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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* ANGELO CERCIELLO, *Plaintiff in Error.*	*Sur Indictment for Murder. On Writ of Error.*

Brief of Frank McDermit, Counsel for Plaintiff in Error.

The writ of error in this case brings up for review the conviction of the plaintiff in error in the Essex County Court of Oyer and Terminer of the September term, A. D. 1913, before the Hon. Wm. P. Martin, Judge of the said Court, on indictment charging him with having, on the thirtieth day of May, 1913, willfully, feloniously and with his malice aforethought kill and murder one Alvira Cerciello. The deceased was the wife of the plaintiff in error. The tntre record of the proceedings had upon the trial is returned duly authenticated along with the writ. The reasons, together with the assignments of error are also returned, which will of course be considered by this court.

This case is one of circumstantial evidence. There is no direct evidence showing that the plaintiff in error was seen at the place of homicide or that he had any direct connection with the same.

The State failed to show a motive, which, as I take it, is necessary and an essential factor in the case, which is wholly made up of circumstantial evidence, and is one of the main links which is to connect and

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to fasten upon the accused the commission of the crime in order to show his actions towards the deceased.

The defense was that of an absolute denial and also by introducing evidence of an alibi. See plaintiff in error confession on page 55 of the printed case, which confession was obtained from him at the time of his arrest, at the court house, prosecutor's office.

One Laudisi, a witness for the State, who was convicted of murder in the first degree, for the murder of a child, testified to certain alleged statements that the plaintiff in error made to him while in the jail awaiting trial upon this indictment and stated that the defendant told him it was about 9.30 o'clock when the murder happened about two and a half miles from the plaintiff in error's home, out in certain lots along Bloomfield avenue in the Town of Bloomfield.

The evidence on the part of the State and the evidence shows this to be absolutely an untrue fact.

Josephine Urso, a State's witness, testifies that she was in the store from 7.00 P. M. to 7.30 P. M. on the night of the homicide and that she talked to Alvira and with Angelo, the plaintiff in error and that the deceased told her husband, Angelo, to go and buy the bananas and then come home for supper.

Minauro Nacola testifies that he was in the store from 7.30 to 8. 30 P. M.

Nurziata Vanbola testified that she was in the store at 9.15 to 9.30 P. M. and saw the deceased, Alvira and Angelo; and Nacola Urso testifies that he saw Angelo from 9.00 to 9.30 P. M. in the store also. It was also shown by the witness for the defense, William Rosel, and by Petrelo Cerrutto that the plaintiff in error went to order the bananas from the said witness, Cerrutto, and that the plaintiff in error returned home about 8.30, so by way of this evidence it can be seen that the plaintiff in error could not have been at the place of homicide, as testified to by the said Laudisi.

The plaintiff in error testified when on the stand that he went out looking for his wife when he found she was not home. That he went along the streets crying. That he called up the police station and told them to look for his wife, and Sargent McMahon testifies that he did receive a phone call to that effect.

Counsel at this point sought to introduce a blotter that is known to be the record of the fifth precinct police station of certain calls and complaints to show that certain calls were made, which the court refused to admit in evidence and which counsel on that took exception to the ruling of the court and have assigned as an error in this case.

We respectfully submit that the case of the *State* vs. *Overton* in 88 Atlantic Reporter, 689, decides this question and shows that this evidence should have been admitted in evidence.

At the time of the trial the court allowed Exhibit S. 2, a hatchet, to go in evidence. Counsel objected strenuously to the admission of this hatchet. It was not shown that the plaintiff in error ever owned the hatchet or that the plaintiff in error ever had it in his possession. The plaintiff in error was not shown to have had direct knowledge of this hatchet at the time it was introduced in evidence or afterwards connected with him in any way with the commission of this crime. Also assigned error in allowing Exhibit S. 5 and S. 6 to go in evidence because there is no connection with the plaintiff in error in this case.

POINT No. 1. ASSIGNMENT No. 3.

"Because the court erred in allowing the testimony of Eugene De Stefano to go before the jury, without restricting it and instructing the jury for what purpose it was introduced." This witness testified that two or three weeks after the plaintiff in error was married to the deceased they

called upon their different friends and stopped at the witness' house. While talking there in a joculatory mood and jesting about different matters and witness and other persons complimented and congratulated the plaintiff in error for his good luck in picking out a good girl. That she was a nice girl and that her family was nice. He said if she is not nice, in a jesting way, the hatchet will work. Witness further testified that they were all laughing and jesting at the time this was said. Having been jesting in the remarks made, probably as counsel explains it, meaning to intend by way of their own dialects, that he intended to discipline his wife if she did not carry out as a true and dutiful wife.

I take it that the court allowed the evidence of this witness to go in evidence for the purpose of trying to show a bad feeling and ill feeling that the plaintiff in error had towards the deceased, or for the purpose of threat. It surely cannot be said that this was a threat because the elements of a threat are wanting in this testimony as testified to by this witness. And it cannot be said that this testimony shows bad feelings or ill will towards the deceased because it was not said with any malicious touch to it. Therefore, I take it that the court should have either struck out this testimony as not coming up to the measure for the purpose for which it was introduced and that the court should have instructed the jury for what purpose it was admitted and his omission to do so allowed the jury to consider this testimony in the light of an admission that the plaintiff in error was going to murder his wife with a hatchet unless she remained pure and true to him.

The State claimed that the reason why the plaintiff in error murdered his wife is because his wife was an impure woman. That when he married her she was impure. That she was not virgin. The State failed

to show this. Then the State took up another line of testimony claiming to show the plaintiff in error was jealous and assumed jealousy as the motive. The State fails to show this. There is not one iota of evidence showing anything based upon jealousy of the plaintiff in error or the impureness of the deceased as the motive, so therefore, there is no motive in this case whatever. The State having fallen through in this, which is one of the main links in the case; and for that reason this testimony was illegal and by the court having it remain upon the record and not restricting it in some shape, manner or form, allowed it to go before the jury as evidence of a certain fact rather than as evidence of motive. Together also with this assignment, you might consider Assignment No. 4, because the "Court erred in sustaining the obejction of prosecutor to the following question asked by counsel for the defendant on cross examination of the State's witness, Eugene DeStefano."

> "Q Stating that you knew Angelo Cerciello and that you also knew his wife and that you knew them to be good people?"

The reason this question was asked for was to show that this witness, DeStefano, knew Angelo Cerciello to be a good, honest and truthful fellow. To show that he at the time that the plaintiff in error and the deceased were married, went to the City Hall and helped them get the license and counsel was striving here to bring before the jury what the witness then stated in the presence of the deceased and plaintiff in error as to the good character and good qualities of them both. And we respectfully submit that this was proper cross examination.

POINT No. 2—ASSIGNMENT No. 5.

"Because the court allowed Exhibit S. 8, a revolver, to go in evidence against the objection of counsel for the defense."

The State claims that the defendant murdered his wife with a hatchet. There is no evidence in this case whatsoever that the defendant used a revolver in the commission of the murder. This revolver was found in the apartment occupied by Vincenzo Cerciello, a brother of the plaintiff in error, which was adjoining the apartment of that of the plaintiff in error and the revolver belonged to Vincenzo Cerciello and not his brother who was on trial for murder.

The State also introduced certain cartridges together with this revolver. Clearly this was an error because the revolver has no connection whatever with the crime at issue, and for what purpose or reason the State introduced this revolver, counsel cannot at the present time conjecture.

We respectfully submit that this was a most prejudicial error committed by the court in allowing this to go in evidence when the prosecutor states himself that the revolver was not used and does not state for what purpose it was admitted in evidence and not being connected in anywise with this case either before or after the homicide. We should also bring under this point Assignment No. 6—"Because the court erred in allowing Exhibit S. 9, a bottle, to go in evidence against the objection of counsel for the defense, as said exhibit was not in any way connected with the plaintiff in error." And the same reasons apply with this Exhibit as they did to the Exhibit S. 8, the revolver. They might have brought anything at all they located on the place. They might have brought stones down; there were lots of things around there. There were two or three hundred persons there at the time the body was found. It is a place where people frequently go. It may be that this empty bottle was thrown into this lot from the road by someone while passing the road. Who knows? There is no possible connection with the plaintiff in error with this Exhibit.

POINT No. 3—ASSIGNMENT No. 7.

"Because the court erred in its refusal to strike out the testimony of Gelsomina Longo, a witness for the State." The testimony of this witness was immaterial, irrelevant and incompetent. A conversation between the plaintiff in error and this witness about the renting of some property to somebody else had no bearing on this issue. Prosecutor said that he desired to prove by this witness that the defendant objected to Ferrara having that property, Ferrara having been a relative of the deceased by way of marriage. That is, Ferrara's son had married a sister of the deceased.

I contend that this is absolutely independent matter and in as much as the State failed to connect it up it should have been stricken out. The counsel made his objection to the admission of this testimony, the court said that it is independent unless it can be connected up.

"*Mr. Mott.* I will say to the court, I will connect it up.

"*The Court.* Under this circumstance, we can take the evidence subject to your objection and you may make a motion to strike it out if it is not connected, to which exception was allowed. Later on, after the completion of all testimony in the case counsel again made motion to strike out the testimony of this witness and at that time the court confused the testimony of this witness with the testimony of Ferrara, and yet the court then and there refused to strike out this testimony which was collateral as the prosecutor had failed to comply with his promise to connect this testimony up, and the court should have striken it out, which he refused to do. This testimony does not connect the plaintiff in error with any altercation or ill feeling with his wife, the deceased. Ferrara is a third party in this case. Absolutely independent,

having no connection whatever in the case, Ferrara testified in his testimony that he was on good, friendly terms with the plaintiff in error. That on the night of the homicide he had a cup of coffee with the plaintiff in error. That he and the plaintiff in error drank the coffee together. That he was invited to go over by the plaintiff in error and that he never had any altercation with the plaintiff in error and that the deceased was only there a few minutes at his shoemaker shop on that date. The plaintiff in error also testifies that he was on good friendly terms both with his wife and with most of the members of her family; so what possible connection has it if the plaintiff in error had gone to this witness and told her that if you have rented the store to this man he will not pay you. Surely it is independent and a collateral matter outside of the issue, no conection with the main things in any particular whatsoever and having no possible bearing on the case.

> "Particularly acts or specific facts are not admissible as original evidence or as evidence by way of rebuttal in order to impeach a person's character."
>
> *Bullock* vs. *State*, 36 Vroom, 557.

The court should have eradicated from the case, this illegal testimony, and there is no question but that this had a great influence with the jury.

POINT 4. ASSIGNMENT NO. 8.

"Because the court erred in allowing the prosecutor of the pleas to ask the following questions of Vincenzo Cerciello, against the objection of the counsel for the defense, to wit:

> "Is it not the reason you don't dare to answer these questions that you are afraid you will be rearrested for this murder?"

This witness is a brother of the plaintiff in error, and at the time of the alleged homicide they were both arrested and lodged in jail. After Vincenzo Cerciello had been in jail two months he was released and discharged from prison. Naturally we can justly assume that the county authorities had found no incriminating evidence against this witness and he was thereafter held under bond as a material witness for the State. And the State failed to call him for any part of the case but called him only for the purpose of proving the revolver. Exhibit S. 8. And when the said Vincenzo was placed on the stand on behalf of the defense he testified as to the movements of the plaintiff in error, his brother, and as to the time that he, the witness, was awakened by his brother and what his brother did about looking around for his wife, and the prosecutor sought to impeach this witness in every possible way and we respectfully submit that the question above referred to as asked by the prosecutor is most unreasonable and implies the fact that the man is an accomplice in the commission of the murder for which his brother was being tried for and it is most prejudicial to the plaintiff in error's rights inasmuch as this witness had been heretofore discharged of the said murder charge. And the question as asked by the prosecutor, to which counsel objected, shows an absolute conclusion. The objection should have been sustained by the court.

POINT NO. 5. ASSIGNMENT NO. 10.

"Because the court erred in permitting to go in evidence against the objection of counsel for the defense certain glasses alleged to be magnifying glasses for the use of the jury."

When these magnifying glasses were submitted and were offered in evidence counsel made objection. The court again took judicial notice of the fact which he

does not know is accurate. The magnifying glasses might be fitted for A's eyes but not for the eyes of B. Each and every person might have different eyesight, and there was nothing shown that these glasses were fitted for the eyes of each member of the jury and no evidence was offered to show by way of the manufacturer or expert that said glasses were accurate in every particular to discover the finger prints on the hatchet handle.

I take it that before these glasses could have been offered in evidence it should have been shown that by looking through these glasses a correct reproduction of a larger size of things at which they were looking at could be easily produced and could be looked into with perfect accuracy.

POINT NO. 6. ASSIGNMENT NO. 11.

"Because the court erred in permitting Katie Minichino, a witness for the state to testify against the objection of counsel for the defense, to one particular incident that she found the deceased crying and also that she was allowed to testify to statements made by the deceased which were hearsay."

I respectfully submit that this was prejudicial error. I take it to be a rule that evidence of independent facts tending to prove something against the defendant of other collaterial affairs for the purpose of showing the likelihood of his guilt of the offense is inadmissible.

State vs. *Hendrick and Stanton,* 41 Vroom, 41.

This is only an isolated fact that this witness testified to. No one knew why this witness was crying, and this was long before the murder happened. Why let the testimony of this witness be charged to the defendant. She may have been crying for some other reason. The evidence shows that her family did not want the deceased to marry the plaintiff in error.

There was some trouble at the time of her marriage. She may have been crying probably that her own family was treating her very mean. And yet are these acts isolated as they are to be ascribed to the defendant as a motive that he treated his wife harshly and cruelly and that he was jealous of her.

I respectfully submit that the court should of its own motion strike out this testimony.

See *State* vs. *Tolla*, 43 Vroom, 515.

POINT No. 9. ASSIGNMENT No. 12.

"Because the court erred in its refusal to charge as requested by counsel for defense, to tell the jury to disregard certain remarks made by prosecutor during his summing up, to wit:

> "If the State could prove a case against Vincenzo that he could be re-arrested and indicted for murder as accessory after the fact."

Coupling the statement of the prosecutor during his summing up with the question that he put to this witness Vincenzo Cerciello, at the time this witness was testifying to wit: Assignment No. 8: why was it not the duty of the court to have instructed the jury to disregard such a statement? Was this not a prejudicial declaration to the rights of the defendant? There was only one issue before the jury in this case and that was the case of Angelo Cerciello. If the prosecutor can go outside of his own main case during his summing up and assume facts not brought out in the evidence surely then the purpose of summing up is very very wide.

I take it to be a rule of law that during counsel's summing up that they must maintain their summing up within the bounds of the case itself and when they assume propositions they must assume and liken them to the facts as adduced in the case at bar and not outside of the issue.

POINT No. 8. ASSIGNMENT No. 13.

Because the court erred in its charge to the jury as follows:

> "On the other hand the jury has a right to *convict* on the *testimony* of *Laudisi,* if in their judgment it is entirely credible and worthy of belief."

Laudisi was convicted in the Essex Court of Oyer and Terminer of murder in the first degree for the murder of a child, which was the child of a sister-in-law, he being the reputed father of the bastard child. In order to cover up his crime he murdered the child. Laudisi had for eight months remained in the jail pending and awaiting sentence to death on the said charge. While there at the jail, the State claims that the plaintiff in error talked with this witness, Laudisi, and told him certain facts of the murder which the plaintiff in error denied that he ever did. For the court to tell the jury that they could convict on the testimony of Laudisi is the same as to tell the jury that a verdict of guilty could be found on the testimony of Laudisi alone; thereby excluding the question of all reasonable doubt. I take it from this whole case the plaintiff in error could not be convicted unless they generated a full belief that from the whole case without a reasonable doubt the jury had the abiding conviction as to the guilt of the plaintiff in error, and not that the jury had a right to convict on the testimony of Laudisi. We respectfully submit that the court erred in this charge.

POINT No. 9. ASSIGNMENTS 14, 15, 16, 17, 18.

Are certain requests which counsel asked the court to charge, all of which it refused to do. These requests in their order are as follows:

(a) "That to convict the accused of murder one kind of malice is essential, namely: premeditated de-

sign to take life; no other kind of malice is sufficient, and this kind of malice must be proven affirmatively to the satisfaction of the jury beyond a reasonable doubt."

To constitute murder in the first degree under the statutes of this State there must be intent to take life.

Donnelly vs. *State,* 2 Dutch, 465, *id.,* 602.

In *Coffee* vs. *State,* 3 Yerg., 283, it was decided that malice being a necessary ingredient in constituting crime of murder, if the jury had a reasonable doubt of the malicious intent with which the act was done, that doubt must weigh in favor of the prisoner.

In *Commonwealth* vs. *York,* 9 Metcalf (Mass.), 93, 43 Am. Dec., 373, malice afterthought being an essential element in murder, upon principle, the burden of proving malice like any other fact, beyond a reasonable doubt rests upon the prosecution.

Commonwealth vs. *Webster,* 5 Cush. (Mass.), 295; 52 Am. Dec., 711.

State vs. *Beyers,* 100 N. C., 512; 6 S. E., 420.

(b) "Before the jury can convict, they must find that the cause of the death of the deceased has been positively proven to be murder committed by the defendant."

(c) "That neither preponderance of evidence nor any weight of preponderant evidence is sufficient in a criminal case, unless it generates a full belief of the guilt of the party charged to the exclusion of all reasonable doubt."

(d) "The question of the parties intent is clearly to be considered: defendant's intention as stated by him should at all times be considered and given such weight as you believe he should receive."

(e) "That the defendant is not responsible for the death of the deceased unless it was caused by his own act or omission, or the act or omission of some other

person for which he is lawfully responsible, and if the act or omission of the defendant was merely a condition incident to the death and not a proximate cause thereto, he is not responsible."

These requests were all reasonable requests and should have been charged and inasmuch as it was a case built wholly upon circumstantial evidence I see no reason why the court should have refused to charge these requests.

POINT NO. 10. ASSIGNMENT NO. 20.

"Because the court erred in allowing the experts Flak and Schwartz to testify as to the legality of their testimony and the acceptability of same by the courts of law, and also permitted them to testify as to the merit of the finger print system."

This question was for the court and not for these experts to decide. The court allowed these experts to testify in behalf of the State; to testify at length upon the merit of the finger-print system and to boast the system so much before the jury in order to leave very little doubt as to their testimony and to their opinions.

The court also allowed them to testify that their opinions and their evidence was upheld by courts of different States.

I respectfully submit that the question of the legality of their testimony was for the court not for the witnesses to pass upon.

I want to call the attention of this court to what opportunity had the plaintiff in error to prepare a defense in connection with the finger-prints when the accused knew nothing about the introduction of the finger-print testimony till he went on trial in court. The court may say, you may ask for a bill of particulars, but time and again have I asked for a bill of particulars in different other cases and have been re-

fused it on many occasions because the courts in our county have held that it is a matter of discretion with every judge to allow a bill of particulars in a criminal case, but I take it to be a rule of law that in a case where it is made up wholly of circumstantial evidence and the counsel may desire a bill of particulars that in that case the court should grant it. Of course it was not done in this case but we went by the ruling in other cases which was nothing but a *nisi prius* decision.

POINT No. 11—ASSIGNMENT No. 19.

"Because the court erred in permitting the alleged finger-prints of plaintiff in error to go in evidence and compare them with the alleged finger-print on the hatchet, Exhibit S. 2, when the said finger-prints of the plaintiff in error had been obtained against his will and without his consent."

The plaintiff in error, and his brother were arrested right after the funeral of his deceased wife, and taken to the Court House in the prosecutor's office. From there they were taken down to headquarters at the City Hall and at that place they were forced to place their fingers on certain blank paper to obtain their finger-prints. Vincenzo said that they were going to place him in the cooler unless he did as they said, and that they forced him and his brother in doing as the officers wanted. They were forced to sign their names to certain plain pieces of paper, which were afterwards reproduced in photographic form containing alleged finger-prints of plaintiff in error.

I take it to be a rule of law that in criminal cases compulsory examination of a person cannot be resorted to as you might in a civil case. Where a man's life is at stake and it is wholly built on circumstantial evidence and the main factor upon which the State relies to prove its case is the finger-prints found upon

an axe handle which has been laying out in open air for a week and handled by ten to twelve people right after the finding of the hatchet upon wet ground and when it had rained for two or three days while laying in the open field, I submit that the court should have inquired into the acts of the officers at the time that this plaintiff in error was compelled to make marks upon a certain piece of paper and sign his name thereto. It is the same as making a confession. A confession must be voluntary. The obtaining of these marks upon paper is the same as obtaining a confession or an admission of the facts. It must be voluntary and of his own free will and not obtained by the flattery of hope or by the impressions of fear as decided in our State by the case of *Rosel* vs. *The State,* 33 Vroom, 216, and *Bullock* vs. *State,* 36 Vroom, 557, and *State* vs. *Hernia,* 39 Vr., 299.

It is particularly compelling a person to make a damaging act against himself and compelling him thereby to admit his guilt. Compulsory examination of the accused cannot be resorted to.

State vs. *Jacobs,* 5 Jones (N. Car.), 259.
State vs. *Johnson,* 67 N. Car., 58.
People vs. *McCoy,* 45 How. Pr. (N. Y.), 216.

Evidence of an enforced comparison of foot-prints is not admissable.

Stokes vs. *State,* 5 Baxt. (Tenn.),619. 3 Am. Reporter, 72.

Trying on shoe.

People vs. *Mead,* 50 Mich., 228.
Day vs. *State,* 63 Ga., 667.
Blackwell vs. *State,* 67 Ga., 76.

I ask the court to indulge in the careful consideration of this case. It is a very important case and involves the question of the plaintiff in error's life; being one wholly built upon circumstantial evidence. And I ask the court to read the record and if the

record shows there are errors upon its face then no matter whether the exceptions which perhaps should have been taken at the trial were effective or not, the court under the ruling in the case of *State* vs. *Kohl,* and *State* vs. *Heron,* the entire record should be considered, when it is a question of life and death.

In the Kohl case Mr. Justice Van Syckle in writing the opinion of the court decided that even where counsel had by reason of the turmoil of the trial refrained from making objections to the testimony adduced on the part of the State; held that the trial judge should have, on his own motion, overruled the testimony and so caused the conviction which was illegal.

I earnestly ask the court to read the whole record of this case. I call the court's attention to one main witness in this case, namely, Alfonso Laudisi, who, as heretofore stated, was convicted of murder in the first degree, and whose testimony was the controlling factor in this case. If this witness's testimony is to stand upon the record as being sufficient for conviction in accordance with the trial judge's charge to which I have assigned error, then it is clothing a person of his character with the right to commit perjury in order to reap his own benefits by way of seeking commutation of his death sentence as a reward for his act by helping the State to convict an unfortunate fellow who was being held on flimsy evidence before being brought to trial.

I respectfully submit that a *veniri de novo* should issue.

FRANK M. McDERMIT,
Of counsel with Angelo Cerciello,
Plaintiff in error.

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* ANGELO CERCIELLO, *Plaintiff in Error.*	*On Error to Essex Oyer and Terminer.*

Brief for Defendant in Error.

I. The plaintiff in error was tried and convicted, in the Essex Oyer and Terminer, of murder in the first degree. The deceased, Elvira Cerciello, was his wife. She was nineteen or twenty years of age.

The writ of error in this case brings up a strict bill of exceptions and the entire record of the proceedings had upon the trial.

II. Facts.

On Decoration Day morning, May 30, 1913, about half-past six, while on his way to work, Daniel Robinson (page 10) saw the body of a woman lying flat on her face, near the path just through the edge of the woods. He stopped about twelve feet from the body and then went to the stable where he worked and told McLain Potts what he had seen. The body was lying three or four hundred yards from Grove street, quite a distance from Bloomfield avenue (page 12). Potts telephoned the Chief of Police of Bloomfield (page 26), and then went back with Robinson to the place where the body of the woman was lying. The chief of police arrived at the scene of the homicide between half-past seven and eight o'clock (page 27).

Louis Collins testified (page 40) that he was Chief of Police of the Town of Bloomfield, that he received a telephone call and went to the scene, and found the body about two hundred feet east of Grove street, about fifteen or twenty feet south of Chester avenue, near the junction of Beardsley avenue, and he says (page 42), "Blood trailed back about ten feet from the body." Collins telephoned the county authorities, and left Officer Marshall in charge of the body.

Officer Marshall testified (page 55) that "There were foot-prints around there for about ten or fifteen feet in circumference, and there was a pool of blood right under her neck where she laid. It looked as if there had been quite a struggle near the body." He found a comb and some hair, and a handkerchief, which were put in the basket with the body (page 57).

On Sunday, following Decoration Day, Angelo Rich was walking through the fields in the neighborhood of Grove street and Beardsley avenue; he stepped on a hatchet, picked it up, saw there were blood stains on it, and notified an officer (page 71). He took the officer to the place where the axe lay, and the officer picked it up.

Anthony Belfie testified (pages 78 and 79) that he was a member of the Bloomfield police force, and says that on Sunday following Decoration Day a young man came to him, telling him something about a hatchet, saying that the young man was the witness who had just preceded him on the stand. He went right over to the place, and the young man showed him where the hatchet was, and Belfie picked it up. The hatchet was found, Belfie says, about one hundred feet from where the body was. He says (page 79, line 40), "The hatchet was pretty dry when I picked it up and there was hair in the nicks here."

Dr. Martland testified (page 120) that there was human blood on the hatchet, and that the hair on it was of the same color and texture as the hair of the deceased (page 126).

Dr. William H. McKenzie, the county physician, testifies (page 94) that he got to the scene of the homicide about nine o'clock in the morning. The body was removed to Kunz's morgue where he superficially examined it, and about noon on the same day he made an autopsy. He testifies (page 95) as follows:

Q And it was the body of male or female? A Female.

"Q And what did your subsequent autopsy disclose? A Why, then I took a description of the wounds. The woman had two wounds above the right eye, one an inch and a half long and one two and three-quarters inches long. These both went through the bone into the brain. She had, just to the right of the nose, a small cut a half inch long. She had the right cheek a cut two and a half inches long, and above that one, one four and three-quarters inches long that cut down to the bone and nearly severed the right ear. Above that she had another one two inches and a half long that went down to the bone—into the bone. In the back of the head there were twelve cuts ranging in length from two to six inches. These cuts, in eight places, went through the skull into the brain. On the right side of the face she had a cut an inch and a quarter long —on the left cheek that went down to the bone. She had some bruises on the upper part of both arms. She had a cut on the right arm, on the outer side of it, about three (indicating) two and a half inches long, and on the inner side, just above the elbow, she had one two and a half inches long. The one on the outer side went right down to the bone. There was a little cut—two little cuts across the thumb, and her index finger—first finger of her right hand—was almost severed just above that knuckle (indicating). The

left hand was almost cut off at the wrist from the little finger side—the inner side to the outer side here (indicating). There was only about two and a half inches of the skin left that it hung on, and below that there was another cut about an inch and three-quarters, and then this hand (indicating) was cut through here.

The Court. Referring to the left hand?

Witness. To the left hand; yes, sir. So that the index finger of that hand—the first finger—just hung, and the other finger pretty well—almost cut off. Internally her organs were very anemic; that is to say they were bloodless. There was no blood in her heart and she was not pregnant and she died as a result of these injuries to her head and the consequent hemorrhage.

Q Was there more than one of these wounds that by itself would have caused death? A Oh, yes; in all probability, yes, sir. The wounds on the forehead and the wounds on the back of the head probably—possibly any one of them could do it.

Q And how many do you say there were on the back of the head, doctor? A There were twelve in the back of the head, eight of which went through the skull.

Q And in your judgment any one of those eight would have caused death; is that it? A Any one of those eight could have caused death. Maybe not right away, but the whole lot together would do it very quickly."

Dr. McKenzie, at top of page 105, says: "I do not believe that a person could stand up and receive all of those blows before they fell."

William Weiner testifies (page 144) that he was Principal of the Central Commercial Manual Training

High School in the City of Newark, and that he was also in charge of the Government Weather Bureau for this territory, the official observer, and he says (page 145, line 15), that "On the night of the 29th, the heavens were heavily clouded, no moon shown that night, although it was almost full moon, would have been full moon on a clear night."

Amelia Ferrara testifies (page 162) that she was the sister of Alvira, the deceased, and that Alvira was married to the defendant, Angelo Cerciello, on the fifth day of January, 1913, and she says (page 165, line 10) on her cross examination, that she objected to her sister marrying Cerciello because he wasn't a good man. "We had information that he wasn't a good man."

Cecil Wainer (page 150) testifies that on Decoration Day morning he was around the territory of Grove street, Eighteenth street and Bloomfield avenue; that he saw a little boy pick up a bracelet, and he says (page 151) that he saw the lady lying on the ground before they took her away, and that the bracelet was picked up right near the place where she was lying, that he went with the boy that picked up the bracelet and he saw the boy hand it to the Chief of Police of Bloomfield about five minutes later.

Anthony De Rogatis, a detective in the prosecutor's office, testifies (page 196) that on June 4, 1913, he went to the jail where the defendant was confined and got from him a sweater which the defendant was at that time wearing. From this sweater, he says (line 35) there was at that time *one buttom missing.* Cerciello says (page 525) that he was wearing this sweater on the night in question.

William F. Mertz testifies (page 194) that he was a member of the Bloomfield police force; that on Decoration Day he went to the scene of the homicide near Grove street, that he got there after the body was taken away, that he saw blood around on the

ground and a lot of foot prints, that about twenty-five feet from where the foot-prints and blood were he found *a button.*

David Vietch testifies (page 190) that on Decoration Day morning he was in the neighborhood of Grove street and Eighteenth street, that he was there before the body was taken away and that before the body was removed he found a bottle about fifty yards southeast from the spot where the woman was in the basket, and he says (page 192) that he smelled the bottle, that he knows the smell of whiskey and that the bottle smelled of whiskey. The bottle was admitted in evidence and marked "Exhibit S. 9."

The button was admitted in evidence and marked "Exhibit S. 10."

The sweater was admitted in evidence and marked "Exhibit S. 11" (page 198).

The evidence against the plaintiff in error may be divided into three classes:

First. The direct and circumstantial evidence.

Second. His confession to Laudisi, a part of which was overheard by Deskovich.

Third. His finger print on the handle of the hatchet.

Alfonso Laudisi testified that he was confined in the Essex County jail, awaiting sentence on a conviction of murder in the first degree (page 370); that he had been in jail ten months, and had been kept in Murderers' Row (page 357) and that while there he became acquainted with the plaintiff in error, first seeing him on June 3rd and that during the months of June, July and August he had frequent conversations with him, but that after a man by the name of Faresi came there his conversations with Cerciello ceased, so that during the months of September, October and November he had not spoken to him. He says

that up to the time Faresi came in, Cerciello and Deskovich were the only inmates of Murderers' Row who spoke Italian.

Laudisi testifies (page 388, line 30): "At first I asked him, referring to Angelo, 'Why you were arrested,' and he said 'For my wife. Better it was in this way, that if she would come back home I would be called a cuckold.' "

And he says (page 358) that at the same time Angelo said to him, "my brother and my sister-in-law, they can help me or they can ruin me; I don't believe they will ruin me because I helped things; I give the groceries, and I am sure they will not ruin me" (page 159, line 12). "I told them that if they do not find the hatchet it was impossible that they will arrest him and his brother, and he said that the hatchet will condemn me."

Laudisi further says (page 359), that on June 12th his lawyer and his brother from Jersey City came to see Angelo, and that Angelo said: "My brother-in-law told me that there are no eye witnesses, so I can be happy, they do not have anything on me. My wife must come out from her grave and tell that I was who did it."

"When the colored man came—was Wednesday—I asked Angelo to ask the colored man how many times you struck your wife" (page 360, line 12). The colored man answered, "I struck two times my wife with a hatchet." He (meaning Angelo) asked the colored man, "How your hatchet was"; the colored man answered that it was an old one, and Angelo said, "Mine was a new one, for this reason the blood dried right away upon the handle, and it was quite cold that evening and for that reason the blood dried right away" (page 360, line 29).

"I begged him to ask the colored fellow why he don't run away and the colored fellow answered he had something in his throat" (page 360, line 37).

"I asked him why the colored fellow don't run away and Angelo answered because he was a fool. Angelo answered, "I went back to the body of my wife and touched her and I had my finger full of blood and I sucked them" (page 361, line 15). "The finger, so was able to run away from the body."

"I spoke to him and I said to him, to Angelo, about his finger, why don't you as Fiore did? I told him that Fiore, he used the point of a needle to scratch the point of his finger, and Angelo did —and every evening for three months, June, July and August, he used to rub them, the fingers in the end—every evening—under the water-closet there. Upon the floor. They are brick. And Angelo told me one evening to 'Look at my finger'; it was about nine o'clock; he says, 'Look at my finger; only you and Nick and I will know about them'" (page 361, line 20).

At this point he was asked who "Nick" was, and upon Peter Descovitz standing up, said, "That is him" (bottom of page 361, top of page 362).

Laudisi continues:

"He told me seven or eight times to ask my wife for sandpaper, but I told him, 'No, I am afraid that the keeper will discover that sandpaper and I will get in trouble'" (page 362, line 20).

Laudisi says (page 362, line 25), that Angelo wanted the sandpaper to polish better his finger, "so if they will have my picture taken of my finfiers they will be different."

"On day Angelo told me that the children of his sister-in-law went to his store and took some

candy—some other things—Aunt Alvira beat them. My little niece and nephew come to me and told me" (page 362, line 32).

'The little one they come to me and told me that Aunt Alvira have struck them and for that reason I cannot see very well her because she struck so many times the children" (page 363, line 15).

"I said to him, 'Why you cut her so many pieces, why didn't you use the revolver,' and he answered me, 'If I did use a revolver they will heard the shooting—the shot—they will hear the shot.' I asked him, 'Where did you put the revolver?' He said, 'I put the revolver in the drawers of my brother and the bullets or the cartridges I throwed them in the water closet so the authorities they can't find anything in the store' " (page 363, line 30).

"Angelo said (page 364), 'I put on a black shirt just to make a fool of the Prosecutor's Office —of the authorities. When I went to the funeral of my wife, when I was in the carriage I fainted but was not really fainting, but only to deceive the people.'

"After the night was the murder committed the sister-in-law asked him, 'With whom you had trouble?' because he was full of blood; he answered to the sister-in-law, 'Help me, save me. I did kill my wife,' and they told him to wash up and undress and that his brother give him his pants—his trousers.' The rest of his clothes they burned them up in the night in the stove. That day, Thursday"—this is a continuation of the conversation—"my wife was most all day in the shoemaker's store, and all day I was worried, and I told her in the evening we will go out and having a walk, and that evening I make her go about fifteen minutes before me out

from the store, and after fifteen minutes I went after her; I prepared myself with the hatchet behind my pants and big knife and bottle of whiskey. I told him I read in the paper—in the paper was written that they found a knife—'What you will say when Joe Federici comes here—what you will say about it.' 'I will say to him that some women went for dandelions and they have lost the knife' (page 364). 'I told her to go there over the grass and we will have sexual intercourse' and he asked me, 'How long you don't have any sexual intercourse,' and I told him five months I am arrested; and I asked him, 'And you how long?' 'From that evening when I had sexual intercourse with my wife up in the grass' (page 365, line 10).

"I first drank a bottle of whiskey, then I had the sexual intercourse with her. After I begin to quarrel with her because she was all day in the shoemaker store, and the wife answered me, 'Why are you so jealous, for he is some relation to me.' After I drank the whiskey and I beginning to strike her with the hatchet, and I went away. After ten minutes I went back there to see if she was alive or dead—I went back there and saw her that she was living yet; I strike her another three or four times. Then I throw away the hatchet, far away from there. I was taking the bracelets but afterwards I was afraid that the law will find the bracelet in my house and I left the bracelet near her' (page 365, line 22).

"He said after he went home and washed himself, about twelve o'clock in the night he telephoned, and after twelve o'clock he telephoned to the station house that his wife don't come home—wasn't home' (page 366, line 5).

"Angelo asked him, 'When you married, how did you find your wife?' and I answered him, 'I

found her all right,' and he said, 'Mine was not virgin; for that reason I kept her with a bad eye.' 'For that reason I kept her under my eye' (bottom of page 367).

"After I married her I was thinking to open the gas, but think of my brother's children I was afraid to do that, and I was afraid also that she would die in my home and they would arrest me right away' (page 368, line 33).

"He told me also in that night, 'She tried to defend herself, poor soul, and she grabbed me, and she tried to defend herself and a button flew off from my sweater' (page 369, line 12).

"It was Thursday night, May 29th, that he threw the bullets into the water closet" (page 403, line 32).

Deskovich testified (page 404), that he was in murderers' row in the Essex County Jail, that he entered the jail on the seventeenth day of March, 1913, charged with murder and that he had since been tried and acquitted. That while in the jail he got acquainted with Cerciello and Laudisi, that he saw Laudisi and Cerciello engaged in conversation together many times, maybe fifty or a hundred times, more or less (page 405, line 10), and that he could recall a few things he heard Cerciello say about his own case (page 405, line 20).

He says: "I heard him say that if Frederici comes here hundred times, whole year, or something like that, that he won't get nothing of him." "I happened to been there—not been there for a purpose to hear anything" (page 405). "I kept no records of any kind. I just heard a few words. I heard him say that if my wife—she has got to come from a well—from the grave—that she can say that I am the one that did it—in the Italian language (page 406, line 1).

"They were talking about the hatchet one time. I heard him say—happened to been there—that 'It is the axe will convict me.' I don't know what he meant by that" (page 406, line 8).

"Say something about Fiore rubbing fingers on the floor. Said Fiore done it for the purpose of saving finger-prints, something like that. I don't know nothing about the finger-prints. Just what I heard. He—sometimes he was rubbing there like that he was washing underneath the sink, something like that. The sink, wash basin we got in the corner of the cell. On the floor, the floor is made of concrete. He was rubbing his hands, I think on the concrete, like that (indicating) flat."

The Court. Indicating with the palm and finger downward (pages 406-407).

"The only thing—another thing he said they can harm him if they want to and they can help him if they wanted to" (page 407, line 30).

On page 613, line 20, Deskovich being recalled was asked this question:

> "Q While you were at the jail, in a conversation you had with the defendant, did he say to you that the man who came up from Rising & Thorn's was not the man of whom he bought the hatchet but that he bought it there from a young man. A Young man; yes, sir."

The foundation for this question was laid on page 563, line 11, where he was asked if he had not made that statement to Deskovich.

Josephine Urso testifies (page 177), that on the evening before last Decoration Day, she went into Cerciello's store about seven or half-past seven; that Alvira and Angelo were there; and on page 178, she said that Alvira said: "This evening we go out Angelo."

Then after a little she repeat the same phrase, "This evening we go out Angelo," and Angelo replied: "Yes, sir." He said, "You know where I have to go."

Nicholo Minauro testifies on page 180, that about half-past seven in the evening he went into the grocery store, that Angelo and Alvira were there, and he says the wife said to the husband, "I will prepare the dinner or supper, and then we go out."

On June 6, 1913, the plaintiff in error made a statement in writing to the police, and this statement was introduced in evidence by counsel for the defendant, and will be found on pages 558 and 559, and in this statement the plaintiff in error says, "Later my wife asked me if I wanted to go out, asking this question many times the entire day. Towards evening, as I remember, one of my women customers came in the store and my wife in her presence asked me twice to go out and I did not answer. The third time I told her that you knew where I have to go and she told me go out and buy bananas while I prepare the supper, and after supper we would go out" (page 558).

On the witness stand, testifying in his own behalf, the plaintiff in error gives a detailed account of his movements on the night of the homicide. He says (page 506), that he had supper with his wife about half-past eight, and (page 507), that about nine o'clock his wife went out; "She didn't finish her supper." He says his wife went out to get some ice cream, and one page 504 he tells the circumstances under which she went out. He closed the store at 9:45 (page 507); went into the kitchen, and, feeling drowsy, went to sleep and didn't wake up until 10:30 (page 509).

Nowhere does he make any explanation of the fact that he did not go out with his wife, as they had arranged to do. The story he tells on page 504 of how his wife came to go out for ice cream is absolutely inconsistent with the fact that he had an engagement

to go out with her himself. When he woke up in the kitchen at 10:30, finding that his wife had not yet returned, he says he immediately went to the apartment of his brother, and woke him up, and told him, "Look here, it is so late, my wife she isn't back yet. He told me why don't you went out and look for her" (page 509, line 20). And thereupon he proceeds to tell how he went walking around the streets of the neighborhood looking for his wife, several times returning to his brother's apartment and informing him that he hadn't yet found her. He says that while he was out on the street looking for her he was crying (pages 538 and 539, and he says on page 540 that when he first went out to look for his wife he came back and cried (line 12), and he says, on page 541, that the reason he did not ask anybody or speak to anybody about his wife was because he was crying (line 8). He says (page 542), that he knew his wife had three sisters living in Newark, but he didn't go to any of them to find out if she was there. He said (page 545), that about twelve o'clock he telephoned to the Bloomfield police station, and said over the telephone (page 545), "I told them my wife had gone out about nine o'clock to buy ice cream and she had about $200 in her possession and she didn't come back no more, and he asked me the name first and second about the address and everything."

John McMahon, a witness sworn on behalf of the defendant, testified (page 568), that he was a lieutenant of police of Bloomfield. He says (page 569), "At two in the A. M., May 30th, a man caled up on the telephone and he said his wife had gone to the *theatre*, and I stopped him right there and I asked him who was he, so he said his name was Angelo Cerciello. I couldn't get the last name proper and I made him spell it for me. I asked him where he lived. He said he lived at the corner of Chester and North Eighth street. I told him to tell me the story again about

his wife. He said she went out to the *theatre* that evening, and she had not returned yet, and she had in her possession $200. On page 573, McMahon, testifies on cross examination that Cerciello did not in his conversation with him over the telephone that night use the word *"ice cream,"* and he says that the message was received about two, A. M., and not at twelve.

Cerciello says, on his cross examination (page 529), that he never before knew his wife at any other time to take money with her when she went out.

On his cross examination (page 531), defendant testified as follows: "Q When did you first find out that the money was gone? A That was the next day. Q What time? A About twelve o'clock. Q How did you come to find out then? A Because I went in the store when I came and I see there is a little change and a couple of bills there, and I went to the drawer and looked was the money left there, and nothing is there. I went open that little place where used to hold that box and only find jewelry in that and $5 gold piece. That is all."

As he had never before known his wife to take the money with her, and as he did not find out until twelve o'clock the next day, when he came to his home from the East Orange police station that his money was gone, how could he possibly have known, when he telephone to the Bloomfield police station at two o'clock in the morning of that day, that his wife had $200 in her possession?

The insistment of the State is that the purpose of this falsehood was to create the impression that his wife had met her death as the result of a robbery.

Armelinda Freda testifies (page 199), that about half-past six in the morning of Decoration Day, she was in Angelo's store and saw him. She asked him about his wife, if she was up, and he told her that his wife last night went away to order some ice cream

about half-past nine. She says (page 200, line 10), "I asked him when you see that the hour was so late why don't you try to find your wife? He said that, *'If I was going out maybe somebody will club me down.'* I asked him if he made any call by telephone to her family and he said, 'No, I just telephoned down to the station house.' I tried to go in the room —the back room, and I saw that the place where Angelo was living was used, but the place where his wife used to sleep was untouched. I asked him why he don't went out to look for his wife, but he said that *he was afraid that somebody would club him.*"

Joseph Vicarisi testified (page 657), that he was a justice of the peace, that on Decoration Day he was in a saloon with the defendant in company with Officer Belfie, that while they were in the saloon Angelo said to him that he woke up about 10:30, found his wife was not home, went and told his brother, and then went and laid on the bed, and *did not wake up again until twelve o'clock.*

Officer Belfie testifies to the same effect on page 661.

The foundation for this testimony in this form was laid by questions asked Angelo on his cross examination (page 654).

On June 6th the defendant made a statement in writing to the police, in which he gives a detailed account of his movements from the time he had his supper until he telephoned to the station house. This statement will be found on page 558, and was introduced in evidence by counsel for the defendant. In this statement he does not say one word about going out and looking for his wife at any time that night, either before or after he sent the telephone message.

Rosie Cerciello, the wife of Vincenzo, testifies (page 483), that on one occasion that night when Angelo

came to their room she exclaimed: "My God! My God! what is it?"

Laudisi says (page 364), that Angelo said to him, "After the night was the murder committed, the sister-in-law asked him, 'With whom you had trouble?' because he was full of blood; he answered to the sister-in-law, 'Help me, save me, I did kill my wife.'"

The insistment of the State is that that is the occasion when the sister-in-law exclaimed, "My God! My God! what is it?"

She testifies (page 488), in answer to the question whether Elvira ever beat or molested her children? "I never saw her strike my children very seriously, but sometimes just to give them education she was spanking a little, that is all, to make them better. The children were getting some candies, some sweets, and they want some more sometimes and she scolded them." This is exactly the story that Laudisi says Angelo told him (pages 362, line 32, and page 363, line 15).

Fiorenzo Ferrara testifies (page 209), that he was a shoemaker; that he came from Italy about ten days before the 30th of May, and had a shoemaker shop next to Angelo's store for four days previous to Elvira's death; that he had known her from the time she was born. He says that on the day before Decoration Day she came to his shop in the morning and in the afternoon two or three times, and they were talking together. He saw her in the evening with her husband, and when he said good-night to her, she said, "We had to go out to a moving picture show" (page 210, line 38). On his cross examination he was asked (page 213), whether he was on good terms with Angelo and he answered, "I know him only for four days," and then this question was asked: "Q Well, did he arrange about your getting your store? A No, sir; his wife tried to impress me that there in that section was the needing of a shoemaker store." One of his sons married Elvira's sister.

Gelsomine Luongo says (page 229, line 18), that after Ferrara, the shoemaker, had rented the store for his shoemaker shop, Cerciello came to her and said, "You rent that place to that man, but he will not pay." Cerciello on his cross examination (page 566), says that he told Federici at the police station in East Orange on Decoration Day morning that Eufenia, the son of the shoemaker, was the lover of his wife before he knew her.

Laudisi says (page 364), that Angelo said to him, "My wife was 'most all day in the shoemaker store and all day I was worried, and I told her in the evening, we will got out and have a walk,' " and on page 365, "After I begin to quarrel with her because she was all day in the shoemaker store and the wife answer me, 'Why are you so jealous, for he is some relation to me?' " He was some relation to her in the sense that his son had married her sister. Angelo told Laudisi (page 367, line 38), that when he married his wife she was not a virgin, she was not pure, and he further said to him (page 368), "After I married her, I was thinking to open the gas, but think of my brother's children. I was afraid to do that, and I was afraid also that she would die in my home and they would arrest me right away."

III. Motive.

The motive for this murder is apparent. He says that he knew that Eufenia, the son of the shoemaker, had been the lover of his wife before he knew her. When the shoemaker came to this country and rented the store next to his, he went to the landlord's wife and told her that the shoemaker would not pay the rent. He says that he found that his wife was not pure, not a virgin, when he married her, and for that reason he had often thought of turning on the gas in their home, but didn't do so for fear it would

kill his sister's children, and his wife would be found dead in the house. He says that he was worried because his wife had been all day in the shoemaker's store, and because of that he told her that they would go out for a walk. The shoemaker was the father of Eufenia, her former lover, and he says if his wife had gone home that night he would have been called a cuckold.

It is not necessary to show special motive for the killing.

State vs. *Jaggers,* 42 Vr., 281.

IV. The Button and the Sweater.

Laudisi says that Angelo told him she tried to defend herself, she grabbed him, and she tried to defend herself, "and the button flew off from my sweater" (page 369). When the sweater which he wore that night was taken from him *the lower button was missing,* and a button *was found* a few feet from where the struggle took place.

V. The Bracelet.

Laudisi says that Angelo told him, "I was taking the bracelet, but afterwards I was afraid that the law would find the bracelet in my house and I left the bracelet near her" (page 365, line 30). The bracelet *was found* a few feet from her body.

VI. The Children.

Laudisi says (page 362, line 32 and page 363, line 15), that "One day Angelo told me that the children of his sister-in-law went to his store and took some candy, some other things, and Elvira beat them. My little niece and nephew come to me and told me."

His sister-in-law Rosie, tells on page 448, how *Elvira spanked* the children, and says that when the children were getting some candies she scolded them.

VII. The Hatchet.

Laudisi says that Angelo told him, "I throw away the hatchet far away from there" (page 365, line 32). The hatchet *was found* about 150 feet from where the body lay (page 78).

VIII. The Bottle.

Laudisi says that Angelo told him that he provided himself with a bottle of whiskey and that he drank the whiskey before he commenced his assault on her (page 365). The bottle, which smelled of whiskey, *was found* about fifty yards southeast from the scene of the murder (page 192).

Other Statements.

Laudisi's statement that Angelo told him that his brother-in-law and his sister-in-law could help him or could ruin him is confirmed by Deskovich (page 407, line 30).

Laudisi's statement that Angelo told him that there were no eye witnesses, and that his wife would have to come from the grave to say that he was the one who did it, is confirmed by Deskovich (page 406, line 1).

Laudisi's statements about Angelo's rubbing his fingers on the floor, as Fiore did, is confirmed by Deskovich (page 406).

The plaintiff in error said that he first learned of his wife's death through a man by the name of Dauria, whom he knew as Tony and whom his brother referred to as Salvino Duaria (page 451), his brother saying that he lived nearby. Who this man was neither of the brothers could tell, and he was not produced at the trial, and no explanation of his non-production was made. Angelo says (page 549) that he did not know Tony's last name, and he says (page 550, line 3) that he did not know whether he was

seventy-five years old or twenty. He says that Tony told him that the "cop" wanted him to come down there. He didn't know where Tony lived or where he was.

This "Tony" story was absurd on the face of it. If the police had wanted Angelo at the time he says Tony came to his house, it is perfectly absurd to suppose that they would have sent an unknown man like Tony to bring him to the scene of the homicide.

IX. Assignments and Reasons.

There are twenty Assignments of Error and twenty Reasons specified pursuant to the statute. The Reasons specified, and the Assignments of Error, respectively, refer to the same matters, and are in each case given corresponding numbers. For convenience, we will take up the various questions discussed in the brief of the plaintiff in error in the same order in which they are discussed in his brief.

X. Point No. 1, Assignments Nos. 3 and 4.

These Assignments relate to the testimony of Eugene De Stafano, a witness sworn on behalf of the State. This witness testified (page 172), that about three weeks after Cerciello was married, "he (referring to Cerciello) was passing by my store and there were a few women. When they saw him and his wife they congratulated with him to take such a beautiful and good girl." He answered, "If she will be kept good, it will be all right; if not, with the four struck of the hatchet and I will fix her."

No objection of any kind was made to this testimony at the trial, and there was no motion made to strike it out.

The plaintiff in error was married to the deceased about five months previous to her death. It is true that the witness said that when Cerciello made this

statement that he was laughing and "I think maybe was playing" (page 172, line 40). That fact, however, did not make the statement inadmissible, but would affect only the weight that the jury should give to the statement. There was no request to charge relative to this testimony.

Assignment No. 4 relates to a question asked this witness on cross examination which the court overruled. After asking the witness if he had not gone to the City Hall and signed a paper so that the plaintiff in error would get his marriage license, and the witness having answered, "I signed a paper down in the City Hall" (page 175), the witness was asked this question, referring to the paper he had signed at the City Hall;

"Q Stating that you knew Angelo Cerciello and that you also knew his wife, and that you knew them to be good people?"

Counsel for plaintiff in error says on page five of his brief: "The reason this question was asked for was to show that this witness De Stefano knew Angelo Cerciello to be a good, honest and truthful fellow."

The question was clearly improper, because, in the first place, it was not proper cross examination; and in the second place, the object of the question was not to draw from the witness testimony as to the *reputation* of Cerciello for peaceableness and quiet among his neighbors in the community where he lived, but rather the fact that the witness himself *knew* them to be good people; and in the third place, if the witness had signed any paper containing such a statement, the document itself was the best evidence of that fact.

XI. Point No. 2, Assignments Nos. 5 and 6.

Assignment No. 5 is based on the admission in evidence of a revolver marked Exhibit S. 28 (page 422).

Vincenzo Cerciello, a brother of the plaintiff in error, when sworn on behalf of the State, testified (page 166) that he lived in the same building with his brother Angelo, one on one side of the building and the other on the other side, and being shown the revolver in question, he said it was his, and that he always kept it loaded. He says, on page 167, that after Elvira's funeral he went home, and when he went to bed that night he examined the revolver "and found no bullets in it," and that a couple of days later, "I put some more bullets in it."

It was admitted (page 170) on behalf of the defendant that Joseph Federici got this revolver from Vincenzo's home on September 27th; that it was at that time loaded.

Vincenzo further testified on cross examination (page 168), that about a month after his sister-in-law was buried he was at the jail to see his brother, and he also saw Federici there. He testifies (line 15), "I says, what is the matter? Where did those bullets go?" And again (line 18), "I go see my brother at the jail, there was Federici, too. I says, What is the matter with the bullets in my revolver?"

Laudisi testifies (page 363) to the following conversation with the plaintiff in error. "I said to him, 'Why you cut her so many pieces, why didn't you use the revolver,' and he answered me, 'If I did use a revolver they will heard the shooting—the shot—they will hear the shot.' I ask him, 'Where did you put the revolver?' 'I put the revolver in the drawers of my brother and the bullets or the cartridges I throwed them in the water closet so the authorities they can't find anything in the store.'"

Joseph Federici testifies (page 414), that after he learned that the plaintiff in error had made statements about what he had done with the revolver when he got home, he employed Joseph Aniorose, a plumber, to go to the Cerciello house and examine the water

closet; that they went there on September 27, 1913, and that after working for about two hours they succeeded in getting a bullet out of the trap of the water closet or toilet in Vincenzo Cerciello's apartment.

Ambrose, the plumber, testifies (page 416), that he went with Federici to the Cerciello home, and in the trap of the toilet in Vincenzo's apartment he found a bullet. The bullet or cartridge found in the trap of Vincenzo's toilet was admited in evidence, with the revolver, and was marked exhibit 29 (page 422).

Bearing in mind the testimony of Laudisi that the plaintiff in error told him that he unloaded the revolver and threw the bullets or cartridges in the water closet "so the authorities can't find anything in the store," the fact that after the plaintiff in error had made that statement to Laudisi that the bullet or cartridge *was found* in the trap of the toilet, was of the utmost importance, and tended, in the strongest possible way, to verify the truth of the statement made by Angelo to Laudisi.

Bearing in mind the testimony of Vincenzo Cerciello, that at the jail, in the presence of his brother Angelo, he had expressed his surprise that his revolver had been unloaded, the truth of the testimony of Laudisi as to what Angelo had told him about the revolver would seem to be absolutely demonstrated.

We respectfully submit that the revolver was properly admitted in evidence.

Assignment No. 6 is based on the admission in evidence of a bottle.

Daniel Veitch testifies (page 190) that on Decoration Day he was at the scene of the homicide, and that before the basket containing the body of the woman was taken away, he found a bottle (line 30), about fifty yards southeast from the spot where the woman was in the basket. On page 192 he further testifies that he smelled of the bottle and that it smelled of whiskey.

Laudisi testifies (page 364, line 39), that Angelo, among other things, said to him, "I prepared myself with the hatchet behind my pants and big knife and *bottle of whiskey.*" And at line 25, page 365, Laudisi says Angelo said to him, "After I drank the whiskey and I beginning to strike her with the hatchet and I went away." And on page 395, line 37, on cross examination, Laudisi says Angelo said to him, "I first drinked a bottle of whiskey * * * I begin to quarrel with her because she was all day in the shoemaker store."

We respectfully submit that the bottle was properly admitted in evidence.

XII. Point No. 3, Assignment No. 7.

This Assignment is based on the refusal of the court to strike out the testimony of Gelsomine Luongo. This testimony had a direct bearing on the question of motive and related to the conversation between the plaintiff in error and the witness regarding the renting of the store to the shoemaker, the father of Eufenia, the former lover of Elvira. If this is not the effect of the testimony, then it has no possible bearing on the case, and could in no way have harmed the defendant.

XIII. Point No. 4, Assignment No. 8.

This Assignment relates to a question asked Vincenzo Cerciello on his cross examination (page 464). The cross examiner had been asking him a series of questions as to his movements and as to the time when he and Angelo and Dauria, the unknown Tony, arrived at the scene of the homicide. At the bottom of page 462, he was asked this question: "Why don't you want to tell me the time?" to which he gave an evasive answer, and thereupon he was asked: "Isn't it because you don't dare to fix the time?" to

which he gave another evasive answer. At the bottom of page 463 he was asked: "Why are you afraid to answer that question, sir?" whereupon counsel for plaintiff in error objected and said at the top of page 464: "I had the same trouble with him," which was true. He was then asked: "Q How long after you got down there was it that you first saw Angelo there? A It was morning. Q Is the reason you don't dare answer these questions that you are afraid you will be rearrested for this murder? A If my conscience is clear I am not afraid of the law; I will not be afraid of the law."

The last question is the question to which this assignment relates.

The witness had been under arrest for this homicide and his fingerprints had been taken. The record does not, and cannot, disclose the *manner* in which he and Angelo gave their testimony. A careful reading of their testimony will, however, satisfy the court that they were both purposely evasive and as indefinite as possible in their answers, and that their manner on the witness stand was shifty, and evinced a consciousness of guilt, all of which the jury saw. Under these circumstances we respectfully submit that the question was a proper one. In any event the answer was of such a nature that the defendant could not possibly be harmed by the question.

XIV. Point No. 5, Assignment No. 10.

This assignment is based on the fact that the court allowed certain magnifying glasses to be used by the jury in connection with the fingerprint testimony. These glasses were produced by Mr. William J. Kingsley, whose testimony will be found on page 580, *et seq.* Mr. Kingsley testified that he had been using magnifying glasses for over eighteen years and he said that he knew of his own knowledge that these glasses were all magnifying glasses; that he had used

every one of them; that they were correct lenses, made by reputable manufacturers, and tested by him and used by him over a period of eight or ten years (page 558). There were eighteen of these glasses, and Mr. Kingsley says, on page 582, that thirty minutes before going on the stand he had cleaned them, and looked through each one and tried it. "I used these glasses myself, some of them every day," and he proceeds to tell what the respective magnifying qualities of the various glasses were.

We respectfully submit that the glasses were properly proved, and properly admitted in evidence.

XV. Point No. 6, Assignment No. 11.

This assignment relates to some testimony given by Katie Minichini, a witness sworn on behalf of the State (page 646). She testified that about a couple of months after Angelo and Elvira were married she was in the store one day and Angelo and Elvira were both present, and says (page 648, line 13), "Angelo was singing a song about the shoemaker, and she said, 'That is a crack for me;' and I said, 'How is that a crack for you?' and she said, 'There was a shoemaker that wanted to keep, wanted to marry her, and I didn't want him, and that is why he is singing that song.'"

This testimony was clearly competent because, what Elvira said, was said in the presence of Angelo, and no objection of any kind was taken to this testimony at the trial. On page 650, the witness further testified that on one occasion when Angelo was on the street in front of the store, she went in the store and found Elvira crying. The witness did not pretend to say why Elvira was crying and did not tell anything that Elvira had said to her.

Rosie Cerciello, the sister-in-law of Angelo, testified (page 485), that she frequently saw Elvira and

Angelo together, that "they were playing, looked like two children; they were playing together most of the time." The witness, Minichini, was sworn for the State in rebuttal and the purpose of this testimony was to rebut the testimony of the sister-in-law. If this was not the effect of the testimony, we respectfully submit that the mere fact, that his wife was on one occasion crying, while he was outside the store in the street, without any testimony as to the reason why she was crying, did not harm the defendant.

XVI. Point No. 7, Assignment No. 12.

It is alleged that during the summing up, the Prosecutor said, "If the State could prove a case against Vincenzo he could be rearrested and indicted for murder as an accessory after the fact."

The Prosecutor had a right to attack the testimony of Vincenzo and he had a right to comment on the interest which Vincenzo had in testifying.

Laudisi had testified (page 364) that when he told his brother and his sister-in-law, "I did kill my wife," they told him to wash up and undress and that his brother gave him his pants, his trousers, and that they burned up the rest of his clothes in the night in the stove (page 364). Vincenzo certainly had an *interest* in the case, and a reason for testifying falsely, and if the facts stated by Angelo to Laudisi could be proven, Vincenzo could and should, be indicted and convicted as an accesory after the fact. We respectfully submit that the alleged statement of the Prosecutor was comment within the "four corners of the evidence," and was fully justified by the evidence.

State vs. *Barker*, 39 Vr., 19, at 27.

XVII. Point No. 8, Assignment No. 13.

This assignment relates to the charge of the court respecting the testimony of Laudisi.

The portion of the charge objected to and the pertinent context will be found on page 690, line 35, and page 691. Taking this portion of the charge as a whole, we submit that it was more favorable to the defendant than he was entitled to. Laudisi was in no sense an accomplice of Angelo. The court charges as applicable to Laudisi the doctrine of *State* vs. *Graham*, 12 Vr., 15.

We do not understand that the principle of that case is applicable to Laudisi, but as this portion of the charge is beneficial to the defendant, he was, of course, not harmed. The portion of the charge specifically objected to is as follows: "On the other hand the jury has a right to convict on the testimony of Laudisi, if in their judgment it is entirely credible and worthy of belief" (page 679, line 25).

The *corpus delicti* being otherwise proven the jury could rightly convict the defendant on the testimony of Laudisi, if in their judgment it was entirely credible and worthy of belief, for that testimony constituted a complete confession of guilt, and a statement of the motive for the crime.

In another portion of the charge (page 677, line 20) the court accurately charges reasonable doubt.

We respectfully submit that there is no error in this portion of the charge.

XVIII. Point No. 9, Assignments Nos. 14, 15, 16, 17 and 18.

These assignments relate to certain requests to charge, which were refused except as already charged (page 694).

The first request refused was No. 2 and relates to malice. The charge of the court relating to premedi-

tation and malice will be found on pages 679 and 680, and is, we respectfully submit, entirely accurate.

The fourth request was as follows: "Before the jury can convict they must find that the cause of the death of the deceased has been positively proven to be murder committed by the defendant." This request if charged would have excluded the possibility of a verdict of manslaughter. If this is not what the request means then the request would seem to be unintelligible.

The fifth request would seem to be an attempt to state in an original way the doctrine of presumption of innocence and of reasonable doubt. Both these doctrines were correctly charged by the Court (page 677, line 10).

The sixth request is as follows: "The question of the party's intent is clearly to be considered; defendant's intentions as stated by him should at all times be considered and given such weight as you believe he should receive."

This request has no relation to any testimony given in the case. The charge of the Court relative to the question of intent will be found on page 680, line 24. The defense was a complete denial and the defendant did not give any testimony as to what his intentions were, and therefore this request was properly refused.

The ninth request was also properly refused. Under no possible theory of the case could the question of the "omission" of the defendant, or of any other person, have any relation to the testimony, and we respectfuly submit that this request was properly refused.

XIX. Point No. 11, Assignment No. 19.

The point of this Assignment is that the fingerprints of the plaintiff in error had been obtained against his will and without his consent.

Officer Federici testifies (pages 274 and 275), that he and Officer Godfrey took the plaintiff in error to Mr. Scharwtz's office for the purpose of having his finger-prints taken, and that when they got him there, they asked Cerciello to sign a paper, which he did, and that no threats or menaces of any kind were used against the defendant, and no promises held out in conection with signing the paper.

Officer Godfrey (pages 270 and 271) testifies to like effect.

On page 266, Edward Schwartz, the finger-print expert, testifies that he took the finger-prints of the plaintiff in error, and he tells the circumstances under which they were taken.

There is not a word of testimony in the case which tends to show that these finger-prints were obtained against the will and without the consent of the plaintiff in error.

Vincenzo Cerciello, the brother, does say, that when they took his finger-prints they told him, "You got to sign, if you don't sign it, we will take you down to the cooler" (page 278).

There is no evidence that Angelo Cerciello was present at the time this was said, and there is no evidence that this remark or any similar remark was made to Angelo when his finger-prints were obtained. The finger-prints of Vincenzo were not produced at the trial, and therefore it is immaterial what was said or done with him.

The ruling of the court admitting the finger-print impressions of Angelo will be found on page 279.

Even if the fingerprints had been obtained against the will and without the consent of the plaintiff in error, we respectfully submit that under the doctrine laid down in the case of *The State* vs. *Miller,* sustaining the right forcibly to search the body of a defendant to discover wounds, or other identifying marks, this evidence would have been admissible.

State vs. *Miller,* 42 Vr., 527, at 533.

XX. Point No. 10, Assignment No. 20.

This assignment is based on the testimony of experts as to the identity between the fingerprint impressions of the defendant's ring finger on the left hand, and the fingerprint on the handle of the bloody hatchet.

The admissibility of such testimony has never been directly passed upon by the courts of this State, although cognate questions involving the same principle have been.

In the case of *Johnson* vs. *State,* this court says:

> "The *fourth* assignment of error relates to the judicial action of the trial court with respect to the introduction of certain evidence. The case was one depending wholly on circumstantial evidence. Certain witnesses testified to having seen certain footprints of a peculiar character in the dirt and soil near to the body of the woman who had been murdered, and for the purpose of showing that such footprints had been made by this defendant, the state produced the boots that were worn by the prisoner on the night in question. Certain impressions in sand made, in the presence of the jury, by the boots just mentioned, were exhibited to the jury against objection taken by counsel of the defendant. This constitutes this assignment of error."
>
> "The testimony of the witnesses with regard to the appearance of these footprints was undoubtedly competent. Such testimony involved in no sense the knowledge of an expert; and the exhibition of the boots worn by the defendant on the night in question, and the impress in the sand by way of illustration with them, were also competent. We agree with the opinion of the Supreme Court on this subject."
>
> *State* vs. *Johnson,* 30 Vr., 535, at 542.

In the case of the *State* vs. *Miller,* this court says:

"The third assignment of error is intended to question the admissibility of evidence, which may be thus stated: In the house where the homicide took place, there was, upon the wall of one of the rooms, an imprint of a bloody hand. Before the plaintiff in error was arrested he accompanied some of the peace officers to this house, and in the room where the print was he was asked to place his hand upon the bloody mark, which he did. Testimony as to the comparison of the hand with the mark was offered and objected to. We see no possible ground for excluding such evidence. The request to place his hand upon the mark was voluntarily complied with by the accused, and bystanders were competent to express an opinion as to coincidence between the outline of the hand and of the print. It may be added that a section of the wall containing the print was produced before the jury, and the testimony of such comparison was like that held to be proper in the case of Johnson *vs.* State, 30 Vroom, 271; S. C., *Id.*, 535, where the prints of the shoes of the accused were made in sand before the jury, and witnesses who had observed prints in the sand at the place of the fatal struggle were permitted to compare them with what they had observed at that place."

State vs. *Miller*, 42 Vr., 527, at 534.

The only case in this country, so far as we have been able to find, which deals directly with the question of the admissibility of fingerprint testimony, is the case of *People* vs. *Jennings*, decided in 1911, in the Supreme Court of the State of Illinois.

As the opinion in this case seems to be well reasoned, and as the authorities cited are numerous, we will, for convenience sake, incorporate in this brief the whole of that opinion on this subject.

"(3) It is further insisted in this connection by the plaintiff in error that the evidence of Hal-

sted, Mrs. McNabb, and Miss McNabb, was inadmissible, because of the uncertain character of the indentification. A great deal has been written and said in the past concerning the doubtful nature of testimony identifying persons. Men's faces, like their handwriting, may be so similar that the keenest observer may be baffled in seeking to discover differences. 'The witness,' says Wharton, 'is asked how he knows that the prisoner at the bar is the person who fired the fatal shot, and his answer is, "I infer it from a similarity of eyes, of hair, of height, of manner, of expression, of dress." Human identity, therefore, is an inference drawn from a series of facts, some of them veiled, it may be, by disguise and all of then more or less varied by circumstances.' Wharton on Crim. Evidence (8th Ed.) sec. 13. In his charge to the jury in the Tichborne case, Lord Cockburn said: 'Frequently a man is sworn to who has been seen only for a moment. A man stops you on the road, put a pistol to your head, and robs you of your watch or purse; a man seizes you by the throat, and while you are half strangled his confederate rifles your pockets; a burglar invades your house by night, and you have only a rapid glance to enable you to know his features. In all these cases the opportunity of observing is so brief that mistake is possible, and yet the lives and safety of people would not be secure unless we acted on the recollection of features so acquired and so retained, and it is done every day. Wharton on Crim. Evidence (8th Ed.), sec. 803, note; Jones on Evidence (2d Ed.), sec. 361. In Ogden *vs.* People, 134 Ill., 599, 25 N. E., 755, the accused was charged with robbery. On the trial, one Martin and his wife and daughter, who had known the accused for 10 years, testified that he came to their house at night with

his face wrapped in red flannel and ordered them to deliver up their money. They testified positively to his identification, recognizing his voice. The court held the testimony competent, and affirmed the judgment. It has been frequently held that a witness may testify to a person's identity from his voice or from observing his stature, complexion, or other marks. See 1 Wigmore on Evidence, sec. 660, and authorities cited in note 1; State *vs.* Lytle, 117 N. C., 799, 23 S. E., 476. This testimony was competent. The weight to be given it was a question for the jury, in view of all the other circumstances and evidence in the case."

"(4) It is further contended that the evidence as to the comparison of photographs of the finger marks on the railing with the enlarged finger-prints of plaintiff in error was improperly admitted. No question is raised as to the accuracy of the photographic exhibits, the method of identifying the photographs, the taking of the finger-prints of the plaintiff in error or the correctness of the enlargements, as shown by the exhibits introduced in evidence. It is earnestly insisted, however, that this class of testimony is not admissible under the common-law rules of evidence, and as there is no statute in this state authorizing it the court should have refused to permit its introduction. No case in which this question has been raised has been cited in the briefs, and we find no statutes or decisions touching the point in this country. This class of evidence is admitted in Great Britain. In 1909 the Court of Criminal Appeals held that finger-prints might be received in evidence, and refused to interfere with a conviction below though this evidence was the sole ground of identification. In re Castleton's Case, 3 Crim. App., 74. While

the courts of this country do not appear to have had occasion to pass on the question, standard authorities on scientific subjects discuss the use of finger-prints as a system of identification, concluding that experience has shown it to be reliable. 10 Ency. Britannica (11th Ed.), 376; 5 Nelson's Ency., 28. See also Gross' Crim. Investigation (Adams' Transl.), 277; Fuld's Police Administration, 342; Osborn's Questioned Documents, 479. These authorities state that this system of identification is of very ancient origin, having been used in Egypt when the impression of the monarch's thumb was used as his sign manual, that it has been used in the Courts of India for many years and more recently in the courts of several European countries; that in recent years its use has become very general by the police departments of the large cities of this country and Europe; that the great success of the system in England, where it has been used since 1891 in thousands of cases without error, caused the sending of an investigating commission from the United States, on whose favorable report a bureau was established by the United States government in the war and other departments.

Four witnesses testified for the state as to the finger-prints. William M. Evans stated that he began the study of the subject in 1904; that he had been connected with the bureau of identification of the Chicago police department in work of this character for about a year; that he had personally studied between 4,000 and 5,000 finger-prints and had himself made about 2,000; that the bureau of identification had some 25,000 different impressions classified; that he had examined the exhibits in question, and on the forefinger he found fourteen points of identity, and

on the second finger eleven points; that in his judgment the finger-prints on the railing were made by the same person as those taken from the plaintiff in error's fingers by the identification bureau.

Edward Foster testified that he was inspector of Dominion police at Ottawa, Canada, connected with the bureau of identification; that he had a good deal to do with finger-prints for six years or more; that he had special work along that line in Vancouver and elsewhere in Canada; that he had studied the subject at Scotland Yard; that he began the study in St. Louis in 1904 under a Scotland Yard man and had taken about 2,500 finger-prints; that he had studied the exhibits in question and found fourteen points of resemblance on the forefinger; that the two sets of prints were made by the fingers of the same person.

Mary E. Holland testified that she resided in Chicago; that she began investigation of finger-print impressions in 1904, studied at Scotland Yard in 1908, passed an examination on the subject, and started the first bureau of identification in this country for the United States Government at Washington; that they had over 100,000 prints at Scotland Yard; that she also had studied the two sets of prints and believed them to have been made by the fingers of the same person.

Michael P. Evans testified that he had been in the bureau of identification of the Chicago police department for twenty-seven years; that the bureau had been using the system of finger-print impressions since January 1, 1905, and that they also used the Bertillon system; that he had studied the question since 1905 or 1906 and had made between 6,000 and 7,000 finger-prints that he had charge of the making of the photographs

of the prints on the railing; that in his judgment the various impressions were made by the fingers of the same person.

All of these witnesses testified at more or less length as to the basis of the system and the various markings found on the human hand, stating that they were classified from the various forms of markings, including those known as 'arches,' 'loops,' 'whorls' and 'deltas.' "

"(5) When photography was first introduced it was seriously questioned whether pictures thus created could properly be introduced in evidence, but this method of proof, as well as by means of X-rays and the microscope, is now admitted without question. Wharton on Crim. Evidence (8th Ed.), sec. 544; 1 Wigmore on Evidence, sec. 795; Rogers on Expert Testimony (2d Ed.), sec. 140; Jones on Evidence (2d Ed.), sec. 581. We are disposed to hold from the evidence of the four witnesses who testified, and from the writings we have referred to on this subject, that there is a scientific basis for the system of finger-print identification, and that the courts are justified in admitting this class of evidence; that this method of identification is in such general and common use that the courts cannot refuse to take judicial cognizance of it. Such evidence may or may not be of independent strength, but it is admissible, the same as other proof, as tending to make out a case. If inferences as to the identity of persons based on the voice, the appearance, or age are admissible, why does not his record justify the admission of this finger-print testimony under common-law rules of evidence? The general rule is that whatever tends to prove any material fact is relevant and competent. People *vs.* Gray, 251 Ill., 431; 96 N. E., 268; Thayer's Prelim. Treatise on Evidence at Common Law (1898 Ed.), 226.

Testimony as to foot-prints has frequently been held admissible. Wharton on Crim. Evidence (8th Ed.), sec. 796; 1 Wigmore on Evidence, sec. 413; State *vs.* Fuller, 34 Mont., 12; 85 Pac., 369; 8 L. R. A. (N. S.), 762; 9 A. M. & Eng. Ann. Cas., 648, and note. In Carleton vs. People, 150 Ill., 181; 37 N. E., 244; 41 Am. St. Rep., 346, on a trial for arson, evidence of foot-prints near or leading to a barn and their correspondence with the feet of the accused was held competent. It was also proved that the accused was lame and walked with a kind of hop, and that the foot he limped on corresponded to the irregular tracks in the field. See Jones on Evidence (2d Ed.), sec. 400; 1 Wigmore on evidence, sec. 660, and note 2; State *vs.* Ah Chuey, 14 Nev., 79; 33 Am. Rep., 530, and note; Commonwealth *vs.* Pole, 103 Mass., 440."

"(6) It is further insisted, as we understand the briefs and oral argument, that expert testimony on this subject was not permissible. Expert testimony is admissible when the subject-matter of the inquiry is of such a character that only persons of skill and experience in it are capable of forming a correct judgment as to any facts connected therewith. Yarber *vs.* Chicago & Alton Railway Co., 235 Ill., 589; 85 N. E., 928. It is an elementary rule that where the court or jury can make their own deductions they shall not be made by those testifying. Evans *vs.* People, 12 Mich., 27. Expert evidence is not confined to classed and specified professions, but is applicable wherever peculiar skill and judgment applied to a particular subject are required to explain results or to trace them to their causes. McFadden *vs.* Murdock, 1 Ir. Rep., 1867; C. L., 211. Expert evidence is admissible when the witnesses offered as experts have peculiar knowledge

or experience not common to the world, which renders their opinions, founded on such knowledge or experience, an aid to the court or jury in determining the questions at issue. Taylor *vs.* Monroe, 43 Conn., 36; Ellingwood *vs.* Bragg, 52 N. H., 488; Rogers on Expert Testimony (2d Ed.), section 6; 1 Greenleaf on Evidence (Lewis' Ed.), sec. 280, and authorities cited."

"(7) From the evidence in this record we are disposed to hold that the classification of finger-print impressions and their method of identification is a science requiring study: While some of the reasons which guide an expert to his conclusions are such as may be weighed by any intelligent person with good eyesight from such exhibits as we have here in the record, after being pointed out to him by one versed in the study of finger-prints, the evidence in question does not come within the common experience of all men of common education in the ordinary walks of life, and therefore the court and jury were properly aided by witnesses of peculiar and special experience on this subject."

"(8) It is objected that some of these witnesses were not qualified by such special experience. The question of the qualification of an expert rests largely in the discretion of the trial court. Bonato *vs.* Peabody Coal Co., 248 Ill., 422; 94 N. E., 69, and cases cited. There can be no arbitrary or fixed test but necessarily only a relative one, dependent somewhat on the subject and the particular witness. 3 Witmore on Evidence, sec. 1823, and cases cited.

"(9) These witnesses were qualified to testify as experts on this subject. In view of the knowledge and experience of men in identifying by foot-prints as compared with their knowledge

and experience in identifying finger-prints, it is manifest that opinions by experts might be entirely proper as to the latter class of testimony when they would not be with reference to foot-prints. The jury, if the facts were all stated, would be able to draw conclusions as to foot-prints as well as could expert witnesses. Thus, the case of Heidelbaugh *vs.* State, 79 Neb., 499; 113 N. W., 145, and others of like nature relied on by counsel, do not conflict with the conclusions we have reached in this case that the opinion evidence of the experts on finger-prints was competent."

"(10) It is further insisted that some of the witnesses testified positively that the finger-prints represented by the photographs were made by a certain person whose finger-print impressions had been photographed, enlarged, and introduced in evidence, when they should have only been permitted to testify that such was their opinion. 'In general, though a witness must depose to such facts, only, as are within his own knowledge, yet there is no rule that requires him to speak with such expression of certainty as to exclude all doubt in his mind.' 1 Greenleaf on Evidence (Lewis' Ed.), sec. 440. Opinion, so far as it consists of a statement of an effect produced on the mind, becomes primary evidence, and hence admissible whenever a condition of things is such that it cannot be reproduced and made palpable in the concrete to the jury. 1 Wharton on Crim. Evidence (8th Ed.), sec. 459. It has been said that a witness must not be examined in chief as to his belief or persuasion, but only as to his knowledge of the fact. 'As far as regards mere belief or persuasion which does not rest upon a sufficient and legal foundation, this position is correct, as where a man believes a fact to be true

merely because he has heard it said to be so; but with respect to persuasion or belief as founded on facts within the actual knowledge of the witness the position is not true. On questions of identity of persons and of handwriting it is every day's practice for witnesses to swear that they believe the person to be the same or the handwriting to be that of a particular individual, although they will not swear positively, and the degree of credit to be attached to the evidence in a question for the jury.' 1 Starkie on Evidence (10th Am. Ed.), 172; Wharton on Crim. Evidence (8th Ed.), sec. 459, note 2; Underhill on Crim. Evidence (2d Ed.), sec. 55; 1 Wigmore on Evidence, secs. 656-659. In Ogden *vs.* People, *supra,* this court, in discussing the identification of a defendant by his voice, said (at page 601 of 134 Ill., at page 756 of 25 N. E.): 'The statement by the witnesses for the prosecution of a fact which they ascertained through the sense of hearing was not the statement of mere matter of opinion, but the statement of a conclusion reached directly and primarily from an operation of the sense of hearing. A witness can learn and know facts by and through the exercise of his perceptive faculties—his five senses—and such facts he may state. City of Aurora *vs.* Hillman, 90 Ill., 61. It was a question of fact for the determination of the jury whether or not the testimony in question sufficiently established the matter of identification.' While it is usual for expert witnesses to testify that they believe or think, or in their best judgment, that such and such a thing is true, no rule of law prevents them from testifying positively on such subjects. It is for the jury to determine the weight to be given to their testimony."

People vs. *Jennings,* 96 N. E., 1077; 252 Ill., 534.

There is a difference between "finger-marks" and "finger-prints." "A finger-print has to contain a certain pattern which can be described, whereas finger-marks and blurred finger-prints is a different matter; they may be superimposed, cris-cross lines, or made by heavy pressure on this one spot, that would also be an indistinct finger-mark. A finger-print is a *picture and reproduction* of the papillary ridges in our finger tips and the corrugations in our finger tips" (page 327, line 37).

On pages 328 and 329, Mr. Flak states why it is that the papillary ridges can never change.

That the two witnesses called by the State to testify as experts were amply qualified to do so, cannot be questioned.

For several years Mr. Flak, was finger-print expert in the British Colonial Service in Singapore. In 1905, he had charge of the finger-print office in Singapor (page 291). He came to this country in 1907, and has since been teaching the police and banks the finger-print system. He is the originator of two finger-print systems (page 292). He took a contract for the City of Boston about three years ago for the classification of the impressions of nearly 4,000 criminals (page 293). In 1907, he went to San Francisco and studied and classified the records of 4,000 criminals, and he equipped the cities of San Francisco, Stockton, Alameda and Sacramento with finger-print systems. During the last thirteen years he examined and classified between 200,000 and 300,000 finger-print impressions of fingers (page 314).

Schwartz is in charge of the bureau of identification of the Newark Police Department. He has been taking finger-print impressions for the last thirteen years; eight years in New York and five years in the New Jersey Reformatory, at Rahway. He studied with Nye and Parks, and during the thirteen years has had practical knowledge and practical demonstra-

tion of finger impressions (page 248). He has examined some thirty-five or forty thousand individual impressions of individual fingers (page 251).

On page 301, line 8, Flak expresses the opinion that the finger-print impressions on the handle of the hatchet and the finger-print impressions of the plaintiff in error taken by the police must have been made by the same finger (page 301, line 7).

And on page 335, Schwartz says, that from his examination of the finger-print on the hatchet and the photograph of the finger-print on the hatchet, and the original finger-print of the defendant which he took and the photograph of that finger-print, it is his opinion that they are identical and made by the same finger.

In his supplemental brief, counsel for the plaintiff in error says (referring to the testimony of Schwartz) "On page 262 this witness further testifies that finger-prints as a means of identification has not been used by the police department for a long while, and that it hasn't been used as a means of identification of criminals."

What the witness said was that the system had been in practical use in police departments in this and other civilized countries for about thirty years (page 262, line 15).

In submitting this branch of the case to the jury, the court in its charge says (page 684, line 15).

> "Both of those experts said that the finger-prints on the hatchet and the finger-prints of the defendant's third finger on his left hand are the same. The testimony of an expert is of little assistance to the jury, unless the reasons for his opinion are satisfactorily trustworthy. If you are satisfied that the finger-print on the hatchet and the one made by the defendant's third finger of the left hand actually existed, and *that the finger-print system of identification is reliable,* then

it is for you to consider and weigh with great care the alleged similarties which have been brought to your attention by the evidence. If you reach the conclusion that the same finger made the prints in the blood when it was wet on the hatchet that made the finger-print at headquarters on the paper produced here, then it will be for you to consider whether or not you are satisfied that the deceased met her death at the hands of this defendant."

And again on page 689, line 32, the court says:

"The defendant also claims that the finger-print identification system is in its infancy or experimental stage, and is more of a fad than an exact science, and that it is not a safe and sure guide for the identification of finger-prints and for the identification of the individual."

Counsel for plaintiff in error (referring to the testimony of these experts), says in his original brief (page 14).

"The court also allowed them to testify that their opinions and their evidence was upheld by courts of different states."

The record contains no such testimony. Whatever was said by these experts about the history of the finger-print system of identifying individuals was said without objection of any kind being interposed at the trial, and no motion was made to strike out any such testimony, if such there were.

The question of the value and reliability of finger-print identification was left by the court, under its charge, to the jury to determine, the court, at the same time, telling them that the testimony of an expert is of little assistance to them, unless the reasons for his opinions are satisfactory and trustworthy.

In his supplemental brief, counsel for the plaintiff in error attacks the testimony of Dr. Martland,

relative to the resemblance between the hair found on the hatchet and the hair taken to him by Mr. Godfrey. Dr. Martland repeatedly stated that he could not say that the hair on the hatchet and the hair brought to him by Mr. Godfrey came from the head of the *same person,* and nowhere in his testimony did he make any such statement.

On page 135, line 39, Dr. Martland says: "I meant that I could not say that it was the same hair; all I could say was what I did before, that 'in color and texture' it resembled closely—the two hairs resembled. I noticed no difference." He says on page 127, line 1, that by texture he meant "Particularly the calibre, cross-diameter of the hair, whether it is coarse or very fine. Of course, the diameter of the hair is compared very closely. Of course, you may allow variations—some variations." On page 123, line 18, he says, that the examination and comparison of different brands of hair to determine whether they are of the same characteristics and texture is within the scope of the work of a pathologist, and that in medical-legal work pathologists over the country can and do pass on the common characteristics of hair. He says, "An ordinary person cannot pass on the microscopical appearance of the hair."

In his supplemental brief, counsel for the plaintiff in error cites the case of *Knoll* vs. *State,* 55 Wis., 249; 12 N. W., 369.

In the opinion in that case (12 N. W., page 370), the court says:

> "The witness said that the hair, which he had examined found on the wheelbarrow and that taken from the skull of the deceased was from the head of the same person. The witness reached this conclusion, as we understand his testimony, not from any scientific test of peculiarities in the texture of the hair, which an examination by a microscope would disclose, but from the length,

> magnitude and color, or those obvious marks and resemblances which one person of good vision would observe as readily as another. The comparison made required no peculiar skill nor scientific knowledge; it was no more in the province of an expert than of an ordinary person to make it; it related to a matter of common observation."

The principle here laid down has no application to the case at bar. Dr. Martland testified that he examined this hair as a pathologist, using the microscope and other known scientific methods by which such a comparison can be made, and he distinctly says, that an ordinary person could not pass on the microscopical appearance of the hair (page 123). He distinctly says, as a result of his examination and comparison, that he could not say that the hair submitted to him by Mr. Godfrey, and the hair from the hatchet came from the head of the same person, but that he could say that in "color and texture" they closely resembled.

> In *Comm.* vs. *Dorsey,* the court says: "On the trial of an indictment for murder testimony of persons, not experts, is admissible, that hairs on a club appeared to the naked eye to be human hairs and resembled the hairs of the deceased."
>
> *Comm.* vs. *Dorsey,* 103 Mass., 412.

This case of *Comm.* vs. *Dorsey, supra,* is cited and approved in *Johnson* vs. *State,* 30 Vr., 271.

In his supplemental brief counsel for plaintiff in error says:

"On page 135, on being asked the question: 'You now say that your examination upon that hatchet shows that it was human blood?"

"A I said that it shows that the stains were blood, that in all probability in my opinion, they were either human blood or blood of the monkey *or fowl,* or not of the common domesticated animals."

This is not an accurate quotation from the testimony of Dr. Martland on page 135, or on any other page of the record.

On page 120, line 8, he says:

"So therefore I am convinced that this part of this hatchet contained blood stains; that the blood stains are in all probability those of human blood, but there is one animal which we cannot differentiate; that is the monkey, especially the higher ape. His precipitinery reaction will also give a precipitate with monkeys blood, especially the higher ape, the champanzee, gibbons, orang-outang and gorilla."

His testimony on page 135, as we read it, is to the same effect.

We respectfully submit that there is no error in the record before this court, and that the judgment below should be affirmed.

Respectfully submitted,

LOUIS HOOD,

Prosecutor of the Pleas.

WILBUR A. MOTT,

Assistant Prosecutor.

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New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant in Error,* *vs.* ANGELO CERCIELLO, *Plaintiff in Error.*	*Sur Indictment for Murder. On Writ of Error.*

Supplemental Brief of Frank M. McDermit of Counsel with Plaintiff in Error.

I beg leave of the court to file this, my supplemental brief and to consider these additional points which were not fully considered in my original brief, which I shall hereafter point out in this brief, viz.:

One. The illegality of expert testimony pertaining to finger-prints, human blood and human hair.

Two. The compulsory taking of the plaintiff in error's finger-prints for the purpose of comparing with the alleged finger-prints on the hatchet handle.

Three. Alfonzo Laudisi's testimony.

Four. Motive an essential element in a case of circumstantial evidence.

Point One.

Edward H. Schwartz was an expert in behalf of the State for the purpose of giving testimony on the question of finger-prints. He testified at length as to that on which he based his claims as to the identity of the finger-prints as alleged to have been made

by the plaintiff in error and in comparison with the alleged finger-print on the hatchet handle.

On page 250 of the printed case, counsel for the defense asked the following question:

> "Q What is there about your system that could warrant you in saying that this is the particular finger-print of this man or the particular finger-print of the other man?
>
> A Well, there are a great many differences. There are no two fingers alike as far as I have been able to ascertain. I have examined some thirty-five or forty thousand. I mean by that, individual impressions. I don't mean concessions of ten fingers, I mean individual fingers, and while there are only four types of impressions and there may be thousands of any one particular type that may look similar, when you get under the glass and examine them closely you will find a vast difference as to divergents, lines, abrupt endings, islands, and the general formation of the delta."

Further on, on page 255, this witness on being further asked:

> "Q You are able to take finger-prints of a given subject and by an examination of that finger-print, to determine whether or not that is the finger-print of the individual?
>
> A Yes, sir.
>
> Q You mean to say that every finger-print you examine is different?
>
> A Yes, sir.
>
> Q You do not mean to say that there was different distinguishing beings that you could enumerate the differences of all of the number of fingers, do you?
>
> A Yes, sir.
>
> Q Do you mean to say that in your opinion there are no two fingers of the human race that

are alike? Do you mean to say that of every man's fingers in the entire world, there are no two fingers alike?

A Well, I have no means of knowing that, but that is my belief from the study and from the observation that I have made personally.

Q Then you do not except?

A Not for a positive fact, no.

Q Except from the examination you have made as to whether or not all fingers are alike or not?

A Well, if I might quote an authority, Gaulton claims that there is no possible chance of two fingers being similar, in one in sixty-four billion, if that be correct.

Q You are quoting somebody?

A Yes, sir.

Q So that because you have read in a work that some other gentleman said that there was no distinction of over one in sixty-four billion, and because you have examined thirty-five or forty thousand different fingers, you conclude that you are absolutely able to determine whose finger is on the impression upon any object?

A Yes, sir, positively.

Q Well, what way do you get your comparison, how do you get your comparison, what way?

A Well, I can't explain that.

Witness. The only way that I can explain that—I can't explain that without subjects. Now there are certain characteristics with reference to every impression. If I have one or more impressions with which to work on, I can show you the comparison or show you the differences between any one particular impression and another, but speak everything you write without anything to show, together with the explanation, it would be

a pretty hard matter to do it. I can tell you whether it is horizontal or parallel if I can see it. If I can see it, I can explain it goes that way, or what way it goes, or how it goes.

Q There are thousands and millions of more horizontal lines and spaces?

A Surely.

Q Nothing especially new about that, is there?

A No."

On page 261, the witness in answer to a question, further testified:

"Q What you want to be understood as saying; that you are able beyond any question of doubt, to identify the individual finger-marks of any individual in the world, are you?

A Positively."

I take it that this witness testified and based his opinion upon hearsay evidence and not upon knowledge. His mere basing his opinion upon what someone else wrote in a book, testifying to that fact, does not qualify him to state his opinion on the finger-print question, as he is not testifying something which he is able to do by a reason of vast experience and scientific knowledge of the same.

On page 262, this witness further testifies that finger-prints as a means of identification, has not been used by the police department for a long while, and that it hasn't been used as a means of identification of criminals. I respectfully submit that testimony of this kind is very dangerous, to say that upon the testimony of this witness, that he is absolutely certain that every finger in the entire world is totally different from the other. This witness doesn't give any distinguishing characteristics or how he can make them between different fingers. He doesn't go

into the examination to show that the fingers may have been soft or were used in the ordinary vocation of professional men, from the fingers that may be used on the laborer, in that the fingers were hardened. Nor does it show that different nationalities have different fingers. Nor does he show that there is a different distinction in fingers of different nationalities, but I claim there unquestionably is. Nor does the testimony show the peculiar evidence sufficient to have the court say that he is an expert to take the credit of being the ninth miracle of the world, that he is able to say absolutely that there isn't a single finger in the world that he can't tell whose finger it is or who the man is and point him out.

Peter A. Flak was another expert sworn on the part of the State, on the question of finger-print testimony. He testified at length as to the finger-print system.

On page 300, this witness requested that a pointer be given to each of the jurors and a photograph, and started to lecture to the jurors.

On page 301, this witness continues: "Find the same outriger, we will call those black lines I have drawn in outrigers, so as to not get confused in regard to the finger-print line." Further on he tells the jury: "I think you all can see that little spot in there. It is not so different in the blood impression of course, as it is in ink impression, but it is clearly discernable."

Further on, on page 320, witness tells the jury and instructs them what else they can see. And all through his testimony, he continues asking the jurors questions if they understand him, and asking them questions. In other words, instructing the jury to absolutely adopt his opinion.

And on 310, he tells the jury: "Now just as an experiment, you count the number of ridges and lines. Can you see there are two lines between?"

Then, on the bottom of page 310, this witness further continues: "So you have seen how clearly all these points can be traced in both impressions in the same positions relatively?"

On page 311, witness continues, "But it is very hard to explain to you, the identity absolutely of one or two points that I have already called your attention to, but the majority of these points are absolutely in the same position relatively, and established the identity already, of those two prints."

On page 312, this witness further on impresses the jury by a certain discrepancy existing in that finger-print, and toward the end of said page, witness says: "I know exactly where each line runs and if you were to take the pointer from one outriger to the other, you could trace every connection and count and ascertain that the intervening ridges correspond in every case."

On page 314, witness says: "I could sight many authorities and all authorities agree literally speaking, that finger-prints can not be duplicated and they have stated what the chances approximately are, and such evidence is accepted."

On page 317, on cross examination, this witness, on further question asked by the counsel for the defense:

> "Q I ask you this question, and you pay some attention to me as I point my finger where I want to indicate. I show you a space on the photograph exhibit that you call the enlarged impression exhibit of the left ring finger of Angelo Cerceillo, called by the ink impression.
>
> Q Why is the space which is all white here between those sections, not apparent in the other section of the photograph, that professes to be taken from the axe or hatchet?
>
> A I couldn't tell, imperfections occur.

And on page 318, the witness says he cannot explain that, and that there is a very large percentage of space in the finger-print, and tells that they are

unimportant in the consideration of others. On being asked why the said space did not appear in the other photograph, witness replied he did not know. And also testified that therefore the photographs were not the same and that the finger-print is not compared with that which was found on the hatchet handle. And that therefore, correspondingly, there is an absolute and essential difference in the record between plate No. 16 and plate No. 14. Witness further testifies that he found quite some other differences and that he was unable to see lines where lines do not exist.

On page 319, the witness testifies that there was at least fifty discrepancies and that he did not trouble about them. See also on page 330-331 and 334 of the printed case.

And on page 320, the witness testifies that he has never testified in court. I respectfully submit that the conviction of a person for murder built wholly upon circumstantial evidence and basing a conviction mainly upon evidence of this kind, to allow such testimony to stand as being legal is a most fallacious doctrine in the law. This kind of testimony is too uncertain, it is too doubtful. This expert, Falk, himself, puts himself in the place of the jury in determining a most pertinent factor in this case, and the court allows him to do so, together with the witness, Schwartz. An expert witness cannot be put in the place of the jury.

Wabash Ry. Co. vs. *Samille,* 97 Ill., App., 7.
N. Gaslight & F. Co. vs. *Methkle,* 35 Ill., App., 629.

Facts must be recited to the jury so as to enable them to form a trustworthy opinion themselves.

Kocis vs. *State,* 56 N. J. Law, 44.

Witnesses cannot give their opinion in such a way as to cover the very matter to be submitted to a jury.

C. & A. R. R. Co. vs. *S. & N. W. Ry. Co.,* 67 Ill., 142.

In our own state in regard to handwriting experts, in regard to expert testimony, it has been held that evidence of handwriting experts is of low degree.

Life Ins. Co. vs. *Brown,* 30 N. J. Equity, 193; 32 N. J. Equity, 809.

How much more useful would it be to admit evidence on finger-prints when our own courts in our own state holds that testimony of handwriting experts is of low degree?

I shall now consider testimony as to the hair question.

Walter Godfrey, witness for the state, on page 113 of the printed case, testified that there was a great deal of hair laying around the body and also more still on the head which was cut loose. He further testifies, he "can't show that particular lock." "No, sir, because it was all put in an envelope together." "I can't say that particular lock that I gave to Dr. Martland laid on the ground or was on the head at the morgue."

On page 114, he further testifies that part of the hair was laying on the ground near the body and the rest of it laid on the head of the body and when the body was taken to the morgue, he took that which was loose, laying on the back of the head, and put it with the rest of the hair. And that this hair he placed in an envelope which was marked Exhibit S. 4, and that out of this exhibit, he took a lock of hair which he gave to Dr. Martland.

Dr. Harrison S. Martland, a witness for the state, testifies on cross examination, on being asked how many different qualities and kinds of human hair there are in the world, he answered that, "I should imagine that every human hair differs in some respect. There is not absolutely much in hair, in the color for instance."

On page 123, he further testifies that by many cir-

cumstances, he could say that it is the same in color, thickness and texture.

"Q Do you want to go on record and say this is the same hair?

A I haven't said it is the same hair.

Court. Can you, from examination of hair, state whether or not one hair is like another, or comes from the same body?

Witness. I cannot say it comes from the same body, but I can say that one hair may resemble the other closely, another by comparing its color, its texture and its microscopical appearance."

On page 126, this witness further testifies, "I was unable to find any hair bulbs that you would get if you pulled the hair out of the scalp, showing probably that that hair was cut, that is all I can say, that they are closely alike in color and texture. Of course, the diameter of the hair is compared very closely. Of course, you may allow some variations."

On page 127, on being asked whether he was prepared to say that the hair from the hatchet is the same hair that Mr. Godfrey brought to him in the paper, he answered, "Of course not."

On page 135, on re-direct examination, in answer to a question by the prosecutor, this witness further testified, "I mean that I could not say that it was the same hair. All I could say was what I did before, that in color and texture, it resembled closely. The two hairs resemble."

On page 404, on being asked by counsel:

"Q Now are you willing to say that the hair on the glass slide and the hair that Mr. Godfrey brought you, came from the same human body?

A I told you before I could not say that."

As far as this testimony is concerned pertaining to this human hair by allowing it to go in evidence

before the jury, there is no evidence shown to have been connected with the body of the deceased in any way. There is no direct testimony or any part of the testimony to the effect that the hair as examined by the doctor came from the scalp of the deceased and that the hair as found on the hatchet was human hair, and that it was the same hair as that on the scalp of the deceased.

In a case of homicide, a witness testified that he had made a comparison of hair taken from the head of the deceased, with hair found upon a wheelbarrow belonging to the defendant; that such comparison was founded upon his experience, he having made a careful study of hair; that the hair was precisely the same in length, magnitude, and color, and in every other respect, and added, "As the result of that comparison, I can say that it was from the head of the same person." It was held that the evidence was improperly admitted because of opinion founded on facts open to common observation.

> "The comparison made required no peculiar skill, no scientific knowledge. It was no more in the province of an expert than of an ordinary person to make it. It related to a matter of common observation. The jury were as competent to make the comparison from the description given of the hair, and draw the conclusion whether it came from the head of the same person, as was the witness. The opinion of the witness, as to the fact that the hair came from the same person, was not admissible on the ground that the inquiry related to a scientific knowledge—one which required peculiar knowledge or previous study and experience to give information about; but it related to a matter within the observation, judgment, and knowledge of any ordinary man; for the resemblances relied upon in making the comparison, as the length, magnitude, and color

of the hair, were as open to the observation of the jury, or the jury could draw their inference from those resemblances, as well as any one. The Witness, then, could not testify to his opinion on the ground that the subject-matter of the inquiry related to a scientific subject, and was expert testimony.

"Is there any other principle upon which the testimony would be admissible? At first we had some doubt whether it should not be received on the ground that the witness was merely stating his opinion as to the identity of the hair, and that it was admissible upon the same principle as an opinion in respect to the value of property, or damage done to it, or the identity of a chattel, or person, or facts of that nature. In regard to this class of facts, a witness can only testify by using language which amounts to little more than giving his opinion about them. But this kind of evidence is admitted in that class of cases from necessity, because it is impossible by any mere words of discription, to give the jury a proper understanding of the facts. * * * In a number of cases, which will be found in our reports, the rule has been laid down as to when and upon what questions a witness may testify to his opinion a conclusion of facts. But none of these go to the length of sanctioning the admission of such testimony. We think it was clearly incompetent."

Knoll vs. *State,* 55 Wis., 249., *s. c.,* 42 Am. Rep., 704.

Every impression and material connection which the state should have established between this hair did not go in evidence before the jury.

Dr. Martland says that he cannot say that it is the same hair that came from the body of the deceased. All he can say is he thinks it resembles.

I respectfully urge that the court erred in allowing this hair to go in evidence.

Our next point in regard to expert testimony will be relaitve to the human blood question.

On page 120, Mr. Martland, witness for the state, testified in conclusion, as follows: "So therefore, I am convinced that this part of this hatchet contained blood stains, that the blood stains are in all probability, those of human blood, but there is one animal that we cannot differentiate, that is the monkey, especially the higher ape.

On page 134, doctor further testified that if the alleged hatchet containing blood, had been exposed to the weather before he made the examination, or been exposed to the air for any given length of time, that it would be impossible for him to make an examination.

On page 135, on being asked the question: "You now say that your examination upon that hatchet shows that it was human blood?"

> "A I said that it shows that the stains were blood, that in all probability in my opinion, they were either human blood or blood of the monkey or fowl or not of the common domesticated animals.
>
> Q I say that it is absolutely impossible for you to say that this is human blood.
>
> A It is; yes, sir."

On page 137, on re-cross examination, on being asked whether there was any real basis for the conclusion, even on examination of blood, doctor answered, "It isn't absolute, no."

I wish to call the court's attention to Sallerthiavaits Manual of Histology, page 36, where it is held there are no certain methods of distinguishing microscopically or chemically the blood of a human being from that of an animal when it has once been dried on an article. Summing up these points and upon

the illegality of finger-print expert testimony, all I can say against such evidence is that experts are brought from a distance by the state at great cost, protracted experiments are made by them afterwards to be detailed to the jury, and testimony is adduced which the defendant must meet at the peril of life. Controvert it he readily may, if he can procure the means, for the great weight of authority, to my mind is that such identification cannot be accurately determined, but to procure this testimony, may be impossible for him, unless the prosecution assume the expense which it is often either unwilling or unable to do. This amounts to a perversion of justice; but it is not the chief objection. Experts are obtained so as to fully exhibit to the jury, both sides of this vexed question. And the case goes to the jury on their testimony, what then? Is there not danger that the jury may regard the question as one determined, not by ascertainable physical laws, but by their own discretion or on the authority of particular experts? It would seem, in view of these dangers, and in view of the more recent explorations of scientists who have viewed the question, not as advocates retained by a particular party, but as dispassionate investigators, that the time has now arrived in which it is the duty of courts to advise juries, in all cases in which it is proposed to rest, a conviction on the identity of finger-prints, that as matter of fact, no such identification can be made out beyond reasonable doubt.

And further on the blood question, that stains look like blood, may be proved by expert and non-expert witnesses, but that they are dried human blood can be satisfactorily proved by no one.

I call the court's attention to Dr. Wharton's familiar phillipic against expert testimony, Wharton on criminal evidence, Sec. 420. There is no question but that this finger-print testimony, together with the other expert testimony, should not have been received

in evidence, but only with a great degree of caution. It is a homicide case, and to uphold a doctrine that a person who is held on a charge of murder, with the only article of evidence in the case being an unidentified hatchet alleged to contain part of an impression of a finger-print on the handle, and basing the conviction on that, paying large sums of money to would-be experts who rather than testify upon what they base their opinions, rather lecture and seek to make an impression on the jury and overstep from the witness stand and literally place themselves in the position of the jurors is a most outrageous one.

I respectfully submit that our courts should discourage such evidence rather than uphold it. It is a most dangerous doctrine to be upheld in the law of evidence.

Point Two.

As to the compulsory taking of finger-prints of plaintiff in error.

Plaintiff in error and his brother were arrested together. They were first taken to the Court House, the prosecutor's office, and then from there they were taken down to the City Hall at police headquarters.

On page 234, Mr. Schwartz testified that he secured the impression of the finger-print of plaintiff in error.

On page 266, shows how finger-prints were taken and placed upon the roller. That he took each finger individually and rolled them in the manner indicated, and that he took several impressions in a certain manner indicated, and that before he made plaintiff in error put his fingers on a sheet of paper, he had him sign the said sheet of paper for what purpose it was going to be used.

On page 267, he says that his object was in securing testimony for the state, and that he did not inform plaintiff in error that would be used against him.

On page 268, Schwartz further testifies that he did not ask the consent of the plaintiff in error for the use of the blank paper which he made him sign his name to for finger-prints.

On page 269, witness testifies that he got plaintiff in error to sign a blank piece of paper without telling him for what purpose he was to sign, that he might afterwards use those forms for the purpose of having him put the finger-prints on it.

On page 270, witness further testifies that he did not warn the plaintiff in error and his brother as to their rights in signing a blank piece of paper. That they were given no opportunity to consult with any one.

Walter Godfrey testifies to the same effect.

Joseph Federici also testifies to the same effect.

In view of the testimony of this witness, Federici, while plaintiff in error was out, he had been released for the purpose of attending the funeral, was being watched and was virtually in custody. I say in those circumstances that it would be a very unwarranted proceeding in a murder case, to say that a man's signature should be obtained through a piece of paper in such a method as that nothing pointed out to him of what his rights are; they could have identified these finger-prints without having plaintiff in error sign his signature.

Vencenzo Cerciello, on page 278, testifies that he was forced to sign, that he did not want to sign and they said, "You've got to sign it." And being asked who said it, he testified the people in the City Hall. "All he says to him, 'You got to sign, if you don't sign, I don't know what you get, got to take it down to the cooler.' "

I think that under the testimony shown on record, that it would be incompetent to put in evidence, the papers that were marked by the names of the people.

The names were obtained without safeguarding their rights.

The same argument would apply here as originally stated on my original brief on page 16, I contend that the obtaining of marks on paper is the same as obtaining a confession or admission of facts; to sustain a doctrine that a person can be forced or rather compelled under compulsory examination to give evidence against himself in a criminal case, is contrary to the constitutional law of this country.

Boyd vs. *U. S.*, 116 U. S., 616.
Emerys case, 107 Mass., 172, 181.

Compulsory examination of accused cannot be resorted to.

State vs. *Jacobs*, 5 Jones (N. Car.), 259.
State vs. *Johnson*, 67 N. Car., 58.
People vs. *McCoy*, 45 How. Pr. (N. Y.), 216.

Evidence of an enforced comparison of foot-prints is not admissible.

Stokis vs. *State*, 5 Baxt. (Tenn.), 619; 3 A. M. Reporter, 72.

Trying on shoe.

People vs. *Mead*, 50 Mich., 228.
Day vs. *State*, Ga., 667.
Blackwell vs. *State*, 67 Ga., 76.

Point Three.

Our next point as to the testimony of Laudisi. This witness was sworn in behalf of the state. He was convicted of murder in the first degree in the Court of Oyer and Terminer for the murder of a child, which was the child of his sister-in-law, he being the reputed father of the said bastard child. In the printed case, this court will find in his testimony, that he admits the guilt of the said crime. He had for eight months, remained in the jail pending and

awaiting sentence to death on the said charge while at the jail; the state claims that the plaintiff in error talked with this witness and told him certain facts of the murder, which the plaintiff in error denied that he ever did.

A person of this character to be allowed to testify and to admit his testimony and allowing it to go before a jury, is clothing a man of his type, with a right to commit perjury, when the law can reach him no further, and reap the benefits by way of commutation of his death sentence, as a reward for his act by helping the state to convict another who was being held on flimsy evidence before being brought to trial. A man who will deliberately ingratiate himself into the confidence of another for the purpose of betraying that confidence, and while with words of friendship from his lips, he is seeking by every means in his power to obtain an admission which can be tortured into a confession of guilt which he may blazon to the world as a means to accomplish the downfall of one for whom he professes great friendship, cannot be possessed of a very high sense of honor or of moral obligation. Hence the law looks with suspicion on the testimony of such witnesses.

Preuit vs. *People*, 5 Neb., 377.

It is doubtful to my mind if anything is really gained in the administration of the law from the admission of such testimony and the consequent encouragement of the courts of the practice. If it is answered that confessions are thus obtained which otherwise could not be had, it may be said, in reply, that the same is true of the rack and wheel, by means of which confessions were formerly forced from its victims, but which experience showed, were entirely unreliable.

The following authorities establish a proposition which I now put up to this court upon the considera-

tion of the testimony of the said Laudisi, and as regards to the whole case, that an extra-judicial confession, uncorroborated and without proof *aliunde* that the crime has been committed will not justify a conviction.

Robinson vs. *State,* 12 Mo., 592.
State vs. *Scott,* 39 Mo., 424.
State vs. *German,* 14 An. Rep., 481.
State vs. *Paterson,* 73 Mo., 695.
State vs. *Brooks,* 10 West. Rep., 679.

Point Four.

As to the question of motive.

I urge upon the court, the fact that in this case the prosecutor failed to show a motive for the crime. The court must bear in mind that this is a case of circumstantial evidence, there being no direct evidence whatever in the case that connects the plaintiff in error with the commission of the murder, and in view of the fact that the state failed to show a motive for the crime, that they failed to prove one of its main links for the circumstances which they sought to prove, namely murder committed by the plaintiff in error, I contend that it is of great importance to see whether there was a motive for committing such a crime, because of the fact of circumstantial evidence. "In looking at the motives which instigate human conduct, we ascend to the very origin of crime."

Burrill Circ., Ev., 281.

It is in cases of proof by circumstantial evidence, that the motive often becomes not only material, but controlling, and in such cases, the fact from which it may be inferred, must be proved. It cannot be imagined any more than any other circumstance in the case.

Chief Justice Church in *People* vs. *Bennett,* 49 N. Y., 137.

Evidence of motive is most pertinent and important when clearly connected with declarations which demonstrate that the particular motive has passed into action, or with inculpatory moral facts which it tends to explain, and co-ordinate, and which would otherwise be inexplicable.

Wills Circ., Ev., 42.

I take it that it is always an exceedingly satisfactory circumstance of corroboration in a criminal case, when in connection with other convincing proofs, an adequate motive for the crime or act can be assigned. It is a general axiom of human action, that all persons act from motive, and it is always a satisfactory circumstance if a jury can feel that it is proved to their satisfaction that the party had a motive, a strong, impelling motive, for the act which he is charged with doing. The absence of a probable motive is a circumstance always to be considered by the jury in favor of the accused, and it is always a just argument on behalf of one accused, that there is no apparent motive to the perpetration of the crime. Men do not act wholly without motive. On the other hand, proof of motive tends, in some degree, to render the act so far probable, as to weaken presumptions of innocence, and corroborate evidence of guilt.

And so, therefore, I contend that inasmuch as the State has failed to prove a very material link in the chain of evidence, inasmuch as this is a case of circumstantial evidence, that the State failed to show who the murderer was.

I therefore submit that a *veniri de novo* should issue.

FRANK M. McDERMIT,
Of Counsel with Plaintiff in Error.

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* ANGELO CERCIELLO, *Plaintiff in Error.*	*On Indictment and Conviction in the Essex County Court of Oyer and Terminer of the crime of Murder in the First Degree.*

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for the review of the judgment of the Essex County Court of Oyer and Terminer of Essex County in this State, convicting the said Angelo Cerciello of the crime of murder in the first degree, and that I have refused to order a writ of error for the review of said judgment.

EDWIN R. WALKER,
Chancellor.

Dated at Trenton, N. J., January 16, 1914.

Writ of Error.

Filed January 17, 1914.

NEW JERSEY COURT OF ERRORS AND APPEALS.

The State of New Jersey, to our Judges of our Court of Oyer and Terminer of the (SEAL.) County of Essex, constituting the Court of General Quarter Sessions, in and for said county, GREETING:

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

WITNESS, Edwin Robert Walker, Esq., Presiding Judge of our said Court of Errors and Appeals, at Trenton, the sixteenth day of January, in the year of our Lord one thousand nine hundred and fourteen.

DAVID S. CRATER,
Clerk.

FRANK M. MCDERMIT,
Attorney.

Return.

Endorsed:

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* ANGELO CERCIELLO, *Plaintiff in Error.*	*On Writ of Error, &c.*

Presented in open court this 19th day of January, 1914.

WILLIAM P. MARTIN,
President Judge.

Filed January 17, 1914.
JOSEPH MCDONOUGH,
County Clerk.

Return.

COUNTY OF ESSEX.
STATE OF NEW JERSEY, } *ss.*

I, William P. Martin, Judge of the Court of Oyer and Terminer in and for Essex County, New Jersey, do hereby certify and return to the Court of Errors and Appeals, the court of last resort, the indictment, judgment and proceedings, together with all things touching and concerning the same and the entire record in the case as by the within writ to me directed, I am commanded.

In witness whereof, I have hereunto set my hand and official seal of said court and county, this day of January, A. D., 1914.

(SEAL.) Wm P. Martin

Indictment.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the third Tuesday of September, in the year of Our Lord one thousand nine hundred and twelve, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Thomas L. Morton, William Kennedy, Samuel Schechner, John C. Fineran, William Roberts, Andrew J. Donahue, Joseph Samuel, John Birkenhauer, Louis W. Kenngott, William E. Quinn, Leo McCabe, Benjamin Shephard, John L. Carroll, Lewis A. Kimbel, James S. Pigott, James R. Hensler, John L. O'Toole, John Howe, Munson G. Doremus, Terrence J. Devine, Peter Fox, Edward J. Hunt and Henry Stephens, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

ESSEX OYER AND TERMINER.

September Term, A. D., 1913.

ESSEX COUNTY, to wit: The Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath present that Angelo Cerciello, late of the Town of Bloomfield, in the County of Essex aforesaid, on the thirtieth day of May, in the year of Our Lord one thousand nine hundred and

thirteen, with force and arms at the town aforesaid, in the County aforesaid, and within the jurisdiction of this court, one Elvira Cerciello, in the peace of God and of this State then and there being, wilfully, feloniously and of his malice aforethought, did kill and murder—contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

LOUIS HOOD,
Prosecutor of the Pleas.

And on the twenty-seventh day of October, A. D., nineteen hundred and thirteen, on which day the said indictment was presented by the Grand Jury aforesaid to the said Court of Oyer and Terminer, and an entry of such delivery and filing was then and there made in the minutes of said court, at the same time pursuant to the statute in such case made and provided.

Plea.

And afterwards, that is to say, at the same session of the Court of Oyer and Terminer, holden at Newark, on the twenty-ninth day of October, in the year of Our Lord one thousand nine hundred and thirteen, before the justice and judge aforesaid, comes the said Angelo Cerciello in the custody of John F. Monahan, Sheriff of the County of Essex aforesaid, in the above custody of the jail of the county aforesaid, he has been before committed for the cause aforesaid being brought to the bar of this court in his own proper person by the said sheriff to whom he is also committed and having heard the indictment and being forthwith demanded of and concerning the premises in the above indictment specified and charged upon him how he would

acquit himself thereof, he says that he is not guilty thereof and therefore for good and evil he puts himself upon the county and Louis Hood, Prosecutor of the Pleas, for the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

Postea.

