard? A. Yes, sir.

Q. When you came up at night from the corn field could you see his house? A. Yes, sir.

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

Q. You saw when you went in the house the lamp was on the table? A. Yes, sir.

Q. On the kitchen table? A. Yes, sir.

20 Q. Was there anything else on the kitchen table? A. A few papers.

Q. A paper? A. A few papers; yes.

Q. Newspapers? A. Yes.

Q. Do you know what newspapers they were?

A. No.

Q. Were there any dishes on the table? A. I didn't see any.

Q. Were there any cooking utensils on the stove?

A. No, sir; didn't see any.

30 Q. And signs of a meal being prepared? A. No, sir.

Q. When you went in the house what light was there for you to see the body? A. They didn't have no light.

Q. Did anybody have a flashlight? A. Yes, sir.

Q. And by that you saw his body lying there? A. Yes, sir.

Q. And was or was not his body bleeding? A. No, sir.

MR. EASTWOOD: That is objected to, if the court please. This is reexamination on the same point. The witness said that he didn't see any blood and couldn't see any.

THE COURT: He has answered that. I will allow it to stand. What was that answer, stenographer?

10

(Question and answer read as follows:

"Q. And was or was not his body bleeding? A. No, sir.")

BY MR. HILLMAN:

Q. When you saw his body there, how was his body clothed? What clothing did it have on? A. 20 Why, pants, shirt—

Q. What's that? A. He had pants, a shirt and a coat on.

Q. What kind of a shirt? A. I didn't take notice.

Q. Was it an outside shirt or undershirt? A. Well, it was an outside shirt.

Q. It covered his shoulders, did it? A. Yes, sir.

RE-CROSS EXAMINATION

30

BY MR. EASTWOOD:

Q. Mr. Sampson, you said that his face was not bleeding. You didn't look to see, did you? A. Well, what I seen he had a mark here (indicating)

and he had been bleeding a little down his face, but that was dry.

Q. You didn't look to see whether it was dry or not? A. Just took a glance when I went over him.

Q. You stepped over his body? A. Yes.

Q. You were still in motion? A. Yes.

Q. And you looked down and you saw this mark on his head and the blood was dry? A. Yes.

Q. That is what you say? A. Yes, sir.

Q. Did you make an examination to see whether
10 it was fresh blood? A. No, sir.

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

Q. You are not really positive whether he was bleeding at that time? A. No, sir.

Q. He might have been bleeding a little, is that right? A. Yes, sir.

Q. I understand there were other days when his chickens were penned up all day? A. Yes, sir.

Q. Besides this day? A. Yes, sir.

Q. You were not looking for him particularly that
20 time, were you? A. No, sir.

Q. You were doing your work? A. I was doing my work; yes.

Q. There was nothing in your mind that prompted you to look over there and look for him particularly? A. No, sir.

Q. So, he might have been there and you might not have seen him? A. Yes.

Q. Did you say that Mr. Eilers, when you looked at him, had a coat and shirt on? A. I think he had
30 a kind of bluish shirt, I ain't sure.

Q. And he had a coat over that? A. Yes; he had a coat.

Q. I show you a photograph marked Exhibit S-3, and ask you if you can see any coat there? A. Well, no.

Q. Then, he didn't have any coat on? A. He didn't have no coat on.

Q. You were mistaken about that? A. I was mistaken on that.

Q. Then, weren't you mistaken when you said that the blood may have been dry? A. No, sir.

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

Q. You said you stooped over and looked at him, and that is the only observation you made? A. Yes.

Q. Your recollection about that is better than that he had a coat on? A. Yes, sir.

10

WILLIAM J. MALSEED, recalled.

BY MR. HILLMAN:

Q. Mr. Malseed, do you know Mr. Ciemiengo here (indicating)? A. Yes, sir.

Q. How long have you known him? A. Ever since he lived there—about seven or eight years, I think.

20

Q. And how far is the home where he lives from your home? A. About a half mile.

Q. Does the land of his father adjoin your land? A. Yes.

Q. And in order to get to the Ciemiengo house from the road, is it necessary to pass through your farm? A. It comes up the front lane and then goes down the back lane and around the meadows.

Q. Have you frequently seen Mr. Ciemiengo during the time he has lived there? A. Oh, yes.

30

Q. He has been over at your house? A. Yes, sir.

Q. You have a son about his age? A. What's that?

Q. I say, you have a son about his age? Have you a son about Ciemiengo's age? You have a son? A. Yes—yes, sir.

Q. How old is he? A. About 17.

Q. About the same age as Ciemiengo? A. Somewhere around there—yes.

Q. Did they go together? A. Somewhat.

Q. Are you acquainted with Ciemiengo's reputation in that community? A. Some little; yes.

Q. For peace and good order? A. Very good; yes.

Q. What is his reputation? A. Pretty fair—yes.

Q. Do you remember going over to the home of Eilers on the night of October 7th? A. Yes, sir.

10 Q. And do you remember going over there the following morning? A. Yes, sir.

Q. What time? A. Somewhere around 8 o'clock.

Q. Who was with you then? A. My son and Mr. Sampson.

Q. For what purpose did you go over there then?
A. We were ordered to take care of the chickens until somebody came there.

Q. And did you go over and take care of the
20 chickens? A. Yes, sir.

Q. What did you do? A. Fed them and watered them and left them out.

Q. They were fastened up? A. Some of them.

Q. By "fastened" do you mean fastened in the coops or chicken house? A. Yes; some of them were fastened up and some of the doors have ventilators, and they weren't shut, and some of the chickens—I don't know how they got out.

Q. Did you notice whether the chickens had any
30 water? A. No; there was water outside but there was none inside.

Q. Did you give them water? A. Yes.

Q. What do you mean by water outside? A. There was some big troughs outside, and there was none inside of the coops.

Q. Were there any places for water inside? A. Yes; for rainy days.

Q. What? A. For rainy days, he mostly watered them inside.

Q. Did you give them any feed? A. Yes, sir.

Q. Did they have any feed when you got there?

A. I didn't see any; no, sir.

Q. Were the chickens hungry.

MR. EASTWOOD: That is objected to.

THE COURT: Objection sustained.

10

BY MR. HILLMAN:

Q. Did you gather any eggs? A. We just look over; there were no eggs there.

Q. There were no eggs there? A. Only a few; there weren't very many. We gathered them that night.

Q. But not that morning? A. No; I don't think so. We just saw a few in the coops. That was natural.

20

Q. You didn't gather them but you could see there were eggs there? A. Some few—yes.

BY MR. HEILBRON:

Q. Do you know George Hildebrand? A. Yes; saw him coming in and out.

Q. He often came to your house and played with your boys, baseball? A. Yes; they had a baseball team.

30

Q. They had a baseball diamond there? A. Yes.

Q. And you saw George Hildebrand there quite a number of times playing baseball? A. Yes.

Q. And how long would you say you have known George? A. When he first came down there to work for Mr. Eilers, that's the first time I saw him.

Q. About three years ago? A. About three years ago; maybe a little longer.

Q. What is his reputation in the community for peace and good order?

MR. EASTWOOD: If the Court please, that is objected to, because so far he has not testified that he knows.

BY MR. HEILBRON:

10

Q. Do you know his reputation in the community? A. Just only seeing him. I haven't anything against him.

Q. You do not—you do know his reputation? A. Good—yes.

Q. So far as you know?

MR. EASTWOOD: That is objectionable as not being responsive as to whether he does or does not
20 know his reputation.

BY THE COURT:

Q. Do you know other people who know him?

A. No; I don't.

BY MR. HEILBRON:

Q. Do you know other men who know Mr. Hil-
30 debrand?

MR. EASTWOOD: He just said he didn't.

MR. HEILBRON: I don't think he understood the question.

BY MR. HEILBRON:

Q. You know other men that live in your community there that know Mr. Hildebrand? A. Oh, yes.

Q. Do you know his reputation in that community? A. Never had anything bad.

MR. EASTWOOD: That is objected to, if the Court please, because he has stated he does not know his reputation. I move that be stricken out. 10

THE COURT: It will be stricken out as not responsive.

BY MR. HEILBRON:

Q. You know his reputation in the community, don't you? A. Just my seeing him around there—yes.

Q. For peace and good order? A. Good order. 20

Q. What is his reputation in that community? A. What's that?

Q. In that community? A. Well, I never saw anything bad about him.

MR. EASTWOOD: I move that be stricken out as not responsive.

THE COURT: It will be stricken out.

BY MR. HEILBRON:

30

Q. His reputation for peace and order in your community, is it good or bad? A. Good, as far as I know.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. Mr. Malseed, you say you have known Hildebrand for about three years? A. Yes, sir.

Q. You never knew him before that? A. No, sir.

Q. The place where he lived and where you first knew Hildebrand was when he worked for Mr. Eilers, wasn't it? A. That's the first place I met him—yes.

10 Q. That is more or less of a sparsely populated district in there; that is, there are only a few people who live on the farms around in your section? A. Just a few, yes.

Q. Did you ever talk to anybody before Hildebrand was arrested for this crime about his reputation? A. No, sir.

Q. Then you never discussed the matter of his reputation with anybody? A. No, sir.

Q. Never heard anybody saying anything about
20 his reputation? A. No, sir.

Q. So that actually your only observation is from what you saw of him? A. Just what I saw.

Q. And how frequently did you see him during the time that he lived over at Eilers? A. Oh, maybe once a week or something like that.

Q. Did you see him at night time when he was not working? A. I saw him go through.

Q. Just passing, you mean, in an automobile? A. Yes; walking sometimes.

30 Q. You were never in his company? A. No, sir.

Q. So that the only knowledge that you have of his reputation for peace and good order is just a few times that you saw him? A. Yes, sir.

Q. And not from discussing his reputation with anybody? A. No.

Q. I think you said that Ciemiengo's reputation

was pretty fair, Mr. Malseed? A. Yes; he's a good boy as far as I know.

Q. Did you ever hear anything about his reputation? A. No; I did not.

Q. Didn't you hear some rumors that he had been stealing things? A. Oh, you hear those kind of things lots of times.

Q. You heard them about Ciemiengo? A. Well, I heard people say so, but I could never prove it.

Q. I am not asking you to prove it, but I am asking you if you heard rumors that Ciemiengo had stolen things at different times? A. Yes.

Q. Then, in that respect his reputation was not good, was it? A. Well, I couldn't prove it.

Q. I am not asking you whether you could prove it. I am asking you about his reputation, not what the truth was, but what his reputation was. Then in that respect if you heard rumors that he was accused of stealing things at different times, his reputation was not so good, was it? A. I just heard that.

Q. Yes; but wouldn't that indicate to you that a man was not so good if you heard that about him, not whether it was true or not, but his reputation? A. I never find a man guilty until I catch him.

Q. I am asking you about his reputation, what other people said about him. A. Some people say a heck of a lot at times.

Q. Some people told you that he had been stealing things at times? A. I had heard it, yes; in times back.

Q. What time did you go over to Mr. Eilers' the following morning? A. After we had got our work done, about eight o'clock.

Q. And as I understand it, there was no feed in the chicken house then. A. No, I didn't see any.

Q. If there had been any feed placed there the evening before around five o'clock would that feed

have been eaten by the chickens, by the time you got there in the morning. A. Yes.

MR. HEILBRON: That is objected to, Your Honor please.

MR. EASTWOOD: I think it is perfectly proper, if the Court please.

THE COURT: It calls for a conclusion, doesn't
10 it?

MR. EASTWOOD: It does, but this witness is qualified to pass on it.

THE COURT: I will exclude it.

Q. Do you raise chickens of your own, Mr. Malseed? A. Yes, sir.

Q. And you at times personally supervise feeding
20 them? A. What's that?

Q. And you yourself at times personally look after the feeding of your chickens. A. Yes, sir.

Q. When you feed your chickens at night do you usually find any feed left on the ground? A. You don't try to have any left over if you can help it.

Q. In other words you just place enough in there to supply their actual needs. A. Yes, generally they clean it up and some times you take it out.

Q. And if you place in just enough for their use
30 you would not find any there the following morning.

A. No.

Q. So you don't mean to say that because there was no surplus feed left by the chickens that morning that there was none placed there the night before. A. No.

Q. It might have been done by the chickens. A. Yes, a bunch like that soon cleans it up.

Q. How many chickens did he have? A. He had around eight hundred or better.

Q. And there were quite a few in each coop? A. There were about three hundred in each coop.

RE-DIRECT EXAMINATION

BY MR. HEILBRON:

Q. Was there any water there in the morning?

A. Outside, yes. 10

Q. I mean inside the coop? A. No, sir.

Q. Was there water in the pans in the coops? A. Not inside the coops, but there was some outside.

Q. Were there pans there for it in the coops. A. Yes.

Q. Did you give them water? A. Yes, sir.

Q. That was the next morning. A. Yes, sir.

Q. October 8th? A. Yes, sir.

Q. Did they seem thirsty? 20

MR. EASTWOOD: Object, if the Court please.

THE COURT: Objection sustained.

MR. HEILBRON: That is all.

BY MR. EASTWOOD:

Q. Where did you give them water, Mr. Malseed, inside or outside. A. In the outside trough. 30

Q. As I understand your previous testimony, the water that is placed in the containers inside the chicken coops is placed there when it is dry weather, is that right? A. No, in bad weather you keep the chickens penned up and water and feed them inside.

Q. Then you put water in the containers inside during the bad weather, because of their not being

out, so they can get water outside for themselves. A. Sure.

Q. What was the weather that day and the day before. A. It was pretty fine.

Q. Pretty good weather? A. Pretty good weather.

Q. So there would be no occasion to put water inside. A. No.

BY MR. HILLMAN:

10

Q. How was the weather on Sunday, the 6th? A. I really could not tell you. We have had some awful nice weather, but I could not tell you about the weather on Sunday.

ARTHUR THERRIEN, recalled.

20

DIRECT EXAMINATION

BY MR. HEILBRON:

Q. Do you know George Hildebrand? A. Yes.

Q. How long have you known him? A. About two years.

Q. And do you know other people in the community that know him? A. Yes, sir.

Q. Do you know his reputation in the community where he lives for peace and good order prior to—

A. I never heard anything.

MR. EASTWOOD: I ask that the question be answered yes or no.

THE COURT: Finish the question.

Q. Prior to the time George Hildebrand was charged with this crime do you know his reputation in the community for peace and good order? A. Yes, sir.

Q. What was it? A. Good as far as I know.

Q. Do you know Jacob John Ciemiengo? A. Yes, sir.

Q. How long have you known him? A. About the same time.

Q. Do you know other people in the community that know him? A. Yes, sir. 10

Q. You know what his reputation is in the community for peace and good order in the community in which he resides. A. Yes.

Q. What is that? A. That is good.

BY MR. HILLMAN:

Q. You were over at the home of Eilers on the night of October 7th. A. Yes, sir.

Q. Did you see his body there? A. Yes, sir. 20

Q. How was the body dressed, if you remember. A. He had a pair of pants and a shirt and shoes.

Q. What sort of shirt? A. A working shirt, a dark bluish shirt or something like that. It was dark.

Q. It came up around his neck?

MR. EASTWOOD: Object as leading.

THE COURT: Yes.

Q. Did it come up around his neck? 30

MR. EASTWOOD: Object as leading.

THE COURT: The objection will be sustained.

Q. Tell us what the shirt covered? A. (No answer.)

Q. What part of the body did the shirt cover?

A. I know he had it on and that is all I know.

Q. Was it an outer shirt or an undershirt? A. It was an outer shirt, a working shirt.

Q. Did you see the lamp there? A. Yes, sir.

Q. Where was the lamp?

MR. EASTWOOD: Object, that was all gone over
10 by counsel when this witness was on the stand before.

THE COURT: I will permit it, he has been subpoenaed by the defense. This is his own witness.

Q. Where was the lamp? A. On the table.

Q. Was it lighted? A. No.

Q. Was it lit while you were there? A. Yes.

Q. Who lighted it? A. I could not say.

20 Q. Did anybody fill the lamp while you were there? A. Yes.

Q. Who did that? A. I could not tell you but it was filled.

Q. Do you know whether there was any oil in it when you first saw it? A. I know there was not.

Q. What else was on the table with this lamp?

A. There was a magazine and some old papers.

Q. Were there any dishes? A. I don't remember.

30 Q. Any signs of a meal there? A. No, sir.

Q. Any signs of a meal being prepared on the stove or elsewhere? A. I don't remember.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. There might have been some provisions on the stove where a meal was being prepared but you don't know, is that right. A. I don't know.

Q. Mr. Eilers lived there by himself, didn't he? A. Yes, sir.

Q. And did his own cooking? A. Yes, sir.

Q. And did his own house work? A. Yes, sir. 10

Q. And he looked after his chickens himself, in fact he did all the work around the place including the work inside and outside alone, did he not? A. Yes, sir.

Q. You say that this lamp was lighted while you were there. A. Yes, sir.

Q. What time was it when it was lighted. A. It was lighted the second time we was there, I imagine--

Q. What time was that? A. That must have been somewhere between half past seven and eight, 20 maybe quarter of.

Q. That was after you had gone for these other men. A. Yes.

Q. And after you had called Mr. Griffith. A. Yes, after we had called Mr. Griffith.

Q. You waited for Mr. Griffith before you went in, didn't you? A. Yes.

Q. And what time did you get there? A. Around a quarter of eight.

Q. And Mr. Griffith had a flash light. A. Yes, 30 sir.

Q. And how long after you got in there was this lamp lighted. A. Not very long, maybe three or four minutes.

Q. Who was there when it was lighted. A. I am not sure, but I think it was Bill Malseed, Mr. Grif-

fifths, and Baird Malseed and some of the girls, I think, were there.

Q. You don't know who lighted it? A. I could not say.

Q. You examined it before it was lighted. A. Yes, I took the chimney off, when someone said, "Light the lamp", and there was no oil in it and we could not light it.

Q. You took the chimney off— A. Yes, and I said there was no oil in it, and somebody took the
10 lamp and put some oil in it.

Q. But you don't know who put the oil in it. A. No, sir.

Q. Although somebody took it from you for the particular purpose of filling it with oil so that it could be lighted, you don't know who that person was. A. No, I do not.

Q. You didn't make much of an observation to see if there was any oil in it, did you? A. I did in the first place.

20 Q. It was dark in the room when you looked at it, wasn't it? A. Yes, but they had a flashlight.

Q. Did somebody hold the flashlight up against the lamp? A. It must have been because I could see the lamp.

Q. Was that what was done? A. Yes.

Q. Who held the flashlight up against it? A. I am not sure if it was Baird Malseed or who.

Q. How close was he to you. A. Just to one side about a foot away.

30 Q. You just said a moment it was either Baird Malseed or someone else, and he was standing along side of you only a foot away and yet you don't know. A. I believe it was him, but I am not sure.

Q. You cannot say now who was holding the flashlight. A. No.

Q. And you don't know how far away from you he was when he held the flashlight, A. No.

Q. What kind of flashlight was it? A. I couldn't say. I know we had a flashlight when we went in there that time.

Q. And with the light the flashlight gave there might have been some oil in the lamp, but you could not see it. A. Possibly.

Q. You don't know how long before that the lamp had been lighted. A. No.

Q. You didn't make any examination to find out? A. No, sir.

Q. Mr. Therrien, you say that you had known 10 Hildebrand about two years. A. Yes, about two years.

Q. The first time you knew him was when he came there to work for Mr. Eilers, wasn't it? A. No, he lived over there at Ciemiengo's.

Q. That was before he worked for Eilers? A. That was maybe a year and a half ago. I didn't live down there before that.

Q. And you didn't know him when he worked for Eilers. A. No.

Q. It was after that, possibly a year and a half. 20
A. Yes.

Q. When you first got to know him he was living in Cedar Lane? A. Yes.

Q. How long did he live there? A. All summer I guess.

Q. And as related to your place where is Ciemiengo's. A. My place is right at the head of their lane.

Q. Your place is just near the entrance to the lane 30 on Cedar Lane Road that goes pass the Malseed property and goes back to Ciemiengo's. A. Yes.

Q. You were friendly with the Ciemiengo's? A. Yes.

Q. And with Hildebrand. A. Yes.

Q. And you still have a friendly feeling toward Ciemiengo. A. Yes.

Q. And you still have a friendly feeling toward Hildebrand. A. Yes.

Q. And you want to do what you can to help them in this case. A. Yes.

Q. Had you ever discussed with anyone in that neighborhood Hildebrand's reputation before this occurrence. A. No, sir.

Q. So you had never heard anybody say anything about his reputation. A. No, sir.

Q. And your statement about his reputation being good is not based on what anybody ever said about him. A. No.

Q. It is merely based on your own observation. A. Yes.

Q. How many times did you see him? A. I saw him every day when he went up to work.

Q. Did he ever stop in your house? A. Occasionally.

Q. How often? A. Not very often.

Q. You never made an occasion to go out with him. A. No.

Q. You don't know anything about his reputation or his life. A. No.

Q. And you don't know anything about Ciemiengo's reputation or his life. A. No.

Q. You have known him about the same length of time as you have known Hildebrand. A. Yes.

Q. That is just since he moved into that community. A. Yes.

Q. Did you ever hear that Ciemiengo had stolen 30 things at different times? A. Yes, I did.

BY MR. HILLMAN:

Q. Did you believe it?

MR. EASTWOOD: Object, that is immaterial.

THE COURT: Objection sustained. It is a question of reputation.

Q. Did you ever hear anybody say anything against his reputation for peace and good order. A. No.

Q. Did you ever hear of his being engaged in any fight or anything of that sort? A. No, sir.

MR. EASTWOOD: Object to that, if the Court please. 10

THE COURT: I will permit it.

MR. HILLMAN: That's all.

EUGENE R. SCATTERGOOD, recalled.

DIRECT EXAMINATION 20

BY. MR. HEILBRON:

Q. Where do you live, Mr. Scattergood? A. I live on the Burlington-Columbus Road.

Q. In Florence Township? A. No, in Mansfield Township.

Q. You know George Hildebrand? A. Yes.

Q. He worked for you? A. Yes.

Q. How long had he worked for you? A. Thir- 30
teen months and one week.

Q. Do you know other people in the vicinity that know George? A. Yes.

Q. Prior to the time George was arrested do you know what his reputation in the community for peace and good order was? A. I only know of my own observation, as far as I knew it was all right.

Q. His reputation for peace and good order was all right? A. As far as I knew personally, yes.

MR. HEILBRON: That's all.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. You said you knew other people that knew
10 him. A. Yes, most everybody around the neighborhood knew him more or less.

Q. What other people in your immediate vicinity knew him? A. Well, the Malseeds and Mr. Therien and my next door neighborhood knew he worked for me.

Q. Had you ever talked with any of them concerning his reputation. A. No.

Q. Then you don't know what his reputation is in the community based upon what other people have
20 said about him. A. No.

Q. You said his reputation for peace and good order was based merely upon your own observation, while he was working for you. A. Yes, just while he was working on my property.

Q. You still have a friendly feeling for him? A. Yes.

Q. You want to do what you can to help him get out of this scrape he is in. A. Well, yes.

30 MR. HEILBRON: Object to that question.

MR. EASTWOOD: I think it is a matter of testing the credibility of the witness.

MR. HEILBRON: He is called to testify to the defendant's reputation.

MR. EASTWOOD: As I understand it is permissible to ask a witness his attitude toward a person about whom he is testifying, in order to evaluate the testimony for the jury.

THE COURT: Yes, but you said, "Willing to do anything", and that would create a certain inference. I don't think the witness is that kind of man.

Q. How far is it from your place where I understand Hildebrand lived and worked over to Eilers? 10

A. About a mile and a half.

MR. EASTWOOD: That's all.

JOHN F. MOLLER, a witness called on behalf of the defendants, being duly sworn according to law on his oath testified as follows:

20

BY MR. HILLMAN:

Q. Mr. Moller, where do you live? A. Columbus Road.

Q. And you are a farmer? A. Yes, sir.

Q. How long have you lived in that vicinity? A. I have been there 20 years.

Q. Do you know Jacob Ciemiengo? A. Yes, sir.

Q. How long have you known him? A. Well, just about eight years. 30

Q. Ever employed by you? A. Yes, sir.

Q. Do you know other people who know him there? A. What?

Q. I say, do you know other people who know him? A. Yes; a lot of people around there, I guess, know him.

Q. Are you acquainted with his reputation in that community for peace and good order? A. No, sir.

Q. What did you say? A. No, sir.

Q. Do you understand me? Do you know what his reputation was for peace and good order? A. Yes, sir.

Q. What was it, good or bad? A. Good.

BY MR. HEILBRON:

10 Q. You also know George Hildebrand? A. Yes.

Q. Do you know other people in the community who know him? A. Well, I couldn't tell you that. I guess I do.

Q. You do? A. Yes, sir.

Q. Do you know his reputation in the community for peace and good order? A. Yes, sir.

Q. Was it good or bad? A. It's good.

CROSS EXAMINATION

20

BY MR. EASTWOOD:

Q. How long have you known Jacob Ciemiengo? A. Well, I know him since he lived out there, about eight years. I couldn't tell you how long he lived there.

Q. Are you friendly with his family? A. Yes, sir.

Q. Do you visit there at times? A. Yes, sir.

30 Q. When did Jack work for you? A. He worked for me the past two years, off and on.

Q. Just occasionally when you needed a man, is that it? A. Yes, sir.

Q. And you say you know his reputation there in that community? A. Yes, sir.

Q. Did you ever talk with other people concern-

ing his reputation before this case— A. No, sir; I did not.

Q. So, you don't know what other people said about him? A. No; I couldn't tell you.

Q. Did anybody ever tell you that he was charged with stealing things from different people? A. They did not.

MR. HILLMAN: If the Court please, I object to that. The question of his reputation for peace and good order is in issue here, nothing else. 10

THE COURT: I will permit the question. I think it is proper cross-examination.

The defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON, 20
Judge.

MR. EASTWOOD: Read the question.

(Question read as follows:

"Q. Did anybody ever tell you that he was charged with stealing things from different people?")

THE WITNESS: No; they did not.

BY MR. EASTWOOD: 30

Q. You never heard anything at any time about Ciemiengo? A. No; I did not.

Q. As a matter of fact, you say you never talked with anybody about Ciemiengo and his reputation? A. No; I did not.

Q. How long have you known Hildebrand? A. Hildebrand, I have known him for about—well, a year and a half. He worked for me the past summer; not this past summer, a year ago this past summer.

Q. 1934? A. Yes, sir.

Q. Do you know other people that know him? A. Yes, sir.

Q. What other people? A. Well, the people who worked for me, like Louis Malseed.

10 Q. Did you ever talk with him about Hildebrand's reputation? A. Well, I don't know exactly talking about his reputation—no.

Q. Did you ever hear anybody talk about his reputation? A. No; I did not.

Q. The only thing you know about Ciemiengo is when he worked for you— A. That's all.

Q. And the same thing is true of Hildebrand? A. Yes, sir.

Q. You were never in their company when they
20 were not working for you? A. No, sir.

Q. So you don't know what their mode of living was and what they may have done when they were not working for you? A. No, sir.

BRUCE BUNTING, a witness called on behalf of the defendants, being duly sworn according to law on his oath, testified as follows:

30

BY MR. HILLMAN:

Q. Where do you live? A. Columbus and Burlington road.

Q. How long have you lived in that vicinity? A. All my life.

Q. What is your business? A. Farming.

Q. Do you know Jacob J. Ciemiengo, the gentleman here (indicating)? A. No; I do not.

Q. What did you say? A. I do not.

Q. Do you know George H. Hildebrand, (indicating)? A. No; I don't know him, only by sight to speak to.

Q. Are you acquainted with the reputation of either of those persons in your community? A. I am not.

Q. Never heard their reputation discussed? A. No.

10

(No cross-examination)

CLARENCE D. HALL, JR., a witness called on behalf of the defendants, being duly sworn according to law on his oath, testified as follows:

BY MR. HILLMAN:

20

Q. Mr. Hall, where do you live? A. On the Columbus and Burlington Stone Road.

Q. What is your business? A. Farming.

Q. How long have you lived in that vicinity? A. About a year and three-quarters.

Q. Where did you live before that? A. Mt. Holly and Columbus Road.

Q. I mean, in that vicinity, how long have you lived there, not just the particular place where you are living now, but in that vicinity? A. Around 30 that territory?

Q. Yes. A. Practically all my life.

Q. Are you acquainted with Jacob J. Ciemiengo? A. I know him; yes.

Q. Do you know other people who know him? A. Well, I guess most people know him around there.

Q. Are you acquainted with his reputation in that community for peace and good order? A. I don't know anything about him only—

MR. EASTWOOD: That is objected to.

THE COURT: Just answer that question yes or no.

BY MR. HILLMAN:

10

Q. Are you acquainted with his reputation in that community for peace and good order? A. No; not exactly.

Q. What do you mean by that? A. Well, he worked for me and I never seen anything out of the way.

MR. EASTWOOD: That is objected to and I move it be stricken out.

20

THE COURT: It will be stricken out.

BY MR. HILLMAN:

Q. How long did he work for you? A. He worked for me, I will say, around a little over three months, maybe.

Q. When was that? A. From—it was sometime last April until sometime in July, if I am not mistak-

30 en.

Q. Did he live at your house during the time he was working for you or did he go home at night? A. He lived there.

Q. He lived with you? A. Yes.

Q. Did you make inquiries about him before you hired him? A. I did not.

Q. Did you hire him without making any inquiries or did you know him? A. I knew him about three weeks before I hired him.

Q. Well, have you known him since he ceased working for you? A. I don't know of his whereabouts; no.

Q. You knew he was around there? A. I knew he was around there somewhere, around the territory.

Q. Did you see him? A. Not very often; about once, maybe. 10

Q. Do you know his reputation for peace and good order? A. As far as I know, yes.

Q. What is that reputation, good or bad? A. Good, as far as I know.

BY MR. HEILBRON:

Q. Do you know George Hildebrand, too, Mr. Hall? A. I know him to see him around there, that's all. 20

Q. Did he ever work for you? A. He never did.

Q. Do you know other people in that community who know him, too? A. I suppose the neighbors know of him, seeing him around.

Q. Do you know his reputation for peace and good order in that community?

MR. EASTWOOD: That is objected to, if the Court please, because he has not said that he knows other people that know him. That is, he said "I suppose other people know him." To qualify, he must know other people who know him and what his reputation is. 30

THE COURT: I think that is right. He ought to be qualified.

BY MR. HEILBRON:

Q. Do you know other people in the community that know George Hildebrand? A. As far as I know, the neighbors around there know him, seen him go past the same as I did, seen him go past.

Q. You know the man he worked for? A. Mr. Scattergood; yes.

Q. So you do know people that know him? A. Yes.

10 Q. Do you know his reputation in that community for peace and good order? A. Good, as far as I know. I never heard anything bad about him.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. In fact, Mr. Hall, so far as either of these defendants is concerned, you never discussed their
20 reputation with anybody else, did you, prior to the commission of this crime? A. I did not.

Q. So that you never heard anybody saying anything one way or the other about them? A. Never heard anything either way.

Q. Did you ever hear any charges against Ciemiengo that he was alleged to be stealing things at different times? A. I did not.

Q. The fact is that you never talked about him to anybody else? A. No.

30 Q. You hired him without making any inquiries about him? A. I did, yes.

Q. And he worked for you about three weeks? A. He worked three months, maybe. I don't know exactly.

Q. I beg your pardon, and the same thing is true about Hildebrand, you never talked with anybody concerning him? A. I did not.

Q. And you never heard anybody discuss his reputation? A. No.

Q. You don't know what either of them may have been doing so far as their actions were concerned, do you? A. I do not; no sir.

FRED DAVID, a witness called on behalf of the defendants, being duly sworn according to law on his oath, testified as follows: 10

BY MR. HILLMAN:

Q. Mr. David, where do you live? A. On Cedar Lane Road.

Q. And how long have you lived in that vicinity? A. 18 years.

Q. What is your occupation? A. Farming.

Q. Are you acquainted with Jacob J. Ciemiengo? A. Well, not exactly acquainted with him. I only 20 know him from going to school.

Q. What did you say, going to school? A. Meeting at our corner.

Q. Your boys and he went to school together? A. Yes.

Q. Do you know whether people know him there? A. Yes, sir.

Q. Are you acquainted with his reputation in that community for peace and good order? A. Yes, sir. 30

Q. What is that reputation? A. Well, as far as I know, it is good; I never heard nothing about him.

BY MR. HEILBRON:

Q. Do you know George Hildebrand? A. Just

at the neighbors, working for the neighbors.

Q. Do you know other people in the community that know him? A. Well, yes, around there.

Q. Do you know his reputation in that community for peace and good order? A. Yes; good as far as I know of.

CROSS EXAMINATION

BY MR. EASTWOOD:

10

Q. Did either of these men ever work for you?

A. No, sir.

Q. So far as Ciemiengo is concerned, did you ever talk with anybody concerning him and his reputation? A. No, sir.

Q. Did you ever hear these charges that he was accused of stealing things? A. No, sir.

Q. The fact of it is you never talked about him and his reputation with anybody since you have
20 known him? A. No, sir.

Q. And you have never made any observation of his conduct, have you? A. No.

Q. In fact, you don't know what he does except the times you saw him on the corner when he was going to school? A. No, sir.

Q. How long ago was that? A. Well, it was about seven years I have known him around that neighborhood.

Q. Well, did he quit going to school about two or
30 three years ago? A. Yes; I guess about two or three years he quit.

Q. Then, you have not met him around the corner since that time? A. No, but he worked for a neighbor up there, John Moller.

Q. How long ago was that? A. About two or three years.

Q. That is what I say, since that time you have not seen him? A. No; but he has been in my yard once.

Q. How long ago was that? A. That's about the middle of the past summer.

Q. This last summer? A. Yes.

Q. That is the only time you have seen him in those two or three years? A. That's all.

Q. So far as Hildebrand is concerned, have you ever discussed his reputation with anybody? A. No, sir.

10

Q. You never talked with anybody about what his reputation is? A. No.

Q. And he never worked for you, I understand? A. No.

Q. You never had opportunity to observe him or his conduct, did you? A. No.

Q. Have you ever been where he was? A. Yes.

Q. Where? A. John Moller's place.

Q. That was about a year and a half ago? A. Yes, sir.

20

Q. Has he been in your company anywheres since? A. No, sir.

Q. So, you don't know what his reputation was or what he has been doing since a year and a half ago? A. No.

SOUTH HATHAWAY, a witness called on behalf of the defendants, being duly sworn according to law on his oath, testified as follows:

30

BY MR. HILLMAN:

Q. Where do you live? A. Columbus and Burlington Stone Road.

Q. And how long have you lived in that vicinity? A. About 25 years or more.

Q. What is your business? A. Farming.

Q. Are you acquainted with Jacob J. Ciemiengo?

A. Well, I have seen him around there and talked with him some.

Q. For how long? A. Oh, since he has been there. I don't know how many years that has been.

Q. Did you know him from the time he was a child? A. Ever since he has been there. I seen him going to school riding on the bus with my children.

Q. Do you know other people who know him? A. 10 Well, I guess about everybody around there knows him.

Q. Are you acquainted with his reputation in your community for peace and order? A. Never heard anything against him.

Q. Did he ever come over to your house to your children? A. No.

Q. Do you know whether they were together? A. No.

Q. They were together going to school? A. Oh, 20 to go to school—yes, yes, to school.

BY MR. HEILBRON:

Q. Do you know George Hildebrand? A. I just seen him at Scattergood's; that's all.

Q. Do you know other people around there who know him? A. Well, where he has worked. That's all I know that knows him.

Q. The neighbors around there? A. The Scattergoods. 30

Q. The Scattergoods know him? A. Well, Scattergood of course knows him.

Q. You have known him how long? How long have you known him? A. I haven't seen him since he has been with the Scattergoods. That's all I have ever seen him.

Q. That is a little over a year, is it not? A. I suppose it is; yes.

Q. Do you know his reputation in your community for peace and good order? A. I never heard anything one way or the other about him.

Q. It was not bad? A. No; I never heard anything bad. I never heard it discussed.

CROSS EXAMINATION

BY MR. EASTWOOD:

10

Q. Did you ever hear anybody saying anything good of him? A. No; never good and never bad.

Q. Did you ever hear anybody saying anything good for Ciemiengo? A. Just—

Q. Have you ever heard anybody say anything good of Ciemiengo? A. No.

20

ELLSWORTH D. PANCOAST, a witness called on behalf of the defendants, being duly sworn according to law on his oath, testified as follows:

BY MR. HILLMAN:

Q. Mr. Pancoast, where do you live? A. Columbus and Burlington Road.

Q. How long have you lived in that vicinity? A. About nine years.

30

Q. What is your business? A. Farming.

Q. Do you know Jacob J. Ciemiengo? A. Yes; I do.

Q. How long have you known him? A. Just about over a year.

Q. You know other people in your community who know him? A. Yes.

Q. Are you acquainted with his reputation in your community for peace and good order? A. Yes.

Q. What is that reputation? A. Always good, as far as I know.

BY MR. HEILBRON:

Q. Do you know George Hildebrand? A. Yes; I do.

Q. Do you know other people in your community who know him? A. Yes.

Q. Do you know his reputation for peace and good order in your community? A. Always good, as far as I know.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. Did you ever hear anybody say anything good of Ciemiengo?

MR. HILLMAN: That's objected to.

MR. EASTWOOD: He knows his reputation, if the Court please, and I think it is proper cross examination.

THE COURT: I will permit it.

30 MR. EASTWOOD: Read the question.

(Question read as follows:

"Q. Did you ever hear anybody say anything good of Ciemiengo?")

THE WITNESS: No, I haven't.

BY MR. EASTWOOD:

Q. Did you ever hear anybody say anything good of Hildebrand? A. No; I have not.

RE-DIRECT EXAMINATION

BY MR. HILLMAN:

Q. Have you ever heard anybody say anything bad about them? A. No; I have not. 10

NATHAN B. PANCOAST, a witness produced on behalf of the defendants, being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. HILLMAN: 20

Q. Where do you live, Mr. Pancoast? A. Burlington-Columbus Road.

Q. How long have you lived there? A. Nine years.

Q. What is your occupation? A. Farming.

Q. Are you acquainted with Jacob J. Ciemiengo? A. No.

Q. You don't know him at all? A. Only by sight. 30

Q. Do you know his reputation? A. No, sir.

Q. Do you know George Hildebrand. A. Only by sight.

Q. Did you ever speak to him? A. When I saw him go by.

Q. You lived near Eugene R. Scattergood. A. Yes, sir.

Q. You know other people in the community that know George Hildebrand. A. I suppose they do, he lives in that neighborhood.

Q. Do you know what his reputation in the community is? A. No.

MR. EASTWOOD: No questions.

