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New Jersey State Library

WRIT OF ERROR

New Jersey, ss:

(L. S.) The State of New Jersey to Walter D. Van Riper, Esquire, Judge of the Court of Common Pleas of the County of Essex, constituting the Court of Oyer and Terminer holden at Newark, in and for the County of Essex, of the term of April, in the year of our Lord, nineteen hundred and twenty-eight.

Because in the records and proceedings and also in the giving of judgment upon a certain indictment in the name of the State of New Jersey against one, Anthony Boccadoro for murder, in the City of Newark, in said County of Essex, found in our Court of Oyer and Terminer and in and for said County heard and determined, manifest error hath intervened to the great damage of him, the said Anthony Boccadoro, as from his complaint we have received information, we being willing in that behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Anthony Boccadoro, do command you, that if judgment be thereupon given, that then you do send the record and proceedings aforesaid, together with all things touching and concerning the same, to us under your seal, distinctly and openly, and this writ, so that we may have them before our Court of Errors and Appeals, at Trenton, the 8th day of June next, that inspecting the records and proceedings aforesaid we may further do thereupon for correcting the error that which of right and according to law shall be fit to be done.

Witness, Edwin Robert Walker, Esquire, presiding Judge of our said Court of Errors and Appeals, at Trenton, the 19th day of May, in the year of our Lord one thousand nine hundred and twenty-eight.

Joseph F. S. Fitzpatrick, Clerk.

J. Victor D'Aloia,
Attorney for Plaintiff-in-Error.

The within writ was presented in open court on the 21st day of May, 1928.

Walter D. Van Riper, Judge.

State of New Jersey, } SS.
County of Essex. }

I, Walter D. Van Riper, Judge of the Court of Common Pleas, constituting the Court of Oyer & Terminer of Essex County, New Jersey do hereby certify and return to the Court of Errors and Appeals the Court of last resort of the State of New Jersey the Indictment, Judgment Record and Proceedings together with the entire record of the proceedings had at the trial and all things touching and concerning the same as by the within Writ to me directed, I am commanded,

In Witness Whereof, I have hereunto set my hand and affixed the official seal of
(L. S.) said Court at Newark N. J. this day of June A. D. 1928

Walter D. Van Riper,
Judge of the Court of Common Pleas holding the Court of Oyer and Terminer Essex County New Jersey.

RETURN TO WRIT

State of New Jersey, } SS.
County of Essex, }

Be it Remembered, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the second Tuesday in December, in the year of Our Lord, One Thousand nine hundred and twenty-seven, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of John F. J. Sheehan, Gustave C. Wolber, Elmer Lutz, Frank Miller, George J. Gates, Harry L. Braender, Robert Lee Roney, Michael T. Baudermann, Frank Seifert, John S. Smith, George Blackbourne, Samuel H. Levy, Bertram Palk, Richard Coe, Gasper Milici, Eugene A. Clancy, William W. Broadwell, Jacob Gropper, W. W. McLaughlin, Homer J. Van Duyne, Charles A. MacCall, Albert R. Crabb and Joseph P. O'Toole, good and lawful men of the said County of Essex, duly summoned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

Essex County, to wit: The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Anthony Boccadoro alias Tony Lopez alias Johnny Toronto on the thirty-first day of January, in the year of our Lord one thousand nine hundred and twenty-eight, at the Town of Bloomfield in the County of Essex aforesaid did wilfully, feloniously and of his malice aforethought kill and murder Edmund Thompson, amend Edward C. Thompson, 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.

Joseph L. Smith,
Prosecutor of the Pleas.

Return to Writ

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

And afterwards, that is to say, at the same session of the Court of Oyer and Terminer holden at Newark on the twenty-third day of March, A. D. Nineteen hundred and twenty-eight, in the year of our Lord, one thousand nine hundred and twenty-eight, before the Judge aforesaid, comes the said Anthony Boccadoro alias Tony Lopez alias Johnny Toronto, in the custody of Conrad Deuchler, Sheriff of the County of Essex aforesaid, in the above custody in the Jail of the County aforesaid, he has been before committed for the cause aforesaid, being brought to the Bar of this Court in his own proper person by the said Sheriff to whom he is also committed and having heard the Indictment and being forthwith demanded of and concerning the premises in the above indictment specified and charged upon him how he would acquit himself thereof, says that he is Not Guilty thereof, and therefore, for good and evil he puts himself upon the Country, and Joseph L. Smith, Prosecutor of the Pleas for the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

On the tweny-fourth day of April A. D. Nineteen hundred and Twenty-eight, the Court on motion of Assistant Prosecutor Simon L. Fisch, Esq., order the above stated indictment amended to read "Edward C. Thompson" instead of "Edmund Thompson."

Return to Writ

Therefore, let a Jury thereupon come before the Judge aforesaid, at Newark aforesaid, in the County of Essex, at the same session of the Court of Oyer and Terminer aforesaid on the twenty-fourth day of April, A. D., Nineteen hundred and twenty-eight, to which day the trial of said Indictment was postponed, twelve free and lawful men each of whom shall be a citizen of this State and a resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years by whom the truth of the matter may be better known and who are not of kin to the said Anthony Boccadoro, alias Tony Lopez alias Johnny Toronto, to recognize upon their oath, whether the said Anthony Boccadoro alias Tony Lopez alias Johnny Toronto is Guilty of the Murder in this Indictment aforesaid specified or Not Guilty, because as well the said Joseph L. Smith, Prosecutor of the Pleas of the County of Essex aforesaid who prosecutes for the State of New Jersey in this behalf as the said Anthony Boccadoro alias Tony Lopez alias Johnny Toronto has put himself upon the Jury, and the same day is given to the parties aforesaid, at the same place, at which day, to wit, the twenty-fourth day of April, in the year of our Lord, one thousand nine hundred and twenty-eight at the same Term of Oyer and Terminer, holden at Newark, aforesaid, in the County of Essex, before the Honorable Walter D. Van Riper, Judge of the Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the said County of Essex, comes as well the said Joseph L. Smith, Prosecutor of the Pleas who prosecutes aforesaid, and the said Anthony Boccadoro, alias Tony Lopez alias John Toronto, in the custody of Conrad Deuchler, Sheriff of the County aforesaid, being brought to the bar in his own proper person, by the said Sheriff, and the jurors of the Jury by the said Sheriff for this purpose empanelled and returned, to wit, after the follow-

ing challenges by the State 9, the defendant 20, by consent 2, by cause 12 and the Court excused 4, 1. Frank W. Besson, 2, Wilbur P. Garrabrant, 3, George Bohlen, 4, Frederick Ost, 5, John Noll, 6, James G. Hall, 7, Alfred O. Pollitt, at this stage of the proceedings the Court ordered a recess unto two o'clock P. M. Officer Seth Middleton, James Mulcagy, Charles Pfeifer and Benjamin Smith being sworn to attend the jury during the trial.

Whereupon at 2 P. M. the Court reconvened and the trial continued and Jurors, 8, Paul Rutgers, 9, Raymond Whitesell, 10, Philip R. Guinan and 11, James L. Cole where drawn, after Juror No. 11 was sworn, the said Special Panel becoming exhausted, the Court ordered the remainder of the Panel drawn from the General Panel whereupon before juror No. 12 was drawn the Court ordered a continuance until April 25th 1926, at ten o'clock A. M.

And afterwards, that is to say on the twenty-fifth day of April A. D. Nineteen Hundred and twenty-eight, at the same Court the eleven jurors heretofore sworn, being called, all appeared and the trial progresses, whereupon the following named person was returned from the General Panel and sworn as Juror No. 12, William H. Eggers, at this stage of the proceedings, the attorney of the defendant moved for a direction of a verdict of Not Guilty, which motion was heard and denied by the Court, the Jury being called came and were sworn on that Jury who to speak the truth of and concerning the premises and thereupon the trial of the issue commenced and continued until the twenty-sixth day of April, A. D. Nineteen hundred and twenty-eight, the Court order that Officer Patrick Crean be sworn to attend the jury during the trial, as alternate in place of Officer Benjamin Smith. whereupon the trial continued until the 28th day of April A. D. 1928. at this state of the proceedings the attorney of the defendant

renewed his motion for a direction of a verdict of Not Guilty, which motion the Court denied, and thereupon the trial commenced was continued before the said Court, and Jury, aforesaid, the Jury in the meantime being all that time kept together and in the care of Officers of the said Court, who were selected and duly sworn by said Court for the purpose, at which last mentioned day the said issue after a charge from said Court was submitted to the said jury and the said jury in charge of said officers of said Court for that purpose were taken to a private room to consider of their verdict, and afterwards, that is to say, on the day aforesaid, at Newark, the said Jury returned into and before the said Court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said Prosecutor Joseph L. Smith, and the said defendant say, "We find the said Anthony Boccadoro, alias Tony Lopez alias Johnny Toronto Guilty of Murder in the first degree with a recommendation of life imprisonment," and so they say all.

By request of J. Victor D'Aloia, Esq., attorney of Defendant, the jury was polled and when the roll was called each juror for himself, answered, "Guilty of Murder in the First degree with a recommendation of life imprisonment."

Defendant was remanded for sentence.

Whereupon all and singular, the premises being seen and by the Court, Hon. Walter D. Van Riper, now here fully undrstood, it is on this eighteenth day of May A. D. Nineteen hundred and twenty-eight Ordered and Adjudged that the defendant be imprisoned in the State Prison of this State at hard labor for life.

And the defendant be in Mercy, etc.

Judgment signed May 18, 1928.

Walter D. Van Riper, Judge.

Adjournments

ESSEX COUNTY COURT OF OYER AND TERMINER

Monday, April 23, 1928

State of New Jersey vs. Anthony Boccadoro, alias Tony Lobez, alias Johnny Toronto.	Indictment No. 115 for Murder

Before Hon. Walter D. Van Riper, Judge.

For the State appears Simon L. Fisch, First Assistant Prosecutor of the Pleas.

For the Defendant appears J. Victor D'Aloia.

Mr. D'Aloia—I am compelled to ask for an adjournment until tomorrow morning. The only reason for the adjournmnt is that there are some witnesses arriving here from Massachusetts about noon today and I want to confer with those witnesses. I think the prosecution has no objection to the adjournment because I made known this fact to Mr. Smith and he has consented.

Mr. Fisch—We have no objection to the adjournment, except that a special panel was served and I understand it is to be stipulated, if your Honor grants this adjournment, that this special panel will be held over until tomorrow morning; that there will be no question raised with regard to this special panel being the special panel for the purpose of trying this case; that they are the jurors to be drawn from this special panel which was already served on the defendant.

Mr. D'Aloia—Yes, there is no objection to that. The defendant stipulates that these gentlemen drawn on the special panel will be the same gentlemen to answer the call tomorrow without the need of a further special panel.

Mr. Fisch—And the presence oi the defendant in making this stipulation is waived.

Mr. D'Aloia—Yes.

The Court thereupon adjourned until tomorrow, Tuesday, April 24, 1928, at 10 o'clock A.M.

Continued pursuant to adjournment.

Present, counsel as before stated.

(It is stipulated that the entire special panel be sworn in a group.)

Mr. Fisch—If your Honor please, this indictment charges the killing of one Edmund Thompson. I understand that the deceased's correct name was Edward C. Thompson, and I now move to amend the indictment to Edward C. Thompson instead of Edmund Thompson.

Mr. D'Aloia—There is no objection.

The Court—Motion granted.

The Court thereupon adjourned until tomorrow, Wednesday, April 25, 1928, at 10 o'clock A. M.

Continued pursuant to adjournment.

Present, counsel as before stated.

(A jury is called and sworn.)

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

May it please the Court and gentlemen of the jury. The Grand Jury of this County has returned an indictment against the defendant Anthony Boccadoro, alias Johnny Toronto, alias Tony Lopez, the defendant sitting there next to his counsel, charging that on the 31st of January of this year at the town of Bloomfield in this County, he did wilfully, feloniously and of his own malice aforethought, kill and murder Edward C. Thompson, contrary to the form of the statute in such case made and provided, against the peace of this state, the government and dignity of the same.

Opening for the State

Now, the State will prove to you that on the date laid in the indictment, the 31st of January, at about five minutes to eight in the evening, the deceased, Edward C. Thompson, was on the second floor of his home on Ampere Parkway in the town of Bloomfield, number 191, which is located on the corner of Ampere Parkway and Abington avenue; that while he was on the second floor of his home, Mrs. Thompson was doing some ironing and that there was a desk lamp with a metal back to it, the metal back of it facing toward the window, and the light was reflected down on the ironing board, and while he was sitting there watching Mrs. Thompson do some ironing, he went downstairs, and that after he went downstairs, there was a struggle in the kitchen in that apartment on the first floor, and that after that struggle a man jumped out of the rear window of the pantry, on to the side cheek of the steps which lead to the back yard; that Thompson was seen on the front of his house leaning up against the porch; that some neighbor came out who had heard the struggle and that Thompson then said, "I tried to choke him but he got me." He said, "He shot me. He went out of the back window," and the State will further prove that a young lady who was on the opposite side of Abington avenue and who lives there, saw a man standing on the cheek of this rear stoop with a curtain over his head and that that curtain was subsequently found in the back of the garage and this young lady will testify she saw that man proceed behind this garage; and the State will prove to you that that curtain came from the pantry window of the Thompson home, and the State will further prove to you that another man who

lived in a house on Abington avenue saw a man coming from behind these garages and running up through the space between the two houses which face on Leslie street, and that that man had a soft hat on and that that man was of the build and height of this defendant; and the State will also prove to you that after Mr. Thompson had been seen here leaning up against this stoop that he was taken into a neighbor's home; that the police were telephoned for; that they came and he was taken to the hospital; that he had been shot through the abdomen and that he died the following morning as a result of that bullet wound; that the bullet went right through him, and that when he got to the hospital a police officer connected with the police force of the town of Bloomfield took that bullet and it was marked by him, and we will offer that bullet in evidence, and that Thompson died as a result of that bullet wound.

The State will also prove to you that this pantry window contained markings on the outside of the window, on the window frame, and the State will further prove to you that this defendant had been living in Newark; that he had come to Newark with a woman by the name of Rose Tiffany, a married woman, had left his home where he had been living on Canal street in Newark on this night in question; that he had boarded a Bloomfield trolley car and that he got off of this Bloomfield trolley car at Belmont avenue and Bloomfield avenue in the Silver Lake section of Bloomfield, which is some eight or nine blocks all told, from the scene of this crime; that he left that trolley car somewhere about three-quarters of an hour or an hour before this crime was committed. The State will

also prove to you that about a month or four weeks previous to this day, on the 2nd of January of this year, the home of a Mr. Black, in Glen Ridge, was entered, and that there was taken from that home at that time—

Mr. D'Aloia—Now, if your Honor please—just a moment, Mr. Prosecutor, I am sorry to interrupt you—but this is now outlining a separate and distinct offense, and I don't think the Prosecutor ought to be permitted to bring in anything which happened in Glen Ridge about a month before, in any way, shape or manner, or even by referring to it.

The Court—Well, of course, if it is just the recital of another crime being committed, it is not material, but I don't know what the Prosecutor intends to prove by it.

Mr. Fisch—I will connect it up, your Honor.

The Court—If he intends to connect it, all-right, if it has a material connection with this crime—

Mr. D'Aloia—How can it have?

The Court—I don't know, but I will say to the jury now that the Prosecutor is outlining to you now what he intends to prove and it is not proof until it has been testified to by the witnesses.

Mr. Fisch—And that there was taken from that home in Glen Ridge at that time a maple leaf pin, a pin in the shape of a maple leaf, and there was also taken a revolver from that home, and the State will prove to you that that maple leaf pin was found hidden in the premises which were occupied by this defendant in Canal street, betwen the wall and the cellar boards, which covcr that wall, and running from stud to stud, and that this pin was found in the opening contained between those two boards in that wall,

and the State will prove to you that that pin had been given to Rose Tiffany, the woman he was living with, by this defendant, shortly after the 2nd of January, and the State will prove to you that the revolver which had been taken from the home of Mr. Black on the 2nd of January, was a nickel plated revolver, with a black handle, and the State will prove that this defendant was seen to have in his possession that revolver, shortly after the 2nd of January, and that on the night when this crime was committed this defendant, after having cleaned that revolver, put it inside of his trousers; that he that night wore a soft hat and a dark overcoat; that he put the revolver inside of his trousers before he went out that evening, and the State will prove to you that the bullet which killed Mr. Thompson issued from that revolver; that that revolver was used in the killing of Thompson, and the State will further prove that this defendant returned to his home that night at about half past nine, with his eyes blood-shot, and that he had had an arrangement with this woman, Rose Tiffany, whereby he was to give her money, and had given her money to send for her child to come to Newark, and that when he came home that night with his eyes blood-shot, that he made the statement to her, "If it had not been for you and your damn kid, this thing would not have happened tonight." And that she asked him what the matter was and he told her that he was doing a job when the police chased him, and when, as he said, they fired at him, and that he had to run three miles; that he was lucky to get away, and she asked him what he did with his gun, and he said he threw it away in a vacant lot, and he did not have the gun

when he returned, and the State will further prove that she continued to ask him questions about this; that in the morning she went out and got a newspaper, either at his direction, or at her own initiative, and when she brought that newspaper back, he would not let her look at it, but threw it behind the stove, and she asked him why he would not let her look at that newspaper and he said, "Well, what is the use, it would only worry you, it contains the description of a man that tallies with my description," and he sat in the house all that next day, and would not go out until nightfall, and that the following day he arranged with her to go to Brooklyn, to some relatives of hers, and he arranged with her that they would not walk together, because if he were picked up by the police he did not want her to be picked up, those were his words, and they went to the Tubes, one following the other and they got in separate cars, and they joined one another in New York and subsequently when they were arrested, that this defendant was questioned and he stated to the police that he had committed some thirty or forty robberies in the suburbs of Newark, Bloomfield, Glen Ridge, Montclair, Elizabeth, and that after he was arrested, this woman was arrested with him, and they were brought to Newark and after he came to Newark, he then denied that he had committed these robberies, and the State will further prove to you that after this defendant had returned home on the night of the commission of this crime, that on the following day he took a small manicure scissors and cut the overcoat which he had worn on the previous night to bits and threw these pieces into the fire and burned them in that stove, and

that that was after the newspaper had been brought into the house and it had been read by him.

Now, Gentlemen, in inquiries from some of you gentlemen and also some of the other prospective jurors on their voir dire, questions were raised with regard to their duty in the case of a murder in the first degree. If the State proves these facts as outlined by me, I am convinced that you will be satisfied, beyond a reasonable doubt, that this defendant shot and killed Mr. Thompson in an endeavor to commit a robbery and that the law of this state is that a killing under such circumstances is murder in the first degree, and when the State proves these facts, the State will ask a verdict at your hands of murder in the first degree.

Mr. D'Aloia—Upon the Prosecutor's opening, upon the facts stated by him, as he has outlined to the jury, I move for the direction of a verdict of acquittal . Admitting that on the 2nd of January a maple leaf pin was taken from the home in Glen Ridge; admitting that on that same day from that same home there had been taken a revolver; admitting everything that the Prosecutor has stated, that on the 31st of January, that a man of the stature described, as of about the same stature of this defendant, was seen at the premises known as 191 Ampere Parkway, Bloomfield; admitting that a man there was shot, who subsequently died at a hospital, and that a revolver bullet had gone through his body; admittnig that the State has that bullet; admitting that this defendant got home with blood-shot eyes; admitting that he told his friend—lady friend, or companion, that he had been chased by the police for three miles and that they fired

at him, and that he had to fire back; admitting also that the next day there might have been some kind of a controversy as to some kind of an account in the newspaper, admitting, further that a black overcoat was cut up in small bits by a manicuring pair of scissors, the Prosecutor made a statement in his opening, which he did not follow up complete, we will prove to you, gentlemen of the jury, that the bullet came from that revolver, and then he finished up and said that the revolver that this defendant is alleged to have gone out with that night was thrown into a vacant lot, he does not tell the jury it was found, he does not tell the jury he is going to produce it; I say, it is a physical impossibility, when he says to you that the bullet taken from Thompson's body came from that revolver which was taken from this house on the 2nd of January in Glen Ridge, and which was taken from this defendant's home on the evening of December 31, when he says to the jury, we will show you that I think—

The Court—That is all a matter of proof.

Mr. D'Aloia—He cannot produce the revolver, because he tells this jury and this court that he cannot produce that revolver.

The Court—Well, he might be able to prove it.

Mr. D'Aloia—Well, that is a new phase of proof in criminal cases that I have never heard of. Now, my motion is directed to the Court upon the opening, because of that very, very important point that the Prosecutor omitted, and I ask your Honor to pass upon it now, admitting all of the facts, without that revolver there is not any proof.

The Court—I will deny your motion.

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

Walter D. Van Riper, Judge.

JOHN J. BRACKEN sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. You are a civil engineer and surveyor, are you not? A. Yes.

Q. And did you, at my request, make a map showing the locality of Ampere Parkway and Abington avenue? A. Yes.

Q. And did you also make a map of the first floor of the premises at 191 Ampere Parkway? A. Yes.

Q. And are those the two maps which you made now exhibited on the wall of this courtroom? A. Yes.

Q. And when did you make those maps? A. The date is on them. The measurements were made fiirst February 2nd, and the maps were made later.

Q. Now, referring first to the map of the ground, will you please tell us whether that map is drawn to scale or not? A. Yes.

Q. What is the scale? A. The scale of the map is one quarter inch on the map is equal to a foot on the ground.

Q. And what does that map you are now referring to represent? A. It represents the building known as 191 Ampere Parkway; the next one 189; the garage in the rear and the buildings on the rear of Ampere Parkway is known as 170-172 Leslie street.

Q. And the arrow points north? A. Yes.

Q. So that, for all practical purposes, Ampere Parkway runs north and south? A. Yes.

Q. And Abington avenue east and west? A. Yes.

Q. What is the width of Abington avenue? A. Abington avenue is 70 feet wide.

Q. And what is the width of Ampere Parkway? A. Well, that is a very wide parkway. I have not taken that measurement after I got out from the curb in front of the house.

Q. How far does the body of the house set back from the street line, 191? A. You want the body of the house, or the porch?

Q. The body of the house. A. The body of the house from the curb line sets back 48 feet.

Q. From Ampere Parkway? A. Yes.

Q. How far from Abington avenue? A. From the curb line shown there, 24 feet.

Q. What is the distance between the house 191 Ampere Parkway and the house next adjoining on the south, 189? A. Ten feet.

Q. And what is the distance from the rear of the house to the garage? A. 18 feet. That is to that portion there (indicating).

Q. What would be the distance from the end of the back stoop; this represents the back stoop? A. Yes, sir.

Q. What would be the distance from the end of the back stoop to the garage? A. Fourteen feet.

Q. And I notice that you have marked the three steps. A. Yes.

Q. And also you have marked here with a cross on it, marked four feet; what does that mean? A. Four feet from the ground.

Q. So that the cheek from the side is four feet from the ground? A. Yes.

Q. Is there a window in the rear of the house on the first floor? A. Yes.

Q. What room does that window lead into? A. It is sort of a pantry.

Q. And how far above the ground is the sill of that window? A. Six feet and a half.

Q. So that the sill of the window would be two and

a half feet above the cheek of the stoop? A. Yes.

Q. How far is the sill of the window—how far is the window from the cheek of the stoop? A. Just a little over a foot.

Q. How big is that window? A. That is two feet and a few inches. I can give it to you.

Q. All right. Give it to us from your notes. A. 2.25; two feet and three inches.

Q. Now, are there any houses on the south side of Abington avenue between Ampere Parkway and Leslie street? A. On the south side?

Q. Yes. A. Why, no, there is only this house on the corner, that part is showing.

Q. And then the only other house or buildings of any sort are two garages which you have shown? A. Yes.

(Map which has just been described as the ground map offered in evidence and marked Exhibit S-1.)

Q. Now, I call your attention to the other map which is on exhibition and ask you if you will please describe that map to the Court and jury. A. That map shows the first floor of the house known as 191 Ampere Parkway and this, what I call a living room; this shows the stairway going to the second floor; this is the entrance; those different lines there are the windows on different sides of the house; this is a hallway; this is walls separating different rooms; this is the dining room; this is the kitchen. This is sort of a pantry; and this is sort of an outside shelter. The steps are shown in the rear. The different objects are the different objects of furniture I found on that floor. The scale on the map, one inch on the map equals one foot.

Q. Can you give us the size of that pantry? A. I

can scale it right off for you. That pantry is four feet eight inches, looking north and south. That pantry is about square.

The Court—Four feet eight square?
Witness—Yes.

Q. And is there a shelf around part of that wall? A. There is a shelf around in here, not in the pantry, in that little ice box, that I gave you here, or the entrance.

Q. No. I am wondering what these lines are? A. Those are shelves around the pantry.

Q. Those are shelves around the pantry? A. Yes. The other room I gave you the distance of was the entrance there.

Q. What was the size of the kitchen? A. The kitchen is nine feet ten inches.

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

Cross Examination by Mr. D'Aloia:

Mr. D'Aloia—If your Honor please, when the first opportunity presents itself, I would like to ask that this particular map P-1 be put away from this because the width of Abington avenue you say is 70 feet?

Witness—Yes. It does not show there.

Q. It does not show either how far the houses on the right hand side of Abington avenue going toward Leslie street are back from the curb on the right hand side? A. It does not show the houses at all.

Q. That distance is going to be very important and I would like to have the maps at least separated and then you can give us an idea how wide Abington avenue is and how far the curb on the right hand side of Abington avenue is from the house. Now, for the time being, would you please give me the distance from the

curb line of Abington avenue and that stoop? . A. 46 feet and a few inches, perhaps.

Q. You told us that this is between that stoop and the garage? A. Yes.

Q. Now, give me the space between the first garage here, where you have this lead pencil line, and the end of that garage, and this next garage, that intervening space there? A. Five feet and a little over.

Redirect Examination by Mr. Fisch:

Q. What is the space on the westerly side of the garage which you have just referred to to the easterly side of the house on the corner of Leslie street and Abington avenue? A. This point up here?

Q. Yes. Not that one, the garage nearest to it. A. 33 feet; maybe a few inches.

DR. HARRISON S. MARTLAND sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Doctor, you are the chief medical examiner for this county, are you? A. I am.

Mr. D'Aloia—We admit the doctor's qualifications.

Q. And did you perform an autopsy on the body of the deceased, Edward C. Thompson? A. I did.

Q. When and where, doctor? A. At Kunz' morgue, Orange, on the first day of February, 1928, at five o'clock, P. M., about three and one half hours after death.

Q. And who was present at the autopsy? A. One of the assistant medical examiners, Dr. Brien of Orange, and through part of the autopsy, Detective Lieutenant Clifford Shippen of the Bloomfield Police Department, and part of the time Officer Arthur Billingham, also of the Bloomfield Police Department.

Q. And what did your autopsy show, doctor? A. My autopsy showed the body of a man about five feet six in height, about 140 pounds in weight, black hair, gray eyes. There was a recent surgical incision in the abdomen extending from about just below the ensiform cartilage, down to the naval. This incision was about four and a half inches in length and was made by the surgeon and closed with five metal clips for closing the skin, and several deep sutures. In the lower part of the wound was a surgical drain composed of gauze and rubber tissue around it. In the left chest, in the front, in a line drawn through the middle of the collar bone, the clavicle, and just above the free border of the ribs, was a bullet wound of entrance. This wound was one quarter inch in diameter at its edges, and around its edges the skin was bruised the reddish in color for a distance of about two-sixteenths of an inch. The lower border of the wound was longer, and wider than any other part. There were no surrounding powder marks or smudge on the skin. The autopsy showed that this bullet wound had passed backwards and to the right and slightly upwards. The point of exit in the skin was in the right chest, in the back, in what is known as the posterior-axiliary line, just about here (indicating) coming out of the chest cavity between the tenth and eleventh ribs on the right side, so the course of the wound, the direction, was backwards, to the right and slightly upwards, the point of exit being about two and a half inches higher than the point of entrance with the body erect. This wound passed directly into the abdominal cavity and passed through the left lobe of the liver on this side (indicating) producing a wound through the lobe of the liver with extensive bleeding; it then came out of the left lobe of the liver and made a wound at the top of the stomach in the lesser curvature, which wound had been sutured tight by the surgeon who performed the operation after

the shooting. The wound then continued after it hit the stomach and came to the right lobe of the liver and passed completely through that, producing also extensive bleeding into the lesser sac or peritoneum; the wound then went through the peritoneum and just skipped hitting the lower border of the right lung and it passed between the lung and chest wall and came out in the back. The cause of death was hemorrhage, and shock following these wounds. On the left side of the head behind the left ear there had been an area which was shaven, about two and a half inches in size, and just behind that area there was a laceration of the scalp "T" shaped, like a "T", about three quarters of an inch in length, the limbs of the "T". The wound went through the scalp and almost down to the bone but was not very large. Just above this was a parallel wound, running parallel with the upper arm of the "T", a small bruise, about three-quarters of an inch in length, and just above this was another laceration about three-quarters of an inch in length, just above that another laceration, so in this area just above the ear there were two lacerations, two brush abrasions in the scalp, none of which produced injuries that were serious. They were limited to the scalp. An examination of the scalp showed no fracture, and the brain was normal; the other organs were normal except the heart which showed some evidence of chronic disease of the heart muscles. On the right thumb over the phalangeal joint were two small scratch marks, very small and superficial. In the left hand over the base of the thumb was a small superficial laceration. There was dry blood over the middle finger of the left hand and I could not find any evidence of hair or foreign body beneath the finger nails. Those were all the marks of injury on the body.

Q. What would you soy, doctor, was the calibre of the bullet which caused this wound? A. The bullet

was not found in the body, the wound of entrance being one quarter inch in diameter which suggests that the calibre of the bullet was all the way from a 32 to a 38, possibly. I saw the bullet afterwards, during the autopsy.

Q. And is this the bullet which you saw, doctor, during the autopsy? A. That is the bullet which was given to me while I was doing the autopsy by Detective Lieutenant Clifford Shippen of the Bloomfield Police Department as being the bullet that the—

Mr. D'Aloia—No, wait a minute. It was given to you by Shippen.

Witness—And marked by Shippen for identification. I took the bullet with me.

Q. Are you sure it was Shippen, was it Shippen or Billingham? A. I was under the impression that it was Shippen.

Q. At any rate, it was shown to you when the autopsy was performed? A. It was shown to me at the time the autopsy was performed by one of the two, either Shippen or Billingham, I don't remember which, and one of them marked it for identification. I was doing the autopsy at the time.

Q. And would you say, doctor, that this bullet which was shown to you at that time could have caused this bullet wound? A. Oh, yes.

Mr. Fisch—I ask that this bullet be marked for identification.

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

The Court—When you said the bullet was not found in the body, you mean it was not found by you, is that what you mean?

Witness—It was not found by me. There was a wound of entrance and a wound of exit in the body.

Cross Examination by Mr. D'Aloia:

Q. What were these heart lesions, which you found, doctor? A. The heart lesion was what we call chronic interstitial myocarditis, which is due to the heart muscle being scarred with scars due to a disease of the coronary arteries.

Q. Wasn't there sufficient evidence of heart disease to make shock the cause of death? A. No, sir.

Q. You say the cause of death was internal hemorrhage? A. Yes, sir.

Redirect Examination by Mr. Fisch:

Q. Caused by what? A. Caused by the bullet wound.

NICHOLAS G. KAUFMAN sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Mr. Kaufman, what is your business, A. Photographer.

Q. How long have you been a photographer? A. About thirty-two years.

Q. And did you, at my request, make some photographs of 191 Ampere Parkway? A. Yes, sir.

Q. And of the interior of 191 Ampere Parkway? A. Yes, sir.

Q. When did you make these photographs? A. January 31, 1928.

Q. Now, I show you a photograph and ask you what that is? A. That is a building at 189 and 191 Ampere Parkway, Bloomfield.

Q. Can you show us on the map, Exhibit S-1, please, where your camera was situated, and in what

direction it was pointed at the time that photograph was taken? A. (Witness indicates.)

Q. Will you please mark that S.C.-3? A. (Witness marks as requested.)

Mr. Fisch—I offer the photographs in evidence.

(The same is marked Exhibit S-3.)

Q. I show you another photograph and ask you if you took that photograph. A. Yes, sir.

Q. What does that represent? A. The rear of the house at 191 Ampere Parkway, Bloomfield.

Q. And will you please show us on Exhibit S-1, where your camera was situated and in what direction it was pointing when that photograph was taken and mark it, please, S.C.-4? A. (Witness marks as requested.)

Mr. Fisch—I offer the photograph in evidence.

(The same is marked Exhibit S-4.)

Q. I show you another photograph and ask you if you took that photograph and what it represents? A. The rear house, 191 Ampere Parkway, looking southwest.

Q. Will you please indicate on the map, Exhibit S-1, where your camera was pointing and mark it with an arrow and Ex. S-5? You say it was looking west or looking east? A. It was looking southwest.

Q. That is looking up toward Leslie street? A. Yes.

Q. The houses represented in the photograph are the houses which are fronting on Leslie street? A. Yes, the rear of Leslie street.

(Photograph offered in evidence and marked Ex. S-5.)

Q. Now, I show you another photograph and ask you if you recognize this photograph and what it re-

presents? A. Rear of buildings on Leslie street; photo taking in buildings 170 and 172 Leslie street, which is southwest.

Q. Will you be good enough to put a mark on Ex. S-1 of the place where your camera was and the direction in which it is pointing and mark it by an arrow Ex. SC6? This shows the opposite of Leslie street? A. The opposite side.

Q. What side? A. The westerly side.

(Photograph offered in evidence and marked Ex. S-6.)

Q. Now, did you make a photograph of the interior of the premises, 191 Ampere Parkway? A. Yes.

Q. Now, I show you a photograph and ask you if you made this photograph and, if so, what is represents? A. A close up photo of the windowsill of the building 191 Ampere Parkway, looking east.

Q. And will you be good enough to show us on Ex-S-1 where your camera was and the direction in which your camera was pointing? Were you outside of the building? A. Outside of the building.

Q. So this is a representation of the outside of the window? A. Yes, sir.

Q. Will you be good enough to mark that Ex. SC7?

(Photograph offered in evidence and marked Ex. S-7.)

Q. Now, I show you another photograph and ask you if you took this photograph and what it represents? A. The parlor, looking toward the dining room, the living room, looking toward the dining room and kitchen.

Q. Will you be good enough to show us on Ex. S1A the direction in which the camera was pointed and indicate it by an arrow and mark it SC8?

(Photograph offered in evidence and marked Ex. S-8.)

Q. I show you another photograph and ask you if you took this and if you did what it represents? A. The kitchen at 191 Ampere Parkway, looking west.

Q. Will you please indicate on Ex. S1A the place your camera was situated and indicate by an arrow the direction in which it was pointed and mark it Ex. SC9.)?

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(Photograph offered in evidence and marked S-9.)

Q. Now, I show you another photograph and I ask you if you took this photograph and what it represents? A. The front porch of the building 189 Ampere Parkway.

Q. Will you be good enough to indicate on Ex. S-1 the place where your camera was situated and the direction in which it was pointed by an arrow and mark it SC10?

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Photograph offered in evidence and marked S-10.)

Q. I show you another photograph and ask you if you made that photograph and what it represents?

Mr. D'Aloia—I object to that photograph and I do not think the photographer should state in answer to the question what it represents. It has nothing to do with the premises and the

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testimony all ready in has sufficiently described the cause of death, which has not been seriously contended—It has not been contradicted at all, so that that particular photograph serves no purpose whatever.

Mr. Fisch—Only for the purpose of identifying the body.

Mr. D'Aloia—There is no question about it.

Mr. Fisch—It is stipulated that the body autopsied by Dr. Martland is the body of Edward C. Thompson.

Mr. D'Aloia—Why, certainly.

Cross Examination by Mr. D'Aloia:

Q. What time of day were these photographs taken? A. Afternoon.

Q. About what time? A. About between two and three o'clock.

Q. On what date? A. The 31st of January.

Q. Was the sun shining? A. Sun shining.

Redirect Examination by Mr. Fisch:

Q. Are you sure it was the 31st of January? A. The photograph is dated there.

Q. I know, but you dated these photographs after the photographs were developed and printed? A. No.

Q. Uh? A. I had to, yes.

Q. Did you put the date on after the photograph was printed? A. Why, yes.

Mr. D'Aloia—We will not lose any time at all. There wouldn't be any occasion to take them on the 31st of January. I think the witness made a mistake. He took the photographs subsequent to the crime by order of the police and Prosecutor.

Mr. Fisch—It is stipulated, then, they were taken on the 31st of February?

Mr. D'Aloia—Why, certainly.

BLANCH THOMPSON sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Mr. Fisch—I understand this witness does lip reading.

Witness—I understand you quite well.

Q. Well, we will see if we can get along with one another. All right. You are the widow of Edward C. Thompson, are you; was Edward C. Thompson your husband? A. Yes, Edward Charles.

Q. And you remember the evening of January 31st? A. I do.

Q. And where were you on that evening? A. I was upstairs. You mean the time it happened?

Q. Yes. A. I was upstairs.

Q. What room? A. The front room.

Q. And who was with you? A. Mr. Thompson.

Q. Was there anyone else in the house? A. No one else in the house.

Q. And the first floor, was there any light on the first floor? A. Well, when I went upstairs the light was lit in the living room and Mr. Thompson about ten or fifteen minutes before this happened was sitting down in the living room on the sofa playing his mandolin by the window with the shades up and a bright light was lit.

Q. And then subsequently did Mr. Thompson come upstairs after that? A. I was half-way down the stairs and I wondered where he was and he was sitting on the sofa playing his mandolin and I went back upstairs, and he come up, I should judge, about ten or fifteen minutes after that.

Q. Now, when he came upstairs there was not anybody downstairs any more; is that it? No, no one was downstains.

Q. Now, then, what were you doing upstairs? A. I was ironing.

Q. Whereabout? A. The front room, right near the hall door, with the door open.

Q. And were you ironing on a table or on an ironing board or what? A. Ironing board.

Q. And where was the ironing board located? A. From the table right across by the door; quite aways from the window.

Q. Quite aways from the window? A. Yes.

Q. And what means of light did you have? A. I had a light, shaded light. It had a green shade. It reflected on the ironing board, but the green shade was toward the window.

Q. Was it a metal shade, iron; was it a metal shade? A. It was metal.

Q. Was it sort of a desk lamp with a rounded shade? A. Yes, a round shade.

Q. And the back of that was toward where? A. Toward the window.

Q. And the light was— A. Reflecting on the board.

Q. Now, where was Mr. Thompson? A. Mr. Thompson was sitting—well, I was ironing right here and he was sitting right there (indicating) in the rocking chair.

Q. How long was he sitting there? A. Oh, it don't seem to me it was five minutes.

Q. And what happened? A. Well, I could tell—I did not hear the noise, but I could tell by the expression on his face that he heard a noise and I said, thinking it was my son coming home to supper, I said to him, "Oh, don't you go, I will go", and I went downstairs and opened the front door and as I turned he was halfway down the stairs.

Q. That is, Mr. Thompson? A. Yes.

Q. Now, when you came down those stairs to open the front door was there any light in the living room then? A. No. The living room was dark.

Q. And then when you were down there to the front door, to open the door—A. I opened the door.

Q. Your husband was where? A. Halfway down the stairs.

Q. Then where did you go? A. I went up and passed him on the stairs and he went, as I thought, to go to attend the furnace and that must be when it happened.

Q. What was the next thing you saw or heard? A. The next thing was a neighbor came upstairs where I was ironing and I thought it strange that he should come upstairs. He asked me where the boys were and I told him, and I said, "Have you seen Mr. Thompson?" He said, "Yes," but he did not tell me anything about it, and I thought it strange and in a few minutes I came down and I saw the pantry window where I saw it locked and the curtain up and it was all off, and then I ran outside and I wanted to know what was the matter and with that I seen the police drive up next door. They would not let me see him, and they brought me back in the house.

Q. And when did you next see your husband? A. Well, just before he died in the hospital. They sent word from the hospital and I went up.

Q. Now, did you see anything by your kitchen floor, was there anything on your kitchen floor? A. What do you mean, stains or anything?

Q. Yes. A. Oh, yes.

Q. What did you see? A. Blood. You mean blood stains?

Q. Yes. A. That was on the kitchen table, on the dishes that was on the table, on the dining room table cloth and on the floor all the way from the kitchen to the living room.

Q. And did I understand you to say that the pantry window had been locked? A. The screen in and locked, and the window locked.

Q. Now, when did you discover that something had happened with regard to that window? A. Well, when I seen the window like that I knew something was the matter.

Q. When did you see that? A. Why, just as soon as I came down to walk to the cellar to see where he was, looking for him.

Q. And what condition did you find that window in at that time? A. What?

Q. What condition? A. Well, it was just wide open, the curtain and rod all gone, and the screen was out.

Q. What kind of a curtain did you have on the window? A. Well, I had a white curtain of thin material, I could tell it in a minute.

Q. And the screen, was that an inside screen or an outside screen? A. It was an outside screen, full length.

Q. Did you see that screen later in any place? A. It was in the back yard the next morning right in the back yard.

Q. You saw it in the back yard the next morning? A. Yes, sir.

Q. Now, I show you a photograph and ask you if you can tell me whether the screen shown on that photograph is the screen from your window? A. It is.

Q. Is the photograph marked Exhibit S-5? A. Yes, sir.

Q. Now, did you see the curtain or the rod after that? A. Yes, sir.

Q. I show you some rods and curtains and ask you if these are the curtains and rods from that pantry window. A. They are, those are the curtains.

Mr. Fisch—I offer them in evidence.
(The same are marked Exhibit S-11.)

Q. I also see wrapped up in this same bundle a piece of wood. Do you know where that comes from- A. That has been broken off the window.

Mr. Fisch—I offer that in evidence as part of the same exhibit.

Q. Where did you find S-11, that is, these curtains and these rods? A. That was brought in to me when the police found it and brought it in and asked me if it was mine.

Q. Now, I show you a window and ask you if you recognize this as the window of your pantry. A. Yes, that is it.

Mr. Fisch—I offer the window in evidence.
(The same is marked Exhibit S-12.)

Q. I show you a screen and ask you if that screen is from your pantry window? A. That is.

Mr. Fisch –I offer it in evidence.
(The same is marked Exhibit S-13.)

Q. Now, when you come down the stairs to go into the kitchen or into the cellar which way do you have to go? A. Come right through the living room and through the dining room, right around.

Q. These are the stairs? A. That is not the picture—

Q. You can tell it better in the picture? A. I could tell it better if I saw the picture.

Q. I will show you Exhibit S-8. A. He came down and went right around and that was the kitchen door, and he had to walk around this part of the table, and then around in there (indicating).

Q. So that the door leading from the kitchen into the living room was blocked off by the piano, is that right? A. Yes, sir.

Q. Then, you would have to go the way I am now

indicating, just watch this (indicating on map). A. In that way.

Q. Is that right? A. That is the way you come.

Q. That is down the stairs, through the living room and through the dining room and through the swinging door into the kitchen? A. Yes, sir.

Q. Now, Mrs. Thompson, as I understand it, you have been following my lips, is that right? A. Yes, sir.

Q. You are totally deaf, are you? A. I am totally deaf.

Q. You do not hear a thing? A. I do not hear a thing, no, sir.

Q. And was that the same condition that you were in on the night of this happening? A. Yes, for eighteen years I have been that way.

Q. Do you know what time of the night it was, Mrs. Thompson? A. Well, it was around eight o'clock or a little before, around that time.

Cross Examination waived.

CLAIRE J. RICHARDS sworn in behalf of the State.

Direct Examination by Mr. Fisch.

Q. Miss Richards, where do you live? A. I live 401 Abington avenue.

Q. And is that between Ampere Parkway and Leslie street? A. Yes, you see, Leslie street does not cut through, it only cuts through as far as Abington avenue.

Q. That is to say, Leslie street does not extend north of Abington avenue? A. Yes, sir.

Q. And how far from the corner of Ampere Parkway and Abington avenue, do you live? A. Well, there is one vacant lot on the corner, and the next house is where I live.

Q. So that your house is the first house from the

corner of Ampere Parkway on the north side of Abington avenue, is that right? A. Yes, sir.

Q. So that if this map, exhibit S-1, showed the north side of the street, it would be some place about the place I am now indicating? A. Yes, sir, in there.

Q. Now, if you look straight out from the front of your house, what does it face on the other side of Abington avenue? A. It faces between the garage and the house on the corner, you see, this is the yard of the house on the corner (indicating).

Q. That is the Thompson house? A. No, between the garage and the next house.

Q. Between the garage and the house on the corner of Leslie street? A. Yes, sir.

Q. So that your house is up here somewhere (indicating). A. Yes, sir, not exactly across from the garage.

Q. Now, do you remember the evening of January 31? A. Yes, sir.

Q. Where were you on that evening, Miss Richards? A. I was coming out of my home.

Q. Were you with anyone? A. No, I was by myself.

Q. Now, as you were coming out of your home, did you see anything that attracted your attention? A. As I got down the stairs I heard this—well, it was an unusual noise to me, it sounded like someone was wrestling, and I could hear faint voices but not distinctly.

Q. In what direction was this sound coming from? A. Well, it carried my glance right toward the Thompson residence, and I looked over there and it was in total darkness; from my house I could not see a light, and so I decided it could not be in there, I thought it was just perhaps some boys fooling on the corner, perhaps on the Parkway, because they were sleigh-riding up and down Abington avenue that night,

and they made quite a noise, so I continued on, and as I continued on, I thought I heard the report of a gun, but it was very muffled, and then I thought, oh, I am just nervous, nonsense, and I glanced up, and as I did, I saw the figure of a man on the part of the steps there, I don't know just what you call it.

Q. Was that what I called the cheek of the steps? A. I imagine that is what it is.

Q. Suppose you look at the photograph, showing you exhibit S-4, which is a photograph of the rear steps. A. Yes, sir, I guess about there (indicating).

Q. You say you saw the figure of a man on that cheek. A. What looked like a man to me.

Q. And that is the cheek which is nearest to the pantry window? A. Yes, sir.

Q. And what did you observe about him? A. Well, I saw that—I noticed that he had on, I think it was a white sweater or something white, and I just thought for a minute it was one of the boys, and he went toward the garage, I did not see whether he went to the garage, I could not quite get a view of it back that far, but he went toward the back of the garage.

Q. Toward this garage I am pointing to? A. Yes, and I could not tell whether he went into the hedge or to the back of the garage.

Q. So that there is a hedge between the garage and the Thompson home? A. Yes, sir.

Q. You say you saw him going from the direction of the house toward the garage? A. Yes, he was not rushing, so I took it for granted it was one of the boys going for the car, and then I thought, well, probably they were having a little battle between themselves—

Mr. D'Aloia—I object to what she thought.
The Court—Tell us what you saw.

Q. What did you see and hear? A. Well, I continued on then and it sort of passed out of my mind, and as I got a few steps further on, I could see the

porch of Thompson's house, that is the front of it extends out, there is a place right above the steps there.

Q. I will show you a picture of the front of the house, the picture on the right is a picture of the Thompson house, on Exhibit S-3. A. I could see him right through there, and he was just about here (indicating).

The Court—Who was?

Witness—A man, I could not tell just who, I did not know Mr. Thompson at the time, I did not know who he was.

Q. And did you afterwards learn it was Mr. Thompson that you saw at the point which you are now indicating? A. Yes, sir.

Q. And where were you? A. I was right across here, I was coming toward the corner.

Q. You were still on the opposite side of Abington avenue, coming toward the corner of Abington avenue and Ampere Parkway. A. Yes, sir.

Q. When you saw Mr. Thompson on his porch? A. Yes, I really heard him, I heard him holler that he was shot, holler about being shot, and I heard groans, and really I did not quite know what it was about, so I went right home and got my father and I said—

Mr. D'Aloia—Just a moment, you went right home.

Q. You ran home and you got your father? A. Yes.

Q. And then did you go out with your father? A. Yes.

Q. And then when you came out again with your father what did you do or say? A. We did not hear a thing; it was all perfectly quiet and we continued to walk until we crossed the street, and then Miss Wiley came running down the walk.

Claire J. Richards—cross

Q. Who is Miss Wiley? A. She lives next door to the Thompson residence.

Q. 189? A. Yes.

Q. Then what did you do? She said something to you and what did you do? A. We went up on to the porch.

Q. Whose porch? A. Miss Wiley's porch.

Q. And did you see Mr. Thompson there? A. Yes. He was lying there.

Q. He was lying on this Wiley porch. A. Yes.

Q. What was his condition? A. Why, I saw a lot of blood and he was groaning terribly.

Q. Then what did you do? A. Why, my father told me to 'phone for the police, and when I went in Mrs. Wiley was sitting at the 'phone and she said it was—

Mr. D'Aloia—Just a minute.

Q. Well, did you 'phone to the police? A. Yes, she handed me the 'phone and and as I took the 'phone she had evidently called the police.

The Court—Never mind. You 'phoned for the police.

Q. You got the police on the wire and they came down and took Mr. Thompson away? A. Yes.

Cross Examination by Mr. D'Aloia:

Q. Now, do you know how far away the front of your house is from the hedge? A. No, I do not.

Q. Well, you are going down the front steps; let us imagine that the witness chair is the front of your house; how far would the hedge be from where you are sitting, the length of this room? A. I am no judge of distances.

Q. Now, that is looking straight ahead to the hedge. Now, when you look from where you are sitting, coming out of your house, you are looking to the

rear of the Thompson residence. Do you know what that distance was? A. No, sir.

Q. Your house was directly opposite the space between the garage and the rear of the house fronting on Leslie street? A. Yes, it was a little bit nearer the garage.

Q. Do you know what that distance is from this point in front of your house diagonally over there? A. No.

Q. Can you give us an idea? A. Well, it is across the street and as far as the house extends back.

Q. Now, can you tell us how many times the length of this room it is about? A. Well, I don't know. I cannot say. I do not know.

Q. Well, anyhow, you heard first what you thought was wrestling? A. Yes.

Q. And you thought it was some of the boys on the avenue skating? A. Well, I didn't know.

Q. You didn't know? A. No.

Q. And there were boys skating? A. Well, sliding down the hill.

Q. Making a noise and chattering? A. Yes.

Q. How old were they? A. Well, they varied in ages. I did not have time to look up the hill.

Q. Your attention was directed across the street. You say that you saw at that rear entrance of the Thompson home a boy and you took the figure you saw as that of a boy with a white sweater on? A. That is the impression I got.

Q. And that is the conclusion you formed, that it was one of the boys in the neighborhood with a white sweater on? A. With something white on. I did not know what it was.

Q. You thought it was one of the boys in the neighborhood? A. I thought it was one of the boys in the Thompson residence.

Q. Now, this sweater that you saw—

Mr. Fisch—I object to that.

Q. You said a white sweater.

The Court—She said she thought it was a sweater.

Witness—It looked like a sweater, but I cannot say what it was. It was something white. I cannot say whether it was a shirt or what.

Q. Was there a coat over it? A. I couldn't see that distinctly.

Q. Well, did you see the entire upper part of the body covered? A. Well, if he had a sweater, it must be the upper part.

Q. Did you see the arms, too? A. I didn't notice, I did not discern.

Q. How much of the white garment covering the upper portion of the body did you see? A. Well, the only thing I can tell you it looked from the impression I got he might have a sweater on.

Q. Well, you have seen a man with a coat on like this? A. Yes.

Q. You would not see much of the sweater? Imagine now I have a sweater on underneath this coat. You would not be able to see much of the sweater? A. No, but you are at close range, and he was very far away. It was just like a shadow.

Q. I know, but in that distance you saw what you thought was a sweater and it looked white and covered his entire body? A. Yes, at the top.

Redirect Examination by Mr. Fisch:

Q. Might what you saw of this white business, might it have been a curtain such as Exhibit S-11?

Mr. D'Aloia—I object.

The Court—I will permit it.

Defendant's counsel prays an exception to

ruling of the Court. Exception allowed; let it be and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. I could not say anything, because I really was not near enough to discern what it could be.

Recross Examination by Mr. D'Aloia.

Q. This figure that you saw there, when you saw it, did it have an overcoat on? A. I could not tell.

CHARLES A. RICHARDS sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Mr. Richards, you are the father of Claire, the young lady who was just on the stand? A. Yes.

Q. Do you remember the night of January 31st? A. Yes.

Q. Were you home that evening? A. I was.

Q. And do you remember your daughter having left the house and having come back again? A. I do.

Q. When she came back, did you go out with her? A. Yes.

Q. Where did you go, and what did you see and do? A. We crossed the street diagonally to Mr. Thompson's house. The house was in darkness and we went around the corner and Miss Wiley met us and said—

Mr. D'Aloia—Just a minute.

Q. Now, you say you went around the corner. Will you just show us, using this pointer on Exhibit S-1, the course you took?

Mr. D'Aloia—That particular diagram does not show this gentleman's house and he cannot describe the course on that map, because the beginning of that is not shown. Now, I renew my request to get the Prosecutor to have Mr. Brack-

en give us the other side of Abington avenue, scale it properly so that we can understand these distances and this testimony.

The Court—That is a request over which the Court has no control. If you want to produce testimony as to that you have a perfect right to do it. Now, the witness can point out the course he took on this map so far as the map shows it.

Mr. Fisch—I will withdraw the question temporarily and ask another one.

Q. Can you, by referring to Exhibit S-1, show us the point where your house is located with reference to what is shown on Exhibit S-1?

Mr. D'Aloia—I object to the question because that particular diagram does not contain this man's house. This man's house is away to the right and it is not there and how is he going to show it?

The Court—Of course, he cannot show it on the diagram. He can show, if he is able to, where his house is located.

Q. You are pointing to a place—A. 401.

Q. 401 Abington avenue, and that is a little bit west, is it, of the second garage which is shown on the map on Abington avenue? A. Just about.

Q. What course did you take? You went diagonally across the street? A. Over this corner, around here, and turned the corner here, and met Miss Wiley.

Q. Where did you meet Miss Wiley? A. Just around the corner. She was coming toward the corner.

Q. She was coming toward the corner from what direction? A. From her home.

Q. From 189? A. Yes.

Q. And you were going to the corner from the opposite direction? A. Right.

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

Q. Where was he? A. He was lying just inside of the porch.

Q. Of the porch of the Wiley home? A. Yes.

Q. And what position was he in as you observed him? A. He was lying there in his shirt sleeves and he was groaning, naturally, and helpless.

Q. Did you see any blood on him? A. Yes. His shirt was covered with blood.

Q. And then what did you do? A. I told my daughter or asked Miss Wiley—

Mr. D'Aloia—Please do not give us any conversations.

Q. What did you do? A. I told my daughter to telephone.

Q. You told your daughter something? A. Yes.

Q. What did she do? A. She telephoned.

Q. And then what happened? A. I went out to Mr. Thompson and got a rug and put it over him, he was in his shirt sleeves. It was a cold night, and then Mrs. Wiley came and my daughter and I, we helped her up and came down, and waited ten or fifteen minutes for the police to arrive. They came and they telephoned for the ambulance, and after the ambulance came and took him away.

Cross Examination by Mr. D'Aloia:

Q. Do you know how far the front of your house is from the rear of the Thompson residence? A. Why, I think it is about 18 feet to the curb, and the street is—the surveyor said about 70 feet.

Q. Yes. That is 88? A. And 20 feet to the garage.

Q. 20 feet to the garage. That is 108, and what is the distance from the garage to the back stoop? A. Well, the garage runs back of the house.

George Sanger—direct

GEORGE SANGER sworn in behalf of the state.

Direct Examination by Mr. Fisch:

Q. Where do you live? A. 187 Ampere Parkway.

Q. You live next to the house which has been referred to as the Wiley house? A. Yes.

Q. And that is two doors away from the Thompson home? A. Yes.

Q. Do you remember the night of January 31? A. Yes.

Q. Was there something that attracted your attention? A. Yes.

Q. What was it? A. Why, I was down in the cellar attending to the furnace and I heard the door bell ring violently and someone knocking on the door. I immediately went upstairs, as quick as I could, and when I got to the front door, I noticed a girl running away, and I called to her and asked her what she wanted.

Mr. D'Aloia—Will your Honor please tell these witnesses to eliminate converastion?

The Court—You had a conversation with the girl?

Witness—Yes.

Q. She told you something, did she? A. Yes, sir.

Q. And as a result of what she told you what did you do? A. I immediately went next door through the hedge to where Mr. Thompson lay.

Q. That is on the Wiley porch? A. Yes, sir.

Q. Did you know Mr. Thompson? A. Yes, sir.

Q. What happened there? A. Why, I asked him what happened, how did it happen—

Mr. D'Aloia—Now, if your Honor please, I don't think that conversation is admissible.

Mr. Fisch—It is a conversation had with the deceased, if your Honor please, immediately at

the time, and it seems to me it is part of the **res.**

Mr. D'Aloia—No, there is the ringing of a doorbell intervening, and we don't know when it was rung—

Q. You had a conversation with Mr. Thompson, did you. A. Well, I did not have a conversation with him, I just spoke a few words, he was in very bad condition—

Mr. D'Aloia—I move to strike that out as a conclusion.

The Court—Strike it out.

Q. What condition was he in, what did you observe? A. Well, he seemed to be suffering from shock, and of course he was in pain, he was groaning.

Q. Did you see any blood on him? A. Yes, sir, quite a lot of blood.

Q. And what did you do, what happened next? A. Why, I went back to telephone for the police to my own home, which is only a few feet away away, back to the hedge.

Q. Then what happened? A. Well, then, I went back after that again to where he lay and waited for the police to come. I tried to turn him over on his side but he was in such pain that I left him there until the police came and then we turned him over.

Q. Now, you say Mr. Thompson told you something? A. Yes, he did.

Q. And as a result of what Mr. Thompson told you, what did you do? A. Well, I did not do anything as the result of what he told me.

Q. So we can get it squarely on the record, what did he tell you?

Mr. D'Aloia—I object to that if your Honor please as inadmissible and incompetent.

The Court—Sustained.

Q. What time was this when you say Mr. Thompson told you something? A. Well, it seems to me right around eight o'clock, I am not sure about the time; it was around eight o'clock, and it might have been a little before or it might have been a little after eight. I cannot swear as to the time.

Mr. Fisch—Now, if your Honor please, in view of Mrs. Thompson's testimony as to the time of the occurrence, it seems to me that this statement would be a part of the res gestae.

The Court—Well, it does not appear so to me at the moment, Mr. Prosecutor, I will let you renew that request after the lunch hour.

Cross Examination by Mr. D'Aloia:

Q. You were somewhat excited after that doorbell had rung, weren't you? A. Well, anybody would be a little bit excited if tragedy comes to your door like that in a moment's notice.

Q. And in your excitement you did not pay attention to the time much, did you? A. No, I did not look at my watch while I was waiting for the police.

Q. What time was that? A. Oh, it was around eight o'clock, I cannot say whether it was a few minutes after or a few minutes before. It was somewheres in the neighborhood of eight o'clock, it may have been a quarter after, it may have been a quarter to eight.

Q. That is a half an hour? A. I know, I am sorry.

Q. You took your watch out and looked at it? A. I just glanced at it.

Q. And can you tell us whether it was quarter of eight or a quarter after eight? A. No, or whether it was eight o'clock.

(Recess from 1 to 2 P. M.)

(After Recess.)

MARION WILEY sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Where do you live? A. 189 Ampere Parkway.

Q. That is right next door to the Thompson home, is it? A. Yes.

Q. Do you remember the evening of January 31? A. I do.

Q. And where were you on that evening? A. I was at home.

Q. What part of your home were you? A. Why, part of the time in the dining room and part of the time in the living room.

Q. Now, your dining room, on what side of the house is that? A. It is facing the north.

Q. That is, it faces toward the Thompson home? A. Yes.

Q. How many windows are there in the dining room? A. Two dining room windows.

Q. Was there anything that attracted your attention that evening? A. Yes.

Q. What was it? A. A confusion and noise in the Thompson kitchen.

Q. Where were you at that time? A. Going through the dining room into the living room and to the pantry and back again.

Q. And what kind of noise or confusion was it? A. It sounded like the shuffling of feet, probably a man's feet, because it sounded like heavy shoes, and general confusion like a struggle it sounded to me.

Q. Did you see any light in the Thompson kitchen? A. No, sir. I looked and did not see a light.

Q. Now, what was the next thing that attracted your attention, or the next thing that you did? A. I went into the living room to sit down at the front window to read, and I heard a cry. It sounded like a muf-

fled cry for help, and I listened. At first I did not pay much attention. I thought I was imagining it, and then I heard it louder and louder, and finally I could not mistake it. It was an awful cry for help, so I looked out of the window, and I saw Mr. Thompson standing on the front porch crying for help. He was very distressed. I looked out of the window toward where I heard the noise and I saw him standing there and I turned to my mother and I said—

Mr. D'Aloia—Just a moment. No conversations.

Q. No, not what you said to your mother. A. I quickly realized something awful had happened, because I heard a shout and help very distinctly, so I ran to the living room where the electric light plugs were and lit the one on the porch, and I went to the front door to our inside door, and as I opened it, I looked out and saw Mr. Thompson running across from his house to ours. He ran up the front stairs of our porch and he had his hand on the outside door and he opened it as I opened the inside door, and I looked out and I could see that he was covered with blood. He was very distressed, and holding his side and he opened the door and I said to him—

Mr. D'Aloia—Don't tell us what he said.

A. (Continuing) He opened the door and staggered in, and I looked at him. I said something to him that you do not want to know, and he leaned up against the house and we spoke to each other, and I went out to get help. I wanted to get a man's assistance. There was no man home in our house, and I went out the front door and down off the porch and down into Mr. Spanger's house next door and I rang the bell several times, and nobody came at first, and I started off the porch and Mr. Thompson had collapsed apparently, be-

cause I did not see him on the porch, and Mr. Sanger opened his door just about that time, and I spoke to him. You do not want to know what I said to him?

The Court—No.

A. (Continuing) and he ran back apparently to get a cap, and I ran off the porch, down into the street, trying to see who I could get for help, and I seen a young lady and a man coming around the corner, and I called and asked them if they would not help me, and they said they would and the three of us came back to the house and went in, and at first the young lady and her father stayed there on the porch.

Q. Miss Richards? A. Miss Claire Richards.

Q. And her father, Mr. Richards? A. Yes, and I went in the house and my mother was at the telephone, and I could see that she was very much confused and upset, and I took her, and put her in the living room and I believe Miss Richards then completed the call to the Police, and then I really diverted my attention to my mother, who was in a state of collapse, and they asked me to bring some bandages and some kind of a stimulant for Mr. Thompson, and I went in the dining room and got some liquor and brought it out but they did not give it to him, and I went upstairs and got some absorbent cotton and a piece of tape and an antiseptic of some kind, and I brought them downstairs. I do not know whether they used them or not, and then I went into the living room again for my mother, but she had gone into the kitchen, but she was in such a bad condition, and at that time the police were on the porch, and I realized Mr. Thompson was being taken care of, and I gave all of my attention to my mother, and I called my doctor, and went upstairs with her, and just a few minutes after I went upstairs, I believe they took Mr. Thompson in the ambulance.

Q. Now, is the house shown on the left of this picture, Ex. S3, is that your house? A. Yes, sir.

Q. And I notice there are three windows shown on the righthand side of that house as you look at the picture. A. Yes, sir.

Q. Which are the dining room windows? A. Those rear two.

Q. The two toward the rear of the house? A. Yes, sir.

Q. And the one window toward the front? A. The living room.

Q. And the windows along the front of the porch? A. The living room windows.

Q. I show you Ex. S10 and ask you if that is a photograph of your porch? A. Yes, sir, it is.

Q. And where are these dining room windows with reference to the kitchen windows of the Thompson house? A. Just about opposite, maybe a little toward the rear, but practically opposite.

Cross Examination by Mr. D'Aloia:

Q. What room were you in when you say you heard this noise? A. I was going through from the living room, through the dining room to the butler's pantry when I heard the confusion.

Q. Is that on the side of the house nearest the Thompson house? A. That is on the side toward the Thompson house.

Q. And were you going through to the pantry close to the windows? A. No, away from the window.

Q. And when you heard this noise did you turn to look and try to peer toward the windows? A. I did.

Q. And did you see anybody come out of that rear entrance of the Thompson residence? A. No, sir.

Q. And your windows if you look at S1 would be about here, wouldn't they? This is a plan of your house and this is the other house, and your windows would be about here (indicating)? A. Possibly there.

Q. Now, you can see from those windows, you can see that stoop? A. Yes.

Q. And while that noise was being heard didn't you look out that way? A. I did not look toward the porch, I looked toward the windows.

Q. And you could not see anything? A. It was dark in there.

Q. But there was some light, there was some light here? A. It is very dark there.

ARTHUR DRURY sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Mr. Drury, where do you live? A. 407 Abington avenue.

Q. Where is that with reference to Ampere Parkway and Leslie street? A . It is straight facing Leslie street, looking straight along Leslie street.

Q. And is it nearer to Leslie street than it is to Ampere Parkway? A. Yes, sir.

Q. And on which side of Abington avenue is it? A. On the right side.

Q. That is on the north side? A. Yes, sir.

Q. And Leslie street only runs to Abington avenue? A. Yes, sir.

Q. And your house faces Leslie street and Abington avenue? A. Yes, sir.

Q. Now, were you at home on the evening of January 31st? A. Yes, sir.

Q. About 8 o'clock? A. Eight o'clock.

Q. And in what part of the house were you? A. I was sitting in the sun parlor.

Q. And where is the sun parlor? A. The front side of the house facing Leslie street.

Q. You occupy the whole house, do you? A. Yes, sir.

Q. And is the sun parlor on the first floor? A. Yes, sir.

Arthur Drury—direct

Q. Was there anything that attracted your attention that night? A. Yes, sir, there was one thing that attraced my attention, that was a young man run across the road from Leslie street to Warwick street.

Q. Warwick street is west of Leslie street, is it? A. Yes, sir.

Q. Where did that young man come from and where did you see him go to? A. Between the first and the second house on the lower side of Leslie and between the second and the third house on the high side of Leslie street.

Q. Do you understand this map, Mr. Drury, Exhibit S1? A. Yes, sir.

Q. These are the house as shown as represented on Leslie street and your house, you say, is on Abington avenue opposite Leslie street, is that right? A. Yes, sir.

Q. Will you show us please, where you saw that man come from and where you saw him go to? A. Is this the Thompson house? (Indicating.)

Q. Yes. A. He came to between the two garages in between the first and the second house and came in between the second and the third house on the righthand side of Leslie street.

Q. You saw him come from between the two houses and go straight across the road, did you see him go out on Leslie street? A. Straight across Leslie street.

Q. And can you describe that man, what was he doing, walking or running? A. He was running.

Q. Will you describe him, please? A. I didn't see his face.

Q. I want to make sure that you and I understand one another with regard to this map. Where I am pointing out to you now is the Thompson home. A. Yes, sir.

Q. Then there is a garage in back of the Thompson house? A. Yes, sir, there are two garages.

Q. And the first house from Leslie street and Abington avenue is represented by this semi-outline, do you understand that? A. Yes, well, he came in between the first and second house, in between those.

Q. You see him come in between those two houses? A. Yes, and run to the opposite side of Leslie street, the third house.

Q. You saw him go past the third house on the other side of Leslie street? A. Yes, sir.

Q. And did you see him go between the first and second house on Leslie street and then cross over to the third house on the opposite side of the street? A. Yes, sir.

Q. You say he was running? A. Yes, sir.

Q. Did you notice whether he had a hat or a cap or what? A. He had a dark overcoat on and dark clothes and a slouch hat.

Q. Can you give us a better description of him? A. I cannot give any more description of him, I think he was between five feet four and five feet five.

Q. Short or tall? A. Well, if it is five feet four or five feet five he is in between.

Q. And you say that it is a slouch hat that he had on? A. Yes, sir.

Q. What do you mean by that? A. One of them with a slit in the top of it.

Q. That is an alpine hat? A. Yes, sir.

Q. You mean a hat something like the one that is in the courtroom here? A. Yes, sir.

Q. You mean a hat that is something like that in the courtroom here on this rack? A. Yes. That is it.

Q. And did you see this defendant after this affair down at police headquarters? A. I did not. Yes, I seen him down at Police headquarters, but I could not recognize him as the man who ran across the road.

Q. You could not see his face? A. No.

Q. Well, what about his build with reference to the build of the man you saw running?

Mr. D'Aloia—That is objected to. He said he saw him at police headquarters, but he could not recognize him as the man he saw running that night.

The Court—He said "I could not recognize him as the man I saw that night, I could not see his face." Now he is asking about the build of the defendant with reference to the build of the man he saw.

Mr. D'Aloia—There might be a thousand people of the same build in the State of New Jersey.

The Court—That goes to the weight, not to the competency.

Mr. D'Aloia—He says, "I could not identify him as the man I saw running."

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. (Question read.) A. Well, I was out too far away to tell the build of the man. I could tell the height.

Q. What about the height? A. Five feet four or five feet five.

Q. How about the height of the man you saw running that night with reference to the height of this defendant?

Mr. D'Aloia—Same objection.

The Court—Same ruling.

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

Walter D. Van Riper, Judge.

Q. Answer the question. What about the height of the man you saw running that night with reference to the height of this defendant? A. Well, I do not think he is quite the height of the man who was running across the street.

Q. You think the man running across the street was taller or shorter? A. Taller.

Q. How much taller? A. Well, he would be an inch or two.

Q. An inch or two? A. Yes.

Q. Did you see Lieutenant Gannon down at Police Headquarters when you were there? A. Yes.

Q. Did you see Lieutenant Linarducci? A. Yes.

Q. And was that the time when you saw this defendant? A. Yes.

Q. And did you not say to them, you say in their presence, and to them that this defendant answered the build and height of the man you saw running that night?

Mr. D'Aloia—That is objected to.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. When I went down to the police station that night to see the man, I said if I had seen his face, I could have sworn that he was the very man.

Q. I am not talking about the face. I am asking you if you did not say to Lieutenant Gannon and Lieutenant Linarducci at police headquarters that the man at Police Headquarters, this defendant answered to the build and height of the man you saw running that night. A. Well, supposing he does answer to the height—

Mr. Fisch—You can't argue with me.

The Court—Do not argue. Answer the question.

A. Well, he might be the height. I will say that.

Q. Isn't that what you told Lieutenant Gannon and Lieutenant Linarducci?

Mr. D'Aloia—That is absolutely incompetent, if it was not in the presence of this defendant. We cannot be bound.

The Court—He says now, he makes a certain statement with reference to the height of the man he saw and the height of the defendant. Now, the prosecutor asked him if an another occasion he did not make any other statements, it is perfectly competent.

Mr. D'Aloia—It is not admissible against us.

The Court—I will admit it.

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

Walter D. Van Riper, Judge.

Q. Isn't that what you told Lieutenant Gannon and Lieutenant Linarducci? A. I said to the detectives down in Headquarters, I said that the man who run across Leslie street, I gave them every description of him but his looks, I did not see his face. I said I did not see the man's face. I did not recognize the man, but I said the man who run across Leslie street was between five feet four and five feet five, and I told them everything that was in my power to say. I did not tell any lies, and when I went down to headquarters, they brought this other young man in the place and I said, "It does not look like the man who ran across Leslie street." I said, "It might be the height of the man, but from the looks of him, I could not say."

Q. Was that at the time you saw him, you thought that he might be the height of the man that ran across Leslie street? A. Yes.

Cross Examination waived.

ARTHUR J. BILLINGHAM sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. You are a police officer connected with the police department of the town of Bloomfield? A. Yes.

Q. Do you remember the evening of January 31? A. I do.

Q. Did you have occasion to go to the Thompson home at 191 Ampere Parkway that evening? A. Yes.

Q. What time? A. Why, the call came in about 8:01, and answering the call, I got there about 8:05.

Q. Who was with you? A. Lieutenant Osborne, Officers Reeves, Chapman and Farese.

Q. When you got there, what did you find? A. We found Mr. Thompson lying on the porch of the house next to where he lived.

Q. Did you assist in taking Mr. Thompson to the hospital? A. Yes.

Q. What hospital did you take him to? A. Mountainside.

Q. And were you present when he was being examined at the Mountainside Hospital? A. Yes.

Q. And while he was being undressed? A. I was.

Q. I show you Exhibit S-2 for identification and ask you if you ever saw that before? A. I have.

Q. Where did you see it? A. Lying beside Thompson's body in the emergency room of the hospital.

Q. That is when he was being undressed? A. Yes.

Q. And did you mark that bullet? A. I did.

Q. And is that your mark on the side of it, the cross? A. Yes.

Mr. Fisch—I offer it.

Mr. D'Aloia—I object to it unless I have an opportunity to cross examine him as to what he means lying beside the body of Thompson.

The Court—Well, you may examine him as to that.

Cross Examination by Mr. D'Aloia:

Q. Had his clothes been taken off? A. To a certain extent, yes.

Q. Who was taking off his clothes? A. If I am not mistaken, there was an orderly, a doctor, and two nurses.

Q. Is the orderly here? A. That I cannot say.

Q. Is the doctor here? A. That I cannot say.

Q. Are the nurses here? A. One of them.

Q. Where were you standing in the room while these four persons were taking off the clothes? A. Well, I didn't stand in one particular spot, around the head of the body?

Q. How long after Thompson had been brought there was it that you found that bullet on the floor?

Mr. Fisch—I object to that. He did not say he found it on the floor.

The Court—Sustained.

Q. Well, where was it, on the floor? A. No.

Q. Where was it? A. It was beside his body, between the clothes and his flesh.

Q. Where were the clothes at the time you saw it? A. Why, the clothes had been cut open with a pair of scissors and as they were cut open and the doctor was examining, the doctor said—

Q. Where did you find the bullet? A. Why, lying between his body and the clothes in a pool of blood.

Q. And how far from the body? A. Well, maybe

a half an inch or it may have been an inch, but no more.

Q. Which side of the body was it? A. On the right side.

Q. And you picked it up? A. Yes.

Q. That is it? A. That is it.

Q. And you do not know how it got there? A. No, sir; I do not. I cannot answer that.

Q. Which of those four persons were cutting that particular part of the clothing at the time you saw the bullet? A. Why, no one, the clothes were already cut open.

Q. And how long had that operation been consuming before you found the bullet? A. Why, the doctor just about got through.

Q. And you were allowed to go near the body? A. Yes.

Q. For what purpose? A. As a police officer of the town, I figured that was my duty.

Q. Well, what were you going to do?

Mr. Fisch—I object to what he was going to do.

Q. Well, what did you go to the body for?

Mr. Fisch—I object.

The Court—Sustained.

Q. Where did the doctor go after cutting the clothes away?

Mr. Fisch—I object.

The Court—I will admit that.

A. That I couldn't say.

Q. What is the doctor's name? A. Brown, if I am not mistaken.

The Court—When the clothes were cut open, did the bullet fall out?

Witness—Why, the bullet was lying—if you want me to explain it—

The Court—No. Just how did you find the bullet?

Witness—The doctor was practically through with his examining and he said, "Why—

The Court—No, do not tell us what he said.

Witness—Why, after the remark of the doctor about the bullet hole showing on the edge, why I said if there is a hole there must be a bullet.

The Court—Tell us what you did.

Witness—Why, I just dug down among the torn clothes and played for the bullet.

The Court—Were his clothes still on the body?

Witness—They had been cut and some lying there and some on and some off.

The Court—You put your hand on the body down through the clothes?

Witness—Yes, sir.

The Court—And you drew out the bullet?

Witness—Yes, sir.

The Court—It was not in the body?

Witness—No, sir.

The Court—It was between the clothes and the body?

Witness—Yes, sir.

The Court—I will admit it.

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

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

Walter D. Van Riper, Judge.

WILLIAM F. GANNON sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. You are connected with the Newark Police Department? A. I am.

Q. Attached to the Detective Bureau at headquarters? A. Yes, sir.

Q. And bearing the rank of lieutenant? A. Yes, sir.

Q. How long have you been connected with the Police Department of Newark? A. Seventeen years.

Q. And did you arrest this defendant? A. I did, yes, sir.

Q. When and where? A. At the corner of Gold and Front streets, Brooklyn, about 7:45 on the evening of February 2, 1928.

Q. Was anybody with him? A. I believe it was February 3rd, I will correct that. Yes, sir, there was one other person with him.

Q. Who was with him? A. A man by the name of John Cuzon.

Q. And when you arrested him where did you take him? A. To the Brooklyn Police Headquarters.

Q. Who was with you? A. Detective O'Connor and Detective Jordan and Sergeant Larken of Glen Ridge.

Q. And when you took him to the police station in Brooklyn did you have a conversation with him? A. I did.

Q. And what was that conversation? A. When he was arrested I asked him his name and he said it was Barry, and "Where are you from?" He said "Boston". At Brooklyn headquarters I showed him a picture, after again asking him his name, and I showed him the picture of Anthony Boccadoro and he snickered a smile and he said, "You got me right, I

am Anthony Boccadoro.'' As the result of finding a check for a piece of baggage, with Detective O'Connor and Sergeant Larken and the defendant, we went to Wood's Parcel checking room at the Hudson Terminal Building in New York and the defendant obtained a black suit case.

Q. Where did you find this check that you speak of? A. On his person, it was found by Detectives Larken and Jordan.

Q. A baggage check, was it? A. Yes, sir.

Q. And you went to Wood's Parcel room in New York? A. And we returned to the police headquarters in Brooklyn and in the presence of the defendant opened the bag and inspected what was there and found some clothing, and as a result of the inspection of that clothing and a bill, we confronted the defendant with the fact that one of the clothing marks was removed, and he said, ''I will tell it to you, I will tell everything, you got me right.'' We then questioned him about where he obtained this and he said he had obtained them from jobs—

Mr. D'Aloia—I object to that conversation if your Honor please, any conversation with reference to the clothes, and I move to strike out all the detective has testified to with reference to the clothing in that bag.

The Court—This is a conversation with the defendant after he was arrested.

Mr. D'Aloia—Yes, sir.

The Court—Why isn't it material?

Mr. D'Aloia—Because it has no reference to the occurrence on the 31st of January, 1928, and it is evidence of a separate and distinct defense and inadmissible for that reason.

The Court—It is not admissible for the purpose of showing other offenses, but why isn't any conversation which the defendant had with

the police officer, after he is arrested, admissible?

Mr. D'Aloia—Because if your Honor please, if it is in reference to the charge laid in the indictment, yes, but if it is with reference to alleged crimes that have no connection with the one charged in the indictment it is not material and it is not competent.

The Court—Why isn't a general conversation, which this purports to be so far, without reference to any particular crime, why isn't that admissible?

Mr. D'Aloia—Because he is beginning to talk about a particular crime.

The Court—Well, if he is, I don't know.

Mr. D'Aloia—I will tell your Honor what he said and then you will realize that he said so. He said that he got clothing that was in that black bag from a certain job—

The Court—No, I understood the witness to say that he had called his attention to the fact that part of his clothing had been taken away or cut away.

Mr. D'Aloia—He was interrogating him about the clothing and the following remarks of the detective indicated that there were some jobs, that the clothing was the proceeds of, and I object to that and say to your Honor that it is inadmissible because there is no reference to the 31st of January allegation.

The Court—I will permit him to testify as to the conversation he had with the defendant.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Witness—As a result of a talk about that

clothing and the signs of removing of certain marks and a pencil, a gold pencil and a gold fountain pen found on the defendant's person, he admitted that he had done numerous jobs.

Mr. D'Aloia—Now, if your Honor please, I object to that.

The Court—In the first place that is a conclusion. Tell us what he said. Don't say that he admitted or denied it.

Witness—I said, "What is your racket?"

Mr. D'Aloia—I object to any conversation with reference to any other offense or offenses, other than the one laid in the indictment. It is improper and it is absolutely incompetent.

The Court—I will permit the testimony and allow you an exception.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Witness—I asked the defendant, "What is your racket," meaning by that—

The Court—No, don't tell us what you meant by that, tell us what he said to you and what you said to him.

Witness—He said he was a prowler. "What do you mean by a prowler?" "Oh," he said, "a housebreaker—

Mr. D'Aloia—May I have an objection?

The Court—I will give you now on the record, if you haven't it already, an objection to this conversation which this witness had with this defendant in the Brooklyn Police Headquarters.

Mr. D'Aloia—But now as he goes along and he cites these individual bits of conversation, as he, the witness, recalls them, I object to any re-

ference to any particular offense than is in the indictment.

The Court—I will give you an objection to the conversation which took place in the Brooklyn Police Headquarters between this witness and defendant, and when they leave Brooklyn you can renew your objection.

Mr. D'Aloia—But by that time the harm will have been done.

The Court—I am not giving you a blanket objection.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Witness—He said he was a housebreaker and I asked him his system of working, and he told me that he worked the suburban sections around Newark, going out early in the evening, right after dark, and that he would take a bus or trolley car and ride out. He did not know the names of the streets, but he knew the names of the towns, suburban towns, as Elizabeth, Montclair, Bloomfield, Orange and East Orange, but he could not name the specific streets. In fact, sometimes he did not know what town he was in although he knew they were suburban towns of Newark. He said he would, as a rule, pick out what he thought was a one family house—

Mr. D'Aloia—Now, if your Honor please, I think the witness ought to follow your instructions.

The Court—Tell us what he said, his words.

Mr. Fisch—I understood that is what he witness is doing.

The Court—Just a minute, this is an experienced witness. If you are telling us his words,

all right, but don't tell your own conclusions, use his words.

Witness—He said that he would try to pick out a one-family house from its appearance and build in a section where there were no fences between the houses, mostly lawns, and that he would pick out a house where there was no lights showing, some times between the hours of right after dark and eight or ten or eight or nine o'clock, something like that, and he would ring the bell when he found there was no light in the house, and other times he would just take a chance of finding an open window and if he could not find an open window he would jimmy a pantry window or toilet window and would then go immediately to the second floor of a house and open a window over the rear porch or the front porch, or near a tree, so in case anybody came in to frighten him he could make an easy get-away. I asked him how many jobs he did, "Oh, plenty, you got five or ten on me in that bag." "What do you mean by plenty, one hundred?" "Oh, no." "Seventy five?" "Oh, no." "Fifty?" "Maybe thirty or forty." That is the substance of the conversation, to the best of my recollection.

