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# In Chancery of New Jersey

THE STATE OF NEW JERSEY,

—vs.—

GEORGE SGRO,

*Defendant.*

*Certificate of the  
Chancellor.*

10

On indictment and conviction in the Essex County Court of Oyer and Terminer of the crime of murder in the second degree, with a recommendation of mercy.

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for the review of the judgment of the Essex County Court of Oyer and Terminer, convicting the said George Sgro of the crime of murder in the second degree, with a recommendation of mercy and that I have refused to allow a writ of error out of the New Jersey Supreme Court for the review of said judgment.

20

Dated at Trenton, New Jersey, this 15th day of May, 1931.

EDWARD ROBERT WALKER,

*Chancellor.*

30

40

*Writ of Error.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

WRIT OF ERROR.

10 THE STATE OF NEW JERSEY To:

(SEAL) DANIEL J. BRENNAN, Esquire,  
Judge of the Essex County Court  
of Oyer and Terminer, holden  
at Newark, of the April term,  
1931.

Because in the records and proceedings, and also in the giving of judgment upon a certain indictment against George Sgro, late of the City of Newark, in the County of Essex aforesaid:

20 For that "on the twelfth day of September, in the year of our Lord one thousand nine hundred and thirty, at the City of Newark, in the County of Essex aforesaid did wilfully, feloniously and of his malice aforethought, kill and murder Louis Balducci, 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."

30 Pro ut the said indictment, whereof, before you, the said George Sgro, hath been indicted and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said George Sgro, as it is said, manifest error hath intervened to the great damage of the said George Sgro, as from his complaint we have received information, we being willing in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to the said George Sgro, command you that if judgment be  
40 thereon given, then that you distinctly and openly

*Writ of Error.*

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 8th day of June, 1931, and this writ that the record and proceedings as aforesaid being inspected we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done. 10

WITNESS, EDWIN ROBERT WALKER, Esquire, our Chancellor and the President Judge of our Court of Errors and Appeals, at Trenton, New Jersey, this 19th day of May, 1931.

JOSEPH F. S. FITZPATRICK, 20  
*Clerk*

Presented in Open Court this 19th day of May, 1931.

DANIEL J. BRENNAN,  
Judge.

30

40

*Writ of Error.*

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } SS.

10 I, Daniel J. Brennan, Judge of the Court of  
Common Pleas in and for Essex County, New  
Jersey, holding the Court of Oyer and Terminer  
in and for the County of Essex, State of New  
Jersey, DO HEREBY CERTIFY and return to  
the Court of Errors and Appeals being the Court  
of last resort in the State of New Jersey, the in-  
dictment, judgment record and an entire record  
of the proceedings had at the trial, together with  
all things touching and concerning the same as by  
the within Writ to me directed, I am commanded.

20 IN WITNESS WHEREOF, I have  
hereunto set my hand and affixed  
the official seal of said Court and  
(SEAL) County, at Newark, N. J. this  
12th day of June, A. D. 1931.

DANIEL J. BRENNAN.  
Judge of the Court of Common  
Pleas holding the Court of  
Oyer and Terminer for Essex  
County, N. J.

30

40

## JUDGMENT.

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX. } SS.

BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the first Tuesday in April, in the year of Our Lord one thousand nine hundred and thirty-one, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of John Broemel, Robert I. Heller, Joseph L. Bahr, Francis W. Hay, William Provost, Patrick Galante, Louis Lewis, Dr. Charles F. Restaino, David Silverstein, Gennaro Giorgio, John B. Matt-  
 ingly, Howard J. Conroy, George F. Hewson, Arthur E. Kean, Jr., Hyman Breen, Frank A. Reeve, Robert W. Post, Dr. Aloysius L. Barry, William F. Higgins, Byron G. Harlan, T. Cecil Hughes, Charles M. Jessup and Albert W. Neuscheler, good and lawful men of said County of Essex, duly summoned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

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Essex County, to wit:

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that George Sgro, on the twelfth day of September, in the year of our Lord one thousand nine hundred and thirty, at the City of Newark, in the County of Essex aforesaid did wilfully, feloniously and of his malice aforethought, kill and murder Louis Balducci, contrary to the form

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*Judgment.*

of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

JOSEPH L. SMITH,

*Prosecutor of the Pleas.*

10

And on the fifth day of March A. D. Nineteen hundred and thirty-one, on which day the said Indictment was presented by the Grand Jury aforesaid to the said Court of Oyer and Terminer, the said Justice did then and there order the said Indictment to be delivered to the Clerk of the Court of Oyer and Terminer in and for the said County and then and there the said Indictment was delivered and duly filed by the said Clerk, and an entry of such delivery and filing was then and there made in the minutes of said Court, at the same time pursuant to the statute in such case made and provided.

20

And afterwards, that is to say, at the same session of the Court of Oyer and Terminer holden at Newark on the twelfth day of March, in the year of our Lord, One thousand nine hundred and thirty-one, before the Judge aforesaid, comes the said George Sgro in the custody of Harry L. Huelsenbeck, Sheriff of the County of Essex aforesaid, in the above custody in the Jail of the County aforesaid, has been before committed for the cause aforesaid, being brought to the Bar of this Court in his own proper person by the said Sheriff to whom he is also committed and having heard the Indictment and being forthwith demanded of and concerning the premises in the above indictment specified and charged upon him how he would acquit himself thereof, says that he is Not Guilty thereof and therefore, for good and evil he puts

30

40

*Judgment.*

himself upon the Country, and Joseph L. Smith, Prosecutor of the Pleas, for the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

Therefore, let a Jury thereupon come before the Judge aforesaid, at Newark aforesaid, in the County of Essex, at the same session of the Court of Oyer and Terminer aforesaid on the twentieth day of April, in the year of our Lord, one thousand nine hundred and thirty-one, twelve free and lawful men each of whom shall be a citizen of this state and a resident within the County of Essex 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 Prisoner, to recognize upon their oath whether the said George Sgro is Guilty of the Murder in this Indictment aforesaid specified or Not Guilty, because as well the said Joseph L. Smith, Prosecutor of the Pleas of the County of Essex aforesaid who prosecutes for the State of New Jersey in this behalf as the said George Sgro has put himself upon the Jury, and the same day is given to the parties aforesaid, at the same place at which day, to wit, the twentieth day of April A. D. Nineteen hundred and thirty-one, at the same Term of Oyer and Terminer, holden at Newark, aforesaid, in the County of Essex, before the Honorable Daniel J. Brennan, Judge of the Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the said County of Essex, comes as well the said Joseph L. Smith, Prosecutor of the Pleas who prosecutes aforesaid, and the said George Sgro, in the custody of Harry L. Huelsenbeck, Sheriff of the County aforesaid, being brought to the bar in his own proper person by the said Sheriff. And the Jurors of the Jury by the said Sheriff for this

*Judgment.*

purpose empannelled and returned, after the following challenges were exhausted, by the State 8, by the defendant 13, by consent 13 and for Cause 15, to wit. 1, Charles Castles, 2, George R. Tracy, 3, Culver O. French, 4, Alexander Fleckenstein, 5, Harry L. Hamilton, 6, Norman H. Henning, 7, Edmund W. Hancock, 8, John Hoey.

After Juror No. 8 was sworn, the said Special Panel becoming exhausted, the Court order the remainder of the panel drawn from the General Panel, whereupon the following named persons were returned from the General Panel and sworn as jurors, 9, Gustave Holmgren, 10, G. Ellsworth Harris, Jr., 11, James Getgood, 12, Walter J. Gorman, being called come and were sworn on that Jury, who to speak the truth of an concerning the premises and thereupon the trial of the issue commenced.

On the opening to the jury by Joseph L. Smith, Prosecutor of the Pleas, J. Victor D'Aloia, Counsel for defendant moved for a direction of verdict of acquital, which motion was heard by the Court and denied.

And further, that is to say on the twenty-first day of April A. D. Nineteen hundred and thirty-one to which day said trial was continued, J. Victor D'Aloia, Counsel for Defendant moved for a direction of verdict of acquital, which motion was heard by the Court and denied.

And afterwards, that is to say on the twenty-second day of April, A. D. Nineteen hundred and thirty-one to which day the said trial was continued J. Victor D'Aloia, Counsel for defendant renewed his motion for direction of verdict for acquital, which motion was heard by the Court and denied and thereupon the trial of said issue was continued before the said Court and the Jury in

*Judgment.*

the meantime being all that time kept together and in the care of Officers of the said Court, who were selected and duly sworn by said Court for that purpose, at which last mentioned day the said issue after a charge from said court was submitted to the said jury, and the said jury in charge of said sworn officers of said Court for that purpose were taken to a private room to consider of their verdict, and afterwards, that is to say, on the day aforesaid, at Newark, the said Jury returned into and before the said Court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said Prosecutor Joseph L. Smith, and the said George Sgro, say that

10

"We find the defendant, George Sgro, Guilty of Murder in the Second Degree, with a recommendation for Mercy," and so they say all.

20

By request of counsel for defendant, the jury was polled and when the roll was called, each juror, for himself, answered, "Guilty of Murder in the Second Degree, with a recommendation for Mercy."

By order of the Court the verdict was moulded to read, "Guilty of Murder in the Second Degree", leaving off the words, "with a recommendation for Mercy".

30

*Judgment Signed*  
*May 11th, 1931*  
 Daniel J. Brennan,  
*Judge.*

Whereupon, all and singular, the premises being seen, and by the Court now here fully understood, it is on this eleventh day of May, A. D. Nineteen hundred and thirty-one, the Court do order and adjudge that said defendant George Sgro, be imprisoned in the State Prison of this State for a term of Fifteen years at hard labor upon this conviction, without costs.

40

## OPENING FOR STATE.

ESSEX COUNTY COURT OF OYER  
AND TERMINER.

Monday, April 20, 1931.

10	THE STATE OF NEW JERSEY,  —vs.—  GEORGE SGRO,	}	On Indictment No. 148 for MURDER.
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Before Hon. Daniel J. Brennan, Judge.  
 Joseph E. Conlon, Second Assistant Pros-  
 ecutor of the Pleas, for the State.

20 J. Victor D'Aloia, for the defendant.  
 [A jury is called and sworn.]

Mr. Conlon opens in behalf of the State as follows:

May it please your Honor, Mr. Foreman and gentlemen. I am about to ask you to perform a very, very serious duty.

30 George Sgro, the man sitting at the far end of the counsel table, whose name is S-g-r-o, has been indicted by the Grand Jury of this County. The indictment is very short and I will read it to you. It charges that on the 12th day of September, 1930, in the City of Newark he did wilfully, feloniously and of his malice aforethought kill and murder Louis Balducci; that on the 12th of September in Newark, he did wilfully, feloniously and of his malice aforethought kill and murder Louis Balducci.

40

*Opening for State.*

Those words, gentlemen, constitute the technical accusation of murder in the first degree. Under this indictment, as the Court will tell you, it may be possible at the end of the case for you to pass upon the question as to whether or not this defendant is guilty of murder in the first degree or murder in the second degree or manslaughter. It is the contention of the State that this defendant is guilty, as the State claims he is, and that he is guilty of murder in the first degree, that this murder was wilful, felonious and it was with malice aforethought. Considering that, the State is not going to prove unat the period of meditation, premeditation, was one of any great period of time. The Court will charge you that any space of time is sufficient to constitute a premeditation, if you are satisfied that such premeditation existed.

10

20

Now, this case is not going to be very long, gentlemen, but the State is going to put before you, I think, a very definite set of facts from which you will have no doubt as to what actually occurred on the 12th of September.

On that morning Louis Balducci was in the store at 53 Seventh avenue. It shows on the map. It is a grocery store owned by a man named Meyers. This is the store here on the map (indicating).

30

He arrived there sometime before ten o'clock for the purpose of buying, as I understand it, some sugar. He waited there for some little time because Mr. Meyer could not wait on him. He was busy with the other

40

*Opening for State.*

customers. While he was in the store he was called across the street by a man who was in an automobile parked directly across from Meyers' store, pointing east toward Broadway.

10           Balducci went over to his car and stood in the street—that is, on the left side of the car, on the side of the car away from the curb—talking to the man who was in the driver's seat of the car. The evidence will be clear and specific that there was only one man in that car, that that car was a dark blue or black sedan. Balducci spoke to him there for some minutes and their conversation was such that it attracted the attention of two men who were standing over  
20           near Meyers' store, because it was loud and apparently angry. Balducci at the end of this conversation turned his back on the car and proceeded to walk from the car across the street toward Meyers' store. When he was about ten feet, I think—the witness will say, from the car, there was a gun shot and Balducci fell to the ground. Immediately after that shot there were two or three or  
30           four more—the witnesses differ on that—but at any rate there were more shots in quick succession. Balducci fell as the result of the first shot that was fired. He was shot right in the middle of the back.

          He was taken to St. Michael's hospital immediately. As a result of the gun shot wound he became paralyzed. It entered his spine. The doctors will describe that to you in detail. As a result of that paralysis and the  
40           loss of circulation, he became very badly in-

*Opening for State.*

fect, and in spite of all the work the doctors could do on him, he finally died on the 26th of February of this year. But under the law, if the State proves, as it will without any question, that he died as the primary result of this bullet wound, then the murder was committed on the day the bullet wound was inflicted, which was on the 12th day of September, 1930.

10

Now, those shots were heard by the police officers, this particular shot being over near the precinct, and they hurried to the scene and they gathered in all the witnesses they could. The State is going to produce nobody who will get on the stand and point to this man Sgro and say, "You are the man who fired the shot." They were across the street and he was in an automobile; but the witnesses that were gathered in at that time, whether they know Sgro or not, I don't know, and you probably won't know when the case is over, but at any rate the testimony of two of them will be confined to this extent: that while they were standing there in the neighborhood of Meyers' store they saw Balducci go over to that car and have this argument, turn around and walk away, and while he was walking away he was shot in the middle of the back by a bullet fired from that particular car. That is, two of the witnesses the State will produce, who were in that vicinity.

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30

There was another man walking along the street whom I want you to listen to very carefully, and this man is named Hans Faber. He is a German who does not talk English.

40

*Opening for State.*

10 At least, I do not think he will talk English well enough to testify on the stand. At the time of this occurrence he was walking east on Seventh avenue on the upper side of the street as you look on the map, on the same side with Meyers' store; and he saw Balducci coming across the street and he heard the first shot and he saw Balducci fall and he heard the second third and fourth shots; just how many there were he does not remember, and he saw that fire come from that automobile which was parked across the street, and he saw the automobile immediately start off and go down Seventh avenue toward Broadway and make a turn very fast, and he will say, and he saw the man at the wheel, and he got a look at him; and he saw something else; he saw the license number of the car.

20 He was taken by the police officers down to Headquarters immediately after the shooting. At that time it happened that there was nobody available to interpret for him and he was asked to sit down and write out in German, which he was able to write, just exactly what he saw, and he did do that before anybody talked to him about this thing or asked him any questions. So before he was able to talk to anybody he described in his own handwriting, in German, what he had seen, and he wrote down in this part of that statement the number of this automobile. The number he wrote down is H—meaning Hudson County, 4017. That was written down by him within possibly a half an hour after the shooting.

30

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*Opening for State.*

The police then went to work on the case, and from information that they had they proceeded, not until about three days later, to look for Sgro, and when they went to his home they found out that he was gone. Of course it is the State's contention that he ran away.

10

Sgro's automobile was checked up and it was discovered that his license number was not as Mr. Faber had noticed it, H-4017, but it was H-41017; in other words, of the five numbers in the license he had four of them right.

Balducci did not die, and in fact at one time it seemed to the doctors that he was going to get better, immediately. Some time in the month of October Sgro came back and he was arrested, and when he was arrested and taken into custody he was asked by the police to tell his movements on the 12th of September. He of course denied that he shot Balducci, but he did admit, gentlemen, that between 10 and 10:30 in the morning of this shooting and after leaving his home in Harrison and riding around, making several stops, when it got along about ten o'clock he did arrive opposite Meyers' store on Seventh avenue; that he did call Balducci out of Meyers' store to talk to him; that the reason he did that was that Balducci had owed him some money for a long time; that Balducci had paid back some of that money and had promised repeatedly to pay back the balance; and that he had not done it; and that he called Balducci over to his automobile; and that he talked to him: and that Balducci

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*Opening for State.*

went across the street, and that he drove away and he never knew anything about any shooting or anything else.

10           These, gentlemen, in brief are the facts in  
this case. I am conscious of the fact that  
I am asking you to find a man guilty of mur-  
der in the first degree. I am conscious of the  
fact that even though I may have pressed you  
a bit when I questioned you as jurors, that  
you are not going to do it unless you are  
sure that this man committed this murder.  
I am going to ask you to listen to the testi-  
mony carefully and I am going to ask you  
to come to the conclusion that there is no  
20           possibility of anything having happened in  
this case except that this man shot Balducci.  
You are going to have nobody, as I say, who  
will get on the stand and point to Sgro and  
say, "You are the man. This man over there  
did that." I could not seriously ask you to  
give much weight to this testimony, because  
he himself admitted he only saw the driver  
at the wheel for a moment and all he can  
say about it is that the back of his head  
and shoulders were the same as Sgro, but he  
would not say the face of the man is the same  
30           man in the automobile, but he will say that  
after Sgro's automobile was found he was  
brought down and shown the automobile and  
he said, "That is the automobile that the man  
was sitting in on the 12th of September on  
7th avenue," and "That is the automobile  
Balducci was standing beside and that is the  
automobile he walked away from," and Bal-  
ducci was shot in the back by the man sitting  
in that automobile, who fired two, three, four  
40           or five shots at him, and the State contends,

*Opening for State.*

gentlemen, that that evidence in this case is going to be more satisfactory to you than the evidence of a personal identification.

There were other features in this case, gentlemen, I am not going to speak about now, because they are not part of my case, but I am going to ask you this, in fairness to the State and the defense, to reserve decision in this case until it is all in, until you hear all of the evidence. I want to ask you to watch the witnesses on the stand and as they go along, whether they are telling the truth. It is the contention of the State, gentlemen, that Balducci and Sgro had certain business dealings together, about which I will not speak now; that Balducci owed him money and for some reason or other Sgro could not take the usual legal proceeding to collect his money, that he went to him this day and demanded it, and whether Balducci did not have it or could not pay him, we do not know, but when the conversation was over so far as Balducci was concerned, he walked away and this man pulled his gun and pointed it at the man's back and deliberately and feloniously and with premeditation fired a bullet in the middle of his back, as a result of which he died and, therefore, he is guilty of murder in the first degree, and I am going to ask you now if at the end of the case you are satisfied beyond a reasonable doubt, that that is what happened—I am going to ask you to find the defendant guilty of murder in the first degree, and after you have found that, I am going to ask you whether he is entitled to a consideration of recommendation

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*Motion for Direction.*

of life imprisonment and at the end of the case I am going to ask you not to bring in that verdict, but to bring in a verdict for the extreme penalty, not only as a punishment to him, but an example to others.

10

MR. D'ALOIA. I object to that at this stage of the case or any other stage.

THE COURT. I think I am inclined to allow it to stay in the record.

Defendant's counsel prays an exception to this ruling of the Court.

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

DANIEL J. BRENNAN,  
Judge.

20

MR. CONLON. (Continuing) That, gentlemen, is the State's case. It is going to be quite brief. I am going to ask you to do that and if you make up your minds this defendant is guilty, I am going to ask you to bring in that verdict of murder in the first degree without a recommendation of life imprisonment.

30

MR. D'ALOIA. I move for the direction of the verdict of acquittal on the opening of the Prosecutor. The Prosecutor has told the jury that he cannot produce any evidence of any witness who will say that this defendant fired the fatal shot. The Prosecutor has said he will produce a witness who about a half an hour afterwards in police headquarters made an error in that automobile license. The Prosecutor went on further to say that simply because the defendant happened to own an automobile which was similar to the one that

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*Motion for Direction.*

was seen on Seventh avenue on a certain day  
 he is going to ask this jury for a verdict of  
 murder in the first degree. That is not suf-  
 ficient. Now, if there is no one who is go-  
 ing to testify this defendant fired the fatal  
 shot and there is no one to identify this  
 defendant was there with a pistol in his hand  
 and the proof is going to come out of four  
 or five digits in an automobile license, four  
 of them are called and called incorrectly, an  
 automobile which resembled an automobile  
 was seen by a witness, that that falls far  
 short of the proof the State must produce to  
 prove this defendant guilty beyond a reason-  
 able doubt for the charge laid in the indict-  
 ment, and I ask your Honor to grant the  
 motion. 10

THE COURT. Motion denied and you may  
 have an exception. 20

Let it be sealed and it is signed and sealed  
 accordingly.

DANIEL J. BRENNAN,  
 Judge.

JOHN J. BRACKEN, sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon. 30

Q You are a civil engineer and surveyor in  
 this City?

A Yes.

MR. D'ALOIA. Mr. Bracken's qualifica-  
 tions are admitted.

THE COURT. His qualifications are ad-  
 mitted and it will be so noted on the record.

Q Did you at the request of the Prosecutor  
 make the map on the wall?

A. I did. 40

*John J. Bracken, Direct.*

Q Will you please describe it to the Court and jury?

10 A The map shows the block and the intersection on Seventh avenue between Summer avenue and High street, Newark, New Jersey. The arrow is pointing in a northerly direction. The scale of the map is one inch on the map is equal to ten feet on the ground. The objects in red show the brick buildings on either side of Seventh avenue and at both intersections. The grey lines show the sidewalk. The blue line shows the curb line and the yellow objects show the frame houses on either side of the street.

Q Is No. 53 Summer avenue shown there?

A It is so shown and marked and that it is occupied as a grocery store.

20 Q How wide is Seventh avenue from curb to curb?

A 36 feet from curb to curb, so shown on the map.

[Map offered in evidence and marked Exhibit S-1.]

CROSS EXAMINATION WAIVED.

JACOB REUL, sworn in behalf of the State.

30 *DIRECT EXAMINATION* by Mr. Conlon.

Q Mr. Reul, what is your occupation?

A Photographer, Newark Police Department.

Q Did you in the course of your official duties make some photographs of Seventh avenue in the vicinity of Summer avenue and High street?

A I did.

Q And are these the photographs?

A They are.

Q When did you take those, Mr. Reul?

40 A February 27, 1931.

*Jacob Reul, Direct.*

Q Now, I show you a picture and ask you what that represents.

A That is Seventh avenue looking east from Summer avenue.

MR. D'ALOIA. If your Honor please, if they were taken on February 27, 1931, I do not think they are admissible unless it is to be shown the properties there have not changed from September 12, 1930.

10

THE COURT. They are not offered to show any moveable objects. The objection is overruled.

MR. D'ALOIA. Well, there may have been trees there on the 12th of September that were not in existence on the 27th of February. There might have been a lot of other things there. Now, if he proves conditions there were substantially the same on February 27, 1931, as they were on the 12th of September, I have no objection.

20

THE COURT. Suppose we admit them that there was no change in the geography or topography. You may renew your motion to strike that out if he does not do it.

Q Will you show the place where your camera was when that was taken and show by an arrow the direction in which your camera was pointed and mark it C-S-2?

30

A (Witness marks.) C-S-2.

(Photograph offered in evidence and marked Exhibit S-2.)

Q I show you another picture. Will you indicate on the map where your camera was and indicate by an arrow the direction in which your camera was pointing and mark it C-S-3?

A (Witness marks.)

40

*Jacob Reul, Direct.*

(Photograph offered in evidence and marked Exhibit S-3.)

Q I show you another picture. Will you mark on your map where your camera was when that was taken?

10 A (Witness marks.)  
(Photograph offered in evidence and marked Exhibit S-4.)

Q And will you do the same thing with this picture?

A (Witness marks.)  
(Photograph offered in evidence and marked Exhibit S-5.)

Q Now, I show you two other pictures. Did you take those?

A I did.  
20 Q When?  
A October 28, 1930.

Q Where?  
A In front of Police Headquarters.

Q And those pictures show the condition of the car there represented at the time you took the pictures?

A At the time I took the pictures.

(Pictures marked Exhibit S-6 and S-7 for Identification.)  
30

MR. D'ALOIA. The date of those last two pictures was what?

WITNESS. October 28, 1930.

Q Now, did you take those two pictures?  
(Handing witness pictures.)

A I did.  
Q Where and when?

A On February 27, 1931, at Hulsbeck's  
40 Morgue.  
(Pictures marked S-8 and S-9 for identification.)

*George Blackburn, Direct.*

CROSS EXAMINATION WAIVED.

GEORGE BLACKBURN, sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

Q Doctor, you are a practicing physician in this county? 10

A I am.

MR. D'ALOIA. Qualifications are admitted.

THE COURT. His qualifications are admitted and the record will so indicate.

Q Now, in September, 1930, you were connected with St. Michael's Hospital?

A Surgeon there.

Q And did you in the course of your duties there attend a man named Balducci? 20

A I did.

Q Will you look at this picture, doctor, and tell me whether they are pictures of Balducci?

A Yes, they are.

MR. CONLON. Referring to S-8 and S-9 for identification.

Q Now, doctor, during what period did you treat Balducci?

A I treated him from the time of his commitment. I have a few brief notes here. September 12, 1930, until about the last day of January, when I went away on a vacation. I did not attend to him during the month of February when he died. 30

Q And do you remember the details of the case, doctor, without referring to the hospital record?

A I do.

Q And when you treated him on the 12th of 40

*George Blackburn, Direct.*

September, will you tell us what his condition was?

10 A He was admitted to the hospital with a bullet wound in the back, about the middle of the back, under the shoulder blade on the right side. There was no wound of exit. By x-ray the bullet was located somewhere under the left shoulder blade. He was treated at the time—at the immediate time for shock and possibly lung injury, we not knowing the exact course of the bullet. It later developed that the bullet had penetrated his spinal column and damaged the cord—the spinal cord and I operated and attempted to relieve any pressure that there was upon the cord either by bone fragments or blood and possible perineum damage. The spinal cord running down in the middle of the spinal column was found to have been contused, mashed or crushed, but not cut across, but the bullet and fragments of bone and blood clot were removed and this did not very much improve the condition of the man, who was paralyzed from the waist down, in spite of every care, air beds and the special attention of one head nurse and an assistant and orderly almost constantly and an air bed he developed sores on his back, two large ones, one about ten inches across, another small one behind that, and the skin sloughed away right down to the bone and he almost died from that infection. He was transfused two or three times and rallied and got much better. He was paralyzed from the waist down and that paralyzed the bladder and a small tube was inserted in the bladder for drainage purposes. He showed some degree of infection as a result of both the bed sores and bladder paralysis, which infection extended up to the kidney and finally

40

*George Blackburn, Direct.*

resulted in his death from what we call septicema, but the laity knows as blood poisoning.

Q Doctor, was there any connection between the bullet wound and the paralysis?

A The bullet wound was the direct cause of the paralysis.

Q Was there any connection between the paralysis and infection? 10

A If there had been no paralysis there would have been no infection.

Q Will you describe it?

A As a result of the paralysis from about the rib down he lacked nutrition for the skin of his back and he had a paralysis of the bladder. These parts are very prone to infection when they are paralyzed. They are prone to infection at any time, particularly the bladder, but more so when they are paralyzed, and the infection occurred from the pressure of the back upon the bed clothes in the back. The infection of the bladder occurred as a result of the paralyzed bladder with this low vitality, the fetid cauterization and this infection which occurred in his paralyzed bladder ascended up along the little tubes that go to the kidney and affected the kidney. That is the real secondary cause of death. The primary cause of the death was septicema. 20

Q You say they were the secondary causes. What was the primary cause of death? 30

A Bullet wound of the back of the spine.

*CROSS EXAMINATION* by Mr. D'Aloia.

Q But that had healed up at what time?

A The break of the bullet wound in the back and the operation that was done on the back had healed in about two weeks. 40

*George Blackburn, Cross.*

Q No infection resulting from that wound directly, was there?

A No. We had no local infection.

Q So that you say the bullet wound itself was completely healed within two weeks?

10 A Yes.

Q Now, when did you first notice the bed sores, and where?

A Right in the sacral region on the lower part of the middle of the back, about a month following his admission they began.

Q That is, the bed sores began to show two weeks after the bullet wound had completely healed?

A Yes.

20 Q Is that right?

A Yes, sir.

Q Notwithstanding all the clean bed clothes, and as you said, the aerated beds you used, and the attendant, those bed sores did not get better; is that right?

A They progressed very rapidly and got very bad. Then they had a period of healing, and one completely healed, and the larger one was improving.

30 Q Were there any bed sores on the heels?

A Yes.

Q Did it begin there? Did the septicemia begin there?

A No.

Q It began with the sores on the back?

A With the sores on the back, and there were also small sores on each heel.

Q Now, I am correct in understanding, Doctor, that two weeks after his admission to the hospital the bullet wound was completely healed?

40 A Yes.

*George Blackburn, Cross.*

Q And two weeks after that you noticed the bed sores here in the sacral region, you call it?

A Right.

Q The lumbar region?

A Sacrum.

Q And those bed sores began to come on and then they went away and got better, and those bed sores finally caused his death?

10

A They contributed to it by sapping his vitality. I felt the kidney infection caused his death.

Q The kidney infection came from the bed sore?

A No, not directly; no, sir.

Q That is what I understood you to say.

A They came from the infection of the bladder ascending into the kidney.

20

Q Now, do you remember the 8th of November? He was under your care at that time, wasn't he?

A Yes.

Q And at that time had you given up any hope of his recovery? Now, the 8th of November is about six weeks, eight weeks after his admission to the hospital.

A He was in very bad shape about that time.

Q Had he had any transfusion on that day?

30

A Yes. I don't recall the exact date, but about that time we had transfusions.

Q Will you please look at the record and refresh your memory as to whether or not on that day there was any transfusion? The 8th of November, that would be 11-8.

A Transfused on the 10th.

Q On the 8th it was decided that he be transfused?

A Yes.

40

*George Blackburn, Cross.*

Q Did you see him on the 8th of November?

A I did.

Q At that time was he in such condition that you would say he was about to die?

A I thought he was.

10 Q At that time, during that day, the entire 8th of November, you would say there was no hope for his recovery?

A No. I thought there was a very slight hope for him.

Q Well, you were then satisfied—

A He was pretty bad. He was in bad shape.

Q (Continuing) That he was going to die?

A Pretty near.

20 Q And that it made it necessary for you to order the transfusion?

A Yes.

Q And your record shows that was the 8th of November, 1930?

A That is when the arrangements were made; yes, sir.

Q For the transfusion?

A Yes.

*REDIRECT EXAMINATION* by Mr. Conlon.

30 Q Doctor, when you say that the bullet wound was healed, in answer to Judge D'Aloia's question, what do you mean?

A I mean that the wound of entrance in the back had closed over and the cutting wound of the operation upon the spine had healed.

Q Was the bullet extracted?

A No, it was never extracted.

Q He died with the bullet in him?

40 A He died with the bullet under his left shoulderblade. He was never in fit shape to put

*George Blackburn, Redirect.*

him through an additional operation to extract that.

