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WRIT OF ERROR.

STATE OF NEW JERSEY: SS:

The State of New Jersey to Ralph W. E. Donges, Esq., one of the Justices of the (SEAL) Supreme Court of the State of New Jersey, and to the Judge of the Court of Common Pleas of Camden County, constituting the Court of Oyer and Terminer, holden at Camden, in and for the County of Camden, of the term of April, 1941. 10

Because of the record and proceedings and also in the giving of judgment upon a certain indictment in our said Court of Oyer and Terminer against Robert Cox, late of the Township of Gloucester, in the County of Camden aforesaid, for that the said Robert Cox, on the 23rd day of April, in the year of our Lord One Thousand Nine Hundred and Forty-one, in the Township of Gloucester, in the County of Camden aforesaid, did wilfully, feloniously and of his malice aforethought, kill and murder Agnes McBurney, contrary to the form of the statute in such case made and provided, and against the peace and dignity of this state. 20

Pro ut the said indictment whereof before you he, the said Robert Cox, has been indicted and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Robert Cox, as it is said, manifest error, hath intervened to the great damage of the said Robert Cox, 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 him, the said Robert Cox, do command that you distinctly and openly send, under 30 40

*Return*

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 12th day of July, 1941, and this writ, that the records and  
 10 proceedings as aforesaid being inspected, we may further cause to be done thereupon, for correcting the error, what of right and according to the laws and customs of New Jersey, might be done.

WITNESS, Luther A. Campbell, Esquire, our Chancellor, and the President Judge of our said Court of Errors and Appeals, at Trenton, this 23rd day of June, nineteen hundred and forty-one.

Thomas A. Mathis

Clerk

20 Rocco Palese  
 ROCCO PALESE  
 Attorney

---

 RETURN.

30 The answer of Ralph W. E. Donges, Esquire, and Clifford A. Baldwin, Esquire, Judges of the Court of Oyer and Terminer, in and for the County of Camden, and State of New Jersey within named:

The record and proceedings of the plaint whereof mentioned is within made, with all things touching and concerning the same, including the record of the proceedings had upon the trial of the said defendant, to the Court of Errors and Appeals in the last resort in all causes, within specified, at  
 40 the day and place within contained, we certify in a

*Return*

certain schedule to this writ annexed, as we are within commanded.

Ralph W. E. Donges  
Justice  
Clifford A. Baldwin  
Judges.

10

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ORDER.

STATE OF NEW JERSEY,  
CAMDEN COUNTY COURT OF OYER AND  
TERMINER,

holden before Clifford A. Baldwin, Judge,  
sitting alone by designation of Justice Ralph W.  
E. Donges.

20

THE STATE  
vs.  
ROBERT COX

} April Term, 1941.  
} Sur Indictment  
} Murder  
} Samuel P. Orlando,  
} Esq.  
} Rocco Palese, Esq.

30

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CAMDEN COUNTY COURT OF OYER &  
TERMINER

By reason of the absence of Homer H. Lotier,  
Foreman of the Camden County Grand Jury,  
whereby he, the said Homer H. Lotier will be pre-  
vented from attending the session of said Grand  
Jury;

40

*Return*

It is on this first day of May, 1941, ORDERED that H. Russel Hunt, a member of said Grand Jury, be and he is hereby designated and authorized to serve as Acting Foreman thereof, and until such time the said Homer H. Lothier returns to his duties as said Foreman.

10

Ralph W. E. Donges  
Justice of the Supreme Court  
Presiding

Filed May 2nd, 1941 Frank J. Suttill, County Clerk.

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 INDICTMENT.

20

## STATE OF NEW JERSEY

30

CAMDEN COUNTY, to wit: BE IT REMEMBERED, That at a Court of Quarter Sessions, held at Camden, in and for the said County of Camden, on the first day of May in the year of our Lord one thousand nine hundred and forty-one, being the day on which the Grand Jury heretofore summoned before the Court of Oyer and Terminer and then and there sworn and charged to inquire in behalf of the State of New Jersey in and for the said County of Camden and now sitting in and for the said County, desires to make presentment of sundry bills of indictment and no justice of the Supreme Court being present at the court house in said County, before the Honorable Clifford A. Baldwin, Judge of the said Court of Quarter Sessions in and for the said County of Camden, according to the form of the statute in that case made and provided; by oath

40 of

*Return*

1 Mary C. Barb	12 Harold C. Lowden	
2 Helen Bechtel	13 Harry Lawrence	
3 John Cruise	14 Sidney Lawless	
4 William L. Duffy	15 Homer H. Lotier	
5 Albert E. Engel	16 Edward D. Marker	
6 William F. Easterling	17 George McQuilkin	
7 Gordon Garvey	18 Leslie W. Rogers	10
8 Howard E. Goff	19 Charles Sullender	
9 Frank M. Gaudelli	20 Charles F. Schafer	
10 H. R. Hunt	21 Curtis R. Walter	
11 Charles C. Holton	22 Howard Levis Yearsley	
	23 Frank Zimmerman	

good and lawful men and women of the said County of Camden, summoned, sworn and charged as aforesaid to inquire in behalf of the State of New Jersey in and for the said County of Camden, it is presented in manner and form following, to wit: 20

The Bills herewith presented are true Bills.

H. R. Hunt,  
Acting Foreman.

Filed, May 1, 1941, Frank J. Suttill, County Clerk.

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IN THE 30  
COURT OF OYER AND TERMINER OF  
CAMDEN COUNTY

April Term A. D. 1941

CAMDEN COUNTY, to wit:

THE GRAND INQUEST of the State of New Jersey and for the body of the County of Camden, upon their respective oath, PRESENT THAT Robert Cox late of the Township of Gloucester in the 40

*Return*

said County of Camden, on the twenty-third day of April in the year of our Lord one thousand nine hundred and forty-one at the Township aforesaid, in the County aforesaid, and within the jurisdiction of this Court, in and upon one Agnes McBurney, in the peace of God and this State then and there  
 10 being, willfully, feloniously and of his malice aforethought did make an assault, and her, the said Agnes McBurney, then and there willfully, feloniously and of his malice aforethought did kill and murder, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

Samuel P. Orlando

Acting Prosecutor of the Pleas.

A True Bill, H. R. Hunt, Acting Foreman

20 Filed May 1, 1941, Frank J. Suttill, County Clerk.

---

And afterwards, to wit, on the fifth day of May, in the year of our Lord one thousand nine hundred and forty-one, at a session of the Court of Oyer and Terminer aforesaid, being the April Term of Court, before the Honorable Ralph W. E. Donges, Judge of said Court, at Camden aforesaid, here cometh  
 30 the said Robert Cox, under custody of Frank B. Luker, Sheriff of the County of Camden aforesaid, in whose custody in jail of the County of Camden aforesaid, having been committed for the cause aforesaid, being brought to the bar and having heard the indictment read and forthwith being commanded of concerning the premises in the said indictment aforesaid specified and charged upon him how he will acquit himself thereof, he says he is  
 40 not guilty thereof and puts himself upon the Country.

*Return*

And Samuel P. Orlando, Esquire, Acting Prosecutor of the Pleas for the said County of Camden, who prosecutes for the State of New Jersey in this behalf doth the like.

Thereupon the Court fixed the day for the trial of the said Robert Cox for the second day of June, in the year of our Lord one thousand nine hundred and forty-one. 10

---

STATE OF NEW JERSEY  
vs.  
ROBERT COX

} On Indictment for  
Murder of Agnes  
McBurney.  
Request.

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20

Pursuant to R. S. 2:11-5, I, Ralph W. E. Donges, Justice of the Supreme Court, within whose district the Camden County Court of Oyer & Terminer is, hereby request the Honorable Clifford A. Baldwin, Judge of the Inferior Court of Common Pleas of said Camden County, sitting alone, to constitute and hold the Court of Oyer & Terminer of said County, for the purpose of arraignment of said defendant and the trial of or other and further proceedings on said indictment as authorized by law. 30

Enter in the minutes of the Oyer and Terminer Court.

Dated May 5th, 1941.

Ralph W. E. Donges

Justice of the Supreme Court

Filed May 5, 1941, Frank J. Suttill, County Clerk.

And thereupon let a jury come before the Honorable Clifford A. Baldwin, Judge of the Court of 40

Common Pleas in and for the County of Camden aforesaid, sitting alone by designation, of Justice Ralph W. E. Donges, at Camden aforesaid, in the County of Camden at the April Term in the year of our Lord one thousand nine hundred and forty-one of the Court of Oyer and Terminer aforesaid

10 on the second day of June, in the year of our Lord one thousand nine hundred and forty-one, twelve good and lawful men, each of whom shall be a citizen of this State and reside within the County of Camden 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 Robert Cox, to recognize upon their oath whether the said Robert Cox, be guilty of murder in the indictment aforesaid specified, or not guilty, because as well the said

20 Samuel P. Orlando, Acting Prosecutor of the Pleas for the County of Camden aforesaid, who prosecutes for the State of New Jersey aforesaid, as the said Robert Cox, have put themselves upon said jury, and the same day is given to the parties aforesaid, at the same place at which time, that is today, the second day of June, in the year of our Lord one thousand nine hundred and forty-one, at the same term of Oyer and Terminer, holden at Camden

30 aforesaid, in the County of Camden, before the Judge aforesaid, sitting alone by designation of said Justice aforesaid, here cometh as well the said Samuel P. Orlando, Acting Prosecutor of the Pleas aforesaid, as well as the said Robert Cox, in the custody of the Sheriff of the County of Camden, being brought to the bar here in his proper person by the said Sheriff, and the trial of the indictment aforesaid being moved by the said Samuel P. Orlando, Acting Prosecutor of the Pleas as aforesaid,

40 and the jurors of the said jury by the Sheriff of the

*Return*

County aforesaid for the purpose empanelled and returned, to wit:

John V. Ogden, Philip Gallagher, James H. North, Herman Skalla, Charles H. Agar, Sr., John Van Artsdalen, Thomas V. Fitzpatrick, Bernhard C. Foulon, Watson Cooper, Charles A. Aceto, Nash Marshall and Frederick R. Baker, being called, 10  
 come, who being chosen, tried and sworn to speak the truth of and concerning the premises and there-upon the trial of the issue commenced and continued before the said Court and jury from day to day, until the fourth day of June, in the year of our Lord one thousand nine hundred and forty-one of Camden aforesaid, the jury in the meantime having all that time been kept together and in care of officers of the said Court, who were selected and duly sworn by the Court for that purpose at which last 20  
 mentioned day the said issue after a charge from said Court was submitted to the said jury, and then the said jury in charge of the officers of the said Court duly sworn for the purpose, were taken to a private room to consider on the verdict; and afterwards, that is to say, on the day aforesaid, at Camden, 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 Samuel P. Orlando, Acting Prosecutor of the 30  
 Pleas and the said defendant Robert Cox, do say that the said Robert Cox is guilty of murder in the first degree in manner and form as in and by the said indictment as charged against him, the jury was then polled by the Clerk;

And the said Robert Cox, now, to wit, on the fourth day of June, in the year of our Lord one thousand nine hundred and forty-one, being produced before the said Court at Camden aforesaid, in his proper person in the custody of the Sheriff of 40

the said County, whereupon all and singular the premises being seen and by the Court here being fully understood, it is considered and adjudged that the said Robert Cox be forthwith taken by the Sheriff of the County of Camden to the State Prison at Trenton, New Jersey, and delivered to the principal  
 10 keeper of the said State Prison, and there confined until the week beginning Sunday the thirteenth day of July next, and during said week within the State Prison enclosure the said Robert Cox shall be put to death by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, and the application of such current shall be continued until the said Robert Cox is dead.

Judgment entered and signed this fourth day of  
 20 June, in the year of our Lord one thousand nine hundred and forty-one.

Clifford A. Baldwin

Judge of the Court of Common Pleas in and for the County of Camden, sitting alone by designation of Ralph W. E. Donges, Justice of the Supreme Court in and for the Second Judicial District.

30

STATE OF NEW JERSEY  
(Seal)  
COUNTY OF CAMDEN

I, FRANK J. SUTTILL, Clerk of the County of Camden, do hereby certify, that the foregoing is a true copy of record and proceedings and also judgment in the matter of 10

THE STATE  
vs.  
ROBERT COX } Sur Indictment  
Murder

filed June 4th 1941, and recorded in the Clerk's Office of the County of Camden, in Book H of Oyer and Terminer page ..... 20

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Camden, this twenty-seventh day of June A. D. 1941.

(SEAL)

Frank J. Suttill  
Clerk.

30

40

*Testimony*  
*Opening Statement for the State*

## TESTIMONY.

10 CAMDEN COUNTY COURT OF OYER AND  
TERMINER.

THE STATE, }  
vs. } On Indictment for Murder.  
ROBERT COX. }

20 FIRST DAY  
JUNE 2, 1941

Before BALDWIN, J. and a Jury

## APPEARANCES:

30 For the State, SAMUEL P. ORLANDO, ASSIS-  
TANT-ATTORNEY GENERAL  
For the Defendant, ROCCO PALESE, Esq.

(Mr. Orlando opens the case for the State as follows:)

40 With your Honor's permission and yours, gentle-  
men of the jury, you have been drawn and have

*Opening Statement for the State*

been sworn to try an indictment which has been returned by the Grand Jury of Camden County against the defendant, Robert Cox, upon a charge of murder. The facts which briefly give rise to this trial, members of the jury, are as follows:

The State will show you that on the 23rd day of April of this year, about 7:10 o'clock in the morning, for the last time the victim, Mrs. McBurney, was seen alive by her son, Robert McBurney, Jr., who was then going to school. I think he was the one who left the house last. At that time Mrs. McBurney was inside the house and the boy saw her for the last time alive. Later that afternoon, about 4 o'clock or 4:10 in the afternoon, after he had returned from school, he came back to the same place and the same house, and there he found his mother dead. Death had been brought about by perhaps what may be described as one of the most brutal fashions that death could possibly be brought about. We will show you that when the young lad came home a little after 4 o'clock that afternoon he discovered the body of his mother lying upon the ground, near a little stoop that leads into the kitchen or the shed of this house wherein they lived. We have photographs which will more vividly describe the condition in which she was lying. Suffice it to say that when the boy came home he found her within a very close distance of the stoop that leads into the shed, with her face upward, and the face, as I recall, facing toward the back of the house where the woods are, and the feet outstretched toward the front of the house or the entrance to the house. We will show you, members of the jury, that some time between 7:10 that morning, when the son saw his mother for the last time alive, and 4:10 in the afternoon, when he again saw his mother lying dead at the place that I have described, this defen-

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30

40

dant, who stands charged with this murder, by means which will be more minutely described in this opening address that I shall make to you, brought about the death by murder of this woman in a most brutal fashion.

10 Now, just a word or two concerning the place where this murder occurred. The McBurney family, consisting of Mr. McBurney and four children who were living at home, and Mrs. McBurney, were living in a small farmhouse situated on what is commonly known as Buffalo Road. I think it is approximately a mile or a mile and a half from Turnerville, and it is a very lonely spot. This road that leads to the farmhouse where this little woman lived with her children and her husband is in a lonely position. The nearest house to it is some  
20 distance away. This road that I have said is commonly known as Buffalo Road is a small gravel road that runs past this house and on out to a road which eventually takes you out towards Turnerville. That house, as I recall, sits back from the Buffalo Road a distance of about 200 to 250 feet, the front of the house facing towards Buffalo Road, and in the front of the house is an entrance to it, a doorway which is very rarely opened and, as I understand, on this particular day, the front door was closed as  
30 it had been closed for some time. Then there is an entrance to the house by the back way. When I speak of the back way I mean a small shed which is built right to the house and right in back of the house and on the side towards the back is a little stoop as I have already described with a doorway leading into the shed and then a little back of that is a room which was used as a bedroom for the children, as I understand the situation, and then off the shed, into the front of the house, towards the  
40 front of the house, there is a room which was used

*Opening Statement for the State*

as a sitting room or living room or parlor. Then upstairs is another bedroom which was used by Mr. and Mrs. McBurney, and I take it that is the only room upstairs.

Now, on this particular day, Mrs. McBurney had gotten up in order that she might get as usual and customary her children off to school, and the last one to get off was young Robert, who will be here to testify. When he last saw her I think he will tell you he saw her in the living room or parlor which is situated right adjacent to this back room which is in the shed. She was then perfectly all right and as I expect, content and happy to see the children make off to school. 10

Now, this defendant, sometime during that morning—and the best we have sometime perhaps between 11 and 12 o'clock,—left the house where he stayed and where he lived with a colored woman, some mile or mile and a half away from there, and he went up the roadway, a gravel road that leads up to the Buffalo Road, and then up the Buffalo Road to right on up to the McBurney farm. After he got to the McBurney farm he entered into the premises, this roadway that leads up to the house, a couple of hundred feet away, and the State will contend with the idea and purpose in mind of going there for the purpose of robbing and stealing from the person who might be in that house. He went there with the idea of stealing whatever he could get. He finally entered that house. Now, of course, there was nobody there excepting the victim and this accused, and therefore we have to necessarily spell some of the facts and some of the circumstances surrounding this murder by the incidents and by the things which we observed after this murder was discovered. The State contends that he went there for the purpose of robbing whoever he 20 30 40

*Opening Statement for the State*

might find within that house. It just happened to be unfortunate that he found this fine woman, the mother of these children, to be at home and to be at home alone, and we contend that after he got to this McBurney farm he went up by way of the side, the back entrance, and he gained admittance into this shed and he, while being in the shed, must have been discovered by Mrs. McBurney, because we will show you the photographs and people will testify here concerning the conditions as they found them in that little shed.

We will show you that after the murder had occurred and after the matter was brought to the attention of the authorities, that when they went there, when they visited and entered the house, in the shed they discovered a state of disorder to exist. They discovered that a chair which the boy will tell you was in its perfectly normal position when he left that morning, was down upon the floor, and that upon that chair there were some blood marks. We will show you there was some blood, not in large quantities but some blood marks upon the floor in the shed. We will show you a basket which had been placed in its normal position earlier that day, when the boy left, was thrown down to the floor, and other things were thrown, items of furniture and furnishings within the shed were all in a state of disorder, which we say justifies the State's contention that this man must have entered into the kitchen or into the shed of this house, and that while he was there Mrs. McBurney must have heard him there for the first time.

He must have, in his attempt to try and steal whatever he could in this house, have struck her in some fashion and caused her to bleed in some form or other. Then, we will show you that also in the shed there was one of the two slippers which

*Opening Statement for the State*

this lady was wearing on the day of this murder, the other slipper was discovered right outside the house, right near the entrance to this shed door. It is the State's contention that Mrs. McBurney must have gone outside the house in some fashion or other, because right outside—near the shed, near the shed entrance, you will find another one of those slippers. Then, and alongside the house with the back towards the shed door, was a truck which was parked there, a truck owned by Mr. McBurney, which was parked parallel with the side of the house. Some little distance from the shed door entrance to the front of the truck, perhaps ten or fifteen feet or more, there was a wastebasket and some other things lying there, upon which was discovered some more blood, which would seem to indicate there was some sort of struggle, and that struggle having been from the shed extended out to this point somewhere in front of this car to the site where it was parked, and then eventually and ultimately he must have dragged her from that position from the front of the house more towards the back, and towards this kitchen door, the shed door entrance, away from the view of people who might have been coming along this Buffalo Road.

A statement has been made by the defendant which will be offered in evidence during the course of the trial, in which he describes the method that he employed in bringing about the death of Mrs. McBurney, as to the circumstances and details of which occurrence, the State contends, contrary to what he may testify, that he went there deliberately with the purpose of robbing whoever he might find in the house, and we will contend and show that, aside from the idea of going there and attempting to rob and bring about the murder in that fashion, that after he did strike Mrs. McBurney one blow,

according to his own admission, with this baseball bat which was located alongside the house somewhere near the shed door, and she had fallen down to the ground, possibly still alive, thinking that perhaps he might be discovered, and she might live to tell the jury, according to his own admission, he took the same baseball bat, and after having struck her once and thrown her down to the ground, he again struck her some two or three more times, with the result that that inflicted such a serious injury to her head that her head was practically a pulp and covered entirely with blood at the time when the body was discovered by the young man when he came home from school.

So, members of the jury, you can see very readily from what has already been indicated to you in my opening that this attempt on the part of this defendant to go to this house at a time, perhaps, when he knew that there was nobody there excepting the lady of the house, Mrs. McBurney, when he might replenish himself with some money he needed, and which he had to have, according to his own admission, in order that he might buy something to drink and something to eat. Now, after he had brought about the death of Mrs. McBurney, or, at least, after he had struck her a number of times with this baseball bat in the fashion I have described, the defendant apparently went all over that house and ransacked through every room of the house. We will show you, in this living room or parlor, which is adjoining the shed, there was a chair upon which was located a pocketbook or wallet which was owned by Mrs. McBurney, which had been examined very thoroughly by this defendant in seeking money or other possessions of value. Then, after he had gone over that, he went upstairs in the bedroom I have already described. He went all over that very

*Opening Statement for the State*

thoroughly, and we will have evidence in the form of photographs which will be shown to you, which will indicate that when he was unable to find any money, he finally gazed upon this radio, the property of the McBurneys and he conceived the idea that possibly he might be able to get some money from the sale of the radio. Whereupon, he came out of the house with that radio in his possession, having stolen it from the property and at the place I have already described. 10

And then you can see how cunning and how well planned and designed this thing was. In order that he might get back to his home instead of going down towards the front of the house along Buffalo Road and right on down to the highway, which would lead him to his house, in order that he might not be seen, in order that he might hide himself from the view of any one that might come along, he came from the house with this radio in his possession, and he went back through the woods in the back of the McBurney home, where there is a lot of woodland which will take you across—by walking across out to the road where he eventually wanted to go, and when he went through the woods, he hid himself from the view of anyone because there was no one that could possibly penetrate through these woods from the roadway to see what was going on. When he crossed the road again to go to his own place, he again took a circuitous route to his own home. When he got to his own home, his intention was to turn this radio into cash. It was money he was after primarily, having been unable to find money in the house and in the pocketbook of Mrs. McBurney. He was very desirous of turning this radio into cash. We will then show you he went up in the neighborhood seeking from one of his acquaintances and friends enough money in order that he might 20 30 40

*Opening Statement for the State*

go to Philadelphia to a pawn shop, where he might be able to pawn this radio and get the money with which he might buy the things that he desired. He made numerous efforts to get money from various individuals, and was unsuccessful, but finally he did meet one of his neighbors, one of his friends in the vicinity from whom he got the sum of twenty-five cents, which was exactly what he needed to get from Clementon to the Camden Terminal of the railway facilities and ferry facilities and then five cents in order that he might come across in a ferry boat over to Philadelphia. We will show you that being conscious of the need, and being desirous of keeping himself from view, and keeping this radio from the view of others, who might possibly suspicion him, he went home and got this basket which was at his home. He placed this radio in this basket and covered it up. So, when he ultimately went to Clementon, where he had to get the bus to take him to Camden, and when he went across in the ferry boat over to Philadelphia, he had this radio so situated in this basket that it might be hidden from the view of anyone that might have taken occasion to look in the basket. Then, we will show you after he got to Philadelphia, he alighted from the ferry boat, and he went across Delaware Avenue, and then up towards South Street some place, to a place where a pawn shop was situated. He went in to this pawn shop and offered to pawn this radio for some sum of money, which will be given to you in detail. I don't know just exactly how much it was. It was a matter of a few dollars. When he went to the pawn shop in order again that he might hide his identity and in order that he might not be discovered when he was questioned as people would question him in a pawn shop about his name, he gave a name which was not his name. He gave a name that came

*Opening Statement for the State*

to his mind, and he gave an address which was non-existent so far as he knew. He gave, to use a slang expression, a phony name and phony address in order that he might not be discovered.

In the meanwhile, while these things are occurring—I might also mention to you members of the jury, he had these rubbers on when he went to this farm house, and when he left the farmhouse and before he got out into the road where some footprints might show or be left on the road he hid these rubbers at some place so they might not leave any footprints or any evidence of footprints. All of which goes to show you how well he planned and how well this matter was designed. 10

While this was taking place, the young man was returning back from school. When he came home and discovered this body lying out in the yard near the entrance to this kitchen or this little room, which I have indicated is in the back of the house, he became alarmed naturally as would any young man in those circumstances. He immediately got aboard a horse—he mounted a horse that they kept in the barn they have in the back, and he rode across these woods in the back as fast as he could until he came to some building some distance away where a couple of men he knew were there. He immediately told them of his discovery, and they came to the scene of the crime, and they, along with the boy, discovered the body there exactly as it was when it was first seen that afternoon when the boy came home. Then, one of these men covered the body with some kind of clothing, covered the face of the body, and then the first thing that was done was naturally to call the local township police, the police in Gloucester Township. They went to the scene and they will be able to describe to you conditions as they found them when they got there. Naturally, in turn they 20 30 40

notified the New Jersey State police, who dispatched a couple of police officers from their nearest barracks to the scene of the crime, and then, of course, they, in turn, notified the Coroner and the County Detectives, and in a short time all of these various investigating authorities of the County came upon  
10 the scene of this crime. Each one of these men will be able to describe to you in detail the conditions as they were found there at the time.

Fortunately for the authorities and unfortunately from the defendant's standpoint, there was some tangible evidence by which the whereabouts of the defendant might be established and the fact of who was the defendant might be established. It was discovered at the time the house was being examined that whoever was the perpetrator of this crime, he  
20 had stolen from this home this radio, and following this as a clue, the State police authorities and the County authorities investigated and discovered that very same day this radio had been pawned in Philadelphia by a negro, a colored man. With that as a clue, finally late that afternoon or that evening, this defendant was arrested and questioned, and during the course of the questioning he admitted that he was the man who had gone there, and who had committed this murder. Of course, members  
30 of the jury, both in his statement, and, I suppose, in his own defense, this defendant will contend and narrate to you a course of conduct which we will characterize brought about some state of intoxication. He claims to have been drinking, and he claims he had drunk to such an extent that possibly he did not act as discreetly as he should, but against that, the State maintains, members of the jury, that the conduct of this man was such as to show a deliberate, actual, well designed, calculating man  
40 committed this crime in such a fashion as to dispel

*Robert McBurney—Direct*

any possibility that the drunkenness or stupor effected by drunkenness of his would not be able to do these things which he did following this crime.

Members of the Jury, I shall refrain from discussing this matter more at length because you will look at the entire picture as it is unfolded by the witnesses. I want to close this opening argument 10  
or this opening address to you by saying to you, there is no doubt whatsoever, so far as the State is concerned, and it maintains and will submit for your consideration that this occurrence is one of the most brutal killings committed under such circumstances, which, under our law, presents a murder in the first degree such as would justify demanding the penalty of death, and if we show that—we establish that to you by proper evidence those things which I have 20  
outlined will be testified to and that we are going to show you, in the name of the State I will ask you that you return a verdict of murder in the first degree accompanied by the death penalty.

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ROBERT McBURNEY, sworn.

BY MR. ORLANDO:

Q. Robert, how old are you? 30

A. Nineteen.

Q. You are a student at the Haddonfield High School?

A. That is right.

Q. I understand that this is your senior year?

A. That is right.

Q. Will you speak up so the folks at the desk will be able to hear you? How many brothers and sis-

ters did you have living at home with you on the 23rd day of April?

A. Two brothers and two sisters.

Q. Are they younger than you?

A. All.

10 Q. Did your father and your mother also live in this house on Buffalo Road?

A. That is right.

Q. Do you recall the date April 23rd, last?

A. Yes, sir.

Q. What day of the week was it? Do you recall?

A. Wednesday.

Q. Do you remember whether or not you attended school that day?

A. Yes, sir, I did.

20 Q. What time was it, about, when you left the house?

A. About five or ten minutes after seven.

Q. In the morning?

A. In the morning.

Q. You would have to walk, I assume, some distance before you get to the bus, is that right?

A. Yes.

Q. Had the other children left before you?

A. I was the last one to leave.

30 Q. Where was your mother when you left the house at five or ten minutes after seven?

A. Lying on the studio couch in the front room.

Q. What you speak of as the front room is the room adjoining the shed?

A. It is all the ways in the front.

Q. There is a kitchen between the shed and the front room, is that right?

A. Yes.

Q. Did you speak to your mother before you left?

A. Yes.

40 Q. And know that she was alive?

*Robert McBurney—Direct*

A. Yes, sir.

Q. What time was it when you returned from school?

A. I would say between four and ten minutes after.

Q. Were you the first one to get back home from school? 10

A. The first one.

Q. What sort of day was it? Was it a clear day?

A. It was clear and warm because I walked slow.

Q. How far did you have to walk from where you descended from the bus?

A. I guess it is about a mile and a quarter.

Q. When you got home was there any person at home other than the body of your mother?

A. No.

Q. Where did you find your mother when you got home from school? 20

A. Lying between the truck and the back door step.

Q. How was her body lying? In what position?

A. It was lying with her face up, with her feet toward the step, and her right hand was on her left breast, and her left hand was stretched out, and her head was turned toward the truck.

Q. Did you do anything when you found that situation to exist? 30

A. I stayed there for a few minutes, and then I got a shot-gun and shot it and called for help. I got no answer and then I mounted my horse and rode to Bungalow Inn and got two men, and they came to the scene and one of them got the police.

Q. Bungalow Inn that you spoke of, is on what road?

A. Hickstown Road.

Q. Approximately about how far is that from your place? 40

A. Half a mile.

Q. How did you get there? Did you go by road or did you go through the woods?

A. Cut straight through the woods.

Q. The jury finds it difficult to hear you. Will you keep your voice up, Robert? Who were the two  
10 men that you saw when you got to Bungalow Inn?

A. Mr. Chew and Mr. Erdbrink.

Q. Then did you go back to the scene of the crime?

A. Yes.

Q. What did you do then? Did you remain there or did you leave?

A. No, I stayed there.

Q. Later on do you recall the police officers coming there?

A. The township police.

20 Q. How many of them were there?

A. Two.

Q. After the township police had arrived do you recall whether or not the state police came?

A. Those two gentlemen behind you.

Q. Were you there when the state police arrived?

A. Yes.

Q. Were you there when your father came home?

A. Yes.

30 Q. What time was it when your father came home?

A. I would say about quarter after five.

Q. Do you recall a member of the state police who came there taking some photographs?

A. There were a lot of state police there.

Q. Do you remember them taking pictures?

A. I don't remember what he was doing—oh, yes, yes.

Q. Were you there when that was done?

A. Yes.

*Robert McBurney—Direct*

Q. Did you enter the house after you had summoned help?

A. Before—oh, yes, after.

Q. What part of the house did you enter?

A. Well, before I entered the shed and went to my bedroom and loaded my gun and looked over the house, and I couldn't see anyone, and I went for help. When I came back I went through the house again, all through. 10

Q. As I understand it before you went to get help you went into the house and got your gun?

A. Yes, and got help.

Q. Do you recall seeing the condition that existed in the shed when you entered the house the first time?

A. Yes.

Q. Were they as you had left them that morning when you went to school? 20

A. No, sir.

Q. What did you find about the condition in the shed? Were they different from what you had seen them that morning when you left for school?

A. There was a chair at the door with blood stains. As I recall it, it was standing upright at the pump, and there was several baskets dumped that were stained, which were upright in the morning when I left. That is all I can recall right now. 30

Q. Do you recall seeing the baseball bat?

A. I believe it was lying on her left side.

Q. Did you disturb the things that were in the kitchen?

A. No, sir, the only thing I picked up was a knife and go into the bedroom.

Q. That was in the bedroom?

A. No, I picked it up as I walked in the shed.

Q. Where did you pick up the gun?

A. In my bedroom. 40

Q. Where was your bedroom with relation to the shed?

A. Right behind the bedroom, in back of the pump on the left.

Q. Did you go upstairs to the bedroom that was occupied by your father and mother?

10 A. Yes.

Q. What condition did you find existing up there?

A. The bed was tore up, and all the drawers were half closed and the clothing torn out.

Q. Was that the condition that you discovered before you went to summon help?

A. Yes.

Q. Now, do you know of your own knowledge whether or not there was a radio upstairs in that house before the 23rd of April or was it downstairs?

20 A. It was downstairs.

Q. In what part of the house was it kept?

A. In the front room on the right side of the stove on the corner.

Q. Is that where your mother was when you left?

A. It was at her head, I believe, when I left.

Q. What sort of radio was it?

A. That radio there (indicating).

Q. A portable type radio?

A. Yes.

30 Q. I show you what purports to be a General Television radio, portable type, and ask you to look at it and tell us whether or not you can identify this radio as being the radio that was in your home that morning when you left on April 23.

A. Yes, I recognize these buttons.

Q. Is there anything about these buttons that particularly causes you to identify that radio?

A. This name is wore off.

40 MR. ORLANDO: Your Honor, we would like to

*Robert McBurney—Direct*

have this marked for identification as State's Exhibit S-1.

THE COURT: It may be marked.

(The radio referred to was marked State's Exhibit S-1 for identification.) 10

Q. Was that radio at home when you came back?

A. No, sir.

Q. Did you notice it missing?

A. Not right away.

Q. Later on after you had returned did you notice it was missing?

A. Yes.

Q. I show you a photograph and ask you whether or not this photograph shows the position that you found your mother's body to be lying when you came back from school. 20

A. That is it.

MR. ORLANDO: I ask that the photograph be marked State's Exhibit S-2 for identification.

THE COURT: It may be marked.

(The photograph referred to was marked State's Exhibit S-2 for identification.) 30

Q. I now show you another photograph, Robert, which purports to show the side of the house with the front of the truck and by it on the side a small wastepaper box made of paper, and a small wooden box and ask you whether or not you recall those two items being in front of the car in the position shown in that photograph when you came back from school.

A. I don't recall that box standing right there, but this paper box was.

Q. Do you recall when you discovered that box whether there was any bloodstain on it?

A. Not till my attention was called to it.

Q. When it was called to your attention did you see some blood stains on it?

A. Yes.

MR. ORLANDO: I ask that the photograph be marked as State's Exhibit S-3 for identification.

THE COURT: It may be marked.

(The photograph referred to was marked State's Exhibit S-3 for identification.)

20

Q. I show you another photograph, Robert, which shows the position of the body with relation to the entrance of the shed and also that of the truck, and ask you whether or not this photograph substantially portrays the position of the body with relation to the truck and the entrance of the shed when you came back from school.

A. That is the way it was.

30 MR. ORLANDO: I ask that this be marked as State's Exhibit S-4 for identification.

THE COURT: It may be marked.

(The photograph referred to was marked State's Exhibit S-4 for identification.)

40 Q. I show you a photograph of what purports to be the bedroom upstairs and ask you to look at it and tell us whether or not this photograph portrays

*Robert McBurney—Direct*

the conditions as they were upstairs in the bedroom when you went upstairs after you returned home from school.

A. That is the way they were.

Q. Speak up so the gentlemen can hear you.

A. That is the way they were.

10

MR. ORLANDO: I ask that this photograph be marked State's Exhibit S-5 for identification.

THE COURT: It may be marked.

(The photograph referred to was marked State's Exhibit S-5 for identification.)

Q. I show you a photograph which depicts the condition in the shed and ask you whether or not the condition as depicted in this photograph is substantially as you saw the condition to be after you returned home from school.

20

A. That is the way it was.

MR. ORLANDO: I ask that this photograph be marked State's Exhibit S-6 for identification.

THE COURT: It may be marked.

30

(The photograph referred to was marked State's Exhibit S-6 for identification.)

Q. When you came home, Robert, did you have an opportunity to gaze at your mother's body while it was lying on the ground before you went to summon help?

A. Yes.

Q. Did I understand you to say that you did that for a moment or two; is that right?

40

A. Yes.

Q. Can you tell us whether or not the body as it was lying there on the ground was covered with blood?

A. I believe just the head.

Q. Around the head?

10 A. I believe that is right.

Q. Did you notice whether or not there was some blood on the ground in the vicinity where the body was lying?

A. Yes, I noticed blood stains on the truck and the side of the wall.

Q. You described, Robert, as seeing your mother lying with one hand toward her breast, is that right?

A. Yes.

20 Q. Did that blood that you discovered seeing over your mother's body seem to be spread over every part of her body?

A. I think it came down over her face. I don't remember anything else. I think a little over her shoulder.

Q. I show you a photograph which shows that portion of your mother's body that you have described and ask you whether or not this substantially portrays the condition of the blood as you saw it.

30 A. Yes, that is right.

MR. ORLANDO: I ask that this photograph be marked State's Exhibit S-7 for identification.

THE COURT: It may be marked.

(The photograph referred to was marked State's Exhibit S-7 for identification.)

40 Q. Did you notice, Robert, when you came home

*Robert McBurney—Direct*

where the slippers that your mother wore were situated?

A. One was by her body at the step and the other one was inside the door.

Q. In the shed?

A. In the shed.

Q. I show you what purports to be slippers and ask you whether or not you recognize them as being the slippers that your mother wore at that time. 10

A. Yes, she wore those to knock around in.

MR. ORLANDO: May we have these two slippers marked for identification, your Honor, giving each one a separate number so that later on they may be identified, which was found within and which was found without the house?

20

THE COURT: Yes, they may be marked Exhibit S-8 and S-9 for identification.

(Said slippers marked Exhibits S-8 and S-9 respectively for identification.)

Q. Young man, was your attention called, after you had returned that afternoon, to the fact that outside of the house, right near the front of the truck there was this wooden box there? 30

A. I don't recall where I saw it but I remember seeing it.

Q. You testified that you saw a paper box. Do you recall whether or not that paper box was the one that I hold in my hand (indicating)?

A. Yes, I believe that's the box that laid at her head.

Q. What did it have inside?

A. I don't know.

Q. You do not recall that? 40

A. I don't recall.

Q. I show you a baseball bat and ask you whether or not you recall having seen this baseball bat with bloodstains on it after you came back that afternoon from school?

A. It laid by her body.

10 Q. It was where with relation to her body, near her body?

A. Close. I think between her and the step, I think.

Q. You recognize this as being the bat that was there?

A. That's right, that's the one.

MR. ORLANDO: The State desires to have this marked, if your Honor please, as an exhibit for  
20 identification.

(Said bat marked Exhibit S-10 for identification.)

Q. There were two bats there, were there not, Robert?

A. That's right.

Q. Is this your bat, this larger one?

A. No. I don't play baseball. That belongs to my brother.

30 Q. The other bat was there when you came home, but no blood on it?

A. That's right. It's a smaller one.

MR. ORLANDO: Cross-examine.

MR. PALESE: No questions.

No cross-examination.

*J. Summerill Chew—Direct*

THE COURT: The jury may be taken out. Just before the jurors leave, I want to say to them that throughout the trial of this case and until it is given to you for your deliberations you will not discuss the matter with each other. The defendant may be taken out. We will resume the trial of this matter at a quarter of two. 10

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At this point a recess was taken until 1:45 o'clock P. M.

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Hearing of the case resumed at 1:45 o'clock P. M., pursuant to adjournment, in the presence of the defendant and counsel for the respective parties. 20

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J. SUMMERILL CHEW, sworn.

BY MR. ORLANDO:

Q. Mr. Chew, where do you live?

A. Grenloch. 30

Q. That is in Gloucester Township?

A. Gloucester Township.

Q. In this county?

A. Camden county.

Q. Do you remember the date of April 23rd of this year?

A. I do.

Q. Were you in the vicinity of Buffalo Road on that particular day?

A. I was. 40

Q. Where were you when you were summoned by Robert McBurney, Jr., to the home of the McBurneys?

A. Bungalow Inn, as we call it, on Hickstown Road.

10 Q. And that is roughly how far from the house where Mr. and Mrs. McBurney and the children were living on the date mentioned?

A. I would say approximately four-tenths of a mile.

Q. Approximately half a mile?

A. Yes.

Q. Were you there alone or was there someone there at the time when the boy arrived?

A. I had Mr. Erdbrink and I, myself, were at the bungalow inn.

20 Q. Do you recall Robert McBurney, Jr., coming there that afternoon?

A. I do.

Q. What time of the day was it about?

A. In the neighborhood of about 4 o'clock.

Q. And as a result of his coming to the bungalow inn that you have mentioned and described, did you and your friend that you mentioned accompany the boy back to the home where he and his family lived?

30 A. We went to the corner of the Hickstown Road and the Buffalo Road, as we call it, and from here Mr. Erdbrink went to the scene of the murder and I immediately went to Turnerville, or to Blackwood, rather, and notified our local police.

Q. So you were the one who notified the township police?

A. I was.

Q. After you had notified the township police did you, along with the police officers, go to the place which we have called the McBurney farm?

40 A. The police officer got in touch with the other

police officer and they went immediately back and I followed them, and I suppose I got there maybe five minutes afterward. Both got there practically at the same time.

Q. What time would you say it was about when you arrived at the McBurney home?

A. Possibly maybe 4:30, something like that. 10

Q. Still daylight?

A. Oh, yes.

Q. Who was at the McBurney home when you arrived there with the police officers?

A. Well, the police were there prior to me getting there as I said about two or three minutes after they were there, and I think Robert, Jr. was there.

Q. What did you do when you got to the McBurney home?

A. When I returned? 20

Q. When you arrived there?

A. Well, I immediately went over to where the lady was, or Mrs. McBurney, laid there along the truck, and of course that's practically all I done for a little while, only just sat there with the rest of them and talked the matter over. That's practically all I done for a few minutes, until the State Police arrived.

Q. Did you remain there after the State Police arrived? 30

A. I did. I was there until about 8:30 or 9 o'clock that night, until after they took the body away.

Q. During the time you were there were photographs taken?

A. They were.

Q. And by whom?

A. Well—

Q. One of the State Police?

A. The State Police and practically several people, as far as that's concerned. I didn't know just 40

who they were, but I saw every photograph taken. I was right there alongside of them when they were taken.

Q. Were you there when Mr. McBurney came home from work?

A. I was.

10 Q. Did you enter the house or remain outside?

A. Just in the shed, that's all.

Q. Did you go into the shed?

A. Just part way, that's about all I could say. I looked in the house but I didn't go in, because I thought it wasn't worth while in me doing that.

Q. When you went in part way into the shed, did you notice the conditions as they existed in the shed?

20 A. I wouldn't want to say too much about that on account I couldn't tell. I just saw things were sort of muxed up, you might call it, and I wouldn't be able to tell the condition it was in.

Q. You made no particular observation?

A. No, I did not.

Q. Was the body of Mrs. McBurney lying in the position that you saw it when you first arrived there, at the time when the photographs were taken?

A. It was.

Q. Who was it moved the body, do you remember?

30 A. The only one that I saw move it was when the undertaker came there.

Q. The coroner?

A. The coroner, yes, and undertaker.

Q. Were you there when members of the detective staff of the Prosecutor's office arrived?

A. I was.

Q. Do you know Chief Doran?

A. I do.

Q. Did you see him there?

40 A. Did I see him there?

*J. Summerill Chew—Direct*

Q. Yes.

A. I did.

Q. And this other gentleman that you mentioned was with you at the inn, Frederick Erdbrink, is that the name?

A. Erdbrink.

Q. He went back with the boy right to the farmhouse? 10

A. He did.

Q. Did you make any observations of conditions as they existed outside, right near the side of the house, in the vicinity where the truck was parked?

A. I tried to look things over the best I could. I tried to see everything I could when there.

Q. Did you see a bat there?

A. I did.

Q. Did you notice whether or not it had any blood on it? 20

A. It had, yes, one.

Q. One bat, you mean?

A. Yes.

Q. What have you to say as to the body itself? Was the body covered with any blood?

A. On the right side, I think, of her face, right here (indicating) was almost unrecognizable, so much blood, like clods of blood here (indicating).

Q. I show you what has been marked Exhibit S-2 for identification, a photograph, and ask you whether or not this photograph depicts the condition the body was in when you first arrived there. 30

A. Well, that looks very plain to me that that's about the way she was lying. I would say yes.

Q. I show you another photograph which has been marked Exhibit S-3 for identification, and particularly direct your attention to what appears to be a paper box and a wooden box in the vicinity of the front of the truck, and ask you whether or 40

not you recall those two items being there when you arrived at the scene of the crime.

A. The truck, I saw the paper box there, some sort of box—I won't call that—and the truck looks as if it was exactly in the same place. It was only a place just possibly a little over a foot between the truck and the house, and that looks very plain that that's the picture.

Q. At the time when you saw the paper box did you pay any particular attention as to whether or not there were any bloodstains on the paper box?

A. I wouldn't say that I did but I say the box was at the same, practically the spot where I saw lots of blood on the ground, right around the box.

Q. What would you say was the distance from where that paper box was to where the body was lying on the ground?

A. I should say possibly maybe six to eight feet.

Q. I show you a photograph which has been marked Exhibit S-4 for identification, which is a view showing the distance that you mentioned to exist between the house and the truck and also showing the paper box and also showing the body, and I ask you whether or not this photograph substantially portrays the conditions as they existed with relation to those bodies that have been mentioned?

A. I would say that's a very good photograph.

Q. I show you another photograph which has been marked Exhibit S-7 for identification, a photograph showing the right side of the victim's body and blood splattered about that part of the body, and ask you whether or not that photograph portrays substantially the blood as you noticed it when you arrived there?

A. It does, yes. That's about as near perfect as I think it could be made.

40

MR. ORLANDO: Cross-examine.

*J. Summerill Chew—Cross*  
*Frederick Erdbrink—Direct*

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Chew, what time did you say you arrived 10  
 at the McBurney home?

A. At the McBurney home?

Q. Yes.

A. I should say somewhere in the neighborhood  
 of 4:30.

MR. PALESE: That is all.

20

FREDERICK ERDBRINK, sworn.

BY MR. ORLANDO:

Q. Is the last name Erdbrink?

A. Erdbrink.

Q. E-r-d-b-r-i-n-k?

A. Yes.

Q. Where do you live?

A. At a place called Lambs Terrace. 30

Q. On what road is that place situated?

A. That is just off the Hickstown Road below  
 Turnerville.

Q. Approximately how far from where the Mc-  
 Burneys were living in April of this year?

A. From my home?

Q. Yes.

A. I could not judge that distance, that is a little  
 too far.

Q. On the afternoon of April 23, were you advised 40

by young Robert McBurney of some occurrence at their home?

A. I was.

Q. Where were you at the time when you were so notified?

A. In the Bungalow Inn.

10 Q. The Bungalow Inn is situated where?

A. On the Hickstown Road.

Q. Approximately how far from the McBurney homestead?

A. Well, I would judge one-half mile.

Q. Who was at the Inn beside yourself, at the time?

A. Mr. Chew and I.

Q. No one else?

A. No one else.

20 Q. Do you recall young Robert McBurney coming there that afternoon?

A. Yes.

Q. How did he come in?

A. He came rushing in.

Q. By reason of what he said—

A. He said that—

Q. Wait a minute. Do not tell us what he said. By reason of what he said, did you or did you not go to the McBurney farm?

30 A. I did.

Q. Did you go with him?

A. I did.

Q. How did you go from Lambs Inn or Lambs Tavern, or whatever they call it to the McBurney home?

A. I didn't go from Lambs Terrace. I went from the Bungalow Inn.

Q. From the Bungalow Inn I should say. Up what road?

40 A. Up Buffalo Road as they call it.

*Frederick Erdbrink—Direct*

Q. You first go up Hickstown Road to Buffalo Road, and then up Buffalo Road?

A. Yes.

Q. What would you say was the length of time that it required you to get to the McBurney farm after you had been notified of what happened?

A. Oh, I judge about five minutes.

10

Q. Did the boy go with you?

A. Yes.

Q. What time would you say it was in the afternoon when you were first told about some happening at the farm?

A. I judge it was between four and a quarter after.

Q. You say within five or ten minutes after that you were at the farm?

A. I would say yes.

20

Q. Then you and young Robert went over to the McBurney homestead?

A. Yes.

Q. Was anyone else there when you arrived?

A. No.

Q. You were the only two?

A. The only two.

Q. How long after you arrived did the police officers from Gloucester Township come along?

A. Oh I would say one-half hour afterwards.

30

Q. What did you find when you arrived at the McBurney homestead?

A. I found Mrs. McBurney lying on the ground.

Q. What part of the house?

A. The side of the house.

Q. Is that in the vicinity of the entrance to the shed?

A. Yes.

Q. How was her body lying?

40

- A. The body was lying this way. The head towards the dining room window and the feet toward the rear door.
- Q. Was her body covered or uncovered?
- A. Uncovered.
- Q. What did you do?
- 10 A. I covered it.
- Q. With what?
- A. With an old raincoat that was hanging on the barn fence.
- Q. Did you move the body any?
- A. No, sir, didn't touch it.
- Q. Then did you observe anything around in the vicinity of the body in the way of objects?
- A. Oh, I seen a baseball bat and basket.
- Q. What about the bat? What did you see about
- 20 the bat?
- A. The bat was lying at the head of the body.
- Q. Did you think it had blood on it?
- A. It had blood on it.
- Q. Did you, or did you not, notice a slipper?
- A. Yes, a slipper laid about two feet from the rear steps.
- Q. Did you notice an automobile truck parked there?
- A. Yes.
- 30 Q. In what direction was it facing? In what direction was the front of that truck headed?
- A. Headed towards the Buffalo Road.
- Q. So that the back was towards the shed?
- A. Yes.
- Q. Did you notice any particular object in the vicinity of the truck, such as boxes?
- A. I did.
- Q. What did you notice in that connection?
- 40 A. There was a paper box, a cardboard box, about that big up at the head of the body. Then there was

*Frederick Erdbrink—Direct*

a basket above that, between the truck and the house, with blood on it.

Q. These two objects that you have mentioned, namely, the basket and the box, you say did have blood on them?

A. Yes.

Q. Did you notice that blood?

10

A. Yes.

Q. What would you say was the distance that existed between these two objects, namely, the basket and the box, and the place where the body was lying?

A. I judge they were about two foot apart.

Q. Well, how far was it —

A. The body —

Q. From the body?

A. Oh, the box was just about three foot, I judge, ahead of the body.

20

Q. Did you go into the house?

A. I went into the house.

Q. Was that before the police officers arrived?

A. Yes.

Q. What part of the house did you enter?

A. I entered in the rear door.

Q. And that led you into what? To what is known as the shed?

A. The shed.

Q. Will you describe, if you will, Mr. Erdbrink, the conditions as you observed them in the shed?

30

MR. PALESE: I object to this witness testifying to the condition the house was found in because I take it he was there at four-thirty in the afternoon. We have no evidence at the present time as to when this happened. There are many things that may have happened that might have disarranged that house prior to the entry of Mr. Erdbrink.

40

THE COURT: Is this primarily to show the condition of the house as it existed at the time the body was discovered, to show what the conditions were at the time the body was discovered?

10 MR. ORLANDO: That is the very purpose of it.

MR. PALESE: If your Honor please, if they are not going to tie it up or have the jury infer that whatever may have caused this condition was caused by this defendant, I am assuming that, this defendant cannot be accountable for the condition of that home where there is no evidence here as to the time he may have been there and the time this witness said he arrived there at four-thirty o'clock in the afternoon. The boy was in the house, as I understand from the testimony already in this case, prior to the entry of Mr. Erdbrink. He could have caused disorder in the house or the condition in which it was found at the time these two entered the house. It ought not to be placed on this defendant if there is no testimony to tie it up.

THE COURT: The objection is overruled.

30 MR. PALESE: Allow me an exception.

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

MR. ORLANDO: Will you read the question again?

40 (Question re-read.)

*Frederick Erdbrink—Direct*

A. As I entered the shed, there was a chair opposite a basket of corn, and everything was all upset. That is the way I found it as I entered the shed.

Q. State whether or not you observed any blood stains in the shed when you entered.

A. On the floor —

10

MR. PALESE: I would like to enter the same objection. I assume I can have an objection to this entire line of testimony, or does your Honor prefer I object to every question as to what this man observed inside the house.

THE COURT: I believe if you want to preserve the record, you better make your objection to the questions as they are asked.

20

MR. PALESE: I object to the question for the same reason.

THE COURT: The Court will make the same ruling.

MR. PALESE: Allow me an exception?

The defendant prays an exception, which is hereby allowed and sealed accordingly. 30

Clifford A. Baldwin (Seal)  
Judge

THE COURT: Was your answer completed, or do you want to make a further answer?

A. I seen the blood on the floor when I entered.

Q. Did you enter any other part of the house other than the shed?

40

A. I went into the other room with the boy.

Q. Tell us what room.

A. The front room.

Q. What has been designated or called the sitting room or parlor?

A. Parlor, I judge.

10 Q. Will you tell us what condition you found that room to be in, at that time?

A. I found ——

MR. PALESE: I enter an objection for the same reason.

THE COURT: The Court will make the same ruling. You may have an exception.

20 A. I found it all upset, the pocketbook on the chair open, and its contents thrown all over.

Q. Did you enter any other part of the house?

A. No, sir.

Q. Now, did you touch any of those things as you saw them in the sitting room?

A. No, sir. I told the boy not to touch them until the authorities came.

Q. Did you touch anything in the shed as you observed them?

30 A. No, sir.

Q. Now, Mr. Erdbrink, I am going to show you some photographs that were taken, and ask you to identify them, if you can. I show you what has been marked as Exhibit S-2 for identification, a photograph purporting to show the position of the body with relation to the stoop leading into the shed and ask you whether or not the body shown in that photograph is in the position that you saw it when you arrived at the scene?

40 A. Exactly the same.

*Frederick Erdbrink—Direct*

Q. I show you another photograph which has been marked Exhibit S-3 for identification, showing the front part of the truck, and on the side of the house some box or boxes, and ask you whether or not the objects which are depicted on that photograph are as you saw them when you arrived at the scene of the crime?

10

A. That is it, exactly.

Q. Now, I particularly direct your attention in this photograph marked Exhibit S-3 for identification, to what appears to be marked on the box, and also on this wooden container, and ask you whether or not you recall having seen these marks at the time when you arrived there?

A. I recall seeing those marks.

Q. Now, I show you photograph which has been marked Exhibit S-6 for identification, purporting to be a photograph showing the condition of the shed, and ask you whether or not the conditions as they are depicted on this photograph, marked Exhibit S-6, for identification, are any different than the conditions as you observed them when you arrived?

20

A. There is no difference. That is exactly the way I seen it.

Q. Speak up, please.

A. That is exactly the way I seen it when I entered the door.

30

Q. Now, I understood you to say, Mr. Erdbrink, that you picked up a raincoat or some coat of some kind, and covered Mrs. McBurney's body?

A. That is right.

Q. At that time, did you have an opportunity of making an observation of the blood that was spattered around the body, her face and body?

A. Yes.

Q. How close were you to her body when you did that?

40

A. I was rather close to her when I put the rain-coat over her.

Q. I show you photograph marked Exhibit S-7 for identification and ask you whether this photograph depicts the condition of the body with respect to the blood about her body as being any different than  
10 the way it was when you arrived?

A. No different. That is exactly the way I seen it.

Q. Now, I direct your attention to the photograph marked Exhibit S-4 for identification, and directing your attention to the fact, in this photograph appears a slipper, and ask you whether or not that is the slipper that you refer to as being somewhere near the foot of the body?

A. That is the slipper, exactly.

Q. I show you what has been marked as Exhibit  
20 S-10 for identification and ask you whether or not you recall seeing this baseball bat at the time when you arrived at the scene in question?

A. I seen that lying there.

Q. Where was this baseball bat with relation to the body?

A. Lying up near the head.

Q. At the time when you saw the baseball bat  
30 lying there in the position you have described, was it covered with blood?

A. There was blood on it, yes, sir.

MR. ORLANDO: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION.

*Carl Deroskewicz—Direct*

CARL DEROSKEWICZ, sworn.

BY MR. ORLANDO:

Q. Trooper, you are associated with the New Jersey State Police service? 10

A. Yes, sir.

Q. For how many years have you been a New Jersey State policeman?

A. Ten and a half.

Q. Will you speak up, please?

A. Ten and a half years.

Q. Where are you stationed?

A. At Hammonton.

Q. Were you stationed at Hammonton on the 23rd day of April, this year? 20

A. Yes, sir.

Q. Were you summoned or dispatched by your superior officer to go to a place on the Buffalo farm or on the Buffalo road occupied by the McBurney family?

A. Yes, sir.

Q. What time during the afternoon of April 23rd, did you get there?

A. Why, about six o'clock in the evening.

Q. And when you arrived there, was it still daylight or was it dark? 30

A. It was daylight.

Q. Who was there when you arrived at the scene?

A. Why, the County detectives, and some of our State detectives, Trooper Headley, Sergeant Kelly, County Detective Doran, Detective Wojtkowiak, and some of the others, Bennie, Detective Bennie.

Q. Were the local police there?

A. Yes, there were two local officers. I don't know their names. 40

Q. Was Mr. McBurney there?

A. Yes, sir.

Q. Was young Robert McBurney, Jr., there?

A. I don't recall whether he was there or not.

Q. Did you take photographs at the scene of the crime?

10 A. Yes, sir.

Q. Did you take these photographs?

A. Yes, sir.

Q. Did you develop these photographs?

A. Yes, sir.

Q. Do you do that sort of work for the State police?

A. Yes, sir.

Q. For how many years have you been doing it?

A. About two.

20 Q. After these photographs were taken, you developed them, did you not?

A. Yes, sir.

Q. How many photographs did you take?

A. I can't recall unless I check up.

Q. All right. I show you what has been marked as Exhibit S-2 for identification and ask you whether or not you took this photograph and developed it in the finished product such as it appears now?

A. Yes, sir.

30 Q. Are the objects as shown in this photograph substantially the same as they were at the time the photograph was taken?

A. Yes, sir.

MR. ORLANDO: If your Honor please, the State offers in evidence, and asks it be marked Exhibit S-2, the photograph marked heretofore as S-2 for identification.

40 MR. PALESE: I object to the photograph being

*Carl Deroskewicz—Direct*

admitted into evidence for the reason I have indicated before, that there has been no testimony showing that there has not been any change in the placing of these objects from the time of the occurrence up to the time that this witness contends he took the picture, as I take it, about six o'clock in the evening. There is some testimony there was no change from four-thirty, I assume, up to six o'clock, because this witness testified after having examined the picture that it showed possibly the things that they had seen at four-thirty, but there is nothing in this case to show what happened in the house or in the yard to these objects prior to four-thirty in the afternoon. I think the jury having this picture showing the conditions this witness saw at six o'clock is not testimony to be considered by them unless we have testimony in this case that the objects were in that condition from the time of the occurrence or the handling until the time this witness took the picture.

THE COURT: The young man, Robert McBurney, was examined as to all these photographs marked for identification from Exhibit S-2 up to and including Exhibit S-7 for identification, and he has said, as I recall it, that these photographs portray the conditions as he found them on his arrival home.

MR. PALESE: At four-thirty.

THE COURT: The objection is overruled.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: An exception will be allowed.

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge

10 THE COURT: It may be received and marked Exhibit S-2 in evidence.

Q. I show you other exhibits from S-3 for identification down to and including Exhibit S-7 for identification and ask you whether or not these five photographs which have heretofore been marked for identification are the photographs which were taken by you and finished by you depicts the condition as you saw them at the time the photographs were taken.

20 A. Yes, sir, every one of them.

MR. ORLANDO: Your Honor, these photographs are offered as State exhibits and we ask that they be numbered in evidence as they were numbered for identification.

30 MR. PALESE: I make the same objection and advance the same reason, these pictures were not taken until six o'clock in the evening and there is no testimony in the case that the circumstances as portrayed by these pictures existed at the time of the occurrence of this affair.

THE COURT: The objection is overruled.

MR. PALESE: Will your Honor allow me an exception?

40 THE COURT: Yes.

*Carl Deroskewicz—Direct*

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge

THE COURT: The photographs may be received in evidence and marked State's Exhibits S-3 to S-7 10 inclusive.

Q. I show you another photograph which was taken after the body was removed and ask you whether or not this shows generally the condition of the back of the house, the ground, and the position of the truck.

A. Yes, sir.

MR. ORLANDO: This photograph, your Honor, 20 please, is offered for the purpose of giving the jury a view of the side and back of the house. It has nothing to do with the conditions as they existed at the time of the alleged crime but merely for the purpose of giving them a view of the approach of the side and back of the house.

MR. PALESE: I have no objection.

Q. Did you make an enlargement of this photo- 30 graph?

A. I don't think so.

Q. I show you what purports to be an enlargement and ask you to look at this enlargement and tell me whether or not this enlargement was made from the original negative made by you.

A. Yes, sir.

Q. Does that enlargement show the same conditions as are shown in the smaller photographs?

A. Yes, sir, it is taken from the same negative. 40

MR. ORLANDO: Your Honor, I offer this in evidence and ask that it be marked as an exhibit showing the condition of the side and back of the house.

THE COURT: Is there any objection?

10 MR. PALESE: No.

THE COURT: It may be marked as State's Exhibit S-11.

(The photograph referred to was marked State's Exhibit S-11 in evidence.)

20 Q. Did you make any measurement, Trooper, of the distance that existed between any of those objects shown in any of the photographs?

A. No, sir.

Q. You made no measurements?

A. No, sir.

MR. ORLANDO: Cross-examine.

CROSS-EXAMINATION.

30 BY MR. PALESE:

Q. Trooper, you took the pictures at six o'clock on the evening of April 23, this year?

A. Yes, I arrived at the scene about six o'clock and I started taking the pictures from then on.

Q. You took the pictures of the conditions as you found them at six o'clock.

A. Yes.

*Paul Rilatt—Direct*

PAUL RILATT, sworn.

BY MR. ORLANDO:

- Q. Will you state your name?  
 A. Paul Rilatt. 10
- Q. Where do you live?  
 A. 521 State Street.
- Q. In Camden?  
 A. That is right.
- Q. Are you one of the coroners of the County of Camden?  
 A. I am.
- Q. Were you holding such office on the 23rd day of April, last?  
 A. I was. 20
- Q. Were you summoned in the course of your duties to a place in Gloucester Township on Buffalo Road occupied by the McBurney family on April 23?  
 A. I was.
- Q. What time did you arrive there?  
 A. Around six o'clock.
- Q. Who did you find there at the time?  
 A. The County detectives, Mr. Doran, and there was a Mr. Chew there, a registrar of Gloucester Township, and there was a trooper there, I don't know him by name, and several other people I didn't know by name. 30
- Q. Are you the one that moved the body from the place?  
 A. I had it ordered removed from the place.
- Q. Were you there when it was removed?  
 A. I was.
- Q. Who was it that removed the body?  
 A. The local undertaker, by the name of McCann, Blackwood. 40

Q. What time of day or night was the body removed?

A. I guess it was after seven o'clock.

Q. How long were you there?

A. I was there until after the body was moved, and then we went to the undertaker's establishment, and then I got in touch with Dr. Saunders to come  
10 down to this place and examine the body, and I stayed there, and from there I went over to Mantua, to the barracks, and then went home.

Q. Before the body was removed from the McBurney home, Coroner, did you make any observations of the condition of the body without moving it?

A. Yes, I did.

Q. At the time when you arrived there, death was  
20 present?

A. Yes, no question about it.

Q. I show you some photographs which have been marked in evidence and ask you whether or not the conditions which are depicted in the photographs existed at the time when you arrived there. I show you a photograph marked State's Exhibit S-2 showing the position of the body and ask you whether or not that was the position the body was in when you arrived there.

A. Yes, it was.  
30

Q. I show you another photograph which has been marked Exhibit S-4, showing another view of the position of the body as it was lying there with relation to the house and the back of the automobile truck and ask you whether or not this photograph portrays substantially the condition as you saw it when you arrived there.

A. It does.

Q. I show you another photograph which has  
40 been marked Exhibit S-7, which shows the blood

spot about the various parts of the body and ask you whether or not the body in so far as it was covered with blood was as is shown in that photograph when you arrived there.

A. Yes, it was.

Q. Did you make an examination of the interior of the house when you arrived there? 10

A. Not immediately. A little while later when the fingerprint man went in. We didn't want to go inside until the men from the state police arrived. We didn't want to disturb anything, and then we went inside.

Q. Did you go in with the state police?

A. Yes, I did.

Q. I show you another photograph which was marked State's Exhibit S-3 showing the side of the house with relation to the front part of the truck, and particularly direct your attention to two boxes, a paper box and a wooden box, and ask you whether or not you observed those particular objects there when you arrived at the scene. 20

A. Not when I arrived at the scene, but upon investigation I found them.

Q. When you looked in that vicinity did you see them?

A. Yes, I did. 30

Q. Calling your attention particularly to the boxes which appear in the photograph I am going to ask you whether or not you observed any blood stains on either one of those two objects.

