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Writ of Error.

NEW JERSEY, *ss.*

The State of New Jersey to William S. Gummere, Esq., one of the Justices of the Supreme Court of the State of
(Seal) New Jersey, and to the Judges 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 December, 1925.

Because in the record and proceedings, and also in the giving of judgment upon a certain indictment against Peter Doro alias Peter Bruno, late of the City of Newark, in the County of Essex aforesaid :

“For that said Peter Doro alias Peter Bruno, on the 11th day of November in the year of our Lord One Thousand Nine Hundred and Twenty-five, at the City of Newark, in the County of Essex aforesaid, did wilfully, feloniously and of his malice aforethought, kill and murder Anna Abramovitz, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.”

Pro ut the said indictment and the several counts therein, whereof, before you, he, the said Peter Doro alias Peter Bruno, hath been indicted, and is thereof convicted by a certain jury of the County, taken between the State of New Jersey, and the said Peter Doro alias Peter Bruno, as it is said, manifest error hath intervened to the great damage of the said Peter Doro alias Peter Bruno, as form his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to

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Writ of Error.

him, the said Peter Doro alias Peter Bruno, command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same to our Court of Errors and Appeals, in the last resort in all causes at law, to be
10 be held at Trenton, on the 15th day of April next, and this writ, that the record and proceedings as aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customes of New Jersey ought to be done.

WITNESS, Edwin Robert Walker, Esq., our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, N. J., this 26th
20 day of March, 1926.

THOMAS F. MARTIN,
Clerk.

JAMES MANGO,
Attorney for Defendant.

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Indictment.

STATE OF NEW JERSEY
 COUNTY OF ESSEX ss.

BE IT REMEMBERED, that at a Court of Oyer and Terminer holden at Newark, in and for the County of Essex, on the second Tuesday in December, in the year of Our Lord, one thousand nine hundred and twenty-five, 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 Fred C. Van Keuren, James H. Connor, Herman Roessler, John G. Schweikhardt, Thomas H. Hickey, Walter Pryor, Jr., William Weinrich, Marion H. Hall, Isadore Moskowitz, Alfred Popik, Harry Garfinkel, Anthony R. Staubwasser, Henry D. Northrop, Frederick Seligman, Milo W. Wilder, Jr., Walter R. Wheaton, Carl Scheller, Thomas McLaughlin, Julius Abeles, Ira C. Williams, Norman F. Wiss, T. Burton Crane and Edward Elin, good and lawful men of the 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 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 Peter Doro alias Peter Bruno on the eleventh day of November, in the year of Our Lord, one thousand nine hundred and twenty-five, at the City of Newark, in the County of Essex, aforesaid did wilfully, feloniously and of his malice aforethought, kill and murder Anna Abramowitz

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Indictment.

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.

J. O. BIGELOW,
Prosecutor of the Pleas.

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Record of Delivery of Indictment for Trial.

And on the twenty-second day of December A. D. Nineteen hundred and twenty-five, 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 cases made and provided. 10

Plea.

And afterwards, that is to say, at the same session of the Court of Oyer and Terminer holden at Newark on the seventh day of January A. D. Nineteen hundred and twenty-six, before the Judge aforesaid, comes the said Peter Doro alias Peter Bruno in the custody of Harry B. O'Connell, Sheriff of the County of Essex aforesaid, in the above custody in the jail of the County of Essex 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 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 John O. Bigelow, Prosecutor of the Pleas for the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like. 20 30

Therefore, let a Jury thereupon come before the Judge aforesaid, at Newark aforesaid, in the County 40

Plea.

of Essex, at the same session of the Court of Oyer and Terminer aforesaid on the twenty fifth day of January A. D. Nineteen hundred and twenty six, 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 Peter Doro alias Peter Bruno to recognize upon their oath, whether the said Peter Doro alias Peter Bruno is Guilty of the Murder in the indictment aforesaid specified or Not Guilty, because as well the said John O. Bigelow, Prosecutor of the Pleas of the County of Essex aforesaid who prosecutes for the State of New Jersey in this behalf as the said Peter Doro alias Peter Bruno 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, March second, A. D. Nineteen hundred and twenty six, to which day said trial was postponed at the same Term of Oyer and Terminer, holden at Newark, aforesaid, in the County of Essex, before the Honorable Edwin C. Caffrey, 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 John O. Bigelow, Prosecutor of the Pleas who prosecutes aforesaid, and the said Peter Doro alias Peter Bruno in the custody of Harry B. O'Connell, 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 following challenges, by the State 4 and by Defendant 7 (after Juror No. 10 was drawn the Special Panel was exhausted, Jurors No. 11 and No. 12 were drawn from the General Panel) Henry G.

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Plea.

Lemassena, Edward W. Earle, H. Allen Lanning, Allyn W. Beebe, Floyd Charles David, James G. Ogden, Alexander B. Dewar, Julius Peters, Samuel E. Sutton, George A. Lenox, George L. McCall and Frederick D. Heiss, being called come 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 before the said Court and Jury, from day to day, until the third day of March, A. D. Nineteen hundred and twenty six, at Newark 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 the said Court for that purpose, at which last mentioned day the said issue after a charge from said Court was submitted to the 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 John O. Bigelow, and the said Peter Doro alias Peter Bruno, say that the said Peter Doro alias Peter Bruno is Guilty of Murder in the first degree, and so they say all.

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Judgment and Sentence

Judgment Signed

March 15, 1926

Edwin C. Caffrey,

Judge.

Whereupon, all and singular, the premises being seen, and by the Court now here fully understood, it is on this fifteenth day of March, A. D. Nineten hundred

- 10 red and twenty six Ordered and Adjudged that Peter Doro alias Peter Bruno be taken to the County Jail from whence he came, and there to be kept in strict custody and from thence that he be taken by the Sheriff within ten days after the issuing of the warrant to him, for that purpose, and delivered to the principal keeper of the State Prison, to be kept by him in solitary confinement until the week beginning April twenty fifth, A. D. Nineteen hundred
- 20 and twenty six and upon some day within the said week, at his discretion, as to the time within the walls of the buildings provided, by the Board of Inspectors of the State Prison for that purpose, or within the yard or enclosure adjoining thereto, the principal keeper of the State Prison shall execute the punishment of death upon the said Peter Doro alias Peter Bruno, by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, the application of such current to be continued until the body of the
- 30 said Peter Doro alias Peter Bruno be dead.

“And may God have Mercy upon your soul.”

ESSEX COUNTY, to wit:

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Peter Doro alias Peter Bruno on the eleventh day of November, in the year of our Lord one thousand nine hundred and twenty-five, at the City of Newark in the County of Essex aforesaid did wilfully, feloniously and of malice aforethought, kill and murder Anna Abramovitz 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. 10

J. O. BIGELOW,
Prosecutor of the Pleas. 20

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Panel of Jurors.

ESSEX OYER AND TERMINER.

THE STATE <i>vs.</i> PETER DORO, Alias PETE BRUNO.	DECEMBER TERM, A. D., 1925 INDICTMENT FOR MURDER
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The following is the list or Panel of Jurors furnished to the Defendant above named, as required by law.

- 1 Allen H. Lanning
206 Broad St., Newark
- 2 Edward A. Ward
211 Montclair Ave., Newark
- 20 3 Edmund C. Stout
74 South Munn Ave., East Orange
- 4 Harry L. Balmos
227 Claremount Ave., Montclair
- 5 Edwin O. Snow
168 South 11th St., Newark
- 6 Alex B. Deuar
17 Davis Ave., East Orange
- 7 Julius Peters
149 Essex Avenue., Bloomfield
- 30 8 Allyn W. Beebe
10 Lancaster Ave., Maplewood
- 9 Frank Bell
479 South Belmont Ave., Newark
- 10 Herbert L. Stone
146 Orchard St., Bloomfield
- 11 Leopold Jay
972 Broad St., Newark
- 12 James H. Gilbert
336 Sussex Ave, Newark
- 40 13 William Kelley
71 Ferry St., Newark

Panel of Jurors

- | | | |
|----|---|----|
| 14 | David A. Tierney
183 Mapes Ave., Newark | |
| 15 | Daniel J. Peck, Sr.
54 Holmes St., Belleville | |
| 16 | Oliver Brant
17 Oberlin St., Maplewood | |
| 17 | Harry G. Gardner
28 South 8th St., Newark | 10 |
| 18 | Gordon G. Meyer
Pleasant Valley Way, West Orange | |
| 19 | Fred O. Harris
931 Sandford Ave., Irvington | |
| 20 | John A. Condon
72 Millington Ave., Newark | |
| 21 | Isidore Lorenz
84 Madison Ave., Irvington | |
| 22 | William Ehlers
569 Ridgewood Rd., Maplewood | 20 |
| 23 | Albert F. Huber
163 South 11th St., Newark | |
| 24 | Victor Herzman
351 Halsey St., Newark | |
| 25 | Richard Best
374 Clinton Ave., Newark | |
| 26 | Leonard C. Haskell
27 Morris Place, Bloomfield | |
| 27 | William Abramson
500 Washington Ave., Belleville | 30 |
| 28 | Harry W. Cottrell
129 Vermont Ave., Newark | |
| 29 | Henry G. Lemassena
29 Wakeman Ave., Newark | |
| 30 | Herman B. Schaefer
77 South 13th St., Newark | |
| 31 | William C. Bouton
54 North 5th St., Newark | |

Panel of Jurors

- 32 Albert J. Foltzer
189 Dodd St., East Orange
- 33 Nils Ivar Malmstrom
209 Park St., Montclair
- 34 John J. Farrell
244 South 19th St., Newark
- 10 35 Edward W. Earle
190 Vermont Ave., Newark
- 36 George A. Lenox
100 South Arlington Ave., East Orange
- 37 William H. McMoran
140 Main St., East Orange
- 38 John Caffrey, Jr.
246 Seymour Ave., Newark
- 39 David Davis
555 South 17th St., Newark
- 20 40 Floyd Charles David
65 South Munn Ave., Newark
- 41 Allan P. Durgin
154 North Munn Ave., East Orange
- 42 Chas. L. Cameron
706 Ridge St., Newark
- 43 Wm. James Conroy
23 Cumberland Ave., Verona
- 44 Alexander McDonald
104 North Munn Ave., East Orange
- 30 45 Jacob Bamberger
747 South 10th St., Newark
- 46 Joseph C. Charles
179 Watsessing Ave., Bloomfield
- 47 James G. Ogden
109 Ridgewood Ave., Newark
- 48 Samuel E. Sutton
402 Broad St., Newark

HARRY B. O'CONNELL,

Sheriff.

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Newark, N. J.
February 25, 1926.

Return.

STATE OF NEW JERSEY, ss.
COUNTY OF ESSEX,

I, Edwin C. Caffrey, Judge of the Court of Oyer and Terminer in and for Essex County, New Jersey, Do hereby certify and return to the Supreme Court of Judicature 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. 10

In Witness Whereof I have hereunto set my hand and affixed the seal of said (Seal) Court at Newark, N. J., this fifteenth day of April A. D. 1926. 20

EDWIN C. CAFFREY,
*Judge of the Court of Oyer
and Terminer Essex County,
N. J.*

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Case

ESSEX COUNTY COURT OF OYER
AND TERMINER.

Tuesday, March 2, 1926.

10	STATE OF NEW JERSEY, <i>vs.</i> PETER DORO ALIAS PETER BRUNO.	}	INDICTMENT No. 160, Dec. T., 1925, MURDER.
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Before Hon. Edwin C. Caffrey, J., and a jury.

For the State appears Simon L. Fisch, second assistant Prosecutor of the Pleas.

20 For the defendant appear James Mango and Nicholas La Vecchia.

(The special panel is called by the clerk.)

Mr. Mango. May I be informed how many jurors on the special panel did answer?

The Clerk. Sixteen, your Honor.

30 Mr. Mango. I move at this time for an adjournment upon the ground that we have been served with a special panel of forty-eight jurors and, as I understand it, under the law, we are entitled to twenty peremptory challenges, when there are only sixteen to select from; therefore, we are not in a position to go on.

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.

40 EDWIN C. CAFFREY,
Judge.

State's Witness, John J. Bracken, Direct

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

Direct examination by Mr. Fisch.

Q You are a civil engineer and surveyor? A Yes.

Q And have been for about how long. A Going on to about thirty years. 10

Q Did you, at the request of the Prosecutor's office, make a diagram or map of an apartment on the fourth floor of the building at Orange and Fifth street in the City of Newark? A Yes.

Q When did you make that diagram? A That diagram was made in November, between the 15th and 20th.

Q 1925? A 1925.

Q And is that the diagram on the exhibition board? A It is a copy. 20

Q And is that drawn to scale? A Yes.

Q What is the scale? A The scale, one inch on the map equals a foot and a half in the apartment; one inch to the foot and a half.

Q And the house is on which side of Fifth street?

A It is on the east side of Fifth street.

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

Q And Orange street runs, for all practical purposes, east and west? A Yes. 30

Q And this house is on the southeast corner of Orange and Fifth street, is that correct? A Yes.

Q And the number of the house? A 141 North Fifth street.

Q And these doors, they represent the entrances?

A Yes.

Q And how do you get to the upper floors?

A By stairs, up through the hallway.

Q And the stairs are represented by the marks which I am pointing to now? A Yes. 40

State's Witness, John J. Bracken, Direct

Q And the apartment which you made the diagram of, what was the number of that apartment?

A No. 14, I think it was, the apartment.

Q And will you please step down here and with the aid of the pointer describe the various rooms and how you get to them. A Well, after you arrive at
10 the top of the stairs on the fourth floor there are four apartments. You pass through this hall door and on your right——

Q Now, we will call that private hall of the apartment. A Yes.

Q You have no objection to my marking it? Private Hall. A Yes. This was a vacant room.

Q That is, the first room that you go to on the right was a vacant room? A Yes.

Q I will mark that vacant room. A The second room was a bathroom.
20

Q We will mark that bath. A The third room on your right was the kitchen.

Q I will mark that kitchen. A Going through the kitchen you entered a bedroom.

Q Is that the smaller bed room of any that was in the apartment? A I would say so, yes.

Q We will call that small bedroom. A And directly in front of your entrance you entered into a dining room.

Q We will mark that dining room. A And
30 through the dining room they were using this room as a bedroom.

Q We will mark that large bedroom. Now, what are the various objects which are outlined in the kitchen? A Why, there was a sink there.

Q We will mark it sink. A And wash bowl, or wash tray, and tubs. This was an ice-box, gas range and table.

Q And what are the various articles which you
40 have outlined in the small bedroom? A Bed and trunk and closet.

State's Witness, John J. Bracken, Direct

Q This is a closet? A Yes, used as a closet.

Q And what is this representation of on the left hand side of the hall opposite the kitchen door.

A A small closet off the hall.

Q We will mark it closet. And that apartment was on what floor? A That apartment was on the fourth floor.

10

Mr. Fisch. I offer the map in evidence.

Mr. Mango. Objection is made to the offer unless the Prosecutor can prove the articles were not moved by the witness, and the occupancy of the rooms existing from the 11th to the 15th, when the map was made, so that there could be no change from the time of the alleged murder.

The Court. We will let it in subject—you have no objection to the diagram itself?

20

Mr. Mango. No.

Witness. The measurements were made on the evening of the 12th. I made the map two or three days after I had the measurements.

Cross Examination by Mr. Mango.

Q You made the measurements on the 12th? A On the 12th, in the evening, between three and five o'clock.

Redirect Examination by Mr. Fisch.

30

Q So that on the evening of the 12th you saw all those articles in the position as you have them on the map? A Yes.

Recross Examination by Mr. Mango.

Q I point to the center of the map, the place marked private hall. What is there in the building between this double line, indicating a wall, I suppose— A Yes, to another apartment.

Q To the place on the map marked ST 141. A

Recross Examination by Mr. Mango.

Another apartment, that is what you call that north-east apartment of that house. There were four apartments on each floor.

Q And how many stories are there to the entire building? A Four stories. Stores on the first floor.

10 Q How many stores? A Two or three on Orange street.

Mr. Fisch. I understand that counsel admits to the admission of six photographs of the apartment represented on the sketch S1, and I would like to have those photographs marked separately. The photographer is ill, and counsel for the defense consents that they go in. I offer photograph representing the front or large bedroom as used from the parlor or dining room.

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(The photograph referred to is marked Ex S2.)

Q I offer a photograph representing the unfurnished room which has been marked on the sketch as "vacant room," with a door from the private hall.

(Photograph is marked Ex. S3.)

Mr. Fisch. I offer photograph of the hall marked on the sketch as "private hall", with a door from the dining room, showing the doors, kitchen, bathroom and unfurnished room and outer hall.

30

(Photograph referred to is marked Ex. S4.)

Mr. Fisch. I offer photographs of the bedroom as marked on the map S1, which is a small bedroom off the kitchen.

(Photograph referred to is marked Ex. S5.)

Mr. Fisch. I also offer photograph of the parlor, dining room, marked on the map S1, as "Dining Room" showing a few feet of that room from the hall.

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State's Witness, Louis Sidney-Herndon, Direct

(The photograph referred to is marked Ex. S6.)

Mr. Fisch. I also offer photograph of the kitchen showing a view of the kitchen from the private hall.

(The photograph referred to is marked Ex. S7).

10

LOUIS SIDNEY-HERNDON, sworn in behalf of the State.

Direct Examination by Mr. Fisch.

Q You are one of the Deputy County Physicians of the County? A I am.

Q And on the 5th of November, 1925, did you have occasion to go to the house that we have been talking about on North Fifth street, No. 141. A I did, yes, sir.

20

Q What time of the day did you go there? A I reached there, I should judge, a few minutes after midnight on the night of the 11th.

Q How did you come to go there? A The call was relayed to me from the City Hospital ambulance.

Q When you got there what room did you go to?

A To an apartment on the Fourth Floor. The entrance was on the right hand side of the stairway as you reach the head of the stairs.

Q When you got there what did you find? A I saw a woman lying partly in the kitchen and in sort of a doorway between the kitchen and the hallway to the bedroom, a small bedroom, lying in considerable blood and she had been wounded in the neck.

30

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

Q What was the location of the body with regard to the head of the body? Will you point it out to us on this diagram S1? A The head was direct-

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State's Witness, Louis Sidney-Herndon, Direct

ed towards the hall, with the feet directed toward the bedroom, and, as I recall, partially over the doorsills between the bedroom and the kitchen, that is, the feet were partially over the doorsills between the kitchen and the small bedroom, as though she had just left this room and was in this room (indicating).

10 Q You saw considerable blood there? A Yes, sir.

Q I show you photograph S7, and ask you if you can tell me whether this represents the condition which you saw there that night with the exception, of course, of the body? A Yes, sir.

Q And these marks on the floor, what are they?

A Those are blood spots.

20 Q How long did you stay there? A I was there until the body was removed.

Q Who removed the body? A It was removed by Holle's Morgue wagon.

Q What was the name of the man who removed the body? A Tom O'Mara.

Q Could you identify the clothing that was on this body, Doctor? A I believe I could.

30 Q I show you a dress and undergarment, a pair of stockings and a garter, and a pair of slippers, and I ask you whether or not those were the garments that were on that body? A The black dress, I believe was the one. The undergarments I could not identify, but the black beaded dress was the one that she wore at the time.

Q You don't know about the stockings and the shoes? A The shoes, I believe, was the same shoes; the buckles appear to be those.

Mr. Fisch. I offer them in evidence.

40 Mr. Mango. I object until it is proved by the Prosecutor in whose hands these clothes have been.

State's Witness, Louis Sidney-Herndon, Direct

Mr. Fisch. I think it will be better if the dress and shoes were marked for identification, at that time I would like to mark all the clothing as one exhibit.

(Marked Ex. S8 and S9 for identification.)

By the Court.

10

Q What would you say was the cause of death?

A She died as a result of hemorrhage following a wound on the side of the neck caused by a very sharp instrument.

Cross Examination by Mr. Mango.

Q You say there was one wound in the neck? A I did not. I said as the result of wounds on the neck.

Q How many wounds? A I recall three wounds. 20

Q Did you turn the body over to examine the back? A I didn't turn it all the way over, no, sir.

Q You looked at the body as it lay on the floor? A Yes, sir.

Q Did you take any of the clothing apart to look at the shoulders below the dress? A No, sir.

Q What did she have on her head as she lay on the floor. A I don't recall that she had anything on her head. 30

Q I mean, did she have a hat on? A I don't think so.

Q You mean there is some doubt as to whether there was anything on her head or not? A I would have to say there was no hat on her head.

HARRISON F. MARTLAND, sworn in behalf of the State.

Direct Examination by Mr. Fisch.

Q Dr. Martland, you are the County Physician of this county? A I am. 40

State's Witness, Harrison F. Martland, Direct

Q And did you perform an autopsy on the body of Anna Abramowitz? A I did.

Q When and where? A On the morning of November 12th, at 9:45 A. M., at Holle's Morgue, Newark, New Jersey.

10 Q And what did you find as the result of your examination of the body? A I found the cause of death was murder, homicide, by cutting the neck with a sharp instrument. There were three wounds of the neck, one important wound being the fatal wound. This wound started just above the supra
20 sterno notch here, slightly to the right, and the wound extended backwards obliquely—slightly obliquely—for a distance of about five inches, reaching here, the anterior border of the pratezius muscle. This was the fatal wound. This wound
20 was five inches in length and gapped at its widest portion about two and a half inches.

Q Would you mind standing up and turning your right side to the jury so the jury can see all the description. A This wound started about here and came back obliquely at about that angle, stopping about here, five inches in length, two and a half inches at its widest gap. The edges of this wound was bevelled; that is, the lower edge was bevelled externally so that you could see it. The upper edge
30 of the wound was undermined, showing that the direction of the instrument—the sharp instrument which produced this wound—was slightly in an upward direction, bevelling the lower edge externally, shoving it externally, and the upper edge undermined above. This wound in its deepest portion was about two inches. It varied from an inch and a quarter to two inches in depth. It cut through the following important structures, first, the sterno mastoid muscle, the large muscle of the neck. This was
40 cut completely across so that the separated end of

State's Witness, Harrison F. Martland, Direct

the muscle appeared apart, giving the appearance as if the head was partly severed from the body through the separation of this group of muscles. There was also severance here in the line of the cut of the lower portion of the sterno mastoid muscle and the sterno thyroid muscle. The cut then in the anterior part cut half way through the windpipe or trachea, with aspiration of blood into the lungs. As we cut back here—the wound cut through the largest vessel in the neck, first, the common carotid artery, which cut through about one-half of its external surface, about half-way through the artery, causing excessive bleeding from that artery. It cut next the jugular vein completely through, so the ends of the vein were drawn apart for about an inch and a quarter. It did not hit the major vagus nerve at that point. This first wound was the fatal wound producing death from bleeding. Just above this wound was a second wound lying about here and going the same plane, the same direction, three inches in length. This wound also cut through the sterno mastoid muscle, but there was no large muscle cut. There was another wound at the back of the neck starting just under the back of the neck here, about in the posterior midline and coming around towards the right here for a distance of about three and a half inches.

The Court. Doctor, suppose you turn so the jury can see.

Witness. Can I illustrate here (indicating on the stenographer.)

The Court. Yes.

Witness. This wound here started about here and came for a distance of three and a half inches stopping about there. The second wound that I described happened here. The edges were bevelled,

State's Witness, Harrison F. Martland, Direct

the same as the first wound; that is, the lower edge was bevelled externally and the upper edge was undermined. This third wound up here was different—the edges were different, the bevel in here, the upper edge is bevelled so that you can see it outside and the lower edge is undermined, showing the direction of the knife of the first two cuts was like that and the third cut probably like that, down. This third cut in its deepest portion was about an inch and three-quarters in depth and went down. There were no large vessels cut in this region. In addition there was a small cut on the base of the left thumb about two inches, ragged, cut about two inches in length exposing the tendons and muscles. There was a superficial scratch over the left shoulder about here, about two inches in length, and there was a bruise about two and a half inches, bluish bruise of the skin, about two and a half inches over the right shoulder. There were no other marks of injury on the body.

Q Could you say whether or not the instrument that could have inflicted those wounds could have been a razor? A It might very well have been a razor.

Cross Examination by Mr. Mango.

30 Q You did not see the body at the Fifth street address, you saw it at the morgue the first time?

A No, when I got at the Fifth street apartment house late that night the body had been removed.

Q So the body the first time you saw it was in Holle's Morgue? A Yes.

JAMES McNISH, sworn in behalf of the State.

Direct Examination by Mr. Fisch.

40 Q You are a police officer of the city of Newark?
A I am.

State's Witness, James McNish, Direct

Q Connected with what precinct? A Fifth Precinct.

Q And on the night of November 11th, 1925, did you have occasion to go to this house at North Fifth street. A I did.

Q —that we have been talking about in this case No. 141. A Yes. 10

Q What time did you go there? A About 11:05 P. M.

Q And what apartment did you go to? A I went to the fourth floor, in the front room; that is, the Orange street side.

Q When you got there what did you find? A We found a woman dead.

Q Where was she? A Well, she was lying partly in the kitchen and partly in a little room off the side. I don't know what room it was. 20

Q And did you see any blood? A I saw a lot of it in front of her, big pools of it, the walls all splattered with it.

Q Was there anybody there at the time? A Three other police officers besides myself.

Q And did you see the clothing that was on the body. A Yes.

Q I show you a dress and a pair of shoes which have been marked for identification and also an undergarment, a pair of garters and a pair of stockings, and ask you if that clothing was on the body at that time? A The shoes look like them. The dress looks like it, but the undergarments I don't know anything about that. 30

Q And did you make an examination of the apartment? A In what way?

Q Well, did you look around on the floor? A Yes.

Q What, if anything, did you find on the floor of that kitchen? A Why, as you go down the hall- 40

State's Witness, James McNish, Direct

way into the kitchen on the left as you enter right inside of the kitchen on the floor on the left Officer Stitcher and I picked up a razor all full of blood, the razor opened up.

10 Q Are you familiar with this map which had been offered in evidence, this a private hall, and this is the entrance into the kitchen? A Yes.

Q Now, will you point out, please, where you found this razor? A This is the kitchen here.

Q Yes. A Well, right as you go in, right over the door; right inside of the door.

Q You mean over the door sill? A Yes.

Q And I show you a razor and ask you if that is the razor which you found? A Yes, that is the razor.

20 Q How do you know? A. Why, Officer Stit- cher marked it at headquarters.

Q Marked it in your presence? A. Yes.

Q And you now see that mark? A Right there.

Q And that is the manner in which you identify it? A Yes.

(Razor marked Ex. S8.)

Q Did you have occasion to go to Holle's Morgue on the following day? A Yes.

30 Q And did you see Dr. Martland, there? A Yes.

Q And did you see a body there? A Yes.

Q And what body was that that you saw at the Morgue? A The body which was murdered up in Fifth Street.

Q The same body that you saw in this apartment house the night before? A Yes.

Q And Dr. Martland was performing the autopsy? A Yes.

40

*State's Witness, James McNish, Cross**Cross Examination by Mr. Mango.*

Q What was the first room you entered when you went to the Fifth street address A When I got on the fourth floor?

Q Yes. A Into a hall way off the stairs.

Q And what room did you enter after you left the hallway? A I entered the kitchen. That would be the second room. I seen a bathroom and right next to the bathroom was a kitchen.

10

Q The first from the hall was the kitchen? A No, there was a bathroom.

Q Did you have to go through the bathroom to go to the kitchen- A No, straight down the hall. They were both off the hallway.

Q You examined the kitchen very closely? A Not very closely.

Q Well, you were looking for something that may have caused the death of this woman? A Looking for evidence.

20

Q All the evidence you could get? A Yes.

Q What did you find in that room beside the razor? A I didn't find nothing else.

Q What did you see in the room beside the razor? A I seen a woman lying on the floor dead and a lot of blood there and the room in the back, the walls all splurred with blood.

Q Did you see a table? A Yes.

30

Q Did you see anything else? A I saw an ice pick.

Q Did you open the ice box? A No.

Q Did you see any chairs? A I wouldn't say I did.

Q Did you see any bottles on the table? A No.

Q What else did you see? A I saw sort of a stove there, gas range.

Q Anything on it? A I can't say.

Q Any kettles on the stove? A I can't say.

40

State's Witness, Andrew R. Stitcher, Direct

Q Did you see any jugs there? A No.

Q I mean a jug that carried liquor? A No.

Q Did you look under the table? A No.

Q Did you look into the corners of the kitchen?

A I looked around the floor, that is where I found the razor.

10 Q You did not find any jug at all in the kitchen?

A No.

Q Did you find any jug in any other room? A I didn't get into any other room.

Q That is the only room you entered? A Yes.

ANDREW R. STITCHER, sworn in behalf of the State.

Direct Examination by Mr. Fisch.

20 Q You are a police officer of the City of New-ark? A Yes.

Q And on the 11th of November, 1925, you were connected with the 5th precinct? A Yes.

Q And did you have occasion to go to this house on Fifth street that we have been talking about on that night? A Yes.

Q Who did you go there with? A Officer Mc-Nish.

Q And what floor did you go to? A The fourth floor.

30 Q What apartment did you go to? A The front apartment.

Q The one facing on Orange street? A Yes.

Q And did you go into the kitchen? A Yes.

Q What did you find in the kitchen? A We found a lady lying between the kitchen and the bedroom with her head severed, cut.

Q And any blood? A Yes.

Q Where was the blood? A On the kitchen floor.

40 Q A small amount or large amount? A Large.

State's Witness, Andrew R. Stitcher, Direct

Q And did you look around the floor of the kitchen? A Not in particular.

Q Well, did you find anything on the floor? A I found a razor.

Q Where did you find the razor? A At the entrance, coming from the hall into the kitchen.

Q I call your attention to Ex. S1, this scale of this apartment, can you point out on this scale where it was that you found the razor? A This is the hall? 10

Q Yes. A You go in here and the door opens in and we found the razor about here.

Q Where the R is on the scale? A That represents the door.

Q Suppose we mark that R. And did you put any mark on the razor? A Yes.

Q I show you Ex. S8 and ask you whether or not that is the razor that you found in that apartment? A Yes. There is the identification mark, the cross. 20

Cross Examination by Mr. Mango.

Q Did you go into the bedroom after going into the kitchen? A No.

Q Did you go into any other room beside the kitchen? A No, sir.

Q Did you look for any evidence after you found the razor? A No. 30

Q You stopped looking for evidence in the room after you find the razor? A No, sir.

Q What did you do after you found the razor?

A We picked it up very cautiously so we wouldn't spoil finger marks.

Q And you didn't look for anything else after you picked up the razor? A No, sir.

Q You didn't look for anything else? A No, sir. 40

State's Witness, Raymond L. Mabus, Direct

RAYMOND L. MABUS, sworn in behalf of the State.

Direct Examination by Mr. Fisch.

Q You are a police officer of the City of Newark? A Yes, sir.