LEWIS MALSEED, a witness produced on behalf
10 of the defendants, being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. HILLMAN:

Q. Where do you live? A. Columbus Road.

Q. How long have you lived in that vicinity. A. All my life, I guess.

20 Q. What is your business. A. Farming.

Q. Are you acquainted with Jacob J. Ciemiengo? A. Yes, sir.

Q. How long have you known him? A. It has been around three years now.

Q. You know other people in that community who know him? A. Oh, yes.

Q. Are you acquainted with his reputation in that community for peace and order? A. I always thought it was good.

30 Q. Did you ever hear anybody speak about his reputation? A. No, sir.

Q. Did you ever hear anybody say anything against him? A. No.

BY MR. HEILBRON:

Q. Do you know George Hildebrand. A. Yes, sir.

Q. How long have you known him? A. I met him last spring.

Q. Do you know other people in the community who know him? A. Yes.

Q. Do you know his reputation for peace and good order? A. As far as I know it was good.

CROSS EXAMINATION

BY MR. EASTWOOD:

10

Q. You are not sure that you know it, are you?

A. No, I have only known him a little while.

Q. Then you are not quite sure you know his reputation? A. No.

Q. You are not quite sure you know Ciemiengo's reputation. A. I only know him by working along with him. I never seen anything wrong.

Q. You said you always thought his reputation was good. A. Yes.

Q. Did you ever hear any statements made in 20 your community that he had stolen things at different times? A. No.

Q. Did you ever hear any good of either one of them? A. (Witness laughs)

BY MR. HEILBRON:

Q. Did you ever hear any bad of either one of them? A. No.

30

MR. HEILBRON: I will call Jacob J. Ciemiengo.

THE COURT: I think before we go into that, we will take our noon recess.

(Court adjourned until 1 P. M.)

(Court reconvened at 1.15 P. M.)

JACOB JOHN CIEMIENGO, one of the defendants, being produced on his own behalf being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. HILLMAN:

- 10 Q. What is your full name? A. Jacob J. Ciemiengo.
- Q. Where do you live? A. Cedar Lane.
- Q. How old are you? A. Sixteen.
- Q. When were you sixteen? A. July 23rd, 1935.
- Q. Did you know Herman Eilers? A. Yes.
- Q. In his lifetime? A. Yes, sir.
- Q. How long had you known him? A. About four and a half years.
- Q. How far did you live from him? A. About 20 a little over half a mile.
- Q. How long have you lived there? A. Seven or eight years.
- Q. Where did you live before that? A. Plaza Park.
- Q. In this County? A. Yes.
- Q. Were you born in this country? A. Yes.
- Q. What is your father's name? A. Joseph Ciemiengo.
- Q. Is your mother living? A. Yes, sir.
- 30 Q. What is your mother's name? A. Katherine Ciemiengo.
- Q. Do you live with your parents? A. Yes.
- Q. On the evening of Monday, October 7th, 1935, did you get your evening meal at home? A. Yes.
- Q. About what time were you through. A. About ten minutes after six.

Q. Where did you go then? A. Over to Scattergood's.

Q. Eugene R. Scattergood's? A. Yes.

Q. For what purpose did you go there? A. To get George to take me in town after some bread.

Q. George who? A. George Hildebrand.

Q. Did you see him there? A. Yes.

Q. What was he doing when you got there? A. He was eating supper.

Q. Did you and he go together? A. Yes.

Q. How long after you arrived there did you 10
leave? A. About ten minutes.

Q. Where did you go then? A. Down to Herman Eilers.

Q. What was your purpose of going down to Herman Eilers. A. To try to borrow half a dollar to get some cigarettes.

Q. Had you ever borrowed money from him before. A. I didn't, no.

Q. Do you know whether anybody else had. A. George had, yes. 20

Q. Had you ever visited Herman Eilers' before that? A. Yes.

Q. How many times. A. About once or twice a week.

Q. Over a period of what time. A. In what way?

Q. How long had you been visiting him? A. Just talking with him once in awhile. I would go over there and he would take me to Mount Holly to pay for a tire bill. 30

Q. Were you friendly with him? A. Yes.

Q. Did you have any ill feelings toward him? A. No, sir.

Q. You and Hildebrand went to Eilers. A. Yes.

Q. Did you go in this yard? A. What's that?

Q. Did you drive in the yard? A. Yes.

Q. You were in an automobile? A. Yes.

Q. Whose automobile was it? A. My father's.

Q. When you arrived at Herman Eilers' residence where did you go? A. I went up to the door.

Q. Where was George at that time? A. George stayed in the car.

Q. Did George drive in the yard? A. Yes.

Q. How far in the yard. A. Just where he pulls in and everybody else pulls in, right there in front of the house, the back porch.

Q. Did you go around the barn or the corn crib?

10 A. We didn't go around the barn or the corn crib, no.

Q. What did you do when you got to the house.

A. Got out of the car and walked up on the porch. There was no light in the house. I hollered for Herman four or five times, I did not get no answer.

Q. Then what did you do? A. We blew the horn.

Q. Who blew the horn? A. George.

Q. Then what did you do? A. George flickered 20 his lights three times and we pulled up where he had his wood pile, we backed up between the corn crib and the house and went on out.

Q. Did you go in the house at that time? A. No, sir.

Q. Did you see Herman Eilers? A. No, sir.

Q. Did you see Herman Eilers? A. No, sir.

Q. Did you shoot Herman Eilers? A. No, sir.

Q. Did you have a pistol with you? A. No, sir.

Q. I show you a pistol, which has been marked 30 Exhibit S-18, and ask you if you recognize that pistol? A. Yes; that's the pistol my father gave me.

Q. When did he give it to you? A. Last year.

Q. What time last year? A. Why, about in the, the last of the summer.

Q. You mean 1934? A. 1934; yes, sir.

Q. Did you have that pistol with you that night of October 7th? A. No, sir.

Q. Do you know where the pistol was? A. Yes, sir.

Q. Where was it? A. It was home, in the upper drawer, in the front room.

Q. Upstairs or downstairs? A. Downstairs.

Q. And when did you have that pistol last before that? A. I hadn't touched that pistol for awhile. I just don't remember how long it was.

Q. Did you have any cartridges? A. No, sir.

Q. Did you ever fire it? A. Yes; I fired it when my father first give it to me. 10

Q. Do you know whether or not there were any shells in the revolver, any exploded shells? A. I just don't remember.

Q. Was the gun loaded? Did it have any bullet shells in it? A. No, sir; I don't think so.

Q. Did you shoot Herman Eilers with this pistol? A. No, sir.

Q. Now, after George had blown the horn you say you backed out of the yard? A. No; we pulled ahead to where he had the old wood pile. We backed 20 backwards between the corn crib and the house and then went out forwards.

Q. Where did you go? A. We went to Burlington from there.

Q. Did you meet any one on the way to Burlington? A. Yes.

Q. Whom did you meet? A. About two and a half miles from where we left Herman Eilers' place, we met Baird Malseed and Norman Abrams.

Q. Were they walking or riding? A. They were 30 parking in a car along the road.

Q. In an automobile? A. Yes, sir.

Q. Did you have any conversation with them? A. Yes, sir.

Q. What did you talk about? A. Why, George--

MR. EASTWOOD: Objected to, if the Court please.

BY MR. HILLMAN:

Q. How long were you with them there? A. We were with them about five minutes.

Q. Then where did you go? A. We went to Burlington.

Q. What did you do in Burlington? A. I got 10 bread for my mother.

Q. Where did you get the bread? A. Schlams Bakery.

Q. How much bread did you get? A. A half a dollar's worth.

Q. Did you pay for it? A. On credit.

Q. And then where did you go? A. We went to Miller's tobacco store.

Q. Both of you go in there? A. No, sir.

Q. Who went in? A. George.

20 Q. And when he came out, did he have anything?
A. Yes, sir.

Q. What did he have? A. Cigarettes.

Q. Then where did you go? A. Then we went back home.

Q. Where? A. Back home.

Q. To your home? A. Yes.

Q. Was George there? A. Yes, sir.

Q. Did he come into the house? A. Yes, sir.

Q. How long did he stay there? A. About an 30 hour.

Q. Then where did you go? A. George asked me if I would take him home.

Q. And you did take him? A. Yes, sir.

Q. To where, to Mr. Scattergood's? A. Mr. Scattergood's; yes, sir.

Q. Do you know what time it was when you got

to Mr. Scattergood's? A. I don't know what time it was.

Q. Then where did you go? A. Then I come on back home.

Q. What did you do when you got home? A. I—I just pulled up in the yard there, and closed the doors in the car and the windows, and I got out and went in the house, and locked the door and went on upstairs to bed.

Q. Anything happen after you had gone to bed? A. Yes.

10

Q. What? A. About 12:30 Troopers Zapolsky and another trooper—I don't know what one it was—

Q. Do you see him here? Was he on the stand here yesterday or the day before? A. Yes.

Q. What did they say to you? A. They just—I went downstairs, my mother called me. She said, "These State Troopers want you," and I asked "What for?" and she said, "I don't know." So I went on downstairs and opened the door, and I come upstairs and they followed me up and told me to put 20 on some clothes.

Q. What was that? A. They told me to put on some clothes. So I put on a shirt and a pair of trousers and shoes and stockings and put a jacket on and put on my cap, and Trooper Zapolsky, he looked all over my bed and in the bureau I had there.

Q. Did he tell you what he was looking for? A. Yes, sir.

Q. What did he tell you he was looking for? A. He asked me if I had a gun.

30

Q. What did you tell him? A. I told him no.

Q. Then what? A. Then we all got in the car and they took us to Columbus Barracks.

Q. Who was in the car when you went to Columbus Barracks? A. Baird Malseed and—

Q. Was Baird Malseed in the car with you? A. Yes, sir.

Q. Baird Malseed and who else? A. Two troopers and a fellow that was driving the car; I don't know who it was; and myself.

Q. The two troopers who had come to the house accompanied in the car? A. Yes, sir.

Q. And you went to the Columbus Barracks of the State Troopers? A. Yes, sir.

Q. About what time did you get there? A. About 20 minutes to one, I guess.

Q. Who was there when you get there? A. Well
10 there was a great many state troopers there.

Q. About how many? A. About eight.

Q. Was Hildebrand there? A. I don't know.

Q. What did you do when you got there? A.
They took me in one of the bedrooms.

Q. Then what did they do? A. They asked me
all about Sunday night.

Q. About Sunday night? A. Yes.

Q. Did you tell them where you had been Sunday
night? A. Yes, sir.

20 Q. Where did you tell them you had been? A.
I told them Sunday from 1 o'clock, since morning
I had come out of the house to fix Jack Johnson's
brakes; we put in new brake lining on the car, and
about half past 11 he left, and I guess it was about
a quarter to one when I started out of the house.
George and I—George was there, too—we started out
of the house. We went to Burlington for my sister
Blanche. She was coming home to spend the day
there. So, we went in and got Blanche and come on
30 back home and we stayed there for awhile, and then
Blanche suggested to go see her girl friend, which
she wanted to see her. So, she asked George if he
would drive her over and George said, "Yes"—

MR. EASTWOOD: If the Court please, I think
this is conversation which was held previously.

THE COURT: I assume it is what they told the state troopers.

BY MR. HILLMAN:

Q. Is that what you told the state troopers? A. Yes, sir.

BY THE COURT:

Q. Did you tell this story to the troopers? A. 10 Yes, sir.

MR. EASTWOOD: All right.

THE WITNESS: My sister Blanche and George and my sister Wanda all got in the car and went to a fellow's by the name of Seafled on the Florence road and they stayed there, I guess for awhile. I stayed home, and painted the handlebars of my bicycle, painted all it, and they come back home about 20 ten minutes after four, and we had supper, and after supper Pop asked me if we would go up to Whitey Poole's in Jacksonville to see if he would take him to work on Monday morning. So, my sister Blanche, and George and I went up to Whitey Poole's place, and I went in and I asked for Whitey Poole, and Mr. Poole is there and he said he's away, he asked me, is there anything I can tell him, and I said, "Yes, my father wants to know if Whitey will come and get him Monday morning and take him to 30 work."

So, we left there and we went over to Johnson's in Jacksonville, and stayed there for awhile. There was just Bertha Johnson, and Jack Johnson, and Dick Gillette and a few other kids there, and we stayed there about a half an hour and come back home.

Q. Did you tell the troopers all this? A. Yes, sir.

Q. What else did you tell them? A. Another thing, they asked me where I was Sunday night and I told them I went up to George Hildebrand's—

MR. EASTWOOD: If the Court please, I understand all the testimony which has already been taken was as to Sunday night?

10 BY THE COURT:

Q. Is that right? Was all of the testimony as to where you had been Sunday night? A. Yes.

Q. That day? A. Yes.

Q. Did they ask you anything about Monday? A. No, not then.

Q. What did they ask you then? A. They asked me where was I Monday night and I told them I had supper at six o'clock and left about ten minutes after
20 six and after that I went over to Scattergood's where George Hildebrand was working and I pulled in the yard and George come out, he had not finished his supper and he asked what I wanted and I told him I wanted him to take me in town to get some bread and he said, "All right, I will finish my supper," so he went in and finished his supper and he come out and got in the car and he said, "I am out of cigarettes, let's go down to Herman's and see if I can borrow any money for cigarettes," and I said, "All right",
30 and we left Scattergoods and went down to Herman Eilers, and we pulled in there and I went up on the porch. There was no light in the house and I hollered for Herman three or four times, "Herman, Herman", and I didn't hear anything of him, but I heard the chickens hollering but I didn't pay any attention to that and George blew the horn and flickered the lights and we pulled up where he had the old

wood pile. We backed up between the corn crib and the house and went on out and went into Burlington.

Q. Did you tell the Troopers that? A. They didn't ask me where I was, I didn't tell them that, they just asked me where I was Monday night, they did not want to find that out.

MR. EASTWOOD: Object, Your Honor please, and ask to have it stricken out.

THE COURT: Strike out the last part of the answer.

Q. How was that? A. They just didn't want to find out.

MR. EASTWOOD: If the Court please, that has already been stricken out.

MR. HILLMAN: I am not asking him that.

20

Q. You told them where you had been Sunday night. A. Yes.

Q. Then did they ask you where you had been Monday night? A. No.

BY MR. EASTWOOD:

Q. No? A. Yes.

BY MR. HILLMAN:

30

Q. Did they ask you or didn't they? A. They asked me Monday night and I just told them.

Q. You told them what you have told us. A. Yes.

Q. Then what did they say. A. They said, "You shot Herman Eilers", and they kept coaxing me all

the time and when one Trooper went out another came in and they kept forcing it on me and saying "You shot Herman Eilers", again and again and I had no chance, they kept questioning me and kept shooting questions at me until they broke me.

Q. How long did they keep up asking you these questions? A. Seven or eight hours.

Q. Then what did they do? A. They took a statement when they found all they thought they needed.

10 Q. Did you tell them you had shot Herman Eilers. A. I could not say nothing else after they broke me, I said, yes.

Q. Why did you tell them you had shot Herman Eilers if you didn't? A. They forced everything in my mouth and told me just how to say it and all that.

Q. Then did you sign that statement? A. Yes.

Q. Did they write it out? A. Yes.

Q. Did they question you as they went along or just write it out and have you sign it? A. As they
20 typewrited it they told me what to say to most of the questions.

Q. Who was doing this? A. I think the fellow sitting right over there (indicating Trooper in court room) is the one that typewrited it.

Q. How many of the troopers were at you questioning you. A. About four at that time.

Q. Was Hildebrand there. A. Yes, I think he was.

Q. Was Hildebrand there all the time. A. Not
30 the whole time.

Q. Did they take you away for a time and then bring you back or take Hildebrand away for a time and then bring him back. A. They brought him in and brought him back. Most of the time I was by myself.

Q. Did they ask you anything about a pistol. A. Yes.

Q. What did they ask you? A. Zapolsky came in and asked me if I had a pistol and I told him yes, because George Hildebrand already told him I had one and he asked where it was and I told him it was in the front room in the bureau in the left upper drawer.

Q. Why did you make this statement to the State Troopers. A. They forced me to it, I could not say nothing else. They did not give me a chance to do anything else.

Q. Did they make any promise or tell you what ¹⁰ would happen to you? A. Yes, they told me I would get off easy and a whole bunch of stuff.

Q. Then you were brought over to Mount Holly? A. Yes.

Q. When were you brought to Mount Holly. A. Tuesday afternoon.

Q. Were you brought up in the court house. A. Yes.

Q. Who did you see in the court house. A. I don't remember who I seen. ²⁰

Q. Was Mr. Parker there, Ellis Parker? A. I don't think so.

Q. This gentleman here at the end. A. When they took me down there was a few fellows sitting around.

Q. What did you see when you were brought in? A. When they brought me and George inside there were two fellows sitting by George and there were two troopers sitting by me.

Q. That was here in Mount Holly? A. Yes. ³⁰

Q. Were there two troopers sitting by you while you made your statement? A. No.

Q. When you came over to Mount Holly and made your statement before Mr. Parker who was present?

A. Why Mr. Parker, Mr. Eastwood, and Mrs. Bad-
ing, I think.

Q. Was anybody else there. A. No, sir.

Q. Why did you make that statement before Mr. Parker. A. I didn't know who Mr. Parker was and I was all excited.

Q. Why did you make the statement. A. I could not explain it.

Q. Did you tell them you had shot Herman Eilers? A. Yes, sir.

Q. Was that true? A. No.

Q. Why did you tell them that?

10 MR. EASTWOOD: Object, Your Honor, that question has been answered already, he said he could not explain it.

THE COURT: I will permit it.

Q. Why did you tell them that? A. I could not tell them nothing different because I did not know who Mr. Parker and Mr. Eastwood were?

Q. Why did you say in their presence that you
20 had killed Herman Eilers. A. I could not say.

Q. When you and Hildebrand went over to Herman Eilers on the night of October 7th, had you talked about going over there and robbing him. A. No, sir.

Q. Did you ever before that discuss— A. No, sir.

Q. Did you ever talk to him about robbing him?
A. No.

Q. Did you ever go over there before for the purpose of taking Eilers' money. A. No, sir.

Q. When did you first know that Herman Eilers had been murdered. A. When the State Police come in the house that night at half past twelve, the State Police told my father—

Q. Did you hear them telling that? A. No, my mother told me.

- Q. You didn't hear them tell your father? A. No.
- Q. You got the information from your parents? A. Yes.

CROSS EXAMINATION

BY MR. EASTWOOD:

- Q. John, how long had you owned that gun? (showing witness pistol in evidence) A. I owned 10 that gun about a year.
- Q. When was the last time you saw it before this night Herman Eilers was killed. A. I don't remember.
- Q. Have you any idea? A. No, sir.
- Q. You have not the least idea of the last time you saw this gun before the night Herman Eilers was killed. A. No, sir.
- Q. When did you last fire it. A. I am not sure, but I think the last time I fired it was over at Scat- 20 tergood's.
- Q. When was that? A. Last summer.
- Q. What time last summer? A. I could not say.
- Q. Couldn't you give me any idea? A. I could not say.
- Q. How many times did you fire it at that time? A. I could not say.
- Q. Was it more than once? A. I guess so.
- Q. What were you firing at? A. We was trying 30 to hit a tin can.
- Q. Was Hildebrand there? A. Yes.
- Q. Was he also firing it? A. Yes.
- Q. Then both of you fired it several times. A. Yes.
- Q. How long were you firing it and trying to hit this tin can. A. About ten minutes.

Q. You both fired altogether several shots. A. There was three of us there.

Q. Who else was there? A. There was another fellow, Norman Stackhouse, George Hildebrand and I.

Q. And the whole three of you were firing at a tin can for a target. A. Excuse me, I think there was another boy there, Charles Hathaway.

Q. Was there anyone else there? A. That's all.

Q. The four of you were firing it? A. I know
10 George and I was firing it, but I don't know about the other two.

Q. Did you reload it any time while you were there firing at this tin can. A. What do you mean, re-load?

Q. Did you exhaust the number of shells in the barrel and then have to re-load it a number of times. A. We just put one or two in there, we never loaded it full.

Q. You never fully re-loaded it. A. No.

20 Q. Then you brought it home and put it away? A. Yes.

Q. Where did you put it when you brought it home from Scattergood's? A. I put it in the bureau drawer.

Q. Is that where you told the trooper he could find it? A. Yes.

Q. When you put it away, did it have any bullets in it? A. I don't remember.

Q. Don't you remember at all? A. No, sir.

30 Q. Would say it did not have? A. I cannot say, I don't remember.

Q. Did it have three in it? A. It might have.

Q. You won't say it did not have three in it when you put it away? A. I won't say for sure.

Q. And from that time you did not see the gun again until the troopers showed it to you at the police barracks, is that right. A. Yes, sir.

Q. This bureau drawer was in the bureau in the dining room, wasn't it? A. Yes.

Q. What was that drawer used for? A. It just had papers in there, it was not used for anything special.

Q. Whose papers? A. School papers.

Q. Whose school papers were in that drawer, yours? A. No, my sisters and a few pictures.

Q. And did your sister use the drawer every day? A. No, sir.

Q. Did you use it for anything? A. No, sir. 10

Q. John, you knew Mr. Eilers about four and a half years, didn't you? A. Yes, sir.

Q. You used to go there frequently when Hildebrand worked there, didn't you? A. Yes, sir.

Q. You used to spend the evening there at times. A. Yes, sir.

Q. You and Mr. Eilers and Hildebrand played cards together. A. Yes, sir.

Q. And after Hildebrand left there and went to other places to work you and he used to come back 20 there and occasionally visit Mr. Eilers, didn't you? A. Yes.

Q. And you played cards there in the evening even after Hildebrand left there. A. Yes.

Q. And you continued to do that more or less up until the time of his death? A. We didn't play any more except once or twice after George left Herman Eilers.

Q. But you did go back there once or twice, and visit Herman Eilers. A. Yes, if George would come 30 down.

Q. You were there several times in the evenings with George Hildebrand after he left Mr. Eilers and there were occasions when you did not play cards, you just visited there. A. I could not say. I think but I am not sure, but I think me and George visited there once or twice.

Q. You knew Mr. Eilers carried good sized sums of money on him didn't you? A. Yes, sir.

Q. You had known that for some time before the night he was killed. A. Yes, sir.

Q. You had seen it hadn't you? A. Yes, sir.

Q. And George Hildebrand had told you he carried large sums of money on him, didn't he? A. Yes, sir.

Q. He learned that when he was working there and told you so. A. I suppose so.

10 Q. And didn't you go over there on one occasion about three months before his death with Mr. Richardson, the insurance man, to get a twenty dollar bill changed. A. Yes, sir.

Q. And at that time he took quite a roll of money out of his pocket. A. Yes, sir.

Q. You saw it. A. Yes, sir.

Q. You told George Hildebrand about it. A. I don't remember whether I told George about it or not.

20 Q. Will you say you did not. A. I wouldn't say I did, but I wouldn't say for sure I did not.

Q. You might have? A. Yes, I might have.

Q. As a matter of fact, you did, didn't you, John? A. I couldn't say.

Q. You said so in the statement you made, didn't you? A. I don't know what I said in the statement.

Q. You are fully conscious of what you are saying today. A. Yes.

Q. You know where you are? A. Yes.

30 Q. And you know who I am? A. Yes.

Q. You know there is a jury here trying you. A. Yes.

Q. You know there is a judge on the bench. A. Yes.

Q. You know you are here on a charge of first degree murder against Herman Eilers. A. Yes.

Q. You are fully conscious of everything you are saying. A. Yes.

Q. But at that time when you made the statement to the State Police you didn't know what you were saying. A. I didn't know what I was saying, I was so sleepy and tired.

Q. You were not sleepy and tired when you made the statement to Mr. Parker and myself, were you?

A. Well, I didn't know who Mr. Parker was.

Q. Didn't he tell you? A. I don't remember.

Q. Didn't he say to you, "My name is Ellis Parker, 10 Chief of County Detectives, and this is Mr. Eastwood, Howard Eastwood, Prosecutor of the Pleas, and this is Mrs. Bading, stenographer, taking down what we are going to talk about. You, together with another fellow by the name of George Hildebrand are charged with having killed a man by the name of Herman Eilers, on Monday night, this week, October 7th. You don't have to make any statement unless you want to and any statement you make must be of your own free will and must be voluntary. Now 20 do you want to tell us what occurred as near as you can remember?" Did he make that statement to you? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. You remember you were upstairs in the second floor of the Court House, don't you? A. Oh, yes.

Q. On the morning of October 9th? A. I don't know what date it was.

Q. You were brought to the county jail on the afternoon of Tuesday, weren't you? A. Yes, sir.

Q. And it was the next morning, about 11 o'clock, that you were brought over here to the court house, you and George Hildebrand? A. I couldn't say what time it was.

Q. Well, it was in the morning, wasn't it? A. I suppose so.

Q. Well, don't you know? A. Well, I don't know; I don't know the time.

Q. Why don't you know? A. I don't know the time.

Q. Well, it was in the morning, wasn't it? A. I guess so.

Q. You had not had your dinner, had you?? A. No.

Q. You had had your breakfast? A. Yes, sir.

Q. Did you see Mr. Parker and myself in that
10 room? A. Yes.

Q. Did you see Mrs. Bading, who was on the witness stand and read the statement that you had given? A. Yes, sir.

Q. That is clear in your mind, isn't it? A. Yes, sir.

Q. And yet you say you don't remember Mr. Parker making this statement to you, in which he told you who he was, who I was, and who Mrs. Bading was? A. I don't remember.

20 Q. You don't remember us telling you that? He might have told you that? A. Yes, sir.

Q. And you might have forgotten it, is that it? A. Yes, sir.

Q. You know me? A. No, sir.

Q. You don't? A. No, sir.

Q. When you lived in Burlington? A. No, sir.

Q. You remember being asked a question by Mr. Parker, do you not: "Now, do you want to tell us exactly what occurred as near as you can remember?" A. Yes, sir.

30 Q. And you remember your answer, "Yes, sir"? A. Yes, sir.

Q. And do you remember the question then of Mr. Parker: "Go ahead."? A. I don't remember that.

Q. And then did you make a statement of what

had happened that night of Monday, October 7th?

A. Yes, sir.

Q. You knew that Mr. Eilers lived alone? A. Yes, sir.

Q. You knew that he did his own work? A. Yes, sir.

Q. You had been there at night time before and you knew nobody was there, except Mr. Eilers? A. No, sir.

Q. You had been there with Hildebrand on other occasions when nobody was there to Mr. Eilers', is 10 that not right? A. Oh, yes.

Q. In fact the times you and Hildebrand visited him in the nighttime, nobody was there but Eilers?

A. In what way do you mean?

Q. Nobody was there at the house except you and Hildebrand when occasionally you went over there at night? A. We did go there once at night, me and George Hildebrand.

Q. When was that? A. That was when George was working up at Scattergood's. I used to go up 20 there and see George.

Q. All right. When was that? A. I couldn't say what part of the year it was. It was pretty near wintertime.

Q. And that is the night you went there and the house was dark, and you were going to rob him, and you got scared? A. No, sir.

Q. When was that? A. We never did go there to rob him?

Q. How long before Eilers' death was it that you 30 and Hildebrand went over from Scattergood's? A. The time we went over from Scattergood's was when Herman was up. He was in the other room, sitting up and reading.

Q. Was anybody with him? A. No, sir.

Q. I asked you if you had ever gone over there at anytime with Hildebrand and nobody was there

but Mr. Eilers? (No answer)

Q. The times that you visited at Eilers' home with Hildebrand, was there anytime when anybody else was there except Eilers? A. Well, I couldn't say because—there's Baird Malseed, he used to go over there a lot with me.

Q. When you visited there with Hildebrand on other occasions, you were accustomed to walking right in, weren't you? A. Yes.

Q. You did not rap on the door, did you, before
10 you entered? A. Well, sometimes we did—yes.

Q. How often? A. Not often.

Q. You usually walked right in, didn't you? A.
Yes.

Q. In other words, you and he and Hildebrand were friendly with each other? A. Yes, sir.

Q. And he never made any objection to your coming there at any time you wanted to, did he? A.
No, sir.

Q. And on the occasions when you did go there,
20 wasn't it your practice ordinarily to open the door and walk right in? A. Yes.

Q. And the door you always used was this rear door, wasn't it? A. Yes.

Q. That led into the kitchen? A. Yes.

Q. You left your house at six o'clock that night?
A. Ten minutes after.

Q. 10 minutes after six and you went over to Scattergood's? A. Yes.

Q. Is that right? A. Yes.

30 Q. And you had your father's car and you drove it over to Scattergood's? A. Yes, sir.

Q. And to get over to Scattergood's you have to drive over Cedar Lane Road to the Burlington and Columbus Road, do you not? A. Yes, sir.

Q. And then you have to proceed along the Columbus Road to Mr. Scattergood's? A. Yes, sir.

Q. Did you have a driver's license? A. No, sir.

Q. Did Hildebrand have a driver's license? A. Yes, sir.

Q. How long did he have one? A. Well, I couldn't say.

Q. Did he drive that night? A. Yes, sir.

Q. Where from Scattergood's? A. Down to Herman Eilers', from Herman Eilers' on to Burlington, from Burlington on back home.

Q. Then you drove him to Scattergood's to take him home? A. Yes, sir.

Q. And you drove the car back from Scatter- 10
good's, did you not? A. Yes, sir.

Q. What time did you leave Scattergood's? A. What time?

Q. Yes, the 7th? A. Anywheres from a quarter after to half past.

Q. Haven't you any idea as to the exact time? A. About 20 or 25 after.

Q. In the statement that you gave to Mr. Parker and me you told us that you left about 6:15 or about 6:20, did you not? A. Yes; around that time, be- 20
tween that and half past.

Q. How far is it from Scattergood's to Eilers'? A. About two miles.

Q. And as soon as you left there, you went directly to Eilers? A. Yes, sir.

Q. How long did it take you from the time you left there? A. I couldn't say.

Q. It was only five miles and it didn't take you more than five minutes at the most? A. I don't know.

Q. What? A. I guess it takes five minutes.

Q. No longer than five minutes? A. I couldn't say.

Q. So; you must have arrived at Eilers' about 6:30? A. About 25 after.

Q. About 25 after six, and Hildebrand was driving the car? A. Yes, sir.

Q. And he drove the car into the entrance, where the gate is? A. Right on by the porch.

Q. He didn't drive it between the corn crib and the house at that time? A. No, sir.

Q. And he didn't get out of the car? A. No.

Q. You got out of the car, and what did you do after you got out of the car? A. We didn't go there for nothing as far as—

Q. I asked you, what you did when you got out of the car? A. We went up on the porch and hollered four or five times, didn't get no answer, so we went back to the car and blew the horn and flickered the light—George did.

Q. The porch that you went on is the back porch? A. Yes, sir.

Q. Did I understand you to say that "we" went up on the porch?

MR. EASTWOOD: Read the answer.

20 (Answer read as follows: "We went up on the porch and hollered four or five times, didn't get no answer, so we went back to the car and blew the horn and flickered the lights—George did.")

BY MR. EASTWOOD:

Q. Then, George accompanied you up onto the porch? A. He didn't go up on the porch.

Q. You said, "We went up on the porch and we hollered, and then didn't get no answer and then come back", didn't you? A. I guess I did.

Q. You don't refer to yourself as "we" when you are usually talking about yourself, do you? A. That's what I say most times.

Q. You do? A. Yes, sir.

Q. When you are talking about yourself, you say "we"? A. Not all times.

Q. Is it because George and you are so friendly that you always talk of yourself as "we"?

MR. HILLMAN: Objected to.

THE COURT: Objection sustained.

BY MR. EASTWOOD:

Q. You want the court and jury to understand that when you are talking about yourself you always 10 say "we"; is that right? Do you want us to understand that? A. No.

Q. Didn't you say you usually say "we" when you are talking about what you are doing? A. I made a mistake.

Q. You made a mistake? A. Yes, sir.

Q. Now, Hildebrand was the one that suggested about getting money to get cigarettes, wasn't he? A. Yes, sir.

Q. Then why didn't he get out of the car to get 20 the money for the cigarettes?

MR. HILLMAN: Objected to. How does the witness know?

THE COURT: Objection sustained. It calls for a conclusion.

BY MR. EASTWOOD:

30

Q. Hildebrand sat in the car, notwithstanding the fact that he was the one who suggested to go to Eilers and get money for cigarettes? A. Yes, sir.

Q. And you are the one who got out? A. Yes, sir.

Q. Did you go up as far as the door itself? A. I went up on the porch.

Q. Yes; when you got up on the porch, you were close to the back door? A. Yes; about a foot from it.

Q. You could see whether that door was opened or closed, couldn't you? A. Yes.

Q. Was it open? A. The door was open.

Q. The door was open? A. Yes, sir.

Q. Did you look in? A. No, sir.

Q. Why didn't you? A. I just saw the door was open and I didn't go in.

10 Q. You never went in? A. No, sir.

Q. Why didn't you go in? A. It was dark.

Q. Did you look in? A. Well, I looked towards the door. The door was open.

Q. The door was open? A. Yes, sir.

Q. Now, that door opened, as you faced it, didn't it open that way (indicating) toward the left? A. Yes.

Q. And how far open was it? A. I couldn't say.

Q. I show you exhibit 3, showing the body of Her-
20 man Eilers. Was the door open that much when you saw it? A. I don't know. It was dark. I could hardly see, but it was opened.

Q. You could not see how much of the door was open? A. No, sir.

Q. Did you pull the screen door back? A. No, sir.

Q. Did you rap on the door? A. Yes, sir.

Q. You made no other sound than hollering. What did you holler? A. "Yo, Dutch."

30 Q. Why didn't you rap on the door? A. Why, I couldn't say.

Q. You couldn't say why you didn't rap on the door? A. No, sir.

Q. You can't give any reason why you didn't rap on the door? A. There was no use. There was no light in the house.

Q. Why didn't you think it was any use? A. I thought he had gone somewhere.

Q. With the door open? A. I don't know; I don't know when he went away whether he left the door open or not.

Q. How long did you remain on the steps? A. Just to holler a few times and went right back in the car again.

Q. And when you got in the car again, you say you left, pulled away? A. Blew the horn and flickered the lights.

10

Q. Why did you blow the horn? A. We thought he was over at the neighbors'.

Q. What neighbor? A. Sampson.

Q. Why didn't you go over there and find out? A. We were ashamed to go over.

Q. Why were you ashamed? What were you ashamed for? A. We had never been over there before?

Q. You had never been over there before? A. I had been there maybe twice a year.

20

Q. Had Hildebrand been over there? A. I couldn't say.

Q. You got no response at Eilers? A. No.

Q. You pulled out of there. Did you see any cars approaching the place? A. I think there was two cars went by.

Q. Did you recognize whose cars they were? A. I am pretty sure there was one, a fellow by the name of Brownie.

Q. Where is he from? A. From Florence.

30

Q. Did he see you that you know of? A. I don't know whether he did or not.

Q. What time was it you left Eilers? A. I don't know; about half past six.

Q. And you went from there towards Burlington? A. Yes, sir.

Q. And you saw Norman Abrams and Baird Malseed? A. Yes, sir.

Q. Where did you see them? A. About two and a half miles from Herman Eilers' place on the Columbus road.

Q. Did you talk with them? A. Yes, sir.

Q. How long did you talk with them? A. About five minutes.

Q. Why didn't you go towards the Jacksonville road and into Burlington that way? Wasn't that 10 nearer? A. I don't know whether it was any nearer or not. We always go that way.

Q. You always go the other way? A. Yes, sir.

Q. Now then, you went on into Burlington and you went to Schlams Bakery there, didn't you? A. Yes.

Q. And you got some bread? A. Yes, sir.

Q. And that is what you started out to get in the first place? A. Yes, sir.

Q. And then you went to Moller's and Mr. Hildebrand went in and got some cigarettes? A. Yes, sir.

Q. You didn't go in with him? A. No, sir.

Q. How long did you stay in Burlington altogether? A. About 15 minutes.

Q. What time did you get home? A. I don't know; about 20 to eight.

Q. About 20 minutes to eight. A. 25 minutes to eight.

Q. As a matter of fact, didn't you get home around nine or half past nine? A. No, sir.

30 Q. Are you sure? A. I am sure.

Q. And when you came home didn't your mother say, "Have you been stealing something somewhere?" A. No, sir.

Q. You are sure of that? A. I am sure.

Q. You go home that night about twenty minutes to eight? A. Yes, sir.

Q When the trooper came over to get you what did your mother say? Didn't she say, "Now, what trouble have you been in again? Have you been stealing again?"

MR. HILLMAN: Objected to.

MR. EASTWOOD: If the court please, he has testified to the conversations he had at the time when the troopers came.

10

MR. HILLMAN: This is a conversation with somebody else.

THE COURT: I will permit it and grant you an exception.

The defendants pray an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

FRANK A. HENDRICKSON, 20
Judge.

MR. EASTWOOD: Read the question, please.

(Question read: "Q. When the trooper came over to get you what did your mother say? Didn't she say, "Now, what trouble have you been in again? Have you been stealing again?")

THE WITNESS: Yes.

30

BY MR. EASTWOOD:

Q. Now, when you first saw Trooper Zapolsky at your home that night, when he came after you, you told him you had no gun? A. Yes, sir.

Q. Why did you tell him you had no gun? A. I was sleepy and tired and I didn't think of the gun.

Q. Oh, you were sleepy and tired? A. Yes, sir.

Q. That is the only reason you didn't tell him?

A. Yes, sir.

Q. You knew you had a gun? A. I knew I had a gun before that.

Q. You knew where it was? A. Yes, sir.

Q. You had put it away? A. Yes, sir; at a certain time.

10 Q. Now, the reason you told the trooper you had no gun was because you were sleepy and tired when he asked you that? A. Yes.

Q. You had already been told by your mother that Herman Eilers had been shot? A. Yes, sir.

Q. And it was after that that Zapolsky asked you if you had a gun, wasn't it? A. Yes, sir.

Q. And that was the reason that you told him you had no gun, wasn't it? A. No, sir.

Q. You remember, then, your mother telling you
20 that Zapolsky had said that Eilers had been shot, don't you? A. Yes—Zapolsky, he didn't say who was shot. He just said a man was shot.

Q. A man was shot? A. Yes, sir.

Q. And it was after that you were asked if you had a gun and you told him you didn't? A. No; it was before that they asked.

Q. A little while ago you told me it was after that? A. No; I didn't.

Q. After your mother told you that a man had
30 been shot, Zapolsky asked you if you had a gun? A. I said they come in my bedroom and looked all over for something, and I told my mother I thought they were looking for a license. They looked all over, and then they come back downstairs, and my mother told me there was a man shot.

Q. Then wasn't it after that the trooper spoke to you about the gun? A. No, sir; they asked me before that.

Q. They asked you before that? A. Yes, sir.

Q. Now, you stated a moment ago, that they were looking all through this bureau drawer and you thought they were looking for a license, didn't you? A. Yes.

Q. But they were looking for a gun? A. Yes. They didn't tell me they were looking for a gun.

Q. They had not asked you if you had a gun before your mother told you that a man had been shot? A. They first started to look, and then they asked me if I had a gun and I told them no.

Q. A little while ago you told me that your mother had told you that first before they asked you whether you had a gun, didn't you? A. Yes, sir.

Q. Then that was not true, was it? A. No, sir.

Q. You want to change that now and say it was before your mother told you that, they asked you whether you had a gun? A. I don't want to change it. I want to tell you what I know.