Therefore, let a jury thereupon come before the justice and judge aforesaid, at Newark aforesaid, in the County of Essex, at the same session of the Court of Oyer and Terminer aforesaid, on the seventeenth day of November, in the year of Our Lord, one thousand nine hundred and thirteen, twelve free and lawful men each of whom shall be a citizen of this State and a resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years by whom the truth of the matter may be better known and who are not of kin to the said Angelo Cerciello, to recognize upon their oath, whether the said Angelo Cerciello be guilty of the murder in this indictment aforesaid specified or not guilty, because as well the said Louis Hood, Prosecutor of the Pleas of the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf as the said Angelo Cerciello has put himself upon the country, and the same day is given to the parties aforesaid, and the same place, at which day, to wit, the seventeenth day of November, in the year of Our Lord one thousand nine hundred and thirteen, at the same term of Oyer and Terminer, holden at Newark aforesaid, in the County of Essex, before the Honorable William P. Martin, Judge of the Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the said County of Essex, comes the said

Louis Hood, Prosecutor of the Pleas who prosecutes aforesaid, and the said Angelo Cerciello, in the custody of John F. Monahan, Sheriff of the county aforesaid, being brought to the bar in his own proper person, by the said sheriff, and the jurors of the jury by the said sheriff for this purpose empanelled and returned, to wit: (After the following challenges have been exhausted. By the State, 11; by the Defendant, 12; for cause 2) Hugh O'Grady, DeWitt C. Pell, Abraham Feinberg, Frederick J. Oppel, Thomas D. Anderson, Elwood T. Reid, Martin Wright, William R. Farlee, Simon Gans, Henry R. VanDuzer, Albert O. Vogeler, and Walter L. Babcock being called come and were sworn on that jury to speak the truth of and concerning the premises and thereupon the trial of the issue commenced before the said court and jury, from day to day, until the twenty-fifth day of November, in the year of our Lord, one thousand nine hundred and thirteen, at Newark aforesaid, the jury in the meantime being all that time kept together and in the care of officers of the said court, who were selected and duly sworn by said court for that purpose at which last mentioned day the said issue after a charge from said court and submitted to the said jury, and the said jury in charge of said officers of said court for that purpose were taken to a private room to consider of their verdict, and afterwards, that is to say, on the day aforesaid, at Newark, the said jury returned into and before the said court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said Prosecutor Louis Hood and the said Angelo Cerciello say that the said Angelo Cerciello is guilty of the murder in the first degree, and so say they all.

Judgment signed December 9, 1913.

WM. P. MARTIN,

Judge.

Judgment.

Whereupon, all and singular, the premises being seen, and by the court now here fully understood, it is, on this ninth day of December, A. D., nineteen hundred and thirteen, ordered and adjudged that Angelo Cerciello be taken to the County Jail from whence he came, and there to be kept in strict custody and from thence that he be taken by the sheriff within ten days after the issuing of the warrant to him for that purpose, and delivered to the principal keeper of the State Prison, to be kept by him in solitary confinement until the week beginning Sunday February first, nineteen hundred and fourteen, and upon some day within the said week, at his discretion as to the time within the walls of the buildings provided by the Board of Inspectors of the State Prison for that purpose, or within the yard or enclosure adjoining thereto, the principal keeper of the State Prison shall execute the punishment of death upon the said Angelo Cerciello, by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, the application of such current to be continued until the body of the said Angelo Cerciello be dead.

And may the Lord have mercy upon his soul.

ESSEX COUNTY COURT OF OYER AND TERMINER.

November 17, 1913.

STATE	*Indictment*
vs.	*No. 229.*
ANGELO CERCIELLO.	*Murder.*

Transcript of shorthand notes of testimony taken before his Hon., William P. Martin, Judge, and a jury, at the Courthouse, in the city of Newark, New Jersey, in the presence of Wilbur A. Mott, Esq., Assistant Prosecutor of the Pleas, for the State, and Frank M. McDermit, Esq., for the defendant.

Mr. Mott opened for the State.

Mr. Mott. May it please the court, we have a map there on the board not prepared by a surveyor. I have submitted it to Mr. McDermit and we are both satisfied it is substantially correct and I understand we are willing that it should be used and marked as an exhibit in the case.

The Court. By whom was it prepared?

Mr. Mott. It was not prepared by a surveyor at all. The measurements were taken by Mr. Godfrey, in our office.

The Court. It will be received by consent and it will be subject to correction.

Map marked Exhibit S 1.

The Court. I think you better, during the course of the trial, get a proper survey duly authenticated.

Mr. Mott. The distances are so large there and cover so much territory it is quite a job to do that. This is only an outline sketch. It only shows the lay of the ground. It doesn't help very much to have a map.

DANIEL ROBINSON, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Robinson, where do you live? A 172 Honiss, Silver Lake.

Q And were you living there in May of this year? A In Honiss street?

Q Yes. A Been living there going on seven years.

Q Where were you working last May? A Last May? Willette & Lawless.

Q Where is their place of business? A On Grove street.

Q In Bloomfield? A Near the Crocker-Wheeler place. You know where the Crocker-Wheeler place is?

Q Yes. A Just up above Crocker & Wheeler place, on the D. L. & W. road there.

Q What is their business? A Lumber—handle lumber.

Q Did you work Decoration Day of this year? A No, sir; did not.

Q On Decoration Day morning about seven o'clock where were you? A I was going to take care of my horses.

Q Where were they? A They lived—the stable is right in the yard at the lumber yard.

Q And on your way did you notice something? A Yes, sir; I did.

Q What did you notice? A Why, I looked at—I thought at first it was a man. I was within about twelve feet of it, going along, near the path to the—just through the edge of the woods. I stopped about twelve feet of it and looked at it and found it was a woman, because she was lying flat face. She had on dark button shoes.

Q Did you know the woman? A No, sir; I didn't know her. I know it was a woman—knowed

the difference between woman and man, but didn't know the woman.

Q What time was it you saw the body lying there? A About half past six in the morning.

Q And when you saw her what did you do? A Why, I went over to the stable—on my way over to the stable I told a fellow by the name of McPotts—sits in the rear there.

Q And who was McClane Potts? A He is over there. He is employed—worked for Mr. Willette & Lawless.

Cross examination by Mr. McDermit.

Q What time of day was this? A Half past six in the morning.

Q And was it light or dark at that time? A Light.

Q What was the date? A I don't know the date of the month it was but I know it was on Decoration Day.

Q It was on Decoration Morning? A Yes, sir.

Q Of this year? A Yes, sir.

Q Did you do anything after you saw this body at all? A I took care of my horses and went back home.

Q When did you next go there? A What?

Q When did you next go back there? A I didn't go back that way at all. I come along Grove street and they had taken—the woman wasn't laying there when I came out Grove street—went out Grove street and down Bloomfield avenue home.

Q About how far away? A From the path?

Q About how far away from Bloomfield avenue was this spot where you saw this woman lying? A Well, I should say about three or four hundred yards from Grove street.

Q Three or four hundred yards from Grove street? A Yes, sir; down the hill.

Q Grove street is the street that runs north and south, does it? A Yes, sir.

Q Runs over from Central avenue to Bloomfield avenue? A To Bloomfield avenue.

Q And then on over? A Yes, sir.

Q How near to Bloomfield avenue was this spot where you saw this woman? A Oh, I couldn't exactly say. It was quite a distance from Bloomfield avenue to where she was laying.

Q You know where North Eighteenth street is, do you? A Yes, sir.

Q And you know where Beardsley avenue is? A I don't know exactly where Beardsley avenue is, but I know where North Eighteenth street is.

Q Now there is a street that runs the same as—almost the same as Bloomfield avenue, that is running practically east and west, one block from Bloomfield avenue towards Central avenue—do you know where that is? A That is Eighteenth street.

Q No; Eighteenth street runs the same way as Grove street. A Yes, sir.

Q Now, Bloomfield avenue runs past both those streets? A Yes, sir.

Q In the center of Bloomfield? A Yes, sir.

Q Now, where did you start to get into Grove street—where? A I got into Grove street just beyond the woods right by the fellow used to keep milk. I don't know what his name is—lives in the country.

Q You live in Honiss street? A Yes, sir.

Q Got up in the morning about quarter after six? A About half-past six.

Q About half-past six. You passed through Grove street? A Yes, sir.

Q How did you get to Grove street from where you lived? A Go right off from Belmont avenue right through the lots.

Q Yes. These lots were all open there? A Yes, sir.

Q No fence around them? A No fence.

Q There is some sort of company up there improving the lots, isn't there, filling it in? A Yes, sir.

Q It was formerly all woods and all swamp land, wasn't it? A Yes, sir.

Q Now, you went across from Bloomfield avenue across lots to Grove street? A Yes, sir.

Q And don't you know where the street is that is opened up from North Eighteenth street to Grove street? You can use it for walking but cannot use it for trucking and driving? A I don't know what the name of the street is. I know where it is.

Q There is a street there? A There is a street there, yes, sir.

Q Did you cross that street that morning? A Yes, sir; I did.

Q Whereabouts on Grove street did you go to get your horses? A The horses' stable is right off of Grove street.

Q Whereabouts? Where off of Grove street? Where? A Just a couple of minutes' walk from the D., L. & W. Railroad track.

Q That is over close to Springdale avenue, is it? A No, sir; this side of Springdale avenue—two blocks from Springdale avenue.

Q This side of the Lackawanna crossing of Bloomfield— A Just the other side.

Q Over towards Bloomfield. Whose stable is that? A Willette & Lawless.

Q Was it your duty to report there that morning and take care of the horses? A Yes, sir.

Q Were you working that day? A Didn't work that day but I had to go take care of my horses.

Q Now, there was at that time a number of trees up there, wasn't there? A Yes, sir; lot of them stands there yet.

Q And Grove street from Bloomfield avenue on over to pretty nearly where your stable is is all hedges, is it not, or was? A About a block of the

stable. There is houses too along there—quite a lot of houses.

Q On the block near the stable? A Yes, sir.

Q But on the easterly side of Grove street, last May, there was hedges all the way over, wasn't there? A Yes, sir.

Q And trees? A Yes, sir.

Q Now, do you know where Thomas street is? A Thomas street?

Q Yes. A Yes, sir; street—you mean Silver Lake?

Q Yes; Thomas street, Silver Lake? A Yes, sir.

Q That runs out to Bloomfield avenue? A Runs out to Bloomfield and across.

Q It is almost where North Eighteenth street is? A Yes, sir; pretty near.

Q Now, you went across to the road—look at this map for a moment, just for the purpose of guiding you—this is Bloomfield avenue (indicating) on the map? A Yes, sir.

Q Here is Thomas street, Silver Lake—here is the Silver Lake section (indicating)? A Yes, sir.

Q Now, you started across, did you, on a line across the whole lots? A I crossed the lots right in front of Belmont avenue, Silver Lake, right across lots—make my way across lots out to Grove street where the milkman used to live—don't live there now. He lives in Springdale.

Q When you came across from Bloomfield avenue you didn't come to Thomas street? A No, sir.

Q You came from Honiss street? A Came from Honiss, down Belmont avenue—

Q Down Belmont avenue and crossed Bloomfield avenue? A Yes, sir.

Q Then across to Grove street? A Right across lot to Grove street.

Q You did not cross from Grove street into this patch, did you, of ground between— A The path

goes right through the edge of the woods—right along the edge of the woods. This woman was laying about twelve or fourteen feet, as near as I can possibly say, off this little path. I had been traveling that path for the last year or more—little path made through the woods.

Q Now, that was—after you left Bloomfield avenue you would come through a large territory, wouldn't you, before you got to the stable? A Yes, sir.

Q No cross streets except this so-called Beardsley avenue, if that is the name of the street that runs from North Eighteenth to Grove street? A I don't know what the name of the street is. I know the street there.

Q Was it above this street that the body was found or was it below this street—or was it south of Beardsley avenue or was it north of Beardsley avenue? A Laid twixt Eighteenth and Grove street but she laid nearer to Eighteenth street than what she did to Grove.

Q You know where the boundary line is between Bloomfield Township and East Orange Township, don't you? A Yes, sir.

Q Is your barn in East Orange side or is it in the Bloomfield side? A East Orange.

Q You know where the line starts? A Yes, sir.

Q Was her body in Bloomfield—inside of the Bloomfield territory or inside of the East Orange territory? A Bloomfield.

Q Bloomfield territory? A Yes, sir.

Q How close to the East Orange territory? A Quite a ways.

Q How far? A I don't know exactly how far, but I know it is quite a ways.

Q Now, according to this map it is 162 feet in from Grove street to where this body was supposed to have been found. Here is a mark (indicating). I

call your attention to it. Here is the mark put upon this map for convenience to indicate where the body was found. The measurement shows 162 feet from Grove street direct to where the body was found. Now, this path you talk about runs between where the body was found and Grove street? A Yes, sir.

Q And you found the body to the left of you as you were going south? A Yes, sir; about twelve feet from this little path.

Q About twelve feet from that path? A Yes, sir.

Q Now, how many feet in is the path from Grove street proper, about? A How many feet in from which?

Q You were on the path. You found the body about twelve feet off the path, to the east? A Yes, sir.

Q And how far from where you were is Grove street proper—the street itself—from the path? A A From the path?

Q Yes. A Grove street?

Q Yes. A I don't know exactly how many inches.

Q About. Approximately? As long as this room here? A Oh, yes; longer than that.

Q So that this path you were traveling upon is a path which is frequently used, is it? A Yes, sir.

Q Used by day and by night? A I don't know about night. I never came along there at night. I have been traveling that path for the last year or more.

Q It is not an unusual thing for you to meet people on that path, is it? A No, sir.

Q And the passengers going to and from the East Orange section to the Bloomfield section of Silver Lake use that path because it is a short cut? A Short distance over to Bloomfield avenue.

Q Yes. So you were pursuing that path that morning because it was the usual path that you took to get to your place of business? A Yes, sir.

Q Now, when you came in to where this body was what did you find there? Now just describe to his honor and the jury what you did and what you found there? A I didn't find anything only she was laying flat of her face. She had her hand like this over her face and this hand was cut and her head was cut into gashes this way and that way (indicating) but I didn't touch her at all.

Q Now you didn't expect to meet that kind of occurrence that morning, did you? A No, sir; if I did I wouldn't have went that way.

Q That kind of frightened you a little? A Certainly did.

Q And when you saw that situation you became very much excited, I suppose? A Yes, sir.

Q You really didn't stop long enough there to make any great—strict observation of the situation, did you? A No, sir; I did not.

Q You just dug out, went to the stable and then afterwards did not come back that way? A No, sir; I went right along Grove street.

Q Right along Grove street? A All the way out to Bloomfield avenue and down Bloomfield avenue.

Q Now, how close did you get to this body? A About twelve feet of her.

Q That was the nearest you come? A Yes, sir; that is as near as I wanted to get to it.

Q Now, what do you mean by twelve feet? Can you give us some idea here by indicating? A Why, twelve feet I would take here over to the second bench there, little over.

Q About the second bench outside? A No; right behind this large gentleman.

Q You mean the rail here (indicating)? A Yes, sir; as near as I can come at it.

Q Could you see the cuts on the head from there? A Yes, sir; it was light enough for me to see.

Q The body was laying down? A Yes, sir; the flat of her face.

Q And one arm was under— A This hand (indicating) was this way, across her face, but you could see the hand up as far as the wrist.

The Court. Was it her right arm?

Witness. Her right hand.

The Court. Against the ground and her head resting on her forearm?

Witness. Just the same as this (illustrating).

Q Did you see the body after that again? A No, sir; I did not.

Q You said something about noticing that the finger or something was cut—or hand was cut? A I could see from where I stood the fingers was cut.

The Court. That is the index finger on the right hand, he indicated?

Witness. Yes, sir.

The Court. One finger?

Witness. I see one finger was cut. You couldn't see very much of it from the blood.

Q Do you know what kind of a dress she had on? A Kind of a dark, as near as I can remember now—it was something dark—green dress—kind of greenish looking dress she had on.

Q Did she have any hat on there? A I didn't see any hat.

Q Or bonnet? A She had a short coat on.

Q Any shawl? A Had a coat on. One of these short coats.

Q Did you notice whether there was anything else lying around where she was? A No, sir; I did not.

Q And could you see from the roadway—the pathway rather—could you see from the pathway clear to where the body lay? A Yes, sir.

Q Was there an opening there? A Yes, sir; there is an opening there yet.

Q And there was a tree very close to where this body was found, wasn't there? A Well, tree down—quite a distance down below it.

Q Now, where the body was found is entire open space, no shrubbery or anything there? A No, sir; all open space there; kind of a gravel place like.

Q Yes. There are no trees or shrubbery or anything either east or west or around there, for a space of at least three or four hundred feet; isn't that so, outside of the shrubbery on Grove street? A That is all.

Q That is correct, isn't it? A And trees down below; yes, sir.

Q Trees down below. All this territory now is wide open. A Perfectly open; yes, sir.

Q So as to get to this spot where you saw the body a person could come in North Eighteenth street, going south, and go by this street or over any portion of the lot and get there, couldn't they? A You couldn't see her exactly coming up North Eighteenth street excepting you were going towards Grove street and go by that way, then you could see her up there.

The Court. Counsel in referring to "this" is referring to the map already alluded to. Has it been marked yet?

Map marked Exhibit S. 1.

Mr. McDermit. Now, then, let it appear upon the record, please, that the questions immediately heretofore asked by counsel applied to the map now marked Exhibit S. 1.

The Court. That will so appear.

Q Now when you were, for instance, down Thomas street—you know this territory very well there, Mr. Robinson—you know this place very well around there? A Yes, sir; I do.

Q And there are no houses or anything of the kind on any of the territory across between Grove

street and North Eighteenth street and where this street runs across on the exhibit to Grove street, are there? A No houses at all.

Q That has been laid out—is being laid out and was then being laid out to be cut up into city lots, is that right? A Yes, sir.

Q Big piece of territory? A Yes, sir.

Q Now, how near to where you saw the body this morning is the nearest house? A The nearest house? I don't know exactly—from—well it is about course of long block, I guess—very short—I will say it is from here down to Augusta street.

Q Down to Augusta street. That would be in the neighborhood of four hundred feet. Would that be about right? A About that.

Q And where is the next house after that? A Next house is about fifty or sixty feet from that. Party lives in that house now.

Q Now, this (indicating) is the nearest house occupied by anybody? A Nearest house? No; that belongs to the Land Improvement Company.

Q No one lives there? A No one lives there at all.

Q There are only two houses in that vicinity and one is an unoccupied house? A Yes, sir.

Q And the other is ocupied by whom? A I don't know what the people's name that live in it is but I know there is a family in it.

Q Well, now, in going from Thomas street—suppose you were at Thomas street and you wanted to make a short cut to get from the corner of Thomas and Bloomfield avenue as it appears upon Exhibit 1, how would you go there? Point on that map. A Going where?

Q How would you go—suppose you wanted to go to Thomas street and Bloomfield avenue as it appears upon this Exhibit, what would be the shortest way to reach the spot where you found the body of the dead

woman? A Go right across the lots the same as I always go.

Q Would you cut across here (indicating) or would you come up here to Grove street and go across there? A I would go across right in front of Belmont avenue, the same as I always did.

Q Belmont is considerably above Thomas street? A Belmont avenue is one block below Thomas street.

Q How, towards Bloomfield? A No, sir; towards Newark.

Q Then Thomas street is above Belmont avenue. A Yes, sir.

Q When you came out of Belmont avenue you used to cross these lots and get into Grove street on a pathway that run the whole way across? A Yes, sir.

Q Now, about—on that map—how would it run? Can you show the jury here? Suppose you say you are at Bloomfield avenue—here is Bloomfield avenue (indicating) below Thomas street, if your statement is right—I guess it is below Thomas street—you go from here to get to your barn—how would you do it? A Start at Belmont avenue.

Q Yes; to Grove street? A Yes, sir. Start at Belmont and go this way across the lot and then get into Grove street at the last house on Grove street where people live in.

Q Now, that pathway, then, cuts you off from going up Bloomfield avenue to Grove street here (indicating)? A Yes, sir.

Q And Bloomfield avenue runs kind of—the same as this map shows here, does it? A Yes, sir.

Q At an angle? A Yes, sir.

Q Doesn't run directly north and south at this particular junction, but it runs at an angle. That is right, is it not? So therefore, the object of crossing here is to save approximately four or five hundred feet; isn't that so? A Yes, sir.

Q Now this grove that you speak about—this path commences then at Bloomfield avenue? A Runs right—go right across Blomfield avenue right into the lot.

Q You go down into a sort of swamp, don't you? A Yes, sir.

Q Then it runs up hill again at Beardsley avenue? A Yes, sir.

Q Then down again and up again? A Yes, sir. It comes out into Grove street.

Q And that pathway has been there how long? A I have been traveling it for two years to my knowing.

Q It has been there for two years? A Yes, sir.

Q Now, there isn't anything that surrounds that pathway from Belmont avenue to the point that you get up here that hides it in any way, is there? A No, sir; not but little woods up there—up there near Grove street why you come to a patch of woods.

Q On the easterly side of Grove and to the west from Eighteenth street and to the west from your pathway—is that the woods? A Yes, sir.

Q But you found her body when you were crossing—A This side of the woods.

Q This side of the woods, out in the opening? A Yes, sir; out in the opening.

Q So that she could reach this territory from North Eighteenth street at any junction, or from Belmont avenue, or Thomas street, or enter from this street (indicating) as long as she didn't go up to Grove street? A Yes, sir.

Q Or they could have gone up to Grove street and come up Grove street and entered down to Beardsley avenue and then came across to where this plot was, is that right? A Might have done it. I don't say they did it that way.

Q It could have been done? A It could have been done.

Q You could reach this point where you saw the body by going up Bloomfield avenue to Bloomfield avenue and Grove and across Grove southerly to Beardsley avenue and down Beardsley avenue and then over to where the body was found, crossing your pathway—crossing the pathway where you were on? A Yes, sir.

Q How long a time did you remain—how long a time did you remain where the body was? A Didn't stop there not five minutes.

Q Not five, eh? A No, sir; no longer than I made out it was a woman and I left her, went on back to the stable.

Q Didn't feel the woman to see whether she was a white woman? A No, sir; had no business to feel of her. I was too scared to put my hand on her.

Q Stood there about five minutes? A Stood there about five minutes, until I saw she was a woman; went on to the stable.

Q How could you tell she was a woman—had on dresses? A Had on dresses. Never see men with as small shoes as they were.

The Court. Did she have shoes on?

Witness. Yes, sir.

Q Then, you went from there to your stable? A Yes, sir.

Q How long did you remain there? A After I got my nerve quieted down a little bit I took care of my horses and went back home.

Q How long did it take you to get your nerve quiet? A I set on a wagon pole. I was scared to death. Set on the wagon pole for at least twenty or twenty-five minutes before I took care of my horses and went home.

Q And you went back, I understood you to say, by Grove street? A Yes, sir.

Q Didn't go back the pathway? A No, sir.

Q Who was the first person you told anything about your experience that morning? A Who was the first person?

Q Yes; to whom you reported it after you came to —after your excitement was over? A After I went to the stables?

Q Yes. A That gentleman sitting over there.

Q And who is that gentleman over there? A Mc. Potts, McClane Potts and Tom McConicle are the only two people I spoke to.

Q Now after you told McConicle and the other man what your experience had been did you start out with them to go back to where the body was? A No, sir; did not.

Q Did they go? A They went.

Q Both went? A Yes, sir.

Q Did they ask you to go? A No, sir.

Q Did they ask you where it was? A I told them where it was.

Q And were you still at the stable when they came back after loking at the body? A They didn't come back to the stable.

Q Didn't come back? A No, sir.

Q That is all you know about the whole matter? A That is all I know about it.

Q How long does it take to go from Belmont avenue over to the spot where you found this body lying, about? A How long it would take?

Q How long does it take to walk over there? A Walking anyway briskly you could go there in about four or five minutes.

Q Four or five minutes? A Yes, sir.

Q And if you were walking slowly I suppose it would take a little longer? A Takes you a little longer.

Q What do you usually call your walk from Honiss street to the stable? A I give myself twenty

minutes. I make it sometimes in less than that. Just according to how I feel.

Q Do you know whether there are any lights around there or not? A Only lights there are on Grove street.

Q Do you know how far away from the spot where this body was found there is a light? A Light just opposite, upon Grove street, opposite where she was laying in the lot, but it don't—the light don't throw any reflection on this place at all. It is quite a distance away.

Q There is a light—look at this map, Exhibit S 1—incandescent light appears on a line 190 feet from spot where body was found. That I understand is about right, is it? A About that.

Q About that. A Yes, sir.

Q Now, there is another incandescent light on Grove street down from there probably about 300 or 400 feet more, isn't there, or don't you know? A I don't know anything, how many feet it is. There is several lights along there on Grove street.

Q Do you know who those lights belong to, whether they belong to East Orange or Bloomfield Township? A Belong to Bloomfield, I think.

By the Court.

Q Was the ground wet or dry there? A Where she was laying?

Q Yes. A Well, the ground had been—been raining a little bit that night as near as I could get at it.

Q Was it bare or covered with grass? A Where she was laying there was no grass at all there.

Q Did she have a hat? A I didn't see any hat at all.

Q Did you see any part of the clothing or anything of that sort near where she was, not on her? A No, sir; I did not.

Q Was she bleeding? A She wasn't bleeding when I seen her.

Q Did you notice any blood? A I didn't notice any blood at all, only on her head; that is all.

McCLANE POTTS, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Potts, where do you live? A No. 6 Achilla street, Soho.

Q And for whom were you working last May? A Willette & Lawless Lumber Company.

Q Do you know Daniel Robinson who was just on the witness stand? A Yes, sir.

Q Did you see him on the morning of Decoration Day last? A Yes, sir.

Q Where did you see him? A Over at the stable.

Q And what time of day? A Well, around seven o'clock, I guess.

Q Did he then tell you something? A Yes, sir.

Q After that what did you do? A Why me and the stableman got in the wagon and drove over to see what he told us.

Q Well, did you do anything else before you drove over? A No, sir; not after he told me.

The Court. What is the stableman's name?

Witness. Tom McConicle.

Q Did you telephone to anybody? A Yes, sir.

Q To whom? A Chief of Police in Bloomfield.

Q When did you telephone, before or after you went over there? A After I went over.

Q Well, then, you and—what was the other man's name? A Tom McConicle.

Q Went to the place where Robinson directed you, did you? A Yes, sir.

Q And what did you find when you got there? A We found a woman laying there.

Q You found a woman lying there? A Laying there; yes, sir. And her head was cut and then we

went to Mr. Morris' to telephone and Mr. Morris wasn't up there—went from there to Seventh street and Chester avenue and telephoned to Chief of Police.

Q Of Bloomfield? A Yes, sir.

Q Then after you telephoned to the Chief of Police what did you do then? A Why, then, after, I drove up there and met the Chief of Police.

Q You drove back to the spot? A Yes, sir.

Q About what time was it when you, if you recollect,—when the Chief of Police got there? A When the Chief of Police got there?

Q Yes. A Well, I should judge it was between half past seven and eight o'clock when he got there.

Q And did you touch the body in any way? A No, sir.

Cross examination by Mr. McDermit.

Q Now, what did you say your name was? A McClane Potts.

Q You found Mr. Daniels in quite an excited condition when he came into the stable? A Why, yes; he seemed kind of scared.

The Court. I thought his name was Robinson, Daniel Robinson.

Mr. McDermit. Daniel Robinson.

Q Daniel Robinson appeared to be quite frightened that morning when you saw him? A Yes, sir.

Q And he explained something to you and then you hooked up the horse and wagon— A No, sir; I had the horse and wagon hooked up.

Q You had the horse and wagon hooked up. You took the horse and wagon and drove over with who to that place? A Tom McConicle.

Q Is he here? A No, sir.

Q How far from the stable was this spot where you found this body? A From the stable?

Q Yes. A About four blocks from the stable, I guess.

Q Four blocks. Could you drive right in to where the body was? A Yes, sir.

Q Did you do so? A Yes, sir.

Q And how close up to the body did you go? A Well, I drove the horse, I guess, within fifteen or twenty feet of her.

Q Did you get out then? A Yes, sir.

Q Did you go over— A I walked around her; yes, sir.

Q Did you examine her? A Didn't touch her, no, sir.

Q Didn't touch her? A Walked around her.

Q How close did you get? A Oh, I was within as far as—as close to her as I am to you.

Q Now, what did you see there? A What did I see?

Q Yes. A I just saw a woman laying there; that is all I saw.

Q Well, now, you said something about her having cuts on her head? A Yes, sir; I saw her head cut.

Q In what way was the head cut? A Well, it was all cut up in gashes so as you could lay your finger in them. Laid up like a piece of raw beef.

Q And what else did you observe? A And I observed her hand cut—fingers.

Q Well, now, what fingers did you discover cut? A Well, I didn't take so particular notice of that, but it looked to me as though they were cut right off like that (indicating).

Q Didn't make much of an inspection, but some of the fingers had been cut down about two or three inches from their tips? A Yes, sir.

Q Did you observe how one of her hands lay—was one of her hands under her forehead? A Yes, sir; she laid with her forehead like that (indicating).

The Court. Her forehead on the right forearm?

Witness. Yes, sir; just like that (illustrating).

Q Now, then did you observe whether the fingers were cut upon that right hand or on the left hand? A I think it was cut on the left hand.

Q Do you know? A I am not sure; no, sir.

Q You got excited too, didn't you? A No, sir; I did not.

Q Didn't? A If I had been excited I wouldn't have went there.

Q How long did you stay there at that time? A First time I stayed there probably five minutes.

Q Five minutes? A Longer than that because a wagon came over and I called him Venzo Moore.

Q Is he here? A I guess not—drives for Seigel & Cooper, Belleville. I called him down there.

Q You called him down and you went down with him? A I was down there. He come past with a wagon on Grove street.

Q Did you look around the premises there? A No, sir.

Q You must have made some inspection of the ground around there. Did you see any clots of blood there or pool of blood or did you see anything extraordinary there? A No, sir.

Q Did you notice any garments torn or anything of that kind? A No, sir.

Q Did you notice anything that would indicate a struggle around there? A No, sir.

Q Did you see any knives? A No, sir.

Q Whether there had been any hatchets or knives or anything of the kind laying there—you would have seen them, would you not? A If they laid there I would have seen them, yes, sir.

Q And the place where she laid was in the clear for how wide a space or circumference around it—how much? A One hundred feet around.

Q One hundred feet around. Now, on the spot where she was was that just ground itself, land itself? A Sure.

Q Was there any bushes around her? A No, sir.

Q Was there any grass under her? A No, sir; she laid right on the ground—raw ground—where they had probably been dumping dirt there or cleaning dirt away from there.

Q So the place where you found her was right upon the opened-up ground there? A Yes, sir.

Q That they had been making even territory there, hadn't they, even ground? A They had been grading that street through there, Chester avenue.

Q Now, then her body lay there? A Yes, sir.

Q And you walked around the body? A Yes, sir.

Q You remained there about five or seven minutes until the party came who drove the Seigel & Cooper wagon? A Yes, sir.

Q Then you remained there a little while longer, did you? A Remained there a little while.

Q Then he got out of his wagon? A Got out of his wagon.

Q And was his wagon—look at this map—was his wagon on Grove street? A His wagon was on Grove street; yes, sir.

Q His wagon was on Grove street and when you heard him he was on Grove street going which way, north or south? A South; towards East Orange.

Q Going towards East Orange. Did he drive his wagon in there? A No, sir.

Q He left his wagon in Grove street, got out of his wagon and came down? A Yes, sir.

Q And remained with you? A Yes, sir.

Q You and he talked together, did you? A Yes, sir.

Q And both of course were surprised at what was there? A Yes, sir.

Q Now, if there had been anything around there within a space of fifty, seventy-five or a hundred feet that was the result of any scuffle there, you would have been able to observe it, would you not? A Well, yes, sir, I probably would have seen it, I probably would have seen it.

Q And so you saw no razor or hatchet or anything else that indicated the use of any weapon there? A No, sir.

Q And there was nothing lonely about the spot where this woman was found as far as the open was concerned?

Mr. Mott. I object to the use of the word "lonely."

Mr. McDermit. I will withdraw the question.

RECESS.

Q Did you visit that place more than once that day? A Which place?

Q Where the body was found? A Yes, sir.

Q How often did you go there? A Twice.

Q Now, the second time that you came back what time of day was that? A Between half-past seven and eight o'clock.

Q Well, you were told about this thing first by the witness, Robinson? A Yes, sir.

Q About seven o'clock? A About seven o'clock.

Q Then you went over there with a wagon, you and somebody else? A Yes, sir.

Q Then you drove away from there again? A Yes, sir.

Q And then you went back there again about how much later? A Well, between half-past seven and eight o'clock.

Q Who did you go back there with? A I went back there with a couple of fellows I met.

Q Well, who were they? A Well, they were Italian fellows and their names—one of their names was Tony. I don't know the other one.

Q How did they come to go back there with you? A Because I took them there in a buggy.

Q You took them there in a buggy. Where did you pick the two Italian fellows up? A Over in Ninth street.

Q Did you know them? A Yes, sir.

Q Did you request them to go with you? A Yes, sir.

Q And they went with you? A Yes, sir.

Q How old were these persons? A I don't know.

Q Eh? A Well, I haven't got any idea how old they were.

Q Well, do you know whether they were boys or whether they were men? A They were men. Married men.

Q Married men? A One of them had six or seven children. I don't know how old he was.

Q Lived in the Silver Lake district? A Yes, sir.

Q Do you know what part of Silver Lake he lives in? A Yes, sir; North Ninth street.

Q What number North Ninth street? A I don't know.

Q Could you go to the house now and point it out? His first name is Tony? A First name is Tony.

Q What did he work at? A At that time he was working over in the lumber yard.

Q What did he do? A Unloading cars and piling lumber and anything else that was to do around the yard.

Q Why was it that you took those two Italians back with you to this place, what was the idea? A Because I drove down there and told him—told Tony.

Q Yes—what did you drive to him for? A Well, I don't know why I drove there. Just drove there.

Q Were you afraid, too? A No, sir; I wasn't afraid.

Q Where was it you drove to Tony's place, North Ninth street? A Yes, sir.

Q How far is that away from the place where you saw this body? A Well, probably half mile.

Q And then you took those people back there? They talk English, do they? A Yes, sir. I was going to go home and I went over that way to go home and I stopped there.

Q You hadn't reported this matter to the police or anybody? A Yes, sir; I had reported it to the police then.

Q When you got hold of these two Italians? A Before.

Q Before. Now you brought the Italians back there? A Yes, sir.

Q What did you do there? A Then I met the Chief of Police there and I went home from there.

Q Well, what did you do when you went back there the second time, did you go any closer to the body? A No, sir.

Q How near did you get to the body the second time when you went back there? A Within ten or twelve feet I suppose.

Q Ten or twelve feet. What did these Italians do when they came there? A One of them shut his eyes and told me to come on and go home.

Q Well, what did the other one do? A The other one, I don't know; he didn't do anything at all that I know of. He didn't say nothing.

Q Neither one of those Italians or anybody else picked up anything around there? A No, sir.

Q No knives picked up there? A No, sir.

Q Or hatchets or choppers or anything of that sort there, was there? A Not that I saw.

Q The Chief of Police was there? A The Chief of Police was there.

Q What is his name? A Collins.

Q Was he there when you got there? A He was coming across the field and he happened to see the wagon there and he come on over.

Q He got there the same time as you got there? A I was there a little bit before. He seen the wagon and come down.

Q When was it that you had sent word to Chief Colilns, how long before that? A Well, between seven and half past.

Q You telephoned to him, did you? A Yes, sir.

Q Telephoned to Bloomfield center, to the Police Station? A Yes, sir.

Q That there was a woman's body down in Grove street? A Chester avenue and Grove street.

Q Chester avenue and Grove street? You call that Chester avenue? A Yes, sir.

Q You say the body was found corner of Chester avenue and Grove street? A No, sir; I did not. I said the body laid about 200 feet probably from Grove street.

Q Chester avenue? A Chester avenue.

Q ——has been used by you and other witnesses. Where is Chester avenue in that locality? A Chester avenue is where the woman was found.

Q Then there was a street—she was found on the street, was she? A No, sir; she was found about, as near as I can judge, about fifty feet from the street —probably a little over that.

Q Was she found on Chester avenue? A I will say about fifty feet from Chester avenue.

Q From Chester avenue. Which way does Chester avenue run there? A Chester avenue runs from Fifth street right straight up to Grove.

Q Fifth street to Grove? I was under the impression that Chester avenue was north of Bloomfield, running east and west. A Chester avenue is north of Bloomfield avenue until it comes up to Bloomfield

avenue, then it crosses Bloomfield avenue and runs to Grove street.

Q Where does it cross Bloomfield avenue about? A It crosses—

Q I mean around Thomas street or Belmont avenue or Grove street. A It crosses Bloomfield avenue right at Heckel street.

The Court. It is nearer Newark than Grove street and Bloomfield avenue?

Witness. Heckel street is below Belmont avenue one street.

The Court. You mean "below" nearer Newark?

Witness. Nearer Newark.

Q Does it come up to Thomas street? A Chester avenue?

Q Yes. A No, sir.

Q It don't come up to Belmont avenue either, does it? A It crosses about there.

Q Then at the intersection of Belmont avenue with Bloomfield avenue, Chester avenue comes in there then? A Chester avenue runs up right in through there, yes, sir.

Q So that that would be below North Eighteenth street, towards Newark—east of North Eighteenth street where Chester avenue comes in? A Where it crosses Bloomfield avenue?

Q Yes. A Yes, sir.

Q Two or three blocks down? A The blocks isn't cut through there. I don't know.

Q You don't mean to say now that Chester avenue crosses Bloomfield avenue? A Yes, I do.

Q Goes through—crosses Eighteenth street? A Yes, sir; it crosses Eighteenth street.

Q And it crosses through this territory here into Grove street? A Runs right straight up to Grove street; yes, sir.

Q Do you know where Beardsley avenue is? A Beardsley avenue? Yes, sir.

Q How near is that to Chester avenue? A Next block back.

Q North or south? A Towards East Orange.

Q Then Chester avenue must be between Beardsley avenue and Bloomfield avenue; is that right? A Chester avenue is between Bloomfield avenue and Beardsley avenue; yes, sir.

Q How far is Chester avenue from Bloomfield avenue? A Well, as near as I could judge probably 500 yards.

Q 500 yards? A Yes, sir.

Q Then Mr. Robinson must have been greatly mistaken when he said that the body laid south of Beardsley avenue towards the East Orange line.

The Court. You are asking him to characterize testimony of another witness. Ask him what he knows.

Q I call your attention to Mr. Robinson's testimony. Mr. Robinson says that the body lay east of Grove street approximately 175 to 200 feet and that it laid north of—it laid south of Beardsley avenue. A Well, it lays north of Beardsley avenue. It laid south of Chester avenue. That street in there has never had any name on it—it has never been cut through as a street, only just striking through.

Q Turn around and look at the map. A I know it. I was born right there. I know all about it.

Q Then you can give us some information. You are the man we are looking for. A I knew it before it was ever cut off.

Q You are the man that will give us the information then.

The Court. You say Chester avenue was never cut through and never opened, and there are trees in it?

Witness. No, sir; there was no trees in it. Since this Empire Landing Company has got hold of it, they have tried to grade it half way through—it is half graded and half not.

Q Look around. I know you know the territory well but I want to invite your attention to this map. This represents Beardsley avenue running east and west (indicating); that represents Grove street (indicating); this is Exhibit S 1; running north and south, also represents north Eighteenth street running north and south. You say that Belmont avenue, which is shown upon this map at this point (indicating), one point below Thomas street, you say Chester avenue crosses Bloomfield avenue there, do you, and continues on to Grove street? A Yes, sir.

Q How far is Chester avenue from Beardsley avenue? A Block.

Q One block. Now, this body was found where? South or north of Chester avenue? A South.

Q Where you saw it. South of Chester avenue? Then the body was found between Beardsley avenue and Chester avenue? A Yes, sir.

Q Correct? A Yes, sir.

Q Now, which was it nearer to, Chester avenue or Beardsley avenue? A Chester.

Q Chester avenue. Are you sure about that? A Yes, sir.

Q Couldn't be mistaken about that? A Impossible.

Q What is the distance between Beardsley avenue and Chester avenue? A About a block.

Q A block. Now, then, so that there may be no mistake about this, I ask your attention once more to it. You say you know the territory. Now, turn and look at this map. This is important. You say that Chester avenue crosses this place along here (indicating), is that right? This is Bloomfield avenue on the map. This is Beardsley avenue (indicating). You

say Chester avenue crosses in through here. Is that right? A Well, now, as you go, I will tell you how it is. You drive around in Heckel street—

Q No; I want you to explain. A I am telling you. Drive around in Heckel street, you go around like this and go right up in Chester avenue, come right across and go down that way (indicating.)

Q You were born in there, and you know? A Yes, sir; I was born—

Q Look at the map. A I am looking.

Q Chester avenue crosses this place here then? A Yes, sir; comes right out there (indicating).

The Court. Indicating a point between Beardsley avenue and Bloomfield avenue.

Mr. McDermit. And Bloomfield avenue on this map at a distance of what?

Q How many feet from Beardsley avenue? A Which?

Q Chester avenue? A One block.

Q How many feet do you say that is? A You know a block. I don't know how far a block is.

Q About how far? I don't know what the blocks are up there; you do? A I don't know either. Probably 250 feet—probably 200 feet.

Q I thought you knew all about that territory? A I do.

Q Born up there and knew it all? A I was but I don't take a rule—

Q I knew that place before you were born? A I guess you have.

Q You know Chester avenue is laid out on the block between Eighteenth street and Grove street—is not laid out? A Yes, sir; it is not laid out.

Q You can't drive wagons across from North Eighteenth street, can you, on Chester avenue? A North Eighteenth street—yes, you can.

Q You can? A Yes, sir.

Q It is in use now? A Yes, sir; I drove through there that morning.

Q You drove through there that morning? Couldn't be mistaken? A Could not.

Q That the body was laying right south of Chester avenue? A Yes, sir.

Q That is in Bloomfield? A That is in Bloomfield.

Q That is in Bloomfield. This other place on this map—turn around again now because you know that locality and I don't so well—this spot here where they pointed this morning, being 150 feet south of Beardsley avenue, that would be in East Orange? A Beardsley avenue? No, sir.

Q Beardsley avenue is also in Bloomfield? A Yes, sir.

Q How far is the East Orange line from there? A Beardsley avenue?

Q Yes, the East Orange line from Beardsley avenue? A It is about two blocks, I guess.

Q You don't know where the East Orange line is? A Yes, I do know where it is.

Q Do you know where the barn is that you came from that morning? A Yes, sir.

Q Do you know whether that is in East Orange or not? A I certainly know it is in East Orange; yes, sir.

Q Now, did you have occasion to go back to this spot again, after that that day? A Did I have occasion to go back there?

Q Yes. A No.

Q No officer ever come to see you to ask you where the body was found? A No, sir.

Q You don't know whether the body was removed from this spot over to there (indicating) or see anybody remove it that morning? A No, sir.

Q As far as you know there was no removal? A No, sir.

Q And you can't be mistaken about that? A No, sir.

Q And do you know where Beardsley avenue is, positively? A Yes, sir.

Q And that runs north from Eighteenth street into Grove street? A Yes, sir.

Q That cannot be used—no vehicles, wagons can go through there? A Yes; Beardsley avenue from Grove street to Eighteenth street they can.

Q They can, eh? A Yes, sir.

LEWIS COLLINS, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Collins, what position do you hold? A Chief of police, sir.

Q Of what town? A Town of Bloomfield.

Q How long have you been chief of police? A About fourteen years.

Q On Decoration Day morning last did you receive some information which induced you to go into the neighborhood of Chester avenue and Grove? A Yes, sir.

Q What time did you get the information? A About 7.35.

Q And what did you find when you got down to the place? A A man 'phoned. I asked who it was, &c.—

Q No. I asked you what you found? A I found the body of a woman.

Q Where was the body located, chief? A Located about 200 feet east of Grove street, about fifteen or twenty feet south of Chester avenue, near the junction of Beardsley avenue there, facing north—kind of northwest—northeast a little.

Q Are you familiar with the streets there? A These are new streets. Never been graded.

Q They are not graded. Just partially opened? A Yes, sir.

Q What is the location of Chester avenue and Beardsley avenue with reference to each other? A Chester avenue starts in at the city line near Belmont avenue and comes through on an angle to Grove street.

Q That goes clear through; and then where is Beardsley avenue and what is Beardsley avenue? A That runs half a block the other side of Grove—east of Grove street—running south.

Q I call your attention to this map. Here is Grove street, here is Bloomfield avenue and here is Eighteenth street and here is a street marked Beardsley avenue (indicating). Where would Chester avenue come in there, if at all? A Chester avenue would come in from down this way, up this way (indicating).

Q And where would it run into? A Why strikes just about—strikes in about on this angle, up here (indicating).

Q Does it go through to Grove street? A I think it does; yes, sir. I think it is intended—

Q Does it cross Beardsley avenue? A Yes, sir.

Q What? A Yes, sir.

Q And about whereabouts does it strike Beardsley avenue? A Well, somewheres near a patch of woods up here, this side (indicating).

Q Now, chief, when you got there that morning, who went with you? A Officer Marshall.

Q And did you see anybody else there? Was there anybody around while you were there? A We got there just a few minutes before this former witness, and as I understood him to describe the body was lying in the woods, in the edge of the woods, so they drove in through Beardsley avenue or Chester avenue. We went down there. He was there with two other men with a runabout.

Q Well, now what did you find as to the body? A The body was lying facing a little northeast resting on the right hand similar to that (illustrating); part of her dress thrown up.

The Court. (Indicating her forehead on her right forearm?)

Witness. Yes, sir. Part of her dress thrown up exposing her stockings; considerable—three or four cuts on her head; blood trailed back about ten feet from the body.

Q And what did you do with the body, if anything? A I left Officer Marshall there and immediately come back—before that I had 'phoned to Chief Weimer the word I had received from Potts.

Q Of the prosecutor's office. And you left Officer Marshall in charge of the body? A Left Officer Marshall in charge of the body.

Q Did you disturb the situation at all? A Not a thing. Told him to keep the people off that were congregating there from the vicinity of the body.

Q Did you come back there again? A Yes, sir; but the body then had been taken by the officers.

Cross examination by Mr. McDermit.

Q Do you know that territory pretty well, yourself? A Well, a little.

Q Can you give me any idea on Exhibit 1 for the State—now take this pointer and show me on there where Chester avenue crosses that street (indicating) this is Bloomfield avenue. If you haven't examined the map examine it before you talk. A Well, you see there is no opening there. It was cut through —never any grading or anything else. There is a driveway through there that is very irregular.

Q Don't you know now where Chester avenue starts to cross the ground opposite Bloomfield avenue, to the south of Bloomfield? A It crosses Bloomfield there somewheres by the city line, I think, in Belleville. It starts in Belleville, I think.

Q Chester avenue starts in Belleville and runs across the Newark City line into East Orange—comes through Newark, doesn't it? A Comes through Bloomfield.

Q Through Bloomfield? A That is the new Chester. I don't know anything about the old Chester.

Q I am talking about this Chester—Chester avenue crosses upon this place here—this section (indicating) this map proper—can you tell the jury where Chester avenue enters that block (indicating)? A At Bloomfield avenue.

Q At Bloomfield avenue? A By Belmont avenue.

Q How does it run? A It runs northeast and southwest, I should say.

Q Runs north—runs northeast? A I should say that; yes, sir.

Q And southwest? A Yes, sir.

Q Don't you know how it runs at all? A Well, I should say that.

Q The location is northeast and southwest? A I should say so.

Q Well, chief, is that a street? Is that laid out as a street at all—any grading there? A No grade.

Q Flagging? A No, sir.

Q Sewers there? A No, sir; nothing but a driveway through there.

Q Wagons pass over there? A Driveway.

Q Any sign there "Chester avenue" or anything? A I couldn't tell you whether there is or not.

Q Don't you know? A No, sir. If there is a sign there it is in Belleville where it enters Bloomfield avenue.

Q I am not speaking about Belleville, I am speaking about Bloomfield. You say you saw this body this side of Bloomfield avenue and east of Grove street and west of North Eighteenth street? A Yes, sir.

Q The body, when you saw the body—you were there twice? A I saw the body once.

Q Saw it once. The body was gone the second time? A Yes, sir.

Q Can't you tell on that map where the body was located? A About 150 or 200 feet I should judge east of Grove street.

Q Where? A Near Beardsley avenue and Chester avenue, about there (indicating).

Q Well, I supposed Chester avenue was here (indicating). A It runs that way, I believe (indicating).

Q Don't you know which way it runs? A Northeast and southwest, I said.

Q Does it cross Beardsley avenue? A I believe it does.

Q Don't you know whether it does or not? A No; I can't say whether it does. There are no signs there or anything else. It is unimproved property.

Q Well, don't you know whether that body was north or south of Beardsley avenue? A I should say it was south.

Q South of Beardsley avenue? A Yes, sir.

Q Now positive about that? A Yes, sir.

Q You have heard the testimony of the witness Potts on the stand as to where that Chester avenue lays and as to it being north, did you? A Why, I didn't hear all of it.

Q You heard his testimony, it was north of Beardsley avenue and it was within a very few feet—short distance of Beardsley avenue. That couldn't be so, could it?

Mr. Mott. I object.

The Court. Objection sustained.

Q Now, you are Chief of Police and you went there, found the body, and what did you do there? A I left Officer Marshall in charge of it.

Q What did you do yourself? A What did I do?

Q Yes. When you got there what did you find? A Found the body lying there, of the woman.

Q What did you do? A Left Officer Marshall there and went back there.

Q Who else was there at that time? A Potts and two other men drove up there in a rig.

Q Did you examine the body? A Didn't touch it, no, sir.

Q Did you cover the body? A No, sir.

Q What was Marshall's name? A What is Officer Marshall's name?

Q Yes. A Officer Marshall.

Q He is not a marshal, just name is Marshall? A That is it.

Q Officer Marshall. You left him there and went away? A Yes, sir.

Q Made no investigation at all as to the surroundings there? A Yes, sir.

Q What did you find? A A lot of blood on the ground.

Q You said a few moments ago you saw a trail of about ten feet? A Yes, sir.

Q What else did you observe there? A What else? Nothing.

Q Did you make any search for anything around there? A Right around there. Walked around, saw the blood and told Marshall not to let anybody around that circle there, to keep the crowd back that was coming in there from Bloomfield.

Q Large crowd congregating? A Yes, sir.

Q How much of a crowd when you left? A Twenty or thirty when I left.

Q Twenty or thirty when you left. You told him to keep them away from the body? A Yes, sir.

Q You were waiting for the county physician? A Yes, sir.

Q And you had made a search of the vicinity around there? A Few feet.

Q What do you mean by a few feet? A Ten or fifteen feet circle around the body.

Q What was the condition of the ground around there? A Number of tracks and blood I saw.

Q Number of tracks and blood. How many tracks did you see there? A I didn't count them.

Q Didn't count them? See more than one? A Yes, sir.

Q Did you make any measurement of them? A No, sir.

Q You just simply put Officer Marshall in charge and went away? A Waiting for the officers to come from the county, yes, sir, which had been notified before.

Q Did you see any woman's combs there? A No, sir

Q Did you search for any evidence of weapons there? A Looked around there fifteen feet or so to see what I could find.

Q Didn't it occur to your mind that the woman might have been killed? A It looked as though she had been killed, yes, sir.

Q Yes. You had a theory about it? A Yes, sir.

Q And what was your judgment as to how she was killed? A It looked as though she had been murdered with some kind of weapon.

Q Yes? Did you make a search for that weapon there to find it? A I told you I looked around fifteen feet or more to see what I could find.

Q Did you instruct Marshall to make a search there? A No, sir; I told him to stay there and keep the crowd away from the body, away from that circle.

Q You knew what your duty there was as to making that search, didn't you? A I did it, I believe.

Q And you know what your duty was about making that search before the crowd collected there? A I did, sir.

Q You made the search and found nothing there? A Couldn't see anything right around there, as I told you.

Q You didn't look very far, did you? A I told you how far I looked.

Q You said for a circle of ten or twelve feet? A I said fifteen feet around in a circle.

Q Circle from around the body? A Yes, sir.

Q About fifteen feet in circumference? A Yes, sir; fifteen feet from the body each way, which would be thirty feet in diameter.

Q And found nothing at all? A No, sir.

Q It was daylight? A Yes, sir.

Q And it wasn't raining then? A No rain then, no, sir.

Q Clear morning, was it? A Yes, sir.

Q Did you observe anything about her fingers or her hands? A Yes, sir; they were cut.

Q Well, did you notice whether the fingers were on or off? A No; I think they were fast.

Q Think they were fast. Did you make any note at that time? Did you take your note book and make any note about the finding of the body—look at the time of the day—make that report? A When I got the message I knew the time, yes, sir.

Q And did you ever see the body after that again? A No, sir.

Q Why didn't you keep those people further away from the body? A Why, what do you mean?

Q Officer Marshall—why didn't you instruct him to keep the people further away than fifteen feet? A Why, I didn't know. Wasn't that far enough?

Q I don't know. It depends how this case develops, whether it was or not, kind of—that is all.

Redirect.

Q When you were decribing the location of the body you said something about some woods. A Yes, sir.

Q Where was the body with reference to the woods? A The body was lying northeast of the woods.

Q Where were the woods? A The woods is south, on the east of Grove street, south of Beardsley avenue.

Q How far was the body from the woods? A Oh, I should judge 100 feet or more—150 feet possibly.

Re-cross.

Q You don't mean to say there is a woods there, do you? A Yes, sir; number of trees, oak and chestnut, &c.

Q Yes; but that has all been pretty well cut down for years back, hasn't it? A Well, they was there as I told you Decoration Day morning.

Q If you know where Beardsley avenue is—I assume you do—you must know—there is only three or four trees on that spot up there for a distance of circumference of 150, 200, 300 feet? No trees there (indicating). What was the nearest tree to where this body was found? A Well, a clump of woods, I told you, 150 feet or more.

Q Yes. And all that woods in there (indicating) that has been from time to time taken and made into fire wood, so that the whole thing has been cleaned up except a few trees in there (indicating), isn't that so? A No, sir; there is a clump of trees as I told you right on the east of Grove street, south of Beardsley avenue.

Q Do you know anything about the path that the witness said he traversed there? Do you know anything about any pathway there, he crossed? A I don't know anything about the path.

Mr. McDermit. What was the name of that fellow that traveled the pathway? What was the name of that path?

The Court. You cannot interrupt the proceedings this way.

Q Do you know where there is any pathway that goes from Bloomfield avenue across to Grove street used as a foot passenger way? Has that any—A

Pathway? One of those streets laid out—wagons go through there occasionally too.

Q Has that any name? A I couldn't tell you.

Q Is that Chester avenue? A I think that was Chester avenue.

Q You think the pathway then across there is Chester avenue? A That is what it is intended for, yes, sir.

JOHN R. MARSHALL, sworn for the State.

Direct examination by Mr. Mott.

Q You are a member of the Bloomfield Police force, I judge, Mr. Marshall? A Yes, sir.

Q And on the morning of Decoration Day last did you, in company with Chief Collins, go down to the neighborhood of Beardsley avenue and Grove street? A Yes, sir.

Q What time did you get down there? A Well, between seven and eight o'clock.

Q And when you got down there what did you find? A Found this woman laying there.

Q Where was she lying, as near as you can recall? A Well, she was laying I should think between 100 and 150 feet this side of Grove street, and then there was a path goes near her—where she laid—for a short cut across there.

The Court. By this side of Grove do you mean the east side?

Witness. Yes, sir.

Q Is Beardsley avenue open through there, as you know? A Well, all you can see is where the streets —some has been laid out but only sewers in them, no path or gutters or anything in them, no paving or anything.

Q No sidewalks? A No, sir; no names on the streets. I didn't know it had a name.

Q It is possible to drive through with a wagon?

A You can drive through the same as going out into the country in the woods. That's the kind of a road it is.

Q Now, were you left in charge of the body there? A Yes, sir.

Q How long did you stay there? A I stayed there until the county physician—or until Mr. Weimer came there.

Q Mr. Weimer of the prosecutor's office, you mean? A Yes, sir.

Q What was the next official that came? A Why, the county physician.

Q Dr. McKenzie? A Yes, sir.

Q About what time did Dr. McKenzie get there? A I guess around nine o'clock—between eight and nine.

Q And were you there when the body was taken away? A Yes, sir.

Q What time was the body taken away, about? A Well, I should judge that was around about nine o'clock.

Q After or before Dr. McKenzie came? A After he came.

Q And was Dr. McKenzie there when the body was taken away? A Yes, sir.

Cross examination by Mr. McDermit.

Q How long do you say you remained there with the body? A I suppose I was there about an hour or more.

Q What time did you report there? A Well, I didn't report. The Chief come out and got me and I went down with him.

Q The Chief came after you? A Yes, sir; I was on the street.

Q And you went over there but did not go back with the Chief? A Sir?

Q You did not go back from there with the Chief? A No, sir; I did not.

Q He came over and got you on the street. Where did he get you on the street? A On the center—Bloomfield center.

Q How many miles was that from where the body was found? A It is a mile, I should judge.

Q A mile. So he gave you instructions to go down there? A No, he came down with me.

Q Came down with you? A Yes, sir.

Q Bring you into the place there? A Yes, sir; we both went there together.

Q You and he came there together? A Yes, sir.

Q He went away from there? A He told me to stay there and keep the crowd away—not to let them get around to trample around or anything.

Q How much of a crowd came there? A Well, a crowd came there—well, there was about twenty-five to fifty there before Mr. Weimer came, and then the crowd increased.

Q How large did it increase? A I suppose there must have been 100 or more there.

Q 100 or more there? A Yes, sir.

Q And you were keeping them away from the body? A Yes, sir.

Q How much distant from the body? A Who?

Q How much distance from the body was the crowd? A I kept them away about twenty-five feet.

Q Twenty-five feet. Did you patrol around there during that time? A No, sir; I didn't go near the body. I saw there was footprints and everything around there. I kept a certain distance away.

Q Did you see any weapon there? A No, sir; I did not.

Q Make any search for a weapon? A After the body went away I went out around there fifty or 100 feet and couldn't find anything.

Q Make a thorough search there, did you? A Yes, sir.

Q How long did it take you to make that search? A I suppose it took twenty or twenty-five minutes.

Q Twenty or twenty-five minutes. You found nothing at all? A No, sir; all I found was her back comb then—the twist she had in her hair. That I gave to the undertaker to take along.

The Court. Where did you find that?

Witness. Found that about—well, they laid about I guess, twenty-five feet from the body.

The Court. You mean a woman's switch?

Witness. Yes, sir; switch what she wears in her hair.

The Court. And black comb?

Witness. No; I guess it was a gutta-percha comb or rubber.

The Court. These were about twenty-five feet away from where the body was?

Witness. Yes, sir.

The Court. You picked them up, did you, from the ground?

Witness. Yes, sir.

Q Now, was there anything else you picked up? A Yes, sir; there was. I think there was a handkerchief with initials on.

Q What did you do with the handkerchief? A I gave that—I think I gave it to the undertaker. He put that in the basket with the body.

Q And how far was the handkerchief away from the body? A That laid about ten or fifteen feet away from the hair.

Q In another direction from where you found the comb? A Well, her head laid kind of towards the northeast and it looked to me as though she must have had her hand up when she fell. Her feet was laying right by it, and I walked around the body and see this laying there, and I see an initial on it, and her brother-in-law was there—her husband's brother—he said it belonged to his brother's wife, that was her initials.

Q You say you consumed twenty or twenty-five minutes in a search? A Out from the body.

Q After the body was taken away? A I went further than that away. I went around and looked—there was some woods there. Where she laid it was all open field, there was nothing growing there much. I went away 50 or 100 feet away from the body and looked in the clumps of woods where it was growing to see if I could find anything.

Q What were you searching for? A To see if I could find any weapon.

Q What character of weapons did you suppose you would find there? A I couldn't tell you. That is what I wanted to find out.

Q Which direction did the trail of blood that you say extended out a distance of ten feet—A As she laid that way (indicating) the trail of blood extended off that way (indicating).

Q Relative to the situation where the body was on the map? Assuming that this (indicating)— A Here (indicating) her head.

Q —assuming that this point here that is marked on this map was the location where the body was found, now in which direction, east, west, north or south, was the trail of blood? A All up this way (indicating) from her feet.

Q Then it was to the south? A Yes, sir.

Q Sure about that?

The Court. East?

Witness. South or southeast.

Q Southeast that would be?

The Court. Answer the question. Would it be southeast?

Witness. This is—I think it would from the way she laid, Judge.

Q So that the trails of blood lay—A In this direction (indicating).

Q In this direction? A Now, there was all footprints all around there (indicating) as though there was a struggle.

Q So that the footprints also, apparently, were south or south of east from the body? A Yes, sir. And then you could see footprints under her after the body was taken away.

Q After the body was taken away there was footprints under her? A Yes, sir.

Q They all seemed to look—A You see where men fight they jump all around; they wouldn't stay in one place.

Q —seemed to be a good many feet there? A What?

Q Seemed to be a great many feet there? A Yes, sir; footprints.

Q Good many footprints, I mean. Did you measure the footprints? A No, sir.

Q Did you look at them to see whether they were the same? A Some man's size because you could tell by the heels on the shoes.

Q As to the other footprints? A I couldn't tell.

Q Ground looked pretty hard? A It was pretty hard but wasn't so very hard. It would make a print on it. It wasn't soft.

Q It looked as though there had been a struggle there? A Yes, sir.

Q And looked as though there had been a good many footprints there? A Yes, sir.

Q How many footprints embedded in the ground, probably forty or fifty? A Well,—

Q About twenty-five times? A Might be.

Q Give us approximately. You were there. A Might be twenty-five times more or less.

Q How about the footprints there of men's footprints—men's shoes,—if there was any? A Well, looked to me as though there was only two or three.

Q Looked as though there was two or three differ-

ent men's shoes? A Yes, sir; I don't mean two or three, but I mean there was more than that. You could see them, but some got covered up, all jumping around there.

Q I see. In other words the only evidence of the struggle there that you observed was the tracing of that blood running in a southeasterly direction from where the body was found and footsteps found under her body, making many indentures with their own shoes and other footsteps southeasterly of the body? A Yes, sir.

Q Showing many footsteps? A Yes, sir.

Q And some covered again by—A Footprints around there for about ten or fifteen feet in circumference and there was a pool of blood right under her neck where she laid there.

Q So that it looked to you from the examination as though there had been quite a struggle, didn't it? A Yes, sir.

Q Have you seen anything of that handkerchief since? A I did not.

Q Seen anything of the comb or the other article since? A No, sir; I have not.

Q You don't know who has got possession of those? A I don't know who has got them now, at all.

Q Did you ever go there to make a search after that again? A I did not. Officer Marshall went down there after that looking round.

Q Did you ever go down there to make a search after that? A No, sir.

Q Were you ever requested to make a search after that? A No, sir.

Q Do you know where this body was taken? A I don't know where it was taken. Mr. Kuntz, the undertaker, took it, I believe, to Orange or East Orange.

Q Did he bring his wagon there? A Yes, sir.

Q Did his wagon back up to where this body was? A Backed up until about twenty-five feet of it.

Q What street did he come up on? A He came over Grove street.

Q How did he get in to where the body was? A There is kind of a driveway through where it is open —level—graded off.

Q Is that the driveway you have spoken about as being Chester avenue? A I don't know which driveway it is.

Q Is the driveway which the undertaker came with his wagon the driveway you called Chester avenue? A It is just like going out in a vacant lot.

Mr. Mott. Answer the question.

Q Is the driveway which he came through from Grove street to where the body was what you call Chester avenue or not? A I don't know as there was any streets run through there, because they haven't named them or anything else though, since this East Orange Land Company got it.

Q You saw Dr. McKenzie there, didn't you? A Did I call back to him?

Q You saw Dr. McKenzie there? A Yes, sir.

Q You saw what he did when he got there? A Well, he looked at the body and had it removed.

Q What did he do? Tell the jury what he did. A He had the body removed. Now, that is all I seen him do.

Q Did he look at the body? A Yes, sir; he looked at the body.

Q Did he touch the body? A He looked at her. Pulled up—I laid a paper over her so as to keep the flies from her—over her head—he lifted that up and looked at her.

Q Did he say anything? A No; he didn't say anything to me.

Q Did you say anything to him? A No.

Walter Godfrey, direct.

Q Did you give him your views as to how you thought the woman might have come to her death? A You could tell how she looked, how she come to her death.

The Court. Answer the question.

Witness. No; I suggested nothing to him.

Q Suggested nothing? A No, sir.

Q He suggested nothing? A No.

Q Now, he removed the body? A Yes, sir.

Q Yet you were the officer in charge there, detailed to make the investigation. He was the county physician?

The Court. What is the use of arguing with him? He did not suggest anything.

Mr. McDermit. That is all.

Redirect.

Q I understand the comb and hair you found they put with the body in the basket? A Yes, sir; I gave it to them.

Q And the handkerchief—everything you found was put in the basket with the body? A Yes, sir.

WALTER GODFREY, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Godfrey, you are a detective in the prosecutor's office, are you? A Yes, sir.

Q On the morning of Decoration Day last, did you go to the scene of the homicide near Grove street and what we call Beardsley avenue? A I did, sir.

Q Did you go alone or in company with somebody? A In company.

Q With whom? A Chief Weimer and his son.

Q How did you go? A In an automobile.

Q About what time was it when you got there? A About eight o'clock.

Q Who was there when you got there? A Officer Marshall.

Q And was there anyone around at that time? A A number of people, yes, sir.

Q How near to the body were they? A Oh, within ten feet of the body, sir.

Q After you and Weimer got there who came next of the officials? A Kunz, the morgue keeper.

Q And then who came? A Dr. McKenzie.

Q About what time was it when McKenzie came? A I should think between quarter of and nine o'clock, sir.

Q And after McKenzie came what did you do with the body? A The body was removed to Kunz's morgue.

Q And what was it removed in? A In the morgue keeper's wagon in a basket. Put into a basket and the basket put into the wagon, sir.

Q Who put the body in the basket? A Morgue —or at least Kunz, the morgue keeper, and I think Chief Weimer and myself. There were two or three parties assisted in moving it into the basket.

Q Did you see the body at that time—did you notice the body at that time? A I did, sir.

Q What was the condition of the body? A As to wounds?

Q Wounds? A The back of the head—when we arrived there it was laying on the face—the back of the head had from ten to twelve cuts penetrating the skull into the brain, most of them either in the back or on this side (indicating).

Q This side is—A The left side, sir. The ear was partly cut off on the left side. There were three or four gashes across the face on the left side, one of them, the lower one, going, I believe, all the way through the jaw bone, sir. The hand—left hand—was severed at the wrist, merely a small piece of flesh holding it. Three fingers were cut completely off, merely a small piece of flesh holding each one. And then there were two cuts in the right arm, in here

(indicating) passing clear through the coat and cut into the bone. There were two fingers—

The Court. Indicating the forearm?

Witness. Yes, sir. There were two fingers on the right hand, I believe, cut off, just a piece of flesh holding them; and there was a cut down here on the lip, not very deep. Not as deep as that (indicating).

The Court. Perpendicular cut?

Witness. Yes, sir; from the nose.

The Court. On the righthand side?

Witness. On the righthand side, sir.

The Court. From the nose down by both lips?

Q And where was the body lying? A About 150 or 160 feet east of Grove street and 135 or 140 feet—I can't say—I made the measurements—south of Beardsley avenue.

Q You say you made measurements? A Yes, sir; I did.

Q Have you made the measurement of the distance from the spot where the body lay in a direct line to Grove street? A I have, sir.

Q And what is that distance? A 160 feet.

Q And did you make the measurement of the distance the body lay south of what is called Beardsley avenue? A I did, sir.

Q And what is that distance? A 150 feet.

Q And did you measure the distance of the spot where the body was found south of Bloomfield avenue near the intersection with Grove street? A From where the body laid to Bloomfield avenue was about 1325 feet, sir.

The Court. Bloomfield avenue at North Eighteenth street?

Witness. Grove street. Bloomfield avenue and Grove street, which is almost a straight line.

Q And did you make any measurement of the distance from the point where the body lay to the junc-

tion of Bloomfield avenue and Thomas street? A Not to the junction, but to the nearest electric light on Bloomfield avenue.

Q And what was that distance? A About 1,050 feet, sir.

Q Are there any lights on Grove street? A There are two incandescent lights on that block.

Q Did you measure the distance from the point where the body lay to these incandescent lights? A I did, sir.

Q What is the distance from the two lights? A The nearest one is 190 feet. That lays a little to the north—northwest of where the body lay, on Grove street—on the far side of Grove street—on the westerly side of Grove street. The other is on the easterly side of Grove street to the south of where the body laid and about 332 feet.

Q Did you measure the distance to the nearest house? A I did, sir.

Q What is the distance? A That stands on the westerly side of Grove street 547 feet.

Q Now, what was the condition of the ground around where the body lay? A Just the spot where she lay it was bare ground. Evidently new earth dumped in there, but all around that was short stubble and grass.

Q And did you see any marks of struggle of any kind? A There were a good many footprints around there and also blood and hair and combs.

Q Did you see the comb picked up? A It was picked up while I was there; yes, sir.

Q And some hair picked up? A Yes, sir; I picked up some of the hair and Dr. McKenzie picked up some.

Q What was done with the hair and comb? A All of it was put into the basket with the body, sir.

Q About the handkerchief? A And the handkerchief was there and put into the basket and taken to the morgue.

Q Who has those articles now? A I have them, sir.

Q Did you examine the surrounding territory there looking for anything? A For a short distance; yes, sir.

Q For how great a distance did you? A I suppose I covered probably 75 to 100 feet, sir, in each direction.

Q And did you find anything? A I did not, sir.

Q Did you see—did you yourself find anything or see anything else picked up near the body when it was removed? A There were things picked up there. I did not see them picked from the ground.

Q You did not see them. That is what I meant. A No, sir; I did not see them picked off the ground.

Q You have some of those things now? A Yes, sir; I have other articles that were found around the body.

Q What? A I have other articles which were found around the body but which I did not pick up.

Cross examination by Mr. McDermit.

Q Mr. Godfrey, you are the officer in charge of the prosecution of this case? You are the detective officer in charge of the prosecution of this case? A Well, I don't know just what you mean by that, Mr. McDermit.

Q You are the chief officer in charge of the prosecution of this case? A I was the one that was sent up there, at the time of the murder, sir.

Q You are attached to the district attorney's office of this county? A I am, sir.

Q And your duties there is to take up murder cases and investigate them? Am I right about that? A Yes, sir; that is correct, sir.

Q You did quite some investigating in this case, didn't you? A Yes, sir.

Q You started in at what time in the morning? A As near as I can tell you, sir, I arrived there about eight o'clock.

Q And it was very close to eight o'clock the next morning when you got through? A That I can't answer, sir.

Q Your memory on this occasion, I suppose was good? A Yes, sir; I was there a good many nights but I can't say just how long I was there that night.

Q You happened to go to St. Michael's Hospital during the course of that twenty-four hours, didn't you? A No, sir; I did not.

Q Sure about that? A Yes, sir.

Q Go there the next day? A No, sir.

Q Or the day following? A No, sir.

Q Know man by the man of Viola? A I do not; no, sir.

Q Ever hear of the death of a man named Viola? A I read about it in the paper, sir.

Q Ever know the man was badly cut up on Decoartion night and taken to St. Michael's Hospital and then jumped out of the window to his death after being apprised of the death of this woman? A I read about it in the paper, sir.

Q Ever investigate it? A No, sir.

Q Ever know who this man was that was cut up and taken into St. Michael's Hospital on the night preceding the finding of this body? A I know there was such a man.

Q Know about the man coming to St. Michael's Hospital and surrendering himself for treatment—or going there for treatment? A I know nothing—

Q At midnight on the night of the day preceding the finding of this body? A I know nothing about that.

Q Never made any investigation of that? A No, sir.

Q Never made any investigation of the fact that he jumped out of the window over there? A No, sir.

Q Never knew whether he died from jumping out of the window or whether he died from the wounds he had received by way of hatchet cuts—wounds upon his head and body? A I heard what caused his death, sir. I did not investigate it.

Q In connection with this case—pursuing the investigation of this case—did you ever make any investigation to find out how it was the man come to have those cuts that night? A Not directly, no, sir.

Q Did you ever know anybody else that did? A I can't say positive whether anyone in the office did or not, sir. I was not assigned to that case.

Q You knew what class of cuts he had? A I couldn't tell you where those cuts were; no, sir.

Q You said you had read in the newspapers? A Yes, sir.

Q You knew the man was cut in the head—said to be cut with a hatchet? A I didn't know it; no, sir.

Q Cut in the arm? A I never heard he was cut with any hatchet, sir.

Q Cut in the face? A I never heard he was cut with any hatchet, sir.

Q You hadn't anything to do with the Viola matter at all? A No, sir; not any more than to find out who Viola was. I did find out who he was.

Q Who was he? A I couldn't tell you. He was an Italian and lived in the Silver Lake section.

Q He lived five doors from where the deceased lived, did he not? A Not to my knowledge he didn't, sir.

Q Will you say that he didn't? A I can't say how many doors, sir. I don't believe he did.

Q Didn't it strike you as a circumstance for investigation to find that a man living five doors, or in the same vicinity, of where this woman was said to be hacked to death had been hacked and probably killed himself? A He didn't live anywheres near where she was hacked to death.

Q You know where the Silver Lake section is? A Yes, sir. Where she lived and where she was hacked to death is a long distance apart.

Q Let us see about that. You drew this map? A I didn't draw that map.

Q I suppose you participated in the preparation of that map? A I made the measurements.

Q You made the measurements? A Yes, sir.

Q I want to be as fast as I can. Of course you know where Bloomfield is? A Yes, sir.

Q You know the Silver Lake line the other side of Bloomfield? A To the northeast from where the body was found.

Q About 1,000 feet from where the body was found is Silver Lake? A More than that.

Q Is it 2000? A 1,100 to Bloomfield avenue.

Q Is it three thousand? A Yes, sir; and more. I should think 3,000 or more.

Q Is it a mile? A To where this man lives I should think it was a good mile.

Q Do you know where the Newark city line ends? A I do not, sir.

Q Do you know where the Bloomfield line commences? A I do not, sir.

Q Or East Orange line commences? A About; not exactly.

Q Do you know where the Silver Lake commences? A About, but not exactly.

Q How can you say to the court here that it is 2,000, 2,500, 3,000 feet from this spot if you don't know? A I don't say to the line. Where this man lives.

Q To where the man lives? A Yes, sir.

Q 3,000 feet. How many miles is that? A I said about a mile. I should say it was fully a mile from where this man lives to where the woman was hacked to death.

Q You think from where Viola lived it was a mile? A Fully that, yes, sir.

Q And in a northerly direction? A In a northeasterly direction.

Q Have to go over Grove street to get to Silver Lake? A Yes, sir; Silver Lake runs along some distance.

Q Isn't it so, officer, that Silver Lake is in Belleville Township? You know enough about the townships to know that? A I think it is in Belleville Township—I think part of it is in Bloomfield.

Q You were right; part belongs to Bloomfield and part to Belleville.

The Court. Are you testifying, counsellor, or is the witness? You are making announcements here and there is no acquiescense in them by the witness.

Mr. McDermit. I understood him to say yes.

The Court. I will instruct the jury now that any questions containing an inference which are not supported by the answer of the witness will be disregarded by the jury.

Q You knew where the deceased lived? A Yes, sir.

Q And that was on what street? A That was Chester avenue and Eighth street.

Q Now, is that the same Chester avenue that crosses through this strip here? A I know of no Chester avenue, sir, up in that section.

Q Never heard of Chester avenue? A There is no sign—no street marked "Chester avenue" or anything on the county map showing Chester avenue.

Q Do you know where Chester avenue comes out from Silver Lake? A Yes, sir; to Bloomfield avenue.

Q Comes out to Bloomfield avenue? A Belmont avenue into Bloomfield.

Q How many blocks down from Belmont avenue on Bloomfield avenue is the house where the deceased lived?

The Court. You mean the deceased in this case?

Mr. McDermit. Deceased in this case, yes, sir.

A Well, I would say three blocks, sir.

Q How far would you say that was from the point where her body was found now? A From where?

Q Where she lived? A From where Chester avenue runs into Bloomfield?

Q No; from where she lived from the place where her body was found? How many feet do you say it is? A Now, I have never measured that.

Q You have measured this (indicating)? A Yes, sir; and I have told you that.

Q You measured here (indicating) and this is your measure? A Yes, sir.

Q You measured from Thomas street, or approximately at Thomas street, to the point where it is alleged the body was found and you have marked it 1,100 feet; is that right or wrong? A That is correct, sir.

Q Now, then, if Thomas street is one block above Belmont avenue and Chester avenue comes into Bloomfield avenue and the deceased lived three blocks down Chester avenue, then the distance would be 1,100 feet plus Thomas block to Belmont avenue and plus the three blocks down to where she lived, wouldn't it? A Chester avenue is virtually a continuation of Beardsley avenue.

Q Can't you tell us then how many feet it would be? A No, sir; I cannot.

Q From the 1,100 point, you left off here— A No, sir.

Q —down to where the deceased lived? A No, sir; I cannot.

Q She only lived four blocks from there? A I told you about four blocks, yes, sir.

Q Can't you tell us approximately? A No, sir. Those blocks are quite long. I don't know how many feet they are.

Q It isn't a couple of miles, is it? A No, sir; I didn't say it was a couple of miles.

Q Less, you say. Do you know where Viola lived? A About where he lived.

Q What street did he live on? A I couldn't tell you. I was never there but once in my life.

Q You were there once? A Yes, sir.

Q How did you come to go there? A To find out who he was. I went there the day he was buried.

Q Went over to find out who he was? A Yes, sir.

Q That was some interest to you, then, wasn't it? A Why, yes; man died.

Q A man had died? A Yes, sir.

Q Did you find out from what he had died? A Did I what?

Q Did you find out from what he had died? A I was told he jumped out of the window at the hospital.

Q Did you find out how he come to get into the hospital? A No, sir.

Q Did they inform you he was brought into the hospital the same night of the alleged murder of this woman?

Mr. Mott. I interpose the objection that this is not cross examination.

The Court. How is this cross examination? This witness was called by the State to testify to the condition of the ground and the body as he found it. You are cross examining him about some investigations that he made that afternoon or the next day and he says that he did not find out this, that and the other thing. Now, how is that evidence?

Q What did you do when you arrived at the scene of this alleged murder? A Looked around there, sir. Looked at the body.

Q What did you do? A Why, I looked around there.

Q Looked around of course. What else did you do? A Nothing until the morgue keeper and the doctor came.

Q Did you look at the body? A I did look at the body, yes, sir.

Q Did you pick anything up there? A Yes, sir.

Q Did you? A Yes, sir; I did pick something up.

Q What did you pick up? A Picked up some hair.

Q What else did you pick up? A Assisted in picking up the body.

Q Make any search around there? A Yes, sir.

Q How much of a search did you make? A I should judge I searched around that body in all directions for 75 or 100 feet.

Q Find anything else? A No, sir; I had other things laying there at the body which were put in the basket with the body.

Q Did you go there to make a search afterwards? A I did not, sir.

Q Did you notice a tree very close to where this body was found? A No, sir; there was no tree very close to it.

Q What was the closest tree to where this body was found? A Without making any measurement?

Q Yes; approximately. A I should say 150 to 175 feet.

Q Do you remember in which direction the tree lay? A Yes, sir; laid to the south—southeast.

Q Do you know where the body was found there was an entire clearance? A For a small space—probably eight or ten feet, sir.

Q Was there any shrubbery or trees or anything else to the south? A Short stubby grass, and trees, some little distance to the south, say 150 to 175 feet, there was a grove of trees—quite a number of trees.

Q Do you know anything about the names of these streets up there? A There is no names on the streets, but the county map shows that it is Beardsley avenue.

Q Eh? A The county map.

Q No names on the streets? A No, sir; no streets named there at all.

Q Did you go back to make a search again on the premises? A I did not, sir.

Q At no time? A At no time.

Q Did you ever get possession of any alleged weapon that was found up there? A I did, sir.

Q When was that? A Monday morning following. Second day of June, I believe.

Q And from whom did you get that weapon? A From Chief Collins.

Q And what has become of that weapon? A I have it, sir, in my possession.

Q Where is it? A In the office.

Q Will you produce it? A If I am told to do so.

Mr. McDermit. I ask for its production.

Mr. Mott. The witness cannot testify and produce it. I assure you it is coming. I refuse to produce it now. I will produce it when I get ready.

The Court. Proceed.

Mr. McDermit. I will ask to have that on the record.

The Court. It is on the record, exactly what what you have asked for and what the prosecutor has said.

Mr. McDermit. The court refuses to allow the production of it?

The Court. The court does not do anything. It has not been asked to do anything yet.

Mr. McDermit. I ask the court to direct the witness to produce this weapon that he says was brought to him by Chief of Police Collins.

The Court. Do you want to make him your witness?

Mr. McDermit. I make the application for that purpose now.

The Court. Do you want to make him your witness? This is not cross examination.

Mr. McDermit. I will make him my witness for the purpose of producing this.

The Court. You can produce him at the proper time. The objection is sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed, and it is sealed accordingly.

Wm P. Martin (Seal)

Judge.

ANGELO RICH, sworn for the State.

Direct examination by Mr. Mott.

Q Angelo, where do you live? A Nutley.

Q Some two or three days after Decoration Day last, were you in the neighborhood of Grove street and Beardsley avenue? A Yes, sir.

Q What day was it that you were there? A On Sunday afternoon.

Q Sunday afternoon after Decoration Day? A Yes, sir.

Q Were you alone or was someone with you? A I was with my cousin.

The Court. What is his name?

Witness. Joseph Rich.

Q And whereabouts were you there? A Below Grove street on what they call Eighteenth avenue there—whatever it is—I don't know.

Q On Eighteenth avenue or Eighteenth street? A Eighteenth street. I don't know the names of the streets; I ain't acquainted up there.

Q What were you doing? A I and my cousin were walking through the field and I finally ran through some swamps what I called, there, and I stepped on an axe, and I picked it up and I was to take it home. I thought—I didn't realize it until I picked it up and saw blood stains, and I notified the officer about it.

Q You say an axe? A An axe.

Q What do you— A Hatchet.

Q What do you call it, axe or hatchet? A Hatchet.

Q Was the article you picked up like this (indicating)? A Yes, sir.

Q And did your cousin go with you when you went to notify the officer? A He did.

Q And where did you find the officer? A He was on Belmont and Bloomfield avenue.

Q And do you remember who the officer was? A Well, I don't know his name, but I know he is a Bloomfield officer.

Q (Stand up). Is that the man? A Yes, sir.

The Court. What is the gentleman's name who is identified?

Mr. Mott. Belfie.

Q Then what did you and Belfie do—and the officer? A I and my consin and the officer walked over and picked up the axe.

Q You showed him the place where the hatchet was? A Yes, sir.

Q And he picked it up, did he? A He picked it up.

Cross examination by Mr. McDermit.

Q Now, you were walking through the woods, were you? A Well, not woods. It is field—no wood there that I picked the hatchet up.

Q You were walking in a swamp? A Well, it ain't a swamp, but there was weeds there. It looked like a swamp—call it a swamp anyway.

Q Well, there is water there? A There wasn't any water at the spot where I picked the hatchet up. It was high weeds there. Looked like a swamp. I think they would call it a swamp.

Q You picked the hatchet up, did you? A Yes, sir; I did.

Q And then you looked at the hatchet? A I did.

Q Is that the hatchet (indicating)? A Yes, sir; this is the hatchet.

Q Show me how you picked it up, what hand? A I picked it up with my right hand.

Q Right hand? A This is it right here. It was laying this way (indicating). I stepped on it right here (indicating) with my right foot, and I went over past it about five feet and I turned back, I saw it shining, you know, and I went back and I picked it up, and I told my consin, "I got a hatchet."

Q Just show the jury how you picked it up. A I picked it up in this manner (indicating), took it in the other hand and looked at it and turned it all around and saw blood stains and dropped it again just where I picked it up and then went over and notified the officer.

Q How long did you have the hatchet in your hands examining it? A About a second, I guess.

Q About a second. Have both hands on it? A I did.

Q Have both honds on it? A I did.

Q Now, just which hand did you put on the hatchet first? A My right hand.

Q Just indicate by the hatchet—put your hand over it—showing what you did? A This way (indicating).

Q These four fingers fronting that way, were they? Lift it up a little bit? A Yes, sir.

Q The same as—you had it off the ground? A Yes, sir.

Q Lift it up higher, way off the table. A (Indicating.)

Q That is the way? A Yes, sir.

Q Then what did you do? A I looked at it first this way and then turned it around.

Q Used the other hand on this end turning it over? A Yes, sir.

Q That paper wasn't on the end of the hatchet at that time, was it? A No, sir.

Q Then you threw it back on the ground? A Yes, sir; the very same spot I picked it up.

Q You threw it out of your hand? A I dropped it out of my hand.

Q You dropped it out of your fingers—out of your right hand, did you? A Yes, sir.

Q Down to the ground. You came back again? A With the officer.

Q With your friend and the officer? A Yes, sir.

Q Then you showed him where it was and you picked it up again, did you? A No, sir; I did not. The officer—

Q He picked it up. Show the jury how he picked it up. A I don't know how he picked it up. I didn't look at it.

Q Don't you remember where he took hold of it? A I don't know where he took it. I know he picked it up. I didn't watch how he picked it up.

Q Did he show it to you when he picked it up? A No. He took it and walked over with it—he made a mark on some tree there—I don't know what he done.

Q With the axe? A Yes, sir.

Q He chopped the tree with the axe? A Yes, sir; put a nick on one tree there.

Q With this axe? A Yes, sir.

Q How far was the tree from where you picked up the axe? A Tree from where I picked up the axe?

Q Yes. A About six feet.

Q About six feet. Where did you see any blood upon it? A This here (indicating), all those spot you see there now. Of course, it was a little fresher then. You can tell better. I think there was a few spots in here (indicating), and I saw these all over the hatchet and I left it.

Q Was there any blood spots down on the end of the hatchet where you had your fingers when you picked it up first? A I didn't examine it very close. I only saw—as soon as I saw blood spots I dropped it again.

Q It was a new axe, was it; new hatchet, was it, apparently? A Yes, sir.

Q Same condition as it is in now, was it? A Yes, sir.

Q That is the hatchet, is it? A Yes, sir; this is the hatchet.

Q Do you know anything about these marks up here? A I do not.

Q And did the officer carry the hatchet in his hand or did he put it in his pocket? A Why he carried it in his hands until he got out to where he put the nick on the tree.

Q He took the hatchet, went over to the tree and marked the tree with the hatchet, then he carried the hatchet in his hands to where, Bloomfield avenue? A No; he put the hatchet under his coat and walked over to Bloomfield avenue with it, then I don't know what he done with it after that.

Q He didn't put it under his coat right away? A He did not.

Q He walked over first and cut the tree and after he cut the tree he put the hatchet under his coat? A He did..

Q And walked over to Bloomfield avenue with it? A Yes, sir.

Q When did you see the hatchet after that again? A I never saw the hatchet until now, again.

Q How do you know that is the hatchet? A I guess I ought to know what it is when I see it once, after I see it again. I think I ought to know what I got in front of me.

Q That is the hatchet? A That is the hatchet; pretty sure.

Q You mean to say that is similar to the hatchet that you picked up there? A What is that?

Q You mean to say that is similar to the hatchet you picked up? A Silver?

Q Similar. Looks like the hatchet? A Yes, sir.

Q You wouldn't be willing to say that is the same hatchet? A No; there is lots of hatchets alike.

Q Sure. Did that hatchet have the same resemblance, dry blood marks, therefore you think that is the hatchet? A Yes, sir.

Q You never was called upon to see the hatchet after that again? A Never until now.

Q Where was it that you found the hatchet there? Can you tell by looking at this map? A I can tell you the spot, but I couldn't tell you just the direction.

Q You know where Bloomfield avenue is? A I do.

Q And do you know where North Eighteenth street is? A Yes, sir.

Q And Grove street? A Yes, sir.

Q Now was it between North Eighteenth and Grove you found it or was it this side of North Eighteenth down towards Thomas or Belmont? A It was between Grove and North Eighteenth street.

Q Where had you been walking, boy? A I walked right up in this direction here (indicating) and I walked—

The Court. Let the witness indicate that so as to get it down.

Q Show the jury? A We was over to Bloomfield avenue. This is Belmont avenue (indicating). We walked around and come right up in this direction—we come right up this way (indicating) and right here I stopped, and I ran in that direction here (indicating) on the field. The swamps was there (indicating), right here was the tree, about there (indicating) and right here (indicating) was laying the axe, and I stepped right on to it with my right foot.

The Court. You are indicating a point south of Beardsley avenue and west of North Eighteenth street, is that correct?

Witness. Yes, sir.

Mr. McDermit. Indicating a spot approximately I would say about forty or fifty feet—

Witness. No; about twenty feet from North Eighteenth street.

Q About there (indicating). This line says 325 to this point, from North Eighteenth street. Measurement. I am calling your attention to the measurement of this ground which is 325 feet away from where the body was alleged to have been found. Show us about the point where you think you found the axe—hatchet? A Right about here (indicating).

Q That is approximately thirty feet? A I don't know exactly.

Q It was near North Eighteenth street? A Yes, sir.

Q Do you know where Beardsley avenue is? A I don't know names of streets. I know the street there. I don't know the name.

Q Is there more than one street from North Eighteenth street to Grove street? A I didn't examine close to it. This is the only one I saw.

Q Where do you live? A Nutley, New Jersey.

Q What were you doing down in that section this day? A I went over to my brothers and my cousin lives there and I met him and we started fooling—we are always full of fun, running around the field and grass, that place.

Q Came over from the Silver Lake section? A Yes, sir.

Q Over into the fields in this side, were fooling, running around in the swamps there? A Went up to Grove street. After we passed here (indicating), went up to Grove street passed the house up there and then turned back and spoke to the officer about it.

Q Is there any water around there at all? A There was a little water there on account of the rain.

Q Isn't there water that remains there? A I don't know; I couldn't tell you because I never was there since.

Q That day didn't you notice any pools of water there? A There was little streams of water there.

Q Water runs through there, does it, from Belmont avenue? You know where the Belmont section is, brook comes through there to Bloomfield avenue? A No.

Q You know where that brook is at Chester avenue and Bloomfield—crosses Bloomfield? A I didn't notice the brook.

Q There is sheets of water there? A There is sheets of water.

Q There is what you thought was a swamp on this end of the line? A Yes, sir.

Q Hill up here towards Grove street? A Yes, sir.

Q And this is valley towards Eighteenth street? A Yes, sir.

Q It is near this place you saw this hatchet when you were in there romping around? A Yes, sir.

Q After you got that hatchet did you go out North Eighteenth street to Bloomfield? A No, sir; I went back the same way as I went there.

Q You went back to Grove street? A No; right down to Belmont avenue; went down along that hill there.

Q At the side—came over to Belmont avenue? A Yes, sir.

Q There is where you met the officer? A On the corner of Belmont and Bloomfield avenue.

Q And you told him that you found— A Saw the hatchet laying down there. We walked up together and he picked it up.

Q How long from the time you first seen the hatchet laying there was it that you first saw the officer? A I imagine about ten minutes afterwards.

Re-direct.

Q What sort of morning was this, bright? A It was on Sunday afternoon. It was bright day.

Q It wasn't raining? A No, sir.

The Court. Is that Sunday, June 1st?

Witness. Well, it was the Sunday following after Decoration Day. I couldn't say which one.

The Court. Decoration Day was May 30th on Friday?

Witness. It was the Sunday following.

The Court. It was the next Sunday after. That would be June 1st?

Witness. Yes, sir.

ANTHONY BELFIE, sworn on the part of the State.

Direct examination by Mr. Mott.

Q You are a member of the Bloomfield Police force, are you? A Yes, sir.

Q Do you remember on Sunday, following Decoration Day, a young man coming to you and telling you something about a hatchet? A Yes, sir.

Q Where were you when you met him? A Corner of Belmont avenue and Bloomfield avenue.

Q Was it the witness who was just on the stand? A Yes, sir.

Q And did you go somewhere with him?' A Went right over there where he showed me where the hatchet was and I picked it up.

Q Where did you find the hatchet? A Why, I should judge 100 feet from where the body was.

Q In which direction? A More of northeast.

Q Well, with reference to this map, assuming that this (indicating) is the spot where the body lay— A Over this way further.

Q Point out where you think? A This is North Eighteenth street (indicating). It laid over this way (indicating) and over this section marked—I should judge about fifteen to twenty feet from North Eighteenth street.

The Court. Did you say northeast or southeast?

Witness. Why it was over this section here (indicating). I couldn't exactly just tell you now.

The Court. That is southeast.

Mr. McDermit. Southeast.

Q Southeasterly direction, about twenty feet from — A From North Eighteenth street.

Q And describe the ground. A Why, there was a little high grass there, looked sort of damp grass, but that day the grass was pretty dry. There was nothing around there. Grass stood I guess about that high—eight to ten inches in height.

Q Go on. A And when I picked this hatchet up I went over to this tree, to make sure; I kind of put a nick in the tree to make sure where I picked the hatchet up.

Q And what was the condition of the hatchet when you picked it up? A The hatchet was pretty dry

when I picked it up and there was hair in the nicks here, that, I said, that is the hatchet they must have used on the woman.

Mr. McDermit. Never mind what you said—strike it out.

Q You found some hair there? A Yes, sir.

The Court. What? Nicks you say the hairs were—

Witness. The hair was in the nicks of the hatchet here on the blade, where they pull the nails out.

The Court. Where there is a slit in the hatchet—

Witness. There was a lock of hair.

The Court. For the purpose of pulling nails?

Witness. Yes, sir.

The Court. And in that you found hair?

Witness. There was a lock of hair in that.

Q Of course these papers and the things that are on the hatchet were not on at the time you found it? A No; they were not.

Q Nothing on it? A There was dried blood stains on it.

Q And what did you do with the hatchet? A I picked it up and after I had put the nick in the tree I put it under my coat and went over to the drug store, corner of Belmont and Bloomfield and wrapped it up carefully and brought it to the Bloomfield Police Station and Chief Collins brought it down to the prosecutor's office.

Q You took it over to Chief Collins, did you? A Yes, sir.

Cross examination by Mr. McDermit.

Q Now, how far from where you picked the hatchet up was this tree that you made the mark in? A Why, I should judge about ten to twelve feet.

Q Now, take that hatchet in your hand and show us what way you held the hatchet when you made the mark on the tree, right or left hand? A Right hand.

Q Lift up your hand. A (Illustrating).

Q And you made the dent in the tree? A I just made a small dent in the tree.

Q Then what did you do, put the hatchet in your other hand? A No, sir.

Q How did you put it under your coat? A Like this (indicating) and I carried it across this way.

Q Carried it under your arm under the coat over to the drug store? A Over to the drug store.

Q What did you do with the hair that was in the hatchet? A Why the hair was still on there when it was wrapped up.

Q What did you wrap it up in? A In newspaper.

Q When you got over to the store—the drug store —you again took the hatchet in your hand how? Show us. A I took it the same way. I was careful. Took it up this way (indicating), and I set the paper down and I wrapped it up.

Q You were trying to preserve, I suppose, or rather keep together, the hair from getting out of the hatchet A That is what I was after.

Q So that the part of the hatchet you were protecting was the steel or iron end of it, not the wooden end of it? Every time you took the hatchet up you took it up by the handle? A And I was careful how I picked it up.

Q Show us how you picked it up. A This way, I picked it up (indicating).

Q Lift it up so that the jury can see how. A This (indicating).

Q Show us again when you were hammering the tree how you did it? A Done it the same way.

Q Picked it up— A Picked it up the same way and used it (indicating).

Q Used it that way? A Yes, sir.

Q When you were putting it away how did you do it? A Put it in that way.

Q When you picked it up and put it into the paper —took it out and put it in the paper, how did you take it out? A Took it this way (indicating).

Q Then what did you do? A Put it down carefully and wrapped it up.

Q Taking it out you— A I didn't take it out.

Q You only took the handle—didn't touch this hair end at all? A No, sir.

Q Didn't touch this part at all? A No, sir.

Q Just the handle? A Yes, sir.

Q You picked it up once in picking it up, once to mark the tree, once taking it out and putting it in the paper and once taking it out, to protect the hair, is that right? A No, sir; only once after that, when I wrapped it up in the paper.

LEWIS COLLINS recalled for

Further direct examination by Mr. Mott.

Q Look at that hatchet lying before you and see if you ever saw it before. A Yes, sir.

Q From whom did you receive it? A Officer Belfie.

Q What did you do with it after you got it? A Brought it down the next morning and gave it to Detective Godfrey.

Cross examination by Mr. McDermit.

Q Where did you get the hatchet? A Officer Belfie.

Q When? A Sunday evening.

Q How did you know it was a hatchet? A How did I know it was a hatchet?

Q Yes. A I knew it wasn't an axe.

Q How did you know that? A Tell by looking at it.

Q It came in paper, wrapped, to you, or how? A Yes, sir.

Q It come in paper, wrapped, to you? A It was wrapped in paper, yes, sir.

Q Couldn't tell whether it was an axe or revolver or plate of soup, could you, until you opened it? Could you? Well, the bundle was opened, was it? A Yes, sir; part way.

Q And you took hold of the axe to examine it, did you? A No, sir; I did not.

Q Didn't touch it? A I unwrapped it. Had the paper there and just unwrapped it and wrapped it up again.

Q Didn't touch it at all? A Not the axe itself; no, sir.

Q Didn't touch the handle at all? A No, sir.

Q Didn't touch any part of it? A Only the paper that was wrapped around it.

Q Just opened the paper and looked at the axe and wrapped it up? A Yes, sir.

Q What became of the hair that was in the hatchet? A It was in there when I wrapped it in there.

Q Did you see it? A Saw a little hair, yes, sir.

Q Did you examine it to know whether it was hair or not? A Well, I know hair when I see it.

Q Did you look at that to see whether it was hair or not? A I told you yes.

Q Did you examine that by gas light, electric light, or daylight, or how? A Electric light.

Q Electric light? A Yes, sir.

Q Then you wrapped the hatchet up or chopper up or whatever you call it. Where did you put it? A Locked it up.

Q Where? A In a closet.

Q How long did it remain in there, do you know? A Next morning—Monday morning.

Q Then what did you do with it? A Brought it down and gave it to Detective Godfrey.

Q When you brought it down and gave it to Detective Weimer—Godfrey—did you open it to show them what you had there? A I handed it to him.

Q Did he open it? A He had it—

Q Did he open it? A Like that, sir (indicating), with the paper in his hand.

Q Had you examined the axe or hatchet to see whether it contained any blood marks on it or not, yourself? A I saw it on the blade of the axe.

Q Why didn't you take the blade of the hatchet in your hand? What was the reason? A What was the reason?

Q Yes. A Because I knew it would be used in evidence if that was the one.

Q You didn't want to touch the— A Handle.

Q —because it was going to be used in evidence? A If that was the one; yes, sir.

Q And when you brought it down to Godfrey he didn't touch it? A I don't know whether he touched it.

Q Didn't touch it in your presence? A No, sir.

Q He just held it with the paper on the outside of the hatchet? A Yes, sir.

Q Because it was going to be used in evidence, you wasn't going to touch it with your hands? A Yes, sir.

Q You didn't want your finger-prints on the hatchet, is that the reason? A I didn't touch it.

Q Eh? A I didn't touch it.

Q He didn't touch it as far as you know. Of course nobody touched it over in Bloomfield as far as you know? A No; they did not.

Q Weren't you surprised, Chief, to find the hatchet after you had made such an exhaustive search up there for the hatchet on the premises where the alleged murder took place? A Oh, I don't know.

Q What? A I don't know. I wasn't surprised; no.

Q You and officer Marshall had made very careful search, and he under your instructions, for a radius of twenty-five or thirty feet, you say in diameter? A This was found a considerable distance further.

Q You didn't go out and look in the clump of woods around there, 150, 200 feet from there to see whether there was any instrument there that would cause this poor unfortunate woman's death, did you? A Quite a big field.

Q You took it for granted you weren't going to walk to the north or south pole in your investigation? A I didn't walk far enough, for I didn't find it.

Q And so when it came back to you it was a great surprise and you wanted to be very careful how you handled it and you never touched it? A I told you all I touched it, sir.

WALTER GODFREY, re-called for

Further direct examination by Mr. Mott.

Q Have you ever seen the hatchet lying before you before? A I have, sir.

Q From whom did you receive it? A Chief of Police of Bloomfield.

Q Do you recall when you received it from him? A Monday morning.

Q Monday following Decoration Day? A Yes, sir.

Q Now, since you received that hatchet has it been out of your possession? A Yes, sir.

Q Who had it? A Mr. Schwartz, of police headquarters; Dr. Martland, of the City Hospital.

Q When did it go to Dr. Martland, as you can recall, about how long ago? A It went to Dr. Martland within a week of the time it was found.

Q Who took it to Dr. Martland? A I did, sir.

Q Who received it back from Dr. Martland? A I did.

Q How long did Dr. Maitland have it? A It was put in his safe and he had it, I should judge, four weeks.

Q And when did it go to Mr. Schwartz, about? A It went to Mr. Schwartz the Monday morning it was handed to me by Chief Collins, before it went to Dr. Martland.

Q How long did Mr. Schwartz have it? A He had it two days, sir.

Q Who received it back from Schwartz? A I did, sir.

Q And you gave it to Schwartz? A Yes, sir.

Q Outside of those two occasions it has been in your possession since you received it? A Yes, sir.

Cross examination by Mr. McDermit.

Q What time of day was it that you got this hatchet from Chief Collins? A Monday morning, sir, sometime between nine and eleven.

Q What records did you make that day of the receipt of it? A I beg pardon.

Q What record, if anything, did you make that day of the receipt of it? What written record? A So far as I know, none.

Q None. It came to you wrapped up, did it? A Yes, sir.

Q And did you unwrap it? A I did, sir.

Q Did you look at it? A I did.

Q And did you see the hair that the chief spoke about? A There were a few hairs on it yet.

Q Have you got those hairs yet? A There is some of them on there.

Q Have you got the hairs that you could see that morning on the hatchet? Is there any curl on there? A What?

Q Curl of hair on there? A Curl of hair?

Q Yes. A I didn't know that there was any curl of hair. I understood him to say there was a lock of hair.

Q Was there a lock of hair on there? A There are a few hairs.

Q Were a few hairs? A Yes, sir.

Q Did you pick it up and examine it closely? A I did, sir.

Q Eh? A I did, sir.

Q You did? Did you pick it up with your fingers? A I haven't anything else to pick it up with.

Q Show us how you picked it up? A (Indicating.)

Q You picked it up by that end? A Yes, sir; picked it up by the blade, sir—blade and the blunt end.

The Court. Blade in one hand and the head in the other?

Q Then you laid it down again? A After looking at it; yes, sir.

Q Laid it down in the same paper, I suppose? A Yes, sir; put it back in the same paper.

Q Got that paper yet? A No, sir.

Q What became of the paper? A I took it in that paper to Mr. Schwartz.

Q What kind of paper was it? A As near as I can remember, sir, it was brown paper.

Q It wasn't a newspaper? A I don't think it was. I can't say positive.

Q It was tissue paper? A No, sir; I am positive it was not tissue paper.

Q You don't know what kind of paper it was? A Not positive. I know it wasn't tissue paper.

Q Now, who did you take it to? A Mr. Schwartz, police headquarters.

Q Took it to Mr. Schwartz when? A Monday morning, sir, shortly after receiving it.

Q When was it that you took it to Dr. Martland? A About a week after, sir.

Q You took it down to police headquarters? A Yes, sir.

Q And when you got down there you got hold of who? A Mr. Schwartz.

Q Well, did you open up the package again? A He did; yes, sir.

Q And did he pick it up? A I think he did.

Q How did he pick it up? The same as you picked it up? A I can't answer that question, sir.

Q Don't you remember how he picked it up? A I don't remember how he picked it up.

Q Why, weren't you there? A Yes, sir. I don't think I noticed it particularly as to how he picked it up, whether he took hold of the blade or of the handle. He knew what I brought it there for and I supposed he knew how to pick it up.

Q You didn't suggest to him how to pick it up? A I did not.

Q You didn't tell him it had been picked up by a man in the woods and dropped and picked up again and given to the officer who picked it up and made a nick in a tree and then picked it up and put it under his coat, then took it out from under his coat and put it in the newspaper and took it up to Bloomfield? A I did not, sir.

Q You supposed he would be able to suppose what you wanted, and you as the officer or detective said nothing to him and as to what you wanted him to do with that hatchet? A I haven't said that, sir.

Q You can't now say to the court and jury how he picked it up? A I didn't say what I took it down for or what I expected him to do with it. You never asked me that.

Q You said you presumed he knew what you wanted done? A How to pick it up. I didn't say what I wanted done.

Q You told us you didn't see him pick it up? A I didn't see that.

Q You told us you didn't notice how he picked it up? A I said I didn't notice.

Q Didn't notice how he picked it up? A No, sir.
Q Then you left it there? A Yes, sir.
Q Get a receipt for it? A No, sir.
Q Got no receipt for it? A No, sir.
Q Then you went away? A Yes, sir.
Q And what time of day was that? A I should imagine very close to dinner time, sir.
Q How long had you been down there? A I was there, I should judge, about an hour, sir.
Q Did you ever take that axe away from there while it was down there with him? A Not until he got through with it.
Q How long was it down there? A I should think about two days, or might have been three.
Q Didn't you make any record at all, Mr. Godfrey, with regard to the delivery of this matter to Schwartz and the time of its return? A I have told you when I took it to him and told you about when I received it back.

The Court. Answer the question. Did you make any record?

Witness. No, sir. I made no written record; no, sir.

The Court. That is all he wants to know.

Q Now, where were you when you received it back? A Went there for it, sir.
Q Went where? A Went there for it—went to his office.
Q Went there for it? A Yes, sir.
Q What time of day was it? A I couldn't tell you, now, sir; don't remember.
Q Was he there? A Who?
Q Was Schwartz there? A He was, sir.
Q Did you have to wait to get it? A No; he handed it to me.
Q Handed it to you. Did he hand anything else to you? A At that time?
Q Yes. A No, sir; not that I know of.

Q Did he hand you any other package with it? A not that I know of.

Q Was this axe wrapped in the same paper that you brought it there in? A I don't think so, sir.

Q What kind of paper was it wrapped in? A When I received it back?

Q Yes. A As near as I remember some brown wrapping paper.

The Court. You mean the hatchet, counsellor?

Mr. McDermit. Hatchet; yes, sir.

Q You then took it away from there and brought it to the court house? A Yes, sir.

Q Didn't he give you some copies of finger-prints with it? Just think a minute. A Me?

Q Yes. A No; he did not.

Q Didn't he furnish you with some paper or report when you got the hatchet back from him? A No, sir.

Q Had no conversation with him? A Yes, sir; I did.

Q Gave him no receipt for the hatchet? A No, sir.

Q What did you do then with the hatchet? A Brought it back here to the court house and put it in the safe in our office.

Q Put it in the safe. Then that was about Wednesday of that week? A About that; might have been Thursday, but about that time.

Q After that what did you do? A Later on from arrangement with Dr. Martland I took it up to his office.

Q Then you took the hatchet away from the office two or three days later and brought it up to Dr. Martland's office? A Yes, sir.

Q How long did it remain up there? A For some length of time, sir; over a month.

Q Over a month?

The Court. Dr. Martland?

Witness. Yes, sir; he is the pathologist of the City Hospital.

Q I suppose it was brought up there for the purpose of making an examination to see whether there was blood on the hatchet or not, was it? A That is what I asked him.

Q That was the situation? A That is what I asked him to test.

Q And he kept that there for four weeks? A About that time.

Q Then you got it back again? A Yes, sir.

Q Did it come back wrapped up again? A Yes, sir.

Q Wrapped up in what kind of paper? A Brown paper.

Q Same old brown paper, was it? A I didn't say the same old brown paper.

Q What kind of paper was it? A Brown paper.

Q Brown paper? A Yes, sir.

Q Don't know of any newspaper published around here in brown paper, do you? A I do not, sir.

Q Then what did you do with it? A Put it back in the safe again.

Q Well, then what became of it then? A As far as I know it has been there until to-day, sir.

Q Now, you know better than that, don't you? A I do not know better than that.

Q Is that so? A I haven't taken it out of the safe since.

Q Other people have access to that safe? A Yes, sir.

Q Other people might take that out? A There is one other that can get into the safe.

Q And you know that that axe has been out, don't you? A Don't know anything at all about it.

Q You know that that axe has been missing—hatchet? A Been missing?

Q Yes. A I didn't know it had been missing.

Q Didn't you know they were trying to find that hatchet here about three or four weeks ago, one day,

couldn't find it—great commotion? A No, sir; I do not.

Q Is that so? A Yes, sir.

Q Was that hatchet not sent for to be brought into the grand jury? A It was.

Q Was it found? A It was, sir.

Q After how much search? A No search at all. As soon as they asked the right party for it, it was found, sir.

Q Wasn't it said that the hatchet was still up to Dr. Martland's? A No, sir; not to my knowledge it wasn't. I don't know what went on.

Q Wasn't it the understanding it wasn't in your possession, it was in the possession of the doctor—Dr. Martland? A Not that I know of. I don't know what went on before the grand jury, sir.

Q I don't either. You say that somebody else has access to your safe. Which one has access? A Chief Weimer.

Q Where is the safe located? A In Chief Weimer's office, sir.

Q Any other property kept in the safe besides evidences of guilt against people? A No, sir.

Q Was it wrapped in paper when it was taken out to-day? A It was, sir, I brought it into the room.

Q Is this the paper you call brown paper? A That is the piece of brown paper that was brought in here, yes, sir.

Q Now, I will just see whether you know whether that is the same paper Chief Collins brought it to you in or whether it is the same paper you took it to the City Hall in or whether this is the same paper it was sent to Dr. Martland in—whether that is the same paper you brought into the courtroom with it? A No, sir; it is not.

Q It is not? A No, sir.

Q When did this particular line of paper put in an appearance? A That is the piece of paper that

came back from Dr. Martland, to the best of my knowledge.

Q So that the hatchet has had many coffins. You are going to keep the custody of this hatchet to-night, are you? A I believe so, sir.

Re-direct.

Q Do you know whether that hatchet was taken out of the safe recently by the chief? A It was out the time of the grand jury.

Q I mean within two or three days? A Yes; it was.

Q Were you present? A I was not present.

Q Then all you know is what you have been told about it? A Yes, sir.

Mr. Mott. I offer the hatchet in evidence.

Mr. McDermit. We object to the admission of the hatchet in evidence, found after the crime was alleged to have been committed.

The Court. It is what you were calling for and demanding in a stentorian voice.

Mr. McDermit. That don't make any difference.

The Court. I want to know. Is it?

Mr. McDermit. I can't tell.

The Court. Get your objection on the record. You haven't finished your objection. The court interrupted you.

Mr. McDermit. I think I said it was produced long after the alleged homicide and it hasn't been connected up in any way, shape or manner with the homicide and with this defendant who is on trial here charged with murder.

The Court. It will be received.

Hatchet marked Exhibit S 2.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly. Wm P. Martin (SS)

Judge.

ADJOURNED until to-morrow morning at 10 A. M.

ESSEX COUNTY COURT OF OYER AND TERMINER.

November 18, 1913.

STATE		*Indictment*
	vs.	*No. 229.*
ANGELO CERCIELLO.		*Murder.*

SECOND DAY.

Appearances as before.

WILLIAM H. McKENZIE, sworn for the State.

Direct examination by Mr. Mott.

Q You are a practicing physician in this county? A I am.

Q Do you hold any public position? A County physician.

Q And how long have you been county physician? A About nine years.

Q On Decoration Day morning were you called to Bloomfield? A I was, yes, sir.

Q And did you go up there? A I did.

Q Where did you go? A I went up to Grove street.

Q What time did you get up there? A I would think it was about nine o'clock in the morning.

Q And did you go alone or with someone? A I think I went up alone—with my chauffeur.

Q And what did you find when you got there? A I found some officers there and a body in an undertaker's basket, in a vacant lot there—the body of a woman.

Q That was your first visit? A Yes, sir.

Q Who were the officers there? A I didn't take their name. Godfrey was there.

Q And any other persons from the prosecutor's office? A I think Weimer was there, and some of the Bloomfield police were there.

Q What became of the body that was put in the basket? A I sent it to Kunz's morgue in Orange.

Q Did you see the body in the basket? A I did.

Q And did you subsequently see it at Kunz's morgue in Orange? A I went up and examined it superficially in Kunz's morgue.

Q Please answer my question? A I did. I said I went up there. I followed the body right up to Kunz's morgue and examined it superficially at Kunz's morgue after.

Q You followed it you say? A Yes, sir; and then I made an autopsy at noon time on the body.

Q What did you superficial examination show when you first got to Kunz's morgue? A That the body had been very much hacked and cut.

Q And it was the body of male or female? A Female.

Q And what did your subsequent autopsy disclose? A Why, then I took a description of the wounds. The woman had two wounds above the right eye, one an inch and a half long and one two and three-quarters inches long. These both went through the bone into the brain. She had, just to the right of the nose, a small cut a half inch long. She had on the right cheek a cut two and a half inches long, and above that one one four and three-quarters inches long that cut down to the bone and nearly severed the right ear. Above that she had another one two inches and a half long that went down to the bone—into the bone. In the back of the head there were twelve cuts ranging in length from two to six inches. These cuts, in eight places, went through the skull into the brain.

On the left side of the face she had a cut an inch and a quarter long—on the left cheek that went down to the bone. She had some bruises on the upper part of both arms. She had a cut on the right arm, on the outer side of it, about there (indicating) two and a half inches long, and on the inner side, just above the elbow, she had one two and a half inches long. The one on the outer side went right down to the bone. There was a little cut—two little cuts across the thumb, and her index finger—first finger of her right side—was almost severed just above that knuckle (indicating). The left hand was almost cut off at the wrist from the little finger side—the inner side to the outer side here (indicating). There was only about two and a half inches of the skin left that it hung on, and below that there was another cut about an inch and three-quarters, and then this hand (indicating) was cut through here.

The Court. Referring to the left hand?

Witness. To the left hand; yes, sir. So that the index finger of that hand—the first finger—just hung, and the other finger pretty well—almost cut off. Internally her organs were very anemic; that is to say they were bloodless. There was no blood in her heart and she was not pregnant and she died as a result of these injuries to her head and the consequent hemorrhage.

Q Was there more than one of these wounds that by itself would have caused death? A Oh, yes; in all probability, yes, sir. The wounds on the forehead and the wounds on the back of the head probably—possibly any one of them could do it.

Q And how many do you say there were on the back of the head, doctor? A There were twelve in the back of the head, eight of which went through the skull.

Q And in your judgment any one of those eight would have caused death; is that it? A Any one of

those eight could have caused death. Maybe not right away, but the whole lot together would do it very quickly.

Q The whole lot together did, you say? A Eh?

The Court. Answer the question, doctor.

Witness. I did.

Q (Question read.) A Why, yes.

Q Did you pick up anything and put it in the basket? A I picked up a comb.

Q Anything else? A I don't know. Whatever I did pick up I gave right over to Mr. Godfrey.

The Court. What kind of a comb, doctor?

Witness. I think it was a hair comb—one that they wear in the hair.

The Court. Woman's hair comb?

Witness. Woman's hair comb—that they wear in their hair.

Cross examination by Mr. McDermit.

Q Doctor, you say this was on Decoration Day? A Yes, sir.

Q And you say you proceeded to a vacant lot and found a body there. What time in the morning was it? A I think it was about nine o'clock.

Q About nine o'clock. You said that Chief Weimer was there and Chief Godfrey. Who else was there that you remember? A Who else did I see? There was some officers from Bloomfield there, and a man—well, there was a lot of people there.