Q In other words, you could not extract the bullet without endangering his life further?

A Yes.

Q And it was a matter of judgment that you did not extract the bullet? 10

A Yes.

Q And for his own good?

A Yes.

Q Now, also, Doctor, when you speak of the bullet wound, you mean, as I understand it, the bullet wound of entrance?

A Yes.

Q What about the damage done to the spinal cord by the bullet? Was that healed within the two weeks? 20

A That would never heal.

Q When you say the bullet wound was healed, you mean the wound of entrance?

A The flesh wound, yes.

*RECROSS EXAMINATION* by Mr. D'Aloia.

Q Well, there was no direct sepsis at or around the bullet wound or along the course of the bullet that you found?

A No. 30

Q There was no blood poisoning there at all, was there?

A Not at that site.

Q Not over the point of entrance, where you say the flesh wound healed, nor along the course of the bullet going on past the spinal cord, no sepsis there, was there?

A No, sir.

Q And by sepsis you understand me to mean blood poisoning? 40

*George Blackburn, Recross.*

A Infection.

10 Q In other words, Doctor, there was no infection, no septicemia, which you say was the ultimate cause of death, which was directly due to the bullet wound, or any infection of the bullet wound? Mind you, I said directly due to the bullet wound or any infection due to the bullet wound.

A The bullet wound caused the condition which resulted.

Q The bullet wound caused the paralysis

MR. CONLON. Pardon me. I think the witness ought to be allowed to answer the question.

20 MR. D'ALOIA. But the question is very simple.

MR. CONLON. But I think the witness ought to be allowed to answer the question.

BY THE COURT.

Q Was your answer completed?

A No, my answer was not complete.

Q Finish the answer.

30 A The bullet caused a condition that resulted in the infection of other parts of the body not at the point of entrance of the bullet.

MR. D'ALOIA. I move to strike the answer out as not responsive.

MR. CONLON. I object to having the answer stricken out.

MR. D'ALOIA. That was not my question. Will you please read my question?

40 (Question read as follows: "In other words, Doctor, there was no infection,

*George Blackburn, Recross.*

no septicemia, which you say was the ultimate cause of death, which was directly due to the bullet wound or any infection of the bullet wound? Mind you, I said directly due to the bullet wound or any infection due to the bullet wound.")

10

MR. D'ALOIA. I will reframe that question. If that is the way you got it I don't understand it myself.

THE COURT. That is the way you asked it.

MR. D'ALOIA. I am frank to confess that.

BY MR. D'ALOIA.

20

Q Now, Doctor, there was no blood poisoning directly due to the bullet wound or the course of that bullet, was there?

A No, sir.

BY MR. CONLON.

Q Was any of the sepsis there, Doctor, due to anything else except the primary cause of the bullet wound?

A No.

Q In other words, it was all the result of the bullet wound in the beginning; is that correct?

30

A It was.

MR. D'ALOIA. I move to strike that out as a conclusion. Now, it may not be a conclusion of fact, but it is a conclusion of law. The doctor's testimony is to be taken for whatever he says without the Prosecutor's saying it is this and that and that. He has told us the facts.

THE COURT. The motion is denied.

40

*George Blackburn, Recross.*

Defendant's counsel prays an exception  
to this ruling of the Court.

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

DANIEL J. BRENNAN,  
Judge.

10

(Adjourned until Tuesday, April 21, 1931,  
at ten o'clock, a. m.)

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30

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ESSEX COUNTY COURT OF OYER  
AND TERMINER.

Tuesday, April 21, 1931.

THE STATE OF NEW JERSEY,  —vs.—  GEORGE SGRO,	}	On Indictment No. 148 for MURDER.	10
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Before Hon. Daniel J. Brennan, Judge.

**SECOND DAY.**

Continued pursuant to adjournment.

Present, counsel as before stated.

HARRISON S. MARTLAND, sworn in behalf of  
the State. 20

*DIRECT EXAMINATION* by Mr. Conlon.

Q Doctor, you are the Chief Medical Examiner  
in this county?

A I am.

Q And in the course of your duties did you  
perform an autopsy on the body of one Balducci?

A I did.

Q Doctor, I show you Exhibits S-8 and S-9  
for identification and ask you if they are the  
pictures of the man upon who you performed the  
autopsy? 30

A Yes, they are.

Q And when and where did you perform it,  
Doctor?

A The autopsy was performed on February  
27th, twenty hours after death, at 11:30 a. m., at  
Huelsenbeck's Morgue, Newark. 40

*Harrison S. Martland, Direct.*

Q Will you tell us, Doctor, what you found as a result of your autopsy?

A I found the body of a white man about 33 years of age, about 5 feet 7½ inches in height and about 130 pounds in weight. The body showed—

10 MR. D'ALOIA. If your Honor please, I ask that the doctor be confined to the cause of death. Now, this will take possibly a long time to describe. There is no question about the identity of the body upon which the autopsy was performed. Now, what is the cause of death?

20 THE COURT. I think the doctor is entitled to tell us what objectively he discovered as a result of the autopsical examination. I am not going to limit Dr. Martland. I do not think he is ever unusually elaborate in his descriptions.

MR. D'ALOIA. I know, but this 5 feet 7, weight 130 pounds, 33 years—that has nothing to do with the cause of death.

THE COURT. Is it objected to?

MR. D'ALOIA. Yes.

30 THE COURT. Objection overruled. Defendant's counsel prays an exception to this ruling of the Court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,  
Judge.

*Harrison S. Martland, Direct.*

BY THE COURT.

Q Proceed, Doctor.

A The body showed over the back a small healed scar about a half an inch in size and about a half an inch to the right of the spine opposite the eighth dorsal vertebra. That is between the shoulder-blades about a half an inch to the right of the mid-spinal line. That is the healed bullet wound of entrance in this case.

10

MR. D'ALOIA. I object to that, if your Honor please, because it seems as if it were hearsay. He does not tell us where he got that information. There is a scar that is healed. Now, the doctor goes on and tells that in his opinion he concludes that is something, and describes it, and I would like to find out where he got that information from.

20

BY THE COURT.

Q Why do you say that?

A Because in my opinion, from the rest of the autopsy, I find the bullet, I find what in my opinion is the course of the bullet, and that is the only scar in the region of the course of the bullet that looks anything like a healed bullet wound of entrance.

30

THE COURT. The objection is overruled.

Q Proceed, Doctor.

A Near this in the mid-spinal line is a healed surgical incision about 7 inches long and extending over the spinous processes of the 4th, 5th, 6th, 7th and 8th dorsal vertebrae. That is a scar which is a result of the incision made by the surgeon to cut down on the spine and remove some of the bone and expose the spinal cord. The autopsy

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*Harrison S. Martland, Direct.*

shows that there had been a removal by the surgeon of the 6th, 7th, 8th and 9th dorsal vertebrae. That is the posterior part called the spinous processes that we feel sticking out in the back. That had been removed.

10 The autopsy then shows a healed track through the muscles starting at the wound of entrance, passing through the back part of the spine, going upward and to the left, and a 38 caliber jacketed bullet was found in front of the left shoulder-blade in about its middle, the total direction of the bullet being about  $6\frac{1}{2}$  inches, passing in at the right of the spine, passing upwards and to the left. The place where the bullet was found is about  $3\frac{1}{2}$  inches higher than where it went in.

20 This bullet is surrounded by several ounces of creamy pus, and the ribs, several of the ribs over the area where the bullet was found were bare.

In examining the spinal cord opposite this wound, the direction of this wound, there is extensive softening of the spinal cord covering an area about 3 inches in vertical height, which practically severs the cord, not in the respect that a knife cuts through entirely the cord, but the softening over the 3 inches of the cord due to the impact of the bullet and the cutting of the bullet has produced a degeneration so that the cord is, practically speaking, about at the base below that area.

30

The body showed a scar in the left axilla about opposite the 8th rib, about 3 inches in length, a healed oblique scar. The body showed over the back, over the sacrum, a large decubitus or bed sore. It is about 8 by 5 inches in size with red, fairly clean, granulating base. That extended across the back. There were also two decubital sores, or bed sores, pressure sores, over the back of both heels.

40

*Harrison S. Martland, Direct.*

The autopsy of the rest of the body shows changes which are due to a long continued infection. There is what we call cloudy swelling of the heart muscle, of the liver and of the kidneys in addition, due to the fact that the spinal cord has been injured. The bladder has become infected; and there is an ascending infection over the bladder, up both little tubes or ureters, and the kidneys, so that the left kidney has multiple abscesses in it, and the course of the ureter or tube on the left side is surrounded by a large abscess in the back of the abdominal cavity.

10

That is enough.

Q What did you determine to be the cause of death?

A The cause of death was a bullet wound entering the back on the right side and passing through the spinal canal, injuring the spinal cord, producing a transverse myelitis, from which the man died.

20

Q Doctor, have you a bullet?

A Yes.

Q May I have it?

A (Witness hands counsel envelope.)

Q Doctor, this is the bullet you removed from the body of Balducci?

A Yes.

30

MR. CONLON. I offer it in evidence.

MR. D'ALOIA. That is objected to.

THE COURT. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

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

DANIEL J. BRENNAN,

Judge. 40

*Harrison S. Martland, Cross.*

(Bullet marked Exhibit S-10.)

Q Doctor, were you able to determine the cause of these bed sores?

A Oh, yes.

Q What was it?

10 A The cause of the bed sores is due to the injury to the spinal cord, cutting off the nerves so that there is loss of sensation in certain parts of the body below the injury of the cord and as a result of that there is disturbed circulation in the skin and tissues underneath it and as a result of that the skin finally breaks down and forms a bed sore. These are common in all spinal cord injuries.

*CROSS EXAMINATION* by Mr. D'Aloia.

20 Q You were not in court when Dr. Blackburn testified yesterday?

A No, I was not.

Q You did not have charge of this case from the beginning?

A No.

Q All you did was to perform the autopsy?

A That is all.

Q Many hours after death?

A Twenty hours.

30 Q And the wound you described, that was healed?

A Yes.

Q Now, wasn't the cause of death blood poisoning because of bed sores?

A No. The cause of death was a bullet wound.

Q No, I mean the immediate cause of death.

A The immediate cause of death is probably the heart stopping beating, or the lungs stopped functioning, but as I did not see the man at his

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*Harrison S. Martland, Redirect.*

death I am unable to determine whether his heart stopped first.

THE COURT. Either one of the other those always happens.

WITNESS. Those are the causes of death. 10

Q Now, doctor Blackburn said the cause of death was blood poisoning brought on by the bed sores, is that mistaken?

MR. CONLON. I object to that. That is not what Dr. Blackburn said.

THE COURT. Objection sustained.

Q Now, wasn't the direct cause of death blood poisoning?

A No. The direct cause of death, in my opinion, it is a habit I have in signing death certificates, which I think is a proper manner, the direct cause of death was bullet wound, causing transverse myelitis of the spinal cord and the bed sores or infection and those are secondary- 20  
leisions that follow the first cause.

*REDIRECT EXAMINATION* by Mr. Conlon.

Q You said that the bullet wound was healed. What did you mean by that? 30

A Well, I said that most of the tract of the bullet wound was healed, yes, that is as far as entrance into the skin was concerned, and as far as most of its tract was concerned. However, there is infection along that tract especially where the bullet was found or located.

Q Then, of course, the severence of the spinal cord was in the bullet tract?

A In the bullet tract.

Q Of course, that was not healed. 40

*Hans Faber, Direct.*

A No. There was an extensive softening of the cord.

Q When you said the bullet wound of entrance—

10 A I meant the bullet wound of entrance in the skin and the muscles.

HANS FABER, sworn in behalf of the State through the interpreter.

*DIRECT EXAMINATION* by Mr. Conlon, through the interpreter.

Q Where do you live?

A Jersey City.

Q Where did you live September 12, 1930?

A 726 Bloomfield avenue, with my brother.

20 Q In Newark?

A Yes.

Q How long had you been living in Newark?

A Two weeks.

Q Were you working on September 12th?

A I came from St. Louis and I was with my cousin. I had not worked.

Q Do you remember the morning of September 12, 1930?

A Yes.

30 Q Where were you about half past ten that morning?

A I went down to Newark from the place— from my home. I walked down.

Q Where were you going?

A To Newark.

Q When you came down to Newark what street did you come down?

A I cannot tell that. That was the first time I went through that street.

Q Well, do you know Bloomfield avenue?

40 A Yes.

Q Did you walk down Bloomfield avenue?

*Hans Faber, Direct.*

A No, it was not Bloomfield avenue.

Q Where did you leave from?

A From Bloomfield avenue, the home of my brother.

Q And where were you going?

A Downtown, to the city, Newark.

Q Near what street on Bloomfield avenue does your brother live? 10

A That I do not know. I am a stranger. I cannot tell.

Q Now, do you remember what street you were on about half past ten?

A Yes.

Q What street?

A Seventh avenue.

Q How did you know it was Seventh avenue?

A Well, they told me it was Seventh avenue, but I do not know the street. 20

Q Now, when you were going down Seventh avenue were you on the righthand side of the street or lefthand side of the street?

MR. D'ALLOIA. I object to the question.

The witness says he was told it was Seventh avenue.

Q Well, when you were coming down the street you were on.

MR. D'ALLOIA. Well, that is different. 30

MR. CONLON. I will withdraw the question.

Q When you were coming down the street you were on, were you on the lefthand side of the street or righthand side of the street?

A On the left side.

Q Now, I show you the two picture, S-2, and S-3. Do you recognize that scene?

A This one I do. Not this once (indicating). 40

*Hans Faber, Direct.*

MR. D'ALOIA. Which one is it?

MR. CONLON. S-2 he says he recognizes.

Q And does S-2 show the street you were on?

A Yes.

10 Q Now, in this picture S-2 do you see the automobile?

MR. D'ALOIA. I object to that, that picture was taken on the 27th of February, 1931. Now, I object to "Do you see the automobile." In the first place the Prosecutor should not lead that way.

20 THE COURT. Maybe he is using the automobile as a beginning point for some other place in the geography of the picture. I suppose the picture is offered in evidence and it has on it an automobile and you and I want to discover where a certain man was. Is it objectionable to say where were you with reference to where this car is? I take it that is the purpose of the inquiry.

MR. CONLON. Yes, sir.

MR. D'ALOIA. No, but if you recall my objection to the picture.

30 THE COURT. I have admitted the picture as an indication of the topography or geography of the place subject to the limitation if there was no change between the happening of the event and the date of the picture.

MR. D'ALOIA. That has not been established.

THE COURT. What possible harm can there be in asking a man where he was with reference to an automobile?

40 MR. D'ALOIA. A great deal of harm.

*Hans Faber, Direct.*

This man does not know the street he is on.

THE COURT. He is a stranger in New-ark.

MR. D'ALOIA. That is true.

THE COURT. He does not know the name of the street. He only knows the name of it because somebody told him it was Seventh avenue. 10

MR. D'ALOIA. Yes, sir. Now, when they show him a photograph which he says looks like the street he was on and there is an automobile on there and that picture is admitted conditionally that the Prosecutor must show the geography was unchanged from the 12th of September, and the 27th of February, 1931.

THE COURT. Overruled. 20

Defendant's counsel prays an exception to this ruling of the Court.

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

DANIEL J. BRENNAN,  
Judge.

Q Were you on the same side of the street the automobile is in that picture or the other side? 30

A On the other side.

Q And you were walking in the same direction that the automobile is facing?

MR. D'ALOIA. I object to that question.

THE COURT. Sustain the objection.

Q In which direction were you walking?

A The auto was in front of me, and I came from back of the auto.

Q You mean you were walking in the same 40

*Hans Faber, Direct.*

direction the automobile was pointed; is that correct?

A Yes.

Q On the opposite side of the street?

A Yes.

10 Q Were you all alone?

A Yes.

Q Now what happened as you were walking down that street?

A I heard a shot, and I was in the back, and shortly afterwards I heard two more.

Q Now, where were you when you heard the first shot?

A I can't tell exactly because I wasn't attracted much by the first shot because often when you walk the streets you heard back firing of automobiles.

20 Q Now, after you heard the first shot, what, if anything, did you see?

A That moment I didn't see anything.

Q Well, what did you see after that moment?

A After the two shots were fired I saw a man fall to the street.

Q Where was the man that fell to the street?

A He was in the middle of the street.

30 Q Do you know in which direction he was facing as he fell?

A Yes, towards me. I just came toward it.

Q You mean that he was facing toward your side of the street?

A Yes. He fell on his chest in front of me.

Q You were on the sidewalk, were you?

A Yes.

Q Did he fall in the street or on the sidewalk?

A In the street.

40 Q About how far from the sidewalk did he fall?

*Hans Faber, Direct.*

A I can't tell exactly. I was very much excited then.

Q About how far? Can you show us?

A I had to make one or two steps when I was in front of him, about two meters.

Q Now, after you saw him fall what happened?

A He said something to me and I wanted to help him, but I couldn't understand him and he couldn't understand me.

10

Q Then what happened?

A Then an auto started off on the other side and was a distance away already.

Q Where was that automobile when you first saw it?

A It went off from the side.

Q Where was it when you first saw it?

A As it started off, as it went off from the other side was the first time I noticed it.

20

Q Did you see it start?

A No. It was already going.

Q And where was it with reference to where you were and this man was?

A I can't say that exactly.

Q Well, was it in front of you or behind you or beside you or where?

A In front of me.

Q How far in front of you?

30

A I can't say that exactly.

Q Well, about how far?

A About 10 meters or 12 meters.

Q Was it moving at that time?

A Yes.

Q Now, did that automobile go fast or slow?

A That I can't tell. I don't know the driver. I saw how he turned around the corner.

Q Did you see him go down the street?

A Yes, he was riding then.

40

*Hans Faber, Direct.*

Q And can you tell me whether he was going fast or slow or medium?

A I can't tell that because I just gave a glance there.

Q Now, do you know how many people were in that automobile?

10 A That I can't tell. I don't know that.

Q Did you see anybody in the automobile?

A One I saw sitting there.

Q And where was the one that you saw?

A At the wheel.

Q Did you see his face?

A No.

Q What part of him did you see?

A The Back. I was excited. I bend down to the man.

20 Q I know, Faber. Did you see any part of the man who was at the wheel?

A No, I can't tell that.

Q Well, you say there was a man at the wheel?

A Yes.

Q Did you see him?

A No. How could I see him?

Q How did you know there was a man at the wheel if you did not see him?

30 A I saw a man, but just at a glance, because I was bending down.

Q You mean you can't identify the man? Is that what you mean?

A No, I couldn't identify him.

Q I am not asking you that. I am asking you what part of the man in the car you saw.

A The back of his head; that is all.

Q Now, did you see the automobile?

A Yes.

40 Q What kind of automobile was it? What did it look like?

*Hans Faber, Direct.*

A Well, it was dark colored. I looked at the number and I remembered the number.

Q Was it an open car or a closed car?

A Closed car.

Q Was it a new car or an old car?

A That I can't tell.

Q Did you notice about the wheels?

10

A Yes. It had yellow spokes.

Q You say you saw the number?

A Yes.

Q Where was the automobile when you saw the number of it?

A It was a good distance away.

Q Did you write the number down then?

A No. I remembered it.

Q Then after the automobile was gone you helped the man, did you?

20

A Yes.

Q What happened after that?

A Then a great many people came around.

Q Well, who came around?

A People who stood on the street there.

Q Did any policemen come there?

A Yes. There were more than one.

Q And after the policemen came where did you go?

A I stood in front of the man who was shot. 30

Q And the man was taken away in an ambulance, was he?

A Yes.

Q Where did you go then?

A The policeman took me along.

Q Where did he take you?

A Police station not far away from there.

Q I show you a paper. Did you write that paper out?

A Yes.

40

*Hans Faber, Direct.*

- Q Where?
- A There where they took me to.
- Q How long was that after the shooting?
- A Probably a half an hour.
- Q Now, between the time of the shooting and the time you wrote this paper, did you talk to anybody?
- 10 A No. They speak English and I speak German. There was no one there who could understand me.
- Q And you were in the police station when you wrote this paper out, were you?
- A About two hours later a policeman came. He knew some German and he asked me to write it down.
- Q And then you did write it down, did you?
- 20 A Yes, about in the afternoon at three o'clock.
- Q And did you write down the number of this automobile as you remembered it?
- A Yes, as I saw the number in the excitement. That is the way I wrote it down.
- Q Do you remember that number now?
- I can't say exactly.
- Q If you looked at that paper would it help you remember?
- A Yes.
- 30 MR. CONLON. I would like this marked for identification first. It is a statement of Hans Faber dated September 12, 1930. (The paper referred to is marked Exhibit S-11 for identification.)
- Q Now, will you look at that statement and tell me, after reading it, if you can remember the number of that automobile as you saw it?
- A Yes. 4017.
- Q Is there anything before that?
- 40 A H.

*Hans Faber, Direct.*

Q H-4017?

A Yes.

Q And that number you wrote on the statement in the police station before you talked to anybody in German, is that correct?

A Yes, I did.

Q Now, did you see that automobile after that day? 10

A Yes. They showed me the auto in an auto garage.

Q When is that? Do you remember?

A I can't tell.

Q How long after the shooting?

A About three months.

Q And where was the automobile?

A In an auto garage.

Q Do you know where, whether it was in Newark or where? 20

A Newark.

Q Now, I show you two pictures, S-6 and S-7. Do you recognize **that car**?

A No, not according to the picture.

Q Do you know whether that is the car you saw at the garage?

MR. D'ALOIA. He said he can't recognize it according to the picture, if your Honor please. 30

Q Do you know whether or not that is the car you saw in the garage?

A According to the picture I can't recognize it.

Q Can you tell me that? Was the car that you saw in the garage the same car that you saw on 7th avenue?

A She had the likeness of the car.

Q What do you mean by that?

A She looked about like the one I saw, but I cannot say. 40

*Hans Faber, Cross.*

Q Did you look at the license number of the car in the garage?

A No. I could not see it, because the cars were so closely together I had to climb on other cars.

10 Q And would you say that the car in the garage looked like the car that you saw on Seventh avenue?

A Yes.

Q Now, Mr. Faber, can you tell me how far apart these shots were? Will you indicate on the stand there?

A (Witness taps three times with a fountain pen.)

Q How many shots did you hear?

A Three.

20 Q And from what direction did they come?

A I cannot tell. I haven't any idea.

*CROSS EXAMINATION* by Mr. D'Aloia.

Q Who told you that the street you were on on that day was Seventh avenue?

A The policeman.

Q When was that?

A When I started to write I asked him what street I was on, because I had written it down on the paper.

30 Q You wrote the paper at three o'clock in the afternoon?

A Yes. It was a good while after.

MR. D'ALOIA. Stand up (addressing the defendant.)

Q Did you see that man that day any place?

A No.

40

*Hans Faber, Redirect.*

**REDIRECT EXAMINATION** by Mr. Conlon.

Q Did you ever see this man before today?

A Yes. They showed him to me in the police station.

Q And you saw him down in the police station in a room? 10

A Yes. There he was introduced.

Q And how many people did you see in that room?

A It was a row. Six or seven men.

Q And you say you saw the back of the head of the man in the automobile?

A Yes. That was for a second.

Q And was there any resemblance between the back of his head and the back of this man's head when you saw him down in Police Headquarters? 20

A That I cannot tell.

Q Well, when you say you never saw him before, what do you mean, he was not on Seventh avenue or do you mean you did not see him?

MR. D'ALOIA. I did not ask whether he saw him before. My question was on that day at that place where you saw the thing did you see this man and he said no.

THE COURT. Answer it.

(Question read.) 30

A What do you mean?

Q I want to know whether you say he was not on Seventh avenue or whether you say you did not see him there.

A I only can say I saw a man who left on a car.

Q And you can not recognize that man?

A No.

Q Would you say this man was or was not the man who was in the car? 40

*Hans Faber, Redirect.*

MR. D'ALOIA. I object to that.

THE COURT. I will permit it.

MR. D'ALOIA. Your Honor, that is not proper redirect examination. That is not a proper question. That may be answered with reference to any man. It does not mean anything, can you say whether this is the man or not the man.

Q Or can you tell who the man was?

MR. D'ALOIA. Of course, the question is improper.

THE COURT. I will admit it.

A Do you ask me if a man was in the car.

Q No. I am asking you whether you know or not that this man was in the car (indicating the defendant.)

A That I don't know.

Q Do you know one way or the other?

A I saw a man in the car but I do not know who the man is. I did not see the man.

*RE CROSS EXAMINATION* by Mr. D'Aloia.

Q Stand up (addressing a man in the audience). Was this gentleman in the car?

A That I don't know.

LOUIS RUSSO, sworn in behalf of the State through an interpreter.

*DIRECT EXAMINATION* (Through an interpreter) by Mr. Conlon.

Q Where do you live?

A 143 Ridge street.

Q (Addressing the defendant in English.) You can talk English.

A (In English.) Not much.

THE COURT. Those things always result in a lame process. It just impedes

*Louis Russo, Direct.*

the progress of the reply. As long as we have a competent interpreter let him proceed. Judge D'Aloia has a sufficient knowledge of the language to tell whether he is testifying accurately. Proceed.

- Q What is your business? 10  
 A Barber.  
 Q Where was your shop in September, 1930?  
 A 51 Seventh avenue.  
 Q And is there a grocery store next to you?  
 A Yes, there is a grocery store.  
 Q Whose grocery store is that?  
 A A party named Meyers.  
 Q Do you remember the morning of the 12th  
 of September, 1930?  
 A Yes.  
 Q That was on a Friday? 20  
 A Yes.  
 Q Where were you about half past ten?  
 A I was in front of my barber shop.  
 Q And what were you doing?  
 A I was speaking to Mr. Contaldi.  
 MR. CONLON. Stand up, Mr. Contaldi.  
 Q Is that the man there?  
 A Yes.  
 Q And how long were you there talking to  
 him? 30  
 A Not even a few minutes.  
 Q Did you know a man named Louis Balducci  
 at that time?  
 A No, sir.  
 Q When you were standing there talking to  
 Contaldi, did you notice anything in the street?  
 A I observed two persons talking.  
 Q Where were they talking?  
 A Opposite to where we were standing. 40

*Louis Russo, Direct.*

Q Well, were they standing or sitting or where were they?

A One was standing and another one was sitting in the car.

Q And where was the car?

10 A The automobile was opposite to where we were standing.

Q Do you mean across the street?

A Yes.

Q And which way was it facing?

A Facing Broadway.

Q The man that was sitting in that automobile talking—what part of the automobile was he sitting?

A At the wheel.

20 Q And how many people were in the automobile?

A I believe one man, one person.

Q Do you know?

A One person.

Q And that was the man at the wheel, was it?

A Yes. One was in the automobile and another one alongside talking.

Q Now, I am talking about the automobile. Was the only man in the automobile the man at the wheel?

30 A I believe that there was only one person there.

Q Now, was the window next to that man open or closed?

A I cannot explain you this, because I paid not so much attention to it.

Q You cannot explain to me what?

A I cannot say something that I do not know.

Q What is it that you do not know?

40 THE COURT. Whether the window was open or closed.

*Louis Russo, Direct.*

A I do not know. I paid no attention to that, because I was talking to Contaldi.

Q The man who was talking to the man at the wheel, where was he?

A The man was standing on the side where the man was at the wheel.

10

THE COURT. Standing in the roadway?

WITNESS. In the street.

Q What kind of an automobile was it?

A It was a black car, but I cannot describe it.

Q Well, was it a closed car or an open car?

A It was a closed automobile.

Q Now, what, if anything, attracted your attention to that automobile?

A Coming out of a barber shop we saw the two persons talking there and we paid no further attention

20

Q You mean you paid no further attention?

A Yes; no further attention.

Q Could you hear their voices?

A Yes, I heard them talking. You know how the Italians talk.

Q You mean they were talking loud?

A Yes, a little loud.

Q What happened then?

A Then we didn't pay any more attention, but we heard three shots.

30

Q Now, Russo, don't tell me what "we" did. I am asking you what you yourself did, not Contaldi.

A Yes, what I have heard.

Q You heard three shots?

A Yes, sir.

Q Then what did you see?

A I seen a man laying on the sidewalk.

40

*Louis Russo, Direct.*

Q What man was it?

A A man that was wounded.

Q Who was he? Where did you see him before?

10 A I never saw him. I saw him on the ground when the police arrived there.

Q When you saw him on the ground was there a man still talking to a man in the automobile?

A The automobile had gone away.

Q Did you see the automobile leave?

A At the moment of the shooting the automobile pulled away and I was so confused I didn't see what was going on.

Q What was happening to the man whom you had seen standing in the street talking to the man at the wheel?

20 A I don't know. I don't know their business. I don't know what happened to him.

Q Did you see him after that?

A Who?

Q The man that was standing in the street talking to the man in the automobile.

A Do you mean the man who was wounded or who? Who do you mean?

BY THE COURT.

30 Q Was the man that you saw on the street after the shots were fired the same man that you saw talking to the man in the automobile?

A Certainly it was the same person.

(A brief recess is taken.)

BY MR. CONLON.

Q Russo, you are sure it was the man standing in the street talking to the man in the automobile who was shot, are you?

A Yes.

40 Q Now, what happened to the automobile?

*Louis Russo, Direct.*

A I didn't see it any more. It ran down the street. It sped down the street.

Q What do you mean when you say it sped down the street?

A I saw the man laying on the curb, on the sidewalk, and then I saw the automobile speeding down the street. 10

Q Will you look at the map behind you? This is a grocery store. This is No. 51.

A Yes, that is where I was.

Q Is that where your barber shop used to be?

A If this is the grocery store (Indicating: Indicating on the map, chart, marked grocery store), the one next (Interpreter: Indicating baking store) was my barber shop.

Q Now this is the grocery store.

A Yes, that is the grocery shop. I don't understand the map. 20

Q That is what I am explaining. This is No. 51 where your barber shop used to be.

A Yes, 51.

Q Now, this gray part here is the sidewalk. See?

Q And this blue line is the curb.

A You mean opposite?

Q No. This is the street in white and this is the sidewalk; this gray is the sidewalk across the street. 30

A Yes.

Q Now, do you understand that now?

A Yes.

Q Now, will you show me where you and Contaldi were standing?

A We were standing right here (Interpreter: Indicating near the door of the barber shop).

MR. D'ALOIA. Northwest of the corner of the building where the barber shop is. 40

*Louis Russo, Direct.*

Q Of the sidewalk?

A We were standing right near my door.

Q Were you standing on the steps or on the sidewalk?

A On the sidewalk.

10 Q The sidewalk part is in gray; understand?

A Yes, I understand.

Q Now, will you make a mark showing me where you were standing?

A This is the entrance. We were standing here (Interpreter: Placing a mark on the place marked on the map).

Q Were you standing on the steps?

A On the sidewalk.

Q Well, show me where on the sidewalk.

A Right near the steps.

20 Q Will you make a mark there?

A The steps of the barber shop, they are inside of the building.

THE COURT. Make a mark on the sidewalk where he was standing.