10 Q On November 11, 1925, you were connected with the Fifth Precinct? A Yes, sir.

Q Did you have occasion on the night of November 11th to go to this house 141 Fifth street?

A Yes, sir.

Q What time did you go there? A About 11:05 P. M.

Q And who was there beside you? A Several other officers.

Q What officers? A Officer Stitcher.

20 Q Did you go to the kitchen and the parlor on the fourth floor in front? A Yes, sir.

Q What did you see in the kitchen? A Puddle in the kitchen, seen a razor on the lefthand side, upon entering, between the kitchen and the bedroom, I seen a body lying on the righthand side as you entered the small room.

Q The body on the floor was a woman? A A woman.

Q Did you see any blood? A Yes, sir.

30 Q A small amount or a large amount? A A large amount.

Q Where was the blood? A Right on the floor.

Q I show you Exhibit S8 and ask you if that was the razor that was found in your presence? A Yes, sir.

Q How do you identify it? A By a mark on the blade.

Who put the mark there? A Officer Stit-cher.

40 Q In your presence? A Yes, sir.

State's Witness, Raymond L. Mabus, Direct

Q How long did you stay in the apartment? A About a half an hour.

Q Did you have occasion to go to Holle's Morgue?

A Yes, sir.

Q When did you go to the morgue? A The following morning, about 9:30.

Q Did anybody go with you? A Yes, sir. 10

Q Who? A Officer McNish.

Q Did you see Dr. Martland there? A Yes, sir.

Q And was Dr. Martland about to perform an autopsy? A Yes, sir.

Q Did you recognize the body that he was performing the autopsy on? A Yes, sir.

Q What body was it? A The body of the woman that was found between the kitchen and the small room, which was next. 20

Q That is 141 North Fifth street? A Yes, sir.

Cross Examination by Mr. Mango.

Q What did you do in the half-hour you were in the kitchen? A I wasn't in the kitchen all that time.

Q Where were you? A I was in the front bedroom.

Q You mean the bedroom that runs to Orange street? A Yes, sir.

Q Looking for anything? A I wasn't looking for nothing, no, sir. 30

Q What were you doing there. A I was with one of the star witnesses.

Q Did you say star witness? A Yes, sir.

Q What do you mean by star witness? A Why, the woman that seen the crime committed.

Q You call her the star witness? A Yes, sir.

Q You were talking together in the front room? A Yes, sir. 40

State's Witness, Rachel McKenna, Direct

Q She told you what had happened? A I asked her questions——

Q I am not asking you that. She was telling you how it happened? A Yes, sir.

Q Did you look for anything beside the razor? A No, sir.

10 Q Did you leave the kitchen after you found the razor? A I left the kitchen immediately after the razor was found. I didn't pick the razor up.

Redirect Examination by Mr. Fisch.

Q You refer to this woman who saw the murder committed as the star witness. What do you mean by that?

The Court. We have been all over that.

20 Q You mean she was an important witness?

The Court. We have been over that. He has explained it. We do not need any further elaboration.

Mr. Fisch. I wanted to explain what he meant.

RACHEL MCKENNA, sworn in behalf of State.

Direct Examination by Mr. Fisch.

30 Q Mrs. McKenna, you are married, are you? A Yes, sir.

Q What is your husband's name? A Eugene Edward McKenna.

Q Where do you live? A Now?

Q Yes. A 14 Warren place.

Q Newark? A Yes, sir.

Q Do you know Anna Abramowitz? A Yes, sir.

Q How long have you known her? A About twenty-two years.

40

State's Witness, Rachel McKenna, Direct

Q Do you know the defendant, Peter Doro? A I do.

Q Do you know him by any other name outside of Peter Doro? A I was introduced to him, I believe it was a party by the name of Bruno.

Q Who introduced you to him in 1923? A Anna.

10

Q Anna Abramowitz? A Yes, sir.

Q Where? A In Boston.

Q How did you come to be in Boston in 1923? A My sister lives there I have two sisters living out there.

Q And where was Anna living at that time? A In Boston.

Q And she introduced you to Peter at that time?

A Yes, sir.

Q And when she introduced you to him what did she say to you? How did she introduce him? A I was going to the moving pictures that night and she says, "I am going along with you, and we went as far as Causeway street and Stanton street out in Boston. She says, "I wont go no further"; she says, "I am going to meet a man. I will introduce you to him. She introduce me to the defendant."

20

Q And do you know who she was living with at that time in Boston? A Her husband.

Q What was her husband's name? A Louis Abramowitz.

30

Q Where was she living in Boston with her husband? A 96 West Cedar street.

Q Subsequently did she come to live in Newark, do you know? A She moved from Boston to Cleveland.

Q Who moved from Boston to Cleveland. A Anna and her husband. Then I don't know how long they were out there only until the month before the accident happened, and Anna came to Newark.

40

State's Witness, Rachel McKenna, Direct

Q So that Anna and her husband were living in Cleveland after they had lived in Boston; is that right? A Yes, sir.

10 Q Then you say some time before the 11th of November she came to Newark? A I don't know how long she was in Newark; she was in Newark when she came to my house.

Q Where were you living at that time, about a month before the 11th of November, when Anna came to your house? A 19 Warren place.

Q And did she come there alone or with somebody? A Alone.

Q And then did you learn where she was living? A She asked me to go and live with her, she said she had everything to live for, but she was alone, would I please go and live with her.

20 Q Did you go and live with her? A Not immediately, no.

Q Did you find out at that time where she was living? A She had told me she had lived at 245 Walnut street.

Q Newark? A Yes, sir.

Q And did you go there? A One night, yes, sir.

Q When you went there who did you see there? A Why, for awhile she was alone and then in walked Mr. Doro.

30 Q That is the defendant in this case? A Yes, sir.

Q Do you know who was living with Anna at 245 Walnut street? A Peter Doro.

Q That is this defendant? A Yes, sir.

Q And that was how long before the 11th of November? A I don't know how long they were living in that apartment.

40 Q No, when you were there? A It was about a week before registration.

State's Witness, Rachel McKenna, Direct

Q 1925? A Yes, sir.

Q And was the apartment furnished or not? A Beautifully.

Q Did you discuss with her the question of the furniture when the defendant was present? A She asked me would I come and live with her, she would even move to a better location, that it was cold there and her furniture was getting ruined, damp. 10

Q Did she tell you anything about who had bought the furniture in the defendant's presence? A Not right away she didn't, no.

Q Did she tell you that later? A When they had moved to the Orange street place.

Q She was entreating you to come to live with her; is that right? A Yes, sir.

Q And was the defendant there when she asked you to live with her? Yes, sir. 20

Q And then what happened after that, did she go away or did she continue staying there on Walnut street? A Sunday night she was going away.

Q How do you know that? A I was there Sunday afternoon with her and I walked with her and him as far as the Pennsylvania station. She was going to New Brunswick.

Q How do you know that? A The Pennsylvania station.

Q How do you know she was going to New Brunswick? A They were discussing it before that in my house. 30

Q When they were discussing in the house about her going to New Brunswick—and when you say “they” who do you mean? A Peter and Anna.

Q What did she say? What did she say—what did they say about going to New Brunswick, give us the conversation? A He said, “Well, at last you have got the place, you will stay there for a week and a half, or two.” 40

State's Witness, Rachel McKenna, Direct

Q Who did? A He did. "And you will make out pretty good, I will see to that."

Q What else did he say? A Oh, nothing. She got ready. He said, "Do you want to be there, you get there at ten o'clock." He said, "There will be a black and white taxi to meet you," and he said,
10 "They will take you around to the back of the house and when you get in there you will be all right."

Q And did he say what kind of a house it was?
A It was understood it was to be a disorderly house.

Q Did he say anything about the price of the house or how much she was going to make? A Not in my presence, but when she came back she said she made \$191.

Q He and she were discussing about going to New Brunswick, getting a taxi which would meet her and she was to go in the back way. A Yes,
20 sir, the taxi was to take her right around to the back of the house.

Q Did he say how long she was to stay there, was that discussed? A No, that would be up to the people over there.

Q And then she went to the Market street station? A Yes, sir, and I don't know where he went, but I went on home where I lived, on Warren place.

Q Where did you leave him? A At the station.
30 Q The Market street station? A Yes, sir.

Q Did you go up to the platform or not? A No, sir, right outside of the door.

Q And then you left both of them there and you went home to your place on Warren Place?

A Yes, sir.

Q When was the next time that you saw the defendant Peter? A On a Tuesday night, the following Tuesday night.

Q Where? A At my house.
40 Q Did you talk with him? A Why, he coaxed,

State's Witness, Rachel McKenna, Direct

and he said to me, "Anna wrote me a letter and asked me wouldn't you please come down and look after the things." There was only one bedroom there and as long as Anna isn't there I won't go down to the house until I get another bed." And he said, "Please, for Anna's sake, go down and look after the things." Wednesday my husband and I moved there.

10

Q You went down to the Walnut street house?

A Yes, sir.

Q How long did you stay there? A I went there the 21st of October and we moved from there the 4th of November, I think the 4th or 5th of November.

Q After you went down there on the 21st of October, did the defendant come there? A I didn't see him from the time I went in the room until the day Anna came home.

20

Q What day did Anna come home? A Sunday evening, early in the evening.

Q Do you remember what date that was?

A No, sir, I don't. It was the second Sunday.

Q So that she had been away for about two weeks? A About thirteen days.

Q And when she came back was Peter there? A Peter brought her home.

Q What conversation, if any, took place between them, in your presence, or between Anna and yourself in the defendant's presence? A She had made \$191.

30

Q Who was that? A Anna. And she said, "I am going to give a hundred dollars on the furniture." And she said, "I am going to try my best and take my diamonds out of pawn," she says, "And then when that is over, why, I know what I have to do."

Q Where was Peter when she said that? A He was right there.

Q What, if anything, did he say? A Nothing,

40

State's Witness, Rachel McKenna, Direct

only that he would see that she would get more jobs like that until she did get straightened out.

Q You said that she was going to put a hundred dollars on the furniture? A Yes, sir.

Q Was anything further discussed as to the furniture, and who bought it? A Not that day.

10 Q Was it discussed later on? A Yes, sir.

Q What other conversation took place at that time between Peter and Anna in your presence? Anything else? A Not that day.

Q How long after Anna got back from New Brunswick when this talk took place about the fact that she had made \$191 and that she was going to pay \$100 on the furniture? A While she was home and resting up she was talking about it that same evening that she got home.

20 Q That was the evening that she got back? A Yes, sir.

Q How long was it after that that she moved, if she moved at all? A To the Walnut street house?

Q Yes. A Oh, I guess about a week and a half.

Q During that week and a half did you continue to stay at the Walnut street house? A Yes, sir, in the meantime Peter Doro got a bed for us.

Q You testified that you had been living on Warren place. A Yes, sir.

30 Q Did you have any furniture? A No, sir.

Q You were living in a furnished room? A Two.

Q What is that? A Two furnished rooms.

Q So he did get a bed for you and your husband? A Yes, sir.

Q And you stayed down there in Walnut street with the defendant and Anna? A Yes, sir.

40 Q During the time that you were down there at the Walnut street house with your husband and the defendant, did you hear any conversation and the

State's Witness, Rachel McKenna, Direct

defendant? A If you mean quarrelling continuously.

Q They were quarrelling continuously? A Yes, sir.

Q What was this quarrel about? A That I can't say. Some of it was spoken in Italian.

Q Do you understand some Italian? A Nothing of— 10

spoken or said? A I got to understand the words up in Orange street; it was quite new to me on Walnut street.

Q While you were there at the Walnut street house you say they were quarrelling continuously? What, if anything, do you remember Peter saying to Anna? A On Walnut street his words were "I had a beautiful wife, the best looking woman in the world, good enough to be a moving picture actress and I slashed her face so that she had to have eighteen stitches." And he said, you, you Udine, you got to die." 20

Mr. Fisch. It might be well to have a translation of that word in the record.

The Interpreter. "Whore."

Q What else can you remember his having said down there on Walnut street during the course of their quarrelling? A One time they were talking about something and she was showing me how to fix my dress, she took a cape off of it and showed me how to alter it, and he made a leap for her with a black handled knife. I was paralyzed to the seat for a second there, I didn't know what to make of it, and she says, to me, "Are you scared of him?" She says, "He is full." She says, "He wouldn't do nothing," and she grabbed him by the collar. He said, "Look how white she got, you Udine," he said, "You got to die before you get through with me, you got to die," he said. 30

4.)

State's Witness, Rachel McKenna, Direct

The Interpreter. He said, "Udine, you got to die, you got to die,"

Q Was there any other quarrelling down there in Walnut street that you can remember? A Not that amounted to anything. It was pretty quiet there after that one outburst.

10 Q From there where did you move to? A 131 North Fifth street or 450 Orange street.

Q The house is on the corner of Fifth street and Orange? A Yes, sir.

Q Who rented that apartment? A I did.

Q How did it come that you rented the apartment? A Well, they were not married.

Q What is that? A They were not married and they asked me to take it in my name.

Q That is why you rented it, is that it? A Yes.

20 Q And did you get a lease for the apartment? A Yes.

Q Had the lease been executed, had it been signed? A We never got a chance to send it out. It had been signed, but we never got a chance to send it out.

Q Did you show the lease to the defendant? A Oh, he didn't pay no attention to it, it was all Anna.

Q It had never been sent by you to the owner? A We never got a chance to.

30 Q Now, when you moved up there to Fifth street what was the date? A The 5th of November.

Q And I show you this diagram, Exhibit S1, and ask you if this layout of the rooms represents the apartment which you rented up at 141 North Fifth street? A It does.

Q And whose furniture went into that apartment? A Anna's furniture and Peter Doro's.

Q And there were how many rooms in the apartment? A Five, but only four filled.

40 Q Five rooms and bath? A And bath.

State's Witness, Rachel McKenna, Direct

Q One room was vacant? A Vacant, yes.

Q Now, there were two bedrooms, were there?

A Yes.

Q A large bedroom facing on Orange street? A Yes.

Q And a small bedroom off the kitchen? A That was our bedroom.

10

Q Now, the small bedroom was occupied by——

A By my husband and myself.

Q And the large bedroom? A Was Anna's and Peter's.

Q And in order to go from the kitchen into Anna's and Peter's bedroom through what other room or rooms did you go? A You had to walk out into the hall and into the dining room and into their room.

Q And in order to go from the hall to your bedroom what room did you go through. A Into the kitchen and from the kitchen into our room.

20

Q Now, what were the articles of furniture in the kitchen? A There was a white ice chest, an ice box.

Q Where did that stand with reference to the entrance into the kitchen when you came into the kitchen, was it on the lefthand side or the righthand side? A The righthand side.

Q Now, were there any wash trays in there? A Two and the white sink and the gas range.

30

Q Now, the gas range, on which side of the room was that. A Right near the sink.

Q On the righthand side? A Yes.

Q And where was it with reference to the doorway in your bedroom? A It was just a little bit of a ways from the bathroom to my door.

Q Was there a kitchen table in there? A Yes, it was on this side.

40

State's Witness, Rachel McKenna, Direct

Q It was on the side opposite the gas range, is that right? A Yes.

Q And there was a closet out in the hall? A Yes.

Q What was that closet used for? A For Anna's and Peter's clothes, their suits and coats.

10 Q Now, after you got up there into North Fifth street apartment—by the way, what floor was that on? A On the fourth.

Q Was there any quarrelling between Anna and Peter? A There was.

Q Were the quarrels frequent or were they infrequent? A Almost every day from the time we moved up there until the time of the tragedy.

Q What was the quarrelling about? A Do I have to—

20 Q Yes. You have to. Tell us about them. Go ahead. Tell us what the quarrelling was about.

The Court. Tell us what he said and what she said.

A Well, mostly he used to get down on her.

Q And what did he say and what did she say?

A Well, the night before the accident—

Q Well, now, I don't know whether we want to call that an accident, and let us start from the time that you first moved up there on North Fifth street?

30 A Well, I didn't know what the quarrels were about until the night before the tragedy.

Q Well, now, you say you didn't know what the quarrels were about, did you hear the quarreling?

A Plenty of it.

Q What did you hear? A You have got to die. Puttanna. You were a whore before you were born. That is what I heard fifty times a day.

Q Who said that? A Peter Doro.

Q To whom? A To Anna.

40 Q And you say you heard that fifty times a day?

A Yes.

State's Witness, Rachel McKenna, Direct

Q And when was the first time you heard that after you moved up to North Fifth street? A I guess it was the next day.

Q And how often did you hear it from the time that you heard it the day after you moved up there to the 10th of November? A Well, when he would dress up and go out it would be quiet and immediately when he come in if things did no go right outside, if something went wrong he would pick. He would answer her back puttanna. You whore, you have got to die. 10

Q Well, now, did he ever make any reference to what would happen to him or what was going to happen to him if Anna was going to die? A He said that—the time he slashed his wife's face in Cleveland he got away with it and he said, "Anything I do I have the ability to get out," and he said to her, "Look out, look out." 20

Q And did he ever say anything about the electric chair? A The day before he says you have got to die, he said, "After you are dead five minutes after if they give me the electric chair I will take it like a man."

Q That was on the 10th of November? A That was on the 10th of November, and there were several other times. I cannot exactly recall the date. 30

Q Now, did you ever see him make any motions with his hands or put his hands in his mouth, or anything of that sort? A Every time he got mad he would go like this to her.

Q (Indicating)— A Look out.

Q —putting his index finger in between his teeth? A Yes. "Look out," and he would run from room to room. "Manmuzza. Oh, my God," he would go.

Mr. Fisch. I wonder if counsel for the de- 40

State's Witness, Rachel McKenna, Direct

fense would have any objection to Mr. Federici telling the court and jury now what significance if any, the motion which the witness indicated was made by the defendant.

10 Mr. Mango. I object. Let the jury draw its own conclusion, because, after all, it would be nothing but the interpreter's own idea. The language used by the witness indicates the Sicilian dialect and while it may be common to many Italians as to significance meaning, I think it would be merely his opinion about it.

Mr. Fisch. Well, we will call him and have him sworn later on.

Q Now, on the 10th of November, 1925, was there a quarrel that night? A Yes

20 Q What time was that quarrel? A I guess it was after one. It lasted until three in the morning.

Q In the morning? A Yes.

Q Well, now, where were you when the quarrel-
ing began? A In my bedroom.

Q And where was Anna? A Anna in her bed-
room with him.

Q And where was your husband? A Out. His
brother-in-law was dying and he was over to his
sister's house.

Q He was not at home? A He was not at home.

30 Q Well, now, what woke you up? A Their
pickerings and fighting, and when I ran into the
room she was standing—

Q Into what room? A Their room.

Q What made you run into her room? A Well,
it sounded as though someone was being choked.

Q Whose voice did you hear? A Anna's, and
I never heard a murmur out of him.

Q What was Anna doing.

40 The Court. Now, you are speaking about the
11th?

Witness. No, the 10th.

State's Witness, Rachel McKenna, Direct

Mr. Fisch. No, the night of the 10th early on the morning of the 11th at one or two o'clock.

Q What was Anna doing, talking or screaming?

A She was not screaming. "I cannot stand it no longer. I won't." I said, "Anna, we have just moved into this new place. This is an American place, for God's sake, what will people say." 10

Q Where was Peter when she said that? A Right there.

Q In bed? A Yes. She said, "Peter, I am going to jump out of the window. I can't stand it any longer." If you want it I will tell you.

Q Go straight ahead and tell us what she said.

A She said he bothered me, and when he is through he gets down on me.

Q Well, now, is that the exact words? A No. 20
My God.

Q Tell it to the stenographer. A He jazes me, and after he gets through he gets down on me," and she said, "Now, he put his both hands in and he is pulling on me, I can't stand it no longer. I am going to jump out of the window if he doesn't stop it." I think that is what prompted him to kill her.

Mr. Mango. I object.

Mr. Fisch. I consent that that be stricken out. 30

Q What happened after that? A I never spoke to him. I said, "Please, Anna, until morning, until daylight. This is terrible. I said, I can't stand it no longer, I am going to get out. I took the rooms in my name. This is terrible, and about a quarter to three my husband walked in, when I started at him, and he said, "I can't help it, George is dying."

Q The quarrel continued up to the time your husband came in? A Yes, and then I walked in her room and coaxed her, and she come out into the 40

State's Witness, Rachel McKenna, Direct

kitchen and I said, "Anna, go to sleep until morning," and he said, "All right, I won't bother you, Putanna. Go to sleep you Goddam whore."

Q Now, then, after he had made that statement in the kitchen, "All right, Putanna, go to bed—

10 A He did not come out in the kitchen. He was always in his bedroom.

Q Where was Anna? A Anna came out in the kitchen and my husband coaxed her to go to bed and keep quiet until morning.

Q That was what time in the morning? A It was a little after three A. M. He started to talk to her.

Q Now, then, after that was it quiet? A Yes, he let her alone. We went to sleep.

20 Q Now, then, what happened on the 11th of November, which was Armistice Day? A On the 11th we got up about nine o'clock.

Q In the morning? A Yes, in the meantime my sister's husband out in Boston died and she sent me a telegram and money—

The Court. We don't want that.

Witness. Well, I want to bring it out how I sent back the money.

The Court. No, we do not need that.

30 Q Now, you cannot tell us about that. You had gotten up about nine o'clock in the morning? A Yes.

Q What happened on that day? A Well, we went to the barber's and got a hair cut.

Q Who? A Anna and I, and we went to some big store and she bought a washboard.

Q Where was Peter when you got up and left the house? A In the house. Everything was fine as silk then.

40 Q He was in the house and everything was quiet? A Quiet.

State's Witness, Rachel McKenna, Direct

Q And after you went to the barbers you went and bought a washboiler? A Board.

Q And what then? A We came home.

Q What time did you get home? A I guess it was about half-past eleven.

Q You mean Anna and yourself? Anna and I, yes. 10

Q Where was Peter when you came home? A In the house. When he was home he done the cooking. He was cooking a nice spaghetti dinner—Macaroni dinner, and I started to wash clothes and Anna went in her room and fixed her bed up. Well, everything went along smooth until towards evening.

Q Well, now, in the afternoon where were you? A Oh, yes, in the afternoon he was talking to her on the quiet, and I said to her, "Well, why don't you make it peaceful? Go in the bedroom with him, everything will be all right." I said, "I am washing, everything will be all right." I said "Lie down. You were up the whole night," and she said, "Well, I want to rest up as much as I can, because Sunday night I am going to New Brunswick again." 20

Q Had Peter said anything about her going to New Brunswick again? A No. He got the place for her.

Q He got the place for her to go? A Yes.

Q What did he say about the place that she was to go to on Sunday? A I believe she was a Russian woman who owned the place. They got a letter that day that she was to be ready for Sunday evening, to telephone to him, telephone to New Brunswick to let them know. 30

Q And did he say anything about who she was to ask for? A On that trip she was not to ask for anybody. The first time she had to ask for Anna, a woman Anna and a man Freddy.

Q And did he say anything about the kind of 40

State's Witness, Rachel McKenna, Direct

house it was, the price of it, or anything of that sort? A No, sir.

Q Or how much she was to get? A If they talked about that it was not in my hearing.

Q But you say that he made the arrangement for her to go? A He did.

10 Q Well, now, that was in the afternoon that they were talking about this, November 11th? A The letter was—— There was only one mail that day and that day he got a letter from this woman that there would be a vacancy for her for Sunday evening, if she come to notify her, to telephone to this woman to let her know that Anna would be there.

Q Where was that; what place was she to go to? A I don't know. It was in New Brunswick, but what place, I don't know.

20 Q Do you know what kind of a place it was? A Well, a disorderly house.

Q And did Anna go to sleep in the afternoon? A Yes, they lay down.

Q Anna and Peter both? A Yes.

Q All right. Now, what happened after that? A Mr. Andesso came up.

Q Who is he? A Well, she bought the furniture from him, I believe, and he came up. I suppose he was looking for money.

30 Mr. Mango. I object to what you suppose.

Q No, not what you suppose? A Well, I don't know. They walked into the dining room and started to talk.

Q And you saw Mr. Andesso and Anna and Peter go into the dining room and talk? A Yes.

Q And after that what happened? A Peter invited Mr. Andesso to have dinner.

Q Now, where did you have your dinner? A In the kitchen.

State's Witness, Rachel McKenna, Direct

Q Who had dinner in the kitchen? A Peter and Anna and Mr. Andesso.

Q Yourself. A No, I didn't eat then, I was waiting until I got through with the wash.

Q What time was that? A I could not say. I guess it was about half-past two.

Q That was in the afternoon? A Yes. 10

Q That was the noonday meal? A Yes.

Q I am talking about the evening meal. Andesso came there around noontime? A Yes, just before. Well, it was about one o'clock, but he didn't stay all the afternoon. He just stayed for a little while because Peter asked him to have dinner and he stayed and had his macaroni and went home.

Q And when he went home was that when Anna and Peter went in the bedroom to lie down? A Yes.

Q Now, do you know what time they got up? A 20
It was after four.

Q When they got up what happened? A I continued washing. We had such a big wash. It was almost three weeks wash to be done. I continued to wash. Some of the clothes I got out on the line.

Q Did you have any supper? A We had what was left of the macaroni.

Q Who ate supper? A Anna, Peter, my husband and myself.

Q What time was that? A I guess it was about 30
five o'clock.

Q And after that what happened? A Peter said to me to go down to the butcher's and get a piece of veal. There was some canned stuff in the house and he was going to make an Italian veal supper.

Q Did you get the piece of meat? A I went down and got the piece of meat and he was to cook it. He was not going out, and Anna suggested that her and I go to the movies, and we went to the 40
Tivoli.

State's Witness, Rachel McKenna, Direct

Q What time did you start to go out to the movies? A About half-past six.

Q And what, if anything, did the defendant say, when you and Anna started go out to the movies?

A Well, when we went out she said, "So long," and I said, "the same to my husband." When we got in
10 the hall I said, "Anna, who has the key?" and she said, "I have," and I said, "Go in and ask Peter if he is not going out to give it to John, because he is going over to his sister's again tonight, and so I would not have to lay awake to let him in, and she went in and said, "Peter, are you going out," and he said, "No," and she handed him the key, and when she got as far as the door he said, "Go out and get killed by the cars."

Q Who said that? A Peter to Anna.

20 Q What tone of voice did he use? A Bad enough to chew her head off I guess.

Q An angry tone? A Yes. When we got down on the street she said, "Did you hear that?"

Mr. Mango. I object.

The Court. No.

Q Not when he was not present. You went to the Tivoli on Orange street? A Yes.

Q What time did you get back to the house? A I could not say. About a quarter to eleven.

3 Q And when you got back at quarter to eleven you and Anna were together, were you? A Yes.

Q And what room did you first enter when you came back into the house? A I walked right into the kitchen, through to the bedroom and took my hat and coat off.

Q What did Anna do? A Stood in the little hall where her closet was and took her hat and coat off and hung them off.

40 Q That is the closet you have indicated that is opposite the kitchen door? A Yes.

State's Witness, Rachel McKenna, Direct

Q Where was Peter? A In the kitchen.

Q Whereabouts in the kitchen? A Well, I cannot—

Q Well, was he sitting down or standing up? A Sitting down near the table.

Q And what, if anything did he say to Anna and what did she say to him? A I walked over to the sink to put water on for tea and he said to Anna, "Do you want supper?" and she said, "You know I only ate a little while ago. Leave it, it will be all right until P. M." and he said, to me, "Do you want supper?" and I said, "I cannot, I ate a big supper." I said, "I am going to make tea." 10

Q Could you understand what he was saying, clearly understand it? A Yes, he said it in plain English.

Q And did you see him stand up? A Yes. 20

Q And did he stand perfectly still? A Perfectly still.

Q You did not see him stagger? A No, sir.

Adjourned until Wednesday, March 3, 1926,

at ten o'clock S. M.

30

40

Direct Examination by Mr. Fisch (continued).

Second Day.

Wednesday, March 3, 1926

10	STATE OF NEW JERSEY, <i>vs.</i> PETER DORO ALIAS PETER BRUNO.	}	INDICTMENT No. 160, Dec. T., 1925, MURDER.
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Cotinued pursuant to adjournment.
 Present counsel as before stated.

RACHEL McKENNA, resumes the stand.

Q Now, Mrs. McKenna, yesterday afternoon at
 the conclusion of the day, in order to follow the
 20 testimony, I will read to you the last two or three
 questions and answers. (Reading) "What, if any-
 thing did he say to Anna, and what did she say to
 him?" "I walked over to the sink to put water on
 and he said to Anna, 'Anna, do you want supper?'
 and she said, 'You know I only ate a little while ago;
 leave it, it will be all right until P. M.' and he said
 to me 'Do you want supper?' and I said, "I can't
 eat a big supper." I said, 'I am going to make tea.'
 Did you understand what he was saying, clearly
 30 understand it? Yes, he said it in plain English.

Q And did you see him stand up? A Yes, sir.

Q And did he stand perfectly still? A Per-
 fectly still.

Q Did you not see him stagger? A No, sir."
 Now, you say you saw him stand up, what happen-
 ed? A Nothing.

Q After you had said you were going to make tea
 what did he say or do? A Nothing definitely then.
 When the tea boiled, I put out three glasses and I
 40 said, "Pete, do you want a glass of tea?" and he did

State's Witness, Rachel McKenna, Direct

not answer, and she said, "He don't want no tea, he had it already while we were not here."

Q Did you notice anything peculiar or extraordinary about his looks? A Only that he was made looking.

Q Did you notice anything peculiar or extraordinary about his eyes? A No, I did not. 10

Q Did they look the same as usual? A The same as usual.

Q Now, after Anna said that he doesn't want any tea what did you do or what did anybody else do that was there? A He said to her, "You did not kiss me when you went out, did you?" And he said, "You have my guts don't you?" and she said to him "Pete, you are imbriago——

Mr. Mango. May the interpreter give us the meaning of that? 20

The Interpreter. Drunk.

Witness. (Continuing). And she said, "When you will cut out drinking, when you will cut out going down," she said, "then," she said, "I will be like I was before."

Q Are those the exact words she used, "Going down?" A That is the exact words.

Q And did she say anything about her mouth? A Yes, she says, "Because I am afraid of taking a chance, if you got anything I will get it in my mouth," she says. 30

Q What happened after that? A He was like a wild man——

Mr. Mango. I object.

Q When Anna said "You are imbriago," was he drunk or sober? A He didn't look drunk to me, no, sir.

Q Now, when she said to him that she did not want to take a chance because if he had anything 40

State's Witness, Rachel McKenna, Direct

she would get it in her mouth, what if anything, did he do or say? A He slapped her.

Q Were? A In the face.

Q What did he say, if anything? A Putanno, he says to her, and she slapped him and she said, "Cornuto" you call me putanno, you shot my husband three times and I left my husband to come with you because I was afraid you would kill him, and you call me putanno, and you are taking my money," and she said, "You are taking me to whore houses and you are making me do what I am doing, and you called me a whore," she said, "You dirty, putanno, you are rotten."