A. Yes, they were on both.

Q. After the body was removed from the scene where was it taken?

A. To McCann's Funeral Home in Blackwood.

Q. Was it later removed from there to the City of Camden? 40

A. No.

Q. That was the place where the examination took place?

A. Dr. Saunders came down there.

Q. Were you there when Dr. Saunders came and examined the body?

10 A. Yes, I was.

Q. Who else was present besides yourself when Dr. Saunders came?

A. Mr. McCann, the undertaker.

Q. Had the body been identified by anyone to you before it was removed from the scene?

A. Not personally to me, but I understand —

MR. PALESE: No.

20 MR. ORLANDO: Not what you understand.

Q. Do you know whose body it was that you removed?

A. I was told whose body it was.

Q. By whom?

A. By the state police or county detectives, I don't know which.

Q. When they told you that were you in the presence of the body or was that some time later?

30 A. I saw that when I arrived there.

MR. ORLANDO: We are not interested in that, and I am agreeable to that being stricken.

Q. I am going to show you another photograph, Mr. Coroner, which has been marked State's Exhibit S-11 which shows generally the back of the house and the side view of the house with the truck parked at the side of the house in the vicinity of the shed

40

and ask you whether or not this photograph, Exhibit S-11 depicts the condition of the house, the back of the house, generally speaking?

A. Yes.

MR. ORLANDO: Cross-examine.

10

MR. PALESE: No questions.

BY THE COURT:

Q. You say you were present when Dr. Saunders made an examination of the body at the undertaker's establishment?

A. Yes, sir.

Q. Was the body that he examined the body that you had seen lying on the ground at the McBurney home? 20

A. That is right.

---

ORRIS SAUNDERS, sworn.

BY MR. ORLANDO:

Q. Dr. Saunders, you are a practicing physician in this city? 30

A. Yes, sir.

Q. And you hold the office of County physician?

A. I do.

Q. Did you hold such office on the 23rd day of April, last?

A. I did.

Q. As County physician were you called upon to examine the body of Mrs. McBurney? 40

A. I was.

MR. PALESE: Objected to. We do not have any evidence in the case that it was the body of Agnes McBurney.

MR. ORLANDO: All right, I withdraw the question.

10

Q. Were you called upon to examine the body of a woman that was found dead?

A. On this day?

Q. On April 23.

A. Yes.

Q. Where did you make the examination?

A. In Blackwood, at McCann's Funeral Parlor.

Q. Who was present when you went down there?

20 A. Mr. Rilatt, the coroner, Mr. McCann, and his assistant, I don't know his name.

Q. Do you know Mr. Robert McBurney?

A. Do I know him?

Q. Did you see him there?

A. No, sir.

Q. You did not see Mr. McBurney?

A. Not to my knowledge I did not.

Q. Tell us what examination you made of the body in McCann's Funeral Parlor in Blackwood.

30 A. Why, it was not necessary to hold a complete post mortem. The head was pretty well battered up, and the result of our observations were that the woman had a fracture of the occipital bone right side of center, right back here (indicating), fracture of the frontal orbital zygomatic bone on the right side, fracture of the left frontal bone about three inches long, right along here (indicating), and of course, she had severe cerebral hemorrhages, and the fourth finger of the right hand, posteriorly, was lacerated.

40

There was some thought of criminal assault, and we took some specimens of the vaginal contents. The woman was menstruating at the time, and we took some of the blood, but the result came back negative, there was no criminal assault.

Q. How many fractures did you find about the head?

10

A. Three.

Q. Could you tell from the character of the fractures that you found as to what sort of objects had been used in producing those fractures?

A. It must have been some blunt object with force, because the one on the left side just laid the brain open, and the brain was oozing out and the blood was oozing out. It was a severe blow that caught her here (indicating).

Q. You mentioned something about one fracture in the back of the head?

20

A. Yes, the occipital bone.

Q. How serious a fracture was that?

A. That wasn't laid open, but you could feel the crepitation, you could feel the bone crepitate.

Q. What about the one on the right side?

A. That was right here (indicating).

Q. Was that open?

A. It wasn't open, but you could feel the fracture.

Q. Doctor, what is your opinion, as a physician, what was the cause of death in this instance?

30

A. The cause of death would be fractured skull and hemorrhage of the brain. You want to know the instrument which caused the death?

Q. Not necessarily. I am trying to find out what produced death.

A. Fractured skull plus hemorrhage of the brain.

Q. The fractures that you saw, three of them?

A. Yes.

40

Q. Were any one of those sufficient to have caused death?

A. Well, I would not say this Zygomatic process would cause death, but I know positively the one on the frontal bone would and possibly the one in the rear might have.

10 Q. What time of day or night was it when you made the examination?

A. Near ten o'clock, nine-forty-five or ten.

Q. Had the body been washed before you arrived?

A. Yes, I think they had cleaned the face up a little bit.

Q. I show you a photograph and ask you whether or not this photograph shows the woman that you examined and whose cause of death you have given us.

20 A. That is the woman, yes, sir.

THE COURT: Which photograph is that?

MR. ORLANDO: That has not been marked. I am going to have it marked for identification as State's Exhibit S-12.

30 THE COURT: It may be marked for identification.

(The photograph referred to was marked State's Exhibit S-12 for identification.)

Q. Does this photograph, S-12 for identification, show the particular fracture on the right side that you have mentioned?

A. Yes, that is the one on the right (indicating).

40 Q. Does this photograph also show the fracture on the left side?

A. That is where the large fracture was, on the left side.

MR. ORLANDO: Cross-examine.

CROSS-EXAMINATION.

10

BY MR. PALESE:

Q. Doctor, is it your opinion that the fracture on the left side could have caused death?

A. It could have caused death, yes, sir.

Q. Instant death?

A. Oh, yes, within a few minutes.

Q. What is your opinion as to whether or not the other fracture you described in the back of the head could have caused death?

20

A. It all depends whether there was any hemorrhage because this fracture did not expose the brain. We had enough evidence here (indicating) without doing it there (indicating).

Q. You did not determine whether there was a hemorrhage following that fracture?

A. No.

Q. If there had been a hemorrhage, could that fracture have been the cause of the death?

A. There was a hemorrhage in the large opening.

30

Q. I am talking about the fracture in the back of the head. You did not observe whether there was a hemorrhage following that fracture?

A. The fracture of the occipital, yes.

Q. The third fracture was where? One was on the right side, one was in the back, and where was the other?

A. On the left side.

Q. Was that fracture of such severity that it could have caused death?

40

*Orris Saunders—Re-direct*  
*John Ashburn—Direct*

A. Indeed it was, yes.

MR. PALESE: That is all.

BY MR. ORLANDO:

10

Q. When you speak of instant death, within a few minutes, what period of time did you mean?

A. Say half a minute or a minute.

---

JOHN ASHBURN, sworn.

BY MR. ORLANDO:

20

Q. Will you speak up, Mr. Ashburn, please, so the gentlemen at the end of the jury box will be able to hear you? You are a police officer in what township?

A. Gloucester Township.

Q. How long have you been serving as a police officer in that township?

A. About a year and three or four months.

Q. Where were you stationed?

30

A. Black Horse Pike and Church Street.

Q. And that is how far from where the McBurney farm is situated on Buffalo Road?

A. About two mile.

Q. Did you know Mrs. McBurney during her lifetime?

A. Slightly.

Q. I mean you knew her when you saw her?

A. Yes.

Q. How long had you known her by sight?

40

A. Ever since I have been on the force I have

*John Ashburn—Direct*

come in contact now or then. It hasn't been so long but I know of her.

Q. Were you summoned to the McBurney farm on April 23rd?

A. I was.

Q. Where were you at the time when you received the call? 10

A. I just finished school time with the children at 4 o'clock and went up and put the lights out, when I gets a call that there was a woman murdered or killed by the name of McBurney.

Q. Did you go to the McBurney farm?

A. Not right away.

Q. Within what time?

A. I waited for a hop up the road—I mean thumbing it—because the other officer had the car, because it was my week off at nighttime, see. I do daytime and one week I have off at night and he has the car on the nights, the week I am off, so I jumped a truck and went to Blenheim and notified Officer Hagner, and we both jumped in the car and went right away within a space of ten or fifteen minutes. 20

Q. And you were with Officer Haggerty?

A. Hagner.

Q. That is the other police officer in the town? 30

A. The other Gloucester Township police officer.

Q. When you arrived there, was there anyone at the farmhouse?

A. Oh, yes.

Q. Who was there?

A. Mr. Chew, Mr. Erdbrink, young Bob McBurney, and several other people that I didn't take notice right away. I was more interested in looking at the body and starting investigating, covering up. 40

Q. Did you recognize the body that was lying there?

A. I did.

Q. Whose body was it?

A. Mrs. McBurney.

10 Q. Where was it with relation to the side and the back of the house?

A. It was laying with the feet towards the entrance to the shed, on an angle, the head like on an angle towards the front of the house, towards the truck like, on an angle.

Q. Did you summon the State Police?

A. I did not.

Q. Who did?

A. I do not know.

20 Q. Did the State Police come there shortly afterwards?

A. About 15 minutes after I arrived.

Q. Speak up. I cannot hear you.

A. About 15 minutes after I was there.

Q. From the time you arrived until the time the State Police arrived had anybody moved the body?

A. No one moved the body. Nobody touched the body.

30 Q. Had you gone into the house before the State Police arrived?

A. Yes, sir.

Q. Who went into the house with you?

A. Officer Hagner.

Q. Who else?

A. I don't know.

Q. Did you touch or disturb any of the contents of the house?

A. No, sir.

40 Q. What way did you get into the house, the front door or the back door?

*John Ashburn—Direct*

A. Through the shed door.

Q. Will you describe the conditions that you found the shed to be in when you entered the house?

MR. PALESE: If your Honor please, I make the same objection and give the same reason I advanced before. I have not gotten the time that this officer came there but I am assuming it was after 4:30 in the afternoon. 10

(Objection overruled.)

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge 20

MR. ORLANDO: Will you repeat the question?

(Question repeated.)

A. When I entered the shed it looked to me as though there was a scuffling in the shed, chair turned over, basket of corn throwed around, and several other things scattered here and there, and I went through the living room. You have to go through the living room to go up the stairs, upstairs, to go up the upstairs part. 30

Q. What did you find the condition to be in the living room?

A. In the living room I took notice of a rocking chair there, saw a woman's pocketbook, about the size of that (indicating) opened up. I saw that the contents was scattered all over the kitchen, the chair, which I left the same way I saw it. I wouldn't let nobody touch it.

Q. What did you do then? 40

A. I walked up, examined downstairs, didn't see anything was touched downstairs, until I went upstairs and on entering the room I saw all the drawers —

10 MR. PALESE: If your Honor please, I interpose the same objection.

THE COURT: I suppose this part of the answer is not responsive to the question that was asked.

MR. ORLANDO: I will ask a new question, if your Honor please.

20 Q. Tell us what condition you found the upstairs to be in when you arrived there for the first time.

MR. PALESE: If your Honor please, I interpose an objection for the same reasons that I advanced. This officer did not get there until a long time after the crime had been committed.

THE COURT: The objection is overruled.

30 The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge

THE COURT: Now you may answer the question.

THE WITNESS: What was the question?

(Question repeated.)

40 A. When I entered the room upstairs, the bed

*John Ashburn—Direct*

was tore apart, the sheets tore back, the bureau drawers was opened and things dumped out and scattered about. All the drawers was looked into. I left things the way I found them.

Q. I show you a photograph which has been marked Exhibit S-15 for identification and ask you whether or not you recognize the body shown in that picture? 10

THE COURT: Exhibit S-12, isn't it, Prosecutor?

MR. ORLANDO: Yes, I guess it is, your Honor. My mistake. It is S-12.

A. That's the exact picture.

Q. Shows whose body?

A. Mrs. McBurney. 20

MR. ORLANDO: I offer this in evidence, if your Honor please, and ask that it be marked Exhibit S-12.

MR. PALESE: If your Honor please, I object. The witness said Mrs. McBurney. The indictment charges Alice McBurney.

THE COURT: Agnes McBurney, isn't that right? 30

MR. PALESE: Mrs. McBurney surely is not Agnes.

Q. Do you know what was Mrs. McBurney's first name?

A. I do not, only Mrs. McBurney.

Q. Do you know her to be the woman who lived in this McBurney farm? 40

MR. PALESE: If your Honor please, I object. Counsel has gotten the answer from this witness that he does not know the first name.

THE COURT: Yes, I do not think the photograph has been identified.

10

MR. ORLANDO: I will withdraw it. I was trying to save the necessity of calling the husband to identify this picture but I guess I will have to do it. I withdraw the question.

THE COURT: All right.

Q. Were you there when photographs were taken later on?

20

A. Yes, sir.

Q. I show you what has been marked as Exhibit S-2, a photograph showing the position the body was in, and I ask you whether or not that photograph shows the condition as you saw it when you arrived at the scene?

A. It was, with the exception on the scene, the lower limbs was covered up, the legs was covered up with a gum coat.

30

Q. Speak up, please.

A. The lower limbs was covered up with a tarpalin or a gum coat.

Q. You are not asked that. You are asked whether the position of the body was as shown in that photograph.

A. The position was.

Q. I show you another photograph which has been marked Exhibit S-3 and ask you whether or not you recall seeing the objects which are shown in that photograph?

40

*John Ashburn—Direct*

A. Yes, I saw the objects.

Q. Are the conditions as depicted in that photograph as they were when you arrived at the scene of the crime?

A. Right.

Q. I show you a photograph which has been marked Exhibit S-5, showing the condition of the bedroom upstairs, and I ask you whether or not the conditions portrayed in that photograph are any different than what you saw them when you entered the place? 10

A. Just the same way.

Q. I show you another photograph which has been marked as Exhibit S-6 for identification, depicting the condition in the shed, and I ask you whether or not the conditions as are shown in the photograph that I hand you were the same or any different when you arrived and looked over the shed? 20

A. That's the way it looked to me when I walked in.

Q. I show you another photograph which has been marked Exhibit S-4 for identification, showing the position of the body with relation to the back of the truck and the stoop of the shed, and I ask you whether or not that photograph substantially portrays the conditions as you saw them when you arrived? 30

A. Yes, sir.

Q. Now, when you arrived at the scene, did you notice whether or not there was blood about the face and body of the woman whose body was lying on the ground?

A. Yes, on the right side of the face.

Q. I show you a photograph which has been marked Exhibit S-7 for identification and ask you 40

whether or not this photograph depicts that condition with the blood as you have described it?

A. Yes, sir, that's the way it looked.

MR. ORLANDO: Cross-examine.

10 MR. PALESE: No questions.

NO CROSS-EXAMINATION

THE COURT: We will take a short recess now. The jury may leave the box.

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(AFTER RECESS)

20

ROBERT McBURNEY, sworn

BY MR. ORLANDO:

Q. Mr. McBurney, on the afternoon of April 23rd last, what time did you arrive at your home?

A. Between ten after and fifteen after five.

Q. When you arrived there did you discover the body of your wife lying somewhere near the shed door?

30

A. Yes, sir.

Q. Were you there when she was removed?

A. No, sir.

Q. When the body was removed?

A. No, sir.

Q. Later on did you see the body at the undertaker's establishment?

A. No, sir.

40 Q. I show you a photograph which has been marked Exhibit S-12 for identification, and I ask

*Edward Cohen—Direct*

you to tell us whether or not that photograph shows your wife?

A. Yes, sir.

MR. ORLANDO: I offer it in evidence, if your Honor please.

10

THE COURT: Is there any objection?

MR. PALESE: No.

THE COURT: It may be received into the evidence.

What was your wife's first name, Mr. McBurney?

THE WITNESS: Agnes.

20

(Said photograph marked Exhibit S-12)

MR. ORLANDO: Cross-examine.

MR. PALESE: No questions.

NO CROSS-EXAMINATION

30

EDWARD COHEN, sworn

BY MR. ORLANDO:

Q. Mr. Cohen, you are in business in Philadelphia?

A. I work as a clerk.

Q. You work as a clerk in what place?

A. Philadelphia Money Loan Office, 136 South Street.

40

Q. What is the address?

A. 136 South.

Q. They do a pawnbroker's business?

A. Yes, sir.

Q. Do you recall the date of April 23, 1941,  
10 when a colored man came to your place and pawned  
a portable radio?

A. I do.

Q. Do you see that man in the court room?

A. Yes, I do.

Q. Will you point him out to us?

A. Right there, sir. (Indicating)

Q. Sitting next to Mr. Palese?

A. The attorney, yes, sir.

Q. What time of the day was it when he came to  
20 your place to pawn the radio?

A. 3:52.

Q. That was in the afternoon?

A. Yes, sir.

Q. What name did he give you?

A. Henry Austin.

Q. Henry Austin?

A. Yes, sir.

Q. What address did he give you?

A. 1420, and I asked him, "Kater or Decatur?"  
30 I understood him to say Decatur but he said 1420  
Kater.

Q. What city?

A. Philadelphia.

Q. I show you what has been marked for identification Exhibit S-1 and ask you whether or not this is the radio that he brought to your pawnshop and pawned that afternoon?

A. That's the radio.

Q. I noticed you looked in the back. Was there  
40 any particular means of identification?

A. A number right back here. (indicating)

Q. And what number is that?

A. 432117, General Television.

Q. And that is the radio this defendant brought to your pawnshop?

A. Yes, sir.

Q. And pawned that afternoon?

10

A. Yes, sir.

Q. How do you fix the time as being 3:52?

A. They have a police report every day to fill out and as people bring in things we mark down the time. We kept a duplicate and the police keep the original.

MR. ORLANDO: Cross-examine.

CROSS-EXAMINATION

20

BY MR. PALESE:

Q. Mr. Cohen, had you ever seen this man prior to the 23rd of April, 1941?

A. I had never, no, sir.

Q. How long was he in your place of business? How long was he in your place of business on this occasion?

A. Well, the whole transaction took about 10 minutes.

30

Q. During that 10 minutes you had the opportunity to observe him?

A. Yes, sir.

Q. When did you see him the next time?

A. When I was called by the county detectives to identify him.

Q. When was that?

A. On a Saturday.

40

Q. How many colored people did you have in your place of business on the 23rd of April?

A. Ten for that day.

Q. He was one of ten on that day?

A. Yes, sir.

10 Q. And you are able now to identify him as the person who came there?

A. Yes, sir.

MR. PALESE: That is all.

BY MR. ORLANDO:

Q. When you saw him the second time you say it was on a Saturday?

A. Yes, sir.

20 Q. And that was how long after he had pawned the radio?

A. Well, Wednesday was the 23rd, and Saturday that was on I think Wednesday. I don't remember offhand.

Q. So that was about three days?

A. Yes, sir.

Q. Will you tell us where you saw him the second time?

30 A. In the upstairs, in the attorney's office—not an attorney's office, in the detective's office.

Q. In this building?

A. Yes, sir.

Q. Did the defendant say anything to you on that occasion?

A. He identified me and said, "He is the man I put the radio in."

Q. He said that when you came up to the Court House?

40 A. Yes, sir.

*William B. Macdonald—Direct*

Q. Did he say that before you had a chance to identify him?

A. Before I had a chance to identify him.

MR. ORLANDO: That is all. The State offers in evidence, if your Honor please, this radio which has been marked Exhibit S-1 for identification. 10

THE COURT: Is there any objection?

MR. PALESE: No.

THE COURT: It may be received.

(Said radio marked Exhibit S-1)

20

WILLIAM B. MACDONALD, sworn.

BY MR. ORLANDO:

Q. Mr. Macdonald, you are the official court stenographer for this district which includes Camden County?

A. I am.

Q. Were you officiating in that capacity on the 24th day of April, 1941? 30

A. I was.

Q. On that day, namely, April 24, 1941, some time in the evening, approximately 9:45, state whether or not you were called upon the prosecutor of this county to take a statement of the defendant, stenographically.

A. I was.

Q. Where was that statement taken?

40

A. It was taken in your office.

Q. By that you mean in the prosecutor's office?

A. In the prosecutor's office in the court house.

Q. What particular part of the prosecutor's office was it taken in?

A. In your private room.

10 Q. Will you tell us who was present?

A. Yes. Chief Doran, State Police Detective Ritchie, Robert Cox, the defendant, and myself.

Q. Did you take down stenographically all that transpired in the way of questions and answers between the prosecutor and the defendant?

A. I did.

Q. And since that time have you transcribed your notes?

A. I have.

20 Q. Have you compared your notes with the stenographic notes?

A. I have.

Q. The transcription which you have, does that compare with the stenographic notes taken that night?

A. It does.

30 Q. Will you tell his Honor and the jury, Mr. Macdonald, whether the prosecutor before taking this statement of the defendant warned the defendant concerning the voluntariness of it?

MR. PALESE: I object. That does not make the confession of the defendant a voluntary statement, and we challenge the fact this statement was a voluntary statement. As I understand the law, objection being made by counsel for the defendant, it then becomes a question for your Honor to determine whether the statement is a voluntary statement or was obtained through any threats or violence.

40

*William B. Macdonald—Direct*

THE COURT: Yes, I think we had better find out, Prosecutor, what the circumstances were, rather than ask Mr. Macdonald.

MR. ORLANDO: In view of counsel's statement, I didn't think there was going to be any question, but after counsel says to the court, they are going to challenge the statement, then, perhaps, we have to go into certain portions of it. 10

THE COURT: Perhaps, he doesn't say that but it is the law before the statement becomes evidential, its voluntary nature must be shown.

Q. Mr. Macdonald, will you tell us the circumstances under which this statement was taken? What were the conditions as you remember them to be? 20

A. When I was called into the office you were present with the defendant. Chief Doran was then called in and State Police Detective Ritchie. You then started to question the defendant.

Q. In your presence and in the presence of the defendant, did you hear the prosecutor or Chief Doran or State Police Detective Ritchie make any threats toward this defendant?

A. Absolutely none.

Q. Did you hear in your presence and in the presence of the defendant and those others, any promises held out to the defendant if he would make a statement? 30

A. There was not.

Q. Did you hear any hope of reward held out to the defendant if he would make a statement?

A. There was not.

Q. Was the defendant at any time during the course of time the statement was taken threatened in any way by any of the persons present? 40

A. He was not.

Q. Do you remember the prosecutor making or saying to the defendant this statement, "I want to warn you in advance that whatever statement you may make must be voluntary on your part?"

A. I did.

10 Q. Do you recall what answer the defendant made to that statement?

A. He answered, "Yes."

20 Q. Do you recall the prosecutor saying to the defendant, before the object of the statement was gone into, the following, "And anything that you may say may be used against you in future proceedings in court. In other words, I want you to understand right at the outset that this statement which I am about to take from you must be a voluntary statement. I don't want you to say anything that you do not think is just right, and I want you to know whatever you say must be said of your own volition without any promises being made to you or without any fear or hope of reward being held out to you for making this statement. You understand me, do you?"

A. Yes, sir.

30 Q. And what answer did the defendant make to that?

A. He answered, "Yes, sir."

Q. What condition did the defendant appear to be in so far as you could observe?

A. He looked then very much the same as he looks today.

40 Q. I ask you whether or not you recall, Mr. Macdonald, after the defendant had been questioned and while the statement was being taken that night, the prosecutor saying to him, "This statement that you have made to us concerning the happenings, is it

a truthful statement?" And the defendant saying, "Yes, sir, a truthful statement, every word I am telling you is the truth. I am not going to tell you a story." Do you recall such a question being asked of the defendant and such answer being made by the defendant?

A. I do.

10

Q. Do you recall the prosecutor asking the defendant during the course of this statement being taken this question and he making this answer: "Q. Everything you have told me here is all voluntary on your part?" And defendant saying "Yes, sir, exactly what I did." Do you recall that?

A. I do.

Q. And the question being asked by the prosecutor and the answer being made by the defendant "Q. No one has promised you anything?" "A. No, sir. Nobody has promised me a thing."

20

A. I do.

Q. And the question being asked by the prosecutor, "Q. I have not offered you any promise for making this statement?" And the answer being made by the defendant, "You nor officers neither that have been with me all day. They haven't told me nothing, not to say or nothing. They told me to tell the truth, what I know. I was going to tell it but I was afraid I was going to get punished." Do you recall that question and that answer being made?

30

A. I do.

MR. ORLANDO: Now you may cross-examine Mr. Macdonald if you care to.

40

BY MR. PALESE:

Q. Mr. Macdonald, when was this statement taken?

A. May I refer to my notes?

Q. You may.

10 A. On the evening of April 24, 1941, beginning at 9:45 o'clock.

Q. In the evening?

A. In the evening, yes, sir.

Q. You do not know what preceded the taking of this statement with respect to the defendant?

A. I was there for about an hour before Prosecutor Orlando arrived, and I was sitting in the next room to where the defendant was located, and I do know, I think, everything that went on within  
20 that hour's time.

Q. Well, prior to that time, you did not know what the defendant was doing or where he was from the time of the arrest up until the time you entered this room for the purpose of taking this statement?

A. I think, Mr. Palese, that I arrived there before eight o'clock that evening in the prosecutor's office and the statement was not taken—not started until quarter of ten. So, from that time on, I do  
30 have a good recollection of what took place.

Q. Prior to eight o'clock on April 24, you do not know what went on between the defendant and the individuals in whose charge or custody he was?

A. Not before he came into the prosecutor's office; from that time on I do.

Q. Mr. Macdonald, I have tried to listen to the questions propounded to you by the prosecutor and your answers, and all I heard was that he held no  
40 hope or favor out for the defendant. Did he, at

any time, ask the defendant whether or not the statement was given because of any threats or fear on his part?

A. May I refer to my notes?

Q. Yes.

A. The only reference to the word fear or threats—was that your question, Mr. Palese?

10

Q. That is correct.

A. The defendant himself said in answer to these questions by the prosecutor, “Q. I have not offered you any promise for making this statement?” “A. You nor the officers neither that have been with me all day. They haven’t told me nothing, not to say or nothing. They told me to tell the truth what I know. I was going to tell it but I was afraid I was going to get punished.” “Q. Then you had fear, the thing that caused you to hesitate to tell us was your fear of punishment by the law, is that right?” “A. Yes, sir.” “Q. In other words, after you had committed this wrong, you realized that you were subject to punishment by the law?” “A. Yes, sir.” “Q. And in order that you might avoid that punishment, you decided not to tell the truth at first?” “A. Yes, sir\* \* \* ”

20

Q. That doesn’t answer my question. I am satisfied you know what I meant by my question as to whether or not he had given this statement as the result of threats of violence by the individuals who were in charge of the defendant and not because of his fear for the consequences of his act. I think you understand my question. At least, I tried to make it clear enough for you.

30

A. No, that exact statement was not made.

Q. At any time prior to the taking of this statement as to whether or not it was given as the result of threats or fear of violence?

A. Oh, this part of the question by the prosecu-

40

tor "I don't want you to say anything that you don't think is just right, and I want you to know whatever you say must be said of your own volition without any promises being made to you and without any fear or hope of reward being held out to you for making the statement."

10

MR. PALESE: That is all.

MR. ORLANDO: Now, if your Honor please, we offer the statement.

20

MR. PALESE: I still object to it because I think the law is also clear that it is not the fact the statement is voluntary at the time it is actually given, but I think it is also incumbent on the State to prove that during the time the defendant was in their custody, acts of violence or threats were not made to the defendant prior to actually giving the statement.

30

THE COURT: No, I don't think that burden rests upon the State. If you have any proof to offer of that character, I will hear it now before dealing with the admissibility of the alleged statement.

MR. PALESE: I object to the confession or the statement going in until that is shown.

THE COURT: Do you have any testimony to offer?

MR. PALESE: No, I don't have any testimony.

40

THE COURT: On the question of the voluntary nature of this statement?

*Statement of Robert Cox*

MR. PALESE: I have no testimony.

THE COURT: All right, proceed.

MR. PALESE: Will your Honor allow me an exception?

10

The defendant prays an exception which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

Q. Will you commence with the very first question of the prosecutor, and read all the questions and answers until the statement is completed?

A. (Reading:)

“Q. I understand your full name is Robert Cox, 20  
is that right?

A. Yes, sir, that's right.

Q. Where do you live, Mr. Cox?

A. Hickstown Road, Hickstown.

Q. Are you married or single?

A. Married.

Q. Mr. Cox, I am the Prosecutor of this county, as you probably already know.

A. Yes, sir, I know you.

Q. And I am about to question you concerning 30  
a murder which took place yesterday on Buffalo Road, in Gloucester township, in this county. A Mrs. Agnes McBurney was killed and, as you can appreciate, as Prosecutor of the county I have a duty to perform and that duty requires me to question you.

A. Yes, sir.

Q. I want to warn you in advance that whatever you may say must be voluntary on your part.

A. Yes.

40

Q. And anything that you may say may be used against you in future proceedings in court; in other words, I want you to understand right at the offset that this statement which I am about to take from you must be a voluntary statement. I do not want you to say anything that you do not think is just right and I want you to know that whatever you say must be said of your own volition, without any promises being made to you or without any fear or hope of reward being held out to you for making the statement. You understand me, do you?

A. Yes, sir.

Q. You had known Mrs. McBurney before this murder, had you not?

A. Yes, sir, I know them, I guess, about six years.

20 Q. Six years?

A. Between six and seven years.

Q. You knew where she lived?

A. Yes, sir.

Q. Where did she live, on a farm?

A. Why, that's a little, small farm, right there by the buffalo farm.

Q. How did you come to know her? Had you worked there?

30 A. No, sir, I never worked there. Why, her husband and I used to work on the WPA job and I used to ride with him back and forward to work. At that time I had no machine. It was around about three years ago.

Q. In that way then, by knowing her husband and going forwards and backwards with him to and from your place of employment, you got to know Mrs. McBurney?

A. Yes, sir.

40 Q. And I suppose you also knew her children?

*Statement of Robert Cox*

A. Yes, sir, I knew the children.

Q. How many children were there, do you know?

A. Three boys and two girls, and the oldest girl I guess she is around about 17 or 18.

Q. When did you see her yesterday?

A. The last time—oh, yesterday, I remember, I guess it was around about, if I am not mistaken around about noontime, just around about noontime. 10

Q. And where did you see her?

A. At her home.

Q. At her home?

A. At her home.

Q. Was she inside or outside of her house?

A. She was outside, you know, just inside where I knocked at the door.

Q. You went to her house and knocked at the door? 20

A. Yes, sir, and she came out.

Q. Where had you been just before you went to her house?

A. Well, I had been drinking, you see, Mr. Orlando, all morning.

Q. What had you been drinking?

A. Gin and wine. I had one pint of gin in my pocket and one pint of wine.

Q. You had one pint of gin and one pint of wine? 30

A. And one pint of wine, in each pocket.

Q. When had you gotten the gin and when had you gotten the wine?

A. Tuesday night I bought it up here in Camden.

Q. Had you drunk any part of the wine or any part of the gin Tuesday night?

A. Not a drop of that but I drink that night and I had enough in me and I went home drunk. 40

*Statement of Robert Cox*

Q. So that yesterday morning when you got up you had a pint of gin and a pint of wine which had not been opened?

A. Hadn't been opened. I had it in my machine.

Q. What time did you get up yesterday morning?

10 A. Around 10 o'clock in the morning, between 9:30 and 10 o'clock, I am quite sure.

Q. Did you sleep at your home?

A. Yes, sir. I didn't go to work all day, I was feeling so bad.

Q. How far is your home from the McBurney farm?

A. I guess around about two miles, two miles and a half.

Q. When did you first start to drink yesterday morning?

20 A. As soon as I got up I washed my face and I went out in my car, and my wife, you know, she was gone to work. She had woke me up and asked me whether I was going. She said, 'Are you going to work this morning?' I said, 'No, I am feeling so bad, my head hurts me so awful bad and I don't feel so good.'

Q. Never mind about the conversation you had with your wife.

30 A. As soon as I got up, I got my wine and gin.

Q. As soon as you got up you started to get drunk?

A. I started drinking again.

Q. What did you drink first, the gin or wine?

A. Drink gin first.

Q. Did you drink all the gin up first?

A. Not all at the present time, about half of it.

40 Q. Did you start drinking wine then after you had drunk half a bottle of gin?

*Statement of Robert Cox*

A. I went on for a walk straight on down the road.

Q. Was anybody with you?

A. By myself

Q. You were by yourself?

A. Yes, sir.

Q. When did you start to do a little more drinking? 10

A. Just as I got down the Hickstown Road and going into Lamb's Terrace, the bungalow, as I got nearer to the bungalow I taken the rest of my gin out and drank it all and throwed the bottle in the woods.

Q. How far is that about from your home?

A. About a good mile from my home.

Q. And what did you do about your wine? 20

A I kept on walking and as soon as I got to Buffalo Road I says to myself, 'I guess I'll walk down Buffalo Road and I'll come on into the other road and come home.' So was a little tired. I sits down on a stump and I open my wine and drink pretty nearly half my wine. I sit there a little while and said, 'I'll go again,' and I make a little piece to a stump and Staggered and I went down.

Q. That was how far after you had gotten into Buffalo Road? 30

A. About quarter of a mile I was in the Buffalo Road from the Hickstown Road, Lamb's Terrace, so I said to myself, 'Well, I better kill that other and get rid of the bottle,' so I taken the bottle of wine out, drink it, and throw the bottle away, and by that time I was pretty near to Mr. McBurney's house, and I says to myself, 'That's where Mr. McBurney lives,' and I wanted a little drink of water but something said, 'You are too full to go in, you are too full,' don't go in. I don't guess she will 40

say anything about me being full. I will go and ask for a drink of water,' and knocks on the door and I heard the dog barking and she opened the door, and I had a little stick with me. The dog run out and I had the stick in my hand, just like that (illustrating), and he come out and I waved at him like that (illustrating) and he grabbed me by the pants.

10 Q. Who grabbed you by the pants, the dog?

A. The dog, and she says to me, she says, 'Bob, what are you doing here drunk?'

Q. Who said that to you?

A. Mrs. McBurney. She said, 'Bob, what are you doing here drunk?' I said, 'I stopped here to get a drink of water,' and she said, 'You are drunk. Get off my place.' And by that time she shoved me and hits me and I fell up against the truck.

20 Q. You fell against the truck?

A. Yes, sir.

Q. Then what happened?

A. One of the boy's bats was there.

Q. Baseball bat?

A. Yes, sir, so when she hit at me again I taken the baseball bat and I struck her and she fell and I looked down.

30 Q. Wait a minute. Let us get that. When you were leaning against the truck you saw a boy's baseball bat?

A. Yes, sir, right along there by the side of the house.

Q. And you picked up the baseball bat?

A. I picked up the baseball bat.

Q. And you struck Mrs. McBurney with it?

A. Yes, sir.

Q. Where, on the head or what part of the body?

40 A. In the head.

*Statement of Robert Cox*

Q. And when you struck Mrs. McBurney in the head with the baseball bat, what happened to her?

A. Why, she fell.

Q. She fell to the ground?

A. Yes, sir, she fell to the ground.

Q. What did you do?

A. I said to myself, 'My God! I wonder have I killed her?' I said that to myself, and then I just lost my nerve and struck her again. 10

Q. You struck her how many times?

A. I guess about three or four times I struck her.

Q. With the same baseball bat?

A. Yes, sir, two or three or four times.

Q. After you struck her the first time with the baseball bat and she had gone down, why was it that you struck her two or three or more times? 20

A. I don't know myself, Mr. Orlando. I was crazy with liquor and didn't know what I had done. I was crazy under the influence of liquor.

Q. Isn't it a fact you struck her several more times after the first time, so that you might make sure that she would be dead?

A. Yes, sir, I did that.

Q. That is the reason you struck her three or four more times?

A. Yes, sir. 30

Q. After you struck her the first time and she had gone down?

A. Yes, sir.

Q. After you struck her the first time and she had gone down?

A. Yes, sir.

Q. Then you conceived that you better strike her several more times and make sure that she was dead, so she would not tell on you? 40

A. That's what I did.

Q. Is that right?

A. Yes, sir.

Q. So you wanted to make sure?

A. Yes, sir.

Q. That she was dead?

10 A. After I hit her, I figured she may not come to or if she's dead I would be in a whole lot of trouble. Something to my mind said I better strike her again.

Q. I understand when you went to the house you were dead broke, you had no money?

A. No, sir, I didn't have no money.

Q. Is that right?

A. Yes, sir.

20 Q. And you wanted to get some money, is that right?

A. Yes, sir, that's what I said to myself, 'Well, I'll go and get me some money and I'll get some more liquor.'

Q. Was that your intention then when you got to the McBurney's farm of getting yourself some more money so you could get some more liquor?

A. Not until I stopped to go in, I didn't have no idea of going in the woman's place at all.

Q. Originally?

30 A. Originally I didn't have that in my head, Mr. Orlando, to go for that purpose.

Q. But once you got there —

A. Something in my liquor told me to go in there. I was so full of liquor, something told me to go in. I went not to get money. I said, 'I'll stop and get a drink of water.'

Q. I understand originally you tell us you went with this idea of getting a drink of water.

40 A. Yes, sir.

*Statement of Robert Cox*

Q. But once you got to the farm, whether it was the liquor or something else that drove you to do it, you do not know, but the fact is once you got there you made up your mind to get some money so as to buy some more liquor?

A. I didn't make up my mind to get the liquor until I hit her and it looked like something come to me to get me to get some money and get some more liquor. That's why I went in the house then. 10

Q. Do you know when she actually died?

A. No, sir.

Q. Did you make sure she was dead before you went in the house?

A. No, sir, I did not.

Q. When you went in the house you don't know whether she was still alive or dead?

A. No, sir; she looked like she was asleep. 20

Q. All you know was that she was lying on the ground?

A. Probably she was just unconscious.

Q. She probably was just unconscious?

A. Unconscious. Didn't have no idea she was dead. Probably she was just unconscious, and I would go in the house to try and find where she had some money in the drawer, and I didn't see no money and I taken the radio. 30

Q. Let us get that straight. That is important. Originally you say you went there with the idea of getting some water?

A. Yes, sir.

Q. After you got there some things occurred which you have described to us.

A. Yes, sir.

Q. And then you picked the baseball bat up and struck her over the head?

A. I struck her after she hits me, after she shoved 40

me up against the truck. She said, 'What are you coming in here, Bob, drunk?'

Q. She wanted you to get off the steps?

A. I guess so, and she shoved me up against the truck and I picked up the bat.

Q. You went there originally to get some water?

10 A. Yes, sir.

Q. After you got there, Mrs. McBurney was displeased to see you there drunk?

A. Yes, sir.

Q. And she wanted you to get off her place?

A. Yes, sir.

Q. And shoved you or tried to get you off?

A. Yes, sir.

20 Q. When she did that, you picked up a baseball bat lying near a truck and struck her over the head with it?

A. Not at that time. I didn't strike her until the dog grabbed me by my pants leg and I waved at him, and she shoved me up against the truck and there was the baseball bat standing up against the house and I taken the baseball bat and swung it like that (illustrating) and hit her.

Q. After you struck her with the baseball bat she went down?

A. She went down.

30 Q. And after you saw her go down you then conceived the best thing was to strike her two or three more times?

A. Yes, sir.

Q. And you struck her with the same bat on the head, is that right?

A. Yes, sir.

Q. Then she was lying on the ground and you don't know whether she was dead or alive?

40 A. I didn't know whether she was dead or just

*Statement of Robert Cox*

unconscious. Then something just told me to go in the house.

Q. Then something told you to go in the house and get some money so you might buy more liquor?

A. Yes, sir.

Q. Once you got in the house you looked around to see if you could find some money? 10

A. Yes, sir.

Q. And after you looked you were unable to find any money?

A. That's right.

Q. But you did see a radio?

A. Yes, sir.

Q. And then you conceived the idea of stealing the radio?

A. Yes, sir.

Q. And selling it so you could get some money with which to buy more liquor, is that right? 20

A. Yes, sir, that's right.

Q. What kind of radio did you steal from McBurney's farm?

A. I didn't notice what the make was.

Q. Was it a little radio?

A. One looked like a little grip, a little handle to it.

Q. A radio with a handle on?

A. Radio with a handle on, carry it in the hand. 30

Q. Where did you find the radio, what part of the house?

A. Upstairs, second floor.

Q. Where did you look for the money?

A. I looked in the bureau drawer.

Q. In the bureau drawer?

A. Bureau drawer.

Q. Where was that, downstairs or upstairs?

A. Upstairs. 40

*Statement of Robert Cox*

Q. What other place did you look to see if you could find any money?

A. Downstairs too.

Q. Where?

A. First floor.

Q. What part of the house?

10 A. I don't know whether the middle room or front room. I don't know which one. I don't know whether the middle room or front room.

Q. Isn't it a fact you also looked through her bag?

A. Handbag.

Q. You looked in her handbag to see if you could find some money?

A. Nothing in there. I didn't get a nickel out of the house, nothing but the radio.

20 Q. In your search for money in the house, you looked downstairs but do not know whether it was the middle room or the front room?

A. No, sir.

Q. You looked in her handbag and could not find any money in there?

A. No, sir.

Q. Then you went upstairs and looked in the bureau drawer?

30 A. Yes, sir.

Q. Was that in a bedroom?

A. Yes, sir, in the bedroom.

Q. To see if you could find any money there and you were not able to find any money there?

A. No, sir.

Q. And then where was it that you saw the radio?

A. Why, I think it was sitting on a little table.

Q. Upstairs or downstairs?

40 A. Upstairs. The radio, I think it was on the little table.

*Statement of Robert Cox*

Q. Was it in the bedroom?

A. Yes, sir, in the bedroom. I lifted it and I just took the radio.

Q. Was the radio plugged in or was there no plug to it?

A. Why, it had a plug. You could play by electric, you know, or not, just put the plug back and it would play without electric. 10

Q. When you took the radio, was it plugged in?

A. No, it wasn't plugged in. The wires and everything was intact.

Q. Then you took the radio from upstairs, is that right?

A. Yes, sir.

Q. And you came downstairs?

A. Yes, sir.

Q. And put it in the basket? 20

A. No, I didn't have no basket, not at that time.

Q. Where did you get a basket?

A. At home.

Q. At your home?

A. Yes, sir, I got the basket at my home.

Q. After you had taken the radio and left the McBurney's farm —

A. Yes, sir.

Q. —and you went to your home? 30

A. Yes, sir.

Q. Why did you go to your home, to get the basket?

A. To get a basket home. I carried the radio with me in my hand.

Q. Why did you go to your home?

A. I went home to get a basket, to come up here with it.

Q. After you had gotten the radio, you wanted to get a basket so you could put the radio in the basket, is that right? 40

*Statement of Robert Cox*

A. Yes, sir.

Q. Did you do that so that the radio could not be seen?

A. That's exactly what I did.

Q. Is that right?

A. Yes, sir.

10 Q. In other words, before you went to sell the radio you wanted to get a basket?

A. Yes, sir.

Q. So that you could put the radio in it?

A. Yes, sir.

Q. So that it would not be seen, is that right?

A. Yes, sir.

Q. Why did you want to get a basket to put the radio in?

20 A. Well, the reason why I wanted to get the basket to put the radio in, I didn't want nobody to see I had the radio.

Q. Why didn't you want anybody to see the radio?

A. On account they knew I didn't have none.

Q. In other words, you were afraid if people saw you walking with a radio they might suspect something wrong, is that right?

A. I might have stolen it some place.

30 Q. And the reason you wanted to get a basket and cover the radio was so that it would not be seen and so no one would have suspected you of stealing the radio?

A. That's right.

Q. When did you conceive the idea of getting the basket, while you were in the farmhouse or after you left the farmhouse?

A. I didn't get no basket at her place. I come home and got it.

40 Q. When did that come to your mind, that you better get a basket and cover it up?

*Statement of Robert Cox*

A. After I got to my home.

Q. After you got to your home?

A. Yes, sir.

Q. Do you remember how you got from the McBurney's farm to your home?

A. Yes, sir, I remember I come—there's a little pathway going out through her garden and there's a short cut and I come on through the pathway back of the woods on down to Erial Road. 10

Q. And when you got to Erial Road, what did you do?

A. When I got to Erial Road I looked and I didn't see nobody see me and I crossed the road and goes on home.

Q. Do I understand, Mr. Cox, you went back home a different way than what you had come, is that right? 20

A. Yes, sir.

Q. And the way you went back home was the back way?

A. Back way.

Q. And you took the back way so that nobody could see you, is that right?

A. Yes, sir.

Q. When did you conceive that? When did you think about the idea of going home by the back road instead of the other road? Was that when you were in the house or after you came out of the house? 30

A. After I come out of the house is when I decided to come through the woods.

Q. In other words, as soon as you came out of the McBurney house, it came to your mind that it would be best for you to go that back way so that nobody could see you, is that right?

A. Yes, sir, that's right.

Q. And the reason I understand you wanted to 40

*Statement of Robert Cox*

go the back way was so that no one would suspect you of having done anything wrong?

A. That's right.

Q. Is that right?

A. Yes, sir.

10 Q. You knew, did you not, when you were leaving the farmhouse that you had done wrong, is that right?

A. Yes, sir, I realized then, it come to me I had done wrong.

Q. And knowing you had done wrong, you thought it the wisest thing to do was to get back to your home by the back road, so that nobody would see you?

A. Yes, sir.

Q. Is that right?

20 A. That's right.

Q. Did anybody see you?

A. No, sir, I didn't see anybody at all.

Q. You saw no one?

A. No, sir; probably someone must have seen me but I didn't see anyone.

Q. This back road that you speak of, you go through the woods, don't you?

A. Right through the woods, a short cut.

30 Q. A short cut through the woods?

A. Yes, sir.

Q. And you figured that by taking the short cut through the woods you would be able to get to your home without being seen by anybody?

A. Yes, sir.

Q. Mr. Cox, when you first went to the McBurney home you had rubbers on, didn't you?

A. Yes, sir, I had my rubbers.

40 Q. When had you put those rubbers on, that morning when you left your home?

*Statement of Robert Cox*

A. I had the rubbers on that morning when I got up.

Q. And you wore your rubbers from the time you left your home until the time you got to McBurney's farm?

A. Yes, until I got to the farm.

Q. When was it that you took those rubbers off and threw them away? 10

A. I threw them away before I got to my home.

Q. While you were in the woods?

A. No, I was coming down the road.

Q. When you got into the road?

A. I was going on down the road.

Q. What made you take the rubbers off and throw them away?

A. The reason why I threw them away, I says to myself, 'Now, somebody may track me,' and I said, 'I think I'll take my rubbers and throw them away.' So before I got to the corner I seen a white lady coming down the road and I stopped and pulled my rubbers off and threw them on the side where there's a dump pile. 20

Q. But I understand while you were walking through the woods you kept your rubbers on and when you came to the road you were afraid that your rubbers might leave footprints on the road?

A. Yes, sir. 30

Q. And because of those footprints somebody might track you?

A. Might track me.

Q. In order that you might not leave footprints and in order that no one might track you, you conceived it best to take the rubbers off and throw them away, is that right?

A. Yes, sir.

Q. How long was that after, would you say, after you left the McBurney farm, just a few minutes? 40

*Statement of Robert Cox*

A. The time I threw away the rubbers?

Q. Yes.

A. I got pretty nearly home.

Q. How long?

A. Yes, sir, a few minutes. I guess it's about a 15 or 20 minutes walk.

10 Q. How long do you figure you were at the McBurney farm from the time you got there until you left?

A. I guess I was around the place there about 20 minutes, 20 or 25 minutes.

Q. And during those 20 or 25 minutes you struck Mrs. McBurney as you have described and the rest of the time you spent in the house looking for money, is that right?

A. Yes, sir.

20 Q. How long do you figure you spent in the house looking for money?

A. I imagine around about 5 minutes, about ten minutes.

Q. Did you lock the door when you left the McBurney house?

A. No, sir, I didn't lock the door. I come out and pulled the door to.

Q. You did not pull the door to?

30 A. Yes, sir, I pulled the door to.

Q. You closed the door?

A. Yes, sir.

Q. When you went into the McBurney house, was the door closed?

A. No, sir, it was open.

Q. Was anyone home other than Mrs. McBurney?

A. No one at all.

Q. Just herself?

A. Yes, sir.

40 Q. Do you remember what time it was approximately when you got to the McBurney farm?

*Statement of Robert Cox*

A. Well, I think it was before noon.

Q. What time was it when you got back to your home?

A. Why, I don't know, Mr. Orlando. I just could not possibly say what time it was when I got home, but anyway when I left my home with the radio I looked at my clock and it was 20 minutes after one, and I started walking up the road then with the radio in the basket. 10

Q. You had this radio in the basket?

A. Yes, sir.

Q. And the basket in which you put the radio is that basket which you see there?

A. That's the basket I covered the radio up with."

THE COURT: The hour for adjournment having arrived, we will resume tomorrow morning at ten o'clock. The jury may leave the jury box 20

(At this point a recess was taken until June 3, 1941, at ten o'clock a. m., Daylight Saving Time.)

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Camden, N. J., June 3, 1941

Trial of the case resumed at 10 o'clock, pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

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WILLIAM B. MACDONALD, resumed

THE COURT: You may continue, Mr. Macdonald.

THE WITNESS: (Reading:)

“Q. What did you cover it up with?

20 A. A burlap bag.

Q. Where did you get the burlap bag with which to cover the radio?

A. In my yard.

Q. Why did you get a burlap bag to cover it?

A. I put it over it so I didn't want anybody to see what I had.

Q. So as to hide the radio?

A. Hide the radio.

30 Q. After you got the radio in the basket and covered it up as you have told us, then where did you go?

A. I went over to Clementon to catch the trackless trolley.

Q. How far was the station or the place where you were going to catch the trolley, trackless trolley as you call it, from your house?

A. About two miles and a half.

Q. You walked?

40 A. I walked. I walked all the way.

*Statement of Robert Cox*

Q. Do you know how you walked there, what route you took, what road?

A. The Clementon-Erial road. That's the road that leads down to Clementon. They call that road the Clementon-Erial road.

Q. From your house you went to the Erial road?

A. Yes, sir.

10

Q. And the Erial road takes you right down to Clementon?

A. Right down to Clementon.

Q. Did you meet anybody while going down to make the trolley?

A. A couple white fellows came up and down the road.

Q. Did you stop and speak to them?

A. I spoke to one fellow.

Q. Do you know who he was?

20

A. No, sir, I don't know who he was.

Q. What did you speak to him about?

A. I just told him hello.

Q. You just greeted him by saying hello?

A. Yes, sir, greeted him and kept on walking.

Q. Did you say anything more than that?

A. That's all.

Q. Where did you go then?

A. On my way to Clementon.

Q. Did you meet anybody else except the two white fellows?

30

A. I didn't meet anybody else, I don't think I met.

Q. Did you have money to get on the trolley?

A. 25 cents.

Q. Where had you gotten the 25 cents?

A. I borrowed it from a colored lady around the neighborhood where I live, Mrs. Medley.

Q. Where was she, near your house?

40

*Statement of Robert Cox*

A. She lived about half a mile below me.

Q. Did you go to her place before you went to your home or did you go to her place after you had gotten home?

A. After I had gotten home I walked down there and got that quarter.

10 Q. Did you have the radio in the basket then?

A. Yes, I had the radio in the basket but at home. I didn't take it with me. I left it and walked down there and got the quarter first and came back to my home and got the radio.

Q. What was your idea in going to this neighbor's house that you have mentioned, to borrow money, and not take the radio with you? Why didn't you take the radio with you?

20 A. Well, you see, I wanted to catch the bus at Clementon and it wouldn't pay me to walk all the way down there with the radio and come back by my house and go to Clementon.

Q. Did you borrow some money from her?

A. 25 cents.

Q. Did you tell her what you wanted the money for?

A. I told her I wanted to borrow the quarter to get one of my inner tubes fixed.

30 Q. Get what?

A. Inner tubes.

Q. After she loaned you the quarter you left her place and walked back to your house?

A. Walked back to my house.

Q. And then you got the radio?

A. And started to Clementon.

Q. And started toward Clementon, to make the trackless trolley as you call it?

A. Yes, sir.

40 Q. What was your intention in getting this quarter? What were you going to do with it?

*Statement of Robert Cox*

A. To get fare to pawn it and get some money and get some more whiskey.

Q. Where were you going to go to pawn it?

A. In Philadelphia.

Q. In Philadelphia?

A. Yes, sir.

Q. Had you ever pawned anything there before? 10

A. No, sir, never, for that's the first time I ever stole anything to pawn.

Q. But you did know that was the place to go to pawn this article so that you could get some money?

A. Yes, sir.

Q. And did you get the bus?

A. No, I went across the boat at Market Street Ferry.

Q. I mean at Clementon, did you get the trolley, 20 as you call it?

A. Yes, sir, trackless trolley.

Q. And you came on that trackless trolley to Camden?

A. Yes, sir, Market Street.

Q. Market Street Ferry, is that right?

A. Yes, sir.

Q. How did you go from the Market Street Ferry to Philadelphia?

A. I paid a nickel, you know, to come across the 30 ferry, and that killed the quarter.

Q. How much did it cost you for the trolley?

A. 20 cents.

Q. That took you to Market Street Ferry and then you had 5 cents left and you used that to go across the ferry over to Philadelphia, is that right?

A. Yes, sir.

Q. When you got off the ferry in Philadelphia, where did you go? 40

*Statement of Robert Cox*

A. I walked on down, let's see, what's the name of that street now?

Q. Market Street?

A. You call it. I beg pardon. I walked from Market Street down to South. I walked down Front Street to South.

10 Q. You got off the ferry in Philadelphia and walked down Front Street in Philadelphia?

A. To South Street.

Q. To South Street, is that right?

A. Yes, sir.

Q. And then what did you do when you got to South Street?

A. The first loan office I come to, I walked in and I pawned it.

Q. On what street?

20 A. South Street.

Q. Do you know where on South Street you went to pawn it?

A. Right on top of a hill.

Q. That is not very far?

A. From the South Street Ferry, I think about three squares.

Q. How much did you get for the radio?

A. Three and a half.

Q. \$3.50?

30 A. Yes, sir.

Q. Did the man ask you where you got the radio?

A. No, sir, he didn't say anything at all to me.

Q. Did you get a ticket, a pawn ticket?

A. Yes, sir, he gave me a ticket.

Q. What did you do with that?

A. The blue trousers I had, in my watch pocket, they had a hole in, and I just stuck my ticket down there, and I took the paper money and twisted it in where I have my owner's card.

40

*Statement of Robert Cox*

Q. Then you put it in your back pocket?

A. I puts my money in the back pocket and put the ticket in my watch pocket. Didn't have no idea there was a hole in it, and that's the way I lost it.

Q. When you went to the pawn shop, they asked you your name, didn't they? 10

A. Yes, sir.

Q. And did they ask where you lived?

A. They asked where I lived and I told them on Kater Street in Philly.

Q. What name did you give them?

A. I gave them a different name.

Q. What name did you give them?

A. Henry Alston.

Q. That is not your name, is it?

A. No, sir. 20

Q. Then you gave them a false name?

A. False name.

Q. And you gave them a false address?

A. False address.

Q. Why did you give them a false name and a false address?

A. Well, I figured, you know, they would trace me if, you know, they find out I pawned the radio.

Q. In other words, you gave them a false name and a false address so that no one could identify you as being the person who had pawned this radio, is that right? 30

A. Yes, sir.

Q. And you did that for what reason?

A. Well, the same thing you say, I didn't want anybody to know I pawned it.

Q. You were afraid, were you, that the police might find out that you had pawned the radio?

A. Yes, sir. 40

Q. And that way trace you as being the person who had stolen the radio?

A. That's it.

Q. So then you gave a false name and a false address in order that you might deceive the police authorities?

10 A. Yes, sir.

Q. If an investigation were made, is that right?

A. Yes, sir.

Q. Is that your reason?

A. That's right.

Q. When did you think of that idea?

A. I don't know. I thought it up, Mr. Orlando.

Q. When did you think it up, when you got there or before you got there?

A. A little before I got there.

20 Q. Where did you get this name from? Had you ever used it before?

A. Never had.

Q. Do you know anybody by that name?

A. No. The name just came in my mind and I just told the man that was my name.

Q. And this address that you gave, did you know anybody that lived at that address?

A. Not at all.

30 Q. Is there a street by such name that you gave?

A. No, sir.

Q. In other words, there was no such street, as far as you know?

A. No, sir, I didn't know. I just told him anything.

Q. Before you got this quarter that you speak of, which was necessary to get you to Philadelphia, did you go to see more than one person or just the one?

40 A. I went to two or three persons there around the neighborhood.

*Statement of Robert Cox*

Q. And you went to two or three people before you finally got it?

A. Before I finally got that, I went to two other houses.

Q. Who was the first person you went to?

A. Ike Shaw.

Q. Where does he live?

10

A. In the same neighborhood where I live. All the houses are bunched there together.

Q. What happened?

A. He said he didn't have anything.

Q. Then where did you go?

A. Then I went over to Mrs. Watson.

Q. What is the name?

A. Mrs. Watson.

Q. Did you get it there?

A. She didn't have it, and then something told me to walk down to Mrs. Medley. 20

Q. And that is where you got it?

A. That's where I got it.

Q. In other words, before you were successful in borrowing a quarter you had to go to three different places?

A. Yes, sir.

Q. Then after you had gone to the pawnshop and delivered this radio, what did you do with the basket? Did you hold on to the basket? 30

A. I brought the basket home with me.

Q. You brought the basket home with you?

A. That's right.

Q. After you left the pawnshop, where did you go?

A. I went on around the corner and stopped at the saloon and got me another drink.

Q. Drink of what?

A. Gin.

Q. Then where did you go? 40

*Statement of Robert Cox*

A. And then a beer.

Q. And then where did you go?

A. I walked on back down to the boat.

Q. To the ferryboat?

A. Yes, sir, South Street Ferry.

Q. Did you go across the South Street Ferry?

10 A. I came on across.

Q. After you got across the South Street Ferry, where did you go?

A. I catch the bus there.

Q. You got a bus?

A. For 5 cents and I rides to Kaighn Avenue.

Q. Then what did you do?

A. I gets off Sixth and Kaighn and walks down to the Giant Tiger and they were closed—I forgot they closed on Wednesdays at noon—so I comes on back to Sixth and Liberty. That's where I lost my registration card and work card, my social security card, and I went up where I got drunk Tuesday night and I dropped them in the toilet, and the lady owns the place, after I come out, I done lost my basket, and when I come out to come on home, this fellow went in behind me, he picked it up and he didn't know which way I went, and going up after I left the Giant Tiger she gave it to me and that's where I started drinking again.

20  
30 Q. I understand after you had been to the pawnshop and gotten money, after having pawned the radio, you went around the corner to a saloon and got yourself a drink of gin and a glass of beer.

A. Yes, sir.

Q. And after you left there you walked down to South Street Ferry?

A. Yes, sir.

40 Q. You paid a nickel and went across the South Street?

*Statement of Robert Cox*

A. Yes, sir.

Q. After you went across the ferry you paid a nickel and got a bus?

A. Yes, sir.

Q. And that bus took you to 6th and Kaighn Avenue?

A. Yes, sir.

10

Q. And you got off at 6th and Kaighn Avenue with the idea of going to the Giant Tiger Market?

A. Yes, sir.

Q. When you got there you found out the Giant Tiger Market was closed because it was Wednesday afternoon?

A. Yes, sir.

Q. And then you conceived the idea of going to Sixth and Liberty Streets, is that right?

A. That's right, yes, sir.

20

Q. And when you went to Sixth and Liberty Streets, the lady or man, which was it?

A. The lady, I guess she runs the place.

Q. The lady who runs the place gave you those things that you had lost the night before?

A. Yes, sir, when I was drunk Tuesday night.

Q. Then you stayed there a little while?

A. And I took a couple more drinks.

Q. Then what did you do?

30

A. I comes around to Market, or Broadway, and that's where I bought some meat and puts the meat in my basket, and I bought some meat and couple loaves of bread, and potatoes and onions, and walks up to Haddon Avenue and Kaighn, to catch the bus to come home.

Q. Did you?

A. Yes, sir, and I gets on the Clementon-Berlin bus, and the salesman told me—I said, well, this bus, I says, 'Clementon-Berlin, will this bus go to

40

*Statement of Robert Cox*

Pine Hill?' He said, 'No, you can't get the bus here right now at the present time going to Pine Hill. You have to ride around the circle at the boulevard. I can take you around the circle and into Ferry Avenue at the cemetery. The bus comes around the circle.' Then he stopped, 5 cents there, and he said, 'You go right over where you see the bus swinging around and you catch the Clementona bus,' and I wait over there and I catch the Clementona bus, 20 cents from there to Clementon.

10 Q. Where did that take you?

A. That takes me up the hill into Pine Hill and I get off at Stetson's corner. I guess that's about half a mile, not quite half a mile, a good quarter, Stetson's corner and Hickstown Road, and I walked down home with the stuff in the basket, and just as  
20 I goes in the house the lady I live with, you see, her boy was in the house, just had made a fire, and I says to them, 'There's some meat I brought in the basket. Where is your mother?' He said, 'She's out in the yard,' and I walked out in the yard and she was picking up some chips in the woodpile and I goes around and speaks to her, and she said, 'Did you feed the dogs today?' I said, 'Yes, I fed them this morning,' and I goes around and comes in the house and takes a drink of water and  
30 walks in the front room, and I don't think it was five minutes before the officers come in.

Q. What time was it when you got home?

A. Not quite dusk.

Q. It had not got dark yet?

A. No, sir, it hadn't got dark yet.

Q. And you had not been home over 10 minutes when the officers came?

A. Just about ten minutes when they come, so  
40 they said to me, they come in and says to me, 'Your

*Statement of Robert Cox*

name Robert Cox?' And I said, 'Yes, sir.' They said, 'Put on your coat and get your hat. I want you to take a ride with me,' and I come out of the house and gets in his machine.

Q. After the officers got you and asked you to go with them, you were questioned by the police officers and you were asked whether or not you knew anything about this murder, isn't that right? 10

A. Not at that time they didn't tell me anything.

Q. But a little later on they told you?

A. A little later on they told me, after I got to Woodbury, they asked me about it, you know.

Q. And what did you tell them? Did you admit it or deny it?

A. I denied it.

Q. You denied knowing anything about the murder? 20

A. Yes, sir.

Q. To the police officers?

A. Yes, sir, I denied it.

Q. When you denied it you were not telling them the truth, were you?

A. No, sir, I wasn't telling the truth. I was scared and I just didn't know what to do.

Q. When did you finally decide to tell the truth? 30

A. Today.

Q. Today?

A. Yes, sir.

Q. Are you telling me the truth now?

A. Yes, sir, I am telling you the truth now, exactly what happened.

Q. And everything you have told me here tonight

—  
A. Yes, sir.

Q. —in answer to these questions I have submitted to you, is it the truth? 40

*Statement of Robert Cox*

A. Yes, sir, it is the truth and I raise my hand to God.

Q. This statement that you have made to us concerning the happenings, is it a truthful statement?

10 A. Yes, sir, a truthful statement, every word I am telling you is the truth. I am not going to tell you a story.

Q. Everything that you have told me here, is it voluntary on your part?

A. Yes, sir, exactly what I did.

Q. No one has promised you anything?

A. No, sir, nobody has promised me a thing.

Q. I have not offered you any promise for making this statement?

20 A. You nor officers neither that have been with me all day, they haven't told me nothing, what to say or nothing. They told me to tell the truth what I know. I was going to tell it but I was afraid I was going to get punished.

Q. Then you had fear, the thing that caused you to hesitate to tell us was your fear of punishment by the law, is that right?

A. Yes, sir.

30 Q. In other words, after you had committed this wrong, you realized that you were subject to punishment by the law?

A. Yes, sir.

Q. And in order that you might avoid that punishment, you decided not to tell the truth at first?

40 A. Yes, sir. See, one of the fellows over there in Woodbury, they scared me. They said, 'Look out what you say. They will hang you up.' He said, 'What the officers going to do with you, they will hang you up by the ears,' and I was scared. I knew I had to tell it but I was afraid.

Q. Not only were you afraid because of what the law might do to you but you were also scared

*William B. Macdonald—Direct*

because of what some fellow in Woodbury told you?

A. That's it, that's exactly what I thought.

Q. Who was it, some prisoner down in the jail in Woodbury who told you that?

A. Yes, sir, told me they would hang me by my ears all night.

10

Q. You feel better now that you have told the truth?

A. I feel fine, Mr. Orlando. I was telling Mr. Bennie today I was going to tell it. I told him I was going to tell the truth."