Mr. D'Aloia—Now, if your Honor please, I move to strike out the testimony given by this detective up to this point on the ground that it is incompetent and inadmissible on the trial of this indictment, and as having no connection or relevancy to the crime alleged to have been committed and set forth in this indictment on the 31st of January, 1928.

The Court—I will deny the motion and will allow you an exception. I will say to the jury, however, at this time, that we are not trying this

defendant for any other crime except the alleged murder of Mr. Thompson. I will further instruct you on that later.

Mr. Alloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Subsequent to the conversation you had with the defendant at the police headquarters in Brooklyn was he brought back to Newark? A. Yes, sir.

Q. And did you have a conversation with him in Newark? A. I did.

Q. Where? A. At Police Headquarters.

Q. When was that? A. February 8th.

Q. What was that conversation? What did you say to him and what did he say to you?

The Court—Now, Mr. D'Aloia, your exception has expired.

Mr. D'Aloia—I renew the objection if your Honor please to this particular evidence. That conversation I say is inadmissible because it refers to other offenses.

The Court—I will permit the question and grant you an exception.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Witness—The main feature of the question in there to the defendant was, "Where were you on the night of Tuesday, January 31st"?

Q. You asked him that question? A. Yes, sir.

Q. What did he say? A. He could not tell us where he was.

Mr. D'Aloia—I object to that.

The Court—Tell us what he said.

The Witness—He said, "I don't know where I was, I may have been on Broad street walking up and down or I may have been in a moving picture house, I don't know where I was."

Q. Did you ask him where he had been on the night before, and the night after January 31st? A. I did.

Q. And did he tell you where he was on those nights? A. He did.

Q. And he said he could not tell you where he was on the 31st of January? A. He could not remember where he was that night.

Q. Did you learn where the defendant had been living? A. I did.

Q. Where did you learn that? A. He told us in Brooklyn, and previous to that, why, Rose Tiffany had told us.

Q. Did you arrest Rose Tiffany? A. We did.

Q. Where did you arrest her? A. We took her in custody in Brooklyn but did not place her under arrest until we got her in Jersey.

Q. Did you have any further conversation with the defendant, any further conversation with the defendant at the same time when you were asking him where he was on the night of January 31st? A. Yes, sir.

Q. When was that, tell us the whole conversation. A. Well, we again questioned him about—

Mr. D'Aloia—Now, if your Honor please, the conversation asked for is a conversation between this witness and the defendant and he starts off with the pronoun "We", "We did this—" This is not Lindberg and his plane. This witness, if he said something to the defendant, should say, "I said this and I did this." This "We" gives us the impression that there was a trio there.

Q. Who was with you? A. Detective Linarducci.

Q. Did you ask him questions and did Detective Linarducci ask him questions? A. Yes.

Q. Tell us the conversation, if you please. A. With referenc to any particular point?

Q. Well, I want the whole conversation that you had with him at the time you asked him where he was on the night of January 31.

Mr. D'Aloia—And I object to any part of the answer which may refer to offenses not connected with the offense laid in the indictment on the 31st of January, 1928.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Did you ask him where he was on the night of February 1, February 2 and February 3? A. I did.

Q. Did he tell you where he was? A. He did.

Q. What did he tell you? A. He told me he was home all day Wednesday, February 1, and that in the evening he went to a moving picture show, that on Thursday, February 2, he had gone to New York to see his physician and to see relatives of Rose Tiffany and that he had returned from New York Thursday night sometime after six o'clock and that he remained at home, and that Friday, February 3, he had left and went to Brooklyn—went to New York, on 6th avenue, and spent some time looking for a position among the employment agencies on Sixth avenue, and subsequently to Brooklyn, where he ended.

Q. Now, had you had a talk with Rose Tiffany before that conversation with the defendant at police headquarters in Newark? A. I did.

Q. And did you as a result of that talk which you

had with Rose Tiffany say anything to this defendant with regard to a coat?

Mr. D'Aloia—I object to that as leading.

The Court—I think the first part of it might be stricken out.

Q. Was there any conversation between you and the defendant with regard to a coat? A. There was.

Q. What was that conversation? A. I asked Tony where his blue coat was, or the defendant, rather. He said he did not know. I said, "Did you burn it?" "No." "Are you sure?" "No." "You did not cut it up and burn it?" "No, no."

Q. Yes. A. That was at that point.

Q. Was there any further conversation with regard to that coat? A. Later on, I should judge fifteen or twenty days later, I spoke to him about it again, and he admitted he had burned it.

Mr D'Aloia—I want the rule as laid down by the Court followed by the witness.

The Court—Tell us what he said.

Witness—I said "what about that coat, did you burn it?" That is the exact language. "Yes, I burned it."

Q. When was it that he said that? A. Oh, I said fifteen to twenty days later.

Q. In the meantime, had he been confronted by anybody in your presence? A. He had been confronted by Rose Tiffany.

Q. And did Rose Tiffany say anything about the coat in his presence? A. She did.

Q. What did she say in his presence about the coat? A. She told him that he had cut it up, she saw him cut it up, and she saw him start to burn it in the kitchen stove.

Q. And then it was fifteen or twenty days after that that he said he had burned it? A. Yes.

The Court—I object to that. He did not say that he had burned it at all. The detective said, "How about that coat, Tony, did you burn it?" "Yes."

The Court—That is not the testimony. As I remember it the defendant, "I burned it." Is that right, Lieutenant?

Witness—Yes, sir.

Q. Now, was there any conversation with this defendant with regard to a revolver?

Mr. D'Aloia—I ask that the prosecutor fix the time.

Q. In police headquarters in Newark after he went back to Brooklyn.

Mr. D'Aloia—The day after or twenty days after?

The Court—Well, maybe there was not any conversation. If there was, we will fix the time.

Witness—There was a conversation the day he was brought back.

Q. What was that about? A. That was with reference to the two revolvers.

Q. There was a conversation? A. That they were left at 25 Orchard street on January—December 31, 1927.

Mr. D'Aloia—I move to strike that out as incompetent with reference to a separate and distinct offense not at all connected with the 31st of January, 1928, the date of the alleged charge laid in the indictment.

The Court—It was a conversation between the witness and the defendant?

Mr. D'Aloia—I understand that.

The Court—I will permit it.

Defndant's counsel prays an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. I asked him if he had left two revolvers behind at a furnished room house at 45 Orchard street, and he said that he had.

Mr. D'Aloia—I move to strike that out. If he had he could not take any part in this matter of January 31, 1928.

The Court—I will deny your motion.

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

Walter D. Van Riper, Judge.

Q. Was there any further conversation with regard to a revolver or revolvers? A. I had a conversation with him as to him leaving the house on the night of January 31 with a revolver stuck down in the front of his trousers?

Q. Yes. A. He denied it.

Q. And then did you confront him with anybody? A. We confronted him with this Mrs. Tiffany.

Q. And did she say anything in his presence about that? A. She did. She told him that he had left the house on the night of January 31, with a revolver down in front of his trousers, nickel plated revolver.

Q. She described the revolver? A. She did describe it, yes.

Q. Now, then, did you learn where this defendant lived? A. Yes.

Q. Did you learn where he lived in Newark? A. Yes.

Q. Where? A. 82 Canal street.

Q. Did you go there? A. I did.

Q. With whom? A. With Rose Tiffany, Sergeant Larken, Detective Fryling, Lieutenant Shippen and O'Neill.

Q. Now, when you went there, what did you do? A. We had Mrs. Tiffany point out the rooms in which they lived, and we made a thorough search of the premises from top to bottom.

Q. What did you find and where? A. It was on a Saturday, February 4, about 11 A. M., in the cellar, immediately underneath where the defendant and Mrs. Tiffany had lived, we found behind a partition, between the walls, a 38 calibre automatic revolver, one black leather wallet stuffed with jewelry, wrapped in a newspaper, dated February 2, N. Y. Telegram, I believe it was, dated February 2, 1928.

Q. Is this the wallet which you found, which you say was stuffed with jewelry? A. Yes.

Q. And is this the paper in which it was wrapped? A. Yes, that is the paper, in which the two wallets were wrapped, and that is the wallet that was stuffed with jewelry.

Q. Now, among that jewelry, was there a pin? A. There were two or three pins.

Q. Now, I show you a pin and ask you if that pin was among the jewelry which was found in the wallet? A. Yes, that was found right in the wallet.

Mr. Fisch—I ask that the wallet and the paper be marked for identification.

Mr. D'Aloia—I object to all of this line, because it is not connected or related in any way with what occurred on the 31st of January, 1928.

The Court—Well, I presume the prosecutor is proceeding to connect this up in the way he mentioned in his opening; is that correct?

Mr. Frisch—Yes, sir.

The Court—On that basis I will allow it to be marked.

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

Walter D. Van Riper, Judge.

(Wallet and paper marked Exhibit S-14.)

(Pin offered in evidence and marked Exhibit S-15 for identification.)

Q. I show you a photograph and ask you if that is a photograph of the premises at 82 Canal street? A. Yes.

Mr. D'Aloia—I object to the use of that photograph. It has not been in any way proven. We do not know when it was taken and by whom.

The Court—He is not offering it in evidence. He is simply identifying it.

A. That is the partition in the rear of the cellar behind which these things were found after ripping the boards out.

Q. Between the plaster and the boards? A. Yes.

Mr. D'Aloia—I object to the photograph because it is incompetent and irrelevant and immaterial with reference to the alleged offense laid in the indictment.

Mr. Fisch—Well, if you insist, we will call Mr. Kaufman.

(Photograph marked S-16 for identification.)

Q. I show you another photograph and ask you if that photograph represents the interior of the basement of 82 Canal street? A. The front room basement left.

Mr. D'Aloia—The same situation as heretofore.

(Photograph marked S-17 for identification.)

Q. I show you another photograph and ask you if this photograph represents the basement right, 82 Canal street? A. That is the rear.

(Photograph marked S-18 for identification.)

Q. Now, I show you a photograph and ask you if this photograph represents the interior of the first floor of 82 Canal street? A. The first floor rear, right, facing the street.

(Photograph marked S-19 for identification.)

Q. Now, then, what else did you do there at 82 Canal street? A. We moved the ashes from the stove.

Q. On what floor? A. First floor, rear right. That was the stove in the room occupied by Rose Tiffany and the defendant. Also the—

Q. How did you come to do that?

Mr. D'Aloia—I object to that.

The Court—Sustained.

Q. After you removed the ashes, what did you do with the ashes? A. Turned them over to Dr. Edel for analysis.

Q. That is the county chemist? A. Yes.

Cross Eamination by Mr. D'Aloia:

Q. Did you make a note of the conversation you had in Brooklyn? A. I did not.

Q. Did you make a note of the conversation you had when you brought him to Newark? A. I didn't.

Q. Did you make a note of the conversation you had twenty days later? A. I did not.

Q. By the way, where was this man kept when he was brought from Brooklyn to Newark? A. Police headquarters.

Q. For how many days? A. About thirty-five days.

Q. And during those thirty-five days how many of

your men, you and the rest of the detectives, talked to him? A. I guess I alone, Chief Brex.

Q. That is two? A. Lieutenant Row.

Q. Three. A. Detective Linarducci.

Q. Four. A. That is about all.

Q. How many conversations did you have? A. Oh, I should judge about ten or twelve.

Q. How many times did you ask him if he had been up there to the Thompson residence during the thirty-five days he was down at Police headquarters?

Mr. Fisch—I object. There is no testimony that this witness says he did ask him.

The Court—I will permit it.

A. Oh, I guess I asked him about fifteen or twenty times.

Q. And he denied it all of the time? A. Oh, yes.

Q. Now, how many times was he asked the same question by Linarducci in your presence during the thirty-five days you had him down there? A. About four or five times.

Q. In your presence? A. Yes.

Q. What did he say to Detective Linarducci? A. The same thing.

Q. How many times did Chief Brex ask him that question or questions with reference to the Thompson place up in Ampere Parkway? A. Maybe ten or twelve times.

Q. And did you hear the answer? A. Well, it was not always a denial. There was one occasion I believe that he did not make a denial.

Q. What did he say on that occasion? A. He remained silent.

Q. But there was plenty of talk on that occasion? A. Yes.

Q. How long was that after he had been there? A. Three days, I believe.

Q. Are you sure about that? A. Yes.
Q. Was he physically able to talk? A. Yes.
Q. How do you know? A. I saw him.
Q. But you say that he remained silent? A. Yes.
Q. And that was the only time he did not deny it on this occasion and on the numerous occasions when you put the question to him, when Lieutenant Linarduci put the questions to him, and Chief Brex put the questions to him, that was the only time that he remained silent. Did Lieutenant Larsen or Rowe, did they ask any question? A. I believe they did.
Q. Did they ask him about the Thompson affair? A. I presume they did.
Q. Did you hear his answer to that? A. It was always a denial.
Q. You never made a note of any of these conversations? A. No, I didn't.
Q. Uh? A. Mental note, that was all.
Q. You had other cases to take care of? A. Fortunately I did not.
Q. You simply gave up everything but this? A. That is right.
Q. Well, did you find time to write it down anywhere? You had nothing to do with other cases; did you write it down anywhere? A. I did not.
Q. Well, did you put down on such and such a date, the conversations began at such and such a time and lasted so long and just what he said? A. No.
Q. You did not do that? A. No.
Q. You have not any note of that on any scrap of paper made by you of any of these conversations? A. I have not.
Q. You have not any admission in writing; you did not write out a statement for him to sign? A. No, I don't think so.
Q. You did not? A. No, I don't think so.
Q. Why, you had a hat down there? A. I had one hat, yes.

Q. You know there was a hat found around those premises, don't you? A. No, I don't.

Q. Don't you remember the one occasion you left out when you was told to put on a hat? Q. Yes, I do.

Q. Where did you get the hat from? A. That was brought down from East Orange, a robbery committed sometime in December.

Q. It had nothing to do with this? A. No bearing on this case whatsoever.

Q. What day was that episode; how many days had he been here? A. I guess he was over here two weeks then.

Q. You are trusting to your memory about these things? A. Yes.

Q. So after he was here three days you recall he remained silent one time when they interrogated him about the Thompson affair? A. Yes.

Q. And two weeks later you remember that a hat was brought down and he was made to put it on? A. Yes, sir, and it fitted him to a "T".

Q. You put it on him? A. He put it on himself.

Q. And he did not object to that, did he? A. Oh, no.

Q. Now, after that, that is, two weeks after you brought him here, about twenty days after you had him here, you went in and had a conversation with him about burning the coat? A. Oh, I had several conversations with him about burning the coat and it was about twenty days after when he admitted it to me.

Q. You asked him about a blue coat? A. Oh, I asked him on numerous occasions.

Q. That is about twenty days after? A. Yes, sir.

Q. You asked him about a blue coat? A. About a coat he burned.

Q. And you said in your answer to the Prosecutor it was a blue coat? A. It was a blue coat.

Q. And you have been in court all day? A. Yes, sir.

Q. There is a difference between a black coat and a blue coat, isn't there? A. Some times.

Q. There is every time, isn't there? A. Not all the time; there is a blue black.

Q. Did you ask him about a blue black or a blue coat? A. No, I did not, I asked him about a blue coat.

Q. You are sure you were not referring to any policeman, when you asked him about a blue coat? A. No, sir.

Q. Did anyone of these men that you mentioned, Chief Brex, Lieutenant Larken, Linarducci or Rowe, did anybody take down any notes of these different conversations? A. I don't believe so.

Q. Well, didn't you police officers think you might be called upon to fix dates a little more exactly than you have?

Mr. Fisch—Objected to.
The Court—Overruled.

A. Yes, I did.

Q. Did you remember one occasion in Chief Brex' office when the Tiffany woman was brought in and he was seated in a chair toward the woman standing between him and the man who was interrogating him at the desk? A. I do.

Q. Do you remember that one of you held his head so he could not turn around and see the girl? A. No, I don't remember that.

Q. But you remember the occasion? A. I do, well.

Q. You answered the Prosecutor and said he was confronted by the girl. A. He was.

Q. The girl sat behind him, didn't she? A. She was sitting behind him.

Q. And he did not turn and see her? A. He did on several occasions.

Q. And when did that happen, how long after he was brought back from Brooklyn? A. The same day.

Q. The same day he was brought back? A. February 8th.

Q. Do you remember the first time he was brought in and she was brought in? A. Yes, sir.

Q. Who interrogated him, you or Brex? A. Brex.

Q. Do you remember Brex saying to her, over his head, "You are going to be charged with being an accessory to a murder"? A. I do not, no.

Q. You did not hear that at any time? A. No, sir.

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

Q. With reference to the girl I mean? A. Yes.

Q. You never heard that? A. No.

Q Did you ever hear her accused or told she was going to be accused? A. No, I did not.

Q. In one of these meetings where she was brought in to see him and was interrogated—

Mr. Fisch—I object to this line of examination on the ground that it is a conversation not between this witness and the defendant to which he testified on direct, but it is attempting to prove some conversation had between somebody else and Rose Tiffany which he has not testified to.

The Court—But the witness has already testified, an direct eyamination, about a conversation between Rose Tiffany and the defendant, and this is cross examination as to the circumstances under which Rose Tiffany made it. I will permit it.

Q. Now, do you recall any such statement made by the interrogator on one of these occasions to Rose Tiffany, when she was brought in, during these thirty-five days at police headquarters, when she was told, before she was asked any questions, that she was charged

with being an accessory before or after the murder? A. She was never told it.

Q. She was told, do you remember her being told about being under any charge? A. She was slated as at material witness.

Q. I am not asking you what she was slated, you know what I mean, you know what I am talking about, that is not done by her, that is done by the desk lieutenant. I am asking you if you recall one of the officers or Captain Brex, when she was brought in to confront him, as you answered the Prosecutor, that she was told before she began to speak that she was charged with the crime? A. She was not.

Q. At no time? A. At no time.

Q. Now, the first time she was brought in she did not quite satisfy the interrogators, did she? A. I can't say that.

Q. Well, she was taken out right away, wasn't she? A. Yes, sir.

Q. Then, you had a conversation with her, didn't you? A. Oh, I had several conversations with her.

Q. No, I mean immediately after the first time she was brought in? A. The first time she was brought in where?

Q. Right after she was brought in and you took her immediately out because she did not answer very promptly, did she? A. I took her out of the room, yes, sir.

Q. And then you brought her back an hour and a half later, didn't you? A. About an hour and a half.

Q. In the meantime did you talk with her? A. No, I did not.

Q. Did you know who did? A. No, sir.

Q. Do you remember the second time she was brought in, an hour and a half after the first time? A. Yes, sir.

Q. Will you tell us if at that time she was not told

that she would be charged with being an accessory after the murder? A. She was not told.

Q. Now, isn't it a fact that she told you and she told Brex when you brought her in, that she did not remember anything about the burning of a coat? A. She did tell us about the coat.

Mr. Fisch—If your Honor please, I object, that certainly is going into a conversation which was not inquired into on direct and is not cross examination.

Mr. D'Aloia—This is in the presence of the defendant when she was brought in the first time on these two occasions an hour and a half apart.

The Court—The witness has answered, he said "she did tell us."

Q. Did she refuse to say anything about the burning of the coat the first time she was brought in there? A. She did not.

Q. When did you first learn that the coat had been burned from her in the presence of this defendant? A. In the presence?

Q. In the presence of this defendant? A. That same time, February 8th.

Q. The first day he had been there? A. It was the first day he came back, yes, sir.

Q. And how long did the conversation last after she had been there once and an hour and a half elapsed when she was brought in again? A. An hour.

Q. What time of the day? A. Somewhere around ten or eleven o'clock at night.

Q. Well, now, after that night, which was the first day, the 8th of February, when she was brought in there twice, an hour and a half apart, how many times after that was she brought in there between the 8th of February and the thirty-five days later when she was

taken up to the jail? A. She was brought into where?

Q. Into his presence, your presence, the presence of Linarducci, Brex or Larken? A. She was not brought in in front of him again.

Q. Not again after the first time? A. Not after the first night.

Q. Are you sure about that? A. Sure.

Q. But you continued having conversations with her? A. Oh, yes.

Q. And after you had these conversations with her you would come in and ask the defendant questions? A. Sometimes.

Q. Well, now, don't you know, are you trusting your memory about this? A. I say sometimes I would.

Q. And at no time did he tell you he knew anything about the Thompson killing, did he? A. No, sir.

Q. Nor to anybody else? A. Not to my knowledge.

ROSE TIFFANY sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Where do you live? A. 79 Broadway, Lawrence, Massachusetts.

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

Q. What is your husband's name? A. Mark Tiffany.

Q. Do you know the defendant, Anthony Boccadoro? A. Yes, sir.

Q. How long have you known him? A. Since ever I was thirteen years old.

Q. Did you come to Newark with him? A. No.

Q. Well, did you come to Newark and meet him in Newark? A. At what time?

Q. At any time? A. Well, I met him in Newark, yes, sir.

Q. When was that? A. I can't remember the date.

Q. You say you know him since you were thirteen years old? A. Yes, sir.

Q. How old are you now? A. Twenty-one.

Q. Now, sometime in—did you see the defendant sometime in September, 1927? A. 1927?

Q. Yes, last September. A. Yes.

Q. Where? A. In Newark, here.

Q. And when you came on from Lawrence, Massachusetts, where did you first go to? A. New York.

Q. To whose house? A. To my sister's house.

Q. Where does she live? A. At present she lives 262 Front street.

Q. Where did she live at that time? A. On Gold street.

Q. Brooklyn? A. Brooklyn, yes.

Q. And while you were there did you write to Tony? A. Yes.

Q. And after you wrote to him did he come on? A. He come on a couple of days after.

Q. Where did you write to him? A. From my sister's home.

Q. To where? A. His mother's home.

Q. Where was that? A. 11 Forest street, Watertown, Massachusetts.

Q. Watertown, Massachusetts? A. Yes.

Q. And then after he came on to your sister's house did you subsequently come to Newark with him? A. Well, I made arrangements. He was going to Newark and I made arrangements with him that I would like to go to Newark with him.

Q. And then did you go? A. Well, he went over first and he told me to meet him on Broad and Market streets.

Q. He went over first and told you to meet him at Broad and Market street? A. Yes.

Q. And did you meet him? A. Yes.

Q. And where did you go to live? A. 21 Grant street.

Q. In Newark? A. In Newark.

Q. Was that the first place you went to live? A. That was the first place.

Q. And how were you known there? A. As Mr. and Mrs. Lopez.

Q. Mr. and Mrs what? A. Lopez.

Q. And how long did you stay there? A. Oh, we stayed there about a month or so.

Q And then where did you go to live? A. I went to Massachusetts.

Q. And how long did you stay in Massachusetts? A. A couple of weeks.

Q. And did you come back again? A. I came back again.

Q. And then when you came back again, where did you go to live? A. 22 Elm street.

Q. With Tony? A. Yes.

Q. What name were you known by there? A. We gave no name.

Q. And then how long did you stay there at Elm street? A. I do not know the exact length of time I did stay.

Q. Well, about how long? A. About a month.

Q. And then where did you go to live from there? A. Orchard street.

Q. What number Orchard street? A. I think it was 42; something like that.

Q. And what name were you known by there? A. Well, we did not give any name there.

Q. How long did you stay at Orchard street? A. Well, we did not stay very long on Orchard street.

Q. How did you come to move from Orchard street?

Mr. D'Aloia—I object to that as immaterial and incompetent.

The Court—Sustained.

Rose Tiffany—direct

Q. When you moved from Orchard—when did you move from Orchard street? A. We moved from Orchard street on a Saturday.

Q. On a Saturday? A. On a Saturday.

Q. What month was it? A. I do not know what month it was.

Q. Well, when was it with reference to New Year's? A. I cannot remember that.

Q. Well, do you know when New Year's was? A. No.

Q. What is that? A. I cannot seem to remember that, just the date when we moved.

Q. Well, New Year's fell on a Sunday, didn't it? A. Yes.

Q. Eh? A. Yes.

Q. Well, now, when was it that you moved from Orchard street with reference to New Year's day?

Mr. D'Aloia—I say that is too remote and it is incompetent, immaterial and irrelevant. Now, let us get down to 82 Canal street on the 31st of January, 1928.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

The Court—Go ahead. Answer it. When did you move from Orchard street with reference to New Year's day?

Witness—I do not quite understand that question.

The Court—Well, did you move before New Year's day or after New Year's?

Witness—Well, I have just tried to explain I don't know just when the date was.

Q. You said it was on a Saturday? A. Yes.

Q. And New Year's fell on a Sunday. Now, can you tell us when it was that you moved from Orchard street?

Mr. D'Aloia—The same objection to that question. The same ground.

The Court—The same ruling.

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

Walter D. Van Riper, Judge.

A. Well, I know it was on a Sunday. I cannot give you the date. I cannot remember.

Q. Well, I am not asking you the date. A. Well, you started to ask me whether it was on New Year's.

Q. Well, I say New Year's fell on Sunday and you say you moved on Saturday. Now, when was it with reference to New Year's that you moved from Orchard street? A. I do not quite get that question.

Q. Well, did you move from Orchard street the day before New Year's or the week before New Year's, or a month before New Year's, or when? A. Well, I moved on a Saturday. If New Year's was on a Sunday, it must have been the day before.

Q. Now, when you moved from Orchard street the day before New Year's, where did you move to? A. High street.

Q. What number High street?

Mr. D'Aloia—The same objection, absolutely incompetent, irrelevant and immaterial.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

The Court—What number, do you know?

Witness—It was four hundred and something.

Q. Four hundred and something High street? A. Yes.

Q. And did you move into that place on High street on the same day that you moved out of Orchard street? A. On the same morning, Saturday morning.

Q. Now, how long did you stay at the High street address? A. We only stayed a few days.

Q. Now, while you were at the High street address, did you have occasion to make the bed? A. Why, sure.

Q. Now, while you were at the High street address and made the bed, did you discover anything?

Mr. D'Aloia—I object to that.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

The Court—You can answer it.

Witness—No.

Q. Well, did you—when you were making up the bed, did you feel anything? A. No.

Mr. D'Aloia—The same objection. Incompetent.

The Court—The same ruling.

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

Walter D. Van Riper, Judge.

Q. Well, now, do you remember when you were getting ready to move from High street? A. Yes.

Q. Well, did you find anything in the bed? A. No.

Q. In the bed? A. No.

Q. Do you remember making up the bed? A. Yes.

Q. And did you put your hand under the mattress, between the mattress and the spring?

Mr. D'Aloia—I object to that as leading and, besides, it has no connection whatsoever with the 31st of January, because the time is not fixed, it is sometime around New Year's, on a Saturday, or a couple of days later.

The Court—It would be after New Year's. I do not know what the testimony is going to be. It might be very material and might not be material at all.

Q. Do you remember putting your hand under the mattress and between the mattress and the spring?

Mr. D'Aloia—I object to that as leading.

The Court—Allowed.

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

Walter D. Van Riper, Judge.

Q. As you were getting ready to move from High street—

Mr. D'Aloia—I object.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Do you? A. No, sir.

Q. What is that? A. No.

Rose Tiffany—direct

Q. Did you ever see a gun while you were in that house?

Mr. D'Aloia—I object to that.
The Court—I will allow it.

A. No.

The Court—What was the answer?
Witness—No.

Q. I show you Exhibit S-15, and ask you if you ever saw that before? A. Yes.

Mr. D'Aloia—I object to that.
The Court—What is that, the pin?
Mr. Fisch—Yes, sir.
The Court—Why did you object to that?
Mr. D'Aloia—Because I cannot see any connection between that pin and what we are charged with, except the Prosecutor's opening, but up to this point there is not anything that makes the exhibition of the pin competent.

The Court—The prosecutor is going to connect it up with this defendant and this particular crime. He has to have it identified by somebody.

Mr. D'Aloia—I object. It is incompetent, immaterial and irrelevant.

Th Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Answer that question, please. I show you Exhibit S-15, and ask you if you ever saw that before? A. Yes.

Q. When was the first time you saw it? A. The first time I saw that that I can remember it was on High street.

Q. And how did you come to see it on High street? A. It was given to me.

Q. By whom? A. Mr. Anthony Boccadoro.

Q. That is, this defendant? A. Yes.

Q. Did he say anything when he gave it to you? A. No. He just gave it to me.

Q. Did he tell you where he got it? A. No.

Q. Did he say anything to you as to where it came from? A. No.

Q. And then did you wear it? A. Yes.

Q. Now, do you remember the first night when you moved there into High street, that Saturday night? A. Yes.

Q. And did you stay home that night? A. Yes, I stayed home.

Q. And how about Tony, did he stay at home? A. Well, I cannot go away back to that, whether he stayed home or not.

Q. Well, now, you remember the first night that you got into the High street house? A. Well, I remember we were so busy fixing up the room he did not have no time to go out.

Q. So the both of you stayed home that night, is that right?

Mr. D'Aloia—I object. She said she did not recall what night it was. She did not remember what they did the first night they were in High street, and then the Prosecutor incorporates in the next question, assumes that they both stayed home that night.

The Court—No, he assumes by her furnishing the statement that he was so busy he did not have time to go out.

Mr. D'Aloia—What he wants to find out if that was the first night they were in High street, and I also object on the ground it is remote, incompetent and immaterial.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Now, the second night, that was Sunday, did you and Tony stay home that night?

Mr. D'Aloia—The same objection.

The Court—Overruled and exception allowed.

Mr. D'Aloia prays an exception to this ruling of the Court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. That I cannot remember.

Q. Now, do you remember the following night, which was Monday, you know, New Year's fell on Sunday and it was celebrated on Monday, wasn't it? A. Yes, sir.

Q. So that the holiday was on Monday? A. Yes, sir.

Q. What did you do that night? A. Well, I can't seem to understand or I cannot answer.

Q. What can't you understand about it, Rose? A. You said, "What did you do that night". I cannot go back three months ago.

Q. Did Tony go out that night?

Mr. D'Aloia—Now, if your Honor please, what difference does it make if he went out that night or did not go out that night, which is the second night after January 1st. I cannot understand the materiality of that, but probably your Honor does. I think the Prosecutor has had enough latitude and I think anybody who has a grain of sense knows that whether he went out that night or did not had nothing to do with it.

The Court—So far as I can see, up to this

time, I don't see that it is material at all, but on the other hand I don't see that it hurts the defendant one way or the other, whether he did or did not. Maybe the Prosecutor has something to connect it up with.

Mr. Fisch—I have, your Honor.

Q. That Monday night, that holiday night, did Tony go out that night? A. To tell the truth I cannot seem to recollect whether Tony went out that night or not.

Q. Did you go out that night to the movies? A. I usually go out to the movies every night so far as that is concerned.

Q. When you went out to the movies where did Tony go? A. I don't know that,

Q. What time did he get back that night? A. I can't answer that question.

Q. But do you remember whether he went out that night? A. I can't say that he went out that night or not.

Q. That is the holiday night I am talking about now. A. Yes, I know.

Q. What is that? A. I know that was a holiday night.

Q. You don't know whether he went out or not? A. All I know is that I go out every night to a show.

Q. And did he go out with you that night? A. Well, we never go to the show together.

Q. You never go to the show together? A. We go to the show but not all the time, together.

Q. Did you go together that night? A. That I can't remember.

Q. When you got back from the movies where was Tony? A. Well, that is so far back I can't remember.

Q. Well, did you remember it on the 15th of February when you saw Lieutenant Linarducci?

Mr. D'Aloia—Now, I object to that question as to form. It is improper. He is cross-examining his own witness and there is no sign of hostility, and there isn't any right that the Prosecutor has to cross examine her or impeach her now. It is simply because she cannot remember things that happened in the early part of January.

The Court—I will permit the question.

Mr. D'Aloia prays an exception to this ruling of the court? Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Did you remember the 15th of February when you saw Lieutenant Linarducci? A. The 15th of February?

Q. Yes, did you?

Mr. D'Aloia—If your Honor please, I object to the manner in which the Prosecutor is using a sheet of paper without laying a foundation for it.

The Court—So far as the witness is concerned he is not using the paper.

Mr. D'Aloia—He is there, he is going to read from it.

The Court—I don't know whether he is or not. I will decide whether I will allow him to later on. The question is did you remember on the 15th of February, when you saw Lieutenant Linarducci?

Witness—I should hope I did, when they asked me a lot of questions and when I had people help me answer questions.

Q. What do you mean help you answer questions? A. Well, he helped me think over the questions.

Q. All right, suppose I help you think over the questions. On the Monday night following New Year's,

that is New Year's night, the holiday night, did Tony stay home or did he go out? A. I answered that question before and I said I didn't know.

Q. Well, did you know when you saw Lieutenant Linarducci on the 15th of February?

Mr. D'Aloia—I object to the form of that question, if your Honor please. It is improper examination of his witness. There is a way of doing it and that is not it. I contend that it is improper and I object to it.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Did you? A. Did I what?

Q. Did you know when you saw Lieutenant Linarducci on the 15th of February whether Tony went out or not on New Year's night, that Monday night, the holiday night, January 2nd?

Mr. D'Aloia—The same objection.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. I knew when I had different dates brought up to me and answered it, but it was different on certain nights and I was told different dates and everything.

Q. You say you knew when different dates were told you? A. I was told about the New Year's holiday and given a lot of talk that would lead me to it.

Q. A lot of dates, is that it? A. Yes, sir.

Q. All right, now, I am giving you those dates. I am giving you the dates that you say you moved from Orchard street to High street on Saturday morning,

the day before New Year's, is that right? A. That's right.

Q. And on that Saturday night, the first day that you moved, you say you and Tony stayed home, is that right? A. Yes, sir.

Q. Then, the next day was Sunday, is that right? A. Yes, sir.

Q. And as I understood your testimony, you and Tony stayed home on Sunday; you did not go out, either of you, is that right? A. Yes, sir.

Q. And then the next day, Monday, the holiday night, where did you go that night? A. I took in a show.

Q. Where did Tony go? A. That I don't know.

Q. Did he go out? A. I don't know whether he went out or not, I know I went to the show.

Q. Well, when you went to the show did he go out before you went out or was he in the house when you went out?

Mr. D'Aloia—She has answered that question, she says she doesn't know whether he went out or not.

Q. When you came back from the show where was Tony? A. He was in the house.

Q. So you don't know whether he was in the house or not? A. No.

Q. Now, isn't it a fact that you were already in bed when Tony got home that night? A. Well, it might be on the paper, but I am just telling what I know now.

Q. Yes, that is what I want you to tell me now. A. It might be on the paper there, but that ain't the truth.

The Court—Do not argue with the Prosecutor. Just answer the questions truthfully. Isn't it a fact that you were in bed when Tony got back that night?

A. No, sir.

Q. Didn't you tell that to Lieutenant Linarducci?

Mr. D'Aloia—I object to that question.

A. Maybe I did tell him, tell that to Lieutenant Linarducci after a lot of questions.

Mr. D'Aloia—I object.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Adjourned to Thursday, April 26, 1928, at 9:30 A. M.

Continued pursuant to adjournment.
Present, counsel as before stated.

ROSE TIFFANY resumes the stand.

Direct Examination (continued) by Mr. Fisch:

Q. Rose, I was asking you yesterday with regard to the time that you moved into the High street address. Do you recall that? A. Yes, sir.

Q. And as I recall it, you testified that you moved in there on Saturday, the day before New Year's, is that correct? A. Yes, sir.

Q. And on that Saturday night you and Tony both stayed at home, is that right? A. Yes, sir.

Q. And that on the following night, which was Sunday, you and Tony both stayed home, is that right? A. Yes, sir.

Mr. D'Aloia—Now, if your Honor please, what is the use of rehashing this? I objected to it yesterday because I said it was remote and had no connection at all with the 31st of January, the first of the year, now, we have to go over it again because your Honor allowed it in over my objection.

The Court—The questions have been answered and there is no question pending.

Q. Now, on the holiday, on the Monday night, that is the night that New Year's was celebrated on, did Tony stay home that night or not?

Mr. D'Aloia—I object to that question as not being competent, relevant or material.

The Court—Overruled.

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

Judge.

A. Tony went out that night.

Q. What time did he go out?

Mr. D'Aloia—The same objection.

The Court—Overruled.

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

Judge.

A. I don't know what time he went out.

Q. About what time was it? A. It was about six o'clock.

Q. And did you go out? A. Yes, sir.

Q. Where did you go? A. I went to the show.

Q. What time did you get back from the show? A. Around ten o'clock.

Q. And when you got back from the show around ten o'clock was Tony home? A. No, sir.

Mr. D'Aloia—Why, if your Honor please, that question was answered yesterday. A. I object to that question, it was answered yesterday.

The Court—Your objection comes too late. The question has been asked and answered.

Mr. D'Aloia—I cannot hear half of the time what the witness is saying.

The Court—Mrs. Tiffany, keep your voice up so we can all hear you.

Mr. D'Aloia—I want to get a general exception if your Honor please, to all of these questions which are directed to this particular day, one or two nights after the first of the year, on the ground that that particular episode has no connection, it is a separate and distinct proposition in the mind of the Prosecutor and it is prejudicial to the defendant.

The Court—I will give you a general exception to the testimony of this witness with reference to the movements of the defendant on the night of the first or second of January.

Q. What time did Tony get home that night? A. What night are you speaking of?

Q. I said the holiday night. A. I don't know what time he got home.

Q. Where were you when he got home? A. I was in bed asleep.

Q. Now, the following night, the night after that, which would be Tuesday night, did Tony go out that night? A. Not that I can recall.

Q. Now, this pin, Exhibit S-15, I believe you testified yesterday, that you got that on Wednesday, is that right? A. On Wednesday—

Mr. D'Aloia—I object to that as absolutely immaterial, incompetent and inadmissible.

The Court—I will permit it.

Defendant's counsel prays an exception to this ruling of the Court. Exception allowed; let

it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Is that correct, Rose? A. The next day?

Q. Yes, on Wednesday. A. No, not the next day, no.

Q. When did you get it, what day? A. A couple of days after.

Q. You said that Tony went out on Monday night, and you went to the movies, he went out at six o'clock, you came home about ten o'clock and went to bed and you were in bed before Tony got home, is that right?

Mr. D'Aloia—I object to that as leading, if your Honor please.

The Court—Well, it is just repeating what the witness said.

Mr. D'Aloia—That is the trouble, it is that repetition with this witness who is his witness that makes the question leading.

The Court—I will permit it.

Q. And that on the next night you and Tony both stayed home, is that correct? A. Yes, sir.

Q. Well, now, with reference to that next night, when was it that you got this pin? A. With reference to that next night?

Q. Yes. A. As far as I know it was the second day afterwards.

Q. The second day after what? A. After the night he went out.

Q. The second day after the night that he went out you got the pin? A. Yes, sir.

Q. Did he tell you where he got the pin?

Mr. D'Aloia—Objected to as absolutely incompetent, immaterial and not proper.

The Court—Overruled.

Defendant's counsel pays an exception to this ruling of the Court. Exception allowed; let it

be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. No, sir.

Q. Did he tell you where it came from? A. No, sir.

Q. Where did he take the pin from? A. His pocket.

Q. And what, if anything, did he say to you about the pin?

Mr. D'Aloia—I object to that as absolutely incompetent and immaterial.

The Court—Overruled.

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

Walter D. Van Riper, Judge.

A. He said that he found it.

Q. Did he say where he found it? A. No.

Mr. D'Aloia—I wish to object to that as improper and inadmissible.

The Court—Overruled.

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

Walter D. Van Riper, Judge.

Q. Did he tell you where he found it? A. No, sir.

Q. Did he tell you anything about finding the pin in his clothes?

Mr. D'Aloia—Objected to as leading.

The Court—Sustained.

Q. What, if anything, did he tell you with regard to where he found the pin?

Mr. D'Aloia—The same objection.

The Court—Overruled.

A. In his pocket.

Q. Now, when did you move from High Street?

Mr. D'Aloia—Objected to on the same ground that it is immaterial, remote, incompetent and inadmissible and having no relevancy.

The Court—Overruled.

Defendant's counsel prays an exception to this ruling of the court. Exception allowed; let let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. On a Thursday.

Q. That was the day after you got this pin, is that right?

Mr. D'Aloia—I object to that as leading.

A. Yes.

The Court—I will permit it.

Defendant's counsel prays an exception to this ruling of the Court. Exception allowed; let it be sealed and it signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Now, where did you move to from High street?

Mr. D'Aloia—The same objection.

The Court—The same ruling.

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

Walter D. Van Riper. Judge.

A. New Street.

Q. And how long did you stay in New street? A. Three days, I think.

Q. And then after the three days at New street, where did you move to?

Mr. D'Aloia—Objected to.

The Court—Same ruling.

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

Walter D. Van Riper, Judge.

A. Canal street.

Q. What number Canal street? A. 82.

Q. What floor? A. It was a rooming house.

Q. And what room did you occupy; what floor was the room on that you occupied? A. The first floor.

Q. And did you have charge of cleaning the rooming house there and taking care of it?

Mr. D'Aloia—Objected to as leading.

Mr. Fisch—It is, I will reframe it.

The Court—I will permit it.

Q. What, if anything, did you do at the Canal street address? A. I took care of fourteen rooms.

Q. You took care of the rooms? A. Yes.

Q. Were you employed for that purpose? A. Yes.

Q. By whom? A. I do not remember the name of the woman; I cannot just remember.

Q. And was Tony there with you? A. Yes.

Q. Now, while you were at the Canal street address, did you see a gun?

Mr. D'Aloia—Objected to as leading, and absolutely improper.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Did you, Rose? A. Yes.

Q. Where did you see the gun?

Mr. D'Aloia—Same objection.

The Court—The same ruling.

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

Walter D. Van Riper, Judge.

A. Under the mattress.

Q. And how many days after you were at the Canal street address was it that you saw the gun? A. A few days after.

Q. What kind of a gun was it?

Mr. D'Aloia—I object to that unless she knows what kind of a gun.

Mr. Fisch—I want her to describe it.

Mr. D'Aloia—Well, what kind of a looking gun.

Mr. Fisch—I am going to frame these questions.

Mr. D'Aloia—There is no testimony brought out that this witness knows the kind of gun.

The Court—Well, if she does not know, she can say so. I will allow it.

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

Walter D. Van Riper, Judge.

A. Silver gun.

Q. What kind of a handle did it have? A. Black handle.

Q. Was it bright or dull? A. Well, it was kind of dull.

Q. By silver do you mean nickel plated? A. Yes.

Q. Now, you say you saw that gun under the mattress in what room? A. Canal street.

Q. Well, there were fourteen rooms there; what room was it? A. Room three.

Q. Who occupied that room? A. I did.

Q. And who else? A. Tony.

Q. Now, then, after you saw this gun under the mattress did you see anybody handle the gun?

Mr. D'Aloia—I object to that as leading, without the time being fixed. It is improper and incompetent.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Did you, Rose? A. Yes.

Q. Who? A. Tony.

Q. And how long after you first saw the gun under the mattress did you see Tony handle it? A. I saw him two days after we moved in there.

Q. Had you ever seen that gun before you moved to High street? A. No.

Q. Now, when you saw Tony handle the gun, what did you see him do with it? A. He was cleaning it.

Q. And while he was cleaning it, did you see him take anything out of it?

Mr. D'Aloia—That is objected to as leading.

The Court—Yes, I think it is.

Q. What did you see him do while he was cleaning it with reference to anything that might have been in the gun?

Mr. D'Aloia—That is objected to as leading.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Answer the question. A. I seen him take the bullets out of the gun.

Q. And what else did you see—what did you see him do with those bullets after he had taken them out? A. He laid them on the table.

Q. And after he laid them on the table, what did he do? A. Washed the gun.

Q. And then what did he do? A. Then he put them back in again.

Q. After he put them in again, did you see how many there were? A. Four.

Q. And did you see the bullets while they were lying on the table? A. Well, I saw them on the table, but I didn't look close.

Q. When you say he put them back in the gun, you say there were four? A. As far as I remember.

Q. Were there any more spaces in the gun for bullets?

Mr. D'Aloia—I object to that as leading. I do not know how close this woman was standing to the gun.

The Court—No, but you will bring it out. She can testify if she knows.

Q. Were there any more spaces in the gun after the four bullets were put in? A. As far as I can remember there was one space.

Q. There was one space without any bullet in it; is that what you mean? A. Yes.

Q. Now, how many times did you see Tony handle that gun?

Mr. D'Aloia—That is objected to because it is absolutely immaterial, incompetent, inadmissible and of no value whatsoever.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. You may answer the question, the Judge says. A. Well, to my knowledge, I seen him twice.

Q. Now, your child was at that time—where was your child? A. In Massachusetts.

Q. And did you have any conversation with Tony with regard to bringing this child down to Newark? A. Yes.

Q. And had he given you any money to bring this child down to Newark? A. Yes.

Q. How much money had he given you? A. Seventy odd dollars.

Q. And what arrangements did you make with Tony with regard to bringing your child down here; were you to go up there?

Mr. D'Aloia—That is objected to on the ground it is incompetent and immaterial.

The Court—I will permit it.

Q. Were you to go up there for the child? A. Yes.

Q. When were you to go up? A. I was supposed to go up on Tuesday night.

Q. What train were you to take? A. The midnight train.

Q. And when was that Tuesday night with reference to the time you were arrested? A. I do not quite get that.

Q. Now, let us see. You were arrested on a Friday? A. Yes.

Rose Tiffany—direct

Q. You say that you were supposed to go for your child on the midnight train on a Tuesday? A. Yes.

Q. Now, was that Tuesday before the Friday you were arrested? A. Yes, sir.

Q. And was it the Tuesday before the Friday you were arrested? A. Yes.

Q. It was the Tuesday of that same week, wasn't it? A. Yes.

Q. Now, on that night when you were supposed to take the midnight train up to Massachusetts to get your child, did Tony go out that evening? A. Well, as far as I can remember, he went out.

Q. What time did he go out? A. Twenty minutes to seven.

Q. And when he went out, did you see him take anything with him? A. Well, he had not gone outside the door, but while he was in the room there, I seen him with the gun, but he had not gone outside the door.

Q. Now, while he was in the room, you saw him with the gun? A. Yes, sir.

Q. What did you see him do with the gun?

Mr. D'Aloia—If anything.

A. He put it down in front of his pants.

Q. Down in here, is that what you mean? A. Yes, sir.

Q. And then he went out, did he?

Mr. D'Aloia—Objected to as leading.

Q. Did he go out then? A. Well, I went upstairs, he must have went out.

Q. Now, then, did he come back that night? A. Yes, sir.

Q. What time did he come back that night? A. Between a quarter past and half past.

Q. Quarter past and half past what? A. Nine.

Q. Now, when he got back between a quarter past and half past nine, did you notice anything about him? What did you notice about him? A. Well, I noticed that he was back kind of early.

Q. Earlier than usual? A. Yes, sir.

Mr. D'Aloia—I object to that, that is a conclusion.

The Court—Overruled.

Q. What else did you notice about him, about the way the looked and the way he acted?

Mr. D'Aloia—Objected to as leading.

The Court—Overruled.

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

Walter D. Van Riper, Judge.

A. Well, when he first came home, I asked him to go to the depot with me, to go to get the little boy and he told me it would be better for me to pack my clothes and go home and stay home.

Q. Did you ask him why?

Mr. D'Aloia—Objected to as leading.

The Court—Overruled.

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

Walter D. Van Riper, Judge.

Q. Did you have a conversation with him about it? A. Yes, sir.

Q. Now, just tell us what happened when he came home there between a quarter past nine and half past nine. What if anything did you notice about his ap-

pearance, and what conversation did you have with him?

Mr. D'Aloia—Objected to as leading.

The Court—Overruled.

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

Walter D. Van Riper, Judge.

Q. Tell us, Rose. A. Well, we started arguing over the child.

Q. Well, what did he say? A. Well, I asked him to come over as far as the depot with me to New York, to the Grand Central, and he told me that it would be better for me to pack my clothes and stay home.

Q. And what else did he say, do you remember how he looked when he came in?

Mr. D'Aloia—I object to that, there is a question there for which he is waiting for an answer.

The Court—See if you can get an answer to the question that is on the record.

Q. What else did he say at that time, do you remember?

The Court—Do you remember what he said?

Witness—I know we were arguing over the child, I know that.

Q. Well, what was the argument over the child? What did he say about it?

Mr. D'Aloia—If the Court please, is that material, an argument over the child?

The Court—I don't know, it might be.

Mr. D'Aloia—I know, but we cannot take chances, and say an argument over child may have something to do with what happened up in Bloomfield.

The Court—It might have.

Mr. D'Aloia—I object to it upon the further ground that the Prosecutor anticipates that something further was said.

The Court—Can you recall what was said?

Witness—I remember he said, "If it was not for your child, things would have been different."

A. Are those his exact words, the exact words that he used, "If it was not for your child—"

Mr. D'Aloia—Now, if your Honor please, wait a minute. There is another part of that answer which he omits from that question.

The Court—"If it was not for your child, things would have been different."

Q. Are those the exact words that he used? A. Well, that I cannot say, they were the exact words.

Q. Well, as near as you can recall, give us, please, the exact words that he used.

Mr. D'Aloia—I object to that, if your Honor please, because that is assuming that she has not.

Mr. Fisch—She just said that she did not.

Mr. D'Aloia—She said, "As near as I can recall that is what it was."

The Court—I will permit the question. Tell us the exact words that he used as near as you can.

Witness—"If it was not for you and the damn kid, things would be different."

Q. Did you ask him what he meant by that?

Mr. D'Aloia—Objected to as leading.

The Court—I will permit it.

Defendant's counsel prays an exception to this ruling of the Court. Exception allowed; let

it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Did you ask him what he meant by that? A. Yes, sir.

Q. What did he say? A. He said that he had been chased by the cops that night, by the police.

Q. And what else did he say? A. He said that they had fired shots at him.

Q. What else did he say? A. He got chased over back yards and fences for about three miles.

Q. What else did he say, you say he told you he had been chased by the cops that night and that they had fired shots at him and he had been chased over back yards and fences for about three miles, is that right? A. Yes.

Q. Now, what else did he say?

Mr. D'Aloia—If anything. If your Honor please, the Prosecutor assumes in every one of these questions that something else was said.

The Court—Well, did he say anything else?

Witness—Yes, sir.

The Court—What?

Witness—He said he had fired his gun in an empty lot while he was running.

Q. And did he have the gun with him when he came home?

Mr. D'Aloia—Objected to.

A. Well, as far as I understand, I don't think he did.

Q. He did not? A. No, sir.

Q. You did not see it, did you? A. No, sir.

Q. Do you mean by that that he told you he fired the gun, or what do you mean by that—do you mean that he fired it away or that he shot the gun?

Mr. D'Aloia—I object to that, if your Honor please.

The Court—That is not the question, what she means, what did he say?

Q. What did he say? A. He said he had thrown it away.

Q. Did he tell you what he was doing when the cops chased him?

Mr. D'Aloia—Objected to as absolutely leading.

The Court—Overruled.

Defendant's counsel pays an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. No, he did not actually tell me what he was doing.

Q. What did he say about it, you say he did not actually tell you what he was doing, what did he say about it, if anything? A. He said he was just about to do something.

Q. He said he was just about to do something when what? A. The cops chased him.

Q. Did he tell you what he was about to do? A. No, sir.

Q. Now, when he came in, did you notice anything about his eyes?

Mr. D'Aloia—Objected to as leading.

The Court—Overruled.

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

Walter D. Van Riper, Judge.

Q. Did you? A. I noticed his eyes were kind of blood shot.

Q. And what else did you notice about him, was he cool and calm as usual or not?

Mr. D'Aloia—Objected to as leading.

The Court—Sustained.

Q. What else did you notice about him besides noticing that his eyes were kind of blood shot? A. Well, I noticed that he was kind of quiet.

Q. What clothes did he have on? A. He had a dark blue coat on.

Q. What kind of a hat? A. Gray felt hat.

Q. Was that the same colored hat that he had on when he went out? A. Yes, sir.

Q. So that before he had gone out that evening he had arranged with you and given you the money to go up and bring the child down to Newark, is that right? A. Not before, the day before.

Q. That was the arrangement that you had with him that night when he left the house? A. Yes, sir.

Mr. D'Aloia—Haven't we gone over all of this, your Honor?

Q. Now, when he came back, is that when you had the conversation in which he said that you better take your clothes and go?

Mr. D'Aloia—I object to that, we have had all of that chronologically stated.

The Court—I think it is objectionable on that ground, Mr. Prosecutor, that it has been testified to.

Q. Now, then, did you leave the house that night after he got back? A. Did I leave the house?

Q. Yes. A. After he got back?

Q. Yes, that night, when he got back, between a quarter past nine and half past nine, his eyes were

blood shot, did you stay there that night? A. Yes, sir.

Q. And did he stay t here that night? A. Yes, sir.

Q. Now, when he came home did you notice anything about his coat?

Mr. D'Aloia—Objected to as leading.

The Court—Overruled.

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

Walter D. Van Riper, Judge.

A. Oh, I can't say that I noticed anything about hs coat, but I noticed he was brushing it.

Q. How was he brushing it, what was he doing with regard to the coat, now, just describe that to us, please? A. Well, he had a brush and he was wetting it under the faucet and brushing his coat.

Q. What part of the coat was he brushing? A. Well, as far as I can remember, it was the top part.

Q. The top part, and did you notice any spots or stains on it?

Mr. D'Aloia—I object to that as leading.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Did you? A. Well, I cannot say that I noticed any spots or stains on it, but I noticed him brushing it.

Q. With this brush that was wet, is that right? A. Yes.

Q. Now, then, did you have any further talk with Tony that night? A. Not as far as I can remember.

Q. Well, he then said to you that he wanted you to take your clothes and go, didn't he? A. Yes.

Q. Did you want to go? A. No, sir.

Q. Did you talk with him about that? A. Well, at the time he was telling me to take my clothes and go, I was in bed.

Q. And how did it come you did not go on the midnight train that night?

Mr. D'Aloia—That is objected to. I do not see what competency that has.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. How did that come up? A. Well, because he did not want me to go.

Q. Did he say why?

Mr. D'Aloia—That is objected to as leading.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. I cannot seem to remember that he asked me why.

Q. What is that? A. I cannot seem to remember whether he asked me why or not.

Q. No. Did you ask him why, or did he tell you the reason he did not want you to go on the midnight train to bring the child down?

Mr. D'Aloia—That is objected to as incom-

petent, irrelevant and immaterial.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. I cannot seem to answer that question.

Q. Why not? Why not?

Mr. D'Aloia—I object to that why not question. It has been put twice.

The Court—I will permit it.

Mr. Fisch—Now, if your Honor please, I must ask Mr. D'Aloia please not to talk back of me and make remarks under this breath that are audible to me and possibly to the jury. I submit I have the right of the quiet of the court room in the examination of the witness.

The Court—I think whatever has been said will not be said in the future. I do not think you want to annoy the Prosecutor.

Q. Why can't you seem to remember, Rose?

Mr. D'Aloia—The reason why she cannot remember I say is absolutely immaterial and incompetent and it has nothing to do with the relevancy of the case.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Can't you answer that? A. I cannot seem to remember.

Q. What is that? A. I cannot seem to remember.

Q. Well, did Tony tell you; did Tony say anything to you as to why he did not want you to go on the midnight train?

Mr. D'Aloia—That is objected to as leading.
The Court—I will permit it.
Defendant's counsel prays an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. Well, he did not actually say why he did not want me to go on the train; he told me it would be better for me to go home that time.

Q. He told you it would be better for you to go home? A. Yes.

Q. And still you did not go home? A. No.

Q. Did you notice anything about Tony that night, anything different from any other night after he went to bed?

Mr. D'Aloia—I object to that as leading.
The Court—I will permit it.
Defendant's counsel prays an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Did you? A. Well, I don't know whether I noticed anything about him, but I know that I did not sleep very good that night.

Q. Do you know why?

Mr. D'Aloia—Can we be bound by her not sleeping very well?
The Court—Sustained.

Q. Now, while you did not sleep very good, what, if anything, did you notice about Tony? A. Well, I

noticed that he did not sleep very good, either.

Q. Now, then, the next morning what time did you get up?

Mr. D'Aloia—Are you through with the episode of this particular night?

Mr. Fisch—I do not know whether I am or not.

Mr. D'Aloia—I move to strike out all of the testimony your Honor has permitted about this episode, because it has nothing to do with this transaction and the crime laid in the indictment and the Prosecutor's opening. What he says he told her may be all true. It is a separate and distinct proposition. There is not one iota of testimony in all of the questions and answers which connect up the conduct of this defendant, if true, as described in his talk with her, that night which in any way connects the defendant with this charge laid in the indictment.

The Court—You do not mean to say it is not competent to show the conduct and demeanor of the defendant at a time shortly after the crime?

Mr. D'Aloia—It is if there is anything in that conduct or talk connected with the charge laid in the indictment. Now, it has been testified to by this witness—maybe there may be a hundred or a thousand episodes that may have occurred various distances from this place, and that is why I say that there is no connection between his conduct described by her and this charge laid in the indictment, especially because of the minute description the Prosecutor elicited from the witness the occurrences which he may or may not have participated in that night. It does not follow with this charge on which the indictment is based.

The Court—It is what he told her he did that night. Why is that not competent?

Mr. D'Aloia—Because it does not describe the charge. In this charge there were no policemen. There were no shots fired by any policeman. You have got to stop some place.

The Court—This is not contrary to the Prosecutor's opening.

Mr. D'Aloia—Why, certainly. He described the occasion and conduct, and what happened at this house.

The Court—Yes, there is no question about what happened there as far as the actual occurrence is concerned.

Mr. D'Aloia—No, but we are agreed on this what this witness says, what this defendant described did not happen at that house.

The Court—Of course, but that does not make it incompetent.

Mr. D'Aloia—Well, I suppose every man who got home at quarter after nine that night and met a woman such as on the stand and told about being chased by a policeman could be charged with this murder.

The Court—Well, if there is any evidence to connect him with it, it could. The State has not proven the whole case.

Mr. D'Aloia—Everything she said may be absolutely true and yet we know at this stage we know it does not agree with what the Prosecutor said occurred at that place, and therefore I move to strike all of it out.

The Court—I deny your motion.

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

Walter D. Van Riper, Judge.

Mr. D'Aloia—Upon the ground it is the description of a separate and distinct offense, without any connection whatever with the offense laid in the indictment.

Q. Now, the next morning, what time did you get up? A. I cannot tell you the exact time.

Q. Oh, about what time? A. About ten o'clock; about ten.

Q. Now, won't you raise your voice up? These gentlemen want to hear what you have to say, and it is very difficult for them to hear what you have to say when you do not keep your voice up. Who got up first, you or Tony? A. I did.

Q. When you got up, what did you do?

Mr. D'Aloia—I object to this as having no bearing whatever upon the episode of January 31, charged in this indictment and as explained by the witness so far.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. When you got up what did you do? A. I went out to the store to buy a newspaper.

Q. What paper did you buy? A. The Ledger.

Q. What did you do with the paper? A. Well, I started to read it.

Q. Did you go back to the house? A. Yes, sir.

Q. Now, when you went back to the house where was Tony? A. In bed.

Q. And what, if anything, did Tony do with the paper? A. Well, Tony said he did not want me to read the paper.

Q. He told you he did not want you to read the paper? A. He never wanted me to read the paper.

Q. He never wanted you to read the paper? A. Yes, sir.

Q. Now, what, if anything, did Tony do with the paper? A. He took it away from me, he did not want me to read it.

Q. What did he do with it? A. He put it behind the stove.

Q. Then, did he tell you what was in the paper?

Mr. D'Aloia—That is objected to as leading.
The Court—Overruled.

A . Not just at that time.

Q. Well, at what time did he tell you? A. Well, after I had made all the rooms up and came downstairs again he told me that there was a certain description in the paper.

Q. That same morning, was it? A. Well, I can't say whether it was in the morning or the afternoon.

Q. Well, was it that day? A. Yes, sir.

Q. After you had made up the rooms and you came back Tony was still in the room, was he? A. Yes, sir.

Q. And then he told you what? A. There was a certain description in the paper about somebody who had been working the different sections.

Q. And what did he say about that? A. He said the description had sounded something like him.

Q. What did he say about the description sounding something like him? Did he tell you what the description was? A. He said that the fellow wore a dark blue coat like him and a felt hat.

Q. And what else? A. That is all as far as I can remember.

Q. Well, did he say anything about the nationality of the man? A. Well, he said it was—his description answered a short Italian fellow.

Q. A short Italian fellow with a dark blue coat and what? A. A felt hat.

Q. And what did he say about that? A. Well, he said the description sounded like him.

Q. Did you ask him anything about it? A. No, not just then.

Q. Well, did you ask him later? A. Well, after I had seen the piece in the paper.

Q. What paper? A. The Newark News.

Q. When did you read the Newark News? A. On the following Thursday.

Q. The following Thursday? What day was it that you read the Newark News with reference to the night Tony came in with his eyes bloodshot? A. That following Thursday.

Q. Well, now, I am not asking you the day of the week, I am asking you what day it was with reference to that night when he came in with his eyes blood shot? A. I don't quite understand that question.

Q. Well, he came in between a quarter past nine and half past nine one night with his eyes bloodshot, didn't he? A. Yes, sir.

Q. And that was the night you were supposed to go on the midnight train but you did not go? A. Yes, sir.

Q. Then, the next morning you got up and went out and bought a Ledger, is that right? A. Yes, sir.

Q. Now, when was it that you bought the News? A. On Thursday, it was the next day afterwards.

Q. The next day after what? A. After I got the Ledger?

Q. After you got the Ledger? A. Yes, sir.

Q. Now, that day when you got the Ledger did Tony go out during the day that day? A. Tony was in New York City that day.

Q. The day that you bought the Ledger? A. No, not when I bought the Ledger.

Q. I am asking you about the day when you bought the Ledger, did Tony go out that day during the day? A. Well, as far as I can remember I know he did go over to the landlady of the house that day.

Q. Where was the landlady of the house? A. On Greene street.

Q. Now, you just see if you can remember. See if you can remember all the way. A. I can remember that he went out that day to the landlord.

Q. What day? A. That Wednesday.

Q. Are you sure about that? A. Well, I can bring the landlady up for that.

Q. Are you sure about that? A. Yes, sir, I am sure.

Q. What time did he go to see the landlord? A. After I had come in that day, he had let a room to two women, and a man and a wife, and she had left $2 deposit on the room, and I had just come in after coming from taking my dress at the tailor's, I went to see about my dress at the tailor's—

Q. Did you ever tell me about that before?

Mr. D'Aloia—Objected to.
The Court—Overruled.

A. It just came to my mind.

Q. What made it just come to your mind? A. Well, you asked me that question and I am answering it.

Q. What made it just come to your mind? A. Well, I was just thinking about the rooming house.

Q. Now, I want you to think about the case altogether. I want you to tell me whether Tony said anything to you that day about going out, about being seen on the streets?

Mr. D'Aloia—I object to that as leading, the testimony thus far is that he went out and went down to see the landlady. Then the Prosecutor asked, "Did you tell me that before" and she

said it just came to her mind and he puts this leading question. I don't think that is fair.

The Court—Objection overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Answer the question, please. A. I cannot seem to understand it.

Q. What, if anything, did Tony say to you that day about being seen on the street?

Mr. D'Aloia—My objection goes to the second question.

Q. Or wanting to be seen on the street or not wanting to be seen on the street?

Mr. D'Aloia—And to all these additional phrases that the Prosecutor adds on.

A. He just said he did not want to be seen on the street, that's all.

Q. Did he say why? A. No, he did not say why.

Q. You remember that he said that, don't you? A. Yes, sir.

Q. Now, does that refresh your memory as to whether he went out that day or not? A. It refreshes my memory that I know he did go out that day.

Q. How long was he out? A. Well, he was out in the afternoon and he did not come back until that night.

Q. What time did he go out? A. I did not look at the time.

Q. Well, about what time? A. I can't say about what time either.

Q. Well, was it one o'clock or four o'clock? A. It was in the afternoon, anyway, the latter part of the afternoon.

Q. What time did he get home? A. He did not get home until after seven.

Q. Now, then, you say you bought a Newark Evening News, is that right? A. Yes, sir.

Q. Did you read it? A. Yes, sir.

Q. Did you see something about this case in it?

Mr. D'Aloia—I object to that as leading, if your Honor please.

Q. Well, what did you read in it? A. Well, I read something about some fellow, about some burglar had went in, on Tuesday night, some burglar went in and tried to rob the house and this man got killed and he was going to be buried on the following Saturday.

Q. Now, did you say anything to Tony about that? A. Well, Tony was not home at the time I had read it.

Q. What is that? A. Tony wasn't home at the time I read it.

Q. Where was Tony when you read it? A. In New York City.

Q. And when did he come home? A. He came home around seven or eight o'clock.

Q. Now, when he came home did you speak to him about it? A. I did not actually speak that it was him that done it, I just showed him the newspaper.

Q. What did he say? A. He claimed that he was in Bloomfield—no, not in Bloomfield, that he was in Montclair that night.

Q. He told you he was in Montclair that night? A. Yes, sir.

Q. Is that what he told you? A. Yes, sir.

Q. How did he come to tell you that? A. Well, I asked him where he was that night when he was out.

Q. And what did he say? A. He said he was in Montclair that night.

Q. Now, then, this coat that Tony had, what be-

came of that blue coat that he wore that Tuesday night when he went out? What became of it? A. Well, as far as I know I seen him starting to cut it up to burn it, I don't know whether he burned it or not. I seen him starting to cut it.

Q. What did he cut it with? A. A manicure scissors.

Q. Whose manicure scissors? A. Well, it belonged to both of us.

10 Q. I show you a manicure case with some scissors in it and ask you if you ever saw that case before? A. Yes, sir.

Q. Can you tell me the scissors that he cut the coat with? A. The small one.

Q. Will you pick it out, please? A. (Indicates.)

Q. Is that the scissors? A. Yes, sir.

Mr. Fisch—I offer the case and the scissors in evidence.

20 Mr. D'Aloia—I object to that as having no bearing, competency, materiality or relevancy in this case.

The Court—I will admit it.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(The same is received in evidence and marked Ex. S20.)

30 Q. Where was he when he started to cut the coat?

Mr. D'Aloia—Objected to as immaterial.

The Court—Overruled.

A. Sitting on the side of the bed.

Q. And what, if anything, did you see him do with the piece that he cut? A. Well, I only seen him with a small piece that he put into the stove, that wouldn't amount to anything.

Q. Where was it cut from? A. The inside of the coat, the lining.

Q. What were you doing? A. Well, I left him there and I went out to make the rooms.

Q. And when you came back from making the rooms what was Tony doing? A. He wasn't doing much of anything.

Q. Did you notice anything about the heat in the room? A. Well, I noticed it was kind of warm in there.

Q. Did you see the coat after that? A. No, I can't say I seen the coat after that.

Q. Well, did you see it after that? A. No.

Q. Now, after that did Tony have a coat? A. He had a light top coat.

Q. What is that? A. A light top coat.

Q. Do you know where he got it from? A. Well, as far as I know, he got it in the second hand store.

Q. Well, how do you know? A. Well, that is what he told me.

Q. What did he tell you about it? A. That he got it in a second hand store.

Q. Did he tell you what he paid for it?

Mr. D'Aloia—I object to that as immaterial.

A. $3.

The Court—I will permit it.

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

Walter D. Van Riper, Judge

Q. When did he buy this light top coat? A. On Friday.

Q. That was after you saw him cut the blue coat? A. Yes.

Q. Now, then, did Tony say anything to you on

Friday as to where you were going to go or what he was going to do? A. Well, we both planned on going over to New York and look for work.

Q. And you were to go over together? A. Yes.

Q. And did you go to New York? A. Yes.

Q. What route did you take to go to New York? A. The Hudson Tubes.

Q. And how did you get from the house to the tubes? A. We walked.

Q. Did you walk together? A. Well, no, not together.

Q. Well, how did you walk? A. Well, I was about five feet behind him.

Q. And how was it that you were not walking together? Did Tony say anything to you about that?

Mr. D'Aloia—I object to that as leading.

A. No, he didn't say nothing about it.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. What is that? A. No, he didn't actually say anything about it. He just wanted me to walk that way.

Q. Well, why did he want you to walk that way? A. Well, I cannot say that he told me, but when we traveled that way, from one station to another, we never traveled together.

Q. Why not?

Mr. D'Aloia—I object to that as having no bearing on this.

The Court—Sustained.

Q. Well, did Tony say anything to you about not traveling together?

Mr. D'Aloia—I object.

The Court—I will permit it.

A. Well, we never traveled together.

Q. Well, did Tony say anything about your not traveling together? A. Not that I can remember.

Q. Well, try and think for a minute. Now, what, if anything, did Tony say about not traveling together to New York? What did he say, if anything? A. Well, I cannot seem to remember what he said.

Q. Well, why didn't you travel together; why didn't you walk together?

Mr. D'Aloia—Well, she said it just happened that way.

The Court—Sustained.

Q. Well, did you get on the same train? A. Well, we got on the same train, but not the same car.

Q. You did not get in the same car? A. No.

Q. Did he buy your ticket? A. No; I bought my own ticket.

Q. Did he buy his own ticket and did you buy your own? A. Yes.

Q. Did you buy them at the same window? A. Well, that I cannot say, because I was not there.

Q. You were not there? A. I don't know what window he bought his at. I did not see him.

Q. Oh, you did not see him at the window? A. No.

Q. You just bought your ticket and you got on the train in one car and he got in another car? A. Yes.

Q. And then when you got to New York, did you join one another? A. After we got in the depot.

Q. And where did you go? A. We looked for work.

Q. Where did you go after that? A. Over to my sister's house.

Q. In Brooklyn? A. Yes.

Q. And is that where you were arrested from? A. Yes.

Q. And after you were arrested, where were you taken? A. Taken to New York.

Q. What is that? A. New York.

Q. And then from there where were you taken? A. Newark.

Q. Down to Police Headquarters? A. Yes.

Q. Did you see Tony down there? A. Down where?

Q. Police headquarters. A. No.

Q. Never saw him down there? A. No. I seen him in the office.

Q. Well, I mean in the office in headquarters. Did you? A. Yes. I seen him in the office, surely.

Q. Let me just ask you this question. Was there anything that prevented you or hindered you from walking with Tony from the house to the station when you went to New York? A. Well, no, there was nothing that prevented me.

Q. Well, was there anything that prevented or hindered you from getting in the same car of the same train? A. Well, I just answered you that we never traveled together.

Q. Did Tony ever say anything to you about traveling together or not traveling together?

Mr. D'Aloia—I object.

The Court—I will sustain that so far as ever saying anything.

Cross Examination by Mr. D'Aloia:

Q. When did you come from Massachusetts with this defendant to Newark? A. In September.

Q. And where did you work during that time? A. When I first came to Newark?

Q. Did you work in a restaurant? A. No. I worked in a razor blade factory.

Q. Did you work in a restaurant, too? A. Afterwards.

Q. Did you try to get a job anywhere where work could be had? A. Yes.

Q. And he did? A. Yes.

Q. Now, when he came down from aMssachusetts with you, where had he and you been living? A. In Newark?

Q. Yes. No. I mean, in Massachusetts; where had you been living up there? A. I was not living with him in Massachusetts.

Q. Well, how did you come to get together to come to New York? A. Well, I went to New York to my sister's first.

Q. Now, you have known him since you were thirteen years old you told us yesterday? A. Yes.

Q. You knew him before he went to Prison in Massachusetts? A. Yes.

Q. And you corresponded with him while he was in prison? A. Yes.

Q. And when his time was about to come to an end, you wrote to him and you told him that you could not get along where you were and you wanted to go along with him? A. Yes.

Q. So you both struck out from Massachusetts and came toward New York? A. No, sir. I went to New York first.

Q. And he followed you? A. A couple of days afterwards.

Q. Did you write to him? A. Yes.

Q. And from New York you came to Newark and you lived here at 21 Grant street with him? A. Yes.

Q. Under the name of Lopez? A. Yes.

Q. And you did whatever work you could and he did whatever work he could? A. Yes.

Q. Well, there were some people coming in to see him, weren't there? A. Not that I know of.

Q. Did you know a man by the name of Martini? A. No.

Q. Did you know another man by the name of Jack Woods? A. Yes.

Q. Well, Woods would come in to see him very often? A. Yes.

Q. Now, this pin that was shown to you, do you remember shortly before the pin was given to you you had seen Jack Woods? A. I had seen Jack Woods.

Q. And do you know what Jack Woods—

The Court—Was that question answered?

Mr. D'Aloia—Yes, sir.

The Court—Were you asking Judge D'Aloia a question or answering his question?

Witness—I was answering his question.

Q. Do you know where Jack Woods was about the 31st of January, at the end of January when you were living in Canal street? A. He was in Massachusetts?

Q. Do you know where Martini was at that time? A. No.

Q. Now, when you got this pin from Tony, he just gave it to you, is that right? A. Yes, sir.

Q. How long before this was it that Woods had been to the house? A. Quite a few times.

Q. What? A. Woods had been to the house ever since he went there.

Q. Well, how many days before you got the pin was it that Woods had been to the house? A. Well, it was not very long.

Q. Now, do you remember a man used to come and see you and your husband, or your friend, the defendant, by the name of Morgan? A. Yes.

Q. Did he come very often? A. Yes.

Q. Do you remember shortly after a visit by Morgan, that some pistols were shown to you in Orchard street? A. Yes.

Q. How long before those pistols were seen by you in Orchard street was it that Morgan had been to see your husband? A. Morgan had been to see Tony when the police were up there.

Q. And don't you know that Morgan brought two

pistols there and asked that they be left there? A. Yes.

Q. Now, let us go back to the time when you say you went to New York and he went to New York to look for work and then he came back. You were living at 82 Canal street; you were taking care of a fourteen room house? A. Yes.

Q. You were not getting any pay for that? A. No.

Q. You were simply getting the rent free for one room? A. Yes.

Q. And you were quarreling with him very frequently about your child? A. Yes.

Q. You wanted your child brought down here? A. Yes.

Q. Now, do you remember Sunday when he gave you $300 to go to Massachusetts to get your child? A. Well, it was either Sunday or Monday.

Q. You did not go? A. No.

Q. How long was that before you were arrested? A. Only a couple of days.

Q. You told the Prosecutor that he gave you $50 on one occasion? A. Yes.

Q. Now, do you remember when you were arrested? A. No, I cannot remember the date.

Q. Where were you arrested? A. At my sister's.

Q. Over in Brooklyn? A. Yes, sir.

Q. After you and he had been up to Sixth avenue to an Employment Agency, several Employment Agencies to look for work? A. Yes, sir.

Q. And you were considering taking a job to take care of a house in New York where you were to get $45 a month beside rent free, is that so? A. Yes, sir.

Q. And is that what brought you to New York? A. We were looking for work.

Q. He had been to New York first, hadn't he? A. Yes, sir.

Q. And he had come back and told you that there

was a job up with the people in the Employment Agency and they wanted to see the woman?

Mr. Fisch—I object to that, if your Honor please. I am wondering if Mr. D'Aloia is on that stand testifying or whether he is asking questions.

The Court—Sustained.

Q. Well, now, did he go to New York the end of January or the first of February alone? A. Well, he went to New York alone the first time.

Q. Will you tell us what he told you when he came back? A. Well, he said that he had a job over there.

Q. And how many people were to have the job? A. Well, he said he would have to see the woman first.

Q. Who wanted to see the woman? A. In the employment office.

Q. Now, after that did you go to New York with him? A. Yes, sir.

Q. Did you go to the employment agency? A. Yes, sir.

Q. Did you get the job? A. No, sir, we were too late.

Q. Now, what time was it when you got through at the employment agency on that day when you went over? A. About six o'clock.

Q. Six in the evening? A. Yes, sir.

Q. And is that the time you determined to go to Brooklyn? A. Yes, sir.

Q. And how long had you been in Brooklyn before you were arrested? A. About eight o'clock we got arrested.

Q. Now, do you remember being brought to Newark to Police Headquarters? A. I remember being brought to New York first.

Q. Well, from New York you came to Newark, didn't you? A. Yes, sir.

Q. Do you remember this gentleman here talking to you? (Indicating Deputy Chief Brex.) A. Yes, sir.

Q. And did he ask you questions about Tuesday, a certain Tuesday night? A. They asked me questions about that Tuesday night.

Q. Did you know anything about any Tuesday night the first time you were asked? A. The first time I was asked?

Q. Yes. A. I can't say that I know anything about it.

Q. Well, now, how many times had they been talking to you about a Tuesday night, was it, before you remembered anything at all about a Tuesday night? A. Quite a few times anyway.

Q. Now, did anyone down in Police Headquarters suggest to you a Tuesday night, a particular Tuesday night? A. Well, they suggested that Tuesday night before we were arrested.

Q. Well, who suggested it? A. Well, I was examined by quite a few of them.

Q. You said that they suggested, what did they say to you? A. Well, they asked me if he was in or out on that Tuesday night.

Q. Did they tell you what Tuesday night it was? A. Well, they told me it was the Tuesday before I got arrested.

Q. Were you told by them you were charged with murder? A. I was told by them I would be held as an accessory after the fact.

Q. Was that before or after they wrote out something on a piece of paper? A. That was after they had questioned me in the office.

Q. After they had questioned you in the office, is that right? A. After.

Q. After they had questioned you in the office, that was the time they had told you you were charged with being an accessory after the murder? A. That

was the time they took my picture and finger prints.

Q. Did they tell you that you were charged with being an accessory after the murder? A. Yes, sir.

Q. How many days was that after they brought you over to the Police Headquarters in Newark from Brooklyn? A. A couple of days after.

Q. And how many times had they been questioning you about a certain Tuesday night? A. I was questioned for about two weeks while I stayed there.

Q. You did not remember any particular Tuesday night the first time they asked you? A. I cannot remember whether he was in or out that Tuesday night.

Q. Now, after two weeks you were told that you were an accessory after a murder, weren't you? A. No, I was told after I was there a few days.

Q. And then they kept telling you that, did they? A. They did not keep telling me that, I kept it on my own mind.

Q. Now, do you remember the 7th of February when you were told that you were charged with being accessory and you were told that Tony had been identified by a taxicab driver? A. Yes, sir.

Q. Who told you that? A. Well, I can't remember who told me that.

Q. Do you remember that you were told that they had him right and that a man driving a taxi, who had driven him had identified him, do you remember that?

Mr. Fisch—I object to that on the ground that it is leading and that it is not cross examination. There isn't anything on the record that would warrant that.

The Court—You are assuming that there is something on the record that she was told that.

Q. Were you told by anyone on or about the 7th of February down at police headquarters— A. (In-

terrupting) I don't know just what the date was. But I know I was told.

Q. How long had you been down at police headquarters? A. Only a few days.

Q. And you were told after you had been at police headquarters a few days that you were charged with being an accessory after the murder, and, secondly, that Tony, your friend, had been positively identified by a taxicab driver as having been seen riding in that vicnity, the place where the murder was committed.

Mr. Fisch—Objected to.

The Court—Overruled.

A. Yes, sir.

Q. Were you told that? A. Yes, sir.

Q. Now about two weeks after you were down there, how many times after those two weeks did you see the gentleman I pointed out, Chief Brex? A. I seen him about three times.

Q. How many times did you see this gentleman (indicating Lieutenant Linarducci)? A. I seen him quite often.

Q. Were you told that this defendant was going to turn you over to the police and leave you, and desert you, and you would never see your child again?

Mr. Fisch—I object to that if your Honor please, there is nothing that would warrant such a question on cross examination.

The Court—It seems to me that you ought to ask this witness what she was told.

Q. Well, were you told that?

Mr. Fisch—I object.

The Court—Sustained.

Q. What else were you told by the police?

Mr. Fisch—Objected to.

Witness—I was told that if I wasn't going to talk I would have my child taken away from me.

Q. You were told what? A. That if I did not speak what I knew I would have my child taken away from me.

Q. And were you frightened? A. Yes, sir.

Q. And was that when you began to remember about a Tuesday night at the suggestion of those people who were scaring you? A. That is the time I began to talk.

Q. And when you talked were you telling the truth? A. I cannot actually say it was the truth.

Q. Why? A. Because I was more like frightened into it than anything.

Q. You mean to tell me that you cannot say it was the truth because you are not certain as to the particular Tuesday they were talking about? A. I ain't certain.

Q. You were not certain on that day, were you? A. No, sir.

Q. And when you told me that you did not know whether what you told them is the truth or no it is because you are not certain it was that Tuesday night they were alking about and they got you to talk about, is that so? A. Yes.

Q. You don't know what Thursday or what Wednesday you purchased the Ledger, do you? A. Well, I don't know what date, but I know I purchased the Ledger.

Q. Now, you knew that this companion of yours was a pretty bad man, didn't you? A. Yes, sir.

Q. And when you read in the paper that a man looking like him was wanted by the police, did that frighten you? A. Well, it did in a way, yes, sir.

Q. Were you afraid that they might arrest him? A. Yes, sir.

Q. Did you read about this blue black overcoat? A. No, sir.

Q. Who did? Did you read about it in the paper?

Rose Tiffany—cross

Mr. Fisch—Now, if your Honor please, I submit that there is a question on the record that is unanswered?

The Court—Yes, sir, the question, "Who did?"

Q. Who did read about it? A. Well, I was told.

Q. By whom? A. By Anthony.

Q. When he told you that did you become frightened? A. Well, I did, yes, sir.

Q. Now, he got that paper and he said, "they are looking for a man with a black overcoat and a slouch hat and that is what I got," and you said, "Well",—what did you say to that?

Mr. Fisch—I object to that if your Honor please, that is not the testimony at all and that is not what the witness said.

Mr. D'Aloia—Let us find out. This is cross examination.

Mr. Fisch—I know it is cross examination, but counsel has no right to testify.

The Court—Read the question.

(Question read.)

Mr. Fisch—I object to that, if your Honor please. That is not the testimony.

The Court—What is it, as you recollect it?

Mr. Fisch—As I recollect it, the defendant had said that he read in the newspaper a description of a man answering his description, a short Italian, and there wasn't anything said about her saying anything, regarding a dark coat or a slouch hat—

The Court—Suppose you ask her what he did say about it.