Q Then what happened? A You mean after the scrapping was over?

Q How did he look? A He was like a maniac, just like a crazy person.

Q You are making some kind of grimace with your face. A Well, that is what he did, he grinned at her.

Q And After he grinned at her what did he do? A Ran in the other room.

Q Into what room? A He ran into the dining room.

Q From where? A From the kitchen.

Q And didn't he say anything? A Just mumbled words, and he ran into the other room, and into the kitchen and over to where Anna was and she was wiping the stove up and I said to Anna—

Mr. Mango. I object to what she said to Anna.

Q Don't tell us what you said to Anna when he was not present. A If I cannot lead up to the time of the killing—

The Court. You said something to her, but don't tell us what you said.

Q And what, if anything, did you hear the de-

State's Witness, Rachel McKenna, Direct

defendant say? A He didn't say a word after that, he came running in and he was near the range and he pulled her over into the corner and he put his arm around her neck and with his hand he let go three or four times like that (indicating) and when he left go of her he was covered with blood and I got it too.

Q And what did you get? A Blood all over me. 10
I was standing right close to him.

Q This quarrel or argument, where the slapping took place, between the defendant and Anna, which part of the kitchen did that take place in? A Near the table.

Q Near the table in the kitchen? A Yes, sir.

Q Now, afer she had said to him what you have just testified to, about his having shot her husband and her having left her husband to come with him, and his having put her in whore houses and so forth, and then you say he grinned at her, where was Anna after that? A She walked over to the gas range. 20

Q Where did the defendant go? A Into the dining room.

Q He walked out of the kitchen into the hall and from the hall into the dining room? A Yes, sir.

Q What did he do or say? A Just mumbeld to himself and I could hear what he said.

Q After he had been in the dining room where did he go? A He ran into the kitchen again. 30

Q What part of the kitchen did he come into the first time? A Over to Anna.

Q Then where did he go? A He pulled Anna from the gas range right into the corner between my bedroom and the door there.

Q How many times did the defendant leave the kitchen and come back again to it after the slapping took place? A Three times.

Q Three times? A Three times, yes, sir.

Q Then the slapping took place at his table here 40

State's Witness, Rachel McKenna, Direct

(indicating)? A Yes, sir.

Q And then he went into the dining room? A Yes, sir.

Q Then the slapping took place at this table here (indicating)? A Yes, sir.

Q And then he went into the dining room?
10 A Yes, sir.

Q And then he went back into the dining room?

A Yes, sir.

Q What did he do? A He went into the dining room and then went into the kitchen and then into the bathroom.

Q Then he went out of the kitchen into the hallway into the bathroom? A Yes, sir, and came right in and over to Anna.

Q That is when he went came to the kitchen he came to Anna? A Yes, sir.
20

Q And Anna was standing at that time where? A Near the gas range.

Q And during that time when he made these three trips out of the kitchen and back again, what, if anything, did you hear him say to Anna? A He didn't say anything before he just made a leap for her.

Q Now, while the defendant was walking in and out of that kitchen, what if anything, did you do?
30 A I had the broom from behind the gas range and took it into my room and I said to Anna—

Mr. Mango. I object.

The Court. Was he present when you said that?

Witness. Positively.

Q What did you say? A I said, Anna, if he goes to do anything to you"—I was afraid he was going to try and beat her up—and I said, "I will go

State's Witness, Rachel McKenna, Direct

to using that broom on him and I am going to scream for all I am worth."

Q What made you think he was going to beat her up, and what made you take the broom? A Because he was walking from room to room and mumbling words and he looked like a maniac to me.

Q What did you hear him mumbling? A I 10
heard him say "Putanno you have got to die, putanno, you have got to die, mammuzza, mammuzza," running around like that.

Q Now, the third time he came back into the kitchen and she was near the gas range, near the door leading to your bedroom, what then did you see him do? A He made a spring for her and grabbed her around the neck.

Q Which arm did he grab her around the neck with? A With the left arm, and with the right 20
arm he was working like that, I didn't see anything in his hand, but I had the broom and I gave him one over the head.

Q And how many times did you see him working like that, making a slashing motion? A I think three times.

Q What position were you in with reference to him, where were you standing? A Right near to him on the inside of my bedroom.

Q You were in my bedroom, is that right? A 30
Yes, sir.

Q And you were facing him or were you to the side of him or to the back of him? A Well, I was not to the back of him, no, I was facing the two of them.

Q What did you say or hear her do? A She didn't have a chance to do anything, all I heard was (the witness makes a noise) and that was all I heard, and when he let go of her he was covered with blood and when he let go of her I got it and 40

State's Witness, Rachel McKenna, Direct

when I saw the blood I didn't see anything else, I screamed like a maniac and he looked at me and he ran and he thought——

Mr. Mango. I object to what he thought

The Court. Tell us what he did.

A He looked at my crazy and ran out of the
10 house.

Q Where did he run? A Down the street and
me after him with the broom and I tried to trip him
up.

Q What did you say? A I hollered——

Mr. Mango. I object, unless she can show
that the defendant was within hearing dis-
tance.

The Court. Just at the moment when the
cutting took place, is that what you mean?

Mr. Mango. I understand that the defendant
was running away and she was chasing him
with a broom and she tried to trip him. Now,
20 the Prosecutor asks her what she said.

The Court. I will permit her to testify as
to her explanation at the time, as part of the
res geaste, but if any interval elapsed, I will
not.

Witness. He was right there when I hollered
at him.

The Court. What did you say to him?
30

Witness. I never said a word, I hollered he
was getting away.

The Court. How far away was he?

Witness. One flight down the hall——

Mr. Mango. I ask an exception.

The Court. One moment. How soon after
that, when you saw him grab her around the
neck did you holler?

Witness. I hollered right then when he was
cutting her, "Oh, my God, oh my God——"
40

State's Witness, Rachel McKenna, Direct

Mr. Mango. I renew my objection and ask that the answer be stricken out.

The Court. The answer was not responsive to my question and it will be stricken out. How soon after you saw him making the motions with his arm was it when you shouted he was getting away?

10

Witness. About a minute after.

Mr. Mango. I renew my objection.

The Court. Strike that out.

Q Now, you say you saw him running down the stairs? A Yes, sir.

Q How far ahead of you was he? A About a flight.

Q And what did you say in his hearing?

Mr. Mango. I object.

The Court. Sustained. It calls for a conclusion.

20

Q What did you say?

Mr. Mango. I object.

The Court. What is the importance of this?

Mr. Fisch. Just to show the action of the defendant.

The Court. The action of the defendant is shown, he was running away.

Q Then, you say you saw him running down the stairs and you were running after him? A Yes, sir.

Q Did you get out to the street? A Yes, sir.

Q Who reached the street first? A Him.

Q And when he got to the street did you see the defendant? A I did.

Q Where did you see the defendant when you reached the street? A About two doors from the house.

Q In what direction? A Towards Sussex avenue.

Q What was he doing? A Running.

40

State's Witness, Rachel McKenna, Direct

Q How was he dressed? A Just in his under-shirt and his pants and his shoes were unlaced.

Q And what were you doing? A Trying to take up the chase.

Q What were you doing? A Screaming and trying to have him stopped.

10 Q Were you standing still? A No, sir, I was running after him.

Q What did you say? A Some man stopped me and asked me——

Mr. Mango. I object to what the man said to her.

Q Some man spoke to you stopped you and asked you something? A Yes, sir.

Q And you told him something? A Yes, sir.

20 Q What did the defendant do? A The defendant, I don't know, he kept on running.

Q Did you then continue chasing the man? A Not after I met a policeman and he took up the chase and I went upstairs to see what I could do for Anna.

Q Do you know who that policeman was? A No, sir, I do not. I was too excited.

Q Do you know whether that was the officer who met you (indicating Officer Cook)? A I would not swear; I don't remember.

30 Q Where did you see the defendant go, what was the last you saw him? A Two houses from where I lived.

Q Then what did you do? A I went upstairs, I thought I could do something for Anna.

Mr. Mango. I object to what the witness thought she could do.

The Court. Don't tell us that.

Q What did you do? A Nothing, nothing at all. When I went into that hall and she was sprawled out with all that blood around her——

40 Q You went upstairs back into your apartment, did you? A Yes, sir.

State's Witness, Rachel McKenna, Direct

Q And what did you do when you got upstairs?

A I saw her lying in that pool of blood and I didn't go near her.

Q Where was she lying? A Between the kitchen and my bedroom.

Q I show you Exhibit S7 and ask you if you can tell me, with reference to that exhibit a picture leading into your bedroom, where Anna's body was lying? A Half of the body in there (indicating) and the other half right about here (indicating). 10

Q Half of the body was in your bedroom, over the door sill and the other half where this spot is indicated on the floor? A That is where he got her wedged in, right here (indicating).

Q Got her wedged in where? A Right here, he pulled her in from the door——

Q That is, you are indicating that he pulled her in from the gas range in through the door leading to the kitchen—— 20

Mr. Mango. Objected to as leading.

The Court. It is a preliminary matter.

A Yes, and Anna stood about there, (indicating) and Pete had her and I was right close to Pete——

Q Now, after coming upstairs, after he had run out, in which direction was her head and in which direction were her feet? A Her feet was in there in the bedroom, and her head was like this, in the shadow. 30

Q And you saw these cuts? A Yes, oh, a terrible gash.

Q Where did you see the gash? A Her throat, like this, a wide gash.

Q On the left side, do you remember? A No, on the right side.

Q And was there a small amount of blood or a large amount of blood on the floor? A Oh, a terrible pool of blood. 40

State's Witness, Rachel McKenna, Cross

Q Then what did you do, if anything? A I ran from room to room screaming for help, that's all.

Cross Examination by Mr. Mango.

Q How long are you married, Mrs. McKenna?

10 A Twelve years.

Q What was your name before it became Mrs. McKenna? A Ray Goldstein.

Q Was that your maiden name?

Mr. Fisch. Pardon me, just a moment. Before I close the direct examination.

By Mr. Fisch.

Q I show you a broom and ask you whether you can tell me whether or not that is the broom that you had with which you endeavored to strike the defendant? A It is.

20

Mr. Fisch. I offer it in evidence.

(The same is marked Ex. S9.)

Cross Examination by Mr. Mango (continued).

Q Was that your maiden name? A No, sir, it was not.

Q What was your maiden name? A Sternberg.

Q You knew this Anna Abramovitz for twenty-two years, is that right? Yes, sir.

30

Q Were you living in the same town with her for twenty-two years? A Well, now, we lived in Newark from 1903 to 1917, then I moved to Boston from 1917 to 1922.

Q You remained in Boston until 1922? A Yes, sir.

Q And from 1922 to the present time you lived in Newark? A Yes, sir.

Q And all through the period that you knew Anna Abramovitz she lived in the same town that you

40

State's Witness, Rachel McKenna, Cross

did? A No, she lived in Newark for a long time and then went to Boston with her people and she got married the second time in Boston to this Abramovitz.

Q How much of the 22 years was it that Anna Abramovitz was outside of the same city that you lived in? A Oh, I guess for the last seven or eight years. 10

Q So that it was for twenty-two years you saw her on and off at different places? A Not in different places, she was my sister-in-law at one time; I was married to her brother.

Q She was your sister-in-law at one time? A Yes, I married her brother in 1904.

The Court. That was Goldstein?

Witness. Yes.

The Court. And her name was Goldstein before she was married? 20

Witness. Yes, sir.

Q So that her name, before Abramovitz was Anna Goldstein? A Yes, sir.

Q And by reason of the marriage to her brother she became a sister-in-law of yours? A Yes, sir.

Q How did you first become introduced to Peter Bruno? A In Boston.

Q In what year? A I think it was in 1923.

Q And you were living then in Boston? A No, I was out to visit my sisters, I have two sisters living in Boston. 30

Q At that time? A They are yet, I have relatives living there.

Q And was Anna Abramovitz living in Boston then? A Yes, with her husband.

Q And it was while she was living with her husband that you were introduced to the defendant?

A Yes, sir.

Q How long did you remain in Boston after 40

State's Witness, Rachel McKenna, Cross

that, on that trip or your visit to your sisters? A About two and a half months.

Q How many times did you see the defendant and the Abramovitz woman together in the two and a half months? A I never seen them. Only just one time, she walked down and introduced me to him.

Q You never saw the defendant in Boston after the introduction? A No, I did not.

Q Do you know when the Abramowitz woman and her husband left Boston for Cleveland? A No, sir, I do not.

Q Do you know what year it was? A She was a pretty sick woman---

Q I did not ask you that. A Well, no, I do not; about 1924 she moved.

Q She moved out of Boston to Cleveland?
A Yes, sir.

Q How long did she remain in Cleveland, if you know? A I don't know, I can't tell you correct.

Q Do you know whether the defendant went to Cleveland after Mrs. Abramovitz went to Cleveland? A I cannot say only what she told, me, that he had come out after, but I don't know if he did go.

Q I mean aside from what Mrs. Abramovitz told you you don't know it was a fact? A No, sir, I do not.

Q The next you knew of the defendant and Mrs. Abramovitz was when Mrs. Abramovitz came to see you all by herself? A Yes, sir.

Q Did she have an establishment in Newark or any rooms in Newark at that time? A Yes, sir.

Q She lived at 245 Walnut street? A Yes, sir.

Q Do you know how long she lived there before she came to see you? A No, sir.

State's Witness, Rachel McKenna, Cross

Q Did she tell you then whom she was living with? A She told me.

Q Did she tell you she was living with the defendant? A Yes, sir.

Q Did she make any complaint to you then about the fights or the arguments? A If she did I would never go to live with her. 10

Q Did she make any complaint to you about having any fight or argument with the defendant? A No, she did not.

Q And until that time you did not know of any fight or argument between the defendant and the Abramovitz woman? A She did not come to my place, I didn't know nothing.

Q Was it on that occasion she asked you to go down and live with her? A The only time when she came over to my place and asked me to come and stay with her, and she said she had everything to live for but she was lonesome. 20

Q I say was it on the occasion of that single trip to your Warren place residence that she asked you to come and live with her? A Yes, sir.

Q That was the first time you met her in Newark? A Yes, sir.

Q That was the time she asked you to come and live with her? A Yes, sir.

Q What month of last year was that? A In October. 30

Q Do you know what day of the month it was? A No, I don't know exactly.

Q Well, would you say it was in the middle of the month or the beginning of the month? A It was before registration.

Q You mean before November 4th, before election? A Before registration, before you register.

The Court. The court will take judicial notice that registration is in June. 40

State's Witness, Rachel McKenna, Cross

Mr. Fisch. Registration, if the court please, was in October.

The Court. No, we had June primaries this year.

Mr. Fisch. But this was the registration in October.

10 Q How long after this occasion of the single trip to the Warren place residence did you go down and live with the Abramovitzs? A I went there to live with her the 21st of October.

Q How long a time elapsed between the time she came and asked you to go down with her and the time that you did go? A Before who asked?

Q Mrs. Abramovitz? A Over a week.

Q I suppose you talked it over with your husband and you both went down together? A Surely.

20 Q You lived in a furnished room house in Warren place? A Two rooms.

Q No. 14 or 19? A 19.

Q Where did the conversation take place about the trip to New Brunswick, in the Warren place residence of yours or in the Walnut street residence of Mrs. Abramovitz? A No, in their house.

Q How soon after you moved in her residence did the conversation take place? A She was gone when we moved into her place, she went on Sunday afternoon and on Thursday we moved in.

30 Q Where did the conversation take place between the defendant and the Abramovitz woman about going to New Brunswick, in your presence? A In their house.

Q You were present in the Walnut street residence at the time the conversation took place? A I did not live there yet, I was there on a visit.

Q You did not move there yet but you were there on a social visit? A Yes, sir.

40

State's Witness, Rachel McKenna, Cross

Q How long before you moved into this Abramovitz place? A About four days.

Q You heard all the arguments that took place between the defendant and the deceased? A I went along with her to the station.

Q You heard all the conversations and the arrangements between the defendant and the deceased as to when and where she was to go? 10

Mr. Fisch. Now, if the court please, I object to that; I don't think that is a proper question.

Witness. I cannot exactly say whether they mentioned the names and the addresses.

The Court. You heard him when she talked to him about it.

Witness. I could not hear every word.

Q You heard her say something about her having to go to New Brunswick on a Sunday night? A Yes. 20

Q Did you hear what train she was to make from the Market street station? A The 9:05.

Q And this conversation you heard was four days before Sunday? A Oh, no, she went on a Sunday, four days before I moved.

Q How is it you happened to be at this Doro residence on the evening of the Sunday she was to go? A She came to the house and I went down with her to spend the day. 30

Q You are talking of the Sunday she left for New Brunswick? A She left Sunday at night.

Q She came to see you at Warren place? A Yes, sir.

Q In the day time? A In the day time.

Q And at what time? A About half-past ten.

Q Did she tell you of her trip to New Brunswick in the evening? A No, not a word, I don't

State's Witness, Rachel McKenna, Cross

think she expected anything of it herself until he came and told her.

Q Didn't you know she was going to leave that evening for New Brunswick? A Not until she came home and spoke of her going.

Q And you were going with her, on the way?
10 A Yes, and she said to me, "I am going to New Brunswick and I think I will make some money," and I said, "Watch your step."

Q You told her to watch her step? A Yes, sir.

Q That is all the advice you gave her? A I did.

Q And she told you what she was going to do?

A Yes, sir.

Q Well, she told you? A Yes, I heard it in plain English.

Q How long did she remain in her house on Sunday evening? About an hour.
20

Q And both of you went down to Walnut street?

A Yes, sir.

Q And both of you remained there until Doro came in? A Yes, sir.

Q And you accompanied the Abramovitz woman to the station? A Yes, sir.

Q And said goodbye to her when she left? A Yes, sir.

Q When did you tell her to watch her step, on the way to the station or when you saw her in the afternoon? A She didn't say anything until we got to the house, and while we were on the way to the Market street station he knew a man—
30

Q Answer the question. When did you tell her to watch her step, when you left her at the station?

A Well, while we were walking on Market and he crossed over to speak to this man I said to her, "Ann, watch your step."

Q That's all you told her? A I said, "God help
40 you, watch your step, I said to her.

State's Witness, Rachel McKenna, Cross

Q And she left on the train? A She left on the train and she said, "I am going to write to you, Ray, but I am not going to send you no address."

Q And after that you moved into the Doro residence on Walnut street? A Yes, sir.

Q Where was Doro when you moved into the residence? A Tuesday night Doro brought the keys up to my house and that was the first time he ever seen Mr. McKenna, and he said to Mr. McKenna and me, "Please, for Anna's sake come up to the house," he said that the furniture needs somebody to look after it, and he said, there is only one bedroom, and in the meantime he will not come into the house until there is another bedroom. 10

Q And you remained in the house until the Abramovitz woman came in? A Yes, sir.

Q How many rooms were there at the Walnut street address? A Four. 20

Q What were they? A Two bedrooms, a dining room and a kitchen.

Q So, until she came back you remained in that bedroom? A The following Friday he went and got a bed.

Q Did you occupy the same bedroom after she came back as the one you had during her absence? A No, sir. Only during her absence.

Q Who occupied that room after she came back that day? A Herself and her husband. 30

Q Who occupied the bedroom after she came back? A They did.

Q And yourself and husband—— A He got a bed the following Friday.

Q For the other room? A Yes, sir.

Q The four of you remained in the same apartment? A Yes, sir.

Q Until when? A The 5th of of the month we moved up to the 5th street address. 40

State's Witness, Rachel McKenna, Cross

Q In other words, you remained in Walnut street until you moved to Fifth street? A Yes, sir.

Q You did not pay the rent for the apartment?
A Half of it.

10 Q Do you mean to the landlord or to Doro? A Half a months a rent I gave to Anna and Anna went upstairs and gave it to him.

Q You mean the apartment was rented by Doro?
A By Doro.

Q Do you remember the incident about a dress that was to be fixed for you? A Yes, I do.

Q She took off a cape from the dress? A It was my dress.

Q She took off the cape from the dress and showed you how to fix it? A Yes, sir.

20 Q You say then he made a leap for her with a knife? A He was talking in Italian and she answered him in broken Italian——

Q Did you understand what she said in Italian?
A No, sir.

Q By the way, was this conversation of the trip to New Brunswick in Italian or in English? A In English, the only thing that they left out was the name and address.

Q And what did she say to him after this Italian conversation with her?

30 The Court. With reference to the dress, now?

Q I am referring back to the dress incident?
A She sat on one chair and I was sitting on another chair near the kitchen table and made a lunge for her with his knife and I went "Oh!" and she says, "Go on," she says, "Look," she grabbed him by the shirt and tie and she said, "Pete, you are full of shit, you try to scare her, look how white she got."

40 Q Had he been drinking then? A If he did, I didn't notice it.

State's Witness, Rachel McKenna, Cross

Q Did he look as though he had been drinking then? A He didn't look like he was drinking.

Q Do you know whether he had been drinking?

A I was never out with him, I don't know.

Q I mean in the house? A No, sir.

Q Not to your knowledge he didn't have a drink?

A Not to my knowledge, no, sir. 10

Q At the Fifth street address you had two bedrooms, is that right? A Yes, sir.

Q A large bedroom and a small one? A Yes, sir.

Q The large bedroom was about double the size of the small one? A The large bedroom was a parlor and they made a bedroom out of it.

Q I say the large bedroom was double the size of the small one? A Not quite, double, about one and a half. 20

Q Who selected the rooms, you and Doro? A Anna and I.

Q You mean, as a general proposition between you two or for you alone. A The place was going in my name, but it was her furniture and she was to pay the rent, and we were going half.

Q She was to pay the rent and you was to give her half? A Yes, sir.

Q Yet the apartment was in your name? A Yes, sir. 30

Q In spite of the fact that the apartment was taken in your name and you had a smaller bedroom, you gave them the larger one? A Yes, I had no need for it, I didn't have any furniture.

Q Now, Mrs. McKenna, let us get down to the incident on the night you came back from the movies on the 11th of November, you and Mrs. Abramovitz came in from the movies, is that right? A Yes, sir. 40

State's Witness, Rachel McKenna, Cross

Q About twelve o'clock that night? A Yes, sir.

Q Where was Doro sitting when you came into the room? A I don't believe he was sitting at all, I think he was standing near the sink.

10 Q You say he was standing near the sink when you came in? A Standing near the sink.

Q Standing at the sink? A Yes, sir.

Q He was not sitting at all? A No, sir.

Q Suppose I call your attention to your testimony yesterday on direct examination, referring to page 56 "Question: Where was Peter?" and your answer; "In the kitchen" and the Question: Whereabouts in the kitchen," and the answer "Well, I can't——

20 Q Well, was he sitting down or standing up? A Sitting down near the table." Does that refresh your recollection? A It was just before the fight that he was sitting down.

The Court. You are talking now where he was when they came in.

Q Now, you say when you came in he was standing up near the kitchen sink? A Standing up near the sink.

Q Why do you hesitate? A I want to remember and I want to get it right.

30 Q What did he do there at the kitchen sink? A Nothing at all, just standing there with his back to the sink and we walked in and he said, "Heart mine, how do you feel?"

Q Did he say that in Italian or in English?

A In English, and she said, "You are asking me how I feel now, and when I went out you said you should get run over by the cars."

Q What did he say after that? A He says "You would not kiss me before you went out, would you?" and she says, "Pete, imbrigo——

40 Mr. Mango. May I have the interpreter's interpretation?

State's Witness, Rachel McKenna, Cross

The Interpreter. You are drunk.

Q Go ahead. A She said, When you cut out drink, and when you cut out—oh, I don't have to say that again, do I?

The Court. No.

Witness. No, then I will kiss you and I will be like I was before." 10

Q And what did he do after that, did he sit down? A He slapped her face.

Q When did he sit down? A He slapped her face and she pulled him on to the chair and slapped him back.

Q When did he sit down by the kitchen table?

A When she pulled him down.

Q Do you mean when she sat him down? A Yes, and he said Putanno, you were a whore before you were born," and she said, "Pete you called me a whore, you called me a Putanno, cornuto—— 20

Mr. Mango. Will your Honor have the interpreter give us the meaning of that word.

Interpreter. Cornuto means a man that lives on the earnings of a prostitute, it means the husband of an adulteress.

The Court. That was the word she used to him?

Witness. Yes. She said, "If you didn't shoot my husband and threaten his life I never would leave him," and she said, "You made me run away from him," and she said, "You are calling me that when you bring me to whore houses and take my money," and she slapped him three or four times, and when she let go of him he ran out. 30

Q Was he standing up when she called him cornuto or sitting down? A He was standing like this over here (indicating) and she slapped him.

Q And the only time he was sitting down is 40

State's Witness, Rachel McKenna, Cross

when she sat him down on the chair? A That is the only time, yes.

Q Did he get up after that, and leave the room?

A Yes, he jumped up and went into the dining room.

10 Q Was there anything on the kitchen table at that time? A Three glasses that I started to wash off, wash and put away.

Q What kind of glasses were they? A Tea glasses, instead of drinking our tea in cups we drink it in glasses, because the cups were small—

Q Who had used those glasses? A Just me and Anna, and I poured out three, but he didn't drink his.

Q You mean you poured out three cups of tea?

20 A Yes, when I came in from the movies I put the water up for tea.

Q Before you put the water on for tea was there anything on the table at all? A Nothing, not even a tablecloth, it was one of those white tables.

Q Will you tell me what he was doing at the kitchen sink when he came in? A No, I can't tell you, I don't know.

Q Did he have anything in his hand? A Not to my knowledge.

30 Q Did you notice whether or not he had been drinking? A He did not look drunk to me.

Q Did you notice whether he had been drinking liquor? A No, sir, I didn't notice.

Q Did you notice any jug of liquor around when you came in? A At that moment, do you mean?

Q Why, did you see it at any other time?

A Yes, it was in the house.

Q What? A A jug.

Q Of what? A Alcohol.

40 Q Drinking whiskey? A Oh, he mixes that himself.

State's Witness, Rachel McKenna, Cross

Q When? A A few days before that.

Q And wasn't he drinking that when you came in from the movies? A I never seen him drunk.

Q You never saw him drink? A No, sir.

Q Did you see the jug of whiskey around after he mixed it with the alcohol? A No, sir, I didn't go through their things. 10

Q Of course you didn't, but did you see the jug of whiskey around after he mixed it with alcohol?

A No, sir, I did not.

Q How do you know he mixed the alcohol with something else to make whiskey out of it? A I seen the little sample bottles he had.

Q Where? A In the pantry closet.

Q And that was the pantry closet which he used in common with the Doros? A Yes, sir.

Q And where was the jug with the alcohol? 20

A In his closet.

Q How big was it? A About a gallon.

Q You know what a gallon jug looks like?

A Yes, sir.

Q What kind of a jug was it? A clay jug or a glass jug? A A glass jug.

Q Did you see it when it was mixed with the essence of whiskey? A I never seen it from that day to this.

Mr. Fisch. That question assumes that the witness said "Essence of whiskey". 30

The Court. Mixed with something, she said.

Q He mixed something with the alcohol? A I did not see it, I seen the sample bottles.

Q Of what? A Anissite.

Q What is anissite? A I don't know.

Q It is a cordial, isn't it? I don't know.

Q Did you ever drink any of it? A No, sir.

Q What is annisette, an Italian whiskey. A I 40

State's Witness, Rachel McKenna, Cross

don't know, when I looked at the little sample bottles it said annisette on it.

Q How many bottles were there? A Four or Five, and I think one had whiskey in it and the rest was annisette.

10 The Court. What is the meaning of annisette?

The interpreter. Annisette is a cordial.

Witness. This was a little bit of a bottle like a cologne bottle.

Q Liquor in a small bottle? A Yes, sir.

Q Did you ever see those empty bottles? A I threw them out in the dirt box myself.

Q You did? A Yes, sir.

Q Do you know what became of the contents of those bottles? A I have never asked, I have no
20 interest in it because I don't drink any.

Q Didn't you know that Doro had made whiskey from the essence had in these bottles? A I didn't see him. I didn't ask.

Q You did not see him?

The Court. She said she didn't see him.

Q Do you know if he did? A No, I don't know.

Q How long a time, Mrs. McKenna, was it that elapsed between the time he left the kitchen and came back with the razor?

30 Mr. Fisch. I object to that question unless he specifies which time, the witness has testified he left the kitchen three times.

Q I understand you to say that Doro left the kitchen the first time and went into the other room?

A Yes, sir.

Q Then he came back into the kitchen? A Yes, sir.

Q Did he bring anything with him at that time?

A I did not see anything in his hand.

40 Q How did he appear? A Running around like a maniac.

State's Witness, Rachel McKenna, Cross

Q Running from room to room? A "Oh, mamamuzza, mamamuzza, putanno, putanno," and something else in Italian, I could not make out what it was.

Q He was raving, was he?

Mr. Fisch. I object to that as calling for a conclusion. 10

The court. Yes, it is.

Q What else was he doing? A Well, he was acting like——

Q Like what?

Mr. Fisch. I think the witness is giving a conclusion.

The Court. Tell us what he did or said, the mannerisms, if you can?

A He ran into the kitchen from the dining room raving, "Mamamuzza, Mamamuzza, patanno, patanno," and a lot of other words that I did not know what was what, and into the kitchen and out of the kitchen and into the dining room again, and twice into the kitchen and into the bathroom and back again, and when he came in—— 20

Q How long a time elapsed between the first time he left the kitchen until the time he came in and you say he pulled the Abramovitz woman——

A I don't want to give you no short answer, I don't know anything was going to happen, and I can't tell you the accurate time. 30

Q Would you say it was about two or three or four minutes? A About that.

Q Will you say it was less than that A The whole thing lasted about fifteen minutes, I don't know the time and I didn't know any thing was going to happen.

Q But the time that elapsed between the first time when he left the kitchen and he came back and killed the Abramovitz woman, as you say he did, 40

State's Witness, Rachel McKenna, Cross

you say it took about two or three minutes? A Not even that long.

Q It was even less than that? A Positively.

Q How much less than that? A Well, I don't know how long it would take from the kitchen to the dining room and back again and then to the dining room again?

10 Q Well, if it was less than two or three minutes, would you say it was about a minute? A About a minute.

Q Mrs. McKenna, have you ever been convicted of crime? A Yes, sir.

Q Under the name of Ray McKenna? A Yes, that is my name.

Q When? A 1922.

Q For what? A Disorderly house.

20 Q You are sure it was not for White Slavery? A Positively, no. I shielded somebody else.

Q You shielded somebody else and took the blame? A Yes, sir.

Redirect Examination by Mr. Fisch.

Q Mrs. McKenna, from the time that you came home from the movies with Anna, up to the time of the killing, how much time elapsed? A The whole thing happened about fifteen minutes.