Q. Mr. Macdonald, on the evening of the questioning was a basket shown to the defendant which was marked by you for identification?

A. Yes, sir.

Q. I show you a basket and ask you whether or not there is any mark by which you can identify the basket as being admitted by the defendant that he used that day?

20

A. There is a mark on the bottom of the basket, D-1 for identification, 4-24-41, W. B. M., my initials.

Q. Is this the basket (indicating)?

A. Yes, sir.

MR. ORLANDO: Your Honor, please, the State desires to have this marked for identification at this time.

30

THE COURT: It may be marked S-13.

(The basket referred to was marked State's Exhibit S-13 for identification.)

Q. In addition to identifying the basket was the defendant shown a stick which he mentioned hav-

40

ing carried and was it marked for identification at that time?

A. Yes, sir, it was.

Q. Do you see any mark on that stick by which you recognize it as being the stick the defendant admitted using in the statement he made?

10 A. Yes, sir, at the end of the stick I marked D-2 for identification, 4-24-41, W. B. M., my initials.

MR. ORLANDO: With your Honor's permission we ask that this stick be marked for identification as State's Exhibit S-14 for identification.

THE COURT: It may be so marked.

20 (The stick referred to was marked State's Exhibit S-14 for identification.)

MR. ORLANDO: You may cross-examine.

MR. PALESE: No questions.

THE COURT: That is all, Mr. Macdonald.

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30 THOMAS J. RITCHIE, sworn:

BY MR. ORLANDO:

Q. Mr. Ritchie, you are associated with the New Jersey State Police?

A. Yes, sir.

Q. And have been a New Jersey State policeman for how many years?

40 A. Thirteen years.

*Thomas J. Ritchie—Direct*

Q. Is there any particular branch of the service that you are connected with?

A. The Detective Division.

Q. For how many years have you been so connected?

A. Three years.

Q. Where were you stationed on the 23rd of April, 1941? 10

A. At Mantua.

Q. By reason of a call which was received at that station did you go to the McBurney farm situated on Buffalo Road in Gloucester Township?

A. Yes, sir.

Q. Did you go there by automobile or by what other method?

A. By automobile.

Q. Did you go alone or were you accompanied by someone? 20

A. By Trooper Headley.

Q. What time was it that you received the call?

A. We received a call from Willis Harvis at 4:31 p. m.

Q. What time was it when you arrived at the scene of the crime?

A. 4:55.

Q. Will you tell us who was at the farm when you arrived there. 30

A. Mr. Chew, Mr. Erdbrink, young Robert McBurney, and Officers Hagner and Ashburn of the Gloucester Township police.

Q. At that time had the coroner or the county detectives arrived?

A. No, sir.

Q. Did they come some time later?

A. That is right.

Q. When you arrived at the scene of the crime, 40

at the McBurney farm, did you then assume charge of the investigation which was then to be developed?

A. Yes, sir.

10 Q. Did you make any observations of the conditions as they were outside of the farm before going inside the house?

A. Yes, sir, I did.

Q. Will you describe to his Honor and the jury what observation you made, such as you can recall now, of physical objects outside the farmhouse.

20 MR. PALESE: Your Honor please, I interpose the same objection at this time. There is no testimony in this case that the conditions were not changed from the time of the commission of the crime to the time that this witness appeared at the McBurney farm.

THE COURT: How is it material what the conditions were, what the conditions were when this witness arrived.

30 MR. ORLANDO: Merely to show as to where the body was, the truck, the baseball bat, and such things as have already been mentioned.

THE COURT: It is cumulative?

MR. ORLANDO: It is to corroborate what has already been testified to.

THE COURT: The objection is overruled.

40 MR. PALESE: Will your Honor grant me an exception?

*Thomas J. Ritchie—Direct*

THE COURT: Yes.

The defendant prays an exception which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

10

THE WITNESS: I found at the rear step, about two feet from the rear step, the lower part of Mrs. McBurney's body lying in between the house and the parked truck, which I later learned was the McBurney truck. She laid with her head in a westerly direction and her feet toward an easterly direction and on her back, and at the time she was covered with a raincoat. I pulled this raincoat down from her face to make an examination of her head, and there appeared to be bad wounds on her head. Immediately above her head on the ground was this baseball bat. Along the rear end of the truck, that is above the fender were blood spots, and on the right-hand fender were also blood spots, about two or three feet in the front in a westerly direction of the truck was a cardboard box with ashes in which also had blood on, and a green dresser drawer which came out of a chest of drawers, I suppose, which was up against the house, also had blood spots on. That, I would say, was probably ten feet above the head of Mrs. McBurney. Along the truck which was only possibly two feet from the off-set of this house, along the front fender, the dust had been brushed off. This fender, apparently —

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30

MR. PALESE: Your Honor please, you see the difficulty we are getting into. It is not cumulative. This is the first time we have had any testimony as to dust, and if it is the purpose of the prosecutor

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that this testimony is cumulative testimony—none of this testimony, I mean the major part of this testimony is not cumulative but new testimony, if we may term it that.

10 THE COURT: I think what the witness is presently testifying to is speculative, he uses the word apparently. I think that may be stricken out and about the dust or what had at least taken place.

MR. PALESE: In addition to that we are getting back to the cardboard box, and we have this drawer. How easily could it have been moved prior to the time that this witness arrived at the scene. That may be material, how close the cardboard box was 20 to the body or the scene of the crime. I think we are going a little too far in permitting this witness to testify as to where this box was and where this drawer was when he appeared, at least, if the statement made by the defendant is correct, at noon time and he, the witness, appeared at the scene of the crime at 4:55, and it may be very material in this case as to the closeness of this cardboard box to the body and the closeness of this 30 drawer to the body. I don't think this witness should be permitted to testify at this time that the cardboard box and the drawer were there at the time this crime was committed. It may be prejudicial to the defendant.

THE COURT: There is no means of knowing what the order of proof is going to be. Of course, if it turns out there is no proof which connects up the box or the drawer in an adequate way you may, perhaps, move to strike out the testimony later on. 40

*Thomas J. Ritchie—Direct*

At the present time I think it is evidential and admissible. The objection is overruled.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Yes. 10

The defendant prays an exception which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

THE WITNESS: I asked the two Gloucester Township police officers that were there prior to my arrival —

20

THE COURT: Just a minute.

MR. ORLANDO: We do not want any conversation. Do not tell us what the police officers may have said in the absence of the defendant.

Q. I want to take you back a moment to this cardboard box and this wooden drawer and ask you to tell me whether or not you made any measurements or observations as to the approximate distance which existed between these two objects and the head of Mrs. McBurney's body. 30

A. I would say ten feet.

MR. PALESE: I object to that. The question was did he.

THE COURT: Yes. Did you make any measurements?

40

THE WITNESS: I made observations, and I would say it was ten feet —

MR. PALESE: Wait a minute. You have not been asked that, Detective.

10 Q. From the observations you made, will you tell us what in your best judgment was the distance that existed between the head of the body and the two objects?

MR. PALESE: I object for the same reason that I have interposed before, because the box and the other article may have been moved before this witness came there to make his observations.

20 THE COURT: The objection is overruled.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Yes.

The defendant prays an exception which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

30

Q. Will you state what that distance was the best you could estimate it?

A. I would say ten feet.

Q. Did you notice when you arrived there, Mr. Ritchie, this stick which has been marked for identification as State's Exhibit S-14?

A. Yes, sir.

40 Q. Will you tell us exactly the position where it was when you arrived?

*Thomas J. Ritchie—Direct*

A. Immediately alongside the back or side part of the rear entrance of the McBurney home this stick stood up on this end alongside the door.

Q. I show you a photograph which has been marked as State's Exhibit S-4, Mr. Ritchie, and ask you whether or not in this photograph you see the stick which has been marked State's Exhibit S-14 for identification in the place that you have described. 10

A. Yes, sir.

Q. Does that photograph show the place where the stick was at the time you arrived there?

A. That is right.

Q. I show you a photograph which has been marked State's Exhibit S-3 which shows the front view to the right of the truck and also the house or side of the house and particularly direct your attention to the fact that there appears in that photographs two objects, one a paper box and the other a wooden drawer that you have mentioned, and ask you whether or not the two objects shown in that photograph were in that position as they are shown in the photograph when you arrived there? 20

A. They were, yes, sir.

Q. Are those the two objects that you have referred to in your testimony heretofore?

A. That is right. 30

Q. I show you a photograph which has been marked State's Exhibit S-4 and particularly direct your attention to the position of the truck and to the position of the body of Mrs. McBurney and ask you whether or not that photograph depicts the condition or position of the truck and the position of the body as of the time you arrived there.

A. That is right, yes, sir.

Q. Now, I particularly direct your attention, Mr. Ritchie, to the photograph marked State's Exhibit 40

S-4 and to what appears to be a slipper in the immediate vicinity of the stick that you have heretofore identified and ask you whether or not you observed the slipper at that place when you arrived there.

A. I did, yes, sir.

10 Q. Were you the police officer who seized or picked up that slipper?

A. Yes, sir.

Q. When you picked it up, did you put any mark to identify it or some notation so you might later recognize it?

A. No, sir, it was turned over to Trooper Deroskewicz of our identification bureau.

Q. When you picked it up did you keep it in your possession?

20 A. Yes, sir.

Q. And did it remain in your possession until some time later when you turned it over to someone else?

A. Yes, sir.

Q. Who did you turn it over to?

A. Trooper Deroskewicz.

Q. Is that the gentleman who testified yesterday?

A. Yes, sir.

30 Q. I show you what has been marked as State's Exhibit S-9 for identification, a slipper, and ask you whether or not you recognize this as being the slipper that you picked up at the place you have already indicated.

A. Yes, sir, that is the slipper.

Q. Do you recognize that as being the slipper that you turned over to Trooper Deroskewicz?

A. That is right, that is the slipper.

40 Q. By what method do you identify it as being that slipper?

*Thomas J. Ritchie—Direct*

A. Well, it is a mate to the other one, the one found in the house was left hand and this being right hand, foot instead of hand.

Q. Did you place in someone's presence a memorandum slip to identify this slipper?

A. Trooper Deroskewicz did.

Q. Did you observe him when he did that? 10

A. I believe that was done after I turned it over to Trooper Deroskewicz.

BY THE PROSECUTOR:

Q. Did you see this stick, which has been marked Exhibit S-14 for identification?

A. Yes, sir.

Q. What did you do with it after you seized it? 20

A. I placed it in my automobile, and kept it until such time that it was turned over to the Prosecutor's office on the 24th.

Q. Were you at the Prosecutor's office on the evening of the 24th when the defendant was being questioned?

A. Yes, sir.

Q. Were you present at the time when this stick, Exhibit S-14 for identification, was shown to him, and by him identified as the stick he had that day? 30

A. Yes, sir.

THE PROSECUTOR: We offer this exhibit in evidence, and ask that it be marked S-14.

THE COURT: Any objection?

MR. PALESE: No.

THE COURT: It will be received into the evidence. 40

(Received and marked Exhibit S-14.)

Q. After you had looked about on the outside, did you enter the inside of the house?

A. I then took young Robert McBurney with me, and made a tour of the interior of the house, starting in the shed.

Q. How did you gain admission into the house, through what door?

A. Through the rear, or side door.

Q. After entering through that door, what was the first room that you came into?

A. The shed.

Q. Will you describe for us the conditions that you found existing in the shed when you entered at that time?

20

MR. PALESE: I again object. There's no testimony in the case indicating no change in the shed from the time of the commission of the crime to the time this witness is about to testify.

THE COURT: Again I say, Mr. Palese, I don't know what the order of proof is going to be. I will permit this, and if there's any occasion for you to move for its elimination later on, you may do so.

30

A. As I entered the shed I noticed at the westerly end of the room there was a yellow chair lying on its side. On that chair were several spots of blood. On the floor beneath the back of the chair were also several spots of blood. The northern end of the room was a large basket, upset, with ears of corn lying all around the basket, and there were several cement bags piled on the eastern end of this room, with cement all around the floor, the ends, I think,

40

*Thomas J. Ritchie—Direct*

of one or two of those bags having been broken open.

Q. Let me ask you at this point whether you were there a little later on that afternoon when Trooper Deroskewicz took photographs of the interior of the house?

A. Yes, sir. 10

Q. Were you present at the time the picture was taken?

A. Yes, sir.

Q. I show you what has been marked Exhibit S-6, a photograph purporting to show conditions of the kitchen, and ask you to look at that, and tell us whether or not the conditions portrayed in that photograph were the same, or any different from what they were at the time you entered with young McBurney, Jr.?

20

A. Exactly the same.

Q. After you had gone through the shed, what other part of the house did you go into, if any?

A. Then went in the kitchen and living room, and found in the living room —

MR. PALESE: You were asked, Detective—you understand the question, you are asked whether you went in some other part of the house?

30

THE COURT: Mr. Palese, make your objections to the Court.

MR. PALESE: If your Honor please, I ask the latter part of his answer be stricken.

THE PROSECUTOR: I consent to it.

THE COURT: Yes.

40

Q. You went, I understand, into the living room?

A. That's right.

Q. Will you describe for us, Mr. Ritchie, the conditions as you found them to be present in the living room when you went there at the time that you have testified, with young McBurney, Jr.?

10

MR. PALESE: I interpose the same objection. I understand your Honor will make the same ruling.

THE COURT: The same ruling.

A. Immediately inside of the door leading from the kitchen to the front room was a rocking chair. On this rocking chair was a large pocketbook, and on the seat of the chair, or cushion of the chair, were a number of papers strewn around. Other than that there appeared to be nothing ransacked in that room. I then went —

20

MR. PALESE: I ask the latter part of this answer be stricken.

THE COURT: Yes, I think this answer should be stricken, there appeared to be nothing else ransacked.

30

Q. Where was the pocketbook you have spoken of, Mr. Ritchie?

A. Lying on the rocking chair.

Q. And the contents were where?

A. On the chair, on the cushion of the chair.

Q. Did you observe what the contents consisted of?

A. They were papers.

MR. PALESE: I object to that. The question was, did you observe. The answer is yes, or no.

40

*Thomas J. Ritchie—Direct*

THE COURT: I suppose he can so answer, yes, or no, but I thought he had already described what he saw strewn about. However, did you make an observation of the contents?

THE WITNESS: Yes, sir.

10

Q. You tell us what were the contents as you observed them to be?

A. Papers and cards. I can't tell you anything about what was on those papers, because I didn't touch a thing, pending the arrival of Trooper Deroskewicz.

Q. Then did you and young McBurney go in any other part of the house?

A. Yes, sir, we then went upstairs to the one room on the second floor.

20

Q. Will you tell us what the conditions of the room upstairs were, as you found them to be, when you went up there with young McBurney, Jr.?

MR. PALESE: I interpose the same objection. There is no testimony here that there had been no change in this room from the time of the crime to the time of the inspection made by this witness.

THE COURT: The same ruling.

30

A. We found a bed in the room on the second floor that the bedclothes and mattress were turned down. A chest of drawers in the corner, the drawers were open, and the clothing strewn about, which looked as though they had been ransacked.

MR. PALESE: I ask that be stricken.

THE COURT: Strike it out.

40

Q. Were you present later on that afternoon, Mr. Ritchie, when the photograph was taken of that particular room by Trooper Deroskewicz?

A. Yes, sir.

10 Q. I show you a photograph, which has been marked in evidence as Exhibit S-5, showing the bedroom upstairs, and ask you to look at it, and tell us whether or not the conditions as denoted in that photograph are the same, or any different than what you saw them to be when you went up there that afternoon with Robert McBurney, Jr.?

A. I would say they are the same, yes, sir.

Q. How long was it, Mr. Ritchie, after your arrival that Trooper Deroskewicz arrived?

A. Probably an hour.

20 Q. And during that hour, were you there in attendance at all times?

A. Yes, sir.

Q. During that hour's period of time, did you notice anyone moving or changing any of the conditions that were apparent before you?

A. No, sir, I ordered everyone off the farm but the police officers.

30 Q. Do you recall whether or not during the course of the examination that you made of the interior, you discovered what appeared to be a slipper, a woman's slipper?

A. Yes, sir.

MR. PALESE: I object to it.

THE COURT: What is the objection?

MR. PALESE: What appeared to be.

40 THE COURT: That is harmless.

*Thomas J. Ritchie—Direct*

Q. Where did you find such slipper?

A. Underneath the yellow chair that was turned over in the shed.

Q. And did you seize possession of that slipper at that time, did you take it in your possession?

A. No, sir, not at the time I found it.

Q. When did you, if ever, take it into your possession? 10

A. After Trooper Deroskewicz had taken the pictures.

Q. After you took it, who did you turn it over to?

A. Trooper Deroskewicz.

Q. I show you what has been marked as Exhibit S-8 for identification, a slipper, and ask you whether or not you recognize this as being the slipper that you found in the place that you have described in the kitchen of this house? 20

A. Yes.

Q. When you spoke of the kitchen, was it the kitchen or the shed?

A. The shed.

Q. Then you later turned this over to Trooper Deroskewicz?

A. That's right.

Q. Did you continue with the investigation of this matter after you had left the farm house? 30

A. Yes, sir.

Q. And during the course of your investigation, state whether or not you ran across and found a rubber, or rubber shoes?

A. Yes, sir, two of them.

Q. I show you a pair of rubber shoes, and ask you whether or not you recognize these as being the rubber shoes that you found?

A. Yes, sir, I do. 40

Q. Did you place a marking on them at the time?

A. I have my initials on, T. J. R., on both rubbers, marked April 25, 1941.

Q. Is that the date they were found?

A. That's right.

10 Q. Will you tell us, Mr. Ritchie, where you found these rubber shoes?

A. On the Hickstown Road, about three hundred yards from the home that the defendant lived in. They were buried under some leaves on an old dump there.

Q. Who was present at the time when they were found?

A. Detectives Bennie and Wojtkowiak from the Prosecutor's office.

20 Q. After you found them, did you place upon them a card denoting the date and place where they were found?

A. Yes, sir.

Q. Were these rubber shoes in your possession from the time they were found down to the time they were turned over for the purposes of this trial?

A. No, sir, they were turned over by me to Trooper Deroskewicz.

30 Q. And Trooper Deroskewicz had them from that time on?

A. As far as I know, yes, sir.

Q. Do you definitely identify these as being the rubber shoes that you found?

A. I do, yes, sir.

THE PROSECUTOR: We would like to have these rubber shoes marked for identification at this time.

40 THE COURT: They may be marked S-15 for identification.

*Thomas J. Ritchie—Direct*

(Received and marked S-15 for identification.)

Q. Did you direct the defendant's attention to these rubbers after they were found, or did you talk to him about the rubber shoes?

A. Before I found them I did.

Q. Where was it when you talked to him about them? 10

A. In the Prosecutor's office.

Q. Did he say anything to you about having had a pair of rubber shoes that day?

A. Yes, sir.

Q. Of the crime?

A. Yes, sir.

Q. Did he say to you what he had done with them?

A. Yes, sir, he told me he had hidden them under some leaves in this old dump on the Hickstown Road. 20

Q. Was it or was it not because of the information that he had imparted to you that you went to the place where you eventually found these rubber shoes?

A. That's right.

Q. Did he mention to you why he had hidden these rubber shoes?

A. Yes, sir.

Q. What did he have to say concerning that? 30

A. He said that after he had committed this crime he wanted to get rid of the rubbers, because he was afraid they would trail him.

Q. Did you make any measurements, Mr. Ritchie, of the distance from the Buffalo Road to the farm house?

A. No, sir.

Q. Is there anything between the farm house and the road, Buffalo Road? 40

A. No, sir.

Q. Were you with Sergeant Kelly and other members of the State Police organization later on in the evening of April 23, when he was being questioned concerning his knowledge of this crime?

A. Yes, sir.

10 Q. And who was present at that time?

A. Sergeant Kelly, Chief Doran, Detective Dube, Detective Wojtkowiak and Bennie.

Q. And where was he being questioned?

A. Dr. Saunders was also there.

Q. Where was he being questioned?

A. At the Mantua barracks.

Q. Let's fix the time, when was that, about?

A. I would say around nine, possibly nine-thirty or ten o'clock that night of the 23rd.

20 Q. In the evening?

A. That's right.

Q. Who was questioning him of the group that you have mentioned?

A. Chief Doran and Sergeant Kelly.

Q. Do you recall whether or not at that time, and at the place you have mentioned, he was asked if he had any knowledge of the murder that had taken place at the McBurney farm?

30 A. He was asked.

Q. Do you recall what answer he gave to such question?

A. He denied it.

Q. Was he asked concerning whether or not he had been on the McBurney farm that day?

A. Yes, sir.

Q. What answer did he make to such question?

A. He denied it.

40 Q. Did he, at any time, during the course of the questioning that evening of April 23rd at the place

and at the time that you have mentioned, admit having any knowledge whatsoever concerning the killing of Mrs. McBurney?

A. He did not, no, sir.

Q. When was it to your knowledge that for the first time he admitted having killed Mrs. McBurney? 10

A. About 7:45 or 7:50 on the night of April 24th.

Q. Is that the night he gave these statements to the Prosecutor?

A. That is right.

Q. Where was it that he made the admission?

A. In the Prosecutor's office.

Q. Were you present at that time?

A. No, sir.

Q. Were you present at the Prosecutor's office when the defendant was questioned by the Prosecutor? 20

A. Yes, sir.

Q. You heard, have you, the reading of the statement by Mr. Macdonald that was taken of the defendant by the Prosecutor on the evening of April 24th?

A. Yes, sir.

Q. Were you present at that time?

A. Yes, sir.

Q. Did you hear those questions propounded and the answers read made? 30

A. Yes, sir.

MR. ORLANDO: That is all. Cross-examine.

## CROSS EXAMINATION.

BY MR. PALESE:

Q. Detective, you say you arrived at the Me-Burney home about 4:55?

10 A. I would say so, yes, sir.

Q. That is on the afternoon of April 23rd?

A. That is right.

Q. How long were you on the outside making observations before you went into the shed?

A. Possibly 15 or 20 minutes.

Q. Did you observe anything in the shed during the time you were making observations on the outside?

A. No, sir.

20 Q. Now, that evening was it you that arrested the defendant?

A. No, sir.

Q. When did you first see the defendant on the evening of April 23rd?

A. When I arrived at the Mantua Barracks, around 9:30 o'clock.

Q. At that time he was in custody at the Mantua Barracks?

A. That is right.

30 Q. Did you know he was in custody there at that time?

A. I had — Yes, I did.

Q. Do you know who gave the order for taking the defendant to the Mantua Barracks?

A. I did.

Q. What was the purpose, detective, of having him brought to the Mantua Barracks, and not to the Prosecutor's office in Camden?

40 A. That was where I was stationed and that is where my investigation was directed from.

Q. Is it the custom of your department to take a defendant out of the county where the crime has been committed?

MR. ORLANDO: That is objected to as to what the custom may be. I think the State Policeman has already said he was directing his investigation from that headquarter, that is the place he was doing his investigation from. 10

THE COURT: I do not see why the custom would matter, Mr. Palese.

MR. PALESE: I will withdraw it and take the word "custom" out.

Q. Can you tell us, detective, why it was that he was taken from where he was arrested to the Mantua Barracks, that you ordered him being taken there? 20

A. That is right. That is my barracks where I was stationed.

Q. And that is the only reason why he was taken there?

A. That is right.

Q. How long was he retained in custody at the Mantua Barracks? 30

A. I do not know what time they arrived there with him.

Q. When was he taken away from the Mantua Barracks?

A. Possibly 11 o'clock at night.

Q. At night?

A. That is right.

Q. Was he removed there as a result of your order, if you know—you would know if you gave the order or not? 40

A. Well, at that time the orders would probably be a joint proposition between the Prosecutor's office and our department.

MR. PALESE: That is all.

10 BY MR. ORLANDO:

Q. There are one or two questions I neglected to ask you, Mr. Ritchie. I show you a cardboard box which you have already mentioned as having been found at the place and ask you whether or not that is the card box—this card box which I have in my hand is the card box to which you have referred?

A. Yes, sir, it is.

20 Q. Is there anything about that cardboard box by which you identify it as being there on the night in question, or the afternoon in question?

A. The blood mark on the side of the box.

MR. PALESE: I didn't get that answer.

(Answer repeated)

Q. Did you take this into your possession?

A. Yes, I did.

30 Q. To whom did you turn it over?

A. Trooper Deroskewicz.

MR. ORLANDO: If your Honor please, I would like to have this marked for identification.

THE COURT: S-16.

40 Q. I show you what you have described as a drawer, a chest of drawers, and ask you whether or not this drawer which I have in my hand is the

*Thomas J. Ritchie—Re-direct*

drawer to which you have referred as having been found at the place of the crime when you arrived there that afternoon?

A. That is it, yes, sir.

Q. Is there anything about the drawer by which you identify it?

A. The blood marking on the side. 10

Q. To whom did you turn this over after you had taken possession of it?

A. Trooper Deroskewicz.

MR. ORLANDO: I ask to have this marked as an exhibit for identification.

THE COURT: S-17 for identification. May I see the photograph, Prosecutor?

MR. ORLANDO: Yes. This large photograph shows the rear and side view of the house. 20

Q. Now, Mr. Ritchie, I show you a baseball bat which has been marked as Exhibit No. 10, and ask you whether or not when you arrived at the scene of the crime you discovered that baseball bat?

A. I did, yes, sir.

Q. Is that the baseball bat to which you have heretofore made reference? 30

A. Yes, sir, that is.

Q. Did you see it there that afternoon?

A. I did, yes, sir.

Q. Where was it lying with relation to the position of the body?

MR. PALESE: I object to that for the same reason. These things happened there prior to the coming of this witness and for him to testify where he found it, I think we ought to have some testimony 40

that it was not moved from the time of the crime to the time this witness observed it.

THE COURT: The objection is overruled, subject, of course, to any later application to strike the testimony.

10

A. The bat laid on the ground just above Mrs. McBurney's head.

MR. ORLANDO: That is all.

MR. PALESE: That is all.

THE COURT: Just a minute.

20

BY THE COURT:

Q. Just a minute, Detective Ritchie. Is the cardboard box or are the wooden drawers shown in any of the photographs which are in evidence?

A. Yes, sir.

Q. Are the baseball bat and the slipper to which you have referred shown in any of these photographs?

A. Yes, sir.

30

Q. I hand you the photographs and ask you to tell me which of these photographs portrays these articles.

A. In this photograph is the cardboard box and the drawer.

Q. Now, what is the number of that exhibit?

A. S-3.

Q. All right. Now, where did you find the baseball bat and the slipper portrayed?

A. The left slipper and the baseball bat appears

40

*John Schmidt—Direct*

between the bicycle and Mrs. McBurney's body or head on S-4.

Q. Were you present when these photographs were taken?

A. Yes, sir.

Q. Do these photographs portray accurately the location and position in which these respective articles were when you arrived on the scene? 10

A. They are, yes, sir.

THE COURT: That is all.

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JOHN SCHMIDT, sworn.

BY MR. ORLANDO: 20

Q. What is your full name?

A. Why, John Dink Schmidt.

Q. Where do you live?

A. Third Avenue, Pine Hill, New Jersey.

Q. What is your position, Mr. Schmidt.

A. I am an iceman.

Q. Do you serve the territory in that vicinity of Hickstown Road?

A. Not within two squares. 30

Q. Do you know the defendant, Robert Cox?

A. Yes, sir.

Q. How long have you known him prior to the date of April 23rd last?

A. About six—six and a half years.

Q. I direct your attention to Wednesday afternoon, April 23, 1941, and ask you whether or not on that particular day about noon or a little before the afternoon, you did not see the defendant Cox in that vicinity of Erial Road. 40

A. I seen him twice between the hours of 12:45 and 1:30.

Q. And where did you see him the first time?

A. I seen him between 7th and 8th Avenues on Erial Road headed toward Clementon.

10 Q. Did you notice anything in his possession at that time?

A. Yes, he was carrying a basket.

Q. Which way was he walking?

A. He was walking toward Clementon.

Q. How close were you to him?

A. I was going to pick him up and take him down, but something just struck my mind and I kept on going.

Q. When did you see him the second time?

20 A. After I got a load of ice and was coming up the hill, I seen him near Everson Avenue, near Pine Hill.

Q. Was he still carrying the basket?

A. Yes.

Q. Will you state whether or not you saw anything covering the basket on the occasion you saw him carrying the basket?

A. He had something covering it, it was some kind of bag or cloth. I really don't know what it was.

30 Q. But you did see some kind of cloth?

A. That is right.

Q. Now, I show you a basket that has been marked in evidence as Exhibit S-13 for identification, and ask you whether or not that is the type of basket you saw him carrying?

A. That is the type of basket.

Q. Did you talk to him or did he talk to you on either occasion that you saw him that day?

A. No, sir.

40

MR. ORLANDO: You may cross-examine.

## CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Schmidt, you say you were intending to give him a lift?

A. Yes, sir.

10

Q. How close did you come to him on the first occasion?

A. About 10 feet.

Q. He didn't say anything to you?

A. No.

Q. You didn't say anything to him?

A. No.

Q. And yet during that time you had intended to give him a ride?

A. That is right. If I may be allowed to say it I go up and down the hill, and when I am going down, I generally pick them up and carry them up. It is about a mile or mile and a half, and bring them back, but something turned my mind when I seen Bob. I kept right on going instead of giving him a lift.

20

MR. PALESE: That is all.

THE COURT: We will take a short recess. The jury may leave the box.

30

(AFTER RECESS).

THE COURT: You may call your next witness, Prosecutor.

10

CHARLES WHITE, sworn.

BY MR. ORLANDO:

Q. Your name is Charles White?

A. Yes, sir.

Q. Where do you live, Mr. White?

A. I live in Hickstown at the corner.

20 Q. Do you know the defendant, Robert Cox?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I have known him ever since he came around there. For about seven years, I guess.

Q. Well, now, did you know where the defendant lived or did live on about April 23rd?

A. Yes, sir.

Q. Where did he live?

A. He lived at Lillian Hicks' place.

30 Q. That is the name of the woman, you mean?

A. Yes, sir.

Q. Did you see him on the 23rd of April, 1941?

A. Yes, sir, I did.

Q. Where did you see him?

A. He came in my yard. I had sumac. I had been fighting fire the day before. That was the big fire. He came into my yard. I was attending to some little baby chickens. He came into the yard and he asked me if I had a quarter. I told him—I  
40 said, "Yes, Bob. I have a quarter. I just got paid

*Charles White—Direct*

from the WPA." I told him, "I could not spare it because of not having bought anything to eat." So, he said—he stood there, and he said, "I am asking you again." I said, "Robert, I would give it to you if I could spare it." So he started to walk away and he came back. So he said, "Charlie, I got fifty cents. All I want is another quarter to get me a pint of whiskey, that would make me seventy-five cents." 10

Q. What time of day was it that you saw him?

A. I judge around 12 o'clock.

Q. Noon?

A. Yes, sir.

Q. Did he stay there very much longer than that?

A. No, he didn't stay very much longer. He stood there, and he asked me again. I told him, "I could not do it." So he said, "I wonder if Mr. Shaw is home?" I told him, "Yes, Mr. Shaw is home." So he left me and went over to Mr. Shaw. I took a shovel—the woods was burning, and I went to a stump to put the stump out. On my way to the stump, he was coming out of Mr. Shaw's. So he said, "I can't do no good by you, Charlie. You have the money and you would not give me a quarter." I said, "Well, Bob, I hate for you to feel that way. If I had it to spare, I would give it you." So I went to put the stump out. 20 30

Q. Did you notice whether he was carrying anything at that time?

A. No, he was only—went straight down the road.

Q. Did you see him go down the road?

A. He went straight down the road.

Q. Did you see him any more that day?

A. I didn't see him any more that day, no.

MR. ORLANDO: Cross-examine.

*Charles White—Cross*  
*Lonnie Holtz—Direct*

## CROSS-EXAMINATION.

BY MR. PALESE:

10 Q. You said he wanted to borrow a quarter for  
what purpose?

A. He said he had fifty cents, and he wanted to  
borrow a quarter to make himself a pint of whisky.

MR. PALESE: That is all.

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LONNIE HOLTZ, sworn.

20 BY MR. ORLANDO:

Q. Your name is Lonnie Holtz?

A. That is right.

Q. How old are you, Lonnie?

A. Twenty-two.

Q. Where do you live?

A. Hickstown.

Q. With whom do you live?

A. With my mother, Lillian Hicks.

30 Q. Your mother's name is Lillian Hicks?

A. Lillian Hicks.

Q. Lillian Hicks?

A. Yes.

Q. On April 23 and prior to that time did or did  
not the defendant, Robert Cox, live at the house with  
you and your mother?

A. Yes, sir, he did.

Q. How long had he been living at your home?

A. Approximately, I guess, five years, six years.

40 Q. Were you working at that time?

*Lonnie Holtz—Direct*

A. Yes, I worked that day.

Q. Where did you work?

A. Johnny Johnson's farm, Sicklerville, New Jersey.

Q. What time did you come back from work?

A. About quarter after six.

Q. What time did you leave in the morning? 10

A. About twenty minutes to seven. Not exactly, because I had to ride in one car and she had to ride in the other, but I had to ride with my uncle. He was a night watchman on W. P. A.

Q. What time did your mother leave for work that day?

A. She left home about quarter to seven.

Q. Do you recall whether or not there was any conversation had with your mother and the defendant, Robert Cox, the morning of April 23rd? 20

A. No more than this. In the morning from what I could understand she says to him, "You have been out spending your money. You know we are supposed to have something to eat. How are we going to live? You have to pay board," and she says to him, "You go to work with me," and he said, no, he felt bad, and so far as the hour he came in, I don't know what time he came in because I was asleep.

Q. Tell me whether or not anything was said by your mother about getting money for food that day. 30

MR. PALESE: Just a minute, I object.

THE COURT: I think it is a leading question.

Q. Was there anything said during the course of the conversation that was had between your mother and the defendant, Robert Cox, concerning him getting money or food? 40

MR. PALESE: I object to that. I think it is a leading question. The prosecutor can ask him what was said.

THE COURT: Yes, it is leading. I think he can state what the conversation was.

10

THE WITNESS: No more than this, "Something has to be done. You have been doing this for some time." She went on to work, and I left him in bed when I left.

Q. Do you recall whether or not he brought any food home Tuesday night?

A. Oh, yes, he brought a basket in, which is that basket there.

20

Q. Was that Tuesday or Wednesday night?

A. Wednesday night of the crime he brought this basket in with some articles in.

Q. How about the night before, did he bring any food?

A. No, sir.

Q. I don't understand exactly what you said about board. Will you repeat what your mother said to him concerning board?

30

MR. PALESE: Just a minute. If the prosecutor did not understand, the stenographer can read the answer.

THE COURT: Yes, we better refer back to the record.

(The stenographer read the following answer.)

"The Witness:

40 "Answer: No more than this. In the morning from what I could understand she says to him, You

*Lonnie Holtz—Direct*

have been out spending your money. You know we are supposed to have something to eat. How are we going to live? You have to pay board," and she says to him, "You go to work with me," and he said, no, he felt bad, and so far as the hour he came in, I don't know what time he came in because I was asleep."

10

Q. Were you home when the defendant, Robert Cox, came home the night of Wednesday, April 23?

A. Yes, sir.

Q. What time was it that he came home?

A. I will say about half-past six, maybe a little later. I don't know exactly because our clock was not running, and that is when he had these articles.

Q. Did you overhear any conversations between him and your mother that night?

20

A. No more than this. He says to me first, he says, he told me he felt so bad he liked to die that day, and then he asked where my mother was. He could see where she was sitting under the tree, she was getting ready the food for the cats. I had made a fire for supper.

Q. Was there anything else that you overheard that he said?

A. No more than that, that I can remember.

Q. Do you recall whether he made any statement concerning the food?

30

A. Oh, yes, he said he brought the food, he knowed we had nothing to eat and he went out and borrowed some money to get food for us as he knowed we had nothing to eat.

Q. I show you a basket which has been marked State's Exhibit S-13, for identification and ask you whether or not you recognize that basket.

A. Yes, sir, I recognize that basket.

Q. Had you seen it before?

40

A. Yes, sir.

Q. Where did you see it?

A. At my house.

Q. Did you see it on the night of April 23 last?

A. Yes, sir.

Q. Who had it?

10 A. Robert Cox.

Q. Was it empty or did it have anything in it when you saw it?

A. It had things in, such articles as potatoes and onions and a piece of meat, and something more.

MR. ORLANDO: Cross-examine.

MR. PALESE: No questions.

20

CARL DEROSKEWICZ, recalled.

BY MR. ORLANDO:

Q. Mr. Deroskewicz, you know, of course, Trooper Ritchie?

A. Yes, sir.

30 Q. I show you what has been marked for identification as Exhibit S-16 and ask you whether or not this exhibit was turned over to you by Trooper Ritchie?

A. Yes, sir.

Q. After it was turned over to you what did you do with it?

A. Why, I labeled it as to where it came from and what it was.

Q. Do you recognize it as being the article that was turned over to you by Trooper Ritchie?

40 A. Yes, sir.

*Carl Deroskewicz—Direct*

Q. Is there anything about this object that can particularly identify it outside of your own label?

MR. PALESE: I object to it. He has identified this box by the label that he put on it. I assume that I know what the prosecutor is after. The witness has identified it by the label he put on it. 10

THE COURT: If there is one way of identifying it I don't suppose there need be two ways of doing it.

MR. ORLANDO: I withdraw the question.

Q. I direct your attention to what appears to be blood spots on State's Exhibit S-16 and ask you whether or not those spots which appear on that exhibit in evidence were on there when it was turned over to you by Trooper Ritchie. 20

A. Yes, sir, they were.

MR. ORLANDO: Your Honor, we offer in evidence this exhibit marked S-16 for identification and ask that it be marked Exhibit S-16.

THE COURT: Is there any objection? 30

MR. PALESE: No.

THE COURT: It may be received.

(The object referred to was received in evidence as State's Exhibit S-16.)

Q. I show you two slippers which have been marked State's Exhibit S-8 and S-9 for identification and ask you whether or not those two slippers were turned over to you by Trooper Ritchie? 40

A. Yes, sir.

Q. Is there anything about them by which you identify them?

A. They were labeled by me as to where they came from.

Q. Labeled at the time they were turned over to  
10 you?

A. Not exactly, no. When I got back to headquarters I typed them on the typewriter.

Q. I mean, it was within a short time after you received them?

A. Yes, sir.

Q. Did they leave your possession any time before the labels were put on them?

A. No, sir.

20 MR. ORLANDO: Your Honor, we offer them in evidence and ask that they be given numbers S-8 and S-9.

THE COURT: Is there any objection?

MR. PALESE: Your Honor, I do not understand the witness to say that they had been in his possession ever since that time.

30 Q. Have they been in your possession since that time?

A. Yes, sir.

THE COURT: They may be received and they will be marked as State's Exhibit S-8 and S-9.

(The two slippers referred to were marked State's Exhibits S-8 and S-9.)

40 Q. I show you a wooden drawer which has been marked State's Exhibit S-17 for identification and

*Carl Deroskewicz—Direct*

ask you whether or not Trooper Ritchie turned this exhibit over to you some time during the day of April 23.

A. Yes, sir.

Q. Did you put any mark or label on it by which you can identify it?

A. Yes, sir.

10

Q. Was it in your possession until produced here for the trial?

A. Yes, sir.

MR. ORLANDO: We offer this in evidence.

THE COURT: It has been offered.

MR. ORLANDO: I thought it was just identified. We have it marked for identification so we better cross that out.

20

THE COURT: Yes. Is there any objection?

MR. PALESE: No.

(The drawer referred to was marked State's Exhibit in evidence S-17.)

Q. I call your attention, Trooper, to what appears to be blood stains or blood marks on this exhibit and ask you whether or not they were on the exhibit at the time you received it?

30

A. Yes, sir.

Q. I show you a pair of rubbers which have been marked State's Exhibit S-15 for identification and ask you whether or not these rubbers were turned over to you by Trooper Ritchie?

A. Yes, sir.

Q. Is there any label or any mark by which you

40

identify them as being the rubbers which were turned over to you?

A. Yes, sir, there are labels on each article.

Q. Do you recognize them as being the rubbers which were turned over to you?

A. Yes, sir.

10 Q. Were they in your possession until asked to be produced here for the purpose of the trial?

A. Except for the time they were given to the chemist.

Q. Do you recall them, after having been given to the chemist, being returned to you?

A. Yes, sir.

MR. ORLANDO: They are offered in evidence, your Honor.

20

THE COURT: Is there any objection?

MR. PALESE: No.

THE COURT: They will be received in evidence as State's Exhibit S-15.

(The rubbers referred to were received in evidence as State's Exhibit S-15.)

30

Q. Now, these exhibits that you have identified as having been turned over to you, namely, State's Exhibit S-16, a cardboard box, exhibit S-17, this chest of drawers, and these rubbers, Exhibit S-15, were they by you delivered to the chemist?

A. Yes, sir.

Q. Who was the chemist to whom they were delivered?

A. John Brady.

40 Q. Where is he located? With what department?

*William P. Kelly—Direct*

*John P. Brady—Direct*

A. He is the chemist for the state police located at Trenton.

Q. After they had been delivered to him and he made whatever test he did make, were they given back to you?

A. Yes, sir.

10

Q. Did you personally deliver them to the chemist?

A. Yes, sir.

MR. ORLANDO: Cross-examine.

MR. PALESE: No questions.

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20

WILLIAM P. KELLY, sworn.

THE PROSECUTOR: I am informed by Chief Doran that the chemist is here. I didn't know he was. I am going to ask your Honor's permission to recall Mr. Kelly so I may call Mr. Brady.

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JOHN P. BRADY, sworn.

30

BY THE PROSECUTOR:

Q. What is your full name, Mr. Brady?

A. My name is John P. Brady.

Q. Where do you live?

A. I live in East Orange, New Jersey.

Q. What is your profession or occupation?

A. I am an analytical chemist.

40

Q. How long have you been engaged as an analytical chemist?

A. About thirteen years.

Q. What technical training did you receive in that field of endeavor?

10 A. I attended Newark Technical School, College of Engineering, and Brooklyn Polytechnic Institute.

Q. And graduated there at what time, what year?

A. 1927, with the degree of chemical engineer.

Q. So you are a chemical engineer?

A. That's right.

Q. During recent years, have you been associated in any capacity with the New Jersey State Police?

A. In the past two years I have been associated with the New Jersey State Police as their chemist.

20 Q. And as such, have you made from time to time chemical analyses of such matters as submitted to you for that purpose?

A. I have.

Q. In your work as a chemical engineer or analyst, have you from time to time analyzed blood to determine whether it is human blood, or not?

A. I have.

Q. And are there chemical tests by which that can be determined as a scientific fact?

A. Very definite tests.

30 Q. I show you what has been marked as Exhibit S-16, a cardboard box, and ask you whether or not you recall Trooper Deroskewicz, of the New Jersey State Police, delivering this box to you at Trenton?

A. I do.

Q. And at that time, did you do anything in order that you might subject what appeared to be blood stains on that box to make a test to determine whether or not it was human blood?

A. I did.

*John P. Brady—Direct*

Q. Will you tell us the type and character of test that was applied?

A. Well, we make a preliminary test to see if it is blood, and after proving that it is blood with a serum I have prepared myself, I test the reaction for human blood, and if it gives a definite, what is known as a precipitin test, or precipitates reaction of the albuminoid, that definitely characterizes it as human blood. 10

Q. Did you apply the test that you have spoken of to the blood that appeared to be on the exhibit which is before you?

A. I did.

Q. With what result?

A. It was positive.

Q. That means it was what?

A. It was human blood. 20

Q. After you had applied the test, did you or did you not return this exhibit to Trooper Deroskewicz?

A. I did.

Q. I show you what has been referred to as Exhibit S-15, a pair of rubbers, and ask you whether or not those rubbers were delivered to you by Trooper Deroskewicz, for the purpose of making a test on the blood stains that were found upon it?

A. Yes, they were.

Q. Did you, or did you not apply the test that you have heretofore described to the blood stains found upon the exhibit in question? 30

A. I did.

Q. Tell us what was the result of that test.

A. There was one spot on the right overshoe, that's this shoe here marked that gave the reaction for human blood.

Q. And then after you had applied your test, did you or did you not return the subject of this exhibit to Trooper Deroskewicz? 40

A. I did.

Q. I show you what has been marked as Exhibit S-17, a chest of drawer, and ask you whether or not you recall Trooper Deroskewicz delivering to you at Trenton this particular exhibit?

A. I do.

10 Q. Will you tell us whether or not you applied the test that you have heretofore described for the blood stains which appeared upon this exhibit?

A. I did.

Q. With what result?

A. It was positive for human blood.

Q. I show you a baseball bat, I don't know off-hand whether it was submitted to test, or not. Was it submitted to you for test?

A. Yes, it was.

20 Q. Exhibit —

THE PROSECUTOR: I find that may be by mistake it is marked for identification S-10.

THE COURT: Yes.

THE PROSECUTOR: I would like to offer and have it marked S-10.

30 THE COURT: It may be.

(Received and marked Exhibit S-10.)

Q. I show you Exhibit S-10, and ask you whether or not this exhibit was delivered to you by Trooper Deroskewicz, in order that you might test the blood-stains that appeared thereon, to determine whether or not it was human blood?

A. Yes, it was delivered.

40 Q. Did you, or did you not, apply to it the test

which you have heretofore described, in order that you might determine that fact?

A. I did.

Q. With what result?

A. It was positive for human blood.

Q. Were these slippers delivered to you?

A. No, sir, they were not.

10

Q. Other than these exhibits I have heretofore called your attention to, were there any other exhibits delivered to you?

A. Yes, there was a coat and trousers, and they were negative for blood.

Q. The ones then that I have called your attention to were all subjected to the test that you have mentioned?

A. That's right.

Q. And all found to be positive?

20

A. That's right.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Mr. Brady, is it possible in your work to have determined whether or not from the result of your test, whether it was the same blood from the same person? 30

A. It cannot be definitely said that it comes from the same person. The only thing that can be said, it could be classified as to type.

Q. Did you in this case attempt to classify them as to types, the blood that you say you observed on these articles?

A. Yes, I tried to get a reaction on these objects, but it offered no reaction for any types. In other 40

words, the peculiar characteristics of the blood had dried up to such an extent that to get a reaction to define it as to type was not left in the blood any longer.

Q. You made your examination when?

A. On April 28th.

10 Q. You say at that time that the spots or the blood stains on these articles could not have been determined as to type?

A. On these particular articles it could not.

MR. PALESE: That is all.

THE PROSECUTOR: That is all, Mr. Brady. Thank you very much for coming.

20

—————  
WILLIAM P. KELLY, recalled.

BY THE PROSECUTOR:

Q. Your full name is William Kelly?

A. Yes, sir.

Q. Mr. Kelly, you are a sergeant in the New Jersey State Police?

30 A. Yes, sir.

Q. And assigned to what particular division of the State police service?

A. Troop A—Detective Bureau.

Q. Are you in the detective division?

A. Yes.

Q. How long have you been engaged as a New Jersey State policeman?

A. Seventeen years.

40 Q. You have been a sergeant for how many years?

*William P. Kelly—Direct*

A. Since 1929.

Q. On the 23rd of April, 1941, at what station were you assigned, or stationed?

A. Troop headquarters at Hammonton.

Q. Did you, or did you not, on that date receive instructions to participate in the investigation of what appeared to be a murder to the farm known as the McBurney farm on Buffalo Road in Gloucester Township? 10

A. I was detailed to —

MR. PALESE: There's no testimony in this case at the present time that this is Gloucester Township, or Camden County, at the present time.

THE COURT: Is there any dispute about that?

20

MR. PALESE: There is, in view of the fact I tried to get from Detective Ritchie as to why—that was the purpose of my question—why this man was taken to Malaga, and not to either the Troopers' headquarters here in Camden County, or to the Prosecutor's Office, and I am rather honest and sincere when I say that that was the purpose of my question.

THE COURT: You had better eliminate the geographical feature of your question, unless the witness himself shows competency to give an opinion on that matter. 30

THE PROSECUTOR: I will withdraw the question, and establish it if there's any question about that. Will you take a chair aside there, and I will call the police officer of the township.

40

OTTO HAGNER, sworn.

BY THE PROSECUTOR:

- Q. Your full name is what?  
10 A. Otto Hagner.  
Q. Where do you live, Mr. Hagner?  
A. Blenheim, New Jersey.  
Q. In Camden County?  
A. That's right.  
Q. What is your occupation?  
A. At the present time?  
Q. Yes.  
A. Gloucester Township police.  
Q. How long have you been in the Gloucester  
20 Township police?  
A. Fifteen years.  
Q. Gloucester Township is situated in what  
county?  
A. Camden County.  
Q. Do you know a road which is commonly known  
as Buffalo Road?  
A. I do.  
Q. Do you know on that road a farm which was  
known as the McBurney farm?  
30 A. I do.  
Q. Were you at that place on April 23, 1941?  
A. I was.  
Q. Were you there at a time when the body of  
Mrs. McBurney was there?  
A. I was.  
Q. How long have you lived in Gloucester Town-  
ship, Mr. Hagner?  
A. Around thirty-two years.  
Q. The McBurney farm, can you tell us what  
40 township it is situated in?

A. It's in Gloucester County, Gloucester Township.

Q. Is it in Gloucester County?

A. Gloucester Township, Camden County.

Q. So that does it come or does it not come within the jurisdiction of your police department?

A. It comes in our jurisdiction.

10

Q. And following the happening of this occurrence, on April 23rd, did you as part of your duties as police officer, participate in the investigation of that crime?

A. I did.

THE PROSECUTOR: You may cross-examine.

CROSS-EXAMINATION.

20

BY MR. PALESE:

Q. You say the McBurney farm is in Gloucester Township, or Voorhees Township?

A. Gloucester Township.

Q. Gloucester Township?

A. That's right.

BY THE COURT:

30

Q. Is the McBurney farm, or any part of it, near any boundary of Gloucester Township?

A. Yes, sir.

Q. What is the nearest boundary of the township?

A. The nearest township to that would be Pine Hill.

Q. How far is that?

A. That would be practically two, two and a half to three miles.

40

THE COURT: All right.

THE PROSECUTOR: That's all.

---

10 WILLIAM P. KELLY, resumed.

MR. ORLANDO: Now will you read to him the question that I put to him.

(Question repeated.)

A. I was assigned on the morning of April 24, to participate in the investigation of the murder of Mrs. McBurney.

20 Q. Where did you first take up your investigation?

A. At the McBurney home, about nine a. m. on the morning of the 24th.

Q. Later on that morning did you, or did you not see the defendant, Robert Cox?

A. Yes, sir, I did.

Q. Where did you see him?

A. In the Prosecutor's office here in the court house.

30 Q. Camden?

A. Yes, sir.

Q. Did you, or did you not, have the opportunity and in fact did talk to him concerning his knowledge of the occurrence, the day before?

A. I did.

Q. Where was it you talked to him?

A. In the Prosecutor's office here in the Camden County Court House.

Q. At that time, was anyone present?

40 A. Yes, sir.

Q. Who was present?

A. Chief Doran, County Detective Dube, County Detective Mulligan, Wojtkowiak, Bennie, Detective Ritchie, and myself.

Q. Do you recall whether or not you asked him the question as to whether or not he had been on the McBurney farm the day before? 10

A. Yes, sir, we did, I did.

Q. And what answer did he make to that question?

A. He denied it.

Q. What other questions can you recall, Sergeant, having asked him in connection with the occurrence the day before, and what answers did he make?

A. We questioned him as to his whereabouts. He denied being on Buffalo Road. We questioned him regarding Mr. Schmidt's statement of seeing him on the Pine Hill Road, rather the Erial Road. He denied that. He denied carrying anything in the basket. We questioned him as to what he was doing over on the Hickstown Road, near where the galoshes were found. He denied being there, and there were several other questions asked. 20

Q. When was it, sergeant, to your knowledge, for the first time that he admitted having participated in the murder of Mrs. McBurney? 30

A. In the evening of April 24th, approximately 7:30 p. m., he first admitted that he had committed this crime, to Detective Bennie.

Q. Were you present a little later on in the evening when the Prosecutor was summoned, and a statement was taken of the defendant?

A. Yes, sir.

Q. Do you recall, sergeant, whether or not you asked him anything concerning the radio, or the pawning of the radio, on the morning of the 24th of April, when you were questioning him? 40

A. Yes, sir, we did.

Q. When had you obtained the information that the radio had been pawned?

A. We first obtained information that the radio had been pawned from the defendant.

Q. Where was that when you questioned him about that, where was it?

A. In the Prosecutor's office here in Camden County court house.

Q. When you first obtained that information, did he tell you where he had pawned the radio?

A. Yes, sir, he did.

Q. Did he tell you what name he had used?

A. Yes, sir, he told us he used the name of Alston.

Q. And was it based on that information that you located the place where this radio was?

A. Yes, sir.

Q. Did you go to Philadelphia at that time?

A. On the morning of the 25th of April I went to Philadelphia.

Q. After you had obtained the radio from Philadelphia, did you show him the radio?

A. No, sir, I didn't.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Did you make any notes of the questions that you asked of the defendant, and the answers that he made to your questions?

A. No, sir, I did not.

Q. So your testimony here to-day is your recollection of what happened on the 24th of April, 1941?

A. Yes, sir.

*William P. Kelly—Cross*

Q. How many other cases have you investigated since that time?

A. One other murder case.

Q. What other cases of crime have you investigated?

A. I have been concerned with investigating un-American activities mostly since that time. 10

Q. Your recollection goes back to all these things you have testified to, and the answers that Mr. Cox gave on that day?

A. The investigation of the McBurney case, on account of its importance, stands out in my mind more so than cases of less importance.

Q. And these questions and answers stand out in your mind?

A. Yes, sir.

Q. You have talked about galoshes that you confronted the defendant, with galoshes. They weren't found until you had gotten some information concerning the galoshes, is that correct, you didn't know anything about galoshes until after they had been found, did you? 20

A. No, sir.

Q. So you are mistaken when you say you confronted him with some galoshes on the 24th of April?

A. I didn't confront the man, I didn't say I confronted him with any galoshes. 30

Q. You showed him the galoshes on the 24th of April, as I understood your testimony, is that correct, or is that incorrect?

THE PROSECUTOR: That's objected to. I think the question was he did question him concerning galoshes. He didn't confront him with any galoshes. The galoshes at that time had not been found. 40

THE COURT: I will permit it under cross-examination.

Q. Did you have the galoshes on the 24th of April?

A. No, sir, I did not.

10 Q. Did you know when the galoshes were found?

A. The galoshes were recovered from where the defendant hid them, on the morning of the 25th of April.

Q. When did you first learn anything about galoshes with respect to this case?

A. When the defendant told us that he had hid his galoshes.

Q. When was that?

A. On the night of the 24th.

20 Q. Was that during the time that the statement was being taken, or prior to that time?

A. The defendant advised us of the galoshes before there was any stenographic statement taken, yes, sir.

Q. Were you present when he advised those who had him in custody concerning the galoshes?

A. No, sir, I wasn't present.

Q. When did you first hear anything about galoshes in this case?

30 A. In the Prosecutor's office, the Camden County Court House, the evening of April 24th.

Q. Was that before or after the stenographic statement was taken?

A. Before the stenographic statement was taken.

Q. Did you see him after they were found?

A. I did not, no.

Q. You never exhibited the galoshes to the defendant?

A. No, sir, I didn't.

*Lillian Hicks—Direct*

Q. Were you present at any time when they were exhibited to the defendant, after they were found?

A. No, I was not.

MR. ORLANDO: That is all.

10

LILLIAN HICKS, sworn.

BY MR. ORLANDO:

Q. Will you state your name, and hold your voice up so the gentlemen at the end of the jury box will be able to hear you. What is your name?

A. Lillian Hicks.

Q. Is it Miss or Mrs. Lillian Hicks.

20

A. Miss.

Q. Where do you live, Miss Hicks?

A. Hickstown, New Jersey.

Q. What was that?

A. Hickstown.

Q. How far is that from the Buffalo Road?

A. How far—well, I imagine about a mile and a half—a mile and a half.

MR. ORLANDO: Keep your voice up, please. 30

THE WITNESS: I will try.

Q. Who lives, or who did live on your place on April 23, 1941?

A. Why, my son and myself and Robert Cox.

Q. That is the defendant in this case?

A. Yes, sir.

Q. How long had Robert Cox lived upon your place?

40

A. Ever since 1935.

Q. Did he board there?

A. Yes, sir.

Q. Do you recall the morning of April 23, 1941?

A. Do I recall it?

Q. Yes. Do you remember that day?

10 A. Yes, sir, I do.

Q. Do you remember that evening? The day of April 23, 1941, is the day upon which, in the nighttime, Mr. Cox was picked up by the police officers.

A. Yes, sir.

Q. Did you see Mr. Cox on the morning of April 23rd before he went to work?

A. Yes, sir, I did, and I called him, and I—

Q. Will you tell us what conversation you had with him that morning.

20 A. I am trying to tell you now.

Q. All right.

A. I called him and wanted him to go with me but he told me he was sick. So I didn't bother with him. So the last word I said to him on that morning "I said tend to the door for the wind is in the door." For the wind was on that side that morning. I said, "I am going." I had to go—my car was there. So I went on to work and my son with me, and we went to work until 6 o'clock. I imagine we got home around a quarter after. When we came home, Robert wasn't home, so I said to my son—

30

Q. Do not tell us what you said to your son.

A. I said to him, "Go get the water—"

THE COURT: Strike out what she said to her son.

A. —"Go get the water. I don't know where Robert is at." So he went over and gets me two  
40 buckets of water from the spring—

MR. PALESE: If your Honor please, I object.

Q. Get down to the time when Robert came home.

A. That is what I am trying to get to. I went out while my kid got water from the spring. I wanted my cat and dog. In the meantime, my boy came back, and he wasn't back very long before Robert came in. 10

Q. Did you see him come in?

A. Yes, sir, I was sitting out under the tree feeding my animals. He said to my boy—he called him a short name—he said, "I thought I would die today." My son turned around and said, "That is too bad you were so sick." He had the basket. In the meantime he walked in the house with the groceries and sat them on the table. After awhile, when I got through feeding my animals I went into the house. He had been sitting the basket on the table. He walked into the room and sat down. I decided I would make fire in the oil stove in place of the wood stove— 20

Q. Now, wait a minute. Did you see him carrying anything when he came in?

A. Yes, sir. That basket.

Q. I show you what has been marked Exhibit S-3 for identification and ask you whether or not you recall—you recognize it as the basket he was carrying? 30

A. Yes, sir.

Q. Had you seen this basket before this day?

A. I had two of them just alike. That is the mate to it.

Q. Is this the basket he was carrying that night?

A. Yes, sir, exactly.

MR. ORLANDO: We offer this basket in evidence, and ask that it be marked Exhibit S-3. 40

THE COURT: Is there any objection?

MR. PALESE: No.

THE COURT: It will be received.

10 Q. Now, will you tell us whether or not you observed anything inside that basket when it came home that night?

A. Yes, sir, I did.

Q. What was in there?

A. Why two loaves of bread, white potatoes, onions and meat.

Q. Do you recall whether or not there had been any conversation that morning concerning food?

A. Yes, sir.

20

MR. PALESE: She has testified to what happened that morning and now the Prosecutor is asking her some specific item.

THE COURT: Yes. I think the question is leading. You may find out what was said.

Q. Well, tell us what was said.

30 MR. PALESE: She answered that question.

THE COURT: She may not have answered it fully.

BY THE COURT:

Q. Was there anything else said?

MR. ORLANDO: In the morning.

40

*Lillian Hicks—Direct*

A. Yes—he said, “Stay home with me to-day.” I said, “No, I got to get to work because there isn’t a crust of bread in the house. I got another mouth to feed beside my own, and I am going.” That was all, and that is all I know about it.

MR. ORLANDO: I fully appreciate the ruling your Honor has made but I have a statement from this witness whom I think I have a right to rely upon definitely. In the statement, some statement is made concerning the subject matter she has not testified to. 10

THE COURT: Be careful. She has not proven to be a hostile witness. There is nothing in her testimony that shows an act of hostility. 20

MR. ORLANDO: I would not think, if your Honor please, it is so much a question of hostility as it is perhaps the limited thinking power of the witness, limiting herself to conversation. 20

THE COURT: You see, she is on the stand, and she is under oath, and what she tells us she said is her recollection of what happened of something she said. The statement you claim to have is not evidential in any way. 30

MR. ORLANDO: I cannot see how that can be said. Suppose in the alternative the question I heretofore had asked this witness to which notwithstanding she had made an answer, how can it be said in any way to be prejudicial. It is directing the witness’s attention to something she may not recall and it is surely not of a character that leads to a subject that is prejudicial to the defendant. 40

THE COURT: It is suggestive of something apparently that you desire her to say, and up to now she has not said it, respecting a conversation she had with the defendant on the morning she left for work. I think the question may not be asked in that leading form.

10

BY MR. ORLANDO:

Q. Well, do you recall being home on Tuesday, April 22nd?

A. Why, I was yes, sir.

Q. When Mr. Cox came home?

A. Yes, sir.

Q. Will you tell us whether or not on the evening of April 22, 1941, when he came home he brought  
20 home any food?

A. No, he didn't.

Q. Well, was there any conversation concerning that subject when he failed to bring home food?

A. No, none, whatever.

Q. Was it discussed?

A. None whatever.

Q. What is that?

A. None whatever.

Q. Well, what was it you said a moment ago about  
30 feeding mouths?

A. I told you I told him that morning that somebody had to go out for there wasn't a crust of bread in the house. So I had another mouth to feed beside my own. That is what I said about mouth.

Q. Will you tell us whether or not he had paid board?

A. No, he didn't.

Q. For what period of time had he failed to pay board?

40 A. Oh, well, about a month.

*Lillian Hicks—Direct*

Q. Had anything been said by you to him concerning that subject matter?

A. No more than I said about the board and he told me he would give it to me the next time. Like anyone else would say.

Q. When was it you had that conversation with him? 10

A. That Tuesday evening when he came in—that Tuesday night.

Q. Will you tell us about that? What did he say to you and what did you say to him?

MR. PALESE: Just a moment.

A. Well, I—

MR. PALESE: Just a moment. I have an objection because I didn't know what the Prosecutor was leading up to. I do not see how anything that occurred at least one day prior to this crime had anything to do with it. The witness has said nothing was said, and the Prosecutor said something was said. 20

THE COURT: Repeat the question.

(Question repeated as follows:) 30

Q. Will you tell us about that? What did he say to you and what did you say to him?

MR. PALESE: About what?

THE COURT: About the board. Is that what you mean, Prosecutor?

MR. ORLANDO: Yes. 40

MR. PALESE: She has already answered that. She said a little while ago that he said he would take care of it the next time.

THE COURT: I think the Prosecutor is trying to establish when it was he said that.

10

MR. PALESE: Oh, that is all right if that is what he is trying to do.

MR. ORLANDO: I will reframe the question.

THE COURT: Perhaps you better.

Q. Miss Hicks, tell us when it was you later had a conversation with Mr. Cox concerning the payment of the board, and what it was he told you.

20

A. Tuesday night, the 22nd. That was when he got his pay, and came home and didn't have anything.

Q. Will you speak up. What was the conversation?

A. Well, I got after him about my board money.

Q. What did you say to him?

A. "Oh," I said, "Robert, where is my money—just like that—for the board?" Well, he didn't give me any Tuesday. Anyhow, when he did speak up, he said, "I will have to give it to you the next day."

30

Q. Do you recall whether or not that was the evening of April 22nd?

A. 22nd, yes, sir.

Q. Now, when he came home on the evening of April 23rd, did you have any conversation with him?

A. None whatever, no, sir. Not a word.

Q. Do you recall the police officers coming there?

40

*Lillian Hicks—Direct*

A. Yes. I was just getting ready to fill up my oil stove tank to start my stove for supper.

Q. Was there any conversation by the defendant with either of the police officers when they arrived?

A. No, sir. No, sir, they came to my house and asked me, "Was Robert Cox in?" Robert was in the front room sitting down. I told them, "Yes, he was in." They walked in and one of them said to Robert put your coat and cap on. And then another one came in and he begged to be excused, and he said would you mind if I looked through your house. I told him, "Help yourself." That is all. 10

Q. I show you a pair of rubbers and ask you whether or not you recognize those rubbers? Do you?

A. Yes, sir, I do.

Q. Whose rubbers are they? 20

A. Robert's.

Q. Robert who?

A. Robert Cox.

Q. When did you see them on Robert Cox the last time?

A. Oh, I could not tell you when, I never saw them that day for I wasn't there.

MR. ORLANDO: You may cross-examine. 30

MR. PALESE: No questions.

