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# New Jersey

## Court of Errors and Appeals

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THE STATE OF NEW JERSEY, Defendant in Error, vs. MICHAEL TOMASSI, Plaintiff in Error.	} Upon Conviction of Murder in the First Degree. Writ of Error.
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### BRIEF OF DEFENDANT IN ERROR.

No Assignment of Errors, State of the Case or Notice of Argument having been served up until the time that this brief goes to the printer, December 9th inst., the prosecution is handicapped in not knowing upon just what points the Plaintiff in Error relies. However, the Court having fixed a definite day for the hearing of this cause, in order to avoid delay the State will deal with those points relied upon by Plaintiff in Error in petition to the Chancellor for a writ of error. These were:

First—"In rejecting evidence produced in behalf of the defendant, over the objections of the defendant's attorneys."

Second—"That no special panel of forty-eight jurors

was drawn by the Sheriff, or other proper officer, as provided for by statute in this State, and consequently no list of special panel or list of jurors was served on the defendant in this case as required by statute."

Third—"That there was misconduct on the part of the prosecution at the trial of said case in that one, Edgar W. Hunt, an attorney at law, assisted in the prosecution of said case, examining witnesses and summing up the prosecution's case. Whereas, it appears from the testimony in said case that said Edgar W. Hunt was sitting with the prosecution as the personal paid representative of one, Frank Congilio, the widower of the deceased woman concerning whose death the trial was had."

As to the first: Before the Chancellor the exclusion of evidence referred to was the refusal of the Court to permit the answering of questions "As to her general bad reputation and character."

Page 329 of transcript, witness Joseph Narducci, defendant's counsel asked witness, "What was the general character of Delia Congilio—was it good or bad?" This the Court very properly over-ruled, for the question was not in proper form. A question of that kind should refer to reputation for TRUTH and VERACITY. That question might have had reference to her reputation as an artist, actress, physician or what not and hence be immaterial.

When the questions of similar import were in proper form they were admitted by the Court.

Question by Mr. Mason: "Then you will not allow me to prove her general reputation?"

The Court: "For what?"

Mr. Mason: "Just simply her general reputation."

The Court: "No, of course not."

As to witness Giacinti Pinelli, page 332 of transcript, Mr. Mason asked: "Then I understand your honor that you will not permit me, by any witness, to show what her general reputation was."

The Court: "I will not permit the question of 'What is her general reputation' to be answered."

Mr. Braun: "Now, if the Court please, there is no need of us taking up the time of the Court. I simply desire to have it appear upon record that your honor, as I understand your honor, will not permit us to ask witness whether the general character of this woman was good or bad in order to enable us to show that she is unworthy of belief."

The Court: "Oh, that isn't the question—the general character for truth and veracity. I haven't said anything of that sort."

Mr. Mason: "I said, to show her general bad character."

The Court: "That is the point; I over-ruled that question."

Mr. Braun: "Then I pray an exception and will put in no further witnesses."

The Court: "I want it distinctly understood that I do not over-rule the question as to her truth and veracity, because I suppose the fact that although she is not a witness, her dying declarations came in, would permit you to impeach her veracity."

Atwood vs. Impson, 20 N. J. Equity, page 151: "The general reputation in the community where a witness is known as to habits in respect to telling the truth, is the only test which the law allows as to character. If he is a common liar he is not to be believed under oath."

King vs. Buckman, 20 N. J. Equity, p. 316: "The only testimony allowed to impeach the character of a witness is as to her general reputation in his neighborhood for *truth* and *veracity*, and that such reputation is generally bad."

As to the second point. The objection is as to the drawing and serving of a special panel of jurors.

(a) Defendant's counsel made no objection on this point at the time of the trial.

(b) In Hunterdon County the practice is to have but forty-eight jurors on the *general* panel, and that was the number of jurors on the general panel at the September term of court, when this defendant was tried. A list of these was duly served upon the defendant five days prior to the said trial. To have drawn the identical names specially, there being only forty-eight in all, would have been unnecessary and superfluous. That statute only applies to panels where the number of jurors on the general panel exceeds forty-eight.

(c) As there is no magic in the word *SPECIAL* under such circumstances, the defendant having been duly served with the complete panel consisting of forty-eight names, he was obviously not prejudiced so that in any event, assuming an error to have been committed, Sec. 136 of the Criminal Procedure Act, laws of 1898, p. 915, applies, \* \* \* \* "Provided, no judgment given upon any indictment shall be reversed for any imperfection, omission, defect in, or lack of form, or for any error except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits."

As to the third point:

(a) There was no objection to Mr. Hunt's presence at or participation in the prosecution of this case at the time of the trial. He is a young attorney, living in Lambertville, (where the crime was committed), familiar with the locus, and he assisted the surveyor in making the measurements of the premises where the crime was committed, which he afterwards identified. The record will show that his participation in the conduct and management of the case was limited and in no wise improper or unduly prejudicial to the rights of the defendant.

Dated December 9, 1907.

GEORGE K. LARGE,  
*Prosecutor of the Pleas in and for  
the County of Hunterdon, for  
Defendant in Error.*

## New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY,  
Defendant-in-Error,

vs.

MICHAEL TOMASSI,  
Plaintiff-in-Error.

### **First Assignment of Error.**

Presents formally to this Court, the defence interposed at the trial, to wit, that the killing of Delia Congillio was committed in the necessary defence of the defendant's life.

In a modified form, it becomes the second specification of cause for reversal. In order of argument it will be considered last.

### **Third Assignment of Error.**

We contend that the Court erred in excluding the question embodied in this assignment. A situation of intimidation had been testified to, by the witness, on the direct-examination. She was asked if there was any appearance of fear on the part of her mother, the party threatened. The materiality of this question must be apparent, both as a test of the veracity of the witness, and as a circumstance showing whether the situation was a serious one or not, because the answer might have been such as to destroy the credibility of the witness.

### **Fifth Assignment.**

Careful examination of the testimony will show that the pan which was allowed in evidence as an exhibit, had not been identified as the pan which the children had testified to have seen in the hands of their mother. It was not sworn to, by them. It had not been marked or preserved by the officers, and was identified by one witness in a general way as a pan of the household, but not as the pan which the deceased is said to have held in her hand.

It was offered for the purpose of showing that the deceased was engaged in the household duties when shot, and, therefore, could not have had a knife in her hand, as claimed by the defendant. From this point of view, it became of great importance in the case, and should have been strictly identified. Its introduction, therefore, is manifest injury to the defendant.

### **Sixth Assignment.**

The question permitted, by the Prosecutor, referred to in this assignment, it seems to us, should not have been asked. It implies that the defendant was so much in the habit of carrying a deadly weapon, a loaded revolver, that his friends reimonstrated with him. In its generality, it was incapable of contradiction, but while it gave no opportunity for the denial, yet gave to the jury the impression that the defendant was a most dangerous character.

### **Seventh, Eighth and Ninth Assignments of Error.**

When, on a trial for murder, the dying declarations of the deceased have been introduced against the accused, it is competent for the latter to im-

peach these declarations by showing that the deceased, because of general bad character, was unworthy of belief.

Redd v. State (Ga.), 25 S. E. Rep., 268.

Nesbit v. State, 43 Ga., 239.

Thus dying declarations may be discredited by showing that the character of the declarant was bad.

10 Am. & Eng. Ency. of Law, page 384.

It is competent for the accused to impeach dying declarations introduced in evidence against him by showing that the deceased because of general bad character was unworthy of belief.

21 "Cyc.," 994.

#### **Fourth, Fifth, Sixth and Tenth Specifications.**

The fourth, fifth, sixth and tenth specifications of causes for reversal will be considered together:

Section 54 of the Act entitled, "An Act relating to Courts having criminal jurisdiction, and regulating proceedings in criminal cases."

Revision 1898, page 885, provides for the service of a list of the jury on the person accused two entire days before the trial.

Section 82, Revision 1898, page 897, prescribes the manner of the selection of this list, which is to be served as aforesaid, and also prohibits the defendant from being tried in a murder case by a jury drawn in the ordinary way.

The contention of the plaintiff-in-error is that the jury list, which was actually served upon him, was not a list from which a petit jury could be legally drawn to try him for murder, and that the jury actually drawn therefrom had no power of authority over a question of life or death and that, there-

fore, he has been convicted without due process of law.

Section 54 aforesaid is substantially the same as Section 66, Revision of 1873, page 279, and that in turn is the same as

Sec. 1, Nixon's Digest (3d Ed.), page 197.

It has been the subject of adjudication by the Supreme Court in three cases.

In 1863 in

State v. Brooks, 1 Vr., page 358;

in 1886 in

State v. Patterson, 19 Vr., page 381;

and in 1888 in the case of

Peak v. State, 21 Vr., page 213.

But these cases are no longer of any authority whatsoever upon the points here raised either as a construction of this section, or as requiring a challenge to the array or other objection to the panel to be made on the part of the defendant at the time of the trial. Since these cases were decided the method of selecting the list of forty-eight jurors has been materially changed; and, above all, the power of the indicted person to waive or consent to irregularities in the selection of the jury has been absolutely and expressly taken away from him.

At the time of the decision of State v. Brooks, Patterson v. State and Peak v. State, the selection of the panel of forty-eight was governed by Section 8, Nixon's Digest, 3d Edition, page 198, which is Section 72, Revision, page 280. *Rev. Sts. 1134*

It provided that the Sheriff or other officer should select the forty-eight jurors, and permitted the accused to consent in open Court to waive certain formalities.

Section 82, Revision, 1898, page 897, which has

taken the place of the section last mentioned, differs from it in most important particulars.

First. The forty-eight jurors are no longer "SELECTED" by the Sheriff or other officer, but *are drawn from the box in open Court* out of the general panel with such additions thereto as may be necessary.

This change is due to the amendment of 1888, and is probably a result of the decision of *Peak v. State*.

Second. The accused is expressly prohibited in treason or murder cases from waiving any formality, or consenting to be tried "by a jury drawn in the ordinary way." The exact language is: "The defendant or his counsel may at any time in open Court, *except where the indictment is for treason or murder*, waive the drawing or service, or both, of such list of jurors; and *consent to be tried by a jury drawn in the ordinary way from the general panel.*"

This is equivalent to an enactment that he can *not consent* to waive the drawing or service, or above all to be tried by a jury drawn in the ordinary way; that is to say, by a jury drawn direct from the general panel, as this one was without going through the formality of putting the names of the general panel again into a box with such additional names as may be necessary, and drawing out forty-eight names for the special panel. But the jury which actually tried the defendant *was "drawn in the ordinary way from the general panel."*

The consequence is the jury which actually tried this defendant was not a jury authorized to try him for murder. Its verdict therefore is a nullity. All the power of the State may be exerted against him. He may be put out of existence, but it will be the mechanical action of the State which will do it, but not its reason which is law.

No action of this Court, no want of action on

the part of defendant or his counsel at the trial, no silence, no failure to challenge the array, no failure to point out the objectionable feature, as is held necessary in *Brooks v. State*, or *Patterson v. State*, can cure this illegality. The necessity of a challenge to the array, or of objecting at the trial, and pointing out the defect, does not apply, because this necessity rests upon an implication made by law of a waiver and consent by the silence of the defendant, but such waiver and consent cannot be imputed to one from whom the power to consent has been taken away. An *implied* consent certainly cannot be raised or inferred by law where there is no *power* to *expressly* consent.

Did it make any difference to the defendant? Who knows? Who can tell?

In the first place this question has no relevancy here. Here is the plain, unequivocal positive command of the sovereign power. Who can dispense with it, ignore it or excuse disobedience to it? Certainly not the Judges upon the bench, who are equally its creatures, and the first of its servants in precept and example.

The Court's belief in the guilt or innocence of this defendant is immaterial. It is a question of the paramountcy of law over every other consideration. The same law which has created the Court and given it power to exact obedience to its judgments, has said: "The jury shall be selected in a certain way, and no man charged with murder shall consent to be tried by a jury drawn in the ordinary way."

In the second place it appears from the record that there never was a list of forty-eight jurors from which the petit jury could be selected, because at least one man of the general panel, Butler by name, had been excused from all trials, leaving only forty-seven. Under the law it be-

came the duty of the Sheriff to put into the box the forty-seven names of the general panel, together with an additional number of names, certainly more than one (two, three or four names), from which the forty-eight names could have been drawn. If this had been done, the complexion of the jury might have been materially changed. No one can tell but that out of those additional names one or two petit jurors might have been drawn, who would have taken an entirely different view of the evidence. The whole question of conviction might have turned on this point.

Nor is this method altered or affected in any way by anything that is said in *Patterson v. State*, as has already been said, the method of selecting a special panel of forty-eight has been entirely changed. The point here made is that under the present statute forty-eight names must be drawn from the box by the Sheriff or other officer in the presence of the Court or Clerk thereof, and "if for any reason the number of jurors drawn or summoned shall be reduced below forty-eight, then the Sheriff or other officer shall add to the number of names so drawn and summoned, as many more persons as shall make up the number of forty-eight. In this case the number had been reduced by the action of the Court in excusing Butler to forty-seven. It was thereupon the duty of the Sheriff under this statute to have substituted some other names for Butler's name, to be put in the box and drawn therefrom as juror.

The Court has declared that whenever a material error is evident on the face of the record, the judgment must on that account be reversed.

*Smith and Bennett v. State*, 12 Vr., page 373.

This question is properly before this Court, it

seems to us, under Sections 136-137 it being a proceeding at the trial.

Clifford v. Hudson, Oyer & Terminer, 32 Vr., page 493, and being brought here as a part of the entire record.

The test of manifest injury is the propriety of a new trial on the indictment.

Winters v. State, 32 Vr., page 363.

Is not this a case where this test applies?

### **Eighth Specification.**

The sentence of the Court in this case is "That the Court does order and adjudge and the judgment of the Court is that the said Michael Tomassi suffer death as the punishment for said crime at the time and place and in the manner prescribed by the law."

By analogy with the common law by the strict rules of language, this sentence is void for uncertainty. By analogy, because the former sentences to capital punishment of the common law always commanded a certain physical treatment of the convict. The sentence ran, that the convict "be hanged by the neck until dead." In the same way if the analogy of the common law held good under the present electrocution law, the sentence should run as it did in the Kemmler case—"that the defendant be put to death by the warden of the prison, by then and there causing to pass through the body of him a current of electricity of sufficient intensity to cause death, and that the application of such current of electricity be continued until he, the said \* \* \* be dead." Nor can it be said with any propriety of language that the law—that is, the Electrocution Act—prescribes the time, place and manner of Michael Tomassi's death. To bring him within its provisions the

physical agency of a Court is necessary, and that agency should be definite and precise in its action and judgment, and the record of it preserved. In this case the record terminates abruptly as above. In order to learn the date of the execution, the inquirer must turn from the judgment of the Court to the archives of the State Prison.

If it be suggested that by virtue of the maxim that that is certain which can be made certain, the reference to the law makes this judgment definite and certain, the reply is that this may be true as to the *manner* and *place* of the execution; they are fixed by the statute, but it is *not true* as to the *time* of the execution. No reference to the statute can make the time certain. The judgment is, therefore, void for uncertainty, because it fixes no time.

### Ninth Specification.

The Act entitled "An Act concerning the infliction of the death penalty approved April 4th, 1906," it is contended is unconstitutional and void, as being in contravention of the constitutional provisions against "cruel and unusual punishment."

This point is raised in order that the plaintiff-in-error may have the benefit of it, such as it is, and in the sincere conviction on the part of counsel that the Act is a violation of the Subdivision 15th of Art. 1 of the New Jersey Constitution "that cruel and unusual punishment shall not be inflicted."

It is true that it has been otherwise decided in other States. It is also true that the facts which demonstrate the cruelty of electrocution are not perhaps sufficiently before this Court except in respect to Section 5, that terrible provision of the law which dooms the unhappy wretch to solitary confinement for four or more weeks preceding his execution.

not a part of  
judgment.  
State vs. J.  
44 Vr. 31

Judgment re  
Roesch vs. St.  
33 Vr. 3

It is true that the Supreme Court of Massachusetts, in that light spirit of him who "jests at scars" because he "has never felt a wound," has tossed this aside as of trivial importance, but to the undersigned who have seen a condemned man under its influence, it seems to be a prolonged torture and a living horror.

To state our position categorically, we claim that Section 5 of the Act concerning the infliction of the penalty of death, approved April 4th, 1906, P. L., page 112, which provides that the person so sentenced "shall be kept in solitary confinement, etc.," until the infliction of the punishment of death upon him, even his friends being barred from any communication with him except upon the order of the Court, is unconstitutional and void.

### **Eleventh Specification.**

An Italian witness called Bishop was permitted to testify, in what he appears to have considered to be English, as to some statement alleged to have been made to him by the deceased about the time that the last sacraments of the Catholic Church were administered to her while she was, or just before she had started on her way to the hospital at Trenton.

The testimony was so unintelligible that finally resort was had to the Italian interpreter, who, on being asked what the witness said, evidently gave a paraphrase of what he said, to the effect that deceased stated that she could *not betray* her husband, and, therefore, Mike shot her.

The objection to this testimony is two-fold: first, that on its face it is evidently not a literal translation of what the witness said, but a construction of what he said by the interpreter. The latter does not attempt to *translate*, he testifies as to what wit-

ness says. This is hearsay. Second: Because whatever it was, whatever it meant, there is no proof that it was a dying declaration, properly so-called, or given under the sense of impending death.

Bishop does not so testify. The only attempt on the part of the State to establish that fact was by proving that the last sacraments had been administered. Of course the fact that she had been prepared by her spiritual adviser for death is no proof that she herself had given up hope of recovering.

Nor can the law presume that the state of mind to which Maria Rossi testified *continued* to exist. The human mind is so constituted as to be subject to alternate emotions of hope and despair.

So in

Donelly v. State, 2 Dutch, page 602.

it must be an abiding impression of almost immediate dissolution.

The testimony is of the utmost importance. Without it the whole theory of the State, recognized and emphasized by Judge REED in his charge, that the deceased was shot in an attempt to ravish, falls to the ground. There is absolutely *no other testimony* in the case to support it.

It is foundationless. The other remarks testified to by other witnesses as dying declarations, to the effect that for "five lire she got five shots," that she was shot "because she was not content to do what he wanted," are perfectly consistent with the defendant's own story, that the dispute occurred over the amount he owed her for lodging, etc., and that he wanted her to accept Five dollars instead of Six.

Seventh. Is based upon the active part taken by the private counsel in the prosecution of the indictment.

Edgar W. Hunt, Esq., an attorney-at-law of the State of New Jersey, was retained as private coun-

sel of Frank Congillio, husband of the deceased, to assist the Prosecutor in the conduct of the case. According to his testimony, he had received part of his fee prior to the trial, and expected to receive the balance thereafter. He was not retained by the State, nor was there any stringent reason arising in this case, which required the active participation, on behalf of the prosecution, of any counsel but the Prosecutor, and the special counsel retained by him, George H. Large, Esq. Had Mr. Hunt's participation in the case been limited to such advice and assistance to the State, as is usually rendered by private counsel, in criminal prosecutions, his right so to do would have been unassailable.

*Gardner v. State, 26 Vr., 18.*

But the latitude allowed him by the Prosecutor, and the latter's acquiescence in the assumption of such authority in the conduct of the case as said counsel assumed, transcended the limits which public policy has set to the powers of private counsel in criminal prosecutions and established a precedent, which, if adhered to, places a defendant in a capital case largely at the mercy of counsel retained by private persons indirectly interested in obtaining a conviction.

Mr. Hunt did not only advise and assist the prosecution in the conduct of the case, but, in addition, the diagram used at the trial was prepared under his supervision, he took the stand as a witness for the State, and, at the conclusion of the taking of testimony, summed up on behalf of the prosecution (see certificate of Judge attached to transcript of testimony).

The testimony of Mr. Hunt related to the preparation of the diagram employed in the course of the trial to assist counsel and the jury in fixing the places and distances associated with the

scene of the homicide. It appeared from the testimony of Francis M. Wilson, surveyor, that Mr. Hunt accompanied the surveyor and directed the latter's work with reference to the location upon the diagram of such points of interest as he deemed it desirable to have located.

Q. You simply put in there what Mr. Hunt wanted?

A. Yes, what he asked me to, to measure it.

As he was not retained by the State, the question presents itself of whether a party indirectly interested in obtaining a conviction in a capital case (to wit, the husband of the deceased, either personally or by his paid attorney), may virtually assume charge of the preparation of the diagram to be employed throughout the trial and designed to form a basis for the judgment of the jury on the question of the location of objects, associated with the scene of the homicide and the distances between them. When it is considered how important a role the location of objects play in affecting the minds of the jury, how the question of the distance between two points or two objects at the scene of the homicide influences the outcome of criminal cases, the importance of this question will be evident. It is true that counsel for Congillio did not testify to the facts directly bearing upon the homicide itself, but it is submitted that his testimony respecting his work in the preparation of the diagram, designed as it was to complete the proof which the State deemed necessary for the introduction of the map in evidence, placed him in the position of a witness, whose influence in moulding the minds of the jury cannot be overrated.

It appears, then, that the diagram from which Court, counsel and jury sought light and guidance was not prepared under the supervision of the officer appointed to represent the State and at the

same time to safeguard the rights of the defendant. It was prepared under the guidance of one who was retained not to see that justice was done between the State and the defendant, but to secure a conviction to gratify the husband of her who had been shot to death.

Yet, to the private attorney of an interested party was assigned the task of supervising the preparation of the diagram, assisting the prosecution during the progress of the trial, appearing as a witness on behalf of the State, and summing up for the prosecution.

It is submitted that the prosecution, in countenancing such pernicious activity in the conduct of the case on the part of private counsel, surrendered to the representative of the husband of the deceased a part of that control of the case which can legally be exercised only by the Prosecutor himself or counsel retained by him to assist him on behalf of the State.

The Prosecutor is a sworn officer of the State. He stands between the defendant and the Commonwealth, and his sole duty consists in seeing that justice is done between the prisoner and the State, whose laws the defendant is accused of having violated. He represents no private interests, nor does he aim to gratify the malice or vindictiveness of any individual who may seek the conviction of a prisoner on trial. So long as the representatives of the State conduct the case for the prosecution, no personal malice can be injected into it.

But in this case, the Prosecutor permitted the case to be summed up by one, who confessedly represented that very element of vindictiveness, which the law, in justice and fairness to a defendant and in the maintenance of its own dignity, has ever sought to eliminate from the conduct of criminal prosecutions. It surrendered to counsel, employed for the sole purpose of gratifying the vengeance of

an individual, that duty of presenting the case to the jury which is vested only in the impartial representatives of the State.

### **Second Specification.**

The testimony shows that the shots that were fired by the defendant were glancing shots; that one of them struck the deceased, in a glancing direction, in the left breast; that the fatal bullet did not go direct to the vital organ that it eventually reached, and thereby caused death, but struck the hip bone and was by that obstruction in its passage deflected, passing thence to the vital organ.

Indeed, but for that deflection of that bullet, the deceased would probably have lived to tell the story.

Now the defendant's uncontradicted evidence is that the deceased was approaching him with a knife in her hand; that he reached a point where in his dread and fear that she was about to stab him, his further retreat was at least retarded; to his mind his escape was absolutely impossible, and he shot while he was retreating, but only when he thought his life was in immediate peril. This testimony was of course the testimony of the defendant, but was uncontradicted, and necessarily so, because no other person was present except the defendant and the deceased, but is absolutely borne out by the circumstances of the course of the bullets in the body of the deceased. If the defendant had had murder in his heart, and the deceased was unarmed, how perfectly natural that he should have faced the deceased and sent his bullet direct to the heart or brain.

And then the further fact of the number of shots;—a fleeing man, believing his life was in danger, of course would shoot at random. That is just what the defendant did.

All the testimony, taken together with all the circumstances, is very much more strongly corroborative of the theory of self-defense than of deliberate murder. The State claims that the dispute was over something that involved a dollar. The defendant makes the same claim. The thing that the State claims was the cause of the dispute, also involved the honor of the deceased. And yet there is not a scintilla of evidence to show, although the defendant had lived in the home of the deceased for months, that the defendant (although he must have had abundant opportunity many times before as on that day), that there isn't a scintilla of testimony or a circumstance in the case that shows that the defendant, before or even on the day of the tragedy, ever in any way, by suggestion or deed, acted immorally toward the deceased. On the other hand, the thing that the defendant claims involved a dollar was the difference between Five dollars (the amount he says he owed the deceased), and Six dollars (the amount the defendant says, the deceased insisted he owed her). The evidence is that she was a dangerous woman. What more natural, under all the circumstances developed by the testimony, than that she approached the defendant with this deadly weapon in her hand, that the defendant started to retreat, that he finally found his escape impeded and that while fleeing he fired these random shots, not for the purpose, not with any thought in mind of killing the woman, but with the one overpowering thought uppermost in his mind (always uppermost in the human mind), of escaping with his own life.

RUDOLPH A. BRAUN,  
Attorney of ~~Defendant.~~

JAMES M. TRIMBLE,  
NATHAN KUSSY,  
Of Counsel.

*Plaintiff in Error.*

## INDEX.

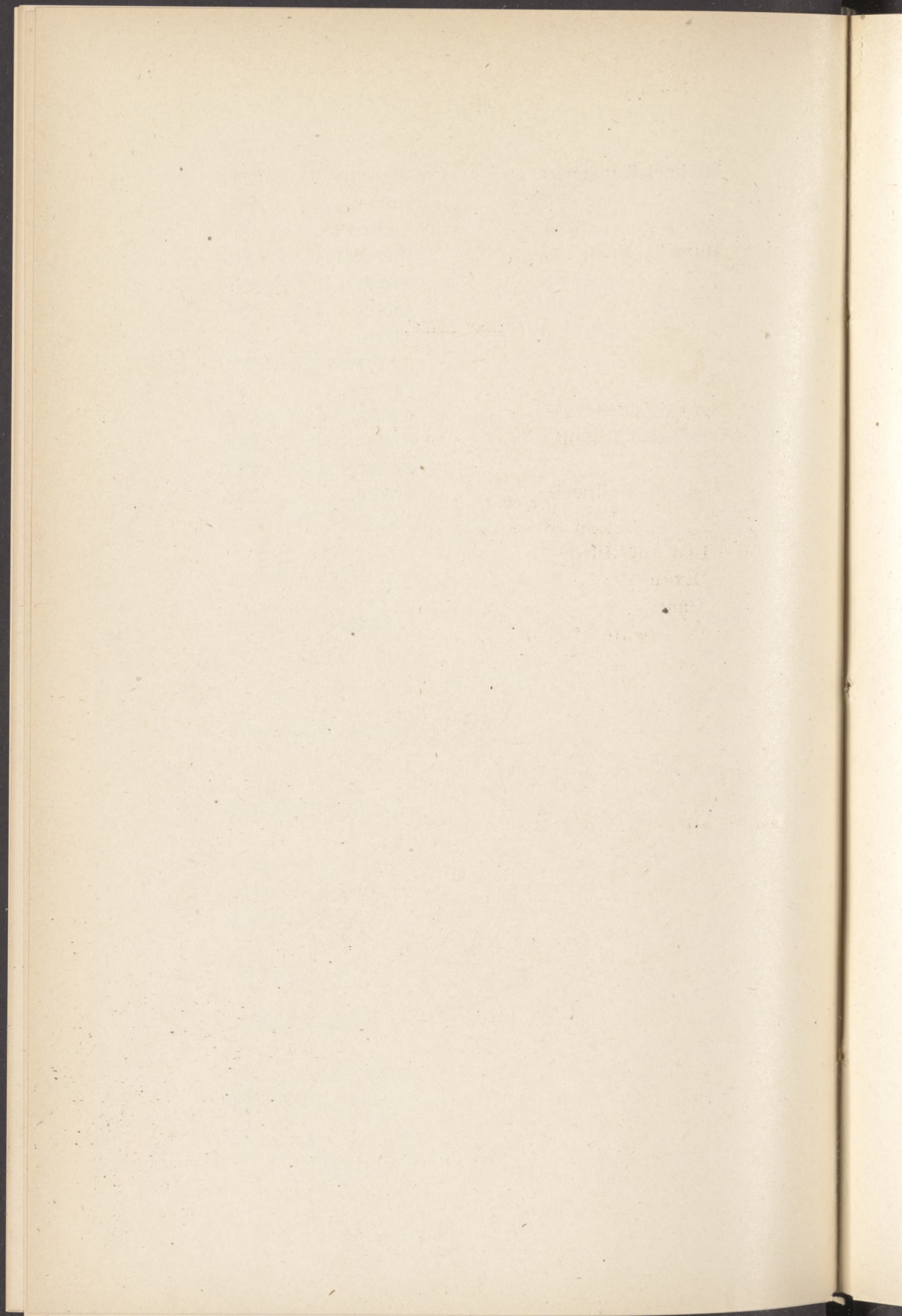
	PAGE
Indictment .....	1
Plea .....	10
Writ of Error.....	13
Assignment of Errors.....	15
Specification of Causes for Reversal.....	18
List of Jurors.....	22
Examination of Jurors.....	28-55
Charge .....	291
Certificate of Clerk .....	302

### TESTIMONY.

Francis M. Wilson,	direct.....	63
	cross.....	68
Edgar W. Hunt,	direct.....	74
	cross.....	75
Frank Congilio,	direct.....	76
	cross.....	81
	recalled, direct.....	233
	cross.....	234
Louis Congilio,	direct.....	81
	cross.....	87
	recalled, direct.....	229
	cross.....	230
Rowland H. Mitchell,	direct.....	91
	cross.....	99
William H. Lynch,	direct.....	102
Dr. Richard H. Rogers, Jr.,	direct.....	106
	cross.....	112

	PAGE
Rosina Palaio,	direct..... 113
	cross..... 116
	redirect..... 120
Pastala Congilio,	direct..... 121
Apostelle Congilio,	direct..... 121
	cross..... 130
	redirect..... 143
George Sommer,	direct..... 144
	cross..... 146
Silas R. Bray,	direct..... 147
Charles Assay,	direct..... 149
Dr. Edwin W. Closson,	direct..... 150
	cross..... 152
James S. Studiford,	direct..... 152
	cross..... 154
Manfred Naar,	direct..... 154
	cross..... 157
Rosina Congilio,	direct..... 160
	cross..... 182
	recalled, direct..... 234
	cross..... 235
Pasqualina Muelli,	direct..... 192
	cross..... 196
	redirect..... 197
Salvatore Lucitano,	direct..... 198
	cross..... 201
Victoria Strollo,	direct..... 202
Assunta Cifelli,	direct..... 210
Maria Rossi,	direct..... 213
	cross..... 217
Alfred T. Ely,	direct..... 219
	cross..... 222
Joseph Bishop,	direct..... 224
	cross..... 228
Pasqualina Cavallo,	direct..... 231
Pasqualina Goccia,	direct..... 232

	PAGE
Michael Tomassi,	direct..... 239
	cross..... 256
	redirect..... 276
Mary L. Neal,	direct..... 276
	cross..... 278
	direct..... 280
	cross..... 282
	redirect..... 284
	recross..... 285
Joseph Narducci,	direct..... 286
Giacinto Pinelli,	direct..... 288
	cross..... 289
Nicolino Bellucci,	direct..... 291



State of New Jersey, }  
Hunterdon County, } ss.:

Hunterdon County, to wit: Be it remembered that at a Court of Oyer and Terminer, holden at Flemington, in and for the said County of Hunterdon, on the second Tuesday of September, in the year of our Lord one thousand nine hundred and seven, before the Honorable Alfred Reed, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable John L. Connet, Judge of the Court of Common Pleas in and for the said County, according to the form of the statute in such case made and provided, by the oath of James N. Pidcock, Joseph Hoff, Hiram S. Opdycke, George B. Kremer, Oscar Rittenhouse, Erastus W. Sutton, Hiram Holcombe, Barton Huffman, Lewis R. Hiner, Jacob S. Manners, George W. Hoffman, Frederick A. Dalrymple, Absalom Apgar, John C. Arnwine, Ephraim W. Rush, James H. Reynolds, Calvin Solliday, Alfred T. Ely, William D. Bloom, Jacob R. Hall, Spencer L. Dilts, John Pace and John G. Mickey, good and lawful men of the said County of Hunterdon, duly summoned and then and there sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Hunterdon.

It is presented in manner and form following, that is to say:

HUNTERDON OYER AND TERMINER,

SEPTEMBER TERM, A. D., 1907.

Hunterdon County, to wit: The Grand Inquest of the State of New Jersey, in and for the body of

the County of Hunterdon, upon their respective oath present, that Michael Tomassi, late of the City of Lambertville, in the County of Hunterdon, on the twentieth day of May, in the year of our Lord one thousand nine thousand and seven, with force and arms, at the City of Lambertville aforesaid, in the County of Hunterdon aforesaid, and within the jurisdiction of this Court, in and upon  
10 one Delia Congilio, in the peace of God and of this State then and there beng feloniously, wilfully, deliberately, premeditately and of his malice aforethought, did make an assault; and that the said Michael Tomassi, a certain pistol, of the value of one dollar, then and there loaded and charged with gunpowder and five leaden bullets, which pistol he; the said Michael Tomassi, in his right hand, then and there had and held to, at, against and upon  
20 the said Delia Congilio, then and there feloniously, wilfully, deliberately, premeditately and of his malice aforethought did shoot and discharge; and that the said Michael Tomassi with one of the five leaden bullets aforesaid, out of the pistol aforesaid then and there, by force of the gunpowder, shot and sent forth as aforesaid, the said Delia Congilio, in and upon the left hip of her, the said  
30 Delia Congilio, then and there feloniously, wilfully, deliberately, premeditately and of his malice aforethought did strike, penetrate and wound, giving to the said Delia Congilio then and there with the leaden bullet aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said Michael Tomassi in and upon the left hip of her, the said Delia Congilio, one mortal wound, of the depth of six inches, and of the breadth of half an inch, of which said mortal  
40 wound, the said Delia Congilio from one o'clock in the afternoon of said twentieth day of May, in the year aforesaid, until seven o'clock in the afternoon

of said twentieth day of May in the year aforesaid, as well at the City of Lambertville aforesaid, in the County of Hunterdon aforesaid, as also at the City of Trenton, in the County of Mercer in said State, did languish, and languishing did live; on which said twentieth day of May, in the year of our Lord one thousand nine hundred and seven, the said Delia Congilio, at the City of Trenton, in the County of Mercer in said State, of the mortal wound aforesaid died. And so the Grand Inquest aforesaid, upon their respective oath aforesaid, do say, that the said Michael Tomassi, the said Delia Congilio in manner and form aforesaid, feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought did kill and murder, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oath aforesaid, do further present, that the said Michael Tomassi, on the twentieth day of May, in the year of our Lord one thousand nine hundred and seven, with force and arms, at the City of Lambertville aforesaid, in the County of Hunterdon aforesaid, and within the jurisdiction of this Court, in and upon the said Delia Congilio, in the peace of God and of this State then and there being feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought did make an assault; and that the said Michael Tomassi, a certain pistol of the value of one dollar, then and there loaded and charged with gunpowder and five leaden bullets, which pistol he, the said Michael Tomassi in his right hand then and there had and held to, at, against and upon the said Delia Congilio, then and there feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought did shoot and discharge; and that the said Michael Tomassi with one of the five leaden

bullets aforesaid, out of the pistol aforesaid, then and there, by force of the gun powder, shot and sent forth as aforesaid, the said Delia Congilio in and upon the left side of her, the said Delia Congilio, then and there feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought did strike, penetrate and wound, giving to the said Delia Congilio then and there with the leaden bullet aforesaid, so as aforesaid shot, discharged and sent forth out of the pistol aforesaid, by the said Michael Tomassi, in and upon the left side of her, the said Delia Congilio, a little above the left hip of her, the said Delia Congilio, one mortal wound, of the depth of six inches, and of the breadth of half an inch, of which said mortal wound, the said Delia Congilio from one o'clock in the afternoon of said twentieth day of May, in the year aforesaid, until seven o'clock in the afternoon of said twentieth day of May, in the year aforesaid, as well at the City of Lambertville aforesaid, in the County of Hunterdon aforesaid, as also at the City of Trenton, in the County of Mercer, in said State, did languish, and languishing, did live; on which said twentieth day of May, in the year of our Lord, one thousand nine hundred and seven, the said Delia Congilio, at the City of Trenton, in the County of Mercer, in said State, of the mortal wound aforesaid, died. And so the Grand Inquest aforesaid, upon their respective oath aforesaid do say, that the said Michael Tomassi, the said Delia Congilio in manner and form aforesaid, feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their

respective oath aforesaid, do further present that  
 the said Michael Tomassi, on the twentieth day  
 of May, in the year of our Lord one thousand nine  
 hundred and seven, with force and arms, at the  
 City of Lambertville aforesaid, in the County of  
 Hunterdon aforesaid, and within the jurisdiction  
 of this Court, on and upon the said Delia Congilio,  
 in the peace of God and of this State, then and  
 there being feloniously, wilfully, deliberately, pre- 10  
 meditatedly and of his malice aforethought, did  
 make an assault; and that the said Michael  
 Tomassi, a certain pistol, of the value of One dol-  
 lar, then and there loaded and charged with gun-  
 powder and five leaden bullets, which pistol, he,  
 the said Michael Tomassi, in his right hand then  
 and there had and held, to, at, against and upon  
 the said Delia Congilio, then and there feloniously,  
 wilfully, deliberately, premeditatedly and of his 20  
 malice aforethought, did shoot and discharge; and  
 that the said Michael Tomassi, with one of the  
 five leaden bullets aforesaid, out of the pistol  
 aforesaid, then and there, by force of the gun-  
 powder, shot and sent forth as aforesaid, the said  
 Delia Congilio in and upon the left breast of her,  
 the said Delia Congilio, a little to the left, and  
 about two inches above the left nipple of her, the  
 said Delia Congilio, then and there feloniously, wil- 30  
 fully, deliberately, premeditatedly and of his malice  
 aforethought did strike, penetrate and wound  
 giving to the said Delia Congilio, then and  
 there with the leaden bullet aforesaid so as  
 aforesaid shot, discharged and sent forth out  
 of the pistol aforesaid, by the said Michael  
 Tomassi, in and upon the left breast of her,  
 the said Delia Congilio, a little to the left and  
 about two inches above the left nipple of her, the 40  
 said Delia Congilio, one mortal wound, of the  
 depth of four inches and of the breadth of one-half

inch, of which said mortal wound the said Delia  
 Congilio from one o'clock in the afternoon of  
 said twentieth day of May, in the year aforesaid,  
 until seven o'clock in the afternoon of said twen-  
 tieth day of May, in the year aforesaid, as well at  
 the City of Lambertville aforesaid, in the County  
 of Hunterdon aforesaid, as also at the City of  
 Trenton, in the County of Mercer in said State, did  
 10 languish, and languishing did live; on which said  
 twentieth day of May, in the year of our Lord  
 one thousand nine hundred and seven, the said  
 Delia Congilio, at the City of Trenton, in the  
 County of Mercer in said State of the mortal  
 wound aforesaid died. And so the Grand Inquest  
 aforesaid, upon their respective oath aforesaid, do  
 say, that the said Michael Tomassi, the said Delia  
 Congilio, in manner and form aforesaid, feloni-  
 20 ously, wilfully, deliberately, premeditatedly and of  
 his malice aforethought, did kill and murder, con-  
 trary to the form of the statute in such case made  
 and provided, against the peace of this State, the  
 government and dignity of the same.

And the Grand Inquest aforesaid, upon their  
 respective oath aforesaid, do further present, that  
 the said Michael Tomassi, on the twentieth day  
 of May, in the year of our Lord one thousand nine  
 30 hundred and seven, with force and arms, at the  
 City of Lambertville aforesaid, in the County of  
 Hunterdon aforesaid, and within the jurisdiction  
 of this Court, in and upon the said Delia Con-  
 gilio, in the peace of God and of this State, then  
 and there being feloniously, wilfully deliberately,  
 premeditatedly and of his malice aforethought, did  
 make an assault; and that the said Michael  
 Tomassi, a certain pitsol of the value of One dol-  
 40 lar, then and there loaded and charged with gun-  
 powder and five leaden bullets, which pistol, he,  
 the said Michael Tomassi, in his right hand then

and there had and held to, at, against and upon  
 the said Delia Congilio then and there feloniously,  
 wilfully, deliberately, premeditatedly and of his  
 malice aforethought did shoot and discharge; and  
 that the said Michael Tomassi with one of the five  
 leaden bullets aforesaid, out of the pistol aforesaid  
 then and there by force of the gunpowder, shot  
 and sent forth as aforesaid, the said Delia Con- 10  
 gilio, in and upon the center of the thorax of her,  
 the said Delia Congilio, about five inches to the  
 center from either nipple of her, the said Delia  
 Congilio, then and there feloniously, wilfully, de-  
 liberately, premeditatedly, and of his malice afore-  
 thought, did strike, penetrate and wound, giving  
 to the said Delia Congilio then and there with the  
 leaden bullet aforesaid, so as aforesaid shot, dis-  
 charged and sent forth out of the pistol afore- 20  
 said by the said Michael Tomassi, in and upon  
 the center of the thorax of her, the said Delia  
 Congilio, about five inches to the center from  
 either nipple of her, the said Delia Congilio,  
 one mortal wound, of the depth of five inches,  
 and of the breadth of one-half inch, of which  
 said mortal wound, the said Delia Congilio  
 from one o'clock in the afternoon of said  
 twentieth day of May, in the year aforesaid, 30  
 until seven o'clock in the afternoon of said  
 twentieth day of May in the year aforesaid, as well  
 at the City of Lambertville aforesaid, in the County  
 of Hunterdon aforesaid, as also at the City of  
 Trenton, in the County of Mercer, in said State,  
 did languish, and languishing did live; on which  
 said twentieth day of May, in the year of our Lord  
 one thousand nine hundred and seven, the said  
 Delia Congilio, at the City of Trenton, in the 40  
 County of Mercer, in said State, of the mortal  
 wound aforesaid died. And so the Grand Inquest  
 aforesaid, upon their respective oath aforesaid do

say, that the said Michael Tomassi, the said Delia Congilio in manner and form aforesaid, feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

10 And the Grand Inquest aforesaid, upon their respective oath aforesaid, do further present that the said Michael Tomassi, on the twentieth day of May, in the year of our Lord one thousand nine hundred and seven, with force and arms, at the City of Lambertville aforesaid, in the County of Hunterdon aforesaid, and within the jurisdiction of this Court, in and upon the said Delia Congilio, in the peace of God and of this State, then and there being feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought did make an assault; and that the said Michael Tomassi, her the said Delia Congilio, then and there feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

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30 And the Grand Inquest aforesaid, upon their respective oath aforesaid, do further present that the said Michael Tomassi, on the twentieth day of May, in the year of our Lord one thousand nine hundred and seven, with force and arms, at the City of Lambertville, aforesaid, in the County of Hunterdon aforesaid, and within the jurisdiction of this Court, in and upon the said Delia Congilio, in the peace of God and of this State, then and there being feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought, did make an assault; and that the said Michael

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Tomassi, a certain revolver, of the value of One dollar, then and there loaded and charged with one leaden bullet, which revolver, he, the said Michael Tomassi in his right hand then and there had and held to, against and upon the said Delia Congilio, then and there feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought, did shoot and discharge; and that the said Michael Tomassi, with the leaden bullet last aforesaid, out of the revolver aforesaid, then and there by force of the gunpowder, shot and sent forth as aforesaid, the said Delia Congilio, in and upon the left side of her, the said Delia Congilio, then and there feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought did strike, penetrate and wound, giving to the said Delia Congilio then and there with the leaden bullet last aforesaid, so as aforesaid shot, discharged and sent forth, out of the revolver aforesaid by the said Michael Tomassi, in and upon the left side of her, the said Delia Congilio, a little above the left hip of her, the said Delia Congilio, one mortal wound, of the depth of six inches, and of the breadth of half an inch, of which said mortal wound, the said Delia Congilio, from one o'clock in the afternoon of said twentieth day of May, in the year aforesaid, until seven o'clock in the afternoon of said twentieth day of May, in the year aforesaid, as well at the City of Lambertville aforesaid, in the County of Hunterdon aforesaid, as also at the City of Trenton, in the County of Mercer in said State, did languish, and languishing did live; on which said twentieth day of May, in the year of our Lord one thousand nine hundred and seven, the said Delia Congilio, at the City of Trenton, in the County of Mercer, in said State, of the mortal wound aforesaid, died. And so the Grand Inquest aforesaid, upon their respective oath aforesaid, do

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say, that the said Michael Tomassi, the said Delia Congilio, in manner and form aforesaid, feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided, against the peace of this State, the government of the same.

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JAMES N. PIDCOCK,  
Foreman.

Geo. K. Large,  
Prosecutor of the Pleas.

Endorsed:

HUNTERDON OYER & TERMINER,

SEPTEMBER TERM, A. D. 1907.

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<p>The State</p> <p>vs.</p> <p>Michael Tomassi.</p>	}	<p>Indictment for Murder.</p>
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Geo. K. Large,  
Prosecutor of the Pleas.

A True Bill,

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James N. Pidcock,  
Foreman.