30 Q Now, from the time that you came home from the movies with Anna up to the time of the slapping how much time elapsed? A About half of that, I will say.

Q Well, how many minutes? A About seven,

Q Now, how soon after the slapping was it that the defendant first left the kitchen? A Oh, only about a minute after.

Q He left immediately, is that what you mean?

A Yes, sir.

40 Q Then, how much time elapsed from the time

State's Witness, Rachel McKenna, Redirect

of the slapping to the time that he left the kitchen the first time, up to the time of the slapping that you saw blood when he came in and grabbed Anna around the neck?

Mr. Mango. I object. She has answered the question.

The Court. I will allow it.

10

A Don't forget he made three trips.

Q I understand that. A It would be about seven or eight minutes.

Q Now, you said on cross examination that it was about a minute from the time that he left the kitchen, what did you mean by that?

Mr. Mango. I object. Let the jury draw its own conclusion as to what she meant.

The Court. She can explain as to what she meant when she said a minute. I will allow that.

20

Mr. Mango prays an exception to this ruling of the court.

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

EDWIN C. CAFFREY,
Judge.

Q A minute from when? A When we came in from the movies and he was standing by the sink and she refused to kiss him and the balling out started and he slapped her and she slapped him back and she let him go then and he jumped out from the chair then and out—well, I don't know, it took about fifteen minutes, the whole thing

30

Q The whole thing took about fifteen minutes?

A Fifteen minutes.

Q You told us that, and you have also told us that it was about seven or eight minutes from the

40

State's Witness, Rachel McKenna, Redirect

time you came back from the movies up to the time of the slapping? A Yes, sir.

Q Then he immediately got up and went into the other room? A Yes, sir.

Q And then he made three trips back into that kitchen? A Yes, sir.

10 Q And that seven or eight minutes first elapsed from the time he first went out and came in and grabbed Anna around the neck? A Yes, sir.

Q Are you sure about that? A Yes, sir.

Q You in, answer to one of the questions of counsel for the defendant, on cross examination, said something about a minute. Now, what did you mean by that? What took a minute A He was gone about a minute when he ran out and into the other room, I don't know whether he ran into his bedroom
20 or not.

Q Is that what you meant? A And back again.

Q Is that the last time he went in and out?

A The last time was the bathroom.

Q How long was he gone then? A Now, I can't just exactly say.

Q Now, that was the time when you say it was about a minute, was that the first time he went out?

A The very first trip.

30 Q What furniture was there in the bedroom which you occupied? A Just the bed and my trunk.

Q That is the bed which is shown on this picture Exhibit S5 and the trunk also shown on that picture?

A Yes, sir.

Q Were those the only articles of furniture that there were? A That is all, besides the closet.

Q And the closet? A That closet belonged to the house.

40 Q What articles of furniture were there in the bedroom which was occupied by Doro and Mrs. Abramovitz, the large bedroom? A There was a

State's Witness, Rachel McKenna, Redirect

bed and a chifferobe and a vanity dresser and one of those with the big mirrors——

Q What do you mean with a big mirror?

A What do you call it, a chiffonier, with the big high top.

Q A dresser? A A dresser.

Q And are these some of the articles of furniture that were in that room shown on Ex. S2? 10

A Yes, sir.

Q And you say that besides the articles that are shown on this picture what furniture was there?

A That is the bed, and that is the vanity and that is the chifferobe. Now, the dresser must have been on that side, then.

Q So that in addition to the furniture that was shown on the picture there is a dresser? A Yes, and another chair besides. 20

Recross Examination by Mr. Mango.

Q What happened to the dresser between the time you left the house? A Happened to the dresser?

Q You say there is something in the room that is not shown on that picture? A Yes, sir, the dresser is there if it is not in the picture it was in the room when the men took the furniture out and took it along. 30

Mr. Fisch. Is it admitted that the clothing contained in this box is the clothing worn by the deceased on the night in question?

Mr. Mango. Yes, sir.

The same is received in evidence and marked Ex. S10.

EUGENE E. MCKENNA, sworn in behalf of the State.

Direct Examination by Mr. Fisch. 40

State's Witness, Eugene E. McKenna, Direct

Q Mr. McKenna, what is your busness? A Automobile upholsterer.

Q Where are you employed? A Durant Motor.

Q You are the husband of Rachel McKenna, are you not? A Yes, sir.

Q Where do you live? A 14 Warren place.

10 Q Do you know the defendant, Peter Bruno or Peter Doro? A I did know him for about three weeks.

Q Three weeks before when? A Before November 11.

Q 1925? A Yes, sir.

Q Where did you first see him? A 19 Warren Place.

Q That was where you were living? A Yes, sir.

20 Q You were living there in a furnished room, is that right? A That's right.

Q And how did you come to meet him there?

A Why, he came up to the house there and he had keys and asked if I would go over with the wife to take care of the apartment for Anna Abramovitz.

Q What apartment? A Why, 245 Walnut Street, I think it was.

Q And you had been down to the Walnut street apartment at any other time? A No, sir.

30 Q Did you know Anna Abramovitz? A Yes, sir.

Q When did you first meet her? A About thirteen years ago.

Q Where? A In Orange, New Jersey.

Q And did you go down to the apartment on Walnut Street? A I did about a few days after that.

Q With whom? A Mrs. McKenna.

40 Q And was Doro there, the defendant? A No, he was not.

State's Witness, Eugene E. McKenna, Direct

Q How long did you stay at that apartment on Walnut Street? A I should judge a little over a week.

Q Did you see the defendant during that period of time? A Not until after he came in about a week after with Anna.

Q And after he came in with Anna did you continue to stay at the apartment on Walnut Street? 10

A Yes, sir.

Q Who else besides yourself? A Myself, Mrs. McKenna, Anna and Peter Doro.

Q How long did you stay there? A At that address?

Q Yes, from the time that Anna and Peter came back.

A I don't think it was over eight or nine days.

Q Now, during that time did you hear any quarrels between Anna and the defendant? A Well, 20
yes, every other day there was a quarrel.

Q And what were the quarrels about?

Mr. Mango. Objected to as immaterial.

The Court. Just tell us what they said.

A Well, it was in Italian and I could not understand it.

Q You could not understand it? A No, sir.

Q In what tone of voice did the defendant speak to Anna? 30

Mr. Mango. I object

The Court. I will allow that.

A Why, enough to let me know that he was fighting.

Mr. Mango. I object and I ask that the answer be stricken out.

Mr. Fisch. I consent that the answer be stricken out.

Q I want to know was it loud or quiet? A Well, 40
real loud.

Q And did you ever hear him say anything to

State's Witness, Eugene E. McKenna, Direct

her in English at any time in a loud tone of voice during these quarrels? A No, sir, I did not.

Q While you were down on Walnut Street

A No, sir.

Q Did you ever hear him make any threats to her? A No, sir.

10 Q Down there on Walnut Street? A No, not there.

Q Now, after this period of time elapsed down on Walnut Street, where did you go from there?

A 141 North Fifth Street.

Q What floor? A The fourth floor.

Q Who rented the apartment, do you know?

A Mrs. McKenna and Mrs. Abramovitz.

Q And whose furniture went into that apartment? A Mrs. Abramovitz.

20 Q And what room did you occupy with your wife? A I occupied the small bedroom off the kitchen.

Q And what furniture was there in that room?

A Just the bed and a trunk and a closet.

Q What room did the defendant and Mrs. Abramovitz occupy? A The bedroom off of the dining room in the front.

Q That is the large bedroom in Exhibit S1?

A Yes, sir.

30 Q And what furniture was there in that room?

A There were what I would call two dressers, a bed, and I believe there was two little stools went under each dresser.

Q When did you move up to that apartment?

A The date I can't say.

Q Well, how long before the 11th of November?

A I judge about eight days we were in there altogether, or nine.

40 Q Well, now, while you were up there during that eight days, did you hear any quarrels between

State's Witness, Eugene E. McKenna, Direct

Mrs. Abramovitz and this defendant?

Mr. Mango. Objected to as immaterial.

The Court. Tell us what was said by either of them, if you know.

A Well, I just heard them quarreling the same as before.

Mr. Mango. I ask that the answer be stricken out. 10

The Court. The answer will be stricken out.

Q What did you hear the defendant say to her and what did you hear her say to the defendant?

Q Well, the night of November 11 I heard him threaten to kill her.

Q What did he say? He started to call her puttanna and mostly in Italian, "And I got to kill you."

Q "That I got to kill you"? A Yes.

Q What else? A Well, that's all I understood of it. 20

Q Did you see him make any motions at all?

A He put his fingers in his mouth like this (illustrating).

Q He put his fingers in his mouth between his teeth? A Yes, sir.

Q When was that that you saw him do that and say? "I got to kill you, puttanna, I got to kill you"?

A That was the night of the killing, November 11. 30

Q What time was that? A Why, I should judge about six o'clock in the evening.

Q Around supper time, is that right? A Yes.

Q Did you spend very much time home around the house during the day. A No, sir, I did not.

Q Now, after you had heard him say this, "Puttanna, I got to kill you," that night, did you stay home? A No, sir.

Q What time did you go out? A I went out about 9:30. 40

State's Witness, Eugene E. McKenna, Direct

Q Where was the defendant during that time, from supper time to 9:30? A Right in the house.

Q How about Mrs. Abramovitz and Mrs. McKenna? A They had gone to the movie show before I had left.

Q What time did they go to the movies

10 A I should judge about seven o'clock.

Q And from seven o'clock until 9:30 who was in that apartment? A Just Peter Doro and myself.

Q And where were you in the apartment?

A In the kitchen.

Q What were you doing? A Just sitting there talking.

Q And what were you talking about?

Mr. Mango. I object to that as calling for a conclusion.

20 The Court. Sustained.

Q What did you say to the defendant and what did the defendant say to you.

The Court. No, I sustained the objection.

Q Now, then, you left the house at 9:30. did you?

A Yes, sir.

Q What time did you come back? A I should judge around 12.30.

Q That was after the tragedy? A Yes, sir.

30 Q Now, the night before November 11, where were you—

Mr. Mango. Object to as immaterial.

The Court. I will allow that, it might be material.

A I believe I was over to my sister's house.

Q Where was that? A I can't remember the number, it is on Warren street, between First and Hunterdon.

Q What time did you get home? A About three o'clock in the morning.

40 Q When you got home at three o'clock in the

State's Witness, Eugene E. McKenna, Direct

morning who was in the apartment? A I came home and Mrs. McKenna was walking up and down pulling her hair.

Mr. Mango. I object to that as not responsive to the question, the question was who was in the apartment.

The Court. Well, he probably can tell us more. 10

The Witness. And all excited, and she said that she was glad I came home——

Mr. Mango. I object.

The Court. That will be stricken out.

Q Don't tell us what was said, but tell us who was in the apartment. A Why, that's all I seen there, but they were talking in the other room, in the bedroom.

Q Who did you hear talking in the other room? 20

A Peter Doro and Anna Abramovitz.

Q What room were they talking in, do you know?

A In their bedroom.

Q And your wife was in her room A In the kitchen.

Q Was the light on? A Yes, sir.

Q And that was three o'clock in the morning?

A Yes, sir.

Cross Examination waived.

DOCTOR ALBERT E. EDEL, sworn in behalf of the State. 30

Direct Examination by Mr. Fisch.

Q Doctor, you are a chemist? A I am.

Q An analytical chemist? A I am.

Q How long have you been such?

Mr. Mango. Qualifications of the witness are admitted.

Q Now, Dr. Edel, did you, at the request of the 40

State's Witness, Albert E. Edel, Direct

Prosecutor's office, make an analytical examination of Ex. S-8, a razor? A I did.

Q When did you make that, doctor?

A December 11 to December 21, 1925.

Q Now, I ask you if you made an examination of the stains which were found on that razor?

10 A I did.

Q Did you remove any part of those stains on the blade? A I did.

Q From which side? A The left and the right sides, both sides.

Q Now, the portion that you removed from the left side, what does your chemical analysis show that to be? A To be blood.

Q What kind of blood? A In my opinion, human blood.

20 Q And the stain which was removed from the right side, what did that prove to be? A Marked Number three is blood, human blood, in my opinion.

Q And did you remove any portion of the stain or smudge found on the handle? A I did, and so marked it number four.

Q And what did you find that to be? A Blood.

Q Now, what else, if anything, did you find on the blade of the razor? A Some hair, dark brown in color, of human origin.

30 Q How many hairs did you find near the base of the blade? A Sixteen.

Q Did you find any hairs on the other side?

A Yes, sir.

Q How many? A Three.

Q Were they of the same color? A They were of the same color.

Q And all of human origin? A Of human origin.

40 Q And in your opinion, would you say that all of these hairs were from the same person?

State's Witness, Charles Eagan, Junior, Direct

Mr. Mango. I object to that as leading.

The Court. This is an expert witness.

A They were all the same under the microscope.

Q Can you tell us anything, doctor, about the length of the hairs which you examined? A Yes, I had them measured, they measured about one and a half inches long and covered about two inches where the hair was on the lower side (indicating on Ex. S-8), two inches covered with hair, sixteent hairs. 10

Q You say the hairs were about an inch and a half? A About an inch and a half in length, yes, sir.

Cross Examination waived.

CHARLES EAGAN, JUNIOR, sworn in behalf of the State. 20

Direct Examination by Mr. Fisch.

Q Mr. Eagan, where do you live? A 47 North 5th street.

Q How old are you? A Nineteen.

Q What is your business? A I go to school.

Q On the night of November 11, 1925, were you in the vicinity of this apartment house at the corner of North Fifth and Orange Streets? A Yes, sir.

Q About what time? A About eleven o'clock.

Q Where were you? A Right in front of the doorway where they come out. 30

Q On which side of the street? A On the left hand side.

Q The same side of the street where the doorway is?

A Yes, sir.

Q How far away do you live? A About two blocks.

Q Now, while you were there in front of the 40

State's Witness, Charles Eagan, Junior, Direct

doorway, what, if anything, did you see and hear?

A While I was right in front of the doorway I heard screaming and I stopped for a moment and then I started walking again and a man came running out of the door and a lady in back of him yelling that he just murdered somebody.

10 Mr. Mango. I object and I ask that it be stricken out.

The Court. I will allow it, it is perfectly proper.

Mr. Mango. It is not part of the *res gestae*, that exclamation of the defendant.

The Court. I will allow the question.

Mr. Mango. Exception.

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

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

EDWIN C. CAFFREY,
Judge.

Q Go ahead. A I saw the lady in back of him yelling that he had just murdered somebody and I got out of his way and after he had passed me I went to Orange Street and called two officers who were around the corner.

30 The Court. How close was this defendant when the woman shouted?

The Witness. Oh, she was shouting all the way down the stairs, she was on the stairs when he came out and she was, I should say, at the end of the apartment house, when she got out of the doorway.

The Court. How many feet would you say?

The Witness. About thirty or forty feet away, I think.

40

State's Witness, Charles Eagan, Junior, Direct

Q And how was the man dressed? A He just had another shirt and pants and shoes on, he had no overshirt on or coat.

Q Did you notice anything about his clothing?

A It was covered with blood.

Q And have you seen the man since then?

A Yes, sir. 10

Q Do you see him in the court room here?

A Yes, sir.

Q Where is he? A He is sitting over there behind these men, between the two officers.

The Court. Pointing to the defendant.

Q And did you see that woman again?

A Yes, sir.

Q Is she in the court room today??

A Yes, sir.

Q Who is she? A Mrs. McKenna. 20

Q And did you notice anything about her or her clothing? A Well, her clothing had blood all over it.

Cross Examination by Mr. Mango.

Q Where do you live? A 47 North 5th Street.

Q How far is that from 141 North 5th Street?

A Two blocks.

Q What were you doing at the residence of 47 North 5th Street? A I was going home, just passing there. 30

Q Were you alone? A Yes, sir.

CLARENCE J. COOK, sworn in behalf of the State.

Direct Examination by Mr. Fisch.

Q You are a police officer of the City of Newark?

A I am.

Q Connected with the Fifth Precinct? A I am.

Q And on the night of November 11, 1925, at 40

State's Witness, Clarence J. Cook, Direct

about eleven o'clock, where were you? A Between 4th and 5th Streets on Orange Street.

Q Now, was there anything that attracted your attention at that time? A Screaming.

Q Where was the screaming coming from?

A From the vicinity of North 5th Street.

10 Q And what did you do? A I hastened to that point where I met a woman screaming and shouting that someone had——

Mr. Mango. I object to any statement which the woman may have told this witness at that time.

Q Who was that woman? A Mrs. McKenna.

Q Did you notice anything about her clothing?

A About the breast was blood.

20 Q And what else did you see? A Why, there in?

was a man running about a half block away and she shouted for me to catch him.

Mr. Mango. I object to what the witness said.

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.

30

EDWIN C. CAFFREY,
Judge.

Q What did you see? A A man running about a half block away from me and the woman shouted to catch him.

The Court. What did you do then?

The Witness. I immediately gave chase.

The Court. Which direction was he running

40

State's Witness, Clarence J. Cook, Direct

The Witness. South on 5th Street.

The Court. That is towards Sussex Avenue?

The Witness. Yes, sir.

Q And how was he dressed? A I could not say at that time.

Q You gave chase? A I did.

Q Tell us, please, what happened from that point on? A At Sussex Avenue he turned east at the library on 5th Street I jumped the fence and came out on 4th Street and landed on Sussex Avenue where the man had already boarded a machine and I hollered to the man and gave chase and this machine that I was pursuing turned in on 1st Street and 1st and Orange Streets we overtook the machine. 10

Q This machine you had boarded overtook the other machine? A The machine with Peter Doro in it. 20

Q And when your machine overtook that machine, what did you do? A With the assistance of Officer Sexton we took him out of the machine and called for a patrol wagon.

Q When you overtook this machine that you say Doro was in, what did you do? A I seized the victim on the hand.

Q Did you get in the machine? A Yes, on the running board.

Q Whose machine was that. A My father's. 30

Q Did you have any conversation with your father in the presence of the defendant. A Yes, I said, "How do you come to get this man?" and he said, "The man was pleading for mercy and there was a crowd was after him and he was taking him up to First and Orange Streets where I usually am.

Q What kind of a machine was it that your father was driving? A Daniels touring.

Q And did you find the defendant in the machine? A Yes, sir. 40

State's Witness, Clarence J. Cook, Direct

Q Whereabouts? A On the back seat.

Q What did he do A He was about to get out when I seized him by the arm.

Q Well, what did he do to you, if anything?

A Well, between the two officers he put up a fight and we had to subdue him.

10 Q What did he do in putting up a fight?

A He kicked and he started swinging his arms.

Q And what did you do? A We wrenched his arm and got him under control and got him back in the machine after we had called for a patrol wagon and found out that the patrol wagon was at the scene of the murder and we got him back in my father's machine and took him to the station house.

Q You took him from there to the Fifth Precinct? A Yes, sir.

20 Q When you did get on your father's machine and saw the defendant, how was he dressed? A In an undershirt covered with blood.

The Court. And with trousers and shoes or hat.

The Witness. Dark trousers and shoes on.

Cross Examination by Mr. Mango.

Q Did you smell his breath, Mr. Cook? A No, I did not.

30 Q Were you close enough to smell it? A Well, the odor from his shirt, I could not smell no liquor, I could not say I smelled any odor on his breath.

Q Did you smell any liquor? A I did not.

Q Did it look as though he had been drinking before that time?

Mr. Fisch. I object.

The Court. Overruled.

A I can't say.

40 Q Did you take him to a doctor to be examined as to whether or not he was drunk? A The last I

State's Witness, Ernest Cipriano, Direct

had anything to do with Peter Doro was in the station house where I had him slated.

Q You don't know what became of Peter Doro after he was slated in the precinct? A I do not.

ERNEST CIPRIANO, sworn in behalf of the State.

10

Direct Examination by Mr. Fisch.

Q Mr. Cipriano, you are an Italian, are you?

A Yes, sir.

Q And did you know the deceased, Anna Abramovitz? A Yes, sir.

Q Were you at one time married to her?

A Yes, sir.

Q And do you know whether or not she understood and spoke Italian?

20

Mr. Mango. I object, how does this witness know what the woman understood.

The Court. Wait a minute, you are talking English to me, therefore I know you are talking English, what is to prevent this witness from testifying to a conversation which permits him to adduce that knowledge?

Mr. Mango. The question calls for a conclusion.

The Court. Overruled.

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

30

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

EDWIN C. CAFFREY,
Judge.

(Question read.) A Yes, sir.

Q Did she? A She understood Italian very well but she did not speak it quite as well.

Q What is that?. She understood Italian very well but she did not speak it quite well.

40

State's Witness, Ernest Cipriano, Direct

The Court. Did you converse with her?

The Witness. Very seldom.

The Court. And when you did, were her answers responsive to your conversation?

The Witness. If I spoke to her in Italian she would probably answer me back in English and Italian.

10

The Court. And would the answers be responsive?

The Witness. Yes, your Honor.

Q When were you married to her? Q I believe in 1916.

Q And you lived with her until when?

A I should say about 1920.

Q Then you were divorced? A Yes, sir.

Cross Examination by Mr. Mango.

20

Q You say you were divorced, or did she get the divorce? A I got the divorce.

Q From her? A Yes, sir.

Q In New Jersey or in New York? A New Jersey.

Q Were you born in this country? A Yes, sir.

Q Do your parents come from Italy proper or Sicily? A Italy, not from Sicily.

Q When you spoke in Italian you spoke the Italian town dialect of your father's town or Sicily?

30

A My father's town Italian, yes, sir.

Q And she understood everything you said?

A Well, almost everything, very little she didn't understand.

Q Do you know whether she had any experience in speaking or listening to Italian before meeting you? A Well, of course, she must have had a little experience because she could understand Italian before I met her.

40

Q You were her first husband? A Yes, sir.

THE STATE RESTS.

Defendant's Witness, Peter Doro Bruno, Direct

Mr. Mango opens in behalf of the defendant.

PETER DORO, the defendant, sworn in his own behalf.

Direct Examination by Mango.

Q What is your correct name? A Peter Doro Bruno. 10

Q Is Doro your middle name? A Nick name.

Q Where did you live before you were arrested?

A Cleveland, Ohio, you mean 145 5th street?

Q How old are you? A Thirty-one.

Q Whom did you live with at 5th Street?

A 141?

Q Yes? A With Mrs. McKenna and her husband and Annie and myself.

Q Were you married to Anna Abramovitz? 20

A No, sir.

Q How many rooms did you have at the 5th Street address? A It was about five

Q What were they? A Four and the kitchen.

Q How many bedrooms? A Three.

Q Which rooms did you occupy. A Front.

Q The large bedroom? A Yes, sir.

Q With whom did you occupy that room?

A Anna Abramovitz.

Q Who occupied the other bedroom? A Mrs. McKenna and her husband. 30

Q How long did live at 5th Street? A Oh, it was about six days.

Q Where did you come from? A 245 Walnut Street, we moved from Walnut Street to 145 5th Street.

Q How long did you live at Walnut Street?

A Oh, about thirty-five days, a month and five days.

Q How many rooms did you have at Walnut Street? A Four and bath. 40

Defendant's Witness, Peter Doro Bruno, Direct

Q Who first occupied the apartment in Walnut street?

A Me and Anna Abramovitz.

Q How long after you began your tenancy at Walnut Street did the McKennas come to live with you? A She asked me, she said, "Pete, I seen Ray" because I know Ray from Boston in 1923, and so she said, "They live in a furnished room and her husband is out of work, so I would like you to do me a favor and let these people move in."

Q Did they finally come down to live with you?

A So, I said, "You don't have to question me," I said, "Anything you say goes."

Q Did they finally come to live with you at Walnut Street? A Yes, we did live with them.

Q How long did you know this Abramovitz woman? A Altogether about twenty-eight or twenty-nine months.

Q Where did you first meet her? A In Boston.

Q Where? A In North Street, in my barber shop.

Q You had a barber shop at North street?

A Yes, 295 North Street and a wholesale house, olive oil wholesale.

Q Did you go out with her in Boston? A Yes, this Ray McKenna gave me an introduction to the woman.

Q Who gave you an introduction? A Mrs. Rose Miller.

Q Who is that? A Ray McKenna's sister.

Q Who is Rosie Miller? A That is Mrs. McKenna's sister.

Q And she gave you an introduction to the Abramovitz woman? A Yes, Rose Miller.

Q Did you know that the Abramovitz woman was married? A Yes, she told me when I got an introduction to her.

Defendant's Witness, Peter Doro Bruno, Direct

Q Did you take her out in Boston? A Yes.

Q Did the Abramovitz woman remain in Boston with her husband? A Yes.

Q Did they move out of Boston. A Well, when I first met her we went to a restaurant and she told me that she had a husband which was against her and there was frame-up—

10

The Court. Well, we do not need that.

Q Do you remember Armistice Day, last year? I will withdraw that. Did you have any arguments with Anna Abramovitz in the Walnut Street house about going to New Brunswick? A She told me she wanted to go there.

Q When did this talk take place? A When she moved in on Walnut Street.

Q What day of the month was it? A I cannot recall exactly when it was.

20

Q What took place A Well, she said, I "want to go to New Brunswick." I said, "What doing?" "I want to go there." She said, "I want to make some money." I said, "What is the matter, ain't I man enough to pay bills for the house?" She said, "You are not my husband. I do as I please." I said, "If that is your idea." She said the first husband I could not agree and the second husband then she left when she came with me.

Q What did she say after that? A It was in Cleveland. 30

Q Down in Walnut Street, talking with Anna Abramovitz. A Well, when we came from Cleveland, that is what I am telling you.

Q You had a talk with the Abramovitz woman about her going to New Brunswick? A She told me she wanted to go there.

Q What did she tell you about going to New Brunswick? A She wanted to go to work there.

Q Give us exactly, if you can, what words she 40

Defendant's Witness, Peter Doro Bruno, Direct

used? A She said, "I want to go to a house and make some money." I said, "I don't want you to."

Q What did she say? A She said, "Well, you cannot stop me from going."

10 Q Did she tell you why? A She said, "I want to go there to make some money, because I have got to pay for the furniture." I said, "All right, I will pay for it." I said, "I am able to earn the living."

Q What did she say? A She said, "I want to go. You cannot stop me. You are not my husband."

Q What was this talk about the first or second husband? A Well, she said, "I left my first husband and you cannot stop me from what I am doing."

Q Did she finally go to New Brunswick?

20 A Yes, she did go.

Q Who bought her ticket to New Brunswick?

A Herself.

Q Did you give her money to buy her ticket to New Brunswick? A No, sir. She had her own money.

Q Did you ever talk about the New Brunswick trip in the presence of Mrs. McKenna? A Never.

30 Q Did you accompany the Abramovitz woman to the Pennsylvania station when she went to New Brunswick? She went with me as far as the station then I went home without talking or without saying a word.

Q Was Mrs. McKenna present? A Yes, sir.

Q Did she say anything? A Nothing, we didn't talk, we just walked as far as the station.

Q Did you at any time ask her to go out and earn any money for you? A Never did, I gave up plenty, which I can prove by their own relations.

40 Q What money did you give her? A Her sister needs it, Mrs. Jennie, I gave her \$755 inside of forty-five days.

Defendant's Witness, Peter Doro Bruno, Direct

Q What for? A To get her ring out of hock, and her brother was in jail in Boston and she told me she needed that money and I gave her \$750 at one time.

Q Did you give her any money at any other time?

A All the time she wrecked me, all I had she used all up. 10

Q Did she ever ask you for any money and you didn't give it to her? A Well, I used to give her all the time and besides she used to ask me all the time, too, at the same time, it was never enough.

Q Did you give her money every time she asked for it? A I never refused it.

Q Did she ever ask you to pay any of her bills?

A All the time, yes.

Q Did you pay any of her bills? A She asked me for money and she said, "I got to have some money, and don't you see," and I don't know what she used the money for, but she asked me and I gave it to her and I didn't know she put up lies for me to give her money. 20

Q Did she tell you anything about the \$191 she made in New Brunswick? A She had the money and she said it was for the furniture. I never asked her about the money, I make my own all the time.

Q Did you ever tell Mrs. McKenna that you had slashed your wife in Cleveland with a knife? 30

A I never did.

Q Did you ever slash your wife in Cleveland?

A I never did, I got a letter from her the other day here in the county jail.

Mr. Fisch. Never mind that. If the court please, the testimony was that it was said in the presence of Mrs. McKenna and the deceased.

Mr. Mango. I consent that the last part of the answer be stricken out.

Q Did you ever tell Mrs. Abramovitz in the pre- 40

Defendant's Witness, Peter Doro Bruno, Direct

sence of Mrs. McKenna, that you had slashed your wife in Cleveland? A I never did, I never mentioned my wife at all.

Q Did you ever shoot at Mr. Abramovitz in Boston? A I only see him once in Boston, that's all.

10 Q Did you ever shoot at Mr. Abramovitz in Boston? A No, sir.

Q Did you ever say to the Abramovitz woman in the presence of Mrs. McKenna that you had a beautiful wife, the best looking woman in the world?

A I did, I told Annie, and then she told her.

Q What brought that statement from you to her? Mr. Fisch. I object.

The Court. That is not a properly framed question.

20 Q To whom did you make that statement?

A I told to Anna I was married because I told her I was in Cleveland and I went up to a friend of mine's house and this friend of mine his wife——

Mr. Fisch. Now, if the court please, I object.

The Court. No, we don't want that.

Q Did you ever call the Abramovitz woman Puttanna fifty times a day? A Yes, I used to call her.

Q Fifty times a day? A Not fifty times a day, I used to call her once in awhile.

30 Q Why did you do that that? A Because she wanted to go out all the time.

Q Go where? A She wanted to go out and make money.

Q What did she say? A She said "I want to step out for money" that was the fight all the time.

Q And what did you say to that? A I said to her, "You don't have to do that, I am enough of a man to pay the bill for the house."

Q Did you go to work on the 11th of November

40

Defendant's Witness, Peter Doro Bruno, Direct

of last year, Armistice Day, last year? A The 11th of November?

Q Did you work that day? A No, I didn't work that day.

Q About what time did you get up in the morning? A About half-past eight, quarter to nine.

Q Do you know what time the Abramovitz woman got up that morning? A She got up before me. 10

Q About what time? A About half an hour before.

Q When you got up where was she? A In the kitchen.

Q What was she doing? A Well, you know, just making a cup of coffee.

Q Did you have breakfast with her? A No, just drank a little tea, that's all. 20

Q What did you do all day? A I stayed in the house:

Q What did you do in the house? A I was around the house and done cooking.

Q Do you remember having lunch? A About three o'clock.

Q Who was present at the lunch? A Jim Andesso, Mrs. Abramovitz, me and Mrs. McKenna.

Q Did Mrs. McKenna have lunch with you?

A Well, she sat down and had a little bite, that's all, she was washing clothes. 30

Q How long did the lunch take? A About a half an hour or three-quarters.