Q Make a mark on the sidewalk where you were standing. This is the step you are marking. Do you understand that?

A Where are the steps? On the outside or inside? I don't understand them steps.

30 Q These marks here are the steps going up to your barber shop.

A These steps here on the sidewalk.

Q Well, those are the steps.

A They are inside.

Q All right. Make a mark where you were standing.

THE COURT. This is the most elaborate process I ever saw to have a witness point out where he was.

40

*Louis Russo, Direct.*

THE COURT. Tell him to mark on the map where he was standing on the sidewalk. That is a very simple direction.

WITNESS. (Speaking through interpreter) I was standing in front of my doorway here.

Q Wait a minute. Will you stop talking so much and just answer my question? Now, where was the automobile that was across the street? 10

A It was here (indicating).

THE COURT. Mark it.

(The witness marks the map.)

Q Was it across the street from your barber shop?

A It was facing the grocery store.

Q You mean opposite the grocery store? Is that what you mean? 20

A Yes.

Q And that is where the automobile was, is it?

A Yes.

MR. CONLON. Shall I mark that "auto" your Honor?

(Mr. Conlon marks the map.)

Q All right. There is the automobile. Now, where was the man standing?

A It was out in the street. 30

MR. CONLON. Shall I mark that Balducci?

THE COURT. Yes.

(Mr. Conlon marks the map.)

Q Now, where did that man fall on the street?

A Right in front of the grocery, on the sidewalk.

MR. CONLON. I will mark that Balducci (marking the map). 40

*Louis Russo, Cross.*

THE COURT. All right.

WITNESS. The feet were hanging off the sidewalk.

Q Did he fall on his face or on his back?

A Face downward.

10 Q And which way did the automobile go?

A In the direction of Broadway.

Q That is, toward High Street?

A Yes, toward High Street.

THE COURT. Easterly.

CROSS EXAMINATION by Mr. D'Aloia.

Q When you heard the shots do you know what direction they came from? I did not ask him what direction they came from. The question is do you  
20 know what direction they came from. Yes or no.

MR. CONLON. Wait a minute.

A I do not know.

MR. CONLON. I am at quite a great disadvantage here. The counsel is carrying on a conversation with the interpreter and witness and I want to know what the witness is saying.

30 THE COURT. There may be something entirely irrelevant and irresponsible.

MR. CONLON. There might be and there might not.

THE COURT. The question is, when you heard the shots do you know what direction they came from. Answer yes or no.

WITNESS. I do not know.

40 MR. D'ALOIA. Stand up, Sgro.

*Louis Russo, Redirect.*

Q Did you see this man on Seventh avenue that morning at or about that time any place?

MR. CONLON. What did he say?

INTERPRETER. He said, "I have not seen him."

MR. CONLON. No. That is not what he said. I want you to repeat the answer he gave. 10

INTERPRETER. I was not finished with the question.

MR. CONLON. Whatever he says, repeat to us.

(Question read.)

A No.

*REDIRECT EXAMINATION* by Mr. Conlon. 20

Q You say he was not there?

MR. D'ALOIA. Object to the question.

THE COURT. Sustain the objection.

MR. CONLON. I think I am entitled to have the witness tell us what he knows.

THE COURT. Yes, you are. Suppose you did not see me or I did not see you on Market street. How could he say?

Q Did you see the man in the automobile? 30

A I saw so many people in the automobile I do not know who I see. I saw so many people during the day.

Q Now, will you listen to the question and answer it? Did you see the man who was sitting in the automobile that was parked opposite the grocery store?

A When I came out of the barber shop I saw two persons talking there and I paid no attention. 40

*Louis Russo, Redirect.*

Q Could you identify the man who was in the automobile?

A I cannot identify.

Q Do you know whether or not he is the defendant here who stood up?

10 MR. D'ALOIA. If the answer is "I cannot identify him" what is the use of this question?

THE COURT. Is it objected to?

MR D'ALOIA. I do object.

THE COURT. Sustain the objection.

Q What did you mean when you say that you did not see this man there?

20 MR. D'ALOIA. I object to that question.

MR. CONLON. It is perfectly clear that that simple question of Judge D'Aloia's was framed for only one purpose.

30 MR. D'ALOIA. I object to that statement. It was a simple question, direct and we got a simple and direct answer. Now, this question, "What did you mean by that" was absolutely improper and I refer your Honor to the case of State vs. Musica and Horne, where I was the Prosecutor, and I asked the witness, "What did you mean by cleaning this factory up," and he said, "Burning it from top to bottom," and the Supreme Court reversed it.

40 MR. CONLON. I insist that the question and answer created an uncertain situation as to what this man does know or does not know.

*Louis Russo, Redirect.*

THE COURT. You mean if he did say he didn't see him there, you mean that is open to some contriarity of meaning?

MR. CONLON. Yes, sir. All I want to know is whether he was there or not.

THE COURT. How can he go beyond his own knowledge unless he has some artificial aid. The only way I can tell you are here is by seeing you. Now, if I cannot see you, I cannot say whether you are here or not. 10

MR. CONLON. Well, he says, "Did you see that man there and I want to find out who was there at the time and whether he knows, whether or not this was the man who was there. 20

MR. D'ALOIA. If your Honor please, this is the Prosecution—

THE COURT. All right. Proceed.

Q Now, you say you cannot identify the man who was sitting in the automobile that was parked across the street, is that correct?

A I cannot identify.

Q You do not know who it was?

A No. 30

Q And you do not know who was the man who was just pointed out to you?

MR. D'ALOIA. Now, those other two answers— I don't know. There is no whether or not he was not. I cannot identify him.

THE COURT. Is it objected to?

MR. D'ALOIA. It is objected to. 40

*Gabriel Contaldi, Direct.*

THE COURT. Sustain the objection.

MR. CONLON. I cannot ask him in any other form and I do not want to leave the testimony in this condition.

10

THE COURT. I am willing to render you any assistance I can, but I have to observe the rule of evidence.

Q When you say you did not see this man on Seventh avenue that morning, do you mean that he was not there?

MR. D'ALOIA. I object to the question.

THE COURT. Sustain the objection.

GABRIEL CONTALDI, sworn in behalf of the State through interpreter.

20

*DIRECT EXAMINATION* (Through interpreter)  
By Mr. Conlon.

Q Contaldi, where do you live?

A 830 Broadway.

Q Where did you live September 12th, last?

A Seventh avenue, 47.

Q Do you know Louis Russo?

A Yes.

30

Q And did you see him on the morning of September 12th?

A Yes.

Q Where?

A Near the barber shop.

Q What were you doing there?

A We were talking.

Q Now, did you see anybody on the street that morning while you were talking to Russo?

A I saw a man in an automobile and another one who were hollering.

40

Q And where was the automobile?

*Gabriel Contaldi, Direct.*

A Opposite to Meyers' grocery store.

Q How many people were in the automobile?

A I cannot say.

Q How many did you see?

A I only saw the one standing in the street.

Q Did you see anybody in the automobile?

MR. D'ALOIA. No, that is not the question. Did you see the automobile is the question. 10

THE COURT. Did you see anyone in the automobile.

WITNESS. Yes, he was talking with another.

MR. D'ALOIA. Just a minute. That is not the translation of the answer. Please ask him to repeat that. 20

THE COURT. Repeat the answer.

INTERPRETER. I saw the one that was talking on the outside.

Q Who was he talking to?

A With another one who was in the automobile. I did not see him. I saw him making motions with his hands.

Q Well, was there a man in the automobile?

A I paid no attention to it. 30

Q I didn't ask you that. Was there a man in the automobile?

A I did not see him.

THE COURT. Who was the man in the street talking to?

WITNESS. He was talking to the man in the automobile.

THE COURT. How do you know? 40

*Gabriel Contaldi, Direct.*

WITNESS. Because he was making motions with his hands.

THE COURT. Who was making motions, the man in the automobile or in the street?

10

WITNESS. The man on the outside.

Q What was the man on the sidewalk doing?

A I didn't see him. I paid no attention to him.

Q Now, you say they were hollering?

A Yes, they were talking.

Q I didn't ask you that.

BY THE COURT.

Q The question is, did you say they were hollering?

20

A They were talking a little loud.

BY MR. CONLON.

Q Well, you said before they were hollering.

MR. D'ALOIA. No, the interpreter said before that they were hollering.

THE COURT. Well, he translated it.

30

MR. CONLON. Now, your Honor, I object to Judge D'Aloia saying those things. Lieutenant Linarducci tells me that the witness did say before that they were hollering.

THE COURT. And the interpreter translated that he was hollering. There can be no question about that.

MR. CONLON. No, but Judge D'Aloia is doing a little interpreting himself.

THE COURT. But he has not been sworn, unfortunately.

40

MR. D'ALOIA. No, but we have got to check up a little on these interpretations.

*Gabriel Contaldi, Direct.*

MR. CONLON. I do not mind their being checked up if they are checked up correctly.

Q Did you say before that those men were hollering?

A Yes, they were talking a little loud.

Q I asked you if you told us a moment ago that they were hollering.

10

A Yes, they were hollering. They were talking loud.

Q Did you hear what they were saying to each other?

A No, because I was talking to Louis.

Q Now, what if anything did you see the man do who was standing in the automobile?

A He was just going away from the automobile and I heard three shots and he fell on the sidewalk.

20

Q Did you see him leave the automobile?

A Yes.

Q Did you see him turn around?

A No.

Q When he left the automobile did he have his back to the automobile or was he facing it?

A With his back.

Q How far away from the automobile was he when you heard the shot?

30

A About 15 feet.

Q How near to the side of the street were you where was he?

A About 25 feet.

Q Now, do you know where the middle of the street was?

A The center, yes.

Q Where was he with reference to the center of the street when you heard the shots?

A The one that fell?

40

*Gabriel Contaldi, Direct.*

Q Yes.

A Near the sidewalk.

Q How many shots did you hear?

A Three shots.

10 Q And did the man fall on his back or on his face?

A Face downward.

Q Now, do you know whether or not the window of the automobile was closed or open?

A Was half open, I believe. I can't say.

Q Where did these shots come from, if you know?

A No, we thought that it was an automobile backfiring.

Q How do you know what Russo thought?

20 MR. D'ALOIA. Now, if your Honor please, is he cross examining his own witness? I object to it.

THE COURT. Sustain the objection.

Q Do you know what Russo thought about this?

MR. D'ALOIA. I object to the question.

THE COURT. Sustain the objection.

30 Q When did you first decide that they were shots and not the backfire of an automobile?

MR. D'ALOIA. I object to the form of the question.

THE COURT. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

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

DANIEL J. BRENNAN,

Judge.

*Gabriel Contaldi, Direct.*

A Right then, and then we saw him down on the floor, and then we saw that it was some shooting.

Q What happened to the automobile?

A I didn't look because I was looking at the man on the ground.

Q Did you see where the automobile went?

A No, I didn't.

10

MR. CONLON. If your Honor please, I plead surprise as to this witness. I have a statement from him which is contrary to his testimony, and ask leave of the Court to neutralize his testimony.

THE COURT. That is perfectly all right. You may adduce such testimony as may be necessary for the purpose of neutralization.

20

MR. D'ALOIA. But at this juncture, if your Honor please, I would like to have this stated on the record, that there is not any sign of hostility on the part of this witness.

THE COURT. There is not any sign to you.

MR. D'ALOIA. No, and his attention has not been called to any statement different than the one he has made on the stand before the plea of surprise was made to the Court.

30

MR. CONLON. I can't call his attention to it until after I have pleaded surprise.

MR. D'ALOIA. I contend that that has to be done first, that there is something said here that is different. The mere saying to the Court that "We plead surprise" is not sufficient.

40

*Gabriel Contaldi, Direct.*

THE COURT. I will rule that it is. Proceed.

Defendant's counsel prays an exception to this ruling of the Court.

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

10

DANIEL J. BRENNAN,  
Judge.

Q Contaldi, do you remember being brought down to police headquarters in Newark on the 27th of February of this year?

A Yes.

Q Up to that time had you talked to anybody about this case?

20

A No.

Q Since then have you talked to anybody about it?

A No, sir.

Q To nobody?

MR. D'ALOIA. Well, now, if your Honor please, I object to that question. Under the plea of surprise all the Prosecutor can do is to pick out from the alleged statement that he is relying upon the contradictory statements.

30

MR. CONLON. I can also show his motive, your Honor, in changing his story.

MR. D'ALOIA. Oh, no.

MR. CONLON. It certainly has a weight upon the extent of the neutralization.

THE COURT. Why can't he be shown the particulars in which he changed his story first?

40

*Gabriel Contaldi, Direct.*

MR. D'ALOIA. Motive cannot be shown. This is an effort to neutralize. This is not evidential against the defendant in any way. The rule under the D'Adame<sup>CASE</sup> is that this neutralizes what he says which is contrary to the Prosecutor's expectation, not motive. 10

THE COURT. It is offered for the purpose of self cancellation.

MR. D'ALOIA. Absolutely; yes, sir.

Q How did you come to go to headquarters on the 27th of February?

MR. D'ALOIA. I object to that.

THE COURT. Sustain the objection. If he was there what difference does it make? De he make a statement at that time? 20

MR. CONLON. Yes. Officer Conlon, will you stand up, please? Detective Capodano.

(A man stands up in the court room.)

Q Do you remember that man?

A Yes.

Q Was he down at police headquarters over there?

A Yes.

MR. CONLON. Detective Coccozza, will you stand up? 30

(Detective Coccozza stands up in the court room.)

Q Do you remember this man?

A Yes.

Q Was he down at headquarters?

A Yes.

MR. CONLON. Sergeant Conlon. Officer Laufer, will you stand up, please?

(A man stands up in the court room.) 40

*Gabriel Contaldi, Direct.*

Q Was he there?

A Yes, he was there.

MR. CONLON. Officer Trautwein.

(A man stands up in the court room.)

Q Was he there?

10 A Yes, he was there.

Q And you were asked down there to tell what you knew about the happenings of September 12, were you not?

A Yes.

Q And who questioned you about this?

A Mr. Capodano.

Q And he talked to you in Italian and English both, didn't he?

A Yes.

20 Q You understood what he said to you, didn't you?

A Yes. He was telling me that in English.

Q He asked you to tell him what you knew about the happenings on 7th Avenue on September 12th, is that right?

A Yes.

Q And you told him?

A Yes, the same as I have said now.

MR. CONLON. I ask that that be stricken out as not responsive.

30 MR. D'ALOIA. I will ask that the answer remain, if your Honor please.

THE COURT. Strike it out.

MR. D'ALOIA. He did not write that statement, if your Honor please.

THE COURT. It may be stricken out as not responsive.

40 Q You told Capodano what you had seen and heard on the morning of September 12th, didn't you?

*Gabriel Contaldi, Direct.*

A Yes.

Q And as you told it to him he wrote it down on a piece of paper, didn't he?

A Yes, he was writing.

Q And after he had written this paper all out, he read it to you, didn't he?

A I didn't understand it. 10

Q You didn't understand it?

A Yes. He was telling me when he was writing it, but then I didn't know.

Q After he was all finished writing it, didn't he read it to you?

A Yes.

Q Then you understood it, didn't you?

A Yes, I understood it.

Q Did he read to you in English or Italian?

A English. 20

Q And what he read to you was the same as you had told him?

A Yes, sure.

Q And then he asked you if what he read to you was the truth, is that right?

A Yes.

Q And you told him it was the truth?

A Yes.

Q And then he asked you to sign it?

A Yes. 30

Q You did sign it?

A Sure I did.

Q And the other officers signed as witnesses?

A I don't know; I don't remember.

Q Now, I show you a paper. Is that your signature?

A Yes.

Q And is that your signature?

A Yes.

MR. CONLON. I would like this marked for identification. 40

*Gabriel Contaldi, Direct.*

(The paper referred to is marked Exhibit S-12 for identification.)

Q Now, you can understand me in English, can't you?

A (In Italian, through interpreter.) Not so good.

10 Q Well, now, did you tell Cappodonna and the other officers down in Headquarters on February 27th as follows: About 10:30 A. M. September 12, 1930, I was standing on the sidewalk in front of Luigi Russo's barber shop at 51 Seventh avenue talking to him.

MR. D'ALOIA. That is not contrary to anything he has testified to.

THE COURT. What is this?

20 MR. CONLON. It is simply introductory.

MR. D'ALOIA. No. I object to the part of the testimony.

Q Now, did you tell officer Cappodonna that there was a car parked opposite Meyers' Grocery store and that there was only one man in the car?

A No. I saw the man on the outside; not the man on the inside.

30 Q I am not asking you what you saw. I am asking you what you told Cappodonna.

A I do not remember.

Q Now, did you tell Cappodonna and the other officers this, that "the man who was standing in the street talking to the man in the car turned around and started to walk over to Meyers' store, which was on the same side of the street where we were standing."

MR. D'ALOIA. That is not contradictory of his testimony.

40 MR CONLON. It is contradictory. I

*Gabriel Contaldi, Direct.*

asked him specifically if he turned around and saw the man walk and he said no.

THE COURT. As I remember his testimony he said he had his back to the automobile and walked across the street to a point as he described it on the sidewalk. The other eye witness said it was partly on the sidewalk and partly on the curb. 10

MR. CONLON. No, sir; I asked him if he saw the other man turn from the automobile and start to walk and he said no.

MR. D'ALOIA. I would like to have your Honor tell the jury that none of this is evidential as against this defendant, not one syllable of what he is reading, not one syllable contained in that paper is evidence that they can consider as against this defendant. The purpose of this is simply to neutralize the testimony given by this witness before the use of that statement which the Prosecutor thinks is not favorable to the State, but none of it, not one syllable of it happening down at Headquarters with Cappadonna and all of these witnesses and the defendant not being there, it is not evidence against the defendant. 20 30

THE COURT. I will instruct the jury on the evidence of neutralization.

MR. D'ALOIA. Well, I would like to have the instruction given now that nothing said now is evidential against the defendant.

THE COURT. Is that your request?

MR. D'ALOIA. Yes, sir.

THE COURT. I will deny the motion. 40

*Gabriel Contaldi, Direct.*

Defendant's counsel prays an exception to this ruling of the Court.

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

10

DANIEL J. BRENNAN,  
Judge

(Question read.)

A Yes.

Q Is that true?

A Yes.

Q Now, did you tell them this, "When he—that is, referring to the man who was walking in the street—when he was about eight or ten feet away from the car we heard three, four, five shots."

20

A Yes, I don't know. Yes. I don't know how many shots.

Q I will ask that question again. Did you tell Cappadonna that when this man was about eight or ten feet away from the car that you heard three, four, or five shots fired?

A Yes.

Q And did you tell him this, the fire coming out of the window, which was open in the door of the car where the driver was sitting?

30

A I do not remember.

Q You mean you do not remember whether you told him that or not?

A I do not remember, no.

Q You might have told him that?

A Maybe. I do not remember.

Q Was it true?

A Yes.

Q That is true, is it?

A I do not remember if it is true or not.

40

Q Now, did you tell him this ,that the man

*Gabriel Contaldi, Cross.*

who fired the shot from the car then started his car and drove down Seventh avenue toward Broadway driving very fast.

A I saw cars go down toward—down, but I did not see whether that was the car.

Q I want you to answer yes or no. Did you tell Cappadonna and the other officers on February 27th the following, "The man who fired the shots from the car then started the car and drove his car down toward Broadway driving very fast." Did you or did you not say that to Cappadonna? 10

A I do not remember. That is the truth.

Q You do not know whether you said that to Cappadonna or not?

A I told him that I saw an automobile going down the street.

Q You told Cappadonna the truth, didn't you? 20

A Yes, sure I told him the truth.

Q And what Cappadonna read to you from this paper was the truth, was it?

A That is the way I believe it is.

*CROSS EXAMINATION* by Mr. D'Aloia.

Q Do you read English?

A A little bit.

Q Did you read this paper?

A Yes, I read it, but I do not understand it quite good. 30

Q Well, now, how long were you down to Police Headquarters on the 27th of February?

A From two in the afternoon until seven or eight that night.

Q Was Cappadonna writing all the time during those five hours?

A Oh, no, just for a while.

Q Well, was he talking to you?

A Yes. 40

*Gabriel Contaldi, Cross.*

Q And how long did he talk to you?

A About one hour in a room.

Q Now, did you tell him that you saw the man in the automobile?

A I do not remember. That is the truth.

10 Q Well, now, did you see the man in the automobile that day on the 12th of September, the man in the automobile, did you see him on the 12th of September?

A I do not remember.

Q On the 12th of September did you see any fire come from any particular half open window from any automobile coming down Seventh avenue? This is the 12th of September, now.

A I do not remember.

20 Q Well, now, Cappadonna talked to you for an hour. How long did it take him to write this?

A About a half an hour or three quarters of an hour.

Q Well, what were you doing the other three hours down there from three to seven?

A They took us down to the First Precinct.

Q After you had signed this or before?

A After.

30 Q How long had you been down in Headquarters before they took you to the First Precinct?

A About five hours.

Q Did you write anything at all in that paper, did you?

A Write what?

Q Anything.

A I just signed my name.

Q After you had been talked to for an hour and asked questions, and after somebody had been writing for three-quarters of an hour?

40 A Yes.

*Gabriel Contaldi, Redirect.*

Q Now, can you write English?

A No, just in numbers.

Q How many automobiles were on Seventh avenue while you were out there talking to Russo on the 12th of September?

A Stopped?

Q Well, stopped or moving or going by. I do not care what they were doing.

A I do not remember. Four or five were going down or three or four were coming down.

Q And how many were stopped?

A Five or six in a line

MR. D'ALOIA. (Addressing the defendant.) Stand up, Sgro.

Q Did you see that man there that morning at any time?

A No.

*REDIRECT EXAMINATION* by Mr. Conlon.

Q Are you able to identify the driver of the car that was parked opposite near the grocery store?

MR. D'ALOIA. If your Honor please, in his testimony he said he did not see the man who was behind the wheel.

THE COURT. Proceed, Mr. Conlon.

MR. D'ALOIA. That question is objected to.

THE COURT. The objection is overruled.

MR. D'ALOIA. The testimony is he did not see the man behind the wheel. That is his testimony. I do not want your Honor to confound the reading of certain excerpts from the statement with his testimony.

THE COURT. The objection is overruled.

*Harry Mayer, Direct.*

Defendant's counsel prays an exception to this ruling of the Court.

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

10

DANIEL J. BRENNAN,  
Judge.

A I did not see him. How can I identify him?

Q Did Cappadonna or any other one of those police officers down in Headquarters try to get you to say anything you did not want to say?

MR. D'ALOIA. I object to that.

THE COURT. Sustain the objection.

HARRY MAYER, sworn in behalf of the State.

20

*DIRECT EXAMINATION* by Mr. Conlon.

Q Mr. Mayer, what is your business?

A Grocer.

Q Where?

A 53-7th Avenue.

Q Was your store open on the 12th of September, 1930?

A Yes, sir.

Q Did you know Louis Balducci?

A Yes.

30

Q How long had you know him?

A About 3 or 4 years.

Q Was he a customer of yours?

A Yes.

Q Do you know George Sgro, the defendant?

A If I am not mistaken he used to come in my place of business.

Q Speak up.

A If I am not mistaken he used to come— I seen him a couple of times in my place of business.

40

*Harry Mayer, Direct.*

MR. CONLON. I would like to know whether it is admitted that the Louis Balducci was killed on this day as a result of the shooting is the man named in the indictment and eliminate proving his pictures.

MR. D'ALOIA. Absolutely. There is no question about the identity of the dead man. We do not question that.

10

THE COURT. All right. The corpus delicti is admitted then.

MR. D'ALOIA. Yes. That is, we do not contradict the State's contention that it was Balducci.

Q Now, was Balducci in your store on the 12th of September?

20

A Yes.

Q About what time did he come in there?

A I don't recall the time.

Q About what time?

A Probably half past nine.

Q You say he had been a customer of yours, had he?

A Yes.

Q What had he been buying from you?

A He had been buying sugar.

Q I can't hear you.

30

A Sugar and groceries.

Q Sugar in what quantity?

MR. D'ALOIA. If your Honor please, is that material?

THE COURT. I do not know. It may be.

MR. D'ALOIA. I object to it.

THE COURT. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

40

*Harry Mayer, Direct.*

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

DANIEL J. BRENNAN,  
Judge.

10 Q In what quantity, Mr. Mayer?

A Five, ten, as high as fifteen bags at a clip.

Q How many pounds in a bag?

A 100 pounds.

Q You mean 500, a thousand, a thousand five hundred pounds of sugar at a time?

A Yes.

MR. D'ALOIA. I object to that as absolutely immaterial.

20

THE COURT. Objection overruled. Defendant's counsel prays an exception to this ruling of the Court.

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

DANIEL J. BRENNAN,  
Judge.

30 Q How, when he came into your store on the morning of the 12th what did he do? Did you wait on him?

A No, I did not.

Q Why not?

A I had been all alone in the store and I had a few customers in the store, and he waited for his next.

Q Did anything happen while he was waiting for his turn?

40 A No, but he walked out of the place and he walked across the street and he was talking to someone across the street, a man was sitting on a machine.

*Harry Mayer, Direct.*

Q You mean in a machine?

A Yes.

Q Where was the machine?

A Right in front of my place of business across the street.

Q Point in what direction?

A Facing Broadway.

10

Q Now, did you see the man in that automobile?

A I did not.

Q Did you see Balducci over there at that automobile?

A Yes, I have seen him from his back because he was turned with his face to someone, was talking, to the machine.

Q Now, how long did he stay there, so far as you know?

20

A I couldn't say very well how long he stood there.

Q Well, what was the next thing that you noticed?

A We heard two or three shots, and I had six customers at the time in my place of business, and the customers walked out and I walked out with them, and I found Balducci laying on the sidewalk with his face down. I went over to him and I asked him who done the shooting and I did not get any response.

30

Q Did you see anything else?

A I seen a car below High Street going down.

Q What car?

A A car going down below High Street.

Q Do you know what car that was?

A No, I don't. I don't recall the color of the car and I don't know the make of the car.

Q And did you notice anything in particular about that car?

40

*Harry Mayer, Direct.*

- A No, I did not.  
 Q Was it going slow or fast or how?  
 A I couldn't very well say.  
 Q What?  
 A I don't know.  
 10 Q Did anything attract your attention to that  
 car?  
 A No.  
 Q Is your store still up there, Mr. Mayer?  
 A Yes, sir.  
 Q Will you look at these pictures of 7th ave-  
 nue and your store? Did your store look the  
 same as that then?  
 A I guess so.  
 Q And next door was a barber shop as shown  
 there.  
 20 A Yes.  
 Q That is a close up view of your store.  
 BY THE COURT.  
 Q You are still running a store there?  
 A Yes.  
 Q Is there any change in any of that area  
 since the day of the shooting?  
 A You mean change of display?  
 Q No, change in buildings or street lines or  
 anything like that.  
 30 A No, except the barber shop used to be here.  
 Q The barber moved away?  
 A Moved away.  
 BY MR. CONLON.  
 Q The street otherwise is the same as it was  
 then?  
 A I believe so.  
 BY THE COURT.  
 Q Well, you lived there, didn't you, or had  
 your business there?  
 40 A I have my business.

*Harry Mayer, Cross.*

Q You say you believe so. You mean you know so, don't you?

A Well——

Q There has been no change that you noticed there, has there?

A Not as far as I know.

Q You would know, wouldn't you, being there every day, if there were any change? 10

A Yes.

MR. CONLON. Do you admit them?

MR. D'ALOIA. If he says they look the same I do not object to them. My objection is not captious.

*CROSS EXAMINATION* by Mr. D'Aloia.

Q You say you have known this defendant. He has been your customer? He has been in several times? 20

A Yes.

Q Did you see him on that morning any place?

A I did not.

Q Now, when you came out of the store you say Balducci was lying on the sidewalk?

A Yes.

Q Did you notice how many cars were on the avenue between Summer Avenue and High Street?

A Well, I noticed there is quite some cars every morning parked in between Summer Avenue and High Street. 30

Q I mean just as you came out, as you came out of your store, Mr. Mayer, and you saw Balducci on the sidewalk.

A Yes.

Q At that moment did you see any cars on the avenue and could you tell us about how many there were?

A I haven't got any idea. 40

*Anna Balducci, Direct.*

- Q Well, was there lots of cars or few?  
 A A few cars.  
 Q Which way were they going or what were they doing?  
 A Well, different directions.  
 10 Q Were there five or six cars in the line parked?  
 A I couldn't very well say.

ANNA BALDUCCI, sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

- Q Mrs. Balducci, you are the widow of Louis Balducci?  
 A Yes.  
 Q And where did you live September 12, 1930?  
 20 A In Netcong.  
 Q What was your husband's business?  
 A He was a bootlegger.

CROSS EXAMINATION WAIVED.

FRED L. TRAUTWEIN, Jr., sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

- Q You are attached to the Detective Bureau in Newark?  
 30 A Yes, sir.  
 Q Working out of headquarters?  
 A Yes, sir.  
 Q And you made the arrest of George Sgro in this case?  
 A Yes.  
 Q When?  
 A On the 28th of October.  
 Q 1930?  
 40 A 1930.

*Fred L. Trautwein, Jr., Direct.*

Q Where?

A At Harrison, New Jersey, East Newark rather. I did not know it was East Newark at that time.

Q And after his arrest where did you bring him?

A Brought him to the East Newark police headquarters, turned over by the Chief of Police of East Newark to Detective Laufer and myself and brought him back to Newark police headquarters.

10

Q Did you question him there?

A Yes, sir.

Q In whose presence?

A In the presence of Prosecutor's Detective Coccozza.

Q Did he talk English to you?

20

A Yes, sir.

Q Did he answer your questions?

A Yes, sir.

Q And as he answered your questions, what did you do?

A I took a statement from him at that time.

Q And after you had completed the statement, what did he do with reference to the statement?

A I gave it to George Sgro to sign.

Q Well, before he signed it was anything done to it?

30

A I read it to him and I let him read it himself and he said it was just as everthing happened.

Q And then after you had read it to him and he read it himself, you asked him to sign it?

A Yes.

Q And did he sign it?

A Yes.

Q Those are his signatures?

A Yes, sir.

40

*Fred L. Trautwein, Jr., Direct.*

Q And those are yours and Coccozza's signatures as witnesses?

A Right.

MR. CONLON. I would like that marked for identification.

10 (The paper referred to is marked Exhibit S-13 for identification.)

Q Now, Officer, when were you first assigned to duty in this case?

A September 12th about 10.30, a. m.

Q And where did you go?

A Detective Laufer and myself were sent to 53-7th Avenue to investigate some person having been shot—

20 MR. D'ALOIA. I object to that, if your Honor please.

Q Well, did you go to 7th Avenue?

A No. We went to St. Michael's Hospital.

Q And whom did you see at St. Michael's Hospital?

A On reaching St. Michael's Hospital we met Lieutenant Kass and Detective Polistino.

Q Did you talk to anybody up at the hospital?

A A man was there shot in the back.