Q I understood you to say that the body had been taken off the ground before you got there? A Yes, sir.

Q Placed in a basket? A Yes, sir.

Q Is that the usual, orderly occurrence when county physicians are sent for in this county, to disturb the body before the county physician gets there? A Well, it is not usual.

Q Done, however, in this case? A Done in this case.

Q So that in order to make an examination of the body you were obliged to follow the undertaker's wagon with your machine, keep in touch with the corpse, I suppose that was the idea? A No, no; oh, no. I did that because I never do make much of an examination of a body when there is a crowd around.

Q Now, how much of a crowd was there there? A I should think there were thirty to fifty people.

Q Thirty to fifty people. You made an autopsy on this body? A Yes, sir.

Q And I suppose you took down a written memoranda? A I did.

Q Of what injuries you found? A I did.

Q And also the date? A Yes, sir.

Q The prosecutor did not ask you anything about the class of wounds—how they could be inflicted—in his direct examination. Tell us what these wounds could have come from? A Why, most of them could only come from some instrument in the nature of a hatchet.

Q How about the bruises on the arm? A Well, bruises can come from almost any kind of an injury.

Q Well, were the bruises of a fresh nature? A They were, apparently.

Q Or were they an old bruise? A They were apparently of a fresh nature and they could be caused by a blunt instrument, or a pinch, or something of that nature.

Q Now, they were—the bruises—as I understand were pretty well up on the arm of the deceased on both sides? A (Indicating.)

Q And could have been caused by some person or persons taking hold of the arm and holding a person tightly so they couldn't move or run away? A Could be caused that way or could be caused by a blunt instrument, but they could be caused by a pinch—like a pinch.

Q Or could have been caused by, for instance, the hatchet that was here yesterday, by being struck with the rough end of the hatchet instead of the other end of the hatchet? A Yes, sir.

Q That is so. So that it is merely problematical how the bruises got there. How the cuts got there is not problematical. That must have been done with some sharp instrument? A Surely.

Q Now, did you ever see this hatchet that was produced here yesterday? A I did, yes, sir.

Q Eh? A I did.

Q When did you first see that, Doctor? A I don't know whether I saw that before it went to the Grand Jury room or not.

Q Well, relative to the time of the alleged homicide? A Relative to that—

Q Relative to that time when did you see it? A Oh, good while after; say a month after.

Q About a month after? A Something like that.

Q Where did you see it, Doctor? A I think I saw it first in the Court House.

Q What part of the Court House? It is a big house? A Prosecutor's office.

Q What part of the prosecutor's office? A That I couldn't tell you.

Q Well? A In Mr. Godfrey's room, or in Mr. Godfrey's possession.

Q You didn't take it out of the safe there? A No.

Q And you saw it in Mr. Godfrey's possession? A Yes, sir.

Q Look at it, did you? A Not particularly.

Q Did you look at it to see whether there was blood stains on it or not? Not particularly; no.

Q Didn't you look at it— A No; I don't believe I did. I just looked at the shape of it.

Q Didn't pick it up in your hand? A No, sir; I didn't pick it up.

Q Very sure about that? A Very sure.

Q You, as county physician, was not interested enough to look at the hatchet to see whether or not there were blood stains upon the hatchet, is that right? A It wasn't that. They said there were stains on it. I said the fewer people handled it the better.

Q You said the fewer people handled it the better, and you had no means of knowing they were blood stains, did you? A It was to be examined for that and I wanted it kept as well as it could be.

Q Was the examination made at your suggestion of these blood stains? Was this examination for blood stains made at your suggestion? A I wouldn't say that it was made at my suggestion directly, but I might have been consulted about it.

Q Do you know whether the hatchet had any paper on it or not? A At that time it was wrapped up in paper, I think.

Q Now don't think about it, Doctor. If you don't know say so. A Then I won't say.

Q Let me show it to you. Take a look at it. Look at it. Don't put your fingers on it. Think that is the hatchet? A I think that is the hatchet; yes, sir. It looks like it.

Q Don't know. You didn't make any mark on it? A I didn't make any mark on it.

Q You don't know what that mark is on the side, I show you? A No, sir.

Q You don't know what those three separate marks down there are, do you? A I do not.

Q Do you know whether the hatchet that you saw, that this resembled, had this covering on it the day you saw it? A I do not know about that.

Q You don't know about that? A I don't think it did, I don't know.

Q You don't know when that first got there? You next saw the hatchet when, after that? A Yesterday afternoon.

Q Didn't see it when it was before the Grand Jury? A I can't go before the Grand Jury with it.

Q You didn't see it if it was before the Grand Jury? A I didn't see it before the Grand Jury.

Q You didn't have it before the Grand Jury? A No, sir.

Q Didn't have it in your possession during the Grand Jury proceedings in this case, did you? A No. I never did, no.

Q You performed an autopsy and the result of the autopsy was that you gave a certificate of death? A I did.

Q What was that certificate of death? Now, if you don't remember say so. If you do remember say so. Certainly it was a written certificate? A Yes, sir; I have a copy of it.

Q Well, what was the certificate? Can't you remember? A Can I read it just as I put it down?

Q Yes. I have no objection. Get the memorandum if you desire, Doctor? A Multiple fracture of the skull.

Q I understand you, Doctor, to say that you have the death certificate here with you? A No. I have a copy of it, or stub.

Q Copy of it? Let me look at it? A (Witness handed paper to counsel.)

Q Now, you just read to the jury what that certificate discloses. That isn't a certificate. That is a copy of it from your book, isn't it? Your county physician's book? A No; each death certificate that is made out has a stub attached to it, just like a check book.

Q Each official? A No; with every death certificate that is furnished, there is a stub attached.

Q Your own course of procedure? A Is to follow that out.

Q When you have homicide cases you make written memorandum, don't you? A Yes, sir.

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Q And you make it at the time when you make the examination or when you have the autoposy? A This is the one I made.

Q I am asking you these questions. You answer them. A You are referring to this?

Q I am referring to them all? A All of it.

Q At all times how do you do that? What is your custom? A A death certificate I make out when they bring me the proofs.

Q Of course, you make an examination of every homicide case that is brought into this county? A At that time—I make it out at the time of the autopsy in the presence of the body.

Q You make an examination also of every other kind of death by suicide? A I do.

Q And you made another examination that same day, didn't you, about a case of St. Michael's Hospital? A I may have.

Q Now, haven't you your memorandum here with you from which you have taken that stub? A Only this one case.

Q Probably I can refresh your memory. Did you make an examination or autopsy on the body of a man by the name of within twenty-four hours following your examination in this case in which the death of the deceased—by the examination of the deceased it showed marks from the hatchet?

Mr. Mott. I object.

Q Marks on the forehead, marks on the head, marks on the body that would appear to have been inflicted by a hatchet?

The Court. This is not part of the cross examination. If you want the Doctor to testify you can bring him in at the proper time.

Mr. McDermit. It was only for the purpose of expediting the case, that is all. The subpœna is drawn.

The Court. The objection is sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm. P. Martin (SS)
Judge.

Q Read the certificate that you made at that time? A Now, do you want everything that is on it?

Q The entire certificate you made pertaining to the death of Mrs. Cerciello—said to be Mrs. Cerciello—the deceased in this case? A "J. 84." That is a number of my own.

Q What does that mean? A That means the series and the number of the series of these cases. That is a private number of my own.

Q Your own private number? A Yes, sir. Only refers to my own work. "J. 84." The J. was the beginning of this year's series and 84 was the 84th case.

Q So that any case following that would be J. 85? A 85, 86, or 87. "Alvira Cerciello, nineteen years, one month, twenty-one days, female, white, married, wife, Italy, Ceriero Vitol, Italy, Parsia Carcoma, Italy, Vacant lot on Grove street between D., L. & W. R. R. and Bloomfield ave., found May 30, multiple fracture of skull, homicide, jury case, C. P. Holy Sepulchre, P. Ippolito."

Q And that report? A This is—most of that is made out by the undertaker.

The Court. Never mind, doctor, you have answered the question.

Q How much of that report belongs to your own individual effort? A Why, just the—

The Court. He is called to testify here as to what he found—the conditions that he discovered. If this is proper it is proper as a contradictory statement made by him of the conditions which he found.

Mr. McDermit. I understand that, your honor.

Q What part of this is your own handwriting? A The place of death—

The Court. It is not the certificate. This is a stub.

Mr. McDermit. He says that is a copy of the certificate. I understood him to say it is a copy.

The Court. No; he says it is the stub of the certificate.

Q The certificate is made from that stub or the stub is made from the certificate. Which is it? A They are both made out together.

Q Both made out together. Now, then, the cause of death is in whose handwriting there? A Mine.

Q What does it say? A "Multiple fractures of the skull. Homicide. Jury case."

Q Then the certificate shows the cause of death to be what? What would the certificate show the cause of death to be? It wouldn't be homicide? A Multiple fractures of the skull.

Q So that is what caused the death? A That is what caused the death.

Q Now, there were a great many blows on the head? A Great many.

Q And how many, one, two or three, to cause death; or could one of several cause death? A One of several of them could have caused death.

Q And about how many fatal blows were there struck—that would prove fatal? A Why, ten or twelve of them might have proved fatal.

Q Any one of them? A I say eleven or twelve of them might have proved fatal.

Q Eleven or twelve of them. Could you form any idea as to whether those blows were delivered while the party was standing or the party was on the ground, or how? Have you any opinion to express from your autopsy and your careful examination of the infliction of these wounds how they were inflicted

to give the jury any light on that? A Why, I do not believe that a person could stand up and receive all of those blows before they fell.

Q Then many of the minor blows might have been inflicted standing and might have been inflicted while the party was down. That is impossible to tell? A Yes, sir; impossible to tell.

Q There is no way from which you could tell absolutely in what way those blows were delivered, as to whether the body was prostrate, semi-prostrate or standing, could you? A No.

Q Now, I understood you to say there was some mark upon the arm—cut upon the arm, one on the outside—the right arm? A Yes, sir.

Q And also on the reverse of the right arm was another cut—same arm? A Yes, sir.

Q Could that have happened by a person who was standing or in any position trying to ward off—protect themself from being struck? A You would naturally think that that blow that was on the outside of the arm come from that.

Q Probably was given while the person was trying to protect themself from injury? That would be your notion of it? A It would look as if that was the natural thing.

Q And the part of the arm that was injured on the inside—I do not allude to the bruise, but I allude to the cut—could it possibly have been given while some one was trying to ward off also a blow or trying to get away from a blow of the axe or some other sharp instrument? A Come in a way that they could get a blow in there.

Q Do you remember what kind of day that was? A I do not.

Q Do you remember what kind of a night the night before was? A I do not.

ALFRED J. HARGAN, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Hargan, I show you Exhibit No. 2 for the State, the hatchet, and ask you whether that has been in your possession recently? A It was.

Q How did you receive it? A I received that last Thursday, November 13th, about nine A. M., from Chief Weimer, in his office.

Q Where did he get it from? A Out of the safe.

Q And what did you do with the hatchet? A I took it to New York to Mr. Kinsley's office and had it there in my possession there all day, and returned it about half-past five that night to the safe in Chief Weimer's office.

Cross examination by Mr. McDermit.

Q How did you know it was a hatchet when you got it from Weimer? A I saw it.

Q How did you see it? A Opened the paper and saw what was inside.

Q Did you open the paper up? A I did.

Q Before you took it away from the prosecutor's office? A Yes, sir.

Q What kind of paper was it wrapped in? A The paper that is on the table in front of you.

Q That same paper? A That same paper.

Q And you took it to Professor Kingsley's office in New York? A Yes, sir.

Q And you there remained how long? A Until about five o'clock.

Q From what time of your arrival? A Neighborhood of ten o'clock.

Q And was Dr. Kingsley there when you got there? A He was there.

Q And did you state your mission to him why you had brought this hatchet over there? A There was a party there—

Q Did you state your mission to him when you brought the hatchet over there? A I did; yes, sir.

Q Who was present when you made your statement? A Mr. Flak.

Q Black? A Flak.

Q Where does he live? A I don't know.

Q Is he connected with the prosecutor's officer here? A He is not?

Q Connected with Dr. Kingsley's office of Professor Kingsley's office? A Not that I know of.

Q He had no connection particularly with your errand there? A He did, I believe.

Q Well, is he an expert also on some things—so regarded? A I believe so.

Q Talked with him, did you? A I did.

Q And Mr. Kingsley both? A Yes, sir.

Q And you opened up your package, did you? A Yes, sir.

Q How did you carry that package there? A Wrapped in that paper.

Q I know you carried it wrapped in the paper.

The Court. You better mark the paper that is referred to.

Paper marked Exhibit S. 3 for identification.

Q How did you carry it there? A I carried it in a paper, also a newspaper on the outside of it.

Q You wrapped another newspaper around it? A No; just put the newspaper that I had been reading on the outside.

Q Did you carry it in a valise? A No, sir.

Q Carry it in your pocket? A No, sir.

Q Overcoat pocket? A No, sir.

Q Carried it in your hand, did you? A Yes, sir.

Q And what did you do over there with it? A I remained there while they placed it up and photographed it in different positions.

Q How did they take hold of it to photograph—A With the photograph apparatus.

Q How did they take hold of the axe or hatchet to photograph it? A Generally by the blade.

Q Generally by that end there? A Yes, sir.

Q Didn't touch the handle at all? A No, sir.

Q Sure about that? A Positive.

Q How many times did they pick it up? A It was placed in position in front of the machine, I think, two or three times, the position was changed.

Q Changed by whom? A Oh, by Mr. Flak.

Q And always in your presence? A Always in my presence.

Q Just show the jury what way the hatchet was placed before the apparatus. Look out for the handle. A (Illustrating).

Q Stood on the bottom that way, was it? A Yes, sir; and several occasions it was turned.

The Court. Stood up on the wooden end, was it?

Witness. Yes, sir.

Q Several occasions it was turned? A About that far (indicating) and then it was turned back that far.

Q Photographed the back part of it as well as the front? A Not in my presence.

Q Do you know which side of this hatchet they photographed? A I believe that they photographed a certain side of the bottom of it—of the handle.

Q Do you know which side they photographed A I do.

Q Which side is it now? A Photographed—which contains finger-prints.

Q Which side is that, do you know? A I couldn't say without taking the wrapping off of it.

Q Without taking the wrapping off of it. That side is marked, is it? A Why, nothing except the finger-print.

Q Was it marked by those people over there in any way? A It was not.

Q Do you know anything about what this means on this hatchet here (indicating)? A I do not.

Q Don't know who put that mark on? A I do not.

Q You notice it, do you? A Yes, sir.

Q Turn around the hatchet the other way. See those three marks up there? A Yes, sir.

Q Do you know who put those on? A I do not.

Q Do you know what this wrapper is? A Yes, sir. It is an envelop from the prosecutor's office.

Q Do you know who put that on? A It was on when I got it.

Q I ask you do you know who put it on? A I do not.

Q You took that off, of course, when you got over to New York? A I did.

Q And of course, you put it back again? A I did.

Q And has it been taken off since? A Not to my knowledge.

Q Sure? A I don't know. I didn't see it.

Q Did you bring back any photographs with you? A I did not.

Q Was there any paper on it when it was photographed? A There was not.

Q Was it examined by a microscope before it was photographed? A It was.

Q And it was, all parts of it, examined by the microscope? A I think it was.

Q Do you know? You were there. You were there during the entire time? A I saw it being examined with the microscope.

Q How did they hold the hatchet when they were examining it by the microscope? A By the blade end of it.

Q Blade end of it. Put the microscope on all over the hatchet? A They examined it through the hand microscope.

Q Where did you first see them start the examination by the microscope—what part of the hatchet? A

I couldn't say particularly what part they started on. They were examining the handle.

Q Now, Mr. Hargan, how long did it take them to make this microscopical examination of this handle?

Mr. Mott. I object because the witness hasn't said anything about microscopical examination.

The Court. Objection overruled. He told us there was a microscopical examination.

Q How long did it take them to make the microscopical examination? A I think it was in the neighborhood of about half an hour or more while the machine, while the photograph machine was made ready for the taking of the picture.

Q When the hatchet was stood upon its end it must have had something to hold it—couldn't stand up alone? A It was fastened to an upright and the machine—apparatus—the blade was fastened to an upright higher up.

Q So that the apparatus was taken over there and secured to the iron part or steel part of the hatchet? A No sir; it was held fast by a rubber band.

Q Rubber band was put around what part of the hatchet? A The upper part of the hatchet handle, just below the blade.

The Court. Near the metal end?

Witness. Yes, sir.

Q Rubber band was put around that and then the hatchet was hung suspended, is that it? A No, sir; resting on some books.

Q Sitting on some books. How long did it take them to rig up that arrangement? A Probably in the neighborhood of five minutes.

Q Who handled the handle of the hatchet during that rigging up process? A Mr. Flak.

Q What was the date of your visit to New York? A Thursday, November 13th.

Q Do you know whether any photographs have been sent over or anything sent here from the experi-

ment or photographing over there of this hatchet to your office? A Not to my knowledge.

Q Have you seen any? A No, sir.

Q Have you heard of any? A I have heard of it; I haven't seen it.

Q Did you bring back anything at all with you that day from Dr. Flak or Professor Kinsley? A Nothing only—excepting what I took over there.

Q Where did you go when you come back? A Directly to the Prosecutor's office.

Q What time of day was it? A Neighborhood of half past five.

Q And did you carry your package back the same way you carried it over? A I did.

Q Then what did you do with it when you got to the Prosecutor's office? A Placed it in the safe.

Q Lock up the safe? A I did.

Q Anybody there when you put it in the safe? A There was not.

Q Anybody else have access to that safe? A Yes, sir.

Q Who? A Chief Weimer.

Q Anybody else? A No, sir; not to that particular safe.

Q That safe have a combination or key? A By combination.

Q Where does Sergeant Godfrey have access to for his matters that he has in connection with these murder cases? A The safe directly above that one.

Q Same room? A Yes, sir.

Q When did you next see the hatchet after you put it in the safe that night? A Yesterday.

Q What time yesterday did you see it? A About four o'clock in the afternoon.

Q Where? A Sergeant Godfrey was taking it out from this courtroom into the office.

Q Where did it rest last night? A I don't know.

Q You had no occasion to take it out of that safe from the time you came back from Professor Kinsley —didn't see it again until you saw it in the courtroom here yesterday afternoon? A I did not.

Q Correct, is it? A Yes, sir,

Q Where it may have been since Thursday, November 13 down to yesterday you don't know? A I do not.

WALTER GODFREY, recalled for the State.

Direct examination by Mr. Mott.

Q Mr. Godfrey, did you turn over anything to Dr. Martland at the time you took the hatchet to him? A Not at the time I took the hatchet, no, sir.

Q Did you at a subsequent time? A I did, sir.

Q What did you then turn over to him? A I took him up a lock of hair, sir.

Q And that was hair— A Hair found on the ground with the body of Mrs. Cerciello.

Q When did you take that to him? A On October 13th, sir.

Cross examination by Mr. McDermit.

Q October 13? A Yes, sir.

Q Did you take a memorandum of that? A I have a memorandum, yes, sir.

Q Where is your memorandum? A Book in my pocket.

Q I ask you to produce it. You keep a memorandum book in connection with this case, do you? A Some things.

Q And does your memorandum book contain your various connections with this case? A No, sir; not all of them.

Q What page of that book—or is it paged?—is this memorandum of October 13? A Page isn't numbered. It is a memorandum book with the days of the month in.

Q November 13, what appears? A "Hair taken to Dr. Martland's office," Monday, October 13, 1913.

Q Did you testify to that yesterday, that you had taken that to Dr. Martland's office? A No, sir; I wasn't asked.

Q Where did you take it from when you started to take it to Dr. Martland's office? A From an envelope which I have a lot of hair taken from the body at the time of the murder, sir.

Q Did you get any receipt from him for it? A No, sir.

Q When did you get it again? A Didn't get it again, sir. Dr. Martland has it in his possession.

Q Anything on that memorandum to show the time of day you went there? A No, sir; but I can tell you.

Q You, as I understand, you kept a memorandum of important matters in that diary? A Some things; yes, sir.

Q And you picked up this piece of hair that you sent to Dr. Martland on October 13th on May 30th, 1913? A There was a great deal of hair laying around the body and also some still on the head which was cut loose.

Q You picked up something of that kind? A I can't say that particular lock, no, sir, because it was all put in an envelope together. I can't say that that particular lock that I gave to Dr. Martland laid on the ground or was on the head at the morgue.

Q Look at your diary of May 30, 1913, and see whether that refreshes your memory as to whether this particular hair was part of the hair that you allude to? A I can tell you it does not, sir.

Q Anything about hair there at all? A I don't think it does, sir.

Q Anything about Cerciello there? A One minute and I will tell you just what is there.

Q I don't want to know anything except what pertains to the case. You may have other connection there, I don't want that? A Merely speaks of the death of Alvira Cerciello, Chester avenue, Friday, May 30th.

Q Any other death on that date? A Nothing else on that day that is entered here.

Q Anything with regard to the Cerciello case with regard to hair? A No, sir.

Q Any other case? A Excepting that I was working on the case on the following day, sir.

Q That appears on the diary? A Just says "State *vs.* Cerciello"—

Q And subsequently? A (Continuing.) —but there is nothing marked. And the following day I was on the case—the following day.

Q And following day? A Monday? No, sir. Second arrest of Angelo Cerciello.

Re-direct.

Q I show you an envelope and ask you what it contains? I should have done so before? A It contains hair of the deceased, sir.

Q And where was that hair obtained? A Part of it laying on the ground near the body, the rest of it laid on the head of the body and when she was taken to the morgue I took that which was loose, laying on the back of the head, and put it with the rest of the hair.

Q And what did you do with that bundle of hair? A I have had it in my possession ever since, sir, right up to the present time.

Q And it was out of that— A Out of that envelope that I took a lock of that hair to Dr. Martland.

Mr. Mott. I offer the hair in evidence.

Envelope of hair marked Exhibit S. 4.

ALFRED J. HARGAN, re-called for the State.

Direct examination by Mr. Mott.

Q Mr. Hargan, I understood you to say that when this envelope was photographed there was no paper on it? A No.

Q Did you have reference to these little papers here (indicating) on it? A No. I had reference to the envelope around it.

The Court. You say "envelope"; do you mean "hatchet"?

Mr. Mott. Yes, sir.

The Court. You intend to answer that way?

Witness. I intend to answer that the paper—

The Court. With reference to the hatchet?

Witness. With reference to the hatchet, yes, sir.

Q Now what paper did you refer to when you said there was no paper? A I referred to the envelope on the wooden end of the hatchet.

The Court. That consists of a paper apparently wrapped around the end of the wooden handle?

Witness. Wrapped around the end of the wooden handle.

Q And that was there when you received it that day? A It was.

Q And while they were using it for their purposes they took that off? A Yes, sir.

Q That is what you referred to? A Yes, sir.

HARRISON S. MARTLAND, sworn for the State.

Direct examination by Mr. Mott.

Q Doctor, you are a physician of this county, are you? A I am.

Q Have you any specialty? A I have.

Q What is your specialty? A Pathology.

Q Are you connected with any of our institutions? A I am.

Q Which one? A City Hospital.

Q And what position do you there hold? A Pathologist.

Q What experience and study have you had as a pathologist? A For the last seven years I have been making—doing pathological work entirely, such as autopsies—such as sections of various tissues of the body for diagnosis—various examinations of the blood for syphilis and other diseases—urine, &c., called—examinations that come under clinical pathology and pathological anatomy.

Q That is for the last seven years. Previous to that what experience and study did you have? A Only the study of the college.

Q Where? A Columbia University.

Q By "pathology"—what—translate that term into ordinary layman's language, will you, so we will understand it? A Pathology means the study of diseases and it is most often thought of as a study of the dead tissues from the body after death, to compare them with the diagnosis during life. That is what the layman most often think of as pathology, but not only do we have to do with dead people but we have to do with various examinations of the blood, urine and the various body fluids that come from the living in order to arrive at a proper diagnosis during life and treatment.

Q Doctor, the hatchet before you, Exhibit No. 2, I think, for the State, was that ever in your possession? A It was.

Q Do you recall when you received it? A On June 5th, 1913, at the City Hospital, at 5.30 P. M.—around 5.30.

Q And do you recall who brought it to you? A It was given to me by Mr. Godfrey.

Q Have you made any examination of that hatchet, first to determine what constitutes the stains —the apparent stains on the hatchet? A I have.

Q What do you find to be the cause of those stains? A Blood.

Q And have you made any examination, doctor, to determine whether or not the blood on that hatchet is human blood? A I have.

Q What process do you go through to do that? A First we had to prove that those stains were blood stains. That was done as a preliminary examination during the month of June; that is, practically, the following week most of the work was done. The various parts of the blood of the hatchet, especially where I have marked with white paint around there, were scraped off with a clean penknife that had been flamed in a Benson burner until it was red hot before touching the axe; the hatchet was placed on—wherever we placed it down—was placed on very clean white paper which had not come into contact with other things around the laboratory—these blood stains were scraped off and examined by several methods; first, to find out whether that was blood. The first test that was applied was the so-called benzodion, glacialaceticacid test. Some of those scrapings were put on a white porcelain dish, a drop of glacialaceticacid added and a very small portion of powdered benzodion was added on the tip of a knife, a drop of peroxide of hydrogen was then added, and every time we repeated this on the various parts of these scrapings immediately a deep blue color came. A deep blue color in those tests coming within one or two minutes after the peroxide of hydrogen is added is very good evidence that there is blood present. Some other substances will produce this same color, such as the sweat or urine or other substances from the body, so that this is not an absolute test by any means, but it is a very good preliminary test. The next test was made—some of these scrapings were put on a glass slide and a drop of—a minute granule of sodium chloride was added, a drop or two of glacialaceticacid,

a cover (glass) put on over the slide and the thing gently heated in the Benson burner. After evaporating some of the glacialaceticacid by gently heating and allowing the slide to cool, we were able to demonstrate, under the microscope the typical so-called hemin crystals—the so-called Teichmann's crystals. This is the most positive chemical test we have for blood. The presence of Teichmann's crystals is taken as absolute evidence of blood, but does not tell what kind of blood it is. Also I made a study under the microscope of the scrapings from various parts of this blood and found that when some of those scrapings were dissolved in a little saline solution, nine-tenths salt solution and examined under the microscope a rather typical red blood corpuscles were seen. We do not place much importance on the measurement of the size of the red blood cells as distinguishing one blood from another, but that is just another corroborative test that there were blood stains on this hatchet. Being quite satisfied then that this hatchet contained blood stains, I went ahead, in August, and started at August 20th and injected four large healthy rabbits. I injected these rabbits in the abdomen every day with placental blood—that is human placental blood—human placental blood taken from afterbirth —after a woman had her child the afterbirth was taken and squeezed and the blood collected in that manner—this blood was injected into the abdomen of these rabbits every day for about six days, and each dose was about 10 c. c.—10 cubic centimeters or about a fluid half an ounce; at the end of that time I gave them four extra injections with human serum, that is the fluid part of the blood which came off some of our tubes which were being examined for syphillis—these rabbits, at the end of six or seven days, were tested to find out whether their blood had developed the property of precipitating human blood when the serum came in contact with it. Two of the rabbits were

killed about the seventh or eighth day and we found that their serum was not strong enough to use in the test. The third rabbit, the rabbit serum was strong enough. That rabbit was killed on the ninth day. Blood from the vessels in the neck is the blood collected, and the fluid part, that is the blood separated from the corpuscle part of the blood. Now it is known that when you take any—this test is called the biological test for blood—it is known that if you inject human blood into a rabbit over a period of time that that rabbit will develop in its blood the power of forming a precipitate, or milky precipitate. When that rabbit serum comes in contact with human blood and with any other blood—for instance if that rabbit was injected with pig's blood it would develop in the course of time the property of precipitating pig's blood and no other blood, and likewise throughout all the animal kingdom, throughout all the species—therefore we had at the length—at the end of this time, having injected these rabbits with placental blood, we had a rabbit serum which gave a precipitate against human blood up to one to ten thousand dilution within five minutes. That is this rabbit serum would precipitate human blood in a dilution up to one to ten thousand within five minutes; one to one thousand it would precipitate in about one minute. Now before going further that rabbit serum was tested against other animal's serum to show that it would not precipitate, for instance, a guinea pig or sheep. It was tested against sheep, guinea pig, dog, chicken and horse and it failed to give a precipitate in any of those animals. We next made a saline solution—we then began the test. We made a saline solution of these scrapings and put in a series of test tubes about one cubic centimeter of this saline solution. We then added to the one cubic centimeter in each tube—we added one-tenth of a cubic centimeter of this rabbit serum and within five minutes—every time we did this test—within five minutes

there was a milky precipitate formed and went to the bottom of the tube. Repeating this about four times—four times—we got the same result each time. Now we would have liked to have gone further perhaps and make more counts but on account of the rather small quantity of blood which we had at our demand we could not go much further. So therefore I am convinced that this part of this hatchet contained blood stains, that the blood stains are in all probability those of human blood, but there is one animal which we cannot differentiate, that is the monkey, especially the higher ape. This precipitinery reaction will also give a precipitate with monkey's blood, especially the higher ape, the champanzee, gibbons, orang-outang and gorilla.

Q Well then, your conclusion is, Doctor, that the stains on there are the stains of human blood?

Mr. McDermit. I object.

The Court. Objection sustained.

Q Have you stated your conclusion?

The Court. He certainly has. He said that in his judgment these scrapings are either human blood or blood of a monkey or orang-outang or gibbon, or an animal belonging to that class. Is that correct, doctor?

Witness. Yes, sir.

Q Those little slips of paper, doctor, on that hatchet? Who put—

The Court. Are they on the blade?

Mr. Mott. On the blade.

Q Who put those on? A I put this label on here (indicating).

The Court. Which one is that, doctor, the white one?

Witness. The paper label, the other is white paint.

The Court. Show the jury.

Witness. This part of a Dennison label.

Q What do you call a Dennison label? A This paper.

Q This square here (indicating)? A That is paint.

Q You put that on? A I did.

Q And on the handle, on the other side, who put that on? A That square paint outline?

Q You put that on? A Yes, sir.

Q What did you put that Dennison label on there for? A I put that on there because there were strands of hair clinging to the blade and stuck in a little clotted blood. I put that on so all of them would not fall off. They were drying and constantly falling off.

Q Did you receive from Mr. Godfrey anything besides the hatchet? A I received on June 25th a bread knife—a long bread knife to examine for blood stains.

Q Well, anything else? A And I received on October 13 some hair. I asked for it—which was removed—

Mr. McDermit. I object to any evidence pertaining to the examination of the knife—nothing has been shown that it is connected with the case.

The Court. That is dropped now. The doctor says he received some hair on October 13 from Mr. Godfrey. Proceed with the answer.

A (Continuing.) On October 13th, I received some hair which was given to me in a blue envelope marked with the prosecutor's office type, and that hair was given to me and supposed to be taken from the body of this woman.

Q Have you made any examination to determine whether the hair given to you by Mr. Godfrey was of the same texture and character as the hair you found on the blade of the hatchet?

Mr. McDermit. I object. He hasn't qualified here as an expert on hair.

The Court. Cross examine.

By Mr. McDermit.

Q What do you know about hair? A I have several times examined hairs for the prosecutor's office here to determine—

Q Ever examine any hair before you came here? A How do you mean?

The Court. You mean here in court, this morning?

Mr. McDermit. No; here. Any character of hair.

The Court. You said "Before you came here"?

Mr. McDermit. I mean before he came to Newark.

Witness. Before I came to Newark?

Q Yes. A Yes, sir; certainly.

Q Where? A I have made sections of the scalp often after autopsies and studied the hair in position. I see the hair almost every day in sections taken from the skin for the diagnosis of breast cancer, etc.—or cancer of the lip.

Q Have you any idea how many different qualities and kinds of hair there are—human hair in the world? Have you the faintest idea? A You mean —why every—I should imagine that every human hair differs in some respect. There is not, absolutely, much in the hair—in the color for instance.

Q Any difference between hairs taken from a person that is alive and hair taken from a person that is dead? A No, sir.

Q No difference whatever? A Under the microscope, no difference.

Q Make any difference as to the length of death? A No, sir; hair is about—hair lasts longer than any other tissue of the body after death.

Q You do not mean to say that your training at autopsies and the other examinations that you have had qualifies you as a witness to be able to take one piece of hair and place it against the other and say it is the same class of hair, do you? Do you want to go on record and say that? A By common sense I can say it is the same color and same thickness and texture.

Q Do you want to go on record and say it is the same hair? A I haven't said it is the same hair.

Mr. McDermit. I do not think the witness qualifies. He is well up on the blood question but I do not think the foundation is sufficient to warrant examination of that kind.

Further direct.

Q Doctor, is the examination and comparison of different brands of hair to determine whether they are of the same characteristics and texture within the scope of your work as a pathologist? A In medical-legal work pathologists over the country quite frequently have to pass on—have to use all the evidence they have got in the examination of a hatchet—they can and do have to pass on common characteristics of the hair.

Mr. McDermit. Any ordinary person can do that.

Witness. No; an ordinary person cannot pass on the microscopical appearance of the hair.

The Court. Have you had experience in that work, doctor?

Witness. I think I have; yes, sir.

The Court. When did you graduate from the College of Physicians and Surgeons of the City of New York?

Witness. 1905.

The Court. And since then you have been the pathologist, except for a short time when you had

hospital experience—you have been the pathologist in the City Hospital of Newark?

Witness. Since 1909.

The Court. Can you from the examination of hair state whether or not one hair is like another or comes from the same body?

Witness. I cannot say it comes from the same body, but I can say that one hair may resemble very closely another, by comparing its color, its texture and its microscopical appearance.

The Court. Had you, prior to the time that you received the hair from Mr. Godfrey on October 13, 1913, made examinations for such comparisons and made such comparisons?

Witness. I have.

The Court. Why isn't he an expert now?

Mr. McDermit. I don't think he has gone far enough to show that. He doesn't show what those comparisons were.

The Court. How much more should he know to be able to say that? He says there are certain characteristics of the hair and he can say whether or not they are similar.

Mr. McDermit. That doesn't establish anything.

The Court. That goes to the weight of his evidence. The question as to whether it is competent at this point is another question.

Mr. McDermit. I desire to take an exception to your honor's ruling.

The Court. I haven't ruled yet. What is the question?

Mr. McDermit. As to his competency.

The Court. The question was, have you made an examination as to this hair. Objection overruled. You may answer the question whether you made an examination.

Witness. I have.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm. P. Martin (S S)
Judge.

Q And what did that examination consist of, doctor?

Mr. McDermit. I object to further examination along that line and ask an exception.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm. P. Martin (S S)
Judge.

A I took some of the hair from that blade, put it on a large glass slide and mounted it in the usual fashion. I took some of the hair that was given to me by Mr. Godfrey and put it on another glass slide and mounted it, and I studied both specimens under the microscope and with the naked eye. I have the specimens here. That is the hair given to me by Mr. Godfrey (indicating). These (indicating) are a few strands of the hair—the longest being about two and a half to three inches in length—which was removed from the blade of that hatchet. There are some short hairs still clinging there under the label. Those were stuck on with a little dried blood.

Q One minute now. Now this plate, you say, contains the hair given you— A By Mr. Godfrey.

Q There is a label on that?

The Court. What is it marked?

Mr. Mott. It can be marked right on that label.

The Court. Has it a mark, Doctor?

Witness. Yes, sir. "*State* vs. *Angelo Cerciello.* Autopsy hair."

The Court. Are there distinguishing marks on the other hair?

Witness. "*State* vs. *Angelo Cerciello.* Hair from hatchet."

Mr. Mott. I offer the hair given by Godfrey to the doctor.

Slide marked Exhibit S 5.

Mr. Mott. I offer the slide containing the hair taken from the hatchet by Dr. Martland.

Mr. McDermit. I object because there is nothing in the record showing any connection between this hatchet and the defendant in this case—to show any connection between the hair in this case and the hair found upon the hatchet on the record as it now stands.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Judge.

Slide marked Exhibit S 6.

Q Now, doctor, will you tell us then what you did in the line of studying the hair and the conclusions you came to? A These were examined under the microscope and compared very carefully, in color and in texture. The hair from the hatchet was cut across the free ends—that is was cut—most of them was cut diagonally. I was unable to find any hair bulbs that you would get if you pulled the hair out of the scalp, showing probably that that hair was cut. That is all I can say that they are closely alike in color and texture. The color I took as a very dark brown, approaching almost a black seen in large bulk.

Q And by "texture," Doctor, what do you mean by that? A Particularly the caliber, cross diameter of the hair. Whether it is coarse or very fine. Of course the diameter of the hair is compared very closely. Of course you may allow variations—some variations.

Cross examination by Mr. McDermit.

Q You are not prepared to say that the hair from the hatchet is the same hair that Mr. Godfrey brought to you in that paper, are you? A Of course not.

Q You have adopted the latest test on the ascertainment of human blood upon any other tangible subject, have you? A Yes, sir.

Q In your application in this case? And you have testified in court before, haven't you? A I have testified on blood stains before, yes, sir.

Q How often? A I think twice before. It wasn't in court; it was before the grand jury here.

Q In connection with this case? A No; other cases.

Q Were the cases subsequently brought into court in which you appeared as witness in the trial of them? A No; they were not brought into court. One man was held on suspicious blood stains and freed after examination.

Q Now you had this hatchet that you have marked up there in your possession a long time? A I have.

Q And you say that you scraped the ends of that hatchet with a knife. Steel knife, was it? A A penknife—steel penknife.

Q What is the composition of the hatchet there—the lower part of it there? A What do you mean? The blade?

Q Yes. A What metal, do you mean?

Q Well, what metal was that made of? A I should think it was steel.

Q Do you know whether it is or not? A By the looks of it, &c., I take that as big steel. I don't know.

Q You have no knowledge of what that composition is, whether it is steel or iron or what it may be? A Well, from seeing the hatchets before I should probably conclude that that was steel, but I don't know positively.

Q You don't now figure or don't now qualify as an expert on steel? A No; it might be soap.

Q Probably isn't soap though? A Probably is not.

Q Do you know whether there is any difference in taking a piece of blood—dried blood from a piece of steel or a piece of celluloid or a piece of wood—whether it is—any difference in the method of taking it off? A No; there is no difference.

Q There is no difference? A As long as it is taken off with a clean instrument.

Q Well, would the fact that it was upon wood or upon steel or upon celluloid make any difference? A Of course if it is on the wood—it depends on what it is on in a way. The blood will soak down, if it is on wet wood, and you would have to whittle shavings off the wood to get sufficient blood.

Q The chances are if it is on steel there wouldn't be as much absorption of the liquid as there would be on wood? A Practically no absorption.

Q And if it is on celluloid with a surface that is tantamount to rubber there would be no absorption—would there be? A You say celluloid?

Q Celluloid; yes. A Probably not.

Q Now how often have you taken blood off of steel before? Ever in your life? A Yes; surely.

Q Where? A Scrape blood off of steel almost every day.

Q Where? A Doing autopsies and getting sections—dried blood on our knives.

Q What else do you take it off? A That is all that I can recall right now.

Q Did you ever take it off any place outside of the hospital? A Taken it off instruments; yes.

Q Did you examine the handle of that axe for blood stains? A I examined right up near the—where the wooden handle goes right in there—in that crevice (indicating); between the steel and there. You can see where I have whittled it.

Q You cut that, did you? A I had to whittle with the penknife.

Q How did you hold the hatchet when you cut it? A I cannot remember how I held it. Would hold it as careful as we could—holding it so (indicating).

Q How long did it take you to whittle off the wood? A Not very long; just a few shavings.

Q You think probably as you are holding it now? A I couldn't say how I held it all the times.

Q You have handled the handle lots of times? A I have handled it about the way I would do now; with the handle covered.

Q You never took the cover off, of course? A Only took it off once. Found it wrapped in gauze—looked at it and put it right back without touching the handle once.

Q How many times do you think—do you think a hundred times you handled the hatchet while it was under your care in making these different examinations of it? A I should say—rough guess—somewheres about thirty or forty times perhaps.

Q Was there any finger-prints on the ends of the hatchet from where you handled it that you can discover? A I can't discover any.

Q Any finger-prints on the paper? A Well, it has been handled a good deal. You might find them.

Q And it has been handled by other people besides yourself up there? A Not up there; no.

Q Now you have other work to do besides work of examining for blood for thirty days on this hatchet at the City Hospital? A Surely.

Q You have work every day—you have a laboratory there? A Surely.

Q While you were at different parts of the hospital, taking your dinner, &c., you didn't take the hatchet with you? A I did not.

Q Didn't take it to dinner, supper or breakfast? A No.

Q Didn't take it to bed with you, or if you are called out to perform some other duties. It lay there. Most of the time it lay—because you are careful—on clean white tissue paper, if I understood you in your direct examination. Is that right? A I said when we were examining it.

Q "We"? A When I was.

Q You said "We." A Pardon me. When I was examining it it was always laid on clean paper.

Q You were very careful about it. And other people came into the laboratory? You are not in entire charge of the entire laboratory of the City Hospital? A I have charge of the pathological laboratory of the City Hospital.

Q That is connected with the general laboratory? A No, it isn't.

Q What part of the hospital is your laboratory in? A Addition part of the hospital.

Q How large a room? A We have got—

Q "We have got" or you have got? A The hospital has four rooms now for pathological laboratory.

Q How many attendants in these four rooms? A We have one constant attendant.

Q Who is that? A Mr. Moran.

Q Mr. Moran, is he here? A He is not.

Q He wasn't away from the premises or away from those four rooms in June, 1913, was he? A He had a vacation in the end of June or July.

Q Either June or July. You don't know? A I don't know.

Q Anybody else have any vacation up there? A I don't know.

Q Did you have any vacation in June or July? A I certainly have not.

Q Have a vacation in August? A I have not had a vacation in the whole year.

Q Who else besides Mr. Moran attends the four rooms where this pathological laboratory is, if he did? A The internes do their work there.

Q How many of them are there there? A Twelve on the interne staff.

Q How often do they frequent those rooms a day? A They are there every day.

Q What was to prevent them from seeing this hatchet in there? A Because the hatchet was locked in the safe after I got through.

Q Was it locked in the safe when it was laying out on the paper? A When it was laying out on the paper I was working on it and nothing else.

Q How many days did you devote to it? A I can't say. I have taken this out several times—I told you about thirty or forty times.

Q Thirty or forty. You must have devoted more than a minute each time. Did you ever consume more than an hour or two? A I have. I have gone over it perhaps one time taking two hours—

Q That was eleven o'clock or half-past eleven—

The Court. You must let the witness finish his answer.

A (Continuing.) Some times only a few minutes. Scrape off another portion, put the axe away again—cover it up.

Q You are satisfied that never at any one time of the thirty-five or forty times you were examining that hatchet that you ever left it there unguarded; is that right? A I am.

Q Do you understand my question? A I do.

Q Mr. Moran never knew there was a hatchet there? A He knew it was there—he saw me working on it perhaps.

Q The internes never knew there was a hatchet there, did they? A Perhaps one or two might have seen me working on it—

Q Who—

The Court. Let him finish the answer. You cannot cut off an answer and go on with the next question. You must let the witness have a chance to answer.

Q (Continuing.) Perhaps one or two of them have seen me working on this hatchet.

Q Who has assisted you there on this hatchet? A No one.

Q At no time? A No time.

Q Held it for you? A No one.

Q Did you make a date of the different examinations of the hatchet? A I haven't made a date of the days because whenever I would get a couple of hours that I could—felt like I could work on it without being interfered with I probably did some work on it and in the intervals the hatchet was locked up in the safe in the City Hospital—in the office—and when I got through examining it it was always wrapped up in the cover—this same sheet it was brought to me in.

Q Where is the safe of the office? A It is right off from the main hall as you go in.

Q That isn't part of your laboratory? A No; it is near the laboratory—across the hall from it.

Q When you got through with your different examinations of this hatchet you took it each time from the laboratory and brought it to the office safe—right? A That is practically right. Probably a few times I had it locked in the cabinet downstairs in what we call the Wasserman laboratory, there no one

has admission to that laboratory but myself—no one works there but myself.

Q So that there were two places in which this hatchet could be found that you were working on, one was downstairs in the place in which you had personal and sole control and the other was in the safe in the office? A Yes, sir.

Q How many people have access to the safe in the office? A I think only two.

Q Who are they? A Mr. Talbot, the superintendent and Mr. Vidt, the clerk.

Q Did you ever tell them that you had placed the hatchet in the office safe? A I told Mr. Vidt.

Q How often? A I couldn't tell you how often. Every time I put it in the safe I put it in in his presence.

Q Safe is open all the time there in the daytime? A What is that?

Q The safe is open all the time in the day time—office safe? A The small drawer in which this was put in is locked. He had the keys of it.

Q He had the key to it? A He had the key to it.

Q You don't know whether he took it out or not? A I do not know.

Q He could have taken it out? A He could have done it.

Q Did you have to go to him to get the key every time you wanted to get it out? A I did.

Q Who else has the key of that inside box in the safe besides that party? A I think Mr. Talbot has the key.

Q Do you know whether he has or not? A I don't know absolutely.

Q Did you ever ask Mr. Talbot for the key? A I never did.

Q What is the other gentleman's name that had the key? A Mr. Vidt.

Q When did he go off on his vacation if he had any? A I don't know whether he had one or not.

Q You don't know whether he was away in June or not, or in Europe? A He probably wasn't in Europe.

Q Probably wasn't in Europe. Was he away on vacation? A I think he had a week's vacation; I wouldn't be sure.

Q Wasn't it in June or July? A I couldn't tell when it was.

Q Would you have applied any other test other than the test that you applied on the steel end of the hatchet for the blood on the wood—test on the blood spots on the wood? A On the wood?

Q On the handle? A On the wood here. I applied the same chemical test and found the same result.

Q Would it make any difference to you in your examination of the blood on the steel end of that hatchet if the hatchet had been exposed to weather before you made the examination or been exposed to air for any given length of time? A Certainly. In this way. If there is, of course, less blood there it is more difficult. It is easier to work with a large quantity of blood than with a small quantity of blood.

Q If blood has been on the hatchet for a period of a week in the minimum quantity in which you found it there, what are the chances of determining that against the chances of determining it if you had got the hatchet within a few hours after the blood was on it? A Depends whether it has washed off or if it hasn't. If there is a reasonable quantity of blood there the chemical test—the Teichmann's crystals will be formed in the amount—in dilution of one four hundred thousandths.

Q If this hatchet had remained out all night and had remained out all night in the rain, on the ground, in the open, and had remained upon the ground for three or four days following that and had been taken into the hands of other people, had been used to chop a tree, had been taken out by one or two persons in

their hands, wrapped up in paper, carried over to—a distance of two or three thousand feet, then taken and unwrapped at the police station, wrapped up and brought to the court house and brought to you five or six days later, would you be able to determine whether that was actual blood of a human being or not, on the quantity of blood that you have testified here on this record that you found there? A Yes, sir.

Q You now say that your examination upon that hatchet shows that it is human blood? A I said that it showed that the stains were blood; that in all probability in my opinion they were either human blood or the blood of the monkey and not of the common domesticated animals.

The Court. Or fowl. Didn't you say or fowl?

Witness. Yes, sir.

Q Then it is impossible for you to say that this is human blood absolutely? A I just stated what I said.

Q Answer my question now? A Between monkey blood and human blood.

Mr. McDermit. I ask to strike that out. You listen to my question.

Q I say that it is absolutely impossible for you to say that this is human blood? A Absolutely?

Q Yes, absolutely? A It is; yes, sir.

Re-direct.

Q Well now, you are limiting it to the fact that you are unable to say that that is human blood. You are able, as I understand it, to say that it is human blood or the blood of the animals you named, are you not? A Or the monkey; yes, sir.

Q Doctor, you were asked if the hair brought you by Mr. Godfrey was the same hair as that on the axe or on the hatchet, and you said no. What do you mean by that? A I meant that I couldn't say that it was the same hair. All I could say was what I

did before, that in color and texture it resembled closely—the two hairs resembles.

The Court. Did you notice any difference?

Witness. I noticed no difference.

Q No. The case that you said you had examined for blood tests was one where there was suspicions of blood. Did you make an examination in that case?
A I did.

Q And what did you find?

Mr. McDermit. I object.

Q And you further said in answer to Mr. McDermit "and the man was subsequently freed." What did you find—

Mr. McDermit. I object to that line of examination.

The Court. Why you have endeavored to impeach the witness by trying to show that he made an examination and the man was freed. Now he can say what the situation was.

Mr. McDermit. If your honor so rules I desire to ask an exception.

The Court. I will hear you on the question if you desire to be heard.

Mr. McDermit. He volunteered the information. He said the man was freed. I did not inject that into the record.

The Court. In response to your question, brought out on cross examination. He has a right to explain. He does not have to leave the matter in suspense as to what the truth is. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm P. Martin (SS)
Judge.

Q In the case in which the man was freed that you have spoken of what did you find as to blood stains? A The man, I think—

Q Briefly, what did you find? A We found human blood, but very probably menstrual blood coming from his wife, contaminated his underwear.

Q You came to the conclusion it was menstrual blood and so reported? A Menstrual blood. Yes, sir.

Re-cross.

Q Then you got a little bit confused on the degrees or kinds of human blood, didn't you, Doctor? A I don't believe so.

Q You first found one class of blood in this case that you allude to and then said you found another? A No; I didn't say that.

The Court. He didn't say that. He said it was human blood.

Witness. I said it was human blood and my conclusion was that it was probably menstrual blood.

Q Now what is the difference between menstrual blood and human blood when menstrual blood comes from the human being? A There is no difference except during menstruation it is sometimes possible to find squamous cells from the vagina mixed with the blood.

Q Then that makes the blood mixed—adulterated and impossible to give a proper examination of it; is that the idea? A No it doesn't.

Q What is the trouble with the corpuscles in that blood? A No trouble at all with them. It is just contaminated with the other—with the cells from the vagina and mixed and in that way we form a conclusion that it is probably blood from that source.

Q I see. So that there is no real basis for the conclusion even on that? A It isn't absolute; no.

Q That from the surrounding circumstances and conditions led to the belief that that blood came from a human being and it came from a menstruation; is that right? A Yes, sir; that is right.

Q And that—when you made your test of the two rabbits why was it that you tried that rabbit on the seventh day? What was the reason that you did that? A Because in injecting these animals the period when their serum is strongest is about seven to nine days after the last injection. That is a known scientific fact, that is all.

Q The two rabbits on the seventh day didn't qualify, did they? A Their serum could have been used but it wasn't as strong as I desired.

Q Wouldn't have been satisfactory—wouldn't have been the best test? A I like to work with a stronger serum; that is all.

Q Now on the ninth day you used the rabbit, and you had injected what class of blood did you say? A Human placental blood and blood serum from human beings.

Q Did you ever examine a goat or inject a goat with blood? A I did not.

Q Or a deer? A No.

Q Did you ever see any deer blood? A I haven't seen any deer blood; no.

Q Ever seen any goat blood? A I don't believe I have.

Q Ever seen any monkey blood? A I have seen monkey blood; yes, sir.

Q How long ago? A About five or six years ago.

Q Where? A Rockefeller Institute.

Q Ever seen any since? A I haven't done any work on monkeys since; no.

Q Do you know what the distinguishing feature or characteristics are about deer blood in comparison with human blood of your own knowledge? A All animals—the red cells of all animals have a definite

measurement for that red cell—a definite diameter for the red cell, and there are tables showing that deer's blood has a different diameter than blood from other animals, but that—those measurements can be taken only under ideal condition, such as fresh blood —and they are practically worthless in examining stains—the measurement of the red cells is not a reliable test for distinguishing blood from different animals. There are blood examinations that are past that stage.

Q Do you know anything about where the neighborhood was where this hatchet was found, yourself? I do not.

Q Did you inquire anything, before you made your examination, into the history of the hatchet, as to its surrounding, how long they had it in their possession and where it was found; whether it had been exposed or not? A I was told it had been exposed to air and possibly to water for some period of time.

Q Did they state how long? A I don't know how long.

Q Do you know where the section of Bloomfield avenue is, over that territory over there? A I don't know just where this was at, no.

Q You know there are a good many animals over in the direction of Bloomfield avenue—Silver Lake? A I think there is. I think I have seem them often.

Q You didn't make any attempt to take any goat blood and inject it into the rabbit? A No; but we know from science that this rabbit serum will not precipitate goat blood. I have tried it against seven or eight animals but I cannot try it against all. It is impossible.

Q You never specially tried goat blood against a rabbit, did you? A I never tried goat blood with this rabbit serum, no, but it absolutely would not produce a precipitant.

Q How do you know that, Doctor? A Because of the men who have done this before. This is an absolute scientific fact—

Q You are—

The Court. Let him finish.

A (Continuing.) It is a scientific fact that this precipitionary reaction is specific against all other animals, except animals closely allied, such as the monkey and man.

Q Then you consider man is monkey? A I believe that man sprung from monkey.

Q That is all, doctor.

By the Court.

Q How much human hair was there on the hatchet when you got it? A From about eight to ten strands here from about a quarter of an inch to nearly three inches in length.

Q Can you tell whether or not those eight strands on the hatchet were the same hair, that it presented similar appearance? A How is that again?

Q Can you say whether or not the strands of hair on the hatchet presented a similar appearance? A To the other hair?

Q To one another? A Yes, sir; they did—to one another.

Q How many of the strands of hair on the hatchet did you compare with the strands of hair delivered to you by Mr. Godfrey on the 13th day of October? A I think there is seven or eight there. Those are from the hatchet (indicating).

The Court. Referring to Exhibit S. 6?

Q When was it you made a comparison between the strands on Exhibit S. 6 and the hair that Mr. Godfrey brought to you? A That was a couple of days after October 13th. He brought me that hair October 13th, at my request, so that I could compare them.

Q This hair that he brought you was brought to you in a bundle, and the hair— A In an envelope.

Q —in an envelope—and the hair that you compared that with was hair that was upon this hatchet that had been in your possession— A Since June 5.

Q —since June 5, down to October 13, and you then, upon October 13, made the comparison between those hairs? A I did.

Q And you say there is a similarity? A Yes, sir.

Q One of your samples, of course, was in a bundle, possibly in a dry place, the other was on the hatchet all the time— A Both in a dry place.

Q One congealed, you say, with blood, on the hatchet? A Just stuck in one place with a little—

Q And that laying in the blood—laying there for three or four months, you compared with hair that was apparently fresh hair, and say there was a similarity? A The whole hair was not laying in the blood. It was just stuck by less than a quarter of an inch.

Q You didn't take that part of the blood off the hatchet? A Yes, I did. I used that in some of my tests.

Q Then you had separated the blood from the hairs that was upon the hatchet that were immersed in the blood and used that blood in your test, and afterwards on October 13, compared the hair that you had taken out of the blood with this hair, and you say there is a similarity? A I do not just understand what you are driving at.

Q Well, it is plain. You are saying there is a similarity in answer to his honor's question, between the hair that Godfrey brought there and the strands of hair that were upon the hatchet, didn't you? A I did.

Q I am saying that you did not make an examination of these hairs until October 13th, is that right? A Until after October 13th.

Q Until after October 13th. Meantime Godfrey had possession of the other hair and brought it there in a bag to you, or in an envelope, and you had taken the hairs off the hatchet in the blood clot, or the hairs that were immersed in the blood there and had used that blood—taken the hairs from it, and then you compared the hair that Godfrey brought and that hair that had been on the hatchet, and you say they were similar, do you? A Yes, sir; you know I had examined the hair that was on the hatchet long before October 13th.

The Court. When did you put the Dennison label on there?

Witness. I put that on while I was doing the blood work on there, to prevent all the hair—

The Court. That was when you first got that?

Witness. Yes, sir. To prevent all the hair from falling off, so that there would still remain some on, that you can see now.

Q You cannot see it without the microscope? A Yes, with the naked eye—

Q And can you tell by looking at that—

The Court. One moment, counsellor. The witness is entitled to finish his answer.

Witness. Yes, sir; I can see it with the naked eye.

Q You say in taking that now under the light that you have just used it—examined it? Can you say that that hair that you have examined now under this light is the same hair as the hair that you took off? A Why, no, not exactly. All I know is that I took hair off from that particular spot of the hatchet.

Q But you are unwilling to say that the hair that is now on that hatchet is the same hair that you found upon October 13? A I think that is the same hair.

Q You think so? A Yes, sir.

Q That is all you can say? A That is all I can say truthfully; yes, sir.

Q You are not willing to say that it is? A I can't say absolutely that it is because I haven't had the hatchet for some time. I haven't had the hatchet in my possession. It is the first time I have seen it since I returned it to the prosecutor's office.

Q Well, taking the hair that you did examine now what did you base your calculation upon that it is similar hair—what hair was it? What are the hairs that you compared that you say were the same? A The hair taken from this point in the hatchet and placed on a glass slide and compared with the hair given to me by Mr. Godfrey. They are all uniform in color and texture.

Q Now, that is exactly what I understood you to say before; from this point on the hatchet where you placed on this paper mark? A Yes, sir.

Q You took a hair, is that right? A I took more than a hair.

Q You took several hairs from that spot. Where you took the hairs off the hairs had been immersed in blood, is that right? A Small portion of them had, yes, sir.

Q You took those hairs off that hatchet when? A When I was doing the blood work.

Q When was that in point of time? A That was during June—during the last couple weeks of June.

Q During the last couple of weeks in June? A Yes, sir.

Q And that hair you took off you had laid aside, had you? A It had been mounted on a glass slide at the time.

Q Been mounted upon a glass slide, and when Mr. Godfrey brought you in the hair on October 13, you compared the hair upon the glass slide with the hair he brought you, is that right? A I did.

Q Now, are you willing to say that the hair on the glass slide and the hair that Mr. Godfrey brought you came from the same human body? A I told you before I could not say that.

WILLIAM WIENER, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Wiener, what is your occupation? A I am principal of the Central Commercial Manual Training High School.

Q And in addition to that what special work do you do? A I have charge of the government weather for this section—official observer.

Q Bureau, do you call it? A Yes, sir; bureau.

Q And in your capacity in charge of the United States weather bureau what do you do? A I make the daily observations as required by the United States Government and also the reports and keep the records—the official records—

Q Of? A Weather conditions.

Q Weather conditions. Did you do that with reference to the condition of the weather on the night before Decoration Day, last? A I did.

Q And in what form are your records? A They are entered in an official book and all entered by myself.

Q And have you that book with you? A I have.

Q Where is it, please? A I have it here.

Q Referring, if need be, to your records, will you tell the court and jury what the weather conditions were for the—well say from twelve o'clock noon of the day before Decoration Day up till noon on Decoration Day—for those twenty-four hours.

The Court. That is May 29th?

Mr. Mott. Beginning noon May 29th.

A Is it with reference to any special condition?

Q Commence first as to whether it was raining or not? A Well, it began to rain on the 29th at three

P. M. There was a heavy shower from three P. M. to 3:40; 68/100 of an inch of rain fell. This was a thunder storm. From 4:30 P. M. to five P. M. 21/100 of an inch of rain fell. That was also a thunder storm. Then at 7:15 P. M. to ten P. M. 18/100 of an inch of rain fell. This also was a thunder storm. Then there was no further rain until noon of the next day.

Q What was the condition of the moon, if you know, during the night? A At noontime the sun was out. I don't know whether you wanted this over the twenty-four hours.

Q I do not care for this over the twenty-four hours. I mean as to the night. What was the condition of the moon on the night of the 29th? A It was cloudy. The heavens were heavily clouded. No moon shone that night, although it was almost full moon—would have been full moon on a clear day—clear night.

Cross examination by Mr. McDermit.

Q What was the condition of the weather the following day? A On the following day, May 30th, afternoon time, at 1:10 to 2:45—1:10 P. M. to 2:45, it rained 36/100 of an inch. That also was a thunder storm. After that—or at seven o'clock in the morning, the sun had been shining. This is Decoration Day. At two o'clock the heavens were clouded and then again at night the heavens were partly clouded—just half.

Q Any more rain except that one shower on that Decoration Day? A No, sir.

Q How about the next day? A None the next day.

Q How about the day succeeding that? A No; none on the 31st; none on June 1st.

Q How about June 2d? A June 2d, there was a shower, 9:45 P. M. to 10:45 P. M., 4/100 of an inch of rain.

The Court. That was P. M.

Witness. Yes, sir.

The Court. That is the only rain on June 2d?

Witness. Only rain.

Q How about June 3d? A No rain.

Q What was the total precipitation of rain on the 29th? A 1 7/100 inches.

Q Do you know anything about the territorial conditions of Essex County?

The Court. If you do not understand the question you do not have to answer it.

Mr. McDermit. I will withdraw the question.

Q Do you know anything about the vicinity of Bloomfield avenue and Grove street as to the condition of it—effect of rains upon the property? That is in the boundary of Grove street and Bloomfield avenue and North Eighteenth street? You know where Bloomfield avenue is, do you? A I do.

Q You know where Grove street is? A Yes, sir.

Q And you know where North Eighteenth street is? A Yes, sir.

Q Do you know where Roseville avenue is? A Yes, sir.

Q Do you know where the old Erb property is up there—the old John Erb Hotel? A I think I do.

Q You know where the park is there—old time park there? A Yes, sir.

Q Do you know where Belmont avenue is in the Silver Lake section? A No.

Q You know the Silver Lake section commences at Bloomfield avenue, don't you? A Yes, sir.

Q And there is said to be some swampy land and stuff in through Grove street there, Eighteenth street section, south—immediately south of Bloomfield avenue. Do you know anything about that section? A Not of recent date.

Q Well, you are familiar, I suppose, with that section up there. Do you know whether there is any water up there or not? A I think there is. I couldn't tell you.

Q Do you know whether there is any swampy land up there or not? A I don't know.

Q Not sufficiently familiar to describe that? A No, sir.

Q Don't know what effect water would have upon that territory during this day I speak about, May 29th? A Don't know that section well enough.

Q Don't know that section well enough to tell us what the effect would be there. All right, professor. What was the temperature of that day of the 29th? A The maximum temperature was 82, the minimum 65.

Q That is the 29th, is it? A Yes, sir. The average temperature of that day 73.5.

Q Take Decoration Day from midnight on, the entire day. A Maximum temperature 80, minimum temperature 64; average for the twenty-four hours, 72½.

Q You say that from the evening of the 29th and morning of Decoration Day would have been full moon if the cloudy conditions did not obstruct—the moon would be full, is that right? A Yes, sir; almost full.

Q So that in the territory—the territory I have alluded to—in this county there would have been plenty of light? A If it hadn't been rainy or cloudy.

Q If it hadn't been rainy or cloudy there would have been—ordinarily would have been plenty of light? A Yes, sir.

Q You cannot, of course, say from your record how long it remained cloudy during the night? Nothing to indicate that there? A It tells the time at which these observations were taken.

Q Yes; but for instance what observation was the first observation. Say, at eight o'clock on the evening of the 29th, what was the condition of the situation then, raining? A Yes, sir.

Q Nine o'clock, raining? A It was raining until ten.

Q Raining until ten? When was your next observation taken on that same day? A Which observation?

Q After ten o'clock.

The Court. As to what, he means.

Mr. McDermit. After the observation of the rain having ceased?

The Court. You mean as to rain, temperature or moon?

Mr. McDermit. As to condition, whether it was cloudy or bright or whatever your book shows.

A It shows that it was dark until twelve o'clock that night.

Q Shows it was dark until twelve o'clock that night? A Yes, sir.

Q What does it show after that? A We do not take the record again until seven in the morning.

Q I see; so that we are without the official record from midnight of the 29th until seven o'clock on the morning of the 30th? A Except if it rains, then it records.

Q Except if it rains. If it rains the record will be taken? There was no rain between midnight—between ten o'clock and seven o'clock in the morning. That is correct, isn't it? A No official record made except by the instruments. If it rains or storms commence then they record.

Q There isn't upon your book any record to show there was any storm from ten o'clock at night on the night of May 29th until seven o'clock in the morning, May 30th, isn't that right? A Yes, sir.

By the Court.

Q You mean by that there is no record to show there was rain or is there a record there was not rain? A There is a record there was not rain at that time.

There is one other record—wind record, that is automatically recording itself all night as well as this.

Q Where did you make these observations? A At the Central High School.

Q In Newark? A Yes, sir.

Q How far away from that is Bloomfield? A It is the corner of High, New and Summit streets.

Q How far it is from Bloomfield, if you know? A From Bloomfield proper?

Q No; from the Bloomfield line? A I don't know. I couldn't tell you that definitely.

Mr. McDermit. I should think on an air line possibly a mile or a mile and a half—not over two, on an air line.

Q Do these observations which you make indicate the condition which you have described at the point of observation? A I can only answer that this way, that the government record—

Q Never mind that. The observations which you made were at the Central High School? A Yes, sir.

Q For how great an area—a space around the Central High School—would these observations be true of? A Officially recognized as true to about eighteen miles—eighteen to twenty miles. Within that radius.

Q Would they be true as to two or three or four miles away from the point of observation? Within that distance of four miles, say? A I, personally—I can conceive of conditions, if the storm is not general, when they would not be true for a distance of perhaps even greater than a mile. It depends upon the storm area of that day.

Q Now, is there anything in your record or do you know of anything as to whether or not the storm on Thursday evening, May 29th, which began at 7.15 and ended at ten P. M. was not only at the Central High School but also within the area of four or five miles? A I think so. That is I can tell from the record.

Q Can you say whether it was within four or five miles? A Judging from the character of that storm?

Q Yes. A It was; yes, sir.

CECIL WAINER, sworn for the State.

Direct examination by Mr. Mott.

The Court. How old are you?

Witness. Eleven.

The Court. Do you go to school?

Witness. Yes, sir.

The Court. What is your name?

Witness. Cecil Wainer.

Q Now, Cecil, talk to me just as if you were out doors talking to the boys. Do not be frightened. Talk right up as if you were playing ball with those gentlemen over there. Where do you live, Cecil? A 481 Chester avenue.

Q In what town? A Newark.

Q Do you know this little boy sitting there (indicating)? A Yes, sir.

Q What is his name? A I only know his first name.

Q What is his first name? A Jim.

Q Were you up around the territory of Grove street and Eighteenth street in Bloomfield, over that way, were you? A Yes, sir.

Q When were you there, do you remember? A Decoration Day.

Q What time were you there? A I don't know. It was in the morning.

Q Did you find anything anywhere up there? A No, sir.

Q Did you see this little boy pick up something? A Yes, sir.

Q What did he pick up? A Bracelet.

Q And what did he do with the bracelet that he picked up? A He was taking it home with him.

Q Yes; and then what did he do with it, if you saw? A He didn't do nothing with it.

Q Did he give it to anybody? A Yes, sir.

Q To whom did he give it? A Chief of Bloomfield.

Q (Collins.) Is that the man he gave the bracelet to? A Yes, sir.

Q Can you tell us about where it was that he picked up the bracelet? A Yes, sir.

Q Where was it? A On the side.

Q Side, where? A Of the lady.

Q Of the lady? A Yes, sir.

Q Was the woman lying on the ground? A Yes, sir.

Q When he picked up the bracelet? A Yes, sir—no, sir.

Q Just what is it you mean? A They had took the lady away.

Q Oh. Did you see the lady lying on the ground before they took her away? A Yes, sir.

Q How near to the place where you saw the lady lying did you see this little boy pick up the bracelet? A They had took the lady away first. I couldn't tell you.

Q Well, how near to the place where she was lying before they took her away did he pick up the bracelet? A Right near it.

Q What kind of a bracelet was it? A I don't know. Like gold.

Q Look at this bracelet and see if this looks like the one he picked up? A Yes, sir.

Q How soon after he picked it up did he give it to Chief Collins, as you remember? I mean, the same day? A Yes, sir.

Q About how long after it was it? A About five minutes. He was walking down the street.

Q The chief was? A Yes, sir.

Cross examination by Mr. McDermit.

Q How did you come to go over there that morning, Cecil? A I seen a lot of people over there.

Q How many people was there over there? A When I went over there was only three.

Q When you went over there there was only three. How long did you stay over there? A About half an hour.

Q Then did there come some people there? A Yes, sir.

Q How many more people came there? A Lot more.

Q Lot more. Did they all come up to where the body was? A Some of them did.

Q And did they walk around the body? A No, sir.

Q How close did they come to the body? A About five inches away from it.

Q About five inches away from the body. How long is five inches? Now show us how long five inches is about. A (Indicating.)

Q About that much? A Yes, sir.

Q And many people walk around there? A Yes, sir.

Q What was the policeman doing? A He was standing there.

Q Didn't he put these people away from there? A The boys he did.

Q Put the boys away and the grown up people he let stand there, did he? A Yes, sir.

Q And you remained there until they took the body away, did you? A No, sir; I had went home afterwards and then I came back.

Q You went home and then came back? A Yes, sir.

Q And did you come back with this little boy there? A No.

Q Was he over there with you the first thing in the morning? A No, sir.

Q Where was it that you saw him pick up this bracelet or ring? A Near the lady.

Q What? A Right near the lady.

Q Was she laying there at that time? A No, sir.

Q Well, how did you come to go over there with him, did you know him? A Yes, sir; I didn't go over with him. I went over first and then he came after.

Q Then he came over there after you had been over there. You had been there twice, were you? A Yes, sir.

Q What did you go back there the second time for? A Nothing.

Q Must have went back there for some reason? He came with you? Did you pick anything up? A No, sir.

Q Was he looking for anything? A No, sir.

Q And how close to where the woman was laying when you saw her first was this bracelet picked up by him? A I don't know what you mean.

Q You were where you saw the woman's body lying first?

The Court. How near was it from the place where the woman was that he picked up the bracelet?

Witness. On the side of her.

Q On the sidewalk? A No; on the side of the lady.

Q On the side of her? A Lady, after they had taken her away.

Q After they had taken her away, but near where the body was? A Yes, sir.

Q Can't you indicate with your hand about how far away from the body? Suppose the body was laying here (indicating) how far from where my hand is —suppose this was the woman's body. Show the

judge and jury how far away from the body the bracelet was when he picked it up? A (Indicating.)

The Court. Witness indicates about twelve inches. It was as near as that, was it, Cecil?

Witness. Yes, sir.

Q And who else was there besides you and the boy when he picked that up? A Lot of boys.

Q Lot of boys there. They were all tramping around there, were they? A Yes, sir.

Q All walking around where the body laid? A The body had gone away.

Q The body had gone away at that time? A Yes, sir.

Q Where did you go with the boy after he had picked that up? A He was running down the street.

Q He run away with it, did he? A Yes, sir; he was running.

Q He was running with it? A Yes, sir.

Q And what did you do. Did you run after him? A Yes, sir; and lot of other boys.

Q And you all followed this boy, did they? A Yes, sir.

Q They wanted to get the bracelet, I suppose? A Yes, sir.

Q How many boys were there that run after him? A Quite a lot.

Q Quite a lot. Then they run into Chief of Police Collins, did they? A Yes, sir.

Q Over on Bloomfield avenue, was he? A Yes, sir.

Q And then he took the bracelet away from the boy, did he? A Yes, sir.

Q Who told Mr. Collins about the bracelet? A The boys.

Q What boy? A The boys that was running after him.

Q The boys that was running after him. Then did the Chief go to this young boy's house after the bracelet? A Yes, sir.

Q Where does this boy live? A On 10th street.

Q And where do you live? A On Chester avenue.

Q How long have you known this boy? A Long time.

Q Does he go to school with you? A Yes, sir.

Q Same school? A Yes, sir.

Q What is his name? A Jim Salvatoriello.

The Court. You call him Jim, do you?

Witness. Yes, sir.

Re-direct.

Q Cecil, I understood you to say that Chief Collins went to the little boy's house to get the bracelet; is that so? A No, sir; he met the boy.

Q Right near by there, wasn't it, or over on Bloomfield avenue? A Yes, sir; coming down this way.

Q He met the boy on Bloomfield avenue, and did the boy give him the bracelet right there, on Bloomfield avenue? A Yes, sir.

Re-cross.

Q Did the boy have it in his pocket first? A No, sir.

Q The boy was carrying it in his hand? A Yes, sir.

JAMES SALVATORIELLO, sworn for the State.

By the Court.

Q How old are you? A Eight.

Q Do you go to school? A Yes, sir.

Q And what grade are you in? A 2A.

Q And do you go to school with this other little boy that was here? A Yes, sir.

Q Do you go to Sunday School? A Yes, sir.

Q What church? Do you know what church it is? Whereabouts is your Sunday school? Do you go to Sunday School? A Yes, sir.

Q Whereabouts is it? You live on 10th street? A Yes, sir.

Q Where is the Sunday School you go to? Do you remember the street that it is on? Do you know what will happen to you if you don't tell us the truth, that we will have to punish you and you will be punished for not telling us the truth? You understand that, do you, Jimmie? Don't be afraid, Jimmie, nobody is going to hurt you. I only want to know. That you must tell us the truth, is that so? You understand that, do you? Speak up. Answer the question.

Mr. Mott. Can we use the interpreter?

Mr. McDermit. It is agreed by counsel that the Rev. Coltorti should be sworn as interpreter.

(Interpreter sworn.)

The Court. Tell him to talk to you in Italian and not to say anything in English.

Q Ask him if he goes to Sunday School. Ask him if he goes to the Catholic Church or any other church. Tell him that he must talk up. We cannot understand him if he shakes his head. Ask him if he goes to school? You are in 6A? A 2A.

Q Ask him if he would rather you would talk to him in Italian or that we should talk to him in English. Ask him which he understands better. What is the matter; Jimmie, are you frightened? Ask him if he is frightened.

The Court. Perhaps you had better try another witness.

LEWIS COLLINS, recalled by the State for

Further direct examination by Mr. Mott.

Q Chief Collins, I show you a bracelet—gold bracelet—we will call it gold—and ask you if you have ever seen it before? A Yes, sir.

Q When did you first see that? A Oh, about between ten and 10:30 Decoration Day.

Q Where? A Up near the—on the pathway near Bloomfield avenue pretty nearly opposite Belmont avenue.

Q Who had it? A Little boy come running up and handed it to me.

Q What? A Little boy come up and handed it to me.

Q Did you recognize the boy? A Yes, sir; that looks like the boy.

Q The one that was just on the stand? A Yes, sir.

Q And what did you do with it after you got it? A Put it in an envelope, took it up to the police station, gave it to Officer Belfie to bring it down here on Monday.

Q It stayed in your possession then until produced in court on Monday? A Sir?

Q It has been in your possession from that time until this except when it was produced in court on Monday? A Officer Belfie brought it down and gave it to—I don't know—one of the prosecutor's office.

Q When did he bring it down? A The following Monday.

Q What? A The Monday the day of the funeral.

The Court. That is Monday, June 2d, isn't it?

Witness. Yes, sir.

Cross examination by Mr. McDermit.

Q Chief, didn't I ask you some questions yesterday, whether you picked up anything around there or got anything around there belonging to this woman and didn't you say no? A I didn't pick it up, sir. I didn't pick it up; no, sir.

Q I asked you if you picked anything up or whether you had anything in your possession that belonged to her? A I don't think you asked me that.

Q Didn't I ask you whether you had any money or any jewelry or anything belonging to her in your possession or anything that was picked up down there that you knew? A No, sir.

Q Did you make any investigation of where this bracelet came from? A Well—turned it over to the prosecutor's office.

Q Did you make any investigation yourself of where the bracelet came from that boy gave you? A No, they told me they found it up there near where the body was found.

Q You told us you made a search around there? A You could do a good deal of searching. There is woods and grass around there.

The Court. Wait until you hear the question. That is not a question, that is merely a declaration.

Q You said you made a search around there? A I did.

Q You found nothing there? A Did not.

Q Didn't see anything of that kind (indicating) laying up there? A No, sir.

Q And the only knowledge you had that it came from there is what the boy told you? A That is all, sir.

Q You took it up to the police station and kept it there from Decoration Day until Monday, then you sent it down by Officer Belfie to the prosecutor's office. Now, have you anything else up there that you got turned to you by anybody in the neighborhood? A No, sir.

Q Have you got two hundred and some odd dollars in cash up at the police station that this woman was supposed to have had? A No, sir.

Q Have you any other personal property up there that was brought from this place? A No, sir.

Q Why was it you didn't call our attention to this bracelet yesterday, sir?

The Court. He says he wasn't asked about it.

Mr. McDermit. That is all.

The Court. Now, when you say you received this bracelet from the last witness, which one do you mean? The last witness in the case was Cecil Wainer, or do you mean Jimmie Salvatoriello, the little boy?

Witness. The little Italian—the little boy.

The Court. You mean Jimmie Salvatoriello?

Witness. Yes, sir.

Q Did you find a bottle of whiskey up there? A Sir?

Q Did you find a bottle of whiskey up there? A No, sir.

ANTHONY BELFIE, recalled for the State for

Further direct examination by Mr. Mott.

Q This bracelet, have you ever seen that before? A Yes, sir.

Q Who did you receive it from? A I received it from the Chief on Monday morning, June 2d.

Q And then what did you do with it? A I put it in my possession and I went down to the defendant's house and I asked him if he knew anything about that bracelet. I asked him if it was his wife's. He says "Yes"; and I went to the funeral and I come back from the funeral and I handed it over to Mr. Godfrey.

Q What time of day was it when you went down to defendant's house and asked him whose bracelet this was? A This was about eight o'clock in the morning.

Q And that is the time he said it was his wife's? A He said it was his wife's.

The Court. Where was his house?

Witness. On Eighth and Chester avenue.

The Court. Where?

Witness. Eighth street and Chester avenue.

The Court. Where?

Witness. Newark.

Cross examination by Mr. McDermit.

Q You are the man that brought down the hatchet are you? A Yes, sir.

Q From Bloomfield? A Yes, sir.

Q Did you bring down the bracelet at the same time? A No—I didn't bring the hatchet down.

Q Oh; you didn't bring the hatchet down? A No, sir.

Q You went over to the house of mourning of Cerciello, didn't you, on Monday, the day of the funeral?

Mr. Mott. I object to "house of mourning." I object to the characterization of the house.

Mr. McDermit. I will withdraw the question.

Q You attended the funeral of Mrs. Cerciello? A Yes, sir.

Q The deceased? A I went to the funeral.

Q And you brought this bracelet over to Cerciello? A I did.

Q And you asked him if that was his wife's bracelet? A Yes, sir; and he took it in his own hands and looked at it and he said it was.

Q You also told him you found it within twenty feet of the body, didn't you? A No, sir; I did not.

Q You told him you picked it up? A No, sir.

Q You are sure about that now? A I am sure I didn't tell him.

Q Did you tell him who picked it up? A No; I didn't tell him; I didn't know.

Q Who was with him when you showed it to him? A There was nobody but me. There was other people in the house there, though.

Q Yes? A Yes, sir.

Q Show him anything else? A No—there was a button there that I showed him.

Q Yes? The button is here? A I guess so; I don't know.

Q Where did you get the button? A Why, it was handed to me when the bracelet was handed to me.

Q Who handed you the button? A Chief Collins, with the bracelet.

Q You heard his testimony, didn't you, a minute ago? A Well, it was in an envelope. I didn't know

what was in there until I looked in and I seen the bracelet and button in the envelope.

Q Would you know the button if you saw it again? A I don't know; I think so.

Q Did you mark the button? A No, sir.

Q Did the Chief mark the bracelet for identification? A I don't know.

Q Was there anything else in the envelope? A No; not as I know of.

Q What did he say about the button? A What did I say?

Q What did he say about the button, Cerciello? A I don't know. There was a button off his sweater down there. I compared it. This button was a little bit smaller than the one on his sweater.

Q Didn't compare at all? A It was the same make button but little smaller.

Q You examined—found a button off the sweater and examined the sweater and found there was a difference—same kind of button but smaller sized button? A These sweaters they buy they seem to be—can't get four or five buttons on them sweaters alike anyway.

Q Did you take the sweater off, officer? A No, sir.

Q Have you got the sweater here? A I don't know whether they have or not.

Q Did you find any blood marks on the sweater? A I didn't look for any blood marks.

Q Find any blood marks on his clothes? A Didn't look for any.

Q Did you or any other officer examine his clothes?

Mr. Mott. I object.

The Court. Objection sustained.

Mr. McDermit. No further questions.

The Court. You can call him as your witness at the proper time.

Mr. Mott. I offer the bracelet in evidence. Bracelet tagged and marked Exhibit S 7.

AMELIA FERRARA, sworn for the State (through the interpreter).

Direct examination by Mr. Mott.

Q Where do you live, Amelia? A 237 Bank street.

Q In the city of Newark? A Yes, sir.

Q Are you single or married? A Married.

Q What relation were you to Alvira Cerciello? A I am sister.

Q Was Alvira married? A Yes, sir.

Q Were you present at her marriage? A Yes, sir.

Q Whom did she marry? A Angelo Cerciello.

Q This man (indicating)? A Yes, sir.

Mr. McDermit. I want to correct the interpreter. What else did she add besides being married? What other word?

The Court. Was there anything else?

The Interpreter. Well, she said that blood come out from his mouth.

Mr. McDermit. I wish he would add "I wish he would die—I wish he would blow up."

The Court. The answer was that she was married to the defendant, Angelo Cerciello?

The Interpreter. Yes, sir.

The Court. Then she added some other words?

The Interpreter. Yes, sir.

The Court. What were those words; give us as nearly as you can in English.

The Interpreter. To die. To throw up blood from his mouth.

Mr. McDermit. Isn't it in the nature of a curse on him? "Damn his blood." Isn't that the literal translation of it?

The Court. What is it?

The Interpreter. She says something against the man, Cerciello.

The Court. I don't want you to say "something." I want to know what she said.

The Interpreter. She said that, "let him put out his blood." That is all.

The Court. What is the translation of that into English?

The Interpreter. She wished that he would die. That is all.

The Court. Is that enough?

Mr. McDermit. Yes; to show the hostility.

Q Now, will you tell us when it was that Alvira married Angelo? A 5th of July. I forget the day.

The Court. How long has she been in this country?

Witness. Five years.

Q About when was it that Alvira was married to Angelo? A 5th of January.

Q The 5th of January of this year? A Yes, sir.

Q Where was she married? A In the church.

Q You were there? A Yes, sir.

Q Did you attend Alvira's funeral? A Yes, sir.

Q How old was Alvira? A Nineteen.

Q How long had she been in this country? A Two years.

Cross examination by Mr. McDermit.

Q You were present when Alvira was married to Angelo? A Yes, sir.

Q And you didn't want Alvira to marry Angelo, did you? A Yes, sir; because he was false; never said the truth.

Q And the day that Angelo married your sister you got your husband to lick Angelo? A No, sir.

Q Didn't your husband slap Angelo in the face? A No, sir.

Q Do you know Mr. Viola—Veola? A No.

Q Do you know a man by the name of Veola who lived in Heckel street who jumped out of the window in St. Michael's hospital?

Mr. Mott. I object

The Court. Objection sustained, and I will warn the jury again that any inferences which are contained in questions or declarations by counsel should not be drawn by the jury unless they are supported by the answer of the witness. Counsel is not called upon to testify but witnesses are called upon to testify.

Mr. McDermit. If your Honor please on that line of examination I want it to go upon the record, in claiming my right to not make this woman my witness, but have it on cross examination. The direct examination brought out in the case is to the effect that she had attended the marriage of Alvira to the defendant and from the hostility evinced by her and the declaration she made upon the very first question that was asked of her, showed of course, there was bad blood. I want to see whether I haven't got a right to show by this witness that she went to the marriage and attempted to stop the marriage and attempted to coerce her sister to marry somebody else.

The Court. You asked whether she knows about somebody who jumped out of the hospital window?

Mr. McDermit. That is the party she wanted her sister to marry.

The Court. The objection is sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm P. Martin SS
Judge.

RECESS.

The Court. Mr. Interpreter, give only the precise question asked and the precise answer, whether you regard it as relevant or irrelevant. Tell her to speak altogether in Italian.

Q Did you not object to your sister marrying the defendant? A We don't care, because he was false; never said the truth.

Q Didn't you object to your sister marrying Cerciello? A Yes, sir; because he wasn't a good man. We had information that he wasn't a good man.

Q And was there not at the wedding a row on account of the marriage to him of your sister in which blows were struck? A He promised to come at four o'clock with the carriage but it was about seven and half-past seven before they came and my husband was quite mad about it, and he struck me but not the man.

The Court. Ask if there was any more to the answer.

Witness. (Continuing.) Everybody were speaking about the late hour and for that reason my husband was quite mad and he struck her, but not the man.

The Court. Struck me.

The Interpreter. Struck me.

The Court. Does she say "my husband struck me."

The Interpreter. Yes, sir.

The Court. Translate precisely in her words. The answer is yes, sir.

The Interpreter. "He struck me and he don't want me to go out at such an hour."

Q Didn't he also ask you to stop abusing Angelo at the wedding? A My husband was right to speak. Lots of people are there and everybody were against him.

Mr. McDermit. I think your honor ruled on this question. I will lay it again, having laid the foundation.

Q You wanted your sister to marry somebody else? A No; we found that he was not a faithful man and we don't want him to marry her.

Q You didn't want your sister under any circumstances to marry Angelo. You tried to stop it even the night of the marriage ceremony? A He went in the evening to that sister—to the brother—to the sister of Angelo and the sister of Angelo said "why you marry such a man. You will cry every day of your life."

Q Now, then, didn't your husband slap you in the face because you were interfering that night with the marriage—wanted to break it up? Isn't that the reason your husband struck you in the face with his fist, because you were interfering—trying to stop the marriage? A Because he was right; yes, sir.

Q Thought he was right in striking you. All right. That is all.

VINCENZO CERCIELLO, sworn for the State.

Direct examination by Mr. Mott.

The Court. How long have you been in this country?

Witness. Fifteen years.

The Court. Can you speak English?

Witness. Not very much.

Q You are a brother of Angelo, the defendant, aren't you? A Yes, sir.

Q And you and Angelo lived on the same floor? A One on one side and one on the other.

Q One one one side and one on the other of the same building? A Same building.

The Court. Tell him in Italian if he don't understand any words to stop and ask for it to be put to him in Italian.

Q Did you or Angelo have a revolver up in your house? A In my house?

Q In your house? A Yes, sir.

Q And is this the revolver that was up in your house? Look at it. A I suppose by law I am permitted to have a revolver at home.

Q Yes. You did have—this revolver was up there in your— A In my house.

Q In your house. And this was your revolver? A That is my revolver.

Q After the funeral of Angelo's wife, did you load this revolver? A I loaded it before a long while. I kept it loaded all the time.

Q You kept it loaded all the time? A Because I keep it home for the family.

Q Well, you went to the funeral—you went to Alvira's funeral? A I was.

Q And after the funeral did you go home? A Yes, sir.

Q And when you got home did you find this revolver loaded or unloaded? A When I go to bed I wanted to take the revolver and put it on the desk what I have and found no bullets in it.

Q You found no bullets in it? A (Shaking head.)

Q Then when did you load it after that? A When I load it?

Q Yes; when did you put bullets in it? A After couple of days. I don't remember. I had some bullets home. I put some more bullets in it.

Cross examination by Mr. McDermit.

Q That revolver is your own property, is it? A Yes, sir.

Q Belongs to you? A Belongs to me.

Q Who took it out of your house? A That man, Federici, because nobody could take it away from my home.

Q Who took the pistol away from your home? A Joseph Federici.

Q This gentleman here (indicating)? A That is the gentleman.

Q And when did he take the pistol away from your home? A I don't know what they say.

The Court. When did he take it?

Witness. Oh, when he take it away? Long while ago, because I don't find any bullets in the revolver.

Q When was it in regard to the time that your sister-in-law was buried, that Mr. Federici came there? How long after your sister-in-law was buried did Joe Federici come there and get this pistol? A Oh, long while ago. It was about months ago—month after, because when I was in jail to see my brother I see Federici too. I says, "What is the matter? Where did those bullets go."

Q What is that? A One day—I don't know what day it was—I go to see my brother at the jail, there was Federici too. I says, "What is the matter with the bullets of my revolver."

Q How long had he had your revolver then? How long had he had your pistol when you met him in the jail? A I can't remember. About a months or more.

Q You know when your sister was buried, don't you? A Yes, sir.

Q You lived in the same house with your brother? A No; on one side.

Q The same building? A Yes, sir; same building.

Q You know when she was buried—you know when Mrs. Angelo Cerciello had her funeral? A It was months, you know, before—he take the revolver about a month ago or two.

Mr. Federici. September 27th.

Q Why did he say he took the pistol away from your house in September, when he come after it? What did he want of the pistol? A I don't know. He says, "The court wants. I will keep: After it will come to you back again." That is what he said.

Q Told you the court wanted it and he would take it away and bring it back again afterwards? A That is what he said.

Q What line of business was your brother in? What business did your brother work at when he was living up there? Did he have a store? A He had a grocery store.

Q And his wife worked with him there? A Yes, sir.

Q Now, this building where the store is in belongs to you? A I am owner of the property.

Q You built the property there, and that is the corner of Chester avenue and where? A Chester avenue and North 8th street.

Q Large four-story brick building? A Three-story brick building.

Q He had his rooms— A Had two rooms on the rear of the store.

Q On the rear of the store facing Chester avenue? A Yes, sir; along Eighth street.

Q Where were your rooms, in the rear of the building? A On the back side.

Q On North Eighth street? A No, on the—across on the next lot—on the rear.

Q It is the same building? A Same floor.

Q On the floor? A Flat.

Q Who has the flat adjoining the store? A He has the flat and I have the flat on the other side.

Q You were living there last Decoration Day, were you not, and your wife was living there? A Yes, sir.

The Court. Where were you living last Decoration Day?

Witness. Corner of Chester avenue.

The Court. Chester avenue?

Witness. My property.

The Court. 49?

Witness. 409.

The Court. That is where you live now. Is that what you say?

Witness. Sure.

Q You saw your brother every day? A Well, I got to keep to my work every day.

Q What work did you do last Decoration Day? A Carpenter.

Q You built that house yourself, there, did you—helped to build it? A I built it by day work.

Q How long have you owned this pistol? How long has this pistol belonged to you? A This pistol belongs to me.

Q How long? A I can't tell you. Long while I bought.

Q Many years? A Oh, sure; many years.

Q How many years? A I can't count.

Q Your brother, Angelo, see this pistol too—he knew you had this pistol? A He know I had the pistol.

Q He knew that pistol was there? A Oh, sure.

Q And that pistol you have had a good many years? A Yes, sir.

Mr. Mott. I offer the pistol in evidence.

The Court. There isn't any admission on the record. You have had a private conversation with counsel on the other side. If the facts are agreed to, all right, but the court must see that legal evidence goes before the jury and nothing else.

Mr. McDermit. It is admitted on behalf of the defendant that Joseph Federici went there on the 27th of September, and got this gun and unloaded it and took it away from there. From the last witness's house. He swears that is so.

Mr. Mott. That it was loaded at that time.

Mr. McDermitt. That it was loaded at that time. He said something about that he was going to offer the pistol. I said, of course, I will object to that.

EUGENE DESTEFANO, sworn for the State.

Direct examination by Mr. Mott.

Q Where do you live? A 225 Bank street.

Q How long have you lived in this county? A This county thirty-three years.

The Court. You have lived in Bank street, Newark.

Witness. Yes, sir.

Q Do you know the defendant in this case, Angelo? A Yes, sir; I know him couple of times.

Q Did you have a talk with him two or three weeks before his wife died? A Only once.

Q Did you have a talk with him? A Yes, sir.

Q Where was that? Where did that talk take place? A I was out side of the stoop, you know—outside of the store and he passed around with the wife.

Q Outside of your store? A Yes, sir; they come down Bank street, and then I was outside—few more ladies in there you know. The ladies used to be so kind to give them what they call a good regard. He says, "They are nice girls; nice women; good saving women; nice and everything like that," and he says, "Well," he says, "If she not too good," he says, "I didn't lose very much; the hatchet put that on the head." That is all.

The Court. Repeat that in Italian.

Q Now, at that time what did he say? A That is all; nothing else. I didn't say nothing—answer him at all.

The Court. Hold on, Mr. Witness, you will have to wait.

Mr. McDermit. It purports to have told us all that took place.

The Court. The court suggested that the question be repeated to him and he repeat his answer in Italian.

Mr. McDermit. Isn't it well to ascertain whether this conversation between the defendant and this man was in English or Italian before he goes on? That would be the best test of it. The conversation carried on between the defendant and the witness.

The Court. Was this talk that you had with Angelo, then, in Italian? You talk in Italian and he talk in Italian?

Witness. Yes, sir.

The Court. Repeat the answer that you made in English, which we do not understand, to the interpreter in Italian.

The Interpreter. "He was passing by my store and there were a few women. When they saw him and his wife they congratulated with him to take such a beautiful and good girl. He answered 'If she will be kept good it will be all right, if not with the four struck of the hatchet and I will fix her.' "

Q Do you know how long this talk occurred after Angelo's marriage? A After three weeks he was married.

Q That is three weeks after he was married? A After married.

Cross examination by Mr. McDermit.

Q When this conversation took place with you and Angelo, Angelo's wife was with him in your store, wasn't she? A Not in the store; outside.

Q Well, the conversation between you and Angelo took place in the presence of Angelo's wife, didn't it? A The ladies was outside.

Q Put that in Italian? A We were outside of the store with two or three women and his wife.

Q There was whole party of ladies including Angelo's wife and they were joking? A When he said he was laughing and I think maybe was playing.

Q Jesting, he said, didn't he? A Jesting.

Q Now, then, when he said that you gave him a cigar, didn't you? A No, sir; I didn't give him nothing. I went inside. The people's call me inside to attend to them and I went inside.

Q Did you give him a cigar for a wedding present? A No; he didn't come in—didn't come inside at all.

Q How long after Angelo was married did he have that talk with you with his wife? A About three weeks. They was coming around—wanted to see the relation down there and was right across from my store.

Q He laughed and said if she was good everything would be all right and if she wasn't good he would hit her four times with the hatchet, is that right? A Yes, sir.

Q And he laughed? A Yes, sir.

Q And she laughed? A And she laughed.

Q And who was it you told this story to after Mrs. Cerciello was found dead? Who did you come to tell that story to first? A What is that?

Q About him joking with you about the hatchet? A To Ferrara, the brother-in-law.

Q To the husband of the lady who was on the witness stand a few minutes ago, Mrs. Ferrara, to her husband? A Yes, sir.

Q Did Mrs. Cerciello say anything at all when Angelo was talking about using the hatchet in the event she was not good? A I don't know anything about it because I was called in.

The Court. Do not answer any in English, if you do not understand. You mean Mrs. Alvira Cerciello, the wife of this defendant?

Mr. McDermit. Yes.

Witness. She was laughing.

Q She was laughing? A She was laughing.

Q Well, what did you think about that? Did you think that that was a joke or was in earnest, yourself? A I don't know Mr.—

Q Tell us in Italian. A I don't know anything about. He was laughing, but maybe—I don't know if he had some feeling in his heart.

Q That was last July, was it? A I don't remember the date.

Q July a year ago? A I don't remember the date it was.

Q Do you know when he was married? A I don't remember anything any more. I had so many things to attend to I don't remember anything.

Q You were on very good terms with her people? A I know. I am there all the time.

Q You are there all the time. You are on good terms with the family of the deceased? A Well, that is customer of mine. It is next door.

Q They come to your store every day and they are friends of yours, and after you found out that this woman was dead and that some hatchet had been used, then this story that he told you three or four or five months before she was killed came back to your mind and you told it to them; is that right?

The Court. Now, ask him that question.

A Yes, sir.

Q And didn't you telephone down to the City Hall and arrange the marriage license between Angelo Cerciello and the girl that is dead, because you knew they were both good people and you wanted them to get married? Yes, or no?

Mr. Mott. I object to the latter part of the question which gives the reason "because you knew them to be good people." That interjects into this case a statement that ought not to be put into the question. No objection to his testifying that he telephoned down to facilitate their marriage.

The Court. Why don't you divide up your question, counsellor, and I will rule on that part afterwards.

Q You telephoned down to the City Hall for a license to arrange the wedding between Angelo Cerciello, the defendant here, and his deceased wife? Yes or no. A I don't remember. I know that her sister come to my store and I telephoned, but I do not remember for what motives I telephoned.

Q Didn't you witness the marriage? A No, sir.

Q Didn't you sign your name on the paper required at the City Hall so that he could get his marriage license? Yes or no? A Yes, sir; I signed a paper down in the City Hall.

Q So that they could get the license? A Yes, sir; I signed a paper for them.

Q Stating that you knew Angelo Cerciello and that you also knew his wife and that you knew them to be good people?

Mr. Mott. I object. If he has any such document the document itself will speak rather than his recollection.

The Court. There is nothing contradictory is there to his testimony?

Mr. McDermit. No, except that I put that question in that way. I don't know as we are bound to produce any record.

The Court. Ojection sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm P. Martin (S S) *Judge.*

JOSEPHINE URSO, sworn for the State.

Direct examination by Mr. Mott.

Q Mrs. Urso, where do you live? A On North Eighth street.

Q You are married? A Yes, sir.

Q Are you Italian? A Yes, sir.

Q You speak Italian? A Yes, sir.

Q Did you know Alvira Cerciello? A Yes, sir.

Q And do you know the defendant, Angelo? A Yes, sir.

Q And did you know where their store was? They kept a store? A Yes, sir.

Q Little grocery store, was it? A Yes, sir.

Q On the evening before last Decoration Day did you go into their store? A Yes, sir.

Q And was Alvira there? A Yes, sir.

Q And was Angelo there? A Yes, sir.

Q About what time was it when you went in the store? A About seven—half-past seven.

Q Did you hear any conversation between Alvira and Angelo? A Yes, sir.

Q Did they speak in English or in Italian? A In Italian.

Q What did you hear?

Mr. McDermit. I insist that it shall be in the Italian language. The defendant is entitled to that.

The Court. How long have you been in this country, madam?

Witness. Twenty-eight years.

Mr. McDermit. She cannot interpret Italian conversation for me or for the court or jury. She is going to testify to conversation she heard in Italian between deceased and defendant. The jury and myself are entitled to have that in Italian, not her interpretation of that Italian conversation. She shall testify in the Italian language to the conversation as it took place, then the interpreter will give us the interpretation. That will be the correct rule.

Mr. Mott. I suppose that *prima facie* every witness must, if they can testify in English. Then, I suppose, that it would be entirely proper for

counsel for the defense, if he questions the accuracy of her translation, to find out what the Italian words used were and to get the Italian translation. If it will facilitate matters at all I am perfectly willing to have this conversation through the interpreter.

The Court. What is the question?

Mr. Mott. What did you hear Alvira say at that time.

Mr. McDermit. I say that that should be in Italian. She testified that the conversation between Alvira and the defendant was in Italian. What she got from that conversation by way of understanding the English language or translating that into the English language is not for her to say. It is for us to say—for the jury to say.

The Court. I do not agree with you that that is the law.

Mr. McDermit. We have had a ruling here on it once.

The Court. I think in the exercise of reasonable discretion, for the sake of accuracy, it is not unwise to pursue that policy. I do not think there is any rule of law about it. Ask her that question and tell her to answer that in Italian, and you repeat it in English.

Q You give the Italian words that Alvira used. What did Alvira say? A She was sitting and she said to her husband, Angelo, "This evening we go out."

Q And did Angelo reply? Make any answer to that? A No.

Q Did Angelo say anything? A He don't say anything.

Q Well, did Alvira say anything more than that? A She repeat "This evening we will go out with Angelo."

Q Now, what is that—what does she say? "We will go out with Angelo"?

The Interpreter. She said that she would go out with Angelo.

Mr. McDermit. Did she say "Angelo, we will go out together"?

Witness. She went in the store and found Alvira, that she cleaning the store, and after she sit down and she said "This evening we go out, Angelo." Then after a little she repeat the same phrase "This evening we go out, Angelo."

Q And did Angelo make any comments or reply of any kind? A Yes, sir; he said "You know where I have to go."

Q And then what did she say? A When he, Angelo, said that they were going away, she said that she will take a can of peas and I will take also some tomatoes and bacon.

Q Do what? A When you will come back you will find everything ready.

Q Ready for what? A Ready to eat.

Q And then after they have eaten or had supper, what did she say they would do, if anything?

Mr. McDermit. I object. Nothing in here about their having supper. Just find out what further conversation took place between these people.

The Court. Objection sustained.

Q And then after they had had their eat, did Alvira say—

The Court. The objection is sustained because it is leading. What else was said, first.

Q Well, what else was said? A She said that when you get back you will find everything ready, we will eat, then we go out.

Q Who said that? A She said.

Cross examination by Mr. McDermit.

Q Now, when was this conversation? A In her house.

Q When? What month, year, day? A Thursday night.

Q What Thursday night? A The day before Decoration Day.

Q The day before the body of Mrs. Cerciello was found? A She said that between seven and half-past seven of the day before Decoration. She heard this conversation in her store.

Q Now, was that the day before Decoration Day when this body was found—last Decoration Day? A When I spoke—when I heard this conversation was Thursday night.

Q Well, was it the Thursday night before this woman's body was found? A Yes, sir.

Q And was that the last time that you saw Mrs. Cerciello alive? A Yes, sir.

Q And how near do you live to the store where you had that conversation with them? A About 100 feet.

Q And that was the only conversation that these people had while you were there? A Yes, sir.

Q And how do you fix the time as seven o'clock at night? A Because I was waiting for my husband coming from work.

Q What time does your husband return evenings from work? A He generally come back about half past six or seven, but in that time he was on strike and he come later home.

Q Did you see Mrs. Cericello after she was dead? A Yes, sir.

Q Did you go to the funeral? A No; I went not to the funeral but I see her in the home.

Q Did you see her in the coffin? A Yes, sir.

Q Did you see Angelo there? A Yes, sir.

Q Talking to Angelo there? A Yes, sir; I spoke to him.

NICOLO MINAURO, sworn for the State (through interpreter).

Direct examination by Mr. Mott.

Q Where do you live? A Sixth street.

Q In Newark? A Yes, sir.

Q What number? A I don't know the number.

Q Do you know Angelo Cerciello? A Yes, sir.

Q And did you know his wife, Alvira? A Yes, sir.

Q They kept a little grocery store, did they? A Yes, sir.

Q On the evening before Decoration Day last, were you in their store? A Yes, sir.

Q About what time were you there? A About half-past seven—forty-five minutes past seven.

Q And was Angelo there? A Yes, sir.

Q Was Alvira there? A She was in the inner room.

Q And did you hear Angelo say anything to his wife while you were there? A Yes, sir.

Q What did you hear him say? A The wife said to the husband, I will prepare the dinner or supper and then we go out.

Q Did she say where they would go out? A No, sir.

Mr. McDermit. I object to the answer. I challenge the answer.

The Court. What do you claim it is?

Mr. McDermit. We claim that he said nothing—the defendant said nothing. That is the answer.

The Court. Is that the answer?

The Interpreter. What I got is "No, sir." Nothing else.

The Court. The question is did he say anything about where they were going or did she say anything?

Witness. No. The only thing that I heard that she asked him and told him "go where you have to go and then come back and we will eat together; then we will go out."

Cross examination by Mr. McDermit.

Q That was about quarter to eight o'clock in the evening, you think? A I don't know precisely.

Q How close do you live to where these folks had their store? A Two blocks. I was living before near them; then I moved on Sixth street.

Q So that she said to him, "You go out and go where you have got to go, come back and we will have our supper, and then we will go out together;" is that it? A Yes, sir.

Q Now, then, did you see the store again that night? A No, sir.

Q Did you notice whether the store was closed that night or not at half-past eight or nine o'clock? A No, sir; eight o'clock I went down to Newark.

Q What time did you leave the store? A About half-past seven or 7:45.

Q How do you fix the time? A Because half-past eight I was down in Newark.

NUNZAIATA DAMBOLA, sworn for the State.

Direct examination by Mr. Mott.

Q Do you speak English? A Not speak it good —little bit.

Q I think you and I can talk all right. You are a married woman? A Yes, sir.

Q You know Angelo Cerciello? A Yes, sir.

Q And you knew Alvira, his wife? A Yes, sir.

Q Did you know where their grocery store was? A Yes, sir.

Q And did you trade there some time? A Sure.

Q Did you go into their store on the evening before Decoration Day last? A Yes, sir.

Q What time did you go into the store? A I got nine o'clock and a quarter—about half-past nine.

The Court. You went about half-past nine, is that it? Ask her that, Mr. Interpreter.

Witness. I went there to get a box of matches about quarter past nine or half-past nine. I am not sure of it.

Q At that time what, if anything, was Angelo or Alvira doing? A The husband was standing up and the woman she had her head declining in her arm.

The Court. In her arm?

Witness. In her arm.

Q Go on. Anything else that there was? A Angelo give me a box of matches and I went home and I don't know anything else.

Q Did you notice how Angelo was dressed at that time? A Angelo, he wore a sweater, but I don't know the color.

Q And did he have anything on besides the sweater? A No.

The Court. Did he have his hat on or coat?

Witness. No; got on sweater.

Cross examination by Mr. McDermit.

Q When you were in there at nine o'clock, Angelo was eating his supper, wasn't he? A They were already through. The plates were still on the table.

Q And Angelo was sitting at the table still? A No; he was standing up.

Q And was his wife sitting at the table? A Yes, sir.

Q And you asked Angelo to get you a box of matches? A Yes, sir; Angelo he came and he give it to me.

Q He came out from the room where the supper table was, which you say he was standing in, and came in the store? A Yes, sir; he came out from the kitchen to the store.

Q Into the store and gave you the matches? A Yes, sir.

Q And then you went away? A I went away.

Q You said good-night to them? A Sure.

Q And you said good-night to his wife? A No; I spoke only to him, Angelo.

Q The lights were burning in the store at that time? A Yes, sir; it was all lighted.

Q And how do you fix the time as nine o'clock in the evening—how do you fix the time? A I went home and I looked at the alarm clock that I have and I see it was quarter past nine—I just live across from the store.

Q How long does it take you to get from the store to your house about? A The length of the street.

Q Length of the street. Your clock was usually right, kept good time? A Yes, sir; maybe five minutes slow.

Q You didn't see Angelo or Mrs. Alvira again that night? A No.

Q Did you notice what time the lights were turned down in the store, if they were turned down at all, from where you lived, that night? A No; I went in my home and after I went to sleep. I don't see anything.

Q While you were in the store at nine o'clock you went also into the kitchen? There was no bad words or harsh words or no words that indicated trouble between Alvira and the defendant—there was no quarrel? A No, sir; the husband was near to the door and the wife was at the table with her head in her arm this way (indicating).

Q In a leaning position? A Yes, sir.

Q She wasn't crying? A That I don't know.

The Court. Was her face hidden from you?

Witness. Yes, sir; I see her face.

Q She was leaning the same as a person would lean, who was resting her head in a sort of tired con-

dition; was she? A Yes, sir; she wasn't crying. She was just with her head resting. She got up and she went around the table there.

NICHOLAS URSO, sworn for the State.

Direct examination by Mr. Mott.

Q Nicholas, where do you live? A 667 North Eighth street.

Q And do you know the defendant, Angelo Cerciello? A Yes, sir.

Q You know where his grocery store is? A Yes, sir.

The Court. How old are you.

Witness. Fifteen.

The Court. You are fifteen years old now?

Witness. Yes, sir.

Q On the night before Thanksgiving Day do you know about what time he closed his store? A Thanksgiving Day?

Q I beg your pardon. Decoration Day? A Yes, sir.

Q Did you see him? Just tell us what you saw. A Well, the night I saw him I was coming down from Sixth street. The whistle blowed—it was nine o'clock.

The Court. Speak louder.

Witness. It was nine o'clock, when I was on Sixth street coming down and I saw Angelo close the store. I walked right past. I waved my hand.

The Court. Tell them what you said about the whistle. You heard the whistle blow.

Witness. I heard the whistle blow when I was on the corner of Sixth street and Chester avenue.

Q And how long did it take you to get down to Angelo's store? A Well, I stopped on the next corner and started to fool around with some other boys.

Q You stopped on the next corner and talked with some other boys? A Yes, sir.

Nicholas Urso, cross.

Q What time do you think it was when you got down to Angelo's store? A It was about sixteen—seventeen minutes after nine. I couldn't tell you exactly the right time.

Q And he was closing it up. What was he doing closing it up? A Closing the gas lights.

Q He was inside the store? A Yes, sir.

Q Turning— A The gas lamp.

Q —the gas lights off? A Yes, sir.

Q Are you sure as to the time when this was? A Well, I am sure it was after quarter after nine.

Q It was after quarter after nine? A Yes, sir.

Q How much you can't tell, or can you tell? A Couldn't tell exactly the right time, but I know it was after quarter after nine.

Cross examination by Mr. McDermit.

Q You came down the street from where? A Sixth street and Chester avenue.

Q What were you doing up in Sixth street? A Waiting for a boy to come down halfways with him.

Q Who is he? A Another boy.

Q What is the other boy's name? A Donato Palmiro.

Q Where does he live? A I don't know his number but he lives on Seventh street.

Q How close do you live to where the defendant lived? A About a couple of houses down from where he lives.

Q Chester avenue did you live on? A No, sir; Eighth street.

Q Eighth street? A Yes, sir.

Q You lived north or south of his house? A Lived north.

Q About two or three houses north? A Well, there is some vacant lots in behind his house too.

Q Yes? You live three or four houses away from his house? A Yes, sir.

Q Same side of the street? A Same side of the street.

Q Now, then, this store that he has faces out on the end of the building, doesn't it, partly on Eighth street and partly on Chester avenue? A Yes, sir.

Q Comes right out of the corner of the building? A Yes, sir; you can see it both ways.

Q You can see it both on Eighth street— A And Chester avenue.

Q Chester avenue. And it has window panes on both sides? A Yes, sir.

Q Do you know how many gas jets he burns in there or lamps? A I don't know how many he lights in the night.

Q How late do you pass there usually at night time? A That time I used to pass about ten, nine o'clock, half past nine.

Q He sold bananas there? A I didn't see what he had.

Q Sold apples there? A I didn't see what he had.

Q Kept a fruit store? Had some fruit in the store. And vegetables and groceries? A I don't know. He had a grocery store; I know that.

Q What time did he usually close his store up there at night time? What was his usual hour of closing? A Some nights used to close ten, half past nine—I couldn't tell exactly the right time.

Q Usually closed between nine, half past nine and ten o'clock, is that right? A Yes, sir.

Q And he always did that? A Not always. Sometimes later and sometimes earlier.

Q Sometimes later and sometimes earlier? A Yes, sir.

Q You didn't stop to go into the store? A No, sir; I walked right past.

Q And you don't know how many lights there were in the store? A No, sir.

Q And when you passed there he was turning down one of the lights? A Yes, sir.

Q That wasn't anything strange to you, that wasn't anything new to you, was it, the fact that he was turning down a light in the store? That is all you saw him do? A I waved my hand and walked right by.

Q You were just walking by, weren't you? A Yes, sir.

Q As you were walking by, you think quarter after nine, you saw Angelo turning down one of the lights in the store? A Yes, sir.

Q That is all you saw? A Yes, sir.

Q That is the reason you suppose he was closing up his store? A Yes, sir.

Q That is the idea, isn't it? A Yes, sir.

The Court. Did the light go out when he turned it off?

Witness. He was just putting his hand on it there and I passed right ahead.

WALTER GODFREY, recalled for

Further direct examination by Mr. Mott.

Q Mr. Godfrey, I show you a bottle and ask you when you first got it? A It was brought to the court house by Chief Weimer, sir, and turned over to me.

Q And in whose possession has it been since Chief Weimer gave it to you? A Mine, sir.

Mr. McDermit. I object to the testimony about this bottle. No bearing upon this case. It is irrelevant and immaterial.

The Court. It will be received subject to your objection and you may make a motion to strike it out if it isn't connected. I presume you are going to connect it.

Mr. Mott. Yes.

Q When did you get it from Mr. Weimer? A I have had it I should judge within a day or two of the murder, sir, ever since.

Q Is it in the same condition now as it was when you received it? A It is not, sir.

Q What is the difference? A The bottle is broken.

Q When was it broken? A This afternoon. A few minutes after two.

Q Where? A At the door of the courtroom.

Q How did it come to be broken? A A man coming along the hall from the office—I had all those bundles together—ran into and knocked it out of my hand.

Q What become of the bottle? A I brought it in the court room.

Q What became of the bottle when the man run into it? A Fell to the floor, sir.

Q And it was broken as it now is? A Yes, sir.

Cross examination by Mr. McDermit.

Q Did it contain any whiskey? A No, sir.

Q Contain any hair? A Contained nothing, sir. It was empty just as it is now.

Q Contain any blood? A No, sir.

Q Where has that bottle been kept, with the hatchet? A In the safe, sir.

Q With the hatchet? A Yes, sir; in the safe in the office.

Q Let me look; take a look at this bottle, please. Was there anything in the bottle when you got it? A When I received it? No, sir.

Q Yes. A No, sir.

Q Was there any smell to it? A I never smelled it, sir. Never took the top off.

Q Didn't take the top off. Didn't notice whether there was any drugs in that? A No, sir.

Q Didn't attempt to have that bottle sterlized, did you, sergeant? A No, sir.

Q What was the object of keeping that bottle so securely put away in the safe?

Mr. Mott. I object.

The Court. Objection overruled.

A Given to me by Chief Weimer as evidence in the murder case.

Q It contained nothing? A Contained nothing.

Q And it contains on the outside a description of what it might have contained? A Yes, sir.

Q Look at it? A Yes, sir; I can see.

Q What does it purport to contain? A It contains a label with "Rye whiskey"—

Q Supposed to be sold at Patrick Campbell's on High street? A Blended by Patrick Campbell, 421 High street.

Q Marked "Rye whiskey"? A Yes, sir.

Q And you assumed there was whiskey in that and there was no necessity— A I didn't assume anything.

The Court. That is not a question, Mr. Godfrey. You do not have to answer declarations of counsel.

Q You have had the bottle ever since? A I have, sir.

Q Hasn't been refilled since, to your knowledge? A It has not, sir.

Q And it got broken by an accident? A It did, sir; this afternoon.

Q You being in a hurry to get in here with all the exhibits in this case—fell out of your hands and broke at the door, is that right? A That is correct, sir.

DAVID VEITCH, sworn for the State.

Direct examination by Mr. Mott.

Q David, where do you live? A 79 Springdale avenue.

Q And do you know where Grove street is in Bloomfield? A Yes, sir.

Q Is Springdale avenue in East Orange or Bloomfield or where? A East Orange and Newark.

Q It is in East Orange and Newark? A Yes, sir.

Q Do you live in East Orange or Newark? A Newark.

Q On last Decoration Day were you up around the neighborhood of Grove street and Eighteenth street? A Yes, sir.

Q Who was you up there with? A My father.

Q And whereabouts were you up there? Do you know where you were? A Well, it is right at the spot there where the lady was in the basket—body was in the basket.

Q Did you see the basket with the body of a woman in it up there? A Yes, sir.

Q Did you see them take the basket away or didn't they take it away while you were there? A They put it in a wagon.

Q You saw them do that? A Yes, sir.

Q And then go away with it? A Yes, sir.

Q Now, after that, or some time while you were up there that morning, did you find anything? A Yes, sir.

Q What did you find? A Bottle.

Q Look at that bottle and see whether that looks like the bottle you found? A Yes, sir; that looks like it.

Q What time did you find the bottle, before or after they took the basket away with the woman? A Before.

Q Before? A Yes, sir.

Q And what did you do with the bottle when you found it? A Well, I picked it up and gave it to my father and father gave it to Chief Weimer.

Q Did you see your father hand it to Chief Weimer? A Yes, sir.

Q Whereabouts did you find the bottle, now, with reference to the spot where the woman was in the basket? A Well, about fifty yards southeast.

Cross examination by Mr. McDermit.

Q Do you know that locality pretty well, young man? A No, sir.

Q Had you never been there before? A No, sir.