NO CROSS-EXAMINATION

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MR. ORLANDO: Does your Honor wish to proceed with another witness? I notice by the clock it is 12:30.

THE COURT: We may as well take the noon recess now. We will resume at 1:45 P. M. Take the jury out.

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10

## (AFTERNOON SESSION)

OTTO HAGNER, recalled.

BY MR. ORLANDO:

Q. Mr. Hagner, what time was it when you got to the McBurney farm on the afternoon of April 23?

A. It was probably between twenty-five minutes after three or half-past three.

Q. Was it half-past three or half-past four?

A. Half-past four.

BY MR. PALESE:

Q. You got there quarter after four?

A. Half-past four.

BY MR. ORLANDO:

30

Q. Did you go immediately to the scene after you were notified?

A. That is right.

Q. Who went with you?

A. Mr. Ashburn.

Q. Mr. Ashburn is the other Gloucester Township policeman?

A. That is right.

Q. How did you go? By automobile?

A. Automobile.

40

*Otto Hagner—Direct*

Q. You were familiar with this place, were you not?

A. That is right.

Q. How close is the nearest house to the McBurney farm?

A. There are only two houses on that road. They were both on the left-hand side, and one was empty and the McBurney house was the next one, and the nearest house was on the Hickstown Road going towards Lamb's Terrace. 10

Q. That would be approximately how close to the McBurney farm?

A. Half a mile.

Q. Do you know where the defendant lived or did live on April 23?

A. Yes, sir.

Q. On what road did he live? 20

A. On the Hickstown Road off of Erial, the right-hand side of the road.

Q. To get to the McBurney farm from where the defendant lived how would one go? By what road or roads?

A. From where the defendant lived?

Q. Yes.

A. He would have to come up the Hickstown Road, cross Erial to the Hickstown Road, go down Hickstown Road to what we call the Buffalo Farm Lane, and then down. 30

Q. Then down Buffalo Road?

A. That is right.

Q. Did you at any time after you were summoned to the scene of the crime go through the woods, the road or pathway, that leads from the McBurney farm out to Hickstown Road?

A. I did. I was stationed all night long at the scene of the crime, and at dawn or daybreak I myself went through, through the path. 40

Q. Where does that path come out?

A. That comes out on Erial Road.

Q. Erial Road?

A. Erial Road.

Q. How far from where the defendant lived?

A. Taking the path I imagine it is about three-  
10 quarters to a half mile.

Q. How long is Buffalo Road from one point to the other?

A. From one point to the other I imagine it is somewhere around two miles.

Q. Did I understand you to say that on this two-mile road there were but two dwellings?

A. Two dwellings, one was empty and the other was McBurney's.

Q. Do you know of your own knowledge that the  
20 other house on Buffalo Road was empty?

A. Yes, sir, it had furniture in it, but nobody was living there.

Q. Leaving the place where the defendant lives on Hickstown Road and traveling on that road in the direction toward Buffalo Road would the defendant come past any dwelling house before he got to the McBurney farm?

A. Yes.

Q. How many?

A. One.  
30

Q. What is that house known as?

A. That is known as Bungalow Inn.

Q. How far approximately is Bungalow Inn from Buffalo Road?

A. I should say a square and a half.

Q. Then coming up the Hickstown Road past Bungalow Inn to Buffalo Road and turning in Buffalo Road in order to travel to the McBurney farm how far would it be from the Hickstown Road to the  
40 McBurney farm?

*Otto Hagner—Direct*

A. I imagine it would be somewhere around quarter of a mile.

Q. Buffalo Road is a gravel road, is it not?

A. That is right.

Q. Now, when you arrived at the McBurney farm who was at the farm when you got there?

A. There was a Mr. Chew, a Mr. Harverson, and there was another gentleman there that lives at Lamb's Terrace. I don't know his name. 10

Q. Mr. Erdbrink?

A. Yes.

Q. Was young McBurney there, Robert McBurney?

A. Robert McBurney was there also.

Q. From the time you arrived at the McBurney farm, which you fix in the neighborhood of four-thirty, until the state policemen arrived did you ever leave the McBurney farm? 20

A. I did not.

Q. Were you there all the time?

A. Yes, sir, the only time I left the McBurney farm was after the state police took charge and the people were coming in, and I took my station at the road to keep everybody out.

Q. During the time that you were there, from the time of your arrival until the state police arrived, did anyone as far as you could see change the condition of any of the physical objects outside the house? 30

A. No, sir.

Q. Were you there when the state policemen arrived?

A. I was.

Q. Were you there when Trooper Deroskewicz was taking photographs?

A. I was at the end of the road.

Q. Did you make observations of the conditions 40

as they existed when they arrived at the McBurney farm?

A. I did.

Q. Did you or did you not before the state policemen arrived to enter the McBurney farmhouse?

A. I did.

10 Q. When you entered did you enter alone or was someone with you?

A. I was accompanied with Mr. Ashburn and also young McBurney.

Q. I show you a photograph which has been marked Exhibit S-4 and ask you whether or not the conditions as shown in that photograph were the same or any different than what you found them to be when you arrived at the McBurney farm?

A. That is right.

20 Q. What is your answer?

A. Yes.

Q. Were they the same or any different?

A. The same, they were the same.

Q. I show you another photograph which has been marked Exhibit S-3 showing another view of the same premises and ask you whether or not the conditions depicted in this photograph, Exhibit S-3, were any different or were the same as are depicted in the photograph at the time you arrived.

30 A. They are the same as when I arrived.

Q. When you entered the house, did you go in what has been commonly described the shed?

A. The shed.

Q. How did you gain admission to the shed?

A. Through the back door.

Q. Did you or did you not make any observations of the conditions as they existed in the shed when you got there?

A. I did.

40 Q. Within what time after you arrived at the

*Otto Hagner—Direct*

farmhouse would you say that it was that you entered the shed?

A. I should say around five or ten minutes that I entered the shed.

Q. I show you a photograph which has been offered in evidence marked Exhibit S-6, which shows the condition of the shed and ask you whether or not the conditions as portrayed in that photograph of the shed were the same or were any different than shown on that photograph when you arrived there. 10

A. The same.

Q. Then did you go into any other part of the house after you arrived in the house?

A. Yes.

Q. What other part of the house did you go into?

A. We went into what they would call the kitchen or sitting room. 20

Q. Sitting room?

A. Sitting room, that is right.

Q. Did you observe the conditions in that room?

A. That is right.

Q. What if anything did you observe in that sitting room?

A. There was a rocking —

MR. PALESE: Just a minute, your Honor, I object for the same reasons as mentioned before, as to no changes being made from the time of the crime until the time this witness said he made his observation. 30

THE COURT: The same ruling.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Yes.

The defendant prays an exception which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

10

THE WITNESS: There was a rocking chair or morris chair and there was a pocketbook and that was open wide and all the contents was on the pillow.

Q. Did you observe what the contents were of the pocketbook?

A. They were a lot of papers. I didn't examine a thing because I waited for the state police to arrive.

20

Q. Did you or did you not while you were in the house go upstairs?

A. Yes.

Q. When you went upstairs that led you into what sort of room?

A. Bedroom.

Q. Did you observe the conditions as they existed in the bedroom when you arrived there?

A. Yes.

30

Q. I show you a photograph which has been marked Exhibit S-5 and ask you whether or not the conditions as portrayed in that photograph were the same or any different than what they were when you went into that room at the time you described.

A. Exactly alike.

Q. Now, I direct your attention particularly, Officer, to the photograph marked Exhibit S-3 and ask you whether or not you saw that box and

40

*Otto Hagner—Direct*

wooden drawer that appear in that photograph when you got to the scene of the crime?

A. They were exactly alike.

Q. Did you see those two objects?

A. I did.

Q. Does that photograph show them to be in the position they were in? 10

A. They were in that position when I got there.

Q. Did you observe anything about those two objects as to whether or not they had any spots on them?

A. They did.

Q. I show you an exhibit which has been marked S-17 and ask you whether or not you recognize this as being one of those two objects shown in that photograph?

A. It is. 20

Q. I particularly direct your attention to what appears to be blood stains upon that object and ask you whether or not those blood stains were on there when you arrived there.

A. They were.

Q. I show you an object which has been marked as Exhibit S-16, a cardboard box, which appears in the photograph and ask you whether or not you saw this cardboard box there with some contents. 30

A. I did.

Q. Did you or did you not notice whether there were blood stains upon this box?

A. There were.

Q. Showing you this object now I ask you whether or not the blood stains which appear on the exhibit now are any different than those which were on the object at the time you arrived?

A. They are the same as when I arrived.

Q. Now, did you or did you not when you arrived at the scene of the crime observe a baseball bat? 40

A. I did.

Q. Where was that baseball bat lying with relation to the position of the body?

A. The baseball bat was lying up above Mrs. McBurney's head with the handle toward the truck.

10 Q. Did you notice whether or not there were any blood stains on the baseball bat?

A. There were.

Q. I show you a baseball bat which has been marked as Exhibit S-10 and ask you whether or not you recognize this baseball bat as being there at the time you arrived at the scene of the crime?

A. The same bat.

20 Q. I show you a photograph which has been marked Exhibit S-11, being a large reproduction of a smaller photograph taken showing the back and side of the house, and ask you whether or not this photograph depicts or portrays, generally, the condition of the back and side of the house as far as the position of the house is concerned?

A. Yes, sir.

Q. I direct your attention to what has been marked Exhibit S-9, a slipper, and another exhibit marked S-8, another slipper, and ask you whether or not when you arrived at the scene of the crime you observed one or both of these slippers.

30 A. I did.

Q. Where did you see these slippers?

A. One was in the shed under a chair, and the other was out about two feet away from Mrs. McBurney.

Q. A stick has been offered in evidence and has been marked Exhibit S-14, and I show you that stick and ask you whether or not you saw that stick there when you arrived at the scene of the crime on the afternoon in question.

*Otto Hagner—Cross*  
*Lawrence T. Doran—Direct*

A. I did.

Q. I direct your attention to Exhibit S-14, a photograph, upon which it appears among other things a stick leaning against the building and ask you whether or not the position of the stick at the time you arrived is as is denoted in that photograph? 10

A. Exactly.

MR. ORLANDO: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. If I understand you correctly, it was 4:30 20  
 when you arrived at the McBurney home?

A. Approximately 4:30.

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LAWRENCE T. DORAN, sworn.

BY MR. ORLANDO:

Q. Mr. Doran, you are Chief of County Detectives 30  
 in and for the County of Camden?

A. Yes, sir.

Q. And have served in that capacity for how many years?

A. Seventeen.

Q. On the afternoon of April 23, 1941, were you advised of the occurrence of a crime at the McBurney Farm in Gloucester Township?

A. About 5:30 p. m., yes, sir.

Q. Did you go alone or were you accompanied by 40

some other of the county detectives to the McBurney farm?

A. I went alone followed by Detective Mulligan in his car.

Q. Approximately what time did you arrive at the McBurney farm?

10 A. About six p. m.

Q. Did you know Mrs. McBurney during her lifetime?

A. About twenty-five years.

Q. You had known her for twenty-five years?

A. Yes, sir.

Q. When you got to the farm was or was not the body of Mrs. McBurney at the farm?

A. Yes.

Q. Did you see the body?

20 A. Yes.

Q. Did you or did you not recognize who it was?

A. Yes.

Q. Who did you recognize it to be?

A. Agnes Scully, as I know her. McBurney is her married name.

Q. Speak up so the gentleman at the end can hear you. Were the state police there when you got there?

A. Yes.

30 Q. Did you proceed then from that point on with the investigation of this crime along with other police agencies?

A. I did.

Q. Did you or did you not cause the arrest of the defendant, Robert Cox, to be made late that afternoon or evening?

A. I did from information that I received at the scene of the crime.

40 Q. Then later that evening, namely, April 23,

*Lawrence T. Doran—Direct*

did you or did you not see the defendant in the custody of the New Jersey State Police at the Mantua Barracks?

A. I did.

Q. When you saw him that evening at the Mantua Barracks did you or did you not question him concerning this crime?

10

A. Yes, sir, I asked him about five questions.

Q. And those questions were what the best that you can remember?

A. In reference to whether he had been on Buffalo Road or in the neighborhood of the McBurney farm and he denied it.

BY THE PROSECUTOR:

Q. And the next morning, did you again question the defendant, if so, where?

20

A. He was taken from Mantua that night in custody of the State police, and then I left and continued the investigation. The next morning I ordered him taken to the Prosecutor's office, and I continued the investigation down at the scene of the crime.

Q. Don't tell us what the information was, Chief, but did you after you had seen and questioned the defendant at Mantua, obtain some additional information concerning the defendant?

30

A. Yes.

Q. On the strength of the information which you obtained concerning the movements of the defendant, did you question him the next morning concerning such movements?

A. I did.

Q. Where, at the court house in Camden?

A. Prosecutor's office, in the Prosecutor's office.

40

Q. And what questions did you submit to him the next morning, and what answers did he make?

A. My investigation, I had received information through the investigation that he was seen on the Erial Road going towards Clementon, with a basket, covered. I came back and questioned him  
10 about it, and he denied that he was on that road with a basket. I then went to his home, and got this basket out of his home.

Q. At any time prior to the evening of April 24, when a statement was taken, did the defendant, upon being questioned by you, admit having been at the McBurney farm?

A. He denied it.

Q. Did he at any time prior to the making of the statement on the evening of April 24, admit being  
20 on the Hickstown or Erial Road in the vicinity of the place of the crime?

A. He denied being in that neighborhood.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

30 Q. Chief Doran, you knew before the statement was actually taken by the Prosecutor, as to what he was to say when the Prosecutor came in?

A. No.

Q. What's that?

A. No.

Q. Who sent for the Prosecutor to come in to take the statement?

A. I did.

40 Q. Didn't you have information then that Mr. Cox was ready to talk?

*Joseph Bennie—Direct*

A. I did, but I got it over the telephone. I was at lunch.

Q. But you did have information, Chief, over the telephone, that Mr. Cox was ready to talk, before the Prosecutor came in?

A. Yes.

Q. And as a result of the telephone call you called the Prosecutor? 10

A. I came back to the Prosecutor's office, and then called the Prosecutor, and waited for him to come to take the statement.

Q. Did you talk to the defendant from the time you returned after this telephone call, and the time that the Prosecutor came?

A. No.

Q. Who gave you the information, do you know that, that the defendant was ready to talk? 20

A. Mr. Bennie called me up at Kenney's cafe, where I was at dinner.

Q. You asked him no questions when you came to the Prosecutor's office?

A. Not one, no, sir.

MR. PALESE: That's all.

THE PROSECUTOR: That's all, Chief. 30

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JOSEPH BENNIE, sworn.

BY THE PROSECUTOR:

Q. Mr. Bennie, you are one of the County detectives employed by the County of Camden?

A. Yes, sir.

40

Q. You have been in the employ of the County in the capacity mentioned for how long?

A. Seven years.

Q. Did you participate in some manner on April 23rd, and thereafter, with the investigation of the killing of Mrs. McBurney?

10 A. Yes, sir.

Q. Did you have some conversation with the defendant concerning his movements, which led you to a certain place to look for certain rubbers?

A. Yes, sir.

Q. When was that conversation had?

A. The evening of the 24th.

Q. What did he tell you as to where the rubbers were?

20 A. He told me the rubbers were hidden over at a dump on Hickstown Road.

Q. After receiving that information that you obtained from him, did you, along with some other police officer, go in the vicinity of Hickstown Road?

A. Yes, sir.

Q. Who went with you?

A. Detective Ritchie, of the State Police, and Detective Wojtkowiak.

Q. Did you make a search to try to find the rubbers?

30 A. Yes, sir.

Q. Where were the rubbers found?

A. The rubbers were hidden under the leaves, under the leaves.

Q. Where, with relation to Hickstown Road?

A. Right along the side of the road there, in the woods.

Q. How far away from where the defendant lived?

A. About three hundred feet away.

40 Q. And who took possession of these rubbers

*Joseph Bennie—Direct*

after they were found, what detective, or what trooper?

A. Detective Ritchie, of the State Police.

Q. I show you what has been marked as Exhibit S-15, two rubbers, and ask you whether or not these are the rubbers that you found at the spot that you have mentioned? 10

A. Yes, sir, they are the rubbers.

Q. Did the defendant tell you why he had hidden the rubbers at that place?

A. Yes.

Q. What did he say in that connection?

A. He says that the reason he hid them there was so they could not trace his footprints.

Q. On the 24th day of April the day following the crime, were you at the prosecutor's office before the Prosecutor was summoned to take the statement of the defendant? 20

A. Yes, sir.

Q. And was the defendant, prior to the taking of the statement, in a room with you?

A. Yes, sir.

Q. And in what part of the Prosecutor's office were you at the time?

A. Federal Street side.

Q. Is that towards the front of the office?

A. That's right, that's the first room on Federal Street. 30

Q. Did or did not the defendant ask you to summon the Prosecutor, so that the statement might be taken?

A. Yes.

Q. Was anyone else present besides you and the defendant at the time when he mentioned that he desired to make a statement?

A. Detective Mathis, and—pardon me—before he told me he wanted to make a statement, De- 40

tective Mulligan, Detective Ritchie was in the room. He said he wanted to talk to me. I told him, "All right, if you want to talk to me, I will talk to you," and then he went and told me about how he killed her, he killed this woman.

10 Q. Did he or did he not, during the course of that conversation express a willingness to make a statement?

A. Yes, he did.

Q. To whom did you convey the information that he desired to make a statement?

A. Chief Doran.

Q. Then later on the Prosecutor came to the Prosecutor's office?

A. That's right.

20 THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION.

BY MR. PALESE:

Q. Had you been in charge of the defendant all that day?

A. No, I had not.

Q. Did you know the defendant?

30 A. I know him.

Q. From the fact that he was in your custody that day, or did you know him prior to that day?

A. I knew him seeing him over at the Mantua barracks the night before.

Q. That was the first time you had seen the defendant at the Mantua barracks?

A. That's right.

Q. The next day, what time was it you first saw him, that's Thursday?

40

*Joseph Bennie—Cross*

A. Thursday evening.

Q. Hadn't you seen him at all that day?

A. No, sir.

Q. You had not seen him but once down at Mantua barracks, you say he asked for you before he wanted to make this statement?

A. That's right. 10

Q. How long were you with him at the Mantua barracks?

A. Fifteen minutes.

Q. Who gave him your name?

A. I did.

Q. And he met you for fifteen minutes Wednesday night at the barracks at Mantua, and you say that the next night, after Detective Ritchie and another officer were in the front office of the Prosecutor's office, he sent for you because he wanted to make a statement? 20

A. I didn't say he sent for me.

Q. He asked for you?

A. We were in the room questioning him about the murder. After some time he said he wanted to talk to someone. I asked him if he wanted to talk to me, and he said, "Yes."

Q. How long had you been questioning him before that time? 30

A. Fifteen minutes, or twenty minutes.

Q. Out of the three men who were there, he decided upon you to talk to?

A. I asked him if he wanted to talk to me.

Q. Was that before or after he said he wanted to talk?

A. He said he wanted to talk to me.

Q. I am trying to pick out, I am trying to find out why he wanted to talk to you in particular, when Detective Ritchie and the other detectives were there at the same time? 40

THE COURT: Would he know that, Mr. Palese, would he know what was going on in the defendant's mind?

MR. PALESE: If he knows.

10 BY THE COURT:

Q. Do you know any reason?

A. I don't, Judge.

BY MR. PALESE:

Q. You say you had only been talking to him about fifteen minutes, or questioning him about fifteen minutes all day Thursday?

20 A. Not all day Thursday.

Q. You said you only questioned him about fifteen minutes during that entire time?

A. That's right.

Q. That was in the evening?

A. Evening.

Q. Had you seen him at all in the daytime in the Prosecutor's office?

A. No, I had not.

30 Q. These rubbers that you speak of, did you find them before he made his statement, or after he made his statement?

A. After he made his statement.

Q. When did you have the information as to where they were, after he made his statement or before he made his statement?

A. He told me Thursday evening.

Q. I am asking you, Mr. Bennie, was that before or after the statement was made to the Prosecutor?

A. That was before.

40 Q. And then you and Detective Ritchie the fol-

*Penelope Elizabeth King—Direct*

lowing morning, as I take it, went down to this place to find the rubbers?

A. That's right.

Q. You didn't take the defendant with you, did you?

A. No, sir.

10

MR. PALESE: That's all.

THE PROSECUTOR: That's all, Mr. Bennie, thank you.

---

PENELOPE ELIZABETH KING, sworn.

BY THE PROSECUTOR:

20

Q. Mrs. King, where do you live?

A. I live in Erial, New Jersey, on the Jarvis Road, corner of Jarvis and New Brooklyn Road.

Q. Do you know where Buffalo Road is?

A. I do.

Q. Do you know where the house is situated on Buffalo Road, which was occupied by the McBurney family before April 23rd?

A. Yes, sir, I do.

30

Q. Had you ever been up there?

A. Yes, sir, I had been to the house.

Q. Did you know Mrs. McBurney?

A. I have known her for almost four years, but I only had occasion to speak to her one time, when I went there to find out about buying a horse.

Q. On the afternoon of Wednesday, April 23, were you at home around noon, or a little after noon?

40

A. At noon time I was on Little Mill Road, just near where it crosses Hickstown Road. I was carrying a lunch to my husband and my son, and two men who was working for him.

Q. While you were doing so, did you or did you not see the defendant?

10 A. I saw a colored man.

Q. Do you recognize that colored man?

A. Well, I wasn't near enough to see his face, but I described the walk, and I described him as near as I could for as close as I was to him, and then I told my husband —

Q. Don't tell us what you told your husband, but you saw a colored man.

A. Yes, sir.

Q. What road was he on?

20 A. He was on the Hickstown Road.

Q. How close did you get to him?

A. I am not such a good judge of distance, but I should judge it was about half the distance, or three-quarters of the distance in between two telegraph poles.

Q. At that time did you notice whether or not the colored man was carrying anything?

A. No, why, I noticed him, he stepped back in the road, and I thought he was hiding from me.

30 Q. How far away did he step on the road?

A. About as far as from where I am to you.

Q. Do you know the defendant?

A. I have seen him, but I didn't know his name.

THE PROSECUTOR: Cross-examine.

## CROSS-EXAMINATION

BY MR. PALESE:

Q. What time of the day was this?

A. Quarter past twelve.

Q. Are you ready today to say that the colored 10  
man you saw on that occasion was this man, the  
defendant?

A. I saw a colored man, and he resembled this  
man.

Q. Will you say today that the man you saw on  
that occasion is this man sitting here alongside of  
me?

A. Would you mind having him stand and walk  
for me?

20

(The defendant stands.)

THE WITNESS: Will you please walk? Is he  
permitted to walk?

(The defendant walks and stands in front of the  
witness box.)

A. I would not say I was positive, but I feel—you 30  
understand, I know the man is up for murder, and  
maybe his life—and I am not too sure, but he looks  
very much like the man.

Q. I understood you to say a little while ago you  
knew Mr. Cox, or this man here, and had seen him  
on other occasions?

A. I have seen this man, but I didn't know his  
name.

Q. You knew his appearance, and you knew how  
he sidled?

40

A. But he wasn't near enough to distinguish his face. He wore a cap.

Q. And the only thing that brings to your mind that it resembled him is because of his walk?

A. Yes. He had a very peculiar walk. Especially the way his shoulders—he holds his shoulders.

10

MR. PALESE: That is all.

---

MRS. LULU C. MEDLEY, sworn.

BY MR. ORLANDO:

Q. Where do you live, Mrs. Medley?

20

A. Why, I live on the road between Blackwood and Erial.

Q. What is that road called?

A. The Blenheim and Brooklyn Road.

Q. Do you know the defendant Robert Cox?

A. Yes.

Q. How long have you known him?

A. Well, I have known of him, I guess about six years, probably seven.

30

Q. Do you know where he lived on April 23rd and prior thereto?

A. Well to say that I know I didn't.

Q. Did you see the defendant on the 23rd day of April, this year?

A. Yes, I did.

Q. Where did you see him?

A. Why, he came to my house.

Q. Had he ever been to your house before?

A. Well, yes, he had been there before.

40

Q. You knew him and was acquainted with him?

*Mrs. Lulu C. Medley—Direct*

A. Well, I knew him—I know of him.

Q. Yes. What time of the day was it if you can tell us, when he came to your house on the afternoon of April 23rd?

A. It was somewhere near midday. I just don't know the hour. It was after I had my lunch.

Q. Were you home alone? 10

A. No, sir, I wasn't.

Q. Was the defendant alone?

A. He wasn't—there wasn't any one with him when he came to the house.

Q. That is what I mean.

A. Yes.

Q. Did you notice him carrying anything?

A. No, sir, I don't—I didn't see him until he came in the door.

Q. When did he come in the house? 20

A. Just came inside the kitchen door.

Q. Did he or did he not have a basket on his arm?

A. No, he didn't have anything I know of. He didn't have anything.

Q. What did he say to you when he came to your house?

A. He asked me if I would loan him 25 cents, that is, a quarter.

Q. Did he tell you what he wanted it for? 30

A. Yes, he did.

Q. What did he say about that?

A. He said he wanted it to get his tire patched or to get a second-handed inner tube to repair his automobile.

Q. And he wanted you to loan him a quarter?

A. He wanted me to loan him a quarter for that purpose.

Q. Did you or did you not lend him a quarter for that purpose? 40

A. I didn't have a quarter. I told him I had just borrowed a quarter that morning, so I just really could not let him have it. So my father happened to be there. He wanted it very badly it seemed like. So my father says, "I have twenty cents." So I said, "I will see if I can find a nickel." So I found  
10 five pennies and between us we let him have the 25 cents. He said he was on his way to Blackwood to get his check and when he got it he would get it cashed, and on his way back from Blackwood he would give me the 25 cents back and if I didn't believe his car was out of order I could go out to the road and look at the road and I could see it there. So I said, "No. I would not do that."

Q. Did you see him leaving your place?

A. Yes, I did.

20 Q. And when he left did he have anything in his possession—any basket or anything?

A. No, he didn't.

Q. Did you see him any more after that?

A. No more after that. He didn't stop and leave the quarter.

Q. What would be your best estimate, Mrs. Medley as to the time of day when he left your place?

30 A. Well, I imagine—really I don't know because I do not generally watch the clock until 2 o'clock when the "Light of the World" comes on. I did not start watching the clock when he was there. Probably it was 1 o'clock; probably half past, I don't know because I was talking to my father who was visiting with me. I wasn't watching the clock.

MR. ORLANDO: That is all. Cross-examine.

MR. PALESE: No questions.

40 NO CROSS-EXAMINATION

*Robert McBurney, Sr.—Direct*

ROBERT McBURNEY, Sr., recalled

BY MR. ORLANDO:

Q. Mr. McBurney, where do you live now?

A. Live right at the corner of Buffalo Road and the Blenheim-Erial Road. 10

Q. Are your children living there with you?

A. Yes, sir.

Q. On April 23rd, sometime before April 23rd, where were you and your family living?

A. Living on the Buffalo Road.

Q. How long had you lived on that road?

A. Two years.

Q. Were there any other houses on the Buffalo Road that you know of? 20

A. One small bungalow which was empty.

Q. So that there your house was really the only house that was occupied on that road on April 23rd?

A. Yes, sir.

Q. On April 23rd?

A. Yes, sir.

Q. Are you or were you familiar with the countryside in the vicinity of the Buffalo Road?

A. Yes, sir.

Q. The Hickstown Road—does that come up to the Buffalo Road? 30

A. Yes, sir.

Q. Do you know the defendant, Robert Cox?

A. Yes, sir.

Q. For how many years had you known him prior to this time?

A. Five or six years.

Q. And where did you live before you lived on this farm on the Buffalo Road?

40

A. Blenheim.

Q. Was that somewhere in the vicinity of where this defendant lived?

A. No, sir.

Q. Did you and the defendant at some time or other in the past work together on some WPA  
10 project?

A. We had, yes, sir.

Q. How long ago has that been?

A. Three years ago.

Q. Now, on the date of April 23rd, what time did you leave your home?

A. Fifteen minutes of seven.

Q. And you went to what place?

A. The New York Shipyard.

Q. Is that where you were then and are now  
20 employed?

A. Yes, sir.

Q. Were the children then at home?

A. No, sir.

Q. Was the older boy at home when you left?

A. The older boy—the older boy drove me to the end of the road.

Q. What did he use, this truck that was parked there on the property?

A. Yes, sir.  
30

Q. When did you last see your wife alive?

A. At a quarter of seven, Wednesday morning.

Q. Where was she then?

A. Lying on the couch.

Q. Downstairs or upstairs?

A. Downstairs.

Q. How old a woman was Mrs. McBurney?

A. 39 years old.

Q. That morning when you left was she healthy  
40 or was she suffering from any trouble?

*Robert McBurney, Sr.—Direct*

A. She wasn't feeling good.

Q. Where was she when you got out of the house?

A. Lying on the couch.

Q. Did you leave the house through the front door or did you leave by way of the back shed?

A. The back shed. We never used the front door.

Q. That was locked, was it?

10

A. Yes, sir.

Q. Now, will you tell us, Mr. McBurney, whether or not when you left in the morning the condition so far as the chair and basket and other things in the kitchen were as they appear in this photograph which has been marked in evidence Exhibit S-6?

A. (Witness examines photograph) Yes, that is how I found it when I returned home.

Q. Well, when you left that morning, was it in that condition?

20

A. No, sir.

Q. What time did you get back to your home that afternoon of April 23rd?

A. Between ten and fifteen minutes past five.

Q. Was it still daylight?

A. Yes, sir.

Q. When you came to your home, whom did you find there? What people as best you can remember were there?

A. Detective Ritchie, the Township police, and Mr. Chew.

30

Q. Do you know Officer Hagner?

A. Yes, sir.

Q. Was he there?

A. Yes, sir.

Q. Do you know the other officer, the local town officer?

A. Ashburn, yes, sir.

Q. Was he there?

40

A. Yes, sir.

Q. Was your son Robert at home when you came back?

A. Yes, sir.

Q. That afternoon?

A. Yes, sir.

10 Q. When did you first gain knowledge that something had happened during the day? Was it when you arrived or had you gained the knowledge before you arrived home?

A. I gained the knowledge before I arrived home.

Q. And when you came home, where did you find these various people that you speak of? Were they inside or outside the house?

A. Outside of the house.

20 Q. Did you go into the house immediately upon arriving at your home, or did you remain outside for a long period of time?

A. I remained outside until Detective Ritchie took me in.

Q. While you were outside did you or did you not have an opportunity to observe the conditions as they existed particular the position where your wife's body was lying?

A. Yes, sir, I did.

30 Q. Did you observe where the truck was parked?

A. Yes, sir.

Q. Did you or did you not observe the baseball bat lying there?

A. Yes, sir, I did.

Q. And where was that bat with relation to your wife's body?

A. Up near her head.

Q. Did you notice whether or not there were any bloodstains upon the baseball bat?

40 A. Yes, sir, I did.

*Robert McBurney, Sr.—Direct*

Q. Besides the baseball bat, did you notice any other object outside of the house that had bloodstains or bloodspots?

A. Yes, sir, I did.

Q. What object or objects, did you observe with bloodstains or bloodspots, besides the bat?

A. A wooden drawer out of an old cabinet, a paper box. Also blood on the side wall of the dining room. 10

Q. You speak of the side wall, do you mean the outside wall?

A. Yes, sir, alongside the window of the dining room.

Q. On the side of the house?

A. Yes, sir.

Q. The paper box and the wooden drawer that you speak of, where were they with relation to the truck? Were they somewhere in the vicinity of the truck? 20

A. Yes, sir.

Q. What is the length of that truck, Mr. McBurney, the best you can tell us.

A. Sixteen or eighteen feet over all, I imagine.

Q. Sixteen or eighteen feet, you say?

A. Yes, sir.

Q. I show you photograph which has been marked Exhibit S-3, and ask you whether or not the wooden drawer and the paper box that appear on this photograph are in the same or different position than what you discovered them to be in when you came home? 30

A. No, sir, that is the position they were in.

Q. And what would you say, Mr. McBurney, was the distance between these two objects and the place where your wife's body was lying?

A. I would say 10 feet from her head. 40

Q. Now, you mentioned something about blood on the side of the building. Where was that blood with relation to where this box and wooden drawer appear on this photograph?

A. It was a little to the back of it—the side of the window and high, higher up.

10 Q. I show you the same photograph, Exhibit S-3, and direct your attention to what appears to be the lower part of a window. Is that the window to which you referred?

A. Yes, sir.

Q. Were these bloodspots that you speak of in the vicinity of that window?

A. Yes, just off to the side a little bit.

Q. You know, do you not, Mr. McBurney, that your wife had a pair of black slippers?

20 A. Yes, sir.

Q. I show you what has been marked Exhibit S-9 and Exhibit S-8—two slippers—and I ask you whether or not you recognize these as being the slippers which your wife used to wear in her lifetime?

A. Yes, sir.

Q. Now, did you notice either one of these slippers when you came to the house, on the outside of the house?

30 A. Yes, sir. One slipper off her foot, 18 inches or 2 foot away from her foot.

Q. I show you photograph which has been marked Exhibit S-4 and ask you whether or not on this photograph you see the slipper in the position it was when you came to the scene?

A. Yes, sir.

40 Q. After having been outside the house for the period of time you mentioned, did you in the presence of some one of the officers who were there, enter the house?

*Robert McBurney, Sr.—Direct*

A. Yes, sir, I went with an officer.

Q. With whom did you enter the house?

A. Detective Ritchie.

Q. And what part of the house did you enter, Mr. McBurney?

A. The shed—through the back door.

Q. I neglected to ask you when you entered the shed or just before entering the shed on the afternoon in question, did you notice this stick? 10

A. Yes, sir.

Q. And where was this stick resting?

A. On the right hand side of the back door, standing up on nearly a forty-five.

Q. The wooden drawer that you have spoken of has been presented here, and has been marked Exhibit S-17. I ask you whether or not you recognize it as being the wooden drawer that was lying against the side wall of the house? 20

A. Yes, sir.

Q. I particularly direct your attention, Mr. McBurney, to what appears on this exhibit to be bloodstains, and ask you whether or not the bloodstains as they appear upon the exhibit now are as you saw them that afternoon?

A. Yes, sir.

Q. And mention has been made by you of a cardboard box which was to the front, toward the side of the house. I show you now what has been marked as Exhibit S-16, a cardboard box, and ask you whether or not you recognize that as being the box that was lying in the vicinity that you described? 30

A. That is the box.

Q. Directing your attention to what appears to be blood marks, do you recall whether or not the blood marks you saw on that box that day appear on the exhibit now? 40

A. Yes, sir.

Q. What did you observe upon entering the kitchen with Officer Ritchie?

10 MR. PALESE: Your Honor, I object for the same reasons that I advanced on all this line of questioning, no testimony here as to whether or not there has been any changing or moving about from the time of the commitment of the crime to the time Mr. McBurney entered the shed.

THE COURT: The objection is overruled.

MR. PALESE: Will your Honor allow me an exception?

20 THE COURT: Yes.

The defendant prays an exception which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

BY THE COURT:

30 Q. Will you describe, if you will, the conditions as you observed them in the shed.

A. The shed was all tore up. There was some cement bags and a bag of lime that I had been using for building, that I put in there to keep them out of the rain. One of the bags was torn open and the lime was all over the floor, and a chair, which was yellow or cream, was upside down, and there was some blood stains on the chair, as though there had been a fight or scuffle of some kind in the shed.

40 MR. PALESE: I ask that that be stricken out.

*Robert McBurney, Sr.—Direct*

THE COURT: That will be stricken, as though there had been a fight or scuffle of some kind in the shed.

Q. Did you or did you not notice one of the slippers that I have heretofore shown you in the house?

A. No, I don't remember that, remember that 10  
slipper.

Q. You don't remember that?

A. No, sir.

Q. Did you go into what has been described as the parlor or sitting room?

A. Yes, sir.

Q. Will you describe for us the conditions that you found in the parlor or sitting room when you went in there that afternoon?

A. Just as you go in the door there was a rocking 20  
chair and my wife's pocketbook was turned upside down and the contents strewn over the seat.

Q. Did you recognize that pocketbook as being your wife's pocketbook?

A. Yes, sir.

Q. Where was the radio which has been produced here and which has been marked as an exhibit in this case, bearing No. S-1? Where was it when you left the house or when you last saw it in the house?

A. On a little table, a radio table. I had taken the 30  
time from the radio that morning before I left.

Q. In what room was it?

A. The front room.

Q. That is in the parlor?

A. Yes, sir.

Q. When you came home was the radio there or missing?

A. It was missing.

Q. Then, did you or did you not go upstairs in 40  
the bedroom?

A. No, sir.

Q. You did not go upstairs?

A. No, sir.

Q. Were you there when the state police took photographs?

A. Yes, sir.

10 Q. Do you recognize the state police officer Mr. Deroskewicz as being the officer who took the photographs?

A. Yes, sir.

Q. At the time that you were there, the time that intervened between your arrival and that the state policeman came there to take the photographs, did anybody touch, disrupt, or disturb the things in your view?

A. No, sir, didn't allow any one near there.

20 Q. Are you familiar, Mr. McBurney, with the footpath or some walk leading from the back of the farm where you and your family lived out to Hickstown Road?

A. Yes, sir, every inch of it.

Q. Had you and other members of your family walked through there at times?

A. Yes, sir.

Q. How far is it from the back of the house, walking through the woods, to the Hickstown road?

30 A. About a quarter of a mile through the pathway to the Hickstown road.

Q. Walking through that road is one obscured from view from either the Buffalo Road or the Hickstown Road?

A. Yes, sir.

Q. What sort of country or what kind of terrain do you have there?

A. Heavy timber.

40 Q. To get to the place where the defendant, Rob-

*Robert McBurney, Sr.—Direct*

ert Cox, lived on April 23 if one wanted to go by road how would one go from your house?

A. Going from our house we would go out the back way to the path straight up Hickstown Road to the first house.

Q. If the road were used, how would you go?

A. Out Erial Road to Hickstown Road and then directly to the house. 10

Q. Is his home past Erial Road?

A. Yes, sir.

Q. Erial Road crosses Hickstown Road?

A. Yes, sir.

Q. What is the nearest house to where you and your family lived on the farm, Mr. McBurney, aside from the one which was vacant?

A. Bungalow Inn on Hickstown Road.

Q. What would you say is the distance between your place and that place? 20

A. By the way of the road it would be close to half a mile.

Q. Was that occupied on the day, April 23, or was it vacant?

A. That I don't know.

MR. ORLANDO: Cross-examine.

MR. PALESE: No questions. 30

BY THE COURT:

Q. Mr. McBurney, do I understand that Buffalo Road, on which you live, may be about two miles long; is that right?

A. Yes, sir, just about.

Q. Along the whole road are only these two houses, your own house and this house which was vacant? 40

A. Yes, sir.

Q. And the other end of the road, not the Hickstown Road end of it, where does it lead in the other direction?

A. It goes into a dead end.

Q. Comes into a dead end?

10 A. Yes, sir.

MR. ORLANDO: Your Honor, please, I have three photographs which I have asked the trooper who took the original photographs to enlarge, dealing with three positions already indicated by the smaller photographs. If counsel has no objection I would like to offer them and have them marked as exhibits. If not, I shall be obliged to call the trooper.

20

THE COURT: Show them to counsel.

MR. PALESE: I have no objection by reason of the fact of the enlargement, but I do interpose the same objection to the pictures as I did to the smaller pictures, that they were taken some time after the crime was committed and that there is no testimony that there was no changing or moving around of the objects represented by these pictures.

30

THE COURT: Of course, those smaller photographs are in evidence.

MR. PALESE: I wanted to object also —

THE COURT: You do not object that they are enlargements or that they constitute duplications of the exhibits?

40

MR. PALESE: No.

*Motion to Strike Exhibits*

THE COURT: They will be received, and I think they should be marked to correspond with the smaller photographs.

MR. ORLANDO: The first one is Exhibit S-3, a photograph showing the front view of the road with the two boxes that face the machine, and we will ask that this be marked S-3A. 10

Another is a view showing the back part of the truck and the stoop leading to the shed, which is the photograph already received in evidence was marked S-4, and we ask that this be marked S-4A.

The other photograph is one which bears Exhibit No. S-6 in the original photograph, and we ask that this be marked S-6A.

THE COURT: They may be marked. 20

(The photographs referred to were marked State's Exhibits S-3A, S-4A, and S-6A respectively.)

MR. ORLANDO: Now, I think, your Honor, all the exhibits which have been marked for identification have been offered in evidence, but if not —

THE COURT: Yes, I think they all have been marked in evidence. 30

MR. ORLANDO: With that the State rests its case.

MR. PALESE: If your Honor please, my first motion is directed to the exhibits and to the testimony that your Honor permitted during the course of the trial whereby several witnesses testified that they observed and did make some observations of 40

*Motion to Strike Exhibits*

the conditions at the McBurney farm, if we may call that the site of the crime, although they appeared there some time after the crime is alleged to have been committed, that is, assuming that the statement that was admitted in evidence correctly states the time at 11 or 12 o'clock noon. The testimony of the young boy McBurney was that he got there about 4:10 or 4:15 of that day, and that the other witnesses and officers who testified got there, some at 4:30, some at 5:15 and some as late as 6:30. Your Honor, if I understand your rulings correctly, permitted that testimony to go in and permitted the exhibits to go in upon the fact that subsequent to the admission of these exhibits and subsequent to the witnesses being permitted to testify as to what they observed when they arrived at the scene, that there would be some connection or some testimony offered on behalf of the State that there was no moving around, no changing of the objects represented on these exhibits from the time of the commission of the crime to the time they were observed by these witnesses. My recollection, and I tried to follow it rather closely after your Honor made such a ruling is there wasn't one iota of testimony presented on behalf of the State to show that those conditions had not been changed, with the exception of the father, or the husband, who testified that he left at 6:45 in the morning and when he came home at 6 o'clock in the evening, there was some change or moving around of these objects in the house. I feel that they have failed or the State has failed to show that these pictures or the object represented by the pictures were not as they were at the time the crime was committed, that is as far as the exhibits and the testimony of the witnesses are concerned. I ask that in view of your Honor's

*Motion to Strike Exhibits*

ruling, and in view of the failure of the State to have connected up that phase of the case, your Honor should strike from the case the exhibits that were offered and admitted into evidence by reason of your Honor's ruling, and also the testimony given by the several witnesses with the understanding they would be connected, be stricken from the case. 10

THE COURT: Which witnesses do you have in mind whose testimony you desire stricken?

MR. PALESE: I have in mind the testimony of the two policemen, the testimony of Detective Ritchie, the testimony of Trooper Deroskewicz, I think his name is, and I have in mind the testimony of Mr. Chew. I have in mind the testimony of Mr. Erdbrink, and I have in mind the testimony of Robert McBurney, Sr., I think his boy had the same name, if I am not mistaken, and also of the boy. Now, all of that testimony plus the exhibits or the pictures that were taken by the State Trooper at 6:30, I think, in the afternoon, I say to your Honor all of that testimony was put in, as I understand your Honor's ruling on the theory they would be connected up. Now, there has not been a bit of testimony offered on behalf of the State to show that the conditions were identical with the conditions at the time the crime was committed. 20  
30

THE COURT: It was never the purport of the Court's ruling it would be essential for the State to show that nothing had been moved from its position from the time the crime was committed. I think all of that testimony, particularly through the medium of the photographs links up with the testimony of the young man, Robert McBurney, Jr., 40

*Opening Statement for Defendant*

who first discovered the dead body, and who described the condition in which he found things when he did make that discovery. Furthermore, the defendant's own statement is replete with matters which he said he did with respect to going to the house and opening the drawers and opening the pocketbook and that kind of thing. Some of the matters, for instance, which have been testified to have been accounted for by the defendant's own story of what he did while on the premises. Therefore, the application is denied.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Yes.

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge

MR. PALESE: If your Honor please, I have before me the opening of the Prosecutor in this matter, in which he opened to the jury and said that the State would proceed upon the theory that this defendant brought about the killing of Mrs. McBurney in an attempt or an effort to perpetrate the crime of robbery. Second, of course, he added that in addition to that if the State failed, as I read his opening, if the State failed in that regard, that he then would endeavor to show that between the striking of the first blow and the striking of subsequent blows that the defendant wilfully and deliberately premeditated the killing of Mrs. McBurney.

Now, there are no facts in this case at the present time that would indicate that the defendant when he

*Opening Statement for Defendant*

went to the McBurney home either contemplated or had in mind, or attempted to commit or attempted to perpetrate the crime of robbery. I know your Honor is familiar with the definition of it, and that is an attempt on the part of the defendant to have taken by force or violence anything belonging to Mrs. McBurney or anything that may have been in her presence. Now, the only thing we have in this case is the statement of the defendant, and his statement is devoid of any suggestion on his part that he went to the McBurney home on the 23rd of April, 1941, with any design or any thought in his mind to either commit or perpetrate the crime of robbery. He said he went there to get a glass of water. As a result of that, a scuffle ensued between the two, and he then struck the blow, and it was not until after the blow had been struck or the blows had been struck that she fell to the ground, that he then conceived the idea or design, if we may call it that, to go into the house and get whatever he could get out of it. I say there is no testimony in the case other than the defendant's testimony, and in that he says there was no design or any contemplation on his part to commit robbery or attempt to commit robbery if that be true. He went there to get a glass of water, and after striking these blows and the falling down of Mrs. McBurney to the ground, he then conceived or designed or contemplated, be it robbery or whatever crime it may have been he committed at that time. I think our cases are settled that surely, under those circumstances, if a person kills that the attempt to commit or to perpetrate the crime as set forth in our statutes, of a robbery, burglary, arson or other crimes after the person was hit and fell to the ground, and he then designed to commit robbery, surely that does not come within the meaning of the crime of murder in our statute.

*Opening Statement for Defendant*

There is no testimony here, I say, or anywhere in this case at the present time, with the exception of the fact he himself said after the killing had been perpetrated that he then designed to go into the house to take whatever he could out of it. Now, I think your Honor ought to dispose of that upon this motion because I do not think if the case is going to the jury upon the question of robbery at this time, you should permit it to go to the jury on the question of whether or not this defendant wilfully and deliberately premeditated, this killing. Unquestionably there is nothing concerning robbery in this case and the jury ought not to be burdened with the responsibility of determining whether this killing was occasioned by this defendant in an attempt to commit the crime of robbery. That, of course, is insofar as the robbery is concerned.

I think also in this case, your Honor is dealing somewhat with the other part of the opening of the Prosecutor to the jury that if the killing was not as a result of an attempt to commit robbery, it then comes under the other provision of our Crimes Act that it was a wilful, deliberate and premeditated killing. I say this if that is the way it was, and if we eliminate the question of robbery in this case and this matter is presented to the jury, it can only be presented to the jury as, I think, from the testimony we have in the case at the present time upon the theory—again falling back upon the statement made by the defendant because that is all they have in this case—I think it would be incumbent upon the State to have established at the present time, if they expect this case to go to the question on the question of wilful, deliberate and premeditated killing, that it is upon the State to have established at this time that after the striking of the first blow or the striking of the second blow and before this man wilfully

*Opening Statement for Defendant*

deliberated upon the fact and premeditated upon the fact, that Mrs. McBurney was not dead because if there was any striking there after she fell to the ground or if she were dead, then any subsequent striking, any subsequent design on the part of this defendant and any subsequent desire on his part to bring about the death by a subsequent striking, surely would not make him guilty of murder under our statutes. 10

Now, Dr. Saunders testified that at least two of these fractures that he examined could have caused instant death, or momentarily I think is the word he used. I say there is no testimony here. If the State is to proceed upon the opening it made to the jury that following the first or second striking of this woman by the defendant, if that robbery is eliminated, that at that time, after such a striking that the defendant then made up his mind, deliberated upon the fact, designed to kill this woman and suffer the consequences of his act, and that this woman was still alive when he struck the fatal blow because I know your Honor will agree that all of these must precede the striking of the fatal blow in order to bring about a conviction of this defendant for the crime of murder. 20

Now, I had the stenographer make me a copy of the opening, and the Prosecutor there makes that opening to the jury. He has not substantiated it with the exception of the confession, if we may call it that, or the statement of this defendant. In the statement he says he may have struck her the second or the third time. I say even with that, if it be considered true to be some testimony before your Honor but before the case goes to the jury on that phase, it must be shown that Mrs. McBurney was still alive at the time the subsequent blows were struck by this defendant. I say for this reason, I think your 30 40

Honor ought to at this time dispose of the question of robbery and also dispose of the question of whether or not this defendant, if the Prosecutor intends to carry out what he opened to the jury, that this defendant did design and premeditate the killing of this woman after the striking of the first or second  
10 blow. Now, there is no testimony here that Mrs. McBurney was still alive at the time the defendant was deliberating and premeditating upon the killing.

THE COURT: What judicial action do you want taken, Mr. Palese?

MR. PALESE: I think, if your Honor please, the judicial action, I feel under the circumstances is that the State has opened —  
20

THE COURT: I understand that but what do you want done?

MR. PALESE: At this time, there ought to be a direction insofar as the accusation made by the State that this woman was killed as a result of an attempt to commit or perpetrate robbery at the time of the killing.

30 THE COURT: What kind of a direction do you mean? You want me to direct the jury on some point or other?

MR. PALESE: Yes, I think, your Honor, at this time, ought to direct this jury that the case has proceeded upon the theory—I mean if your Honor is agreeable to one or the other. I am coming to the other as to premeditation. Your Honor should now tell this jury that the State has failed to estab-  
40 lish this woman was killed as a result of this

*Defendant's Motion for Direction*

defendant's attempt to commit or perpetrate the crime of robbery because the proof at the present time does not warrant such a verdict from this jury. Now, secondly, I want your Honor at the present time, if I am right in my argument so far as this second charge that this woman was killed as the result of wilful, deliberate and premeditated acts on the part of the defendant, that, as the result of the state having failed to establish that thing at this time that between the second or third or fourth blows, upon which they rested their case, that the State has failed to show that Mrs. McBurney, at that time, was still alive, and having failed to do that, then all this defendant can be convicted of at the present time is an unlawful killing, which, of course, would make it murder in the second degree.

10

20

THE COURT: Have you rested your case?

MR. PALESE: No, I haven't.

THE COURT: The motion is denied.

MR. PALESE: Will your Honor allow me an exception?

THE COURT: Yes.

30

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge

40

## EVIDENCE ON BEHALF OF THE DEFENDANT.

ROBERT COX, sworn.

10 BY MR. PALESE:

Q. Mr. Cox, can you hear me over here?

A. I can't hear so good. You will have to talk louder.

Q. Can you hear me from here?

A. Yes.

THE COURT: Keep your voice up so all the members of the jury can hear your testimony.

20

Q. Mr. Cox, how old are you?

A. Forty-five.

Q. On April 23, 1941, where did you live?

A. Hickstown.

Q. You will have to talk loud enough so that the last juror can hear you.

A. Hickstown.

Q. How long have you lived at Hickstown?

A. I have been there ever since I come from Pittsburgh around 1932.

30

Q. 1932?

A. Yes.

Q. With whom do you live at Hickstown?

A. Miss Lillian Hicks.

Q. Is that the lady who was on the stand this morning?

A. Yes.

Q. Mr. Cox, how long had you known Mr. Me-Burney?

40

*Robert Cox—Direct*

A. I guess about six years, I guess six or seven years the best I can remember.

Q. Had you ever been employed with him?

A. Yes, sir, we worked together.

Q. On a WPA project?

A. Yes, sir.

Q. During that time did you know Mrs. McBurney? 10

A. Yes, I know her.

Q. Had you known her the same length of time that you had known Mr. McBurney?

(There was no answer.)

Q. Had you known her the same length of time that you had known Mr. McBurney?

A. Yes, sir, but she wasn't present at the time when I first met him, I had not seen his wife. 20

Q. You had not seen his wife?

A. No.

Q. Had you ever been to their home before April 23, 1941?

A. Not at the home where they lived.

Q. Had they lived at some other place than where they lived on April 23?

A. Erial Road, they used to live there around three or four years ago. 30

Q. Mr. Cox, were you employed prior to the 23rd of April of this year? Were you working?

A. Well, I had been laid off for thirty days vacation on WPA, but that Monday, that was on the 21st, I think it was Monday, why I had secured a job on the farm cleaning scallions and my lady that I lived with, so Tuesday, the next day, I stayed home to get my check.

Q. You got your check on Tuesday, April 22?

A. Yes, sir.

Q. You got your check from the WPA?

A. Yes, sir.

Q. What did you do after you had gotten your check?

10 A. Didn't work that day, you know, so I went to Blackwood, you know, where I get to the postoffice to get my check, and I get it, and I went to Wright's Cafe.

Q. Where is Wright's Cafe?

A. About a square up above the postoffice, the other side of the bank.

Q. In what town is that?

A. Gloucester Township, the same township I live in.

20 Q. This was on Tuesday?

A. On Tuesday morning.

Q. What time did you get home Tuesday evening?

A. Why, I didn't come home at all. I went to Camden after I had a couple of drinks, and I didn't get home until—I don't remember what time it was when I got back, I was pretty full.

Q. What time did you get up the following morning which would be the 23rd of April? What time did you get up?

30 A. I looked over that clock and I think it was around about eight-thirty.

Q. About eight-thirty in the morning?

A. About that.

Q. Just tell us what you did after that.

40 A. Well, after I got up I dressed. At first before I got up the woman asked me was I going to work, and I told her I feel too bad, I had been drinking heavy all day before, and I told her I feel too bad I couldn't make it today, so I gets up and I put my clothes on and walks out the house. When I came home in the

*Robert Cox—Direct*

evening I came home with a pint of gin and a pint of wine, and I goes out in the kitchen and takes me a big drink of gin and a big drink of wine. I sat down awhile, and after a while, I imagine fifteen or twenty minutes after that I take another little drink.

Q. Did you leave the house after that?

A. Some time, but I didn't leave right away, and I walked around the yard there a little while, you know, and then I go in the house and I takes me gin, I couldn't say how long I had been in the house, but I imagine it was around about over an hour, an hour anyway, and I put the pint of gin in this pocket and the pint of wine in this pocket, so I says, "I will take a walk, maybe I will feel better," so down the road I went, and then I got on the road a little piece and I take out my bottle and take another drink until I got down pretty near a little place, I forget the name of it, it is on the left-hand side going down to Hickstown, going to Lamb's Terrace, so I stopped again and I take another drink.

Q. All right, continue.

A. Then the little road winds around to the right, and I was going down this road, down Buffalo Road, and I come to a stump, a big stump in the woods, and I sit down again, and I go to the bottle in my pocket and I looked at the bottle and there wasn't much in there, there wasn't much gin, and I took the bottle and take the rest of the gin and throw the bottle away in the woods some way, and pretty soon I get the wine out and finish it. I stay down around there fifteen or twenty minutes, and I was feeling hot and thirsty like, I wanted some water, so I thought well, I will walk on and go home, so when I got along to McBurney's —

Q. You got to the McBurney's house?

A. Yes, after I got off the stump.

Q. What time of day was it when you got to her home?

A. I imagine it was before dinner time.

Q. Before dinner time?

A. Yes.

Q. Did you know it was the McBurney home?

10 A. No, sir, I didn't know whether she was home or not.

Q. Did you know it was her home?

A. Yes, I heard that is where she lived, you know.

Q. Then what did you do when you got to the house? What did you do?

A. I went around to the back and knocked at the door.

Q. You will have to keep your voice up, keep it up. What did you do?

20 A. I went around to the back and knocked at the back door.

Q. Is there any fence or gate around this house?

A. No, sir, no fence.

Q. How far is that house away from the road?

A. Well, it was not far, probably around about, I guess in my estimation about fifty, maybe sixty feet, if I am not mistaken.

Q. You walked from the road fifty or sixty feet to the house?

30 A. Yes.

Q. You went to the back of the house?

A. Yes, I went to the back of the house.

Q. What did you do when you got to the back of the house?

A. Knocked at the door.

Q. Did anyone answer the knock?

A. No, sir, no answer, so I knocked again.

Q. Then what happen?

40 A. Then she came to the door.

Q. Who was it that came to the door?

A. Mrs. McBurney.

Q. Tell us what she did when she came to the door.

A. When she came to the door I said, "Good morning," and she said, after I said that —

Q. You will have to talk loud so the gentlemen can hear you. 10

A. I said, "Good morning, Miss McBurney," and she didn't say good morning or nothing, she said, "What are you doing, Bob, coming here with all that liquor in you," just like that, and by that time the dog ran around her truck which was standing pretty near by the door there. She was walking on the stoop and by that time the dog ran around the side of the truck and he grabbed me by the leg, my leg is sore yet where he grabbed me, and I got a stick, and she went on and grabbed me by the leg and I started to beat the dog, make him turn me loose, and when I got near to the dog she reached and got a bat, and I grabbed the bat quick out of her hand, and I struck her. 20

BY MR. PALESE:

Q. Then you struck Mrs. McBurney? 30

A. Then I struck her. I don't know how many times I struck her, and I think I must have struck her about two or three times, and I don't know nothing else when I struck her the two or three times.

Q. Then what did you do after that?

A. Then after I struck her, I was so excited, and everything, I didn't know just what I was doing. My head was going around. The whiskey was working on me, and something seemed to say, "Go in the house, and see if you can find some change, and 40

get some more liquor this afternoon," so I goes into the house, and I goes into the house, and I went upstairs. I pulled out the drawer, and got a pocket-book. There wasn't anything in it. Then I picked up a radio, a little small radio sitting on the table, and I had taken that up, and I come on downstairs, and I walked out the kitchen door, and went out in the woods and went on home.

10 Q. When you went there on this afternoon, had you any intention, or had you made up your mind, or had you given any thought to the question of committing a robbery on that occasion?

A. No, sir, Mr. Palese, there wasn't no intention of mine at all going there and harming the woman. When she shoved me down up against the truck, and I was falling, when she reached for the bat, we were tussling, and then I grabbed the bat, she 20 grabbed it, and I grabbed the bat from her, why, I just lost my head, excited and full of liquor, and I didn't hardly know what I was doing. Then is when I struck her. I didn't have no intention at all of going there and harming the lady, or trying to rob the place whatever. If it had not been for the liquor I had in me, I never would have committed anything. I just didn't know what I was doing.

30 Q. Did you strike her after she had fallen down to the ground?

A. I don't remember seeing her fall. I never did look to see whether she fell, or not. I went right on in the house.

Q. Have you ever been convicted of a crime?

A. Never have, all my life I never have been convicted of no kind of crime whatsoever.

Q. You say you have been living down here since 1932?

40 A. Yes, sir.

Q. At Hickstown?

A. Hickstown since 1932. I have been knowing the lady, knowing her husband, and I never had anything against them, but when I went up there, I didn't have no intention of harming her in my heart whatever. I was just full of stuff, in fact, I wasn't to myself, I didn't know what I was doing.

10

MR. PALESE: Take the witness.

CROSS-EXAMINATION.

BY THE PROSECUTOR:

Q. As I understand, Mr. Cox, your explanation of this murder is that you were full of stuff, and it was the stuff that caused you to kill her, is that right?

20

A. That's right.

Q. That's your explanation of why you killed Mrs. McBurney, is that right?

A. At the present time I didn't have no idea I was going to kill her.

Q. That isn't the question. The question now is, do I understand you to say to this court, and to this jury, that the reason why you killed Mrs. McBurney was because you were full of stuff?

A. Yes, I was full of stuff.

30

Q. You say that the only reason you went to this farm house was so that you might get a drink of water?

A. That's the reason why I stopped there. I went in and stepped up, I didn't have no intention of going there to harm her at all.

Q. The only reason you went there was so you could get a drink of water?

A. That was it.

40

Q. Is that right?

A. Yes.

Q. Had it not been for the fact you wanted a drink of water, there is no reason that would take you to Mrs. McBurney's home, is that right?

10 A. I didn't have it in my mind whether I was going to stop there. I just come along there on my way home. I thought I would stop and get a drink of water.

Q. Had it not been for the fact you got a desire to get a drink of water, there was no reason why you would go to the McBurney farm, is that right?

A. No, sir, I would not have stopped.

Q. What?

A. No, sir, I would not have stopped.

20 Q. Do I understand you to say now that Mrs. McBurney made a grab for the baseball bat?

A. Yes, sir.

Q. When did she make a grab for the baseball bat?

A. When I was scuffling, getting up.

Q. Had you been thrown to the ground before that?

A. I pretty nearly hit the ground. I was falling on the ground, I was falling, and caught myself up against the truck.

30 Q. Who was it that caused you to fall down, were you pushed?

A. She was the cause of it.

Q. She pushed you?

A. Yes, sir.

Q. When she pushed you, you say you went down towards the ground?

A. I went down.

Q. Is that right?

40 A. I lost my balance the way I was standing, the way the dog had me by the leg, and the way she

shoved me, and I went on down against the truck, and then when I was getting up, then I looked, she reached down and got the bat, the bat, I guess one of the boys' bats, they had been playing there alongside the truck, and when she grabbed it I reached and grabbed it out of her hand.

Q. Did you grab the bat out of her hand? 10

A. After she had touched it, and she took it, I grabbed it.

Q. When, for the first time, did you conceive of the idea in your mind that Mrs. McBurney grabbed the baseball bat?

A. When I was getting up.

Q. When was the first time that you told anybody about Mrs. McBurney picking up the baseball bat, and you taking it out of her hand?

A. When is the first time I told anybody? 20

Q. Yes.

A. I told you, didn't I.

Q. You mean to tell me that when you were questioned in the Prosecutor's office you told me that she made a grab for the baseball bat and you took it out of her hand?

A. I remember telling you.

Q. Is that your explanation that you recall giving me in the Prosecutor's office?

A. Yes, sir. 30

Q. You mean to tell me then to-day that what you are saying now concerning taking the baseball bat out of Mrs. McBurney's hand is the same as you told it to me in the Prosecutor's office?

A. That's what I remember saying.

Q. I am going to ask you to listen attentively to the questions that were asked in the Prosecutor's office, and the answers you made then, and try to explain it if you can with what you are saying to-day. 40

“Q. After you got there, Mrs. McBurney was displeased to see you drunk?

“A. Yes, sir.

“Q. And she wanted you to get off the place?

“A. Yes, sir.”

10 Is that right, did I ask you those questions and did you make those answers?

A. I don't remember you asking me that.

“Q. And shoved you or tried to get you off?”

And your answer was, “Yes, sir.”

Do you remember that question and that answer?

A. No, sir, I can't remember.

Q. You don't remember it?

A. No, sir.

Q. And then this question was asked, and the answer follows:

20 “Q. When she did that, you picked up a baseball bat lying near a truck and struck her over the head with it? Answer: Not at that time. I didn't strike her until the dog grabbed me by my pants leg and I waved at him, and she shoved me up against the truck and there was the baseball bat standing up against the house and I taken the baseball bat and swung it like that (illustrating) and hit her.”

30 Do you remember telling me that?

A. I don't remember saying it.

Q. Do you say to-day that what I have just read is true or not true?

A. What you reading right now, Mr. Orlando, I can't remember saying.

Q. Do you say it is correct, or not correct?

A. Not correct.

Q. That's not correct?

A. It's uncorrect, I don't remember saying that.

40 Q. And then the next question follows:

*Robert Cox—Cross*

“After you struck her with the baseball bat, she went down?”

“A. She went down.”

Do you remember that?

A. She fell after I struck her.

Q. She fell after you struck her?

A. I say she fell after I struck her, but I don't 10  
remember nothing else.

Q. When you first went to this house, as I understand, you had this stick in your hand, is that right?

A. That looks like the stick I had.

Q. Is it or isn't it the stick you had?

A. Yes, that's the one.

Q. Is that the stick you had?

A. That's the one I hit the dog with.

Q. As I understand, you were carrying this stick 20  
in your hand, is that right?

A. That's right.

Q. Were you carrying it in your left hand or right hand?

A. I don't know what hand I had it in.

Q. You don't remember that?

A. I don't remember.

Q. You remember that the first thing you did after you came to the house, you went to the door which leads into the shed, is that right?