Q Who was the man?

30 A At that time I think—I don't recall whether I got his name at that time or it was later.

BY THE COURT.

Q Was it Balducci?

A Balducci.

Q Did you subsequently get his name?

A Yes, Louis Balducci.

Q And did you talk to him on that night?

40 A We tried to talk to him, but in the presence of Lieutenant Cass and Detective Polistano, Detec-

*Fred L. Trautwein, Jr., Direct.*

tive Loeffler and I continued on to Seventh Avenue. We did not talk to him that day.

Q Now, did you say you left the other detectives there in the hospital?

A Yes.

Q And did you see them later?

A We were later joined by Detective Polistano and Cass at 53 Seventh avenue.

Q And from there where did you go?

A 53 Seventh avenue. We were jointed by Captain Quinn, who informed us—

MR. D'ALOIA. I move to strike out the information.

THE COURT. He is not informed of anything yet. Do not tell us what Captain Quinn told you.

A Captain Quinn referred us to the grocery man Harry Meyers, that he might be able to give us some information.

Q All right. Where did you go when you left Seventh avenue?

A We went back to the hospital.

Q And did you see Balducci then?

A Yes.

Q And did you talk to him?

A We spoke to him, but we did not get any information at that time.

Q Did you see Balducci after that?

A I saw Balducci the following day.

Q Do you remember what day that was?

A That was Saturday, the 13th of September.

Q Were you able to talk to him then?

A I went there alone and talked to him. He stated to me—

Q He did tell you something.

A Yes.

10

20

30

40

*Fred L. Trautwein, Jr., Direct.*

Q As a result of what he told you, were did you go?

A I went immediately to Harrison, New Jersey.

Q Whereabouts?

A Harrison Police Headquarters.

10 Q And from Harrison Police Headquarters, where did you go?

A I got the cooperation of Sergeant Wardell and Detective Higgins, who assisted me.

THE COURT. Where did you go?

WITNESS. We went to Third street.

Q What number?

A 420.

Q Whose house was that?

A George Sgro.

20 Q And did you find Sgro there?

A We did not.

Q Did you go in the house?

A No, sir.

Q What did you do?

MR. D'ALOIA. What was that answer?

THE COURT. No, sir.

Q What did you do?

A We made inquiries in the neighborhood.

MR. D'ALOIA. I object to that.

30 THE COURT. We made inquiries in the neighborhood, is the answer.

Q What else did you do?

A Finally he was not at—

Q No, what did you do?

A We went to a garage at Third street and Harrison avenue.

MR. D'ALOIA. Your Honor please. Just a moment, Mr. Witness.

Q Well, you went to a garage, did you?

A Yes.

40 Q And after that what did you do?

*Fred L. Trautwein, Jr., Direct.*

A I went back to Harrison Police Headquarters.

Q Now, whom did you see at the garage?

A Sergeant Wardell went in and spoke to the owner of the garage.

Q Do you know what his name is?

A No, sir.

10

MR. CONLON. Mr. Davis, will you stand up, please.

Q Is that the man?

A I did not see him.

Q Well, after you left the garage, what did you do?

A I came back to Newark.

Q Did you go back to Harrison subsequently?

A Detective Loeffler and myself went back to Harrison every day for the following week two or three hours at a time covering the house at 420 North 3rd street.

20

Q What were you doing there?

MR. D'ALOIA. I object to that. He has already stated.

THE COURT. Covering the house.

Q For what purpose?

A For the purpose of trying to pick up George Sgro, or for the purpose of seeing his car come along, the car in question.

30

Q Did you see him?

A No.

Q And when did you first see Sgro after the 12th of September?

A On October 28th.

Q Where?

A In front of his house.

Q Now, between the 12th of September and the 28th of October, how often were you there in Harrison looking for Sgro?

40

*Fred L. Trautwein, Jr., Cross.*

A After the 15th of September we were over there for a week and after that week we went there at least two or three times a week to see.

Q You mean the first week you were there evry day?

10 A That is right.

Q And after that you were there two or three times a week?

A Yes.

Q And when you say we, you mean yourself and Loeffler?

A Yes.

*CROSS EXAMINATION by Mr. D'Aloia.*

20 Q And you told us the first time you went over to Harrison, which was on a Saturday, you did not go into 420 North 3rd street at all?

A No.

Q During the following week did you go in the house at all?

A No.

Q Did you ever go in the house at any time while you were at Harrison?

A No, I didn't.

*REDIRECT EXAMINATION by Mr. Conlon.*

30 Q Why not?

MR. D'ALOIA. I object to that question.

THE COURT. Overrule the objection.

A I understood that the Harrison—

MR. D'ALOIA. I insist on my objection to that question.

THE COURT. I think that answers the question.

Q Tell us the reason why you did not go in the house without telling us any information.

40

*Fred L. Trautwein, Jr., Redirect.*

A We left that up to the Harrison police due to their cooperation with us.

Q You mean it was under their advice?

A Yes.

*RECROSS EXAMINATION* by Mr. D'Aloia.

Q You mean it was left to them to go into the house; you didn't go in. 10

A We did not go in.

*REDIRECT EXAMINATION* by Mr. Conlon.

Q Did they go in?

A I don't know.

RECESS for one hour.

AFTER RECESS.

20

GEORGE E. KASS, sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

Q You are a lieutenant in the Newark Police Department?

A I am.

Q You are attached to the Detective Bureau?

A I am.

Q You work out of headquarters?

A Yes.

30

Q Were you assigned to duty in this case?

A I was.

Q In the performance of that duty did you go to the Newark City Hospital?

A St. Michael's Hospital.

Q St. Michael's Hospital, rather. When?

A September 12th, about 10:45.

Q Who was with you, Mr. Kaas?

A Detective Polistino.

Q Whom did you see there? 40

*George E. Kaas, Direct.*

A A man by the name of Balducci.

Q Now, were you able to talk to him that day?

A Yes, sir.

Q Did you talk to him?

A Yes, sir.

10 Q Did you get information from him?

A I did.

Q Don't tell me what the information is, Lieutenant. You can't testify to that.

A I understand. I received, between both of us—that is, between the questioning, both Polistino and myself, we received certain information.

Q And as a result of that information what did you do?

20 A I called up the Harrison Police Department, notified Captain Sebold—

MR. D'ALOIA. I object to that, if your Honor please.

THE COURT. He called up the Harrison Police Department and notified Captain Sebold.

WITNESS. I have not said what I said.

THE COURT. I know you haven't and I would not let you, and I think you know better.

30 WITNESS. I know better.

THE COURT. I don't think that is objectionable.

BY MR. CONLON.

A And then went to—told the Detective Laufer and Trautwein, either one of the two of them, immediately to proceed to Harrison.

40 MR. D'ALOIA. If your Honor please, there is a conversation that comes in in an indirect way.

*Thomas F. Wardell, Direct.*

Q They were working under you at that time?

A At that time, yes.

CROSS EXAMINATION WAIVED.

THOMAS F. WARDELL, sworn in behalf of the State.

10

*DIRECT EXAMINATION* by Mr. Conlon.

Q You are a sergeant in the Harrison Police Department?

A Yes, sir.

Q On the 12th of September—do you remember that day?

A Yes, sir.

Q Were you on duty sometime in the forenoon?

A Yes, sir.

20

Q And were you assigned to a case on that day?

A No, sir. I received a telephone call in regards to a man.

Q Now, Sergeant, you can't testify to any conversation had with anybody. Do you understand that?

A I received a telephone call in regard to a certain man.

Q From whom did you receive the telephone call?

30

A I believe Lieutenant Kass.

Q And as a result of that telephone call what did you do?

A I didn't do nothing at that time at all.

Q Well, did you later do something?

A I waited for further information from Newark headquarters.

Q And did you get that further information?

A Not till the following morning.

40

*Thomas F. Wardell, Direct.*

Q That was the 13th?

A Yes, sir.

Q After you received that further information on the 13th, what did you do?

A Detective Trautwein came to Harrison and asked me if I knew a certain man.

MR. D'ALOIA. Just a minute.

BY THE COURT.

Q Where did you go as a result of the information you subsequently received?

A We went in the vicinity of this man's home.

BY MR. CONLON.

Q Of what man's house?

A George Sgro.

Q Where was his home?

A 420 North 3rd Street, East Newark.

Q Is that house in Harrison?

A No, sir.

Q Where is it?

A East Newark.

Q How far is it from the Harrison line?

A Why, I should judge that the last house in Harrison would be 400 and his house it 420.

Q About ten houses?

A Yes.

Q It is almost in Harrison?

A Just over the line.

Q What did you do there, Sergeant?

A We went around the vicinity looking for Mr. Sgro.

Q And did you find him?

A No, sir.

Q Did you go any place else?

A Yes.

Q Where?

*Thomas F. Wardell, Direct.*

A To the garage where he kept his car.

Q What garage?

A The Modern—

MR. D'ALOIA. I object to that last part.

MR. CONLON. I consent it be stricken  
out.

10

Q Where was the garage?

A 2 South 3rd Street, Harrison.

Q Who was there?

A Mr. Davison.

MR. CONLON. Is Mr. Davison in court?

VOICE. Yes.

MR. CONLON. Yes, stand up.

Q Is that the gentleman?

A Yes.

20

Q Did you talk with him?

A Yes.

Q When was it you talked to Mr. Davison?

A Around after dinner.

Q On what day?

A The 13th of the month, September.

Q That was a Saturday?

A Yes.

Q And where did you talk to him?

A In the garage.

Q Now, after that, Sergeant, what did you do?

30

A Why, we covered the garage watching for the car to come in there and also covered this house to see if he came home or left the house.

Q And did you see him after the 12th of September?

A No.

Q Until his arrest.

A The 28th of October was the next I saw him at Police Headquarters.

40

*Thomas F. Wardell, Cross.*

*CROSS EXAMINATION* by Mr. D'Aloia.

Q When you saw him the 28th of October he was at his house?

A Police Headquarters, Newark.

Q You did not see him at his house?

10 A No.

Q You were not at North 3rd street at the time he was taken into custody?

A Yes.

Q Well, he was taken into custody from his house.

MR. CONLON. I object to that. How he know that.

THE COURT. Objection sustained.

20 JAMES DAVIS, sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

Q What is your business?

A Why, I was a garage proprietor.

Q Where is the garage?

A 2 South 3rd street, Harrison.

Q Do you know George Sgro?

A Yes.

Q Did he keep his car in your carage?

A Yes.

30 Q I show you two pictures, S-6 and S-7 for identification, and ask you if you recognize the car depicted in those pictures.

A Well, I would not swear that that is the car, because I do not know those plate numbers, and all Nash cars look alike.

Q His car was a Nash car?

A Yes.

Q And this car in the picture is a Nash car?

A Yes.

40

*James Davis, Direct.*

Q And was his car comparatively new?

A New car, yes.

Q How long had he kept his car in your garage?

A Well, I do not know exactly. About three or four months off and on he was in there.

Q And was his car there during the entire month of September? 10

A The Nash?

Q Yes.

A No.

Q When was it taken?

A Well, I could not tell you the exact date, because he has a key for the place to get in at night, and he can go out in the morning if he wants to before I get there.

Q Well, you remember the date? 20

A Then I might say that it was not in there—well, that would be quite right, because he could get in at night after I went home.

Q Well, as far as you know.

A As far as I know.

Q Do you remember the last time it was taken in September?

A I could not tell you the date.

THE COURT. Was it the 13th of September when the officers came around? 30

WITNESS. No.

Q Did you talk to Sergeant Wardell of the Harrison Police Department?

A Yes, a couple of times.

Q Well, do you remember the first time you talked to him?

A I do not remember the date.

Q But you remember talking to him?

A Yes.

Q And that was in your garage? 40

*James Davis, Direct.*

A Yes.

Q Do you remember how long before that the car had been taken out?

A A few days. I could not say for sure.

Q What do you mean by a few days, three or four?

10 A It might have been a couple. I would not say for sure. You see, I did not know anything about this case. They came in and inquired about it.

Q I want to find out what you know about this car. Do you know who took the car out the last time?

A Well, Sgro himself generally always took it out. nobody could take it out without they would have to come at night with the garage key.

20 Q If you do not remember, tell me.

A All right.

Q Do you know who took the car out the last time?

A No, I couldn't say.

Q Do you remember an occasion when Sgro's wife came to the garage?

A Yes.

Q And do you remember when that was?

A No, I couldn't say for sure.

30 Q Well, how long before the conversation you had with Wardell?

A Well, I guess that was after.

Q Did she take the car out?

A Well, some fellow was with her. She cannot drive, but it was in her custody when it went out.

Q And was that after you had talked with Wardell or before?

A No, I guess that was after.

40 Q That was after?

*James Davis, Direct.*

A That is why it could not go out, because he was not around there.

Q Well, was the car in the garage when Wardell was there?

A No.

Q Well, was it in the garage after Wardell was there? 10

A No, sir.

THE COURT. When, then was it taken out under the supervision of the defendant's wife?

WITNESS. Well, that is something I could not say.

THE COURT. Well, approximately, with reference to the date of the conversation between you and Sergeant Wardell, before that time or after that time? 20

WITNESS. I could not say, your Honor, I am not sure.

THE COURT. Well, as I understand you, you say it was not in the garage at the time that Sergeant Wardell talked to you or to your knowledge for the rest of the month of September, is that correct?

WITNESS. Yes.

THE COURT. Now, do you remember when it was that this man's wife came with somebody and took the car out, was it before that? 30

WITNESS. I could not recall that.

Q Well, you say some young man came for the car?

A Yes.

Q And was he alone or with someone else?

A He was alone. 40

*James Davis, Direct.*

Q And what time of day was it?

A Well, sometime between probably nine o'clock and eleven.

Q Morning or night?

A Morning.

10 Q And did you give him the car?

A No.

Q Why not?

A Well, I had no permission to take it.

Q And then he left the garage when you refused to give it to him?

A After a little argument, why, he went out.

Q Did he come back?

A He came back later on with the fellow's wife.

Q Then did you let him have the car?

20 A Yes.

Q Did you see the car after that?

A Oh, I guess a month or so afterwards, yes, something like that.

Q Now, Davis, I mean between that time to the—

A Oh, no.

Q (Continuing) —and the time you saw and spoke to Sergeant Wardell.

30 MR. D'ALOIA. Why, if your Honor please, this testimony is all subsequent to speaking to Wardell, if I understand the witness' testimony.

40 THE COURT. He says he does not remember although he testified—it is in the record conversation between Wardell and himself was on Saturday. Friday was the 12th. Saturday was the 13th. Between the time of his conversation with Sergeant Wardell to the end of the month, all the rest of September, the car had not been in the garage to this man's knowledge.

*James Davis, Direct.*

MR. D'ALOIA. But then the Prosecutor asked him if he saw the wife and the young man come there with reference to the car. He said yes. Then he said after he talked to Wardell.

THE COURT. Of course there is patent inconsistency between that statement and the statement that he previously made that the car was not in the garage so far as he knew from the time he talked to Wardell on the 13th of September and the rest of the month of September. It could not have been after that if the car was not in there after the 13th as he testified. 10

MR. D'ALOIA. That is what I would like to have the Prosecutor clear up if he can. 20

MR. CONLON. I will take care of my case. The jury understand.

Q What I want to know, Davis, is this: Do you remember the occasion upon which Mrs. Sgro and this young man took Sgro's car out of your garage? Do you?

A I know of an occasion that happened on that, but I couldn't say just when it was.

Q And did you see the car after that? 30

A Well, there is something I couldn't say because there was so many of them over there.

BY THE COURT.

Q How many cars have you in this garage?

A About 60 or more besides a few more that goes in and out during the day.

BY MR. CONLON.

Q You knew what Wardell, was there for, didn't you, on the 13th? 40

*James Davis, Direct.*

A What was that? Around the first time that he was looking for me?

BY THE COURT.

Q The first time that he was there.

10

A No, I didn't know for a week.

BY MR. CONLON.

Q Didn't he tell you?

A No. I didn't ask him. That is something I didn't want—

Q What?

A He may ask me and tell me to mind my own business. I don't generally ask them. The place is open.

20

Q Did he talk to you?

A Yes, sure.

Q What else did he do besides talk to you?

A Looked around the place, see if it was in there.

Q And was it there?

A No.

Q Was it in there after?

30

A That is the time that I am doubtful. I don't know just exactly when that trouble started, when his wife called to take the car out. This is the thing that I haven't got no recollection of, but that happened, though, but when it happened, that is something I don't know.

Q Would you now say that it happened before or after Wardell came over there looking for the car?

A That is something that I couldn't answer right.

Q You don't know?

A No, I don't know.

40

Q You mean to say that the car was not in

*James Davis, Cross.*

the garage for at least a month after Wardell came looking for it; is that right?

A Not to my recollection it was not.

Q When did you as a matter of fact see that car again?

A Probably a month or so afterward.

Q Well, now, can't you fix it any closer than that? 10

A Well, three days before he got locked up, whenever that was.

Q Do you know when he was locked up, or what month it was?

A I don't think I know that. It was quite a while afterwards.

Q Would you say it was a month or more than a month or two months or three months or how long? 20

A It was sometime in the next month, but when it was I don't know the date or anything about it.

Q Sometime in October, is that what you mean?

A Yes, that would be sometime in October.

Q Where did you see the car then?

A Brought it in the garage.

Q Who brought it in?

A He did. 30

Q Sgro?

A Yes.

*CROSS EXAMINATION* by Mr. D'Aloia.

Q How many cars did he have, do you know, Sgro?

A Two.

Q What was the other car?

A A Dodge.

Q What model and body? 40

A Dodge coupe.

*James Davis, Redirect.*

*REDIRECT EXAMINATION* by Mr. Conlon.

Q Mr. Davis, is this your record book of your garage?

A Yes.

10 Q Will you just look at it and tell me whether you had a charge against Sgro for the month of September?

A Whether I had a charge against him?

Q Yes.

A Yes, he paid me for that month.

Q For September?

A Yes.

Q When did he pay you for that?

A 9th month, 3rd day.

Q That is the 3rd of September, is that right?

20 A 9th month, yes.

Q Did you have any charge against him in the month of October?

A No.

Q Does that refresh your recollection at all as to whether or not the car was in there in October?

A Well, it wasn't.

Q It wasn't in there in October?

A No.

30 Q And you have a charge for him in the month of November, have you not?

A Yes. He was in there and paid me on the 10th.

Q 10th of November. Now, does that refresh your recollection as to whether or not this car in the garage at any time during the month of October?

A Well, it could have been in there at night, but I never saw it.

40

*James Davis, Recross.*

Q I don't mean at night. I mean from what you know about it.

A As far as I know, no, it wasn't in there.

*RECROSS EXAMINATION* by Mr. D'Aloia.

Q Could it have been in there between the 13th of September and the 30th? 10

A Well, see, I close the place up at eleven o'clock at night.

Q I know you did. Could it have been there? From this record you say the month of September the charge was paid.

A It would be a very hard job for me to answer that yes or no because I close up there at eleven o'clock at night, and I don't open up till eight o'clock. A man could come in late at night and stay till morning. That is quite a few hours. 20

Q Now, this visit by his wife, when the car was gotten out of there, and the young man drove it, would you say that was after the 13th of September?

A That is something I could not answer.

Q Is it possible that it was?

A I couldn't say yes or no.

Q You won't swear that the car wasn't in your garage between the 13th of September and the 30th of September, would you? 30

A No, sir, I would not.

Q You won't swear that it wasn't in the garage at some time during the night during October, would you?

A No, sir, I would not.

*REDIRECT EXAMINATION* by Mr. Conlon.

Q Would you swear that you saw it or did not see it after the visit by Sergeant Wardell the next month? 40

*James, Davis, Recross.*

A I wouldn't say a month, no.

Q Well, for how long would you say?

A Well, I couldn't tell you the dates.

Q Well, Davis, tell us something. About how long was it after Sergeant Wardell's visit that you next saw Sgro's car?

10 A Well, what date was Sergeant Wardell's visit?

Q It doesn't make any difference what date.

A Well, I have to get an idea.

## BY THE COURT.

Q I will tell you what date it was. He testified that it was the 13th of September that he saw you first. Now, how long after that was it that you saw this car?

20 A Well, the first time I saw it after that was two days before he got locked up.

Q That was the first time you saw the car after the 13th of September, is that right?

A Yes.

*RECROSS EXAMINATION* by Mr. D'Aloia.

Q And you won't swear that it wasn't in there during the balance of the month of September after the 13th, would you?

30 A No, sir.

EUGENE C. BUERLE, sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

Q You are a member of the Newark Police Department?

A Yes, sir.

Q To what duty ~~WERE~~<sup>WERE</sup> you assigned on the 12th of September, 1930?

40 A Reserve duty in the Second Precinct.

*Eugene C. Buerle, Direct.*

Q And did you respond to a call on that morning?

A I did.

Q Where did you go?

A I went to 53-7th Avenue.

Q Did you find anything there?

A I found a man lying on his stomach. He had been shot. 10

Q Did you search in the vicinity there?

A I did. I took a bullet out of the woodwork in front of the store and found a flattened bullet that had hit a slab there.

Q Can you show us in the picture here where you picked the bullet out?

A I picked the bullet out of this woodwork here (indicating).

Q Make a circle there where you picked the bullet. 20

A (Witness marks.)

MR. CONLON. The witness wants to correct his answer. I have shown him a picture with only half of the store and it was the wrong half.

Q Can you see the there, officer, where you picked out this bullet?

A On the left side of the store.

Q This is the grocery store here. 30

A On the left side.

Q On the left side of the door?

A Yes.

Q So you were right the first time.

A All right.

Q And is that the bullet or the piece of the bullet that you picked out of there?

A I never marked them.

Q What did you do with them?

A I gave them to my captain. 40

*Eugene C. Buerle, Direct.*

Q Captain Quinn?

A Yes.

(Marked S-14 for identification.)

10 MR. CONLON. It is admitted on behalf of the defendant that if Captain Quinn was here he would testify he received the pieces of the bullet.

THE COURT. Any objection to their being marked in evidence?

MR. D'ALOIA. Yes, sir, because they have no connection with the defendant.

THE COURT. The objection is overruled.

20 Defendant's counsel prays an exception to this ruling of the Court.  
Exception allowed; let it be sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,  
Judge.

THE COURT. Mark them in evidence.  
(The same are marked Exhibit S-4.)

30 THE COURT. You are willing to waive the proof on Captain Quinn's part?

MR. D'ALOIA. I am willing to admit if Captain Quinn were brought here as a witness he would testify.

HE COURT. Your objection only goes to their relevancy?

MR. D'ALOIA. Yes, sir.

40

*Raffaele Capodanno, Direct.*

CROSS EXAMINATION WAIVED.

RAFFAELE CAPODANNO, sworn in behalf of the State.

DIRECT EXAMINATION by Mr. Conlon.

Q You are a member of the <sup>NEWARK</sup> ~~NEWARK~~ Police Department? 10

A Yes.

Q Attached to Headquarters?

A Yes.

Q Working out of the Detective Bureau?

A Yes.

Q I show you S-12 for identification and ask you if you wrote that up.

A I did.

Q And the signatures on there are the signatures of Gabriel Contaldi? 20

A Yes.

Q And the other signatures are of Sergeant Conlon?

A And Joseph Coccozza and my signature, Fred Trautwein and Simon Loeffler.

Q And they were all present?

A Yes.

Q Will you kindly tell the Court and jury the procedure you followed in taking that statement? 30

MR. D'ALOIA. I object. There is only one purpose that that was allowed by the Court when the Prosecutor pleaded surprise. Now, we cannot be held by a conversation with a police officer examined not under oath.

THE COURT. Well, it is not offered for establishing anything excepting variation between the testimony of the witness by which the witness was surprised. 40

*Raffaele Capodanno, Direct.*

MR. CONLON. Yes. He said he did not remember what he said.

10 MR. D'ALOIA. Well, it is in the statement. If your Honor admits the statement, there they are. I say the function of that document is limited and it is a crucial point in this case. Your Honor can allow that to neutralize the testimony they think is unfavorable.

THE COURT. Well, I suppose if they can ask him orally they can as well produce the statement which varies in some respect from his testimony here.

20 MR. D'ALOIA. Well, isn't your Honor allowing the statement for that purpose and isn't all the phraseology included there, including the signature?

MR. CONLON. I do not intend to ask this witness to repeat the conversation. I simply want him to testify in the manner in which the statement was taken.

THE COURT. Yes, and then offer the statement to show what you contend is the variation between his oral testimony and the statement.

MR. CONLON. Yes, sir.

30 MR. D'ALOIA. I say that this is absolutely unnecessary.

THE COURT. You mean the method?

MR. D'ALOIA. Yes, sir. I do not say your Honor cannot admit the statement and at the proper time the jury will receive the effect of the evidence.

THE COURT. Is the statement offered?

MR. CONLON. The statement is offered.

40 THE COURT. It may be admitted and marked in evidence.

*Fred Trautwein, recalled, Direct.*

(The same is marked Exhibit S-12.)

MR. D'ALOIA. At this juncture for the purpose of the record the Court is requested to instruct the jury that no part of the statement which is used in the examination of the witness Contaldi is evidential as against this defendant, that the object of allowing the examination on the part of the Prosecutor was to sponge from the record whatever testimony the witness Contaldi had given, which the Prosecutor thought was unfavorable to the State. It has no evidential value whatsoever as tending to prove the guilt of the defendant.

10

THE COURT. That motion is denied presently. The Court will instruct the jury at what it considers the proper time. You may have an exception.

20

Let it be sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,  
Judge.

FRED TRAUTWEIN, recalled in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

30

Q Where was it that you arrested Sgro?

A At 420 North 3rd street, East Newark.

Q Where did you take him?

A Took him to the East Newark Police Department.

Q And how did you take him there?

A He was taken there by Detective Loeffler.

I was not there.

Q Well, did you see his car?

40

*Fred Trautwein, recalled, Direct.*

A Yes.

Q Was he in his car?

A He was not in the car when I saw it.

Q Well, where did you see his car?

A I saw his car in front of his house.

10 Q And is that a picture of his car?

A Yes.

MR. CONLON. I offer it in evidence.

MR. D'ALOIA. I object.

THE COURT. Objection overruled.

20 MR. D'ALOIA. The witness Faber looked at those photographs and he could not say that was the car he saw on the day in question. He looked at the photographs and said, "I cannot tell." Now, therefore, the car is not identified by this witness the 27th of October, or whatever date the man was taken into custody, I do not think the pictures are admissible. The witness Faber looked at those pictures and said, "I cannot tell if this is the car I saw."

THE COURT. They have a likeness.

MR. D'ALOIA. Yes, that makes the picture all the more inadmissible.

30 MR. CONLON. Well, I am going to connect it up. I am going to prove this is the car the witness saw in the garage and I am going to prove it is the car the defendant admitted he was in at the time of the commission of the crime.

40 THE COURT. Well, I am inclined presently to hold to Judge D'Aloia's view. The testimony of the witness Faber being so limited under the circumstances, and to sustain the objection presently.

*Joseph Cocozza, Direct.*

JOSEPH COCCOZZA, sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

You are a detective attached to the Prosecutor's office?

A I am.

10

Q Did you together with Detective Trautwein of headquarters take a statement of the defendant in this case?

A I did.

Q I show you Exhibit S-13 for identification and ask you if that is the statement you took.

A Yes, sir.

Q And that was taken where?

A At police headquarters.

Q When?

20

A On the 28th of October.

Q 1930?

A 1930, yes, sir.

Q Will you tell us the procedure that was following in taking the statement?

A The defendant was asked questions by Detective Trautwein and myself and it was later reduced to writing, and as the defendant spoke Detective Trautwein would write the story on this paper, and after the statement was taken the statement was read to the defendant and it was given to him to read, and then the defendant signed it.

30

CR. CONLON. I offer it in evidence.

MR. D'ALOIA. May I cross examine at this moment?

THE COURT. Yes.

40

*Joseph Coccozza, Cross.*

*CROSS EXAMINATION* by Mr. D'Aloia.

Q Did he say this in English?

A Yes, sir. We were speaking to him in English.

10 Q Well, he didn't say what is written here, did he?

A He did.

Q As it is written here?

A Yes, sir.

Q Did he answer questions?

A We asked him questions prior to reducing it to writing.

Q Well, none of the questions is here.

A No.

20 Q This is a narrative form in very good English, very grammatical?

A He spoke very good English and grammatical.

Q He did?

A He did.

Q Did he write his name in your presence?

A Yes, sir.

Q Did you ask him to write English?

A We asked him to write his name.

Q Could he write English.

A He wrote his name.

30 Q Did you ask him to write any part of this statement?

A No, we did not.

Q This is all in Trautwein's handwriting?

A Yes.

Q How long did it take you to get this?

A Well, you mean the statement in writing or the entire?

Q This statement.

40 A That statement, I should say about two hours.

Q Two hours. This statement in writing I am talking about.

*Joseph Coccozza, Cross.*

A Yes.

Q How long did you talk to him?

A I spoke to him about an hour and a half or two hours.

Q So your entire time was about four hours?

A Well, we spoke to him and then we would have other things to do and we would have to speak to him again. 10

Q What time did you begin?

A I judge right after two o'clock roll call.

Q You saw me down there about one o'clock, didn't you?

A One o'clock.

Q Yes.

A Yes.

Q I saw the defendant, didn't I?

A You did for a moment. 20

Q For a moment. You heard what I said to him?

A I did.

MR. CONLON. I object to this. What has that got to do with it?

MR. D'ALOIA. We will connect it up just the same as you have been promising.

MR. CONLON. I object to it on the ground it is not cross examination, your Honor. 30

THE COURT. Objection sustained.

Q You heard me say something to the defendant, didn't you?

MR. CONLON. I object to what Judge D'Aloia said to the defendant.

THE COURT. Sustain the objection.

Q Anyhow you saw me there.

A Yes.

Q And I saw the defendant? 40

*Joseph Cocozza, Cross.*

A Yes, with my permission.

Q What is that?

A With my permission.

10 Q With your permission of course. I couldn't go without your permission. Now, what happened after I went away, down there, do you know?

A We waited. We had lunch, I believe, after you left, and we came back at two o'clock and we talked to him.

Q Did you talk to him for that hour and a half?

A After two o'clock, after roll call, I guess probably it was half past two.

20 Q You talked to him about an hour and a half; it was about four o'clock when this was taken, this statement?

A About four.

Q And then it was finished about six, wasn't it?

A Just about six because I went out to supper right after, yes.

Q Nobody laid any hands on him?

A No, sir.

Q There wasn't any difficulty in getting this, was there?

A No, no difficulty.

30 Q It came right out voluntarily?

A Yes. He talked to us voluntarily and then we reduced it to writing.

Q Are you sure that there was not any force used to get any part of this?

A I am positive.

Q You did not speak any Italian to him at all?

A No, I spoke every word in English.

Q Everything was in English and everything that Trautwein said to him was in English too?

40 A Yes, sir.

*Joseph Coccozza, Cross.*

Q What?

A It was.