Q. You are willing to let the record stand as it is? Then you were taken over to the Columbus Barracks, weren't you? A. Yes, sir.

Q. How long were you there before you told them you had a gun? A. I couldn't say.

Q. Give me some idea. A. About four hours, I guess.

Q. You had been asked in the meantime if you had a gun, hadn't you? A. Yes.

Q. And you told them again you didn't have a gun? A. They didn't ask me at the police station. When they asked me if I had a gun was when they come to me.

Q. I am asking you, when you were over at the police barracks in Columbus, during the interval of two hours, before you told them you had a gun,

didn't somebody ask you over there if you had a gun? A. No, sir.

Q. Wasn't Baird Malseed with you? A. No, sir.

Q. Didn't he go over in the same car with you?

A. He went over in the same car with me; yes.

Q. Weren't you there when he was asked about it? A. No, sir; not in the same room.

Q. You say that at no time before you told them you had a gun were you asked by any trooper if you had a gun, is that right? You didn't tell them you
10 had a gun until George Hildebrand told them you had a gun? A. Yes, sir.

Q. It was only when George Hildebrand told them you had a gun, you admitted you had a gun? A. I would have told them anyway.

Q. Yes, but you didn't tell them until they told you that George Hildebrand had told them you had a gun? A. No, sir.

Q. And that was the first time you told them you had a gun, when George told them you had a gun, is
20 that right? A. Yes, sir.

Q. And then you told them where the gun was? A. Yes, sir.

Q. And what kind of gun it was? A. No, sir.

Q. Didn't you tell them that it was a 22-calibre "Young America"? A. They didn't ask me what make it was.

Q. You told them what make? A. Yes, sir.

Q. You weren't too tired and sleepy then to tell them where it was? A. No, sir.

30 Q. You were fully awake, weren't you? A. I wasn't fully awake.

Q. You were awake enough to tell them where your gun was? A. Yes, sir.

Q. Did Zapolsky bring the gun back? A. Yes, sir.

Q. Did one of the troopers show it to you? A. Zapolsky, I think he showed it to me later.

Q. And you identified it as your gun? A. Yes, sir.

Q. While you were over there at the station being questioned, you were not being questioned continuously all that time, from the time you arrived until you made the statement the following morning, were you? A. Yes, sir.

Q. Weren't there times when nobody was questioning you? A. No, sir.

Q. Weren't there times of an hour or an hour and a half that elapsed when you were not being questioned and Hildebrand was being questioned? A. Well, that was when my statement had been made.

Q. And what time was that? A. I couldn't say.

Q. Don't you know what time your statement was made? A. It was in the morning, I know that.

Q. But before that, from the time you arrived, you say you were being continuously questioned without any interruption, is that right? A. Yes, sir.

Q. Didn't they bring you some lunch around 4 o'clock? A. No, sir. 20

Q. Didn't you have some cigarettes they gave you? A. They treated me cigarettes; yes.

Q. And didn't they give you some sandwiches and coffee around four o'clock in the morning? A. No, sir.

Q. You are positive of that? A. Positive, sure.

Q. Didn't they also ask you where you were Sunday night—didn't they? A. Yes, sir.

Q. As well as where you were Monday night? A. Well, yes, after I told them where I was Sunday night I guess they thought I had too good an alibi for them so they tried to put it on me for Monday night.

Q. They also asked you where you were Saturday night, didn't they? A. No, sir.

Q. You didn't have any alibies for Monday night?

MR. HILLMAN: I object to that, if the Court please.

MR. EASTWOOD: I don't see why, if the Court please.

THE COURT: He can answer it.

BY MR. EASTWOOD:

10 Q. They asked you where you were Saturday night, didn't they? A. No, sir.

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

Q. You are sure of that? A. Sure.

Q. When did they first ask you where you were Monday night? A. I don't remember.

Q. What time was it? A. I couldn't say.

Q. How long had you been there? A. At the police station?

Q. Yes. A. From about half past 12 until about 20 half past two or three o'clock in the afternoon, Tuesday.

Q. You mean it was around two o'clock when they asked you where you had been Monday night? A. I don't know.

Q. Some little time had elapsed when they asked you where you had been Monday night, is that right? A. Yes.

Q. And when they first asked you where you had been Monday night, you didn't tell them where you 30 had been Monday night? A. They just said: "You shoot him?" "You shoot him?" "You shoot him?"

Q. When Mr. Hillman questioned you, he asked you if they asked you where you had been Monday night and you said, yes; they did, didn't you? Didn't Mr. Hillman ask you here on the stand if the troopers asked you where you were Monday night? A. Yes.

Q. And you said: "Yes; they did"? A. I guess I did.

Q. Well, now, don't you know? You know they asked you that? A. I guess I do.

Q. And that is the answer you gave Mr. Hillman when he asked you about that, isn't it? A. Yes, sir.

Q. And when you first told them where you were Monday night in your story, you didn't tell them that you had been at Mr. Eilers' at all, did you? A. No.

Q. You told them that you had gone with George 10 Hildebrand to get some bread for your mother and that you had gone from there into Burlington to get the bread, didn't you? A. I didn't say that.

Q. What did you say? A. No, sir.

Q. What did you say? A. I don't remember what I said.

Q. You don't remember? A. No, sir.

Q. But the first time they asked you where you had been that night you didn't tell them in that statement you had been to Herman Eilers'? A. Yes; I 20 told them I had been down to Herman Eilers'.

Q. The first time they asked you? A. Yes, sir.

Q. You told me awhile ago you didn't? A. George stated that.

Q. I am asking you, the first time you were asked where you were Monday night, didn't you tell them in your answer to your question that you had been to Eilers'? A. Yes.

Q. Now, a little while ago you said you didn't. Now, which is true? A. I did. I told them I went 30 down to Eilers'.

Q. The first time? A. That's when they broke me.

Q. Then, you wish to correct the statement you made a little while ago, when they asked you, you didn't tell them that you went to Eilers' the first time

they asked you? Do you want to correct that answer? A. Yes.

Q. What did these troopers do to break you, as you put it? A. They swore me.

Q. They swore me? A. Yes, sir. They swore at me.

Q. What else did they do? A. They told me that I would get off easy.

Q. Who told you that? A. I don't remember what trooper it was now.

10 Q. Can you point him out here in the court room? A. I don't know. I ain't seen him for a good while.

Q. Which trooper swore at you? A. I think that one sitting right down behind you there (indicating).

Q. This gentleman here (indicating)? A. Yes, sir.

Q. Lieutenant Keating? A. Yes, sir.

Q. Nobody else swore at you? A. No, sir.

Q. What else did they do to you, that, as you call it, "they broke me"? A. That's about the two
20 things, I guess.

Q. Then, the only things they did was to tell you that you would get off easy and they swore at you? A. And they said, "Take it off your chest," too.

Q. "Take it off your chest"? A. Yes, sir.

Q. Who said that? A. The man sitting over there in the court (indicating).

Q. Is that him (indicating)? Trooper Caisse? Did he say, "Take it off your chest"? Did he say what he meant? A. No.

30 Q. You knew what he meant, didn't you? A. Yes.

Q. You knew he meant if you did it, you had better get it off your chest and tell it? A. I knew I didn't have nothing to do with it.

Q. No; but you knew what he meant when he said, "Take it off your chest"? A. Yes; I would get off easy.

Q. In other words, you understood that if you told them that you killed Herman Eilers, you understood Trooper Caisse to say that you would get off easy? A. Yes, sir.

Q. And you were willing to make a statement that you killed Herman Eilers so you would get off easy? A. I didn't understand when they said, "make a statement."

Q. When they said you had better get it off your chest, what did you think he meant? A. Get it over with.

10

Q. Get over what? A. I suppose the State Police thought—

Q. I am not asking you what they thought, what the state police thought, but what you thought when they said to get it off your chest and you will get off easy; what did you think they meant? A. I suppose they thought I was the guilty person and that's the reason they said it.

Q. You understood that if they thought you were the guilty person and you told them that you were, 20 you would get off easy? A. Yes.

Q. And you were willing under those circumstances to make a statement and say, "I murdered Herman Eilers"; is that right? A. I did make a statement; yes.

Q. You did make that statement? A. Yes, sir.

Q. And the only reason you made it is because they said you would get off easy and they swore at you? A. Yes, sir.

Q. Now, when you made the statement to Mr. 30 Parker and to myself, neither Mr. Parker nor I told you anything of the kind, did we? A. No, sir.

Q. Neither one of us swore at you, did we? A. No, sir.

Q. We never told you that if you told the story you would get off easy? A. No, sir.

Q. You were asked to tell what happened that night, were you not? A. Yes, sir.

Q. And you told your story, did you not? A. Yes, sir.

Q. Now, John, in this statement you made to the State Police, George Herman Hildebrand was present at the time, wasn't he? A. Yes, sir.

Q. In the room at the same time your statement was taken? A. Yes, sir.

Q. And when his statement was taken, you were
10 present, weren't you? A. Most of the time; yes, sir.

Q. You both heard what the other said, didn't you? A. Yes, sir.

Q. Did either one of you during the time that your statements were being taken speak up and say that this story you told was a lie? A. No, sir.

Q. You were asked the questions, were you not? A. Yes, sir.

Q. And the answers were written down on the typewriter? A. Yes, sir.

20 Q. As each question was asked, the question was typewritten? A. Yes, sir.

Q. And when the answer was given by you, the answer was typewritten? A. Yes, sir.

Q. And then you went on to the next question and so on throughout the whole statement? A. Yes, sir.

Q. Is that your signature, John, on those three sheets (indicating)? A. Yes, sir.

Q. Will you look at this Exhibit S-16 and tell me whether that is your signature at the bottom of the
30 first two pages and also on the third page, witnessed by Zapolsky, Trooper Caisse and Stockberger? Are they your signatures? A. Yes, sir.

Q. Will you look at it and tell me whether or not that is the statement that was taken on the typewriter, question and answer, and then signed by you?

A. That is the statement.

Q. While this statement was being taken on the

typewriter, did any of the troopers swear at you? A. No, sir.

Q. Did any of the troopers tell you while the statement was being taken that you would get off easy? A. No, sir.

Q. It was all before this statement was made that this was said to you? A. Yes, sir.

Q. But during the taking of the statement, in the presence of each other, no trooper swore at you, nor did anyone say to you that you would get off easy if you made a statement? A. They didn't swear at 10 me.

Q. And you were there while Hildebrand's statement was being taken? A. Not all the time.

Q. This second statement that was signed by him, weren't you there all the time? A. No, sir.

Q. Now, John, in this statement didn't you make this answer: "Now, tell us in your own words just what you did, what you know and who was with you when you committed this crime?" "A. I don't know how long ago we first thought of this thing." 20 "How long ago was that George?" "A. Sometime during the summer a few months ago. A few months ago George Hildebrand and I were figuring on getting some money and so we thought we would holdup Herman Eilers. About six weeks ago George Hildebrand and I were intending to holdup Herman Eilers. We went to his place by walking across fields, and I had a 22-calibre revolver that my father gave to me. Suddenly we got to Herman Eilers' house and seen that we couldn't hold him up because 30 we were afraid of getting shot, knowing that he had a shotgun. So we turned around and started back to home.

"Last night, Monday evening, October 7th, 1935, about 6.00 o'clock I had supper at my home and got in the car and went over to get George Hildebrand who works at Scattergoods on Columbus Stone

Road; George came out of the house to the car, got in the car and we drove about a mile through Cedar Lane where we stopped in the woods and talked it over about holding up Herman Eilers. George and I planned to get some money. We was going to shoot him so he couldn't recognize us. I had my 22-calibre revolver 'Young America' with me and it had three bullets in it, so we finally drove up to Herman Eilers place and got out of the car, went in the house by opening the kitchen screen door and house
10 door, leading into the kitchen. I took my gun out of my pants pocket and put it in my right hand, I led the way into the house, and George was in back of me. We were in the doorway and then Herman Eilers coming out of the room towards us. I walked up to Herman Eilers and then I tried to hold him up. I shot Herman Eilers in the chest and then the head and he dropped to the floor. George Hildebrand reached down and went through his pockets while Herman was kicking on the floor. Then we thought
20 we would better move along in case of being caught. We started for Burlington to go to the Schlams Baker Shop on Broad Street. We stopped on our way to Burlington and met Baird Malseed and Norman Abrams, who were parked along the road in an automobile, about four miles from Burlington. We talked to them for about five minutes and then went to Burlington. When we shot Herman Eilers we did not get any money from his pockets, and George tried to borrow ten cents from Baird Malseed, but he
30 didn't have it. So we went in town and got our bread and cigarettes and come back to Joe Ciemiengo's house. When we got home we talked for an hour and then George got ready to go home. So I took him home and come back and put my 22-calibre revolver in the bureau drawer in the dining room and then went to bed." Did you make that answer?
A. Yes, sir.

Q. And that was taken down as you dictated it on the typewriter, was it? A. Yes, sir.

Q. Did you make this answer to this question:

"Q. When you planned to hold up Herman Eilers did you think he had a large sum of money on his person or in the house? A. Yes, Mr. Richardson, an insurance man, came to my father's house to collect insurance. He could not change a twenty-dollar bill so we went to Herman Eilers' House (Richardson and I). Herman changed the twenty-dollar bill and I saw a roll of money in his wallet and I thought I would try to get some of it." Did you make that answer? A. Yes, sir.

Q. Were you shown the revolver then? A. Yes, sir.

Q. Did you give this answer: "Q. Is this the revolver you used in killing Herman Eilers? (Sgt. A. Zapolsky showing Jacob Ciemiengo 22-calibre Young America Double Action Revolver. Number 25579)." They showed us this revolver (indicating) and did you give this answer: "A. Yes, that is the 20 gun I used, and it was given to me by my father about a year ago." A. Yes, sir.

Q. Then did you make this answer in response to the question: "Q. Jacob, you told us you shot Herman Eilers twice, once in the chest and once in the head. This revolver shows it has three exploded shells in the chamber, what happened to the third shot? A. It had exploded during the excitement. I think it went wild." A. Yes, sir.

Q. You gave that answer? A. Yes, sir. 30

Q. And did you make this answer in response to the question: "Q. How is it you had only three shells in the revolver? A. I didn't have any more to put in." A. Yes, sir.

Q. And did you give this answer in response to the question: "Q. What distance was you from Her-

man when you fired the shots? A. Within three feet of him." A. Yes, sir.

Q. Did you give this answer: "Q: At the time of the shooting of Herman Eilers, where was George Hildebrand? A. George Hildebrand was alongside of me close to the door." A. Yes, sir.

Q. Did you give this answer: "Q. Did you witness George Hildebrand searching the pockets of Herman Eilers while he laid on the floor after he had been shot? A. Yes." A. Yes, sir.

10 Q. Did you give this answer: "Q. Did George Hildebrand tell you that Herman Eilers had no money on his person? A. Yes." A. Yes, sir.

Q. Did you give this answer to the question: "Q. Did George Hildebrand agree to accompany you on this holdup? A. Yes." A. Yes, sir.

Q. Did you give this answer to the question: "Q. About how often would you visit Herman Eilers? A. Every couple of weeks, we would also play cards at his home and he would drive my father's car and I
20 would accompany him, as I had no license." Did you give that answer? A. Yes, sir.

Q. Did you give this answer to the question: "Q. Had you ever planned to hold up Herman Eilers on the highway while you accompanied him in your father's car? A. Yes; about a year ago, while I was planning a fake holdup, where I would shoot Herman Eilers and let it look like a real holdup." Did you give that answer? A. Yes, sir.

Q. Then, as I understand it, John, if you will look
30 at this Exhibit S-16, you gave those answers that way in this statement as you were being questioned by the troopers and they took your answers down on the typewriter as you spoke the words? A. Yes, sir.

Q. And you now say that the statements that you made concerning the killing of Herman Eilers in this statement I have read to you and which you have looked at is false. Then you were lying on the oc-

casion you gave these statements concerning these matters.

MR. HILLMAN: Object.

THE COURT: On what ground.

MR. HILLMAN: The question is whether he made these statements or whether he did not. I don't think it is proper for the Prosecutor to so characterize. I don't think it is proper for him to say, "Then 10 you were lying."

THE COURT: Perhaps the characterization may be wrong. You might say untrue.

Q. I will ask you, are these answers I read to you concerning the murder of Herman Eilers the truth.

A. No, sir.

Q. And yet you signed these statements for the only reason that the troopers swore at you and said 20 you would get off easy. A. Yes, sir.

Q. You told approximately the same story to Mr. Parker and myself the morning of the 9th of October, didn't you? A. Yes, sir.

Q. That was a day and a half later. A. Yes.

Q. And no force was used on you at that time and no promises were held out to you, were they? A. No.

Q. You were not told you would get off easy if you told the truth about it. A. No, sir. 30

Q. In fact as soon as you got into the room the questions were commenced to be asked, weren't they? A. Yes, sir.

Q. Then in this statement given on the 9th of October, 1935, in the presence of Ellis H. Parker, Anna E. Bading, and myself, do you remember that you

were warned that you were charged with the murder of Herman Eilers. A. Yes, sir.

Q. That was before you gave this statement to Mr. Parker and myself. A. Yes, I remember that.

Q. You were told you did not have to make a statement if you did not want to. A. Yes, sir.

Q. And you made your statement after you were told you were charged with the murder of Herman Eilers and that you did not have to make a statement if you did not want to, and that if you did make it
10 it must be entirely voluntary, were you not? A. It was not.

Q. It was voluntary at the time you gave it? A. Yes.

Q. I am referring to this statement made to Mr. Parker and myself. A. Yes.

Q. You were not forced or pressed in anyway whatever, were you? A. No.

Q. Did you make this answer to the question. "Q. Now go ahead. A. We stopped down Cedar Lane
20 about a mile and talked about this murder case, getting some money, so finally we got started, went down to Herman Eilers, pulled in the yard, got out of the car, went on the porch. George Hildebrand opened the screen, I opened the door and Herman Eilers came toward the door and he asked us, what we wanted." Did you make that answer? A. Yes, sir.

Q. Did you make this answer to the question? "Q. Did he know you? A. Yes, sir. I shot three times
30 and he fell down. George Hildebrand searched his two back pockets and then George said, 'We better get going'" Did you make that answer? A. Yes, sir.

Q. Did you make this answer to this question? "Q. And you shot at him three times? A. I shot at him three times." Did you make that answer to that question? A. Yes, sir.

Q. Did you make this answer to this question? "Q. I show you a revolver and ask if that is the revolver that you used?" Were you shown this revolver at the time you were asked that question? (showing witness Ex. S-18.) A. Yes, sir.

Q. And did you make this answer to this question? "Q. Where did you get it. A. My father gave it to me about a year ago." Did you make that answer to that question? A. Yes, sir.

Q. Did you make this answer to the question? "Q. Had you planned or intended to do this before? A. 10 Yes." A. Yes, sir.

Q. And then did you make this answer in response to the question? "Q. Tell me about it? A. George, he was short of money. When he lived with Herman Eilers he was only getting forty cents a week and so he thought he would quit that job and go to Preidel's in Columbus. So one night he planned this out to get some money. He came down and George and I went over to Herman Eilers, we got afraid that he was going to shoot us, so we turned around and 20 went back. That is all." Did you make that answer? A. Yes, sir.

Q. Did you make this answer to this question? "Q. Did you know that he had a gun in the house? A. Yes, sir, a shot gun." A. Yes, sir.

Q. And in answer to the question. "Q. Who told you?" Did you say? "A. I shot it before and seen it." A. Yes, sir.

Q. Were you asked this question and did you give this answer? "Q. When did you plan to go there 30 and rob him before? When you went and got scared? A. Yes, that is the time." Did you make that answer? A. Yes, sir.

Q. And in answer to a question of mine: "Q. Did you go as far as the place that time?" Did you answer? "A. Yes." A. Yes, sir.

Q. And in response to my question. "Q. Was

Eilers there.” Did you answer: “A. No. Turned around.” A. Yes.

Q. And in response to my question: “Q. Got cold feet and went back?” Did you say? “A. Yes.” A. Yes, sir.

Q. Did you answer this question? “Q. The night this occurred, John, Monday night, did George know you had this gun with you?” And did you answer? “A. I had told him. He hadn’t seen it.” A. I answered that one.

10 Q. And did you answer that question? “Q. Didn’t he see it in your hand before you fired it?” Did you answer? “A. Yes.” A. Yes, sir.

Q. And were you asked: “Q. When did he first see it that night?” And did you answer? “A. When I did fire.” A. Yes, sir.

Q. And were you asked: “Q. Say anything to you when he saw the gun in your hands?” And did you answer? “A. No.” A. Yes, sir.

Q. And in response to my question: “Q. Did you
20 and George in talking it over say anything about killing him if you had to, in order to get the money from him?” Did you answer? “A. Yes.” A. Yes, sir.

Q. And in response to the question: “Q. What did you talk about when you planned it that night?” Did you answer? “A. We planned it if we couldn’t get it some other way, we would have to shoot him, to get it.” A. Yes, sir.

Q. And then in response to the question referring to Herman Eilers: “Q. What did he say to you when
30 he opened the door? A. He asked us what we wanted.” Did you make that answer? A. Yes, sir.

Q. And then in response to the question: “Q. And then what did you say?” Did you answer? “A. I shot.” Did you make that answer? A. Yes.

Q. And in response to the question: “Q. You shot him?” Did you answer? “A. Yes, sir.” A. Yes, sir.

Q. And all the questions and answers I have read you, those questions were asked you at the time you were questioned by Mr. Parker and myself and they are the answers you made? A. Yes.

Q. And are those answers the truth? A. No, sir.

Q. Then when you made those statements to Mr. Parker and myself they were not the truth. A. No, sir.

Q. What were the weather conditions that night, John? A. About moonlight when we got there.

Q. It was moonlight when you arrived there? A. 10
Yes.

Q. It was quite cold, wasn't it? A. It was not so very cold.

Q. Did you take any notice of whether there was any fire in the room? A. No, sir.

Q. You did not look in the room? A. No, sir.

Q. How tall are you, John? A. Five foot eleven and a half.

Q. How much do you weigh? A. One hundred and fifty-six. 20

Q. One hundred and fifty-six? A. Yes, sir.

Q. Do you know how tall Herman Eilers was? A. No, sir.

Q. You haven't any idea? A. No, sir.

Q. Do you know what age man he was? A. No, sir.

Q. Do you know anything about his weight? A. No, sir.

Q. Do you recall the position of the moon in the sky that night? A. What is that? 30

Q. Do you remember just where the moon was that night, was it overhead or to your back when you went into Eilers? A. I don't know.

Q. It was showing a tricky bright light, wasn't it? A. Yes.

Q. And did it shine in on the steps of Eilers' back door? A. Well, no, not exactly.

Q. But it did show up the scene around there. A. Well, you could see your shadow by the moonlight when you was walking.

Q. I show you Ex. S-8, showing a picture of Eilers' house and the corn crib, will you turn the picture around a little so the jury can see. A. (Witness complies.)

Q. Will you tell me where Hildebrand pulled up in there as you said after you came down. A. He pulled up here. (indicating on photograph.) Pulled
10 up toward the wood pile and backed up between the corn crib and the house and then pulled out.

Q. Did any part of the car get in between the corn crib and the house? A. He backed in there, yes.

Q. It was your father's car? A. Yes, sir.

Q. Now, John, in this statement you gave to the State Police the name you gave was the truth, wasn't it? A. The name of what?

Q. Your name? A. Yes.

Q. Your age was the truth, wasn't it? A. Yes,
20 sir.

Q. You told them you were living with your parents? A. Yes, sir.

Q. And it was the truth when you told them you had seen a roll of money on Herman Eilers the day you and Mr. Richardson went over there? A. Yes, sir.

Q. And it was the truth when you told them where Mr. Richardson lived? A. Yes, sir.

Q. And it was the truth when you told them you
30 went over to Scattergood's farm for George Hildebrand? A. Yes, sir.

Q. And it was the truth when you said you met Baird Malseed and Norman Abrams on the road afterwards? A. Yes, sir.

Q. And it was the truth when you said you went to Schlam's Bakery to get some bread. A. Yes, sir.

Q. And it was the truth when you said you went to Miller's and Hildebrand went in and got some cigarettes? A. Yes, sir.

Q. And it was the truth when you told them that after that you came home. A. Yes.

Q. And it was the truth when you told them you were at home when the State Police came and took you over to the Columbus Barracks? A. Yes.

Q. All of these other statements were the truth except what you said about murdering Herman Eilers, and those statements were not the truth. A. 10 Yes.

Q. Is that right? A. That's right.

Q. And the same thing is true of the statement made to Mr. Parker and myself. Were all of the answers you gave to the questions except those which had to do with the murder of Herman Eilers, were all those other answers the truth? A. I don't think there was any truth in the statement I gave Mr. Parker.

Q. No truth at all? A. Yes, about our being to 20 Schlam's Bakery and like that.

Q. But I say that everything else in the statement made to Mr. Parker and myself except the answers you gave concerning the murder of Herman Eilers, everything else in that statement was the truth, but the answers you gave concerning the murder of Herman Eilers are not the truth. A. Yes, sir.

Q. Will you come down here please? A. (Witness complies.) (Stands between the bench and the counsel table.) 30

Q. Stand out here, please. A. (Witness complies.)

Q. Here is a ruler three feet long, will you stand over there further. A. (Witness complies.)

Q. Put that gun in your hand, hold it straight up toward me. A. (Witness complies.)

Q. All the way, extend your arm straight out. A.
(Witness complies.)

MR. EASTWOOD: All right, that's all.

RE-DIRECT EXAMINATION

BY MR. HILLMAN:

Q. Mr. Ciemiengo, you said something in your
10 direct examination or in your cross-examination
about the trooper saying to you, "You did it." Tell
us what you meant by that. A. They meant that I
killed Herman Eilers.

Q. How many times did they tell you that? A. I
cannot remember, I guess about a hundred times.

Q. They kept at you continually. A. Yes, sir.

Q. And did you tell them about going over to Mr.
Eilers with Mr. Richardson or did they know that be-
fore? A. I told them that.

20 Q. After you were indicted were you advised that
having made this statement if you were guilty it
would be better for you to so plead?

MR. EASTWOOD: Object, if the Court please,
there is no testimony up to this date that I know of
which would justify any such statement.

THE COURT: The question will be excluded.

30 Q. Why having made this statement do you stand
trial now?

MR. EASTWOOD: That is objected to, if the
Court please, I don't think it is a proper question for
this witness to answer. It is a conclusion for the
jury.

THE COURT: I think it is apparent. I will allow him to answer.

Q. Will you answer my question? Why having made this statement do you stand trial now? A. The State Police told me I would get off easy and all that.

Q. But why having made this statement do you now stand trial? A. Because I am not guilty.

Q. Did anyone talk to you? A. No, sir.

Q. Since you have been in jail? A. No, sir. 10

Q. Mr. Heilbron and I talked to you, didn't we? A. Oh, yes.

Q. Did or did not we advise you to stand trial?

MR. EASTWOOD: Objected to, if the Court please, I don't care what they advised him.

THE COURT: Objection sustained.

Q. You said the night you were over at Mr. Eil-20
ers when you went there you heard the chickens,
what were the chickens doing? A. They were just
as if somebody was in the chicken coop.

Q. Cackling?

MR. EASTWOOD: Object as leading.

Q. What kind of noise were they making? A.
Just crowing.

Q. It was dark at the time? A. Yes. 30

Q. Outside of the moonlight. A. Yes.

BY MR. EASTWOOD:

Q. Did you go into the chicken coops to investi-
gate anything about them? A. No, sir.

Q. Have you chickens on your own place? A. Yes, sir.

Q. Have you ever heard any of them crow at night time? A. Yes, sir.

Q. You never thought anything about it, did you? A. No, sir.

Q. There was nothing suspicious about it? A. No, sir.

Q. That is one of the few pleasures that chickens have, isn't it?

10

MR. HILLMAN: Object.

THE COURT: Objection sustained.

Q. You say that you talked with Mr. Heilbron and Mr. Hillman. A. Yes, sir.

Q. You also talked to George Hildebrand since you have been arrested? A. Oh, yes.

Q. As a matter of fact you and he were in the 20 same cell together. A. Yes, sir.

Q. And you and he talked this case over quite a number of times, since you have been locked up in the same cell. A. Well, I figured.

Q. Will you please answer my question. Did you and George Hildebrand talk this case over quite a number of times since you and he have both been locked up in the same cell? A. Yes.

Q. You have talked over what your defense was going to be? A. Well, no, I just thought it over and 30 that it would be best to tell the truth.

Q. And you talked over what your defense was going to be, didn't you with Hildebrand? A. The only thing George told me was just to tell the truth.

Q. You and he were together when you talked over what your defense was going to be, didn't you? A. I don't know what you mean?

Q. Do you know what I mean by the defense? A. No, sir.

Q. Your coming into court and stating to the jury what the facts are, that is your defense. You and he talked over what you were going to say when you got on the witness stand. A. Nothing but the truth, yes.

Q. You talked over what that would be. A. Yes.

Q. And you did it frequently? A. Yes, George told me it would be better to tell the truth. 10

Q. And what that truth was that you didn't tell when you made these statements you were going to say when you got on the witness stand, and say that these statements were not the truth. A. (No answer.)

Q. You talked that over? A. Yes.

Q. And you both decided to tell the same story. A. Well, we was both in the same place.

Q. And didn't you talk it over while you were in the jail and decide that when you came into court 20 you would testify that the statement you made to the State Police and the statement you made to Mr. Parker and myself were not the truth. A. I did, yes.

Q. And wasn't that what he said to you? A. I don't know what he thought.

Q. I asked what he said to you in the cell when you were talking it over? Wasn't that what he said? A. No.

Q. Didn't you both agree that you would make the statement that these statements were not true? A. 30 Yes.

BY MR. HILLMAN:

Q. Why did you make that statement? A. Because we told a lie.

Q. Because the statements you made to the State Police were not true. A. No.

Q. And the statements you made to Mr. Parker and Mr. Eastwood concerning the murder of Herman Eilers were not true. A. No, sir.

BY MR. EASTWOOD:

Q. But everything else was true except what you said about killing Herman Eilers, and that was not 10 the truth. A. No, sir.

Q. And the only reason why you made the statements to the State Police about killing Herman Eilers was because they swore at you or because you were frightened? A. Yes.

Q. And you cannot explain why you made the statement about Herman Eilers' murder to Mr. Parker and to me, can you? A. No, sir.

MR. EASTWOOD: That's all.

20

ABRAHAM I. MILLER, a witness produced on behalf of the defendant, being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION BY MR. HEILBRON:

Q. Mr. Miller, where do you live? A. 29 East 30 Broad Street, Burlington, New Jersey.

Q. What business are you engaged in? A. General merchandise and also cigarettes and tobacco.

Q. Do you remember the night of October 7th. A. Yes, sir.

Q. Do you remember seeing George Hildebrand, this young man here, in your store on that night?

A. Yes, sir.

Q. Did he purchase anything that night? A. A pack of cigarettes.

Q. With what did he pay for the cigarettes? A. He gave me a five-cent stamp and a nickel.

Q. The cigarettes were ten cents. A. The cigarettes were ten cents and he told me—

MR. EASTWOOD: Object to what he told this witness.

Q. Not what he told you, but he did purchase a 10 pack of cigarettes and gave you in payment a five-cent stamp and a nickel. A. Yes, sir, he said he had only five cents and a five-cent stamp.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. What time was he there? A. It must have been anywheres between eight and half-past eight. 20

GERTRUDE SCHLAM, a witness produced on behalf of the defendant, being duly sworn according to law, upon her oath testified as follows:

DIRECT EXAMINATION BY MR. HEILBRON:

Q. Mrs. Schlam, you live in Burlington? A. Yes. 30

Q. Burlington, New Jersey? A. Yes.

Q. What business are you in engaged in? A. Baker shop.

Q. Where is your store located in Burlington? A. 211 Broad Street.

Q. On Broad Street? A. Yes, sir.

Q. Do you know Jacob Ciemiengo? A. Yes.

Q. Do you remember the night of October 7th, last? A. Yes.

Q. Did Jacob come into your store to purchase anything on that night? A. Yes, he bought bread.

Q. How much? A. Fifty-five cents he want for fifty cents, but I gave him for fifty-five cents.

Q. Did he pay you for it? A. He didn't have no money. He told me I should put it in, he had credit, his mother.

Q. You put it down on her account? A. I put it
10 down on her account, yes.

Q. Do you have any idea what time it was? A. I have not an idea but it was half-past six or seven o'clock. He came in just when the Jewish Church was Yom Kippur, so I remember that day.

CROSS EXAMINATION

BY MR. EASTWOOD:

20 Q. You don't know what time it was do you? A. That's what I believe.

Q. You didn't look at any clock to pay attention to the time. A. No, I know it was six o'clock at the Synagogue and we had supper and then he came in after bread.

Q. You left the Synagogue at six o'clock and you came home and had supper. A. They had supper yet, but I was in the store.

Q. But you don't know what time it was? A. I
30 could not tell. I did not notice.

Q. When he came in, did you notice anything about thim A. He was a little in a hurry, you know. I gave him the bread and did not say nothing.

Q. He acted kind of excited, didn't he? A. I could not tell you.

Q. Was not his face red? A. I could not say.

Q. But he seemed to be in a hurry. A. Yes, he seemed to be in a hurry.

Q. You signed a statment for the State Police, did you not, and in that statement you said, "His face was red and he appeared to be excited and he was in a hurry." A. Yes, he was in a hurry, that's right.

BY MR. HILLMAN:

Q. What do you mean by being excited. A. He was in a hurry to get home. 10

Q. He did not tremble or seem nervous, did he? A. No.

BY MR. EASTWOOD:

Q. Was his face red that night? A. I could not tell you.

Q. You said it was in the statement you gave to the State Police. A. His face is red all the time.

Q. Didn't you say in that statement, "His face was red, he appeared to be very excited and in a hurry." A. Yes. 20

BY MR. HILLMAN:

Q. Did the State Troopers insist on your saying that? A. Yes.

BY MR. EASTWOOD:

Q. Just a minute, Mrs. Schlam, you say that the State Troopers insisted on your saying that? A. No, I did not understand what he was talking. 30

MR. EASTWOOD: That's all right then.

BY MR. HILLMAN:

Q. Who suggested it to you, the State Troopers?

A. They came in and asked me.

Q. Did they suggest that about his being excited?

A. No, I said that myself.

Q. What did you tell them? A. I said he came in for fifty cents bread. That is all.

Q. And did they ask you if he was excited? A. They asked me how he looked.

10 Q. Did they ask you if he seemed to be upset? A. I guess so.

Q. And would not take no for an answer. A. I guess so.

BY MR. EASTWOOD:

Q. Now, Mrs. Schlam, didn't they ask you this question? "Q. Do you remember how he was dressed at the time?" A. Yes.

20 Q. And did you then give this answer? "A. I don't know but I think he had on a light brown coat and a sweater under, his face was very red, and appeared to be very excited and in a hurry." A. Yes.

MR. EASTWOOD: That's all.

GEORGE H. HILDEBRAND, one of the defendants in this cause, appearing in his own behalf, being duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION BY MR. HEILBRON:

Q. Where did you live prior to your arrest? A. On the Burlington-Columbus Road.

- Q. With whom? A. Mr. E. R. Scattergood.
- Q. George, how old are you? A. Twenty-six.
- Q. Where were you born? A. In Germany
- Q. In what part of Germany? A. Freiburg, Sil-
esia.
- Q. Are your parents living? A. Yes, sir.
- Q. Where do they live? A. They live in Ger-
many.
- Q. In Freiburg? A. Yes.
- Q. When did you come to this country, George?
A. November 9th, 1928. 10
- Q. What port did you land? A. New York.
- Q. And after you landed, where did you go from
there? A. I went to Albany.
- Q. How long did you stay in Albany? A. About
eight months.
- Q. Were there friends of your family there? A.
No.
- Q. You went to work there? A. Yes.
- Q. And after you left Albany where did you go?
A. I went to Schenectady, New York. 20
- Q. And from Schenectady where did you go? A.
I went to Philadelphia.
- Q. And how long were you in Philadelphia? A.
About four months.
- Q. And then where did you go to live? A. I
went to Paulsboro, New Jersey.
- Q. Paulsboro, New Jersey? A. Yes.
- Q. How long were you there? A. A little over
a year I guess, I am not sure.
- Q. When did you first come to Burlington Coun- 30
ty? A. 1930, or 1931. '31 it must be.
- Q. For whom did you work at that time? A. Mr.
George Preidel.
- Q. Where did he live? A. He lives on the Co-
lumbus-Hedding Road.
- Q. You worked there how long? A. About two
years.

Q. And then where did you go? A. I went to live at Mr. Eilers' place.

Q. When did you first become acquainted with Mr. Eilers? A. At George Preidel's farm.

Q. And you went to live with Mr. Eilers? A. Yes, sir.

Q. How long did you stay at Mr. Eilers' place? A. From March, 1933, to December, 1933.

Q. Then where did you go? A. I went back to Columbus to Mr. Preidels'.

10 Q. From there did you go to Mr. Scattergoods? A. No I went over and lived with Ciemiengo's.

Q. Did you work on farms while you were living there? A. Yes, with Farmer John Morley.

Q. And then you went to work for Mr. Scattergood, is that correct? A. Yes.

Q. You knew Mr. Eilers for about three years? A. Yes.

Q. After you left Mr. Eilers' place did you go there to see him? A. Yes.

20 Q. At any time after you left did you ever borrow any money from him? A. Yes.

Q. Did you borrow any large sums or what sums of money did you borrow? A. Once I borrowed three dollars and another time about a quarter or a half a dollar.

Q. Did you pay those back? A. Some I paid, I paid some of them back, and I helped him work around the place there.

Q. George, do you remember the night of October 30 7th, last? A. Yes.

Q. Did you work that day? A. Yes.

Q. Where did you work that day? On Mr. Scattergood's farm. A. No, sir.

Q. Where did you work? A. Next to Scattergood's farm, for a farmer by the name of Lewis.

Q. What were you doing there? A. Filling silos.

Q. The whole day? A. Yes.

Q. What time did you return from Mr. Lewis' farm that afternoon? A. About half-past five or quarter to six.

Q. Then did you have supper? A. I went in the barn first.

Q. You did your work in the barn? A. A little bit, yes.

Q. Then you went into supper? A. Yes.

Q. While you were eating supper did you receive any visit from Jack Ciemiengo? A. Yes, sir.

Q. About what time was that? A. About ten 10 minutes after six or fifteen minutes after six.

Q. Ten or fifteen minutes after six? A. Yes, about that time.

Q. Did you go out in the yard when Jack came in? A. Yes, sir.

Q. What did you do after you went out there? A. I asked him what he wanted and he told me he had to go to Burlington and get some bread, and I told him, "All right, I will go in and finish my supper and we will go." 20

Q. Then did you go in and finish your supper? A. Yes, sir.

Q. And after that did you come out and go in Jack's car? A. Yes, sir.

Q. Did you drive the car? A. Yes, sir.

Q. Where did you go? A. We went down Cedar Lane to Mr. Eilers.

Q. What was your purpose in going there? A. I asked Jack if he had cigarettes and he told me no, he didn't, he only had tobacco, just enough for him- 30 self and I said, "We will go down to Eilers and see if we can borrow some money to buy cigarettes."