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And afterwards, that is to say, at the same Court of Oyer and Terminer, held at Flemington aforesaid, in the County aforesaid, on Monday, the sixteenth day of September, in the year last aforesaid, before Honorable Alfred Reed, Justice of the Supreme Court of the State of New Jersey, and John L. Connet, Esquire, Judge of the Court of Common Pleas, in and for the said County, comes the said Michael Tomassi, in his proper

person, and now here, touching the premises  
 in the said indictment above specified, and  
 charged upon him, being asked in what man-  
 ner he will acquit himself thereof, he says he is  
 not guilty thereof, and of this he puts himself upon  
 the Country; and the said George K. Large,  
 Esquire, who prosecutes for the State in this behalf,  
 does likewise the same, and afterwards, that is to  
 say, at a Court of Oyer and Terminer, held at  
 Flemington aforesaid, in the County aforesaid, on  
 Monday, the thirtieth day of September, in the year  
 last aforesaid, before the Honorable Alfred Reed,  
 Justice of the Supreme Court of the State of New  
 Jersey, and John L. Connet, Esquire, Judge of the  
 Court of Common Pleas, in and for said County,  
 the said Michael Tomassi being set to the bar,  
 George K. Large, who prosecutes for the State,  
 moves the trial of the indictment aforesaid, where-  
 fore, let a jury thereupon come, on this day last  
 aforesaid, before this Court of Oyer and Terminer  
 aforesaid, of good and lawful men of the County  
 of Hunterdon aforesaid, by whom the truth of the  
 matter may be better known, and who are not of  
 kin to the said Michael Tomassi, to recognize upon  
 their oaths whether the said Michael Tomassi be  
 guilty of the murder in the indictment aforesaid  
 above specified, or not guilty because as well the  
 said George K. Large, who prosecutes for the State  
 in this behalf, as the said Michael Tomassi have put  
 themselves upon the said jury, and the jurors of the  
 said jury, by Elisha W. Opdycke, Esq., Sheriff of  
 the said County of Hunterdon, for this purpose em-  
 panelled and returned agreeably to the statute in  
 such case made and provided, to wit: Joseph R.  
 Mathews, Elmer Heins, Willam M. Holjes, Theo-  
 dore Van Camp, Henry Pence, George W. Bate-  
 man, Samuel Kitchen, George Arnwine, Benjamin  
 F. Apgar, Isaac B. Anderson, Lafayette H. Abbott  
 and Mahlon Smith, who, being chosen, tried and

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sworn, to speak the truth of and concerning the premises, upon their oaths say, that the said Michael Tomassi is guilty of murder in the first degree, on him above charged in the form aforesaid, and as by the indictment aforesaid is above supposed against him, and thereupon the said Michael Tomassi is remanded to the custody of the Sheriff of the County of Hunterdon aforesaid, and afterwards, that is to say, at the same Court of Oyer and Terminer, holden at Flemington aforesaid, in the County aforesaid, on Monday, the twenty-eighth day of October, in the year last aforesaid, before the Honorable Alfred Reed, Justice of the Supreme Court of the State of New Jersey, and John L. Connet, Esquire, Judge of the Court of Common Pleas, in and for the same County of Hunterdon, the said Michael Tomassi, being set at the bar, George K. Large, who prosecutes for the State in this behalf, moves for judgment on the said Michael Tomassi, the defendant aforesaid, whereupon the Court now here do order and adjudge, and the judgment of the Court is that the said Michael Tomassi suffer death as the punishment for said crime, at the time and place, and in the manner prescribed by law.

I do herewith send to our Court of Errors and Appeals in the last resort in all causes, the return of the caption, indictment, together with all things touching and concerning the same, as fully and entirely as the same remain of record in my office. In witness whereof, I have hereunto set my hand and the seal of said Court at Flemington, this twentieth day of November, A. D. nineteen hundred and seven (1907).

[SEAL.] O. A. FARLEY,  
Clerk of Oyer and Terminer,  
Hunterdon County,  
New Jersey.

State of New Jersey :

The State of New Jersey to the Honorable Alfred Reed, one of the Justices of the Supreme Court of the State of New Jersey, and presiding Judge of the Court of Oyer and Terminer of the County of Hunterdon, and Honorable John L. Connet, holding said Court of Oyer and Terminer at Flemington in and for the County of Hunterdon, September Term, in the year of our Lord nineteen hundred and seven.

[SEAL.] Because in the indictment, record and proceedings and in the giving of judgment upon said indictment against Michael Tomassi, late of the City of Lambertville, in the County of Hunterdon, for that he did on the twentieth day of May in the year of our Lord one thousand nine hundred seven, at the City of Lambertville, in the County of Hunterdon aforesaid, wilfully, feloniously, and of his malice aforethought, did kill and murder one Delia Congilio, &c.

Which indictment was found by the Grand Jury of the said County of Hunterdon, at the said September Term, of the said Court of Oyer and Terminer in the said County, in the said year, one thousand nine hundred seven, and the said defendant after being tried and found guilty in said Court of Oyer and Terminer of Hunterdon County on said indictment of murder in the first degree was on the twenty-eighth day of October in the year nineteen hundred and seven, sentenced by said Court of Oyer and Terminer, to suffer the death penalty at the time and place and in the manner provided by law in the week commencing the sixteenth day of December in the year nineteen hundred and seven and the principal keeper of the State Prison of the

State of New Jersey was thereby commanded to execute said sentence.

10 And in the said indictment record, judgment and proceedings as it is said manifest error having intervened to the great damage of the said Michael Tomassi, as from his complaint we have received information. We being willing in this behalf to correct the error in due form and manner, if any there be, and that speedy justice be done to him the said Michael Tomassi;

20 Command you, that if judgment be therein given 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 to be held at Trenton, the thirtieth day of November, in the year nineteen hundred and seven and this writ that the record and proceedings aforesaid, being inspected we may further cause to be done thereupon for correcting, that error what of right and according to the laws and customs of New Jersey ought to be done.

30 Witness, the Honorable William J. Magie, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, aforesaid, the thirteenth day of November, nineteen hundred and seven.

S. D. DICKINSON,  
Clerk.

Rudolph A. Braun,  
Attorney.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

THE STATE OF NEW JERSEY,  
Defendant-in-Error,

vs.

MICHAEL TOMASSI,  
Plaintiff-in-Error.

In Error.  
To the Hunterdon  
Court of Oyer and  
Terminer.

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**Assignment of Errors.**

Afterwards, to wit, on the thirtieth day of November, 1907, comes the said Michael Tomassi, by Rudolph A. Braun, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit: 20

First. Because, on the trial of the said indictment in the Hunterdon County Court of Oyer and Terminer, at the September 1907 Term, of said Court, the said defendant, Michael Tomassi, was found guilty by the jury impanelled for said trial of murder in the first degree, whereas, by the law of the land, the said defendant should have been acquitted on the ground that the killing of said Delia Congillio was in the necessary defence of defendant's life. 30

Second. Because, on the trial of said indictment, as aforesaid, and at and upon the trial of said issue between the parties aforesaid, the Court before whom, etc., permitted the Prosecutor of the Pleas, of said County against the objection of defendant's counsel, to ask one Postala Congillio, a witness, produced on the part of the State, the following question: "Subsequent to that, or after 40

your brother left the house, did you observe Michael Tomassi in the house with your mother or near your mother?" Whereas, by the laws of the land the said question should have been excluded, to which action of the Court, the defendant duly excepted, then and there.

10 Third. Because, the Court before whom said trial, etc., as aforesaid, refused to permit counsel for defendant to put the following question to the said Postala Congillio, a witness as aforesaid: "Your mother didn't seem to be afraid, did she?" Whereas, by the law of the land, said question should have been allowed. To which refusal of the Court, the defendant duly excepted.

20 Fourth. Because, on the trial of the said indictment, as aforesaid, the said Court, before whom, etc., permitted the said Prosecutor of the Pleas, against the objection of the defendant to ask of one Victoria Strollo, a witness, produced by the State, the following question: "After Mrs. Congillio had made the statement that she was bound to die, or that she was going to die in five (5) minutes, and stated that Michael Tomassi had shot her, did she state why he had shot her?" Whereas, by the law of the land, said question should have been excluded on the ground that the same was leading on  
30 a material point in the case, to which action on the part of the Court, defendant then and there excepted.

Fifth. Because, on the trial of said indictment, as aforesaid, the Court before whom, etc., permitted the said Prosecutor of the Pleas to put in evidence a certain pan. Whereas, by the law of the land, the same should have been excluded, as not being  
40 identified.

Sixth. Because on the trial of said indictment as

aforesaid, the Court before whom, etc., permitted the Prosecutor of the Pleas to ask of Michael Tomassi, the following question: "Now, Michael, have you not been cautioned by friends of yours to stop carrying a loaded revolver?" Whereas by the laws of the land, said question should have been excluded.

Seventh. Because, on the trial of the indictment as aforesaid, the Court, before whom, etc., refused to permit counsel for the defendant, to ask the following question: "What was the general character of Delia Congillio, was it good or bad?" Whereas, by the laws of the land, the said question should have been permitted. 10

Eighth. Because, on the trial of said indictment, as aforesaid, the Court, before whom, etc., refused to permit counsel for defendant to ask the following question: "Do you know whether her general reputation (referring to Delia Congillio), was good or bad?" Whereas, by the law of the land, said question should have been permitted. 20

Ninth. Because, on the trial of said indictment, as aforesaid, the defendant offered to show by testimony, the general bad character of the said deceased, Delia Conigillio, in order to establish her unworthiness of belief and that the Court before whom, etc., refused to permit such testimony to be given. Whereas, by the law of the land, the said offer should have been accepted and the defendant permitted to show the general bad character of said deceased. 30

Tenth. Because, the charge of the Court, on the trial of said issue, etc., was as a whole and in each and every part of it, illegal.

And the said Michael Tomassi prays that the judgment aforesaid for errors aforesaid, and for other errors therein, may be reversed, annulled and 40

altogether holden for nothing and that he may be restored to all things, which he has lost by reason of said judgment.

RUDOLPH A. BRAUN,  
Attorney.

**Specifications of Causes for Reversal.**

10 NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

20	<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">MICHAEL TOMASSI, Plaintiff-in-Error.</p>	<p>On Writ of Error. To the Hunterdon County Court of Oyer and Terminer.</p>
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30 The entire record of the proceedings had upon the trial of Michael Tomassi, in the Hunterdon County Court of Oyer and Terminer, before the Honorable Alfred Reed, Justice of the Supreme Court, and the Honorable John L. Connet, Judge of the Court of Common Pleas for said County, holding the said Court of Oyer & Terminer, September Term, 1907, before whom said trial was had, having been returned by the plaintiff-in-error, with the writ of error, bringing up the bill of exceptions as signed and sealed in the cause, as appears from the certificate of the said Hon. Alfred Reed, Justice, as aforesaid, and the plaintiff-in-error, on the trial below having, as is said suffered manifest wrong and injury in the admission and rejection of testimony and in the charge of the Court, and in the denial of certain matters by the Court, does here-  
40 by specify for the causes in the record relied upon by him for relief and reversal as follows:

That is to say, first, he hereby adopts the assignment of errors filed in said cause, and the errors therein specified in the manner and form as therein expressed severally and respectively, as specifications of certain of the causes under Section 137 of the act for the punishment of crimes, revision 1898, and as a part of the specifications on which he relies for relief or reversal in this cause and in addition to the said errors so assigned, specifies the following additional causes for relief and reversal:

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Second. Because the evidence adduced on the trial of the said indictment of the said defendant for killing Delia Congillio is of such a nature, that when fully and fairly considered, it does not satisfy a considerate mind beyond a reasonable doubt, that the said Michael Tomassi was guilty of the crime of murder in the first degree in the said killing of the said Delia Congillio.

20

Third. Because on the trial of said indictment as aforesaid, the said Court of Oyer and Terminer, for said Hunterdon County, before whom, etc., refused to permit the jurors of the panel, whereof mention is made in the said record and proceedings, and from which the trial jury was selected, to be sworn on their *voir-dire* touching their competency as jurors.

30

Fourth. Because on the trial of the said indictment, etc., the said defendant was tried by a jury drawn in the ordinary way from the general panel, and not by a jury selected from a list of forty-eight jurors drawn from the box in the presence of the Judge of the Court of Quarter Sessions of said County, or the Clerk thereof from the general panel of jurors that had been summoned to attend at the term at which said defendant was to be tried with such additions thereto, as

40

were necessary to make up the number to forty-eight, as provided by Section 82 of the Act relating to Courts having criminal jurisdiction, etc., Revision, 1898.

Fifth. Because the said defendant, Michael Tomassi, was not served two entire days before his said trial with a panel of forty-eight jurors, drawn  
10 and selected according to the provisions of Section 82 of the Act last aforesaid.

Sixth. Because, the said trial of the said defendant on said indictment in the Hunterdon County Court of Oyer and Terminer, was a mistrial by reason of the illegal composition of the jury impanelled for the trial of said defendant as aforesaid.

20 Seventh. Because, the said trial of the said defendant in said indictment as aforesaid, became and was a mistrial for the reason that one Edgar W. Hunt, Esq., an attorney-at-law of the State of New Jersey, and the private counsel of one Frank Congillio, and being retained and paid by him, was permitted by the said Prosecutor of the Pleas of said County to assume undue importance, power, authority in the trial of said indictment and to  
30 assist in preparation and trial of the cause, to supervise and direct the making of the diagram of the scene of homicide, and to decide what should be included therein, and omitted therefrom, and to sum up the evidence to the jury on behalf of the State.

Eighth. Because, the judgment and sentence of the Court that the said Michael Tomassi suffer the death penalty in the manner and at the time  
40 and place provided by law, is void for uncertainty.

Ninth. Because the act entitled, an act concerning the infliction of the death penalty ap-

proved April 4, 1906, under which the said judgment and sentence was pronounced, is unconstitutional and void.

Tenth. Because the said Michael Tomassi, on the trial of said indictment as aforesaid, was convicted of the crime of murder in the first degree without due process of law.

Eleventh. Because, on the trial of the said indictment as aforesaid, the Court, before whom, etc., permitted one Bishop, a witness procured and sworn on behalf of the State, to testify to a statement made by the deceased in the absence of the defendant, and without proof that the deceased made the statement under a sense of impending death.

Twelfth. Because, on the trial of said indictment aforesaid, the Court before whom, etc., permitted testimony to be given by divers witnesses as to statements made by the deceased, as to the manner of the occurrence of the homicide in the absence of the said deceased, and without proper and sufficient proof as dying declaration.

Thirteenth. Because, the Court told the jury in the charge that the theory of the State was that the said killing was done in an attempt to ravish the deceased without calling the attention of the jury, to the want of testimony to support that theory.

Wherefore, he said Michael Tomassi, prays that judgment and sentence aforesaid, for reasons aforesaid, may be reversed and that he may be relieved from the same.

RUDOLPH A. BRAUN,

Attorney.

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LIST OF THE NAMES OF DULY QUALIFIED  
JURORS

Drawn to serve at the Circuit Court, Court of Oyer and Terminer, Court of Common Pleas and Court of Quarter Sessions to be holden at Flemington, in and for the County of Hunterdon, on the second Tuesday of September, A. D. nineteen hundred and seven; on the fourth Tuesday before the commencement of the regular September Term of the year nineteen hundred and seven, of said Courts, to wit: On the thirteenth day of August, A. D. nineteen hundred and seven, at the hour of ten o'clock in the forenoon, at the Court House in said County, by Elisha W. Opdycke, Sheriff of said County, in open Court, in the presence of the County Clerk and before the Court of Common Pleas of said County, pursuant to the directions of the statute in such case made and provided, to wit:

	Names.	Townships.
	1. Eugene Fox,	Lambertville.
	2. Isaac Riley,	East Amwell.
	3. Newton Eick,	Union.
	4. Theodore VanCamp,	Lambertville.
	5. Charles H. Curtis,	Alexandria.
	6. John Reardon,	Raritan.
30	7. George W. Bateman,	East Amwell.
	8. Samuel Kitchen,	Delaware.
	9. Benjamin F. Apgar,	Junction.
	10. Cyrus J. Bissey,	Delaware.
	11. James Slockbower,	Town of Clinton.
	12. George Arnwine,	Delaware.
	13. Daniel Mullaly,	Lambertville.
	14. Howard Sutton,	Tewksbury.
	15. Edward C. Bloom,	Holland.
40	16. John Neighbour,	Tewksbury.
	17. Elmer Heins,	Lambertville.
	18. William M. Holjes,	Union.

19. Josiah Butler,	Frenchtown.	
20. William E. Phillips,	Holland.	
21. Philip A. Hazlett,	Bethlehem.	
22. James Little,	High Bridge.	
23. John S. Miller,	Tewksbury.	
24. David O. Hoagland,	Readington.	
25. Jordan R. Fox,	Alexandria.	
26. Mahlon Smith,	Clinton.	
27. William H. Gandey,	Lambertville.	10
28. Henry Pence,	Lebanon.	
29. John Q. Adams,	Raritan.	
30. George E. Britton,	Raritan.	
31. Joseph O. Wagoner,	Kingwood.	
32. John W. Larison,	West Amwell.	
33. John Woolery,	Frenchtown.	
34. Lafayette H. Abbott,	West Amwell.	
35. John W. Hall,	Readington.	
36. Isaac B. Anderson,	Raritan.	20
37. Michael Keifer,	Bethlehem.	
38. David H. Agans,	Readington.	
39. George Race,	Alexandria.	
40. Peter Rockafellow,	Clinton.	
41. William Myers,	Bethlehem.	
42. Amos Thatcher,	Raritan.	
43. Samuel E. Moon,	Lambertville.	
44. Joseph R. Mathews,	Franklin.	
45. Robert Roseberry,	Bloombury.	30
46. Isaac Baldwin,	Union.	
47. Walter Smith,	Bloomsbury.	
48. Archibald Fisher,	Lebanon.	

State of New Jersey, }  
 Hunterdon County, } ss.:

I, Elisha W. Opdycke, Sheriff of the County of Hunterdon, do hereby certify that the foregoing is the panel of jurors selected to serve at the ensuing Circuit Court, Court of Oyer and Terminer, Court of Common Pleas and Court of Quarter Sessions

to be holden at Flemington, in and for the County of Hunterdon, on the second Tuesday of September, A. D. nineteen hundred and seven.

Witness my hand this thirteenth day of August, A. D. nineteen hundred and seven.

ELISHA W. OPDYCKE,  
Sheriff.

10 Drawn in the presence of  
O. A. Farley, Clerk.

I, the undersigned Judge of the Court of Common Pleas of the County of Hunterdon, do hereby certify that the jurors named in the foregoing list were selected in all respects according to the provisions of an act entitled "A further supplement to An Act entitled An Act concerning Juries" (revision), approved March twenty-seventh, eighteen  
20 hundred and seventy-four, which Supplement was approved April sixteenth, nineteen hundred and six.

JOHN L. CONNET,  
Judge of Common Pleas.

State of New Jersey, }  
County of Hunterdon, } ss.:

30 I, Oliver A. Farley, Clerk of the County of Hunterdon and Clerk of the Court of Common Pleas, Court of Oyer and Terminer, and Court of Quarter Sessions of said County, do hereby certify the foregoing to be a true copy of the list of jurors drawn to serve at the September Term, A. D. 1907, of said Courts.

In Testimony Whereof I have hereto set my hand and the seal of said County and  
40 [SEAL.] Courts this 20th day of September, A. D. 1907.

O. A. FARLEY,  
Clerk.

I, Elisha W. Opdycke, Sheriff of the County of Hunterdon, do hereby certify that the list of jurors hereto attached is the only list of jurors served by me upon Michael Tomassi, indicted for the murder of Delia Congilio.

E. W. OPDYCKE,  
 Sheriff.  
 Per Jacob Dilti,  
 Under Sheriff.

10

State of New Jersey, }  
 County of Hunterdon, } ss.:

I, Oliver A. Farley, Clerk of the County of Hunterdon, in the State of New Jersey aforesaid, do hereby certify the foregoing to be a true copy of a certain certificate of service of panel of jurors as the same is filed on the 4th day of December, A. D. 1907, in the Clerk's office of said County.

20

In Testimony Whereof, I have hereunto set my hand and the seal of said County this  
 [SEAL.] 4th day of December, A. D. 1907.

O. A. FARLEY,  
 Clerk.

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HUNTERDON COUNTY OYER AND TERMINER.

10	<p>THE STATE</p> <p>VS.</p> <p>MICHAEL TOMASSI.</p>	}	Indicted for Murder.
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Transcript of testimony and so forth in the above-entitled cause in the Hunterdon County Court of Oyer and Terminer, on Monday, September 30, 1907, at Flemington, N. J., before Hon. Alfred Reed, Presiding Justice, and Hon. John L. Connet, J., and a Jury.

20 For the State appear GEORGE KNOWLES LARGE, Esq., Prosecutor of the Pleas of Hunterdon County; GEORGE H. LARGE, Esq., and EDGAR L. HUNT, Esq.  
For Defendant appear RUDOLPH BRAUN, Esq. and CHARLES M. MASON, Esq.

The Court having convened:

30 Mr. Mason: May I ask if Mr. Butler was on the original jury drawn at the beginning of the term?

The Court: He was on that jury.

Mr. Mason: And also was he excused on the other cases this term?

The Court: Undoubtedly.

Mr. Mason: This is the first case this term?

The Court: Yes. Mr. Prosecutor, are you prepared to move any cases?

40 The Prosecutor: Yes. I move the case of the State against Michael Tomassi, charged with the murder of Delia Congillio.

Mr. Braun: If the Court please, I would

like to make application for a copy of the testimony for the defendant. It is true that we have received a fee, but it is so low that I can well and honestly say that the prisoner cannot afford to pay for a copy of the testimony.

The Court: What fee did you receive?

Mr. Braun: We have up to date received about \$300. 10

The Court: What fee have you secured?

Mr. Braun: An additional fee of \$100. We made arrangements for \$500. \$101 of those \$500 are in the hands of an attorney of this town, who received the money without the authority of Mr. Tomassi. That money has been assigned to us, but we have not as yet received it, and whether we will get it or not we do not know. 20

The Court: That is all the money you have received or will receive from any of the relatives?

Mr. Braun: That is all, yes, sir. I can say to your Honor that it has cost us, up to date, about \$150 to work up our case; we have had actual disbursements—

The Court (interrupting): You will have to make an arrangement with the stenographer for your own copy; we cannot furnish it at the expense of the County. 30

Mr. Mason: I wish it to appear on the record that the defendant having applied for a copy of the testimony for use in his trial, being unable to pay for it, is refused by the presiding Judge.

The Court: All right. Is the defendant in Court? 40

Mr. Mason: He is. We would like to examine the jurors on their *voir dire*.

SAMUEL E. MOON, called.

The Clerk: Juror, look upon the prisoner; prisoner, look upon the juror. Do you challenge?

Mr. Mason: We would like to have the juror sworn on his *voir dire*.

10 The Court: You cannot do it unless you challenge.

Mr. Mason: I would like to have it appear that we would like to have him sworn on his *voir dire* prior to challenging him.

The Court: The practice is first to challenge and then to swear.

Mr. Mason: We challenge all of them. We would like to have him sworn.

20 The Court: The rule is, if you want to examine a juror on his *voir dire*, that you must challenge for cause—to the favor, or whatever your challenge is—and if it is for bias or any other cause then you examine him for that particular cause. If you have any authority for any different practice you may interpose it now.

Mr. Braun (addressing the juror): What is your business.

30 The Court: Wait a moment; you have not challenged him.

Mr. Mason: I challenge him for cause.

The Court: What cause?

Mr. Mason: For bias.

The Court: All right; the witness is challenged because he is biased in this case. Swear the juror.

(The juror having been sworn.)

40 Examined by Mr. Mason.

Q. Where do you live?

A. Lambertville.

Q. What is your business?

A. Clerk.

Q. Clerk for whom?

A. The Lambertville Rubber Company.

Q. Are you acquainted with Mr. Alfred T. Lee,  
Mayor of Lambertville?

A. Yes, sir.

Q. Have you talked with him about this case?

A. No, sir. 10

Q. Have you formed any opinion as to the guilt  
or innocence of the prisoner, Michael Tomassi?

A. I have.

Mr. Large: That question is objected to  
in that form.

The Court: Let him answer it if he wants  
to.

Q. Is your opinion of such a nature that it could 20  
not be changed by the evidence to be produced in  
the case?

A. I think not.

Q. It is not?

A. I think not.

Q. I didn't hear you.

A. I think not.

Q. You think not?

A. Yes, sir. 30

Mr. Mason: I ask that the challenge be  
sustained.

By the Court:

Q. Do you mean to say that you, sitting as a  
juror in this case, could not find a true verdict  
based upon the testimony delivered in this case  
after hearing such testimony?

A. No, sir. 40

Q. Do you mean to say that you could not?

A. No, sir; no, sir. This is my first appearance  
on the stand and I am nervous.

Q. Sitting here as a sworn juror do you say that after hearing the testimony you could decide according to the sworn testimony delivered before you and give the defendant the benefit of any reasonable doubt—do you mean to say that you could?

A. I could; yes.

10                   The Court: The challenge is overruled.  
                       Mr. Mason: The juror is challenged peremptorily.

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JOSEPH R. MATHEWS, called as a juror.

The Clerk: Juror, look upon the prisoner; prisoner look upon the juror. Do you challenge?

20                   Mr. Mason: Challenged for cause.  
                       The Court: What cause?

Mr. Mason: Bias.

The Court: Swear the juror.

(The juror having been sworn.)

Examined by Mr. Mason.

Q. What is your business?

A. Farmer.

30                   Q. Have you read in the newspapers an account of this accusation or charge against Michael Tomassi?

A. I have.

Q. How old are you, Mr. Mathews?

A. I am sixty.

Q. Have you formed an opinion of the guilt or innocence of this prisoner?

A. I have not.

Q. Have you any prejudice against an Italian?

40                   A. No, sir, I have not; I never have seen many of them.

Q. You would bring in a verdict in this case in

the same way as you would in the trial of any other man?

A. Go according to the evidence I would.

Q. When were you last on the jury?

A. Oh, I can't tell you; may be ten or a dozen years.

Mr. Mason: That is all.

The Court: Swear the juror. 10

Mr. Mason: Just a minute your Honor.

He is acceptable.

The Court: Swear the juror.

(Whereupon Joseph R. Mathews was sworn as the first juror.)

AMOS THATCHER, called.

The Clerk: Juror look upon the prisoner; 20  
prisoner look upon the juror. Do you challenge?

Mr. Mason: Challenged for cause—bias.

The juror having been sworn:

Examined by Mr. Mason.

Q. What is your business?

A. Farmer.

Q. Have you read an account of this affair at 30  
Lambertville?

A. I have; yes, sir.

Q. Have you formed an opinion as to the guilt  
or innocence of the defendant?

A. I have not.

Q. Have you any prejudice against an Italian?

A. No, sir; I have not.

Q. Are you a married or single man?

A. Married. 40

Q. When was the last time you served on the  
jury, Mr. Thatcher?

A. About a year ago, I should imagine; something like that.

Q. A year, or less than a year?

A. No, about a year.

Q. When was the last time; do you remember exactly?

A. No; it was less than a year; last summer sometime I was on a struck jury.

10

Mr. Mason: Challenged on the ground that he has served on a jury within a year.

Witness: I was on a struck jury last fall.

The Court: It does not sustain your challenge; that is not for bias. The challenge is overruled.

Mr. Mason: I pray an exception.

The Court: Why?

20

Mr. Mason: On the ground that the juror has served on the jury within less than a year.

The Court: Have you any law that says that is a ground of challenge?

Mr. Mason: I think your Honor will look in the Jury Act—

The Court (interrupting): Show me the Jury Act.

30

Mr. Mason: I haven't a library with me.

The Court: Of course, if a juror has served on a jury within less than a year if he does not want to serve that is the privilege of the juror, but I do not think it is a cause for challenge.

By the Prosecutor:

Q. When were you on the struck jury?

A. Last summer.

40

Q. What was the case?

A. Crater.

Q. That was over a year ago, wasn't it?

A. I forget exactly. It was all of a year, if not a little more.

By Mr. Large:

Q. That was a lunacy commission, over a year ago. Mr. Parker was in the case.

A. He was there; yes.

10

Mr. Large: It was no regular panel of jurors; it was a lunacy commission; that was all.

The Court: Yes.

Witness: It was over a year ago.

The Court: You may interpose your challenge if you care to.

Mr. Mason: I challenge for cause—that is, that he has served on a jury within less than a year.

20

Mr. Large: That jury that you served on was in the H. H. Herter case?

Witness: Yes.

Mr. Large: Now, your attention being called to it, do you think it was not more than a year ago?

Witness: I think it was a little more than a year ago. Mr. Parker knows.

30

Mr. Large: Was it an ordinary panel of jurors or some special case?

Witness: A special, twenty four panel case.

Mr. Large: For what purpose?

Witness: Lunacy, I think.

Mr. Large: To ascertain whether he had mental capacity?

Witness: Yes, sir.

40

Mr. Large: I will call Mr. Parker on the question of time, Mr. Thatcher not being perfectly clear about it.

Mr. PARKER, called.

Examined by Mr. Large:

Q. Were you employed in the Herter case as attorney?

A. I was the solicitor of the complainant in the proceeding or petition.

10 Q. Do you remember on that trial, Mr. Thatcher, the witness who preceded you being sworn as a witness on that case?

Mr. Mason: I object to this on the ground that the record is the best evidence.

The Court: Note the objection.

Mr. Mason: We challenge the juror peremptorily now.

The Court: Wait until we get through with this witness.

20

Q. What was the object of that proceeding?

A. It was an inquest in Chancery as to the mental capacity of Herter to attend to this business?

Q. When was that jury in service?

A. It was in the summer time; I think in the month of July, 1906. You also asked me whether Mr. Thatcher was a juror in that case. My recollection is that he was. Of course, I haven't the record here.

30

Mr. Mason: We challenge the juror peremptorily.

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JOHN P. LARISON, called.

The Court: Wait one moment. Where is that juror that was challenged peremptorily?

40 Mr. Mason: I think you overruled the challenge for cause.

The Court: Yes, he served as a juror in a proceeding *inquiendo de lunatico*; that does not apply to the general panel.

The Clerk (to John P. Larison, the juror last called) : Juror, look upon the prisoner; prisoner, look upon the juror. Do you challenge?

Mr. Mason: It is John W.

The Sheriff: He was served as John W. Larison; his name is John P.

Mr. Mason: He was served as John W. Larison? 10

The Sheriff: Well, his name was drawn from the box as John W.

Mr. Mason: If there is a mistake in the name, I do not think this is the man that was served. I challenge the juror.

The Court: For what?

Mr. Mason: On the ground that he is not the juror whose name was drawn from the box. 20

The Court: Proceed to prove it. Swear him.

(The juror having been sworn.)

Examined by Mr. Mason:

Q. Mr. Larison, have you your summons that was served upon you as a juror?

A. Yes, sir.

Q. May I see it? 30

A. It ain't here; home I guess; I haven't got it here.

Q. Do you remember how that—

Witness (interrupting) : Yes; here it is. I didn't think I had it in my pocket.

Q. What is your right name?

A. John P., but oftentimes they call me John W.

Mr. Mason: Never mind. (Indicating.) 40

There is the summons. The juror says his name is John P. Larison.

The Court: Well, what of it?

Witness: They always, when they have subprnaed me, had it W.

Mr. Mason: I challenge the juror on the ground that he is not the man that was drawn from the box.

By the Court:

10 Q. Do you know of any other John W. Larison?

A. No, sir.

Q. Or John P.?

A. No, sir; I don't know of any other.

The Court: The challenge is overruled.

Mr. Mason: I pray an exception.

The Court: You are not entitled to the challenge.

20 Mr. Mason: I think the cases hold otherwise.

The Court: Have you any case that holds that?

Mr. Mason: I think the Encyclopedia of Law says it.

The Court: Well, I will not send for it.

By Mr. Mason:

30 Q. When did you last serve on the jury, Mr. Larison?

A. Three of four years ago.

Q. Are you acquainted with the—

The Court (interrupting): What is the ground of challenge?

Mr. Mason: I challenge on the ground of bias.

The Court: Let it appear on the record.

40 Q. Are you acquainted with or a client of the Prosecutor or Ex-Senator Large?

A. I have seen him; never knew him well; have no personal acquaintance with him.

Q. Have you read an account of this affair?

A. Yes, sir.

Q. Where did you read it?

A. In the paper.

Q. In which paper?

A. In the Philadelphia Record.

Q. Have you formed such an opinion of the guilt or innocence of this man charged with committing the crime that you could not change you opinion by the evidence in the case? 10

A. I have formed my opinion.

Q. I asked you if you had formed such an opinion as that it could not be changed by the evidence produced in the case?

A. Yes, I guess I have.

Q. What say?

A. I think I have. 20

Mr. Mason: Challenged for cause.

By Mr. Large:

Q. The inquiry now is whether or not you have formed such a fixed opinion, from reading of this matter in the Philadelphia Record, or otherwise, that the testimony would not change it?

A. It would have to be pretty good testimony. If it was clear I could change my mind, of course. 30

Q. Would you then be able to render a verdict in accordance with the evidence?

A. I might.

By the Court:

Q. It is not a matter of whether you might or might not. The question is whether if you, sitting here as a juror in this case, could give a verdict according to the evidence? 40

A. Yes, sir, if the evidence was clear I could.

The Court: Challenge overruled.

By Mr. Mason:

Q. What do you mean by saying if it was clear?

A. If it was a clear case, you know. If a fellow could change his mind it would be all right.

Mr. Mason: I challenge for bias.

The Court: Overruled.

10 Mr. Mason: I challenge peremptorily and I take an exception to the overruling of the challenge for bias.

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ELMER HEINZ, called.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

20 Mr. Mason: Challenged for cause.

The Prosecutor: What cause?

Mr. Mason: Bias.

(The juror having been sworn.)

Examined by Mr. Mason:

Q. You are a resident of Lambertville?

A. Yes, sir.

Q. Are you acquainted with the Mayor of Lambertville, Alfred T. Lee?

30 A. Yes, sir.

Q. Have you talked with him concerning this case?

A. I have not.

Q. Have you talked with the police officials of Lambertville, or the Chief of Police?

A. No, sir.

Q. What is your business?

A. Hardware.

40 Q. Have you read an account of this affair?

A. I wouldn't say positively that I had.

Q. You have heard of it?

A. Yes, sir.

Q. You have discussed it?

A. Yes, sir.

Q. With whom?

A. Oh, I don't know; anybody; different people; nobody in particular.

Q. Anyone connected with this case?

A. Not to my knowledge.

Q. In your discussion of this case have you formed an opinion? 10

A. I have, sir.

Q. Is that such an opinion as that it could not be changed?

A. No; it could be changed.

Q. Have you any prejudice against Italians?

A. I have not.

Q. Name some of the people you have discussed this case with. 20

A. I don't know that I could do it. This case came up in general conversation; no particular person.

Mr. Mason: The juror is acceptable.  
(Sworn as juror Number 2.)

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WILLIAM M. HOLJES, sworn.

30

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: I challenge the witness for bias, if your Honor pleases, for cause.

The Court: Swear him.

(The juror having been sworn.)

Examined by Mr. Baun:

Q. Where do you live? 40

A. Pattenburg.

Q. What is your business?

A. Hotel.

Q. How old are you?

A. Fifty-seven.

Q. Are you married or single?

A. Married.

Q. Do you know the defendant in this case?

A. No, sir.

10 Q. Did you know the deceased?

Witness: Who?

Q. You have read of this case?

A. I have heard of it, yes.

Q. Have you read of it?

A. No.

Q. Have you discussed the case?

A. No.

Q. Have you formed any opinion as to the guilt  
or innocence of the defendant?

20 A. No.

Q. Have you any prejudice against Italians?

A. I don't know the gentleman.

Q. Beg pardon.

A. I don't know the gentleman.

Q. I say have you any prejudice against Ital-  
ians?

A. No, sir.

30 Mr. Braun: We are satisfied, if your  
Honor pleases.

The Court: Swear the juror.

(Sworn as Juror Number 3.)

THEODORE VANCAMP, called.

40 The Clerk: Juror look upon the prisoner;  
prisoner look upon the juror. Do you chal-  
lenge?

Mr. Braun: Challenged for bias.

The Court: Swear him.

(The juror having been sworn.)

Examined by Mr. Braun :

Q. Do you live in Lambertville?

A. Yes, sir.

Q. What is your business?

A. I am a canaler.

Q. Beg pardon?

A. I work on the canal, a Pennsylvania Railroad  
man. 10

Q. How old are you?

A. Past fifty-four.

Q. Are you a married man?

A. Yes, sir.

Q. You have heard of this case, have you not?

A. Yes, sir.

Q. Read of it?

A. I have.

Q. Discussed it? 20

A. Yes; somewhat.

Q. Did you know the deceased?

Witness: Sir?

Mr. Braun : Did you know the deceased?

A. No.

Q. Do you know the defendant?

A. I have saw him.

Q. Have you formed any opinion in the case at 30  
all—

A. (Interrupting.) No, sir.

Q.—from your reading?

A. No, sir.

Q. Have you any prejudice against Italians?

A. No.

Q. Have you discussed this case with anybody?

A. Well, different ones; no one in particular.

Q. With whom have you discussed it? 40

A. That I could not say.

Q. Anyone that you recall?

Witness: What say?

Mr. Braun: Anybody that you recall?

A. No, sir.

Mr. Braun: The juror is satisfactory.  
(Sworn as the 4th juror.)

10

JOHN NEIGHBOR, called.

The Clerk: Juror look upon the prisoner;  
prisoner look upon the juror. Do you chal-  
lenge?

Mr. Braun: Challenge for bias.

The Court: Swear him.

(The juror having been sworn.)

Examined by Mr. Braun:

20

Q. What is your business, Mr. Neighbor?

A. Well, I work for my father.

Q. What is your business?

A. I work for my father.

Q. Doing what?

A. Well, he manufactures peach baskets.

Q. Have you read of this case?

A. I have.

30

Q. Have you formed any opinion from your read-  
ing?

A. I have formed an opinion.

Q. Is that such an opinion as could not be  
changed by the evidence produced before the jury?

A. No, I don't think so.

Q. Do you mean to say it is such an opinion that  
it could be changed?

A. Could be changed.

40

Q. Have you any prejudice against Italians?

A. I have not.

Q. Do you deal with Italians?

A. I have no dealings with Italians.

Mr. Braun: Satisfactory.

The Juror: Well, I don't know; I have not been very well for sometime; I don't think I am fit to serve.

The Court: What is the trouble?

The Juror: I don't hardly know; I have sort of a kidney trouble sometimes; been doctoring for six weeks; then oftentimes I have to go to bed for a day. 10

By the Court:

Q. Who have you been doctoring with?

A. Doctor Miller of Califon. I have been working most of the time, but there have been days I couldn't work; some headache and pain in my kidneys. Of course in a case of that kind I would have to go to bed. 20

The Court: Well, unless the State chooses to excuse you—

Mr. Braun (interrupting): We will consent to the juror being excused if the Prosecutor will.

The Prosecutor: I will consent.

The Court: Yes; we don't want a person on the jury who may become sick. 30

Mr. Large: Yes; we don't want a mis-trial, and I think we had better consent.

---

HENRY PENCE, called.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: We challenge for bias. 40  
(The juror having been sworn.)

Examined by Mr. Braun:

Q. How old are you?

A. Sixty-three years old.

Q. Beg pardon.

A. Sixty-three.

Q. What is your business?

A. Farmer.

10 Q. Have you read of this case?

Witness: What say?

Mr. Braun: Have you read of this case?

A. Yes, in the town paper.

Q. Have you formed any opinion from that reading?

A. Not particular, any more than in accordance with the evidence, that is, not in particular, no.

20 Q. Have you any prejudice against Italians?

A. No.

Mr. Braun: Satisfactory.

(Sworn as juror Number 5.)

GEORGE W. BATEMAN, called.

30 The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: Challenge for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

Q. What is your business?

A. Farmer.

Q. Have you read of this case?

A. I seen it in the County paper.

40 Q. Have you discussed it?

A. No, sir.

Q. Have you formed any opinion from your reading?

A. No, sir.

Q. Have you any prejudice against Italians?

A. No, sir.

Mr. Braun: Satisfactory.

(Sworn as Juror No. 6.)

10

DANIEL MULLALY, called.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: Challenge for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

Q. What is your business? 20

A. Boiler maker.

Q. Do you know the defendant?

A. No, sir.

Q. Did you know the deceased?

A. I did not.

Q. You have read of this case, have you not?

A. I read of it when it occurred.

Q. And you have discussed it since then, have you not? 30

A. Yes, sir.

Q. With whom have you discussed it?

A. Well, different men of the town, acquaintances.

Q. Do you know Mr. Hunt?

A. Yes, sir.

Q. Are you a client of Mr. Hunt's?

A. No.

Q. Have you formed any opinion in this case? 40

A. I have.

Q. Is that such an opinion that it could not be

changed by the evidence produced before you as a sworn juror?

A. It could not.

Q. It could not be changed?

A. No, sir.

Mr. Braun: Challenged for cause.

By Mr. Large:

10 Q. I don't know whether you fully understood the last question. You told us that you had formed an opinion?

A. Yes, sir.

Q. Counsel then asked you if you had formed that opinion in such a way that under your oath as a juryman you could not be changed in that opinion by competent testimony?

A. Not very well, I couldn't.

20 Q. Do you mean to say that no evidence, no matter how strong and clear it may be, would change your views?

A. I live right there, and I don't think that could be produced; I don't think it could.

Q. Suppose that competent proof were produced, proof under which you were led to believe, or proof showing the innocence of the defendant. Would that change your opinion?

30 A. No; it could not.

By the Court:

Q. Do you mean to say that if you were sworn on the jury and evidence was brought here that left a reasonable doubt in your mind as to whether the defendant was present on that occasion and committed the crime, that you could not return a verdict according to the evidence?

40 A. I don't think I could.

The Court: Then you are not fit to serve on this jury or any other. You are discharged.

SAMUEL KETCHAM, called as a juror.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: Challenged for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

- Q. How old are you, Mr. Ketcham? 10  
 A. Forty-nine.  
 Q. And your business?  
 A. Farmer.  
 Q. Married or single?  
 A. Married.  
 Q. You have read of this case, have you?  
 A. Yes, sir.  
 Q. Formed an opinion from that reading? 20  
 A. No, sir.  
 Q. I didn't hear that answer?  
 A. No, sir.  
 Q. Any prejudices against Italians?  
 A. No, sir.

Mr. Braun: Satisfactory.

(Sworn as Juror No. 7.)

JOHN REARDON, called as a juror. 30

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: Challenged for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

- Q. What is your business? 40  
 A. Stone-cutter.  
 Q. Married or single?  
 A. Married.

Q. You have read of this case, have you?

A. Yes.

Q. Formed an opinion from that reading?

A. Yes.

Q. Is that such an opinion that the evidence produced before you as a sworn juror could not alter it?

A. No.

10 Q. You mean it could be altered by the evidence?

A. It could be altered by the evidence if the evidence was sufficiently strong.

Q. What do you mean by "sufficiently strong?"

A. Well, if it was clearly proved to me that the person was innocent, why of course—

20 Q. (Interrupting.) You mean "clearly proved" that he was innocent, or proved beyond a reasonable doubt that he was innocent?

A. Proved beyond a reasonable doubt that he was innocent.

Q. That would be sufficient for you?

A. Yes.

Q. Have you any prejudice against Italians?

A. No.

30 Q. You would just as well believe an Italian as you would a witness of any other nationality, would you, under oath?

A. Well, I think I would; yes.

Q. You think you would?

A. Yes.

Q. Don't you know you would; if he was under oath?

A. Yes.

Q. You would?

A. Yes, sir.

40 Q. And you know you would?

A. Yes, sir.

Mr. Braun: We challenge peremptorily.

GEORGE ARNWINE, called as a juror.

The Clerk: Juror look upon the prisoner;  
prisoner look upon the juror. Do you  
challenge?

Mr. Braun: Challenged for bias.  
(The juror having been sworn.)

Examined by Mr. Braun:

- Q. How old are you, Mr. Arnwine? 10  
A. Forty-seven  
Q. Married or single?  
A. Married.  
Q. Your business?  
A. Work for the Pennsylvania Railroad.  
Q. In what capacity?  
A. Pump runner.  
Q. Beg pardon.  
A. Pump runner; pump water. 20  
Q. Have you read of this case, Mr. Arnwine?  
A. Yes I read of it.  
Q. And discussed it?  
A. What say?  
Q. And discussed it?  
A. Yes, I did.  
Q. Have you formed any opinion from the read-  
ing and from those discussions?  
A. I have not. 30  
Q. No opinion?  
A. No, sir.  
Q. Any prejudices against Italians?  
A. I have not.

Mr. Braun: Satisfactory.  
(Sworn as Juror Number 8.)

BENJAMIN F. APGAR, called as a juror. 40

The Clerk: Juror look upon the prisoner;  
prisoner look upon the juror. Do you  
challenge?

Mr. Braun: Challenged for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

Q. What is your business, Mr. Apgar?

A. Tinner and plumber.

Q. Married or single?

A. Married.

10 Q. And your age?

A. Forty-eight.

Q. Read of this case, have you?

A. Well, not much of it. I have seen a heading  
or two of it.

Q. Have you formed an opinion?

A. No, sir.

Q. From that reading?

A. No, sir.

20 Q. Any prejudices against Italians?

A. No, sir.

Mr. Braun: Satisfactory.

(Sworn as Juror Number 9.)

ISAAC B. ANDERSON, called as a juror.

The Clerk: Juror look upon the prisoner;  
prisoner look upon the juror. Do you  
30 challenge?

Mr. Braun: Challenged for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

Q. What is your business, Mr. Anderson?

A. Farmer.

Q. Married or single?

A. Married.

40 Q. Have you read of this case?

A. I have.

Q. Have you discussed it?

A. No, sir.

Q. Formed any opinion from that reading as to the guilt or innocence of the defendant?

A. No, sir; I don't know as I have.

Q. Beg pardon.

A. I have not.

Q. Any prejudices against Italians?

A. No, sir.

Q. What is your age, Mr. Anderson?

A. Forty-eight.

10

Mr. Braun: Satisfactory.

(Sworn as Juror Number 10.)

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GEORGE RACE, called as a juror.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: Challenged for bias.

(The juror having been sworn.)