Q. What did he say to you? A. He told me there was a piece in the paper answering a description of a

man who was working the section and it said about a dark coat and a gray hat.

Q. There was a description in the paper of a man who was working in some section, and what else? A. The description was a man wearing a dark coat and a gray hat.

Q. What did you say when he said that? A. Well, I got frightened.

Q. Well, now, what did you say, what did you suggest, if anything? A. I suggested that it would be better for him to go to another place until everything cooled off.

Q. You suggested it would be a good thing for him and you to go to another place, is that right?

Mr. Fisch—She did not say anything about herself, she said about him.

Q. Well, did you include yourself in the going away? A. Well, I included myself after I had spoken to the landlady.

Q. And is that what caused your fright, is that what caused you to tell him that it would be a good thing to go away from there? A. Yes, sir.

Q. Now, tell us with regard to this episode which you have described the cutting up, was that coat a new one or an old one? A. Well, he had it quite awhile.

Q. You would not call it new, would you? A. No.

Q. What? A. No, you would not call it new.

Q. And who suggested that it be cut up and burned?

Mr. Fisch—I object to that. There has not been any testimony that anybody suggested it.

Q. Well, while you were frightened did you say anything about it? A. Well, I suggested that it would be better to do something with the coat, because

I had a letter from my sister that there was a certain trunk with clothes in it.

Q. Some time before you were arrested in Brooklyn, about a month or so, you had received information from your sister that the police had gotten a trunk of yours?

Mr. Fisch—I object to tht. There is a lot in that question that is not in the testimony at all, sometime before, about a month or so. Now, there is not anything in the testimony about that.

The Court—Sustained.

Mr. D'Aloia—Now, she just told us that she suggested something.

Q. Now, what was it that your sister told you about the trunk?

Mr. Fisch—I object to that.

The Court—Sustained. What difference does it make? She said, "My sister told me something about the clothes being identified in the trunk."

Q. Whose trunk was it?

Mr. Fisch—I object to that I do not see how that is cross-examination.

The Court—I will sustain it.

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

Walter D. Van Riper, Judge.

Q. When was this trunk taken by the police which was in the possession of your sister?

Mr. Fisch—I object unless she knows of her own knowledge.

A. I do not know when it was taken, but I know my sister—

Mr. Fisch—Just a moment. I object.

The Court—She says, "I do not know when it was taken."

Q. Well, when did you find out about it with reference to New Year's? A. Well, I did not find out about it until Anthony come home and told me what my sister said.

Q. Well, how long was that after New Year's — where were you living in Newark when that happened? A. In Canal street.

Q. That was the same place you were living when you suggested getting rid of that coat, is that right? A. Yes.

Mr. Fisch—I object to that.

The Court—Sustained.

Mr. Fisch—All right. It has been answered.

Q. Now, do you know what Tuesday night it was that he went out, and you said shortly after seven o'clock? A. Yes.

Q. During that month of January, do you know what Tuesday night it was? A. Well, I cannot say whether it was a Tuesday night or what it was.

Q. Did you sign a piece of paper down at Police Headquarters after you had been detained down there for several weeks? A. Yes.

Q. And at the time you were asked to sign that paper, what was told to you?

Mr. Fisch—I object to that; that is entirely immaterial. This is not a proposition of a confession, or the offering of a paper.

Mr. D'Aloia—Now, your Honor will allow me an exception, because the Prosecutor walked up to the witness with a paper in his hand consist-

ing of several sheets and he has apparently read from that paper to put his questions to the witness.

The Court—Well, he has not asked the witness anything concerning the paper.

Mr. D'Aloia—I am not asking her whether anything was said to her at the time she signed the paper.

The Court—The ruling will stand.

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

Walter D. Van Riper, Judge.

Q. Do you know how long you were in there before you were asked to sign a paper? A. I know I was not there very long.

Q. How many weeks? A. No more than the first or second day.

Q. Did you sign it the first or second day, or did you sign it after a week or two? A. Well, I signed it the second day.

Q. Now, do you remember being brought into the chief's office down at Police Headquarters and you were placed behind this defendant, who was seated in a chair? A. Yes.

Q. Do you remember on that occasion you were crying? A. Yes.

Q. Do you remember on that occasion—who was the gentleman that was sitting at the desk you had to look at? A. Lieutenant Gannon.

Mr. D'Aloia—Is he in court?

Q. This gentleman (indicating)? A. Yes.

Q. Do you remember the position this man was in when you came in? A. Yes.

Q. And you remember where they placed you? A. Yes.

Q. And was he permitted to turn around?

Mr. Fisch—I object to that. I cannot see how that is material or cross examination.

Mr. D'Aloia—I asked Gannon about this yesterday.

Mr. Fisch—Yes, but it is not cross examination.

The Court—You are trying to show a circumstance under which she told the story to the police. It is not what she told the police. It is what she said here. The story that is being told here can be attacked.

Mr. D'Aloia—I am simply bringing out from that information that the Prosecutor has been asking that was elicited. Now, I have gotten thus far. She has described the manner in which they examined her. Now, I can have her describe every particular visit she made to this room where this man was.

The Court—The question is whether or not the story she is telling here is a truthful story, not what the police might have said to her to get her to tell the story.

Mr. D'Aloia—Yes. That is the point exactly.

The Court—Yes, but that is not the point you are trying to get. You are trying to get certain actions at police headquarters when they got her to tell the story down there.

Mr. D'Aloia—I will abide by your Honor's ruling.

Q. Let us go back to this night when you say he came back and he told you that he had been chased by the cops and that they, the cops, had fired at him

and he had fired his gun, he said he threw his gun into a vacant lot. Do you know what particular night that was during the month of January? A. Well, no, I cannot exactly say.

Redirect Examination by Mr. Fisch:

Q. What night was it with reference to the day when you were arrested? A. That is kind of a hard question to answer.

Q. Well, you know the night you were supposed to go to Massachusetts to get your child, and you were supposed to get the midnight train. A. Well, I did so much about that child that I cannot exactly say what night it was.

Q. Well, you know what night that was? A. Well, I might have told you Tuesday night and it might have been Tuesday night and it might have been a different night.

Q. Well, was it the same night that Tony came back with his eyes blood shot, was it that night? A. I cannot seem to remember.

Q. Well, was it the same week in which you were arrested? A. Well, before we got arrested, we were arguing always about the child.

Q. Well, you were arrested on a Friday? A. Yes.

Q. Now, Thursday, was when you bought the Newark Evening News? A. Around that.

Q. Well, it was the day before you were arrested, wasn't it; is that right? A. Yes.

Q. And on Wednesday was when you went out and bought the Ledger, wasn't it? A. Yes.

Q. And it was the night before that Tony came back with his eyes blood shot?

Mr. D'Aloia—I object to that as leading.

The Court—It is merely a repetition of what she said before. I will permit it.

Q. Was it? A. I cannot seem to remember whether it was or not.

Q. You were arrested on Friday, is that correct?
A. Yes.

Q. It was on Thursday that you bought the Newark Evening News, wasn't it? A. Yes.

Q. And it was on Wednesday, the day before, that you went out and bought the Ledger, was it? A. Yes.

Q. And did you buy the Ledger on the morning after Tony came home with his eyes blood shot and said, "If it was not for you and your damn kid, things would be different?" A. I cannot seem to remember.

Q. Why not? A. Because I know I usually bought the paper every day.

Q. Yes, but the day—the night when he made that remark to you. A. Well, it was not the first time that he made the remark to me.

Q. Well, was that the night you were supposed to go to Massachusetts for your child on the midnight train?

Mr. D'Aloia—I object to that, because she stated on cross examination that one Sunday they had an argument about the child and she got $300 in cash.

The Court—She said they were arguing all the week about the child. I will allow it.

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

Walter D. Van Riper, Judge.

Q. Wasn't that the night you were supposed to go on the midnight train for your child? A. Well, no. I was supposed to go on some midnight train, but the night we did not settle. I was not sure whether he was going to let me go or not.

Q. Well, wasn't that the night you wanted him to make arrangements to take you to the train that you

testified on your direct examination? A. I cannot seem to remember whether that was the night or not.

Q. Why not? A. Well, I just cannot seem to remember.

Mr. D'Aloia—I object to that last question.

The Court—Allowed.

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

Walter D. Van Riper, Judge.

Q. Well, you told us about it before, didn't you? A. Well, I know, but we had argued all week about the child and he did not have his mind settled when I was going.

Mr. Fisch—I ask that that be stricken out as not responsive.

The Court—Strike it out.

Q. You told us about it before, didn't you; didn't you? A. I told you about that Tuesday night.

Q. Yes, about that Tuesday night, and was that the Tuesday night—just the Tuesday night preceding the Friday you were arrested; was it the Tuesday night of the week that you were arrested? Well, now, that is a simple question. Can't you answer that? A. It is a simple question, but I cannot seem to understand it.

Q. What is there about the question that you cannot seem to understand? A. Well, I answered you before and said that we had not made up our minds whether I was going on that midnight train, I was not sure whether he would let me go on that midnight train.

Q. What night? A. Tuesday night.

Q. And was that the same night he came home with his eyes blood shot and the night he had gone out put-

ting the gun in the front of his pants? A. I am kind of mixed up on that.

Q. What are you mixed up about? A. Well, all I have been hearing is Tuesday night, Tuesday night.

Q. I don't care about whether it was Monday, Tuesday, Wednesday, Thursday or Friday. I am asking you whether that is the same night that he went out and put the gun in his pants, in the front of his pants. Answer that question, please. A. I am trying to think. Well, the only way I can answer it, I cannot seem to remember whether it was that Tuesday, that I was supposed to go or what night it was.

Q. Now, irrespective of what night you were supposed to go, you went to New York on Friday, didn't you? A. Yes, sir.

Q. And was that the day he burned the coat, Friday? A. Well, as far as I can remember.

Q. Now, the day before that you had bought a Newark Evening News, hadn't you? A. Yes, sir.

Q. And the day before that you had bought a Ledger, hadn't you? A. Yes, sir.

Q. Now, wasn't it the night before that that Tony had gone out and put the gun in his pants? A. Well, Tony goes out so often I can't say whether it was that Tuesday night or not.

Q. Well, did you see him go out often and put a gun in the front of his pants? A. No, sir.

Q. What is that? A. No, sir.

Q. Well, I am talking about the night that you saw him put that gun in the front of his pants. A. Well, I am trying to remember it, but I cannot seem to remember whether it was that Tuesday night or what night it was.

Q. Well, you did not have any difficulty in remembering it before on direct examination, did you, when I asked you about this before this morning while you

were on the witness stand this morning; you did not have any difficulty in remembering that, did you? A. No, but I had a lot of leading answers.

Q. What leading answers? A. Well, to help me.

Q. What helped you? A. That Tuesday night, all I have been hearing is about that Tuesday night.

Q. I am not asking you about any particular day in the week. Now, I am taking you back from Friday, that was the day on which you were arrested; you haven't forgotten that, have you? A. No, I haven't forgotten that.

Q. On the day before that, you remember the day before that you were arrested, don't you? A. Yes, sir.

Q. You remember the day before that?

Mr. D'Aloia—Now, if your Honor please, is this redirect examination, proper redirect?

The Court—I don't know if it is proper, but it is redirect.

Mr. D'Aloia—I don't think it is proper, and I object to it.

The Court—I think it has been covered quite sufficiently.

Q. Now, then, did Tony ever give you $300? A. Yes, sir.

Q. When? A. Between that Sunday, or the Monday before we were arrested.

Q. Did he give you $70? A. Yes, I had $70 besides.

Q. When did he give you $70? A. I can't say just when he gave it to me, but I know I got it.

Q. When was that?

Mr. D'Aloia—If your Honor please, that has been answered, she said, "I can't say."

The Court—I assume the Prosecutor is asking

her if it was with reference to the $300. Was it before or after he gave you the $300?

Witness—I cannot just remember whether it was before or after, but I know I had $70.

Q. Well, if it was before, how long before?

Mr. D'Aloia—I object to that, if your Honor please, because it is absolutely immaterial and incompetent whether she got the $300 or $3000.

The Court—She says she doesn't remember whether it was before or after.

Q. Well, whether it was before or after, how long a time elapsed, how much time intervened between the time you got the $300 and the time you got the $70?

Mr. D'Aloia—If your Honor please, the question is unfair. She cannot tell whether it was before or after, so how can she tell how long it was before or how long after.

The Court—She might be able to tell.

Witness—I don't remember.

Q. When did you get the $70?

Mr. D'Aloia—There is the same question, if your Honor please, and I object to it.

The Court—Sustained.

Q. How long before you were arrested was it that you got the $300?

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

The Court—She said Sunday or Monday, isn't that what you said?

Witness—Yes, sir.

Q. And how long before you were arrested that you got the $70? A. I cannot seem to remember.

Q. You don't remember whether it was a few days or a month or a week?

Rose Tiffany—recross

Mr. D'Aloia—I object to that, he is cross examining his own witness.

The Court—Sustained.

Q. So, you say you got the $300 on the Sunday or Monday before you were arrested? A. Yes, sir.

Q. What did you do with it?

Mr. D'Aloia—I object.

The Court—Sustained.

Q. Now, you were asked about these pistols at Orchard street. What became of those pistols?

Mr. D'Aloia—Objected to.

The Court—Overruled.

A. They were taken away from him.

Q. By whom? A. By the police.

Q. And did you ever see those pistols after you left Orchard street? A. No, sir.

Q. I show you some photographs and ask you if you can tell me which one of those photographs represents the stove in which you saw Tony put a part of a coat?

Mr. D'Aloia—I object—I don't think it is very important, but it is not proper redirect examination.

A. That end one.

Mr. Fisch—Referring to Exhibit S-19 for identification.

Recross Examination by Mr. D'Aloia:

Q. Now, was it the coat or the inside of the lining or the lining of the coat that you saw him put in there?

A. It was the inside of the lining.

Carl Lindsley—direct

CARL LINDSLEY sworn in behalf of State.

Direct Examination by Mr. Fisch:

Q. Where do you live? A. 190 Bloomfield avenue, Montclair.

Q. What is your business? A. Operator for the Public Service.

Q. What are you operator of? A. Trolley car.

Q. And were you an operator of a trolley car on the 31st of January? A. I was.

Q. Of this year? A. Yes.

Q. And what line did you operate a trolley car on? A. On the Bloomfield line.

Q. And did you have a trip on the evening of January 1st? A. Yes.

Q. Well, what time did you leave the Terminal Building? A. Well, I made about three trips.

Q. What is that? A. I made three trips.

Q. Well, now, what time did you leave the Terminal Building on these three different trips? A. The first time was, I think, was 3:07.

Q. In the afternoon? A. Yes. I am not certain. Mr. Johnson has the time sheet.

Q. Well, have you got the record; did you make a record of the time you left? A. I made a record, but you turn that in.

Q. Is that record here? A. Mr. Johnson, the stationmaster, has it.

Q. Is this the record? A. That dope sheet.

Q. Can you tell us by referring to that record what time you made the trip out of the Terminal Building? A. I cannot say the first trip. The second one was 5:56.

Q. Does that mean 5:56 in the afternoon you left the Terminal Building? A. 5:56 P. M. left the Terminal Building.

Q. What was the length of your trip, you went from

the Terminal Building to where? A. To Caldwell, New Jersey.

Q. Did you go up Bloomfield avenue? A. Yes.

Q. Did you go apast the Hudson Tubes? About what time was it that you reached the Hudson Tubes? A. About three or four minutes after six.

Q. Now, did you take on any passengers there; do you remember any of the passengers you took on? A. Yes.

Q. Do you see any of those passengers, any one of those passengers in the court room? A. This fellow here.

Q. Which fellow? A. Boccadoro, whatever his name is.

Q. The man standing up now? A. Yes.

Mr. Fisch—Indicating the defendant.

Q. What attracted your attention to him? A. Well, there were four of them. The car was stopped halfway down from the Hudson Tubes where the Yellow Cab turned and there is generally three or four run down there and want to get on the car. Well, if you stop to let them on you have got to stop at the regular stopping place and let them on and you lose time and block traffic, and I did not let them on at all, and this fellow was standing before the front of the vestibule window and he gave a sarcastic look and I noticed him in particular. He was right in front of me standing there and I pulled the car up. I pulled up even with the road there, that is, the tubes, and he was one of the last ones to get on the car, and all the seats were filled then; in fact, they were almost filled when I left the Terminal. He was standing right near the front holding on to the second or third strap on the left side.

Q. Where was that with reference to where you were? A. Well, about six feet behind me, I should say.

Q. And did you continue to observe him? A. Yes.

Q. What made you continue to observe him; what was it that made you continue to observe him? A. Well, I thought he was going to say something when he got on the car.

Q. And did he continue on the car? A. Yes.

Q. Until what point? A. Belmont avenue and Bloomfield.

Q. That is the Silver Lake section? A. Yes.

Q. Where was that with reference to Ampere Parkway and Bloomfield avenue? A. That is two or three blocks below Ampere Parkway.

Q. That is, you get to Belmont avenue and two or three blocks later on, further west, you get to Ampere Parkway, is that it? A. Yes.

Q. And did you observe him when he got off the car? A. Yes.

Q. What was there that caused you to observe him when he got off the car? A. Well, he was standing there and when I looked back to see if there was anyone going off or coming toward the front he was looking in my direction, so when he got off I thought he would make some remark. I just noticed he got off.

Q. And he got off at Belmont avenue and Bloomfield avenue? A. Yes.

Q. What time was that? A. It must have been 6:25.

Q. Twenty-five minutes past six? A. Yes.

Cross Examination by Mr. D'Aloia:

Q. How many people got on at the tubes? A. Well, fifteen or twenty.

Q. Do you know whether the next to the last was a woman or a man? A. The last three were men.

Q. What was the second last three? A. I could not say.

Q. How many women got on? A. I could not say that.

Q. How many others got on? A. I could not say that.

Q. How many passengers did you have on your car when you came to the tubes? A. I did not take any account of that.

Q. How long after that night were you first talked to about this matter? A. First talked to?

Q. Yes. A. About ten days.

Q. How many passengers had you carried that you took on at the tubes during the ten days? A. I could not say.

Q. How many people got off at Belmont avenue? A. Three.

Q. Have you ever seen anything of the other two since that night? A. I could not say.

Q. If you were to see one or the other two would you know him or her or them? A. I could not say that.

Q. Now, ten days after this night who was it that talked to you? A. That talked to me?

Q. Yes. A. Why, it was ten or fourteen days later that Lieutenant Shippen—

Q. Which is it, ten days later or fourteen days later? A. Well, he has the day.

Q. Don't you recall, we are depending on your memory, your memory is what the Prosecutor depends on, was it ten days later or fourteen days later? A. Fourteen days later.

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

Q. And you were not sure when you told me ten days, were you? A. I did not say I was sure.

Q. But you said ten? A. I said about ten.

Q. Now you say it is fourteen? A. Yes, sir.

Q. Now you are sure about it? A. Yes, sir.

Q. Where did you see Shippen fourteen—what day of the month of February was it when you saw Shippen? Then, we will get rid of his uncertainty as to

the number of days. A. I think it was the 13th.

Q. The 13th of February. Do you remember the day of the week? A. It was either Tuesday or Wednesday.

Q. Aren't you sure of that? A. No, sir.

Q. Where were you when you saw him? A. Up in the station master's office of the Montclair car house.

Q. And he asked you questions, didn't he? A. Yes, sir.

Q. What did he ask you to do? A. He had some pictures there.

Q. And how many did he have? A. Three.

Q. Three pictures? A. Yes, sir.

Q. You looked at them? A. Yes.

Q. Did you recognize anybody? A. Yes, sir.

Q. Well, now, these pictures, they were not full length pictures, were they? A. Yes, sir.

Q. Standing up? A. Yes, sir.

Q. Legs and all? A. Yes, sir.

Q. Clothes on? A. Yes, sir.

Q All men? A. The same man, three views.

Q. And when you said three pictures you had three pictures of one man shown to you, is that right? A. Yes, sir.

Q. And Shippen then asked you if you recognized that man? A. He did not only ask me, he asked all the operators up there.

Q. He asked you that, didn't he? A. He did not ask me in particular.

Q. You did not answer yes, did you? A. After I looked the pictures over.

Q. Yes, what did you do? A. I told him I had him as a passenger in my car.

Q. When? A. Two weeks before that.

Q. Who mentioned the two weeks before that? A. No one.

Q. When Shippen showed you the pictures and you

said that man was a passenger in your car two weeks before. A. Yes, sir.

Q. And did you remember then what night of the week it was? A. No, sir.

Q. You don't know whether you saw that passenger on Tuesday night or on Wednesday night or on Friday night, do you? A. Well, the run that I had, I only had the run at that time—

Q. Just a minute—

Mr. Fisch—He is answering the question.

The Court—Let him answer.

Mr. D'Aloia—He is answering my question.

The Court—He has not finished his answer. Go ahead.

Witness—Two weeks before that time, within about five days, I only had one run that came to the Terminal around the Hudson Tubes around that time of the day.

Q. That is a pretty crowded time of the day, isn't it? Six o'clock in the evening around the Tubes, from the Terminal out into the city? A. Yes, sir.

Q. And you are pretty busy, you are the operator, you take the fare and you make the change and you start the car and you stop it and you observe the signals, don't you? A. Yes, sir.

Q. Now, this day, the 13th of February, when Shippen came up with the three photographs and you looked at them you remembered that he had been a passenger on your car, is that right? A. Yes, sir.

Q. But you did not remember the night, did you? A. I did not.

Q. You did not remember whether you had seen him on Tuesday or on Monday or on Wednesday or on Thursday or on Friday or on Saturday, that's right, isn't it, when you saw those pictures? A. I knew it was either Monday or Tuesday.

Q. Now, how do you fix that? Certainly after you

saw pictures, at which time you did not remember the night, what was it that happened after that that got you to say it was a Tuesday? A. I looked at the work book to see what run I had.

Q. You looked at what? A. At the work book.

Q. Now, the work book was the same on Wednesday night as it was on Tuesday night, wasn't it? A. No, sir.

Q. Why not ? A. Probably because you have a different run out each day, different hours.

Q. So you depended upon the work book to simply indicate what runs they were at the time, is that right? A. Yes, sir.

Q. Now, were you taken anywhere after that, after you saw the pictures? A. Two days later I went down to see if I could identify the man.

Q. Where did you go? A. In police headquarters, Newark.

Q. Where? A. In Newark.

Q. What day of the month was that? A. The 14th or the 15th.

Q. Now, which is it, now you see we are testing your memory, now, which was it, the 14th or the 15th? A. I can't say.

Q. And when you got down there to police headquarters who had the pictures? A. Who had the pictures?

Q. Yes, who had the pictures?

Mr. Fisch—If your Honor please, I object to that. There is no testimony that anybody had the pictures.

The Court—Sustained.

Q. Who had the pictures you had seen, if you know? A. There were no pictures down there.

Q. How long did you have those pictures in your possession the two days before or the day before?

Mr. Fisch—I object. There is no testimony that the witness had any pictures in his possession at all.

Q. Well, were they shown to you? A. Yes, sir.

Q. And when they were shown to you did you pick them up, did you look at them? A. Yes, sir.

Q. And how long did you scrutinize them? A. About three or four minutes.

Q. Now, you gave them back to Shippen? A. They were laying on the table.

Q. And when you went down to police headquarters subsequent to that time did you know who had the pictures? A. I do not.

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

Q. And then the man was brought out down there, wasn't he? A. Yes, sir.

Q. The man alone? A. Yes, sir.

Q. Before the man was brought out did you have any conversation with anybody down there? A. Well, there was—

Q. Did you have any conversation down there? A. Yes, sir.

Q. With whom? A. With about four other operators that thought they had seen him.

Q. What are their names? A. I don't know what part of their names were, they were from different car houses.

Q. And how long did you talk to them? A. Well, we were sitting there until this fellow was brought out.

Q. And this fellow was brought out all alone, wasn't he? A. Yes, sir.

Q. How many police officers did you talk to before he was brought out? A. Lieutenant Gannon.

Q. And what did you say to him and what did he say to you? A. Why, he asked my name and what day I thought I had seen him.

Q. What is that? A. He asked me my name and what day I thought I had seen him.

Q. And this was before you had seen this fellow come out? A. Yes, sir.

Q. He asked you what day you thought you had seen the man? A. Yes, sir.

Q. What answer did you make? A. I told him about two weeks before I was down there.

Q. And you did not give him any night, did you? A. No.

Q. You did not give him any particular night, did you, in that conversation? A. I told him it was a Monday or a Tuesday night.

Q. Now, first you answered my question and you said you told him it was about two weeks and when I kept at you and asked you did you give him any nights, you answered and said, "I told him it was a Monday or Tuesday night."

Mr. Fisch—I object to that. There was not any change at all.

The Court—No, there was not any question of changing. You asked him questions in different forms. You first asked him if you told him any night.

Mr. D'Aloia—My recollection is that he said, "I do not remember what I said to him." I am asking him what the conversation was with Gannon. Now, he must tell me what it was and he proceeds, and Gannon said, "When do you think you saw him," and he answered, "I think I saw him two weeks ago."

The Court—What is the pending question?

Mr. D'Aloia—There is now no question at all. I am going to frame one.

Q. What else did you say to Gannon? A. I don't know what else I said to him.

Q. Try to remember; that conversation is just as important to use as this testimony you are giving. What did you say to Gannon, and what did Gannon say to you? Now, we have parts of it. A. Gannon asked me how the man was dressed.

Q. And did you tell him? A. I did.

Q. What did you say? A. I told him he had on a dark blue overcoat.

Q. What else? A. Soft white shirt.

Q. What else? A. Gray hat and a gray suit.

Q. Now, was that after you had told him you thought it was two weeks before that time that you were talking with him or before? A. Repeat that.

Q. What did you tell Gannon first? Did you tell him about the clothes first, or did you tell him about the time you thought you saw him? A. I told him when I thought I saw him.

Q. Then he asked you how he was dressed? A. Right.

Q. And then you described that dress? A. Right.

Q. Now, did you see a man with a blue overcoat down there and a white hat? A. Gray hat.

Q. Down at police headquarters? A. I didn't.

Q. Then you didn't see anybody that looked like the man as far as dress was concerned that you thought you had seen two weeks before? A. I didn't.

Q. And they brought this man out? A. They did.

Q. And who was in the room when he was brought out? A. There were several men in there.

Q. How many? A. About eight or ten.

Q. Who were they? A. I suppose they were officers.

Q. Eh? A. I suppose they were officers.

Q. Do you remember one of them? A. Lieutenant Gannon was in there.

Q. Well, who else was there? A. How do I know?

Q. Well, you were in that room? A. I don't know their names.

Q. Well, pick them out in here. A. I don't see them.

Q. You don't see them? A. No.

Q. Do you see Gannon here? A. I do.

Q. Do you see anyone else here? A. He wasn't there.

Q. Do you see anybody else beside Gannon who was there? Lok on this side of the room. A. I don't see anyone else.

Q. Do you know Shippen of Bloomfield? A. From seeing him that time I do.

Q. Was he down there at Police headquarters? A. No.

Q. Who else was down at Police headquarters you had seen before? A. I told you I don't know.

Q. Is Mr. McDavit here? Do you know McDavit? A. Not his name.

Q. How many stops did your car make between the Bloomfield canal bridge and Belmont avenue? A. I could not say.

Q. How many people got off at 4th street? A. I could not say that.

Q. How many got of at 5th street? A. I could not say.

Q. Do you know where the water tower is at 6th street? A. I do.

Q. How many people got off at that corner? A. I could not say.

Q. How many people got off at Ampere Parkway? A. I could not say.

Q. How many people rode on through to Montclair with you? A. I don't know.

Q. How many passengers did you have registered on that trip? A. You will have to see the day card.

Q. Well, can't you recall more or less? A. No.

Q. Were there sixty passengers all the way up? A. No.

Q. How many did you have on at the tubes? A. I don't know.

Q. You had never seen this man before? A. I had not.

Q. And you had not seen him between the interval or between the time you say you saw him on your car and the time you saw him at headquarters? A. I had not.

Q. And isn't there a possibility of your being mistaken? A. I don't think so.

Q. But there might be? A. No.

Q. You do not think so; are you sure about that? Now, in saying that, aren't you a little bit doubtful? A. I am not.

Q. Oh, you are sure it was five minutes to six when he boarded your car? A. Three or four minutes after six.

Q. And he alighted therefrom about twenty minutes thereafter? A. Between twenty and twenty-five minutes after six.

Q. Now, at the Belmont avenue stop and Bloomfield avenue, that is an Italian section? A. Yes.

Q. A lot of Italians, dark-skinned, get off, don't they, usually at that hour? A. No.

Q. Well, the next night did anybody get off there? A. I didn't have the run the next night.

Q. Was this the only time you had the run? A. The only time within two or three weeks.

Q. Well, any time after that didn't you know that there were dark-skinned individuals got off at Belmont avenue? A. Sure, there always is.

Q. Short and dark at that particular spot, that is so, isn't it? A. Yes.

Q. Do you think you would recognize anybody that got off there two or three weeks after this night? A.

If I had taken notice of them before they got on I could.

Q. Now, down at headquarters this man was brought in for you to identify; how many people had a hold of him, if any? A. Two men.

Q. Eh? A. Two men.

Q. Had a hold of him? A. That is right.

Q. What was said by them, by the men who were holding him? A. Nothing was said the first time.

Q. Oh, there was a second time, is that right? Why weren't you certain the first time? A. I was not certain which night it was.

Q. Let us see! You saw him the first time and then you asked to see him again? A. No. I didn't ask, the first time I saw the man I was almost positive that was the man and he asked me what run I had, and I told him the only way I could be sure was by looking at the work book, so I went back and got the work book and the runs and the hours.

Q. Both times did they show you this man? A. Well, they were showing him to some other fellows the second day.

Q. Well, you saw him the second time? A. I did.

Q. Who were the other fellows, operators? A. They were.

Q. On the Bloomfield line? A. Lake street, crosstown.

Q. Well, now, you had identified him, hadn't you? A. I had.

Q. And you had picked out your run? A. I had.

Q. And you had fixed the time? A. I had.

Q. Do you know what the necessity was for the other operators being examined?

Mr. Fisch—I object to that.

Q. Let's see. Do you mean to say that the second

time you were down there there were other operators that were asked? A. I don't know what they were asking.

Q. Do you know what they were there for? A. I don't.

Q. You were talking with them? A. The first day I was.

Q. They were there for the same purpose you were?

Mr. Fisch—I object.
The Court—Sustained.

Q. Now, the second time you saw him, too? A. I did.

Q. Was he held by two or three detectives at that time?

Mr. Fisch—I object to that.
The Court—I will permit it.

A. I think there were two men holding him.

Q. How many men held him the first time? A. There were two, I think.

Q. Eh? A. Two.

Q. Was it the second time? A. Two.

Q. There was not any line-up, was there, or seven, eight, ten, fifteen men, and you were asked to pick out the man you were there to identify, were you? A. I wasn't.

Q. There was no lineup neither on the first or second occasion? A. No.

Redirect Examination by Mr. Fisch:

Q. You had identified the picture, had you not; you recognized the picture when it was shown to you up at the car barns? A. Yes.

Q. And then you came down and identified the man himself? A. Yes.

Q. And after you identified the man, was that when

it was you went to search your records to make sure of the date? A. Yes.

Q. And when you discovered your records, were you sure of the date? A. Yes.

Q. What was it? A. It was Tuesday, January 31.

Recross Examination by Mr. D'Aloia.

Q. I ask you what was said to you when those two officers held him? A. They didn't say anything. The second time they said, "Tony, do you recognize any of these men."

Q. They asked him did he recognize you? A. No, those men. He said, "I have seen a lot of people I don't know."

Q. Was that all that was said? A. That was all he said.

Q. And any time you made those two visits at headquarters did those two men let go of him? A. I do not think they did.

Q. Well, what is your memory? A. Well, I know they did not, they held him and turned him around so you could get a view of his profile, his face and his back.

Q. Just as the pictures you had been shown a couple of days before? A. They turned him and walked him across the floor and turned him around two or three different times.

Q. And did they put him in the position he was in on those photographs that were shown to you? A. I never took any notice.

Q. They had a light hat on him that you had told Gannon the man you were there to identify wore that night, didn't they? A. Yes, sir.

Q. They had the dark blue overcoat on him that you had tod Gannon the man you saw on your car was wearing that night, didn't they? A. No, sir.

Q. What kind of a coat did he have on? A. He had on a coat, not an overcoat.

Q. A black coat? A. I think he had on a gray suit.

Q. That was subsequent to the night on your car, the night on your car you were positive and now you say you did not know any more at police headquarters.

Mr. Fisch—I object to that if your Honor please. He did not say he didn't know any more.

The Court—Sustained.

Q. Now, at police headquarters, what did he have on? A. I think he had on a gray suit at headquarters.

Q. Are you sure of it? A. I did not make any particular note of it.

Q. Then, you are uncertain of it, aren't you? A. I know, but he didn't have an overcoat on at headquarters.

Q. What was the color of his suit? A. Kind of grayish brown.

Q. Are you sure of that or do you think he had it on? A. I am sure of it.

Q. Then, it is true you are not sure of the manner in which he was dressed although you are sure of the manner in which he was dressed the night on the car? A. Yes, sir.

ALBERT E. EDEL sworn in behalf of the State.

Direct Examination by Mr. Fisch.

Q. Dr. Edel, you are the County Chemist, are you? A. I am.

Q. Analytical chemist? A. Yes, sir.

Q. How long have you been an analytical chemist?

Mr. D'Aloia—We admit his qualifications.

Q. Did you receive a package of some ashes and material from Lieutenant Gannon? A. I did.

Q. When? A. On a Saturday. I have my dates here, February 4th.

Q. Of this year? A. This year, 1928.

Q. How many bundles did you receive, how many packages did you receive? A. At different times, I received one on February 4th and then some on February 4th.

Q. Now, the package that you received on February 4th, have you that package with you? A. This is the package (indicating).

Q. And what did you do with that package? A. I made an examination.

Q. What kind of an examination? A. Microscopic and chemical.

Q. Now, in making that microscopic and chemical examination of the contents of that package, what was the result of your microscopic and chemical examination? A. There was some material of textile nature wrapped around some carbonous material which had been destroyed by combustion.

Q. What does that mean in English, Doctor? A. Some material of textile nature was burned up and mixed with the ashes. Some cotton, probably burned, and small pieces of stiff material which we find in the lining of a coat, it is called buckram or something of that order.

Q. Have you those objects with you? A. I have them all here.

Q. Now, this is the object which you say is the buckram? A. Yes, here it is.

Q. And that is contained in this glass jar? A. Yes, sir.

Mr. Fisch—I offer it in evidence.

Mr. D'Aloia—I object.

The Court—Why?

Mr. D'Aloia—It has no connection, here are some ashes that contains certain materials in a

fire that may have been used between the 31st of January, 1928, and the 4th of February by possibly fourteen people. Things might have been burned in this stove night and day and morning and noon, and I don't know what they got out of that stove on the 4th of February, and unless the Prosecutor proves the condition of that stove from the 31st of January or the 1st of February up until the time the ashes were taken out it is incompetent and immaterial.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(The same is received in evidence and marked Ex. S21.)

Q. Now, then—A. (Interrupting.) This is the goods of the textile nature.

Q. You show me now a jar which shows the contents of a textile nature. A. Yes, sir.

Q. What do you mean by that? A. I cannot say exactly what it is, but it is partly destroyed, there is cotton material in that.

Mr. Fisch—I offer it in evidence.

Mr. D'Aloia—I object to that on the ground that there is no connection with this case, or that somebody other than the defendant put cotton materials in that stove.

The Court—The same ruling.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(The same is marked Ex. S22.)

Q. Now, you show me another jar, and what do you

say is the contents of that? A. Partly destroyed milk bottle cap marked "Grade B", a couple of matches, wire, and partly destroyed carbonaceous material.

Q. What does that mean, carbonaceous material? A. Well, coal, wood, anything that will form carbon when it is burned under complete combustion.

Mr. Fisch—I offer it in evidence.

Mr. D'Aloia—The same objection.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling o the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(Same is received and marked Ex. S23.)

Q. Now, these jars which have been marked in evidence and which you show me, are they all of the material which you examined, or are they specimens of the material? A. They are parts separated out of the material.

Q. And the contents of the box is the remainder of the material, is it? A. Yes, sir.

Q. That was turned over to you in this one package? A. Yes, sir.

Mr. Fisch—I offer the contents of the box.

Mr. D'Aloia—The same objection.

The Court—The same ruling.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(The same is received and marked Ex. S24.)

Q. Now, I believe you testified that the Lieutenant also brought you another package, is that right? A. Yes, sir.

Q. Have you got that package, the contents of it? A. I have the contents of it, it was wrapped in newspaper.

Q. What did you do with the contents of that package? A. Made an examination of it.

Q. And have you specimens of the package and also the remainder of the package? A. I have.

Q. Will you pease tell me what the specimens show? A. There was a large package and a small package. Thiss came marked "Lower part of stove". That contained unburned coal, wood, pieces of charcoal, many nails, staples, two hairpins and match sticks and on one of the match sticks the top was intact; particles of garbage, apple cores, onion skins, bologna skin and a part of a White Rose tea card advertisement.

Mr. D'Aloia—I move to strike that testimony out in the absence of any testimony tending to show who had put the onion skins and the potato peals in there.

The Court—I don't see how it is material.

Mr. Fisch—Except that an analysis was made of the contents of that stove and to show what it contained.

The Court—I know, but haven't you shown that part which is material to your case?

Mr. Fisch—I think that is true and if counsel objects I will withdraw it.

The Court—Of course, if there has been any error the error has already been committed.

Mr. Fisch—I will not press it.

Cross Examination by Mr. D'Aloia.

Q. Doctor, when did you receive those packages? A. The first one of those packages here on February 4, 1928.

Q. What time was it? A. In the afternoon.

Q. What time? A. Somewhere between two and three.

Q. Who brought them to you? A. I received them at police headquarters.

Q. You went down there to get them? A. Yes, sir.

Q. Who gave them to you? A. Lieutenant Gannon, Chief Brex and several other detectives were present.

Q. Now, you have done a great deal of analyzing, haven't you? A. Yes, sir.

Q. And some of it was liquor? A. Some of it, but very little.

Q. And you have done some for me? A. Oh, yes.

FRANK E. BREX sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. You are the Chief of Police, Deputy Chief of Police of the City of Newark? A. Yes, sir.

Q. And how long have you been connected with the Police Department? A. Twenty-four years this month.

Q. And are you in charge of Detective Bureau of Police Headquarters? A. Yes, sir.

Q. And you know the defendant, Boccadoro? A. I do.

Q. And did you have a conversation with him at Police Headquarters? A. I did, several.

Q. When? A. The first one was on February 8th of this year.

Q. And that was in your office at Police Headquarters? A. Yes, sir.

Q. Will you tell us, please, what that conversation was, what you said to him, what he said to you, and also before you begin to tell us about it, will you tell us, please, who was present? A. Why, present was the defendant in this issue, Mr. Boccadoro, Rose Tif-

fany, Lieutenant Gannon and Lieutenant Rowe, I don't know as to whether Linarducci was there at that time or not; that was in the afternoon, probably four or half-past four. I had this conversation with the defendant as the result of a conversation I had with Rose Tiffany.

Q. You had spoken to her first, had you? A. First, yes, sir. A nd Rose Tiffany was brought in and the defendant was brought in, and my desk is a flat top arrangement, about probably four or five feet in length and probably three and a half or four feet wide. I sat at the desk in the middle part of it and he sat to my left and Rose sat at the end of the desk, both facing each other. Just as they were both seated, my telephone rank and as I looked over I saw Rose Tiffany become very pale and her lips quivered. I asked her if she knew—

Mr. D'Aloia—Now, if your Honor please. The description of the tremor and the emotion of the woman seated at the end of this flat top desk, I move to strike that out.

Mr. Fisch—I think it is material.

Mr. D'Aloia—How is it material, how can anybody's emotions or anybody's paleness in any way affect us?

The Court—I will strike it out.

Mr. Fisch—It will be connected up, if the court please, with the conversation.

The Court—Go ahead with the conversation.

Witness—She was different that time—

Mr. D'Aloia—I object to that as a conclusion. The question on the record is, "What was the conversation you had with the defendant", if your Honor please.

The Court—That is the question.

Mr. D'Aloia—Now, we have not had a syllable of conversation, but a description in detail.

Mr. Fisch—I will reframe the question.

Mr. D'Aloia—Then I move to strike out all the testimony which was given in answer to the other question, not because it is not responsive, but because it is absolutely immaterial and incompetent.

The Court—I have struck it out for you.

Q. Chief, you say you had Rose Tiffany at one side of the desk—and this defendant at the other?

Mr. D'Aloia—I object to the question, because the question includes all the descriptive material which was put in and stricken out.

The Court—It certainly is proper to show how they were seated.

Q. Had you seen Rose Tiffany before that? A. I had.

Q. Alone? A. Yes, sir.

Q. That was not in the presence of the defendant? A. Yes.

Q. What, if anything, did you observe about Rose Tiffany when she was in the presence of the defendant on this day in question that was different from her appearance when you saw her and she was not in the presence of the defendant?

Mr. D'Aloia—I object to that.

The Court—I don't think it is admissible at this time, Mr. Prosecutor. Judge D'Aloia might make it admissible for you after he gets through cross examining.

Mr. Fisch—Then, your Honor sustains the objection.

The Court—Yes.

Q. Well, now, Chief, when they were seated there together, what, if anything, did you observe about the defendant? You say your telephone rang. A. My

telephone rang, yes, and I noticed he gave her a very severe look, stared at her, and she kind of bowed her head. I turned away after I had terminated the telephone call and I said, "Rose, do you know this man?" And she said, "Yes," and he kept glaring at her, and I said, "How long have you known him?" She said she had known him since she was fifteen or sixteen years of age, she was keeping company with, or part company with him simultaneously with being with her husband.

Mr. D'Aloia—I have the right to assume that Chief Brex is going to testify along the same lines as Detective Gannon testified yesterday. I enter my objection now. Now, there is a conversation he had with this defendant which the Prosecutor wants. Let us get right down to it. If there is anything competent that this defendant said to this witness, let us get that. I won't object to that if it has any reference to the affair on the 31st of January. Of course, it is competent, but if we are going to have a conversation about the past life of a woman in Massachusetts, I do not think it is material.

The Court—I do not understand that the motion is really directed to anything.

Mr. D'Aloia—No, sir. I just wanted to preclude the necessity of my getting up every few minutes.

The Court—Go ahead, Chief.

A. (Continuing) I asked her—she had not replied to me. I asked her as to whether she was living with him as man and wife and she said yes, and I asked her if she recalled the Tuesday of the prior week, and she said she did. I asked her what time Tony left that evening and she hung her head, she would not make no reply. He kept glaring at her all the while, and

she became pale. She was not pale when she came into the office and sat down, but after he kept glaring at her, she became nervous and shivered.

Mr. D'Aloia—I ask that that be stricken out, the fact that she became pale.

Mr. Fisch—I submit the witness has a right to testify what happened in the presence of the defendant.

Mr. D'Aloia—I know, but we cannot be bound by it.

The Court—I think I will admit it.

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

Walter D. Van Riper, Judge.

Witness—I asked her what time the defendant left home that afternoon, January 31, and she did not answer the question. I said, "You have told all this story, and, in fact, before you told me you were perfectly willing to tell all that was said."

Mr. D'Aloia— Iobject.

Witness—He was present.

Mr. D'Aloia—I know, but this is a perfectly contemptible, indirect way to get into the record a conversation which this witness had with a woman not in the presence of the defendant.

The Court—You said what is the matter. Did she reply to that?

Witness—No, she didn't, and then I turned my attention to the defendant. I said, "You dirty, low, contemptible whoremaster;" I said, "You gave her the Comora eye and you frightened her to death." I said, "Before you came here, she recited the whole story, and since you came in she has become speechless," and I said,

"You have her frightened to death, and that is why she is not talking now," and then I broke up the interview and later on I had a talk with Rose and as a result of what she told me, then we brought in the defendant. That was about eight or half past eight, and at that time Rowe and Gannon and Linarducci were present. We kept Rose about six or eight feet away from the defendant at that time. His chair was somewhat facing me and as I asked her what time the defendant left the Tuesday of the week before, and she said, "He left home that night about six or half past six." asked her, "Did you notice him taking any gun with him," and she said, "Yes." I said, "Where did he put the gun?" she indicated down at his pants. I said, "The belly part of his pants?" She said, "Yes," and I said, "What kind of a gun was that?" and I pulled out a small automatic I had, and she said, "No, not that kind." She said it was a silver gun with a black handle, and it had sort of a catch on the handle. I said, "Did he have any gun like this," and she said, "Yes, but it is bigger," maybe not an automatic, the type like I have.

Mr. D'Alcia—I move to strike that out.

The Court—Yes.

Witness—Meaning like the gun I had, only larger.

The Court—Tell us just what she said about that.

Witness—She said, "It is a gun like that, but bigger." I was showing her an automatic revolver.

Q. And she said that he had one like that but bigger? A. But bigger.

Q. Beside the silver one? A. Silver one, and I asked her where he kept the big automatic, and she said, **under the mattress.** She said he left that Tuesday evening. I said, "Do you recall the night it was last week?" She said, "Yes." I said, "Do you recall where you were the day before?" She said, "Yes," Tuesday they were home, and she recited about Wednesday they were home all day and in the evening going to the movies, and Thursday being home and about Friday going to Brooklyn. The follow up conversation after she related the fact about the gun, she said she remained at home and he went out about six or half past six and he came home, she thought, around half past nine or ten o'clock. I said, "Is that the usual time," and she said, "No, he usually came home about eleven or half past." "Were you in the rooms when he walked in?" She said, "No, I was upstairs, and I came down, and he had his overcoat off and he was over by the sink brushing it, and I asked him what was the matter, and he didn't say anything, and I said, "What is the hatter," and he said, "If it had not been for you and that God damn kid, it would not have happened." She said, "What do you mean". He said, "I was up in Montclair and I had a pretty close call and the cops were after me," and I asked her did she mention anything to him about the gun and she said, "Yes, he threw the gun away he had." I asked her in his presence how long she remembered he had that gun, and she said she thought it was around New Year's, and he brought it home and cleaned it and he, in fact, favored that gun, and she said they went to bed and she said it was a practice for them to lie in each other's arms, but this night he would not lie in her arms, this night he would not have it, he turned and tossed to the rear of the bed and he was moaning, and she asked him what was the trouble and he said, "Never mind, if it was not for you and that God damn

kid and supporting the pair of you, this thing wouldn't have happened.'' She said that he had given her that morning either $65 or $70 for the purpose of going to Lawrence, Mass., for the purpose of seeing her mother and child, and that the next morning she went out and got the Ledger for him, and they kept in the house all day, and that evening they went out to the movies and the next day she went out and got the News for him. I cannot recall whether it was the Ledger or News, but after he read it, she wanted it, and he said, ''No, don't read it, it will only excite you and get you upset and nervous.'' and she said she saw him put the paper under the stove; that on Thursday or Friday morning he mentioned the fact to her that he had read the paper, that a fellow about his size or description was wanted, and she came into the kitchen either Thursday night or Friday morning, and saw him cutting up a coat and put part of it in the kitchen stove and taking part of it down to the basement stove. I said, ''Do you recall what he cut that coat with?'' She said. ''A manicure scissors.'' I said, ''I think that is impossible, a heavy material like that.'' She then produced the scissors, which are the small manicure scissors, and we tested it out and it was possible to cut the seam of another overcoat.

Mr. D'Aloia—Was this all in the presence of the defendant?

Witness—In the presence of your defendant there.

Q. Was this the set which she produced and the scissors? A. This is it. Lieutenant Gannon made an indenture there in my presence.

Q. That is, you marked it? A. Not, me, but I had Lieutenant Gannon do it. I questioned her whether it was not a small razor and she said no, and I asked her about the stoutest razor of the two, and she said no.

Q. Then what did you say? A. I said, "Tony, now, here is a girl who, in my opinion, loves you; you have no trouble with her; she is the last girl on earth that would lie about you; what have you to say about this?" during this time he remained silent. He turned to her and said, "Do you think I really killed Thompson?" and she said, "No, Tony, I don't," and she leaned forward and said, "Tony, why don't you tell where you were Tuesday, what difference would it make; you have told them where you were on Monday, Wednesday and Thursday, why don't you tell them where you were on Tuesday?" He said, "Well, you people made her say what you said." I said, "You dirty, low, contemptible liar, that is what you have learned in the last six or seven years or the ten years since you have been in prison in America."

Mr. D'Aloia—I move to strike that out. That has nothing to do with this case.

Mr. Fisch—That is conversation.

Mr. D'Aloia—The conversation may be introduced when it is relevant to the matter tried to be proven in the indictment.

The Court—You brought out early this morning something similar to that yourself.

Mr. D'Aloia—That was on cross examination.

The Court—No, you brought it out.

Mr. D'Aloia—I brought it out for the purpose of showing intimidation of a witness.

The Court—You brought it out and asked the witness Tiffany if she didn't write to him some time when he was in prison.

Mr. D'Aloia—What has that got to do with this conversation, the Chief's manner of speaking to a man who said something that the chief didn't like?

The Court—Well, the only part of what the

chief said was that part he had been in prison before. The fact he called him a liar does not prejudice him so far as this case is concerned.

Mr. D'Aloia—I do not think those expressions the Chief used toward this defendant are at all admissible. Now, they are not admissions of the defendant.

The Court—They are not admissible as proving anything except they are admissible as a conversation between the chief and the defendant. I will admit them.

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

Walter D. Van Riper, Judge.

Witness—I said, "You contemptible low liar,"—I said, "That is what you have learned in the last six or seven years of the last ten years you have been in prison in half a dozen states of this Union. Why would that girl want to lie about you? You took her away from her husband." I said, "She don't hate you She is pleading with your herself." About that moment I turned to Rose and I said, "Rose, for God's sake, we want nothing but the truth in this matter. If you can give this bird any break at all, we want you to give him the break, we do not want you to lie him in or lie him out." I said, "Is that the truth?" And she said, "Yes." And again she turned to him and pleaded with him to tell where he was on Tuesday night, and he turned and said, "Rose, do you think I would kill Thompson?" And she said, "No." I said, "If you help, we will try to get you out of this charge, provided you are O. K., we will check up with your help, you said you were home Mon-

day, Wednesday, Thursday and Friday, and tell us where you were and we will send investigators out and if they come back and we are sure that you are telling the truth, we will drop the charge," but, I said, "This night you cannot tell where you were, this girl has said from six to half past nine you were out, you came home all excited, you used to sleep in her arms"—at that time I said, "How often do you take a bath, Tony," and he said, "Never mind about that" —so with the result he said, "Well, I have not nothing to say." We took Rose out at that time and I said, "Well, Tony, there is a girl above all that would not cover a stretch, in fact, she is trying to give you a break"—

Mr. D'Aloia—Now, let us get down to something this man might have said.

The Court—This is all conversation between the witness and the defendant. Go ahead.

Witness—Then he accused us of making Rose tell that story, and I told him I thought he was a low, contemptible yellow cur, he was that kind of a cur that would make that remark and would kill a man in the dark like he killed—

Mr. D'Aloia—I move to strike that out. There is a point we must stop and not go any further.

The Court—It is not admitted as binding on the defendant. It is admitted as the conversation between this witness and the defendant.

Mr. D'Aloia—If I stand here and call your Honor a lot of names I am not having any conversation with you; that is no conversation at all; if I characterize your Honor with a lot of vituperations here, that is not a conversation which I am having with you.

The Court—What is your motion? To strike it out?

Mr. D'Aloia—Yes.

The Court—I will strike that out.

Q. You may proceed, Chief. A. He then became maniacal. He stood up, his eyes glittered and I stood up simultaneously with him and I said, "Sit down". I said, "The truth, apparently hurts." With that Lieutenant Gannon and Lieutenant Rowe and Lieutenant Linarducci got up and walked over, and just as soon as Lieutenant Rowe put his hand on the defendant he started to squirm and pull, he wanted to jump out of the window, and the combined efforts of Lieutenant Rowe, Gannon and Linarducci and myself were not sufficient to keep him quiet. We tried to pacify him and put him in the chair with the result that I had to call for some handcuffs and handcuff his ankles and hands together. And he said, "I will show you I am not yellow, you sons-of-bitches, I will show you, I will jump through the window, I will escape; give me a chance." I said, "That is an admission so far as I am concerned, that you are guilty." That terminated the scenario that night.

Mr. D'Aloia—Now, if your Honor please, I move to strike out the last part of the answer.

The Court—I deny the motion.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Recess from 1 to 2 P. M.

AFTER RECESS

FRANK E. BREX resumes the stand.

Direct Examination by Mr. Fisch (continued).

Q. Now, Chief, did you have a further conversation with the defendant? A. I did.

Q. When and where? A. On the morning of

February 11th at the defendant's prison cell at headquarters.

Q. Tell us about that conversation? A. Why, as a result of a conversation with a woman by the name of Mrs. Black from Glen Ridge, I took an envelope containing a pin to the defendant's cell.

Q. I show you Ex. S15 for identification and ask you if that is the pin that you took to the defendant's cell? A. Yes, but it was in an envelope.

Q. All right. A. I showed him the envelope—

Mr. D'Aloia—Now, if your Honor please I object to this. It has no relation whatsoever with the occurrence laid in the indictment.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. I show you an envelope and ask you if that is the envelope that you refer to? A. Yes.

Q. Now, when you showed him the envelope what did you say to him and what did he say to you? A. I held up the envelope in my left hand and I said, "Tony, I think this is going to solve the crime"—

Mr. D'Aloia—I move to strike that out, if your Honor please.

The Court—Motion denied.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. I said, "Here is a pin that has just been identified by a woman up in Glen Ridge as the pin that was burglarized"—

Mr. D'Aloia—If your Honor please, I move to strike that out and insist upon the motion be-

cause it refers to a separate and distinct offense and it is inadmissible at this time to show that the charge in the indictment was in any way connected—

The Court—It is a separate and distinct offense which the Prosecutor says he will connect up with this time.

Mr. D'Aloia—That the Prosecutor says, but he hasn't done it as yet.

The Court—Well, if he does not I will strike it out.

Mr. D'Aloia—That is the danger of it, if your Honor please. The inadmissibility of this testimony is that it tends to prove another crime separate and distinct from the one laid in the indictment. Now, it is not sufficient for your Honor to say, "Why, after awhile if it is not connected up I will strike it out." The harm has then been done to the defendant, the prejudice against the defendant has been created, and that is why the law says that you cannot introduce in evidence details of another crime or anything referring to another crime.

The Court—Well, if the Prosecutor can prove it, why isn't it competent for him to prove that certain things were taken from Black's house, or all that was in Glen Ridge, that this defendant had with him on the night of the crime?

Mr. D'Aloia—Because up to this time we have spent a day and a half trying to prove that is so and it is not so yet.

The Court—I said if he could prove it. Now, your answer is that he can not prove it, if he can prove it, why isn't it competent?

Mr. D'Aloia—I say it is not competent at this time, if your Honor please.

The Court—It is competent if he can prove it.

Mr. D'Aloia—But we are not going to be satisfied with future promises. I say now at this particular juncture that this bit of testimony is absolutely incompetent and inadmissible and prejudicial.

The Court—It would be unless it can be connected up with this crime. Now, the Prosecutor says he can connect it up. Is that right, Mr. Prosecutor?

Mr. Fisch—Yes, your Honor.

Mr. D'Aloia—I am not as prone to accept the Prosecutor's assurance as the court is.

The Court—Well, until I have some evidence that he cannot make it on his assurance I will accept it.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. You may proceed, Chief. A. I showed him the envelope and I opened it up and I told him a woman had just come down from Glen Ridge and had identified this pin, pointing toward this pin you have just shown me, and I said, "There is no question about her being able to identify it." I said, "She told us she received it from her husband as a gift some twenty or more years back" and I said, "Tony, at the same time this pin was stolen there was some other jewelry stolen and a"—

Mr. D'Aloia—I object.

The Court—I understood you were objecting to a conversation between the witness and the defendant on this particular occasion with reference ti the pin.

Mr. D'Aloia—Yes.

A. (continuing) and a revolver, and I am satisfied that the revolver was stolen,—that you stole, was realized from Black's house, was the gun you used to kill Thompson with. I said the nature of all of these breaks up in Montclair, Bloomfield, Glen Ridge, have been all the same.

Mr. D'Aloia—I move to strike that out, because he is talking about other crimes than this one that the Prosecutor has promised your Honor would be connected up and upon the statement made by Chief about other breaks, other crimes, I move now, sir, for a mistrial.

The Court—I will deny your motion.

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

Walter D. Van Riper, Judge.

Mr. D'Aloia—Now, I move to strike it out.

Mr. Fisch—I will consent to the striking out of that part of the chief's testimony which relates to the nature of other breaks in Bloomfield, Montclair and Glen Ridge.

Q. You may proceed. A. I said from the description that Mr. Black gave us it was a silver gun with a black handle, and some kind of device on the handle. I said, coupled up with Rose Tiffany's statement about that kind of a gun and the events which took place that night, your coming home with blood-shot eyes, I said, "I am satisfied it is the same kind, and it was the gun used by you to kill Thompson," and he remained silent and he said, "Can I see that," and I turned and I said, "Oh, it will be all right," and I extracted the pin from the envelope and he said, "That was January 2nd?" I said, "Yes." I said, "Do you

recall where you were that night?" and he said, "No." That was the substance of that interview.

Cross Examination by Mr. D'Aloia:

Q. Now, how many days was he kept down at police headquarters? A. I don't know. I did not keep account of it. There was a purpose for keeping him there.

Q. I didn't ask you that. A. Of my own knowledge I do not know; a month or more. I could not say exactly.

Q. Can't you remember the number of days he was there? A. No. There would be no reason for me remembering that.

Q. Now, in all of these conversations you had with him and during the period of time he was down at police headquarters and examined by you, did he at any time admit he was at any time near the Thompson residence on the night of January 31, 1928? A. No, he didn't.

JOSEPH LINARDUCCI sworn in behalf of the State.

Direct Examination by Mr. Fisch.

Q. You are a County detective attached to the Prosecutor's office and bear the rank of lieutenant? A. Correct.

Q. And as such you are in charge of the homicide bureau? A. I am.

Q. And did you have any conversation with this defendant Boccadoro? A. Yes.

Q. When and where? A. In the Newark police headquarters on the 8th of February.

Q. Who was present? A. Lieutenant Gannon and the defendant.

Q. And had you had conversations with Rose Tiffany before that time? A. No, sir.

Q. You had not? A. I had not.

Q. Now, will you tell us the conversations you had with the defendant when the questions were asked by either Lieutenant Gannon or yourself? A. I had received some information from Lieutenant Gannon, and our questions were along the lines of information I had received from Mr. Gannon. Either Mr. Gannon or myself asked the defendant where he was the day before, the 7th of Feb., and we brought him back every day back to the Sunday before the 31st of January, or the 29th of January and, of course, he told us that on the 7th of February he was in custody in Brooklyn; on the 6th the same, the 5th, the 4th, the 3rd, the same. He said that the afternoon of the 3rd of February—

Mr. D'Aloia—I would like to have the witness instructed to tell us what he said. The same does not mean anything.

The Court—Tell us what the conversation was, what you said to him and what he said to you.

Witness—Well, to questions either by Mr. Gannon or myself where were you last night, he smiled, he answered, "You know where I was, I was in Brooklyn, in the Raymond street jail." "Where were you the night before last?"

Q. What date would that be? A. That would be the 6th.

Q. Of February? A. February 6. "You know; what is the use of asking me those questions. You know where I was. I was at the Raymond street jail." "Where were you on the 5th." Same answer. "On the 4th." He gave the same answer. "On the 3rd." He gave the same answer. "That was Friday." "Yes, that was Friday." "Where were you on the day before this Friday?" "I was in New York up around 6th avenue and 42nd street looking for a job." "Did you find a job?" "no." "What time did you get

home that night?'' ''Oh, I don't know, seven or eight o'clock.'' ''Where were you Wednesday?'' ''Home.'' ''Home all day?'' ''Yes.'' ''Where were you in the evening?'' ''I don't remember. I think I went to the movies with Rose.'' ''Where did you go on Tuesday, January 31?'' ''I don't know, I might have been walking on Broad street. I might have been in the movies. I don't know.'' ''Where were you on the Monday before the 31st of January?'' ''Home.'' ''Where were you on Sunday?'' ''Home. I think I took a walk on Broad street some time in the afternoon.'' That was about the substance of the conversation at that time, excepting for this. He was told by either Lieutenant Gannon or myself, or both of us, that Rose had made a statement that he left his home on the evening of the 31st and before leaving he had placed a revolver on the inside of his trousers, and that he had come home all excited, his eyes blood-shot, and made the statement that he had been chased three miles and the cops had fired shots at him, and that he threw the revolver into a vacant lot. To that he said, ''I don't believe she said that,'' and ''Do you want us to prove it to you?'' ''Yes.'' As a result of that conversation, the interview was had in Chief Brex' office with Rose present.

Q. Were you present at that interview in Deputy Chief Brex' office that Deputy Chief Brex testified about? A. Yes, sir.

Q. Were you present when the defendant did anything with regard to jumping out of the window? A. He made a statement that he wanted to ''jump out of the window and show you sons-of-bitches that I am not yellow.''

Q. What did he do? A. Why, he tussled and he tried to get to the window and Brex opened the door and called some men from the Detective Assembly room and they came in with handcuffs and he was handcuffed and his feet were also tied.

Cross Examination by Mr. D'Aloia:

Q. How many times did Brex call him a yellow dog? A. Once—"Yellow dog?" He called him "yellow."

Q. Well, he called him a "yellow cur," didn't he? A. I remember him calling him "yellow."

Q. And did he use any other names to call him? A. He called him a whoremaster.

Q. Now, in answer to those epithets that Brex used isn't it a fact that the defendant said to Brex, "To show you that I am not yellow, I don't know how high that window is above the ground, but if you don't bother that girl I will jump out of it." A. That is not so, no, sir.

Q. Well, he was going to jump out of the window to show you that he was not yellow? A. That is what he said.

Q. And he also told you several times in different ways that he was not yellow, in refutation to the accusation made by Brex? A. That was the only time in my presence, to my knowledge.

Q. Well, it was Brex who charged him with being yellow, wasn't it? A. Brex called him yellow.

Q. And the only thing that he did was to refute it by word or action, that accusation of being a yellow dog or a yellow cur, about being yellow— A. He up and said that he would jump out of the window and called us all sons-of-bitches.

Q. Now, in those conversations that you participated in or heard about did you ever hear him admit to you or to Gannon or to Brex in the presence of Mrs. Tiffany, or not in her presence, that he on the night of January 31, 1928, knew anything about the Thompson killing or was in any way near the Thompson home? A. No, of course not.

NICHOLAS G. KAUFMAN, recalled.

Direct Examination by Mr. Fisch:

Q. Mr. Kaufman, I show you Ex. S19 for identification and ask you if you made that photograph?

Mr. D'Aloia—Now, if your Honor please, if Mr. Fisch will inform us as to when those photographs were taken, we might be guided in our objections.

Q. Did you make that photograph? A. Yes, sir.
Q. When? A. February 6, 1928.

Mr. Fisch—I offer it in evidence.

Mr. D'Aloia—I object, there is no indication, or there is no evidence here to indicate, rather, that on the 6th of February, the premises that were photographd had not been tampered with. The man had been in custody for several days at this time.

Mr. Fisch—This photograph, if your Honor please, was identified by Rose Tiffany.

The Court—I will allow it to be marked.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(Exhibit S19 for identification is marked Ex. S19 in evidence.)

Q. I show you Ex. S15 for identification and ask you if you made that photograph? A. Yes, sir.
Q. When did you make that? A. February 6, 1928.

Mr. Fisch—I offer it in evidence.

Mr. D'Aloia—The same objection.

The Court—Same ruling.

Mr. D'Aloia prays an exception to this ruling

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

Walter D. Van Riper, Judge.

(S16 for identification marked S-16 in evidence.)

Q. And S16 for identification represents what? A. It is the cellar.

Q. At where? A. 82 Canal street.

Cross Examination by Mr. D'Aloia:

Q. Who ordered you to take those photographs? A. The Prosecutor.

Q. What time did you go there? A. In the afternoon.

Q. Did you find anybody in the place? A. Why, yes, the first floor was occupied.

Q. By how many people? A. By two, man, woman and child.

Q. Did you see anybody else? A. No, sir.

Q. How old a man was the man with this child? A. About 35.

Q. What kind of a place is this at 82 Canal street? A. It looked to me like a rooming house.

Q. Did you see any of the roomers? A. I did not see anybody but these people.

Q. Did you ask their permission to go into the cellar? A. No, we simply went there.

Q. Did you ask their permission? A. I did not, but it seems—

Q. Never mind what it seems. If you did not all right. I want to find out how many persons you saw about the premises while you were there taking the photographs not connected with your photographic party? A. Three, man, woman and child, and Detective Friary of the Prosecutor's staff and three other officials.

Q. So there were three people there not connected with your party? A. Yes.

Redirect Examination by Mr. Fisch:

Q. Was there anybody in occupancy of the room where this stove is located that is shown on Ex. S19? A. Yes, sir.

Q. Sure about that? A. Yes, sir.

Q. Who was it? A. It was the man, woman and child.

Recross Examination by Mr. D'Aloia:

Q. Oh, the man, woman and child occupied the room that you photographed? A. Yes, sir.

Q. It was not this defendant? A. No, sir.

Q. It was not anybody that you have seen here in court? A. No, sir.

Redirect Examination by Mr. Fisch:

Q. Now, you took some other photographs there, didn't you? A. Yes, sir.

Q. Did you take the photograph Ex. S17 for identification? A. Yes, sir.

Mr. D'Aloia—At the same time, Mr. Fisch?

Witness—Yes, sir, the same time.

Q. And S18 for identification? A. Yes, sir.

Q. Now, after looking at those photographs, can you tell me whether or not the premises at which those photographs were taken were occupied? A. No.

Q. You are certain about that? A. There was nobody in the place.

Q. You are certain about that? Who was with you when you took the photographs?

Mr. D'Aloia—I object to that, that question calls for something that is not within the knowledge of this witness.

The Court—You did not see anyone there, did you?

Witness—No, sir.

The Court—So far as you know they were unoccupied.

Witness—So far as I know.

Q. Who were at the premises where the two photographs were taken? A. Detective Friary of the Prosecutor's staff and three police officials.

Q. Well, was Lieutenant Gannon there? A. No, sir.

Q. Sure about that? A. No, I am not sure.

DAVID G. BLACK sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Mr. Black, where do you live? A. 142 Midland avenue, Glen Ridge.

Q. How long have you been a resident of Essex County? A. Six and one half years.

Q. And before that? A. Brooklyn, New York, fifty years.

Q. What is your business, Mr. Black? A. Metallurgist.

Q. And are you married ? A. Yes, sir, my wife died last month.

Q. Your wife died when? A. Last month.

Q. Last month? A. Yes.

Q. And where were you living in the month of January of this year? A. 124 Midland avenue, Glen Ridge.

Q. What kind of a house is that? A. Two and a half story frame one family.

Q. Any fence around it? A. No.

Q. And is it in the middle of the block or where? A. On the corner.

Q. Corner of Midland avenue and where? A. Maolis.

Q. Maolis avenue? A. Yes.

Q. And did anything happen in your house during the early part of January of this year?

Mr. D'Aloia—I object as absolutely immaterial, incompetent and inadmissible.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. On the 2nd of January of this year, we were burglarized.

Q. Were you at home when you were burglarized? A. No, we were away from ten o'clock in the morning until about 11:30 at night.

Mr. D'Aloia—The same objection to each and every one of these questions, and I assume the same ruling.

The Court—I will allow you an exception to all of the testimony with reference to the robbery in Mr. Black's house. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Now, when you left at 10 o'clock in the morning of January 2, what was the condition of the house with regard to the windows? A. They were all closed and locked.

Q. Was the heat going? A. The heat was turned on.

Q. Now, what time did you return home? A. About 7:30 P. M.

Q. What was the condition of the weather that day? A. Very cold.

Q. Now, you say your returned at 7:30. When you got home at 7:30, what condition did you find the house in? A. We found two windows open and two more unlocked, but I cannot remember distinctly whether they were open or not.

Q. What floors were those windows open on? A. The second and third floors,—two on the first floor and two on the second.

Q. Now, was the house cold or warm? A. Very comfortably warm. We had a thermostat and that kept them warm.

Q. And two of the windows were open? A. Two of the windows were open, to my recollection, to about two inches.

Q. Did you find anything missing? A. We found all the drawers from the bureau and desk and contents taken out and scattered on the floor.

Q. Did you find anything missing? A. All the jewelry and money that had been put in my wife's dressing bureau.

Q. Anything else? A. From my room my revolver was missing.

Q. Now, what kind of a revolver was it? A. 38 calibre, Smith and Wesson, five shot, hammerless, safety.

Q. What was the color of it? A. Nickel plated.

Q. What kind of a handle did it have? A. Black.

Q. And was there anything—you say it was a safety, what did you mean by that? A. In the handle there was a catch which engaged with the hand when you gripped it to fire it. It cannot be fired unless in the proper position in the hand.

Q. That is on the handle? A. On the back of the handle.

Q. Was it bright or dull? A. Badly discolored.

Q. And how long had you owned that revolver? A. About thirty-five years.

Q. And did you have any bullets for it? A. Yes.

Q. What kind of bullets did you have for it? A. 38 calibre, black powder cartridges.

Q. What make? A. Peter's cartridge company.

Q. And were there any cartridges taken? A. No.

Q. Now, what kind of cartridges did you have at your house? A. I had two makes, one was Peter's; I am not certain of the other.

Q. I show you a package, and ask you if that is the package of cartridges which you had at your house and which you subsequently turned over to the Prosecutor's office. A. That is the package.

Mr. Fisch—I offer that package in evidence.

Mr. D'Aloia—I object.

The Court—Will that be connected up with the bullet used in this case?

Mr. Fisch—Yes, your Honor.

The Court—I will allow it to be marked in evidence.

(Package marked Exhibit S26.)

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

Walter D. Van Riper, Judge.

Q. Now, you said, I believe, you had another box or package of cartridges? A. Yes.

Q. Is that the box or package you had? A. It is.

Q. Now, looking at the package, what kind of cartridges are those? A. 38 Winchester.

Q. Now, the gun, you say, was taken—

Mr. Fisch—I offer this box in evidence.

Mr. D'Aloia—That is objected to. That box

was never in the possession of this defendant.

The Court—How is that material?

Mr. Fisch—I am simply offering it so counsel may have it in evidence if he desires.

The Court—It is not connected up directly with this shooting?

Mr. Fisch—No, your Honor.

The Court—I will sustain the objection.

Q. Now, the gun which you say was taken away—withdraw that. Were there any cartridges in it? A. Yes.

Q. What kind of cartridges? A. Peter's black powder, small cartridges.

Q. That is, cartridges that were taken from this package which has been marked in evidence? A. Four cartridges from that package.

Q. There were four cartridges in it. It was a five shooter, I believe you said. A. Five shots.

Q. What about the fifth space? A. That I had fired on New Year's night, 1926. I fired one shot from it into my garden just as the new year was dawning.

Q. That was on New Year's, on the dawn of the new year of 1926? A. 1926.

Q. So that it was fired on the morning of January 1, 1926? A. Yes.

Q. When had you— A. As 1926 was coming in.

Q. When had you loaded the revolver prior to the time that you fired the one shot into the ground in your garden on January—as 1926 was coming in? A. About two years before that.

Q. Two years before that? A. Yes.

Q. And at that time did you fully load it? A. Yes.

Q. Where had you kept the gun? A. In a drawer in a table in my bedroom, in a holster.

Q. What is that? A. In a leather holster.

Q. Have you that holster with you? A. I have.

Q. May I see it, please? A. (Witness hands holster.)

Mr. Fisch—I offer the holster in evidence.

Mr. D'Aloia—I object to it as incomcetent, irrelevant and immaterial.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

(Holster marked Exhibit S27.)

Q. Now, then, after you fired that—withdraw that. When you fired that one shot, whereabout did you fire that shot?

Mr. D'Aloia—Now, has this anything to do with what your Honor laid down as the rule the reason for the admission of the testimony of the events of January 2, at Mr. Black's house?

The Court—You mean does it connect up the Thompson shooting?

Mr. D'Aloia—No. The question is this. The witness on the stand has been permitted by the Court to testify to a certain occurrence at his house on the 2nd of January, because the Prosecutor promised to link it up with something that happened on the 31st of January as laid and charged in this indictment. Now, this gentleman's target practice or desire to celebrate New Year's three years before, or two years ago, I don't think has anything to do with that on that night, the 2nd of January, 1928.

The Court—Can you connect that in any way that is material?

Mr. Fisch—Yes, your Honor.

The Court—I will permit it on the statement he can connect it.

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

Walter D. Van Riper, Judge.

Q. Whereabouts was it that you fired the shot as 1926 was coming in? A. I stood at the righthand corner of my porch and fired it directly into the flower bed about two feet below my foot.

Q. Now, I show you a photograph and ask you if that is a photograph of your house? A. Yes.

Q. And was this photograph taken in your presence? A. No.

Q. But you know it is a photograph of your house? A. I do.

Q. And can you show us on that photograph the point where you fired the shot? You indicate the corner of the house nearest to the corner of the house that a person would see facing the photograph? A. I placed my initials there.

Mr. Fisch—I ask that that be marked for identification.

(Photograph marked S28 for identification.)

Mr. D'Aloia—May I have an exception as to all this line, every question along this line?

The Court—I will give you an exception with reference to all of the testimony of the shots that were fired by Mr. Black in his yard. Let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Mr. D'Aloia—And all of the testimony with reference to his pistol taken away prior to the second of January. Exception allowed; let it

be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Now, Mr. Black, I show you another photograph and ask you if you recognize that photograph? A. I do.

Q. What does that represent? A. The lower part of my porch, lefthand corner, standing looking at the house.

Q. Can you show us on that porch the point at which you fired this shot? A. Right where this stone lies.

Q. Will you be good enough to mark that place with a cross and your initials? A. (Marks.)

Mr. Fisch—I ask that this photograph be marked for identification.

(The same is marked S29 for identification.)

Q. Now, how long prior to the time that you fired that shot, as 1926 was coming in, had you loaded that revolver? A. About two years.

Q. Now, during all that two year period had you cleaned the gun? A. No, sir.

Q. How long prior to January, 1926, was it that you had cleaned that gun? A. Fully five years.

Q. Now, then, after you fired that one shot into the ground, what did you do with the revolver? A. Took out the empty shell, put the revolver back in the holster and laid it back in the drawer.

Q. Did you replace the shell that had been fired? A. No, sir.

Q. So that it was back in the drawer with four empty shells in it and one empty space? A. Exactly.

Q. And had it continued to remain there until the time when you were robbed? A. It was there all the time.

Q. Now, I show you Ex. S15 for identification and ask you if you have ever seen that before? A. Yes, sir.

Q. Where did you see it? A. I bought it in Toronto, Canada, about twenty years ago for my wife.

Q. And was this pin in the house when you left on the morning of January 2nd? A. Yes, it was.

Q. Was it there when you returned in the evening? A. It was not.

Mr. Fisch—I offer the pin in evidence.

Mr. D'Aloia—I object to it on the ground already stated and it is inadmissible and tends to show a separate and distinct defense.

The Court—Let it be marked and the defendant is given an exception.

(S15 for identification is marked S15 in evidence.)

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. When was the next time that you saw this pin after January 2nd? A. In this building about a week ago.

Q. And do you know whether or not your wife had gone down to police headquarters in Newark in connection with this matter?

Mr. D'Aloia—I object to that.

Mr. Fisch—Yes or no, that's all.

The Court—I will permit him to say whether or not she went.

Witness—She told me—

The Court—No, don't tell us what she told you, just tell us whether or not you know she went there, Mr. Black.

Witness—Yes, sir, she went there.

Q. Now, did you see Lieutenant Linarducci at your house, this gentleman here, (indicating) Lieutenant Linarducci? A. Yes, sir.

Q. And when was that with reference to the time your wife went to police headquarters in Newark? A. Just before.

Q. And what time of the day or night was it? A. I have not a clear recollection, I think it was the afternoon.

Q. Now, then, did you tell them about the firing of that shot in the ground?

Mr. D'Aloia—I object to that, if the court please, a conversation had not in the presence of this defendant.

The Court—Don't tell us what was said.

Q. You had a conversation with him, did you? A. Yes, sir.

Q. Now, as a result of that conversation did he come up to your house again? A. He did.

Q. Was he accompanied by anyone? A. Yes, Sergeant Larken and Lieutenant Gannon.

Q. Is that the gentleman (indicating Sergeant Larken)? A. Yes, sir.

Q. And is that the other gentleman you refer to (indicating Lieutenant Gannon)? A. Yes, sir.

Q. And anybody else, do you remember seeing Captain Jensen there? A. Not with the others.

Q. Did you see Captain Jensen at your house? A. On another occasion, yes, sir.

Q. What occasion was that? A. A party came up to dig for the bullet.

Q. Did you point out the spot for them? A. I did.

Q. And was that the spot you pointed out on the photograph and just marked with your initial? A. It is.

Q. And did they dig for the bullet? A. They did.

Mr. D'Aloia—Now, if your Honor please, this is an operation which is absolutely incompetent and performed not in the presence of this de-

fendant, but in his absence and is not binding on him in any way—up to this point at least there is no connection and I object to it because it is incompetent and inadmissible.

The Court—Overruled.

Mr. D'Aloia—prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. When did they do that? A. They dug in the garden where I indicated the spot and they sifted the earth and washed it and Captain Jensen found the bullet.

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

The Court—Motion denied.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Did he find it in your presence? A. He did.

Q. Did he show it to you? A. He did.

Q. Was there any identifying mark on it? A. I did.

Q. Did you put any identifying mark on it? A. Yes, sir.

Q. I show you a bullet and ask you if that is the bullet which was found in your presence and which you marked with your identifying mark? A. It is.

Mr. Fisch—I offer it in evidence.

Mr. D'Aloia—I object to it as having no bearing whatsoever on the charge laid in the indictment, it is incompetent, inadmissible and improper and irrelevant.

The Court—It may be marked, and the defendant given an exception.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(Same is marked Ex. S30.)

Cross Examination waived.

Mr. Fisch—I offer in evidence the photograph S28 for identification and S29 for identification.

Mr. D'Aloia—I object to them on the ground that they are absolutely immaterial as tending to show anything that occurred on the 31st of January, 1928; that they are incompetent because they refer to a building in Glen Ridge which, as the Prosecutor has stated, something happened on the 2nd of January, 1928.

The Court—You do not make any objection because the photographer is not testifying?

Mr. D'Aloia—I do not object because the photographer is not taking the stand, and we lose time—

The Court—Mark them.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(S28 for identification and S29 for identification are marked S28 and S29 in evidence.)

Mr. D'Aloia—Now, if your Honor please, at this juncture I move to strike out all of the testimony given by Mr. Black.

The Court—Motion denied.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

CLIFFORD SHIPPEN sworn in behalf of the State.

Diret Examination by Mr. Fisch.

Q. Lieutenant Shippen, you are a lieutenant connected with the police department of the Town of Bloomfield? A. Yes, sir.

Q. How long have you been connected with the police department there? A. Thirteen years.

Q. And did you have occasion to go to the residence of Mr. Thompson, 191 Ampere Parkway on the evening of January 31, of this year? A. Yes, sir.

Q. What time did you get there? A. I got there about 8.05.

Q. Did you make an examination of the premises? A. After I had taken care of the party who was injured.

Q. That is Mr. Thompson? A. Mr. Thompson, yes, sir.

Q. What time was it that you made the examination? A. I should say about 8.25.

Q. In the evening? A. Yes, sir.

Q. And what did you find? A. Why, I found that the rear pantry window, on the rear of Mr. Thompson's house at 191 Ampere Parkway, I found his screen on the window, the screen had been jimmied and thrown on the ground in the rear of the house and the window had been jimmied open and I found the screen, a small piece of the screen broken off under the window where it had been forced. The screen had been thrown in between the garage owned by Mr. Wiley and one owned by Mr. Thompson.

Q. I show you Ex. S5 and ask you if that correctly shows where that screen was? A. Yes, sir.

Q. Now, what else did you find? A. In my examination I saw that somebody had come out of that window and in tracing the footsteps, there was snow on the ground, why, going in between in the rear of

Mr. Wiley's house and in the rear of a house, the second house on Leslie street—

Q. Show us where, on Exhibit S1. This is the first house and this is the second house. A. In the rear of the second house on Leslie street.

Q. And that is No. 172 on the map? A. Yes, sir, and there is a pile of snow that had been shoveled there, and on top of that pile of snow I found a lace curtain with a piece of brass rod that had been thrown there or dropped there.

Q. I show you Exhibit S-11, and ask you if that is the curtain and rod that you found. A. Yes.

Cross Examination by Mr. D'Aloia:

Q. How long were you there all told? A. Why, in the house, around the house, in making this examination?

Q. Yes. A. I was practically oround there for three or four hours afterwards.

Q. Now, you know something about this diagram which is called Exhibit S-1. This is supposed to be the first house, the Thompson house, the house, next to it, the garage back of it, and here is the garage back of it. Now, will you put a mark on here showing where the curtain was? A. The curtain was in back of the house on Leslie street. It might be right near the driveway.

Q. The second house or first? A. The second. It would be about there. There is the third house.

Mr. D'Aloia—There is no objection to marking that.

Mr. Fisch—Not at all.

Witness—Right about there, near a pile of snow there.

Q. Then this screen was lying where you show in this picture? A. Yes.

Q. How far from the house? A. It was in be-

tween the two garages there. The distance, I do not know what the distance is, twelve or fifteen feet.

Q. Did you got to the hospital? A. I went to the hospital late that evening, yes.

Q. What time? A. Why, about the time before they had performed anything at all, but after one of the officers had been there and given a blood transfusion.