Q. You drove down Cedar Lane to Mr. Eilers' place? A. Yes.

Q. Where did you drive when you got to Mr. Eilers' place? A. I drove inside the yard.

Q. In the back yard? A. Yes.

Q. When you got there was there any light in the house? A. No, sir.

Q. What happened then? A. Jack went out of the car and walked up the steps and he started to holler, "Hello, Dutch," about four times, and I blowed the horn and there did not seem to be anybody around the place and he came back in the car and we waited a little while and I blew the horn again and did not get any response and then I pulled out into the road.

10 Q. Where did you go then? A. To Burlington.

Q. Did you see anybody on your way to Burlington? A. Yes, sir.

Q. Whom did you see? A. Baird Malseed and Norman Abrams.

Q. Where was that? A. They were parked not far from Burlington, about half a mile from where Cedar Lane goes into Burlington Road.

Q. About half a mile on the Burlington-Columbus Road, from Cedar Lane? A. Yes, sir.

20 Q. Did you stop to talk to these young men? A. Yes, sir.

Q. Then what did you do? A. I asked them if they had any money, I asked them if they would lend me a dime so we could get some smokes.

Q. To whom did you direct that question? A. To Baird Malseed.

Q. Did you get any money from them? A. No, sir.

30 Q. Did you get any cigarettes from them? A. We got one cigarette apiece.

Q. Then where did you go? A. We went on to Burlington to the Bake shop and Jackie he went in and got some bread.

Q. After Jack came out of the Baker shop what did you do? A. We pulled up to the cigar store and I went in and bought a pack of cigarettes.

Q. After you got the pack of cigarettes, where did you go? A. We turned around and went to Ciemiengo's.

Q. You went back to Jack Ciemiengo's home? A. Yes.

Q. Did you stay there for awhile? A. Yes.

Q. Do you know what time you left Ciemiengo's? A. I know exactly.

Q. Have you any idea? A. About half-past nine or quarter to ten.

Q. Then where did you go? A. Jackie took me 10 home in his car to Scattergoods.

Q. Did you go to bed then? A. Yes.

Q. Later did anyone come to Scattergoods? A. Yes, sir.

Q. Who came? A. State Trooper and Mr. Mullins.

Q. That is the gentleman sitting here. A. Yes, sir.

Q. And what did the State Trooper say to you, if anything? A. He didn't say anything. 20

Q. Who called you? A. He woke me up, he put his hand on my shoulder.

Q. He came into your bed room? A. Yes.

Q. What did he say then? A. He didn't say anything.

Q. Didn't he say anything at all? A. He started to look around the room in the bureau drawers and closets and he said, "Put on your clothes and come along."

Q. Then where did you go? A. We went down 30 Cedar Lane to Mr. Eilers' place.

Q. Did you go in the house then? A. Yes.

Q. Did you see Mr. Eilers? A. Yes, sir.

Q. What had happened, what did you see concerning him? A. He was laying across the doorway inside the room along the wall, he seemed to be hurt, shot.

Q. Did they say anything to you while you were there? A. No, sir.

Q. No one asked you any questions while you were at Mr. Eilers' house? A. No, sir.

Q. Did anyone say anything at all while you were at Mr. Eilers' house? A. No, sir.

Q. Then where did you go? A. We went to Columbus to the State Police Barracks.

Q. After you got to Columbus did anybody ask you any questions? A. Yes, sir.

10 Q. By whom were they asked? A. By two troopers.

Q. Are they in the court room here. A. I think this is one, there (indicating.)

Q. Which one is that? A. The third man from the end.

Q. On the front row? A. Yes.

Q. Who else? A. I don't see him.

Q. Were you then detained at the State Trooper Barracks? A. Yes, sir.

20 Q. Now, at the time you went down to Eilers' house after Jack Ciemiengo came to Scattergood's for you to go to Burlington, when you got to Eilers' house did Jack Ciemiengo shoot Mr. Eilers? A. No, sir.

Q. Did you see Jack Ciemiengo go into Mr. Eilers' house? A. No, sir.

Q. Could you see him all the time? A. Yes, sir.

Q. Where did he go around the house? A. He went up on the step, on the porch.

30 Q. Did he go in any farther? A. No, sir.

Q. You could see him? A. Yes, sir.

Q. Did you go in the house at that time? A. No, sir.

Q. Did you go through Mr. Eilers' pockets? A. No, sir.

Q. Did you and Jack ever talk of robbing Mr. Eilers before this night? A. No, sir.

Q. Did you ever go down to Mr. Eilers' house with Jack three or four months prior to that time with the intention of robbing him? A. No, sir.

Q. Did Jack have his pistol with him that night? A. No, sir.

Q. After you were taken to the Barracks in Columbus what happened there? A. They started to question me.

Q. What questions did they ask you? A. He asked me first if I knew Herman Eilers and I told him yes, I had lived there, and he asked if he had 10 any enemies of any people who used to come around at the time I lived there and I told them, "No, I didn't know of anybody," and he asked me where I was Sunday and I had to tell him where I was all during Sunday up to Sunday night.

Q. They asked you where you were all that day on Sunday? A. Yes, sir.

Q. Did they keep asking you other questions? A. Yes, he asked me if I knew anybody had any gun. 22- or 25-calibre guns, and he asked me if I knew 20 anybody had a new automobile.

Q. Did you give them any answers to those questions? A. Yes, I told them Jackie Ciemiengo had a 22 pistol, Baird Malseed had a rifle, and he had two 32 revolvers.

Q. Was there anyone else that you mentioned? A. Yes, I knew one of the boys living with Mr. Therrien had a 22 rifle and I told them that.

Q. Did they keep questioning you then? A. No, they stopped then and went out and got Jackie, and 30 Baird.

Q. After Jackie was brought what happened? A. I didn't see Jackie or Baird, I was downstairs at the time. I saw the Trooper bring the guns in and show them to a trooper sitting at the desk.

Q. Then what happened? A. They started questioning me again and then for awhile he started

questioning me about Monday night.

Q. Did you tell them where you had been that night? A. Yes, sir.

Q. Did they keep questioning you then? A. No, they let me go for awhile, I was sitting downstairs.

Q. Then what happened? A. One of the troopers come downstairs and he cursed me and threatened me.

Q. You say he cursed you? A. Yes, sir.

Q. When was that, do you know? A. About 10 three or four o'clock in the morning.

Q. Then what did he do? A. Then he went back and then he took me upstairs in another room then he started questioning me again about Monday night.

Q. Did you tell them about where you had been Monday night? A. Yes, sir.

Q. Did they keep asking you questions concerning Monday night? A. Yes.

Q. How long did they question you? A. About 20 half an hour.

Q. Did they question you any longer than that? A. You mean the whole time I was there? Yes, they questioned me first when I got there for an hour or an hour and a half. Then they let me go for awhile and then after that they come and asked me some more questions.

Q. Did they accuse you of anything while you were there? A. No, sir.

Q. Do you understand what I mean by accused? 30 A. Not at first they didn't, but around toward morning they accused me of being there when Herman Eilers was killed.

Q. Did they come back and question you more after that? A. Yes, sir.

Q. How long did they question you? A. They questioned me about up to half past five or six o'clock in the morning, and then the trooper came in

and told me that Jackie had told them that he had went down and killed him.

Q. Did he ask you if you shot him before that?
A. Yes, sir.

Q. Did he tell you that you did it? A. No, he asked me if I done it, but he didn't tell me that I did it, not before that.

Q. After they came and told you about Jack Ciemiengo what did he say then? A. He told me Jackie had told them I was mit him when he shot Herman Eilers, and he told me to tell the truth and 10 not lie any more.

Q. Did he say anything more to you? A. He always said, "Don't lie, don't be stubborn."

Q. What else did they say? A. I don't know. He took me in another room after that where Jackie was because I told them I didn't believe Jackie said anything like it and he said, "Do you want to hear him yourself?" and he took me in the other room where Jackie was.

Q. Then what happened? A. They decided to 20 take a statement from Jackie.

Q. And after they took the statement from Jackie, what did you do? A. I told them I didn't have anything to do with it, but he asked me to make a statement and I said, "Why, should I make a statement," and he said, "Come on, don't be stubborn, don't lie." So I told him I would make a statement.

Q. Did you make a statement? A. I didn't make that statement here, I told them I did not kill Eilers and Jackie did not kill him.

30

Q. Did you sign this statement that is in court?
A. Yes.

Q. How was that statement taken? A. I was sitting there and a trooper was sitting at the typewriter and the other men in the room started to ask us questions and he asked us the questions and he wrote them down on the typewriter.

Q. Why did you make that statement? A. I was scared for one thing.

Q. What scared you? A. He acted like he was going to hit me.

Q. Who acted like that? A. One trooper, this one sitting right there (indicating.)

Q. You mean the man right back of the Prosecutor? A. Yes, sir.

Q. Did he act as if he was going to hit you? A. He told me he was, he cussed me.

10 Q. He cursed you? A. Yes.

Q. That was before you made this statement? A. Yes, sir.

Q. He said he was going to hit you? A. Yes.

Q. What else did he say about that? A. He cussed me.

Q. He cursed at you and said he was going to hit you? A. Yes, he said he was going to knock me through the door.

Q. He said he was going to knock you through
20 the door? A. Yes, sir.

Q. And right after that you made this statement? A. Not right after, it was some time after that.

Q. Did he come back and say anything more to you? A. You mean threatened me?

Q. After he cursed you and threatened to hit you did he say anything more to you? A. No, sir.

Q. Then you signed this statement they wrote out? A. I did.

Q. Do you remember coming here to the court
30 house after you were taken to the jail? A. Yes.

Q. Do you remember seeing Mr. Parker and Mr. Eastwood? A. Yes.

Q. Did you give them a statement? A. Yes.

Q. Was that statement the truth? A. No.

Q. Why did you give Mr. Parker and Mr. Eastwood that statement? A. I don't know. We had told them the same statement on Monday night.

Q. What? A. I could not explain why I said the statement to Mr. Parker and Mr. Eastwood. I figured they would be all against us anyway and it would not be no use telling them the truth.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. Herman, are you a citizen? A. No, sir.

Q. You are a citizen of Germany? A. No. 10

Q. You are a citizen of what country? A. I am not a citizen of any country now.

Q. You have not lost your citizenship in Germany, have you? A. Yes, your passport is good for five years, if you don't renew it you lose your citizenship.

Q. When did you lose your citizenship under your passport? A. In 1933.

Q. You remained here beyond the time that your passport was good? A. For five years, yes. 20

Q. When you left you got a passport and if after five years you do not return to Germany to renew your passport you lose your German citizenship? A. Yes, sir.

Q. You were employed by Mr. Scattergood? A. Yes, sir.

Q. How long did you work for Mr. Scattergood? A. A little over a year.

Q. How much wages did you get paid? A. I got five dollars a week. 30

Q. That was beside your board and room? A. Yes, sir.

Q. You didn't have to pay anything to Mr. Scattergood for your food or the room you occupied? A. No, sir.

Q. Before this night of October 7th, when had you last been paid? A. Saturday night.

Q. How much did you get paid at that time? A. Saturday night, I think three dollars.

Q. Had you any money beside that three dollars?

A. No.

Q. That was the only money you had? A. Yes.

Q. You spent that three dollars before Monday night? A. Most of it.

Q. How much of it did you have left? A. A nickel.

Q. That is all you had left? A. Yes, sir.

10 Q. When Jack Ciemiengo came for you he told you you were going into Burlington, did he not? A. Yes, sir.

Q. Where did he say he wanted to go? A. To Schlams to get some bread.

Q. You had no cigarettes when you left? A. No.

Q. And Ciemiengo had no cigarettes? A. He had some tobacco.

Q. What kind of tobacco did he have? A. He had some cigarette tobacco.

20 Q. And some cigarette papers? A. He had.

Q. Why did you have to go over to Eilers to borrow money for cigarettes if he had tobacco and papers? A. He only had a little bit of tobacco.

Q. How much? A. Just a little bit in the bag and he needed that for himself.

Q. Wasn't it more than enough to make one cigarette? A. Yes.

30 Q. Why didn't you borrow money from Mr. Scattergood, he was your employer? A. He had paid me Saturday and I didn't want to ask him for more money.

Q. He was your employer, you were working for him, and he was friendly and had confidence in you as far as you know? A. Yes, as far as I know.

Q. And would not he had loaned you money if you asked for it?

MR. HILLMAN: Object.

THE COURT: Objection sustained.

Q. You had borrowed money before from Mr. Scattergood. A. On my wages, yes.

Q. And he had given it to you. A. Yes.

Q. And if you had asked him for some money that night he would have given it to you, wouldn't he?

10

MR. HILLMAN: Object.

THE COURT: Objection sustained.

Q. But you didn't ask him. A. No.

Q. You went all the way over to Eilers to borrow money to buy cigarettes. A. Yes.

Q. That was out of your way to go to Burlington and to Schlams. A. Yes.

Q. And if you had gone directly into Burlington 20 for the bread it would not have taken you by Eilers at all, would it. A. No, sir.

Q. In fact the road leading in from Columbus Road to Eilers is the Cedar Lane Road, which would have taken you out of your way in going from Scattergood's to Burlington. A. Yes.

Q. But notwithstanding the fact that you were going into Schlams in Burlington for bread and that Eilers was out of your way you decided to go out of your way to try to borrow money from Eilers in order to buy cigarettes. A. Yes.

Q. Even though Jack Ciemiengo had the makings with him. A. (No answer)

Q. Do you understand what I mean by that? A. Yes.

Q. And notwithstanding that Jack Ciemiengo had the makings with him, you still say you went in there

to borrow some money to buy cigarettes. A. Yes, sir.

Q. You had worked for Mr. Eilers, hadn't you?

A. Yes, sir.

Q. How long had you worked for him? A. About seven months.

Q. That was back in 1933, wasn't it? A. Yes, sir.

Q. And while you were working for him your relations were friendly, were they not? A. Yes, sir.

Q. You had no differences with him at all, had you? I mean you had no serious differences with him. A. No, sir.

Q. And when you left you were friendly with him, were you not? A. Yes, sir.

Q. You had gone there with agreement that he would furnish the money to buy some chickens and that you would do the work of looking after them?

A. Yes, sir.

Q. And whatever you made out of it jointly, you would go fifty-fifty? A. Yes, sir.

20 Q. And you didn't make much money of it during the time you were conducting the business, did you? A. We didn't make any money.

Q. And the reason you left was because it was not a profitable venture, wasn't that the reason? A. Yes, sir.

Q. And after you left up until the time of Mr. Eilers' death, you and Mr. Eilers were always friendly? A. Yes, sir.

Q. And after you left, you went over there and 30 visited him, didn't you? A. Yes, sir.

Q. On a number of occasions you and Ciemiengo went over to visit him? A. Yes, sir.

Q. For sometime prior to Eilers' death, you and Herman had been very friendly? A. Yes, sir.

Q. And you were in each other's company very often? You visited there very often, you and Ciemiengo? A. Yes, sir.

Q. In fact, almost every night? A. Not every night.

Q. Well, several nights a week, weren't you? A. Yes.

Q. And that had been for how long before Mr. Eilers' death? A. Oh, about five months.

Q. Didn't Ciemiengo come over there when you worked for Mr. Eilers and you, and Mr. Eilers, and Ciemiengo played cards? A. Oh, yes; he come over that time—yes.

Q. And after you left, didn't you and Ciemiengo go back there together and visit Eilers? A. Yes, sir.

Q. A number of times? A. Yes, sir.

Q. And on some of those occasions you played cards together? A. Once.

Q. Once? A. Yes, sir.

Q. There were several other occasions when the two of you went together and visited him? A. Yes, sir.

Q. And they were occasions in the evening? A. No.

20

Q. Didn't you visit him in the nighttime? A. Once.

Q. Only once? A. Only once.

Q. You are sure of that? A. I am sure of that.

Q. You were working daytimes, after you left him, weren't you? A. Yes; we went over there on Sundays and holidays.

Q. On Sundays? A. Yes, sir.

Q. You knew that after you left there, Mr. Eilers lived alone, didn't you? A. Yes, sir.

30

Q. You knew that he conducted his own affairs over there without anybody helping him? A. He had a helper for awhile.

Q. For how long? A. About three weeks, I guess.

Q. After you left? A. Yes, sir.

Q. And then, after that, up until the time of his death, did he have anybody? A. No, sir.

Q. His cooking, his housekeeping and looking after the chickens, all the work was done by him alone after that time, was it not, and you knew that? A. Yes, sir.

Q. George, is it not a fact that when Herman Eilers went out of the house at night he left the house alone and put a padlock on the door and locked it? A. A padlock?

10 Q. Yes. A. No, sir.

Q. A lock of some kind when he went out at nights and the house was alone, didn't he put a lock on the house? A. He locked the door—yes.

Q. And he locked the back door, where Ciemiengo went up onto the porch and called to him, and isn't it true that he always locked it when he went out and left the house alone? A. Yes, sir; when he went away.

Q. You knew that, didn't you? A. Yes, sir.

20 Q. When you got there that night, you could see that the door was open, could you, from where you were seated? A. I couldn't.

Q. You did not? A. No, sir.

Q. But Ciemiengo told you it was open— A. Yes; he did.

Q. —after he came back to the car; after he had called? A. Yes, sir.

Q. And he didn't go in the house? A. No, sir.

Q. He didn't knock on the door? A. No, sir.

30 Q. He didn't do anything but call? A. Just call.

Q. While you were seated in the car, you could see where he opened the screen door? A. Yes, sir.

Q. And did he open the screen door? A. He did.

Q. He called four or five times and called him "Dutch"—that's all what he did? A. Yes, sir.

Q. You were the one that suggested that you go there for money to get cigarettes? A. Yes, sir.

Q. When he told you that the door was open, didn't it strike you that that was rather unusual? A. It did.

Q. Because previously when he left, you knew that he locked the door? A. Yes, sir.

Q. And yet you didn't get out of the car and see why that door was open, after Ciemiengo told you that it was open? A. No, sir.

Q. Why didn't you? A. We didn't want to go in the house if he wasn't home.

Q. You didn't? A. No, sir. 10

Q. Yet you and Eilers were friendly? A. Yes, sir.

Q. Did you think he would object to your going into the house?

MR. HILLMAN: Objected to.

THE COURT: Objection sustained.

BY MR. EASTWOOD: 20

Q. Did you on the occasions when you visited him walk in the door without calling or knocking? A. Yes.

Q. On other occasions you had gone into that house and had gone in the door without calling or knocking? A. If he was home—yes.

Q. You didn't know he was home and yet you walked in? A. When I seen a light most of the times. 30

Q. But you didn't know whether he was in there just because you saw a light? (No answer)

Q. It was a moonlight night, wasn't it? A. Yes.

Q. And that fairly lighted up the premises around there at Eilers, didn't it? A. Yes, sir.

Q. It lighted up the back porch pretty well, didn't it? A. I don't know.

Q. Didn't you look? A. I didn't see any moonlight on the porch, because I seen it on the door.

Q. There was a little roof on the porch, wasn't there? A. Yes, sir.

Q. Did you pay any attention as to how the moon lighted up the scene at the time? A. No, sir.

Q. You don't know whether it was over your shoulder when you drove into Eilers' place; did you? A. No, sir.

Q. Or whether it was overhead, but it was moonlight and shining at the time when you were there at Eilers'? A. Yes, sir.

Q. When you were first questioned by the state police about where you were on the night of Monday night, October 7th, the first story that you gave them as to where you were, you didn't tell the trooper or troopers that you were at Eilers', did you? A. No, sir.

Q. You told them that you had gone with Ciemiengo into Burlington to Schlams and also to Miller's
20 —to Schlams to get bread and to Miller's to get cigarettes, did you? A. Yes, sir.

Q. And you told them you had seen Norman Abrams and Baird Malseed on the way in, and stopped to talk to them and asked them for 10 cents to get some cigarettes, didn't you? A. Yes, sir.

Q. But the first time you told them where you were, you didn't tell them you had been to Eilers' at all, did you? (No answer)

Q. When was it you first told them you had been
30 to Eilers' on that Monday night? A. I don't remember what time it was.

Q. As a matter of fact, that was after they told you that Jack Ciemiengo had told them he had been there and saw Eilers, wasn't it? A. I don't know.

Q. And that you were with him? Wasn't it after that that you first told them that you had been at Eilers'? A. No—no; it isn't. I told the troopers—

they first asked me if I knew anybody that had a new car or had new tires on the car, and I told the troopers we were there that Monday night.

Q. When did you tell the troopers that? A. When they asked about the car.

Q. How long was that after you had been over at the police station? A. About a half hour.

Q. But the first time you were asked where you had been Monday night, you did not say you had been at Eilers', did you? A. No, sir.

Q. Now these tires that were on Ciemiengo's car 10 that you drove, they were practically brand new tires, weren't they? A. Yes, sir.

Q. When you left Eilers' home, what did you do to get out of the premises? A. We had to pull ahead against the wood pile and back up against the house to get out of there.

Q. So, when you had backed out, did any part of the car extend into this space between the corn crib and the dwelling house? A. Yes, sir.

Q. How much of it? A. Oh, I don't know how 20 much back maybe about three feet or something like that.

Q. I don't know whether you are able to distinguish on this photograph what purports to be tire marks here and there (indicating). Can you see them? A. Yes, sir.

Q. Would you say that they are the tire marks that you made when you backed in there to go out of the premises? A. I can't say that.

Q. Is that about where you did back around to go 30 out? A. Yes, sir.

Q. And aren't the tire marks that appear on that photograph the same as were made by the tires on the car that you were driving? A. I don't know.

Q. You don't know. You never tested them to see? A. No, sir.

Q. They look similar, don't they? A. I don't know. I never looked at it.

Q. You knew that Mr. Eilers had a shotgun, didn't you? A. Yes.

Q. I show you a shotgun, which has been marked S-21, and ask you whether or not that is the shotgun? A. Yes, sir.

Q. And where did Mr. Eilers keep it, do you know? A. He kept it behind the door.

Q. And that is the door that enters into the kitchen
10 from the back porch? A. Yes, sir.

Q. You knew that he kept it there? You had seen it there? A. I seen it—yes.

Q. I show you what purports to be a signed statement given by you to the state police on October 8th, 1935, marked Exhibit S-17, and ask you to look at it and tell me whether or not that is your signature on those pages? A. Yes, sir.

Q. Now, at the time you gave that statement, did you at any time tell the State Police that you had gone
20 to Eilers' to get money for cigarettes? A. No, sir.

Q. So that the first time that you made the statement concerning the trip to Eilers' from Scattergood's to borrow or attempt to borrow money from Mr. Eilers for the purpose of getting cigarettes was here in court on the stand today, wasn't? A. Just what do you mean—the first time I told this?

MR. EASTWOOD: Read the question.

30 (Question read)

THE WITNESS: No, sir.

BY MR. EASTWOOD:

Q. I am referring now, Mr. Hildebrand, to any statement that you made to the officials, either the

state police, Mr. Parker and myself or any other officials who have questioned you—isn't today on the witness stand the first time you have told the story to any officials that you went to Eilers' to try to borrow money for cigarettes and that he was not in? A. Yes, sir.

Q. So that when you made the statement to the State Police and to Mr. Parker and myself, you made absolutely no mention of any trip to Eilers' to borrow money for cigarettes and that you found he was not in by calling his name, and you then left? A. I told the state troopers the first time that I was down there. I didn't tell them about cigarettes.

Q. Yes; you told them that you were there after Ciemiengo—after you had been informed that Ciemiengo had said that he had been there and had killed Eilers, isn't that when you told them? A. No. It was before that.

Q. When you said you had been at Eilers' did you tell them at that time you had gone there to borrow money to buy cigarettes? A. Yes, sir. 20

Q. And that you had not found Eilers home; you didn't tell them that? A. Yes; we did.

Q. The first time you told them that? A. Yes, sir.

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

Q. Now while you were over at the Columbus Barracks, you denied that you had anything to do with the killing of Herman Eilers? A. Yes, sir.

Q. You denied that you had anything to do with Herman Eilers? A. Yes, sir. 30

Q. You were then informed by a trooper that Jack Ciemiengo had made the statement that he had killed Herman Eilers in an attempt to rob him and that you were with him, were you not? A. Yes, sir.

Q. And didn't you say you didn't believe it, "I wanted to be taken to him and hear him say it"? A. Yes, sir.

Q. And then they took you to him, didn't they?

A. Yes, sir.

Q. And he said it in your presence, didn't he? A. Yes, sir.

Q. And then it was that you admitted you were with him, wasn't it? A. That's the second time—yes.

Q. Yes; the second time. A. That I was down there—yes.

Q. After you had been informed by the trooper
10 that Ciemiengo had admitted that he had killed Eilers when you were present, the second time it was, wasn't it that you were questioned about it? A. Yes; about being down there.

Q. Yes; and it wasn't until you had been informed of the fact that Ciemiengo had made such a statement and you had requested to be taken to him to hear him make that statement yourself, that you admitted or made the statement that you had been with him and that you had gone into his pocket after Mr.
20 Ciemiengo had killed him? A. No, sir.

Q. Is that not right? A. No, sir.

Q. When did you make that statement then? A. I told the state troopers about a half hour after they took me down to the stationhouse that we were down there that night. They didn't ask me why we went there.

Q. I am not asking you that, Mr. Hildebrand. I am asking you when was the first time that you made the statement to the troopers that you were at Herman Eilers' when Ciemiengo killed Herman Eilers,
30 and you went through his pockets? When did you first make that statement to the state police? A. Why, after they took Ciemiengo's statement.

Q. Yes; and that was after you had been informed that Ciemiengo had made such a statement, wasn't it? A. Yes, sir.

Q. And you said, "I don't believe he said it."? A. Yes.

Q. And you asked to be taken to him? A. Yes, sir.

Q. And you were taken to him immediately, weren't you? A. Yes, sir.

Q. And he repeated that statement in your presence? A. Yes, sir.

Q. And it was then, after he repeated the statement in your presence, that you then made the statement that you were at Herman Eilers' and that Ciem- 10
iengo shot him three times and you went through his pockets? A. No, sir.

Q. You then made that statement after that? A. No, sir.

Q. After that what did you do? A. I did after that, after he made his statement to the state troopers.

Q. After you heard that, when they took you there to him, and you, yourself, heard what he said you made that statement, didn't you? A. Yes, sir. 20

Q. Before that you had denied it, hadn't you? A. Yes, sir.

Q. You said you were not over there? A. No, sir.

Q. When did you first admit that you were over there? A. I admitted that about a half hour, when they took me down to the police barracks.

Q. You didn't admit it when they first questioned you? A. Yes; I admitted it when they first questioned me. I told them— 30

Q. When they first questioned you, you told them on Monday night, you told them you were at Eilers'? A. Yes, sir.

Q. Didn't you say a moment ago when they asked you where you were Monday night, you didn't mention the fact that you were at Eilers? A. No; I don't think so.

Q. Didn't you in response to a question, when you were asked by the troopers where you were on Monday night, you said you went to Scattergood's, and on the way you saw these two men, Abrams and Malseed, and then you went to Eilers' and you said you had not been to Eilers? A. Yes; but I had told them before I was down there.

Q. You remember seeing Detective Cain over at Eilers when you were brought over there, Mr. Cain being seated next to me? A. I don't remember.

10 Q. Do you remember his talking to you there at Eilers' home? A. No, sir.

Q. And asking you where you were that evening? A. No.

Q. You didn't say anything to him about being to Eilers' at all? A. No, sir.

Q. Would you say that you did not say it to him? A. I couldn't say that, because I don't know.

Q. Were you questioned at Eilers' home on that occasion as to where you were that Monday night?

20 A. No, sir.

Q. You say that when you were at Columbus Barracks one of the troopers cursed you—that was about three or four a. m.? A. Yes, sir.

Q. That was this man in back of me (indicating)? A. Yes, sir.

Q. And you say that he also threatened you? A. Yes.

Q. What did he do when he threatened you? A. He stood in front of me and he put his fist up there
30 (indicating).

Q. Did he make any motion to strike you? A. No.

Q. What? A. No, sir.

Q. Now, he told you that he would throw you through the door, he said that? A. He said he would knock me through the door; yes.

Q. He would knock you through the door? A. Yes.

Q. He told you you had better tell the truth now and stop your lying? A. No; it was about something else that time.

Q. What was it? A. Jackie had told them Monday night that his brother and his sister had come to Ciemiengo's home Monday night late, when I wasn't and when I got to the police station, I didn't mention it because it slipped my memory, I didn't think about it, that I was over there, and they said I was lying. 10

Q. At the time he cursed you, he had his fist doubled up and said he would throw you through the door, he was not at that time even attempting to have you make any statement as to having taken any part in the killing of Herman Eilers? A. No, sir.

Q. It had nothing to do with any statement about killing Herman Eilers, had it? A. No, sir.

Q. Didn't you say before that was one of the reasons why you made the statement, because Lieutenant Keating cursed you? And threatened to throw 20 you through the door? A. I don't know what to say on that.

Q. When Mr. Heilbron was questioning you and you were asked, as I recall, why you made this statement to the state troopers, didn't you say one of the reasons was that this trooper, Lieutenant Keating, cursed you and threatened to throw you through the door—was that one of the reasons why you made this statement? A. Yes, sir.

Q. And as a matter of fact, he was not asking you 30 anything about making a statement at that time, was he? A. Not at that time; no.

Q. Then it had nothing to do with making the statement, did it? A. Not the statement of killing anybody.

Q. No; in fact you made no statement at that time, did you? A. No, sir.

Q. In fact, you were not scared a bit by any such actions of Lieutenant Keating? A. I was, yes.

Q. You were? A. Yes.

Q. You did not make a statement right at that time as a result of it, did you? A. No.

Q. In fact, the statement you made was around a quarter to nine in the morning, wasn't it? A. I don't know what time it was.

Q. You were there when Ciemiengo's statement was taken, weren't you? A. Yes, sir.

10 Q. And then after his statement was taken, you went out and got some breakfast, didn't you? A. Yes, sir.

Q. And your statement was taken after you came back from having breakfast? A. Yes, sir.

Q. Where did you have your breakfast? A. The dining room, I guess.

Q. What did you have? A. I think fried ham, and we had a cocktail and fried potatoes, and bread and butter.

20 Q. You had a very good breakfast, didn't you? A. Oh, yes.

Q. You were perfectly sober when you made your statement? A. Oh, yes.

Q. You had something to eat at 4 o'clock that morning, didn't you? A. I did.

Q. They brought sandwiches and coffee, didn't they? A. Yes, sir.

Q. Did Ciemiengo eat something in the morning when you had your coffee and sandwiches? A. I
30 don't know. I didn't see him.

Q. But you had sandwiches and coffee? A. I didn't have coffee. The trooper asked me if I wanted a sandwich and I said yes, and he said, "Do you want any coffee," and I said "No". He said, "Do you want milk?" and I said, "Yes" and he brought me a glass of milk.

Q. He brought you milk and sandwiches at four o'clock in the morning, didn't he? A. Yes, sir.

Q. And then Ciemiengo made his statement, and then this statement of yours, which I have shown to you, was made after breakfast, wasn't it? A. Yes, sir.

Q. Now, Herman, in this statement that you gave to the state police, there were times when you were not being questioned at all, weren't there? After you arrived over at the state police barracks, you were not questioned continuously from that time on up 10 until the time you made a statement at a quarter of nine? A. Yes, sir.

Q. There were times of an hour and an hour and a half when you were not being questioned at all, is that not right? A. Well, maybe a few questions between times.

Q. I understand that you said previously in your testimony that there were times of an hour and an hour and a half when you were not being questioned at all, is that right? A. They might come down- 20 stairs and ask me one question, asking for information.

Q. I see, they were just seeking information, but there were times of one hour and an hour and a half when they were not asking you any questions? A. Yes, sir.

Q. So, you did not give the statement because you were being questioned continuously by one trooper after the other? A. No, sir.

Q. You had your breakfast and you got back 30 about a quarter to nine and you were asked the questions and the answers were taken down on the typewriter, weren't they? A. Yes, sir.

Q. And at the time they asked you, you were not threatened in any way? A. I wasn't.

Q. You were not cursed at that time? A. I wasn't, but Jackie was.

Q. At a quarter to nine, at the time your statement was taken— A. No; I wasn't cursed.

Q. You heard all the answers that were given by Ciemiengo when his questions were being asked? A. Yes, sir.

Q. And you were there when he signed this statement, weren't you? A. Yes, sir.

Q. And you knew everything that was in his statement? A. Yes, sir.

Q. And you heard the statement read here in the
10 court, did you not? A. Yes, sir.

Q. And all the questions and answers that you heard read here in court, were they the questions and answers that were taken down on the typewriter while you were there? A. To the best of my memory.

Q. To the best of your recollection? A. Yes, sir.

Q. In the statement of Ciemiengo that was read here in court, was there anything that was not taken down while you were there? A. I don't think so.

20 Q. And as far as you can recall everything in those questions and answers in his statement were taken down while you were there? A. Yes, sir.

Q. You heard your own statement read here in court, didn't you? A. Yes, sir.

Q. And were all those questions and answers taken down while you were there? A. Yes, sir.

Q. And Ciemiengo was present, was he not, while your statement was being taken? A. Yes; some of the time.

30 Q. How much of the time was he not there? A. I can't remember that; he was there most of the time.

Q. Now, in your statement did you make this answer—I am referring now to the statement given to the State Police: "Q. Now, will you tell us in your own words what you did and whom you were with in committing this crime?" and your answer: "A. In the middle of the summer, a few months ago I

decided to steal some money from Herman Eilers. I told 'Jack' Ciemiengo about it and one night about two or three months ago we went down to his house. (Herman Eilers). We figured on going inside the house to get the money, as I knew Herman Eilers had money in his house and carried a large amount of money in his pocket; when we got down to Herman Eilers house we changed our mind about it and went back home. At that time we knew Herman Eilers was away, and we were scared he would come home and find us in the house." Did you make that answer? A. Yes, sir.

Q. That was taken down on the typewriter as were all these answers when you said these words? A. Yes, sir.

Q. Did you make this answer: "Q. On how many occasions did you discuss the plans with Jacob Ciemiengo about holding up or robbing Herman Eilers? A. About five times?" Did you make that answer? A. Yes, sir.

Q. Did you make this answer to the question: 20
"Q. Were you with Jacob Ciemiengo on Monday night, October 7th, 1935? A. Yes." A. Yes, sir.

Q. Did you make this answer: "Q. Where did you meet Jacob Ciemiengo? A. At Scattergood's farm where I work." A. Yes, sir.

Q. Did you make this answer: "Q. At what time did you meet Jacob Ciemiengo? A. About quarter after or twenty minutes after six p. m." A. Yes, sir.

Q. Did you make this answer: "Q. Did he come there with his car? A. Yes." A. Yes, sir. 30

Q. Did you make this answer in response to the question: "Q. Now tell us in your own words just what took place after you left the Scattergood farm with Jacob Ciemiengo in his car? "A. It was about fifteen or twenty minutes after six p. m. we drove away from the Scattergood Farm towards Herman Eilers Farm. We stopped on Cedar

Lane in the woods about half way between Scattergoods and Eilers Farm. While stopped, we talked over what we were going to do. We planned to go into Herman Eilers' house and rob him of his money and if he showed any resistance, we were going to shoot him. Jacob Ciemiengo at this time told me that he had his gun with him. From there we went down to Herman Eilers house. We drove into the yard got out of the car and went up the back porch steps. Jacob Ciemiengo opened the screen door and house
10 door and I held the screen door open. Herman Eilers started to come out of the other room into the kitchen and walked towards us as we were standing in the kitchen door. When he got about three or four feet from us Jacob Ciemiengo aimed the gun at Eilers and fired it three times. Herman Eilers dropped down on the floor and then I went through his pockets searching for money. I didn't find any money so we went out to the car then left. We drove along the Columbus-Burlington Road and met Baird Malseed
20 and Norman Abrams who were parked along the road in an automobile about four miles from Burlington. We talked to them about five minutes and I tried to borrow ten cents from them to buy a pack of cigarettes. They did not have any money, so we continued to Burlington. Jacob Ciemiengo went to Schlams Baker Shop on Broad Street and got some bread. I then went to Millers Cigar store and bought a pack of 'Wings' (cigarettes) paying for them with a nickel and a five cent stamp. We returned to Ciemiengo's house direct from Burlington, getting there
30 about twenty minutes to eight p. m. We sat there and talked for awhile and then Jacob Ciemiengo drove me back to the Scattergood Farm where I went to bed." Did you make that answer? A. Yes, sir.

Q. Did you make this answer in response to the question: "Q. Is this the gun Jacob Ciemiengo used to shoot Herman Eilers? A. Yes." A. Yes, sir.

Q. I show you a gun, which has been marked Exhibit S-18, and ask you whether or not that is the gun that Zapolsky showed you at the time you made that answer to that question? A. Yes, sir.

Q. And did you make this answer to the question: "Q. You say you heard three shots fired in Herman Eilers house? Describe the shots to the best of your knowledge. A. I saw Ciemiengo lift the gun and point it at Eilers chest and shoot. Eilers kind of dropped down a little bit and he shot again. Eilers then dropped to the floor and I heard another shot 10 fired, but I did not see where that shot went." A. Yes, sir.

Q. Did you make this answer to the question: "If you had been successful in robbing Eilers what did you intend to do with the money? A. I wanted to get a suit of clothes and shoes and a coat for wintertime." Did you make that answer? A. I don't know.

Q. Well, did you make that answer to the best of your recollection? A. Yes, sir.

20

Q. Did you make this answer to the question: "Q. On your return from Burlington to Ciemiengo's home did you and Jacob discuss the shooting of Herman Eilers? A. Yes." A. I don't know.

Q. Well, did you make that answer to the question? A. I can't say now. Does it say "yes" or "no"?

Q. The answer is yes. Did you make that answer?

Q. Did you make this answer: "Q. When you 30 searched Eilers for money, what pockets did you go into? A. Just the two rear pants pockets." A. Yes, sir.

Q. Did you make this answer: "Q. In accompanying Jacob on this hold up you were aware that it may be necessary to take Herman's life to avoid both you and Jacob being identified?" and your an-

swer was "Yes." Did you make that answer? A. Yes, sir.

Q. And did you make the answer in response to the question: "Q. You accompanied Jacob on your own free-will, without any fear, force or threats? A. Yes." Did you make that answer? A. Yes, sir.

Q. Were all those answers that I have read to you that you said that you made the truth? A. No, sir.

Q. Then you were not telling the truth when you made those answers? A. No, sir.

10 Q. But all the other answers that you made concerning going to Schlams and seeing Abrams and Malseed, and going to Miller's, they were the truth, were they? A. Yes, sir.

Q. And the things you said about having a part in the attempted robbery of Eilers and killing him were not the truth? A. No, sir.