20

Examined by Mr. Braun:

Q. What is your business, Mr. Race?

A. Farmer.

Q. Married or single?

A. Married.

Q. And your age?

A. Fifty-two.

30

Q. Have you read of the case of The State against Tomassi?

A. I have, a little.

Q. Formed an opinion from that reading?

A. No. I don't know as I have.

Q. You don't know as you have?

A. No.

Q. Have you or have you not?

A. I have not, as I know of, formed any opinion.

40

Q. Got any prejudice against Italians?

A. No; I haven't.

Mr. Braun: We challenge peremptorily, if your Honor please.

LAFAYETTE H. ABBOTT, called as a juror.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: Challenged for bias.  
(The juror having been sworn.)

10 Examined by Mr. Braun:

Q. What is your business, Mr. Abbott?

A. Plumber.

Q. Plumber? Married man?

A. Yes, sir.

Q. Have you read of this case?

A. Yes, sir.

Q. Formed an opinion from that reading?

A. No, sir.

20 Q. Any prejudices against Italians?

A. No, sir.

Mr. Braun: Satisfactory.

(Sworn as Juror Number 11.)

JOHN W. HALL, called as a juror.

30 The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: We challenge for bias.  
(The juror having been sworn.)

Examined by Mr. Braun:

Q. What is your business, Mr. Hall?

A. Farmer.

Q. How old are you?

A. Fifty.

40 Q. Have you read of this case?

A. I have.

Q. Formed an opinion from that reading?

A. I have not.

Q. Any prejudices against Italians?

A. I have not.

Mr. Braun: We challenge peremptorily,  
if your Honor please.

JORDAN R. FOX, called as a juror.

10

The Clerk: Juror look upon the prisoner;  
prisoner look upon the juror. Do you chal-  
lenge?

Mr. Braun: Challenged for bias.

The Prosecutor: At his request, I will  
challenge Mr. Fox peremptorily.

NEWTON EICK, called as a juror.

20

The Clerk: Juror look upon the prisoner;  
prisoner look upon the juror. Do you chal-  
lenge?

Mr. Braun: Challenged for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

Q. What is your business, Mr. Eick?

A. Farming.

30

Q. Have you read of this case?

A. Yes, sir.

Q. Have you formed an opinion from that read-  
ing?

A. I don't think I have.

Q. Have you any prejudices against Italians?

A. No, sir.

Q. Beg pardon.

A. No, sir.

Q. Are you a married man, or single?

40

A. Married.

Mr. Braun: We challenge peremptorily.

EDWARD C. BLOOM, called as a juror.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: Challenged for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

10

Q. What is your business, Mr. Bloom?

A. Farmer.

Q. Have you read of this case?

A. I have.

Q. Formed an opinion from that reading?

A. I don't know as I have; no.

Q. Don't know as you have? Have you or have you not?

20

A. Well, no, I haven't. Just read it; that is all. Not much opinion to form about it. Reading it, that is all.

Q. Have you any prejudices against Italians?

A. I don't know as I have. No.

Mr. Braun: We challenge peremptorily.

JOSEPH O. WAGNER, called as a juror.

30

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: We challenge for bias.

(The juror having been sworn.)

Examined by Mr. Braun:

Q. What is your business, Mr. Wagner?

A. Farmer.

Q. Have you read of this case?

40

A. Well, I have heard of it. Read of it in the paper; that is all.

Q. Formed an opinion from that reading, have you?

A. Have not.

Q. Any prejudices against Italians?

A. No, sir. I haven't. I don't know anything about them.

Mr. Braun: Challenged peremptorily.

10

MAHLON SMITH, called as a juror.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. Braun: Challenged for bias.  
(The juror having been sworn.)

Examined by Mr. Braun:

Q. What is your business, Mr. Smith?

20

A. Farmer.

Q. Have you read accounts of this case in the newspapers?

A. I have not.

Q. Prejudices against Italians?

A. I have not.

Mr. Braun: Satisfactory, if your Honor please.

30

(Sworn as juror Number 12.)

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HUNTERDON COUNTY COURT OF OYER  
AND TERMINER.

10	<p>THE STATE,</p> <p>vs.</p> <p>MICHAEL TOMASSI.</p>	}	<p>Homicide. Indicted for Murder.</p>
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Transcript of shorthand notes of testimony and so forth, taken in the above-stated cause before Hon. Alfred Reed, P. J.,-Hon. John L. Connet, J., and a jury, at the Court House, Flemington, New Jersey, on Monday, September 30th, 1907.

20 For the State appear, Hon. GEORGE K. LAGE, Prosecutor of the Pleas, GEORGE H. LARGE, Esq., and EDGAR W. HUNT. For Defendant appear, RUDOLPH A. BRAUN, Esq., and CHARLES M. MASON.

The jury having been sworn, the Prosecutor opened as follows:

30 If the Court please, gentlemen of the jury, on Monday, the twentieth day of May last, at about one fifteen P. M., Mrs. Delia Congilio, of the City of Lambertville, was shot five times with a revolver. The wounds were in her breast, stomach and hand. From the results of those wounds she died in the Trenton Hospital, about seven o'clock in the evening of the same day.

The facts, as understood, by the State, are briefly as follows:

40 Mrs. Congilio and her husband resided in a house on the easterly side of South Main Street in the City of Lambertville. Their family consisted of five children, the oldest

of which was a boy about fourteen years of age, the youngest a girl about seven; the second child was a boy about eleven, and the oldest girl a child of ten. In addition to the children, there were three boarders who resided there at the house. One was a brother of Mrs. Congilio, another was an Italian, and the third Michael Tomassi, the defendant in this case. On Monday morning, the twentieth of May, Mr. Congilio, the husband of the deceased, and two of the boarders started for work early in the morning, leaving Tomassi and the children there at the house with Mrs. Congilio. At about eight o'clock the oldest boy left the house to go to school, leaving in the house the four younger children and Michael Tomassi, the defendant. During the morning Michael Tomassi made an improper suggestion to Mrs. Congilio down in the cellar kitchen, and she repulsed him and declined to accede to his request. He went in his pocket, put his hand in his pocket and drew out a revolver and a dollar bill, in the presence of her children, the four younger children and told her to choose between them. Mrs. Congilio again repulsed him and then went upstairs, later on, to make the beds. Her four children, being apprehensive lest Tomassi should injure their mother, followed her to the bedroom and there, again, in the presence of those little children, Tomassi drew the revolver from his pocket and the dollar and held them out and told Mrs. Congilio to either take the dollar or the gun. The little children being there in his way, he made an effort to get them to go downstairs and told the oldest

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boy, a bright little chap of eleven—or the next oldest boy—the oldest boy that was there—that if he would go downstairs he would give him a penny and the boy replied, “I don’t want no penny.” And he stayed there with the other children to protect his mother until she had finished her upstairs work and come downstairs. Tomassi had gone on downtown. After Tomassi had left the house and the little children thought their mother was free from danger, the little children went out to play. While they were playing, and unobserved by them, Tomassi returned to the house, being at the house upon his return about 12:30, and as he came in no one saw him until the oldest boy, the boy coming from school arrived, which was sometime after twelve o’clock, after Tomassi is supposed to have returned to the house. The boy was then in his way, as were the other children in the morning, so he instructed the boy to go to Goat Hill Quarry and secure his bicycle. The boy, not understanding the purpose of Tomassi, innocently went down through the quarry and asked all the men there and looked all around for the wheel, but was unable to find it. On the way back, he met someone who told him a lady had been shot, and when he arrived at the house, he found that his mother was the person who had been shot. At the time the shooting occurred, no one was in the house excepting Tomassi and Mrs. Congilio. The little girls were out in the front of the house, playing in the street. (Going to the map.) Here is the house; here is the back lot—they were playing out in front of the house. The hired girl, a girl about ten years of age, heard some shots and at once ran to the door,

which is on a level with the ground, in front of the door and looked in there, and as she looked in, she heard Michael Tomassi firing the revolver and saw him holding it in his hand. She was just returning from the summer kitchen with a pan in her hand, where she had been preparing some beans to be cooked for the little children that evening.

She stood there, just by the entrance to the door of the cellar kitchen (indicating), right about there, and the little girl came in there alongside of the steps which go upstairs and saw Tomassi standing right near the entrance of the stairs going up, with this revolver in his hand, and then saw him turn around and run upstairs, taking his course up the stairs (indicating on map).

Mr. Braun: If your Honor please, I don't want to be too technical; but I don't believe the diagram ought to be used until it is in evidence. That diagram is not in evidence. I don't think the Prosecutor ought to refer to it.

The Court: It is not in evidence, it is for an opening. I don't think any harm can come from alluding to it now. It will be constantly alluded to in the testimony.

The Prosecutor: The little child, as I say, being afraid, ran out in the street, Tomassi running upstairs.

The building is so situated there in Lambertville that it is right along what is known as Cemetery Hill, so that the rear room on the first floor is practically a cellar and to go into the back yard one would have to go up to the second story in order to get out. That was the course taken by Tomassi; and the little child in going to the street looked alongside the house and saw Tomassi climb-

ing this hill and running away in the direction of Hopewell, that is, in an easterly direction.

10

At the same time, a neighbor who lives in a house a little north of the Congilio house heard the shots, and she came to the street and observed Tomassi running up over the hill. At the same time a young man who was standing there in the street saw the commotion and observed Tomassi running over the hill and yelled at him and asked, "Here, what have you been doing?" Tomassi turned around so that he had a full view of his face and recognized him.

20

Just prior to the shooting a very intelligent woman, who lives in a house a few doors from the Congilio house was standing on her front porch, and saw Michael Tomassi come to the door of the Congilio home, stick out his head, and look up and down the street to see if anyone was coming. In almost an instant she heard the shots, and, having observed the appearance of his countenance, became frightened, locked her own door, and ran upstairs to hide.

30

The matter was reported to the authorities there and Mayor Ely very promptly wired a description of Tomassi to the neighboring towns. Among others who received a telegram giving a description was Officer Roland Mitchell, in the employ of the Philadelphia & Reading Railroad Company. He was at Trenton Junction at the time he received the message, and he had scarcely received it (only a few minutes prior), when a train came in bound south; and the passengers who were bound for Philadelphia were obliged to change cars at Trenton Junction.

40

He observed an Italian who answered the description of Tomassi, he thought and placed him under arrest.

In searching him he found a loaded revolver, size No. 32, a number of cartridges, a razor, a large knife (that is, large for a penknife), a hundred and some odd dollars in money which Tomassi had drawn—part of which Tomassi had drawn from the bank in the morning in Lambertville, closing out his account there, showing his premeditation and desire to get away and preparation for it. And when he left he left his clothing and an accordion, a musical instrument, and failed to pay a board bill of a month, I believe, and also neglected to collect some money that he had coming, a small amount, at the quarry where he worked.

The Court: When was he arrested, at the Junction? On the 20th?

The Prosecutor: Same day, yes, sir.

The Prosecutor: He was taken to Trenton and there held in custody, and Sheriff Dilts and Mayor Ely and some of the officers of Lambertville went to Trenton, and the stuff that they had taken from him was turned over to them, with the exception of the money, I believe, and he was brought to Flemington.

The State will show that Michael Tomassi had on the same shoes—I think, has on the same shoes to-day—that he had on the day of the murder, and that the track made in the dirt in the rear of the Congilio house was made by a person wearing pointed shoes about the size of those worn by Tomassi.

10 The first grown person to reach Mrs. Congilio was Victoria Strauth, a neighbor. Soon a crowd gathered and Mrs. Congilio, who had made her way to the front porch from that inside door, from the door of the kitchen—she staggered over to the front porch outside and fell. Mrs. Strauth was the first woman, and then a number of other neighbors, and they carried her to her bedroom. In the presence of Victoria Strauth and a number of other neighbors, people, and her children, Mrs. Congilio, realizing that she was about to die—

20 Mr. Mason (interrupting): I object to this, your Honor. He is bringing in improper statements; we have let him go the full limit so far in stating conclusions of his own, not in proof, saying that he had drawn money from the bank in proof of premeditation—

The Court (to the Prosecutor): Suppose you leave out that alleged dying statement. Just say that you expect to prove a dying declaration, without stating what it is.

The Prosecutor: Very well, it is a very important feature of the case.

30 The Court: It will come out if you get it in.

40 The Prosecutor: A number of Lambertville physicians were summoned, three, I think, and her condition was so serious that nothing could be done at that time, and it was determined to take her to the hospital. On her way to the hospital, or to the station, Father Lynch, the Catholic priest of Lambertville, was sent to her, and he, as I think we can prove, administered the last rites of the church on the

tow-path of the canal before she reached the station, her condition being so critical that they stopped along the tow-path. He then again performed another ceremony at the railroad station. She was then placed on the train and taken to Trenton, and the State will endeavor to prove declarations made on the train after leaving Lambertville. 10

She died about seven o'clock at the hospital in Trenton, and when her husband arrived she was not conscious and could not recognize him. Dr. Rogers, the Mercer County physician, performed an autopsy upon her body, and recovered one bullet that had been shot into her. That bullet, the State will show, was Number .32, corresponding in size with the other bullets that were found upon Tomassi. The revolver that was taken by the officer, the State will show, was smoky, showing that it had been recently used. 20

When Tomassi was brought to Flemington the following morning, he made a statement in the presence of a number of witnesses, the details of which the State will show differ from the evidence which the State is about to produce. 30

The State's insistment is that this was a premeditated, cold-blooded, deliberate murder, and that your verdict should be one of first degree, murder in the first degree.

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FRANCIS M. WILSON, sworn for the State. 40

Direct-examination by the Prosecutor:

Q. Where do you reside?

A. Stockton.

Q. What is your occupation?

A. Surveyor.

Q. Did you make a map at my request for use in this case?

A. I did.

Q. Of property in Lambertville, and some of the adjoining buildings and houses?

10 A. Yes, sir.

Q. Are the measurements, distances, etc., correctly made?

A. Yes, sir.

Q. Does your map correctly represent—

The Court:

Q. Are these the maps?

A. Yes, sir.

20

Further direct:

Q. Will you explain, in a general way, what those maps show—just start in and explain that map over on this side.

A. The map heré, first?

The Court:

Q. Just generally, the streets and localities.

30

A. Well, that line here shows the plan of and kitchen on the first floor of the house, the second floor, two bedrooms on the second floor; shows also the stairway and front door, windows and tables, range, closet and door leading to the cellar; front porch, bench back of the table, and the second floor shows the stairway leading from the dining-room and the two beds in that front bedroom and the door leading to the rear of the bedroom and one bed in that room, and the door leading to the rear of the house, going up the hill.

40

Further direct:

Q. Now, Mr. Wilson, just state how a person going east, through that house, on what floor would he come out on a level with the ground?

Mr. Mason: I object, it has not been established that this is a diagram.

The Court:

10

Q. Who went over the ground with you?

A. Mr. Hunt.

Q. You took the house that he pointed out as the C house?

A. Yes, sir.

Q. And those are the streets and the distances?

A. Yes, sir.

Q. Do those represent the entire house?

A. The first and second floors.

20

Further direct:

Q. Just state what floor would a person going into the house have to go out on to get on a level with the ground?

A. This floor here.

Q. State it—what is it, the first or second?

A. The second floor.

Q. What is there in the rear of that house, is it level or is it a hill? 30

A. A steep hill.

Q. Now, then, before you leave the first floor, just show where the porch is?

A. In the front.

Q. Where is the street?

A. In front of that.

Q. Where is the front door going into the house?

A. Here.

40

Q. Where is the entrance to the stairs leading to the second floor?

A. Here.

Q. Where is the door leading to the cellar kitchen?

The Court: Is it all marked on there?

Witness: Yes, sir.

Q. Where is the door leading to the cellar kitchen?

10

A. Here.

Q. Now, then, as to this other map. State where the C house is represented on that map?

A. Right here.

Mr. Mason: I object to the house being designated as the Congilio house.

Q. Are you familiar with the residence of Mr. Congilio, of your own knowledge?

20

A. No, sir.

The Court:

Q. That is the house pointed out by Mr. Hunt to you, as the Congilio house?

A. Yes, sir.

Further direct:

Q. What have you designated on the map there to the right?

30

A. This?

Q. Yes.

A. Double brick house.

Q. And to the left?

A. A brick house I think it is.

Q. Now, then, what have you designated in the rear of that house?

40

A. That is a plot of ground mapped out, from the description in the deed of that property.

Q. Now, state the character of that ground back there?

A. Why, it is a very steep slope about 25 degrees angle, coming out in the rear of the house, here there is about seven feet to the stone steps leading up to the first floor, and the ground is terraced off, and herein is the first part of it, and then back here is another retaining wall, and you go up another terrace and the same distance and to the other terrace, and so on, on this wall here, leading on up to the east end of the lot. 10

Q. And beyond that easterly what is the first street you strike?

A. The street running along the cemetery there.

The Court:

Q. North of this direction?

A. Yes.

Q. What is the street running on the south side of this cemetery? 20

A. I don't know the name of it, it has no name, it has just been opened.

Further direct:

Q. What is the direction of Hopewell from the house designated on your map there?

A. Hopewell?

Q. Yes, the general direction?

A. Easterly direction; about that direction. 30

Q. Is the map drawn to a scale?

A. Yes, two different scales; this is eight feet to the inch and that is 16 to the inch, in order to get the map to show all that was wanted we had to condense the scale, this part of it.

The Court:

Q. Up between the rear of this lot and Franklin Street? 40

A. Yes, another lot in there of rough ground.

Further direct :

Q. What is the object you have on the right in lead pencil?

A. That represents a large rock.

Q. What is the point there in the center of the rock?

A. An iron supposed to be the corner of this lot.

10 Q. What is the height of those various steps there, approximately?

A. Well, this one is six feet high and this is three feet, and four feet and three and a half; it is marked on there.

Q. What is that little square there in the second terrace?

A. Water-closet.

20 Q. Now, as to the stone wall—is that approximately perpendicular?

A. Little sloping, I think, some of them.

Q. What is that large building on the opposite side of the street?

A. That is the storage house of the rubber company.

Q. What is the distance between the Congilio house and the house to the north, how far away are they apart?

30 A. Eight feet between the two houses.

Cross-examination by Defendant's Counsel :

Q. Who pointed out this house to you?

A. Mr. Edgar Hunt.

Q. The gentleman that is associated with the Prosecutor?

A. Yes, sir.

40 Q. Did he tell you he represented the Prosecutor?

A. He said he was going to assist him.

Q. Now, in here on this map marked the first

floor, you have marked here, "range," what kind of a range was that?

A. Cooking range.

Q. How was it connected? Which way is the chimney?

A. I cannot say, I didn't notice that.

Q. Why didn't you put that on your map?

A. I wasn't asked to.

Q. You simply put on here what Mr. Hunt told you? 10

A. In a general way.

Q. You left out what you wanted and put on what you wanted—you and Mr. Hunt wanted?

A. He told me what they wanted, certainly.

Q. Told you what they wanted and you put it on, is that it; then it is not a true map and does not show all the details in the house?

A. Not everything. 20

Q. It is not a true map, is it; it is of the outside, but not of the inside? You have marked here "table."

A. Dining room table.

Q. Who told you to put that in there?

A. Mr. Hunt asked me to locate it.

Q. To locate it. That is where the table was placed. What day did you go there with Mr. Hunt? 30

A. I don't remember what day that was now, it was some few weeks ago, perhaps, that first day.

Q. Cannot you place it any better than that?

A. No, sir, I cannot, unless I refer to my records at home.

Q. In other words, you put the table in there simply where you found it on the day that you and Mr. Hunt went over is that it?

A. I put it there where I found it the day I went to make the measures. 40

Q. With Mr. Hunt?

A. He wasn't there when I measured the table.

Q. Is that table a moveable table?

A. Yes.

Q. Could it be shifted from one part of the room to another part?

A. I think it could.

Q. Now, answer whether it could or not?

A. Yes.

10

Q. What is this you have marked "bench"?

A. That is the bench alongside of the room, back of the table.

Q. And a window behind it?

A. A window back of it.

Q. Where is the window—on this side?

A. There is no window there.

Q. There is no window along here?

A. No, sir.

20

Q. Then could a person, from the outside along here, see what was going on in here?

A. No, sir.

Q. A person along here could not see what was going on in here?

A. No, sir.

Q. You have got marked here "cellar and kitchen." What do you mean by that?

30

A. It was used for both purposes, as far as I am able to judge.

Q. Any range in there?

A. No, sir.

Q. Then it was not used for a kitchen—you generally cook where there is a stove?

Objected to.

The Court: I don't think that matters much. You don't know anything about it, do you?

40

Witness: No.

Mr. Mason: I object to the overruling of the question and ask an exception.

The Court: What question was overruled?

Mr. Mason: The one that your Honor just overruled.

The Court: I did not overrule it. I said "You don't know anything about it, do you?" And he said, "No." That isn't overruling a question.

10

Q. Who told you to put on there the word kitchen?

A. It was put on there from my own observation. I put in a bench and a table.

Q. How is it you never designated the places where the cooking utensils were in that room and not in this room?

A. They were not essential.

Q. Who told you they were not essential? 20

A. Mr. Hunt.

Q. You simply put in there what Mr. Hunt wanted?

A. Yes, what he asked me to, to measure it.

Q. (Indicating on the map.) You have this marked closet. Is this the cellar and kitchen—they are on the same grade with the dining-room?

A. Yes.

Q. (Indicating on the map.) A person coming in here to go from that entrance there would come in this door from the cellar and kitchen into the dining-room—you would come through this door from here to here, wouldn't you? 30

A. Yes.

Q. Could a person out here see what took place in here (indicating on the map)?

A. Yes.

Q. (Indicating on the map.) You have this marked closet. What kind of a closet was that? 40

A. Dishes in there.

Q. Knives?

A. I didn't see any knives. I didn't examine the closets to see what was in them.

Q. You wouldn't say whether there were any knives in there or not, would you?

A. No, sir.

Q. What kind of a door was that?

Witness: What kind of a door?

10 Mr. Mason: Yes.

A. A frame door.

Q. Was the door in place then?

A. Yes.

Q. You are sure of that, are you?

A. Yes.

Q. (Indicating on the map.) Then you would have to open this door to come in here?

A. You would if it wasn't already opened.

20 Q. (Indicating on the map.) How would a man coming from here get out of the house?

Witness (indicating on the map): From here?

Mr. Mason: Yes.

A. Go out of this street door?

Q. Go out of the street door?

A. Yes.

30 Q. If someone was going through this door, would it be easier to go out of this door or by this stairway?

A. Go out of that door easiest if he wanted to go out of doors.

Q. This is an open entrance?

A. Yes.

40 Q. Wouldn't it be easier to go through this open door than through this door (indicating on the map). If he wanted to get away from a person getting out of that door?

The Court: The question is overruled and an exception allowed. It isn't cross-examination. Let the exception be sealed and it is sealed accordingly.

ALFRED REED,  
Presiding Judge.

Q. (Indicating on the map.) What is the distance from this door to this open entrance—about what distance—about five feet? 10

A. (Indicating on the map.) From this door to this one about five feet?

Q. And that is where the stairs go up to the second floor?

A. Yes.

Q. (Indicating on the map.) What is the distance from this door to this door? 20

A. It is fourteen feet and nine inches across the room. In other words it is about fourteen feet and nine inches from this door to this door?

A. Fifteen feet.

Q. Then from this door to the open doorway going to the second floor is about five feet?

A. About five feet.

Q. In other words this door is ten feet further from the door here than the open entrance (indicating on the map). 30

A. Yes.

Q. Now a man going up this open entrance into the stairway would go where?

A. Go up the stairway.

Q. Where would this stairway lead to?

A. To the second floor.

Q. To the second floor.

The Court: There is no need of repeating his answers. You are taking time enough without that. 40

Q. Then how would a man get from the second story out to the yard?

A. (Indicating on the map.) Through this way.

Q. Through the back door?

A. Yes.

Q. Where would that back door lead to?

A. (Indicating on the map.) Out here.

10 Q. And anyone coming through here would be obliged to go through here, wouldn't they?

A. Yes, sir.

Q. How could a man get out of the second story in any other way, if he came up here, then by going out of the back door?

Q. Unless he jumped out of the back window.

Q. Have you represented the first story?

A. No.

20 Q. Why didn't you put that on—the complete house? Did Mr. Hunt tell you not to?

A. Mr. Hunt said he didn't want it.

Q. Did he tell you why he didn't want it?

A. No.

---

EDGAR W. HUNT, sworn in behalf of the State.

Direct-examination by the Prosecutor:

30 Q. Where do you reside, Mr. Hunt?

A. Lambertville.

Q. What is your occupation?

A. Counsellor-at-law.

Q. Were you retained in this case by Frank Congilio, the husband of the deceased woman?

A. I was.

40 Q. Did you meet Mr. Wilson, the surveyor, and designate to him which house on South Main Street was the residence of Mr. Congilio?

A. I did.

Q. How long had you known that to be Mr. Congilio's house—how long have you known it?

A. I should say about two years, to my best recollection.

Q. To your own knowledge?

A. To my own knowledge, yes.

Cross-examination by Mr. Mason:

Q. By whom were you retained in this case?

A. By Mr. Congilio.

Q. The husband of the deceased woman?

10

A. Yes.

Q. You have been paid for your services, I suppose?

A. I have been paid a retainer, not in full.

Q. Then you expect to get more from him; is that so?

A. I do.

Q. Why did you go with Mr. Wilson to this house?

20

A. To show to him the house of which I wanted a survey made.

Q. For whom was the map to be made?

A. For the use of the prosecution in this case.

Q. Did you pay Mr. Wilson?

A. I did not.

Q. Who authorized you to get Mr. Wilson to make the map?

30

The Court: I do not see what the purport of this testimony is.

Mr. Mason: I wish to show prejudice on the part of this witness.

The Court: It isn't a question of prejudice; he certainly knows whether this is the house.

Mr. Mason: Yes, and other facts will probably come out.

40

The Court: They are not coming unless they are properly in the case. I overrule

the examination as to whether this is the house he told the surveyor to make a map of.

Q. Did you point out to Mr. Wilson where the table was located?

A. When the map was originally made the table was not included, and Mr. Hunt had me go there and make a map with a table, a stove and other furniture there that is on the map.

10 Q. You did not go to the house on the 20th of May?

A. No.

Q. You simply had things mapped that are put on the map as of the day Mr. Wilson was there?

A. As they were on a later day than that, when Mr. Wilson went back.

Q. And you told him to go and have him put it on there?

20 A. I did.

---

FRANK CONGILIO, called:

The Prosecutor: We will have to examine this witness through an interpreter, Vincent Serrafini.

Mr. Braun: If the Court please, may we examine the interpreter before he is sworn?

30 The Court: Yes. But I will say now that he is the regularly employed interpreter in the Mercer Circuit.

Mr. Braun: That is all I desire.

(Whereupon the interpreter was sworn to truly interpret between the witness and the Court, and the witness was sworn to the interpreter.)

40 Direct-examination by the Prosecutor:

Q. Where do you reside?

A. Lambertville.

Q. What is your occupation?

A. I work at the quarry.

Q. Are you the husband, or widower of Delia Congilio?

A. Yes, sir.

Q. What children comprise your family?

A. Five children.

Q. Give their names and ages.

A. Louis G., the first one.

10

By the Court:

Q. Louis is how old?

A. Not quite fourteen; he will be fourteen next January.

By the Prosecutor:

Q. The next one?

A. Apostelle.

20

Q. The next.

A. He will be twelve next February.

By the Court:

Q. Who?

The Interpreter: Apostelle, the second child.

By the Prosecutor:

30

Q. I want the name of all the children and their ages.

A. Rosina Congilio, she was ten years old last month. Victoria Congilio; she will be eight next March.

Q. Are those all of the children?

A. Josie Congilio.

Q. How old?

A. She will be six next November.

40

Q. Who all made up your household (what persons), on the 20th day of May last?

A. We had five boarders, and also I, and two work with me at Morris Station, another worked at Shanda Quarry, two friends of Michael worked on the railroad, and Michael stayed home.

Q. State whether or not Michael Tomassi was one of the regular boarders at your house?

A. Yes, sir.

10 Q. When did he start to board there and how long did he board there?

A. He was in the house seven or eight months.

Q. Yes. And when did he leave it?

Witness: When did he leave it?

The Prosecutor: Yes.

A. The 20th day of May, he killed my wife and went away.

20 Mr. Mason: I move that that be stricken out and merely hearsay.

The Court: Strike out "he killed my wife."

Mr. Mason: Yes.

Q. Who were the other boarders in addition to Mike?

A. There were five boarders; four went to work and Michael remained home.

30 Q. On what day?

A. On Monday, the 20th day of May.

Q. Who were the other four boarders? Give us their names.

A. Two were my brothers-in-law and two were friends of Michael.

Q. Now, the two brothers-in-law, were they related to Mrs. Congilio, and, if so, what was their relation?

40 A. One married my sister and another married my wife's sister.

Q. What time did you leave the house on Monday morning, May the 20th last?

A. I left home at half past five in the morning and went to work to Morris Station.

Q. Who went with you?

A. My brother-in-law went before me and I remained behind.

Q. Who all were in the house when you left?

A. There were the other boarders, were home, Michael's friends, and one of my brothers-in-law.

Q. When did you first hear that your wife had been shot? 10

A. I heard it about, quarter or twenty minutes to two.

Q. What did you do?

A. Men with a bicycle came there; I immediately left work and went away.

Q. Where did he go?

A. I went to Lambertville, my home.

Q. How far were you working from your home? 20

A. About an hour and five minutes by walking.

Q. Ask what he did after he arrived home?

A. What could I do? There was the Mayor of Lambertville there and the house was full of people.

Q. What did you next do?

A. I changed my clothes and I went to Trenton.

Q. Where did you go when you arrived in Trenton? 30

A. I went to the hospital where my wife had been taken.

Q. Was she living or dead?

A. When I reached there, the nurses wouldn't allow me to see her, saying that she was very ill.

Mr. Braun: I move that be stricken out.

Mr. Large: No objection.

The Court: The last clause of it. "They wouldn't let him see her," that can stand, 40  
I suppose. There is no objection to that.  
"Saying she is very ill" struck out.

Q. Did you see your wife in Trenton?

A. (Witness answers in Italian.)

Mr. Mason: We object to this answer, your Honor, as hearsay.

(Question read.)

Mr. Mason: We object to the answer. I think it is hearsay.

10 The Court: How can I tell whether it is hearsay?

Mr. Mason: Well, I have a notion that it is, and I am willing to have it repeated to you quietly and then have you rule on it. I don't think it should go to the jury.

(Interpreter repeats answer to the Court privately.)

20 Interpreter: I waited a while and finally the nurse allowed me to see her.

Q. What was her condition?

A. My wife's condition?

Q. Yes.

A. She worked at home.

Q. What was her condition when you saw her in Trenton, at the hospital?

30 A. Oh, she had her eyes closed, and she worked like a snake that had been killed in the country.

Q. Did she recognize you?

A. The nurse opened her eyes, but she didn't recognize me. And as the nurse would leave her eyes up, she would close them again. And she died in about five minutes.

Q. How did the nurse open her eyes?

A. (Illustrating.) This way, with the fingers. On lifting them they would close again.

40 Q. How long have you been married to Delia Congilio?

A. 14 or 15 years.

Q. How long have you resided in the particular house where you reside now in the City of Lambertville?

A. Two years I have been living in the house where I live now. I was in Lambertville once before.

Q. Were you present when your wife died?

A. Yes, sir. I was present.

10

Cross-examination by Mr. Mason:

Q. Mr. Congilio, how much have you paid Mr. Hunt as a retainer in this case.

The Court: Overruled.

Q. Have you retained Mr. Hunt as your attorney in this case?

A. Yes, sir.

20

The Interpreter: The witness wishes to say a few words if you will allow it.

The Court: Hear what he has to say, and see whether it is—

Mr. Mason: I object. It is not in answer to any question on either side. I will ask an exception.

(Interpreter repeats to counsel witness' remarks.)

30

The Court: Does the State want it?

The Prosecutor: No, I guess not.

---

LOUIS CONGILIO, called on behalf of the State:

Mr. Mason: I would like to have him examined before he is sworn and see if he understands the nature of an oath.

40

The Court: All right.

By the Prosecutor:

Q. How old are you, Louis?

A. Fourteen.

Q. When were you fourteen, or when will you—

A. Be 14 the 28th of January.

Q. Of what?

A. 28th of January, this January.

10 Q. Coming January.

A. Yes, sir.

Q. Do you know the purport and obligations of an oath, what you are supposed to do when you are testifying, and are sworn?

A. Yes, sir.

Q. What are you supposed to do?

A. Tell the truth.

Q. Tell the truth?

20 A. Tell the truth.

By the Court:

Q. Suppose you don't tell the truth, what will happen?

A. If you don't tell the truth it is wrong. Don't tell the truth—

Q. (Interrupting.) Suppose you should die?

A. Go up to Hell.

30 Q. What would become of you?

A. Go to Hell.

Q. Go to Hell, eh?

A. Yes, sir.

The Court: Any cross-examination?

Mr. Mason: We are satisfied.

(The witness was then sworn.)

A recess was then taken.

## After Recess.

LUIZZI CONGILIO, resumes the stand:

Examined by the Prosecutor:

Q. Where do you live?

A. Lambertsville.

Q. Whereabouts in Lambertsville?

A. South Main Street.

10

Q. Whereabouts down South Main Street?

A. In the First Ward.

Q. What number?

A. 166,

Q. 166?

A. 166.

Q. What side of the street?

A. Left hand side going down?

Q. Left hand side going down?

20

A. Yes, sir.

Q. Were you living there on the 20th day of May last?

A. Yes, sir.

Q. Where were you the morning of the 20th of May?

A. In school.

Q. No, you don't understand my question. What time did you get up?

30

A. About half-past seven.

Q. You got out of bed at half-past seven?

A. Yes, sir.

Q. What did you do then?

A. Got my breakfast and about eight o'clock started to school.

Q. You got your breakfast and about 8 o'clock started to school?

A. Started to school.

40

Q. When you left the house who all were there at the house when you left?

A. Me sisters.

Q. Your three sisters?

A. Three—

Q. And who else?

A. Me brother.

Q. And who else?

A. Mike Tomassi.

10 Q. Is that the fellow there (indicating the prisoner)?

A. Yes, that's him.

Q. He was there when you went to school about 8 o'clock Monday morning?

A. Monday morning.

Q. When were you next home?

A. Half-past 12.

Q. At the time that you had left what had become of the other boarders?

20 A. Gone all to work.

Defendant's Counsel: Objected to unless the witness knows.

The Prosecutor: I will change the question.

Q. At the time that you went to school—

The Court:

Q. You say you came home at half-past 12?

30 A. Half-past 12.

Further direct:

Q. At the time you went to school in the morning, at say 8 o'clock, had or had not the other boarders gone out?

A. He was the only one that was in the house, all of them was gone to work

Q. Excepting your sisters and Tomassi?

40 A. Yes, sir.

Q. Was your mother there?

A. Yes, sir, me mother was there.

Q. When you came in at half-past 12, who did you see?

A. I seen me mother and him—Mike Tomassi, and me three sisters and brother.

Q. And what did you do when you first returned to the house?

A. Got me dinner, and he told me to go down to Joe Ledger's after the bicycle.

10

Defendant's Counsel:

Q. That is, Mike asked you?

A. Yes, sir.

Further direct:

Q. Now, where is Joe Ledger's?

A. Away down near the Ridge shanty.

Q. What has Joe Ledger there?

A. A quarry.

20

Q. A stone quarry?

A. Stone quarry.

Q. How far is that from your house?

A. About ten or fifteen minutes' walk.

Q. And Mike asked you, after you had your dinner, to go down there and get the wheel?

A. The wheel.

Q. Did he say that he owned the wheel or what did he say?

30

A. He only told me to go down and get the wheel.

Q. What wheel?

A. His wheel, he told me.

Q. He said it was his?

A. No, he didn't tell me it was his; he told me to go down and get a wheel; down after his wheel.

Q. Did he locate it—tell you where to find it?

A. Down at Joe Ledger's.

40

Objected to as leading.

Q. Just tell what Mike said?

A. Mike told me to go down and get—

The Court: He said that three or four times—Mike told him to go down and get a wheel.

Q. What further did he say about it?

A. And I asked—he didn't tell me anything afterwards, and I asked every man that was down  
10 in the quarry.

Q. You asked every man that was down at the quarry for Mike's wheel.

A. For Mike's wheel.

Q. Did you find a wheel?

A. Didn't find a wheel, I went all the way down to the white bridge, all the way down.

Q. Was there any wheel there?

A. No wheel there.

20 Q. Then what did you do?

A. I came—when I heard a lady was shot on the road, so I went up to the house and I seen my mother lying in bed shot.

Q. When you got to the house you found your mother in bed shot?

A. Shot.

Q. When you returned to the house, you went upstairs—

30 A. (Interrupting.) And my mother was laying in bed shot.

Q. Where did you go?

A. I went with her over to the depot.

Q. No, not so soon. When you got to the house?

Mr. Braun: If your Honor please, I think that is very improper.

The Court: Yes; let him tell his story.

40 The Prosecutor: I asked him where he went.

The Court: Yes, you asked him where he went and he said he went to the depot.

Cross-examination by Mr. Mason :

Q. Louis, do you recall going down to Trenton to the Coroner's inquest?

A. I went down with her.

Q. And you testified there, didn't you?

A. Yes, sir.

Q. You went down to Trenton, and you testified, didn't you? 10

A. I stood there.

Q. What?

A. I stood there.

Q. You stood there?

A. Yes.

Q. Did you say anything?

A. No, I didn't say anything.

Q. Weren't you called and sworn as a witness at Trenton, at the Coroner's inquest? 20

A. Yes; I was at Trenton.

Q. And didn't the Coroner swear you there, the Coroner, Mr. Brower?

A. No.

Q. What say—Mr. John P. D. Brower, the Coroner, didn't he swear you as a witness there?

A. I don't remember.

Q. What say?

A. I don't remember. 30

The Court: Ask him what he said there, in order to lay a foundation—if he didn't say so and so.

Q. Did you tell the Coroner at that time anything about this bicycle story that you now tell?

A. Yes, I told him about it.

Q. You did tell the Coroner?

A. Yes. 40

Mr. Mason to the Prosecutor: You have a certified copy of the testimony taken at the Coroner's inquest.

The Prosecutor: No, I have not.

Mr. Mason: I call upon the Prosecutor for the certified copy of the evidence taken at the Coroner's inquest; I understand that a certified copy was sent to the Prosecutor.

The Prosecutor: I don't think there is any certificate attached to it; I have a copy of the evidence.

10

Mr. Mason: It is not necessary that it be certified. This is a copy of the testimony that was taken there.

The Court: I think the statute requires the Coroner to certify the proceedings and testimony, does it not?

Mr. Mason: No, I don't think so, your Honor. If you will look at the case of the State against a case tried in this County in 1823, that very question came up on the admission of evidence.

20

The Court: What was the question there?

Mr. Mason: On the contradiction of a witness.

The Court: Certainly on the contradiction of a witness.

Mr. Mason: The Court there said that the proper way to contradict the witness was by the written testimony taken by the Coroner.

30

The Court: Yes. But it has to be sent up by the Coroner.

The Prosecutor: Not at all. I am not obliged to furnish him with a copy of the testimony.

The Court: But the Coroner is obliged to send up his testimony, and when he does it is usable by the other side.

40

The Prosecutor: This was sent to me by the stenographer.

The Court: Is it a certified copy?

The Prosecutor: No.

Mr. Mason: It is not necessary that it be certified, either.

The Court: How do you know that the Coroner sent it up unless it is under his hand?

Mr. Mason: I will put the Prosecutor on the stand to prove it. 10

The Court: I think the statute provides that the Coroner shall send up the testimony.

Mr. Mason: I simply ask, in order not to take up the time of the Court, I will simply ask the Prosecutor if he will not admit that that is a copy of the testimony that was taken at that inquest?

Mr. Large: He was not there and don't know anything about it. 20

The Prosecutor: I have a bill here from M. L. Neal, for some notes taken. I ordered that.

The Court: Apparently there is no return here. The difficulty is there seems to be no return here, and the coroner would not make it to this county. If it was a Mercer County inquisition it would be returned there. 30

Q. Louis, at that time—that was the 29th of May wasn't it?

A. It was the 20th.

Q. That you went down to Trenton?

A. I can't remember what date it was.

Q. What?

A. I can't remember.

Q. You can't remember now? Can't you place at all? 40

A. (No answer.)

Q. Well, Louis, you remember that you were there, though, you don't remember whether you were sworn or not.

A. I don't know whether I was sworn or not.

Q. Don't you remember the coroner saying to you, "Just tell us all you know about this." Do you recall that?

A. I don't remember it. No.

10 Q. Did you tell anything to the coroner's jury at that time, anything about Mike Tomassi sending you after any bicycle?

A. I told him.

Q. You told him? You are sure?

A. Sure.

Q. And you told the coroner at that time of Mike Tomassi sending you for the bicycle?

A. Yes.

20 Q. You are sure of that?

A. Yes, sir.

Q. You are just as sure of that, that you told the coroner about Mike sending you for the bicycle, as you are about all the other facts and things that you have said?

The Court: That is overruled, that question.

30 Q. And you are positive that you told the coroner about this?

A. Yes, sir.

Q. Louis, you and Mike were not on very good terms were you?

A. Very good terms?

Q. Yes, that is, you weren't very friendly towards Mike were you?

A. I don't know what you mean by that.

40 Q. You don't know what that means? You didn't like Mike, did you?

A. I liked him a little bit.

Q. You liked him a little bit? Do you remember stealing sixty cents out of Mike's coat?

A. No.

Q. Didn't your mother and Mike have a quarrel over that?

A. No.

Q. Sure?

A. Sure.

Q. Soon after Mike—when Mike was boarding there? 10

A. Sure.

Q. You deny that you took the sixty cents?

A. I didn't take it.

Q. Do you deny that your mother and Mike had a quarrel over that?

A. My mother and Mike didn't have no quarrel over that.

Q. Do you deny that your mother paid Mike back the sixty cents if he wouldn't make a charge against you? 20

A. No. Didn't make no quarrel that I seen.

Q. Did not?

A. No.

The Prosecutor: I will be obliged to call a couple of witnesses a little out of order because they are living in Trenton.

The Court: All right call them. 30

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ROWLAND H. MITCHELL, sworn for the State.

Direct-examination by the Prosecutor:

Q. What is your occupation and where do you reside?

A. My occupation is a railroad detective and also a State detective of New Jersey, and I live at Trenton, N. J. 40

Q. Where were you on the afternoon of the 20th of May last?

A. I was at Trenton Junction, not the afternoon, the evening.

Q. What say?

A. Evening, about half past six.

Q. What time did you arrive there?

A. About 20 minutes after six.

10 Q. Just in your own way describe what occurred at Trenton Junction after your arrival?

A. I left Trenton for Trenton Junction on the 6:08 train, and when I arrived at Trenton Junction I got a description list of a man that shot a woman at Lambertville, and shortly after I was there there was a Bound Brook local train for Philadelphia that stops for Trenton Junction to let the express train go by, and while I was there  
20 this man Mike Tomassi came walking down the platform and of course he answered the descriptions and I locked him up.

Q. How long prior had you received the message?

A. Not over ten or fifteen minutes.

Q. Did you see whether or not he got off the local train from Bound Brook?

A. Yes, sir, he did.

30 Q. Does that train pass through and stop at Hopewell?

A. Yes, sir; stops at all those stations, it is a way train to Philadelphia.

Q. Did you either personally or see Tomassi searched?

A. Yes, sir; I helped search him.

Q. Whereabouts were you when you searched him, or assisted in it?

40 A. Trenton Junction express office.

Q. Will you examine these articles in this box and state whether or not they were taken from the person of Michael Tomassi?

A. This gun came from him, and it was loaded when I got it, dirty, five-shooter, and also this handkerchief, and this knife.

Q. Anything else?

A. And this watch and that razor and chain with a locket on it.

Q. What have you in the envelope?

A. Why, they are bullets, 32.

Q. Just open them please—open the envelope, please. 10

A. Do you want to see them?

Q. Yes, I should like to see them. I ask you whether or not those bullets fit this revolver?

A. 32 and that is a 32-calibre, yes, sir.

The Court:

Q. How many bullets?

A. 5 bullets in the chamber when I got it, and he had others in his pocket, two or three. 20

Further direct:

Q. The bullets that you have in your hand, where did you get those?

A. I got them out of the revolver, and what he had in his pocket.

Q. How many have you in your hand?

A. I have here about seven now. 30

Q. How many had he?

A. He had five in his revolver.

Q. Any others?

A. I don't know of any others; I cannot tell you that.

The Court:

Q. Two in his pocket?

A. Yes, sir. 40

Further direct:

Q. What else have you in your hand?

A. I got a photograph here of a woman, a postal card.

Q. State what you have there?

A. This is stuff I took away from him.

Q. Now, what is that?

A. I got that off him; and a book here.

Q. How many books?

10 A. About four or five, I don't know just which; that is of thick books, I cannot just tell you, and then there was a letter here addressed to him to Lambertville, by the name of Mike Tomassi.

Q. Was in his pocket?

A. At the time I made the arrest.

Defendant's Counsel: The letter speaks for itself.

20 The Prosecutor: We don't know where he got it yet until he says.

Witness: I think this is the letter right here, it is pretty well torn, I think that is the letter.

Q. I have here in my hand a letter directed to Michael Tomassi, Princeton, N. J.,—

Objected to.

Q. —is that the letter taken from him?

A. Yes, sir; that is the letter.

30 The Court: Why do you object?

Defendant's Counsel: It is not yet in evidence. I don't believe the Prosecutor ought to read it.

The Court: It is all right.

Witness: That is the first one I took out of his pocket.

40 Q. I have in my hand a postal card addressed to Michael Tomassi, Lambertsville, N. J., and I ask you whether or not that is one of the postal cards you took from him when you searched him?

A. Yes, sir; that is the one I had reference to.

Q: I also have in my hand a letter addressed to Michael Tomassi, torn and has "T ville" on it, and ask you whether you got that?