Q. Mr. Thompson was alive? A. Mr. Thompson was still alive at the time, yes.

CALVIN GODDARD sworn in behalf of the State.

Direct Examination by Mr. Fisch.

Q. Major, where do you live? A. New York City.

Q. At what address? A. 48 East 28th street.

Q. What is your occupation? A. I am a consultant on small arms and projectiles in civil and criminal cases.

Q. And how much of your time do you devote to this work? A. All of my time.

Q. How long have you been devoting all of your time to this work? A. Oh, several years past.

Q. And what education or training have you had, preliminary education? A. I hold an A. B. degree from Johns Hopkins University and M.D. degree from Johns Hopkins University, and I graduated from the Army & Navy school, Washington, D. C.

Q. What other experience have you had, or training? A. Well, with regard to small arms, I have been interested in that all of my life, and for fifteen or twenty years past I have been making a study of manufacturing methods, visiting factories as opportunities offered, factories that manufactured small arms. I visited all of the major ones in this country. Most of them frequently, as an ordanance officer of the army. I have been on duty at arsenals manufac-

turing rifles and pistols manufactured for them, and have taken special courses in the manufacture of such articles. I have made a study of everything I have been able to find in various languages that have been written on the subject of arms and munitions, and their relation to homicide cases, methods of identification. I have personally collected many hundreds of arms for specimens, reference specimens, also samples of munition, ammunition of all types used in small arms made by the various companies, cartridges and loose bullets and unloaded shells, specimens of bullets fired through hundreds of different known arms of different makes and models and have conducted experiments of different kinds in determining how bullets and shells are marked in leaving the barrel of a gun or in being fired through the chamber of an arm.

Q. Now, were you ever in the army? A. Yes.

Q. When were you in the army? A. I was commissioned lieutenant in the regular army in 1917, and resigned in 1920 as a major.

Q. Did you serve on the other side? A. Yes.

Q. Whereabouts? A. France, Germany, Poland.

Q. And what title did you resign with? A. I had a regular Army Major when I resigned.

Q. You were a major in the regular army? A. Yes.

Q. Do you at the present time hold any commission in the regular corps? A. I am a lieutenant-colonel in the ordonance reserve at the present time.

Q. Have you attempted any experiments with regard to small arms and the determining of projectiles fired from various arms? A. I have conducted, as an officer on duty at Springfield Arms, Springfield, Massachusetts. I conducted a series of experiments on the sequence of barrels made one after the other, firing bullets through them to determine whether the bullets through two barrels being made one right after

another can be distinguished one from the other. I have a letter from an adjutant of the army covering that particular experiment.

Q. You made an experiment using guns made in the same factory one after another? A. Yes.

Q. And fired projectiles from those guns which were made one after another from the same factory, is that right? A. Yes.

Q. And after you had fired those guns, what were you able to determine as a result of your experiments?

Mr. D'Aloia—I do not think the experiments conducted by this gentleman up in Massachusetts with certain barrels made one after another in a certain factory would lend much aid or throw much light upon a gun which was loaded thirty-five years ago, kept loaded twenty-five years, was cleaned but once in that time, fully five years ago, and fired once about 3 years ago. These experiments made with barrels that came from a munitions factory, fresh from the factory, cannot help us very much, so I object to the testimony given by this expert.

The Court—I suppose it is all for the purpose of laying a foundation for showing what happened to these two bullets in evidence.

Mr. Fisch—Yes.

The Court—For that purpose I will admit it.

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

Walter D. Van Riper, Judge.

Q. What were you able to determine by that experiment?

Mr. D'Aloia—I want to state on the record that the testimony given with reference to the

experiment does not indicate that any of those barrels he experimented with and the bullets were in the same condition as the particular bullets he may have experimented with at the request of the prosecutor or of the police department. There is not any indication of any similarity between the barrels he used in those experiments and whatever he used in making the experiment at the behest of the Prosecutor's office or the police department.

The Court—If the witness has not already stated, I believe it would be better to have him state the type of gun he experimented with. His answer to your question will be a conclusion.

Mr. Fisch—No conclusion.

The Court—All right.

A. I determined the fact that it was possible to differentiate between bullets fired between any one of these guns, which comprised six barrels, between any one of these—fired from any one of those as between bullets fired from any other one of those six barrels.

Q. Had the bullets been marked before they were fired? A. The test was conducted by the adjutant of the army who actually fired the bullets, and he put his own secret mark on the bullet and then gave me the bullet to connect them with the individual barrel.

Q. Did you connect them? A. Yes.

Mr. D'Aloia—I move to strike that out, because it does not appear that the barrel of the pistol or the pistol used was in any way similar as to calibre or condition as the one the Prosecutor has alleged to connect up in this case.

The Court—I will allow it to stand.

Defendant's counsel prays an exception to this ruling of the court. Exception allowed; let

it be signed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. And you have also made experiments in determining whether or not projectiles fired from certain type guns where the guns had not been cleaned for a long time—

Mr. D'Aloia—I object to that question on the ground that it is leading. If he has experimented with projectiles and the Prosecutor wants him to qualify him let him ask him what he did.

Mr. Fisch—I will withdraw the question and ask this question.

Q. Have you written any articles on the subject of fire arms identity? A. Yes.

Q. Have you written any articles on the subject of firearms identification? A. Yes, sir.

Mr. D'Aloia—If your Honor please, firearm identification has nothing to do with bullet identification. It is a separate and distinct subject.

The Court—Personally I don't know whether it is or whether it is not, but don't see that it is at all material except as part of the general qualifications of the witness.

Q. And when I say "Firearm identification" what do you understand me to mean? A. The identification of weapons, bullets, shells and powders.

Q. And have you written articles on those subjects? A. Yes, sir.

Q. For whom? A. John Wigmore, Dean of the Northwestern University Law School, asked me to write one for the Journal of Criminal Law and Criminology, which I duly did, and it was published in that journal.

Q. That is the gentleman who has written a work

on evidence, "Wigmore on Evidence?" A. Yes, sir, and I have also written articles on this same subject for the "Military Surgeon," the organ of the medical department of the army, on military ordnance, and for the Popular Science Monthly, and for the New York State Medical Journal.

Q. Have you ever contributed any articles on general ordnance topics? A. Yes, to various organs and scientific publications.

Q. And have you ever delivered addresses and lectures on that subject? A. Yes, sir.

Q. Before whom? A. Before groups of district attorneys in convention, before chiefs of police in convention, the International Association of Chiefs of Police, before the International Association for Identification, which is an association comprised of the Identification Bureau Head of the various police departments in convention, before the sheriff's school of the State of Iowa, before the police training school of the State of Pennsylvania, before engineering societies, and groups of army officers in various places.

Q. So that you have spoken on this subject in various parts of the country, have you not? A. Yes, sir.

Q. Now, are you a member of any scientific organizations in connections with firearms and bullet identifications? A. Yes, sir.

Q. What organizations? A. Well, the Institute of Criminal Law and Criminology, the Association of American Military Engineers, the Army Ordnance Association, the Association of Military Surgeons, the New York Microscopic Society, the American Microscopic Society, and the American Society for the Advancement of Science.

Q. And have you been called into consultation by any law enforcement of allied agencies with reference to firearms and bullet identification? A. Yes, sir.

Q. Where? A. In various police departments

throughout the United States scattered over a number of different states and also experts in foreign countries have consulted me.

Q. What foreign countries? A. Great Britain, Cuba, France, Germany, Italy, Australia, Ukrania, and there may be others that I do not recall right now.

Q. Now, have you conducted investigations into homicide by shooting and have you testified in cases involving firearms and bullet identifications? A. Yes, sir, in many states.

Q. What states? A. Oh, Maryland, the District of Columbia, Mississippi, Tennesee, Alabama, Kentucky, New Mexico, Texas, California, Wisconsin, Iowa, Ohio, Pennsylvania, Massachusetts, New York and New Jersey.

Q. Did you ever testify in Canada? A. Yes, sir.

Q. What are some of the case with which you were identified? A. Well, the most and best known cases in this part of the country were the so-called Hall-Mills case, and the so-called Sacco-Vanzetti case.

Q. Did you testify in the Sacco-Vanzetti case? A. I did not testify, I rendered a report to the District Attorney which was forwarded by him to the Governor.

Q. Now, has your method of identification been referred to in any opinions of any court? A. The Supreme Courts of Kentucky and Wisconsin.

Q. And how recently has your method of identification been referred to by the Supreme Court of Kentucky?

Mr. D'Aloia—I object to that, if your Honor please.

The Court—I don't quite see how it is material or competent.

Q. Now, what resources have you, Major, for the making of experiments and for the conducting of investigations into the identification of bullets and firearms? A. I have the collection of specimen arms,

which I have already mentioned, which numbers six or seven hundred, I imagine somewhere in that vicinity; thousands of specimens of bullets both in the unfired state and as fired through known makes of arms; a similar number of specimen shells fired and unfired; specimens of various powders used in loading small arms in this section of the country, instruments of precision especially designed for the identification of powders, shells and bullets, including specially designed microscopes, bullet holders, instruments for examining the interior of a barrel, guages for measuring the diameter of a barrel—

Q. How accurate are those guages? A. Why, they are all accurate to the thousandth of an inch, all of these instruments, and I have a very large collection of data on firearms, which includes the manufacturers' specifications of fifteen or sixteen hundred models of pistols and revolvers both modern and obsolete, and a library of books covering the whole field of firearms and ammunition, catalogues of all the well known makes of arms and many obsolete ones.

Q. Now, you stated, Major, that you conducted experiments which demonstrated that bullets fired from any two barrels even if those barrels are made successively on the same machine are different, is that correct? A. Yes, sir.

Q. Will you be good enough to describe your experiment?

Mr. D'Aloia—I object to that, if your Honor please, on the same ground of objection as before, unless the Prosecutor includes in his question that the experiments were made with a barrel similar to the barrel of a gun that fulfilled the qualifications of the description of it given by Mr. Black. A gun loaded thirty-five years ago, cleaned fully five or six years ago or four or five, and fired once three years ago. Now, unless he conducts his experiments with a

barrel which fulfills that kind of specification, all his experiments are not at all material or competent.

Mr. Fisch—I withdraw the question.

Q. Have you ever made an experiment with a 38 calibre Smith and Wesson, five shooter, hammerless safety gun? A. Yes, sir.

Mr. D'Aloia—I object to that unless it has been in use for thirty-five years, loaded and not cleaned in that time.

The Court—It certainly is competent for him to say whether or not he made that experiment. He has not testified, nor has he been asked any conclusions as the result of the experiment.

Q. Now, Major, will you be good enough to describe to the court and jury the method of manufacture of a revolver similar to a Smith and Wesson 38 calibre, five shooter, hammerless safety.

Mr. D'Aloia—If your Honor please, the method of manufacture, is that important, the description of it?

The Court—Of course, I don't know, frankly, Judge, I don't know just what the Major is going to testify to, but how relevant it is—I assume the basis of that question is to lead up to the identification of these bullets, and in the identification it is necessary to go into detail with reference to the manufacture of revolvers, is that right, Major?

Witness—Yes, sir.

Mr. D'Aloia—May I be allowed to cross examine on his qualifications as an expert before he begins to pose and tell us how a pistol is made?

The Court—You may examine him as to his qualifications as an expert before he is allowed to tell any conclusions with reference to this

particular revolver or these paticular bullets. This is still preliminary.

Mr. Fisch—I have no objection, your Honor, to Mr. D'Aloia now cross examining the Major, as to his qualifications, if he so desires.

The Court—Have you finished already?

Mr. Fisch—I have not finished, if your Honor please.

The Court—If you are finished as to his qualifications—

Mr. Fisch—I have finished my examination on his qualifications, but I am laying some foundation.

Cross Examination by Mr. D'Aloia (on qualifications).

Q. Your full name is what? A. Calvin Goddard.

Q. Are you the plaintiff in a libel suit today involving your testimony in one of these cases where you testified as an expert?

Mr. Fisch—I object to that, I can't see how it is material.

Mr. D'Aloia—I want to identify this gentleman.

The Court—Sustained.

Q. Are you the Calvin Goddard who testified in the Dragowitz case in St. Claire, Belmont County, Ohio, yes or no, no long speech, but yes or no.

Mr. Fisch—I submit, if your Honor please, that that is improper.

The Court—It is entirely uncalled for. The witness has not started to answer.

Witness—I made a deposition, does that mean I testified?

Q. Did you make the deposition in that case as an expert? A. I did.

Q. As an expert on small arms? A. Yes, sir.

Q. And as a result of your deposition in that case,

under oath, are you the plaintiff in a libel suit against a newspaper?

Mr. Fisch—I object to that, if the Court please.

The Court—Sustained, it has the same materiality as the decision of the Kentucky Supreme Court.

Q. Isn't it a fact, Major, that in that particular case you testified, after examining a bullet and a pistol, that that bullet had been fired several months before the date of your examination of it? A. No, sir.

Q. What did you say about that bullet? A. I don't recall that I made any remarks as to what time the bullet had been fired.

Q. Well, you connected the bullet with the particular killing? A. Yes, sir.

Q. When did that happen with reference to the time you examined the bullet? A. Why, I think within the month prior.

Q. What do you mean, within or without? A. Within a month before I examined it, within that month.

Q. And isn't it a fact in that cas it was established that that particular pistol, which you said had been fired within a month, had been sold only three days before the day that you made your examination of the bullet which had been fired? A. It is not.

Q. Now, I am going to ask you again, isn't it a fact that as a result of your deposition in that case and the publication of an article with reference to your depositions you are now the plaintiff in a libel suit against a newspaper?

Mr. Fisch—I object.

The Court—I sustain the objection. I don't know why you ask it when it has been twice ruled out.

Q. Well, did you make a mistake in that case? A. I did not.

Q. Now, in the Sacco case, you mention, you say you did not testify at the trial? A. I did not.

Q. But you did take the evidence of the ballistic experts who had testified at the trial and by a special report you wrote an article, or wrote an opinion wherein you contradicted the experts who had testified at the trial; that is true, isn't it? A. Many experts testified at the trial.

Q. I know, but you didn't. A. I didn't.

Q. But in that trial you took that testimony of the experts who had testified at the trial for the Commonwealth of Massachusetts and from their written words you wrote out your opinion contradicting them, and you submitted it as part of the defense in that case? A. I didn't.

Q. What did you do? A. I conducted an examination together with an expert for the defense. He and I together in the presence of representatives of the State and of the defense, examined the so-called fatal bullet and so-called fatal shell.

Q. Whc were you retained by? A. I offered my services to both sides at the same time. I wished to make an impartial examination.

Q. And you were not paid any fee? A. I was not paid any fee.

Q. But nevertheless your conclusion contradicted the conclusion—

Mr. Fisch—I submit that the witness has been asked the question and he has not had an opportunity to complete his answer.

Q. Proceed. Tell us what you did. A. As I stated, I conducted an examination in conjunction with a defense expert in the presence of representatives of both sides, counsel for the defense and assistant dis-

trict attorney. As a result of that examination I came to the conclusion which I embodied in my report and as a result of that examination an expert who worked with me changed his opinion entirely on what he originally said and coincided with my opinion which I submitted.

Q. Yes, and it contradicted the other experts who testified at the trial? A. It contradicted some of them, yes.

Q. Now, in the case of the State of Ohio against Berkowitz. You testified there in giving your qualifications that you were writing an article or articles for the Scientific American on this particular subject.
A. I didn't.

Q. In your deposition? A. No, sir.

Q. Did you ever so testify during the month of November, September, December, of 1927? A. No, sir.

Q. Any time during 1927? A. No, sir.

Q. At any time did you ever testify that you, among your other qualifications, possessed this, that you were writing articles on the subject of the identification of projectiles and the identification of small arms for the Scientific American? A. No.

Q. Sure about that? A. Yes.

Q. Quite sure? A. Quite sure.

Q. In this particular case, were you given any particular pistol by the prosecution to make your experiments with?

Mr. Fisch—I object to that. This is not a cross examination at length. This is a cross examination to determine the Major's qualifications.

The Court—That is correct. Sustain the objection.

Mr. D'Aloia—I will state right here as to his qualifications—

Mr. Fisch—Do you object to the Major's qualifications?

Mr. D'Aloia—I do not know. I am going to look at these answers I got from him. I did not know he was your expert.

Mr. Fisch—I wouldn't tell you.

Mr. D'Aloia—Now, after that change of pleasantries, I am going to renew my question.

Q. Are you, Major, the defendant in a libel suit—

The Court—I have ruled on that three or four times.

Direct Examination (Continued) by Mr. Fisch.

Q. Now, Major, you have been asked by Mr. D'Aloia about some case at Clairetown, Ohio.

A. St. Claire.

Q. Tell us about that and your connection with it.

A. I was visited by the Prosecutor from that town, who brought a pistol and a bullet. There was a man under arrest charged with murder. He wished to determine whether this pistol had fired this bullet. I stated that it had. The prosecutor was not pleased with my statement, because this pistol did not happen to belong to the defendant, and so he chose not to employ my services. He told me that he was going to convict the defendant anyway. So he sought by using other means of establishing guilt of the defendant, and the defense became informed of the fact that he had visited me and approached me on the subject, and asked me if I would make a deposition. I was going west on another case. I told them I would be very glad to, and I did go and made a deposition to the effect that this bullet was from this gun, thereby exonerating the defendant, who was fully acquitted.

Q. Now, was that your entire connection with that case in St. Claireville? A. Yes.

Q. Now, with regard to the Sacco-Vanzetti case,

was that report of yours made to this commission which was appointed by Governor Fuller in connection with a new trial? A. I understand a copy was presented to the commission.

Q. And that examination you made in the Sacco-Vanzetti case, did you make that with the actual bullets which were in evidence and the fire arms? A. Yes.

Q. And who was present at that examination? A. The assistant district attorney, Mr. Raney, associate defense counsel, Mr. Ehrman, the stenographer, certain press representatives, who were sworn to secrecy, the clerk of the Court of Dedham, Massachusetts, Professor Gill, of the Massachusetts Institute of Technology, who I stated changed his opinion, and myself.

Q. And what was your report in that case with regard to the bullet and the gun? A. My report was that the bullet which killed the Guard Beradelli had been fired by Sacco's pistol and one of the shells picked up from the scene had also been fired from that pistol.

Q. Now, will you be good enough to describe to the court and jury the method of manufacture of the gun—a small arm such as Smith and Wesson 38 calibre, five shooter.

Mr. D'Aloia—Is that part of his qualifications?

Q. You may answer the question.

Witness—I have some charts which I would like to use in connection with that.

Q. You may use the charts it it is going to help us. Are these the charts you refer to? A. Yes.

Q. Would it help any if we put the charts up on the wall? A. Yes, or they can be passed around.

Mr. D'Aloia—Your Honor knows there is a general objection to this because of the impossi-

bility of the charts representing any particular weapon that might have been used.

The Court—The question is with reference to the manufacture of a gun similar to a Smith and Wesson 38.

Mr. Fisch—Yes, sir.

Mr. D'Aloia—There is an objection to is.

The Court—Overruled.

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

Walter D. Van Riper, Judge.

A. The barrels start out as a solid bar, solid chunk of metal, which we show here as a cylinder—a plain cylinder of metal. On the end of the cylinder is a larger lump, a bulge where the bridge breech action is hinged, but that has nothing to do with the bore of the gun. Through this solid piece of metal is passed a steel drill, which drills a hole through there, leaving a hole rather ragged on its inner surface, because this drilling is not what you call a precision job. The main thing is to get a hole there through the bar first, which might later be finished into a nice clean bore, and so, in order to take the scars of this rough drilling out a reamer is passed through backward and foreward until the barrel is polished nice and clean—it looks like the interior of a shot gun barrel. Following the reaming, the rifling rod is passed back and forward through that barrel. On that bar or rifling head, is situated a little cutting edge, the width of that edge is the width of the groove which is to be cut. In this Smith and Wesson five grooves are cut all equally distant. As a matter of fact, in this particular drawing I have six. That drawing should be modified to this particular arm to indicate five.

Q. By the way, have you seen a Smith and Wesson 38 calibre manufactured? A. I have.

Q. And have you specimens you could show us of this rifling and so forth? A. Yes. This long rod, considerably longer than the full length of the barrel, is passed backward and foreward. In a slot on that rod, this cutting edge is situated. Now, that edge which is shown in this upper picture, much magnified in this especial case, as I say, cuts a groove of its own width through that barrel. The rod is passed backwards and foreward, turning as it goes, so that the grooves shall have a spiral twist and not be perfectly straight. The fact is that this spiral twist gives the bullet a spinning action and makes it fly further and faster than if it were not so spun. The barrel is turned. The position of the cutting edge is not changed beyond the spiral that it goes through. When cutting our grooves, instead of moving the cutter around the whole barrel is moved around. For instance, we start one here. The first operation shaves out a very tiny shaving of metal from the interior of that barrel. Then the whole barrel is turned around and a second groove is begun, another fine shaving turned out. Then the barrel is turned again and another and until five shallow gutters situated an equally distance apart have been started. After those five have been begun, this cutting edge is jacked up by a wedge underneath it so that on the next draw it will cut deeper, so that it makes five little deeper cuts in the same channels and deeper cuts on the next turn, and so forth until the grooves are cut to the required depths, to the predetermined depth for that arm, which as I recall, in five-thousands of an inch. Now, this cutting edge, this rifle edge which is shown in section here, this tiny cutting edge and this groove which it cuts, this edge of the cutter, and which to the naked eye is a perfect arc, is actually interrupted by little irregularities, teeth practically, which exist on any fine cutting edge when you magnify it, when you look at it under magnification under a high-powered microscope

or under a microscope of moderate power. This edge instead of having this appearance (indicating) has that appearance. As a result of that instead of the bottom of the grooves having nice beautiful contours, perfect arcs in the bottom of the grooves, they have these little hills and valleys, a perfect row of tiny little depressions and elevations which correspond with other tiny teeth on the edge of the cutter. Now, when you draw one piece of hard metal against another piece of hard metal wear occurs, and wear occurs so rapidly and so steadily in this rifling operation that these teeth edges are constantly crumbling and new teeth are constantly forming. As a result, the little tiny barrel scratches left in this groove are not the same as are left in this groove or in this (indicating), with the result that the two grooves are different in the same barrel, with reference to the same fine scratches as they run down in the bottom of the groove. Now, after the rifling operation a rod with a washer on it is put in the barrel and molten lead is poured into it, and oil and emery is splashed on to the molten lead, and after the lead has solidified it seeps down in the cracks, and this slug of lead is worked back and forward to take out what it can of the coarser scars left in this operation. It also produces longitudinal scars if tiny bits of emery are caught in the lead of the barrel and rubbed up and down, so these elevated surfaces also are not perfectly free from scratches, although the majority of the scratches are present in the grooves. That carries us through the manufacture of the actual bore of the barrel.

Q. Will you be good enough to, if you have them with you, show us the specimens of this manufacture of the barrel in its various stages?

Mr. D'Aloia—The same objection, if your Honor please.

The Court—The same ruling.

Defendant's counsel prays an exception to this

ruling of the Court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

The Court—Do I understand that these specimens which you are about to produce apply to the manufacture of a barrel of a Smith & Wesson?

The Witness—No, sir, these are not the Smith & Wesson barrels.

The Court—Do the specimens apply?

The Witness—They apply, the same sequence of process is followed on those barrels.

Mr. D'Aloia—If your Honor please, my objection is now renewed, these are not Smith & Wesson barrels, admittedly not, and I object to the use of any barrel except a Smith and Wesson barrel.

Mr. Fisch—The process is the same, the witness said.

Mr. D'Aloia—That may be, but we are down to one-thousandth of an inch and smaller fractions, and one barrel which is not a Smith and Wesson barrel may be altogether different, and it is not a question of a thousandth of an inch, it is the difference in an object, and the use of these barrels, because they are not Smith and Wesson barrels.

The Court—I will allow the ruling to stand.

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

Walter D. Van Riper, Judge.

Q. Now, Major, will you be good enough to show me the bar which corresponds to the object which you have marked on the chart number one, the cylindrical steel barrel? Q. Yes (produces object).

Q. This is the cylindrical steel barrel which corresponds to number one on the chart? A. Yes, sir.

Q. Now, then, will you just go through the operations describing the various parts which you have in your hand? A. Number two I do not seem to have, number two being the one with the scars in it. This is number three where the scars have been polished out. This is after the rifling operation has taken place and the grooves have been cut in it.

Mr. Fisch—Just a moment, suppose we have some markings on these to avoid confusion. I ask the cylindrical steel bar be marked S-31A for identification.

(The same is marked S-31A for identification.)

Mr. Fisch—And that the portion of the barrel which the major has described as after the reamer operation be marked S-31B for identification.

(The same is marked S-31B for identification.)

Mr. D'Aloia—They are not in evidence yet?

The Court—No, just for identification.

Mr. Fisch—And the portion of the barrel which the major has described as after the rifling be marked S-31C for identification.

(The same is marked S-31C for identification.)

The Witness—And these are duplicates which follow the leading operations.

Mr. Fisch—I ask that this portion of the barrel which correspondens to the barrel after the leading operation be marked S-31D for identification.)

(The same is marked S-31D for identification.)

Q. Can you tell us, Major, by the examination of a bullet, whether it has been fired by a clean gun or a foul gun? A. Yes, sir.

Q. How can you tell that? A. You can tell that with respect to lead bullets and black powder quite consistently, black or semi-smokeless powder, but you cannot always tell it with regard to smokeless powder. When you are dealing with lead bullets or black or semi-smokeless powders, the fouling in the barrel accumulates quite rapidly and leaves on the surface of the bullet marks in addition to those present from the surface of the metal itself so that the surface of the bullet, in addition to carrying the fine scratches imparted to it by the barrel surface has additional scratches running down its cylindrical portion which are the rough paths, tiny accumulations of fouling which acts as little islands inside of the barrel and scrape out their own pads on the outside of each bullet.

Q. So that the fouler the barrel the more marks on the bullet fired through the foul barrel, is that right? Yes, sir.

Q. Now, is there a difference which can be discerned, Major, between the foul markings on a bullet and the marks made on a bullet by the rifling of the weapon? A. Yes, sir, the foul marks are temporary and the rifling marks are permanent.

Q. And you can determine this on the examination of the bullet? A. You can determine it only by the fact that over a series of shots certain marks will be there permanently and others will appear and disappear, and you know that those which disappear are due to temporary conditions.

Q. And that is the fouling? A. Fouling or rust.

Q. And the permanent marks are the result of the rifling, is that it? A. Yes, sir..

Q. Now, are the bullets of a given type, say the 38

calibre Smith & Wesson type, exactly the same as made by the different cartridge companies? A. No.

Q. Is there a difference in the various types of bullets? A. A standard type such as 38 Smith and Wesson, which we are discussing, is made slightly different by every different manufacturing company which has a number of different characteristics, which are peculiar to the product of that company and different from the product of any other company.

Q. In what respects do they differ? A. Well, bullets have—

The Court thereupon took a recess until tomorrow, Friday, April 27th, 1928, at ten o'clock A. M.

Continued pursuant to adjournment.

Present, counsel as before stated.

CALVIN GODDARD resumes the stand.

Direct Examination (continued) by Mr. Fisch:

Mr. Fisch—May I just read the last one or two questions and answers?

The Court—Yes.

Mr. Fisch—(Reading) "Question: Now, are the bullets of a given type, say a 38 caliber Smith & Wesson type, exactly the same as made by the different cartridge companies? Answer: No. Question: Is there a difference in the various types of bullets? A. Answer: A standard type, such as a 38 Smith & Wesson, which we are discussing, is made slightly different by every different manufacturing company, which has a number of different characteristics which are peculiar to the product of that company and different from the product of any other company."

Q. In what respects do they differ? You started to answer that question. Will you please answer it? A. I asked if I may use the blackboard for that. The difference in outline and curvature—by curvature I mean the curve of the bullet on the nose may differ, the overall lengths differ—these differences are slight, but distinctive. They may differ in adiameter by one thousandths of an inch, but that would not make any difference, of course, in its final identification; they differ in weight by a few grains; the lowest weight for this size is 145 grains and the highest 150 grains. The difference in the width of this cylindrical bearing surface above and below this groove which is known as the connelure or grease groove and in that groove the grease is packed around and serated and it has a little piece, and the grease is squeezed down when the bullet is fired, and that cuts down the amount of fouling when it is fired. Without that grease the fouling would accumulate much more rapidly than it does, and in that operation the bullet actually comes in contact with the barrel and this portion (indicating) not coming in contact, and these dotted lines indicate the interior of the ball of the gun, so you see, these two portions which we might mark A and B are the portions of the bullet which come actually in contact with that barrel. Now, if that is a given make of bullet, on the bullet of the next maker the portion below the curve may be broader and above the curve it may be broader and below the curve narrower, or the curve may be situated in a different relationship to that which it occupies on the bullet of the first maker, it may come higher or lower on the bullet. These teeth may be curved in on one bullet and cut in square on the next. The teeth inflection may be pointed in one bullet and square topped in the next bullet. The base of the bullet may be cut off perfectly square in one make and rounded in another make, practically almost beveled

in the third make, and holding it by the base and looking at it, it may be perfectly flat and round, or it may be slightly cup shaped, slightly depressed. There are a number of points which show one make as distinguishing it from another make, which includes the width of the grease groove, much wider in some than in others, the position of the grease groove, the number of teeth in the grease groove; they are spaced close together in some and wider apart in others; the shape of the teeth; the shape of the base and the contour of the top. If we have the standard unfired bullets of the various makes to compare our fired bullets with, it is possible to determine the make of the fired bullets, because it will have the characteristics of one of these unfired bullets, and it will not have the characteristics of the other.

Q. Now, bullets fired out of a 38 calibre Smith and Wesson gun, irrespective of the make of the bullet, are they known as 38 calibre Smith and Wesson type? A. Yes, sir, there are different types of 38 calibre Smith and Wesson and a 38 calibre Smith and Wesson, so called Smith and Wesson type cartridge, can be fired not only through a 38 Smith and Wesson, but through other makes, but that is a standard commercial type adaptable to 38 Smith and Wessons and other 38 arms.

Q. Now, have you a chart or some photographs by which you could demonstrate to us the various characteristics of a 38 calibre Smith & Wesson type bullet? A. Yes.

Mr. D'Aloia—I object to that at this stage of the testimony. There is no evidence what particular instrument that is, whether it is a 38 calibre type or a 38 calibre Smith & Wesson.

The Court—Can you have your bullets identified first?

Mr. Fisch—Well, if your Honor please, the witness Black testified that the bullet fired into

the ground was a Peter's 38 calibre, fired from a Smith & Wesson gun.

The Court—Well, can the witness testify that the other bullet was also a similar bullet?

Mr. Fisch—I will connect that up.

The Court—What is this question?

Mr. Fisch—This question is whether the witness has charts showing the various types of 38 calibre Smith & Wesson bullets such as would go into a 38 calibre Smith & Wesson gun and whether he could demonstrate by those charts the various characteristics of the different makes of bullets.

The Court—I will allow that.

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

Walter D. Van Riper, Judge.

Q. Now, I show you seven photographs and ask you if these are the charts referred to, the different makes of 38 calibre Smith and Wesson type of bullets.

Mr. D'Aloia—I object to the use of those charts. Those bullets have nothing to do with the bullets in this case. I do not object to diagrams or drawings of the bullets in this case, but I do object to the use of charts showing other bullets.

The Court—This is all for the purpose of showing the method by which the witness arrived at a conclusion.

Mr. Fisch—That is correct. We want to give the Court and Jury everything we have in showing how this determination is arrived at.

Mr. D'Aloia—If they want to give the jury everything they have, let this expert, who is very much of an expert, tell us the method. He does not need those charts.

The Court—This is a part of the method whereby he arrives at a conclusion; isn't that it, Major?

Witness—Yes, sir.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Mr. Fisch—Now, I have additional sets of these photographs which I can supply to the Court and jury.

The Court—What do you mean, they are duplicates of this?

Mr. Fisch—Duplicates of these photographs.

The Court—Well, since I am admitting them, it would help the jury if they can have copies close at hand to follow them. I will admit them.

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

Walter D. Van Riper, Judge.

Mr. D'Aloia—I object on the ground that the diagram used has not been sufficiently described by the expert to show whether or not any of these bullets examined by him have been in any soil for any period of twenty-six months, or whether they were new bullets or one month old or two or three months old.

The Court—Your ground may be noted on the record.

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

Walter D. Van Riper, Judge.

Q. Now, Major, I have given to the Court and jury the three photographs at the head of which are written Remington, Winchester and United States. Will you describe them first and then we can eliminate them?

Mr. D'Aloia—I object to that particular photograph of three Winchester bullets.

The Court—You already have an exception.

Mr. D'Aloia—I object to the testimony about to be given as incompetent, irrelevant and immaterial.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. This photograph shows large pictures of the unfired 38 calibre Smith & Wesson type bullet as made by three well-known American cartridge companies, namely, Remington, Winchester and United States.

Mr. D'Aloia—I object to that testimony because there is no testimony here we have any unfired bullets.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. They merely demonstrate photographically what I demonstrated a little while ago on the blackboard, namely, the difference in position and width of this grease groove, the difference in the spacing and in the shaping of that cannelure, the different in length or width, if you wish to call it, of these cylindrical sur-

faces; the difference in contour. This is more pointed and this is flatter and so on, merely to establish the fact that they are products of the different companies, although made for a specific purpose. Each differ according to the company that makes them.

Q. How many cartridge companies are there in the United States?

Mr. D'Aloia—That is objected to.

The Court—Allowed.

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

Walter D. Van Riper, Judge.

A. There are five manufacturing of this type: Remington, Winchester, United States, Western and Peters and one in Canada.

Q. And you have here the photographs of the bullets of each company? A. Each company.

Q. And do the bullets from each company of this type—are they the same? A. They are not.

Q. Well, the bullets of the Remington for 38? A. All Remingtons of a given type will run the same, made from the same specifications.

Q. Now, then, can you point out to us the differences in the Remington, Winchester, United States Companies? A. Well, I have already done that partially. For instance, this grease groove in the United States is much narrower than it is on the Remington or Winchester. In the Winchester the grease groove is wider than it is on either the Remington or United States and the Winchester it is also cut in on a very deep arc, which does not exist in the other two. In the Remington the grease groove is cut in on an arc at the top and bottom, but runs straight to the center portion, as different from the Winchester which arcs all the way through. The width of this lower bearing surface on the Remington is a little more than that on

the Winchester and less than that on the United States. It is easy for any one to appreciate at a glance that they have different characteristics.

Q. I am now going to ask you to refer to the Dominion and Western on the top.

Mr. D'Aloia—I object to that, because there is no proof we are dealing with either a Western or Dominion product.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Mr. D'Aloia—I would like to strike out all the evidence given by the expert witness up to this point on the ground that he is not testifying that he ever saw either of the bullets that have been introduced in evidence before either bullet was fired.

The Court—Deny the motion.

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

Walter D. Van Riper, Judge.

Witness—This is a photograph of two bullets. We have the Dominion on the left and the Western on the right. It is very plain that in the Western the cannelure is narrow and placed higher than that in the Dominion. It is equally plain that the bearing surface on the Western is broader than on the Dominion, and also broader below on the Western than on the Dominion. These points are sufficient to diffentiate the two.

Q. And are the Dominion or Western bullets the same or different than the other three makes of bullets that you have referred to, namely, the Remington, Winchester and U. S.? A. They differ from those.

Q. Each has its peculiar characteristic, has it? A. Yes, sir.

Q. Now, I am going to ask you to refer to the photograph marked "Peters evidence and current Peters."

Mr. D'Aloia—I move to strike out, if your Honor please, at this juncture, the testimony given by the expert wtih reference to the Dominion and Western bullets, upon the ground that it has not been shown that either of the bullets in this case were of the Dominian brand or the Western brand, and the expert has not testified that he saw either of the bullets in evidence prior to their being fired, my understanding being that neither one of these photographs show the head of the bullet before it is fired.

The Court—Motion denied.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. You may proceed, Major. A. The Peters—

Q. The picture of a bullet which you are now pointing to, the picture marked "Peters evidence", will you tell us where you got it? A. That bullet was removed by me from a cartridge—

Mr. D'Aloia—I object to that if your Honor please, unless it be shown that one of the bullets which the Prosecutor intends to connect up with the occurrence on the 31st of January is that kind of a bullet.

The Court—Maybe that is what he is going to show. I will permit an answer.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Witness—It was removed by me from a cartridge in a box of Peters ammunition brought to me on the 7th of March by Lieutenant Linarducci.

Q. I show you Exhibit S26 and ask you whether or not the bullet, the photograph of the bullet which you are referring to and marked on the top of it, "Peters evidence" was taken. The bullet of which that was a photograph, was taken from this Ex. S26? A. It was.

Q. Now, when you took the bullet from the package marked S26 in evidence what did you do with it? A. Photographed it, I had it photographed.

Q. Is that the photograph of it? A. Yes, sir.

Mr. D'Aloia—If your Honor please, the witness said he had it photographed.

Q. Was it photographed under your supervision, in your laboratory? A. It was in my laboratory with my equipment and under my supervision.

Q. Before you photographed it or it was photographed under your supervision, did you remove it from the shell? A. I did.

Mr. D'Aloia—May we ask at this juncture where the bullet is?

The Court—Yes, you may ask.

Q. Where is it, Major? A. We have it, it can be produced. I had that photographed and at the same time had a photograph made of a Peters bullet 38 Smith & Western Peters bullet furnished me by the Peters Company as a standard of their current type. This Peters bullet has a mark on it which does not ap-

pear on the standard Peters, this mark being the print mark just below the upper edge of the outward cylindrical bearing surface. That mark is left on the bullet when the neck of the shell is squeezed down on to the bullet when the cartridge is put together. This is a sample furnished by the company,has no such mark because that bullet was never loaded into the cartridge, naturally. Beyond that the bullets are the same in contour in cylindrical bearing surface, in the number of teeth, in spacing of teeth, in their general specifications, with the exception that the section of the teeth on the evidence is practically triangular whereas the section of teeth on the current is practically rectangular, this indicating that there has been some change in the machine which cuts the teeth since the time of this bullet being manufactured. In all other respects they are the same and it has been identified for me by the Peters Company as their same bullet, and as I say, it varies only from the present type in the shape of the teeth.

Mr. D'Aloia—I move to strike out what has been identified for him by the Peters Company.

The Court—Strike it out.

Q. Now, both of these photographs, Major, do they represent Peters bullets? A. Yes, sir.

Q. And the photograph marked "Current Peters," that is a photograph of the bullet now being made by the Peters Company? A. Yes, sir.

Q. And the photograph marked "Peters evidence" is a photograph of the bullet which is no longer being manufactured by the Peters Company? A. Yes, and no, it is the same bullet; no, they are not turning them out at the present time with the pointed teeth in the cannelure.

Q. Well, is it an obsolete type? A. It is obsolete in that respect.

Q. And is it distinctive in that way from the current type? A. It can be differentiated from the current type in that respect.

Q. Now, I call your attention, Major, to the portion of the photograph marked "Current Peters" below what I am now indicating, which seems to be the base of the bullet and ask you what that is? A. That is a little steel cap on which this bullet is mounted with a layer of adherent wax to place it in a position to photograph.

Q. That is no part of the bullet? A. No.

Q. Now, have you with you the bullet from which the photograph marked "Peters evidence" was taken? A. Yes, sir.

Q. And the bullet which you have just handed me represents this photograph here? A. Yes (indicating) (photograph marked Peters evidence).

Mr. Fisch—I offer the bullet in evidence.

Mr. D'Aloia—I object to it.

The Court—Is that one of the bullets taken from Black's box.

Mr. Fisch—Yes.

Mr. D'Aloia—I object to it on the ground that this expert never saw either one of these bullets which the Prosecutor is trying to connect up with this episode of January 31st before they were fired.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the Court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(Same is marked S32.)

Mr. Fisch—Now, if the court please, at this juncture I would like to offer in evidence as one exhibit the photographs of the types of bullets which the witness has referred to and which

have been accepted as the Remington, Winhester, United States, Dominion, Western and Peters manufacture of bullets.

Mr. D'Aloia—I object to it as incompetent, immaterial and not at all admissible. Diagrams made by any experts arriving at conclusions are not as evidential as his conclusion is, he may be permitted to explain how he arrived at his conclusions, but they are not admissible as exhibits in evidence in any case. Handwriting experts cannot bring in photographs of the different letters and no expert can bring in before a jury his exhibits, but diagrams are the different things he has done in arriving at a conclusion. They may be used in showing the jury how he arrived at the conclusion.

The Court—I will not admit them at the present time.

Q. Now, Major, I show you Exhibit S-2 and Exhibit S-30 and I ask you if you have ever seen those bullets before? A. I have.

Q. And when was the first time you saw them? A. On March 7, 1928.

Q. And where? A. In my office.

Q. And who exhibited them to you? A. Lieutenant Linarducci.

Q. And did you receive any information concerning those bullets at the time you received them? A. Not beyond the fact that he wanted me to tell him what I could about them.

Q. Did he tell you anything more than that? A. As I recall, he did not tell me anything about them.

Q. Did he tell you where he had gotten them from? A. No.

Q. Or what connection they had? A. He may have told me that one of them figured in a homicide. I am

not certain whether he told me that before or after I examined them.

Q. Now, did you make an examination of the bullets? A. I did.

Q. Now, will you explain to the Court and Jury your method of making this examination of these bullets? A. First I wanted to ascertain the make of the bullets and the type, so I weighed them and measured them.

Q. What did you weigh them on and what did you measure them with? A. With a micrometer caliper, and I weighed them to a grain.

Q. Have you that instrument with you? A. I have not, no. The weight tallied out with the weight of the Smith & Wesson 38 type and the diameter did too. The weight being 145 or 146 grains—I forget which—on the Peters and the diameter 358 or 359 thousandths of an inch. One of these bullets lacked one or two grains and the other several grains of its complete weight, but that is natural after the bullets have been chewed up, especially such as this second one has.

Q. What is the number of the Exhibit? A. That is S30.

Q. Exhibit S30? A. S30. I then compared Exhibit S2 with the various standard makes of cartridges.

Q. By the way, has Exhibit S2 a mark or cross on it? A. It has a very distinct cross mark on the groove. I compared that with the unfired bullets of different makes, such as have been shown photographically here.

Q. How did you compare it? A. Under a comparison microscope.

Q. Have you that comparison microscope here? A. I have.

Q. Will you show it and produce it and show us how you did that?

Mr. D'Aloia—I object. The same objection. The expert can give his conclusions, but the methods are not evidential. I submit that this is not evidential.

The Court—I will admit it.

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

Walter D. Van Riper, Judge.

Q. Now, is the instrument which you now produce the instrument which you used in examining these bullets? A. Yes.

Q. What is that known as? A. Comparison microscope.

Q. Are you familiar with the use of a microscope? A. Yes.

Q. How long have you used a microscope, what training have you had in using one? A. I had nine years in the College University training, using one, and I have been using one off and on ever since.

Q. How long is that? A. Twenty years.

Q. And I believe you said you were a graduated M.D. from Johns Hopkins University? A. Yes.

Q. Did you subsequently have anything to do with the university? A. I was a member of the faculty.

Q. Teaching? A. Electro-cardiography.

Q. Did you in that connection use a microscope? A. Yes.

Q. Will you just show us how you made the examination of this bullet for the purpose of determining what make it was?

Mr. D'Aloia—I resume my objection and say the question to be put to this expert at this juncture is what make of bullet did you find it to be and his answer is admissible. Now, this is absolutely inadmissible.

The Court—I will admit it.

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

Walter D. Van Riper, Judge.

Mr. D'Aloia—I know you have admitted the question asked about the microscope, but you have not admitted this method he is about to pursue.

The Court—As I understand, I permitted him to pursue this method.

Mr. D'Aloia—Well, what will it sum up to? There is not any one here who can tell us whether that is correct or not.

The Court—You can examine him on that when it is your turn.

Q. Now, what have you done with regard to this comparison microscope? Will you please describe what you have done? A. I have assembled the instrument, placing the cross arm, which connects the two barrels of this double microscope in such a position that the images of the objects under these two microscopes are carried together horizontally by reflection from prisms in the two ends of the cross arm. These images meet just below this single eye piece in the middle of the cross arm, and secondary prisms throw that upward, side by side, so that when we look in this single eye piece, we see a composite image formed one half of what is under the left hand microscope and one half of what is under the right hand microscope.

Q. And the half under the left would be the base of the bullet? A. Yes.

Q. And what is under the right side would be the nose of the bullet? A. Yes.

Q. So that you see the nose under one and the base under the other? A. Yes. They can be manipulated

so that you can see various portions along those bullets, reverse and elevate or depress them. Now, having established that the general characteristics of the two bullets are the same, the final differentiation, the final determination, whether they are the same make, is to determine whether those teeth in the cannelure are spaced equally and shaped the same, so I take two bullets and fuse them together right across the middle of the cannelure.

Q. Where these teeth are? A. Yes.

Q. So that you would have the base of one and nose of another? A. Yes. I see a bullet and the lower half of the teeth being furnished by the left hand bullet and the right hand by the right hand bullet, and if those teeth are equally spaced and faced the same, then I am satisfied those bullets are made by the same company.

Q. You refer to this as the left hand? A. Yes.

Q. That is exhibit S2? A. Yes, and on the right hand I have S32, the bullet removed by me.

Q. That is Exhibit S26? A. Yes.

Q. Can you tell me by the use of that comparison microscope whether or not the bullet from Exhibit S26 is the same make and vintage of bullet as Exhibit S2, the fatal bullet?

Mr. D'Aloia—I move to strike out the vintage.

A. Yes.

Q. And you have determined that, have you, by the manner which you have described? A. Yes, sir.

Q. And do the cannelure markings of the fatal bullet, S2, correspond exactly with the cannelure markings of the bullet which you extracted from Ex. S26? A. They do.

Q. Have you any objection to the jury viewing through that microscope? A. No, sir.

Mr. Fisch—I would ask, if your Honor please,

that the jury be permitted to view the bullets through the microscope.

Mr. D'Aloia—I object to that.

The Court—This is the bullet which was found in Thompson's clothing and the bullet which was taken out of Black's box?

Mr. Fisch—Yes, your Honor.

The Court—I will permit it.

Mr. D'Aloia—I object, if your Honor please, because before anybody can use or do any microscopic work with precision a college education is necessary.

(Argument.)

The Court—I will permit a view of the bullet.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(The jury views the bullet through the miroscope.)

Mr. Fisch—And I suppose, if any of the jurors desire to ask the witness any questions they may be permitted to do so.

The Court—Jurors always have that right.

Q. Now, Major, from your microscopical examination of the bullet, S2, and one of the bullets extracted from Ex. S26, what is your concusion as to those two bullets, as to their make? A. They are both Peters 38 Smith and Wesson make.

Q. And are they the current Peters bullet? A. No, sir.

Q. Are they the bullets which Peters are not making any more? A. Yes, sir.

Q. How do you determine that? A. By the shape of the teeth in the cannelure.

Q. The shape of the teeth in the cannelure and these two bullets is what? A. The same.

Q. And what is it? A. It appears to be pointed, not perfectly sharp, but the general shape is triangular.

Q. Rather than what? A. Rather than square.

Q. What next did you do? A. I examined Exhibit S2 to determine the type of arm through which it had been fired.

Q. And how did you determine that? A. In two ways, first by measuring the width of the land and groove marks.

Q. Will you tell us, please, what those are land and groove marks? A. When a bullet is fired through a barrel there is a certain marking there. The groove of the barrel. Each groove of the barrel is reproduced on the bullet by an elevated area, an elevated strip known as a land; each elevated strip in the barrel between two grooves is reproduced on the bullet by a groove.

Q. That is by depression? A. By a depression. When you force a holder of lead through this barrel, which is the full diameter of this barrel, just as these bullets are, a depression is going to be gouged out along the side of this bullet wherever one of these projections exist in the barrel, and vice versa, so a land in the barrel is reproduced as a groove on the bullet and the groove in the barrel is reproduced in a land on the bullet.

Q. So the raised marks would be the land and the depressions would be the grooves? A. Yes, sir. I counted the number of grooves on this bullet and found it to be five. There are always as many lands as there are grooves, so this bullet showed five lands and grooves.

Q. Which bullet? A. S2, and it also showed the groove inclined to the right.

The Court—What is S2?

Mr. Fisch—S2 is the fatal bullet.

Witness—Different makers of firearms use different rifling specifications, some use grooves

inclined to the right and some use grooves inclined to the left; by that inclination I mean that this bullet has the tendency to be tilted to the right of a vertical line through the bullets.

Q. And are those marks formed by any marks in the barrel of the gun? A. These marks are formed by the lands in the barrel of the gun.

Q. And are those lands rifling marks? A. The lands and grooves together constitute the rifling marks in an arm.

Q. Is that what you referred to by giving the speed and velocity in going through the barrel? A. It does not give it forward velocity, it gives it angular velocity which makes it fire straight rather than wobble. As I say, this bullet has five lands and grooves and I measured them with a Filar micrometer microscope.

Q. Have you that Filar micrometer microscope with you? A. Yes, sir.

Q. Will you show us the microscope and show us just what you did.

Mr. D'Aloia—That is objected to.

The Court—Same ruling.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Is that the Filar micrometer microscope? A. Yes, sir.

Q. And how accurate is that microscope? A. It is graduated down to five-thousandths of an inch.

Q. And what is it used for? A. It is used for measuring accurately short distances on any object you wish to measure.

Q. Is it used for bullets? A. Yes, sir.

Q. Now, this microscope differs from any other microscope only in that on the eye piece it has a device

by which the measurement can be carried out. A. There is a graduated scale in the bottom of the eye piece, each interval being one thousandths of an inch. There is a vertical cross hair running up and down of the eye piece and a horizontal cross hair. When we wish to measure the distance between two points on an object, say it is as on a bullet, we wish to measure the width of a groove on this bullet, we twist the hair on the eye piece or the bullet, so that the groove will be parallel with the vertical cross hair. Here is our groove now. We put the vertical cross hair on the edge between the groove and then remove that cross-hair over to the other edge by rotating this little drum. The number of whole spaces it has moved in 100ths of an inch, and in this case it would be 400ths of an inch, and every intermediate division less than 100, we can rotate on this gradual drum on the outside, and each one hundredth is divided into fifty parts which makes one part equal to five-thousandths. As I said before, the various makers use different specifications. One maker will make his groove so many thousandths of an inch wide and, if I can inject something, of course, when two makers have a different number of grooves they can never be confused. If they have the same number of grooves going in opposite directions they can never be confused, but when two makers have the same number of grooves inclined in the same direction, then, naturally, it is difficult to tell whether the bullet has been fired from one or the other, but no two makers use the groove the same width or of the same inclination. If they get to the same width one may be inclined to the perpendicular and the other not, but no two makers use the same width, just as they do not in bullets, so by measuring the width of the groove and the insulation which this groove has made by the use of this microscope, by which we can rotate our cross hairs through the angle of the groove, we can de-

termine the width of these grooves and the angle that they make. Now, engineering tables have been worked out and are available, and I have a volume containing such tables, which shows the rate of twist of a given spiral over a given angle of a given diameter of that spiral, so knowing the diameter of the bullet and the diameter of the angle by measuring these angles, we can determine what it is, and I determined this to be fired through a Smith & Wesson. That was my first test. Then I took a bullet which I knew to be fired through a 38 calibre Smith & Wesson and compared it with this under the microscope and the grooves were the same, and that was a practical check on the theoretical determination.

Q. In the comparison, did you use the comparison microscope in comparing the bullet S2, the fatal bullet, with the bullet you knew to have been fired by this Smith & Wesson 38 hammerless? A. Which I had personally fired.

Q. Did you compare those two bullets under the comparison microscope? A. I did.

Q. What did they show? A. They showed that they had both passed through the same type of gun, 38 Smith and Wesson.

Q. And did the grooves and lands match up the base of one and the nose of the other? A. They did, as I just said, in the composite picture furnished one half by the fatal bullet and one half by the bullet I fired the grooves appeared to be of the same width and cut by the same angle.

Q. Thereby giving the appearance of being one bullet? A. In their gross appearance they looked like one bullet.

Q. Now, Major, what next did you do? A. I went through the same test as to S30.

The Court—So the jury gets that straight—

Mr. Fisch—S30, if your Honor please, is the bullet which has been testified by Mr. Black was

fired into the ground at his home by the Smith & Wesson 38 calibre hammerless safety revolver in 1926.

Mr. D'Aloia—I object to that. That is the bullet which Mr. Black thinks he fired into that flower bed on December 31, 1926. That is a piece of lead found in that flower bed by some people who went up there and excavated in the month of February.

The Court—Well, it is the bullet taken from Mr. Black's flower bed.

Q. Well, what did you do in connection with the bullet which was taken from Mr. Black's flower bed and marked S30? A. I went through exactly the same procedure I went through with the same bullet. I went through and determined it was a Peter's make and I satisfied myself it went through a Smith & Wesson arm.

Q. And how did it compare in these cannelures with the bullet Exhibit S2, the fatal bullet?

Mr. D'Aloia—I object to the comparison, because it does not yet appear that that particular object in evidence marked as S30 is positively a bullet fired from a 38 calibre Smith & Wesson revolver in the possession of Mr. Black.

The Court—I understood the witness just testified to that.

Mr. D'Aloia—No. He testified it came from a Smith & Wesson revolver, but I don't like the qualification it was fired by Mr. Black.

The Court—I think that is admissible.

Mr. D'Aloia—Might it be?

Mr. Fisch—S30.

Mr. D'Aloia—S30 does not appear to be anything but a piece of lead fired possibly through a Smith and Wesson revolver. Now, we have

had Mr. Black describe what he did this New Year's eve, but that does not prove it was the piece of lead he was talking about.

The Court—I will admit it.

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

Walter D. Van Riper, Judge.

A. The bullet was badly deformed and many of the teeth were badly distorted.

Q. Which is Exhibit S30? A. Yes, but such teeth as were undistorted had all the characteristics and were identical with those on the fatal bullet.

Q. What would you say as to that comparison you made wtih regard to what Exhibit S30 is? A. I would say S30 is a bullet of Peter manufacture, fired through a Smith & Wesson revolver, the same type and period of manufacture as the fatal bullet as distinguished from the current period.

Q. Now, then, as I understand it, then, you determined, did you, that Exhibit S2, the fatal bullet—have you that—Exhibit S2, the fatal bullet, and Exhibit S30, the bullet which was taken out of Mr. Black's lawn were both Smith & Wesson 38 calibre type bullets manufactured by the Peter's company? A. Yes.

Q. And which are not now being manufactured? A. Not in that identical form, no.

Q. Then what next did you do? A. I then compared the fatal bullet with the bullet from the flower bed to determine whether or not they had issued from the same gun or not.

Q. How did you do that? A. By the same process that I made these prior comparisons. I placed one bullet on one of these bullet mounds.

Q. That is of the comparison microscope? A. Yes. This knob being completely revolvable. I placed the

second bullet on the other mound, which is similarly constructed. It has a fast speed gear and low speed gear. I held one bullet in one position, picking up some rather prominent markings, and I compared the second bullet with that, rotating it slowly, and trying first one point of the second bullet and comparing it with the fixed point of the first bullet. In due time I found a point where there were markings of identity common to both bullets. I do not mean they had broad groove marks, but I mean certain finer markings, the origin of which I have already explained in the manufacture of a gun barrel.

Q. That is, made by this tool; are those the markings made by the rifling tool? A. Yes. I found where the finer markings coincided. Now, that coincidence was disturbed by the fact that one bullet had been fired through a foul gun and the other bullet fired through a gun in a clean condition.

Q. Which bullet had been fired through a foul gun? A. The so-called flower bed bullet.

Q. That is Exhibit S30? A. Yes.

Q. Which bullet had been fired by a clean gun? A. Fatal.

Q. That is Exhibit S2? A. Now, for that reason there were many additional remarks—

Q. Just what do you mean by a foul gun? A. One that has not been cleaned.

Q. Dirty on the inside of the barrel? A. Dirty on the inside of the barrel, yes. For that reason, as I explained yesterday, tiny lumps of fouling and the rust which followed the fouling leave their own individual scratches on bullets, which may be cleaned out or shot out, whereas these underlying teeth marks remain permanent unless they are cured by these temporary characterisitics. Now, there were a number of these marks on the flower bed bullet which were not on the fatal, but having found definite coincidences between

the two, I then rotated them all the way around and found actual marks in common apart from these variable marks to satisfy myself they had both passed through the same barrel.

Q. And you say the fatal bullet, Exhibit S-2, and so-called flower bed bullet, S-30, were not only bullets of Peters make, which are not now being manufactured, 38 calibre, and were not fired out of a Smith & Wesson 38 calibre, but do you say they were both fired out of the same gun? A. Yes.

Q. Now, did you have photographs made under your supervision of the various—of the different positions of the two bullets? A. I did.

Q. Which would show the similarity which you say you referred to in the land and groove marks? A. Yes.

Q. A similarity of the land and groove marks of a permanent nature? A. Yes.

Q. And I suppose also that those photographs show on the so-called garden bullet, S-30, the markings of a temporary nature, the fouling marks? A. Yes.

Q. Have you those photographs here? A. Yes, I have.

The Court—These are photographs of S-2 and S-30?

Witness—Yes, sir.

Q. And how many sets of each position did you make? A. Ten sets altogether.

Q. I don't know whether you understand what I mean. A. Four in each position.

Q. What are they? A. There was a picture of the fatal bullet, a picture of the flower bed bullet, and then a composite picture in which a print of the fatal bullet identical to the first print used has been cut in two and the lower half of that cut print has been laid over another print of the flower bed bullet identical to this first print. The last picture is still a third print of the

flower bed bullet with the upper half of the fatal bullet laid on top of this.

Q. Now, is this the photographic section which you have just referred to, Major? A. Yes.

Q. And it is composed of four sections? A. Yes.

Q. Now, I notice that the first section is marked A-1. Will you please tell the Court and jury what A-1 is? A. A-1 is a photograph of the fatal bullet.

Q. Now, what is A-2? A. A-2 is a photograph of the flower bed bullet.

Q. What is A-3? A. A-3 is a photograph of the flower bed bullet on top of which has been laid one half of a copy of the fatal bullet, a duplicate print of A-1.

Q. What is A-4? A. A-4 is an additional print of the flower bed bullet on top of which has been laid one half of a copy print of the fatal bullet.

Q. In other words, you took duplicate prints of A-1 and cut them in two and duplicate prints of A-2? A. No. Those have not been cut.

Q. But you took a duplicate print of A-1 and cut it? A. Yes.

Q. And you took a portion of A-1 and superimposed it on a portion of A-2? A. Yes.

Q. Thereby making it A-3? A. Yes.

Q. And then you took a superimposed cut of A-2 and put it on A-4, making it A-4? A. Yes.

Mr. D'Aloia—I object.

The Court—I will admit that.

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

Walter D. Van Riper, Judge.

Mr. D'Aloia—May I cross examine on that before they are admitted?

The Court—Yes.

By Mr. D'Aloia:

Q. Now, Major, it is possible if you slip a bit in this line of cutting you are going to have a little difference in he line, aren't you? A. No, you can cut it anywhere, up or down, the bullet.

Q. If it is a thousandth of an inch above the bordei side, just as it appears here, the lower half of this picture is about an eighth of an inch to the left of the outside surface of that bullet? A. Yes.

Q. So that when you superimpose if there is a little inaccuracy in this cut, you are going to be inaccurate with your line. A. You cannot cut inaccurately.

Q. Now, why is it even when you fasten them together there is an inaccuracy? A. There is no inaccuracy. There is a failure to meet, because there was a distortion of both bullets when they hit the ground.

Q. Now, if you are inaccurate on this cut, when it comes to this operation of superimposition, why, you are going to get those lines twisted at the joining point. A. No. You can cut it any where you want.

Q. I know, but the straightness of that line and where it comes in contact with a portion of the photograph below, has a great deal to do with the continuity of the line? A. Yes.

Q. And if you make a mistake in cutting with a scissors or knife, you are liable to get things that fit, the lines up and down will fit, and some won't fit. A. You cannot make a mistake.

Q. Do you mean to say if I took a scissors and started to cut here on a bias and brought them up so the lines would be vertical, there would not be an inaccuracy? A. No, sir.

Q. They would still match? A. Yes, sir.

By Mr. Fisch:

Q. Now, Major, woud it be helpful if magnifying glasses were used on these photographs? A. They would bring out lines that are not ordinarily readily seen.

Mr. D'Aloia—I object to this entire thing and I think your Honor understands I am entitled to an exception to all of this.

The Court—I think you have taken an exception to practically everything.

Mr. D'Aloia—Your Honor realizes that this side of the house has a duty to perform and I am not taking exceptions to anything to annoy your Honor or anyone else.

The Court—I realize that and I realize you are here to take exceptions.

Q. I notice, Major, that there are certain numbers and markings in ink on these photographs of this exhibit? A. Yes, sir.

Q. Did you make this number? A. Yes, sir.

Q. Will you be good enough, Major, to explain to the court and jury what those markings represent and why you say those marking show that the fatal bullet and the so-called garden bullet were fired from the same gun? A. These lines I have drawn, the first on the composite picture, positions three and four—

Q. That is A-3 and A-4? A. A-3 and A-4 to point out the characteristics in common, or which both of these bullets have in common. For instance there is a characteristic No. 2 which is a rather prominent ridge.

Q. You say No. 2 on which number? A. On position A-3.

The Court—There are two number 2s on there, Major.

Witness—There are two in each instance. I have drawn a line on the upper part of the picture to show that characteristic is present on the flower bed bullet and the line on the lower part of the picture to show that the same characteristic is present on the fatal bullet, so wherever

these cut pictures these lines appear they indicate the presence of a characteristic which can be located on both bullets, and the same number appears above and below the line. Now, characteristics such as No. 9—

The Court—Just a minute, Major, I probably interrupted you. You started talking about No. 2 but you did not finish.

Witness—I merely said that it indicated a prominent characteristic which is common to both of them.

The Court—Well, what is it?

Witness—It is a ridge in the groove of the bullet which indicated the interval between two aggregations of fowling on the land of the gun. Wherever we have something on the surface of the gun pressing into the bullet we get the groove into the bullet wherever we have it, and wherever we have an interval between those elevations on the surface of the gun we have a ridge on the bullet. The edge of one groove is indicated by this No. 9, this characteristic No. 9 on position A-3. Now, that gouging would exist on any two bullets fired through any two Smith & Wesson revolvers.

Q. That is the space between, you are now referring to the space between No. 2 and position A-3 and No. 9 on position A-3? A. Well, No. 2 is not quite over to the left hand edge of the groove.

Q. Well, extending a little further to the left. A. There is a highlight just to the left of No. 2 which we have not marked, but the distance between that highlight on this sharp edge No. 7 would be the same on any bullet through any Smith & Wesson revolvers.

Q. Now, that is to say, Major, if I understand you correctly, that this space which I am now referring to would be the same, being formed by the land in the barrel, is that right? A. Yes, sir.

Q. Is that what you referred to before by a determination of which you came to the conclusion that both of these bullets were fired from a Smith & Wesson gun?
A. Yes. As I say, the fact that these grooves are the same width prove only that they came from a Smith & Wesson. They do not prove that they are from the same Smith & Wesson.

Q. And when you talk about the grooves you are talking about the markings from No. 9 on A-3 and just above highlight or marking No. 2? A. In order to prove that they are through the same arm we have to pick up a number of markings common to the two, and that I have done in this particular instance. I have picked up nine markings.

Q. Will you just explain those markings, pleas,e with the numbers? A. Those marks are left by tiny collections of rust, fouling, protruding into the barrel of the gun, by tool marking, predominently by tool marking, but we occasionally will get a change due to rust which becomes permanent, which permanently changes the surface of that arm so that in addition to the ordinary tool scars which existed in the barrel, certain other permanent scars become acquired as the arm ages.

Q. And do the tool scars in every barrel differ? A. They do.

Q. And do the tool scars in the barrel of one gun differ? A. They differ in each groove, yes, sir.

Q. That is the result of the friction, is it, between the tool points, or whatever you may call it? A. The weight of the cutting edge.

Q. And the barrel itself? A. Yes, sir. Each one of these lines represents the presence of a tool scar in the barrel, or a presence of other changes due to rust and corrosion which have permanently marked that barrel, so permanently that those marks will be imparted to all bullets passing through it. So, as I say, I have picked up nine markings, and

starting with No. 9, which is an interval between two ridges, No. 4 which is another ridge; No. 5 an interval between two ridges, No. 6 another interval; No. 7 a tiny interval between two other ridges; No. 8 a tiny ridge, and No. 9 the edge of the groove itself. In 10 we have another ridge which exists from the two. You will recall that I said before that No. A-3, the flower bed bullet, was fired through a very foul gun, and it has many, many more marks on it than the fatal bullet which passed through a relatively clean barrel. Moving over to A-4, I picked up 12 such characteristics, starting with a prominent ridge No. 20, then a groove to the right of it, No. 21, then ridge No. 19, a groove No. 18, groove No. 17, and ridge No. 16; a very prominent ridge No. 15, ridge 14, groove 13 and the groove edge No. 12. Now, I picked these two series of lines and carried them back to the uncut pictures.

Q. That is to the pictures marked A-1 and A-2? A. These series of lines from 1 to 10 on the lower one-half of position A, which represents the lower portion of the cut on the fatal bullet, I picked up bodily and placed on the uncut fatal bullet, placed in the same position which they occupy on the cut one. I then picked up these series of lines on the fatal bullet A4 which are from 21 down to 11, and bodily transposed those back to No. 1.

Q. Do they match? A. They do. You see, that is the same bullet, but we are not trying to match any bullets. I am merely showing the relevant position of those lines on the cut and the uncut and I have done relatively the same on the line of the upper part of A-3, and transposed this picture from 1 to 20 and then the lines of the upper part of A-4 from 21 down to 11 I have transposed to the lower part of A-3.

Q. Now, then, the photographs of these bullets which you have shown, in examining that portion of these two bullets, how many marks of similarity are

there between the two in the lands and grooves in A3? A. I have 10 and in A-4 we carry from 11 to 21.

Q. So that there are 21 points, are there, of similarity between these two bullets? A. In this one position 21. I have used the same ridge frequently in both of these positions. I have used the same characteristics more than once so there is not a total of twenty-one points of similarity. As a matter of fact, there are many more, I have not marked half of them, half as many as can be picked up with this glass. I have marked the most prominent one—I will correct that to say that there are at least twenty-one, but I have not marked half of them.

Q. Then, there are at least twenty-one points of similarity in this position? A. Yes, sir.

Q. Now, Major, did you take photographs of another position of the bullet, of both bullets? A. They were taken in my laboratory.

Q. And taken under your supervision? A. Yes, sir.

Q. And do you call those photographs position B? A. Yes, sir.

Q. And were they made in the same manner that position A was made? A. Exactly.

Q. That is the position B-1 represents? A. The fatal bullet.

Q. And B-2? A. The flower garden bullet.

Q. B-3? A. The flower garden bullet with a portion of the print of the fatal bullet overlaid, and B-4 the flower garden bullet with another portion of the same print with the fatal bullet.

Mr. Fisch—I offer these photographs in evidence.

Mr. D'Aloia—I object to them as incompetent and immaterial.

The Court—Admit them.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(Same are marked Ex. S-34.)

The Court—What is this, another position of the bullet, Major?

Witness—Yes, both bullets have been slightly rotated from their original position.

Q. Were they both rotated the same distance from the position A? A. Yes, sir.

Q. Now, referring to position B Exhibit S-34, did you rule out certain markings and number them in that position? A. Yes, sir.

Q. For what purpose? A. For the purpose of showing the points of identity present on both of those bullets.

Q. Will you explain them to the court and jury, please. A. These were ruled and treated in the same matter as just shown, the A position. A copy of the photograph of the fatal bullet was cut in two parts, one part is overlaid on the photograph of the flower garden bullet covering its face.

Q. That is in position B-3? A. B-3. Another part of the photograph of the fatal bullet is overlaid on still another print of the flower garden bullet, which is position B-4. I then started on B-3 and picked out the more prominent land marks common to both of those bullets. The more prominent points of identity.

Q. Will you describe them, first, please. A. Well, first we have 18 on the extreme left which is the extreme left edge of this groove mark. That is really what we call a slippered mark, because on the edge of the groove, as the bullet enters the gun we get a sort of duplication of the marks owing to the fact that the bullet tried to slide down the barrel without turning. We

get a sort of a double series of marks. The first series of pulling as the bullet enters the barrel and tries to roll down the groove and the other as the bullet settles into the groove and we get a different sort of marking. On 17 and 18 we have our double marks, 18 and 17 being present on the upper portion of the picture. 16 is a highlight, which is prominently present. We then go over to the outside curve and find a nice ridge No. 15. 14 is the curve just slightly besides 15, and we have a direct impression of 14. We go on still to the right and we have No. 12 which is a little curve on the surface of the bullet. We come to No. 11 which is the edge of the groove, a broad rifling groove mark. Both bullets are pretty well used up along here, but the surface eroded and very few marks are present from there on over to 10 where we get a highlight common to both which leaves a ridge, and then No. 9 we pick up just below the line in the lower section, and away above the line in the upper section is another ridge we can not pick up just above the line, because that portion of the bullet has been polished off by contact with the earth, and it is just grooved off, and we do not get back to that line again until we get quite high. The same is true of line 8 which we pick up above the line and we have to go away above the line. We pick up above the surface of the flower garden bullet, and as I said before, these ridges and grooves correspond with the grooves and ridges present on the metallic surface and some of them are due to tool scars and some of them due to definite changes in the metal due to rust and corrosion, some temporary ones which are not common to both due to temporary rust and fouling conditions which had been altered between the firing af the first and second bullets. Going over to B-1 we find prominent high lights and prominent ridges. Then the upper bullet has been eroded again and shows nothing very definite until we go over to three and four where

we have two quite prominent ridges. Five is a grooved edge prominent high light, and then we come over—

Q. Will you explain why there are very little markings over the land? A. That particular land was clean and smooth. Until we get to the edge of the next groove is six, the lower bullet has been so corroded that nothing can be picked up in common.

Q. The lower bullet is the garden bullet? A. Yes. That has been subject to discharge through earth and the polishing and the heating effect it has on it, and we finally come to number seven, which is the edge of that groove. These same marks I have picked up bodily and transferred back to the original pictures, the marks on the lower half of B-3 have been transferred to the lower half of B-1 and the marks on the top half of B-4 have been transferred to the top half of B-1, the marks on B-3 have been transferred to B-4; the marks on the upper half of B-4 have been transferred—have been transferred to the lower half of B-2.

Q. Can you explain to me the cause for the formation of the nose on bullet B-2 and the upper half of the photograph B-3? A. That bullet has struck some resisting object and two cavities have been formed there, sort of a triangular here, and sort of a sphere shape one to the right, by contact with a pebble, or something quite resisting, which dented the bullet.

The Court—Which is B-2?

Witness—B-2 is the flower garden bullet.

Q. And B-2, the flower garden bullet, and the upper half of B-3, which is also the flower garden bullet, is that right? A. Yes.

Q. Was that bullet deformed in any way by striking this resisting object? A. Quite deformed. Its whole surface is out of true.

Q. Would you say that is caused by the hitting of a resisting object such as a pebble or stone in the

ground? A. And by the scraping action of the ground, it passed through, which took off certain portions of its surface.

Q. Now, did you make another set of photographs showing another position of these two bullets? A. Yes.

Q. And did you rotate them in the same direction and at the same distance? A. I don't know whether they were exactly the same—oh, yes, both bullets were moved the same.

Q. That is what I mean. A. Yes. Otherwise it would not match.

Q. And the next set did you mark that set as position C? A. Yes.

Q. And is this the set that you marked as position C? A. Yes.

Q. And what do these photographs represents? A. C-1 represents the fatal bullet. C-2 the flower garden bullet. C-3 the flower garden bullet with a portion of a print of the fatal bullet overlapped and C-4 the flower garden bullet with still another portion of the fatal bullet overlapped.

Mr. Fisch—I offer that photograph in evidence.

Mr. D'Aloia—I object to that as incompetent, irrelevant and immaterial.

The Court—The same ruling.

Defendant's counsel prays an eception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(Photograph marked Exhibit S-35.)

Q. Did you line out these photographs and put numbers on the lines? A. Yes.

Q. Tell us what you did and explain them. A. I

followed the same procedure as used in the two sets already exhibited and marked the most prominent points of identity present on both bullets, starting in C-3, I continued by number eleven, which is a ridge close to the left hand edge.

Q. That is about in the center of the bullet? A. Pardon me, number sixteen. Then number fifteen, which is a grooved edge, then number thirteen, which is a ridge rather prominent in size common to the two. Then number fourteen, which is a second ridge quite sharply outlined on both of them, and then number twelve, another ridge, which stands out extremely low on both of these pictures. Then number eleven, which is prominent in that it stands by itself with very few lines on either side of it and is right in the middle of a groove, and then number ten, which is a ridge in the edge of the groove, and number nine marked again the edge of the groove. I may repeat the grooved edges themselves are merely used as land marks to indicate points in which we worked in either direction and as land marks to show that these bullets were the same make of gun. It is the presence of identical marks between grooved edges and land edges which indicate that they went through the same particular gun.

Q. You say that these marks indicate that both of these bullets were fired through the same gun? A. Yes.

Q. That all of the marks you have referred to in all of the pictures, do they indicate that all of the bullets were fired from out of the same gun? A. All of them except the marks that were on the edges of the groove which confirmed the same make of gun. Of course, they worked in with the others to prove the same identity.

Q. Now, then— A. We go over to C-4 and we find a series marked one to eight, one being a groove edge; just to the right of that is a ridge, a high light ridge I have not marked, but which can be readily seen. To

the right of that is a high light ridge marked number two. To the right of that again another ridge marked three, and then a short high light ridge number four; another number five, and one a deep shadow ridge—shadow groove; number six, and then there is a space where the surface of both bullets is quite clean and there was practically no identity marks until we get to the left of the grooved edge number eight, where a tiny shadow groove number seven appears. These marks as in the previous pictures have been transferred bodily back to the untouched pictures, so if I were to take print C-1 and cut it in two, I would have all that I have here.

Q. That is in the lower portion of C-3 and upper portion of C-4? A. C-1 is a duplicate of the lower portion of C-3 and the upper portion of C-4, if they were put together.

Q. Now, you have pointed out, then, some—a number of similarities on this set C? A. Yes.

Q. Between these two bullets, is that correct? A. Yes.

Q. Now, are there other marks of similarity which you did not point out? A. There are other marks on all of these pictures which can be picked up, many with the eye and others with a glass, which have not been marked. I think it is safe to say in any picture twice as many as I have marked.

Q. Twice as many marks of similarity as you have marked? A. Yes.

Q. Now, did you take photographs of these two bullets in still another position? A. Yes.

Q. And were both bullets rotated at the same distance? A. Yes.

Q. In the case of the next photograph? A. Yes.

Q. And in the same direction? A. Yes.

Q. So that the photographs would show another position of both of the bullets, is that correct? A. Yes.

Q. And did you call that position D-1, 2, 3, and 4?
A. Yes.

Q. Are these the photographs that you refer to? A. Yes.

Q. Now, will you please explain to the Court and jury what these photographs are? A. D-1 the fatal bullet, D-2 flower garden bullet, D-3, composite picture, top half formed by the flower garden bullet and lower part by the fatal bullet; D-4 is a composite picture, top half the fatal bullet and bottom half the flower garden bullet.

Mr. Fisch—I offer that.

Mr. D'Aloia—I object.

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

Walter D. Van Riper, Judge.

(Photograph marked Exhibit S-36.)

Q. Now, in the position D-2, representing the flower garden bullet, so-called flower garden bullet, and in the position in which it is shown photograph D-2, is or is not that flower garden bullet badly damaged? A. It is very badly damaged.

Q. And can you say what that damage is caused by? A. Sort of a sand blasting effect, but due to the action of the material it passed through on the surface of the bullet at high speed. The surface was just ground off as though it were sand blasted.

Q. And if that bullet were fired into a garden patch would it be likely it would have that effect upon the bullet? A. Quite likely.

Q. Now, will you explain what you did with reference to this photograph which you call position D? A. I have explained what the individual positions of the pictures are, D-1 to four. In D-3, I have picked up, as in the previous position, points of identification, which

are present on both of these bullets, although in position D-2, it looks the surface of the flower garden bullet as though it offered absolutely nothing for identification. When we matched the two prints up we found a number; in fact, we found seven are there. Starting with number fourteen—

Q. On position D-3? A. Yes. Starting with number fourteen, which is a little ridge just left of the land edge or the grooved edge, we have a ridge which is very definitely present on both of these bullets, and then we move to thirteen, which gives us the land edge. Coming in there is a ridge unmber twelve on the surface of the land, and then very little until we get to ten, where the ridge appears marked at just below the land on the lower portion of this composite picture, and I have had to travel quite a bit above the line to pick it up on account of the eroded condition of the flower garden bullet, but it is picked up some distance above the line.

Q. Does the lower portion of the bullet tally with number ten on the lower portion of D-3? A. Yes. If that bullet were not corroded, it would be continued right through it, the same is true with D-11.

Q. And did you see whether if continued and protracted that would meet up with the upper portion of D-11? A. Yes. I did. The flower garden bullet remains badly damaged and offering no points of identity unitl we get over to position nine, where a groove is continued up on it above the line and on the fatal bullet below the line that groove continues very definitely present all the way down right to the edge of the cannelure. We then come to the groove edge, which is marked 8. Beyond that neither bullet has any definite markings on the surface, any identical markings. Now, in going over to D-4, we have the groove edge number one near the left hand side of the picture. We then have two short ridges which are outlined in high

lights, number two and three edge do not carry very far down in the ground bullet because the surface has been ruined. We then have a prominent ridge number four which carries a little ways down, and a shorter ridge number six to the right of that. Higher up and to the right is number five, which shows a high light on the upper portion and is also picked up as a short high light ridge on the lower portion.

Q. Did you measure that to see if number five were protracted it would meet? A. Yes. To the right of that we have number seven, which is continued up as a high light ridge above the line and the high light ridge ending below the line. That ends the point of identity there, because the ground bullet beyond that has been so sand blasted that none of the vertical scratches remain.

Q. Have you pointed out to us all of the marks of similarity you have marked? A. But here again with the eye and with the glass additional marks can be picked out.

Q. Which you have not marked? A. Which I have not marked.

Q. Would you mind pointing out one or two of those additional ones which you say you have not marked? A. There is one—

Q. Referring to D-3? A. Yes. There has been—about midway between ten and twelve, which is a ridge running a short distance above the line and a short distance below the line, but it is about midway between the two. Then there is a ridge just to the left of the line, which runs a very short distance above the line, and a long distance below the line, which I have not marked. There is a further ridge just to the right of twelve, appearing as a high light on the lower portion and not so brilliant on the upper portion. Quite definitely outlined next to the right of twelve, on D-4, there are very few additional ones. I do not see any right at present, except one near the left hand edge of

the picture, because that lower bullet is absolutely sand blasted out of all reasonable appearance.

Q. Then, with regard to position D-1 and D-2, did you follow the same ruling with it with regard to the other position? A. Yes. If we were to take D-1 and cut it in two between those two lines, we would have just what we have here. We would have the lower part of D-3 and the upper part of D-4 and D-2 in the same relationship.

Q. Now, then, did you take another set of photographs of another position of these two bullets? A. Yes.

Q. Did you rotate the bullets in the same direction? A. Yes.

Q. And at the same distance? A. Yes.

Q. And that position you have marked as position E-1, 2, 3 and 4? A. Yes.

Q. And is this the photograph which was taken of that position? A. Yes.

Q. What do these photographs represent? A. E-1 represents the fatal bullet, E-2 represents the garden bullet, E-3 is a composite picture, the top portion furnished by the flower garden bullet, the lower portion furnished by the fatal bullet; E-4 is a composite picture of the top portion furnished by the fatal bullet, the lower portion furnished by the flower garden bullet.

Mr. Fisch—I offer that in evidence.

Mr. D'Aloia—I object.

The Court—The same ruling.

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

Walter D. Van Riper, Judge.

(Photograph marked Exhibit S-37.)

Q. Now, Major, what are these marks on E-1 and the lower half of E-3, which is a duplication of E-1? A. Those are marks which are put on there by way of identifying that particular bullet.

Q. It has been testified to by a police officer who identified the fatal bullet that he put an X mark on the fatal bullet when it was taken from the clothes of the deceased. Would you say, Major, that mark is the mark which might be made by such marking? A. Yes, sir.

Q. Now, will you please tell us, Major, what you observed in that set of photographs which you marked position E. A. The same procedure was followed in marking this position as in the previous one. On position E-3 I picked out 11 points identical to the two bullets, above and below the line. Starting on the left with 22 is the edge of the groove; we move a little bit to the right of that and we find a sharp dark groove which we mark 21; half-way across the groove is another ridge, speaking of those which I have not marked —another prominent unmarked ridge a little less than half-way across the groove.

Q. That is between 20 and 21? A. Yes, sir.

Q. That is one which you have not marked? A. Yes, one to the right of that—there are two which I have not marked. A little to the left in the middle of the groove. At 20 we have a ridge shown as a highlight above and below the line and running quite a distance below the line. At 19 or just to the right of 19, which marks the left hand edge of it, we have a very prominent and a very long continued ridge which runs practically the whole edge of this upper surface of the surface above the cannelure.

Q. That is, it runs all the way down to those notches? A. It runs all the way down to the notches, yes, sir.

Q. That is the teeth that you refer to? A. Yes, sir, the teeth, and quite a distance above the line, too.

Also, No. 19 runs up and down in both directions for a long period. Then, we come to the groove edge of 18; then, the fatal bullet has been obliterated, its surface has been pretty well obliterated by its marks for identification, as the result of which, when we come over to 17 we have to go away below the line to pick that up in the form of a dark ridge.

Q. That is on the lower portion of E-3, just at the corner between those two scratches or identification marks, is that it? A. Yes, sir. It shows up there as a ridge right in that corner, and the same ridge appears projected upward on the flower garden bullet.