Q. Did you read that statement over before you signed it? A. Yes, sir.

Q. Did you read those sentences in the statement
20 where it says: "This statement that you have just given is the truth"? and did you answer: "Yes, it is the truth?" A. Yes, sir.

Q. And you knew it was not the truth? A. Yes, sir.

Q. And you said on that night it was the truth? A. Yes, sir.

Q. You did not tell this story about Herman Eilers' death until after Jacob Ciemiengo told you in your presence, when the trooper took you to him,
30 that he had killed Herman Eilers, did you? A. No, sir.

Q. Did you make a statement to Mr. Parker and myself? A. Yes, sir.

Q. Where was that statement made? A. Why, here in the court house.

Q. Upstairs in the court house, wasn't it? A. Yes, sir.

Q. Who was present? A. Mr. Parker, yourself and I don't know—Miss—

Q. And the lady who took what was said down stenographically? A. Yes, sir.

Q. Mrs. Bading, who testified on the witness stand here before and read your statements? A. Yes, sir.

Q. Before you made any statement concerning the facts of this crime, were you told by Mr. Parker who he was, who I was and who the lady was? A. Yes, sir. 10

Q. And you were told, were you not, that you had been arrested and charged along with Ciemiengo with the killing of Herman Eilers, weren't you? A. Yes, sir.

Q. And you were told that you did not have to make a statement unless you wanted to, weren't you? A. Yes, sir.

Q. And you were told that any statement you made must be made of your own free will and voluntary, were not you told that? A. Yes, sir. 20

Q. And then you were asked you, if you wanted to tell just what occurred in your own way, and you then proceeded to tell what happened, didn't you? A. Yes, sir.

Q. And you told practically the same story to Mr. Parker and myself as you did in the statement to the state police, from which I read the answers which you gave, did you not? A. Yes, sir.

Q. That you had gone there with Ciemiengo, and Ciemiengo had pulled the gun, and fired three shots, 30 and had killed Herman Eilers, and that you had gone through his pants pockets in an attempt to get some money, and you told that same story to Mr. Parker and myself, did you not? A. Yes, sir.

Q. And were you, before you were questioned, threatened in any way by Mr. Parker or myself? A. No, sir.

Q. Were you offered any promises of any kind before making the statements? A. No, sir.

Q. Were you told that it would be for your benefit to make a statement? A. I don't remember.

Q. As a matter of fact, the moment you came into the room, you sat down at the table and you were questioned immediately, weren't you? A. Yes, sir.

Q. And nothing was said to you before you were questioned? A. Yes, sir.

Q. The first question that was asked you was:
10 "What is your full name?" A. Yes, sir.

Q. And you answered: "George Herman Hildebrand"? A. Yes, sir.

Q. And the rest of the statement which was read here in the court concerning the facts of this crime by Mrs. Bading, a copy of the notes she made at the time, and that was the statement that you voluntarily gave to Mr. Parker and myself? A. Yes, sir.

Q. And that was on the 9th of October, around 11
20 o'clock in the morning, was it not? A. It was in the morning, around dinnertime—yes, sir.

Q. And you had been brought over to the county jail the day before, had you not? A. Yes, sir.

Q. And you had been in the county jail overnight? A. Yes, sir.

Q. And you were brought into the court house the following morning, and were brought into the room where Mr. Parker and I questioned you? A. Yes, sir.

Q. And were these statements that you made to
30 Mr. Parker and me to the effect that you and Ciemiengo attempted to rob Eilers and that Ciemiengo fired three shots, were those statements the truth?
A. No, sir.

Q. They were not the truth? A. No, sir.

Q. But everything else that you were told appertaining to that night was the truth? A. Yes, sir.

Q. You did not tell us at anytime when you were talking to us that you had gone to Herman Eilers to borrow money for cigarettes, and that you found that Eilers wasn't home, that Ciemiengo went up on the back porch and called four or five times and got no answer—you didn't tell that? A. No, sir.

Q. You made no mention of it? A. No, sir.

Q. And yet, you were asked to make a voluntary statement of what happened, were you not? A. Yes, sir.

Q. Was there anything to prevent you from telling that story if you wanted to? A. No, sir.

Q. Then, you deliberately told something that was not true, when you had the opportunity to tell the truth, didn't you? A. Yes, sir.

Q. You were in the same cell in jail with Ciemiengo from the time you were arrested up until last Friday or Saturday? A. Yes, sir.

Q. And you and he talked this case over frequently, didn't you? A. Yes, sir.

Q. And did you talk over what story you were going to tell when you got into the court room? A. No, sir.

Q. Did you and he talk over the matter, when you got on the stand, as to what story you were going to tell? A. No, sir.

Q. Didn't you say that you were going to tell the story that you wanted to borrow money for cigarettes? A. I told him to tell the truth.

Q. You told him to tell the truth? A. Yes, sir.

Q. And you both agreed, did you not, that you would say that this story that you gave to the state police and you gave to Detective Parker and myself was not the truth, didn't you? A. Yes, sir.

Q. And you say that this story that you gave to Mr. Parker and myself concerning the part that you have in your statement to us that you had taken in

the killing of Herman Eilers—you say that wasn't the truth, is that right? A. Yes, sir.

Q. You were asked this question by Mr. Parker: "Is this story you have told true?" Did you make the answer: "Yes, sir"? A. Yes, sir.

Q. Then it was not the truth when you said the story you told us was true? A. No, sir.

Q. Was there anything to prevent you at that time when Mr. Parker was asking you whether the story you had told was the truth to say "No, sir"? A.
10 No, sir.

Q. You could have said "No, sir" couldn't you? A. Yes, sir.

Q. There was nothing to prevent you from saying "No, sir"? A. No, sir.

Q. Nothing was preventing you at that time? A. No, sir.

Q. There wasn't a thing in the world that prevented you at that moment from saying that this story about the part you took in the murder of Her-
20 man Eilers was not true? A. No, sir.

Q. And yet, notwithstanding that, you gave the answer that "The statement is true," didn't you? A. Yes, sir.

RE-DIRECT EXAMINATION

BY MR. HEILBRON:

Q. When you were questioned at Eilers' house,
30 were you asked any questions concerning his relatives? A. Not when I was taken down there. They asked me at the state police.

Q. They asked you those questions at the state police headquarters? A. Yes, sir.

Q. Did you see Jacob Ciemiengo on Monday afternoon? A. No, sir.

Q. Did he come over to Scattergood's farm any time? A. I don't know.

Q. Monday afternoon? A. Monday afternoon. I don't know; I wasn't over at Scattergood's.

Q. Did you see him at any time on Monday afternoon? A. No, sir.

Q. What name do you use when you refer to Jacob Ciemiengo? A. Jack.

Q. You call him "Jack"? A. Yes, sir.

RE-CROSS EXAMINATION

10

BY MR. EASTWOOD:

Q. Just one other question, George. When Mr. Parker and I were questioning you, at that time were you shown that gun (indicating)? A. Yes, sir.

Q. And were you asked whether that was the gun that you saw that night that Jacob Ciemiengo shot three times at Herman Eilers? A. Yes, sir.

Q. And you identified that gun as the gun that 20 you had seen Jack Ciemiengo fire at Herman Eilers three times, didn't you? A. That is what I said.

MR. EASTWOOD: Yes, that is all.

THE COURT: The audience will remain seated and the officers will take the prisoners back to jail.

I want again to caution the jury about conversing among themselves in regard to the case or reaching any conclusion until it is finally submitted to you. 30 I trust that we may be able to submit it to you tomorrow, so that that will be the last day. The jury may now retire.

(Adjourned until Thursday, November 21, 1935, at 10 o'clock a. m.)

COURT OF OYER AND TERMINER

STATE

vs.

JACOB JOHN CIEMIENGO and
GEORGE HERMAN HILDE-
BRAND,

Defendants.

On Indictment for
Homicide.

10

Mount Holly, N. J., November 21, 1935

TESTIMONY

BEFORE HON. FRANK A. HENDRICKSON, JUDGE,
AND A JURY.

20

(Court reconvened at 10.15 a. m., November 21st,
1935.)DAVID BAIRD MALSEED, a witness produced on
behalf of the defendant, being duly sworn according
to law, upon his oath testified as follows:

30

DIRECT EXAMINATION BY MR. HILLMAN:

Q. Where do you live? A. Cedar Lane.

Q. You are the son of William Malseed who was
on the stand yesterday? A. Yes, sir, I am.Q. Do you know Jacob J. Ciemiengo? A. Yes,
sir.

Q. And Mr. Hildebrand, here? A. Yes, sir.

Q. Do you remember seeing them on October 7th, 1935? A. Yes, sir.

Q. Where did you see them? A. On the Columbus Road.

Q. Where on the Columbus Road? A. About a mile from Cedar Lane.

Q. What time of day was it? A. About half-past six or twenty minutes of seven.

Q. Did they pass you on the road? A. No, they stopped and was talking to us. 10

Q. Who was in the car with you, if anyone? A. Norman Abrams.

Q. How long did they stop and talk to you? A. About three to five minutes.

Q. What did they do after they finished talking? A. They went on.

Q. In what direction? A. Toward Burlington.

Q. What did you talk about? A. Nothing special, they asked us for cigarettes, and a dime.

Q. They wanted to borrow ten cents? A. Yes. 20

Q. And then you gave them cigarettes? A. Yes.

Q. Did you go to the residence of Herman Eilers' later, that evening? A. Yes.

Q. About what time? A. After seven some time it must have been.

Q. Were you there when Mr. Griffith was there? A. Yes.

Q. Did you see him look in the mail box? A. Yes.

Q. Did you see whether he took anything out? 30
A. He did.

Q. What? A. A paper.

Q. Did he take anything else out? A. I didn't notice.

Q. Did you notice what paper it was? A. No.

Q. Did you see it afterwards? A. No.

Q. Did you look at it? A. No.

Q. But you did see Mr. Griffith take a paper out of the mail box? A. Yes.

Q. Did you ever go over to Mr. Eilers some time previous to this evening and engage in target practice? A. Target practice?

Q. Shooting? A. No.

Q. You were never over there shooting a pistol or a revolver? A. No.

Q. You have never been over there? A. Yes.

Q. But you say you never shot a rifle or a pistol
10 there? A. No.

Q. Did you ever see anybody else do it? A. No.

Q. Did you go in the house? A. No.

Q. Did you go in the house on previous occasions? A. I have been in the house.

Q. You went in the house October 7th? A. Yes.

Q. Did you see a bullet imbedded in the wall? A.
No.

Q. Did you ever see a bullet imbedded in the wall? A. A couple of days after this happened I
20 seen it, they showed it to me in the wall.

Q. But you had never seen it before that? A.
No.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. You don't know just what time it was when you saw these two boys, Hildebrand and Ciemiengo,
30 while you were stopped on the road? A. No.

Q. You had left your home, hadn't you, after your supper? A. Yes.

Q. And you went down to Mr. Therrien's farm to get money that he owed you for cutting some corn, didn't you? A. Yes.

Q. And Mr. Therrien paid you? A. Yes, sir.

Q. And then you went from there in your car to Abrams' farm? A. No. I stopped over on the Columbus Road and picked him up. He was walking over to my place.

Q. Then, you stopped and pulled into the side of the road with Norman Abrams, didn't you? A. Yes, sir.

Q. And then you were talking there for a few minutes when Hildebrand and Ciemiengo came along? A. Yes, sir.

Q. So, you couldn't be exact as to the time you 10 saw them? A. No.

Q. It might have been later than 20 minutes of seven? A. Yes.

RE-DIRECT EXAMINATION

BY MR. HILLMAN:

Q. How long after that was it when you went over to Mr. Eilers' home and talked to Griffith? A. 20 I took Norman home, and talked for about five or ten minutes, and then I went out in the yard and got my father and we went down there.

RE-CROSS EXAMINATION

BY MR. EASTWOOD:

Q. Your father is William Malseed? A. Yes, 30
sir.

Q. And your place is only a short distance from Eilers? A. Yes, sir.

NORMAN ABRAMS, a witness called on behalf of the defense, being duly sworn according to law on his oath, testified as follows:

BY MR. HILLMAN:

Q. Where do you live? A. Columbus Road.

Q. Do you know where Mr. Eilers lived? A. Yes, sir.

Q. How far from him do you live? A. I don't
10 know; about three and a half miles.

Q. Do you know Jacob J. Ciemiengo? A. Yes, sir.

Q. And Mr. Hildebrand, George Herman Hildebrand? A. Yes, sir.

Q. Did you see them on the night of October 7th? A. Yes, sir.

Q. Where did you see them? A. It was about a mile from Cedar Lane.

Q. On which road? A. Columbus Road.

20 Q. In whose company were you? A. Baird Malseed.

Q. The gentleman who has just been on the stand? A. Yes.

Q. Were you walking or riding? A. We were sitting in a car.

Q. You were sitting in a car along the road? A. Yes.

Q. Did Ciemiengo and Hildebrand come along there? A. Yes, sir.

30 Q. And did they stop? A. Yes, sir.

Q. Have any conversation with you or Mr. Malseed? A. Yes, sir.

Q. What was the nature of the conversation? A. They asked for a dime and they asked for a cigarette.

Q. And which did they get? A. The cigarette.

Q. You sat there and talked for how long? A. I don't know. We sat there and talked for a couple of minutes, and then Baird took me on home.

Q. Which direction did they go? A. Towards Burlington.

Q. Did you go over to Eilers' home that night?
A. No, sir.

CROSS EXAMINATION

BY MR. EASTWOOD:

10

Q. How far from Eilers' home was it to the place on Columbus Road where you saw Ciemiengo and Hildebrand? A. About two or two and a half miles.

JOSEPH CIEMIENGO, a witness called on behalf of the defense, being duly sworn according to law on 20 his oath, testified as follows:

BY MR. HILLMAN:

Q. Where do you live? A. Cedar Lane.

Q. Are you the father of Jacob J. Ciemiengo here (indicating)? A. Yes.

Q. How long have you lived there? A. Eight year.

Q. What is your occupation? What do you do 30 for a living? A. I don't understand that.

Q. What do you work at? A. I work in the foundry now.

Q. The foundry, where? A. The Burlington foundry.

Q. How long have you worked there? A. I'm working there about three months already.

Q. Well, did you work there before? A. Yes, I work before, too.

Q. For how long? A. I worked up there about 20 years ago.

Q. Was your son Jacob born there where you live, or where was he born? A. What did you say?

Q. Where was your son Jacob born? A. In Burlington on the Thompson Street.

Q. How old is he? A. Sixteen—me, how old? I, 56.

10 Q. How old is Jacob? A. Sixteen.

Q. Now do you remember the evening of October 7th? A. I never know what—he got home October 7th.

Q. Did he go out that evening? A. I says mother wants some bread. Mother says for Jackie to go with George and get the bread and come home right away. That's what I told him, and he says "All right, Pop." He did it. So, he come back and bring the bread home and he stayed home.

20 Q. What time did he leave? A. He left home about five after five.

Q. Five after five? A. Some after five.

Q. What time did you say he left? A. What say?

Q. What time was it when he left the house to go to Burlington? A. About after five, twenty minutes after five, half-past five, something like that.

Q. What time did he come back? A. He come back after six o'clock.

30 Q. Then did he go out again? A. No.

Q. How much after six was it when he came back? A. About twenty minutes after six.

Q. Did he go away then? A. No.

Q. Was he there all evening? A. No.

Q. Which was it? A. I don't understand much.

Q. He left to go to Burlington to get bread? A. (No answer.)

THE COURT: Go a little closer, Mr. Hillman, and try to make him understand better.

Q. He left your house to go to Burlington to get bread? A. Yes.

Q. Did he bring the bread back? A. Yes.

Q. How much was he to get? A. He was to get half a dollars' worth of bread, that is what the mother said.

Q. You heard her tell him that? A. Yes.

Q. Did the State Troopers come there and take 10 you anywhere? A. The State Troopers come after twelve o'clock and knock at the front door.

Q. That is not what I asked you, I asked you if the State Troopers came there and took you anywhere? A. They take me Tuesday night.

Q. Where? A. To Columbus.

Q. What did they ask you? A. Asked me all questions, what did Jackie do from Monday morning to Monday night.

20

MR. HILLMAN: That's all.

CROSS EXAMINATION

BY MR. EASTWOOD:

Q. Mr. Ciemiengo, you say that Jackie left the house Monday night to get bread? A. Yes.

Q. About twenty minutes after five? A. To go 30 for bread.

Q. He left the house about twenty minutes after five, is that right? A. Yes.

Q. You are sure it was twenty minutes after five, when he left the house to go get bread? A. Something like that.

Q. Wasn't it twenty minutes after six? A. That is when he come home.

Q. No, when he left to go get bread, wasn't it twenty minutes past six, when he left the house to go and get the bread? A. Yes.

Q. Do you understand me? A. Yes.

Q. First you said that Jackie left the house to go to Burlington to get bread about twenty minutes after five. Then you told me that he left the house about twenty minutes after six to go get bread, which is right? A. I don't know for sure. I don't look on the clock what time he is going, but I think half past
10 five.

Q. Wasn't it half-past six when he left the house to go get bread? A. I guess so, I don't know for sure, something like that.

Q. You can write your name, can't you? A. Yes.

Q. Did you write your name on that statement (showing paper to witness.) A. Yes.

Q. You wrote that name on this statement over at the State Police Barracks at Columbus, didn't you? A. Yes.

20 Q. That was the next night, the night of October 8th? A. Yes.

Q. And didn't you tell the State Police that your son left the house to go get bread about half-past six? A. Yes.

Q. Then it was around half-past six and not half-past five or twenty minutes after five, wasn't it? A. I forget about that.

Q. You forget? A. Yes.

Q. What time did they get back? A. They got
30 back about half-past seven, I don't know so sure, but after seven I know.

Q. When Mr. Hillman asked you that question, what time they got back, you told him a little after six o'clock. didn't you? A. No, I guess—

Q. Didn't you tell Mr. Hillman just a little while ago that they got back with the bread a little after six o'clock? A. Excuse me, I make a mistake.

Q. You made a mistake? A. Yes.

Q. What time do you say they got back with the bread? A. He got back after seven o'clock

Q. What time was it when they got back, how much after seven o'clock? A. It got to be after seven some.

Q. Was it eight o'clock when they got back? A. A little earlier.

Q. Half-past seven? A. Half past seven, maybe.

Q. In this statement you gave to the State Police you say they got home about half-past nine. A. (No answer.)

Q. Didn't you tell the State Police in this statement you signed, "They left my home about half-past six." A. Yes.

Q. "And when they returned I was in bed, but my daughter Wanda told me they got in about half-past six, but I think it was later than that." Didn't you say that? A. Yes.

Q. I show you a gun marked Ex. S-18 and ask you whether that is the gun you gave your son? A. Yes, that is the one.

Q. How long ago did you give it to him? A. About a year and a half.

RE-DIRECT EXAMINATION

BY MR. HILLMAN:

Q. Do you know where that pistol was? A. Yes.

Q. Where was it kept? A. I don't understand what you say?

Q. Where did you keep that pistol? A. I got it in the front room in the bureau.

Q. Downstairs? A. Downstairs in the front room.

Q. Did you ever see your son have the pistol after you gave it to him? A. No, he used it just on the 4th of July.

Q. Did you ever see him use it after that? A. No.

Q. Did you ever see it in this drawer after that? A. No.

Q. Did you ever see him carry it? A. No.

10

BLANCHE ANNA CIEMIENGO, a witness produced on behalf of the defendant, being duly sworn according to law, upon her oath testified as follows:

DIRECT EXAMINATION BY MR. HILLMAN:

Q. Where do you live? A. 5615 Arlington Street, Philadelphia.

Q. You are a sister of Jacob Ciemiengo? A. 20 Yes, sir.

Q. How many brothers and sisters are there? A. I have two brothers and three sisters beside myself.

Q. How long have you been living in Philadelphia? A. For the past few years.

Q. Do you remember any of the State Troopers coming to see you? A. Yes, sir.

Q. And when was it they came there? A. Wednesday evening.

Q. October 9th? A. Yes, sir.

30 Q. How many of them came? A. There was five.

Q. Do you recognize any of them here as those who came? A. Mr. Zapolsky was there and that tall young fellow there with the glasses on (indicating); the only two I recognize.

Q. But there was some others there? A. Yes.

Q. Did they have any typewriter or anything of the kind with them? A. Yes, they brought a typewriter in with them.

Q. Did they question you? A. Yes.

Q. What did they question you concerning? A. They questioned me from the time that I left home until the time I got back.

Q. From the time you left home where? A. From Philadelphia, Sunday, 11.30 in the morning.

Q. On Sunday, at 11.30, you went up to your father's home? A. Yes. 10

Q. They questioned you about that? A. Yes.

Q. And did they question you about your brother, Jacob Ciemiengo? A. Yes; they asked me whether he was with me, and where I went, and who was with me.

Q. They questioned you as to where he had been on Sunday? A. Yes.

CROSS EXAMINATION

20

BY MR. EASTWOOD:

Q. And you were also asked, were you not, as to whether you had seen your brother since Sunday night? A. Yes, sir.

Q. And you said you had not, didn't you? A. I said I had.

Q. What? A. I didn't see him since Sunday night.

Q. You were asked if you had seen him Sunday 30 night? A. I was asked if I saw him Sunday night, and I said, "Yes; that was the last time."

Q. And you were asked if you had seen him Monday night? A. No; I wasn't.

Q. You were asked if you had seen him since you had seen him on Sunday night; weren't you asked that question? A. Yes.

Q. And you said you had not seen him, that the last time you had seen him was Sunday night? A. Yes.

RE-DIRECT EXAMINATION

BY MR. HILLMAN:

Q. What is your sister's name? A. Mrs. Mary—Mrs. Andrew Gubko.

RE-CROSS EXAMINATION

10 BY MR. EASTWOOD:

Q. You were a friend of George Hildebrand, weren't you? A. Yes.

Q. And kept company with him? A. Yes; I did.

Q. When the statement was taken by the troopers, you told them about a proposed airplane trip you and Herman were going to take, didn't you? A. Yes.

20 MR. HILLMAN: I object to that.

THE COURT: Objection sustained.

MARY L. GUBKO, a witness called on behalf of the defense, having been duly sworn on her oath, according to law, testified as follows:

BY MR. HILLMAN:

Q. Where do you live, Mrs. Gubko? A. 224
30 Milton Street.

Q. What city? A. Camden, New Jersey.

Q. Are you the sister of Jacob Ciemiengo? A. Yes, sir.

Q. Do you remember any of the state troopers coming to see you? A. Yes.

Q. Where was it they came to see you? A. My house.

- Q. When? A. Wednesday, I believe, noontime.
- Q. Did you hear about Mr. Eilers having been murdered? A. Not until they come over.
- Q. It was the Wednesday after that, after he had been murdered? A. Yes.
- Q. Who came there? A. Two troopers.
- Q. Do you see them here in the court room or have you seen them here? A. There's one over there (indicating).
- Q. What time did they get there? A. Around 12 o'clock or a little after. 10
- Q. At noon or at night? A. Noon.
- Q. How long did they stay there? A. About a half hour.
- Q. And did they question you concerning your brother, Jacob Ciemiengo? A. Yes.
- Q. And what did they question you concerning? A. If they were over at my house.
- Q. What's that? A. If they were over at my house on Sunday evening.
- Q. The previous Sunday evening? A. Yes. 20
- Q. Did they ask you many questions? A. Not very many.
- Q. But they were trying to find out where he was Sunday night? A. Yes.
- Q. Did they have a typewriter there? A. Yes.

CROSS EXAMINATION

BY MR. EASTWOOD:

- Q. Didn't they also ask you if that was the last 30 time you saw your brother? A. They did.
- Q. Did they ask you if you had seen your brother since Sunday night? A. Yes.
- Q. And you told them you had not? A. No.

MR. HILLMAN: We rest.

DEFENDANTS REST

STATE'S EVIDENCE IN REBUTTAL

FRANCIS CAISSE, recalled.

BY MR. EASTWOOD:

Q. Trooper, were you present at the state police barracks from the time the defendants, Hildebrand
10 and Ciemiengo, were there and were questioned? A. Yes, sir; I was.

Q. Until and during the time that they made the statements, which they signed? A. Yes, sir.

Q. During that time did any trooper swear at either one of them? A. No, sir.

Q. Were you there when Lieutenant Keating returned from the morgue around 4 o'clock in the morning? A. Yes, sir; I was.

Q. Did he swear at either one of these defend-
20 ants? A. I didn't hear him; no, sir.

Q. Well, you would have heard it if he did? A. Yes, sir.

Q. And did he make any threatening gesture with his fist and tell Hildebrand that he would throw him through the door if he didn't stop lying? A. No, sir.

Q. Did you at any time make any statement to Ciemiengo that he had better get it off his chest, that if he told the truth you would see that he got off
30 easy? A. No, sir; I didn't.

Q. Was there any such promise made to either one of them? A. No, sir; no such promise made.

Q. And you were there at the time they were being questioned? A. Yes, sir.

CROSS EXAMINATION

BY MR. HILLMAN:

Q. Where do you live, Trooper? A. South Amboy.

Q. Now, these two men were questioned separately, weren't they? A. Separately; yes, sir.

Q. What's that? A. Yes, sir; they were in different rooms at different times.

Q. And you could not have been with both of 10 them all the time, could you? A. No, sir.

Q. You don't know what happened to one while you were in the company of the other? A. No, sir.

CLIFFORD D. CAIN, a witness called on behalf of the State, was duly sworn according to law on his oath, and testified as follows:

20

BY MR. EASTWOOD:

Q. You are one of the county detectives? A. Yes, sir.

Q. On the night of October 7th, last, were you at the home of Herman Eilers? A. Yes, sir.

Q. At any time while you were there did you see the defendant, George Hildebrand? A. I did.

Q. Did you have any conversation with him while he was there? A. Yes, sir.

30

Q. And did you ask him in that conversation where he was that night, Monday night? A. Yes, sir.

MR. HEILBRON: Objected to, if the Court please. I don't think any foundation has been laid here.

MR. EASTWOOD: There has, if the Court please. The defendant Hildebrand said he talked to nobody, no questions were asked, and he talked to no one.

THE COURT: My recollection is that the specific question was asked if he had talked to anyone. I will allow the question.

The defendants pray an exception to this ruling of the Court. Exception allowed; let it be sealed, and
10 it is signed and sealed accordingly.

FRANK A. HENDRICKSON,
Judge.

BY MR. EASTWOOD:

Q. In response to the question you asked him as to where he was that Monday night, did he say to you, "I went to Burlington with Ciemiengo to get
20 some bread, and then I went home and went to bed?"
A. He did.

CROSS EXAMINATION

BY MR. HILLMAN:

Q. Did he say he went right home? A. He said he went home and went to bed. He didn't use the word "right."

30 Q. Who summoned you there? A. At Eilers' home?

Q. Yes. A. The result of a telephone call from Chief Griffith.

ARTHUR T. KEATING, a witness called on behalf of the State, being duly sworn according to law on his oath, testified as follows:

BY MR. EASTWOOD:

Q. Lieutenant, you are connected with the New Jersey State Police? A. Yes, sir.

Q. In what capacity? A. Lieutenant, Detective Bureau.

Q. At any time in the morning of October 8th, 1925, did you see the defendant, Herman Hildebrand? A. I did, sir.

Q. And did you at anytime when you were talking with him curse at him and tell him you would throw him through the door if he didn't stop lying? A. No, sir.

Q. Did anyone else make any threats in your presence? A. No, sir.

Q. Did you at any time raise your fist and make any threatening gesture? A. No, sir; I didn't. 20

CROSS EXAMINATION

BY MR. HILLMAN:

Q. Where do you live, Trooper? A. Trenton.

Q. How long have you lived in Trenton? A. Since 1925.

Q. Where did you live before that? A. Jersey City. 30

Q. You never did threaten anybody?

MR. EASTWOOD: That is objected to, if the Court please.

THE COURT: Objection sustained.

BY MR. HILLMAN:

Q. These two men at the barracks were not together all the time, were they? A. No, sir.

Q. They were questioned separately, weren't they? A. Yes, sir.

Q. You were not present, consequently, during all the examination of these men? A. No, sir; I couldn't be.

10 Q. And you didn't employ any threats? A. No, sir; I didn't.

BY MR. HEILBRON:

Q. Were you away from the barracks that night? A. I was at the morgue.

Q. What time did you leave the station to go to the morgue? A. I went from the scene of the crime to the morgue.

20 Q. And then returned to the barracks? A. Yes, sir.

REBUTTAL TESTIMONY CLOSED.

CHARGE OF THE COURT

HENDRICKSON, J: Ladies and gentlemen of the jury, the indictment of this case is in statutory form and charges that Jacob J. Ciemiengo and George H. Hildebrand on the 7th day of October, 1935, with force and arms in the Township of Florence, in the County of Burlington and within the jurisdiction of this Court, one Herman Eilers, in the peace of God and of this State, then and there being, wilfully, feloniously and of their malice aforethought, did kill 10 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.

Under the statutes all that is necessary for the State to allege is that the defendants did wilfully, feloniously and of malice aforethought kill and murder the deceased. The defendants in this case were indicted jointly and are now being tried together under the indictment. It is alleged by the 20 State that the deceased came to his death from the effects of pistol shot wounds; the State contends that the two defendants in this case on the night of October 7th, 1935, went to the home of Herman Eilers with the intention of robbing the said Herman Eilers and did in the perpetration of that purpose shoot and kill the said Herman Eilers.

Our statutes provide that murder which shall be perpetrated by the means of poison or by lying in wait or by other kinds of wilfull, deliberate, pre-30 meditated killing, or which shall be committed in perpetrating or attempting to perpetrate murder, arson, burglarly, rape, robbery, or sodomy shall be murder in the first degree.

Robbery is the larceny from a person by the use of force or threats. If you find from the evidence and are satisfied beyond a reasonable doubt, as I

shall hereinafter define it to you, that the defendants in this case were engaged in perpetrating or attempting to perpetrate a robbery, and while so doing killed the deceased, you should find a verdict of murder in the first degree, and if you find from the testimony that one of the defendants was present aiding and abetting in the commission of a robbery, he also is guilty of murder in the first degree. Under the law persons who are actually present at the commission of a felony are considered as principals, 10 that is persons who are actually present or persons who are near enough to the scene of the crime for the purpose of rendering aid or assistance, to those who are actually engaged in the perpetration of the crime are all considered as principals. In other words, if you should find from the evidence that these two defendants were both present for the purpose of robbing the decedent, even though one of them may have fired the fatal shot, the other being actually present is equally guilty.

20 The law presumes the defendants to be innocent, and the presumption of innocence rests upon the defendants throughout the entire case. The burden is upon the State to prove the defendants guilty beyond a reasonable doubt. The defendant is not bound to establish his innocence, but the State is bound to prove his guilt beyond a reasonable doubt before you can convict him.

To warrant a conviction under the charge it is incumbent upon the State to prove to you beyond a 30 reasonable doubt the guilt of the defendant. Reasonable doubt is not a mere possible doubt, it is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. If there is a doubt raised after consideration of the evidence, the

accused are entitled to it, and if a reasonable doubt is raised they should be acquitted.

The burden of proof is upon the prosecution, and if upon such proof there be a reasonable doubt remaining, the accused are entitled to the benefit of that doubt. If you are satisfied beyond a reasonable doubt, you may convict.

The law presumes that the defendants are innocent; the mere finding of the indictment indicates nothing more on the trial of the case except that the grand jury has accused them of the crime for which 10 they are now here at the bar to answer.

You are to remember that the presumption of innocence remains with the defendants throughout the entire case. The burden of establishing their guilt is upon the State, and that must be established beyond a reasonable doubt in accordance with the definition I have just given you.

The contention on the part of the defendants is that they did not commit the crime with which they are charged. They admit that they visited the premises of Herman Eilers on the night of October 7th, 20 for the purpose of borrowing some money from him, but say upon arriving at his home that they were unable to find him and they left the premises without seeing him, that they did not kill the said Herman Eilers, and that if he was later in the evening found to be shot that someone else was responsible for his death. If you find from the evidence this to be the fact they should be acquitted.

These defendants have each made two statements, 30 one to the State Police, and one to the County Prosecutor and the County Detective, in which they confessed to having committed this crime. They now say that these confessions were not voluntarily made and were in fact untrue.

With regard to the question of confessions, I may say to you that under our law a person may be con-

victed by his own confession although uncorroborated by any other evidence provided the corpus delicti be proved.

By corpus delicti, we mean practically the dead body itself. In other words it is the proof that some actual person has been killed by some criminal agency. That has been definitely shown in this case.

With regard to the question of confessions, the Courts of this State have taken judicial notice that persons have been forced or induced to confess the
10 commissions of crime that they actually did not commit, and therefore as a safeguard the Courts have held that to be admissible as evidence, a confession must be voluntarily made.

Further, with regard to the question of confessions in this case, I may say to you, that confessions by an accused to one in authority, to be admitted in evidence, must be voluntary. By this is meant that the confession must not be extorted by threats or obtained by any direct or implied promise. A con-
20 fession obtained either by flattery or hope or by the impressions of fear is not admissible as evidence. That the accused were in custody under an accusation of having committed the murder at the time of making the statements will not of itself exclude them from being used as evidence, nor will such confessions be excluded by the fact that they were elicited by questions put to the prisoners, no threats or promises being made. In all such cases the situa-
30 tions of the prisoners and the manner in which confessions are obtained are legitimate subjects of comment to the jury, as the circumstances under which the statements are taken may tend to impair the credibility to be given to the witnesses testifying or as tending to show the untruthfulness of the confessions.

The accused contend that the confessions were improperly obtained and testimony on that subject

has been offered by them. The Court has as a matter of law on a preliminary examination admitted the confessions in evidence as being voluntary. Even though these confessions have been admitted by the Court the question is still left to the jury for them to decide whether or not in their opinion the confessions were truthful and that if you feel from the whole evidence and are satisfied that they were not the truth, you may reject those statements the same as you may reject any evidence that you do not believe. 10

Our Supreme Court has taken the view that the admissibility of confessions is a question for the Court and the Court admits or rejects the confession after weighing the evidence upon the question of its voluntariness. The confessions in this case have been admitted by the Court as evidence.

The weight that the jury is to give to the confessions is another matter and depends upon your belief of the truthfulness thereof. If you do not believe in the truthfulness of the confessions, you can 20 treat them in the same manner as any other evidence which you disbelieve, but you cannot decide to reject them as evidence if the Court has properly admitted them. Of course, the determination of the weight and the credibility of the evidence is always for the jury and that question is entirely for you to decide.

I want to say to you that the confession by one of these defendants, indicted and tried together, is admissible, only against that one making the confession, but not admissible against the other defendant. 30 In other words, the alleged confession of Jacob J. Ciemiengo is admissible only as testimony against Jacob J. Ciemiengo, himself, and should not be considered by you as testimony against the other defendant, George Hildebrand; and conversely the confession of George Hildebrand is admitted as evidence

against him only, but not against the defendant, Jacob J. Ciemiengo.

The statements of the defendants need not be in writing to be admissible, in other words the statements made by the two defendants and testified to by Mrs. Bading, which have been read to you and into the evidence, are admissible for your consideration.

There has been testimony offered in this case by witnesses who are known as experts. I refer particularly to one witness, Captain Jones, the ballistic expert. The testimony of experts such as this gentleman, on a subject so little known to the public, is entitled to great respect. It must, however, be submitted to the judgment and consideration of the jury, and must be weighed by you as part of the evidence in connection with the other facts in the case. The purpose of this testimony is to aid and assist you, not to dominate or control you in the decision of questions of fact.

Character witnesses have been produced on behalf of the defendants and have testified. Evidence of good character and peacefulness of an accused is always competent on the trial of an issue such as this, and is entitled to consideration by the jury in making up their verdict. Good character, however, clearly established, will not excuse crime, but it is affirmative evidence in an accusation involving moral turpitude. It is the right of a person charged with crime to have all the relevant testimony including that relating to his good character and reputation considered by the jury in every case, and if on such consideration there exists reasonable doubt of his guilt, even though that be engendered merely by his previous good repute, he is entitled to an acquittal.

Some of the evidence produced by the State with a view to fixing the prisoner's connection with the

killing of the deceased, is what is known as circumstantial evidence. Our law and cases have held that an accused may be convicted of the highest crime known to law by circumstantial evidence, but the first inquiry in an issue resting upon circumstantial evidence, is whether the facts sworn to are satisfactorily proved, which involves the consideration of the credibility, and the accuracy of observation and memory of the witnesses by whom such facts are testified to and in the next place, assuming that the facts sworn to by witnesses are satisfactorily proved, then 10 the further inquiry arises whether the facts proved are explainable by any other rational conclusion than that the prisoner is the guilty person, whether the inference of guilt deduced from such facts in the judgment of the jurors is sufficiently strong to justify a conviction that the prisoner is the guilty party, tested by the consideration whether the facts proved are capable of being reconciled with the hypothesis of innocence. Circumstantial evidence cautiously dealt with is frequently regarded as the 20 most satisfactory proof that jurors can rely upon.

If according to the recollection of the jury, the Court or counsel erred in its statement of any evidence, whether disputed or undisputed or assumed, or stated the existence or presence in the case of evidence that is not actually in the case, not actually before the Court, the jury should disregard the recollection of the Court and counsel and rely upon its own recollection, and not upon the recollections of the Court or counsel. You are the sole judges of 30 the facts. The statute further provides that in cases of murder, that you shall announce when you come into court the degree of which you find the defendants guilty, or if you acquit, by finding them not guilty. If you find that the defendants or either one of them, was not at the scene of the tragedy, nor there for the purpose of assisting or perpetrating the

crime of robbery, you should acquit them or either of them.

If on the other hand you find from the evidence, and beyond a reasonable doubt, that the defendants or either one of them, was at the scene of the tragedy on the day in question for the purpose of perpetrating or attempting to perpetrate robbery, and in such perpetrating or attempting to perpetrate robbery or in aiding or abetting the commission of the same, killed the deceased, then they or either of them or
10 both of them are guilty of murder in the first degree.

The Legislature of this State has passed a law which permits a jury to fix the punishment, so if you find that these defendants are guilty of murder in the first degree, you have the right to recommend life imprisonment; it is not necessary that you should find any extenuating circumstances at all, the law does not say that. The Legislature says in any case of murder, it does not make any difference how revolting or otherwise it may be, the jury has the right
20 to make a recommendation that the defendants be imprisoned for life. If you make no such recommendation when you come in, if you should find the defendants guilty of murder in the first degree, then it will be the duty of the Court to execute the sentence of the law, which is electrocution.

Your verdict shall be one of three and as to each defendant individually, unless your verdict shall be the same as to both; guilty of murder in the first degree, guilty of murder in the first degree with a recommendation of life imprisonment, or not guilty.
30

I would ask that the jurors please rise and stand in the corner and then take the positions, as your names are called, in the jury box.

The clerk will call the names, and number one will be foreman of the jury and the other eleven will take their seats accordingly, as members of the jury.