Q He wasn't taken into any particular room when he refused to admit that a certain car was being used, was he?

A He did not refuse to admit anything. He talked— 10

Q What?

A He did not refuse to admit anything.

Q You can't tell us why it took you three or four hours to get that page and a half written out?

A Yes. He stopped to think every once in a while and that delayed us.

Q And was there anything done to jog up his memory a bit?

A No, sir. 20

Q So after four hours of work that was the product, that statement?

A Yes, sir.

Q And he signed it?

A He did.

Q Did you tell us he read it?

A Yes, it was given to him to read.

Q Did he tell you that he could read English?

A He was very slow in reading it.

Q What is that? 30

A He was very, very slow in reading it.

Q Very slow in reading?

A Yes.

Q Was he reading it out loud?

A He was.

Q Did he pronounce those words that are written in there?

A Well, he didn't pronounce them in very good English.

Q Do you know whether he understood them? 40

*Joseph Cocozza, Cross.*

A I don't know whether he understood them. In fact, it was explained to him in Italian after he read it.

Q Now, no where in that statement is there an admission that he shot Balducci, is there?

10 MR. CONLON. I object to that. The statement speaks for itself.

THE COURT. Sustain the objection.

MR. D'ALOIA. Are you through with the direct examination, Mr. Conlon?

MR. CONLON. I have offered the statement.

MR. D'ALOIA. Well, I was cross examining on the statement.

20 MR. CONLON. The statement speaks for itself.

MR. D'ALOIA. I object to the statement, if your Honor please, because it does not contain anything that might be said to be incriminating.

THE COURT. Overrule the objection. Defendant's counsel prays an exception to this ruling of the Court.

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

30 DANIEL J. BRENNAN,  
Judge.

(The paper referred to, previously marked Exhibit S-13 for identification, is received in evidence and marked Exhibit S-13.)

MR. CONLON. That is all.

CROSS EXAMINATION (Continuing) by Mr. D'Aloia.

40 Q Now, when this statement was taken that

*Joseph Coccozza, Cross.*

has just been admitted, how many of the men were there besides yourself and Trautwein?

A While the statement was being taken Detective Trautwein and myself were in the room.

Q During the entire four hours nobody else was there?

A Yes. Detective Laufer came in and out. 10

Q What is that?

A Detective Laufer came in and out of the room.

Q Who else?

A That is all that came in and out.

Q How many witnesses signed it?

A Sergeant Conlon.

Q That is one.

A Detective Laufer.

Q Two. 20

A Detective Trautwein and myself.

Q Four. Was Sergeant Conlon there all the time?

A No.

Q He wasn't? He was in and out, wasn't he?

A He came in several times. These other names appear on here as witnesses to the signature of Mr. Sgro.

Q How many are there?

A There is two on here. 30

Q Isn't Capodano's signature there?

A No, sir.

Q He wasn't there, was he?

A No, sir.

MR. CONLON. I offer in evidence a certified copy of the car license issued by the Commissioner of Motor Vehicles of the State of New Jersey to George Sgro for Hupmobile automobile, license for the year

40

*Simon B. Laufer, Direct.*

1930, which was subsequently transferred covering the passenger car of Nash manufacture, license No. H-41017.

10 MR. D'ALOIA. I object to that, if your Honor please. That is absolutely immaterial.

THE COURT. Objection overruled.

MR. D'ALOIA. It is not the license number that any person has testified to so far and there is not anything there that in any way connects this defendant with the crime laid in the indictment.

20 THE COURT. The objection is overruled.

Defendant's counsel prays an exception to this ruling of the Court.

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

DANIEL J. BRENNAN,  
Judge.

SIMON B. LAUFER, sworn in behalf of the State.

*DIRECT EXAMINATION* by Mr. Conlon.

30 Q Officer Laufer, you were present when the defendant Sgro was arrested?

A I was.

Q Where was he arrested?

A 420 North 3rd street, East Newark.

Q Was he on the street or in his home or in his car?

A He was in his car at the time.

Q And is that a picture of the car he was in (handing witness picture)?

40 A That is the car.

*Simon B. Laufer, Direct.*

Q And who took him to Headquarters?

A I did.

Q In your car?

A In our car.

Q And what was done with this car?

A Trautwein drove that car.

Q To Headquarters?

10

A Yes.

Q And it was in front of Headquarters these pictures were taken?

A Yes.

MR. CONLON. I offer the pictures in evidence.

MR. D'ALOIA. I object to the picture.

THE COURT. Overrule the objection.

MR. D'ALOIA. The same ground offered before.

20

THE COURT. The same ruling and you may have an exception.

Let it be sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,  
Judge.

CROSS EXAMINATION WAIVED.

(Mr. Conlon read Gabriel Contaldi's statement to the jury.)

30

MR. D'ALOIA. I ask that the Court instruct the jury that that statement as read by the Prosecutor is not evidential against the defendant.

THE COURT. The Court has indicated it will instruct the jury what it thinks about that statement at the proper time.

MR. D'ALOIA. Well, I submit this is the proper time.

40

*Motion for Direction.*

THE COURT. Well, I disagree with you.

Defendant's counsel prays an exception to this ruling of the Court.

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

DANIEL J. BRENNAN,

Judge.

(Mr. Conlon reads the statement of the defendant to the jury.)

## STATE RESTS.

20 MR. D'ALOIA. Your Honor, I made a request of the Prosecutor at this juncture I was going to ask for a fifteen minute recess, if there is no objection to it and in the absence of the jury I will argue.

THE COURT. The jury may be recessed.

(The jury retires.)

(The following motion is made in the Court's chambers:)

30 MR. D'ALOIA. I move for the direction of a verdict of acquittal upon the ground that the evidence has not in any way connected the defendant with the fatal shooting of one Louis Balducci on the day set in the indictment, September 12, 1930. The evidence at best indicates that the shots were fired, one of which struck the deceased, but there is no evidence tending to show that the shots were fired by this defendant. The defendant is not identified by any of the witnesses for the State and the only witness that we have

40

*Motion for Direction.*

as to where the shots are alleged to have come from, or, strike it out— and the only reference that appears as to where the shots came from is contained in an alleged statement made by the witness Gabriel Contaldi to the Police at Police Headquarters in the absence of the defendant and admitted in evidence by the Court after the Prosecutor had pleaded surprise. The said statement and its contents are not of any evidential value whatsoever. Eliminating the statement, as must be done under the law and the ruling ~~in~~ *in* 10

~~State against D'Adame~~ "State against D'Adame", the purpose of its admission only to neutralize what the Prosecutor believes to be testimony given by the witness, the case is absolutely void of any evidence whatsoever connecting the defendant with the shooting of Balducci. The statement admitted in evidence— offered and admitted in evidence, rather, by the State obtained from the defendant by the police is not in any way contradicted and does not contain any incriminating fact or circumstance. At best he was sometime before 10:30 A. M. on Seventh avenue and had a talk with the deceased and drove away some time before any shooting occurred. Upon all of the facts and circumstances adduced up to this point I respectfully ask the Court to grant the motion for the direction of a verdict of acquittal. 20 30

THE COURT. What do you think, Mr. Conlon, the State has established thus far connecting this defendant with the commis- 40

*Motion for Direction.*

sion of the crime charged in the indictment?

10 MR. CONLON. Well, I think the State has proved that the deceased owed the defendant some money—had owed it to him for some time, that the defendant saw the deceased's car in front of this grocery store, called him out across the street, and they there had an argument, that the deceased turned from the car and was walking on a direct line from the car to Meyers' store and he was shot in the middle of the back and another bullet that missed him hit Meyers' store, which was on a direct line between the car, the man to whom he had been talking and himself; 20 that the evidence is that Balducci was in the store for some twenty minutes or half an hour and during this time he did not leave, and the only time he left was to go across the street to talk to a man in a car, and the defendant admits he stopped at Meyers' store and called Balducci out and there he talked to him and, therefore, the testimony is that Sgro was the only man Balducci talked to. He must have 30 been the man in the car at the time the shots were fired. In addition to that we have the testimony of Faber that he saw the car leave the scene not before the shooting but directly at the time of the shooting and testified to four of the five license numbers of the car, and there is plenty of evidence that the defendant's car was there, that the shots came from the defendant's car, and the defendant's own 40

*Opening for Defendant.*

admission that he was in the car at that spot leads to the conclusion that the defendant was the only man the deceased talked to. I do not think it is not even a jury question, but it is a strong one for the defendant.

THE COURT. I will deny the motion and you may have an exception.

Let it be sealed and it is signed and sealed accordingly.

10

DANIEL J. BRENNAN,  
Judge.

(Mr. D'Aloia opens in behalf of defendant as follows:)

20

MR. D'ALOIA. May it please the Court, Mr. Foreman and gentlemen of the jury. The defense in this case is not going to be very long. In the first place, I am going to be frank with you gentlemen of this jury, I am not going to put the defendant on the stand. He cannot add or take away from the statement which he made to the police when they took him into custody down at police headquarters. In the main that statement is true.

30

Now, I am going to put in this defense. He did not shoot his friend. We are going to show you a dying declaration. We are going to prove to you a dying declaration made by the deceased on the 8th day of November, 1930, at the time he believed he was dying. You will recall that yesterday when I had Mr. Blackburn on the stand I had him look at the

40

*Opening for Defendant.*

record of his hospital. I had him turn to the 8th of November, when the condition of the deceased was such that he ordered transfusions that day.

10 I am going to show you that on that day the wife of this defendant had been visiting the hospital regularly, and on that day the deceased told her and said, "I am going to die. I know I am going to die. I don't think I will last out the day. Will you send here your lawyer and I want to make a statement, because I am sorry for George. The police brought him here a week ago and I know he is arrested for shooting me, but he didn't shoot me."

20 She left the hospital post-haste, went down to my office. I was at the Pennsylvania-Notre Dame game, not being in Newark at the time, but Mr. Judge, my clerk, and Mr. Garramone, who spoke Italian, were there, and the two of them went to the hospital. There they were admitted to this room where the deceased was, and they will tell you that he told them first that he thought he was going to die that day and that he was waiting for a priest, and that he felt that it was his duty to tell them that George Sgro, his friend, had not shot him. He said that George Sgro had driven away. They had a talk. He had gone away, that he had gone up on the sidewalk and he was shot by a man whom he did not know.

30

40 Now, when that dying declaration is testified to by these two clerks, having

*Opening for Defendant.*

been made by the deceased, we are going to say to you twelve men that on all the evidence we are entitled to a verdict of not guilty.

(Adjourned to Wednesday, April 22,  
1931, at ten o'clock, a. m.)

10

20

30

40

*Maria Sgro, Direct.*

ESSEX COUNTY COURT OF OYER  
AND TERMINER.

Wednesday, April 22, 1931.

10	THE STATE OF NEW JERSEY,  —vs.—  GEORGE SGRO,	} On Indictment No. 148  for MURDER.
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Before Hon. Daniel J. Brennan, Judge.

**THIRD DAY.**

20

Continued pursuant to adjournment.  
Present, counsel as before stated.

MARIA SGRO, sworn in behalf of defendant.  
(The testimony of this witness is taken  
through the official Italian interpreter.)

*DIRECT EXAMINATION* by Mr. D'Aloia.

Q Do you remember the 8th of November,  
1930?

30

A Yes.

Q What day of the week was it?

A Saturday.

Q Did you go to St. Michael's Hospital on  
that day?

A Yes.

Q Whom did you see there?

A Louis Balducci.

Q Did you speak to him?

A Yes.

40

Q What did he say to you?

*Maria Sgro, Direct.*

MR. CONLON. I object to that. I do not see that that comes within the exception to the hearsay rule.

THE COURT. Sustain the objection.

MR. D'ALOIA. If your Honor please, we are laying a foundation for what the condition is. A man's statement will indicate exactly whether it is admissible or not admissible. 10

THE COURT. If that is the purpose then I am inclined to rule otherwise. If the purpose is to lay a foundation as to his condition and his knowledge as to whether he was in extremis.

MR. D'ALOIA. That is the point exactly.

MR. CONLON. If it is part of a dying declaration I have no objection. 20

THE COURT. If it is preliminary to an actual declaration I think under the circumstances it is admissible.

MR. D'ALOIA. That is the point if your Honor please.

THE COURT. For that purpose I will permit it. It seems to me, Mr. Conlon, one of the accompaniments of course must be an establishment of the man's condition, and on that theory I am inclined to admit it. 30

MR. CONLON. I think that if the question were confined as to the statement as to his condition, to confine it in some way

THE COURT. I think it would be limited, of course, strictly.

MR. D'ALOIA. I will do that.

Q What did he say to you about his condition? 40

*Maria Sgro, Direct.*

A He told me that he felt as if he was going to die.

Q Well, what else did he say, if anything?

A That he was sorry that George Sgro—

MR. CONLON. I object to that.

10 Q Wait a minute about that. What else did he say about his condition?

A He said that he felt so bad that day that he felt like dying.

MR. D'ALOIA. "He thought he was going to die."

A. (Continuing) He felt that he was going to die and that he had told the sister that he wanted a priest so that he could confess something.

20 MR. D'ALOIA. Then he told you something else, didn't he?"

MR. CONLON. I object to that. The answer yes or no ought to be sufficient to answer that.

THE COURT. Answer yes or no. Did he tell you something else?

A Yes.

30 Q After you got the information from him in a further conversation, where did you go?

A I went to the office of the lawyer.

Q You mean my office?

A Yes.

Q Did you see anyone there?

A I saw there two young men with the lawyer.

MR. D'ALOIA. Mr. Judge.

(A man stands up in the court room.)

Q Did you see that gentleman there?

A Yes.

40 MR. D'ALOIA. Mr. Garramone.

*Maria Sgro, Cross.*

(A man stands up in the court room.)

Q Did you see that gentleman there?

A Yes.

Q Did you talk to them?

A Yes. I told them to come with me to the hospital.

Q Well, did you go to the hospital with them? 10

A Yes, I took them to the hospital.

Q Where did you take them when you took them to the hospital?

A To the room where Louis Balducci was.

Q And did you do anything there when they were there in the room?

A I presented the two men to Louis Balducci.

Q Then what did you say?

A I told him to tell them what he wanted to say. 20

Q And did you stay there or did you go away?

A I went away because my children were alone at my home.

Q What time was it when you left the hospital, left these two men there?

A It was about ten minutes after two.

Q In the afternoon?

A Yes.

*CROSS EXAMINATION* by Mr. Conlon. 30

Q How many times were you up to see Balducci in the hospital?

A I went often. I went always.

Q When was the first time you went up?

A Four days after he was shot.

Q How did you learn that he was there?

MR. D'ALOIA. I object to that, if your Honor please. That is not proper cross examination. 40

*Maria Sgro, Cross.*

THE COURT. Sustain the objection.

Q Well, you went up to see him in St. Michael's hospital four days after he was shot?

MR. D'ALOIA. I object to that. Not proper cross examination.

10 THE COURT. Sustain the objection.

Q How often did you go up after he was shot?

MR. D'ALOIA. That is objected to on the same ground.

A Two or three times a week.

Q And during the two months after Balducci was shot, where was your husband?

MR. D'ALOIA. I object to that question.

20 THE COURT. Sustain the objection.

Q Did Sgro ever tell you before the 8th of November that he was going to die—Balducci?

MR. D'ALOIA. I object to that. That is not proper cross examination.

THE COURT. I will permit it. His actual condition at the time.

A Yes.

Q When was the first time he told you that he was going to die?

30 A November 8th.

Q That was the first time?

A Yes.

Q Didn't he ever tell you before that that he was going to die?

MR. D'ALOIA. That is objected to on the ground it is not proper cross examination.

THE COURT. Sustain the objection.

40 Q Did you talk to Balducci on the other occasions you went to see him?

*Maria Sgro, Cross.*

MR. D'ALOIA. That is objected to on the ground it is not proper cross examination.

THE COURT. How is that material?

MR. CONLON. I think it is material how it came to happen.

THE COURT. Overrule the objection. You may have an exception.

Let it be sealed and it is signed and sealed accordingly.

10

DANIEL J. BRENNAN,  
Judge.

A No.

Q You never talked to him before the 8th of November?

A No. I only went there to visit him.

Q And when you went there to visit him, did you talk to him?

20

MR. D'ALOIA. The same objection.

THE COURT. The same ruling. You may have an exception.

Let it be sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,  
Judge.

30

A Yes.

Q Each time you went up there to see him you talked to him?

A Yes.

Q And you went over there two or three weeks from the middle of September until the 8th of November, is that right?

A Yes.

Q Now, on any other occasion did you go

40

*Maria Sgro, Cross.*

down to your lawyer and ask him to go up and talk to Balducci?

MR. D'ALOIA. That is objected to.

THE COURT. Sustain the objection.

10 MR. CONLON. Your Honor, this witness is an interested witness.

MR. D'ALOIA. I do not think we ought to have any speeches of the Prosecutor. My limited direct examination was only limited to one day to establish one particular fact.

Q When you went down to Judge D'Aloia's office and saw his clerk, did you tell them what you expected Balducci to say when they went to the hospital?

20 A No.

Q How many children do you have?

MR. D'ALOIA. That is objected to. Not proper cross examination.

THE COURT. Sustain the objection.

MR. CONLON. She has testified on direct examination that she did not stay in the hospital because she had to go and take care of her children.

30 MR. D'ALOIA. All right. I will withdraw the objection.

A Four.

Q How old is the oldest?

MR. D'ALOIA. That is objected to.

A Thirteen years.

MR. D'ALOIA. And the youngest what?

40 WITNESS. Four years.

*Charles J. Garramone, Direct.*

CHARLES J. GARRAMONE, sworn in behalf of  
the defendant.

*DIRECT EXAMINATION* by Mr. D'Aloia.

Q On November 8, 1930, where were you employed?

A I was employed in the office of J. Victor D'Aloia, 738 Broad street, Newark, New Jersey. 10

Q As a law clerk?

A As a law clerk, yes.

Q Do you remember that date?

A I certainly do remember that date.

Q Did you see this witness who was on the stand at the office that day?

A I did.

Q What time was it?...

A About one o'clock. Ten after one. 20

Q And did she tell you what she wanted?

A She did.

Q What did she say?

A She said, "I just come from St. Michael's Hospital and I saw a Mr. Balducci there. He wishes that the lawyer, Mr. D'Aloia come to the hospital."

Q What else did she say, if anything?

A And she said that Mr. Balducci wanted to make a statement and wanted somebody either the lawyer or somebody connected with the office, to go to the hospital to make the statement. 30

Q Who was in the office at the time with you?

A. Mr. John Judge, the other clerk.

Q Do you know where I was?

A You were at the football game in Philadelphia. Notre Dame against Philadelphia.

Q Did you go to the hospital?

A I did.

Q Who accompanied you?

A Mr. John Judge. 40

*Charles J. Garramone, Direct.*

- Q What time did you go to the hospital?  
 A About two o'clock.
- Q Where did the witness take you?  
 A The witness took us one flight upstairs. I would call that the second floor, in the corridor to the left, and the last room to the left.
- 10 Q What was said there?  
 A Mrs. Sgro introduced both of us to Mr. Balducci.
- Q Where was Mr. Balducci when you saw him?  
 A He was in bed.
- Q And how did he look?  
 A To me he looked as though he was going to die any minute.
- Q After you were introduced to him what did she say in introducing him to you?
- 20 A She said, "these are the two gentlemen from Judge D'Aloia's office and what you want to say you can say to them and I am going away—going home," and she left.
- Q Did she give any reason for going home?  
 A She said she was going home to see her children—take care of her children.
- Q After she had gone, did you speak to Balducci?  
 A I did.
- 30 Q What did you say to him and what did he say to you?  
 A I said, "How do you do, Mr. Balducci?"  
 He said, "Hello."  
 I said, "We are from Judge D'Aloia's office, as you know." And I said, "How do you feel?"  
 And he said, "I am dying. I don't think I will last the afternoon." He says, "I have already asked for a priest. I am waiting for a priest."  
 Then I said, "Well, what else do you wish to
- 40 tell us?"

*Charles J. Garramone, Direct.*

And he said, "The police arrested my friend Sgro. The police have brought Sgro before me last week and asked me whether this was the man that shot me and I told the police that he wasn't the man who shot me. I positively stated that he is not the man who shot me, and I wish before I die to have a clear conscience so that this man who was arrested for the shooting will not be placed in jail or in prison, and I state these facts to you, I will now die with a clear conscience."

10

Q Did he say anything as to who shot him?

A Then I asked him, I said, "Well, do you know who shot you?" and he says, "I was shot by a man whom I do not know."

Q Did he tell you anything about when he was shot?

20

A He said, "I was shot while I was talking to a man, seated in an automobile that I was talking to—I was shot on that day. I was shot by a man."

And I said to him, well, I said, "Do you know who shot you?"

He says, "No. I was shot by a man whom I do not know."

Q What did he say with reference to the presence of Sgro there at the time he was shot?

30

A He said that on September 12th, I believe it was, on the day of the shooting anyhow, "I was talking to Mr. Sgro. We were talking about some matters about 10 or 15 minutes, and that after the conversation I says, 'Well, good-bye,' and he said, 'Good-bye.' Sgro drove away and sometime thereafter while I was on the sidewalk near the curb standing there I was shot, but that Sgro was not in the immediate neighborhood. He had driven away. It was sometime after that."

40

*Charles J. Garramone, Cross.*

I asked him, "About how long after Sgro had driven away were you shot?"

And he said to me, and to Mr. Judge, "About 10 or 15 minutes, might be about 10 minutes."

10 And I asked him, "Are you positively sure that Sgro did not shoot you?"

He said, he raised his hand like that, he says, "So help me God, Sgro didn't do it. He is innocent of this shooting."

*CROSS EXAMINATION* by Mr. Conlon.

Q Have you told us all of the conversation, Mr. Garramone?

A Yes, sir, I believe that is the full—

20 Q That is, what you testified to now was everything that was said by you or Mr. Judge or by Balducci?

A Excepting the last part when I said, when we got through with the conversation, I said, "Well, good-bye, Mr. Sgro, I wish"—

BY MR. D'ALOIA.

Q You mean Sgro or Balducci?

A Pardon me. I says, "Good-bye, Mr. Balducci. I wish that you would get better."

30 And he says, "No, no. I will see you in the next world." And that is how he spoke.

BY MR. CONLON.

Q Now, you have told us all of the conversation that was had in the St. Michael's Hospital on the 8th of November between you, Balducci and Mr. Judge?

A That is right, sir.

Q You are sure of that?

A Yes.

*Charles J. Garramone, Cross.*

Q How long have you been employed in Judge D'Aloia's office?

A About nine years.

Q And in what capacity?

A As a law clerk.

Q And you assist in the preparation of cases? 10

A Yes, sir.

Q And interview witnesses?

A Interview witnesses?

Q Yes.

A When I am sent out?

Q Yes.

A To get statements?

Q I mean, to do the ordinary—

A Law clerk work, yes.

Q Law clerk work. On the 8th of November Judge D'Aloia had represented Sgro for some 20 time, hadn't he?

A Yes, sir; he had.

Q Well, about how long would you say?

A I don't know.

Q Well, about how long?

A I don't know. That was the first intimation I had that we had a case in the office, a murder case by the name of Sgro. I didn't know anything about that case up until the time that Mrs. Sgro came to our office. 30

Q You mean Mrs. Sgro?

A Mrs. Sgro.

Q You mean that when she came into your office on the 8th of November, you did not know that such a case was in the office?

A No, sir.

Q You had never heard of the case?

A No, sir.

Q You had not read about it in the paper?

40

*Charles J. Garramone, Cross.*

A Well, I don't know, sir. I will say no. No, I did not.

Q And you didn't know that a man named Balducci had been shot?

A No, sir, I didn't know.

10 Q And that the police had been looking for a man named Sgro?

A No, sir, I didn't know that.

Q And you didn't know that when Sgro was finally arrested, that Judge D'Aloia made an application for bail for him?

A Made an application for bail?

Q Yes.

A I do not know whether he did or not. I did not know that.

20 Q You did not hear about that?

A No.

Q You had never heard about that?

A Matters are brought into his private office and clerks outside, we don't hear that.

Q I am asking you what you knew about it.

A No.

Q And you didn't know anything about this application for bail?

A No, sir.

30 Q Did you know whether or not Sgro was charged with any crime at that time?

A I didn't know anything about this case.

Q Never heard of it?

A Never heard of it.

Q Did you ask Balducci whether he had ever made a statement before different than the one he made to you?

A I did, and he says—

Q Now, just a minute.

A I did, yes, sir.

40

*Charles J. Garramone, Cross.*

MR. D'ALOIA. I think he ought to be allowed to answer.

MR. CONLON. He will answer. I will let him answer. Don't worry.

Q And you did ask him if he had ever made a statement contrary to the one he made to you; is that right? **10**

A Yes, sir, I did.

Q Now, I thought you had told me all of the conversation that you had with him.

A Pardon me?

Q I thought you told me a little while ago that you had already told us all of the conversation that you had with Balducci.

A Relative to the shooting.

Q I didn't ask you relative to the shooting. I asked you if you had related all of the conversation that was had in the hospital,, and you said yes. **20**

A Well, probably that just escaped my mind. I thought you had reference to the shooting itself.

Q I see. So you did ask him whether or not he had ever made a statement different than the one he was then making to you?

A He told me that himself.

Q And what did he tell you about that? **30**

A He told me that Mr. Sgro was presented to him by the police and asked to be identified whether this was the man that did the shooting, and he said, "No, positively no."

Q Now, that does not answer my question. I asked you if you asked him whether he had ever made a statement contrary to the statement that he made to you on the 8th of November.

A He said, "The statement that I am making to you now is the same statement that I told the **40**

*Charles J. Garramone, Cross.*

police, practically the same that I told the police.

Q Will you please answer my question? Did you on the 8th of November ask Balducci whether he had ever made a statement contrary to the statement he then made to you?

10 A Contrary?

Q Yes.

A No, I didn't ask him that.

Q At the time you went to the hospital you knew that between the time you talked to Mrs. Sgro and the time you got to the hospital, you learned, I suppose, that Judge D'Aloia did represent Sgro?

A Yes.

Q And that Sgro was charged with the shooting of this man in the hospital, didn't you?

20 A That is right.

Q Did you learn anything else about the case?

A No, sir, I did not.

Q From whom did you learn that?

A About what?

Q That Judge D'Aloia represented Sgro and that Sgro was charged with the shooting of Balducci.

30 A When Mrs. Sgro came into the office she asked for Judge D'Aloia. I said, "Judge D'Aloia is not in." I said, "What did you want from him?" She says, "Something very important." I says, "Do you wish"—

Q Now wait a minute. I don't want to cut you short, but you can answer my question.

A All right.

Q I want to know from whom you learned any facts about this case.

A From Mrs. Sgro.

40 Q And did she tell you that Judge D'Aloia represented her husband?

*Charles J. Garramone, Cross.*

A She did.

Q Did she tell you that her husband was charged with the shooting of Balducci?

A She did.

Q Did she tell you anything that Balducci had previously said with reference to the shooting? 10

A She did not.

Q She did not?

A She said that she wanted to make a statement to her husband's lawyer.

Q Didn't she tell you that Balducci, immediately upon this shooting, had said several times—

MR. D'ALOIA. I object to that question. Wait a minute. I object to that question, if your Honor please. The question here is not what Mrs. Sgro told this clerk down at my office. The question here, the only thing I brought out, was what the man at the hospital told this clerk. 20

THE COURT. He has gone into it rather extensively on examination. I am inclined to overrule the objection. I will so rule.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly. 30

DANIEL J. BRENNAN,  
Judge.

Q Didn't she tell you that Balducci immediately after the shooting and for several days after that had insisted that Sgro was the man that shot him?

MR. D'ALOIA. I object to that, if your Honor please, because that is not a fair question to put in this form before this 40

*Charles J. Garramone, Cross.*

10 jury. There is not any evidence that any such thing ever occurred so that Mrs. Sgro could know it and tell it to any of my clerks, and it is a wrongful assumption and it is an improper way of framing the question. There is no evidence in this case that any such condition of facts existed, either at the time of the shooting or immediately after the shooting.

MR. CONLON. Oh, yes there is, your Honor.

MR. D'ALOIA. No, there is not.

20 MR. CONLON. There is. There is evidence in the case by Lieutenant Kass and by the other police officers that they had a conversation with Balducci at St. Michael's Hospital and that as a result of that conversation they immediately went over to Harrison to arrest him.

30 THE COURT. Of course there is no direct evidence that he said to anybody at any time that this man shot him. The only thing we have in that connection is entirely inferential information, and it could not be otherwise in the posture of the testimony. If it were it would be hearsay. All that Lieutenant Kass testified, as I recall it, was that as a result of this conversation he communicated with, or caused to be communicated with, Harrison police headquarters. I will sustain the objection.

40 Q Well, Mr. Garramone, between the time that you talked to Mrs. Sgro and the time you went to the hospital did you make any effort by going

*Charles J. Garramone, Cross.*

through your office files or any other manner learning something about this case?

A No.

Q So that you could intelligently question this man?

A No.

Q You did not know anything about it? 10

A No.

Q Did you talk to Balducci in English or Italian?

A Both.

Q Well, now, in what language did he tell you the story about the shooting?

A In English.

Q Mr. Garramone, just one more question. I would like you to tell me what part of your conversation with Balducci was had in Italian? 20

A Everything that was said in English was spoken in Italian.

Q What do you mean by that?

A Well, the conversation I related on the witness stand now was related both in Italian and in English for the reason that Mr. Judge does not speak Italian and he spoke to me in Italian, so I had to speak it in English so he could understand.

Q Did Mr. Balducci talk English? 30

A Yes.

Q Why did you have him talk Italian?

A Because he spoke Italian first.

Q Well, he could speak English?

A Yes.

Q Well, why did you have him tell the story twice?

A So Mr. John Judge would know what he was talking about.

*John M. Judge, Direct.*

Q Well, why didn't you have him talk in English?

A Well, I do not know whether he spoke in Italian first or English, but it went that way.

Q What way?

10 A When he spoke in Italian I would have him speak it in English.

Q Well, did you interpret it for Mr. Judge?

A I certainly would not. He would say it in Italian and he would say it in English.

JOHN M. JUDGE, sworn in behalf of the defendant.

*DIRECT EXAMINATION* by Mr. D'Aloia.

Q On the 8th of November, 1930, were you a clerk in my office?

20 A Yes.

Q And at or about one o'clock that day did you see Mrs. Sgro?

A I did.

Q At the office?

A At the office.

Q Was Mr. Garramone there?

A Yes.

Q Do you remember what she said to you?

30 A She wanted to see you, Judge D'Aloia, and I called Mr. Garramone and she had some conversation with him in Italian, and he told me that she had been to St. Michael's Hospital and that she had seen Balducci up there and that he wanted the Judge,—Judge D'Aloia, to go up to see him.

Q Well, did you go anywhere with Garramone or Mrs. Sgro?

A Yes. Mrs. Sgro and Mr. Garramone and I went up to the hospital.