Q. That is No. 17? A. That is No. 17.

Q. Did you measure that so that if it was protruded and projected it would meet? A. Yes, sir.

Q. And did it meet? A. Yes, sir, and the same holds true to No. 16 which I had to pick up away below the cannelure.

Q. That is below those teeth? A. Yes, sir, and which I picked up above the cut edge on the flower garden bullet had been carried through proved to be the same marks.

Q. That is No. 16, is it? A. Yes, sir.

Q. So that if carried through it would extend all the way from the upper portion of E-3 down to below these teeth? A. Yes, sir, that, as a matter of fact, is on the groove which you can see. Then, we have the surface of both bullets in a bad shape. They show no vertical scratches until we get over to 15. Then we have a series of 4, 15, 14, 13, and 12, in rapid succession; 12 being the groove edge and the other 3 indicating prominent ridges to the left of the edge of the groove.

Q. These marks, are they identical on both the fatal bullets and the so-called garden bullets? A. Those marks are identical on both of those bullets, yes, sir, and coming over to E-4 I collect 11 marks of identity,

starting at No. 1 with the ridge outlined in highlights No. 2 a groove immediately to the right of that extending on a short distance below the line, also outlined in highlights, No. 3 a very prominent ridge, quite prominent above the line, and equally so below for a short distance, standing out on the surface of this bullet in highlights. No. 4 a highlight just to the left outlining a ridge just to the right of this, which is not quite so prominent as No. 3, but quite prominent, and No. 5 a still additional ridge, making 3 highlight ridges in a row, very prominent above the line and somewhat less so above the line. The surface of both bullets is now badly eroded, the garden bullet is eroded and the fatal bullet is quite clean, with the result that no identifying marks appear until we get over this way, when a short ridge is present just above and below the line, just to the right of that where we have ridge 7 and to the right of that No. 8. The upper bullet is now chopped out by these identification marks and we see nothing until we get to 9, 10, and 11, 11 being the groove edge and 9 and 10 being smaller shadows just to the left of that groove, which carry right on down way below the line, ending in little fingers running up into little fingers above the line. Those same lines have been carried back to the uncut pictures as in previous positions, so that position E-1, if cut in two, could be used to replace these two cut portions which for the lower half of E-3 and the top half of E-4, and position E-2 is cut in two to be used to form the top half of E-3 and the lower half of E-4 just as they are now marked.

Q. Now, did you take photographs of still another position of these two bullets? A. Yes, sir.

Q. And did you rotate them in the same direction? A. Yes, sir.

Q. Did you rotate them the same distance? A. Yes, sir.

Q. And do the photographs show the same relative position as each of those bullets? A. Yes, sir.

Q. And what have you called that position? A. F.

Q. I show you a photograph marked F-1, F-2, 3 and 4, and ask you if you will tell the court and jury what they are. A. F-1 represents the fatal bullet, and the identifying scratch mark as may be readily seen, have been moved by the rotation of this bullet, so they are quite a little bit to the left of where they appeared in the prior position; both bullets have been rotated in a clockwise manner. F-2 is another position of the flower garden bullet and F-3 is a composite picture, the top half being furnished by the flower garden bullet and the lower half by the fatal bullet, and F-4 is a composite picture, the lower half being furnished by the flower garden bullet and the top by the fatal bullet.

Mr. Fisch—I offer the pictures in evidence.

Mr. D'Aloia—I object to the composite picture.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

(The same is marked Ex. S38.)

Q. Now, will you tell us, please, what this set of photographs disclose? A. This discloses exactly what the preceding ones did, namely, that the two bullets have identical markings, identical positions indicating that they must have passed with the same regularity over the same barrel to receive those markings in those positions. Those markings we have picked out on position F-3 starting with No. 14 which is a slippage mark on the left hand edge of the groove, which we had to go considerably below the line to pick up on account of this identifying mark which has been left on that bullet.

Q. That is the identifying mark on the fatal bullet? A. On the fatal bullet on which we have to go above the line somewhat on the flower garden bullet to pick up on account of the scarred condition of that bullet.

Q. Did you project those lines? A. Yes, sir, that carries through, it is the same line. The fatal bullet is now completely ruined as far as these fine identifying marks are concerned.

Q. What ruined that fatal bullet as far as the fine identifying marks which occur in that area? A. The fact that its surface is cut away by the X mark in that area, until we get to No. 13 where we have a ridge which occurs right on up from the cannelure to well above the line on the ground bullet. That is a very prominent characteristic which can easily be seen is identical in position and in outline on both of these pictures.

Q. You say it goes all the way from the teeth marks up to the point marked 13 on the upper portion of E-3? A. Yes, sir, and well above that. The same is true of 14 which runs well below the cut edge of the lower portion of the picture and well above the cut edge on the upper portion. I think I used No. 14 when I should have said 12. Coming to 11 we have that same condition, a shadow running well up and down, above and below the cut edge of the picture. At 10 we reach the edge of the groove. The flower garden bullet is now devoid of markings, they have been sand-blasted off, until we get to No. 9, where we pick up considerable above the line on the flower garden bullet, and there move down below the line to pick it up on the fatal bullet, where it appears quite prominently and can be carried through without difficulty. At No. 8 we reach a point at the edge of the groove where a ridge on the highlight is present. Moving to F-4 the fatal bullet has been badly destroyed by these identifying marks and the flower garden bullet is badly sand-

blasted, so we have to go two-thirds of the way across the two before we get any prominent marks of identification. To the left of this edge, however, a ridge, No. 1 which is very definitely common to the two, and a second ridge No. 2 which runs well above and below the cut edge, in fact, ridge No. 2 runs two inches above the cut edge and practically that much below. No. 3 represents the edge of the groove and No. 4 represents a groove common to both bullets, and identical to both bullets and outlined in a shadow which ends a short distance above the cut line on the fatal and which runs down to the cannelure and below the cannelure to the face of the ground of the bullet.

Q. It is a long mark? A. Yes, sir. No. 5 represents a long mark, but it does not quite extend to the cannelure on the lower portion of the bullet and it extends about two-thirds of the way to a ridge which becomes a highlight above the line and then becomes dark below the line and has a similar ridge ending in a little loop below the line. No. 6 is another long thin ridge identically present on the two portions of this bullet and indicates a grooved edge. Again I picked up these two lines and carried them back to the two uncut ones so that there would be cut ones representing the two halves of the cut bullets put together and the two halves which are not obscured, the two halves of the flower garden bullet not obscured by the fatal bullet, if they were cut and put together.

Q. So that if you cut position F-1 and position F-2 between the markings which you have ruled out would they superimpose on positions F-3 and F-4? A. Yes, sir.

(Recess.)

(After Recess.)

Q. Now, Major, did you have made under your supervision, another set of photographs showing another

position of these two bullets, the so-called garden bullet and the fatal bullet? A. Yes.

Q. And did you rotate the bullets in the same direction? A. Yes.

Q. And for the same distance? A. Yes.

Q. And I show you a set of photographs and ask you if these are a set of photographs showing another position which is marked G-1 to four? A. Yes.

Q. Will you be good enough to tell us what that set of photographs represents? A. G-1 represents the fatal bullet in this new position. G-2 the flower garden bullet. G-3 the upper portion is also the flower garden bullet; the lower portion a part of the print of the fatal bullet. G-4 the upper part of fatal bullet; lower portion part of flower garden bullet.

Mr. Fisch—I offer this photograph.

Mr. D'Aloia—Same objection.

The Court—The same ruling.

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

Walter D. Van Riper, Judge.

(Photograph marked Exhibit S-39.)

Q. Now, what does this set of photographs show? A. In position G-3, I have picked up nine points identical on the two bullets, nine points of identification, beginning over just to the left of a groove mark, which is marked 21. We have a prominent ridge carrying right up parallel with the groove edge, which is marked 22. That is quite a large drawn out mark present on both of the bullets.

Q. Extending from where to where? A. Extending from the cannelure edge of the lower section to three inches above the cut edge on the upper section.

To the right of this the fatal bullet is quite smooth, having passed through a clean barrel, but we do pick out about in the middle of this line right in the center of the picture a ridge which is faintly present, but definitely present on the fatal and prominently so on the garden bullet.

Q. What number is that? A. Twenty.

Q. So it is faintly present on one bullet and more prominently present on the other? A. Yes.

Q. How do you account for that? A. Well, that is probably a tiny bit of fouling, part of which was carried out in the firing of the last bullet and a smaller portion left and a small mark when the later bullet was fired.

Q. Do I understand that the first firing left a more prominent mark on the bullet? A. Yes. Passing to the next groove, we have in that groove lines eighteen and nineteen which are two parallel ridges between which a dark ridge flows. These lines are prominently present on both bullets. They ran down to the cannelure on the lower section and three and a half inches above the cannelure on the upper section. To the right of that we have another number, number sixteen, and seventeen. Sixteen runs quite a bit below the cut edge. Number seventeen a short distance. Above the cut edge they both run for an inch and a half or more and then can be continued up again above that on the surface of the ground bullet. To the right of that number fifteen is a dark shadow, a small groove which runs well above the cut line on the garden bullet, and a short distance below it on the fatal. Number fourteen is two high light ridges side by side with a tiny black shadow intervening between them, which is present on both bullets and runs well above and below the cut line of both of them. Number thirteen shows the edge of that particular groove. Moving over to G-4, we have a line number one, identifying a small ridge, which runs just a little bit below the cut line on the ground

bullet and a little way above the cut line on the fatal bullet. The fatal bullet here still shows the identifying marks that were put on it to identify it as Exhibit, which damaged the surface at that point. We therefore pass from where that mark ceased to exist and pick up from that ridge number two, which runs from the cut line upward to the identification mark, where it ceases, and a short distance downward. Ridge number three is a prominently outlined ridge running two and a half to three inches above the line on the fatal bullet and for a small distance below the line on the garden bullet. Line four indicates the edge of the groove. Moving up there is a prominent mark which I have not indicated in number; a little to the right of line number four, a shadow running below the line on the garden bullet, and then line number five indicates a ridge and a groove side by side running a fair distance above the line on the fatal bullet and right down to the cannelure on the garden bullet. The fatal bullet is now quite clean. It has a clean surface until we reach number six, which is another ridge running a short distance above the line on the fatal and a short distance below the line on the ground bullet. Under that is number seven, a ridge which runs a short distance above the line on the fatal and below the line on the ground. Number eight, which may be described about the same way. Number nine which runs a short distance above the line on the fatal and well below the line on the ground, practically down—almost down to the cannelure, where the bullet has been—to a point where the bullet has been damaged. Then we have ten and eleven, which are parallel—kind of parallel ridges just within the edge of the groove running well above the cut line, an inch and a half or two inches and running down on the garden bullet to a point where the bullet has been damaged. Number twelve concludes the edge of the groove. Now, as in the previous cases,

Calvin Goddard—direct

I have taken these lines up, taking this G-4 and carried them to the upper part of G-1; the series on the lower part of G-3 and carried them back to the lower part of G-1; the series on the upper part of G-1 to upper part of G-2, so that G-1, if connected up, would resupply the head portion of G-1 and 4.

Q. Now, Major, from your examination of these bullets and comparisons of them and the pointing out of the marks of similarity as you have on these various sets of photographs, were those two bullets fired from the same gun? A. Yes, sir.

Q. By the way, Major, did you do any work for the United States Bureau of Standards? A. I have done work with them.

Q. You were consultant of the Bureau?

Mr. D'Aloia—I object to that question, he says he works with them.

Q. What do you mean by that, Major? A. We collaborated in an examination of certain bullets and shells in a homicide case.

Q. Do they refer work to you? A. They have.

Q. That is bullet comparisons? A. Yes, sir.

Q. In homicide cases? A. Yes, sir.

Q. Now, Major, yesterday you described the manufacture of the barrel of a gun? A. I have with me the missing exhibit, Mr. Prosecutor.

Q. What is the missing exhibit? A. That is No. 2, after drilling and before reaming.

Q. And is this it? A. Yes, sir.

Mr. Fisch—I ask that that be marked for identification.

(The same is marked S-31 A-2 for identification.)

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

Q. Now, Major, can the marks which you refer to as these fine lines, which caused these fine lines on the

bullets, can they be discerned in the portion of the barrel after the rifling marks have been put on, if that portion of the barrel is put under the microscope? A. Yes, sir.

Q. Will you please do that for us?

Mr. D'Aloia—I object to that, that is not a Smith & Wesson barrel, if your Honor please.

The Court—You are asking him now to examine what?

Mr. Fisch—I am asking him now, if your Honor please, to examine a section of a barrel of a gun similar to a Smith & Wesson 38 caliber gun, under the microscope, to show the markings which would be discernible under the microscope, caused by the rifling, too.

The Court—Did I understand you to testify, Major, that this barrel which you are now about to be handed is similar to the Smith & Wesson barrel?

Witness—It goes through the same process, that is, the boring, reaming, rifling, lead lapping are carried out in the same manner. The rifling of this barrel is not the same in number of grooves or width of grooves as in the Smith & Wesson, but the mechanical process is followed through in the same series of operations.

The Court—From the number of grooves it is not the same?

Witness—It does not have the same number of grooves, but it has the same tool markings.

The Court—Would the markings on a Smith & Wesson barrel be the same as this?

Witness—The broad rifling mark would not be the same. I imagine the prosecutor wishes merely to demonstrate that fine scratches appear in the rifling marks and fine scratches would exist in every arm under that same routine.

The Court—Is that a fact, that they exist in other barrels regardless of the make?

Witness—Every barrel that I ever heard of or had anything to do with, anything mechanical.

Mr. D'Aloia—Now, if your Honor please, because we have not been told of the impossibility of using a Smith & Wesson barrel for this exhibition to the jury, I do not see why we should take something secondary, of secondary importance in a case of this kind. Why can't we get the real thing? There hasn't been any explanation as to why Smith & Wesson barrels were not examined and brought here and your Honor has tolerated this exhibition without Smith & Wesson barrels, and at this point I object, particularly after the explanation by this expert that the marks in this kind of a barrel are different than in a Smith & Wesson barrel.

Mr. Fisch—If your Honor please, the witness said that the tool markings in every barrel, even the tool markings in a Smith & Wesson barrel one made after the other, are different. The only purpose of this is to show the two markings left on a barrel after rifling has been completed in the barrel. In other words, if your Honor please, this witness has testified that the markings on these photographs, these lands and curbs, are caused by the scratches left in the rifling marks, by the rifling tools, by the cutting tools.

The Court—Yes, left in a Smith & Wesson barrel, and now he produces a barrel which is not a Smith & Wesson barrel.

Mr. Fisch—And he says also that those marks are left in every barrel of every kind that is made.

The Court—Some marks, but he says these are different from the marks in a Smith & Wesson

barrel and your purpose is to show the jury that there are marks of some kind left?

Mr. Fisch—Yes.

The Court—And of course, you do not contend that these are identical marks as those left in a Smith & Wesson barrel?

Mr. Fisch—Yes.

The Court—That is one reason why I think it is too remote.

Mr. Fisch—If your Honor please, of course, this is simply for the purpose of demonstrating the fact that the machine which makes these marks in the rifling process leaves distinctive markings.

The Court—The witness has already testified to that, and I think the introduction of the barrels is too remote.

Cross Examination by Mr. D'Aloia:

Q. Now, Major, some of the rifling in these barrels was made by a pull operation, a mechanical operation that pulls some kind of a scraper through? A. Yes, sir.

Q. And then there is some of the rifling made in these barrels which was done by an operation which is a push instead of a pull? A. On the forward motion, on the push motion, there is no cutting, it is done only on the pull.

Q. Aren't there barrels that are rifled with the different pushes, the pull and the push? A. Not to my knowledge. There might be but I have never met any.

Q. Will you please tell us by going through any of these photographs that you have tacked up on the board and pointing out what straight lines or markings on the bullets can be made by rifling, and what can be made by a grain of sand, quartz, what can be

made by a piece of sandstone, what can be made by a piece of wire, ordinary iron wire, what can be made by a piece of pumice stone, and what can be made by a copper tack. Will you distinguish those markings? A. The markings left on a bullet by the rifling are always of two kinds.

Q. What are the two kinds? A. They are either parallel with the axis of that bullet and are left on that bullet as it enters the barrel and then it has settled down in the groove and has begun to turn. Those marks are what we call slippage marks and are parallel to the axis. Another set of marks are those which are parallel to the edges of the groove, those are the only kind that can be left on a bullet by the barrel. Any other marks on these bullets may have been left by any foreign substance.

Q. Now, take this mark that I am outlining with a pencil. That white that you see there. Can that be made by a grain of sand scraping along the side of the gun? A. It cannot.

Q. If the bullet had left the muzzle of the gun at a short distance going at high velocity? A. No, sir.

Q. You don't think so? A. No, sir.

Q. So that you can distinguish those marks and tell us what they were made by, those straight marks? A. Marks, as I said before, straight marks are received in the barrel and not outside of the bullet.

Q. So that this bullet, taking this one here, that has a straight mark, hasn't it? A. Yes, sir.

Q. That is made with a knife? A. Yes, sir.

Q. Now, you see the line in there, in that direction and of course there are lots of lines in there? A. Many.

Q. Is there any difference between that mark and this mark? A. This mark here is parallel with the axis of the bullet.

Q. But supposing this cut was made straight up

and down, perpendicular instead of diagonally? A. Any cut of that kind, when magnified, would show irregularities not perfectly parallel with the axis of the bullet.

Q. These pictures are bromide enlargements? A. These are enlargements, I would not say whether they are bromides or not.

Q. What is the size of the original photograph? A. 5 by 7.

Q. And what is the size of these photographs? A. 11 by 14.

Q. Now, in order to bring that from 5 by 7 to 11 by 14, you used bromide? A. It is on a sensitive paper.

Q. It is a bromide enlargement? A. I don't know what my photographer uses. He is here.

Q. Do you admit that there is some distortion when they are enlarged? A. I prefer that a photographer answer that.

Q. You know, you are an expert? A. I would not say there was any appreciable distortion.

Q. Would you say that all the rifling marks are parallel with the bullets? A. Oh, mercy, no. I say some marks are taken off parallel to the axis which we call slippage marks when that bullet tries to slide through the barrel without turning.

Q. Now, let me call your attention to G-3, that is the lower half superimposes what? A. Superimposes a portion of the fatal on the garden bullet.

Q. Now, between line 22 and line 19 are there any grooves, ridges or marks, which are perpendicular to the axis? A. There are not.

Q. Now, on the ground bullet, there are? A. There are plenty.

Q. Made by what? A. Made to my mind by fouling and rust in the barrel of that gun when that bullet was fired.

Q. Not by the rifling? A. No, sir.

Q. Didn't you just tell me that these marks here could not be made by the rifling, that they were made by the sand? A. If you say made by the rifling, yes, in a sense, it becomes a part of the rifling, and temporary obstruction in the barrel becomes a temporary part of the rifling.

Q. So looking at the two photographs which you have marked G-3 you do admit that the fatal bullet has no mark except as shown by the lower portion made by the garden bullet? A. Yes, sir.

Q. And the same applies to G-4 that there are marks on the upper one-half of the garden bullet which are not shown on the upper one-half of the fatal bullet? A. Yes, sir.

Q. Lots of them? A. Yes, sir.

Q. These here all to the right? A. Yes, sir.

Q. Now, you saw Mr. Linarducci and he gave you those two bullets. Did he give you a history of each bullet? A. He gave me no history.

Q. He did not? A. No, sir.

Q. Then, you did not know that one had been in the ground about twenty-six months? A. No, sir.

Q. Would that have made any difference? A. No, sir.

Q. What? A. Any difference in what respect?

Q. In this respect: Suppose a bullet had been taken out of the ground and washed and cleaned in some substance unknown to you, which might have been corrosive—did you try to find that out? A. If it had been washed in some substance, a liquid which was corrosive or not?

Q. Did you try to find out if it had been washed in any substance or liquid which was corrosive? A. No.

Q. If it had there would have been marks on there wouldn't there? A. There would have been marks if it was corrosive.

Q. Now, a lot of corrosion does appear in that bullet which was in the garden? A. Yes, sir.

Q. What makes you describe it in your testimony here as the garden bullet? A. After I rendered my report to Mr. Linarducci he gave me the entire history of that bullet.

Q. It changed it? A. No, sir.

Q. It did not change your report one iota? A. No, sir.

Q. Can you tell us the difference between a scratch, a sand scratch and a ridge? A. Yes, sir.

Q. Point it out? A. Well, I have already said to the best of my knowledge these parallel ridges,any parallel ridges, any ridges parallel to the groove are left on the bullet as it goes through the barrel, and any other marks may be made by sand or anything else.

Q. Now, don't the rifling marks drift? A. No. I imagine you use that term in the same sense I used the term slippage. There is practically on every bullet a certain degree of slippage which I claimed this morning results in the upper part of the groove. When that bullet starts to go into the barrel it rides right over these—

Q. You told us that rifle marks are parallel with the axis of the bullet. A. I said the slippage marks are parallel? The rifling marks are parallel.

Q. Now, the slipping marks would be what? A. Parallel.

Q. And would they change their course? A. No, sir.

Q. By reason of the bullet being twisted? A. No.

Q. Wouldn't they tend to drift? A. Up at the very top, no. They may be splayed at a slight curvage at the top.

Q. That makes the slippage marks show very clearly? A. On certain bullets in one groove a slippage mark will be quite prominent and the next groove will be almost invisible. t varies from bullet to bullet on the same gun.

Q. Have you ever made a mistake while trying to find out whether or not a certain bullet came from a certain arm? A. Not to my knowledge.

Q. Don't you recall one? A. No.

Q. Do you recall the one in Cleveland in the Milazzo case? A. I recall being consulted by Cleveland authorities.

Q. Do you recall the error? A. I do not recall any error.

Q. Do you recall the pistol and the bullet being sent to you by the Cleveland authorites at New York? Answer yes or no. A. They were brought to me.

Q. Well, you got a bullet and you got a pistol? A. Yes.

Q. And as an expert you were asked to determine whether or not that bullet had been fired from that pistol? Yes or no. A. If you want me to answer that properly, I will answer either comprehensively or no.

Q. Well, what were they brought to you for? A. I was asked to examine the bullet before I was ever retained in the case.

Q. I don't care whether you were retained or not retained. I am asking you if that is not a fact that you got from the Cleveland authorities in the case of Frank Milazzo a pistol and a bullet and it was given to you as an expert to determine whether or not that bullet had been fired from that pistol? A. Yes.

Q. Now, is it or is it not a fact that after you made these comprehensive experiments and all of these tests you have been talking about all yesterday afternoon and all of the morning, you made a report and in the report you stated that that bullet which had been submitted to you had been fired from the pistol which had been submitted to you? A. No.

Q. A deposition? A. No.

Q. What was your conclusion? A. I made one conclusion.

Q. And that was what? A. That that bullet was not fired from that pistol.

Q. Is that the truth? A. Yes.

Q. Now, isn't this the truth that you made the report that it was from that pistol? A. No.

Q. And you changed when it was found out afterwards that that pistol had not been manufactured at the time of the alleged killing, then you changed your report and charged the Cleveland authorities with confusing the bullets? Yes or no. A. No.

Q. That is not so? A. No.

Q. You do not agree with Mr. Warner, who gives you the report charging you with having made that mistake? A. No.

Q. Have you seen the article? A. Yes.

Q. The article charges—

Mr. Fisch—I object.

The Court—Sustained.

Q. Well, is the article about you? A. It is.

Q. Does it contain what I stated in my question that you made that error?

Mr. Fisch—I object to what the article says.

The Court—Sustained.

Q. Do you recall the facts in the article? A. I do.

Q. Do they refer to your being given—

Mr. Fisch—I object to what the article refers to.

The Court—I thought I had already sustained an objection.

Mr. D'Aloia—Will your Honor let me finish?

Mr. Fisch—I object at this time, because that portion of the question already stated is improper.

Q. Do you recall the date of the alleged firing of that pistol as given to you by the Cleveland authori-

ties? A. Some time in October or November, 1927.

Q. About October 8? A. I don't know.

Q. Well, you got the information, didn't you? A. I certainly did.

Q. Wasn't it told you by the police that that pistol and that particular projectile you were to pass your judgment on and give your opinion on, that they had been used in a killing which occurred on the 8th of October, 1927? A. I do not know now without my record.

Q. Do you recall that it subsequently developed after you gave your first report that the pistol had not been manufactured or sold until November 3, 1927?

Mr. Fisch—I object to that. There is no testimony about giving any first report, the Major said he made a report.

Q. Well, when did you make that report? A. I do not remember when I made that. It was some little time after I was consulted.

Q. Well, when did you make the first report about this particular gun and projectile?

Mr. Fisch—I object. There is no testimony about any two reports.

The Court—How many reports did you make?

Witness—I made a single official report.

Q. Now, did you make a report before that? A. I did not.

Q. Why did you characterize the report you made as an official report? A. I had conversations with the men in my office. That was all that preceded my report.

Q. Now, isn't it a fact that upon your preliminary report, which we will not call an official report, the man was held for murder?

Mr. Fisch—I object to that.

A. I made no preliminary report.

Q. Don't you know, as a matter of fact, that that man's arrest was caused by a report or an opinion that you gave the Cleveland police? A. I do not.

Q. You do not recall it, but you would not say that is not so?

Mr. Fisch—He did not say he does not recall.

The Court—I don't think that is the answer.

Q. Now, did you bring an action against "The Nation"? A. I did.

Q. Is it printed? A. It is.

Q. And in an article published Wednesday, April 18, 1928,—1928, April 18—did they tell you—

Mr. Fisch—I object.

Mr. D'Aloia—Wait until I get through.

Mr. Fisch—I object.

The Court—Sustained.

Mr. D'Aloia—I am cross examining this witness, and I think it is proper cross examination.

The Court—What you are doing is saying somebody else said you are wrong. Now, if you produce somebody else to say the Major is wrong, you may do it.

Q. Well, now, did you see the article in the Nation of April 28? A. Yes.

Q. Does it refer to the Cleveland case? A. It does.

Q. Does it refer to your action against the Nation? A. It does.

Q. When did you bring your action against the Nation? A. In January, I think.

Q. Of this year? A. Yes.

Q. How many reports had you made about the Cleveland case when this article appeared? A. One.

Q. Official? A. One report.

Q. Do you know now of your own knowledge what caused the arrest of the man on the charge of murder

made against him out in Cleveland? A. I do not.

Q. Do you know just how soon after the 8th of October, 1927, this pistol and this projectile were brought to you? A. I do not.

Q. Will you try to remember with reference to October 8? A. Sometime in November, I think.

Q. It wasn't October? A. It may have been.

Q. Well, was it the latter part of October or the early part? A. Well, it must have been the latter part if the shooting was on the 8th.

Q. It may have been the middle? A. Possibly.

Q. It could have been in the middle of October? A. Certainly.

,Q. To whom did you make your report? A. To Mr. Cody.

Q. Who is he?

Mr. Fisch—I object to that.

Q. To whom did you report about this pistol and the bullet?

The Court—Mr. Cody, he said.

Q. Where is he located? A. Cleveland.

Q. Now, in giving your qualifications, yesterday, you said that you were also a witness in the Hall-Mills case. A. Yes.

Q. Prosecution or defense? A. Prosecution.

Q. You also told us in the Sacco-Vanzetti case, you gratuitously went up there and studied the bullet fired from Sacco's gun. A. A bullet which I later decided had been fired from Sacco's gun.

Q. It was given to you as the one in that case as having been fired? A. Yes.

Q. And in that case you conferred with an expert for the defense? A. I participated in the examination with an expert for the defense.

Q. You were not asked by either the Commonwealth

of Massachusetts or the defense to participate there?
A. I was not.

Q. You did that for your experience? A. I did that because I had a method of demonstration which had not been developed at the time of the original trial and which I was satisfied would answer the question.

Q. You were going to try a new theory in the Sacco-Vanzetti case? A. It was not new at the time.

Q. Well, it had not been developed at the time? A. No.

Q. So this theory of yours is a new one? A. Not the theory but the apparatus.

Q. When did you begin the operation of this new theory of this—when did you begin working on this method of identification? A. The theory, as I said, is old, but this special type of comparison microscope has only been available for three or four years.

Q. Well, you used the comparison microscope in the Cleveland case? A. Yes, sir.

Q. And it is the use of that particular instrument that is talked about in this particular version of yours

Mr. Fisch—I object to that.

Q. Now, it is about this comparison microscope and the method that you used in reaching your conclusion in the Cleveland case that appears in the article which is published in the Nation this month—

Mr. Fisch—I object.
The Court—Sustained.
Defendant's counsel prays an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Now, did you begin this work in 1925? A. No, sir, I began active study of projectiles and shells in 1921. I mean from the standpoint of identification.

Q. Now, you told me a little while ago that you never made a mistake. A. Not to my knowledge.

Q. And you declared positively that in the Cleveland case I have been speaking of, when a mistake was pointed out to you, you did not find the excuse that the Cleveland bullets had been mixed up by the police.

Mr. Fisch—I object.

The Court—Sustained.

Q. Now, do you remember this case of Dracovitz in St. Clairville, Belmont County, Ohio? A. Yes.

Q. For whom did you appear there? A. For the defense.

Q. And in that case did you make a mistake? A. I didn't.

Q. Are you sure about that? A. Yes.

Q. Sure you did not mistake the projectile which was alleged to have been fired in that case? A. I am sure.

Q. Sure about that? A. I am.

Q. You know Captain Jones? A. I have met the gentleman.

Q. He was a witness in that case? A. So I understand.

Q. You were there? A. I was not there when he was there.

Q. You knew he was a witness in that case? A. So I understand.

Q. You did not make any mistake in that case? A. I didn't.

Q. Now, when was it that you first found out that one of these bullets had been in a flower bed for twenty-six months? A. After I turned in my report to Mr. Linarducci.

Q. Did you know that another expert by the name of Foster had been consulted? A. I did not.

Q. Did Mr. Linarducci tell you? A. He did not.

Q. Did he tell you the result of Mr. Foster's report? A. No.

Q. Will you give us the date you first saw Mr. Linarducci with respect to these two bullets? A. The 7th of March, 1928.

Q. Do you know from the appearance of what you call the garden bullet whether at the time you received it there was any indication from its appearance that it had been washed?

Mr. Fisch—I object to that portoin of the question where Mr. D'Aloia says, "What you call the garden bullet." It has received that application from Mr. D'Aloia.

The Court—Well, what we call the garden bullet.

A. It had pieces of what looked like dirt adhered to it. Whether additional dirt had been washed off before it came to me, I do not know. I could not tell.

Q. You had never seen the pistol which may or may not have fired either of those bullets? A. I have not seen it.

Q. You never had an opportunity to examine it? A. No, sir.

Q. How long did you have both bullets, Major, before you made your report? A. You refer to these bullets in the Cleveland case?

Q. No, not in the Cleveland case. A. Why, I made the report the day I got them. They were brought to me by the Prosecutor.

Q. How long did you have them before you made your report? A. Well, so far as I know less than an hour.

Q. And all these photographs were made? A. Pardon me, I thought you were still harking back to the St. Clairesville case now.

Q. No. A. These bullets were brought to me in the morning and I wrote out the report in the afternoon and I had it waiting for Linarducci when he returned.

Q. That is the same day? A. Yes, sir.

Q. No photographs? A. No photographs at that time.

Q. How long did it take you to make the photographs? A. Well, it took a matter of a couple of days to make the exposures and enlarge them up.

Q. And you made your report in an hour or so to Mr. Linarducci and then you worked this out subsequent thereto? A. I made my report about six or seven hours after I got the bullets.

Q. Now, have you any of your literature that you send Prosecutors? A. Here with me?

Q. Yes. A. I have not, no, sir.

Q. You do say in that literature that you can assist Prosecutors in their prosecutions and guide them throughout the prosecution of the case involving the identity of projectiles, don't you? A. I don't know that I actually use that expression.

Q. Well, in substance, is that it? A. Why, yes.

Q. You are not coming here to Newark and doing this work gratis like you did in the Sacco-Vanzetti case, are you? A. No, sir.

Q. Now, are you sure that you were not told by Mr. Linarducci that another ballistic expert had made a report and had examined the bullets prior to the 7th of March? A. Quite sure.

Q. Are you positive? A. Positive.

Q. And that that examination had been made for the Prosecutor's office of Essex County? A. Positive.

Q. Are you sure that you were not told by Mr. Foster—you know Albert Foster? A. I know of him, I don't know the gentleman.

Q. You don't know him? A. No, sir.

Q. You don't know the arms expert of South Orange? A. I know of him.

Q. Have you paid any attention to murder cases where ballistic experts have testified in Essex County

during the past five years? A. I can't say that I have paid any attention to them.

Q. Have you ever testified here as a ballistic expert in the past five years? A. No, sir.

Q. Do you know who did? A. No, sir.

Q. Don't you follow with interest every case of importance where an expert testifies? A. No, sir, I have too many other things to do.

Q. And you don't know that within the last four or five years the ballistic expert used by the Prosecutor in this county was Albert Foster? A. I don't know.

Q. And you did not know when you got these bullets on the 7th of March, 1928, that their ballistic expert, Mr. Foster, had been given these bullets for a report and that they had received it? A. I did not.

Q. Did anybody inform you that these bullets had been given to Mr. Foster, and by Mr. Foster to Captain Jones? A. They did not.

Q. They did not tell you that, did they? A. They did not.

Q. When were you given the order for the making of these series of photographs, A, B, C, D, E, F, and G; before or after you made your report? A. After the report; the report might have been that they were not out of the same gun.

Q. And then you would not have gotten the job to make the photographs, would you? A. I would have made photographs of these two bullets.

Q. Did the fact that you were looking for the job and the bill that you might send the County of Essex influence you in any way to make your report? A. It did not.

Q. You are sure you were not contradicting anybody at the time you were looking at these bullets and were not asked to contradict somebody else in your report?

Mr. Fisch—I object to that, if your Honor please. It is a double question.

Q. Are you sure that you were not told or informed when the bullets were given to you on the 7th of March, 1928, that another report had been obtained which did not state as a conclusion that the two bullets had been fired by the same gun and that you would be retained as an expert if your report would show that conclusion? A. I am very sure of that.

Q. Did Mr. Linarducci tell you that these bullets had been taken to New Haven by him to Merton Robinson, another ballistic expert? A. He did not.

Q. Do you know how many Winchester 38 caliber cartridges, such as are in this box, can be bought today in the eastern part of the United States? A. As far as I know they are Peters cartridges in that box.

Q. Do you know how many can be purchased today in the eastern part of the United States, in the Metropolitan District? A. Are you speaking of Winchester or Peters?

Q. You saw what was in here. A. But you were speaking of Winchester.

Q. All right, those in here. A. I imagine a matter of millions.

Q. Do you know how many of that particular quality of bullets, that you called "Peters evidence", how many of those can be bought today? A. I don't think any of those can be bought today.

Q. You are sure of that, you don't think so? A. To the best of my knowledge.

Q. But there are some in existence? A. Oh, of course, there are some in existence because there are some right here.

Q. And you don't know how many more besides those are in existence? A. No, sir.

Q. Do you know when the company, the Peters

Company, stopped manufacturing them? A. No, I do not.

Q. You don't know whether it was last year or last month? A. No, sir.

Q. Then, why do you say it is a very old, old bullet and obsolete, in answer to the Prosecutor? A. I did not use the words "very old".

Q. You answered the question which included the words "obsolete" to the Prosecutor. A. Why, when one type of bullet is changed and supplanted by another type the older type becomes obsolete whether it is yesterday or whenever it happened.

Q. You understand the meaning of the word "obsolete;" it means not in use, not made and very old.

Mr. Fisch—I object to that as not the proper definition of obsolete.

Q. Now, when you heard the Prosecutor ask you the question here that if it were not a fact—I think if I remember the form of the question it was substantially this: "Isn't it a fact, Major, that these bullets which you say 'Peters evidence' are obsolete," and do you remember your answer was yes? A. Yes, sir.

Q. Now, do you know how many of them could be procured if the manufacturing of them stopped last month? A. Probably a great number.

Q. And there would be a great many that could be procured if the manufacturing stopped on the first of the year? A. No doubt.

Q. Do you know how many of these bullets were produced by that particular arms company during the year 1927? A. No, I do not, but probably a great number.

Mr. Fisch—Which bullets?

Mr. D'Aloia—The bullets he called obsolete in answer to your question.

Wtiness—I don't know if any were produced, speaking of Peters evidence.

Q. But there may have been just as many as the others? A. Yes, sir.

Q. Do you know how many 38 Smith & Wesson revolvers, nickel plated with black handles, were produced last year? A. Well, a matter of thousands.

Q. And possibly hundreds of thousands? A. No, not that many.

Q. Well, how many? A. Probably less than 25,000, but well into the thousands.

Q. How many do you think were produced in 1926? A. I imagine a certain number of thousands, I don't know how many.

Q. Do you know how many were produced in 1925? A. No, sir.

Q. You will admit, though, from your standpoint, that the rifling in each one of these Smith & Wesson 38 caliber revolvers, five shot revolvers, was the same? A. The method of rifling was the same.

Q. Well, produced by the same machinery? A. The same type of machinery.

Q. The same measurements? A. The same measurements within permissible tolerance.

Q. What do you mean by tolerance? A. I mean the wear of the tools is allowed for, for instance in grooves they vary as much as five thousandths of an inch but not more than that.

Q. How much fouling would there be in the barrel of a gun which was loaded thirty-five years ago? A. There might not be any.

Q. How much fouling would there be in the barrel of a gun that was fired ten times in twenty-five years? A. That would depend entirely on the cleaning of the gun, the cleaning it had received after the firing.

Q. Suppose the gun is manufactured and comes out

of a factory and is not cleaned at all, would the fouling affect the bullet? A. There would be no fouling of the gun when it left the factory no matter how many times it was fired.

Q. Suppose it was fired and put away? A. Then there would be considerable rusting, there must be.

Q. Do you consider rusting the same as fouling? A. I consider fouling the deposit of the powder residue and the rusting is an oxidization process.

Q. And after the oxidization has been there for a length of time it is blown out? A. Blown out?

Q. It is scaled out, blown out? A. After it becomes sufficiently large enough it may scale out.

Q. What would it be in a pistol thirty-five years old that had not been cleaned except once fully four or five years ago?

Mr. Fisch—I object, there is no testimony that the pistol is thirty-five years old.

The Court—My recollection is that Mr. Black testified he owned it thirty-five years.

Mr. Fisch—I withdraw the objection.

A. That is too general a question. I would have to know exactly what happened to that gun.

Q. That is just the point I want you to get to, you would have to see the pistol. A. I would have to know the history of a gun to know what was going to happen to it.

Q. There was no history of any pistol given to you in this case, was there? A. No, sir.

Q. You were handed two pieces of lead and you were asked to make a report. A. Yes, sir.

Q. And didn't they tell you what they wanted you to find out? A. No.

Q. They did not tell you that they wanted you to find out that these two pieces of lead were fired by the same gun? A. They told me that there was a possibility that they might be related.

Q. Didn't they tell you the history of the gun as they had it? A. They did not.

Q. And you never saw it? A. No, sir.

Q. And you have not seen it to this day? A. I have not.

Q. Now, do you remember any other case in which you testified as an expert where you were given two bullets and asked by a Prosecutor's detective whether or not there was any possibility of relationship and you concluded and swore under oath before a jury, in the United States of America, that those two bullets were related or that there was a possibility of their being related, without your having seen the weapon? A. Yes, sir.

Q. Which case? A. Hall-Mills.

Q. There is where you were a witness for the prosecution? A . Yes, sir.

Q. And you know the result in that case? A. There was no gun there.

Q. You know what the result of that case was? A. Yes, sir.

Q. And in that case did you send your literature to the Prosecutor of Somerset County?

Mr. Fisch—I object, what difference does it make?

The Court—Sustained.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Now, in the Hall-Mills case what actual experiments did you make? A. I had three so-called fatal bullets and three so-called fatal shells, and compared these under the comparison microscope and determined they were all fired from the same pistol.

Q. Who was the other expert who appeared for the prosecution? A. So far as I know, none.

Q. Wasn't there work done by another man besides yourself? A. Not to my knowledge.

Q. Now, do you solicit prosecutors of the different counties of the different states of the United States, District Attorneys, by means of your literature?

Mr. Fisch—I object. What difference does that make?

The Court—I will permit it.

A. I send literature out describing the work of my laboratory. So far as I know there is nothing in that literature which directly solicits work. It merely acquaints them with the facilities I have at hand.

Q. And the objects of your sending out that literature is to be engaged by prosecutors? A. It is.

Q. Why is it that in coming here to testify in this case you did not bring over the barrels of a 38 calibre Smith & Wesson revolver? A. I did not think of introducing section barrels of any value—that it would be worth while introducing until it was too late to ask Mr. Wesson for some barrels.

Q. That is the excuse you give?

Mr. Fisch—I object to that.

Q. Is that the only explanation you give? A. That is the reason I did not.

Q. When did you know you were coming here to testify? A. Oh, I should say a month ago.

Q. Didn't you know a month ago that the pistol that the Prosecution had in mind was a Smith & Wesson 38 calibre? A. I did.

Q. Why didn't you procure them then? A. I didn't think of introducing an exhibit of that type at the time.

Q. Well, you knew that this was a murder case? A. I did.

Q. And you had conferred with the prosecutor? A. I had.

Q. And between you you had discussed the fact that it was a Smith & Wesson revolver? A. Yes.

Q. In question? A. Yes.

Q. And yet for a month back you did not try to procure that kind of a barrel so that this jury could get the benefit of your expert knowledge with the barrel which is directly concerned with the gun that the Prosecutor in this case alleges may have participated in the killing on the 31st of January, 1928? A. No.

Q. Did you shoot or fire any Smith & Wesson five shot revolver and then take the bullets and compare those bullets fired by you through a Smith and Wesson barrel, 38 calibre, with these bullets? A. I did.

Q. How many times? A. Well, I had several in my collection already which I had fired in past years, and I fired two additional ones, making five or six, I guess.

Q. And you did that without knowing at the time you did it that it was a Smith and Wesson revolver that was connected with this case? A. Well, I knew it was a Smith & Wesson after I made my measurements on it.

Q. Didn't the measurements show it was a 38 calibre? A. The measurements showed the type of arm that was fired through it.

Q. Did you take that up with the Prosecutor? A. I embodied in my report the type of arm that was fired through it.

Q. Did you take that up with the Prosecutor? A. I embodied in my report the type of arm it had been through.

Mr. D'Aloia—At this point I conclude for the time being the cross examination of the witness, and I would like to have him stay here for further cross examination until I can get in touch with some authorities which are about a thou-

sand miles away about certain facts that he has positively stated here on the stand.

CHARLES F. JENSEN sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. You are a captain of the police department of the town of Bloomfield? A. I am.

Q. And did you go to the home of Mr. Black in Glen Ridge? A. I did.

Q. In company with Lieutenant Linarducci and others? A. I did.

Q. And did you dig in the front of his home as shown on Exhibit S-29? A. I might say that we did; not I alone.

Q. Well, you and others? A. Yes.

Q. And in the course of your and others digging, did you recover anything? A. We did.

Q. What did you recover? A. A lead bullet.

Q. I show you Exhibit S-30 and ask you if that is the bullet you recovered?

Mr. D'Aloia—I object to the use of the word "recovered".

Q. Well, did you find it?

Mr. D'Aloia—A piece of lead was found, and I would like to cross examine the captain as to the extent of the excavation.

A. Yes.

Q. Are you the man that found the bullet, Exhibit S-30? A. Yes.

Q. And how far down did you dig when you found it? A. Twelve, thirteen or fourteen inches.

Q. And then when you dug and found this bullet, how did you find it; just what was the operation you went through? A. We had riddled the dirt that we took out through a sieve and washed the remaining contents left in the sieve until the bullet was found.

Q. What did you wash it with? A. Plain water.

Q. And then after you had washed the contents that remained in the sieve, and you found S-30, did you do any other washing? A. No.

Q. Then what did you do with Exhibit S-30? A. Handed it to either Lieutenant Linarducci or Lieutenant Gannon.

Cross Examination by Mr. D'Aloia:

Q. Were there any stones or gravel in the sieve? A. Yes.

Q. Who was shaking? A. I couldn't tell you.

Q. Was Mr. Foster there? A. Yes.

Q. Did you see Mr. Foster since? A. No.

Q Was the bullet handed over to Mr. Foster? A. I couldn't say.

Q. He did not do any digging? A. No.

Q. You knew Mr. Foster? A. That was the first time I had the pleasure of meeting him.

Q. You know what his business is? A. Yes.

Q. You know who I mean by Mr. Foster? A. Yes.

Q. Do you want me to describe him, with blonde hair? A. Yes.

Q. He supervised this digging? A. I could not say that.

Q. He was there after the digging began? A. Yes.

Q. And was he given it to examine? A. I believe he was.

Q. And do you know whether he took it away with him? A. I think he did.

Q. Well, you know he did. A. I couldn't say for sure.

Q. He didn't do any digging? A. I couldn't say.

Q. He is not a police officer? A. No.

Q. Do you know why he was there? A. No.

Q. Do you know why he took the bullet away? A. No.

Redirect Examination by Mr. Fisch:

Q. Do you know positively that Mr. Foster took the bullet away? A. No, I do not.

Joseph Linarducci—direct

JOSEPH LINARDUCCI recalled in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Were you present at the Black home when Exhibit S-30 was found? A. I was.

Q. And who found it? A. Captain Jensen.

Q. Where? A. In the sieve.

Q. It was found at a point in the dirt patch indicated by Mr. Black? A. Yes.

Q. Is that point shown on Exhibit S-29? A. That is right.

Q. The point marked with a cross? A. Yes.

Q. And how far below the surface? A. I should say about a foot.

Q. And then what was done with the bullet when it was found? A. I took possession of it.

Q. Well, was it washed? A. It was washed.

Q. With what? A. Water.

Q. And then you took possession of it? A. I did.

Q. Who did you receive it from? A. I received it from Captain Jensen. I asked Captain Jensen and Mr. Black to mark the bullet.

Q. And they put identification marks on it? A. Yes.

Q. In your presence? A. Yes.

Q. And then you took it with you? A. Yes.

Q. And subsequently did you take that bullet and the fatal bullet, Exhibit S-2, to Major Goddard? A. I did.

Q. And when you took those two bullets to Major Goddard, did you give him anything of a history of the case? A. I did not.

Q. What did you ask him to do? A. I asked him to look those bullets over and tell us what he could about them, tell us what kind of a gun they were fired out of, if they had been fired. And—oh, in the afternoon—

Q. Who was with you at the time? A. Lieutenant Gannon in the afternoon. I asked him whether or not he could tell me whether they had come out of the same gun after he had given me his opinion as to the calibre, the type of gun from which they were fired. That is all, I believe.

Q. Then did he render his report to you? A. He did.

Q. Did you up to that time tell him anything with regard to the circumstances of this case? A. I did not.

Cross Examination by Mr. D'Aloia:

Q. When did you dig the bullet up? A. February 12, I believe.

Q. When did you go with it to Major Goddard? A. The 7th of March.

Q. What did you do with the bullet between February—what date did you say it was in February? A. 12th.

Q. And March 7th? A. Right.

Q. What did you do with it in that interval? A. I gave it to Mr. Foster, I believe.

Q. Who is he? A. Albert Foster; he is the manager of the Colt Firearm company in New York.

Q. You gave it to him? A. I did.

Q. How long did he keep it? A. The 13th. He had it a few days less than a week; possibly three or four days.

Q. What did you give it to him for? A. I wanted Mr. Foster to tell us something about the bullet.

Q. He was present at the time it was dug up? A. He was.

Q. And he saw it found? A. He did.

Q. He saw it sifted? A. He did.

Q. And he saw it picked up by Captain Jensen? A. He did.

Q. Mr. Foster is not a witness in this case? A. No.

Q. Under subpoena by the State? A. He is not, but I understand you are going to subpoena him.

Q. You did not subpoena him? A. I did not.

Q. You are in charge of this case? A. I am.

Q. As the lieutenant at the head of the homicide bureau? A. That is me.

Q. Did you go to Winchester with that bullet? A. Winchester?

Q. Yes. A. Where is that?

Q. The Winchester factory, did any partner in your bureau go? A. I sent a man from the homicide bureau to New Haven.

Q. Was there any information given the Winchester people as to where it was found? A. I could not tell that.

Q. Was there any instruction given by you to the man who went up to tell the Winchester people where it was found and how long it had been in the ground? A. No.

Q. Did you get a report from Mr. Foster after the four days? A. I did.

Q. Did Mr. Foster inform you that he had submitted the bullet to Captain Jones? A. For photographs.

Q. Did he tell you he submitted the bullets to Captain Jones? A. He told me—

Q. Yes or no. A. I cannot answer that question yes or no.

The Court—Answer it the way you can.

A. He told me he had Captain Jones photograph the bullets.

Q. And then he gave you a report? A. He did.

Q. And subsequent to receiving Mr. Jones' report—when did you get that report? A. I don't remember the date.

Q. Well, it was between the 12th of February and 7th of March? A. Yes, that is correct.

Q. Where is it? A. I have it in my possession.

Q. And you have not subpoenaed Mr. Foster? A. I have not.

Redirect Examination by Mr. Fisch:

Q. And did you talk with Mr. Foster with regard to this report? A. I did.

Q. And with regard to these bullets and their similarity? A. I did.

Q. What did he say?

Mr. D'Aloia—I object to that.

The Court—You asked him if he got a report from Mr. Foster, and now he is asking what the report was.

Mr. D'Aloia—No. He is asking what he said.

Q. Did you get a verbal report from Mr. Foster? A. I did.

Q. Tell us what the report was.

Mr. D'Aloia—I object to that, if there is one in writing.

The Court—I think it is admissible now.

The Court—How does this get itself out of the hearsay class, Mr. Prosecutor?

Mr. Fisch—By reason of the fact that the defendant has opened the door by making inquiries regarding the report. I submit I have a right, on redirect, to show what the report was.

Mr. D'Aloia—Not in this case. You can show it by producing Mr. Foster and then we can prepare to cross examine Mr. Foster, but we cannot cross examine this witness because he is not an expert and that report is the product and conclusion of an expert.

The Court—Here is a statement made by a third party to this witness.

Mr. Fisch—Yes, your Honor, which was inquired about on cross examination.

The Court—Of course, the report was inquired about to this extent, did he make a report or something to that effect, it was not inquired into to the extent that the witness was asked, "Did Mr. Foster say to you so and so." Now, had he been asked if Mr. Foster said so and so, under those circumstances, it would have been proper for the witness to tell what Mr. Foster said.

Mr. Fisch—If your Honor please, counsel asked the witness did he make a report and the answer was, "Yes," I submit under those circumstances the door has been opened for me to see what report Mr. Foster made.

The Court—I think you are in the same position that the defense would have been in had it attempted to ask this witness, "Didn't Mr. Foster make a report to this effect"—It would have been objectionable on your part and I would have sustained the objection.

(Argument.)

The Court—I cannot see how it is admissible.

Mr. Fisch—Then under that proposition the report would not be admissible.

The Court—No, the report itself, no.

Mr. Fisch—Then, your Honor sustains the objection?

The Court—Yes.

Q. Now, Lieutenant, when you took those bullets, the fatal bullet and the so-called garden bullet to Major Goddard, did you tell him that anybody else made any report to you one way or the other? A. I did not.

Q. Did you ever tell him? A. I never told him.

Q. Did you ever tell him that anybody else had ever examined the bullets? A. I did not.

By Mr. D'Aloia:

Q. Did you take the bullets to Robinson in New Haven? A. I did not.

Q. Did you send anybody with it? A. I did.

Q. Is Robinson under subpoena? A. He is not.

By Mr. Fisch:

Q. You have been asked on cross examination whether Mr. Foster was ever subpoenaed by the State and I think you said no, is that right? A. Yes, sir.

Q. Will you tell us why he is not under subpoena?

Mr. D'Aloia—I object to that, I object to the reason why he is not under subpoena.

The Court—If it is for some physical reason that he cannot be subpoenaed or something like that I will permit it, but if it is simply an exoneration of somebody's judgment I will not.

Mr. Fisch—No, your Honor, I think we are entitled to show the jury why Mr. Foster is not under subpoena, if it is brought out by the defense that he is not under subpoena.

Mr. D'Aloia—Oh, no, if it going to involve in the answer a portion of that report, no. If the answer is going to be Mr. Foster is in Europe I will take that answer. I won't object to your question; if the answer is going to be that Mr. Foster is sick in bed and physically unable to be present on account of his illness I will take that answer, but if the answer is going to be something which Mr. Foster may or may not have said to this witness, then, I object.

The Court—Counsel may tell me what the answer is and I will rule on it on the basis of that.

Mr. Fisch—I really don't know, your Honor, but the witness can tell it without having it go on the record and then you could rule on it. I honestly do not know what it is going to be.

The Court—All right, you tell me.

(The witness states the answer to the Court, off the record.)

The Court—Wel, the answer involves a conversation which is the basis of the same objection I sustained a few moments ago, and I therefor sustain this objection.

Q. Lieutenant Linarducci, do you know what examination Mr. Foster made of the bullets?

Mr. D'Aloia—I object to that, this witness is not qualified to know what examination he made except if he looked at it.

The Court—He can answer this question.

A. I don't know, he took the bullets away with him and returned them to me some four or five days later.

Mr. Fisch—Now, if your Honor please, in view of the statement of Mr. D'Aloia and his cross examination of Lieutenant Linarducci and the other witnesses with regard to Mr. Foster, the State is ready to close its case with the reservation that it be permitted to subpoena Mr. Foster to come here to testify as to whatever he may know, unless, of course, he is subpoenaed for the defense and then he will be here.

Mr. D'Aloia—I will say to Mr. Fisch we have been attempting to find Mr. Foster to subpoena him.

The Court—Then, you both want him?

Mr. D'Aloia—Yes.

The Court—Then, I assume there is no objection to the State resting its case with that reservation.

Mr. Fisch—And of course, we also retain the reservation to redirect examine Major Goddard after the completion of the cross examination.

Mr. D'Aloia—Now, may it please your Honor

and gentlemen of the jury, the defense in this case is going to be very brief—I am in a position, and I think your Honor ought to hear what I say now, that without the completion of the testimony of Major Goddard I cannot properly open this case for the defense, because if that examination is continued there may be the necessity of making a motion for a direction of a verdict of acquittal not in the presence of the jury.

The Court—You may make a motion any time that you want to.

Mr. D'Aloia—Now, will your Honor allow me to renew that motion at the end of the cross examination of Major Goddard?

The Court—Yes.

Mr. D'Aloia—I move for the direction of a verdict of acquittal—

The Court—Are you making the motion now?

Mr. D'Aloia—Yes.

Mr. Fisch—Then, we should excuse the jury.

The Court—I thought you started to open and wanted leave to make a motion after you finished the cross examination.

Mr. D'Aloia—Well, I will take that view of it if your Honor will permit me.

The Court—I will allow you to make the motion at any time as of this time.

Mr. D'Aloia opens for the defense.

ERNESTINE MICHAEL sworn in behalf of the Defendant.

Direct Examination by Mr. D'Aloia:

Q. Do you remember the 1st day of February of this year? A. Yes.

Q. Do you know what day of the week it was? A. It was on a Wednesday.

Q. Do you know this defendant? A. Yes.

Q. Did you know him at that time? A. Yes.

Q. Were you the owner of premises 82 Canal Street, Newark? A. Yes.

Q. And what kind of a place was that? A. Furnished room house.

Q. How many rooms did it contain? A. Fourteen.

Q. And who was in charge of that house? A. Mr. Boccadoro.

Q. This defendant? A. Yes.

Q. And a lady? A. Yes.

Q. Now, on the afternoon of February 1, 1928, this Wednesday, did you see this defendant? A. Yes.

Q. What time was it? A. Between two and five.

Q. And where did you see him? A. Down at my house.

Q. Where is your house in reference to 82 Canal street? A. 75 Green street.

Q. Near where? A. Near Mulberry.

Q. And did you have a conversation with him? A. Yes.

Q. How long did he stay? A. Oh, he stayed about three quarters of an hour, I guess.

Q. What time was it he left, about? A. I could not say.

Q. Well, was it daylight when he came? A. Daylight when he came and daylight when he went.

Cross Examination by Mr. Fisch:

Q. What makes you recall the date? A. What is it?

Q. What makes you recall the date? A. The date?

Q. Yes. A. Well, because my rent came on the first and on the Monday before I went down to pay it, and that was two days—I always pay my rent a little ahead of time, and on Monday I paid it and it was on a Wednesday.

Q. You paid your rent on Monday? A. Yes.

Q. Who did you pay your rent to? A. To the agent.

Q. Who was that? A. Mr. Smith.

Q. What Mr. Smith? A. I think his name is Smith, the coal place.

Q. And you paid that on Monday? A. Yes.

Q. And is that the only thing that fixes in your mind that this defendant was at your house on this Wednesday? A. Well, no. I read about this murder case, so it was the next day after the murder case.

Q. Well, when did you read about it? A. After that; sometime after that.

Q. Well, when did you read about it? A. I couldn't say.

Q. What? A. I couldn't say.

Q. What paper did you read? A. The Star-Eagle.

Q. You read the Star-Eagle? A. Yes.

Q. And was it the day after you read the Star-Eagle that you saw this defendant? A. Oh, no, I read the Star-Eagle afterwards; after that.

Q. You read the Star-Eagle and read the account of this murder after you saw the defendant? A. Yes.

Q. How many days after? A. After—I couldn't say.

Q. Well, was it two days or three days? A. I couldn't say.

Q. Well, was it two days or three days? A. I couldn't say.

Q. Uh? A. I couldn't say.

Q. You do not know whether it was a day or two or three days after? A. No, I couldn't remember.

Q. But you are sure you read about the murder after you saw the defendant at your house? A. Oh, yes.

Q. And you do not know what day of the week you read about the murder? A. No, I don't.

Q. Well, did you read about it on the same day that the paper was published concerning the murder? A. I couldn't say that, either.

Q. Well, did you buy the paper and read about it? A. Well, I bought the paper. I bought the paper every day.

Q. What is that? A. I bought the paper every evening.

Q. And when you buy it you read it the same evening? A. Well, sometimes I do; sometimes I don't until the next day.

Q. What is it? A. Well, sometimes I do and sometimes I don't.

Q. Well, did you read this paper you are talking about the same evening that you bought it? A. Well, I don't know.

Q. Uh? A. I could not say that; I don't know.

Q. Was this the first account you read in the Star-Eagle of this murder? A. Yes.

Q. Uh? A. Yes.

Q. And how many days before that did you see this defendant at your house? A. Well, I could not say how many days it was. I know it was on Wednesday I saw him; Wednesday afternoon.

Q. You know it was on Wednesday? A. It was on Wednesday, on the first.

Q. And how did you know it was on the first? A. On account of my paying my rent two days before.

Q. You paid your rent on Monday? A. Yes.

Q. And that is the only way you can fix it? A. Yes.

Q. And you have no other way of fixing it except you say you saw him before you read the Star-Eagle article concerning this murder? A. Yes.

Q. And that was the first article you saw published about this murder? A. Yes.

Q. Now, where is this office of this man you pay your rent to? A. The coal; right below 82 Canal street.

Q. And who is the man you paid it to? A. Well, the agent.

Q. What is his name? A. I don't know, only Smith. I have not had the house so long.

Q. And who was the person you paid it to that day? A. Mr. Smith.

Q. Did you get a receipt? A. Yes, I have a book.

Q. And does he have a book, too? A. Yes.

Q. And where is the book you have? A. Home.

Q. You did not bring that with you? A. No, I didn't.

Q. And does he write out in your book, when you pay your rent? A. I think he does.

Q. And did he put the date in that day? A. I think so; I am not sure.

Q. How much did you pay him? A. $100.

Q. What was that? A. $100.

Q. And is that rent for the house on Canal street? A. Yes.

Q. That is the rent of the Canal street house? A. Yes.

Q. And what fixes in your mind that you saw the defendant two days after you paid your rent? A. Well, that is the only thing, that I paid my rent on Monday and he came down Wednesday afternoon and there was a roomer left that morning, and that was on Wednesday, the rent was due.

Q. What portion of the premises did this defendant and Mrs. Tiffany occupy? A. The first floor in the back.

Q. And do you know when they left? A. Yes. Theye left on a Friday. I am not sure of that, but I went down Saturday and the lady said they had gone on Friday.

Q. And you went down on Saturday and there was not anybody in that apartment, is that right? A. Yes.

Q. And how long was that apartment vacant until somebody else occupied it? A. Well, the lady was

supposed to go right down in the room, but she didn't go down until Monday.

Q. So that from the time that this defendant and Mrs. Tiffany occupied those rooms up until the following Monday, nobody had occupied them, is that right? A. They were back and forth in them.

Q. But they did not occupy them? A. Well, I don't think so.

Q. And you are refering, are you, to that portion of the premises of which Exhibit S-19 is a photograph?

Mr. D'Aloia—I do not think this is proper cross examination.

The Court—I do not think it is.

Q. When these people—this defendant, Buccadoro and Mrs. Tiffany went into your place and were supposed to take care of these rooms, did you get some money from them?

Mr. D'Aloia—I object as not proper cross examination.

Mr. Fisch—I think it is proper to show interest.

Mr. D'Aloia—I simply brought out the fact that Wednesday, February 1, she saw this defendant.

The Court—I will permit it.

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

Walter D. Van Riper,
Judge

Q. Did you? A. Yes.

Q. How much? A. $50.

Q. And have you still got that $50? A. Yes, I have, but they collected rent.

Q. What is that? A. They collected quite a bit of rent.

Q. They owe you rent? A. Yes.

Q. You never returned the $50? A. No, because they owe me rent.

Q. You say they owe you money? A. Yes.

Redirect Examination by Mr. D'Aloia:

Q. You have $50 belonging to the defendant? A. Yes.

Q. Is that $50 transaction that you claim they may have received for rent—you claim as a deposit that $50; does that influence your memory one way or the other as to Wednesday afternoon, February 1, when this defendant came to the house?

Mr. Fisch—I object.

The Court—I will permit it.

Q. Does that influence you in any way in recalling this Wednesday afternoon; are you testifying because of the $50 that you saw him that afternoon or is it a fact that you saw him that afternoon? A. It is a fact.

Q. And the hour you remember? A. Well, not the hour.

Q. But daylight? A. Yes.

Q. And you remember it was the first of February? A. Yes.

Q. And you remember it was a Wednesday? A. Yes.

Recross Examination by Mr. Fisch:

Q. Was anybody with you at that time? A. In my house when he came down there?

Q. Yes. A. My husband.

Q. Where is he? A. Home.

Q. Anybody else? A. No.

BESSIE VERITY sworn in behalf of the defendant.

Direct Examination by Mr. D'Aloia:

Q. Did you live at 82 Canal street, Newark? A. Yes.

Q. The last days of January and the beginning of February? A. Yes.

Q. Do you know the defendant? A. Yes.

Q. Do you remember the Wednesday of that week, the first of February? A. Well, I don't know anything about Wednesday, but I know Friday he left there.

Q. He left there Friday? A. Yes, sir.

Q. Now, during those days before Friday, Wednesday and Thursday, did you see this defendant go out those two days? A. No.

Q. You did not see him go out at all? A. No.

Q. Did you see him come in? A. No.

Q. When did you see him? A. I seen him Friday morning last.

Q. Where did you live with reference to his room? A. Right up on the second floor in the front of 82 Canal Street.

Q. Did you ever see him go to the moving pictures? A. He only went twice as I can remember.

Q. When was that? A. I think on January 2 his wife and he went, and I think his wife went out previous to him.

Q. Did you ever see him go that first week of February with his dog? A. Yes, to the store.

Q. Where was the store located? A. I could not tell you. Well, I think it is the A & P around the corner.

Q. Well, did you see him go out every day with the dog? A. Well, he used to go out.

Q. Well, did you see him go out with the dog shopping to the store on Wednesday before that Friday? A. Well, I could not tell you exactly.

Q. Well, can't you try to fix your mind to that last part of January and that part of February before this Friday when you saw the two of them go out and go away? A. Well, because his wife brought me up the keys as the landlady's daughter.

Q. Well, will you please tell me if the defendant, before you saw him go to the store with the dog— A. No, I couldn't tell you about that.

Q. Well, can you tell us about any days you saw him go out? A. Well, I seen him different days when I was sitting in the window with the baby, but outside of that, I could not tell you truthfully any certain day.

Q. Well, was there any change that particular week? A. There was not any change as I seen.

Cross Examination by Mr. Fisch:

Q. You do not know whether you saw him that Tuesday or Wednesday or Thursday, do you? A. No, sir; I do not.

Q. And you say you saw him go to the movies on January 2nd? A. I did not see him. The landlady told me when they went out to bring me up the keys on January 2, his wife brought me up the keys.

Q. Are you sure that is January 2nd? A. Well, I am pretty sure.

Q. You mean February 2nd? A. February 2nd.

Q. They were not living there January 2nd? A. No, they came there January 9th.

Q. And February 2nd they brought you up the key and left? A. Yes.

Q. And nobody occupied the apartment they had until Monday? A. I occupied it on Saturday, because I moved down my things on Sunday, because my husband was home, and he moved them down.

Q. He moved the things down on Sunday, is that right? A. Yes.

Q. Did you disturb the stove in any way? A. No.

Mr. D'Aloia—I object to that as not proper cross examination.

A. Only put the coal in and made the fire.

Q. When was that? A. When we moved down there.

Q. When was that? A. On Sunday.

Redirect Examination by Mr. D'Aloia:

Q. You do not know who got into that room during Friday and Saturday? A. No, sir; I do not.

Q. Now, on the 2nd of February you say you went to the moving pictures; do you remember that? A. Yes.

Recross Examination by Mr. Fisch:

Q. When was that, during the day or at night? A. I think it was in the evening.

Q. Now, did you see Lieutenant Gannon there on Saturday? A. Yes. I know all the detectives that was there.

Q. And did you see him take some ashes out of that stove there?

Mr. D'Aloia—I object as not proper cross examination.

The Court—Sustained.

A. Yes, I see him.

Mr. D'Aloia—Just a minute. You should not answer that question.

Q. Now, up to the time you saw Lieutenant Gannon there, did you touch that stove? A. Not until after.

Redirect Examination by Mr. D'Aloia:

Q. Did you know whether anybody touched that stove before Lieutenant Gannon came there? A. Not as I can tell you.

Argument

Adjourned until tomorrow, Saturday, April 28, 1928, at 9:30 o'clock A. M.

Continued pursuant to adjournment.

Present, Counsel as before stated.

Mr. Fisch—Now, if your Honor please, Mr. D'Aloia yesterday asked that he be permitted to reserve the cross examination of Major Goddard until this morning. Might I suggest that this would be a good time to resume that cross examination?

The Court—Are you prepared?

Mr. D'Aloia—No, sir, I am expecting a messenger here from New York any moment. I have been in telephonic communication—

The Court—You are not prepared.

Mr. D'Aloia—I am not prepared and won't be prepared, possibly, until he has arrived.

Mr. Fisch—Of course, it is a rather difficult situation to be in, to have the defendant's expert go on before the completion of the cross examination of the State's expert.

The Court—I understood from Mr. D'Aloia that he did not intend to cross examine Major Goddard on any technical testimony.

Mr. D'Aloia—No technical testimony, but on certain questions to which he gave me positive answers—

Mr. Fisch—Now, then, if your Honor please, Mr. Foster is not here—

Mr. D'Aloia—If your Honor please, I object to Mr. Fisch's speech now about Mr. Foster. At the proper time he can put in evidence to show why Mr. Foster is absent. .

The Court—I don't want Mr. Fisch to tell me why he is absent, and I don't know that he intends to tell me why.

Mr. Fisch—Yesterday I reserved the right, in my case, cross examination referred to the fact

that Mr. Foster made a report. I have that report and I desire now, if your Honor please, I ask your Honor's permission, to offer that report in evidence.

The Court—You are offering the report in evidence?

Mr. Fisch—Yes, your Honor.

Mr. D'Aloia—I have nothing to say as to that offer. I think we ought to have the opportunity to cross examine Mr. Foster. We do not cross examine pieces of paper.

The Court—I think you should have too, and under that objection, I will not admit it.

Mr. Fisch—Now, if your Honor please, may I state to your Honor that we have been able to obtain the presence of Mr. Merton Robinson, from New Haven, who has been referred to on the cross examination as a gentleman who examined the mortal bullet and the so-called garden bullet, and I am now addressing my motion to your Honor's discretion to permit me to open my case for the purpose of permitting Mr. Robinson to testify at this time, or, if your Honor thinks that it will disturb the orderly proof in the case, I will call him on rebuttal, provided I would be allowed equal latitude with regard to his testimony.

The Court—I suppose that is purely within the discretion of the Court.

Mr. D'Aloia—Absolutely.

The Court—Well, I will consult your wishes about it, Judge. I will use my discretion to the extent of allowing the State to open its case and put Mr. Robinson on at this time.

Mr. D'Aloia—I believe he ought to take the stand now.

The Court—All right. The State opens its case for the purpose of calling Mr. Robinson.

Merton A. Robinson—direct

MERTON A. ROBINSON sworn in behalf of the State.

Direct Examination by Mr. Fisch:

Q. Mr. Robinson, where do you reside? A. New Haven, Connecticut.

Q. And what is your business? A. I am the ballistic engineer for the Winchester Repeating Arms Company.

Q. When did you first become connected with the Winchester Repeating Arms company? A. In 1904.

Q. That is twenty-four years ago? A. Approximately, yes, sir.

Q. And in 1904, in what capacity were you with the Winchester Repeating Arms company? A. I entered the ballistict laboratory.

Q. And did you later have charge of the laboratory? A. In 1910, January, 1910, I was appointed head of the ballistic laboratory.

Q. And when did you become the ballistic engineer of the company? A. In 1907, a central engineering force or department was organized and I was transferred to that engineering department and given the title of ballistic engineer, a position which I have held ever since.

Q. And are you, or were you, a member of any ordonance commission of the United States? A. In August, 1918, I was appointed a member of a commission by the United States Ordonance Department to visit England, France and Italy for the purpose of studying methods of manufacture of small arms and ammunition, the methods of test and the various operations throughout.

Q. And as a member of that commission did you go abroad to those countries and study the manufacture of these small arms, ammunitions and so forth? A. I did. I spent about three months, that is, lacking the time going and coming, and went through all of the

important factories, both arsenals and private manufactories of those countries.

Q. Now, since 1917, when you became the ballistic engineer of the Winchester Repeating Arms Company, what branch of the work of that company has been under your charge? A. Since 1910, when I was made head of the laboratory, I had supervision of the routine and experimental tests of ammunition, guns and ammunition. Since 1917, when I was made ballistic engineer, I have had the supervision and charge of that testing.

Q. The testing of guns and ammunition? A. The testing of guns and ammunition. I have supervised experimental tests of new types of powders, new types of bullets, priming mixtures and other components used in the loading and manufacture of ammunition. I have prescribed the bullet diameters, cartridge sizes, and interior dimensions of the barrel, correlating the ammunition and the diameters or board dimensions. I have prescribed the standards to be maintained in our tests of velocity, pressure, accuracy, and other functioning tests. I have prescribed types of powders, types of priming mixtures and other items of that nature.

Q. Now, Mr. Robinson, are you familiar with the different types of small arms? A. Yes, sir, I am.

Q. And are you familiar with the different types of cartridges made by the various companies? A. I am.

Q. And are you able to differentiate between the types of cartridges made by various companies? A. I am.

Q. And have you testified in any homicide cases or in any cases involving the identification of bullets and the identification of small arms and been consulted in them and filed depositions in them? A. I cannot be away from my duties, of course, very much, but I have been consulted a great many times by various officials

or defendants and have appeared in a number of cases.

Q. And over what period of time? A. The first occasion that I appeared as an expert was about fifteen years ago; that was when my testimony was given.

Q. And in what state have you appeared as an expert either on testimony or consultation or depositions? A. I cannot recall all of them but Maine, Massachusetts, Connecticut, New York, Pennsylvania, Ohio, West Virginia, Canada.

Q. Canada, did you say? A. Canada, several times.

Q. Did you ever appear in New Jersey? A. Yes.

Q. Essex County? A. Yes.

Q. Now, what are some of the more outstanding cases in which you have been connected as an expert? A. Sacco-Vanzetti case I made an examination of the shells and bullets; made a report or an affidavit to the prosecuting attorney.

Q. That is, you examined them for the state, did you? A. Yes.

Q. And you made your report on that? A. Yes.

Q. What was your report in that case?

Mr. D'Aloia—I object.

The Court—Sustained.

Q. You were retained by the State, weren't you? A. I was.

Q. What other case? A. Hall-Mills case, I was retained by the defense, made an examination of the shells and bullets for Mr. Pfeiffer for the defense.

Q. Did you testify in that case? A. I did not.

Q. And did your examination of the bullets and shells in that case agree with the examination of Major Goddard?

Mr. D'Aloia—I object to that as to what use this report was put.

The Court—I do not think that is proper as to his qualifications.

Q. And any case of note in Ohio? A. The Mallet case. I appeared in two of those trials.

Q. On behalf of what part? A. For the prosecution.

Q. And what was the result?

Mr. D'Aloia—I object.

The Court—Sustained.

Q. Now, Mr. Robinson, I show you Exhibit S-2, which has been referred to as the fatal bullet, and Exhibit S-30, which has been referred to as the garden bullet and ask you if you ever made an examination and comparison of those bullets? A. I have.

Q. And when did you make your first examination of them? A. I could not tell you the exact date. It was in the early part of February of this year.

Q. By the way, are you familiar with the use of a microscope? A. I am.

Q. And have you made an examination of the bullets—microscopic examination of the bullets? A. I have.

Q. And have you been able to determine by your examination of the bullets and your familiarity with the various types of bullets, of what manufacture the bullets are? A. I have.

Q. And of what manufacture are they? A. The bullets agree with those manufactured by the Peter's Cartridge Company, which we have in our retained samples, which we received some little time ago. The last sample of Peter's bullets of this calibre were somewhat different in the knarlings.

Q. Is that also known as cannelureing? A. Yes.

Q. That sets around the base of the bullet and looks something like this (drawing on blackboard)? A. Well, it is on the side of the bullet.

Q. Toward the base? A. Yes, near the base.

Q. Now, you say, then, that both of those bullets are Peter's bullets? A. That is my opinion, yes.

Q. What calibre? A. .38, Smith and Wesson.

Q. 38 Smith and Wesson type. A. Yes.

Q. You have said also the knarlings on these bullets is different from the present type of knarlings on Peter's bullets? A. Yes.

Q. Will you be good enough to describe to the Court and jury the difference between the knarlings on these bullets and the knarling on the present type of 38 calibre Smith & Wesson type bullet? A. The shape of the knarl or raised portion of the knarl on these two bullets is somewhat sharp, more like a pyramid than the present bullet. With the present bullet the raised portion of the knarling is flattened, whereas he old bullet as indicated by the sample is sharper.

Q. Now, can you tell me which of these two drawings that I am now indicating, one is number one and the other is number two on the blackboard, would represent the knarling on the bullets which you now have before you, the fatal bullet and the garden bullet? A. Illustration number one, with the sharper raised portion, illustrates the present case.

Q. And illustration number two represents what? A. More nearly represents the manufacture of Peter's bullets.

Q. Can you determine, Mr. Robinson, from your experience, whether a bullet has been fired out of a clean gun or a foul gun? A. I can.

Q. And how do you determine that? A. From an examination of the bullet with the markings.

Q. Now, a bullet which has been fired out of a foul gun, as compared with a bullet which has been fired out of a clean gun, which bullet would have more markings on it? A. The bullet fired through the foul barrel would show more markings than one fired through a clean barrel.

Q. Now, in your examination of those bullets, were you able to determine whether those bullets were fired from a clean or a foul gun? A. I was.

Q. And what was the garden bullet fired out of, what kind of a gun, clean or foul? A. The so-called garden bullet was undoubtedly fired from a barrel in a foul condition.

Q. Now, the fatal bullet, what kind of a barrel was that fired out of, as to the condition? A. The fatal bullet was fired through a barrel in good condition.

Q. Now, can you determine, from your experience, what kind of a gun a bullet is fired out of? A. I can.

Q. And how do you determine that, Mr. Robinson? A. The suspected bullet is measured for diameter, if possible, the number of lands and grooves are determined, the width of lands and grooves measured, the direction of twists noted, the weight of bullet determined, and these results are then compared with the results obtained when bullets are fired through various known types of arms. It is a well known fact that various manufacturers employ various types of rifling, some four, some three, some five and some six. Some of these rifles are right hand and others left.

Q. That is right hand twists and left hand twists? A. Left hand twists or right hand twists. By comparing all of these results obtained with the examination of the suspected bullet, we are able to tell pretty conclusively as to the type of arm through which it is fired.

Q. Now, did you make such an examination of the two bullets that are referred to in evidence in this case? A. I did.

Q. And are you able to say, Mr. Robinson, what kind of a gun those bullets were fired from? A. It is my opinion that they were fired through a Smith & Wesson revolver.

Q. Of what calibre? A. 38.

Q. Both of them? A. Both of them.

Q. Now, Mr. Robinson, are you able to determine, by your experience and methods which you employ, whether two bullets have been fired from the same gun? A. With a reasonable certainty, yes, sir.

Q. And what method do you employ in order to reach that determination? A. The suspected bullet is measured for diameter and the land impression or groove impression, if possible. The direction of twist is noticed and the appearance of the land and groove impression observed. The bullet is examined carefully for the appearance of land impression, for the amount of slippage of the bullet, as to whether the bullet engaged the rifle in the grooves used formerly, and the bullet is also examined for any characteristic marks or scratches.

Q. Is that examination made with the use of a microscope? A. It might be either with a magnifying glass or with a microscope. Any measurements of the land and groove impressions could be made with a microscope and a suitable measuring attachment. After this examination is made the bullet of the same type and calibre are fired through the suspected revolver. This bullet is then examined in the same manner as the suspected bullet and by a comparison of all of these results, an opinion is reached as to whether or not the suspected bullet was fired through that particular gun.

Q. Now, suppose you have no weapon and you have two bullets? A. In that case, having two bullets, both suspected, you can make the same examination and measurements and compare the two bullets.

Q. And is that what you did in this case? A. I did.

Q. And did you examine these bullets under a comparison microscope? A. I did.

Q. I show you Exhibit S-33, which has been testified is a set of photographs, photograph A-1 being a photograph of the fatal bullet, A-2 a photograph of the

so-called garden bullet, photograph A-3 a photograph of the garden bullet with the lower portion of the fatal bullet superimposed, and photograph A-4 being a photograph of the garden bullet with the upper portion of the fatal bullet superimposed, and ask you if you have made an examination of that photograph? A. I have.

Q. And have you made a comparison of the impressions as photographed of these bullets in the lands and grooves? A. I have.

Q. And have you been able to determine and see grooves and ridges in those photographs, the photographs of the bullets, which are coincidental? A. I have.

Q. And are those coincidental points marked out by numbers or by lines which are numbered? A. They are.

Q. And have you also been able to observe lands and grooves which are coincidental in both of the bullets that are not marked? A. Yes, sir.

Q. Now, I show you Exhibit S-34, which is a set similar to Exhibit S-33 and made up in the same fashion, and ask you if you have examined this set of photographs? A. I did.

Q. And were you able to observe ridges and grooves as shown on the photographs of those two bullets, on these photographs of those two bullets which are coincidental in degree on both bullets? A. I have.

Q. And are those ridges and grooves shown by the lines which are numbered? A. Yes, sir.

Q. And were you able to determine also and see ridges and grooves of similarity which are not marked out? A. In several of the photographs, yes.

Q. I show you Exhibit S-35, which is a similar set of photographs made up in the same way and I ask you whether you made an examination of that set of photographs? A. I did.

Q. And were you able to determine grooves and ridges of similarity on both of the bullets? A. I was.

Q. And are those grooves and ridges marked out by the lines and numbers on that set of photographs? A. Yes.

Q. I show you Exhibit S-36, which is a similar set of photographs of these bullets in still another position and I ask you if you examined that set of photographs? A. I did.

Q. And were you able by an examination of that set of photographs to determine and ascertain grooves and ridges of similarity, corresponding similarity on both of the bullets represented by the photographs? A. I am not sure about that particular one, but I have on most of them.

Q. I show you Exhibit S-37, which is a similar set—which is a set of photographs made up in a similar manner, showing another position of the bullets, and I ask you if you made an examination of that set of photographs? A. I did.

Q. And were you able to determine markings such as ridges and grooves of similarity in both of the bullets? A. I was.

Q. And were those markings of ridges and grooves marked out on the photographs by lines and numbers at the end of them? A. Yes.

Q. I show you Exhibit S-38, which is another set of photographs made up in a similar manner, showing the bullets in another position, and I ask you if you made an examination of that set of photographs? A. I did.

Q. And were you able to see on that set of photographs lines such as grooves and ridges—representing grooves and ridges which were similar in both bullets? A. I was.

Q. And are those points of similarity marked out by lines in ink with numbers at the end of them? A. Yes.

Q. Now, I show you Exhibit S-39, which is another set of photographs of the two bullets, gotten up in a similar way, showing another position of the two bullets, and I ask you if you examined that set of photographs? A. I did.

Q. And by an examination of that set of photographs were you able to observe lines such as grooves and ridges on the two bullets which were similar? A. I was.

Q. And are those markings of similarity marked by lines in ink at the end of which there are numbers? A. Yes.

Q. Now, Mr. Robinson, from your examination of the two bullets which are in evidence—your microscopical examination of them and any other examination you made and from your examination of the photographs which you have just identified in the various positions of these two bullets, are you able to tell us whether or not, in your opinion, these two bullets were fired from the same gun? A. In my opinion, both of the bullets were fired from the same barrel.

Cross Examination by Mr. D'Aloia:

Q. Were you told that one of the bullets had been embedded in the ground for over two years? A. I was told that the bullet had been embedded in the ground for some time.

Q. Did they give you the exact time? A. I am not sure of that.

Q. Would shooting a bullet in the ground show a lot of markings on a bullet that had been shot in the ground? A. It would cause it to be mutilated.