Q What happened after the luncheon?

A After the luncheon Jim and I and Anna Abramovitz we started to talk to bring another bed for that extra room in the house and I said, "I will be up tomorrow to select a bed so she can look at it", and so Jim said, "All right, when you pay a little more on the furniture, then I will give you a parlor 40

Defendant's Witness, Peter Doro Bruno, Direct

set," and with a few more words he walked out.

Q What did you do? A Remained in the house.

Q What did Anna Abramovitz do? A She cleaned up the house.

10 Q What took place towards evening? A About half-past four or a quarter after four or something like that—

Q What happened? A Well, she cleaned up the house and then she began to get dressed.

Q What did you do between lunch and half-past four? A I sat down and smoked, that's all.

Q What took place after that? A Well, around six o'clock I say to Ray McKenna I said, "Ray, will you please go out and buy some meat."

20 Q What did she say? A She said "All right, so she went and buy the meat and I started to cook, so Anna said, "Can I go to the show?" I said, "You very seldom ask me, you do as you please all the time it surprises me that you ask me." So they went to a show and I remained in the house, me and Mr. McKenna, so I grabbed hold of the gallon.

Q What? A The gallon of whiskey.

Q What did you do with it? A Well, we started to drink, me and McKenna until half-past nine.

Q You and Mr. McKenna? A Yes, sir.

30 Q How big a jug was this? A Well, at first we had a little bottle, we finished the bottle and then we got the big jar, which we mixed with half with water and half with alcohol.

Q You mentioned a small bottle, how big a bottle was the small bottle? A A small bottle, we had a little over there and we finished that up and then we got the jug.

Q Was it a small soda bottle or one of those large ones? A A large one.

Q What was in this bottle? A Whiskey.

40 Q How much whiskey was in the bottle?

Defendant's Witness, Peter Doro Bruno, Direct

A The first bottle was a little less than half a bottle.

Q And what became of that quantity of whiskey? I am talking about the bottle that had less than half in it. A Well, we drink it all.

Q Who did? A Me and Mr. McKenna.

Q What time did you sit at the table? A It was 10 around about half-past six or a quarter to seven.

Q How long did you remain together?

A Until half-past nine.

Q How long did it take to get rid of the small bottle of whiskey? A Well, I think it was about a half an hour or three quarters.

Q Then what did you do? A I get a big jar.

Q How big? A A gallon.

Q What was it, a glass jug? A Glass jug.

Q What was in it? A Alcohol. 20

Q What did you do with it? A I get some alcohol and put it in the glass and make fifty-fifty, water and alcohol, and was drinking it.

Q Well, what did you mix with the alcohol besides water? A Just some plain water and alcohol.

Q What else did you put in? A That is all; no color; just plain.

Q You drank water and alcohol mixed? A Yes.

Q Did you put anything in? Q No, just white.

Q What did you make, gin? A Just plain. 30

The Court. Mixed water and alcohol. He did not make anything.

Q What did you do with that? A Well, we drink it.

Q Who did? A McKenna and I.

Q How long did you remain together drinking?

A Well, we drink a few more glasses and we started to talk.

Q How long did you remain together? A Until 40 half-past nine.

Defendant's Witness, Peter Doro Bruno, Direct

Q And what happened? A I told him I was going to get some olive oil from my friend in New York.

10 Q What did he do? Did he stay there? A He stayed there and listened to me and finally I talked about my business, I said, "I have lots of orders," and finally he said, "I have got to go." "All right." Then after he went out I started to drink by myself.

Q You say after you went out? A After he went out I have the jar right on the table and I drink by myself.

Q Where were you at that time? A The only thing I remember I was in the kitchen.

Q What happened after that? A After that I don't know nothing.

20 Q What do you mean? A I don't know what happened or anything. I don't know what time they come home. What time they went to bed I don't know nothing.

Q Mrs. McKenna said you offered them supper?

A I don't know.

Q And she said she made some tea. A I don't know.

Q Well, why not? A Because I was really what you call drunk. I started to drink by myself and I lost control and I don't know how much I drank.

30 Q What do you remember after that? A Nothing until the next day when I was in the police station.

Q Where, Newark? A Yes.

Q Don't you remember running away? A Nothing at all.

Q Do you remember killing the Abramovitz woman? A Nothing at all.

Q Why don't you remember that? A Well, because I drank heavy.

40 Q Do you remember how much whiskey in the

Defendant's Witness, Peter Doro Bruno, Direct

jug you did drink? A I cannot say. I lost control.

Q What is the next thing you remember?

A The next day I find myself in headquarters all bandaged up I don't know what happened.

Q Bandaged where? A In my head.

Q All around your head? A All around my head, and I seen myself full of blood, and that is the time I find out. I said, "What am I here for?" 10

Q Do you know who bandaged your head?

A I don't know nothing.

Q What was on the bandage? A What do you mean?

Q Was there any stains of blood, or did you have the bandage for a headache? A The stain of blood was right here on my clothes, not on the bandage.

Q Do you know who put the bandage on your head? A I don't remember. 20

Q Do you know why you had a banage?

A I don't know until the next day I find out.

Q How did you find out?

Mr. Fisch. I object, unless it is shown how.
The Court. Sustain the objection.

Cross Examination by Fr. Fisch.

Q You say that the name Doro is a nick name, is that right? A Yes.

Q Your right name is Peter Bruno? A Yes. 30

Q You are a Sicilian? A I am.

Q And you say that the first time you met Mrs. Abramovitz was in Boston? A Yes.

Q Right? A Yes.

Q Were you married at that time? A Yes. I do not live with my wife.

Q Were you married at that time? A Yes.

Q Where was your wife living? A She was out in Cleveland.

Q And how long after you first met Mrs. Abram- 40

Defendant's Witness, Peter Doro Bruno, Cross

ovitz in Boston did you continue to stay in Boston?

A Three and a half years altogether.

Q After you met Mrs. Abramovitz? A When I met Anna, you mean?

Q Yes. A Well, I stayed there three and a half years altogether.

10 Q You said you met Mrs. Abramovitz about twenty-two months ago? A Twenty-eight or twenty-nine months ago.

Q Now, after you first met her how long did you continue to stay in Boston? A Well, I continued to stay there until she went back to Cleveland.

Q Was she living in Boston? A Yes.

Q With her husband? A Yes.

Q With Mr. Abramovitz? A Yes.

20 Q You knew that? A She told me, I never seen her husband.

Q She told you that A Yes.

Q And then she moved to Cleveland, did she?

A Yes.

Q With her husband? A Well, she said "I have got to go away; inside of fifteen or twenty days I will write you a letter."

Q Then you went to Cleveland? A When she sent the letter. She said, "If you want to come out I am in Cleveland."

30 Q And you went to Cleveland? A Not right away.

Q Well, you went to Cleveland? A Yes.

Q And you met her there? A Yes, that was about after three or four months where she was in Cleveland.

Q You met her in Cleveland? A Yes.

Q Did you meet her husband there? A No, I never see the man before.

40 Q Did you ever see her husband in Cleveland?
A No, I never seen him before.

Defendant's Witness, Peter Doro Bruno, Cross

Q Before when? A I never seen him in my life; I never spoke to him.

Q Didn't you shoot at her husband in Cleveland?

A No, sir.

Q Did you ever shoot at anybody? A No, sir.

Q Didn't you shoot at Anna Abramovitz and her husband in Cleveland? A No, absolutely not. 10

Q Did she accuse you of having shot at her husband? A No, never.

Q Never? A She never mentioned anything like that to me.

Q Now, then, you knew that she was living with her husband in Cleveland? A Every time she used to meet me she used to meet on the west side of Cleveland. She said, "I don't want to see my husband downtown."

Q Now, then, from Cleveland you came to Newark with her, did you? A Yes. 20

Q And you got her to leave her husband in Cleveland and come to Newark with you? A She came down to me and she said, "Pete, I am through with my husband."

Q You agreed to come here together. A Just a minute.

Q And when you came to Newark you went to live down on Walnut Street? A No, not first, as soon as I came here we went to her sister Fanny Wolf and we lived there for a week and then she said we would buy our own furniture. 30

Q Who did you get the furniture from?

A Andizio.

Q And she paid for the furniture? A I gave her the money.

Q Didn't she pay for the furniture? A I gave her the money.

Q How much did you give her? A I gave her a hundred and fifty dollars. 40

Defendant's Witness, Peter Doro Bruno, Cross

Q When? A Before her sister Fanny Wolf.

Q Her sister was present at that time? A Yes.

Q Her sister lived in Newark here? A Yes, 622 South Orange Avenue.

Q And she is in court? A I don't see her. I don't know. There is Fanny. (Indicating).

10 Q She is here. A Yes.

Q Now, you have quite a temper, haven't you?

A Uh?

Q You have quite a temper, haven't you?

A What kind of a temper is that?

Q You have a quick temper, haven't you?

A Me?

Q Yes. A I haven't a quick temper.

Q You don't get angry, do you. A Why should I get angry?

20 Q Do you get angry? A Why should I get angry.

Q Don't ask me a question. Answer me. Do you get angry? A No.

Q Did you ever call Anna names? A Well once in a while I used to call her names.

Q Those were pet names? A I used to call her names.

Q Well, did you think that those were pet names?

30 A Well, I don't abuse the woman all the time, because I love the woman all the time, which I love her yet.

Q You didn't even abuse her all the time?

A No, sir; once in a while we had a scrap.

Q And when you had a scrap with her you used to call a whore? A Not all the time; sometimes.

Q And you would call her a "puttano?" A I am telling you once in a while.

Q And you would put your finger in your mouth between your teeth? A No.

40 Q Never did that? A No.

Defendant's Witness, Peter Doro Bruno, Cross

- Q Never in your life? A No, never did that.
- Q And you would say to her that she got to die, would you? A No, sir; never.
- Q Never said that? A No, sir; never.
- Q You never used that expression to her? A No, sir; never in my life.
- Q Never used that expression to her or to anybody else? A No, nobody. 10
- Q What does it mean when a person puts a finger in his mouth between his teeth? A I don't have such kind of an attitude.
- Q What does it mean? A I don't know what it does mean.
- Q You do not know what that means? A No.
- Q Never heard of it? A I don't know what it does mean.
- Q Never heard of it? A I don't know what it does mean. 20
- Q Never hear of it? A Never heard.
- Q And you never saw anybody do it? A Well, I don't know what it means.
- Q Did you ever see anybody do it? A I never seen it, even if I see it I don't know what it means.
- Q Did you ever see anybody do that? A I am telling you I never see it.
- Q Never saw it? A Never saw it.
- Q And you had a number of quarrels with Anna— A Not all the time. 30
- Q —while Mr. and Mrs. McKenna were around? A Once in a while; not all the time.
- Q And once in a while, then, when you had these quarrels with Anna while Mr. or Mrs. McKenna, or both of them, were around you called her a whore and "puttano?" A I used to talk with the woman in Italian all the time.
- Q You called her a "puttano" in her very presence? A Once in a while I did; not all the time; once in a while. 40

Defendant's Witness, Peter Doro Bruno, Cross

Q And she called you a "cornuto"? A Well, I am not her husband.

Q Didn't she call you a "cornuto"?

A She did, yes.

Q When did she call you that? A Well, some-
time, I do not recall the exact date when that was.
10 It was sometimes she used to call me that.

Q It was only once she called you that?

A I said once in a while she used to call me that.

Q Well, did she call you "cornuto" more than
once? A No, I don't think she did.

Q Only once? A Maybe once or two times.

Q Now, let's find out about that. Did she call
you "cornuto" more than once? A I said I don't
remember, I don't think she did.

Q Did you ever strike at Anna? A Strike?

20 Q Yes. A Sometimes, yes.

Q Try to hit her? A No, no; just to push like
that.

Q Do you remember the time when she and Mrs.
McKenna were fixing a dress? A When was that?

Q Down on Walnut Street, do you remember
that? A No, I don't remember.

Q You don't remember making a lunge for her
at that time? A No.

Q Do you remember her grabbing you by the
30 coat? A I don't remember that.

Q Will you say that that didn't happen?

A I do not remember.

Q You do not remember? A I do not remem-
ber.

Q Now, you didn't get drunk often, did you?

A Once in a while I used to get drunk.

RECESS.

Defendant's Witness, Peter Doro Bruno, Cross

AFTER RECESS.

Q You frequently drank anisette? A Not all the time.

Q You say not all the time? A No.

Q But you often drank it? A Not all the time; once in a while.

Q How often? A Well, maybe once a week or two times a week. 10

Q And you drank alcohol and water often?

A That night I did.

Q You often drank it? A No, not before.

Q You often drank it? A Just whiskey, but not alcohol the way I drank that night.

Q You have been a drinker for a good many years? A No.

Q And during all of the time you had been living at Walnut Street you had not been drunk? 20

A No.

Q And during all of the time you had been living at 5th Street you had not been drunk? A No.

Q And while you were living down on Walnut Street you say that Anna wanted to go to New Brunswick? A Yes.

Q Do you know a man by the name of Teddy?

A Who?

Q In New Brunswick? A No.

Q You went to the station with Anna? 30

A I left her and went back.

Q You left her at the station. A I left her in front of the station and went back home.

Q And then you went home and Mrs. McKenna went home? A Yes.

Q Mrs. McKenna went home before you left Anna? A Yes.

Q And then after Mrs. McKenna went home you left Anna at the station? A Just at the front of the station. 40

Defendant's Witness, Peter Doro Bruno, Cross

Q That was the Market Street station of the Pennsylvania Railroad? A Yes.

Q And you knew then that she was going to New Brunswick? A Yes, I knew she was going there, but I did not want her to go there.

10 Q Now, Anna had bought some furniture, hadn't she? A Yes. I gave her the money.

Q How much furniture did she buy? A She told me it was \$702.

Q And how long after you came to Newark was it that she bought furniture? A About a week after.

Q Four or five days? A About seven days after.

Q And then you went to live at Walnut Street, is that right? A Yes

20 Q Now, in these quarrels that you had with Anna, did she ever hit you? A Hit me?

Q Yes. A Well, sometimes she hit me.

Q Did she ever threaten you? A No, she never threaten me.

Q Did she ever say to you that one of these days she was going to kill you? A No, she never said that.

Q But you say she wrecked you? A About myself, my money, yes, she did.

30 Q And you were not very well pleased over that? A No, sir, never.

Q Now, who did you work for? A For myself.

Q You worked for yourself? A Yes.

Q What business? A Olive oil business.

Q Any other business? A Well, barber by trade. When I left the barber shop I sold olive oil and cheese, the Italian cheese and olive oil.

Q Did you buy and sell olive oil? A Well, I get it from a friend and make so much percent.

40 Q Where did you keep it? A Over to a friend of mine.

Defendant's Witness, Peter Doro Bruno, Cross

Q You did not have any olive oil in the house?

A No, I was going to.

Q What is this friend's name? A 118 Elizabeth Street, New York City, Peter Compo.

Q Is he here in court? A I don't think he is here.

Q And who did you sell this olive oil and cheese to? A Well, here in Newark I get the orders. 10

Q Had you sold any of it? A Not since I was in Newark.

Q So that since you were in Newark you have not sold any olive oil? A No, I was only one month and ten days here.

Q Since you were here in Newark you have not sold any olive oil and cheese? A Yes, I was going to get the stuff.

Q To whom did you sell any olive oil or cheese while you were in Newark? A I didn't sell to anybody, I have the orders. 20

Q Who did you have orders from? A Well, a friend of mine.

Q Who is he? A Well, he used to live on Walnut Street.

Q What is his name? A They wait for the olive oil, when I was ready to bring it.

Q What was the name of any man you had orders from? A Christie Galante, 242 Walnut Street. He said when you get the olive oil they will sell lots. 30

Q How much did he order? A Well, he promised me he would do the best for me. He said, "I will take three, four or five gallons."

Q So you did not have any order? A Yes, they were waiting to buy it. This trouble happened. How could I bring the olive oil.

Q Did you have a written order A Yes.

Q Order in writing A They said, "When you get the olive oil bring it right in." 40

Defendant's Witness, Peter Doro Bruno, Cross

Q Was the order in writing? A No. I just kept it in my mind I was going to bring it in.

Q But you didn't deliver any olive oil to anybody in Newark? A No.

Q Did you have orders from anybody else?

A Different gentlemen in Boston I did.

10 Q In Newark? A I didn't have time when I was here.

Q Did you have any orders from anybody else in Newark for olive oil and cheese? A I said yes.

Q Who? A Different people.

Q Who? A People around 8th avenue.

Q What are their names? A Rappaele, the lame guy, I told him about some olive oil. He said, "When you bring that in I will take it."

20 Q How much olive oil did you have an order from Pappaele for? A Well, he said, "Bring me five gallons."

Q Did you put that in an order book? A I just kept it in mind.

Q Did you have any books? A Not here.

Q Did you have any order books since you have been in Newark? A No, not in Newark.

Q And since you arrived in Newark you have not earned any money yourself? A Well, I had enough money to live on.

30 Q Had you made any money since you arrived in Newark? A No, I didn't make any. I had my own money.

Q How much money did you have? A I had about a couple of hundred dollars, two hundred and fifty dollars.

Q When you came to Newark? A Yes, and then a fellow held my diamond ring for \$105.

Q That was Anna's ring? A That was my ring.

40 Q And you pawned it? A Yes. Somebody has my ring yet for \$105.

Defendant's Witness, Peter Doro Bruno, Cross

Q So that \$105 was all the money that you yourself got from the time you arrived in Newark from Cleveland? A No. I had \$250 more besides that.

Q In addition to the \$250 you had when you came to Newark? A Yes.

Q Well, on the 11th of November you had—Mrs. McKenna was doing the washing? A Yes. 10

Q And you had sent her out to get some meat?

A Yes.

Q What kind of meat? A Well, I said a couple of pounds of veal meat.

Q You did the cooking? A I did the cooking.

Q And what kind of a dish were going to prepare with this veal meat? A Well, I just cooked and leave it in the pot.

Q You were going to prepare a little veal hunter style? A It may be; Italian style. 2)

Q And did you prepare it? A Then they came home—I do not remember what time they came. I just remember until half-past nine when McKenna was with me.

Q You sent Mrs. McKenna out for that veal about six o'clock? A Well, around about half-past five. I didn't have no watch in my pocket.

Q And did she come back with it? A She bring 'uff and she said, "We go to the show," and then I started to cook. 30

Q So that you did prepare it? A The veal chops—I mean veal only takes about a half hour for cooking.

Q Well, then, you did cook it? A I cooked it and left it in the pot.

Q You left it in the pot so that when Mrs. Abramovitz and Mrs. McKenna came back from the movies there would be something to eat there?

A Yes.

Q And when they came back from the movies 40

Defendant's Witness, Peter Doro Bruno, Cross

you asked them if they wanted something to eat?

A I don't remember.

Q Well, there was something to eat? A Well, I do not remember what time they come in and if they asked me anything.

Q And when they went out to the movies—

10 A Well, they went out around half-past six or quarter to seven.

Q What clothing did you have on? A Just my underwear, pants and shoes.

Q And that was the same clothing you had on when they came back from the movies? A I do not remember when they came back.

Q What was the first that you remember after that? A When they went at six o'clock, quarter after six and I started cooking.

20 Q And you remember what you did up and until half-past nine? A Up until McKenna left, yes.

Q And how did you know it was half-past nine?

A Because he had to see his brother. He looked at his watch and said "It is half-past nine and I have to go."

Q What happened after that? A Well, I drank by myself, because I had been drinking with McKenna, and when he left I drank by myself.

30 Q After McKenna left how many drinks did you have? A I cannot tell, I lost control.

Q How long do you remember after half-past nine? A I don't remember.

Q What is the next thing you remember after half-past nine? A The only thing I remember I had a drink.

Q What is the first thing you remember after that? A The next morning I was in headquarters.

Q What time? A I cannot tell you; I do not remember what time it was.

40 Q Was it daylight? A I think it was daylight.

Defendant's Witness, Peter Doro Bruno, Cross

That is the time I found out.

Q Was it six o'clock in the morning or ten o'clock in the morning? A Well, I had no watch in my pocket. They did not tell me the time.

Q Don't you know whether it was daylight or whether it was dark? A It was daylight when they called me, sure. 10

Q It was daylight? A Yes.

Q And that was the first you remember when it was daylight? A It was daylight when they called me, but I don't know what time it was.

Q Now, you have mentioned Mr. Linarducci's name here. How do you know Mr. Linarducci.

Q Well, I seen him many times around Eighth Avenue.

Q You saw him around Eighth Avenue?

A Yes. 20

Q You didn't see Lieutenant Linarducci down at police headquarters? A No, sir, I do not remember it.

Q Will you say you did not see him down there?

A I told you I did not remember.

Q Do you know Lieutenant Linarducci's father?

A What?

Q Do you know Lieutenant Linarducci's father?

A I know his father, yes. I know the old man.

Q And didn't you tell Lieutenant Linarducci down at police headquarters that you knew his father? A I do not remember if I did say that. 30

Q You would not say that you did not say it?

A I do not remember, because I was so drunk.

Q And you didn't tell Lieutenant Linarducci down at police headquarters that you were a barber and oil and cheese merchant? A Maybe I did; I don't remember.

Q Well, you were a barber and oil and cheese merchant? A I do not remember if I said it. 40

Defendant's Witness, Peter Doro Bruno, Cross

Q Well, you were a barber and oil and cheese merchant? A Maybe I did say it, but I don't remember.

Q That is not the question. Weren't you a barber and oil and cheese merchant? A Yes, sure.

10 Q And didn't you tell Lieutenant Linarducci at police headquarters at ten minutes past twelve—that is a few minutes past midnight, that you had known Anna twenty-eight months? A Twenty-eight months. I do not remember if I did say so.

Q Well, you had known her twenty-eight months?

A Well, maybe I did say, but I don't remember.

Q But you did know her twenty-eight months?

A I did say that before. I do not remember if I did say it.

20 Q And didn't you tell him that you and Anna met here in Newark about forty days prior to that time?

A I do not remember saying it.

Q Well, you did meet here in Newark? A I do not remember saying it.

Q You did meet her in Newark about forty days prior to that time? A No, I came on the same train with Anna over here.

30 Q You were in Newark about forty days prior to that time with Anna? A Well, maybe thirty-five, I do not know. Let's see, the 11th—maybe thirty-five days.

Q And didn't you tell Lieutenant Linarducci that you had decided that Anna would purchase the furniture and that you were going to board with her until she got a divorce from her husband so that you could marry her? A I don't remember.

Q Well, you decided to board here in Newark?

A I know, but I do not remember if I say it.

40 Q You had decided that you were going to board

Defendant's Witness, Peter Doro Bruno, Cross

here in Newark? A As soon as she got the divorce I was going to marry her.

Q And as soon as she got the divorce you were going to marry her? A Yes.

Q And didn't you tell Lieutenant Linarducci that four or five days, after four or five days Anna purchase \$702 worth of furniture? A How much did you say? 10

Q \$702 worth of furniture? A Maybe I did say, I don't remember sure.

Q Well, she did buy \$702 worth? A Yes, but I do not remember saying that to him.

Q And didn't you tell Lieutenant Linarducci that she had maltreated you and beaten you and threatened you and one of these day she was going to kill you? A I don't remember.

Q Well, she had maltreated you? A She never beat me. 20

Q And didn't you tell Lieutenant Linarducci that at about 6:30 the night before she had gone out with Mrs. McKenna and had gone to the movies?

A I don't remember.

Q But she had gone out with Mrs. McKenna and had gone to the movies? A I don't remember.

Q But she had gone out with McKenna?

A I don't remember that I said that to him.

Q But she had done that? A Well, she had, I don't remember if I had told that to him. 30

Q And didn't you tell the Lieutenant that you prepared a little veal, hunter's style, so that when she came back she could eat it? A Maybe I did.

Q And you had prepared the veal hunter's style?

A Maybe I did tell him, yes?

Q And you had prepared it? A Yes.

Q So that when she came back she could eat?

A Yes.

Q And didn't you tell Lieutenant Linarducci that 40)

Defendant's Witness, Peter Doro Bruno, Cross

she and Mrs. McKenna came back from the movies about ten o'clock? A I don't remember.

Q Well, she did come back? A I don't remember what time they came back.

10 Q And didn't you tell him that as soon as she entered Anna started to maltreat you, making motions to seize something to hit you with? A I don't remember.

Q You would not say you did not say that?

A I don't remember.

Q Didn't you tell him that you said to Anna: "Let me shave because tomorrow I am going out?"

A I don't remember.

Q And didn't you tell him that you went into the front room to get a razor to shave yourself?

A I don't remember.

20 Q And that as you entered the kitchen to get some hot water that she again started to maltreat you? A I don't remember.

Q And didn't you tell him that you had a razor in your hand? A I don't remember.

Q And that she seized you by hands and you cut your finger? A I don't remember.

Q But you did have a cut on your finger?

A I don't remember.

30 Q But you had a cut on your finger? A I don't remember if I had it.

Q It was bleeding, wasn't it? A I do not remember.

Q And didn't you tell him that afterwards Anna managed to wrest the razor away from you?

A I don't remember.

Q And didn't you tell him that the razor opened and when she tried to wrest the razor from you she brought her hand with the razor towards her neck and cut her neck? A I don't remember.

40 Q And didn't you then say that Anna fell to the

Defendant's Witness, Peter Doro Bruno, Cross

floor and you went away? A I don't remember.

Q And didn't you tell him one and a half blocks distant from the house you were taken without giving any resistance? A I don't remember.

Q And wasn't all this conversation in the Italian language? A I don't remember.

Q And didn't Lieutenant Linarducci write out in Italian what you had told him? A I didn't get that. 10

Q And didn't Lieutenant Linarducci write out in Italian what you had told him? A I do not remember if he did.

Q And didn't you see Lieutenant Linarducci writing something? A I do not remember.

Q You do not remember that? A I don't know.

Q And after he had written it out he handed it to you to read? A I do not remember if he did. 20

Q You wouldn't say he didn't? A I do not remember if he did.

Q And after you had read it he read it to you?

A I do not remember.

Q And after you had read it you signed it Pete Doro? A Well, I must have.

Q And after you signed it Peter Doro, he said to you, "That is not your name, your name is Bruno, isn't it?" A What?

Q After you had signed it Peter Doro, he said to you, "That is not your name, your name is Bruno?" 30

A Maybe he did say it, I don't remember.

A And then after Pete Doro you added Bruno Pete Doro Bruno? A I do not remember what I signed.

Q You signed your name twice, didn't you? First, on the first sheet, then on the second sheet?

A I do not remember.

Q I show you a paper and ask you if that is not 40

Defendant's Witness, Peter Doro Bruno, Cross

your signature? A Well, I do not remember, no, but I do not remember signing it.

Q And how about the signature on the second sheet? A I do not remember signing that.

Q Will you say that is not your signature?

A Well, I do not say that is mine.

10 Q Well, it is your signature, isn't it? A Yes, but I don't remember if I signed it.

Q And after you saw Lieutenant Linarducci and Detective Colgary witness your signature, didn't you? A I don't remember.

Mr. Fisch. Stand up, detective Colgary.

Q Do you remember seeing Detective Colgary at police headquarters? A I do not remember.

Q You would not say you did not see him?

A I do not remember if I did see him.

2) Mr. Fisch. I ask that this statement be marked for identification.

(Paper marked S11 for identification.)

Q Now, you can read Italian? A A little, not much.

Q What is that? A A little.

Q Well, you can read S11 for identification, can't you? A What do you mean, my name here?

Q Yes. Can you read that? A Yes.

30 Q Now, how about the beginning, "Statement made to, Lieutenant Linarducci." A I do not remember if I did.

Q Look at the paper and see if you can read it?

A Lieutenant Linarducci. I cannot see that.

Q Now, below that? A Well, I see that Boston.

Q Well, go ahead and look at it. It is in Italian, isn't it? A Yes.

Q And you can read it? A Yes.

Q Can you read what it says? A Well, that is what you are asking me, but I do not remember.

40

Defendant's Witness, Peter Doro Bruno, Cross

Q All the things I have asked you are on this paper in Italian? A Yes.

Q Read that first line, please, beginning with—
Mr. Mango. I object.

The Court. Sustain the objection.

Q And it is in Italian, isn't it?

Mr. Mango. He said so. 10

The Court. You have been over that.

Q Now, on the day of November 11, in the afternoon, Andesso was at your house? A Yes.

Q That is the furniture dealer? A Yes.

Q And Mrs. Abramovitz was there? A Anna, you mean?

Q Yes. A Yes.

Q Her maiden name had been Goldstein, Anna Goldstein, is that right? A Yes.

Q And on that day Andesso had a paper there for her to sign? A Yes. 20

Q You remember that? A It was the daytime, yes.

Q And did she sign the paper? A I see she signed, yes.

Q And is this the paper she signed? A It may be, yes, Anna Goldstein.

Q It was a mortgage upon Anna's furniture?

A Yes.

Mr. Fisch. I ask that that be marked for identification. 30

Mr. Mango. I object as immaterial.

The Court. It is for identification. It is not offered in evidence yet.

(Paper marked Ex. S12 for identification.)

Q Now, do you know Dr. Mullen? A Who?

Q Do you know Dr. Mullen? A I do not remember.

Q Didn't you see him down at police headquarters? A I don't remember if I did. 40

Defendant's Witness, Peter Doro Bruno, Cross

Q About two o'clock in the morning? A I don't know if I did.

Q Or around one o'clock in the morning?

A I don't remember.

Q On the morning of November 12ht? A I do not remember if I seen him.

10 Q You would not say that you did not see him?

A I do not remember. That is all I can tell you.

Q And this Dr. Mullin asked you how the thing happened? A I don't remember.

Q And didn't you say to Dr. Mullin you will be satisfied to go to the electric chair if you can see the woman? A I did not say that; I do not remember.

20 Q Well, which is it? A I say I do not remember.

Q Didn't Dr. Mullin ask you if you knew right from wrong? A I do not remember that I answered.

Q If you knew the difference between right and wrong? A I do not remember that I answered.

Q But he asked you that? A I do not remember if he did.

30 Q Didn't you have a conversation. Quiet a long conversation with Dr. Mullin? A I do not remember.

Q And told him about the killing? A I do not remember.

Q And didn't you tell Dr. Mullin that the cops beat you up? A I do not remember saying it.

Q Will you say that you did not say it? A I do not remember saying it.

Q Well, the cops did beat you? A I do not know if they did.