Q How did you come to go there this day? A Well, the milkman told my mother that there was some one killed up there, so we thought we would take a walk up.

Q Did you see any other empty bottles around there—beer bottles? A No, sir.

Q Well, did you see the body when it was there? A Yes, sir.

Q And you found this whiskey bottle about fifty yards away from where the body was, eh? A Yes, sir.

Q In a southeasterly direction? A Yes, sir.

Q Did you look around there much? A No, sir.

Q Did you see the boy pick up the bracelet up there? A No, sir.

Q See anybody pick up a handkerchief while you were there? A No, sir.

Q See anybody pick up a comb while you were there? A No, sir.

Q Well, what did you pick up the bottle for? A Well, the grass was all down there and I thought maybe something happened there. Where I picked it up, the grass was all down just as if somebody had been laying there.

Q Where you picked up the bottle from it looked as though the grass was all lying down as though some forms was laying prostrate there? A Yes, sir.

Q The grass was down? A Yes, sir.

Q What you mean by that is that people must have laid there so long that the grass itself was made to lay down by the weight of the body? A Yes, sir.

Q Did you look in the grass there to see whether there was more than one or two people laying down there? A Were like two people, I guess.

Q Looked like two people to you? A Yes, sir.

Q Couldn't tell of course, by looking at the bottle how long the bottle had been there? A No, sir.

Q Didn't discover any blood marks on the bottle? A No, sir.

The Court. Was there anything in the bottle when you found it?

Witness. No, sir.

Q Did you smell of the bottle? A Yes, sir.

Q What did it smell like? A Whiskey.

Q How do you know that? A Well, I know what it smells like.

Q Eh? A I know what it smells like.

FREDERICK WEIMER, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Weimer, I show you this bottle and ask you if you have ever seen it before? A Yes, sir.

Q Where did you receive it? A Up in the Bloomfield woods.

Mr. McDermit. Bloomfield woods?

Witness. Yes, sir; I call it the Bloomfield woods, on Grove street.

Q From whom did you receive it? A From that boy that was here.

Q What time? A Oh, probably about ten o'clock —half-past nine, ten o'clock in the morning.

Q Do you recall whether you actually received it from the boy or the boy's father in the boy's presence? A Well, the boy and the father were there together —stood there together—and the boy told me he picked it up. I think I got it from the boy.

Q When you got the bottle what did you do with it after? A Brought it down to the office and turned it over to Sergeant Godfrey. He took charge of it.

Cross examination by Mr. McDermit.

Q Did you look around there for anything else? A No, sir.

Q Did you find anything on the ground there yourself? A Find a nail there, that is all.

Q Make any search there? A Looked around; yes, sir.

Q Looked around that ground good many times, haven't you? A No; I was only—

Q You picked chestnuts there for years? A Not on that day.

Q What is that? A Yes; I have been through there.

Q You know that ground pretty thoroughly? I think you know more about it than Mr. Potts knows about it? A I don't think so.

Q Don't you? A No.

Q You picked mushrooms there too, haven't you? A No, sir.

Q You have hunted on that ground, haven't you? A I have; some years ago.

Q You live only a short distance from this territory? A That is right.

Q You live what is called Ampere? A Yes, sir.

Q And the Lackawanna road is only short distance from where you live? A Yes, sir.

Q This is only short distance from the Lackawanna road. Now you know the condition around there, don't you? A Yes, sir.

Q You know there is swampy land, don't you? A Yes, sir.

Q You know there is water there? A Yes, sir.

Q And there is upland, and the East Orange reservoir is there, and other things? A Have been, not now.

Q Lots of things—driven wells there? A They are all filled up. They are not there any more.

Q Muskrats up there too, isn't there? A I don't know.

Q Did you find any other bottles up there that day? A Bottles?

Q Yes. A No, sir.

Q Been lots of empty bottles along that woods in your time, isn't that so? You frequently ran across empty beer bottles and empty whiskey bottles, haven't you? A No, sir; I have not.

Q Never seen any empty beer bottles or whiskey bottles in there in the Bloomfield woods at Grove street? A No, sir.

Q Seriously consider that. A I don't remember finding any bottles or seeing any other bottles around the spot there.

Q I don't mean that particular day? A No; nor any other day.

Q Lots of picnic parties around through there? A No.

Q What is there peculiar about that bottle, anything? A Nothing peculiar about it. The boy had it and I took it away from him, or asked him to give it to me.

Q Did you smell of it? A No, sir; I did not.

Q What did you suspect that you suspected that bottle for? A Well, the boy said he picked it up there and I simply asked the boy to give it to me and I brought it down.

Q Didn't want to refill it for any purpose? A No, sir; I did not.

Q Had no idea what possible connection it might have in this case? A Took it because the boy said he found it near the body.

Q Any stones around there? A Yes, sir.

Q Pick any of those up too, or the boy pick any up? A No, sir.

WILLIAM F. MERTZ, sworn for the State.

Direct examination by Mr. Mott.

Q Are you a member of the Bloomfield Police force? A Yes, sir; I am.

Q On Decoration Day, did you go down in the morning to the scene of this homicide, near Grove street? A I did.

Q Did you get there before or after the body was taken away? A After the body was taken away.

Q Then you do not, of your own knowledge, know where the body lay? A Well, I knew just about where it lay.

Q How? A Well, I was told by some people around there.

Q Who told you? A I don't just remember who they were. They were around there. They showed me where the body had laid.

Q Were there any marks on the ground from which you could tell where the body laid? A Well, no; not to see where the body laid. I see a lot of footprints around there.

Q Well, did you see any blood or anything? A Yes, sir; I seen blood around on the ground.

Q Well, now, did you find anything there? A Yes, sir; I found a button.

Q With reference to the place where you found the footprints and the blood on the ground where did you find the button? A Well, I should judge it was about twenty-five feet away from there.

Q Well, look at that button and see if that is the button you found? A Yes, sir.

Q And what did you do with the button? A I turned it over to the Chief.

Q Chief Collins? A Yes, sir.

Cross examination by Mr. McDermit.

Q Find any suspenders up there? A No, sir.

Q Find any other buttons up there? A No, sir.

Q When was it you found the button up there? A The day—the morning that the body was found.

Q Morning after five or six hundred people had been over there—was that the morning you got the button? A Yes, sir.

Q How many feet away from the body was the button? A I should judge about twenty-five feet

away from where the body had been—from where I was told the body had been lying.

Q And there was 100 people around there that morning? A I don't doubt there was.

Q What connection has the button got to do with this case, do you know? A I don't know. I was told to go down there to see if I could pick anything up that would be any sort of clue.

Q Any grass up there? A Yes, sir; grass up there.

Q Weren't asked to bring any of that down? A No, sir.

ANTHONY DEROGATIS, sworn for the State.

Direct examination by Mr. Mott.

Q You are a detective in the prosecutor's office, are you? A I am.

Q After the arrest of the defendant and while he was in jail, did you go up to the Essex County Jail to see him? A I did.

Q On one occasion did you get any article of clothing from him? A Yes, sir.

Q When was it that you got that? A On June 4 of this year.

Q What did you get? A A sweater.

Q Tell us where the sweater was and how you got it? A The sweater was on the defendant and I told him to take it off. He wasn't willing to do that. Finally I called the warden. The defendant says the reason why he was unwilling to give it to me was because he would get cold. The warden gave him another one and he gave me this sweater. There was one button missing.

Q Look at this sweater and see whether this is the sweater that you got from the defendant at that time? A This is the sweater. One button missing.

Q Is this the sweater that you got from the defendant? A This is.

Q I call your attention to the fact that the bottom button of the sweater is off. Is the sweater in the same condition now as it was, in that respect, when you got it from the defendant? A It is.

Cross examination by Mr. McDermit.

Q Who told you to steal this coat from the defendant?

Mr. Mott. I object.

The Court. Objection sustained.

Q Under whose authority did you demand that coat of the defendant? A From the Chief of the prosecutor's office.

Q You stripped him of this coat at that jail, did you? A I took this coat off of him.

Q Where is this other button that you have offered here?

Mr. Mott. There hasn't been any offered yet.

Mr. McDermit. Where is the button you allude to as found up there. I would like to look at it.

Mr. Mott. I don't suppose you are entitled to it until I offer it, but then I have no objection.

Q Where is the button off the sweater? A Down here (indicating).

Q Where is the button hole for that sweater? A Here is the buttonhole.

Mr. McDermit. I have no objection to this button being offered in evidence.

The Court. It hasn't been offered yet.

Q Did you find anything else peculiar about that sweater except the absence of a button? A That is all.

Q Make a careful examination of it? A I looked at it.

Q Find any blood spots on it? A Did not.

Mr. Mott. I offer the sweater in evidence.

Mr. McDermit. No objection.

Mr. Mott. I offer the button.

Mr. McDermit. No objection.

Mr. Mott. I offer the bottle. I offer the revolver in evidence.

Mr. McDermit. I object. It hasn't been connected up with this case.

The Court. What connection has that?

Mr. Mott. I don't think at the present time it has any.

The Court. The revolver will be considered as Exhibit S. 8 for identification, and you may offer it later if it becomes apparent that it has some relevancy. It is not apparent now.

Mr. McDermit. The bottle is the same situation as the revolver.

The Court. The revolver was not found there. The button was.

Mr. Mott. I offer the bottle.

Mr. McDermit. I object. Anything that might be found up there might be brought here.

The Court. That goes more particularly to its force, and immateriality, not to its competency and relevancy. I will admit it and give you an exception.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm P. Martin (8s) *Judge.*

Bottle marked Exhibit S. 9.
Button marked Exhibit S. 10.
Sweater marked Exhibit S. 11.

WALTER GODFREY, recalled for

Further direct examination by Mr. Mott.

Q Mr. Godfrey, I understood you to say that you broke this bottle here by the door as you were coming in? A I did, sir.

Q Have you any of the glass that came from it? A I have, sir.

Q Where did you get that? A Laying right at the door, sir.

Q And what is this piece of glass? A Piece that came out of the side and bottom of the bottle.

The Court. What is that?

Mr. Mott. He produces a piece of glass that he picked up at the door where this bottle was broken.

The Court. You just picked it up a little while ago?

Witness. Yes.

The Court. This afternoon since it dropped?

Witness. Yes, sir; since I was on the stand.

Mr. Mott. I desire to offer this one piece—this larger piece in evidence.

The Court. Let the clerk put it in an envelope and mark it. Envelope marked Exhibit S. 9 B.

ARMELINDA FREDA, sworn for the State.

Direct examination by Mr. Mott (through interpreter).

Q Where do you live? A Eighth street.

Q In Newark or where? A Newark.

Q Do you know Angelo Cerciello? A Yes, sir.

Q And did you know Alvira, his wife? A Yes, sir; from the day he married her.

Q Were you at their store on the morning of Decoration Day last? A Yes, sir.

Q What time were you there? A About half-past six.

Q In the morning? A Yes, sir.

Q When you went in the store who was there? A Only Angelo.

Q Did you see him? A I asked him about his wife.

Q What did you ask him? A I asked him about his wife, if she was up or not.

Q And what did he say? A I asked him about her, if she was in bed.

Q What did he say—what did Angelo say? A He told me that his wife last night went away to order some ice cream about half-past nine.

Q Then what did you ask him, if anything? A I asked him when you see that the hour was so late why don't you try to find your wife.

Q What did he say? A He said that "if I was going out maybe somebody will club me down."

Q Did you ask him anything else? A I asked him if she had any money on her possession and he said that she had about $200 on her person or more.

Q Well, anything else? A No, sir; I went home.

Q Do you remember whether you said anything about whether he telephoned or not to any one?

Mr. McDermit. I object to it as leading.

The Court. It is objected to only because it is leading. She has detailed all of the conversation and now it seems proper to call her attention to particular things that she apparently omitted. I think I will let her answer the question.

A Yes, sir.

Q What did you say about that? A I asked him if he made any call by telephone to her family and he said "No, I just telephoned down to the station house."

Q And what did you do. Did you look anywhere for Alvira? A No, sir.

Q Did you go into any room to find Alvira? A Yes, sir; I tried to go in the room, the back room and I saw that the place where Angelo was living was used but the place where his wife used to sleep was untouched.

Q And when you saw that did you say anything more to him? A No, sir.

Q Well, now, did you say anything to him as to about how he could go to sleep while his wife was out? A I asked him about and I asked him why he don't went out to look for his wife, but he said that he was afraid that somebody would club him.

Q "I ask him about" what? Did you give the whole answer?

The Interpreter. Yes, sir.

The Court. Tell us what you asked him.

Witness. Nothing else.

The Court. Tell us what you asked him about; the point concerning which you were questioned, how he could stay there when his wife was out.

Witness. He told me that she went out to order some ice cream.

The Court. What did you ask him when he said he might be clubbed when he was out?

Witness. I didn't ask him any more.

Cross examination by Mr. McDermit.

Q When did you last see Alvira alive? A Thursday night.

Q What time? A About four o'clock.

Q And was that at the store? A Yes, sir.

Q You mean four o'clock on the afternoon of Thursday, do you? A I saw her in the sidewalk, front of her store about four o'clock.

Q Did you patronize her store there? A Yes, sir.

Q They sell vegetables, cigars and ice cream and different sundries of that kind there? A Yes, sir; everything.

Q And Decoration Day, that was a holiday? A Yes, sir.

Q And he had told you that his wife had gone to order the ice cream for Decoration Day? A Yes, sir.

Q Now what time in the morning of Decoration Day was it that you went to the store? A Friday morning at half past six.

Q What was it that you wanted? A I was going then to get some sugar.

Q Was the store lit up then? A No.

Q Was the store open? A Yes, sir; it was open.

Q And Angelo was up? A Yes, sir.

Q Did you ask for his wife, whether she was there? A Yes, sir.

Q And he told you no? A He told me that his wife went away the night before about half past nine to buy some ice cream.

Q Well, what did he say he did after she went away? A He don't told me anything.

Q Was he crying in the morning when you came in there? A No, sir; he wasn't crying. He was thinking of something—looking very serious—thinking of his wife.

Q She said she looked into the room? A Yes, sir; I looked.

Q And saw the impress in the bed where he had slept in his accustomed place and the part that the wife slept in was undisturbed? A Yes, sir; I looked in and I saw the place where Angelo was used to sleep and the other side was untouched.

Q Now, when was it she had the talk about the telephone, about him telling her that he had telephoned to the police? A When I went there and told him why he don't telephone to her family.

Q Had she visited the store more than once that morning? Was she there again after half-past six? A I went there many, many times before that day.

Q No; but on this day, Mr. Interpreter, the same morning—Friday morning? A Only once that morning.

Q That was half past six? A Yes, sir; it was half past six.

Q And that was the time that he told her that he had telephoned to the police or would telephone to the police, which? A Yes, sir.

Q Did he have a telephone in his place there? A No, sir.

Q Did he say from where he telephoned? A No, sir.

Q Did he say why he wouldn't tell his wife's folks or notify his wife's folks? A No, sir; he don't tell me.

Q Did you know that his wife's folks and he were not on friendly terms? A No; I did not know.

Q Never heard anything about that? A No, sir; I had never heard it.

Q Did he tell you what time it was the wife had left there? A He told me that she went away the night before about nine or half past nine.

Q Did he say where she had went to order the ice cream, what concern or to what place—Newark, Orange, East Orange or where? A He didn't know where she was going in Newark or some other place.

Q Did she tell him how much ice cream she was going to order? A No, sir.

WALTER GODFREY, recalled for

Further direct examination by Mr. Mott.

Q Mr. Godfrey, at any time that morning did you examine the body of Mrs. Cerciello to see what she had on? A I did at the morgue; yes, sir.

Q At the morgue? A Yes, sir.

Q What did you find on her in the way of jewelry? A Found some rings and a chain and locket.

Q Specifically now, what did you find she had? A Four rings, a locket and a neck chain.

Q Where are those rings? A In this envelope (indicating). They should be, sir.

Q And these were finger rings? A Yes, sir.

Mr. McDermit. We admit that they were found there—they are our property.

Witness. Two rings on the right hand and locket and chain and pair of gold earrings and two finger rings on the left hand.

Q These were all on her? A Yes, sir.

Mr. Mott. I desire to offer these in evidence.

Mr. McDermit. No objection.

Envelope marked Exhibit S. 12.

Q Mr. DeRogatis says he got this sweater at the jail and brought it down and gave it to you. A Brought it to the courthouse and handed it to me, sir.

Q In whose possession has it been in since, sir? A In mine.

NOT CROSS EXAMINED.

Mr. McDermit. It is admitted that the deceased is the wife of the defendant. No reason why the State should prove that the body was taken to the morgue and buried.

Mr. Mott. It is admitted that Mr. Kunz took the body from the spot where it was found to the morgue?

The Court. Dr. McKenzie testified that he followed it.

Mr. McDermit. And performed an autopsy and it was removed to the house.

GUSTAVE KUNZ, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Kunz, what is your business? A Undertaker and morgue keeper.

Q Where is your place of business? A 35 North Center street, Orange, New Jersey.

Q On the morning of Decoration Day last did you go to the neighborhood of Grove street and what we call Beardsley avenue? A I did.

Q And what did you get there? A A woman.

Q Alive or dead? A Dead.

Q What was her body in? A Body in?

Q Yes. A In the open field.

Q Was it enclosed in anything or was it on the ground? A On the ground.

Q Did you put it in the basket? A I did.

Q Who assisted to do it? A I think Mr. Godfrey and another officer or gentleman standing there.

Q What did you do with the body? A Took it to my morgue.

Q Were you there when Dr. McKenzie performed the autopsy? A I was.

Q Did Dr. McKenzie perform the autopsy on the body you found on the field here by Grove street? A He did.

NOT CROSS EXAMINED.

CARMINE MINICHINO, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Minichino, where do you live? A 656 North Eighth street, Newark.

Q Do you know the defendant, Angelo Cerciello? A Yes, sir.

Q Did you know his wife? A Yes, sir.

Q Did you attend the funeral of his wife? A Yes, sir.

Q When was the funeral held? A On Monday.

Q And where was it held—at the house or in the church? A Why, in the church; yes, sir.

Q And during the progress of the funeral service did anything occur that attracted your attention? A Yes, sir.

Q What? A He was unconscious.

Q What do you mean by that? I don't know what you mean. A Well, when the body was taken out of his house, why, he fainted, and can't get in alone in the coach—they help him out and help put him in the coach, and carry him in the church and all around the house again. He was around the house and then goes in the church.

The Court. Where did he faint, at the house?

Witness. In the house; yes, sir.

The Court. That was when the body was taken out?

Witness. Yes, sir.

Q How did he go around the house, in the coach or walking? A In the coach.

Q Is that what you mean? A Yes, sir; in the coach.

Q You mean around the block? A Yes, sir.

Q Well, now, we ought to get this a little straighter. Can't you tell us that a little straighter? You say he fainted away in the church? A No; not in the church but in the house; and again out of the house he fainted.

Q He fainted in the house? A Yes, sir.

Q And they had to assist him out of the house? A Yes, sir.

Q And then they assisted him in the carriage? A Yes, sir.

Q And then the carriage drove around the block several times? A Well, only once; not several times.

Q Once. And then did the carriage go to the church? A Yes, sir.

Q And how did he get out of the carriage to go into the church, himself or did they assist him? A He remained there—he remained in the coach.

Q He remained in the coach? Didn't he go into the church? A No, sir.

Q He didn't go into the church? A No, sir.

Cross examination by Mr. McDermit.

Q He was pretty sick, wasn't he? A What?

Q He was pretty sick? A Well, he looked so.

Q You saw him crying there? A No; he don't cry any.

Q Didn't cry? A No, sir.

Q You saw him faint away in the house? A I don't know. He wants to know if I saw when he

fainted in the house or not. I don't see him when he fainted in the house, but I saw him when they carried him out of the house.

Mr. Mott. He was in a faint when he came out of the house?

Witness. Yes, sir.

Q He was then being carried out to attend his wife's funeral? A Yes, sir.

Q His wife had already been carried out in the funeral.

Q I say her body had been taken out of the house and put in the hearse? A Yes, sir.

Q And the coach was waiting for him? A Yes, sir.

Q He had to be carried out of the house into the coach—and placed in the coach in order to go to the funeral? A Yes, sir.

Q And then they drove the coach— A Yes, sir.

Q —all the coaches around the block once, didn't they? A Well, I guess so.

hearse? A They carried him out on account of the

Q That is an Italian custom, isn't it, to pass around— A I don't know if it is Italian.

Q You are an Italian, aren't you? A Yes, sir; I am.

Q Don't you know that it is the custom to pass around? A I know they all do that way; yes, sir.

Q There wasn't anything unusual about that? A No, sir.

Q He wasn't passed around the house merely for fresh air— A Yes, sir.

Q He was passed around the block because it was the custom for Italian people to go around the circle of the house. You know Angelo very well? A Yes, sir; I did.

Q And you knew his wife very well? A Yes, sir.

Q And you were one of their nearest neighbors? A Yes, sir.

Q And one of their best friends? A Well.

Q And you visited them and they visited you?

The Court. Answer the question. You said "well."

Q You were good friends of theirs? A He don't say nothing to me—any wrong—or I don't say anything to him wrong.

Q He visited your place? A Yes, sir.

Q You visited his store? A I was in his store after he was married about three times.

Q You patronized him? A Yes, sir.

Q Bought goods from him, and he came there once in awhile and saw you? A Well, he come and see me once in awhile.

Q You kept a saloon in the neighborhood? A Yes, sir.

Q Where your friends once in awhile assembled? A They always come in.

Q Yes; and you knew about the relationship between him and his wife. They were on good terms? A Well, yes.

Q They had no quarrels there? A Wait, Mr. McDermit. Let me talk. Don't stop my talk.

The Court. Go ahead.

Witness. I saw many times them play outside there together but after you don't know what I do inside—that is I don't know what you are doing inside when you are inside.

Q We understand that thoroughly. A Well—

Q You saw them both good friends while you observed them outside? A Yes, sir.

Q But you say you don't know what they did inside? A Nobody could tell what they did inside.

Q Did you see anything to— You say they played outside? A I say yes.

The Court. You say were they friendly? He says he only saw them playing out in the street. Isn't that so? Ask him that, Mr. Interpreter.

Witness. I saw them outside. They were very friendly. Were friendly with each other, but I can't say what they were doing inside of the house.

Q Did you ever see them go out together? Did you ever see Mr. and Mrs. Cerciello go out together? A Yes, sir; I did.

Q See them go to the theatre? A I did. I did.

Q And you know of no quarrels between these people while you lived there? A No; I don't see; no.

Q You lived immediately across the street from where these people lived? A Yes, sir.

Q And you have been there all the time since they have been married? Isn't that so? A Yes, sir; and before that too.

Q And before they were married? A Yes, sir.

FIORENZO FERRARA, sworn for the State.

Direct examination by Mr. Mott (through interpreter).

Q Where do you live? A Bank street.

Q What is your business? A Shoemaker.

Q And in May last where was your place of business? A Near the store of Angelo.

Q Angelo Cerciello, you mean? A Yes, sir.

Q And how long did you have your shoemaker shop there near his store? A Four days.

Q How long had you had your shoemaker shop next to Angelo's store—how long were you there? A I come 24th or 26th May, he come there.

Q You came from Italy? When did you come to this country? A About ten days before the 30th of May.

Q And you opened up a little shoemaker shop near where Angelo's store was? A Yes, sir.

Q Did you know Angelo's wife? A Yes, sir.

Q How long had you known her? A I know her from where she born, in our little town.

Q And what town was that? A San Cipriano, Piacentino, Province of Salerma.

Q On the day before Decoration Day last was Alvira in your shoemaker's shop? A Yes, sir.

Q About what time did she come into your shop? A She came in the morning and the afternoon two or three times in front of my store because she was tending her own store because her husband was out.

Q Well, when she came in front of your store did you and she talk together? A Yes, sir; we was talking together.

Q What time did she come over the first time that morning? A About eight o'clock.

Q How long did you talk with her at that time? A About one minute.

Q And then when did she come again? A About two o'clock in the afternoon.

Q And then how long did you talk with her that time? A Maybe a minute or two.

Q And did you see her again there? A In the evening.

Q Where? A In her store.

Q Did you go in there to see her? A Yes, sir; was country folks and relations between me and her because my son married her sister.

Q How long were you in her store that evening? A About four or five minutes.

Q The next morning did you see Angelo? A In the evening before going I saw the weather was threatening and I told her that I had to go out and she said that herself too she had to go out—we had to go out with the husband. She said that.

The Court. You are not getting that very straight. Now, just what did the witness say?

The Interpreter. "I said to her 'Good-night, I want to go out' and she said, 'we had to go out too, to a moving picture show. We.'"

Q About what time was that when she said that? A I went away from there about half-past seven.

Q Did you know by the conversation whom she meant by "we"—when she said "We have to go out to the moving picture show"? A She said that she had to go out with her husband. He thinks so because she said, "We have to go out to a moving picture show."

Q Now, come back to the question I asked you some time ago. Did you see Angelo the next morning? A Yes, sir.

Q About what time? A Half-past seven.

Q Where did you see him? A It was my custom. I went in his store and told him good-morning and I saw him that he was serving his customers, and I looked to see if his wife was there—I looked to see his wife and I thought that she was living, and I went back to my store, and after Angelo came to my store.

The Court. When?

Witness. About half-past seven.

Q While you were in Angelo's store that morning did he say anything to you? A He don't tell me one word. He was serving his customers.

The Court. Did he say anything to you in your store when he came over there?

Witness. Yes, sir.

Cross examination by Mr. McDermit.

Q What did he say to you at your store?

Mr. Mott. Is what the defendant says the day after the homicide competent? I object on the ground that it is incompetent. Your honor asked the question but I think it is in the same position as if counsel had asked it.

The Court. I haven't asked the question what he said. I asked him if he said anything there, and in response to the court's question it has been brought out that he said something at the store. Now, counsel wants to know what he said.

Mr. Mott. I doubt the propriety of that because this is after the event.

The Court. Why, isn't that outside of the scope of his direct examination?

Mr. McDermit. It is part of the case I should say—part of the *res gestae.*

The Court. The *res gestae* occurred the night before. This is the next day. The question is whether it is part of his declaration.

Mr. McDermit. No proof that she was killed that day or the night before.

The Court. She was dead at seven o'clock.

Mr. McDermit. In the morning, yes, sir. This was an hour afterwards. She was found at seven o'clock. This was a declaration or statement made by him to this party. I don't know what it is, of course.

Mr. Mott. I will withdraw the objection.

The Court. Answer the question. What did he say?

Witness. "Did you see my wife down to her sister's house?"

Q What did you say? A I said to him, "Why, you let your wife go out at night." And he says, "Don't you know that last night she went out to buy five cents of ice cream."

Q Had you been in their house the night before? A Yes, sir.

Q And didn't you take supper with them the night before? A I took a coffee cup.

Q Cup of coffee with them the night before? A Two nights before.

Q Two nights before? Well, the night before when you talked about going out—when she talked about going to the moving picture shows, what time of night was that? A About half-past seven.

Q What was the condition of the weather then? Was it raining? A Raining.

Q And how long did it continue to rain? A Very little after, because I went and took a car and it was not raining.

Q You were on good terms with Angelo? A I know him only for four days.

Q Well, did he arrange about your getting your store there? A No, sir; his wife tried to impress me that there in that section was the needing of a shoemaker store. The day after he went to the landlord and told him that don't give it to me this store because I wasn't able to pay.

Mr. McDermit. I ask to strike that out.

The Court. Ask him if he was there when he went to the landlord.

Witness. The landlord told me after.

The Court. Now, tell him to answer the question. Were you there when Angelo spoke to the landlord? We don't want anything else.

Witness. No; I don't see him.

The Court. Motion granted.

Mr. Mott. Just what goes out?

The Court. The record appears just that way. What he says about what Angelo did when he was not there goes out. That is the motion, isn't it, counsellor?

Mr. McDermit. That is the motion, your honor.

Q Angelo and his wife were on good terms the night you had your cup of coffee there, were they not? A When I went inside I saw them in the kitchen, and when he told me to come inside—Angelo told me to come inside—he went away from there and his wife asked me to take a cup of coffee, and after Angelo said it to him "Why don't you go and get some coffee."

Q Angelo asked him to go get some coffee, is that right? A Yes, sir.

Q Angelo was out in the store, was he? A Yes, sir; he was in his store.

Q And Angelo invited you in from the store to go into the kitchen to have a cup of coffee with his wife, didn't he? A Yes, sir; he invited me to go there.

Q And there was no quarrel or trouble between Angelo and his wife there that night, was there? A No, sir.

Q And the four days that you were— (interrupted).

Witness. She was quite like sorrow—she was looking sorrow.

The Court. How can that be an understandable and intelligent answer?

Mr. McDermit. It can't be.

The Court. Why don't you move to strike it out.

Mr. McDermit. I ask to strike it out.

The Court. Motion granted.

Re-direct.

Q You say they were not quarreling any that night? A No, sir.

Q But how did Alvira look or what did she do? A She was sitting at the table taking the coffee.

Re-cross.

Q Do you know where your sister lived that your son was married to? Do you know where Mrs. Cerciello's sister lived, the one that your son is married to? A She lives in Bank street.

The Court. Is that Amelia Ferrara?

Witness. Yes, sir.

The Court. Ask him that, because he answers something he probably don't understand. Does he say that Amelia Ferrara lives in Bank street?

Witness. Yes, sir.

Q Didn't Amelia Ferrara live on Academy street that time? A Yes, sir; Academy street.

Q And didn't Alvira, the deceased, visit your daughter on Academy street? A In my presence never came to see my daughter-in-law.

Q Well, had you been to your daughter's residence on Academy street in the four days that you were in the country? A Yes, sir.

Q And didn't you tell Mrs. Cerciello and tell Angelo Cerciello that you were going over to visit your daughter on Academy street? A I was living there with my daughter—my son.

Q On Academy street? A Yes, sir.

Q When you came to the country first, before you took the store over at Silver Lake, you had first lived with your daughter on Academy street, is that right? A I had there only a little place, but was living—I came down in Newark to Academy street.

Q Yes. So that you had been to your daughter's house the night before you heard of this alleged homicide—slept there? A Yes, sir; I slept there—Bank street. We were moved from Academy street to Bank street then.

Q That night? How long before this night had you moved from Academy street to Bank street? A I don't remember. Maybe one or two or three evenings before.

Q Now, then when Angelo came to your house on the morning of Decoration Day—your store—he asked you the question whether or not his wife had been over to your daughter's house the night before; is that right? A Yes, sir.

Q And you told him no? A I answered him that maybe she was in some other sister's home but not in my daughter-in-law's home.

Q That was the same night that you went over and slept in Bank street that somebody had talked or she had talked rather about going out to the moving picture show, is that right?

The Court. It was the next day after, he has testified.

Mr. McDermit. As I understand the testimony —I may be mistaken—I understood the same night, the night they spoke about going to the moving pictures. The night before he had been in and had a cup of coffee.

The Court. Night before Decoration Day, Thursday night. That is what he has already said.

Adjourned until to-morrow morning at ten o'clock A. M.

ESSEX COUNTY COURT OF OYER AND TERMINER.

November 19, 1913.

STATE	*Indictment*
vs.	*No. 229.*
ANGELO CERCIELLO.	*Murder.*

THIRD DAY.

Appearances as before.

Mr. Mott. May it please the court and counsel, there is a bundle of clothing here—it is the clothing that was on the woman at the time—with the comb that was said to have been picked up and the handkerchief that was picked up. Are they of any assistance in any way and do you desire them in?

Mr. McDermit. Have you examined the kind of buttons that are upon those clothes? It might be material. You produce a button that seemed to have been dragged off of clothes. It may be that—

Mr. Mott. Then with your permission I will offer all the clothes that were on the woman and the comb and handkerchief. I am calling your attention to the fact that they are here. Myself I see no evidential use in them.

Mr. McDermit. I do not object to them because I see where they may be a benefit.

The Court. They are not authenticated. There is no evidence before the court to show that the clothing presented was taken from the body of the deceased.

Mr. McDermit. Of course, that offer will have to be made in a legal way. I shall not press it.

Mr. Mott. Will it be necessary for me to prove it?

Mr. McDermit. I don't see how you are going to get it on the record unless you do do it.

WILLIAM J. KINSLEY, sworn for the State.

Direct examination by Mr. Mott.

Q Where do you live? A I live in Nutley, Essex County, New Jersey.

Q And have you a place of business? A Yes, sir; at 261 Broadway, New York, my office.

Q And your business is what? A I am an examiner and photographer of documents.

Q And how much experience have you had as a photographer? A For a number of years I was an amateur photographer and for quite a number of years I have been a photographer of documents professionally, and in my professional work I have made thousands of negatives natural size and enlarged of various objects—mainly papers—but I have photographed other objects as well, and I have supplied myself with the documents camera and special lenses arranged for accurate reproduction of objects—still objects. The whole apparatus is arranged for the accurate reproduction of any object placed before it. The bed of the camera and the back are adjusted so as to keep everything in the same plane—get an accurately reproduction. My lenses are sent to the bureau of standards, United States Government, department of Commerce, and they are tested and have a certificate for each lens before I attempt to use it at all.

Mr. Mott. Mr. McDermit, I am going to call on this witness to testify to some photographs, if you wish to cross examine.

By Mr. McDermit.

Q In your experience have you ever handled any axes before in your life? A I think this is the first axe handle I have photographed in my life. I have photographed razors that were used in murder cases.

Q This is the first time you photographed actual wood? A No. I have photographed wood but not in the shape of an axe handle or hatchet handle.

Q How often have you photographed wood? A Oh, a dozen times.

Q For court purposes? A I can't recall whether or not they were used in court.

Q Isn't it a fact, professor, that you have never heretofore photographed a piece of wood for to go in court in your life until this present handle? A Why, I do not recall that I have photographed wood to go in court. I think there was wood on some object that I photographed that went in court.

Q Do you remember what the case was? A No; I do not.

Q Do you remember how long ago it was? A No; I photographed so many different cases that I cannot recall.

Q Yes; I know you have photographed a great many cases. Your line of business has been that as expert in handwriting, hasn't it been, doctor or professor? A Neither doctor nor professor—just Mr.

Q You are an expert, called in many cases, in regard to handwriting? That is your long suit, is it not? A That is the main occupation, but I have had documents generally—seals—I have photographed seals—photographed water marks in paper by direct and transmitted light on paper—photographed ink conditions and typewriting and I have given quite a large proportion of my time, now, to typewriting investigations and making photographs.

Q And you now have got down to the level of where you are starting to photograph wood as a specialty, have you? A No; I am not specializing in wood at all.

Q You are not, eh? A Just required to make an accurate reproduction.

Q You cannot give us any time or point to any negative or any case where you have heretofore photographed wood, can you, for court purposes or any other purposes? A I cannot recall now, although I know I have photographed and the grain of the wood has shown in the photograph.

Q You have been a pretty busy man throughout the environs of the United States? A Yes, sir; I am busy.

Q And you are in court nearly every day—have been for the last four or five years; is that right? A Oh, no.

Q Every other day? A No. I had last year 120 cases and I suppose of that number I had thirty or forty that got me in to court.

Q You haven't had much time to develop wood photography, have you? A I haven't tried to take much time to develop photography of wood, but I have developed photography, the accurate reproduction of whatever is ever placed before the lens.

Mr. McDermit. I object to the witness being allowed to testify as an expert on the question of photography and handling of wood on the ground that he is not an expert in wood photography and that his main line has been documents.

The Court. I suppose that is predicated upon a serious contention that there is a difference in photography as applicable to reproduction of wood and any other object; is that not so?

Mr. McDermit. I think there is a vast difference.

Further direct.

Q Mr. Kinsley, approximately, how many times have you testified in court in relation to your photographs that you have taken? A Scores and scores of times.

Q Is there anything different in principle between photographing a piece of wood or photographing any other inanimate object? A No.

The Court. Proceed. There is nothing before the court to rule upon the record. You simply announce that you propose to use him as an expert and he was turned over for cross examination.

Q I show you the hatchet, Exhibit No. 2, in this case and ask you if you have seen it before? A Yes, sir.

Q When did you see it? A Thursday of last week, at my office in New York.

Q And how long did you have it—do you recall who brought it to you? A Yes, sir; Mr. Hargan, detective from the prosecutor's office.

Q How long did you have that in your place? A From about 10:15 or 10:30 until 4:45, as I recall it, P. M.

Q And while you had it in your office, what did you do?

Mr. McDermit. I object on the ground that there is nothing in this testimony to show that he is an expert for the purpose of taking photographs, and that is the offer made, from the examination shown previously upon the record. I think this is the proper time to object to the question.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A I made photographic reproductions of the lower part of one side of the handle. I made this in natural size and enlarged about five diameters—about twenty-five times or five diameters.

Q Mr. Kinsley, will you remove the cover from the handle and point out the exact spot which you photographed? A The exact spot that I endeavored to photograph was about a third of an inch—began a third of an inch above the end of the hatchet and extended a short distance above that. I took in a little larger section of the hatchet than that but I focussed sharply on that particular point, endeavoring to bring out with the greatest definiteness that the lens and camera was capable of the finger-print impression that I there saw.

Q Now, on the side of the lower end of the hatchet where this mark is there is this square in white on the same side of the hatchet, is there not? A Yes, sir.

Q And so the point you photographed was—

The Court. In the side of the handle of the hatchet?

Mr. Mott. Yes.

The Court. There is another square on the blade of the hatchet.

Witness. At that time I paid no attention to that.

Q For the purpose of identification, the point you photographed was at the end of the wooden handle on the side where the square is in white paint? A Yes, sir.

Q Have you your original plates with you—the original plate? A Yes, sir.

Mr. McDermit. I shall object to the use of those plates on the basis that if anything they are only secondary and not the best evidence. Can-

not be used against the defendant when the original article under inspection is here.

The Court. There is nothing before the court to rule on. The answer is "yes, I have them here." Now that is all there is on the record.

Q And how is your photograph made from your plate? Have you the photograph with you? A Yes, sir, I have the plates, and the prints from the plates are down there at the desk. This plate (indicating) is a five diameter enlargement.

Mr. McDermit. I object to this testimony going upon the record under the objection that I make to the court.

The Court. You object to the witness using the plate?

Mr. McDermit. Yes, sir.

The Court. Because it is not the best evidence?

Mr. McDermit. Yes, sir.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Witness. Is a five diameter enlargement of that portion of the handle to which I have just directed attention, and then here is a five diameter enlargement reversed. Made from this same negative. One is the negative reversed, the other is the positive from that negative made directly from it by contact print. Put up and made in that way (indicating), and then the paper prints which we have to show are made from this second glass or the positive.

Q I show you photographs and ask you what the darker photograph representation on it is? A There

is an intermediate one you will have to show me there. The one from this (indicating).

Q (Handing witness paper.)

Paper marked Exhibit S. 13 for identification.
Paper marked Exhibit S. 14 for identification.

Q I show you Exhibit S. 13 for identification and ask you what it is? A This is a print from the glass positive which I hold in my left hand. This glass positive bears a number—my number—on the outside 1500a.

Paper marked Exhibit S. 15 for identification.

Q Now refer to the mark numbers? A I didn't make these.

Q Just tell us what the fact is? A I say I did not make these two that are handed to me, S. 14, but they used my photograph to produce those.

Q Did you take any other—have you any other photograph?

The Court. The witness said in answer to the last question, or referring to "this" was referring to a separate photograph of his own.

Mr. Mott. S. 14.

The Court. That you produced?

Witness. No; S. 14 was a photograph of my 13.

The Court. Did you make S. 14?

Witness. I did not.

The Court. You answered with reference to the reproduction of your negative or positive, with reference to a photograph which you produced?

Witness. I gave it to the stenographer as S. 14. Will you please read my answer and see.

The Court. Never mind that. The point is, Mr. Kinsley, that you made a photograph from the positive which you produce and that is here.

Witness. Yes, sir; I have S. 13, which is my print, and that is made from S. 15, the glass plate.

The Court. S. 13 is your print?

Witness. Is my print. I made one more from the finger-print itself. That is not from the hatchet but from the paper finger-print.

Q Did you make any more than one copy of No. 13? A Yes, sir; we made quite a number of reproductions from the same plate. There are fifteen or twenty of them, I think, altogether.

Q Do you know whether you gave one of them to Mr. Flak or not? A I did. I gave them all to Mr. Flak.

Q Now in regard to No. 13, did you photograph what is—so far as you know—what is No. 14? A No. 14 on the lefthand side is a reproduction reduced of a photograph that I made of a natural size finger-print on paper. The right hand side is a reproduction reduced of S. 13—a print from my plate made directly from the handle of the hatchet.

Mr. McDermit. Made by yourself?

Witness. No; this is not.

Q S. 14— A S. 14, is not made by me.

Q Neither one of them? A Neither one of them, made by me.

Mr. McDermit. I ask to strike it out.

Witness. I can identify it.

Mr. Mott. That is all I want.

The Court. He is merely stating what he did and what he has not done. The exhibits are not yet offered in evidence.

Mr. McDermit. No; but he makes the pretense upon the stand of understanding that this is a reduction. He did not make the reduction.

Witness. I can identify it.

The Court. He is an expert. He can say whether or not in his judgment a certain photograph is reduction of another photograph, which he made.

Witness. The natural size finger-print on paper is what I want. They haven't shown it to me yet.

The Court. You may leave the stand and go get it.

Mr. Mott. May I withdraw this witness, unless Mr. McDermit wants to examine him?

A Juror. May I look at this hatchet with the magnifying glass now with the photographs?

The Court. You may do that later, Mr. Juror, If the matters go before you. The photograph is not yet in evidence. If they go before you properly authenticated then the court will give you facilities for making proper examination.

GELSOMINA LUONGO, sworn for the State. (Through Interpreter.)

Direct examination by Mr. Mott.

Q Mrs. Luongo, where do you live? A Chester avenue, 401.

Q Does your husband own some property around there? A Yes, sir.

Q Did you know Mr. Ferrara, the shoemaker? A Yes, sir.

Q Do you know the defendant here, Angelo Cerciello? A Yes, sir; I know him because I was near his house.

Q Did Cerciello come to see you about renting the property to Ferrara?

Mr. McDermit. Objected to as being immaterial and irrelevant to the issue, any conversation between Cerciello and her about the renting of the property to somebody else—has no bearing in this issue.

The Court. How is it relevant?

Mr. Mott. Why I desire to prove that this defendant objected to this shoemaker having that property.

Mr. McDermit. What has that got to do with this case?

Mr. Mott. A good deal. This evidence came out yesterday but was stricken out because it was not within the personal knowledge—

Mr. McDermit. Absolutely collateral matter. Absolutely independent matter.

The Court. It is independent unless it can be connected up.

Mr. Mott. I will say to the court I will connect it up.

The Court. Under those circumstances we can take the evidence subject to your objection and the court will allow you an exception and you may make a motion to strike it out if it is not connected.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm. R. Martin (L.S.)
Judge.

Q (Question read.) A Yes, sir.

Q And did he see you and have a talk with you about it? A Yes, sir.

Q And what did Cerciello say? A He said that he wanted to rent a little store of mine for shoemaker.

Q No; that is what Ferrara—he said that Ferrara or Cerciello? A Ferrara, the shoemaker.

Q Now did Cerciello say anything to you about your renting the store to the shoemaker afterwards?

Mr. McDermit. Any time fixed?

The Court. Fix the time of the conversation.

Mr. Mott. Haven't I got first to develop that there was a conversation?

The Court. You have developed that there was a conversation. Now the defense asks that the time of the conversation be fixed.

Q A few days after the store was rented to Ferrara did Cerciello say anything to you about your having rented it? A Yes, sir; he came—he told me you have rented that store to him but he will never pay the rent.

Cross examination by Mr. McDermit.

Q Did you see Cerciello in regard to renting the store before you rented it to the shoemaker? A No, sir.

Q Did Cerciello say anything to you about renting the store to this man and bring him to your place? A Yes, sir; he came to me and asked me for the rent of this store, the little store, but after the shoemaker came and he rent himself.

Q Well, he told you—Cerciello told you that he wanted you to rent the store to Ferrara as a shoemaker store, that he had asked the shoemaker to come up there and take a store and the shoemaker was a relative of his—relative of his wife?

Mr. Mott. One minute. Your honor, I am only calling counsel's attention there is no question asked now. The counsel has simply made a statement to the witness. "He told you so and so."

Q Did he not? I will withdraw that question. Put it in this shape. Did Cerciello not tell you when he came there that he wanted to know the price of the little store because Mr. Ferrara, who was a relative of his wife, and who was a shoemaker, he wanted him to start in business up near him? A The shoemaker come first and he rented the store.

Q Did you see Cerciello before the shoemaker came to rent the store?

The Court. She has answered that "no; Ferrara came first."

Mr. McDermit. She answered it just the reverse before, your honor?

The Court. No, she has not. That is what she said right along. All right. If you want the question asked, proceed. Ask the question.

Mr. Mott. Did you see Cerciello before the store was rented.

Mr. McDermit. About the store.

The Court. About the store.

Witness. No.

Q How long after the store was rented to the shoemaker was it that Cerciello came to see you? A In the end of the month he come to my place and told "You rent that place to that man but he will not pay."

WILLIAM J. KINSLEY, re-called for further

Direct examination by Mr. Mott.

Q Now proceed and tell what further photographs you made? A I made a five diameter enlargement of a finger-print on paper.

Q Well, no—I think—how do you know it is a finger-print? A I can tell it is a finger-print because I have compared finger-prints before. It is a finger-print of somebody on paper.

Paper marked Exhibit S. 16 for identification.

Witness. I think that should be kept in an envelope too.

Q And have you the plate of that enlargement here? A I have.

Q And did you make any photographs of that plate? A Yes, sir; we made some prints from that plate, and made a number of those prints.

Q Have you one of them? A I haven't a whole one here. I have one that has been cut up.

Paper marked Exhibit S. 17 for identification.

Q I show you Exhibit S. 17 for identification and ask you what that is? A That is the photographic print from a negative that I made about five diameters enlarged of the finger-print on the paper, No. 16 —Exhibit 16.

Q And did you make more than one print of that? A Made quite a number prints of that. This negative, do you want that marked.

Mr. Mott. Yes. I offer it.

Negative of 17 marked Exhibit S. 18 for identification.

Q And your various prints that you made from your plates, are you able to say whether they are all alike? A They are all alike, as near as they can be made, and are correct photographic reproductions of the original, and are correct prints from this plate, S. 18. I would also like to say in regard to S. 14 that I did make the original of these two photographs that now appear on there with the figures at one side. That part I did not do, and I did not make it in that shape, but in the other shape, and the part appearing on cardboard were cut—

Mr. McDermit. Then that is not a correct reproduction of what you did make?

Witness. Oh, yes.

Mr. McDermit. Then you were mistaken before when you said that was a correct reproduction?

Witness. They reproduced it, but the one showed me was the original itself.

Mr. McDermit. That is not the one that was shown you before?

Witness. Yes; that is the original, but it has been reproduced since.

Mr. McDermit. Did you reproduce it?

Witness. I made the original photograph that you hold in your hand and they are cut from these. I didn't make it in that shape.

Mr. McDermit. Then it isn't a reproduction. It is a reproduction only in part of your photograph?

Witness. The essential part—the finger-print part.

The Court. The witness says he made the original photograph and that the part in Exhibit S. 14 for identification is cut out of that photograph which he made. Isn't that so, Mr. Witness?

Witness. That is so.

Mr. McDermit. I object to its being allowed because it is not a reproduction of the entire thing.

The Court. Objection overruled.

Defendant's counsel prays an exception, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Paper marked Exhibit S. 19.

Another paper marked Exhibit S. 20.

Q Now, I show you S. 19 and ask you what it is? A It is a part of a five diameter enlargement made directly from the original finger-print on paper, the original finger-print being natural size, and the part cut out is the part containing the center of the finger-print and is the part appearing on the left-hand portion of S. 14 for identification.

Q And I show you S. 20 and ask you what it is? A S. 20 is a print of a positive plate, five diameters enlarged, being not the entire print as the finger-print section is cut out and pasted on the right-hand side

of S. 14. That is these original, complete size, the way I made them, somebody else has since cut out from those and pasted it on paper for some other purpose.

Q Then the photograph at the right of S. 14 together with S. 20 is the complete photograph which you took, is it? A Yes, sir. You see it fits right in, showing just what portion was cut out of S. 20.

The Court. Both the prosecutor and witness are referring to numbers of exhibits without mentioning the words "for identification." They have not yet been offered.

Witness. For identification.

Mr. Mott. They have not yet been offered.

Cross examination by Mr. McDermit.

Q You had this hatchet in your possession? A No.

Q For seven or eight hours, didn't you? A No. It was never in my possession at all.

Q Well, where was it you took the photographs of the handle? A At my studio in New York.

Q It was in your possession to the extent that you had it there for the purpose of taking the photograph, wasn't it?

The Court. Isn't that a legal question? He had it there. Mr. Hargan was there and somebody else was there.

Q Now, what did you do when the hatchet was brought to you first there? A Mr. Hargan unwrapped it, handed it to me and I examined the handle with the magnifying glass.

Q Just show the jury. You have got a magnifying glass. Take the hatchet up in your hand and just show the jury how you examined it before you made the photograph. A I examined the hatchet in the same way as I examined it a few minutes ago. Both

sides—is it necessary to unwrap it again—and went over it until I found the finger-print spot on the hatchet, and I then asked if they cared to have a photograph of any portion beyond that and they said they did not, and I proceeded to photograph—put the hatchet up carefully on the end—get it perfectly vertical and have the lens directly in front of the finger-print impression on the hatchet handle, and then proceeded in the usual way to focus with the aid of a ten diameter magnifier on ground glass.

Q Then you, as I recall your testimony, you—I suppose we can do it with that—with this around it, but I would much rather you would remove it. I can't see through that. You may be able to do it. I want the jury to see exactly the portion you photographed—how you photographed it—how the hatchet stood at the time, exposed. Now, turn the hatchet towards the jury, the one that has appended the mark on there. Just take a pencil or take your finger and show the jury just exactly where your photograph started and where your photograph ended? A It began at the—

Q Extreme bottom, did it? A It began at the base, except—photograph began at the base and I had a little scale—paper scale carefully made here to show the degree of enlargement or whether or not it was made natural size, and I photographed two or three inches above.

Q Now, show us on that handle by an examination and comparison with your photograph just how you photographed the handle the height and the width. That is what I want. A Oh, that is quite difficult to show.

Q Why? A I went above and below and to the left and to the right of the finger-print and I did not concern myself with how far above that I went.

Q Can't you tell by the measurement of your photograph? A It is a pretty difficult measure to make

on a curved surface, and a photograph to show afterwards without—I suppose you could tell. It would take two or three hours probably to measure it carefully to see.

Q Is that so? A Yes, sir.

Q So you couldn't without taking two or three hours now just tell the jury what the exact measurements of the photograph was that you afterwards enlarged? A No. I have given you exact measurements and scale, which if you notice is on the photograph. That is by the actual scale and that scale shows the degree of enlargement. That was photographed at the same time the hatchet handle was photographed and that shows you exactly the degree of enlargement.

Q Now, can't you tell from this photograph what the length was of the hatchet that was photographed, in height? Yes or no. A I suppose we could figure it out, but this is the way—

Q No. I don't want you to figure it out. Can you now tell without figuring it out? A No. I didn't know you were going to ask that or I would have figured that out.

Q I didn't expect to tell you that.

Mr. Mott. If you desire it Mr. Kinsley, after he leaves the stand, will be perfectly willing to figure it out for you.

Mr. McDermit. We will first figure out the cross examination and see what he wants.

A Juror. I would like to examine the hatchet with the magnifying glass. I am a professional photographer and I think I can form a little idea about it of my own personal—

The Court. You must not form your ideas from your own personal knowledge, but from the evidence in the case. You will be given an opportunity to examine the hatchet.

Q Now, indicate, and you did on your direct examination make an effort to indicate—the width and the length of the photograph that you took on the hatchet itself—the handle? A I don't think I indicated either except to say that I endeavored to get below, above and left and to right of the finger-print itself.

Q Now, keep your eye all the time on that handle and just show me with the end of your pencil—you need not get it where you will disturb the real finger mark or the alleged finger mark—get on this side, or the side next to the jury and show me the length that you photographed the handle—to what height from the base? How much of the base was covered?

The Court. Don't make any pencil mark on it, Mr. Witness.

Witness. No; I won't.

A As I think I did not go above two inches from the base in the five diameter enlargement. I made natural sized photographs that went up four or five inches.

Q Now, just again how far from the bottom was the first actual photograph? A It began at the bottom. I placed it—this gentleman here, the photographer, cannot see—I had it placed on a little elevation and then I had leaning against that, right at the base, this scale.

Q Yes. How far up did the scale extend? A Just a tiny bit.

Q Above the top of the axe? A Above the bottom of the handle, because I had the handle elevated a little and the scale just a tiny bit above that, but quite a distance below the finger-print impression, and it shows, of course, in the photograph itself, that the scale was below the area covered by the finger-print itself.

Q Now, can you tell us what the height was of this first photograph? How high up here (indicating), indicate on that handle. A That I don't know. It went up.

Q Show us approximately how high it went up, in your opinion. A It went up above the finger-print, about twice the distance of—

Q Keep the handle in that position and show us. A I can't look at anything through it. I can't look through the handle.

Q No. A The five diameter enlargement went up, I should say about two inches away from the base of the hatchet.

Q You indicate there what is two inches. Put your pencil on. Now, you are making the measurement. That was the part you photographed? A Yes, sir; from the pencil-point to my pencil down to the base.

Q From the pencil down to the base you say is two inches? A About two inches.

Q And that developed, you say, the finger-print? A No; the finger-print was developed when I photographed it.

Q Where is your photograph of the handle itself? Where is your photograph of the handle? A What do you mean, of the entire handle? This a photograph of a portion.

Q I am speaking of the portion that you photographed. A This is a photograph of it, and that is S. 13.

Q Well, now, is that the first photograph that was taken? A I don't know. I made several.

Q Don't you know whether that was the first or last? A No; I do not.

Q Why did you have to make so many? A Why, I made a natural size and enlarged and with different kinds of plates.

Q Well, did you photograph the handle any larger than you have indicated to the jury itself? A No.

Q So that what you mean to say to the jury is that for a section of about two inches from the bottom you had taken a photograph with your lenses from this wooden hatchet—wooden handle and the other portraits that you made are the ones that you took and enlarged from that? A Oh, no.

Q Well, what is it? A I made my enlargement direct on the plate from the handle itself. The one that I show you, that is made directly on the plate, five diameters.

Q I know, but what is the extent of that now, how far does that run? A That is the one I told you that went up about two inches.

Q Yes? A Probably a little less.

Q Well, it hasn't been any higher than that at any time? You took no portrait of any other part of the handle? A I made a natural size photograph that went up—further up the handle, but reduced in size. That is it represented only that portion of the handle that we show.

Q Now, where is the original photograph that showed up to that part of the handle which you now indicate? Where is that lens—that— A The prints are here; natural size prints of the handle.

Q You made no effort to take any photographs of the other—reverse side of this handle? A No.

Q For finger-prints or anything else, did you? A No.

Q Weren't asked to do that? A No.

Q And any portrait that you took from there—from this section here (indicating), did that portrait show under the microscope or on those pictures—does it show to your mind a finger-print? A I think it does, yes, sir.

Q How? How does it show it? Explain that to the jury, where it shows that? A It shows it—

Q Come down here. I want you to show what you think represents a finger-print in that photograph. Take this pencil and show where you say that designates a finger-print? A It shows the core and the ridges from the skin; it shows the curved line by which finger-prints are identified. There are quite a number of these and they occur in the same curve and same regularity and same shape which finger-prints are recorded, and it differs from the surrounding surface on that handle where the wood shows that it has been rubbed with sandpaper or some material like that, so that the finger-print itself shows on the handle with violence from impression made with some red substance—looks like blood—but something red.

Q You say that the impression of the finger-print shows up in something red as though it was blood? A Something red.

Q The impresion of the finger-print itself? A Yes, sir.

Q Now show the jury on your finger—take one of your fingers—(I withdraw that question). Is there more than one finger-print shown on your photograph?

Mr. Mott. May I suggest that Mr. Kinsley has not qualified as a finger-print expert.

The Court. This question is "Is there more than one finger-print on your photograph?"

Mr. Mott. Oh, on your photograph.

A I don't know, but I think not. I didn't examine this from the finger-print standpoint at all.

Q You are examining it now. Put your microscope on it. A I don't need a microscope for this enlarged photograph. I think there is only one finger-print in that area. There might be more. I haven't studied it.

Q Are you able to tell the jury whether there is or is not in the photograph? A I cannot. I photographed what was there.

Q Then, you cannot tell from the area there whether there is any other finger marks on the axe handle or not? A I don't know.

Q In other words your portrait shows an isolated finger mark, is that right—finger-print? A I think that is an isolated finger-print. There might be something—

Q Show me, in your judgment—indicate what finger apparently or what part of the finger or the hand is indicated in that photograph by way of comparison? A I haven't examined it for that purpose.

Q Then you can't tell whether that is the index finger, whether it is the thumb or whether it is any other finger that appears upon the photograph, or whether it is the front or back of the finger? A I know it isn't the back of the finger. I can't tell what finger, because I didn't examine it to see. I didn't expect to testify with regard to that.

Q Do you know whether it is a human finger or not in that photograph? A I do not.

Q Can you say whether it was a goat's claw or goat's toe or cat's paw or any other class of animal or anything else on that, let alone a human finger from your knowledge of photography?

Mr. Mott. I object to his knowledge of photography. It doesn't enable him to testify as to finger-prints.

The Court. Mr. Kinsley has characterized the peculiar formation which he discovered upon the handle of this hatchet as a finger-print. I presume that defendant's counsel has a right to inquire as to the value of that characterization. Is that your object?

Mr. McDermit. It is.

The Court. You may have the question answered.

A I never photographed any goat prints but I think I would be safe in saying that it is not a goat

print and I don't think it is a cat print. I think it is the print from some human finger. Now, which finger of the hand, I don't know. I didn't examine it.

Q Could you give us any idea in which way the axe was held when the impression of that finger got on the hatchet? A No; I haven't gone into that at all.

Q Have you any idea of whether the hatchet was held this way or held that way or what way the hatchet was held in order to get such a print on the hatchet? A No; I haven't looked at that at all.

Q Haven't the remotest notion? A No.

The Court. He is not called as an expert on finger-prints.

Mr. McDermit. I understand that but he is dangerously close to the line.

The Court. He is a photographer. He says that he has reproduced something that he says is on that handle. Now, he thinks it is a finger-print.

Q Have you ever photographed a natural finger in your life? A Yes, sir; I have photographed finger-prints but never on a handle.

Q Have you ever photographed a natural finger in your life? A No, sir; not a finger. I have photographed finger-prints.

The Court. What do you mean, the papillary ridges on the tip of the finger?

Mr. McDermit. Papillary or whatever it may be, that is too strong, your honor, for me.

Witness. No.

Q Never photographed a complete finger in your life? A No, sir.

Q Have you ever photographed a human toe? A No.

Q Boy's toes? A No, sir.

Q Do you know—have you any idea what the impression of a toe would be upon a hatchet handle any more than a finger, if a toe of a human person had touched it would you be able to distinguish between that and a finger? A I might if I had them for comparison. I cannot say as a hypothetical question whether or not I can.

Q Now, if after—say on the 29th day of May, a person had this handle of the axe in their possession and had their hand or fingers upon it and if the same night the hatchet remained out in the open and continued to remain out in the open and it had rained at intervals during a couple of days following, and three days afterwards a boy came along and picked up the hatchet and had the hatchet in this fashion with his fingers up towards the top, taking hold of it, had then dropped it down again upon the ground—first, before picking it up with his fingers he had stepped upon it, then the boy comes back fifteen minutes later and picks it up again by the handle at the point where your photograph has shown, and he then turns it over to another person and that person takes hold of the handle, puts his impression of his full fingers and uses it for the purpose of putting a nick in a tree, and then after that takes the hatchet and puts it under his coat and carries it over to a store, a distance of a thousand or fifteen hundred feet, and there he takes the hatchet again in his hand and wraps it up in paper, would you be table to say which of the imprints upon the hatchet that your photograph took, if it took any —would it take the first, second, third, fourth or fifth imprint of the finger or hand? A I can't tell which it would take, but I could tell by study which it did take. I could tell by comparison with other finger-prints, but I haven't gone into this because I knew that following me were finger-print experts.

Q Which would it be likely to take, the most recent, freshest finger-print upon the handle of the

hatchet or the oldest? A That would depend on so many conditions. For example, if bloody finger-prints were put on that originally, when the hatchet was clean and this was turned over and it rained on the other side and the underneath side was dry, and that this coagulated blood remained there, that might remain dry. It would depend on the physical conditions surrounding that hatchet. Then if they picked it up thereafter they might not touch that particular spot that has the spots—finger-prints, and on the other hand they might touch it and smear it all over, but the fact remains that there is a finger-print there made by somebody that is clear, strong and distinct and comes out distinctly in the photograph. Now, who made it I don't know.

Q But the blood is at the bottom of it? The blood is under the finger-print impression? A The blood?

Q Or is it on top? A The blood made the finger-print impression.

Q Then it was an impression of blood? A Of some red substance. I am not a blood expert, however. There it gets in another field. It is something that looks like dark red.

Q Found no other finger-prints upon the hatchet? A Well, I didn't look it all over to see. Just offhand I don't see any others, but there may be. I didn't look.

Q How do you attribute the difference in the appearance of this wood from this point down to the base. It would seem covered—it would seem covered by this cloth around it or paper, or has that been shaved or washed in your opinion? A I don't think it has been shaved. I can't say about washing. It does look as though it is much cleaner—the wood cleaner. Whether or not that covering is responsible for it, I don't know.

Q Does it look to you as though that wood has been washed? A I can't tell.

Q Look at the bottom of the hatchet itself, doesn't that look absolutely clean? A No; there are a few drops of dark brownish red that look like on the flatter surface of the side of the handle.

Q No; I mean the general—take the— A It is much the cleanest part of the wood. It is the freshest and brightest.

Q What do you attribute that difference between the hatchet of this end and the bottom end and the center—what do you attribute that difference of appearance to; could you say? A To handling—the use.

Q Then, the point is that this has been more handled below than the upper part, therefore it is more cleaner, is it? A No; I attribute—I thought you asked about the end.

Q Also this portion here (indicating) there is a distinct difference in the appearance of that wood? A Yes, sir.

Q Is that not true? A Yes, sir.

Q This bears a relatively more cleaner appearance —whiter appearance than the rest? A Yes, sir.

Q I ask you to what you attribute that? A I don't know.

Q Was that washed with any of your preparation over there for photographing for you to look at it? A No, sir; it was absolutely untouched. It came in as you see it wrapped here and Mr. Hargan unwrapped it and we all handled it gingerly and put it up in front of the camera and photographed that part. Then Mr. Hargan very carefully wrapped it again. We had it put up so as not to handle it while the photographing was going on. No. There was absolutely nothing done with it except carried it and put it in front of the camera and wrap it up again while in my office.

Q Let me see the wrapper. That doesn't seem to be a very clean wrapper to have around a thing that

is being carefully protected. Doesn't strike you as being clean, does it?

Mr. Mott. I object. What difference does it make whether it strikes the witness as clean? The jury is just as good a judge. The witness hasn't qualified as an expert washwoman.

Mr. McDermit. He will very shortly if you require him.

The Court. That does not call for the remark. Should not be made. Wastes time and causes confusion and the jury will disregard it. The gentleman has distinctly said that he was not an expert upon finger-prints.

Q Is this the wrapper that was around the hatchet? A Looks like it, although it is a long piece of cloth wound around and around, I couldn't positively identify that as the particular piece. I didn't handle it.

Q Didn't you take this off here this morning, this piece of cloth? A That is what was around it now, but over in my office it was a piece like that.

Q Didn't you observe that it was all full of ink prints or any other kind of marks? A No; I didn't notice. I don't think—hardly think that those were on then, but I am not sure.

Q So you don't think that is the same wrapper that you got it in? A I don't know.

Q Well, this paper was also around it this morning? A Yes, sir. They had an envelope around it at my office.

Q And you don't know whether that is the envelope or not? A No; I didn't unwrap it or wrap it again. Mr. Hargan attended to it. The hatchet was technically not in my possession. It was in the possession of the prosecutor.

Q As far as you know there was no tissue paper around this, as far as you recall? A I don't recall

any, but there might have been some. I didn't watch the unwrapping all the while. I saw him unwinding and taking off the rubber bands while I was busy adjusting the camera. I just noticed him one side.

RECESS.

EDWARD H. SCHWARTZ, sworn for the State.

Direct examination by Mr. Mott.

Mr. Mott. I now offer in evidence the original plates taken by Mr. Kinsley marked Exhibits S. 15 and 18 for identification.

Mr. McDermit. I object as to all the offer of the Kinsley plates and subsequent reproductions and part reproductions as not being proper evidence in the case.

The Court. On what ground?

Mr. McDermit. On the ground that it is not proper evidence. On the ground that it is not the best evidence.

The Court. Surely anything that is presented in evidence can be marked—scientifically for description and explanation to a jury.

Mr. McDermit. Not in this way.

The Court. What way can it be?

Mr. McDermit. Cannot be in the present offer.

The Court. You do not object to the offer of the two negatives or positives because they are offered at the same time.

Mr. McDermit. No. I object to the entire offer of these photographs and all portions of photographs of different parts that is offered here, any one photograph on the part of the witness, Kinsley.

The Court. Objection overruled.

Exhibits marked by striking out the words "for identification."

Mr. Mott. I now offer in evidence Exhibit No. 13 for identification which is Kinsley's photograph.

Mr. McDermit. Further objection is that no connection between the hatchet and the fingerprint has been shown—no connection in the case up to this time of the offer of these papers. Therefore it is premature and not a proper offer and cannot be offered at this time.

The Court. Objection overruled.

Exhibit marked by striking out the words "for identification."

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. Mott. I now offer in evidence No. 14 for identification.

Mr. McDermit. Further objection because in that particular exhibit for identification it was testified by the witness that he had not made that reproduction. It was not his own work. Also same objection as before.

The Court. He said he made it and it was cut out. Objection overruled.

Exhibit marked by striking out the words "for identification."

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. Mott. I now offer Exhibit No. 17, photograph taken by Kinsley.

Mr. McDermit. Same objection.

The Court. Same ruling.

Exhibit marked in evidence by striking out the words "for identification."

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. Mott. I now offer Exhibits 19 and 20 for identification.

Mr. McDermit. Same objection.

The Court. Same ruling.

Exhibit marked in evidence by striking out the words "for identification."

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. Mott. I now offer Exhibit S. 16 for identification which is a photograph which Mr. Kinsley says he copied and enlarged. He said it was the photograph of a finger-print, he didn't know whose it was, but it is the basis of the other photograph. I will show first what this 16 is before it is offered, if you think that is necessary.

Mr. McDermit. I object on the ground that it has no relevancy to this issue as the record now stands.

Mr. Mott. I am willing to defer that.

Q Mr. Schwartz, what is your business? A I have charge of the Bureau of Identification, Police Department.

Q And by that what do you mean? What is that? A Why, I finger-print those arrested for crime, bertillon them—photograph.

Q And when you say of the police department you mean what police department? A Newark Police Department.

Q What experience have you had with this work, especially with finger-print identifications? A Why, I have been taking impression for the last thirteen years—eight years in New York and five years with the New Jersey Reformitory.

Q At Rahway? A At Rahway; yes, sir.

Q Well, what experience and study have you made? A Why, my first experience was—rather the tuition which I had was from Mr. Nye. He was a pupil at Lebonworth, Kansas. I afterwards studied under Captain Parks, of Albany, New York. Afterwards by practical knowledge or practical demonstrations of finger impressions.

Q And have you testified in court as an expert as to finger identifications? A Yes, sir.

Q How many times that you recall? A Five.

Q All in the State of New Jersey? A No, sir.

Q In what other State? A New York.

Cross examination by Mr. McDermit.

Q How old are you? A Forty-three.

Q Who do you say you studied with? A Captain Parks and Mr. Nye—J. N. Nye.

Q Who is J. N. Nye? A Now Government agent in—

Q What is his business? A Finger-print expert. Supposed to be at that time one of the first in the country.

Q Who is the other party? A Captain Parks. He is with the New York State Bureau, at Albany.

Q Is he there now? A I don't know he may be.

The Court. New York State Bureau of what?

Witness. Of identification—or rather I should say, he is the superintendent of the prison. He has under his direction and charge the New York State Bureau of Identification, at Albany.

Q You were down at Rahway for five years, you say? A Yes, sir.

Q What were you doing there? A Assistant superintendent—record clerk.

Q There you say you made a study of finger-prints? A Yes, sir.

Q And in what way did you make a study of finger-prints at Rahway? A By making impressions and comparisons—studying other impressions that I had received from other departments—institutions.

Q Well, in what way did you make your impressions? A In what way did I make the impressions?

Q Yes. A Of the subjects which I had there?

Q Yes? A Why, we had at that time a large table on which there was a bronze plate. That plate was inked and the subject's fingers were placed on that plate, the ink adhering to the finger. They were then rolled on an impression sheet.

Q Impression sheet was made up of what? A Paper.

Q What kind of paper? A I am not familiar with the different kinds of paper. It was just merely a sheet of paper printed for that purpose—some high gloss surface.

Q Well, what was the character of the preparation of the paper? A Character of the preparation of the paper?

Q Yes; what did the paper consist of—white paper? A White paper, surely.

Q Any particular white paper? A No.

Q Any particular quality of paper? A Not to my knowledge.

Q And by inking up the bronze stand there and by taking the boy—subjects and putting their finger-prints into the ink on the stand and having them make the impression of their fingers upon a piece of whate paper upon another table— A Not on another table, same table.

Q Same table? A Yes, sir.

Q Then what would you do? A In relation to what?

Q Why, in relation to the imprints of the finger. A After they were taken they were classified.

Q Of course, when you saw a person go to the ink-stand or to the table there and put their finger down upon the ink and go to the white paper, of course, you know whose finger-prints they were? A I might add he signs that sheet also by his name.

Q After he signed his name to that sheet—after you got a number of subjects to do the same thing as this subject did, then you examined the different finger-prints, would you? A Yes, sir.

Q What way would you examine them? A Under a glass as to their character of type. Men have their different characters and they are classified accordingly.

Q Now, you discovered after seeing personally, a number of these people make impressions that they were all different finger-prints, of course, didn't you? A Yes, sir.

Q In what way do you acquire knowledge of general finger-prints from that? A How do I acquire knowledge?

Q Yes; so that you would be able to distinguish the finger-print as belonging to a particular individual? A I didn't get it from that; I got it from information I had before that time in connection with that, to get it more accurate and more perfect.

Q What is there about your system that you could warrant you in saying that this is the particular fin-

ger-print of this man or the particular finger-print of the other man? A Well, there are a great many differences. There are no two fingers alike as far as I have been able to ascertain. I have examined some thirty-five or forty thousand—I mean by that individual impressions—I don't mean combination of ten fingers—I mean individual fingers, and while there are only four types of impression and there may be thousands of any one particular type that may look similar, but when you get them under the glass and examine them closely you will find a vast difference as to divergence, lines, abrupt ending, islands, and the general formation of the delta, which is the outer terminus to the core, in the different counts, the ridge counts between the outer and inner terminus.

Q How long will a finger-print have to be touched to a different object in order to put you in position in which you can take off the finger-print and determine whose finger it belongs to—whose finger-print it was? A If the impression is made in any substance such as ink or any substance of liquid, anything of that sort leaves the impression it is indefinitely. You can take the impression from it—

Q How long? A You can take it a year after they are made, two years—five years.

Q And if it isn't made in any particular fluid or not made in any particular way except the ordinary finger mark, then how long? A Why, if it is made on glass or a safe or tin or anything of that sort from experiments I have got a fairly good impression after eleven days, but after that I have been unable to get an impression that I could distinguish.

The Court. You mean after eleven days or within eleven days?

Witness. Eleven days; yes, sir; that is on the eleventh day.

Q Pretty difficult thing to get any character of impression of finger-print after that time? A That is, if an impression is made in that way.

Q Unless there is some contact, with regard to the impression, as you say, by way of blood or by way of fluid or ink or something that would indicate—something that would be durable? A Yes, sir.

Q In other words, after eleven days the ordinary finger mark will go away, is that right? A What I mean by that—if I place my fingers on there, those impressions can be developed now.

Q How long?

The Court. You mean on the middle edge of the stand?

Witness. Yes, or on glass or tin.

Q How long will your finger impressions remain on that metal box there? A As I place them there?

Q Yes. A About eleven days.

Q About eleven days? A Yes, sir.

Q Is there any difference in the method—of the way you place the finger marks as to its staying qualities, as to the length? A Oh, no.

Q Suppose you put the hand down that way and you press with your fingers upon the metal substance and suppose you put your hand just that way or that way (indicating), which impression will last the longest? A Well, the first impression you made there you would merely secure the outer tips of the finger which would be nothing that you could distinguish from excepting a few lines and that will last just as long—the harder you press the better the impression to a certain extent if the hand isn't too moist, but the natural moisture of the hand is what leaves the impression on the substance.

Q It is, eh? So it is the moisture of the hand that makes the impression? A Practically.

Q And if there is additional moisture on the object that is touched why, of course, that makes the

impression all the greater, is that the theory? A I am only speaking now of the objects such as I have described. I am not speaking of the general manner in which you put it, and about where there is any substance attached to the hand such as ink or paint or any such liquid substance it will leave the impression indefinitely, but where there is nothing on my hand and I place it on there, then about eleven days.

Q How would you take off your impression from that metal substance? A How would I take it off?

Q Yes. A Develop it first with powder which we have and bring them out and then photograph them.

Q What kind of powder? Just tell the jury in what method you would—suppose you were asked to take my finger print or your own finger-prints on that metal box there, just state to the court and jury in what method you would do that to prove that those fingers were yours or mine? A Well, counsellor, may I use a sheet of paper instead of this stand, then the jury and you can see it more plainly.

Q No objection to your doing that. Come down here and take an impression of my hand. A We merely sprinkle the powder on in this case, run it down, and we secure the impression in that manner (indicating). Where it is placed on wood or something of that sort, when we are not positive to secure impression we use white powder that is for glass or wood or something of that sort of a dark nature, that is, dark background.

Paper marked Exhibit S. 21 for identification.

Q Now, what is the powder composed of which you take these marks with? A Charcoal and graphite.

Q What proportion is charcoal and graphite? A I don't know. The powder isn't manufactured by me.

Q Does that come—what is the powder that you use in this preparation of developing on that paper, a prepared powder? A Is it a prepared powder? Yes, sir.

Q Prepared powder and in the market for use by manufacturers? A Number of dealers, P. A. Flag, Maryland and Chicago—buy it pretty nearly in any supply store.

Q Of course, you don't think there is any question but what the finger marks there you could identify on that paper? A I think I could.

The Court. Referring to Exhibit S. 21 for identification?

Mr. McDermit. Yes.

The Court. What do you mean by that? You mean to say that he has any doubt in his mind as to whether that is the finger print of your right hand?

Mr. McDermit. Yes, sir.

The Court. He saw you do it, didn't he?

Mr. McDermit. I asked the question.

Witness. Why, certainly.

Q Is there any peculiar characteristics about those fingers as they strike you there?

The Court. You mean the finger-prints?

Mr. McDermit. Finger-prints; yes, sir.

Q Look them over carefully? A Yes, sir.

Q What is there about it? A What is there about them?

Q Yes. A That is different from the impression which I made there and which you made?

Q No, not between your fingers; my own fingers. What is there, if—what characteristics have my fingers got there? A Merely the classification, taking the three or four fingers which I will use here—I only succeeded getting three of yours—I didn't get the other one very distinctly. There are four there of yours. The last three are ulnar loops and in the index finger you apparently have a radial loop.

Q What do you mean by that? A It is reversion of the type, that is, while ulnar in the right hand the

ridges trend from the little finger going towards the thumb and recurving back to the little finger again in the radial in the same hand simply reverses from the thumb the other way.

Q Could you tell from those finger marks whether I have any distinctive mark on the hand? A Any distinctive mark?

Q Distinctive mark or cut—long cut or unusual cut on the hand?

The Court. On the hand?

Mr. McDermit. On the finger.

Witness. There apparently is none here on the impressions taken of your fingers.

Q There apparently is not any here either. You are right about that. Now, you say you are able to distinguish a finger-print upon an object by comparison, is that right? A Yes, sir.

Q That you are able to take finger-prints of a given subject and by an examination of that finger-print determine whether or not that is the finger-print of the individual? A Yes, sir.

Q You are able to do that. And you base that upon the fact that you have examined some thirty to thirty-five thousand different finger-prints and found them entirely different? A Yes, sir.

Q You mean to say that every finger-print you examined is different? A Yes, sir.

Q One from the other? A I do.

Q You do not mean to say that there was distinguishing features so that you could enumerate the differences of all that number of fingers, do you? A Yes, sir.

Q Do you mean to say that in your opinion there is no two fingers of the human race that is alike, do you? Do you mean to say that every man's finger in the entire world—there are no two fingers alike? A Well, I have no means of knowing that, but that is

my belief from the study and from the observation which I have made personally.

Q Then you do not know except— A Not for a positive fact; no.

Q Except from the examination you have made, as to whether or not all fingers are alike or not? A Well, if I might quote an authority, Gaulten claims that there is no possible chance of two fingers being similar in one in sixty-four billion. If that be correct—

Q You are quoting somebody? A Yes, sir.

Mr. McDermit. I ask to strike that out.

The Court. You asked him for what he believes and he had a right to answer.

Q So that because you read in a work that some other gentleman said that there was no distinction of over one in sixty-four billion and because you have examined thirty-five or forty thousand different fingers you conclude that you are absolutely able to determine whose finger is on the impression upon any object? A Yes, sir; positively.

Q Where did you first testify—what case? A I testified in Elizabeth, New Jersey, blackhand case there. I have forgotten the name. I think it was 1908. I am not positive. I think it was around that time. The record of the court will show.

Q Did you produce your machine down there? A Did I—

Q Produce your apparatus? A No, sir.

Q What was the class of case—what was the nature of the case under trial? A Why, a party had sent a letter to a priest down there demanding, I think, six or eight hundred dollars. Blackmail and in signing the communication he very foolishly wet his three fingers of the left hand on the ink mark which he had made at the bottom of the sheet leaving three very distinct and clear impressions.

Q You testified in that case to the effect that the marks that were upon the communication were the marks of the defendant, didn't you? A Yes, sir.

Q Now, when did you next testify in court? A The next was in Rockland County, New York State.

Q And what was the charge there? A Burglary.

Q And what was the impression of the finger-prints there sought to be shown? A One of the burglars had been drinking whiskey and had left an impression on the whiskey bottle there, or several of them; another had examined a number of envelopes in which there were cancelled checks. I secured a fairly—or rather, several good impressions from the bottle and several good impressions from the envelope.

Q And when was it relative to the time of the alleged robbery or burglarly that you got possession of the whiskey bottle—how long after—to make your examination? A May possibly have been five or six days. I haven't the—I don't really remember that.

Q That case did you identify the finger marks upon the whiskey bottle and finger marks upon the cancelled checks as the finger marks of one of the defendants? A Yes, sir; both of them.

Q How many defendants were there? A Two.

Q And there were finger marks as to both or one? A Both.

Q So you took double impressions from the whiskey bottle showing that both had apparently handled the bottle? A No; I did not. I only took the one on the bottle and the other from the envelope.

Q And then the bottle contained only one distinctive line of finger marks?

Mr. Mott. May it please the court, I think I ought to interpose an objection. I do not see what the details of that case have to do with this case.

The Court. I suppose it relates to the value of this kind of evidence. If he goes too far the court will in its discretion suppress any further cross examination. A No. I said may have been more there.

Q There were more? A There were more.

Q On the whiskey bottle? A Yes, sir.

Q Take them all off? A No; I did not.

Q Only photographed this one or took off this one particular mark? A One—several particular marks; yes, sir.

Q Now, what other case were you engaged in? A Next case was attempt of rape, I think, down in Union County, about a year or two years ago. It was last summer sometime.

Q What did you do there? A Why, I secured his impressions from a post which he climbed up, this back porch, to enter the room in which this young lady was sleeping.

Q Took the impressions off of what—off of the wood? A Off of the wood; yes, sir.

Q How many impressions did you find on the wood? A Three.

Q How did you take them off of the wood? A Cut pieces of wood out the pillar.

Q And then what did you do? A Photographed it.

Q Photographed it. You didn't apply the same test to developing the finger-prints on the wood that you did in developing my finger-prints in court here to-day, did you? A It wasn't necessary, no.

Q Why didn't you apply the test of this charcoal to the piece of wood at Elizabeth? A It wasn't necessary. This case occurred in the summer.

Q Well, what was there about the summer occurrence of the impression upon the wood to make it different to the time this occurred? A He hung over the top of the balcony, placed both hands over the

top of the tin roof and then threw his hand around the post and to remove his hand he left the three clear imprints on the post.

Q What else was there that you were engaged in in court? A The next case was another burglary, the Ratel case. That was also down in Union County.

Q What was there in that case? Why, this burglary had been committed during the night and the party who committed it had used a pitcher for a light, ordinary water pitcher. He put the candle in the bottom of that and holding it in this manner the smoke from the candle had blackened the upper portion of it and he had taken hold of that and left a clear impression.

Q What other case did you testify in? A I testified here in the Skuden case, I think it was.

Q What was the character of that case? A That was burglary.

Q And what was the character of the print marks? A Impression left on the door of the house in Belmont avenue.

Q And what was the nature of your testimony in that case? What was the offer to prove, the door marks—to prove the finger marks on the door? A To prove the finger marks on the door were left there by this party.

Q What way did you get that evidence for presentation? A Photographed the impression on the door, enlarged it, marked the several points for identification, or rather the similarity and presented it to the court.

Q How did you manage to make your comparison. Photograph finger marks upon the door—how did you make your comparison in any of the cases you have indicated that you served as expert in? A Why, by the examination of the original impressions made by the people accused of the crime and the impressions left on the several objects.

Q In what way did you justify the deduction that it was the particular finger mark of a particular defendant? You photographed the door in one instance, in the other instance you cut down a piece of the porch, or border of the house. In what way did you make the comparison to show—to prove that the defendant was interested in those finger marks that you had photographed or prepared? A Why, as I said before, by comparing the impressions on the several objects with the original impressions of the prisoner.

Q How do you do that? A Why, comparing with several impressions, taking their several points of similarity, general trend of the ridges and forming the deduction from that.

Q Well, but what way—what way do you get your comparison—how do you get your comparison—what way? A Why, I can't explain that.

The Court. If you do not understand the question you do not have to answer it.

Witness. The only way I can explain that—I can't explain that without subjects. Now, there are certain characteristics with reference to every impression. If I have one or more impression with which to work on I can show you the comparison or show you the differences between any one particular impression and another, but as to telling you why without anything to show together with the explanation it would be a pretty hard matter to do it. I can tell you whether it is horizontal or parallel if I can see it. If I see it I can explain it goes that way or what way it goes or how it goes.

Q There are thousands and millions of horizontal lines, I suppose? A Surely.

Q Nothing specially new about that, is there? A No.

Q You take a given case—take the Skuden case, in what way would you qualify as an expert to testify that the marks on the Belmont avenue door were the marks made by the defendant, Skuden? A Well, I believe I had qualified prior to that.

Mr. Mott. That requires a repetition of the testimony that he has already given here. In what way would he qualify as an expert?

The Court. Objection sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q Have you ever made any other prints besides finger prints? A No, sir.

Q Ever made any foot-prints? A No, sir. I have seen them.

Q Do you want to be understood as saying that you are able beyond any question of doubt to distinguish the individual finger marks of any individual in the world—are you? A Positive.

Mr. McDermit. Now, I shall object to any testimony given by this witness on the finger-print question.

By the Court.

Q Have you studied the system of identification by means of finger-print impressions for upwards of thirteen years, as the court understands it? A Yes, sir.

Q And this is not a new art developed within that period, is it? A No, sir.

Q How old is it? A Thirty or thirty-five years.

Q Doesn't it go back to 1858? A True, but not as a means of identification as used by the police department.

Q It hasn't been used as a means of identification of criminals? A Not as to criminals.

Q But it was used as the means of identification of individuals in India as early as 1858? A The Chinese used it fifteen hundred years ago according to history.

Q The reports that we have indicate that, don't they? A Yes, sir.

Q And how long has it been in practical use in police departments in this and other civilized countries? A About thirty years.

Q (*The Court.*) What is the ground of your objection, Mr. McDermit?

Mr. McDermit. Very dangerous doctrine to uphold to say that finger-prints—on the testimony of this witness, that he is absolutely certain that—completely certain that every finger in the entire world is different from the other. I don't believe it and I don't believe that he believes it. It seems impossible that a man—(interrupted).

The Court. Suppose we had never heard a physician before and he was going to tell us something about his science and he told us about it—we would have no right to think what he said was true until we knew something about it. It is a question of weight for the jury. He tells us that he is dealing with the method of identification which has been in practical use for thirty years; he has studied it and made forty thousand examinations. Others in that same line of work, I presume, have made other examinations of large numbers of fingers. This is their judgment.

Mr. McDermit. He doesn't give any description of the manner in which he makes the dis-

tinguishing characteristics or how he can make them between different fingers. He doesn't go into the examination to show that the fingers may have been soft that are used in the ordinary vocation of professional men from the fingers that may be used on the laborer, that the fingers are hardened. Doesn't show the distinguishing characteristics of these fingers, nor does he show the different nationalities has different fingers, or does he show that there is a distinction in fingers of different nationalities, which there unquestionably is; doesn't show the peculiar features sufficient to have the court to say that he is an expert to take the credit of being the ninth miracle of the world, that he is able to say absolutely that there isn't a single finger in the world that he can't tell who the finger is—who the man is and point him out.

The Court. It has always been sustained wherever it has been brought up and the court is not doing anything unusual. Wherever the question has come up, as the court understands the law and the recorded decisions, this kind of testimony has always been admitted. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Further direct examination.

Q I show you Exhibit No. 16 for identification and ask you if you have seen it before? A Yes, sir.

Q What is that? A It is an impression made by me of the left ring finger of the defendant.

Q The left ring finger, and the ring finger is which finger, as you described it? A This finger of the left hand (indicating).

Q The one next to the little finger? A Next to the little finger.

Q When did you take that impression of his finger? A June 3d.

Q Where was he at that time? A The bureau of identification, police headquarters.

Q What time of day? A Why, sometime in the morning. I have really forgotten the exact time.

Q And was there anybody present when you did that? A Yes, sir.

Q Who was present? A Mr. Godfrey and Cerciello's brother, Mr. Reilly, my photographer and my assistant was in the office, Mr. McConlouge.

Q How did you secure the impression of the finger? A By inking the finger and by putting the impression on the impression sheet.

Q And do I understand that is the original finger-print? A One of the originals, yes, sir.

Mr. McDermit. I object. I think it is necessary for the prosecutor to show whether that was a forcible or voluntary examination.

The Court. Why?

Mr. McDermit. It makes a big difference as to the question as to whether it was voluntary or force taken.

The Court. How?

Mr. McDermit. Testimony of the witness as to the impression. The court will notice that when taking my impression—

The Court. The prosecutor has got to show how the finger-print was taken?

Mr. McDermit. I think he is obliged to show whether it was a voluntary taking or whether it was forced taking.

The Court. Why?

Mr. McDermit. I believe that is the law.

The Court. What do you mean, on the theory that a man can not be permitted to testify against himself?

Mr. McDermit. No; but where a man is put in the position—a new system that is being injected into the law which your honor says has been extant for thirty years—where a question of how these impressions were taken, whether taken forcibly or voluntarily, is a preliminary question that should obtain in an examination of this kind.

The Court. That constitutional privilege of protecting a person from testifying against himself only refers to oral or mental operations, if he is made to write his name or state something, but any characteristics or anything of that kind, footprints or anything that are obtained from the defendant, as I understand the law, may be taken and used, whether taken voluntarily or involuntarily.

Mr. McDermit. It must be shown that this man —can be shown and is shown, that this man was in durance at that time—he was in prison—and I think that is a fair method of examination. in any event I feel that I should object to that class of testimony being offered in that way at this time.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q Now, just tell us the circumstances under which you procured this finger-print; how it was done and to what extent, if any, the defendant co-operated with

you in getting it? A Why, in the stand that Mr. McDermit has sent for—will send for this afternoon—there is just a board about so long and so wide—about like that (indicating). And on that is the ink plate.

Q About so long is about how long? A I should imagine about twenty-four to twenty-eight inches in length; perhaps about eighteen in width. And on that board is an ink plate made of steel and that is inked in the ordinary way with a roller, printers' ink or prepared ink for that purpose. The fingers are taken in this manner (indicating)—

Q Just how they were in this particular case? Tell us how they were in this paricular case? A How they were?

Q How they were taken. Don't make it general. Make it specific as to the defendant in your description. A I took him to the stand and inked his fingers in the usual manner and took the impression of his hand—fingers on the impression sheet.

Q How did his fingers get on the impression sheet? A Took each finger individually and rolled them in that manner (indicating).

Q And you took more than one impression, did you? A I took several.

Q And after you had taken them did you request the defendant to sign anything? A Yes, sir—no. Before the impressions were made he signed these sheets.

Q Where have you his signature? A (Producing two papers.)

Paper marked Ex. S. 22 for identification.
Paper marked Ex. S. 23 for identification.

Q I show you Exhibit No. 22 for identification and call your attention to the fact that there is some writing on there. Who wrote that?

Mr. McDermit. I object to the testimony as incompetent and illegal, on the basis that when he

got the defendant to sign the statement, or to sign the writing, they should have warned him that that statement or writing might be used against him. He is entitled to be protected.

The Court. The rule in this state is whether or not the statement is extorted from the person by means of promises or duress or some other manner. The only question is whether the act or the words spoken were voluntary.

Mr. McDermit. This is surreptitious.

The Court. The defendant was right there.

Mr. McDermit. It is taking of the name without acquainting him of what his rights were. It is an underhanded way of taking the name.

The Court. You may cross examine the witness.

By Mr. McDermit.

Q You knew that this man was charged with murder? A I did not.

Q What did you suppose he was charged with? A I didn't know he was charged with anything.

Q You made no inquiry as to who he was? A No; I was told who he was.

Q You weren't told he was charged with murder? A I was not.

Q Told he was held— A Don't believe he had been charged.

Q Told he was held on suspicion of murder? A I understood he was held in connection with murder, but that is as far as it went.

Q Your object in taking the finger-prints was for the purpose of securing testimony for the State? A If possible.

Q Yes. Then, nevertheless, you never told him that those finger-prints would be used against him and you got him to sign his name, is that right? A Didn't know at that time that I might use them against him.

Mr. McDermit. That is all. I ask that the question be overruled and the testimony not allowed to go in in answer to it.

Mr. Mott. I will withdraw that question and put it in this way.

Re-direct.

Q Before you took the defendant's finger-prints did you get him to sign anything? A Yes, sir.

Q What did he sign? A He signed several blank impression sheets on which we take finger impressions.

Q And the Exhibit No. 22 before you, is that one of the blank impression sheets which he signed at that time?

Mr. McDermit. I object.

The Court. The question is whether that is voluntary or not.

Q How did he come to sign it? A He was merely asked to sign his name, which he did.

By the Court.

Q Was there any preliminary statement made to him? A No, sir.

Q Was any suggestion made to him as to why he should sign his name? A No, sir.

Q He was only asked to sign his name and then he signed it? A Yes, sir.

Q Anybody force him to sign it or use physical exertion or power over him? A No, sir.

Q You were there all the time? A All the time.

Mr. McDermit. Did you ask his consent to use the paper when you started to take the finger-prints?

Witness. No.

Mr. McDermit. And you made him sign a blank piece of paper?

Witness. I didn't make him; he signed it.

Mr. McDermit. You got him to sign a blank piece of paper?

Witness. A blank piece?

Mr. McDermit. Yes.

Witness. No, only these forms.

Mr. McDermit. Well, these forms?

Witness. Yes, sir.

Mr. McDermit. Without telling him for what purpose he was to sign them, and you afterwards used those forms for the purpose of having him put the finger-prints on, is that right?

Witness. Yes, sir.

Mr. McDermit. I object.

The Court. You may call any witness you desire on that question.

By Mr. McDermit.

Q Who was present at the time you took these—got him to sign these papers? A Mr. Godfrey, Mr. Federici, assistant in the office and myself and perhaps Mr. Reul. I don't know whether Mr. Reul was there at the time or not, but I think he was, and the brother of Cerciello.

Q You also took his finger-prints too, didn't you? A I did.

Q Both the brothers were there under arrest charged with suspicion of this murder? A I don't know what they were charged with.

Q Mr. Cerciello was under arrest at the time and you took the finger-prints of the other brother? A They were brought to the office by Mr. Godfrey. I did not inquire into the cause at the time as to what these men were charged with.

Q It must have occurred to you when Federici and Sergeant Godfrey and two or three other officers came with those prisoners it was a matter of some importance to the defendants? A Surely.

Q Didn't they talk to you about a hatchet? A I had seen the hatchet prior to that.

Q Didn't they tell you they were attempting to get finger-marks for the purpose of comparing with the hatchet so that these people might be held upon the charge? A No, sir.

Q Isn't that true? A No, sir.

Q Didn't you infer that? A Might have inferred—it might have been spoken about in a general way or not.

Q Now, did Godfrey or Federici or any of the other officers present there in any way warn the defendants as to what his rights were when you asked him to sign those papers? A No, sir.

Q Either of the defendants? A No, sir.

Q Had they had any counsel present? A No, sir.

Q Were they told to consult with anybody? A Not to my knowledge.

Q Were they given any opportunity to consult with anybody? A That I don't know.

Mr. McDermit. I think we better withdraw the witness and put our witness on that question for the purpose of sustaining our objection. I don't know whether I can strengthen it.

The Court. Do you want to call any other witness on the question of whether the signing was voluntary, Mr. Mott?

Mr. Mott. Yes.

WALTER GODFREY recalled for the State.

Direct examination by Mr. Mott.

Q Mr. Godfrey, I call your attention to Exhibit No. 22 for identification and ask you whether you ever saw that piece of paper before? A All I can say is that I saw the defendant sign his name to blank papers. I never had them in my possession, sir.

Q Where was it you say he did that? A In the identification bureau, police headquarters, City Hall, Newark.

Q When? A On the 3rd of June, in the morning.

Q The defendant was then in custody? A He was, sir, in my custody.

Q He was under arrest? A Yes, sir.

Q And his brother was with him? A He was, sir.

Q He under arrest? A Yes, sir; I placed him under arrest the night before.

Q Will you tell the court and jury under what circumstances the defendant signed that form? A I can't say who laid the paper before him, but they were laid there on the table and he was asked to sign them and he signed them voluntarily. There was no threats or force of any kind whatever used with either one of them.

Q Had any such force or threat been used on him before you took him to Mr. Schwartz? A None whatever, sir.

Cross examination by Mr. McDermit.

Q You were there in company with Sergeant Federici? A I was, sir.

Q And with Mr. Schwartz? A Yes, sir.

Q And the defendant Angelo and his brother? A Yes, sir.

Q James? A Vincenzo, I believe it is.

Q Anybody else? A Mr. Reul was there. I can't say positive whether there was anybody else in the room or not.

Q Both of them were arrested, held under suspicion of murder? A They were, sir.

Q And both were taken to police headquarters by you? A They were, sir.

Q And you took them there for the purpose of having their finger-prints taken? A I did.

Q And you took them into the finger-print department? A I did.

Q And thereupon Mr. Schwartz got a couple of

pieces of paper and got both of them to sign their name? A Yes, sir.

Q Did they ask you any questions? A Ask me any questions?

Q Did Angelo or his brother ask you any questions? A They did not, sir.

Q Did you ask them any questions? A I did not.

Q Did you explain to them what they were signing there? A I did not, sir.

Q Or what the purpose of taking them there was for? A No, sir.

Q Did you tell them what they were doing there might be used in the way of identification finger-prints against them? A I did not, sir.

Q Had you told them up to that time that they were charged with murder? A Yes, sir; they were arrested on a warrant the night before.

Q Had you told them that they were charged with murder? A They saw the warrant; yes, sir.

Q Had you told them? A Yes, sir.

Q Personally, they were charged with murder? A Yes, sir.

Q Was the conversation carried on at the bertillon system office entirely in English? A That conversation was carried on the night before when I placed them under arrest, sir.

Q In English? A In English; yes, sir.

Q Where did you take them when you arrested them? A To the Fifth Precinct Police station.

Q From there where did you take them? A Left them over night.

Q Took them down next morning to Police Headquarters? A Yes, sir.

Q Mr. Federici was then with you? A He was.

Q Did you say anything to them at all with regard to their signing these papers? A I did not, sir.

Q You knew why they were signing the papers, of course? A I knew they were down there to have their finger prints taken.

Q Did you? A I didn't know why they signed them.

Q Do you mean to say you didn't know why they were signing the papers? A Signing the papers? No, sir; I did not.

Q Is that the first time you ever had finger prints taken? A I have seen other finger prints taken; I never noticed that they signed sheets of paper.

Q That was news to you? A I haven't paid attention to it; that is not part of my business.

Q Not part of your business to protect the interest of defendants by making a statement that would prevent the jeopardize my life? A No, sir; I didn't undertake to jeopardize a life, or take any advantage of them.

Q You made no statement to them in any way? A No, sir.

Q Were they your prisoners or Federici's prisoners? A I was in charge, sir; I suppose they were mine.

Q You talked to Schwartz when you got there? A About what?

Q About taking finger prints? A Yes, sir; that is what I took them there for.

Q Told him that is what you brought them there for? A Yes, sir.

Q And told him what they were held for? A Yes, sir.

Q You had no knowledge then of what finger you wanted—you wanted them to take the entire fingers? A Certainly.

Q Where was the hatchet at that time? Was that there with you? A That was not with me; no, sir.

Q Where was it? A It was in Mr. Schwartz's possession.

Q Mr. Schwartz's possession? A Yes, sir.

Q Do you know who gave him possession of it? A I did, sir.

Q The same day? A No, sir; the day before.

Q Sunday? A Monday.

Q Monday? This was Tuesday, you were down there? A Yes, sir; the arrest was made Monday night.

JACOB G. REUL, sworn on the part of the State.

Direct examination by Mr. Mott.

Q Mr. Reul, were you present when the defendant signed the form Exhibit No. 22 for identification, if he did sign it? A I was not there when he signed it.

Q You didn't see him sign it? A No, sir.

Q Do you know anything about the circumstances under which he signed it? A Well, I couldn't say because I wasn't there when he was to sign; I was in the dark room in the meantime.

Q Did you hear anything said to him by anybody about signing or any of the details? A He was only asked to sign and then I walked out, you know, to the dark room.

Q Were you present when he was asked to sign? A I think I was. I wouldn't say positive.

Q Do you know who asked him to sign? A No, I don't think I can answer that.

Q Can you recall any of the conversation at that time between any of them? A Very little, because I was in the dark room developing plates when the fingerprints and the signature was taken.

No Cross Examination.

JOSEPH FEDERICI, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Federici, were you present at Mr. Schwartz's office when the defendant was down there in connection with having his finger-prints taken? A I was.

Q Who took the defendant there? A Sergeant Godfrey and I.

Q And what did you do with him when you got down there? A Took him upstairs to Mr. Schwartz's room and we asked Mr. Schwartz to take his finger-prints. Mr. Schwartz gave us two sheets of paper and we asked Cerciello to sign the paper.

Q And did he sign it? A He did.

Q And at any time before or after he reached Mr. Schwartz's office did you hear any threats or menaces of any kind used against the defendant? A No, sir.

Q Or any promises held out of anything? A No, sir.

Q In connection with signing that paper? A No, sir.

Q And did you yourself use any such threats or menaces or promises? A No, sir.

Cross examination by Mr. McDermit.

Q Did you have any conversation with these people on the way down from the Fifth Precinct Police Station? A Yes, sir.

Q What was the nature of it? A Told them we were going down to Police Headquarters to take their finger-prints.

Q Did you tell them to sign the papers down at Police Headquarters? A I don't remember whether I did or not; I was there.

Q Would you say you didn't? A I couldn't say.

Q Did you say "Angelo and Vincenzo, sign these papers, it is all right?" A No, sir; I never used the words "it is all right."

Q You told them to sign the papers? A I just said, "Mr. Schwartz wants you to put your finger on this."

Q You said "It is all right to do it." A I didn't use the words "all right."

The Court. Did you speak in English or Italian to them?

Witness. In English.

Q What did you say to them? A I told them that Mr. Schwartz wants them to put their signature on the paper.

Q You knew what that was being prepared for, didn't you? A For finger-prints.

Q To prepare to be used in court against them; you knew that, didn't you? A Didn't know it was his finger-prints.

Q But you were taking their finger-prints for the purpose of getting the finger-prints on the hatchet? A To compare with the hatchet, certainly.

Q Yes, you were taking their finger-prints. A Certainly.

Q Did you tell them that was the purpose? A Yes, sure.

Q Did you tell them there was a hatchet in the case? A He knew it.

Q Did you tell them there is a hatchet in the case? A He knew that the day before.

Q Did you tell him there was a hatchet in the case? A Yes, sir.

Q When did you tell him that? A I told him at his house, Chester avenue.

Q Was that Sunday? A Sunday evening.

Q When the body was in the house? A Yes, sir.

Q Before the funeral, was it? A Yes, sir.

Q And you told them there was a hatchet in police headquarters? A Hatchet had been found.

Q Hatchet had been found. A I didn't know who had it.

Q You didn't know who had it? Did you tell them anything about finger-prints on the hatchet? A Did not.

Q Did you ever tell them anything about finger-marks? A No, sir.

Q You knew the object of having him write his name there was for the purpose of identifying his own fingers on paper, didn't you? A Yes, sir.

Q And you said nothing to him against doing it? A No, sir.

Q Didn't explain to him what his rights were? A No, sir.

Q Didn't explain that they could be used against him in any way? A I did tell him going up; yes, sir.

Q Didn't explain it could be used against him? A Did not.

Q Didn't say anything to him at all about what his legal rights were in regard to the allegation that was being made against him? A No.

Q You knew that he was being watched?

The Court. He has answered the question.

Q You knew he was being watched and virtually under arrest before he was taken actually into custody, didn't you? A Well, we had him under suspicion.

Q Yes. You knew he was released for the purpose of going to his home and attending his wife's funeral, so that he could be better watched to see what his actions would be during that time so that you could get further evidence against him, isn't that true? A To trace him up a little bit.

Q Yes, that is all.

Mr. McDermit. In view of the testimony of the last witness that while this man was out—he had been released for the purpose of attending the funeral and was being watched and was virtually in the custody—I say, under those circumstances, that it would be a very unwarranted proceeding in a murder case to say that a man's signature should be obtained through a piece of paper in such a method as that, nothing pointed out to him of what his rights were. They could have identified these finger-prints—

The Court. Do you want any further testimony?

Mr. McDermit. No, sir.

The Court. If you rest on this point as to whether or not this signature was voluntary, so that the testimony is admissible, then I will hear you on that point.

Mr. McDermit. I will call Vincenzo Cerciello.

VINCENZO CERCIELLO, sworn for the defendant.

Direct examination by Mr. McDermit.

Q You were brought down to police headquarters from the Fifth Precinct on the 3rd of June last? A 3rd.

Q By Federici and Officer Godfrey?

The Court. What is the answer? He has not answered.

Witness. I say yes to it.

Q You were under arrest at that time? A I was.

Q And you were brought down to the First Precinct Police Station, City Hall? A Yes, sir; I went down with my brother.

Q You saw Mr. Schwartz down there? A I saw him.

Q And Mr. Federici and Mr. Godfrey? A That man (indicating) sure.

Q And they got you to sign a paper down there? A Forced you to sign.

Q "Forced you to sign"? A Yes, sir.

Q How? Just explain what they said to you when you signed the paper? A I don't want to sign. He says, "You got to do it; got to sign it."

Q Who said that? A The people on the City Hall.

Q How did they say you got to sign it? A Well, he says to me, "You got to sign, if you don't sign, I don't know what you get it. Got to take it down to the cooler."

Q "If you don't sign it we will take you down to court?" A To cooler.

No cross examination.

The Court. Now I will hear you.

Mr. McDermit. I think that under the testimony shown here, that it will be incompetent to put in the papers that were marked by the names of these people. The names were obtained without safeguarding their rights. Besides that an issue of veracity is raised. Not between the defendant and the officers who are interested, but between the witness who is now disinterested, and who has been discharged from the charge of murder, and his testimony, while he may be interested in the welfare of his brother, is to the extent that they told him if he didn't sign it, he would be placed in the cooler.

The Court. He was there already.

Mr. McDermit. Custody.

The Court. He was there.

Mr. McDermit. Not in the cooler.

The Court. What he means by "the cooler" I presume, is the vernacular of the jail; he was in jail then and was going back to jail.

Mr. McDermit. Transferred from the Fifth Precinct, as I understand it, that morning down to the First Precinct.

The Court. Why, the rule in New Jersey is and has been always, as I understand it, the mental operation or statement or confessions of the defendant may go in evidence if they are voluntary —if they are done by his free will and accord, without threats compelling him to do it, or without duress. Under those circumstances this is plainly a case where the court has no other option than to admit evidence.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

RECESS.

EDWARD H. SCHWARTZ, recalled for further

Direct examination by Mr. Mott.

Q Mr. Schwartz, referring to Exhibit No. 22 for identification, I ask you whether or not you saw the defendant sign his name to that sheet? A Yes, sir.

Q And did he sign his name there before or after you took his finger-print? A Before.

Q I show you Exhibit No. 16 for identification with which we must be very careful, and ask you what it is? A It is the original impression of the left ring finger of Cerciello taken from this impression sheet—rather cut from it.

The Court. In designating the ring finger—you designated it this morning. Point to me which is the ring finger.

Witness. Next to the small finger.

The Court. This is the finger here (indicating)?

Witness. Yes, sir.

The Court. On the left hand?

Witness. On the left hand, yes, sir.

The Court. The third finger?

Q This is the original? A Yes, sir.

Mr. Mott. That is all at present.

Mr. McDermit. Have you concluded with the entire examination of this witness?

Mr. Mott. No. Before I examine into the substance of this case and ask his opinion I am going to recall him and put on another witness.

Mr. McDermit. I have no further cross-examination at this time.

Mr. Mott. I will ask the permission of the court to withdraw this witness at this point and put on another one, in the orderly development of my case. He was only called for the purpose of proving this Exhibit 16.

The Court. You are promising the defendant that in withdrawing him temporarily that you are going to put him on the stand so that the defendant may cross-examine him, because if the defendant does not have that privilege the testimony will be all stricken out.

Mr. Mott. I now offer in evidence Exhibit 16 for identification.

Mr. McDermit. I object if it is offered for identification or for any other particular.

The Court. Upon what ground? You haven't stated your ground. The objection isn't any good when you get up to the Court of Errors and Appeals unless you point out to the court here what the trouble is.

Mr. McDermit. It seems to me that the offer of this matter for identification isn't sufficiently developed as to what it represents to be, a matter offered at this time. It is true it is offered only for identification.

The Court. No; it is offered in evidence.

Mr. McDermit. It was offered before for identification and objected to. You are offering it now?

Mr. Mott. Yes.

Mr. McDermit. I say there isn't ground enough raised for its introduction.

The Court. It will be received, and marked Exhibit S-16 by striking out the words "for identification."

JACOB G. REUL, recalled for further

Direct examination by Mr. Mott.

Q What is your occupation? A Photgrapher at Police Headquarters.

Q And what experience have you had as photographer? A Well, I have been in photography in

Police Headquarters for the last seven years, and photographed close on to three thousand subjects.

Q And previous to that did you have any? A I hadn't any before that.

Q I show you Exhibit No. 14, and ask you to look at it on the front and back and see whether you have seen it before. A I have.

Q When did you have that? A Last evening.

Q I noticed the signatures on the back of that. Did you sign your name there? A Yes, sir.

Q Did you see the other man sign? A Yes, sir.

Q Mr. Flak; did you see him sign his name? A Yes, sir.

Q Mr. Schwartz; did you see him sign his name? A Yes, sir.

Q When you had that photograph last evening, what did you do with it, or at any other time? A Put it into a frame and rephotographed it on a plate.

Q Have you your plate here? A Yes, sir.

Mr. McDermit. When was that re-photographed?

Witness. Last evening.

Q And just describe what you did now, with your plate in re-photographing it. What did you do? A Fastened this print in the frame and focussed it and got it square as I could possibly get it, and exposed it for two minutes and went in the dark room and developed the plate.

Q And what are the proportions of the two? A Well, I made it as large as I could get it on an eight-ten plate.

Q And your plate,—this plate which you produce is an enlargement of that? A Of that there.

Q Is it an exact reproduction on an enlarged scale? A Yes, sir; on enlarged scale.

Q Of the original of Exhibit No. 14? A Yes, sir.

Q And from your plate have you made any photographs? A Made about thirty altogether.

Q Look at this package and see what it contains. A All those that I made excepting a few that I haven't mounted down in the office.

Q Are those the photographs that you made last night? A Yes, sir. The photographs weren't made last night, they were made this morning early.

The Court. How many were produced, how many do you want to use?

Mr. Mott. Thirteen; one for the court and one for each juror.

(Papers marked Exhibits S24a, S24b, S24c, S24d, S24e, S24f, S24g, S24h, S24i, S24j, S24k, S24l, S24m, S24o).

Mr. Mott. I offer in evidence your Honor, the plate taken by Mr. Reul, of this photograph, and the twelve photographs which the clerk is marking.

(Plate marked Exhibit S25).

Mr. McDermit. I object. I want to examine him on the question of taking that photograph.

The Court. S14 is the reproduction of S13 and S16.

Mr. Mott. S14 is the photograph of the finger-print on the hatchet and the photograph of the finger-print taken by Mr. Schwartz.

Mr. McDermit. The offer now is the plate. I first want to examine the witness further on his photographic ability to demonstrate such a picture.

The Court. You may do so.

By Mr. McDermit.

Q Will you show me the two exhibits, No. 16 and No. 14 from which these two pictures are taken? Where are the originals? Now, who were they taken by? A These here (indicating)?

Q Yes. A Not by me.

Q You have sworn you took them from this Exhibit here, haven't you? A Just photographed them from that.

Q Photographed them from that? You don't know when they were taken? A I don't know.

Q Or by whom they were taken? A Only from hearsay.

Q How long will a photographic impression taken from a photograph last so that it may be taken absolutely the same when it is rephotographed? A I don't quite understand that.

Q Well, I will withdraw that question for a moment. The light upon a picture—photographed picture will fade the picture, will it not, after a given time? A Not if it is developed properly, it will not.

Q You mean to say that a portrait that lays exposed will not vary in color after a given time? A Well, it may.

Q You are a photographer you say? A Well, I am doing the work at Police Headquarters.

Q Are you an expert photographer? A No, sir; I do not class myself as an expert.

Q And you do what work is required for the Police Department system down there? A Police system, yes, sir.

Q In addition to that you have other work to perform? A Very little.

Q You have other duties to perform, those duties incidental to your employment there? Now, don't you know that a photograph taken after it has been exposed for a given length of time changes some in its appearance? A If it is copied in the dark it wouldn't.

Q Well, you don't keep all photographs in the cellar, do you? A Sometimes you do.

Q If this photograph has been exhibited to the light for a period of two or three months do you mean to say you could reproduce that in the exact identical

shape it was three or four months ago? A I could only reproduce what is on the paper and what the lens will take.

Q You can reproduce what is actually reproduced from what you then get, is that right? A I can only reproduce what is on the subject I am to photograph.

Q Don't you know as a matter of fact—A What was not there I can't photograph.

Q —as a matter of fact that these things change in a given time? Photographs themselves? Isn't it a fact, say,—now, isn't it a fact, a well known fact—outside of being a photographer, that pictures will fade—pictures will become—dark pictures will become dirty even without handling? A I haven't seen any yet.

Q You don't know. You have never seen a portrait that was taken two or three months ago change in its color or its condition? eh? A Not in three or four months, no.

Q Do you mean to say that a portrait—that that photograph last night is absolutely in the same condition it was when it was taken? A I can't say that because I only got it in my hands last evening.

Q Could you tell by looking at the plate or the negative? A I think I could.

Q Is there any way you could check it up? Will you check it up? Is the plate and negative here? A Check it up? I don't see anything to be checked up, only the stuff has been reproduced from the plate.

Q Well, you didn't come into activity in this case until last night, did you? A Last night I reproduced—

Q The first time you figured as a photographer of value in this case was last night? A Yes, sir.

The Court. Why do you say that when he testified awhile ago that he took a photograph on June 3rd?

Mr. McDermit. I know. Not this photograph —not these photographs. He never took these. He may have taken one before, but not these.

The Court. The question is "You haven't figured in this case until last night." What you mean I don't know. Let the witness answer.

Q Why was it you signed your name there on the back of this photograph? A Because I photographed that last evening.

Q Why did you sign your name there? A To make sure it was the copy that I photographed.

Q Who is "F. A. Frick?" A Flak.

Q Is that Flak? A Yes, sir.

Q Whose name is this (indicating?) A That is mine; Jacob G. Reul.

Q Who gave you this Exhibit? A Mr. Flak.

Q Where? A Police Headquarters.

Q Is he connected with police headquarters in any way with the photographic department there? A He is not.

Q Did he request you to make an enlarged photograph of that picture? A He asked me to do so.

Q And how much larger are the new photographs of that picture than the one that you took it from? What is the difference? A I haven't measured it.

Q Don't you know? A I do not.

Q Don't you know the size of the lens, or the size of the negative you have enlarged those? A I made it as large as I possibly could.

You made it as large as the process you had on hand would permit? A The size of my plate.

Q Is that the idea? A Yes, sir.

Q You don't mean to say that your process then is complete there. A Well, it isn't an enlarging—really enlarging plant that you enlarge from a plate on a paper.

Q You haven't attempted to enlarge pictures there, before, have you? A What is that?

Q (Question repeated). A I have made enlargements with the camera; yes, sir.

Q At what time, when? A Oh, at different times.

Q Give us one particular instance—one picture that you did that, that you got still in your possession that you can produce here to-day. A I don't know as I have.

Q Haven't any? You didn't suggest the question of enlargements of these pictures yourself, did you? A I didn't suggest it, no.

Q And the reason why your place was taken was because it was nearer than the laboratory of Professor Kinsley, isn't that the idea? A I don't know.

Q You don't know. You know you would be unable to take any larger photographs than that? A I may possibly take a little bit larger, but I wanted to get in everything that was on it.

Q This isn't the most complete photograph that could be taken of the photographs that you had for reproduction, is it? A I think it is about as good as anybody can make, that is, with the conditions it was taken in.

Q Well, I know, but could any other more scientific process have been applied to develop more clearly the portrait you got there? A No, sir; I don't think so, not under the conditions that that was taken.

Q What do you mean by "under the conditions it was taken?" A The time of the night or evening.

Q What time of the evening was it taken? A About half past six—seven o'clock.

Q Well, what is the difference between taking a photograph at half past six or seven o'clock or taking a photograph in the middle of the day? A Well, the light.

Q Light. Now, which can you take the photograph the best, from the light or from the darkness? A From the light.

The Court. You mean daylight or artificial light?

Q Daylight or artificial light? A Daylight.

Q So that these cannot be said to be the best production that could be made of pictures of any kind because they were taken in the dark? A Wouldn't make much difference to that.

Q But you have said it makes a difference. Even the difference of the minutest stroke of a hair is difference in this case. You know, if you are a photographer, that you cannot take as good a picture by artificial light or by night light that you can by daylight, don't you? Yes, or no. A The lense will take—

Q Yes or no.

The Court. Answer the question.