Q. Sand marked? A. Not on the side.

Q. I am not talking about the side. Would it have marks on it? A. Yes.

Q. Would the bullet come in contact with the soil—

A. Not unless the bullet is given more—

Q. If a bullet is fired in the ground, a 38 calibre Smith and Wesson about two feet, the bullet is rather hot when it hits the ground? A. Yes.

Q. Yes, the lead is softer two feet away from that muzzle than it would be fifty? A. Not so you could measure it.

Q. Well, it would be softer than 500 yards from the muzzle? A. Somewhat.

Q. And when lead is soft there is some tendency to scratch very easily? A. Not from temperature, but from velocity.

Q. Well, would it depend on the kind of soil the bullet was shot through? A. Yes.

Q. In other words, if it was shot through concrete which was not yet hard, you would have some markings on the side from the stone or cinders of the concrete? A. Not necessarily.

Q. Not necessarily, possibly? A. Possibly.

Q. Now, if it had been in the soil for twenty-six or twenty-seven months, what would be the effect of climatic changes on that piece of lead? A. The bullet would become corroded and darken; otherwise no change.

Q. Would some of the marks be obliterated from that corrosion? A. No.

Q. What do you mean by corrosion; corrosion is the eating away of the metal? A. No.

Q. Now, if a mark is on the edge of the bullet and corrosion sets in by reason of climatic conditions or the soil it is set in, the marks will disappear? A. Lead does not rust.

Q. It corrodes? A. Yes.

Q. Is there an increase or diminution of the metal? A. I would not expect any appreciable amount of the metal on the surface of the bullet to be eaten away or to wear away or to disappear from the bullet. The bullet would become tarnishd and discolored and that is all.

Q. Let me illustrate what I mean by the photographs. I am showing you D-3. I do not know what the exhibit number is. Here is a bullet, which is the fatal bullet, the superimposed part here is the garden bullet. Do you see this rifle land mark here, rifling mark? A. Yes.

Q. Now, do you see the same portion of that bullet underneath all eaten away? You see that ? A. That is not eaten away.

Q. What is that caused by? A. I don't know.

Q. Would you say it was corrosion? A. If I see the bullet.

Q. Now, I show you the photographs. You told Mr. Fisch that you studied these photographs and found marks. Now, I am pointing out one feature that is dissimilar. You see it? A. Yes.

Q. There is no coincident there, is there? A. No.

Q. There is not anything similar there between the superimposed portion and the lower portion of that bullet, is there? A. Yes, there are certain lines, marked on both bullets, that appear in the same relative positions.

Q. There are a lot of other things that do not appear in the same position? A. Very true.

Q. Now, will you kindly give us—now, it is a fact that this land mark shown on the superimposed picture does not appear marked at all on the lower picture, does it? A. Yes, it does.

Q. Well, it is eaten away. What are those holes in the surface?

Mr. Fisch—I object to that. That is not what the witness said.

Q. Well, where does it appear? A. Down through here (indicating).

Q. Not as distinctly? A. Not as distinctly.

Q. And eaten away? A. I doubt it.

Q. What are those holes caused by that look like a volcanic crater? A. The bullet turned over when

it hit the ground and was indented by loose pebbles and dirt and it obliterated certain marks.

Q. And would you say that some corrosion set in? A. I doubt it.

Q. But you are not sure? A. I am not sure, any irregularities of the surface, I expect, come from contact with the ground, rather than after effects.

Q. Let me show you the same set of photographs which is C-4. I will ask you to look at the lower photograph which was the one that was in the ground. The rifling mark up here is very distinct, isn't it, up at the top? A. Very, yes, sir.

Q. Now, will you let me show you the upper portion of the bullet which is S-2. The rifling mark up above becomes indistinct when superimposed? A. It is not as plain.

Q. Yet the bullet on top that is not as plain, the rifling mark is not as plain as it was in that one in the ground and had never been corroded, and been recently fired, at least two years more recent than the one underneath, the rifling mark is not as plain.

Mr. Fisch—Is that a question?

Mr. D'Aloia—Yes.

Q. You find that the rifling mark is not as plain? A. The rifling mark is in the same relative position but it is not as plain, not as distinct.

Q. Now, the rifling mark is in the same relative position upon every 32 caliber bullet made of lead and fired with a Smith & Wesson revolver, isn't it? A. No, sir.

Q. It is not? A. No, sir.

Q. Not of the same relative position? A. Well, there is considerable variation in the land.

Q. Now, let me show you this S-3. Do you see this mark here, this pen line on the lower portion? A. Yes, sir.

Q. Do you see that perpendicular there very distinct? A. I do.

Q. Now, let me have the picture please. I am showing you the lower portion of the bullet, photographed underneath. Do you find any such mark there—now, let us make this clear. Here is the mark I am talking about, which is just at the end of the line marked 9. You see it? A. I do.

Q. Plainly visible? A. Yes, sir.

Q. Now, that does not appear on the lower bullet at all, does it? A. It appears, but not as plainly.

Q. You say it does appear? A. There is evidence of it, yes, sir.

Q. You also have evidence there of some portions being eaten away, right along there on the lower photograph? A. Eaten away or mutilated, probably mutilated.

Q. In other words, the metal is missing? A. Not at the point where this line shows.

Q. I am pointing out the same part. You see the line I mean is just an inch inside of the edge of the bullet. A. Well, that is not the inside of line 9.

Q. Look at the line I am designating there, a white streak. You see that line I am taking in my finger? A. That does not show.

Q. Look at this photograph; there are two portions of the bullet eaten away there either by mutilation or corrosion, and no line at all—

Mr. Fisch—Is that a question or a statement by counsel?

Q. Is that so, there isn't any line at all on the lower portion, is there, to correspond with this line on the top photograph that I have traced with my finger? A. The line referred to just about a quarter of an inch to the left

of the end of line 9 appears on the upper portion but does not appear on the lower.

Q. That is your answer? A. Yes, sir.

Q. Isn't it a fact that on the lower portion, the under-picture, there are portions of metal eaten away at or about the place where the line shows on the upper photograph, superimposed one? A. The bullet shows mutilation at that point.

Q. Can you positively state that it is mutilation or corrosion? A. I think it is mutilation.

Q. Can you state whether or not there ever was a line on that bullet which would correspond with this one? A. I cannot. There does not appear to be any there.

Q. And it is very plain that there was one there? A. I cannot say.

Q. Let me show you the same situation on E-3, another set of photographs. Do you notice the rifling mark here, very plain on the superimposed picture? A. I do.

Q. The superimposed picture is a picture of what, what is that, S-2 or S-30? A. This bullet.

Q. That is S-2? A. Yes, sir.

Q. Do you find any rifling mark in that bullet, any line? A. I do not.

Q. Do you find this hole here which shows a high white spot in the lower picture? A. That is not a characteristic mark and it has nothing to do with the barrel.

Q. Is there something the matter with the metal? A. It is probably a raised portion.

Q. It is possibly a raised portion and indentation? A. No, I guess a raised portion.

Q. You guess it is? A. Yes, sir.

Q. Can't you guess the other way, too, isn't that possibly an indentation? A. No.

Q. But one thing is certain, that the rifling mark

which is so plain on the fatal bullet does not appear on the other bullet? A. It does not.

Mr. Fisch—In that position.

Mr. D'Aloia—In what position?

Mr. Fisch—In the position shown by S-3.

Mr. D'Aloia—I am told by the testimony that the two bullets were put in the same position and that is why they are superimposed.

Mr. Fisch—Well, the position shown in E-3.

Mr. D'Aloia—That is the position I am talking about.

Q. Now, this picture of the bullet which was in the garden, what do you say that condition, which shows it to be in that photograph is due to, rifling, corrosion, climatic conditions, erosions? A. Mutilation.

Q. Now, I am going to show you D-3 and ask you if it is not a fact that on the superimposed photograph there is a very clear rifling mark, a landmark? A. There is.

Q. Now, I am going to show you the lower portion of the other bullet. Does that appear there at all? A. It does not.

Q. Can you tell us what this dark spot is, is that a crater, an indentation? A. An indentation.

Q. You say that surface of the bullet not showing any rifling marks at all was brought to that condition by corrosion or erosion? A. It was brought to that condition by mutilation.

Q. Did corrosion play a little part in it? A. Not to the extent of obliterating any lines.

Q. Well, can you see those lines that are in the superimposed picture here? A. Those were raised by mutilation.

Q. Do you find in the lower picture lines shown in the superimposed picture? A. They were moved if they were there, by contact with the ground.

Q. And that is one very great respect in which these two bullets were dissimilar? A. Yes, sir.

Q. You are more certain as to whether or not a particular projectile or bullet has been fired from a particular revolver if you have the revolver from which you can fire bullets and then study the markings and compare them with the bullets which you are examining. That is pretty nearly a certain test, isn't it? A. Yes, sir.

Q. Now, when you have not the pistol, the conclusion that you come to particularly about the two bullets having been fired from a pistol you have never seen and never had the opportunity of examining, particularly where one of the bullets had been imbedded in the earth for two years and a month or two, about twenty-six months, that makes it all the more difficult, doesn't it? A. Especially when it is mutilated, yes, sir.

Q. And in this case it is mutilated? A. Yes, sir.

Q. When did you first see those bullets? A. In the early part of February of this year.

Q. Well, will you please fix the date for me? A. I would not go on an oath as to the exact date; but I would say the middle of February, within two or three days.

Q. Within two or three days from what? A. The middle of February.

Q. Would you say it was about the 10th? A. It was a Saturday.

Q. Well, was it the 10th? A. I don't know.

Mr. Fisch—Are you looking for a calendar?

Witness—Yes.

Mr. Fisch—Here is a calendar you may use, Mr. Robinson.

A. February 18.

Q. And how long did you keep them? A. I ex-

amined those bullets a portion of Saturday morning, February 18, and they were taken back by Mr. Sklary.

Q. A member of the Prosecutor's staff? A. Yes.

Q. And did you give him a report? A. Not at that time.

Q. What did you say to him, you were uncertain?

Mr. Fisch—I object to what he said to him.

Q. Well, what did you conclude at that time after examining the bullets in the morning and the bullets in the afternoon, did you conclude that they had been fired from the same gun?

Mr. Fisch—I object to that, there is a question on the records that has not been answered and he is firing another one at him.

Q. I will withdraw all the questions and I am asking you this question. Is it or is it not a fact that when you first examined these two bullets you could not determine whether or not they had been fired by the same gun? Now, can you answer that yes or no? A. Not definitely.

Redirect Examination by Mr. Fisch.

Q. But your subsequent examinations of them enabled you so to determine? A. My examination at that time was necessarily very short and limited and I did not come to a definite conclusion. Since that time I have had further opportunities of examining the bullets and have been able to come to a definite conclusion.

Q. And even on your—on the examination you made at that time, which you say was necessarily short and so forth, did you at that time arrive at some conclusion as to whether or not they came from the same gun? A. I did.

Q. But it was not as definite as the conclusion which you arrived at subsequently with your further examination? A. Yes.

Merton A. Robinson—redirect

Q. Now, you have been shown some of these photographs and you have been asked whether the rifling marks or the groove which appear on the upper portion of one of the bullets distinctly and on the lower portion of the other bullet appearing not so distinctly, does the manner in which the bullet enters the barrel when it is fired have anything to do with the resultant rifling mark on the bullet itself? A. There are a great many factors which might affect the rifling mark.

Q. Now, is it or is it not a fact that a bullet may enter a barrel of a gun when the gun is fired either straight, in that fashion, or tipped, in that fashion, or tipped in that fashion?

Mr. D'Aloia—Is this redirect examination?

The Court—I think it goes to the question of the rifling mark you examined on.

A. It is.

Q. And would the manner in which the bullet entered the barrel have its effect upon the rifling mark in that bullet after it had been fired? A. To a certain extent, yes.

Q. And if the bullet had entered the barrel tipped upward as shown in my second diagram, would the rifling mark appear more marked toward the nose of the bullet than it would toward the base? A. Yes.

Q. And on the other hand, if the bullet entered the barrel of the gun as shown in my third diagram, would the rifling marks on the nose of the bullet toward the lower side be more pronounced than the rifling mark toward the base of the bullet on that side? A. Well, the rifling marks would be longer on the near part on figure three, longer on the upper part of figure two; uniform on figure one.

Q. And going now to figure two, with the rifling marks on the upper portion of the bullet that is tilted up, would the rifling mark appear more distinctly on the

nose of the upper portion than it would on the base of the lower portion than on the nose of the lower portion? A. Yes, it would.

Q. And in your opinion would the dissimilarity of these photographs with regard to these rifling marks be caused by a tilting of the bullet? A. I think the dissimilarity is due to the mutilation of the bullet hitting the sand.

Q. Now, in your examination of the so-called garden bullet, do you find any evidence of corrosion such as the eating away of any metal? A. I would not expect to find any, and I do not find any.

Recross Examination by Mr. D'Aloia:

Q. Do you find any marks on it which are not caused by the gun? A. Plenty of them.

Q. Now, that illustration of the Prosecutor two and three, that is known as a flip? A. Yes.

Q. Now, isn't it a fact that there is a very little flip in the firing of a Smith and Wesson revolver? A. A Smith & Wesson revolver is one of the best revolvers made in this country.

Q. Now, isnt it—

Mr. Fisch—He has not finished yet.

The Court—Let us have the rest of that answer.

A. The tipping of the bullet shown in Exhibit 2 and 3 would be caused more by the fact that the bullet is passing through a large portion of the cylinder, in other words, jumping.

Q. And that does not happen very often in a Smith & Wesson, does it? A. To a certain extent, a certain amount, the bullet does not enter the right of the barrel exactly true in any case.

Q. But a Smith & Wesson revolver has less of it than any other small arms? A. Yes.

Q. And a Smith & Wesson revolver, in order to avoid the flip, has a shoulder in the cylinder? A. Yes.

Redirect Examination by Mr. Fisch:

Q. Are there marks of flippage also on an exploded bullet, a bullet that has been fired? A. Yes.

Q. And did you observe marks of flippage on these two bullets? A. I did.

Q. And what did you observe as to whether they were similar or not? A. Very similar.

Q. Now, in spite of this shoulder which the Smith & Wesson people put in their gun, isn't it true that the bullet jumps through a certain space before it comes in contact with that shoulder? A. It does.

Q. And that would result in this tipping, that is to say, the jump would be a jump and tip or flip? A. The bullet moves only a very short distance before coming in contact with the shoulder, so it then passes through a straight portion into the barrel.

Q. Now, is there a jump from the time it passes through the shoulder, until the time it enters the barrel, the time that it comes in contact with the interior walls of the barrel? A. There is.

Recross Examination by Mr. D'Aloia:

Q. Now, give us the distance of that jump, that word jump, in hundredths of an inch in Smith & Wesson, or thousandths, as you know it. A. Various types have various length cylinders and various shoulders.

Q. 38 calibre Smith & Wesson five shot revolver. A. What model?

Q. 35 years ago. I could not know what the model is, the way it has been described here.

Mr. Fisch—Hammerless or safety catch on the handle.

Q. Well, weren't you told the kind of pistol this was when you made your examination of the bullets; did you

not have the pistol? A. No. I was not told. I was asked an opinion.

Q. And you were not told the kind of pistol? A. No, they came to me to find out what the pistol was.

Q. And I heard you say a moment ago that you are more definite, that you reach a point of more certainty with the pistol than you can without, and in this case the pistol was never described to you.

Mr. Fisch—I object to that as not proper re-cross examination.

The Court—Sustained.

Q. When those two bullets were brought to you on the date in February, did you examine them under the microscope? A. I did.

Q. And how long did your examination take, how many hours? A. Oh, I expect two hours, perhaps.

Q. And you then gave the bullets back and you were not definite as to whether or not they had been fired from the same gun, isn't that true? A. I gave Mr. Friary an opinion.

Q. An opinion, but you are not sure of it.

Mr. Fisch—I object. That is not proper recross examination.

(Argument.)

Mr. D'Aloia—Will your Honor simply allow me to ask him what he has done with the bullets which he did not do on the first examination which made his opinion a definite one rather than an indefinite one?

The Court—That is not what you have been asking, but I will permit it.

Q. After you gave the bullets back, when did you next see them? A. Last evening.

Q. What did you do with the bullets last evening

which you had not done on the first occasion and which caused you to change your indefinite opinion to a definite one? A. I examined the bullets carefully with a microscope.

Q. Well, hadn't you done that for two hours? A. Both bullets simultaneously with a microscope with a monocle eyepiece.

Q. Well, you had done that in New Haven? A. I did not have a comparison microscope in New Haven.

Q. When were you notified to come here last evening?

Mr. Fisch—I object.

The Court—Sustained.

Q. How long did your examination take last night? A. I finished about half-past three this morning.

Q. Was there a Mr. Foster present? A. There was not.

Q. Did you see Mr. Foster last night? A. I did not.

Mr. Fisch—Now, if your Honor please, at this juncture may I be permitted to recall for further cross examination, the witness Mrs. Michaels.

The Court—Is she here?

Mr. Fisch—Yes, sir.

ERNESTINE MICHAELS recalled for

Further Cross Examination by Mr. Fisch:

Q. Mrs. Michaels, you testified yesterday that you saw this defendant two days after you paid your rent for the month of February, is that right? A. Yes, sir, but I made a mistake in the day, it was the day before I paid my rent, on a Tuesday, I made a mistake in one day.

Q. Now, what do you mean by that? A. Well, I paid on Tuesday instead of Monday.

Q. You say you paid it on Tuesday? A. Yes, sir.

Q. Yesterday you said you paid it on Monday. A. Well, I made a mistake in a day.

Q. Now, you say you paid it on Tuesday? A. Yes, sir.

Q. How many days do you say now it was after you paid the rent that you saw the defendant at your house? A. The next day, Wednesday.

Q. You are sure it was the next day after you paid the rent? A. Yes, sir.

Q. And you got a receipt? A. Yes, sir.

Q. And it was written in your lease book? A. Yes, sir.

Q. And is this the receipt that you got written on this page? A. Yes, sir.

Q. I notice that the signature for the February rent is signed, "J. A. Voght." Who signed that? A. I cannot remember which man, Mr. Smith or his helper, I cannot remember it.

Q. Mr. Smith? A. I don't remember which one it was.

Q. This is the book that you got and this is the receipt that you got, is that right? A. Yes, sir.

Mr. Fisch—I ask that the book be marked for identification.

(The same is marked S-40 for identification.)

Redirect Examination by Mr. D'Aloia:

Q. You paid your rent on Tuesday, didn't you? A. Yes, sir.

Q. And you saw the defendant the next day? A. Yes, sir.

Q. In the afternoon? A. Yes, sir.

Recross Examination by Mr. Fisch:

Q. You are sure you did not pay the rent on Wednesday? A. No, sir, I have my bank book to show that.

State Rests.

CALVIN GODDARD recalled for

Further Cross Examination by Mr. D'Aloia:

Q. Now, Major, you received a commission as First Lieutenant in the medical corps in the United States Army and you served in that army, the medical corps as Lieutenant up until 1920. A. No, sir, as Lieutenant until 1918.

Q. Then you were commissioned while in Reserve as a Major? A. I received regular army commission as Captain and Major the same year.

Q. Now, in 1925, the month of June, you became associated with an organization in New York, with a Bureau in New York, known as Forensic Ballistic? A. 1925, another individual and I formed the organization which we termed the Bureau of Forensic Ballistics.

Q. That is the name which you used? A. Yes, sir.

Q. You were not incorporated? A. No, sir.

Q. You had no certificate filed with the Secretary of the State of New York? A. No, sir.

Q. That was in 1925, in June? A. In March, 1925.

Q. And have you permission from any state authority in New York to use that name?

Mr. Fisch—Objected to.

The Court—Sustained.

Mr. D' Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Have you filed any certificate with reference to the use of the name with the County Clerk?

Mr. Fisch—Objected to.

The Court—Sustained.

Mr. Fisch prays an exception to this ruling of

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

Walter D. Van Riper, Judge.

Q. Prior to September, 1926, how many cases did you testify in as an expert? A. I don't know.

Q. Isn't it a fact that you did not testify in any? A. No.

Q. Well, which ones did you testify in prior to September, 1926?

Mr. Fisch—I submit that that question has bben answered.

The Court—Overruled.

A. Offhand only one I remember definitely, that is the one in Fayetteville, North Carolina.

Q. When was that, what was the date? A. May, 1926.

Q. Is that the only one you can recall? A. That is the only one I can recall at the present time.

Q. Now, in 1917, in October, you got this revolver and bullet from Cleveland and it was handed to you on the 11th day of November, 1927, is that right?

Mr. Fisch—Now, if your Honor please, I don't know whether Mr. D'Aloia expects to go into detail with regard to propositions of that kind, I don't think he is entitled to, if your Honor please, to ask questions of that sort.

The Court—I think that question was answered before. I will permit this question but I don't know how far I will permit this line.

Q. Is that true? A. You said I got it in October and it was handed to me in November.

Q. I said you remember the Cleveland case was in November, 1917, and in October you were given the gun and the bullet. A. Early in November, I believe.

Q. By telephone you made a report to the Cleveland authorities? A. No, sir.

Q. Didn't the authorities in Cleveland telephone to you? A. We had telephone conversations, yes, sir.

Q. And did they ask you over the telephone whether you had examined the bullets? A. They did.

Q. And did you tell them yes? A. I did.

Q. And didn't you state over the telephone and also by telegraph, in your opinion, the bullets which had been handed to you and the gun which had been handed to you, had been examined and your conclusion was that the gun had fired that bullet? A. No, sir.

Q. You never did that? A. No, sir.

Q. By telephone or telegraph? A. No, sir.

Q. Did you subsequently learn, as a matter of fact, that the gun which you said had been used, or you had examined, had been manufactured on October 6, 1927?

Mr. Fisch—I object to that if the court please, unless the question proves subsequent to what, what time.

Mr. D'Aloia—Subsequent to the time he had the telephone conversation.

The Court—Subsequent to the examination?

Mr. Fisch—Subsequent to the report or what?

Mr. D'Aloia—He said he made no report; he telephoned.

Mr. Fisch—There has been testimony that he did made a report in that case.

Q. Well, did you find out after you had come to some conclusion about that bullet and that pistol that the pistol had not been manufactured until October 26, 1927? A. I never had any definite information from the Cleveland authorities with whom I dealt as to when that gun was manufactured. I had a lot of hearsay information.

Q. Were you telephoned to again by the Cleveland

authorities subsequent to the first conversation after the 14th of November? A. I had various telephone conversations.

Q. Did you reaffirm the conclusion you had reached in the first instance?

Mr. Fisch—I object, because the witness did not testify he reached a conclusion.

Q. Did you reach any conclusion at any time while examining that pistol? A. I reached a conclusion and embodied it in a written report.

Q. And did you say it was not fired in that gun? A. No.

Q. What did you say? A. I said it was not fired in that gun.

Q. Are you sure of that? A. Yes.

Q. Did you not subsequent to the report that you made answer many inquiries in this fashion that the date—

Mr. Fisch—I object to that. To whom and where and when?

The Court—Make it definite.

Q. Subsequent to the making of the first report, isn't it a fact that you were asked how you came to make that report and you said—

Mr. Fisch—I object to that unless there is embodied in the question by whom he was asked, and my further objection goes to the point that the question embodies a statement after you made your first report, and the Major has testified he made only one report.

Q. November, on the 20th of November, that is six days after the 14th, weren't you talking to a newspaper man about that report of yours, and didn't you state to him—

Mr. Fisch—I object to that unless the name of the newspaper man is given and where the conversation took place.

The Court—Sustain the objection.

Q. Did you know on the 20th of November what date that gun had been manufactured? A. I say now I have had a lot of hearsay about it. I have never had any official information as to the date it was manufactured.

Q. On the 21st of November, did you ask the Cleveland authorities to bring you back the pistol? A. Yes.

Q. For the purpose of making another examination? A. Yes.

Q. What was the matter with the first? A. I had had this hearsay that the gun had been sold prior to the shooting—subsequent.

Q. So these rumors made you send for the pistol again? A. I said, "All right, bring it back, and we will go over the situation."

Q. Did you go over the situation a second time? A. No.

Q. Didn't they give you the gun the second time? A. No, they did not bring the gun; not to my recollection; I don't think they did.

Q. Well, it was only a short time ago? A. Well, I examine a lot of guns.

Q. I know, but how about this case where you have an action pending, did you or did you not examine the gun the second time after you heard these rumors that the gun had been manufactured later than the time that somebody said it had been manufactured? A. I cannot say.

Q. Did you make a subsequent report?

Mr. Fisch—I object to that. The testimony is that the witness made one report.

Mr. D'Aloia—Well, we have come to the point where he says he got the gun again.

The Court—He says he did not get the gun.

Q. Well, did you get the gun again? A. I don't remember.

Q. Did you get that gun, and did you make a re-examination of it, and didn't you state, in that second report, that the Cleveland police had mixed up or confused the bullets? A. I made only one report.

Q. Did you get the gun back the second time? A. I don't remember.

Q. Did you make a request for it? A. I do remember that I made a request.

Q. And that is as far as you go? A. I remember an officer came and he had a gun.

Q. Now, please do not confuse me any more than you have with your answers.

Mr. Fisch—I object to that.

A. He had a gun of that make and model. It was not the original gun. Now, whether he also had the original gun with him, I do not remember. I do remember I saw the second gun he had with him.

Q. And you contend now the second gun was not the gun you had in the first instance? A. I know that it was not. It was a different serial number entirely.

Q. Did you ever send for the gun you first examined on the 4th of November, 1927? A. I asked them to bring the gun and the same people who brought it to come with it.

Q. Did they come? A. They did not.

Q. You told me you didn't know whether they did or not.

Mr. Fisch—I object to that.

Q. Now, did you get that gun, the gun you examined

in the first instance the second time? A. I say I do not know. He brought one gun. Whether he brought two or not, I don't know.

Q. Well, can't you tell us whether you examined the same gun twice? A. I don't remember.

Q. Well, will you give us your reasons? A. I gave you my reasons.

Q. And you heard the gun was manufactured subsequent to the time you heard it was fired? A. They told me they were worrying over that and I said, "All right, come on back."

Q. Why did it worry them, if your report had been that the bullet had not been fired from the gun?

Mr. Fisch—I object to that as argumentative.

The Court—You may ask him why it worried him.

Q. Well, did it worry you because you had made a report that the bullet had been fired from that gun?

Mr. Fisch—I object to that. There is no testimony it worried him at all.

The Court—There is no testimony that he made a report that the bullet had been fired from that gun.

Q. Why worry as to the date of the manufacture of the gun?

Mr. Fisch—I object to these wild statements of counsel. There is no testimony in this case that this witness worried about it at all.

The Court—I have not heard any.

Q. You got a gun from the Cleveland authorities? A. Yes.

Q. You examined it? A. Yes.

Q. You concluded in the report that the bullet was not fired from that gun, that is right? A. Yes.

Q. Subsequent to that you became worried and you sent for the gun again?

Mr. Fisch—I object to that. That is not the testimony.

The Court—Well, is that right?

Witness—No.

Q. Did you send for that gun again? A. Yes.

Q. Did you make an examination of it a second time? A. I told you I did not remember.

Q. Now, I am going to ask you this question, now, if your first report after examining that gun was to the effect that that bullet was not fired from that gun, why did it worry you subsequent thereto when the question subsequently came up as to the date it was manufactured?

Mr. Fisch—I object to that.

The Court—I have sustained that two or three times, because we both admitted that the Major said it had not worried him. Ask him once more if it did worry him.

Q. What caused you to send for the gun the second time? A. Because, as I have said two or three times, the Cleveland police told me they had heard these rumors and they were disturbed over them.

Q. They were disturbed over these rumors? A. Yes.

Q. Rumors that the gun had been manufactured subsequent to the date of the shooting? A. Yes.

Q. And yet your report was to the effect that the bullet had not been fired through that gun? A. Well, I had made no report at that time.

Q. Well, you did over the telephone. What worried the Cleveland police?

Mr. Fisch—I object. How can this witness say?

Q. Do you know with reference to your second request for the pistol, with reference to that date sometime in December, when this man Mallasi was liberated out in Cleveland? A. No, I do not.

Redirect Examination by Mr. Fisch:

Q. Have you a copy of the report which you rendered in this case which you have been cross examined on, this so-called Cleveland case? A. Yes.

Q. Have you that report with you? A. Yes.

Q. Will you produce it?

Q. Major Goddard, have you looked through your file for that report, through your brief case for that report? A. Yes, sir, I have the file, but the report is not in it.

Q. You haven't got the report with you? A. No, sir.

Q. As I understand it, in connection with that case, you have been asked about, that is the Cleveland case, you made a report, your report was that the bullet was not fired from the gun which had been sent to you? A. Yes.

Q. For inspection, is that right? A. Yes, sir.

Q. Subsequent to that you were communicated with by the authorities in Cleveland, Ohio, that they were disturbed after your report had come to them? A. No, sir, I made no report until some three or four weeks, some three weeks after the gun had come to me, and this disturbance arose before the report was in.

Q. Was that the reason why you sent for the gun to make a reexamination of it or something of that sort? A. They were disturbed and I thought the whole case warranted going in to.

Q. In spite of the fact that you had come to the

conclusion in your report that the bullet had not been fired from that gun? A. I did not come to any conclusion. I had not had a chance to work on the case.

Q. Oh, you had come to no conclusion? A. Not at that time.

Q. You don't recall whether you saw the gun again or not? A. I do not.

Q. But your report, in any event, was that from your examination the bullet had not been fired from that gun? A. Yes, sir.

Q. And that tallied, did it not, with the rumors that the gun was manufactured or sold after the murder? A. Yes, sir.

Q. Or alleged murder? A. Yes, sir.

Q. Now, with reference to the St. Clairsville case that you were asked about, on cross examination I believe yesterday, tell us just what your connection was with that case. A. I went over that relationship briefly, I think the first time I was on the stand. I was approached by a Prosecutor with a gun and a bullet. He wished to determine the relationship of the bullet to the gun and I told him the bullet was out of the gun. This offset his case, because he was accusing a man of murder—

Mr. D'Aloia—Now, if your Honor please, I don't think the details of that case are material.

The Court—We have the details of the Cleveland case.

Mr. D'Aloia—We had the details of the Cleveland case because we had contradictory statements.

The Court—What was the examination with reference to the St. Clairsville case before it was asked before? Wasn't he asked if he made a statement in the St. Clairsville case?

Mr. D'Aloia—He was asked about the Dragovitz case.

Mr. Fisch—He was asked if he had made a mistake in that case.

Mr. D'Aloia—And he said no. I cannot go out to St. Clairsville, Ohio, Belmont County—

The Court—Wasn't there some testimony as to whether he made one report in the St. Clairsville case and then made another report which was different, wasn't he asked about that?

Mr. D'Aloia—He was asked wasn't he a witness in the case of the State against Dragovitz in St. Clairsville, Belmont County, Ohio, and he said in that case he had testified as an expert.

The Court—And wasn't he asked further as to whether or not he first said it came from the gun and then saw the gun?

Mr. D'Aloia—No, then I went over to the Cleveland case.

The Court—If that is so—

Mr. Fisch—I would like an opportunity, if your Honor please, to consult the record.

Mr. D'Aloia—I will withdraw the objection.

A. I was consulted by this prosecutor who brought a gun and a pistol. He wished to determine the relationship, if any between this gun and bullet, and I told him this bullet had been fired from this gun, and I said this upset his case, because he was charging with murder a man not the owner of that gun, and a deputy had been shot in a melee, one of the bootleggers being accused. The Prosecutor was not pleased with my finding and did not engage me on the case. He told me, however, that he was going to go ahead and convict the man anyway. He left my office and some days later I was approached by a representative of the defense, who had heard of his visit to New York, and they asked me what I found, and

I told them, and they asked me if I would go and make a deposition for the defense, which I did. The man was tried and the jury brought in a not guilty verdict, I understand, after being out twenty-five minutes.

Q. Does the fact that you are engaged by Prosecutors make any difference in your reports or your testimony? A. No, sir.

Q. Has it made any difference in your report or your testimony in this case? A. No, sir.

Recross Examination by Mr. D'Aloia:

Q. Now, in that St. Clairsville case, you were consulted by the Prosecution? A. Yes.

Q. You gave an opinion to the Prosecution? A. I did.

Q. And you appeared as a witness for the defense? A. I did. I am glad I did.

Q. What is that? A. Yes.

Q. And there were some photographs in that case? A. I made no photographs.

Q. But you saw them? A. No, I didn't see any.

Q. Weren't they shown to you, photographs of the bullets? A. No.

Q. Eh? A. No.

Q. And you testified for the defense and said that the markings were different? A. I made a deposition for the defense.

Q. Well, did you differentiate between the markings on the bullet? A. I did not see any bullet pictures.

Q. You saw the bullet? A. I saw the fatal bullet.

Q. Did you make any photographs of that bullet? A. No.

Q. Not like these here? A. No, sir; I did not have time. They were not wanted, either.

Redirect Examination by Mr. Fisch.

Q. Were you requested to make photographs of that bullet? A. I was not.

Q. And were you requested to make photographs of the bullets in this case? A. I was.

Q. Is that why you made them? A. Yes.

Q. You do not make photographs for nothing? A. No.

Recross Examination by Mr. D'Aloia:

Q. You did not make any photographs at all? A. You mean personally?

Q. Yes. A. No.

Q. You did not make any photographs at all? A. No.

Q. The photographer was pointed out to you on the stand? A. Yes.

Redirect Examination by Mr. Fisch:

Q. And this is the photographer right here on my left? A. Yes.

Q. And he made photographs in your laboratory under your supervision? A. Yes.

Q. And with your equipment? A. Yes.

The Court—Is the state finished?

Mr. Fisch—Yes, sir.

WILLIAM A. JONES sworn in behalf of the defendant.

Direct Examination by Mr. D'Aloia:

Q. Captain, how long have you been identified with the science known as the subject of ballistic forces and ballistic arms? A. Well, in 1895 when President Roose-

velt was Police Commissioner, he organized a school for pistol practice, and I was picked out as the instructor. In that work we reloaded our own cartridges and in later years, while I was in charge of that from 1895 until 1911, while the school was in operation—in the later part of that, I used on an average of 6000 cartridges a day, and we reloaded them all ourselves.

Q. And what kind of weapons, small arms, have you been studying as an expert since 1895? A. Well, in the cases that I have come into, I have handled almost every make of firearm that is found on the market.

Q. What firearm particularly was the police department of the City of New York using in 1895? A. In 1895 a great many different makes were used in the department. In 1896 they adopted the Colt, or Smith & Wesson, and from that time on they have been armed in New York City with either the Colt or Smith & Wesson.

Q. How long were you the instructor at that school? A. From 1895 until 1911. In 1908, I was assigned to the homicide bureau of the detective bureau with supervision of the shooting school and my duties were to investigate homicide shooting cases or all shooting cases. In that I went to the scene of the shooting, observed conditions there, attended the autopsies and in a great many cases made experiments with the arm used and ammunition of the same make as used to find some condition such as powder stain on the body, or powder conditions.

Q. How many homicide cases of shooting have you been connected with? A. A great many.

Q. Well, approximately? A. Well, I suppose way over a thousand.

Q. Over a thousand? A. Yes.

Q. In what parts of the United States? A. Well, I have qualified in Maine, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia,

West Virginia, North Carolina, Montana, Washington, D. C., Tacoma, Washington, and I have testified in the United States Army, and I have also testified in Montreal, Canada.

Q. Now, what apparatus have you for the purpose of making experiments so as to come to a definite conclusion with firearms and projectiles? A. Well, I have a microscope and magnifying glasses, and I have a machine for setting the bullets in for comparison, and I use a photograph, enlarged photograph.

Q. Do you know Mr. Albert Foster? A. I do.

Q. Did you receive from him, in the month of February, Exhibits S30 and S2? A. Yes, sir.

Q. Did you examine those bullets for him, with him? A. I did, under the microscope. I set them in this machine and I made photographs of these two bullets together in one plate, and then we fired a shot from a Smith & Wesson revolver and we mounted that bullet in the machine and photographed the three of them, and I made only one view of the three bullets and one view of the two bullets.

Q. You and Foster did that? A. Yes, sir.

Q. Did Mr. Foster tell you that S30—

Mr. Fisch—I object to what Mr. Foster has stold him or did not tell him.

The Court—I don't think the conversation is competent, but I think it would be competent for him to testify as to whether or not he knew where the bullet had been, if that is what your testimony is directed to.

Q. Were you informed, or did you know where S30 had been? A. Yes, sir, I was told.

Q. Were you informed or did you know where S30 had been? A. Yes, I was told.

Q. Now, after you had made, with Mr. Foster, an ex-

amination of those two bullets, did you make a report? A. No, sir, I did not.

Q. Did you tell Foster what your conclusion was? A. I did, we talked it over at the time, yes, sir.

Q. Now, will you please tell the jury, using those photographs which are copies of those in evidence, in what details and it what particulars the two bullets differ, using those charts there.

The Court—Referring to what exhibit?

Mr. Fisch—Exhibit S33.

Witness—On A2 there are several marks here for comparison. Now, there is one very strong mark here in the center of this and there is no comparison mark pointing to that mark at all. That is this heavy scratch in the center.

The Court—Is that the garden bullet?

Witness—Yes, sir, that is the garden bullet, it does not show on A1.

Q. On the fatal bullet? A. No, sir, it don't show at all.

Q. And when you saw that that letter or the mark that shows on the garden bullet does not show on the fatal bullet at all you mean the one here (indicating)? A. Yes, sir, there is absolutely no chance of it being on that at all.

Q. Now, what other marks do you find on the one that does not appear on the other? A. Well, there are several marks here that unless we move this over it is very hard to find anything like it.

Q. Now, what you mean by that on A3, you say there are marks where, on the garden bullet? A. It is very hard to find them.

Q. Very hard to find them where? A. Any mark like it.

Q. On what? A. On the fatal bullet.

Q. In other words, you say here, looking at A3, these marks which appear on A3, that is the garden bullet, very plainly, you do not find them on the fatal bullet? A. No, sir, we have the true mark of the Smith & Wesson land, we have the slippage here on the side, which has been testified to, but a lot of these scratches some of them are similar, they are not on them on that side of it at all.

Q. Now, is there any other marks which you find different? A. No, I will have to go on to another one.

Q. And those big ones you pointed out to us they do not appear at all? A. Sir?

Q. That big mark in the center, and in the center of that second illustration does not appear on the face? A. No, sir, and there is no comparison there made by whoever put these marks on there to that scratch at all.

Q. Now, using that other set of the pictures, will you kindly point out to us what marks appear on one bullet and do not appear on others?

Mr. Fisch—What set is this?

Witness—B.

Mr. Fisch—Exhibit S34.

Witness—Now, the rifling marks upon this bullet show that the gun that this bullet was fired from was in fairly good condition.

Mr. Fisch—That is B1?

Witness—Yes. Take this land mark here, the general full width of that. Now, here is a similar land mark on this one, you see the heavy scratches on that, and when we throw this open, when it comes down there, these scratches do not jibe to me at all, not so I would want to place it from a gun where a man's life is at stake.

Q. You say that these marks placed down to where the cut is do not appear below on the fatal bullet? A. No, sir.

Q. They are marked there but they do not appear on the fatal bullet and yet you say the fatal bullet was fired from a gun which was in good condition? A. It looks to me as if it was in fairly good condition.

Q. And the rifling marks do not appear on the other one? A. The scratches do not show in this one but it does on this. To this one here is this part here, this one has very heavy scratches all the way up to here. The scratches are not of the same depth or anything like that.

Q. Are not as heavy? A. No, sir.

Q. And what have you to say as to the direction of them? A. That may be due to the position of the garden bullet in reference to this one, the way it sets on to it.

Q. The superimposition may be incorrect to cause that change in direction, is that what you say? A. It may seem so.

Q. What other difference do you find? A. Well, now, here is one mark, this, I cannot see any—

Q. That is, it is this heavy ridge in here? A. No, but the point comes to a definite stop—that they are pointing out and I can't see anything there at all.

Q. It comes to a definite stop and on the lower picture you cannot see anything at all? A. No, sir. Now, here is 8, 9 and 10.

Q. On the fatal bullet that is photographed what do you find on the lower picture? A. I don't know what ten means at all here.

Q. Ten does not indicate anything on the superimposed picture, but what does it show on the lower picture? A. There is nothing here, there is no semblance of a line on it up here. You do get the semblance of the edge of a land mark on the bullet.

Q. And you can find the semblance of the land mark on any two bullets fired from a Smith & Wesson revolver? A. I would expect to find the same, yes, sir.

Q. And if the two bullets had been fired, one by Smith & Wesson and another by another Smith & Wesson you would find the same coincidental land mark? A. Of the land marks?

Q. Yes. A. If the barrels were in the same condition I would, yes, sir.

Q. Now, looking at Exhibit S-35. A. On this one the land mark and the rifling on the bullet show straight on. This land mark shows it was fired from a pistol in very good condition. There are few scratches in here, but there must have been some corrosion in this land mark, it shows a little. Otherwise this land mark shows a gun in fairly good condition. Now, when we come over to the garden bullet I cannot find very much of this land mark at all.

Mr. Fisch—The one on which side, the right or left?

Witness—On the right, you get it very ragged, and then, we take it over here there are some marks made there. Now, we will take No. 11.

Mr. Fisch—You are talking about C-3?

Witness—Yes, and on No. 11 you turn the garden bullet over and there is no semblance of where this is, I don't see where that mark points to, where you throw it over you cannot find it there at all. Now, we take No. 12 and I would not want to pass on No. 12 as being a positive mark.

Q. Well, does it show on one, does it show on one of those bullets? A. There is a slight mark here, yes, sir.

Q. Now, does it show on the other at all? A. No, not that I would want to say that it is a mark.

Q. Would you say it is the same mark by looking at those two photographs? A. Of course, there is a slight spot there, I would not want to say it is a scratch, though.

Q. By a scratch, what do you mean? A. A scratch done by corrosion or something in the rifle. Now, you come over to this one.

Q. What do you find there? That is C-4. A. Number six points to a scratch that comes from here down to the margin. I cannot see any scratch.

Q. Turn it over and tell us. A. Number six, I would not want to pass on that.

Q. You say that number six as outlined on the superimposed points to a mark? A. Yes.

Q. And you do not find that on the number six below? A. No.

Q. Would you say that those two marks are identical? A. I would not, where a person's life is at stake; no, sir.

Q. Now, take that off and let us see the other charts. A. There is one thing I have not called attention to in any one of these photographs, but I will right here now. This bullet here is not in focus.

The Court—Referring to the fatal bullet?

Witness—Yes, sir. These are not in focus on any one of them.

Q. What do you mean by that? A. The camera was not properly focused on that to get a clear detail. It is just kept either under or over the focus.

Q. Now, tell us— A. It shows very plainly. This scratch here, but this is foggy.

Q. In your opinion, the second and third photographs are out of focus? A. Yes. Now, here we get a clearly defined land mark and on this one we cannot find anything, although there are marks here pointing to points I will not pass on.

Mr. Fisch—Which one is that?

Witness—D-3.

Q. Do you find the marks on the superimposed pic-

ture that appear on the superimposed photo, the lower one? Take that big streak on the fatal bullet. A. It does not show; no semblance of it.

Mr. Fisch—That is line number 8?

Witness—8, yes.

Q. Take the next picture. A. Over here, we will take number one. Number one does show the edge of the land mark there, and that is the only one of the whole of the remarks I would want to pass on. That does show the rifling marks running from one down to the other and lifted up you can see it in under.

Q. That is the only one? A. That is the only one.

Q. Now, what kind of a mark is that? What was that made by? A. That was made by the edge of the land mark on that side of the bullet.

Q. That is the only one that you find there that shows a bit underneath? A. The only one.

Q. Of all those that are marked? A. Yes.

Q. The others you do not find, if I understand you correctly? A. No, sir; I do not see how anyone can find them.

Mr. Fisch—What are you referring to now?

Witness—E.

Mr. Fisch—What book are you referring to there?

Witness—This?

Mr. Fisch—Yes.

Witness—It is a memorandum I have.

Mr. Fisch—Oh, you made a memorandum of some marks in looking over these pictures over night?

Witness—Yes, sir.

Mr. Fisch—All right.

Mr. D'Aloia—He had to look them over.

Mr. Fisch—Oh, yes. That was perfectly all right. I wanted to know what he is looking at. I am entitled to know that.

Q. Take the first picture. A. 12 and 15. E-12, 13, 14 and 15. Of course, 12 points to the edge of the land mark. 13, 14, and 15, are in there, and I would not want to pass on those being rifle marks.

Q. But what would you say they might be caused by? A. Well, in this one it may have been caused by sand.

Q. In the other one? A. Yes.

Q. That is the garden bullet, S-30? A. Yes, and on this one here, I would not pass on that being marks at all.

Q. What would you say they were?

Mr. Fisch—What number?

Witness—Numbers 12, 13 and 14. 12 we will admit is the edge of the land. 13, 14 and 15 do not show a mark that shows plain at all. I cannot see it there at all.

Q. In other words, there are lines drawn with pen and numbered to certain spots there that do not show in the lines at all? A. Yes.

Mr. Fisch—I object to that. Is Mr. D'Aloia testifying?

The Court—Those lines are drawn to a point he cannot pass on.

Witness—I am willing to let anyone pass on that.

Q. You say, in your opinion, they do not show any marks? A. No.

Q. Nothing on that is definite? A. No.

Q. Now, will you show us a marked difference on that superimposition; take the rifling mark, the land mark on the left of the picture, this; does that show under-

neath? A. Nothing at all. It shows the edge of the land mark down to there. Below that you cannot see anything.

Q. Well, that would show on any bullet fired by a 38 calibre Smith & Wesson? A. What, a land mark like this?

Q. Yes. A. Yes.

Q. Take the next picture, and show us what you find there. A. Now, 17 on this one. 17 is over a half an inch to the left.

Q. 17 is over a half an inch to the left of what? A. Of the left hand edge.

Q. That is the 17 mark on one picture— A. Of the land mark. I am placing the rule on the bottom of the land mark down here.

Q. Yes. A. Now, what number 17 points to is over a half an inch to the left of it.

Q. To the left of this 17 above? A. Yes.

Q. So that there is no corresponding mark there, is there, in your opinion? A. Here is the 17.

Q. On the upper picture. A. On the upper picture. They are not exactly in line with each other.

Q. They are not perpendicular, one above the other? A. No.

Q. Now, what marks do you find on the one below that you do not find on the other is shown by those two photographs, the superimposed one and the underneath one? A. I am trying to judge the true measurement of the top of the line here, but I cannot get it, so I would not pass on it. Measuring carefully here, there is a slippage on that side.

Q. There is a slippage on E-3 underneath much more than it is shown on the superimposed picture? A. Yes. This shows way down here.

Q. And if that was carried out it would be out here somewhere? A. It would be out there somewhere.

Q. You cannot find out how wide that land mark is up here? A. No.

Q. You find that those two bullets differ in that respect, is that right? A. Yes.

Q. Now, take the next picture. Now, very briefly go over that chart and give us the main points of difference that you can find there, something that you can see with the naked eye and easily understood. A. This one here is the nearest to getting a mark that does coincide. There are scratches on this side of this land that look quite a lot alike.

Mr. Fisch—Which number is that?
Witness—F-3.
Mr. Fisch—What line?
Witness—F-2.
Mr. Fisch—What line number?
Witness—12 and 13.
Mr. Fisch—You say that those are good?
Witness—Take 12, 1 and 12 point to the same mark there.
Mr. Fisch—On F-2, you mean?
Witness—Yes.

Q. Take F-3 now and show us the difference of the markings on the bullet in the two pictures? A. Take nine on this.

Mr. Fisch—What number?
Witness—Nine.
Mr. Fisch—On F-3.
Witness—Yes. They are not exactly alike.

Q. Number 9 on the superimposed picture is a very marked perpendicular streak of white, is that it? A. Yes.

Q. Now, on the lower picture, this number nine here, you cannot see here at all, can you? Now, did you see

either line there on mark 9? A. Nothing like what it is on the other.

Q. What do you find there that is different, if anything? A. Nothing on this.

Q. Do you find anything there that is similar? A. The right edge of this landmark.

Q. Which land mark? A. It has more characteristics than any other.

Q. And what is that attributed to? A. Just the way it happened to strike into the barrel of the gun.

Q. Any one of those marks outside of these edges of the land marks, is it possible for any of those perpendicular strokes that are parallel to the land marks, the side of the land mark, is it possible for those marks to be made with grains of sand or gravel or rock when the bullet is shot into the ground or a few feet above it? A. Well, the general condition of the bullet shows that it has struck something that mottled the side of it.

Q. Is it possible for markings that resemble rifling marks to be made by grains of sand when the bullet is shot into the ground? A. Well, there are scratches that were made by the sand no doubt.

Q. Would those scratches resemble rifling marks? A. It would resemble corrosion in the barrel.

Q. Would it resemble rifling marks? A. It would a little, the bullet is twisting when it goes into the ground and it would show the general direction of the rifling.

Q. Then some marks made by the sand because the bullet is twisting, would be in the parallel direction as the marks made by the rifling?

Mr. Fisch—Objected to as leading.

The Court—Overruled.

Q. Well, would it? A. It would show.

Q. Show us some marks on this which are different, Captain, not in so much detail, but the general character-

istics. Referring to Exhibit S-39.) A. On this one here we have—

Q. That is the fatal bullet? A. Yes, we have this same land mark which we have seen in the previous picture, that is, it is the edge of the same land mark that we have just been looking at.

Mr. Fisch—The same land mark as in what picture?

Mr. D'Aloia—Picture F-1.

Witness—Yes, it is the same style of the same land mark. Now, we will take twenty in this one. We have a mark 20 below the line and when you move it over there is no semblance of the same mark there at all.

Q. 20 here on the superimposed part, which the fatal bulet, shows a mark which does not show on the garden bullet at all? A. No, sir.

Q. What have you to say on this horizontal mark on the face of this bullet as compared with the perpendicular marks on the other? A. This one has been obliterated a lot by coming in contact with something strong. This mark here shows that this is a press of the shell on to the bullet.

Q. And there is no print showing here? A. No, sir.

Q. How about anything else? A. Well, when we get over here on to the side of this one, I do not doubt that this cut in here may be from the print.

Q. Does that show on the superimposed picture? A. It seems to me as if it was a little bit low for the print.

Q. And it does not show at the same spot on the superimposed picture at all? Does it? A. No, it does not.

Q. What about the next picture? A. That is the last picture, G is the last one.

Q. Is there anything that you can show by the sup-

erimposition of the upper half of the bullet which is dissimilar? A. Well, if you take No. 1 on G-4.

Q. What is No. 1? Point to something here, I don't know what it is. Is there any mark there at the end of that line? A. No, sir, not on either one.

Q. Now, what have you to say as to any markings on the upper portion of the fatal bullet on this photo? Do you see the same markings there as you see on the markings below? A. That prominent mark here.

Q. And you haven't any there at all? A. None at all.

Q. You know this bullet superimposed was fired, or alleged to be fired January 31, 1928? A. Yes, that is what I was told.

Q. And you know that this other bullet is alleged to have been fired some twenty-six months or twenty-eight months ago? A. I have learned that, yes, sir.

Q. And yet the markings you find there from the rifling are clear on the one fired twenty-eight months ago, but you do not find anything as to the rifling of the one fired or alleged to be fired on the one January 1, 1928?

Mr. Fisch—Objected to as leading.

A. They are not the same, no, sir.

Q. Now, from this examination that you made of the bullets, when they were given to you and brought over by Mr. Foster, and from your microscopic examination, and from your examination of these photographs, what have you to say of the photographs of the so-called garden bullet, S-30, would you say that they are all out of focus on those diagrams or on A, B, C, D, and not on G and F? A. Are they out of focus?

Q. Yes. A. Well, you take the garden bullet on each one, the garden bullet, the bullet is a little bit out of focus.

William A. Jones—direct

Q. What does that mean, was the camera brought a little closer or further away? A. Everything inside was over the focal distance.

Q. And you have been taking and making photographs of bullets for some time, haven't you?

Mr. Fisch—Objected to as leading.

A. Yes, sir, but I never take them alone.

Q. Have you made any enlargements from small photographs of bullets to large photographs? A. No, sir, mine have always been enlarged from the bullet itself.

Q. Now, in enlarging a small photograph to that there, one that is, say, half the size of that one, is there a certain amount of distortion?

Mr. Fisch—Objected to, if your Honor please, because there is no testimony that these photographs are enlargements of photographs one half the size of that one.

The Court—There is testimony that they were enlargements from photographs 5 by 7.

Q. A 5 by 7 photograph being enlarged to 11 by 14, is there a certain amount of distortion? A. Some, yes, sir.

Q. Will any part of the soil, which is harder than lead, make a scratch on the face of the bullet showing in it the soil? A. Yes, sir, from sand or anything like that, gravel, you will get scratches from sand and gravel.

Q. Now, on your examination of these bullets microscopically, your photographs of them and what you did with Mr. Foster, what is your conclusion, were they fired by the same pistol? A. They were fired from a Smith & Wesson pistol, but on account of so many foreign scratches on them—

Q. What is that? A. On account of so many scratches on the garden bullet I would not want to pass on it where a life is at stake.

Q. Would you say that the garden bullet with all those scratches that are foreign was fired by the same pistol that fired the fatal bullet? A. I would not pass on it. That was my conclusion at the examination on February 13th.

Q. Do you know how many Peters 38 bullets or cartridges might have been in existence in January, 1928? A. Millions of them in existence, I suppose.

Q. Both the old type cannelure and the new type cannelure, you don't know how many were in existence, do you? A. No, sir.

Q. Do you know how many Smith & Wesson revolvers of 38 caliber might have been manufactured in 1927? A. No, sir, it would be a good many.

Q. How many, about? A. Well, it would be up in the thousands, anyway.

Q. Now, if a gun is thirty-five years of age and it is not cleaned except on an occasion of about five years ago, what would you say as to the condition of that barrel, the inner part of the barrel, as to rust? A. Well, that would depend on how it had been cleaned at that time and how it was oiled at that time, and then where it was put during the time.

Q. What have you to say about a bullet from the barrel of a pistol through which a bullet had passed on December 31st, 1925, and not cleaned, and put away, what was the condition of the barrel as to rust in 1928? A. I would expect to find a barrel corroded quite a little.

Q. And by the barrel being corroded quite a little you would say that the rifling marks would be destroyed? A. Then I would want to qualify on the powder that was used in it, too.

Q. Would the barrel, the inner part of the barrel, of the gun fired on the 31st of December, 1925, put away and unclean, would the bore of the rifling be corroded? A. I expect it would be, yes, sir.

Q. Would it be corroded more than it had been prior

to its being fired on that occasion? A. Yes, it certainly would.

Q. Would the corrosion change in some way the rifling marks on the bullet fired subsequent to that time, December 31, 1925? A. If there was a strong seated rust in it it would show very plainly on the bullet, yes, sir.

Q. So that the bullet fired with the same gun which was used on the 31st of December, 1925, which was not cleaned and put away, if fired in January, 1928, it would show different rifling marks because of the rust and the corrosion of the inner part of the barrel? A. It would probably show corrosion marks very plainly.

Q. No matter how much it had been cleaned in the meantime or before firing in January, 1928, if it had been lying for two years unclean, would that make any difference? A. If it was lying two years unclean I would expect it to be corroded.

Q. The rifle would be corroded? A. Yes, that would match with the rifling marks on the bullet.

Q. So that the marks on the bullet fired from that particular gun, as I have described, would differ from the marks on the bullet?

Mr. Fisch—Objected to as leading.

The Court—I think you should preface your statement by a question.

Q. Is it not a fact, then, Captain, that the bullet fired on the 31st of January—

Mr. Fisch—I object to the form of the question as leading.

The Court—Ask him if it is a fact.

Q. Is it a fact, captain, that the markings on the bullet fired on the 31st of January, 1928, from a gun which had been fired on the 31st of December, 1925, and left uncleaned for about twenty-five months, would be

different than the markings on the bullet fired on the 31st of December, 1925? A. I would expect it would be different, yes.

Q. I mean the rifling marks. A. You would find corrosion marks on the bullet.

Cross Examination by Mr. Fisch:

Q. Now, Captain, you were connected with the New York police department, is that right? A. Yes.

Q. And were you in charge of any laboratory there in connection with ballistics? A. No, sir. I was in charge of the branch of the detective bureau the last six years I was in the department.

Q. In charge of a branch of the detective bureau? A. Yes.

Q. But that had nothing to do with ballistics? A. No, sir. I appeared as a fire arm expert right along all the time.

Q. You appeared as a fire arm expert all the time while you were in the detective bureau? A. Yes.

Q. And did you do any laboratory work in connection with your appearance as a fire arm expert? A. I have taken pictures with them in the photograph galleries of the detective bureau.

Q. You have taken pictures in the photograph gallery of the detective bureau? A. Yes.

Q. Did you work in any laboratory? A. No.

Q. Did you own any laboratory to do your work in? A. No, sir.

Q. Except the photographic gallery and detective bureau where they took rogues gallery pictures and so forth? A. I had apparatus I had at home.

Q. What apparatus had you at home? A. I had apparatus for years and years.

Q. What apparatus did you have at home when you were testifying as an expert in these murder cases when

you were in the detective bureau? A. What I had at home at that time was crude because I did not have time to make up anything as I have since I left the department.

Q. Now, will you tell us what it was and let us pass on whether it was crude or not? A. I have nothing here.

Q. Well, tell us what it was? A. I had boxes with clamps I set the bullets in.

Q. What else? A. Of course, I had my apparatus for catching bullets for comparison.

Q. What do you mean by that? A. Catching of bullets.

Q. Catching it after it was fired? A. Yes.

Q. Well, what kind of apparatus was that? A. A box with cotton.

Q. Just an ordinary box with cotton waste in it? A. That is all anyone needs.

Q. That is the apparatus you refer to? A. That was all that was used.

Q. What other apparatus did you have? A. I explained all that I had.

Q. That was all that you had? A. Yes.

Q. Did you have a microscope? A. Yes, sir. -I have gotten that since I left the department.

Q. How long is it since you have been using a microscope in your examinations? A. In 1926, I got it, I believe.

Q. And prior to 1926, you never used a microscope? A. Magnifying glasses.

Q. You used magnifying glasses, but you never used a microscope? A. No.

Q. And prior to 1926, you were examining these bullets without using a microscope and you were testifying as an expert, in homicide cases? A. A great many hundreds of them.

Q. Did you receive any training in the use of a microscope? A. I have learned it all myself.

Q. And you do not know whether you learned correctly or not? A. I do.

Q. Well, how do you know that? A. I have a good microscope.

Q. You have a good microscope? A. Yes.

Q. Well, I know a lot of people who have good golf clubs and cannot play golf. What kind of a microscope have you? A. Carlzice binocular.

Q. What power? A. I have different powers.

Q. What powers have you? A. I have five and six, and I have seven and three. That I can make 21. I can make it 10, 15 and 21.

Q. How large can you enlarge your object with that microscope? A. Well, it is called 21 power.

Q. Well, it is called 21 power. How much of an enlargement does that make? A. When it comes to 21, it does not cover the full size of the bullet.

Q. Well, irrespective of the bullet. A. Will you let me explain?

Q. No. I want you to answer my question. I want to know how large you can enlarge an object on the microscope you have and which you say you have perfected in the use of. A. You do not understand the question you are asking.

Q. I understand the question. A. No, you don't.

Q. Please do not argue with me. A. He is not asking a question that a man can answer.

Q. Why not? A. Because the pull of that width in twenty-one is very small.

Q. Now, suppose that you were examining a pin head under that microscope, can you tell me how much of an enlargement you can get under the most powerful vision of your microscope? A. I would have to measure that.

Q. Well, have you never measured it? A. I have often measured it for marks on bullets.

Q. Well, then, what is the power of that microscope so far as an enlargement is concerned? A. It is called 21 power, but I would not want to say how much of an enlargement.

Q. Well, you don't know whether it enlarges five times or fifty times. A. It is not quite five times.

Q. Well, is it fifty? A. How could it be fifty, when it is only 21. Did you say fifty, or fifteen?

Q. Fifty? A. It would be ten times, I should think.

Q. Well, would it be twelve times? A. I could not tell you that.

Q. So that you don't know? A. I made my measurements on it.

Q. You do not know, do you? A. I do not know the exact, no.

Q. And still you say you have perfected yourself in the use of the microscope? A. To find identifications, yes; anyone can do that.

Q. You have not taken up the study except by yourself? A. No.

Q. You have taken no courses in it? A. I have not.

Q. What preliminary training did you have for this work? A. Examining bullets since 1895 up to the present time.

Q. What is that? A. Examining bullets since 1895 up to the present time.

Q. I am asking you about your preliminary education.

Mr. D'Aloia—Whether he has had a college degree? I admit he has not any.

Q. I was inquiring with regard to your preliminary education. A. You said in this work.

Q. I beg your pardon. Preliminary to taking up this science, and it is a science, I take it, of ballistics? A.

Well, you have asked a couple of questions there now.

Q. Will you please read the question to the captain? (Question read.) A. I thought you were trying to find out what schooling I had and you had it.

Q. Now, do you understand the question now? A. No.

Q. What preliminary education did you have prior to taking up this science of ballistics? A. You mean in school, what school I went to?

Q. Whatever preliminary education you had, whether it was in school or otherwise. A. I went to high school, but I did not graduate in it. I went through the grammar school and to high school, but I did not graduate.

Q. So that you have no other preliminary education prior to taking up this science? A. No, sir. This job came to me. I was not looking for it. I was drafted into the department on account of being a fire arm inspector. I did not look for it.

Q. Can you tell me, please, what kind of an objective you have on your microscope? A. Objective?

Q. Yes. A. 2 and 3 power is what I have on the objective.

Q. Will you explain to me, please, what part of the microscope the objective is? A. It is the bottom glass.

Q. And do you know what a microscope cover glass is? A. What is that?

Q. Microscope cover glass; have you ever heard of that? A. That has nothing at all to do with ballistics.

Mr. D'Aloia—We have been told by Major Goddard what is done with these bullets. There is a microscope and some photography was done and then deductions were drawn. Now, we do not care anything about the manufacture of a microscope, or the technical names of the different parts of it. That does not help us at all.

The Court—Well, this goes to the witness' qualifications.

Mr. D'Aloia—Well, he examined the bullets in a microscope and all the microscope does is to make a small thing bigger.

The Court—The point is whether or not the witness knows how to handle a microscope.

Mr. D'Aloia—I thought your Honor yesterday, when you allowed the jury to look in, said that that was not necessary.

The Court—The jurors were not posing as experts. Now, along comes an expert and he is being questioned as to his qualifications to examine through a microscope. Now, why is it not proper to ask him about his knowledge of a microscope?

Mr. D'Aloia—I object to the question as immaterial and incompetent.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. (Question read.) A. A microscope cover glass is all I could qualify that on. It might be the slides they put the specimens between where doctors are examining specimens. It has nothing at all to do with the bullet.

Mr. Fisch—I ask that the latter part of that be stricken out as not responsive.

The Court—Strike it out.

Q. Will you please tell me? You told me it might be this or it might be that. Do you know what a microscope cover glass is? A. I don't know what it is.

Q. Do you now whether your objective is corrected

to include or exclude a microscope cover glass? A. I could not tell you as to that.

Q. Now, do you know that in the use of a microscope where a microscope cover glass is used that you get a different vision than you would if a microscope cover glass were not used, your objective is corrected to it, do you know that? A. My objective is perfect, it is made by Carlzice and I could assure you that it is absolutely perfect.

Mr. Fisch—I ask that that be stricken out as not responsive.

The Court—Strike it out. Answer the question.

A. I do not know what a cover glass is.

Q. And then you do not now whether your objective is corrected for use with a cover glass, or whether it is corrected to eliminate a cover glass? A. I don't know what you are talking about.

Q. All you know is you went out and you paid good money for a microscope? A. I bought it from the Carlzice Company, 485 Fifth Avenue, as a perfect microscope. I paid $129.50 for it.

Q. And you thought you ought to get a good microscope for that? A. It is a good one.

Q. And you know some of them sell for as high as four or five hundred dollars? A. Yes, I do, but they are doctor's microscopes.

Q. Now, have you ever used a comparative microscope? A. I have looked through one.

Q. Have you ever used it? A. I looked through the one that was in court here.

Q. Will you please answer my question? Have you ever used one? A. Only to look through the one yesterday, and about four or five years ago before Major Goddard was in that.

Recess from one to two P. M.

After Recess.

WILLIAM A. JONES resumes the stand.

Cross Examination by Mr. Fisch (continued):

Q. Now, Captain, why did you examine these bullets under the microscope? A. At my home.

Q. Why, I say? A. To see the markings on them. I examined them first with this glass—I left the glass at home.

Q. What is it, a little magnifying glass? A. It is a seven power size glass.

Q. A seven power magnifying glass? A. Yes, sir

Q. So, you examined these bullets under the scope to get a better view of them, to get the marks clear? A. I wanted to look them over, yes, and that gave me a stronger power, the microscope.

Q. Now, when you look at a bullet under a scope do you get a clear view of it? A. It is stronger, yes, sir.

Q. And is it as perfect as looking at it with the naked eye? A. Yes, sir.

Q. Is there any distortion by reason of looking at through a microscope? A. Of course, it is enlarged.

Q. Well, I am not asking you whether it is enlarged, is it distorted? A. Not so very much.

Q. Well, is it distorted at all? A. It makes it larger.

Q. Well, making it larger would not distort it, would it? A. Not necessarily.

Q. Well is it so distorted? A. Not very much.

Q. Is it distorted at all? A. Some.

Q. Why? A. The magnification of it does a little.

Q. You think that magnification of an object distorts the object? A. I would rather look at it with a lower powered glass.

Q. Then, why did you look at it with a microscope? A. To look at it with a stronger glass, that was all.

Q. Well, now, is there a distortion in looking at an object through a microscope merely because that object is enlarged? A. Not very much, no, sir.

Q. Well, is there any as a matter of fact? A. It is to the ordinary person looking at it, that is not used to looking in a microscope.

Q. Well, you are not the ordinary person looking at it, are you, you are used to looking at it, aren't you? A. Yes, sir.

10 Q. Now, is there any distortion to your eye? A. No, sir.

Q. When did you come to the conclusion that there was no distortion in looking through a microscope? A. I never came to any such decision; I have always held to a common magnifying glass if I could.

Q. Well, won't you answer my question, please. When did you come to the conclusion that there is no distortion of an object in looking at it through a microscope? A. I never said that it distorted it very much.

20 Q. Well, you just said a moment ago, haven't you, that the person who is trained in looking at an object through a microscope that there is no distortion of that object, is that correct? A. Yes, sir.

Q. And you claim to be trained in looking at objects through microscopes, do you not? A. With mine, yes, sir.

Q. So that to your eye there is no distortion, is there? A. Not with mine, no, sir.

Q. What is that? A. Not with my microscope.

30 Q. When did you come to that conclusion?

Mr. D'Aloia—I object to that if your Honor please. When did he come to what conclusion? That there was no distortion with his microscope? How is that material?

The Court—Well, it goes to his qualifications, that's all.

Mr. D'Aloia—What difference does it make? Suppose it was a year ago when he bought it and after testing it he finds there was no distortion through his microscope—

The Court—I will permit it.

Witness—I cannot understand the question.

Q. When did you come to the conclusion that there was no distortion of an object in looking at it under the microscope? A. When I got mine and examined it with mine.

Q. When was that? A. I think it was 1926, it may have been before. I think I ordered it in either 1924 or 1925, and it took a year to get here from the other side.

Q. And prior to that time were you of the opinion that looking at an object through a microscope distorted the object? A. You take—

Q. Will you please answer my question yes or no? A. I did.

Q. You did what? A. I did feel it was distorted because it is inverted in the microscope.

Q. You did feel at that time then prior to 1926 there was a distortion when you looked at an object? A. Yes.

Q. You are satisfied now that is not correct? A. Not with mine, because mine shows it straight instead of inverted.

Q. Have you looked through other microscopes? A. I have.

Q. Have you seen distortion through other microscopes? A. That depends on the magnification.

Q. Irrespective of the magnification, have you seen distortion on other microscopes? A. Where it is very much enlarged, yes. It is what I consider inverted at the same time.

Q. Enlarged to what extent? A. I could not tell. I did not understand the scope I was looking at.

Q. And that is why you felt there was distortion?

A. I felt that way. Anyone who was not trained to use it would feel there was distortion. There is not one man in a hundred who is used to looking through a microscope could see.

Q. And was it your opinion at the time you bought your microscope? A. I was not friendly toward a microscope. I would prefer to look through an ordinary magnification, so a person looking through an ordinary magnification could see what I could see.

Q. Do you use the term distorted synonymously with the word enlarged, enlarged view? A. No, not exactly.

Q. Well, did you ever use it that way? A. I know what you are leading to.

Q. Just answer my question. A. I now what you are leading to. That is in the Hoffman trial.

Q. Answer my question, did you ever use it that way? A. If you get all of my testimony, you will get it straight.

Q. Will you please answer my question? Did you ever use it that way? A. Yes, I did in that trial.

Q. You used it in the Hoffman trial? A. I said it was distorted and I went further and qualified and said the ordinary man could not see it until his eye was trained for it.

Q. You are sure you said that? A. I did, yes. If you have all of the record there, yes.

Q. What is that? A. If you have all of the record there, yes.

Q. Didn't you, in answer to that question, answer as follows: "Question: And you looked through it, referring to the microscope, and you looked through it enough to obtain knowledge you get a distorted view? A. I have, yes."

Mr. D'Aloia—I object to the question as having no bearing upon this particular episode of the 31st of January of 1928.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. Did you so testify? A. I just glanced through that scope.

Q. Did you so testify? Will you answer my question? A. Will you let me answer it?

Q. I will ask you please to answer the question. Did you so testify?

The Court—I think you ought to fix the time and case.

Q. Well, did you not so testify in the case of the State of New York, people against Hoffman, in New York? A. Richmond county.

Q. In Richmond county. In the year of 1924? A. I did. I testified in that case.

Q. You testified to that, did you not? A. I testified to just one glance through. They did not allow me to use the microscope enough to finish.

Q. Did you not so testify? A. I told them it looked distorted to me. I did not have a chance even to look through anything with it. I was trying to put a rule under it when the attorney stopped me.

Q. Weren't you asked this question: "Question: And are you sure it is a distorted view?" And didn't you answer the question, "It is."?

Mr. D'Aloia—I object.

A. From what I saw of it.

Q. And weren't you asked this question: "Do you use distorted synonymously with the word enlarged view?" And didn't you answer that question: "You can use it that way?' A. Yes, I did.

Q. And weren't you then asked this question: "Now, you mean to tell the jury that distorted means enlarged?" And didn't you answer that question: "Answer: Yes." Didn't you so testify? A. Yes, I did, yes.

Q. And weren't you asked this question, "That is what I am getting at?" And didn't you answer that question in this way, "It is not as perfect as looking at it with a moderate glass." A. I say so now.

Q. Now, you say, Captain, that the photographs of the so-called garden bullet are out of focus? A. Yes, sir, they are, some, that is very plain.

Q. Now, would you be good enough to show the court and jury on the exhibit which is now on the exhibition board, which exhibit has been marked G-2, where that photograph is out of focus? A. It is all slightly out of focus.

Q. Now, you take photographs, do you not? A. I do.

Q. And you have taken them for a long time? A. Yes, quite a lot of them.

Q. And you consider yourself an expert on photography, do you not? A. I don't want to say I am an expert, I take very good pictures.

Q. You are pretty good at it? A. I take some very good photographs.

Q. Will you tell us how you arrive at the conclusion that the exhibit which is marked G-2 is out of focus? A. Because it is not anywhere near as clear as on one.

Q. Are the bullets which you photographed the same color? A. One is darker than the other.

Q. And wouldn't that make a difference as to whether they come up as clear or not? A. Oh, not the hazy line, the hazy lines show.

Q. Where are the hazy lines? A. On two.

Q. Show us where? A. In all of them, you can

see it does not show as bright and clear even this in here is not as bright, they are not as bright as these are (indicating). These lines in here are not as sharp as these lines.

Q. Wouldn't the condition and the color of the bullets photographed as represented in G-2 have anything to do with the fact that the lines show up dull? A. No, sir, not if the proper light was on them and the proper focus.

Q. You say not? A. No, sir.

Q. Did I understand you to say that these photographs were fogged? A. I say it is foggy some, they are not clear and anybody can see that.

Q. And when you say foggy was the film foggy or was the paper foggy? A. No, that is from not being focused properly.

Q. And you say not being focused properly would make them foggy? A. It always does, if you haven't got the proper focus it is blurred.

Q. Now, do you use the terms blurred and foggy synonomously? A. That is about the only way I could explain it, if the camera is not in focus on a person the face looks foggy, doesn't it, or blurred?

Q. Well, do you use those terms synonomously, foggy and blurred? A. Well, that is the only explanation I can give.

Q. Well, now, Captain, you made photographs, did you not, of these two bullets that have been put in evidence? A. Yes, sir, I did.

Q. Have you those photographs with you? A. No, sir, I have not.

Q. I show you a photograph with three bullets on it and ask you if that is the photograph which you took of the two bullets that are in evidence and are they bullets which you fired from a Smith & Wesson 38 caliber gun? A. Yes, sir, they are.

Mr. Fisch—I ask that it be marked for identification.

(Same is marked S-41 for identification.)

Q. Now, I show you another photograph and ask you if that is a photograph which was made by you of the fatal bullet and the garden bullet? A. Yes.

Mr. Fisch—I ask that it be marked for identification.

(Same is marked S-42 for identification.)

Q. And I show you another photograph and ask you if that is a copy of the photograph Ex. S-42 for identification? A. Yes, sir, that is another print from the same plate.

Mr. Fisch—I ask that that be marked S-42A for identification.

(The same is marked S-42A for identification.)

Q. Now, Captain, what kind of a lens did you use in taking this photograph S-42 and S-41 for identification? A. It is a Carl Zeiss known as F-45.

Q. Well, is it an anastigmic or is it a rectolinear lens? A. It is an anastigmic lens.

Q. Why did you choose to use an anastigmic lens instead of a rectolinear? A. When I went to the Zeiss Company I explained what I wanted the lens for and that is the one they advised me to take.

Q. So, you took their advice on it? A. Yes, sir.

Q. And not because of the difference that you knew between the lenses? A. I wanted professional advice on it.

Q. Do you know the difference between an anastigmic and a rectolinear lens? A. I never worked with them, I have with others. I never worked on any other kind of a lens than this one.

William A. Jones—cross

Q. Do you know the difference between a rectolinear and an anastigmic lense? A. No, sir. I do not.

Q. But you say you used an anastigmic lens in taking these photographs? A. That is what they told me it is.

Q. What was the aperture at which you took these photographs? A. Between sixteen and twenty-two.

Q. Well, now, what was it? A. Well, between, I stopped it between 16 and 22.

Q. Well, was that 20 or 17½ or what? A. It was about one-half between the two.

Q. Do you know what one-half between 16 and 20 is? A. I did not figure on that at all.

Q. What does the aperture 16 mean? A. It is closing the diaphragm down to a small compass.

Q. Well, what compass? A. Well, it might measure across that about a quarter of an inch.

Q. Did you ever measure it? A. No, sir, I never did, it is inside the lens.

Q. What is stop 22? A. Why, to stop it at that you get more detail and a sharp view of the outer edge of the plate.

Q. What does aperture 22 mean?

Mr. D'Aloia—I object. He is not an expert in photography.

A. I do not claim to be an expert.

The Court—He has testified to the incorrectness of these pictures in evidence.

Mr. D'Aloia—He testified they are out of focus. Now, let the Prosecutor ask him what that means. He has asked him and he answered and said they looked foggy.

The Court—I will allow it.

Defendant's counsel prays an exception to this

ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Tell us that, please. (Question read.) A. It is to close the shutter down to that size so as to get a clearer view of it.

Q. Is that one of the markings on your camera? A. On the lens, yes.

Q. It is marked on the lens? A. What, the 22?

Q. Yes. A. It is on the shutter.

Q. And that is why you referred to it as 22? A. Yes.

Q. But, as a matter of fact, you do not know what the actual size of that opening is, do you? A. No, I do not.

Q. Now, what would you say with regard to these photographs which he took, Exhibits S-41 and S-42 for identification as to whether they were in focus or not? A. They are fairly in focus, but that box of plates I had there were very bad.

Q. And you say they are fairly in focus? A. Yes.

Q. What do you mean by fairly in focus? A. I think it is in focus better than two.

Q. You think it is? A. Yes.

Q. That is your opinion? A. Yes.

Q. And now, what kind of plates did you use? A. They were an Eastman plate; they were some I bought one day when I needed them in a hurry, and I could not say what the name of the plates was.

Q. Well, was it a Portrait plate? A. No.

Q. Was it a Process? A. No.

Q. Was it a panchromatic plate? A. Yes.

Q. Do you know what a panchromatic plate is? A. Yes.

Q. Was it a commercial photo plate? A. No.

Q. What kind of a plate was it? A. It was an East-

man plate, but I do not know what the name was on the box.

Q. Well, Eastman makes all the plates I mentioned? A. Yes.

Q. Well, they are a pretty big company? A. I know they are.

Q. And can't you tell me which of those plates you used? A. I don't know what the name was on that box. I don't know.

Q. What did you generally use in taking bullet pictures? A. Commercial-photo, or 23-Seeds.

Q. But you don't know what plates you used in this case? A. No. They were some I had very bad results with all the way through.

Q. Are the Eastman people still making the Seeds plate?

Mr. D'Aloia—I object. It is absolutely immaterial.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. The Seeds plates are made, but I don't know who by.

Q. Well, the Seeds plates you have been using, who were they made by?

Mr. D'Aloia—I object to that as immaterial.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. I have been using the Seeds plate for thirty years and over.

Q. When was the last time you used a Seeds plate?

Mr. DAloia—I object.

The Court—Permitted.

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

Walter D. Van Riper, Judge.

A. Just previously to getting this box of plates.

Q. When was that? A. Wait now. I know the date.

Q. All right. You may look it up. A. I bought them on the 9th of January at Tremont avenue in the Bronx, New York.

Q. And those were Eastman Seeds plate? A. Yes.

Q. And don't you know that the Eastman Seeds plates put out under that name, have not been put out by the company for a year and a half? A. I said I didn't know who they were made by.

Q. You don't know who they were made by? A. I answered that. I said I didn't know who made the Seeds plates.

Q. Now, Captain, the photographs, Exhibits S-41 and S-42, will you say that those photographs made by you represent the exact same portions of the respective bullets as they stood in line on the bullet holders? A. This one is a little bit to the left. This one is a little bit nearer. I did not try to set those absolutely perfect. I had given my decision on them, and Mr. Foster wanted a photograph of them.

Q. You are referring to Exhibit S-41 for identification? A. Yes.

Q. Now, I do not think you and I quite understand one another on that question. Would you say, Captain, that in taking a photograph of three objects, standing

one right up alongside of another in this position— A. I understand what you are getting at.

Q. —and taking one photograph of those three objects, that the same relative surface of each of these objects would be shown in the photograph?

Mr. D'Aloia—I object to the question. The captain said when he took those photographs he did not have that object in view.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

A. I did not try to set these true together.

Mr. Fisch—I ask that that be stricken out, as not responsive.

The Court—Strike it out.

Q. Please answer the question. A. You mean on account of the radiation of the lens?

Q. Don't you understand my question? A. Yes, I understand what you are trying to get at.

Q. Will you please answer it?

Mr. D'Aloia—I renew my objection. The captain stated that photograph was not taken for the purpose of photographing the exact identical portions of the surface of the three objects.

The Court—I will permit it.

Defendant's Counsel prays an exception to this ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Judge.

Q. Will you please answer the question? A. I didn't set it—try to get that true.

Mr. Fisch—I ask that that answer be stricken out as not responsive.

Mr. D'Aloia—I move it remain on the record.

The Court—It will remain, but the question may be asked again.

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

Judge.

Q. Will you please answer my question? A. You are trying to show that the outside of these plates—

Q. Never mind what I am trying to show; just answer my question. A. Would you let me have the question again?

Q. (Question read.) A. The outside of them may be a little bit foggy, out of focus line.

Q. Now, whether it were foggy or out of focus or not, is not the question?

Mr. D'Aloia—I object to this line of examination, because it was not brought out in the direct examination and it is incompetent.

The Court—The question of the pictures being foggy was brought out in the direct examination.

Mr. D'Aloia—Which picture?

The Court—Both pictures.

Mr. D'Aloia—All right. But he is limited in cross examination to tell what he means by that, not to be cross examining an hour about photographs he took himself.

Q. Now, assuming, Captain, that you were to take a photograph of three cylindrical objects, taking photographs of the three at the same time and assuming that these circles represent three cylindrical objects, and that your camera was situated at the place marked by a square, would you say that taking a photograph of those

three cylindrical objects, you would obtain a view of those three cylindrical objects which would be cut exactly in the middle by a line?

Mr. D'Aloia—That does not need any expert testimony to answer it. Anybody would know that is so. I object to this cross examination, because it is not proper.

The Court—All right. You may object to the cross examination, as you have a right to, but you ought not to testify at the present time.

Mr. D'Aloia—It is visible at a glance that that question cannot be answered yes.

The Court—It does not have to be answered yes. Captain Jones is an experienced witness and he can answer it. Now, you may answer it.

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

Walter D. Van Riper, Judge.

The Witness—There has got to be an explanation.

The Court—You do not have to answer it yes or no if you cannot.

Witness—The outside of those may be a little bit off from what the others are, but with this picture here it shows very good, but the light does not penetrate in here even on the center.

Q. Now, disregarding the light. A. (Interrupting) Because we do not use—

Q. Now, Captain, I am asking you would you, in taking a photograph of three cylindrical objects, the camera being situated at the place which I have marked in the square on the exhibition board, would you, in taking the one photograph of those three objects, obtain an image of those three objects which would be represented

by a line drawn right through the middle of them? In other words, obtain an image which would be represented by the front one-half of each of these cylindrical objects? A. You would not get one-half.