A. Yes, sir; that is the one; I got all these from him.

Q. And the books that you have in your hand, with the elastic around them?

A. Yes, sir, and also \$101.

Q. All right, I will come to that. You say that you also took from the defendant how much money? 10

A. \$101.

Q. Did you examine the revolver?

A. Yes, sir.

Q. Will you state what you observed as to its condition?

A. Why, it has been used, been shot through, you can see where the powder has gum, like, in the barrel. 20

Q. Did you observe it at the time you took it?

A. Yes, sir.

Q. Could you state whether or not the use the revolver had been put to, whether recent or otherwise?

A. Yes, sir, it had been used shortly before that.

Objected to.

The Court: I suppose the witness ought to show that he has used revolvers. 30

Q. Have you had occasion to use revolvers in your business?

A. Yes, sir, all my life.

Q. Are you familiar with revolvers to know how one looks when it has been used?

A. I certainly am.

Q. Did this revolver that you took from Tomassi have the appearance of having been recently used? 40

A. Yes, there was powder smoke right on the chamber, on the outside, that showed it had been shot.

Q. The watch was also taken?

A. Yes, sir.

Q. And the handkerchief?

A. Yes, sir, and these here cartridges.

The Court:

Q. These are the balls you speak of?

A. Yes, sir, there were five of them in the chamber and two in his pocket.

Further direct:

Q. I notice that these cartridges that you have just been speaking of were in a sealed envelope?

A. Yes, sir, I had them put in an envelope, as soon as I got them before the Magistrate at Trenton.

Q. I call your attention to one that is somewhat longer than the others, and ask if you know whether or not one is 32 short—

A. One is 32 long and the other is 32 short.

Q. And these particular bullets in this particular envelope were sealed by you and taken from Tomassi?

A. Yes, sir.

Q. I now ask what you did with these various articles and also as to what you did with the money that you took from Tomassi?

A. I turned the stuff over to Magistrate Naar of Trenton.

Q. The Justice of the Peace?

A. Yes, sir.

Q. Everything that you got from Tomassi?

A. I turned over to the Magistrate at Trenton, I was ordered to turn the money over to Naar later on. I kept the money until he sent word that they wanted the money, and I sent a check for \$75 and the rest in money.

Q. A few days after turning over these other articles?

A. Yes, sir.

Q. Did you have any conversation with Tomassi such that you could understand any feature of it?

A. He had very little to say.

Q. Do you recall anything?

A. Well, he told me—

Objected to.

Q. Did you make any threats or offer any inducement to Tomassi prior to the conversation you had with him? 10

A. No, sir.

The Court:

Q. To make any admission to you or confession?

A. No, sir.

Further direct:

Q. If Tomassi made any statements that you could understand, kindly state what they were? 20

Defendant's Counsel: May I ask a question?

The Court: Certainly.

Defendant's Counsel:

Q. Was he under arrest at that time?

A. Yes, sir.

Q. You had the handcuffs on him? 30

A. Yes, sir.

Q. Were there any other officers around?

A. There was another officer and about four or five railroad employees.

Q. Where did you have him when he made this statement?

A. The express office, Trenton Junction station.

Q. Is that a small room or a large room?

A. Small room.

Q. Was the door closed? 40

A. The door was open and the people were in there.

Q. And he of course realized that he was under arrest?

A. Sure he did.

Q. Didn't you make any promises to him whatever?

A. None at all.

Q. Didn't you offer him any inducement?

A. Not a bit.

10 Q. How did he come to make this statement that you claim he made to you?

A. Simply made—

Q. Did he make this statement to you without you having said a word to him?

A. What statement is that?

Q. You say he made a statement to you?

A. Simply said that he—

20 Q. Now, don't tell me what he said. Did he make this statement to you without you having asked him any question; did he volunteer the statement?

A. I asked him a question or two.

Q. What questions?

A. I asked him where he lived.

Q. What else did you ask him?

A. And he told me where he lived; he told me the name, he gave me a name.

30 Q. Didn't you tell him for what he was under arrest?

A. I certainly did.

Q. And how many other officers—I think you told me six?

A. There was one officer and about four or five railroad employees.

Q. And they were in uniform?

A. The employees were—

40 Mr. Braun: Objected to on the ground that the statement was procured from the witness.

Objection overruled.

Exception prayed and allowed.

ALFRED REED,

P. J.

Q. Just state what statement Tomassi made to you subsequently to his arrest?

A. Then I asked him where he lived after I placed him under arrest, and he said he lived at Hope- 10  
well and his name was Tony.

Q. Tony?

A. Tony. And he said he worked in a quarry there.

Q. Yes.

A. And I kept asking him different questions.

Q. Just tell me all that he—

A. (Interrupting.) And then he stopped right there and would not say another word. 20

Q. Did you ask him any other questions?

A. He told down in front of the Magistrate that he lived with this lady in Lambertville.

Mr. Braun: Were you present?

The Court: Were you present?

A. Yes, sir.

Cross-examination by Mr. Braun:

Q. How long have you been a railroad detective? 30

A. I have been a railroad detective about eight years.

Q. And where were you going that night?

A. At my duty there, Princeton Junction.

Q. That is your place of duty?

A. I located there once in a while.

Q. Where did you take these articles from him?

A. At the Trenton Junction Station express 40  
office.

Q. And you carried them to Trenton?

A. Yes.

Q. And there turned them over to the Justice?

A. Yes.

Q. Did you put any mark on them at the time you took them from him?

A. No, I didn't.

Q. Did you put any mark on them at the time you handed them to the Justice.

10 A. I did not.

Q. How can you tell me this is the revolver that you took from Mike Tomassi?

A. It was never in his possession afterward.

Q. How can you tell me this is the revolver?

A. That is the gun.

Q. How can you tell me?

A. Simply, I can tell you it is. That is the gun.

Q. You have seen a number of revolvers—

20 A. (Interrupting.) Yes, sir, I have.

Q. Just like that?

A. Not just like that.

Q. You have seen a number of revolvers that looked just like that?

A. Well, not just like that.

Q. You have seen a number of revolvers that looked just like that?

A. I am not sure about that.

30 Q. What is the difference between that and other revolvers that you have seen?

A. Some of them I have seen without hammers on.

Q. You have seen them without hammers before?

A. Oh, yes, Hammerless No. 38.

Q. You are not sure that is the revolver?

A. If this isn't the gun it was one just like that.

Q. Oh, one just like that?

40 A. I think that is the one; I can almost swear to it. I placed a gun like that in the hands of the Magistrate.

Q. How can you tell that this is Tomassi's? (Indicating.) Did you put any mark on that?

A. No.

Q. No, not any mark on that either?

A. No, sir.

Q. So that what you have said about the revolver applies to all these things?

A. No, you can recognize that knife.

Q. Haven't you ever seen knives like that before? 10

A. That little string.

Q. Who put that on there?

A. It was put on by the Magistrate.

Q. That string?

A. That's an elastic band, that's been put on since.

Q. So that the string you put on is not on now?

A. No, sir. 20

Q. Still you say that is the knife?

A. That is a razor, not a knife.

Q. That is a razor?

A. Yes.

Q. The razor which you handed to the Justice had a string tied around it, didn't it?

A. Yes, had a little blue string; I tied it.

Q. What is there about this knife that you can identify it? 30

A. A bone handle and a large blade.

Q. Isn't it the fact that you simply turn articles over to the Justice that looked like these articles?

A. Yes.

Q. Do you remember appearing before the Coroner at the inquest at Trenton?

A. I do.

Q. Do you remember saying to him—Who put the cuffs on this man?

A. I had an officer there who assisted me, he put the cuffs on—Ceasar. 40

Q. And wasn't it Officer Ceasar who searched this man?

A. No, sir; I did.

Q. Do you remember saying before the Coroner's inquest, "I found a Hundred and one dollars in money and—"

10 A. (Interrupting.) No, sir, I did not; I took the money off of him.

Q. Did you or not say that to the Coroner?

A. I did not.

Q. What did you do with the money?

A. Turned it over to Magistrate Naar.

Q. And it is not here to-day?

A. I don't know nothing at all about that.

20 WILLIAM H. LYNCH, having stated that he has conscientious scruples against taking the oath, affirmed in behalf of the State:

Direct-examination by Mr. Large:

Q. Where are you located, Father?

A. Lambertville, New Jersey.

Q. Your occupation, please.

A. Clergyman; Catholic Priest.

30 Q. Where were you located on the 20th of May last?

A. Lambertville, New Jersey.

Q. On that day did you officiate in your professional capacity, did you officiate on one Delia Congilio?

A. I did.

Q. Where, please.

40 A. Well, part of the time along the canal, near the station, and the remainder at the station, in the freight house, I think.

Q. And the point first spoken of, along the canal, on the tow path, do you mean?

A. Along the tow path, yes.

Q. Was or was not that tow path along the line of travel between her residence and the station?

A. It was.

Q. And what was the exigency that required your professional services on the tow path?

A. Well, I thought her condition was very serious.

Mr. Mason: At this time I would respectfully ask that the jury be excused from the room while there is a discussion and an admission of, I suppose, certain statements. 10

The Court: You better wait until it comes to the author of the statements. (To the witness.) You thought her condition was very—

Witness (interrupting): Serious, critical.

Q. You spoke of her condition as serious. Would you tell us a little more in detail if you mean by that that death was pending? 20

Objected to as leading.

The Court: Yes, that is a little leading.

Mr. Large: That is a little more leading than I meant it to be.

Witness: Well, I am not a physician.

Mr. Large: No. 30

Witness: And simply I thought the way she was acting.

Mr. Mason: I object to the Father giving his opinion. It is simply his opinion.

The Court: Father, just give us the manifestation which led you to think that her condition was critical.

Witness: She was gasping and very pale.

By Mr. Large: 40

Q. What was her position on the tow-path, now, first, was she being carried?

A. When I met her first, she was being carried.

Q. On what?

A. A stretcher.

Q. A stretcher?

A. Yes, sir.

10 Q. Without giving us any particulars of anything that was said will you kindly state in your way what was done? The question refers more particularly as to a degree of privacy. Was the crowd waved away?

A. At first, of course they did; afterwards no, as far as I remember. There was a crowd around when I was giving her the last sacraments in the freight house.

20 Q. Under the tenets of your church the last sacrament that you have just referred to, is that a ceremony performed in the immediate expectancy of death?

Mr. Mason: I object to the question as leading.

The Court: I suppose the purport of that is that he administered the last functions of the church.

Mr. Large: That's just all I want.

30 The Court: And inferentially he supposed that she was moribund?

Mr. Large: That is exactly the point.

40 The Court: I think that is the trouble with your question; it is the inference. Let me suggest. (To the witness.) Of course, Father, this is preliminary to the State's attempting to get in a remark, if any was made to you, respecting this occurrence as to the cause of it. You can state anything you said to her or anything said by her to you other than the statement that he fired three shots?

A. No, sir.

By the Court:

Q. Nothing?

A. No, sir.

Q. No other words?

A. No, sir.

Q. You went there and found her in a critical condition?

A. Yes.

10

Q. So critical that you thought it was time for you to perform the last ceremonies of your church?

A. Yes, sir.

Mr. Large: I think that probably is all right. I want to ask you a question, but do not answer until the Court has passed upon it.

20

By Mr. Large:

Q. Had you any information from any physician in attendance upon her at that moment or just prior, as to her being *in extremis* as to her then condition?

Witness: What was the question?

Mr. Large: Had you any information from any physician who was at that time or shortly prior in attendance upon Mrs. Congilio, informing you of the critical character of her condition.

30

Objected to as leading and also as hearsay.

The Court: I do not think that will do.

Mr. Large: All right. That is all.

Cross-examination Waived.

40

DR. RICHARD R. ROGERS, JR., sworn for the State.

Direct-examination by the Prosecutor:

Q. Where do you reside?

A. Trenton, New Jersey.

Q. And what is your occupation?

10 A. I am a physician.

Q. And have been how long.

A. 26 years.

Q. Graduate of what institution, if any?

A. University of Pennsylvania.

Q. What is your present official position there in Mercer County, if any?

A. I am County Physician.

Q. County Physician? Did you perform an autopsy upon the body of a woman said to be that of Delia Congilio sometime in May last?

20

A. Yes, sir.

Q. Will you kindly state the date upon which this was performed; and the results?

A. 21st of May, in the morning.

Q. What time in the morning, about?

A Half-past nine.

Q. Any other doctor present?

30 A. Dr. Madden, at that time a resident of St. Francis' Hospital. That is the only physician.

Q. Only other physician? Where is Dr. Madden now?

A. I can't tell you, sir.

Mr. Braun: Just one question. Where was this autopsy made?

The Prosecutor: I will bring that out in a minute.

40 Mr. Braun: I want to interpose an objection. Will your Honor permit me to ask one question?

The Court: Yes.

Mr. Braun: Where was this autopsy made?

Witness: It was made in the County morgue of Taylor's on Broad Street, Trenton, N. J., Mercer County.

Mr. Braun: Then I think the testimony is objectionable. There is no evidence that the body of Delia Congilio was taken to this morgue. 10

The Court: It will be shown.

The Prosecutor: I said "On the body said to be hers."

The Court: Proceed. He will have to connect it.

By the Court:

Q. You performed an autopsy on a body said to be the body of this woman? 20

A. Yes, sir.

By the Prosecutor:

Q. Just describe the appearance of the woman, first—

A. (Interrupting.) I will state that these are the notes that were taken in the morgue room at the time that the body was lying in front of me.

Q. That you took personally at the time of the autopsy? 30

A. Personal notes; yes, sir.

Q. Just describe the appearance of the woman?

A. She was a woman five feet one-half inch high.

Q. Did you measure her?

A. I measured her.

Q. Yes. Can you give her approximate weight?

A. Her approximate weight—she was not weighed—was about a hundred and forty pounds, 40 I imagine. She was awfully fat; dark hair, and a little mixed gray through it. Brown or black eyes.

And on the left chin; left side of her chin, there was a hairy mole, about one inch one way and a half inch wide. She was a woman apparently 45 years old. There was no other marks on the body except as I will mention now.

10 Mr. Mason: May I just simply ask? Those are the same notes that you used at the Coroner's inquest, are they not?

Witness: Yes, sir; same notes exactly.

Q. Just state what wounds you did observe, doctor?

20 A. There was a pistol shot wound in the center of the thorax; that is, in the center of the chest, even with either nipple; measuring from this nipple and the other nipple (indicating), about five inches either way.

The Court: Between the nipples?

Witness: Between the nipples; about the center.

30 A. There was a pistol shot wound two inches above and one-half inch to the left of the left nipple, just about there (indicating). This one was one-half inch in diameter. There was a wound on the left index finger, third joint, just about in that position (indicating). Around this one there was some powder marks. There was a wound on the left hip, three and a half-inches to the left of what we call the anterior superior spinous process of the ilium, just about in that position (indicating).

By the Court:

Q. What was the direction of the wound?

40 A. Well, that isn't in. I could tell that afterwards. This wound was one-half inch in diameter. There was a long incised wound over the center of the abdomen; about here (indicating); six inches

long; and had five what we call interrupted sutures in it. Interrupted sutures is a suture that is made each one by itself, not continuous, as though it had been done by some surgeon, as though there might have been an operation performed.

By the Prosecutor:

Q. Recent or otherwise? 10

A. Recent. The pistol shot wound on the left chest (that is, this wound)—her breasts were rather large—connected with the wound in the center. That is, there was a canal or a sinus went right from this wound to this wound (indicating), from left to right. This wound had the indication as though the ball had passed directly through and out.

Q. Do you mean by that that it entered on one— 20

A. (Interrupting.) Entered on the left, passed through her breast, being large, and passed out this opening, because there was a continuous canal in making the incision all the way through that breast; so that there was a continuous—

The Court: There was one shot you mean?

Witness: One shot; yes, sir.

A. The one on the left hip was the fatal one. The ball—after I had made a thorough examination, the course of the canal was very peculiar; and my experience in a good many cases is that to find a ball inside of the body you cannot— (interrupted). 30

Mr. Mason: We object to that testimony. Simply tell what the wound was.

The Court: He can go on and state his opinion. He is an expert. 40

Q. Have you had experience on autopsies?

A. Yes, sir.

Q. Been county physician how long?

A. Thirteen years.

Q. Performed very many?

A. Yes, sir.

By the Court:

Q. Gun shot wounds?

10 A. Yes, sir.

Q. Go on.

A. The ball went through the hip at this point (indicating); as I stated before, three and a half inches to the left of this superior spinous process ilium, passed inward breaking through the bone at that juncture, passing directly over to the right, striking the bone on this side (indicating) and reflecting, passed upwards and backwards, tore through the kidney, passed upward through the liver, the diaphragm, and tore through the lung, and passed backward, passing through the rib, splintering the rib. The ball was removed from the right side at about the 9th rib, three inches from the spine; superficial, directly under the skin. This wound was the fatal one. She died of internal hemorrhage resulting from a pistol shot wound. The woman otherwise, physically was in good health. The organs were all intact, healthy in appearance, with the exception that she had a cystic ovary, but that was nothing that would kill her or cause any death at that particular time; had a small cystic ovary, probably the size of a goose's egg. The uterus or wound was normal, physiological. She had a discharge from the vagina that looked very much as though she was menstruating.

20

30

Q. How many shots were exhibited then?

40 A. I have one in my pocket.

Q. How many? How many wounds were exhibited indicating distinct pistol wounds? The

first two, you say, were the result of the same shot?

A. The wound on the index finger was a kind of skin abrasion.

Q. Was that of a pistol?

A. Pistol abrasion, apparently. The wound on the left side of the left breast and the center wound were both pistol shots. And the wound on her hip were the only wounds on her body. I removed the ball from the back on the right side, near the ninth rib. 10

By the Prosecutor:

Q. Tell us how many wounds there were; distinct wounds?

A. Three.

Q. Have you the bullet that you removed?

A. Yes, sir. 20

Q. Kindly produce it.

(Witness produces bullet.)

Q. Is this bullet, which I have in my hand, the one that was taken from the body of the woman said to be Delia Congilio upon whom you performed the autopsy?

A. Yes, sir.

Q. And you have it in your possession?

A. It has not been out of my possession from the time I removed it. 30

Q. Are you familiar with bullets, and can you state what the size of that particular bullet is?

A. Yes, sir.

Q. Doctor, from the result of your autopsy, can you state definitely the cause of the death of the woman upon whom you performed it?

A. Hemorrhage; internal hemorrhage; very profuse. 40

Q. Caused by what?

A. By injuries running along from the left.

Mr. Mason: I object. Could this wound, the incision in front, have caused that? You are stating your opinion now—

The Court: What is the ground of your objection?

Mr. Mason: I withdraw the question now.

Q. I am trying to ascertain the cause of death?

10 A. Internal hemorrhage.

By the Court:

Q. Caused by what?

A. Pistol shot wounds.

Cross-examination by Mr. Braun:

Q. Doctor, these bullet shot wounds, didn't they indicate to you that the pistol must have been fired at close range, or couldn't you tell?

20 A. I couldn't tell; no, sir.

Q. You couldn't tell? Well, the powder marks around the wound would indicate to your mind that this had been fired at close range?

A. The only powder marks were on the index finger.

Q. That would indicate that the shot was fired at close range, wouldn't it?

A. I don't know, sir.

30 Q. Doctor, do you know who made this incision that you discovered?

A. No, sir.

Q. Couldn't that have caused internal hemorrhages?

A. No, sir.

40 Mr. Large: I will make an offer now of this bullet which has just been testified to, and of the pistol, and razor, the knife, the watch, the letters, and the books and the handkerchief. All of them were identified.

The Court: Aren't you going to show the custody any further?

Mr. Large: Well, as to the bullet. The doctor has had that.

The Court: Oh, yes; that is right.

Mr. Large: We will make formal offer now of that bullet.

Bullet offered in evidence and marked Exhibit S No. 1. 10

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ROSINA PALAIO, sworn for State.

Direct-examination by the Prosecutor:

Q. Where do you reside?

A. 170 South Main Street, Lambertville.

Q. What is the number of the Congilio house?

A. 166, I think. 20

Q. Do you live in the second door south of the Congilio house?

A. Yes, sir.

Q. Were you in Lambertville and at your residence on the 20th day of May last?

A. Yes, sir.

Q. Where were you about half-past 12 on the 20th day of May last?

A. In the house. 30

Q. Did you see Mike Tomassi that time?

A. I saw him about ten minutes after one.

Q. Ten minutes after one?

A. Yes, sir.

Q. Will you just describe what you have observed?

A. I was on my front porch ten minutes after one, and I saw Mike peep his head out of the door and look down and up the street and go right in again, and, after a little while, I heard some shoot- 40

ing, and while I heard the shooting I heard the little girl Rosie scream, "Oh, Mike is killing my—"

Defendant's Counsel: Objected to on the ground that this is hearsay.

A. "Mike is killing mama; Mike is killing mama—"

10                    Objected to.

Q. How long did the remark of the little girl follow the shooting?

A. Well, this shooting was going on—

The Court: Part of the *res gestae*; go on.

Defendant's Counsel: I ask for an exception.

Exception allowed.

20

ALFRED REED,  
P. J.

A. While the shooting was going on, the little girl was screaming, "Oh, Mike is killing mama; Mike is killing mama," and while the little girl said this, I opened the door and ran upstairs.

Defendant's Counsel:

Q. Of which house?

30                    A. My house; because I was afraid, I ran upstairs.

Q. What did you do to your door?

A. Locked the door.

Objected to.

A. I locked the door and went in the house and then I came out again when they were taking her to the hospital, and that is when I went out front again.

40

Q. Did you observe Mike's appearance?

A. What do you mean?

Q. Did you see Mike's face?

A. Yes, sir; before the shooting.

Q. Well, what did you observe—what did you notice?

A. I saw him look up and down the street, and then the little girl started to scream—then he went in the house, and, after a little while I heard some shooting and the little girl screamed—

10

Defendant's Counsel: I object to that going on the record.

The Court: It is not worth while getting the same thing again.

Q. What do you say the number of your house is?

A. 170.

Q. I call your attention to the map, and say that this is designated as Mrs. Congilio's house here, and ask you whether or not you lived—

20

Defendant's Counsel: I object to that diagram being used; it is not in evidence.

Prosecutor: Well, I offer it in evidence.

The Court: It is offered in evidence for the purpose of illustration.

Defendant's Counsel: I object to it being offered in evidence on the ground that it is not a correct diagram of the premises at the time the crime was committed, and on the further ground that it does not show the entire premises.

30

The Court: I guess it is good enough for the purpose for which it was offered.

Objection overruled.

Exception prayed and allowed.

ALFRED REED,

40

P. J.

Q. Kindly state whether or not the house that you live in—the direction of the house that you live in from the Congillio house?

A. There is another house between her house and mine.

Q. Then, yours is the second door from the Congillio house?

10 A. Yes, sir; 170.

Q. And you lived on the south side of the double house; brick house?

A. Yes, sir.

Q. Whose house was it from which Mike Tomassi stuck his head?

A. What house was he in?

Q. What house was he in?

A. He was in that lady's house that is dead; I don't know her name; he was in that lady's house.

20 Q. Delia Congillio?

A. Yes, sir; in that house.

Q. You stated that one of the little girls was crying out in front of the yard, and I ask you to state which little girl it was?

A. This little girl; Rosie.

Cross-examination by Mr. Mason:

30 Q. Do you mean to say that you do not know the name of this woman that was shot?

A. I don't know her last name.

Q. You knew her first name?

A. I know her first name.

Q. How long have you known her?

A. I have known her for I think a couple of years.

Q. Do you mean to tell this jury that you did not know her last name?

40 A. No, sir; I didn't know her last name.

Q. You didn't go to the inquest at Trenton, did you, on the 29th of May?

A. In Trenton?

Q. Yes.

A. What do you mean?

Q. You didn't go down to Trenton to testify on the 29th of May, at the Coroner's inquest?

A. No, sir.

Q. You knew these facts then just as well as now, didn't you?

10

Q. A. Yes, sir.

Q. Who was the first person, was it Mr. Hunt, to whom you first told this story?

A. Yes, sir.

Q. Why didn't you tell it to the police officials at Trenton, why didn't you tell someone before then; when was the first time you told it to Mr. Hunt?

A. I don't remember.

20

Q. You don't remember?

A. No, sir.

Q. Where was this little girl playing that you say you heard crying out. Show us on the map where she was, just come right down and show us; show the jury.

A. I don't understand this.

The Prosecutor: Here is the front porch and here is the door and here is the railing around here. (Indicating on map.)

30

Q. Here is the street; you say you live at No. 166?

A. 170.

Q. That (indicating), is supposed to be your house?

A. Yes, sir.

Q. Now where were you at this time when you first saw Mike?

40

A. I was on my front porch.

Q. Did your porch come out to the street?

A. Yes, sir.

Q. How far?

A. Well, about—

Q. Don't look around here at Mr. Hunt; look at the map.

A. I cannot tell you, just near the street, you can see everything.

10           The Court: I don't see any cause to remark to the witness not to look at Mr. Hunt, she was not looking at Mr. Hunt at all.

Q. Where were you standing?

A. My front porch.

Q. Where did Mike—

A. He peeped his head out.

Q. Where did he come from?

A. In the house.

Q. He was in the house?

20           A. Yes, sir.

Q. How long had you been on the porch?

A. I just came out about three minutes before.

Q. You just came out a few minutes before, and just while you were out there those few minutes Mike peeped out, is that it?

A. Yes, sir.

Q. How much did he peep out?

30           A. He peeped his head out and looked down the street and up the street and went in again.

Q. He looked as if—where was the little girl at this time?

A. She was out on the front street.

Q. Whereabouts?

A. This is the railing, isn't it? (Indicating map.)

Q. No, back right from this place here is the Congilio house and here is your house, 170?

A. Yes, sir.

40           Q. Where was the little girl?

A. Right by the fence.

Q. Right where?

A. Is that the fence?

Q. I am not sure whether there is a fence there myself or not. This does not show whether there is a sidewalk here or not. Is there a sidewalk on there?

A. There is a little street.

Q. Is there a sidewalk around there?

A. A pavement.

Q. Yes.

10

A. No pavement, just a street.

Q. Is there a gutter along here?

A. There is a gutter, but she wasn't outside of the gutter, she was inside of the gutter.

Q. Where?

A. Right in front of the door in the fence, right by the railing of the fence.

Q. Was there a porch between her and the house?

A. Yes, sir.

20

Q. Is there a fence along there in front of the Congilio house?

A. Yes, sir.

Q. How large a yard is there in front of the Congilio house?

A. They have no yard, just a little porch.

Q. There is a little porch and fence in front; was the girl outside of the fence?

A. Yes, sir.

30

Q. Is there a gate in front of the Congilio house?

A. No, sir.

Q. Just the fence?

A. Yes, sir.

Q. She was outside of the—

A. Of the fence.

Q. Outside of the fence?

A. On the sidewalk, yes, sir.

Q. And where were you when she first cried?

40

A. On my front porch.

Q. You were on your front porch?

A. Yes, sir.

Q. Did she cry before there was any shooting?

A. No, sir.

Q. After?

A. When—I don't know who was shooting, but when some one was shooting the little girl screamed.

Q. She stood right on the sidewalk?

A. She went right by the fence.

10 Q. But she stayed right along on the sidewalk, didn't go inside?

A. She went right by the fence.

Q. She did not go inside?

A. I didn't see her go inside at all.

Q. You did not see her go inside of the house during the shooting?

A. No, sir, I went right inside after the shooting.

Q. All the time she was hollowering that you heard her she was outside?

20 A. She was near the fence outside.

Q. Did you go out to any place with Mrs. Congilio the day preceding this, or on Saturday?

A. What is that?

Q. What is your business?

A. I stay home.

Q. Are you married?

A. Yes, sir.

30 Q. Don't you take in—have any business of your own?

A. No, sir.

Q. You are on very friendly terms with the Congilios, you visit back and forth with the Congilios?

A. No, I didn't go much, I knew her when I saw her and she knew me when she saw me, we just lived there two months before this happened.

Q. But you knew her for two years?

A. Yes, I had known her for two years.

40 Redirect-examination:

Q. You spoke of a fence there by the porch, you mean the porch railing, don't you?

A. Yes, sir.

By the Court:

Q. Is the house on the street—the porch of the house comes right up to the street?

A. There is a little bit of a sidewalk there, just a little street.

Redirect:

Q. A cinder path, isn't it?

A. Yes, just a little path, and right near the porch there is a little railing fence. 10

Q. On the porch?

A. Yes, right along with the porch.

Mr. Mason: Now I ask that the cries of the little girl be stricken out.

The Court: The request is refused and exception given.

ALFRED REED, 20  
P. J.

POSTALA CONGILIO, called:

By the Court:

Q. How old are you?

A. Eleven, going on 12.

Q. Suppose you should be sworn to tell the truth in this case, and then you should tell what was not true, what would be the result to you? 30

A. It would be a sin.

Q. Well, if you committed that sin what would be the result?

A. I would go to Hell.

APOSTELLE CONGILIO, sworn in behalf of the State.

Direct-examination by the Prosecutor: 40

Q. Where do you live now, Apostelle?

A. Down Main Street.

Q. Since the death of your mother where have you lived?

A. Hopewell Home?

Q. Over at Hopewell Home?

A. Yes, sir.

Q. What kind of an institution is that?

10                   The Court: What odds does it make?  
                       The Prosecutor: What odds does it make?  
                       The Prosecutor: All right, sir.

Q. Where were you on the 20th of May last?

A. Home.

Q. Home in Lambertville?

A. Yes, sir.

Q. Who else was there at the time that you got up in the morning, and what time was that?

20                   A. It was about seven or eight o'clock.

Q. It was about seven or eight o'clock that you got up?

A. Yes, sir.

Q. Who else was there at that time, at the house?

A. My brothers and sisters and Michael Tomassi and my mother.

Q. Your brothers and sisters and Michael Tomassi—

30                   A. (Interrupting.) And Michael Tomassi and my mother.

Q. What had become of the other boarders?

                      Objected to as immaterial.

A. They went to work.

Q. What time did your older brother leave the house?

A. Eight o'clock he started to go to school.

40                   Q. At eight o'clock?

A. Yes, sir.

Q. Subsequent to that, or after your brother

left the house did you observe Mike Tomassi in the house with your mother or near your mother?

Objected to as leading.

Mr. Large: That is only preliminary.

The Court: I will let the question stand and allow you an exception.

Let the exception be sealed, and it is sealed accordingly.

10

ALFRED REED,  
P. J.

Q. Was Mike in the house with your mother?

A. Yes, sir.

Q. Now, then, just state in your own way to these gentlemen what occurred while you were downstairs?

A. Michael Tomassi had a dollar in his hands (indicating his left hand) and a pistol in this hand (indicating his right hand), and he said to my mother, "If you don't take this dollar, I will shoot you." And my mother said, "I got a husband working for me."

20

Q. Where was this?

A. Downstairs in the kitchen, and upstairs too.

Q. First while you were downstairs?

A. Yes, sir.

Q. (Going to the map in evidence.) Let me show you this map here (indicating). This is supposed to be the ground floor, where you come in from the street. Do you understand it?

30

A. Yes, sir.

Q. (Again indicating on the map.) This is the back room, in your cellar. Do you understand?

A. Yes.

Q. (Again indicating on the map.) And that's a door leading from there, and that's the doorway going upstairs, and there is the table, the range and a bench. Do you understand?

40

A. Yes.

Q. Will you tell us where Michael and your mother were when you heard Mike say this? Just point with this. (Hands witness the pointer.)

A. He was standing in the kitchen.

Q. (Indicating on the map.) This is the front room; here is the kitchen, back here. Just point. Here is the door in between.

10 A. He was in the kitchen.

Q. Was in the kitchen?

A. Yes, sir.

Q. Which room do you call the kitchen?

A. The front room, by the door you go in.

Q. Where you go in from the street?

A. Yes, sir.

Q. You call that the kitchen?

A. Yes, sir.

20 Q. (Indicating on the map.) This is the door you come in from the street. Do you understand it?

A. Yes, sir.

Q. Now, then, whereabouts in that room were your mother and Michael?

A. In the kitchen.

30 Q. Where did your mother stand when he said this? You understand the map, do you? You see that is the door and here is the table. Now, whereabouts did either one of them stand?

A. Michael was by the table and my mother was on the side.

Q. Mike was by the table?

A. Yes.

Q. And your mother was at the side?

A. Yes.

Q. How far apart were they?

A. I don't know how far apart they were.

40 Q. You don't know how far?

A. No, sir.

Q. Do you know what time in the morning it was?

A. No, sir.

Q. Where did Mike stand?

A. By the table.

Q. What part of the table—which side of it?

A. (Indicating.) This side.

Q. Which side do you mean, by “this side?”

A. On the side near the door.

Q. On the side nearest to where you go out of  
the door? 10

A. Yes, sir.

Q. Where did your mother stand?

A. (Indicating.) On this side.

Q. Which side do you mean by “this side?”

A. By the steps as you go out.

Q. You mean how close to the front part of the  
house?

A. By the front part of the table.

Q. And your mother stood by the other side of  
the table? 20

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Mr. Mason: If your Honor please I ob-  
ject to the Prosecutor pointing to the map,  
as it has not been shown that this was the  
position of the furniture on the 20th day of  
May. 30

The Court: Assuming that the boy recog-  
nizes the condition of the table as it is lo-  
cated on the map as being in the same lo-  
cation it was on the 20th day of May, I  
suppose.

Mr. Mason: He has not identified it, your  
Honor.

The Prosecutor: I can.

The Court: Don't take up the time. Go  
on. 40

Q. Now Apostelle, just take this gun and this postal card, letting the postal card represent a dollar bill, and show us just how Mike stood and what he did with the gun and the dollar.

Objected to.

The Court: Go on.

10 A. He had the dollar in his hand (indicating his left hand), and the pistol in this hand (indicating the right hand), and he said, "If you don't take this dollar I will shoot you." My mother said, "I don't want any dollar; I got a husband working for me."

Q. What happened then?

A. Then he stuck it back in his pocket and me and my three sisters started to cry.

Q. You and your three sisters started to cry?

20 A. Yes.

Q. He put the revolver back in his pocket, did he?

A. Yes.

Q. What about the dollar bill?

A. Mike put that back too.

Q. What did Mike do then?

A. Mike went out.

Q. How long was it before he came back?

30 A. I don't know how long.

Q. Where were you while Mike was out?

A. I was home.

Q. You don't know how long Mike was away before he came back?

A. No, sir.

Q. What did your mother then do?

A. Then she stayed upstairs making her beds, started to make the beds.

40 Q. Hadn't Mike come back yet?

A. Yes, sir.

Q. Mike was back then?

A. Yes, sir.

Q. Where was Mike when your mother was making the beds upstairs?

A. He was in the room.

Q. Which room?

A. He was in both of the rooms, in where my mother sleeps and my two cousins sleep, my mother's brother and the other one.

Q. They were in both rooms?

10

A. Yes, sir.

Q. Was this on the second or the third story of the house?

A. The second.

Q. What occurred while Mike and your mother were there upstairs?

A. My mother said, "Don't bother me."

Q. Who too?

A. To Mike.

Q. Did she say anything to you children?

20

A. No, sir.

Q. Did you children go upstairs?

A. Yes, sir, stayed upstairs with my mother.

Q. You were upstairs with your mother?

A. Yes, sir.

Q. Why did you go upstairs?

A. When he started to say, "If you don't take this dollar I will shoot you," I was afraid he would shoot her upstairs.

30

Q. What did you do?

A. I followed her up.

Q. After you got there what did you observe?

A. Nothing.

Q. What did you see Mike do upstairs, if anything?

A. He went up in his room.

Q. While you were upstairs did Mike make any remarks to you?

40

A. He said, "Here's a penny; go downstairs." And I said, "I don't want no penny."

Q. Did he say anything to your sister?

A. No, sir.

Q. Rosie.

A. No, sir.

Q. Did Mike at that time, while he was upstairs, have the revolver out of his pocket?

Witness: When he said "Take this penny," do you mean?

The Prosecutor: Yes.

A. No, sir.

Q. Did he at anytime while he was up stairs?

A. He had it upstairs when he said, "Take this dollar or I will shoot you," and he said that again.

Q. Am I to understand that he made that remark upstairs as well as downstairs?

A. Yes, sir.

20 Q. After he offered you the penny to go downstairs what did you do?

A. I staid upstairs.

Q. How long did you stay upstairs?

A. As long as, until my mother went down in the kitchen.

Q. Then what became of Mike?

A. Then he went uptown.

Q. What did you do after Mike went uptown?

30 A. While he was uptown I went to where the field was and started to play mumbledy-peg with some other boys.

Q. And what became of your little sisters?

A. They was out front, by the house.

Q. During the period Mike was upstairs and you were upstairs where were your little sisters?

A. They was up there too.

40 Q. State whether or not they stayed there as long as Michael Tomassi stayed there.

A. Yes, sir.

Q. Were they there as long as you were?

A. Yes, sir.

Q. Did they remain there until your mother came down to the kitchen?

A. Yes, sir.

Q. After Michael went out what did the little children do?

A. They went out front and started to play.

Q. During the time that Mike was in the kitchen or upstairs, now, state anything that you have not stated which was said by Mike. 10

A. Downstairs he was sitting by the door, drinking a bottle of beer, and my mother don't want any.

Q. Didn't want what?

A. Didn't want any beer.

Q. Didn't want Mike what?

A. My mother didn't want any of the beer. He was drinking a bottle of beer.

The Court: Fix the time when this was. 20

Q. Do you know what time Mike went uptown?

A. No, sir.

Q. Did Mike ask you or ask your mother or suggest to your mother in your presence about taking any trip.

A. Yes, sir.

Q. State what he said in regard to a trip?

A. He said, "Come on and go to Trenton; you can take him too. Take Apostelle with you." My mother said "No, I don't want to go." 30

Q. Mike asked your mother to go with him to Trenton?

A. Yes, sir; and he said she could take me too.

A. What was the reply?

A. She said, "No, sir, I don't want to go."

Q. While you were playing, do you know when Mike came back?

A. No, sir. 40

Q. Did you see Mike there again at the house?

A. No, sir.

Q. Have you ever seen Mike there at the house

since the time that you left him, or he went up-town, at that time when you went out to play?

A. No, sir.

Q. Have you never seen him there?

A. No, sir.

Q. When did you next see your mother?

10 A. When a colored lady by the field when he was playing, said, "What is the matter with your mother," and I ran down and there she was shot.

Q. That was the first you had seen of your mother—

A. (Interrupting.) Yes, sir.

Q. —since Michael left at that time?

A. Yes, sir.

Q. You are not the boy that went to Trenton?

A. No, sir.

20 Cross-examination by Mr. Mason:

Q. Is this the same story that you have told, or that you told when you were under oath, that you told in Trenton under oath?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. It is?

A. Yes, sir.

30 And also have told on the stand—it is exactly the same as the story you told on the 29th day of May, and which was so much sooner after the shooting than the present?

A. Yes, sir.

Q. It is?

A. Yes, sir.

40 Q. Apostelle, on the morning of that day about eight o'clock, you first testified to, was Mike dressed—did he have part of his clothes off and was he washing his hands trying to get the dirt off?

A. No, sir; he had his blue suit on that he has on now, and he had a watch chain and a watch—a watch charm with a ribbon around it.

Q. He went upstairs after this, after you say they were in the dining-room together, did or not your mother tell you to go anywheres for protection—did your mother ask you to go anywheres, to get a policeman, or ask for any protection to keep Mike from shooting her? 10

A. No, sir.

Q. Your mother didn't seem to be afraid, did she?

Mr. Large: Oh, that is unfair.

A. I don't know.

Judge Connet: ((Justice Reed having temporarily left the bench.) That's a conclusion. 20

Mr. Mason: Does your Honor overrule it?

Judge Connet: I overrule it.

Mr. Mason: I pray an exception.

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

ALFRED REED,

P. J. 30

Q. Now, your mother didn't tell you to go for any assistance or tell you to go for any of the neighbors or for anybody else, did she?

A. No, sir.

Q. Who went upstairs first after Mike had finished his bottle of beer?

A. I don't think nobody went.

Q. You don't think anybody went?

A. No, sir. 40

Q. Then this scene you testified to as having taken place upstairs never really occurred—is that

if—somebody told you about that?

A. Nobody told me about that.

Q. Who went upstairs first?

A. I don't know; I went out and started to play mumbledy-peg.

Q. When you came back were both Mike and your mother upstairs?

10 A. No, sir.

Q. Where were they?

A. Mike had done shot my mother.

Q. Now, you testified to twice—you say Mike took out his gun twice—downstairs in the dining-room you say he took out his revolver and held it in his right hand and took a dollar bill and held it in his left hand; that's true is it, and said "Take this or I will shoot you?"

20 A. Yes, sir.

Q. Now, didn't you testify to something of that kind taking place a second time, or wasn't that true?

A. It is true.

Q. It is true?

A. Yes, sir.

Q. Then did you see him?

Witness: When he took it out?

30 Mr. Mason: How many times did Mike take out the money?

A. Twice.

Q. Tell us where they were. You say the first time they were down in the kitchen?

A. Yes, sir.

Q. Then, when I ask you whether you saw them again you said you did not see them until after your mother was shot?

40 A. He done it upstairs too.

The Prosecutor: He didn't understand your question.

- Q. When did this take place upstairs?  
 A. When she started to make the beds.  
 Q. Now, I asked you which one went upstairs first. Did Mike go upstairs first?  
 A. I don't know.  
 Q. Which floor was Mike's room on?  
 A. The third floor.  
 Q. The third floor?  
 A. Yes. 10  
 Q. Didn't you go up to Mike's room on the third floor?

Witness: That morning?

Mr. Mason: Yes.

- A. No, sir.  
 Q. You did not go up there?  
 A. No, sir.  
 Q. Which floor was it when you say Mike came back again—what time in the morning was it that Mike was drinking a bottle of beer? 20  
 A. I don't know what time it was.  
 Q. What time was it when they were upstairs?  
 A. I don't know.  
 Q. You knew when you were down at Trenton, didn't you?  
 A. Yes, sir.  
 Q. How is it you can't tell it now? 30  
 A. (No answer.)  
 Q. Do you know whether or not Mike had a valise?

Witness: Where, upstairs?

Mr. Mason: Yes.

- A. Yes, sir  
 Q. You used to go up in Mike's room quite frequently, did not you? 40  
 Witness: That day?

Mr. Mason: No; different days.

A. Yes, sir.

Q. You knew he had a valise?

A. Yes, sir.

Q. Now, as a matter of fact, didn't Mike keep his razor and pistol in that valise?

A. I don't know.

Q. Or don't you know?

A. I don't know.

10 Q. Now, going upstairs, that you say you cannot place the time of now, did he say, "Take this dollar or I will shoot you," in Italian or in English?

A. In Italian.

Q. What is the Italian of those words?

Witness: Do you mean how do you say it?

Mr. Mason: Yes, in Italian?

A. I don't know.

20 Q. You don't know how to say it in Italian?

A. No, sir.

Q. Then how can you tell what he said that day?

Witness: How he told it?

Mr. Mason: Yes.

A. I could tell.

Q. You could tell?

A. Yes, sir.

30 Q. Although you cannot tell it in Italian, and he said it in Italian?

A. (No answer.)

The Court: Don't you understand Italian?

Witness: Not very much.

Q. Do you know when Mike's month was up, when his money came due to pay your mother?

A. No, sir.

40 Q. Are you positive that the bill—Mike showed your mother a dollar bill, didn't he?

A. Only a One dollar bill he showed her.

Q. Are you positive that was a One dollar bill and not a Five dollar bill?

A. One dollar.

Q. How do you know?

A. I know; I seen it.

Q. Was it open or folded?

A. It was opened.

Q. You are sure of that?

A. Yes, sir. 10

Q. Has Mike on different occasions frequently given you pennies?

A. He said, "Here is a penny for you."

Q. I ask you if Mike did not on different occasions give you pennies, frequently?

A. Yes, sir.

Q. He has, hasn't he?

A. Yes, sir.

Q. At those times you heard Mike say he always talked in Italian, didn't he? 20

Witness: To me?

Mr. Mason: To your mother.

A. Sometimes.

Q. Most of the times when he was talking to your mother he was talking in Italian, wasn't he?

A. Yes, sir.

Q. You heard him saying something about a trip, didn't you? 30

A. Yes, sir.

Q. About his going away?

A. Yes, sir.

Q. Do you remember that morning when Mike was placed downstairs whether he was shaved or not or whether he said anything about going to the barber's to get shaved and a haircut before going on the trip?

A. I know he said something about getting shaved. 40

Q. He told that in your mother's presence that morning?

A. Yes, sir.

Q. And he went away?

A. Yes, sir; he said he was going to get shaved.

Q. Do you recall whether he returned to the house with his hair cut and his face shaved when he came back the second time?

10

Witness: When he came back?

Mr. Mason: When he was upstairs in the bedroom with the bottle of beer.

A. I think he was shaved.

Q. On that occasion he spoke about going away again, didn't he?

Witness: When he came back again?

20

Mr. Mason: Yes.

A. I don't know; he said something to my mother, "Come on and go to Trenton."

Q. And didn't he again offer your mother money?

A. Yes, sir.

Q. And he again took money out of his pocket and offered it to your mother, didn't he?

A. Yes, sir.

30

Q. Can you put that in Italian, what he said? He said that in Italian, didn't he?

Witness: Said what?

Mr. Mason: About going to Trenton and wanting her to go and offering her a Dollar.

A. Yes, sir.

Q. He put that in Italian, didn't he?

40

A. Yes, sir.

Q. Was it you that went with Mike on Saturday—that is, the 18th of May—to get his money out of the bank—was it you or your brother?

A. I don't think it was me.

Q. You don't remember?

A. No, sir.

Q. You don't know of your own knowledge whether Mike was married or not, do you?

A. No, sir.

Q. Do you remember his ever telling you about his wife and child in Italy?

10

Objected to.