A. That's right. 30

Q. You say you knocked on that door twice, you remember that?

A. No, sir, I don't remember how many times I knocked.

Q. Didn't you just say a moment ago you knocked at the door twice?

A. Knocked the first time, I say I knocked the first time and nobody answered.

Q. Then you knocked the second time? 40

A. Knocked the second time, I don't know if I knocked any more.

Q. Do you remember whether you knocked with the right hand or the left hand?

A. No, sir, I don't remember what hand I knocked with.

10 Q. Do you remember having the stick in your hand when you were knocking at the door?

A. No, sir, I don't know if I had the stick in my hand at the time, or not.

Q. Do you remember whether or not you were on the stoop that leads into the shed when you were knocking at the door?

A. Whether I was on what?

Q. Before you get into the shed door there's a stoop on the ground, you remember that, a step?

20 A. I didn't pay no attention to that.

Q. I am going to show you a photograph, and ask you whether or not this refreshes your recollection. I show you photograph which has been marked Exhibit S11, and ask you to look at it, and tell me whether or not that photograph shows the place you were standing at the time when you knocked at the door?

A. I were around here.

30 Q. When you say "I were around here", what do you mean?

A. Round to the back there, the back door.

Q. Were you on the step when you were knocking at the back door, or not?

A. I can't remember whether I was up on the step knocking at the door, or not.

Q. You do remember knocking on this door that appears in this photograph?

A. Yes, sir, I remember knocking on that door.

40 Q. And then when Mrs. McBurney came to the

door, you remember whether you were on the step or off the step?

A. I don't know, I can't remember, Mr. Orlando, if I was on the step or off, when I knocked.

Q. Do you remember having the stick in your hand when she came out?

A. I don't remember, having the stick in my hand when she came out the door? 10

Q. Yes.

A. Talking to me?

Q. Yes.

A. Yes, I had the stick then.

Q. What hand did you have the stick in?

A. I don't know.

Q. Had the dog come before she answered the door, or did the dog come after she answered the door? 20

A. She answered the door, then she came out talking to me.

Q. She came to the door before the dog came and grabbed you by the pants leg?

A. Yes, she was at the door talking to me before the dog grabbed me.

Q. You had this stick in your hand?

A. I had the stick then.

Q. You remember that positively, do you? 30

A. Yes, sir, when I was talking to her I had the stick.

Q. When Mrs. McBurney came to the door, you were standing outside of the door, and she was standing inside the house, is that right?

A. Standing right in the door.

Q. Right in the doorway?

A. Yes.

Q. While you were standing there talking to her the dog came along, is that right? 40

A. She had come out the door then when I started talking. When the dog came around the back of the car she was standing outside there talking to me on the ground.

Q. When the dog came then you say Mrs. McBurney had come outside of the doorway?

10 A. Yes, sir, when he came around the house.

Q. Were you up on the step or off the step when she came outside of the door?

A. I was on the ground.

Q. You were on the ground, and she was standing on the step?

A. Yes, sir. I was on the ground when she was standing on the step when I was talking to her.

Q. You were back of the truck, is that right?

20 A. No, wasn't back of the truck, I was on the side of the truck.

Q. On the side of the truck towards the back?

A. No, towards the side.

Q. You were talking to Mrs. McBurney?

A. Yes, sir.

Q. And Mrs. McBurney said to you, "What are you doing here, Bob, drunk?"

A. She said—that's what she said, "What are you doing coming up here, Bob, drunk?"

30 Q. While you were there in that position, with the stick in your hand, the dog came along and grabbed you by the pants leg, is that right?

A. Grabbed me by my leg.

Q. Which leg was it, the left leg or the right leg?

A. He grabbed me where he caught me.

Q. Which leg was it, the left leg or the right leg?

A. Left leg he caught me, right by the skin.

40 Q. At that time you had this stick in your hand?

*Robert Cox—Cross*

A. I had the stick.

Q. When the dog grabbed you by the pants leg, you used the stick on the dog, isn't that right?

A. Yes, sir.

Q. You remember now whether it was in the right hand you had the stick, or the left hand?

A. I don't know which hand I hit him with, whether I had the stick in my hand, I couldn't say left or right hand. 10

Q. Are you left-handed or right-handed?

A. I can use both hands.

Q. You can use one hand just as well as the other hand?

A. Just as well.

Q. Do you remember what hand you had the baseball bat in when you struck Mrs. McBurney?

A. No, sir, I don't remember. 20

Q. You don't remember whether you struck her with the right hand, or with the left hand?

A. No, sir.

Q. Then the dog came there, and made a grab for your pants leg, on the left leg, and you had this stick and you struck the dog?

A. That's right, I struck it.

Q. Is that right?

A. That's right.

Q. And when you did that Mrs. McBurney, you claim, became displeased and pushed you? 30

A. Yes, sir, pushed me, and I fell towards the truck.

Q. When you fell, where did you fall with relation to the truck?

A. Sideways to where I was standing.

Q. I am going to show you a photograph, which shows the position of the truck, and I am going to ask you to mark on this photograph where you fell. 40

Do you see on this photograph, Exhibit S-11 the place where you fell with relation to the truck?

A. Right there.

Q. Where was that, mark it here with a pen, mark an X, X marks the spot where you fell.

A. I went back over here.

10 Q. All right, mark it with an X. Put a big-sized X, so we will be able to see it, a little larger than that. Does that mark that you have placed on photograph Exhibit S-11 show the place where you were when you fell?

A. I was right around the side, I was not standing in the back.

Q. You were on the side towards the back of the truck?

A. Right-hand side.

20 Q. The right hand side towards the back?

A. That mark looks as if I am standing at the back.

Q. Do you mean the mark at the side or back of the truck?

A. The side, the way it looks, it should be.

Q. The side towards the back, is that right?

A. That's right.

30 Q. When you fell there you saw a baseball bat. Where was it, lying on the ground or lying against the building?

A. It was on the ground.

Q. When you fell, what happened to the stick that you had in your hand?

A. When I fell?

Q. Yes.

40 A. When I hit the truck, and she shoved me, I dropped the stick, I dropped the stick, and then when I caught myself, when I went up against the truck, I caught myself like that, the bat was right

alongside the side there by the truck, and she reaches for the bat, and then when I balanced myself, getting on up, I grabbed the bat out of her hands. That's when I struck her.

Q. I am going back to the original question. Answer this. What happened to your stick that you held in your hand when you fell, did the stick remain in your hands, or did it fall? 10

A. It fell on the ground.

Q. The stick fell on the ground?

A. She shoved me, and I just dropped the stick.

Q. You say then when Mrs. McBurney shoved you

---

A. Yes, sir.

Q. You were shoved down towards the ground, and that the stick which you had in your hand fell to the ground? 20

A. I dropped it out of my hand. It must have fell to the ground.

Q. Are you sure the stick fell out of your hand when you fell?

A. Fell out of my hand.

Q. You are sure of that?

A. Yes, sir, when I fell.

Q. Do you remember whether or not the stick was out of your hand when you grabbed for the baseball bat? 30

A. Yes, sir, it was out of my hand then.

Q. You remember definitely that the stick was on the ground when you grabbed the baseball bat?

A. Yes, sir.

Q. Where was the stick on the ground with relation to where you fell. Was it right near where you fell, or did it fall some distance away?

A. I don't know how far away, or which way it went, I didn't pay that any attention. 40

Q. You do know it fell to the ground?

A. It wasn't on my mind which way it went.

Q. Where was Mrs. McBurney when you claim she grabbed the baseball bat, was she on the step, off the step, on the ground?

A. Off the step, on the ground, standing by me.

10 Q. Was she near that step that leads into the kitchen or the shed?

A. Yes, sir, she was near the step.

Q. Will you mark with a circle—you understand what I mean by a circle—the place where you claim Mrs. McBurney was when you were falling to the ground, and she was grabbing for the baseball bat?

A. Right along there where the wheel was.

20 Q. And as I understand, Mrs. McBurney was somewhere near the back right wheel of the truck, is that right?

A. That's right.

Q. And it was while she was in that position, right near the back rear wheel of the truck, that you say that she made a grab for the bat, and you grabbed the bat out of her hand?

A. I snatched it out of her hand.

30 Q. When you snatched it out of her hand, what did you do?

A. I hit her.

Q. Was Mrs. McBurney then standing up, or was she lying down?

A. She was standing up.

Q. Was she facing you, or did she have her side or her back towards you?

A. She was facing me when I struck her.

Q. Where was the first blow that you struck Mrs. McBurney, what part of her body?

40 A. The only thing I remember when I was swing-

ing the club she was standing in front of me, that's all I remember.

Q. Do you remember whether you struck her arm, or in the back, or in the side, or where it was you struck her the first blow?

A. The only place I remember was in front when I was swinging in front, I don't remember nothing else. 10

Q. When you struck that blow, you struck her with the intention of hitting her, didn't you?

A. I struck her, yes, I struck her, in my intention to hit her, but it wasn't my intention to kill her.

Q. You mean that you were intending to hit her just a little with the bat, so you would scare her away?

A. I don't remember how I hit her.

Q. You don't remember whether you struck her with the bat in your right hand, or struck her with the bat in your left hand, or whether you had the bat in both hands? 20

A. No, I don't remember which hand I had the bat in when I struck her. I was so excited, I was so excited, and the whiskey was having an influence on me, I didn't know what I was doing.

Q. What were you excited about, what had happened that had caused you to become so excited? 30

A. She and I were scuffling, and then the liquor, you know, had taken effect on me, I didn't know what I was doing.

Q. You want us to believe by that statement that at that time you did not know what you were doing?

A. No, sir, I didn't know what I was doing at that present time when I struck her. I was excited.

Q. You were excited?

A. Excited, I didn't have no idea what I was doing, Mr. Orlando. 40

Q. What were you excited about?

A. I didn't go there with the intention of harming the lady.

Q. The question is what were you excited about?

A. She and I were scuffling for the bat, and then having the liquor, I had all the liquor in me, I didn't  
10 know what I was doing.

Q. You say that you were successful in grabbing the baseball bat out of her hand. What was there to be excited about once you took the bat out of her hand?

A. I just didn't know what I was doing.

Q. You knew you were striking her with the baseball bat, didn't you?

A. I remember when I struck her, yes, sir, I remember when I was striking her.

20 Q. You knew you were striking her with the bat, didn't you?

A. I remember striking her once or two times, but I don't remember anything else.

Q. You remember after having struck her the first time, that you struck her again the second and the third time?

A. The only thing I remember I was so excited, and I hit fast, and I didn't know what I was doing. I must have struck her about one or two times. I  
30 don't know nothing else. I was just excited and I lost my nerve, I guess, and half crazy with liquor. I didn't know what I had done. I didn't go there, Mr. Orlando, with no intention at all of harming the woman, as sure as I am sitting in this chair.

Q. You were so excited, and so full of liquor, you didn't know what you were doing, is that it?

A. No, sir, I didn't know at that time what I was doing.

40 Q. You do remember, after striking her with the

baseball bat, whether it was one time or two times, three times, or four times, that you deliberately went through that house seeking to take whatever property you could put your hands on?

A. When I went in the house after I hit her, after I hit her, that's when I went in.

Q. Were you excited when you went in the house? 10

A. Yes, I was excited.

Q. Is that why you went in the house, because you were excited?

A. Must have been I was excited, I didn't know what I was doing. It looks like something said, "Go in the house".

Q. What was it told you to go in the house?

A. I don't know, a man, you know, under the influence of liquor, naturally he don't know when he is doing anything, anything that comes to him, he will do it. 20

Q. Had it been your experience prior to April 23, every time you got under the influence of liquor you would get excited and go in peoples' houses?

A. I have never went in nobody's house and done nothing like that.

Q. You had been under the influence of liquor a good many times before April 23, had you not?

A. Yes, sir.

Q. This was the first time that you were under the influence of liquor that something told you to go into the house, into a house that wasn't your house, is that right? 30

A. The house was not mine, but it just happened at that time that I was under the influence of liquor.

Q. This was the first time that you were under the influence of liquor, that the liquor urged you to go into somebody's house that was not your house?

A. Yes, the first time I ever been out like that, like I didn't know what I was doing. 40

Q. You mean you were so drunk that you didn't know what you were doing?

A. I was not what you call dead drunk, but I was under the influence of liquor and half crazy.

Q. Do you claim now you were half crazy at the time?

10 A. The way whisky will get you.

Q. When did you get out of your insanity, or partial insanity, when did you straighten out after you got away from there?

A. After I came home.

Q. You remember how you got away from Mrs. McBurney's farm, don't you?

A. I came out the road there by the house.

Q. Did you go down Buffalo Road and down Hickstown Road?

20 A. No, sir, I didn't go down Buffalo Road.

Q. Why not, that's the way you had come up, wasn't it?

A. The side road I come up.

Q. Isn't it true when you went to Mrs. McBurney's farm you went from your place down Hickstown Road, and then when you got to Buffalo Road you turned to the right into Buffalo Road up to the farm house?

30 A. On my way there?

Q. Yes.

A. Yes, sir, I remember coming that way.

Q. On your way to the McBurney farm, you came out Hickstown Road, until you got to Buffalo Road, and turned to the right on Buffalo Road right by McBurney's farm house?

A. That's right.

Q. You remember that?

A. I remember that.

40 Q. You remember just before going into the McBurney farm stopping?

*Robert Cox—Cross*

A. Yes, sir.

Q. You say something was hot inside and told you to go in and get something to drink?

A. Yes, sir.

Q. You remember that, don't you?

A. Yes, sir.

Q. You remember passing that bungalow on the Hickstown Road on your way to the McBurney farm? 10

A. I remember passing it.

Q. Why did you not go back home the same way you had come? Why didn't you go back home the same way you came?

A. That is what I don't know. I was excited when I came out of the house I don't know which way —

Q. That is the best explanation you can give? You do not know why you didn't go the same way you had come? 20

A. I don't know, I was excited and didn't know what I was doing.

Q. Is that the best answer you can make to-day?

A. Yes, it is, Mr. Orlando. I just went on out.

Q. And that is the best answer you can give here to us to-day?

A. That is the best I can give you. 30

THE COURT: We will recess until 10 o'clock tomorrow morning. The jury may be taken out.

(At this point a recess was taken until Wednesday morning, June 4, 1941, at 10 o'clock A. M.)

Camden, N. J., June 4, 1941.

Trial of the case resumed at 10 o'clock, pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

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ROBERT COX, resumed.

BY MR. ORLANDO:

Q. Mr. Cox, at the close of yesterday's session I was examining you about what explanation you had to make concerning why you took the back road on your way home from the McBurney farm rather than taking the same road that you had taken when you came to the McBurney farm, and the question I asked you, just to refresh your recollection was "Why did you not go back home the same way you had come? Why didn't you go back home the same way you came?" And your answer was, "That is what I don't know. I was excited when I came out of the house, and I don't know which way—" and then this question, "That is the best explanation you can give? You do not know why you didn't go the same way you had come?" And you answered, "I don't know, I was excited and didn't know what I was doing."

20

30

Now, do you recall having been questioned by me in the prosecutor's office on the evening of April 24 of this year?

A. Yes, sir, I remember being there.

Q. You remember being in the prosecutor's office, in this building, some time around nine-thirty or

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ten o'clock at night when I was questioning you concerning this crime?

A. I don't know exactly what time it was.

Q. It was in the evening?

A. Yes.

Q. Do you remember at that time I asked you this question: "Do you remember how you got from the McBurney's farm to your home?" And you made this answer: "Yes, sir, I remember I come—there is a little pathway going out through her garden and there's a short-cut and I come on through the pathway back of the woods on down to Erial Road." 10

Do you remember that?

A. No, sir, I can't remember that.

Q. You say now that the answer you made to that question was correct or incorrect?

A. I just can't remember, Mr. Orlando, that I said that. 20

Q. That is not the question. The question I am asking you now is, do you say now that the answer which you made at that time, which I have read, was correct or incorrect?

A. I guess it is incorrect. I can't remember saying it.

Q. Because you can't remember saying it then you say it is incorrect? 30

A. Yes, sir, it is incorrect. I don't remember saying it.

Q. Do you deny now that you made that answer?

A. I don't remember making it.

Q. You don't remember making that answer?

A. I just can't remember it now.

Q. All right. Then, do you remember the prosecutor asking you this question: "And when you got to Erial Road, what did you do?" And you made this answer: "When I got to Erial Road I looked 40

and I didn't see nobody see me and I crossed the road and goes on home."

Do you remember that?

A. No, sir, I can't remember.

Q. Do you say that answer was correct or incorrect?

10 A. Incorrect, I can't remember saying it now.

Q. Do you say that was incorrect?

A. Yes, sir, incorrect. I can't remember saying that.

Q. All right. Then, do you remember the prosecutor asking you this question: "Do I understand, Mr. Cox, you went back home a different way than what you had come, is that right?" And your answer was, "Yes, sir."

You remember that, don't you?

20 A. I can't remember exactly how I got home. I was pretty nearly out of my head. It was clearing up pretty nearly, getting over my excitement. I can't remember when I was coming through the field. Since I have been here I have been so worried and sorry of what I did my memory is leaving me. I can't hardly remember nothing.

Q. The question I am asking you now is this: Do you remember the prosecutor asking you this question, and you making the answer that follows:

30 "Question: Do I understand, Mr. Cox, you went back home a different way than what you had come, is that right?"

And your answer was, "Yes, sir."

Do you remember that question being asked you and you making that answer?

A. No, sir, I can't remember.

Q. Then this question was asked by the prosecutor and the answer follows:

40 "Question: And the way you went back home was the back way?"

*Robert Cox—Cross*

And your answer was, "Back way."

Do you remember that?

A. No, sir.

Q. Do you say that answer was incorrect?

A. Yes, sir, I don't remember saying it.

BY THE COURT:

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Q. The question is not whether you remember saying that. Do you say now on the witness stand that what is stated in that answer that you went back the back way is incorrect? In other words, is it wrong that you went back the back way or right that you went back the back way?

A. Your Honor, Judge, I just can't remember whether I came through the back way or not. I know I came through the back field that is back of my house, that I came through back of the woods. There is woods in the house.

20

Q. What you want us to understand now is that you don't remember how you came?

A. No, sir, until I got nearly home I remember coming through the field. That is the best I can remember.

BY MR. ORLANDO:

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Q. You don't know as far as your testimony goes today why you went back the back way?

A. No, sir, I don't remember why I came back the back way.

Q. Was your memory any better on April 24 when you were being questioned in the prosecutor's office or is it better today?

A. I can't say. I was worried both times. Since I have been in here my memory is getting worse.

40

Q. April 24, Mr. Cox, was the day after you were arrested, is that right? You were arrested on the evening of April 23, is that right?

A. Yes, sir, on Wednesday.

10 Q. Was your recollection of what happened on April 23 better the day following, namely, April 24, or is it better now while you are on the witness stand?

A. My memory is a little worse.

Q. What is that?

A. My memory is a little worse. I can't hardly remember a lot of things. Maybe I said it. I don't know. My memory is worse.

Q. Your memory is worse now than it was on April 24?

A. It is getting worse.

20 Q. It is getting worse?

A. Since I have been here.

Q. I am going to ask you whether or not you remember the prosecutor asking you this question and you making the answer that follows:

“Question: You took the back way so that nobody could see you, is that right?”

And your answer was, “Yes, sir.”

Do you recall that?

30 A. No, sir, I can't recall that. No, sir, I can't recall that.

Q. Did you take the back way so nobody could see you?

A. I didn't have my mind on nobody seeing me. I don't think I was thinking about that.

Q. So when you made that answer to the prosecutor on the evening of April 24, that you took the back way so nobody could see you, would you say that was incorrect?

40 A. Yes, sir, it is incorrect, I don't remember saying it now.

Q. Then this question was asked you by the prosecutor:

“Question: When did you conceive that? When did you think about the idea of going home by the back road instead of the other road? Was that when you were in the house or after you came out of the house?” And the answer was: 10

“After I came out of the house is when I decided to come through the woods.”

Do you remember that question and answer?

A. No, sir, I do not, I don't remember.

Q. If I told you that was the question that was propounded and the answer which I read is the answer that you made, would you say now that that was a truthful statement that you made or an untruthful statement? 20

A. I don't remember saying it.

Q. You don't remember saying it?

A. No, sir.

Q. Forget for a moment whether you said it or not, and I ask you now was it true that you came out of the house and then and there you made up your mind to go through the back way.

A. I guess it is untrue. I don't remember which way I came from the house. I don't remember which way I came out when I left the house. 30

Q. Now I am going to ask you whether or not you remember this question being propounded by the prosecutor and you making the answer as follows:

“Question: In other words, as soon as you came out the McBurney house, it came to your mind that it would be best for you to go that back way so nobody could see you, is that right.” And your answer was, “Yes, sir, that's right.” 40

Do you recall that question being asked you and that answer being made?

A. No, sir.

Q. You don't recall that question being asked and that answer being made?

A. No, sir.

10 Q. I ask you today whether or not it is true that when you came out you conceived, when you came out of the house you conceived the idea that the best thing for you to do was to go around the back way so no one could see you?

A. No, sir, I don't remember saying it.

20 Q. The question is not whether you remember saying it. The question now is whether or not it is true or not true that when you came out of the house, the McBurney house, you made up your mind that the best thing for you to do was to go through the woods so nobody could see you.

A. No, sir, I don't remember saying it.

Q. That is not the question.

THE COURT: The question is not what you said. Forget that part, forget what you have said on another occasion. What do you say now?

30 THE WITNESS: It is untrue. I don't remember saying it, Mr. Orlando.

THE COURT: That is not the question. Forget what you said on another occasion. What do you say now? Did you or did you not make up your mind when you left the McBurney home that the best thing you could do was to go through the woods so no one could see you?

40 THE WITNESS: No, sir, your Honor, Judge,

*Robert Cox—Cross*

I don't have it in mind. I don't know what I had in mind, whether no one would see me or not.

BY THE COURT:

Q. Then you say now that you did not make up your mind to that effect? 10

A. No, sir, I did not make up my mind.

BY MR. ORLANDO:

Q. I am going to ask you whether or not you remember this question being asked by the prosecutor and the answer that follows being made by you.

“Question: And the reason I understand you wanted to go the back way was so that no one would suspect you of having done anything wrong?” And your answer is, “That’s right.” 20

Do you recall my asking you that question and you giving me that answer?

A. No, sir.

Q. I ask you now on the stand is it or is it not true that the reason you made up your mind to go back by the route through the woods was so that no one would suspect you of having done anything wrong? 30

A. No, sir, I don't remember saying that.

Q. When did you realize, Mr. Cox, on the day of April 23 that you had done something that was wrong?

A. Well, after I got home, I pushed the door open and I went on in the house, and I sit down in there a good while and my nerves are getting together, I wasn't quite so excited, my senses were coming back to me, and then I realized. 40

Q. How long was that after you left the McBurney home that you got home?

A. I just don't remember.

Q. Would you say it was five, ten, fifteen, or twenty minutes that elapsed before you got home, as you have explained?

10 A. I don't know exactly how long it took me to get home.

Q. How long after you got home was it that you made up your mind that you had done something wrong?

A. I was in the house a good while.

Q. How long would you say?

A. I don't know myself how long it was. I can't remember how long it was.

20 Q. Was it before or after you put the radio in the basket that you made up your mind that you had done something wrong?

A. Before I put the radio in the basket, then I remember that.

Q. Was that before you borrowed the money in order that you might go to Philadelphia?

A. That was the time, before I went out.

Q. Is that what you want us to believe is correct, the statement as to when you realized that you had done wrong?

30 A. That was the first time, after I got home and sat down and my senses was coming to me. I remember then about what I did.

Q. Now, I am going to ask you whether or not you remember this question being asked you by the prosecutor, when you were being questioned on the evening of April 24, and you making the answer that follows:

40 "Question: You knew, did you not, when you were leaving the farm house that you had done

*Robert Cox—Cross*

wrong, is that right?" And you answered, "Yes, sir, I realized then, it come to me I had done wrong."

Now, did you make that answer in answer to that question?

A. I don't remember it.

Q. Do you deny that you made that answer? 10

A. I don't remember making it.

Q. Do you say now that was correct or incorrect when you told the prosecutor in answer to his question that you realized when you came out of the house you had done something wrong?

A. It is incorrect, I don't remember saying it.

Q. The question is not whether you remember saying it. The question I am asking now is it true or not true that you made up your mind that you had done something wrong when you came out of that house. 20

A. Not true. I had not made up my mind. I didn't know what I had did.

Q. I am going to ask you this question and ask you whether or not you remember it being propounded to you and the answer that follows being made by you in speaking to the prosecutor in his office on April 24:

"Question: And you figured that by taking the short cut through the woods you would be able to get to your home without being seen by anybody?" And you answered, "Yes, sir." 30

Now, do you recall that question being asked you and that answer being made by you?

A. No.

Q. Do you say that question was not asked and that answer was not made?

A. I don't know whether you asked me or not. I don't remember. 40

Q. If that question was asked and if you made that answer, what is your statement today as to the correctness or incorrectness of that answer?

A. Incorrect, I don't remember saying that.

10 Q. Now, you remember, Mr. Cox, that the day you went to the McBurney farm on April 23 you had rubbers on?

A. I can't recall.

Q. You don't remember if you had rubbers on?

A. No, sir, I don't remember whether I had rubbers on or not at that time.

Q. You say now you don't know whether you had rubbers on that day or not?

A. No, sir, I don't remember.

Q. You did own rubbers, did you not?

A. Yes, I had a pair of rubbers home.

20 Q. You did wear those rubbers from time to time?

A. I wore them working all the time.

Q. I show you what has been marked in evidence as Exhibit S-15, a pair of rubbers, and ask you whether or not you recognize these rubbers as being your rubbers.

A. Yes, sir, those are my rubbers.

Q. They are your rubbers?

A. Yes.

30 Q. When did you last see them?

A. I can't recall when I seen them last.

Q. When do you think you saw them last, as far as you can recall?

A. Monday.

Q. When?

A. Monday, the 22nd.

Q. Monday the 22nd or Tuesday the 22nd?

40 A. I had them on Monday, through the woods to work. I wore them all the time cutting wood, and I also put my rubbers on, gentlemen of the jury,

*Robert Cox—Cross*

when I am going through the woods to cut wood. I can't remember whether I had them on Tuesday or not, I can't remember right now.

Q. You mean to tell us that you don't remember whether on Wednesday, April 23 you hid these rubbers under some leaves off the Hickstown Road?

A. No, sir, I don't remember having them on Wednesday, I don't remember. 10

Q. You mean you have no recollection of having hid those rubbers on the 23rd day of April?

A. No, sir, I don't remember hiding them.

Q. Well, I am going to ask you whether or not you recall on the evening that you were questioned by the prosecutor being asked this question and you making the answer that follows:

“Question: Mr. Cox, when you first went to the McBurney home you had rubbers on, didn't you?” And you said, “Yes, sir, I had my rubbers.” 20

Do you recall that?

A. No, sir, I can't recall that.

Q. Do you remember if that question was asked and that answer being made by you to the prosecutor?

A. I don't remember having them on.

BY THE PROSECUTOR: 30

Q. That isn't the question I am asking you now. Do you remember that question, or do you deny that question being asked you by the Prosecutor, and you making the answer that followed?

A. Yes, I deny it.

Q. You deny it?

A. Yes, sir, I deny it, I don't remember saying it. 40

Q. Do you recall the Prosecutor asking you this question:

“When had you put those rubbers on, that morning when you left your home? And your answer, “I had the rubbers on that morning when I got up.”

10 Do you remember that question being asked, and that answer being made?

A. No, sir.

Q. Do you deny that question was asked you and you made that answer?

A. I don't remember.

Q. Do you deny now on the stand you had those rubbers on the morning of April 23rd?

A. I don't remember having them on.

Q. Do you deny having them?

20 A. I will have to deny it, I don't remember having them on.

Q. Then the question was asked you by the Prosecutor,

“And you wore your rubbers from the time you left your home until the time you got to McBurney's farm?

“A. Yes, until I got to the farm.”

30 Do you remember that question being asked of you, and you made that answer?

A. No, sir.

Q. Do you deny that question was asked you, and you made that answer?

A. Yes, sir, I don't remember.

Q. Do you say now on the witness stand testifying here that that is incorrect?

A. Yes, sir, it's incorrect, I don't remember saying it.

40 Q. Then do you recall the Prosecutor asking you this question, and you making the answer that follows:

*Robert Cox—Cross*

“When was it that you took those rubbers off and threw them away?”

“A. I threw them away before I got to my home.”

Do you remember that?

A. No, I don't remember when I threw them away. I don't remember having them on, I can't recall. 10

Q. The question I am asking you now is whether or not you remember the Prosecutor asking you this question:

“When was it that you took those rubbers off and threw them away? And you said, “I threw them away before I got to my home.”

A. I don't remember saying it.

Q. Do you deny the correctness of that answer? 20

A. Yes, I can't remember, I have to deny, I don't remember saying it, I can't remember.

Q. Then the question was asked you by the Prosecutor as follows, and the answer follows that.

“While you were in the woods”?

“A. No, I was coming down the road.”

Do you remember that?

A. I didn't quite understand.

Q. This question was asked you by the Prosecutor, following the one that preceded it, “While you were in the woods”? “A. No, I was coming down the road.” 30

A. No, sir, I don't remember that.

Q. Isn't it true that you threw those rubbers away, or put them away under the leaves, while you were on the road?

A. No, sir.

Q. That's not true?

A. Not true, I didn't have no rubbers under no leaves; I don't remember having them. 40

Q. And the question I am going to ask you now, is whether you remember this question being asked you by the Prosecutor, and the answer that you made following it:

10 “Q. What made you take the rubbers off and throw them away?” And the answer is as follows:

“The reason why I threw them away, I says to myself, ‘Now, somebody may track me’ and I said, ‘I think I’ll take my rubbers and throw them away’. So before I got to the corner I seen a white lady coming down the road and I stopped and pulled my rubbers off and threw them on the side where there’s a dump pile.”

20 Do you remember that question and that answer?

A. No, sir.

Q. Do you say that question was not asked of you?

A. I remember seeing the white lady, but I don’t remember saying I threw my rubbers off.

Q. You do remember seeing the white lady?

A. I met the white lady.

Q. Where were you when you saw the white lady?

A. On my way home, coming down the road.

30 Q. Were you on the Hickstown Road?

A. Hickstown Road.

Q. Was it somewhere near where there’s a dumping pile?

A. I can’t remember.

Q. You mean you remember being on the road, but you don’t remember just exactly where you were on the road?

A. I can’t remember the location, or where I was at, but I was on my way home.

40 Q. How close were you to the white lady?

*Robert Cox—Cross*

A. A pretty good ways.

Q. Do you know that white lady?

A. No, sir, I don't know her, never seen her before.

Q. But you were close enough to recognize her as a white lady?

A. She looked like she was white to me, or light complexion, I couldn't say whether she was white, or colored, but she was a light complexion. 10

Q. Isn't it a fact when you saw the white lady you stepped off of the road and hid off the road a little ways?

A. I don't remember stepping off the road.

Q. What do you remember doing when you saw the white lady?

A. I was walking.

Q. What did you do, did you continue to walk, or did you stop, or did you do something else? 20

A. I don't remember stopping, I kept walking, all I can remember.

Q. You remember having the radio in your possession at that time?

A. No, sir, I didn't have nothing, just walking by myself, I didn't have a thing in my hand. I remember I didn't have anything in my hand when I was walking.

Q. Isn't it true you met the white lady while you were going to your home from the McBurney farm? 30

A. I don't remember whether I was coming from the farm when I met her, or not.

Q. Do you remember whether or not you had been to your home when you met the white lady on the road?

A. I don't remember whether I had been home, or not. I just seen her crossing the road. I don't know whether I had been home, I don't remember. 40

Q. I am going to ask you now on the stand whether or not this statement is the truth or an untruthful statement:

10            “The reason why I throwed them away, I says to myself, ‘Now, somebody may track me’ and I said ‘I think I’ll take my rubbers and throw them away’. So before I got to the corner I seen a white lady coming down the road and I stopped and pulled my rubbers off and threw them on the side.”

A. Untruthful, I said I don’t remember seeing no rubbers at all at that time

Q. I am not asking you whether you can remember it, or not. I am asking you whether that statement is a true statement or not true?

A. Not true.

20            Q. Not true?

A. No, sir.

Q. Do you remember the Prosecutor asking this question and you making the answer that follows:

“But I understand while you were walking through the woods you kept your rubbers on, and when you came to the road you were afraid that your rubbers might leave footprints on the road?”

30            “A. Yes, sir.”

Do you remember that question being asked you, and you making that answer?

A. No, sir, I do not.

Q. Do you deny that question was asked you, and you made that answer?

A. Yes, sir.

Q. Do you deny saying that the reason you took your rubbers off when you came upon the road was you were afraid it might leave footprints?

40            A. Yes, I deny it, I don’t remember saying it.

*Robert Cox—Cross*

Q. You deny it?

A. Yes, I don't remember saying it.

Q. Do you recall this question being asked you by the Prosecutor and you making the answer that follows:

“And because of those footprints somebody might track you”? 10

“A. Might track me.”

You recall that question and that answer being made?

A. No, sir.

Q. Do you deny that question was asked, and that answer was made?

A. I deny it, I don't remember saying it.

Q. Do you remember the Prosecutor asking you this question, and you making the answer that follows: 20

“Q. In order that you might not leave footprints and in order that no one might track you, you conceived it best to take the rubbers off and throw them away, is that right”?

“A. Yes, sir.”

A. Not right.

Q. That's not right?

A. No, sir.

Q. It's not right that question was asked and you made that answer? 30

A. No, sir.

Q. You deny that question was asked you, and you deny you made that answer, is that right?

A. Yes, sir.

Q. You say to-day in court that that's not true?

A. Not true, I don't remember saying it.

Q. And to-day, as far as you are able to explain, you can't tell us when was the last time that you had these rubbers on, except to tell us that it was the Monday night before this killing took place? 40

A. I think on Monday.

Q. Yes, you remember having them on Monday?

A. Yes, sir.

Q. You remember having them on Tuesday?

A. No, sir, I don't remember having them on Tuesday.

10 Q. You remember having them on Tuesday morning when you left your house?

A. I went to Blackwood Tuesday to get my check. I didn't have them on Tuesday.

Q. What check did you go to get in Blackwood?

A. My W. P. A. check.

Q. You remember going to Blackwood to get your check on Tuesday?

A. Yes, sir.

20 Q. If you could remember things that occurred Tuesday morning, why can't you remember things that happened on Wednesday?

A. Well, I was full of liquor, I got drunk Tuesday, and I come home, I was pretty near drunk, and Wednesday morning, when I got up I started drinking again. I don't remember putting on no rubbers. I was drinking all day Tuesday until I come home, and I was pretty near drunk, and then when I got up Wednesday morning I started drinking.

30 Q. As I understand, Mr. Cox, the only explanation you can make to-day for not being able to remember the events of Wednesday is because you had been drinking that day?

A. Yes, sir, I was drinking.

Q. And because you had been drinking on Wednesday you say now you can't remember anything that happened?

A. I can't remember not everything.

40 Q. You remember anything that happened on Wednesday?

*Robert Cox—Cross*

A. I remember some things that happened Wednesday, I don't remember putting on my rubbers.

Q. You don't remember putting on your rubbers, and you don't remember throwing the rubbers away?

A. No, sir.

10

Q. You don't remember coming through the woods.

A. No, sir, I don't remember going through the woods.

Q. You don't remember why you came through the woods?

A. I was on my way home, I guess. I went through the woods coming home.

Q. Why didn't you go back home the same way you had come?

20

A. I don't remember which way I came back. I don't remember which way, the same way I went, or not. I can't remember now. I was so excited and under the influence of liquor, I can't remember what road I come back until I got nearly home. I knew then I was coming through the fields.

Q. You remembered enough on Wednesday, did you not, Mr. Cox, to cover the radio that you placed in that basket with a burlap bag, so it would not be seen by people, don't you?

30

A. I remember putting it in the basket that afternoon before I left.

Q. You remember covering that basket up with burlap bag?

A. I remember that, covering it up.

Q. Why did you do that?

A. Well, after I done got myself straightened out, my excitement was all over and the liquor in me was dying out, I come to my senses a little bit then, then I say, "I will take the radio."

40

Q. Then you started to realize you had done wrong, didn't you?

A. Then is when I remember, then, that I did wrong, I was coming to myself then.

Q. Then you had your senses about you?

A. Yes, better than I was when I came home.

10 Q. Then you knew you had stolen property in your possession, did you not?

A. I can't remember then whether I stole it, or not.

Q. You mean to say you didn't know how that radio got into the basket, or how you got it to your home?

A. I remember how it got in there, and putting it in there myself.

20 Q. You didn't know whether it was a stolen radio, or not?

A. I had taken —

Q. It didn't belong to you, did it?

A. It didn't belong to me.

Q. It was not your property?

A. It was not my property, right.

30 Q. Then if you knew it was a stolen radio, and was not your property, why did you not do the decent thing and take it back, or keep it at the house, instead of going and pawning it for money?

A. At that time after I had did it, I realized then I had did wrong. My senses was coming to me, and I didn't want to go back.

Q. You didn't want to go back, why didn't you leave that radio home, instead of taking it to Philadelphia and pawning stolen property that didn't belong to you?

A. At the time when I brought it away I didn't know exactly what I was doing.

40 Q. That's not the question, whether you knew or

whether you didn't know. The question now is, when you got home some little time thereafter, you realized you had a stolen radio, did you not?

A. I realized it then.

Q. If you realized you had a stolen radio, why did you want to take it and turn it into cash in a pawnshop?

10

A. I said to myself then that my liquor was dying out of me, I will take it and pawn it, and I will buy me some more liquor.

Q. It was because you wanted to get money to buy more liquor you took the stolen radio to Philadelphia to pawn it for cash, isn't that right?

A. That's right.

Q. Why did you cover it up when you put the radio in the basket, why did you cover it up with a burlap bag?

20

A. Well, that time I was going through the streets with it, after I was coming to my senses, and I didn't want nobody to see it.

Q. Why did you not want anybody to see you carrying that radio?

A. I guess I didn't want anybody to see it.

Q. Why didn't you want anybody to see it?

A. I didn't want them to see what I had.

Q. Why didn't you want them to see what you had?

30

A. I don't know, I just didn't want them to see me having it, what I had.

Q. Do you mean to tell me that's the best answer you can make to-day why you covered it up, and why you didn't want people to see it, was because you don't know?

A. I didn't want them to see what I had no, when I was on the road.

Q. Why was it you didn't want people to see you had a radio in that basket?

40

A. Because if they had seen I had a radio in my basket they would know I had a radio.

Q. You knew if somebody seen that radio in the basket, and you didn't have any radio, you might be suspected of having committed a crime, isn't that right?

10 A. I guess so.

Q. And you wanted to cover things up so that nobody would know you had committed this crime, isn't that right?

A. Yes, I didn't want nobody to know it.

Q. You had senses at that time, didn't you?

A. At that time I did, my senses was coming to me.

Q. That was before you started to go to Philadelphia?

20 A. I was on my way.

Q. That was how long after you had stolen this radio from the McBurney farm?

A. It was in the afternoon sometime, I can't tell exactly what time it was.

Q. Was it before you had gotten the money to go over to Philadelphia?

A. I had got the money.

Q. You had got the money?

30 A. I was on my way to Philadelphia, but I don't know what time it was.

Q. You remember what time you left to go to Philadelphia, don't you, you made a bus, didn't you?

A. I can't remember what time it was I caught the bus, I don't remember what time it was.

Q. You remember what time you got to Philadelphia, don't you?

40 A. No, sir, I don't know, I didn't have no watch, I don't know what time it was.

*Robert Cox—Cross*

Q. You remember how you got to Philadelphia?

A. How I got there?

Q. How did you get from your home to Philadelphia, tell us what movements you went through.

A. I walked up Hickstown Road.

Q. Yes, to what place?

A. From my home. 10

Q. To where?

A. Up to Stetson's Corner, Erial Road.

Q. Who did you see before you left to go over to Philadelphia?

A. I didn't see anyone.

Q. You saw somebody when you tried to get money, didn't you?

A. I thought you meant on my way to Philadelphia.

Q. No, I mean before you started over to Philadelphia? 20

A. I went down the road that I knew a friend of mine that I used to borrow from all the time. I borrowed a quarter from her.

Q. What was her name?

A. Mrs. Medley.

Q. What was it you told Mrs. Medley you wanted the money for when you went there?

A. I told her I wanted to borrow a quarter to fix the inner tube of my machine. 30

Q. You remember that, don't you?

A. I remember that.

Q. You remember having told Mrs. Medley when you went to borrow the quarter that you wanted to borrow the quarter so you could fix the inner tube on your machine?

A. Yes, sir.

Q. You knew that wasn't true?

A. I know it. The reason why I told her is she 40

knew I am a heavy drinker and maybe she would think I wanted to buy some more liquor because she was looking at me pretty hard. I don't remember whether she smelled liquor.

Q. Do you remember definitely what you told Mrs. Medley when you went to borrow the quarter?

10 A. To fix my inner tube.

Q. That was before you started to go to Philadelphia?

A. No.

Q. Was that before you had put the radio in the basket and covered it with burlap bags?

A. Yes, sir, that was before I covered it up.

Q. How long was that after you had gotten home from the McBurney farm?

A. I can't remember how long.

20 Q. How far is Mrs. Medley's home from your home?

A. I imagine three-quarters of a mile.

Q. Would it take you about 10 or 15 minutes to walk there?

A. I can walk there in 15 minutes—10 minutes, about 10 minutes.

Q. Who had you seen before you had seen Mrs. Medley?

30 A. I met an officer—Officer Hagner—I think that is his name. He knows me. He lives in Blackwood. He is a Township patrolman.

Q. Had you not gone to see some other colored folks to borrow some money before you went to Mrs. Medley?

A. I stopped down about three doors from where I live at Charlie White's.

Q. Three doors from where you live is where Mr. White lives?

40 A. Yes.

*Robert Cox—Cross*

Q. Is he the first man you saw about borrowing the quarter?

A. Yes.

Q. He turned you down?

A. He turned me down. He said he didn't have anything.

Q. You remember he told you that? 10

A. Yes. I remember it.

Q. Where did you go after you went to see Mr. White?

A. I went down to Mrs. Medley.

Q. Did you see a Mrs. Shaw?

A. Across this road—I beg pardon, I went across the street.

Q. Across the street from where?

A. From Charlie White.

Q. You first went to Charlie White, and he turned you down and said he didn't have it, and then you went to see Mrs. Shaw? 20

A. Mr. Shaw.

Q. Mr. Shaw?

A. Yes.

Q. You remember asking him for money?

A. Yes. He said he didn't have anything.

Q. Then where did you go?

A. Then I thought I would go down and try Mrs. Medley. 30

Q. And Mrs. Medley was down the street a ways?

A. Down the street—down the road.

Q. Then, at Mrs. Medley's you got 25 cents?

A. Yes.

Q. What did you get, a quarter piece or change?

A. I don't know whether it was change or a quarter—I don't remember. I remember it was a quarter.

Q. You remember it was 25 cents? 40

A. 25 cents. I don't remember whether it was change or in a piece.

Q. How do you remember it was 25 cents?

A. I asked for a quarter and she handed me 25 cents. I put it in my pocket. I don't remember whether it was change or not.

10 Q. How much did you pay the bus to go to the Camden Ferry?

A. 20 cents.

Q. How much did you pay to go across the ferry?

A. 5 cents.

Q. After you got the money from Mrs. Medley, did you not then go home and put the radio in the basket?

A. That is when I put the radio in the basket.

Q. Then what did you do?

20 A. I sat around the house a while.

Q. How long?

A. I can't remember how long. I sat around the house.

Q. Then what did you do?

30 A. Sat around awhile, a little while. Then, I had—I said, "Well, I am going uptown." Before I had missed my driver's license, owner's card and work card and social security card that morning. When I got up I had sobered up. I don't remember that afternoon. I figured I must have lost it up in Camden in a beer garden, at 6th and Liberty Avenue. I know that is the last place I was at when I started drinking quite heavy. I said, "I must have dropped it in there." The lady that runs this beer garden knows me. I am going up to find out because pretty soon I wanted to get my tags for my machine. That is the only reason I went up. After I came on back from Philly, I stopped by there and as soon as I

40 walked in and before I asked the lady anything she

*Robert Cox—Cross*

said, "Robert, you dropped your wallet." Not a wallet—one of those bags you get from the license bureau for your owner's card and driver's license. She said, "Two fellows saw you when you were going into the lavatory, and when you came out you went on out the door. We all knew you was pretty near drunk, but at that point you had not dropped anything. When you went out a little while after, two fellows—two colored fellows went into the lavatory." 10

Q. Mr. Cox, what you are telling is what happened after you went to Philadelphia. You haven't told us how you got to Philadelphia. Suppose you tell us that.

A. I tell you now I got the bus.

Q. How did you get from your house to the place where the bus was boarded? 20

A. I walked.

Q. How did you walk to the bus?

A. I walked up to Pine Hill.

Q. Well, over what road did you go?

A. And the bus didn't come there—the bus didn't come there. I just kept walking to Clementon.

Q. Yes, but how did you get from your home to where you boarded the bus?

A. I am telling you, I walked from Pine Hill to Clementon. 30

Q. Over what roads did you go?

A. Erial Road.

Q. From what road?

A. From my place you go up the Hickstown Road. It runs from Pine Hill, Mr. Orlando, down to Clementon.

Q. You went up the Hickstown Road from your place to the Erial Road and then down to Pine Hill and then to Clementon? 40

A. Yes.

Q. And from Pine Hill, you walked to Clementon?

A. Yes.

Q. You remember it was at Clementon you boarded the bus? It was in Clementon that you got on the bus?

10 A. Yes, I got on the bus in Clementon. I remember that.

Q. Where did that bus take you?

A. To the river.

Q. To the Camden Ferry?

A. Yes, Camden Ferry.

Q. You remember getting off at the Camden Ferry?

A. I got off at the Camden Ferry.

20 Q. What did you do after you got off at the Camden Ferry?

A. Got on a boat.

Q. And then what did you do?

A. Went across the river.

Q. And then what did you do?

A. I walked on up the hill.

Q. What hill?

A. South Street.

Q. South Street?

A. Market Street.

30 Q. Well, how did you go to the pawnshop?

A. Well, I walked up the hill. The first pawnshop I came to I went in. I forget which street it was from the ferry—not where the bus goes to the ferry. I forget which street it was.

Q. And then you got to the pawnshop. What did you do when you got to the pawnshop?

A. I went in there with the basket that I had the radio in.

40 Q. What did you do there?

*Robert Cox—Cross*

A. I went in and put the basket on the counter. I told the gentleman I wanted to pawn the radio.

Q. Did the man ask you what your name was?

A. Yes, he asked me what my name was.

Q. What name did you give him?

A. I can't remember now what kind of a name I did give. 10

Q. You mean you do not remember the name you gave him?

A. No, sir. I know I gave him a name but I can't remember exactly what it was.

Q. What address did you give him?

A. I don't remember what street it was.

Q. Did you give him your right name?

A. No, sir, I didn't give him my right name.

Q. You remember you didn't give your right name? 20

A. I remember that.

Q. And why didn't you give him your right name?

A. I didn't want to give him my right name. I figured somebody would think I pawned the radio. I didn't want to give him my right name.

Q. Why didn't you want anybody to know you had pawned the radio?

A. I don't know myself. 30

Q. And that is the best answer you can give us?

A. Yes.

Q. That is when you went there and pawned this radio under this name, you did not know why you did it?

A. No, sir, I don't.

Q. Why didn't you give your right name?

A. I know I wasn't coming back. I just gave to him this name.

Q. You knew you weren't coming back for the radio? 40

A. I knew I wasn't coming back. I gave him any name.

Q. And the best reason you can give us in court to-day as to why you didn't give your right name is that you do not know?

A. Yes.

10 Q. Is not the reason that you gave him a false name was because you were afraid if you gave them your right name you might be caught up with by the law?

A. I wasn't thinking of that.

Q. You weren't thinking of that?

A. No, sir.

20 Q. You mean at the time you gave the man that operated the pawnshop a false name, you were not thinking of covering—covering up your identity so you would not be discovered?

A. No, sir. I wasn't thinking about that at the time.

Q. You weren't thinking of that at the time you were carrying the radio in the basket with the bur-lap bag?

A. I didn't want anybody to know what I had in the basket. I wasn't thinking about the officers. I didn't have any idea they would find it.

30 Q. You know you gave them a false address?

A. Certainly I gave them a false home address.

Q. Why was it you gave the man that operated the pawnshop a false address? Why didn't you give them your right address?

A. I don't know myself.

40 Q. Is it not a fact that the reason you gave them a false address was because you were afraid that if you gave them your right address that you might be apprehended by the law for the wrong you had done?

*Robert Cox—Cross*

A. No, sir, I wasn't thinking of that.

Q. You weren't thinking of that?

A. No, sir.

Q. Now, do you recall being examined in the Prosecutor's office by the Prosecutor on the evening of April 24th, on this subject, and do you remember the Prosecutor asking you in his office at the time he examined you on April 24th why it was you didn't give your right name? You remember that, do you not? 10

A. No, sir. I don't remember you asking me that.

Q. How much money did you get for pawning this radio?

A. \$3.50.

Q. You remember that?

A. Yes, sir, I remember \$3.50.

Q. What did you do with the money after you got it? 20

A. I went around the corner. I went into a saloon and I started drinking again.

Q. Did the very same thing that you had started out to do—that you wanted to do that morning, namely, get some more money so you could buy some more liquor.

A. Start drinking again.

Q. Is it not true that you then did just exactly what you started out wanting to do that morning on April 23rd, to get some more money to buy some more liquor? 30

A. The liquor was eating at me. I wanted to get some more.

Q. Is it not a fact that when you pawned that radio and got this money, you did the very same thing you started out to do—wanted to do that morning when you got up?

A. Yes, sir, I started drinking again just like I did that morning. 40

Q. Is it not a fact that on the morning of April 23rd when you got up you started out with the idea of getting some more money so you could get some more liquor?

A. No, sir. I didn't have no idea of getting any more money. I had liquor brought from Camden, Tuesday night. I had a pint of gin and a pint of wine.

Q. If you had so much to drink Tuesday night and so much to drink Wednesday, why was it when you came to your senses, as you put it, Wednesday, April 23rd in the afternoon, at your home, when you got up that morning you were going to convert this radio into cash and buy some more liquor?

A. Because I had been drinking so long. I had been drinking steady for the last four or five years. Anybody can tell you that in the neighborhood—white or colored. I just got to a place I could not help myself, I craved for liquor.

Q. Is it not true that your craving for liquor on the morning of April 23rd, drove you out so you could get some more money?

A. I didn't have any idea of doing anything—doing anybody that wrong or hurting anybody, Mr. Orlando, and doing any more when I came to this lady's house than to get a drink of water. God knows I didn't have nothing in my heart of doing any wrong or hurting this woman.

Q. Let me ask you —

A. I was drinking at the time, and didn't know what I was doing.

Q. Let me ask you this question —

A. It was not my intention to hurt this lady then.

Q. Listen to this question —

A. I didn't have it in my heart, God knows, to harm that woman or take anything she had then.

Q. Listen to this question. When did you get that drink of water?

A. I didn't get the drink of water.

Q. You were out there for the purpose of getting a drink of water and you left that farmhouse accomplishing everything except the thing you went there to accomplish—you want us to believe that you went there for, is that right? 10

A. I went there for a drink of water.

Q. Did you get your drink of water?

A. No, sir, the thing had happened before she gave me the water.

Q. Did you get your drink of water before you went into the house?

A. I didn't go into the house, I went outside.

Q. Yes, but after you battered Mrs. McBurney with the baseball bat you went into the house according to your own statement? 20

A. I went in after that.

Q. Then when you went into the house why did you go in there to pick up the radio instead of going away?

A. I was excited. Liquor had influenced me, Mr. Orlando. I was, just as you say—I just say to myself I was half crazy. I don't know what I did. I was excited and everything. I didn't go there for the intention to do anything to the woman when I went in there for the drink of water. 30

Q. You went in there for the purpose of getting a drink of water?

A. That was all.

Q. That is right. After you had struck Mrs. McBurney in the head with the baseball bat and she was lying there unconscious you went into the house?

A. I went into the house after—not at the same time.

Q. Why didn't you get yourself a drink of water if you were so thirsty?

A. I didn't think of no water. I lost my head.

Q. I thought you said you had to quench your thirst—your desire for water?

A. I drank my stuff. I was on my way home.

10 Q. You said you had drunk your stuff before you went over to the McBurney farm, and it was your thirst that drove you in there?

A. That is why I did.

Q. Why didn't you get this glass of water when you went in the shed or kitchen?

A. I didn't go in the kitchen. I didn't go in until after the thing had happened.

Q. Why didn't you get yourself a drink of water?

20 A. I was excited. I was under the influence of liquor.

Q. You weren't thinking about water when you went on the McBurney farm?

A. Yes, I was thinking about water.

Q. When did you stop thinking about water and start thinking about something else?

A. I had no intention of even hurting that lady.

Q. When did you stop thinking about getting a drink of water?

30 A. I can't remember when I stopped. I wasn't at myself. The liquor had my head going. I didn't know what I was doing.

Q. I am going to take you back to the pawnshop —

A. I didn't know what I was doing. I didn't want to hurt the lady.

Q. Let us go back to the pawnshop. You have told us you cannot give us any good reason to-day why it was you gave a false name or why it was you gave a false address.

40

*Robert Cox—Cross*

A. That is right.

Q. You cannot give us any reason?

A. I wasn't thinking about what you told about officers catching me.

Q. On the afternoon or evening of April 24th when you were being questioned by the Prosecutor in his office he asked you this question, and I am going to ask you now whether you remember him asking you the question and you making the answer that follows: 10

“Q. When you went to the pawnshop they asked you your name, didn't they?” You said, “A. Yes, sir.” Is that correct?

A. Yes.

Q. You remember that?

A. I remember.

Q. Do you remember me asking you that question and you making that answer? 20

A. I don't remember you asking me that.

Q. You mean you do not remember me asking you this question, “When you went to the pawnshop they asked you your name?” and you said, “Yes, sir”? Isn't that correct? Isn't it correct that you went to a pawnshop and they asked you your name?

A. Yes, they asked me my name.

Q. And don't you remember me asking you in the Prosecutor's office whether they asked you your name and you said, “Yes, sir.”? 30

A. I don't remember now what name I gave them.

Q. That isn't the question. The question I am asking you now is whether you remember the Prosecutor asking you this question when you were in there in the Prosecutor's office, “When you went to the pawnshop they asked you your name?” and you said, “Yes, sir”? Is that correct?

A. I can't remember you asked me that, Mr. Orlando. 40

Q. Do you deny you were asked that question and gave that answer?

A. Yes, I deny that. I can't remember.

Q. Then you were asked a question: "Q. Did they ask you where you lived?"

10 "A. They asked me where I lived. I told them on Kater Street in Philadelphia."

Q. Do you remember giving me that answer?

A. No, sir.

Q. Do you deny that?

A. Yes, I don't remember telling you Kater Street.

Q. Do you deny telling the pawnshop broker or the clerk in the pawnshop when you were asked where you lived that you lived on Kater Street in Philadelphia?

20 A. Yes, I don't remember that. I told him some street. I can't remember what street, it has been so long.

Q. Do you remember the Prosecutor asking you, "Q. What name you gave them?" and your answer was "A. I gave them a different name." Do you remember that?

A. I remember telling you I gave them a different name.

30 Q. That is right. Do you remember the Prosecutor asking you this question: "Q. What name did you give them?" Your answer was "A. Henry Austin." Do you remember that?

A. I remember that name now.

Q. Do you remember telling the Prosecutor —

A. I remember that name now.

Q. Do you remember telling the Prosecutor that is the name you gave them?

A. I remember I told you Henry Austin.

40 Q. Do you remember the Prosecutor saying, "Q. That is not your name" and you said "A. No." Do you remember that?

*Robert Cox—Cross*

A. Yes.

Q. Then do you remember the Prosecutor saying, "Q. You gave them a false name?" and you answered "A. False name." Do you remember that?"

A. Yes.

Q. Do you remember the Prosecutor saying, "Q. You gave them a false address?" 10

A. Yes.

Q. Do you remember the Prosecutor asking you, "Q. Why did you give them a false name and a false address?" and you said, "A. Well, I figured, you know, they would trace me if, you know, they find out I pawned the radio." Do you remember that?

A. No, sir, I don't remember.

Q. That is a part you don't remember?

A. Because —

Q. There are parts that you remember and a few 20 questions and answers that you don't remember?

A. I don't remember the last question.

Q. Do you deny that that question was asked and you deny that you made that answer?

A. The last one I don't remember telling you that.

Q. Do you today on the witness stand deny that the reason that you gave a false name and false address was that you figured they would trace you through your having pawned the radio? 30

A. I don't remember saying the last part.

Q. That is not the question. The question now is do you deny now on the witness stand that the reason you gave this false name and false address was because you were afraid that they might trace you?

A. I deny that.

Q. You deny that?

A. Yes.

Q. That is not the reason you gave them the false name or false address? 40

A. Not to trace me, I don't have nothing like that on my mind, I wasn't thinking about that.

Q. Do you remember the prosecutor asking you this question: "In other words, you gave them a false name and a false address so that no one could identify you as being the person who had pawned this radio, is that right?" And you said, "Yes, sir."

A. I don't remember saying that.

Q. You don't remember saying that?

A. I don't remember saying that.

Q. You don't remember the prosecutor asking you that question?

A. No, sir.

Q. And you don't remember making that answer?

A. No, sir.

Q. Do you deny that it is the correct answer?

A. I deny that. I don't remember making that answer.

Q. Do you deny now, I repeat, do you deny now that the reason that you gave this false name and false address was that no one could identify you as being the person that pawned the radio?

A. Yes, sir.

Q. You deny that?

A. Yes, sir.

Q. What reason do you give them for giving a false name and a false address?

A. I don't know why I gave them that name.

Q. Do you remember my asking this question, "And you did that for what reason?" And you answered, "Well, the same thing you say, I didn't want anybody to know I pawned it."

Do you remember me asking you that question and you telling me that?

A. No, sir.

*Robert Cox—Cross*

Q. You deny that you told me in the prosecutor's office that the reason why you gave this false name and false address was for the same thing, namely, that you didn't want anybody to know that you had pawned it?

A. I deny it. I was so excited, Mr. Orlando, that night, so many questioning me, one way or the other, I don't remember. 10

Q. When were you excited?

A. The night you questioned me.

Q. The night you were questioned —

A. I was worried, I don't know what I was saying.

Q. I thought you told me a little while back that your mind was more able on April 24 to remember things than now.

A. There was many talking before I seen you, I don't remember what I was saying. 20

Q. When I was talking to you nobody was talking but you and me.

A. Yes, the other men had got through with me, and there was so many things said to me I don't remember what they were doing.

Q. When you were talking to me in the prosecutor's office there was nobody talking but you and me at the time I was asking the questions and you were giving me the answer. 30

A. Yes, sir, but a lot of things I can't remember what I said.

Q. You say you were excited?

A. I was worried, not excited.

Q. What were you worried about?

A. Well, what I did, drink, everything, and my mind was all upset.

Q. Were you more excited in the prosecutor's office or are you more excited now?

A. I was more excited when I was in your office at the time. 40

Q. You are not excited at this time?

A. Not excited at the time, but my memory is not good. I can't remember a lot.

Q. Was your memory better when you were questioned in the prosecutor's office or is your memory better now?

10 A. At that time my memory was a little worse than it is now.

Q. I thought you told me a little while ago that your memory was better on April 24. Which is correct, is your memory better now or was your memory better on April 24, when you were being questioned in the prosecutor's office? Is your answer now that your memory is better now than when you were being questioned in the prosecutor's office?

20 A. Both times were bad. At that time it was so long ago, and I have been worried, and I have forgot a lot of things.

Q. You have forgotten a lot since you were questioned in the prosecutor's office?

A. Yes, sir, I have forgotten a lot since I have been in here.

Q. You knew a lot more the night you were in the prosecutor's office than you do now?

A. Very little.

30 Q. What have you forgotten, if anything?

A. I don't know what I have forgotten.

Q. You said you have forgotten a lot of things. Tell us what you forget.

A. Some things you said I said I can't remember, I can't remember.

Q. Then I am going to ask you whether or not you remember the prosecutor asking you this question and you making the answer that follows:

40 "Question: You were afraid, were you, that the police might find out that you had pawned the radio?" And you answered, "Yes, sir."

*Robert Cox—Cross*

Do you remember me asking you that question and you giving me that answer?

A. I don't quite understand.

Q. Do you remember me asking you in the prosecutor's office this question: "You were afraid, were you, that the police might find out that you had pawned the radio?" And you said, "Yes, sir." 10

Is that correct?

A. Yes, I remember that.

Q. You remember that question?

A. Yes.

Q. And you remember making that answer?

A. Yes.

Q. Was that correct?

A. That was correct.

Q. Then, when you were questioned in the prosecutor's office on April 24, 1941 you did say to the prosecutor that the reason that you gave the wrong name and the wrong address was that you were afraid that the police might catch you, is that so? 20

A. I don't remember saying that.

THE COURT: We will take our usual morning recess.

(A recess for ten minutes was taken.) 30

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(AFTER RECESS.)

Q. Do you know that you told the prosecutor when you were being questioned in his office on the evening of April 24 that the reason that you gave a false name and a false address was because you were afraid that the police might find out that you had pawned the radio? 40

A. Yes, sir, I deny that.

Q. You deny that?

A. Yes.

Q. You tell us today that is not the reason why you gave the false name and false address?

A. Yes, sir.

10 Q. But you cannot give us the reason why you did it, is that right?

A. No, sir.

Q. Do you remember the prosecutor asking you this question and you making the answer that follows: "And that way trace you as being the person who had stolen the radio?" And your answer, "That's it."

Do you recall that?

A. I can't quite understand.

20 Q. Perhaps I should read the preceding question in order that you may understand, so I am going to ask you if you remember these two questions and answers which were made by you:

"Question: You were afraid, were you, that the police might find out that you had pawned the radio?

"Answer: Yes, sir.

"Question: And that way trace you as being the person who had stolen the radio?

30 "Answer: That's it."

Do you recall that?

A. No, sir, I don't recall that.

Q. You deny that the questions that I have asked you were asked of you and that you made the answers that follow?

A. Yes, I deny that. I don't remember.

40 Q. Then this question was asked you by the prosecutor, "So then you gave a false name and a false address in order that you might deceive the police authorities?" And you answer, "Yes, sir."

*Robert Cox—Cross*

“Question: If an investigation was made, is that right?”

“Answer: Yes, sir.”

“Question: Is that your reason?”

“Answer: That’s it.”

Do you remember that line of questioning being asked you and you making those answers? 10

A. I don’t remember.

Q. You don’t remember that?

A. No, sir, I don’t remember that.

Q. You deny that those questions were asked of you and you making those answers?

A. Yes, I deny it.

Q. Do you state today that is not so, what you told when these answers were made, that that is the reason why you gave the false name and false address? 20

A. Yes, sir, I don’t remember.

Q. Had you ever used the name of Henry Allston before?

A. No, sir, never had.

Q. Speak up.

A. No, sir, never had, never used the name of Henry Allston. I had never been in any kind of trouble before.

Q. Do you remember today, Mr. Cox, that when you went to the pawn shop you gave the name of Henry Allston to the pawnbroker? 30

A. I don’t remember.

Q. You remember that you gave some false address?

A. False address.

Q. But you don’t remember where you got that name from?

A. No, sir, I don’t remember.

Q. When did you think up the idea of giving the pawnbroker a false name and a false address? Did 40

you think that up when you left your home, or did you think that up while you were traveling to Philadelphia, or did you think it up while you were in the pawnshop?

A. While I was in there.

Q. You thought of it where?

10 A. While I was in the shop.

Q. In the shop?

A. Yes, sir, the name came to me.

Q. Didn't you say that you thought of it before you got there?

A. No, sir, I don't have nothing like that on my mind.

Q. When did it come to your mind to give a false name and false address?

A. Just when I walked in.

20 Q. What caused that to come to your mind? Do you know what reason prompted it?

A. I don't know myself.

Q. Do you remember when the prosecutor asked you this question in his office and you made the answer that follows:

“Question: When did you think it up, when you got there or before you got there?”