40 Q You had a bandage on your head? A The next day I had a bandage; I do not know who did it.

Defendant's Witness, Peter Doro Bruno, Cross

- Q Didn't you have a bandage on your head?
- A I did, but I don't know what was the matter.
- Q And didn't Dr. Mullin ask you to let him see your tongue? A I don't remember.
- Q Didn't you tell Dr. Mullin that you needed a physic? A I don't remember.
- Q Didn't you tell Dr. Mullin that you were coughing constantly? A I do not remember. 10
- Q And didn't you say to Dr. Mullin, "Well, Boss, that is the life?" A I do not remember.
- Q And didn't Dr. Mullin ask you if you were under a doctor's care? A I don't remember.
- Q And didn't you tell him that you were not under a doctor's care? A I do not remember.
- Q And didn't you say to him that you had a cold?
- A I do not remember saying that.
- Q And that you took a lot of whiskey? A I do not remember saying that. 20
- Q And that the whiskey got you crazy that night? A I do not remember saying that.
- Q And didn't you tell him that you had not taken any medicine? A No.
- Q And that you drank a quart of anisette that night? A I don't remember.
- Q And that you had drank steady for the last four days? A I don't remember saying that.
- Q And that you had cut Anna's throat with a razor? A I don't remember saying that. 30
- Q And that you remember everything that happened? A I don't remember saying that.
- Q Didn't you say to him, "I soka her, she pusha me." A I do not remember saying that.
- Q Didn't you say to him, "I was drunk?"
- A I do not remember saying that.
- Q And didn't you say to him, "I could not walk on my feet?" A I do not remember saying that.
- Q Didn't you tell him it was the evening and 4)

Defendant's Witness, Peter Doro Bruno, Cross

that you did not know the correct time? A I don't remember saying that.

Q And didn't he ask you if you knew it was wrong for you to kill? A I don't remember saying that.

10 Q And didn't you say "Yes," you knew it was wrong? A I don't remember saying that.

Q And then didn't he again ask you toward the end of your talk with him that you had said about the electric chair? A I do not remember saying a thing.

Q And then didn't you stop talking and refuse to talk? A I do not remember saying a thing.

Q And then denying drinking anything but water? A I don't remember saying a thing.

20 Q You would not say that the conversation did not take place? A I do not remember saying a thing.

Q And when you jumped on an automobile didn't you ask a man for mercy? A I do not remember saying it.

Q And didn't you say to the man that there was a crowd chasing you? A I do not remember saying it.

Q You would not say that you remember saying it? A I don't remember saying it.

30 Q You would not say that you did not say it?

A I do not remember saying that to the old man the way you asked me.

Q You knew Mrs. McKenna had a broom there?

A I do not remember a thing.

Q And didn't you know that Mrs. McKenna had a broom there? A I do not remember, I said.

Q Didn't you know that Mrs. McKenna had a broom in the house? A There was a broom in the house, but I do not remember a thing that night.

40 Q Didn't you see this broom in the house?

State's Witness, Joseph Linarducci, Direct

A Yes, that is a broom I bought.

Q You bought the broom? A That was the broom that was in the house.

Q That broom was in the house? A Yes.

Q Referring to Exhibit S9. A I do not remember she chased me the way I hear here.

10

DEFENDANT RESTS.

JOSEPH LINARDUCCI, sworn in behalf of the State in rebuttal.

Direct Examination by Mr. Fisch.

Q You are a Prosecutor's detective of Essex County? A I am.

Q And bear the rank of Lieutenant? A That is right.

0

Q And you are in charge of homicide cases, is that right? A Yes.

Q On the morning of November 12, 1925, did you have occasion to go to police headquarters in Newark? A I did.

Q And did you see the defendant there?

A I did.

Q About what time was it that you saw the defendant at police headquarters? A I first saw him about five minutes past twelve.

30

Q That was five minutes after midnight?

A Yes, sir.

Q And did you speak with him? A I did.

Q And did he answer your questions responsively? A He did.

Q Was he drunk or sober. A Sober in my opinion.

Q Was there any liquor on his breath? A Yes, there was a slight alcoholic odor on his breath.

Q And what language did you speak in?

40

State's Witness, Joseph Linarducci, Direct

A Both English and Italian.

Q And did he ask you who you were? A He did.

Q And did you tell him? A I did.

Q And did he say to you that he knew your father? A He did.

10 Q And did he say that he knew you? A He said he knew me by sight.

Q What else did he say?

Mr. Mango. I object. The Prosecutor intends, I suppose, by the evidence of this witness to show rebuttal in contradiction. They are going to rebut something that is not defined by the defense. In other words, there is no foundation laid for rebuttal.

20 The Court. His answers to most questions were "I do not remember". Evidence to the contrary by way of contradiction is admissible. The defendant being a party to the action a foundation is not necessary.

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.

EDWIN C. CAFFREY,
Judge.

30 Q What else did he say?

Mr. Mango. I object on the further ground that the only proper method of giving an answer for the contradiction of a defendant's story is by the same question and answer that was put to the defendant.

The Court. No. He is a party to the transaction. It is not admitted solely on the basis of impeachment but evidence in the case.

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

State's Witness, Joseph Linarducci, Direct

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

EDWIN C. CAFFREY,
Judge.

Q I took him in a small room at police head- 10
quarters off the assembly room and as soon as the
defendant, Detective Colgary and myself entered
the room he asked me if I was an Italian. I said,
"Yes." He asked me my name. I gave him my name,
and he was sitting at this time and he stood up and
shook hands with me and said, "I know your father.
I know Mr. Marzulli. I know all the big Italians in
Newark."

Q You are a pretty big fellow. A He was 20
speaking of my father. This was in English. I
told him that wasn't going to do him any good. He
said, "Why?" I said, "Do you know that you killed
a woman." He said, "Is she dead?" I said, "Yes."
I said, "How did it happen?" He stood up again
and said, "That dirty whore ruined my life." I ask-
ed him if he wanted to make a statement. He said,
"Yes." I told him that I wanted to take the state-
ment in writing. He said. "All right." Then I
asked him if he wanted to make the statement in the 30
English language or the Italian language. He said,
"Italian." Then I sat down and at that time I look-
ed at my watch to fix the date on this statement and
it was then about a quarter past twelve. He made
the statement and I reduced his verbal statement to
writing.

Q Now, as he spoke what language did he speak
in? A Italian.

Q And what language did you write the state-
ment in? A Italian.

Q And then after you had written it in Italian 40

State's Witness, Joseph Linarducci, Direct

what did you do with it? A I handed the statement to the defendant and asked him to read it.

Q What did he do? A He looked it over and apparently read it. He had it in his hand about five or six minutes. I then took the statement from him and read it to him and then I asked if he would
10 sign the statement and he said yes, and he signed on the first page Pete Doro. I said, "Didn't you tell me that your name was also Bruno?" He said, "Yes." "Well," I said, "Write out your full name." Then he added Bruno. I said to him to sign the second sheet also and Detective Colgary and myself witnessed it.

Q I show you Exhibit S-11 for identification and ask you if that is the statement which you wrote out and which he signed and which was then witnessed
20 by Detective Colgary? A It is.

Mr. Fisch. I offer it in evidence.

The Court. Is that the original in Italian?

Mr. Fisch. It is.

Mr. Mango. I object on the ground that it is not proven that the statement is voluntary

The Court. This is not a confession. There are things in there which exculpate him.

Cross Examination by Mr. Mango.

30 Q How long did it take you to write out this statement? A Thirty to thirty-five minutes, possibly forty minutes.

Q And it was all done so quietly as you have told us? A Yes.

Q You are correct about that? A Yes.

Q Did he have a bandage around his head when you took this statement? A He did.

Q Did any marks show on the bandage, what the reason for the bandage was?

40 Mr. Fisch. I object.

State's Witness, Joseph Linarducci, Cross

The Court. Sustain the objection.

Q Did the bandage show any blood? A Yes, there was a little blood on the bandage.

Q What part, the front or back? A I think it was the front part, I do not remember.

Q How big a spot was it? A Possibly the size of a nickle. 10

Q Was it wound all around his head?

Mr. Fisch. I object to that.

The Court. I will allow it.

A Yes, it was wound around his head

Q Well, it did cover the back of his head?

A That I don't remember.

Q This language that you have in this statement was all written by you, is that right? A That is correct.

Q It is your language? A The defendant's language. 20

Q Did he give you the story indicated in this statement in narrative form or by question and answer? A Narrative form.

Q Did you have to ask him any questions to finish this statement? A I did not.

Q And you mean that everything that is in this statement was told by him without any coaxing on his part? A That is correct.

Q Did you tell him the statement was going to be used against him? 30

Mr. Fisch. I object. It is not necessary.

Mr. Mango. Does your Honor allow the question?

The Court. Yes.

A I didn't. I told him it was not necessary.

Q Did you tell him it was not necessary to use this statement against him? A I did not, certainly not.

Mr. Mango. I will renew my objection. 40

State's Witness, Joseph Linarducci, Redirect

The Court. I have ruled before.

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

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

10

EDWIN C. CAFFREY,
Judge.

(Statement marked Ex. S11.)

Redirect Examination (continued) by Mr. Fisch.

Q Now, Lieutenant, did you make a translation of Exhibit S11 in the English language for me?

A I did.

Q And is this the translation that you have made? A It is.

20

Mr. Fisch. I would suggest, if there is not any objection, that the translation be connected to Ex. S11.

Mr. Mango. When was the translation made?

Mr Fisch. When did you make the translation?

The Court. Well, it is one man who made both. He is not refreshing his recollection from something made. The question now is the translation of the original statement.

30

Mr. Mango. Well, then, will your Honor permit me to look at both statements before the jury takes it into the juryroom?

The Court. Yes, go ahead.

(Defendant's counsel looks at statement.)

Mr. Fisch. I take it counsel has no objection to attaching the translation to the exhibit?

Mr. Mango. Not at all.

Q Now, then, Lieutenant, did you see Dr. Mullin at headquarters that morning? A I did.

40

Q What time did Dr. Mullin get there? Just before one o'clock.

State's Witness, Anthony F. Colgary, Direct

Q And did Dr. Mullin make an examination of the defendant? A He took him into another room by himself.

Q He took him into another room by himself?

A Just the doctor and the defendant.

Q Now, while the defendant was talking to you was his speech coherent? A Absolutely. 10

Q Did you see anything wrong with the pupils of his eyes? A No, sir.

Q Was he steady on his feet? A He was.

CROSS EXAMINATION WAIVED.

ANTHONY F. COLGARY, sworn in behalf of the State in rebuttal.

Direct Examination by Mr. Fisch.

Q You are connected with the Newark Police Department and attached to the Detective Bureau at headquarters, is that right? A Yes. 20

Q And on the night of November 11th and the early morning of November 12th were you at headquarters? A Yes.

Q And did you see the defendant there? A Yes.

Q And did you see Lieutenant Linarducci there?

A I did.

Q And did Lieutenant Linarducci have a talk with the defendant in your presence? A Yes. 30

Q Was that conversation in English or in Italian? A Both in English and Italian.

Q Of course, you do not understand the Italian part of it? A I do a little.

Q What was the conversation? A Why, at first he said he knew his father.

Q Who said it? A The defendant, that he knew Linarducci's father, and that he knew a whole lot of Italians, and he asked us if we were Italians 40

State's Witness, Anthony S. Colgary, Direct

and we said yes, and he said, "Well, I will get a square deal here," and Lieutenant Linarducci said that would not do him any good. Linarducci said, "Do you know you killed a womna?" And he said, "Is she dead?" And Linarducci said "Yes," and we asked him if he wanted to make a statement and he
10 said yes, and we asked him if he wanted to make it in English or Italian and he said in Italian and we took it.

Q Who wrote the statement? A Lieutenant Linarducci.

Q I show you Ex. S11 and ask you if that is the statement Lieutenant Linarducci wrote out?

A Yes.

Q After he wrote the statement out what did he do with it? A Well, he gave it to the defendant to
20 read.

Q What did the defendant do? A He read it and then Lieutenant Linarducci read it.

Q Out loud? A Yes, and then the defendant signed it and we witnessed it.

Q This is your signature, Anthony S. Colgary, on the first page? A Yes.

Q And also on the second page? A Yes.

Q When you were talking to the defendant were his answers responsive? A Yes, they were.

30 Q Did you see him standing up and walking?

A I saw him standing up and walking both.

Q Was he steady on his feet? A Yes, he was.

Q Did you notice anything peculiar about his eyes or the pupils of his eyes? A No.

Q Was his speech coherent? A Yes.

Q Was he drunk or sober? A He was sober to my knowledge.

Q There was a smell of liquor on his breath?

A A slight odor.

40

*State's Witness, James Fletcher, Direct**Cross Examination by Mr. Mango.*

Q Did he seem to be in pain by reason of a bandage around his head? A No.

Q Did you see any blood on the bandage?

A A very small clot on the front.

Q There was some blood on the bandage?

10

A Just a small clot.

Q His entire head was bandaged around?

A Yes.

Q Was the top of his head bandaged? A That I could not say.

Q Do you know who bandaged it? A I believe at the hospital.

Q At the hospital? A I believe so.

Q I mean do you know who did? A I don't.

JAMES FLETCHER, sworn in behalf of the State, in rebuttal. 20

Direct Examination by Mr. Fisch.

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

Q Detective Bureau at headquarters?

A Yes, sir.

Q On the night of November 11, 1925, did you see the defendant? A I did.

Q Where? A Headquarters.

30

Q And where did you see him prior to that time?

A In the Fifth precinct.

Q Did you take him from the fifth precinct down to police headquarters? A From the hospital.

Q You saw him at the Fifth precinct.

A Yes, sir.

Q Did you go anywhere with him from the fifth precinct? A He was taken from the fifth precinct to the City Hospital in the patrol wagon, and I went down with him in the patrol wagon. 40

State's Witness, James Fletcher, Direct

Q And you were with him? A Yes, and then he was brought to headquarters.

Q When was the first time you saw him?

A The time was around 11:20 or 11:25 at the Fifth precinct.

10 Q And what was his condition at that time, what did you see his condition to be? A In what respect?

Q About his clothing? He was in an undershirt and pants and shoes.

Q Did he talk? A Well, no, he didn't talk to me.

Q How did he act, did he walk? A He was sitting down in the Fifth precinct but he wouldn't answer.

Q He wouldn't answer. A Not me.

20 Q He was sitting down? A Oh, yes, he was all right, apparently.

Q Did you notice anything peculiar about his eyes? A No, I didn't.

Q Was he drunk or sober? A I wouldn't say he was drunk by any means.

Q Would you say he was sober. A I would.

Cross Examination by Mr. Mango.

Q Did you smell any liquor on his breath?

30 A I did not.

Q Did you find out if he had been been drinking?

A I did not, he did not look like a man that had been drinking anything. I am judging from appearance.

Q Did you smell to find out whether he had been drinking? A No, I did not.

The Court. How would he do that?

Mr. Mango. By going close to the defendant.

A I am not a doctor, I would not do that

40 Q Did you accompany him to the City Hospital?

State's Witness, James Fletcher, Cross

A Yes, sir.

Q Were you in his office all the while he was in the City Hospital? A I was not.

Q Where was he taken to in the City Hospital?

A To Headquarters.

Q I mean to what room was he taken in the City Hospital? A The receiving room. 10

Q Did you wait outside the receiving room?

A Yes, sir.

Q Who went inside with him? A Oh, there was a lot of people inside with him, three or four policemen.

Q From the same precinct? A From the Fifth precinct, yes.

Q Were you the only one that remained outside of the receiving room? A Oh, no, there was a lot of people outside the receiving room, going in and out. 20

Q Do you know what they did do with him?

A They fixed his wound up I believe.

Q Where did he have the wound? A I don't know, they treated him for something.

Q Did he have a bandage on his head when he got to the City Hospital? A No.

Q Did he have one when he came out of the receiving room? A Yes, sir.

Q Did you see any blood on the bandage? A Why, I believe there was a little on the top of the bandage, yes. 30

Q Did you see any blood on the defendant at the Fifth precinct? A No, I did not.

Q Did you look? A No, I did not.

JOSEPH T. BARILE sworn in behalf of the State in rebuttal.

Direct Examination by Mr. Fisch.

Q You are a police officer of the Fifth precinct? 40

State's Witness, Joseph T. Barile, Direct

A I am.

Q On the night of November 11, 1925, did you see the defendant? A I did.

Q Where? A At the precinct.

Q What time? A Well, I should judge it was about 11:10, 11:15.

10 Q Did you take him anywhere? A I did.

Q Where? A To the City Hospital.

Q What for? A To the receiving room.

Q What for? A For scalp wounds, laceration of the scalp.

Q Did you go in the patrol wagon with him? A Yes.

Q What was his condition at that time with regard to sobriety, was he drunk or sober? A Well, he was apparently sober.

20 Q Was he steady on his feet? A Yes, he was.

Q Did you notice anything peculiar about his eyes? A I did not.

Q Was he coherent?

Mr. Mango. I object.

The Court. Why?

Mr. Mango. It is a conclusion.

The Court. Overruled.

A What was that?

30 Q Was he coherent? A No, he was not. The only thing I tried to talk to him, being an Italian, but he said he would not have anything to say until he got down to headquarters.

Q When I asked you was he coherent, do you know what I mean by coherent?

The Court. Ask him in another way.

A Did you talk to him? A Yes, I talked to him.

Q Were his answers responsive? A Well, they were, yes.

40 Q What did you say to him and what did he say

State's Witness, Joseph T. Barile, Direct

to you? A I tried to talk to him to find out what it was all about.

Q In English and Italian? A Both English and Italian.

Q What did he say? A He didn't have much to say because he wouldn't do much talking until he got down to headquarters. 10

Q Is that what he said? A Yes, sir.

Q That he would not do any talking until he got down to headquarters? A He did not have a word to say.

Q Did you have any difficulty in understanding what he said? A I did, being that he spoke in Sicilian, and I don't quite understand Sicilian.

Q Oh, it was the question of the dialect, was it? A That's about the size of it.

Q And from what you could observe did he have any trouble in understanding what you said? A Oh, no, he did not. 20

Cross Examination by Mr. Mango.

Q How close were you when you spoke to him? A Well, I was sitting right alongside of him.

Q In the next chair? A Well, you know how the patrol wagon is, there are only two sides and I was sitting alongside of him.

Q Oh, you spoke to him in the patrol wagon and not in the precinct? A Oh, I was just detailed by the lieutenant to take him down to the hospital, that's all. 30

Q Where was it that you spoke to him, in the precinct or in the patrol wagon? A In the patrol wagon.

Q Were you near enough to smell his breath? A Well, that I don't know.

Q Did you smell his breath? A I did not.

Q Did you smell any liquor on his breath? A 40

State's Witness, Joseph T. Barile, Cross

I could not say, he was all messed up with blood and if he did have an odor of liquor on him a fellow would not be able to smell it on account of him being messed up with blood. I didn't go that far, anyhow.

Q Where was the blood? A All over his clothes.

10 Q And how about his face? A I guess there was a little blood on his face from the laceration of the scalp.

Q Coming out of the wound on the scalp? A I don't know where the wound was. But, I know if there was a little blood there may have been a little blood that was splashed on him when the crime was committed.

Q Now, there was a scalp wound, you know that? A Yes.

20 Q And you know there was some blood in the scalp wound? A Yes, sir.

Q And you took him to the hospital? A Yes, sir.

Q Did you notice his treatment by the doctors in the hospital? A Yes, I did.

Q Did you notice the blood then? A Yes, I did.

30 JOHN V. COOK sworn in behalf of the State in rebuttal.

Direct Examination by Mr. Fisch.

Q Mr. Cook, you are the father of Officer Cook who testified in this case, are you? A Yes, sir.

Q And do you remember the night of November 11, 1925? A Yes, sir.

Q Were you driving an automobile on Sussex avenue that night? A Yes, sir.

Q Whereabouts? A I was driving on Orange street.

40 Q What kind of an automobile was it? A A Daniels.

State's Witness, John V. Cook, Direct

Q Touring car? A Yes, sir.

Q What happened that attracted your attention?

A I believe two shots were fired on Fifth street as I was passing on Orange street.

Q Then what happened? A I saw people running and I turned into that street where the people were running up the street and I saw somebody running down Sussex avenue towards me and I turned the car down Sussex avenue and as I got down in the middle of the block I saw a man running in the street in his undershirt and he tried to catch a car running in the opposite direction and he fell in the street, and I thought the man was injured or in a gang fight, and I thought I could assist him in some way, and he jumped on the running board and asked me to help him that they were trying to kill him, and I told him to get in the back of the car, and when I got him in the car I heard a couple more shots fired and I thought the gang was after me and I kept on going, and I guess there were a couple more shots fired and as I turned around the corner another car got ahead of me and forced me against the curb, the gutter, and an officer covered me with a gun and got on the running board.

Q Was that your son on the running board? A One was my son and one another officer.

Q When they got on the running board where was the defendant? A In the rear seat.

Q What happened then, what did you see the defendant do, if anything? A He was in a rage and he asked them to shoot him, he wanted to die, and I was driving them towards the station house and I could not tell what was going on in the back, and just as I got to the corner they got on the running board and told me to drive to the station house.

State's Witness, John V. Cook, Cross

Q Could you tell us whether or not the defendant did anything to the officers? A I could not.

Q Then you drove to the Fifth precinct? A Yes, sir.

Q And you saw the officers get out with the defendant? A They took him out.

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Cross Examination by Mr. Mango.

Q You saw what the officers did with the defendant, didn't you? A No, I did not, my back was turned.

Q Didn't you see them club him? A No, sir. I did not. I know there was a scuffle back there, I know there was a scuffle going on but it was in the back seat.

Q You knew somebody was getting hit? A I did not know whether they were getting hit or not.

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Q Did you see any of the policemen hit the defendant? A No, sir, I could not from where I was sitting.

Q Did you go into the Fifth precinct with the officers and the defendant? A No, sir, I did not go in.

RAYMOND J. MULLIN sworn in behalf of the State.

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Direct Examination by Mr. Fisch.

Q Dr. Mullin, you are police surgeon of the City of Newark? A Yes, sir.

Q Early on the morning of November 12, 1925, did you have occasion to go to police headquarters? A Yes.

Q What time did you get there? A Approximately ten minutes to one.

Q Did you see the defendant Doro there? A I did.

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State's Witness, Raymond J. Mullin, Direct

Q Where did you see him? A I saw him in one of the ante rooms off the detective's main room.

Q Did you examine him? A I did.

Q What did your examination show, Doctor, what examination did you make? A I examined him as to his mental condition, his ability to reason and tell right from wrong and his sobriety.

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Q I beg pardon. A And his sobriety.

Q Just what did you do in your examination, tell the court and jury, please, what tests you made?

A I walked into the room and found the defendant in the chair with his head resting in his both hands. I was accompanied by Detectives McConnell and Dwyer who were present during the examination. I asked him first what was the matter and he said, "The cops beat me up." And I examined him then

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to see what had taken place, if possible, or if he was seriously injured, and found that he had three or four scratch wounds, abrasions, superficial, slight, in other words, on his face, on both cheeks and nose, and there was a slight laceration of the scalp; he was covered with blood, the shirt was covered with blood, and I asked him how he got that, or what had taken place, and he commenced to tell me with interruptions, interrupting himself, that he had a fight, and he had killed a woman, he had killed her with a razor, cut her throat with a razor, and I asked him how it had taken place and he said it was a fight, that he had soaked her and she had pushed him and he slashed her and ran away, and I asked him if he knew right from wrong and he said yes, and I asked him if he knew the punishment for killing another human being and he said yes, and I asked him what it was, and he said, "People who kill other people are put to death." At one time, without any question being asked, he looked at the men that were in the room and said, Well, boys, this

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State's Witness, Raymond J. Mullin, Direct

is the life," and I asked him to explain what he meant by that and he again gave an explanation of that, or at least, he said he had been drinking, and he coughed during the examination, I asked him if he was sick or under a doctor's care and he said no, he had a cough and he had been drinking
10 whiskey heavily for several days. First he said he had taken a lot of whiskey, and at one time he said he had taken a quart of annisette. He told me that he was very drunk, and I asked him if he knew what had happened and he described what had happened, he related the details of the fight, of being pushed, and of hitting the woman and of cutting her throat, and I asked him what time in the evening that had taken place and he did not tell me the exact hour,
20 and he told me the time it was while he was being examined, and I asked if he knew where he was and he answered all my questions intelligently and relevantly, and he showed no evidence at that time of any serious injury or mental disorder, and with the excetpion of an odor of liquor on his breath, he showed no evidence of intoxication.

Q Would you say that he was sane? A Yes, sir.

Q That he was rational? A He was.

Q Were his answers responsive to your ques-
30 tions? A They were.

Q Was he coherent? A Yes, sir.

Q Was there any dilation of the pupils of his eyes? A Yes, sir, very slight. The pupils were dilated.

Q Would you say he was drunk? A He was not.

Q Did he say something to you that he would be satisfied to go to the electric chair if he saw the woman again? A He made that remark to me,
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State's Witness, Raymond J. Mullin, Direct

that was the essence of his talk, as I entered the room, or as I made him aware of my presence, I don't remember whether I touched him or whether I spoke to him, he remarked to the effect that he would be satisfied to go to the electric chair or anywhere else, if I remember distinctly, if he could see the woman.

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Q And did you refer to that proposition of the electric chair later in your talk with him? A I did.

Q In what manner, Doctor? A After I finished examining him and had finished making all the notes that I started, we prepared to go out, and leave, and I said, "What was that remark you made about the electric chair, what did you mean by that," and he sat down and refused to talk any further and said, "Well, I explained everything any-
how" or words to that effect, that he explained everything to me now, and he talked to me about being drunk, and he said he did not have anything to drink, and I said, "Do you mean to tell me you have not been drinking liquor?" and he said, he had been drinking water and he could not go any further than that.

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Q Would you say, Doctor, from your examination of him at that time that he appreciated the nature and quality of his acts? A I believe that he did.

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Q And that he was responsible for his acts? A I would say so.

Cross Examination by Mr. Mango.

Q From the information that you had and the fact that you smelled liquor on his breath, and from the dilation of his pupils, would you say he was drunk? A I would not consider that. When I say his pupils were dilated, I myself was interested in

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State's Witness, Eugene W. McKenna, Direct

knowing whether the head injury was serious or not, and after having examined him I was satisfied to know that the head injury was not important. In my opinion, the dilation of the pupils would have no bearing on the amount of liquor that he drank or consumed.

10 Q You would say that it has no bearing, in your opinion, the dilation of his pupils? A I would say in my opinion that it would have no bearing on the amount of liquor that he took. The liquor might have dilated them and they may have been dilated before he took the liquor.

EUGENE W. McKENNA, recalled By MR. FISCH.

20 Q Mr. McKenna, you testified in the main case that you had been in the house with the defendant from about six to about half-past six o'clock, at least, and your wife and Mrs. Abramovitz went out to the movies, until half-past nine. Now, during that time did you and the defendant finish a large soda bottle of whiskey? A No, sir.

Q And then drink alcohol and water, fifty of alcohol and fifty of water taken out of a glass jug? A No, sir.

30 Q Did you have any liquor up to that time that you left at half-past nine? A Yes.

Q What did you have? A I had one drink of annisette.

Q And what did he have? A The same thing.

Q What? A Annisette.

Q How many drinks? A One to my knowledge, while I was there.

Q One drink while you were there up to half-past nine? A Yes, sir.

40 Q And what is this annisette which you say you were drinking? A It tasted like licorice to me.

State's Witness, Eugene W. McKenna, Direct

- Q A cordial, was it? A I couldn't say.
- Q How big a glass did you have? A We drank them out of the regular water glasses.
- Q How much was in the glass? A I would say about that much. (Indicating about an inch).
- Q And how much of this annisette was in the glass that this Doro drank? A He poured about the same amount in both glasses. 10
- Q And that was the only drink that you and he had up until half-past nine? A Yes.
- Q And where did that drink come from that the both of you got? A In a soda bottle.
- Q And where did he bring the bottle from? A I believe he got it out of his room.
- Q That is where he got it? A Yes, sir.
- Q And where did you have the drink? A At the table. 20
- Q In the kitchen? A Yes, sir.
- Q Where were you when the drink was poured? A Sitting down by the table.
- Q Who poured it? A Peter Doro.
- Q And after it had been poured what did he do? A We had been talking there for a few minutes and we had the drink.
- Q What time did you have that drink? A I cannot be exact and say the time; say about half-past seven or a quarter to eight. 30
- Q Then the bottle was not put on the table until about that time, is that right? A Yes, sir.
- Q And then from half-past seven until a quarter to eight you sat in the kitchen with the defendant? A I did.
- Q Talking? A Yes, sir.

Cross Examination by Mr. Mango.

- Q Did he drink the liquor he poured himself? A I believe he did. 40

State's Witness, Eugene W. McKenna, Cross

Q Have you any doubt about it? A I just don't remember whether I saw him drink it or not.

Q You drank it yourself, didn't you? A I did.

Q You were sober enough to know whether he drank his? A I will say I was.

10 Q Did you ever taste annisette before? A No, sir.

Q Are you sure it was annisette? A That is the way it was told to me.

Q Did you sit there at the table with him? A Yes, I did.

Q Do you know whether it was annisette or an-nistone? A No, I do not.

Q And the annisette you say contained alcohol? A I couldn't say.

20 Q Is that the first time you ever drank it? A Yes, sir.

Q That is the first time you ever drank annisette? A Yes, sir.

Q You never saw any annisette before? A No sir.

FANNIE WOLFF, sworn in behalf of the State.

Direct Examination by Mr. Fisch.

30 Q Mrs. Wolff, where do you live? A 622 South Orange avenue, Newark.

Q You are a sister of the deceased Anna Abramowitz? A Yes, sir.

Q Do you know the defendant, Peter Doro? A Why yes, I met him twice.

Q Did he give your sister Anna Abramowitz \$150 in your presence at any time? A No, sir.

Q Do you know of his ever giving your sister \$755? A No, sir.

Q Or any sum of money? A No, sir.

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*State's Witness, Max Horn, Direct**Cross Examination Waived.*

MAX HORN sworn in behalf of the State in rebuttal.

Direct Examination by Mr. Fisch.

Q On the night of Novemebr 11, 1925, were you an interne at the City Hospital? A Yes. 10

Q And on that night did you see the defendant, Peter Doro? A Yes.

Q And did you treat him? A Yes.

Q What for? A He had a laceration of the scalp and he had a swelling beneath his right eye.

Q What did you do? A I sewed the laceration on the scalp up and put a dressing on it.

Q Would you say the wounds were serious? A No, they were not. 20

Q Superficial? A Superficial. 20

Cross Examination by Mr. Mango.

Q How many stitches did you put in the scalp? A One stitch.

Q Did you bandage his head after that? A Yes.

Q Did you see any blood on there before you treated him? A There was blood around the scalp.

Q Coming out of that bruise? A There was not much blood as I remember it. There was blood around the area where he had this wound. 30

Q Did you smell any alcohol on his breath? A Yes.

Q Much? A I could not tell if there was much. There was alcohol there.

Q There was quite a smell of alcohol on his breath? A As I bent down over him, I could smell it.

State's Witness, Joseph Linarducci, Direct

Redirect Examination by Mr. Fisch.

Q Would you say he was drunk? A I don't know.