A. No, sir, I don't think he did.

Q. Did he say anything that morning about his wife and child in Italy, or couldn't you tell?

A. I think he said something about his wife.

Q. Yes, he said something about sending for them.

A. (No answer.)

Q. You don't know how much board a month Mike paid your mother, do you?

20

A. I think it was \$2.25.

Q. Do you know what arrangement Mike had with your mother about getting the meals for Mike?

Witness: Who cooked for him?

Mr. Mason: Yes.

A. My mother.

30

Q. And who usually went out and got the provisions for him?

A. Sometimes my mother sent me.

Q. Yes; and sometimes—

A. (Interrupting.) He would go.

Q. He would go and sometimes your mother would go?

A. Yes, sir.

Q. And when they were brought in, your mother would cook them for Mike's meals?

40

A. Yes.

Q. And would Mike sometimes give you the money?

A. My mother used to give me his book; he used to get trust and I would go down and get it; she would tell me what to get for him, you know.

Q. Didn't you hear that morning Mike and your mother saying something about paying the bill he owed them?

10

A. No, sir.

Q. You don't remember that?

A. I didn't hear him say nothing about that.

Q. Are you sure, if it was said in Italian, whether you would understand—do you know whether he said about how much he owed your mother for provision?

A. I don't know?

20

Q. It might have been said and you not have understood it?

A. It might.

Q. Now, you have told us, Apostelle, about this second time, about Mike with the dollar in his left hand, and the pistol in his right hand and about him threatening to shoot your mother?

A. Yes, sir.

Q. That was said in Italian, was it not?

A. Yes, sir.

30

Q. Can you tell the jury what it was in Italian?

Witness: What—say that?

Mr. Mason: Yes.

A. (Witness speaks in Italian.)

Q. You understand that?

A. Yes, sir.

Q. What did your mother say?

40

A. She said, "Nox." I got a husband working for me."

Q. Didn't you tell down at Trenton that she said, "Don't bother me?"

A. Yes.

The Court: That is what he said here.

Q. Did your mother seem frightened then—did she tell you to go for help?

A. No, sir.

Q. Didn't tell you to go for a policeman?

A. No, sir.

Q. Didn't tell you to go to the neighbors and tell them that Mike had threatened to kill her? 10

A. No, sir.

Q. As a matter of fact she told you to go downstairs and play, didn't she?

A. No, sir.

Q. Didn't you say that she told you to go?

Witness: Say what?

Q. Didn't you tell it a short while ago, that your mother told you to go? 20

A. I don't think I did.

Q. Didn't you tell it down at Trenton—

A. (Interrupting.) I don't remember.

Q. —that your mother told you to go?

A. I don't remember.

Q. Now, think, Apostelle; this is very important. Didn't you say that your mother told you to go?

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

Q. Was Mike up in his room part of the time? 30

A. I think he went up. But I went up once.

Q. Yes. Now, Mike was dressed in those clothes, wasn't he; the same clothes he has on today?

A. I don't know that they are the clothes, but he had a blue suit on.

Q. As a matter of fact, aren't those the same clothes, the same shirt and necktie he had on when he went upstairs?

A. No; I don't think that is the necktie. 40

Q. Is the suit like the one he had on?

A. It was a blue suit.

Q. Those were known as Mike's Sunday suit?

A. I think he used to wear it Sundays.

Q. Those were the best clothes he had, weren't they?

A. I don't know.

Q. Do you remember saying anything at Trenton, that your mother was under the care of the doctor?

A. Yes, sir.

10 Q. You remember that?

A. Yes, sir.

Q. Apostelle, don't you remember saying at Trenton, "My mother said, 'go downstairs,'" and then they asked you, "Did he have the pistol out in that room?" and you replied, "No, he did not have the pistol"; and then the question was asked, "That was in your mother's room?" and you answered, "Yes, sir?"

20 A. Well, he did say that in my mother's room, too.

Q. He said that in your mother's room, too?

A. Yes, sir.

Q. You said today that you were down by the field with some boys, didn't you?

A. Yes, playing mumbledy-peg.

Q. Playing mumbledy-peg?

A. Yes, sir.

Q. Is that what you told at Trenton?

30 A. I don't remember.

Q. What say?

A. I don't remember.

Q. As a matter of fact, didn't you say at the Coroner's inquest at Trenton—a question was asked of you by the Coroner, "Where did the shooting take place?" and you replied, "Downstairs in the cellar; and my mother was getting supper, and we went to get a spoonful of oil, and when we was coming out of the cellar he shot."

40 A. Yes, sir.

Q. You said that at Trenton?

A. Yes, sir.

Q. And then they asked you did you see that?

A. I didn't see it.

Q. You did not see it?

A. No.

Q. You said you did not see it?

A. Yes.

Q. Then they asked you—you heard the shots?

A. No, I did not hear the shots.

Q. You said that at Trenton, didn't you? 10

A. I don't remember.

Q. You don't remember telling the Coroner, in Trenton, that you heard the shots?

A. No, sir.

Q. Didn't you answer the question as to whether you heard the shots, "I did not hear the shots. My little sister was playing and hollering and all like that." And then they asked you where were you and you replied, "I was outside of the house." 20

A. I was not.

Q. But didn't you say that at Trenton?

A. I was playing mumbledy-peg not far from the house.

Q. Didn't you tell the Coroner that you were in the field?

A. Yes, sir.

Q. At Trenton—isn't that true?

A. I don't remember. 30

At this point the Court adjourned until Tuesday, October 1, 1907, at half past nine o'clock in the A. M.

HUNTERDON COUNTY OYER AND TERMINER.

10

<p>THE STATE</p> <p>vs.</p> <p>MICHAEL TOMASSI.</p>
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Flemington, N. J., Tuesday, October 1, 1907.  
Case resumed pursuant to adjournment.  
Appearances as heretofore noted.

APOSTELLE CONGILIO, resumes the stand.

Cross-examination continued by Mr. Mason:

20 Q. Apostelle, just a few more questions. When was your mother shot?

A. About two o'clock.

Q. Well, what day of the month—what month?

A. In May.

Q. What date?

A. The 20th.

30 Q. Now, with whom did you first talk over this matter—who was the first outsider to whom you talked over this matter?

Witness: Who I talked to first?

Mr. Mason: Yes.

A. Nobody.

Q. Well, you must have talked to someone. To whom did you first tell about these occurrences that you have said occurred there—to whom did you first tell them.

40 Witness: Tell what?

Mr. Mason: Tell about what you have said took place in the house?

A. (Indicating counsel for the State.) To them there.

Q. Which do you mean by them there.

A. I talked to them three.

Q. You talked to them three?

A. Yes, sir.

Q. When did you talk to them?

A. Saturday.

10

Q. What Saturday?

A. Saturday just past.

Q. You went to Trenton on the 29th of May?

A. Yes, sir.

Q. Who did you talk to about this occurrence before you went to Trenton?

A. Nobody.

Q. How would you know at Trenton what you knew—didn't you talk to anybody before you went to Trenton? To any of the women in the house that came soon after this affair?

20

A. No, sir.

Q. You didn't talk this matter over with your father or your sisters or any of the women that came there?

A. No, sir.

Q. You didn't speak to anyone?

A. No, sir.

Q. Then the first time that you told anything about what happened in the house was when you were at the Coroner's inquest at Trenton; is that right?

30

A. Yes, sir.

Q. And what you said when you were at Trenton was the exact truth, was it?

A. Yes, sir.

Redirect-examination by the Prosecutor:

Q. Apostelle, last Saturday when we were talk-

40

ing to you about your father, you were there acting as interpreter for him?

Objected to as irrelevant.

The Court: The objection is overruled.

Mr. Mason: I pray an exception.

The Court: The objection is overruled and an exception allowed.

10

ALFRED, REED,  
P. J.

Mr. Braun: If your Honor please, I object to the question on the ground that it has not been shown that anybody acted as interpreter.

The Court: The objection is overruled.

Mr. Braun: I pray an exception.

20

The Court: You cannot have two exceptions to the same ruling. Go on.

The Prosecutor: Who acted as interpreter?

The Court: Who translated?

The Prosecutor: Who translated at that time for your father?

A. Youse three.

Q. I know. But who talked for him?

30

A. I did.

---

GEORGE SOMMER, sworn by the State.

Direct-examination by the Prosecutor:

Q. Where do you reside?

A. Trenton, New Jersey.

Q. What is your occupation?

A. Physician.

40

Q. Are you connected with any hospital there in Trenton?

A. Yes, sir, St. Francis Hospital.

Q. Were you on the 20th day of last May, associated with that Institution?

A. Yes, sir.

Q. State whether or not any woman was brought there who had been shot?

A. There was an Italian woman brought in there somewhere in the afternoon, I suppose somewhere around five o'clock, something of wounds from the chest, abdomen and thigh. There was one on the left side of the chest, another one below the border of the ribs, somewhere near the middle line of the body, and the third one out on the left hip. The patient was lying in the accident room of the hospital and was prepared for an operation, her condition indicating—

Mr. Mason (interrupting): I object. He has not been asked the question and it is not responsive.

Q. Kindly state what you observed there as to the condition of the woman right from the beginning?

A. Shall I repeat it?

The Court: No, do not repeat, go on from where you were.

Witness: She was prepared for an operation, her condition indicating some internal abdominal injury of a most likely hemorrhage; she was operated once by one of my colleagues, a Dr. Costella, I assisted him at the operation. Her abdomen was open and a great deal of blood was found within the abdomen.

Q. Where was the opening?

A. In the upper left hand side of the abdomen.

Q. Indicate, please.

A. (Witness indicates.) About here, just below the edge of the ribs on the left side. It was found

that that wound lay through the left edge of the middle and was lost somewhere in the back around the region of the blood vessels. The doctor sponged out the blood as best he could and applied what we call clamps, they are something like scissors, but are flat on the end and come together, in that region which seemed to control a bleeding. The abdomen was then closed up again and the ordinary dressings applied and the patient put back upstairs in the ward to bed where she died some hours later.

10 Q. Do you know at what hour she died?

A. I do not.

Q. Do you know what action was taken in the way of notifying any official of Mercer County?

A. Well, the usual—

Mr. Mason (interrupting): Of your own  
20 personal knowledge.

Witness: Well, I do not know.

By the Court:

Q. Were you there when the autopsy was performed?

A. No, sir.

Further direct:

30 Q. Do you know what became of the body?

Mr. Mason: That is of your own personal knowledge also.

A. Well, I know it was taken from the hospital—

By Mr. Mason (interrupting):

Q. Did you see it taken?

A. No, sir, I did not see it taken.

40 Cross-examination by Mr. Mason:

Q. Doctor, if the woman had been treated at

Lambertville would not that have tended to redeem her sufferings and help her condition?

Objected to as immaterial.

Objection overruled.

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

Exception allowed; let it be sealed and it is sealed accordingly 10

Judge.

A. I do not know.

SILAS R. BRAY, sworn for the State.

Direct-examination by the Prosecutor:

Q. Where do you reside, Mr. Bray? 20

A. Trenton, New Jersey.

Q. What is your occupation?

A. Funeral director and morgue keeper?

Q. Funeral director and morgue keeper?

A. Yes, sir.

Q. State what your occupation was on the 20th day of May last?

A. Well, funeral director and morgue keeper; just the same. 30

Q. Located where?

A. 306 South Broad.

Q. What city?

A. Trenton, New Jersey.

Q. State whether or not you had occasion to call for a body at St. Frances' Hospital, and state how you came to go there if you did?

A. On the 21st, about 6 o'clock in the morning, Coroner Bowers 'phoned to me from the hospital (interrupted)— 40

Mr. Mason: I object to anything that was said—

The Court: Objection overruled.

Defendant's counsel pray an exception to the above ruling of the Court.

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

ALFRED REED,  
P J.

10 By the Court:

Q. Go on.

A. Coroner Bowers 'phoned to me there was the body of an Italian woman shot at Lambertville, and for me to come over and take it to the morgue, 306 South Broad Street.

By the Prosecutor:

20 Q. Did you do so?

A. Yes, sir.

Q. Did you look at the body?

A. Yes, sir.

Q. Was it the body of a man or of a woman?

A. A woman.

By the Court:

Q. Where did you take it from?

30 A. St. Francis' Hospital, Trenton, New Jersey.

By the Prosecutor:

Q. Where to?

A. 306 South Broad Street, Trenton, New Jersey.

Mr. Large: Taylor's morgue?

Witness: Yes, sir.

No Cross-examination.

40

CHARLES ASSAY, sworn for the State.

Direct-examination by the Prosecutor:

Q. Where do you reside, Mr. Assay?

A. 306 South Broad Street, Trenton, New Jersey.

Q. What is your occupation?

A. Working for an undertaker.

Q. Whom do you work for?

A. I worked for Taylor at the time. I work for Keiser now.

Q. Whom were you employed by on the 20th of May last, and 21st?

The Court: Who did you work for?

Witness: Taylor.

Q. State whether or not you saw the body just referred to by the last witness, Mr. Bray, brought to the Taylor morgue? 20

A. I saw the body on the 21st of May when the post-mortem was held.

Q. Was it the body of a man or a woman?

A. Woman?

Q. Who performed the autopsy upon that woman?

A. Why, Dr. Rogers.

Q. Were you present?

A. Yes, sir.

Q. The body upon whom Dr. Rogers performed the autopsy, was that the body that was taken from St. Francis' Hospital?

A. Yes.

Q. The body referred to by Mr. Bray, the preceding witness?

A. Yes.

Q. Did Dr. Rogers, on that day perform any other autopsy on the body of any woman at Taylor's morgue, that day? 40

A. No, sir.

Q. The particular body that you have referred to, did you observe whether there were any wounds on that body?

A. I saw two scars on the breast.

Q. Do you mean scars or wounds?

A. Well, black marks.

Q. Do you know what became of the body after  
10 Dr. Rogers had performed the autopsy?

Mr. Mason: That is, of your own personal knowledge.

The Prosecutor: I asked him if he knew.

A. Not exactly. It was there in the morgue for that day and the next day.

Q. I mean, what became of it after it left the morgue?

A. I suppose it was buried.  
20

Mr. Mason: I object.

Q. Do you know?

A. No. I don't know.

No Cross-examination.

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DR. EDWIN W. CLOSSON, sworn for the  
30 State.

Direct-examination by the Prosecutor:

Q. Doctor, where do you reside?

A. Lambertville, New Jersey.

Q. And what is your occupation?

A. Physician.

Q. Have been how long?

A. 22 years.

Q. Did you attend an Italian woman on the  
40 20th day of May last?

A. Yes, sir. I was called—

Q. (Interrupting.) Just detail the circumstances?

A. I had a hurry call to come to South Main Street, and see Mrs. Congilio, who was stated to have been shot.

Q. Yes. Did you go?

A. Yes.

Q. Just state what you found after you arrived?

A. When I arrived I found Mrs. Congilio in bed, suffering from the effect of four bullet wounds in her body; one just above the left hip, another just a little above the heart, looked to be, and another a little to the right of that, and another further toward the shoulder. She appeared to be suffering from considerable shock, and as though she was having a good deal of internal hemorrhage.

Q. What other physicians were present?

A. Doctor Salmon arrived about the same time that I did.

Q. Was any other physician there later in your presence?

A. I think Dr. Fretts was standing outside when I—

Q. (Interrupting.) Do you know where Dr. Salmon is now?

A. Dr. Salmon is on his vacation over in Pennsylvania, somewhere near Pittsburg.

Q. What was done by the physicians there at Lambertville if anything? Just state what disposition of the case was made?

A. We gave her a heart stimulant and prepared her to send to Trenton, where she might have some medical aid.

Q. Where, to Trenton?

A. St. Francis' Hospital.

Q. And was she sent to Trenton?

A. Yes, sir. Sent out on the train that left there 2:11 in the afternoon.

Q. From Lambertville?

A. Yes, sir.

Q. What was your diagnosis of the case as to its seriousness?

A. A fatal prognosis, from the condition of the—position of the bullet wounds.

Cross-examination by Mr. Braun:

10 Q. You were Mrs. Congilio's family physician, were you not?

A. I had not recently attended her.

Q. Wasn't she under your treatment at that time?

A. No, sir.

Q. She was not?

A. No, sir.

20 Q. She had no trouble that you were treating her for at that time?

A. No, sir.

Q. Was she sent by train or trolley?

A. She was sent by the steam cars—the train.

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JAMES S. STUDIFORD, sworn in behalf of the State.

Direct-examination by Mr. Hunt:

30 Q. Mr. Studiford, where do you live?

A. Lambertville, New Jersey.

Q. And what is your occupation?

A. Teller in the Lambertville National Bank.

Q. Did the Lambertville National Bank carry a savings account in the name of Michael Tomassi?

A. It did.

40 Q. Did you, on the 18th day of May last, pay to Michael Tomassi, upon his check, all of the money standing to his credit upon that account?

A. I did.

Q. Have you the record of that transaction with you?

A. I have.

Q. Will you produce it?

The Court: Unless counsel for the defendant wants to raise some objection, or cross-examine, it is hardly worth the while.

Mr. Mason: We do want to show what the amount of the deposits that were made were. 10

Witness: I have the check right here.

Mr. Mason: Not the final amount, but I want it shown the way in which the money was put in.

Mr. Hunt: Well, we are not prepared to show that; we are prepared to show simply the closing out of the account; that was the essential consideration. 20

Mr. Mason: But I want it shown what the credits to the account were.

The Court: Have you the books here showing the deposits?

Witness: Yes, sir; I have the book of original entry right here.

The Court: Well, it may be as well to have it shown now. How long will it take you to find it? 30

Witness: I can turn to it right away.

The Court: About a minute?

Witness: Yes.

By Mr. Hunt:

Q. Will you turn to the first deposit,—first, Mr. Studiford,—turn to your record and see whether his entire account was closed out and the money drawn on the 18th day of May. 40

Mr. Mason: We admit that.

A. Yes.

Q. What was the amount?

A. Seventy dollars and fifteen cents.

Q. Did he draw it on his own check?

A. Yes.

Q. Did he write the check that drew it?

A. Yes.

Q. That's the check there?

10 A. Yes.

Q. It was paid to him personally?

A. Yes. Personally paid to him.

Cross-examination by Mr. Mason :

Q. Won't this account also show when the deposits were made?

A. Yes.

20 Q. Just read the different dates on which deposits were made, and the amounts?

A. On the 14th day of March, 1907, \$70 was deposited.

Q. \$70?

A. Yes. And on April 1st, there was interests credited of fifteen cents, making the total amount, which was drawn on the 18th day of May, \$70.15?

By the Court :

30 Q. What was the date of the deposit?

A. Deposited March 14th, 1907, \$70.

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MANFRED NAAR, sworn in behalf of the State:

Direct-examination by the Prosecutor :

Q. Where do you reside, Mr. Naar?

A. Trenton, N. J.

Q. What is your occupation?

40 A. I am a Justice of the Peace.

Q. Mercer County?

A. Mercer County.

Q. Did you receive some articles from Officer Roland Mitchell—

Witness (interrupting) : Roland Mitchell?

The Prosecutor (continuing) : About the 20th day of May last or from—

Mr. Mason (interrupting) : Let him answer the question.

The Prosecutor : One moment. Were any articles turned over to you purporting to have been taken from an Italian? 10

Witness : From a man by the name of Tomassi?

The Prosecutor : Yes.

A. Yes.

Q. Squire, I show you a revolver, a watch, a razor, a knife, a photograph of a woman, seven cartridges, a handkerchief, a chain and a package of papers, books and envelopes— 20

Mr. Large (interrupting) : Pass books.

The Prosecutor : Pass books—and ask you whether or not they were handed to you on the 20th day of May last?

A. On the 20th day of May Officer Mitchell came to my house with a man supposed to be a man by the name of Tomassi, who handed me— 30

Mr. Large (interrupting) : Was it this man here (indicating)?

Witness : Yes, sir. He handed me a revolver, which this resembles, the one that is marked here—a razor, a knife—that looks like the knife—a handkerchief (an old Italian silk handkerchief of that color), a chain and watch, seven bullets, I think—I placed them in an envelope and marked them—some pass books and \$101 in money, which he took from the prisoner. 40

Mr. Mason: I object to that unless it was in the presence of the witness.

Witness: Yes, sir, he took everything from the prisoner in my presence, excepting the money and the revolver. He took the pass book and these other things from him personally when he captured him; he took the revolver from him when he captured him, not in my presence.

10

Q. Is that the revolver that he handed over to you?

A. That resembles the revolver that he handed over to me.

Q. Is there any mark on there by which you can identify it?

20

A. Yes, sir, I took particular notice of this mark right here where the plating had been taken off.

Q. State what you did with the articles that were turned over to you by Officer Mitchell.

30

A. I marked the cartridges, I placed them in an envelope, and marked them, "Taken from Michael Tomissi," that is the name he gave me, not "Tomassi," he gave me the name of Michael Tomissi and I there marked it on the envelope. And I wrapped up the revolver and these different things in this old handkerchief and put them away; the money Officer Mitchell took, and took it down to his home, which he afterwards turned over to me, and I turned it over to Harry L. Stout, on June 10th, 1907.

Q. The articles, however, that I am referring to, what did you do with them?

40

A. I turned them over I think to—Deputy Sheriff Dilts. Somebody came to my place after them, I can not recall who it was who came there and got them.

Q. Were there more than two people who came there that evening?

A. I cannot be positive, there were quite a number of people came to my office, I think Mayor Ely from Lambertville was one of the gentlemen who came there, there were three I think if not four came to my place.

Q. In any event did you or did you not turn over the articles to one of the officers from Hunterdon County?

A. Yes, sir, I did, I don't recall exactly who the officers were, there were three or four who called there. 10

Q. Are you then certain that Mayor Ely and Sheriff Dilts were two of the officers who were there?

A. Yes, I am positive they were two who came to my house; they came to my house the night she was apprehended.

Q. Did you turn over these articles to one of those two officers? 20

A. I think I—I am pretty positive I did, yes.

Cross-examination by Mr. Braun:

Q. Will you kindly take that pistol and show me that mark.

A. (Witness did so.)

Q. That is a mark which has been caused by the barrel revolving is it not? 30

A. No; when this revolver was taken from him I took a little knife I had and took a piece off of it.

Q. Oh, you did that yourself?

A. Yes, I took a little piece off of it.

Q. What identification marks are there on these other articles?

A. There are no identification marks on these other articles at all.

Q. So you cannot tell us positively whether or not those are the articles handed you that night? 40

A. I cannot say; they simply resemble them.

Q. You can only say they resemble those articles?

A. Yes, sir.

Q. Did you place these articles in a box?

A. No, sir.

Q. You did not place them in a sealed package of any kind?

10 A. I placed them in a large envelope, in my desk.

Q. How long did you keep them?

A. When I took them out and turned them over to the officers, I retained the envelope I had placed them in, it was a large, manila colored envelope, and this (indicating), was sealed up at the time I turned them over.

Q. Why did the officer take the money with him and not these articles.

20 Objected to.

Question withdrawn.

Q. Why did you not keep the money?

A. Because I was notified that Harry L. Stout—

Mr. Mason: That night.

Q. Were you notified that same night?

A. No, sir. The prisoner refused to talk after I had got—

30 Q. You are not answering my question Judge, I want to know why you kept these articles and why the officer took the money?

A. I cannot answer for the officer.

Q. Why didn't you retain everything taken from the prisoner?

A. Because I felt it was my duty to turn over these articles to the authorities of Hunterdon County.

40 Q. The money was taken from the prisoner, was it not?

A. I believe so, I did not see it taken.

Q. Why did you not retain everything that had been taken from the prisoner?

A. What do you mean, "everything?"

Q. Everything.

A. The money?

Q. Everything, yes.

A. The money was not in my possession at the time the man was captured.

Q. The money had never been handed to you? 10

A. Only at the time that Mr. Mitchell handed it to me; I forwarded it immediately to Mr. Stout.

By the Prosecutor:

Q. Have you your check here showing that?

A. Yes, sir.

The Court: It is not necessary to go into that. 20

Mr. Braun: That is all.

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ROSINA CONGILIO, called for the State.

By the Court:

Q. How old are you, Rosie?

A. Ten years old.

Q. Rosie, suppose now you were asked some questions here, and wished to tell an untruth, should lie about it, what about it, would that be right or wrong? 30

A. Wrong.

Q. What would be the result in case you should die after telling such an untruth?

A. Go to hell.

The Prosecutor: I would state for the Court's information that Rosie has been over at the Catholic Orphan's Home in Hopewell and they have instructed her somewhat. 40

Mr. Braun: May I put just one question, if it is improper, your Honor can overrule it.

The Court: Very well.

By Mr. Braun:

10 Q. Rosie, do you know what hell is, do you know what it is to go to hell?

A. The Sisters told me.

Q. What did they tell you?

A. If I told any lies I would get lost and go to hell.

Q. Do you know what it is to be punished?

A. Yes.

Q. And you think you would be punished if you went to hell, is that it?

20 A. Yes, sir.

The Court: Swear the witness.

(The witness was then duly sworn.)

Direct-examination by the Prosecutor:

Q. Where do you live, Rosie?

A. Lambertville, N. J.

Q. You don't live in Lambertville now, do you?

A. No.

30 Q. Where do you live now?

A. Hopewell, N. J., in the home.

Q. In the home at Hopewell?

A. Yes, sir.

Q. Where were you living at the time your mother was shot?

A. Lambertville, N. J.

Q. Were you home the day she was shot?

A. Yes, ma'am.

40 Q. Were you home all day, were you home in the morning?

A. Yes, ma'am.

Q. Who all were in the house that day besides yourself, in the morning now?

A. My sister was there too.

Q. Your two sisters?

A. Yes ma'am.

Q. Who else?

A. My brother.

Q. Who else?

A. Nobody was there in the morning about eight o'clock, only my sister and my brother and Mike Tomassi. 10

Q. Was your ma there?

A. Yes, ma'am.

Q. Then your brothers and sisters, and your mother and Tomassi, were there in the morning about eight o'clock?

A. Yes, ma'am.

Q. Now, then, state what you saw, if anything, as to between Mike and your mother? 20

Mr. Mason: I object to that as leading.

The Court: The objection is overruled.

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

ALFRED REED,

P. J.

Q. Tell them what you saw. 30

A. He said that he wanted bring my mother to Trenton, and my mother said she don't want to go to Trenton. He said if he bring my mother he bring my brother Apostelle.

Q. What did you see Mike do, if anything?

A. He said, "Take this dollar, or else I shoot you." My mother said, "I don't need it. I got a husband working for me."

Q. Where was this, Rosie? 40

Mr. Mason: The juror says he cannot hear.

Q. What did you say? Now, say that over again. Say it to them.

A. He said, "Do you want to come to Trenton?" My mother said, "I don't want to come to Trenton." He said, "I bring your little boy with you, Apostelle." And my mother said, she didn't want to go. And so he said, "You want this dollar?"  
 10 And my mother said she don't need no dollar; she got a husband "working for me; I have got a husband working for me."

Q. What did Mike have in his hand, if anything?

A. He had a dollar and a revolver.

Q. How did he hold the two?

A. (Indicating) He had a dollar here and a revolver here.

Q. Where was this? What part of the house?

20 A. Downstairs?

Q. Eh?

A. Downstairs.

Q. Downstairs?

A. Yes, ma'am.

Q. What part of the house downstairs?

A. Down in the front room.

Q. Did Mike and your mother go anywhere else in the house?

30 Mr. Mason: What time?

Q. Later.

A. Eh?

Q. Did your mother and Mike go anywhere else in the house?

A. They were down there and then he went upstairs.

Q. What did your mother do when he went upstairs?

40 A. My mother went to her bed to make her beds, too.

Q. Well, what did you do then? Where did you go?

A. I went—my brother was chopping wood out back in the yard and my mother called us. We were all after carrying wood to the house.

Q. Your mother called you?

A. Yes; called the whole four of us.

Q. What did she say to you?

10

A. She called us upstairs.

Mr. Braun: I object to that unless the defendant was present.

Q. Was Mike there?

A. Yes, ma'am.

Q. Yes. What did your mother say to you?

Mr. Mason: I object. How can she tell, if she was out in the back yard, whether Mike was there or not? 20

The Prosecutor: If she can't tell she won't.

Mr. Large: Her mother called her up.

Mr. Mason: She can't tell if Mike was there. It has not been shown that Mike was there.

The Court (to Witness): Don't tell anything when Mike wasn't there, anything that your mother said when Mike wasn't there. 30

Q. Now, when you were playing out in the back yard you say your mother called you?

A. Yes, ma'am; she called me and my brothers.

Q. What did she call? You and the others?

A. My brothers and my sisters.

Q. What did she say to your brothers and your sisters? If Mike was there? 40

Mr. Mason: I object; if she can show or prove—

The Court (interrupting): She called them in. That is all.

Q. What did you do?

A. I went upstairs with my sisters.

Q. Who did you find upstairs?

A. I found Mike Tomassi and my mother.

Q. Where were they?

10 A. In the bedroom.

Q. What bedroom?

A. In his room.

Mr. Mason: Found them upstairs in his room?

Witness: Yes, sir.

Q. What did you say? In the bedroom or what room? What do you mean; which room?

20 Mr. Mason: I object. The record will show.

Q. Stop and think. What room were they in when you went upstairs?

A. In the bedroom.

Q. What bedroom?

A. In the front room where his room was.

Q. Was it on the third floor or the second floor?

30 A. Third.

Q. On the third floor?

A. Yes, ma'am.

Q. What occurred while you children—well, who all went up with you?

A. My sister went up with me, and then we was sitting up there, and my brother came up, too.

Q. Which brother?

A. Apostelle.

40 Q. The one that was on the stand last. The one that was on this morning; Apostelle?

A. Yes, sir.

Q. What did you observe when you got upstairs?

A. We were up there, and my mother said—

Q. (Interrupting.) No. I mean when you first went up there; when you were in the bedroom? I don't mean after she was shot.

A. She said "My poor child. I am going to leave you," she said.

The Prosecutor: No, she don't understand. 10

Mr. Braun: I move that be stricken out.

The Court: Yes.

Q. I don't mean after she was hurt. Rosie, what I mean is when you went up there in the morning. When you went up and they were in the bedroom, when Mike was up there.

A. Yes.

Q. What did you say then, if anything?

A. He had a dollar and a revolver in his hand— 20

Q. (Interrupting.) Now, Rosie.

A. And he was going to shot my mother, and my brother hollered; and he put his revolver in his back pocket again, and he went downstairs and went in the lady's store there.

Q. He came downstairs and went out to the lady's store down in the street?

A. Yes, sir.

Q. Now, before he came downstairs, while you were there, did he say anything to you? 30

A. No, ma'am.

Q. Did he say anything to you in regard to going downstairs?

Mr. Mason: I object to that as leading.

The Court: I don't think you ought to ask that.

The Prosecutor: I withdraw the question. 40

Q. Now, Rosie, after Mike came downstairs and went down to the store, where did you go?

A. I came down with my mother.

Q. Were you upstairs and how long? Did you go down before your mother or—

A. (Interrupting.) I went down when my mother went.

Q. When your mother went?

A. Yes. In my uncle's bedroom.

Q. What did you do after you came down?

10 A. I didn't do nothing. My mother was sitting down in the uncle's room, and she was hitting her hands. She was afraid Mike shoot her. She was crying.

Q. Your mother was crying?

Mr. Braun: I ask that it be stricken out, that portion where she says her mother was afraid Mike would shoot her.

The Court: All right, strike it out.

20

Q. Had Mike gone out then, Rosie?

A. Yes, ma'am.

Q. That was when Mike was down at the store?

A. Yes, ma'am.

Q. Then what did you do after Mike went out?

A. My mother went in her room, and then he came back from the store and he came around the the back door, and he came in my mother's room.

30

The Prosecutor: The witness said Mike came back from the store and went in the back way, and went back to her mother's room. Is that right?

Witness: Yes, sir.

Mr. Mason: I would like to ask the witness if she saw him. Did you see Mike?

The Witness: Yes, ma'am.

Prosecutor: You can cross-examine.

40

Q. Well, Mike was away and after you came downstairs as you said, where were you, in the house or out of the house?

- A. Where?
- Q. After Mike came in the house where were you?  
The last time that Mike came in, where were you?
- A. I was in my mother's room with my mother.
- Q. Yes. How long did you stay there? Where did you go after you were there?
- A. I was staying there with my mother.
- Q. Yes. But after Mike went out where did you go? 10
- A. He said good-bye to my sisters, and he said he was going to New York.
- Q. Mike told you he was going to New York?
- A. New York; yes.
- Q. I am asking you where you went?
- A. Then we went downstairs. We went to get our dinner. My brother came home from school.
- Q. You went to get your dinner and your brother came home from school? 20
- A. Yes, sir.
- Q. Where was Mike at this time?
- A. He went uptown. He said he was going to New York.
- Q. Did you see Mike come back again?
- A. Yes.
- Q. How long before he came back?
- A. It was about eleven o'clock or about half past eleven when he went. 30
- Q. When he came back?
- A. When he went.
- Q. Did you hear any pistol shots?
- A. Yes.
- Q. Where were you when you heard the pistol shots?
- A. By the fence around the porch.
- Q. By the railing around your porch?
- A. Yes. 40
- Q. What were you doing?
- A. I was playing with my sisters.
- Q. Who all are there?

A. My two sisters.

Q. You and your two sisters?

A. Yes, ma'am.

Q. Who went in the house?

A. Only my mother, my mother and Mike, Mike Tomassi was there.

10 Q. Your mother and Mike Tomassi were in the house, and your two little sisters out in the front?

A. Yes ma'am.

Q. Now, could you look at this map and tell me where you were playing, where you were? That is the front door there; that is the porch where the red fence is; you see here is the door that goes in front way (indicating).

A. (Indicating on map.) I was down by the fence, this side.

20 Q. Do you mean in front of the fence?

A. Yes, that side of the fence (indicating on map.)

Q. Now then, when you heard the pistol shot, what was the first thing that you did?

A. I hollered out "Mike Tomassi shot my mother."

Q. You hollered?

A. Yes, sir.

30 Q. Then what next did you do?

A. I didn't hear the next shot. I was hollering.

Q. You were hollering and then what did you do?

A. I went in and another shot went out and that was the last shot.

Q. Where were you when the last shot was fired?

40 A. I was in by the door, in the middle of the door.

Q. In the middle of the door?

A. Yes.

Q. Now, just show me where you stood.

A. (Indicating on map.) In there.

Q. The front door?

A. Yes ma'am.

Q. Could you see Mike?

A. I only saw his left arm (indicating.)

Q. Saw his left arm?

A. Yes, sir.

Q. Where was Mike then?

A. (Indicating on map.) He was up here, by  
the steps. 10

Q. Where was your mother?

A. Inside the door.

Q. (Indicating on map.) Here is the door right  
there.

A. (Indicating on map.) Inside the door.

Q. She was a little bit inside the door?

A. Yes, sir. 20

Mr. Braun: If your Honor please, hadn't  
we better have these places marked on the  
diagram?

The Court: You can if you choose. You  
had better wait until cross-examination.

Q. What did you do when you saw Mike—did  
you see Mike shoot at all? When you came up,  
did you stand there when you heard the last shot?

A. Yes. 30

Q. Where did Mike go?

A. (Indicating.) My mother had that pan in her  
hand.

Q. (Handing pan to witness.) Show how your  
mother had that?

A. (Illustrating.) She had it like this, and he  
was shooting, and it went down like that.

Q. Fell out of her hand?

A. Yes, sir. 40

Q. Where was your mother when that happened?

A. She was in the cellar door, too.

Q. Where did the pan fall? In what room?

A. In the cellar.

Q. How far from the door?

A. It wasn't so far.

Q. How far do you think? Measure with your hands?

10 A. (Indicating.) About that far. About there was the door and about there, about this far, was the pan.

Q. Was anything in the pan?

A. No.

Mr. Mason: I object to that. She was outside.

By the Court:

Q. What was she doing?

20 Mr. Mason: I object.

The Court: Go on.

Mr. Mason: I pray an exception.

By the Prosecutor:

Q. Was your mother moving?

A. When she went to get the pan—

30 Mr. Mason: (interrupting): I object and ask for an exception. The girl has said that she was outside of the house at the beginning.

Q. Did you see your mother have the pan?

A. Yes, sir.

The Court: One moment, I want to get counsel's exception. What is it?

40 Mr. Mason: I ask for an exception on the other question, that she was going to get the pan, on the ground that the witness has stated before that she was outside when the first shot was fired.

The Court: Is that all?

Mr. Mason: Yes.

The Court: The objection is overruled.

Go on.

ALFRED REED,

P. J.

Mr. Mason: I ask for an exception.

The Court: There is no use of asking for  
an exception; whenever I overrule your ob- 10  
jection the stenographer will note an ex-  
ception.

Q. Now, you say you saw your mother with the  
pan in her hand?

A. Before she was shot.

Q. Did you see the pan fall?

A. Yes; she dropped it down—she seen—

20

The Court: (Interrputing) Wait. Did  
you see the pan fall?

Witness: Yes sir.

Q. Where were you when it fell?

A. I was by the door and I came down twice.

Q. Did your mother have anything in the pan?

A. No ma'am.

Q. Now, after you went in the door and heard  
the last shot, did you go on in the room, or what 30  
did you do?

A. I was standing by the door too when he went  
upstairs.

Q. You were standing by the door until Mike  
went upstairs?

A. Yes; he turned and shot and runned up.

Q. (Indicating on the map.) Are these the  
stairs he went up?

A. Yes, sir.

40

Q. Where do those stairs go to?

A. They go to the back door.

Q. You say that Mike, after he shot turned and ran upstairs?

A. Yes, sir.

Q. Did you see him go upstairs?

A. Yes ma'am.

Q. And what did you do after you heard the last shot and saw Mike go up the steps?

10 A. I ran down to see where he was going to run.

Q. And what door did you run out of?

A. Out of the front door.

Q. And where did you go after you went out of the front door?

A. (Indicating on the map.) On this side.

Q. On the side of the house?

A. Yes.

Q. Can you understand this map here?

A. Yes ma'am.

20 Q. Here is your house. Come here. (Witness leaves the witness chair and goes to the map.) That is your house (indicating). Where did you stand (indicating)? This is uptown—that is the way uptown. Now where did you stand from your house?

A. (Indicating on the map.) Here.

Q. (Indicating on the map.) Do you mean here?

30 A. Yes, sir.

Q. Now where did you see Mike?

A. On the third, by the brick, by that big stone there, pretty near up to the top of the hill.

Q. What was Mike doing?

A. He wasn't doing nothing.

Q. He was running?

A. He was running, yes ma'am, and a woman called him and he turned around and he walked off.

40 Q. A man and a woman called to him and he turned around and walked on?

A. Yes ma'am.

Q. Did he walk or run?

A. He ran.

Q. Who were the persons that called?

A. Salvatore and Pasqualina. She is here as a witness yet.

Q. Yes, I understand. Where did they stand after the shooting?

A. By the porch; and they stand from that little porch and put their heads out and look where he was going; when he was running they called him and he ran on, turned around and ran on. 10

Q. What did you do then?

A. I told the lady he was running.

Q. What did you do next?

Mr. Braun: I move that the last answer be stricken out. I don't suppose it makes much difference though.

The Court: No, but it is competent as part of the *res gestae*. 20

Q. What did you do next?

A. My mother was coming out of the house and I ran down.

Q. What did your mother do?

A. She was coming out and I called twice, and she came, and just—

Q. (Interrupting.) Did your mother stay back by the kitchen? 30

A. No.

Q. What did your mother do?

A. Ran out of the door.

Q. Your mother ran out of the door. What door?

A. The front door.

Q. What did she do when she got out on the front porch?

A. She was hollaoing "Mike Thomas—" 40

Mr. Mason (interrupting): I object to that on the ground that it is hearsay.

The Court: The explanation of the deceased?

10 Mr. Mason: The *res gestae* was finished, and under the ruling in the case of Estelle vs. The State, I don't think it should be admitted; and also the famous English case decided by Lord Chief Justice Cochran, where the woman came out of the house exclaiming "My husband has cut my throat," and it was overruled as not being part of the *res gestae*, because the act had been completed. After the act has been completed and other things have intervened, it is inadmissible.

The Court: What is the citation of the case you refer to?

20 Mr. Mason: 51 New Jersey Law, 182, and also 33 New Jersey Law, 97.

The Court: An assault and battery case?

Mr. Mason: Yes.

The Court: I have not got this quite in my mind. Was this alleged exclamation after she saw Tomassi running?

30 Mr. Mason: Yes, sir, it was after Tomassi had gone up the stairway; the woman had come out through the closet, out to the street.

Q. What was the first thing your mother said to you after the shooting?

A. She said—

Mr. Mason (interrupting): I object.

The Court: The whole thing rests upon the period of time.

40 Witness: She said Mike Tomas—

Mr. Mason (interrupting): I object to what she said.

Q. After you heard the shots what did you hear your mother say if anything?

A. She was holloaing.

Q. Your mother was holloaing?

A. Yes, sir.

By the Court:

Q. How soon after these shots were fired?

A. She was holloaing when he was shooting her. 10

Q. Was that the time she made the exclamation, at this time, when she said what you say she said?

A. When she came down the porch she said that.

Mr. Braun: May I interrupt to ask just one question? Where was Mike Tomassi when your mother made this statement—where was Mike at that time?

Mr. Mason: Where was Mike— 20

The Court (interrupting): Won't you, gentlemen, let the State get through without interrupting. I want to get the period of time. Here, Rosie, after the shots were fired, after he shot your mother, he went up the steps, did he?

Witness: Yes, sir.

Q. And you went out of the back door?

A. Yes, sir. 30

Q. And saw him running?

A. Yes, sir.

Q. Where was your mother then?

A. She was just coming out.

Q. Just coming out?

A. Yes, sir.

Q. And was it then that she made these exclamations?

A. Yes, sir. 40

Q. Saying what you said she did?

A. Yes, sir.

Further direct-examination :

Q. After you heard the first shot, I don't mean the last one, after you heard the shot, did you hear your mother say anything?

A. He was shooting her again, she was hollaoing.

10 Q. Now, state what was said while he was shooting her?

The Court: Have you any objection to make?

Mr. Mason: What was said while the shooting was taking place is admissible.

Q. Tell me what was said while he was shooting her?

20 A. She didn't say anything only she was hollaoing.

Q. What did she say when she was hollaoing?

Mr. Mason: I would like to ask what she means by "hollaoing" was she simply making a noise?

Q. When your mother was hollaoing at the time she was shot, what did she say, what did you hear her say if anything.

30 A. She didn't say nothing, I didn't hear her say nothing.

Q. What was the first you did hear her say and how long after the first shot?

Mr. Mason: I submit he is bound by that answer. The witness says she did not say anything more.

40 The Court: He is bound by the answer that the witness did not hear her say anything more while she was being shot. Now he asks how long after that she heard anything else. That is competent.

Q. How long after you heard the shots did you hear your mother say anything?

A. No, ma'am.

The Prosecutor: I do not think she understands the question.

Q. Rosie, you heard shots and you said a while ago you heard your mother say something.

10

A. After she was shot.

Q. How long after she was shot?

A. It was not so long.

Q. Well, how long was it, where had you gone from, where did you move to?

The Court: I overrule the remark to which objection was made.

Q. You told Victoria Strollo that your mother had been shot?

20

A. Yes, sir.

Q. Your mother, you just stated, came out to the porch?

A. Yes, sir.

Q. What did your mother do when she got out on the porch, not what she said, but what did she do, what happened to her?

A. She fell right down.

Q. She fell down?

30

A. Yes, sir.

Q. Where was she, on the porch?

A. Yes, sir.

Q. Whereabouts on the porch did she fall right down?

A. By the door.

Q. The door she came out of do you mean?

A. Yes, ma'am.

Q. Who was the first person who came up by her?

40

A. Victoria Strollo.

Q. Who is the next person who came up?

A. They pretty nearly all came then.

Q. You mean a large crowd?

A. Yes, sir.

Q. What did the ladies who came up there do with your mother if anything?

A. They asked her what is the matter.

10 Q. These ladies asked your mother what was the matter with her?

A. Yes, sir.

Mr. Braun: I ask that be stricken out.

The Court: It is competent so far. Her reply would not be competent.

Q. I do not want you to state what she did at that time, but tell me what the ladies did with your mother if anything?

20 A. They did not do anything with her, only Victoria Strollo was helping with her.

Q. Did they leave her there on the porch?

A. Yes, sir.

Q. How long did they leave her there on the porch?

A. It was not so long.

Q. What did they do with her after she left the porch?

30 A. Brought her upstairs.

Q. To her own bedroom?

A. Yes, sir.

Q. After she was brought to her bedroom did she send for you or were you brought upstairs?

A. I went upstairs.

Q. After you went upstairs did your mother say anything to you?

A. Yes, ma'am.

40 Mr. Braun: I desire to interpose an objection there. If this question is asked for the purpose of showing knowledge of im-

pending death on the part of the woman, that is all right, but only for that purpose. I presume that is the object of the Prosecutor.

The Prosecutor: It is.

Q. While you were there did your mother ask for a picture?

A. Yes, ma'am. 10

Q. State what picture she called for?

Mr. Mason: I object to that as irrelevant.

The Court: It is competent to show her condition.

Defendant's counsel pray an exception to the above ruling of the Court; exception allowed, let it be sealed and it is sealed accordingly.

ALFRED REED, 20  
Judge.

A. St. Anthony.

Q. The picture of St. Anthony.

A. Yes, sir.

Q. Where was that?

A. In the bedroom.

Q. Did your mother make any statement in your presence indicating her knowledge of her condition? 30

A. She only said—

Mr. Mason (interrupting): I will ask that the jury be excused while this is being discussed.

The Court: I will not excuse the jury. Go on.