Q Where was I that day?

40 A You were at the football game between Notre Dame—

*John M. Judge, Direct.*

Q What time did you get to the hospital?

A In the neighborhood of two o'clock.

Q Did you go to any particular place in the hospital?

A Yes. We went to a room at the northeast corner of St. Michael's Hospital. It was down a long passageway and it was the last room to the left. 10

Q Who was in that room?

A Mr. Balducci was there.

Q How was he?

A He was lying in bed.

Q How did he look to you?

A Well, he was a dying man, in my estimation.

Q Did Mrs. Sgro stay there?

A Mrs. Sgro said something in Italian and then she motioned to Mr. Garramone and I. I was at a disadvantage because, of course, I do not understand any Italian, but I heard her say Judge D'Aloia, and he asked Mr. Garramone in Italian—Balducci did. 20

Q Now, did Mrs. Sgro stay there or go away?

A She stayed for about a minute and then she said something in Italian to Mr. Garramone and she started away and I said, "Where is she going?" and he said, "She is going home, she has to take care of the youngsters." 30

Q Now, after that did you hear Mr. Garramone speak to Balducci?

A Yes.

Q Did you hear Balducci speak?

A Yes.

Q What did he say?

A Mr. Balducci spoke in Italian and I turned to Mr. Garramone and I said, "I do not know what this is all about, kindly have him speak in 40

*John M. Judge, Direct.*

10 English," and Mr. Balducci—he was very weak and he spoke slow, and he said, "I am dying;" he said, "I know I am going to die. I asked for a priest." He said, "I want my conscience to be clear. I do not want any mistakes. The police brought my friend George Sgro up here and he asked me if he was the man who did the shooting and I said no, it was not," and Mr. Garramone asked him some more questions in Italian, and I stopped Mr. Garramone and I said, "I do not know what this is all about. Would you repeat the questions in English and have him say—that he repeat it in English to me," and Mr. Balducci, in my opinion, was rather an intelligent man and he spoke fairly good English.

Q What did he say to you?

20 A And he said, "On the day—" he said, "I was talking to my friend Sgro;" he said, "We talked for a few minutes," and he said, "Then we said 'Good-bye, good-bye,'" and Sgro went away" and he said, "I was standing on the sidewalk and I was shot," he said, "And I was shot by a man I do not know," and right there I interrupted and I said, "Did you see the man who shot you?" and he said, "I was shot by a man I do not know," and I said again, "Did you see Sgro?" and he said,  
30 "No, Sgro is my friend, he is my friend," so we had to stop two or three times. This man was very weak and it took quite some time and we had to wait from time to time because he would wave his hands and his breath was coming rather heavy, and he would shake his hands like that (illustrating). We would wait and strength would come back to him and he would talk a little more and we would ask him another question. Now, this was not a conversation the way I am  
40 testifying.

*John M. Judge, Direct.*

Q What else did he say?

A "Now," I said to him—I said, "Did you see Sgro?" and he said, "No;" he said, "He is my friend, he is my friend." So I turned to Mr. Garramone and I said, "Now, if you ask him in Italian," I said, "If Sgro is innocent of the shooting," and Mr. Garramone asked him in Italian and he answered and I said, "Now, tell him to repeat to me in English what he said," and returned to me and he said, "Sgro is innocent." 10

Q Was there anything else said before you left?

A Oh, pardon me. Oh, yes. As I say, he was very weak, and he settled down, leaned back and he says, "Now I feel better." He said, "I don't want any mistake." 20

Q What did he say, if anything, when you were leaving? Do you recall that?

A Well, he said something to Mr. Garramone in Italian, and I said to him, I looked at him and I said, "Well, I am sorry." I said, "I hope you will be all right," and he says, "Never, never, never." 20

Q Did you leave then?

A Yes, sir.

Q Where did you go from there? 30

A Mr. Garramone and I got in the machine and we went down to the office.

Q Did Mr. Garramone do anything at the office?

A Yes, sir.

Q What did he do?

A We made out a report.

Q Who made it out, you or he?

A Mr. Garramone made it out. 40

*John M. Judge, Cross.*

*CROSS EXAMINATION* by Mr. Conlon.

Q You are not admitted to the Bar, Mr. Judge?

A No, sir.

Q How long have you been studying law?

10 A I started in September, 1928.

Q And when this woman came in on this Saturday morning and said that she wanted to see Judge D'Aloia and then said that Balducci wanted to see the Judge in the hospital, she did not say what Balducci wanted, did she?

A Well, the conversation between Mrs. Sgro and Mr. Garramone was in Italian.

Q Well, so far as you knew from anything that was related to you, did she say what was wanted at the hospital?

20 A No, not to my knowledge.

Q She simply said that Balducci had wanted to see Judge D'Aloia?

A Yes.

Q And Judge D'Aloia—

A Yes, he was away.

Q He was away and he would be back in the office on Monday morning, wouldn't he?

A Yes.

Q Did she say there was any necessity of any particular speed in this matter?

30 A Well, she was. She wanted us to go up.

Q Well, now, what did she say?

A Well, now, I don't know.

Q I am asking you what you know, Mr. Judge, from anything that she—

A You are asking what she said—pardon me.

Q No, you pardon me. From anything that you heard there, did you learn that there was any necessity of speed? Now, you can answer  
40 that yes or no, I think.

*John M. Judge, Cross.*

A Well, I understand that she wanted us to hurry.

Q From what did you understand that?

A Well, she would turn to Mr. Garramone and say something to him and he would say, "All right, all right, we will go," or he would say in English, and he would talk in Italian. 10

Q Well, he said nothing to you that would indicate to you that there was any emergency, did he?

A Well, he told me the gist of the conversation between them.

Q What did he tell you?

A Well, that the purpose was, that she had come down to the office.

Q What was the purpose?

A That she had come down to the office to get Judge D'Aloia to go up to see Mr. Balducci. 20

Q What for?

A In regard to—well, now, right now the only think I know is this, that she came down to see Judge D'Aloia to go up to see Mr. Balducci, that she had been up there. That is what I remember of that.

Q And so far as anything was translated to you from Italian in English, she said nothing about the emergency of this situation, did she? 30

A She didn't say anything to me. It was all in Italian.

Q Well, I am asking you from what was translated to you by Garramone.

A Yes, sir.

Q And she did not tell you that Balducci was dying?

A I am telling you that she did not say anything to me, Mr. Conlon.

*John M. Judge, Cross.*

Q She didn't tell you that it was necessary that representative of Judge D'Aloia see this man immediately?

MR. D'ALOIA. Hasn't the witness told Mr. Conlon she did not say anything to him?

10

MR. CONLON. This is cross examination.

MR. D'ALOIA. I know, but he said that.  
THE COURT. Proceed.

A You see, I was at a disadvantage—

Q Now, I don't want to see anything. If you just answer my questions I will be through in a minute.

THE COURT. Just answer the questions.

20

Q (Continuing) As I understand it, there was nothing said to you about this being an emergency about Balducci dying, about any necessity of any speed of the visit of Judge D'Aloia to the hospital; is that correct?

A No, it is not correct.

Q Well, what was said?

A Well, I gathered—

Q No, I am not asking you what you gathered.

30

THE COURT. Wait a minute. If your statement is based on inference and not knowledge, Mr. Judge, don't tell us about it. If it is something that you know of your own knowledge that was said or done definitely, that is what Mr. Conlon, as I understand it, is trying to discover. Is that right?

MR. CONLON. Yes.

WITNESS. Well, perhaps—

40 BY THE COURT.

*John M. Judge, Cross.*

Q Well, did she say anything to you or did you understand anything that she said indicating a necessity for haste to you?

A No, she spoke in Italian.

THE COURT. All right. That is the answer, "No."

10

BY MR. CONLON.

Q Did you understand anything from what Garramone told you that there was any necessity of haste?

A Yes, I understood that she wanted—she wanted us to hurry.

Q What did he say that led you to believe that there was any haste about the thing?

A Well, now, I can't remember exactly what he said, but I remember that there was something in regard to her wanting us to go up there.

20

Q Now, what were your duties in the office, Mr. Judge?

A Well, my duties were, to a great extent I did brief work, some brief work.

Q And you are familiar with Judge D'Aloia's affairs, more or less?

A Well, more or less.

Q Did you know that he represented Sgro?

A Yes, sir; I knew that.

30

Q Did you know something about the case?

A Very little.

Q You knew something about the case?

A Yes, sir.

Q You knew that a man named Balducci had been shot on 7th Avenue in the month of September?

A I didn't know any of the details of the case.

Q Well, did you know that?

A I did not know where he had been shot.

40

*John M. Judge, Cross.*

Q Well, you knew that a man named Balducci had been shot?

A I only knew that a man had been shot, some man had been shot.

Q By Sgro?

10 A I did not know who he was shot by.

Q I apologize that. I mean, did you know that Sgro was charged with the shooting of that man?

A I knew that Judge D'Aloia represented Mr. Sgro.

Q Did you read anything about the case in the paper?

A Maybe I did. I don't know.

20 Q Did you ever discuss the case with anyone, either with the Judge or your friends in your usual conversation?

A Well, no. I did not discuss the case with my friends, but there might have been something said about it. I knew something about the case but not very much.

Q And when you talked to Balducci in the hospital, did you ask him if he had ever told a different story than he was telling you?

A No.

30 Q Did you have any knowledge that he had told a different story than he was telling you?

MR. D'ALOIA. That is objected to upon the ground that there is no evidence that he ever told a different story.

THE COURT. Sustain the objection.

Q Was there any reason why you did not ask him if he had told a different story?

40 MR. D'ALOIA. I object to that. That is immaterial, what the reason might have been for not asking.

*John M. Judge, Cross.*

THE COURT. Sustain the objection.

Q You have related all the conversation which was had at the hospital?

A As I remember now, at this moment.

Q And you said nothing to Balducci about his having at any time told a different story than he was telling you— 10

MR. D'ALOIA. If your Honor please, I object to that question.

THE COURT. Sustain the objection.

MR. D'ALOIA. The objection has been sustained and I do not think Mr. Conlon should reframe the question that way.

Q Let me ask you again, so we will make sure. You have told me everything that was said in the hospital? 20

A As I remember.

DEFENDANT RESTS.

STATE RESTS.

MR. D'ALOIA. Might I renew the motion, if your Honor please, at this stage of the case, for a direction of a verdict of acquittal upon all the grounds mentioned yesterday while in the absence of the jury?

HE COURT. That motion is denied. 30

Defendant's counsel prays an exception to this ruling of the Court.

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

DANIEL J. BRENNAN,  
Judge.

Mr. D'Aloia sums up in behalf of defendant.

Mr. Conlon sums up in behalf of the State. 40

*The Court's Charge.*

The Court charges the jury as follows:

BRENNAN, J.

10 Gentlemen of the jury. The defendant in this case, George Sgro, stands charged upon an indictment that on the 12th day of September in the year of our Lord one thousand nine hundred thirty in the city of Newark, in the County of Essex, he did wilfully, feloniously and of his malice aforethought kill and murder Louis Balducci 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. The indictment in form, as you doubtless perceived or have had explained to you, is for murder. This  
20 indictment you will take with you to the jury room, gentlemen, and have a chance to examine.

At the outset I want to outline to you the respective functions of the Court and jury in the trial of a criminal case. The Court is the judge of the law. It is the sole judge of the law. The jury are the judges of the facts, the sole judges of the facts.

30 The function of the Court is to instruct the jury in reference to the principles of law governing the case, and the law of the case you must take from the Court. The jury, however, are the sole judges of the facts, the weight of the testimony, the credibility of the witnesses, inferences to be drawn from evidence, and the ultimate conclusion to be reached upon all the facts.

40 The Court in referring to the evidence is not to be understood as deciding any fact, for that is your province, but merely as attempting to elucidate the evidence for the convenience or

*The Court's Charge.*

assistance of the jury, or to illustrate or explain the application of the principles of law. So if, according to your recollection, the Court errs in its statement of any evidence, whether disputed or undisputed, or assumes or states the existence or presence in the case of evidence that is not actually before you, you should disregard the recollection of the Court and rely upon your own recollection, as you are, as I have indicated, the sole judges of the facts. 10

Again, if any part of the evidence is referred to, seemingly giving it particular emphasis, you are not to disregard other evidence which you may deem of equal or greater importance, for yours is the duty to consider and weigh all the evidence having pertinent bearing upon the questions involved in this matter before you, not only that which has been mentioned by the Court, but all that has been presented here before you. 20

The law presumes that the defendant is innocent and this presumption continues until overcome by proof establishing his guilt beyond a reasonable doubt; and the defendant is entitled to the benefit of a reasonable doubt, both as to the question whether or not he is guilty at all, and as to the question of the degree of criminality, for the rule of reasonable doubt applies as well to the degree of a homicide as to the crime itself. The burden of the degree of criminality, for the rule of reasonable doubt applies as well to the degree of a homicide as to the crime itself. The burden of proving beyond a reasonable doubt the guilt of the defendant and the degree of his guilt is upon the State represented by the Prosecutor, and that burden of proof remains upon the State through 30

*The Court's Charge.*

its Prosecutor throughout the whole case. It never shifts, gentlemen.

10 Reasonable doubt is not a mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

20 The finding of an indictment, as I have indicated to you, is a mere step in the regular course of legal procedure which must be taken before any person can be placed on trial for certain offenses, and it is of no evidential value against the defendant. The charge is in the statutory form, and under the indictment, the defendant, according as the evidence shall warrant, may be found guilty of murder in the first degree, guilty of murder in the second degree or guilty of manslaughter, or he may be acquitted.

30 Murder generally is the unlawful killing of a human being with malice aforethought by a person of sound mind and discretion. By the statute murder is classified into two degrees; that is, into murder of the first degree and murder of the second degree. The statute provides that murder which shall be perpetrated by means of poison or by lying in wait or any other kind of wilful, deliberate or premeditated killing shall be murder in the first degree. All other kinds of murder shall be murder in the second degree, except, of course, murder perpetrated in the commission of a robbery, which is also murder in the first de-  
40

*The Court's Charge.*

gree, but with which you are not concerned, because this is not that character of crime. The statute further provides that the jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or murder in the second degree. 10

The distinguishing feature, gentlemen, between murder of the first and murder of the second degree is the intent with which the homicide is committed. In first degree murder there must be an intent to take life. In second degree murder the intent need merely be to do grievous bodily harm, and where a person takes another's life with intent to do grievous bodily harm, it is murder in the second degree. So, homicide resulting from a breach of the peace, committed by the use of a deadly weapon in heat and passion, without premeditation, but also without justifiable provocation, is murder in the second degree. 20

Where a killing by the defendant with a deadly weapon is established the presumption is that it is murder in the second degree, malice being presumed, and the burden is on the accused to show facts reducing it to manslaughter, unless such facts appear from the evidence adduced against him; and it is upon the State to prove beyond a reasonable doubt, if it claims that the killing was murder in the first degree, that there was present in the accused an intent or purpose to take life, and that such intent, such purpose, was wilfully, deliberately and premeditatedly executed. 30

Normally premeditation comes first; that is, an entertainment by the mind of a design to kill, followed by deliberation, the weighing of con- 40

*The Court's Charge.*

siderations pro and con, as to whether the design shall be carried into effect, after which the killing, being determined upon and carried out, becomes wilful, deliberate and premeditated in the sense intended by the statute.

- 10 No particular length of time need intervene, gentlemen, between the formation of the intent, the purpose to kill, and its execution. It is not necessary that the deliberation and premeditation should continue for an hour or for a minute; it is enough that the design to kill be fully conceived and purposely execute. If the design is found to exist, even though it is executed in a very short space of time, that is sufficient under the law. Deliberation and premeditation, while they must exist, need not be long.
- 20 If the killing is wilful, deliberate and premeditated, it is murder in the first degree, even though no special motive is shown; but you may consider absence of motive, if you find there is such absence, as a circumstance bearing upon the question whether or not the killing was premeditated.

- 30 The specific intent which is necessary to constitute murder of the first degree, which is the intent to take life, may be proved by direct or by circumstantial evidence. It is not necessary that some witnesses should testify that the defendant had said that he intended to kill. It may be shown by circumstances or declarations of the accused, or it may be inferred from his acts and conduct at the time, or from all these sources. Indeed, it is very rare that the existence of such an intent can be proved by direct evidence, and ordinarily the proof of such intent is furnished by circumstantial evidence derived from the nature of the acts and the circumstances attending it,
- 40 the place where the killing took place, the weapon

*The Court's Charge.*

or weapons used, and how the defendant came into possession of it or them, the location of the wound inflicted, the proof of the wounds, and the acts and conduct of the accused leading up to, connected with and immediately succeeding the killing of the deceased.

10

Voluntary manslaughter is where a person kills another upon a sudden quarrel, not in self defense, or upon a sudden transport of passion or heat of blood upon a reasonable provocation and without malice, malice as here used meaning an evil state of mind. The provocation to reduce the killing to manslaughter must be of such character and so close upon the act of killing that the accused for the moment could not be considered as master of his own understanding, or if such an interval of time elapses between the provocation and the act of killing as is reasonably sufficient for reason to resume its sway, or sufficient cooling time has intervened then and the act is not mitigated or reduced to manslaughter.

20

No provocation by words only will reduce a killing from murder to manslaughter, nor will wordy abuse, however great, or threat of personal violence to self or family or a member thereof, standing alone, justify such a reduction.

30

In connection with the guilt of murder in the first degree, our statute provides that every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury by their verdict and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed. The statute further provides that every person convicted of

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*The Court's Charge.*

murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty years.

10 Now, gentlemen, the State adduced in proof of the indictment several witnesses, to whom you have listened with considerable patience over nearly three days now, and whose testimony I will not rehearse at length. You heard first the doctor who made the autopsical examination and disclosed the condition that was produced. There was no question but what this man was killed and he was killed by a bullet wound. I think the defense even concedes that, although denying that this defendant was guilty of the murder.

20 The State then adduced a chain of circumstances which it says establishes the fact of the murder by this defendant. There apparently were two persons on Seventh avenue in the City of Newark on the day in question when this happened, the deceased, who it was testified was talking to another man and he was at an automobile parked or stopped with somebody else in it. The testimony is that there was some discussion or altercation (one of the witnesses for the State described it as hollering and another one said loud talking), that that went on for not a long space of time, a  
30 comparatively short space of time, and thereafter the deceased turned and went toward the other side of Seventh avenue from the side nearest to which he had been standing, and that in that process he was shot in the back and he fell at or near the curb; one witness said partly over the edge of the curb and partly in the street way or roadway itself.

40 There was a witness, a German, a man named Faber, who said that he was passing down the

*The Court's Charge.*

street at the time, that he heard these shots and then he saw the man fall, that he went to his assistance and observed this automobile going away, speeding away, driving down the street, as I recollect it (but if I am wrong you will use your own recollection), and that, although rather highly excited, according to his own testimony, he attempted to take the number of the car and got the letter H and four digits, four of the five digits, which correspond with a similar number of digits on the car of this defendant. 10

The police were notified. Investigation was pursued. The Harrison police, as the result of information they received from the Newark police, watched this man's house for some time and did not apprehend him for a considerable period after the happening of this shooting. But he was apprehended finally and brought into Court. 20

The deceased did not come to his death immediately. There were several processes set up as an incident. Both physicians testified. Both Dr. Blackburn and Dr. Martland, who made the autopsical examination, testified that in their medical judgment the bullet wound was the inducing cause of death, but there were several factors in the way of poisoning and septicemia as a result of the injury originally produced. The bullet in its course injured the spinal structure, injured the cord of the spine and set up a paralysis, which of course then set up a certain secondary condition ultimately resulting in the man's death. All of that process you heard. 30

You heard the officers testify as to what they discovered. You heard the automobile described as generally as could be by the witnesses. There was no positive identification, as I recall it, by 40

*The Court's Charge.*

any of the witnesses who happened to be on or near Seventh avenue at the time except that it was a closed car, apparently of the sedan type. The defendant, it was established, owned a car of that type. He himself admitted that he was on Seventh avenue on the morning in question, and the time he has fixed in a statement he made and which the State has put in vidence. He denies, however, absolutely, positively, that he was the person who perpetrated the shooting that resulted in the killing.

That substantially, with the surrounding factors that you have heard, is the posture of the State's case.

The defendant did not take the stand in his own behalf. He denied the killing, because counsel said they rested on the statement of what his actual movements were. The statement went into evidence.

But the defendant did adduce on the part of two young men who were law clerks in the office of counsel for the defense a dying declaration that had been procured by them on the 8th of November, as I recall it, some time after the shooting, when there undoubtedly was a clear apprehension on the part of the deceased that he was going to die. Dr. Blackburn earlier testified, as you recall, that he felt strongly as a medical proposition that the man was going to die on that day. The deceased apparently felt the same way and made the statement to Mr. Gramone and Mr. Judge, in which he absolved the defendant from guilt. He said that he, this defendant, did not shoot him, the deceased, but that he was shot by some stranger on Seventh avenue; that he wanted

*The Court's Charge.*

that fact known because this defendant had been charged, as he understood it, by the police with murder. The men who heard that declaration were produced in court. Of course a declaration of that character, made under those circumstances, has the same solemnity as a statement made under oath, and it may be used in evidence. That is the law with reference to that, the legal theory being that a man in extremis will say what he has to say with such solemnity as to give it practically the same characteristics as a statement made under oath. 10

That is substantially the defense, and the defense rested on the dying declaration by the deceased that this defendant did not perpetrate the murder. 20

What are the facts? That is the province of you gentlemen. What was the actual situation? Where is the truth and what is it? That is strictly a jury province. The Court, as I have indicated to you, is a judge of the law, but you in the final analysis are the persons who must resolve the facts. It is your province.

It is for you to say, within the limitations that I have indicated, after listening as patiently as you have, whether or not this defendant is guilty of the offense with which he is charged, whether he is guilty, if he be guilty, of murder in the first degree, whether, if he is, there should be a recommendation for imprisonment at hard labor for life or no recommendation, whether he is guilty of murder in the second degree or guilty of manslaughter, or whether he is to be acquitted. 30

In connection with one of the statements in evidence, gentlemen, there has been a good deal of 40

*The Court's Charge.*

10 discussion about neutralization of testimony so called. You have heard counsel on both sides talk with some vehemence about neutralization of testimony. The State introduced or adduced one witness and pleaded surprise at the character of his responses which it is authorized to do as a matter of law, and then offered other self-contradictory statements.

20 Now, as to the law with reference to that, I will read to you from our decision of the court of last resort. "You are to disregard this"—that is, this neutralization testimony—"as in any way tending to prove the truth of the facts which it asserts in a case barren of other direct proof of the facts which such contradictory statement would tend to prove, if admissible for that purpose."

30 The Court must instruct you that neutralization testimony is not offered as proof of the facts contained in the prior self-contradictory statement. You cannot, for example, take as true any of the statements that are in that statement now in evidence. It was offered purely for the purpose of neutralizing the earlier contradictory statements or the later contradictory statements. It is what we call a self-cancelling or self-effacing testimony, and you are not to regard it. Be careful not to regard the statement now in evidence as proof of any of the facts contained therein. It was offered by the State, as it can be, for the purpose of neutralizing another contradictory statement, and it is not offered and cannot be considered by the jury as evidential, as proving any of the facts in the statement itself. If there is any misunderstanding or doubt in your minds on that question, do not hesitate to ask the Court for further  
40 instructions in that connection.

*The Court's Charge.*

I have been asked by counsel for the defense to charge certain requests. The first, second, third and fourth I decline to charge except as I have already charged them.

And the fifth, "Insufficient evidence is in the eyes of the law no evidence." I so charge you. 10

Sixth, "The test of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from those facts." I so charge you.

Seven. "In this case there is no direct evidence connecting the defendant with this crime and, under the law of this state his failure to take the stand creates no presumption of guilt." 20  
I so charge you, gentlemen, with this qualification, that our law provides that if facts are testified to which concern the acts of the defendant which he could by his oath deny, his failure to testify in his own behalf raises a strong presumption that he cannot truthfully deny them. That is the law.

Number eight, "If the circumstances, no matter how strong, can be reasonably reconciled with the theory that some other person may have done the act, the defendant should be acquitted." I so charge. 30

Number nine, "Circumstantial evidence must be of such a character as to satisfy the jury of the defendant's guilt beyond a reasonable doubt; evidence creating a mere probability of guilt is not sufficient; much less is evidence which gives rise to a mere suspicion or conjecture of guilt." I so charge. 40

*The Court's Charge.*

Number ten, "Mere suspicion or probabilities, however strong, are not sufficient basis for a conviction." I so charge.

10 Number eleven, "If the circumstances can be reconciled with innocence, the inference of guilt is not sufficient." I so charge.

Number twelve, "If the presumption of the defendant's innocence is as reasonable as the inference of guilt, the defendant must be acquitted." I so charge.

20 Number thirteen, "If the circumstances make one inference just as reasonable as the other, the jury must give the defendant the benefit of the conclusion, which is consistent with his innocence and he must be acquitted." I so charge.

Number fourteen, "A possibility or a bare possibility of guilt, under the evidence, is not sufficient and it is not enough if the evidence merely creates a conjecture or suspicion." I so charge.

30 Number fifteen, "If the facts give rise to several inferences some of which are consistent with the presumption of innocence then it can be said that the facts give rise to a mere suspicion, probability, speculation or food for thought and it is insufficient to raise an inference of guilt and the jury must acquit." I so charge.

Number sixteen I decline to charge except as I have already charged it.

40 Number seventeen, "The jury must confine itself solely to the evidence adduced by the witnesses and if the State has not proven the defendant guilty, beyond a reasonable doubt, then they must acquit." I so charge.

*The Court's Charge.*

Number eighteen, "The jury must exclude from their consideration of this case any and all references to other crimes being committed in the community; this case must be decided solely upon the evidence given here in court, by the witnesses under oath." I so charge.

10

Number nineteen, "The statement which was admitted by the Court, alleged to have been made by the witness, Gabriel Contaldi, is not evidential proof of any fact which it tends to substantiate. It has no testimonial value whatsoever against this defendant. It is simply admitted in the discretion of the Court for the purpose of neutralizing the testimony given by Contaldi under oath, and by neutralizing I mean, that it discredits Contaldi. It does not, in any way, become evidence or have any testimonial effect tending to show the guilt of the defendant. I cannot make this warning too emphatic, because evidence of this character is obviously extraordinarily dangerous and the Court is bound to give the jury ample warning against the consideration of such evidence by the jury except for its limited purpose." I so charge you.

20

Now, gentlemen, you have, as I say, listened very patiently, and yours is now, as I have indicated, the solemn duty of resolving what the fact actually is, and in discharge of that duty you may now retire.

30

(The jury retires to the jury room.)

Defendant's counsel prays a general exception to the charge.

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

DANIEL J. BRENNAN,

Judge.

40

*The Court's Charge.*

Defendant's counsel prays an exception to the refusal by the Court to charge defendant's requests to charge numbers one, two, three, four, seven with its qualifications, and sixteen.

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

DANIEL J. BRENNAN,  
Judge.

*The Return of Jury.*

(At 3:15 o'clock P. M the jury returns to the courtroom.)

20 THE COURT. Gentlemen of the jury. I understand you want some statements from the Court as to a matter of evidence. I am sorry that in my legal judgment I do not think I can supply that lack, if there be a lack. The Court's function is to instruct the jury purely on matters of law, and I would not supply my recollection of the evidence in an inquiry of this kind. I do not think I can legally. You will have to be bound by your own recollection of what the facts are, as indicated to you. You are bound to be bound by that recollection.

30

If there is the testimony of any witness that you think may throw any light on the question, I will be very glad to have that testimony read. That is something you will have to satisfy yourselves on.

Do I make myself clear?

THE FOREMAN. Yes.

40 THE COURT. It arises out of no lack of de-

*The Return of Jury.*

sire, but out of what I concede to be the limitations imposed upon me by the law.

You may retire, gentlemen. Was there another question that the juror had?

A JUROR. Would the Court read the testimony?

THE COURT. If there is a witness that you indicate. Otherwise it would involve, I suppose, reading some thousands of pages of the testimony. Do you want the testimony of any witness? 10

A JUROR. Russo.

THE COURT. Certainly. I will have it read to you.

(The stenographer reads the testimony of the witness Russo to the jury.)

A JUROR. I think that is the wrong witness, your Honor. 20

THE COURT. The juror said Russo. Do you mean Contaldi?

A JUROR. Your Honor, some witness spoke about the number of cars passing up and down the street, and other cars parked in the street, and that is the testimony we would like to have read. I thought it was this witness. I am sorry.

THE COURT. Of course I can't speculate as to that. I can grant a request for any testimony which you indicate. I mean I cannot speculate as to the testimony. 30

A JUROR. I understand. Thank you.

(At 3:30 p. m. the jury again retires.)

Defendant's counsel prays an exception to the Court's permitting the jury to hear read the testimony of the witness Russo.

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

DANIEL J. BRENNAN,  
Judge. 40

*The Return of Jury.*

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Defendant's counsel prays an exception to the Court's refusal to give the jury the information it had requested: to wit, that there was evidence and testimony in the case about the number of cars passing up and down the street and other cars parked in the street; this the jury requested to be read to them.

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

DANIEL J. BRENNAN,  
Judge.

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*Defendant's Requests to Charge.***Defendant's Requests to Charge.**

1. The defendant is presumed to be innocent until the contrary is proven beyond a reasonable doubt.

2. The burden of proving the guilt of the defendant beyond a reasonable doubt is upon the State and never shifts from the shoulders of the State, notwithstanding the nature of the charge or of the defense.

10

3. Reasonable doubt implies more than a mere preponderance of evidence and requires, among other things, an abiding conviction in your minds of guilt. By an abiding conviction of guilt it is meant that there is no wavering of your mind on this question. If one moment you are inclined to think him guilty and the next you are inclined to think him not guilty, and if your mind wavers back and forth between innocence and guilt, so long as your mind does so waver there cannot be said to be an abiding conviction and if you have no abiding conviction of guilt your verdict will be one of acquittal.

20

4. The mere fact that an indictment has been found against this defendant is not an indication of guilt and cannot be considered by you as part of the evidence. It is a mere step in the cause.

30

5. Insufficient evidence is in the eyes of the law no evidence.

6. The test of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from those facts.

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*Defendant's Requests to Charge.*

7. In this case there is no direct evidence connecting the defendant with this crime and, under the law of this State, his failure to take the stand creates no presumption of guilt.

10 8. If the circumstances, no matter how strong, can be reasonably reconciled with the theory that some other person may have done the act, the defendant should be acquitted.

9. Circumstantial evidence must be of such a character as to satisfy the jury of the defendant's guilt, beyond a reasonable doubt; evidence creating a mere probability of guilt is not sufficient; much less is evidence which gives rise to a mere suspicion or conjecture of guilt.

20 10. Mere suspicion or probabilities, however strong, are not sufficient basis for a conviction.

11. If the circumstances can be reconciled with innocence, the inference of guilt is not sufficient.

12. If the presumption of the defendant's innocence is as reasonable as the inference of guilt, the defendant must be acquitted.