THE CLERK: (Reading.) Reba Marren, Irving Gaskill, Arthur C. Stickle, Henry H. Stiles, Ellen C. Flynn, Esther Sass, Fannie G. Sleeper, Betty Morton, Elizabeth Rogers, George L. Wurst, Charles Moses, Frank T. Buchanan.

THE COURT: The other two jurors kindly remain seated there for a few minutes.

Will the Clerk swear the officers to take care of the jury? 10

(The officers were thereupon duly sworn by the Clerk.)

THE COURT: The jury may retire. There are a number of exhibits to take out with you and the officers will take them out. The jury may retire at this time to consider their verdict.

20

MR. HEILBRON: At this time, Your Honor please, I would like to take a general exception to the Charge of the Court.

THE COURT: Exception will be allowed. Let it be sealed and signed accordingly.

FRANK A. HENDRICKSON,
Judge. 30

CERTIFICATION

I, Lee A. Towers, Official Stenographer of the Judicial District comprising the Counties of Monmouth, Ocean and Burlington, hereby certify that I designated and deputed Mary Elverson, a competent and experienced stenographer, to take in shorthand, the testimony and evidence and the record, at the trial of the indictment of the State vs. Jacob J. Ciemiengo and George H. Hildebrand, on the 18, 19, 20,
10 21 days of November, 1935, and to reproduce the same in typewriting as the official record of said trial.

I further certify, that as far as I am able to discover from the information which I have been able to obtain, that the transcription of the record made by the designated stenographer is a correct reproduction of the testimony, evidence and proceedings
20 had at said trial.

In witness whereof I have hereunto set my hand this 27th day of December, 1935.

LEE A. TOWERS.

CERTIFICATION

STATE OF NEW JERSEY, ss.

I, Mary Elverson, do hereby certify, that I was deputed and designated by Lee A. Towers, Official Stenographer of the Judicial District, of which the County of Burlington is a part, to take stenographically and reduce in typewriting the testimony and evidence at the trial of the indictment in the case of State of New Jersey vs. Jacob J. Ciemiengo and George H. Hildebrand, defendants, in the Court of Oyer and Terminer in the County of Burlington, on the 18, 19, 20, 21 days of November, 1935, and I hereby further certify, that the testimony and evidence was so taken by me in shorthand from the lips of the several witnesses, and, together with the record to which this certificate is attached, correctly and accurately is a reproduction in typewriting of said testimony and evidence and the record as a whole, of said trial as the same occurred on the dates indicated before the Hon. Frank A. Hendrickson, Presiding Judge in said court and at said trial.

In witness whereof, I have hereunto set my hand this 28th day of December, 1935.

MARY ELVERSON.

CERTIFICATION

BURLINGTON COUNTY COURT OF OYER
AND TERMINER

THE STATE OF NEW JERSEY

vs.

JACOB J. CIEMIENGO and
10 GEORGE H. HILDEBRAND.On Indictment,
September Term,
1935,
for Murder.

Frank A. Hendrickson, presiding in the Burlington County Court of Oyer and Terminer, and the Judge who presided over the aforesaid cause, certifies that the foregoing is the entire record of the proceedings had upon the trial of said cause, and that the same is returned by the plaintiffs-in-error therein with the writ of error, bringing up the bill of exceptions signed and sealed in this cause.

20

Dated: December 28th, 1935.

FRANK A. HENDRICKSON,
Judge.

STIPULATION RE EXHIBITS

NEW JERSEY COURT OF ERRORS
AND APPEALS

THE STATE OF NEW JERSEY, Defendant in Error,	}	On Error to Burlington County Court of Oyer and Terminer.	
vs.		On Indictment, September Term, 1935.	10
JACOB J. CIEMIENGO and GEORGE H. HILDEBRAND, Plaintiffs in Error.	}	Stipulation.	

It is stipulated between Howard Eastwood, Attorney for Defendant-in-Error, and George M. Hillman and Stanley K. Heilbron, Attorneys for Plaintiffs-in-Error, that the return of the exhibits in the trial of the above entitled cause, with the exception of Exhibits Numbers S3, S8, and S20, is hereby waived.

20

HOWARD EASTWOOD,
Attorney for Defendant-in-Error.

G. M. HILLMAN,
STANLEY K. HEILBRON,
Attorneys for Plaintiffs-in-Error.

Dated: December 28th, 1935.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JACOB JOHN CIEMIENGO and
GEORGE H. HILDEBRAND,
Plaintiffs in Error.

In Error

Specifications of
Causes for Reversal.

10

And now come the said Jacob John Ciemiengo by George M. Hillman, Esq., his counsel, and George H. Hildebrand by Stanley K. Heilbron, Esq., his counsel, and say that in the record and proceedings aforesaid and also in the matters recited and contained in said bill of exceptions and also in the giving of the verdict and judgment aforesaid, there is manifest error and the said Jacob John Ciemiengo and George H. Hildebrand say that the judgment should be reversed and

20 assign the following reasons or causes for reversal:

1. Because the trial Judge directed the selection of a jury for the trial of the indictment in this cause consisting of fourteen members, the said fourteen jurors were sequestered together during the entire trial of said cause, and not until after the charge of the court, was a panel of twelve selected from said fourteen, and the other two jurors excused. During the entire trial, the twelve jurors who decided the

30 cause and rendered the verdict associated with and were subject to the influence of the two other jurors.

2. Because the trial court permitted the Prosecutor to cross examine and endeavor to impeach the credibility of one Arthur Therrien, a witness produced on the part of the State and permitted the Prosecutor to question the said Arthur Therrien as

to statements alleged to have been made by him at another time at variance with and contradictory to the testimony given by him at the trial.

3. Because the trial court permitted the Prosecutor to cross examine and endeavor to impeach the credibility of one William Malseed, a witness produced on the part of the State, and to question the said William Malseed as to statements alleged to have been made by him at another time at variance with and contradictory to the testimony given by him 10 at the trial.

4. Because the trial court refused to allow the witness, John S. Conroy, to answer the following question:

Q. "But it was a part of the body which was ordinarily clothed?"

5. Because the court permitted the witness, John S. Conroy, to answer the following question:

Q. "Did you at any time measure the height of 20 John Ciemiengo?"

6. Because the court permitted the witness, James Barton, to answer the following question:

Q. "On other occasions, Mr. Barton, when you have been delivering mail to Mr. Eilers, have you seen Mr. Eilers remove mail that was in the box, delivered on a previous occasion or occasions?"

7. Because the trial court admitted in evidence 30 certain statements alleged to have been made by the defendants, Jacob John Ciemiengo and George H. Hildebrand, over the objection of said defendants.

8. Because the trial court ruled that the defendants had been sufficiently warned and that the alleged statement made by them was voluntary.

9. Because the trial court admitted in evidence, over the objection of defendants, a written statement or statements alleged to have been made and signed by the said defendants.

10. Because the trial court permitted the witness, Andrew Zapolsky, to testify as to statements alleged to have been made to him by Jacob John Ciemiengo.

11. Because the trial court permitted the witness,
10 Andrew Zapolsky, to testify as to certain alleged statements made to him by the defendant, Jacob John Ciemiengo.

12. Because the trial court admitted in evidence a written statement purporting to have been made by the defendant, George H. Hildebrand.

13. Because the trial court refused to allow the witness, Andrew Zapolsky, to testify concerning the
20 interior of the house occupied by Herman Eilers at the time of his murder.

14. Because the trial court refused to permit the witness, Andrew Zapolsky, to answer the following question:

Q. "And you went down there and you questioned her, did you not, as to where Ciemiengo was on Sunday night?"

30 15. Because the trial court permitted the witness, William N. Richardson, to testify, over objection by defendants, as to conversation and transactions with Herman Eilers, previous to the alleged murder.

16. Because the trial court permitted the Prosecutor to cross examine and endeavor to impeach the credibility of one, Eugene R. Scattergood, a witness

produced on the part of the State and permitted the Prosecutor to question the said Eugene R. Scattergood as to statements alleged to have been made by him at another time at variance with and contradictory to the testimony given by him at the trial.

17. Because the trial court refused to permit the witness, William K. Sampson, to testify concerning the condition of the poultry on the farm of the said Herman Eilers, and ordered stricken out, the answer made by him in answer to the question: 10

Q. "How did they appear, hungry or not?"

18. Because the trial court permitted the witness, John Moller, to answer the following question, on cross examination, over the objection of the defendants:

Q. "Did anybody ever tell you that he was charged with stealing things from different people?" 20

19. Because the trial court compelled the defendant, Jacob John Ciemiengo, on cross examination, over objection by defendants, to answer the following question by the Prosecutor:

Q. "When the trooper came over to get you what did your mother say? Didn't she say 'Now what trouble have you been in again?' Have you been stealing again?"

20. Because the witness, Clifford D. Cain, was permitted, over objection by defendants, to answer the following question: 30

Q. "And did you ask him in that conversation where he was that night, Monday night?"

21. Because the trial court erred in that it directed the jury to find the defendants guilty of murder in the first degree when it charged said jury, as follows:

"If you find from the evidence and are satisfied beyond a reasonable doubt, as I shall hereinafter define it to you, that the defendants in this case were engaged in perpetrating or attempting to perpetrate a robbery, and while so doing killed the deceased, you should find a verdict of murder in the first degree."

10

22. Because the trial court in its charge erred when it charged the jury, as follows:

"There has been testimony offered in this case by witnesses who are known as experts, I refer particularly to one witness, Captain Jones, a ballistic expert. The testimony of experts such as this gentleman, on a subject so little known to the public, is entitled to great respect."

20 23. Because the trial court erred in its charge to the jury when it said "Your verdict shall be one of three and as to each defendant individually, unless your verdict shall be the same as to both; guilty of murder in the first degree, guilty of murder in the first degree with a recommendation of life imprisonment, or not guilty," thereby excluding from the consideration of the jury the question as to whether the defendants or one of them might have been guilty of murder in the second degree or manslaughter and
30 preventing them, no matter what their view of the testimony might have been from rendering a verdict of guilty of any lesser crime than murder in the first degree.

24. Because the verdict was contrary to law and against the weight of the evidence.

Wherefore, because the aforesaid reasons or some of them constitute error prejudicial to the said Jacob John Ciemiengo and George H. Hildebrand, the plaintiffs-in-error, they pray that the said judgment and sentence be reversed and annulled and altogether held for nothing, and that they may be restored to all things which they have lost by occasion thereof.

STANLEY K. HEILBRON, 10
G. M. HILLMAN,
Of Counsel for Plaintiffs-
in-Error.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JACOB JOHN CIEMIENGO and
GEORGE H. HILDEBRAND,
10 Plaintiffs in Error.

In Error.

Assignments of
Error.

Afterwards to wit, on the return day of the writ of error before the Justices of our said Court of Errors and Appeals in the last resort in all causes, come the said Jacob John Ciemiengo, by George M. Hillman, Esquire, his counsel, and George H. Hildebrand, by Stanley K. Heilbron, Esquire, his counsel, and say that in the records and proceedings aforesaid, also in the matters recited and contained in said
20 bill of exceptions, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the Prosecutor to cross examine and endeavor to impeach the credibility of one, Arthur Therrien, a witness produced on the part of the State, and permitted the
30 Prosecutor to question the said Arthur Therrien as to statements alleged to have been made by him at another time at variance with and contradictory to the testimony given by him at the trial.

2. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemi-

iengo and George H. Hildebrand, permitted the Prosecutor to cross examine and endeavor to impeach the credibility of one, William Malseed, a witness produced on the part of the State, and to question the said William Malseed as to statements alleged to have been made by him at another time at variance with and contradictory to the testimony given by him at the trial.

3. That the said Court before whom, etc., at and upon the trial of the said issue joined between the 10 State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, refused to permit the witness, John S. Conroy, on cross examination, to answer the following question:

Q. "But it was a part of the body which was ordinarily clothed?"

4. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the witness, John S. Conroy, on re-direct examination, to answer the following question: 20

Q. "Did you at any time measure the height of John Ciemiengo?"

5. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the witness, James Barton, on direct examination, to answer the following question: 30

Q. "On other occasions, Mr. Barton, when you have been delivering mail to Mr. Eilers, have you seen Mr. Eilers remove mail that was in the box, delivered on a previous occasion or occasions?"

6. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, admitted in evidence certain statements alleged to have been made by the defendants, Jacob John Ciemiengo and George H. Hildebrand, over the objection of said defendants.

10 7. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, erred in ruling that the defendants had been sufficiently warned and that the alleged statement made by them was voluntary.

20 8. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, admitted in evidence, over the objection of defendants, a written statement or statements alleged to have been made and signed by the said defendants.

9. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the witness, Andrew Zapolsky, to testify as to statements alleged to have been made to him by Jacob John Ciemiengo.

30 10. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the witness, Andrew Zapolsky, to testify as to certain alleged statements made to him by the defendant, Jacob John Ciemiengo.

11. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, admitted in evidence a written statement purporting to have been made by the defendant, George H. Hildebrand.

12. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, refused to allow ¹⁰ the witness, Andrew Zapolsky, to testify concerning the interior of the house occupied by Herman Eilers at the time of his murder.

13. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, refused to permit the witness, Andrew Zapolsky, to answer the following question: 20

Q. "And you went down there and you questioned her, did you not, as to where Ciemiengo was on Sunday night?"

14. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the witness, William N. Richardson, to testify, over objection by defendants, as to conversation and transac- ³⁰ tions with Herman Eilers, previous to the alleged murder.

15. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the Pros-

ecutor to cross examine and endeavor to impeach the credibility of one, Eugene R. Scattergood, a witness produced on the part of the State and permitted the Prosecutor to question the said Eugene R. Scattergood as to statements alleged to have been made by him at another time at variance with and contradictory to the testimony given by him at the trial.

16. That the said Court before whom, etc., at and upon the trial of the said issue joined between the
10 State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, refused to permit the witness, William K. Sampson, to testify concerning the condition of the poultry on the farm of the said Herman Eilers, and ordered stricken out, the answer made by him in answer to the question:

Q. "How did they appear, hungry or not?"

17. That the said Court before whom, etc., at and upon the trial of the said issue joined between the
20 State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the witness, John Moller, to answer the following question, on cross examination, over the objection of the defendants:

Q. "Did anybody ever tell you that he was charged with stealing things from different people?"

18. That the said Court before whom, etc., at and upon the trial of the said issue joined between the
30 State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, compelled the defendant Jacob John Ciemiengo, on cross examination, over objection by defendants, to answer the following question by the Prosecutor:

Q. "When the trooper came over to get you what did your mother say? Didn't she say 'Now what trouble have you been in again?' Have you been stealing again?"

19. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, permitted the witness, Clifford D. Cain, over objection by defendants, to answer the following question: 10

Q. "And did you ask him in that conversation where he was that night, Monday night?"

20. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, erred in that it directed the jury to find the defendants guilty of murder in the first degree when it charged said jury, at follows: 20

"If you find from the evidence and are satisfied beyond a reasonable doubt, as I shall hereinafter define it to you, that the defendants in this case were engaged in perpetrating or attempting to perpetrate a robbery, and while so doing killed the deceased, you should find a verdict of murder in the first degree."

21. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, erred when it charged the jury, as follows: 30

"There has been testimony offered in this case by witnesses who are known as experts, I refer particularly to one witness, Captain Jones, a ballistic expert. The testimony of experts such as this gentle-

man, on a subject so little known to the public, is entitled to great respect."

22. That the said Court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey and the said Jacob John Ciemiengo and George H. Hildebrand, erred in ^{its} charge to the jury when it said "Your verdict shall be one of three and as to each defendant individually, unless your verdict shall be the same as to both; guilty of murder in the first degree, guilty of murder in the first degree with a recommendation of life imprisonment, or not guilty," thereby excluding from the consideration of the jury the question as to whether the defendants or one of them might have been guilty of murder in the second degree or manslaughter and preventing them, no matter what their view of the testimony might have been from rendering a verdict of guilty of any lesser crime than murder in the first degree.

23. Because the verdict was contrary to law and against the weight of evidence.

Wherefore, the said Jacob John Ciemiengo and George H. Hildebrand pray that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that they may be restored to all which they have lost by occasion thereof.

STANLEY K. HEILBRON,
G. M. HILLMAN,
Of Counsel for Plaintiffs-
in-Error.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JACOB JOHN CIEMIENGO and
GEORGE H. WILDEBRAND,
Plaintiffs in Error.

On Writ of Error,

Joinder in Error.

10

And hereupon the State of New Jersey, Defendant-in-Error, by Howard Eastwood, Prosecutor of the Pleas of the County of Burlington, comes into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid. The State of New Jersey prays here that the Court 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, may in all things be affirmed. ²⁰

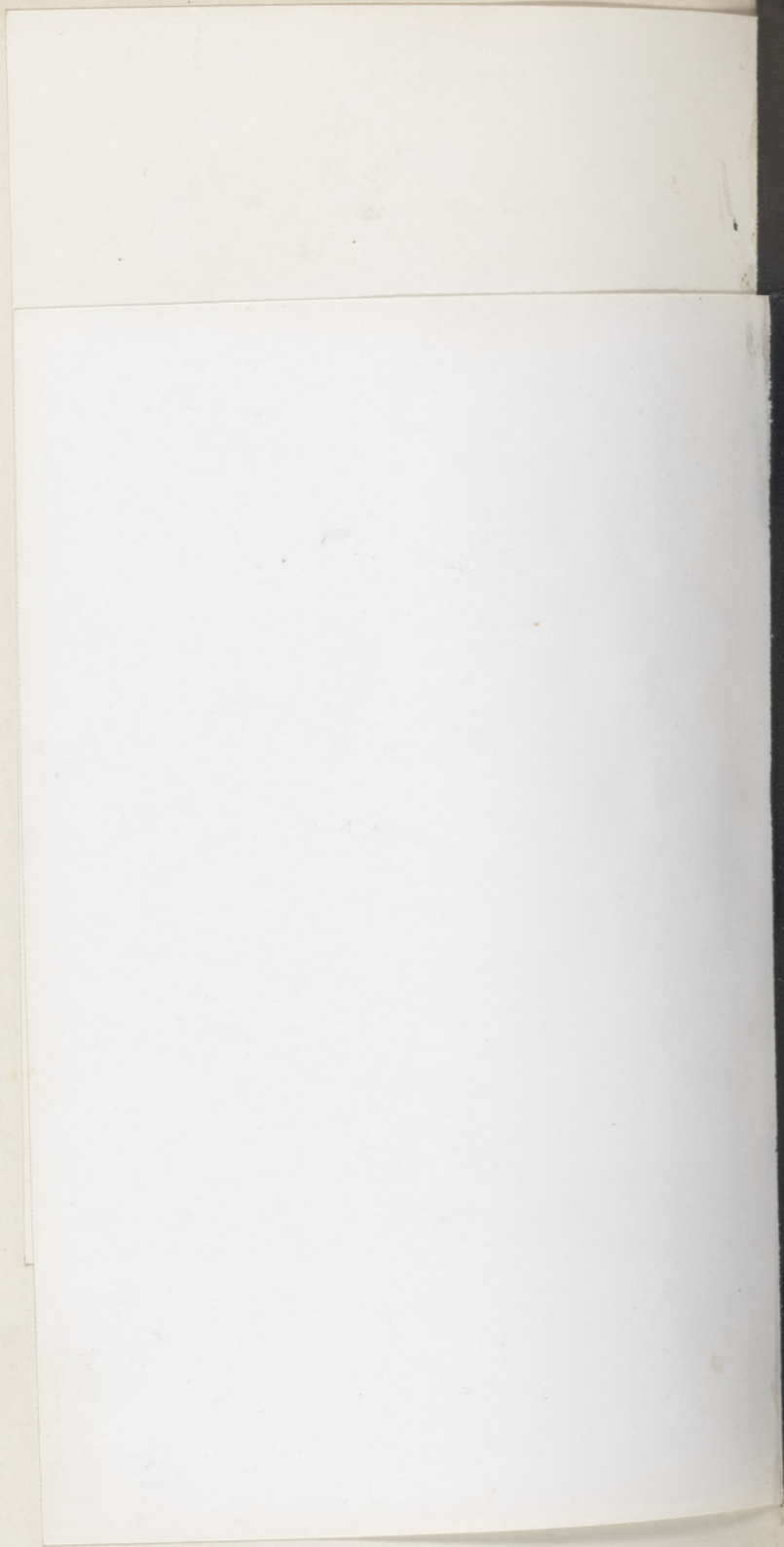
HOWARD EASTWOOD,
Prosecutor of the Pleas of
Burlington County.

Dated: December 30, 1935.

NEW JERSEY COURT OF ERRORS



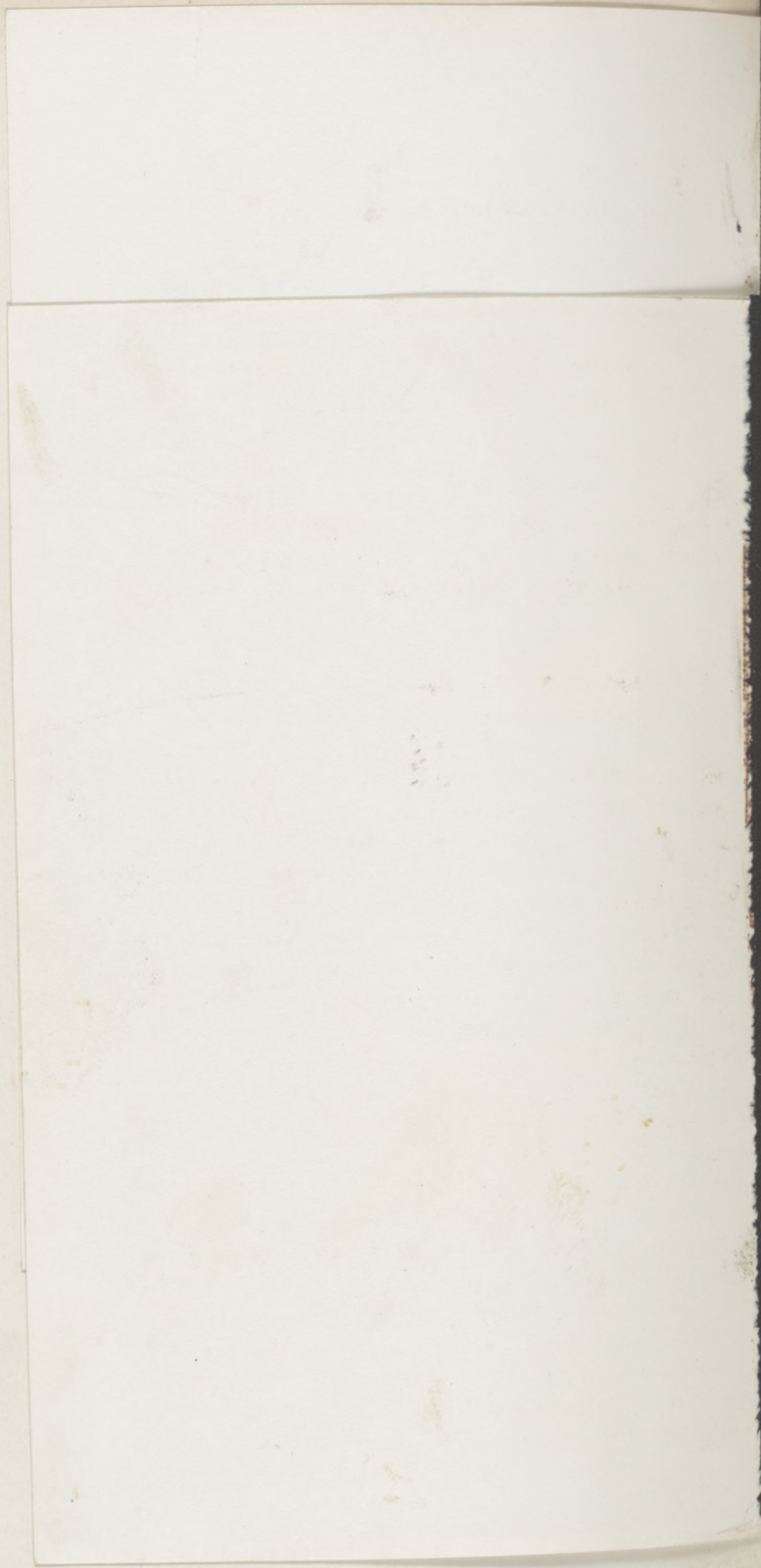
Exhibit S-8



NEW JERSEY COURT OF ERRORS



Exhibit S-20



NEW JERSEY COURT OF ERRORS
AND APPEALS

THE STATE OF NEW JERSEY, Defendant-in-Error,	}	On Error to Burlington County Court of Oyer and Terminer.
vs.		
JACOB J. CIEMIENGO and GEORGE H. HILDEBRAND, Plaintiffs-in-Error.	}	On Indictment September Term 1935, for Murder.

BRIEF OF PLAINTIFFS-IN-ERROR

The plaintiffs-in-error, hereinafter referred to as the defendants, were tried in the Burlington County Court of Oyer and Terminer before the Honorable Frank A. Hendrickson and a jury, on an indictment charging them with the murder of one Herman Eilers on October 7, 1935. They were found guilty of murder in the first degree by the jury on November 21, 1935, and were thereupon sentenced to death.

The present writ of error brings up the entire proceedings for review.

STATEMENT OF FACTS

The decedent lived alone on a chicken farm owned and operated by him situate on the road known as "Cedar Lane," Florence Township, Burlington County, New Jersey. On the evening of October 7, 1935, about 7.15 o'clock, Arthur S. Therrien, a neighbor, discovered the body of the victim. Therrien had gone to Eilers' home to purchase some eggs. He drove his car into the yard towards the rear of the house, and finding the house unlighted was about to leave,

when he noticed that the back door leading into the kitchen was partly open. (Case p. 76). He made further investigation, went into the house, found the corpse, and observed blood on the face. He then went to the home of William K. Sampson, a neighbor, and he and Sampson telephoned to William Malseed, another neighbor, and then the three (Therrien, Sampson and Malseed), together with Baird Malseed (son of William Malseed), returned to Eilers' house, made a further examination of the corpse, and found that he had been shot. Then they notified by telephone the State Police at Columbus, New Jersey, and George Griffith, Chief of Police of Florence (Case p. 78). Officer Griffith arrived at the Eilers home about 7.45 P. M. and immediately started an investigation (Case p. 115). The State Police arrived shortly thereafter. It appeared by their examination and the subsequent Post Mortem that the death of Eilers had apparently been caused by two revolver or gun shot wounds, both made by bullets of twenty-two calibre, and either capable of causing death: one on the left side of the head about three-eighths of an inch above the left corner of the eye, and the other in the body about one-half inch above the left collarbone. There were powder marks at the entrance of both wounds (Case pp. 98, 99, 100). The officers learning that the defendant George H. Hildebrand had been on intimate terms with the deceased, having been employed by him, interviewed Hildebrand and found that he and the defendant Ciemiengo had been at the home of Eilers on the evening of October 7th. Hildebrand was a young man, twenty-six years of age, with no relatives in this country, and was employed on the farm of Eugene R. Scattergood. Ciemiengo was sixteen years of age, and resided with his parents, brothers and sisters on a small farm owned by his father, situate near the Eilers residence.

The story which the young men first told the Troopers was that on the evening in question, Ciemiengo had been instructed by his mother to go to Burlington and purchase some bread, and, as Ciemiengo had no driver's license, he called on Hildebrand at the Scattergood home and requested him to drive him to Burlington, which he agreed to do. The young men wished to obtain some cigarettes, but had no money, and therefore it was suggested by Hildebrand that they call on Eilers, with whom they were both acquainted, and borrow some money from him to purchase the cigarettes; they were friendly with Eilers and had borrowed money from him on previous occasions. They stated that when they went to the home of Eilers they found the house in darkness. Ciemiengo went to the door and called, but obtained no reply, and Hildebrand, who remained in the car, sounded the horn but still obtained no reply, and thereupon concluded that Eilers was absent and drove out of the yard and proceeded to Burlington. The State Troopers subjected the defendants to a severe examination, having them in custody at the State Troopers' Barracks at Columbus all night, continually questioning them and eventually forcing them into making confessions to the effect they had gone to the home of Eilers between six and six-thirty in the evening, and had there shot him. The alleged confessions of the defendants constituted the State's case.

QUESTIONS OF LAW INVOLVED

1. The trial Court erroneously permitted the Prosecutor to cross-examine and endeavor to impeach the credibility of the State's witnesses, Arthur S. Therrien and William Malseed. (Assignments of Error Nos. 1 and 2). (Case p. 434). (Specifications of Causes for Reversal Nos. 2 and 3). (Case pp. 428-429).

2. There was error by the trial Court in refusing to allow the witness John S. Conroy to answer the following question: Q. "But it was a part of the body which was ordinarily clothed?" (Assignments of Error No. 3). (Case p. 435). (Specifications of Causes for Reversal No. 4). (Case p. 429).

3. The Court erred in admitting certain testimony of James Barton over the objection of defendants. (Assignments of Error No. 5). (Case p. 435). (Specifications of Causes for Reversal No. 6). (Case p. 429).

4. The trial Court erroneously admitted in evidence the alleged written statements of the defendants made to the State Police. (Assignments of Error Nos. 6, 7, 8, 9, 10, 11). (Case pp. 436, 437). (Specifications of Causes for Reversal Nos. 7, 8, 9, 10, 11, 12). (Case pp. 429-430).

5. The Court refused to permit the witness Andrew Zapolsky to testify as to the interior of the house of Herman Eilers at the time of his murder. (Assignments of Error No. 12). (Case p. 437). (Specifications of Causes for Reversal No. 13). (Case p. 430).

6. The trial Court refused to allow the witness Andrew Zapolsky to answer the following question: Q. "And you went down there and you questioned her, did you not, as to where Ciemiengo was on Sunday night?" (Assignments of Error No. 13). (Case p. 437). (Specifications of Causes for Reversal No. 14). (Case p. 430).

7. The trial Court erroneously permitted the witness William N. Richardson to testify to conversation and transactions with Herman Eilers previous to

the alleged murder. (Assignments of Error No. 14). (Case p. 437). (Specifications of Causes for Reversal No. 15). (Case p. 430).

8. There was error on the part of the trial Court in its refusal to permit the witness William K. Sampson to testify as to the condition of the poultry on the Eilers farm and ordered stricken out his answer to the following question: Q. "How did they appear, hungry or not?" (Assignments of Error No. 16). (Case p. 438). (Specifications of Causes for Reversal No. 17). (Case p. 431).

9. There was error by the learned trial Court in permitting the witness John Moller on cross-examination to answer the following question, over objection of defendants: Q. "Did anybody ever tell you that he (Jacob John Ciemiengo) was charged with stealing things from different people?" (Assignments of Error No. 17). (Case p. 438). (Specifications of Causes for Reversal No. 18). (Case p. 431).

10. There was error on the part of the trial Court in compelling the defendant Jacob John Ciemiengo, on cross-examination, over objection by defendants, to answer the following question, by the Prosecutor: Q. "When the trooper came over to get you what did your mother say; didn't she say, 'now what trouble have you been in again; have you been stealing again?'" (Assignments of Error No. 18). (Case pp. 438-439). (Specifications of Causes for Reversal No. 19). (Case p. 431).

11. There was error on the part of the trial Judge in charging the jury as follows: "If you find from the evidence, and are satisfied beyond a reasonable doubt, as I shall hereinafter define it to you, that the defendants in this case were engaged in perpetrating

or attempting to perpetrate a robbery, and while so doing killed the deceased, you should find a verdict of murder in the first degree." (Assignments of Error No. 20). (Case p. 439). (Specifications of Causes for Reversal No. 21). (Case p. 432).

12. There was error on the part of the trial Judge in charging the jury as follows: "There has been testimony offered in this case by witnesses who are known as experts, I refer particularly to one witness, Captain Jones, a ballistic expert. The testimony of experts such as this gentleman on a subject so little known to the public is entitled to great respect." (Assignments of Error No. 21). (Case pp. 439-440). (Specifications of Causes for Reversal No. 22). (Case p. 432).

13. There was error on the part of the trial Judge in charging the jury as follows: "Your verdict shall be one of three and as to each defendant individually, unless your verdict shall be the same as to both: guilty of murder in the first degree, guilty of murder in the first degree with a recommendation of life imprisonment, or not guilty," (Assignments of Error No. 22). (Case p. 440). (Specifications of Causes for Reversal No. 23). (Case p. 432).

14. There was error because the verdict was contrary to law and against the weight of the evidence. (Assignments of Error No. 23). (Case p. 440). (Specifications of Causes for Reversal No. 24). (Case p. 432).

ARGUMENT

POINT 1

Error in permitting State to cross-examine and impeach the credibility of State's witnesses.

A

The State called as a witness, Arthur S. Therrien, a neighbor of the decedent, who discovered the body. Therrien testified that when he first saw the body and later when he came back to the house and looked at the body the second time the blood on the face of the deceased had run down along his temple; that it was not running at either time. (Case p. 79). The trial Court permitted the Prosecutor (over objection and exception noted, Case pp. 79-80) to cross-examine and endeavor to impeach the said witness by asking him if he had not previously made and signed a written statement to the State Police, wherein he stated "I saw blood running down the left side of his face and blood on the floor and on a feed bag" (Case p. 80) and the Prosecutor further questioned the witness by referring to the statement: Q. "Well, it was true whatever you said at that time, wasn't it?" (Case p. 81).

B

The State also called as a witness, William Malseed, another neighbor of decedent, who was called to the scene of the crime by Therrien, and the trial Court permitted the Prosecutor to cross-examine and endeavor to impeach this witness as to whether or not blood was running out of the nose or down the nose of the deceased, at the time he first saw the corpse. The witness had testified that it was not running (Case, p. 89) and the trial Court permitted the Prosecutor to cross-examine and attempt to impeach the credibility of this witness by referring to a statement made and signed by the witness to the State Police on October 9, 1935 (Case p. 89); and over objection and exception noted (Case pp. 89-90) the Prosecutor asked if the witness didn't in that statement say "We could see blood running out of his

nose and there was blood on the floor," and the Prosecutor further asked the witness if that statement was true. (Case p. 90).

It is respectfully submitted that the Court erred in allowing the State to thus cross-examine and impeach the credibility of its own witnesses. The testimony of these witnesses as given on direct examination tended to corroborate the theory of the defense that Eilers had been murdered prior to the time when the defendants were at his house, as both witnesses stated that when they first saw the body there was blood on the face, but it was not running, thus indicating that death had occurred a considerable time prior thereto, they having arrived at the home of the decedent forty-five minutes after the defendants had been there (Case p. 76). While it may be conceded that if a party is surprised by the testimony of his witness he may be permitted to examine him as to his contradictory statements, in order to neutralize the effect of his testimony, in the present case the Court permitted the Prosecutor to go further and in effect permitted him to substitute for the testimony given by the witness on the stand ex parte statements made by him previously.

In the case of *State vs. Brunet* 88 N. J. L. 414, the Court said:

"The written statement was not competent for the purpose of proving the truth of what happened on the occasion of the homicide. Prior statements made by a witness contradictory of her testimony on the stand, are only admissible for the purpose of discrediting or neutralizing the effect of the testimony given; they are not admissible for the purpose of proving the facts set out in such statements." See also *State v. D'Adams* 84 N. J. L. 386; *State v. Kysilka* 85 Id. 712.

We submit that it was harmful error to permit the Prosecutor to cross-examine his own witness and under the guise of impeaching the testimony to substitute for such testimony given on the stand, other statements made by the same witness on another occasion.

POINT 2

ERROR IN REFUSING TO PERMIT WITNESS JOHN S. CONROY TO ANSWER A QUESTION

The trial Court erred in refusing to permit the witness John S. Conroy to answer the following question: Q. "But it was a part of the body which was ordinarily clothed?" (Case p. 106).

This question had reference to the wound appearing above the left collar bone of the deceased. The witness had previously testified that there were powder burns at the entrance to this wound, (Case p. 100), indicating that the weapon had been held close to the body when it was discharged. The extent of such powder burns would obviously depend upon whether there was any clothing on the body of the deceased at the location of the wound. If the weapon, when discharged, was against a portion of the body upon which there was clothing, the powder burns would not have been so marked, as if the portion of the body was naked. The theory of the defense was, that the fact that the powder burns around the wound below the collar bone were not so pronounced as around the other wound, was because of the presence of clothing (and there had been evidence that the deceased was fully dressed and that he had on a blue denim shirt), (Case p. 123) and not because the weapon was held at a further distance. It became material whether or not the weapon was held against the body of the deceased

at the time it was fired, which was contradictory to the circumstances as contained in the defendants' alleged statements. This matter therefore became of material importance to the defendants and the Court should have permitted the witness Conroy to answer this question, the tendency of which would have been to throw more light on this question, and the Court's action in refusing so to do constituted harmful error to the defendants.

POINT 3

ERROR IN ADMITTING CERTAIN TESTIMONY OF WITNESS, JAMES BARTON

The State called as a witness, James Barton, a rural mail carrier, on whose route the residence of decedent was located, and the Court permitted the witness to answer (over objection and exception noted, Case pp. 128-129), the following questions: Q. "On other occasions, Mr. Barton, when you have been delivering mail to Mr. Eilers have you seen Mr. Eilers remove mail that was in the box delivered on a previous occasion or occasions?" A. "I have handed him mail in the box." Q. "Did that include the mail that had been in the box the day before?" A. "Yes." The State proved this fact because in the evidence previously offered by the State it was proven that a morning newspaper dated October 7, 1935, was found in the mail box of decedent after his death. (Case p. 121).

We contend that it was error for the Court to admit the evidence of the mail carrier that on other occasions he had found in the mail box newspapers of a previous day or days, on the ground of being too remote.

POINT 4

THE COURT ERRONEOUSLY ADMITTED THE
ALLEGED CONFESSIONS OF THE
DEFENDANTS IN EVIDENCE

The State offered in evidence written statements alleged to have been made by the defendants wherein they confessed to the killing of Eilers, stating that they had gone to Eilers' home for the purpose of robbing him. (Case pp. 156 to 163, 165 to 170).

It appears from the evidence that the defendants, from the time of their arrest on the evening of October 7th, were detained by the State Police at the State Police Barracks at Columbus, N. J., and were given a severe examination, having been continuously questioned from the time of their arrest until 6.45 o'clock the next morning. (Case pp. 144, 145, 151, 152). They were subjected to threats made by the State Troopers and were continuously being asked questions. The defendant Ciemiengo testified "They kept forcing it on me and saying, 'you shot Herman Eilers,' again and again, and I had no chance, they kept questioning me and kept shooting questions at me until they broke me." They questioned him seven or eight hours. "They forced everything in my mouth and told me just how to say it and all of that." (Case p. 312). The troopers swore at him. (Case p. 336). They told him that he would get off easy. (Case pp. 313 and 336). The defendant Hildebrand testified that the troopers cursed and threatened him. They questioned him from the time of his arrest until 5.30 or 6.00 in the morning of the next day. (Case p. 366). One State Trooper told him that he was going to knock him through the door. (Case pp. 368, 382, 383). They were also closely questioned as to their whereabouts

all day Sunday and Sunday evening. (Case pp. 308, 309, 310, 333, 365).