Q You did not examine him for that? A Yes, I did; that is, superficially.

10 Q You did not treat him for alcoholism or drunkenness? A No.

JOSEPH LINARDUCCI recalled in behalf of the State in rebuttal.

Direct Examination by Mr. Fisch.

Q Lieutenant Linarducci, did you subpoena Mr. James Andesso to appear in Court in this trial? A I did.

Q And is he here in court? A He is not.

20 Q Why not? A He is confined to his home; confined to his bed.

Q By illness? A Yes.

Cross examination waived.

(S-12 for identification is offered in evidence by the State. Objection is made by the defense. Objection sustained).

TESTIMONY CLOSED.

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Charge

CAFFREY, J.

Gentlemen of the jury. The indictment charges the defendant Duro with murder. It alleges that in the city of Newark, on the 11th day of November, 1925, that he did wilfully, feloniously and of his malice aforethought, kill and murder Anna Abramowitz.

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Murder is the killing of a reasonable being with malice aforethought, that is, with intent to do evil. A purpose to do bodily harm is sufficient and malice may be presumed from the character of the killing.

Under the form of this indictment the prisoner may be convicted of murder in the first degree or murder in the second degree.

The classification of murder into the two degrees is made by the statute. The statute requires the jury, upon conviction for murder, to designate by their verdict whether they find the accused guilty of murder in the first degree or murder in the second degree.

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The distinguishing feature between the two degrees of murder is the intent with which the homicidal act was done. The presumption of law is that all homicides are murder, but there is a further presumption that it is murder in the second degree, and the burden of proving affirmatively that the accused is guilty of murder in the first degree rests upon the State. If the intent was to take life and the act was premeditated, deliberate and wilful, it is murder in the first degree. Wilfulness, deliberation and premeditation are distinct mental acts, each requiring some appreciable time, and you must find, in order to convict of murder in the first degree, that the accused contemplated the act; that is to say, pre-

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Charge

meditated; then determined upon its commission, that is to say, wilfully intended it, and then weighed such intent before carrying into effect, or, in other words, deliberated. In considering these words, I cannot fix any definite time, whether it is a minute or a second, and, it has been said, the words do not import any appreciable period of time and that the mental acts to which they severally refer are capable of being performed with that degree of celerity with the human mind is proverbially capable of acting.

Under our law, every person convicted of murder in the first degree shall suffer death, unless the jury, by their verdict and as part thereof and upon and after considering all of the evidence, recommends life imprisonment at hard labor, in which case this and no greater punishment shall be imposed.

Murder in the second degree comprehends those cases of murder which are an attempt to do grievous bodily harm without intent to take life, or where the act is done in the heat of passion but without justification and lacking the essential elements of the highest degree of crime, premeditation, deliberation and wilfulness.

The State contends that this murder is one of first degree and offers, through the medium of witnesses, testimony showing the relationship of these parties from some time prior to the eleventh of November and with particular reference to the course of conduct on the night in question.

There seems to be no dispute that the McKennas and the defendant and the deceased lived together at the corner of Fifth and Orange streets; that sometime shortly after their last meal Mrs. McKenna and the deceased went to the movies—I think they testified to the Tivoli Theatre on Orange street,

Charge

leaving McKenna and the defendant at home. Mr. McKenna said he remained at the house until about nine-thirty, and the proof further shows that Mrs. McKenna and the deceased returned; that there was some conversation with regard to eating and the deceased said that she had no desire to eat, that she had eaten but a short time before; that Mrs. McKenna made some tea and poured out three cups; that prior to their going out this defendant said he hoped and wished that the deceased would be killed by a trolley car, and that upon their return the quarrel continued or started anew, at which time language was used filthy in character and both the defendant and the deceased berated each other, and finally the defendant said, "I will kill you," again referring to her in terms which have been testified to by the witnesses. I think Mrs. McKenna said that the defendant appeared to be angry, that he made grimaces, and that a quarrel lasted for about fifteen minutes from the time of the entry of the two people from the movies to the actual killing and that the defendant slapped the deceased and she slapped him back—I think she pushed him into a chair; then he got up went out of the room, if I recall her testimony, two or three times, and the last time he returned he pushed the deceased into a corner and put his left arm around her neck and she observed the right arm in a motion as exhibited to you—I think she said that she saw this arm movement three or four times; that she heard a scream; blood splattered and of which she received some; that the defendant ran out; that she followed him until they reached the street and, I think, she said he turned down Sussex avenue. Dr. Martland, the County Physician, who made the autopsy, testified that death in this case was the result of an injury; that there were four wounds, one five inches long

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Charge

and another three and a shorter one and then what he termed a minor scratch or minor wound, and that the wound which he looked upon as the one causing death was the one which had severed the sternomastoid muscle and which caused the deceased's head to appear as if fully severed. Mrs. McKenna said that she screamed, that she reached the street and a boy named Egan testified that he was at a point outside the door on Fifth street when he saw the defendant come out, describing his dress, that he had blood on his clothes, and he also saw Mrs. McKenna; that he returned to the corner of Orange street and notified two policemen what he had seen there and they started in pursuit. The testimony further shows that the defendant ran on Sussex avenue and, I think, Mr. Cook, Sr., said he saw the defendant attempt to board an automobile going west and he missed that and that he came to him and pleaded for mercy and he got in the machine and turned over First street, at which point he was apprehended by two police officers. He was then taken to the precinct and then to the City Hospital, and later to police headquarters. The defendant has offered no explanation on the witness stand other than a general denial, which comes from his statement that he does not remember anything. The State has offered testimony as coming from the lips of the defendant through the medium of conversations had with other people, who have testified as to his conversations and course of conduct. Detective Linarducci testified that he saw this man about midnight, or a few minutes before or after, and he took this statement which has been offered in evidence. In that statement the defendant states that the decedent mistreated him and that he was about to shave himself when she grabbed his hand and in the scuffle the razor reached her throat, which resulted in the injury. That state-

Charge

ment is in evidence, as such, it is evidence, and, of course, in your province as jurors, having a right to consider all of the testimony, you have a right to give that statement such credit as you believe it worthy of. The testimony of Dr. Martland, I think, further shows that the wound was an inch and a half and two inches deep and, at the widest gap, it was about two and a half inches. In considering the story as told by Detective Linarducci as coming from this defendant and Dr. Martland's testimony as to the nature of the wound, of course, you have a right first to consider whether or not the defendant told Detective Linarducci what was in the statement and, if you are satisfied that the defendant did tell Detective Linarducci, you have a right to consider his explanation and then take into consideration the testimony of Dr. Martland as to the nature of the wound as bearing upon the probability of the defendant's story. The defendant said that he was drinking and had been drinking with Mr. McKenna and that they had some sort of cordial and alcohol diluted to the degree of fifty per cent. with water. Mr. McKenna denies this and he said that up to the time he left at 9:30 he had one drink of this cordial and the defendant had one. Detective Linarducci said that at the time he saw him at midnight the defendant was not intoxicated. Dr. Mullin, the police surgeon, testified that he made an examination of the defendant and the defendant was not intoxicated, although he told Dr. Mullin that he had been drinking, and later he changed it and said he had drunk nothing but water.

Drunkenness or intoxication is never an excuse or a defense for crime. Intoxication, if you find it to be a fact, is a mere circumstance to be considered in determining whether premeditation was present

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Charge

or not, and when we speak of intoxication, we have to consider from the evidence what degree of intoxication. If the evidence is sufficient to satisfy the jury that the intoxication of the accused, at the time of the homicide, which is the essential ingredient of murder in the first degree, the prisoner will
10 not be entitled to acquittal, but his offense will be murder in the second degree. You should carefully discriminate between that excitable condition of the mind produced by drink, which is not capable of forming an intent, but determines to act on a slight provocation, and such prostration of the faculties by intoxication as puts the accused in such a state that he is incapable of forming an intention from which he shall act.

20 This defendant, like all other persons charged with crime, is presumed to be innocent until proven guilty and is entitled to the benefit of any reasonable doubt arising upon the evidence, and the burden is upon the State to establish every material element. If there be reasonable doubt in regard to the guilt or the degree of criminality, the defendant is entitled to that benefit. Reasonable doubt is defined by the highest court in our state as not a mere possible doubt, because everything relating to human
30 affairs and depending upon moral evidence is open to some possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they have an abiding conviction to a moral certainty of the truth of the charge. The evidence must establish the truth of the fact to a moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound
40 to act conscientiously upon it. But if, after con-

Charge

sidering carefully all of the evidence, giving the accused the benefit of any reasonable doubt, you are led to the conclusion that he is guilty, though of the highest degree of crime, you should declare it by your verdict. As I pointed out to you before, the presumption of law is that all homicides are murder in the second degree, and it is your duty, upon a conviction of murder, to designate by your verdict whether you find the accused guilty of murder in the first degree or second degree and, also, as indicated before, if the circumstances of the case warrant it, the court cannot impose a greater sentence than that.

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This case, as it stands now, is an issue between the State of New Jersey and this defendant. What this woman was or what the defendant is or was is not the issue being tried. The law is a respecter of no person, and under your oaths you should determine this case entirely upon the evidence submitted. You are the sole judges of the facts and, if the Court, in its reference to any of the testimony, has omitted some of the testimony, of course, it is in no wise a limitation upon what you should consider and, if the Court, in its statement, has mistated some of the testimony, of course, you must rely upon your own recollection and not the Court's. It is your duty to judge the credibility of the witnesses; it is your duty to weigh all the testimony, and under your oaths as jurors you are charged with a duty as solemn as the law can impose upon you as citizens, the determination of the question of the extinction of human life by judicial decree. The responsibility which rests upon you is a grave one. The life of this defendant is in the balance. Let your verdict accord with the evidence. You are the vindicators of the law and charged with that high

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Charge

responsibility. In your decision be mindful on the one hand of the obligation of the prisoner and on the other hand what you owe to public justice. Let no fear of responsibility deter you from discharging your duties faithfully, for the consequences that may follow from your verdict neither you nor this Court is responsible. When you have discharged your duty fairly and conscientiously and firmly, our responsibilities are at an end and we may leave the consequences to the law.

I have been requested to charge on behalf of the defendant. The first I have already covered. The second I have already covered. The third I deny.

The fourth I have already covered. Fifth: "You are charged that, in determining weight and credibility of witnesses, you should take into consideration the character of the witnesses and in considering the character the jury may also consider the fact that the witness Mrs. McKenna, was convicted of a crime of "Disorderly house" and such conviction may be considered by the jury as affecting her credibility." I so charge you.

(The jury retires.)

Defendant's counsel prays an exception to the refusal of the Court to charge request number three.

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

EDWIN C. CAFFREY,
Judge.

Defendant's counsel prays a general exception to the charge of the Court.

Charge

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

EDWIN C. CAFFREY,
Judge.

Defendant's counsel prays an exception to that part of the Court's charge wherein the Court stated that what the deceased was or what the defendant is or was is immaterial in this case. 10

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

EDWIN C. CAFFREY,
Judge.

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Defendant's Requests to Charge

1. You must find, in order to convict of murder in the first degree, that the accused contemplated the act—that is to say, premeditated it; then determined upon its commission—that is to say, wilfully intended it, then weighed such intent before carrying it into effect or, in other words, deliberated.
- 10 2. The distinguishing feature between the degrees of murder is the intent with which the homicidal act was done. The presumption of law is that all homicides are murder, but there is the further presumption that is murder in the second degree. The burden of proving affirmatively that the accused is guilty of murder in the first degree rests upon the state.
- 20 3. Murder in the second degree presents those classes of murder which are intended to do mere bodily harm, without intent to take life, or, where the act is done in the heat of passion, but without justification and lacking the other elements of the highest degree of crime, premeditation, deliberation and willfulness.
- 30 4. The law now provides that every person convicted of murder in the first degree, shall suffer death unless the jury shall by their verdict, and as part thereof, upon and after considering all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed. By force of the same legislation, the jury may, in case they shall adjudge the defendant to be guilty of murder in the first degree, determine, within the limits fixed by the statute, what his punishment shall be.
- 40 5. You are charged that, in determining weight and credibility of witnesses, you should take into consideration the character of the witnesses, and in

Defendant's Requests to Charge

considering the character the jury may also consider the fact that the witness Mrs. McKenna, was convicted of a crime of "disorderly house" and such conviction may be considered by the jury as affecting her credibility.

Dec. 1, 1925

for

MURDER

PETER DORO ALIAS PETER BRUNO

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We Harold T. Cook and Joseph S. Fishkind, official stenographers of the Essex County Court of Oyer and Terminer, and Walter W. Ressler, an official stenographer of the Essex Circuit Court, 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 entitled case, which was held before the Hon. Edwin C. Caffrey, presiding judge of the Essex County Court of Oyer and Terminer, and a jury, on Tuesday, March 2, 1926, and Wednesday, March 3, 1926, at Newark, New Jersey.

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HAROLD T. COOK
JOSEPH S. FISHKIND
WALTER W. RESSLER

Dated at Newark, N. J.,
April 9, 1926.

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Certificate of Court Stenographers

ESSEX COUNTY COURT OF OYER AND
TERMINER.

10	STATE OF NEW JERSEY, <div style="text-align: center;"><i>vs.</i></div> PETER DORO ALIAS PETER BRUNO.	Indictment No. 160 Dec. T., 1925 for MURDER
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20 We, Harold T. Cook and Joseph S. Fishkind, official stenographers of the Essex County Court of Oyer and Terminer, and Walter W. Ressler, an official stenographer of the Essex Circuit Court, 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 entitled case, which was held before the Hon. Edwin C. Caffrey, presiding judge of the Essex County Court of Oyer and Terminer, and a jury, on Tuesday, March 2, 1926, and Wednesday, March 3, 1926, at Newark, New Jersey.

HAROLD T. COOK
JOSEPH S. FISHKIND
WALTER W. RESSLAND

30 Dated at Newark, N. J.,
April 9, 1926.

Certificate of Judge.

ESSEX COUNTY COURT OF OYER AND
TERMINER.

STATE OF NEW JERSEY,

vs.

PETER DORO ALIAS PETER
BRUNO.

Indictment No. 160

Dec. T., 1925

for

MURDER.

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I, Edwin C. Caffrey, presiding Judge of the
Essex County Court of Oyer and Terminer, and the
Judge who presided over the aforesaid cause, cer-
tify that the above printed book contains the entire
record of the proceedings had upon the trial of the
said cause and that the same is returned by the
plaintiff in error therein with the writ of error
bringing up the bill of exceptions signed and sealed
in this cause.

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EDWIN C. CAFFREY,
Presiding Judge of the
Essex County Court of
Oyer and Terminer.

Dated in Newark, N. J., April 9th, 1926.

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Assignment of Errors

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> PETER DORO BRUNO, <i>Plaintiff-in-Error.</i>	}	On Writ of Error. ASSIGNMENT OF ERRORS.
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20 Afterwards, that is to say, on the 18th day of May 1926, at the May Term of the New Jersey Court of Errors and Appeals, in the last resort in all causes, comes the said Peter Doro Bruno, by Nicholas La Vecchia and James Mango, his attorneys, and says, that in the entire record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

30 1. That the said court before whom, etc, at and upon trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, at the opening of the trial, refused to adjourn the trial of said issue at the defendant's request, which motion for adjournment was based on the ground that the special panel contained the required number of forty-eight names and addresses of jurors who were summoned to attend the trial so that a petty jury of twelve could be selected therefrom, but that on the roll call, at the opening of the trial of this issue, only sixteen jurors answered present.

(The special panel is called by the clerk.)

40 Mr. Mango. May I be informed how many jurors on the special panel did answer?

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The Clerk. Sixteen, your Honor.

Mr. Mango. I move at this time for an adjournment upon the ground that we have been served with a special panel of forty-eight jurors and, as I understand it, under the law, we are entitled to twenty peremptory challenges, when there are only sixteen to select from; therefore, we are not in a position to go on. 10

Steno's min. pg 1 and 2. *St d case p 14.*

2. That the said court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, erroneously overruled the defendant's objection to the Prosecutor's question directed to Mrs. Rachel McKenna, a State's witness, on re-direct examination. 20

Q Now, you said on cross examination that it was about a minute from the time that he left the kitchen, what did you mean by that?

Mr. Mango. I object. Let the jury draw its own conclusion as to what she meant.

The Court. She can explain as to what she meant when she said a minute. I will allow that.

Steno's min. pg 99 and 100. *St d case p 78 + 30
79.*

3. That the said court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, erroneously refused during the direct examination of the State's witness Charles Eagan, to strike out the answer of the said witness to the question of the Prosecutor as follows:

Q On the night of November 11, 1925, were you in the vicinity of this apartment house at 40

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the corner of North Fifth and Orange Streets?

A Yes, sir.

Q About what time?

A About eleven o'clock.

Q Where were you?

10 A Right in front of the doorway where they
come out.

Q On which side of the street?

A On the left hand side.

Q The same side of the street where the
doorway is?

A Yes, sir.

Q How far away do you live?

A About two blocks.

20 Q Now, while you were there in front of the
doorway, what, if anything, did you see and
hear?

A While I was right in front of the doorway
I heard screaming and I stopped for a moment
and when I started walking again and a man
came running out of the door and a lady in
back of him yelling that he just murdered
somebody.

Mr. Mango. I object and I ask that it be
stricken out.

30 The Court. I will allow it, it is perfectly
proper.

Mr. Mango. It is not part of the *res gestae*,
and that exclamation of the defendant.

The Court. I will allow the question.

Q Go ahead.

A I saw the lady in back of him yelling that
he had just murdered somebody and I got out of
his way and after he had passed me I went to
Orange Street and called two officers who were
around the corner.

40

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The Court. How close was this defendant when the woman shouted?

The Witness. Oh, she was shouting all the way down the stairs, she was on the stairs when he came out and she was, I should say, at the end of the apartment house, when she got out of the doorway.

10

The Court. How many feet would you say?

The Witness. About thirty or forty feet away, I think.

Steno's min. pgs. 113, 114, and 115. *ET of case p 89-90.*

4. That the said court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, erroneously permitted a State's witness Clarence J. Cook, to testify to a statement which Cook heard, alleged to have been made by Mrs. Rachel McKenna a State's witness, as follows:

20

Q And what did you do?

A I hastened to that point where I met a woman screaming and shouting that someone had—

Mr. Mango. I object to any statement which the woman may have told this witness at that time.

Q Who was that woman?

A Mrs. McKenna.

30

Q Did you notice anything about her clothing?

A About the breast was blood.

Q And what else did you see?

A Why, there was a man running about a half block away and she shouted for me to catch him.

Mr. Mango. I object to what the witness said.

The Court. I will allow that.

40

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Steno's min. pg. 116 and 117.

St. of case p. 91 & 92.

- 10 5. That the said court before whome, etc., at and upon the trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, erroneously permitted a State's witness Ernest Cipriano, to testify as to his knowledge of the capability of the deceased to understand and speak the Italian language:

Q. Mr. Cipriano, you are an Italian, are you?

A Yes, sir.

Q And did you know the deceased, Anna Abramovitz?

A Yes, sir.

Q Were you at one time married to her?

A Yes, sir.

- 20 Q And do you know whether or not she understood and spoke Italian?

Mr. Mango. I object, how does this witness know what the woman understood.

The Court. Wait a minute, you are talking English to me, therefore I know you are talking English, what is to prevent this witness from testifying to a conversation which permits him to adduce that knowledge.

- 30 Mr. Mango. The question calls for a conclusion.

The Court. Overruled.

Steno's min. pg. 120 and 121. *St. of case p 95*

6. That the said court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, erroneously charged the jury as follows:

- 40 The indictment charges the defendant Doro with murder. It alleges that in the city of Newark, on the 11th day of November, 1925,

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that he did wilfully, feloniously and of his malice aforethought, kill and murder Anna Abramovitz.

Murder is the killing of a reasonable being with malice aforethought, that is, with intent to do evil. A purpose to do bodily harm is sufficient and malice may be presumed from the character of the killing.

10

Under the form of this indictment the prisoner may be convicted of murder in the first degree or murder in the second degree.

The classification of murder into two degrees is made by the statute. The statute requires the jury, upon conviction for murder, to designate by their verdict whether they find the accused guilty of murder in the first degree or murder in the second degree.

20

The distinguishing feature between the two degrees of murder is the intent with which the homicidal act was done.

Steno's min. 1st 4 paragraphs of Court's charge. *St. of case p 153.*

7. That the said court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, erroneously charged the jury as follows:

30

Murder in the Second degree comprehends those cases of murder which are an attempt to do grievous bodily harm without intent to take life, or where the act is done in the heat of passion but without justification and lacking the essential elements of the highest degree of crime, premeditation, deliberation and wilfulness.

40

Assignment of Errors

Steno's min. page 3 of Court's Charge.

ST. of case P 154.

10 8. That the said court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, in one or more things erred in ruling upon the evidence.

9. That the said court before whom, etc., at and upon the trial of the said issue joined between the State of New Jersey, and the said Peter Doro Bruno aforesaid, otherwise erred in charging the jury.

20 10. That upon the whole evidence and upon all the facts and circumstances in the case, the guilt of the plaintiff-in-error of murder in the first degree was not made out by any relevant and competent evidence.

11. That the verdict is against the weight of the evidence in that no evidence exists of premeditation, proof of which is a prerequisite to sustain a verdict of murder in the first degree.

12. That the verdict is against the weight of the evidence and the law as charged by the court.

30 13. That there are divers other errors in the record and proceedings aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

Wherefore the said Peter Doro Bruno, 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 things which he has lost by occasion thereof.

NICHOLAS LA VECCHIA,
JAMES MANGO,

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Of Counsel with Plaintiff-in-Error.

Specification of Causes

NEW JERSEY COURT OF ERRORS
AND APPEALS.

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	In Error.	
<i>vs.</i>		Specification of	10
PETER DORO BRUNO, <i>Plaintiff-in-Error.</i>	}	Causes for Reversal.	

And now comes the said Peter Doro Bruno, by Nicholas LaVecchia and James Mango, his attorneys, and says that the entire record and proceedings aforesaid, and also in the matters recited and contained in the said writ of exception, and also in giving the verdict and judgment aforesaid, there is manifest error, and the said Peter Doro Bruno says, that the said judgment should be reversed and assigns the following causes: 20

1. Because at the opening of the trial, the court refused to adjourn the trial of said issue at the defendant's request, which motion for adjournment was based on the ground that the special panel contained the required number of forty-eight names and addresses of jurors who were summoned to attend the trial so that a petty jury of twelve could be selected therefrom, but that on the roll call, at the opening of the trial of this issue, only sixteen jurors answered present. 30

(The special panel is called by the clerk.)

Mr. Mango. May I be informed how many jurors on the special panel did answer?

The Clerk. Sixteen, your Honor.

Mr. Mango. I move at this time for an ad- 40

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journalment upon the ground that we have been served with a special panel of forty-eight jurors and, as I understand it, under the law, we are entitled to twenty peremptory challenges, when there are only sixteen to select from, therefore, we are not in a position to go on.

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Steno's min. pg 1 and 2. *St of case p 14.*

2. Because the court erroneously overruled the defendant's objection to the Prosecutor's question directed to Mrs. Rachel McKenna, a State's witness, on re-direct examination.

Q Now, you said on cross examination that it was about a minute from the time that he left the kitchen, what did you mean by that?

Mr. Mango. I object. Let the jury draw its own conclusion as to what she meant.

20

The Court. She can explain as to what she meant when she said a minute. I will allow that.

Steno's min. pg 99 and 100. *St of case p 78-79*

3. Because the court erroneously refused during the direct examination of the State's witness Charles Eagan, to strike out the answer of the said witness to the question of the Prosecutor as follows:

30

Q On the night of November 11, 1925, were you in the vicinity of this apartment house at the corner of North Fifth and Orange Streets?

A Yes, sir.

Q About what time?

A About eleven o'clock.

Q Where were you?

A Right in front of the doorway where they come out.

Q On which side of the street?

A On the left hand side.

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Q The same side of the street where the doorway is?

A Yes, sir.

Q How far away do you live?

A About two blocks.

Q Now, while you were there in front of the doorway, what, if anything, did you see and hear? 10

A While I was right in front of the doorway I heard screaming and I stopped for a moment and when I started walking again and a man came running out of the door and a lady in back of him yelling that he had just murdered somebody.

Mr. Mango. I object and I ask that it be stricken out.

The Court. I will allow it, it is perfectly proper. 20

Mr. Mango. It is not part of the res gestae, and that exclamation of the defendant.

The Court. I will allow the question.

Q Go ahead.

A I saw the lady in back of him yelling that he had just murdered somebody and I got out of his way and after he had passed me I went to Orange Street and called two officers who were around the corner. 30

The Court. How close was this defendant when the woman shouted?

The Witness. Oh, she was shouting all the way down the stairs, she was on the stairs when he came out and she was, I should say, at the end of the apartment house, when she got out of the doorway.

The Court. How many feet would you say?

The Witness. About thirty or forty feet away, I think. 40

*Specification of Causes**St. of case p 89+90.*

Steno's min. pg. 113, 114 and 115.

10 4. Because the court erroneously permitted a State's witness Clarence J. Cook, to testify to a statement which Cook heard, alleged to have been made by Mrs. Rachel McKenna a State's witness, as follows:

Q And what did you do?

A I hastened to that point where I met a woman screaming and shouting that someone had——

Mr. Mango. I object to any statement which the woman may have told this witness at that time.

Q Who was that woman?

A Mrs. McKenna.

20 Q Did you notice anything about her clothing?

A About the breast was blood.

Q And what else did you see?

A Why, there was a man running about a half a block away and she shouted for me to catch him.

Mr. Mango. I object to what the witness said.

The Court. I will allow that.

30 Steno's min. pg. 116 and 117. *St. of case p. 91+92.*

5. Because the court erroneously permitted a State's witness Ernest Cipriano, to testify as to his knowledge of the capability of the deceased to understand and speak the Italian language.

Q Mr. Cipriano, you are an Italian, are you?

A Yes, sir.

Q And did you know the deceased, Anna Abramovitz?

A Yes, sir.

40 Q Were you at one time married to her?

Specification of Causes

A Yes, sir.

Q And do you know whether or not she understood and spoke Italian?

Mr. Mango. I object, how does this witness know what the woman understood.

The Court. Wait a minute, you are talking English to me, therefore I know you are talking English, what is to prevent this witness from testifying to a conversation which permits him to adduce that knowledge. 10

Mr. Mango. The question calls for a conclusion.

The Court. Overruled.

Steno's min. pg. 120 and 121. *St. of case p 95.*

6. Because the court erroneously charged the jury as follows: 20

The indictment charges the defendant Doro with murder. It alleges that in the city of Newark, on the 11th day November, 1925, that he did wilfully, feloniously and of his malice aforethought, kill and murder Anna Abramovitz.

Murder is the killing of a reasonable being with malice aforethought, that is, with intent to do evil. A purpose to do bodily harm is sufficient and malice may be presumed from the character of the killing. 30

Under the form of this indictment the prisoner may be convicted of murder in the first degree or murder in the second degree.

The classification of murder into the two degrees is made by the statute. The statute requires the jury, upon conviction for murder, to designate by their verdict whether they find 40

Specification of Causes

the accused guilty of murder in the first degree or murder in the second degree.

The distinguishing feature between the two degrees of murder is the intent with which the homicidal act was done.

10 Steno's min. 1st 4 paragraphs of Court's Charge. *St. of case p 153*

7. Because the court erroneously charged the jury as follows:

20 Murder in the second degree comprehends those cases of murder which are an attempt to do *grievous* bodily harm *without intent to take life*, or where the act is done in the heat of passion but without justification and lacking the essential elements of the highest degree of crime, premeditation, deliberation and wilfulness.

Steno's min. page 3 of Court's charge.
St. of case p. 154.

8. Because the court in one or more things erred in ruling upon the evidence.

9. Because the court otherwise erred in charging the jury.

30 10. Because upon the whole evidence and upon all the facts and circumstances in the case, the guilt of the plaintiff-in-error of murder in the first degree was not made out by any relevant and competent evidence.

11. Because the verdict is against the weight of evidence in that no evidence exists of premeditation, proof of which is a prerequisite to sustain a verdict of murder in the first degree.

40 12. Because the verdict is against the weight of the evidence and the law as charged by the court.

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13. Because there are divers other errors in the record and proceedings aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

14. Because the whole evidence in the case is insufficient to warrant the findings beyond a reasonable doubt of the guilt of the plaintiff-in-error of murder in the first degree.

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Wherefore, because the aforesaid reason or some of them constitute error prejudicial to the said plaintiff-in-error, he the said Peter Doro Bruno, 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 things which he has lost by occasion thereof.

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NICHOLAS LA VECCHIA,
 JAMES MANGO,
*Attorneys for and of Counsel
 with Plaintiff-in-Error.*

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Specification of Causes

13. Because there are divers other errors in the said and proceedings aforesaid by reason of which the said judgment and sentence should be reversed and set aside.

10 14. Because the whole evidence in the case is insufficient to warrant the findings beyond a reasonable doubt of the guilt of the plaintiff in the murder in the first degree.

15. Because the aforesaid reason or reasons of error contained in error prejudicial to the said plaintiff in error, in the said Peter Doro Banno, require that the said judgment and sentence may be reversed and annulled and altogether held for no thing, and that he may be restored to all things which he has lost by occasion thereof.

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NICHOLAS LA VECCHIA,
JAMES JAMCO,
Attorneys for and of Counsel
with Plaintiff in Error.

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

PETER DORO, alias PETER BRUNO,
Plaintiff-in-Error.

On Error.

BRIEF OF JOHN O. BIGELOW FOR THE STATE.

Doro was convicted in the Essex Oyer and Terminer of murder in the first degree. From this conviction he has sued out a writ of error and has brought to this Court the entire record under Section 136 of the Criminal Procedure Act.

I.

The Weight of the Evidence.

Specifications Nos. 10, 11, 12 and 14.

The victim of the murder was Anna Abramowitz. The time was November 11, 1925, about 11 P. M. The place was an apartment on the fourth floor of No. 141 North 5th street, Newark, at the corner of Orange street. This apartment consisted of a kitchen, living room, two bedrooms and a bath. There were living in it a woman named McKenna and her husband, Anna Abramowitz and the defendant.

According to the defendant's own testimony he first met Mrs. Abramowitz early in 1923 at Boston, where she was living with her husband. Shortly thereafter, Mr. and Mrs. Abramowitz

moved to Cleveland, Ohio, and the defendant with his wife—for he was also married—followed her there.

In Cleveland the defendant deserted his wife and brought Mrs. Abramowitz to Newark, where they took rooms on Walnut street (Case, p. 108).