A No.

Q No. So that this picture that is produced is not the most scientific, up-to-date reproduction of the picture that you took it from, is it? A Same as that is on the original.

Q It isn't the most scientific and best, up-to-date way of taking a portrait, is it? Yes, or no. A It isn't the best.

The Court. You mean the best reproduction? Photography is an art.

Mr. McDermit. Most artistic reproduction.

The Court. You deal with the method of reproduction?

Mr. McDermit. Yes.

The Court. You are asking him if this is the best specimen of that method?

Mr. McDermit. Yes, sir.

The Court. That is what you want to ask him?

Mr. McDermit. Yes, sir.

The Court. That is what you had in mind, I presumed.

Mr. McDermit. Your Honor has got me right.

The Court. Is that the best photographic reproduction of S-14 that you can make?

Witness. Yes, sir.

Q Then you mean to say that you qualify now. You before testified three times that it was the best that you could make under the conditions. What did you mean when you said it was the best you could make under the conditions, three times? Explain that now, to the jury. A I mean that the light is not as strong as the daylight, but the lense will take everything that is before it and nothing else.

Q What is the distinction then between taking a photograph by daylight and taking a photograph by night light or twilight, or cloudy weather—what is the difference? A There isn't much difference. One may be a little bit clearer in color than the other.

Q Do you mean to say that you could take as good a photograph by twilight or by artificial light as you could take by natural sunlight, under conditions where the sunlight came over the transom, which is used for the purpose of taking photographs—that that would be as lifelike a production and positively as good a production as the other? A Yes, sir.

Q Do you mean to say then that there is no difference? A Have the light for it—if an instrument is used, screens to get strong light, you can expose it as well as you can in the daylight.

Q I am speaking now again of what you meant by the conditions under which you took these photographs. I don't want any dissertation on how night light photographs can be as good as day light photographs. I want to know whether the photographs taken last night under the conditions that surrounded you, would have been as good as if they had been taken under conditions and had been taken under daylight. Yes, or no? A I think they would.

Redirect examination.

Q When you speak of under some conditions a photograph is better than under other circumstances do you refer either to the accuracy of the reproduction, or to the beauty and artistic character of the photograph? A The beauty.

Q Then did the conditions of which you have spoken in any way affect the accurate reproduction of any photograph? Do they? A They do not.

Re-cross examination.

Q Then your qualification is that the only difference is that the one is more beautiful taken in daylight and the other is not quite as beautiful, is that your explanation? A Yes, sir.

Q You want to let it stand at that? A Yes, sir.

Mr. Mott. I now offer in evidence the negative taken—whatever you call it, the plate—by this witness of Exhibit No. 14.

The Court. That has already been marked for identification.

Mr. McDermit. We object to the plate on the grounds stated.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed, and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

(Marked Exhibit S-25 by striking out the words "for identification.")

Mr. Mott. I offer the thirteen photographs taken from that place, my purpose being to supply one to the court and one to each juror.

Mr. McDermit. I make the same objection.

The Court. Same ruling.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

PETER A. FLAK, sworn on the part of the State.

Direct examination by Mr. Mott.

Mr. Mott. I now desire to offer another of these photographs so that I may show it to the witness, and the witness may use it.

The Court. Change your offer. Instead of offering thirteen, make it fourteen.

Q Mr. Flak, where do you live? A At 95 Liberty street, New York City.

Q And where is your place of business? A I beg your pardon, I live in Brooklyn. My place of business is 95 Liberty street, New York City.

Q And what is your business? A I am a finger-print expert and instructor in the finger-print system of bank and police departments.

Q Are you connected in any way with any police department anywhere? A Yes, sir.

Q Which department? A For about five years—

Q I asked you if you are now? A No, sir; I thought you said "were."

Q No. I asked if you are now connected in any way with any police department. A No, sir.

Q Mr. Flak, will you tell the court and jury what experience you have had in the study and practice of the art of identification by finger-print? A For several years I was a finger-print expert in the British Colonial service, in Singapore. When I left there in 1905 I had charge of the finger-print office in Singa-

pore. Since I came to the States in 1907, I have been teaching the police and banks the finger-print system. I am the originator of two finger-print systems, one classification system called the Flak-Conley system, which is now used in some of the police departments in the United States, and further of the Flak finger-print system for banks which is now used by about two hundred banks.

Q Well, you were in Singapore under the British Government for how long? A I was in the service of the Government in Singapore for about four years, over.

Q And are you now connected with any banking association or associations of bankers in connection with fingerprints? A I am connected with the banks in so far as I am instructing them and visiting them occasionally, supervising their work.

Q Are you actually installing this system now anywhere or have you been in a bank within the last few days? A Yes, sir; I was up in Connecticut, a little town, about a week ago.

Q Do you remember the name of the town? A It just slipped my mind—Derby, Connecticut.

Q And what were you doing in Derby, Connecticut? A I was teaching four bankers in that bank, on the 12th inst., that is, Wednesday, when somebody came on the telephone—

The Court. Never mind that. You were up there installing.

Q That is where you got in touch with me, was it? A Yes, sir.

Q Now, what were you doing up there at this Derby Bank? Is it a savings bank? A It is a savings bank. I was instructing them in the use of my system for the identification of depositors.

Q And are they installing and using a finger-print system for the purpose of identifying their customers? A Yes, sir.

Q Have you put this system into any other bank? A Yes, sir; in a great many.

Q Well, in what—in how many states, Mr. Flak, have you installed this finger-print system for identification in banks? A I think perhaps in ten or twelve states.

Q And what experience have you had with the police department in the various cities of this country with reference to the installation and teaching of the finger-print system for identification purposes? A In the United States or anywhere?

Q In the United States. A I had a contract for the City of Boston about three years ago for the classification of the impressions of nearly four thousand criminals, embracing those impressions on file, and instructing the officers in the department in the use of my system. That took me nearly one year, working by the day. The biggest job I had in the United States.

Q And how far west have you been in this work? A I have been as far west as San Francisco. From 'Frisco to Boston.

Q What did you do in San Francisco? A When I came from the Orient in 1907 I landed in San Francisco and there I had my first opportunity to study and analyze American finger-prints for the purpose of working out a more efficient classification system, and by the courtesy of the director of the California State Bureau for Criminal Identification, I studied his records and classified them and filed them, the records of four thousand criminals; and after coming to the East I had my work in Boston as already mentioned. While I was in California I equipped a number of police departments with equipments for the working of the finger-print system on the old English plan, still used in the majority of the American police departments and most cities abroad, and among those cities equipped by me was the City of San Fran-

cisco, Stockton, Alameda, Sacramento, and one or two others.

Q Have you had any European experience? You have spoken of your far Eastern or Asiatic experience? A No European experience except in Singapore.

Mr. Mott. Any cross examination?

Mr. McDermit. Yes.

By Mr. McDermit.

Q How many systems of finger-prints are there extant? A A great many, sir.

Q Are there more than twenty-five? A No, I don't think so. I should say there are about eight systems.

Q About eight systems? A Yes, sir.

Q Eight recognized systems? A Eight recognized systems.

Q Which system do you regard from your experience as the best? A It all depends on the purpose it is intended to serve, sir. If you mean the system of filing finger-prints so as to discover a man's identity later on without reference to name or number, why, then you need the classification system, by means of which we allow an arbitrary value to every one of the man's ten fingers, according to the design and number of ridges and place him on file—or place his card on file, and if you have reference to a simple system for checking up a man's identity you have reference to the simple comparison of finger-prints, and in that record the English have been—in this connection the English have been using the thumb print for many, many years, rolling it over from one side to the other so as to get as large a surface as possible for the comparing of two individual prints. My system now used in the bank system of simultaneous impression from three fingers of the right hand—first three fingers of the right hand—both of those systems, the

thumb print system and three finger system are just meant to be used as a means of checking up the identity of a person you have before you—so there you are, sir, two different systems entirely, a classification system and a simple checking up system.

Q What is the next system? A Now, among those classification systems we have many—and that is really where the different systems comes in. There is, for instance, the Henry system.

Q Who was Henry? A Henry is the present Metropolitan Commissioner of Police in London, while he was out in India, about ten years ago, he devised the first classification system for filing finger-prints, which was afterwards adopted by the Metropolitan police in London, in the American police in the various cities, and also abroad. That system of his was improved upon by Mr. Conley.

Q Called now the Conley system? A Yes, sir.

Q That is four systems, is it? A Well, I thought I had been able to explain the two different systems entirely. The classification system should be kept apart from the simple checking up system, and the thumb print system and the three finger system we have done with entirely. Now, sir, if you will allow me, the classification systems are of many kinds, and really it was the classification systems I had reference to when I said there was many systems. The Henry system is the first of the classification systems, the second is the Conley system—not in their proper chronological order, but the Conley system comes next because it is the most efficient. Now, the Conley system is now in use in my old office in Singapore, where they reclassified thousands of records by this new system. I took this Conley system which was devised for the filing of Oriental finger-prints and adopted that system by allowing different values to the designs in a man's fingers, and applied it here in America. Now, in addition to those three systems,

the Henry system, the Conley system and the Flak-Conley system, which is the last and most improved American system, my system, we have a number of systems devised by people in all countries. And I might just mention a few names so as to abbreviate matters.

The Court. Those are not systems as to finger-prints, they are systems of classification of finger-print impressions for the purpose of getting at them quickly, is that it?

Witness. Yes, sir.

Q Do you know about the taking then of impressions of fingers from your experience? A I beg pardon!

Q Do you know anything about taking impressions of fingers? A Yes, sir; I know a great deal about it.

Q You do? Now, which impression will be the best impression, where I gently place the finger upon the paper or upon the board, or where I press it upon the board? A It all depends upon the condition of the fingers. If it is a hard and bony finger you could press hard and get a good impression.

Q Look at one of my fingers; they are soft, are they not? A Your finger would be very easy to print—make a fine impression.

Q Very fine impression. Always make a fine impression? If I put down the finger on the board or paper, pressing it hard— A Yes, sir.

Q —that disguises— A No.

Q Wait a minute. Now that disguises my natural finger, doesn't it? A Disguises the natural finger?

Q Natural finger. Yes or no. A I don't quite understand what you mean.

Q Let me show with your finger, You are an expert. If you put your finger down softly—gently—so that you do not press on any of your lines and you hold it against the board— A Yes, sir.

Q Then if I put it down this way (indicating). A Yes, sir.

Q And press with weight on it so that the finger is broadened. A Yes, sir.

Q And, as it were, mailed to the board? A You might get a blurred impression if you press too hard. Yes, sir.

Q So that the soft impression would be the natural impression of the finger? A Not necessarily, if you press too lightly.

Q If it was pressed sufficient to make an identure or mark there, it would be the soft impression? A We can't say that because very often the finger is hard and we have to press harder.

Q I see. Well, now just feel the weight of this hatchet.

Mr. Mott. May it please your honor, how can he cross examine this witness about this hatchet?

Mr. McDermit. I am going to have impression put on this hatchet now.

The Court. You are going into the weight of his evidence. Now, you are cross examining for the purpose of ascertaining whether he is an expert in finger-prints, I take it.

Mr. McDermit. Yes, sir; I am on that scope now.

The Court. You cannot go into the question of any particular hatchet. The question is whether or not he is an expert.

Q Look at this hatchet? A Yes, sir.

Q I am doing it for the purpose of testing your knowledge as an expert. If I gently suspend that hatchet or if I roughly take that hatchet for the purpose of making a mark in a post or for the purpose of cutting an object, with the intention of splitting the skull, or kill, with all my weight, of course the grasp

upon the hatchet must necessarily be strong, isn't that so? A Yes, sir.

Q Depending entirely upon the physical prowess and make up of the subject handling it, and therefore the impressions that would come from such weight would be blurred impressions? A No, sir; not necessarily.

Q The chances are—

The Court. Do you want to object to this gentleman as an expert.

Mr. McDermit. I am.

The Court. What do you ask expert questions for that requires expert knowledge to answer.

Mr. McDermit. To see whether or not he can pass upon those questions.

The Court. Proceed.

Mr. Mott. Your honor, will you hear me? I submit that is not the way to test whether a man is an expert.

The Court. There is no open question on the record. If you had objected the court would have ruled with you on that proposition.

Further direct.

Q Mr. Flak, I show you the hatchet Exhibit No. 2, and ask you whether you have seen it before? A Yes, sir; I have.

Q And have you examined it? A Yes, sir; I have; very closely.

Q On that hatchet anywhere do you find the imprint of a human finger? A I did sir, at the end of the butt, on one side of the handle.

Q And will you point out which side of the hatchet you found it on? A It is on the side where the square mark is on the handle.

Q And whereabouts on the hatchet—on the handle is it? A It is quite close to the end, about—oh, about quarter of an inch from the butt of the handle

and it extends up nearly one inch. It is about in the center of the handle on the curve of the side of the handle.

Q I show you, Mr. Flak, Exhibit No. 16. Assume that that is the photograph of a finger mark of a man. A That is a finger impression made by a man's finger on paper—a direct impression made by the finger.

Q I show you S. 14, a photograph? A Yes, sir.

Q And ask you if you are familiar with that photograph? A Yes, sir.

Q What do you understand that photograph to be? A That is a photographic copy from two different—they are two photographic copies, I should say, from two photographic plates. On the righthand side, the darker impression, we have a photographic copy from a plate taken by Mr. Kinsley direct from the fingerprint on the hatchet handle—

Q By the by, were you present, when those photographs were taken by Mr. Kinsley? A Yes, sir. And the other illustration on the board, the one to the left, is a similar photographic copy from another plate which was taken direct from the little fingerprint marked 16.

Q And you were present when that was taken, were you? A Yes, sir.

Q Now, I show you Exhibit S. 240 for the State? A Yes, sir.

Q Do you know what that is? A I do.

Q What is it? A That is the photographic reproduction from the original I am holding in my right hand.

The Court. S. 14.

Q And were you present when that photograph was taken at police headquarters last night? A Yes, sir; last night at police headquarters.

Q Now, Mr. Flak have you made any study, first of the finger on the handle of the hatchet itself? A Yes, sir; I have.

Q And have you made any study of the finger-print, Exhibit 16? A Yes, sir.

Q And have you studied in that connection the other photographs before you? A Very thoroughly, sir.

Q Numbers 14 and 240? A Yes, sir; I have made a very thorough study of those two photographs.

Q And from your study of these photographs and the original finger-print on the handle of the hatchet have you formed any opinion as to whether or not the finger-print on the handle of the hatchet is made by the same finger shown in the finger-print number Exhibit 16? A Yes, sir; I have become convinced of the fact—

Q You have an opinion on that subject, have you? A I have an opinion.

Q Will you proceed, Mr. Flak, in your own way, to state what your opinion is and give with as much detail as you think will be helpful to the court and jury the reasons on which you base your opinion—and first, would it be helpful if I passed these to the jury? A I think it would; yes, sir. I am sure it would.

Q Have you any material in your bag that you wish to use? A I think I would like to have my bag around here. I shall ask you to give a pointer to each of the jurors and they will better understand what I am explaining. To start with I want you to look at the left hand—

The Court. State your opinion first.

Q What is your opinion? A My opinion is that the finger-prints illustrated on this card are identical. They correspond in many details.

Q What is your opinion as to whether the finger-print on the handle of the hatchet and the finger-print shown in Exhibit 16 are or are not identical?

Mr. McDermit. I object. He has just testified that they correspond in many details. That does not mean they correspond entirely. I submit the question is not proper and I object to it.

The Court. You can revise that question.

Q What is your opinion as to whether the finger-print on the handle of the hatchet and the finger-print on No. 16 is made by the same finger? A Yes, sir; they must have been. That is my opinion.

Q Now proceed and state your reasons, A In the first place if you look at the illustration to the left you can see the lines run round and round, and if you look at the righthand illustration you can see that that is the same tendency, ridges running round and round. Such an impression is called a whorl, very properly. That is the name of the whole thing. It is a whorl. That is the technical term for that kind of an impression. In the first place you can see that, generally speaking, they are alike, to say the least. You can see, first, we have the figure one on the lefthand side, bottom. From that figure 1 runs a fine black line into the print—

The Court. Into what?

Witness. Into the finger-print. You see where that ends, that fine black line. It points out a little projection there—a little spot. Hold your pointer on there while you look on the blood impression, we shall say, for simplicity sake, on the righthand side. Find the same outrigger. We will call those black lines I have drawn in outriggers, so as to not get confused in regard to the finger-print line. Now outrigger No. 1 points at the same spot in the ink impression on the left and the blood impression on the left and the blood impression on the right. I think you all can see that little spot in there. It is not so distinct in the blood impression, of course, as it is in the

ink impression, but it is clearly discernable. Now, if you will see, right and left from that point there are two black lines running down to the lefthand corner—right and left from that point there (indicating). They run down almost parallel for a little stretch. Now put your pointer on the righthand illustration, that is the blood impression, and you can more easily guide yourself by looking just with your eyes to the left as we follow the ridges down. Now, if you run down into the lefthand corner, you see those two parallel ridges really start down there. You do not have to go far down. I just want you to see clearly those two ridges are parallel. Now, come up again, you see they suddenly diverge to right and left of that point marked one. The lefthand one runs up and curves over to the right surrounding this finger-print, in the righthand one, runs out to the righthand side almost horizontal. Now come over again to the ink impression. Be sure you know what I mean. On the lefthand side you have the ink impression, on the righthand side you have the blood impression. Now, I want you to go back again with the pointer on the ink impression, and get your pointer onto the left of those two lines running apart. Now, those two lines running apart—

Mr. McDermit. I do not think any person living with the speed he is going on can follow with the pencil or human eye the impression you are now asking us to follow. I consider myself more or less an intelligent man but I do not think anyone can follow your deduction from the speed you are going. I do not object to it, only go very slowly because we do not get the benefit of it.

Witness. All right. Well those two diverging lines you can readily see, left and right, from that point marked 1, and I want you to know that

those two lines are my starting point in the comparison of those two finger-prints. Those two lines are called the delta lines in the finger-print, the delta—and the little point I have been talking about is the delta—right in front of those two delta lines. Now, if you clearly understand what those two delta lines are I shall ask you to put your pointer on the ink impression—left-hand side.

Mr. McDermit. Now, is that a fair proposition to the court to ascertain whether or not the jury does understand where those two delta lines are? Does the court understand where they are?

The Court. Yes.

Mr. McDermit. Does the jury understand where they are?

The Court. The jury need not speak to counsel on this proposition. I do not see what your point is, Mr. McDermit?

Mr. McDermit. My point is that I want to have the outline of these lines followed intelligently. He is stating his reasons for the belief that these finger-prints are made with the same finger.

The Court. I understand him and am following him.

Mr. McDermit. He asks the jury if they understand where the delta lines are. Maybe they do and maybe they don't.

The Court. They are at the end of the line marked 1, as I understand it. Proceed.

A (Continuing.) At the end of the line marked 1 is that little point, the center of the delta. You can readily see it is just in front of those two strong lines running far apart. Now, I want you to put your pointer on the lefthand delta line and follow upwards, in the lefthand illustration you get to No. 5

where there is a junction of the two lines. Is that clear?

The Court. Proceed. You cannot ask the jury questions.

A (Continuing.) Just keep your pointer on No. 5 and look over the righthand impression. You can see right at No. 5, in the righthand impression is a black line stopping a little to the left. It appears as if there was a break there—it appears as if there were a line ending abruptly. Now, in your lefthand impression you see there is a junction. Now that is a correspondence in the finger-print. Doesn't matter whether it is absolutley joined or whether it is parted. The very fact that we there have those two lines running together, if not absolutely joining, is one point in addition to point 1 which you have already seen. Now, if you jump over one line to the left you can see it runs upward and it comes up about to No. 6. There is a junction or a break, one of the two; doesn't matter which, but you can clearly see that there is not room for one ridge to pass up in between. Lefthand illustration. There must be a junction or break. You can see it most clearly in the lefthand illustration. The ink impression I mean now, rather. Put your pointer now on the righthand impression, the blood impression, and hold it there while you study that point for a minute. You can see that there the break is underneath to the right in the blood impression. On the ink impression there is a break on either side—there is an imperfection there as it were. We often have imperfections in prints. Now, you have traced two or three—traced three corresponding details. Now, if you run your pointer straight upwards in the ink impression again—just shift over—and you will understand it more clearly. Run it over to where it marks No. 6 exactly and follow the line upwards with your pointer. Now, when you get opposite No. 8 you can see there is another junction of the two

lines. See if you can find that point with your pointer in No. 8. You can see it in the blood impression. You can see it very clearly. It is, in fact, clearer in the blood impression than it is in the ink impression, and if you run upwards from there, just a little ways, until you get opposite No. 9—rather just hold your point now on the blood impression. The comparison will be easier in that way. You hold it on that ridge, study the continuations from No. 8 upward. Hold it on that, study just opposite No. 9. Can you see at No. 9 there is a little spur projecting? Just look to and fro from the blood impression to the ink impression and see it with your eye—see it clearly in both places. Now, see the count lines between those points is just one. There is another correspondence in addition to the other points I have marked. You are holding your pointer now on the line running upward from No. 8. It is right opposite No. 9, isn't it? Now jump over with your pointer—hold it on the blood impression—now jump over with your pointer to the point No. 9, just the end of that spur. Now, you see in the blood impression there is a short spur. You can see it in the ink impression. There is a long spur. Now run—in that angle of that spur at No. 10 is the junction where that spur projects from. You can see now the spur is longer, clearly, in the ink impression than it is in the blood impression. Now that is just caused by the rounding of the impression on the handle. Naturally we, in photographing this print on the curved surface, you would see around the corner as it were, with the photographic apparatus, and you wouldn't see it in the flat field. I am just explaining this to you because you might have a hesitancy in your mind as to the identity of those two points, but you can readily see from the way you have been following the details right from the delta to where we are now that everything corresponds in detail if not in measurement.

Now, in finger-prints we do not concern ourselves about measurements at all, because the finger grows or circumstances may occasion a small print in one place or a distorted print. So it is like a piece of curtain. You can take two pieces of curtain and any woman can press them and tell whether it is identical or not. Stretch it as you like you can find every curve and line, although it is straightened out. Similar in finger-print. There may be two patterns, but if you can follow the lines you can tell that it is the same thing. We will come back to the junction No. 10. Now, you see there is the end of your details at the top. In the ink impression it runs right out to the edge of the print and in the blood impression it runs out to the edge too, and you see there is a larger distance just for the reason I explained a minute ago. Now, I will ask you to go down again to the starting point No. 1. Put your pointer—just keep it on the blood impression now—and look to and fro as you may find convenient to the ink impression. Now hold it on No. 1 in the blood impression and jump over just one point to the left with your pointer. You will get onto the lefthand delta line, don't you? Now, if you follow that down a little ways you can come to opposite No. 23. There is an abrupt ending of the line just opposite, to the left; it is marked 23 in both illustrations. You cannot see it very clearly in the blood impression, but you can see it, and it must be there, because down below the delta line and the line further out to the left come together and do not leave space for another line to pass between them. There must be a termination, as we call it, at 23. Now, there is possibly the poorest point in the comparison of these prints. There are many more I could mark if I wanted to but I do not want to test your patience or your ability to see these things. So you can see No. 23 is in the same spot—in between two other lines—in both illustra-

tions. Now, I have shown you every detail to the left of the lefthand delta line. Now let us come down over again to point No. 1, our starting point. Now, you can see, in the ink impression, you have a distinct triangle there, marked by the figures 1, 2 and 20, 1 and 2 on the left side, 20 down below at the bottom. In the blood impression that triangle is indistinct as a whole, but you see at No. 2 is either a junction or a break, so that we call a correspondence. There is evidently a little blood in the blood impression joining the lefthand spur, upper lefthand corner of the triangle, I should say, joining that corner with the lefthand delta line. You see now, we concern ourselves only about the black line in this print. The white lines are spaces. Now, examine that triangle again in your ink impression and compare it at point 20 in both impressions. There you can see, in the blood impression, it is clearly detached. There is a little junction as it were with the line above, but you can see the triangle is there. Now, if you follow the righthand delta, running down again, downwards tothe right, you can see it comes out to No. 22 and at 22 in the ink impression there is a clear bifurcation, as we call it—a fork—a junction or fork in the line. You see that junction is not so distinct in the blood impression, but it is there. That is also a rather blurred point in the finger-print, but from the formation we can see it is there. Now, if you run upwards from there, following the lefthand branch from No. 2—that is to say the highest up of the two lines—running upwards from 22—you hold your pointer on the blood impression now—run up just as far as the crossing of the outrigger No. 21, now look over on the ink impression—you can see a long dash—a long dash right below the righthand delta ridge or delta line. I say "delta ridge." I have to explain now why I said "ridge." We have reference only to the ridges or elevations in the skin when

we talk of finger-prints and you see the black lines represent the elevations. If I were to say "lines" you might get confused and think I was talking about the white lines, but I said a minute ago we have reference only to the black lines, so if I can help it I won't use the word "ridges" at all. I will try not to but there are technical terms it is difficult for me to forget all, and so we just say lines and you know I am talking about the black lines. So now, come back again to that point, No. 22, where that fork is —there is a fork in there—and run upward along the upper branch of that fork until you get to the crossing of outrigger 21. Now, follow outrigger 21 right in to where it stops. There is a long dash that I talked about just now. You can readily see it. Commences at 21 and terminates at No. 18. That corresponds. Of course you can see in the ink impression it is almost horizontal, whereas in the blood impression it is more or less defected—turned upward at the right end. Now, that is due again to this curvature in the handle. It is very natural it should be out of shape a little but it is there in the same relative position to the other details in the finger-print. Now, if you jump one line from No. 18—jump downwards, and then down one more towards No. 17, you see a clear fork in No. 17, ink impression, at No. 17. I should say it is a clean cut forking of the line. In the blood impression you can see from the righthand side comes a line that stops in front of No. 17. There is another correspondence, because as I say, the little deflection in here makes it open whereas with plenty of ink on it you would have a clean fork or junction at that point. Now, you just follow that junction upward—rather keep your pointer on the blood impression—it is harder to see that way, but you will easily find it with the eye on the other side whereas you wouldn't easily find it with the eye on the blood impression. You are holding your pointer at point

No. 17, aren't you? Now, you run upward the same as you did before, following the upper branch of this fork. Now, as you run upwards you come opposite No. 15. Now, look at the ink impression. There is a clean cut fork, isn't there? In the blood impression again there is an ending, an abrupt ending of a line. It stops right in front of No. 15. There is just a little defect again in the junction of the lines, and I am going to explain to you in a few minutes why there is that digression. There is a reason for it. You have now seen that deflection in several places. There is a very natural reason for it, and all these points that I have shown to you are correspondences exactly. Now, we will just stop there at No. 15. That is as far as we go by way of details on this course we are taking in finger-prints, and now we come back again to our starting point No. 1. Now hold your pointer on the blood impression again. Now, you are familiar with this section of the print. The point then, No. 1, right in front, has that triangle. You see in the ink impression it is very clear? In the blood impression you can see it too, and in the blood impression there is the same black line dipping down right onto that triangle; coming down from the righthand side. It dips down onto it. It is joined to it as it were, but that we take is just a little extra blood spot, you see. You can really see it detached in there, a rounded spot, right above outrigger—the end of outrigger No. 20. You can see it is really detached from the ridge that comes down on the right. Now, if you will look at the ink impression you will see where the missing link is. The blood wasn't on that ridge in the skin. It didn't make—it didn't make the connection that you see in the ink impression, and in the ink impression you can clearly see there is a line running straight up, left and right, in front of that triangle. It runs up on the left and far up on the right. Now, from where you hold your pointer at No. 20, I believe,

you can just jump over in that defective line in the blood impression and come out to No. 19—just over No. 19. You see what that is in the ink impression. There is a break. There is a termination, as I called it a minute ago. That line terminates very distinctly in the ink impression, doesn't it? And you can see in the blood impression is a little dirt again. It is joined on as it were to the next line above. Now there is a point of correspondence again. In one place it looks like a fork, and the other place it looks like a termination. It is marked at 19 in both illustrations. In the ink impression you see it very clearly. It terminates right there. Now, just as an experiment you count the number of ridges—of lines, I should say—count the number of lines between 19 and 18 in both illustrations. Can you see there are two lines between? There is another point of correspondence. Now, right above where you are holding your pointer now, No. 19, you find No. 3. There you have a termination in both illustrations. I think you will clearly see that, all of you, there is a distinct termination, in both impressions, that the line terminates at No. 3. Now, then you follow that termination downward to the right—just run your pointer downward slowly to the right until you come opposite No. 16. Just run slowly down there. You can see now at No. 16 is another termination. Clear in both prints. Of course those black outriggers are slightly confusing but this is the approved method and the most practical way we know of comparing impressions that are slight distorted. So you have seen how clearly all these points can be traced in both impressions in the same positions relatively. You are holding your pointer now at the termination marked No. 16. If you will just jump down again one ridge and proceed up to the right, following that line with your pointer, you will come to No. 14 in the blood impression, where you can see two lines running to-

gether. Now, it is more distinct of course in the ink impression. It is very clear in the ink impression. In the blood impression there is a deflection outside that junction but you can see they run together. That is also one of the less conspicuous or less absolute points in the finger-print. There are three or four, as you have seen, that we cannot absolutely determine. I could, of course, but it is very hard to explain to you how to determine the identity absolutely of one or two points that I have already called your attention to, but the majority of these points are absolutely in the same position relatively, and establish the identity already of those two prints. Now there is one or two more points that I have not as yet explained to you or pointed out to you rather. If you will come back again now at No. 4 you see a point we have not yet examined. You will find it readily in the ink impression. In the ink impression it looks like a poor bifurcation—imperfect bifurcation even in the ink impression, doesn't it? In the blood impression you can see it is a distinct termination. It is a still poorer bifurcation but you can see the trend of those two ridges in the blood impression is the same as in the ink impression. Now, right here I shall explain to you why we see those disconnected points in the blood impression and why so many of them appear as bifurcations or junctions in the ink impression. Now you see the elevations—the corrugations on our finger-tip are like the corrugations on a sheet of corrugated iron in so far as they would make a distinct print like a rubber stamp if they were inked with ink in some way or another just on the tip of the corrugation. If all these corrugations were of equal heights as you see them in a sheet of corrugated iron, of course they would make distinct and continuous lines of black right along without any break, wouldn't they, the same as rubber stamps—continuous line—but you see now in the finger-prints

where those ridges join there is very often a little sink in them, little recess, just where they join together. The ridges do join. Of course we have many that actually stop—do not misunderstand me—where they actualy stop, as you have seen in several places in this print just like at No. 3 again. In both illustrations No. 3 is distinctly a break—a stop—you see there. Now, you see so many others may be called either a bifurcation or a break, and you see—I want you to realize why this discrepancy exists in that finger-print. It is very natural, because where these two ridges join, the same as two mountain ridges, one is a little lower perhaps just at a point where it joins, and you can see then, if you have plenty of ink on your finger and press hard, you would get that junction—that sink as it were, recess, if you had little ink on it as we very often have, or if the one print is made accidentally, or incidentally, unintentionally, naturally you do not expect to get a good impression. That is the reason for this apparent flaw in the print or design rather that I have traced before you. Now there are just one or two more points that I haven't yet called your attention to, and we might just as well cover them all. You can see now at No. 1 in both prints is a junction. It is indistinct it is true. In the blood impression it is indistinct, and at No. 12 we have the center of the print. Now there is the center of the complete finger-print and you can clearly see that in the ink impression. That is the center of the print. Now, of course, the surrounding ridges there in the blood impression are blurred or dirty with extra blood, so you can't clearly trace the whole design. I can trace it. I know exactly where each line runs, and if you were to take pains and just run your pointer from one outrigger to the other you could trace every connection and count and ascertain that the intervening ridges correspond in every case.

The Court. You are stating your reasons why you think they are similar. State whether or not you have done that and whether they are the same.

Witness. Your honor wants me to state why they are similar?

The Court. No, that is what you are doing now. Have you actually counted—you say we could count if we could see better—but have you actually made the count yourself?

Witness. I think I said I could follow the ridges where you cannot very clearly see them.

The Court. Now have you?

Witness. Yes, sir. I have done so and I am satisfied that they exist in there in the blood impression, and I will call your attention to the intervening ridges in one or two or three places. For instance, put your pointer right-hand side, blood impression, at No. 7. Now, with your eye count over to No. 6. You can see there are three lines in between those two points. Take another. Put your pointer on No. 13 and count across to No. 14. Can you see there are three lines in between counting this No. 13 for a termination? You see No. 13 is detached really in both illustrations. You can see there are three in between. Now, let us see if there is another I can show you. We shall come back to No. 8. Hold your pointer on that point in the blood impression and you run upward till you get opposite No. 10. There is one between. Same as I showed you before, between that same ridge and that spur No. 9. Just look two and fro in the ink impression and count it with the naked eye. You can easily see that while you hold your pointer on to No. 10. Now everything taken together in these two illustrations, gentlemen, prove to me conclusively that those two finger-prints were made by the same person and by the same digit.

Q Mr. Flak, assuming that there are these marks of similarity which you have called our attention to, what do you say as to the possibility of one of those finger marks being made by one finger and the other by another finger, there being the similarities that you have called attention to? A In my experience it would be utterly impossible for two finger-prints to correspond in all these details, except when they come from the same finger. I could cite many authorities and all authorities agree that generally speaking finger-prints cannot be duplicated, and they have stated what the chances approximately are, and such evidence is accepted.

Q Well, I know, but what do you say from your personal experience as to the possibility of these two impressions being made by different fingers? What is your opinion on it? A I consider it impossible. I have never found any and I have examined a few hundred thousand—never found any that would be so similar—not approximately—as these two impressions and yet be made by different fingers. These last thirteen years I have been studying—analyzing finger-prints—and working in my capacity as a finger-print expert.

The Court. How many finger-print impressions of fingers have you examined in those thirteen years?

Witness. I should say a few hundred thousand.

The Court. What do you mean by a few hundred thousand. Do you mean two or three hundred thousand?

Witness. Yes, sir; I mean two or three hundred thousand.

The Court. You never found them alike unless made by the same finger?

Witness. I never found any so much alike that they could be confused on a question of examination.

Q You said something about this system of identification being inaugurated in banks. To your personal knowledge where is there finger-print systems in use in banks for the purpose of identification? A In which bank?

Q Yes. Name us a few within our reach. A The first bank in the United States that adopted my finger-print system, was the German Savings Bank in Brooklyn, New York, about two years and a half ago. Shortly after that the Williamsburg Saving Bank in Brooklyn, another big bank—sixty-seven million dollar deposit bank—and since then I have instructed ten more banks in greater New York—twelve, I think. I could name them all—give you a list of them all.

Q And that is for the identification, I suppose, of illiterate depositors who cannot sign their name? A And also as an extra safeguard in all other cases where there may be a doubt about a man's identity. They will take the finger-print on the back of the signature card or on the face of the card and place it on file, and whenever there is a new clerk in the bank, doesn't know his client, he will just look at the finger-print and check up and by my system he is able to do that in a few moments, and he will pay the money, and there are now, as I said a little while ago, nearly two hundred banks all over the country using my system. There are two in Newark; I have one in Hoboken and two or three in Jersey City.

Q Do you happen to know which the two Newark banks are? A One is the German Savings Bank and other is the American National or something, up on the hill. Far up on the hill going up on Market street.

The Court. You mean Springfield avenue?

Witness. Yes, sir; continuation of Market street.

Cross examination by Mr. McDermit.

Q You have been giving us the names of a number of systems for the examination of finger-prints. Don't you think your own system is the up-to-date finger-print system of the age? Don't you? A For classification purposes in the State, yes, sir.

Q Did you ever have your system in the Ironbound Trust Company in Newark? A No, sir.

Q Do you know whose system was put in there? A I don't know if they have put in any system. Many banks are experimenting on their own hook.

Q You think that the system of putting three fingers across a piece of paper in a bank on a card is the system for the absolute protection of the bank against paying the wrong depositor; is that right? Is that correct? A Well, a thumb-print—one finger-print is plenty, absolutely.

Q So that every time you go to the bank and draw out any money you have to make an impression with your finger to show that that is the same finger-print? A Where a man can't write; yes, sir, every time.

Q Every time. So that it would make no difference whether a finger-print was taken at a time when a man was in fever or whether he was suffering from dropsical troubles or whether he was in absolutely proper physical condition, would it? A No, sir.

Q Make no difference whatever, the fact that the man's finger was swollen and bruised by reason of an accident and at the time that his finger was taken in the bank it was in a normal condition; it would make no difference. The finger-print examination would be just the same? A There might be a difference.

Q Might be a difference. You say you have closely studied these two subjects? A Yes, sir.

Q How much time did you devote to studying them? A About five days.

Q Five days? You have been very busy installing plants all over the country? A Yes, sir.

Q And had to be sent for to come here? A Yes, sir.

Q And your time is taken up and would have been taken up installing your plants if you hadn't been sent for by telephone to come here, is that right? A Yes, sir.

Q Can you give me or give the jury any notion of where there exists the same corresponding section between the space that I point out to you between lines five and seven—and seven—is this eight? Seven and eight? A Five and seven?

Q Yes. A Let me see. Take a pointer and I will point out.

Q Show me where? A Here (indicating).

Q No, no. You listen to me. Show me where this space from the first, second, third, fourth, fifth line —from between five and— A Five and seven?

Q Five and seven. Where that appears over here? A Yes, sir.

The Court. When you ask a question like that you may understand and perhaps the witness, and possibly the jury, but the record doesn't show what you mean. You said "look at the space between the first, second, third, fourth, fifth line and sixth" that isn't an intelligent question on the record. Withdraw it and reframe it.

Q I ask you this question, and you pay some attention to me as I point my finger where I want to indicate. I show you a space on the photographic exhibit that you call the enlarged impression exhibit of the left ring finger of Angelo Cerciello, called by you the ink impression, why is the space which is all white here between those sections not apparent over in the other section of the photograph that professes to be taken from the axe or hatchet? A I couldn't tell. Imperfections occur.

Q Now, doesn't these imperfections occur—may I ask the witness to step down as far as the jury a

moment—I ask you to explain to the jury why this space here of white—

The Court. Where are you indicating?

Q Indicating between six and seven and the other space of white between seven and eight, indicating upon the same record—photograph, called the ink photograph, and indicating also here in this section back of No. 8 at the end there, why those white places appear in this photograph and do not appear in the other? A I couldn't explain that.

Q Ain't that a very large percentage of that space? A Well, but they are unimportant in the consideration of others.

Q I didn't ask you whether they were important or unimportant. I ask you why it is that they do not appear in the other photograph? A It may be due to an imperfection in the skin healed afterward.

Q You don't know? A No; I don't know.

Q But they are not the same in that respect, are they? A Oh. no.

Q So that there isn't a complete formation of the finger shown in this photograph marked S. 16, is there? A The finger-print is not complete in itself.

Q And therefore correspondingly there is an absolute and essential difference in that record between plate No. 16 and plate No. 14, is that so? A In the illustration; yes, sir.

Q Yes. Now, then you also found quite some other differences, didn't you? A I trimmed off various inconspicuous differences.

Q You also said that the photograph wasn't complete because it only represented— A A section of the finger.

Q Section of the finger—the flat side of the hatchet. Is that right or wrong? That in re-photographing that photograph that photograph had been trimmed down so that it did not show the curve? A

No, it shows the curve, but the whole thing is trimmed not to show too large a section of it.

Q Then you haven't—then you are unable to get a complete observation by reason of the fact that both photographs are defective? A No, sir; my observation is absolutely complete.

Q But you are unable to see lines where lines do not exist? I suppose you admit that? A Oh, yes.

Q So that if there are not any lines in the parts of the finger imprint shown you cannot designate anything there? A No; there are many spaces—

Mr. Mott. I don't think counsel ought to interrupt this witness as he did then. He hasn't allowed him to complete his answer.

Witness. There are many places I said where there are discrepencies, but we have found a great number of correspondences—a great number—and that is sufficient in my mind to absolutely establish the identity. I can't help these—

Q There are at least fifty discrepancies, if you have made a careful examination of these plates—at least fifty? A I didn't trouble about that.

Q Suppose you just trouble now. I ask you how many discrepancies there are? A There are none there because I cannot see them.

Q You can't see them? Where can you see them? Where? Where would you see the discrepancies that you speak about? A I don't understand what you mean exactly.

Q You said there were a large number of discrepancies. I ask you to enumerate where those discrepancies were and you said there are no discrepancies? A Not from my point of view of identifying those two prints. I ignore those little flaws in the prints.

Q You ignore all the discrepancies? A Because the discrepancies are caused by little flaws in the skin.

We often have them—in the finger—and they heal again afterwards. We have got to overlook that. In finger-prints it is a common occurrence.

Q Have you taken any finger-prints yourself? A Yes, sir.

Q I understand you to say you have taken three hundred thousand of them? A I said a few hundred thousand. I could tell you approximately how I arrive at that?

Q And you developed those? A No, sir; I just took them on the paper. After touching the finger on the ink put it on the paper.

Q How many have you developed? A You mean photographs, sir?

Q Yes? A That is hard to tell. I am a photographer in addition. I studied photography about sixteen years ago.

Q How many have you developed in the last few years? A How many I have photographed?

Q Yes? A Oh, I must have photographed fifty or something like fifty, yes, sir.

Q Haven't had much business in photography in the last two or three years? A No, sir; I have been teaching.

Q Haven't been called upon to make any comparisons in the last few years between photographs and finger-prints? A I haven't testified any in courts.

Q Have you ever testified before? A Yes, sir.

Q In what court? A In the police court in Singapore.

Q Police court? A Yes, sir. I sometimes testified myself. Mostly my assistants would do it. I had charge of the office there. I didn't have to testify.

Q What were you? Were you a judge there? A I had charge of the central finger-print office at Singapore.

Q What was your position, detective? A No, sir. I was finger-print expert in the criminal registration

department, the same as Mr. Schwartz is, and naturally in that connection I went into the police courts.

Q How many finger-prints have you photographed in your lifetime? A Oh, a great many. I have been experimenting for thirteen years. Spent most of my money on that.

Q Whose marks—whose figures appear on these two photographs? A Mine, sir.

Q And do you know when you made those figures upon those? A I do.

Q When was it? A Last night.

Q And was that the first time that these two had been submitted to you together? A I prepared that record myself.

Q That may be true. Was it the first time that these two separate portraits had been submitted to you together?

The Court. He has answered that. He says he got it up himself. It never was submitted to him.

Mr. McDermit. Your honor doesn't seem to understand my question. There are two separate photographs here not got up by him?

Witness. Yes.

The Court. He got up S. 14?

Witness. That is my work.

Q When did you get those up? A Yesterday.

Q And from what? A From the original photograph made by Mr. Kinsley. I cut them out.

Q Not seen by you before? A Yes, sir.

Q Both of them? A Surely.

Q Both the hatchet and the photograph of the finger-print? A I was with Mr. Kinsley when he photographed those two things.

Q And why did you delay putting them together or to put your figures on them until yesterday? A Because I have been working on the same material

over and over again to make sure of avoiding any mistake.

Q How many hours a day have you spent trying to convince yourself that these finger-prints are the same? A I didn't spend very long to convince myself, only I prepared to convince everybody else. That took a lot of time.

Q How long a time did that take? A Well, now I traced up these yesterday, I think, in three hours, anyway.

Q Now, what would be the effect of the impressions upon—what would be the effect of a number of impressions on the hatchet of different finger-prints, one over the other? Suppose there was four or five finger-prints on this hatchet within the time of three or four days, would it be easy to photograph the finger-prints separately upon the hatchet? A No, sir; it would be a jumbled line.

Q It would be a jumble. So if that hatchet had been handled by three or four different people and their finger-marks were upon it you couldn't get a correct impression? A Not necessarily.

Q Couldn't get the correct impression? A Not necessarily. They might be in different spots.

Q Assuming that—here (indicating) as I understand, is where you photographed; is that right? Look at it carefully, now? A My eyes are not very good. I will get out my magnifying glass. Yes. The impression is right there (indicating).

Q The impression is right there. Now, then, it has been testified in this case that this handle—this hatchet was picked up by different people; in the first place this hatchet was found on a Sunday, couple of days after the alleged homicide—picked up after two days in which there had been several storms, and in which the rain had fallen—picked up two days after this homicide by a boy who said he picked it up that way (indicating)? A Yes, sir.

Q He first said before that that he had stepped upon it, and seeing a bright blade—something bright shining—he picked it up; observing it closely he saw what appeared to him to be blood marks, and he immediately dropped it down again upon the ground; then went a distance of a quarter of a mile or so and got hold of a police officer and brought the police officer in to where the hatchet lay. The police officer picked it up in the same fashion, putting his fingers around the portion that is testified to by you on your examination, and after doing that he then took the hatchet in his hand this way (indicating) and grasped hold of the handle so tightly that he was able to drive a nitch in a tree to mark the place where the hatchet had been found; he then took the hatchet had been found; he then took the hatchet after doing that and set it in this fashion up under his coat; he then went from the place where he found the hatchet over to a drug store and picked the hatchet up again and wrapped it up in a piece of paper—what would you say as to your ability to be able to get the finger-prints on a hatchet of that kind? What would be the chances of getting clearly a single finger-print from that same hatchet? Could it be done? A I don't know.

Q I asked you whether it could be done? A Yes, sir.

Q How can it be done? By washing off the other —by washing off the exterior or last finger-prints? A Is it not conceivable that the handle might have been covered up in some way on the ground.

Q I am telling you with no cover to it. I want you to understand my question. The hatchet is found in the field—in the open fields, where it has lain for two days, during which occurred a time after it is supposed it was used in the homicide; it is found smeared with what appeared to be blood; man comes in—boy comes in, he picks it up right at the end of

the handle with his fingers, looks at it; his attention was called to it because he has stepped upon it— A His fingers were not on there—

The Court. Wait until you hear the question.

Q He had his finger-print on the hatchet. He picked the hatchet up with his fingers and examined—

The Court. Do you revise your question to that extent.

Mr. McDermit. Yes, sir.

Q (Continuing.) —and then he drops the hatchet on the ground, after seeing what is supposed to be blood prints to his notion; he then goes and gets a police officer, comes in, and the police officer comes to the spot; he, the police officer, again takes hold of the same end of the handle with his fingers; takes it up, then he reverses his hold and takes hold of it on the handle of the axe—hatchet—on the same spot where it was in use as you have described that there was a finger-print, and uses that clenched in his fist in an effort to make a mark in a post—makes a mark in a post—then takes the hatchet in his hand and puts it under his coat, takes it a distance with his coat rubbing against it—or under his coat at least, distance of a mile; goes to a drug store and wraps it up in paper, and it had been handled a number of times since that. Do you mean to say that you could take an impression of a finger-print off of that accurately and say— A I think so. The space is very large and might be many prints on them and some might be preservered.

Q Do you find any prints on there now? A No; yes, the one on the end I find now.

Q That is the only print you found? Can't find any other prints can you? A Not finger-prints proper, but markings in blood.

Q Can't find any finger-prints along the handle of this? A I haven't found any.

Q Then it couldn't have been handled by anybody except that one person; is that right? A It might have been handled by a number of persons, and evidently has been, and they did not make any finger markings.

Q They couldn't make any finger markings? A They make finger marks, but not finger-prints. Sliding two and fro wouldn't make finger-prints.

Q Chopping down a tree? A That would probably tend to make a blur.

Q How would that affect a finger-print already on it? What would be the effect? A If you touched the finger-print with the dried finger, wouldn't affect it at all.

Q Suppose it was moist? A If moist it might affect it.

Q Suppose it laid out two days in the rain, would it affect it?

The Court. No evidence of that here. The evidence is that it rained up to 10.15 on May 29th, and again 36/100 of an inch the next day.

Q You were present when the photograph of this hatchet was taken, weren't you? A I know it was taken from this hatchet.

Q When was it taken? A It was taken on the 13th instant.

Q Thirteenth instant? A In Mr. Kinsley's office.

Q Thirteenth of the present month? A This month.

Q Thirteenth of November? A This month.

Q And you had never seen the hatchet before that time? A It was shown to me in the public prosecutor's office the day before when I arrived here from out of town, and when I saw it in Mr. Kinsley's office it was there to be photographed; brought by somebody—

Q Suppose that this hatchet had been used in delivering twelve blows sufficiently powerful to have

penetrated the skull and suppose this hatchet had been utilized in cutting off an entire chain of fingers, and suppose this hatchet had been used in cutting into the face in to the bone, and suppose this hatchet had been used in cutting in the back, and suppose this hatchet had been used in cutting in the arm, and suppoes this hatchet had been used for a period of five or ten minutes in a furious effort to destroy human life, what would the handle of the hatchet show as to imprints of the fingers or hands, do you know? Can you tell? A No; I don't think I could tell, sir.

Q Then put that condition, plus the other condition that I asked you before about the different handlings of the hatchet, and are you willing as an expert to say to this jury that you could discern that one finger-print, if that hatchet had been kept as carefully as they have testified it has been kept? A I have had very little experience in examining objects with blood on it.

Q You wouldn't want to go on the record before this jury—

The Court. Let the witness answer.

Witness. I can testify absolutely in regard to this finger-print. In regard to the methods and results of different handlings of an object I would not pretend to tell at all.

Q Then there is nothing left of any impression of any handling of that hatchet on the 13th day of November when the photograph was taken except an impression of something that appeared to be from blood; is that it? A No real finger-print, except the one we have photographed. Finger markings are of many kinds. They may not show the papillary ridges at all.

Q You don't believe it would be possible to have had that handle of this hatchet go through the evolutions and fingers that I have indicated to you and still only be in position to have only that one finger-print?

A I think possibly it would, sir, because the first hand had blood on it and the others had no blood on. There can only be one blood mark made in the first place.

Q Why is it you didn't find any other blood mark around the end of the handle, do you know? A No, sir; I don't know.

Q This handle has been scraped, hasn't it? A I don't think so.

Q It has been sandpapered? A It has been sandpapered.

Q Hasn't it? A I know the handle originally was sandpapered because it shows the streaks in the wood under the magnifying glass, and all over it.

The Court. You mean before any red substance was on it, don't you?

Witness. Yes, sir. I will see if I can see, sir. Well, you know there are finger markings on there but no finger-print. We can see lines all right made by the fingers.

The Court. Lots of finger marks?

Witness. Yes, sir; there are some, but no real print.

The Court. What do you mean by that, "there are some markings but no finger-prints."

Witness. There are some jumbled up lines apparently made by the touch of a finger.

The Court. But no complete impression of the whole finger, is that what you mean?

Witness. There is no conspicuous portion of any finger-print.

Re-direct.

Q What difference is there between what you call a finger mark and a finger-print? A A finger-print, of course, has to contain a certain pattern which can be described, whereas finger marks and blurred finger-

prints is a different matter; they may be superimposed, criss-cross lines, or made by heavy pressure on this one spot, that would also be an indistinct finger mark.

Q But the finger-print is a picture? A It is a picture—a reproduction of the papillary ridges in our finger tips—the corrogations in our finger tips.

Q Are you able to tell whether a finger-print is a single or composit print? I mean whether it is made with one finger or more than one finger? A Yes, sir; you can tell that.

Q And the finger-print that you found on that axe, would you say that that was made by one finger alone? A Most decidedly, sir.

Q You say that the handle itself shows that at some time it has been sandpapered? A When the handle was manufactured it evidently was sandpapered crosswise—this was across, we can see the streaks even in the photograph, that is one of the reasons why the blood impression is a little indistinct.

Q I understood you to say, Mr. Flak, that if you had a finger-print of a person and subsequently, while the finger was swollen you took another finger-print of the same finger, that that would make no difference in your ability to compare them? A Not if the skin isn't injured. If the skin is uninjured it would make absolutely no difference. It might swell and grow in disease; which sometimes occurs. It is held that in certain diseases the fingers grow larger. It has been proved that unless there has been injury to the skin the size has nothing to do with the finger-print at all. It remains the same in every detail.

Q The lines you deal with then are permanent lines, are they? A The lines we see in the skin are really determined by the sweat glands down in the sub-cuticle; there are four thousand to the square inch and they run in rings and rows and show this very design we have on the surface of the finger, and for this reason the pores and sweat glands have their

exit along the tops of the ridges. Now, you see why you can't destroy the finger-print pattern. If you pull out a little section of the skin, why you don't take off the finger-print because the design is down in the flesh, the pore holes are still there in the same order; the perspiration continues along that same ring when the skin rebuilds of course, it grows around this hole and finally the hole comes out on top of the ridges again, so you see the finger-print is absolute in one way. It will always come back again as long as you do not destroy these sweat glands down in the flesh. But you can take off the skin as much as you please and a little while after the finger-print is back again. That is why we pay little attention to the little flaws in a finger-print. We have it every day. Let a man pull off half the skin of his finger. I don't care. I will absolutely identify him again in a few days. You can take off the skin by scalding your finger or burning your finger superficially or by pulling off the skin, and the quick may appear, and you may just be able to just see the pattern very faintly, and yet it may make a sort of print at the same time—at once—that would enable you to recognize the continuation of the section of the pattern which had not been injured. Now, if you leave that skin heal again, why in a few days—or in a couple of days the skin grows out and the ridges appear little by little until they join with the uninjured part of the finger-print, and you have an absolute finger-print—or, I mean to say, an absolutely perfect finger as it was before.

Q Complete reproduction of it as it was before the injury? A Complete reproduction as it was before the injury. That is recognized by all people who know about finger-prints, by all authors who write about finger-prints.

Q Your attention was called to the white spaces between lines 6 and 7 on the ink impression and at the end of line 8, and said that the absence of a like space

in the other picture was in your judgment immaterial, if I understood you, is that right? A It is immaterial in my mind entirely.

Q Tell the court and jury why. A Well, of course, the finger may have had a sort of little elevation there, or it might have been injured, by cutting or by tearing out a section of the skin at the time this ink impression was made, and I expect these were imperfections there which have healed now in the man's hand. That is all I can say about it. In regard to the spot on the blood impression I don't know anything. It may be a surgeon could tell you about that. I attach very little importance to that defect, as a matter of fact. I wasn't very interested in that at all, seeing such a tremendous lot of corresponding details. If I had had a lot of time, of course, I would consult with other people, just for the fun of it, but it isn't necessary. In my mind the whole thing is established absolutely beyond a doubt. I can say nothing about those imperfections beyond that.

Q You find enough corresponding similarities in the two prints to make you feel certain of your judgment? A I do. I have had quite a little experience —long experience. I cannot help saying I find them to be identical. Of course it has been attempted on the part of many good people to ascertain the possibility of a duplication of many finger-prints, and as Mr. Kinsley stated before to-day—or Mr. Schwartz it was—that Francis Gordon, the English anthropologist, who has done more on finger-prints than anyone we know of—he states that twenty years ago to the best of his ability and after exhaustive inquiries, he could state and affirm that there would not be one chance in sixty-four billions—sixty-four thousand millions were his words; sixty-four thousand millions —there wouldn't be one chance in sixty-four thousand millions of finding two fingers which would carry the same design in every detail. Of course there are many

details in every finger. More than we find in these prints. But with so many correspondences this kind of evidence has been accepted time and again, and about fifteen years ago the British legalized finger-print evidence in the courts of India, and with them one finger-print would convict a man.

Mr. McDermit. Is this competent?

Witness. Of course there are many things that could be said. Now, there is a gentleman in Paris by the name of Dr. Balthazard—

Mr. McDermit. We will have to draw the line on what Balthazard says. I don't know him.

Mr. Mott. All right.

Q The evidence shows that the marks on that handle are human blood? A So I understand.

Mr. McDermit. He don't say that.

Mr. Mott. I say the evidence in the case shows that the marks on that handle are human blood.

Mr. McDermit. I object. It isn't for him to say what the evidence in the case shows. It is for the jury to say.

The Court. Finish the question.

Q Assuming that to be true can you tell whether or not the blood had completely dried or not at the time that finger-print that you found there was made? A I think it must have been. I don't quite understand.

Q Whether the blood was completely dry at the time that the finger-print was made that you found there? A At the time the finger-print was made I believe the blood was wet.

Re-cross.

Q Just show us how—let me have that hatchet a moment—you just put your finger on that hatchet in the way that the hatchet must have been made to put the finger-print impression on the spot where you say

it was taken—a photograph of it now identified by you as being on the spot.

The Court. Before you do that state whether or not by putting your finger over the precise finger-print impression there is a possibility of its being injured.

Witness. I wouldn't trust it, sir; certainly not.

The Court. You have been asked to do it. He can't do that. He can't destroy evidence in the case.

Q Take the reverse side.

The Court. Let him take something else. Haven't you got a broom handle?

Q Taking by way of indication the piece of wood there, the court pointer, in your left hand, and you are indicating the same as if the end contained in your hand, the bottom end of this pointer, was the axe handle? A Yes, sir.

Q Now show the jury where this finger—this ring finger would have come on that in order to create the impression, how the hand must have been on there? A About that way (illustrating).

Q Right clean down to the bottom? A Not right clean down, little distance, as we explained before, both Mr. Kinsley and I, it is about a quarter of an inch from the bottom of the handle.

Q Then all three fingers are touching the handle? A I don't know about the three fingers. I am only trying to get my little finger in the exact position.

Q That would be the position in which the handle must have been handled by whatever finger handled it in order to get that finger-print? A Yes, sir.

Q That would be the correct notion? A Yes, sir.

Q Now, why do you say now, that if you put your finger on the spot of the blood print on the handle that it would blur it or divest it—

The Court. He didn't say that. He said distinctly that there is a possibility it might injure it.

Q How great a possibility would there be? A Not a very great possibility. But if my finger is moist it might just efface a slight amount of the blood on there.

Q So that if moisture was applied to that handle it might evaporate or take off some of the blood? A Excessive moisture, yes, sir; maybe might evaporate it; maybe it wouldn't because the blood is a pretty curious article. It adheres and dries like paint.

Q What? A Dries like paint. Chinese use it in their lacquers.

Q Use human blood in their lacquers? A Yes, sir—no; not human blood. They use blood.

Q What kind of blood do they use in their lacquers? A They use ox blood.

Q You think that three or four or five people handling that, the fact that it has been out in the rain after its use and still shows on the 13th day of November signs of the blood finger, that you think that by handling it now and showing directly on that same instrument, that there is a possibility of it affecting it, do you? A Affecting it slightly; yes, sir; at any time. At the same time it might have been handled by a hundred persons and yet the print might not be effaced. There is a difference in effacing and injuring it to a slight degree.

Q You think that this finger-print on this hatchet is now discernible with the microscope so that it can be compared with the prints that you have taken, the photographs? A Yes, sir. I wouldn't compare it with enlarged photographs; I could compare it with the actual finger-print, the small photograph that is reproduced here. I wouldn't compare it with one large and one small. That's the reason we have two large impressions.

Q That wouldn't be a fair comparison? A Any comparison.

Q That wouldn't be a fair comparison, would it? A I don't quite understand that, sir. The small impression on the axe—

The Court. You have already answered that. He has answered that it would not be fair to compare that photograph with the larger size reproduction.

Re-direct.

Q Putting your finger on that handle over the finger-print now, and injuring the finger-print, as you say it possibly might, would that have the effect of increasing or decreasing the similarity between the two finger-prints? A It would most decidedly decrease the similarity.

Re-cross.

Q Then by reason of all the handling of the hatchet don't you think there is a decrease in the original finger-print?

The Court. He has answered it. He says, notwithstanding all that he still sees there a print of something—a finger-print.

Re-direct.

Q You speak of the three finger-print system and here you have only one finger-print. You are able from that one to form the judgment that you have expressed? A Absolutely.

Q Then why do you take the three finger-print? A To facilitate the reading of the prints.

Q To what? A To facilitate the comparison—shorten the time of comparison for those who are not well versed in reading finger-prints.

Q Is there any advantage to an expert to have three imprints rather than one? A Yes, sir; there is if the print lacks in detail, but if the prints are so

complete in detail as this, why I don't see why he should wish any more.

EDWARD H. SCHWARTZ, recalled for the State.

Direct examination by Mr. Mott.

Q Mr. Schwartz, I show you Exhibit No. 16, which I understand you to say is the original print which you yourself took of the defendant, is it? A Yes, sir.

Q I show you Exhibit No. 14, and do you know what that is? A Yes, sir.

Q That is what? A That, or rather those, are two photographic enlargements, one taken from Exhibit 16 and the other taken from the axe handle or hatchet rather.

Q And I show you Exhibit 240, and you know what that is, do you? A Yes, sir.

Q And you have examined the finger print on the hatchet handle, Mr. Schwartz? A Yes, sir.

Q From your examination of the finger-print on the hatchet and the photograph of the finger-print on the hatchet and the original finger-print of the defendant which you took and the photograph of that finger, comparing the same in your method, have you formed an opinion as to whether the same finger made both impressions? A Yes, sir.

Q What is your opinion? A That they are both identical; made by the same finger.

Q Will you kindly tell the court and jury the reasons which have influenced you to come to that conclusion? A Do you want me to explain from the time of my receiving the axe or the hatchet rather?

Q Yes. I think this hatchet came to you before it went to Mr. Flak, did it? A Yes, sir. It was received by me on June 2d.

Q Now, just tell what you did by way of study and examination of the hatchet? A This hatchet

was brought to me by Sergeant Godfrey of the prosecutor's office on June 2d, with the explanation that—

The Court. Never mind what he said. It was brought to you.

A Brought to me to make an investigation—or rather make a search for any identification marks that might lead to the party being responsible for—
10 or rather having the axe or hatchet in their possession. I made a thorough examination of it and found at the lower end, about here on the—might say flat side of the hatchet—a well-defined finger impression. Of course, I used the glass for that. I was enabled to see the lines very distinctly with the naked eye. The next day the Cerciella brothers were brought down to the office and they were finger-printed. I made a comparison between the finger-print of the two brothers and found that the impression of the left ring
20 finger of Angelo was identical with the impression on the hatchet handle. The fact of this handle being handled by numerous persons, or might have been handled by numerous persons, did not affect this impression. That come from the fact that it was in dried blood or substance resembling blood. You can handle it any way you want to, in my opinion and it would not defect or rather change any lines in that impression. It was thoroughly hardened when I received it on June 2d. It was further hardened on
30 November 19 or 20—or 19—to-day—consequently I do not think any handling that might be done with that hatchet will cause any of those lines to disappear. I took a photograph of that impression on the handle and I also took a photograph of the original impression of Angelo's. When Mr. Flak was called in the case, after these photographs that have been offered in evidence were taken by Professor Kinsley, brought to the office by Mr. Flak, and prepared by Mr. Flak and myself, and the numerous points of
40

similarity were gone over very thoroughly—but prior to this time I had formed the opinion and was positive that the two impressions—

The Court. Wait a minute. This witness ought not to state the reason for his opinion, anything that he did, unless it is exhibited to the jury. So Mr. Witness, in stating your opinion—the reasons for your opinion—you refrain from alluding to any photographs or negatives not here produced for the jury to see. If you have taken photographs which have not been produced do not say anything about them here.

Witness. I have the plates to produce.

The Court. They have not been produced?

Witness. No.

The Court. Will it be helpful to you in expressing your views to introduce those rather than the others?

Witness. I don't think so. They are similar.

The Court. Then confine your testimony to the photographs in evidence.

Q But, as the court says, do not talk about some photographs that are not before the jury or anything else that is not before the jury. You have got the photographs and the hatchet? A Mr. Flak and I, or rather Mr. Flak was making the preparation of these. He made several sets in the office. I was there while they were made—saw the comparison—and in fact we compared them together and the different points as he has already described to you and numbered on these two exhibits were—or rather a number of its similarity were gone over thoroughly by him and I and deduction formed by me, or rather opinion—positive opinion—that the two impressions are the same. Do you care to have me describe the different points as described by Mr. Flak?

Q Everything that you think is essential to the jury.

The Court. The question is for you to state your reasons why you believe these two finger-prints were made by the same digit—same finger.

Q And utterly regardless of anything Mr. Flak has said, I want your reasons.

The Court. You go right ahead regardless of whether you think we are tired or not.

Q I want you to state, Mr. Schwartz, the reasons why you think those two finger-prints are the same. A Let me have those other impressions that have been offered in evidence that you have.

Q No. 17? A Yes, sir.

Q No. 13? A I would like to have those two impression sheets.

Q No. 22 and 23? A Those are the two. Now may I get in front of the jury box there?

Q Why can't you do it there? A I can do it. I think I would be more effective in the general explanation with these other prints here.

Q You wish to point out something to the jury directly?

Mr. Mott. Have you any objection?

Mr. McDermit. I have no objection.

Witness. Referring to No. S. 240, in making a comparison between these two impressions the first object to be considered is the type of impression. This is determined as a whorl, meaning by that that the lines have one or more circle. The line mark No. 1 on your impression sheet, or rather on your photograph there, and No. 2, are practically two points of the delta upper and lower, that is the outer terminus, as we so term it (indicating). If you will compare it with the other photographs you will see that they are identically similar, both as to the general trend and the general shape. No. 3 is the abrupt ending of a line, at which, if you take your pointers

and count from the delta, excluding the delta count, you will see there are two counts in between; taking No. 4, is a bifurcation of two lines. You may also count from your delta there. You will find that the counts are four including the two lines, that is the top delta line and the lower bifurcation line; No. 5 is also a bifurcation of two lines; No. 6 is also a bifurcation, and if those lines are counted you will see that they correspond in every detail from any given—or any line you may take there on either impression; No. 7 is also a bifurcation on the inside; No. 8 is also a bifurcation; No. 9 is the lower end of a line—whether it is a bifurcation or not is hard to determine there because the impression may be a trifle distorted—but my opinion is it is the abrupt ending of a short line; No. 10 is bifurcation of it. While a trifle indistinct, still you can see or rather it is my opinion that it is an abrupt ending, No. 10; No. 11 is a bifurcation, the top of the line circling the core or inner terminus; No. 12 is the core or rather the inner terminus, the inner terminus of the core line; No. 13 is a bifurcation; 14 is a bifurcation, 15 is a bifurcation, 16 is abrupt ending of a line, 17 is bifurcation; 18 and 21 are two points of a straight line ending apparently at the divergence of one line on the inside and the other on the outside, the one line below the delta or the outer terminus; No. 19 is an abrupt ending of the line; 20 is the outside of the delta, as I have already explained, and 21 I have explained; 22 is downward trend in the bifurcation of the line and 23 is an abrupt ending of the line. Those marks or the similarity between those are so great and so accurate that in my opinion they are identically the same in both impressions.

Q Referring now to the ink impression it appears between lines 6 and 7 and at the end of line 8 there are white spaces that to my eye do not appear in the other impression. What have you to say about that? A Well, will you point out just exactly what you mean there, Mr. Mott? There are two there.

Q As I say I am referring to the white spaces between line 7 and 6 and the white space at the end of line 8. A Well, that does appear in the other impression in my opinion, but it appears dark from the fact that the one is taken from the positive plate and the other is taken from the negative.

Q And you think that the same spaces are as a matter of fact on the other plate? A I am of that opinion; yes, sir.

By the Court.

Q You don't mean by that that the black lines in the ink impressions are white lines in the alleged blood impression, do you? A I mean to state that in the blood impression on this plate here, or on this photograph, that shows black where it shows white here, from the fact that this is a positive plate from which this impression was taken and that is a negative.

Q Just those two spaces only? A As to those two spots, yes, sir.

Q But not generally, as a whole? A Yes, sir; I do mean generally.

Q You mean that all the black lines on the left-hand picture are white lines in the right-hand picture? A No, I don't mean to state that.

Q That is the impression you have given us. I want you to explain that. A I mean to state that the impression on the right-hand side, or rather the impression taken from the hatchet, was a negative first made of that impression and those lines that would show red on the axe handle are from the foroughs or

grooves in the finger and not from the ridges, consequently the ridges show white in the negative and show black in the positive impressions which you have here.

Q Are there any other reasons, Mr. Schwartz? You have spoken of the whorl and the lines, beginning and endings and forks, bifurcations, &c. Are there any other reasons? A No, sir; not only what I have spoken of and the study given to the different points.

Q Something has been said about the counts of the lines between points. Have you counted the lines between points? A I have; yes, sir.

Q What differences are there? A There isn't any.

Adjourned until to-morrow morning at 9.45 A. M.

ESSEX COUNTY COURT OF OYER AND TERMINER.

November 20, 1914.

STATE,	*Indictment*
vs.	*No.* 229.
ANGELO CERCIELLO.	*Murder.*

Appearances as before stated.

EDWARD H. SCHWARTZ resumes the stand for

Cross examination by Mr. McDermit.

Mr. Mott. Perhaps this would be the proper time to comply with the request of Juror No. 3, and possibly the desire of all the jurors to see the handle of the hatchet.

The Court. Is that the finger-print on the side of the handle where the square in white paint is made on the handle (indicating)?

Witness. Yes, sir.

The Court. That is it there (indicating)?

Witness. Yes, sir.

The Court. Any objection to the use of this glass produced by the witness?

Mr. McDermit. Yes, sir. I desire to take exception to your honor's right to show the hatchet at this time to the jury, either under naked observation or under the observation of the glass.

Mr. Mott. Why, it is in evidence.

Mr. McDermit. It is true, but it being developed that he being an expert photographer, a sight of the hatchet at this time to him must of necessity make an impression upon his mind and

that it may be prejudicial or beneficial to us, sir, to do it, and I must take exception to it.

The Court. The juror has asked to see the hatchet and he will be allowed to see it.

Mr. Mott. And other members of the jury?

The Court. Certainly.

Mr. McDermit. I object to the right of the court on the record at this time as finger-print evidence is given by the State to give that to the jury.

The Court. It will be postponed until you are through with your cross examination.

Mr. Mott. I should think that this might be the very time when it would be most useful for the jury in order that they can get the bearing and drift of the testimony.

Mr. McDermit. The great difficulty of this is counsel fails to see the other side of the case. Takes the one-sided view. Fails to understand the duty of the juror as to his relation to the defendant. The jury is entitled to withhold all opinion or notion of the situation until the evidence is complete—the last string of the evidence is complete. Now, then, if it should appear that by an examination of the hatchet at this time that a juror says that is a blood clot there and that is the finger of Cerciello, what good would be the balance of the defense to convince the juror against an opinion of that kind?

The Court. Your proposition is that a jury can't see any evidence until after he goes to the jury room for consideration?

Mr. McDermit. Not at all, sir. It is far different to the ordinary case. This is an application where this may be the turning point of this man's life. It is stronger, your honor. His rights have got to be guarded and protected.

The Court. Have you any objection? There hasn't been anything done yet up to this point?

Mr. McDermit. No, sir.

The Court. Except that the court has requested the witness to examine the handle and indicate exactly where the finger-print is to be looked for, or what is supposed to be a finger-print. Now the prosecutor requests that it might be the proper time to comply with the request of a juror yesterday to see the hatchet and the witness states that perhaps it can be seen better by the use of a glass, and he produces the glass. Have you any objection to the use of that glass by the jury?

Mr. McDermit. I have objection to the use of the glass, also use of the hatchet, as it appears on the record that one of the jurors declared to the court that he was a photographer and therefore competent to pass on the question of what it might or might not be.

The Court. The court has directed that particular juror and all jurors to disregard their private knowledge because the defendant is entitled to know the evidence against him and if a juror comes into the box with particular knowledge which the court and the rest of the jurors do not know and the defendant has not heard, it is unfair to the defendant. He ought to know all the evidence that is being used against him. That is not the point now. The point is have you any objection to the use of the glass. The court has already ruled against you on the other because the hatchet is in evidence. You may cross examine the witness as to the glass.

Mr. Mott. Are you an expert on magnifying glasses?

Witness. No, sir.

By Mr. McDermit.

Q What is the glass you have there, Mr. Schwartz? A It is the ordinary magnifying glass used by finger-print men in examining the usual run of finger-prints.

Q It is just a magnifying glass? A Ordinary glass.

Q Does it in any way distort or change the picture of the handle or any part that you look at through it except to increase its size? A No, it does not.

Q You couldn't tell whether there was any defect in that glass except as it reflects to you the object? You made no test of magnifying glasses for this case? A No, sir; I have not.

Q You never made a magnifying glass? A I have not.

Q You have your own magnifying glasses? A Many of them.

Q You take it for granted the magnifying glass you have got there is a properly focussed glass? A I have another one I can use just as well as that.

Q I haven't asked you about having another one.

Mr. McDermit. I object.

By Mr. Mott.

Q How long have you used this glass? A About ten years—ten or eleven years.

Q And from your use of it did you find anything wrong with the glass in the way it magnifies things? A No, sir.

Mr. Mott. I submit, your honor, that there can't be any question about the propriety of allowing the jury to see the hatchet and see it through a magnifying glass. That is all that a photograph is.

The Court. Have you examined the finger-print yourself, Mr. Schwartz, on the hatchet?

Witness. Yes, sir.

The Court. Without the aid of a glass?

Witness. Yes, sir.

The Court. And have you examined it through this glass?

Witness. Yes, sir.

The Court. And is there any difference between the finger-print to your naked eye and the finger-print through the glass except that through the glass it is enlarged?

Witness. No, sir; with the exception that I am a trifle near-sighted and I couldn't see it very well with a naked eye and I had to use a glass to make it out. That is the only difference.

The Court. Did you see it with your naked eye?

Witness. I did; yes, sir.

By Mr. McDermit.

Q Did you ever have this glass tested? A No, sir.

Q If it was defective originally it is still defective, as far as you know? A As far as I know.

Mr. McDermit. We object.

The Court. Is there anybody else that can testify to this glass?

Witness. Mr. Flak has used it; yes, sir; in my office.

The Court. Proceed with the general cross examination.

Cross examination by Mr. McDermit.

Q Look at these two pieces of paper? Look at both of them. Don't get your fingers too much on them. Keep them as gently as you handle the axe.

Mr. Mott. What was the ruling of his honor?

The Court. The court has withheld its decision for a few moments.

Q Any finger-prints on those papers? A I don't see any.

Q Any way to determine whether there is or not? A Yes, sir.

Q Can you see any with the naked eys? A No, sir.

Q What is the difference between finger-prints upon clean wood and finger-prints upon a clean paper; any? A It all depends upon the condition of the fingers. I have explained that to you.

The Court. Proceed Mr. Witness, and answer the question.

Witness. The only difference would be that on a clean sheet of paper if the hand is dirty or dusty in any manner the impression may be seen with the naked eye, if not it can be developed. On wood the same conditions would exist as to the condition of the finger.

Q If the fingers were clean and placed on wood could it be seen by the naked eye? A No, sir; with the exception on dark surfaces, mahogany—something of that sort—highly polished.

Q Do you know what class of wood there is in that handle? A No, sir. I didn't—I haven't examined it for that purpose.

Q I am speaking of a clean piece of wood—new piece of wood? A Pine or other such wood as that.

Q Unpainted wood similar to the wood in the hatchet handle? A If there is any substance on the handle to leave the impression there of the finger it would show.

Q Otherwise you couldn't distinguish it with the naked eye? A No, sir; you could not.

Q How long would the impression remain placed by a clean finger upon a clean piece of wood—how long would the impression remain on the wood? A Anywhere from three to eleven days.

Q And could you photograph it after the eleventh day? A By developing, yes, sir.

Q You could photograph it after the eleventh day? A If it was developed.

Q If it had been developed originally? A No; not if it had been developed originally—might have been developed during that time and photographed.

Q We will give you something easier. After thirty days can you see the impressions upon the wood either by the naked eye or by the lens or any other project known to you? A If there was any substance on the finger, leaving an impression there, yes, sir.

Q I am asking you if the fingers were clean and the wood was clean or new and the finger-prints were put upon the wood, could you, after the expiration of thirty days photograph or in any way obtain any enlarged impressions upon that piece of wood? A If the finger and wood were absolutely clean, no; you could not.

Q So that in order to arrive at any conclusion upon which you base this opinion to the jury there must have existed something on this finger-print that was other than the mere finger-print; in other words it must have been some substance there of a liquid nature that would dry and hold that imprint to the wood; is that right? A Yes, sir.

Q Now, suppose, Mr. Schwartz, that I gave you a clean hatchet and I placed my mark upon the hatchet with a clean finger—clean hatchet—handle—new hatchet handle—how long would that remain on the hatchet handle? A Well, my investigation perhaps about ten—eleven days.

Q Ten or eleven days. Now if after having put the impression upon the wood with my finger it afterwards had some blood or other liquid passed over it or upon it, would it hold the finger-print there more securely? A Indefinitely.

Q It would hold it there indefinitely. Suppose that the wood was first smeared with blood and then

the finger-print—then the finger was put on top of the blood, what would be the effect? A The same thing.

Q So that there is no difference whether I put my finger on the hatchet—on a clean hatchet—a clean finger, this way, without blood or other substance being on it and I afterwards removed my finger and then blood or some substance goes upon it—it would be the same condition, is that your judgment? A That is placing the finger identically over the previous impression you would put there with the clean hand.

Q I assume that it is the same identical finger marked in the same identical location? A Why, yes; the finger impression with the substance on it would show and the other would not.

Q You do not seem, perhaps to understand me. I first take the hatchet and I place my finger on the hatchet? A Clean finger.

Q As I place it on this (illustrating); there is nothing on the hatchet; my finger is clean; the hatchet is clean. I then withdraw my finger and after my finger is withdrawn that impression becomes partly or partially or wholly steeped in blood after the impression is made on the clean handle by the clean finger, and then the finger is withdrawn and the impression remains there; after that, blood is touched against that impression. Now, then, carry that? A Yes, sir.

Q Now, then if blood is on the hatchet and I put my finger over the blood on the hatchet, would there be any difference in the condition to be discovered in that examination? A No, sir. The first finger-print would be obliterated and the second would show.

Q What is that? A The first print would be obliterated and the second would show.

Q I am not taking the same—double impression; I am speaking now of the difference between two separate parts of the axe or hatchet for the purpose of showing a comparison. Do you understand me now? A I understand you.

Q I am saying—follow this question—I take the figure and place—the clean finger—and place it upon the hatchet at a given point with no substance whatever on it.

The Court. Are you going all over that?

Mr. McDermit. I think it is necessary because he certainly, clearly misunderstands the situation.

Q —and than that finger is removed and after the finger is removed blood is placed upon that spot. That is one proposition. The second proposition is if blood is on the wood when the impression of the finger touches the wood upon that particular portion of the wood, making it two separate spots upon the wood—would the conditions be the same? A I have already answered that, that the first impression on which you have placed your hand on the axe handle and then blood put on would show nothing. The second impression, where the blood is already on the handle, put your finger there, it would show the impression.

Q The first wouldn't show anything? A Certainly would not.

Q Then, if the blood got on this hatchet handle after the use of it by the finger there could be no development of that finger? A Hardly.

Q There could be no development? A There could be no development.

Q Isn't that true? A Yes, sir.

Q So that to assume your position upon which you found your opinion the blood must have already been on the handle of the hatchet when he had hold of the hatchet, is that right? A Not necessarily.

Q Then how could it have got on? A Why it could have been on his hands.

The Court. What could have been on his hands?

Witness. The blood.

Q How long would it take you to develop— A Why, the clean impression—

Q The clean impression.

The Court. Wait a minute, Mr. Witness. You do not have to foresee the possibilties of the question. Wait until you hear it.

Q How long would it take you to develop the clean impression on wood—new wood? A That all depends on the circumstances—a second or two.

Q Can you do it in open court? A Why, surely.

Q Is the same process used upon the handle—upon wood that it is upon paper? A May differ some.

Q In what respect would it differ? A May use different powder; all depends on what object it is placed on.

Q What respect? A The development would be the same by the use of powders.

Q The development would be the same? A Yes, sir.

Q Put your magnifying glass on those two white papers and see if you can observe anything with the magnifying glass upon either one of those two papers.

Papers marked Exs. D1, and D2 for identification.

A No, sir.

Q Why is it if they are there that you can't see them with the magnifying glass? A Why, the reason of that is that the impression that is left upon there, if there be any impression on that paper had the natural moisture of the hand and it is not visible to the naked eye without being developed.

Q Would it be visible under your microscope? A No, sir; unless the hand was dirty.

Q At no time? A No—oh, yes; after development; yes, sir.

Q Suppose it was placed on twenty minutes ago, would you be able to see it with the naked eye or with your microscope that you have used in this case?

The Court. He has already answered that.

Q Test those two pieces of paper? A With powder?

Q Anything you want. A (Witness complied).

Q Any finger-prints on them? A Yes, sir.

Q Look at the other one. A Both sides?

Q Yes; both sides.

The Court. Of what?

Witness. Of the paper impressions.

The Court. Which is that?

Witness. Exhibit D2 for identification. There are slight impressions on that side (indicating).

The Court. Of what?

Witness. Finger impressions. This is D1.

Q Anything else on that paper except finger-prints? A Not that I can see.

Q Is that test a fair test? A Why, surely.

Q Is that a complete test? A Yes, sir.

Q As to whether that is a finger-print or not? A Yes, sir; it is a finger-print.

Q There are no other prints on that outside of finger-prints, are there? A May be some marks of some kind.

Q Look at it carefully and see whether there are any other marks other than finger-prints upon it. A Yes, sir; on this side it appears as if the finger were drawn across that and the figures indicate that perhaps the hand was drawn that way or some other way substantially; I can't say whether it is fingers or not, but there are finger-prints on those two slips of papers.

Q Now, if those finger-prints had been on the papers for thirty days could you have discovered them?

The Court. He has already answered that.

Q You expressed your opinion that what is shown to exist on the photograph was the finger-print that appeared upon the hatchet, did you? A I did, sir.

Q And you expressed the opinion that it was the finger-print of the defendant, Cerciello? A Yes, sir.

Q And you said that there couldn't be any mistake? A Yes, sir.

Q Now, are you willing to still stand by that? A Positively.

Q Unqualified statement, and say that there can be no question but what the finger-print upon the handle of the hatchet is the finger-print of Cerciello? A Yes, sir.

Q Where are the other finger-prints of the other Cerciello? A I don't believe I have them here.

Q Where are they? A Down in the office.

Q Did you examine those? A I did, sir.

Q Did you examine them in connection with the hatchet? A I did, sir.

Q Why did you do that? A Why I did it?

Q Yes. A Why, to make a comparison of everything available that I have.

Q Did you have any other finger-prints for comparison except the brothers when you made the comparison? A I had others.

Q Why was it that it was necessary to use the brother's finger-prints for comparison? A I made a comparison between several—

Q Why was it necessary to take the finger-prints of the other Cerciello or comparison with his brother's fingers? Give us that reason. A Yes, sir; I examined the brother's before I examined this one's here.

Q The defendant's? A Yes, sir.

Q And you had examined the other brother's first with a view to ascertaining the finger-print upon the hatchet; is that right? A Yes, sir.

Q And after you had ascertained that his was not the finger-print that you wanted, what did you do? Report that to the prosecutor's office? A I did not.

Q Make any report on it at all? A Not at that time.

Q When did you first make a report that that Cerciello print was not the print upon the hatchet? A After I had examined several other impression sheets which I had of other people, then I told Mr. Godfrey that I identified the impression made by the defendant on my impression sheet with the one on the hatchet handle.

Q Is there anything upon the finger-prints that I have just showed you that will give you any notion as to who they were? A Why, certainly.

Q You saw those made, didn't you? A No. I saw Cerciello place his hand on it.

Q You saw those finger-prints upon the two pieces of white paper I just showed you made, didn't you? A No, sir.

Q Didn't you see Cerciello at ten o'clock place his hand upon those two pieces of white paper? A No, sir; only on one sheet.

The Court. What Cerciello?

Mr. McDermit. The defendant.

WALTER GODFREY, recalled for the State.

Direct examination by Mr. Mott.

Q I show you a handkerchief, Mr. Godfrey, and ask you if you have seen it before? A I have, sir.

Q Where did you first see it? A Lying alongside of the body on the field at Grove and Bloomfield avenue.

Q And is that the handkerchief you testified you picked up and put in the basket? A That is the handkerchief that was picked up and identified by the brother-in-law—by the husband and put in the basket with the body and taken to the morgue.

Q Did you show that handkerchief to the defendant? A I, personally, did not. It was shown to him in my presence.

Q Who showed it to him? A The officer.

Q What officer? A First Officer Marshall and afterwards Chief Weimer, I believe.

Q And did you hear what the defendant said when it was shown to him? A He said that the handkerchief belonged to his wife, and Vincenzo also.

Q Never mind. Was Vincenzo present at the same time? A Yes, sir.

Q In the presence of the defendant? A Yes, sir.

Q You also said you picked up a couple of combs, did you, or do you know anything about the combs? A Yes, sir.

Q Did you find these yourself? A They were with the body and taken to the morgue and I brought them to the court house with the clothing.

Q And this bundle of clothing here is what? A Clothing taken from the body at the morgue and brought here by myself.

Mr. Mott. I now offer in evidence the clothing, the handkerchief and the comb.

Cross examination by Mr. McDermit.

Q Do I understand you to say that this handkerchief you showed the defendant? A I said it was shown to him in my presence, sir.

Q Shown to him in your presence and he said it was his wife's handkerchief? A Yes, sir; both the defendant and his brother.

Q There are initials on there, aren't there? A Yes, sir.

Q What are the initials? A E. V.

Q That is the initial represented Elvira presumably? A I suppose so. I can't answer that question.

Q And the comb? A And the combs were found with the body and taken to the morgue in the basket with the body, and brought to the court house by myself.

Q Were the combs shown to Cerciello? A Not to my knowledge.

Q Did you show him anything else? A No, sir.

Q You examined all the clothing? A Yes, sir.

Q Do you know what it consists of? A Yes, sir.

Q So that we can get it upon the record? A Yes, sir; I think I can name everything there.

Q Tell us what it consists of. I think it is fair that the jury should have a chance to observe each particular piece as he identifies it upon the record.

Mr. Mott. It all goes to the jury.

The Court. As the witness mentions the clothing show it to the jury.

A There is a coat. This is the coat, black or dark blue (indicating). This is the skirt taken from her body, red flannel petticoat, chemise, waist.

Q Any buttoms on that waist? A Yes, sir.

Q What kind? What is the color of them? A Small white pearl buttons.

Mr. Mott. I object to any testimony as to the color of the buttons. They are in evidence and the jury is just as good a judge of that as we are.

A (Continuing.) Corset cover; these are her corsets, pair of buttoned shoes, pair of black stockings, part of a rat that was in the hair.

Mr. McDermit. I understand that is now offered.

Mr. Mott. Yes; all of it.

Handkerchief marked Exhibit S. 26.
Clothing marked Exhibit S. 27.
Comb marked Exhibit S. 28.

MARGARET FERRARA, sworn for the State.

Direct examination by Mr. Mott.

Q You are a married woman? A Yes, sir.

Q Were you any relation to Elvira Cerciello? A I was, sister.

Q What was your name before you were married?

A Margaret Vietolo.

ALPHONSO LAUDISI, sworn for the State.

Direct examination by Mr. Mott (through the interpreter).

Q Laudisi, how old are you? A Twenty-eight.

Q Are you single or married? A Married.

Q You are now confined in the Essex County Jail, are you? A Yes, sir; I am.

Q And you are awaiting sentence on a conviction of murder in the first degree?

Mr. McDermit. I object.

The Court. Objection sustained.

Q How long have you been in jail? A Ten months and ten days to-day.

Q And when you were put in jail what part of the jail were you put in? A Where the murderers are kept.

Q And how long did you remain in the place—part of the jail where the murderers are kept? A Ten months and ten days—ten months and ten days I was—I was ten months in the murder place and ten days I am separated from that.

Q You mean for the last ten days you have been in another part of the jail? A Yes, sir.

Q While you were in the jail did you see the defendant there? A Yes, sir.

Q Do you recall when you first saw him there? A The 3d of June—was Tuesday.

Q And did you have any conversation with him? A From morning to evening; all day long.

Q And while you were in the jail up there how many times did you talk with him? A Three months; June, July and August, I spoke with him.

Q During September and October and November so far have you had any conversation with him? A From the day that man by the name of Faresi come here— come in the jail—I didn't speak any more with Angelo.

Q And by Angelo you mean the defendant? A Yes, sir.

Q Are you able to tell the conversation you had with the defendant on any particular day? A Yes, sir; I am able.

Q Do you recall when you had the first talk with him? A The first time that he came we had a conversation and he told me that it was better that the end in that way because if she would come back home they would call me cuckold.

Q Do you remember when you had the next talk with him; can you fix the day? A On the 9th of June.

Q What did he say to you on that day? A He told me, referring to Angelo, that "My brother and my sister-in-law, they can help me or they can betray me."

Mr. McDermit. "They can help me or they can ruin me."

The Court. Your point is that the answer as given by the interpreter is not correctly interpreted?

Mr. McDermit. Yes.

The Court. Now, Mr. Interpreter, what is the interpretation as you give it?

The Interpreter. "My brother and my sister-in-law, they can help me or they can betray me."

Mr. McDermit. We say that he used the word "ruin."

The Court. What word did he use?

The Interpreter. He used "betray—tradito."

Mr. McDermit. He used the word "rovinato," which means "ruin," instead of "betray."

The Court. Ask him whether he said "ruin" or "betray." Use the precise Italian word.

The Interpreter. "Ruin."

The Court. That is not the word that he used before; but the jury have the whole matter before them now, and I think they can understand it.

Mr. McDermit. I am informed that the answer should be "They can help me or they can ruin me."

The Interpreter. Can I ask him again?

The Court. Ask him whether he said ruin or betray, using the precise Italian words.

The Interpreter. "Ruin."

Q Well, did he say anything else? A "I don't believe that they will ruin me because I helped things; I give the groceries, and I am sure they will not ruin me."

Q Is that all that you recall of that particular conversation? A Some other.

Q Well, what else? A I told them that if they do not find the hatchet it was impossible that they will arrest him and his brother, and he said that the hatchet will condemn me.

Q Well, did he say anything else at that time that you recall? A That evening he don't tell me anything else.

Q Do you remember when you had another talk with him? A The 12th of June, then his lawyer came and his brother from Jersey City came also and Federici and the interpreter of the lawyer. It was Thursday, that day.

Q And what did Angelo say? A "My brother-in-law" (this Angelo is speaking). "My brother-in-law told me that they are not eye witnesses, so I can be happy; they do not have anything on me."

Q Anything more? A Angelo continuing the conversation, said "My wife must come out from her grave and tell that I was who did it."

The Court. Did you say told or tell?

The Interpreter. My wife must come out and tell that I was who did that.

Q Is that all of the conversation that you recall of that day? A Yes, sir; I don't say anything more.

Q Do you recall when you had your next conversation with him about this case, I mean? A I don't remember the date, only these three dates I remember.

Q Well, tell us what he said to you in the various conversations you had with him the date of which you cannot recall? A I don't remember well.

Q Well, just see; just try to remember what you can of the other things that he told you. A When the colored man came—was Wednesday—I asked Angelo to ask the colored man how many times you struck your wife. The colored man answered, "I struck"—

Q Was Angelo there at the time? A Yes, sir.

The Court. He says he asked Angelo to ask the colored man?

Witness. He asked the colored man how was his hatchet that he used.

Q What was his answer? A The answer was that the colored man came to the jail there and he asked—Angelo—to ask the colored person there how many blows he struck to his wife, and Angelo speak English, he asked the colored man, and he said, the colored man speaking to Angelo, "I strike two times my wife with a hatchet."

Q Go on. A He asked the colored person—he, meaning Angelo—he asked the colored fellow, "How your hatchet was"; the colored man answered that it was an old one, and Angelo said, "Mine was a new one, for this reason the blood dried right away upon the handle, and it was quite cold that evening and for that reason the blood dried right away.

Q Well, go on and think of something more. A I begged him to ask the colored fellow why he don't run away and the colored fellow answered that he had something in his throat.

Mr. McDermit. The colored man or Angelo?

The Interpreter. The colored man said that.

Mr. McDermit. I object to going into the trial of some other case.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court; the same is allowed and it is sealed accordingly.

Wm. P. Martin (Ls)

Judge.

Q Go on, Laudisi, now, and tell us any other conversation you can think of. A I asked him why the colored fellow don't run away and Angelo answered because he was a fool. Angelo answered, "I went back to the body of my wife and touched her and I had my finger full of blood and I sucked them.

Q What do you mean, the finger? A The finger, so was able to run away from the body.

Q Go on, anything else that you think of? Take your time. Think it all up. A I spoke to him and I said to him, to Angelo, about his finger, why don't you do as Fiore did?

Q Give us the whole conversation. A I told him that Fiore, he used the point of a needle to scratch the point of his finger, and Angelo did—and every evening for three months, June, July and August, he used to rub them, the fingers in the end—every evening—under the water closet there.

Q What did he rub them on? A Upon the floor.

Q And what was the floor made out of? A They are brick. And Angelo told me one evening to "Look at my finger"; it was about nine o'clock; he says, "Look at my finger; only you and Nick and I will know about them."

Q Do you know who he meant by Nick? A Over there (pointing).

Q (Stand up.) Peter Descovitz? A That is him.

(By consent, Descovitz was excluded from the court room.)

Q You were telling us something that Peter or Nick, as you called him, said or did. A He was there when we spoke about this rubbing of the finger upon the floor.

Q Well, go on, Laudisi, and tell us everything more. Did Angelo say anything to you by way of thanking you for making the suggestion? A Yes, sir; he said "Alphonso, I thank you for this service, why didn't you tell me sooner?" and he asked me if some sand paper would be better—"tell to your wife to bring me some sand paper."

Q Was your wife visiting you at the jail at that time? A Every eight days she come visiting.

Q Go on and tell about the sand paper. A He told me seven or eight times to ask my wife for the sand paper, but I told him "No, I am afraid that the keeper will discover that sandpaper and I will get in trouble."

Q Did he tell you why he wanted the sandpaper? A Yes, sir; to polish better his finger.

Q Did he tell you why he wanted his fingers polished? A "So if they will have my picture taken of my fingers they will be different."

Q Well, can you think of anything more he said? A Yes, sir; I remember some others.

Q Go on and tell us. A One day Angelo told me that the children of his sister-in-law went to his store and took some candy—some other things—and the Aunt Alvira beat them "My little niece and nephew come to me and told me."

Mr. McDermit. I object and ask to strike it out.

The Court. He says Angelo said to him.

Mr. McDermit. I object to this testimony because it is incomeptent and irrelevant to the issue.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court; the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A (Continuing.) The little ones they come to me and told me that the Aunt Alvira have struck them and for that reason I cannot see very well her because she struck so many times the children.

The Court. That is a literal translation.

The Interpreter. Yes, sir.

The Court. Translate it into English so that we can get the meaning of it.

The Interpreter. Well, he said that he was sorry about her because she struck the children, the children of his sister-in-law. He was sorry—he was mad at her.

Q There is lots of difference. Which is it? A He was very jealous; he don't like to see the children beaten by the Aunt Alvira.

Q Now, go on and tell us anything more you think of. A I said to him, "Why you cut her so many pieces, why didn't you use the revolver," and he answered me "if I did use a revolver they will heard the shooting—the shot—they will hear the shot."

Q Go on and tell us anything more. A I asked him "Where did you put the revolver?" "I put the revolver in the drawers of my brother and the bullets or the cartridges I throwed them in the water closet so the authorities they can't find anything in the store."

Q Well, go on. A Another day Mr. De Rogatis come in the jail and took from Angelo the sweater and the shirt.

Q Well, go on. A "They took away my shirt."

Q Who said this? A Angelo, continuation of the conversation. Angelo said, "I put on a black shirt just to make a fool of the prosecutor's office—of the authorities."

Mr. McDermit. Which did he say, the prosecutor's office or the authorities?

The Interpreter. The law.

The Court. Make a fool of the law?

The Interpreter. Fool of the law.

Q Go on. A In this world we must fuck and cry.

Q Is that all you can recall now? A Moment. "When I went to the funeral of my wife, when I was in the carriage I fainted but was not really fainting but only to deceive the people."

Q Well, take your time, Laudisi, and think. Anything more? If you can't, all right. A After the night was the murder committed the sister-in-law asked him "With whom you had trouble?" because he was full of blood; he answered, to the sister-in-law, "Help me, save me. I did kill my wife," and they told him to wash up and undress and that his brother give him his pants—his trousers.

Q And did he tell you what he did with the rest of his own clothes? A They burned them up in the night in the stove.

Q Anything more? A That day, Thursday—this is the continuation of the conversation—"my wife was most all day in the shoemaker's store, and all day I was worried, and I told her in the evening we will go out and having a walk, and that evening I make her go about fifteen minutes before me out from the store, and after fifteen minutes I went after her; I prepared myself with the hatchet behind my pants and big

knife and bottle of whiskey. I told him I read in the paper—in the paper was written that they found a knife, "What you will say when Joe Federici comes here—what you will say about it."

Mr. McDermit. To Federici?

A (Continuing.) I will say to him that some women went for dandelions and they have lost the knife.

Q Well, did he tell you what he did after he sent his wife out—did he tell you what he did after his wife went out fifteen minutes ahead of him? A "I told her go there over the grass and we will have sexual intercourse," and he asked me, "How long you don't have any sexual intercourse," and I told him five months I am arrested; and I asked him "And you how long?" "From that evening when I had sexual intercourse with my wife up in the grass."

Q Go on and tell us what he said he did after the intercourse.? A "After I begin to quarrel with her because she was all day in the shoemaker store, and the wife answered me, 'Why are you so jealous, for he is some relation to me.' After I drank the whiskey and I beginning to strike her with the hatchet, and I went away. After ten minutes I went back there to see if she was alive or dead—I went back there and saw her that she was living yet; I strike her another three or four times.

Q Go on. A Then I throw away the hatchet, far away from there. I was taking the bracelets but afterwards I was afraid that the law will find the bracelet in my house and I left the bracelet near her.

Q Do you recall whether he ever called your attention to the fact that it was the thirty-ninth day since his wife died?

Mr. McDermit. Objected to as leading.

The Court. Ask him first if he recalls anything more.

Mr. Mott. I thought I had.

Q Do you recall anything more, Mr. Laudisi? I want you to exhaust your memory? A He said after he went home and washed himself, about twelve o'clock in the night he telephoned, and after twelve o'clock he telephoned to the station house that his wife don't come back—wasn't home.

Q Well, anything more, Laudisi? A I don't remember anything more.

Q Do you recall whether he ever called your attention to the fact that it was the thirty-ninth day since his wife died?

Mr. McDermit. The question is leading and suggests some sort of conversation had with him and the defendant.

The Court. What can you do when conversation is related and the witness, apparently, according to the information of the examining counsel has overlooked something? He, in good faith, leads him. Hasn't he got a right to do that?

Mr. McDermit. Not in this kind of a case and this kind of a witness.

The Court. What is the trouble with this kind of case and this kind of witness?

Mr. McDermit. This man is being tried for murder and this witness is convicted of murder.

The Court. You haven't brought that out yet. You refused to let it come out.

Mr. McDermit. The prosecutor admitted it.

The Court. No admission.

Mr. McDermit. It appears that this man is in jail and has been for ten months. I believe it is a frame-up and I believe it is my duty to object.

The Court. You can argue that later. Your remarks are improper at this time. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q (Question read.) A Yes, sir; I remember.

Q Tell us about that? A He said "To-day we will eat and I hope to-morrow also, but she can't eat any more, she stinks already." The day after, I passing near by him and he was eating a sandwich "So I will like to eat up her—bite up my wife—my pig of a wife."

Q Is that what he said? A "I would like to eat her up as I am eating this sandwich."

Q And I call your attention to one other thing, did he ever say anything to you as to whether his wife was pure or not when he married her?

Mr. McDermit. I object to now trying to establish a motive for the commission of this offense by asking him a direct question as to her purity. That couldn't be conceivably proper.

The Court. Objection overruled. It is plainly proper.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A He asked me "How did you find your wife when you married her? and I said, "I found her all right," and he said "She was not virgin—she was not pure."

Q Who did he refer to? What was his language?

A He asked me—Angelo asked me "When you mar-

ried how did you find your wife"? and I answered him "I found her all right," and he said "Mine was not virgin; for that reason I kept her with a bad eye."

The Court. That is a literal translation, isn't it?

The Interpreter. In English I would say "For that reason I made her."

The Court. For that reason I watched her.

Mr. McDermit. For that reason I kept her under my eye.

The Court. We will adopt that translation. Is that correct, Mr. Interpreter?

The Interpreter. Yes.

The Court. "For that reason I kept her under my eye." You said, "bad eye." That is literal. The exact words in Italian transferred into English, but the meaning of the sentence is "For that reason I kept her under my eye." Is that correct?

The Interpreter. Yes, sir.

The Court. If that is agreed to by counsel, it will be accepted.

Q Go on and tell us the rest of that conversation about his wife at that time.

Mr. McDermit. Wait a minute. Was there any rest of that conversation?

The Court. Objection sustained.

Q Tell us the rest of the conversation, if there was any? A "After I married her I was thinking to open the gas, but think of my brother's children I was afraid to do that, and I was afraid also that she would die in my home and they would arrest me right away."

Q Do you recall whether he said anything to you at any time about a button?

Mr. McDermit. That is objected to as suggesting an answer. Improper examination.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A He told me also that in that night "she tried to defend herself, poor soul, and she grabbed me, and she tried to defend herself and a button flew off from my sweater."

Mr. Mott. I think that is all, possibly I may think of something else.

Cross examination by Mr. McDermit.

Q You talk pretty good English, Laudisi? A I speak well Italian.

Q How long have you been in this country? A Ten years. I can't speak English.

Q Didn't you talk English all the time or most of the time while you were at the jail? A No, sir; we spoke all in Italian, and Peter here spoke in Italian, and Peter understands very well Italian.

Q You understand me very well, don't you? A You must speak to the interpreter in English and then the interpreter will speak to me in Italian and I will answer the question.

The Court. Tell him to answer the question if he understands his questions.

Witness. Yes, sir.

Mr. McDermit. I would prefer to examine in English, if he talks English.

The Court. Try to answer him in English, and if he doesn't understand he can ask the interpreter.

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Witness. I understand very well, but I can't answer.

The Court. Tell him to do the best he can.

Witness. I will try, your honor.

Q You have been convicted of murder in the first degree? A Yes, sir.

Q For the killing of a four-months-old baby? You can answer that question. Four-months-old child?

(The interpreter put the question.)

Witness. No; he was not—one week old. He died in one hour when he was born.

Q You are convicted of killing a child? A Yes, sir.

Q Whether it was one week old or four weeks old. Where is your wife? A She is over here (indicating).

Q How many children have you got? A One girl.

Q You lived with your sister-in-law as man and wife, didn't you? A Yes.

Q And you had two children by your sister-in-law? A One.

Q Had one by your sister-in-law. And you were convicted of murder in the first degree what date? A The 13th of May I was convicted.

Q The 13th of May this year? A Yes, sir.

Q And you have been kept in jail since the 13th of May until the present day and haven't been sentenced? A Yes, sir.

Q And a few weeks after you were convicted the Cerciello brothers were brought to the jail charged with murder? A Yes, sir.

Q How were you convicted, in what way? A First degree.

Q By whom, by a jury? A A jury; yes, sir.

Q In what court—what country? A This court.

Q In this building—upstairs? A Upstairs.

Q Now you were waiting sentence at the jail when the Cerciello brothers were brought in charged with murder? A Yes, sir.

Q And there was confined in what is called murderers' row beside you eight or ten additional prisoners, besides Cerciello, on the charge of murder? A Yes, sir; I was there for ten months; there was eight or nine persons, and I and Cerciello were the only Italians; the rest were Americans.

Q And you talked to the other prisoners? A I can't speak to them because I am Italian; spoke only the Italian language, and for that reason I spoke to Cerciello only.

Q You know Sauruso? A Yes, sir; I know him, but on the 14th of June he had some trouble there and they put him in another place.

Q He was in murderers' row and talked Italian? A Yes, sir.

Q And you talked Italian to him, didn't you? A Yes, sir.

Q And you and Angelo Cerciello talked with him together, didn't you? A Yes, sir; I spoke with Cerciello and Sauruso a few days, up to fourteen days, until they took him out.

Q So that there was more than one Italian there besides you and Cerciello, was there not? A Only I and Cerciello, we were Italians; the rest were Americans, Irish and Pollocks, and some other nationality.

Q Is that so? A The 28th of August another man came there, an Italian, by the name of Farece, his country folks, and from that day he never spoke to me again; but for three months he spoke always with me.

The Court. "He never spoke to me again." Who does he mean?

Witness. Angelo. From the day that Farece come in, Angelo, he don't spoke—he didn't speak to me any more.

Q When did Farece come in there? A The 27th of August.

Q Then all the talk that you ever had with the defendant was between the 3d day of June or the 4th day of June when he came there and the 27th day of August, is that right? A Third of June he come in; on the 27th day of August Farece come in, told this words, "I will never speak to anyone. If my father would come here I will not spoke to him, because my lawyer told me to keep quiet."

Q Why didn't you talk to him the 27th day of August down to the present time? A Because Farece told him to look out for Alphonso, he is going out and speaking with the detectives, Federici and DeRogatis.

Q You didn't talk any more to Cerciello because Farece told you not to, to look out for Angelo, is that right?

The Court. He didn't say that. He says Farece told Angelo not to talk to him because he was going out to talk to DeRogatis and Federici.

Q What caused you not to talk to Angelo—with the defendant—after the 27th day of August, now give us your full explanation, your full reason. A Because Farece told Cerciello "Don't speak no more to Alphonso because Alphonso go out and speak with the detectives, Federici and DeRogatis, and he go always down to the court house."

Q Then it was Angelo who refused to talk with you after the 27th of August and not you refusing to talk to Angelo, is that it? A Yes, sir; he don't speak to me. They were spoken together and for that reason I don't spoke to them; they kept by themselves with proud; they were proud; they wanted to speak together.

The Court. Do you mean with pride?

Mr. McDermit. They kept in a crowd to themselves.

Witness. And so I myself kept by myself with pride.

Q Now you say that Farece told Angelo in your presence not to talk with you any more, that you were giving information to Federici and that you were being taken to the court house to the prosecutor's office, is that right? A They spoke together and I saw by their looking that they don't care to speak to me.

Q That is not the question.

The Court. Repeat the exact question to him again.

A Yes, sir—they, Farece told Cerciello in front of me "Don't speak with Alphonso," and every time that I went to the gate of the cell they come out from their gates and looking at me.

Q Had you been brought down to the prosecutor's office before the 27th day of August in connection with this case at any time? A The 16th of October I came here.

Q How many times were you brought down from the jail to the prosecutor's office in regard to the Cerciello case? A The first time they didn't call me, they don't speak to me, but the second time the 12th of October they spoke to me.

Mr. Mott. Did he say October or November?

The Court. He said October; maybe he misspoke.

Q Who brought you down the first day from the jail to the prosecutor's office? A A detective.

Q What detective? A (Pointing.)

Q You mean Mr. McManus? A Yes, sir.

Q Where did he bring you to in the court house? A Down in the office of the prosecutor.

Q Who did you meet there? A I met this gentleman here (indicating Mr. Mott).

Q Who else was there besides Mr. Mott? A I, the interpreter, the prosecutor and this other man.

Q Indicating Mr. Godfrey? A Yes, sir.

Q What was the name of the interpreter? A Federici.

Q This handsome gentleman here, Joseph Federici? A Yes, sir.

Q And what did you say to Joseph and what did Joseph say to you? A All what Cerciello told me I told them.

Q You told them? A That is all.

Q And of course, you told it in English or Italian? A In Italian.

Q And was it taken down in Italian? A Yes, sir; took in Italian when they come to the jail.

Q Was the conversation that you had with Mr. Mott and Mr. Federici in the presence of Mr. Godfrey taken down in writing, the conversation of the first day? A Yes, sir; everything was written.

Q Everything was written? A Yes, sir.

The Court. That is not the question. Was it written in Italian?

Witness. Ten sheets of paper were written in Italian and ten were written in English.

Q Ten pages were written in English and ten pages written in Italian; is that right? A Yes, sir; I make them write in the prison there, though, ten Italian pages.

The Court. Do you challenge the answer?

Mr. Mott. Yes.

The Court. What do you claim it is?

Mr. Mott. I claim the interpreter says "I make them write in prison." I want that to be put in intelligent English.

The Court. Can't you give us the meaning of that sentence? "I make them write." Is it, "I make them write, I had them write or they wrote"?

Witness. That somebody else—I dictated to them—I spoke to them and they write down; that is all; in the prison.

Mr. Mott. In the prison?

The Court. They wrote in the prison.

Q I am asking him what he said on the first day that he was taken down to the prosecutor's office. What did you say to the prosecutor or to Joseph Federici when you were at the prosecutor's office on the first day and what did they say to you? A They told me to tell all the truth.

Q Yes; and did they take it down in writing? A No, when they were—when they come to see me in the prison—not down in the prosecutor's office.

Q Now, did you make your statements at the prosecutor's office when you came down the first time in English or did you make them in Italian when you were talking to Mott, Godfrey and Federici? A I spoke in Italian and the interpreter was there.

Q So that you told your story at the prosecutor's office in Italian to Mr. Federici and he interpreted your story to Mr. Mott and Mr. Godfrey, is that the situation? A Yes, sir.

Q Now, then, when was the next time you were brought to the prosecutor's office? A The 12th of this month.

Q The 12th day of this month? A Yes, sir; one week yesterday.

Q One week yesterday? A Yes, sir.

Q Now, had you between the second time you came to the prosecutor's office and the first time you were at the prosecutor's office written out a statement in Italian as to your conversations with the defendant, Angelo? A I spoke and they wrote what I was saying.

Q What date was that; where was it? A The 12th day of June.

Q Where? A In the office of the jail.

Q Who was present at the office of the jail when you made a written statement on the 12th of June? A I, and DeRogatis.

Q Was Federici there? A No; once Mr. Federici came, another time Mr. DeRogatis.

Q On the 12th day of June, the day you had the conversation with DeRogatis, and you say DeRogatis took down in writing what you said, was Federici present upon that occasion? A When I wrote—why Mr. DeRogatis was only there and he wrote.

Q Now, after DeRogatis wrote that day you signed your name, didn't you? A He wrote my name but I can't write. I don't know how to read in Italian and English.

Q And did DeRogatis take down everything that you said, as far as he knows? Of course, if he can't read and write he couldn't tell, but as far as he knows.

Mr. Mott. The witness can't possibly answer the question. He can neither read nor write.

Q While you were talking to DeRogatis on the 12th day of June was DeRogatis writing on a paper what you were saying to him, as far as you know? A Yes, sir.

Q And after DeRogatis had written down on the paper what you had told him did DeRogatis then read that paper to you? A Yes, sir; all what I said he was after to me.

Q Now, then, did you authorize DeRogatis then to sign your name to that paper? A I don't know how to write and for that reason I don't write my name.

Q You had concluded all your conversation and report with DeRogatis on the 12th day of June, had you? A No. I listened what Angelo said to me and then I have referred to the detectives.

Q Then DeRogatis after you had given him this statement on the 12th day of June told you to get some more information and he would come back and

get it, did he? A Yes, sir; "If you can get something from him next time when I come to tell it."

Q So that you were looking from the 12th day of June, in talking with Angelo, to get Angelo to make some admissions to you, so that you could give those admissions again to DeRogatis when he came to the jail, is that right? A We were speaking together about my case and his case; when the detectives were coming down here and asking me I would say what I know.

Q And when did you by virtue of that arrangement between you and DeRogatis next meet and give him the second information? A Every week Mr. DeRogatis came to jail—sometime Mr. Federici was there and other times Mr. DeRogatis.

Q And on the second time that Mr. DeRogatis came there where were you taken from? Were you taken out of murderer's row and brought down to the jail office again? A Yes, sir; the office; sitting down there.

Q Sitting down in the warden's office. Now when was the second time that you were taken there? Give us the date. A I don't remember.

Q Wasn't it July 10th? A Yes, sir; I think so.

Q And you talked some more to DeRogatis? A Yes, sir. What Angelo said to me I told him.

Q And DeRogatis wrote that down again?

Mr. Mott. I object to interrupting the witness.

The Court. Is there any more to the answer?

Witness. No; I will say some other things afterwards.

Q Tell him he will have an opportunity. The conversation that you had with DeRogatis on the 10th day of July, did he also write down what you told him that day? A Always.

Q Always. And how many pages did he write down that day? A I don't remember.

Q Five pages? A I don't remember.

Q As far as you know did he write in Italian or did he write in English? A In Italian, and he read to me in Italian.

Q Then he read to you what you told him on the 10th day of July, in Italian? A Yes, sir.

Q Then did he tell you to go ahead and get some more information from Angelo and that he would come up and see you again and get the information? A Yes, sir; "I will come back next week and try to get something other for me."

Q Now, when did he come back the third time and when were you brough from murderer's row in the jail to the warden's office to see the detective, DeRogatis? A I don't remember, but always I went to the office.

Q Well, upon the third occasion that you went to the office did you talk to DeRogatis and did DeRogatis take down what you said in writing? A Yes, sir; he wrote down what I was saying and after he read it to me.

Q And you again told him to sign your name to the paper? A Yes, sir; he told me to write my name but I told him I can't write.

Q Did he tell Sergeant DeRogatis to sign his name to that third statement? A No, he knew that I wasn't to write and he never asked me.

Q On the third time that DeRogatis came to the jail and took down your words in writing was Joseph Federici present, the other detective? A Only Mr. DeRogatis.

Q When did DeRogatis then come there again? A I don't remember the dates.

Q About how long after the third interview did DeRogatis come there to see you again and take you to the warden's office to talk with you? A About eight days.

Q And upon this fourth occasion when DeRogatis took you to the warden's office did you again talk with

him and did he again take down in writing more information than you had extracted from the defendant? A Yes, sir; he did write and he read to me what I had told him.

Q Now, at the conclusion of the fourth interview after DeRogatis took down your words in writing did he tell you still to get some additional information from the defendant? A Yes, sir; "If you can note some other things let me know it."

Q And did DeRogatis tell you that you were doing well? A No; I just only simply get from Angelo what he was saying and repeat it to them.

Q Well, did DeRogatis tell you to continue the work—continue to interview Angelo and he would come and see you again? A Yes, sir.

Q And then by virtue of that arrangement he came to see you when then for the sixth time? A They came there and they asked me and I told them what I know.

Q And the sixth time that he came there did he again take you out of murderers' row and bring you to the office and have a conversation with you privately and alone? A Yes, sir.

Q And he again took down in writing at the sixth interview all that you said to him? A Yes, sir.

Q Did he furnish you with a copy of any of those six interviews of what you had told him at that time? A Never; nothing. I remember everything in my head.

Q Do you remember the child that you killed was the child by your wife or by your sister-in-law? A It was my sister-in-law; I don't kill him; he died by himself. If he will ask me some more of this stuff I will answer him.

Q What else did he say? A He says, "Did you ask some more of this stuff he will answer you."

Q Give the same kind of answer, did he say?

The Interpreter. Yes, sir.

Q Which is it? You interpreted the question if I ask some questions he will give me the same kind of answers? I ask you to tell the court. "If I ask any more questions he will give me the same kind of answers"?

(The interpreter put the question to the witness.)

Witness. I don't want to listen to any more. It makes me sick. That is all.

The Court. Instruct this witness that his duty is to answer the questions as they are asked. We do not care to have any statements from him as to his opinions of the question.

Witness. The lawyer insult me.

The Court. Tell him I do not want to hear what he has to say. Instruct him that those are the instructions of the court.

Witness. All right.

Q Upon the seventh visit to the county jail of DeRogatis—

The Court. Can't we shorten this? How many more times have you got to go through the same thing?

Mr. McDermit. I want to know how many visits there were.

Witness. Every time he came there he wrote down what I would say.

Q Can't you tell us how many times he came there? A I don't remember the number of times, only I remembered when they come there they told me to tell the truth—what you heard from Angelo, tell us.

Q Can you say whether they came there twenty times and took down your statements or not? A Maybe fifty times, in June, July and August.

Q And every time that they came there of those fifty times they told you to continue to get informa-

tion from Angelo and report it to them; is that right? A Yes, sir.