The facts in the written statements were obtained by threats, promises and the continuous questioning of the defendants over a period of seven or eight hours, and previous to the making of the signed statements the police did not warn or caution the defendants that anything they said might be used against them and that their statements must be voluntary.

We submit that the statements obtained from the defendants were not voluntary and the Court erred in admitting them.

State vs. Compo, 108 N. J. L. 499.

State vs. Murphy, 87 N. J. L. 515.

Roessel vs. State, 62 N. J. L. 216.

The defendants on October 9, 1935, made another statement, to the same effect, to Ellis H. Parker, Chief of Burlington County Detectives. (Case pp. 220 to 238).

We submit that the first confessions were obtained through threats and promises and that the second confessions made by the defendants flowed from like influence, and that presumption was not overcome by the State.

In the case of State vs. Guild, 10 N. J. L. 163, the Court said:

"Where one confession has been obtained through influence, a presumption arises that a subsequent confession flows from the like influence, and such presumption must be overcome before the confession can be given in evidence."

See also Bullock vs. State, 65 N. J. L. 557.

POINT 5

ERROR IN REFUSING TO PERMIT WITNESS
ANDREW ZAPOLSKY TO TESTIFY AS TO
THE INTERIOR OF THE HOUSE

The State's witness, Andrew Zapolsky, had testified that he went to the home of the deceased shortly after the discovery of the murder. (Case pp. 172-173).

It was material to the defense that the condition of the house at this time be shown. The theory of the defense being that the condition of the house showed that the murder had been committed a considerable time prior to that alleged. The testimony of the witness Zapolsky was important for this reason and the exclusion of the same harmful error.

POINT 6

ERROR IN REFUSING TO PERMIT WITNESS
ANDREW ZAPOLSKY TO TESTIFY AS TO
INQUIRY MADE BY HIM

The Court erroneously refused to permit witness Zapolsky to testify as to inquiries and investigations which he had made concerning the whereabouts of the accused on the night of October 6th. (Case p. 174). It was the theory of the defense that the State Troopers having extorted the alleged confessions from the defendants, upon checking up with same, were not satisfied that they were correct and for that reason had pursued investigations as to the whereabouts of the defendants, not on the night or evening of October 7th, but on the previous evening October 6th, and the witness Zapolsky was questioned as to visits made by him to the sister of defendant Ciemiengo in Camden to learn as to the whereabouts of Ciemiengo on October 6th.

If the State Troopers who had extorted the confessions made additional investigation, the apparent purpose of which was to contradict the confessions by showing the whereabouts of the defendants not on that night, but on a previous night, the effect of such testimony would have been to discredit the alleged confessions and to exclude the testimony hereinbefore made.

POINT 7

ERROR IN ADMITTING TESTIMONY AS TO TRANSACTION WITH DECEASED PRIOR TO ALLEGED MURDER

The State called as a witness William N. Richardson, an insurance agent, employed by the Metropolitan Insurance Company, and the Court permitted the witness to testify (over objection and exception noted, Case p. 198) that about three months prior to the alleged murder he had gone to the home of Jacob J. Ciemiengo to collect an insurance premium from his father, and on that occasion the defendant, Ciemiengo, accompanied him to the farm of Herman Eilers for the purpose of having Mr. Eilers change a \$20 bill for Jacob J. Ciemiengo, and that the witness then saw that Eilers had a large sum of money in his pocketbook, which he carried in his rear hip pocket. (Case p. 197 to 198).

The purpose of this testimony was to show that the defendant, Ciemiengo, had knowledge of the fact that Eilers carried large sums of money on his person. It is the contention of the defendants herein that it was error for the Court to admit this testimony, on the ground that it was too remote, immaterial and incompetent. We strongly urge that the admission of this testimony was prejudicial to the defendants.

POINT 8

ERROR BY TRIAL COURT IN STRIKING OUT
ANSWER OF WITNESS WILLIAM K.
SAMPSON TO QUESTION

The defense called as a witness William K. Sampson, who was questioned on his direct examination as to the condition of Eilers' poultry on the morning of October 8th, the day after the alleged date of the murder. The witness was asked concerning the poultry the question: "How did they appear, hungry or not?" to which he answered, "Yes, sir." (Case p. 252), and the Court, upon motion of the State, and against objection of defendants, ordered this answer stricken out. It was the purpose of the defense to show that Mr. Eilers' poultry had been penned up all day Monday, October 7th, in support of its theory that the murder occurred prior to that day, and that the poultry consequently had not had any food or water during the entire day of Monday, October 7th. The answer to this question was, therefore, pertinent to the defense and it was harmful error for the Court to order such answer stricken out.

POINT 9

ERROR BY COURT IN PERMITTING WITNESS
JOHN F. MOLLER TO ANSWER QUESTION

The defense called as a witness John F. Moller, who testified as to the reputation of the defendants for "peace and good order" in the community in which they lived (Case pp. 285-286), and on cross-examination the Prosecutor (Case p. 287) asked the following question concerning the defendant Ciemiengo: "Did anybody ever tell you that he was charged with stealing things from different people?" The Court, over defendants' objection, permitted the witness to answer this question. It was improper to

permit the State to offer testimony tending to show that Ciemiengo had been guilty of some other offense than that for which he was being tried.

The State was limited in its cross-examination of this witness to the question of the reputation of defendant for "peace and good order", and while the witness' answer to the question was "no," yet the State was thereby permitted by innuendo to inject into the case insinuation that Ciemiengo had committed some other crime or crimes.

POINT 10

ERROR IN COMPELLING DEFENDANT CIEMIENGO TO ANSWER QUESTION AS TO STATEMENT MADE BY HIS MOTHER

The Court compelled the defendant, Jacob J. Ciemiengo, to answer the following question of the Prosecutor. Q. "When the trooper came over to get you, what did your mother say? Didn't she say, 'Now, what trouble have you been in again, have you been stealing again?'" (Case p. 329). The question was immaterial. It was at best evidence of what someone else had said. It did not rise even to the dignity of hearsay testimony. It was a statement made by the defendant's mother and not binding on him. We contend that the State, by the admission of this evidence, injected into this case testimony prejudicial to the defendant, for the sole purpose of discrediting him by tending to prove him guilty of some other crimes. It would have been improper to permit the State to offer even legal testimony tending to show that the defendant had been guilty of some other offenses.

In the case of *State vs. Hendricks*, 70 N. J. L. 41, the Court said:

"At a criminal trial, independent facts tending to prove defendant guilty of other collateral crimes to show the likelihood of his guilt, or to discredit him as a witness is inadmissible."

In the case of *State vs. Bullock*, 65 N. J. L. 557, the Court said:

"On the trial of an accused for a crime it is not competent to prove that he committed other crimes of the like nature for the purpose of showing that the accused would be likely to commit the crime charged in the indictment."

POINT 11

ERROR IN CHARGE OF TRIAL COURT IN THAT
IT DIRECTED VERDICT

The Court charged, (Case, pp. 415-416) :

"If you find from the evidence, and are satisfied beyond a reasonable doubt, as I shall hereinafter define to you, that the defendants in this case were engaged in perpetrating or attempting to perpetrate a robbery and while so doing killed the deceased, you should find a verdict of murder in the first degree."

It is submitted that the trial Court by this instruction in effect directed the jury to find the defendants guilty of murder in the first degree, and took from the jury the discretion to which by law it was entitled in the rendition of its verdict. For it will be noted that the Court did not say "you may find," but said "you should find," thereby making the instructions to convict binding, and precluding the jury from finding a verdict of guilty of murder in the second degree or of manslaughter. It is submitted that the instruction contained in this portion of the learned trial Judge's charge was specially harmful to the defendants and constituted legal error.

POINT 12

ERROR IN CHARGE OF TRIAL COURT IN
EMPHASIZING TESTIMONY OF EXPERT
WITNESS

The Court charged as follows (Case p. 420) :

“There has been testimony offered in this case by witnesses who are known as experts. I refer particularly to one witness, Captain Jones, a ballistic expert. The testimony of experts such as this gentleman, on a subject so little known to the public, is entitled to great respect.”

The theory of the State was that the wounds which caused the death of the deceased were from bullets fired from a revolver, identified as belonging to the defendant Ciemiengo, and the witness Jones had testified on this subject. The defendants had questioned, in their cross-examination of the witness, his ability to determine from his observation that the bullets in question (extracted from the corpse) had been fired from the weapon in question. Captain Jones had stated his reasons for the opinion to which he testified. He had stated that he was able to so say positively, because of the results of observation obtained by the use of a certain microscopic instrument which he testified he had used, and that he had with him but which he signally failed to produce. The defendants rightfully endeavored to discredit the accuracy of the conclusions to which the witness Jones had arrived. The testimony of this witness appears in the Case pp. 203 to 218. It was entirely the province of the jury to determine whether this witness could identify a small mutilated leaden bullet as one which had been fired from a certain revolver, of a common and ordinary make. If the jury had doubts as to the accuracy of the conclusions of the witness, it would have been an element

in favor of the defendants, and when the Court told the jury that the testimony of this witness was "entitled to great respect" he invaded the province of the jury and added his endorsement to witnesses' testimony and expressed the idea that he was strongly impressed by the evidence of this witness. It singled out and gave special significance to this testimony, which was harmful error to the defendants.

"Where the defense of insanity is relied on, and there is the evidence of expert and non-expert witnesses who testify as to the sanity of the accused, and who were 'parties who associated with the defendant, lived with him, lived in the same community,' it was error for the Judge to charge the jury that the testimony of expert witnesses was entitled to great weight, and to add, in substance, that the testimony of intimate associates of the accused should be given similar weight. All this testimony is allowed for the purpose of informing the jury as to the truth of the issue, and the weight to be given to it is for them. The Judge should not intimate in any way to them how they should deal with any particular class of witnesses, but, under proper instructions, leave the entire matter to them. It may be that in certain cases the testimony of non-expert witnesses would, in the mind of an intelligent juror, outweigh the testimony of the alleged expert witnesses, and that in other cases the testimony of the expert would be given the greater weight; but the jury are the sole judges of such things, and the Judge should leave them untrammelled to pass upon the credibility of all witnesses, and give such weight to the testimony of each as they see proper."

Ryder vs. State 100 Ga. 528.
38 L. R. A. 721 at Page 746.

In *Taubert v. Taubert* (Minn.) 114 NW. 763, the Court charged the jury that:

"If you believe the plaintiff's testimony, believe it is true, and believe that it measured up to the law as I have defined it to you, he would be entitled to recover, although every other witness lied." * * *

The Court held:

"It was certainly error, for the well settled rule is that it is error for a trial Court in its instructions to a jury to single out the testimony of a designated witness and lay particular stress upon it." * * *

In case of *Security Beneficial Association vs. Small* (Ariz.) 272 Pac. p. 647 at p. 651, in discussing exceptions to a charge in a suit to collect insurance, the defense being that the insured wasn't in good health at issuance of policy, the Court had charged that expert (i. e. doctor's) testimony should not be considered alone. The Appellate Court said:

* * * "But it is never proper to instruct the jury that expert testimony is or is not reliable or to show how the jury should appraise it."

In case of *Indianapolis Traction & Terminal Co. vs. Taylor* 103 NE. 812 (Ind) the Court said:

"It has been held that an expert witness stands upon the same footing as any other witness in so far as his credibility is concerned and that the weight of his testimony should be determined by the same rules, so far as applicable, which apply to the testimony of other witnesses."

In case of *Shaver vs. United Parcel Service (Cal)* 266 Pac. 606 at p. 611, the Court said:

"It is true that expert testimony, when competent and admissible, like the evidence of any other witness, should be permitted to go to the jury without disparagement, leaving them to pass upon its weight and sufficiency."

Philpott v. Jones, 146 N. W. 859, deals with requests to charge which emphasize parts of testimony by expert doctors, and the Court said they were properly refused.

In *Chappeli v. Roberts (Ala.)* 43 Southern 489, refusal of Court to make certain charges upheld in following language:

"These charges were clearly argumentative, as well as subject to the criticism that they single out and give undue prominence to, at the expense of other testimony, certain testimony aduced."

In *Hill v. Union Pacific Railroad Co.* 215 Pac. 310 on p. 311, it was said:

"The Court should have given the instruction requested. * * * The testimony of experts should be considered like any other testimony, not singled out and given special significance."

In *Treadwell v. Nickel (Cal.)* 228 Pac. 25 at p. 34, in discussing refusal to charge, the Court said:

"Expert testimony is to be given weight to which it appears in each case to be justly entitled. The law makes no distinction between that kind of testimony and evidence of other character." Citing *Rolland v. Porterfield*, 191 Pac. 913.

In *Crump vs. Knox* (Ga.) 89 S. E. 586, among other grounds argued for reversal was the refusal of the Court to give a requested charge as to the value of expert testimony. The Appellate Court said:

"The requested charge was not altogether accurate, and was couched in language calculated to convey to the jury an intimation of opinion on the part of the Court as to the value of expert testimony."

"The testimony of experts is to be considered like any other testimony, and is to be tried by the same tests and receive just as much weight and credit as the jury may deem it entitled to, viewed in connection with all the evidence in the case". *State vs. Miller*, 9 Houst. (Del.) 564; *Humphries vs. Johnson*, 20 Ind. 190; *Atchison, T. & S. F. R. Co. vs. Thul*, 23 Kan. 255, 49 Am. Rep. 484.

"The jury should be left at liberty to apply the same rules to the testimony of experts that are applicable to the testimony of other witnesses, in estimating its value". *Cuneo vs. Bessoni*, 63 Ind. 524.

"It is improper to single out one witness, although he was the family physician, and instruct the jury in an action involving a medical question, that his evidence was entitled to great weight". *Kerr. vs. Lunsford*, 31 W. Va. 659.

"It is contrary to the statutory provision on the subject of charging as to the weight of evidence, for the Court to single out certain testimony in a cause and tell the jury that it is entitled to either great or little weight." *State vs. Hundley*, 46 Mo. 414.

POINT 13

ERROR IN CHARGE OF TRIAL COURT
AS TO VERDICT

The Court charged as follows (Case p. 422):
“Your verdict shall be one of three, and as to each defendant individually, unless your verdict shall be the same for both—guilty of murder in the first degree, guilty of murder in the first degree with a recommendation of life imprisonment, or not guilty.”

In this charge the learned trial Judge was guilty of harmful error to the defendants, by this instruction he excluded from the consideration of the jury all questions as to whether the defendants or either of them might have been guilty of murder in the second degree or manslaughter. It is obvious that had the jury returned a verdict of guilty of murder in the second degree or of manslaughter the trial Court would have been obliged to accept the same. Therefore, the jury had the right upon their consideration of the testimony in the case to render a verdict either of guilty of murder in the second degree or guilty of manslaughter, but this instruction of the trial Judge deprived the jury of this right, and prevented the rendition by the jury of a verdict which in their opinion the evidence warranted.

POINT 14

THE VERDICT WAS AGAINST THE WEIGHT
OF EVIDENCE

The State's case was based entirely upon the alleged admissions extorted from the defendants, although the defendants upon the stand positively denied that the statements obtained were true, yet such admissions if detailing facts found to be true,

might have been sufficient to warrant defendants' conviction, but if the defendants declared that they had done certain things and it appeared conclusively that the facts which they stated they had committed could not in fact have been so committed, obviously their admissions or confessions are insufficient to warrant their conviction. Cases are not wanting of where persons have confessed the commission of a crime which it was subsequently demonstrated beyond all doubt that they could not have committed and also as to crimes which were never in fact committed at all.

The statement of defendants as elicited by the State Troopers and by County Detective Parker were not only improbable but impossible in view of the known physical facts. The State Troopers themselves were impressed by the improbability of the defendants' admission in view of the physical facts discovered by them on their investigation. After the defendants had confessed to the State Troopers that they killed the deceased on October 7th, the Troopers in view of the condition of the deceased's body and of his house, appear to have been impressed with the fact that Herman Eilers must have met his death prior to the evening of October 7th, and the Troopers made extensive investigation as to the whereabouts of the defendants on October 6th. (Case pp. 174, 308, 309, 310, 333 and 365).

All of the facts indicate conclusively that the murder did in fact take place at some time previous to October 7th between six and six-thirty P. M. The body was discovered on October 7th at seven-fifteen P. M. (Case p. 76) within a half or three-quarters of an hour after the crime was supposed to have been committed. When discovered the body was cold and rigid (Case p. 118); the blood on the same was dry (Case pp. 266 and 267). The deceased lived alone; kept house for himself and did his own

cooking. When the body was discovered there was no fire in the stove in the house, the same having burned out (Case pp. 94, 123, 190 and 250); there was no indication of there having been a fire in the stove for hours before the murder (Case pp. 94, 123 and 250); there was no preparation for the evening meal, or any meal (Case pp. 264 and 278); the lamp on the table in the kitchen had burned out, the oil being exhausted and the chimney cold (Case pp. 82, 91 and 92); the daily paper which was delivered in the morning of October 7th was still in the mail box (Case p. 121); the poultry had not been taken care of during the day (Case pp. 260 and 261). Every physical fact pointed conclusively to the crime having been committed hours before six-thirty P. M. on October 7th. It appeared that the deceased was in the habit of carrying sums of money on his person (Case p. 198); there was no money found on his body and none was found in the possession of either of the defendants. The deceased met his death from wounds inflicted by a weapon held but four or five inches from his body (Case p. 106), which was entirely at variance with the alleged confessions of defendants that the weapon was fired from a considerably greater distance. The crime was the crime of desperate criminals. It is inconceivable that two boys, one sixteen years of age and the other twenty-six, who were on friendly terms with the deceased, and well known to him, boys who had previously borne a good reputation of peace and good order, should have gone to the home of their friend and acquaintance, and brutally murdered him for the sake of obtaining a small sum of money which he would have undoubtedly loaned them, had they requested it, and then quietly proceeded to Burlington, spent the evening in the vicinity, showing no excitement or apprehension.

Herman Eilers was not murdered by Ciemiengo and Hildebrand. He was done to death by some other person or persons who probably robbed him, the crime having been committed either some time on Sunday, October 6th, or the early part of Monday, October 7th, and his corpse lay abandoned in the house until it was discovered in the evening of October 7th, stiff and cold. No fire in the house; the light burned out; no signs of any meal. The defendants, unfortunately for them, had been at the Eilers residence on the evening of October 7th. The State Troopers discovered this fact and instead of making a thorough investigation of the facts and circumstances which might have led to the detection of the real murderer, subjected the boys to a grueling examination, and those boys young in years, with no friends or relatives at their command, were forced into making statements as to certain events, the words being put in their mouths by over-zealous troopers, which statements in the light of the actual physical conditions appear conclusively to be wrong. The verdict was against the weight of the evidence.

For the respective reasons urged herein it is submitted that the judgment should be reversed.

GEORGE M. HILLMAN,
Of Counsel for Jacob J. Ciemiengo,

STANLEY K. HEILBRON,
Of Counsel for George H. Hildebrand,

Plaintiffs-in-Error.



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NEW JERSEY COURT OF ERRORS
AND APPEALS

STATE OF NEW JERSEY, Defendant-in-Error,	}	On Error to Burlington County Court of Oyer and Terminer.
vs.		
JACOB J. CIEMIENGO and GEORGE H. HILDEBRAND, Plaintiffs-in-Error.	}	On Indictment September Term, 1935, for Murder.

BRIEF OF DEFENDANT-IN-ERROR

Jacob J. Ciemiengo and George H. Hildebrand, Plaintiffs-in-Error, were convicted in the Burlington County Court of Oyer and Terminer, before the Honorable Frank A. Hendrickson and a jury, on an indictment charging them with having murdered one Herman Eilers on October 7th, 1935. Defendants were tried together and convicted of murder in the first degree by the verdict of the jury returned on November 21st, 1935. The jury did not make any recommendation of life imprisonment and the defendants were thereupon sentenced to death. The Writ of Error in this case brings up the entire proceedings for review.

STATEMENT OF FACTS

Herman Eilers, of whose murder the defendants were convicted, lived by himself on a small farm, situate in a very lonely section of the country on a road known as "Cedar Lane," in the Township of Florence, County of Burlington and State of New Jersey. One Arthur S. Therrien, who lived nearby the decedent, was the first person to discover Eilers'

body. Therrien desired to purchase some eggs from Eilers and upon going to his home about ten or fifteen minutes past seven o'clock in the evening of October 7th, 1935, found Eilers' house unlighted and was about to leave, having failed to get any response to his knock upon the rear door, when he noticed that the door was partly open (S. C. p. 76). Therrien thereupon went into the house, found Eilers' body lying on the kitchen floor near the rear door through which he had entered, saw blood running down his face, whereupon he went to the home of a neighbor, William K. Sampson. He and Sampson then called another neighbor, William J. Malseed, and then Therrien, Sampson, Malseed and Malseed's son, Baird Malseed, returned to Eilers' house. They made a further examination of Eilers' body and, finding that he had been shot, the police officials were notified (S. C. p. 78).

Chief of Police George Griffith, of Florence, New Jersey, arrived at Eilers' home between 7.30 and 8 P. M. (S. C. p. 78), and members of the New Jersey State Police arrived about the same time (S. C. p. 187). G. Clinton Zeller, one of the Burlington County Detectives, arrived at the scene of the murder shortly after 8 o'clock (S. C. p. 241). Therrien (S. C. p. 78), William Malseed (S. C. p. 88), and Sampson (S. C. p. 257) identified photograph marked Exhibit S-3, attached to the back of the State of the Case, as the exact position of Eilers' body when they first saw it on the evening of October 7th, 1935. When Officer Griffith arrived at the scene of the murder he examined Eilers' body and found that the blood around the gunshot wound in his head indicated that the injury had been freshly inflicted (S. C. p. 116), and that Eilers was dead when he examined him (S. C. p. 117). According to Officer Griffith, Eilers had been dead about an hour or an hour and a half (S. C. p. 119).

The examination of Eilers' body by the police officers, and the post-mortem subsequently made, revealed that Eilers' death had been caused by two gunshot wounds, both made by bullets from a 22-calibre revolver, either of which was capable of causing death. One bullet entered the skull one and one-half inches externally to the outer corner of the left eye and three-eighths of an inch above the eye, going straight through the skull, passing under the brain without lacerating or tearing the brain tissue and fracturing a portion of the skull, going into a portion of the left temporal bone, which it penetrated and then went to the opposite side of the skull where it became imbedded (S. C. p. 99). The other bullet entered a space one-half inch immediately above the left collar bone, taking a slight downward and inward course, shattered the collar bone and severed a large artery, causing a severe hemorrhage in the left thoracic cavity. Both bullets were removed by Dr. John S. Conroy, who performed the post-mortem (S. C. pp. 99, 100). The defendants, George H. Hildebrand and Jacob J. Ciemiengo, were suspected of having committed the murder in an attempt to rob the decedent. Hildebrand had previously been employed by Eilers and Ciemiengo had visited Hildebrand at Eilers' home on numerous occasions.

Hildebrand and Ciemiengo were first questioned by members of the State Police at the Columbus, New Jersey, barracks, and finally admitted that they had murdered Herman Eilers, stating that they had gone there for the purpose of robbing him, having agreed in advance that they would kill him first. Both defendants signed complete detailed confessions of their participation in the murder (S. C. pp. 156-163 and pp. 165-171). The confessions made by the defendants to the State Police were in the presence of each other. Subsequently, the defendants

separately made further confessions to Ellis H. Parker, Chief of County Detectives of Burlington County, and Howard Eastwood, Prosecutor of the Pleas, of their having murdered Herman Eilers, which confessions were taken down stenographically by Anna E. Bading, Secretary to Detective Parker (S. C. pp. 220-237).

Ciemiengo, both in his confession to the State Police and to County Detective Parker, admitted that he fired three shots at Eilers, two of which struck his body and the other going wild. Hildebrand admitted that he and Ciemiengo talked over their plan to rob and murder Eilers that evening on their way to Eilers' home, that he knew that Ciemiengo had the revolver, saw him draw it and fire three shots at Eilers; thereupon he, Hildebrand, went through Eilers' pockets after he had fallen to the floor from the gunshot wounds inflicted upon him by Ciemiengo, but, finding no money, he and Ciemiengo then hurriedly left the scene of their crime. The revolver used in committing the crime was found at Ciemiengo's home with three empty shells in the chamber thereof, which gun Ciemiengo and Hildebrand identified in both of their confessions as having been the gun that was used in committing the murder of Herman Eilers. The bullets fired by Ciemiengo were identified by Captain William A. Jones, of New York City, a ballistic expert, as having been fired from the revolver identified as Ciemiengo's (S. C. p. 208).

In addition to the two bullets removed by Dr. Conroy from Eilers' body, the third bullet was removed by State Trooper Albert H. Welfare, from the wall of a room adjoining that in which Eilers' body was found, shown by Exhibit S-20, attached to the State of the Case (S. C. pp. 193, 194). Ciemiengo (S. C. p. 315) and Hildebrand (S. C. p. 395) identified the revolver alleged to have been used in murdering Eil-

ers as the one they both identified to the State Police and Detective Parker when they made their confessions of the murder to them. At the trial Cienmiengo and Hildebrand repudiated both of the confessions they had made, stating that the confessions made by them to the State Police had been obtained by force and threats, although they were unable to give any reasonable explanation for the confessions they made to Detective Parker and Prosecutor Eastwood (S. C. pp. 314, 368 and 369).

ASSIGNMENTS OF ERROR AND
SPECIFICATIONS OF CAUSES FOR REVERSAL
NOT ARGUED, MUST BE CONSIDERED
AS ABANDONED

Plaintiffs-in-Error have failed to argue in their brief Assignments of Error Nos. 4, 15 and 19, and Specifications of Causes for Reversal Nos. 1, 5, 16 and 20. Therefore, under the decisions of our courts, these Assignments of Error and Specifications of Causes for Reversal must be considered as abandoned by the Plaintiffs-in-Error.

"Assignments of Error, based on the rulings of the trial Court in a criminal prosecution, not argued nor referred to in the briefs of the Plaintiffs-in-Error, will be considered to have been abandoned."

State v. Marriner,
93 N. J. L. p. 273

108 Atl. Rep. p. 306

Affirmed 111 Atl. Rep. p. 688

State v. Collingswood Sewerage Co.

85 N. J. L. p. 567

89 Atl. Rep. p. 526

State v. Sebato,

91 N. J. L. p. 370

103 Atl. Rep. at p. 808

POINT 1

NO ERROR WAS COMMITTED IN THE EXAMINATION OF THE STATE'S WITNESSES ARTHUR S. THERRIEN AND WILLIAM MALSEED

Under sub-divisions A. and B. of Point 1 in the Brief of the Plaintiffs-in-Error, it is contended that the Court committed error in permitting the State to cross-examine and impeach the credibility of two of the State's witnesses, Arthur S. Therrien and William Malseed. The error complained of is set forth in Assignments of Error Nos. 1 and 2 and Specifications of Causes for Reversal Nos. 2 and 3. The error complained of should not be considered by the Court, because neither the Assignments of Error nor the Specifications of Causes for Reversal specify or set out the particular testimony given by Therrien and Malseed in connection with which error is alleged to have been committed and to which exception is taken by the Plaintiffs-in-Error. Our Courts have always held that grounds of error or causes for reversal must be definitely pointed out and specifically assigned, and that the evidence either admitted or rejected must be specifically set forth in the Assignment of Error or Specification of Causes for Reversal; otherwise, it will not be considered by the Court. By a reference to the Assignments of Error and Specifications of Causes for Reversal, it will be noted that they are very general in their statements, making general assertions that the State sought to cross-examine and impeach its own witnesses, without setting out the particular testimony that was admitted tending to establish the alleged error. Therefore, the error complained of should not be considered by the Court as grounds for reversal.

"Now, whether review is sought by assignments of error on bills of exception or by specifications of causes for reversal pursuant to sections 136 and 137 of our Criminal Procedure Act, the ground of error or causes for reversal must be definitely pointed out and assigned or specified with sufficient precision to apprise the Court and opposing counsel of the injury complained of. *State v. Herron*, 77 N. J. Law, 523, 71 A. 274; *State v. McCormack*, 93 N. J. Law, 287, 107 A. 475, affirmed 94 N. J. Law, 262, 109 A. 925; *State v. Lewis* (N. J. Sup.) 121 Atl. 83."

State v. Schultz,
2 N. J. Misc. Rep. 1027
126 Atl. Rep. 443

State v. Maurone,
7 N. J. Misc. Rep. 473
146 Atl. Rep. 50

State v. Herron,
77 N. J. L. 523
71 Atl. Rep. 274

However, in arguing the question of alleged error, the State did not endeavor to impeach either of the witnesses Therrien or Malseed. The Prosecutor of the Pleas, upon examining both of these witnesses, stated to the Court that he was surprised at the answers given by them in response to his questions concerning the blood that these two witnesses observed on the face of the victim. Both witnesses stated that they did not see the blood running down the decedent's face (S. C. p. 79 and S. C. p. 89). The Prosecutor stated to the Court that this testimony was unexpected and surprising to him, as it was contrary to previous statements made by these witnesses to the State Police when they had questioned them shortly after the discovery of the murder (S. C. pp. 79 and 80, and S. C. pp. 89 and 90).

There was no error committed when the Court allowed the Prosecutor to question the witnesses concerning the contradictory statements they made on the witness stand and as made by them in their signed statements to the State Police. Our courts have repeatedly held that it is within the discretion of the Court to permit examination of this character, when the State is surprised by the testimony given, and no error can be charged if the Court in its discretion permits such examination to be made concerning such contradictory statements. The case of *State v. Brunet*, 8 N. J. L. p. 414, cited by Plaintiffs-in-Error is not in point. The written statements of the two witnesses Therrien and Malseed were not offered in evidence and were only used in questioning them as to the contradictory statements made by them concerning the blood on the victim's face.

"The trial Court may permit a party to cross-examine his own witness, where he is unwilling and the party offering such witness has been surprised thereby."

State v. Lewis,
86 A. 1103
84 N. J. L. 417

affirming judgment (Sup. 1912)
83 A. 692
83 N. J. L. 161

"In prosecution for murder, overruling objection to prosecutor's attempt to cross-examine his own witness, brother-in-law of accused, was not error, when his testimony was asserted to be, and was regarded by trial judge, as surprise to prosecutor; such question being one resting within sound discretion of trial judge."

State v. Genese,
130 A. 642
102 N. J. L. 134

State v. Bassone,
109 N. J. L. 176
160 Atl. Rep. at p. 393 (4)

State v. Johnson,
73 N. J. L. 199
63 Atl. Rep. at p. 13

POINT 2

THERE WAS NO ERROR IN THE COURT'S
REFUSAL TO PERMIT DR. JOHN S. CONROY
TO ANSWER A QUESTION

Plaintiffs-in-Error alleged that the Court erred in refusing to permit the witness Dr. John S. Conroy to answer the following question:

"Q. But it was a part of the body which was ordinarily clothed?" (S. C. p. 106).

The Court was correct in its ruling when it refused to permit, over the Prosecutor's objection, Dr. Conroy to answer said question. When Dr. Conroy examined the victim's body the clothing had been removed and the body was entirely nude. Dr. Conroy never saw the body of the victim as he was clothed at the time of the murder (S. C. pp. 107, 108). Therefore, it was highly improper for Dr. Conroy to testify that the bullet wound just above the left clavicle was on a part of the body which was ordinarily clothed. However, the Court's ruling, even if erroneous, was harmless, as several photographs of the victim, showing the manner in which he was clothed at the time of the discovery of his body, were offered in evidence by the State, and the jury had the benefit of these photographs during its consideration of the case. One of the photographs, Exhibit S-3, is attached to the State of the Case.

In addition, Captain William A. Jones (S. C. pp. 217, 218), testified concerning his opinion as to powder burns around the area of the entrance of the wound above the left shoulder-blade, and the extent of powder burns if fired at a man who had a shirt on. Consequently, the alleged error, if any, was harmless. Plaintiffs-in-Error argue that it became vital to have this question answered by Dr. Conroy because it was important to determine whether or not the weapon was held against the body of the deceased at the time it was fired, which, if true, was contended to be contradictory to the alleged statement of Ciemiengo. However, a reference to Ciemiengo's confession (S. C. p. 162) states that he fired the shots at Eilers within three feet of him. Ciemiengo, upon cross-examination (S. C. p. 347), stated that he was five feet eleven and a half inches in height, and upon being required to stand three feet away from the Prosecutor with the gun in question pointed at the Prosecutor, it brought the end of the barrel of the revolver within a very few inches of where it must have been when he fired same at Herman Eilers (S. C. pp. 349, 350), so that unquestionably there would have been powder marks or powder burns on Eilers' body with the gun being fired at him at that close range.

Our courts have held that erroneous rulings of the Court are not grounds for reversal unless the defendant has suffered manifest wrong or injury.

"It must be borne in mind also that not only our sense of enlightened justice but the mandate of the legislature requires that no reversal should be had upon such grounds unless the defendants have suffered manifest wrong or injury. Criminal Procedure Act 1898 No. 136."

State v. Juliano,
103 N. J. L. 663
133 Atl. Rep. at p. 584

“(6, 7) The next point is that the judge committed prejudicial error in the exclusion of evidence during the examination of the defendant by his own counsel. We incline to think that there was no legal error, but we are clear that, if there was, it was not prejudicial to the defendant. If the evidence, which is the subject-matter of Assignment No. 2, was offered for the purpose announced at the trial of showing that the defendant did not procure the ring which he and the decedent went to the jeweler to purchase, its exclusion was not prejudicial to the defendant, and therefore will not lead to a reversal of the judgment. *State v. McDonald*, 89 N. J. Law, 421, 99 A. 128, affirmed, 91 N. J. Law, 233, 103 A. 165; *State v. Jayson*, 94 N. J. Law, 467, 111 A. 7; *State v. Grace*, 98 N. J. Law, 341, 119 A. 767. If, on the other hand, as seems to be suggested now, the excluded evidence was offered to show defendant's purpose to buy a ring for the decedent from which a friendly feeling at that time might be inferred, its exclusion was not prejudicial to the defendant because the defendant was afterwards permitted to testify in effect to having had that purpose on that occasion. No prejudicial error results from sustaining an objection to a question put to the defendant, where later during his examination he is permitted to testify in effect to the fact sought to be proved.”

State v. Fuersten.

103 N. J. L. 383

135 Atl. Rep. at pp. 896, 897

POINT 3

NO ERROR WAS COMMITTED BY THE COURT
IN ADMITTING TESTIMONY OF WITNESS,
JAMES BARTON

Plaintiffs-in-Error argue that the Court erred in permitting witness James Barton to answer questions as to Barton's observations on previous oc-

casions when he delivered mail to decedent, at which time he found the previous day's mail in the box and delivered it to decedent at the same time he delivered that particular day's mail. On cross-examination of Police Officer George Griffith, counsel for Plaintiffs-in-Error brought out the fact that when Griffith arrived at the scene of the murder he found and removed from the mail box outside of decedent's home that day's newspaper, which had been left there by the mail carrier, James Barton (S. C. pp. 121, 122, and S. C. pp. 127, 128). The State was entitled to prove that on other occasions the decedent had failed to remove his mail from the letter box outside of his house, in order to overcome the inference the Plaintiffs-in-Error sought to leave by Police Officer Griffith's testimony. The admission of this testimony was harmless and was properly admitted to establish the decedent's habits in this respect. In addition to which, there was other testimony by Barton of a similar nature to which no objection was made and no error is assigned as a ground for reversal (S. C. pp. 130 and 131). In fact, both counsel for the defendants questioned the witness Barton concerning the habits of the decedent getting mail delivered by the witness Barton to decedent's home.

POINT 4

NO ERROR WAS COMMITTED BY THE COURT IN THE ADMISSION IN EVIDENCE OF DEFENDANTS' CONFESSIONS

Under Point 4 of the Brief of Plaintiffs-in-Error, it is argued that the Court committed error in admitting in evidence confessions of the defendants. Assignments of Errors Nos. 6, 7, 8, 9, 10 and 11, and Specifications of Causes for Reversal Nos. 7, 8, 9, 10,

11 and 12 are argued together by the Plaintiffs-in-Error. A reference to the Assignments of Errors and Specifications of Causes for Reversal in question will reveal that they are very general in their nature and do not specifically set out what particular statements they allege were erroneously admitted in evidence. However, it would appear from the Brief of the Plaintiffs-in-Error reference is made to the confessions given by both defendants to the State Police at the barracks at Columbus, New Jersey, on the morning of October 8th, 1935 (S. C. pp. 156-163 and pp. 165-171), and to Chief of Detectives Parker and Prosecutor Eastwood, at the Court House on the morning of October 9th, 1935, taken down stenographically by Anna E Bading (S. C. pp. 220-237).

The principal argument advanced by the Plaintiffs-in-Error, that the Court committed error in admitting the confessions made to the State Police, is that these confessions were not voluntary and were obtained as a result of force and threats. However, a careful examination of the testimony of the State Police who were present when the confessions were made clearly shows that no threats or violence of any kind were used against either of the defendants. (See testimony of Andrew Zapolsky, S. C. pp. 143-153). Prior to the confessions made to the State Police being admitted in evidence the Court allowed Mr. Hillman and Mr. Heilbron, respective counsel for the defendants, to cross-examine the witness Andrew Zapolsky, to ascertain the facts and circumstances under which these confessions were obtained from the defendants.

Notwithstanding a rigid examination by both counsel, no testimony whatever was adduced from Zapolsky which in any sense indicated that the confessions were obtained by any threats, force or promises made to or against the defendants. On the

contrary, Zapolsky's testimony revealed that while, prior to the confessions being made, the two defendants were questioned at intervals, there was no evidence to justify the statement that they were continuously "grilled" for several hours. In fact, according to Zapolsky (S. C. p. 154), prior to the confessions, as much as an hour or an hour and a half intervened when the defendants were not being questioned at all. Before the Court admitted in evidence the confessions made to the State Police, Plaintiffs-in-Error offered no testimony whatever to show that the confessions were obtained by force, threats or promises, although they were given an opportunity to do so by the Court (S. C. p. 153). The testimony of the witness Zapolsky clearly established that both defendants were properly warned of the crime with which they were charged, that if they cared to make any statement it must be voluntary, of their own free will and accord, and might be used against them, and that no promises nor threats or force of any kind were used in obtaining said confessions. The confessions made to the State Police were made by the defendants in the presence of each other (S. C. p. 156, and S. C. p. 166). The statements were taken down on the typewriter from the lips of the defendants and subsequently both defendants signed each page of their respective confessions (S. C. pp. 153, 155, 165).

In view of the testimony of Andrew Zapolsky that the confessions made to the State Police were voluntary, made after a proper warning and without any application of force, threats or violence, and the defendants offering absolutely no evidence to prove that said confessions were obtained by force, threats or violence, the Court in its discretion, properly admitted said confessions in evidence.

"However, as early as *State v. Brooks*, 30 N. J. Law, 356, at page 364, the Supreme Court took the view that the admissibility of confessions was a question for the Court, and that the Court admits or rejects the confession after weighing the evidence upon the question of its voluntariness. The weight that the jury is to give to the confession is another matter and depends upon their belief in the truthfulness thereof.