30 13. If the circumstances make one inference just as reasonable as the other, the jury must give the defendant the benefit of the conclusion, which is consistent with his innocence and he must be acquitted.

14. A possibility or a bare probability of guilt, under the evidence, is not sufficient and it is not enough if the evidence merely creates a conjecture or suspicion.

40 15. If the facts give rise to several inferences some of which are consistent with the presumption of innocence then it can be said that the facts

*Defendant's Requests to Charge.*

give rise to a mere suspicion, probability, speculation or food for thought and it is insufficient to raise an inference of guilt and the jury must acquit.

16. It is the law in this State that the failure of the defendant to take the stand does not of itself give rise to any presumption of guilt. 10

17. The jury must confide itself solely to the evidence adduced by the witnesses and if the State has not proven the defendant guilty, beyond a reasonable doubt, then they must acquit.

18. The jury must exclude from their consideration of this case any and all references to other crimes being committed in the community; this case must be decided solely upon the evidence given here in Court, by the witnesses under oath. 20

19. The statement which was admitted by the Court, alleged to have been made by the witness, Gabriel Contaldi, is not evidential proof of any fact which it tends to substantiate. It has no testimonial value whatsoever against this defendant. It is simply admitted in the discretion of the Court for the purpose of neutralizing the testimony given by Contaldi under oath, and by neutralizing I mean, that it discredits Contaldi. It does not, in any way, become evidence or have any testimonial effect tending to show the guilt of the defendant. I cannot make this warning too emphatic, because evidence of this character is obviously extraordinarily dangerous and the Court is bound to give the jury ample warning against the consideration of such evidence by the jury except for its limited purpose. 30

ESSEX COUNTY COURT OF OYER  
AND TERMINER.

Certificate of Stenographers.

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THE STATE OF NEW JERSEY,

—vs.—

GEORGE SGRO,

On Indictment

No. 148

April T. 1931

for

MURDER.

20

We, Joachim Wichmann and Harold T. Cook, official stenographers of the Essex County Court of Oyer and Terminer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by us at the trial of the above mentioned case, which trial was held before the Honorable Daniel J. Brennan, Presiding Judge of the Essex County Court of Oyer and Terminer in and for the County of Essex, and a jury, on Monday, April 20, 1931, Tuesday, April 21, 1931 and Wednesday, April 22, 1931, at Newark, New Jersey.

30

HAROLD T. COOK

JOACHIM WICHMANN

Dated

June 12, 1931.

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ESSEX COUNTY COURT OF OYER  
AND TERMINER.

Certificate of Judge.

THE STATE OF NEW JERSEY,  —vs.—  GEORGE SGRO,	}	On Indictment No. 148 April T. 1931 for MURDER	10
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I, Daniel J. Brennan, presiding in the Essex County Court of Oyer and Terminer, and the Judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff in error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause. 20

DANIEL J. BRENNAN,  
Judge.

Dated  
June 12, 1931.

3:30 P. M. 30

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DEPARTMENT OF PUBLIC SAFETY  
POLICE DIVISION

Newark, N. J. February 27. 1931.

Voluntary Statement of: Gabriele Contaldi  
Residence 47 7th Ave., City.  
Occupation Mason Contractor.  
Age 40 years.

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Statement made to: Det. R. Capodanno and Joseph Coccozza of the Prosecutor's office at Police Headquarters.

20

About 10:30 A. M. September 12, 1930, I was standing on the side-walk in front of Luigi Russi barber shop at #51-7th Ave. talking to him when we heard two men talking loud we turned around and I saw an auto parked on the opposite side of the street near the curb which was right across the street of Mayers Grocery store. There was only one man in the car which was a dark color sedan and he was setting at the wheel in the drivers seat. There was an other man standing in the street along side of the dark sedan talking back to the driver and both men were making motions with there hands.

30

Then the man who was standing on the street talking to the man in the car turned around and started to walk over to Mayers Store which was on the same side of the street where we were standing and when he was about eight or ten feet away from the car. We heard three ,four or five shots fired and the fire coming out of the window which was open in the door of the car where the driver was setting. These shots were fired in very quick order.

Witness,

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Simon B. Laufer	Luke Conlon
Fred L. Trautwein Jr.	Joseph Coccozza
	Raffaele Capodanno
	Gabriel Contaldi
	47 seventh ave.

DEPARTMENT OF PUBLIC SAFETY  
POLICE DIVISION

Page 2

Newark, N. J. February 1931.

Voluntary Statement of: Gabriele Contaldi

Residence 47-7th Ave.

Occupation Mason Contractor. 10

Age 40 years.

Statement made to.

Then I saw the man who was walking towards the store fall face down on the side walk between the store and the curb.

The man who fired the shots from the car then started his car and drove down 7th ave. towards Broadway driving very fast.

I then saw some Policemen's running down 7th Ave from the Station House and then the Patrol Wagon came and took the man who was shot to the Hospital. 20

Witness:

Luke Conlon

Joseph Cocozza

Raffaele Capondanno

Fred L. Trautwein Jr.

Simon B. Laufer

Gabriele Contaldi

47 seventh ave.

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DEPARTMENT OF PUBLIC SAFETY  
POLICE DIVISION

Newark, N. J. Oct. 28 1930

Voluntary Statement of: Battagliano Gigorico Sgro.  
Residence: 420 No 3Rd Street East Orange, N. J.  
Occupation

10 Age 36 years

Statement made to: Fred L. Trautwein Jr Detective Bureau.

20 I have known Louis Balducci for the past eight or nine years soon after his arrival in this country and we became very good friends. He lived with me on Third Street #401 and #410 Third Street for about three years. He left my house about four years ago to go to Net Conge N. J. After going to Net Conge N. J. I did not see so much of him. Around the early part of May 1930 Louis Balducci came to my house at #420 No 3rd Street and asked me to loan him two hundred dollars. I loaned him the two hundred dollars and he left my house. I saw him several times after loaning him the money and asked him how business was?

30 On September 12-1930 I left my house at 420 No 3rd Street at about 8:30 A. M. and went to the garage Third Street and Harrison Ave and got my Nash Sedan License #41017 N. J. and drove over to Newark, N. J. going to my brother-inlaws' Sam Caputo #161-8th Avenue, flower store. I reached there about 9:00 A. M. remaining there about twenty minutes. After leaving my brotherinlaws place I drove over Sheffield St to 7th Avenue and down 7th Avenue towards Belleville Ave. As I was passing Harry Mayers grocery store on the left hand side of 7th Ave  
40 I saw Louis Balducci's car parked and saw Bal-

ducci in the store. I stopped my car and called Balducci from the store. He came from the store across the street to where I was parked. As he reached the car I said hello Louis, how is business? He said not so good and not so bad. We talked for about twenty minutes and I drove away going down 7th Avenue.

Witnesses:

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Joseph Coccozza

Fred Trautwein Jr.

Gigorio Sgro

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DEPARTMENT OF PUBLIC SAFETY  
POLICE DIVISION

Newark, N. J. October 28, 1930.

Voluntary Statement of: Battagliano Gigorico Sgro.  
Residence: 420 No 3rd Street East Newark N. J.

10 Occupation  
Age 36

Statement made to Fred Trautwein Detective  
Bureau.

20 to Belleville Ave then down Belleville Ave to  
Broad St and over Clay St to Harrison to my  
house, I reached my house about twenty minutes  
to eleven. I had something to eat then left for  
Hoboken N. J. I went to see Sam Russo #113  
Madison St Hoboken. I had an appointment with  
him for 1:00 P. M. I stayed at Russo's until  
about 5:30 P. M. and then I returned to Harrison.  
I stayed at my home until the following Tuesday  
September 16-1930 when I went to Boston. Went  
to see my wifes cousin at 561 Dudley Street  
Roxbury Mass. I stayed there about two weeks  
and then went to New Rochell N.Y. I stayed at  
227 Uion Ave. Galbello Bros. I left New Rochelle  
about October the first and came back to Harrison.

30 I stayed around Harrison after I came home.  
The first I heard of Balducci being shot was after  
I returned from Hoboken Sept. 12, 1930 my wife  
told me as soon as I came in the house, that  
Louis was shot and is in St. Michaels Hospital.  
I said to my wife if I get a chance I will go up  
and see him. But I never went up to see him.

Witnesses: Jos. Coccozza Gigorio Sgro  
Fred Trautwein Jr.

## Assignments of Error

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*  
 —vs.—  
 GEORGE SGRO,  
*Plaintiff-in-Error.*

IN ERROR.  
 ASSIGNMENTS  
 OF ERROR.

10

Afterwards, to wit, on the return day of the writ of error, before the Justice of our said Court of Errors and Appeals, in the last resort in all causes comes the said George Sgro by J. Victor D'Aloia, his counsel, and says that in the record and proceedings aforesaid, also in the matters recited and contained in said bill of exceptions and also in giving the judgment aforesaid, there is manifest error in this, to wit:—

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1. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously permitted the Prosecutor of the Pleas to state as follows:

“\* \* \* \* \* at the end of the case I am going to ask you \* \* \* \* \* to bring in a verdict for the extreme penalty, not only as a punishment to him, but as an example to others.”

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2. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously denied a motion for a

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*Assignments of Error.*

direction of a verdict of acquittal at the end of the opening by the Prosecutor to the jury.

10 3. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously permitted the Prosecutor to use a photograph in the direct examination of the witness, Hans Faber, a witness for the State who was admittedly a stranger in Newark and which protograph had been made fully five (5) months after the date alleged in the indictment.

20 4. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously permitted the Prosecutor of the Pleas to cross-examine the State's witness, Gabriel Contaldi, in an attempt to impeach his testimony.

5. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously allowed the Prosecutor to plead surprise during the direct examination of the State's witness, Gabriel Contaldi, without reason or justification therefor.

30 6. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously refused a proper request, with reference to an alleged contradictory statement in writing then being used by the Prosecutor in an attempt to discredit the witness, Gabriel Contaldi, to instruct the jury that said statement and any references thereto was not to be considered evidential as against the defendant.

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*Assignments of Error.*

7. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously refused a proper request to instruct the jury that no part of an alleged contradictory statement, (Exhibit S-12) which had been admitted in evidence and had been used in an attempt to neutralize the testimony of the witness for the State, Gabriel Contaldi, was evidential against the defendant.

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8. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously admitted in evidence a certificate of the Commissioner of Motor Vehicles, showing the issuance of a license for a Hupmobile automobile, for the year 1930, to George Sgro, and a subsequent transfer to cover a passenger car of Nash manufacture, license bearing number H-41017.

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9. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously refused a request, made immediately after the Prosecutor had read to the jury an alleged contradictory statement in writing by the witness, Gabriel Contaldi, to instruct the jury that said statement was in no wise evidential against the defendant.

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10. That the said Court before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, improperly denied a motion made for a direction of a verdict of acquittal at the close of the State's case.

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*Assignments of Error.*

10 11. That the said Court before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, improperly denied a motion for a direction of a verdict of acquittal at the close of the whole case.

12. That the said Court before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously refused to change as requested, as follows:

“It is the law in this State that the failure of the defendant to take the stand does not of itself give rise to any presumption of guilt.”

20 13. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously granted a request by the jury, some time after they had retired to deliberate upon a verdict, to have re-read to them the testimony of the State’s witness, Louis Russo.

30 14. That the said Court, before whom &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said George Sgro, erroneously refused a request by the jury, after they had retired to deliberate upon a verdict, for testimony which they desired to have re-read to them.

Wherefore, the said George Sgro prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that

*Assignments of Error.*

he may be restored to all which he has lost by occasion thereof.

**J. VICTOR D'ALOIA,**  
Of Counsel for Plaintiff-in-  
Error.

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Service of a copy of the within Assignments of Error is hereby acknowledged as of time, this 31 day of August, 1931.

**JOSEPH L. SMITH,**  
Prosecutor of the Pleas.

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Specifications of Causes for Reversal  
NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10	THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> —vs.— GEORGE SGRO, <i>Plaintiff-in-Error.</i>	IN ERROR. SPECIFICATIONS OF CAUSES FOR REVERSAL.
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20 And now comes the said George Sgro by J. Victor D'Aloia, his attorney, and says that in the record and proceedings aforesaid and also in the matters recited and contained in the said writ of exceptions and also in giving the verdict and judgment aforesaid, there is manifest error, and the said George Sgro says that said judgment should be reversed and assigns the following reasons or causes:

1. Because the Trial Court permitted the Prosecutor of the Pleas to state as follows:

30 “\* \* \* \* \* at the end of the case I am going to ask you \* \* \* \* \* to bring in a verdict for the extreme penalty, not only as a punishment to him, but as an example to others.”

2. Because the Trial Court denied a motion for a direction of a verdict of acquittal at the end of the opening by the Prosecutor to the jury.

40 3. Because the Trial Court permitted the Prosecutor to use a photograph in the direct examination of the witness, Hans Faber, a witness for the State who was admittedly a stranger in Newark and which photograph had been made fully

*Specification of Causes for Reversal.*

five (5) months after the date alleged in the indictment.

4. Because the Trial Court permitted the Prosecutor of the Pleas to cross-examine the State's witness, Gabriel Contaldi, in an attempt to impeach his testimony. 10

5. Because the Trial Court allowed the Prosecutor to plead surprise during the direct examination of the State's witness, Gabriel Contaldi, without reason or justification therefor.

6. Because the Trial Court refused a proper request, with reference to an alleged contradictory statement in writing then being used by the Prosecutor in an attempt to discredit the witness, Gabriel Contaldi, to instruct the jury that said statement and any references thereto was not to be considered evidential as against the defendant. 20

7. Because the Trial Court refused a proper request to instruct the jury that no part of an alleged contradictory statement (Exhibit S-12) which had been admitted in evidence and had been used in an attempt to neutralize the testimony of the witness for the State, Gabriel Contaldi, was evidential against the defendant.

8. Because the Trial Court admitted in evidence a certificate of the Commissioner of Motor Vehicles, showing the issuance of a license for a Hupmobile automobile, for the year 1930, to George Sgro, and a subsequent transfer to cover a passenger car of Nash manufacture, license bearing number H-41017. 30

9. Because the Trial Court refused a request, made immediately after the Prosecutor had read to the jury an alleged contradictory statement in writing by the witness, Gabriel Contaldi, to instruct the jury that said statement was in no wise evidential against the defendant. 40

10. Because the Trial Court improperly denied

*Specification of Causes for Reversal.*

a motion made for a direction of a verdict of acquittal at the close of the State's case.

11. Because the Trial Court improperly denied a motion for a direction of a verdict of acquittal at the close of the whole case.

10 12. Because the Trial Court refused to charge as requested, as follows:

"It is the law in this State that the failure of the defendant to take the stand does not of itself give rise to any presumption of guilt.

13. Because the Trial Court granted a request by the jury, some time after they had retired to deliberate upon a verdict, to have re-read to them the testimony of the State's witness, Louis Russo.

20

14. Because the Trial Court refused a request by the jury, after they had retired to deliberate upon a verdict, for testimony which they desired to have re-read to them.

15. 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 George Sgro, the plaintiff-in-error, and he prays that the said judgment and sentence be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof.

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J. VICTOR D'ALOIA,  
Of Counsel for Plaintiff-in-  
Error.

40 Service of a copy of the within Specifications of Causes for Reversal is hereby acknowledged as of time, this 31 day of August, 1931.

JOSEPH L. SMITH,  
Prosecutor of the Pleas.

## Stipulation

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*

—vs.—

GEORGE SGRO,  
*Plaintiff-in-Error.*

STIPULATION.

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It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that upon the argument of the Writ of Error in the above entitled cause there shall be included a list of the Exhibits and that only two (2) Exhibits, S-12 and S-13, shall be printed in full as part of the State of the Case.

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DATED: SEPTEMBER 1st, 1931.

JOSEPH L. SMITH,  
Prosecutor of the Pleas.

J. VICTOR D'ALOIA,  
Of Counsel for Plaintiff-  
in-Error.

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## Exhibits

LIST OF EXHIBITS ADMITTED IN EVIDENCE  
UPON THE TRIAL:

	Exhibit S-1 .....	Map .....	20
10	Exhibits S-2, S-3, S-4, S-5 .....	Photographs of scene taken February 27, 1931.....	21-22
	Exhibits S-6, S-7 .....	Photographs of defendant's automobile .....	123
	Exhibit S-10 .....	Bullet which was removed from body of deceased....	38
	Exhibit S-12 .....	Statement in writing alleged to have been made to the police by State's witness, Gabriel Contaldi.....	113-180
20	Exhibit S-13 .....	Statement in writing alleged to have been made to the police by the defendant, George Sgro .....	120-182
	Exhibit S-14 .....	Bullet found embedded in store window .....	110
30	Exhibit S-15 .....	Auto registration record con- sisting of a certificate of the Commissioner of Motor Vehicles, showing the issu- ance of a license for a Hup- mobile automobile, for the year 1930, to George Sgro, and a subsequent transfer to cover a passenger car of Nash manufacture, license bearing number H-41017. .....	122

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## New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*

*vs.*

GEORGE SGRO,  
*Plaintiff-in-Error.*

*On Writ of  
Error.*

### BRIEF ON BEHALF OF THE STATE OF NEW JERSEY.

The plaintiff-in-error (hereafter called the defendant) was placed on trial on April 20, 1931 in the Essex County Court of Oyer and Terminer, before the Honorable Daniel J. Brennan and a jury. He was charged with the murder on September 12, 1930 of one Louis Balducci. He was found guilty of murder in the second degree to which verdict the jury attached a recommendation of mercy.

#### Statement of Facts. *Point IV*

The writ of error here taken is prosecuted under Sections 135 and 136 of the Criminal Procedure Act, and one of the points (the sixth) raised by the defendant is that the verdict is against the weight of the evidence. For this reason the facts adduced at the trial will be recited herein at some length, and the mere recitation of the facts will be submitted as the sole argument against the contention of the defendant that the verdict was against the weight of the evidence.

Louis Balducci was a bootlegger (C., p. 86, l. 21). He and the defendant had been acquainted

for some years and in fact had <sup>remained</sup> lived together for about three years in Harrison, N. J. (defendant's statement, C., p. 182). In the early part of 1930 defendant had loaned Balducci \$200. On several occasions thereafter defendant and Balducci met and defendant inquired about Balducci's business with an apparent thought about the repayment of his loan. On September 12, 1930 defendant left his home in Harrison, N. J. and after making several calls drove east on Seventh avenue in Newark, and while passing the store of Harry Mayer which was situated at 53 Seventh avenue, defendant noticed Balducci's car parked on the opposite side of the street and saw Balducci in the store. Defendant stopped his car and called Balducci out of the store. Balducci walked across the street to defendant's car and stood in the street at the left side of the car talking to defendant. This was some time after 9:20 A. M. Defendant's car was a Nash sedan bearing license No. H 41017 N. J. (All of the above facts are contained in defendant's written statement which was admitted in evidence and uncontradicted by him—he did not take the stand (C., p. 182).)

Hans Faber testified (C., p. 40) that he was walking east on Seventh avenue at about 10:30 A. M. on the day in question; that he saw a man (later identified as Balducci, the deceased) walk towards him across the street; that he heard shots and saw Balducci fall face forward in the street near the curb. That at the same time he saw a dark colored sedan proceeding east on Seventh avenue; that after Balducci had been taken away in an ambulance the witness was taken into custody as a witness; that he could not converse with the officers because he could not talk English; that he was given pen and

paper and wrote in German what he had observed; that among other things he noted the license number of the car he saw leaving the scene as H 4017 N. J.

Dr. Blackburn testified that Balducci was shot in the middle of the back between the shoulder blades (C., p. 24, l. 7). Dr. Martland testified that Balducci died on February 26, 1931 as a result of the bullet wound (C., p. 33, l. 38).

Louis Russo testified (C., p. 52, l. 64) that about half-past ten he was standing in front of his barber shop at 51 Seventh avenue next door to the store of Harry Mayer; that he was talking to one Gabriel Contaldi; that they were facing the opposite side of the street; that an automobile was parked on the opposite side of the street across from their store facing east; that there was one man in the automobile sitting at the driver's wheel, and that another man, later identified as the deceased, was standing on the left side of the car talking to the man at the wheel; that they were talking loud; he then heard three shots, saw the deceased on the ground near the curb and that "at the moment of the shooting the automobile pulled away"; and that the man who was shot was the man who had been standing talking to the driver of the automobile (C., p. 56).

Gabriel Contaldi testified (C., p. 64, l. 80) that he was standing in front of the barber shop talking to the witness Louis Russo; that he saw a man standing at an automobile on the opposite side of the street talking to a man at the driver's seat of an automobile; that they were hollering (C., p. 67, l. 11); that just as the man was going away from the automobile he heard three shots; the man then had his back to the automobile and

was fifteen feet away from it; that the man then fell near the sidewalk and that the automobile drove away.

Harry Mayer testified (C., p. 80, l. 86) that he conducted a grocery store at 53 Seventh avenue, Newark, N. J.; that he had known the deceased for three or four years; that the deceased came into his store about half-past nine on the morning of September 12, 1930; that he did not immediately wait upon the deceased because he was busy with other customers (C., p. 82, l. 28); that while deceased was waiting to be waited upon the deceased walked out of the place and across the street and was talking to a man in an automobile which was parked on the opposite side of the street right in front of the store facing east; that he did not see who was in the automobile; that he heard two or three shots and saw the deceased lying on the sidewalk with his face down.

The foregoing was the gist of the testimony produced at the trial with reference to the actual shooting. The defendant did not take the stand and produced no witnesses, excepting three witnesses whose testimony was directed to an alleged dying declaration in which the deceased is said to have stated that he was not shot by the defendant but by a stranger. This dying declaration was subject to suspicion by reason of the fact that the wife of the defendant testified that she had called upon the deceased at the hospital about twice a week from the time of the shooting until the time he died some five months later. There was therefore a definite suspicion that the alleged dying declaration was made by the deceased merely as a matter of sympathy for the defendant and his wife.

In this dying declaration as related by the witness Garramone, a special effort was made to emphasize the difference in time between the departure of the witness and the victim, and the firing of the shots. On page 139 Garramone testified that the deceased said to him, "Sgro drove away and *sometime thereafter* while I was on the sidewalk near the curb, standing there, he was shot, but Sgro was not in the neighborhood. He had driven away. It was *sometime after that*." And then the witness Garramone asked him how long after Sgro had driven away was it that he was shot, to which the deceased replied ten or fifteen minutes. We are not attacking the testimony of Garramone. But clearly the statement made to him by the deceased was false, for it is testified by all other witnesses present at the time of the shooting that the departure of Sgro and the shooting of the deceased were simultaneous. The witness Hans Faber heard the shots, saw the deceased fall to the street (p. 44, ll. 12-25). (And then saw an automobile of which he took the tag number and which substantially corresponds with the tag number of the defendant's automobile.) Faber said that the automobile was ten to twelve meters (approximately forty feet) in front of him moving away from him. The witness Russo testified "*at the moment* of the shooting the automobile pulled away and I was so confused, I didn't see what was going on" (p. 56, l. 14). The deceased's declaration therefore that he was shot ten or fifteen minutes after Sgro had left him, was false and made solely for the purpose of concealing his assailant. A feature not uncommon in the ethics of the underworld. False in one, false in all is not an arbitrary, but a permissive rule of evidence.

The police officers testified that from about the 14th of September, 1930 which was two days after the shooting and thereafter they endeavored to apprehend the defendant in and about his usual haunts around his home but they found no trace of him; that the car had been taken out of the garage where it was usually kept and that he was not arrested until October 28, 1930. In his statement the defendant admitted that he had left the city immediately after the day of the shooting and stayed away until a few days prior to his arrest. The State, of course, contended that this constituted flight and that he returned to the city because of the fact that the deceased did not immediately die as a result of the shooting, for which reason, of course, no complaint of murder had been made against him.

In spite of the fact that the State produced no witnesses who could positively identify the defendant as the person who did the shooting, every bit of the evidence that was produced was to the effect that the defendant was talking to the deceased on Seventh avenue as above described and that they were quarreling or at least talking loud; that the deceased then turned with his back to defendant's car and was walking away when he was shot in the back and that the car of the defendant then left the scene of the shooting and the defendant fled jurisdiction. The only witnesses produced were the ones who were immediately apprehended by the police, leaving to the jury a fair inference in view of the fact that the defendant was an Italian and known in the neighborhood in question, that there were other witnesses who were either available to him whom he did not desire to call or that these witnesses kept themselves concealed because of their desire not to testify against the defendant.

*State vs Grace 98 N.J.L. 341*

It is submitted that the jury came to the inevitable conclusion that the shooting in this case was perpetrated by the defendant.

#### POINT I.

Under this point it is contended by Counsel that it was error for the Court to allow the Prosecutor in his opening to state to the jury that at the end of the case he was going to ask the jury to bring a verdict for the extreme penalty not only as a punishment to him but an example to others. Counsel for the defense claims that this violated the constitutional right of the defendant to a trial by an impartial jury. The Prosecutor made no reference whatever to conditions existing in Essex County or anywhere else, nor to any crime waves. The statement of the Prosecutor did not go beyond the generality that in meting out the penalty *those in whose hands it is to decide not only the guilt but the penalty as well, should have in mind not only the punishment of the defendant but also the protection of society.*

It is not an error for the prosecuting attorney to tell the jury that the people look to them for protection against crime (16 C. J. 911 and cases cited under note 70). The prosecutor's attorney may make remarks illustrating the evil consequences that might result from the failure to perform their duty and such remarks do not render the jury partial. The Prosecutor made no remarks outside the record. It has been held proper to state that a verdict of acquittal would be equivalent to anarchy; or to demand that the accused be hung rather than imprisoned or to state that the defendant should be severely pun-

ished (16 C. J. 909). It is respectfully submitted that no error is shown on this point.

## POINT II.

Under this point defense Counsel argues that "the Court erroneously permitted the Prosecutor of the Pleas to plead surprise thereby allowing the State to use an alleged prior self-contradictory statement of a State's witness, Gabriel Contaldi *as evidence against the defendant.*" Counsel has started this argument with the wrong premises, for the Court in his charge most emphatically admonished the jury against the use of this statement *as evidence against the defendant.* The witness Contaldi had made a statement previous to his testifying as a witness, wherein he said among other things that the fire, meaning the shots, were coming out of the window which was open in the door of the car where the driver was sitting; that the man who fired the shots from the car then started his car and drove down 7th avenue towards Broadway driving very fast. This was the information the Prosecutor had as to what Contaldi would testify to. On the witness stand Contaldi was asked by the Prosecutor:

Q Where did these shots come from if you know? A No, we thought that it was an automobile back firing (p. 68, l. 15).

He was again asked:

Q What happened to the automobile? A I didn't look because I was looking at the man on the ground.

Q Did you see where the automobile went? A No, I didn't.

These were of course contradictory to his previous statements as above referred to. It clearly indicated that the witness was hostile and didn't want to testify. The Prosecutor, therefore, properly pleaded surprise and requested the opportunity to neutralize his testimony by his previous statement. The previous statement was not introduced to prove the truth of the allegations contained therein, but merely to neutralize the effect of witness' testimony that he thought the noise was from the back firing of an automobile, and that he did not see the automobile at the time he saw the fall of the deceased, the implication of which would have been that the automobile of the defendant was not there at the time. The effect to which inference would clearly be prejudicial to the State. Counsel does not seriously contend the admissibility of the statement to neutralize the testimony of the witness. This was in accordance with the rule laid down in *State v. D'Adame*, 84 N. J. L. 386; *State v. Kysilka*, 85 N. J. L. 712 and *State v. Lewis*, 83 N. J. L. 161, all of which cases laid down the rule that it is discretionary with the Court to allow the Prosecutor to neutralize the testimony of the witness by producing previous statements of the witness. In the *Kysilka* case it is stated that the Court allowing such neutralization should take adequate measures to prevent the contradictory statement going in as ascertive evidence. The trial judge in the instant case spared no effort to make it absolutely clear to the jury that they should not consider the statement of Contaldi as of any evidential value against the defendant. We quote from the Court's charge (C., p. 167, l. 38 etc., p. 171, l. 10 etc.):

“In connection with one of the statements in evidence, gentlemen, there has been a good

deal of discussion about neutralization of testimony so called. You have heard counsel on both sides talk with some vehemence about neutralization of testimony. The State introduced or adduced one witness and pleaded surprise at the character of his responses which it is authorized to do as a matter of law, and then offered other self-contradictory statements.

Now, as to the law with reference to that, I will read to you from our decision of the court of last resort. 'You are to disregard this'—that is, this neutralization testimony—'as in any way tending to prove the truth of the facts which it asserts in a case barren of other direct proof of the facts which such contradictory statement would tend to prove, if admissible for that purpose.'

"The Court must instruct you that neutralization testimony is not offered as proof of the facts contained in the prior self-contradictory statement. You cannot, for example, take as true any of the statements that are in that statement now in evidence. It was offered purely for the purpose of neutralizing the earlier contradictory statements or the later contradictory statements. It is what we call a self-cancelling or self-erasing testimony, and you are not to regard it. *Be careful not to regard the statement now in evidence as proof of any of the facts contained therein.* It was offered by the State, as it can be, for the purpose of neutralizing another contradictory statement, and it is not offered and cannot be considered by the jury as evidential, as proving any of the facts in the statement itself. *If there is any misunderstanding or doubt in*

*your minds on that question, do not hesitate to ask the Court for further instructions in that connection"* (Case, p. 171, l. 10 etc.).

The trial court charged further :

Number nineteen, "The statement which was admitted by the Court, alleged to have been made by the witness, Gabriel Contaldi, is not evidential proof of any fact which it tends to substantiate. It has no testimonial value whatsoever against this defendant. It is simply admitted in the discretion of the Court for the purpose of neutralizing the testimony given by Contaldi under oath, and by neutralizing I mean, that it discredits Contaldi. It does not, in any way, become evidence or have any testimonial effect tending to show the guilt of the defendant. *I cannot make this warning too emphatic, because evidence of this character is obviously extraordinarily dangerous* and the Court is bound to give the jury ample warning against the consideration of such evidence by the jury except for its limited purpose. I so charge you."

We cannot conceive of a more painstaking effort to prevent the statement going in as evidence. It is respectfully submitted that no error is shown on this point.

### POINT III.

It is contended by Counsel that there should have been a direction for acquittal after the Prosecutor had finished his opening to the jury. In his opening the Prosecutor stated to the jury that the State would prove, that the deceased was called across the street by a man who was

seated in an automobile on 7th avenue pointing east towards Broadway. That the deceased went over to this man's car and stood in the street talking to the man who was in the driver's seat. That there was only one man in the car. That the State would identify the car by its appearance and by its tag number. That the deceased had a loud and apparently angry conversation with the man in the car. That after this conversation, as the deceased turned around and walked away from the car he was shot in the middle of the back by a bullet fired from that particular car. That the State would prove that this car in question belonged to the defendant and that on the day and at the time in question the defendant did stop at the place heretofore mentioned and did have a conversation with the deceased demanding certain money which the deceased owed him.