Early in October, 1925, Mrs. McKenna, who had known the Abramowitz woman for some years, called on her at Walnut street and there saw her and the defendant. She heard Mrs. Abramowitz and the defendant discuss arrangements which he had made for her to go to a house of prostitution in New Brunswick. Pursuant to these arrangements Anna left Newark by the Pennsylvania Railroad, being accompanied to the station by the McKenna woman and Doro (Case, pp. 35 to 36). When she returned about two weeks later, she said she had made \$191 and that she was going to use one hundred dollars of this money to pay for the furniture. Doro was present when she said this.

The defendant admitted on the stand that Anna went to New Brunswick at this time for the purpose of prostitution but claimed that she did it of her own volition and against his protest (Case, p. 100). He conceded, however, that he did not himself earn a cent after coming to Newark (Case, p. 116).

The McKennas, Anna and Doro moved to North 5th street on November 4 or 5 (Case, p. 37).

Mrs. McKenna testified to continual quarreling, during which defendant would call Anna "puttana" (whore) and she would call him "cornuto" (a man who lives on the earnings of a prosti-

tute) and in which he would threaten to kill her. The defendant denying such threats, admitted that the epithets were sometimes used between them (Case, p. 111).

The night of November 10, or early in the morning of November 11, Mrs. McKenna was awakened by the sound of quarreling—"It sounded as though someone was being choked,"—and she ran into their room. Anna exclaimed to her, "I cannot stand it no longer. I won't. * * * He jazzes me and after he gets through he gets down on me. * * * I am going to jump out of the window if he doesn't stop it" (Case, p. 45).

The witness testified that she tried to compose the quarrel, urging Anna to go to sleep until morning, and that finally defendant said, "All right, I won't bother you, puttana, go to sleep you God damn whore" (Case, p. 46). So ended the quarrel that night.

Next evening the two women went to a moving picture house. As they were leaving the apartment, the defendant called to Anna in an angry voice, "Go out and get killed by the cars" (Case, p. 50).

They returned about 10:45. Doro was in the kitchen. The quarrel which was to end with murder began. Doro seems to have asked Anna to kiss him and she replied, "When you will cut out drinking, when you will cut out going down, then I will be like I was before. Because I am afraid of taking a chance; if you got anything I will get it in my mouth." With that he slapped her in the face and she returned the blow (Case, p. 53). They called each other the names which they usually employed and then

he ran from the kitchen, into the dining-room, back again, then into the bathroom.

“Q And what, if anything, did you hear the defendant say? A He didn't say a word after that; he came running in and he was near the range and he pulled her over into the corner and he put his arm around her neck and with his hands he let go three or four times like that (indicating) and when he left go of her, she was covered with blood and I got it, too.

“Q And what did you get? A Blood all over me. I was standing right close to him” (Case, p. 55).

The defendant ran down the stairs to the street, followed by Mrs. McKenna screaming and shouting “murder” (Case, p. 58). A policeman nearby heard her and ran after the defendant who fled south on North 5th street to Sussex avenue where he turned east (Case, p. 92) and jumped into a passing automobile (Case, p. 143). Another officer joined the chase; they commanded a second car, caught up with the defendant and subdued him after a struggle (Case, p. 94).

On the floor of the apartment was found a bloody razor (Case, p. 26).

Dr. Hearnan reached the apartment on North 5th street about midnight. He found Mrs. Abramowitz dead (Case, p. 19). Death had been caused by a wound in the neck five inches long and gaping two and one-half inches. There were two other slashes in the neck (Case, p. 22).

The defendant did not deny any of this evidence as to the happenings on Armistice Day. He maintained on the stand that after the women had gone to the theatre, he commenced drinking alcohol mixed with water, in company with Mr. McKenna; that they continued drinking until

about 9:30, when McKenna left, and the defendant continued drinking alone. After that, he testified, he remembered nothing until the next day when he found himself in the police station (Case, pp. 105 to 106).

It is difficult to reconcile this testimony of the defendant as to his oblivion from drink with the testimony not only of Mrs. McKenna but that of the police officers and others as to the agile flight of the defendant, his leaping aboard the moving automobile, and his struggle with the officers.

Furthermore, Officers Fletcher (Case, p. 138) and Barile (Case, p. 140), who saw him at the Fifth Precinct station immediately after his capture, Officer Colgary (Case, p. 136) and County Detective Linarducci (Case, p. 129) who talked with him at Police Headquarters at 12:05 A. M., and Dr. Mullen (Case, p. 146) who examined Doro about 12:50, all found him sober. And he gave to Linarducci and Dr. Mullen a coherent statement of the killing and signed his name to it (Exhibit S. 11).

If the defendant's testimony as to his drunken condition was false—and the jury evidently so found it—then he falls into the same class with a defendant who fails to take the stand and the jury were justified in believing that he refused to testify as to the happenings of that night, because he could not deny the evidence against him.

Eugene E. McKenna was away from the apartment the evening of November 10 and did not return until about 3 A. M. (Case, p. 86). The following evening he went out before the women returned from the theatre and did not get back until after the murder (Case, p. 85). He cor-

roborated his wife as to the continual quarrels between Dorò and Mrs. Abramowitz (Case, p. 83) and as to his threats to kill her (Case, p. 85). He contradicted defendant's testimony as to heavy drinking the evening of Armistice Day (Case, p. 148).

The evidence not only supports the verdict, but leads irresistibly to the conclusion that the defendant was guilty of deliberate, premeditated and wilful murder.

II.

The Jury.

Specification No. 1.

When the trial of this indictment was moved the clerk called the roll of the special panel of forty-eight. Only sixteen answered to their names. Thereupon counsel for the defendant moved for an adjournment and the Court denied his motion.

A motion for an adjournment is addressed to the discretion of the Court and is not reviewable on error.

State v. Bossonne, 88 N. J. L. 45; 89 N. J. L. 724;

State v. Grossman, 95 N. J. L. 497.

Refusal to grant an adjournment precedes the trial and is not part thereof, and hence is not reviewable under Sections 136 and 137.

It is not error to proceed with the trial in the absence of a number of jurors of the special panel.

State v. Camill Martin, 109 Atl. 350; 94 N. J. L. 139;

State v. Frank Martin, 132 Atl. 93.

A distinction between the Martin cases and the instant case is suggested by counsel—that in the Camill Martin case, 32 of the special panel, and in the Frank Martin case, 37 of the special panel were present, while on the trial of Doro only 16 answered to their names. This distinction is not real; in the Camill Martin case only seven jurors were obtained from the special panel; in the Doro case, ten.

Defendant's counsel contends that he was entitled to the adjournment so that he could investigate the general panel and so prepare to exercise his right of challenge intelligently. He relies upon *State v. Aaron*, 4 N. J. L. 238, and *State v. Patterson*, 48 N. J. L. 381. These cases hold that where the panel must be served on defendant, a list of the talesmen (if a tales be awarded) must also be served; and, if necessary, the trial be continued for that purpose. Those decisions were based on the statute which has since been amended.

Crim. Pro. Act, Sec. 83 “* * * the defendant shall not be entitled to the service of a list of the talesmen taken from the general panel after the special panel is exhausted.”

A general panel of 141 names was drawn February 20 and summoned to appear Monday, March 1. From the general panel on February 25, 48 names were drawn for the special panel in this case.

It is the policy of the jury commissioners in Essex County to place on the list of petty jurors, the names of men of high type, usually business men. One result of this policy is that over half of each panel immediately ask the Court to excuse them from service, and a large number are able to present substantial reasons to support their request.

On Monday, March 1, the Court (Judge Cafrey) excused from service, either for a limited period or for the entire two weeks, 50 members of the general panel. Among those so excused were 24 members of the special panel.

When this case was moved on Tuesday, March 2, five members of the special panel were serving on a jury in the Supreme Court circuit. Three others of the panel are not accounted for and sixteen were present.

It may be questioned why the Court, on the drawing of a special panel, does not excuse its members until the trial of the case for which they are drawn, so that they will not be engaged in other cases and so that they will not be excused for the term. The answer is that usually every member of the general panel is drawn on one or more special panels, and hence members of special panels cannot be treated in any special way. On February 25, in addition to the Doro case, special panels were drawn in one manslaughter and two robbery cases, making the number of names on special panels 192.

Ten of the jurymen who tried this case were chosen from the special panel and only two from the general panel. The defendant used only seven of his peremptory challenges although the statute allows him twenty.

The foregoing facts do not appear from the State of the Case but I have thought it permissible to set them forth so that the Court might fully understand the practice pursued in Essex County in this regard.

III.

Examination of Mrs. Mc Kenna.

Specification No. 2.

Mrs. McKenna testified on direct examination (Case, p. 51, etc.) that on returning from the moving picture theatre about a quarter to eleven, she and Anna found Doro in the kitchen; that he and Anna had a wordy quarrel and he slapped her in the face (Case, p. 54); that the defendant ran from the kitchen and back again three times after the slapping took place (Case, p. 55) and that it was the third time he came back the murder occurred.

On cross examination, she was asked how long a time elapsed between the first time he left the kitchen and the time he killed Mrs. Abramowitz. She replied that she could not tell "the accurate time," but would say it was "about two or three minutes,"—"not even that long,"—"about a minute,"—"the whole thing lasted about fifteen minutes" (Case, p. 77).

On re-direct examination, she was asked:

"Q Now, you said on cross examination that it was about a minute from the time that he left the kitchen. What did you mean by that? (Objection made and overruled.)

"Q A minute from when? A When we came in from the movies and he was standing by the sink and she refused to kiss him and the bawling out started and he slapped her and she slapped him back, and she let him go then and he jumped out from the chair then and out—well, I don't know, it took about fifteen minutes, the whole thing" (Case, p. 79).

It is obvious that the ruling of the Court was proper. Furthermore, the question was not answered responsively and no testimony was elic-

ited which had not already been brought out on cross examination. The defendant was not harmed by the ruling of the Court.

IV.

Res Gestae.

Specifications Nos. 3 and 4.

Immediately Doro had killed Anna, he ran down the steps to the street; Mrs. McKenna after him, screaming (Case, p. 58). When she reached the street she saw the defendant running toward Sussex avenue "about two doors from the house" (Case, p. 59). She ran after him "screaming and trying to have him stopped," until she met a policeman who took up the chase. She went back upstairs (Case, p. 60).

Officer Cook of the Newark Police testified that about eleven o'clock on the night of November 11, he was on Orange street between 4th and 5th streets, when he heard screaming from the vicinity of North 5th street. He hastened to that point where he met "a woman screaming and shouting that someone had—"

Mr. Mango: "I object to any statement which the woman may have told this witness at that time."

The Witness: "There was a man running about a half a block away and she shouted for me to catch him" (Case, p. 92).

Charles Eagan, Jr., another witness for the State, at the same time was at the corner of North 5th and Orange streets, "right in front of the doorway where they come out."

"I heard screaming and I stopped for a moment and then I started again and a man came running out of the door and a lady in back of him yelling that he just murdered

somebody." (Motion to strike out denied.)
(Case, p. 90).

The witness further testified that the man was about thirty or forty feet away from the woman.

State v. Kane, 77 N. J. L. 244, 72 Atl. 39.
"The *res gestae* may be defined as those circumstances which are the undesigned incidents of a particular litigated act, which are admissible when illustrative of such act. These incidents may be separated from the act by a lapse of time more or less appreciable. They may consist of speeches of anyone concerned, whether participant or bystander; they may comprise things left undone as well as things done. Their sole distinguishing feature is that they should be the necessary incidents of the litigated act; necessary, in this sense, that they are part of the immediate preparations for, or emanations of such act, and are not produced by the calculated policy of the actors."

Clearly this testimony was properly admitted under the rule stated above.

State v. Lasecki (Ohio), 106 N. E. 660; L. R. A. 1915 E. 202, is a well-considered decision with facts very similar to the case at bar.

V.

Examination of Cipriano.

Specification No. 5.

Cipriano had been the husband of the deceased and obtained a divorce from her. Over the objection of defendant's counsel, he was allowed to testify that the deceased understood Italian very well but did not speak it quite as well (Case, p. 95). He had had conversations with her in Italian.

The ground of objection was that the question called for a conclusion by the witness of what the woman understood.

Koccis v. State, 56 N. J. L. 44. Held that a linguist who had conversed with the defendant for only a few minutes should not be permitted to testify as an expert that defendant did not understand English.

“The materials for such an investigation could be gathered only by one having opportunity to observe the defendant’s habit in the use of the English tongue, and could be testified to only by those who, from such observation, had actual knowledge in this respect.”

There was no error in the admission of Cipriano’s testimony.

VI.

The Charge to the Jury.

Specifications Nos. 6 and 7.

At the trial defendant requested the Court to charge as follows:

“2. The distinguishing feature between the degrees of murder is the intent with which the homicidal act was done. The presumption of law is that all homicides are murder, but there is the further presumption that it is murder in the second degree. The burden of proving affirmatively that the accused is guilty of murder in the first degree rests upon the State.

“3. Murder in the second degree presents those classes of murder which are intended to do mere bodily harm, without intent to take life, or, where the act is done in the heat of passion, but without justification and lacking the other elements of the highest degree of crime, premeditation, deliberation and willfulness.”

The Court charged as requested, substituting, however, the phrase "grievous bodily harm" for the phrase "mere bodily harm." This change was, of course, favorable to the defendant.

The defendant now assigns as error that part of the charge which was delivered to the jury at his own request. Surely this assignment needs no argument on the part of the State.

The Court defined murder as follows:

"Murder is the killing of a reasonable being with malice aforethought, that is, with intent to do evil; a purpose to do bodily harm is sufficient and malice may be presumed from the character of the killing."

Defendant assigns as error the statement that "a purpose to do bodily harm is sufficient" because, as he argues in his brief, "The purpose must be to do great or grievous bodily harm in order to constitute murder even in the second degree."

Defendant is estopped from raising this objection inasmuch as at the trial he requested the Court to instruct that an intent "to do mere bodily harm" was sufficient to constitute murder.

Furthermore, the Court correctly defined murder in the first degree and instructed the jury that one of the elements of that degree was an intent to take life. The jury must therefore have found not that the defendant intended to do slight bodily harm to Mrs. Abramowitz but that he intended to kill her. This being so, the alleged errors in the use of the phrase "bodily harm" could not have prejudiced the defendant.

State v. Mosley, 131 Atl. 292;

State v. Martin, 132 Atl. 93.

The Judgment of the Essex Oyer should be affirmed.

Respectfully submitted,

J. O. BIGELOW,
Prosecutor of the Pleas.

NEW JERSEY COURT OF ERRORS
AND APPEALS

STATE OF NEW JERSEY,
Defendant-in-Error,
vs.
PETER DORO BRUNO,
Plaintiff-in-Error.

Brief for
Plaintiff in Error
On Indictment of
Murder

This case comes up on a Writ of Error to the Essex Oyer and Terminer to review the conviction of Peter Doro Bruno, the plaintiff-in-error her, defendant below, of the crime of murder of the first degree.

FACTS.

On November 11th, 1925, plaintiff-in-error lived with the deceased as husband and wife, together with another couple, Mr. & Mrs. Eugene E. McKenna in a four room apartment at No. 131 North Fifth Street, (corner of Orange St.) Newark, N. J.

Mrs. McKenna and the deceased had gone to the moving picture theatre, leaving Mr. McKenna and plaintiff-in-error together at home. A concoctive beverage of half water and half alcohol was immediately thereafter taken from a receptacle in the kitchen by one or both of the men and both partook of it. They sat together from six p. m. or thereabouts to about nine p. m., on the evening of November 11th, when Mr McKenna departed from the premises leaving plaintiff-in-error alone in the kitchen of the apartment, with the beverage before him.

At about a quarter of eleven p. m. that evening Mrs. McKenna and the deceased returned from the movies and entered the apartment by way of the

kitchen. Plaintiff-in-error was sitting down near the table. A conversation took place between the three persons in the kitchen, relative to preparing tea or food. During the preparation of the making of tea or immediately thereafter, plaintiff-in-error indicated to deceased that she had not kissed him before she left for the movies, and she answered saying that she would act differently when he stopped drinking. With that remark, he slapped the deceased in the face, she pulled him on to the chair and then slapped him back; there was an exchange of vile names between them. Plaintiff-in-error jumped up from his chair went out of the kitchen into the dining room, returned into the kitchen, left the second time, returned again, left a third time and on the third return pulled the deceased to a corner and killed her by slashing her throat with a razor.

The state claimed that the killing was murder of the first degree, with all the statutory elements of premeditation, deliberation and wilfulness in addition to the intent to kill, though no motive was assigned.

The state sought to support its contention principally by the testimony of Mrs. McKenna, who was alleged to be in the kitchen at the time of the killing.

The defense claimed at the trial that all the facts as proven did not make out a case of first degree murder as defined by our statute, that no motive was proven to support the state's contention of willfulness, that premeditation was altogether lacking in view of the suddenness with which the affair occurred, coupled with the working of a mind that was actuated apparently by the alcoholic concoction, all the result of a wild outburst of passion that had its origin in the exchange of slaps.

This case is now brought before this Court on assignments of error and specification of causes for reversal as well as on the entire record under Sec. 136 of the Criminal Procedure Act of 1898.

SELECTION OF THE JURY.

Assgt. 1. Spef. Causes 1.

A special panel had been drawn and served upon the prisoner in accordance with Sec. 82 of the Crim. Proc. Act. Thirty-two of the members of this panel did not answer when the names were called at the outset of the trial. Sixteen did answer from whom the Plaintiff-in-Error against objection, proceeded to draw the jury for the trial of the issue. At the outset of the case, it was quite apparent that with the privilege afforded by your Statute (Sec. 80 Crim. Proc Act 2 C. S. N. J. p 1846) giving the plaintiff-in-error the right of 20 peremptory challenges, the prisoner could not legally (nor numerically) exhaust his privilege of peremptory challenges from a given number of 16 names; he was compelled in advance of his trial, to make selection of his jurors with knowledge that his statutory right had been curtailed.

In *State vs Martin* 94 N. J. L. 139, 16 jurors were absent from a list of 48. In *State vs Martin* Vol IV N. J. Adv. Rep. 312, a different case, it appeared that 10 jurors had been excused by the court, and adding 1 juror, who had not been served, made 11 absentees. In each case there still was left a sufficient number from which the right of 20 peremptory challenges could be exhausted and then have 12 jurors to fill the jury box.

But in the case at bar, an absence of 32 jurors leaving 16, decidedly limited the prisoner's statutory

right to select a jury from a sufficient number who were to pass upon his guilt or innocence. While the court may have held in the first Martin case above mentioned (94 L 139) and in the majority upon the second Martin case, *supra*, that a challenge to the array on the ground that the absence of the respective numbers of jurors at the trial was properly overruled, yet the court could not arbitrarily refuse the motion of the plaintiff-in-error to adjourn the cause so as to afford the opportunity of investigating or considering their fitness to sit upon the jury, unless, in doing so, the court has abused the power conferred upon it to administer speedy justice in such a manner as to nullify and render void the provisions of the Secs. of our Criminal Procedure Act and especially Sec. 82.

There is no difference between that situation and one where the general panel had been exhausted and a tales awarded.

In the latter case a prisoner is entitled to two days' service of the tales, and the proper practice is, unless service is waived in open court, to adjourn the cause for the purpose of making service.

Patterson v State
48 N. J. L. 381

In the former case, if it be the policy of the law to give the accused the liberty of challenging, to give him the inspection of his panel for the very purpose of enabling him to make such challenges is not the conclusion irresistible that he should have the *same time* to prepare for such challenges?

State v Aaron
4 N. J. L. at star pg 238

In another part of the same case, Justice Russell in speaking on the instance of a tales awarded, said "it is certainly possible to adjourn the trial for 2 days it appears to me to be safest so to do, in all capital cases, especially, if the person should insist on this right it would be cruel and unjust to deprive him of a privilege on which life itself might by possibility depend.

Idem at star pg 243

The primary purpose (of Sec. 82 of the Crim. Proc. Act) is to protect the interests both of the defendant and of the state by providing a panel of jurors sufficient in number to afford each party the opportunity of exercising the right of challenge to its fullest extent, without being compelled to resort to talsemen by reason of the exhausting of the panel; and it should be so construed as to effectuate that purpose. This being the purpose of the enactment, we have no doubt that when it is discovered that the number of jurors provided for by the original order is insufficient for the purpose for which they were drawn, the court has power under the act to make a subsequent order directing the adding to the number of jurors on the panel as many more as the situation of the case may justify.

State vs Mohr
99 N.J.L. pg 124 at 126

The rights of the accused, viz: to acquaint himself with the names of those persons on the general panel, who were to sit in judgment in his case and to enquire into the jurors' competency, fairness and impartiality, which rights are guaranteed by Secs. 82 & 83 of the Crim. Proc. Act, were denied him by the refusal of the Trial Court to adjourn, and was prejudicial error.

ADMISSIBILITY OF EVIDENCE

Assgt. 2 & 5 Spéf. Causes 2 && 5

The questions raised by these assignments and specification of causes were questions that were erroneously permitted to be answered by the trial court, to the prejudice of the plaintiff-in-error.

A question as follows: "Q. Do you know whether or not on the 24th or 25th of October Mr. L. had reasonable foundation for supposing that he was worth \$15,000.00 or \$20,000.00?" was overruled by the trial court and held properly so by the Supreme Court, as calling for a conclusion in the case of

Austrian vs Laubheim
78 L 178 at p 179

On an issue as to testator's mental capacity questions calling for testator's *belief* as to whether he would marry witness' niece, and whether witness knew if her niece had any intention of marrying testator, were properly disallowed.

Huyck, et al vs Reunie
90 Pac Rep (Cal) 929
s. c. 151 Cal. 411

In a passenger's action (agst R. R.) for failure to stop, a question asked of a witness referring to plaintiff, "Your sister knew" etc. was inadmissible as calling for a conclusion.

Louisville & N. R. Co. v
Seale
53 Southern Rep. 237

It was proper to exclude testimony of a witness

as to whether plaintiff knew all about a certain business; such matter being a question for the jury from the facts shown.

U. S. Cast Iron P & F
Co. v Granger
50 So. Rep. (Ala) 159

In a partition suit, cross examination of plaintiff's grantor, a prior co-tenant of defendant as to whether plaintiff knew of defendant's adverse claim, is not permissible; for the proper practice is for the witness to state the circumstances relied upon to show the knowledge of another.

Layton v Campbell
46 So. Rep. (Ala) 775

A witness was incompetent to testify that plaintiff at the time of his injury, had knowledge concerning the defective condition of the trestle by which he was injured.

West Pratt Coal Co v
Andrews
43 So. Rep (Ala) 348

In an action against a railroad company for injuries to a locomotive engineer owing to his train having run into a standing train of another company, the affirmative answer of a witness to a question as to whether the operatives of a standing train would have known that they were on schedule time of plaintiff's train was a mere conclusion, and reversible error.

Central of Geo. Ry. Co
v Martin
36 So. Rep. (Ala) 426.

A witness is to state facts, not inferences, and the court can draw no inference which the facts *as proved* do not justify.

Berckman v do.
16 N. J. Eq. 122.

The words "foolish talk" in an answer of a witness were stricken out because in the opinion of the trial Court it was a conclusion of the witness and not a statement of fact.

Clifford v State
60 N. J. L. 287.

Where an interpreter of a court was offered as a witness for the defense to show that after he (the interpreter) had examined the prisoner for his capability to spell the English language, the prisoner could not use the English words nor words of the same purport and meaning, as were attributed to him by a witness for the State, the Court held that the offer was properly rejected.

Kaccis vs State
56 N. J. L. p 44

Asst. 3 & 4. Spof. Causes 3 & 4

The *res gestae* were finished, and in permitting the questions of these assignments and specifications of causes to be answered by the witness the Court committed prejudicial error.

Mere narrations of past transaction, whether long after the transactions narrated or immediately following them are to be excluded; the reason being

that they are untrustworthy in the extreme; they are not made under oath; they cannot be discussed by cross examination; nor are they likely open to explanation, generally being fragmentary and incomplete, and liable, therefore, to be misunderstood and misreported.

Estell vs State
51 N. J. L. 183
L. Wharton Cr. Evi.
10th Ed. pg 502, 503.

The comments and criticisms of the observers cannot be introduced as *res gestae*; such persons must be called and examined in court, as to *what* they saw. *Their statements made at the time are hearsay.*

Idem pg 506

“The rule” permitting proof of the *res gestae* does not permit the introduction under the guise of *res gestae*, of a narrative of past events, made after the events are closed, by either the party injured or by bystanders.

Idem.

CHARGE TO JURY.

Assgt. 6 Spef. Causes 6.

The trial court started out to define “murder” by the following statement of the law.

“Murder is the killing of a reasonable being with malice aforethought, that is, with intent to do evil. “*A purpose to do bodily harm is sufficient.*” This definition calls for *any* harm, however slight or great. It is erroneous.

The purpose must be to do great or grievous bodily harm, in order to constitute murder even in the second degree. And to raise it to first degree murder there must be intent to take life (State vs. Donnelly, N. J. L. 463) coupled with willful, deliberate and premeditated killing.

The Donnelly case was affirmed in the Court of Errors (26 N. J. L. 601) and on page 616 Justice Ogden who rendered the opinion for the Court said respecting the foregoing definition given in the Supreme Court:

“In the opinion recently read in this case, in the Supreme Court, by Chief Justice Green, he has succinctly and accurately stated the law, *as we believe it to be*, in the following language. “To constitute murder in the first degree, under this clause of the statute, there must be an intention to take life’ On page 617, it states further “This consideration and construction which we have given to the statute, will settle its meaning in New Jersey and be useful in establishing an *uniform rule* in all our criminal courts.”

In the face of such precise language—it is contended by plaintiff-in-error that there was manifest error in the trial courts statement that “a purpose to do bodily harm is sufficient” is a definition of murder.

DEFINITION OF MURDER OF THE SECOND DEGREE.

Assgt. 7 Sepf. Causes 7.

Prejudicial error was committed by the trial court when it stated to the jury that “murder in the second degree comprehends those cases of murder which are an attempt to do grievous bodily harm *without*

intent to take life, or where the act is done in the heat of passion but without justification and lacking the essential elements of the highest degree of crime, premeditated, deliberate and willful."

The necessary effect of the instruction complained of upon the jury was to leave their minds under an erroneous impression that if they found an intention to kill or to take life, a verdict of first degree murder was the only verdict justifiable under such finding, obliterating from the minds of the jury the consideration that they could have brought in a verdict of second degree murder if the intention to take life was present.

Where the trial court charged the jury that "murder in the second degree is devoid of the element of the intention to kill," the Court of Errors said, "That this statement is erroneous is apparent from the consideration that the statute touching the degrees of murder after specifying the attributes constituting murder in the first degree relegates all other kinds of murder to the second degree of that crime. Hence inasmuch as murder perpetrated with an intention to kill that was not deliberate and premeditated, is a kind of murder, and yet is not murder in the first degree, it follows necessarily from the statutory category that it must be murder in the second degree."

State vs Mellillo

77 N. J. L. pg 505 at
508.

While the court held that in view of the other parts of the charge and in view of the distinct facts of that case, there should be no reversal, yet it did

decide that that definition of murder of the second degree was erroneous.

Idem.

In November 1822 murder was defined as the *killing* of a reasonable being with malice aforethought, that is, with a deliberate *intention* or formed design. And the law presumes all homicide to be committed with malice aforethought, and of course, amounting to *murder*, until the contrary appears, from circumstances of alleviation, excuse or justification.

State vs Zellers

7 N. J. L. pg 220 at 243.

“Murder is defined by Lord Coke to be, where a person of sound memory and discretion unlawfully killeth any reasonable creature in being, *with malice* aforethought, either expressed or implied. And it is defined, by Chief Justice Kirkpatrick, to be, “the killing of a reasonable creature with malice aforethought.” This language was used approvingly in the case of State vs Guild in 1828.

State vs Guild

10 N. J. L. at 174

Killing with malice aforethought, means a deliberate intended killing.

State vs Zellers

Supra.

Murder is by the 107th Sec. of the Crimes Act (2 C. S. N. J. pg 1780), classified into two degrees, murder of the first degree and murder of the second degree. That section enacts that all murder which

shall be perpetrated by means of poison of lying in wait, or any other kind of willful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate certain specific crimes, shall be murder in the first degree, and that all other kinds of murder shall be murder of the second degree. The Legislature, in declaring what shall constitute murder of the first degree and murder of the second degree, created no new crimes but merely made a distinction with a view to the difference in the punishment.

Brown vs State
62 N. J. L. pg 66 at 700.

Citing the case of Graves vs State 16 Vroom 347 where it is stated at page 358:

“That which was murder at the common law was, after the statute, still murder here, but the most flagitious species was designated as the highest degree and visited with the extreme penalty, while all others were declared to constitute a lower class and to be punishable accordingly The statute did not make murder of the first degree a separate and distinct crime from murder of the second degree, but murder of each grade, after the passage of the statute, continued to be, as it had heretofore been, the crime of murder. The indictment in the statutory form is for the crime of murder, without regard to the degree It is a charge of murder, and the cause the willful and felonious killing, by him, of the deceased, of his malice aforethought. The offence for which he is called to answer is charged in the indictment. It is murder.

Graves vs State.
Supra at pg 358-359.

It is settled in this state that murder in the first degree cannot be predicated on the mere existence of an intent to kill at the time of committing the crime.

State vs Magnano
77 N. J. L. pg 544 at
546.

And it should be evident, that an intent to kill carried out, does not constitute murder in the first degree, unless coupled with the premeditation, deliberation and willfulness as prescribed by the statute.

Idem at 547.

It necessarily follows, that if all these elements viz: willfulness, premeditation and deliberation with the specific intent to kill were present, they constituted murder in the first degree (Donnelly vs State II Dutcher 619.) or if any one of these constituents of murder in the first degree, with the exception of the intent to kill was absent, and there was an intent to take life or to kill (which is necessary in any murder) the crime is murder in the second degree.

State vs Zellers
Supra.
Graves vs State
Supra.

WEIGHT OF EVIDENCE.

Assignments 10, 11, 12 and 13, Specification of Causes, 11, 12, 13 and 14 (Case p 72 to 78 inclusive).

refer to the insufficiency of the evidence to warrant the verdict.

Plaintiff-in-error contends that upon the consideration of the entire case the verdict of murder of the first degree was against the weight of evidence and should be reversed.

Cook vs State
24 N. J. L. 443.

CONCLUSION.

We, therefore, respectfully urge, that a full, fair and impartial consideration of all the evidence, omissions of evidence, and the legal points in the case, justifies us in a conclusion that there are serious and potential doubts presented on the subject of defendant's guilt, that manifest wrong and injury was suffered by him both in relation to the admission and exclusion of evidence, as well as by virtue of the Judge's charge—and we say that with the utmost respect to the learned Judge before whom this case was tried.

Counsels who were assigned to the defense of this cause have sought to present it to this honorable Court as fairly and as fully as their ability would permit, and beg leave respectfully to say that under all the circumstances of the case the judgment of conviction should be reversed.

Respectfully submitted,

JAMES MANGO,
NICHOLAS LA VECCHIA,

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