Q. Well, how much will you get? A. You would not get only a little bit over a third.

Q. You would get a little over a third of the middle object? A. Yes, sir. You get a third.

Q. A third or a little over a third? A. A little over a third.

Q. Well, would you get that same portion of the object at the extreme left? A. I can show you on here.

Q. Won't you please answer the question? A. I can get the third, yes, sir.

Q. You would get the same third that you did on the object which is in the middle? A. In the photograph you cannot see any different—

Q. Won't you please answer my question? What would you get? A. Yes, sir, I would get it.

Q. Would you get the same portion, the same relative portion of the object on the left that you get of the object in the middle? A. Very close to it, yes, sir.

Q. Now, is it close to it or is it the same relative portion? A. There is one you can see in there—

Q. Will you please answer my question? A. I can get it, so it is all right.

Q. Will you please answer my question? A. There is one with the same machine—

Q. Please answer the question.

Mr. D'Aloia—I will admit that it is not the identical third portion.

Mr. Fisch—I am not asking Judge D'Aloia to admit anything, but I am cross examining his expert witness.

The Court—You may admit it, and the witness might not. What we want is the witness's opinion.

The Witness—If you will allow this picture to be seen it will show that it does show it.

Q. I am not asking you to show me any pictures just now, I am asking you please to answer my question as indicated by this diagram on the blackboard. Can you answer it? A. I have answered it.

Q. Will you get the same relative portion of the object on the left as you get on the object in the center? A. Yes, and it shows on this picture.

Q. Will you get the same relative portion of the object on the right as you get of the object in the middle? A. Yes, sir.

Q. Then, you get the same relative portion of each of those cylindrical objects on the one photograph, do you? A. Yes, sir, it shows very clearly on here.

Q. Isn't it a fact, and don't you agree, that the lens of a camera is nothing more or less than an eye? A. It is.

Q. And with the lens of the camera, just as with the human eye, that lens radiates from a central point, and if you have an object directly in front of the lens, you will get a greater portion of the object that is in front of the lens, than you will on the rays of that lens radiating to objects which are not directly in front of the lens? A. Of course, if they are far enough apart, yes, sir.

Q. Well, even if they are minutely apart, isn't that true? A. Yes, sir.

Q. Now, do you want to change your answer about getting the same relative portion on each of these cylindrical objects? A. There was a slight difference, but not perceptible.

Q. Then, I understand you do want to change your answer. A. I don't call that much of a change.

Q. You do want to change your answer, do you? A. I have answered that.

William A. Jones—cross

Q. Well, I did not quite understand your answer: Will you be good enough to answer it again? A. There is a slight but not perceptible change.

Q. The fact of the matter is that you get more of this portion of the cylindrical object to the right than you get of the object to the left, is that right? A. How is that?

Q. You would get more of the portion of the cylindrical object to the right that faces toward the middle object than you would get of the cylindrical object which is to the far side of the middle object? A. That is different from the last question you asked me.

Q. Well, I am reframing the question, is that proposition of mine correct? A. Probably slight.

Q. But my proposition is correct? A. Very slight with that lens of mine.

Q. Why, Captain, did you select the particular portions of the fatal and the garden bullet to photograph which you did photograph on Exhibit S-42 and S-41 for identification?

Mr. 'Aloia—That is objected to on the ground that it is improper cross examination.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. I picked out the two best lands that I could see, the land marks.

Q. Because you thought that in that position you would have an opportunity to discern lands, ridges and grooves? A. I did not take this picture for that, I took this photograph because Mr. Foster asked me to take the photographs.

Q. Well, didn't you examine the photograph after you took it? A. I printed it for him.

Q. Well, didn't you examine it? A. I looked at it, yes, sir.

Q. Didn't you compare the bullets themselves before you placed them in focus to take this photograph? A. I set them on this machine that I have here and I picked out a good looking land to the front and set them there, that is all there was to it. I did not pick on any one or try to pick out any one object.

Q. As a matter of fact, didn't you select those portions of the two bullets which would correspond or nearly correspond to various groove marks on the lands, so far as grooves were concerned?

Mr. D'Aloia—That is objected to because the answer made by the witness is very clear and very simple. Those bullets were photographed without any object of making any examination of the bullets by means of the photograph.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. (Question read.) A. No, sir, I didn't take it for that.

Q. Well, what was the purpose, what would you say was the purpose, then, in photographing these particular sections, this particular view of these two bullets?

Mr. D'Aloia—If the court please, he has answered that question. He said Mr. Foster wanted a photograph of the bullets for identification purpose.

The Court—Yes, and he is asked now why he photographed these particular views of the bullets.

Mr. D'Aloia prays an exception to this ruling of

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

Walter D. Van Riper, Judge.

A. And for no other reason only that they were fairly good little lands and I set them on the machine there and photographed them. I did not take them for any purpose.

Q. Wouldn't you say, Captain, that the photograph S-42 for identification corresponds or nearly corresponds with the field of the bullet shown on the photograph Ex. S-33 in evidence? A. Yes, it does.

Q. And do you discern similarity in the margin on the bullets as shown in Exhibit S-42 for identification? A. I picked those out looking them over as the nearest of any.

Q. Do the land and groove marks correspond? A. Not all the way through.

Q. Well, were there a number of identifying marks in the lands and grooves?

Mr. D'Aloia—I object to the word "Identifying marks," similarity is the word.

The Court—Overruled.

Witness—This heavy scratch in the center of this one does not show on that one or the other one of these, and it does not show on either one of these—

Q. Now, will you please answer my quesution? (Question read.) A. Not that I would want to pass on as positive.

Q. Irrespective of whether you want to pass on them or not, was there a number of them? A. There are some that are similar there but not ones that I would want to pass on.

Q. Do you agree, Captain, that the fatal bullet and the ground bullet are bullets of Peter's 38 calibre Smith

& Wesson type bullets? A. No, I didn't lok that up to see whether they corresponded.

Q. You did not look that up at all? A. I did not.

Q. Don't you think that was important? A. No, sir; I was going by the marks that was on those bullets.

Q. You did not think that was important at all?

Mr. D'Aloia—That is an answer. He said no, sir.

Q. Now, in your examination did you examine the cannelure markings on the bullet? A. I did.

Mr. D'Aloia—I object to that, if the Court please, because on the direct examination I did not ask him a question about the cannelure marks.

The Court—I will permit it.

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

Walter D. Van Riper, Judge.

Q. And the cannelure markings are the so-called teeth on the bullet? A. Well, that is the knarl of the steel.

Q. And you are familiar, are you not, with the current issue of Peter's 38 calibre Smith & Wesson type bullet? A. Of course. I have some at home, yes.

Q. And do you agree to the proposition that the cannelure markings in the current type of Peter's Smith & Wesson 38 calibre is rather a rectangular knarling? A. I didn't take that into consideration at the time at all.

Q. Now, irrespective, Captain, whether you took it into consideration at the time, I am asking you now, do you agree to that proposition?

Mr. D'Aloia—I object to it, because he said he paid no attention to it.

The Court—No. He said he did not take it into consideration at that time.

Q. Do you agree to that? A. I didn't take it into consideration at all.

Q. Well, do you agree to that now? A. I have heard others testify.

Q. And do you believe it is true? A. I admit what they testified to is right, although I have not checked it up myself.

Q. And then do you admit that what they have testified to is right, the the knarling of the cannelure on the Peter's bullets which are obsolete were more of a pyramid shape, such as this object I have attempted to draw on the board now?

Mr. D'Aloia—I object to the word obsolete, because it was testified by Major Goddard that he did not know when they ceased manufacturing them.

The Court—That they are not used in the current type.

Mr. Fisch—That is what I mean.

Q. Do you agree to that proposition? A. I have not followed that up at all.

Q. Well, Major Goddard and Mr. Robinson of the Winchester Arms company so testified in your presence, did they not? A. They did.

Q. And you agree they knew what they were talking about when they so testified? A. I have not checked up on it.

Q. Well, do you say they are wrong?

Mr. D'Aloia—Well, his answer is the best he can make.

Q. You don't know? A. I have not checked it up, I told you.

Q. In examining the photographs which are in evidence and you examined them during the night yourself, since yesterday's adjournment of court? A. I looked at the pictures.

Q. Well, you looked at the pictures and you made what you considered dissimilarity in a note book? A. I jotted that down on a pad.

Q. And that was the note book you used here in court this morning on direct examination? A. Yes.

Q. In your examination of these photographs you observed, did you not, that the cannelure markings were both of the pyramid type? A. Yes.

Q. And every cartridge company makes a distinctive type of bullet, does it not? A. They vary some, yes.

Q. Different cartridge companies? A. Yes.

Q. So a person would be able, who had knowledge of the subject, to distinguish what cartridge company made the particular bullet? A. I have often done it.

Q. You have often done it yourself? A. Yes.

Q. Did you do it in this case? A. I did not.

Q. You did not? A. No.

Q. Are you prepared to say, now, Captain, that these two bullets are or are not 38 calibre Smith & Wesson type bullets? A. I have not checked up on it. I am going on what Mr. Robinson and Major Goddard said.

Q. So you are not thinking they would say anything wrong, so you are satisfied to act on their opinion? A. I doubt very much if they would come in and testify wrong.

Q. Now, there is a method of identifying whether two bullets are fired out of the same make of gun? A. Yes.

Q. And in your making of that examination, do you determine the width of the lands and grooves? A. Yes.

Q. That is from groove edge to groove edge? A. Yes.

Q. How did you determine that? A. By measuring.

Q. What did you use for the measurements? A. My microscope has a micrometer in it.

Q. Your microscope has a micrometer in it? A. Yes.

Q. Did you ever use a filar micrometer? A. I know what it is.

Q. But you have never used one. A. I have looked at one very often.

Q. Do you believe it is an accurate instrument for using in measuring the distance between groove edges? A. Yes.

Q. More accurate than any measurement you might have under your microscope? A. More accurate than mine.

Q. And such a filar-micrometer would measure up to five thousandths of an inch? A. I would not want to pass on that. I do not know what they have on their micrometers.

Q. I am not talking about a micrometer.

Mr. D'Aloia—I object to this line of testimony. There is no testimony here on the part of any expert on either side as to the actual size or length of any ridge to the thousandths of an inch.

The Court—Well, there was some testimony of Major Goddard as to some instrument measuring one-thousandth of an inch. The captain says that he measured the bullets. Now, he is being tested as to how he measured them and as to the accuracy of his measurements.

Mr. D'Aloia—Well, there is no other measurement that these facts can be compared with. I object, it is not proper cross examination.

The Court—I will permit the question.

Defendant's counsel prays an exception to this

ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. I am talking about a filar-micrometer. A. I have not seen that filar-micrometer.

Q. Well, suppose you look at it. I show you an instrument and ask you whether or not that is a filar-micrometer. A. Yes, it is.

Q. Will you be good enough to take a look at it and tell us whether that filar-micrometer would measure to a five-thousandths part of an inch? A. I could not say whether it would or not.

Q. You are not familiar with it? A. I have not used it. I do not know anything about the use of it.

Q. You do not know anything about the use of a filar-micrometer? A. I have never used one, I told you. I have testified to that before.

Q. Captain, do you agree that both the fatal bullet and the garden bullet were fired out of a Smith and Wesson 38 calibre revolver? A. Yes.

Q. And do you agree that there is a similarity in the slippage marks on both of those bullets? A. I noticed slippage on them in different places.

Q. Well, do you agree there is a similarity in the slippage marks on both of those bullets? A. I would not want to pass on that, because one of those bullets is very much deformed.

Q. In other words, you would not want to say one way or the other?

Mr. D'Aloia—He gave an answer.

The Court—He said, "I would not want to say one way or the other."

Q. Is that correct? A. I would not want to say they were positive, no, sir.

Q. And you would not want to say they were nega-

tive? A. I would not pass on it, the condition that bullet is in.

Q. You would not say that it was negative, either? A. I would not pass on it.

Q. Won't you answer my question? A. I have the only way I can answer it.

The Court—You mean by that that you would not give an opinion?

Witness—I would not give an opinion it is positive, no, sir.

Q. Now, it is possible, is it not, Captain, to ascertain whether two bullets were fired out of the same gun even though you have not got the weapon? A. I have done that, yes, where three men were killed with the same gun.

Q. And it is also possible, is it not, to determine whether a bullet has been fired out of a foul gun or a gun that has been cleaned? A. Well, by a gun that is in good condition?

Q. A foul gun and a gun that has been cleaned. A. Well, you mean a gun in good condition or cleaned. You can clean a foul gun, but there is always a fouling in it.

Q. About a gun that has been cleaned? A. Your question is not comprehensive.

Q. What is not comprehensive about it? A. You say cleaned, do you mean a gun in good condition, or one that has been cleaned out.

Q. I mean a gun that has been cleaned. A. If it was a rusty gun that was cleaned, you cannot clean the rust out.

Q. Suppose it was a gun fired foul, contained fouling marks, by reason of the barrel having been fired through, and then the gun was cleaned, would you not be able to determine whether a bullet had been fired out of the gun in the foul condition and whether the bullet had been fired out of the gun in the clean condition?

Mr. D'Aloia—That is objected to unless it is incorporated in that question that the fouling of the gun happened 26 months before.

The Court—I will allow it.

A. Well, Mr. Fisch has not finished his question.

Q. I have. A. No, you are talking about the barrel of a gun.

The Court—Please do not argue with the Prosecutor.

Witness—I cannot answer that question.

Q. All right. Now, Captain, isn't it possible to determine whether a bullet— A. Oh, now you are saying a bullet. You did not say that before.

Q. Didn't I? A. No. That was what I was trying to get from you.

Q. Isn't it possible to determine whether a bullet has been fired from the gun that has been fouled by firing, and whether a bullet has been fired from a gun after it has been cleaned? A. You may get fouling scratches on it, yes, sir.

Q. Then, it is possible to determine that, is it not? A. You get fouling scratches, you get combustion scratches and you get rust scratches that they are there.

Q. So that you are able to differentiate, are you not, between a bullet that has been fired out of a foul barrel and a bullet that has been fired out of that barrel after it has been cleaned? A. Well, if you get fouling scratches on it and then get a good condition barrel you might possibly think that the fouling scratches are from some other gun.

Q. Won't you please answer my question? A. I have answered it in the only intelligent way I can answer it.

Q. Can't you answer that by telling me whether you

can differentiate between certain bullets? A. I have answered it.

Q. You cannot answer it? A. I have answered it.

Q. Do you say you can or you cannot? A. I have answered that, that is the only intelligent way I can answer what you asked me.

Q. Now, Captain, do you agree to the proposition that the fatal bullet was fired through a cleaned barrel? A. There was some corrosion scratches on it.

Q. Will you please answer my question, sir? A. Through a cleaned barrel?

Q. Yes. A. Well, I wouldn't qualify on that, but I do find scratches on that bullet in some places, there are scratches, yes, sir.

Q. Well, now, in the firing of a bullet through a brand new gun right out of the factory wouldn't you find scratches on the bullet? A. Well, you once in a while find some scratches in it and you will find combustion scratches on a lead bullet, too.

Q. Do you agree to the proposition that the fatal bullet was fired through a barrel that was clean in comparison with the barrel which the garden bullet was fired? A. Well, there are so many foreign scratches on the garden bullet that I wouldn't like to pass on anything like that.

Q. When you say you wouldn't want to pass on it you wouldn't want to say yes or no, is that it? A. I wouldn't want to say it was a clear barrel it was fired through because there are so many scratches on it.

Q. And when you say you would not want to pass on it do you mean you wouldn't want to say yes or no? A. I think I would be going too far if I did say yes or no.

Q. Now, Captain, in your opinion was the garden bullet fired through a foul barrel or a clean barrel?

Mr. D'Aloia—I object to this line of examination for the simple reason that the fact is in evi-

dence that the bullet fired into that flower bed was not fired through a foul gun barrel. There isn't a scintilla of evidence that when Mr. Black took that pistol on that New Year's Eve and went to that flower bed and fired that so-called garden bullet, that is the one that was fired—

The Court—That would be a good objection if this question was asked of the witness on direct examination as a hypothetical question, but it is not, it is being asked on cross examination and it certainly is a proper question.

Mr. D'Aloia—Well, it includes an assumption of fact that is not in evidence and that is that the barrel of the gun through which the bullet was fired in December, 1925, was a foul barrel. There isn't any such evidence, the evidence is that the gun had been cleaned four years before—

The Court—The question is whether in the witness's estimation the garden bullet was fired through a clean or foul barrel, isn't that the question?

Mr. Fisch—Yes, sir.

The Court—Objection overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. I wouldn't want to pass on that.

Q. And what do you mean when you say you would not want to pass on it, that you would not say yes or no? A. I wouldn't say it could be fired through a clean barrel because there are so many foreign marks on it. There is no person living who can tell whether it was fired through a clean barrel.

Q. Then, you think it was fired through a foul barrel?

A. No, sir, I do not say it was, there isn't a man living who could tell.

Q. And you don't say that it could be fired through a clean barrel? A. I have answered that.

Q. Now, with regard to the fatal bullet, would you say, Captain, that that bullet was fired through a clean barrel or a foul barrel? A. The fatal bullet was fired through a barrel that had some corrosion in it.

Q. Would you say, comparing it with the garden bullet, that the barrel was cleaner when the fatal bullet was fired than when the garden bullet was fired?

Mr. D'Aloia—I object to that if your Honor please. He said that the foreign marks on the garden bullet makes it impossible for anyone to tell whether it was fired through a clean or a foul barrel. Now, that absolutely precludes asking this question.

The Court—I don't think it stops him from saying whether or not the fatal bullet was fired through a cleaner barrel, and I will admit it.

A. I won't pass on it.

Q. And when you say you won't pass on it, do you mean you won't say one way or another? A. I think any man is going a long ways to do it.

Mr. Fisch—I ask that that be stricken out.

The Court—Strike it out.

Q. Will you answer the question, please? By that you mean you won't say one way or the other? A. I have answered it four or five times.

Q. Is that what you mean, that you won't say one way or another? A. Oh, Mr. Fisch, I have answered it a half dozen times.

Q. Isn't that what you mean, Captain, that you won't testify one way or another? A. I won't testify one way or another on it.

Q. Do you agree that a bullet fired through a foul barrel will contain more marks and scratches on the land and grooves than a bullet fired through a clean barrel?

Mr. D'Aloia—I object to that question because there is no evidence in this case that either bullet was fired through a foul barrel or a clean barrel.

The Court—Objection overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. That has been answered four or five times, Judge.

Q. (Last question read.) A. Yes, sir, it will, if it is foul it will show foul marks on it, yes, sir.

Q. And there are a great many more marks on the ground bullet, are there not, scratches on the lands and grooves, than there are on the fatal bullet? A. A great many, there are not many marks which were in the gun.

Q. How about marks that were in the gun made by the gun? A. I suppose there are some there, but there are so many others that I won't want to pass on it.

Q. You won't want to say one way or the other whether these two bullets were fired out of the same gun? A. No, sir.

Q. You wouldn't say it was possible that these two bullets were fired out of the same gun, would you? A. I would not say they were fired from the same gun, no, sir.

Q. You won't say positively that they were not fired from the same gun, would you? A. I have to have more evidence on it than there is for me to pass on that.

Q. Will you please answer my question, and you won't say positively that they were not fired from the same gun, will you? A. Well, that is a hard question to ask.

Q. What is hard about it?

Mr. D'Aloia—I object. It is objectionable, if your Honor please, and I make my objection to it.

The Court—I will permit it.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. There are a great many marks on these bullets which do not jibe and I won't pass on it at all.

Q. Will you please answer my question? A. I have answered it.

Q. (Question read as follows:) "And you won't say positively that they were not fired from the same gun, would you?" A. There are marks there that I cannot say if they could have been fired from that gun.

Q. Will you please answer my question? A. I have answered it as far as I can.

Q. Will you say positively, Captain, that the two bullets could not have been fired from the same gun? A. No, sir, I won't say that.

Mr. D'Aloia—I object.

The Court—Overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. You won't say that, will you, that is your answer, isn't it? A. That is not a fair question at all.

Q. I am not asking you to pass on the fairness of the question, the court is here for that. That is your answer, isn't it?

Mr. D'Aloia—Wait a minute, he has not answered the way you think he has. I think the answer made by this witness is very clear and

distinct and he will not conclude as the Prosecutor wants him to conclude and he has a right not to come to that conclusion, particularly after he has given his answer three or four times.

The Court—Let us see what answer the record shows.

(Question and answer read as follows:) "Will you say positively, Captain, that these two bullets could not have been fired from the same gun? A. No, sir, I won't say that."

Q. When you were connected with the Police Department in New York you say that you loaded six thousand shells a day? Did you load them yourself? A. No, I had several men working for me under my supervision.

Q. And how many hours in a day were they loading those shells? A. Until they got through, they would work eight, ten hours.

Q. And how many men would be working at loading them? A. I think about three or four.

Q. Loading them by hand? A. Oh, no, we had pressers to load them with.

Q. So, you loaded about six hundred an hour, did you, when you worked ten hours a day? A. Yes, they were loading them.

Q. Captain, these photographs which have been marked in evidence and are known as A, B, C, D, E, F, and G, and which you went over during the night and made memoranda on, do you agree that there are many lines in the lands and grooves and ridges that do agree in both of the bullets? A. They agree as to make of the gun.

Q. Well, do they also agree in the lands and grooves as to the lines, the similarity of lines continuing through? A. There was one land mark, I will not make it plural, I will make that singular, there is one on which there are a few marks which are similar. You say a great many, but I won't say a great many.

Q. You examined, did you not, when you went over the photographs you examined them for the marks that had been made by Major Goddard, hadn't you? Those numbers which the Major referred to, you examined all of those, didn't you? A. Yes, sir.

Q. And on your direct examination you pointed out what you say are discrepancies in those markings? A. There are many, yes, sir.

Q. And isn't it a fact that on photograph A, showing 21 points of similarity, pointed out by Major Goddard, that you have called attention of the court and jury to two points which you say, which the Major says are similar, that you say are not? A. I would like to have a look at that again.

Q. Well, I won't press the question. How many lands would you say it would be necessary to match up, how many scratches, I should say, would you say would be necessary to match up on two bullets before you could say with positiveness that those were the bullets were fired from the same gun? A. I want them pretty clear on more than one.

The Court—What do you mean more than one, more than one bullet?

Witness More than one land.

Q. You testified, did you not, in the Gerald Chapman case? A. I did.

Q. And you testified for the defense? A. I did.

Q. Chapman was convicted?

Mr. D'Aloia—Objected to.

The Court—Sustained.

Q. And on what was the identification based in the Chapman case as far as the bullet was concerned, the Chapman bullet? A. It was one scratch from a protrusion of something in the barrel of that gun and I testified it was the same on all of the bullets.

Q. And you agreed, then, with the Prosecutor, did you with the State's attorney— A. I agreed with the experts for the prosecution, yes, sir, the marks were absolutely the same.

Q. So that you then agree, do you, that one scratch where the marks are absolutely the same, is sufficient to identify a bullet as coming from a certain gun? A. In that there were three test shells, three test bullets, and there were two bullets that were taken from the body, so I had more than one to go on, didn't I? We had two bullets and we had three tests.

Q. And you had this one scratch, didn't you, that was similar? A. Yes, sir.

Q. And it showed on five different bullets, the three test bullets and two bullets taken from the body, and on that one scratch, you then agreed, did you not, that it was a sufficient mark of identification for that bullet, that had been fired from a particular gun? A. I did.

Q. Captain, you testified that a barrel which had not been used for a number of years would be corroded, is that right? A. Oh, no, I said—that question put to me was "If a gun had been shot and put away for several years foul would it be corroded," that is the question which was asked me.

Q. Well, would it be? A. I said my judgment would be that it would be corroded.

Q. What do you mean by corroded? A. Rust forming in it from the fouling that was in it.

Q. Suppose the gun was put in an absolutely dry place?

Mr. D'Aloia—Does it appear, if your Honor please, that this particular pistol that the Prosecutor had Mr. Black describe was put in a particularly dry place?

The Court—I don't think there is any testimony

as to the atmospheric conditions one way or another.

Mr. Fisch—There is testimony that the pistol was placed in a bureau drawer on the second floor of Mr. Black's house.

The Court—Objection overruled.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. It would be hard to say, the atmosphere might rust it and it might not.

Q. Well, if the gun were placed in a bureau drawer in a suburb of Newark—you are familiar with Glen Ridge, aren't you?

Mr. D'Aloia—I object, if your Honor please, he keeps leaving out the length of time.

The Court—We haven't heard the question yet.

Q. If a gun were placed in a bureau drawer within ten miles of Newark in the second drawer of a house, from which it had been fired, and had been kept there without being cleaned for twenty-six months, and that place was dry, would you say that in such a case there would be corrosion by rust in the barrel?

Mr. D'Aloia—He puts in that this place was dry. I don't know whether it was or not.

The Court—Leave out "If it was dry." Put in a bureau drawer.

Mr. D'Aloia—Then, the question is amended.

The Court—Yes.

A. I would not want to leave mine there for that length of time uncleaned.

Q. Answer my question, please. A. I would expect it to have some corrosion on it.

Q. And you would not be surprised, would you, to find some rust on it?

Mr. D'Aloia—I object to the form of the question, where is the gun with which to surprise the witness.

The Court—Overruled.

Mr. D'Aloia—I move to strike it out.

The Court—Denied.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

A. I would expect to find it rusted.

Q. Would you be surprised to find it rusted?

Mr. D'Aloia—I object.

The Court—I think the question can be answered. Can you answer that question?

Witness—It is a pretty broad question.

Q. Can you answer it? A. I don't think anyone could.

Q. You cannot answer it? A. No, sir, I don't think anyone could, if the window was open and moisture came in, there are a lot of conditions there.

Q. Would you be able to identify a bullet as having come from a particular gun after the gun had laid for a period of, we will say, sixteen or eighteen months? A. Well, I would have to see the bullet and the gun to try and pass on that.

Q. Now, would you say a gun, after it had been fired and had not been cleaned and was permitted to lie for a period of say sixteen or eighteen months would be corroded?

Mr. D'Aloia—Now, it is not sixteen or eighteen. It is twenty-six.

The Court—I think you better change it to fit the condition.

Mr. Fisch—No, your Honor, that is not the proper question. I will withdraw the question.

Q. How long would you say it would take for a gun to lie, after it had been fired, before corrosion would set in?

Mr. D'Aloia—I object to that unless the atmospheric conditions are known.

The Court—Yes, I think you better describe the conditions.

Q. In moist? A. I guess the corrosion will start pretty quick.

Q. So that you would say it would be pretty well corroded after a period of sixteen to eighteen months.

Mr. D'Aloia—I object to the sixteen to eighteen months, because it has no bearing.

The Court—I think you better ask the witness how many months.

Q. How many months and in what length of time would it be that that barrel would be corroded? A. I would expect the rust to start right away in a moist place.

Q. It would start right away and it would continue to deteriorate? A. Yes, it would continue.

Q. So that there would be a greater amount of deterioration and a greater amount of corrosion after a period of six months than a month? A. Yes.

Q. And still a greater amount after a year? A. Yes.

Q. And still more after sixteen to eighteen months? A. Yes.

Q. Would you be able to determine whether or not a bullet had been fired out of a barrel of a gun that had been corroded by such exposure after that period? A.

You would find some corrosion scratches on that bullet after that period of time.

Q. Yes, and then you would be able to, would you, to identify the bullet as having come from the gun some sixteen or eighteen months previously? A. Well, I have seen guns that rust so much that you could not get an identification in it.

Q. Won't you please answer my question? A. That would all depend on the condition of the gun.

Q. Well, a gun that had laid exposed to weather conditions or exposed to climatic conditions such as we find here locally for a period of some sixteen or eighteen months, would you say that you would be able to determine whether or not a bullet had been fired out of that gun sixteen or eighteen months prior to that time?

Mr. D'Aloia—I object to the sixteen or eighteen months. We know definitely from the evidence it is twenty-six.

The Court—I will allow that.

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

Walter D. Van Riper, Judge.

A. Well, there would have to be some prominent rust scratch in that to go by. If it was general rust, you would get general scratches all over it, but you would have to have some prominent marks to identify them by.

Q. I don't think you get my question. A. I understand your question thoroughly and I have answered it the only way it could be answered.

Q. I mean assuming that a bullet was fired out of the gun and that then the gun were exposed to climatic conditions such as we find here about locally and continued to be exposed to such conditions for a period of some sixteen or eighteen months, would you after that period of time be able to determine whether or not that bullet

had been fired from that gun? A. Well, that is a pretty broad question, because, if it is general corrosion in the barrel, you could not identify the mark which would be on a test bullet fired from that barrel with the bullet that was fired from it when it was in this condition.

Q. Then you would say you would not want to do it? A. I would not want to, no, sir.

Q. You testified in the razor case in this state where somebody was charged with shooting his farmer, or something of that sort? A. I did.

Q. And did you in that case testify from a bullet taken from a body that had not been embalmed, the said body having been exposed in the open, as having come from a gun that had been exposed to the elements and had lain on the ground among leaves for a period of some sixteen or eighteen months? A. That gun was hid in under a tree where it was not exposed to the elements, so that it destroyed the gun.

Q. But the gun was hidden under a tree? A. It was.

Q. And it was exposed to the elements in that place for a period of some sixteen or eighteen months? A. It was covered.

Q. With what? A. Leaves.

Q. And is it your opinion that the covering of leaves protected that gun from the elements?

Mr. D'Aloia—Don't you think we have gone too far afield? I submit those are not proper questions.

The Court—I will admit the question.

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

Walter D. Van Riper, Judge.

Q. (Question read.) You think they did. A. They did.

Q. Sufficiently to prevent corrosion? A. The gun was not so badly corroded. I have the photograph right here. You can see it if you want.

Q. And you made an identification of the bullets having been fired from that gun some sixteen or eighteen months prior? A. I did, and anybody else could.

Q. And those bullets had been in a body which was not embalmed? A. That bullet.

Q. What? A. That bullet.

Q. That bullet? A. Yes.

Q. And would the deterioration of the flesh so buried without being embalmed have any effect upon the bullet? A. It would be darker.

Q. Would it cause any corrosion? A. It was darker.

Q. Did it cause any corrosion? A. No.

Q. And in spite of the fact that it was buried in that fashion I have described, you were able to identify it? A. Yes.

Q. The bullet was mushroomed? A. Yes, badly mushroomed.

Q. And yet you were able to identify it? A. Yes.

Q. As having come from that gun which was buried under a tree covered by some leaves? A. Anyone could have identified it.

Q. You did? A. Yes.

Q. And you made your identification on one mark which was an 8th of an inch of rifling, did you not? A. There were two distinct land marks and the groove mark that showed very plain.

Q. Well, the land and groove marks themselves would be present and would determine that they were fired from a particular type of gun, would they not? A. It showed it.

Q. But the identification which you made of that bullet as having come from that gun was made from a rifling mark one eighth inch in length, is that right? A. One eighth inch in length on the bullet itself. Your

question is not so that anyone would understand it. The bullet was mushroomed back and there was about an eighth inch of the length of the rifling mark to show, and it showed two distinct land marks and the groove.

Q. And that was the mark on which you made your identification, the marks that were found? A. In those two land marks and the groove marks.

Q. You did not have any trouble in making your identification. That is all.

Redirect Examination by Mr. D'Aloia.

Q. You had a gun in that case? A. Yes.

Q. And you fired bullets through that gun? A. Yes.

Q. And you had test bullets? A. Yes.

Q. And in the Chapman case you had a gun in that case? A. Yes.

Q. And you fired the three test bullets that you were taken out through that gun? A. Oh, no, they did that, the other experts.

Q. And you passed upon that? A. They fired two through the barrel and the marks were absolute.

Q. In both of those cases, the Chapman case and this razor case, you had the gun? A. Yes.

Q. And you had the condition of the barrel of the gun scientifically made known to you? A. Yes.

Recross Examination by Mr. Fisch.

Q. I show you a photograph which has been cut and ask you whether this photograph is a copy of a photograph which you made and which has been marked Exhibit S-42 for identification.

Mr. D'Aloia—I object to that as not proper cross examination.

The Court—I will permit the question.

Defendant's counsel prays an exception to this

ruling of the Court. Exception allowed; let it be sealed and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

Q. Is that a copy of that photograph? A. It is cut down, yes.

Mr. Fisch—I ask that these four portions of the photograph be marked S-42-b for identification.

(Photographs so marked.)

Mr. D'Aloia—Now, if your Honor please, the defendant moves for the direction of a verdict of acquittal upon the ground that the evidence does not make out sufficient proof beyond a reasonable doubt that he is guilty of the crime charged in the indictment.

Mr. Fisch—Do I understand, if your Honor please, that the defense has rested?

The Court—No, do you remember I gave Mr. D'Aloia the privilege of renewing this motion after Major Goddard had testified? It is probably not quite orderly, but I will permit it.

Mr. D'Aloia—In the first place, there is a serious question of doubt with reference to the robbery or burglary or loss by Mr. Black on the 2nd of January, 1928, of a weapon of any kind, and if there is positive evidence of the fact that he lost that particular weapon, or it was stolen from him, there is no evidence that this defendant was connected with the stealing of it or the receiving of it. The nearest that the evidence comes is the description sometime after the 2nd of January of the weapon which was a nickleplated, black handled revolver, no caliber, and that is the nearest we come to that particular episode that is in evidence. So far as the defendant is concerned he had in his possession, according to the testimony of Rose Tiffany, a pistol which was nickle plated and which had a black handle, but nothing as to

its caliber, and there is no evidence for the jury to conclude, that the 38 caliber pistol which was stolen from Mr. Black's house on the 2nd of January, 1928, at Glen Ridge, was ever in the possession of this defendant; that the only evidence of a possibility of that is, as I said before, a description of the pistol subsequent to the second, which is a general description of a black handled, nickel plated pistol, and then there is another bit of evidence, another circumstance which the state had adduced to the effect that a maple leaf pin which was owned by Mr. Black, and which Mr. Black said disappeared on the second of January and was found in the possession of Mrs. Rose Tiffany, and she testifies that it was given to her by the defendant. Now, that does not exclude, that does not exclude the absolute possibility that this defendant had nothing to do with the receiving of a pistol or the handling of a pistol or the owning of a pistol or the possession of the pistol which disappeared from the Black home at the time the maple leaf pin disappeared.

The evidence adduced by the state is to the effect that on the 31st of January, 1928, one Thompson, the deceased, about eight o'clock, was in the lower part of his residence, for what purpose no one knows. The nearest we can get searching the evidence of the state, is the testimony of Mrs. Thompson, who says that she went to the front door, and that she saw him coming downstairs when she went upstairs, and passed him, and he went right on down and around and she remained under the impression, as she proceeded upstairs, that he was going upstairs to fix the furnace. Now, she was in the lower part of the house by reason of that testimony. We conclude that. There is no evidence in the state's case tending to show what happened after that except that the next bit of evidence that enlightens us is that a muffled sound is heard, other sounds are heard indicating a

struggle and a form is seen coming out from between two houses by the lady next door; groans are heard and a form is seen going toward Leslie street at the rear of the house. There is positive evidence adduced by the state, no equivocation about it, that the form going toward Leslie street in the rear of the house was not this defendant; there was a man or a person two inches taller than this defendant; that is positively stated in the evidence. Secondly, there is no evidence tending to show that this defendant was at or near the scene that except this evidence that at about 6:20 or 6:24 a conductor of a trolley car or an operator states that a man, this defendant, he says, got off at the corner of Belmont avenue and Bloomfield avenue, the night that he says he thinks was the 31st of January, 1928. Now, the interval of time between that hour, 6:20 or 6:24 and 8 o'clock, is so great that that is not evidence that the defendant was anywhere near the Thompson residence. Certainly, there is contradiction of the state's case on that point. The man who is described as this defendant by the trolley car operator and who boarded the car at about six o'clock or a few minutes after six, and who alighted from the car at 6:20 or 6:24 at Belmont avenue, evidence on the part of the other witness of the state, whatever we have of the defendant's movements, on the night in question, if he left his house at all, and there is a great deal of doubt about that, that he left at half-past six; so, it appears from the evidence that he could not have been, and this is the evidence of the state, that the man who left Canal street at half-past six could never have gotten on a trolley car at four minutes after six, and could never have been the man who alighted from the car up there at Belmont and Bloomfield avenue.

Now, the other evidence that is adduced here is that some night, and the state may have shown that it was the 31st of January, and for the sake of the argument

of this motion let us say on that night the State may have shown, through the testimony of Rose Tiffany, that this defendant went out at half-past six and returned at half-past nine; that his eyes were bloodshot, that he had an argument with her about her boy and told her that he had been doing a job and that he had been surprised by the cops and they had been chased over back fences for over three miles and the cops had shot at him and he had shot back and he had thrown his revolver into a vacant lot. If this is all true, and there isn't one scintilla or one syllable of that story that corroborates rather—corroborates, yes, or jibes with the description of what is alleged at the Thompson home, so that there is no connection. It could have been possible for this defendant, under the evidence as it stands now to have been subjected to a race of three miles or two miles, to have been fired at by the police and to have gotten away and to have thrown the gun away into a vacant lot, but what has that got to do with Mr. Thompson? What has that got to do with what occurred up in Ampere Parkway? There were no policemen there. The policemen did not arrive. There wasn't anybody chased by any cops. No cops arrived or no police authorities arrived until after Mr. Thompson had gotten into the house next door on to the porch, and the police came and all they did was to take him to the hospital. Now, we haven't a scintilla of evidence in the State's case, from the lips of the man who was not dead at the time he was taken to the hospital, but who was conscious enough to talk, because we have in the evidence about his having spoken, which in any way connects this defendant with what occurred in his house that night. Now, if your Honor please, upon all of the testimony of these experts which has taken a great deal of time, all that it does, if, it is believed, is to establish the possibility of the Thompson bullet having been fired from the

same gun from which a bullet found embedded in the flower bed in Glen Ridge was fired, but by whom? You cannot tell, I cannot tell from this evidence, and I don't think that the jury should be called upon to guess at it, and I respectfully move for the direction of a verdict of acquittal on all the evidence adduced here by the state. I also will admit, for the sake of the argument of this motion, that the conduct attributed to this defendant as to the removing of certain pieces of lining or burning of an overcoat after reading in the newspaper that a man of his description might be tied up to a murder, that if he acted through fear, and of course, he had knowledge that the police had been searching for him for a month or so, that that fact does not in anyway, if he did act that way, connect him with the visit at the Thompson house on the night of the 31st of January, 1928, therefore, if you scan this evidence from the beginning to the end, and you begin with a doubt as to whether or not the pistol was taken, as the state alleges it was taken from the Black home by this defendant and you end up with the episode on the 31st of January, or what subsequently occurred, the burning of a coat, that it has no connection with those premises and that occurrence on January 31, 1928, whatsoever. You cannot find it. You cannot find any direct point in the whole evidence, as you pass it over in your mind and you point it out in the records, and I have gone over it very carefully, that directly connects this defendant with the scene and with the occurrence. Everything is a break, and I say where anything breaks the evidence is not sufficient to convict beyond a reasonable doubt, and that condition of affairs exists now and the verdict should be, by direction of the court and there should be none other than acquittal.

The Court—Motion denied.

Mr. D'Aloia prays an exception to this ruling

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

Walter D. Van Riper, Judge.

Mr. D'Aloia—Now, I move to strike out all of the evidence and testimony given by Rose Tiffany, because it appears in evidence, uncontradicted, in this case, that she was and still is, and so far as the evidence tends to show the common law wife of this defendant and she is incompetent to testify against him under the Evidence Act of the State of New Jersey.

The Court—Motion denied.

Mr. D'Aloia prays an exception to this ruling of the court. Exception allowed; let it be sealed, and it is signed and sealed accordingly.

Walter D. Van Riper, Judge.

JOSEPH LINARDUCCI recalled in behalf of the Defendant.

Direct Examination by Mr. D'Aloia:

Q. I show you Exhibit S-5 and Exhibit S-6. Did you ever go to the Thompson residence while the snow was on the ground? A. I did not.

Q. Were there any foot prints in the snow that night that you investigated?

Mr. Fisch—I object, unless he knows of his own knowledge.

The Court—He says he did not go there when the snow was on the ground.

Q. Do you know whether Shippen went? A. No, I do not.

Q. Do you know whether Jensen went?

Mr. Fisch—Of your own knowledge.

A. Of my own knowledge?

Q. Yes. A. No, I do not know whether he went.

Cross Examination waived.

WILLIAM F. GANNON recalled in behalf of the Defendant.

Direct Examination by Mr. D'Aloia.

Q. During the time that this defendant had been down at headquarters did you take his shoes? A. I did.

Q. Did you have them measured? A. I did not.

Q. What did you do with them? A. I believe—

Q. Who did you give them to? A. Lieutenant Linarducci.

Cross Examination waived.

Defendant rests.

Mr. Fisch—I desire to offer in evidence Exhibit S-40 for identification.

Mr. D'Aloia—I object to those exhibits, because they have no value whatsoever as tending to prove what occurred on the night of January 31, 1928. The purpose of taking those pictures was explained.

The Court—He is only offering the lease.

(Lease marked Exhibit S-40.)

Mr. Fisch—I desire to offer in evidence Exhibit S-41 for identification.

Mr. D'Aloia—Those are objected to.

The Court—That is a picture made by Captain Jones.

Mr. Fisch—Yes, sir, and identified by him as a picture made by him of the fatal bullet that has been called the garden bullet and the bullet fired from the 38 calibre Smith & Wesson gun.

The Court—Let it be marked.

Exhibits in Evidence

(Marked Exhibit S-41.)

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

Walter D. Van Riper, Judge.

Mr. Fisch—Now, I desire to offer exhibit S-42 for identification, which is a photograph made by Captain Jones of the fatal bullet and the so-called garden bullet.

Mr. D'Aloia—I object to it.

The Court—The same ruling.

(Marked Exhibit S-42).

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

Walter D. Van Riper, Judge.

Mr. Fisch—Now, I desire to offer S-42-a for identification, which is a duplicate print of S-42.

Mr. D'Aloia—I object.

The Court—The same ruling.

(Marked Exhibit S-42-a.)

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

Walter D. Van Riper, Judge.

Mr. Fisch offers 42-b in evidence, which is objected to and, after discussion, the offer is withdrawn.

State rests.

Recess from 4:57 until 6:30 o'clock P. M.

Mr. D'Aloia sums up in behalf of the defendant.

Mr. Fisch sums up in behalf State.

(During the summing up of Mr. Fisch the following transpired):

Exceptions to Charge

The Court—Let the record show that the Prosecutor has been commenting on the failure of the defendant to take the stand, which comment is excepted to by the defendant's counsel, and the comment is permitted by the Court, and the exception allowed.

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

Walter D. Van Riper, Judge.

Mr. Fisch—Commenting upon his failure to take the stand to explain where he got the pin, Exhibit S-15, and may the record also show that counsel for the defendant commented upon the fact, when he summed up, that the defendant did not take the stand.

Mr. D'Aloia—I respectfully submit that there is no evidence tending to show who put these articles there, nor is there any evidence leading to the inference that these two people were not coming back to Newark to live, but that they left here on Friday to go to New York to try to obtain this position.

The Court—Again I will say to the jury that it is their recollection of the facts which will control. The Prosecutor contends also that if the defendant had taken the stand and testified that he was out to do a job on the night of January 31, and had testified as to the location and as to being chased by the police, all that he would have let himself in for would be a charge of attempting to break and enter. Counsel for the defendant objects to this and asks an exception because there is no direct evidence in the case that the defendant was at any time anywhere near the Thompson house on the night of January 31.

Exceptions to Charge

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

Walter D. Van Riper, Judge.

The Court—And let the record show that counsel for the defense commented on the failure of the defendant to take the stand.

Mr. D'Aloia—I don't think Mr. Fisch means that, that he would have saved himself the trial of this indictment if he had taken the stand in this case, I don't think he means that—

The Court—If what the Prosecutor is saying is objectionable, it is perfectly proper to object to it, but if you are simply objecting for the purpose of interrupting his argument, don't do it.

Mr. D'Aloia—I think it is absolutely objectionable for the prosecutor to say to the jury if he had taken the stand in this case he would have saved himself the trial of this case. And, I submit, if the Court please, that the Prosecutor should not be permitted to misstate evidence in this case. The police testified that when the defendant was asked where he was on that night he said he took a walk on Broad street, or he may have gone to a moving picture show, that is the evidence.

The Court—I have told the jury two or three times and I will tell them again in my charge that they must be guided by their own recollection of the facts and not by the recollection of the Prosecutor or Mr. D'Aloia.

Mr. Fisch—Mr. D'Aloia asks why the defendant was not put on trial and convicted of the Black robbery and evidence of that conviction produced on this trial. Mr. D'Aloia knows very well, as a matter of law, that if there had been a conviction of the defendant for the Black robbery that con-

viction would not have been admissible at this trial unless the defendant was called as a witness.

Mr. D'Aloia—I ask the Court to instruct the jury that the Prosecutor's statement of the law is incorrect.

The Court—Inasmuch as you have asked for the instruction I will instruct the jury that the Prosecutor is correct.

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

Walter D. Van Riper, Judge.

The Court thereupon charged the jury as follows:

Van Riper, J.

Gentlemen of the jury: It is the duty of the Court to instruct the jury with reference to the principles of law governing the case. The principles of law, as charged to you by the Court, should be accepted by you as a correct statement of the law. Any statement of law, or any statement purporting to be the law, made by counsel either for the State or for the defense, inconsistent with any statement of law that the Court may make, must be disregarded by you.

You as the jury, however, are the sole judges of the facts, the weight and the sufficiency of the testimony, the credibility of the witnesses and the inferences to be drawn from the evidence.

If the Court, in its charge, refers to the testimony, it is not to be understood as finding any facts, but merely as elucidating or explaining the application of principles of the law. If the Court, in its reference to the testimony, errs in its statement of any testimony or if your recollection of the testimony disagrees with the Court's, you are to disregard the Court's recollection and rely upon

your own. If the Court refers to certain parts of the evidence, seemingly giving it particular emphasis, you are not to disregard other evidence which you may deem of equal or greater importance. It is your duty to consider and weigh all of the evidence and all of the pertinent proof bearing upon the question of the guilt of this defendant and the degree and character of the offense. Not only the evidence that is mentioned by the Court, but also all of the facts which may appear by the testimony and, in referring to the evidence I, of course, refer only to that evidence which has been sworn to by the witnesses. Questions which have been asked or ruled out or intimations, insinuations or parts of testimony which the Court has ordered stricken from the records, or statements of counsel, are not to be considered as evidence, and must be excluded from your mind. Statements of counsel on either side, or promises to connect evidence which are not fulfilled, are not evidence in the case. Your verdict can, therefore, lawfully and properly only be based on the testimony in the case before you. The law presumes that this defendant, like all defendants in criminal cases, is innocent. This presumption of innocence can only be overcome by evidence showing beyond a reasonable doubt the guilt of the defendant. The defendant is entitled to the benefit of the reasonable doubt, not only as to the commission and the nature of the offense, but also the degree of the offense. The State must also show all of the essential elements of the crime, and of the grade of the crime with which the defendant is charged. The burden of proving the guilt of the defendant beyond a reasonable doubt is upon the State and it does not shift from the shoulders of the State throughout the whole case; but, of course, all of the testimony may be considered by you in connection with the burden of proof that is on the State. In other words, the State has a perfect right to rely on evidence which it selects, if

it desires, introduced by the defense, the same as if introduced by the State itself.

During your examination prior to being accepted as jurors, all of you were asked and you heard much discussion with reference to the question of reasonable doubt. Reasonable doubt is a term often used, pretty well understood, but it is not easily defined. It is not a mere possible doubt, because everything connected with human affairs and depending on 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 of 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 burden of proof is upon the prosecution. If, upon such proof there be a reasonable doubt remaining, the defendant is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the facts to a reasonable and moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those bound to act conscientiously upon it. This we take to be proof beyond a reasonable doubt, because if the law should go further than this and require absolute certainty, it would exclude circumstantial evidence altogether. If, on the other hand, you are convinced beyond a reasonable doubt of the guilt of the defendant, then you should convict him.

In your examination prior to being accepted as jurors you also heard discussed the question of circumstantial evidence. This case depends on circumstantial evidence as differentiated from direct evidence. In other words, no witnesses are produced, and insofar as it has been determined by the evidence, there were no witnesses, who actually saw the crime committed.

The State relies for its proof upon evidence which is circumstantial in nature. A defendant may be con-

victed of the highest crime known to the law by circumstantial evidence, but the first inquiry in an issue resting upon circumstantial evidence is whether the facts sworn to are satisfactorily proved, which involves a consideration of the credibility and the accuracy of observation and memory of the witnesses by whom such facts are testified to, and in the next place, assuming that the facts sworn to by the witnesses are satisfactorily proven, then, the further inquiry arises whether or not the facts proved are explained or are explainable on any other rational conclusion than that the prisoner is the guilty person; whether the inference of guilt deduced in such facts is, in the judgment of the jurors, sufficiently strong to justify a conviction that the defendant is guilty; tested by the consideration whether the facts proved are capable of being reconciled with the hypothesis of innocence. Circumstantial evidence, cautiously dealt with, in conformity with the legal principles I have stated, is frequently the most satisfactory proof that jurors can rely upon.

Circumstantial evidence must be of such a character as to satisfy the jury of the defendant's guilt, and to exclude every other hypothesis to a moral certainty beyond a reasonable doubt; evidence creating a mere probability of guilt is not sufficient, much less is evidence which gives rise to a mere suspicion or conjecture of guilt.

Mere suspicion or probability, however strong, are not a sufficient basis for conviction.

If the circumstances make one inference just as reasonable as the other, the jury must give the defendant the benefit of the conclusion which is consistent with his innocence, and he must be acquitted.

This defendant is presented here upon an indictment returned by the Grand Jury of Essex County charging that he did on the 31st day of January, 1928, wilfully, feloniously and with malice aforethought, kill

and murder Edward C. Thompson. Of course, the mere fact that there is an indictment by the Grand Jury is no evidence against the defendant. The finding of an indictment is simply a necessary step which must be taken before the defendant can be put on trial.

The state contends, and its contention in this regard is supported by the evidence of a police officer of Bloomfield that the home of Mr. Thompson, the deceased, was entered by the forcing open of a window, the opening of a screen and the raising of a window through which someone entered Mr. Thompson's home.

The fact that entrance to Mr. Thompson's house had been gained by the opening of the screen and the forcing of a window at night time, while the house was in darkness; the further fact, as testified to, that a scuffle was heard in the house, followed by a shot, justifies the finding that the person who so entered the house entered it in an attempt to commit a burglary.

The law of our State governing a matter of these circumstances is 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 perpetrating or attempting to perpetrate any arson, burglary, rape or sodomy, shall be murder in the first degree."

The testimony is that Mr. Thompson, who was sitting upstairs with his wife, left the upper room and went downstairs into the kitchen. Because of the physical condition of Mrs. Thompson there is no testimony to show why he did this. The fact is established, however, that he did go into the kitchen, and Mrs. Wiley, who lives next door, says that she heard a scuffle. After that, she and Miss Richards testified as to having heard a shot fired. Almost immediately thereafter Mr. Thompson came out on his

front porch calling for help. It is uncontradicted that he had been shot at the time he came from his house and the following day, I think it was, he died as the result of the wound caused by this shot.

Upon this state of facts the jury is justified in finding that Mr. Thompson came to his death as the result of a bullet fired into his body by a person who had forced his way into the Thompson house in an attempt to commit burglary, and under the statute which I have just read to you, the person who fired this shot is guilty of murder in the first degree. Therefore, so far as this case is concerned, your verdict must be either one of not guilty or guilty of murder in the first degree. If the defendant is guilty at all he is guilty of first degree murder.

Now, what are the facts in this case? Of course, as I said to you before, my recital of the facts is merely my recollection of them and you are not bound by my recollection. It is your own recollection of the facts that you are to be guided by.

Miss Richards says that after hearing a shot she saw a man on the back porch of the Thompson home, that the upper part of his body was covered with something white, and that he either ran or walked through the rear yard in the direction of the garage. Some time afterwards there was found behind the garage white curtains which are in evidence here, and which have been identified by Mrs. Thompson as the curtains which were on her kitchen window, the window which had been opened.

Mr. Drury says that he saw a man come out from behind two houses facing on Leslie street and running across Leslie street into the lots on the other side. He cannot identify this defendant as the man whom he said he saw because he did not see his face. At one point in his testimony, as I recall it, he said the man was about the build of the defendant. At

another point he said that the man whom he saw running was an inch taller than the defendant.

The State has produced as a witness Rose Tiffany, who says that she is a married woman, but is now living away from her husband, and for some time had been living with this defendant in Newark, and one time under the name of Lopez. She says that while they were living in Canal street, during the month of January of this year, she saw under the mattress of the bed which was occcupied by the defendant, a nickel plated, black handled revolver; that the nickel on this revolver was dull. She further says that she saw the defendant on one ocasion clean the revolver and take out of it four cartridges which were afterwards replaced by him after he had finished cleaning it.

She says that on the night of the murder—at first on direct examination as I recall it, she said on the night of the murder—and on cross examination there was some confusion in her testimony as to whether or not it was on a Tuesday night, but the night to which she was referring, the defendant left his home in the neighborhood of six o'clock or later, and that when he left he had his gun in the front of his trousers. That he returned home that night about nine-thirty; that his eyes were blood-shot; that he told of having been chased by the police and throwing away the gun. She said he brushed and cleaned his overcoat and a day or two later cut it up and burned it in the stove. Ashes are produced which are testified to as coming from the stove, and the chemist says the ashes show the burning of clothes.

Rose Tiffany further says that on Wednesday morning she bought a newspaper and the defendant would not let her read it.

The witness Lindsley, a trolley conductor, identifies the defendant as the man who he said boarded his

trolley at the tube station on the night of January 31 at 6:04 P. M., as I recall the time, and says that the defendant left his car at Belmont avenue and Bloomfield avenue, at 6:25 P. M.

A pin has been introduced in evidence which was found at 82 Canal street where the defendant lived, and which Rose Tiffany says was given to her by the defendant.

Mr. Black says that this pin is a pin which was stolen from his home in Glen Ridge on January 2, of this year, I think, and that at the same time the pin was stolen, a 38 calibre Smith & Wesson, nickel plated, black handled revolver was stolen.

Right here, gentlemen, let me call your attention to the testimony in this case with reference to certain burglaries having been admitted to by this defendant. You are trying this defendant for the murder of Mr. Thompson. The fact that he may or may not have committed other crimes has nothing whatsoever to do with determining his guilt or innocence in this case.

The burglarizing of the Black home is material only so far as it concerns the ownership and possession of this revolver, to which I now revert. Mr. Black says that his revolver was dull in luster, that on January 1, 1926, he had fired one shot in the garden of his home, that he then extracted the empty shell and put the gun away with four bullets in it, and that it was loaded when it was stolen on January 2nd of this year.

Testimony has been produced to show that the bullet which Mr. Black fired on January 1, 1926, was dug up and a bullet was also found in Mr. Thompson's clothing at the hospital after he was shot. These two bullets have been examined by three men, all of whom qualified as experts on bullets and small fire arms. We have listened for two days to this testimony, most of it in great detail and certainly too voluminous and technical for me to recite here. The result of that

examination, however, has been that two of these experts produced by the State say that these two bullets are of the same make and that they were fired by the same gun. The third expert, produced by the defendant, says that he will not pass upon the question as to whether or not the same gun fired the two bullets.

In addition to Captain Jones, the defense produces Mrs. Michaels, the defendant's landlady, who says that on the day after the murder of Mr. Thompson the defendant visited her at her home on Greene street. She produces her rent book which shows, as I recall it, that her rent was paid on February 1st.

Now, gentlemen, as you know, the defendant did not take the stand. The defendant is competent but not compellable to be a witness in his own behalf, but his failure to do so raises no presumption of his guilt. However, if facts are testified to, which concern the acts of the defendant which he could by his oath deny, his failure to testify in his own behalf raises a strong presumption that he cannot truthfully deny them.

Now, gentlemen, the question which you must decide in this case is simply this: Did Boccadoro kill Thompson? And, of course, in deciding that question, you must consider all of the evidence in the case. Ask yourself questions with reference thereto. Ask yourselves the question was the gun which Rose Tiffany said Boccadoro had the gun which was taken from Mr. Black's house? Was Boccadoro the man on the trolley car, as testified to by Lindsley? Did he, Boccadoro, get off that trolley car at Bloomfield avenue and Belmont avenue? Did he burn his overcoat? Was the bullet which killed Thompson fired from the Black gun and did Boccadoro fire that shot? Ask yourselves, and decide for yourselves these questions. Decide them in your own minds, and if, after you have decided them, you have a reasonable doubt in your mind, as I have described to you, reasonable doubt,

as to the guilt of the defendant, then he should be acquitted. If, on the other hand, after you have considered and weighed all of the evidence in this case and decided the questions of fact in accordance with the principles of law, as I have attempted to lay them down, if then you are satisfied beyond a reasonable doubt as to his guilt, then you should convict him.

There is one other phase of this case to which I wish to direct your attention, and which so far has not been mentioned. The law of this state, as it now is, gives the jury the right, in cases where the defendant is found guilty of murder in the first degree, to fix one of two punishments, either death or life imprisonment. Under the law, any person who shall be convicted of murder in the first degree shall suffer one of these punishments, but the jury has the right to say which. If you should convict this defendant of murder in the first degree and as I said before, your verdict must be either guilty of murder in the first degree or not guilty—but, if you should convict, then you can denote by your verdict what the punishment shall be. If your verdict is simply guilty of murder in the first degree, then, the punishment will be death. If, however, you convict of murder in the first degree and wish the punishment to be life imprisonment instead of death, then your verdict will be guilty of murder in the first degree with a recommendation for life imprisonment, in which case this and no greater punishment can be imposed.

Gentlemen, I need not call your attention to the fact that this is an important case. It is an important case to the community and to the State as represented here; it is an important case to the defendant for he is on trial for his life and his liberty. It is an important case for the defendant and for organized society as represented here by the state. The fact that it is an important case would warrant that it receive from you

your most careful attention and consideration of all of the evidence in the case and of the law in the case charged to you by the Court.

This case has taken us all week to try, gentlemen. The Court wants to express to you appreciation of the time you have given and the patience which you have shown for four or five days in listening to this case and until this hour of the night.

Mr. Fisch—If your Honor please, I don't think there will be any objection to the jury taking with them the magnifying glasses.

Mr. D'Aloia—No, there is no objection.

(The jury retires.)

Thee Court—The requests to charge are denied except as charged.

Mr. D'Aloia—I pray a general exception and a specific exception to the refusal of the Court to charge each request as requested.

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

Walter D. Van Riper,
Judge.

DEFENDANT'S REQUESTS TO CHARGE

1. The mere fact that the defendant has been indicted by the Grand Jury raises no presumption against the defendant. It is a mere step in the cause and it is of no evidential value. (Denied, except as charged.)

2. The defendant is presumed to be innocent and this presumption exists, until it is overcome by proof offered on the part of the State, which satisfied you of the guilt of the defendant of the crime charged in the indictment in each and all of its elements, beyond a reasonable doubt. (Denied except as charged.)

Defendant's Requests to Charge

3. Insufficient evidence is in the eyes of the law no evidence. 108 N. E. R. 408. (Denied except as charged.)

4. The test of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from those facts. 33 N. E. R. S. 5. (Denied except as charged.)

5. If the circumstances, no matter how strong, can be reasonably reconciled with the theory that some other person may have done the act, the defendant should not be convicted and a verdict of guilt will be set aside as contrary to law. 8 R. C. L. 255. (Denied except as charged.)

6. Circumstantial evidence must be of such a character as to satisfy the jury of the defendant's guilt, and to exclude every other hypothesis to a moral certainty beyond a reasonable doubt; evidence creating a mere probability of guilt is not sufficient; much less is evidence which gives rise to a mere suspicion or conjecture of guilt. (Charged.)

7. Mere suspicion or probabilities, however strong, are not sufficient basis for a conviction. 179 Pac. 750. 15 A. L. R. 1043. (Charged.)

8. In order to convict on circumstantial evidence, it is held necessary, not only that the circumstances all concur to show that the defendant committed the crime but they all be inconsistent with any other rational conclusion. (Denied except as charged.)

9. If the circumstances can be reconciled with innocence, the inference of guilt is not sufficient. (Denied except as charged.)

10. If the presumption of the defendant's innocence is as reasonable as the inference of guilt, the defendant must be acquitted. (Denied except as charged.)

11. If the circumstances make one inference just as

reasonable as the other, the jury must give the defendant the benefit of the conclusion which is consistent with his innocence and he must be acquitted. (Charged.)

12. A possibility or a bare probability under the evidence is not sufficient and it is not enough if it merely creates a conjecture or suspicion. (Denied except as charged.)

13. If the facts give rise to several inferences some of which are consistent with the presumption of innocence than it can be said that the facts give rise to a mere suspicion, probability, speculation or food for thought and it is insufficient to raise an inference of guilt, the jury must acquit. (Denied except as charged.)

14. The failure of the defendant to take the stand does not of itself give rise to any presumption of guilt where there is no direct evidence to connect the defendant with the crime. 65 N. J. L. 31. (Denied.)

Certificate of Stenographers

ESSEX COUNTY COURT OF OYER AND TERMINER

State of New Jersey, vs. Anthony Boccadoro, alias Tony Lopez, alias Johnny Toronto.	On Indictment No. 115 for Murder

We, Joseph S. Fishkind and Harold T. Cook, official stenographers of the Essex County Court of Oyer and Terminer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by us at the trial of the above mentioned case, which trial was held before the Honorable Walter D. VanRiper, Presiding Judge of the Essex County Court of Oyer and Terminer in and for the County of Essex, and a jury, on Monday, April 23, 1928, Tuesday, April 24, 1928, Wednesday, April 25, 1928, Thursday, April 26, 1928, Friday, April 27, 1928 and Saturday, April 28, 1928.

Joseph S. Fishkind
Harold T. Cook

Dated:
Newark, N. J.,
July 20, 1928.

Certificate of Judge

ESSEX COUNTY COURT OF OYER AND TERMINER

State of New Jersey, vs. Anthony Boccadoro, alias Tony Lopez, alias Johnny Toronto.	On Indictment No. 115 for Murder

CERTIFICATE OF JUDGE

I, Walter D. VanRiper, presiding Judge of the Essex County Court of Oyer and Terminer and the Judge that presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause and that the same is returned by the plaintiff-in-error with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Walter D. VanRiper,
Judge.

Dated:
Newark, N. J.,
July 30, 1928.

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NEW JERSEY COURT OF ERRORS AND APPEALS

The State of New Jersey Defendant-in-Error, vs. Anthony Boccadoro, Plaintiff-in-Error.	In Error

10 **ASSIGNMENTS OF ERRORS.**

Afterwards, to wit, on the 9th day of June, 1928, before our said Court of Errors and Appeals, in the last resort in all causes comes the said Anthony Boccadoro by J. Victor D'Aloia, his counsel, and says that in the record and proceedings aforesaid and also in the matters recited and contained in said bill of exceptions and also in giving the judgment aforesaid, there is manifest error in this, to wit:

20 1. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously admitted in evidence an alleged conversation between the plaintiff-in-error and the witness, William F. Gannon, a police officer, as follows:

> " '***I will tell it to you, I will tell everything, you got me right.' We then questioned him about where he obtained this and he said he had obtained them from jobs. * * * As a result of a talk about
30 that clothing and the signs of removing of certain marks and a pencil, a gold pencil and a gold fountain pen found on the defendant's person, he admitted that he had done numerous jobs. * * * I asked the defendant, 'What is your racket,' meaning by that— * * * He said he was a prowler. 'What do you mean by prowler?' 'Oh,' he said, 'a housebreaker—' * * * He said he was a house-

breaker and I asked him his system of working, and he told me that he worked the suburban sections around Newark, going out early in the evening, right after dark, and that he would take a bus or trolley car and ride out. He did not know the names of the streets, but he knew the names of the towns, suburban towns as Elizabeth, Montclair, Bloomfield, Orange and East Orange, but he could not name the specific streets. In fact, sometimes he did not know what town he was in although he knew they were suburban towns of Newark. He said he would, as a rule, pick out what he thought was a one family house— * * * He said that he would try to pick out a one-family house from its appearance and build in a section where there were no fences between the houses, mostly lawns, and that he would pick out a house where there was no lights showing, some times between the hours of right after dark and eight or ten or eight or nine o'clock, something like that, and he would ring the bell when he found there was no light in the house, and other times he would just take a chance of finding an open window and if he could not find an open window he would jimmie a pantry window or toilet window and would then go immediately to the second floor of a house and open a window over the rear porch or the front porch, or near a tree, so in case anybody came in to frighten him he could make an easy get-away. I asked him how many jobs he did, 'Oh, plenty, you got five or ten on me in that bag.' 'What do you mean by plenty, one hundred?' 'Oh, no.' 'Seventy-five?' 'Oh, no.' 'Fifty?' 'Maybe thirty or forty.' That is the substance of the conversation, to the best of my recollection." (Case, p. 63-67.)

2. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to strike out the testimony of Frank E. Brex upon motion of counsel for the defendant. (Case, p. 189.)

3. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously admitted the testimony of the witness, David G. Black, over the objection of the plaintiff-in-error. (Testimony of David G. Black to be found Case p. 198.)

4. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to strike out the testimony of David G. Black, upon motion of counsel for the defense. (Case p. 208.)

5. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously admitted in evidence a certain maple leaf pin (Exhibit S-15) the alleged property of said witness, David G. Black. (Case, p. 75.)

6. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously admitted in evidence certain bullets (Exhibit S-26), the alleged property of said witness, David G. Black. (Case, p. 200.)

7. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously admitted in evidence a bullet (Exhibit S-30) alleged to have been fired into the ground on December 31st, 1925 and which was alleged to have been found at or near the house of the witness, David G. Black sometime in February, 1928. (Case p. 208.)

8. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously admitted in evidence the bullet (Exhibit S-2) alleged to have been found near the body of Edward C. Thompson. (Case, p. 24.)

9. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously admitted in evidence certain sections of revolver barrels admittedly different than the one alleged to have been used in the killing of Edward C. Thompson. (Exhibits S-31B, S-31C, S-31D.) (Case, pp. 230, 284.)

10. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously permitted expert testimony to show that the bullet which was alleged to have been fired into the ground on December 31st, 1925, and the bullet which was alleged to have caused the death of Edward C. Thompson were fired by one and the same pistol. (Testimony of witness Calvin Goddard, Case pp. 211, 276.) (Testimony of witness, Merton A. Robinson, Case p. 330.)

11. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously denied a motion made for the direction of a verdict of acquittal. (Case, pp. 15, 433.)

12. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to strike out the testimony of the witness, Rose Tiffany, upon motion of counsel for the defense. (Case, pp. 120, 438.)

13. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the

State of New Jersey and the said Anthony Boccadoro, erroneously charged the jury as follows:

> "Your verdict, can, therefore, lawfully and properly only be based on the testimony in the case before you." (Case, p. 444.)

14. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously charged the jury as follows:

> "In other words, the State has a perfect right to rely on evidence which it selects, if it desires, introduced by the defense, the same as if introduced by the State of itself." (Case, p. 444.)

15. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously charged the jury as follows:

> "However, if facts are testified to, which concern the acts of the defendant which he could by his oath deny, the failure to testify in his own behalf raises a strong presumption that he cannot truthfully deny them." (Case, p. 41.)

16. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously charged the jury as follows:

> "Now, gentlemen, the question which you must decide in this case is simply this: Did Boccadoro kill Thompson?" (Case, p. 451.)

17. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erron-

eously refused to charge the jury the following request to charge:

> "The mere fact that the defendant has been indicted by the Grand Jury raises no presumption against the defendant. It is a mere step in the cause and it is of no evidential value." (Case, p. 447.)

18. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

> "The defendant is presumed to be innocent and this presumption exists, until it is overcome by proof offered on the part of the State, which satisfied you of the guilt of the defendant of the crime charged in the indictment in each and all of its elements, beyond a reasonable doubt." (Case, p. 453.)

19. That the said Court before whom, &c., and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

> "Insufficient evidence is in the eyes of the law no evidence. 108 N. E. R. 408." (Case, p. 454.)

20. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

> "The test of circumstantial evidence is that there shall be positive proof of the facts from

which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from those facts. 33 N. E. R. 65." (Case, p. 454.)

21. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

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> "If the circumstances, no matter how strong, can be reasonably reconciled with the theory that some other person may have done the act, the defendant should not be convicted and a verdict of guilt will be set aside as contrary to law. R. C. L. 255." (Case, p. 454.)

22. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

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> "Circumstantial evidence must be of such a character as to satisfy the jury of the defendant's guilt, and to exclude every other hypothesis to a moral certainty beyond a reasonable doubt: evidence creating a mere probability of guilt is not sufficient; much less is evidence which gives rise to a mere suspicion or conjecture of guilt." (Case, p. 454.)

30

23. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

"Mere suspicion or probabilities, however strong, are not sufficient basis for a conviction. 179 Pac. 750 15 A. L. R. 1043." (Case, p. 454.)

24. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

> "In order to convict on circumstantial evidence, it is held necessary, not only that the circumstances all concur to show that the defendant committed the crime but they all be inconsistent with any other rational conclusion." (Case, p. 454.)

25. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

> "If the circumstances can be reconciled with innocence, the inference of guilt is not sufficient." (Case, p. 454.)

26. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

> "If the presumption of the defendant's innocence is as reasonable as the inference of guilt, the defendant must be acquitted." (Case, p. 454.)

27. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

"A possibility or a bare probability under the evidence is not sufficient and it is not enough if it merely creates a conjecture or suspicion." (Case, p. 455.)

28. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

> "If the facts give rise to several inferences some of which are consistent with the presumption of innocence then it can be said that the facts give rise to a mere suspicion, probability, speculation or food for thought and it is insufficient to raise an inference of guilt, the jury must acquit." (Case, p. 455.)

29. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Anthony Boccadoro, erroneously refused to charge the jury the following request to charge:

> "The failure of the defendant to take the stand does not of itself give rise to any presumption of guilt where there is no direct evidence to connect the defendant with the crime." (Case, p. 455.)

There are divers other errors in the record and proceedings aforesaid and in the giving of judgment and passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

Assignments of Errors

Wherefore, the said Anthony Boccadoro prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that he may be restored to all which he has lost by occasion thereof.

J. Victor D'Aloia,
Of Counsel for
Plaintiff-in-Error.

Service of copy of within assignments of error, is hereby acknowledged this 16th day of July, 1928.

Joseph L. Smith,
Prosecutor of the Pleas.

Reasons for Reversal

NEW JERSEY COURT OF ERRORS AND APPEALS

The State of New Jersey Defendant-in-Error, vs. Anthony Boccadoro, Plaintiff-in-Error.	In Error

REASONS FOR REVERSAL

And now comes the said Anthony Boccadoro, by J. Victor D'Aloia, his counsel, and says that in the record and proceedings aforesaid and also in the matters recited and contained in the said writ of exceptions and also in giving the verdict and judgment aforesaid, there is manifest error, and the said Anthony Boccadoro says that the said judgment should be reversed and assigns the following reasons or caues:

1. Because the Trial Court admitted in evidence an alleged conversation between the plaintiff-in-error and the witness, William F. Gannon, a police officer, as follows:

> " * * * 'I will tell it to you, I will tell everything, you got me right.' We then questioned him about where he obtained this and he said he had obtained them from jobs— * * * As a result of a talk about that clothing and the signs of removing of certain marks and a pencil, a gold pencil and a gold fountain pen found on the defendant's person, he admitted that he had done numerous jobs. * * * I asked the defendant, 'What is your racket,' meaning by that— * * * He said he was a

prowler. 'What do you mean by a prowler?' 'Oh,' he said, 'a housebreaker—' * * * He said he was a housebreaker and I asked him his system of working, and he told me that he worked the suburban sections around Newark, going out early in the evening, right after dark, and that he would take a bus or trolley car and ride out. He did not know the names of the streets, but he knew the names of the towns, suburban towns as Elizabeth, Montclair, Bloomfield, Orange and East Orange, but he could not name the specific streets. In fact, sometimes he did not know what town he was in although he knew they were suburban towns of Newark. He said he would, as a rule, pick out what he thought was a one family house— * * * He said that he would try to pick out a one family house from its appearance and build in a section where there were no fences between the houses, mostly lawns, and that he would pick out a house where there was no lights showing, some times between the hours of right after dark and eight or ten or eight or nine o'clock, something like that, and he would ring the bell when he found there was no light in the house, and other times he would just take a chance of finding an open window and if he could not find an open window he would jimmie a pantry window or toilet window and would then go immediately to the second floor of a house and open a window over the rear porch or the front porch, or near a tree, so in case anybody came in to frighten him he could make an easy get-away. I asked him how many jobs he did, 'Oh, plenty, you got five or ten on me in that bag.' 'What do you mean by plenty, one hundred?' 'Oh, no.' 'Seventy-five?' 'Oh, no.' 'Fifty?' 'Maybe thirty or forty.' That is

the substance of the conversation, to the best of my recollection. (Case, pp. 63, 67.)

2. Because the Trial Court refused to strike out the testimony of Frank E. Brex upon motion of counsel for the defendant. (Case, p. 189.)

3. Because the Trial Court improperly admitted the testimony of the witness, David G. Black over the objection of the plaintiff-in-error. (Case, p. 198.)

4. Because the Trial Court refused to strike out the testimony of David G. Black, upon motion of counsel for the defense. (Case, p. 208.)

5. Because the Trial Court admitted in evidence a certain maple leaf pin (Exhibit S-15) the alleged property of said witness, David G. Black. (Case, p. 75.)

6. Because the Trial Court admitted in evidence certain bullets (Exhibit S-26) the alleged property of said witness, David G. Black. (Case, p. 200.)

7. Beause the Trial Court admitted in evidence a bullet (Exhibit S-30) alleged to have been fired into the ground on December 1st, 1925, and which was alleged to have been found at or near the house of the witness, David G. Black sometime in February, 1928. (Case, p. 208.)

8. Because the Trial Court admitted in evidence the bullet (Exhibit S-2) alleged to have been found near the body of Edward C. Thompson. (Case, p. 61.)

9. Because the Trial Court admitted in evidence certain sections of revolver barrels (Exhibits S-31B, S-31C, S-31D) admittedly different than the one alleged to have been used in the killing of Edward C. Thompson. (Case, pp. 230, 284.)

10. Because the Trial Court permitted expert testimony to show that the bullet which was alleged to have been fired into the ground on December 31st, 1925 and the bullet which was alleged to have caused the death

of Edward C. Thompson were fired by one and the same pistol. (Case, pp. 211, 276, 330.)

11. Because the Trial Court denied a motion made for the direction of a verdict of acquittal. (Case, pp. 15, 433.)

12. Because the Trial Court refused to strike out the testimony of the witness, Rose Tiffany, upon motion of counsel for the defense. (Case, pp. 120, 438.)

13. Because the Trial Court improperly charged the jury as follows:

> "Your verdict, can, therefore, lawfully and properly only be based on the testimony in the case before you." (Case, p. 444.)

14. Because the Trial Court improperly charged the jury as follows:

> "In other words, the State has a perfect right to rely on evidence which it selects, if it desires, introduced by the defense, the same as if introduced by the State itself." (Case, p. 444.)

15. Because the Trial Court improperly charged the jury as follows:

> "However, if facts are testified to, which concern the acts of the defendant which he could by his oath deny, the failure to testify in his own behalf raises a strong presumption that he cannot truthfully deny them." (Case, p. 451.)

16. Because the Trial Court improperly charged the jury as follows:

> "Now, gentlemen, the question which you must decide in this case is simply this: Did Boccadoro kill Thompson?" (Case, p. 451.)

17. Because the Trial Court refused to charge the jury as follows:

Reasons for Reversal

"The mere fact that the defendant has been indicted by the Grand Jury raises no presumption against the defendant. It is a mere step in the cause and it is of no evidential value." (Case, p. 447.)

18. Because the Trial Court refused to charge the jury as follows:

"The defendant is presumed to be innocent and this presumption exists, until it is overcome by proof offered on the part of the State, which satisfied you of the guilt of the defendant of the crime charged in the indictment in each and all of its elements, beyond a reasonable doubt." (Case, p. 453.)

19. Because the Trial Court refused to charge the jury as follows:

"Insufficient evidence is in the eyes of the law no evidence. 108 N. E. R. 408." (Case, p. 454.)

20. Because the Trial Court refused to charge the jury as follows:

"The test of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from those facts. 33 N. E. R. 65." (Case, p. 454.)

21. Because the Trial Court refused to charge the jury as follows:

"If the circumstances, no matter how strong, can be reasonably reconciled with the theory that some other person may have done the act, the defendant should not be convicted and a verdict

of guilt will be set aside as contrary to law. 8 R. C. L. 255." (Case, p. 454.)

22. Because the Trial Court refused to charge the jury as follows:

> "Circumstantial evidence must be of such a character as to satisfy the jury of the defendant's guilt, and to exclude every other hypothesis to a moral certainty beyond a reasonable doubt; evidence creating a mere probability of guilt is not sufficient; much less is evidence which gives rise to a mere suspicion or conjecture of guilt." (Case, p. 454.)

23. Because the Trial Court refused to charge the jury as follows:

> "Mere suspicion or probabilities, however strong, are not sufficient basis for a conviction. 179 Pac. 750 15 A. L. R. 1043." (Case, p. 454.)

24. Because the Trial Court refused to charge the jury as follows:

> "In order to convict on circumstantial evidence, it is held necessary, not only that the circumstances all concur to show that the defendant committed the crime but they all be inconsistent with any other rational conclusion." (Case, p. 454.)

25. Because the Trial Court refused to charge the jury as follows:

> "If the circumstances can be reconciled with innocence, the inference of guilt is not sufficient." (Case, p. 454.)

26. Because the Trial Court refused to charge the jury as follows:

Reasons for Reversal

"If the presumption of the defendant's innocence is as reasonable as the inference of guilt, the defendant must be acquitted. (Case, p. 454.)

27. Because the Trial Court refused to charge the jury as follows:

"A possibility or a bare probability under the evidence is not sufficient and it is not enough if it merely creates a conjecture or suspicion." (Case, p. 455.)

28. Because the Trial Court refused to charge the jury as follows:

"If the facts give rise to several inferences some of which are consistent with the presumption of innocence then it can be said that the facts give rise to a mere suspicion, probability, speculation or food for thought and it is insufficient to raise an inference of guilt, the jury must acquit." (Case, p. 455.)

29. Because the Trial Court refused to charge the jury as follows:

"The failure of the defendant to take the stand does not of itself give rise to any presumption of guilt where there is no direct evidence to connect the defendant with the crime." (Case, p. 455.)

30. Because the verdict was against the weight of the evidence and contrary to law.

Wherefore, because the aforesaid reasons or some of them constitute error prejudicial to the said Anthony Boccadoro, the plaintiff-in-error, and he prays that the said judgment and sentence be reversed and annulled and altogether held for nothing, and that he may be re-

stored to all things which he has lost by occasion thereof.

J. Victor D'Aloia,
Of Counsel for
Plaintiff-in-Error.

Service of copy of within reasons for reversal, is hereby acknowledged this 16th day of July, 1928.

Joseph L. Smith,
Prosecutor of the Pleas.

50 OCT.1.1928

New Jersey Court of Errors and Appeals

State of New Jersey, Defendant-in-Error, vs. Anthony Boccadoro, Plaintiff-in-Error.	In Error to the Court of Oyer and Terminer

BRIEF OF PLAINTIFF-IN-ERROR

STATEMENT

The plaintiff-in-error, Anthony Boccadoro, was indicted and tried for having killed and murdered one Edward C. Thompson in Bloomfield, New Jersey, on January 31st, 1928, and was found guilty of murder in the first degree with a recommendation of life imprisonment. He sued out a writ of error in this Court to review the judgment and conviction in the Essex County Court of Oyer and Terminer.

This case is brought up for review under Sections 136, 137 and 137a of the Criminal Procedure Act, and under Assignments of Error and Reasons for Reversal, as set forth in said sections.

The argument is divided into three sub-divisions.

The first under Point One, brings up for review the refusal of the trial court to direct a verdict of acquittal at the close of the State's case and also that the verdict is against the weight of the evidence.

The second, Point Two, brings up for review assignments of error and reasons for reversal addressed to errors of the trial court in its admission and rejection of evidence at the trial.

The third sub-division of the argument, Point Three, will cover the assignments of error and reasons for reversal addressed to errors of the trial court in its charge to the jury and the refusal to charge as requested.

POINT ONE

A VERDICT OF ACQUITTAL SHOULD HAVE BEEN DIRECTED BY THE COURT AT THE CLOSE OF THE STATE'S CASE: THE VERDICT IS AGAINST THE WEIGHT OF THE EVIDENCE. (Assignment of Error 11; Reason for Reversal 11 and 30.)

A motion for a direction of a verdict of acquittal was made out of the regular order, with the permission of the trial court and is found on page 433 of the State of the Case. The State in its opening conceded that there was no direct evidence in the case and that it depended wholly upon circumstantial evidence in its endeavor to prove the guilt of the accused.

A summary of the evidence produced before the jury by the State at the close of its case is as follows:

John J. Bracken explained two diagrams showing the locality and building (Exhibit S-1), known as 191 Ampere Parkway, Bloomfield, New Jersey. (Testimony appears case page 17.)

Dr. Harrison S. Martland testified that he performed an autopsy and was given a bullet by some police officer, which might have caused the wound

which brought about death. (Testimony appears case, page 21.)

Nicholas G. Kaufman testified as to photographs showing different parts of the locality in and around the Thompsor home. (Exhibits S-3, S-4, S-5, S-6, S-7, S-8, S-9 and S-10.) (Testimony appears case, page 25.)

Blanche Thompson, the widow of the deceased, described the happenings at her home immediately before and after her husband was shot. (Testimony appears case, page 30.)

Claire J. Richards testified that she was coming out of her house. She heard some noise which sounded like a muffled report of a gun and she saw a figure, which she thought was a boy, with a white sweater on, moving slowly from the rear of the Thompson home towards the garage, located in the back. This witness also testified that she heard the deceased say he was shot. She then ran back for her father and together they went to the house next to the Thompson home, on the porch of which the injured man was lying and she telephoned for the police. (Testimony appears case, page 35.)