Q Did they tell you why you were not sentenced to be electrocuted? A Yes, sir; I know that I had to go to the electric chair, but I didn't receive the sentence yet.

Q Did they tell you why you didn't get your sentence—why your sentence was delayed? A No, sir; they don't tell me anything.

Q Did you ask them why you would have to go to the electric chair? A I never asked them.

Q You don't care whether you go to the electric chair or not? A Once we have to die; to-day or to-morrow, younger or older, we have to die once.

Q So it makes no difference to you whether you die or not in the electric chair for the murder of your baby? A What they give me I will be glad.

Q Don't make any difference then to-day whether you tell the truth now or whether you do not tell the truth because you do not care what they give you, is that what you mean to say? A I told only the truth, what he told me I am saying now. My conscience is this way.

Q Did you regard Angelo as a pal and friend of yours at the jail? A I didn't do this for bad, but they asked me and I say what I know.

Q Why did you not tell Angelo that you were holding those secret meetings with DeRogatis and telling DeRogatis everything he told you? A Why, I have to said to him? When the detectives went to Silver Lake and they come back all sweated and he was looking very mad but when the detective went away he was laughing and tell "Let them go around."

Q Why didn't you tell Angelo that the detectives were asking you to repeat the conversations he had with you to them and they were taking it down in writing? A Why, I have to said to him?

Q Then you wasn't a friend of Angelo's when you

were doing that, was you? A The detectives—was impossible for them to get something from him and I try my best to get something from him.

Q Then you were acting as a stool pigeon at the jail for Detective Godfrey, were you, and DeRogatis? A Yes, sir.

Q And you knew by giving these statements to the detectives against Angelo that you would put him on the road to the electric chair as well as yourself, didn't you? A I don't know anything about it.

Q Did you consider it would be a relief to your conscience to try and put a fellow prisoner in the electric chair? A I just tell them. I don't know what the end would be.

Q Had you ever weighed in your mind with your conscience what acts you were performing towards Angelo in giving that information to the detectives?

Mr. Mott. I object.

The Court. Objection overruled.

A I didn't know anything.

RECESS.

Mr. Mott. There are three exhibits that have not been marked. The button, bracelet and bottle.

Bracelet marked Ex. S. 7.

Bottle marked Ex. S. 9.

Button marked Ex. S. 10.

Q You told Mr. Federici about this matter in June, didn't you? A I told him, June, July and August; three months.

Q You told Mr. Federici before you told Mr. DeRogatis about this matter, didn't you? A First I told Mr. Federici, then Mr. DeRogatis, they come one, another time the other.

Q When did you first tell Federici about this matter and where? A In the office.

Q In what office? A In the office over there—in the prison's office—in the jail office.

Q How did you come to go to the jail office to see Federici on this first occasion? A They called me there.

Q Fix the date when you first talked with Federici in the jail office? A The first time was on Thursday.

Q Two or three days after Angelo's arrest? A Yes, sir. He said a few things and I told that what he said.

Q What did Federici say to you when you first saw him at the jail office? What did he say to you? Give me his language? A He told me what Angelo said about the murder of his wife.

Mr. Mott. Told me or asked. What words did he use?

Witness. I would like to know what Angelo said about the murder of his wife.

Mr. McDermit. We challenge the interpretation.

The Interpreter. He says that Federici asked him what Angelo was saying about the murder of his wife.

Mr. McDermit. Did he not also add—say what he said in the first conversation—first question?

The Interpreter. I don't hear.

Q What did he say to him when he wanted you to tell him what Angelo had said to you this second day after Angelo was at the jail? A What Angelo said I would tell to the detective.

Q Why did he want you—why did he say he wanted you to tell him what Angelo said to you? This was the second day that Angelo was at the jail. What explanation did he give to you as to why he wanted you to tell him what Angelo had said to you? A He asked me about what Angelo was saying of his wife's murder.

Q Well, did you ask him why he wanted to know that or how he come to know that you knew anything about what Angelo was saying to you? A No. He only told me "Tell us what you heard from Angelo."

Q What do you mean by "tell us"? Did he say tell us? Who is us? A I told him. He used that plural for "him."

Q Had you any talk with Federici before this time after the arrest of Angelo at the jail? Had you had a prior talk with Federici before this talk at the warden's office the second day after the arrest? A No, sir.

Q Had you sent for Federici? A After he was arrested they came. After he was arrested, was there in jail, they come there.

Q I understand that. You understand me. Federici sent for you two days after Angelo was arrested at the jail to come to the warden's office? A Yes, sir; after two days he called me.

Q Had you talked with anybody in the jail or out of the jail who came there about any conversation that you had had with Angelo Cerciello between the time of his arrest and the time that Joseph Federici came there to the jail and sent for you? A Nobody. I spoke only to Federici.

Q Were you surprised that Federici should send for you and ask you to give him a conversation that you had with Angelo that you had told nobody about? A No; I wasn't surprised. He asked me and I answered him.

Q Did Federici tell you that if you help him in the evidence against Angelo Cerciello that you would not die? A No; he don't tell me anything—don't tell me anything.

Q What reward did you expect from turning traitor to Cerciello and giving information to Federici from Federici?

Mr. Mott. I think the word traitor should be eliminated from the question.

The Court. Why isn't it his duty to disclose the information he gets?

Mr. McDermit. As a stool pigeon?

The Court. Yes. Doesn't the law require a person to tell what crimes have been committed and what evidence he has got?

Mr. McDermit. I wouldn't want to take a murderer's word on a proposition of that kind. I withdraw the question.

Q What consideration did you expect by betraying the confidences of the defendant Angelo Cerciello, if he had placed any confidence in you? A Nothing. I did that by my conscience. He says that and I repeat what I heard.

Q Tell me what time of day and on what day you had the conversation with Cerciello, the defendant, prior to the visit of Joe Federici to you on the 2d day after Cerciello's arrest? A Right away, in the evening of Tuesday when he come inside of the jail.

Q What time Tuesday was Cerciello brought to the jail? A Before three o'clock.

Q What time are the cells locked in murderers' row every day? A They open the cells at eight o'clock in the morning and kept until eleven. We speak together to eleven at night.

Q What number was your cell? A 56. The number of Angelo is 59.

Q One cell between you and Angelo's? A Two cells are between us.

Q Who occupied the two cells between you and Angelo on the day of his arrest—afternoon that he was brought to the jail? A A Polish fellow, and the colored man was brought just a little after.

Q What was the Polish man's name? A I don't know his last name. We called him Adolph; I don't know the last name.

Q His name Kubeszweski? A You had to defend his trial and you know how his name is.

Q Yes. His name is Kubeszweski. A Pollock; yes, sir.

Q What was the name of the colored man? A Charlie, first name—Charlie Mack.

Q Where is Charlie Mack now? A He is inside there yet. He is in the same tier where I was.

Q Where was it—what part of the place was it that Angelo talked to you, in front of your cell, in front of Angelo's cell or where, and the time of the day or night he talked to you first? A Sometimes—

Q No. This first time. A I went to his cell.

Q You went to his cell on the first day that he came there? A No, the first day I spoke from my cell, from the tier, but after that I went to his cell and he come to my cell many times.

Q When he talked to you in front of your cell that was the first time you had seen Angelo, wasn't it? A I never seen him before.

Q Yes. A I make his acquaintance in the jail.

Q Your cell door was locked and you were on the inside of your cell when you talked to Angelo the first time, the first day he came there, was it not? A It was open, the door. The door was open.

Q What did you say to Angelo and what did he say to you when you met him for the first time when he came in at the point of his cell, when you met him first—the witness' cell? A I asked him why he was arrested?

Q Well, what did he say? A It is better in this way because if—it was better in this way if my wife would come back home I would be called a cuckold.

Mr. McDermit. I don't know what that means myself.

The Court. It generally means a man who permits his wife to have intercourse with other men for his profit, but you better get the standard

dictionary and have that settled. The court's recollection may not be perfectly clear. I do not want the jury to regard my recollection at this time. I will get the exact meaning later.

Q That is all he said to you at that time? A Yes, sir; only that he told me—

Q Now, when was it after he told you that that you next talked with him? How long after that did you talk to him again? The same day? A Next Sunday I spoke to him again.

Q So that you didn't talk to him for three or four days after this first occasion, is that right? A We spoke, but we never spoke about the case.

Q Are you certain that you never talked with him in regard to his case from the time that you talked to him at your cell door, which was the day of his arrest until the following Sunday? A On Sunday we spoke again.

Q Two days after his arrest Mr. Federici brought you to the jail office, is that right? A Yes, sir.

Q And of course, that was before Sunday, was it not, that you allude to? A Yes, sir; it was before Sunday. It was in the week.

Q Tell me, did Federici write down the words that you spoke to him at the time that he met you first at the jail office? A Yes, sir.

Q And tell me how many pages, if you can, your story covered at that time to him? A Very little—very few words.

Q How many pages? A Half page. Every time they came there—

Q No, no. Not every time they came. Keep him down to this one time; this first time with Federici. A Half page. The little what I was saying to him.

Q Did Federici read to you in Italian the statement that you had given him from that paper? A Yes, sir; he read it to me.

Q Repeat every word that you told Mr. Federici on this first occasion when he came to the jail?

The Court. He has already stated that. Is he required to re-state it again?

Mr. McDermit. He says on further cross examination that it was about half a page of testimony taken down. That one sentence he put in couldn't be a half page.

The Court. You may have an answer. Are you referring to the Thursday now?

Mr. McDermit. I am referring to the day of the arrest.

The Court. You are referring to what he said on Thursday to Federici and what had been said —

Mr. McDermit. On Tuesday, the day of the arrest.

The Court. In the afternoon?

Mr. McDermit. Yes.

Q I will give you another question. Tell us all the conversation that you gave to Mr. Federici at that time concerning Angelo Cerciello?

The Court. You mean by that what Cerciello told him?

Mr. McDermit. Yes.

Witness. At first I asked him, referring to Angelo, "Why you were arrested," and he said "For my wife. Better it was in this way, that if she would come back home I would be called a cuckold."

Q What else did he say on this occasion? Only on this occasion? A The first time I told only about why he was arrested and he told me "about my wife, and it was better it was in that way because he told me they would call me if she come back home a cuckold."

Q Did he say anything else to you? A No, not that day.

Q And is that all you told Federici when he came there on that Thursday? A That is all.

Q Now, after you told that to Federici what did Federici say to you? A "Try to get some other thing from him."

Q You knew that what you had told Federici did not amount to anything against Cerciello, didn't you?

Objected to.

Q Didn't you think that what you told Federici didn't amount to much as against Cerciello? A No; I didn't think what maybe can happen after.

Q No, but didn't you think that that mere statement that you had told Federici on this Thursday wasn't a matter of much importance and didn't have much consequence as against the defendant? A I didn't know what will happen after.

Q And then after you had told him that statement you agreed with Federici that you would continue to have conversations with the defendant and from week to week detail to Federici what this defendant told you? A Told me what he will say and next week I will come again and see you about it.

Q Didn't he tell you "I want it made specific?" Didn't he tell you that he wanted you to try and pump out of the defendant information that could be used against him as to how his wife come to be killed? A Yes, sir; "Try your best."

Q Didn't he say "Try your best to see what you can do?" A Yes, sir.

Q Then you knew that you were to obtain information against Angelo that could be used to send him to the electric chair? A I didn't know that he would go to the electric chair. I don't understand about law.

Q But you knew Mr. Federici before that day? A No, I did not.

Q Oh, yes you did. Didn't Mr. Federici conduct the prosecution against you for murder? A I know him when he arrested me.

Q Arrested you for murder? A Yes, sir.

Q And you had many conversations with Mr. Federici after you were arrested for murder, at the jail, before Angelo Cerciello was arrested? Right? A Yes, sir; I spoke to him. He was there present when my brother and my wife and other relations come to see me there in jail.

Q And he was the man who secured your conviction by the evidence that he brought into court in your trial? A I thank him.

Q You thank him for that?

The Court. Tell him to answer the question, if he knows.

Witness. Yes, sir; I know. I know that.

Q Why do you thank him for convicting you of murder? What do you mean by that? A He was commanded by the authorities and he did his duty.

Q You think he did his duty. You trusted Mr. Federici.

The Court. Now when was that? Do you refer now to this Thursday?

Mr. McDermit. No, I refer now to his own case.

Q You trusted Mr. Federici? A Sure.

Q You knew, from the fact of your own experience in the murder trial that Joseph Federici was an interpreter and a sergeant detective attached to the prosecutor's office of Essex county and was in charge of your trial? A Yes, sir; I knew it.

Q And you believed, in all your communications with him in the Cerciello case, that he was acting as a representative of the prosecutor's office of Essex county? A Yes, sir; I know that.

Q And relying upon that information, that he had already convicted you of murder, you expected no reward or no return from him if you helped to send this other defendant to the electric chair? A Nothing. God will help me when I will die, and I find in my possession the crucifix. When I die he will save me. I have no hope at all.

Q You have no hope because you are guilty? A It is better to die young than older. We have to die once.

Q You think that you would rather die as an angel young than die as a saint old, do you?

The Court. How can he answer that?

Mr. McDermit. It may be slightly ecclesiastical.

The Court. The court does not understand this.

Q You have reformed, have you?

The Court. It is a question whether he has been promised anything or hopes to have any reward.

Mr. McDermit. A moral question besides that.

The Court. All right. Proceed with it if you want to.

A Why?

Q Well, you don't intend to commit any more crime, do you?

Objected to.

Objection sustained.

Q You show us something from your pocket there. Take it out again. A Jesus God, God—it is Jesus.

Q When did you get that? A Some sister—two weeks ago they came there and they left that to me. Why do I have to throw that away?

The Court. Put your cross in your pocket.

Q From whom did you get that cross?

The Court. He has answered that, from two sisters.

Mr. McDermit. I want to call his attention to it to be sure if he is right about that because I am going to ask him another question to see if he contradicts it.

Q I am going to ask you again, so that you cannot be mistaken, whether you got that cross from two sisters? A Yes, sir.

Q Didn't Peter Deskovich give you that cross? A No. It was the sister. Every Sunday night some sister of charity they come there to the prison and they give it to me.

Q Tell us what you told Federici on Sunday following this first interview? A I spoke during the week, and after, the next Tuesday I spoke to him.

Q No, one minute.

Mr. Mott. If that is answer to the question let us have it.

Witness. The first time I spoke was Thursday and then the next Tuesday I spoke to him.

Q Didn't you tell me three times in answers to questions this afternoon before the jury that the second time that you spoke with Federici was on Sunday? Yes or no. A I never spoke to him on Sunday. On Tuesday, Angelo spoke to me on Sunday and I spoke to him on Tuesday, to Federici.

Q Did you ever ask Mr. Federici why it was that you were held at the county jail instead of being electrocuted? A I never asked him. It was just the same to me if I have to be in Trenton as here in Newark, if they send for me.

Q Now you had a great many conversations with De Rogatis in which he took down some written statements from you? A He came there.

The Court. He told us all about that. You went up to eight or nine, then he said there were a lot more.

Mr. McDermit. I am coming to another channel but I have to reach there by taking this course.

The Court. All right.

Q Why was it that you couldn't get all the information from the defendant in the second, third, fourth or fifth interviews that you had with him, that it was necessary to have an interview covering a period of a couple of months to get all this information for Federici?

The Court. Did you say for or from Federici?

The Interpreter. For.

A Get little by little.

Q But I know, you say it took you about fifty interviews to get from Angelo the story you told the jury here this morning? A You know he said little by little—Angelo said little by little, and I had to said little by little to them when they come to jail and ask me for it.

Q Asked him for what? A Asked him for the information.

Q When did he tell you about the button—what date—June, July or August? A In the month of July.

Q When did he tell you about the bottle? A In the same day, the same time.

Q When did you last talk with him about this case and what was the last statement he made to you —the date? A I don't remember the day.

Q Do you remember the day? A The last day that he spoke to me I do not remember the date.

Q Didn't you tell us this morning that it was the 27th of August? A From that day we didn't spoke to each other.

Q Do you remember asking Angelo to write a letter for you? A Yes, sir; before that time I asked

him to write some letters—some postal-cards, and he did.

Q To whom? A My sister-in-law.

Q And how many postal-cards did Angelo write for you to your sister-in-law? A Six or seven. I don't let him write any more because I told him to write something and he write some other thing.

Q You and Angelo had a quarrel in the jail, didn't you? A Never we have trouble.

Q And didn't you tell Angelo that he made trouble with your sister-in-law by writing a lie instead of the truth on a postal-card and you would take him to the electric chair with you? A My trial was all over. How happened that? How can happen that?

Q How was it that you had confidence in Angelo to write your postal-cards up to the time that he wrote something without your direction and that you accused him of having made a false statement in your postal-card causing you trouble with your sister-in-law? A I do not let him write any more.

Q No. You spoke to Angelo after your sister-in-law came to the jail and told you that Angelo had written a postal-card as follows? A We spoke to each other but we weren't any more friendly terms, but already I know all about, and I told them all about that Angelo has told me.

Q Because he had written a letter to the woman whom you had an illegitimate child by and murdered and because it wasn't just as you wanted, refined to a certain degree, you quit partnership with him at the jail, didn't you—the language of the postal. A I wasn't his enemy. We spoke to each other. We were not enemies.

Q You were no enemy to the man that you were preparing evidence to send to eternity? You were his friend? How do you explain that? A I didn't know that would happen this. He told me the things and I repeat them to the detective. If I know that to-day

I would be called here to this stand I wouldn't have said anything.

Q Oh, you have changed your mind since I have started to ask you some questions, haven't you? A I didn't change my idea. I was listen what Angelo said and I repeat that and to-day I am repeating the same thing that he told me in jail.

Q Now, he has told us that a good many times. He told you that he telephoned at twelve o'clock at night, did he? A Yes, sir; so he told me.

Q And he told you that he had no sexual intercourse with his wife in five months, did he? A I was—I didn't have any sexual intercourse. He asked me "How long you don't have any sexual intercourse with your wife"? and I asked him, "How long you"? and he said, "From the night of the murder."

Q Is that what you said this morning?

The Court. Doesn't the court and jury and everybody know what he said this morning?

Mr. McDermit. Is it what he said now?

Mr. Mott. Yes.

Mr. McDermit. That is what you say. I do not agree with you.

Q He told you that he took a bottle of whiskey and went out in the lots and laid down to have intercourse with his wife, did he? A Yes, sir.

Q Did you ask him why he didn't have intercourse in his own home, in his bed? A "I took her there to do the business. I had that sexual intercourse and after I quarreled with her."

Q Did you ask him how long the sexual intercourse lasted? A Yes, sir; I asked him.

Q What did he say? A "I first drinked a bottle of whiskey, then I had the sexual intercourse with her, after I begin to quarrel with her because she was all day in the shoemaker store.

Q We went over that story this morning. We don't want the whole thing repeated.

The Court. Proceed with the answer.
The Interpreter. That is all.
The Court. Ask him if that is all the answer.
Witness. Yes.

Q And he also told you that his brother-in-law gave him a pair of pants and that he took off the pants that he had that night and that his brother and his sister-in-law burned the pants up, did he? A Yes, sir; he said so.

Q And he told you the reason why he didn't use the pistol upon her was because the pistol shots would be heard? A Yes, sir.

Q Did he tell you what time of night it was?

The Court. What does that refer to?
Mr. McDermit. It refers to the homicide.
The Court. The question isn't clear. Ask him.

Q Did he tell you at what time of night it was, or day, that he had visited this place where he had this intercourse? A He told me that about half-past eight or nine o'clock we went there in the night—in the evening.

Q Did he say how long he remained there? A Half hour or maybe fifteen minutes.

Q And you are sure he told you it was about half-past eight? A Yes, sir; between half-past eight and nine o'clock we went there.

Q Between half-past eight and nine? A Yes, sir.

Q Do you know this young man here, Rozolio? A This is your interpreter, Mr. Lawyer.

Q You know him, do you? A I know him in the jail.

Q Did you see him a week Sunday at the jail? A Yes, sir.

Q While your wife was there? A My wife come to see me and she was speaking to me.

Q What did you say to Angelo as you passed him when he was talking to Mr. Rozolio? A Nothing, I was speaking with my wife.

Q Didn't you say in Italian to Mr. Rozolio that because Angelo had made some trouble for you by writing the postal that you had nothing to live for and that you were going to see that he would have nothing to live for when he got down to court? Didn't you say that in Italian? A He is crazy. I don't know what he is saying.

Q Both Angelo and Mr. Rozolio?

The Court. Tell him to answer the question whether or not he said that. We don't know what he means when he says he is crazy.

Q (Question repeated.) A Nothing. What kind of face do you have to say such thing?

Q Did you tell Mr. DeRogatis that Angelo was going to tell his brother to run away so there wouldn't be any eye witness as his brother was now on bail and the brother could run away? Did he tell you that? A Yes, sir; he told me about that on this Saturday when his brother went out from the jail. He told me that.

The Court. He told him what? Ask the witness.

Witness. "My brother is out from the jail. If I can write to him a letter I will tell him to run away from here."

Mr. Mott. Who said that?

The Interpreter. Angelo said that to him the Saturday when the brother was out of the jail—left the jail.

Q You tried very hard to get Angelo to say to you that his brother was connected with the death of the deceased, didn't you, isn't that right? A No, sir; he always told me that the brother was in his house; "I went out alone in the evening."

Q Well, what did you mean when you say to the jury that the brother could ruin Angelo?

Mr. Mott. I object.

The Court. Reframe the question.

Q What did you mean when you said that Angelo told you that his brother could ruin him?

Mr. Mott. I guess that is worse yet.

Mr. McDermit. I will withdraw the question.

Q You testified that Angelo told you at the jail something in regard to ruining him. What was that? Just refresh my memory on that? A "My brother can ruin me or my sister-in-law. To them they can save me or they can ruin me."

Q Well, now, in that connection did you tell DeRogatis that Angelo wanted his brother to run away as he was the only eye-witness to the homicide or alleged death? A Yes, sir; I told that to DeRogatis. I told him right away that.

Q Now, then, I ask you that question once more in this shape. Did you not say to DeRogatis that Angelo had told you that he had made arrangements to have his brother and his sister-in-law go away from the jurisdiction of the court here? A Only "to my brother I will write him a letter so he will run away." That he told me in the day when his brother went out on bail.

Q Didn't you say this morning that he told you that his brother's wife had washed his shirts and his clothing and washed the blood off of him the night of the alleged murder? A Yes, sir; I said this this morning.

Q Now, do you know Peter Deskovich? A I know him in jail for eight months.

Q You and Peter are pretty good friends? A We never had any trouble in the jail. I spoke to Angelo and Peter was always present. He understood very well Italian.

Q Yes. You told us that this morning. Now after you and Angelo fell out and he didn't write any more postal cards for you then you and Peter didn't have any more conversations with Angelo, did you? A We spoke but I left Peter write my postal cards and letters.

Q You got a new secretary. You got Peter in the row there to become your secretary instead of Angelo. After the time you had this falling out with Angelo Peter wrote your postal cards to your paramour? A Yes, sir; sometimes—sometimes postal cards, yes, sir. He wrote to my brother, my sister, my family—that is all.

Q Was Peter in front of your cell door on the day that Angelo was arrested and had the first talk with you—was he there? A Yes, sir; he was there.

Q Peter was there the very first time that Angelo came into the jail, and as he was passing your cell door you said hello to him, Peter was at the cell door when he made the first declaration that you say he made to you in regard to this case—Peter was there and heard it, too, was he—did he? Is that right? A Yes, sir; we were in the tier there—all speak together.

Q And did you tell Mr. Federici when he took down your first statement that Peter was there with you when he made the statement that you claim he made? A Yes, sir; always. Every time I told Federici that Peter was there when this Angelo was speaking to me.

Q Then every time that you talked with Angelo about this case, and you talked with him over fifty times, upon each of those occasions Peter was always there and heard the conversations? A Always we were all three together.

Q And in every statement that you made—that you gave to either Mr. Federici or Mr. DeRogatis you informed both those people that Peter was every time with you, is that right? A Yes, sir; I told him.

Q Then there wasn't any secret about what Angelo was telling you. He was telling you in the open that he had killed this woman? A All the others were American, they don't understand it. We three speak in Italian so we understand each other.

Q You knew when he got counsel in his present murder case—you knew when counsel came to see him?

The Court. Is that a question or declaration?

Q Do you remember when counsel first came to see the defendant at the jail, how long after his arrest it was? A The twelfth of June you came there, his brother-in-law from Jersey City, Mr. Federici, and you, with Cerciello went to the chapel of the prison. That day was a visitation day or visiting day,

Q And you still continued after you knew that he had counsel—you still continued to attempt to get from him information which you claim he gave you all the time to the 27th day of August? A Yes, sir; I asked him and he spoke to me—he told me.

Q When you took your visits to the warden's office it was usually during dinner time, wasn't it? A Sometimes before dinner time, some other times after dinner time.

Q Who brought you down from jail this morning here, Mr. DeRogatis? A The detective, American.

Q Stand up Mr. DeRogatis. A No.

Q Who brought you down? When did you last see this gentleman before to-day, Mr. DeRogatis? A Up at the jail.

Q This morning? A No.

Q Last night? A Fifteen days ago was the last time I saw him. Ten days ago Federici came to the jail but he didn't call me.

Q And the last time you were up at the jail that Mr. DeRogatis was up at the jail fifteen days ago he still took another statement from you? A Nothing;

no, sir. He had the papers in his hand, but he didn't write anything.

Q What did he want at that time from you? A He asked for some information from Angelo. I answered him: "Angelo—we don't speak any more; he don't say one thing more to me."

Q That was as late as fifteen days ago, was it? A Yes, sir; to-morrow will be fifteen days; to-morrow.

Q Since you testified this morning who did you talk to at the recess hour? A With nobody.

Q Talk with Mr. DeRogatis during the noon hour? A I eat in a room by myself. I was alone there, I and the detective there.

The Court. Does he mean the detective or does he mean the constable that brought him down? Ask him.

Witness. The same man who took me from the jail. He looked on me and I was eating.

Q Did he bring you in the prosecutor's office or upstairs? A Upstairs.

Q And this morning when he brought you down here did he bring you to the prosecutor's office first or did he bring you upstairs? A I was this morning in the upstairs room, and this noontime, too. I was there alone.

Q Did you see Peter to-day? A No, sir.

Q Did you see him yesterday? A No, sir. See Peter?

Q When did you talk to Peter last? A Eight days ago about. The day when he had his trial I told him goodbye and I never saw him again.

Q After Peter was acquitted Peter came back to the jail to see you, didn't he? A He came there but they don't give him the pass to see me. They changed me from that tier and brought me to another tier. He said after his trial would be over "I will come to see you."

Q Why did they change you? What was the reason they changed you? A Because maybe I would have trouble with Angelo.

Q You had trouble in the tier there hadn't you? A No.

Q You were trying to get information from other prisoners there, were you not? A No, with nobody.

Re-direct.

Q When was it that Angelo wrote postal cards for you? A In the month of August.

Q Since the 27th of August did he write any for you? A Never before, yes, but not after. One card he wrote to my sister-in-law.

Q You say that Peter was always there in the tier while you were talking with Angelo. How close would Peter be to you when you were talking to Angelo? A Near by me.

Q You mean that he was always there or that he was there some of the time? A We were always together in the tier.

Q Well, I mean is Peter always right by your side when you were talking with Angelo? A A little far away. Sometimes we stood together and we spoke together, all three of us.

Q But I mean when Angelo was telling you things about his case was Peter always present so that he could hear what Angelo told you? A Yes, sir.

Re-cross.

Q Had you an arrangement with Peter to listen to the conversation between you and Angelo each time you had it about the case? A Yes, sir; he was always with us, and he understood what Angelo was telling me.

Q Did you make an arrangement with Peter whereby Peter was to hear the conversation between you and Angelo each time that you and Angelo talked about the case? A No.

Q So that anything that Peter may have heard— A Only Peter was near us and he heard what Angelo said to me.

Q Did you tell Peter that you were giving the information to the prosecutor's office, what Angelo was telling you? A Yes, sir; I told him, because I don't know him to come there when Angelo spoke to me.

Q And you had told Peter about that before Peter's trial took place, did you? A Yes, sir.

Q And you told Federici and DeRogatis that Peter knew about these things and was assisting you? A Federici asked me once and I answered him, "Peter only speak Italian here and he always is present and hear the conversation of Angelo—"

Mr. McDermit. That is all.

By the Court.

Q You have told us that the defendant said to you in one of these interviews that he did not shoot his wife because it would make a noise and then you added the statement that he had taken his revolver and taken the bullets out and thrown them down the water-closet to avoid the authorities getting them. Did he say to you at that or any other time about when he had taken the bullets out of the revolver, and if so, what was it that he said on the subject? A He told me that he threw the bullets in the water-closet in his house.

Q We know all about that. Now, did he say to him when he had done that? Answer the question yes or no. A Thursday night.

Q What Thursday night? A The 29th of May.

PETER DESKOVICH, sworn on the part of the State.

Direct examination by Mr. Mott.

Q Where do you live? A I live Nutley.

Q And what is your business? A Carpenter.

Q Where were you born? A Austria.

Q What province? A Dalmatia.

Q What language do you speak? A I speak Slavish, Italian and English.

Q Where did you learn your Italian? A In my country—in Italy.

Q How long have you spoken Italian? A About twenty years.

The Court. How old are you?

Witness. Twenty-eight years old.

Q You were formerly an inmate of the Essex County Jail, were you, Mr. Deskovich? A Yes, sir.

Q When were you taken there? A 17th of March.

Q And you were taken there under a charge of murder? A Murder, yes, sir.

Q And while you were in jail you were confined in what we called murderer's row? A Murderer's row, yes, sir.

Q You have recently been tried? A Yes, sir.

Q And were you acquitted? A Yes, sir.

Q While you were in jail did you get acquainted with a man by the name of Laudisi? A Yes, sir.

Q And you got acquainted with the defendant here, Cerciello? A Yes, sir.

Q You were there before either of them, were you not? A No, sir.

Q Who was there before? A I am before Cerciello.

Q You were there before Cerciello? A Yes, sir.

Q And then Laudisi came in? A Laudisi is before me.

Q Was before you? A Yes, sir.

Q While you were in the jail after Cerciello came there were you in the same tier with him? A Same tier.

Q And was Laudisi in the same tier? A Same tier.

Q And did you and Laudisi and Cerciello spend some time together? A Yes, sir; we did.

Q Did you ever see Laudisi and Cerciello engaged in conversation together? A Yes, sir.

Q How many times? A Oh, maybe fifty times or a hundred times, more or less.

Q And did you participate in those conversations? A Yes, sir.

Q Did you at any of those—did you at any time hear Cerciello say anything about his own case to Laudisi? A Yes, sir; as usually, everybody said something.

Q And do you recall what you heard Cerciello say about his own case? A Yes, sir; a few things—few words, I mean.

Q What do you recall that you heard him say? A The first time I heard him say—I don't know if he did exactly know, I have been there.

Q Take your hand down. A I heard him say that if Federici comes here hundred times, whole year, or something like that, that he won't get nothing of him.

Q Yes? A I happened to been there—not been there for a purpose to hear anything.

Q What is that? A I says I happened been there when he said so, not for the purpose of being there to hear anything.

Q No. And did he—do you recall whether at that time Cerciello said anything else than what you have said? A Oh, talking something else, but not in the case, anything of that kind. Something else talk.

Q Now, tell us anything that you heard him say on any other occasion. A Second time I heard him say—

The Court. Fix the time.

Q Yes, as near as you can. A That is as near as I can. I kept no records of any kind. I just heard a few words. I heard him say that if my wife—she has got to come from a well—from the grave—that she can say that I am the one that did it—in the Italian language.

Q And anything else? A They were talking about the hatchet one time. I heard say—happened to been there—that "It is the axe will convict me." I don't know what he meant by that.

Q Do you recall anything else? A That is as far as I know.

Q Was there a colored man in the jail while you were up there? A Yes, sir.

Q Do you recall any incident in connection with him? A Oh, we talked there friendly, everybody.

Q And do you remember an occasion when something was said about Fiore, what Fiore had been doing? A Yes, sir; say something about Fiore rubbing fingers on the floor.

Q Tell us just what you recall was said about that. A Said Fiore done it for the purpose of saving finger-prints, something like that. I don't know nothing about the finger-prints. Just what I heard.

Q That is what you heard? A That is what I heard, what was the purpose for.

Q And did you observe the defendant after that what he was doing? A I don't know. He—sometimes he was rubbing there like that he was washing underneath the sink, something like that.

Q Just tell us what you saw him do without saying what you thought it was; tell us what he was doing. A Well, he was rubbing underneath the sink there hands; something like that.

Q Underneath the sink? A The sink, wash basin we got in the corner of the cell.

Q Yes. Now, was he rubbing?

Mr. McDermit. Let him describe.

Q You say underneath the sink? A Yes, sir.

Q What do you mean by that? A On the floor.

Q On the floor? A Yes, sir.

Q And what was the floor made out of? A Concrete.

Q And just what was he rubbing on the floor? A Hands, I think, on the concrete.

Q What part of the hands? Won't you just rub your hand on that? A Like that (indicating) flat; that is all.

The Court. Indicating with the palm and finger downward.

Q Do you recall whether you heard the defendant say anything about his sister-in-law, what she could do for or against him? A Sister-in-law would say something about the grocery—they were very friendly among themselves and he give groceries to her, that they ought to be good to him now in this condition that he is now; she ought to be good to him, help him along.

Q And did he go any further than that and say what they would do if they were not good to him?

Mr. McDermit. I object as leading. Let him state what the conversations were.

The Court. If that is all he knows—you can ask him if that is all he recollects.

Q I want you to tell all you remember about that conversation about the sister-in-law. A Well, that is as far as I can remember. The only thing—another thing he said they can harm him if they want to and they can help him if they wanted to. That is all I could say.

Q Now, do you recall anything else that you heard the defendant say with regard to his case? A I guess that is all. I don't remember much. Paid no attention.

Q What? A I say I didn't pay no attention to that.

Q Were you at all interested in getting information from the defendant in this case? A No.

Q Did you ever endeavor to get him to talk about his case to you? A No; just accidentally being there. He come over there and explain something to us and tell us. Every man tells his own story. I tell mine, another man told his, another man told his. That is all.

Cross examination by Mr. McDermit.

Q Well, you people all in distress up there, each defendant had something to say to the other defendant to pass the time away? A To pass the time away.

Q But you never interrogated Angelo in regard to his case except when he sometimes volunteered some information to talk about? A That is all; nothing else.

Q There wasn't any statement that he ever made to you that incriminated him in any way? A No, sir.

Q He never attempted to tell you in any way that he did any act he was afraid of, isn't that so? And he denied that he was guilty of the act, isn't that true? A Oh, he didn't say nothing about him being guilty or not guilty. I don't know anything about that.

Q And he said upon one occasion that they got no proof against me—they have no proof? The wife would have to come back? A Come back.

Q To earth? A Yes, sir; she would have to come back and tell that I am the one.

Q She would have to come back and tell that he was the one? A Yes, sir.

Q That is all he said? A Yes, sir.

Q That was his exact language? A Yes, sir.

Q You didn't attach very much significance to that, did you? A No; I have no interest in it at all.

Q No. When he said that he had bought the store for his brother-in-law and sister and they ought to be good to him in his trouble, you understood that to mean in his present trouble, they ought to assist him? A Yes, sir; he says they can harm him and they can do him good.

Q You never sat and talked to him for an hour or two hours at a time, did you, about this thing—about his case? A No; happened to be talking something else.

Q You never sat there alone with Laudisi—do you know Laudisi? A Sometimes he sat there for hour, three together or four or five parties and talk.

Q Yes. Sometimes you talked in Italian and sometimes in English? A English.

Q You can talk English and Italian? A Yes, sir.

Q You talk Italian? A Yes, sir.

Q Angelo talks good English? A Yes, sir.

Q Fine English? A Broken.

Q Well, he talked good English so it is understandable? A Yes, sir.

Q You could understand it? A Yes, sir.

Q Laudisi talked pretty good English when he wants to? A Not very good.

Q When he wants to, talk very good English? A Not very good.

Q Pretty good; you could understand him? A I could understand broken.

Q And he talked in English, of course, to the American prisoners? You know Farece, up there? A Yes, sir.

Q And what other Italian boy is there up there? A That is all, Farece.

Q Did you know that Laudisi was trying to work information from Angelo to give the prosecutor? A No, sir; I don't think I did.

Q Did he ever ask you to listen what was going on? A No, sir; it was only quarrels—questions among them two.

Q You remember, Peter, when he discharged the defendant here as his secretary from writing his postal cards, don't you? A Sir?

Q You remember when he discharged the defendant from writing his postal cards? A Yes, sir.

Q You know Angelo couldn't write? A Yes, sir.

Q And before—the first part of the time that Cerciello was there Cerciello wrote the postal cards? A Yes, sir; something wrong about his family.

Q Then he changed—something wrong about his family? A Yes, sir.

Q And then Laudisi fell out with him, wouldn't let him write any more postal cards and you wrote the postal cards after that, didn't you? A I wrote for everybody that can't write, all I could help.

Q Sure, but I mean first that Cerciello wrote the postal cards for Laudisi? A Yes, sir.

Q But for the latter part of the two or three months back or two months back, you had been writing the postal cards, is that right? A Yes, sir; everybody that can't write.

Q And for a long time the relationship between the defendant and Laudisi was not so friendly, isn't that so? A No.

Q First off, when they were up there they were very good chums? A Yes, sir; they always been.

Q But after the postal card arrangement then they became enemies, as it were? A Yes, sir; he bothers too much one another; they have questions among themselves. Laudisi come down to get sentence—and somebody bother him to get something—come down to get something. That was the trouble among them. That is all I could understand.

Q There wasn't a single solitary word that the defendant spoke in your presence either to you or that he

spoke to Laudisi that would be an admission of his guilt as against his wife?

Objected to.

Objection sustained.

Q Tell me, if you can— A I am not a judge. I don't know anything about the case.

The Court. Wait for the question.

Q Tell me if you can one single statement that the defendant made that in any way admitted his guilt? A I told you I don't know nothing about the case of guilt or not guilt.

Q Can you give the jury any single admission that the defendant made to you admitting any guilt in connection with the death of the deceased?

Objected to.

The Court. That calls for a conclusion.

Q Did he say anything to you in relation to the death of his wife that he had done anything to cause her death? A Not to me. He said in the presence of two or three of us. I never—

Q He never made any statement to you? A Not statement of any kind to me. Two or three of us.

Q And in fact the other statements that you allude to now in your direct evidence, that was made generally in the presence of everybody—no secret about it? A Two or three men; yes, sir.

Q The thing was in the open court? A Yes, sir.

Q Now, let us see if I can again recall what you heard him say. Now, give us the first statement that you recall that he said in any way touching the question at all? A Why, I heard him say about if DeRogatis, any of them come up there they can't get nothing off of him.

Q You heard him say— A I heard accidentally.

Q You heard accidentally that if DeRogatis or anybody else come up there they couldn't get anything out of him? A Yes, sir.

Q That is one statement? A Yes, sir.

Q What is another statement? A He said about "If my wife has got to come from the grave to tell that I am the one that did it."

Q That is the exact language, "My wife has got to come from the grave to tell it"? A If I am the one.

Q "If I am the one that did it"? A Yes, sir.

Q Now what else? A Next one was that the hatchet is one evidence that is going to convict me.

Q The next question was— A He swore that in Italian.

Mr. Mott. Give us the words.

Witness. He swore to Mary.

The Court. Repeat in Italian exactly what he said.

Witness. (Speaking in Italian.)

The Interpreter. Damn to the blessed Virgin Mary the hatchet is that condemned me.

Witness. Convicted.

Mr. McDermit. Convicted or condemned?

Witness. Condemned me.

Q Now, was there anything else? A I guess that is all.

Q That there was in the discussion of his case in regard to the offering of proof, that the hatchet was the only thing that could condemn him? A Yes, sir.

Q That was a comment he was making on the case? A I didn't work on his case at all. That is what I heard.

Q Who was he making this to? Who was that comment made to? Who were the people that were there? A Me, Laudisi and him and somebody else sometimes.

Q Who was the other party? A Colored fellow —not the colored fellow, they couldn't understand Italian when the three were talking, all of us.

Q When you folks talked you talked in Italian? A Yes, sir.

Re-direct.

Q Did you at any time hear the defendant say what was done with his clothes after he got home that night?

Objected to as leading.

The Court. I will allow it, but first ask him if he recalls anything else that was said.

Q Do you remember anything more? A I don't think I remember much about anything, as far as I can from memory.

Q What is that? A I don't remember everything accurate.

Q Now, then, do you remember, I don't know whether you do or not, do you remember whether you heard him say anything about what he or his friends did with the clothes he had on when he got home?

Objected to.

A I don't know. It is hard to tell.

Q Now, do you remember, Mr. Deskovich, anything about that? A I did not—I said I don't think I remember anything.

Q What? A I don't think I remember exactly anything. I don't want to tell lies.

Q You say you do not remember anything being said about that? A Yes, sir.

JOSEPH FEDERICI, recalled for State.

Direct examination by Mr. Mott.

Q After you learned that it was alleged that the defendant had made statements about what he did with the revolver when he got home, did you do anything? A I did.

Q What did you do? A I hired a plumber.

Q Did you go anywhere? A I went over to Cerciello's house.

Q Did you go alone or in company with someone? A In company with the plumber and two other friends.

Q Who was the plumber? A Joseph E. Amorose, from Orange.

Q Who was the other friend? A Michael Lobrete and John Landonia.

Q When was it that you went to Cerciello's house? A September 27, 1913.

Q And when you got there what did you do? A I asked the plumber to see if he could get anything out of the water closet.

Q And in your presence did the plumber do something there? A He did.

The Court. What day was this?

Witness. September 27, Saturday.

Q And what did he do? A He took out the first closet, that is in the store, and didn't succeed in getting anything, and he went down basement on the main trap looking for something.

Mr. McDermit. Were you down there with him?

Witness. Yes; sure.

Mr. McDermit. What was the date of this?

Witness. September 27, 1913, about half-past two in the afternoon. Then he tried the other water closet in Vincenzo's Cerciello apartment,

and there, working about two hours, we succeeded in getting one bullet out.

Q Is that the bullet? A This is the bullet.

Q I show you this revolver and ask you if you have ever seen it before? A I asked Mrs. Cerciello where the revolver was and she handed this revolver to me loaded.

Q It was loaded when you got it? A Yes, sir.

Q And when did you get it? A September 27th.

Q The same day? A The same day.

Q And what did you do with the revolver when she handed it to you? A Unloaded it and gave back to Mrs. Cerciellio the five bullets and I took the revolver with me.

Q And have you had it since? A In my possession; yes, sir.

Q You have had it in your possession since, except during the trial it was down here at the court house.

Cross examination by Mr. McDermit.

Q There were no bullets found in the water closet of the defendant? A No, sir.

Q None whatever? A No, sir.

Q And you did find one bullet in the water closet of his brother's apartments? A Yes, sir.

Q And you did find the revolver that the brother said belonged to him? A Yes, sir.

Q And when you found that revolver you found it fully loaded? A Yes, sir.

Q And when you got the information to search the water closet it was on the 27th of September? A Well, I don't think it was on the 27th. It was some time when Mr. Cerciello—Vincenzo and Angelo Cerciello and I was up at the jail and Mr. Cerciello-Vincenzo told him he has two in his own house—

Q I don't want that. You know I don't want it. You searched the water closet on the 27th day of September? A Yes, sir.

Q And you searched it for some information you got before the 27th day of September? A Yes, sir.

Q Now, upon what day did you get the information that led you to make a search of the water closet —what time in September? A I can't say.

Q Got it in September some time? A Some time before.

Q Some time in September? A Some time before; after Mr. Hood came from Europe.

Q After Mr. Hood came from Europe? A Yes, sir.

Q Do you remember when Mr. Hood came back? A I do not.

Q It was in September, wasn't it? A I can't say.

Q Don't know that. That fixes the time. It was information that you had received after the return of Mr. Hood from Europe? A No, the information I received before Mr. Hood came from Europe. When he came back I spoke to him about it. He told me—

Q Never mind what he told you. You know better than that, don't you? A Yes, sir. I was directed to do something.

Re-direct.

Q Who directed you to go up there and make this search? A The prosecutor.

Q Who do you mean by "the prosecutor?" A Mr. Hood.

JOSEPH AMOROSE, sworn for the State.

Direct examination by Mr. Mott.

Q Where do you live? A 50 Mechanic street, Orange.

Q What is your business? A Plumber.

Q And how long have you lived in Orange—been engaged in the plumbing business there? A Well, I have been in Orange six years and been in business about six years; eleven years in plumbing altogether.

Q Do you know Mr. Federici? A Yes, sir.

Q Some time in September last, did you go with him somewhere? A Yes, sir.

Q Where did you go? A Chester avenue—in this here house. I forget the place—corner of Chester avenue and—Silver Lake section. I can't recollect.

Q And after you got up there, what did you do, Mr. Amorose? A Why, I went—he asked me to see what I could find in the water closet, and I went in the store water closet and upset it and it was a jet water closet there.

Q Just describe the whole situation. A There was a jet water closet there. I told him—before I went there I told him it wouldn't be in the water closet at all.

Mr. McDermit. I object.

The Court. The motion to strike out is granted.

Q Just tell us what you did—don't give us your conversations with Mr. De Rogatis—and tell us why you did it. A I went there and I took out the water closet and upset it to see if I could find anything.

Q Could it be in the water closet? A Yes, sir; in that kind of water closet.

Mr. McDermit. I object. That is simply the worst type of leading. Let him say what he done there.

A I went there and took out the water closet and shook it—turned it upside down—trying to find something. Worked on that water closet about half an hour. I told Mr. Federici—

Q Not what you told him? A I told him there was nothing in there.

Q You didn't find anything in there? A Nothing in that closet. I says, "Well, I will tell you—"

Q Then where did you go? A Then I went down to the cellar and took up the cleanout on the main

trap, put my hand down—thought I might find something there—and didn't find nothing there. So there was another water closet next to the kitchen and I went in there and I took that out, shook it, and—oh, was there fully an hour and a half or so, and I give up hope. So there was another man there with me. I says to him—

Mr. McDermit. Never mind.

Witness. I just want to explain.

Q Just tell us what you did. A Well, I says—

The Court. You didn't find it there. You can't tell us what you said there. We want to know what you did.

Witness. Well, I picked it up and it was too heavy for me to handle. I wanted some one to give me a hand to help me shake it. I says, "You take the end, I will take on this end and we will shake the closet.

Q Go on. A Anyway, after I was there an hour and a half I turned it upside down and found this bullet come out of this closet.

Q Now, just whereabouts did you find the bullet? A In the jet closet—in the same closet—next to the kitchen.

The Court. Where did you find it?

Witness. In the closet.

The Court. What closet?

Witness. Next to the kitchen.

Q And you found only one? A Only one.

Q From the construction of that closet would it have been possible for bullets to have passed down there and gone through so that you couldn't get them?

Mr. McDermit. I object, unless he has been through there himself. He can't see under the earth, how far that goes unless he testifies to it—the trap may be a mile in circumference. How does he know? There is a bullet that is sup-

posed to be found in the trap—in the trap of the adjoining premises, not our premises—on the premises occupied by his brother. I think he has gone far enough.

Mr. Mott. If you are all through with your speech I will continue.

Q (Question read.)

The Court. Objection sustained.

Q Do you know how that closet was constructed? A Yes, sir.

Q You know how the trap was constructed, do you? A Yes, sir.

Q You know how it worked? A Yes, sir.

Mr. Mott. May I repeat the question now?

The Court. Do you want to cross examine him as to whether he is an expert plumber?

By Mr. McDermit.

Q Did you make an examination of the outside of the trap leading to the sewer or anything of that kind? A Not outside; inside.

Q You don't know what capacity the trap was for outflow or anything else, do you? A It is enough to let that go through.

Q Might be enough to allow a bullet to go through? A Yes, sir.

The Court. Where is this closet, Mr. Witness?

Witness. It is on the first floor of the kitchen.

Mr. McDermit. Not of the kitchen of the store; of the kitchen of the other part of the plot—the other premises.

Witness. First floor, there is only one kitchen in it.

Mr. McDermit. Another property entirely. I respectfully submit that the entire testimony is incompetent. None of this testimony—none of these bullets found upon our premises that we occupied—

The Court. There isn't anything for the court now.

Not cross examined.

JOSEPH FEDERICI, recalled for the State.

Direct examination by Mr. Mott.

Q Do you know where the defendant lives? A Yes, sir.

Q Describe the building which he lives? A It is a corner store and then two rooms in the rear; then there is a door leads from the defendant's apartment to his brother's apartment through the kitchen.

Q On the same floor? A On the same floor. Next to the kitchen—between the kitchen and the bedroom is the toilet, and there is another toilet in the store.

Q And where does the toilet in the kitchen lead to? Where does that run to? A Runs in the same trap downstairs that the other toilet runs in.

Cross examination by Mr. McDermit.

Q You were on the witness stand a moment ago. I think your evidence was clear. You said you searched the water closet on the premises of the defendant, Angelo, and found nothing? A Yes, sir.

Q That you afterwards went into the premises occupied by his brother and there, after some investigation in their water closet— A Yes, sir.

Q —discovered in some part of it a single bullet? A Yes, sir.

Q That is the whole situation? A Yes, sir.

Mr. McDermit. Now, I ask to strike all that testimony out, with reference to the pistol and the bullet in the case.

The Court. Motion denied.

Defendant's counsel prays an exception to the ruling of the court; the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Re-direct.

Q The apartments are both on the same floor? A Same, floor, yes, sir.

Q And there is a door, you say, leading from—

A From Angelo's room into Vincenzo's kitchen—there is a door leads from one to the other.

Mr. Mott. I now offer in evidence the revolver and the bullet.

Mr. McDermit. I object.

The Court. Do you object because they are offered together?

Mr. McDermit. The revolver isn't any part at all of this record as I can see and is incompetent in every respect. The mere fact that the revolver was found—

The Court. Do you object because they are offered together?

Mr. McDermit. I object to both of them *seriatim.*

Mr. Mott. I offer the revolver alone.

Mr. McDermit. I object to the revolver. There is nothing in the record to connect the revolver. It is irrelevant to the issue—finding a revolver in the home of the third person.

The Court. Didn't Mr. Cerciello's brother testify that the morning after this was supposed to have happened, that he found the pistol unloaded?

Mr. McDermit. No, sir.

Mr. Mott. Yes, sir.

Mr. McDermit. In our premises?

The Court. He found it unloaded and that subsequently he loaded it again, and he gave it to Mr. Federici.

Mr. McDermit. In the premises of the defendant?

The Court. That is a question for the jury, as to where he said it was or what are the premises of the defendant.

Mr. McDermit. The record will show, your Honor, that he testified the revolver was in his premises in his bureau drawer—in the premises of his own house.

The Court. It is a question for the jury as to what premises they were. There seems to be some evidence on which the jury might possibly draw the inference that the defendant had access to both places. I will receive the revolver.

Defendant's counsel prays an exception to the ruling of the court; the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Revolver marked Ex. S. 28 for the State.

Mr. Mott. I offer the bullet.

Mr. McDermit. I object to the bullet because there is no connection shown between the revolver and the bullet. It doesn't show it is a bullet except in appearance. Doesn't indicate as far as the record is concerned any connection—22 caliber or 32 caliber—whether it even fits this revolver.

The Court. If it isn't connected then the court will strike it out.

Bullet marked Ex. S. 29.

Defendant's counsel prays an exception to the ruling of the court; the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

The Court. Is that which is called a bullet a cartridge in point of fact?

Mr. Mott. I suppose so.

WALTER GODFREY, recalled for the State.

Direct examination by Mr. Mott.

Q Mr. Godfrey, at the time or subsequent to the arrest of the defendant were you up at the apartment in which he lives? A The night of the arrest, sir.

Q The arrest was at what hour? A About ten o'clock, sir—somewheres between half-past nine and ten o'clock at night.

Q And that same night you were there? A And I returned there after the arrest.

Q What time did you return there? A About eleven, sir.

The Court. What night was that?

Witness. Monday night, June 2d.

Q And did you find any article of clothing at that time? A I did, sir.

Q Where did you find it? A Hanging in a house built out in the back yard. A frame house.

Q On the same lot? A On the same premises; in the rear yard; directly back of the defendant's house.

Q You say a house? A A frame—small frame house probably eight or ten feet square.

Q And what did you find there? A A blue coat.

Q Where is it? Is it here? A Yes, sir; it is laying underneath that pile.

Q Look at this coat and see if it is the one. A Yes, sir.

Q And how was the coat located in this place? A I was hanging in this shed or house in the rear and it was very, very wet—almost wring the water out of it.

Cross examination by Mr. McDermit.

Q Looked as though it passed through a thunder storm?

A Looked as though it had been washed.

Q Looked as though it had been pretty wet? A Yes, sir; it was very wet at the time I got it.

Q How is it now? A It is dry now. It has been in my possession ever since.

Q Have you had the coat examined by experts to see whether it contained any blood or not? A No, sir.

Q Do you know whose coat it is? A I should judge—

Q Do you know whose coat it is?

The Court. Answer yes or no.

A No.

Mr. McDermit. No further questions.

Mr. Mott. I offer the coat in evidence.

Mr. McDermit. I object because it doesn't appear to have been connected as part of the case with the defendant at this time—isn't identified. Coat hanging out in the yard of a tenement house, three-story brick building, double flat.

The Court. Is it a tenement house?

Mr. McDermit. Yes, sir.

The Court. As far as we know here it is only a store and this apartment. If there are any other floors it has been left to our imagination.

Mr. McDermit. They found this is an outhouse—disconnected house from the main house.

The Court. In the rear.

Mr. McDermit. I shall now, for the purpose of the court taking judicial notice, put the proof in if necessary that it is a three-story tenement—large number of tenants.

Mr. Mott. I desire to call the court's attention to the fact that this coat has on it the initial "A. C."

Mr. McDermit. That doesn't show anything.

Mr. Mott. And I desire to call the court's attention to the fact that in the usual place where coats are marked the name of Angelo Cerciello is written on there.

Mr. McDermit. I object to that too as no proof of this statement.

Re-direct.

Q Is this coat in the condition now it was when you found it? A Exactly, sir.

Q When did you discover the name in there? A This name I never looked for until just this moment.

The Court. What do you mean by just this moment?

Witness. The tag inside with Angelo Cerciello's name.

The Court. That is the right-hand vest pocket, inside?

Witness. Yes, sir.

Q Well, what is this name? A Also has the date in there, "Angelo Cerciello, February 10, 1912."

Re-cross.

Q Never examined that coat before? A Never on the inside.

Q Never examined it for a name? A No, sir.

Q Never made any examination of it at all until to-day? A No, sir.

The Court. What are the initials?

Witness. A. C., sir (indicating) on the outside of the pocket.

The Court. It will be received.

Coat marked Exhibit S. 30.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. Mott. That is the State's case. If it occurs to me in the morning that there is any little trifling matter that I have omitted I would like to put it in.

Adjourned until to-morrow morning at ten A. M.

ESSEX COUNTY COURT OF OYER AND TERMINER.

November 21, 1913.

STATE	*Indictment*
vs.	*No. 229.*
ANGELO CERCIELLO.	*Murder.*

FIFTH DAY.

Appearances as before stated.

Mr. McDermit. I think it would be a good thing in one of the recesses of the jury that they be allowed to go up and visit the scene of the alleged homicide and also take a look at the building. I think it would be both fair to the State and to the defense to have the jury go there and look at the situation as to the territory at Grove street and take a view of the house.

The Court. Why examine the house.

Mr. McDermit. It would not do any harm. May do a great deal of good.

The Court. I don't see the point of examining the house.

Mr. McDermit. I would rather discuss that matter with the court and not before the jury.

The Court. Renew your application later.

JOSEPH FEDERICI, re-called for the State.

Direct examination by Mr. Mott.

Q Mr. Federici, I show you a diagram made by counsel for the defense which I think is substantially correct and ask you if you, from your knowledge, recognize what it is? A This is a diagram of the first floor in the building on Chester avenue and Eighth street.

Q Which was the home of the two Cerciello brothers? A Yes, sir.

Q Now, what does that building consist of, Mr. Federici? A Three story brick building; store on the ground floor, two rooms in the rear of the store and a kitchen and two other rooms, I believe, in the Cerciello apartments.

Q Now, will you take that and tell us what the various rooms marked by the letters of the alphabet were and which were occupied by Vincenzo and which by Angelo? A "A" is the store; "B" is a bedroom; "H" is a kitchen; "G" is a toilet. This is the apartment that Angelo Cerciello had.

Q Which is? A "A," "B," "H" and "G."

Q That was Angelo's? A Angelo's. "D" is the hall entrance on Chester avenue.

Mr. McDermit. To the apartment?

Witness. To the apartment of Vicenzo Cerciello. "C" is a bedroom; "E" is bedroom.

Mr. McDermit. Of whom?

Witness. I will give you that. "F" is the toilet and "J" is the kitchen, all of Vincenzo Cerciello's apartment.

Q Now, do you know whether the front hallway was used for entrance to either apartment?

Mr. McDermit. You couldn't get into the other apartment unless you went through the entire other apartment and went around. The front entrance was not in use?

Witness. No; closed.

Q As a matter of fact they didn't use the front entrance?

Mr. McDermit. They had a back staircase leading to the apartments from the rear—from the yard.

Witness. Yes, sir; the door was there but it was kept constantly locked.

Q Between the room "H" and the room "J" there is a straight mark standing out. What does that represent? A It is a door leading from one kitchen to the other.

Q And where in the apartments used by Vincenzo was the toilet located? A Right next to the kitchen.

Q That is marked— A "F."

Q The kitchen is marked "F" and where is the toilet? A Is marked "F."

Q And in the apartment used by Angelo where was the toilet? A Where it is marked "G."

Q Do you know what the toilet in Angelo's apartment—or did you—what was the condition of the toilet in Angelo's apartment when you saw it—first saw it? A When I went there it was full of butterine or oleomargerine, they call it—was big tub full and some other little things—groceries.

Q And from your knowledge of the premises are you able to say whether or not that diagram with substantial accuracy represents the ground floor of that building? A Yes, sir.

The Court. He hasn't answered the question. He says he is able to say whether it substantially represents. He hasn't said whether it does.

Q Well, is it? A It is.

Cross examination by Mr. McDermit.

Q This is a new brick building? A Yes, sir.

Q Built on a lot facing 25 feet on Chester avenue and running 100 feet deep on Eighth street? A Yes, sir.

Q Situated at the northeasterly corner of Chester avenue and North Eighth street? A Yes, sir.

Q The building is three stories high? A Yes, sir.

Q And the depth of the building is 70 feet approximately? A About.

Q There are six flats in the building; two on the first floor; two on the second floor, and two on the third floor? A Yes, sir.

Q Part of one of the flats on the first floor is used as a store? A Yes, sir.

Q But the building has been built and designed for six separate apartments; is that correct? A Yes, sir.

Q Now, the apartment occupied by defendant was the apartment that commenced at the intersection of Chester avenue and Eighth street? A Yes, sir.

Q And ran parallel along North Eighth street north for a distance of 70 feet? A Yes, sir.

Q Now, his apartment consisted of a store— A Yes, sir.

Q —in which there was conducted all kinds—combination store—kinds of fruits, bananas, spaghetti, groceries and brooms and delicatessen and everything known to a general commercial grocery store? A Yes, sir.

Q The door from the store faces on an angle—it runs from Chester avenue into Eighth street, isn't that correct? A Yes, sir.

Q So that the door, if this is the corner of the building, indicating the box of the witness stand, and this is North Eighth street and this is Chester avenue (indicating) Chester avenue runs east and west and North Eighth street north and south—the door of the store comes out this way across, doesn't it (indicating)? A Yes, sir.

Q You go up the stoop and the door has a double door there—double glass door? A Yes, sir.

Q There is another glass casing on the Eighth street side running perhaps twelve feet? A Yes, sir.

Q Ten to twelve feet? A Yes, sir.

Q There is a glass window running on Chester avenue from the double door to the point where the

entrance of the front building—front hallway entrance—goes in? A Yes, sir.

Q That is right, is it? Now, the store is occupied and is marked "A"? A Yes, sir.

Q Now, in the store is a closet? A Yes, sir.

Q Has that a mark on this map? A Yes, sir; "G."

Q "G." Now, this is the place where you said there was butterine? A Yes, sir.

Q Now, that closet contains a standing urinal? A Yes, sir.

Q Made of slate? A Yes, sir.

Q And also contains a toilet? A Yes, sir.

Q The other side of it? A Yes, sir.

Q Enclosed? A Yes, sir.

Q Without knowing what it was built for would it suggest itself to your mind that it was used perhaps—that store—for a saloon? A I don't know.

Q Well, anyhow, isn't this the description of it, that when you come into the closet it is really a toilet? A It is; yes, sir.

Q And when you come in here there is a urinal bowl? A Yes, sir.

Q Large slab separating the— A Not very large.

Q Just your recollection. The slab is—on the bottom is a slate floor? A Yes, sir.

Q And against the wall running up and down is a slab? A Yes, sir.

Q Slate slab? A Yes, sir.

Q That you see frequently in toilets in court houses or hotels or saloons or anything else, separated from that is a toilet? A There is a bowl.

Q Where you go to sit down? A Sit down; yes, sir. It is right alongside of that.

Q Now that probably has a depth of five feet by about three and a half in width—good sized closet? A About three and a half by six—five or six.

Q Five or six. Now, you say that when you made your examination there that you found a case of butterine and some other stuff in that closet? A Yes, sir.

Q That was sitting on the—in the part where you ordinarily urinate if you were not going to sit down? A No; it was right near—some things was on top of the bowl of the toilet and some things on top of the bowl and some things on the floor. The tub of butterine was on the floor and some other things was on top of the cover of the toilet.

Q Well, in any event it appeared from the occupancy that the toilet was being used as a storage department—store room? A Little bit.

Q On that order? A Yes, sir.

Q Now, you went there with some man by the name Amorose to this toilet, did you—what is the name of your plumber? A Amorose.

Q Did you go to this toilet with Amorose? A Yes, sir.

Q And was this one of the toilets that Amorose made an examination of? A Yes, sir; it was one of them.

Q The letter "G"? A "G."

Q That was the first examination made? A Yes, sir.

Q That is in room "A"? A Yes, sir.

Q But is marked on this map "G"? A Yes, sir.

Q Then you go from the store through a door to what is marked here as "B" on the map? A Yes, sir.

Q That is a bedroom? A Yes, sir.

Q That is a continuation of the apartment of Angelo? A Yes, sir.

Q And you go from the bedroom to the kitchen through another door? A Yes, sir.

Q So that the apartments of Angelo consisted of the store, bedroom and kitchen, is that right? A Yes, sir.

Q Now, in the house—apartment—there are three exits—four exits—four ways of getting out of this apartment. You can come in—say coming in—you can come in either the front door, can't you? A Yes, sir.

Q Then along up North Eighth street at the room marked "B" is a stone step with a door leading in the street? A Yes, sir.

Q That is the second entrance? A Yes, sir.

Q To this same flat? A Yes, sir.

Q And then at the extreme end of the building—rear of the building there is another entrance with a stoop coming up? A Yes, sir.

Q Part of the continuous range of staircasing going to the top of the building there? A Yes, sir.

Q That is correct, is it? A Yes, sir.

Q Now, then is there or is there not any toilet in this room—this room "B"? A No, sir.

Q Is there or is there not any toilet or bowl in the kitchen room "H"? A No, sir.

Q Did you make an examination and take up any part of the kitchen "H" in making your search for the bullets? A There was a closet there. I didn't look in that. I looked for some clothes.

Q Did you make any examination—isn't there a wash tray there or wash bowl—large tray—water connection? A In the kitchen?

Q Yes. A Yes.

Q Isn't there, as you come in? A Yes, sir; right near the window.

Q Wash and water connections? A Yes, sir; washtub.

Q Did you examine into that? A In the washtub?

Q Yes. Did you folks take up the— A The plumbing work?

Q The plumbing under that? A No, sir.

Q There is an entrance then from "H" into "I"? A Yes, sir.

Q That is from the kitchen of Angelo's apartment to the kitchen of Vincenzo's apartment? A Yes, sir.

The Court. The former answer that you gave, Mr. Witness, was that there was an entrance from "H" to "I." Is it "J" or "I"?

Witness. From "H" to "J."

The Court. When you answered did you answer with reference to the same room that you called "J" before?

Witness. Yes, sir.

Mr. Mott. It was intended for an "I."

The Court. You asked him in looking at it about "J"?

Mr. McDermit. In looking at it I said "J."

The Court. Let us agree that it is "I." It is the same entrance that he talked about before?

Witness. Yes, sir.

Q Now we have got through with Angelo's apartment—got down to the kitchen now—there is a door between "H" in Angelo's apartment and the kitchen marked "I"? A Yes, sir.

Q And there is a wall that continuously separates the apartment of Angelo from the apartment of Vincenzo commencing at the entrance of a door marked "D" on this map or plan facing on Chester avenue, running along "D" back to where we get an entrance to room "C"; is that right? A Yes, sir.

Q Then the wall continues to separate the apartment until we get to the room marked "E"? A Yes, sir.

Q And the room "E" is a continuation of the flat of Vincenzo. Then in room "E" there is a toilet marked here "F." A No; bedroom "E" and then between bedroom "E" and "I" is the toilet.

Q Between the bedroom "E" and "I" is the toilet? A Yes, sir.

Q That is quite some toilet, isn't it? A Yes, sir.

Q That is not only a toilet but a bathroom? A Bath tub.

Q Yes; bath tub in there regular bathroom? A Regular bathroom.

Q Fitted up— A With pretty good closet.

Q Now, there is no way of getting into these apartments, one from the other, unless the door leading between the back kitchen is used; isn't that so? A That is right.

Q And that is the same; placing the store in the shape of rooms in the second and third floors—that is the substantial plan of the entire building? A Yes, sir.

Q Both flats—one separated from the other up in the building—in the general make-up—there is a wooden door that can be locked on either side, or if both sides see fit to keep it open, communication can be had? A Not all the way up, only at the first floor is this door entrance between "H" and "I." On the other flats upstairs it is not.

The Court. Don't both the apartments have stairways with the cellar and don't they communicate with the cellar?

Witness. They have to come down the back stairs, your honor.

Mr. McDermit. Two sets of staircases, your honor, in the house.

Q How many sets of staircases going through the house? A One from the front part of the building, regular hall, and one from the back stairs.

Mr. McDermit. Now, the front part of the hall it is admitted in this case is not in use.

Witness. Not very much

Q Unless people want to use they are not much—in case of necessity they can get through there—it is kept closed; supposed to be closed. People get in-

gress and egress to the second and third floor through the rear? A Yes, sir.

Q There are entrances to each of these apartments in the rear—stoop entrance? A Yes, sir.

Q It isn't necessary to get into Vincenzo's apartment to go through the front door? A No.

Q He gets into his apartment from the rear of the building? A Goes through a gate and comes in through.

Q So that both these lower apartments face out in the yard? A Yes, sir.

Q Now, out in the yard there is a sort of a shed or storeroom? A Yes, sir.

Q And that shed out there is fitted up with a stove, isn't it? A Yes, sir.

Q Fitted up with sort of laundry—general storage room for tools, hammers and a lot of stuff? A There is a lot of little things in there.

Q Sort of storage place isn't it? A Storage, and there is old stuff in there.

Q That is a one-story building and it is about thirty feet off from the main building—isn't it, twenty-five feet? A Twenty-five or thirty.

Q Twenty-five or thirty feet. And hanging from that building in the yard runs a system of clothes lines to the first floor of the building for dyeing clothes, haven't you observed? A I didn't observe that.

Q Didn't observe how they dried or hung out their clothes there? A No, sir.

Q Did you observe clothes lines hanging across in the outer house or anything of the kind? A I didn't observe that.

Q Didn't observe that. Now, the only toilet that Vincenzo's family could use was the toilet marked "F"? A Yes.

Q And that is on the extreme easterly side of the building? A Yes, sir; next to the kitchen.

Q Let me ask you this other question. Did you notice upon which side of the door—that is the door leading from the two back kitchens—which way the door swung between these two kitchens—whether it swung to the west or whether it opened to the east? A I am positive that Vincenzo Cericello's apartment opens east.

Q Opens toward the east. That is correct? A Yes.

Mr. Mott. To get from Vincenzo's apartments?

Witness. No; from the back stoop to get in.

Q I am speaking, Mr. Federici—

The Court. The door swings in, doesn't it?

Witness. Yes, sir.

Q Do you know what door I am talking about?

The Court. He is answering you about a door going out on the porch.

Q I didn't want that door. A Which door?

Q I will show you.

The Court. You mean the door between "H" and "I"?

Q Yes; the door between Vincenzo's kitchen and Angelo's kitchen.

The Court. Which way does it swing?

Witness. I don't rememer.

Q Do you know? Do you? A I don't remember.

Q Now, isn't the lock on the door shown plainly there? Did you find a lock and key there? A There is a lock on every door.

Q Didn't you find a lock and key in the apartment of Vincenzo—don't you lock the door through the lock in Vincenzo's apartment? A I can't say that, I don't know.

Q Don't know about that. Didn't you look to see on which side that door was locked, whether it was locked from the side of Vincenzo's or locked from the

other side? A When I was there that door was always open; I didn't take notice.

Q Did you notice a key in the door? A No, sir.

Q Did you look? A I did not.

Q Did you notice that the lock was on this side of the apartment? A I didn't look.

V The door was always open because Angelo was in jail and some of the rest of the people were out.

Mr. Mott. I object.

The Court. Let him finish the question.

Q The door was open at the time that you went there—Angelo was in jail and these people, Mrs. Cerciello, his sister-in-law, was taking care of the store and the flat? A No, sir; I was there before Angelo was in jail.

Q Now you found in "F," you say, a bullet? A Yes, sir.

Q Did you find it? A The plumber. I was present.

Q Did he find it in the room there or did he find it in the cellar, or where? A In the bowl. He turned the bowl upside down and out from there the bullet dropped out.

Q Now, then, he found—as I understand he found on the 27th day of September, in the bowl of this room, the bullet? A Yes, sir.

Q Is that right? A Yes, sir.

Q It wasn't found down in the cellar? A No.

Q In the trap connecting up the main sewer? A No, sir.

Q And no search was made down under the trap? A We did.

Q All the way down? A Yes, sir.

Q In the cellar? A On the main trap.

Q Main trap? A Yes, sir.

Q Found nothing? A Nothing.

Q But in this one particular place? A Yes, sir.

Q In the bowl itself? A Yes, sir.

Q You found a bullet? A Yes, sir. Do you want an explanation? I want to tell you where that bullet was.

Mr. McDermit. Wait a minute.

The Court. Is that a syphon?

Witness. Syphon injecting closet.

The Court. Is it a cyphon water-closet?

Witness. Yes, sir. I never seen a closet like it before. There is a curve in it and then a little bit of hole, that big (indicating); they call it a cyphon jet; and through that little hole that is where the bullet went in—that is where we found it.

Mr. McDermit. One minute. You don't know how it went through there. I move to strike it out.

The Court. Motion granted. Where did you find it, on the other side of that hole?

Witness. In that little hole.

The Court. The only opening on the other side is towards the sewer in the street?

Witness. To explain that—

The Court. Answer the question. There are two openings into the opening in which the little hole goes?

Witness. Yes, sir.

The Court. One of them is the little hole and the other is the other end towards the street—the sewer end.

Witness. It is in a bowl, your Honor; in there there is a little hole goes—this is the bowl, then under there there is another little hole that goes under here. Now, you could throw anything over here and the water takes it out, but if it happens to go and catch in that little hole that takes it right in there.

Q Now, did you ever throw anything in there? A I did not.

Q How do you know it sticks in there? A I see.

Q Are you an expert on water-closets—toilets? A No, sir; I see it.

Q Are you an expert on bullets? A No.

Q Never mind stating what stuck there. Tell us what you know. That bullet looked to be in a pretty good preserved condition when you found it? A Yes, sir.

Q Do you know what the effect of the water in the toilet for four weeks—what the appearance of the bullet would be? A No, sir.

The Court. You call it a bullet. Looks very much like a cartridge. There seems to be a bullet sticking out one end and the shell part at the other. The difficulty is if you are going to take this case up the record won't be clear.

Q That is a cartridge? A Yes, sir.

Q Did you ever have any experience of a cartridge being placed in a toilet or water— A No, sir.

Q —for a period of four months? A No, sir.

Q Do you know what the effect is? A I do not.

Q Could you tell from examination of that bullet whether it had been freshly put in—been there a day or been there four or five months? A I couldn't say.

Q Look at the condition of the cartridge. It looks like a new cartridge, doesn't it? A Yes, sir.

Q Looks like a well preserved cartridge? A Yes, sir.

Q Don't look as though it had ever been in water for any great length of time? A I couldn't say.

Q Does it, to you? A I don't know what effect the water would be on it.

Q Where are the rest of the cartridges up there, do you know? A I don't know.

Q Did you ever find any other cartridges up there? A No, sir.

Q What is the calibre of that cartridge? A 32.

Q Have you got another cartridge here—new cartridge? A No, sir.

Q What caliber cartridge do you carry? You are an officer; you have got a right to carry it? A Certainly I can.

Q What do you carry? A 32—38.

Q Have you got one with you? A No.

Q Can you get us a 32? A Can get one.

Q Get one. A new one I mean; one fresh out of a box. If there is no objection he may as well do it as some other witness.

The Court. Why don't you do it if you want to. You have a right to bring in anything you want.

Mr. McDermit. I don't carry any.

Re-direct.

Q Now, in which closet did you say you found the cartridge? A "F."

Q Now, Mr. Federici, describe that closet and the construction of it and the position in which you found the cartridge as fully as you can. A A plumber could make a better explanation than I could because he is in the business and he knows just what to call that kind of closet. I am not an expert on that, and if you want that testimony I can get the plumber to do it. He can explain it.

Re-cross.

Q To make that situation clear you undertook to explain to the court and jury that there was a little sort of receptacle or something that this dropped into —that deep hole in there. A It would go out the other way too; there is a little hole there.

Q There is something a little bit deeper—there is a sort of—in the bottom of the hole—in the bottom of

this water flush there is a little receptacle like a basin —like a sewer basin—about an inch deep or half inch deep. A I couldn't say. The best way is to get the closet and look at it; then you have it.

The Court. Don't argue, Mr. Witness, just answer the question.

Witness. I don't know. I am not an expert on water-closets.

Q In any event when this was found was this cartridge in a standing position or laying position? A It dropped out.

Q It dropped out? A Yes, sir.

Q You don't know where it dropped from? A Mr. Cerciello was present.

Q At the time it dropped; you turned the toilet upside down and it dropped out? A Not upside down once, but hundred times, shaking—kept a shaking.

Q You shook it hundred times? A Positively.

Q And after you shook it many times this cartridge dropped out? A Yes, sir.

Q You don't know where it dropped from? Tell us if you know. A It dropped from the toilet.

Q What part of it you don't know? A I don't know.

Q Your opinion was that it must have dropped from the receptacle—from this little basin? A Because the plumber put a little wire in there and he says "There is something in here" and he says "I am going to try and get it out."

Mr. McDermit. Strike that out.

The Court. Motion to strike out granted.

Q You had shaken or Mr. Amorose had shaken the top of this toilet about a hundred times before this cartridge was produced? A I said so; yes, sir.

Q How long did it take you to shake the toilet or bowl a hundred times—how many minutes? A It

is a very heavy closet. I tried a couple of times and then I gave the job up. I gave it to a fellow by the name of Landonia; he was a stronger man than I was.

Q And how long did it take, this process of shaking up this top of the toilet? A About an hour.

Q About an hour? A Or more.

Q Hour or more. How much more, two hours? A I don't know.

Q Three hours? A It took a long time I know.

Q Well, finally the last shake brought forth a cartridge? A Yes, sir.

Q And that is the cartridge? A Yes, sir.

Q Look at this other cartridge.

The Court. What are you showing him now?

Mr. McDermit. Showing him a cartridge I just got from Mr. Godfrey—new cartridge.

The Court. It doesn't make any difference where you got it. It isn't in evidence.

Cartridge marked Ex. D. 3 for identification.

Q Is there any difference in the appearance of those cartridges as they look there? Are they the same make? A They are not the same make, but not much difference.

Q Is there any difference as to the condition of them? A One has got a black spot—

Q Is there any difference—

Mr. Mott. I object to the question because that is a question of which the jury can judge as well as this witness.

The Court. If it is in the nature of expert testimony you haven't qualified him as an expert. If it is something that everybody knows then it isn't necessary to have an expert testify. Objection sustained.

Mr. Mott. I suppose this diagram is in evidence. I don't know who offers it.

The Court. If there is no objection to it, it will be marked.

Diagram marked Ex. S31.

WALTER GODFREY, recalled for the State.

Direct examination by Mr. Mott.

Q Mr. Godfrey, are you familiar with the position of the cells in the county jail known as murderers' row? A Yes, sir.

Q Will you describe how they are located and how the tier is constructed? A It is the ground tier in the north wing and it is about 70 feet long. There are twelve cells in the row. There is a space of about four and a half to five feet between the cell door and the iron railing or iron bars that run around the whole length of the tier and those iron bars are covered with half inch wire mesh. The cell doors stand open all day from about eight in the morning until ten or eleven o'clock at night, when the prisoners are locked up for the night. They can, of course, walk up and down this corridor, but of course, cannot go any further.

Cross examination by Mr. McDermit.

Q Of course prisoners are taken frequently from murderers' row over to the back office of the jail when counsel wants to see them or other visitors come there from the prosecutor's office or anything of that nature—special orders. A Yes, sir; they can be taken out there at the doorway on order.

Q And any person confined in murderers' row is accessible on order from the prosecutor? A Yes, sir.

Q And after trial orders are not necessary? A After trial?

Q After trial—after the evidence has been gathered and the party has been tried it isn't necessary for the prosecutor's office, which it does, to send anybody

up there to see their case is not discussed? A No, sir; as far as that particular prisoner is concerned.

Q He is then in the hands of the sheriff absolutely? A As far as that particular prisoner is concerned.

Q So that in the case of Laudisi the same rule would apply after the conviction was over, people desiring to see him would not require being accompanied by an officer from your office? A No, sir; but they have had to have a pass.

Q That is true. I understand they usually send the joint pass of the prosecutor and the sheriff? A Countersigned by the sheriff.

Mr. Mott. The State rests except I shall request the court later on to allow me to introduce, if I conclude it necessary, some evidence qualifying a magnifying glass for the use of the jury and further evidence regarding the toilet from which the bullet was abstracted or taken.

Mr. McDermit. I suppose I ought to enter an objection.

The Court. You ought not to be asked to admit that any particular magnifying glass is a correct magnifying glass. You want some testimonial authentication of any glass that is delivered to the jury for its use. Now, the question of the closet. I understand that you consent that the water-closet itself may be brought here.

Mr. McDermit. No objection to that.

The Court. So that if you object the result of your objection would be that the court will have to take an adjournment until after these things are brought in. That is not reasonable or necessary.

Mr. McDermit. I do not propose to question it. I am only trying to protect the defendant's rights as far is I know how.

The Court. I think it is a matter in the discretion of the court.

Mr. Mott. I shall recall the plumber to testify to what he did with the closet when we get it here.

Mr. McDermit. I personally, cannot see any way that that would jeopardize or hurt the defendant if that course is pursued. I want to be on the right course. If the court thinks it is discretionary, very well. It is the court's duty to protect the defendant as well as myself.

I presume that any motion to strike out as to the testimony better be reserved until the State has completed its case.

The Court. What is the motion?

Mr. McDermit. The motion to strike out the testimony that Angelo told that lady "You have rented the store to him and he won't pay you." That was the shoemaker. I say it has no relevancy whatever and it ought to be off the record.

The Court. What witness was that?

Mr. McDermit. The shoemaker's landlady.

The Court. Her statement of what the defendant said to her?

Mr. McDermit. Yes.

The Court. That came up in the testimony of Ferrara, the shoemaker. He said that Angelo went to his landlord when he wasn't there, and subsequently the wife of the landloard appeared and then she testified that the defendant came to her.

Mr. McDermit. Yes; made the statement that I have just repeated. I say that has no bearing upon this case whatever. I move to strike it out.

Mr. Mott. I think it has an important bearing.

The Court. That wasn't the question that was reserved. Decision was reserved on the testimony of Ferrara, the shoemaker.

Mr. McDermit. Substantially the same proposition.

The Court. You are making a motion to strike out certain parts of the testimony of the landlady, that is to say the wife of the landlord, under a reservation by the court of some question of striking out the evidence of Ferrara; isn't that so?

Mr. McDermit. Well, it is the same question.

The Court. Isn't that so? Let us proceed one step at a time.

Mr. McDermit. Yes, sir.

The Court. Now, then, you say that substantially the same principle of law applies to the woman's testimony?

Mr. McDermit. Yes, sir.

The Court. The difficulty with the man's testimony was that it was hearsay, that he said what was supposed to have been said to his landlady and he was not there and did not know anything about it, and that, of course, should be stricken out if it is not already stricken out. The court will decide it so now. But as to what this woman says the defendant told her, why isn't that perfectly proper and competent testimony?

Mr. McDermit. Because it is collateral matter entirely and has no bearing upon the main issue.

The Court. The testimony of the shoemaker is stricken out as it is incompetent. The testimony of the woman with reference to what the defendant said to her is competent evidence. The question then is whether it is relevant or not. Now, the only relevancy that it would have would apparently bear on the question of whether it is a circumstance in the case which is of any assistance in determining the guilt or the innocence of the defendant. Why isn't it a circumstance in the case for the jury to draw such inference from it as they will?

Mr. McDermit. Because it is not part of the *res gesta;* is not part of the case; a collateral and

independent matter and it ought not to be allowed to stay in the case.

The Court. The defendant's statement, that he stated to Laudisi that Elvira spent all the day or most of the day at the shoemakers and any question of his feeling towards the shoemaker or towards Elvira on account of her going to the shoemaker would have relevancy in the case if this circumstance of the defendant's going to the landlord is a circumstance from which the jury draws the inference of hostility to the shoemaker, then the question remains for the jury to determine what if any weight it will attach to that circumstance. That is a question that the court is going to leave entirely for the jury to say. I will leave the testimony in the case.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

Wm. P. Martin (L. S.)
Judge.

Mr. McDermit opened for the defendant.

VINCENZO CERCIELLO, called for the defendant.

Direct examination by Mr. McDermit.

Q Where do you live? A 409 Chester avenue.

Q You are a brother of the defendant, Angelo? A Yes, sir.

Q And you and Angelo occupied two apartments on the bottom of the property at the corner of Chester avenue and North Eighth street? A Yes, sir.

Q Who owns that property? A I.

Q How long has that property been built there? A It was started three years last February.

Q How many families were living in that house on the 29th day of May last? A The house built five families and store, two rooms in the rear.

Q Who was occupying the store at that time? A As soon as I completed my brother opened for grocery store.

Q And he continued the grocery business until—from the time he opened down to the time of his arrest, did he? A Yes, sir.

Q Do you remember when your brother got married? A Yes, sir.

Q And how long before the 29th day of May was that? A How long? About four months and few days.

Q About four months before that. Were you at the wedding? A Yes, sir.

Q You were at the wedding, were you? A Explain it through the interpreter.

Mr. McDermit. We will use the interpreter altogether.

Q (Last question put by the interpreter.) A Yes, sir.

Q Do you remember when Mrs. Angelo Cerciello came there to live there with your brother? A Yes, sir.

Q And what is your business? A I am a carpenter.

Q And are you a married man? A Yes, sir.

Q And does your wife live there with you in your apartments? A Yes, sir.

Q Have you any children? A Yes, sir.

Q How many? A Four.

Q Did you see your brother and his wife nearly every day prior to May 29? A I worked on the 29th.

Q Well, in the evening? A I saw them before the sun set.

Q About what time?

The Interpreter. He says that he saw them between the light and dark of the evening.

Q That was on the 29th of May? A Yes, sir.

Q About what time of the evening would that be? A I don't remember because I don't have my watch.

Q Now you had visited your brother and his wife —did you visit your brother and wife on that night? A When?

Q Any time since he married there? A Yes, sir; many, many times.

Q Now what was the relationship between your brother and his wife? How did they act towards one another? State what he knows of his own knowledge about how these people got along, the wife and the defendant.

The Court. You must ask him to testify to facts.

Q Did you talk with your brother while he was married before his wife died? A Yes, sir.

Q Did you talk with his wife the four months she lived there? A Yes, sir; we were friends.

Q Yes. Now what did you see the wife and husband do when you were in there—when you visited them? A They were attending to their business.

Q Ever have any quarrels between them? A No, I didn't see any.

Q Did you hear any? A No, sir.

Q You slept where on the night of the 29th of May? A Sure in my home.

Q What time did you go to bed? A Nine o'clock is my time to go to bed every night; nine o'clock.

Q What time did your wife go to bed that night? A I don't know. I left her. I don't know when she came.

Q Did she go to bed before you or after? A No; I went first.

Q Now, did you see Mrs. Cerciello, the defendant's wife, alive again after the time that you saw her between the time of sunset on the night of the 29th—did you see her alive again—did you see her after that? A No, sir.

Q When did you first know that she was dead? A In the morning.

Q What time? A I can't recite the time.

Q Well, how did you find out that she was dead? A A person come to me and told me that she was dead.

Q Who was the person? A Salvino Daurio.

Q Who is he? A He lives nearby me.

Q Where did he come and tell you? A In the shanty of the yard in my house.

Q In the shanty in your yard? A Yes, sir.

Q You mean the outhouse that was there? Is there more than one outhouse in this yard? A Yes, sir; it is a kind of a shed.

The Court. Did you say shack or shed?

Witness. Shed.

Q Is that the place that contains the stove out there in the yard that you allude to? A Yes, sir; I have always a stove there.

Q What time that morning did he get up—the morning of the 30th?

The Court. You mean "you get up?"

Q What time did you get up the morning of the 30th? A Near six o'clock; I can't precisely say; near six o'clock.

Q And what time the night before you went to bed did you see your brother last, Angelo? A In the same hour that I told you, beginning to get dark.

Q Did you see your brother after you went to bed that night until you got up in the morning? A I saw him when he called me.

Q When was that? A About half-past ten.

Q That was the night of the 29th, was it? Half-past ten in the morning or night time? A The day after.

Q Half-past ten in the morning? A Oh, the same night of the 29th he called me.

Q And where did he call you? A I was in bed.

Q Well, did you get up? A Yes, sir; I got up.

Q And what did he have to say to you—what did he want of you?

Mr. Mott. I object to the conversation between this witness and the defendant at 10.30 that night.

Objection overruled.

The Court. What did he say and what did you say?

Q When he called you out of bed? A He told me that in that time his wife wasn't back yet, she was out to order some ice cream—to buy some ice cream—to buy some ice cream for herself.

Q Well, what else took place? A He asked me "What I will do"?

Q Tell him to go on and tell us what took place between him and his brother and ask if Mrs. Cerciello, his wife, was present, and give us the whole thing that occurred there. A I told him "Go out and try to found her." My wife was present then.

Q Well, what else took place? A He came back after about one hour—half an hour or one hour—and he said that he don't found her.

Q Then what? A He went out again later.

Q How much later? A I can't recite.

Q Well, now, did he ask your wife in your presence to wash any clothes for him? A He never asked that because his wife was washing the clothes.

Q Did your wife or did you wash any blood off his face or did you wife wash any of his clothing that night at his request? A Nothing.

The Court. Well, did she wash any of his clothing of her own volition?

Witness. No, sir; that evening no.

Q Now, what time did you go to bed after that? A I don't went any more in bed.

Q Why? A I was troubled because my brother was looking for his wife and he was out looking for her.

Q Didn't you tell me when I asked you first that you got up at half-past six in the morning? A I slept on the chair.

Q Well, did you know anything about any trouble that night between Angelo and his wife? A No; I don't know anything.

Q Did you ever see any hatchet like that around the yard or outhouse or on your premises or on your brother's premises? A No.

The Court. (Referring to Exhibit S. 2.)

(Question put by the interpreter.)

A No, sir; my tools are in the shed. My carpenter tools.

The Court. Are what?

Witness. Are in the shed—in that little shanty.

The Court. That wasn't the question that he was asked. He was asked if he ever saw a hatchet like that.

The Interpreter. He said no.

Q Do you know Mr. Federici? A Yes.

Q And when relative to the 29th of May did you see Mr. Federici—when after the 29th of May did you see Mr. Federici? A I can't recite the date. I know it was the 30th of May in the morning.

Q Were you over to where the crowd was when your sister-in-law's body was in the lots? A Yes, sir; I went, sure.

Q And who did you go over there with? A With that person who come and called me.

Q Well, when you got over there what time of day was that? A I don't know.

Q Were there many people over there? A Many, many.

Q And did you recognize your sister-in-law on the ground there? A They called me to recognize her.

Q Yes. Now, then, did some one show you a handkerchief there? A They don't showed it to me at all—it was on the floor—on the ground.

Q Who picked it up? A I don't remember.

Q Did you see your sister-in-law's face there? A No.

Q Was the face covered—was it? A Yes, sir.

Q Were you there when they took the body away? A I was sitting a little far away from that.

Q Where was your brother, Angelo, at that time? A He was just near me there.

Q He was over there with you? A He was just a little far way from me.

Q Did you see the bracelet on the ground there? A No, sir.

Q When did the deceased's body come to the house—that day? A No.

Q When? A I think Saturday it was.

Q What time Saturday? A I can't recite the time. I telephoned many many times to the undertaker for the body.

Q Did you work Friday or Saturday of that week? A No.

Q Who was it that told your brother that his wife was dead over there if you know?

The Court. Ask him if he was present at the conversation.

Q Did you tell your brother that his wife was dead in the lots. Did you bring him the information? A No.

Q Do you know who brought him the information? A (No answer.)

Mr. McDermit. I withdraw the question.

Q The body was brought to the house on Saturday, was it? A I don't know, but I think it was Saturday.

Q When was the body buried—when was the funeral? A The 2d of June.

Q What day was it? A Monday.

Q Now, how did your brother act—what did he do—on Saturday, Sunday and Monday while his wife was dead? A Was many and many times faint.

Q What? A Fainted.

Q How often did he faint? A I can't count them.

Q Who attended to him when he fainted—who gave him attention? A Sometimes the detectives—they were there—helped him.

Q Well, on the day of the funeral what happened to his brother if he knows anything? A He fainted.

Q Well, how long did the spell last? Where did he faint, in the street, house or where? A In the house. The spell of fainting was from the house to the church, from the church to the cemetery and from the cemetery to the house back again. I helped him—when we reached the cemetery I and another person we helped him to come near the grave of his wife.

The Court. Why don't he answer the question, and tell us when he fainted.

By the Court.

Q How long have you been in this country, Cerciello? A About fourteen or fifteen years.

Q You speak as good English as the interpreter, don't you? A Not so well.

Q Proceed in English as far as you can. Now answer the question. The question was when did your brother faint during the ceremonies attending the funeral? A I don't understand.

Q When did your brother faint? When was he unconscious and did not know anything? A My brother?

Q Yes. A I was in a place and I don't say nothing of my brother about that trouble, only I see him on the same place on the ground.

The Court. Ask him the question, "When did your brother faint on the day of the funeral at the funeral ceremony or any part of it"?

A He was start in the house, take on the shoulder on the street—on the sidewalk and sit on a chair, when the carriage coming bring on shoulder again and put in carriage, helped to—no alone.

The Court. He says as the body was taken out of the house to the hearse, was it?

Witness. Yes.

The Court. Is that what you mean? Ask him that.

Witness. My brother, I am speaking about.

The Court. Proceed in your own way.

Further direct.

Q You went to the funeral, and came back, did you? A Yes, sir.

Q And when you came back from the funeral what was your brother's condition—how did he act? A Oh, condition of my brother when come back from the cemetery?

Q Yes. A Was not so bad like before.

Q Well, did you see Mr. Federici when you came back from the funeral? A I see a lot of people in there but my eyes—

Q Did you see Joseph Federici when you came back from the funeral? A I see my eyes but I don't see anybody there; there was a lot there.

Q Did Joseph go around your house, search the bureaus and search the place after that? A After the funeral come Mrs. Minichino and carry home a little to help the stomach.

The Court. Tell him to say that in Italian.

A She brought something to him to help his stomach.

Q Some neighbor bring in some broth or soup, or something? A Yes, sir; a neighbor.

Q Who was it? A Carmine Minichino.

Q Now what time of day was that? A When we came back from the cemetery.

Q Look at that revolver. A This is mine.

Q Look at it. (Ex. S8). When did you last have that revolver in your possession before I showed it to you this morning?

The Court. Hasn't he already testified to that?

Mr. McDermit. I am asking him to get out something else in connection with the time if I can manage it.

The Court. All right.

A I don't know how many years I have that revolver in my possession.

Q When did you get it out of your possession? When did it leave your possession? A When Federici come and took it away from me.

Q When was that, the day of the funeral? A No; in the month of September.

Q Where had this revolver been during all that time, between the funeral and the date that Federici took it? A I kept it in the place where I keep in my place.

Q Now, did your brother have possession of it? Did you give it to him at any time? A No; I don't lend it to anyone, a revolver, because I will be arrested with the court. I am under the law for that.

Q Where was this revolver on the night of May 29th and the day of May 30th? A In my home.

Q Did you take any bullets out of that revolver? A No, sir.

Q Did you have any bullets in the revolver? A Yes, sir; must be loaded.

Q How many bullets did you have in the house? More than you had in the revolver? A I don't know how many; yes, we had more.

Q How many cartridges did you have in the house? Did you have a box of cartridges there? A The first time I bought it, yes, sir; I bought a box of cartridges.

Q How many cartridges besides the cartridges that were in that revolver were in your house in the night of the 29th of May, if you know? A I can't precisely say.

Q About how many? A I don't count them; I don't know how many.

Q Was there a box containing cartridges in this closet besides the cartridges that were in the revolver? A No.

Q Was there any extra cartridges, any more than the five or six? A Yes, sir; I had—not where I kept my revolver.

Q Where did you keep the extra cartridges? A Over a mantelpiece in the back-house room in the toilet.

Q Look at this diagram. A I don't have to look because I made the house.

Q You look at the diagram and answer my questions. A This is my toilet.

Q That is room "F"? A Yes, sir.

Q Now, where did you keep the cartridges that belonged to this revolver, where were they? A Up there on the shelf (indicating room F).

Q Now, did you unload the cartridges from this revolver at any time? A No.

Q No? Did Mr. Federici take out the bullets or the cartridges from the revolver? A Yes, sir; when he took the revolver he took out the cartridges because I loaded again.

Q He took the cartridges out and you loaded the revolver, did you? Is that what he says? A When I found the revolver empty then I put in again the cartridges.

The Court. It was long after that that you delivered it to Federici on September 27th, wasn't it?

Witness. Yes, sir; before the 27th.

Q You were arrested charged with having murdered this woman were you not? A Yes, sir.

Q And what day were you arrested on? A The 2d of June.

Q And who arrested you? A Federici and Godfrey—there were three or four men.

Q What time of day was it that they arrested you? A In the night.

Q Wasn't that the night of the funeral that they came there and arrested you? A Yes, sir.

Q And also arrested your brother? A Both.

Q Now, before they arrested you or your brother did Federici or DeRogatis or Detective Godfrey or any of those people make a search of your and your brother's premises? A Nobody else made a search in my home.

Q Then your home wasn't searched? A Never in my presence.

Q When did you get out of jail? A The 2d of August.

Q You had been in jail for two months? A Yes, sir; two months exactly.

Q Your wife was also arrested? A My wife with my children.

Q Took the children to the jail, too? A They told me, I didn't know.

Q How long was your wife kept in jail? A I don't know. I was inside the jail. I come out after two months.

Q When you were in jail and your brother was in jail they kept both of you separated, did they not, so that you couldn't see one another? A Yes, sir.

Q And they kept your wife separated from you and from your brother while she was under arrest in the House of Detention? A So they told me.

Q And you have never been able to talk to your brother alone since the night he was arrested down to the present day except in the presence of a representative of the prosecutor's office? A Yes, sir; didn't speak to him alone; was somebody there always.

Q And they would never allow you to discuss with your brother the question of this murder charge? A No; it is against the law.

Q And you haven't been indicted by the grand jury of this county for the murder yet? A No; I was discharged.

Q Any time during the time that you were up that night or sitting on the chair, on the night of the 29th of May did your brother make any request in your apartments to have anything washed, a coat, shirt, or anything else? A No; what I was, his washwoman.

Q What became of the pants that you wore that night? A I have them in my home.

Q What has become of the pants that your brother wore that night when he was arrested? A Why you ask me? I don't know.

Q What has become of the greasy pants, because you know what has become of the greasy pants, that was up there?

Mr. Mott. I object.

Objection sustained.

Q Do you know anything about a pair of pants that the policeman took away from the apartments up there, either your or his apartment? A I don't know anything.

The Court. There isn't any evidence that a pair of pants was taken away, is there?

Mr. Mott. No, sir.

Q Did you burn up any pants that night? A No, sir; I didn't burn anything.

Q Did your wife burn up any pants? A Why I had to burn them? What for?

The Court. Tell him to answer the question whether or not he burned or saw anybody burning a pair of pants.

A No, sir; I did not burn.

Q Did your brother wear pants that night or did he not? A Yes, sir.

Q And didn't Mr. Federici tell you—now listen to me—didn't Mr. Federici tell you that the pants that Angelo wore belonged to you? A Yes, sir.

Mr. McDermit. Why isn't that competent?

The Court. You got the answer.

Mr. Mott. I move to strike it out.

The Court. No, we will let the answer go.

Motion denied.

Q Did you ever wear that same pair of pants that your brother wore that night? A Yes, sir.

Q You wore the same pants he wore that night, your brother?

The Court. Ask him that.

A No.

Q Why do you answer yes when you don't know what I tell you? The court told you if you didn't understand to say so. A They belonged to my brother.

Q Now, do you know where those pants are now? A I don't know.

The Court. Do not know what?

The Interpreter. Where they are?

The Court. What pants?

Witness. The pants what they ask me about.

Cross examination by Mr. Mott.

Q You went down to the scene or to the place where your sister-in-law Alvira was killed with Dauria, I understood you to say? A Yes, sir.

Q And what time in the morning was it that you and Dauria went down there? A I can't recite the time.

Q Well, as near as you can fix it? A I don't know.

Q Oh, well, was it five o'clock in the morning? A There is no use to ask me because I can't precisely the time.

Q Was it eleven o'clock in the forenoon? A Don't ask me because I don't know the time.

Q I will ask you and you will answer me. Tell him that. A I told you already I don't remember the time.

Q Did you go down with Dauria to the place where your sister-in-law lay some time between five o'clock in the morning and eleven o'clock? A Yes, sir; yes, sir.

Q Then, sir, about what time did you go down there? A I don't remember; it was morning, but I don't remember.

Q Well, about what time? A I can't remember. I don't have the watch in my hand so I can't tell you.

Q I am not asking you that. Tell me within an hour of the time you went down there? A The sun was out, I know that.

Q Can't you tell me within an hour the time you went down there to the place where your sister-in-law lay? A I may make a mistake about the time and I don't know. I can't recite.

Q Why don't you want to tell me the time? A What I can say when I don't know about the time? I can't tell you the time.

Q Isn't it because you don't dare to fix the time? A If I can't fix the time the person who comes with me maybe he can.

Q I am asking you because you are the man I want to tie down, not him. A I don't know the time.

Q And you won't tell, is that it? A No; I don't know the time; not that I will not say, but I don't know.

Q Well, who first went, you or Dauria? A Together.

Q Whereabouts did you go? A Before he brought me to the butcher in Seventh street.

Q Yes, but whereabouts did you go when you got down to the place near Grove street where the body of your sister-in-law lay? A The morning that they brought me there to recognize her—it was her or not?

Q Where did you and Dauria go when you got down to the place where your sister-in-law's body lay? A I went over there, the place where the body was.

Q And did you look at the body? A They called me to recognize her.

Q Did you look at the body? Answer my question, please? A Yes, sir; sure.

Q How close were you to the body? A I was so near that my feet they can touch her dress.

Q Did you get down there first or did Angelo get there first? A I was the first to get there.

Q How long after you got there was it that Angelo came there? A I don't know the time when Angelo come there.

Q How long after you got there was it that you first saw Angelo there? A I saw my brother when the chief of the detectives, of the prosecutor told me to wait for the automobile.

Q Answer my question. Why are you afraid to answer that question, sir?

Objected to.

Mr. McDermit. I had the same trouble with him.

Mr. Mott. I recognize the trouble and I know the reason why.

Mr. McDermit. I withdraw my objection.

Q How long after you got down there did you first see—was it that you first saw Angelo there? A What I can say. I don't know it.

Q Why don't you know? A Well, I wasn't a sick person and I to watch my fever.

The Court. Can't you translate that better?

The Interpreter. It would be "I wasn't a sick person that I can't feel the pulse of my fever." That is the true expression of what he said.

Q How long after you got down there was it that you first saw Angelo there? A It was in the morning.

Q Is it the reason you don't dare answer these questions that you are afraid you will be re-arrested for this murder?

Mr. McDermit. I object to that question. The man has been discharged and I think he is entitled to be protected. I think that is improper and irregular.

The Court. Objection overruled.

Defendant's counsel prays exception to the ruling of the court, the same is allowed and it is sealed and signed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A If my conscience is clear I am not afraid of the law. I will not be afraid of the law.

Q How long after you got down there to the place where your sister-in-law's body lay was it that you

first saw Angelo there? A I told you I was there first and I don't know the time Angelo came.

Q I didn't ask you where Angelo came?

The Court. Tell his the court instructs him to answer these questions.

Q How long after you got down to the place where Alvira's body lay was it that you first saw Angelo there? A I can't say. Maybe it was one hour—maybe was three-quarters of an hour, maybe was ten minutes I was there.

Q You saw Angelo there? A Yes, sir; I saw him.

Q Where was Angelo when you first saw him there? A I saw him that two of his friends carried him under his arms.

Q Where was he when they were doing that? A I was there in the place.

Q Whereabouts? A As the people was so great crowd there he wasn't so near of the body but was there a little far.

Q Did you see Angelo at any time that morning go up to the body? A I was the first going there.

Q Oh, answer my question, please. Did you see Angelo at any time while you were there go up to the body? A No; he wasn't near the body.

Mr. McDermit. That isn't right.

The Interpreter. I don't see him; I was a little far away myself.

Q Did you see Angelo that morning anywhere near the body? A I was in the midst of the crowd and I can't say if Angelo was there.

Q Answer my question. Did you see him near the body? A No.

RECESS.

Q Mr. Cerciello, you got home from work about six o'clock on the night of the 29th, you say? A Yes, sir.

Q And then did you go right into your own apartment? A Yes, sir.

Q And was your wife there? A Yes, sir.

Q What time did you have your evening meal? A Half hour after arrival.

Q Before your evening meal did you see Angelo? A No.

Q Did you see Alvira before that time? A No, sir.

Q When did you first see Angelo after your evening meal? A I saw him in the yard.

Q Yes; at what time? A Half hour after I concluded my supper.

Q What was he doing? A He opened the door and he come in the yard.

Q Did he come into the house from the yard or was he out in the yard? A He was in his house and he come out in the yard.

Q Where did he go? A He went in the yard.

Q Yes; but what part of the yard? A Just in front of his door.

Q How long did he stay there? A Maybe four or five minutes.

Q Then, what did he do? A They called in and he went in side in his store.

Q And when did you first see Alvira after your evening meal? A I didn't see her.

Q Did you see her that evening at all? A No, sir; I didn't see her.

Q Did you see Alvira at any time after you got home from your work that night? A No; I didn't see her that evening.

Q Well, after Angelo went in the store when did you next see him again? A In that evening I didn't

see him any more until half-past ten when he called me. I don't see him.

Q And up till half-past ten had you seen Alvira at any time that evening after you got home from work? A No, sir; I didn't see her in that evening.

Q What time did you go to bed? A Nine o'clock.

Q Did your wife go to bed at the same time? A No.

Q What time did she go to bed? A I didn't know because I was sleeping.

Q When Angelo woke you up at 10.30 was your wife in bed with you at that time? A Yes, sir.

Q Angelo—after Angelo told you that his wife hadn't come home you told him that he better go look for her, I understand? A Yes, sir.

Q And did he go out? A Yes, sir; he went.

Q And he came back in how long a time? A About half hour he was out; maybe one hour. Half hour or one hour.

Q Then he came back? A Yes, sir.

Q How long did he stay when he came back? A He was there about six, seven, eight or ten minutes.

Q And then did he go out again? A He went out again.

Q And did you see him again that night? A Yes, sir; I saw him.

Q When? A About eleven o'clock.

Q Where did you see him then? A In my home.

Q How long did he stay there at that time, at eleven o'clock? A One or two or three or four minutes, just that—such time.

Q Then what did he do? A He told me—

Q I asked you what he did? A What he had to do.

Q Did he stay there or did he go out again? A He went out another time.

Q That is after you saw him at eleven o'clock he went out again? A Yes, sir.

Q How long was he gone this time? A Half hour or three-quarters of an hour.

Q And then did he come back? A Yes, sir.

Q How long did he stay this time when he came back at half-past eleven or quarter of twelve? A At twelve o'clock he went out again.

Q How long was he gone at the time he went out at twelve o'clock? A He went to Bloomfield avenue.

Q No. I asked you how long he was gone? A Fifteen minutes or maybe half an hour.

Q And then did he come back? A Yes, sir.

Q When he came back at quarter after twelve or half-past twelve how long did he stay that time? A I can't precisely tell the time; but maybe he was there one hour or more.

Q Did he go out again? A Yes, sir; he went out again.

Q About what time was it when he went out this time? A I don't remember.

Q Well, how long was he gone this time? A The same time as before.

Q About half an hour? A Maybe more, maybe less.

Q And when he came back again? A Yes, sir.

Q And what did he do when he come back this time; did he stay or did he go out again? A He was with me about another hour; then he went out again.

Q How long was he gone this time? A Maybe half hour; maybe three-quarters of an hour, maybe more, maybe less.

Q And then he came back again? A Yes, sir.

Q And how long did he stay when he got back this time? A He went to his room and I went in mine and I don't know if he went out any more.

Q You understood Angelo was out looking for his wife, didn't you? A Yes, sir.

Q He was very anxious to find her, wasn't he? A Yes, sir.

Q He was very much disturbed because he couldn't find her, wasn't he? A Yes, sir.

Q Angelo is your brother? A Yes, sir.

Q Why didn't you go help him find her? A I have my wife and she don't let me go out.

Mr. Mott. I am in a position to complete my evidence in regard to the toilet now.

Mr. McDermit. It might just as well go in now as any other time.

The Court. The State asks leave to re-open the case for the purpose of putting in additional testimony. Any objection?

Mr. McDermit. No, sir.

The Court. It is granted.

JOSEPH AMOROSE, re-called for the State.

Direct examination by Mr. Mott.

Q Mr. Amorose, were you present when this was taken from Mr. Cerciello's house to-day? A Yes, sir.

Q And is this the toilet that you examined up in his house? A Yes, sir.

Q And from which you took the cartridge as you have already testified? A Yes, sir.

Q Won't you come down here, please, and explain to the jury just what you did to locate that cartridge and explain to the jury just where you found the cartridge and how you got it? A First I flushed the water out and I got a piece of wire—you notice in here (indicating)—there is a little hole. That we call a jet closet. That is a syphon; and I told Mr. Federici that I would—

By the Court.

Q Never mind what you told him.

Witness. Well, I fished it with a wire and I could not get nothing satisfactory.

Q Tell what you did with the wire. A I fished it down in the hole and I heard something rattle in there. "Well—and I thought it was something—piece of stone or something that might have went down there—"Well," I says, "I am going to take this out" and I took it out and turned it up, upside down. When I turned it upside down the bullet—one bullet come out of that little hole.

Q Out of which hole? A This hole right here (indicating).

Q Where? A Here it is (indicating). That is about three-eighths of an inch around.

Q Now, what part of the toilet had that bullet been in before it came out of that hole? A It had been down into the trap; that trap down there (indicating).

Q And what goes into the trap? A There is nothing but water.

Cross examination by Mr. McDermit.

Q I understood you picked that up and shook it a hundred times, did you? A Yes, sir.

Q Pick it up now? A Yes, sir.

Q Pick it up once. A (Complying with request.)

Q Now shake it. A (Complying with request.)

Q You shook that a hundred times? A I haven't —put it down and shook it again.

Mr. Mott. I offer the toilet in evidence.

The Court. You cannot offer an object of that kind in evidence. It is for the jury to see it. If it is in evidence it has got to stay here. All they go to do is to see it unless the defendant insists upon it being put in.

Mr. McDermit. I certainly will not insist upon it.

Re-direct.

Q How much water passes through the trap where this bullet was?

Mr. McDermit. You cannot go into the examination of this entire case now. You brought this trap here. He had an opportunity to examine it.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q I asked you how much water passes through the trap where the bullet was? A Why, there is a continuous flow of water—about—when the tank is flushed the water will go through there, about, a quart and a half.

Q Does it go through with any velocity?

Mr. McDermit. That is objected to as being leading. He hasn't tested this trap. He don't know anything about the velocity. He only knows what he did there that day.

The Court. Did you see the trap yourself—did you flush the trap up there that day?

Witness. Yes, sir.

Q Are you familiar with the working of this trap?

The Court. If you confine your question to the ordinary usage of the trap as to what water goes through when it is flushed, then he may answer.

Mr. McDermit. If he knows.

Witness. When the tank is flushed there is a contiuous flow of water going through there.

Q And what is the shape of the trap in which the bullet lay? A Inside that trap it is about an inch wide. It runs to—it meets the other toilet about four inches on the top. That serves as a syphon of that closet.

Q And when this trap is flushed in ordinary use—in its ordinary use—would the water ever run through this trap with sufficient velocity to have moved the bullet from place to place—the cartridge? A Yes, sir.

Re-cross.

Q What is the name of this particular type of toilet? A This is what they call iron enameled syphon action closet.

Q Syphon action? A Syphon action.

Q How old is that on the market? A I guess it is as old as I am.

Q How old are you? A About thirty-two.

Q What is the object of the two holes in the bottom of the toilet? A Well, one man got a patent out—this that works open—the other makes more of a scientific job by syphoning—it sucks the paper out.

Q So it is a combination patent, is it? A Yes, sir.

Q So that the water that flows from the flusher or from the bowl to the flusher passes through both holes, does it? A No; it don't—water flushes through both places.

Q So that every time that that toilet was used the water was flushed through both holes? A Yes, sir.

Q How do you know that the cartridge came out of any particular hole? A Out of that particular hole?

Q Out of any particular hole. A That is the hole it came out of. That is the only hole down there.

Q Aren't there two holes there? A No, sir.

Q Come down here a minute. Now is there only one hole down there? A There is two holes. One hole goes out through here (indicating) and here is the other, the syphon (indicating).

Q You can't see that with the naked eye from here, can you? A No; but we know.

Q Never mind what "we know." You can't see that there? A No, sir.

Q You don't know they exist there without you break this open, would you? Yes or no? A Well—

Q You wouldn't know absolutely?

Mr. Mott. Let him answer the question.

Mr. McDermit. I am entitled to make the examination.

The Court. But part of the examination is to allow the witness to answer.

Witness. By breaking it? Put the water down there and get it out.

Q You cannot prove—put any water down—you cannot say—you are unable to testify that the holes exist there except as you believe?

Mr. Mott. One minute. I object to counsel going up to the witness and telling the witness what he is unable to testify to. The witness is here as an expert. He is a plumber. He knows something about the thing.

Mr. McDermit. That is for the jury to say, how much he knows about it, of course.

Q You have never—you can't see those holes inside, can you? A No; unless you—

Q You assume from the mere nature of the make-up of that trap that that is the condition there? That is all assumption? A That is my—that is what I say about it.

Q So that in point of fact when the cartridge dropped out of this—whatever you may call it—it was turned upside down, wasn't it? A Yes, sir.

Q Then it came out? A Yes, sir.

Q So that it dropped out? A Yes, sir.

Q So that of course you merely assume that it dropped out of one of the holes below? A That is the only place it could be.

Q That is the only place you think it could be? A That is all.

Q You don't know absolutely? A I know where it come from.

Q You don't know absolutely? A I know absolutely—

Q You couldn't say—

Mr. Mott. Wait a minute.

Witness. I do absolutely know that that thing, if it is down the trap, it couldn't get out.

Q How do you know? A Because I know just where it lays and how it lays.

The Court. You put a wire in there, didn't you, first?

Witness. Yes, sir; put the wire in.

The Court. When you took it off you looked around in there and found it wasn't there and you shook it and heard it, didn't you?

Witness. Yes, sir.

Q But you didn't see what it was? A I couldn't say what it was; no.

Q Will you put this in this trap, please; no danger of its exploding. Put that down. A (Witness complied.) It took two to shake it.

Mr. Mott. Get the other man that was with you.

Q Did you hear anything? A You have got to get right down to hear it.

Q Get somebody else.

The Court. Did you hear it, Mr. Witness?

Witness. I can hear it.

The Court. Do you hear it?

Witness. I can hear it; yes, sir.

Q Shake it again? A (Complying with request.) Hear it?

Mr. Mott. Do not ask the jury whether they can hear it.

Q Now, turn it upside down. A There is some water in it.

Q There is some water in it? Pump the water out.

Mr. Mott. Not on the carpet.

Mr. McDermit. That is not a fair test. The water may be shaking.

The Court. Aren't you spending a lot of time on this?

Mr. McDermit. I don't want to comment upon the situation. Let us see.

Mr. Mott. He can't pour it out without pouring the water out.

The Court. He says he can't do it without pouring the water on the court room floor.

Mr. McDermit. I asked that he take that to a convenient place where the water can be poured out—where the experiment can be made. We are entitled to the full benefit of the cross examination, upon the means that they adopted to get it.

The Court. It will be taken and put in position where it can be shaken. Withdraw this witness for the present and put another witness on the stand.

(Witness shook the toilet in order that the jury might here the rattle of the bullet.)

Q Do you know what part of that toilet trap that that cartridge is now in? A Yes, sir.

Q Where? A Right there (indicating).

Q How do you know that? A I know it.

Q How can you prove it? A Do you want to break the toilet?

Q That is the only way you could prove it, by breaking it; isn't that true? A Well, we can break the closet.

Q Isn't that the only way you can prove it, is by breaking the toilet? A Yes, sir.

Joseph Amorose, re-cross.

Re-direct.

Q You know it from your knowledge as a plumber? A Yes, sir.

Q About the construction of this toilet? A Yes, sir.

Re-cross.

Q You never saw this toilet constructed? A Not this one; no, sir.

Q You don't know what it contains on the inside? A I know the number of that one.

Q You know the build of it? A The number of that closet.

Q Of this closet? You can't say except by the build that that is in that particular trap? A It is in that trap.

Q You can say only it is your belief?

The Court. You have been over and over it again—he says he went in and put a wire in there and there are open parts that he can see and it wasn't there and it came out of the place that he thought it was concealed in there.

Mr. McDermit. The question now that I have asked him, your Honor, was what particular part of this article that is offered here, that present cartridge is in that we dropped in. That is the question.

Q Can you tell that absolutely? A Well, I told you it was in the jet closet.

Q Do you know? A I know it; yes, sir.

Q How do you know it? A Because I know it.

Q Can you see it there? A No; I can't see it.

Q Have you tested it with the wire? A I have tested it with the wire.

Q To-day? A And I know how they lay.

Q Have you tested it with the wire to-day? A No; I haven't tested it with the wire to-day.

Q And you haven't looked or in any way demonstrated it, have you? A (No answer).

Re-direct.