"The later decisions of our courts make it perfectly clear that the admission in evidence of a confession, where there is an objection interposed that the same was not voluntary, presents a fact solely for the trial Court, which is not reviewable on error, if there be any legal evidence to support the finding of the Court. *State v. Young*, 67 N. J. Law, 223, 227, 228, 51 A. 939; *State v. Hernia*, 68 N. J. Law, 299, 302, 53 A. 85; *State v. MacQueen*, 69 N. J. Law, 522, 524, 55 A. 1006; *State v. Monich*, 74 N. J. Law, 522, 526, 64 A. 1016; *State v. Kwiatkowski*, 83 N. J. Law, 655, 85 A. 209; *State v. Dolan*, 86 N. J. Law, 195, 90 A. 1034; *State v. Murphy*, 87 N. J. Law, 525, 94 A. 640."

State v. Compo,
108 N. J. L. p. 499
158 Atl. Rep. at p. 542

"The admission of a confession of the defendant in evidence in a criminal case depends upon whether it was voluntarily made, which is a question for the Court alone to decide; and, if the Court decides adversely to the defendant, the confession is admitted, and error assigned on that ruling is not the subject of revision, unless there be no evidence to support it."

State v. Yarrow,
104 N. J. L. p. 513
141 Atl. Rep. p. 85

State v. Favorita,
115 N. J. L. p. 197
178 Atl. Rep. p. 765

State v. Locicero,
12 Misc. Rep. 837
175 Atl. Rep. 904

(Affirmed by Court of Errors and Appeals,
115 N. J. L. 208
178 Atl. Rep. 770)

In addition to the confession made by the defendants to the State Police, Plaintiffs-in-Error also allege error in connection with the confessions made by the defendants to Chief of Detectives Ellis H. Parker and Prosecutor Eastwood (S. C. pp. 220-238). Plaintiffs-in-Error fail to argue that these confessions were obtained through any threats or promises. The only argument advanced in support of their contention that error was committed by the Court in admitting these confessions is that the first confessions made to the State Police were obtained by means of threats and promises, and the presumption is that the subsequent confessions to Mr. Parker were made as the result of the same influence, and that such presumption was not overcome by the State. There is no evidence to support the contention that the first confessions were obtained by threats and promises and certainly the second confessions were undoubtedly proven to have been obtained without the least suggestion of there having been any threats or promises; in fact, the later confessions were without doubt voluntarily made, after proper warning given to the defendants.

The defendant Ciemiengo testified (S. C. pp. 313, 314) that he did not know why he had made the confession to Mr. Parker, except that he was all excited. (Also S. C. pp. 343, 344). Defendant Hildebrand testified that he did not know why he had made his confession to Mr. Parker and Mr. Eastwood (S. C. pp. 368, 369). Hildebrand also admitted that no promises or threats were made to him and

that he was duly warned that any statement he made to Mr. Parker and Mr. Eastwood must be voluntary (S. C. pp. 391, 392). Hildebrand also admitted that at the time he made his later confession there was nothing to prevent him from making a voluntary statement (S. C. p. 393).

"(7) The sixth point is that 'it was error for the trial Court to permit the witness LoPresti to relate an alleged confession by the defendant.' We find no error here. This confession was made to a police officer several hours after the confession taken down by the stenographer, hereinbefore referred to, was made and completed. The sole objection urged to the admission of the later confession now in question is that proof of the prior confession precluded the proof of a later confession made several hours afterwards. But that argument is fallacious. The fact that the accused made a confession which was taken down by a stenographer does not render incompetent oral evidence by the state of another confession made at another time. *State v. Wells*, 1 N. J. Law, 424, 1 Am. Dec. 211."

State v. Favorito,
115 N. J. L. 197
178 Atl. Rep, at p. 768

POINT 5

NO ERROR WAS COMMITTED IN COURT'S REFUSAL TO PERMIT WITNESS ANDREW ZAPOLSKY TO TESTIFY CONCERNING INTERIOR OF HOUSE

No error was committed by the Court when it refused to permit the witness Andrew Zapolsky to testify concerning the interior of decedent's house. Such refusal by the Court was a proper ruling, as the witness was being cross-examined at the time,

and was based on the fact that the witness had not testified concerning the interior of the decedent's house on direct examination (S. C. pp. 172, 173). In addition, the error, if any, was harmless, as there was ample other testimony concerning the interior of decedent's home. In fact, several photographs were offered in evidence by the State, two of which are attached to the State of the Case, showing the interior of the room in which the decedent's body was found. The witness Arthur S. Therrien (S. C. p. 82), William Malseed (S. C. pp. 91, 92 and 94), Trooper Francis Caisse (S. C. pp. 190, 191) and William K. Sampson (S. C. p. 250), all testified to the conditions of the interior of the house when they arrived there shortly after the discovery of the decedent's body.

POINT 6

THE COURT DID NOT COMMIT ERROR IN REFUSING TO PERMIT WITNESS ANDREW ZAPOLSKY TO TESTIFY AS TO INQUIRY MADE BY HIM

The error complained of by Plaintiffs-in-Error deals with the questioning of Blanche Anna Ciemiengo, sister of defendant Jacob J. Ciemiengo. The Court properly refused to permit the witness Zapolsky to answer the question:

"And you went down there and you questioned her did you not, as to where Ciemiengo was on Sunday night?"

The State was not bound, nor could it be bound, by any conversations Zapolsky had with Miss Ciemiengo. It was also improper cross-examination, as the witness had not been questioned on direct examination concerning any such conversation. In addition, the Court's refusal to permit that question to be answered was harmless, as subsequently on the

direct examination of Miss Ciemiengo, when she testified for the defendant (S. C. p. 407), she stated that the State Police questioned her concerning her brother's whereabouts on Sunday night, the evening preceding the alleged murder.

POINT 7

THERE WAS NO ERROR IN ADMISSION OF TESTIMONY OF WILLIAM N. RICHARDSON

The specific testimony of William N. Richardson, a witness offered by the State, to which exception is taken and in connection with which error is assigned, is not properly set out by the Plaintiffs-in-Error in their Assignments of Error No. 14, and Specifications of Causes for Reversal No. 15. However, it is respectfully submitted that the Court committed no error in permitting Richardson to testify concerning the visit he had made in the company of defendant Ciemiengo, about three months prior to the alleged murder. It was merely corroborative of the statement to the same effect made by the defendant Ciemiengo in his confession to the State Police (S. C. p. 161). In addition to which defendant Ciemiengo testified (S. C. pp. 318 and 348) that he had made such a visit with Mr. Richardson to Eilers' home, to get a Twenty Dollar bill changed, at which time he saw quite a roll of money in Mr. Eilers' possession. No objection is made by Plaintiffs-in-Error to Ciemiengo's testimony to that effect and no error is assigned in connection therewith. Consequently, the admission of Richardson's testimony was harmless.

POINT 8

NO ERROR WAS COMMITTED BY COURT IN
STRIKING OUT ANSWER OF WITNESS
WILLIAM K. SAMPSON TO QUESTION

Plaintiffs-in-Error argue that the Court erred in striking out answer given by defense witness William K. Sampson, to question concerning appearance of decedent's poultry, when Sampson answered "Yes, sir" to question: "How did they appear, (referring to poultry) hungry or not?" The question was answered by the witness while the Prosecutor of the Pleas was making an objection to the question, and, upon motion, the Court ordered the answer stricken out. The question was obviously one that called for a conclusion and was properly stricken out by the Court. In addition to which there was ample other evidence concerning the condition of decedent's poultry.

POINT 9

NO ERROR WAS COMMITTED BY THE COURT
IN PERMITTING WITNESS JOHN F. MOLLER
TO ANSWER QUESTION

The witness John F. Moller was produced by the defense and testified as to the reputation of the defendants for peace and good order. The Prosecutor, in his cross-examination of the witness, properly asked him the question concerning the defendant Ciemiengo: "Did anybody ever tell you that he was charged with stealing things from different people?" The State was entitled to test the witness' knowledge of the reputation of the defendants. I think it can be argued, without fear of contradiction, that a person's reputation is what other people say about him.

Therefore, the State was entitled, in cross-examining the witness, to find out whether he had ever heard anyone say anything concerning the defendant's reputation, in order to test the credibility of the witness. The State was entitled to call the witness' attention to specific matters dealing with the defendant's reputation. In addition to which, no harm was done the defendant by the Court permitting the witness to answer said question, as the witness answered that nobody ever told him that Ciemiengo was charged with stealing (S. C. p. 287).

"On cross-examination, but not on direct examination, a character witness may testify as to rumors."

16 Corpus Juris, p. 583

State v. Baldanzo, 148 Atl. Rep. 727

POINT 10

NO ERROR WAS COMMITTED IN COMPELLING DEFENDANT CIEMIENGO TO ANSWER QUESTION

Plaintiffs-in-Error argue that the Court committed error in requiring the defendant Jacob J. Ciemiengo to answer a question alleged to have been asked him by his mother on the night of the murder, when the State Trooper came to take Ciemiengo for questioning, the question being in part, "Didn't she say, 'Now, what trouble have you been in again, have you been stealing again?'" In asking this question the State was not attempting to show that the defendant had been guilty of some other offenses. The purpose was to bring out the conversation had at the defendant's home when the Trooper went there for him. The defendant Ciemiengo had testified concerning this conversation and the State was

certainly entitled to have all of the conversation that took place at the time (S. C. p. 307).

POINT 11.

THE COURT DID NOT DIRECT VERDICT
AGAINST DEFENDANTS

In Assignments of Error No. 20 and Specifications of Causes for Reversal No. 21, Plaintiffs-in-Error allege the Court erred in charging the jury that if they were satisfied beyond a reasonable doubt, that the defendants were engaged in perpetrating or attempting to perpetrate a robbery, and while so doing killed the deceased, they should return a verdict of murder in the first degree. The Court's charge on this question was undoubtedly in strict conformity with the law. Section 107 of the Crimes Act, Volume 2, Compiled Statutes, page 1780, provides as follows:

"Murder which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery, or sodomy, shall be murder in the first degree."

It cannot be denied that the theory of the State's case was that the defendants were perpetrating a robbery upon the decedent and in connection therewith killed him. Under the evidence and the statute hereinabove cited, if the jury were satisfied from the evidence beyond a reasonable doubt, that the State had borne the burden of establishing the guilt of the defendants beyond a reasonable doubt, then there was only one verdict they could return against them, viz: murder in the first degree. The argument of Plaintiffs-in-Error is that this part of the Court's charge precluded the jury from finding a verdict of guilty of murder in the second degree or of manslaughter. Such a verdict, under the circumstances,

would have been clearly improper. The defendants were either guilty of murder in the first degree or they should have been acquitted. They could not have been convicted of any crime less than first degree murder.

"There is still another answer to this contention: It is that the Crimes Act (Comp. Stat. p. 1779, No. 106) makes murder which shall be committed in perpetrating or attempting to perpetrate any robbery (and certain other offenses) murder in the first degree; and this provision is repeated *Id.* p. 1780, No. 107, in which the degrees of murder are defined. These provisions of our criminal law are so inexorable that, if two persons agree to rob another (as in this case), and one strikes a blow that results in the death of the victim both are guilty. *Roesel v. State*, 62 N. J. Law, 216, 222, 41 Atl. 408. These statutory enactments are but declaratory of the common law. See 4 Bl. Com. 200. While insanity is a defense to any murder, nevertheless a homicide committed in the perpetration of robbery, if murder at all, is by the statute made murder in the first degree; and, as the evidence in this case justified the conviction of the prisoner, who was engaged in robbery, of the crime of murder in the first degree, the jury could not have reduced the grade of the homicide to murder in the second degree. The trial judge was therefore right in refusing to charge the instruction requested by the defendant."

State v. James,
96 N. J. L. 132
114 Atl. Rep. at p. 561

"Carlino was guilty, therefore, of murder as defined in section 106 of the Crimes Act. The jury ascertained under section 107 that was murder in the first degree, as it must have been under our construction of section 106.

"(13) We think the judge was quite right in telling the jury that their verdict must be either

murder in the first degree or an acquittal. We find no other point in the case that it is necessary to consider."

State v. Carlino,
98 N. J. L. 99
118 Atl. Rep. at p. 787

In the case of State v. Gimbel, 151 Atl. Rep. at p. 758, in which case the opinion of the Court was delivered by Chancellor Walker, the trial Court's charge concerning the degree of murder alleged to have been committed by the defendant is set out verbatim, viz:

"2. 'In view of the testimony that this murder was committed in the perpetration of a robbery, the defendant is either guilty of murder in the first degree or he is not guilty. As I said to you a moment ago, if you believe the testimony of the State's witnesses, which testimony is uncontradicted, that the defendant Gimbel held up and robbed this grocery store and ran away, and in the course of being pursued shot and killed Paul Bohrer, he is guilty of murder in the first degree.'"

In deciding this case the Court held that there was no error in the Court's charge respecting the degree of murder committed. The defendant was convicted of first degree murder, alleged to have been committed in the attempt to perpetrate a robbery, and, therefore, properly held that the Court's instruction was correct and that the defendant was properly convicted of first degree murder, and that he could not have been convicted of any lesser degree.

"The trial judge, mentioning the statute, it is true, and quoting section 131 in part, proceeded to instruct the jury as follows: "If, therefore, the defendant by night wilfully and maliciously broke and entered the Lindbergh dwelling house

with intent to steal the child and its clothing and to commit a battery on the child, he committed a burglary; and if the murder was committed in perpetrating a burglary, it is murder in the first degree.' ”

State v. Hauptmann, 180 Atl. Rep. 818, 819

The Court in re: State v. Hauptmann, id., held that the foregoing instruction of the Court concerning the degree of murder committed, based on the testimony, if the jury believed the State's testimony beyond a reasonable doubt, was an entirely proper charge, and did not invade the province of the jury in deciding the guilt or innocence of the defendant and the degree of the crime itself. Justice Parker who rendered the opinion for the Court in the Hauptmann case, further stated:

“The rule stated in the text of 29 C. J. 1107, and which for present purposes we approve, goes somewhat farther, saying: ‘A murder may be committed in the perpetration of a felony, although it does not take place until after the felony itself has been technically completed, if the homicide is committed within the res get-tae of the felony.’ This seems to be the rule applied, if not stated in this language, in our cases above cited, and indeed conceded by counsel for defendant in moving for a directed acquittal when the State's evidence was in. The concession was limited to a situation involving grand larceny at common law, but we have already dealt with that matter. Applying it to the case at bar, we think that the jury were clearly entitled to find that the child was killed while the ‘burglar’ was still on the Lindbergh premises; and, if so, the homicide would be murder in the first degree under sections 106 and 107, supra.”

State v. Hauptmann, 180 Atl. Rep. 820

State v. Giampetro, 150 Atl. Rep. 369

State v. Fearce,
113 N. J. L. 155
172 Atl. Rep. 576

State v. Mowser,
92 N. J. L. 474
106 Atl. Rep. 416

The Court did not direct the jury to return a verdict in that portion of the charge to which exception has been taken by the Plaintiffs-in-Error, nor did the Court invade the province of the jury in any respect whatsoever. It will be noted that the Court instructed the jury that, if they were satisfied by the evidence beyond a reasonable doubt that the defendants were engaged in perpetrating or attempting to perpetrate a robbery, and while so doing killed the deceased, then they should return a verdict of murder in the first degree. This instruction left the matter entirely in the judgment of the jury to decide the facts, and to determine whether the crime alleged to have been committed by the Plaintiffs-in-Error came within the limits of the Court's instruction. In addition to which, the Court specifically instructed the jury that they were the sole judges of the facts and they should disregard any statements made by the Court or counsel, and rely upon their own recollection of the testimony adduced in the case, so that at no time did the Court take the case from the jury when the Court delivered its charge.

POINT 12

COURT DID NOT ERR IN COMMENTS MADE UPON TESTIMONY OF WITNESS CAPTAIN WILLIAM A. JONES

Plaintiffs-in-Error allege that the Court committed error in that part of its charge commenting upon the

testimony of Captain William A. Jones, a ballistic expert (S. C. pp. 203-208), when the Court charged the jury, "There has been testimony offered in this case by witnesses who are known as experts. I refer particularly to one witness, Captain Jones, a ballistic expert. The testimony of experts such as this gentleman, on a subject so little known to the public, is entitled to great respect." This error is alleged in Assignments of Error No. 21 and Specifications of Causes for Reversal No. 22.

Plaintiffs-in-Error argue that the Court improperly singled out the testimony of Captain Jones and unduly stressed its opinion concerning its weight and value. Captain Jones qualified as a ballistic expert, establishing the fact that he had been pursuing work of that kind first with the New York City Police Department for thirty-two years and since 1919 he had specialized entirely in the field of ballistics (S. C. pp. 203-205). Captain Jones further testified that he had made an examination of the three bullets fired from the gun alleged to have been used in committing the murder and positively identified two of the bullets taken from the decedent's body as having been fired from a 22-calibre revolver, admitted by the defendant Ciemiengo as his property, and stated that the third bullet, which had been removed from the wall of the decedent's home, had split and distorted so that he could not make a satisfactory examination thereof (S. C. pp. 207, 208). On cross-examination counsel for the Plaintiffs-in-Error were unable to shake Captain Jones in the testimony he had given identifying the gun and bullets in question.

Under Point 12 of the Brief of Plaintiffs-in-Error it is argued that Captain Jones signally failed to produce the microscopic instrument which he testified he had used in the examination of the bullets. This statement is incorrect, as Captain Jones had the microscopic instrument with him on the witness

stand and offered to demonstrate it to Mr. Hillman, counsel for defendant Ciemiengo, during his cross-examination (S. C. p. 213). The offer was made when Mr. Hillman, asking the following questions, to which the following answers were given (S. C. p. 213):

“Q. That is the way you demonstrate it? A. Yes, sir.

Q. There is no other way of checking it up? A. I would be perfectly willing to catch it right here.

Q. I am not asking you that, Captain. I say, that is the only way you check it up? A. Yes, sir.”

Our courts have repeatedly held that it is perfectly proper for the trial Judge, in its charge to the jury, to comment upon the impression that any or all of the testimony has made upon the Court; and, in fact, that it is the duty of the Court, in order that justice may be done, to make such comment that the jury may have the benefit of the Court's impression of the evidence, so long as the province of the jury to decide the issues is not taken away.

In the case of *State v. Spencer*, 21 N. J. L. at pp. 208 and 209, the charge of Chief Justice Hornblower, who presided at the trial, is set out. In that case the Chief Justice singled out and commented upon the testimony of the medical men, as follows:

“The evidence of competent medical men, who have had frequent opportunities of observing him about the time in question, especially if they have been in attendance upon, or have visited him with a view to probe the state of his mind, is entitled to very great consideration. It has always been held that medical men may give their opinions in evidence. These are always valuable, and more or less so according to their opportunities of observing the accused at, or about the time of the act complained of.”

In the case of *State v. Herron*, 71 Atl. Rep. 274, 77 N. J. L. at p. 526, the Court again upheld the rule that the trial judge properly commented upon the testimony of medical experts, approving the comments made by Chief Justice Hornblower in case of *State v. Spencer*, *id.* Justice Swayze, who wrote the opinion in this case, held as follows:

"The stress of the argument for the Plaintiff-in-Error was directed to the comments made by the trial judge upon the testimony, particularly the testimony of the medical experts, as to the prisoner's mental condition. It is enough to say that these comments were within the latitude allowed by our decisions. We think his comments were justified by what was said by Chief Justice Hornblower in *State v. Spencer*, 1 Zab. 196, 208, and by this court in *Winters v. State*, 32 Vroom 613, 617. The facts in issue as to the insanity of the prisoner and as to his guilt upon the evidence were fairly left to the jury. Where that is done it is the province of the trial judge to comment upon the evidence. *Donnelly v. State*, 2 Dutcher 463; *Engel v. State*, 21 Vroom 272; *State v. Hummer*, 44 Id. 714."

In *State v. Hauptmann*, 180 Atl. Rep. at page 822, the Court, in passing upon an exception to the language of the Court's charge on the subject of handwriting experts' evidence, again affirmed the rule that it is competent for the trial Court to comment upon the evidence or the testimony of any particular witness, holding as follows:

"(20-23) Point XI is based upon language of the charge on the subject of expert evidence respecting the handwriting of letters claimed to have been written by defendant. The language of the charge is as follows: 'A very important question in the case is, Did the defendant Hauptmann write the original ransom note found on the window sill, and the other ransom

notes which followed? Numerous experts in handwriting have testified, after exhaustive examination of the ransom letters, and comparison with genuine writings of the defendant, that the defendant Hauptmann wrote every one of the ransom notes, and Mr. Osborn, Senior, said that conclusion was irresistible, unanswerable and overwhelming. On the other hand, the defendant denies that he wrote them, and a handwriting expert, called by him, so testified. And so the fact becomes one for your determination. The weight of the evidence to prove the genuineness of handwriting is wholly for the jury.' The sentence beginning 'Numerous experts' and ending with 'overwhelming' is selected for specific attack, which seems to consist of the proposition that the Court 'unduly and erroneously emphasized the value and effect of handwriting testimony by referring to and quoting from the testimony of the elder Mr. Osborn' (here following the sentence in question). We fail to see in this anything but legitimate comment."

State v. Warady,
72 Atl. Rep. 38

State v. Grace.
98 N. J. L. 341
119 Atl. Rep. 768

State v. Randall,
95 N. J. L. 452
113 Atl. Rep. 233

State v. Hummer,
73 N. J. L. 714
65 Atl. Rep. 251

State v. Lyons.
99 N. J. L. 301
122 Atl. Rep. 758

Donnelly v. State,
26 N. J. L. 463

Engle v. State.
50 N. J. L. 272
13 Atl. Rep. 604

The only restriction imposed upon the Court in commenting upon the evidence in its charge to the jury is that the Court does not deprive the jury of its prerogative to decide the issues of fact. In the instant case the presiding judge, after commenting upon the testimony of Captain Jones, (S. C. p. 420), charged the jury that it was for them to say what weight should be given to Captain Jones' evidence. In this connection the Court charged: "It must, however, be submitted to the judgment and consideration of the jury, and must be weighed by you as part of the evidence in connection with the other facts in the case. The purpose of this testimony is to aid and assist you, not to dominate or control you in the decision of questions of fact."

In *State v. Hauptmann, id.*, the Court, passing upon the same question, held:

"(19) The brief under this point ignores one of the most thoroughly settled rules in our New Jersey jurisprudence. That rule is that 'it is always the right and often the duty of a trial judge to comment on the evidence and give the jury his impressions of its weight and value, and such comment is not assignable for error so long as the ultimate decision on disputed facts is plainly left to the jury.' *State v. Overton*, 85 N. J. Law, 287, 88 A. 689."

180 Atl. Rep. pp. 820, 821.

All of the cases cited by the Plaintiffs-in-Error in their brief under Point 12 are of courts of jurisdictions other than New Jersey. New Jersey has very definitely passed upon the right of the Court to comment upon the evidence regardless of what other jurisdictions may have done, as is amply proven by the decisions hereinabove cited.

POINT 13

COURT DID NOT COMMIT ERROR IN ITS
CHARGE AS TO VERDICT JURY
MIGHT RETURN

The Plaintiffs-in-Error allege, in Assignments of Error No. 22 and Specifications of Causes for Reversal No. 23, that the trial Court erred in charging the jury as follows: "Your verdict shall be one of three and as to each defendant individually, unless your verdict shall be the same as to both; guilty of murder in the first degree, guilty of murder in the first degree with a recommendation of life imprisonment, or not guilty." It can be stated, without fear of contradiction, that the State's theory and its entire case was intended to establish that Herman Eilers had been killed by the Plaintiffs-in-Error in their attempt to perpetrate a robbery upon the decedent. Therefore, under the decisions of our courts, as set out in Point 11 of this brief, if the jury believed beyond a reasonable doubt, from all of the evidence in the case, that the Plaintiffs-in-Error had killed Herman Eilers while attempting to rob him, no other verdict than guilty of murder in the first degree could have been returned. Therefore, the Court's charge was entirely correct and in accord with the decisions of our courts. To avoid repetition, attention of the Court is respectfully called to the citations in Point 11 of this brief.

The entire charge of the Court must be considered in connection with this particular exception. If reference is made to other parts of the Court's charge, particularly that part appearing on pages 421 and 422 of the State of the Case, it will unquestionably establish the fact that the Court properly charged the jury on the matter of the possible verdict they might return. The pertinent portion of the Court's charge is as follows:

"If according to the recollection of the jury, the Court or counsel erred in its statement of any evidence, whether disputed or undisputed or assumed, or stated the existence or presence in the case of evidence that is not actually in the case, not actually before the Court, the jury should disregard the recollection of the Court and counsel and rely upon its own recollection, and not upon the recollections of the Court or counsel. You are the sole judges of the facts. The statute further provides that in cases of murder, that you shall announce when you come into court the degree of which you find the defendants guilty, or if you acquit, by finding them not guilty. If you find that the defendants or either one of them, was not at the scene of the tragedy, nor there for the purpose of assisting or perpetrating the crime of robbery, you should acquit them or either of them.

"If on the other hand you find from the evidence, and beyond a reasonable doubt, that the defendants or either one of them, was at the scene of the tragedy on the day in question for the purpose of perpetrating or attempting to perpetrate robbery, and in such perpetrating or attempting to perpetrate robbery or in aiding or abetting the commission of the same, killed the deceased, then they or either of them or both of them are guilty of murder in the first degree. The Legislature of this State has passed a law which permits a jury to fix the punishment, so if you find that these defendants are guilty of murder in the first degree, you have the right to recommend life imprisonment; it is not necessary that you should find any extenuating circumstances at all, the law does not say that. The Legislature says in any case of murder, it does not make any difference how revolting or otherwise it may be, the jury has the right to make a recommendation that the defendants be imprisoned for life. If you make no such recommendation when you come in, if you should find the defendants guilty of murder in the first degree, then it will be the duty of the Court to exe-

cute the sentence of the law, which is electrocution.

"Your verdict shall be one of three and as to each defendant individually, unless your verdict shall be the same as to both; guilty of murder in the first degree, guilty of murder in the first degree with a recommendation of life imprisonment, or not guilty."

POINT 14

THE VERDICT WAS NOT AGAINST THE WEIGHT OF EVIDENCE

Plaintiffs-in-Error argue that the verdict of the jury was against the weight of evidence, and assert in their brief that the State's case was based entirely upon alleged confessions extorted from the defendants. This is not a true statement of the facts, as may be very readily ascertained by examination of the evidence. The confessions made by the defendants were not obtained by force or threats, nor were any promises made to them. Concerning the confessions made by the defendants to the State Police, the Plaintiffs-in-Error offered absolutely no testimony at the time the Court went into the question as to whether the confessions were voluntary and obtained without any fear, threats, force or promises, although given an opportunity to do so by the Court (S. C. p. 153). The only evidence to support the argument that these particular confessions were obtained by threats was the testimony of the defendants when they took the stand in their own behalf.

An examination of the testimony of both defendants will show that the threats alleged to have been made occurred several hours before their confessions were taken down on the typewriter in the presence of each other (S. C. pp. 336 and 382), and both

defendants admitted that during the entire time that their statements were being reduced to writing on the typewriter, and when they signed them, absolutely no threats, force or promises were made to or against them by the State Police (S. C. pp. 338, 339, 385). These alleged threats were denied by the State Police (S. C. pp. 410, 413). In view of the fact that the defendants made other confessions and then repudiated them on the witness stand proves how unreliable their testimony was. Under the circumstances, it is reasonable to assume that no such threats were ever made to them, and that the testimony of the State Police that no such threats were made is more nearly the truth.

In addition, how can the Plaintiffs-in-Error satisfactorily explain away the confessions they made to Chief of Detectives Parker and Prosecutor Eastwood, more than twenty-four hours after the confessions given to the State Police? These later confessions were made by each defendant separately, and only Detective Parker, Prosecutor Eastwood and the stenographer who took their statements were present. It was also established by the testimony of Detective Parker that at the time the defendants made their confessions to him he had not seen, nor did he know anything about the contents of the statements taken the previous day by the State Police. This fact is established by the testimony of Anna E. Bading, who took down stenographically the defendants' confessions (S. C. pp. 238, 239), as well as by the testimony of Chief Parker (S. C. p. 240). Neither defendant could explain why he had made almost identically the same confession to Detective Parker as that given to the State Police. Neither defendant attempted to assert that the confessions made to Detective Parker were not voluntarily made or that they were obtained by the use of threats,

force or promises. On the other hand, they admitted that they were voluntarily made by them and stated they did not know just why these later confessions were made (S. C. pp. 313, 314), (S. C. pp. 343, 344), (S. C. pp. 368, 369), (S. C. pp. 391, 392, 393).

The confessions made to the State Police were in the presence of each other, when surely, if the statements they made concerning the murder of decedent were not true in any particular, they would have immediately made that fact known. In fact, a reference to Ciemiengo's statement will show that Ciemiengo, in answering a question, turned to Hildebrand and asked him how long ago it was that they first figured on getting some money from Eilers and Hildebrand answered "Some time" (S. C. pp. 157-160). This, of itself, indicates the truthfulness of their statements to the State Police and their guilt in committing this crime.

The State's case did not depend entirely upon the confessions of the defendants. There was ample corroborative proof that the defendants, and they alone, attempted to rob Herman Eilers and killed him in their attempt to carry out that act. The testimony showed that Hildebrand had previously worked for Herman Eilers (S. C. pp. 322 and 372-374); that while he was employed there defendant Ciemiengo frequently came there and they spent time together with Eilers; that subsequent to Hildebrand's leaving Eilers' employ he and Ciemiengo occasionally returned to Eilers' home to visit him; that they knew that Eilers lived alone and were familiar with his habits, in fact, Ciemiengo only lived a short distance from Mr. Eilers; that both defendants knew that at times Eilers had quite substantial sums of money which he carried on his person; that Ciemiengo admitted that he had seen a roll of money in Mr.

Eilers' possession a few weeks prior to the commission of the crime and informed Hildebrand of that fact (S. C. pp. 318 and 348), which fact Hildebrand admitted was true; that Ciemiengo and Hildebrand were at Eilers' home about an hour before the discovery of his body (S. C. pp. 323, 324), although when first questioned they both denied they had been at Eilers' home the night of the murder (S. C. p. 335), (S. C. pp. 376, 377), (S. C. pp. 411, 412); that Hildebrand denied, when questioned by the State Police, that he had had anything to do with the murder of Herman Eilers, until he was informed by the State Police that Ciemiengo had made a statement that both of them had killed Eilers in an attempt to rob him (S. C. p. 379), and even then Hildebrand said he did not believe that Ciemiengo had made any such statement and asked that he be taken to Ciemiengo for the purpose of verifying the statement made by the State Police to him (S. C. p. 380); that Hildebrand was taken and confronted Ciemiengo, who then informed Hildebrand that he had made a confession involving Hildebrand in the murder of Eilers, and it was not until then Hildebrand admitted his part in the crime (S. C. p. 381); that finally when they did admit their presence at the scene of the crime they stated they had gone there for the purpose of borrowing some money to buy cigarettes, although Hildebrand admitted that Ciemiengo had enough tobacco and cigarette paper (S. C. p. 370) to make sufficient cigarettes for both of them; that they had made the trip to Eilers' home to borrow money although it was several miles out of their way; that Ciemiengo admitted that he had gone to Hildebrand's place of employment on the farm of Eugene R. Scattergood to get him to go into Burlington to buy some bread for his mother; that they left the main road from Scattergood's farm to Burlington and went out of their way several miles to reach

Eilers' home for the purpose mentioned (S. C. p. 371); that Ciemiengo when first questioned by the State Police at his home denied that he had the gun (S. C. pp. 329, 330), although the Trooper informed him he was searching for one; that Hildebrand denied that he had a gun and denied that he had any knowledge of Ciemiengo owning a gun; that Ciemiengo only admitted that he had a gun after he had been told by the State Police that Hildebrand had finally admitted that Ciemiengo did possess a gun (S. C. p. 332); that it was only then that Ciemiengo informed the State Police where it might be found (S. C. p. 332)); that the State Police found the gun (S. C. pp. 133, 134) where Ciemiengo informed them it could be located, and when the gun was discovered it was found to have been freshly fired (S. C. p. 134) and contained three discharged shells (S. C. 134); that the gun was later identified by Ciemiengo as his property, being a 22-calibre revolver; that the number of bullets that were fired at the decedent were three in number, two of which lodged in the decedent's body and were removed therefrom and the third bullet was removed from the wall of decedent's home; that Ciemiengo identified the gun as the one that he fired at decedent, admitting that he discharged it three times, which admission was made not only to the New Jersey State Police but also to Detective Parker and Prosecutor Eastwood; that defendant Hildebrand also identified the gun as the one he had seen Ciemiengo discharge at the decedent, which admission was made by him to the State Police, as well as to Detective Parker and Prosecutor Eastwood; that both defendants identified said gun when on the witness stand (S. C. pp. 315 and 395).

A careful reading of the confessions made by the defendants, both to the State Police and to Detective Parker, and a study of the testimony describing the

decedent's home and the room where the murder occurred (See Exhibits S-3, S-8, and S-20), will be most convincing proof that the defendants could not have made the statements concerning the facts and circumstances of the crime contained in their confessions unless they had actually been there and murdered Herman Eilers. Both defendants admit in their confessions (S. C. pp. 156-163 and 165-171), (S C. pp. 220-237) that they entered the decedent's home by the rear door which led into the kitchen; that as they opened the door which immediately admits one to the kitchen, Eilers started to walk towards them; that as Eilers was walking towards them and when about the distance of three feet away Ciemiengo fired three shots in succession at Eilers, one of which went wild, and the other two lodging in Eilers' body; that Eilers slumped to the floor immediately; that Hildebrand thereupon searched the rear pockets of Eilers and upon finding no money they hurriedly left.

A reference to the photographs attached to the State of the Case will give a vivid picture of just what happened and verify the statements made by the defendants as to how the crime was committed. Exhibit S-3 showing decedent's body, and the rear door open, through which the defendants entered, confirms the statement that Ciemiengo fired as soon as he opened the door, as Eilers came towards him, and Exhibit S-20 showing the room in the wall of which the third bullet was discovered, also confirms the confessions of the defendants, in that the bullet which went wild passed directly through the open doorway separating that room and the kitchen where Eilers was killed, and the place in the wall where the bullet lodged was in a direct line from where Ciemiengo fired his revolver at Eilers. It is inconceivable that the defendants would have made two con-

fessions, at two different times and to different persons, admitting that they had killed Herman Eilers in an attempt to rob him, detailing all the circumstances connected with the commission of the crime, knowing, as they must have realized, the serious consequences involved in such admissions, unless they and they alone were the actual murderers of Herman Eilers.

The testimony of Captain William A. Jones, ballistic expert (S. C. pp. 203-217), was very impressive, Captain Jones having had years of experience in examining bullets and guns and determining whether specific bullets had been fired from certain guns. He very positively identified the two bullets taken from Eilers' body as having been discharged from Ciemiengo's gun. Defendants offered no testimony whatever to refute the State's evidence that the bullets in question were fired from Ciemiengo's gun.

Plaintiffs-in-Error in their brief argue the question of powder burns around the area of the two wounds suffered by the decedent, and attempt to leave the inference that the testimony offered by the State, by reason of these powder burns, negatives the guilt of the defendants. However, Ciemiengo's confession states that he was within three feet of the decedent, as they were walking towards each other, when he first began to fire (S. C. p. 162). Ciemiengo's testimony in this respect was confirmed by Hildebrand's confession (S. C. p. 168). Therefore, with Ciemiengo and the decedent walking towards each other, when Ciemiengo, within three feet of the decedent, commenced firing, undoubtedly with his arm outstretched towards decedent, the end of Ciemiengo's gun would have been very close to the decedent's body when the shots were fired by Ciemiengo, and account for the powder burns

around the wounds. The powder burns tend to confirm and corroborate Ciemiengo's and Hildebrand's confessions, rather than discredit them.

There was also evidence that the crime was committed just about the time the two defendants admitted that they were at the scene. There was testimony by several witnesses that when they arrived blood was still running down the face of decedent from the wound in his left temple, although Plaintiffs-in-Error argue that the crime was committed some hours prior to the discovery of the body. Their only argument in support of this contention is that there was no fire in the house, the light was burned out and no signs of any meal, and the body was stiff and cold. Surely, these things of themselves are of no probative force. Eilers was a bachelor, living by himself, and it may be assumed that he was very irregular in his habits. It was also testified that the night of October 7th was very cold and bitter and it is well known that when one has suffered death by violence, as did Eilers, rigor mortis sets in almost immediately; in addition to which, the door of the kitchen having been left partly open by the defendants when they hurriedly made their exit would undoubtedly account for the house being cold and the body being stiff and rigid.

Counsel for Plaintiffs-in-Error lay stress on the fact that the daily paper delivered that day by the post-man was still in the mail box and that the poultry had not been taken care of during the day. As to the former, it was established that on other occasions the decedent's daily paper was left in the mail box and not taken by him until the following day (S. C. p. 129). Therefore, the fact has no material bearing on the question of the time when the murder was committed. It was also testified by Mr.

Sampson, a neighbor, that on other occasions the decedent had been away for an entire day (S. C. p. 260) and the poultry had not been taken care of then (S. C. pp. 261, 262). In addition to which the proof that the poultry had not been taken care of during the day was very vague and indefinite. Surely this kind of testimony is not indicative of and has no bearing on the time the crime was committed.

Counsel for Plaintiffs-in-Error also argue that there was no money found on decedent's body, nor in the possession of either of the defendants. We have only the defendants' evidence to support this contention. In view of their other conflicting stories it may be that they did get money from the decedent's person and concealed it somewhere. However, whether there was any money on his person or not, has no bearing on the crime that was committed. The defendants were there for the avowed purpose of robbing Eilers (S. C. pp. 160, and 167, 168) and undoubtedly were of the opinion that they would find money on his person (S. C. p. 161), and whether they got any makes no difference. They murdered him first and then searched him for the money (S. C. p. 170).

One of the strongest arguments that can be urged in support of the State's contention that the defendants murdered Herman Eilers is that they both knew him very well, he knew them equally as well; they made no attempt to conceal their faces or themselves and undoubtedly realizing that if they attempted to rob him he would recognize them and, of course, report immediately who had committed the robbery, therefore, they undoubtedly decided to kill him first (S. C. pp. 160 and 170) so that his lips would be sealed and he would be unable to advise police officials who had robbed him. Then, after killing

him, searched him for possible money that might be in his possession (S. C. p. 170). In fact, in their confessions they admit that they decided to kill him first and then rob him, and undoubtedly this decision was reached because of their knowledge that they were so well known to each other.

The State respectfully submits that there was an abundance of evidence justifying the jury in returning a verdict of first degree murder against the defendants and respectfully urges the Court to affirm the conviction.

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Prosecutor of the Pleas,
Of Counsel for Defendant-in-Error.

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