Thus the State offered to place the defendant at the scene and at the time of the murder, and to place him in the car in question and to show that shots fired from his car at the time when he and he alone was in it, caused the death of Balducci. These circumstances could lead to but one possible conclusion, that the defendant fired the fatal shots.

It is further argued by defendant that there should have been a direction for acquittal at the close of the State's case. The defendant was not entitled to such a direction unless there was no legal evidence to justify a verdict of guilty. It was for the jury to decide the truthfulness of the various witnesses. And on a motion for a direction of verdict it would be proper to assume that the jury would discredit the evidence produced by the defense such as the so-called dying

declaration of the deceased, and believe all of the evidence produced by the State. Generally a defendant is entitled not only to plead innocence but also ignorance. He cannot of course be compelled to explain things of which, being innocent, he knows nothing; but in the case at bar we have a situation where the defendant admitted being with the deceased at the very instant of the shooting; or a second or two prior thereto. It was testified that he had an angry conversation with the deceased a second or two before the deceased was shot. It was also shown that the shooting of the deceased occurred within 8 or 10 feet of the defendant and, the shooting and the departure of the defendant's car were simultaneous. It was also shown that at the time Balducci was shot his back was turned towards the defendant's car, and he was shot from the back. That there was only one man in the defendant's car at the time which the defendant in his statement admitted was himself. Under these circumstances the defendant could no longer plead ignorance of the shooting or ignorance of the fact that Balducci was shot, without subjecting himself to the inferences which the jury could properly draw from these facts. It was therefore proper for the Court to deny the motion for direction of acquittal.

#### POINT IV.

It is contended by Counsel that the trial court erred in denying defendant's request to charge number 16, "*It is the law in this State that the failure of the defendant to take the stand does not itself give rise to any presumption of guilt.*" The precise request was included in request number 7 thus, "*In this case there is no direct evi-*

dence connecting the defendant with this crime and, under law of this State his failure to take the stand creates no presumption of guilt." The Court granted this request without change (p. 169, ll. 16-20). No error is shown under this point.

#### POINT V.

After the jury had retired for deliberation they returned and asked to have read to them the testimony of Russo (p. 173, l. 14), the Court allowed the stenographer to read the same. It is to the Court's permitting the jury to hear read the testimony of the witness Russo that an exception was taken, and not to the refusal of the Court to have re-read any other testimony. Therefore if there was such a refusal to permit the re-reading of any other testimony, no objection having been taken thereon there was no judicial ruling which can be made a ground for reversal.

*State v. Hummer*, 81 N. J. L. 430.

The Chancellor in his opinion in the case of *State v. Close*, 106 N. J. L. 321 at page 334, approved the ruling of this Court in *State v. Bavier*, 89 N. J. L. 214, that under such circumstances where there was no request made by Counsel to have any further reading of the testimony, defendant could not complain of non-action on the part of the Court. It will be noted that in the instant case Counsel made no request, although his associate was there at the time (p. 173).

We submit however that the Court did not deny the re-reading of any testimony but refused to speculate as to what testimony it was that the jury wished to have read to them. As stated in the case of *State v. Close*, *supra*, the

reading of the testimony was discretionary with the Court, but the Court was not bound to conjecture or guess as to what was requested. It is highly probable that the jury decided to disregard the testimony of Contaldi altogether and also decided that Mayer, the store-keeper, could not have seen much and that Russo was really the reliable witness. Therefore it is probable they wanted to know if Russo, too, testified that there were numerous cars parked, that there were a number of cars passing down the street. At any rate the Court was not bound to recall the nature of testimony given by the various witnesses, and was under no duty to probe into the record until the jury were satisfied. It is submitted that no error is shown on this point.

**It is respectfully submitted that the Judgment of the Trial Court should be affirmed.**

Respectfully submitted,

JOSEPH L. SMITH,  
Prosecutor of the Pleas.

JOSEPH E. CONLON,  
Assistant Prosecutor of the Pleas.

1917

The first part of the report is devoted to a description of the  
 work done during the year. It is divided into three main sections,  
 each of which is further subdivided into smaller parts. The first  
 section deals with the general work of the department, the second  
 with the work of the various sections, and the third with the work  
 of the individual members of the staff. The report is written in a  
 clear and concise style, and is well illustrated with diagrams and  
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 department, and for those who are interested in the work of the  
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## New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*

—vs—

GEORGE SGRO,

*Plaintiff-in-Error.*

ON WRIT  
OF ERROR.

### BRIEF IN BEHALF OF PLAINTIFF-IN-ERROR.

Th plaintiff-in-error, hereinafter referred to as the defendant, was tried in the Essex County Court of Oyer and Terminer, upon an indictment charging him with murder, before the Honorable Daniel J. Brennan and a jury and found guilty of murder in the second degree with a recommendation of mercy; he was sentenced to 15 years imprisonment at hard labor in the New Jersey State Prison.

### STATEMENT OF FACTS.

On September 12th, 1930 at 10:30 A. M., one, Louis Balducci, a bootlegger, was shot on 7th Avenue, between Summer Avenue and High Street, in the City of Newark. He was removed to St. Michaels Hospital, suffering from a bullet wound in the back which produced a paralysis of the lower extremities. From the rubbing of his lower limbs against the bed clothes, infected bed sores resulted and he died from septicemia on the 26th day of February, 1931, almost 4½ months later. The defendant and the deceased had been friends for 8 or 9 years prior to September 12th, 1930 and had lived together at numbers 401 and 410 - 3rd Street, East Newark, New Jersey, until the deceased had moved to Netcong, New Jersey.

The defendant was taken into custody, in front of his home, on October 28th, 1930 and the police obtained from him a statement in writing, which was introduced in evidence and marked Exhibit S-13 (Case pages 182, 183 and 184). In his statement the defendant frankly admitted having spoken to the deceased on 7th Avenue, some time between 9 and 10 A. M., on the morning of September 12th, 1930 and that, after speaking to him, he had driven away in his automobile and did not learn of the shooting until that evening when he returned home after a visit to Hoboken. (Exhibit S-13, Case pages 182, 183 and 184).

The State produced four (4) witnesses who were at or near the scene of the shooting but none of them identified the defendant.

Hans Faber, the first State's witness, described an automobile he saw turning the corner as he was assisting an injured man on the morning of September 12th, 1930 and also recalled seeing a license number on it, which he wrote down, some hours thereafter, recalling it to be H-4017. He could not identify the defendant and did not know the name of the street he was on. (Case pages 42 to 50 inclusive).

Louis Russo, the second State's witness, was standing in front of his barber shop at 51-7th Avenue and he testified that he saw a man in the street talking along side of an automobile which he described as a black closed car; he saw that man turn and walk away from the automobile toward the sidewalk and that he heard some shots and he saw that man lying on the sidewalk and saw an automobile speed down the street. On cross-examination he stated that he did not know what direction the shots came from and when the defendant stood up, he testified that he did

not see him at any time on that morning. (Case pages 53 to 64).

Gabriel Contaldi, also a State's witness, testified that he was talking to Louis Russo in front of the latter's barber shop and he also saw a man in the street apparently talking to someone in an automobile; he did not see the person or persons in the automobile but he saw the man come away from the automobile and then he heard some noises that sounded like back fire and he saw the man fall. He could not tell what direction the noises, which he afterwards described as shots, came from. (Case pages 64 to 79). On cross-examination, he testified as follows (Case page 79, line 3):

“Q. How many automobiles were on Seventh Avenue while you were out there talking to Russo on the 12th of September?

A. Stopped?

Q. Well, stopped or moving or going by. I do not care what they were doing.

A. I do not remember. Four or five were going down or three or four were coming down.

Q. And how many were stopped?

A. Five or six in a line.

MR. D'ALOIA. (Addressing the defendant) Stand up, Sgro.

Q. Did you see that man there that morning at any time

A. No.”

Harry Mayer was the only other witness, for the State, near the scene of the shooting. He testified that on the morning of September 12th,

1930, Louis Balducci, the deceased was in his store at number 53 - 7th Avenue. He had known him for 3 or 4 years. He also knew the defendant. The deceased walked out of Mayer's place; he went across the street and was talking to someone there. He heard 2 or 3 shots and found Balducci lying on the sidewalk and spoke to him, but did not get any response. On his cross-examination, he testified positively that he did not see the defendant, George Sgro, at any time on that morning. When asked if he saw any automobiles on 7th Avenue, at or about the time he heard the shooting, he said he saw a few cars and that they were going in different directions. (Case page 80, line 20 to page 86, line 12).

The widow of the deceased was called and she testified that her husband was a bootlegger. (Case page 86, lines 15 to 22).

Fred L. Trautwein, a Newark police officer, testified that he visited the neighborhood of the defendant's house on September 13th, 1930, in company with 2 other police officers. They made several visits in that vicinity after September 13th, 1930 but did not see the defendant until he was arrested in front of his home on October 28th, 1930. The witness admitted that neither he nor the other officers had ever gone to the defendant's house to inquire there for him. On cross-examination (Case page 92, lines 18 to 28) his testimony is as follows:

"Q. And you told us the first time you went over to Harrison, which was on a Saturday, you did not go into 420 North 3rd Street at all?

A. No.

Q. During the following week did you go in the house at all?

A. No.

Q. Did you ever go in the house at any time while you were at Harrison?

A. No, I didn't."

And again on Case page 93, line 10:

"Q. You mean it was left to them to go into the house; you didn't go in?

A. We did not go in."

Thomas F. Wardell, a member of the Harrison Police Department, testified that on September 13th, 1930 he and detective Trautwein were in the vicinity of the defendant's house at 420 No. 3rd Street, East Newark, New Jersey (Case page 96, line 15). He also testified that on that day they went to a garage at number 2 South 3rd Street, Harrison, New Jersey and saw a Mr. Davis there. That the defendant was arrested in front of his home on October 28th, 1930.

James Davis, the proprietor of a garage at number 2 South 3rd Street, Harrison, New Jersey, testified that he knew the defendant and that the defendant had a Nash automobile, the photograph of which he did not recognize. He could not say whether or not the defendant's Nash automobile was or was not in the garage after September 13th, 1930. On cross-examination (Case page 108, line 27) this question was asked of him:

"Q. And you won't swear that it wasn't in there during the balance of the month of September after the 13th, would you?

A. No, sir."

All this evidence was adduced in an attempt to show flight but the defendant's statement introduced by the State and made part of its case,

Exhibit S-13 (Case pages 182, 183 and 184) clearly sets forth his movements in detail and it was not contradicted.

There was also introduced in evidence, over objection, and marked Exhibit S-15 (Case page 121, line 35 to page 122, line 26) a certificate of the Commissioner of Motor Vehicles showing the issuance of a license for a Hupmobile automobile for the year 1930 to George Sgro and a subsequent transfer to cover a passenger car of Nash manufacture bearing license number H-4-1-0-1-7. No evidence was adduced by the State to prove the identity of the owner of the automobile bearing license number H-4-0-1-7, which was the only license number seen and noted by the one witness, Hans Faber, nor was there any evidence adduced by the State to prove that the automobile bearing license number H-4-0-1-7 was not on 7th Avenue at the scene of the shooting at the time Louis Balducci was shot on the morning of September 12th, 1930.

The defendant did not take the stand inasmuch as his written statement (Exhibit S-13, Case pages 182, 183 and 184) had been introduced by the State. That statement told his whole story and it was not attacked by the State nor contradicted in any particular.

A dying declaration, made by the deceased, Louis Balducci, on November 8th, 1930 was introduced in evidence by the defense and testified to by the witnesses, Charles J. Garramone and John M. Judge (Case pages 139 and 140) (Case page 150, line 20 to page 151, line 15). In his dying declaration Balducci stated that George Sgro, the defendant, was his friend; that he was not the man who had shot him on September 12th, 1930. He stated that the police had brought the defend-

ant, George Sgro, to his room in the hospital a week or so before November 8th, 1930 and at that time he had told the police, in the presence of the defendant, that the defendant was not the man who had shot him. The deceased further declared that the defendant had driven away after a brief talk and that it was some time after that, while he, Louis Balducci, was on the sidewalk near the curb, that he was shot *by a man who was a stranger to him*. (Case page 139, lines 33 to 40). The dying declaration was not contradicted and no rebuttal testimony was offered by the State. No police officers were called to deny taking the defendant to the hospital, a week or so before November 8th, 1930 and being then positively informed, by the deceased, that the defendant was not the man who had shot him.

#### POINT ONE.

The trial Court erroneously permitted the Prosecutor to make a statement, in his opening to the jury, which was prejudicial to the defendant. (The 1st Assignment of Error and 1st Specification of Causes for Reversal are argued together under this heading).

Exception was taken by counsel for the defense to the following statement made by the Prosecutor in his opening to the jury:—

“\* \* \* \* \* at the end of the case I am going to ask you \* \* \* \* \* to bring in a verdict for the extreme penalty, not only as a punishment to him, *but as an example to others.*” (Case page 18, lines 6 to 9).

This statement was harmful because, at the very outset, it tended to call the attention of the jury to prevailing crime conditions in and about Essex

County, which were very bad, at the time of the trial. It was the constitutional right of the accused to be tried by an impartial jury and it was the duty of the prosecuting attorney to conduct the trial in such a manner as to be fair and impartial to the rights of the accused, no matter how guilty, in his opinion, the accused might have been. It is not the duty of the prosecuting attorney to secure a conviction by any other means or methods than those set forth by law and asking for a verdict of guilty as "an example to others" at that time was highly improper and prejudicial and the trial Court should have sustained the objection made by counsel for the defense.

*"16 C. J. pages 886 and 909,  
Par. 2221 and par. 2258."  
"State Constitution,  
Article 1, Sec. 8."*

#### POINT TWO.

The Court erroneously permitted the Prosecutor of the pleas to plead surprise thereby allowing the State to use an alleged prior self-contradictory statement of a State's witness, Gabriel Contaldi, as evidence against the defendant... (The 4th, 5th, 6th, 7th and 9th Assignments of Error and 4th, 5th, 7th and 9th Specifications of Causes for Reversal are argued together under this heading).

While the State's witness, Gabriel Contaldi, was being directly examined (Case page 69, line 12), and without any reason or justification therefor, the Prosecutor pleaded "surprise" and stated that he had a statement from the witness which was contrary to the witness's testimony and, from that point on, he was permitted, over objection, to ask

questions with reference to a visit which the witness had made to the Newark Police Headquarters and among other things, was allowed to say that he was attempting to prove a motive for the change in the witness's story; Evidence of prior self-contradictory statements of a witness to discredit his "surprise" testimony on a material point, is of a very dangerous character. The circumstances under which "surprise" was pleaded, upon the trial of this case, showed plainly that there was no real "surprise" and that the purpose of it was to procure the benefit of probative force from "hearsay" testimony. This is absolutely borne out by the Prosecutor's answer to the trial Court's question on the argument of the motion made for a direction of a verdict of acquittal at the end of the State's case, (Case page 126, lines 37 to 40), where he stated, among other things, the following:—

"\* \* \* \* \* and there is plenty of evidence that the defendant's car was there, that the shots came from the defendant's car."

There was not a scintilla of evidence in the testimony as to where the shots came from. The only reference thereto is contained in the alleged self-contradictory statement of the witness, Gabriel Contaldi (Exhibit S-12, Case page 180, lines 33 to 37, also page 181, line 16), which was admitted in evidence following the plea of "surprise".

When the self-contradictory statement was being used by the Prosecutor in an endeavor to prove the circumstances under which that statement had been made, a request was made of the trial Court to instruct the jury that the statement itself, and the manner in which it was procured and the circumstances under which it was made were not to be considered evidential

against the defendant. This request was denied (Case page 74, line 1) and the paper was marked Exhibit S-12 for identification. The reason for the request, at that time, was to prevent the jurors from mistakenly interpreting the use of the self-contradictory statement. The prejudicial effect of the refusal to give the instruction requested cannot be doubted. The jury should have been warned before the wrong impression had been made upon their minds, thereby preventing the conclusion that it all tended to prove the guilt of the defendant. Another request for such an instruction was made of the learned trial Court when the alleged prior self-contradictory statement was offered in evidence and admitted (Case page 113, line 1) but this request was also denied. Later, when the Prosecutor read the prior self-contradictory statement to the jury, after its admission in evidence, a third request was made of the learned trial Court (Case page 123, line 30) that the jury be instructed that that statement, as read by the Prosecutor, was not evidential against the defendant and the trial Court again denied the request, saying to counsel as follows:

“The Court has indicated that it will instruct the jury *what it thinks* about that statement at the proper time,”

and to counsel's suggestion that it was then the proper time, the trial Court answered:

“Well, I disagree with you.” (Case page 124, line 1).

These denials of a proper request for a proper instruction undoubtedly impressed the jury that the defendant was not entitled to the instruction and that the statement could be considered by them as evidential against the defendant. It was prejudicial and harmful to the defendant not to

have had the benefit of the instruction, when requested, before any harm could be done. What was said by the trial Court, in its charge, limiting the effect of the alleged self-contradictory statement, came too late and its importance was lost sight of by the jury, first, because of the length of the charge and, secondly because of the number of subjects discussed therein.

*"STATE vs. D'ADAME,*

*84 N. J. L. 386"*

*"STATE vs. KYSILKA,*

*85 N. J. L. 712"*

**It was prejudicial error not to have instructed the jury when requested.**

### **POINT THREE.**

**The trial Court should have directed a verdict of acquittal.** (The 2nd, 10th and 11th Assignments of Error and the 2nd, 10th and 11th Specifications of Causes for Reversal are argued together under this heading).

A motion for a direction of a verdict of acquittal was made after the Prosecutor had finished his opening to the jury.

The sum and substance of the State's opening was to this effect; the State has no witnesses to identify the defendant as the man who fired the fatal shot which caused the death of Louis Balducci; the State has an admission from the defendant that some time on the morning of September 12th, 1930, he was talking to the deceased and the State can show that an automobile resembling an automobile which the defendant owned and bearing a license number almost similar was seen at or near the scene of the shooting on the morning

of September 12th, 1930. The burden of proving the guilt of the defendant, beyond a reasonable doubt, was upon the State and, admitting everything that the Prosecutor had said, the State could not sustain that burden. The motion should have been granted.

At the end of the State's case, a similar motion was made; none of the witnesses adduced by the State had identified the defendant and the main witness for the State, Hans Faber, had failed to identify an automobile shown him in a garage, which the State contended belonged to the defendant, as the automobile which Faber had seen at or about the time of the shooting. (Case page 49, line 23). The State had proved by the testimony of the widow of Louis Balducci, that he was a bootlegger. (Case page 86, line 21). The witness, Gabriel Contaldi, had stated that at the time of the shooting there were 4 or 5 automobiles going in one direction and 3 or 4 in the other direction on Seventh Avenue and there were 5 or 6 other cars in a line. (Case page 79, lines 3 to 15). As part of its case the prosecution had also introduced in evidence a statement in writing made and signed by the defendant of his movements on the morning of September 12th, 1930 (Exhibit S-13, Case pages 182 to 184 inclusive), and all of his movements up until the time of his arrest. A perusal of that statement indicated nothing that was incriminating. No flight had been proved because the evidence showed that the defendant had remained at home for 3 or 4 days after September 12th, 1930 and then had gone to Boston and to New Rochelle, to visit relatives, returning to his home 4 or 5 days before he was arrested in front of his house. No motive of any kind had been proven by the State although the Prosecutor in his opening had attempted to create one. (Case page 17, lines 17 to 27).

In answer to the Court's question, (Case page 125, line 36) when the Prosecutor was asked as follows:—

“THE COURT. What do you think, Mr. Conlon, the State has established thus far connecting this defendant with the commission of the crime charged in the indictment?”

The Prosecutor stated (Case page 126, line 37) as follows:

“\* \* \* \* \* there is plenty of evidence that the defendant's car was there, *that the shots came from the defendant's car.*”

The only reference to the firing of shots is to be found in the alleged prior self-contradictory statement of the State's witness, Gabriel Contaldi (Exhibit S-12, Case page 180, lines 33 to 38 and page 181, line 16), admitted in evidence on the Prosecutor's plea of “surprise” solely to wipe the slate clean. (State vs. D'Adame, *Supra*). That statement was not evidence against the defendant. The motion for the direction of a verdict of acquittal at the close of the prosecution was erroneously denied.

The defense proved a dying declaration made by Louis Balducci on November 8th, 1930. Two witnesses for the defense, Charles J. Garramone and John M. Judge, went to St. Michaels Hospital on the afternoon of that day and were told by Louis Balducci, under fear of impending death, that he and the defendant, George Sgro, were good friends and that on September 12th, 1930, George Sgro did not shoot him; that he was shot by a man who was a stranger to him; that he was shot sometime after George Sgro, the defendant, had driven away. (Case page 139, line 30). The dying declaration by Louis Balducci also set forth

the fact that one week before November 8th, 1930, the police brought George Sgro to the hospital and he, Balducci, then told them that George Sgro was not the man who had shot him. (Case page 139, line 1). No rebuttal testimony was offered and the dying declaration remained intact and uncontradicted.

**A verdict of acquittal should have been directed.**

#### **POINT FOUR.**

**The trial Court erroneously refused to charge as requested.** (The 12th Assignment of Error and the 12th Specification of Causes for Reversal are argued together under this heading).

The trial Court was requested to charge as follows:

“It is the law in this State that the failure of the defendant to take the stand does not of itself give rise to any presumption of guilt.” Case page 117, lines 9 to 11).

The trial Court refused to charge this request, except as he had already charged it. The only reference, in the charge on this subject, is as follows:—

“The defendant did not take the stand in his own behalf. He denied the killing, because counsel said they rested on the statement of what his actual movements were. The statement went into evidence.” (Case page 166, lines 19-24).

The undersigned respectfully contends that in this case, where there was no *direct* evidence connecting the defendant with the shooting of Louis

Balducci and his uncontradicted written statement, containing no incriminating admission, having been introduced in evidence by the State, as part of its case, an instruction, such as the one requested, was a proper one under the law.

*"STATE vs. TWINING,*  
*73 N. J. L. 683, at page*  
*692."*

*"PARKER vs. STATE,*  
*61 N. J. L. 308, at*  
*page 314."*

*"STATE vs. WINES,*  
*65 N. J. L. 31."*

*"STATE vs. KISIK,*  
*99 N. J. L. 385."*

It was prejudicial error to refuse to charge as requested.

#### POINT FIVE.

The trial Court erroneously permitted the jury to hear re-read the testimony of the witness, Louis Russo, sometime after they had retired to deliberate upon a verdict and erroneously denied a request by the jury for the testimony which they desired to have re-read to them. (The 13th and 14th Assignments of Error and 13th and 14th Specifications of Causes for Reversal are argued together under this heading).

After the jury had been deliberating for some hours the Court permitted them to hear re-read the testimony of the witness, Louis Russo, (Case page 172, line 20) and then refused a request by the jury to have re-read to them the testimony referring to the number of cars on 7th Avenue at the time of the shooting which had been testi-

fied to by 2 witnesses for the State, Gabriel Contaldi and Harry Mayer. (Case page 79, line 3 to line 15; Case page 85, line 37 to page 86, line 12). The undersigned respectfully contends that it was improper to allow the jury to hear re-read the testimony of any witness, after they had been deliberating on a verdict for some time, but inasmuch as the Court had permitted them to hear the testimony of the one witness, Louis Russo, whom the jury mistakenly thought had testified to the number of cars on 7th Avenue at the scene of the shooting, it was error not to allow them to hear re-read the testimony which they clearly indicated they desired and which they particularly requested the Court to let them hear re-read. (Case pages 172 and 173). There is no decision in New Jersey squarely on this point. In some States, the re-reading of testimony, after the jury has retired to deliberate, is permitted by statute. In other jurisdictions, such as Colorado, Illinois, Nebraska and Missouri, it is held to be improper on the theory that it gives undue importance to the testimony thus re-read.

“*PADGITT vs. MOLL*,  
159 *MO.* 143,  
60 *N. W.* 121,  
52 *L. R. A.* 854.”

In Nebraska it is held to be a violation of the constitutional right of the accused to confront witnesses.

“*BARTELL vs. STATE*,  
40 *NEB.* 232,  
58 *N. W.* 716.”

We have no special statute on the subject and no law permitting it; the statute providing for court stenographers (C. S. 1721, par. 72) contains no reference to it. The only case which can be found that refers to the subject is *State vs. Close*, 106 *N. J. L.* 321, decided in February,

1930 by this Court. Counsel in that case argued that the jury were entitled to hear re-read the testimony of 2 physicians and cited the Montana and California statutes, together with the rule in New York. The Chancellor writing the opinion for this Court, said as follows:

“We have no statute on the subject and the New York law has no controlling effect here.”

“*STATE vs. CLOSE,*  
106 N. J. L. 321  
at page 334.”

It was held in that case that the trial Court was correct in refusing the request of the jury because *it was not the practice*. Although the Chancellor, in his opinion, states that the reading to the jury of the testimony of witnesses, after having retired to deliberate, gives to that testimony undue prominence over the other testimony which is not so re-read, he leaves the impression that it is the rule in this State that whether or not testimony should be re-read to the jury, after they have retired, is a matter within the discretion of the trial Court. The undersigned does not quarrel with this point of view but in the case sub-judice, the jury having been allowed to hear the testimony of the witness, Louis Russo, re-read, and having informed the Court that Russo was the wrong witness and having indicated and clearly described what testimony they did want, their request should have been granted. The trial Court knew the name of the witness, Contaldi, whose testimony they wanted to hear. The dialogue between the Court and the jury appears on Case page 172, line 20, as follows:

“ (At 3:15 o'clock P. M. the jury returns to the courtroom.)

THE COURT. Gentlemen of the jury. I understand you want some statements from the Court as to a matter of evidence. I am sorry that in my legal judgment I do not think I can supply that lack, if there be a lack. The Court's function is to instruct the jury purely on matters of law, and I would not supply my recollection of the evidence in an inquiry of this kind. I do not think I can legally. You will have to be bound by your own recollection of what the facts are, as indicated to you. You are bound to be bound by that recollection.

If there is the testimony of any witness that you think may throw any light on the question, I will be very glad to have that testimony read. That is something you will have to satisfy yourselves on. Do I make myself clear?

THE FOREMAN. Yes.

THE COURT. It arises out of no lack of desire, but out of what I concede to be the limitations imposed upon me by the law.

You may retire, gentlemen. Was there another question that the juror had?

A JUROR. Would the Court read the testimony?

THE COURT. If there is a witness that you indicate. Otherwise it would involve, I suppose, reading some thousands of pages of the testimony. Do you want the testimony of any witness?

A JUROR. Russo.

THE COURT. Certainly. I will have it read to you.

(The stenographer reads the testimony of the witness Russo to the jury.)

A JUROR. I think that is the wrong witness, your Honor.

THE COURT. The juror said Russo. Do you mean Contaldi?

A JUROR. Your Honor, *some witness spoke about the number of cars passing up and down the street, and other cars parked in the street, and that is the testimony we would like to have read.* I thought it was this witness. I am sorry.

THE COURT. Of course I can't speculate as to that. I can grant a request for any testimony which you indicate. I mean I cannot speculate as to the testimony.

A JUROR. I understand. Thank you.

(At 3:30 P. M. the jury again retires.)"

There could be no clearer indication of what the jury wanted re-read. Two witnesses for the prosecution, Gabriel Contaldi and Harry Mayer, had testified that a number of cars were on 7th Avenue at the time of the shooting; thousands of pages of testimony need not have been read to find their testimony. This case was not a long one and was concluded in a very short time.

Not permitting the jury to have the information desired, simply because of their inability to specify the names of the witnesses, was highly prejudicial and harmful to the defendant.

## POINT SIX.

**The verdict is against the weight of the evidence.**  
(16th Specification of Causes for Reversal is argued under this heading).

The proof adduced by the State showed that the defendant and the deceased were friends; on the morning of September 12th, 1930, the defendant met and had a friendly talk with the deceased in the City of Newark and the defendant then drove away. That at or about 10:30 A. M. on that morning, the deceased was shot and at the time of the shooting there were a number of automobiles on the street, some proceeding in different directions and others parked. An automobile was seen leaving the scene of the shooting. That automobile somewhat resembled, in contour, an automobile registered, at the time, in the name of the defendant. The license number on the automobile seen leaving the scene, by the witness Hans Faber, was H-4017. No evidence was produced to show what kind of an automobile bore that license number H-4017 and there was no identification of its owner. The State introduced in evidence a certificate of the Commissioner of Motor Vehicles (Exhibit S-15, Case page 194, lines 27 to 36) setting forth that a license had been issued to George Sgro, the defendant, for the year 1930 to cover a Hupmobile automobile and a subsequent transfer thereof to cover a passenger car of Nash manufacture, the license bearing number H-4-1-0-1-7. No witness saw the defendant at the scene of the shooting at the time of the shooting. There was no testimony as to where the shots came from. The deceased was a bootlegger; he may have been shot by some enemy in any one of the several automobiles which were on 7th Avenue at the time. The automobile bearing license number H-4017, which was the one seen

by the witness Hans Faber, could well have been the one from which the shots were fired and the occupant or occupants of *that car* could well have been the perpetrator or perpetrators of the shooting. No motive was proved. The signed statement in writing of the defendant (Exhibit S-13, Case pages 182, 183 and 184) was introduced in evidence *by the State* and made part of its case; it sets forth clearly and in detail his conduct and his movements. There is nothing incriminating contained therein and no indication of flight. The State made an unsuccessful attempt to prove flight; the policemen who testified stated positively that they had never visited the defendant's house, at any time, between September 12th, 1930 and the time the defendant was taken into custody in front of his home.

The defendant did not take the stand because there were no facts or circumstances to explain or deny. His statement was introduced by the State and had not been contradicted in any of its minutest details. The defense introduced a dying declaration in which the deceased, on November 8th, 1930, positively and without equivocation had stated that George Sgro, the defendant, was not the man who had shot him. That he and the defendant had had a short friendly chat on 7th Avenue on the morning of September 12th, 1930, after which the defendant had driven away; that some time after that, while the deceased was standing on the sidewalk, he stated that he was shot by a man who was a stranger to him. The dying declaration was in no way contradicted or attacked. No rebuttal testimony was offered by the State.

In conclusion, an examination of all the evidence fails to establish the guilt of the defendant beyond a reasonable doubt. The verdict itself, of "murder

in the second degree with a recommendation of mercy", is incompatible with the theory of the prosecution. It strongly indicates that the jury acquiesced in the request made by the Prosecutor, in his opening, for a result which would serve "as an example to others", and that they were influenced by crime conditions in Essex County at the time of the trial.

**The verdict should be set aside as against the weight of the evidence.**

For the divers errors and reasons urged, it is respectfully submitted that the judgment of the Essex County Court of Oyer and Terminer, herein, be reversed.

J. VICTOR D'ALOIA,  
Attorney for Plaintiff-in-Error.