Q. What did your mother say then?

A. She said, "You are ten years old, now learn to wash your father's shirts—" 40

Q. Go on.

A. She said, "Now, you are ten years old, learn how to wash your father's clothes,—shirts."

Q. She said, "You are ten years old, learn how to wash your father's shirts?"

A. Yes, sir.

Q. What did she say next?

A. I did not say anything only when I went  
10 downstairs.

Q. Before you went downstairs didn't your mother say anything to you?

Mr. Braun: I object to the Prosecutor asking these leading questions. We have reached a very important part now; we have been very liberal, but this is a very important point.

By the Court:

20

Q. Did your mother say anything more to you?

A. No, sir.

The Court: I suppose the conversation which was overruled before, if it only went to show her knowledge of her condition, would be competent. It was only excluded because it was assumed the expression the mother used went to connect the defendant  
30 with the shooting.

The Prosecutor: Yes, I was not offering that to show her condition—but her statement to Rosie.

The Court: You have that in.

The Prosecutor: But I have not that in.

Mr. Mason: He is concluded by the answer. She said her mother did not say anything more.

40 Further direct-examination:

Q. State whether or not your mother kissed you?

A. No ma'am.

Q. She did not kiss you, did she kiss any of the other children.

Mr. Braun: If your Honor please, I object to that.

The Court: It is competent.

Mr. Mason: It is leading.

The Court: Yes, perhaps it is a little leading in a certain sense. 10

Q. State whether your mother said good-bye to you?

Objected to as leading; objection overruled.

Defendant's counsel pray an exception. Exception allowed; let it be sealed, and it is sealed accordingly.

ALFRED REED, 20  
P. J.

A. She said, "Good-bye, everybody."

Q. Did she make any other statement that you heard?

A. She told my brother—she said to tell my brother Louis to keep Joseph and Louis and Victoria—to keep them, to take care of them.

Q. Who is Louis?

A. The biggest one. 30

Q. And your mother told someone there to tell your biggest brother to take care of the three sisters?

A. Yes, sir.

Q. What was the reason if any that your mother gave for doing this?

Mr. Mason: I object to this, she could not read her mother's mind.

The Court: What was it the mother said. 40

Q. What did your mother say?

A. She didn't say anything else to me.

## Cross-examination by Mr. Mason:

Q. Do you remember when you went to Trenton with the rest of the family?

A. Yes, sir.

Q. When was that?

A. The 29th of May.

Q. You remember the day all right, can't you?

10 A. Yes, sir.

Q. Did you at Trenton, nine days after this affair had occurred, did you say anything about your mother having a pan at that time?

A. Yes, ma'am.

Q. You are positive you told in Trenton at the Coroner's inquest about your mother having a pan at that time?

A. Yes, sir.

20 Q. Coming back to the occurrences of that morning, when did you first see Mike on the morning of the twentieth?

A. When I got up.

Q. When you got up?

A. Yes, sir.

Q. Where was Mike at that time?

A. He was sitting—standing with one other man.

30 Q. What other man?

A. His name in Angelo Conoli.

Q. Where was this?

A. Down in the front room.

Q. How was he dressed at that time?

A. He did not have a white hat on, he had the same suit on him, only the hat he didn't have on.

Q. Did you stay around there all the time that your brother was there?

40 A. Not every time.

Q. I mean were you in the room all the time that Mike was in there with your mother?

A. No, ma'am.

Q. You were not?

A. No.

Q. How long did Mike stay downstairs that morning—did you see Mike going down to wash his face and hands that morning?

A. No, ma'am.

Q. You have stated that Mike went upstairs to his room on the third floor, that is correct, is it not? 10

A. Yes, ma'am.

Q. And your mother followed him up.

A. She went to make the bed.

Q. She went up to his room, didn't she?

A. Yes, sir.

Q. Do you know whether Mike had a valise in his room that he kept his clothes in?

A. No, sir.

Q. A satchel or a kind of a bag that he kept his clothes in? 20

A. I know he had a satchel, I did not know what was in it.

Q. That was in his room, was it not?

A. No, it was in the other room that had a closet in.

Q. Are you ready to say whether or not Mike had not taken his satchel in this room that morning or don't you recall it? 30

A. No, he did not have it in his room.

Q. You are positive that you told about the pan in Trenton?

A. Yes, sir.

Q. Rosie, what kind of a knife did your mother use to cut the bread with?

A. She had two like butcher's knives, she had two, one like a butcher's knife.

Q. The butcher's knife was a knife about that long (indicating). 40

A. They were not very big.

Q. Was not the bread knife about that long—longer than that book, was it not?

A. Yes, ma'am.

Q. Where did your mother keep this knife or these knives?

A. She kept them with the spoons and forks.

Q. Where?

10 A. On the table.

Q. Which table—right here in this front room, was it not?

A. Yes, sir.

Q. Were not those knives kept frequently in this pan?

A. No, sir.

Q. What did she keep them in?

A. She kept them in a thing like—round like this (illustrating).

20 Q. What time did you get home from school that day?

A. I was not to school.

Q. You didn't go to school that day?

A. No, sir.

Q. Don't you go to school?

A. My mother was sick at that time, the doctor was to see her.

Q. What doctor was to see her?

30 A. The doctor.

Q. Do you know his name?

A. Doctor Lamar, he is away.

Q. The doctor who is away on his vacation?

A. Yes, sir.

Q. About what time do you generally have dinner?

A. About 11 o'clock or 12 o'clock when my brother comes from school.

40 Q. What time does your mother start to prepare the dinner?

A. I don't remember this time when it was.

Q. When did your mother wash the knives and cutlery you used for dinner or other meals?

A. After dinner.

Q. On this table (indicating), did she not?

A. Yes, sir.

Q. She washed them on that table?

A. Yes, sir.

Q. Had you had your dinner or lunch at that time when you say Mike came there? 10

A. I had had my dinner.

Q. And were not all the knives and dishes and things left on the table?

A. No, they were in the closet.

Q. Which closet, this one here (indicating)?

A. Yes.

Q. The closet right behind the door?

A. Yes, sir.

Q. Was not that the door through which your mother was coming that day when you said she was shot? 20

A. Yes, sir.

Q. Coming from the closet where the knives were kept?

A. She came through that door.

Q. That is the place where the knives were kept, were they not?

A. No, the knives were not kept in there. 30

Q. Where were they kept?

A. On the table.

Q. After they were washed were they not put in the closet?

A. No.

Q. Were they always on the table?

A. Yes.

Q. Didn't you state you saw Mike coming in from the rear? 40

A. He was coming—

Q. Tell me how Mike came in, where were you at that time?

A. When he came from uptown?

Q. Yes.

A. When he said he was going to New York?

Q. Are you sure he said he was going to New York or over to the New York Railroad?

A. He said he was going to New York.

Q. You are sure he did not say he was going to Philadelphia?

10 A. No, ma'am.

Q. He said he was going away, didn't he?

A. Yes; he said he was going to New York.

Q. And he was all dressed, prepared to go away was he not?

A. Yes, sir.

Q. Tell me in your own words, where it was Mike came in?

A. In the front door.

20 Q. Where were you at that time?

A. Over on the porch.

Q. You were out on the porch?

A. Yes, sir.

Q. Where did Mike go?

A. Into the door, the front door.

Q. Did he close the door after him?

A. No.

Q. He did not close the door?

30 A. No.

Q. The door was left open?

A. Yes.

Q. Where did you go then?

A. I went into the house.

Q. You went into the house?

A. Yes, sir.

Q. What time of day was that?

40 A. I do not remember, I did not look at the time.

Q. Mike was in and out several times that day, was he not, getting ready to go away?

A. He went to get a bottle of beer in the cellar, he had beer.

Q. In the cellar in your mother's house?

A. Yes, ma'am.

Q. You have not said anything about that before, have you?

A. Yes, ma'am.

Q. I don't remember it. Then what did you do— what time was it you went out of doors? 10

A. When my brother came home, my big brother, he didn't go to school yet, and he told him to go and get the bicycle.

Q. Did you hear him tell him that?

A. Yes, sir.

Q. You didn't say anything about that in Trenton, did you?

A. I don't remember.

Q. Where did you go? 20

A. I was in there.

Q. Where?

A. In the house.

Q. When did you go out of doors?

A. About one o'clock, I guess.

Q. When was it?

A. When the people were going to work.

Q. It was about one o'clock when you went out of doors? 30

A. Half past twelve or one o'clock, I guess.

Q. Were there many people around there at that time—the men were all going to work were they not?

A. To work, yes.

Q. Where did you go?

A. I was out there playing.

Q. Out where?

A. Out on the porch. 40

Q. Did you go out on the sidewalk?

A. No, I was where I was when I heard the shots.

Q. Where were you, out on the sidewalk, or is this a cinder-path running around along there?

A. Yes, sir.

Q. Was that where you were playing—what were you doing?

A. Playing marbles.

Q. You were down on the ground, were you?

A. Yes, sir.

10 Q. How many of your sisters were there out there?

A. Two.

Q. You were taking care of them?

A. I was playing with them and I saw him coming out and he saw the mans and women going to work.

Q. There were people going along there were there not?

20 A. They were going to work.

Q. But there were men all along there, were they not?

A. They were going to work.

Q. You could not see from where you were playing anything in the rear part, in the cellar or kitchen part, could you, if that door was closed?

A. I was not inside.

30 Q. I say, from outside where you were taking care of your sisters and playing marbles, you could not see or hear anything that took place in here (indicating), could you?

A. No.

Q. You do not know what was said; the only thing that you heard was the pistol shots—was not that the first thing?

A. Yes, sir.

40 Q. Where were you when you heard that first shot?

A. I was out around the porch.

Q. Around in here (indicating)?

A. Yes, sir.

Q. What kind of a window have you in the house there, Rosie?

A. They ain't so big windows.

Q. You cannot see from outside, can you, where you were playing?

A. No, sir.

Q. Rosie, do you know who picked up the— 10  
where did you get this pan from?

A. In the house.

Q. When?

A. This morning.

Q. Who has been keeping that pan, Rosie?

A. They have been using it there.

Q. Using it right along?

A. Yes, sir.

Q. Have you not been away from home? 20

A. Yes, sir.

Q. You have not been using this pan?

A. Father used it.

Q. How do you know?

A. I know when he cooks things he uses it.

Q. That is, your mother used to use it when you were at home?

A. Yes, sir.

Q. You brought that down from home this morning? 30

A. Yes, sir.

Q. Who first got that pan on that day?

A. Which day?

Q. The 20th day of May?

A. It was in my mother's hands.

Q. You say your mother dropped it when she came out; who first got that pan that day?

A. I hanged it up.

Q. You handed it to who? 40

A. I hanged it upon a nail.

Q. In the closet?

A. No; in the cellar.

Q. Where were the dishes and knives at that time?

A. The dishes were in the closet.

Q. Where were the knives?

A. The knives and forks were on the table.

Q. Including the bread knife?

A. Yes, sir.

10 Q. Rosie, to whom did you first talk about your mother being—about this time when your mother was first shot; who was the first man with whom you talked?

A. She was holloaing—

Q. No; when any one came there; who told you to go to Trenton? Who told you you were wanted in Trenton?

A. My father brought me.

20 Q. Who?

A. My father.

Q. Did you talk with your father; tell your father this story before he took you to Trenton?

A. No, ma'am.

Q. You never told any one did you?

A. No, ma'am.

30 Q. Your father took you there without knowing anything about what your mother had said to you or anything of the kind, did he not.

Mr. Large: We will have to object to that, she cannot tell what her father knew.

The Court: Read the question.

(The stenographer read the last question.)

The Court: As far as she knows.

40 Q. As far as you know?

Mr. Mason: She did not understand the question I think.

Q. Didn't you talk to any man or any woman at all before your father took you to Trenton that night, or any time around a day or two; those nine days between the time your mother was shot and the time you were taken to Trenton? Where did you stay during those nine days that your mother was shot and you were taken to Trenton—where did you stay?

A. I went to the home. 10

Q. What home?

A. The Hopewell.

Q. You went to the Hopewell Home?

A. Yes, ma'am.

Q. While you were at the Hopewell Home is that the time you were taught that if you told a lie you would be lost and go to hell?

A. No, ma'am. 20

Q. When were you taught that?

A. It was after; when I went from Trenton.

Q. It was after you went from Trenton that you were taught that way?

A. Yes, ma'am.

Q. Did you talk with any one while you were in the home. Did you talk to the Sisters or to any one about this?

A. No, ma'am. 30

Q. You didn't say anything to any one?

A. No, ma'am.

Q. Have you talked with any one since you were at Trenton about this at all; about how this happened, where you were playing with the children, or anything of the kind?

A. No, ma'am.

Q. Haven't you talked with any of these gentlemen? (Indicating the Prosecutor and his associates.) 40

A. I did talk with them before I went to Trenton.

Q. Then, why did you say you didn't talk to any one?

A. I thought you said somebody else.

Q. Well, he is somebody. With whom else did you talk, Rosie?

A. (No answer.)

Q. Did you talk with Mr. Ely?

A. Yes, ma'am.

10 Q. Did you talk with the Chief of Police of Lambertville?

A. Yes, ma'am.

Q. Did you talk with any of your father's friends?

A. No, ma'am.

Q. Did you speak to your mother's friends?

A. No, ma'am.

20 Q. What you have said here today you have said it just the same as you said at Trenton?

A. Yes, sir.

Q. And everything that you told here today you told in Trenton?

A. I don't remember if I said it all.

Q. You don't remember if you said it all?

A. No, ma'am.

Q. Didn't the gentlemen there tell you to tell it all?

30 A. No, ma'am.

Q. Why didn't you tell it all in Trenton, Rosie?

A. They said that's enough; told me that's enough.

Q. Who told you that?

A. I don't remember which man it was.

40 PASQUALINA MUELLI, sworn in behalf of the State through the sworn interpreter, in the Italian language.

Direct-examination by the Prosecutor, through the interpreter:

Q. Which house do you live in?

A. Next to the next by the person that died.

Q. To the north or to the south of it?

A. Above.

Q. Were you home on the 20th day of May last?

A. Yes, sir.

Q. Do you know Michael Tomassi?

A. Yes, sir.

Q. How long have you known him?

10

A. Two months.

Q. When did you last see him in Lambertville?

The Interpreter: She said no, the morning, no. Undoubtedly she did not understand the question.

Q. When did you see him in the afternoon?

A. I saw him the day before; then I did not see him again.

Q. Ask her if she heard any shots fired on the 20th?

20

Mr. Braun: I object to that on the ground that it is leading, if your Honor please.

The Court: The objection is overruled.

Defendant's counsel prays an exception.

Let it be sealed and it is sealed accordingly.

ALFRED REED,

P. J.

30

A. Yes.

Q. What did you then do?

A. I went out.

Q. Where?

A. In the street. In front of my house.

Q. Who did you see when you came out on the porch?

A. I saw her with her breast full of blood and she cried—

40

Mr. Mason (interrupting): I object.

A. —“I have been killed.”

Mr. Braun: If your Honor please, I would like to say I think it is very unfair on the part of the interpreter who is familiar with court proceedings to make that answer over Mr. Mason's objection.

(Question and answer read.)

Mr. Mason: I move now that it be stricken out.

10

The Court: Just ask her how long it was after the shot was fired.

Q. How long after the firing of the shots was this, that this remark Mrs. Congilio made?

A. A little time after.

Mr. Mason: This is the same case where there was ruled out an exclamation where it was heard by the child. When the woman came to the front porch, this woman had to even come a further distance to reach there; and now we ask that it be excluded.

20

The Prosecutor: I will consent to that being stricken out. It is not the purport of this examination.

The Court: All right.

Mr. Braun: If the Court please, I desire to have the Interpreter instructed that if anymore of these witnesses use an expression of this kind and it is not responsive to the question, he is not to repeat it.

30

The Court: The Interpreter understands that when an objection is interposed he is not to put it in.

The Interpreter: Pardon me. That happened unintentionally. I did not hear the objection; and I am under the supposition to tell all.

40

Q. What men did you see when you came out of your house?

A. I saw a man running. I saw him from the rear. I didn't know him. He turned around.

Q. After he turned around did you know him?

A. I ran away. I got out of the way.

Q. Where was the man going—where was he when you saw him?

A. He was beyond the back house.

Q. You mean beyond the water closet in the rear of the house? 10

A. Yes, sir.

Q. What other man did you see there in the street when you first came out?

The Interpreter: Now she is telling something—

Mr. Braun (interrupting): She repeated the same thing, your Honor. I understood it in Italian. 20

Mr. Mason: I raise the objection. I simply ask that the Interpreter will repeat such an answer to you before he gives the answer. I don't understand all of the Italian and I simply ask that it be told to yourself.

The Prosecutor: I withdraw the question.

Q. What man did you see, if any, on the street, when you first came out? Now answer the question. 30

A. I saw another man who is here also. He cried after him.

Q. Who was the other man?

A. Salvatore. He is here also.

Mr. Large: His last name?

Witness: I don't know it.

A. Who do you refer to when you say Salvatore called after him? 40

A. After the man that ran.

Q. (Indicating.) Is that the man that you saw in the street?

A. Yes. He is the man that called after him.

Q. What did you hear Salvatore call to the man?

Mr. Braun: I object to that on the ground that it is hearsay.

10 Mr. Mason: That man has not been shown. She has not identified him yet.

The Court: Get at where Tomassi was. If he was within the reach of the calls—

Q. When Salvatore called to the man running up the hill did he, in response to that call, turn around or did he not?

A. He turned around; but then I had no time. I didn't stay. I turned around in my house.

20 Q. Did you recognize the man that was running up the hill when he turned around?

A. No, sir.

Cross-examination by Mr. Braun:

Q. So that you don't know who it was that was running up the hill?

The Interpreter: By hearsay. Shall I--

The Prosecutor (interrupting): No.

30 Q. When you first heard these shots, where were you? Out on the street?

A. I was in my own house, eating.

Q. And did you enter Mrs. Congilio's home? Did you go immediately to her home?

A. I didn't go in the house of Congilio's. I went out in the street.

Q. You went out in the street? How long did you remain out in the street?

40 A. A short time, and then I went back to my house.

Q. Then tell me how it was that you could see

Tomassi or a man running up in back of Congilio's home if you went out on Main Street?

A. I was on Main Street, but I heard the man calling after the one that ran, and he turned around; and then I turned around and went in my own house because I was afraid, and saw the man beyond the back house.

Q. Oh, you ran to the rear of your home, did you? 10

A. Yes, sir.

Q. Do you know Rosie Congilio?

A. Yes.

Q. Did you see her at the time?

A. At the time?

Q. Where was she—was she in the home or outside?

A. She was in the street, crying. 20

Redirect-examination by the Prosecutor:

Q. Can you or can you not see the rear of the Congilio lot from Main Street?

A. You can see beyond the back house, but you can't see the rear of the house.

Q. Can you see up on the hill, the upper part of the hill, in the rear of their house, from the street?

A. No. 30

The Interpreter: I don't believe she understood your question.

Q. How far is your house from the Congilio house—isn't there a space between the two houses?

The Court: Can't you show that by someone else—anyone?

Q. Could you not, by looking between the space 40  
between your house and the Congilio house, see the rear of the Congilio lot?

A. No, sir.

Q. What is there to obstruct seeing the rear of the lot from Main Street?

A. The houses in front.

10 SALVATORE LUCITANO, sworn in behalf of the State through the sworn interpreter in the Italian language.

Direct-examination by the Prosecutor through the Interpreter:

Q. Where were you on the 20th day of May last, the day that Mrs. Congilio was shot?

A. I was in the house next.

Q. Which house was it, uptown or downtown from there?

20 A. Downtown.

Q. What was the number of the house you were in?

A. 267.

The Court: Did he live there?

Q. Do I understand you to mean that you were in the house nearest Lambertville from the Congilio home?

30 A. Yes, sir.

Q. Did you see Mike Tomassi that day?

A. No.

Q. Did you hear any shots that day?

A. Yes, sir.

Q. Where were you when you heard the shots and what did you do?

A. I was in the house.

Q. What did you do?

40 A. I came out.

Q. What did you observe in regard to any man?

A. I saw so many people out there.

Q. Did you see Mike Tomassi?

A. Yes, sir.

Q. Where was Mike?

A. He was running through the yard above.

Q. What direction from the house—front or rear?

A. The rear.

Q. Where did you stand when you saw Tomassi?

A. I was between the two houses, in front of the door of the house where I was. 10

Q. Were you standing on the sidewalk?

A. No, sir; I was right there by the door.

Mr. Mason: The door of his own house?

The Prosecutor: No; the house where he was.

Q. What did you say to Mike Tomassi, if anything?

Mr. Mason: I object unless it is shown that Mike was in a distance that he could have heard him. 20

Q. What did you say to Mike Tomassi, if anything, that he heard?

Mr. Mason: How could he say that Mike heard it?

The Court: Ask him how far Mike was away. 30

Q. How far away was Mike?

A. I don't know.

Q. Did Mike hear what you had to say, or did he turn around—did Mike do anything?

A. I called after him and he turned around.

Q. Now, then, what did you say when you called to Mike?

Mr. Mason: It has not been shown yet, your Honor that Mike heard it. 40

The Court: Is that your ground of objection?

Mr. Mason: Yes sir.

The Court: Overruled. Go on.

Question read by the stenographer as follows: "Now then, what did you say when you called to Mike?"

A. I said "See him running—see him running."

10 Mr. Mason: I move that that answer be stricken from the record as not responsive.

The Court: We think the answer is competent.

Defendant's counsel pray an exception to this ruling of the Court, and the same is allowed and sealed accordingly.

ALFRED REED,  
Judge.

20 Q. What further did you say to Mike?

Mr. Mason: I object to the form of the question. He has told us what he said to Mike. I think he should ask what else did you say to Mike.

The Court: Yes, was anything further said to Mike.

The Prosecutor: Yes; did you say anything else to Mike?

30 Mr. Mason: And I think the question should also be had Mike gone any further on at this time—was he running?

The Court: You object to it do you?

Mr. Mason: Yes, sir.

The Court: The objection is overruled.

A. No; I said "Why are you running?"

Mr. Mason: Did he say why or where?

40 The Interpreter: Why.

Q. Did Mike make any reply?

A. No.

Q. What did he do?

A. He looked around.

Q. Can you state, by pointing on that map, where Mike was when you saw him running?

A. No, sir, I cannot.

The Court: He doesn't know anything about the map.

The Prosecutor: I am going to show him the big rock (indicating on the map.) That indicates the big rock. 10

Witness: Yes.

Q. Now, where was Mike with reference to the big rock?

The Court: Ask him if he knows about the rock.

Q. Do you know about the rock? 20

A. Yes, sir.

Q. You do know about the rock?

The Interpreter: Yes.

Q. How far was Mike from the rock?

A. Six or seven steps

Cross-examination by Mr. Mason:

Q. Didn't Mike look before you hollered? 30

A. No, sir; I didn't see him.

Q. You didn't see him?

The Interpreter: Didn't see him do that.

Q. Where were you when you first saw Mike?

A. I was right between the two houses, in front of the door of the house where I was.

VICTORIA STROLLO, sworn in behalf of the State, through the sworn Interpreter, in the Italian language.

Direct-examination by the Prosecutor, through the Interpreter :

Q. How far do you live from the Congilio house?

10 A. (Indicating.) From here to there. There is a house between.

Q. Do you live in one of the double brick houses?

A. I live in a frame house.

Q. Next to the bricks?

A. Yes, sir.

Q. Were you home on the 20th day of May last, the day Mrs. Congilio was shot?

A. Yes, sir; I was in front of my door.

20 Q. When did you see Mrs. Congilio after she was shot first?

A. When she came out of the house.

Q. Who was the first grown person to reach her side?

A. I.

Q. What did you first do?

A. I asked her—

30 Mr. Mason (interrupting) : I object to the answer if she is going to repeat any statement that was made to her.

The Prosecutor: She has not

Q. What did you do, not what you said.

A. I took her, and I wanted to take her to put her on the bed, but she would'nt go.

Q. What statement did she then make to you?

Mr. Mason: I object, your Honor.

40 The Court: Just get her answer and then tell it to the Court Mr. Interpreter.

The witness answers in Italian and the Interpreter interprets the answer to the Court, not in the hearing of the jury.

The Court: Suppose you just state that competent part of the answer.

The Interpreter: That she wouldn't live five minutes?

The Court: Yes.

A. She said she couldn't live five minutes.

The Court: Let that go on the record. Let it also appear that that was not all the answer, but the Court thinks that is all that is competent. Well, the rest of her answer, about her falling back into her arms, it is all competent except the assertion as to the cause. 10

Witness: I took her in my arms and she fell in my lap.

Q. What, if anything, did she say about her blood? 20

Mr. Mason: That is objected to as leading and suggestive. This is a very important statement, your Honor, and she ought to state as far as she remembers in her own language and not have words put into her mouth by the Prosecutor.

The Prosecutor: The question is withdrawn and I will adopt your suggestion. 30

Q. State in your own way what was said there to you on the front porch after she had made the remark that she could not live five minutes.

Mr. Mason: I would ask that this be repeated to your Honors as before.

The Court (to the Interpreter): Yes; get her answer and tell it to the Court.

The witness answers in Italian and the Interpreter interprets to the Court, not in the hearing of the jury, and after a conference between the Court and counsel on both 40

sides the Prosecutor announced that he withdrew the question.

Q. State in your own way all that Mrs. Congilio said with the exception as to what she said in regard to who shot her. Leave that out.

10 Mr. Braun: I think that is highly improper, if the Court please—I will withdraw my objection.

A. She was calling all her children and she was saying good-bye to them.

Mr. Braun: Isn't it proper that we should have an opportunity to cross-examine the witness first, on this preliminary examination.

The Court: Yes.

20 Q. What further statement did she make on the porch to you relative to her condition?

Interpreter repeats answer to Court and counsel.

Mr. Mason: I object to this answer as not being responsive to the question.

The Court: The objection is overruled.

30 Defendant's counsel pray an exception; exception allowed, let it be sealed and it is sealed accordingly.

ALFRED REED,  
P. J.

A. She asked for a drink and I gave her a drink, and I saw blood issuing from her breast and I saw wounds, one here and one here (indicating).

40 Q. What further statement did she make on the porch to you relative to her condition?

Mr. Mason: Isn't he bound by that answer, the answer she has just made? She

has given an answer, supposed to be an answer to that question.

Objection overruled.

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

ALFRED REED,

P. J.

10

A. She said nothing then; when the doctor came she said good-bye to the doctor, and she didn't speak again.

Q. What did she say to you as to her condition when you first took hold of her?

The Court: If anything?

Q. If anything?

A. I was giving her courage. She said "Leave me alone. I can't live five minutes."

20

Q. Did she give any reason why she couldn't live five minutes?

Mr. Braun: I object to that as leading, if your Honor please.

The Court: Overruled.

Defendant's counsel pray an exception; exception allowed, let it be sealed and the same is sealed accordingly.

30

ALFRED REED,

P. J.

The Court: If you want to cross-examine her you can do so on the point.

Cross-examination by Mr. Braun:

Q. Were you present when the doctor called to treat Mrs. Congilio?

A. Yes. I was holding her in my arms.

40

Q. And he said she would have to be removed to Trenton, did he not?

A. Yes, sir.

The Prosecutor: I have not turned the witness over to the defence.

The Court: I told him, he could cross-examine as to her testimony, respecting the admissions of the deceased as to her condition.

10 Q. And wasn't it then that she bid her children good-bye?

A. It was on the bed.

Q. After the doctor had said that she must be removed to the hospital at Trenton? Isn't that so?

A. Yes, after.

Further direct-examination by the Prosecutor:

20 Q. State what, if anything, Mrs. Congilio said to you after she made the statement that she was going to die and could not live for five minutes, relative to how she received her injuries?

The Court: That brings up the question as to the admission of the dying declaration.

30 Mr. Mason: Your Honor, I would ask, that that be excluded on the ground that it has not been shown that this statement was made *in extremis*, and when she was at the very point of death; and also that it has not been shown that there was the sense of impending death; further, that it has not been shown that the deceased at this time was conscious; or that she believed in after accountability if the statements that she made at this time were not true; and that she did not at this time retain her full mental faculties, at the time that the second statements were made by her, and the fact that she had her physician would show that she had still  
40 retained hopes of her recovery.

The Court: We think the testimony is admissible.

Defendant's counsel pray an exception; exception allowed, let it be sealed and it is sealed accordingly.

ALFRED REED,

P. J.

Q. (Question read by stenographer as follows): 10  
State what, if anything, Mrs. Congilio said to you after she made the statement that she was going to die and could not live for five minutes, relative to how she received her injuries?

A. She said that she couldn't live but five minutes, and she wanted to see the face of her husband; and then she would die happy.

Mr. Mason: I move to strike out that as not responsive to the question. 20

The Court: The motion is overruled.

Defendant's counsel pray an exception; exception allowed, let it be sealed and it is sealed accordingly.

ALFKED REED,

P. J.

Q. State what, if anything, Mrs. Congilio said to you after she made the statement that she was going to die and could not live for five minutes, relative to how she received her injuries, in addition to what you have already stated. 30

A. She said nothing.

Q. State whether or not Mrs. Congilio asked for anything after she had made the statement that she was about to die, that she had only five minutes to live?

A. She said nothing. She simply said she couldn't live because her heart had been wounded. 40

The Prosecutor: Because her heart had been wounded?

The Interpreter: Yes.

The Prosecutor: My question was, what did she ask for if anything?

(The Interpreter again put the question and the witness replied.)

The Interpreter: She said nothing.

10 Q. After Mrs. Congilio had made the statement that she was bound to die or was going to die in five minutes and stated that Michael Tomassi had shot her did she state why he had shot her.

Objected to as leading; objection overruled.

Defendant's counsel prays an exception; exception allowed, let it be sealed and it is sealed accordingly.

ALFRED REED,

20

P. J.

A. She said that she would not consent to what he asked and he shot her.

Q. At this time did she make any statement to you or in your presence in regard to any money?

Objected to as leading; objection overruled.

30 Defendant's counsel pray an exception; exception allowed; let it be sealed and it is sealed accordingly.

ALFRED REED,

P. J.

A. No, sir. When we put her on the bed—

40 Mr. Mason (interrupting): I object to any further answer, she was simply asked whether anything was said in regard to money and she said, no, sir.

The Court: We will hear the answer.

Defendant's counsel pray an exception;

exception allowed; let it be sealed and it is sealed accordingly.

ALFRED REED,

P. J.

The Interpreter: She said "No, sir, for when we put her on the bed, then she said 'for five shots, five Italian francs.'"

Mr. Braun: "Lire" she said, Mr. Interpreter, didn't she? 10

The Interpreter: Lire, we call them francs also.

Q. Kindly repeat what you said before in response to the last question?

Mr. Mason: She has answered the question, your Honor.

The Court: What was the question?

(Former question read by the stenographer as follows: "At this time did she make any statement to you or in your presence in regard to any money.") 20

Q. Explain your last answer.

The Court: You had better not put it in that shape, ask her what she means by the answer.

Q. What did you mean by referring to Five francs and five shots in your last answer? 30

Mr. Braun: Objected to on the ground that he is cross-examining his own witness.

Q. Kindly repeat what Mrs. Congilio said to you in regard to any money at this time?

The Interpreter: He was speaking in reference to the time when he was put on the bed and she said that Mrs. Congilio asked for St. Anthony, and she was saying, "St. 40

Anthony, my St. Anthony, I put myself in your hands."

Mr. Braun: If your Honor, please, the answer the Prosecutor wants is already on the record.

The Court: Do you object to this being on the record?

Mr. Braun: No, sir.

10

The Court: You do not object to the last answer going on the record?

Mr. Braun: No, sir.

The Court: Then, let it go on the record if there is no objection to it.

The Prosecutor: My idea is that the answer was not heard by the interpreter which she gave relative to the money and the revolver.

20

The Court: Not heard by him?

The Prosecutor: No; not correctly.

Mr. Large: Owing to the difference in the idiom. Our information is from this gentleman (indicating), who is more familiar with the dialect of the witness, is to that effect.

The Court: We will close it; no further questions on that line.

The Prosecutor: You may cross-examine.

30

Mr. Mason: We have no questions.

A recess was then taken.

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After Recess.

ASSUNTA CIFELLI, sworn in behalf of the State through the sworn interpreter.

Direct-examination by the Prosecutor through the interpreter:

40

Q. Where do you reside?

A. Lambertville.

- Q. How far from the Congilio home?  
 A. I don't know.  
 Q. About how far?  
 A. (Laughing.) I don't know.  
 Q. What number?  
 A. 194.  
 Q. About a block?  
 A. Yes, sir.  
 Q. The same street? 10  
 A. On the same street.  
 Q. Did you see Mrs. Congilio on the 20th day of  
 May last after she had been shot?  
 A. Yes, sir.  
 Q. When did you arrive at her house, if you were  
 there?  
 A. In front of the porch.  
 Q. Who was there when you arrived?  
 A. There was a woman there. 20  
 Q. Who was the woman?  
 A. Victoria.  
 Q. The last witness?  
 A. Yes, sir.  
 Q. What did you do after you arrived?  
 A. I lifted her by the arm.  
 Q. Did you hear her make any statement relative  
 to her condition?  
 A. I was calling her, saying, "Delia, Delia, tell 30  
 me something"; and she was saying, "Good-by, good-  
 by," to everybody, "for I am dead."  
 Q. Was that the first you heard her say?  
 A. Yes, sir.  
 Q. What else did you hear her say at that time or  
 subsequently?

Mr. Mason: May I ask one question—in  
 regard to her condition?

The Prosecutor: I asked her what else she 40  
 heard her say after this time.

Mr. Braun: Will your Honor have the  
 answer repeated to you first?

The Court: We have admitted all the dying declarations now.

Mr. Mason: Simply to save time, we wish to interpose here the same objection that we have made before to similar testimony.

The Court: To her dying declaration?

Mr. Mason: Yes.

10 The Court: Yes. I will regard that all her dying declarations or alleged dying declarations are objected to; the objection is overruled and an exception allowed.

Let the exception be sealed and it is sealed accordingly.

ALFRED REED,  
P. J.

(Question read by the stenographer: "What else  
20 did you hear or say at that time or subsequently?")

A. I went home immediately.

Q. Did you not go upstairs with her?

Objected to as leading.

A. No, sir.

Q. Are you related to the defendant, Tomassi?

A. No, sir.

Q. Are you not a cousin?

A. No, sir.

30 Q. Are you related to him by marriage?

Mr. Braun: If the Court please, is the Prosecutor trying to impeach his own witness?

The Court: It is hardly worth while to pursue that.

Cross-examination waived.

MARIA ROSSI, sworn for the State through the interpreter.

Direct-examination by the Prosecutor through the interpreter:

Q. Where do you reside?

A. 210 Main Street.

Q. City?

A. Lambertville. 10

Q. How far from the Congilio house?

A. Seven or eight houses.

Q. Did you see Mrs. Congilio on the 20th day of May last after she was shot?

A. Yes, sir.

Q. Where was she when you first saw her?

A. On the porch.

Q. Did she make any statement to you relative to her physical condition? 20

A. When I arrived there I said, "Defia, what is the matter with you?" And she answered, "Mary for five lire I had five shots."

Q. What, if anything, did she say relative to her physical condition?

A. She said, "I have been wounded in the heart. In about five minutes I shall be dead."

Q. Which statement did she make first; the one you have just given or the one prior? 30

A. After telling me about the lire she told me about her heart.

The Prosecutor: If the objection of the defence applies to the first statement, I will ask to withdraw my question.

The Court: Which first statement?

The Prosecutor: The first answer she gave.

The Court: There is no objection. 40

The Prosecutor: It is a dying declaration, and he has got a general exception here.

The Court: Just ask her if they were made close together.

Q. How much time intervened between the two statements?

A. After she told me these words, Victoria Strollo and myself took her upstairs and put her on the bed.

10 Q. That did not answer my question. How much time intervened between the statement she made as to the five lire and the statement as to her condition?

A. Immediately, she said the other words; immediately afterwards.

Q. What other statement, if any, did she make to you while you were on the porch?

A. Right there on the porch she told me of the Five lire, and then I asked her, "Who was it?" and she said, "Michael Tomassi."

20

Q. What other statement did she make to you while on the porch, if any?

A. As I was not content to do what he wanted.

Q. What further did she say on the porch if anything.

A. On the porch? Nothing more.

Q. Did she make any remark other than you have stated as to her condition; her physical condition?

30 A. Upstairs, when she was in bed, she said that she wanted the picture.

Q. What picture?

A. St. Anthony.

Q. Did she make any other statement upstairs or elsewhere to you after she was shot, that you have not yet stated?

40 A. While Rosina was giving her the picture of St. Anthony I asked her, at that time there were the authorities there and the doctor, I asked her, "Delia, now that there are so many people here, say something, who was it," and she was saying, and she

said, "I can speak no more; I am dying; Rosina will tell all; she knows it all."

Q. Who is the Rosina referred to?

A. The daughter.

Q. Is she the daughter who was on the stand; the little girl who was on the stand this morning?

A. Yes, sir.

Q. Did you hear her make any statements to any of her children? 10

A. She said to Rosina, "Rosina, look here, you are ten years old; I ask you to wash the shirts of your father."

Q. Where was this she made this request of Rosina?

A. She was on the bed and Rosina was on my side.

Q. Did she make any statement to either of her sons in your presence? 20

A. She simply said, "I bless every one of you, from the first to the last."

Q. Did she make any remark in your presence as to the care of the little sisters by either of the brothers?

Objected to as leading.

Objection sustained.

Q. Did she make any reference to the care of little girls in your presence to any one? 30

Objected to as leading.

Objection sustained.

Q How long were you with her?

A. Until they took her to the hospital. She was saying to me, "Mary, I wish to die in your arms; please go with me to the hospital."

Q. To whom did she refer when she said "Mary?" 40

A. She meant me, as we had known each other for fifteen years.

Q. Did Mrs. Congilio make any reference to her husband?

Mr. Mason: I object to that as leading.

Objection overruled.

Defendant's counsel pray an exception.

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

10

ALFRED REED,  
P. J.

A. She mentioned every one. You know when anyone is dying they look for everybody, but who could give her the ones she wanted?

Mr. Mason: I ask that the latter part of that answer be stricken out.

The Court: Strike it out.

20

Q. You have stated that she remarked that she wanted to die in your arms, I ask you whether or not she gave any reason and if so what it was?

A. Because I had known her for such a long time and the others had come so much later.

The Court: Does she say that was the reason Mrs. Congilio gave?

The Interpreter: That she gave in answer to the question I put.

30

The Court: I was wondering whether you gave the witness' reason or the reason stated to her by the deceased.

Q. What was the reason stated to you by Mrs. Congilio why she preferred to die in your arms—what were the circumstances connected with that statement?

A. Perhaps she—

40

Mr. Mason (interrupting): Your Honor, I would like to know if this is supposed to

be Mrs. Congilio's own words or what this woman is—

The Prosecutor (interrupting): Mr. Mason, we will avoid this discussion if you will come here.

(The respective counsel and the Interpreter go to the bench and converse with the Court.)

The Court: It is overruled.

10

Q. You having been asked to state everything that she stated to you, I now call your attention and ask you whether or not she did not say that not being able to die in the arms of her husband she wanted to die in your arms?

Mr. Mason: I object to that.

The Court: It is overruled.

The Prosecutor: You may cross-examine.

20

Cross-examination by Mr. Mason:

Q. How do you spell your name?

A. Marie Rossi.

The Interpreter: s-s-e or s-s-i—Rossi—s-i.

Q. Did you testify at the Coroner's inquest at Trenton?

A. Yes, sir.

30

Q. Did you at that inquest at Trenton give the same words as Mrs. Congilio's dying declaration as you are giving this afternoon?

The Court: If you have them; you had better give the words she used there.

Mr. Mason. I haven't the official copy here, your Honor. The only way to contradict her is to give her the words she used at Trenton.

40

The Prosecutor: I haven't her name down here.

Q. Were you before the Coroner at Trenton on May 29th?

A. Yes, sir.

Q. What name did you give on that day?

A. The name which I have now, which was the name which I had then.

Q. Were you sworn there as a witness?

A. Yes, sir.

10

Mr. Large: Let him ask her if she was sworn down at Trenton.

Mr. Mason: That is what I did ask her.

Q. Have you told this story in anywhere else besides in Trenton?

A. In Trenton; at this other Court, when I was examined here.

20

Mr. Mason: I think she means before the Grand Jury.

Q. Do you know where Trenton is?

A. I have been there many times.

Q. Did you go there to testify?

A. Yes, sir.

Q. Didn't you give there the name of Mary Lacy?

A. No, sir.

30

Mr. Mason: I think that her name as given here before the Coroner is wrong or else she gave a different name. There was a woman sworn by the Coroner by the name of Lacy; the stenographer has the name down as Mary Lacy having testified there and I think the only person who could tell it is the stenographer who took the testimony. She will be in Court tomorrow and then we can probably identify her.

40

The Court: Proceed.

Q. Do you remember at the inquest at Trenton

the Coroner asking you, "Did Mrs. Congilio say anything?"

A. All that which I have been asked here and said is what I also stated in Trenton.

Q. Did you tell in Trenton—did you say everything in Trenton that you have said here?

A. All.

Q. Were you told in Trenton, at this inquest, to tell everything that you heard Mrs. Congilio say at this time? 10

A. Everything as you have asked me here I was asked in Trenton.

Q. Did you say at Trenton everything that was said and done by Mrs. Congilio on the 20th day of May, 1907?

The Interpreter: What is the question?

Mr. Mason: Ask her if she said at Trenton everything that was said and done by Mrs. Congilio on the 20th day of May, 1907. 20

A. All that which was said and done, I said it all.

---

ALFRED T. ELY, sworn for the State.

Direct-examination by the Prosecutor:

Q. Where do you live, Mr. Ely? 30

A. Lambertville.

Q. What is your occupation?

A. Passenger agent of the Pennsylvania Railroad.

Q. Have you any official position?

A. Yes, sir; I am Mayor of the City.

Q. Mayor of the City of Lambertville?

A. Yes, sir.

Q. Mayor; were you in Lambertville on the 20th day of May last? 40

A. I was.

Q. Were you notified as to the shooting of Mrs. Congilio?

A. Yes, sir.

Q. Whom by?

A. By one of her sons.

Q. Which one?

A. The younger boy, I think it is.

Q. What did you do?

10 A. I immediately notified the police and the constables and sent them out in the direction in which the son had said the man who shot Mrs. Congilio had gone, giving them a description as given to me by the son.

Q. By her son? Where did you send these descriptions?

A. Police of Newark, Elizabeth and Trenton, Philadelphia, Hopewell—

20 Objected to.

The Court: What is the purpose of this.

The Prosecutor: Corroborates Rowland Mitchell; I will skip it; it is not very material.

Q. You were notified of the shooting. When did you next see Tomassi?

A. In Mercer County Jail that evening.

30 Q. That same evening?

A. Yes, sir.

Q. Did you go to Trenton that same evening?

A. Yes, sir.

Q. Who accompanied you?

A. Officer Trefz and Constable Schlach and Deputy Sheriff Dilts.

Q. Did you on that occasion see Justice of the Peace Narr?

40 A. Yes, I did.

Q. Of Trenton?

A. Yes.

Q. Where did you see him?

A. At his office.

Q. Did Justice of the Peace Narr give any of the persons with you, either you or any of the others, any of the articles purporting to have come from Michael Tomassi's person?

A. Yes, sir; they were all turned over to me.

Q. Were you the person that received the articles that Squire Narr turned over? 10

A. Yes, sir.

Q. Will you kindly enumerate just what he turned over to you?

A. Knife—

Q. I hand you a revolver and ask you whether or not that is one of the articles he handed to you on that occasion?

A. Yes, sir; I think so.

Q. I show you a razor, a knife, watch chain, handkerchief, bundle of papers and ask you whether or not they have been in your custody from the time you received them from Justice Narr until you delivered them to me as Prosecutor at the time of the session of the Grand Jury, September 10th last? 20

A. Yes, sir; they have not been out of my possession.

By the Court:

Q. That is, all the articles that you received from Justice Narr you kept until you turned them over to the Prosecutor? 30

A. Yes, sir.

Further direct-examination:

Q. I show you that box and ask you whether or not the articles were handed to me in this particular box with your name on the top in lead pencil? 40

A. Yes, sir.

Q. And are these the identical articles?

A. Yes, sir.

By the Court:

Q. Those are all, and the only, articles that Judge Narr handed over to you?

A. Yes, sir.

Q. And that you turned over to the Prosecutor?

A. Yes, sir.

Further Direct-examination:

10

Q. Did you see Mrs. Congilio at the station in Lambertville prior to the time she was taken to Trenton?

A. I did, sir.

Q. Did you see her after she was shot?

A. Yes, sir.

Q. Did you see Father Lynch at the station?

A. Yes, sir.

20

Q. Where was he?

A. He was standing beside Mrs. Congilio, who was on the stretcher, administering the last rites of the Church to her.

Q. As you supposed?

A. That is the idea.

Q. Did you make any effort to get any information regarding the shooting at that time?

Mr. Braun: I object to that.

30

The Court: It is competent thus far.

Q. Did you use an interpreter in order to ask Mrs. Congilio, or did you ask Mrs. Congilio through an interpreter, who had shot her?

A. I asked an Italian, who was present, who could talk English, who I knew very well, who asked her who had shot her.

Cross-examination by Mr. Braun:

40

Q. Have you any identification marks on those articles?

A. No, sir.

Q. So that you cannot say positively whether or not those are the articles turned over to the Prosecutor; you can simply say these articles resemble the articles you turned over to the Prosecutor, is not that right?

A. Yes, sir.

The Court: He said, however, that all the articles he received from Squire Narr, and all the articles he received from Squire Narr, were turned over to the Prosecutor by him. 10

Q. Was the money turned over to you?

A. No, sir, it was not.

Q. How long have you known Mrs. Congilio, or had you known her prior to her death?

A. No, sir; I had not.

The Prosecutor: Mr. Mason and Mr. Braun concede these are the articles that Mayor Ely turned over to me so that I will not have to go on the stand. 20

The Court: It is conceded that the articles which were in the hands of Mayor Ely were turned over to the Prosecutor.