“Answer: A little before I got there.”

Do you remember that?

30 A. No, sir, I don't remember that.

Q. Do you say that was an incorrect statement that you thought of it before you got to the pawnshop?

A. Yes, sir.

Q. What is the correct statement? What is the truth as to where you thought of it?

A. I thought of it when I was in the shop. I had nothing on my mind like that before I got there.

40 Q. And you can give us no reason why you thought of it?

*Robert Cox—Cross*

A. No, sir, none at all.

Q. Now, Mr. Cox, when you were talking about striking Mrs. McBurney with a baseball bat you made a statement to the effect that you struck her after you had fallen to the ground and that at the time when she went to grab the baseball bat you grabbed the baseball bat out of her hand and struck her. 10

A. I struck her when I grabbed the bat out of her hand.

Q. Didn't you tell us yesterday that you had fallen to the ground, that she had pushed you to the ground?

A. I remember her pushing me, and I balanced my step. I didn't fall to the ground, pretty near down to the ground.

Q. Pretty nearly to the ground? 20

A. Yes.

Q. Suppose you step over here and show us the position you were in with relation to the ground when you grabbed the baseball bat.

A. I couldn't tell you how close I was to the ground. I know I didn't fall to the ground.

Q. Suppose you show us the best you can remember how close you were to the ground when you made the grab for the baseball bat.

A. The dog had me by my left leg, and I was hitting the dog with the stick, trying to keep him away from me, and you can see where he had me, and then all of a sudden I went up against the truck like that (indicating) and when I went like that (indicating) she grabbed the bat in her hand, and when I came up I snatched it out of her hand quick, like. 30

Q. Then where did you strike her?

A. I don't know where I struck her.

Q. How was she facing when you struck her? 40

A. When I grabbed the bat she was facing me, and I hit her.

Q. What part of her body did you hit?

A. I can't remember, I was so excited, and I forget, I can't remember. I just can't remember, I was so excited and under the influence of liquor, and  
10 I can't remember exactly what I told you.

Q. Now, do you remember when you were being questioned by the prosecutor concerning what happened you were asked this question, and you made the answer that follows:

“Question: After you got there some things occurred which you have described to us?”

And your answer was, “Yes, sir.”

Do you remember that?

A. Speak a little louder.

Q. You remember the prosecutor asking you this  
20 question and you making the answer that follows:

“Question: After you got there”—speaking of the McBurney farm—“some things occurred which you have described to us?” And you said, “Yes, sir.”

Do you remember that?

A. Some things occurred?

Q. Some things happened that you had described,  
is that right?

A. I don't understand that.

Q. Then I will ask you the next question:

“Question: Then you picked the baseball bat up and struck her over the head?”

“Answer: I struck her after she hits me, after she shoved me up against the truck. She said, ‘What are you coming in here, Bob, drunk?’ ”

Did you make that answer?

A. I remember her saying what am I doing up  
40 there drunk, but I didn't hit her the way you got it there.

*Robert Cox—Cross*

Q. You don't remember saying anything like I have read, is that right?

A. Some things you got down there I don't understand.

Q. Do you remember making this answer to this question:

“Question: She wanted you to get off the steps?” And you answered, “I guess so, and she shoved me up against the truck and I picked up the bat.” 10

A. I didn't pick up the bat, I didn't say that.

Q. You deny that you made that statement?

A. Yes, I deny it the way they got it down there, I deny that.

Q. Then you remember this question being asked you and you making the answer that follows:

“Question: She wanted you to get off the step?” 20

“Answer: Yes, sir.”

A. I remember saying that.

Q. Is that so that she wanted you to get off the place?

A. Yes, but she didn't say anything like that, get off the place.

Q. She did not?

A. No, sir.

Q. The next question was, “And shoved you or tried to get you off the place?” And you answered, “Yes, sir.” Do you remember that question and answer? 30

A. She shoved me but when she shoved me she was not telling me to get off the place, and that is when we were scuffling for the baseball bat. I don't remember what you got down there.

Q. When was the first time that you remembered anything about a scuffle for the baseball bat? Did you say anything to the prosecutor on the evening 40

of April 24 that you were scuffling for the baseball bat?

A. I told you that I got it from her hand.

Q. You say now in the statement that you made to the prosecutor on the evening of April 24 you told him that you grabbed the bat. Am I wrong?

10 A. The same statement that I made a little while ago.

Q. You say then at the time you were being questioned you mentioned that you grabbed the bat out of her hand?

A. Yes, sir, that is what I said.

Q. Then I am going to ask you whether you remember the prosecutor asking you this question and you making the answer that follows:

20 “Question: When she did that, you picked up a baseball bat lying near the truck and struck her over the head with it?

“Answer: Not at that time. I didn’t strike her until the dog grabbed me by my pants leg and I waved at him, and she shoved me up against the truck and there was the baseball bat standing up against the house and I taken the baseball bat and swing it like that (illustrating) and hit her.”

Do you remember that?

30 A. No, sir, I don’t remember that.

Q. You deny that you made that answer?

A. Yes, sir.

Q. Do you deny that the answer which I read was a correct and truthful statement of the way you struck her?

A. That is incorrect the way you read it. I didn’t say that at all, that is not so.

Q. Do you remember Mrs. McBurney falling to the ground after you struck her?

40 A. Yes, I remember when she fell, but I didn’t see when she fell and hit the ground.

*Robert Cox—Cross*

Q. Do you remember seeing her fall to the ground?

A. I remember her falling but I don't remember looking to see if she hit the ground.

Q. Do you remember her being on the ground after the first blow?

A. No, sir. 10

Q. Do you remember whether she fell face down?

A. I don't remember, I was so excited when I hit her I walked in the house. I can't remember how she fell.

Q. You mean you walked in the house immediately after you hit her?

A. Yes, sir.

Q. Is it not a fact that after you hit her the first time you struck her two or three more times?

A. I can remember hitting her about two or three times, and that is all I can remember. I don't remember anything after that. 20

Q. You tell us now that you remember hitting her two or three times?

A. That is all I can remember.

Q. The first time you told us you struck her was after she had shoved you and a scuffle occurred and you grabbed the bat, is that right?

A. That is when I hit her, when we were scuffling for the bat, and I grabbed it out of her hand. How many times I hit her I don't know. 30

Q. Just a minute. You just told us that you hit her two or three times.

A. I don't remember that.

Q. You remember having hit her two or three times?

A. I told you all I remember I hit her.

Q. The first time you hit her was when you were struggling and you grabbed the baseball bat out of her hand, at which time she was facing you? 40

A. Facing me.

Q. And you say she fell down?

A. Not down.

Q. You mean after you struck her the first time she did not fall down?

A. She didn't fall.

10 Q. You mean the first blow you gave her with the baseball bat did not knock her down?

A. I don't remember knocking her down.

Q. What blow knocked her down?

A. I don't know when she fell. I don't know, I was so excited and drunk, all I remember was hitting her, and I can't remember when she fell down or not.

Q. You remember hitting her two or three times?

A. It was so quick, that is all I remember.

20 Q. You don't remember hitting her two or three times?

A. That is all I can remember, whether it was several times or not, I don't remember.

Q. Why can't you remember about hitting her how many times you hit her?

A. After we were scuffling I grabbed the bat out of her hand, and I hit her, and I can't remember anything after that. All the time I struck her I was so excited, things were in my mind going around I don't know what I was doing, and I don't remember nothing when she fell, I was so excited, I just don't know nothing at the time, Mr. Orlando, I didn't go over like that.

30 Q. Wait a minute, you answer my question, Mr. Cox.

A. I don't know everything after the time I hit her with the bat, I was full of liquor and stuff like that, and I don't know what I was doing.

Q. That is all you know of it, you did not know what you were doing?

40 A. I didn't know what I was doing.

Q. In what position was Mrs. McBurney when you struck her the second blow? Was she standing up or was she down on the ground?

A. She was standing up. I never struck her when she was on the ground. I don't remember when she was on the ground.

Q. You mean you remember striking her two or three times, but you don't remember her going down? 10

A. I can't remember her falling down, I don't remember at all, I didn't look, I was under the influence of liquor, excited, and I didn't pay any attention to it. At the time I didn't know what I was doing.

Q. Let's go back to the door a little bit. You told us yesterday that when you came up to the McBurney farm, the first thing you did, you went up to the shed door, and you knocked on the door, and there was no answer, and you knocked on the door a second time? 20

A. Then she came to the door.

Q. When she came to the door, did you ask Mrs. McBurney for a drink of water?

A. Yes, I asked for a drink of water.

Q. You remember that?

A. Yes.

Q. Is your memory clear about that, is your memory clear now that you did ask her for a drink of water? 30

A. I told you before I went there and asked for a drink of water, yes.

Q. That isn't the question.

A. My memory is all right now, I remember that.

Q. My question is not what you went there for, my question is, do you remember after you knocked at the door, Mrs. McBurney coming to the door, and you asking her for a drink of water? 40

A. Yes, I remember that.

Q. You remember that?

A. I remember that.

Q. Was that before she had said anything to you, or was that after you had said something to her?

10 A. She hadn't said anything when I asked her for the water.

Q. The first thing then that happened was when she came to the door you asked her for a drink of water?

A. A drink of water, and "Good morning".

Q. What did she say to you?

A. I said, "Good morning".

Q. You said, "Good morning," then what?

A. She didn't say anything, and I said, "May I have a drink of water?"

20 Q. What did she say to you?

A. At that time she walked out the door on the step, the little step that was there. She says "Bob, what you doing coming here drunk, with that liquor in you"? That's what she said to me then.

Q. How was Mrs. McBurney dressed?

A. I didn't pay any attention.

Q. Did you notice whether or not she had any shoes on?

A. No, sir, I didn't pay any attention to that.

30 Q. Didn't pay any attention to that?

A. I didn't look her up and down at all, I didn't pay any attention to that.

Q. Then what else was said?

A. Then she said, "Bob, what are you coming up here drunk, with all that liquor in you"? After she said that, the dog run around the side of the truck barking, and barking at me, and grabbed me by my leg. I shook my leg like that for him to turn me loose. There's where he bit me, the mark is there.

40 I shook my leg for him to turn me loose, and I

*Robert Cox—Cross*

hauled off and hit him with the stick, the one you had showed me yesterday, and that time I seen myself going down towards the truck where she pushed me. That's the time when I balanced myself up, and I seen she reached for the bat. As she grabbed the bat, I snatched it out of her hand like that. I was excited, and all, Jesus knows I don't know what I was doing. 10

Q. Those things you remember very definitely?

A. That's just the way it went, and she didn't say nothing after that. When she asked me about coming there drunk, full of whiskey, when the dog grabbed me on the leg there, there's where he grabbed me, and I hit him with the stick, trying to get him loose from me, the first thing I knew I was going on down against the truck. That's the only thing that saved me, the truck being there, and she reached to grab the bat, and I snatched it quick out of her hand, and being excited and full of liquor, I just didn't know what I was doing. I didn't go there with no intention whatever of harming the woman, not at all. I didn't have anything in my head of doing anything like that at the present time, nothing at all, having known the woman for five or six, maybe seven years, and I never had no trouble with them, or her husband, and I didn't go there to do no harm, or anything like that to the woman. I ain't never did anything like that before. I get drunk and everybody know it in the neighborhood. 20 30

Q. After this incident occurred outside, when you struck Mrs. McBurney, did she move any, or did she remain in the spot where she fell?

A. I don't remember anything like that.

Q. Speak up, please.

A. I don't know, I didn't pay no attention.

Q. I show you a photograph—

A. I was so excited at the time, gentlemen of the jury, I didn't pay no attention to it.

Q. Never mind about the excitement. I show you this photograph, which has been marked Exhibit S-3-A, and show you what purports to be there the front of the truck that was parked at the side of the  
10 McBurney farm. I show you particularly the fact that there's a wooden drawer and a paper cardboard box, and ask you whether or not you remember seeing those things at the scene of the crime that day when you were there?

A. No, sir, I didn't see anything like that in front of the truck at all.

Q. Were you and Mrs. McBurney at any time somewhere near there?

A. No, sir, not around the front of the truck at  
20 all.

Q. How did the blood get there, do you know?

A. I can't tell, I wasn't around the front of the truck, I was around on the side of the truck, around on the side, I never seen that piece of wood on there, or the box at all.

Q. After you had had this experience outside, you went inside the house. You remember going in the house, don't you?

A. Yes, sir, I remember when I went in the house.  
30

Q. Do you?

A. Yes, I remember going in the house.

Q. What room did you first go when you went in the house, what part of the house did you enter first?

A. I went from the shed, the back.

Q. Do you remember when you got in the shed there being a pump in the shed, like shown in that photograph, Exhibit S-6-A, look at it.

A. I didn't pay any attention to the pump.

Q. You mean you didn't see the pump when you  
40 got in there?

*Robert Cox—Cross*

A. I didn't pay any attention, no, sir, I didn't notice it, I didn't notice anything.

Q. Did you notice the chair, as is shown in this photograph?

A. No, sir.

Q. Did you notice the baskets that were inside there? 10

A. No, sir, I didn't notice anything like that at all.

Q. What did you notice in the kitchen, or in the shed?

A. I didn't pay any attention to anything.

Q. You didn't?

A. Not anything, when I went in the shed I didn't pay no attention to nothing.

Q. Did you look through the shed when you went in there to see whether you could find anything to steal in the shed? 20

A. No, I didn't look in the shed at all.

Q. You didn't upset anything in the shed?

A. I don't remember upsetting nothing.

Q. Where did you go after you had left the shed?

A. I went on in another room then, my best remembrance, I don't know what room it was now at the time.

Q. You went in the sitting room, didn't you?

A. I don't know whether it was the sitting room, or what, I can't remember now. 30

Q. What room was it you found Mrs. McBurney's pocketbook, and you opened up and went through it?

A. Upstairs.

Q. You remember that?

A. Yes.

Q. You are sure about that?

A. Yes, I am sure.

Q. Where did you find Mrs. McBurney's pocket-book, what part of the upstairs? 40

A. I think the pocketbook was, the pocketbook was along where the radio was sitting.

Q. Where was it, lying on the bureau, or was it inside of one of the drawers in the bureau?

A. I don't know what it was on, I don't know whether the bureau was up there, or not.

10 Q. You remember opening the bureau drawers, don't you, and looking for money and other things to steal?

A. At the present time I don't remember opening no drawers.

Q. When you were being questioned in the Prosecutor's office, you remembered that you had opened the drawers, didn't you?

A. I opened something, but I don't know whether it was the bureau drawers, or not.

20 Q. I show you a photograph, which has been marked Exhibit S-5, and ask you whether or not you remember the bedroom that you entered as being the bedroom which appears in that photograph. Does that look like it?

A. No, sir.

Q. It doesn't look like it?

A. No, sir, I can't recognize it, I can't recognize it.

Q. How did you get upstairs?

30 A. I went up the steps.

Q. Where were those steps from what room?

A. I can't tell now what room they were in. I know I went upstairs and that's all I can remember.

Q. What made you go upstairs?

A. I was just rambling.

Q. What's that?

A. Went upstairs, I was all excited, I don't know why I went up there.

40 Q. Do you mean you went upstairs just for the excitement of doing it?

*Robert Cox—Cross*

A. I was excited, you know, and everything. I went on up there and I seen the radio and I taken the radio.

Q. You remember seeing the radio, do you?

A. I remember seeing the radio.

Q. Where was the radio, was it on the floor or a little table? 10

A. I don't remember now how it was sitting.

Q. What's that?

A. I don't know, I was so excited at the time, I don't know where the radio was, I can't tell.

Q. When you were questioned in the Prosecutor's office about the position of the radio, you said it was on the table, is that correct, or not?

A. It was stood on something, I don't know what it was on. I can't remember now.

Q. You remember taking the radio, don't you? 20

A. I remember taking it.

Q. I show you what has been marked Exhibit S-1, and ask you whether or not you recognize this as being the radio you took from the McBurney farm?

A. Yes, that's the radio.

Q. Is that the radio?

A. Yes, sir.

Q. You carried it by the handle, didn't you, when you left there?

A. I don't know whether I had it by the handle, or not. I know I had it, but I don't know how I had it at the time, I was so excited. 30

Q. Was it again because you were excited, were you excited when you took the radio, too?

A. Yes, sir, I was excited.

Q. For what period of time did you remain to be excited?

A. I didn't understand you.

Q. How long did you remain excited, when did the excitement begin and when did it stop? 40

A. After I got home, and I sat down awhile, I felt better then after I had taken it. I was excited, and the liquor was working on me. My head was going around. I couldn't hardly remember what I was doing.

10 Q. Were you excited when you went to the McBurney farm?

A. I wasn't excited when I went there, but I was pretty near full, I was full of whiskey, but I wasn't excited.

Q. When the excitement came, was it after you had killed Mrs. McBurney?

20 A. Excitement came then when we were scuffling, when the dog grabbed me by my leg. That's when I got excited. He grabbed me by the leg and bit me, and I was trying to protect myself to make him turn me loose. That's when I got excited.

Q. That excitement continued to the extent that you struck Mrs. McBurney with the baseball bat, then went in and went all through the house?

A. I was still excited.

Q. And stole whatever you could find, consisting of a radio?

A. That's all I remember taking.

Q. That was all produced by the excitement, you say?

30 A. I was excited, and I was in my liquor, and I didn't know nothing.

Q. Excitement and liquor and you didn't know anything?

A. Yes.

Q. That's the explanation you give for everything that happened.

A. Liquor will make you do anything, Mr. Orlando, you know that. If I had not had that liquor in me this never would have happened.

40 Q. Earlier in the testimony you told me that al-

*Robert Cox—Cross*

most everybody knew, whether they were colored or white, you were a drinking man, you had been drinking for years, is that right?

A. For the last five or six years there's plenty of people in Blackwood, Clementon, and many places can tell you I am a hard drinker, and the time ever since I have been on the W. P. A., if the bosses was in here to-day they can tell you how many days they have sent me home drunk. 10

Q. How many times during the last five years had you drunk as much as you drank the day of April 23rd?

A. How many times I drank that much?

Q. Yes, did you drink any more April 23rd than you had drunk on any of the other occasions you speak of?

A. Sometimes I used to drink so heavy on the job that I would go in the woods and lie down and go to sleep. 20

Q. So there have been lots of times when you had as much to drink as you had that day of April 23rd, is that right?

A. Sometimes I drink real heavy and fall down just like I am dead. I used to do that on the job. When I didn't know anything, I would be home. The boss would have got somebody to shove me in a machine and drive me home. That's right heavy I had been drinking the last five years, and everybody knows it. 30

Q. Had drinking ever made you excited like it made you excited April 23rd on any other occasions, or was this the only time you got excited after drinking?

A. That's the only time I ever got excited.

Q. The only time you ever got excited?

A. The dog had me by the leg, that's what excited me. 40

Q. Now you tell us then it was the dog biting you on the leg that caused you to be excited?

A. That's what excited me right then at the present time.

Q. It wasn't the drink then that made you excited. It was the dog biting your leg like that caused you to become excited, is that it?

A. I got excited when he grabbed me by the leg, and when she was shoving me, and going on down against the truck, that's when I lost my head, was when the liquor had me, and when she grabbed the bat, I was trying to protect myself, and I was feeling the liquor, too. Then in my excitement that's why I did this. I didn't know what I was doing. I ain't never did anything, Mr. Orlando, in my life, or stole anything in my life, all my life, every other time I have been on a drunk like this. I was on the job some places where I would lie down and go to sleep, and somebody took me home.

Q. Let me show you the baseball bat, Exhibit S-10, and ask you whether or not that is the bat with which you struck Mrs. McBurney?

A. I can't remember. All I remember, it was a bat. I didn't pay much attention to that.

Q. What did you do with the bat after you had used it on her?

A. I don't know what I did with it. I was all excited, and at the time I just don't know what I did. I don't know whether I laid it down, stood it up, or threw it away, I don't know what I did.

Q. When you came out of the house, after having ransacked through the house, you had to come out through the shed, and through the shed door, isn't that right?

A. I guess that's the way I came out.

Q. Don't you remember?

A. I remember coming out.

*Robert Cox—Cross*

Q. You remember coming out of the house?

A. Yes, I remember coming out of the house.

Q. When you came out of the house, where was the body of Mrs. McBurney lying?

A. I didn't pay no attention.

Q. You mean you paid no attention?

A. No, I came out, and I was so excited and scared. 10

Q. You weren't interested to see whether she was living, or whether she was dead?

A. I was under the influence of liquor, I didn't look.

Q. I understand you remember coming out of the house, that you didn't pay any attention to find out whether Mrs. McBurney was living or whether she was dead?

A. No, sir, I didn't, no. 20

Q. You took no pains or no time to even find where her body was lying?

A. No, I didn't look.

Q. Isn't it a fact, Mr. Cox, when you came out of this house you came out and stepped over the body of Mrs. McBurney, lying as it is shown in this photograph, in order that you might get out?

A. No, sir, I don't remember.

Q. You don't remember stepping over her body? 30

A. I don't remember stepping over her body. I didn't pay no attention, and was so excited, and under the influence of liquor, I come out, and I wasn't thinking of nothing.

Q. Look at this photograph.

A. Honest to God, I wasn't thinking of anything.

Q. Look at this photograph, Exhibit S-4-A, and tell me whether or not it isn't true that that is the position of the body when you came out of the house, as it appears in that photograph?

A. I didn't pay no attention to that coming out. 40

Q. You weren't interested?

A. I didn't have nothing like that in my mind. I didn't know what I was doing, and God in heaven, as I am sitting in this chair, knows I didn't know what I was doing at the present time. I didn't know what I was doing. I was so excited, I was  
10 scared, I was full of liquor, I didn't know what I was doing. I didn't pay no attention to nothing.

Q. After you left the Philadelphia pawn shop, you went to buy some more liquor?

A. I stopped in Camden.

Q. You bought some liquor in Philadelphia, didn't you, before you left?

A. After I left Philly I went around the corner.

Q. After you left the pawn shop you went around the corner to what place?

A. Some saloon.  
20

Q. To a saloon, do you remember that, do you?

A. I remember when I got the money.

Q. What did you have to drink around the corner, the saloon?

A. I went in and had taken a couple of drinks of gin.

Q. What happened to this dog that you say bit you in the leg?

A. What happened to the dog?

Q. Yes, did you hit him with the baseball bat, too?  
30

A. I hit him with the stick I had.

Q. What happened to the dog, did he still bite you some more, or go away?

A. After I hit him three or four times, he turned my leg loose, and he run away.

Q. Ran away?

A. He didn't come back at me no more.

Q. Now we are going back to Philadelphia. You have told us after you had left the pawn shop you  
40

*Robert Cox—Cross*

went around the corner to get yourself a couple of drinks of gin?

A. I had taken a couple of shots of gin.

Q. At that time you were sober, you said you had realized you had done wrong, isn't that right?

A. I wasn't what you call dead sober then, I wasn't sober. 10

Q. You weren't sober?

A. I was still under the influence of liquor, but not as bad as I had been that morning. I wasn't drunk.

Q. You knew you had done something wrong?

A. I wasn't drunk then. I had done come to my senses, and knew at the present time I had done something wrong, and I was sorry.

Q. You went around to this saloon and bought a couple of drinks of gin?

A. After I thought about what I did, that made me worry more. 20

Q. How much did you pay for the gin over at that saloon in Philadelphia?

A. You can get any kind there, that you want, as cheap as you can get it.

Q. How much was it?

A. Ten cents a drink.

Q. You bought two drinks of gin in that saloon?

A. I guess two, something, two or three, I can't remember. 30

Q. Then what did you do after you left the saloon?

A. I don't think I had taken over two or three. I walks all the way, and comes on down and got the boat to come back to Camden.

Q. You went across the ferry back to Camden?

A. Yes, sir.

Q. When you got over on the Camden side, what did you do?

A. I goes around— 40

Q. Did you get on a bus?

A. Yes, I caught the bus.

Q. Where did that bus take you?

A. I got off around Kaighn Avenue, Kaighn and Broadway.

Q. Kaighn and what?

10 A. Broadway.

Q. And what did you get off at Kaighn and Broadway for?

A. I came on around to the taproom. I thought about it where I had been on Tuesday night when I lost my driver's license and owner's card.

Q. You went around there to see if you could find those things?

A. I went around there. I knew I was around, that was the last place I had left.

20 Q. After you had been around to that saloon, where did you go?

A. When I went in the saloon, as soon as I went in there, I walks to the counter to get another drink. So the lady that owns the place asked me my name. I told them where they could go and find out for themselves. I ordered another drink.

Q. After you had another drink, where did you go?

30 A. I will tell you, Mr. Orlando. She said to me, "Is your name Robert Cox?" "Yes, ma'am." She said, "I have got a book here. You lost your driver's license and owner's card and work card."

Q. We are not interested in what conversation you had with that lady. I want to know where you went after you left that saloon?

A. After I stayed there, and take me a drink there, I went back around to Broadway.

Q. Broadway and where?

40 A. Kaighn Avenue, a little up from Kaighn Avenue.

*Robert Cox—Cross*

Q. Where did you go to buy the food?

A. I went in a little market there on Broadway there, I forget now, the left side or the right, I think it was the left side coming up.

Q. What did you buy there?

A. I went there and bought a little meat.

Q. Bought what?

10

A. A little meat.

Q. What else did you buy?

A. I bought two loaves of bread, and a few potatoes. That's the only things I remember buying.

Q. What did you put them in?

A. In the basket.

Q. And then after you had bought that from that store you have told us, where did you go from there?

A. After I left there I came on back around 20  
Kaighn Avenue.

Q. And walked up to Kaighn Avenue?

A. Not that time I didn't walk up there, then I stopped.

Q. Where did you go?

A. I stopped at Miss Sophie's, the Jewish lady, and I got myself something else to drink.

Q. How many more drinks did you get?

A. I can't tell exactly how many I got.

Q. Then after you had gotten some more drinks 30  
where did you go from there?

A. I got something else to drink there, a pint of wine and I drank that.

Q. Where did you go from there?

A. I walked up to Haddon Avenue to catch the bus.

Q. You walked up to Kaighn Avenue and Haddon Avenue?

A. That is right.

Q. You remember that?

40

A. I remember that.

Q. When you got to Kaighn Avenue and Haddon Avenue, what bus did you get?

A. I waited there—I waited there for a good little while.

Q. How long did you wait there?

10 A. I don't remember. It was a good while. The wine, you know, got to working on me in general. It got to working on me again.

Q. Did you get excited all over again?

A. I was getting feeling pretty funny so I caught the bus.

Q. Where did the bus take you?

A. I catch the bus. The fellow said to me, "Where are you going?" He then started off. He said, "Where are you going?" I said, "Pine Hill."  
20 He said, "You are on the wrong bus." I wasn't paying no attention when I got on the bus, and all the wine was working on me again.

Q. Do you remember the man at the bus terminal, at the place you got on the bus telling you you were on the wrong bus?

A. After we were going I remember that.

Q. Then what happened after he told you you were on the wrong bus?

A. He said, "I will take you to the circle. I will  
30 take you to the circle."

Q. What circle?

A. The circle that extends into the river avenue near the passed end of the cemetery.

Q. Ferry Avenue?

A. Ferry Avenue.

Q. Then did you go to the circle?

A. I turned to the left.

Q. What did you do when you got to the circle?

A. He stopped.

40 Q. What did you do?

*Robert Cox—Cross*

A. He said, "Walk over there." He said, "Walk over there on the corner. You will catch the bus on the lefthand side. Watch," he said, "out there." He said, "You will see Pine Hill on the top of the bus. Can you read?" I told him I could read.

Q. Do you remember he told you to watch the top of the bus for the bus marked Pine Hill? 10

A. He said, "Yes, he will take you to Pine Hill. This is the wrong bus."

Q. What did you do, wait for the bus?

A. I waited for the bus.

Q. Later on did the Pine Hill bus come along?

A. Later—a lady was standing there. I said, "Lady, does the Pine Hill bus come along this way?" She said, "Yes." She said, "Here it comes, now."

Q. Then what did you do? 20

A. I gets on the bus.

Q. Where did you go after you got on that bus?

A. I was on my way home then.

Q. Where did you get off the bus?

A. I got off the corner where I usually get off.

Q. Where was that?

A. Stetson's Corner.

Q. Stetson's Corner and what?

A. Hickstown Road.

Q. You remember that? 30

A. I told him to put me off there.

Q. You told who?

A. The bus driver. I said, "Bus driver, you put me off—"

Q. How much did it cost you on that bus?

A. 20 cents.

Q. What?

A. 20 cents.

Q. You remember you paid the bus driver 20 cents? 40

A. Yes.

Q. You remember you got off at Stetson's Corner and Hickstown Road?

A. Yes.

Q. How far was that corner from your house?

A. Why, it was just about a quarter of a mile.

10 Q. And then did you walk to your home?

A. Yes, I walked.

Q. Who was home when you got there?

A. Why, my common law wife, Lillian Hicks. I have been living with her six years, and her boy.

Q. This Miss Hicks that you speak of was your common law wife?

20 A. Yes, that is what she told me. Anytime anybody stayed with her—I stayed with her six years. She told me you are the same as a husband. I was taking care of her ever since I been there, and her boy.

Q. You remember when you got home and you found Miss Hicks there and the boy, you told them you had some food in the basket?

A. I sat the basket on the table.

Q. What did you say?

A. I said, "There is a little meat in the basket."

Q. To whom did you say that?

A. To her boy, and I told her too at the wood pile.

30 Q. You told her where?

A. At the wood pile.

Q. Where was she?

A. She was out to the wood pile.

Q. Where was the wood pile with reference to the house? Is it to the back of the house or the side of the house?

A. The rear room of the house where I kept my—

Q. Did you see her there back at the wood pile?

40 A. I didn't see her. It was dark.

*Robert Cox—Cross*

Q. Do you remember saying to her—talking to her and telling her you had some food?

A. She asked me where I was. I told her, "I have been to Camden." I said, "We have a little food." She said to me, "You better go in. The fellow was here the other day and he brought you a hound dog—Mr. Jones." He left him.

10

Q. Let us get that. She told you Mr. Jones was there and he brought you a hound dog?

A. Yes.

Q. You remember she told you that?

A. Yes.

Q. Do you remember she told you that he left a note?

A. Yes, sir.

Q. Did you see that note?

A. I went into the house and they showed it to me.

20

Q. And where was the note, in the room?

A. In the house where I slept.

Q. Did you get the boy to get the note?

A. I was talking to him.

Q. How long had you been home before the police officers came?

A. I could not say exactly but it was not long.

Q. Was it 10 or 15 minutes?

A. I just guess about, around that time—just about that.

30

Q. Who were the police officers that came? Do you recall were they State Police or local police?

A. That gentleman there.

Q. Will you stand up? Do you mean this gentleman, Mr. Doran?

A. The big fellow.

Q. Mr. Mulligan?

A. Yes, sir.

40

Q. And who else did you see around there? Was Mr. Wojtkowiak there? Will you stand up, please?

A. Yes, sir, that gentleman.

Q. What did they say to you when they came in?

A. They said, "Is your name Robert Cox?"

Q. Speak so this gentleman can hear you.

10 A. They said, "Your name Robert Cox?" I said, "Yes, sir." They said, "Get your coat and hat on." I got my coat and hat. By that time, the old lady—she so far as they told her boy, "You come along." She said, "Officer, what is the matter?" I don't know what they said. I can't hear so good. So we went on out in the car. They takes us to Woodbury in the car to Woodbury. They questioned me around there and checked up my clothes and every-thing.

20 Q. Let me ask you, Mr. Cox, do you remember being taken down to the Mantua Barracks?

A. Yes, I remember.

Q. Do you remember the State Policemen that testified being down there?

A. Yes, sir, the gentleman on this end, Mr. Pete. He was there.

Q. You mean Chief Doran being down there?

A. Yes, sir. He was there too. He was too.

30 Q. When these gentlemen took you down to the Mantua Barracks they questioned you about whether or not you had been at Mrs. McBurney's home, did they not?

A. They had taken me in the room.

Q. What did you tell them? Did you admit or deny it?

A. Well,—

Q. Just answer the question. Did you admit or deny it?

40 A. When they took me in the room, I admitted—  
I did not admit it.

*Robert Cox—Cross*

Q. You did not admit it?

A. They started to beat me in the stomach.

Q. You mean when they asked you first of all whether or not you had been at the McBurney farm, you denied having been there the day in question, is that right?

A. At the time I didn't admit it. I denied it. 10

Q. You knew when you denied it you were telling the officers a lie?

A. Yes. I knew I was telling them a story. Then they took me in the room.

Q. You were lying to the police officers that were investigating the murder of Mrs. McBurney?

A. I know that.

Q. Why were you lying?

A. I was scared.

Q. You mean you were scared to tell the truth? 20

A. I was scared and excited. They carried me in the room.

Q. Before you were excited—

A. They carried me in the room, and they carried me in the room and started to beat my stomach, and I got more excited and more scared.

Q. Listen to me, Mr. Cox. When the police officers questioned you about whether or not you had been to the McBurney farm, you denied it?

A. Yes. 30

Q. You knew when you denied it you were telling them an untruth?

A. Yes.

Q. And the reason you told them a falsehood was because you didn't want them to know you had been there? You knew you had been lying?

A. Yes, I realized that.

Q. You were trying to cover it up, is that right?

A. Yes, sir. 40

Q. What caused you to deny it and to cover it up?  
Was it because you were excited?

A. I was scared.

Q. Were you excited?

A. I was scared and excited and I didn't know what they was going to do to me.

10 Q. Was there anything to be scared and excited about when a simple question was asked you whether or not you had been to the McBurney farm?

A. I don't remember. I was scared and excited. Didn't know what to do.

Q. What was there to be excited about when you were asked to tell the truth?

A. I was scared and excited. That is all I can say.

20 Q. What caused you to be scared and excited? You knew whether you had been on the McBurney farm, did you not? Is that right?

A. Yes, I knew I had been there.

Q. You knew that you had been there. You knew you had struck Mrs. McBurney quite a bit. Why did you tell the police officers when they first questioned you that you knew nothing about it?

A. At the time I was scared and excited.

Q. What were you scared about?

30 A. I don't know. That kind of feeling was on me. I don't know what I done.

Q. What was that feeling you are talking about? Describe it.

A. The way it was was still in liquor—drinking in the last few days, not eating nothing, and this liquor—I was all nervous and upset. I don't know what I was doing. I could not say, Mr. Orlando, the way I was feeling. I could not tell you how it was I was feeling.

40 Q. Is it not a fact, Mr. Cox, the reason you were lying to the police officers was because your con-

*Robert Cox—Cross*

science was bothering you and you knew if you told the truth you knew you would be prosecuted for the wrong you had done?

A. Well, I knew—

Q. Yes.

A. I knew I would be prosecuted for the wrong.

Q. You did not want to be prosecuted for this crime? 10

A. I didn't have nothing in my head. I wasn't thinking about that.

Q. You were willing to lie your way out of it if you possibly could?

A. I would not say I was willing to lie out of it—out of it. I was just excited. I didn't know what I was doing.

Q. You were not so excited that you were not able to tell a falsehood? You were telling them lies when they were asking you. 20

A. Yes, I was lying.

Q. You were not so excited you could not tell them lies?

A. Yes, I was excited and scared.

Q. You were excited and you were scared, but you weren't excited or scared to the point of not being able to lie?

A. Scared. I had been on liquor and stuff for the last two days. I had been an awful feeling. 30

Q. Which was it that caused you to lie? Was it because you were under the influence of liquor; was it because you were scared or was it because you were excited? Which one of those three things?

A. All of them. I was just scared. There was a feeling over me, I didn't know what.

THE COURT: We will recess now. The prisoner may be taken over here to the door. We will resume at 1:45 o'clock P. M. 40

## (AFTERNOON SESSION)

ROBERT COX, resumed.

BY MR. ORLANDO:

10

Q. Mr. Cox, when you were in the Prosecutor's office on the evening of April 24th, you were asked this question and you made the answer that follows to the question. I am going to ask you whether or not you recall it.

“Q. Isn't it a fact that you struck her several more times after the first time, so that you might make sure that she would be dead?”

“A. Yes, sir, I did that.”

20

A. I don't remember saying it.

Q. Did you make that statement?

A. No, sir.

Q. Do you deny that that question was asked you?

A. Yes, sir.

Q. And you deny that you made that answer?

A. Yes, I don't remember saying it.

Q. Then the question was asked by the Prosecutor, “Q. That is the reason you struck her three or four more times?” “A. Yes, sir.” Do you remember that?

30

A. No, sr.

Q. Do you deny that question was asked and that answer was given?

A. Yes, sir, I do deny it.

Q. Then this question was asked, “Q. After you struck her the first time and she had gone down?”

“A. Yes, sir.” “Q. Then you conceived that you better strike her several more times and make sure that she was dead, so she would not tell on you?”

40

“A. That's what I did.” Do you deny that those

*Robert Cox—Cross*

questions were asked you and that you gave those answers?

A. Yes, sir.

Q. Then you were asked by the Prosecutor this question and the answer that follows was made.

“Q. So you wanted to make sure?” “A. Yes, sir.”

Then this question was asked. “That she was dead?” “A. After I hit her, I figured she may not come to or if she’s dead I would be in a whole lot of trouble. Something to my mind said I better strike her again.” Do you remember saying that? 10

A. No, sir, I don’t.

Q. Do you deny you said that?

A. Yes, sir.

Q. Do you deny that was the truth?

A. I don’t remember saying it.

Q. Well, is it not a fact that is what you did? 20

A. I didn’t do it.

Q. Then this question was asked by the Prosecutor: “Q. I understand when you went to the house you were dead broke, you had no money?” “A. No, sir, I didn’t have no money.” Do you remember that?

A. No, sir, I don’t remember saying it.

Q. Is it not a fact that when you went to the McBurney house, you were broke, and that you didn’t have any money? 30

A. I didn’t have any money.

Q. Is it not true that you didn’t have any money when you went there?

A. I didn’t have any with me.

Q. You were broke?

A. Yes.

Q. You wanted to get some money to buy liquor and get grub?

A. I didn’t go there for that. 40

Q. Then that question you wanted to get some money to buy liquor is not true?

A. It didn't enter my head to get any more liquor at that time.

Q. Do you remember this question being asked you by the Prosecutor and you making this answer:  
10 "Q. And you wanted to get some money, is that right?" "A. Yes, sir, that's what I said to myself, 'Well, I'll go and get some money and I'll get some more liquor.'"

A. I don't remember saying it.

Q. Do you deny the Prosecutor asked you that question and you made that answer?

A. I deny it. I don't remember saying it.

Q. Do you remember the morning of the killing, Wednesday morning, April 23rd? Do you remember  
20 you were talking to your woman, as you call her, your woman?

A. Yes, I remember talking to her.

Q. You remember she went to work that morning and you stayed home?

A. The woman I lived with?

Q. Yes.

A. I remember when she woke me up she told me she was going to work.

Q. Do you remember telling her you felt bad and  
30 you didn't want to go to work?

A. Yes.

Q. Do you remember leaving your house at Hickstown and going up the Erial Road until you went past Lamb's Terrace?

A. Yes—past what?

Q. The inn.

A. I remember that.

Q. Do you remember taking a drink when you  
40 were near there?

*Robert Cox—Cross*

A. Yes.

Q. Do you remember when you got to the Buffalo Road, you turned to the right and went up the Buffalo Road?

A. Yes.

Q. Do you remember when you got near the McBurney farm you sat down on the stump and cleaned up the bottle? 10

A. Yes, that is when I cleaned it up.

Q. Do you remember throwing the bottle in the woods?

A. Yes, sir.

Q. Do you remember after you left there, you walked up the Buffalo Road up to the place where the McBurney farm is?

A. Yes.

Q. Do you remember going into the McBurney farm? 20

A. Yes, sir.

Q. Do you remember walking up to the house of the McBurney farm?

A. Yes.

Q. Do you remember knocking at the door?

A. Yes, sir.

Q. Do you remember Mrs. McBurney came to the door? 30

A. Yes, sir.

Q. All those things you remember, do you?

A. Yes, sir. I remember at the time.

Q. But the things that happened after that you do not remember so well?

A. No, sir. I don't remember anything after I got excited.

Q. Do you remember when you were talking to Mr. Bennie in the Prosecutor's office you told him you had thrown the rubbers off the highway somewhere near the dump pile? 40

A. No, sir, I don't remember.

Q. You don't remember that?

A. Yes.

Q. Do you remember talking to Mr. Bennie in the Prosecutor's office?

A. Yes, I remember talking to him.

10 Q. Do you remember mentioning anything to him about the rubbers?

A. No.

Q. Do you remember the subject of the rubbers being discussed?

A. No, sir, not at that time, I don't remember.

Q. That you do not remember?

A. Yes, I can't remember.

20 Q. Then after the crime was committed you remember coming out of the woods and going to the Hickstown Road?

A. No, sir, I don't remember that.

Q. You remember walking up to your house?

A. Yes, a little before I get to the house.

Q. Do you remember seeing a white woman, do you remember that?

A. I don't remember her as white or colored. I could not say.

30 Q. Do you remember seeing a woman along the road?

A. Yes, I remember a woman. I don't remember whether she is white or colored.

Q. Do you remember that you wanted to borrow 25 cents so you could fix the inner tube of your car?

A. Yes, sir.

Q. You remember going to your house and staying there a little bit before you started out?

A. Yes, sir.

40 Q. And then you remember going and talking to

*Robert Cox—Cross*

two or three different people trying to borrow twenty-five cents?

A. Yes, sir.

Q. You remember that ultimately you borrowed twenty-five cents from a Mrs. Medley?

A. Yes, sir.

Q. You remember telling her that you wanted to borrow the twenty-five cents to fix the innertube of your car? 10

A. Yes, sir.

Q. You remember after getting the twenty-five cents that you went to your house and put the radio in the basket and covering it with a burlap bag?

A. I remember that.

Q. You remember that. And you remember walking down the Hickstown Road to Erial Road to the place where you got on the bus? 20

A. Yes, sir.

Q. You remember getting on the bus at Clementon and going to the Camden ferry? You remember that?

A. Yes, sir.

Q. You remember going across the Delaware River on the ferry boat?

A. Yes, sir.

Q. You remember going to Philadelphia and going up a hill to a pawnshop? Do you remember that? 30

A. Yes.

Q. That is right.

A. Yes.

Q. You remember pawning the radio and getting \$3.50 for it?

A. Yes.

Q. You remember getting a coupon or ticket from the pawnshop, don't you?

A. A coupon? 40

Q. A ticket. You got a pawn ticket, didn't you?

A. Yes.

Q. You remember that?

A. Yes.

Q. You remember that you put it in your pocket and lost it?

10 A. Yes, sir.

Q. You remember that?

A. Yes.

Q. You remember after you had gotten to the pawn shop you gave them the name of Henry Allston?

A. I remember but I don't remember what name I gave.

Q. You remember now that you gave that name?

A. I remember now.

20 Q. You remember that you gave them a false address?

A. Yes, sir.

Q. You remember that after you got the money you went to a saloon and got two or three drinks?

A. Yes, sir.

Q. You remember that after you got the drinks you walked back down to the ferry and got across the river on the ferry boat?

A. Yes, sir.

30 Q. That is right?

A. Yes.

Q. You remember after you got on the ferry boat you took the bus which took you to Broadway and Kaighn Avenue?

A. Yes, sir.

Q. You remember after you got to Broadway and Kaighn Avenue you went to the saloon where you had been the night before?

40 A. Yes, sir.

*Robert Cox—Cross*

Q. You remember that?

A. Yes, sir.

Q. You remember at that saloon you saw the woman that operates the place and had a conversation with her?

A. Yes, sir.

Q. That is right. You remember after you got to that saloon you came back to Broadway and Kaighn Avenue and went down to Broadway to buy some grub? 10

A. Yes, sir.

Q. Some meat?

A. Yes, sir.

Q. You remember buying some onions?

A. I remember getting potatoes.

Q. You remember buying potatoes?

A. Yes, sir. 20

Q. Do you remember buying two loaves of bread?

A. Yes, sir.

Q. Do you remember buying a bottle of wine?

A. Yes, sir.

Q. Do you remember after you left there you went back to the Jewish woman's place on Kaighn Avenue and got some more drinks?

A. Yes, sir.

Q. You remember after you left there you walked up Kaighn Avenue to Haddon Avenue in Camden? 30

A. Yes, sir.

Q. You remember you had a conversation with the operator of the bus at Haddon and Kaighn Avenues who told you that you would have to go around to the circle to take the bus that would take you down to Pine Hill?

A. Yes, sir.

Q. You remember that, do you?

A. Yes. 40

Q. You remember that the bus driver took you around to this circle somewhere near Ferry Avenue where you got off and waited a short while for the bus for Pine Hill to come along?

A. Yes.

10 Q. You remember that you went on that bus to where you got off—what was the name of that road? Stetson Avenue?

A. Stetson Corner.

Q. Stetson's Corner and Hickstown Road?

A. Yes.

Q. You remember getting off the bus?

A. Yes.

Q. After getting off the bus you went back to the place where you lived?

A. Yes.

20 Q. When you got to the home you saw this woman who lives there and her son?

A. Yes.

Q. You remember this woman telling you that someone had been there before to see you?

A. Yes.

Q. You remember that?

A. Yes.

Q. You remember talking to the boy who gave you that message?

30 A. Yes.

Q. You remember then you called her attention to the fact that you had brought some grub home?

A. Yes.

Q. Then you remember that the state police and county detectives came after you?

A. Yes.

Q. You remember them taking you down to the Mantua Barracks?

A. Yes.

*Robert Cox—Cross*

Q. You remember that you lied to them concerning your movements that day, that is right?

A. Yes.

Q. You remember all that. All those things that I pointed out to you, you remembered?

A. Yes.

Q. But there are just a few things which you can't remember, and those are the things which transpired after you struck Mrs. McBurney over the head with the baseball bat and getting out to the Hickstown Road? Those you don't remember? 10

A. I don't remember everything.

Q. Everything else you remember except what occurred during that short period of time?

A. Yes, sir.

Q. You remember too that despite the fact that you went to the farm, as you say, to get a drink of water you never did get the drink of water? 20

A. No, sir.

Q. You remember too that despite the fact that you tell us that you did not go there for the purpose of stealing anything you did go in the house and steal the radio?

A. Yes, sir.

Q. You also remember that you realized after you got home you had stolen a radio, and despite that you conceived the idea of going to Philadelphia and pawning that radio so that you could get some more liquor? 30

A. Yes, sir.

Q. You say now that you had no intention of stealing when you went to the house?

A. No, sir, not at that time, I had no intention whatever.

Q. You did not have any intention of stealing at any time?

A. No, sir, when I stopped up there, Mr. Orlando, I didn't have no intention to harm the woman or to take anything, it wasn't on my mind to do anything.

Q. When you went to Mrs. McBurney's home you had no intention of stealing anything?

10 A. I didn't have no intention when I got on the place.

Q. So if you did steal the radio, which I understand you now admit, you did that without any intention of stealing?

A. No intention whatever at the time. I didn't know what I had done, I was excited. I didn't go there at the present time, and when I stopped there to get a drink of water, gentlemen of the jury, I didn't have in my mind to harm her, the Lord knows  
20 I am telling the truth. If I had anything in my heart to hurt the woman, nothing like that at all was on my mind to hurt the lady or take anything whatsoever, nothing whatever.

Q. When did you decide after you had been taken to the Mantua Barracks, when did you decide to tell the story that you told the prosecutor on the evening of April 24? When did you decide to tell the story that you told me? Did you decide that after you came to the court house in Camden?

30 A. That night in the court house.

Q. You decided in the court house in Camden that you wanted to give the prosecutor a statement?

A. That is what they brought me up from the basement for.

Q. After they brought you to the court house in Camden you decided you wanted to tell the prosecutor your story?

A. They brought me here Thursday morning.

40 Q. Thursday morning after they brought you to

*Robert Cox—Cross*

the court house, they questioned you at the court house, is that right?

A. I can't remember whether they brought me then, they took me down to the basement.

Q. Didn't they ask you some questions when you were first brought in the court house, Thursday?

A. I don't remember. 10

Q. When was it that you decided to tell the story which you told to the prosecutor? When did you decide to tell that story?

A. That night when they brought me in the court house.

Q. How long before you told the story to the prosecutor was it that you decided to tell the story?

A. I can't remember what time it was.

Q. You remember that you had to wait an hour or an hour and a half for the prosecutor to arrive before you could tell the story? 20

A. I just couldn't say exactly what time it was. At that time I was scared and was excited.

Q. You were scared?

A. Yes.

Q. What were you scared about then?

A. Well, I had been beaten up pretty bad before you got to me. They told me they were going out to get the radio and bring it back and bust it over my head. I had been beaten awfully bad, and I was all nervous, scared and excited, and I didn't know what they were going to do to me. 30

Q. Listen, Mr. Cox, when the prosecutor was questioning you, toward the conclusion of the statement he asked you this question:

"Question: Everything that you have told me here, is it voluntary on your part?" And you said, "Yes, sir, exactly what I did."

Do you remember that? 40

A. No, sir, I don't remember.

Q. You remember the prosecutor asking you whether or not what you had said was voluntary on your part?

A. No, sir, I don't remember.

10 Q. Do you deny that the prosecutor asked you that question?

A. I don't remember you asking me that question. I was so scared and in misery and everything, some things I said I guess I don't know what I said.

Q. You remember the prosecutor asking you this question:

20 "Question: I have not offered you any promise for making this statement?" And you said in answer to that question, "You nor officers neither that have been with me all day, they haven't told me nothing, what to say or nothing. They told me to tell the truth what I know. I was going to tell it but I was afraid I was going to get punished."

Do you remember that?

A. No, sir, I just can't remember.

Q. You don't remember that?

A. No, sir.

30 Q. Do you remember me asking you this question, "You feel better now that you have told the truth?" And you answered, "I feel fine, Mr. Orlando. I was telling Mr. Bennie today I was going to tell it. I told him I was going to tell the truth."

Do you remember that?

A. Yes, yes, I remember that.

Q. Then you did tell me what was on your mind?

A. Yes, I remember telling you that.

Q. Which is the truth, what you told me then, that you were feeling fine, or what you stated today, that you were all excited when you told the story?

40 A. You asked me when I was feeling fine, and I was feeling better then.

*Robert Cox—Cross*

Q. You felt better then than you feel now?

A. No, sir, I was in misery.

Q. What were you in misery about?

A. You know the misery I was in. You seen the condition I was in when I was sitting in front of you.

Q. What were you in misery about when you told me that you were feeling fine? 10

A. I felt a little better. I had been beaten up awfully bad in the office, and I was sitting on a newspaper.

Q. When you talked to me did you tell me anything about anybody beating you?

A. I was afraid to say anything.

Q. You were afraid to say anything?

A. Yes.

Q. What were you afraid of? 20

A. I was afraid the detectives would beat me up again. Do you remember when I was sitting in front of you I was sitting on a paper to keep you from smelling anything.

Q. Were you afraid to tell me that you were beaten?

A. Yes. Do you remember when I was sitting on the newspaper?

Q. I am asking you whether you were afraid to tell me anything about it. 30

A. Yes, I was afraid to tell you about it.

Q. The statement that you made, Mr. Cox, did you make it because you wanted to tell me the story or not?

A. I wasn't telling you no story, I was saying things that I remember.

Q. What you told me, was it the truth or were you lying to me?

A. The things I told you I did was the truth. 40

Q. Did you tell me anything that night that was not the truth?

A. The things that I told you the other day and I asked you is the only things I remember, and is the only thing I am telling you the truth. What I acknowledged today, saying to you today is not the  
10 only thing I remember telling you is the truth.

Q. What you are telling today is the truth?

A. That is the only thing I can remember is the truth, otherwise if I said anything else the condition I was in when the ladies came in I can't remember because I was beat so, the officers beat me so I had action in my pants, and to keep from having a stain on your chair I had to sit on a newspaper. You remember that.

20 Q. Do you remember Dr. Saunders examining you?

A. The next morning, Dr. Saunders, yes.

Q. When did Dr. Saunders examine you upstairs?

A. He didn't examine me that night.

Q. When did Dr. Saunders examine you?

A. I went in the office and he looked me over, and asked me where I was hurt, and I showed —

Q. Do you remember when Dr. Saunders examined you?

30 MR. PALESE: Just a minute.

THE WITNESS: No, no doctor whatever.

MR. PALESE: I think the prosecutor ought to give the witness an opportunity to answer the question. I didn't object two or three questions ago when witness was saying something about where he was sitting but the prosecutor just went on with another question.

*Robert Cox—Cross*

THE COURT: Of course, what he was saying was not responsive to the question, so he did not have to wait for him.

MR. PALESE: I presumed that it was up to your Honor to say whether it is responsive or not.

10

THE COURT: I don't know of any questions that the defendant did not get a chance to answer. If there is, you may ask him to answer it more fully.

Q. How many times did you see Dr. Saunders?

A. A couple of times straight.

Q. You saw him twice?

A. I don't know how many times I saw him. I was going in there pretty nearly every morning, and he said I was all right. Over my body I had bruises and I had misery in my head, and I was taking pills, and I told the sergeant that I needed a pair of overalls, that my trousers were ruined, and I never got them until my wife sent them up to me, but my trousers were full of mess.

20

Q. When did you see Dr. Saunders the first time?

A. Friday morning. I didn't see him Thursday night. I was beaten up, and they locked me up in the cell.

30

BY THE COURT:

Q. When did you see him the first time? That is what you are being asked.

A. Your Honor, Judge, the next morning after I was questioned, Friday morning.

Q. Friday morning?

A. I came in Thursday. Friday morning.

Q. Friday morning?

A. Friday morning.

40

BY MR. ORLANDO:

Q. You deny that Dr. Saunders saw you Wednesday night at the Mantua Barracks?

A. Yes, sir, I didn't see no doctor at all, none at all.

10

MR. ORLANDO: That is all.

REDIRECT EXAMINATION

BY MR. PALESE:

Q. Mr. Cox, you started to answer the prosecutor that while you were in the prosecutor's office and he was taking this statement that you did something in your trousers. What happened to you?

20

A. Well, Lawyer, while I was standing there, all over my body, they beat me so miserably they beat me, they caused me to do something in my trousers.

Q. What did you do?

A. I messed, and it ran down my leg.

Q. Were you in that condition when the prosecutor was asking you questions?

A. One of the detectives took me in the wash room and let me wash, and when I was in there I couldn't get all the stuff off me, it ran down my pants leg and down my trousers, so they brought me back in and said, "Get some newspaper, let him sit on there," and a lot of newspapers were put on the chair to keep the stains from getting on the chair. That is the reason why I was sitting on the newspaper when you came.

30

Q. Did that happen before or after?

A. They had been beating me all night —

Q. I say, the condition of your trousers, did that occur before or after?

40

*Robert Cox—Re-cross*

A. Before, Mr. Palese, before he came in.

Q. When he came in you say you were sitting on some newspapers on the chair?

A. Yes, I was still sitting on them then.

MR. PALESE: That is all.

10

## RE-CROSS-EXAMINATION

BY MR. ORLANDO:

Q. Who do you claim were the officers that struck you?

A. They are sitting right in front of me.

Q. Who hit you?

A. All four of them on the front.

Q. You mean Mr. Dube, sitting at the end? You say that he struck you? 20

A. All four of them.

Q. Sergeant Kelly struck you?

A. Yes.

Q. You say that Detective Ritchie struck you?

A. Yes.

Q. You say that Mr. Mulligan struck you?

A. Yes, sir.

Q. Who else?

A. Mr. Bennie. 30

Q. Mr. Bennie struck you?

A. I don't remember him putting their hands on me.

Q. Did Mr. Bennie strike you?

A. I didn't see him strike me.

Q. Did Mr. Wojtkowiak strike you?

A. I didn't see him.

Q. Did Chief Doran strike you?

A. No, sir, I can't remember him hitting me. I remember those other fellows hitting me. 40

- Q. Those four?  
 A. He did the kicking.  
 Q. Who did the kicking?  
 A. He.  
 Q. The second one?  
 A. Yes.
- 10 Q. You say Sergeant Kelly struck you?  
 A. Just one did the kicking, the other three didn't kick me.  
 Q. When was the first time you have said anything about anybody kicking you?  
 A. The first time.  
 Q. Here today?  
 A. Upstairs, I told the guard.  
 Q. Who did you tell?  
 A. Dr. Saunders.
- 20 Q. Dr. Saunders examined you Friday morning.  
 A. He took something and put his ear (indicating) and took out his watch, and examined me all over up there (indicating), and he said, "You will get all right."  
 Q. You say that Sergeant Kelly kicked you?  
 A. That is the one that kicked me.  
 Q. Once or more than once?  
 A. I couldn't tell how many times.  
 Q. Did he kick you hard?  
 A. Oh, yes.
- 30 Q. Where? On what part of your body?  
 A. All over.  
 Q. All over your body?  
 A. Not all over my body, around my legs, and different things.  
 Q. What other places?  
 A. And then they started with fists.  
 Q. Who hit you with their fist?  
 A. All four were beating me, the same who are
- 40 in front of me.

*Robert Cox—Re-cross*

Q. When I came into the prosecutor's office to question you I asked you whether you had been treated all right and you told me that you felt fine, that everybody treated you fine.

A. I don't remember saying that.

Q. Did you say that anybody had mistreated you?

A. No, sir, I did not. 10

Q. Why not?

A. I was scared.

Q. Why were you scared when I was questioning you?

A. I don't know, it is the first time I had ever been in trouble. I never been in this shape before in my life, and they told me as soon as they bring the radio in they were going to bust it over my head. I never been in trouble before.

Q. I suppose, Mr. Cox, you were struck so hard and they kicked you so hard that you had marks all over your body where you were struck? 20

A. I didn't get any kicks in my face.

Q. I thought Sergeant Kelly kicked you all over your body?

A. Over the legs.

Q. Your legs are part of your body.

A. I thought my waist up is my body.

Q. Don't you consider your legs part of your body? 30

A. I thought from here (indicating) was your body.

MR. ORLANDO: That is all.

## STATE'S EVIDENCE IN REBUTTAL

DR. ORIS SAUNDERS, recalled.

10 BY MR. ORLANDO:

Q. Doctor, when did you see the defendant, Robert Cox, the first time?

A. At the Mantua Barracks.

Q. At Mantua?

A. The night of the murder.

Q. What time was it?

A. I had been to Blackwood, and it must have been about ten-thirty.

20 Q. At that time did he complain to you of having been mistreated?

A. No.

Q. Did you see any physical evidence of any mistreatment that appeared on his body?

A. No, sir.

Q. Did you again see him some time later?

A. We stripped him at the Mantua Barracks.

Q. You did strip him at Mantua?

A. Yes.

30 Q. And examined him?

A. Yes.

Q. Did you find any evidence about his body where blows or injury had been done to him?

A. On his leg he had scratches, healed small scars. I don't know whether it would be from brush or what, but they were about half an inch long, like scratches that had healed, and he had scars. I think he had a lot of them on both legs below the knee.

40 Q. Outside of that did he have any signs of physical injury?

*Dr. Oris Saunders—Direct*

A. No, he did not. He had an old scar that had healed, that had been cut. I think he has one on his head, but outside of that that was the only scar he had on it.

Q. Did you examine him on the morning of Friday, April 25, in the County jail?

A. Yes, I examined him in the county jail. 10

Q. After he had been given a hearing and had been committed to the County jail on a charge of murder?

A. Yes.

Q. Did you at that time disrobe him?

A. Yes, completely.

Q. What sort of examination did you make of him?

A. A general physical examination, and an inspection of his body, and the same marks, of course, were on his legs below his knees. 20

Q. Those scratches that you spoke of?

A. Yes, but there were no other marks on his body.

Q. Was there anything that you could discover or see about his body which would indicate the application of any force to his body at any time?

A. No, sir, no swelling or discoloration. There would be more discoloration than there normally is in a colored man if he was bruised.

Q. Was his condition any different Friday morning when you examined him at the County jail than when you examined him Wednesday night at the Mantua Barracks? 30

A. A little more nervous, I should say.

Q. I mean as far as scars.

A. Physically he was all right. His heart was all right and his chest and everything.

Q. That first examination was made before he had made his statement, is that right?

A. To you, yes. 40

Q. Wednesday?

A. Yes.

Q. The second examination was made after he had made the statement?

A. When he had been committed to the county jail.

10

MR. ORLANDO: Cross-examine.

CROSS-EXAMINATION

BY MR. PALESE:

Q. Who suggested you examining the defendant at Mantua on the evening of April 23?

20 A. I don't know who suggested it, but word had been left with the undertaker, McCann, that they would like to see me over at Mantua.

Q. As I understand it when you were out at Blackwood at the undertaker's establishment you received word that you were wanted at Mantua Barracks by the state police?

A. That they would like us to stop there, both the coroner and myself.

Q. Do you know who left that information?

A. No, I do not.

30 Q. When you got down to the Mantua Barracks, who was there besides Mr. Cox?

A. The detectives from the prosecutor's office, Mr. Doran, Mr. Mulligan, Mr. Dube, and a couple of others that I can't recall their names, and the state police, several of the state police, two or three members.

Q. Doctor, when you arrived there were you told the purpose for your being called to the Barracks?

A. No, I asked if Mr. Doran was there.

40 Q. Was Mr. Doran there?

*Dr. Oris Saunders—Cross*

A. Yes, he was upstairs. I thought he wanted to know what I had found on the woman at Blackwood.

Q. Doctor, who was it that suggested to you that you make an examination of this defendant?

A. I think Mr. Doran.

Q. Did he tell you the purpose of the examination? 10

A. No.

Q. What were you asked to look for, Doctor, in your examination?

A. The thing that was visible to everybody was his legs.

## BY MR. PALESE:

Q. And they asked you to examine his legs?

A. No, they asked me to see the condition he was in, that was all. 20

Q. As County physician, are you asked, when a person has been arrested for murder, to make an examination of him?

A. We make examinations of all cases of assault, and so forth, and the examinations are made in the County jail as soon as the prisoner comes in, as soon as I arrive.

Q. As soon as they come to the County jail you then make your examination? 30

A. Yes.

Q. But this prisoner was not brought to the County jail when he was arrested, he was down at Mantua?

A. Yes.

Q. You were asked to go down to Mantua to examine him, particularly with respect to some marks on his legs?

A. I don't know that that was it, it was particularly the legs, or not.

Q. What I am trying to get from you, what were 40

you asked to do by Chief Doran, or any other of the officers there, with respect to your examination, what was it to consist of?

A. What should it consist of, but seeing that the man hadn't had any injuries on him?

10 Q. They wanted to be sure that this man, if he had any injuries there, that you examined him that night?

A. I don't know, but this happens to be one of those cases where I happened to be handy, and I suppose I got right into it.

Q. You don't call being in Blackwood handy to Mantua, do you? That's some distance, isn't it?

A. I would not say so.

Q. How many miles is it?

A. I don't know.

20 Q. It's ten or fifteen miles, isn't it?

A. You can't go by me, I could tell you it was five, and it may be fifty.

Q. How long did it take you to go from Blackwood to Mantua?

A. I don't really know. I never timed myself any time, and I don't think I ever went that way before in my life to Mantua.

Q. You say your next examination was when he was brought into the County Jail?

30 A. Yes.

Q. That was your regular routine examination?

A. Yes.

Q. Do you usually have them strip when you conduct your usual examination in the jail?

A. Yes, sir.

Q. From the time you saw him down at Mantua, and the time you saw him in the County jail, had you been requested by the Prosecutor, or the officers in his office, to make another examination of the de-  
40 fendant?

*James Mulligan—Direct*

A. No, sir.

Q. You did not?

A. No.

MR. PALESE: That's all.

BY THE PROSECUTOR: 10

Q. When you examined him that night at Mantua, did you find any physical evidence of a dog bite on one of his legs?

A. That's the first I have heard of it.

BY THE COURT:

Q. Did you?

A. No, no, no. 20

THE PROSECUTOR: That's all.

---

JAMES MULLIGAN, sworn.

BY THE PROSECUTOR:

Q. You are one of the County detectives? 30

A. Yes.

Q. On the 24th day of April of this year, were you at the Court House in Camden when the defendant, Robert Cox, was brought here?

A. Yes, I was.

Q. Were you at the Court House during the time that intervened between his arrival, and the time that he was examined by the Prosecutor that night?

A. Yes, I was, the biggest part of the time.

Q. Any time during that day or night, namely of 40

April 24, did you ever strike the defendant, Robert Cox?