Q Have you heard it in there? A Yes, sir.

The Court. You put it in there, didn't you?

Witness. Just now.

Q You say you know the number of this toilet? A Yes, sir.

Q What do you mean by number? A We put in other closets and we smashed it and sold it for junk.

Q Where? A When we take other closets out similar to that, we put in different kinds of closet—we take them out and smash them up. We know just what lays in it like a doctor trying to find out what is inside of a man.

ROSIE CERCIELLO, sworn on the part of the defendant.

Direct examination by Mr. McDermit.

Q Mrs. Cerciello, you are the wife of— A Not stand to speak.

Q You are the wife of the preceding witness on the stand, Vincenzo?

The Court. Does she say she can't speak English?

The Interpreter. She says she can't speak English.

The Court. Swear her in Italian then.

Q You are Mrs. Vincenzo Cerciello? A Yes, sir.

Q And this defendant is your brother-in-law? A Yes, sir.

Q And you lived on the 29th day of May in the premises at Chester avenue and North 8th street? A No, sir.

Q And you were arrested and taken away there a few days later? A Monday they arrested my brother-

in-law and my husband and Thursday they have arrested me.

Q Where did they take you? A They bring me up at the jail in Newark street. I don't know.

Q Who arrested you? A Mr. Joseph Federici.

Q And what did he tell you you were arrested for? A He told me to come with him. He take me and the four children and bring me there.

Q Now, how long did you stay there? A Sixteen days.

Q And during the sixteen days you were there did Mr. Federici come to see you? A Yes, sir.

Q How often did he come there? A Two or three times—I don't know.

Q Mr. DeRogatis came there to see you? A No.

Q And what did Mr. Federici want from you?

Mr. Mott. I object to the use of the word "want."

The Court. How is that relevant? This is after the alleged affair.

Mr. McDermit. I want to show that he tried to get her to make some admissions against the defendant.

Q You are here under subpoena? A Yes, sir.

Q And you are here under State's subpoena? A Yes, sir, the State.

Q And you haven't been called by the State in this present case? A I don't understand. I don't know. I have the paper with me. I can show you.

Q You are under bail for your appearance in this trial as a witness for the State? A Yes, sir.

Q And after you had been arrested and lodged in jail—what were you arrested for? A I don't know. He came there and took me, he bring me here at the jail.

Q Did Mr. Federici at any time while you were under arrest tell you what you were arrested for? A

He asked me if I know something about my brother-in-law Angelo.

Q In connection with what?

The Court. Are you going to show that Federici and DeRogatis and some other persons entered into conspiracy to manufacture false evidence against this defendant?

Mr. McDermit. I do not charge Federici with doing anything of the kind.

The Court. How does this prove anything?

Mr. McDermit. I think this is proper evidence, not for the purpose of charging Mr. Federici or DeRogatis with any conspiracy, but the testimony of the State has shown that the witness who was at the County Jail swore that defendant told him that this woman burned some certain clothing on the night of this affair. Now, then, she has been taken into custody and held as a witness in this case. She must have unquestionably been interrogated by Mr. Federici in regard to the surroundings that night and I want to know what he said to her in regard to this matter and what she stated to him.

The Court. The question is what was done that night. I do not think it is a proper question.

Q After you were in the custody in connection with this alleged homicide and while in the House of Detention, did officer Federici come to you and ask you to make a statement to him of how the deceased met her death? A Yes, sir; he came to me and asked me how my sister-in-law come to her death but I don't know nothing about it.

Q Did she say "How could I tell about it?"

The Interpreter. "How could I tell about it—I don't know anything about it."

Q What did he say to you?

Mr. Mott. I object to the conversation. I will withdraw the objection.

Q (Question read). A "If you want to save your husband tell me everything" and I answered him, "What I can said to you; I don't know anything."

Q What else did he say to you? A He asked me always—he told me always—"If you want to save your husband it is better to tell me all about it," but what I can say to him. If I did know something I would tell him, because my husband was two months in prison, and I was sixteen days. I don't know anything about it.

Q Now on the night of the 29th of May, the night before the body of Mrs. Cerciello was found, were you home at your house? A I wasn't home.

Mr. McDermit. She certainly does not understand the question that is put to her.

Q Where were you living on the 29th of May, 1913? A I was 409 Chester avenue.

Q And you lived and slept there—that was your home? A Yes, sir.

Q And you were there that night? A Yes, sir; I slept there.

Q And was your husband home that night? A Yes, sir.

Q And did you see Angelo that evening—that night? A Yes, sir; he was in his house.

Q Yes. Now, then during the night—during any part of the night—did Angelo come there and ask you to burn up some clothes for him? A No, sir.

Q Did you wash any blood off his face or any blood off any of his clothing? A Why I had to wash him? He is not my husband.

The Court. Tell her to answer the question.

A No.

Q And did you see any bloody clothing there that night and any clothing washed there that night on your premises? A No; I don't see anything.

Q Did you wash any time that night from the time early in the evening until the next day—did you wash anything in your house that night? A No, sir.

Q Did you wash the next day a coat, a black or dark blue coat for Angelo? A I didn't wash anything.

Q Did you ever wash any clothing of any kind —29th, 30th, 1st or 2nd of June for Angelo Cerciello, the defendant? A I never washed anything.

Q When did you last see Mrs. Cerciello alive? A The evening.

Q About what time? A I don't see her but I heard her speaking. Somebody come in the store and I heard her saying that she wanted to go to the cemetery and go up in the city the next day.

Q You heard her say she was going up to the cemetery the next day? A I heard from the other young lady that come to the store.

Q No, no. We don't want any testimony—I am willing to have it stricken out, the testimony that somebody else brought news to her that the deceased was going up to the cemetery the next day. That is not competent.

The Court. Do you make a motion?

Mr. McDermit. I ask to strike it out because it has no bearing on the case and confuses the record.

The Court. Motion granted.

Q When did you talk yourself with Mrs. Cerciello, the deceased, last? A In the evening I spoke to her.

Q About what time? A Maybe half-past eight.

Q Was that after your husband had returned from his work that day after supper time? A Yes, sir.

Q How long did you talk with her that night? A It was—I don't speak very long for her because I had four children and I was busy about them and she had to attend the store.

Q When did you see her after she was dead—when did you first see her body? When did you see Alvira's body? A When they brought her home—her body home; when they told me I was running.

Q When did you first learn that Alvira was dead? A In the morning.

Q What time in the morning? A I don't know.

Q Who told you? A A man came, he came to call my husband; I think his name is Sabino.

Q Do you know what his last name is? A No, I don't know; I know him by the name Sabino.

Q Where was Angelo at that time? A He was in his house.

Q Did you talk with Angelo? A Yes, sir.

Q What did you talk to him about? What did he say to you?

Mr. Mott. I object to conversations with Angelo the next morning.

The Court. How can he make self-serving declarations?

Q What time was it that you saw him in the morning? A Maybe it were nine o'clock—maybe five o'clock—I don't know.

Q Well, you had seen Angelo during the night, had you? A It was about nine o'clock when my husband went to bed.

Q Tell us what took place that night? A And he said, "Angelo, why don't you go to bed?" and he answered, to my husband, "My wife went out to take some ice cream for herself, a glass of ice cream and when she will be back we will go to bed together."

Q Well, what next? A We were sleeping about half-past ten when Angelo come in and calling, "Jimmy, Jimmy," my husband.

Q Yes. A And he said, "Alvira, she has to come back yet"; I told him, "My son, go out, go after her, go see where she is," she says.

Q What then? A He went out.

Q Now when did she next see him again after that? A Maybe half hour after he come back.

Q Then when he come back what was the conversation? What took place? A He said, "I can't find her."

Q What took place there; what was next done that night? A We get up from bed and he went out looking for his wife.

Q Now, tell her to tell the whole story of what took place that night. A He come back and said, "I didn't found her," and I said, "My God! My God! what is it?" My husband he would go look out with him but I told him, "You stay in because I am afraid to be alone." And I don't know anything more about it.

Q Well, didn't Angelo come back again to their house after that? A Yes, sir; he was going out and coming back.

Q Well, what did he say when he came back the last time? What was the last time that he came back? A He was crying.

Q Yes. A He was crying and he was very sorry about it.

Q When was it he was crying? What time of night was it he was crying about his wife? A About eleven o'clock.

Q Well, what was he crying about? A He was crying because his wife wasn't back and he was saying maybe she lost her way or she has got back already.

Q Now, then, what was the last time that night that you talked with Angelo about his wife's absence? A I don't know the time when—the last time he came in. I wasn't looking at the watch.

Q Where was she at half-past twelve that night? A I was in my home.

Q Well, was she in bed? A No, sir; I was in the house.

Q Well, what time did she go to bed? What time did she last see Angelo? A We never went to bed; we never went to bed again.

Q Was Angelo around there all night from half-past twelve until morning? A Yes, sir; he was there. He went outside and he come back and say—he do all night that.

Q Did they say anything to Angelo about where his wife might possibly be, make any suggestions of what should delay her? A No; we don't say.

Q You had no trouble with Alvira? A No, sir. I make her dresses, I do—I was helping her making dresses and everything else like I did for myself.

Q And you know of no quarrel or trouble between Alvira and Angelo? A No. I never saw them quarrel.

Q When you lived for four months that Alvira was alive you lived constantly there, but your same flat, didn't you? A Yes, sir; she was living in this side and I was living in this other side.

Q But there was a door from your kitchen into her kitchen which could be opened between your two flats, wasn't there? A Yes, sir; it is a door between there.

Q And that door was many times open? A It wasn't closed by key, by lock—but many times in the day time it was open; sometimes was closed; but in the evening we closed up, not with a key.

Q Now, she and Alvira were thrown together nearly every day while Alvira was living there with this man Angelo? A Sure, we treat each other.

Q And Alvira made a confidant of you—she told you all her matters and came to you for advice?

Objected to.

Objection sustained.

Q What did Alvira say to you during the daytime of the four months that she lived there, the different days?

The Court. How is that competent?

Mr. McDermit. I think it is competent to show the condition.

The Court. It is what they did when they were together.

Mr. McDermit. I will withdraw the question.

Q You saw Alvira and her husand together frequently? A Yes, sir; they were playing—looked like two children; they were playing together most all the time.

Cross examination by Mr. Mott.

Q About what time of the night was it, Mrs. Cerciello, when Angelo came in and you exclaimed, "My God! My God!"? Q Maybe half-past eleven.

Q Is that the last time you saw Angelo that night? A No; many times he came in.

Q He came in many times after that, did he? Did he come in many times after that? A He was going out and coming back.

Q But about eleven o'clock he was crying, wasn't he? A Yes, sir; he was crying.

Q And did you cry any that night? A Yes, sure, I was all the time crying. I wasn't hollering about it, but I was crying.

Q You were very anxious to find Alvira? A Sure.

Q You liked Alvira, didn't you? A We treat each other as two sisters; I loved her, she loved me.

Q You were very anxious to have her found, weren't you? A Yes, sir.

Q You thought Angelo ought to keep looking for her, didn't you? A He was not a baby that I had to said to him that. He only said it is that she went

out to take some ice cream and I never dreamed that such a thing would happen after.

Q No, but your husband wanted her found, too, didn't he? Didn't he say so? A My husband, he went out in the yard and he wished to go out, too, but I told him, "Don't go," because I was afraid.

Q What were you afraid of? A I was afraid to be left alone.

Q Why? A I never was alone and I am a woman, I am afraid.

Q What are you afraid of? A It is always, not only now, but always in my life.

Q What were you afraid of, please? A I never left go out my husand from my house because always I am afraid to be alone.

Q What were you afraid of, please? A For nothing. I want my husband to be—not only that evening but every evening my husband was home, he never was out later than nine o'clock.

Q You never let your husband out after dark? A No; because I have children. Once one of my babies had a convulsion and if my husband wasn't there I hadn't nobody to send for help.

Q Alvira was lost, Angelo was crying, your husband wanted to go and look for Alvira; what were you afraid of if he went? A Sure, I was afraid and I told him, "You must stay near me." "He is the husband of her, let him go out and find her."

Q But what were you afraid of, please. Not only now? A Now, just about that night.

Mr. McDermit. Let her answer the question.

The Court. What is the whole answer?

Witness. Not only now, but always I am afraid.

Q Were you afraid one of the children would get the whooping cough while your husband was out? A I said maybe some of my children will get sick and I don't have anybody to go out and call the doctor.

Q Was the reason you didn't let your husband go out with Angelo to look for Alvira that night that you were afraid one of your children would get sick while he was gone and you wouldn't have anybody to go to get the doctor for them? A I told him "He is the husband of Alvira, let him go out and look for her."

The Court. Tell her to answer that question. What was she afraid of that night?

Witness. It is natural my husband, after the supper, at nine o'clock to go in bed, and I was accustomed in that way. He never went out and I don't let him go out.

Q Why wouldn't you let him go out to look for dear Alvira whom you loved so much? A He went out in the yard and in the house. The yard of the house, that is all.

Q Once more, will you please answer my question? What were you afraid of that night that you wouldn't let your husband go out to look for Alvira? A She said that already so many many times and she can't say anything more.

The Court. Tell her to answer that question.

Q (Question repeated by the interpreter.) A If only I was thinking that such would happen I would force my husband to go out and look for Alvira, but I never thought about that and so her husband was out looking for her. I thought it was enough.

Q No, madam, that doesn't answer the question at all. You said that your husband wanted to go out and look for Alvira and you wouldn't let him go because you were afraid of something. I ask again what were you afraid of.

Mr. McDermit. You mean that night? What were you afraid of that night?

Mr. Mott. Yes.

Witness. I was afraid that something would happen to my children and was nobody else there to go out.

Q Where were the children, in bed? A Yes, sir.

Q They were asleep? A The little one was in my arms.

Q And the others? This was at eleven o'clock. The others were in bed? A Yes, sir; they were asleep.

Re-direct.

Q Did Alvira ever beat or molest your children? A I never saw her strike my children very seriously, but sometimes just to give them education she was spanking a little. That is all. To make them better.

Re-cross.

Q Well, when Alvira thought your children needed correction she was good enough to give it to them, wasn't she? A No; she was just teaching them, but not—scolding them, but not beating them.

Q What did Alvira do to the children? A The children were getting some candies, some sweets, and they want some more sometimes and she scolded them.

WILLIAM D. ROSSELLO, sworn for defendant.

Direct examination by Mr. McDermit.

The Court. How old are you?

Witness. Thirteen.

Mr. Mott. Mrs. Cerciello spoke of being in a jail. We agree that she was not in the jail but in the House of Detention.

The Court. Ask her to stand up and ask her if she was in the House of Detention or in the jail.

Mrs. Cerciello. I don't know what they call it.

Mr. McDermit. She was in the House of Detention. No question about it.

The Court. All right. It is stipulated that she was in the House of Detention that was across the street from the jail.

Q William, how old are you? A Going on thirteen.

Q And you go to school, do you? A Yes, sir.

Q Where do you live? A 677 North Seventh street.

Q Do you know where the candy store and banana store and grocery store of Angelo Cerciello was located on May 29th, of this year? A Yes, sir.

Q Now, when was he—how long ago was he— A I couldn't tell you. I know when I look on the calendar.

Q You know, William, about the time of the finding of the body—do you know when Decoration Day is—do you? A Yes, sir.

Q That is a holiday, is it? A Yes, sir.

Q You remember that they found Mrs. Cerciello's body that day? A Yes, sir.

Q Do you remember the night before? A Yes, sir.

Q What day was the day before Decoration Day, do you know? A Thursday.

Q Now, did you see Angelo Cerciello that nig A Yes, sir.

Q And what time of night was it you saw him? A I was on Eighth street playing and he was going past, and I said "could I come with you"; he says, "I don't care," and I went with him to get some bananas.

Q Now, where did you say—you were playing on Eighth street? A Yes, sir.

Q And that Mr. Cerciello, the defendant, came out and you said, "Where are you going" and he said he was going to get some bananas, and you asked if you could go along? A Yes, sir.

Q Did you go along with him? A Yes, sir.

Q Where did you and Angelo go? A To get some bananas over in Silver Lake.

Q Over in Silver Lake. Whereabouts over in Silver Lake did you go? A Couple of blocks down from Belmont avenue.

Q Do you know what street in Silver Lake? A I think it is right near Columbus street.

Q Now, do you see the man in court or did you see him here yesterday where you went to—or the day before—did you notice him here? A Yes, sir.

Q Is he here now? A Yes, sir.

Q What is his name, do you know? A I couldn't tell you his name. I know him when I see him.

Q Was it Mr. Cerruto? Is that the man? A Yes, sir.

Q How long did it take you to go with Mr. Cerciello over to this banana man's place? A Why I know the time we got there—about the time I got there.

Q Well, about what time did you get there? A We got there between eight o'clock and quarter after.

Q Got there between eight o'clock and quarter after? A Yes, sir.

Q And did you come back with Angelo? A Yes, sir.

Q And what time did you get back to his store? A About half-past eight.

Q About half-past eight. Now, did the bananas come over that night? A No, sir.

Q When was the bananas to come? A Banana man said he would bring them over in the morning.

Q Did he have any bananas over there? A I don't know if he had the kind he wanted though.

Q Did you get the bananas over there? A No, sir.

Q So you got back with Angelo to his store at half-past eight? A Yes, sir.

Q When you got back to Angelo's store did you see Mrs. Angelo Cerciello there? A I didn't go in the store.

Q You didn't go in, but did you see her in the store? A No, sir.

Q You didn't go in the store at all? A No, sir; I went upstairs to my own house.

Q Do you live in the same house? A No, sir.

Q You live next door, do you? A I live a couple of houses down further.

Q Couple of houses down on North Eighth street? A Chester avenue.

Q Chester avenue. Now, how do you fix the time as eight o'clock to quarter after eight when you were over to the banana man's house—how do you fix that time? A Because I know it didn't take us more than fifteen minutes to get back because he was walking quite fast.

Q How do you fix the time as 8.15 over to the banana man's house? Tell these gentlemen here how you say it was about eight o'clock when you met him and it was about 8.15 when you got over to the banana man's house and it was about fifteen minutes or more going back to the store—why do you say it was 8.30? Why is it? What makes you think that? Explain to us why you fix the time? That is the point. Why was that the time? A When I got upstairs and looked at the clock it was twenty-five minutes to nine and I took fifteen minutes away from it. That's how I got it.

Q You figured fifteen minutes going each way, did you? A Yes, sir.

Q And when you left him at the corner you didn't stop in the place, but you went up in your own house, and when you looked at the clock it was then twenty-five minutes to nine; is that right? A Yes, sir.

Q You knew Angelo's wife, Alvira, didn't you? A Yes, sir.

Q And you had been in his store before? A Yes, sir.

Q And you saw Alvira and the defendant there together? A Yes, sir.

Q At different times? A Yes, sir.

Q Both run the store together, didn't they? A Yes, sir.

Q Did you ever see any trouble between Alvira and her husband? A No, sir; always seen them playing like children outside.

Q Always seen them playing like children outside? A On the walk.

Cross examination by Mr. Mott.

Q Who told you to say that husband and wife were playing outside like children? A They was playing outside with the ball.

Q Who told you to say that this married man and his wife were playing outside like children? A Nobody.

Q Where did you—why do you say that? Did you hear the woman on the stand testify this afternoon? A No, sir; I heard her—but—

Q Didn't you hear her say that? What is your name, Willie? A William.

Q William, didn't you hear that? A Yes, sir.

Q Don't you use that expression because you heard it? A No, sir; that is the truth.

Q You saw them playing like children? A Yes, sir.

Re-direct.

Q How did they play outside? A She stand up there and he go down there and throw ball at each other.

Q Throw the ball outside, one standing by one corner of the building and she at the other? A Yes, sir.

Q Throwing a baseball? A Yes, sir.

PETER CERRUTO, sworn for the defendant (through interpreter).

Direct examination by Mr. McDermit.

Q Where do you live? A Bloomfield.

Q And whereabouts in Bloomfield? A Bloomfield—Bloomfield avenue.

Q And what is your business? A I am selling bananas.

Q Do you know Angelo Cerciello? A Yes, sir.

Q And do you remember when Decoration Day was of this year? A I don't remember.

Q Do you remember when the body of Mrs. Cerciello was found? A Yes, sir.

Q Do you remember the night before the finding of the body? A Yes, sir.

Q Did you see that little boy that was on the witness stand a minute ago that night? A I didn't see him.

Q Did you see Angelo? A Yes, sir.

Q The night before? A Yes, sir.

Q Where? A He came to my house.

Q And what did he want? A He wanted a bunch of bananas.

Q Did he get it? A No, sir.

Q Why? A Because they were green.

Q Were you to deliver a bunch of bananas the next day? A No, sir.

Q Do you remember what time of night it was that he was there? A I don't know very well the time but it was about half-past seven to eight.

Q Couldn't fix the time? A I was eating at my table and I can't fix the time.

Q You had a subpoena to appear here for the State? A Yes, sir.

Not cross examined.

IANNUCONE ALISEO, sworn for the defendant (through interpreter).

Direct examination by Mr. McDermit.

Q Where do you live? A I was living at 400 Chester avenue. Now I am living at 674 North Eighth street.

Q You were a neighbor of Angelo and Alvira, his wife, in March, April, May and June of this year, were you? A Yes, sir.

Q And you patronized their store? A Certainly, I bought cigarettes and bought other things.

Q And you saw Angelo and his wife together, did you? A Sure.

Q How did they act one towards the other as far as you observed? A I saw them that they loved each other as husband and wife.

Not cross examined.

WILLIAM AZZOLI, sworn for the defendant.

Direct examination by Mr. McDermot.

Q Mr. Azzoli, you are connected with the office of McDermit & McDermit? A Yes, sir.

Q Counsel for the defendant Angelo Cerciello? A Yes, sir.

Q And have been in charge of the preparation of this case in the way of interpretation at the jail? A Yes, sir.

Q And your duties called you there to see the defendant? A I did.

Q Now upon a visit in the jail a week ago Sunday —were you at the jail a week ago Sunday? A That was Sunday—Sunday of last week—this week.

Q What date was it? A That was the 16th of the month.

The Court. You were there last Sunday?

Witness. Last Sunday.

Q And you saw the witness Laudesi who was called in this case yesterday? A Yes, sir; his wife was talking to him when I went in.

Q I say you saw Laudesi? A I saw him; yes, sir.

Q Did you hear any conversation take place between Laudesi and Cerciello at the jail on the occasion of your visit there, and if you did state what it was—state the occurrence and the detail.

Mr. Mott. Pardon me. I object. Laudesi denied certain things. All we can have is whether those things were stated or not.

The Court. Put the leading question.

Q Did Laudesi in your presence make use of the expression "You have made trouble for me; if I die you die," or words to that effect?

Mr. Mott. You mean when?

Mr. McDermit. On the particular Sunday when you were at the jail.

Mr. Mott. It appears that you asked Laudesi about a week ago last Sunday, but I am willing to waive that.

The Court. You did say a week ago last Sunday.

Mr. McDermit. I did say that.

The Court. Now answer the question yes or no.

A He did.

Cross examination by Mr. Mott.

Q You say Laudesi's wife was then present? A No; Laudesi's wife had left. She was there when I went to the jail. After I got through talking with Cerciello I walked as far as the gate that enters into murderer's row, and I waited inside there to get certain papers.

Q I didn't ask you anything about that. I asked you whether Laudesi's wife was then present. A She was not; she had left.

Q Didn't you say a moment ago she was? A She was there when I went in there, but after I got through talking with Cerciello at another part of the jail she had left, because we entered—

Q One minute, please.

The Court. You are an attorney and counsellor at law?

Witness. Not of this state, your Honor.

Q This you say was last Sunday? A Yes, sir.

Q What time of day? A Quarter to twelve—about quarter to twelve.

Q Whereabouts? A At the jail.

Q What part of the jail? A They heard religious services there, and they have little booths wherein people can talk through the screen, and at the part—the part where murderer's row is it is open—they have bars there. You can see any person standing in back of where they hold religious services—see anybody in murderer's row going into murderer's row. I had walked in from the outside into murderer's row so as not to let the defendant come out again to get the papers he was to give me—some statements that he had written out for counsel for the defense and Laudesi was on the inside of this religious apartment where they hold religious services—

Q Is that inside of murderer's row? A No; that is outside. You see—

Q You say he was not in murderer's row? A No; he was in the place where they hold religious services and they do a lot of—the prisoners were shaved there.

Q And that was about twelve— A A little before twelve o'clock, because I had gone there at ten and got through.

Q Didn't you say it was about 12.15? A 12.15; about quarter to twelve.

Q There is considerable difference between quarter to twelve and 12.15. A It was quarter to twelve absolutely.

ANGELO CERCIELLO, sworn on the part of the defendant in his own behalf.

Direct examination by Mr. McDermit.

Q Do you want to go along in Italian or try it in English? A I will try. If I can't get along I will get help.

The Court. If we have any trouble we can call an interpreter.

Q How old are you? A I am twenty-seven.

Q And how long have you lived in this country? A Twelve years.

Q And you lived in the Silver Lake section, Chester avenue and North Eighth street in May of this year? A Yes, sir.

Q And you were in the grocery, delicatessen, banana and general merchandise store business up these? A Yes, sir.

Q In a small way? A Yes, sir.

Q And how long have you conducted that store there? A Well, I think pretty near two years.

Q Pretty nearly two years? A Yes, sir.

Q That building is owned by your brother? A Yes, sir.

Q And his wife? A Yes, sir.

Q And they occupied the adjoining flat there with you? A Yes, sir.

Q Now, you married a young lady by the name of what? A Alvira Vitolo.

Q How do you spell the last name? A V-i-t-o-l-o.

Q And how long had you known her? A Nine months.

Q And where were you married? A Over here, St. Philip of Neri Church.

Q What was the form of ceremony there, Protestant or Catholic, or what? A Catholic.

Q Your wife was a Catholic, was she? A They said so, I don't know.

Q They claim so? A Yes, sir; they claimed, but I don't know nothing about it.

Q What was the date of the marriage? A 5th of January, Sunday night.

The Court. This year?

A This year, 1913.

Q Now, who was present at the wedding? A Well, Tom Giordano and his sister—I don't know the husband's second name—Amelia Vitolo—I don't know the second name of her husband.

The Court. Ferrara?

Witness. Don't know; I can't say exactly.

The Court. Amelia, her sister?

Witness. Amelia.

Q After you were married where did you go to live? A I went to 409 Chester avenue, 449 Eighth street, corner.

Q And did your wife go there with you that night? A Same night; yes, sir.

Q And did you continue to live there? A Yes, sir.

Q From January until May 29th? A Yes, sir.

Q Did you ever have any trouble with your wife? A Never did.

Q Do you remember the night of May 29th? A Yes, sir.

Q 1913? A Yes, sir.

Q And do you remember what time of night on that occasion, May 29, you last saw your wife alive? A Yes, sir.

Q Now, tell me about your actions and the actions of your wife on that day? Where were you on the afternoon of May 29th? A I was playing roll ball.

Q And where were you at six o'clock that evening? A What time?

Q Where were you at six o'clock that evening? A I was outside.

Q And where was your wife? A Might be in the store. I can't say where she was, you know, she used to go in the kitchen. I don't know.

Q What time on the night of Thursday, May 29, did you and your wife have supper? A It was about nine o'clock.

Q Do you remember your visit over to the banana man's that evening? A Yes, sir.

Q And who accompanied you on your trip over to the banana man? A Three fellows.

Q What time was it that you got back from the banana man? A It was pretty dark.

Q How do you fix the time as nine o'clock when you had supper with your wife? A Because I went to Silver Lake, it was about half-past seven, and you know I met that little boy on the street and he asked me to go up, I says, "Yes."

Q Don't talk so fast. A Then besides that boy I had a bigger fellow named Adolph, I don't know his second name. He is a mason.

Q Well. A Then we went down the street, Chester avenue and we meet one of them Campione boys, he is a special detective—Union delegate of Labor, and then we meet this boy talking with a girl on the street there between 11th and 12th streets on Chester avenue, and that girl she wear black suit, and stout like me—same size. Then he asked me, "Where you going?" I says, "I go down Silver Like." He says, "If you wait a minute, just as soon as I finish talking with my girl, I will be right after you," the same like the rest, and then we don't want, you know, to discourage the fellow to talk with his girl, we went away, and we get on the corner of Chester avenue and Heckel street—you know Heckel street is between Bloomfield avenue and Chester avenue, it is right on the corner—we stayed there about five minutes, me, the little boy and that fellow named Adopho and we see he didn't show up any more; we says, "Better

let him go, he is busy talking with the girl," and otherwise don't want to discourage the girl. We went to the banana man. It was dark; the light was out already, city light. We went in there and a boy and the other fellow lay in the yard; we asked the fellow outside—there was three or four ladies and men sitting outside of the porch there—no porch, only stoop, on the stoop. Only little bit, what you call alphalt stoop, and we asked about the banana man, this fellow goes around with a little push wagon, and it was only about a month or so he bought a horse and wagon of his friends, anyhow they went to figure it up, who they were, because I didn't know him—their name, and they said, "Go in the back yard and turn on your right and bottom floor knock anywhere because maybe his brother or maybe the other brother—you will find anyway him there." We went in the back yard. I think—I can't exactly say sure, there was a dog barking in there. We started to holler. Somebody come out and stopped the dog —anyhow the dog was tied, can't get turned loose —and I got up on the stoop and knocked on one door, I don't know which one, I don't know who was live in it, and I heard somebody says, "Come in"—Italian. And I went in, I says, "Good evening." I see two or three women and a couple of men—I don't know who they were. I know the banana man because I seen him before. They asked me, "Who you want?" I says, "I want the fellow sells bananas, and he knows me, I am on 8th street and Chester avenue, I got a grocery store, and I am short of bananas and to-morrow is a holiday—somebody come up there, buy bananas, something you know, sometimes they only buy bananas and then sometimes buy something besides bananas." Then he come out, "Wait a minute"—he got up out of the chair and he come outside of the door. He says, "Well, Angelo, I can't supply you to-night because I ain't got any

banana in the place, and the kind of bananas you look for I ain't got any at all." I says, "I don't care which kind of bananas as long as could sell and make my living out of it, I want it. I got my help in the yard."

Mr. Mott. I object as immaterial.

Mr. McDermit. I want to explain the amount of time that was consumed.

Mr. Mott. I object to these conversations.

Mr. McDermit. He is entitled to show those conversations in order to have the jury draw the deduction of the amount of time consumed.

The Court. You started in at half-past seven to go get bananas?

Witness. Yes.

The Court. Now, he is telling us all about the detail of buying bananas. You do not think that is competent, do you?

Mr. McDermit. Just to figure the length of time he was over there by what he did.

The Court. Can't he tell us how long it was that he was there?

Q Well, you didn't get your bananas, did you? A He promised me to fetch up the next day.

Q Well, he didn't bring bananas the next day? A I don't know nothing else then because I was in trouble.

Q Now, then, what time did you get back to your house from the banana man's house? A About half past eight.

Q About half past eight. Now, how do you fix the time as half past eight? A Because it was exactly half past eight I passed by the store there—I called the name before, the detective, the delegate of the Union.

Q (*By the Court.*) Campione, is that the man? A No.

Q C-a-m-p-i-o-n-e? A Yes, sir.

Q And what did you see at Campione's place? A Then I hear some lady—I don't know who that was—they asked the time and the lady in the store she says, "Pretty near half past eight."

Q Now, how far is Campione's place from your place? A I don't think it is—about a minute or so.

Q Minute or so? Then you got home. You went into the house? A Yes, sir.

Q And you left the boy outside? A The boy, I left him right in front of his house.

Q And you wife got supper ready for you? A Yes, sir.

Q And you and her sat down to supper—what did you have for supper that night? A I had some peas, I used to sell in the store, fifteen cents a can and bacon I bought from a party at the corner Orange and Broad streets, wholesale place, generally come up there once a week or twice a week, and then she said to me "Your supper will be ready" and then I went in.

Q Now, then, you sat down and you and your wife took supper? A Yes, sir.

Q Did you have any trouble with her? A Never did.

Q I mean, did you have any bother with her that night? A No.

Q Did you have any quarrel with her at the supper table? A No, sir.

Q And how long did it take you to finish your supper? A Well, I think it take maybe half an hour, if I want to because—sometimes I take an hour and a half.

Q Yes, but, Angelo, on this night in question, how long do you think that you and your wife were at your supper table? Now, this is important to remember? A Yes, sir; I remember that. What do you mean? How long I was eating supper that night?

Q Yes, how long you were eating supper that

night? A Well, I was about half an hour or maybe forty minutes.

Q Maybe forty minutes? A Because after I eat my supper, you know, I lay in the chair, about ten or fifteen minutes and then get up, maybe after supper or dinner, generally I am awful hungry on the coffee—I like my coffee on the table, and I go for a pint of beer too, besides.

Q Now, your wife eats supper with you? A Yes, sir.

Q Your wife eats supper with you and after that she left the house, did she? A Yes, sir.

Mr. Mott. I object.

The Court. Objection sustained.

Q Go ahead, tell us what took place that night? A You want to hear the story about what I know about that night?

Q I can't suggest anything to you. You must tell the jury here what took place when you last saw your wife. I can't testify for you. Tell us.

The Court. You just told us that you sat down to supper and that it usually took you half an hour to forty minutes and sometimes you stayed a little longer over your coffee—sometimes you had beer. Now, that night after you got through with your supper, beer and coffee, if you had any, then what happened?

Witness. Well, before I finished the supper there was somebody come in the store. I can't say exactly who they was, because from the kitchen to the store, you know, you can't see positively who they are, and I was trying to get up on the chair and save my drink, and my wife got up ahead of me and says, "Finish your supper, I go down and see what they want." My wife went in the store and I stayed sitting on the chair and eat my supper. When she came back there was

about that much out of the glass of beer, I says, "Go ahead, drink that beer."

Q (Indicating with his finger about an inch and a half or two inches in a glass.) Go ahead. A I says, "Go ahead, drink, there is some more beer in the can. We got to finish it all." She says, "No, I don't want any more," I says, "You don't want no more, throw him in the sink." Anyhow, she stand behind the stove there, stove right near—here is the table, there is the stove right there (indicating). There is my table, eat right over here.

Q (Indicating with some paper on the witness stand.) A There is my table; there is where I was sitting; there is my wife's chair; here is the stove. Stand up—here is my chair; here is the table; here is my wife's chair; here is the stove. My wife was up—standing up behind—right at the front of the stove—up—then she stood there a minute or so—of course I can't say exactly how many minutes she stand up—and she asked me—she says, "I would like to have a little ice cream"; I says, "For what"? "Why," she says, "I go to have ice cream"; I says, "Look here; I got a ice box in the store there and you know I ain't got no ice cream to-day, and fresh soda water that will freeze your tongue"; and then she refused it—don't want it—then I says, "It is up to you. If you want to go, go ahead, nothing will happen"; she says, "Anyhow I want to have the ice cream"; I says, "Go ahead, then, you got the money; you have been owner of my property first day you come in my place, you do all what you want, all what you please in the house; you have been carrying all my money. In the morning when I get up the only thing I have I don't have a penny in my pocket, only what was in the store, lay on the table there, change or a little bill, dollar or two, maybe if anybody comes in—two or three, $5, and change it; I don't keep any more in my pocket—I don't keep any more than a dollar.

Q Now, your wife left the house to get some ice cream? A Yes, sir.

Q What time was that? A It was about—after nine, maybe; maybe five minutes after nine or ten after nine; I can't say exactly the time because I don't think I had a watch in my kitchen in my life.

Q You said before that you came back and that you and your wife sat down to supper at nine o'clock, you might have remained there forty minutes—you might have remained there half an hour—you didn't know how long you remained there—that your wife got up to go out and wait on a customer in the store. Now you say it was five or ten minutes after nine that your wife left there? A No, sir.

Q Wait a minute. Pay some attention. A Yes, sir.

Q To me, in telling your story. A I said it was half-past eight when I went in to eat my supper. I didn't say it was nine o'clock.

The Court. You didn't say it was nine?

Witness. No, sir.

Q I understood you myself to say it was nine o'clock that you sat down to supper. I may be wrong about that. A No, sir.

Q Anyhow, when you came back from the banana store you sat down to take your supper and your wife after that left the place. When did you sit down now to take your supper that night? A It was after half-past eight when I came in the store and the supper was ready waiting for me and she was outside of the store on the bread-box; that is, she was sitting outside of the door; I forgot about that—of the store on the bread-box and there was one Sicilian fellow that was at the store—there was a Sicilian fellow, lived up on Sixth street, and he said—

Mr. McDermit. I think we might get the thing right if we had an interpreter.

The Court. What was the question?

(Question and answer read).

Mr. Mott. I object to what the Sicilian fellow said. I cannot tell what is coming. I don't know what he is going to tell. I think counsel ought to ask questions.

The Court Ask him if he would rather talk Italian or English.

The Interpreter. He desires to speak in Italian or English because he understands both languages, speaks both well.

The Court. Which does he prefer?

Witness. Italian, I prefer.

The Court. Now, ask him the questions in Italian and tell him to speak all in Italian.

Q You fix the time, now, of taking your supper that night after your return from the banana man at shortly after half-past eight, do you? A Half-past eight.

Q Now, tell us all that occurred between the time that you sat down to your supper and the time that your wife left the house to go out that evening.

The Court. He has been all over that. He told us about that long conversation. He asked her to have a little beer and she said no, she wanted to have ice cream and he said go ahead and get it.

Q Start in any time along nine o'clock. Get him started on the story.

Mr. Mott. I object. I don't want him to start. I want you to start.

Q Where were you at nine o'clock that night? A In my kitchen.

Q Where was your wife? A Was in the store. I don't know if it was nine sharp, but about nine o'clock in the store.

Q Well, now, did your wife have occasion to go away—did you go out with your wife that night from the store? A No, sir.

Q Did she go out? A Yes, sir.

Q What time about did she go out? A I don't know precisely; maybe it was nine, five minutes past nine, maybe nine o'clock—around that time.

Q Do you know how long it took you to take your supper that night—that particular night? A A half hour; no more than that.

Q She left after you took your supper then, did she? A Yes, sir; but she didn't finish her supper.

Q Well, was the store closed or not when your wife went out from the premises there? A No, sir.

Q What time in point of fact that night was the store closed? A Fifteen minutes to ten I closed my store—I am not sure.

Q Did your wife return before you closed the store? A No, sir.

Q Did your wife ever return after she left the store nine or shortly after as you have stated? A No, sir.

Q Did you ever see her alive again after she left the store that night? A No, sir.

Q Tell us how you spent your time and what you did from the time that your wife left the store until quarter to ten when you closed the store? A I closed the store and went in my kitchen, the gas was lighted there—and sit down in a chair waiting for her. The door was open.

Q Have you told us now what you did from the time that she left the store until the time you closed up? Not after you closed up. Before you closed up. I want to know what you were doing from the time that she left the store at five minutes after nine or ten minutes after nine, or nine o'clock, to the time when you closed your store, as you say, about quarter to ten. What were you doing in that three-quarters of an hour? A Nothing.

Q Nothing? A I was in the store. The store was open.

Q Did your wife say when she was leaving the store how long she would be before she would come back? A No; she don't say.

Q Did you ask her how long she would be gone? A No.

Q And when she did not return at quarter to ten what did you do, if anything? A I closed the store. I went in my kitchen, I lighted the gas and sit down there waiting. The door was open.

Q Now when you say the door was open you mean the front store door was open, do you? What door was open? A The door of the yard, and you can see the gas from outside in the street.

Q Now, you were sitting down in your kitchen or in your bedroom? A Near the table in the kitchen.

Q Near the table in the kitchen. That is the same kitchen—"A" is the store—this is the diagram that your brother drew. It is offered in evidence here. This here marked "H" is your kitchen. Is that where you were sitting? A Yes, sir.

Q This is the bedroom, "B"? A Yes, sir.

Q This is the kitchen (indicating)? A Yes, sir.

Q And the door leading to the yard from the kitchen was open? A Yes, sir.

Q What about the door between the kitchen—between your kitchen and the kitchen of Angelo—or rather the kitchen of Vincenzo; was that open or closed? A It was closed but not with the key. It was just shut.

Q Now, then, how long did you remain in the kitchen with the gas turned up waiting for your wife to return? A I don't know, because I fell asleep. I was sleepy there—just a little drowsy.

Q Well, did you see your brother Vincenzo that night? A When I wake up and see that my wife

was not back yet I close the door and I went and called my brother.

Q What time was that? A My brother can know better. I don't know.

Q Well, he must know something about the time. What time do you give as the time when you called your brother?

The Court. You cannot argue with him. You have got to ask him if he knows the time.

A It maybe was half-past ten; it maybe eleven. I didn't know—I am not sure.

Q Now, from that point on, when he called his brother—when you called your brother what did you do? What did you say to your brother? What did you say to anybody? Start, Mr. Interpreter, and see if you can get him to go on with the story? A Yes, sir; I remember.

Q Now, tell us what you did? A I called my brother but he was sleeping very heavily. I woke up him and I told him—I told him "Look here; is it so late and my wife isn't—she is not back yet." He told me "Why don't you went out and looking for her?" I told him "I sleep a little and I wake up and find the gas burning up, the door open and I wasn't out. He came, then, my brother, in the kitchen and he told me "Why don't you go out and looking for her?" I went out near by the places but I don't see anybody in the middle of the street. You know the stores only Saturday and Sunday they are open, but other days they close very early.

Q Well, what else took place that night? Go ahead with your story. A I went around and don't find anybody. I went back home and told to them that I don't find anybody.

Q Go on and tell us all you did that night in making an effort to locate your wife's whereabouts. Go on slowly so that he can interpret it to the jury, what

you did in looking for your wife. A When I come back my brother and his wife, they ask me "Did you find your wife?" I says, "No;" and my sister-in-law, the wife of my brother, she was holding a baby that was crying. My brother he would like to go out looking for Alvira, or for her—but the wife said to him "The baby is crying, don't let me alone."

Q Go ahead. A She don't let her husband to go out because she have girl or baby or children who is suffering with convulsions and one day if it was not for me that I was nearby—near there—the baby maybe would die, and she never let her husband go out in the evening. After that I went out again, I went to the corner looking for an officer or somebody, but I don't see anyone, and after a half hour I went back home.

Q Now, what time was it that he spent this half hour when he went out looking for the officer and went back home; can't he give us the time of that? A It was about twelve.

Q About twelve o'clock midnight? A About twelve o'clock midnight.

Q Now, what else did you do after that? A My brother asked me maybe—"Did you have any trouble to-day with your wife—you have some trouble with her in the store?"

Mr. McDermit. He used the word "argument."

Witness (In English.) Argument.

Mr. Mott. Is it argument or trouble?

The Interpreter. Argument.

A (Continuing.) I told him no. He then told me to go in some places where a telephone would be found and telephone to the law so they will look after the case.

Q Well, in point of time did you telephone at any time? A Yes, sir; I went out then. I went to the corner of Chester avenue and Seventh street where

the police box is there. I went there and then I went to Bloomfield avenue and I was thinking that some officer would come there and ring the box.

Q Well, did any officer come there and ring the box while you were there? A No. If I was seen—if I will see one of them I wouldn't telephone myself.

Q What time did you telephone? A About in the midnight. Joe, the bartender, knows very well. I don't know how his name.

Q Where was the telephone situated that you used? A I went from there to Bloomfield avenue and was going to see a justice of the peace place, I thought that place would be open, but I found it closed, because I used many many times, that telephone. I passing there I passed another box—police box, but no officer was there. When I was at the corner I looked up and down looking for an officer so I can tell him about but I don't see any one. I went across the street to where another box, but it is near the open fields there, park, but I don't see anybody, and I tried to look up and down to see if any store was open yet.

Q Now, what time of night had that got to be? A In the midnight.

Q Well, now, did he at any time get to a telephone and if he did what time was it that he got there? A I found a bar open—a saloon—and I went inside and it was about twelve—ten minutes past twelve or fifteen minutes past twelve.

Q Now what did he do in the saloon he found open? A When I went there inside I found four persons playing cards and they got up and asked me "What you want here?" and I told them I want to telephone to the police station.

Q Where was this saloon located, what street and where? A On Bloomfield avenue, between Seventh and Eighth streets. The owner of the place he asked me to whom I was wishing to telephone and I told him I would like to telephone to police station and he told me "There is the place," and I told him "Please call the police station for me."

Q What then was done? Did the man call the telephone? A He first got from the Central the number of the station and he asked me if I wanted to speak and I told him "No, you speak for me, please," but the owner he said "No; you must speak."

The Court. Are you sure about that, that he got the number of police headquarters?

Witness. I do not know. I know that I spoke and I thought they were officers, but I don't know if it was any other officers.

The Court. Tell him to answer my question. Are you sure that the man that did the telephoning got the number of a police station?

Witness. I am not sure. I only know that he called up the number.

The Court. He called a number?

The Interpreter. The number.

The Court. Ask him if he called a number?

Witness. Certainly. I told him I want to telephone to Orange street or Roseville avenue.

The Court. Telephone to where?

Witness. The station house.

The Court. Where is the station house in Orange street?

Witness. It is on the corner of Orange and Roseville avenue at Seventh street, there is a station house there.

Q Did you go back to the telephone after this man requested you to go to the telephone and telephone to the police station after he had made the connection for you? A He handed me the receiver and he told me to telephone by yourself.

Q Now, then, after the saloon keeper had given you the receiver and told you to telephone yourself, what did you say over the telephone to the police station? A I told them that my wife went out about nine o'clock and she was going to have some ice cream,

to buy some ice cream, and that she was holding in her possession over $200.

Q Did you get any answer back from the police station over the telephone? A Yes, sir.

Q And what did they say over the telephone from the police station to you? A They asked my name, my address.

Q Did you in response to the police station call give them your name and address at the hour that you told the jury now that you did, between twelve and one that night? A Yes, sir; I give it.

Q After you had made the report to the police did they say anything to you over the 'phone besides asking your number and address? A No, they don't tell me anything else.

Q When your wife left home that evening what personal property did she have in her possession as far as you know? A About the jewelry I can't say how many articles she had over her, but about money I can say to you.

ADJOURNED.

ESSEX COUNTY COURT OF OYER AND TERMINER.

November 22, 1913.

STATE,
vs.
ANGELO CERCIELLO.
Sixth Day.

ANGELO CERCIELLO resumed the stand for

Further direct examination by Mr. McDermit.

Q Now, what money did she have in her possession? A She had over $200. $93 were own—her own money.

Q And where was that money usually kept in the house? A In that week she has in her possession in her bosom.

Q Do you know anything about anything else she had in her possession? Look at this bracelet and see if you identify that as your wife's bracelet (showing witness Ex. S. 7)? A She was wearing a bracelet but I cannot say that is that one.

Q When did you learn first that your wife was actually dead? A I know it about—when they came to my home.

Mr. Mott. Did he fix the time?
The Interpreter. No.

Q About what time was it that they came to your home as you say? A Between eight and half-past eight in the morning.

Q Who was it that came to your house to give you notice of the death? Who was it? Can you recall? A The name is Tony.

Q What did he say to you? A He don't said to me anything about my wife, only he tell me to come

down to Silver Lake "an officer wants to speak to you."

Q Well, in response to that message from Tony to you did you go down to Silver Lake? A Yes, sir.

Q And where did you go when you got to Silver Lake? A I saw a great crowd of people and Tony told me "There we have to go."

Q And when you came up—I suppose you came up Chester avenue from North Eighth street? A Well.

Q Don't they call—you came up Chester avenue from North Eighth street to Bloomfield avenue? A Yes, sir.

Q Don't they call the section you live in Silver Lake? A No, sir.

Q Silver Lake is several— A Several blocks up.

Q You live in Belleville? A Yes, sir.

Q Your place is between Newark and Bloomfield? A Between two.

Q You came up Belmont avenue, you came out? A First Heckle street.

Q Heckle street runs like Thomas street, doesn't it? Heckle street runs north and south? A I can't say anything about south and north because I am a stranger in Silver Lake section.

Q Well, now, you came out with Tony and came across Bloomfield avenue and went up to the large vacant space opposite there? A Yes, sir.

Q And how did you get there? Did you cut across? A Crossed Bloomfield avenue.

Q Across Bloomfield avenue? A The track all upset, but can't go through with wagon, only go through with the feet.

Mr. McDermit. I want that in Italian.

The Court. He has shown he can talk in English. He voluntarily talked in English. Pro-

ceed as far as you can. You said you crossed by a road that was not good for wagons, is that it?

Witness. No.

The Court. What did you say about that?

Witness. I say "No, can't go with wagon."

The Court. You mean yes, then?

Witness. No.

The Court. That wagons can't go there?

Witness. No.

The Court. It is not good for wagons?

Witness. No.

Q Now, when you got over to the lot there what did you see? A Well, I seen a big crowd.

Q And what did you do when you got over there? A There was somebody called me near the place.

Q Well, when you say "Called me near the place" — A Somebody called me near the place and showed me the body and I didn't see the body at all. When I seen near the place and seen the crowd went there all faint and I don't know who it was that dragged by the arm and took me up the street.

Q So that when you went over to where the body lay with the crowd there you became faint? A Yes, sir.

Q And didn't go to the body? A No; I was near the body.

Q Well, were you near enough to see whether— to see it was your wife's body? A I can't see the body.

The Court. Did you say "Cannot see" or "Can see?"

Witness. It wasn't possible to see her.

Q About how much of a crowd was there, how many people were there about? A Well, I think possibly fifty or seventy-five, something like that, besides the people run down there—come up.

Q What made you faint? What made you feel ill? A Because I been started to cry before I was there.

Q What made you start to cry before you got there? A The time the fellow come up with me Tony, he mentioned it was my wife before I got there.

Q What? A He said it was my wife.

Q Where did you go after you left the lot with the party who took you off the lot? A I went up the street there.

Q Did you see any police officer there? A I don't know.

Q Did anybody talk to you? A I didn't see any uniform on the people. If I seen uniform why I can say if it was a cop or special or something like. I seen people dressed like I was.

Q Well, you came back to Bloomfield avenue, then, did you go over to your home? A No.

Q Where did you go? A There was a man down there—was big crowd where I was sitting. There was a tree cut up where I sit down and cried, and there was a man down there says "Let that man sit there, let him have a rested.

The Court. A rest, not rested.

Witness. A rest; and they said we will take him down to the station.

Q Did somebody take you down to the station from there? A Yes.

Q Who was it took you down to the station from there; do you know who? A I can't say exactly who that was.

Q Well, were you still sitting, resting, on the trees that were down over here when you were taken to the station? A Yes, sir.

Q And you remained there until the officers came to you? A Yes, sir.

Q How far were the trees from where your wife's body laid, Angelo? About how far away was it you

were sitting down on the clump of trees—or tree—you speak about? A Why, I was crying and I don't know. I closed my eyes. I don't know how far it was.

Q How far away about? A I don't know.

Q Were you out to Bloomfield avenue yet? A No; on Grove street.

Q Still on Grove street side of this place? A Yes, sir.

Q Do you know how long you remained resting on the trees before the officers took you away? A What you say?

(The interpreter put the question.)

A Less than one-half hour.

Q Less than a half hour. What station house did they take you to? I mean at that time that you were put under arrest? A I don't know. There is different stations up there. I don't know which one is it, East Orange or Bloomfield—I don't know.

Q Now, where did they take you to? Where did the officer take you to? A Take to station—station house.

Q Did they take you to East Orange? Do you know where Main street is? A I don't know nothing about that place.

Q Well, Main street runs like— A They took me through the woods there.

Q Where? A They took me through the woods.

Q Up Bloomfield avenue, that way? A No; not on Bloomfield avenue; on the other side. This is Bloomfield (indicating). They took me up this way through the woods there.

Q Over towards—did you cross the Lackawanna Railroad tracks? A I don't know what I was crossing because I was cold as ice that day and I asked the interpreter to put a blanket on me to cover me up.

Q You asked who? A I don't know who I asked.

The Interpreter. I felt so miserable and cold I asked somebody to give me a cover.

Q Now, when you were taken to the police station —(I think I can establish it to be East Orange).

Mr. Mott. It was East Orange.

Q The East Orange police station, you were transferred again from the East Orange police station to the Bloomfield police station, weren't you?

Mr. Mott. No.

Q Taken to the East Orange police station. How long were you kept there? A Over three hours, I think.

Q And while you were in the East Orange police station did Mr. Federici talk to you? A I think it was Mr. DeRogatis, I don't know.

Q Mr. DeRogatis. They asked you to give them a statement? A They asked me what time did my wife went out; did she ever come back; what reason she was going out.

Mr. Mott. I object to any conversation in the East Orange police station as incompetent.

Mr. McDermit. I am trying to establish declarations made by the witness to the officer in charge of him which was subsequently reduced to writing and which is now in the possession of the prosecutor.

Mr. Mott. On the 6th of June at the court house.

The Court. Self-serving declarations.

Mr. Mott. If Mr. McDermit will offer it in evidence I will hand it to him.

Mr. McDermit. I agree to that and I haven't seen it.

The original statement and translation thereof produced and offered for identification, D. 4 and D. 5.

Q After your arrest on the day of the finding of your wife's body you were released again, were you not? A Yes, sir.

Q And what time of day was it you were released? Was it the same day or the next day? A The same day.

The Court. Let him answer in English.

Q And where were you released, from the East Orange police station or the jail? A The station—I don't know whether East Orange or—

Q The station you were arrested, that is East Orange. That is agreed to. Now what did you do when you came out of the police station—where did you go? A Home.

Q Well, was anybody with you? A The detective was with me.

Q And who was the detective that was with you? A It was DeRogatis and I can't remember who they were.

Q Well, they came to the house with you? A Yes, sir.

Q And had your wife's body got there by that time? A No, sir.

Q How long did the detectives remain there with you? A They leave me there in the house; that is all I know.

Q How long did the detectives remain at house after you got home from the police station with them? A They were staying around the corner.

Q They were staying around the corner? And when did your wife's body come to the house? A I think on Saturday.

Q And what time on Saturday did Mr. Appellito bring the body there, the undertaker? A Yes, sir.

Q He had prepared the body after the autopsy was over and brought the body home to you? A Yes, sir.

Q You engaged Mr. Appellito as your undertaker, did you? A Yes, sir.

Q And the body then lay in your house Saturday night—

Mr. Mott. Let him tell.

Q How long did the body remain in the house before it was buried? A Couple of days.

Q Now, during Sunday, did any of the detective officers come in your house? A Yes, sir.

Q And did the detective officers go to the funeral, too? A That man was there (indicating) that man sitting there.

The Court. What is his name?

Witness. I don't know.

(Anthony Belfie, policeman from Bloomfield.)

Q Laudisi said that you told him that when you went to the funeral why you fainted a purpose to deceive the people—that you done that purposely? A No, sir.

Mr. Mott. I don't know whether he said he didn't tell Laudisi that or, no, that he didn't do it.

The Court. You asked him if he fainted purposely. I presume what the question meant was "Did you make believe that you had fainted"?

Q Did you make believe that you fainted? A I was faint.

The Court. You actually fainted?

Witness. Not believe, it was true.

Q It was true that you did faint. And how often had you fainted during these two or three days in which your wife's remains were in the house? A I couldn't remember.

Q More than once? A Yes, sir.

Q Did you tell Laudisi at the jail anything in connection with your being engaged in the murder of your wife? A No, sir.

Q Did you ever tell him that the reason why you used the hatchet— A No, sir.

Q You haven't heard the question yet. Did you tell Laudisi at the jail that the reason you used the hatchet and not the pistol was because the pistol would give a report and make a noise? A No, sir.

Q Did you ever tell Laudisi anything at the jail that in any way, shape, manner or form could indicate to him that you had anything whatever to do with your wife's death? A No, sir.

Q Did you ever tell Laudisi at the jail that the cartridges were taken from the pistol and thrown down in your water closet? A No, sir.

Q Did you ever tell Laudisi that the hatchet had been found and the hatchet was sure to condemn you? A No, sir.

Q Did you ever tell anyone at the jail— A No.

Q —either Laudisi or any other person? A No, sir.

Q Did you ever make any statement to any officer or person— A No, sir.

Q —since the time of your arrest down to the present time that you ever had anything to do with the death of your wife? A No, sir.

Q Did you ever say that the only person that could prove you guilty— A No, sir.

Q You haven't heard the question and you say "No, sir." A You stopped.

The Court. Just wait until you hear the whole question, Cerciello.

Witness. All right.

Q Did you ever say that the only person that can prove you guilty was your wife coming back from the grave? Did you ever say to anybody at the jail, Laudisi or any other prisoner, that the person who could prove you guilty was by your wife coming back from the grave? A No.

Q Did you ever tell Laudisi that you were glad your wife was dead and that you hated her? A No, sir.

Q I am trying to curtail your examination—I am trying to give you two or three propositions at one time. If you will just wait until I finish you will get this record in shape. (Question read.) And that you were glad she was dead because she had beaten the children of your brother? A No.

Q Did you ever tell Laudisi that you took a bottle of whiskey and took your wife over to the lots and that you laid her down on the grass and there had intercourse with her and after you had finished the intercourse that you then killed her with the hatchet? A No, sir.

Q You heard Laudisi's statement here, in court, to the jury the other day, didn't you? A Yes, sir.

Q Were any of the statements that Laudisi made in regard to connecting you with that crime uttered by you or said by you? A No.

Q Did you ever have any differences, troubles or quarrels with your wife from the time you married her up to the time you found her dead in the lot? A Never did.

Q Had you any reason to be jealous or anything of the kind of your wife? A No, sir.

Q Did you tell Laudisi that your wife was an impure woman when you married her and was no good? A No, sir.

Q You heard the statement of Laudisi that you were for two or three months sandpapering or rubbing your fingers on the floor of the jail—what do you say about that? A No, sir.

Q Do you remember last Sunday when Mr. Azzoli called at the jail? A Yes, sir.

Q Did you see Laudisi at that time? A Yes, sir.

Q Did he pass you, where Mr. Azzoli and you were standing together or sitting? A Yes, sir.

Q And what did he say, if anything? What did Laudisi say? A I say with my law counsel down there "Wait until I go into my place and get the papers, some papers I wrote myself, my own hand."

Q Yes; you went back to get your papers?

The Court. Do you read and write English?

Witness. No, sir.

The Court. Cannot read English. You can read Italian?

Witness. Yes, sir.

The Court. Go on and answer the question and tell us what Laudisi said.

Q You went back to get some papers? A Yes, sir.

Q And you gave the papers to Mr. Azzoli, did you, afterwards? A Yes, sir.

Q Now, did you see Laudisi at that time? A Yes, sir.

Q Now where were you? A I was right near the office there, you know, the special office to keep the keeper.

Q Deputies' office? A Yes, sir; and Laudisi, he was in the little cage, what you call it (speaking in Italian).

The Interpreter. Small cell.

Q You mean the booths that are up at the jail—booths that you go in and talk through the screen, is that what you mean? A Yes, sir.

Q Now, what did Laudisi say to you, if anything? A I cannot explain in America. I can tell in Italian.

Q Tell us in Italian what he said. A (Through interpreter.) "I was going back to get the papers to give Mr. Azzolio. I look at the booth where the prisoner Laudisi was there and he said to me, 'Why you look at me with cross eye' "? I fix you all right. If I die you will die with me, too in the electric chair."

Q What time of day was that when Mr. Azzolio was there at the jail? A It was about twelve o'clock (speaking in Italian).

The Interpreter. Near twelve o'clock—before twelve o'clock.

Q How old was your wife—what was her age? A My wife? About twenty.

Q I show you a hatchet. Look at it. Take it in your hand. Did that hatchet belong to you? A No, sir.

Q Is that your hatchet? A No.

Q Did you ever own a hatchet like that? A No.

Q Did you ever see that hatchet before? A No.

Q At any time? A No.

Q Did you use that hatchet or any other hatchet or any instrument to beat your wife to death? A No.

Q Did you strike her across the skull and across the face and across the body with a hatchet? A No.

Q Is that your sweater? Look at it. A I ain't seen it.

The Court (Showing witness Ex. S. 11.)

A Yes, sir.

Q Now, look at this Exhibit S. 10. There is a button alleged to have been found near your wife's body. Did you have such a button as that sewed on the bottom of your coat where this button is off? A No, sir.

The Court. Bottom of the sweater.

Q Bottom of the sweater. A No, sir.

Q Is this the sweater that you were wearing at that time? A Yes, sir.

Q And was this the sweater that you were wearing during the night of that time? A Yes, sir.

Mr. McDermit. I have concluded with this witness except as to the statement. I cannot examine him about that until after I get the

translation. There seems to be some difference between the translators as to the translation.

The Court. You haven't asked him about any alleged statement that he made to Deskovich.

Mr. McDermit. I put that in a general way, to anybody.

Q Did you ever say anything to Deskovich at all whereby he could draw a conclusion if you had in any way injured or killed your wife?

Mr. Mott. I object.

The Court. What is the question?

Mr. McDermit. Did you make any declaration to Deskovich from which the conclusion could even be drawn that you had done anything towards causing your wife's death?

The Court. That is a question for the jury to decide.

Q Ask him what he said to Deskovich.

Mr. McDermit. Deskovich said the conversation was with the other witness.

The Court. What did he say in the hearing of Deskovich?

Q What did you say in Deskovich's hearing concerning your wife's death? A Who is that man?

Q I think they sometimes called him Nick. The man who was called here yesterday after Laudisi. A Yes, sir.

Q The man who was acquitted the other day? A Yes, sir.

Q Did you talk to him at the jail? A Yes, sir.

Q And talk to him often, did you? A Not often.

Q Well, did you ever tell him that you had done anything? A No, sir.

Q —to cause your wife's death? A No, sir.

Q Did you say to Deskovich, meaning your wife, "She has got to come from a well—from the grave

that she can say that I am the one that did it?" Did you ever say that? A No.

Q Did you ever say it is the axe will convict me?" A No.

Q To Deskovich? A No.

Q He says that "he was rubbing there like that he was washing underneath the sink, something like that." What were you doing, if anything, under the sink, at any time? A Nothing.

Mr. McDermit. There is another declaration, or two declarations I do not care to call his attention to because I think they are very easily explained favorably, and not unfavorably.

You might as well proceed, Mr. Mott, and I will reserve the right to examine about the statement.

Mr. Mott. Put the statement in evidence.

Mr. McDermit. I offer this statement made on the 6th of June, 1913, and signed by the defendant and witnessed by Joseph Federici.

The Court. It will be marked by striking out the words for identification.

Mr. McDermit. I withdraw my offer of the paper until I get the translation. I do not want to offer it in evidence until I have read the English translation. I do not want to proceed with it because I do not know what it contains.

The Court. Are you through with the direct examination of the defendant?

Mr. McDermit. Yes, sir.

Cross examination by Mr. Mott.

Q How old are you, Angelo? A Twenty-seven.

Q When did you come to this country? A Twelve years ago.

Q Where were you born? A In Italy.

Q Where? A Naples State.

Q Naples? A Yes, sir.

Q How long had you known your wife when you married her? A Before?

Q Yes; before you married her how long had you known her? A Four or five months.

Q Did you work on the 29th of May last? A Yes, sir.

Q What were you doing during the day? A Stayed around the store there.

Q What time was it when your wife first said to you that she was going out to get ice cream? A In the night you mean?

Q Yes. A Nine o'clock.

Q What did she say at that time? A She came in the store about nine, five after nine, something like that; she says, "I want to go for ice cream."

Q Did she say where she was going? A No, sir.

Q Where was there around your store any place where she could get any ice cream? A There is two or three places there, around on Bloomfield avenue, too.

Q Where are they? A One next corner, only sell but rotten ice cream worth penny, cups, and one between Chester avenue, and I don't know the other names of the street between where—I don't know the name of the other street—where they sell ice cream. He is what you call "George Fritz."

Q You know where the places are but you don't know the names? A Yes, sir; on Seventh street.

Q You know where the ice cream places are located around there? A Yes, sir.

Q Even if you do not know the names of the people that run them? A Yes, sir.

Q Did she say anything about what time she would be back? A No.

Q Did you ask her? A No.

Q When did you find out that she had the $200 with her when she went out? A The next day.

Q How did you find it out then? A I went to look in the drawer; there was nothing in there.

Q Then the only reason you have for saying she had $200 with her is that the money was not in the drawer? A Why, because I went in the place where it ought to be and I didn't see no money; then I went looking all around and couldn't find any.

Q Did you ever know her at any other time to take the money with her when she went out? A I never paid no attention. I never looked whether she took the money any time when she went out.

Q Did you ever know at any other time that she took the money out with her when she went out? A No.

Q Where did she keep the $90 odd that was hers? A What?

Q Where did she keep her money? A Her money? Keep it in the house.

Q Oh, yes, I suppose so, but where? A Where? In the drawer; had a little saving box. I used to put them in there, and day before she had all the money in her hand and count it and she had $3 besides the money out to one side, and she said "Going to save that $3 to buy something for herself on Monday." She count the money up.

Q Did she keep your money as well as her own? A Why, she keep all the money, all the profit.

Q All what? A All the profit.

Q All the profit. She kept all the money? A Yes, sir.

Q That was taken in from the store, did she? A Yes, sir.

Q And where did she keep it? A Well, because she was in the house.

Q I said where. Whereabouts did she keep it? A Well, she had it in a drawer there. I got a bureau in my bedroom, and any place else I don't know where she kept it.

Q I know, but how—there were two amounts of money in the house, your money and her money? A No, one.

Q Then did you keep all your money together? A Well, only one people save money—only have about a dollar or so any time in my pocket. I never save any money myself.

Q Well, then, why is it that you say that of the $200 she took $90 odd was hers, what do you mean by that? A Was hers? I didn't say that. I say there was $193. She had $3 in a little pocketbook; she said, "I am going to have that $3 for me to buy whatever I feel like."

Q Yes. A And the rest, that was to the house.

Q And that was kept in the drawer as you have said? A That is where I seen it last.

Q What time of day was it on the 28th when you saw the money in the drawer? A That was in the afternoon.

Q How did you come to see it there then? A I went down there in the bureau to take a handkerchief and I went to take that up and I seen the money lying there.

Q Where did you keep the jewelry? A We keep jewelry in a box.

Q Whereabouts? A Safety box, little tin box.

Q Yes, and where did you keep the box? A Under the floor.

Q What did you keep the jewelry under the floor for? A Save from fire on account of the brick building.

Q What jewelry did your wife have? A I don't know.

Q Did she have anything besides the jewelry she had on the night she died? Did she have any jewelry besides the jewelry she had on the night she died? A I don't think so. I don't know.

Q If you kept this jewelry in a box under the floor to keep it from fire why did you keep your money in the drawer? A She pull it out herself, out of the box, and count him.

Q Yes. I asked you if you had to protect—did protect your jewelry by putting it in a hole in the floor why did you leave your $190 in the drawer? A She went, pulled it out herself.

Q Yes; but you knew she kept it there. A Well, she says she wants to count the money and see how much there was on Wednesday because we paid all bills on Wednesday and some other, candy sometimes, come through the week.

Q Yes, I know, but why didn't you put the money in the hole under the floor? A I never put money in the hole myself.

Q Do you know why she didn't? A No.

Q The money was worth more than the jewelry, wasn't it? A I don't know what the jewelry worth; I ain't buying any jewelry myself.

Q Didn't you know that your wife's jewelry wasn't worth anything like— A I don't know.

Q Wait a minute. A Yes, sir.

Q You answered yes before you were asked—wait a minute. Didn't you know your wife's jewelry wasn't worth anything like $190? A I don't know how much the jewelry was worth.

Q Don't you know that? If you don't know it, all right. I am asking you "Don't you know that?" A No.

Q You don't know that? A No.

Q You think your wife's jewelry was worth $190? A I don't know how much they paid for it. I am not a jewelry man who charged the jewelry, how much they were.

Q When did you first find out that the money was gone? A That was the next day.

Q What time? A About twelve o'clock.

Q How did you come to find it out then? A Because I went in the store when I come back and I see there is only a little change and couple of bills there, and I went in the drawer and looked was the money

left there, and nothing in there. I went open that little place where used to hold that box and only found jewelry in there and $5 gold piece. That is all.

Q Did you find the jewelry? A Yes, sir.

Q Where is it now? A I don't know.

Q What did you do with the jewelry when you found it the next day? A I let them stay there.

Q Have you seen it since? A No, sir.

Q Is it there now? A I don't know.

Q What jewelry did you see there the next day? A I don't know.

Q Oh, yes, you do. A No, sir.

Q Oh, yes. What jewelry did you see? A I only see jewelry; I didn't took up what was in it.

Q Oh, what kind of jewelry was it? A Why, there was—I don't know; it was all in the box.

Q Don't you know that your wife wore her jewelry when she went out that night? A I don't know. I never look at my wife whether she has got it on or not.

Q I know you didn't look at your wife. I understand that. I am going to ask you by and by why you didn't, but I asked you if you don't know that your wife wore her jewelry when she went out that night? A She used to wear it every day, some jewelry.

Q Didn't she wear all the jewelry she had when she went out that night? A No.

Q Where is the jewelry now? A I don't know.

Q What jewelry was there in the box the next day when you saw it? A I didn't see the jewelry.

Q You said you did. A I saw the box was full there. I didn't open every box to see what was in it.

Q What jewelry did you see in the box the next day? A I see the box—bigger box—square, big box like my hand and it was chain, what you call—put around the neck.

Q Is this the chain you saw in the box the next day (showing witness chain?) A No.

Q What kind of a chain was it? A It was a long one.

Q Have you ever seen it since? A No.

Q Did you ever try to find it since? A No; I was arrested.

Q Oh, you wasn't arrested for several days. A Yes, sir. I put the box back again and I didn't—of course nobody knew where I used to keep that box.

Q Why didn't you let anybody know where you kept the box? A Well, I don't know the reason why somebody got to know where I put my box for.

Q Didn't your sister-in-law know where you kept it? A No.

Q Now, Alvira knew, didn't she? A Yes, sir.

Q Well, after Alvira went out that night you went into the kitchen and took a nap? A No.

Q Where did you go? A What do you mean? I don't understand.

Q After Alvira went out for the ice cream did you go in the kitchen? Were you sitting in the kitchen? A I was in the kitchen.

Q And you went to sleep, didn't you? A I went to sleep after I closed the store. I wasn't asleep. I was crying—what you call—the fellow can explain—trying not to fall asleep.

The Interpreter. I was not heavily sleeping, but just a little drowsy.

Q Drowsy. And what time did you wake up from your drowsiness? A About half-past ten.

Q And what did you do when you woke up from your drowsiness? A Well, I put my hand on my face like this (indicating). Looked up, seen the light going, door was open; look in the bed thought my wife was come back and left the door open maybe, and then I didn't see my wife. I went and woke my brother up.

Q And what did you say to your brother? A I said I did close the store, my fire was gone out and I went kind a sleepy on the table there and after I got up I seen the door open the way I left the door before,

the light was going and my wife didn't come back yet.

Q And what did your brother then say to you? A My brother got up going outside to look for her.

Q What? A My brother got up, said going outside to look for her.

Q Why did you have to wait for your brother to tell you to go to look for your wife before you started to do it? A Because my brother is near me and before I going outside the door I wanted to let my brother know the reason.

Q Yes; but it was your brother who told you to go look for her? A Because he didn't wait for my answer.

Q Your brother came in the kitchen with you, didn't he? A In his kitchen.

Q Into his kitchen? A Yes sir.

Q Got up and came in—and it was down in his kitchen? A In his kitchen.

Q When you went into your kitchen—into the kitchen with your brother what did you and he do, sit down? A No, sir.

Q Stand up? A Yes, sir.

Q And it was in the kitchen that he said to you "Why don't you go look for her," wasn't it? A Yes, sir.

Q And you then went out to look for her? A Yes, sir.

Q And that was about what time, when you went out the first time, as near as you can remember? I don't suppose you can tell us exactly? A Before eleven.

Q It was some time before eleven? Before eleven? A Before eleven.

Q Where did you go? A I went all around the corner there.

Q Where did you go? A I went all around the corner, the block.

Q Where did you go? Oh, tell me where you went? A Around the block.

Q Around what block, please? A Way up to Seventh street, all around there, then I went to the police box, see if there is anybody around. I never seen anybody around the street. When I came back home I said the stores are all closed around this place and I don't see anybody.

Q Well, what places did you go to? Tell me what places you went to? A Around the block, I said.

Q Did you go into any house or any building anywhere? A The places were all closed.

Q Answer my question? A Yes, sir.

Q I didn't ask you whether they were closed or not, I asked you whether you went into them or not? A No, sir.

Q And then all you did the first time was to walk around the block, was it? A Yes, sir.

Q Well, you knew she wasn't getting ice cream on that block, didn't you? A Not on my block. I don't mean my block. Went from the corner—I went up the other corner.

Q You knew there weren't any ice cream places on the corners where you went? A Yes, sir.

Q There was? A Yes, sir.

Q Where? A Right up on Seventh street.

Q Did you go into that place? A It was closed.

Q Did you go and ask the proprietor of the place — A No, sir.

Q What? A No, sir.

Q —if he had seen your wife? A No, sir.

Q Why didn't you? A Because it was closed. I don't know where they sleep, in the back or upstairs. I don't know.

Q Well, if you were looking for your wife, Angelo, you wouldn't care much whether you woke somebody out of their sleep or not, would you? A Man goes around the block, because the man is closed store don't keep women in the store, put the women out.

Q No, but why didn't you go to the man that run the store and asked him if you wife had been in there that evening to get any ice cream? A Of course, I didn't know where the man sleep, in the back or not. I didn't know where the man sleep.

Q You knew him? A I don't know the man.

Q You said you did? A I know the store.

Q You said you knew the man that run it? A Yes; he is the owner of the house, the man that rented the store on the corner. I don't know where they sleep. I went to look around, the store was closed, nobody on the street. I was standing on the box there waiting for the cop to come.

Q You knew where he lived? A No.

Q Why how long has the place been running there? A That place been new already, I think it is only about three or four months maybe.

Q And you didn't know the man? A I knew the man by the face, I don't even know his name.

Q Did you try to find out where he lived? A I didn't see nobody around the street.

Q Did you go in the house and ask them where does the man that runs the ice cream place here live? A No, because nobody can see.

Q Why didn't you go and find out where he lived so that you could go and ask him if he had seen your wife? A Because I am a stranger up there. Nobody knows me very well.

Q What difference does that make? Couldn't you go and say to them "My wife is gone, I am her husband, I am worried about her, and I want to find her, won't you tell me where the ice cream man lives so that I can see if she has been in his place"? Why couldn't you do that? A Can't go in houses too late because the front door is locked.

Q You mean to say you couldn't get in those houses eleven o'clock at night? A Nobody knows me; nobody knows my wife; how can I say?

Q Well, then you came back. How long were you gone that time? A About half an hour.

Q And what were you doing all that half hour? A What do you mean, in the house?

Q No. A Around—I went to look all around if I see anybody ask if they see any woman around the street. I didn't see nobody.

Q Well, then, when you came back the first time you went up and saw your brother again? A Yes, sir.

Q What did you say to him that time? A I said I didn't see nobody.

Q What did he say? A He asked me if there was any reason—if there was any trouble or any argument through the day.

Q Why you never had any trouble or argument with your wife, did you? A Well, my brother he don't know. He is not in the house in the daytime.

Q Answer my question. Did you? A No.

Q You didn't have any trouble? A No.

Q Why, then, should your brother have asked you if you have had trouble with your wife that day, if you know? A Because he was out in the daytime; he don't know what happened in the house.

Q Then your brother didn't know whether you had trouble with your wife in the house or not, did he? A No.

Q And the first thing your brother asked you when you came back the first time was whether you had had trouble with your wife that day or not, was it? A He asked me—first thing asked me if I ever seen anybody. I says no. "Did you ever meet cop or anybody?" I said, "Never meet nobody around the street."

Q Well, did you go out again? A Yes, sir.

Q Where did you go this time? A I went around the corner there, looked around there if anybody

passed, because by that time the cops come up through there sometimes.

Q You went right over the ground you went the first time? A No.

Q Well, where did you go this time? A I stayed around the corner there.

Q How near to your house? A Right by my corner—my corner.

Q Then the second time you stood right outside, looking up and down the street? A Because the cop passes about that time, yes, sir.

Q I don't want your reason. I want you to tell me. You stood right on the corner of the house the second time? A Yes, sir.

Q How long did you stand there? A I couldn't say the time because I didn't have any watch with me. If I had a watch I might—

Q I know Angelo, but about how long did you stay there? A Maybe fifteen minutes—twenty minutes, something like that.

Q Fifteen or twenty minutes? Now up to the time you stayed fifteen or twenty minutes on the corner had you fainted away up to that time? A I don't know what you say now.

Q While you were standing on the corner there fifteen or twenty minutes, the second time you were out did you faint away then? A (Through interpreter.) No, I was crying.

Q You was crying, but up to that time had you fainted away anywhere. Ask him? A In that evening, no.

Q Well, after standing on the corner fifteen or twenty minutes did you go into the house again? A Yes, sir.

Q Then what did you say to your brother? A I said to my brother I didn't see nobody. I said cop used to be around here about this time every night. I didn't see. Silver Lake cop used to come up there, too from Bloomfield—I don't know which one.

Q And you saw your sister-in-law this second time? A I see my sister-in-law the second time. The first time when I went in the baby was crying like anything; she was on the bed giving the baby milk.

Q And your brother-in-law said he would go out with you? A He wanted to go out.

Q Wanted to go out? A Yes, sir.

Q And your sister-in-law said no "You musn't leave me?" A Yes, sir.

Q Is that right? A Yes, sir.

Q And what did you say to that? A I didn't say nothing.

Q And did your sister-in-law give any reason why she wouldn't let Vincenzo go out with you? A She said (speaking in Italian).

The Interpreter. I am afraid—she was afraid.

Q Did she say what she was afraid of? A No.

Q Did she say that she was afraid that the baby or the children would have convulsions? A She didn't say nothing.

Q What did Vincenzo say when she said she was afraid to have him go out? A He says "Well, I want to find that out."

Q Well, did you ask Vincenzo to go? A No.

Q Did you want him to go? A I wanted but I hear the wife refused why of course I don't force the man any more.

Q Were you crying then? A Yes, sir.

Q Did you faint away at that time? A What?

The Interpreter. No, sir.

Q Well, you went out again? A Yes, sir.

Q And where did you go this time, the third time? A I went up Seventh street and stood near the box for about five minutes—the police box, and still cry all the time.

Q You were still crying all the time? A Yes, sir. I went up to Seventh street, way up straight to

Bloomfield avenue to meet any officer that come up there to ring the box.

Q Now what time was it when you went out the third time? A It was about twelve.

Q About twelve? A Yes, sir.

Q And when was it, do you think, that you first began to cry, how early in the evening? A What?

Q When was it you cried for the first time that night? A Well, I have been—first I hear my wife don't show up, then I went outside and didn't find my wife and come back and cry.

Q How long did you think your wife would be gone when she went out? How long would it take her to go get the ice cream? How long did you think she would be gone? A Ten minutes, fifteen minutes, twenty minutes, half an hour. It is up to her.

Q Tell us what you did when you came out the third time? A I went up to Seventh street, Chester avenue, near the box, stood there five minutes and see no cop coming around—no man come around; I went up Seventh street straight over to Bloomfield avenue, there is a box on the other side where there is no houses there, empty ground, and the box right on the other side of the corner. I went near the box where I can see better all the way through, way down Bloomfield avenue and all the way through way down Newark anybody or a cop coming up.

Q You mean to Newark or to the Newark boundary? A I don't know what you call, the box.

Q Go on. A And then I didn't see any cop there —see anybody to go ask—only trolley car was passed once at the time I was there. Then I went to look if there was any store open and telephone to anybody. Then I seen a saloon between Seventh and Eighth streets on Bloomfield avenue near the blacksmith—man put shoes on horses.

Q Wait a minute. You say while you were standing there there was a trolley car pass? A Yes, sir; one trolley car.

Q Which way was it going, towards Newark or towards Bloomfield? A I can't remember.

Q Anybody in the car? A I think so.

Q Why didn't you go stop the car and get on it and tell somebody that you have lost your wife and wouldn't they come and help you find her? You were crying? A I was crying, yes, sir.

Q Why didn't you go get somebody from the trolley car to go and help you find your wife? A The car was passed. I never thought the car was passed at that time. Of course, I was crying—look for anybody and then people was strange to me anyway.

Q At any time while you were looking for your wife did you go down near Grove street anywhere to find her? A No.

Q Why didn't you go down that way? A Because dark place and I never went down there at all. I never know that place before.

Q Well, you knew it was a dark place? A Yes, sir.

Q Why didn't you go down there and see if something hadn't happened to your wife down near Grove street? A I didn't know any such a thing.

Q I say to see if something hadn't happened to her there? A Go down—

Q And look to see if something had happened to her near Grove street. Why didn't you do that?

Mr. McDermit. You better put that in Italian.

Q I don't know. I didn't know except what he said about the ground there in America.

The Court. Ask him that in Italian.

Q Ask him why didn't you go down around Grove street to see if anything had happened to your wife there? A I never was there and my wife never was there and I don't know the place at all. I don't know.

Q I didn't ask you if you had been there and I didn't ask you if your wife had been there. I asked

him "Why you didn't go there to see if anything had happened to your wife there? A There was no houses and nobody living there and she know nobody there. How—why I had to go there to look for her?

Q You were very careful not to look for her anywhere except on streets that were well lighted, weren't you? Ask him that. A I looked where the houses are around there.

Q All right. Now, you knew she had three sisters living in Newark, didn't you? A Yes, sir.

Q You wife was lost. You knew that? A Yes, sir.

Q You have told us. And you were crying about it? A Yes, sir.

Q You were very anxious to find her? A Yes, sir.

Q Did you go to any one of her three sisters in Newark to see if she was there? A No.

Q Why didn't you? A Because my—her sister there they go to bed early in the night and nobody can (continuing in Italian).

The Court. Nobody can what?

The Interpreter. When my wife went out from the store her parents were already—or her relations—were already asleep—sleeping and she never went out in the night to see her relations.

Q Oh, yes, but she had never been out like this before, had she? She had never been out like this before, had she, Angelo? A Out where?

Q Away from home at night? This was the first time she was ever away from home at night, wasn't it? A Yes, sir.

Q Now, what I am asking you is this, Angelo, your wife for the first time was away from home late at night, you were greatly worried, you were crying, and why didn't you go to her sisters to see if she was there? A She was out another time or two or three

times, because my brother, Charlie, can prove it—she was out a couple of times by night buying ice cream.

Q Yes, but did you cry while she was out the other times? A She came back—come back again and give the boy the ice cream.

Q Please answer the question. A I answered the question.

Q No, you haven't yet. When your wife was out for the first time in your married life— A Yes, sir.

Q —without your knowledge— A Yes, sir.

Q —you didn't know where she was, you were crying because she was away, why didn't you go to her sister's in Newark to see if she was there? A Well, I didn't see no reason to go there. I didn't expect my wife went as far as that.

Q Did you want to find your wife? A Yes, sir.

Q Why didn't you go to her sister's to see if she was there? A I can't say anything about that.

Q Of course, you can't. A Because I told you the reason. I have been telephoning in the station and they asked me to send the cop up there some place —I was to wait for the cop to come up to the house to take me around to places, far over the ground with no house and we can see up there.

Q What did you want a cop to go with you for? Were you afraid that something would happen to you? A Why, when the officer come up with me I can go far I want.

Q You could go as far as you wanted without an officer, couldn't you? A It was better for me because I want to call officer.

Q What did you want an officer for when you were looking for your wife? A Why, I telephoned the station because where I am, Bloomfield, East Orange—

Q Never mind. I am not asking you about that. That is not an answer to my question.

Mr. McDermit. Let him answer the question.

The Court. You asked him why. Let him answer the question.

A Where I am, cop from Bloomfield, cop from Belleville, cop from Newark, cop East Orange, and besides the detective down there, suppose people around there by the light. I went telephone to the station. There must be cop around the place where empty ground was and right near ground around Grove street.

The Court. The question is why did you have to have a policeman to go around with you that night?

Witness. I was waiting because I telephoned to the station, and station, I thought, would send a cop up there, asked me what my wife was gone. That is why I didn't went far, because maybe cop come up to my house and looked for me, because after I telephoned to the station I thought station send me up a cop and ask me when my wife was gone, where she was gone and take me out, ask me some questions; I says maybe I go out and go far away from the house and cop come up and want to find out where I am and they no find me in the house, they want to know what for I went away.

Q Well, did you think at that time—at the time you telephoned to the police station—did you think that anything serious had happened to your wife? A Ask that in Italian.

(The interpreter put the question and gave the answer as follows:)

A No, sir; I only know this that the month before a young lady run away—

The Court. He didn't ask him what he knows. The question is did he think there was anything serious?

The Interpreter. "No," he answered.

Q Why was it necessary for you to stay home to tell the policeman what time your wife went out when your brother and your sister-in-law were right there and could have given the officer the information? A (Through interpreter.) Because my sister-in-law asked me "Did you make the telephone call"? I said, "Yes," and she said to me, "You better wait here because maybe some officer will come here and will ask you about."

Q Well, then, it was about twelve o'clock that you made the telephone call, was it? A Yes, sir.

Q What did you say on the telephone? A I said —I ain't called the officer myself—I ain't called the telephone myself.

Q Yes, but you talked through the telephone? A Yes, sir.

Q What did you say to the police station through the telephone? A I says my wife has gone at about nine o'clock and she said she was going for ice cream; they asked me how much it was on the telephone; I said I don't know what she was buy, five, ten or quarter or a dollar worth of ice cream; I don't know; and then I told them how much it was and it was about $200 she had on herself.

Q Just tell us exactly what you said over the telephone? You talked in English over the telephone, didn't you? A Yes, sir.

Q Now, then, you can better repeat that in English because you talked in English over the telephone. A I told them my wife had gone out about nine o'clock to buy ice cream and she had about $200 in herself—in her own possession, and she didn't come back no more; and he asked me the name first, and second about the address and everything.

Q Yes, and you say you telephoned about midnight? A Yes, sir.

Q Why you told me a little while ago that you didn't know until the next day when you went to the

drawer and found the money missing that she had taken $200 with her? Tell him that in Italian. A The 28th I look and see the money in the drawer, but on that day she had in her possession.

Q You said that you didn't know that she had the money with her when she went out and that you didn't know it until the next day when you looked in the drawer and found the money gone? A (Through interpreter.) The 28th of May she counted up the money and she didn't put any more in the box that money but she kept on herself.

Q You said that you didn't know that she had the money with her when she went out until the next day because the next day you went to the drawer and found the money was gone and that that was the reason you knew she took it. Now, if that is so, how did you know at twelve o'clock at night that she had the money with her? A (Through interpreter.) I don't understand your question very clearly and maybe you try me to get in a hole, but I tell you the truth. I never said anything that is not the truth.

Q Oh, I know I am trying to get you in a hole because you are not telling the truth. A I wish to speak in Italian.

Q I wish you to talk English. You can talk English as well as I can and as well as you can Italian.

The Court. You answer in English.

Q Angelo, you said that the day after your wife went away you went and examined the box—the jewelry box, and that you didn't know whether the jewelry was all gone or not—you didn't look at it very carefully— A No, sir.

Q And you said at the same time you went to the drawer where she kept the money and you found the $200 was gone, and you said that that was the reason you knew that she took the $200 with her that night. Now if that is true and you told the truth when you said those things how do you account for the fact that at midnight you told the police she had $200 with her?

Mr. McDermit. Put it in Italian.

Mr. Mott. No, that is English. This man can talk English.

Mr. McDermit. Did you understand the question?

Witness. Before you didn't ask me the question that way.

The Court. Answer the question.

Witness. Ask me the question.

The Court. Answer it.

Witness. I don't know what he said.

Q (Question read.) A Because I know the money was in the drawer and next day I went and looked in the box, I thought maybe she took out of the drawer and put them in the box. I went, looked in the box, there was only $5 gold piece and the box with the jewelry in it.

Q And so again you say that it wasn't until the next day that you knew the money was gone? A I seen the money in the drawer the day before.

Q Yes; but how did you know your wife had taken it with her that night? You didn't look at the drawer until the next day. A Because at night I went to take the handkerchief.

Q All right. What did the police say to you? A What?

Q What did the police say to you? A When?

Q When you telephoned to them? A Took my name and address, where I was, and everything.

Q You say you told the police that your wife had gone out to buy ice cream? A Yes, sir.

Q Didn't you tell them that your wife had gone to the theatre? A No, sir.

Q You say you telephoned at midnight or thereabouts, do you? A Yes, sir.

Q Don't you know it was two o'clock in the morning? A I don't know.

Q Do you say it wasn't two o'clock in the morning? A I didn't exactly say the time. I didn't know the time, I said.

Q Oh, you said it was about midnight? A After midnight, I said, about five or ten minutes; something like that. I don't know.

Q Yes, five or ten minutes? A Yes, sir.

Q Now, I am asking you if it wasn't two hours after midnight and if it wasn't two o'clock in the morning? A I don't know.

Q Why don't you know? A I didn't see the time.

Q Well, then, were you telling the truth when you said it was midnight? A You said give me the idea I had at the time and I give you my idea that it was. I didn't know what time it was because I didn't carry any watch myself.

Q And you didn't say to the police that your wife had gone to the theatre? A No, sir.

Q Do you know Armelinda Freda? A Yes, sir.

Q Did you have a talk with her the next day about your wife? A I don't know.

Q Do you say you didn't? A I don't know; I can't remember sure; if I remember exactly I tell you.

Q Didn't she ask you why you hadn't gone looking for your wife? A I don't remember.

Mr. McDermit. Who was that?

Mr. Mott. Armelinda Freda.

Q Didn't she? A I don't remember.

Q And didn't you say to her that the reason you didn't go looking for your wife was that you were afraid that somebody would hit you over the head with a club? A No, sir.

Q You didn't say that? A No, sir.

Q Did you say anything like that? A No, sir.

Q Was she in your store about half-past six o'clock Decoration Day morning? A I couldn't remember who was in my store in the morning.

Q Did you say anything to her at that time? A I couldn't remember.

Q (Stand up.) This is the woman I am talking about. A I can't remember.

Q Do you say she was not in your store? A I can't remember. I can't say yes or no.

Q Do you say you didn't say to her that the reason you did not look for your wife was because you were afraid somebody would hit you with a club? A No, sir.

Q Eh? A No, sir.

Q You didn't say that? A No; I did not say that.

Q Who was the Tony that told you that your wife is dead? A He is a laborer; I don't know his name; I don't know his last name.

Q Tony came to your house about eight or eight-thirty that morning? A Yes, sir.

Q Did he tell you your wife was dead at that time? A No.

Q What did he say to you? A He said come down to Silver Lake, cop wants to see you.

Q Did you go with him? A Yes, sir.

Q What did you suppose the cop wanted to see you for? A I don't know.

Q Well, had you done anything— A No.

Q —that a cop should want to see you? A No.

Q Well, why didn't you say "If the cop wants to see me let him come up here?" A I asked him he says, "No, he wants to see you down there."

Q You asked him. Why didn't you say "If the cop wants to see me let him come here; I haven't done anything." A That is what I asked him.

Q Well, then, you went with Tony? A Yes, sir.

Q Where did you and Tony go? A Went up to Bloomfield avenue.

Q How long have you known Tony? A Short while.

Q How old a man is he? A I don't know; I can't say exactly how old he is.

Q Well, is he seventy-five year old, or twenty? A I don't know.

Q You don't know whether he is seventy-five years old or—A He can't be seventy-five, though; he is kind a young man.

Q Kind of young man. Older than you are? A I don't know. I can't charge the man by the age. I don't know nothing about.

Q Well, how big a man was he? A Big sized as me.

Q About your size? A Yes, sir.

Q He is here I suppose. Do you see him? A I don't know. If I see him, yes.

Q And did Tony say that the cop had told him to come up and ask you to come down? A Yes, sir.

Q Do you know whether Tony is here or not? A I am looking if I can see.

Q Have you seen him here during the trial? A I don't look in the back way.

Q You don't know what his last name is? A No.

Q Was he an Italian? A Yes, sir.

Q Could he talk Italian? A Yes, sir.

Q Could you tell us about how old he is? Tell us a little something about Tony. A Maybe twenty-five, thirty years, I can't say.

Q I want to find Tony, if I can. A If I could see I would say which he is. That is what I am looking for.

Q I know, but go on and look. A If I see the man I know, that is all I can say.

Q Have you seen Tony since the day he come and told you the cop wanted to see you? A No.

Q You haven't seen him since then? A I don't think he is in here because if he was I could see.

Q Well, you went down with Tony? A Yes, sir.

Q And all Tony told you was that the cop wanted

to see you? A Well, he told me about my wife before I reached the ground.

Q Well, where did Tony tell you that you were to go with him, where did the cop want to see you? A He says "The cop want to see you down Silver Lake;" that's all he said. I said, "Why don't you let him come down;" he says, "No; he wants you to come down."

Q Do you call Grove street and the territory covered by this map— A Silver Lake. I never know of the streets. I never happened there.

Q But the place where your wife's body was found, is that in Silver Lake—what you call Silver Lake? A What they call Silver Lake down there, I think.

Q Where did Tony take you, as a matter of fact? A He take me way up to the ground.

Q Whereabouts—what street did you and Tony go through? A Went through Chester avenue.

Q And then what street? A Went in Bloomfield avenue.

Q And then what street? A No other street than that.

Q Did you go down to Grove street? A No, sir.

Q Did you go down a— A We went through the field.

Q You went through the field. Whereabouts did you go through the field? A I don't know in there.

Q Right through the fields here? Did you go down towards the place where your wife's body was? A Yes, sir.

Q How near did you and Tony go to the place where your wife's body was? A What do you mean, near the body, or near the ground?

Q Near the body. How near to the body did you and Tony go? A (Speaking in Italian).

Q That is perfectly plain English. How near to her body did you go? A My wife's body, you mean?

Q Yes; your wife's body I mean. A I went near

from her—about from here to the door. There was a crowd in there.

The Court. About 5 or 6 feet?

Mr. Mott. I guess that is more than that your Honor. It is two feet more than the length of this pointer.

Witness. I can't say sure how long it was because I was crying, because Tony—

Q Were you crying? A Because Tony told me coming that it was my wife laying there.

Q What did Tony tell you? A As soon as we passed Bloomfield avenue and start to go in the field he says "That is your wife down there."

Q What did he say about your wife? Just tell me what Tony said. A That is all he said. It is your wife down there.

Q Did he tell you whether she was living or dead? A He said she was dead because—

Q What did Tony say? A He says "I was to tell you up to the store and I had no heart enough to tell you your wife was dead."

Q Yes. A That is the reason the cop sent me up, and she is laying on the ground.

Q That is what Tony told you? A Yes, sir.

Q Then you went about that near. Did you go—why didn't you go right up to your wife's body? A I went right up.

Q No. You say you went within 8 or 10 feet or her. A The crowd was there.

Mr. McDermit. He has described to you how many feet.

Mr. Mott. I said 8 or 10 feet.

Mr. McDermit. 4 or 5 feet.

Witness. 4 or 5 feet; something like that.

Mr. Mott. He says as far as from here to that door. We can find out what that is.

Q Why didn't you go closer? A I dropped—I got faint.

Q You got faint? A I dropped, because I was crying. I didn't see the body at all; only just seen big crowd around there. As soon as I went there and crying I fainted right there.

Q You fainted before you saw your wife's body, didn't you? A No, sir; I seen the box there. It was in a box. As soon as I seen the box—

Q You saw there was a box down there? A My wife was in a box.

Q What do you mean, basket? A I don't know what it was, box or basket. I don't know. I don't know what it was.

Q You didn't go up to her and throw your arms around her dead body and kiss her, did you? A I dropped; I couldn't get up any more.

Q Answer the question. I am not asking you the reason. You didn't go up to her and throw your arms around her dead body and kiss her, did you? A I don't have no chance.

Q Answer my question. Did you? A No.

Q And you went over and sat down with your brother, didn't you? A No.

Q Didn't you go and sit beside your brother? A No.

Q He says you did? A No.

Mr. McDermit. The brother did not say so as I recall it.

Mr. Mott. Yes, he did.

Q You didn't, you say? A No.

Q Did you see your brother Vincenzo down there? A No.

Q You didn't see Vincenzo there at all? A No, I see him after.

Q No; down there, where your wife's body was? A No.

Q You didn't speak to Vincenzo down there? A No; I didn't speak to anybody. I didn't have no

chance, because when I seen the box with my wife laying I dropped.

Q And you took Tony's word for it that it was your wife without going to find out, didn't you? A I went down there with him.

Q You didn't see her body? A I seen the body in the box.

Q You didn't see it was your wife? A Well, I got faint ahead of time; I can't see.

Q And you took Tony's word for it. Just because Tony come to you, a stranger, and says "Your wife is dead down there" you took his word for it, didn't you?

Mr. McDermit. That is argumentative.

The Court. Ask him what he did.

Q You took Tony's word for it, didn't you? A No, sir.

Q You didn't go and look at her to see whether it is your wife? A Well, I wasn't strong to look at her.

Q Do you expect anybody is going to believe that?

Mr. McDermit. I object.

The Court. Objection sustained.

Q Why did you take Tony's word for it that your wife was dead? A Tony only said that; I didn't take his word until I was up there.

Q Why didn't you go and push everybody aside and say, "This is my wife? I want to get near her body?" A If I was strong enough to do I would.

Q And you say the reason you didn't do that was because you wasn't strong enough, do you? A Because I dropped in a faint; they had to carry me away from there with the arm.

Q You say that is true, they had to carry you away from there by your arms? A Yes, sir.

Q Didn't they take you and put you—and walk you to the automobile and put you in an automobile and take you away in that? A No.

Q How did you get away from there? A They lifted me up.

Q How did you go away from that place? A I don't know nothing about—I go away with automobile.

Q I thought you just said you didn't go away with the automobile? A After.

Mr. McDermit. After lifting him up.

Witness. I was there for half an hour after lifting me up, crying.

Q Well, you said they didn't take you away in an automobile. Was that a mistake or did you not understand me? A Not right there.

Q Not right there, but they did take you away in the automobile? A After.

Q Now, who had to lift you up? Who lifted you up? A It was Tony and I don't know who the other man was because—I don't know who that was. I seen Tony after I got over laying on the ground and crying.

Q What is that? A I see Tony near me. Took me down the ground. I don't know who it was. I can't say exactly who it was that lifted me up.

Q What did they do with you when they lifted you up? A I don't know; I faint.

Q Where did they take you? A I don't know that.

Q How did you get to the automobile? A They must have carried me up.

Q They carried you to the automobile? A That is the only way they could take me.

Q Now see here. You know whether or not they carried you to the automobile or not, don't you? A The automobile was near me.

Q Answer the question. Don't you know whether or not you were carried to the automobile? A I walked on my feet when I went on the automobile.

Q You walked with your feet? A Yes, sir; and the two men they get me by the arm and pull me up.

Q Those were two officers, weren't they? A I don't know who they were.

Q Isn't this one of the men that took you to the automoile? A I think so; I don't know.

Q Mr. Godfrey? A I think so.

Q And do you say that he had to carry you? A He ain't carrying me from the body, though. He took me from where I sit there after got faint.

Q And he come to you and walked you right down to the automobile, didn't he? A He lifted me out of the ground.

Q He lifted you up off the ground? A I don't know who did; I can't say exactly.

Q Well, when you got home, Angelo, what did you do?

The Court. If you are going to take up another branch of the cross examination perhaps this would be a convenient point to adjourn.

Mr. McDermit. I am prepared to have this statement go in. The translation is agreed to as correct.

The Court. The two papers will be received in evidence and marked by striking out the words "for identification."

Adjourned until Monday, November 24, 1913, at ten o'clock, A. M.

ESSEX COUNTY COURT OF OYER AND TERMINER.

November 24, 1913.

STATE *vs.* ANGELO CERCIELLO.	*Indictment No. 229. Murder.*

SEVENTH DAY.

Appearances as before stated.

ANGELO CERCIELLO, resumed the stand for further

Direct examination by Mr. McDermit.

Mr. Mott. Mr. McDermit expressly reserved the right to examine him on that statement which we did not have the translation of at that time.

The Court. If the prosecutor wants to go on first he can do so.

Mr. Mott. I would prefer that the direct examination be concluded first.

The Court. You may read the document.

(Exhibit D. 5 for identification was withdrawn and a new paper marked Exhibit D. 5.)

Q Now, on June 6th, Angelo, when you were brought to the court house you told us that you made a statement in writing? A They wrote. They asked me and they wrote down what I was saying.

Q And that statement was taken down in Italian? A Yes, sir. They took it down and I asked them to read it over but they don't let me do it.

Q You signed the statement? A Yes, sir; they make me sign in the jail.

Q Now, I am speaking of coming to the court house. A Yes, sir; her—down here they make me sign that paper.

Q Now, Mr. Federici was there? A Yes, sir.

Q And Mr. DeRogatis was there? A Yes, sir.

Q And Mr. Adubato? A I don't remember.

Q And that was a statement that you made to them in response to questions asked you as to your whereabouts on the night of the alleged homicide? A Yes, sir.

Q And in that paper you gave an account of all your actions that night, did you? A Yes, sir; they told me "Tell what you remember," and they put down what I told them.

Mr. McDermit. I think that I have established it sufficiently to read it to the jury. Now, gentlemen of the jury, I will read to you the voluntary statement made by the defendant, Angelo Cerciello, as testified to by the witness at the court house on June 6, 1913. The statement is as follows: "Voluntary statement made by Angelo Cerciello, court house, June 6, 1913.

On May 29, 1913, my wife and I stayed in front of the house for sometime, I, entertaining some of my friends to a game of ball. Later my wife asked me if I wanted to go out, asking this question many times the entire day.

Towards evening, as I remember, one of my women customers came in the store and my wife in her presence asked me twice to go out and I did not answer. The third time I told her that you knew where I have to go and she told me go out and buy bananas while I prepare the supper, and after supper we would go out.

I went to buy the bananas accompanied by Lucrecia's son and on my way I met Edward with Campione's son talking to a young lady. Edward asked me where I was going and I told him I was

going to buy bananas and told me to wait until Campione's son returned, who was talking to the young lady. Therefore, I waited on the corner with Edward, seeing that he did not return, Edward with Lucrezia's son accompanied me to the place where they sold bananas. I left the order and returned home. I found my wife preparing the supper. We ate together. About nine o'clock she went in the store and waited on a customer who had just come in. Then she told me she was going out to buy some ice cream. She went out with the same clothes that she wore all day and never returned.

About nine-thirty or nine forty-five P. M. I closed the store and left the back kitchen door opened, awaiting for my wife's return. My brother went to bed and I was left alone. I got sleepy and leaned on the table.

Then I called my brother and told him that my wife had gone out to buy ice cream and had not as yet returned and I asked him what I should do. My brother asked me if I had any quarrel with my wife during the day or evening and I told him no. Then he told me to call up the police. Knowing that there was a patrol box on the corner of Chester avenue and Seventh street, I went there, but there was no officer to be seen. Then I went on the corner of Bloomfield avenue and 7th street, but no police was there.

So I went to a saloon and asked to call up the police. I told the police that my wife went out with two hundred dollars ($200) and did not return.

On my way home, I saw on the corner of Bloomfield avenue a tall man with a straw hat on.

When I telephoned, it might have been midnight, and the whole day I had on a shirt and a

sweater and a cap. I did not wear a coat in the store. Angelo Cerciello (Witnesses) Joseph Federici, A. DeRogatis, Thomas S. Adubato."

Further cross examination by Mr. Mott.

Q Angelo, about what time were you released from the station house on Decoration Day? A I don't know.

Q Well, about what time was it? A I don't know.

Q Why don't you know? A I can't know because I don't see the time.

Q Well, about how long did they keep you? A I couldn't say.

Q Well, don't you know about what time it was? A I can't say. Maybe I can say it right—maybe I can say it wrong.

Q I am not asking you to be exact. A Well, exactly I can't say.

Q I don't ask you exactly. A I know by the way you say the time I don't know.

Q Wait a minute. Can you tell me at all what time you were released? A No. I don't know how long I was in the station and I didn't see the watch.

Q What time did they take you there about? A They take me down there after I went down to the ground.

Q Yes; about what time was that when they took you to the station house? A I don't know; I don't see the time. I don't know if I stayed there half an hour or five minutes or hour or so down at the ground. I don't know.

Q Was the saloon keeper where you went to telephone an Italian? A No.

Q What was he? A I don't know.

Q But you say he was not an Italian. A Yes, sir.

Q You understand my question, don't you? A He wasn't an Italian—he is not an Italian.

Q Do you know Eufemia Ferrara? A Say it again.

Q Answer. A If I know your question I answer it. Say it again.

Q Do you know Eufemia Ferrara? A What is the first name? I want to explain the first name.

Q Eufemia. A I know Ferrara. I never hear the Eufemia.

Q The brother of the man that married your wife's sister. A Yes, sir.

Q You know him? A There are three brothers. I don't know which you mean.

Q Do you know him? A I know the name is Ferrara but I don't know what you may call Eufemia —I don't know what you mean.

Q Well, one question more. Do you remember the time when a man from a store came up to the jail with Mr. Federici to see whether he could identify you as the man that he had sold a hatchet to?

Mr. McDermit. I don't know whether that is a proper question or not.

The Court. How does he know that somebody came up there for any such purpose.

Mr. Mott. Talked with him.

Mr. McDermit. You would have to show that on your direct case.

Mr. Mott. Only to fix the date, your honor. I think I have a right to ask him if he remembers that event.

Mr. McDermit. Can't make him testify to the knowledge of the other man. How could he be conscious of what the other man's visit was for.

Mr. Mott. Can't I ask him if he knows?

Mr. McDermit. I don't think that is the way to lay the proof by the State.

The Court. Isn't that getting in by indirection what you cannot do directly. If there is somebody that went up there and identified this man

as the man to whom he sold a hatchet that man can be produced.

Mr. Mott. There is no such man.

The Court. It seems to me you can ask him what happened—what statements he made.

Mr. McDermit. Is the man here?

Mr. Mott. No. There is nobody. Nobody did identify him. Only fixing a date.

Mr. McDermit. It is an impossible proposition.

The Court. I think that that is asking him something that he cannot know in the present condition of the proof. You can ask him if he saw a man and he, the man, said such and such things to him. Objection sustained.

Q Did a man from Rising & Thorn's hardware store in the City of Newark, come up to see you with Mr. DeRogatis at the jail, or Mr. Federici?

Mr. McDermit. How could he know he was a man from Rising & Thorn's store?

The Court. He can answer whether he knows or not.

Mr. McDermit. He presumes knowledge of where this man may have come from and the question is so situated that by answering he might answer all.

The Court. He can answer whether or not he knows. Answer the question.

Witness. I didn't know the man.

Q What? A What man do you mean? Explain in Italian, I can tell better.

Q You could talk good English on Saturday. You haven't lost it since then? A I can talk but I can't understand very well how you are talking.

Mr. McDermit. Read that question again.

Witness. Tell him to talk.

The Court. Don't you understand the question?

Witness. No; I can't understand very well what he said.

The Court. That a man came up to see you from Rising & Thorn's; that is the name of the firm.

Witness. I understand the name.

The Court. Ask him that.

Witness. A man came with Federici but I don't know who it was.

Q After the man came with Federici did you say to Peter Deskovitch that that was not the man from whom you bought the hatchet at Rising & Thorn but that it was a young clerk in the store that sold it to you?

Mr. McDermit. How can he lay even that foundation now for any declaration. Deskovitch has testified in this case—in the main case—his testimony is on record. He says absolutely in that regard that he had no other conversation or held no other conversations with this man concerning the case; he was given every opportunity. He testified positively. Are they going to have a right to reopen their main case after the witness has gone upon the stand and then endeavor to produce him again to make another declaration against this man? I object.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A No, sir.

(The interpreter started to say something else and was interrupted.)

Mr. Mott. That is all. He says no.

Mr. McDermit. Let him explain.

Mr. Mott. No; I don't want any explanation.

The Court. You may bring it out later in your re-direct.

Mr. Mott. That is all.

Re-direct examination by Mr. McDermit.

Q What was it you wanted to say in regard to the last question put to you by Mr. Mott?

Mr. Mott. I object. The difficulty with it is I am entitled to know the nature of the evidence that is coming.

Mr. McDermit. You didn't give us much of an opportunity to know what was coming. I think the witness has a right to explain his answer to the question. Now, Mr. Interpreter—re-read that question, Mr. Salmon, please, that Mr. Mott put to the witness. (Question read.) Ask him what in addition to your answer of no—what additional statement did you desire to make to that question when the prosecutor interrupted you?

A Joseph Federici come near the cell where I was and near the cell 55 and 56 and said "Don't you buy this hatchet down in the corner of Broad and Market street—Orange and Broad street?" and I said "No"; and Federici, taking his arm said, "Why don't you say the truth—why don't you tell the truth, this finger here will condemn you, of the right hand index."

Q Now, did they produce any hatchet at the jail to you—did Federici have a hatchet with him at that time? A No, sir.

Q What kind of a looking man was the man that they brought there with Mr. Federici? A I told him that he looked like the same man that I saw at the corner of Eighth street and Bloomfield avenue in a drunken condition the night of the murder—the 29th of May.

The Court. Which did he say the 29th of May or the murder. Don't ask him again. What did he say?

The Interpreter. He said, "The night"—"that night."

The Court. That night?

The Interpreter. Yes, sir; "that."

Q How long did this man remain at the jail with Mr. Federici that came there from this place at Orange and Broad street? A He was there about three or four minutes. He looked at me and Mr. Federici said, "That is all right; you go away."

Q Now, what did the man say to Mr. Federici—anything? A I don't remember.

Q What did Federici say to him in your presence? A I don't remember. The only thing I remember that Mr. Federici asked me "You know this man"; I say to him "No."

Q Well, did Mr. Federici ask the other man whether he knew you? A I don't remember.

Q Well, when he brought this man to you were you in your cell? A No; in the office.

Q Now, was there any other prisoner besides you and Federici and this man in the office when he brought this man in to see you? A No.

Q Sure about that? A Yes, sir.

Q And it was in the office of the jail, was it? A It was in the office. I was there alone. Nobody can hear.

Q And how long after you were arrested was it that Mr. Federici came to the jail with this man that he speaks about? A I don't remember. They asked my brother first and then they asked me—first they asked me—then they call my brother.

Q Now, didn't they call your brother out to the same place where you were? A I don't know; I don't see him.

Q How do you know that they next called your brother to see the man from Rising & Thorn that Federici brought to the jail? How do you know that? A Joe Federici told me about it.

Q Joe Federici told you about it. You, in answer to Mr. Mott, spoke about the $200 which you referred to in your statement at the court house and also in your testimony when you first think that the $200 was missing from your home or your store?

Mr. Mott. The only thing I am thinking of is the word "think."

Mr. McDermit. What will I say?

Mr. Mott. I don't know. I am not examining.

Mr. McDermit. He testified to it on direct examination before. You seem to have made a point out of it. Now I want to see what it is.

The Court. You can ask him for a statement of facts. You are letting him testify as to what he thought.

Q After your wife was missing you testified on your direct examination that you had opened a drawer in the store—I say to you when did you first know or ascertain that the money was missing—$200—$193? A Wednesday we counted the money together and she put the money in the drawer of the place where keep the handkerchiefs; the day in the evening I went there and took a handkerchief but I don't know if she had the money or not but I don't see the money any more.

Re-cross.

Q Did you say to Mr. Federici at the police station in East Orange on Decoration morning last, that Eufemia, the son of the shoemaker, was the lover of your wife before you knew her? A My wife told me that, that she took a knife once because she didn't want him.

Q And did you tell that to Mr. Federici at the police station? A Yes, sir; I told him. I don't said to him about the knife.

The Court. He hasn't answered the question yet. He said "yes, but I didn't tell him about the knife."

The question that was asked by the prosecutor was did you tell Mr. Federici that he was the lover of your wife before he married her and he said something about telling her that—it isn't clear on the record.

Q Did you tell Mr. Federici at the police station in East Orange on Decoration Day morning last that Eufemia Ferrara was the lover of your wife before you knew her? A Yes, sir.

Re-direct.

Q How did you know that Eufemia Ferrara was keeping company with your wife, or the lover of your wife, before you married her? How did you know that? How did you get that information? From what source? A First she told me and my brother also told me and some relations to her told me and another carpenter told me also.

Q How old was your wife—what was her age? A Nineteen or twenty.

Re-cross.

Q And you told Mr. Federici at that time that Eufemia Ferrara was the son of the shoemaker? A No.

Q Do you say you didn't tell him that? A No; I don't tell the name; I says only the shoemaker, but I don't tell the name.

JOHN McMAHON, sworn on the part of the defendant.

Direct examination by Mr. McDermit.

Q You are a sergeant of the police? A Lieutenant.

Q Lieutenant of police. And were you on duty on the night of the 29th of this year? A I was.

Q And the morning of May 30? A I was.

Q At the Fifth Precinct Police station? A Fifth Precinct, yes, sir.

Q And you keep a blotter at the police station of telephones that are made, do you? A Yes, sir.

Q And also what the complaint is that is made over the 'phone, do you? A Yes, sir.

Q Have you got your book here, you say? A Yes, sir.

Q Just open your book upon that date and let me see it, please. A (Witness complies.)

Q Read that report. Start now—does it designate in the column of the book—on the side of the book—the time that this report came to you? A Yes, sir.

Q What was the time? A Two o'clock.

Q Two o'clock in the morning? A Two A. M.; yes, sir.

Q Now, read slowly the report. Your handwriting? A Yes, sir.

The Court. Do you object?

Mr. Mott. Yes, sir.

The Court. Objection sustained. This is not an official record. It is simply a memorandum made in McMahon's own handwriting. He may close the book and state whether he remembers what happened that night. If he does not he can refresh his memory and then close the book and tell us what happened. In other words, the police record is not an official record and has no testimonial authenticity.

Mr. McDermit. That is true, and yet it is a statement on the book and ought to be better evidence than a man's memory.

The Court. Not yet.

Q What do you remember about that night?

Mr. Mott. Just what you know yourself.

A At two in the A. M., May 30, a man called up on the telephone and he said his wife had gone to a theatre, and I stopped him right there and I asked him who was he, so he said his name was Angelo Cerciello. I couldn't get the last name proper and I made him spell it for me. I asked him where he lived. He said he lived at the corner of Chester and North 8th street. I told him to tell me the story again about his wife. He said that she went out to the theatre that evening and she had not returned yet and she had in her possession $200.

Q Yes. A I asked him—I questioned him about —had she any relatives around there that he could go and look to find out was she around there, and he said he didn't know any relatives that she had around there.

Q Do you remember whether that was the only knowledge that you had of telephone calls coming into the precinct?

Mr. Mott. Don't answer until the question is ruled on.

Q (Question read.) That night in regard to the absence or missing of this woman Cerciello?

Mr. Mott. Only what you know yourself. Nothing about what anybody has told you, officer? A That is the only call I received.

Q That is all right. Have you any other knowledge from that record—

Mr. McDermit. Do you want to suppress that record?

Q Have you any other knowledge from that record that other calls were made to the police station that night from Cerciello?

Mr. Mott. Do you know yourself?

Q Or was it told to him?

The Court. I don't know what the question is now. It has been revised. Try it over again.

Q You have made a memorandum in your own handwriting on that book, have you not? A I have.

Q And in the memorandum made upon that book appears a name outside of the name, Cerciello, is that not true? A My own signature is there.

Q Is it not true that there also appears another names besides the name of Cerciello and your own name in the report you made that night in your own handwriting? A Yes, sir; there is another name.

Q Doesn't the name of Mr. Tyler appear there? A Yes, sir.

Q And didn't you in making your memorandum of this reported report put the name of Mr. Tyler in that report? A Yes, sir.

Mr. Mott. I object to the question. There is no report here.

Mr. McDermit. Alleged report.

Mr. Mott. No, there is no alleged report.