Mr. Mason: Yes; all except possibly these books.

The Prosecutor: They were in the box.

Mr. Mason: Well, we will admit all of them. 30

The Prosecutor: I offer these articles in evidence.

The revolver, Exhibit S4.

The knife, Exhibit S5.

The razor, Exhibit S6.

The watch, Exhibit S7.

Letters and books, Exhibit S8.

Bullets, Exhibit S9. 40

The Handkerchief, Exhibit S10.

Watch Chain, Exhibit S11.

Postal Card, Exhibit S12.

Mr. Braun: We object to these articles being received in evidence.

Objection overruled.

Defendant's counsel pray an exception.

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

10

ALFRED REED,  
Presiding Judge.

JOSEPH BISHOP, sworn for the State.

Direct-examination by the Prosecutor:

Q. Where do you reside?

A. I work home.

Q. Where do you live?

20

A. Lambertville, N. J.

Q. Where were you on the 20th of May last?

A. I was home.

Q. Did you see Mrs. Congilio after she was shot, at the station?

A. Yes; at the station?

Q. You saw her there?

A. Yes, sir.

30

Q. Are you the Italian whom Mayor Ely asked to ask Mrs. Congilio who had shot her?

A. Yes, sir.

Q. Did you ask her?

A. Yes, sir.

Q. Was that subsequent to the time that Father Lynch had been there?

A. Father Lynch was there.

Q. At the time?

A. At the time I was there.

40

Q. Was it after or before the time that Father Lynch was with her on the tow-path of the canal?

A. I was there.

Q. Was this the time you asked, at the request of

Mayor Ely after Father Lynch had been with her on the tow-path of the canal?

A. This was after that.

By the Court :

Q. After he had administered the rights of the Church—were you there when he administered the rights of the church?

A. Both times do you mean? 10

Q. Did you see him administer the rights of the church on the canal?

A. Yes, sir.

Q. Now, did you see him after that at the station also?

A. Yes, sir.

Q. Now, at the time that you asked this question of Mrs. Congilio, had he administered the rite yet, or hadn't he; the Sacrament? 20

A. I don't know then. He told me—

Mr. Mason (interrupting) : Who?

Q. Who do you mean?

A. Why, Father Lynch told us to turn around the back to him; turn the back around, you know (illustrating).

Q. You turned around?

A. Yes. I didn't see that. 30

Q. Was it after that when Mayor Ely requested you to ask the question of Mrs. Congilio?

A. Yes.

Q. Will you kindly state what Mrs. Congilio's reply was to that question?

Mr. Braun: Of course, our objection applies to this.

The Court: Yes.

A. Do you mean the time when— 40

Q. Interrupting.) As I understood you to say, Mr. Ely asked you to ask Mrs. Congilio—

A. (Interrupting.) Yes.

Q. —who had shot her?

A. Yes.

Q. I now ask you to tell us what her reply was to that question which you put at the request of Mr. Ely?

A. I asked her to told me who shot her.

Q. You asked her to told you who shot her?

10

A. Yes. And she told me that Mike shot her.

Q. That Mike—

A. (Interrupting.) Yes, sir.

Q. Was that all she said?

A. She told me—

Mr. Mason (interrupting): That is all.

Q. Was that all she said?

A. She says, "I didn't want to do what he say  
20 and I told him I didn't want to turn around to my husband, turn my husband, back, you know, and she turned around and shot him.

By the Court:

Q. Just let him state that again.

A. She says this Mike; this Mike, you know, was going to turn her down.

Q. She said that?

A. Yes; she said this Mike done that. And she  
30 said to me, she says, "She won't turn his husband down, and he turned around and shot him; this Mike.

By the Prosecutor:

Q. Mike turned around and shot who?

A. Shot this Congilio.

Q. What did she say Mike was going to do to her?

40

Mr. Mason: I object to that as leading.

The Court: Yes. Don't lead the witness.

The Prosecutor: Well, the witness has

answered the question; but his English is a little defective.

The Court: I know. But you must take it as it is. It is given in English.

Q. Did you subsequently, or after that, on the train going from Lambertville to Trenton hear Mrs. Congilio make any statement?

A. Well, I went down to Trenton with her. 10

Q. Did you accompany her to the hospital?

A. Yes.

Q. Now, if you heard any statement on the train on the way to the hospital, kindly state what you heard her say?

A. She says to me—I asked him again in there and when I asked him I said, “Now, can you tell me what is the trouble again?” And she says to me, she says, “Why—” she told me the same thing. 20

Q. Well, tell what it was exactly?

A. He says to me, says, was going to throw her down again.

Q. Going to throw her down?

A. Yes, sir.

Mr. Braun: Did the witness use the word throw or turn?

Witness: Throw her down. And she says she didn't want to go back to the husband; then the fellow turns around and shoot him. 30

Q. There is some question as to which word you used just now. Did you say “throw” her down, or—

A. (Interrupting.) Throw her down.

Q. Throw her down?

A. Yes, sir.

The Court: I wish you would ask him to state in Italian what she said—what she said to him in Italian. 40

The Prosecutor: Kindly state what she said to you. (The witness answers in Italian

and the interpreter interpreted the answer as follows: "She stated she did not wish to betray her husband, and, after she said this she follow shot her.")

10 The Court: What I want to get at is the portion of the reply that I could not understand—he said he was going to throw her down and she did not want to go back to her husband.

Mr. Braun: "On," he means.

The Court: Oh, on?

The Prosecutor: Yes. Was there any question as to the words turn or throw?

The Court: No.

Cross-examination by Mr. Braun:

Q. Are those the exact words she used?

20 A. That's what she told me.

Q. The exact words, are they?

A. That's what she told me.

Q. What is your business?

A. I am working in the rubber mill; making shoes there.

Q. Were you working that day?

A. No; I was at home that day?

Q. Why were you not working that day?

30 A. Because I didn't feel good.

Q. Did you testify before the Coroner before going to Trenton?

Witness: What?

Mr. Braun: Did you go to Trenton and testify?

A. Yes; I did.

40 Q. Are you telling us here today exactly what you told the Coroner at Trenton?

Mr. Large: That has been allowed to go on without objection up to this time, but it is

likely to lead to confusion, and we think the rule should be applied.

The Court: The rule should be applied when it comes to a matter of contradiction.

Mr. Braun: I will withdraw that question and put another one.

Q. Have you given us today the same version of your conversation with Mrs. Congilio as you gave before the Coroner at Trenton? 10

A. I said the same thing as I said today.

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LOUIS CONGILIO, recalled in behalf of the State.

Direct-examination by the Prosecutor:

Q. Louis, who accompanied your mother to the Trenton Hospital? 20

A. Joe and me.

Q. Joe who?

A. Bishop.

Q. Joe Bishop and you?

A. Yes, sir.

Q. Did you see Father Lynch at Lambertville, at the station?

A. Yes, sir.

Q. Did your mother make any statement or statements to you in your presence after she was placed on the train after Father Lynch had left? 30

A. Only told me to get her glass of water; that's the only thing she told me on the train.

Q. She asked you to get her a glass of water?

A. Yes, sir.

Q. Did she make any statement to you at any time after leaving Lambertville as to her condition or as to who shot her? 40

Objected to as leading.

The Court: I think that is competent; it is calling attention to the general subject.

Q. Just tell me what she said to you, Louis, on the train?

A. Told me to get a glass of water; that's the only thing she told me on the train.

10. Q. Did your mother have anything to say to you on the way from the station at Trenton going up to the hospital, in the ambulance; in the wagon that took her up to the hospital in Trenton?

Witness: On the way to the hospital?

The Prosecutor: On the way to the hospital?

A. (After a pause.) She only told me she likes to have me around her.

Q. What?

A. She only told me she liked to have me around her.

20. Q. Liked to have you around her?

A. Yes, sir.

Q. Did she say anything to you just prior to the time she was first on the train, at the station at Lambertville, after Father Lynch had finished?

A. No.

Q. Just before she was put on the train?

A. No, sir.

30. Q. And the only thing she said to you on the train was to get her a glass of water?

A. A glass of water. I don't know what she said to Joe Bishop.

Q. Did she converse with Joe Bishop on the train.

A. Yes, sir.

Q. Did you hear what she said to Joe?

A. No, sir. I was by the window.

Q. You were by the window?

40. A. Yes, sir; by the window all the time.

Cross-examination by Mr. Braun:

Q. Were you alongside your mother all the while in the train?

A. No, sir.

Q. You were not?

A. No, sir.

Q. How far were you from your mother on the train?

A. (Indicating.) About from here to there.

Q. How do you know Joe Bishop and your mother were talking together?

A. Because I know they was talking. I don't know what they was saying. 10

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PASQUALINA CAVALLO, sworn in behalf of the State through the sworn interpreter.

Direct-examination by Mr. Hunt through the interpreter :

Q. Where do you live? 20

A. Lambertville.

Q. Lambertville?

A. Yes.

Q. How far do you live from the house where Mrs. Delia Congilio lived on May 20th last?

A. I was to the house of Dominick Cavallo.

Q. Did you go to Mrs. Congilio's house on May 20th after she was shot?

A. We saw many people and so we also went to see. 30

Q. Where was Mrs. Congilio when you arrived at the house?

A. She was on the porch.

Q. Did you hear her say anything in reference to her physical condition?

A. They were—

The Interpreter (interrupting) : I think I had better give this to the Court. (The interpreter and counsel gather around the Bench.) 40

Witness (continuing her answer): They asked her and she said that it was Michael Tomassi who had killed her.

Q. Before she said that did you hear anything that indicated whether she believed she was mortally wounded?

A. This is the only thing I heard.

10 Q. Did you go upstairs with her?

A. I went upstairs when they were putting her on the stretcher to take her to the hospital.

Q. Did you hear her make any further statements as to her condition or the cause of her condition?

A. Nothing more. This is what I heard and this is what I said.

Cross-examination Waived.

20

PASQUALINA GOCCIA, sworn for the State through the interpreter.

Direct-examination by Mr. Hunt:

Q. Where do you live?

A. Main Street.

Q. How far from the house where Mrs. Congilio lived on May 20th last.

30 A. I wasn't in my house on that day. I was moving. I was at the house of Mr. Tom Rossi.

Q. Did you go to Mrs. Congilio's house on May 20th after she was shot?

A. Yes.

Q. Where was she when you arrived at her house?

A. I saw many people and I went there also.

Q. Where was Mrs. Congilio when you arrived at her house?

40 A. She was on the porch.

Q. Did you hear her say anything with reference to her condition?

- A. Yes.
- Q. What did she say?
- A. She said that Michael Tomassi had shot her.
- Q. Did she say anything else with reference to her physical condition; her state of health?
- A. She said that she wouldn't live ten minutes.

No Cross-examination.

The Prosecutor: Your Honor, I desire to offer the maps there in evidence. Were they admitted; the maps? 10

The Court: I think so; yes. They are in now, anyhow.

The Prosecutor: I desire to offer this tin pan.

Mr. Mason: It has not been identified or marked for identification.

The Court: Did that little girl say that was the tin pan? 20

Mr. Large: Yes, sir.

The Court: You are sure?

Mr. Large: That was the one that fell from her mother's hand when she was shot.

Mr. Braun: As I recall the girl's testimony, she said she had not seen the dish; she claims her mother held it in her hand; since May 20th, when she left home and went to the institution where she now is. 30

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FRANK CONGILIO, recalled for the State.

Direct-examination by the Prosecutor through the interpreter:

Q. I show you a pan, and ask you who brought it here to Flemington?

A. A child brought it. 40

Q. Whose pan is it?

A. It is my property.

Q. In whose custody has it been—did you own this on the 20th of May last?

A. Yes. I had it on the 20th of May.

Q. State where this pan has been since the 20th of May?

A. This was hung in the cellar. We used it and we always washed it with soap.

10                   The Prosecutor: I offer the pan in evidence.

                  Objected to.

Cross-examined by Mr. Braun:

Q. When did you first have the pan in your hand on the 20th day of May? How soon after his wife's death did he get hold of that pan?

A. That there was bought before.

20                   Q. How soon after his wife's death did he get hold of that pan?

A. We used it always.

Q. How soon after his wife's death did he see this pan in his home?

A. Two or three days.

                  The Prosecutor: I offer the pan in evidence.

                  Defendant's counsel objected.

30                   The Court: It is admitted.

                  Defendant's counsel pray an exception.

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

  ALFRED REED,  
  P. J.

                  Pan, marked Exhibit S13.

                  ROSINA CONGILIO, recalled for the State.

40                   Direct-examination by the Prosecutor:

Q. What did you say your mother had in her hand when she stood there in the cellar door?

A. That pan (indicating Exhibit S13).

Q. Who brought this pan to Flemington this morning?

A. I did.

Cross-examination by Mr. Braun:

Q. You mean it was a pan just like that, don't you; you mean it was a pan like that one; you don't know whether it was the same pan or not, do you? 10

A. Certainly.

Q. Don't be afraid; I am not going to hurt you. That is all.

The State Rests.

Opening for the Defense.

Mr. Braun: May it please the Court, and Gentlemen of the Jury. Our defence in this case will be self-defence. I will announce that at the outset. 20

We propose to prove to you that about a year or two ago Michael Tomassi came to Lambertville. He has a wife and a small child in Italy and when he reached Lambertville, he went to board at the home of Mr. Congilio. His custom was to pay Congilio the sum of Two dollars and forty-five cents on or about the 23d day of the month, for lodging. So far as meals were concerned, he provided the provision and Mrs. Congilio usually prepared them for him, but sometimes, when he had not time or did not care to buy for himself, Mrs. Congilio would buy provisions for him and he would settle with her when his month was up. 30

Mr. Tomassi, during all the time he lived at Lambertville was economical and saved his money; his whole desire was to bring his wife 40

and child to America where they could live with him and he saved his money for that purpose. He worked on and each week or each month, whenever he had a little money saved, he would deposit it in the Lambertville bank. Finally, on the 18th day of May, he had enough money saved to purchase a ticket for his wife to come over from Italy and join him here in America and on May 18th, he drew his money from the Lambertville Bank, —Seventy dollars in his pocket, and with this money he was going to Philadelphia to purchase a ticket for his wife and child. On the eighteenth, I say, he drew his money, and on the 20th he was going to leave for Philadelphia to buy the ticket. Being about to leave Mrs. Congilio's home, and his month being almost up, he was going to settle with her for whatever he owed,—and we shall prove to you that he always settled with Mrs. Congilio, his dealings were not with Mr. Congilio. During that month Mrs. Congilio had bought certain goods for him and he owed her, besides the money for lodging, certain moneys which she had disbursed on his account.

On May twentieth, he arose early in the morning and put on his best clothes preparatory to going to Philadelphia. He went to Mrs. Congilio and told her that he wanted to settle with her for whatever that he owed. He claimed that he owed her Five dollars, and he offered her that amount; she claimed that the sum of Six dollars was due her on account of rent and for money she had disbursed for him. This was about eight o'clock in the morning and Tomassi and Mrs. Congilio at that time had words, the quarrel

lasting for about an hour, but they could reach no conclusion. Tomassi took the Five dollars which he had offered Mrs. Congilio, put it in his pocket, put on his hat and went down to the village and have a shave and have his hair trimmed. He went down to the village and had his hair trimmed and got a shave and came back to the Congilio house and told Mrs. Congilio that he was going to Philadelphia. 10

I might state right here that early in the morning he had packed his belongings in his valise, he had taken the revolver which he owned out of the closet in his room, I think it was—if I misstate any facts the witnesses will correct me—out of a closet in his room and put it in his valise and had taken his razor and knife and whatever little articles he wanted to take with him and put them in his valise in that room, and Mrs. Congilio was in the room at that time. After he came back from the barber's he told Mrs. Congilio that he was going to Philadelphia to purchase this ticket, and he again offered her the Five dollars which he had offered her earlier in the morning. The quarrel was resumed, Mrs. Congilio telling him she wanted Six dollars or nothing, and Tomassi saying, "Take Five dollars or nothing, that is all I owe you, I shall pay you not one cent more." 20

Mrs. Congilio came downstairs to her kitchen, I think it was, and Tomassi came down the stairs from the second floor to the first floor, or what is known as the cellar, and he said, "Take this Five dollars or nothing, I am going to leave now for Philadelphia." Mrs. Congilio, I think, was standing at a table, she was very much enraged, she 40

wanted no man to get the better of her, she wanted no man to defraud her and she thought Tomassi was trying to cheat her out of money that was justly due her. Here was a man before her whom she thought was about to cheat her, and to escape from her. Tomassi said, "Here is the Five dollars that I owe you, take it or take nothing, I am going to Philadelphia," and Mrs. Congilio picked up a bread knife from the table and said to Tomassi, "I will kill you like a pig," and came at him. Tomassi at that time was at the foot of the stairway which leads from the cellar to the second floor. He saw the flash of the blade, he saw the rage in Mrs. Congilio's eye, he saw her coming towards him and he rushed back to the stairs which opened up the only avenue of escape for him; he got to the foot of the stairs and he saw Mrs. Congilio coming towards him and he pulled his revolver.

We shall show you that the knife Mrs. Congilio had in her hands at that time was a knife about as long as that (illustrating so as to indicate a large knife). Tomassi retreated to the stairway and seeing Mrs. Congilio coming towards him he pulled his revolver and attempted at first to wave her aside. She came on and Tomassi fled up the stairway; he wanted to get away from her and as he went he fired at Mrs. Congilio; he did not know whether she was dead or alive, and he ran out of the rear door and up that hill, and as we shall show, he believed that she was still pursuing him.

We purpose to show you further that Mrs. Congilio was of a quarrelsome, violent disposition; that she had that disposition in Lam-

bertville; that Mr. Tomassi knew of it; that he knew of specific instances in which Mrs. Congilio had demonstrated her violent temper.

We propose to show you further, and it has been testified to here, that Mrs. Congilio was menstruating at that time and we shall produce an expert who will tell you that a woman who was of a violent disposition, would be more so at such periods. 10

These are the facts, gentlemen, that we propose to lay before you. These are the things we propose to prove to you; and these are the things and facts that we claim took place in that house in Lambertville on May twentieth, and if we do, we shall ask for a verdict of acquittal at your hands. 20

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MICHAEL TOMASSI, the defendant, sworn in his own behalf through the interpreter:

Direct-examination by Mr. Mason, through the Interpreter:

- Q. What is your full name?  
 A. Michael Tomassi.  
 Q. How old are you? 30  
 A. Twenty-five.  
 Q. Are you married?  
 A. Yes.  
 Q. Ask him if he has any children.  
 A. Only one girl.  
 Q. Ask him how long he has been in America?  
 A. Five years, but not all together.  
 Q. Did you go back to Italy for part of that time?  
 A. Yes. 40  
 Q. Where did you first live in America?  
 A. Lambertville.

Q. How long did he live in Lambertville?

A. A short time, perhaps a couple of months.

Q. Then where did you go?

A. Princeton.

Q. When was it that you went to Princeton?

A. After Lambertville. From Lambertville, I went to Princeton for four months.

10 Q. At Princeton did you become acquainted with a woman by the name of Delia Congilio?

A. Yes, but not then, the first time I was in America. After I came to America the second time, I met her.

Q. He went to Princeton and met—

A. (Interrupting.) After I came to America the second time I met her.

Q. Then where did he go from Princeton?

A. At Lambertville.

20 Q. How long did you stay in Lambertville?

A. Eighteen or nineteen months.

Q. Ask him where he went then.

A. After Lambertville I went to Italy.

Q. Ask him where did he go when he returned to America?

A. To Lambertville again.

Q. Is this the last time that he went to Italy?

A. No, sir, I was to Italy again.

30 Q. Were you in Italy two or three times?

A. Twice.

Q. Where did you go to live when you returned to Lambertville?

Witness: The last time do you mean?

Mr. Mason: Yes.

A. The last time I came I went to live to Princeton; I remained there one week and then I went  
40 back to Lambertville.

Q. At whose house did you live in in Lambertville the last time?

A. Delia Congilio's.

Q. What arrangements did you have with Mrs. Congilio or Mr. Congilio about paying board, and how much did you pay a month?

A. \$2.25 per month; and then sometimes she would make purchases for me, and then I would pay her back for it.

Q. Did Delia Congilio generally cook your meals when you were living at her house? 10

A. Yes, sir.

Q. How long had this arrangement been going on—that is, how many months had it been going on up to the 20th of May last?

A. Eight months; eight or nine months; I don't remember; eight months, I think.

Q. Did you open a bank account at any place?

A. I placed in the Lambertville Bank \$70. 20

Q. For what were you saving that?

A. In order that I might be enabled to send for my wife in Italy and my girl too.

Q. When did you draw this money from the bank?

A. On the 18th day of May.

Q. Had you said anything at that time to Mrs. Congilio about going away?

A. Yes, sir.

Q. Do you recall the morning of May 20th last? 30

A. Yes, sir.

Q. Now begin with the morning of May 20th, when you got up, and tell in your own words, whatever took place on that day; tell it in your own words.

A. On the morning of the 20th of May I got up at eight o'clock; I went to eat and to wash myself.

Q. Who cooked the breakfast for you?

A. Delia Congilio; four eggs for breakfast. 40

Q. Continue.

A. She said to me, "So long as you are going to

Philadelphia pay me what you owe me." I took a Five dollar bill and offered it to her—said "Here," and she said "No; you owe me six dollars, not five," and I said "Why do I owe you six dollars?" I said "Why do I owe you six dollars and not five; there is \$2.25 for lodging and you gave me 50c. last week and I don't believe that you have extended more than \$2.25 additional for cucumbers and tomatoes and other things which you have bought for me; that makes \$5 and I think it is right; if you wish to take it, take it, and I will go." Then I went up to my room; I went and put my collar on and my coat. Then she came upstairs to my room and she said "You owe me six dollars" and I said "No, I don't owe you six dollars, if you wish \$5 you may take it, otherwise leave it." Then she called me brigand and thief, she said I wanted to take advantage—wanted to appropriate myself of her money, and then I asked her, why did I wish to appropriate to myself of her money, that was what I owed her. Then I took a Five dollar bill again and offered it to her, and I said "Take it if you wish to take it, otherwise let it go." Then I had different objects in my satchel and hearing that they might be stolen I took them out of the satchel and put them in my pocket, because I had at one time sixty cents in my pocket and Louis had taken it out from my pocket, and Constantino Brigantino is as a witness, and the mother returned the fifty cents to me, and my brother-in-law was there present and other persons also, and that is the reason why I took all these objects out of the satchel.

Then I went to the village to have my hair trimmed—cut—to be shaved also, and after I had a hair cut and been shaved I said to myself "Well, on this 23d day my month will be up at the house and if I do not pay her she will throw all my be-

longings into the street." Then I went to the house with the object in view of taking my belongings away from there; I was to go to Philadelphia; then when I reached the house again I offered her \$5, I said "Here are the \$5 if you wish them because I am going away, and I am going to take my belongings with me." Then she said to me, "You owe me six dollars, if you do not give me six dollars I will draw six drops of blood from your heart." Then I said, "What do you take me for a baby, have I not hands as you have them?" 10

Q. Where did this conversation take place?

A. In the kitchen.

Mr. Mason (to the Interpreter): Just come this way, Mr. Interpreter, you explain to him the plan of the house here (indicating map) and after you have explained to him the plan of the house, give him the pointer and let him describe just what took place. Explain to him that this (indicating) is the range. This (indicating) is designated as the cellar and kitchen, while this (indicating) should have been dining-room and kitchen and this (indicating) cellar. 20

(Interpreter explains map to witness.)

Q. Stand like this (illustrating) so that the gentlemen of the jury can see you. 30

A. (Indicating on map.) That is the stairway; that is the door of the cellar.

Q. (Indicating.) No, this is the door of the cellar here.

A. That is the table.

Q. Now ask him where, in what room, this first conversation took place where he first offered her the money early in the morning. Where did he eat his breakfast? 40

A. In the kitchen I was eating breakfast.

Q. Where did the second conversation take place?

A. In my room.

Q. Which floor is that on?

A. Third floor.

Q. Now, where did this conversation take place when he returned from down town the last time?

10 A. In the kitchen.

Q. Now, ask what he means when he says "the kitchen." What he means by the "kitchen."

A. Where we eat.

Q. Which room? Show it on the map.

A. (Indicating on map.) This room.

Q. Now, beginning with that conversation when you returned there and offered the money described.

20 The Interpreter: Describe it on the map here?

Mr. Mason: Yes.

Witness: I have not finished telling all yet. Will you allow me to finish, gentlemen?

Mr. Mason: Yes; I want you to tell the whole thing.

30 Witness (resuming his seat and continuing): He asked me if I had told of his answer that she wished to draw six drops from his heart; then I said, "What do you take me for, a baby? Haven't I hands, as you have them?" And then she took the knife and she said, "I will kill you like a pig," and she came on me with the knife. Then I pulled the revolver from my pocket, wishing to protect myself, and I walked backwards and backwards until I reached the stairs, as I could not protect myself  
40 any more then, I shot and ran, and running I shot (witness illustrates), because I was afraid of that woman, who was a very bad woman.

Mr. Braun: Pardon me one moment; didn't he use the word Markino a few minutes ago?

The Interpreter: No.

Mr. Braun: Didn't he.

The Interpreter: No.

Mr. Braun: I am misinformed then.

Q. Show on the map about where you were standing and where Mrs. Congilio was when she took up the knife? 10

A. (Indicating.) I was here by the stairs and she was by the table when she took the knife, and she came towards the door of the cellar, where I was (illustrates), and she came towards me with the knife (illustrates), then I wanted to protect myself and I walked back and retreated and in retreating I shot. 20

Q. To what part did you retreat?

A. On the stairs going upstairs, because I could not run through the door; otherwise, I would have tried to go through the door.

Q. Why couldn't you run through the door? Is the street along here (indicating on the map)?

A. Yes.

Q. (Indicating on the map.) -Why couldn't you run through this door? 30

A. I couldn't run through the door because she was there on the side and she would kill me, and we were a short distance; I was going to protect myself with my hands; she might have killed me (witness illustrates).

Q. Continue.

A. Afterwards, I went out in the yard and I went away by the roadway.

Q. Where did he go? 40

A. I went to Hopewell to go to Philadelphia.

Q. Have you any relatives in Philadelphia?

A. Yes, sir. I have a cousin. I was going to buy passage and then also to see my cousin.

Q. Had he been talking about going away in the presence of some of these children, Apostelle or Rosina?

10 A. Yes, sir, I was telling their mother that I was going to Philadelphia and the children was there. Rosina was there also, and, I believe, they must have heard it as the mother heard it, they must have heard it also.

Q. Tell him that it has been stated here in Court by Apostelle that he asked his mother, Delia Congilio, to go with him, Michael Tomassi, to Trenton, and to take Apostelle with him. Ask him, is that so or is it not?

A. No, sir.

20 Q. Apostelle says that you, Michael Tomassi, had a revolver in your hand and a dollar bill, and threatened his mother. Is that true or is it not?

A. No, sir.

Q. I think it was Rosina that made the same statement.

30 The Court: I don't think she said he made the statement to her; only that he made the statement to the mother, isn't it? So that it is contradicted by his saying that he never made that statement at all.

Q. Rosina says that when she came in her mother was carrying this pan in her hand and that at the time you were shooting her mother. Is that true or false?

Mr. Large: I object to the form of that question.

40 Q. Is it true or not?

Mr. Large: You can't ask a witness whether the statement of somebody else is true or false.

The Court: This is different.

Mr. Large: Oh, well, we don't care. Ask him anything you like.

A. No, sir.

Q. (Showing pan to witness.) Did you see that pail at all in Mrs. Congilio's hands that day, or at this time which is alleged you shot her?

A. No, sir. 10

Q. Luggi Congilio has stated that you asked him to go to Joe Ledger's and get a bicycle that morning. Is that true or not?

A. No, sir.

Q. Did you intend to stay in Philadelphia all the time or did you expect to return to Lambertville that day when you were arranging to leave town?

The Prosecutor: What hour do you refer to? 20

Mr. Mason: Why, anytime that day, the whole day.

A. My intention was that I would return to Lambertville, as I had worked there.

Q. Was there other money owing to you by people in Lambertville at that time—was there other money owing to you by other people, I think in Morris Station, at that time? 30

A. Yes, sir; there was \$8.75 owed to me yet.

Q. Was that money since paid to you?

A. Yes, sir, it came to me here.

Q. When?

A. I don't remember the precise date, but the lawyer brought it to me.

Q. Was these some other monies owing to you, that was paid this morning? 40

Witness: Which morning, the morning of this day or—

Mr. Mason (interrupting): Did you see Mr. Bob Ireland, I think— The Prosecutor agreed this morning that he saw the money paid over to me, \$2, other money that was owing to the defendant. I don't know whether the witness saw it or not.

10

The Prosecutor: I will concede that he had two dollars coming from some man who was here and handed it to Mr. Braun or Mr. Mason. I don't know the man's name.

Mr. Large: \$2.

Mr. Mason: Yes.

Q. How were you dressed at the time this quarrel took place in the room on the bottom floor?

Witness: The last time or the first time?

Mr. Mason: The last time.

20

A. As I am dressed now, only the collar and the tie is now different. The authorities took charge of the other collar and tie.

Q. To what barbershop did you go in Lambertville that day when you got shaved and your hair cut?

A. On Main Street.

Q. Do you know the barber's name?

30

A. The name of the barber that owns the barber shop—Gaetano is the name of the man that owns the shop but the assistant was there. I don't know what his name is. It has been stated here by different witnesses—I want to make a general denial of the alleged dying declaration. Does your Honor require that I shall go through the testimony of all the witnesses that said that?

The Court: No.

40

Q. It has been stated here by divers witnesses for the State that Mrs. Congilio, that after the shooting, had said that you, Michael Tomassi, had

shot her because she would not betray her husband for a dollar. Is that so or is it not?

The Prosecutor: I object to that. How is he going to know what Mrs. Congilio said after he left?

The Court: That is not the question. The question is whether what she did say was true. The question is a little ambiguous. Is it true or is it not true whether she said it or is it true or not true that you did it? 10

Mr. Mason: Is it true or not true that you had asked her to betray her husband for a dollar?

A. No, sir.

Q. Had you not on different days, on many occasions, given the children small sums of money, a penny or five cents? 20

A. Yes, sir.

Q. (Exhibiting to the witness the revolver in evidence.) This is the revolver that belonged to you, is it not?

A. Yes, sir.

Q. (Exhibiting to the witness the razor in evidence.) Is this your razor?

A. Yes, sir.

Q. As a general thing did you shave yourself? 30

A. Yes, sir.

Q. Why were you taking this razor with you that day?

A. I took everything out of the satchel for fear that they would be stolen.

Q. Is this the razor that you used in shaving yourself?

A. Yes, sir.

Q. (Exhibiting to the witness the knife in evidence.) Is this your knife? 40

A. Yes, sir.

Q. Is this the knife that you used at noon times in eating your meals at the quarry?

A. Yes, sir. I am a machinist, and I had that to fix the washers on the machinery.

Q. Where?

A. At Morris Station, where I worked; and also another quarry where I used to work, at Bob Ireland's.

10 Q. Ask him how long he had the revolver?

A. Four or five months.

Q. Ask him if he had at different times practiced or used the revolver in shooting around in the neighborhood.

A. I always used to shoot and practice against the water-closet back of the house.

20 Q. Mike, how long have you known Mrs. Congilio, all together, that is, different times, moving?

A. I knew her two years ago in Princeton.

Q. Ask him if he knew of instances where Mrs. Congilio had attacked other men.

Mr. Large: One moment. We are not trying other cases that I know of. We will have to object to that. We can't meet that issue.

30 The Court: I understand the rule is that where a foundation is laid to this extent, that the defendant was attacked with a lethal weapon, he can set up self defence, and in that can show that he had knowledge of the desperate character of the party who was assailing him for the purpose of showing light upon the necessity of the act he did. Now, this witness has stated that his assailant was armed with a bread knife.

40 The character of that bread knife does not appear.

Mr. Mason: I think you will remember,

your Honor, that the little girl Rosina described the bread knife as a knife about this long (indicating).

The Court: I guess it is described enough. You can go on with the testimony.

Mr. Large: I suppose this will be limited to what he has seen, not to what he has heard, rumors through the country.

Mr. Mason: What came to his personal knowledge, whether he saw it or not.

The Court: You had better not examine him on that, until you prove by the persons who told him these things that the act occurred. I don't understand that because he has been informed of a fictitious character or fictitious acts, that that would justify him. As I understand the rationale of the case is that the mere fact that a party has been told will not justify his act unless there is a foundation for the facts which he has been told; so I will limit it now. I will look up the matter a little further tonight, Mr. Mason. I will rule for the present that you had better exclude that until you lay a foundation by some other parties who know the facts that were told them.

Adjourned until Wednesday, October 2, 1907, at 9:30 A. M.

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## HUNTERDON OYER AND TERMINER.

10	THE STATE  vs.  MICHAEL TOMASSI.	}	Third Day.
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Flemington, N. J.,

Wednesday, October 2, 1907.

Case resumed pursuant to adjournment.  
 Appearances as heretofore noted.

MICHAEL TOMASSI resumed the stand:

20 Further direct-examination by Mr. Mason:

Q. Mike, how long had you known Delia Congilio?

Objected to as repetition.

Mr. Mason: I am simply directing his attention to where we left off yesterday, your Honor.

The Court: Go on.

30 A. Two years ago, the first time I knew her.

Q. Do you know what is the general reputation of Mrs. Congilio for treachery, vindictiveness and quarrelsomeness?

Objected to.

The Court: Objection overruled.

A. I knew her as a very bad woman, always getting in trouble with people.

40 The Court: That does not answer the question, but, still, go on; we won't take up the time. Go on.

Q. Do you know, of your own knowledge of instances that came under your own observation where she was violent, bloodthirsty or vindictive?

The Court: Overruled.

Mr. Mason: I would like to ask an exception for these reasons.

The Court: No use giving reasons; you have your exception. 10

Mr. Mason: I would like to have them on the record.

The Court: You don't need to have those on the record; the testimony is either admissible or not admissible, and the Court will find that out. Don't take up unnecessary time. You have your exception on the record.

Let the exception be sealed and it is sealed accordingly.

ALFRED REED, 20  
Judge.

Q. Did you see at any time Mrs. Congilio attack other men with dangerous weapons?

The Prosecutor: Objected to.

Mr. Mason: This is of his own knowledge, instances that came under his own observation, that he saw himself, personally.

The Prosecutor: It is objected to as immaterial. 30

The Court: Cases which he himself saw?

Mr. Mason: Yes, sir.

The Court: All right. Not other men, but any other specific instance, and when.

Mr. Mason: I was going to ask that on the next question. Simply yes or no to this question.

A. Yes, sir; and in the month of April. 40

Q. What were those instances that you witnessed yourself?

A. We were in the kitchen, this woman and myself, Nicholo Rossi—we were in the kitchen, and Constantino Procaccino was passing by in the street—he was going to make purchases; she had a weapon concealed on her person, on her stomach, and she intended to kill this man in the house of Dominick Cevallo.

10 Q. Go ahead.

A. We dissuaded her and she stopped in the house, and when this man returned he passed by her house (witness illustrates), and while Constantino was going by she went out with a stick, and with her knife concealed on her person, and attacked him, threatening to kill him; and the man left her alone and went away, and she said a number of words after him.

Q. What kind of words?

20 A. Calling him a son of a bitch—"Why do you go by my house?"

Q. When was this instance? When did this happen?

A. In the month of April. I cannot recall the exact date.

Q. What year?

A. This year.

30 Q. Do you know of any other instance, that you saw yourself, where Mrs. Delia Congilio attacked a man with a dangerous weapon?

A. Yes, sir. Another evening—there came a certain Angelo Ceffili to the house asking for me. A nephew of his was dead and I had received information of the fact. "You ought to be ashamed, a man from Pettoranello to come into my house," this woman said to this man. And this Angelo Ceffillo kept quiet. And then, after, she told me that  
40 if the man had answered she would have attacked him with an axe.

Q. Ask him if, knowing of these instances and of Mrs. Congilio's reputation for treachery, vindic-

tiveness and quarrelsomeness, did he believe that he was in danger of great bodily harm or losing his life on this 20th day of May, when he shot?

A. Yes, sir. I was afraid of this woman.

Q. It has been stated here that Mrs. Congilio had this pan in her hand when you shot her. Is that true or is it not?

A. No, sir.

Q. It has been testified here that a short while before the shooting you came to the door and poked your head out and looked up and down the street. Is that true or not?

A. No, sir.

Q. Had you been in and out of the house several times that day?

A. No, sir. I went downstairs to wash myself, and I was obliged to go out. And then I went out when I went uptown. I went to have my hair cut and get a shave. And then I returned.

Q. Mike, describe more in detail what kind of knife Mrs. Congilio had in her hand when she came towards you?

A. It was a table knife she used to cut bread with. It was that long and that wide. (Indicating.)

Q. Ask him when he was compelled to retreat up this stairway—up here (indicating on map), was there any other way by which he could have gotten out of the house except by going out of the back door on the second floor?

A. No, sir. There was no way except by the stairs. That was the only way which I could get out.

Q. Ask him if, when Mrs. Congilio came towards him with a knife, did he retreat as far as he could go before shooting?

The Prosecutor: Objected to as leading.

The Court: Yes. Overruled.

Q. Ask him why he shot Mrs. Congilio?

The Court: He has told that before.

Cross-examination by Mr. Large:

10 Q. Michael, as I understand it, the greater part of the five years that you have spent in America was spent in the County of Mercer, either at Princeton or Lambertville?

A. I was at Princeton for four months, at Lambertville for two years.

Q. You knew very well, did you not, the location of Hopewell, in its direction from both Trenton and Lambertville?

A. I knew it because I had been there once before, to see my brother-in-law.

20 Q. You knew, did you not, that Hopewell was east of Trenton and Philadelphia was west of Trenton?

A. I knew that if I took the train at Hopewell I would go straight to Philadelphia, and if I went to Trenton I would have to change.

Q. Why, you did change at Trenton that day, or tried to, didn't you? At Trenton Junction you did try to?

30 A. He was obliged to change because he missed the express. If he had caught the express he wouldn't have had to.

Q. Now, Michael, if you told the truth when you said that you were going from this house of Congilio to Philadelphia, and if nothing had happened there that morning, you would never have thought of going around by way of Hopewell, would you, to get to Philadelphia?

40 Mr. Mason: I object to that question. It is testified he went there, and of course it is known that something did happen.

The Court: Objection overruled.

A. No, sir, I would have gone there also.

Q. Well, don't you know that Hopewell laid in almost an opposite direction from the route you would take to go to Philadelphia?

A. That was the way which I knew, and there I was going to get the train.

Q. Didn't you know that the trolley ran from Lambertville right down to Trenton.

10

Mr. Mason: I object to that.

The Court: Why do you object? It is cross-examination. He has the right to ask why he did this or that, anything that appeared in his direct-examination.

Mr. Mason: But this did not appear.

The Court: He asks him why he did not take the trolley. If he gives the reason that he didn't know there was a trolley, all right.

20

A. And then where would I go to get the train? I didn't know where to go to get the train.

Q. You knew, didn't you, that the steam cars ran from Lambertville direct to Philadelphia, didn't you?

A. No, sir, I don't know that.

Q. You have been two years at Lambertville you say, working at Moore's Station?

A. I worked at Moore's station for a while and for a while at Lambertville. 30

Q. At Lambertville?

A. Yes, sir.

Q. Doesn't this steam road run right through Moore's station, right through to Philadelphia?

A. I know there is a road that goes through Moore's station, but I don't know where it goes to.

Q. Have you never travelled over that steam railroad up to Lambertville during the two years you worked there? 40

A. No, sir.

Q. How did you get from the Congilio house over to Hopewell that day?

A. I walked over to Hopewell; I wanted to take the train at Lambertville and then I took the train there for Philadelphia where I go to see my cousin.

Q. You walked from the house over to Hopewell?

A. To Hopewell.

10 Q. How long did it take you to walk from the Congilio house over to Hopewell?

A. About three hours.

Q. Do you know how many miles that is?

A. No, sir.

Q. Did you travel on the public road going from the Congilio house to Hopewell, or did you travel through the woods and fields?

A. I walked in the public road.

20 Q. All the way?

A. Yes, sir; I went out of the yard and then I took the road and went to Hopewell.

Q. Had you ever walked over that route before?

A. Yes, sir.

Q. Now, you made a statement about your movements that day after your arrest, didn't you?

A. I told it in the house of this woman, that I was going to Philadelphia.

30 Q. After your arrest I mean, did you make a statement in the presence of Mr. Erico, Mr. Chamberlain and Mr. Hand, here in Flemington?

A. Yes, sir.

Mr. Mason: Would it not be well to ask him if he knew these men? He might have not known these men.

The Court: What is the trouble now?

40 Mr. Large: I asked him if he made a statement in the presence of these three gentlemen, and he says he made a statement; that is all I care about.

Q. And you signed it, did you not—put your name to it?

A. Yes, sir.

Q. (Showing witness a paper.) I hand you a paper dated May 21, 1907, and ask you whether the signature there "Michael Tomassio" is your genuine signature?

A. Yes, sir.

Q. Can you read writing in Italian? 10

A. Not so very well.

Q. Just look at that a moment and see if that was carefully read over to you and whether you yourself examined it? (Handing witness the paper.)

A. When I cannot read it how can I look at it?

Q. Why you signed your name there?

A. They compelled me to sign it; I did not want to.

Q. Who compelled you to sign it? 20

A. All those there.

Q. You know Mr. C. L. Erico, do you?

A. The Italian? Yes, sir.

Q. He went over this statement with you very carefully, did not he?

A. Yes, sir, he read it. I do not know whether it was with care.

Q. And before you signed that paper, did not Mr. Erico and the gentlemen present especially warn you that you were not compelled to make it or to sign it, and that if you did whatever you said might be used against you. 30

A. No, sir, they said "You must sign this paper," against my will, and I was even handcuffed.

Q. Who said that you must sign this paper against your will?

A. All of them, first the interpreter and then the others who were with him; I did not want to sign it. 40

Q. What interpreter?

A. A young man, I know him by sight.

Q. (The Prosecutor asked the young man to stand up and he did so.) Is that the man?

A. Yes, sir.

Q. Do you mean to say he told you to sign the paper?

A. Yes, sir, he and the rest told me that I should sign the paper, I did not want to.

10 Q. Did not the gentleman who just stood up, Mr. Erico, at the outset, and did not your statement which he read to you and which you had signed, also say "I, Michael Tomassi"—

Mr Braun: I object to the reading of any portion of that alleged statement at this time.

The Court: What do you propose to do?

20 Mr. Large: The witness made the assertion that Erico and the other gentlemen compelled him to make this statement, and I just asked him whether the gentlemen who stood up a moment ago, who he identified as the interpreter had not expressly told him that any statement he made might be used against him and that he was not compelled to make any?

30 The Court: There is no objection to that question, is there?

Hon. Braun: No, I did not object to that, but the Prosecutor was about to read the paper and that is what I objected to.

Mr. Large: Well, it makes no difference whether I take it out of this paper or out of my own head.

Mr. Braun: I think that is very unfair.

40 The Court: Why? He is about to ask the witness whether he did not find the paper at that time. Probably for the purpose of contradicting statements he made here.

Mr. Braun: But the paper is not in evidence.

Mr. Large: But I propose to offer it.

Mr. Braun: Then it might be proper.

Q. Did not Mr. Erico and the other gentlemen present expressly say to you that any statement that you made might be used against you, and did not the Prosecutor—Mr. Large here—also expressly warn you to that effect and tell you that you need not sign anything you did not want to? 10

A. No, sir, that is not true; he (pointing to Prosecutor Large) was the first one to make me sign the paper.

Q. Did you not, on that occasion, and in the presence of these men, say that when you left Hopewell, on this May 20th you were going away permanently? 20

Mr. Braun: I object to that, if your Honor please.

The Court: Well, you can ask him whether he said so and so. If he or his counsel chooses to interpose the objection to the question that it was said under improper influences, improper inducements, let them interpose that and the Court will rule on it, You are trying now, as I understand, to contradict something that he said in his examination in chief. 30

Mr. Large: He has said in his examination in chief that he went to Philadelphia to buy a ticket for his wife.

The Court: Is it of sufficient importance for the purpose of raising this question. It is a new predicament to me. I never had this question raised where on cross-examination he was asked whether he did not say to a man in authority—and the question is whether it would have been admitted as an 40

admission. So I think it is hardly worth while taking up time. The point is here. He goes on the stand and tells his story. Assuming that he has told a story to some other person which you think is contradictory to what he said on the stand, then he raises the question that the story that he told to that person was told under duress. Now, whether that defence can be set up under cross-examination, it is an entirely new question to me.

10

Mr. Large: I would, of course, expect to show, before we get through with the matter, the circumstances under which the statement was made; and further, the statement itself starts off with a contradiction of any duress, because he said "I—

20

Mr. Braun (interrupting): I object to that if your Honor please.

Mr. Large: I have got to state this to the Court. It starts with "I, Michael Tomassi, having been warned that any statement that I may make—"

30

The Court (interrupting): Unless it is a matter of particular importance, I do not think I would take up the time putting it in.

Mr. Large: I will leave that then. There is another point or two in that same statement I thought was important, but I guess I won't bother with it.

Q. Now, Michael, on that day, what time of day do you say it was that you left the house and started on your way to Hopewell?

A. I can't remember exactly whether it was one or a quarter after one.

40

Q. One or a quarter after?

A. Yes.

Q. No, Michael, have you stated to anybody prior

to the trial here that when you left the house you went out on the street and turned up to the right?