A. I did not.

Q. By fist or otherwise?

A. No, sir.

10 Q. In your presence was the defendant, Cox, struck by any other police officer?

A. No, sir.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION

BY MR. PALESE:

20 Q. Mr. Mulligan, you were down at the Mantua Barracks, were you not?

A. Yes, I was.

Q. On the evening he was arrested?

A. Yes, sir.

Q. How long were you there at the barracks?

A. In fact I brought him to the barracks. I was there until he was returned, until he left the barracks, possibly two and a half hours.

Q. During that time, were you with the defendant all the time?

30 A. Most of the time, yes, sir.

Q. You and other officers, or detectives, were there during that space of two hours or two hours and a half, how many other officers were there?

A. Detective Ritchie of the State Police, Detectives Dube, Bennie, Wojtkowiak, Sergeant Reid of the State Police in Mantua were in charge, and Officer Headley, Trooper Headley was there for a while, and I don't know, there may have been another trooper there, I am not sure.

*James Mulligan—Cross*

Q. Detective, as I understand, you are the person who brought him to Mantua?

A. Yes, sir.

Q. Was that your thought, or the orders from Chief Doran?

A. Orders from Chief Doran.

Q. Mantua is in Gloucester County, if you know? 10

A. That's right.

Q. How far is Mantua from the home occupied by defendant?

A. May be about seven or eight miles, I am not sure.

Q. Was he confined in a room at the Mantua barracks?

A. Not exactly confined, we had him downstairs in the station, and we brought him upstairs afterwards. 20

Q. Was there anything said to him while he was there?

A. Yes, there was some things said to him. We were trying to determine where he had been that day.

Q. One of you working on him?

A. Maybe a couple of us.

Q. At that time, Detective, you had some information he had been seen in that vicinity, had you not? 30

A. Yes, sir.

Q. When he told you he had not been there, you took that for granted he had not been there?

A. We did not, no.

Q. After he said he had not been there, I suppose you stopped interrogating him on that phase of it, although you had information that someone had seen him in that vicinity?

A. We weren't satisfied he was there.

Q. You didn't raise your voices to him when he denied it? 40

A. I don't know whether we raised our voices, or not.

Q. Treated him gently?

A. Yes, sir.

Q. Then I understand he was moved from Mantua to the Court House here?

10 A. He was left in charge of Detective Ritchie, and I went back to the scene of the crime. I don't know just exactly what happened to him from Mantua barracks.

Q. When did you see the defendant next?

A. The next evening Detective Ritchie and I went over and brought him from the City Hall over to our office.

Q. That's the first you had seen him since the time you saw him at Mantua?

20 A. Yes, sir.

Q. Where was he brought to from the City Hall?

A. Brought to the Prosecutor's office.

Q. What time of the evening was that?

A. I don't know, maybe around six-thirty or seven o'clock.

Q. He was brought to the front office in the Prosecutor's office?

A. Yes, sir.

Q. Who was there besides you and the defendant?

30 A. Detectives Mathis, Bennie, Wojtkowiak, Sergeant Kelly, Corporal Ritchie, Detective Dube, Chief Doran, myself.

Q. What was the purpose, if you know, of bringing him from the jail to the Prosecutor's office?

A. We were questioning him on his whereabouts the day before. He had told us different stories the night before, and we had checked him all day long, and found out he had been telling us a lot of lies.

Q. You wanted to confront him with that fact?

40 A. That's right.

*James Mulligan—Cross*

Q. Who advised him that the examination, or the investigating showed the information he had given you was incorrect?

A. I think we all were working under Chief Doran. We reported to him, and all we had found out we told him, and Chief Doran is the one done the talking.

10

Q. At that time had you had any information as to where this radio was?

THE PROSECUTOR: I hesitated, perhaps I should have objected long ago, but this is not proper cross-examination.

THE COURT: I thought there was some cross-examination already without objection that was not proper cross-examination. Do you object to this question?

20

THE PROSECUTOR: Yes, because I brought Detective Mulligan for a limited scope, and it seems to me we have exceeded this scope in this cross-examination.

THE COURT: How is this cross-examination?

MR. PALESE: The defendant has testified during the examination, or during the time he was interrogated in the Prosecutor's office, one of these officers threatened him with striking him over the head with the radio. I feel that, of course, would warrant the allowance of this question, as to whether at that time they had the radio, and whether they said, "We have it, we are going to hit you over the head with it", and for that purpose —

30

THE COURT: All right, proceed.

40

MR. PALESE: Will you read the question to him?

(Question repeated.)

A. Not at that time, no, sir.

10 Q. From the time he was brought to the Prosecutor's office, and the time that Mr. Orlando arrived, had you any information concerning this radio and its whereabouts?

A. Not myself. I believe he had told Detective Bennie where the radio was.

Q. Was there any time while you were in the room any threat made to the defendant that he would be cracked over the head with the radio?

A. No, sir.

20 Q. Were you present when the defendant dirtied himself?

A. No, sir.

Q. Were you present when the statement was being taken?

A. I don't think so. I think I went out and had something to eat.

Q. Did you return while the statement was being taken at any time?

30 A. I believe the statement was being taken, but I wasn't there. I think I was in the other room.

MR. PALESE: That's all.

BY THE PROSECUTOR:

Q. Speaking of the radio, is it or is it not a fact the radio wasn't recovered until the next morning?

A. That's right.

40 Q. When the defendant was being questioned, the radio had not been recovered as yet?

A. No, sir.

*Thomas J. Ritchie—Direct*  
*—Cross*

THE PROSECUTOR: That's all, Mr. Mulligan, thank you.

THOMAS J. RITCHIE, recalled. 10

BY THE PROSECUTOR:

Q. At any time, while the defendant, Cox, was either in your custody or in the custody of fellow officers, whether it be County detectives or State policemen, did you at any time strike him?

A. No, sir.

Q. Did you see anybody strike him?

A. I did not. 20

Q. Was there any blows applied to his body by anybody at any time while he was under your observation?

A. No, sir.

THE PROSECUTOR: Cross-examine.

CROSS-EXAMINATION

BY MR. PALESE: 30

Q. You had custody of the defendant, together with other officers, at Mantua, on the evening of April 23rd?

A. Yes, sir.

Q. And he was there for two or three hours?

A. I don't know how long he was there. Chief Doran and I came in possibly nine-thirty, quarter to ten.

Q. Were you there when Dr. Saunders arrived? 40

A. Yes, sir, no, not when he arrived, I arrived after Dr. Saunders.

Q. Were you there when Dr. Saunders made his examination?

A. Yes, sir.

10 Q. Was that examination made as the result of your request, or the request of some other officer who had him in custody?

A. I don't know who made the request.

Q. But Dr. Saunders did get down to Mantua, as he says, about ten-thirty in the evening, after he had been in your custody for some time, to make an examination of him?

A. That's right.

Q. A physical examination?

A. That's right.

20 Q. And particularly for marks that he had between his knees and his feet?

A. No, I don't think there was any particular part of his body chosen to be examined. I think it was a complete examination of his body.

Q. For what purpose, if you know?

A. Well, if I had made the request, yes. I would know that involved in this murder, there was a murder committed, and as I see it now, he claimed he was bitten by a dog. Maybe that would have  
30 been the reason.

Q. You didn't know that then, did you?

A. No, but there may have been other marks on his body.

Q. But the examination was made because he did exhibit some marks on his body?

A. The examination wasn't made for that reason. I didn't know anything about any marks on his body until the doctor examined him.

40 Q. After he left the Mantua barracks, he was then confined in the City Hall here in Camden?

*Thomas J. Ritchie—Cross*

A. No, sir, he was confined in the Gloucester County jail.

Q. In the Gloucester County jail?

A. That's right.

Q. Do you know when he was removed to the Camden County jail?

A. The following morning. 10

Q. What time was that?

A. Probably nine o'clock.

Q. Did you have charge of the moving?

A. Yes, sir.

Q. Where was he confined here in Camden?

A. He was placed over in the Camden City jail.

Q. When was the next time you saw the defendant after he was confined in the Camden City jail?

A. Probably six or six-thirty that night.

Q. Was that the time that Mr. Mulligan says he brought him from the jail to the Prosecutor's office? 20

A. That's right.

Q. Did you assist in the moving, or were you in the Prosecutor's office?

A. Yes, sir. Detective Mulligan and I went over after him.

Q. Did you remain with him until the Prosecutor arrived for the taking of the statement?

A. No, sir. 30

Q. When did you leave?

A. Sometime during the evening. We, Detective Mulligan and I believe, Wojtkowiak, and I went out to have dinner.

Q. Did you return after dinner?

A. Yes, sir.

Q. Had the Prosecutor arrived when you came back from dinner?

A. Not as yet, no, sir.

Q. Did you remain there until the Prosecutor came? 40

A. Yes, sir.

Q. Where was the defendant when you came back from dinner?

A. In the Prosecutor's front office.

Q. Who was in there with him?

A. Detective Bennie and Detective Mathis.

10 Q. Did you then remain with him until the Prosecutor came?

A. That's right.

Q. During that interval he had dirtied himself, had he not?

A. I do not know.

Q. Wasn't he taken out of the room at one time out in the wash room for the purpose of cleaning himself?

20 A. He went to the bathroom with Detective Mathis, I believe, or Bennie, and Wojtkowiak.

Q. When he came back wasn't it necessary to have some papers placed on the chair where he was seated?

A. That's right.

Q. And the papers were placed there after he left to go to the washroom?

A. That's right.

Q. And came back?

30 A. That's right. After he came back they were placed there.

MR. PALESE: That's all.

THE PROSECUTOR: That's all.

*William P. Kelly—Direct*  
*—Cross*

WILLIAM P. KELLY, recalled

BY MR. ORLANDO:

Q. Sergeant, at any time while the defendant was in your custody or in the custody of other officers in your presence, did you ever strike him or kick him? 10

A. I did not.

Q. Did you ever see any other police officer or detective strike him or kick him?

A. I did not.

Q. The defendant has testified you kicked him about the legs. Is that true or not true?

A. No, sir, I didn't.

20

MR. ORLANDO: You may cross-examine.

CROSS-EXAMINATION

BY MR. PALESE:

Q. Sergeant, were you with him at the Mantua Barracks?

A. No, sir, I wasn't.

Q. I understand you did not pick up the investigation until the following morning, that is, the morning of April 24th? 30

A. That is right.

Q. Where was the first you saw the defendant on that day?

A. I first saw him in the Camden County Prosecutor's office here in the Court House.

Q. Was that during the daytime or after 6 o'clock in the evening?

40

A. About 6 P. M. that evening when I first saw him.

Q. Is that when he was brought to the office by Mr. Mulligan and Mr. Ritchie?

A. He was in the Prosecutor's office when I arrived there.

10 Q. Did you remain with the defendant until the Prosecutor came?

A. No, sir, I didn't.

Q. How long were you out of the office?

A. I remained in company with the defendant and other officers approximately between 6 and 7 P. M.

Q. And then you left there?

A. Yes, sir.

Q. You say you did nothing to him while he was in your custody or when you were around?

20 A. I talked to him.

Q. I suppose all of them talked to him?

A. Yes, sir, all of us had a couple of questions, more or less, to ask the man.

MR. PALESE: That is all.

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WILFRED DUBE, sworn

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BY MR. ORLANDO:

Q. Mr. Dube, you are a detective employed by the County of Camden in the Prosecutor's office?

A. Yes, sir.

Q. And prior to that time you had served as a State Policeman for how many years?

A. 12.

40 Q. Were you in the Court House on the 24th day of April, 1941, when the defendant was brought to the Prosecutor's office?

*Wilfred Dube—Cross*

A. Yes, sir.

Q. At any time while the defendant was in your custody or in the custody of fellow officers, did you strike him at any time?

A. No, sir.

Q. Did anybody strike him in your presence?

A. No, sir.

10

Q. Were you at Mantua the night before?

A. Yes, sir.

Q. While you were there, did you strike him or see anybody strike him there?

A. No, sir.

MR. ORLANDO: Cross-examine.

## CROSS-EXAMINATION

20

BY MR. PALESE:

Q. Mr. Dube, were you with the defendant all the time he was at Mantua?

A. No. When I arrived in Mantua, he was already there.

Q. How long were you with him at Mantua?

A. Probably three-quarters of an hour or an hour.

Q. Were you there when Dr. Saunders arrived?

A. Yes, sir.

30

Q. Are you the one who asked Dr. Saunders to come to Mantua?

A. No, I believe Chief Doran did.

Q. What examination did Dr. Saunders conduct when he was down in Mantua?

A. Why, he stripped him and examined his body thoroughly.

Q. Was there anything said to Dr. Saunders as to what kind and character of examination he was to make?

40

A. Chief Doran, I believe, asked Dr. Saunders to examine him.

Q. Examine his body?

A. That is right.

MR. PALESE: That is all.

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LAWRENCE T. DORAN, recalled

BY MR. ORLANDO:

Q. Chief, while this defendant was in your custody and the custody of any of your fellow officers, did you see anybody strike him?

20 A. I did not.

Q. Did he ever complain to you of anyone striking him?

A. He did not.

Q. There has been testimony, Chief, you caused the defendant to be examined the night of the murder down at the Mantua Barracks.

A. Yes.

Q. Will you state to the Court the reason you had him examined?

30 A. I told several of the officers to examine his clothes for bloodstains to see if there was any on it. I am not sure if I spoke to Dr. Saunders or telephoned to Blackwood because I had been down to Blackwood to McCann's office. I am not sure where I was. Why I had him examined—I wanted him examined under his fingernails because the place showed there had been a struggle. I wanted to see if there was any of her flesh under his nails. I wanted a thorough examination of him.

40

MR. ORLANDO: You may cross-examine.

## CROSS-EXAMINATION

BY MR. PALESE:

Q. You say you wanted an examination of his clothes?

A. Yes, for bloodstains. From what I understood from Mulligan, that is what I requested. I wasn't there. I don't know which one I requested. I think I requested the Coroner to go down and make that examination for us. 10

Q. You say the purpose of calling Dr. Saunders was to examine his fingernails and his clothes for bloodstains?

A. His body in general.

Q. Chief, what was the purpose of examining his body? 20

A. Because there was signs of a struggle. I wanted to see if there were any marks to show if there was a struggle. I wanted the detectives to look his clothes over. I thought the physician would be the best man to examine his body and could testify to it.

Q. Were you present when the examination was made?

A. I was there about the completion of it.

Q. You were not there when he started?

A. No. 30

MR. PALESE: That is all.

ROBERT McBURNEY, SR., recalled.

BY MR. ORLANDO:

10 Q. Mr. McBurney, some mention has been made during the trial of this case about a dog that has been described by the defendant as having attempted to bite his leg. Are you familiar with the dog on the place?

A. Yes.

Q. What kind of dog is it?

A. It is a midget airedale.

Q. How big is it?

A. About nine inches high.

20 Q. Was the dog there when you got there that night?

A. Yes, sir.

MR. ORLANDO: You may cross-examine.

MR. PALESE: No cross-examination.

NO CROSS-EXAMINATION.

30

MR. ORLANDO: The State rests.

MR. PALESE: The defendant rests.

BOTH SIDES REST.

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*Motion for Direction*

MR. PALESE: If your Honor please, I would like to renew my motion that I made at the completion of the State's case to strike from the record the photographs, the exhibits—the photographs represented by the exhibits in this case on the ground that at the time the photographs were taken there had not been in this case any testimony showing that the condition portrayed or exhibited by these pictures was not the same as existed at the time the crime had been committed. I think I went into detail with your Honor at the time and I again reiterate that I have again read the transcript and the suggestions that your Honor made on many occasions when I interposed an objection to the admission into the evidence of the observations made by the witnesses. At the time the pictures went in your Honor indicated there would be something later on in the case which would tie them up. Of course, I will not say to your Honor what my interpretation of that ruling was because your Honor, I am sure, knows what you meant by it, but since the introduction of those exhibits and since the admission into the evidence of the observations made by the witnesses, Thomas Ritchie, Carl Deroskewicz, Otto Hagner, Robert McBurney, Sr., Robert McBurney, Jr., J. Summerill Chew, John Ashburn and Frederick Erdbrink there was not a bit of testimony in the case that changed the situation as to whether or not the condition as portrayed in these pictures and the condition as found by the witnesses who testified to it that that condition had existed from the time of the commission of the crime to the time the observation was made, and that is particularly true with what may have been developed in this case as to the location of the cardboard box and the location of this drawer, as to their proximity to the body.

I say to your Honor in all sincerity, I believe they are very important bits of testimony in this case—the distance or nearness to the body they may have been. Your Honor to have permitted that testimony so the jury can now say and believe, and have a right' to infer they were there at the time the fatal blow was struck, I think would be prejudicial and harmful to this defendant.

I now renew my motion that your Honor strike from the record all of the exhibits of these pictures attempting to portray the condition and the circumstances and the surroundings some four or five or six hours after the crime had been committed.

THE COURT: The motion is denied.

20 MR. PALESE: Your Honor will allow me an exception?

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

30 MR. PALESE: Your Honor, at this time I desire to move for a direction in favor of this defendant because the State has failed to prove, as alleged in this indictment, that the homicide or the murder was committed within the confines of this Court or the confines of Camden County.

40 There is testimony here of a policeman who testified he lived in Gloucester Township, and he was of the opinion that the McBurney farm or where the body was found was within the confines of this Court or within the jurisdiction of this Court, as alleged in the indictment, within the boundary lines

*Motion for Direction*

of Camden County. I say that is not sufficient to establish that the homicide was committed within the confines or the jurisdiction of this Court, and the confines of Camden County.

THE COURT: What is your application, Mr. Palese? 10

MR. PALESE: For a direction of a verdict in favor of the defendant because the State has failed to prove that this homicide occurred in Camden County, as alleged in the indictment.

THE COURT: The motion is denied.

MR. PALESE: Your Honor will allow me an exception? 20

THE COURT: Yes.

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

MR. PALESE: If your Honor please, I would like to renew again my motion for a direction in this case by your Honor to this jury that this homicide, if committed, was not committed in the perpetration or commission of the crime of robbery. The Prosecutor opened to the jury that he would prove to this jury by facts and circumstances and evidence that this crime was committed in the perpetration or the commission of the crime of robbery, as set forth in our statute. The testimony is undisputed, uncontradicted at the present time that when the defendant went to the McBurney home he went there 30  
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for the purpose of getting a drink of water, and after he had knocked at the door, Mrs. McBurney answered the knock, and he had a conversation with her at that time and then there was a scuffle or a push as described by the defendant, and then the unfortunate homicide was committed in this matter.

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THE COURT: Is your application for a direction of a verdict, Mr. Palese?

MR. PALESE: Well, your Honor I again say there are two bunched together —

THE COURT: You will have to tell me what it is you want me to do. Do you want a directed verdict?

20

MR. PALESE: Yes, I want your Honor to direct a verdict to this jury that they cannot find him guilty of murder under this indictment because the State has failed to show that this homicide or killing was caused by reason of the commission or attempt to perpetrate the crime of robbery.

THE COURT: Mr. Palese, the indictment is for murder. It can be murder in the second degree or murder in the first degree. You do not want a direction of a verdict of not guilty?

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MR. PALESE: No.

THE COURT: What direction do you want? I cannot direct a verdict of guilty, you know that.

MR. PALESE: If your Honor will just bear with me for a moment, and if I am permitted to —

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*Motion for Direction*

THE COURT: I must know, Mr. Palese, what judicial action it is you are applying for. What do you want me to do? I will listen to your reason if you will tell me what you want me to do.

MR. PALESE: I am asking if it is agreed that this crime was not committed in the commission of a robbery or an attempt to commit robbery that your Honor direct this jury they can only bring in a verdict of murder in the second degree. 10

THE COURT: That is a request for instruction. That is not for the direction of a verdict.

MR. PALESE: I feel I have the right to ask your Honor to direct a verdict of murder in the second degree because — 20

THE COURT: Do you want me to tell the jury to find this defendant guilty of murder in the second degree? The application is denied.

MR. PALESE: Will you allow me an exception?

THE COURT: Yes.

The defendant prays an exception, which is hereby allowed and sealed accordingly. 30

Clifford A. Baldwin (Seal)  
Judge.

MR. PALESE: This would also apply to the question of premeditation, if your Honor will permit me this further motion, as I understand the opening of the Prosecutor. Again, I ask your Honor after I am through with my discussion that your Honor charge this jury under the circumstances and facts 40

*Motion for Direction*

as produced that they can only bring in a verdict of murder in the second degree.

THE COURT: You are talking about the charge. If this is a request to charge, Mr. Palese, it certainly is not the right way to make it on motion.  
10 The way to make requests of charge are to submit those requests in writing to the Court.

MR. PALESE: I have them in writing. I know they are in the requests to charge I have handed your Honor. I just do not follow your Honor. My understanding is you can always make a motion for direction.

THE COURT: You are asking me for a directed  
20 verdict of guilty; you are asking me to tell this jury they have to find him guilty of murder in the second degree.

MR. PALESE: Not to find it but under the circumstances and evidence, they can only find him guilty of murder in the second degree because there is lacking in the proof the question of the robbery or of the intent to rob preceding the killing, and secondly, there is no wilful, deliberate premeditation  
30 established on the part of the State. Now, if those facts are lacking in this case, I think it does not have to be in the form of a charge or a request to your Honor to charge. I think a motion for a direction that under the evidence and the facts as produced in this case —

THE COURT: That is in the nature of a direction as I understand it. That is what I am having difficulty in understanding.  
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*Motion for Direction*

MR. PALESE: I would ——

THE COURT: You say you want a direction but you do not tell me what direction you want.

MR. PALESE: I cannot be more specific than to say under the facts and testimony, they can only bring in a verdict of second degree, your Honor. I just cannot follow your Honor in the distinction you make between the request for charge and the request for direction. There may be a distinction but I cannot see it. 10

THE COURT: If it is a request to charge, Mr. Palese, it is an improper method of making it by means of a motion. 20

MR. PALESE: I agree with your Honor. I am not quarreling with your Honor on that phase. I don't say it is a request to charge. I say the testimony in this particular case warrants your Honor in directing this jury that the testimony would not warrant a verdict of murder in the first degree because the other element—the elements that make it murder in the first degree are lacking. I do not think that has to be done by reason of a request to charge. I think it is made on motion, the same as I would do with respect to these exhibits. I can only get these exhibits stricken from the record by a motion. That is the only way I can get them out or anything your Honor may have done in the trial of the case which now develops are not proper facts to go before the jury. 30

THE COURT: This direction you want when granted is to be dispositive of the whole case, by 40

bringing the jury back and telling them that. What goes on after that?

10 MR. PALESE: Let me for a moment assume that there has been no attempt to rob established on the part of the State—now there is testimony there had  
20 been drinking, uncontradicted testimony that this man had gone to the farm without any intention to rob, and his story as it appears in his confession is that he went there to get a glass of water—assume that is true. It is my contention I can say to your Honor at this time, in view of the fact the State of New Jersey has failed to establish that this killing was the result of an attempt on the part of this defendant to commit robbery or to perpetrate robbery, that this defendant can only be found guilty of murder in the second degree, and I say, in my interpretation of the law, the only way I can bring that to your attention is by a motion at this time, saying to your Honor there is no testimony here that would warrant this jury, if these facts are true and uncontradicted, in bringing in a verdict of murder in the first degree, and can only bring in a verdict of murder in the second degree.

30 THE COURT: Then the indictment would support a conviction.

MR. PALESE: Of second degree.

THE COURT: Yes.

MR. PALESE: Absolutely, we have admitted it.

40 THE COURT: I do not see how I can direct a verdict. Your application is denied. You may have an exception.

*Charge of the Court*

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

## CHARGE OF THE COURT.

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BALDWIN, J.:

Gentlemen of the jury: Robert Cox, the prisoner at the bar, stands charged upon indictment with the murder of Agnes McBurney at the Township of Gloucester in this county on the 23rd day of April, 1941. The indictment is in statutory form and charges that the said defendant did wilfully, feloniously and of his malice aforethought kill and murder the deceased. It now becomes your duty to render a verdict upon the question of the guilt or innocence of the said Robert Cox and upon the degree of his guilt, if guilty. In doing this you must be guided by the principles of law bearing upon the case that I will now proceed to lay before you.

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In the determination of all questions of fact, the sole responsibility is with the jury. You are the sole judges of the veracity and the weight of the evidence and of the credibility of the witnesses. You have had the opportunity of observing the attitude and demeanor of the various witnesses, including the defendant, on the stand, and you have the right to inquire into and consider any possible interest they or any of them may have of the outcome in the case.

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Any comment that I may make upon the evidence will be made not for the purpose of controlling you in your view of the facts but only to aid you in applying the principles of law to the facts as you may find them. You must not consider what I shall say concerning the evidence as being accurate, but

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you must depend upon your own recollection. You must not only consider the evidence to which I may refer but you must consider all the evidence in the case.

10 In this, as in every criminal case, the defendant is presumed to be innocent, which presumption continues until he is proved to be guilty.

To support the indictment and to justify conviction, the State must prove the facts sufficient for that purpose by evidence beyond a reasonable doubt, and that burden never shifts from the State. A defendant is not required to prove that he is not guilty beyond a reasonable doubt; the burden is upon the State to prove the defendant guilty beyond a reasonable doubt. If there be reasonable doubt whether a defendant is guilty, he is to be declared not guilty.

20 Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It 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. The evidence must establish the truth of the fact to a moral certainty, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it, and if, after canvassing carefully the evidence and giving the accused the benefit of reasonable doubt, you are led to the conclusion that the defendant is guilty, you should so declare by your verdict.

40 Further, if in considering this case and applying the principles of law given you by the Court, you

*Charge of the Court*

are clear and find beyond a reasonable doubt that guilt has been established but you should be in that state of mind which is called one of reasonable doubt as to whether that guilt be that of murder in the first degree or as to whether that guilt be murder in the second degree, as I shall define those terms to you later, the benefit of that reasonable doubt would go to the defendant, and you would find him guilty of the lesser degree of homicide, namely, murder in the second degree, that being a lesser offense than that of murder in the first degree. In fine, the benefit of any reasonable doubt always goes to the defendant and always is applied in his favor. He is never presumed to be any more guilty than the facts make him and any conclusion of guilt which you reach must be beyond a reasonable doubt before it can support a conviction.

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Now, the indictment charges murder, and our law is that if any person in committing or attempting to commit arson, burglary, rape, robbery, sodomy or any unlawful act against the peace of this State of which the probable consequences may be bloodshed, shall kill another, or if the death of anyone shall ensue from the committing or attempting to commit any such crime or act as aforesaid, then such person so killing, as aforesaid, shall be guilty of murder. Further, the law provides that murder which shall be perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premeditated killing or which shall be committed in perpetrating or attempting to perpetrate arson, burglary, rape, robbery or sodomy shall be murder in the first degree, all other kinds of murder being murder in the second degree, and that the jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof,

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designate by their verdict whether it be murder in the first degree or murder in the second degree.

To make out a case of guilt the State must establish by evidence beyond a reasonable doubt first, that Agnes McBurney was killed and that her death resulted from some felonious treatment of her by another. Such felonious treatment might arise in the committing of robbery or any other unlawful act against the peace of this State of which the probable consequence might be bloodshed. To support its charge that Agnes McBurney was killed and that she met her death through felonious means, the State has produced evidence tending to show that in the early morning of April 23rd when the other members of her family left their home, she was alive, but that shortly after four o'clock in the afternoon of the same day when her son, Robert McBurney, Jr., returned home, he found her dead body lying on the ground outside the home and in immediate proximity thereto, that the body showed manifest signs of physical violence and injury, particularly in and about the head and face, and that upon removal of the body and the examination of it by a physician it was determined that she died of a cerebral hemorrhage induced and caused by one or more fractures of the bones of the skull, and that those fractures had been produced through the use of some blunt weapon or instrument. From the evidence you may conclude, if you see fit, that the said Agnes McBurney was feloniously stricken on the 23rd day of April, 1941, at the Township of Gloucester in this county, and that she died as a result thereof. If, in your determination of the facts, you do not accept as true the testimony you have heard as to the cause of death of the decedent and you esteem that she was wounded and brought to her

*Charge of the Court*

death under other circumstances, with which the defendant now on trial was not involved, you would naturally find him to be not guilty. The Court recalls no testimony which would depict any such other circumstances.

Secondly, in order to justify a verdict of guilty, the State must establish by evidence beyond a reasonable doubt that the death was caused by the act of Robert Cox. On this issue, the State offered into the evidence a statement testified to by William B. Macdonald, official court reporter, to have been made by the defendant, Robert Cox, on April 24, 1941. I shall not repeat at length the contents of that statement said to have been made by the defendant, but you will recall its contents and you are to determine as jurors whether the statement was in fact made by the defendant, and if so, you are to determine the weight to be given it. The credibility to be accorded it, either in whole or in part, depends upon your belief or disbelief in the truth of the content thereof, and if you do not believe in its truth you can reject it in the same manner as you should reject any other testimony which you disbelieve. Similarly, you may reject it if you do not believe that the statement was in fact made. You are not privileged, however, to disregard or reject it upon any determination on your part that the statement, if given, was not voluntarily given. The Court has determined that the statement was admissible into the evidence and the jury cannot reverse that finding by any finding of its own that the statement was not voluntarily given. Furthermore, upon this issue of whether Agnes McBurney's death was caused by the act of Robert Cox, you may consider the testimony given by the defendant himself in open Court at this trial for, as I recall it, the

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defendant has admitted striking or striking at Mrs. McBurney with a baseball bat which he said he used and he has described with some detail the manner in which he says the bat came into his hands and how he made use of it. You may also have occasion to give consideration to the testimony that immediately subsequent to his arrest, the defendant Cox may have endeavored to mislead the authorities investigating the matter of Mrs. McBurney's death, by his denial during the early part of such investigation that he was present at the McBurney home at all on the day in question, when later and at this trial he may have admitted being there.

The indictment charges murder, and murder has been defined as the killing of a reasonable being with malice aforethought. So, while malice is an important element in the crime of murder, you should understand that malice in its legal sense means nothing more than an evil state of mind. The law implies an evil design whenever a homicide is committed, and the presumption of the law is, therefore, that all homicides are murder in the second degree. The intent to take life is not a necessary element to constitute the crime of murder in the second degree. Therefore, as I have already indicated, if you have been satisfied by evidence beyond a reasonable doubt that Agnes McBurney was killed and that her death resulted from the felonious treatment of her by the defendant Robert Cox in committing or attempting to commit robbery or any unlawful act against the peace of this State of which the probable consequence might be bloodshed, you may find him guilty, and guilty of at least murder in the second degree; otherwise, and if you are not thus satisfied by evidence beyond a reasonable doubt, you should find him not guilty.

*Charge of the Court*

In seeking to establish the guilt of the defendant in a higher degree, which it charges as being that of murder in the first degree, the State goes beyond the scope of the other two essential requirements heretofore discussed with you, and endeavors to prove that the murder which it says was committed by the defendant was committed by him in perpetrating or attempting to perpetrate a robbery or that the murder was perpetrated by means of a wilful, deliberate and premeditated killing of Mrs. McBurney by the defendant, either of which possibilities, if true in fact, would be characteristic of murder in the first degree. 10

Let us deal first with the claim that the defendant committed the murder in perpetrating or attempting to perpetrate a robbery. Again I say to you that if the State is to prevail upon this contention, it must be established by evidence beyond a reasonable doubt. Robbery is stealing property with violence from the person or personal custody of another person. It is necessary in order to constitute that crime that the goods shall be on the person of the owner or the owner's agent or shall be in the presence or custody of the owner or the owner's agent. 20

An attempt to commit the crime of robbery would be an act or combination of acts done with the intent to commit it, going beyond mere preparation but falling short of its actual commission. An attempt, therefore, consists of three elements, the intent to commit the crime, the performance of some act towards its commission and the failure to consummate the commission. I say to you that these particular elements which we are considering as being essential to murder in the first degree, namely, that the murder was committed in the perpetrating or attempt to perpetrate a robbery would not be pres- 30 40

ent in this case if you were to conclude that there was no intent to rob on the part of the defendant Cox at the time when he might have delivered the blow or blows that killed Mrs. McBurney. This would be true notwithstanding the fact, if it is a fact, that the defendant, after dealing with Mrs. 10 McBurney, may have ransacked the premises of which she was in charge, and may have stolen an article or articles of property therefrom. You may give consideration, however, to such ransacking and such stealing, if it occurred, as bearing on the question of whether the murder of Mrs. McBurney was committed by the defendant in the perpetration or in the attempted perpetration of a robbery, for you are not bound by any statement or testimony on the part of the defendant that a purpose on his part 20 to steal what he might find in the McBurney home did not arise until after he had dealt with Mrs. McBurney, if you do not accept any such statement or testimony on his part as being true.

Let us deal secondly with the claim that the defendant committed the murder by means of a wilful, deliberate and premeditated killing on his part, and again I say to you that if the State is to prevail upon this contention, it must be established by evidence beyond a reasonable doubt. In the absence 30 of those elements of first degree murder which we have already discussed as being characteristic of murder in the first degree, namely, murder committed in perpetrating or attempting to perpetrate a robbery, and in the further absence of the aforementioned elements of wilfulness, deliberation and premeditation in the killing, established to your satisfaction by evidence beyond a reasonable doubt, as aforesaid, the killing said to have been committed 40 by the defendant could not have been greater than

*Charge of the Court*

murder in the second degree, for murder in the first degree of the type which I am now discussing with you consists in the taking of human life with the intent to kill, and that intent being executed with deliberation and premeditation. You will understand, of course, that it is not essential to a first degree conviction that there should be any combination of the two kinds of murder in the first degree which I have outlined to you, namely, the kind that is committed in perpetrating or attempting to perpetrate a robbery and the kind that is perpetrated by means of a wilful, deliberate and premeditated killing, for either kind, if established by evidence beyond a reasonable doubt, would suffice to a finding that murder in the first degree was committed. Going back to that type of murder in the first degree which consists in the taking of human life with intent to kill, and that intent being executed with deliberation and premeditation, let me say to you that it is our law that homicide with a deadly weapon justifies in itself the presumption that there was an intent to take life. A deadly weapon is one liable to produce death or great bodily injury, and in case of doubt the manner in which it is used may be taken into account in determining whether or not it was deadly. So far as the elements of deliberation and premeditation necessary to a conviction for first degree murder are concerned, it is not necessary that that deliberation and premeditation be continued for an hour or even for a minute. It is enough if the design to kill be fully formed and purposely executed. You will see, therefore, that the important elements necessary to constitute the crime of murder in the first degree of the type which we are now discussing are an intent to kill and an execution of that intent with deliberation and premeditation. I do not know that I can define those words better than they

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define themselves. Deliberation implies a weighing of the matter; premeditation implies forethought with regard to the matter. Accordingly, upon this issue of whether murder in the first degree was committed in this case, you will recall and consider the evidence bearing upon the same. If the proved facts  
10 establish beyond a reasonable doubt that the killing was done wilfully, that is, with intent to kill, and as a result of premeditation and deliberation, there is murder in the first degree. In coming to your conclusion as to whether in the instant case there was a wilful, deliberate and premeditated killing, you may give consideration to any of the evidence which would tend to establish that the defendant Cox may have been motivated by an intent to take  
20 the life of Mrs. McBurney and to carry out that intent with deliberation and premeditation through any fear that he had of later accountability on his part for his acts toward her or toward the property of which she was in charge, should she live to denounce him for those acts, the defendant's own testimony, as I recall it, being that Mrs. McBurney knew him and knew him by name. Furthermore, you might consider whether according to the evidence his intent to take her life and his execution  
30 of that intent with deliberation and premeditation may have arisen after he had first struck and injured Mrs. McBurney, when realizing the nature and consequences thereof, he may have determined upon an intent to deal her a mortal blow calculated to produce her death, and he may have carried out that intent with the requisite deliberation and premeditation aforesaid. On this score, however, you may experience difficulty, and you may entertain reasonable doubt as to whether the intent was  
40 formed and whether the deliberation and premeditation occurred in the middle of a series of blows, if

*Charge of the Court*

there were a series of blows, and you must be careful to give the defendant the benefit of any reasonable doubt on that subject, as well as upon the possible question of whether the blow or blows which produced her death came after the deliberation and premeditation rather than before the same, for it would be essential to a first degree conviction that the mortal blow or blows, namely, that or those from which Mrs. McBurney died, should have occurred after the defendant's mental processes of forming the intent and carrying it out with deliberation and premeditation had occurred. 10

Now, you will understand that I have discussed with you two types of murder in the first degree and you are not to be confused in any way by requiring a combination of both of these kinds of murder in the first degree in order to support a conviction for murder in the first degree. 20

Since I have told you that all homicides are presumed to be murder in the second degree, and that the burden of raising the degree to first degree by proof, as aforesaid, rests upon the State, I should now discuss with you the matter of the defendant's alleged intoxication which it is claimed operates in his defense and absolves him from being guilty of murder in the first degree. So far as the defendant's alleged intoxication may be of a defensive nature, and I shall discuss that later, let me first say that the fact of intoxication must appear and that there must be a preponderance of evidence to prove the defense of intoxication which is here offered. 30

It is true that when the character and extent of a crime is made by law to depend upon the state and condition of the defendant's mind at the time and with reference to the act done, intoxication as 40

a circumstance affecting such condition and state of mind is a proper subject for inquiry and consideration by the jury. If by law, deliberation and premeditation in some instances, and an intent to commit robbery in other instances, are essential elements in classifying a murder as murder in the first degree, and by reason of drunkenness it appears that at the time of its commission the murderer's mental state was such that he was incapable of such deliberation and premeditation in the one case or of forming an intent to perpetrate robbery in the other case, then the crime is not to be properly classified as murder in the first degree, for murder of that degree was not committed. In such a situation the State would not have borne the burden of proof of all the essential ingredients of such a crime of murder in the first degree. Voluntary intoxication, however, is no defense whatever to the crime of murder in the second degree, for what constitutes murder in the second degree by a sober man is equally murder in the second degree if committed by a drunken man.

You should carefully discriminate between that excitable condition of the mind produced by drink, which is not incapable of forming an intent, but determines to act on a slight provocation, and such prostration of the faculties by intoxication as puts the accused in such a state that he is incapable of forming an intention from which he shall act. You should apply the rule I have given you with caution, so that no undue or dangerous immunity or license be given to crime by persons whose minds are inflamed by drink, for so long as the mind of a criminal is capable of conceiving and carrying out a purpose to kill or an intent to rob, he must be held to the responsibility of one who is sober.

*Charge of the Court*

In arriving at a verdict upon all of the foregoing matters laid before you, I charge you that each juror must reach his own determination after a discussion of the facts with his fellow jurors, and any verdict to be delivered must be unanimous.

Touching upon the subject of the guilt or innocence and of the degree of guilt, if the defendant be found guilty, let me say that there are three possible verdicts; either that the defendant is not guilty or that he is guilty of murder in the second degree, or that he is guilty of murder in the first degree. If you find that the defendant is guilty of murder in the first degree, you may, if you see fit, by your verdict and as part thereof, recommend imprisonment at hard labor for life. If you should return a verdict of murder in the first degree and nothing else, the punishment which would be inflicted upon that verdict would be death.

If you desire to return a verdict of murder in the first degree coupled with a recommendation of imprisonment at hard labor for life, then you must so put it in your verdict because the law reads that "every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers shall suffer death unless the jury shall, by its verdict and as a part thereof, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

I think that I have substantially covered the requests to charge which were submitted to the Court by the defendant's counsel, so far as the first eleven of such requests are concerned. Request No. 12 is refused.

You may retire.

MR. PALESE: If your Honor please, I make a formal objection to the charge.

*Defendant's Requests to Charge*

THE COURT: You take a general exception to the charge?

MR. PALESE: Yes.

10 THE COURT: I suppose you also except to my refusal to charge request No. 12?

MR. PALESE: That is right.

The defendant prays an exception, which is hereby allowed and sealed accordingly.

Clifford A. Baldwin (Seal)  
Judge.

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## DEFENDANT'S REQUESTS TO CHARGE.

1. Every person convicted of murder in the first degree shall suffer death unless the jury shall, by their verdict and as part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed, and every person convicted of murder in the second  
30 degree shall suffer imprisonment at hard labor not exceeding thirty (30) years.

2. If the defendant was, at the time of the striking of the fatal blow, in such a state of intoxication that his mind was incapable of premeditating the consequences of the fatal blow with intent to take life and his reason thereof was deprived of the power to think and weigh the nature of the act and the consequence thereof, then the offense cannot be  
40 more than murder in the second degree.

*Defendant's Requests to Charge*

3. That if the jury believe from the evidence that the defendant, at the time of the commission of the crime, was, by reason of intoxication, unable to decide between right and wrong, you cannot convict of murder in the first degree.

4. If you believe that Robert Cox at the time of the killing was, by reason of intoxication, unable to form a wilful, deliberate and premeditated design, then you cannot convict of murder in the first degree. 10

5. That, while intoxication does not excuse crime, if it has been shown that Robert Cox was intoxicated to such an extent as to render him incapable of judging the nature and quality of his act, you should find a verdict of murder in the second degree. 20

6. If you believe from the evidence that Robert Cox at the time of the killing was intoxicated to such an extent as to render him incapable of judging his acts or their legitimate consequences, he should not be convicted of murder in the first degree.

7. That if, upon consideration of all the evidence, you have a reasonable doubt whether at the time of the striking of the fatal blow the defendant had, as a result of intoxication, or its after effects, sufficient mental capacity to deliberately think upon and rationally determine to kill deceased, you cannot find him guilty of murder in the first degree. 30

8. Before you will be justified in finding the defendant guilty of murder in the first degree, the state must satisfy you beyond a reasonable doubt that before striking the fatal blow, the defendant had formed in his mind a specific intent to take life 40

and that it was carried out with deliberation and premeditation, that is, you must be satisfied beyond a reasonable doubt that the defendant had sufficient time before striking the fatal blow to fully and clearly conceive the design to kill and then to consider and deliberate the question whether to kill or not and thereafter to determine to execute the previously formed intention. Such design must precede the striking of the fatal blow by some appreciable space of time. It must be some reflection and consideration upon the matter for the choice to kill or not to kill and for the formation of a definite purpose to kill.

9. It is apparent that the defendant had been drinking prior to the striking of the fatal blow. If you find from the evidence that he was so intoxicated as to raise in your mind a reasonable doubt as to his mental condition and ability to form and deliberately and premeditatedly carry out an intent to kill, then there would be such a doubt as he would be entitled to the benefit of, and he could not be convicted of murder in the first degree.

10. Where a person merely takes life with intent to do great bodily harm only, it is murder in the second degree, and the evidence in this case does not justify a conviction of murder in the first degree because it was not wilful, deliberate and premeditated.

11. If you find that the defendant was pushed from the step by the deceased, causing him to stagger from the step, and he seized the club ready to his hand and inflicted a mortal wound with it, both the shortness of time and the excitement of the occasion make it much less probable that he acted

*Defendant's Requests to Charge*

with deliberation and premeditation than where he armed himself before the assault. It is the contention of the State that it was after the striking of the first blow that the defendant fully and clearly conceived the design to kill, had sufficient time to consider and deliberate whether to kill or not, and thereafter to determine to execute the previously formed intention. If you find that to be true beyond a reasonable doubt, then you should not convict the defendant of murder in the first degree unless you are satisfied beyond a reasonable doubt that the decedent's death was not the result of the first blow, but the result of the subsequent striking by the defendant. 10

12. That the testimony in this case does not show the attempt to commit a crime of robbery or to perpetrate a crime of robbery which is an essential element in the crime of murder to make it murder in the first degree; that under the facts and circumstances, the State having failed to show that the homicide was caused in the attempt to commit or to perpetrate the crime of robbery that you can only bring in a verdict of murder in the second degree. 20

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## ASSIGNMENT OF ERRORS.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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STATE OF NEW JERSEY, Defendant-in-Error, vs. ROBERT COX, Plaintiff-in-Error.	}	On Indictment and Conviction for Mur- der.  Assignment of Errors.
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Afterwards, to wit, in the New Jersey Court of Errors and Appeals, comes the said Robert Cox, said plaintiff in error, by his attorney, Rocco Palese, and says that the judgment herein should be reversed because in the record and proceedings herein, and in the matters contained and noted in the several bills of exception herein, and also in the findings of the verdict and the giving of judgment herein, there is manifest error, to the great injury of the plaintiff in error, whereby he was prejudiced in maintaining his defense upon the merits in the case, as well as in other respects, to wit:

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1. Because the Court, over objection of the plaintiff in error, permitted to be offered in evidence photographs marked S-5 and S-6; S-5 purporting to show the conditions and surroundings of the bedroom of the decedent's home; and S-6 purporting to show the conditions and surroundings of the inside

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*Assignment of Errors*

of the house as first observed by the son of the decedent upon his arrival home.

2. Because the Court erred in admitting in evidence, over objection, testimony as to the conditions and surroundings of the bedroom, parlor and shed of decedent's home when first observed by the witnesses. 10

3. Because the Court denied the motion on behalf of the plaintiff in error to direct a verdict of second degree for the reason that there was no testimony at the end of the State's case to show that the defendant below, on April 23rd, 1941, then and there did willfully, feloniously and of his malice aforethought, make an assault and did kill and murder one Agnes McBurney; for the further reason that there was no evidence that the murder was the result of the committing or in the attempt to commit the crime of robbery. 20

4. A judgment as of murder in the second degree should have been pronounced.

5. Because the Court, at the conclusion of the trial, denied the motion of the defendant below to direct a verdict of murder in the second degree on the grounds that the State had failed to show that the defendant below did on April 23rd, 1941, willfully, feloniously and of his malice aforethought, make an assault upon one Agnes McBurney, and did then and there willfully, feloniously and of his malice aforethought kill and murder the said Agnes McBurney, or that the murder was the result of the committing or of the attempt to commit the crime of robbery by the defendant below. 30  
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*Assignment of Errors*

6. Because the Court, at the conclusion of the trial, refused to grant the motion of the defendant below that the facts in the case did not warrant a verdict of murder in the first degree, but that the verdict should be one of second degree murder.

10 7. The Court erred in refusing to charge the jury Request No. 12 when moved by the defendant at the close of all the evidence and before the summation, said request being as follows:

20 "That the testimony in this case does not show an attempt to commit a crime of robbery or perpetrate a crime of robbery, which is the element of the crime of murder to make it murder in the first degree; that under the facts and circumstances, the State having failed to show that the homicide was caused in the attempt to commit or to perpetrate the crime of robbery that you can only bring in a verdict of murder in the second degree."

ROCCO PALESE,  
Attorney for Plaintiff-in-Error.

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[ENDORSED]

Service of the within Assignment of Errors is hereby acknowledged this 29th day of August, 1941.

Samuel P. Orlando,  
Of Counsel for Defendant-  
in-Error.

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*Specifications of Causes for Reversal*SPECIFICATIONS OF CAUSES FOR  
REVERSAL.NEW JERSEY COURT OF ERRORS  
AND APPEALS. 10

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STATE OF NEW JERSEY, Defendant-in-Error, vs. ROBERT COX, Plaintiff-in-Error.	}	On Indictment and Conviction for Mur- der. Specifications of Causes for Reversal.
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The plaintiff-in-error specifies the following causes in the record relied upon for a reversal of the judgment:

1. Because the verdict of "Guilty of Murder in the first degree" was against the weight of the evidence.
2. Because the verdict is contrary to the evidence. 30
3. Because the whole evidence did not warrant the verdict of "Guilty of Murder in the First Degree".
4. Because the Court refused to charge Request No. 12 made by the defendant below, as shown in the Assignment of Errors.
5. The verdict of the jury was clearly against the weight of the evidence in this cause, and was 40

*Joinder in Error*

the result of a mistake, passion, prejudice or partiality.

ROCCO PALESE,  
Attorney for Plaintiff-in-Error.

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—————  
[ENDORSED]

Service of the within Specifications of Causes for Reversal is hereby acknowledged this 29th day of August, 1941.

Samuel P. Orlando,  
Of Counsel for Defendant-in-Error.

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—————  
JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

—————  
30 STATE OF NEW JERSEY,  
Defendant-in-Error, }  
v. } In Error.  
ROBERT COX, } Joinder in Error.  
Plaintiff-in-Error. }

—————  
And thereupon, afterwards, to-wit: on the 10th day of September, 1941, the State of New Jersey, by  
40 Samuel P. Orlando, Esquire, of counsel for the

*Joinder in Error*

State, comes into court and says, that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in the manner aforesaid given, may in all things be affirmed. 10

SAMUEL P. ORLANDO,  
Of Counsel for Defendant-in-  
Error.

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[ENDORSED]

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Service of copy of the within Joinder in Error is hereby acknowledged this 10th day of September, 1941.

Rocco Palese  
Atty for Plaintiff-in-Error

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Journal in French

The journal is written in French and contains a detailed account of the events of the day. It is written in a clear and concise style, and is a valuable source of information for the study of the history of the region.

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[Continued]

Journal of the first day of the month of January 1811. The weather was very cold and the wind was very strong. We went to the market and bought some provisions. The people were very poor and the streets were very dirty.



Exhibit S-3

399

394

Exhibit B-3

BLACK



Exhibit 8-6

402

104

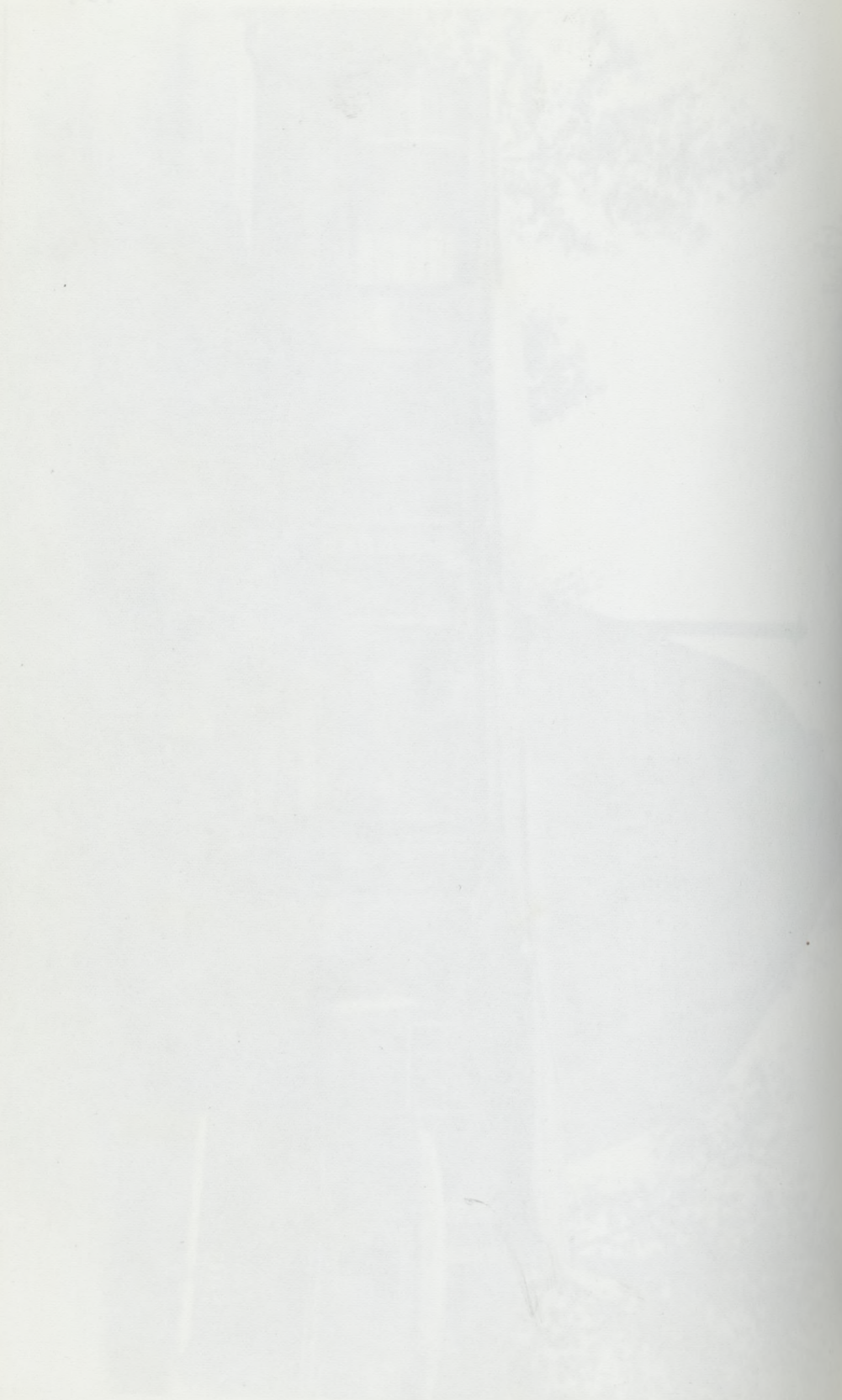
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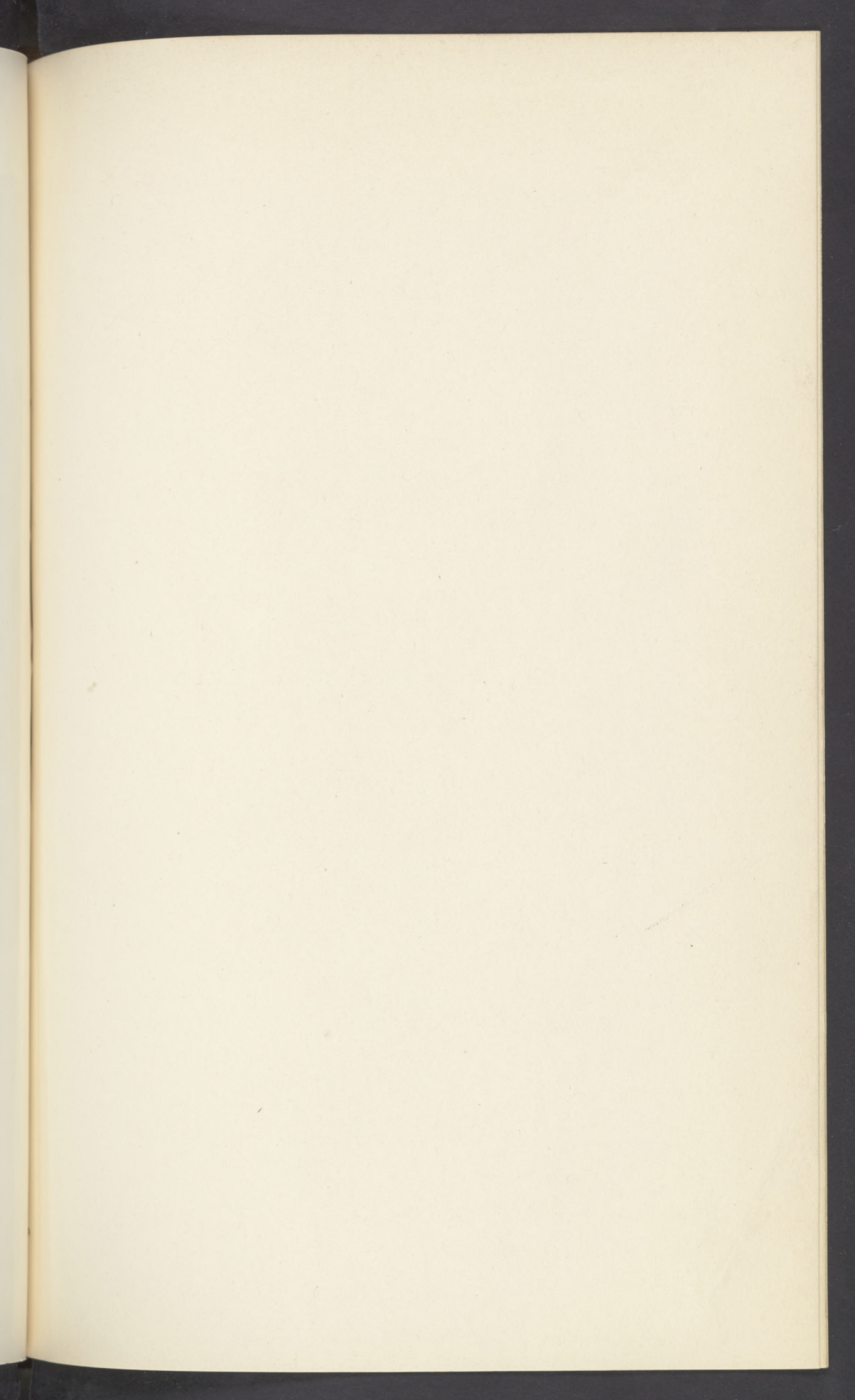
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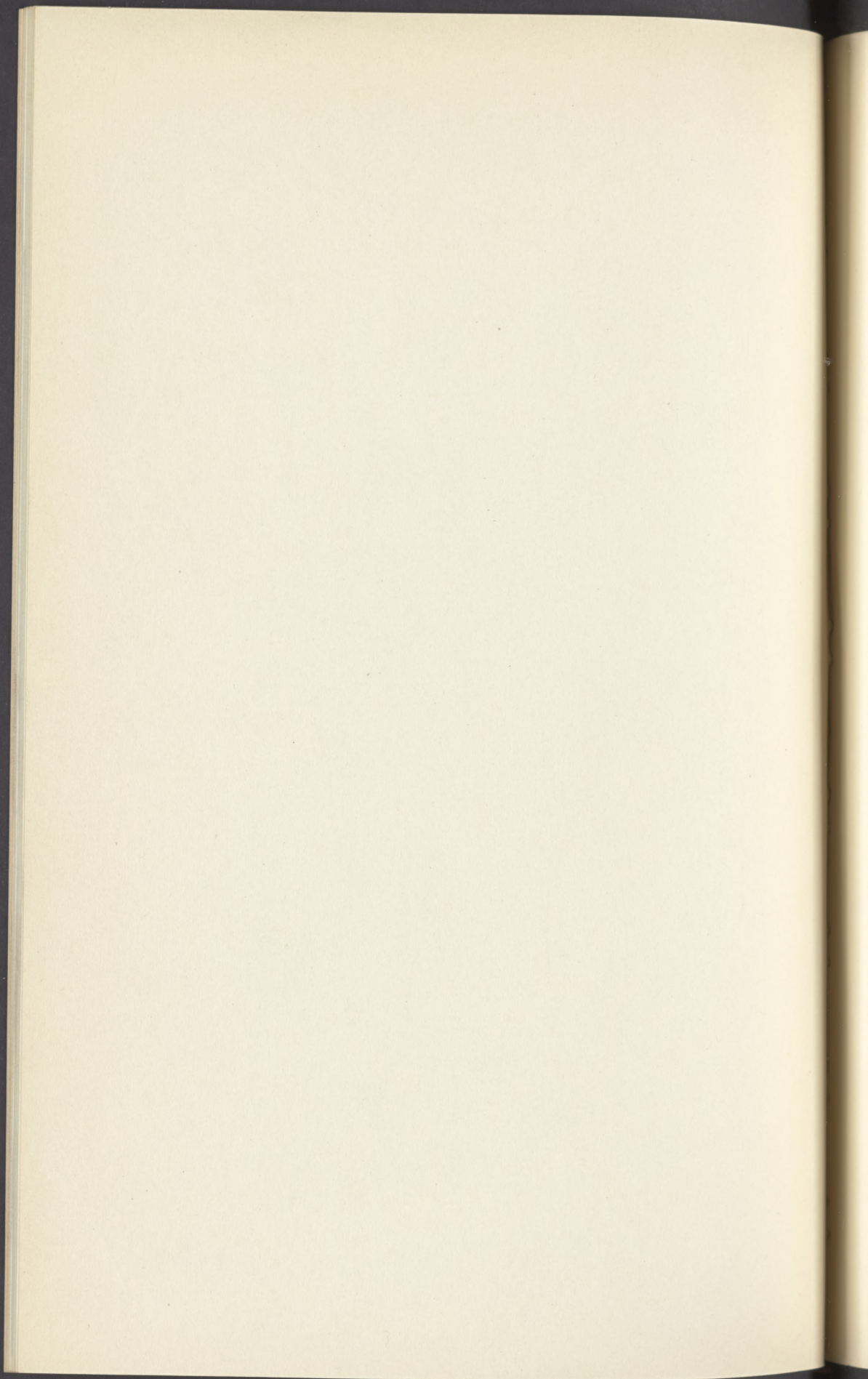


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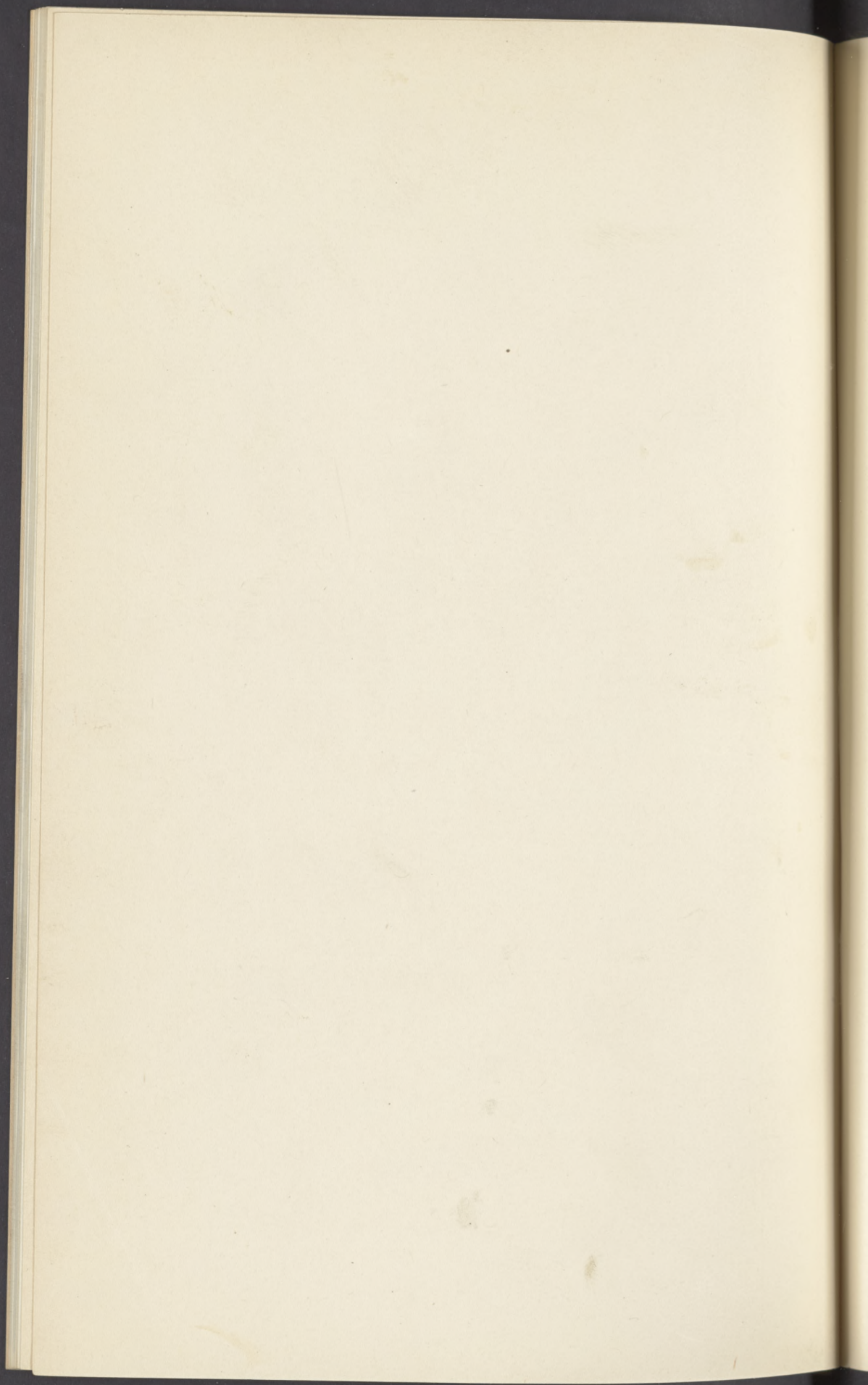
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**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

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THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*  
vs.

ROBERT COX,  
*Plaintiff-in-Error.*

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ON INDICTMENT FOR MURDER.

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ON ERROR TO CAMDEN COUNTY COURT OF OYER AND  
TERMINER.