Charles A. Richards testified that he saw the wounded man lying on the porch of the Wiley home and described the condition of the wounded man; he instructed his daughter to telephone for the police, which she did; that the police later came and the injured man was taken to the hospital in an ambulance. (Testimony appears case, page 42.)

George Sanger testified that he lived two (2) doors away from Thompson; that on the evening of January 31st, 1928, he was in his cellar fixing the furnace when he was summoned to the porch next door where Mr. Thompson was lying. States further that he went to his house and telephoned for the police. He fixes the time as a little before or after 8 o'clock in the evening. (Testimony appears case, page 45.)

Marion Wiley testified she lived next door to the Thompson home. On the evening of January 31st, 1928, she was in her dining room and heard confusion and noise in the kitchen of the Thompson house. There was no light there. The next thing that attracted her attention was Mr. Thompson standing on her front porch crying for help. She saw Mr. Thompson running from his porch to hers; saw him running up the front steps of the porch. He opened the door and staggered in. She then went out to get some help; there was no man in the house. She went to the front door and went out to the house next door to call Mr. Sanger. (Testimony appears case, page 48.)

Arthur Drury testified that he lived on Abbington Avenue opposite Leslie Street; that on January 31st, 1928, about 8 o'clock he was sitting in the sun parlor of his house facing Leslie Street and saw a man run across the road of Leslie Street to Warwick Street. He came from between two garages in the rear of the Thompson house and was running. He described the clothing the man wore and said that he did not see his face. That when he saw the accused at Police Headquarters

he could not recognize him as the man who ran across the road. At the trial he stated that the accused **was not the man**; that the man he saw running was taller than the accused. (Testimony appears case, page 52.)

Arthur J. Billingham testified that he was a police officer, connected with the Bloomfield Police Department; that on the evening of January 31st, 1928, he went to the Thompson home in answer to a call which came in at 8:01 P. M. He was in the company of three (3) other officers and a Lieutenant; that he found Mr. Thompson lying on the porch of the house next door and assisted in taking Mr. Thompson to the Mountainside Hospital; that while the injured man was being undressed, the witness found a bullet (Exhibit S-2) in the emergency room lying beside Thompson. (Testimony appears case, page 58.)

William F. Gannon testified he was a detective connected with the Newark Police Department; that he arrested the accused in Brooklyn on February 3rd, 1928, and found him in possession of certain goods alleged to have been stolen; that he had a conversation with the accused at Brooklyn Police Headquarters, during which alleged admissions were made by the accused of various crimes (other than the crime charged in the indictment). Further stated that he had other conversations with the accused in Newark about the defendant's whereabouts on the evening of January 31st, 1928, and his conduct before and after that date; that on February 4th, 1928, he went to the premises where the accused had lived, 82 Canal Street, and

there found a 38 calibre automatic pistol; a black leather wallet, a newspaper together with some jewelry. He identified a maple leaf enameled pin, found there, (Exhibit S-15) and some photographs showing parts of premises known as 82 Canal Street, Newark, New Jersey. He stated that he removed ashes from the stove on the premises and turned them over to the County Chemist. He testified that at no time did the accused admit to him or to any one in his presence that he (the accused) knew anything about the shooting of Thompson. (Testimony appears case, page 62.)

Rose Tiffany testified that she knew the accused; that she had come to Newark with him sometime in September, 1927, from Lawrence, Massachusetts, stopping at New York for a short time. She mentioned various addresses in Newark, at which she had lived with the accused during the months of November, December and January. She identified the maple leaf pin, Exhibit S-15. She said it was given to her by the accused and he said that he had found it. She stated further that sometime in January she saw the defendant cleaning a "silver-plated" black-handled revolver. She saw four loaded shells in the possession of the accused. She further stated that on a Tuesday night, during January, 1928, the accused had left the house about twenty minutes of seven in the evening and that shortly before he left, she saw the accused in the possession of a pistol, resembling the one she saw him clean. She does not recall what particular Tuesday night it was, but she states that upon the accused's return shortly after nine o'clock, his eyes seemed blood-

shot and he related to her that he had a running fight with the police; that he had been chased for more than three miles; that shots had been fired at him and he had fired back and that he had thrown his pistol in a vacant lot; that then an argument had ensued about her child after which they had retired. That a day or two before she was taken in custody she became frightened at a description that appeared in a newspaper and that fearing that the accused might be arrested and charged with a serious crime, she suggested that he rid himself of any clothing which resembled that mentioned in the description. Thereupon the accused cut out some lining of a dark overcoat, which he then burned in the stove. She does not know what Tuesday night the accused went out (Testimony appears case, page 84).

Carl Lindsley testified that he was an operator of a trolley car employed by the Public Service Railway Company; that on February 13th, 1928, Shippen, a police officer, came to the Montclair Car House and showed him some photographs. Subsequent thereto, he went to the Newark Police Headquarters, where he saw the accused; that he was almost positive the accused had been a passenger on his car some ten days or two weeks before; that he was not sure whether it was a Monday or a Tuesday night; that he saw the accused at Police Headquarters a second time and that he recognized him, as having been a passenger on his car some two weeks before, getting on his car at 6:04 P. M. at the Hudson Tubes and having alighted from his car at the corner of Belmont and Bloomfield Avenues, Newark, at 6:25 P. M. He

further testified that this was on either a Monday or a Tuesday night, until he saw some records and he then concluded therefrom that it was Tuesday, January 31st, 1928. (Testimony appears case, page 154.)

Albert E. Edel testified that he was a County Chemist; that he analyzed some ashes which had been given to him by the Police and found traces of material of textile nature, including some cotton and small pieces of stiff material, such as "we find in the lining of a coat" (Exhibit S-22) and other materials. (Testimony appears case page 169.)

Frank E. Brex testified that he was Deputy Chief of Police of the City of Newark; that he had various alleged conversations with the accused at Police Headquarters some of them in the presence of the witness Rose Tiffany; that the accused was kept at Police Headquarters for over a month and questioned from time to time, but at no time did the accused admit that he knew anything about the killing of Thompson at Bloomfield, on January 31st, 1928. (Testimony appears case, page 174.)

Joseph Linarducci testified that he was a Prosecutor's Detective; that on February 8th, 1928, at Newark Police Headquarters, he had a conversation with the accused who told him that he could not remember exactly where he was on the evening on Tuesday, January 31st, 1928, but probably had taken a walk along Broad Street, Newark, and probably had gone to the movies. That he was

present when the accused had been called yellow by Deputy Chief of Police Brex and had heard the accused resent that imputation and to prove that he was not yellow, the accused offered to jump out of the window; that many epithets had been used by the Chief of Police towards the accused, but at no time did the accused admit that he knew anything about the Thompson killing or that he was anywhere near the Thompson home on the evening of Tuesday, January 31st, 1928. (Testimony appears case, page 190.)

Nicholas G. Kaufman (recalled) identified certain photographs of premises 82 Canal Street, Newark, New Jersey. (Testimony appears case, page 194.)

David G. Black testified that he lived at 142 Midland Avenue, Glenridge, New Jersey; that on January 2nd, 1928, his house was burglarized and he described the condition he found the house in when he returned; he identified the maple leaf pin (Exhibit S-15) as having been the property of his wife and stated that it was in his house on January 2nd, 1928; he stated that on January 2nd, 1928, a pistol, which he had had for thirty-five years had been taken; he described it as a nickel-plated, black handled 38 calibre Smith and Wesson revolver, five shot, hammerless, with a safety catch; that he had fired that pistol on New Year's Eve, 1925-1926, and had put it back in its holster in his room where he remembers it was on January 2nd, 1928. He also pointed out to the police the spot where he had fired a shot on New Year's Eve, 1925-1926; that the police had excavated

around that spot, in February, 1928, and had found what purported to be a bullet (Exhibit S-30). (Testimony appears case, page 197.)

Clifford Shippen testified that he was a Lieutenant of the Bloomfield Police Department; that on January 31st, 1928, he went to the Thompson home at 8:05 P. M. That he removed Mr. Thompson to the hospital and made an examination about 8:25 of the rear of the Thompson house; that he found the rear pantry window had been broken open; that the screen (Exhibit S-13) had been jimmied and thrown to the ground; that there was snow on the ground and that foot-prints appeared to lead from the rear of the Thompson house and the Wiley house to the rear of the second house on Leslie Street; that he found a lace curtain and curtain rods along the route of the footprints, (Exhibit S-11). (Testimony appears case, page 209.)

Calvin Goddard testified that he was a ballistic expert; that he had made an examination of Exhibit S-2, the alleged fatal bullet and Exhibit S-30, the bullet which had been excavated from the flower bed of the Black house in Glenridge and that in his opinion both bullets were fired from the same pistol (Testimony appears case, page 211.)

Charles F. Jensen testified that he was a Captain of the Bloomfield Police Department; that he had gone to the home of Mr. Black and had dug in front of the house and had found the alleged bullet, which he identified, Exhibit S-30. He further testified that he gave the bullet to either the witness Linarducci or the witness Gannon. (Testimony appears case, page 309.)

Joseph Linarducci (recalled) testified that he had been present when the alleged bullet was dug up in front of the Black house on February 12th, 1928; that he had taken possession of it, receiving it from Captain Jensen and subsequently on March 7th, 1928, had turned that bullet (Exhibit S-30) and the fatal bullet (Exhibit S-2) over to the witness Goddard with instructions to look them over and tell what he could about them. He further testified that he had submitted the two bullets to a Mr. Foster, a fire-arms expert, and had sent them to the Winchester people in New Haven to be examined by a Mr. Robinson, another fire-arms expert. (Testimony appears case, page 311.)

Merton A. Robinson testified that he was a ballistic engineer; that he had examined both bullets (Exhibits S-2 and S-30) on February 18th, 1928, at New Haven, and that he could not say, definitely, at that time, whether they had been fired by the same gun. (Case, page 347.) That he had made a subsequent examination during the night before the day he appeared on the stand, which examination lasted until three o'clock in the morning; that as a result of the latter examination he ventured an opinion that the two bullets had been fired with the same pistol. He also testified that had he been given the pistol the examine, his opinion would be more certain. (Testimony appears case, page 346.)

Nowhere in the evidence does it appear that the accused was at the scene of the crime; this fact is essential to his conviction and it must be established beyond a reasonable doubt.

State vs. Sherlock 60 N. J. L. 31.

The following diagram shows a summary of the uncertain facts and unwarranted inferences in the State's case.

" Exhibit S 15 "
(Maple Leaf Pin
In custody of sergeant-at-arms
By stipulation)

Unwarranted Inferences	Testimony
(a) Accused committed burglary on January 2nd, 1928, at Glenridge, N. J. and ransacked the house of David G. Black. (No evidence of this.)	Rose Tiffany testified the maple leaf pin was given to her by the accused early in January and he told her he had found it. This is uncontradicted. (Case, page 102, l. 20.)
(b) Accused took from that Glenridge house on January 2nd, 1928, a revolver described by Mr. Black as a Smith and Wesson, 38 calibre nickel-plated hammerless 5 shot safety catch black-handled pistol. (No evidence of this.)	Rose Tiffany describes revolver which she saw in the accused's possession on one or two occasions in January, 1928. (Case, page 105, l. 32.)
(c) Accused had Mr. Black's revolver on the night of January 31st, 1928, at Bloomfield, at the Thompson residence. (No evidence to support this.)	She describes it as a silver or nickel-plated, dull and with black handle. (Case, page 105, l. 32.)
(d) Accused was attempting to commit burglary at the Thompson house on January 31st, 1928, at 8 P. M. (No evidence to support this.)	Carl Lindsley, trolley operator, testified that the accused boarded his car at 6:04 P.M. on a night 10 days or two weeks before Feb. 13th, 1928, and after

consulting records he concluded it as Tuesday, January 31st, 1928. (Case, page 168, l. 6.) Accused alighted at 6:25 P. M. at the corner of Bloomfield and Belmont Avenues in the City of Newark.

(e) Accused shot Thompson with Black's revolver on January 31st, 1928, at 8 P. M. while perpertrating a burglary at the Thompson residence. (No evidence to support this.)

Rose Tiffany testified that on a Tuesday night in January, 1928, the accused left the house, 82 Canal Street, Newark, at 20 minutes of 7 in the evening and returned sometime after 9 o'clock. (Case, page 109, l. 32.)

(f) Accused shot Thompson with Mr. Black's revolver. (No evidence of this.)

Arthur Drury testified that the accused was not the man he saw coming from the rear of the Thompson house at about 8 P. M. on Tuesday, January 31st, 1928. (Case, page 56, l. 6; case, page 57, l. 34.)

It appears uncontradicted that the enameled maple leaf pin Exhibit S-15, was found by the accused and given by him to the witness, Rose Tiffany. This fact alone does not warrant the inference that the accused committed a burglary on

the 2nd of January, 1928, in the Town of Glenridge, at the house of Mr. David G. Black. Nor does it warrant the further inference that, while committing the burglary on January 2nd, 1928, the accused took a pistol from the Glenridge house, described by the witness David G. Black. (Case, page 102, l. 20.)

Every visitor to Canada for the past quarter of a century has been able to buy an enameled maple leaf pin, such as the one in evidence, as a souvenir of his visit to the Dominion. The maple leaf represents Canada. There are possibly millions of them in existence. The one in evidence has no particular identification mark. It is of the common variety.

Simply because Rose Tiffany saw the accused in possession of what she described to be a silver or nickel-plated, black-handled revolver, sometime during the month of January, 1928, does not warrant the inference that that weapon was the one which had been owned and possessed by the witness, David G. Black, and which was found missing by him from his house in Glenridge on January 2nd, 1928. (Case, page 105, l. 32.) There exist hundreds of thousands of such weapons.

The identification by Carl Lindsley the operator of the trolley car, who on February 13th, 1928, remembered that the accused had boarded his car on a Monday or Tuesday night, some 10 days or 2 weeks before at 6:04 P. M. at the Hudson Tubes Station, Newark, and alighted therefrom at 6:25 P. M. at the corner of Belmont and Bloomfield

Avenues in the City of Newark does not warrant the inference that the accused was at the Thompson residence, 191 Ampere Parkway, in the Town of Bloomfield, at 8 P. M., on January 31st, 1928. The hour mentioned by the trolley operator is a rush hour; the identification is unreliable and proves nothing. (Case, page 108.)

Rose Tiffany's account of what happened on a Tuesday evening in the month of January, 1928, when the accused is alleged to have left the house about 7 P. M., returning a little after 9 P. M., and stating to her that he had had a pistol duel with the police and had been "chased by the cops", if true, does not tend in any way to connect the accused with what is alleged to have occurred at the Thompson residence at 8 P. M. on Tuesday evening, January 31st, 1928. (Case, page 109, l. 34; also pp. 110 to 115, inclusive.)

Admitting for the sake of this argument that the fatal bullet (Exhibit S-2) and the alleged bullet (Exhibit S-30), dug up by the police from the flower bed at the residence of David G. Black in Glenridge, were fired by the same pistol, there is no evidence that that particular weapon was ever in the possession of the accused.

That the accused was not at the Thompson residence on January 31st, 1928, about 8 P. M., is positively established by the testimony of Arthur Drury, a witness for the state, (Case, page 56, l. 6; Case, page 57, l. 34), who definitely states that the accused was not the man he saw coming from the rear of the Thompson residence at the time Thompson was shot.

The testimony of Rose Tiffany (Case, pp. 112 to 130) wherein she stated that the accused had, at her suggestion, burned the part of a lining of a black coat, is easily explained. It is admitted that the police were looking for the accused for several months and it appears from her testimony that, when she read of a description in a newspaper that might fit the accused, she became frightened and suggested to him to get rid of any clothing which might resemble the clothing described in the newspaper article. She was the one who was afraid that the accused might be arrested and charged with the crime she had read about in the newspaper and she suggested that he take no chances. The law of self preservation is the first law of nature and there is nothing extraordinary in what the accused did upon her suggestion. It may be a suspicious circumstance but it does not in any way tend to prove the crime charged in the indictment.

There is no evidence from which an inference of guilt may be drawn and the plaintiff-in-error was entitled to an acquittal as a matter of law. The proof does not overcome the presumption of innocence to which every one charged with crime is entitled; no criminal act by the accused, at or near the scene where Thompson was shot, is shown.

State vs. Bacheller, 89 N. J. L. 433.
State vs. Contarino, 92 N. J. L. 381.

It was held in the case of People vs. Galbo, 218 N. Y., 283, that

> "Insufficient evidence is in the eyes of the law no evidence."

and the legal meaning of "no evidence to go to the jury" is found quoted by Cardozo, C. J., in the Matter of Case 214, N. Y. 199,

> "When we say that there is no evidence to go to the jury, we do not mean literally none; but that there is none that ought reasonably to satisfy a jury that the fact sought to be proved is established."
>
> Jewel vs. Parr, 13 C. B. 916.

There are certain well established principles and rules of law which govern the courts concerning convictions based wholly upon circumstantial evidence and the general rule is that there shall be positive proof of the facts from which the inference of guilt is to be drawn and further that that inference is the only one which can be reasonably drawn from those facts.

People vs. Harris, 136 N. Y. 423; 33 N. E. Rep. 65.

The rule is laid down as follows:—

> "Again, if the circumstances, no matter how strong, can be reasonably reconciled with the theory that some other person may have done the act, the defendant should not be convicted, and a verdict of guilty will be set aside as contrary to law."
>
> 8 R. C. L. 255.

We find the rule in 16 Corpus Juris, at page 766. section 1570 to be this:

> "While absolute certainty is not essential yet the evidence must be of such a charac-

ter as to satisfy the jury of the defendant's guilt, and to exclude every other hypothesis to a moral certainty beyond a reasonable doubt; evidence creating a mere probability of guilt is not sufficient; much less is evidence which gives rise to a mere suspicion or conjecture of guilt."

Probabilities, suspicions, conjecture, however strong, are not sufficient basis for a conviction. The rule found in the decisions, applying to circumstantial evidence in criminal cases may be summarized as follows:

"In order to convict on circumstantial evidence, it is held necessary, not only that the circumstances all concur to show that the prisoner committed the crime, but that they all be inconsistent with any other rational conclusions."

Gardner vs. State, 196 Pac. 760; 15 A. L. R. 1043.

Unquestionably crime may be established by circumstantial evidence but it is uniformly held that the circumstantial evidence must go beyond mere suspicion and conjecture and where such evidence is solely relied upon for a conviction the circumstances tending to show guilt must be consistent the one with the other, and point so strongly to the guilt of the defendant as to exclude every other reasonable hypothesis except that of guilt.

State vs. Mullins, 55 Mont. 95; 173 Pac. 788.

State vs. Suitor, 114 Pac. 114.

State vs. Johnson, 19 Iowa, 230.

The evidence introduced by the state shows that this is not so in the case at bar. On the other hand, the evidence fails to incriminate the accused and as a matter of law is insufficient to show that he is guilty of the offense charged.

It was not only the right but the duty of the trial court to advise the jury to return a verdict of acquittal.

THE MOTION FOR A DIRECTION OF A VERDICT OF ACQUITTAL SHOULD HAVE BEEN GRANTED.

The witnesses for the defense testified as follows:

Ernestine Michael testified that she was the owner of premises 82 Canal Street, Newark, New Jersey, where the accused was in charge of the building for her; that in the daytime, on the afternoon of Wednesday, February 1st, 1928, the accused visited her at 75 Green Street, Newark, New Jersey, and that he remained at her house about ¾ of an hour. (Testimony appears case, page 318.) (Corroborated by Rose Tiffany, case, page 150.)

Bessie Verity testified that she saw the defendant go out while sitting at a window on different days but is not certain on what days. (Testimony appears case, page 325.)

William A. Jones testified that he was a firearms expert and that he had received bullets Exhibit S-2 and Exhibit S-30 in the month of Feb-

ruary, 1928, from a Mr. Foster and took photographs and examined them. He found markings on the bullets which differ; stated that by using two Smith and Wesson revolvers, a bullet fired by the one and a bullet fired by the other would show similar markings (Case, page 372, l. 1 to 6); that by reason of one of the bullets being mutilated a comparison and an examination was rather difficult; he stated that he would not say that the two (2) bullets were fired from the same gun (Case p. 421, l. 27); the reason given by the witnes was that important factors, i.e. condition of gun barrel, whether clean, foul, rusted or corroded, were unknown, as there was no pistol in evidence. (Testimony appears case, page 366.)

The state offered to prove, as appears in the opening of the prosecutor (Case, page 14, l. 12), that the accused had not left the house on February 1st, 1928, and the testimony of Ernestine Michael and Bessie Verity, witnesses called by the defense, established that the accused had not been in hiding after January 31st, 1928, because he went out on February 1st, 1928, and other days; this is corroborated by Rose Tiffany, a witness for the State. (Case, page 125, l. 1.)

The testimony of Captain Jones, a fire-arms expert called by the defense, tended to contradict the expert for the state and also to establish that an attempt had been made by the prosecution to obtain an opinion from him, with reference to the two bullets (Exhibits S-2 and S-30), which he found impossible to give by reason of the mutilated condition of one of them. The state's case was not strengthened by the testimony of the witnesses for he defense.

Weighing all of the evidence as it was presented to the jury, in its totality, this verdict should be set aside on the ground that it is against the weight of the evidence, it clearly appearing that it was the result of mistake, passion, prejudice or partiality.

State vs. Morehous, 117 Atl. 295.
State vs. Karpowitz, 98 N. J. L. 546.

A careful examination of the evidence fails to show with any degree of certainty where the accused was and what he did on Tuesday evening, January 31st, 1928. It certainly does not show he was anywhere near the Thompson home on that night at the time Thompson was shot. The trolley car operator, Carl Lindsley, is contradicted by Rose Tiffany as to time. He says the accused boarded his car at 6:04 P. M. and alighted therefrom at 6:25 P. M. but she says that the accused did not leave the house until 20 minutes of 7 P.M. Besides it is not established, by the evidence, that these two witnesses are referring to the same evening.

The witness Arthur Drury, called by the state, testified that the accused was not the man he saw running from the rear of the Thompson house immediately after the shooting. This positive declaration is not a circumstance. It is a fact. It's effect is to wipe out any semblance of a flimsy structure, built by the prosecution, based wholly upon far-fetching and disconnected circumstances. It has the same effect which would obtain if there were in evidence a dying declaration by the deceased, in which he had stated "I was shot by a tall negro."

The verdict is against the weight of the evidence and undoubtedly is the result of the testimony given by the witness Gannon (Case, page 62) and the witness Brex (Case, page 174), which consisted of nothing but proof of other crimes and evidence tending to degrade the accused, utterly barren of any proof tending to show guilt of the crime charged.

THE VERDICT SHOULD BE SET ASIDE AS AGAINST THE WEIGHT OF THE EVIDENCE.

POINT TWO

THE TRIAL COURT ERRED IN ADMITTING PROOF OF OTHER CRIMES. (Assignments of Error 1, 2, 3, 4, 5, 6, 7, 9 and 10; Reasons for Reversal 1, 2, 3, 4, 5, 6, 7, 9 and 10.)

The general rule is that when a man is put on trial for an offense he is to be convicted, if at all, by evidence which shows that he is guilty of that offense alone, and that under ordinary circumstances, proof of his guilt of one or a score of other offenses in his life time, wholly unconnected with that for which he is put upon his trial, must be excluded.

R. C. L. Vol. 8 page 198, Sec. 194.
Meyer vs. State, 59 N. J. L. 310.
Bullock vs. State, 65 N. J. L. 557.

The testimony of the witness Gannon, a detective, with reference to an alleged conversation at the Brooklyn Police Headquarters with the accused was illegal and inadmissible. (Case, page 62.) It tended to make it easier to believe the

accused guilty of the offense charged, because it improperly informed the jury that he had committed thirty to forty other crimes; it undoubtedly led to the conviction, upon the particular charge, by the proof of other acts in no way connected with it.

It compelled the plaintiff-in-error to meet charges of which the indictment gives him no information; it confused him in his defense and raised a variety of issues thus diverting the attention of the jury from the one immediately before it. It plainly showed the plaintiff-in-error to have been a law-breaker on numerous occasions and created a prejudice which indoubtedly caused an unjust verdict to be rendered against him. It did not tend to establish any of the constitutive elements of the crime charged against the plaintiff-in-error.

The criminal offenses enumerated by the wit ness Gannon were not linked together with the offense charged so as to make them competent proof against the accused. The only excuse that might be offered was the proximity of time to the offense charged in the indictment, but that alone does not necessarily make any one of the separate offenses enumerated by the witness a part of the offense charged in the indictment. Immediatenss is not the true test.
diateness is not the true test.

An examination of that testimony shows that there was no relation, either casual or logical, nor any natural connection between those offenses and the one charged in the indictment. The only effect of such evidence was its tendency to show the criminal character and predisposition of the ac-

cused and it was irrelevant, inadmissible and absolutely incompetent. It was plainly injurious to the accused.

State vs. Deliso, 75 N. J. L. 816.
State vs. Fisher, 96 N. J. L. 5.

THE OBJECTION WAS IMPROPERLY OVERRULED AND THE MOTION TO STRIKE OUT ERRONEOUSLY DENIED.

The testimony of the witness Frank E. Brex (Case, page 175) falls in the same category as that of Gannon. It consists of conclusions, epithets, treats, vaporings and what not. Through it all, there does not appear a syllable of testimony nor a scintilla of evidence tending to prove the crime charged in the indictment, and by the same rule laid down in the cases excluding evidence of other offenses, this improper evidence, tending to degrade the accused and to arouse the prejudice of the jury, should have been excluded. It tended to persuade the jury, by matters not judicially cognizable that the accused, for reasons other than those contained in legitimate evidence, was guilty of the offense charged in the indictment.

The accused had the right to be tried upon the issue made by the indictment and his plea of "not guilty"; all irrelevant and immaterial matters should have been excluded from the jury as the only effect was to injure the accused by clouding the issue and prejudicing the jury against him. This evidence cast a dark shadow on the accused and was of great presuasive force against him as it tended to draw away the minds of the jurors from the real

issue and excite prejudice and to mislead them. It was improperly admitted.

People vs. Sharp, 107 N. Y. 247.
People vs. Molineaux, 168 N. Y. 264.

The testimony of these witnesses, Gannon and Brex, was injected in the case by the prosecutor; it was incompetent evidence but it was certainly helpful in securing the verdict of "guilty" and the prosecutor should not be heard to say, after securing a conviction thereby that it was harmless.

This Court has not the insight into the deliberation of the jury room and the presumption is to be indulged, in favor of the accused, that whatever the prosecutor, over proper objection, has laid before the jury helped to bring about the result of a verdict of guilty.

Miller vs. Territory of Oklahoma, 143 Fed. 330.

The testimony of David G. Black (Case, page 197) proved a burglary committed at his residence on January 2nd, 1928, in the town of Glenridge. That was a separate and distinct offense and its admission as evidence against the accused was in nowise justified. No sufficient connection had been established between that criminal offense and the crime charged in the indictment to render it competent and admissible. The mere identification by the witness of Exhibit S-15, an ordinary cheap maple leaf pin, without any particular identification mark on it, the possession of which had been indirectly traced to the accused (Testimony of Rose Tiffany, case, pp. 91-92, also pp. 100-101-

102-103), without any other evidence does not justify the inference, which the jury were allowed to draw, that the accused had committed a burglary at his house on January 2nd, 1928, at 142 Midland Avenue, in the Town of Glenridge. Likewise it does not justify, without any further evidence, the second inference, based solely upon the first, that the accused had on that occasion, while committing that burglary, taken also a certain pistol, which was the property of the witness.

There was no justification or basis in fact for either of these inferences. No one can doubt that it was harmful to the accused.

THE MOTION TO STRIKE OUT THE TESTIMONY SHOULD HAVE BEEN GRANTED. (Case, page 208.)

POINT THREE

THE CHARGE OF THE TRIAL COURT WAS ERRONEOUS: THE TRIAL COURT SHOULD HAVE CHARGED AS REQUESTED: (Assignments of Error 15, 16 and 29; Reasons for Reversal 15, 16 and 29.)

There was no direct evidence connecting the defendant with the crime laid in the indictment. The testimony of Drury, a witness for the state, showed that the accused was not the man leaving the rear of the Thompson house immediately after the shooting on Tuesday, January 31st, 1928, at about 8 P. M. There was no fact testified to, concerning acts of the accused at or near the scene of the crime which he could have denied and his failure to testify in his own behalf did not

raise any presumption against him. It was prejudicial error for the Court to charge as follows:

> "However, if facts are testified to, which concern the acts of the defendant which he could by his oath deny, the failure to testify in his own behalf raises a strong presumption that he cannot truthfully deny them." (Case page 451, l. 18.)

The state's case did not prove any facts that the accused was called upon to deny.

Should he have denied that he did not burglarize the house of David G. Black on January 2nd, 1928, at Glenridge, when there is no proof that he did?

Should he have denied that he had stolen from that house, on January 2nd, 1928, a Smith & Wesson, 5 shot, hammerless, safety catch, nickel-plated black-handled pistol, when there was no proof that he had?

Should he have denied that he was at or near the Thompson home at Bloomfield, at 8 P. M. on January 31st 1928, when by the testimony of the witness Drury (Case, page 54, l. 35) the state proved he was not there?

Should he have denied that he shot Thompson when there is absolutely no proof that he did?

It was harmful and prejudicial to the accused to permit the prosecutor to comment unfavorably with reference to the failure of the accused to take the stand. (Case, page 441.)

The testimony in this case falls clearly within the rule laid down by our Supreme Court in an opinion by Chief Justice Depue, in the case of State vs. Wines, 65 N. J. L. 31, which holds that:

"Where there is no direct evidence to connect the defendant with the crime it is error to instruct that the defendant's failure to testify****created a natural and irresistible inference against him."

The request to charge was based directly on the Wines case, (supra) and the trial court should have charged as requested as follows:

> "The failure of the defendant to take the stand does not of itself give rise to any presumption of guilt where there is no direct evidence to connect the defendant with the crime." (Case page 455.)

THE REFUSAL OF THE TRIAL COURT TO CHARGE AS REQUESTED WAS PREJUDICIAL ERROR.

THE QUESTION SUBMITTED TO THE JURY BY THE TRIAL COURT, IN ITS CHARGE, WAS ERRONEOUS; IN THAT CONNECTION, THE TRIAL COURT SAID AS FOLLOWS:

> "Now, gentlemen, the question which you must decide in this case is simply this: Did Boccadoro kill Thompson?" (Case, page 451.)

That was not the question to be answered by the jury. The indictment charged a murder in the first degree and the evidence offered by the prosecution indicated that it was a killing committed while perpertrating the crime of burglary, which, by the statute, is murder in the first degree.

Therefore, the question was not "Did the ac-

cused kill Thompson?'', but rather, Did the accused kill Thompson while he, the accused, was perpertrating a burglary at the Thompson residence at 191 Ampere Parkway, Bloomfield, on the night of January 21st, 1928?

The question left to the jury by the Court was incomplete and did not fully state what they should have found before convicting the accused of murder in the first degree.

IT WAS HARMFUL AND PREJUDICIAL TO THE ACCUSED.

For the divers errors urged it is respectfully submitted that the judgment of the Essex County Court of Oyer and Terminer herein be reversed.

J. VICTOR D'ALOIA,
Of Counsel with Plaintiff-in-Error.

NEW JERSEY COURT OF ERRORS
AND APPEALS

THE STATE OF NEW JERSEY, *Defendant-in-Error* vs. ANTHONY BOCCADORO, *Plaintiff-in-Error*	ON ERROR TO THE COURT OF OYER AND TERMINER OF ESSEX COUNTY

BRIEF OF DEFENDANT-IN-ERROR

STATEMENT OF THE FACTS

The defendant, plaintiff-in-error herein, Anthony Boccadoro, alias Tony Lopez, alias Johnny Toronto, was indicted and tried for the murder of Edward C. Thompson, committed on the 31st day of January, 1928, in Bloomfield, N. J., and was found guilty of murder in the first degree with a recommendation of life imprisonment.

The case is brought up for review under sections 136, 137 and 137a of the Criminal Procedure Act.

ARGUMENT

The argument of plaintiff-in-error is divided into three points, and we will answer these arguments as they have been advanced by plaintiff-in-error.

Point I

Plaintiff-in-error argues that the verdict is against the weight of the evidence. The verdict is not against the weight of the evidence.

To justify the setting aside of a verdict as against the weight of the evidence, it must be so

clear as to give rise to an inference that it was the result of mistake, passion or prejudice.

State vs. Grace, 98 N. J. L. 341.

To determine whether the verdict is against the weight of the evidence, the court of review weighs the evidence in the same manner as upon a rule to show cause in a **Civil Case** where the reason assigned is that the verdict is against the weight of the evidence.

State v. Grace, 98 N. J. L. 341.

State v. Morehouse, 97 N. J. L. 285.

State v. Fisher, 97 N. J. L. 34.

That the jury could have reached a different conclusion, is not sufficient to set aside the verdict.

"The Court should not set a verdict aside, even although, in its opinion, the jury might, upon the evidence, have found otherwise."

Queen v. Jennings, 93 N. J. L. 353.

Knickerbocker Ice v. Anderson, 31 N. J. L. 333.

To classify evidence as direct or circumstantial is often misleading. It is true that in the case at bar there was no eye-witness to the murder, but the State proved a chain of facts and circumstances so logically linked one with the other that they lead to the clear conclusion that the defendant committed the crime in question and are not consistent with any theory of innocence.

A summary of the facts adduced at the trial supports this conclusion.

Due to the voluminous testimony taken in the trial of this cause, which lasted an entire week, it would be impossible to relate the facts in detail. Nothing less than the entire state of the case can

give a true version of the evidence adduced, and even that will fall short of reproducing the trial as seen from the jury box, because the jury had the opportunity to observe and hear the witnesses during the course of the trial, and drew such inferences as they were entitled to draw from the fact that the defendant, the one person who could have refuted the charges made against him, failed to take the stand and deny facts testified to concerning his acts, which he could have denied by his oath.

The murder in question was committed at about five minutes to eight on the evening of January 31, 1928, at the home of Edward C. Thompson, the deceased, at 191 Ampere Parkway, (corner of Abington Avenue) Bloomfield, New Jersey. On that evening Mr. Thompson was on the second floor of his house, watching Mrs. Thompson while she was ironing some clothes. Mrs. Thompson, the wife of the deceased, was totally deaf. (Case p. 35.) The entire house was in darkness except the room where Mrs. Thompson was ironing; in this room there was only the light of a desk lamp with a metal back, with the back towards the window, the light reflecting on the ironing board. From all appearances, from the exterior of the house, the house was in total darkness. There was no one in the house except Mr. and Mrs. Thompson.

From the expression on her husband's face, Mrs. Thompson believed that her son was returning home, and she went downstairs to the front door, and upon opening it discovered that there was no one there. On her way back to the second floor, she found Mr. Thompson coming from the second floor on his way downstairs. During all of this time the house was still in darkness as above described. (Case p. 30 and 31,) Undoubtedly Mrs. Thompson learned from the expression on

her husband's face, that the front door bell had sounded, although she could not hear it. When she was returning, after finding no one at the door, the deceased had evidently heard a noise on the first floor of the house, and this was no doubt his reason for going downstairs while Mrs. Thompson was returning from the front door.

There was a struggle in the kitchen on the first floor, which was heard by a neighbor who also heard the muffled sound of a shot. (Case p. 36, line 23.) Mrs. Thompson did not hear this because of her affliction. Subsequently, however, she saw blood spots on the kitchen table. (Case p. 32, line 28.)

The testimony shows that a pantry window, just off the kitchen, was forced open, the screen removed, and that the window is accessible from the back yard from the side cheek of the steps leading to the house. The screen was found in the rear yard, and a curtain which was identified as being the curtain fastened to the pantry window, and a piece of brass curtain rod from that window, were subsequently found between two garages in the rear of the Thompson house, at a place where it was testified that a man of the height and build of the defendant was running, (Case p. 209, line 21 etc.) and where, foot prints were found, in the snow, leading from the pantry window.

The witness, Claire J. Richards, testified that she saw someone at the rear entrance of the Thompson home, "with something white on, I did not know what it was." (Case p. 40, line 32) It is evident that the person who escaped by way of the pantry window, in his haste took the curtain and rod with him, the curtain covering the upper portion of his body, and that, when he arrived at

the place between the garages, where the curtain was found, he managed to disentangle the curtain and the rod from his person and discarded.

Immediately after the struggle in the kitchen Mr. Thompson was found on the front porch of his house, covered with blood and groaning. He was thereafter taken to a hospital where an examination disclosed that he had been shot through the abdomen, and he died the next morning. The bullet, which penetrated his body, was found between his body and his clothes. (Case p. 58.)

The evidence connecting the defendant with the murder may be summarized as follows:

The defendant was identified as being of the same height and build as the man seen running from the rear of the Thompson house, toward Leslie Street. Counsel for the defendant-appellant repeatedly states in his brief that the witness, Drury, who made this identification, said that the defendant was not the man. This is not a true statement of the facts. Drury's testimony shows that he did not see the face of the man who was running across the street, but that the defendant was of the same height as this man. (Case p. 57, line 3.) The testimony of Drury also shows that the man who was running from the scene of the crime wore a dark overcoat and a slouch hat. (Case p. 54 line 17.) The witness, Rose Tiffany, and the witness, Carl Lindsley, who positively identified the defendant, testified that he, the defendant, wore a dark blue coat and a slouch hat on the night of the murder. (Case p. 115, line 10-12; Case p. 163, line 20.)

At no time did the witness, Drury, testify that the defendant was not the man whom he saw running that night.

The witness, Carl Lindsley, also testified that the defendant was a passenger on a Bloomfield car, operated by the witness, on the night of the crime, and that the defendant alighted from the car at about 6.25 P. M., at Bloomfield and Belmont Avenues, in the Town of Bloomfield, which point is but a short distance from the Thompson home. (Case p. 155, line 8; p. 156, line 8-29.) The witness, Carl Lindsley, fortified his testimony and his recollection of the time, from time sheet records made by him. This was the only time Lindsley had made that trip in the course of 2 or 3 weeks. He would have occasion to remember it.

In reply to plaintiff in error's attempt to show discrepancy in the testimony of Rose Tiffany and the testimony of Lindsley, (Plaintiff in Error's Brief, p. 14) it must be noted that the testimony of Rose Tiffany concerning the time defendant left the house was uncertain, whereas the testimony of the trolley operator was accurate and definite, being checked by his time sheets. Furthermore, Rose stated to the police, in the presenc of defendant, that defendant left the house that night at about 6 or 6:30. (Case p. 179, l. 12.)

Carl Lindsley's testimony concerning accused's ride from Newark to the vicinity of the scene of the crime is definite as to date and time. His identification of the defendant was clear. He identified the accused both in picture and in person. He had very good reason to remember defendant's face. Accused was anxious to get on the car, and as the trolley did not stop at the place where accused was waiting for it, and necessitated accused's following the car for nearly a block, accused gave Lindsley a sarcastic look as he got on the car, and stood right behind the operator, Lindsley, during the trip. Lindsley looked back several times, always under the impression that

the accused was going to say something. It may have been a rush hour and hundreds may have gotten on and off the car, but the accused distinguished himself from all others by his conduct. (Case p. 155.)

Rose Tiffany testified that on the day of the murder, defendant left his house early in the evening, putting a gun down in front of his trousers. (Case p. 109, line 9 etc.) The evidence fixing the day is clear and free from doubt. Defendant and Rose Tiffany lived together as husband and wife. Rose Tiffany's child by her lawful husband lived in Massachusetts. They had made arrangements whereby Rose was to go to Massachusetts to bring her child to Newark. She was to go on Tuesday night, January 31, the night of the murder, on the midnight train. It was on this night that Rose saw Tony, the defendant, leave the house with his gun placed in his trousers, as above related. Case p. 108.)

Rose further testified that on the evening of the murder, when defendant left his home with the gun in his trousers, he wore a dark blue coat and a gray felt hat, known as a slouch hat. (Case p. 115, line 12.)

The circumstances attending the entry into the deceased's house, again coincide with the defendant's admitted methods of burglary. The house is located in the suburban section of Newark, in a community of one family houses. The house, from all appearances from the outside, was dark and no one was at home. It was entered through the pantry window and the escape was accomplished through the same way. Evidently the front door bell had been rung before the entry was effected. The defendant's method of operation were strikingly similar to the circumstance under which both

the house of one David G. Black, (To which reference will be later made) and the Thompson house were burglarized. On this point the uncontradicted and undisputed evidence is that the defendant, by his admission, "worked" the suburban sections around Newark, going out early in the evening, right after dark, and that he would take a bus or a trolley car and ride out. He would, as a rule, pick out a one-family house from its appearance, in a section where there were no fences between the houses, and he would pick out a house where there were no lights showing, sometime between the hours of eight and nine, and he would ring the bell, when he found there were no light in the house, and at other times he would take a chance of finding an open window, and if he could not find an open window he would jimmy a pantry or toilet window and would then go to the second floor and open a window over the front porch or the rear porch, or near a tree, so in case anybody came in to frighten him he could make an easy getaway. (Case p. 66 and 67.)

Defendant got back to his house the night of the murder between 9:15 and 9:30, which was earlier than usual. (Case p. 109, line 34).

He was asked by Rose, with whom he was living, to go to the station according to arrangements previously made. Refusing, he said, "If it was not for you and the damn kid, things would be different." (Case p. 112, line 30.) When asked what he meant by that, he said, that he had been chased by the police over back yards and fences for about three miles, and that the police had fired shots at him, (Case p. 113, line 8 etc.) that he had thrown his gun away in an empty lot. He did not have his gun with him when he got back to his house. His eyes were bloodshot. (Case p. 115, line 1.) After he got back home he took a

brush, was wetting it and brushing his coat with the wet brush. (Case p. 116, line 20.) Defendant did not sleep that night. He was moaning all night. (Case p. 20, line 1.)

The next morning Rose bought a Newark Morning Ledger. Defendant did not want Rose to read the paper, and took it away from her and put it behind the stove. He told her that he did not want her to read the paper because it contained a description of a man who had been "working" the different sections and that the subject of the description wore a dark blue coat like him and a felt hat, and that the description answered a short Italian fellow, (Case p. 123) and that the description sounded like him. On Wednesday, the day after the murder, defendant told Rose he did not want to be seen on the street. (Case p. 126, line 20). The following day Rose bought a Newark Evening News, wherein she read about the murder, and showed it to the defendant. On Thursday, two days after the murder, after being shown the newspaper accounts, defendant cut a part of the lining of his coat with a pair of manicuring scissors and burned it in the stove. (Case p. 128.) Then Rose went out of the room for a few minutes and when she came back she did not see any part of the coat, and never saw it thereafter. The following day defendant purchased a gray coat. Then the defendant and the woman Rose left Newark. Subsequently Rose was arrested in Brooklyn, and shortly thereafter the defendant was apprehended there. (Case p. 129 etc. p. 131.)

When the defendant was arrested, he gave a clear account of his whereabouts on the several night before and after the murder, but claimed not to know where he was on the night of the murder, and gave no explanation as to his whereabouts on that night. (Case p. 69 & 70.) Upon

being asked by the arresting officer about his blue coat, defendant denied that he had burned it, (Case p. 71, line 10.) and about fifteen or twenty days later he admitted having burned it, after being confronted by Rose, who told him that she had seen him cut it up.

Altho Rose says that she saw the defendant cut the lining of the coat, the testimony shows that she went out of the room and when she returned the coat was entirely gone. The state contends that the entire coat was burned by the defendant as it was never seen again. The ashes from the stove were recovered and upon being chemically and microscopically examined were found to contain material of textile nature and material used in linings of coats, known as buckram, or something of that kind. (Case page 170, line 15 etc.)

Defendant could have taken the stand and on his oath could have denied that he was in Mr. Thompson's back yard; that he ever burned his coat; that he took a trolley car and went to the vicinity of the Thompson house on that night. Defendant did not deny any one of these facts.

The state produced experts in the science of ballistics, Major Calvin Goddard and Mr. Merton A. Robinson, both of whom have undisputed high standing in their field, namely, the science of small firearms and munitions. Ballistics is a science requiring a highly technical knowledge of munition and firearms; the processes of their manufacture; the different types manufactured by various companies and at different times and periods; the peculiar markings and impressions left on bullets by defects, impurities, fouling, rusts, etc.; the distinctive characteristics of all makes and models of firearms and munition fired through them. It deals largely with the idnetification of

weapons, bullets, shells and powders. Both Major Goddard and Mr. Robinson are well known all over the world as authorities on the subject. (Case p. 215, line 32; p. 331, line 2; p. 217, line 4.)

Both of these men testified that the bullet which was recovered between Mr. Thompson's body and his clothes, was a Peters make, 38 calibre Smith and Wesson type. (Case p. 249, line 29.) and that it had been fired from a 38 calibre Smith and Wesson gun. (Case p. 253, line 22; p. 334, line 4).

The state contends that the fatal bullet was fired from a Smith and Wesson, 38 calibre, five shot, hammerless, safety, nickel-plated, black handled revolver owned by one David G. Black up to January 2, 1928, and stolen from his house on that day by the defendant.

Mr. Black lived in a two-and-one-half story, one family frame house at 142 Midland Avenue, Glen Ridge, N. J., a suburb of Newark, and adjacent to Bloomfield. (Case p. 197, line 18 etc.) In order to reach Glen Ridge from Newark, one must pass through Bloomfield. On January 2, 1928, while Mr. Black and his wife, the only occupants of the house, were away from home, his house was burglarized. When they left the house in the morning all the doors and windows were locked. When he returned home at 7:30 P. M. he found two windows opened and two unlocked on the second and third floors. This corresponds with the defendant's admitted method of operation. Mr. Black kept the above described revolver, together with a maple leaf pin and other jewelry, in a bureau drawer. This revolver, together with the maple leaf pin and other jewelry, were stolen from the said bureau drawer during Mr. Black's absence on January 2. Mr. Black had owned the gun for 35 years and at the time it was stolen it was loaded with four 38 calibre, Smith and Wesson

type cartridges, made by Peters Catridge Co., and there was one empty chamber. The bullet from the empty chamber had been fired into the garden of the Black home by Mr. Black on New Years Eve. 1926, in celebration of the New Year. (Case p. 199 to 201). The revolver had been loaded two years prior to the firing on New Years Eve of 1926 and during those two years the revolver had not been cleaned. (Case p. 204, line 21.) After said shot was fired, Mr. Black removed the empty shell, leaving the other four cartridges in the gun, and replaced the gun in his bureau drawer.

The state proved that this revolver had been loaded by Mr. Black from a package of Peters cartridges. Mr. Black still owned the package and the remaining cartridges, which were received in evidence. (S-26, Case p. 200, line 10 etc., p. 201, line 12.)

Major Goddard and Mr. Robinson, the ballistic experts, testified that the bullet in said box, ex. S-26, are Peters 38 calibre, of an old and obsolete type, with a peculiar canneluring, in that they have pointed teeth in the cannelure. (Case p. 241, line 10, p. 242, line 30) and that they are no longer manufactured. That the canneluring of each make of cartridge is distinctive and that, THE CANNELURE MARKINGS ON THE FATAL BULLET, ex. S-2, CORRESPOND EXACTLY WITH THE CANNELURE MARKINGS ON THE BULLETS TAKEN FROM THE PACKAGE, ex. S-26. (Case p. 248, line 30.) AND THAT BOTH BULLETS, THE FATAL BULLET AND THE BULLET FROM THE PACKAGE, ARE PETERS BULLETS OF THE SAME TYPE, WHICH TYPE IS OBSOLETE. (Case p. 249, line 30.) AND THAT, ex. S-30, THE BULLET WHICH HAD BEEN FIRED BY MR. BLACK INTO HIS GARDEN ON NEW YEARS EVE. AND WHICH WAS SUB-

SEQUENTLY DUG UP (Case p. 207, line 10) WAS A PETERS MAKE, OF THE SAME TYPE AND MANUFACTURE AS THE FATAL BULLET AND THE BULLETS REMAINING IN THE PACKAGE (Case p. 255, line 15), CONTAINING THE SAME CANNELURE MARKINGS.

As has been related above, Mr. Black's gun, together with the maple leaf pin and other jewelry, was stolen from his house on the night of January 2, 1928. The state contends that it was the defendant who, on January 2, 1928, entered the house of Mr. Black and stole the pin and the revolver from which the fatal bullet was fired. This is substantiated by the following evidence:

The defendant's admitted methods of operation coinside perfectly with the circumstances under which both the Black house and the Thompson house were burglarized. This has partly been discussed above in connection with the attempted burglary of the Thompson house. We may add to this, that defendant would generally seek a house without a fence around it. Neither Mr. Black's house, nor that of Mr. Thompson had a fence around it.

According to Rose's testimonay, on Monday night, January 2, 1928, the night on which New Years Eve was celebrated, and the night Mr. Black's house was burglarized, defendant went out at about 6 P. M. and got home late. (Case p. 99, line 15; p. 100, line 22.)

The second day after the night defendant went out, that is, the second day after Monday, January 2, when the Black house was burglarized and the pin and revolver were stolen, defendant gave Rose Tiffany, the woman he lived with, the Maple Leaf pin which was definitely and positively identified by Black as **the** pin stolen from his home. (Case

p. 101, line 29). And no rational explanation was offered or attempted to be offered by defendant as to where he got the pin which he gave to Rose.

A few days after the Black burglary, defendant and the said Rose Tiffany moved to 82 Canal Street, Newark. A few days after they had moved there Rose Tiffany saw a gun under the mattress in their home. (p. 105, line 10.)

Rose Tiffany described said gun as a silver or nickel plated gun, with a black handle, kind of dull. Two days after defendant and Rose Tiffany moved to Canal Street Rose saw defendant handle that gun. She had never seen that gun before the date of the Black Robbery, January 2, 1928. Rose also saw the defendant clean the gun. She observed that he took the bullets out, placed them on the table and washed the gun. **There were four bullets** and when **the bullets were replaced in the gun by the defendant, there was one space in the gun without any bullet in it.** (Case p. 106, 107, 108.)

It is argued by plaintiff in error that there may be any number of such pins as was stolen from Mr. Black's house in the country. Granting that to be so, it is not a mere co-incidence that the defendant gave this pin, which was unequivocally identified by Mr. Black as the one stolen from his house, to Rose Tiffany two days **after** the Black robbery, giving an evasive explanation as to where he got the pin, and winding it up with the statement that he found it, **and found it in his pocket.** It was very significant that this pin was found in rooms which had been abandoned by the defendant in Newark, not where an ornamental pin would be expected to be found, but carefully hidden underneath the room once occupied by the defendant and Rose Tiffany, behind a partition, between the walls, between the plaster and boards. (Case pp. 74 & 75.)

Was it again merely a chance occurrence that this pin, identified by Mr. Black as the one stolen from his house on January 2, 1928, and a gun of exactly the same description as the Black gun, and containing the same number of cartridges as the Black gun contained at the time it was stolen, were both, for the first time, seen in defendant's possession two or three days **after** the Black robbery? Mr. Black positively identified the pin as his pin, he having purchased it for his wife 20 years ago; and there is no evidence or circumstance contradicting his identification. There was, therefore, ample proof showing that the pin in evidence was stolen from Mr. Black's house by the defendant, together with the gun which fired the fatal bullet.

The defendant could have denied ever having had possession of the Black gun, or ever having given the Maple leaf pin to Rose Tiffany. He did not deny either fact.

Mr. Black and Lieut. Lenarducci testified that the bullet fired by Mr. Black on New Years Eve, 1926, was dug up from the garden. (case p. 207, line 10; case p. 311, line 4, etc.)

Major Goddard and Mr. Robinson, the bullistic experts, after examination, both testified that the bullet dug from the garden, known as the garden bullet, and the fatal bullet, had both been fired from one and the same gun.

To give the reasons for their opinions would perhaps require restating all of their testimony. It will perhaps suffice to mention one or two methods of identification used by these experts.

Every bullet fired through a gun receives certain markings known as lands and grooves, corresponding to the grooves and lands in the rifling of the gun. That is, the grooved portion of the

rifling will create an elevated area on the bullet known as a "land", and the elevated strip in the riflling will cause, by depression, a groove on the bullet. (Case p. 250, lines 11 etc.) These lands and grooves are measured by Filar Micrometers which measure to an accuracy of a fivethousanths part of an inch. This micrometer is specially adopted for measuring bullets and markings thereon. By thus measuring the cannelurings, lands, grooves and markings on the bullets, these experts came to the conclusion that the "garden bullet" and the fatal bullet were fired from the same type of a gun, a 38 calibre Smith & Wesson. (Case p. 253, line 21, p. 254, line 12.) After this, the witnesses compared the two bullets to determine whether they had issued from one and the same gun.

Both of these bullets were placed under a comparison microscope, which has two barrels. One bullet is placed in each arm, and the images of the objects under these two microscopes are carried together horizontally by reflection from prisms in the two ends of the cross arms. These two images meet under a single lens, so that a composite image is formed with one-half of one bullet and one-half of the other. Thus, the one-half will be the nose of one bullet, and the other half will be the base of the other bullet. (Case page 247, line 18 etc.) These bullets are revolved under the microscope until markings of identity are found. These are not the broad groove marks, but the fine markings on the lands and grooves, the origin of which is due to the manufacture of the barrel of the gun, and no two barrels alike. (Case pp. 255 and 256.) These markings are the result of rifling tools used in the manufacture of the interior of the barrel of the gun, and are known as rifling scars. (Case pp. 226 and 227.) These rifling

marks are never alike in any two guns even when made one after the other by the same tools and machinery.

The markings caused by the fouling or rust in the gun are different from markings caused by minute teeth in the barrel caused by the rifling tools, so that, the fact that the garden bullet was fired from a dirty gun and the fatal bullet was fired from a clean gun, did not prevent identification. Major Goddard testified that the fatal bullet had been fired from a clean barrel, corroborating Tiffany's testimony that the defendant cleaned the gun. (Case page 256, lines 19 to 25.) (Case p. 256, lines 28 etc.)

Another method of identification is the comparison of enlarged photographs. Photographs of both bullets were taken enlarged, and in a corresponding position. The upper half of one was placed on the lower half of the other and in this manner it was shown that in one position alone there were at least 21 marks of similarity. (Case p. 264, line 3.) Many other marks of similarity were discovered and photographed. These photographs are in evidence as exhibits S-33 to S-39 inclusive. Each photograph represents another position of the 2 bullets. These marks prove that both bullets, the garden bullet and the fatal bullet, were fired from one and the same gun. (Case p. 269, line 25, p. 257, line 5, p. 284, line 7.)

It must be noted that, Captain Jones, the expert produced by the defendant, did not contradict the testimony of Major Goddard or that of Mr. Robinson. He admitted that there is a method of identifying whether two bullets are fired from the same gun, and he testified that he would doubt very much if Major Goddard or Mr. Robinson would testify wrong. (Case p. 413, line 27-33.) He further admitted in his testimony that what Major

Goddard and Mr. Robinson testified to concerning the obsolete cannelure markings on the bullets in evidence was right. (Case p. 412, line 5, etc.)

Major Goddard also testified that the fatal bullet was fired from a clean gun, (Case p. 256, line 22) corroborating Rose Tiffany's testimony to the effect that defendant had washed and cleaned the gun.

And the major further testified that the garden bullet was fired from a rusty gun, thus corroborating Mr. Black's testimony that his gun had not been cleaned after being fired on New Year's Eve, 1926. (Case p. 256, line 19.)

It was thus clearly established that the fatal bullet was fired through the same gun through which the garden bullet had been fired, and that bullet was undisputedly fired from Mr. Blacks' gun; the gun which was stolen from his home, with the maple leaf pin which was found in rooms abandoned by the defendant.

In regard to plaintiff-in-error's so-called diagram, as shown on page 13 of his brief, wherein he argues that unwarranted inferences are drawn from the testimony, we respectfully point out that the diagram is incorrect as it does not contain all of the testimony which support the inferences to be drawn therefrom.

As to his inference (a),

That the accused committed burglary on January 2, 1928, at Glen Ridge, N. J., and ransacked the house of David G. Black, the facts supporting such inference are:

1. The locality and method of defendant's admitted operations and the locality and the circumstances of the "Black" burglary.

2. Mr. Black's unequivocal identification of the pin given by the defendant to Rose Tiffany two days **after** it was stolen from Mr. Black's house.

3. The pin was hidden in the cellar, between the partitions of a wall in a house abandoned by the defendant in Newark.

4. A description of Mr. Black's gun accurately tallies with the description of the gun seen in defendant's possession by Rose Tiffany just a few days after the Black burglary, including the number of cartridges contained therein.

As to plaintiff-in-errors' inference,

B. That the accuse took from that Glen Ridge house on January 2, 1928, a revolver described by Mr. Black as a Smith and Wesson, 38 calibre, nickel-plated, hammerless, five shot, safety catch, black handled pistol, the facts supporting this inference are;

The facts enumerated above under items 1, 2, 3, 4.

Plaintiff-in-error fails, in this inference, to couple with it the additional fact that one bullet had been fired and the shell removed, and that there were 4 unexploaded bullets left in the gun. So that, in supporting this inference, we have not only the proofs as set forth under items 1, 2, 3, and 4, above, but also the testimony of Rose Tiffany as to the number of bullets which were in the gun which was in the possession of the defendant a few days **after** the Black burglary: to wit, that there were four bullets in it and one empty chamber. And further, that the defendant cleaned that gun as well as the testimony of Mr. Black that his gun had not been cleaned in years prior to its theft.

As to plaintiff-in-error's inference,

C. That accused had Mr. Black's revolver on the night of January 31, 1928, in Bloomfield at the Thompson residence, the facts supporting this inference, are;

In addition to facts heretofore enumerated, Rose Tiffany saw the defendant put a gun answering the description of the "Black" gun inside of his trousers before leaving his house on the night of the murder.. Carl Lindsley, the trolley operator, saw the defendant board a Bloomfield trolley car and alight from it just a few blocks away from the Thompson residence. Lindsley did **not** testify that the accused boarded his car 10 or 15 days before February 13, as misstated by plaintiff-in-error. By the use of his time book, Lindsley definitely fixed the date as January 31, 1928, the day of the crime. (Case p. 160.) Expert testimony shows that the fatal bullet was fired from the same gun which fired the Garden bullet, and Mr. Black testified that the Garden bullet was fired from his gun.

As to plaintiff-in-error's inference,

D. That the accused was attempting to commit burglary at the Thompson house on January 31, 1928, at 8 P. M., the facts above recited, answering the other inferences, point to this conclusion.

To the facts above recited, however, we may add, that the defendant came to the locality of the Thompson house. He came there with Mr. Black's gun. A bullet fired from said gun was found in Mr. Thompson's body. A man of the defendant's description was seen escaping from the back porch of the Thompson house. The defendant escaped through the pantry window. The plan of the defendant's operations coincide with the Thompson burglary.

As to plaintiff-in-error's inferences, E and F,

E. That the accused shot Mr. Thompson with Black's revolver on January 31, 1928, at 8 P. M. while perpetrating a burglary at the Thompson house.

F. That the accused shot Mr. Thompson with Mr. Black's revolver.

These two inferences are the essence of the entire indictment, and are sustained by the evidence adduced in the entire trial. In reply to plaintiff-in-error's attempt to show a discrepancy between the testimony of Rose Tiffany and the testimony of Carl Lindsley, (Plaintiff-in-error's brief Page 14) it must be noted that the testimony of Rose Tiffany concerning the time the defendant left house was uncertain, whereas the time fixed by the trolley operator was accurate and definite, being checked by his time sheets. Furthermore, Rose stated to the police, in the presence of the defendant, that the defendant left the house that night at about 6 or 6:30 P. M. (Case p. 179, line 12.) Plaintiff-in-error again misstates facts when he says that Arthur Drury testified that the accused was not the man he saw coming from the rear of the Thompson house. Drury testified that he did not see the face, and would not swear to his identification, but that the defendant was of the same height. (Case p. 57, line 4.) Drury **never** testified that the accused was not the man.

We concede that the defendant's presence at the scene must be established beyond reasonable doubt. There was ample evidence to show defendant's presence at the scene; and the case of **State vs. Sherlock, 60 N. J. L. 31,** cited by the plaintiff-in-error on this point is not controlling. In that case the defendant set up the defense of 'Alibi', and the lower court erroneously charged the jury to the effect that it was the defendant's duty to

establish his "Alibi" affirmatively. In the case at bar the defendant did not set up the defense of 'Alibi" and offered absolutely no evidence contradictory to the state's evidence tending to show his presence at the scene of the crime. Defendant did not deny his presence at the scene of the murder, and offered no evidence to contradict any of the testimony produced by the state concerning his whereabouts on the night of the murder.

On page 14 of his brief, plaintiff-in-error, states; "It appears uncontradicted that the enameled maple leaf pin, Exihibt S-15, was found by the accused and given by him to the witness, Rose Tiffany." There is absolutely no evidence supporting such deductions. The evidence on the point, (Rose's testimony, p. 102 and 103) shows that when Rose asked the defendant as to where he obtained the pin, he answerd that he had found it, **that he had found it in his pocket.** Aside from being a self-serving statement, and therefore of no evidential value, the explanation that he found it in his pocket was too shallow and betrayed the lack of a true explanation.

The state's theory that the defendant had possession of the "Black" gun, and that he had it with him on the evening of the crime, is not dependant on the pin, as made to appear by the arguments of plaintiff-in-error. There is sufficient independent evidence showing that defendant had the "Black" gun a few days after the "Black" burglary, and that he placed it in his trousers on the evening of the crime. There is other evidence tending to show that the defendant committed the "Black" burglary, as related heretofore. The pin, and the evidence relating thereto, merely corroborate the theory of the State as given above, and do so strongly. As to the argument of the plantiff-in-error that there are many such pins, assuming

that to be so, and assuming that there are millions of them in existence, the fact remains, that Mr. Black positively identified the pin to be **The** pin stolen from him, and the defendant did not deny it. It is also to be noted that Mr. Black was not cross-examined by counsel for the accused. Evidently his ability to identify the pin which he had owned for 20 years was not questioned at the time, and was never in dispute. We believe it was no more difficult for Mr. Black to identify that pin, which he had for so many years, than it would be for the average person to identify a hat which he may have used for some time.

Rose Tiffany's description of the gun she saw in accused's possession tallies precisely with Mr. Black's description of his gun. The fact that there were only four bullets in the gun, and one space empty, and the further fact that the gun was seen in defendant's house by Rose just a few days after the Black burglary, as well as the further fact Rose saw the defendant clean the gun,, taken in connection with Mr. Black's testimony that his gun had not been cleaned for years, are important factors in identifying the gun.

Rose Tiffany's account of the return of the accused to their home on the night of the murder in a highly nervous and excited condition, his story of having been chased by the cops, and his further statement that "it would not have happened if it were not for Rose and her 'damn' kid", his failure to sleep through the night, his brushing a spot off of his coat with a wet brush, all lead to but one conclusion,—that he had just returned from the commission of a most horrible crime which had upset him. His statement that he had been chased by the cops was an attempt by him to explain his extreme nervousness and fear to Rose Tiffany. He was attempting to minimize to her the cause of his excitement.

Plaintiff in error in his brief attempts to give an explanation of why defendant burned his coat. The defendant's theory is that when Rose read a description of the defendant in the newspapers she suggested to him that he get rid of any clothing which might resemble the clothing described in the newspapers, and that the accused, answering the first law of nature, that of self-preservation, followed Rose's suggestion. In the first place, it is striking that no such explanation, nor, in fact, any explanation for the burning of the coat, was offered at the time of the trial. Secondly, the attempted explanation misstates the facts. It is true that the accused burned his clothes, in response to the law of self-preservation, attempting to destroy all evidence of identification, but it is to be noted that he tried to rub a spot off of his coat before the newspapers were out. What was the spot? Was it not the blood of the deceased? He did not sleep that night, although the newspapers had not gone to print yet. He did not have to see the newspapers for a description of the man who had killed Mr. Thompson. He knew it himself. And, it was not Rose who first told him of the description in the paper. He would not let her read the paper. He took it away from her. He knew what description it contained, even though he had not yet read it. He certainly did answer the law of self-preservation when he attempted to destroy evidences of identification.

Taking the entire case as a unit, each of the facts and circumstances brought forth is a component part of the whole. Any one of these component parts, taken alone, may in itself be common and easily duplicated elsewhere. But it is the coherence of all these component parts, their matching one with the other and their peculiar combination, which distinguished this defendant from all other

men on earth and puts the stamp of guilt upon him just as clearly as could have been accomplished by direct evidence.

While Rose Tiffany and the defendant, in each other's presence, were being questioned by Frank E. Brex, Chief of Police, and while Rose Tiffany was pleading with defendant to tell where he was on the night of the murder, and telling what she knew of defendant's conduct before and after the crime, defendant at no time denied committing the crime nor did he give an account of his whereabouts at the time of the commission of the crime. He merely kept asking Rose Tiffany if she thought that he killed Thompson, capitalizing on Rose's love for him, and attempting to escape or jump out of a window at police headquarters declaring himself to be brave enough to do it. (Case p. 184, 185.)

A confession, the credit due to which is to be estimated by the jury, may be inferred from the conduct of a prisoner, when a statement affecting him is made in his presence. **(Donnelly v. State, 26 N. J. L. 601.)**

Where the accused, physically able to testify, refused to testify, the jury could infer that he could not truthfully deny the important facts bearing upon the question of his guilt. **State v. Skillman, 76 N. J. L. 464.**

The action or non action of the defendant in not taking the stand is a circumstance which could be taken into account by the jury with other circumstances in determining whether or not the State has satified them beyond a reasonable doubt .**State v. Bailey, 3 N. J. Misc. Rep. 210.**

It is an elementary rule that where there is evidence from which the jury might properly find the defendant guilty the issue is one for the deter-

mination of the jury, and the court will refuse to direct a verdict of acquittal on the ground that there was no legal evidence of the defendant's guilt. **State v. Krupin, 100 N. J. L., 7, affirmed 101 N. J. L. 228.**

We agree with the plaintiff in error that, in order to convict on circumstantial evidence, not only that the circumstances must concur to show that the prisoner committed the crime, but that they be inconsistent with any other reasonable hypothesis.

We contend, however, that all of the circumstances in the case at bar concur to show that the defendant committed the crime and that they are circumstances without any other reasonable hypothesis.

On the point whether the verdict is against the weight of the evidence, this court will only consider whether there was sufficient evidence to go to the jury, and will not disturb the verdict unless it finds that there was such a lack of evidence that the verdict must have been the result of prejudice, mistake or passion. **State v. Grace, 98 N. J. L. 341.**

"The effect of such an assignment, (that verdict is against the weight of the evidence) is the same as that on a rule to show cause where the reason assigned is that the verdict is against the weight of the evidence. The competency of the evidence is not to be weighed." **State v. Morehouse, 97 N. J. L., 285, at P. 296.**

On the value of the circumstantial evidence, the court in the case at bar charged as follows:

"Circumstantial evidence must be of such a character as to satisfy the jury of the defendant's guilt, and to exclude every other hypothesis to a

moral certainty beyond a reasonable doubt; evidence creating a mere probability of guilt is not sufficient, much less is evidence which gives rise to a mere suspicion or conjecture of guilt."

"Mere suspicion or probability, however strong, are not a sufficient basis for conviction."

This was a correct statement of the law, according to authorities cited by the plaintiff in error. The jury heard the entire case; they observed every witness on the stand; the accused did not take the stand, and offered no evidence contradicting any evidence produced by the State.

There is nothing to lead this court to believe that the jury was swayed by prejudice or passion, or that it was mistaken.

The witnesses for the defense failed to bring out any material fact. Two of them, Mr. Michael and Mrs. Verity testified, that the defendant went out on Wednesday, the day after the crime. As was shown by the testimony of Rose Tiffany, he went out, after destroying his blue coat and bought himself a gray coat. We fail to see how this helps the defense. The only other witness for the defense, Captain Jones, attempted to show that the garden bullet and the fatal bullet may have come from different guns. The captain's knowledge of ballistics was shown to be very meager.

Captain Jones was asked:

"Do you agree that both the fatal bullet and the garden bullet were fired out of a Smith and Wesson 38 calibre revolver?

A Yes." (Case p. 415, line 19.)

"Q. You won't want to say one way or the other whether these two bullets were fired out of the same gun?

A. No, sir." (Case p. 421, line 24.)

"Q. Will you say, positively, Captain, that the two bullets could not have been fired from the same gun?

A. No, sir, I won't say that." (Case p. 422, line 18.)

It will thus be seen, that Captain Jones, expert for the defense, did not contradict the testimony of Major Goddard nor of Mr. Robinson.

It is to be noted that there is not one fact pointed out in the entire case which is inconsistent with the guilt of the defendant nor are there any facts which are consistent with defendant's innocense.

The verdict was sustained by the evidence.

Point II.

This point covers assignments of error 1, 2, 3, 4, 5, 6, 7, 9 and 10, relating 1, to the testimony of Lieutenant Gannon; 2, of Chief of Police Brex; 3 and 4, David Black; 5, the admission in evidence of the Maple Leaf pin; 6, certain other bullets belonging to David Black; 7, the garden bullet; 9, sections of revolver barrels used to explain process of revolver manufacture; 10, and the testimony of experts showing that the garden bullet and the fatal bullet were fired from the same revolver.

It is the general and time honored rule that:

Evidence of every material fact or circumstance that will throw light on a homicide, is relevant in a prosecution on a homicide charge. The only qualification is that when taken in connection with all other facts, its relevancy is made to appear. **Wharton on Criminal Evidence, page 1681, par. 893.**

"It is now the rule that every essential element required to prove the homicide can be established

by circumstantial evidence." Same authority, par. 894.

Wharton, Criminal Evidence, p. 1645, par. 877.

"Relevancy is to be determined upon principles of logic. * * * The criterion of relevancy is whether or not the evidence adduced tends to cast any light upon the subject of the inquiry. In circumstantial evidence, we have to deal almost exclusively with inference and deduction, hence, the greater the number of consistent facts, the more certain and complete the deduction.

While the rule that the evidence must be relevant to the hypothesis must always be rigidly applied in criminal cases, nevertheless, there should be an enlarged admission of all circumstances that will aid the court and jury in determining the facts in issue beyond a reasonable doubt." It is, therefore, apparent, that admissibility depends upon relevancy.

Relevancy is that characteristic which has a bearing on the case in hand, conducing to the proof of a pertinent hypothesis. A pertinent hypothesis is that hypothesis which logically affects the issue.

Relevancy involves two distinct inquiries, to be determined by logic. First, will the hypothesis, if proved, affect the issue? Second, does the fact offered as evidence tend either to sustain or to impeach the hypothesis.

There is no distinction, as to relevancy, between circumstantial and direct evidence. The test in both instances is; Does it tend to prove or disprove the issue?

Now, as to admission of evidence of other crimes tending to prove the charge in issue, the rule is again clearly and succinctly given by Wharton.

On page 1661, par. 885, he says:

"Circumstances showing the commission of other crimes than the crimes charged are relevant where they are so connected that evidence of one cannot be given without it proves the other; and such circumstances are also relevant whether the crime incidentally shown is of the same or a different character from the one on trial."

P. 1657, par. 884. Evidence of other crimes is admissible to show motive, and where relevant for this purpose, the admissibility is not affected by the fact that such evidence may prove other crimes.

p. 1733 No. 920.

"The well settled rule, that evidence of collateral crimes cannot be introduced on the trial of the homicide charge is subject to an exception where the collateral crime precedes, or is contemporaneous with, or a part of, the charge on trial, and the circumstances surrounding the collateral crime are essential to proof of or to explain the crime charged."

In his brief, counsel for plaintiff in error makes a few sweeping statements to the effect that the testimony of Lieut. Gannon and Chief Brex, relative to other crimes had no relation to the crime in issue. This is not the fact. Nor does counsel point out any instance to show that this testimony was not relevant.

The theory of the state's case was that the accused killed Mr. Thompson while perpetrating or attempting to perpetrate a burglary. Burglary, therefore, was the motive, and to show this, evidence of other crimes, so far as they did tend to show the motive, was admissible. The testimony of Lieut. Gannon and Chief Brex tended to show the defendant's methods of operation, the locality

of his activities, the time of the day when he would operate, the kind of houses he would burglarize, the circumstances under which he would enter a house, and his methods of escape. It also places the defendant, by his own admission, in the vicinity of Mr. Black's house, from where the gun, which the state contends was used to kill Thompson, was stolen.

Evidence on any of these items would tend to answer the following questions:

1. Did the defendant obtain possession of the gun,—by means of a burglary,—which gun was used in firing the bullet that resulted in the killing of Mr. Thompson?

2. Did the defendant enter the Thompson house in an attempt to perpetrate a burglary, in the doing of which he killed Mr. Thompson?

The relevancy of both of these points is so evident that it needs no further argument.

WHERE TWO BURGLARIES PRECEDED THE HOMICIDE CHARGED, AND THE EVIDENCE TENDED TO SHOW THAT THE ACCUSED GAINED ENTRANCE TO THE HOUSE BY MEANS OF TOOLS TAKEN AT ONE OF THE BURGLARIES, AND DECEASED WAS KILLED BY A PISTOL TAKEN AT THE OTHER, THE EVIDENCE WAS RELEVANT TO THE CHARGE ON TRIAL. **PEOPLE VS. ROGERS, 71 Cal. 565, 12 Pac. 697.**

The case is on all fours with the case at bar.

The case at bar is unlike the case of **State v. Meyer, 59 N. J. L. 310,** cited by plaintiff in error, where the proof of other crimes had absolutely no connection with the charge in issue. In that case, however, the court says, — page 311:

"There are, it is true, some exceptions in which the defendant's guilt of the extraneous crime tends to prove against him some particular element of the crime for which he is being tried. Scienter may thus be proved, so, in appropriate cases, may opportunity, **motive, preparation,** concealment or **escape."**

It is worthy of notice how the case at bar falls within the three underlined elements. Motive; burglary. Preparation; getting the revolver from the Black house, with which Thompson was subsequently killed. Escape, Opening windows on first and second floor overlooking porches, etc., in order to facilitate escape.

Bullock v. State, 65 N. J. L. 557, cited by plaintiff in error, is not at all in point. In that case the State attempted to show that eighteen years prior to the alleged crime, defendant had pulled a razor at some one.

The case of **State v. Deliso ,75 N. J. L. 808,** also cited by plaintiff in error clearly proves the State's contention in the case at bar, that evidence of other crimes is admissible when it tends to prove the one on trial by any relevant connection. In that case the **evidence of other crimes was** held admissible because it tended to prove defendant's presence at the scene of the crime. The same is true in the case at bar. The testimony under attack showed, among other circumstances, the locality and time of defendant's operations.

The case of **State v. Fisher, 96 N. J. L., 5,** cited by plaintiff in error, also recognizes the rule that where the extraneous crime **tends logically to prove against defendant some particular element** of the crime for which he is being tried, such evidence is admissible.

Plaintiff in error has not cited a single case holding the contrary, view, and all cases cited by him support the state's contention.

In the case at bar, evidence of other crimes was not introduced to prove defendant's criminal propensities, but to prove certain particular elements in the main case.

This was made clear to the jury by the trial Judge.

During Gannon's testimony, he said:

"I will say to the jury, however, at this time, that we are not trying this defendant for any other crime except the alleged murder of Mr. Thompson." (Case p. 67, line 36.)

In his charge the Trial Court said:

"Right here, gentlemen, let me call your attention to the testimony in this case with reference to certain burglaries having been admitted to by this defendant. You are trying this defendant for the murder of Mr. Thompson. The fact that he may or may not have committed other crimes has nothing whatsoever to do with determining his guilt or innocence in this case."

"The burglarizing of the Black home is material only so far as it concerns the ownership and possession of this revolver, to which I now revert."

No error was, therefore, committed in admitting evidence of other crimes, because they tended, by very clear relevancy, to prove certain elements in the charge on trial, and because the jury were properly charged concerning the use and purpose of such evidence, so that the effect of the testimony was not to prejudice the jury against the defendant, but to establish certain links in the State's case.

As to Mr. Black's testimony, this was essential to prove that the defendant had possession of the gun, from which it was proven the fatal bullet had been fired.

The State's contention was that the defendant had possession of the 'Black' gun. This was shown in three different ways, each of which corroborate the other. First, Rose Tiffany's description of the gun, which tallied in every detail, including the four unexploded cartridges in the gun, with the description of the 'Black' gun. Second, the circumstances of the 'Black' burglary, and the methods of the defendants operations, and the coicidence of the time when Mr. Black's gun was stolen and the defendant came into possession of it. Third, the unequivocal identification of the pin which Mr. Black lost, by burglary, together with the gun, and which, the defendant gave to Rose Tiffany two days **after** the Black burglary, which pin was subsequently found very cleverly concealed in the house which had been abandoned by the defendant.

The jury saw the pin. They could decide whether it was capable of identification or not.

The contention that defendant had Black's gun does not depend solely upon the pin. As has above been shown, there was ample independent evidence tending to prove the same thing.

It is clear, therefore, that all of Mr. Black's testimony was necessary to prove a link in the State's case, to wit, the defendant's possession of the gun.

Evidence of other crimes is admissible where such other crimes are in time and circumstances connected with the crime in issue. **State v. Barone, 96 N. J. L. 417; State v. Ehlers, 98 N. J. L. 236.**

The other assignments covered under point 2, have not been argued by plaintiff in error.

There was no error in admitting any of the testimony covered under Point II. They were logically connected with, and relevant to, the issue on trial.

Point III.

Covers assignments 15, 16, 29.

The court charged as follows:

"Now, gentlemen, as you know, the defendant did not take the stand. The defendant is competent but not compellable to be a witness on his own behalf, **but his failure to do so raises no presumption of his guilt.** However, if facts are testified to, which concern the acts of the defendant which he could by his oath deny, his failure to testify in his own behalf raises a strong presumption that he cannot truthfully deny them." We deem it unnecessary to again go into the argument whether there were facts showing that defendant had Mr. Black's gun, that he was in the vicinity of the Thompson house on the evening of the crime, that the witness, Drury, did not say that it was not the defendant whom he saw leaving Mr. Thompson's home, but that, on the contrary, he testified that the person leaving the Thompson residence was of the same height as the defendant, that the defendant shot Mr. Thompson. All of this has been discussed under point I. A consideration of the discussion on this point clearly shows that there were many particularls in the testimony introduced by the state's witnesses, which the defendant by his oath could have denied, and which he failed to do. The trial court was, therefore, entirely justified in employing the language above quoted in the charge to the Jury.

The case of **State vs. Wines, 65 N. J. L. 31,** quoted by plaintiff in error, is not at all applicable

to the case at bar. In that case the language used by the trial court was dictatory, telling the jury that they had no choice but to infer that the defendant could not deny the charges against him.

Following is the language of the trial court in the Wines case:

"His mere silence, the court says, would justify a strong inference that he could not deny the charges, and therefore would not go upon the stand." And the court says further, "Such an inference is natural and irresistable. See how strong the word 'irresistable" is. Then it goes on, speaking of the effect of it upon the jury: 'It will be drawn by honest jurymen.' See how strongly the court points to it, how that irresistable strong inference will be drawn by honest jurymen.' 'And no instructions will prevent." That is, if I were to instruct you not to draw such an inference, I could not prevent you from doing it."

It is clear that the language used in State v. Wines is not comparable with the charge brought in error in the case at bar. Furthermore, it was found in the Wines case, as a matter of fact, that there was no evidence to connect the accused with the crime charged; whereas in the case at bar, there was such evidence.

The charge of the court was correct. The court charged the jury that defendant's failure to take the stand created no presumption of guilt. The remainder of the charge is within the rule. It was merely a comment on defendant's failure to take the stand, giving the jury the right to consider it, **if facts are testified to which Concern the acts of the defendant.**

That defendant's failure to take the stand may be commented upon and considered is the settled rule.

State v. Parker, 61 N. J. L. 308.

State v. Gallagher, 6 N. J. Misc. Rep. 631.

Having charged sufficiently on the question of defendant's right not to take the stand, and the exercise of said right not creating any presumption of guilt, it was proper for the court to refuse to charge as requested, to wit:

"The failure of the defendant to take the stand does not of itself give rise to any presumption of guilt where there is no direct evidence to connect the defendant with the crime."

The defendant's request contained the condition of lack of direct evidence. The court did not even include such condition in his charge, and the court's charge was therefore even more favorable to the defendant, than the request to charge.

It is an elementary rule that a refusal to charge as requested, where the charge of the court fairly and substantially covered the request to charge is not error, and the court is not bound to adopt the form or words in which the requested charge is framed.

State v. Bruno, 2 N. J. Misc. Rep. 274.

Gardner v. State, 55 N. J. L. 17, at page 25.

State v. Harris, 100 N. J. L. 184.

Affirming opinion given by Sup. Court and reported in 1 N. J. Misc. Rep. 526.

Haines v. State, 92 N. J. L. 642.

State v. Pisaniello, 88 N J. L. 262.

State v. Schilling, 112 Atl. 400 (N. J.)

It is further urged that the court submitted the

wrong question to the jury. The excerpt from the charge brought on error is this:

"Now, gentlemen, the question which you must decide in this case is simply this: Did Boccodoro kill Thompson?"

It is argued that it is not complete, that it should have made the perpetration of burglary a part of the facts to be found.

It was uncontradicted that Mr. Thompson came to his death as the result of a bullet fired into his body by a person who had forced his way into the Thompson house for the purpose of committing burglary. This was not denied, nor was it anywhere asserted that Mr. Thompson came to his death in any other manner. It was, therefore, only necessary to determine whether it was the defendant, Boccadoro, who had done the killing. The remaining element of burglary was not in issue, it having been conclusively proven and no issue having been taken on it. The charge, therefore, was not erroneous, and if it was erroneous, it was absolutely harmless and without prejudice to the accused.

It is, therefore, respectfully submitted that the judgment of the Essex County Court of Oyer and Terminer be affirmed.

Respectfully submitted,

JOSEPH L. SMITH,
Prosecutor of the Pleas,

SIMON L. FISCH,
First Assistant Prosecutor.

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