Mr. Braun: I object to that. If the Prosecutor is asking this question for the purpose of contradicting the witness he should call the attention of the witness to the time and place.

Mr. Large: I suppose I should do that. 10  
Have you ever stated to Mr. Erico, we will say on the 21st day of May last, that when you left the house that morning you went out of the front door, turned into the street to the right. Did you say that to Mr. Erico on the 21st day of May last?

Mr. Braun: I object to that.

The Court: On what ground?

Mr. Braun: First on the ground that he 20  
has not fixed the time and on the further ground that this forms part of the alleged statement made by this man, and I suggest that the foundation has not been properly laid.

Mr. Large: I am not using any statement. I want to know if that is the fact.

The Court: Put the question again.

(The stenographer reads the question as 30  
follows: Have you ever stated to Mr. Erico, we will say on the 21st day of May, last, that when you left the house that morning and went out of the front door and turned into the street to the right—did you say that to Mr. Erico on the 21st day of May last.)

Mr. Braun: If your Honor please, a peculiar situation presents itself at this time. Mr. Erico has not been on the stand yet, and 40  
I think when Mr. Erico goes on the stand, your Honors will permit no statement made by the witness to Mr. Erico to get out.

The Court: The question is admitted and exception allowed.

Let the exception be sealed and it is sealed accordingly.

ALFRED REED,  
P. J.

A. No, sir.

10 Q. Now at the time of the shooting, Michael—let's get down to that—don't let us spend much time on it—when you fired the first shot how close was Mrs. Congillio to the door leading into that little cellar?

Mr. Mason: I object, if the Court please, to the form of the question.

The Court: What, on cross-examination? Go on.

20

A. She was right by the door—she was by the door and I was by the stairway, and we were just such a distance that I could just protect myself.

Q. That is the cellar door you asked about, was it?

The Interpreter (after speaking to the witness): Yes, sir; the door to the cellar.

30 Q. Now, was she not a short distance, say one, two or three feet in the cellar, and coming out into the dining-room?

A. No, sir. She was by the door, right by me.

Mr. Large: The cellar door right by him?

The Interpreter: Yes.

Q. So that she stood between you and the cellar door?

40 A. Yes, sir.

Q. Then if that is so, what was there to prevent you from turning and going out of the front door, which was behind you?

A. I couldn't get out; I was obliged to protect myself, because she was near the door—here is the door and here is the stairway, and I was by the stairway.

Q. In other words, the foot of this stairway is right by that door going into the cellar, is it not?

A. It is a little distance (indicating), about that distance.

Q. Then, if Mrs. Congilio stood between you and that door going into the little cellar, you would have to go nearer to her in order to turn to go up the stairway, would you not?

A. No, sir.

Q. Is there any door at the bottom of that staircase?

A. There is a door of the closet.

Q. I don't ask about the closet; I want to know if there is any door at the bottom of those steps, enclosing the stairs.

A. No, sir, there is no door at the foot of the stairs.

Q. But the sides of the steps are enclosed?

A. Yes, sir.

Q. Now, had you entered on the steps when you fired the first shot?

A. I was on the stairs when I shot; I was very much afraid, because she was a very bad woman, and I shot and ran.

Mr. Large: I will ask to strike out the latter part of that answer.

The Court: Strike it out.

Q. Were you on the bottom step, on the one next to it, or the third step—which step were you on when you fired the first shot?

A. I was to the very bottom.

Q. Where were you when you fired the second shot?

A. I was inside of the stairs.

Q. How far up, how many steps up?

A. I don't know how many steps.

Q. Where were you when you fired the third shot?

A. I was on the stairs, was all there by—on the stairs.

10 Q. How many steps up were you when you fired the third shot?

A. I don't know how many steps up.

Q. How many shots did you fire all together?

A. I don't know myself, how many shots I fired; I was so afraid I couldn't count the shots.

Mr. Large: I ask to strike out the latter part of the answer.

Q. Did you empty your revolver?

20 A. I don't know whether I fired them all, or how many I fired.

Q. Where were you when you reloaded your revolver?

A. I was in Hopewell when I reloaded it.

Q. Don't you know now how many new cartridges you put in there?

A. I don't remember how many I put in.

30 Q. Now, Michael, is it not the fact that it has been your custom, since you have been in this country, to carry a loaded revolver?

A. No, sir.

Q. Now, Michael, have you not been cautioned and warned by friends of yours to stop your habit of carrying a loaded revolver?

Mr. Braun: I object. It is very vague and indefinite.

40 Mr. Large: That is the first general question.

The Court: The objection is overruled.

Defendant's counsel prays an exception.  
Exception allowed. Let it be sealed, and  
it is sealed accordingly.

ALFRED REED,  
Judge.

A. No, sir, I never carried a revolver, why  
should I be told not to?

Q. Do you know George Barconi? 10

A. Yes, sir.

Q. Did you work under him?

A. Near him.

Q. At Moore's Station?

A. Yes, sir.

Q. For how long?

A. Six or seven months.

Q. Did not George Barconi at Moore's Station  
while you were working there with or under him, 20  
ask you why you generally carried a gun?

Objected to as incompetent.

Objection overruled.

Defendant's counsel prays an exception.  
Let it be sealed, and it is sealed accordingly.

ALFRED REED,  
P. J.

A. No, sir. 30

Q. Do you know Boni Benedicte?

A. No, sir; I don't know who he is.

Q. (Mr. Large directed a man in the court room  
to stand up and he did so.) Do you know that  
man there?

A. Yes, sir.

Q. What is his name?

A. His name is not Benedicte; Marcelline they  
call him.

Q. Did you work with him or under him? 40

A. No, sir.

Q. How long have you known him?

A. Four or five months I know him.

Q. Did he work at Moore's Station while you worked there?

A. Yes, sir.

Q. Did he not on more than one occasion advise you not to carry a loaded pistol?

A. No, sir.

10 Q. Did he not ask you why you carried a loaded pistol?

Mr. Braun: That is objected to on the ground that the time is not stated.

Mr. Large: During the time they worked together at Moore's Station, during the past winter, I cannot give the date.

Mr. Braun: All right. Go on.

20 Q. During the time you worked with him at Moore's Station during the past winter, did he not ask you why you carried a revolver?

A. No, sir.

30 Q. Did not one or both of these men last winter, while you were working there at Moore's Station, ask you why you carried a loaded revolver, and did you not reply that if anybody made any trouble for you, you would shoot them, and didn't they then tell you, one or both of them, that if you did that you would get caught and get hung and to that you replied, "Oh, no, I run away, they no catch me—cannot catch me." did you have that conversation with either of these two men of whom I have spoken?

Mr. Braun: I desire to interpose a formal objection to that question on the ground that it is immaterial and irrelevant.

40 The Court: How does it apply to his direct-examination, what does it contradict?

Mr. Large: He gave as a reason why he

had his revolver that day especially that he had money with him.

The Court: He said that he took these things including his revolver out of his grip that day because he was afraid they would be stolen, but I do not think he said he never carried a revolver on any other occasion.

Mr. Large: The testimony is offered more particularly in this view, to show the character of the man and his habits and his preparedness to use the revolver precisely as the State alleges he did it in this case. If he was that kind of a citizen, that kind of a man, who carried this revolver and boasted of it and was ready at anytime to use it, it would be a strong circumstance going to show that he did use it on this occasion.

Mr. Braun: We admit he used it.

The Court: I think we will overrule this line of testimony. In the cross-examination of the defendant you must confine yourself pretty closely to the examination in chief.

Mr. Large: Would it not be admissible as affecting the credibility of this witness? If he should deny these conversations, I could prove them with the idea of affecting his credibility.

The Court: No, you cannot contradict on collateral matters.

Mr. Large: Very well, your Honor, we thought it proper to offer it.

Mr. Large: I will just submit to your Honor this little clause of testimony which I just find, this little excerpt. (Quotes from testimony.) I thought if we could show that his custom was to carry the revolver

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ready for use on any particular occasion we could contradict in a measure his story as to its having been taken out of the satchel at that time for fear it would be stolen, when his custom was to take it more for use and safety.

The Court: He didn't say that he never carried it.

10

Q. What was the effect on Mrs. Congilio of the first shot that was fired?

Mr. Braun: I object to that on the ground that he is asking for a conclusion. I think the proper form would be, "What did Mrs. Congilio do?"

The Court: Objection overruled.

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Exception prayed by defendant's counsel. Exception allowed; let it be sealed, and it is sealed accordingly.

ALFRED REED,

P. J.

A. What do I know? I was so afraid, I ran. I couldn't look at her.

Q. Where did the first shot take effect? In the chest or near the breast or in the hip?

30

A. I don't know. For the fear I didn't see anything. I didn't even know that I had struck her.

Q. You pointed the pistol directly at her person, didn't you?

A. (Illustrating.) I pointed the revolver this way and ran.

Q. Were you running continuously during all the shots that you fired?

40

A. Yes, sir. I ran and shot that way (illustrating), for I was afraid.

Q. How far away did you get by the time you had the last shots fired? How far up the steps were you?

A. I was on the stairs, but I couldn't tell you exactly where I was, on which step I was.

Q. The width of that whole house is only 16 feet. Is that right?

Mr. Braun: I object on the ground that it is immaterial. The diagram speaks for itself.

Mr. Large: We want to see what he says 10  
about it.

The Court: State it as a fact and then ask the question. "The width of the house being sixteen feet"—

Q. The width of the house being 16 feet, and you being originally close by the bottom of the stairs when you commenced firing, and you say you were running all the time while you fired five successive shots, I want to know how far you got? 20

A. I didn't measure the distance. I was on the stairs. She was by the cellar door and I was going upstairs, and I couldn't tell you how far I was from her.

Q. The side of that stairway is boarded up, enclosed isn't it? The side next to the dining-room is boarded up and enclosed?

A. Yes, sir.

Q. So that, when you were close to the steps you couldn't see Mrs. Congilio unless she were between the steps and the cellar door, or in the cellar, could you? 30

A. (Indicating.) He says this is the stairway and this is the door of the cellar. And she was there and I was on the stairs. Why couldn't I see her?

Q. Then you did see her all the time you shot, didn't you?

A. No, sir. I couldn't see her because I ran. 40

Q. Well, if you had looked in her direction you could have seen her all the time during your shooting, couldn't you?

A. Yes, sir. Then I could have seen her.

Q. Can you now explain to the jury how you did such good shooting, such accurate shooting, rather, without looking at all at the victim?

Mr. Braun: I object to that.

Mr. Mason: You used the word "accurate." I think it is the very opposite.

10

The Court: Strike out the word "accurate" then.

Q. Can you now explain to the jury how you did such good shooting without looking at all at the victim?

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Mr. Braun: I object to that, if your Honor please, on the ground that it is asking the witness for something of which he has no knowledge. He has testified that his head was turned from Mrs. Congilio. He was running up the stairway.

The Court: The objection is overruled. Proceed.

Defendant's counsel pray an exception. Exception allowed; let it be sealed, and it is sealed accordingly.

ALFRED REED,

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P. J.

A. I took a revolver and shot that way (illustrating), and she might have happened to be in the way and perhaps I hit her.

Q. And that is the only explanation you have to make?

The Court: Oh, don't ask that.

40

Q. Now, Mrs. Congilio didn't follow you upstairs, any, did she?

A. No, sir.

Q. Now, after you got up the steps a step or two,

wouldn't that board partition prevent you from seeing her?

A. I didn't see this woman after me.

Q. If you had gotten up those steps any considerable distance at all, in order to have hit Mrs. Congilio, would you not have been compelled to shoot through the boards enclosing this side?

Mr. Braun: I object to that.

10

The Court: The objection is overruled.

Mr. Braun: If your Honor please, then, I think something should be added to the question—

The Court: The objection is overruled. Go on.

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

20

ALFRED REED,

P. J.

A. No, sir, she was at the foot of the stairs against the door of the cellar.

Q. Then, that being so, there was somebody between the foot of the stairs and the street door, was there?

A. No.

Q. What was there, then, to prevent you from turning and going right out of the front door instead of going in front of Mrs. Congilio and up the front steps?

30

A. (Illustrating.) This is the stairway and this is the door. In order to get in the street I should have gone by her, and I did not want to put my life in danger to go by her around in the street.

Q. But you have just said that she was nearer the door going into the cellar than you were, that there was nobody between you and the street door?

40

Mr. Braun: If the Court please, the witness has testified that at the time he was on

the stairway firing, Mrs. Congilio was at the foot of the stairs.

Mr. Large: Oh, no.

The Court: Suppose you don't make any assumption what he did testify to.

10 Q. You testified in your examination in chief that you had been here in this country going on five years, barring a couple of trips to Italy, and that you had saved up altogether \$100. You have had plenty of work all the time you have been in this country, haven't you?

A. Yes, sir. I worked always, but I was obliged also to support my family.

Q. The \$70 which you deposited, I think, in March last, was the first deposit you had ever made, was it, in the savings bank since you have been in this country?

20 A. Yes, sir.

Mr. Braun: Since his last return to this country, do you mean?

Mr. Large: No, during this entire five years.

Q. During this five years, during which, as you have said, you have had plenty of work, was this hundred dollars all that you accumulated here?

30 A. Yes, sir, but I spent a good deal of money to support my family and to pay for my passages going and coming.

Q. You know George Brocino?

A. Yes, sir.

Q. And Salvatore Lucitano?

A. I don't know Salvatore Lucitano.

Mr. Large: Stand up, Lucitano. (A man rises in the audience.)

40 Witness: Yes, I know him.

Q. Didn't you tell him this last winter in Lam-

bertville, that you had a wife and child in Italy, that you cared nothing at all about them and didn't want to hear from them?

Objected to as immaterial and not cross-examination.

The Court: I will take it.

A. No, sir.

Q. Did you not tell George Brocino practically the same thing, that you had a wife and child over in Italy that you did not care anything at all about? 10

A. No, sir.

Q. Are you right handed or left handed?

A. Right handed.

Q. Is it not a fact that you and the other boarders frequently in your presence generally settled the lodgings and your expense accounts with Mr. Congilio, and only settled with Mrs. Congilio when he was away? 20

A. No, sir.

Q. Why did you leave your start for Philadelphia until quarter-past one if you say or a little later, and then take the round about way by Hope-well, why did you leave that long route for such a late hour in the day—for your start?

A. That was the way I knew and that was the way I went. 30

Q. I want to know if you have any reason to give why you left your start until after one o'clock?

A. Then it was convenient for me to leave.

Q. Didn't you know that there was a through train on the steam road leaving Lambertville about two o'clock or two eleven, direct to Philadelphia?

A. No, sir.

Q. And didn't you see that train passing right through Moore's Station where you worked these eight months every day you worked? 40

A. I saw a train go by but what should I know where it went?

Mr. Large: That is all we care to ask the defendant, if the Court please.

Redirect-examination by Mr. Mason:

10 Q. Mike, where was Mrs. Congilio—where were you standing when you first started to quarrel?

Objected to as not redirect-examination.

Mr. Mason: Well, that is all.

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MARY L. NEAL, sworn on behalf of defendant.

Direct-examination by Mr. Mason:

20 Q. Miss Neal, were you the stenographer at the inquest that was held before Coroner Bower of Mercer County, on the 29th day of May last?

A. I was.

Q. Did you take the notes of all evidence that was given by the witnesses at this inquest?

A. I did.

Q. Have you a copy or transcript of those minutes with you?

A. I have.

30 Q. Will you look at the testimony of Luigi G. Congilio given on that day, and which was taken by you?

40 Mr. Large: To that we object. The point, if your Honors please, is this: If we are going into proceedings before the Coroner, the prosecutor not having been personally present, or the County of Hunterdon represented, as I understand, in any way, I think we ought to have the proper legal documentary evidence. The statute provides, under the provisions of the Cor-

oner's act, that the proceedings of that sort, which are peculiar in their nature, they are taken under very peculiar circumstances, as your Honors know, and when they are going to be used to contradict witnesses and all that, we want the jury to have the whole thing, and to know that situation. Now, this is to be used to contradict a whole lot of these people, who were not represented there by counsel, and I do not know what questions were asked or what questions were omitted to be asked. The Coroner's act prescribes that all proceedings should be returned by him to the Quarter Sessions of the County. Now, I do not know whether this witness was sworn to take this testimony—we know nothing at all about that; but the legal thing to be offered here, if anything, is what the statute says must be brought here to be used in a trial of this kind, and, therefore, mere notes taken down that way, to be used here to contradict or explain, I don't think it is legal.

The Court: I think anyone who happened to be there, whether they took notes or not, is competent to state what was said there in contradiction of what the witnesses said here. It is mere contradiction.

Mr. Mason: I am perfectly willing to have the whole record go in.

The Court: There is no use of discussing it any further. I have permitted the examination.

Q. Do you remember the boy, Luigi Congilio, testifying there?

A. Yes.

Q. At that inquest did you make notes of what was said by him when he was a witness there?

A. I did.

Q. Have you those notes with you, or have you a transcript of the notes?

A. I have a transcript of the notes.

Q. Was this testimony taken down by you verbatim?

A. It was.

10                   Mr. Large: May I ask a question or two, to find out about the integrity of the notes she took?

The Court: Yes.

Cross-examination by Mr. Large:

Q. You were, Miss Neal, in any official position there, or were you just called in?

A. I was called in by the Coroner.

20                   Q. Just called in by the Coroner and you have no regular connection, that is, no official connection with the Court in any particular way?

A. No.

Q. No? Now, were you sworn before you took down the notes? You yourself?

A. Yes. I am pretty sure I was. I can't swear to that positively, but I think I was.

Q. You don't recall definitely—

30                   A. (Interrupting.) No, I don't.

Q. —whether you were, or what oath was put to you as to what you were to do?

A. No. I don't, but I think I was sworn.

Q. Well, you say there that you have a transcript. By that you mean you took it down in shorthand—

A. (Interrupting.) I took it down in shorthand.

Q. And then afterwards you transcribed it in longhand?

A. In typewriting. Yes.

40                   Q. Yes. And when did you transcribe the copy which you now have in hand?

A. At the same time that I did the original.

Q. At the same time—that is—

A. (Interrupting.) I made the original copy which the Coroner received and was filed in Mercer County, and made two copies.

Q. Manifolding?

A. Manifolged, yes.

Q. You made three copies, all at one time?

A. At one time.

Q. How soon was that after the examination?

10

A. The following week. I can't tell just what day, of course.

Q. No. A week or so after?

A. Yes.

Q. And did you do all the work yourself from start to finish?

A. I did.

Q. Or did somebody read to you and then you take it down on the typewriter?

20

A. I did it all.

Q. The notes, the testimony that you took down, was it given in Italian?

A. The Italian witnesses—

Q. (Interrupting.) The large part of it, I mean. The Italian witnesses?

A. The large part. The Italian witnesses, they couldn't speak English, was given through the Interpreter.

30

Mr. Mason: Did the boy speak in English, Luigi, the oldest one sitting right behind you? (Addressing Mr. Large.)

Mr. Large: Louis Congilio was the one you asked about?

Mr. Mason: Yes, sir.

Q. Now, this boy Luigi Congilio sitting here, about which the gentlemen on the other side just now inquired about. Was his testimony given in Italian?

40

A. No. In English.

Q. And the services of the Interpreter were not used at all?

A. Not with his testimony.

Q. No, as you understand him—

A. (Interrupting.) Yes.

10 Q. —so you took it down? Who was the examination by? Who put the questions to him?

A. Some of the questions by the Coroner and some by the jurymen.

Q. Jurymen? There were no counsel there representing anybody?

Mr. Mason: Is this material?

The Court: It is very material; but I don't know whether it is the point just now.

20 Mr. Large: It is only as to the admission of this testimony.

The Court: The testimony is admissible. You can cross-examine as to the circumstances.

Mr. Large: If your Honor holds it is admissible, go ahead.

30 The Court: I do not mean the transcript is evidence. It is not. But she has a right to come here and swear to what took place there, and to refresh her mind she can use her notes.

Further direct-examination by Mr. Mason:

Q. Will you turn to the testimony of Luigi Congilio—

40 The Court (interrupting): Don't ask that. Just ask her whether he swore to anything about the bicycle and let her look at her notes.

Q. On that day did Luigi Congilio tell the Cor-

oner, the jury, anything at all about a bicycle story or about a bicycle that Mike Tomassi sent him after at Joe Ledger's?

A. No. I haven't anything of the kind.

Q. You took down his entire statement, verbatim did you not?

A. I did.

Q. Do you recall that as after the Coroner had told him and instructed him to tell to— "Tell us all you know about this?" 10

Mr. Large: I don't understand that question.

Mr. Mason: I simply want to show that he had been instructed by the Coroner to tell all he knew about it.

Mr. Large: That has not been proven yet.

Mr. Mason: Well, never mind. 20

Q. Will you turn to the testimony of detective Mitchell and state whether he testified at the Coroner's inquest that he searched Tomassi or whether he instructed John Ceeder to search him.

A. Do you wish me to read the testimony on that point?

The Court: How is that material anyway? All it goes to is the identification of these things taken from Tomassi's person and there is no question about that. 30

Mr. Large: They admitted it all, they admitted everything.

Q. Do you recall, do you remember Rosina, the little girl with the blue dress, testifying there?

A. I do.

Q. Do you recall her saying at that inquest anything about seeing her mother come through the door with a pan in her hand? 40

A. I do not remember anything of the kind.

Q. Will you look and refresh your memory?

A. (After examining transcript.) I do not find anything at all.

Q. Do you recall what she did say in regard to seeing her mother, when she first saw her?

The Court: Was she asked that on cross-examination?

10 Mr. Mason: I think she was your Honor; she was asked whether she had told the same story before the Coroner.

The Court: That will do.

Q. Do you remember whether Apostelle Congilio, the other boy testified that he had gone away and was playing mumblety-peg, or was outside playing with the other children.

20 Mr. Large: Would not that be the same thing except the mumblety-peg business.

Mr. Mason: No he said he was away out in the field.

A. At the time of the shooting do you mean?

Q. As to where he was at the time of the shooting?

A. He testified that he was outside of the house.

Q. Where?

30 A. Outside by the house.

Cross-examination by Mr. Large:

Q. What I understand you to tell the jury is that you do not find on your notes anything that tells you now that Louis Congilio testified to anything about a bicycle before the Coroner?

A. Yes, sir.

Q. That is all you mean to say is it not?

40 A. That is all; I do not remember his testifying to anything of the kind and I have not it on my notes.

Q. But you would not say to the jury that Louis did not say anything at all on that occasion to the Coroner about a bicycle, you could not testify that he did not?

A. Well, I reported the testimony as it was given, and I think I got it.

Q. Do you remember whether anybody asked Louis—was any question put to Louis by anybody on this bicycle subject there? 10

A. I do not remember anything of the kind and I have nothing of the kind in my transcript.

Q. Who did put questions to Louis, who examined him there?

A. The Coroner and the jurymen.

Q. Were no attorneys present?

A. No, I think not; the testimony was all given—(interrupted.)

Q. And whether or not, in an informal way, at a time when you were not taking notes officially, do you know whether Louis told anybody there anything about that bicycle arrangement at all? 20

A. I do not remember hearing anything of the kind.

Q. What you mean to say is you did not take down on your notes while the testimony was being given, anything on the subject, and further have no recollection of hearing anything about it, that is the extent of that? 30

A. Yes, sir.

Q. In the case of Rosina you were asked, "Did she say anything about her mother coming through the door with a pan in her hand," was she asked anything about that by anybody?

A. I do not remember that she was.

Q. These little children were like anybody else were they not, questions were put to them? 40

A. Yes, sir.

Q. They did not go on and pretend to give a

narrative of everything that occurred, but they answered such questions as were put to them?

A. They answered the questions.

Q. Apostelle did testify that he was outside?

A. That is the other boy, not this one?

Q. Yes, the stout little fellow?

A. Yes, he testified that he was out by the house.

10 Q. And here he testified he was outside, playing mumblety-peg in the field, I believe. You do not pretend, as I understand it, to know anything about what the children said to any of the officers, the Coroner or constables or anybody else, except merely what you were taking down in your professional capacity as stenographer—that was your business there?

A. That is all.

20 Q. You were not charged, in other words with any responsibility as to the conducting of the examination?

A. No.

Q. It was no part of your business to ask questions or to draw out from the children facts that they knew, that was no part of your duty, was it?

A. Certainly not.

30 Q. You were simply professionally taking down what the other people might see fit to bring out, is that it?

Redirect-examination:

Q. Do you remember whether or not Rosie Congilio was asked, "When you went into the house, where did you find your mother?"

A. I do not see anything about where she went into the house. The question was asked "Where was your mother?—She ran straight out."

40 Q. But I think prior to that the question is, "Where were you when your mother was shot," and she answered, "I was playing out and I heard

one shot and went inside." And the next question was, "When you went into the house, where did you find your mother?"

A. I haven't that in the testimony at the inquest: "I was outside, playing."

(Mr. Mason, of defendant's counsel, goes to the witness chair and turns over the transcript in the hands of the witness.) 10

The Prosecutor: Is counsel going to tell the witness what to say?

Mr. Mason: No, I just—

Witness: It may be further on. Oh, yes, here it is. Shall I read?

Mr. Mason: No.

Q. Was she asked where her mother was?

A. Yes.

20

The Court: Was she asked what she had in her hand?

A. I think not.

Q. (After a pause.) Well, she was not, was she?

A. No.

Cross-examination by Mr. Large:

Q. Just a single question. You say she was asked where her mother was; what reply did she make? 30

A. She was back in the cellar.

Q. Then that was all that was asked her on that subject, wasn't it? Then she was asked where was Mike Tomassi?

A. Where was Mike Tomassi was the next question.

40

JOSEPH NARDUCCI, sworn in behalf of the State.

Direct-examination by Mr. Mason:

Q. Do you speak English?

A. Not very much.

Q. Do you prefer an interpreter?

10 A. It would be better; it will help me.

The Court: I guess he can speak English.

Q. Where do you live?

A. Lambertville.

Q. How long have you lived in Lambertville?

A. Fifteen or sixteen years ago.

Q. Did you know a woman by the name of Delia Congilio?

A. Yes, sir.

20 Q. How long have you known her?

A. The first time that I boarded at her house.

Q. How long is that about?

A. About ten, eleven—I don't know—I guess it is ten or eleven years ago.

Q. Had you known her during all that time, from that until the 20th day of May last?

A. Well, I knew her when she lived in Lambertville. She moved from Lambertville.

30 Q. You knew her when she lived in Lambertville?

A. Yes, sir.

Q. What was the general character of Delia Congilio—was it good or bad?

The Court: Overruled.

Defendant's counsel pray an exception to this ruling of the Court and the same is allowed and sealed accordingly.

40

ALFRED REED,

P. J.

Q. Mr. Narducci, what was the reputation of Delia Congilio for truth and veracity?

A. Good name and bad name.

Q. What was her reputation for telling the truth?

A. Well, a good name, when the people choose something I think.

Mr. Mason: One of the jurors says he did not understand the witness. 10

By the Court:

Q. The stenographer will read the answer.

(The stenographer reads the answer as follows: "Well, a good name, when the people choose something, I think.")

Witness: When some people chews. 20

Q. You have not answered my question. Was her reputation for truth and veracity good or bad?

A. Oh, no bad, no bad; straight; no good; some people was talking—good regular woman when living in my place; people won't say anything about her, because good woman, besides, and was talking.

Mr. Mason: I don't think he understands the question. I would like to have it put in Italian. 30

The Court: I think he better testify in English. He seems to understand very well.

Mr. Large: Answers intelligently, too.

Mr. Mason: Then you will not allow me to prove her general reputation?

The Court: For what?

Mr. Mason: Just simply her general reputation.

The Court: No, of course not. 40

Q. Do you know what was her reputation for quarrelsomeness, vindictiveness and treachery?

Mr. Mason: I don't believe he knows the words.

Witness: I don't understand very good.

Mr. Mason: I again ask your Honor that the interpreter may put the question.

The Court: Yes; although it is impossible to cross-examine the witness through the interpreter with efficiency.

10

Mr. Mason: Then I withdraw the witness.

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GIANCINTO PINELLI, sworn for the defendant through the Interpreter:

Direct-examination by Mr. Mason through the Interpreter:

Q. Were you acquainted with Delia Congilio?

20

A. Yes, sir.

Q. Do you know whether the general reputation was good or bad?

Mr. Mason: I want simply to see if your Honor overrules it.

The Prosecutor: I object to it.

The Court: There is no use asking that question. You have got the exception on the record. The question is overruled.

30

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

ALFRED REED,  
P. Judge.

Q. Do you know her general reputation for treachery, vindictiveness and quarrelsomeness?

Mr. Mason: I would suggest that the interpreter give it to your Honor first.

40

The Court: No, let it be given.

A. I have known Mrs. Congilio for eight years.

Personally, I know nothing about her. For hearsay—

The Prosecutor (interrupting) : I object to the hearsay.

Mr. Mason : That is the reputation.

The Court : Go on.

A. It was said that she sold her honor.

10

The Court : Strike that out, the whole answer.

Mr. Mason : Then I understand your Honor that you will not permit me, by any witnesses, to show what her general reputation was?

The Court : I will not permit the question of what is her general reputation to be answered.

20

Mr. Large : I will just ask that last witness one question.

Cross-examination by Mr. Large :

Q. What relation is he to Michael Tomassi, by marriage or otherwise?

A. Brother-in-law.

Q. How? Did he marry his sister?

A. Yes, sir; married his sister.

30

The Court : I struck out the answer. Perhaps the State would prefer it to stand?

Mr. Large : No, I think not.

Mr. Braun : Now, if the Court please, there is no need of us taking up the time of the Court. I simply desire to have it appear upon the record that your Honor, as I understand your Honor, will not permit us to ask witnesses whether the general character of this woman was good or bad in order to enable us to show that she was unworthy of belief.

40

The Court: Oh, that isn't the question. The general character for truth and veracity, I haven't said anything of that sort.

Mr. Mason: I said, to show her general bad character.

The Court: That is the point. I overruled that question.

10

Mr. Braun: Then I pray an exception and will put on no further witnesses.

The Court: I want it distinctly understood that I do not overrule the question as to her truth and veracity, because I suppose the fact that, although she is not a witness, her dying declarations came in, would permit you to impeach her veracity.

20

Mr. Braun: The object of these witnesses is to show her general bad character in order to establish her unworthiness of belief.

The Court: Yes. I overrule that offer.

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

ALFRED REED,

Judge.

Defendant Rests.

30 NICOLINO BELLUCCI, sworn for the State in rebuttal, through an Interpreter.

Direct-examination by Mr. Hunt:

Q. Where do you live?

A. Lambertville, New Jersey.

Q. At the time that Mrs. Congilio was shot, were you at her house?

40

Mr. Braun: I object to that as not rebuttal.

The Court: I can't say. It is very early.

A. Yes.

Q. How long had you boarded there?

A. About one year.

Q. To whom did you usually pay your board?

A. I pay my brother-in-law.

Mr. Braun: I object to that, if your Honor please, on the ground that it is immaterial and not proper rebuttal.

Mr. Large: The question was asked the defendant, and he testified that he always settled with Mrs. Congilio. 10

Witness: Mr. Congilio I said.

Mr. Large: Then he was asked about himself and the other boarders, whether he did not settle usually with the husband and only occasionally with Mrs. when he was away.

The Court: I don't think it is worth 20 while.

Mr. Braun: I don't suppose it is very material now.

Witness: I said Mr. Congilio.

State rests in rebuttal.

Testimony closed.

Counsel sum up.

30

### Charge.

REED, S. C. J.:

Gentlemen of the Jury: On May twentieth last, Mrs. Delia Congilio was shot in the breast, hip and hand at the house where she and her husband lived on Main Street, in the City of Lambertville. From the effects of these shots, as appears by the testimony of physicians, she subsequently died. 40

If, beyond a reasonable doubt, you believe that

the shots caused her death, the first question will be whether the defendant was the party who fired these shots.

10 All the evidence seems to show that Mrs. Congilio was shot a little after one o'clock on that day in the absence of her husband and the absence of the five boarders in the house, excepting the defendant, Tomassi, and while only he and the deceased were in the house, her children playing in front or near the same.

That the defendant shot Mrs. Congilio is admitted by his interposed defence that he shot her in self defence.

20 She appears to have been shot with a .32-caliber revolver and the evidence discloses that there were three shots at least fired, and possibly five, three of them striking the deceased.

The theory of the State is that Tomassi shot this woman while angered at her refusal to gratify his lust, and while in the act, or following the act, of compelling her to yield to his desire by the threat of his revolver.

30 The theory of the defendant is that he shot her as the outcome of a quarrel respecting the amount he owed her, he claiming he owed her only Five dollars, and she insisted that he owed her Six dollars.

40 His story is that he had been living for about eight months, at the house of the Congilio's, paying Two dollars and twenty-five cents a month—he furnishing his provisions and Mrs. Congilio mostly cooking his meals. He says that on the morning of May 20th she said to him, "So long as you are going to Philadelphia, pay me what you owe me," that he offered her a Five dollar bill, and she said, "You owe me Six dollars, not Five dollars." He says that he told her to take Five dollars and then went to his room and she followed

him, saying, "You owe me Six dollars." He says that he again offered her Five dollars and told her to take it or let it go. He said that he took several articles out of his satchel, among which was a revolver, and then went out and had a haircut and a shave, that he afterwards came back to the house and again offered her Five dollars, saying he was going away; to this offer she said, "You owe me Six dollars; if you don't pay me Six dollars, I will draw six drops of blood from your heart"; that he then said, "What do you take me for, a baby, for I have hands as well as you have." He said she then took a knife and said, "I will kill you like a pig," and then came at him with a knife; that he then pulled the revolver from his pocket and walked backwards until he reached the stairs (that stairway leading from the cellar kitchen), he shot and ran—and running, shot. He says that she was by the table and he by the stairs and he retreated up the stairs out into the yard and so went to Hopewell.

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Upon the situation which he says existed, he interposes the plea of self-defence. That is, that he was justified in shooting this woman to her death because he had reasonable grounds to believe that this was necessary to save his own life or his body from grievous harm.

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Under this plea the first question is, is his story true, and the second question is, if you could find it to be substantially true, was he justified, in self-defence, in taking the life of the deceased woman?

If his story be untrue, it would seem that all the circumstances upon which the defence which he interposes rests, fall. Therefore, is it true? His story is that he first drew his revolver at the time of the shooting. This story is in direct conflict with the testimony of Rosina and Apostelle Congilio, two of the children of the deceased. They both

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say that he had presented the revolver previously twice, once in the cellar kitchen and afterwards upstairs, where—upstairs—according to their story, the children had gathered, frightened at the scene, and were there crying.

His testimony seems, also, in contradiction to the testimony respecting the grounds of the scene between himself and Mrs. Congilio on that day. 10  
Apostelle not only speaks of the previous presentation of the pistol, but testifies that the defendant requested his mother to go to Trenton with him, saying that he would take Apostelle with him; he says that while upstairs, the conduct of the defendant evoked from his mother the remark, "Don't bother me." Rosina says that when the defendant presented the pistol he said "Take this dollar or else I shoot you," and that her mother replied "I 20  
don't need it, I got a husband working for me." Rosina says also that when the last shot was fired her mother had a pan which fell from her hand not far from the door.

This testimony tends to show not only a different cause of the scenes between the parties, but also that instead of the deceased having a knife in her hand at the time of the shooting, she had a pan.

It has been said that this pan story was not told 30  
the Coroner, and it is said that the story of Louis going for a bicycle was not told at the Coroner's inquest. Of course, you must take the story of these children as the story of children, and consider it as such. But, gentlemen, merely because these children come here and tell a story containing one or two incidents which were not told at the Coroner's inquest, does not necessarily impeach their testimony. Could it not be that anyone of you gentlemen, after going to a fair, or any other place, and 40  
returning home and attempting to tell your family what you saw there, and after completing your

story, come back an hour afterwards and say, "Oh, yes, I forgot something. So and so occurred?" If grown men in telling a story are apt to leave out some instances and then to remember them afterwards, why should not a child? I merely speak of that particular point, but upon every point you must take their evidence as the stories of children and give to it the effect of children's stories. Sometimes these stories are more apt to be relied upon than those of adults; at other times, of course, they are not. 10

If the cause of the shooting was different from that stated by the defendant, that conflicts with his story of the defence.

In addition to the evidence upon that point to which I have alluded, there are the dying declarations of Mrs. Congilio, one of which, made to Maria Rossi, was, "Maria, for five lire, I have five shots, as I was not content to do what he wanted." This language, if rightly interpreted—and we must always make allowance for defects in hearing and fallibility of human memory in reproducing language used by another—is somewhat equivocal. It might be referred to the fact that they were quarreling over Five dollars and for that Five dollars she got five shots, and that she was not content to take the Five dollars which the defendant offered her. But we have the testimony of Mr. Bishop. He says that when he was on the train—and his language, if correctly reproduced, is more significant. He said that the dying woman said to him, "I did not want to do what he say and I told him I did not want to turn round on my husband's back." The witness was an Italian. His English was imperfect, and, inasmuch as the communication was made to him by the dying woman in Italian, I asked him to state what was said to him, and to state it in the Italian language, which he did, and which the interpreter reproduced in these words, "She 20 30 40

stated that she did not wish to betray her husband and after she said this the fellow shot her.”

Now, gentlemen, if you believe that the testimony produced on the part of the State is such as to discredit the story of the defendant, then it seems to me that you will be unable to find any ground whatever for justification of the defendant, upon the ground of self-defence, as I shall directly charge the law respecting what is essential to constitute such a defence.

But, gentlemen, suppose the story of the defendant is true, it does not necessarily follow, that he was justified in shooting this woman. The admitted fact in the case is that he killed her with a revolver; that fact being proved or admitted, the burden rests upon the defendant to show you such facts as will justify him in the execution of that act under the law which I now proceed to state to you—the law of self-defence.

Self-defence is founded upon the necessity for taking the life of a person to prevent that person from taking the life of, or inflicting serious bodily injury upon the person setting up the defence. A man has the right to take the life of another in self-defence only where the situation is such that it seems to him necessary to do so to save himself from death or from grievous bodily harm. If the threatened injury to life or limb can be otherwise avoided the person is bound to avoid the danger without resorting to violence. The danger must be immediate and actual, or else apprehended on reasonable ground, the reasonableness of which grounds, you, as a jury, are to judge. The burden of showing such a condition of facts is upon the defendant to this extent—he must show such facts as alone, or in connection with the State’s case, raise in your mind a reasonable doubt whether he is guilty of murder or manslaughter, raise in your

mind a reasonable doubt whether he was not justified in the defence of his life or limb in taking the life of Mrs. Congilio.

Now, gentlemen, suppose all the defendant says is true, was it necessary for him to resort to the deadly weapon he then used and to take the life of this woman to protect his own life, or his body from grievous injury. Should he have reasonably tried to disarm her without the use of a pistol; could he have escaped out of the front door; could he have retreated up the stairway and so escaped death or bodily harm? Is it reasonable to believe that this man was or thought that he was in such danger to his life and limb as to justify him in firing shot after shot at this woman? As I have already said, the whole doctrine of self-defence depends upon the necessity, or apparent necessity for the killing to preserve life or limb, and unless the circumstances which he narrates are such as to leave in your minds a reasonable doubt whether he was not justified in killing this woman as the only means of preserving his own life or limb, then, assuming his own story to be true, he is not entitled to acquittal on the ground of self-defence.

I am speaking now upon the assumption that his own story is true, as I have already stated, that if you find that his story is discredited by the facts put in evidence by the State, then it seems to me impossible to find any ground whatever to base the defence of self-defence upon.

I give you my opinion, gentlemen, but these are questions for you.

Now, gentlemen, if you find that these shots were not justified as acts in self-defence, the question arises, in what degree of criminality is the defendant guilty, because he is guilty of some degree unless he has justified his act as self-defence.

There are three degrees in cases of this kind of

which the defendant may be guilty. They are, murder in the first degree, murder in the second degree and manslaughter. The lowest of the three is manslaughter.

10     Manslaughter consists in the killing of another without malice. Intentional manslaughter occurs when the reason is obscured by passion from some adequate provocation which arouses hot blood and obliterates mental control over the judgment for the moment. Words are not adequate, nor is slight physical violence adequate. Usually the question of adequate provocation and hot blood arise in instances where the killing occurs in a mutual combat. The rule is that if two persons engage in a fight and while the passions are aroused a blow is struck which kills, the offence is only manslaughter.

20     Where there is evidence of a killing with a deadly weapon like that used in this case, the presumption is that the killing is murder and not manslaughter. The burden is upon the defendant to show such facts as will, either alone or together with the facts proven by the State, leave in your minds a reasonable doubt whether there was malice in the heart of the person killing; leave in your minds a reasonable doubt whether the killing was not done in hot passion upon an adequate provocation.

30     If, upon the facts in this case as you find them, there is no reasonable doubt in your minds that the killing was not in hot blood on adequate provocation, then the question confronts you, in what degree of murder is the defendant guilty?

As I have already observed, murder is of two degrees, murder in the first degree and murder in the second degree.

40     Murder in the second degree consists in the killing of a person where there is no premeditation, deliberation or wilfulness, but where the defend-

ant intends to kill or intends to commit grievous bodily harm, such harm being followed by the death of the person injured, from the injury. For instance, if a man shoots at another with a revolver without premeditation, either with intent to kill him or to inflict grievous bodily harm, and the person dies, the person is guilty of murder in the second degree, and murder in the second degree only. I repeat, if a person kills another with intent to kill or with intent to inflict grievous bodily injury, and the person dies from such injury, and there was no premeditation, then the party is guilty of murder in the second degree, although he intended to kill or intended to commit grievous bodily harm, because there is no previous premeditation. 10

Murder in the first degree may arise in two ways. If a person in attempting to commit a rape shall kill another, it is murder in the first degree. Rape is the carnal knowledge of a female forcibly and against her will. If, in attempting to commit a rape, a person kills another, whether he intended to kill or not, he is guilty of murder in the first degree. 20

If, therefore, you should come to the conclusion in this case beyond a reasonable doubt, that this defendant at the time the shots were fired, was endeavoring by the exhibition of this deadly weapon to compel Mrs. Congilio to submit to his lustful desires, and, as a part of the transaction, the shots were fired, he would be guilty of murder in the first degree. 30

If, however, there is a reasonable doubt as to whether the shots were fired in an attempt to ravish her by the exhibition of this weapon for the purpose of compelling her by fear to submit to his desires, then, to justify a verdict of murder in the first degree, there must have been first an 40

intent existing in the mind of Tomassi to take her life, and, secondly, that intent must have been formed with deliberation.

10 If you find that the killing was not done while attempting to commit a rape, then, to constitute murder in the first degree there must be two things. First, you must find the defendant intended to kill, and, second, you must find that he formed a deliberate intent to kill.

20 So far as the attempt to take life is concerned, the attempt to take life may be presumed from the use of a deadly weapon—a weapon calculated to extinguish life. It may be presumed that the person who used the weapon intended to execute the work which the weapon was calculated to accomplish. That is, if a man fires at another with a pistol and kills him and there is nothing else shown, the presumption is he intended to do just what the weapon was intended to do, that is, to kill.

This presumption, however, may be overcome if the circumstances leave a reasonable doubt as to whether the intent to kill existed.

If the intent to kill existed in this case, then was the intent wilfully and deliberately formed?

30 The deliberateness of the intention need not exist for a long period of time, the intent need not have been preconceived for a long period of time, before its execution. It need not have existed for a week, a day, or an hour, but if the deliberateness of the intent existed for an appreciable period of time before it was executed and was wilfully and deliberately done in carrying out the intent, it is sufficient to brand the killing as wilful and deliberate murder.

40 Therefore, you perceive, gentlemen, that murder in the first degree may exist in two instances; first, in killing, that is, committing an act which

causes death without any intention to cause death, if the act is committed in the attempt to perpetrate a rape—an attempt to have carnal knowledge of a woman by force and against her will. Secondly, however, if the killing did not occur in the commission of a rape or in the attempt to commit a rape, then murder in the first degree may consist in an intentional killing, that is, in a killing done with intent to extinguish life, if the intent was deliberately, for an appreciable period previously formed and thereafter executed in the pursuance of such deliberate intent. 10

Now, gentlemen, upon all of these points the defendant is entitled to the benefit of a reasonable doubt. If there is a reasonable doubt whether he was not justified in killing under the law of self defence, the defendant is entitled to it. If there is a reasonable doubt whether the crime he committed was murder or manslaughter, he is entitled to the benefit of that doubt and the verdict should be manslaughter; if there is a reasonable doubt whether the crime is murder in the first degree or murder in the second degree, he is entitled to the benefit of that doubt and the verdict should be murder in the second degree. 20

If there is no reasonable doubt that he was not justified under the law of self defence, no reasonable doubt that his crime was not manslaughter, no reasonable doubt that his crime was not murder in the second degree, and you find that he committed this killing while attempting to commit a rape upon her, with or without the intention of killing, or that there is no reasonable doubt that, regardless of the attempt to rape, the killing was a premeditated and wilful killing with intent to take life, then it is your duty to find the defendant guilty accordingly. 30 40

Defendant's counsel prayed a general exception to the entire charge

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

ALFRED REED,  
P. J.

10 Application was made to the Court by counsel for the defendant for an order that the defendant's counsel should be furnished with a copy of the testimony at the expense of the county; and that an order for process for witnesses for the defendant to be paid by the county, on the ground that the defendant was unable to pay for the same.

The Court did not find the impecuniosity of the defendant such as in its judgment would justify the order.

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State of New Jersey, }  
County of Hunterdon, } ss.:

I hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the State of New Jersey vs. Michael Tomassi in the Hunterdon County Court of Oyer and Terminer, upon indictment for the murder of Delia Congilio, except the opening address of the Prosecutor, and 30 the summing up of counsel for the defendant, and of George H. Large and Edgar W. Hunt for the State at the close of the case, which were not reported verbatim.

ALFRED REED,  
P. J.

[2885]

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