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**BRIEF OF PLAINTIFF-IN-ERROR.**

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Plaintiff-in-Error, hereinafter referred to as the Defendant, was convicted in the Camden County Court of Oyer and Terminer of murder in the first degree without recommendation of life imprisonment, on an indictment for the murder of Agnes McBurney on April 23rd, 1941, and was sentenced to death.

The entire record is brought up with the Writ of Error, as provided by Revised Statutes of New Jersey 1937, 2:195-16, and for review on Assignments of Error and Specifications of Reasons for Reversal.

**STATEMENT OF FACTS.**

The defendant, a negro, lived on Hickstown Road, Gloucester Township, Camden County, New Jersey, about two miles from the home of Agnes McBurney, where she lived with her husband and family; defendant had known the McBurney family for about six or seven years; he worked with the husband of Agnes McBurney on WPA Projects and had ridden with him back and forth to the projects over a period of three years (C., p. 88).

Defendant testified to excessive drinking the day and night preceding April 23, 1941 (C., p. 89). On the morning of April 23rd, 1941, he commenced drinking again, and about noon time started walking down the road with a bottle of gin and a bottle of wine in his pockets (C., p. 89). He stopped a few times and consumed the contents of the two bottles and by that time he was near the McBurney home (C., p. 91). He went to the back of the house, knocked on the door and then heard a dog barking. Agnes McBurney opened the back door and the dog came out and grabbed his pants. Defendant then struck at the dog with a small stick which he had in his hand, as he said for the purpose of breaking him loose; that Mrs. McBurney then said, "Bob, what are you doing here drunk," to which he replied, "I stopped here to get a drink of water." Mrs. McBurney replied, "You are drunk, get off my place," and by that time she shoved the defendant and hit him, causing him to fall against the truck which was parked in the yard near the shed (C., p. 92).

The decedent followed the defendant in the yard, there was a scuffle between them, both grabbing for

*Brief of Plaintiff-in-Error*

a baseball bat which was near the step; defendant got hold of the bat and struck Agnes McBurney several times with it, the blows resulting in her death (C., p. 92).

Defendant's explanation for striking her more than once was, "I was drunk with liquor and I didn't know what I had done. I was crazy under the influence of liquor" (C., p. 93). After the striking of the several blows with the baseball bat he entered the house and took a radio (C., p. 97), which he later disposed of in Philadelphia for \$3.50 (C., p. 331).

The body was discovered by a son, Robert, about 4:00 o'clock in the afternoon, who immediately after discovering the body went in the house, got a shot gun and fired it to attract attention. Receiving no answer, he mounted a horse and went for help to the Bungalow Inn, about one-half mile down the road, and returned with J. Summerill Chew and Frederick Erdbrink (C., p. 25). The Township Police were then notified, as well as the State Police.

The defendant was arrested the following day, and after having been in custody but a short time, he made a statement (C., pp. 87 to 118), which was offered in evidence by the State.

The confession constituted the State's case as to the occurrence and commission of the murder, and this is the statement as to the occurrence of the killing (C., pp. 91 and 92):

"A. About a quarter of a mile I was in the Buffalo Road from the Hickstown Road, Lamb's Terrace, so I said to myself, 'Well, I better kill that other and get rid of the bottle,' so I taken the bottle of wine out, drink it, and throw the bottle away, and by that time I was pretty near to Mr. McBurney's house, and I

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says to myself, 'That's where Mr. McBurney lives,' and I wanted a little drink of water but something said, 'You are too full to go in, you are too full, don't go in. I don't guess she will say anything about me being full. I will go and ask for a drink of water,' and knocks on the door and I heard the dog barking, and she opened the door, and I had a little stick with me. The dog run out and I had the stick in my hand, just like that (illustrating) and he came out and I waved at him like that (illustrating) and he grabbed me by the pants.

Q. Who grabbed you by the pants, the dog?

A. The dog, and she says to me, she says, 'Bob, what are you doing here drunk?'

Q. Who said that to you?

A. Mrs. McBurney. She said, 'Bob, what are you doing here drunk?' I said, 'I stopped here to get a drink of water,' and she said, 'You are drunk. Get off my place,' and by that time she shoved me and hits me and I fell up against the truck.

Q. You fell against the truck?

A. Yes, sir.

Q. Then what happened?

A. One of the boy's bats was there.

Q. Baseball bat?

A. Yes, sir, so when she hit at me again I taken the baseball bat and I struck her and she fell and I looked down."

And defendant, concerning the circumstances surrounding the homicide at the trial, testified as follows (C., pp. 233 and 234):

"Q. Then you struck Mrs. McBurney?

A. Then I struck her. I don't know how many

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times I struck her, and I think I must have struck her about two or three times, and I don't know nothing else when I struck her the two or three times.

Q. Then what did you do after that?

A. Then after I struck her, I was so excited, and everything, I didn't know just what I was doing. My head was going around. The whiskey was working on me, and something seemed to say, 'Go in the house, and see if you can find some change, and get some more liquor this afternoon,' so I goes into the house, and I goes into the house, and I went upstairs. I pulled out the drawer, and got a pocketbook. There wasn't anything in it. Then I picked up a radio, a little small radio sitting on the table, and I had taken that up, and I come on downstairs, and I walked out on the kitchen floor, and went out in the woods and went on home.

Q. When you went there on this afternoon, had you any intention, or had you made up your mind, or had you given any thought to the question of committing a robbery on that occasion?

A. No, sir, Mr. Palese, there wasn't no intention of mine at all going there and harming the woman. When she shoved me down up against the truck and I was falling, when she reached for the bat, we were tussling and then I grabbed the bat, she grabbed it and I grabbed the bat from her, why, I just lost my head, excited and full of liquor, and I didn't hardly know what I was doing. Then is when I struck her. I didn't have no intention at all of going there and harming the lady, or trying to rob the place whatever. If it had not been for the

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liquor I had in me, I never would have committed anything. I just didn't know what I was doing."

And again, on Pages 235, 236 and 237, he testified as follows:

"A. Yes, I was full of stuff.

Q. You say that the only reason you went to this farm house was so that you might get a drink of water?

A. That's the reason why I stopped there. I went in and stepped up, I didn't have no intention of going there to harm her at all.

Q. The only reason you went there was so you could get a drink of water?

A. That was it.

Q. Is that right?

A. Yes.

Q. Had it not been for the fact you wanted a drink of water, there is no reason that would take you to Mrs. McBurney's home, is that right?

A. I didn't have it in my mind whether I was going to stop there. I just come along there on my way. I thought I would stop and get a drink of water.

Q. Had it not been for the fact you got a desire to get a drink of water, there was no reason why you would go to the McBurney farm, is that right?

A. No, sir, I would not have stopped.

Q. What?

A. No, sir, I would not have stopped.

Q. Do I understand you to say now that Mrs. McBurney made a grab for the baseball bat?

A. Yes, sir.

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Q. When did she make a grab for the baseball bat?

A. When I was scuffling, getting up.

Q. Had you been thrown to the ground before that?

A. I pretty nearly hit the ground. I was falling on the ground, I was falling, and caught myself up against the truck.

Q. Who was it that caused you to fall down, were you pushed?

A. She was the cause of it.

Q. She pushed you?

A. Yes, sir.

Q. When she pushed you, you say you went down towards the ground?

A. I went down.

Q. Is that right?

A. I lost my balance the way I was standing, the way the dog had me by the leg, and the way she shoved me, and I went on down against the truck, and then when I was getting up, then I looked, she reached down and got the bat, but the bat, I guess one of the boys' bats, they had been playing there alongside the truck, and when she grabbed it I reached and grabbed it out of her hand."

Upon the foregoing facts, it was the contention of the state that the killing occurred in the perpetration of or in the attempt to commit robbery, and defendant was found guilty of murder in the first degree without recommendation.

**QUESTIONS OF LAW INVOLVED.**

(1) There was error because the verdict was contrary to law and against the weight of the evidence. (Specifications of Causes for Reversal Nos. 1, 2, 3 and 5) (C., p. 395); (Assignment of Error No. 4) (C., p. 393).

(2) The Court erred, over objection of the defendant, in permitting to be offered in evidence photographs marked S-5 and S-6; S-5 purporting to show the condition and surroundings of the bedroom of the decedent's home; and S-6 purporting to show the condition and surroundings of the inside of the house as first observed by the son of the decedent upon his arrival home. (Assignment of Error No. 1) (C., p. 392).

(3) The Court erred in admitting certain testimony, over objection, as to the condition and surroundings of the bedroom, parlor and shed of decedent's home when first observed by the witnesses. (Assignment of Error No. 2) (C., p. 393).

(4) Because the Court refused to charge the jury Request No. 12 when moved by defendant at the close of all the evidence and before summation, said Request being as follows (Assignment of Error No. 8) (C., p. 394):

“12. That the testimony in this case does not show the attempt to commit a crime of robbery or to perpetrate a crime of robbery, which is an essential element in the crime of murder to make it murder in the first degree;

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that under the facts and circumstances, the State having failed to show that the homicide was caused in the attempt to commit or to perpetrate the crime of robbery that you can only bring in a verdict of murder in the second degree.”

(5) That the trial court erred in denying the motion of the defendant to direct a verdict of murder in the second degree, for the reason that there was no testimony at the end of the State’s case upon which the jury could conclude that the murder was the result of the committing or the attempt to commit the crime of robbery (Assignments of Error Nos. 3 and 5) (C., p. 393).

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**ARGUMENT.**

**Point 1.**

**The verdict was against the weight of the evidence.**

The theory upon which the case was tried is fully set forth in the opening statement by the Assistant Attorney General (C., p. 16), which is as follows:

“And we contend that after he got to this McBurney farm he went up by way of the side, the back entrance, and he gained admittance into this shed, and he, while being in the shed, must have been discovered by Mrs. McBurney, because we will show you the photographs and people will testify here concerning the conditions as they found them in that little shed.

\* \* \* \* \* We will show you a basket which

had been placed in its normal position earlier that day, when the boy left, was thrown to the floor, and other things were thrown, items of furniture and furnishings, within the shed were all in a state of disorder, which we say justifies the State's contention that this man must have entered into the kitchen or into the shed of this house, and that while he was there Mrs. McBurney must have heard him there for the first time."

Revised Statutes of New Jersey 1937, 2:138-2, provides as follows:

"Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in perpetration or attempting to perpetrate arson, burglary, rape, robbery or sodomy, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree; and 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 in the second degree."

Revised Statutes of New Jersey 1937, 2:166-1, defines robbery as follows:

"Any person who shall forcibly take from the person of another, money or personal goods and chattels of any value whatever, by violence or putting him in fear, and by his aiders, procurers and abettors, shall be guilty of a high misdemeanor and punished by a fine not exceeding one thousand dollars, or imprisonment

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at hard labor not exceeding fifteen years, or both."

It is respectfully contended that the killing must occur while the actor or one or more of the confederates is engaged in the commission of the underlying crime.

The State's showing of the defendant's connection with the homicide rested exclusively upon the confession made by the defendant after his arrest. The defendant's testimony at the trial with respect to this feature was in substantial accord with his confession. In neither his statement offered in evidence, nor his testimony at the trial, was there any proof to warrant the submission to the jury of the question of whether or not the homicide occurred during the commission of one of the offenses named in the statute.

Upon the theory upon which the case was submitted to the jury by the State and in accord with the opening of the prosecutor, it was necessary in order that the jury have the right to determine the defendant to be guilty, that there be some evidence which would reasonably give rise to the inference that the defendant at the time of the killing had an intent to commit robbery, as defined by our statute. Not only is the record barren of any proof of such intent or plan, but the State's case, through the confession offered, would give rise to a contrary inference.

All the facts indicate conclusively that the defendant, whose reputation of peace and good order was not disputed by the State, went to the home of an acquaintance whom he had known for a long time, intoxicated, asked for a drink of water, was bitten by a dog, shoved and pushed off the back

step because of his intoxicated condition, followed by a scuffle, and defendant then struck the decedent several blows with a baseball bat, thereby causing her death.

If the confession be disregarded, the record is entirely destitute of any evidence tending to establish the conditions and surroundings actually existing prior to and at the time of the striking of the fatal blows.

If we were to excind the taking of the radio after the killing, as described by the defendant, there would have been no doubt that the killing was not committed in the commission of or in the attempt to commit robbery. The plan or design to take the radio was not conceived until after the striking of the blow or blows which caused the death of Agnes McBurney.

The defendant explained why he went to the McBurney home, and that it was not until after the striking of the fatal blow or blows that he entered the home and took the radio. It is respectfully submitted that no inference could be drawn from such conduct, that defendant killed Agnes McBurney in the attempt to perpetrate or commit robbery.

The testimony undisputably does not establish any planned or designed robbery, and the proofs bespeak the formation of no intent to commit robbery prior to the striking of the fatal blow or blows; that the jury could not, upon any reasonable hypothesis have been warranted by the testimony of the State's witnesses to find that the commission of a robbery had been designed or planned before or during the striking of Agnes McBurney.

Reviewing the testimony in the aspect most favorable to the State of New Jersey, the jury giving consideration to the following disclosed facts, the

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acquaintance between the defendant and the McBurney family, the undisputed good reputation of the defendant for peace and good order, his drunken condition at the time of the killing, the fact that he was not armed with any weapon when he went to the McBurney home, the testimony that he did not go to the McBurney home for the purpose of robbery; that defendant was pushed and shoved from the back step because of his intoxicated condition; that it was not until there was a scuffle between the decedent and defendant in the back yard that he grabbed the baseball bat and struck the defendant, was not justified in concluding that the murder was committed in the perpetration or attempt to perpetrate a robbery, within the intent of Revised Statutes of New Jersey 1937, classifying as murder in the first degree a killing in perpetrating or attempting to perpetrate a robbery.

There was no evidence of any attempt or attempts of any forcible taking from the person of Agnes McBurney any of the chattels belonging to her, by violence or putting her in fear.

The homicide was an independent act, disassociated from the taking of the radio.

It is respectfully submitted that the verdict was against the weight of the evidence, that it was based upon a speculation that defendant was in the house, was observed and discovered by the decedent before the killing took place, such fact not having been established by proofs on the part of the State.

**Point 2.**

The Court erred in permitting to be offered in evidence exhibits marked S-5 and S-6; S-5 purporting to show the conditions and surroundings of the bedroom of decedent's home; and S-6 purporting to show the condition and surroundings of the inside of the shed as first observed by the son of the decedent upon his arrival home.

Exhibits S-5 and S-6 were admitted in evidence over objection of the defendant (C., p. 54).

The case was tried upon the theory that the defendant had entered into the kitchen and shed before the killing and that such fact would be established by photographs taken some four or five hours after the murder.

Such photographs admitted in evidence, over objection, might have been admissible for the purpose of showing the conditions and surroundings at the time they were taken, but it is respectfully submitted that they were not admissible without further proof on the part of the State to establish the fact that:

“Defendant while being in the shed must have been discovered by Mrs. McBurney because we will show you the photographs, and people will testify here concerning the conditions as they found them in that little shed; such conditions justifying the State's contention that the defendant was in the shed attempting to rob, was there discovered by the decedent, and she was subsequently killed”. (C., p. 16.)

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The purpose of such testimony was to show that the defendant was in the shed attempting to rob, was there discovered by the decedent and she was subsequently killed.

There is no testimony in the case that the defendant was in the house before the homicide. Therefore, such testimony without proof that he was in the house before the homicide was harmful, erroneous and prejudicial to the defendant.

Their admission in evidence and consideration for the jury for that purpose was manifestly erroneous and harmful to the defendant.

The photographs offered in evidence to explain a transaction are only competent when they are shown to have been taken so as to correctly exemplify the actual situation, circumstances and surroundings at the time. When the situation and surrounding circumstances are subject to change, photographs to be of any value as evidence must be shown to have been taken at the time, or when the situation and surroundings are unchanged.

The jury being permitted to examine such photographs of the condition of the shed and kitchen without proofs on the part of the State that such condition existed prior to the killing was harmful and prejudicial to the defendant, because if such condition was created subsequent to the killing, then the State failed to establish that the murder was committed in attempting to perpetrate robbery.

It is respectfully submitted that the court erred in the admission of the two photographs, Exhibits S-5 and S-6, because there was no proof that the defendant had been in the house ransacking same, was observed by the decedent, and then the homicide and the consideration of the photographs to establish such fact was harmful, erroneous and misleading.

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The court's attention is called to the fact that defendant admitted he went through the house after the homicide and took the radio.

**Point 3.**

**The Court erred in admitting certain testimony, over objection, as to the condition and surroundings of the bedroom, parlor and shed of decedent's home when first observed by the witnesses.**

The State called as witnesses Frederick Erdbrink, John Ashburn, Thomas J. Ritchie and Robert McBurney, Sr. The Court permitted the witnesses to testify, over objection and exceptions noted, as to the condition of the shed and bedroom when first observed by them, without further proof that such condition existed prior to the homicide.

Frederick Erdbrink was permitted to testify, over objection, as follows (C., pp. 45 to 47):

“Q. And that led you into what? To what is known as the shed?

A. The shed.

Q. Will you describe, if you will, Mr. Erdbrink, the conditions as you observed them in the shed? \* \* \* \* \*

A. As I entered the shed, there was a chair opposite a basket of corn, and everything was all upset. That is the way I found it as I entered the shed.”

John Ashburn was permitted to testify, over objection, as follows (C., p. 69):

“Q. Will you describe the conditions that you found the shed to be in when you entered the house? \* \* \* \* \*

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A. When I entered the shed it looked to me as though there was a scuffling in the shed, chair turned over, basket of corn thrown around, and several other things scattered here and there, and I went through the living room. You have to go through the living room to go up the stairs, upstairs, to go up the upstairs part."

And again, the court permitted Thomas J. Ritchie to testify, over objection (C., p. 130):

"Q. Will you describe for us the conditions that you found existing in the shed when you entered at the time? \* \* \* \* \*

A. As I entered the shed I noticed at the westerly end of the room there was a yellow chair lying on its side. On that chair were several spots of blood. On the floor beneath the back of the chair were also several spots of blood. The northern end of the room was a large basket, upset, with ears of corn lying all around the basket, and there were several cement bags piled on the eastern end of this room, with cement all around the floor, the ends, I think, of one or two of those bags having been broken open."

The Court permitted Robert McBurney, Sr. to testify as follows (C., p. 214):

"Q. Will you describe, if you will, the conditions as you observed them in the shed?

A. The shed was all tore up. There was some cement bags and a bag of lime that I had been using for building, that I put in there to keep them out of the rain. One of the bags was tore open and the lime was all over the floor, and a chair, which was yellow or cream, was upside

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down, and there was some blood stains on the chair, as though there had been a fight or scuffle of some kind in the shed.

MR. PALESE: I ask that that be stricken out.

THE COURT: That will be stricken, as though there had been a fight or scuffle of some kind in the shed.''

The purpose of such testimony was to show that defendant was in the shed attempting to rob, was there discovered by the decedent, and she was subsequently killed.

There is no testimony in the case that the defendant was in the house before the homicide. Therefore, such testimony, without proof that he was in the house before the homicide, was harmful, erroneous and prejudicial to the defendant.

**Point 4.**

**Because the Court refused to charge the jury request No. 12 when moved by defendant at the close of all the evidence and before summation, said request being as follows:**

"12. That the testimony in this case does not show the attempt to commit a crime of robbery or to perpetrate a crime of robbery, which is an essential element in the crime of murder to make it murder in the first degree; that under the facts and circumstances, the State having failed to show that the homicide was caused in the attempt to commit or to perpetrate the crime of robbery that you can only bring in a verdict of murder in the second degree."

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The testimony did not warrant a conviction of a higher crime than murder in the second degree, for the reason that the homicide was not committed in the perpetration of or in the attempt to commit robbery.

There was no proof of any intent or purpose to take by force the goods and chattels of Agnes McBurney. The uncontradicted testimony clearly establishes that the plan or design to take the radio was not conceived or formulated until after the death of Agnes McBurney and therefore it was not open to the jury to return a verdict of murder in the first degree.

**Point 5.**

**That the Trial Court erred in denying the motion of the defendant to direct a verdict of murder in the second degree, for the reason that there was no testimony at the end of the State's case upon which the jury could conclude that the murder was the result of the committing or the attempt to commit the crime of robbery.**

At the end of the entire case, the defendant again moved for a verdict of murder in the second degree, for the same reasons urged at the end of the State's case, to wit, that there was no proof tending to show that the homicide was committed in the perpetration of or in the attempt to perpetrate a robbery; that there was no proof of any probative value to support a conviction of a first degree murder. There was no proof of any intent, design or plan to rob prior to the commission of the homicide, and therefore, the jury would not have been warranted,

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upon a consideration of the facts disclosed at the trial, to return a verdict of murder in the first degree.

It is therefore respectfully submitted that the only verdict in the instant case which would have been consistent with any reasonable view or interpretation of the testimony, was guilty of murder in the second degree.

For the respective reasons urged herein, it is submitted that the judgment should be reversed.

ROCCO PALESE,  
*Of Counsel for Robert Cox,*  
*Plaintiff-in-Error.*

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

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STATE OF NEW JERSEY,  
*Defendant-in-Error,*

vs.

ROBERT COX,  
*Plaintiff-in-Error.*

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SUB INDICTMENT FOR MURDER.

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ON ERROR TO CAMDEN OYER AND TERMINER.

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**BRIEF FOR DEFENDANT-IN-ERROR.**

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**STATEMENT OF FACTS.**

The facts are fully set forth in the State of the Case in the opening statement for the State and appears in the State of the Case on pages 12 to 23. Counsel for the defendant has partially stated the facts, but not fully. For the sake of brevity, we shall refrain from setting forth the facts at length but respectfully invite the Court's attention to the opening statement for the State for a complete outline of the facts.

**ARGUMENT.**

In dealing with the argument we shall reverse the order of the arguments propounded by counsel for the defendant and shall deal with defendant's Point IV under Point I of plaintiff's brief.

**I.**

The Court did not err in refusing to charge the jury request No. 12 when moved by defendant at the close of all the evidence and before summation, said request being as follows: "12. That the testimony in this case does not show the attempt to commit a crime of robbery or to perpetrate a crime of robbery, which is an essential element in the crime of murder to make it murder in the first degree; that under the facts and circumstances, the State having failed to show that the homicide was caused in the attempt to commit or to perpetrate the crime of robbery that you can only bring in a verdict of murder in the second degree."

Throughout the trial and also during the argument of this case as presented before the Court, counsel for the defendant was operating under a false notion. He argued before the trial court and argues here now that the crime of which defendant stood accused could not be submitted to the jury for a finding of murder in the first degree because, as he claims, the State had not furnished proof to justify a first degree conviction. He operates upon the theory that the State failed to produce

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evidence showing that the murder was caused in the attempt to commit or to perpetrate the crime of robbery such as to justify a first degree conviction. He overlooks the fact that this case was submitted to the jury upon two theories, to-wit: (1) that the murder was committed by defendant, or was committed by him in perpetrating or in attempting to perpetrate a robbery; and (2) that the murder was perpetrated by means of a willful, deliberate and premeditated killing of Mrs. Agnes McBurney.

Either of the above theories, if justified in fact, would provide sufficient basis for conviction of murder in the first degree.

The statement by Judge Baldwin outlining to the jury their responsibility in determining the defendant's guilt does not seem to be challenged and is stated in clear and unmistakable language as follows: (p. 381, lines 1 to 17)

“In seeking to establish the guilt of the defendant in a higher degree, which it charges as being that of murder in the first degree, the State goes beyond the scope of the other two essential requirements heretofore discussed with you, and endeavors to prove that the murder which it says was committed by the defendant was committed by him in perpetrating or attempting to perpetrate a robbery or that the murder was perpetrated by means of a willful, deliberate and premeditated killing of Mrs. McBurney, by the defendant, either of which possibilities, if true in fact, would be characteristic of murder in the first degree.”

Further on, the court said: (p. 381, lines 18 to p. 382, line 23)

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“Let us deal first with the claim that the defendant committed the murder in perpetrating or attempting to perpetrate a robbery. Again I say to you that if the State is to prevail upon this contention, it must be established by evidence beyond a reasonable doubt. Robbery is stealing property with violence from the person or personal custody of another person. It is necessary in order to constitute that crime that the goods shall be on the person of the owner or the owner’s agent or shall be in the presence or custody of the owner or the owner’s Agent.

“An attempt to commit the crime of robbery would be an act or combination of acts done with the intent to commit it, going beyond mere preparation but falling short of its actual commission. An attempt, therefore, consists of three elements, the intent to commit the crime, the performance of some act towards its commission and the failure to consummate the commission. I say to you that these particular elements which we are considering as being essential to murder in the first degree, namely, that the murder was committed in the perpetrating or attempt to perpetrate a robbery would not be present in this case if you were to conclude that there was no intent to rob on the part of the defendant Cox at the time when he might have delivered the blow or blows that killed Mrs. McBurney. This would be true notwithstanding the fact, if it is a fact, that the defendant, after dealing with Mrs. McBurney, may have ransacked the premises of which she was in charge, and may have stolen an article or articles of property

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therefrom. You may give consideration, however, to such ransacking and such stealing, if it occurred, as bearing on the question of whether the murder of Mrs. McBurney was committed by the defendant in the perpetration or in the attempted perpetration of a robbery, for you are not bound by any statement or testimony on the part of the defendant that a purpose on his part to steal what he might find in the McBurney home did not arise until after he had dealt with Mrs. McBurney, if you do not accept any such statement or testimony on his part as being true.”

The second theory upon which the State proceeded and upon which the case was submitted to the jury, to-wit: that the murder was a willful, deliberate and premeditated killing on the part of the defendant, was stated by Judge Baldwin in a clear and precise manner, as follows: (p. 382, line 24 to p. 383, line 5)

“Let us deal secondly with the claim that the defendant committed the murder by means of a wilful, deliberate and premeditated killing on his part, and again I say to you, that if the State is to prevail upon this contention, it must be established by evidence beyond a reasonable doubt. In the absence of those elements of first degree murder which we have already discussed as being characteristic of murder in the first degree, namely, murder committed in perpetrating or attempting to perpetrate a robbery, and in the further absence of the aforementioned elements of wilfulness, deliberation and premeditation in the killing, established to your satisfaction by evidence beyond a reason-

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able doubt, as aforesaid, the killing said to have been committed by the defendant could not have been greater than murder in the second degree, for murder in the first degree of the type which I am now discussing with you consists in the taking of human life with the intent to kill, and that intent being executed with deliberation and premeditation.”

We respectfully submit that the question of whether the murder was committed was one of first degree or second degree, under all of the evidence, was a factual question to be determined by the jury and Judge Baldwin, in denying to charge Request No. 12, of which the defendant complains, properly did so and properly presented for the jury's consideration the elements required to be considered by them, as expressed in the excerpts of the charge, above mentioned, and particularly in the latter part thereof, which is found in State of the Case on pages 382 and 383.

We invite the Court's attention to the extreme fairness of Judge Baldwin's charge in the following portion of his charge, which is found on page 384:

“If the proved facts establish beyond a reasonable doubt that the killing was done wilfully, that is, with intent to kill, and as a result of premeditation and deliberation, there is murder in the first degree. In coming to your conclusion as to whether in the instant case there was a wilful, deliberate and premeditated killing, you may give consideration to any of the evidence which would tend to establish that the defendant Cox may have been motivated by an intent to take the life of Mrs. McBurney

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and to carry out that intent with deliberation and premeditation through any fear that he had of later accountability on his part for his acts toward her or toward the property of which she was in charge, should she live to denounce him for those acts, the defendant's own testimony, as I recall it, being that Mrs. McBurney knew him and knew him by name. Furthermore, you might consider whether according to the evidence his intent to take her life and his execution of that intent with deliberation and premeditation may have arisen after he had first struck and injured Mrs. McBurney, when realizing the nature and consequences thereof, he may have determined upon an intent to deal her a mortal blow calculated to produce her death, and he may have carried out that intent with the requisite deliberation and premeditation aforesaid. *On this score, however, you may experience difficulty, and you may entertain reasonable doubt as to whether the intent was formed and whether the deliberation and premeditation occurred in the middle of a series of blows, if there were a series of blows, and you must be careful to give the defendant the benefit of any reasonable doubt on that subject, as well as upon the possible question of whether the blow or blows which produced her death came after the deliberation and premeditation rather than before the same, for it would be essential to a first degree conviction that the mortal blow or blows, namely, that or those from which Mrs. McBurney died, should have occurred after the defendant's mental processes of forming the intent and carrying it out with deliberation*

*and premeditation had occurred.*'' (Italics ours)

There was ample evidence to justify submitting the case to the jury upon the theories above mentioned and we respectfully submit that Judge Baldwin, in doing so, was extremely fair and gave a very lucid explanation to the jury of the law dealing therewith.

The following excerpts, taken from the statement made by the defendant, Robert Cox, to the Prosecutor, which was received in evidence and is found on pages 92, 93 and 94, well justifies Judge Baldwin's statement to the jury in that portion of the charge last quoted.

“Q. (BY PROSECUTOR ORLANDO) And you picked up the baseball bat?

A. I picked up the baseball bat.

Q. And you struck Mrs. McBurney with it?

A. Yes, sir.

Q. Where, on the head or what part of the body?

A. In the head.

Q. And when you struck Mrs. McBurney in the head with the baseball bat, what happened to her?

A. Why, she fell.

Q. She fell to the ground?

A. Yes, sir, she fell to the ground.

Q. What did you do?

A. I said to myself, ‘My God! I wonder have I killed her?’ I said that to myself and then I just lost my nerve and struck her again.

Q. You struck her how many times?

A. I guess about three or four times I struck her.

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Q. With the same baseball bat?

A. Yes, sir, two or three or four times.

Q. After you struck her the first time with the baseball bat and she had gone down, why was it that you struck her two or three or more times?

A. I don't know myself, Mr. Orlando. I was crazy with liquor and didn't know what I had done. I was crazy under the influence of liquor.

Q. Isn't it a fact that you struck her several more times after the first time, so that you might make sure that she would be dead?

A. Yes, sir, I did that.

Q. That is the reason you struck her three or four more times?

A. Yes, sir.

Q. After you struck her the first time and she had gone down?

A. Yes, sir.

Q. Then you conceived that you better strike her several more times and make sure that she was dead, so she would not tell on you?

A. That's what I did.

Q. Is that right?

A. Yes, sir.

Q. So you wanted to make sure?

A. Yes, sir."

We especially invite the Court's attention to the following questions and answers, to clearly demonstrate the abundance of justification for submission of the case to the jury on the robbery theory: (p. 94, lines 14 to 23)

"Q. I understand when you went to the house you were dead broke, you had no money?

A. No, sir, I didn't have no money.

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Q. Is that right?

A. Yes, sir.

Q. And you wanted to get some money, is that right?

A. Yes, sir, that's what I said to myself, 'Well, I'll go and get me some money and I'll get some more liquor.' "

And at page 95, lines 1 to 20:

"Q. But once you got to the farm, whether it was the liquor or something else that drove you to do it, you do not know, but the fact is once you got there you made up your mind to get some money so as to buy some more liquor?

A. I didn't make up my mind to get the liquor until I hit her and it looked like something come to me to get me to get some money and get some more liquor. That's why I went in the house then.

Q. Do you know when she actually died?

A. No, sir.

Q. Did you make sure she was dead before you went in the house?

A. No, sir, I did not.

Q. When you went in the house you don't know whether she was alive or dead?

A. No, sir; she looked like she was asleep."

At pages 96 and 97, the following appears:

"Q. (line 30) And after you saw her go down you then conceived the best thing was to strike her two or three more times?

A. Yes, sir.

Q. And you struck her with the same bat on the head, is that right?

A. Yes, sir.

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Q. Then she was lying on the ground and you don't know whether she was dead or alive?

A. I didn't know whether she was dead or just unconscious. Then something just told me to go in the house.

Q. Then something told you to go in the house and get some money so you might buy more liquor?

A. Yes, sir.

Q. Once you got in the house you looked around to see if you could find some money?

A. Yes, sir.

Q. And after you looked you were unable to find any money?

A. That's right.

Q. But you did see a radio?

A. Yes, sir.

Q. And then you conceived the idea of stealing the radio?

A. Yes, sir.

Q. And selling it so you could get some money with which to buy more liquor, is that right?

A. Yes, sir, that's right.

Q. What kind of radio did you steal from McBurney's farm?

A. I didn't notice what the make was.

Q. Was it a little radio?

A. One looked like a little grip, a little handle to it.

Q. A radio with a handle on?

A. Radio with a handle on, carry it in the hand.

Q. Where did you find the radio, what part of the house?

A. Upstairs, second floor.

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Q. Where did you look for the money?

A. I looked in the bureau drawer.

Q. In the bureau drawer?

A. Bureau drawer.

Q. Where was that, downstairs or upstairs?

A. Upstairs."

An examination of the explanation of the crime and the facts related thereto in this case leads us to the conclusion that this case is substantially and almost on all fours with the murder found reported in the case of *State v. Leaks*, 18 A(2) 33, 126 L. 115, decided by this Court on January 28 of this year. A reading of that case discloses the facts to be almost identical with the explanation of the happenings in this case. There, Leaks explained that he went to the farm house of the decedent, Howard Meade, and that he saw him coming from the barn with two buckets and he went into the house and came out at the time defendant was walking in his driveway. After some conversation in which Leaks asked for some water and the decedent handed it to him, defendant, Leaks, hit decedent with his fist and knocked him down. Then he grabbed him and struck him again and as Meade lay groaning on the ground he tried to get up and then he was hit with a piece of wood and Leaks looked for the money, found \$12.02 and left the premises. The only difference we can note in the two cases is that in the *Leaks* case the defendant, after having struck decedent, looked for money and found \$12.02. In our case, defendant looked for money and, not having found any, stole the next best thing he could find, namely: the radio. In view of the testimony furnished in the *Leaks* case, Justice Bodine, speaking for this Court, found that the verdict seemed

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proper. We respectfully submit that we could very well justify resting our argument by relying upon the *Leaks* case but, in order that we may deal with other questions raised, we shall proceed to argue some other features of this case.

A request somewhat similar to the one made by defendant in this case is contained in the reported case of *State v. Abbato*, decided by the Court of Errors and Appeals and reported at 47 A. 10, 64 L. 658. In that case, the last two assignments of error were directed to the refusal of the trial judge to instruct the jury in accordance with the following request:

“First, that the state had failed to make proof before the court and jury that the killing of the deceased, DeFoe, was the result of any willfulness, deliberation, and premeditation on the part of the defendant, and that the jury were unauthorized to find the accused guilty of murder in the first degree; second, that the state had not produced before the jury evidence tending to establish that the accused killed the deceased, DeFoe, in the commission or the attempted commission of any specific unlawful act against the peace of this state of which the probably consequence was bloodshed, and that the jury were not authorized to find the accused guilty of murder in the second degree.”

The court, after reciting the facts, said:

“If the deceased, DeFoe, came to his death at the hands of Abbato, as the jury has found, it seems almost impossible, in the face of the facts above cited, to resist the conclusion that his death was the result of the willful, de-

liberate and premeditated act of the latter and that the crime was murder in the first degree. Certainly, it cannot be said as a matter of law that these facts will not support a conviction of that offense. That being so, they will equally support a conviction of felonious homicide of any lesser degree. The requests to charge were, therefore, properly refused by the trial court. We find no error in the record, and are of the opinion that the judgment below should in all things be affirmed."

We submit that, the theory that the murder resulted while perpetrating or in attempting to perpetrate a robbery, is amply supported by the statement made by defendant, which is in evidence and some excerpts of which have already been recited. Defendant did not deny at the trial, and, in fact, admitted that he had stolen the radio from the McBurney home and that this was done after he had inflicted the blows upon the person of Mrs. McBurney. The argument of counsel for defendant is grounded upon the explanation which defendant gave in his statement and also at the trial to the effect that the idea to steal the radio did not come to him until after he had inflicted the blows which proved fatal to the deceased. We submit that it was purely within the province of the jury to determine whether or not that was true because it does not rest with the defendant to sweep away the effect of his wrongdoing by merely giving an explanation which best suits his purpose.

It has been said, and properly so, that possession of the fruits of crime recently after it has been committed affords a strong and reasonable ground for the presumption that the party in whose posses-

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sion they were found was the real offender, unless he can account for such possession in some way consistent with his innocence. Surely, the defendant in this case did nothing to explain away the possession of the radio which he admittedly had stolen. This question seems to have been carefully considered by the United States Supreme Court in an opinion written by Chief Justice Fuller in the case of *Wilson v. United States*, decided October Term, 1895, and reported in 162 U. S. 613-624. Chief Justice Fuller, dealing with this question, had this to say:

“Possession of the fruits of crime recently after its commission justifies the inference that the possession is guilty possession, and, though only prima facie evidence of guilt, may be of controlling weight unless explained by the circumstances or accounted for in some way consistent with innocence. 1 Greenl. Ev. (15th ed) Sec. 34. In *Rex v. Rickman*, 2 East, P. C. 1035, it was held that on an indictment for arson, proof that property was in the house at the time it was burned, and was soon afterwards found in the possession of the prisoner, raises a probable presumption that he was present and concerned in the offense; and in *Rex v. Diggles* (Wills, Circ. Ev. 53), that there is a like presumption in the case of murder accompanied by robbery. Proof that defendant had in his possession, soon after, articles apparently taken from the deceased at the time of his death is always admissible, and the fact, with its legitimate inference, is to be considered by the jury along with the other facts in the case in arriving at their verdict. *Williams v. Com.* 29 Pa. 102; *Com. v. McGorty*, 114 Mass.

299; *Sahlinger v. People*, 102 Ill. 241; *State v. Raymond*, 46 Conn. 345; Whart. Crim. Ev. Sec. 762.”

How well the State was justified in submitting this case to the jury upon the two theories suggested seems to be well established by the expression of Justice Parker in *State v. Jones*, 115 L. 257, 179 A. 320. In that case, the facts tended to show that the defendant in the night time broke into a cleaning and dyeing plant wherein deceased was employed as night watchman; that defendant was provided with a drill and explosive material with intent to blow the safe; that he was discovered and challenged by deceased, whereupon, defendant beat deceased over the head with a piece of iron pipe until his skull was crushed and later went through his pockets appropriated some articles of clothing belonging to customers of the establishment and left without getting into the safe. The State, in presenting its case, chose to present it upon the theory that the murder resulted while perpetrating or attempting to perpetrate a burglary. Later on, after the State had closed its case and over objection of defendant's counsel, the State was permitted to proceed upon the additional theory that the murder had resulted while defendant was perpetrating or attempting to perpetrate a robbery. With the assent of the Prosecutor who tried the case, the Court withdrew from the consideration of the jury the theory that the murder was not established to have been willful, deliberate and premeditated. Justice Parker observed: (p. 323)

“Perhaps it would have been judicious to waive that theory in the first place; but on the evidence as laid before us it seems to have

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a substantial foundation as a jury question. It was open to them to say that defendant killed the deceased with a weapon potentially deadly at the least, under circumstances of great atrocity and while deceased was defending property placed in his care; that according to the evidence of Dr. Martland, the county medical examiner who saw the body while it was still warm and undisturbed, the head lay in a large pool of blood, face downward, with a clothes truck inverted over it; and that there were nine lacerations of the head, of which five caused skull fractures, any one of which could produce death in a few minutes; and that defendant, according to his own confession, after beating the decedent into insensibility and while he was still faintly moaning, dragged him across the floor and wrapped some clothing around his head, overturned the push cart over it, went upstairs and washed his hands, wrapped his electric drill in some stolen clothing, put the bundle in a bag, turned out the lights and left the premises."

It cannot be denied that the weapon used by the defendant in this case was a deadly weapon such as in itself justified the presumption that there was intent to take life and that, added to the circumstances of the killing, well justifies the inference of deliberation and premeditation.

In the *Jones* case, the following principles were enunciated and we feel they are convincingly applicable to the murder under review and well justified Judge Baldwin submitting the case to the jury upon the theory of willful, deliberate and premeditated killing:

“It is elementary law that homicide with a deadly weapon justifies in itself a presumption that there was intent to take life. *State v. Maioni*, 78 NJL 339, 74 A. 526 C. J. Sec. 350, Id. p. 292, Sec. 537. A ‘deadly weapon,’ according to Mr. Bishop, is one liable to produce death or great bodily injury; and in case of doubt, the manner in which it was used may be taken into account in determining whether or not it was deadly. *Bishop on Stat. Crimes*, Sec. 320; *New Crim. Law*, Vol 2, Sec. 681. In the cited Missouri case of *State v. Drumm*, 156 Mo. 216, 56 S. W. 1086, the weapon was a piece of iron gas pipe. In *People v. Schmidt*, 168 NY 568, 61 NE 907, it was a hammer, apparently of ordinary type. In that case the skull of deceased had been heavily fractured. The court said, 168 NY 568, at page 575, 61 NE 907, ‘that he (defendant) killed the deceased by a blow from a deadly weapon upon a vital spot is certain.’

“In like manner, the weapon used, the time consumed, and the circumstances of the killing, may support an inference of deliberation and premeditation. 30 C. J. 142, 293; as also the nature, location and severity of the wounds.”

II.

Points II and III of brief for defendant will be argued together under what we shall label as II of this brief.

The Court did not err in admitting certain testimony, over objections, as to the condition and surroundings of the bedroom, parlor and shed of decedent's home when first observed by the witnesses

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The Court did not err in permitting to be offered in evidence Exhibits S-5 and S-6; S-5 purporting to show the conditions and surroundings of the bedroom of decedent's home; and S-6 purporting to show the condition and surroundings of the inside of the shed as first observed by the son of the decedent upon his arrival home.

The testimony given by the son of the decedent, Robert McBurney, Jr., was to the effect that he left his mother the morning of the murder lying on the studio couch in the front room, about five or ten minutes after 7:00 in the morning (p. 24); that he returned from school about 4:10 that afternoon and when he arrived there was no one there; that as he approached the entrance to his home he discovered the body of his mother lying between the truck and the back door step with her face up; her feet towards the step and her right hand on her left breast; her left hand stretched out and her head turned toward the truck. He testified that

he stayed there for a few minutes and then he got a shotgun, shot it off and called for help. He received no answer, he then mounted his horse and rode to Bungalow Inn where he got two men who came to the scene, one of them going after the police. The men who returned to the scene of the crime with Robert McBurney, Jr. were Frederick Erdbrink and John Ashburn. Later on, a witness Thomas J. Ritchie, a State Policeman, arrived, followed by Robert McBurney, Sr., the husband of the deceased. The testimony was that no one touched any of the articles of furniture either within or without the house and that before any one had disturbed the position of anything within or without the house photographs were taken by a member of the New Jersey State Police Department who was called and testified that the pictures which he had taken and which were offered in evidence and about which the defendant complains depicted the conditions substantially as they were on the afternoon of the murder. To some extent, the State was obliged to furnish circumstantial evidence concerning the intent and the motive for the murder and, in order to afford the jury a complete opportunity of becoming acquainted with the circumstances surrounding the murder, it was deemed advisable to offer photographs showing the conditions existing when Robert McBurney, Jr., and others arrived at the McBurney farm. These photographs are made the basis of objection and argument under this Point. We respectfully submit that the argument made is without foundation and that the law of this State well justifies admission of the photographs as well as the testimony of the witnesses who described the conditions which were made the objects of the photographs taken.

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Justice Parker, speaking for this Honorable Court in the case of *State v. Fiore*, et als, 94 L. 477 110 A. 909, observes:

“With respect to the photograph, we agree with counsel for the plaintiffs in error that its admission cannot be justified for the first reason given by the Supreme Court, which was that the defense in effect utilized or treated it as evidence and could not then be heard in objection to it. This reasoning is not supported by the testimony before us. But the photograph was competent evidence. It was admitted only after the county physician, who had made an autopsy on the body, had testified that he recognized the picture as a photograph of the body examined by him, and which was concededly that of the slain man. Dr. Joyce, who had attended him after the injury and until he died, also testified to the correctness of the picture, especially as showing the injuries to the head which caused death. This was a full compliance with the rule declared in the Supreme Court case of *Goldsboro v. Central R. R. Co.* 60 NJL 49, 37 A. 433. See *Wigm. Ev. Sec.* 793, 794. In fact, the only objection made was that the photograph and the conditions under which it was taken were too remote from the day of the alleged occurrence, being after the autopsy. That question was mainly, if not entirely, one of discretion of the trial court, and, as the attempt was to show the character of the injuries, there cannot be any doubt that such discretion was properly exercised.”

In *State v. Fine*, the admissibility of certain photographs was questioned and argued before the

Court of Errors and Appeals and reported at 110 L. 67, 164 A. 433. On page 434, Justice Parker states:

“The fact that counsel could not see the purpose naturally does not make the photograph incompetent. We think it was both relevant and competent, as a question of identification and part of the evidence to establish the corpus delicti. It is true that there was other testimony as to whose body it was and how death had been caused, but the fact that this evidence was cumulative does not render it incompetent, nor does the fact that it happens to be gruesome and injects an element of horror into the case: *State v. Aeschbach*, 107 NJL 433, 153 A. 505. It is now argued that the photographs were incompetent because ‘not the best evidence,’ and from the case of *Goldsboro v. Central RR Co.* 60 NJL 49, 37 A. 433, a Supreme Court case, counsel quotes the casual observation, that photographs ‘are never admitted but as secondary evidence.’ They are not so treated in *Wigmore on Evidence*, but are classed under what he calls ‘non-verbal testimony’ like maps or diagrams. Section 789 et seq. It is true, of course, that they must be verified by testimony as correctly depicting the originals that they portray, but it is not suggested that such verification was lacking. Furthermore, and finally, the ‘best evidence’ objection was not made at the trial. Several similar photographs were admitted over the ‘same objection’ and the further objection that they were irrelevant and immaterial. We think they were both relevant and material; and that they were properly admitted.”

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Mr. Justice Trenchard, in *State v. Burrell*, 170 A. 843, 112 L. 330 in commenting upon the admissibility of the photographs in that case said:

“The next point is that the judgment should be reversed ‘because the trial court permitted the prosecutor to introduce in evidence two photographs.’

“Not so. The photographs were of the body of the decedent and were proved to be correct representations. They were taken shortly after death and before the autopsy. They were offered to show the actual marks and bruises on the decedent’s throat in support of the state’s theory that she had been choked to death by a man’s hand.

“The argument against the admission of the photographs is that they served ‘to prejudice the minds of the jury against the defendant.’ That contention, if true in point of fact, is ill founded in point of law. The photographs were offered in support of the charge laid in the indictment. Assuming that they tended to prejudice the minds of the jury, that does not render their admission illegal. They tended to prove a material fact, without which the state would be unable to support the charge laid in the indictment. *State v. Aeschbach*, 107 NJL 433, 153 A. 505; *State v. Fiore*, 94 NJL 477, 110 A. 909; *State v. Fine*, 110 NJL 67, 164 A. 433.”

It is respectfully submitted that the testimony of the witnesses and the photographs were properly admitted as affording the jury an opportunity to determine the circumstances surrounding the commission of the murder.

## III.

**The verdict was not contrary to law nor against the weight of the evidence**

Disregarding for the moment, the corroboration which is afforded by the testimony of various witnesses and the conditions as depicted by the photographs and confining ourselves to the explanation of this murder as given by the defendant, we feel justified in making the statement that the point argued by defendant under this heading, namely: that the verdict is against the weight of the evidence, is without foundation. We repeat what was said under point I, that this case was submitted to the jury upon two theories and that the evidence well justified a conviction under either one of those two theories. We have quoted at length under point I and, for the sake of brevity, shall refrain from making a restatement of the testimony which we feel supports submission of the issues to the jury upon the question of the degree of murder. We invite the Court's attention to the excerpt of the statement of Robert Cox as set forth on pages 92, 93, 94, 95 and 96 of the State of the Case which we feel justifies a finding by the jury of murder in the first degree upon either theory. In addition, we call the Court's attention to the following testimony, showing the course of conduct upon the part of the defendant, indicative of a design planned to kill and to escape punishment.

(P. 99)

“Q. Then you took the radio from upstairs, is that right?

A. Yes, sir.

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Q. And you came downstairs?

A. Yes, sir.

Q. And put it in the basket?

A. No, I didn't have no basket, not at that time.

Q. Where did you get a basket?

A. At home.

Q. At your home?

A. Yes, sir, I got the basket at my home.

Q. After you had taken the radio and left the McBurney's farm —

A. Yes, sir.

Q. —and you went to your home?

A. Yes, sir.

Q. Why did you go to your home, to get the basket?

A. To get a basket home. I carried the radio with me in my hand.

Q. Why did you go to your home?

A. I went home to get a basket, to come up here with it."

The defendant attempted to cover his loot, consisting of the radio, so that it might not become known that he had stolen it and in his plan to escape notice or knowledge that he had stolen the radio, he covered it up with a burlap bag. This surely contradicts the explanation of the defendant that he was so drunk he did not know what he was doing. Note the following questions and answers on page 100:

"Q. After you had gotten the radio, you wanted to get a basket so you could put the radio in the basket, is that right?

A. Yes, sir.

Q. Did you do that so that the radio could not be seen?

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A. That's exactly what I did.

Q. Is that right?

A. Yes, sir.

Q. In other words, before you went to sell the radio, you wanted to get a basket?

A. Yes, sir.

Q. So that you could put the radio in it?

A. Yes, sir.

Q. So that it would not be seen, is that right?

A. Yes, sir.

Q. Why did you want to get a basket to put the radio in?

A. Well, the reason why I wanted to get the basket to put the radio in, I didn't want nobody to see I had the radio.

Q. Why didn't you want anybody to see the radio?

A. On account they knew I didn't have none.

Q. In other words, you were afraid if people saw you walking with a radio they might suspect something wrong, is that right?

A. I might have stolen it some place.

Q. And the reason you wanted to get a basket and cover the radio was so that it would not be seen and so no one would have suspected you of stealing the radio?

A. That's right.

Q. When did you conceive the idea of getting the basket, while you were in the farmhouse or after you left the farmhouse?

A. I didn't get no basket at her place. I come home and got it.

Q. When did that come to your mind, that you better get a basket and cover it up?

A. After I got to my home.

Q. After you got to your home?

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A. Yes, sir.

Q. Do you remember how you got from the McBurney's farm to your home?

A. Yes, sir, I remember I come—there's a little pathway going out through her garden and there's a short cut and I come on through the pathway back of the woods on down to Erial Road.

Q. And when you got to Erial Road, what did you do?

A. When I got to Erial Road I looked and I didn't see nobody see me and I crossed the road and goes on home."

In order to escape from the scene of the murder unseen, defendant, who now argues he was so drunk he did not know what he was doing, went to his home, not by the route he had taken to the McBurney farm, but through a back way which necessitated going through the woods, his explanation being found in the following: (p. 101, line 19)

"Q. Do I understand, Mr. Cox, you went back home a different way than what you had come, is that right?

A. Yes, sir.

Q. And the way you went back home was the back way?

A. Back way.

Q. And you took the back way so that nobody could see you, is that right?

A. Yes, sir.

Q. When did you conceive that? When did you think about the idea of going home by the back road instead of the other road? Was that when you were in the house or after you came out of the house?

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A. After I come out of the house is when I decided to come through the woods.

Q. In other words, as soon as you came out of the McBurney house, it came to your mind that it would be best for you to go that back way so that nobody could see you, is that right?

A. Yes, sir, that's right.

Q. And the reason I understand you wanted to go the back way was so that no one would suspect you of having done anything wrong?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. You knew, did you not, when you were leaving the farmhouse that you had done wrong, is that right?

A. Yes, sir, I realized then, it come to me I had done wrong.

Q. And knowing you had done wrong, you thought it the wisest thing to do was to get back to your home by the back road, so that nobody would see you?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Did anybody see you?

A. No, sir, I didn't see anybody at all.

Q. You saw no one?

A. No, sir; probably someone must have seen me but I didn't see anyone.

Q. This back road that you speak of, you go through the woods, don't you?

A. Right through the woods, a short cut.

Q. A short cut through the woods?

A. Yes, sir.

Q. And you figured that by taking the short

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cut through the woods you would be able to get to your home without being seen by anybody?

A. Yes, sir."

In order that he might leave no trace of foot prints, this defendant, who now contends he was drunk and did not know what he was doing, removed his rubbers and threw them away when he reached the road. His explanation for this act, to quote him, is found on page 103, line 19:

"The reason why I threwed them away, I says to myself, 'Now, somebody may track me,' and I said, 'I think I'll take my rubbers and throw them away.' So before I got to the corner I seen a white lady coming down the road and I stopped and pulled my rubbers off and threw them on the side where there's a dump pile."

The following questions and answers fully describe the conduct of this defendant in attempting to cover up his foot prints so that there might not be any evidence leading to him as the criminal: (p. 102, line 36)

"Q. Mr. Cox, when you first went to the McBurney home you had rubbers on, didn't you?

A. Yes, sir, I had my rubbers.

Q. When had you put those rubbers on, that morning when you left your home?

A. I had the rubbers on that morning when I got up.

Q. And you wore your rubbers from the time you left your home until the time you got to McBurney's farm?

A. Yes, until I got to the farm.

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Q. When was it that you took those rubbers off and threw them away?

A. I threw them away before I got to my home.

Q. While you were in the woods?

A. No, I was coming down the road.

Q. When you got into the road?

A. I was going on down the road.

Q. What made you take the rubbers off and throw them away?

A. The reason why I threw them away, I says to myself, 'Now, somebody may track me,' and I said 'I think I'll take my rubbers and throw them away.' So before I got to the corner I seen a white lady coming down the road and I stopped and pulled my rubbers off and threw them on the side where there's a dump pile.

Q. But I understand while you were walking through the woods you kept your rubbers on and when you came to the road you were afraid that your rubbers might leave footprints on the road?

A. Yes, sir.

Q. And because of those footprints somebody might track you?

A. Might track me.

Q. In order that you might not leave footprints and in order that no one might track you, you conceived it best to take the rubbers off and throw them away, is that right?

A. Yes, sir.

Q. How long was that after, would you say, after you left the McBurney farm, just a few minutes?

A. The time I throwed away the rubbers?

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Q. Yes.

A. I got pretty nearly home.

Q. How long?

A. Yes, sir, a few minutes. I guess it's about a 15 or 20 minutes walk."

This defendant, who now argues that he was so drunk he did not know what he was doing, after having committed the murder and stealing the radio, in order to convert his loot into cash, borrowed twenty-five cents from his neighbors, sufficient fare to get him to Philadelphia. When in Philadelphia, he then went to a pawn shop where he pawned the radio for the sum of Three Dollars and Fifty Cents. His cunningness and deliberate thinking is demonstrated by the fact that in order to hide his identity he gave a false name and address at the pawn shop, as will more fully appear in the following questions and answers appearing on page 108, line 39:

"Q. What was your intention in getting this quarter? What were you going to do with it?

A. To get fare to pawn it and get some money and get some more whiskey.

Q. Where were you going to go to pawn it?

A. In Philadelphia.

Q. In Philadelphia?

A. Yes, sir.

Q. Had you ever pawned anything there before?

A. No, sir, never, for that's the first time I ever stole anything to pawn.

Q. But you did know that was the place to go to pawn this article so that you could get some money?

A. Yes, sir.

Q. And did you get the bus?

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A. No, I went across the boat at Market Street Ferry.

Q. I mean at Clementon, did you get the trolley, as you call it?

A. Yes, sir, trackless trolley.

Q. And you came on that trackless trolley to Camden?

A. Yes, sir, Market Street.

Q. Market Street Ferry, is that right?

A. Yes, sir.

Q. How did you go from the Market Street Ferry to Philadelphia?

A. I paid a nickel, you know, to come across the ferry, and that killed the quarter.

Q. How much did it cost you for the trolley?

A. 20 cents.

Q. That took you to Market Street Ferry and then you had 5 cents left and you used that to go across the ferry over to Philadelphia, is that right?

A. Yes, sir.

Q. When you got off the ferry in Philadelphia, where did you go?

A. I walked on down, let's see, what's the name of that street now?

Q. Market Street?

A. You call it. I beg pardon. I walked from Market Street down to South. I walked down Front Street to South.

Q. You got off the ferry in Philadelphia and walked down Front Street in Philadelphia?

A. To South Street.

Q. To South Street, is that right?

A. Yes, sir.

Q. And then what did you do when you got to South Street?

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A. The first loan office I come to, I walked in and I pawned it.

Q. On what Street?

A. South Street.

Q. Do you know where on South Street you went to pawn it?

A. Right on top of a hill.

Q. That is not very far?

A. From the South Street Ferry, I think about three squares.

Q. How much did you get for the radio?

A. Three and a half.

Q. \$3.50?

A. Yes, sir.

Q. Did the man ask you where you got the radio?

A. No, sir, he didn't say anything at all to me.

Q. Did you get a ticket, a pawn ticket?

A. Yes, sir, he gave me a ticket.

Q. What did you do with that?

A. The blue trousers I had, in my watch pocket, they had a hole in, and I just stuck my ticket down there, and I took the paper money and twisted it in where I have my owner's card.

Q. Then you put it in your back pocket?

A. I puts my money in the back pocket and put the ticket in my watch pocket. Didn't have no idea there was a hole in it, and that's the way I lost it.

Q. When you went to the pawn shop they asked you your name, didn't they?

A. Yes, sir.

Q. And did they ask where you lived?

A. They asked where I lived and I told them on Kater Street, in Philly.

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Q. What name did you give them?

A. I gave them a different name.

Q. What name did you give them?

A. Henry Alston.

Q. That is not your name, is it?

A. No, sir.

Q. Then you gave them a false name?

A. False name.

Q. And you gave them a false address?

A. False address.

Q. Why did you give them a false name and a false address?

A. Well, I figured, you know, they would trace me, if, you know, they find out I pawned the radio.

Q. In other words, you gave them a false name and a false address so that no one could identify you as being the person who had pawned this radio, is that right?

A. Yes, sir.

Q. And you did that for what reason?

A. Well, the same thing you say, I didn't want anybody to know I pawned it.

Q. You were afraid, were you, that the police might find out that you had pawned the radio?

A. Yes, sir.

Q. And that way trace you as being the person who had stolen the radio?

A. That's it.

Q. So then you gave a false name and a false address in order that you might deceive the police authorities?

A. Yes, sir.

Q. If an investigation were made, is that right?

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A. Yes, sir.

Q. Is that your reason?

A. That's right.

Q. When did you think of that idea?

A. I don't know. I thought it up, Mr. Orlando.

Q. When did you think it up, when you got there or before you got there?

A. A little before I got there.

Q. Where did you get this name from? Had you ever used it before?

A. Never had.

Q. Do you know anybody by that name?

A. No. The name just came in my mind and I just told the man that was my name.

Q. And this address that you gave, did you know anybody that lived at that address?

A. Not at all.

Q. Is there a street by such name that you gave?

A. No, sir.

Q. In other words, there was no such street, as far as you know?

A. No, sir, I didn't know. I just told him anything."

The contention was made at the time of trial and is repeated in the argument before this Court, that the defendant was so drunk he did not know what he was doing. Such a contention is ridiculous. Seldom have we seen a man who, after committing such a brutal murder could give a minute and accurate account of the steps which he took following the commission of the crime up to the time of his apprehension. Without repeating at length defendant's explanation of his various movements leading up to

his arrest, we invite the Court's attention to pages 114, 115 and 116 of the State of the Case in which defendant explains in detail every step which he took after the crime was committed and up until the time of his arrest.

Defendant was arrested on the same evening of the murder. When he was questioned concerning his knowledge of the crime he denied knowing anything about it and stuck to his denial until he was brought to the Prosecutor's office, at which time a statement was taken in which certain admissions were made. We ask this question: Does the conduct of the defendant after committing the offense indicate that he was so drunk he did not know what he was doing, or that the murder was not one which had been planned and premeditated? To explain his conduct following his arrest, we quote from his statement on pages 117 and 118, as follows:

“Q. After the officers got you and asked you to go with them, you were questioned by the police officers and you were asked whether or not you knew anything about this murder, isn't that right?

A. Not at that time they didn't tell me anything.

Q. But a little later on they told you?

A. A little later on they told me, after I got to Woodbury, they asked me about it, you know.

Q. And what did you tell them? Did you admit it or deny it?

A. I denied it.

Q. You denied knowing anything about the murder?

A. Yes, sir.

Q. To the police officers?

A. Yes, sir, I denied it.

*Brief for Defendant-in-Error*

Q. When you denied it you were not telling them the truth, were you?

A. No, sir, I wasn't telling the truth, I was scared and I just didn't know what to do.

Q. When did you finally decide to tell the truth?

A. Today.

Q. Today?

A. Yes, sir.

Q. Are you telling me the truth now?

A. Yes, sir, I am telling you the truth now, exactly what happened.

Q. And everything you have told me here tonight —

A. Yes, sir.

Q. —in answer to these questions I have submitted to you, is it the truth?

A. Yes, sir, it is the truth and I raise my hand to God."

Mr. Justice Heher in *State v. Woodworth*, 1 A(2)254, 121 L. 78, laid down the following rule which we feel is dispositive of the argument made under this point. On page 261 there appears the following:

"It was for the jury to determine whether the evidence demonstrated guilt beyond a reasonable doubt; and the rule is firmly established in our jurisprudence that a verdict is not to be set aside on error as against the weight of the evidence, under Chapter 349 of the Laws of 1921 (Pamph. L. p. 951); Rev. Stat. 1937, 2:195-19) unless it clearly appears that it is the product of mistake, passion, prejudice, or partiality. Under our system of jurisprudence, the function of determining whether the guilt

of the accused has been established beyond a reasonable doubt rests with the jury. Having the opportunity of observation of the witnesses, and their demeanor while testifying, they are in a better position to judge of their credibility and the weight to be accorded to their testimony. The statutory authority thus to review the evidence was designed to correct injustice resulting from a plain and obvious failure of the jury to function within its allotted sphere. The test is not whether the minds of the reviewing judges are also satisfied of guilt beyond a reasonable doubt. *State v. Hauptmann*, 115 NJL 412, 443, 180 A. 809; *State v. Karpowitz*, 98 NJL 546, 120 A. 40; *State v. Tomaini*, 118 NJL 162, 191 A. 870.’’

### CONCLUSION.

The testimony in this case overwhelmingly supports the conviction of murder in the first degree. The defendant admitted going to the home of the deceased, Mrs. McBurney, striking her with a base ball bat three or four blows; admitted that he went into the house, ransacked the drawers of the bureau, looked throughout the house for money and finally stole a radio therefrom. He admitted that after he had struck the deceased, and not knowing whether she was dead or alive, he went into the house for the purpose of stealing. He admitted that after he had stolen the radio from the home of decedent, in order not to be detected he went back to his home, not by the highway upon which he had come, but through the woods; that he wore rubbers on the afternoon in question and kept them on until he reached the road. Being fearful that foot prints

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might be left upon the road leading from the woods to the highway, the defendant removed the rubbers and threw them away so that they would not be discovered. He admitted that after he went to his home, he obtained a basket in which he placed the stolen radio and covered it with a burlap bag so that it might not be seen by persons with whom defendant might come into contact, the sole purpose being to hide his loot from pedestrians. He admitted that he went to Philadelphia for the purpose of pawning the radio and turning it into money with which to buy liquor. He admitted that when he went to the pawn shop in Philadelphia he gave a false name and address and this was done in order that his true identity might not be disclosed. Defendant further admitted that he lied to the police authorities when questioned later on the afternoon or evening of the crime concerning his knowledge of the killing at the McBurney farm. He admitted he lied because he was fearful of the consequences which might flow from his felonious act. Defendant's only excuse, and not more than that, was that he had been drinking and possibly he had been driven to do these things by the evil influence of liquor. This latter explanation cannot stand in the face of the clear explanation which he had to make concerning all his movements immediately after the killing up to the time of his arrest.

We respectfully submit that the State, by an abundance of evidence, clearly supported its charge of murder upon the theory of either murder resulting from perpetration or attempting to perpetrate robbery or willful, deliberate and premeditated killing. To say the least, the issues were such as to call upon the jury to determine what degree of murder had been proven and we respectfully submit that

*Brief for Defendant-in-Error*

the verdict of the jury was well justified under the evidence. Therefore, we respectfully pray that the verdict of the jury and the judgment entered thereon be sustained and the prayer of the defendant be dismissed.

Respectfully submitted:

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*Of Counsel for State of New  
Jersey, Defendant-in-Error.*

To be argued by Samuel P. Orlando.

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Jersey, Defendant in Error.*

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