Q Well, in taking off Angelo Cerciello's complaint upon your book did you not use the name of Lieutenant Tyler? Yes or no? A Yes, sir.

Q And was it not used in connection with the report? Was his name not placed in that report for the purpose of using it with the report of Cerciello? Yes or no. A We sent all reports to headquarters.

Q Yes. Now, you had transmitted this report to police headquarters upon the receipt, had you not? A Yes, sir.

Q And you received a message back from police headquarters, did you not? A Yes, sir.

Q Which you entered upon that book as part of the case? A Yes, sir.

Q Is that not true? Now, then, what was the message?

The Court. Answer.

Witness. I said yes.

Q Now, then, what was that message that you received from police headquerters that you wrote upon part of the Cerciello complaint and with it?

Mr. Mott. I object. It can't be competent, some message he received from some third person.

Mr. McDermit. It is as much competent as the message of Cerciello—he didn't know Cerciello—in the line of his duty.

The Court. You are not cross examining this witness. You put him on the stand. He is your witness. Objection sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. McDermit. Now, I ask that the record, in view of the court's ruling now, on the failure to allow me to put in part of that record—I ask now to offer the entire record because it produces a new legal situation. I say to your Honor, of course, this record shows—I presume you have no objection to me stating what it shows.

The Court. Yes; I will look at it and see.

Mr. McDermit. It is a corroboration of the defendant in some other respects.

The Court. Why don't you produce Tyler?

Mr. McDermit. I will show you the reason of that, that Tyler hasn't been called. He says such

reports had been made to him in response to the report that was made to this man at two o'clock in the morning—prior reports had been made. I say we are entitled to get all the knowledge that this man had of that transaction that came to him.

The Court. This is not a part of the *res jesta.* It is a thing done by the defendant after the alleged homicide.

Mr. McDermit. Where is there proof that the homicide took place before that? What proof is there?

The Court. Apparently after the alleged homicide.

Mr. McDermit. Our case is not closed. We have other evidence to offer as to—

The Court. You offer that record in evidence and that record is marked D6 for identification.

Mr. McDermit. Yes, sir.

The Court. What have you got to say?

Mr. Mott. I think it is entirely incompetent from every standpoint.

The Court. Objection sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q Now, was there anything in any statement made by you that night that—on that record—that contained the word "ice cream?" Yes, or no. A No.

Q Look at your record again. Please read your record.

Mr. Mott. No.

Mr. McDermit. Can he not read it to refresh his memory?

Mr. Mott. Certainly.

Q Read it before you say no.

The Court. You are asking him if he made any statement. If the witness made any statement?

Q If the witness made any record in that book of the word "ice cream" that night, in that report? Yes or no. A Yes, sir.

Cross examination by Mr. Mott.

Q Did the defendant in his convercation with you use the word "ice cream?" A No.

Q Where is your station house that you are situated? A Orange and North 6th street.

The Court. Is 8th street and Chester avenue in the Fifth precinct?

Witness. Yes, sir.

Q Of the city of Newark? A Yes, sir.

JOSEPHINE URSO, recalled for the defendant.

Direct examination by Mr. McDermit.

Q Mrs. Urso, you have been sworn in this case? A Yes, sir.

Q You talk English, don't you? A Only a little bit.

Q And were you over in the house of Mrs. Cerciello on Wednesday or Thursday? A I never be in the house. I be in the store.

Q In her store? A Yes, sir.

Q Did you have a talk to her on Thursday? A Yes, sir.

Q About money? A No, sir.

Q Now, wait a minute. Did you have any talk to her about collectors—whether they called? A Yes, sir.

Q What was the talk about collectors with her?

The Court. What Mrs Cerciello?

Mr. McDermit. Why the deceased.

The Court. She don't know that.

Q You talked with Mrs. Cerciello? A Yes, sir.

Q On Thursday before she died? A On Wednesday.

Q On Wednesday. And what did she say to you, you say she said something to you about collectors? A Yes, sir.

Q What did she say to you about collectors?

Mr. McDermit. I want to show about the money.

Mr. Mott. What relevancy has that?

Mr. McDermit. To show that she hadn't paid out her collection that Thursday, that the money —I will show that the money was there in cash— declaration made by the deceased stating that she hadn't paid her collection, and wasn't going to pay the collectors that week. Some question arose about the possession of this money. We have a right to establish the possession of it; when she had it.

The Court. The question is not whether she had the money with her that night. The question is whether this defendant's statement when he testified that she said she wanted ice cream, he said "All right, you got all the money, you got $200, go on and buy some ice cream," and then his second statement that he told the police during the night that she had the $200 and then his statement on the witness stand on cross examination that he didn't know she had the $200 until the next day when he examined the box in the bureau, or the drawer. Now, that is the question. The fact doesn't make much difference, does it?

Mr. McDermit. But he had testified nevertheless in his direct examination that he had examined the drawer on the night of the missing of his wife.

The Court. He testified to that this morning.

Mr. McDermit. On the direct record, before, it is testified in this case that that night he had made that examination.

The Court. That is the question, and how does this have any relevancy? How can you take the hearsay testimony?

Mr. McDermit. I submit that it is not hearsay. I submit that it is competent for us to show that she had in her possession that day, money, and she hadn't paid her store bills there and told this lady she wasn't going to pay these bills,—she was reserving this money.

Mr. Mott. I may say, perhaps, to simplify it, the State makes no claim that at the time this woman left the house that night there was not $200 in their house. I have no knowledge of it and I don't know. I do not say there was not $200 in that house.

The Court. Your admission is not as broad as the defense has a right to gain if it has evidence. The question is objected to. I want to hear you on the question of whether it is hearsay testimony.

Mr. McDermit. Declarations made by the deceased with regard to the conduct of her business is competent in this case to show the existence of money claimed by the defense to have existed in her possession at that time. It is competent to show the fact as the defendant says she was in charge of the business of the store and carried the purse strings and had the management of it. It is corroborative of his statement made on June 6th, to the police. It is corroborative of his examination here. I say we are entitled to show that condition of affairs as to the financial standing of these people immediately preceding this alleged murder.

The Court. How does that get around the hearsay rule?

Mr. McDermit. There are times when an exception is good. This is one of the times, I think.

The Court. If Mrs. Cerciello took the money out and showed it to this woman, that is evidence, but how it is evidence of what she said any more than what anybody else said at that time. That is hearsay.

Mr. McDermit. She can testify to it and it can be struck out.

The Court. The fact that she is dead does not affect the rule of law.

Mr. McDermit. No. Of course, if it is improper testimony I do not seek to force it, but at the same time suppose the court allows me to go on and then strike it out if it isn't proper—don't connect it up after questions have been asked, so that it stands as a proposition to go to the jury.

The Court. As I understand your examination and statements to the court all you are going to be able to show is some declaration that this woman made, not in the regular course of business. That is not sufficient. If you can go further and say that she showed the money I will take the testimony and see how far you can go and strike it out if you do not go far enough.

Q You were talking to her on Thursday before she died? A Yes, sir; on Wednesday.

Q And you told me she said something to you about collections? A Yes, sir.

Q Now, will you tell his honor and the jury what that was, what she said to you and what you said to her? A She said, "You know—

Q Give us the whole conversation then we can see what it is? A A man came there when I was

in the store and she gave her—I don't know—some change or some groceries to him.

Q She said next time? "She" means the deceased. She said the next time when the collector will come here I will have some kind of trouble with him. Now what—what kind of trouble? A That she didn't have enough money to pay the collector.

Q What was the man that was there? A I don't know. I never paid no attention because I got a baby in my lap; I never pay no attention what face he has got.

Q Didn't she say to you that she had plenty of money there? A No, sir.

Q Didn't you say that she had told you that she had extra money there because she hadn't paid the collectors? A Not that day.

Q Didn't she tell you—one minute, now—didn't she tell you and didn't you say she had told you that she had extra money there because the collectors hadn't called?

Mr. Mott. I object. It is too palpably leading. This is not a hostile witness in any sense.

Mr. McDermit. No; but she has made declarations.

The Court. If you are going to cross examine your own witness on the theory that she is hostile then you have got to call her attention to the time, place, circumstances, persons present and the precise words that she is supposed to have used. Objection sustained.

Mr. McDermit. I do not regard her as a hostile witness. I regard her as a friendly witness.

The Court. What right have you to cross examine her?

Mr. McDermit. I am not going to cross examine her. When she is called to the witness stand and makes declarations different from the declarations she has made off the witness stand—

The Court. The court has ruled. Objection sustained.

Q Did she say anything to you? A Yes, sir; she said something to me about the money the other day. She told me before—

Q When did she tell you that? A About two weeks before, "she got the money, will never know the husband." Never told me the other thing. About two or three weeks before "Well, I got the money but I didn't tell my husband; he don't know."

Q When was it she told you she had the money? A About two or three weeks before this report is.

Q Well, did she say anything to you at that time about collectors? A No; only the Wednesday, you know, before he got this trouble in.

Cross examination by Mr. Mott.

Q And I understand you to say that on Wednesday she told you that she couldn't pay the bills because she didn't have the money? A Never said that. She says "Well, to-day if come any collect I get short for collect"; that is all she said to me.

FREDERICK L. THORN sworn for the defendant.

Direct examination by Mr. McDermit.

Q Are you a member of the firm of Rising & Thorn? A Yes, sir.

Q Mr. Thorn, you are in the hardware business, firm of Rising & Thorn? A Yes, sir.

Q Will you look at that hatchet without touching the handle of it, please? A Yes, sir.

Q And say whether you carry a line of any like that or not? A We do.

The Court. Showing witness Ex. S. 2.

Q And you carry exclusively in Newark a line of that goods? A We carry a full line of these goods.

Q What particular hatchet is that? A Hammon, made in Oakland, Pennsylvania.

Q You carry those hatchets exclusively as against other concerns? A I have never been in any other store. I don't know what they carry.

Q You have no exclusive contract with this hatchet in Newark in your store? A No, sir.

Q Do you know anything about the sale of this hatchet? A No, sir.

Q Do you know whether you had such a hatchet in your possession or not before? A No; no means of knowing.

Q No means of knowing? A No.

Q You got a man in your employ by the name of Mr. Tries? A William Tries, Jr., yes, sir.

Q Do you know anything about Sergeant Federici and Detective Godfrey coming to your store and getting that man to accompany them to the jail? A I saw them both there; yes, sir.

Q Do you know how long ago that was? A Three or four months ago.

Q This young man is still in your employ? I sent a subpœna down—they gave it to you? A He has been there thirty years.

Q Will you have him come up? A No answer.

Cross examination by Mr. Mott.

Q Where is your place of business? A 475 Broad street.

Q Is that the corner of Orange? A Next door but one.

The Court. Which side of Broad?

Witness. West side of Broad.

Q One door from the corner of Broad? A It is fifty feet from the corner of Broad and Orange street.

Q And I understand you to say that you carry a line of those goods? A We carry a line of those goods; yes, sir.

Q Those hatchets. All right. How many men have you in your store who sell goods? A Eight, and I go to sell occasionally, but not often.

WALTER GODFREY, recalled for the defendant.

Direct examination by Mr. McDermit.

Mr. McDermit. Referring to the marking of the bullet handed to counsel by Mr. Godfrey, I want to substitute another bullet for that one.

Mr. Mott. No objection.

Q Look at this cartridge, Mr. Godfrey, and tell us what character of cartridge it is? A It is a 32 short.

Q And where did you get that from? A From my desk.

Q And how long was it there? A I couldn't say, sir; probably a year or more.

Q Probably a year or more? A Yes, sir; fully that.

Q Take it from a box of cartridges, did you? A Loose in my drawer.

Q Loose in the drawer? A Yes, sir.

Q Have you a new cartridge in there? A These have never been used.

Q Have you a fresh— A I haven't a fresh box.

Q Have you a fresh box of cartridges in there? A Not of 32 short; no, sir.

Q Have you marked that cartridge? A I did, sir; here in the court room this morning.

Mr. McDermit. I desire to offer this cartridge.

(Marked Ex. D. 3 for identification.)

WILLIAU J. KINSLEY, recalled for the State.

Direct examination by Mr. Mott.

Q Mr. Kinsley, how long have you been using magnifying glasses in your profession? A I have been using ever since I started testifying something over eighteen years ago, and for about seven years prior to that time.

Q What have you before you? A I have a box of hand magnifiers varying in magnifying power from one-quarter up to twenty diameter.

Q What is the difference between a diameter and size—times or sizes? A Well, a two diameter glass is four times; two times two. Some people get mixed as to diameters and times or areas. Times, of course, is area, diameter means dimension right across the object, so a glass that magnifies two times magnifies four times—or four areas.

Q Have you a glass there that magnifies three or four diameters? A Yes, sir. These smaller glasses magnify three or four diameters and the larger ones from about one-quarter diameters up, they are various degrees, and quite readily see the power by trying them.

Q Do you know of your own knowledge that those are all magnifying glasses? A I do. I have used every one of them—had them for use.

Q And that they perform the function of a magnifying glass accurately? A Yes, sir; they are correct lenses made by reputable manufacturers and tested by me and used by me over a period—most of them—for eight or ten years at least.

Mr. Mott. My offer will be to offer all those glasses in evidence so that the jury may use them and get the one that best serves their purpose, different eyes requiring perhaps different strength of magnifying glass; one eye requiring a three diameter, another weaker eye requiring five or six diameter. The same principle on which our glasses differ.

Cross examination by Mr. McDermit.

Q You don't manufacture these, do you? A No.

Mr. McDermit. I object.

The Court. On what ground?

Mr. McDermit. Why to send to the jury box a box of magnifying glasses that he says he has used and they are all right. What do we know about the examination of his eyes? How do we know his eyes are all right. That clearly is illegal. They can't go to the jury. Nothing can be less qualified for a legal offer than that offer.

The Court. I suppose that everything that everybody knows ought to be taken judicial notice of, and the fact that a magnifying glass has certain powers ought to be taken cognizance of. Now as to just how much each particular glass will magnify of course the court cannot take judicial notice of, but it certainly can accept the testimony of Mr. Kinsley, who says he bought them from reputable dealers and he knows that they are satisfactory, he has used them for eight or ten years.

Have you testified as to each glass? How many glasses are there, Mr. Kinsley?

Witness. Eighteen.

Q When have you examined these glasses last? A Thirty minutes ago.

Q For the purpose of looking through them? A Just—I cleaned them up and looked through each one and tried it, part of the time as I came out on the train.

Q Preparing your work as you came along. You hadn't used any of those glasses in a long time before, had you? A Oh, yes; I used these glasses myself—some of them every day. Some of them I haven't used for years myself. I keep these glasses, about a dozen of them, mainly for jury purposes and the other —six high power glasses—I use myself, but the lower power ones go into the jury box in almost every case in which I appear.

Re-direct.

Q Which are the six higher power ones—suppose you remove the six higher power ones from the box.

Mr. McDermit. Your offer a moment ago was to have those go in as they were. Now, what are we going to offer? I want to get my ruling on the situation—where we stand—that is the point.

The Court. You were just cross examining. Is that cross examination finished, Mr. McDermit? Mr. Mott started to make an examination.

The Court. You may proceed.

Re-cross.

Q Some of those you haven't used in years and didn't take a peek at them until to-day coming over in the car? A I have taken a peek at them—examined them—but for real hard use there are some there that I do not care for at all in my work, that is they do not magnify enough for me for ordinary work.

Q I suppose you find as you get a little bit older, Mr. Kinsley, that your eyes can stand a little more magnifying qualities, don't you? A No.

Q I mean yours—your own eyes? A I as yet do not wear glasses.

Q Neither do I, except this trial. It is my first appearance. A I do not need any magnification that way to aid the naked eye, but I use these to examine lines and strokes and inks and so forth.

Q How old are you? A Forty-eight.

Mr. McDermit. I object to the offer.

The Court. Objection overruled.

Defendant's counsel prays an exception to the ruling of the court; the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q Will you explain to use these glasses?

(Box containing eighteen glasses marked Ex. S. 32.)

A If there are any jewelers or engravers we have jewelers' and engravers' glasses and those accustomed to counting cloth, I have two cloth counting glasses, one that has frame work that opens out to place on the object—one an inch and the other a half-inch glass; and the others, some of them have double sheets of glass in them, of course, doubling the magnifying power; and others have just the one piece of glass, and the same applies to some of the nickel-plated ones. They are triple in some places and some people might have to use one, some two, some three; and of course, when you get to the very small glass it magnifies twenty diameters. That is very difficult to hold steady in the hand and very few people can use that. I will leave that in the box, and a glass of about that size (indicating) magnifies from four to five diameters. The smaller the glass usually the higher the magnifying power and the smaller the field covered by the glass—of course these small glasses only cover a small portion of the field—but they magnify more highly; but there are different glasses covering larger fields; some smaller and varying from this one at the top, about one and one-third—one and one-quarter—magnifies just a little—up to the one that measures twenty diameters.

Mr. McDermit. Of course you understand that this box don't go out of the court house again even in your possession—can't use it in your business. This is entitled to go all the way through with this case if it goes in.

Witness. I didn't understand it.

The Court. You mean that if this is introduced in evidence we have got to keep it here until this case is concluded?

Mr. McDermit. I don't know how much longer.

The Court. It is already received in evidence, so it doesn't make any difference what may happen, it is going to happen.

Mr. McDermit. I say he must understand it.

The Court. It doesn't make any difference whether he does or not. It is now in evidence.

Witness. I would ask that this little one be looked out for. That is the highest priced one in the lot and it is the easiest to lose.

Mr. Mott. There are eighteen there?

Witness. Yes, sir.

Mr. Mott. Do you need those to-day, Mr. Kinsley?

Witness. I do not need them to-day. I can leave them a few days. I have never understood before that I was to surrender them and have to charge the state with the cost of this outfit and trouble of collecting another. It is expensive to collect them.

Q Isn't there a special name to each one of those, special manufacture or make or are they all the same manufacture and make? A No, majority Bausch Lomp Optical Company of Rochester, New York, and there are a few others are different manufactures, just what makes I don't know. I think they are all marked in a way with the maker's names on them.

Q Have you any other set but that set? A That is all of hand magnifiers. I have one that is not there that I carry in my pocket all the time but do not keep in that box. I am holding that out. I haven't shown it at all.

Q Some of years you have had sixteen and eighteen years? A Yes, sir; I think some that I have had that long and from—down to eight years, I think about the last time I got any.

Q So that the last time that any one of these magnifying glasses were actually looked over or repared

was eight years ago, was it? A They were not; no. I say no to both your questions. To the question looked over and looked through and looked into almost daily, but repaired never. They have never been repaired. They do not need any now.

Q The glasses have never been changed any time since you had them? A No, sir.

Q What is the longest one glass you have had there? A Oh, I don't know.

Q Can't you tell by looking at them? A No; I don't believe—

Q Thirty years? A Oh, no; I haven't had any of them longer than sixteen to eighteen years.

ANNA HELM, sworn on the part of the defendant.

Direct examination by Mr. McDermit.

Q Anna, do you remember the night of the day of the 29th and the night of the 29th and the morning of May 30th of this year? A Yes, sir.

Q Do you remember when Decoration Day was? A Yes, sir.

Q You have been under subpoena as a witness for the State for a week back? A Yes, sir.

Q But you didn't come back here to-day. Why?

Mr. Mott. I object.

The Court. You put her on the stand. We have got to get through with this case.

Q Where had you been that night? A To a dance.

Q Where was the dance? A On Belmont avenue about in Silver Lake section.

Q Belmont avenue in the Silver Lake section? A Yes, sir.

Q Did you come back to Bloomfield avenue that night after you got through? A No, sir; we took a short cut over Chester avenue.

Q About what time of night was that when you were going through Chester avenue? A About half-past one.

Q About half-past one? A Yes, sir.

Q Did you hear anything unusual at half-past one when coming through Chester avenue in the neighborhood of Grove street? A After we got home we sat on the stoop about five minutes or so and all of a sudden I was taken—or I heard the scream.

Q What screams did you hear? A Well, it sounded to me as if it was a woman that screamed.

Q How many times did she scream? A Well, I heard her three times; we listened and we didn't hear any more.

Q Did you make any remark to your friend or did your friend make any remark to you about the screams?

Mr. Mott. I object.

The Court. Objection sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q You know where Grove street is? A Yes, sir.

Q You told some of the officers in the court room that you heard those screams too, didn't you? A Yes, sir.

Q Do you remember this gentleman there? A Yes, sir.

Q You told him?

The Court. Meaning Mr. Federici?

A Yes, sir.

Q You told him, didn't you? A Yes, sir.

Q Do you know this gentleman, Mr. Godfrey? A Well, I didn't know him until I came down here.

Cross examination by Mr. Mott.

Q Where do you live? A 585 North 9th street.

Q And you say you were home at the time you heard these screams? A I was on the front stoop.

Q Yes; I mean on your front stoop? A Yes, sir.

Q Well, there is a colored settlement not far from your house, isn't there—colored people live? A Yes, sir; on the same street.

Q How far from your house? A I guess it is the next house, but there is a few vacant lots in between.

Q Whereabouts was the dance? A Belmont avenue, Silver Lake section.

Q It was about whereabouts on Belmont avenue? A I don't know the numbers, but it is about two blocks in from Belmont avenue.

Q That is near enough. What time did the dance begin? A Well, it started about eight o'clock but we didn't get there until about half-past nine.

Q How do you know what time you got home? A Well, the dance was over about quarter after one. It takes us about ten minutes or so to walk home.

Q How long had you been sitting there when you heard this scream? A Only about five minutes or so. How do you fix the time when the dance was over? Any way of fixing it or is just your impression, as you recollect it? A Well, I know it was about quarter after one we went out of the dance hall, because I asked one of the fellows what time it was and they came on over with us.

The Court. You live at 585 North 9th street?

Witness. Yes, sir.

The Court. That is north of Bloomfield avenue, isn't it?

Witness. Yes, sir.

Re-direct.

Q Who was with you that night? A My sister and I went over but there was two gentlemen friends came home with us.

Q What is the name of the gentlemen friends? A One is Carl Fabiel and the other is Frank Bamboo.

Q How near do you live to Chester avenue? A One block.

Q There are no houses across the street from Chester avenue on the southerly side of Bloomfield avenue towards East Orange? A No, sir.

Q Was there anything to indicate in what direction the voice—the cries came, the screams came? A Well, when I was sitting on our front stoop it seems if it came that way.

Q Where would that be from? A From Grove street.

Re-cross.

Q You live on the corner of Delevan? A Yes, sir.

Q Near the corner? A House in from the corner of Delevan avenue.

Q That is two blocks north of Bloomfield avenue? A Bloomfield avenue.

LOUISE HELM, sworn for the defendant.

Direct examination by Mr. McDermit.

Q Louise, you live where? A North 9th street.

Q And do you remember the morning of May 30 of this year? A Yes, sir.

Q And had you been on May 29th, the night before to any entertainment or anything? A Yes, sir; I was to a dance.

Q Up to a dance, and where was this dance, at Silver Lake? A Yes, sir.

Q And on Belmont avenue? A Yes, sir.

Q And after the dance was over where did you go? A Why, we come home.

Q And how close do you live to Bloomfield avenue? A About three blocks.

Q Now, you know where Thomas street is, do you? A No, sir.

Q You know where Chester avenue is, do you? A Yes, sir.

Q And you know where Grove street is, do you? A Yes, sir.

Q Do you know about where Beardsley avenue is? A No, sir; I don't know just where it is.

Q Do you know that territory that lies south of Bloomfield avenue between Grove street and North 18th street down to where Chester avenue comes across into Bloomfield avenue; do you know the land and adjoining land? A I know about where it is.

Q About where it is. I mean, this is Bloomfield avenue here (indicating) and you live north of Bloomfield avenue—you live down on 9th street, up above Roseville avenue, don't you? A Yes, sir.

Q On that side of the street (indicating) close to Chester avenue. Now, you were coming home from Belmont avenue, and do you remember what time you got home? A Well, the dance broke up quarter after one and we was home—took us about ten minutes I guess to walk home.

Q About ten minutes to walk home, and who was with you? A My sister, and two friends of ours.

Q Two friends of yours, young gentlemen you were keeping company with? A No.

Q Friends of yours. You think you were home about twenty-five minutes after one, do you? A Yes, sir.

Q Now, what did you do when you got home? A Why we sat on the stoop awhile.

Q Now, did anything occur? Did you hear anything? A Yes, sir.

Q What was it? A We heard three screams.

Q Three screams. What did it sound like? A To me it sounded like as though it was a woman screaming.

Q And in what direction did those screams come? What way did they come? What way did they seem to come? A I thought it was over Silver Lake.

Q Came from the Silver Lake section there. Do you know where this wood is, don't you? A Yes, sir.

Q This Grove street section? A Yes, sir.

Q Did it come in that direction, from there? A Yes, sir.

Q And can you give us any idea how you happened to think it was a woman's voice? A I know the difference between a woman's voice and man's voice when I hear it.

Q And what was the space of time between these different cries? A Why, there was no time. One scream came right after the other.

Q One scream came right after the other. And did it attract your attention to the extent that you spoke to the other people about it? A I didn't hear the first scream. My sister said—

Q What did you hear? A My sister says—

Mr. Mott. No. I object to what your sister says.

The Court. Objection sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q What did you hear? A I heard two screams.

Q And can you describe those screams? A Why, the only thing I can tell it sounded like a woman screaming.

Mr. McDermit. I will put this question. Your Honor can rule upon it if counsel objects.

Louise Helm, cross.

Q Had your attention been called to a scream before you heard the scream?

Mr. Mott. I object.

The Court. Objection sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)

Judge.

Cross examination by Mr. Mott.

Q Is this the first time you ever heard screams? A No, sir.

Q When had you heard them before? A Why we often hear them when we come through there that hour of the morning.

Q Coming from which direction? A Well, I couldn't tell which direction they come from. We often hear screams that hour of the morning.

Q Do you know whether there is a saloon on the corner of Belmont avenue and Heckel street? A I do not.

Q There are a good many colored people live down that way, aren't there? A Yes, sir.

Q These screams that you frequently hear, do they sound as if they came from the direction of where the colored people were? A Well, I couldn't just tell where they come from. They sounded to me as if they come from Silver Lake section.

Q The screams that you have heard before? A They all sounded the same to me. I couldn't tell where they were at.

Q Have you any idea who was screaming? A I think they come from Silver Lake.

Q The screams you heard before, that you have frequently heard before, you thought they come from the Silver Lake section too, did you? A Yes, sir.

WILLIAM WIENER, recalled for the defendant.

Direct examination by Mr. McDermit.

Q You testified in the case to the weather conditions on May 29—30, didn't you, Professor? A I did.

Q And did you leave your book here with you? A I didn't bring it to-day.

Q Do you know anything about brass? A Yes, sir.

Q Do you know anything about copper? A I do.

Q I hand you Ex. D3. Look at that. It is a cartridge. And I hand you—where is the little bullet?

The Court. It is the bullet supposed to have been found in the basin, is it, or rather cartridge?

Mr. McDermit. Yes.

The Court. I think that is S29.

Q I show you Professor, another cartridge said to be S29. Please look at that. Now, what metal is that composed of, do you know? A Well, looking at it in a general way I should think it was brass, the upper part; copper the lower part; and lead, the bullet part.

Q You understand the qualities and properties of brass and lead and copper? A I think so.

Q What experience have you had in those matters? A I am a graduate chemist and chemical engineer, and have been doing work of this kind—or at least handling metals for nearly 23 years—metals and other substances in an analytical way—chemical way, manufacturing and so on.

Q What would you say would be—well, from that knowledge are you able to tell about the conditions that the brass and copper and lead would undergo under a given set of circumstances? A It would depend upon the circumstances, I think ordinarily; yes, sir.

Q Now, this cartridge that I show you now is said to have been in the water-closet for a period of about four months, that it had been constantly in water, and it had been in that class of a toilet where there was a syphon flush used to put the water through, that the toilet was in use for a family of children as well as two adults during that entire period. If a cartridge of that—that particular cartridge had been found in that place for that length of time what would be the condition of it as to appearance? Would it be in the condition in which it now appears or would it be otherwise?

Mr. Mott. I object to the question because it fails to incorporate what the evidence shows, that the bullet lay in the trap of the syphon, where nothing but clean water passed through it.

Mr. McDermit. That is a matter that hasn't been demonstrated.

Mr. Mott. That is the testimony.

The Court. Objection overruled.

Q What would be the condition? A If I understand right this was in a trap.

Q It was supposed to have been found in a trap? A In a syphon trap.

Q Syphon trap? A Of a closet that had been in constant use.

Q Yes? A I should say that it would have changed in color. That there would have been, as we call it, oxydation and sulphurization of the metal which would have changed the colors of all the metals that are in the material.

Q Then it is your opinion—examine that—that that cartridge could not have existed for a period of four months or thereabouts and remain in that condition? A I don't think it could. In fact I am certain that it couldn't.

Q Look at that other cartridge on the other side. That is the one that is assumed to have been kept in a

dry place and in a box for a period of a year but never supposed to have been under any water or anything—had no exposure? A There isn't much difference.

Q There isn't much difference? A No.

Q Now, do you think it would have been possible for a bullet to have remained in the position where the closet was in use for urine and excrement and remained in a position of being in the condition that bullet is? A I don't think so.

Q Well, have you ever made any tests or know of any tests being made as to copper or brass or lead as to being put in water, urine and excrement? A Yes, sir; very simple test.

Q Can you test it here in the way that you could show how water would affect or acids or things that come from the class of closet would effect the copper or brass? A Well, while I haven't any excrete or any urine I have some of the essences of some of the materials that occur in that type of organic matter and might show it through that.

Q How long would it take to do that? A Probably a minute or two.

Q Well, suppose that you use this bullet—this other cartridge—in making that demonstration. Suppose you make it now.

Mr. McDermit. I ask the witness to make a demonstration to show that class of material will have an effect upon the color of the cartridge. I make that offer.

The Court. Does the testimony show that this particular bullet was in clean water?

Mr. McDermit. No, except there is a notion that clean water would remain in that syphon. He hadn't built the syphon. Your honor knows what his testimony is as well as I do. It is a matter entirely for the jury as to what the conditions would be there.

The Court. Would it make any difference, professor, with respect to your answer as to the appearance of Ex. S. 29 if you knew that the cartridge had been in clean water constantly in motion or frequently in motion?

Witness. I don't think it would make any with reference to this special experiment, although if it were exposed to the water, even water in motion would change the color. The oxygen there would have its action and effect on both the lead and the brass.

The Court. What is it you wish to show?

Mr. McDermit. It is to show the jury and your honor upon this illustration how this copper and brass will change; that the color of the one that has been kept in a dry place, which hasn't been in use, and the other which must have been in the closet four months are relatively the same—have the same appearance. His statement now is that his belief is that it couldn't be so. I want to demonstrate to the jury just what the condition would be. Why isn't that proper.

The Court. It is perfectly proper it seems to me, but whether it is sufficiently material is a question.

Mr. McDermit. We will have that done. That is a question, of course. Will you do that Doctor, demonstrate it, please?

Mr. Mott. I object because it is not a demonstration that fits this case, for the testimony in this case is that this bullet was in the trap of this syphon closet where nothing but clean water passed through. Now, I object to changing the fact.

Mr. McDermit. You have no proof in this case that shows absolute knowledge of that kind. You have nothing to show that this closet had not been stuffed up at any time or what its condition

may have been and you haven't any evidence here to show to the eyes of the jury or to anybody else that there was clear water all the time in that place that you allude to.

The Court. The only person that testified to it was the plumber.

Mr. McDermit. Supposition.

The Court. He says he knew the situation. Now the professor says it would oxydize, change its color in water regardless of the fact of whether it was moved about frequently or laid still in the clean water. Why doesn't that meet the situation?

Mr. Mott. As far as that goes that meets the condition.

The Court. Now what is the necessity of having experiments with some other kinds of elements or acids or whatever it may be when he says that the same effect was produced by being in clean water?

Mr. McDermit. He doesn't say that exactly as I understand it. He says in effect it would be the same effect if it had been in clean water but—

Witness. It would be a little slower in its action.

The Court. Would it change inside of four months?

Witness. Yes, sir.

The Court. The appearance of the brass?

Witness. I think so.

The Court. That is the metal of which the cartridge is composed. Do you know what metal that is composed of?

Witness. Brass is copper and zinc, perhaps a little German silver of some kind. The copper is a metal by itself, that is the under part of the cartridge. The upper part is lead. The inner part, of course, the shot—the powder.

Q Well, you are willing to say that it is your opinion that that cartridge could not have been in water for three or four months? A I don't think it could have been from its appearance.

Q Have you any idea how long it could have been in water from its appearance, if in water at all? A I could not say. It might have been a day; might not have been at all. It might have changed this way even from air exposure or from handling—might have been similar to this one.

Cross examination by Mr. Mott.

Q Assume that cartridge, Ex. S. 29, since the 27th of September last, has been in a dry place, been exposed more or less to the air, has been handled more or less, are you able to say that previous to the 27th of September, that cartridge had not been for sometime in clean water? A I couldn't say.

Q Is there anything about the cartridge, Professor, that will enable you to say that previous to the 27th of September last that cartridge has not been for some time in clean water? A You mean a minute?

Q No. By "some time" I mean months, two or three months? A I wouldn't think it was or that it has been.

Q Would you say, Professor, that it had not been? A If it were then it might have been cleaned off, that is the only thing, in some way, but from its appearance I would say that it had not been.

Q Well, necessarily the handling of that cartridge cleans it, doesn't it? I mean to say there, picking it up in my fingers in that way cleans it, doesn't it, some? A No; it would tend to change it.

Q Tend to change it. Well, will you answer my question and say whether in your judgment that cartridge was not previous to the 27th of September last for two or three months in clean water? A From

the appearance I should say no; that I don't think it had been.

Q Will you say that it had not? A From its appearance it was not.

Q You say that it is your judgment that it could not have been? A Yes, sir.

Q Now, tell me what there is about that cartridge that makes you say that? A Because it hasn't the change. There would be a certain amount of sulphurization if it were in a trap because the gaseous matter and even excretal matter that is in the syphon will find its way by the principle—same principle of simply passing, as for example, gas would from a burner through the whole atmosphere—the same way these gaseous constituents that are in the excreta would have passed from the water—through the water even into the trap where this lay and changed it, or further too the oxygen of the clean water, would in my judgment, have altered it.

Q Suppose, Professor, that at the time—short time, a new bullet or new cartridge has more or less of that covering of wax on it and that at the time that this bullet—this cartridge—went into the water there was more or less of the wax around it, what effect would that have? A Well, the wax would hinder any action upon it but the water wouldn't dissolve the wax.

Q The water wouldn't dissolve the wax but the continual rolling and rubbing of the cartridge on the bottom of the trap by the velocity of the water would gradually wear the wax away, would it not? A Yes, sir.

Q Could you tell how long it would take to wear that wax away.

Mr. McDermit. It would depend on how much was on it. No testimony in this case of any wax.

The Court. Answer the question. How long would it take to wear the wax away, if you know?

Witness. I couldn't tell that. It depends upon the quantity and number of other conditions there—if it was solid matter going through and so on.

Mr. McDermit. Nothing in this case to show there was wax on this bullet. All that is new this morning.

Mr. Mott. I do not now say there was. Perhaps there was. I haven't said there was.

Mr. McDermit. I ask to strike out that testimony—that answer with regard to the wax.

Mr. Mott. I object.

The Court. Motion denied.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q Now, I call your attention to cartridge No. 29 and cartridge No. 3 and ask you to point out what you call the difference in color and appearance of the two. A 29 is brighter than D. 3.

The Court. What do you mean by that? The apparently brass material is brighter?

Witness. The brass is brighter.

The Court. Isn't any difference in the lead bullet, is there?

Witness. Yes; the lead is a little—I don't see much difference in the lead bullet, the lead part, and the copper is brighter in 29, I believe.

Q Is it not a fact, Professor, that brass tarnishes in the air? A Brass does tarnish in the air.

Q And don't copper? A Yes.

Q And when exposed to the air they turn dark, do they not? A Yes, sir.

Q And that is the reason we polish the handles of our front doors, isn't it? A Yes, sir.

Q Then what more can you say about 29 than that in your judgment it hasn't been exposed to the air as much as D. 3? A I don't quite understand in what particular—with regard to color?

Q As to the color? A Well, this one, 29, may have been handled more and less exposed to the air than the other one.

Q Which would result in what? A In the change of color.

Q Yes; of which? Professor, be frank with me now. A Well, of this D. 3.

Q And wouldn't the fact that D. 3 had been more exposed to the air than 29 account for the difference in their color? A If you assume that.

Q I am assuming that to be the case? A Well, if this one has been under water and this one in the air—

Q Professor, did I see you paid some money as you were sitting on this front seat here in the eyes of the jury this morning before you went on the stand? A You did.

Q Please be frank with us and answer my question. You know what I want. I am asking you, Professor, assuming that D. 3 has sustained a larger exposure to the air than 29, whether that fact would not in the absence of other fact account for the difference in color between them? A I think it would.

Q And then your judgment in this matter necessarily rests on the amount of exposure that D. 3 has been subjected to, does it not? A From the air exposure, yes, sir.

Q To the air exposure, and until you know the history of D. 3 then how can you give the judgment that you have given here? A Because conditions were mentioned to me and I was asked to give an opinion on the basis of the conditions as mentioned. That is the only way.

Q And did you assume that D. 3 had not been exposed to the air? A I don't know anything about it being exposed to the air or not.

Q I mean in making your answer did you assume that D. 3 had not been subject to a greater air exposure than 29? A I didn't consider that at all. It was simply presented as a cartridge.

Q Then considering that D. 3 may have been subjected to a greater air exposure than 29 do you want to change your opinion at all? A Not at all.

Q And the amount of exposure of the two bullets then makes no difference in your judgment as to their color? A If you assume that both were exposed to the air at the same time and same amount of air they would have been the same color.

Q No, sir; but I am asking you to assume that D. 3 has been subjected to a greater air exposure than 29 and then ask you if your answer as previously made would stand? A Based upon the other conditions; yes, sir.

Q With this other added condition? A Yes, sir.

Re-direct.

Q The money paid to you in court was paid for your services? A Yes, sir.

Q As an expert to come here and testify? A Yes, sir.

Mr. Mott. I am not questioning the integrity of the witness. I wanted it distinctly understood that he was in an expert capacity.

WILLIAM TIELSCH, sworn for the defendant.

Direct examination by Mr. McDermit.

Q Mr. Tielsch, where is your place of business? A 417 Bloomfield avenue.

Q And in what line of business are you? A Intoxicating liquors.

The Court. Between what streets is that?

Witness. Between 7th and 8th.

The Court. Between 7th and 8th streets on Bloomfield avenue?

Witness. Bloomfield avenue.

Q You are situated in the City of Newark there? A Yes, sir.

Q And 8th street is what is regarded as a continuation of Roseville avenue, isn't it? A Yes, sir.

Q Roseville avenue runs out to Bloomfield avenue down at about the Silver Lake section? A Well, I don't know much about the other side of Bloomfield avenue.

Q You know where 8th street is? A Yes, sir.

Q And you know where Belmont avenue is? A Yes, sir; I have passed it.

Q Do you know where Thomas street is? A No, sir.

Q Do you know where the old Erb's ground is? A Yes, sir.

Q Now, you know where Grove street is? A Yes, sir.

Q And you know where Beardsley avenue is? A No, sir.

Q You know all that territory that is back of the new City Playground on Roseville avenue and Bloomfield avenue? A Yes, sir.

Q There is a large area section there? A Yes, sir.

Q Of filled-in ground? A Yes, sir.

Q Did you ever notice what it was filled in with? A No, sir.

Q Did you ever notice whether there was any swamp there or not? A I know there was woods there once.

Q Do you know whether there was a sort of lake up there—pond? A I couldn't tell you; I never went up there.

The Court. You are asking about the conditions around the playground. This is a half mile away from 8th street and Bloomfield avenue.

Mr. McDermit. I beg your Honor's pardon, the playground is the corner of Roseville avenue and Bloomfield avenue. As I understand 8th street is right across the street. He is between 7th and 8th streets right there.

The Court. Yes, but isn't the point at 8th street and Bloomfield avenue a very great distance from Grove street and Beardsley avenue and Chester avenue at the point where this decedent was found.

Mr. McDermit. It is easily a mile; yes, sir—three-quarters of a mile at least.

The Court. Then you are asking about the condition around the playground. That is the way the question appears. Call his attention to the exact situation you want him to testify to.

Q Do you know what the condition is from back of the playground up to Grove street? A All I know is vacant lots. That is all I know.

Q Are there any trees there? A That is something I couldn't tell you.

Q Have you ever been in there? A I have been in there, but a long while ago.

Q What was the condition in there?

Mr. Mott. I judge from what the witness says that he knew what the condition formerly was but he doesn't know now. He says, "long while ago." Unless he knows what the condition is now or was (interrupted)—

Q Were you there when they filled in Roseville avenue and Bloomfield avenue for the playground? A No, sir.

Q How long have you been in that territory up there? A Well, I will be there now two years next August.

Q The playground has only been completed about a year? A They have been filling in but I never been over there only until here lately.

Q Never been through that territory yourself? A Only here lately when they have been playing football and baseball.

Q That is in the playgrounds? A That is in the playgrounds.

Q Outside of the playgrounds? A I haven't been outside at all.

Q We don't care anything about the condition of the playground. Outside of the playground, up to Grove street. Do you know the crossing of the brook there and water coming through there? A There used to be a brook.

Q Isn't there a brook there still? A I couldn't tell you.

Q Wasn't there a brook there last May? A Last May? I couldn't tell you. I never went up above Roseville avenue—very seldom.

Q Now, you remember Decoration Day of this year, do you? A Yes, sir.

Q And this defendant, Angelo Cerciello, do you know him? A I didn't know him at all—never seen him before until he came in—I couldn't tell you whether it was him or not, until I seen him in the court here.

Q Yes. Well, now, when he came in where did he come? Into your saloon? A Yes, sir.

Q And at what time was that? A Well, that is something I couldn't tell you what time he did come in, because I never take notice to what time anybody comes in the place, any hour of the day or any hour of the night.

Q Now, were you playing cards that night? A Yes, sir.

Q And did you get up from the card table to go to the telephone? A Yes, sir.

Q And at some request that he made to you? A He come in and asked me if I would call up the police station.

Q Yes. A And I says I would, and I went over to the telephone and called up Central; they connected me with the Fifth Precinct—well, after I got the Fifth Precinct I handed the receiver over to him and I sat down and played cards.

Q You say you called up Central and Central connected you with the Fifth Precinct? You mean you called up police hearquarters? A No, sir; called up Central.

Q And Central connected you with the Fifth Precinct without connecting you with police headquarters? A I don't know whether she connected up or not. When I got the answer the Fifth Precinct was on the other end of the wire.

Q Now, what took place? A Why, then I handed the receiver to him and I sat down and he talked through the 'phone that his wife was—went away from home and she had $200 on her possession—she hadn't come home yet.

Q Yes. A If they would go to work and look for her.

Q Yes. A Then he hung up the receiver and went out.

Q Yes. A That's all I ever remembered until next morning.

Q Yes. A When the beer driver came down and said they found a woman.

Q You heard from some source the next morning that the woman's body— A They found a woman's body up in the lot.

Q Now, fix the time the best you can for us. A Well, I couldn't very well tell you what time. I know it was after twelve o'clock because a couple of friends

of mine that were there they left after twelve o'clock, and this happened after twelve. What time after twelve I couldn't say definitely because I didn't look at the time.

Q You didn't pay any special attention to that fact that his wife was missing? A I know he was a little excited when he came in—when he asked me to use the 'phone.

Q He never patronized you before? A Never remember seeing the man.

Q Never saw him before? A Never knew him before.

Q And you know where the corner of Chester avenue and 8th street is? A Yes, sir.

Q And how far from where you are to there about —about three blocks? A About three blocks.

Q They are very large sized blocks, aren't they? A The first one is only a short one.

Q Second block very large block? A Yes, sir.

Q About a quarter of a mile in from Bloomfield avenue to the corner of Chester avenue and 8th street? A Something like that.

Q Are you familiar with what the territory is running from Chester avenue and 8th street—how many blocks you have to pass before you strike Bloomfield avenue—do you know how many blocks there are? A From where?

Q Coming up Chester avenue. Bloomfield avenue runs this way (indicating)? A Yes, sir.

Q And North 8th street runs north and south? A Yes, sir.

Q Across Bloomfield avenue—continuation of Roseville avenue. Now, Chester avenue at North 8th street, it runs on an angle, doesn't it, this way (indicating) the same as Bloomfield avenue only not as squarely—Chester avenue? A Yes, sir.

Q Runs the same way as Bloomfield only runs on the other angle—the other direction? A Yes, sir.

Q So that three blocks out from there to Bloomfield avenue those are pretty good sized blocks, too, ain't they? A I can't tell you. I am not much acquainted.

Q Are you able to say about what the condition is from Bloomfield avenue and 8th street to where Cerciello lived corner of 8th street and Chester avenue, about the distance from there to Bloomfield avenue going up Chester avenue? Which is the longest distance, the distance going straight, parallel over Roseville avenue, or the one going up on the angle to Bloomfield avenue, do you know? A That is something I couldn't tell you because I never went up Chester avenue—never walked up that way.

Q Who were the people who were in the saloon with you at that time, do you remember? A It is pretty hard to remember who it was.

Not cross examined.

JOHN McMAHON, recalled for the defendant.

Further direct examination by Mr. McDermit.

Q You say you are a lieutenant of police? A Yes, sir.

Q You know what the methods—service in use of telephones was of May, 1913, in the police department, don't you? A Yes, sir.

Q And you know what is necessary to do in order to get an individual precinct, don't you? A Yes, sir.

Q Each precinct has a 'phone on its lieutenant's desk, doesnt' it? A Yes, sir.

Q Connected with the Central Police Headquarters, isn't that so? A Yes, sir.

Q Now, in order to connect with that precinct—any person calling for instance from Bloomfield avenue on the morning of May 30th at the exact time or thereabouts that you got your own message, how could anyone connect with you? A After going through police headquarters.

Q Through police headquarters. So that the party transmitting the message to you would first have to get police headquarters and police headquarters would have to connect with you? A Yes, sir.

Q That is the system? A Yes, sir.

Q And that system is still in existence, is it? A Still in existence.

Q So therefore—who was the man who was on duty at the desk on the morning when this message came in to police headquarters? A Lieutenant Tyler.

Q He would have been able, of course, to have heard the message as it was transmitted to you? A He would have been able to.

Q He would have been able? A Yes, sir.

Q Now, the system is they call the lieutenant and the lieutenant connects them up with the Central? A Yes, sir.

Q For the individual precinct? A Yes, sir.

Q That was the way it was done in this case? A That is the way it had to be done.

Q The way it had to be done. Now, when a complaint is made to a precinct, like this complaint and you take your precinct blotter, is there any record kept of that same complaint at police headquarters? A We send the complaint to police headquarters with the understanding that—a missing woman like this—she was reported as a missing woman—that he would notify all the other precincts throughout the city.

Q Yes; now, then, did you send to Lieutenant Tyler after you had received the message from Cerciello —whoever it was gave you the message—did you send out that general alarm to police headquarters and from place to place? A I sent it to Lieutenant Tyler of police headquarters.

Q And you transmitted the same message? A Same message.

Q That you got to him, didn't you; isn't that right? A Yes, sir.

Q And he would make no record of that, would he? A No; he would make no record of that—just memorandum of it.

Q Memorandum, and send out that general alarm to the other precincts, did he? A Well,—

Q Or did you connect up with all the other precincts? A No, sir; had to go to headquarters.

Q Had to go to headquarters. Well, when he received the report from you did Tyler say anything to you about the report? A Yes, sir.

Q And do you remember what it was that Tyler said to you? A He said he had—

Mr. Mott. How can that be competent?

Mr. McDermit. Suppose he got the report coming into him. Frequently a police officer will listen to the report going through. We may be able to dispense with getting Tyler here. I don't know whether we will or not.

Q Had he informed you that he had received—what did he say to you if anything, with regard to the report that you had made to him when you called him up to send out a general alarm with regard to this woman? What did he say to you?

Mr. Mott. One minute.

Mr. McDermit. In regard to that particular matter; as to any information he may have had; that is the question.

Mr. Mott. I don't see how that can be competent, what Tyler said. I object.

The Court. Objection sustained.

Defendant's counsel prays an exception to the ruling of the court, the same is allowed, and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Cross examination by Mr. Mott.

Q The only way the officer at headquarters could hear what was said to you over the telephone was by keeping the receiver at his ear and listening to the conversation, wasn't it? A Yes, sir; he would have to do that.

JOHN BAADER, sworn on the part of the defendant.

Direct examination by Mr. McDermit.

Q You are a police commissioner, I believe of this city? A Yes, sir.

Q And are also in the hardware, paint, oil, etc. business; have been for many years? A Yes, sir.

Q You also handle hatchets? A Yes, sir.

Q Now, examine the hatchet without touching the handle—just look at it—and see whether—do you know what the manufacture of that make of hatchet is? A It looks similar to a Peck, Stown & Wilcox, but I can't say that it is their hatchet.

Q Look and see if there is any mark there designating Hammond? A But I say Peck, Stown & Wilcox is a similar one.

Mr. Mott. (Pointing to mark on hatchet).

Witness. I can't tell what brand it is. I can't see the name.

Mr. Mott. I understand you can see it if you put the glass on it.

Witness. We handle hatchets similar to this. I don't know whether it is the same kind or not.

Q Do you know the firm name of the Hammond?

The Court. Ogonz, Pennsylvania.

Witness. I believe there is a hatchet manufacturing of that name. We handle so many different kinds it is hard to tell.

Q How many different kinds do you carry? A About twenty different kinds.

Q Did you carry any of those? A No, sir; I haven't any of theirs at the present time.

Q Have you carried it? A I think I have at some time—in times gone by. I can't see the name.

Q Are you able to locate any name on there? A There is a name there but I can't make it out Hammond. I think that is the name. Hammond. I think that is the name "mond."

Q Well, Mr. Thorn says that that is one of the—Rising & Thorn says—that is one of the Hammond hatchets. He ought to know—he handles them, I guess. Do you handle any of those? A I have a hatchet similar to that.

Q Look at this hatchet here; do you recognize that hatchet? A Yes, sir; I have got that.

Q Handle that. Those are similar hatchets, are they? A Yes, sir; similar to that.

Q This came from your place, didn't it, or do you know—could you tell? A There are other people handle them.

Q Could you tell whether that was bought from your place or not—any way for you to identify that? A No, there is not.

Q You didn't know it was. There is no way for you to identify this last hatchet? A I know one was sold. I was told it was got to come over here; that is all I know.

Q You have no way of identifying that as the hatchet, have you? A No, sir; I have not.

Cross examination by Mr. Mott.

Q How long since you have handled the Hammond & Co. hatchet? A I had them, I think five years ago.

Mr. McDermit. With the exception of Mr. Tyler and a witness from Rising & Thorn we are through.

The Court. You rest reserving—

Mr. McDermit. Tries and possibly one hardware store man to prove the general sale of the Hammond hatchet unless counsel admits it.

Mr. Mott. I do not doubt they are sold in many places. Mr. Thorn testified that they are generally sold by hardware people and I have no suggestion to the contrary.

Mr. McDermit. Then we will not need that reservation. Except for Tries' and Tyler's testimony. With those reservations we are prepared to rest the case for the defendant.

DEFENDANT RESTS.

PETER DESKOVICH recalled for the State.

Direct examination by Mr. Mott.

Q Mr. Deskovich, while you were at the jail, in a conversation you had with the defendant, did he say to you that the man who came up from Rising & Thorn's was not the man of whom he bought the hatchet but that he bought it there from a young man? A Young man; yes, sir.

Cross examination by Mr. McDermit.

Q Now, Deskovich, you testified here the other day. Do you remember that, do you? A Yes, sir.

Q How did you come to come back here this morning again? A Why, they want me here, that is all.

Q Who came after you? A Nobody.

Q Who sent for you? A Nobody. I was supposed to stay here until the trial was over., I suppose.

Q You were? And who did you tell about the story this morning about the hatchet, somebody else sold it to him down there? A Somebody asked me a question about it and I —

Q Asked you whether he didn't tell you that some one else had sold him the hatchet? A Yes, sir.

Q And you said yes. Didn't remember that the other day, did you? A No, sir.

Q And you swore there wasn't any such conversation the other day? A That is all I could remember.

Q You swore the other day there was no such conversation with regard to the hatchet? A Nobody asked about the hatchet.

Q Here is your testimony. You know what you swore to? A Nobody asked me about the hatchet question at all. I didn't have it in my head at that time.

Q Let us see if I can read you your testimony. You said "Damn the Blessed Virgin Mary, the hatchet is that condemned me"? A Yes, sir.

Q Then you corrected it and said "convicted" didn't you?

Mr. Mott. I beg your pardon. He didn't correct anything. The witness didn't correct anything, your honor. The interpretation of the interpreter was corrected not the witness.

Mr. McDermit. By this record, the record here says the witness says "convicted" and Mr. McDermit said "convicted or condemned."

Mr. Mott. The witness said condemned me.

The Court. This is the incident where Mr. Deskovich stated the statements of the defendant in Italian?

Mr. Mott. Yes.

The Court. And they were interrupted by the interpreter?

Mr. Mott. Yes.

Mr. McDermit. But the word "witness" nevertheless said "convicted." The question was "Now, was there anything else? A I guess that is all."

Witness. That is all I could remember.

Mr. McDermit. And the question was "That there was in the discussion of his case in regard to the offering of proof that the hatchet was the only thing that could condemn him? A Yes, sir. That was a comment he was making on the case."

The Court. What is the question?

Mr. McDermit. Just a minute. Didn't you tell me in answer to a question—this is your exact language "I told you I don't know nothing about the case, guilt or not guilt." Isn't that what you said?

Witness. Yes, sir; I don't know nothing of guilt.

Q Isn't that what you said? A Yes, sir; I don't know nothing about he is guilty or not guilty; don't look for it.

Q You told us the other day that he never made any statement to you at any time? A No statement.

The Court. Now wait until you hear the whole question.

Q That is you swore the other day that "He never made any statement to me?" A No statement. I not not police. I just simply happened to heard what Angelo there say something.

Q So that what you testified to now is something that you accidentally heard again, is it? A Yes, sir.

Q Is that right? A Yes, sir.

Q And this is something he was telling Laudisi, was it? A Yes, sir.

Q And not to you? A Laudisi and me, and somebody else might be there couldn't understand it.

Q But the statement you make here this morning is the statement he made to Laudisi that you accidentally overheard, is that right? A Yes, sir.

Re-direct.

Q How long ago did you tell anybody that the defendant said that to you?

Mr. McDermit. I object.

The Court. On what ground?

Mr. McDermit. This is his witness.

The Court. You have tried to impeach the witness upon the ground that he stated the other day that he told all he knew. Now, he comes back and says something additional. You asked him who was it he first told this to.

Mr. McDermit. Any statement he may have said not being in the presence of the defendant cannot be binding upon the defendant at this stage of the case.

The Court. Objection overruled. He has a right to explain. You tried to impeach him.

Q How long ago did you tell somebody the fact that the defendant made this statement to you? A That is the time Mr. Federici came up to the netting there and asked me something.

Q And to whom did you tell it? A To Mr. Federici.

Q About how long ago do you think it was? A Three or four months—five months—four months.

Re-cross.

Q Four months ago? A Yes, sir; gentleman come there and ask something.

Mr. McDermit. Never mind. You weren't asked any question.

Re-direct.

Q You told it to Mr. Federici three or four months ago when he came to see you? A Yes, sir.

RECESS.

WILLIAM TRIES, JR., sworn for the defendant.

Direct examination by Mr. McDermit.

Q Mr. Tries, you are in the Rising & Thorn store? A Yes, sir.

Q And you conduct a hardware store there? A Yes, sir.

Q And you sell occasionally hatchet there, do you? A Quite frequently.

Q And you have quite a number of different kinds of hatchet there, do you? A Yes, sir; we do.

Q Can you tell a hatchet without carefully examining it just exactly whose make it is? A From here?

Q Yes? A No; I cannot.

Q Have those two hatchets a similarity? A They look similar, yes, sir, but you can't tell by looking at the hatchet what make they are.

Q You have to look at the stamp? A That is the idea; yes, sir.

Q Most all hatchets look about the same? A Yes, sir.

Q Different handles. Now, look at this particular hatchet (referring to S. 2)? A Yes, sir.

Q Have you ever seen that hatchet before? A I think I have.

Q You think you have? Where did you see that hatchet? A Why, in the store.

Q Whereabouts in the store? A Why, on the counter.

Q What was it doing on the counter? A A person from the prosecutor's office came in with this hatchet and laid it on the counter.

Q Is that so? How long ago was that? A Why, I don't know exactly. It may have been six months ago or five months. I don't know exactly.

Q Do you know who it was? A Why, yes.

Q Was it Mr. Godfrey? A Mr. Godfrey, I believe —yes; that is the gentleman.

Q Do you know this gentleman here, Mr. Federici? A I do.

Q Did you ever see him there? A In the store?

Q Yes. A Yes, sir.

Q Was he there when they brought the hatchet there? A No, sir.

Q And how long did the hatchet remain on your table in the store? A Why, we just looked at it. How long?

Q Yes. A Perhaps five minutes—between five and ten minutes, I should say.

Q How did you examine the hatchet, Mr. Tries, the five minutes—what examination did you submit it to? A Why we looked at it. In the first place we looked at the name to see what make it was, because the idea was they wanted to find out whether or not we sold—

The Court. Never mind.

Witness. All right—to see what make it was.

Q You looked at it? A Yes, sir.

Q And looked at it carefully? A Did; yes, sir.

Q And you had seen that hatchet before that day they brought it there, had you? A Not to my knowledge.

Q Had that hatchet ever been in your store before the time they brought it there? A I can't answer that.

Q You went to the jail, didn't you? A I did.

Q And you went up there for the purpose of interviewing and looking at someone who was alleged to have bought a hatchet from your place of that similar kind, didn't you? A Yes, sir.

Q And there was a hatchet sold during the—there had been a hatchet sold by you during the week of May 30th—Decoration week—you had sold a hatchet? A I can't answer that. We may have sold a great many hatchets.

Q Not we. A I personally.

Q Yourself? A No.

Q Never sold a hatchet— A Don't recall it.

Q Did you sell a hatchet down there that week? A Not that I recall.

Q Had you sold a hatchet the week before? A I don't know.

Q Why did you go to the jail? A At the solicitation of Mr. Federici.

Q You went to the jail to see if you couldn't identify some man as having bought a hatchet in your place? A As having bought a hatchet.

Q You didn't identify him, did you? A No, sir.

Q And the kind of hatchet that you were to have him identify was this kind of a hatchet, wasn't it—this was the hatchet? A Well, now, whether he bought this hatchet or not—no.

Q Why did you want to identify him? What was your idea of going to the jail if you hadn't sold him this hatchet or similar hatchet? What was your idea going to the jail to identify the fellow? A May I explain it?

Q Explain it to me. A Mr. Federici came in and wanted me to go up to the jail to see whether or not—

Q Now you confine yourself to my question. You went to the jail? A Yes, sir.

Q And you knew when you went to the jail that you hadn't sold this man any hatchet, didn't you? A I knew it, yes, sir.

Q Didn't you know that? A That is correct.

Q Didn't you know that you couldn't tell whether this hatchet was bought at Rising & Thorne's store or not? You knew that, didn't you? A That is correct, yes, sir.

Q But under arrangement made between Federici and you you were to go up to attempt to lie to this fellow as to the question as to whether the hatchet was bought there or not? A No, sir.

Q You were to go up there for the purpose of putting a scheme up between you and Federici for the purpose of deceiving this defendant, is it not true? A No, sir; it is not.

Q Didn't you go up there in response—

Mr. Mott. I am willing that this go on, but this is direct examination.

The Court. This is your witness, produced by you.

Mr. McDermit. And failed to be produced by the State after subpoenaeing him all the week.

The Court. What difference does that make?

Mr. Mott. That is not true. This witness was never subpoenaed by the State.

Q You went to the jail? A For a purpose.

Q For a purpose? A Yes, sir, and that purpose—

Q Wait a minute. I didn't ask you what that purpose was yet. I will try to get that purpose in my own way first. You were aiding—you were aiding, as you understood it, the State in its investigation? A No; no.

Q Now, then, you don't know then anything about this hatchet? A No, sir; I wasn't—

Q Don't know anything about the hatchet at all? A No, sir.

Q And in what way did it lay on your counter? A Why, it laid—we examined it one way and we examined it another way, turning it.

Q How did you have it? A Well, looked at it in this manner and looked at it in that manner (indicating).

Q Then set it down again? A Set it down again and looked at it again.

Q How often did you pick it up and set it down on the table? A Well, we may have looked at it two or three times, just that way, looking at it in that way (indicating).

Q What did you want to find out looking at it in that way—what did you find out by looking at that? A It was more a matter of curiosity. They said there was a finger-print on that hatchet and I had never seen a finger-print in my life. It was a matter of curiosity to see what the finger-print looked like.

Q You were making at your store an examination of these finger-prints? A Pardon me!

Q (Question repeated.) A No, sir; it was merely a matter of curiosity to look at it. I read in the paper that the deed was committed and merely a matter of curiosity, looking it over.

Q Did you lay it on like the table there—what kind of table, is it a brass table? A Flat counter.

Q What is the material? A Wood.

Q Wood. And you say it lay there about five minutes. Of course you took it up a couple of times, did you, or three or four times? A I don't know.

Q Five times? A I don't know.

Q Ten times? A I don't know.

Q Will you swear you didn't take it up ten times? A No, sir.

Q How many times did you take it up? A I may have about three or four times.

Q Three or four times. A Two or three; I don't know exactly. I don't know.

Q How often did Godfrey take it up? A I don't know.

Q Did he put it back into his pocket again? A I don't know what he did with it. My recollection is that he wrapped it up. I wouldn't be positive about it.

Q Wrapped it up in what? A A piece of paper, I presume, if I remember correctly.

Q Don't you remember if he wrapped it up? A No, sir.

Q Do you remember he wrapped it up at all? A Well, I think I remember he wrapped it up in paper.

Q Look at this paper. Do you think that is the paper he wrapped it up in? Looks like it, does it? A Well, that resembles paper which we used in our rolls in the store at that time. We use a different type of paper now.

Q Used this kind of paper at that time? A Yes, sir.

Q You think that is the kind of paper he wrapped it up in, do you? A It may be.

Q You don't know, do you? A Positively not; no; that it is the particular paper or not.

Q This isn't the paper that came around the new hatchet from Mr. Baader's, because you couldn't be mistaken about that. Got that this week. They still use that paper but not your hatchet. Now you can't say that that was ever in your store? A No, sir; I cannot.

Q Positive? A I cannot state so.

Q Have you any such hatchets as that there now? A We have this same make of hatchet, same number and style.

Q And everybody else has the same thing.

Q And everybody else has the same thing, I suppose? A I don't know.

Q Every other store? A They have hatchets, I presume.

Q They carry those goods here in Newark, don't they? A Which goods?

Q This hatchet there. A You refer to the make or kind?

Q Make, yes, sir. A I don't know.

Q You have quite a number of attendants in your store, don't you? A As customers?

Q Attendants. A Yes, sir; good many.

Q Seven or eight? A Oh, attendants; you mean sales people?

Q Yes. A No; we have no Italian gentleman.

Q Attendants. How many have you got working there, sales people, in your store? A I think seven or eight. I will have to count them up to be accurate about it.

Q Are you a member of the firm? A No, sir.

Q You keep the books? A I do.

Q You know about the average sales of hatchets a week? A No, sir.

Q Who keeps that list? A We don't keep any records of any particular item as to the quantity sold —no record at all—it is simply—we have hatchet sales come in and they are simply entered as an amount, not as a particular item.

Q So that in keeping your inventory—don't keep in the middle of the week—you take inventory at the end of the year and finish out in the cash book? A We do it to-day in that way; yes, sir.

Q That is the way you keep your books? A Yes, sir.

Q Is that a safe way to keep books? A Why, we consider it so.

Q In order to account in your business for the specific articles, all that go out, you simply deduct the cash at the end of the year from the inventory of stock then, is that your method of doing business? A Well, I—

Q Is that the method of doing business at your place? A Make that a little more explicit and I will try to answer the question intelligently.

Q You went to the jail? A Yes, sir.

Q And you went to the office of the jail with Mr. Federici? A Yes, sir.

Q Mr. Godfrey wasn't there? A No, sir.

Q And you went there some time after the trip down to your store? A Yes, sir.

Q After you and Godfrey and Federici had entered into some little arrangement of some kind? A No, sir.

Q No arrangement whatever? A Absolutely, not, no, sir; positively not.

Q Positively not? A I will make it emphatic.

Q Now, be careful. You went to the jail, didn't you? A Yes, sir.

Q Well, you didn't go to the jail to identify this man that had bought a hatchet at your place, did you? A No, sir.

Q You went to the jail to see this man also, did you? A If you allow me to answer—

Q Did you go to the jail to see this man? Answer yes or no. A Yes, sir.

Q And did you also go there to see his brother? A Yes, sir.

Q And you went there at the request of Mr. Federici? A Yes, sir.

Q And they brought this man to you first, this defendant? A No.

Q They brought the other man to you first? A They brought the taller man, yes, sir.

Q Did Federici talk to that man in your presence? A He did.

Q And did he tell him who you were? A He knew me.

Q Did Federici tell him who you were? A That I don't recall.

Q You knew the other man, did you? A Yes, sir.

Q And you knew his name was Vincenzo Cerciello, didn't you? A I didn't know his name, no. I knew him by sight.

Q You knew— A I knew him by sight, yes, sir.

Q He bought goods in your place? A Yes, sir.

Q And he is a carpenter? A I don't know.

Q And bought lots of tools in your place, did he? A I don't know about the quantities; he bought goods.

Q He bought so much in goods there that you became acquainted with him coming in and out of the store. And did you suggest that you would go to the jail to see Vincenzo Cerciello, is his name? A No, sir; I did not.

Q And you were to go up to the jail for a purpose of some kind? A Yes, sir.

Q I suppose the general purpose was that many Italian people in that neighborhood bought goods from you and you were asked to go up to the jail to see if you could pick out these people as your customers or any one of them? A The idea was—

Q Is that the idea? A No, sir.

Q That wasn't the idea? A No, sir.

Q You weren't to go to the jail to bring a new hatchet to Vincenzo or Angelo, were you? A No, sir.

Q You were to go there with a purpose in view? A Yes, sir.

Q Was that purpose supposed to be helpful to this defendant? A I don't know.

Q Did you see this defendant at the jail? A I did.

Q Had you ever seen him in your store? A Not to my knowledge, no, sir.

Q Had you ever sold him any goods? A Not to my knowledge.

Q The other defendant, had you ever sold him youself a hatchet?

Mr. Mott. The other defendant?

Q The other brother. He was a defendant at one time. The other brother. Had you ever sold him a hatchet? A Not to my knowledge.

Q Take this hatchet with you to the jail? A No, sir.

Q Talk about finger-prints up at the jail when you got there? A No, sir.

Q Talked about the trouble. This man's wife's death? A No, sir.

Q Talk about anything up there? A No, sir.

Q You bid these people the time of day? A I said, "How do you do?"

Q Is that all you said? A To whom?

Q To Angelo, the defendant? A Yes, sir.

Q Just bid him the time of day? A Until I was asked a question.

Q Did you ask him any question? A No; until I was asked a question.

Q Federici asked you some question? A Yes, sir.

Q At the jail? A Yes, sir.

Q Asked you whether that man had ever been down to your place of business? A No, sir.

Q Asked you whether you ever sold him a hatchet? A No; he asked whether I knew him.

Q Didn't know him? A No, sir.

Q You went there then for the purpose of identifying him? A To see whether I knew him. Simply to see whether I knew him.

Q What was the purpose for which you were to go to the jail with Federici? A I was to go there and see whether or not I knew this man.

The Court. Which man?

Witness. Why, I supposed it was this defendant here.

Q You went up there—isn't this the situation—you were sent for and you went—

Mr. Mott. One minute, Mr. McDermit.

The Court. You are not cross-examining this witness. He is put on the stand by you. It is your own witness.

Q Isn't it a fact that you went up there to see both defendants and see whether you could identify either one of them? Both were arrested. A No, sir.

Q You saw both of them? A Saw both; yes, sir.

Q You knew the other but not this one? A That is right; yes, sir.

Q Can you tell us anything about the age of this hatchet? Have you any idea whether that is a new or old hatchet? I don't mean particularly as to two or

three months, but the time you first saw this hatchet at your store will you say it was a new or old hatchet? A When I first saw it it had the appearance of being somewhat new.

Q Newer than it is now? A Yes, sir.

Q Looked—different appearance? A The blade was more polished, didn't have many rust spots on it.

Q And how about the handle? A The handle I should say, if this is the same one, that looked about the same to me.

Q And do you know what the material is in that handle, wood? A I should say it was wood; yes, sir.

Q The material—I mean the kind of wood. A No; I am not a judge of wood, no, sir.

Q How about this part of it (indicating)? A Steel.

Q Is that steel? A That is steel.

Q Is it steel? A Yes, sir; called steel—cast steel.

Q Got any idea about how new it was when they showed it to you? A No; I have no idea at all.

Q I show you this other hatchet. How many years do you suppose it would take that hatchet, ordinary wear and tear, to get in the condition this is in? A It all depends on the man having it.

Q Suppose this wasn't exposed to the weather or wasn't exposed to outdoor work where it would come in contact with damp substances and used for the purpose of splitting wood around the house, kept in a dry place, how long would that retain its brightness, about? A Provided it wasn't touched with the hand?

Q Yes. A Which produces rust. It might stay that way some little time.

Q How long a time do you suppose? A Oh, I don't know. I couldn't tell you that.

Q How long would this remain in this sort of shape if I should take it out and throw it down in

the fields or in a lot and it was out there in the rain, thunder shower, rain of a couple of hours, rain the next day, precipitation of a little over an inch, remaining out in the open for seventy-two hours—what would be the effect upon this hatchet as to appearance? A Well, it wouldn't have—seventy-two hours wouldn't have very much effect on that hatchet I should say.

Q Well, suppose it had been used then and had become blood-stained and had been used in the process of hacking a human body up, used so far, don't know how long—fifteen to twenty minutes, so that it was all smeared with blood the same as the old hatchet I showed you apparently was when you saw it first, what would be its condition?

Mr. Mott. Have you had any experience with using hatchets or do you just sell them?

Witness. Sell, and I occasionally use a hatchet at home, the same as anybody else would—just simply occasional.

Mr. Mott. I submit that this man's jurgment is no better than any man on the jury; can't be.

Mr. McDermit. I submit that he handles these goods and has for a number of years and has used one of them personally and has handled steel and deals in all kinds of hatchets.

The Court. Objection sustained.

Defendant's counsel prays an exception and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Cross examination by Mr. Mott.

Q You say that when you were up at the jail you saw the brother, didn't you, Vincenzo? A I saw Vincenzo, yes, sir.

Q And you say you knew him? A I did.

Q How did you know him? A By coming in the store.

Q Then he has been purchasing hardware supplies of you? A Yes, sir.

Q At your store? A Yes, sir.

Q Did he have an account with you? A No, sir.

Q And for how long a time had he been coming there? A Why, I don't know.

Q As far as you recall? A I don't know.

Q But you did recognize him as a customer? A Oh, yes; I recognized him as a customer.

Re-direct.

Q What price hatchet is that—what is the price of that hatchet? A We sell a hatchet of that type for about seventy-five cents.

Q Look at this other hatchet. A Yes, sir.

Q What is the price of that? A Why, this is—I should say would sell for about—possibly eighty-five cents.

Q About the same? A Very—very nearly the same.

Q General grade, is it? A Yes, sir.

Q This has the appearance of being a nickel-plated hatchet, which that is not? A Yes, sir; has the appearance of being nickel.

Q You have handled the goods so long you are able to tell, are you? A What?

Q You are an expert in handling hatchets? A No, sir; I don't consider myself an expert.

Q Why do you say that has the nickel-plated appearance against the other being steel, looking at it closely? A Well, looking at it closely, etc., it has the appearance of being nickel. It comes through a great many years of experience.

Mr. McDermit. I offer the new hatchet in evidence.

The Court. What relevance has it?

Mr. McDermit. With reference to comparison for the jury.

The Court. You will have to explain the relevancy to the Court.

Mr. McDermit. It is an exhibit, been used in the case; that is the explanation, and it resembles the other hatchet and it is a new hatchet procured—

The Court. It is not the same make as the other one. It is a Peck, Stow & Wilcox hatchet, and the hatchet in evidence is a Hammond hatchet; one of them is proven by your own witness to be nickel-plated and the other one we don't know whether it is nickel-plated or not.

Mr. McDermit. Nevertheless, the offer is made.

The Court. You have got to be prepared to substantiate your offer. I want to hear why it is relevant.

Mr. McDermit. It is relevant because they apparently started to show that this hatchet in the testimony of this case was substantially a new hatchet. I have asked a number of questions as to the situation as to how those hatchets would remain—what condition they would remain in. I think the jury has the same right to take out that hatchet and examine it as to finger marks or anything else as to take out the old hatchet.

The Court. There is no evidence. Mr. Baader said he thought the hatchet was bought from him.

Mr. McDermit. I will put the evidence in separate.

SAMUEL KLEINMAN, sworn on the part of the defendant.

Direct examination by Mr. McDermit.

Q Do you know where Mr. Baader's place of business is opposite the Newark court house on Springfield avenue? A I do.

Q This city? A Yes, sir.

Q I show you a hatchet. Look at it. Did you make a purchase there recently of a hatchet? A I did.

Hatchet marked D. 7 for identification.

Q When was that? A Yesterday.

Q Sunday that was. A Saturday, the last day of trial.

Q Did you bring it here—did you? A I did.

Q Give it to me—did you bring it here to the court house? A No, sir; I gave it to Mr. Conlin to bring it up. I brought it up as far as the court house.

Q It was wrapped up when you got it, was it? A It was wrapped up in the store.

Q When you got it? A Yes, sir.

Q And you brought it as far as the court house and gave it to Mr. Conlin, did you? A Yes, sir.

No cross examination.

OWEN F. CONLIN sworn on the part of the defendant.

Direct examination by Mr. McDermit.

Q Where do you live? A Newark.

Q And were you here to the court house the other day? A Yes, sir.

Q And you saw the last witness on the stand called Sam? A Yes, sir.

Q And did he hand you any package to bring to me? A Yes, sir.

Q And what did it contain, do you know? A That axe wrapped up in the paper.

Q How do you know it was an axe wrapped up in paper? A Because I saw it before it was wrapped up.

Q Where did you see it? A In Mr. Baader's store. I handed it to Ralph.

Q Who did you give it to—but you brought it here? A Ralph Serritella.

No cross examination.

Mr. Mott. Do you want me to admit that Conlin handed this hatchet to Ralph Cerciello and Cerceillo gave it to you?

Mr. McDermit. Yes.

Mr. Mott. I will admit that on the record.

Mr. McDermit. I ask that the hatchet be admitted.

Mr. Mott. I object for the same reasons as before.

TheCourt. On what possible theory is it admissible?

Mr. McDermit. For the purpose of allowing the jury to compare a new hatchet, same character of make apparently as the other so that they can utilize that in putting on finger marks of their own or comparing it in any way, shape or manner they want to.

The Court. They cannot perform any experiments.

Mr. McDermit. We can't tell what they can perform.

The Court. They certainly cannot perform any experiments or take any evidence in the absence of the defendant.

Mr. McDermit. For the other purpose, have an opportunity to compare the condition of what the new hatchet would be under all the conditions that have been found.

The Court. You do not furnish them with any human blood to put on it. Objection sustained.

Defendant's counsel prays an exception and the same is allowed, and it is signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. McDermit. That is all there is of our case except I would like the right to reserve—I would like to prove a similar hatchet of the same type from Rising & Thorn's store for the comparison of the jury. With that reservation, we rest.

The Court. Why should it be done if it is brought here? How is it relevant?

Mr. McDermit. I present that proposition to the court. We offer it. The court can rule upon it.

The Court. You ought to be prepared to state why it is relevant.

Mr. McDermit. Because if I offer an identical hatchet with this hatchet it is the right of the jury to make comparison of the condition of the new hatchet with the other hatchet. There is no one knows when water will rust steel or whether steel will be rusted by water. Under those conditions it is fair to go to the jury, a brand new steel hatchet of that make.

The Court. You rest subject to that reservation?

Mr. McDermit. Yes, sir

ANGELA MARIA CAMPIONE sworn for the State in rebuttal (through the interpreter).

Direct examination by Mr. Mott.

Q Don't you talk English? A No, sir.
Q Where do you live? A 417 Chester avenue.
Q Do you know Angelo Cerciello? A Yes, sir.
Q Do you know Vincenzo? A Yes, sir.

Q Did you know Alvira, the wife of Angelo? A I saw her near to the house, but I don't know her personally.

Q Where is your house with reference to the place where Angelo lived and the store of Vincenzo? A In the same side of the street; the house of Cerciello is half a block from mine.

Q Do you remember where you were on the evening before Decoration Day last? A In the night of the 29th of May I closed my store—I have also a grocery store myself—at nine o'clock—little over nine o'clock.

Q Yes; and where did you go? A My husband went to his society and I waiting for him—I sit down in the store—in front of the store—near the store.

Q What were you sitting on? Just where were you sitting? A I sit down in the stoop of the store, in front of the store.

Q And how long did you remain sitting there? A I don't know if it was nine or fifteen minutes past nine when I sit down there and I stood there until ten o'clock.

Q Stood or stayed? A Stayed there until ten o'clock, and after I seen nobody in the street and everything was closed I went up.

Mr. McDermit. Now, where is this any rebuttal? I don't understand what that amounts to. The whole testimony as to her closing her store and she sitting out and she saw nobody in the street. I move to strike it out, the whole business.

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling, and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q Now, before you went upstairs did you see anybody around the street there or around the store of Cerciello?

Mr. McDermit. I object as leading, and she has already testified that she didn't see anybody around the neighborhood or of the place at all. I object to the question as it is formed and it isn't a proper question to put to this witness on rebuttal.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling, and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A At ten o'clock I went up and I took a chair and went near the window and sit down there waiting for my husband to come home.

Q Now, before you went up did you see anyone on the street or around Cerciello's place?

Mr. McDermit. Objected to as leading.

The Court. Did she look that way? She says that she sat up from a few minutes past nine until ten o'clock in front of the store waiting for her husband, and that she didn't see anybody in the street. Now you are asking her if she saw anybody around Cerciello's place, and the question is whether she looked up that way.

Q While you were sitting in front of the store which way were you looking? A I looked only in the street; that is all. I looked all around.

Q And did you while you were sitting in front of your store see anyone around Cerciello's place?

Mr. McDermit. I object.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling, and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A Nobody was.

Q Then you went upstairs. After you went upstairs at ten o'clock where did you sit?

Mr. McDermit. This testimony is objected to because it is immaterial and irrelevant to the issue, what she did after she got upstairs and where she sat has certainly no connection even in the direct case.

The Court. The answer might be relevant. The question is proper. Objection overruled.

Defendant's counsel prays an exception to this ruling, and the same is allowed, and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A About half-past eleven I was still sitting near the window and I see a colored fellow and a colored woman passing by Eighth street and nobody else was passing there.

Mr. McDermit. I ask to strike that testimony out. I don't know what you are doing.

Mr. Mott. The defendant testified that he was roaming up and down those streets looking for his wife and I am proving that he was not.

Mr. McDermit. Trying to contradict that by a woman half a block away in the third-story window waiting for her husband?

Mr. Mott. Yes.

Mr. McDermit. With the isolated fact of a colored man with his wife passing?

The Court. What is the question on the record?

(Question read.)

Motion denied.

Defendant's counsel prays an exception to this ruling, and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q How close were you sitting to the window from the time you went upstairs to eleven o'clock? A The store of Cerciello was just in front of my window and I was there—sitting down there waiting for my husband to come back from the society. I was not sleepy and for that reason I waited for him there.

Q Well, now, from ten o'clock—and were you looking out of the window all the time or were you doing something else? A Yes, sir; I looked all the time outside of the window.

Q And from ten o'clock to eleven o'clock did you see anyone on the street around there or around Cerciello's place except the colored man that you have spoken of—colored man and woman? A No, sir; that is all. Nobody. Only the colored man and colored woman coming from Eighth street.

Q And at eleven o'clock—from eleven o'clock on what did you do, if anything?

Mr. McDermit. Objected to as leading.

The Court. Cannot be leading. It says "From eleven o'clock on what did you do"?

Mr. McDermit. What did you do after eleven o'clock. He suggests the time.

The Court. He has taken her up to eleven o'clock. It certainly is not a leading question.

Mr. McDermit. Objection withdrawn.

A After half-past eleven my husband coming back from the society at twelve o'clock we went in bed.

Q Well, then, did you sit at the window looking up and down the street until half-past eleven when your husband came?

Mr. McDermit. I object. She never said she was looking up and down the street.

The Court. She said she was looking up and down the street.

Mr. McDermit. She couldn't look up and down the street at the same time, have to look one way one time and the other way the other. It is an impossible proposition.

The Court. Objection overruled.

Defendant's counsel prays an exception and the same is allowed, and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q From eleven to half-past eleven were you sitting by the window looking up and down the street? A Until half-past eleven sit down there near the window.

Q Which floor were you on sitting? A I live on the first and second floor.

Q And while you were sitting at the window you were sitting on which floor? A Second floor.

Q Was the window open or shut? A My window was opened; wasn't any netting.

Q Were you so situated that you could hear if anyone had been walking up and down the street? A Yes, sir; I can hear.

Q And at eleven o'clock what did you do—at 11.30, I mean. I beg your pardon. A Half-past eleven my husband he was back already and I wasn't any more at the window.

Cross examination by Mr. McDermit.

Q You live how many blocks away from Cerciello? A Half a block.

Q Half a block. How many houses in between? A One street and one house.

Q Block and one street apart. One block away and one house apart from her? A One block—one house and one block in; that is all.

Q What line of business are you in? A I have a grocery store.

Q And what street do you live on? A Chester avenue.

Q What number Chester avenue? A 417.

Q 417? A Yes, sir.

Q And you have a basement to your store? A No, sir.

Q Your store is on the first floor, is it? A Three stairs that go to my store.

Q From the street? A Yes, sir.

Q And you closed your store up what time that night? A It was fifteen past nine—maybe twenty minutes past nine.

Q And you were busy up to that time in your store, were you? A I close always nine—half-past nine my store, but because Angelo's store was always open until eleven most every night I was there waiting for my husband on the stoop of my store.

Q Got any children? A I got two boys.

Q How old are the boys? A One about twenty-three years and eighteen years.

Q Where were the boys that night? A Asleep.

Q What time did the boy eighteen and twenty-one, twenty-three—went asleep, did they—what time did they go to sleep? A Half-past eight they went in the bed.

Q What time did they go to sleep? A Half-past eight.

Q Half-past eight, and what time did your husband go out? A About half-past six to seven he went to the society.

Q Which way did he go when he left there; did he go up to Chester avenue towards these lots out on Bloomfield avenue or did he go down towards Newark when he left the house? A He went to Eighth street to Bloomfield avenue.

Q And what time did he get back? A Half-past eleven.

Q Then what did you do, go to bed? A Sure.

Q Was it raining that night? A No, sir.

Q Sure about that? A Sure.

Q Sure there was no thunder showers that night or rain? A No, sir.

Q Positive about that? A The day before it rained.

Q On Wednesday? A The 27th it rained, but not that evening.

Q No rain on that evening at all? A No, sir.

Q Nor no rain that night up until half-past eleven when you went to bed? A Until I was awake it wasn't raining at all. After I don't know. I was sleeping.

Q Were you talking to Mrs. Angelo Cerciello that night? A No, sir.

Q Did you see her that night? A No, sir.

Q Somebody else lives in your house besides you and your boys and your husband? A No, sir; nobody was there. He was there. Were sleeping.

Q How many story building is it? A Two floors.

Q How many families in it? A One family.

Q Only your own family? A My family and another family, but the front room I used, where the window was.

Q How many people in the other family on the second floor? A Husband and wife and two little children.

Q You wasn't looking for Angelo Cerciello at ten o'clock at night time, were you, or his wife either? A What for I had to look for him or her? I was watching for my husband returning.

Q Why did you put your head out the window and look up and down—why did you do that, look up and down the street; what for? A I was looking for my husband to come from down here, so that who looked for his own husband is something wrong?

Q Something all right. Didn't your hubby tell you what time he was coming back? A I didn't know when the society was finished its meeting. I was waiting for him because maybe if I went in bed I would fall asleep and maybe he will knock to the door and I don't hear him and I will let him outside.

Q Then you are a very sound sleeper, are you? A Yes, sir; when I sleep I sleep very heavily.

Q And the reason why you were looking up and down the window was because you were looking for your husband to come back? A Sure.

Q That kept your head turning all the time from ten o'clock until half-past eleven, looking up Chester avenue, towards the west and then looking down Chester avenue towards the east, this way and that way with your head the entire time to see who was around there? A If you will sit down at my window you will see all Chester avenue without doing that up and down.

Q Is that right? How about screens up there. Did you have any screens on the window? A Yes, sir; I had the screen there, but from there I can see very well the store of Angelo Cerciello.

Q Yes. And the screen was in your window and wasn't taken out that night, so that you didn't lean out looking up and down? A From my window—my window is over the roof of my store—and I can see from Chester avenue to Seventh avenue, from Chester avenue to Eighth street.

Q Now, your store is on what side of the street, the north or south of Chester avenue? A My store is north of Eighth street and north of Ninth street,

between the two streets, in the middle of the two streets.

Q Isn't your store on the same side of Chester avenue as Angelo Cerciello's store is on—isn't that on the same street—same side of the street?

The Court. She has already answered that three times.

Mr. McDermit. I haven't heard it once.

Witness. Yes, sir.

Q And doesn't your building line come out to the same line that Cerciello's building comes out on the same side of the street? A On the same side of the place where Cerciello's store is. I live in Ninth street and the store of Cerciello is at Eighth street.

Q Now, how can you see from your room on the second floor Cerciello's rear part of the store, into Eighth street, when she is upstairs? A I swore to tell the truth. If you don't believe what I am saying come up to my house and go to that window and look for yourself if you can see the store of Cerciello.

Q I want to know whether you can see from your store, from where you sat upstairs in this window, the doors that lead to the apartment of Angelo Cerciello on Chester avenue and on Eighth street? A No, sir; I can't see the front door, but I can see from my window the back door of the house of Cerciello, the water closet and all.

Q Yes; then you couldn't see the store at all. All you could see from your window was the rear of the building? A From the window I could see the store.

Q Can you see the entrance that goes out from Cerciello's house on Eighth street from the store from your window? A No, I can see the hind of the house there, where he is living.

Q But you couldn't see any part of the side on Eighth street of the Cerciello—Angelo—flat from where you sat either on the stoop downstairs or in the

room upstairs? A Yes, sir; from the window I can see the front, front of the window, and from the door I can see the door and the house of Cerciello. Yes, sir; I can see from my window and downstairs to the store the store of Cerciello.

Q That is not what I asked her. I asked her if she can see the door leading out into Eighth street from the flat of Angelo Cerciello. Unless she can look through a brick building she can't see it. A No, I can't see the house. I can see only the store. If I was looking from the window in the room, in the back of my store I can see the door of Cerciello.

Q If she now was transplanted and taken from the front room of your house on the second floor and put into the rear room on the second floor then you would be able to see Cerciello's—back of his house—would you? A I wasn't there. I was in the front of my store.

Q Of course, she couldn't see the back part if she was in the front. That is all.

Re-direct.

Q From where you were sitting in the front of your store did you see the rear of Cerciello's building? A No, only the store I can see it.

Re-cross.

Q You were to the funeral of Angelo's wife? A No, sir; I went to see her, but I don't went to the funeral.

ISADORE BENNETT, sworn for the State in rebuttal.

Direct examination by Mr. Mott.

Q Where do you live, Mr. Bennett? A 379 Bloomfield avenue.

Q What is your business? A Stationery—confectionery.

Q Where is your place of business? A My place of business at present, 379 Bloomfield avenue.

Q Where was your place of buisness on the 29th of May last? A I moved at that time from—

Q Where was it? A 332 Bloomfield avenue.

Q 332 Bloomfield avenue? A Yes, sir.

Q Whereabouts is that? A That is the corner of Fourth and Bloomfield avenue.

Q What business did you have there? A The same business.

Q And what did that include? A Ice cream, confectionery and stationery and news dealer.

Q Was your place of business open on the 29th? A It was open all night that night.

Cross examination by Mr. McDermit.

Q Your name is Isadore Bennett? A Yes, sir.

Q What are you, an American? A I am not American; I am fourteen years in this country.

Q Born in this country? A Fourteen years in this country.

Q Your name is Isadore Bennett? A Yes, sir.

Q What was your father's name? A Same thing.

Q Isadore Bennett? A No, sir; Baer Bennett.

Q You changed your name? A No, sir; first name was Baer—what they call Benny.

Q Baer. And what was his last name? A Bennett.

Q How do you spell it? A B-e-n-n-e-t-t.

Q "n-o-t-t," wasn't it? A No, sir; "n-e-t-t."

Q Isadore, you were in the ice cream business? A Yes, sir.

Q Still in the ice cream business, are you? A Yes, sir.

Q You were in the ice cream business last May? A Last three years.

Q Last three years. Where was your ice cream place? A 379 Bloomfield avenue.

Q Where is that? A Between Fifth and Sixth.

Q Between Fifth and Sixth streets? A Yes, sir.

Q You were down—what they call it North Roseville? A Call it North Roseville.

Q North Roseville? A Yes, sir.

The Court. He wasn't there last May, he says.

Witness. I stood there two months; moved from there to Bloomfield avenue.

Q You had an ice cream store kept open by day and by night? A No, sir. I moved from 195 First avenue to 332 Bloomfield avenue. On account of Decoration Day I wanted to be open and worked all night Thursday—my uncle helped me, but he was working with me to eleven o'clock, cleaned my windows, to be opened Friday, Decoration Day.

Q You were moving then? A No; I moved my store on Wednesday and Thursday.

Q You moved your store on the 27th day? A It was Wednesday.

Q And the place you were working was a new store? A New store, but I kept it open just the same.

Q You hadn't sold anything in it? A I sold just my customers know where I moved and they come for the papers to the same place.

Q What time did you start to sell in your store that night? A I moved over all of my goods Wednesday night—Tuesday night—I moved over Wednesday the fixtures.

Q How many blocks away from your own store? A Two blocks—not two blocks—one block and two houses.

Q Your old store that you had occupied you closed two days ahead of Decoration Day? A I didn't close it. I moved the store at night, all the store; next morning I had appointment to move the fixtures over and had the store all open the next morning and the customers knew I moved in that place.

Q You closed your old store up Wednesday night? A I didn't close it, because I moved it.

Q You closed it up then Thursday night? A I closed it up Thursday morning.

Q You closed it Thurday morning? A Not Thursday morning; Wednesday morning, because I started Tuesday night to move.

Q Bennet, you are all right. You were doing business at your new store on Thursday night? A No, sir.

Q And the old store that Mr. Isidore Bennet had before was closed up? A On Thursday night was closed up; yes, sir.

Q So that while you done an ice cream business in the old store for two months that night the old stand had closed? A The people knew I moved in a new place.

Q How many blocks away? Did you leave the lights in the store? A Yes, sir; but the single light I took out.

Q Lights in the old store Thursday night? A Yes, sir; Thursday night was all lit.

Q When did you take them away? A Friday morning.

Q Took them all out Friday morning? A Yes, sir; I took out my own lamp—took the lamps.

Re-direct.

Q Was there a light in your new place? A In the new place all night long; yes, sir.

Q All night long? A Yes, sir.

KATIE MINICHINI, sworn for the State in rebuttal.

Direct examination by Mr. Mott.

Q Are you single or married? A Single.

Q Miss Minichini, did you know Alvira Cerciello? A Yes, sir.

Q How long did you know her? A When she was married.

Q Did you visit her? A Well, we got our groceries from her most of the time.

Q Did you ever have any conversation with her about her husband?

Mr. McDermit. I object.

The Court. In the presence of her husband. Was that when her husband was there? Did he hear it?

Witness. No.

The Court. Angelo, did he hear what Alvira said to you?

Witness. When was this?

The Court. Ask her did Angelo hear what Alvira may have said to her, if anything?

Witness. No, sir; he did not.

The Court. Angelo wasn't there at the time?

Witness. No, sir.

The Court. How is that evidence?

Mr. Mott. Why the defense has put in evidence here of the relationship between husband and wife—they were like two children together—I believe it has been described—and I have called this witness for the purpose of meeting that by declarations of the deceased as to the treatment she had received from her husband.

The Court. If anything like that has gone in by the defendant I don't remember it, but it is plainly improper over the objection of the defendant. Objection sustained.

Q Do you remember one occasion when Angelo was present and singing a song? A Yes, sir.

Mr. McDermit. Time and place.

Q And was Alvira present, too? A Yes, sir.

Q When about was that? How long before her death, or no, I will put it the other way. How long after her marriage? A Well, I ain't positive.

Q Well, about how long? A About a couple of months.

Q After her marriage? A Yes, sir.

Q And where was this? A In the grocery store.

Q And where was Angelo? A He was there, too.

Q What? A He was there in the store.

Q And Alvira was there in the store? A Yes, sir.

Q Now tell us what occurred—what happened? A Why, I went there and bought some oil and while she was taking the oil Angelo was singing a song about the shoemaker and she said, "That is a crack for me," and I said, "How is that a crack for you?" and she said, "There was a shoemaker that wanted to keep—wanted to marry her and I didn't want him, and that is why he is singing that song."

Cross examination by Mr. McDermit.

Q They were on good terms that day, Katie? A Yes, sir.

Q Angelo and his wife were getting along nicely there? A Well, when I was there.

Q Yes; they were always good friends when you were there? A When I was there.

Q Yes. A Yes, sir; sometimes.

Q That is what I say. That is all.

Re-direct.

Q What did you see Alvira do on occasions that was unusual? Did you ever see her do anything that was unusual?

Mr. McDermit. I object; acts of the deceased.

The Court. This is what she did, not what she said. The objection before was hearsay. It may be relevant. I presume it is in connection with Angelo in some way. If it isn't why I will strike it out.

Mr. Mott. If Angelo was not present would you strike it out if he did nothing?

The Court. I cannot tell. I am willing to take the answer and see what there is in it.

Mr. Mott. I am not trying to ask questions and get something that your honor is going to strike out. I don't want that.

The Court. I can't tell. It will depend upon the nature of the testimony.

Mr. McDermit. Her acts, whether usual or unusual, would have no bearing upon the defendant unless he was there, whether it is action by word or action by acts.

The Court. It is impossible to speculate that far. They might be acts of a character where undoubtedly Angelo would know of it. I will take the answer and see what there is in it and strike it out if it is not relevant.

Q What did you see Alvira do that was unusual, if anything? A How do you mean?

The Court. What is the matter? Doesn't she understand the word "unusual"?

Mr. Mott. I think she understands but she don't know what I am getting at and it is hard to do it without asking a leading question.

Q So far as you could see was Alvira happy? A Sometimes she was—

Mr. McDermit. I object. That calls for a conclusion. "Was she happy?"

The Court. All you got to do, counsel, is to state your objection. Objection sustained.

Q What did you see Alvira do? A She was happy one time and sad some other times. She wasn't always happy.

Mr. McDermit. I move to strike it out.

The Court. Motion granted.

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Q What did you see her do that makes you think she was sad? A I met her crying one time.

Mr. McDermit. I object. No time or place fixed, and besides that how could she know what she was made sad from. It is practically a conclusion.

The Court. Your objection is that there is no time fixed.

Mr. McDermit. That is one of them.

Q When was this that you saw her crying? A Well, I judge about two weeks before she died—before she was murdered.

Q And where did you see her? A In her store.

Q What time of day? A In the afternoon.

Q Was Angelo there? A Yes, sir; he was out on the street.

Q He was out in the street. How long were you with her at that time? A Well, I went in the store and bought something and met her crying and I asked her what was she crying for.

The Court. Never mind what she said.

Mr. McDermit. I object.

The Court. Go ahead and say what you saw but don't tell us what she said.

Witness. I saw her crying.

Q Was she crying all the time you were in the store?

Mr. McDermit. I object.

Q How long did she cry?

Mr. McDermit. I object.

A She was crying when I went there.

The Court. Objection overruled.

Defendant's counsel prays an exception, the same is allowed and it is sealed and signed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

WILLIAM TRIES, JR., re-called for the defendant.

Direct examination by Mr. McDermit.

Q Mr. Tries, I show you a hatchet and ask you whether that is—the hatchet I show you—is a duplicate of the hatchet that has been marked in evidence here as No. 2? A Let me have the two for comparison. Yes, sir; they are identical.

Q They are identical? A Yes, sir.

Q And you handle a large stock of those? A Yes, sir; we do.

Q Had a stock of them last May? A To the best of my knowledge and belief, yes, sir.

Q Still have stock? A Yes, sir.

Q Always carry these hatchets in stock, do you? A Yes, sir.

Q This is the condition in which the hatchet leaves the store to the trade, is it? A Not always.

Q It is usually wrapped up, is it? A No, sir.

Q This particular hatchet that I show you, which you brought here this afternoon that was wrapped up, wasn't it? A That was taken from a box in the upper shelves.

Q Where it had been wrapped and protected? A Yes, sir.

Q And some hatchets you have, of course, down there that are exhibition hatchets or sample hatchets —hatchets which you show and hang on the wall and put on the counter and in the case to exhibit to people to buy them, is that right? A We generally have them in a drawer. We have a drawer full of hatchets.

Q This wasn't taken out of the drawer? A No, sir.

Q This was taken out fresh from the covering the same as you received it from the manufacturer? A Yes, sir.

Q And it has as far as you know every protection and hasn't been taken out since it was shipped there? A Yes, sir.

Q So it can be said to be a clean hatchet—new hatchet? A Yes, sir.

Q And you can't be mistaken about that being the exact duplicate or counterpart of the hatchet that is in contention in this case? A I have looked at the number and I have looked at the maker's name on it and I have gotten the size from that.

The Court. What is the number of it?

Witness. It is a No 2 hatchet.

The Court. Does the number refer to the size?

Witness. The number refers to the size, yes, but not to the style. In this case it refers to the style; that is to say this is what we term a No. 2 all polished shingling hatchet. There are No. 2 all polished hatchets which run square across instead of running at an angle or bevel like.

Q These two hatchets I have showed you and that you have compared with the hatchet that is an exhibit in the case are to all appearances identical, are they? A Yes, sir.

Q And are the same group or class of hatchets? A Yes, sir.

Q Made by the same firm? A Correct.

Q Answer the same purpose? A Yes, sir.

Q And at the same price and figure?

Mr. McDermit. Now do you want to ask any questions, Mr. Mott?

Mr. Mott. No.

Q You brought that hatchet here? A I did.

Mr. McDermit. I offer the new hatchet in evidence.

Mr. Mott. I object.

The Court. What relevancy has it, counsellor?

Mr. McDermit. I think that the defendant has a right to offer for the consideration of the jury a hatchet similar to the hatchet offered by the State, so that where it is sought to establish

a finger-print as the method of identification and that hatchet is going to the jury, that this other hatchet may be used by the jury and held in their hands to compare its weight and size with the acts that have been described by the witnesses for the defense and by the witnesses for the State. For instance, the police officer testified that after the party had called his attention to the hatchet that he picked the hatchet up and made a dent in the tree, and all the kindred fingerings and handlings of that hatchet down to the development to-day of the new time when they had the hatchet out again down to Rising & Thorn's store—all those acts, as to what the probabilities would be of this jury under any kind of a magnifying glass discovering something that will take a man's life. They have an opportunity to handle this particular new hatchet and not handle the other one to blur from off that hatchet what the State relies upon as its main contention for conviction; that they should have an opportunity to have a hatchet of the same size so that they can compare it that they might be able to determine how the finger-prints may be discovered upon the handle of that hatchet after all that handling.

The Court. The testimony is that notwithstanding all the handling the finger-print remains on the hatchet in the blood. Objection sustained.

Defendant's counsel prays an exception to this ruling of the court, and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. Mott. I inadvertently omitted to ask the defendant one question when he was on the stand and I ask permission to recall him for the purpose of asking the question.

Mr. McDermit. I object. The State has closed its cross examination of the defendant. All the testimony in rebuttal is in. He cannot open the State's case now.

The Court. Call the defendant and let him go on for further cross examination.

Defendant's counsel prays an exception to this ruling of the court and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

ANGELO CERCIELLO recalled for

Further cross examination by Mr. Mott.

Q (Officer Belfie, stand up—Vicarisi) just look at these two men, Angelo. On Decoration Day, the day that your wife's body was found, did you go into a saloon with Officer Belfie and Mr. Vicarisi? A They brought me into the saloon.

Q And did you have a drink there? A Yes, sir, one glass, they treated me.

Q All right. That is proper. And did you say to them while you were in the saloon getting your drink that your wife went out about nine o'clock and that about half-past nine or ten o'clock you closed up your store and first put your head on your hands and dozed off for about half an hour; that you then opened your eyes, saw your wife was not at home and went and laid down on the bed and didn't go out until twelve or after? A No; never said. They asked me only if my wife—when I married her—I found—

Q No. I want to know did he say that? A No.

Re-direct.

Q Now, Angelo, you know Vicarisi? A Yes, sir.

Q Do you know Officer Belfie? A Second time I saw him.

Q Just ask him to tell us what the conversation was between him and the two officers on this Thursday. Give us the entire conversation, how he come to go to the saloon, what they did there and what they said—the whole business.

Mr. Mott. I submit that is not right. I asked this man if at a certain place he said certain things; he said no.

Mr. McDermit. No; he said he went there for the purpose of taking a drink and did have a conversation with them. Now he is entitled to give all the conversation and explain what the conversation was.

Mr. Mott. I withdraw my objection.

Q What was the talk there about you and Vicarisi and Belfie? A That man there, Belfie, he took me from my home in the rear of my home—he took me out in the saloon in the rear of the house and he brought me out the rear of the saloon instead of the front of the saloon.

Q What did they do in the saloon? They took a drink and then what? A After there come a young man, and I know he is an Italian and they asked me, "Do you want to drink"? and I told them I would like to have a whiskey.

The Court. Cannot you get by the details and tell us what he said?

Q What did you say and what did they say to you? A They spoke between themselves and they said, "Is it possible that this man would kill his wife that way, innocent"; they asked me "When you married did you find your wife pure"? You know we Italians, we believe in that.

Q Well. A "Certainly I find her pure, and not only I but I told him about my sister-in-law and if she was not a pure woman we would have to send her

away from home, and never was any quarrel between me and my wife.

Q Never mind that. Now what other conversation? A When I was there taking that whiskey I see a shoemaker there; I don't know the name; he was sitting down there in the saloon. I told him—to Belfie—that man is there and when he heard that he run away from the saloon and Belfie went after him and it wasn't possible to find him out, he was away already.

Re-cross.

Q In that conversation did you say to these two men that after you took your nap you woke up at 10.30 saw your wife wasn't home, went and told your brother and then went and laid on the bed and didn't wake up again until after twelve o'clock? A No; I told them just as I told here and to the prosecutor.

The Court. Is your motion to strike out?

Mr. Mott. Yes.

The Court. Motion granted with the exception of the answer "No."

Re-direct.

Q What did you tell them?

Mr. Mott. I object.

Mr. McDermit. I ask him now to say what the conversation was between himself and those two people relative to the question of his talk with them.

The Court. He has told us that.

Mr. McDermit. He told us that by answering and saying he told them the very same story that he told the prosecutor before.

Mr. Mott. No; he has told us what he said and did in the saloon. He told us his version of the whole thing.

The Court. Call his attention to that particular part of it.

Q Did you say anything to them about going into your bed and lying down in your own bed that day, that morning? A No, sir; never.

JOSEPH VICARISI, sworn on the part of the State in rebuttal.

Direct examination by Mr. Mott.

Q Mr. Vicarisi, where do you live? A 54 Belmont avenue, Silver Lake, New Jersey.

Q And do you hold any official position? A Yes, sir; up to last 1st of May I was justice of the peace.

Q On Decoration Day last did you see the defendant? A I did.

Q Did you go to a saloon with him? A I did.

Q Who was with you in the saloon with him? A Officer Belfie.

Q While you were in the saloon there with him did he say to you that he woke up about 10.30—

Mr. Mott. Objected to. Let him state the exact question he gave to the other witness.

The Court. Objection overruled.

Q That he woke up at 10.30? A Yes, sir.

Q Found his wife wasn't home, went and told his brother and then went and laid on the bed and didn't wake up again until twelve o'clock? A He did.

Cross examination by Mr. McDermit.

Q Did you make a memorandum of that at the time? A No, sir.

Q Did you put it down in writing the next day? A No, sir.

Q Did you put it down in writing any other day? A No, sir.

Q When did you tell the prosecutor about him having told you that he had gone into his bed? A I didn't tell the prosecutor when he got out of his bed, but I told Mr. Federici and I told Mr. Godfrey.

Q When did you tell them that? A Right after the things happened.

Q Who was the shoemaker that got out of the place up there—walked out of the saloon? A I don't know if the man is a shoemaker or not.

Q He was there, was he? A If I see him I would recognize him, but I don't know who he is. He come in after we had two drinks.

Q Repeat in Italian to me the conversation just exactly as Angelo told it to you there? A The conversation was in English. Very few words in Italian.

Q Tell us the part in Italian. Give us the part exactly. A I will start it in the Enblish language and proceed as far as the English language goes and then I will give it to you in Italian when he spoke in Italian.

The Court. Go ahead.

A We were on the street, me, him and Officer Belfie, and we went out after a drink and went through the back door of the saloon. Officer Belfie, he treated first, and he drank a glass of whiskey; then he treated himself and drank every one whiskey. I was the first one to ask him what was the condition between him and his wife, if he had any quarrel with his wife. He said no.

Q He said what? A He said no. I said, "Did you find your wife a virgin when you married"? he says, "Yes." I says to him, "Did you go to bed last night"? He says, "Well, it was about nine o'clock when my wife went out last night and I laid on the table and I fell asleep on the table; when I woke up it was half-past ten and my wife wasn't in yet; and then told my brother about it; then I went to bed again and slept up to about twelve o'clock and my wife wasn't in yet. Purposely when I went to bed half-past ten he says that he left the door open that in case his wife will come in she can come in without knocking. At twelve o'clock he woke up and didn't

find his wife. Then he went out and looked for his wife.

Q Didn't he tell you that he sat on the chair? A He sat on the chair.

Q Did he tell you he sat on the chair in the bedroom in a drowzy condition? A He sat on the chair in the kitchen room with his head on the table.

Q Yes. A And fell asleep there.

Q Yes. Then woke up twelve o'clock? A No; woke up half-past ten.

Q Woke up about half-past ten? A Yes, sir, and told his brother his wife wasn't in yet.

Q Then after he told his brother his wife wasn't in yet? A He left the door open.

Q He left the door open? A He went to lay in bed again.

Q And told you he went to lay in bed again? A Yes, sir.

Q Went to lay in bed again? A In the bed; yes, sir, and didn't wake up until twelve o'clock.

Q You can't be mistaken about that proposition, that he told you he would go to lay in bed again? A Yes, sir.

Q "Again" that is the word he used? A Yes, sir. I don't know whether it was the word "again" or not, but he said he went to lay in bed.

Q You said again three times. Why do you take it out now? A I don't take nothing out, Mr. McDermit.

Q Didn't you say "again"? A I said—

Q Didn't you say "again"? A I might say again myself but I don't know whether he did tell me or not. I know he told me that he went—he told me that he woke up at half-past ten—

Q And you don't remember— A And he told his brother that his wife wasn't in yet—

Q Then you told me—

The Court. Let him finish the answer.

A When he left the door open so his wife will get in and went and lay in bed and didn't wake up until twelve o'clock when he went out to look for his wife.

Q Why did you say he went to lay in bed again? A Why, slipped out of my mouth.

Q I know that it slipped out of your mouth. Why didn't you tell me you couldn't tell me whether he said that again when I caught you A What do you mean?

Q Caught you using the word "again."

Mr. Mott. I object.

Q Did he use the word "again" or not? A I don't remember.

Q Then you don't remember the entire conversation? A I do remember the conversation, yes, sir.

Q Then why can't you remember for the jury whether he said he went to bed again or not? A How can I remember a particular word of the conversation? I wasn't taking it shorthand.

Q No? A No, sir.

Q And you didn't expect to be called in court as a witness, did you? A Why, yes, I did.

Q You did? A Yes, sir.

Q Now, you don't know whether he told you he went back to the table again, went back to the room again to awaken in a drowsy condition or whether he went back to the table to sleep again. He said he went back to bed again? A I don't know anything about this "again" that you speak of.

Mr. McDermit. It would be a good thing if you didn't remember any.

Re-direct.

Q You are here under subpoena? A Yes, sir.

Q Been here under subpoena all the week? A Yes, sir.

Q Are you sure he said he went to bed after he saw his brother? A Certainly, certainly.

ANTHONY BELFIE, recalled for the State in rebuttal.

Direct examination by Mr. Mott.

Q Were you in the saloon with the defendant and Judge Vicarisi, on Decoration Day? A Yes, sir.

Q At the time the defendant had one or two drinks? A Yes, sir.

Q At that time did the defendant say to you two men that he woke up about 10.30, found his wife wasn't home, went and told his brother and then went and laid on the bed and went to sleep and didn't wake up again until twelve o'clock? A Yes, sir.

Cross examination by Mr. McDermit.

Q Now, were those words in English or Italian? A In English, sir.

Q The whole conversation in English? A Yes, sir.

Q Vicarisi testified part of the conversation was in Italian? A Not with me.

Q What have you to say about that? A Not with me.

Q Why, you were present with Vicarisi when he made the statement about him going to bed again or going to bed? A Yes, sir.

Q You were present, you say, when he made those remarks to you. Vicarisi says it was part English. That is not so. The entire conversation was English. A There was a few words in Italian but I can't understand their language thoroughly.

Q Oh, you can't understand Italian. Are you not an Italian? A Yes, sir.

Q Do you talk Italian? A Yes, sir.

Q So there was some conversation carried on in Italian that you can't tell the jury what it meant? A Those dialects in Italian I can't understand.

Q But on this particular occasion, during part of this conversation, some of it was in Italian and you can't tell the jury what it was? A Well, what he told me in English I can answer.

Q Can't tell what he said in Italian with regard to the same transaction? A No, sir; I cannot.

WALTER GODFREY, recalled in rebuttal for the State.

Direct examination by Mr. Mott.

Q Mr. Godfrey, you were up at the scene of the homicide? A Yes, sir.

Q At any time on Decoration Day morning did you see the defendant there? A I did, sir.

Q Who got there first, you or he? A I was there before he arrived.

Q How long after you got there did he come? A I should say fifteen or twenty minutes. Perhaps a little longer.

Q Did he come there alone or with someone? A When I saw him he was alone—when I first saw him.

Q Well, tell us what he did. A I saw him coming cross lots from the direction of Eighth street along what is known as Beardsley avenue and he was coming up the drive—this wagon road or drive, and I learned it was Angelo Circiello. Someone—I can't say who—someone showed him the handkerchief which was found by the body and he identified that handkerchief as his wife's. Vincenzo joined him. He was already there. They went over and sat down on the stone. I went and talked to them and also Chief Weimer.

Q And did you have anything to do with his getting in the automobile? A I was with him when

he got into the automobile, sir; told him to get into the machine.

Q How much did you observe him from the time you saw him until he got in the automobile? A I kept my eye on him most all the time.

Mr. McDermit. I object. I do not see any rebuttal testimony about this whole evidence. I object to it. It is the main issue, main fact—he has been all through this. I move to strike it out.

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the court; and the same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q At any time he was there from the time you first saw him until the time he was in the automobile did he at any time faint? A He did not, sir.

Q Did he at any time fall to the ground? A He did not.

Q Did he have to be assisted into the automobile? A He did not, sir; he got in himself.

Q Do you know where Delavan and Ninth streets are? A Yes, sir.

Q How far is it from Delevan and Ninth street to the corner of Bloomfield avenue and Eighteenth street? A How far?

Q Yes. A I should think over half a mile, nearly three-quarters of a mile, sir, that is to Bloomfield avenue.

The Court. What is the question?

Witness. From Bloomfield avenue and Belmont avenue.

Mr. Mott. Eighteenth street, I said.

Witness. Belmont avenue is just below that. From Ninth to Delavan.

The Court. About a half mile?

Witness. If not three-quarters of a mile—from Ninth and Delavan to Bloomfield avenue and Eighteenth street.

The Court. From Ninth and Delavan?

Witness. Yes, sir.

Q Were you at the East Orange police station when the defendant was released? A Yes, sir; I took him away from there.

Q What time of day was it? A About half-past eleven as near as I can remember, sir.

Q Where did he go? A I took him part way home and then let him go the rest of the way himself and we came on downtown, sir.

Cross examination by Mr. McDermit.

Q You say the distance is three-quarters of a mile from Delavan avenue and Ninth street— A To Eighteenth street and Bloomfield avenue. It is over a half mile. I should say nearly three-quarters of a mile.

Q How far in distance in point of time—from Chester avenue and North Eighth street to the scene where the body was found by the pathway? A Fully three-quarters of a mile.

Q Isn't it a mile and a quarter by the pathway? A I don't think it is, sir.

Q Isn't it a mile and a half from the place where Cerciello lived by the pathway, across Bloomfield avenue, across Chester avenue and Beardsley avenue until you strike this spot, a mile and a quarter walking? A I don't think it is, sir.

Q You say it isn't? A I shouldn't think it was by walking. I never measured it.

Q Have you tried to walk it? A I walked it a number of times.

Q How long will it take you to walk it? A Something over ten minutes.

Q Take you the same length to walk it back, would it? A I guess so.

Q Walked pretty free, too, wasn't it? A Not so very fast; ordinary gait, sir. I should say ten to twelve minutes.

Q Now, wouldn't you say it was the biggest mile you ever walked in your life? A I said at the beginning I should imagine it was a mile from Eighth and Chester avenue to the scene where the body laid. Mr. Mott didn't ask me to where the body laid.

Q Mr. Godfrey, isn't it a fact that at that time and still dotted along through here are ponds of water and almost—you might say small lakes of water there? A No, sir.

Q And are there not down through there (indicating) many ponds of water? A Not ponds; no, sir.

The Court. Are you pointing at Eighteenth street?

Witness. Eighteenth and Beardsley avenue he is pointing.

The Court. You were asking him if at Eighteenth street there is a pond there?

Q Surrounding grounds there? A There is no pond.

Q Plenty of water there, swampy land? A After rains it is swampy. I know I got my feet wet there many times.

Q Been plenty of places to have thrown the hatchet where it couldn't be found if they desired to throw it in the water, wasn't there, in that section there? A Well, that is—

Q To have hidden the hatchet. A I don't know any place where it couldn't be found if they searched the grounds thoroughly.

Q Well, the hatchet with that steel probably would go to the bottom of the lake? A It isn't deep at all,

sir. Probably the water would cover the sole of your shoe.

Q Have you got the girl's shoes here, the deceased's shoes? A Yes, sir.

Q Will you get them for me? A Yes, sir.

CARMELLA LAUDISI, sworn for the State in rebuttal (through the interpreter).

Direct examination by Mr. Mott.

Q You speak English? A No, sir.

Q Are you single or married? A I am married.

Q What is your husband's name? A Alfonso.

Q Is your husband now confined in the Essex County jail? A Yes, sir.

Q And he has been there for some time? A Yes, sir; for about ten months or more, I don't know.

Q Were you present at the jail to see him a week ago yesterday? A Yes, sir.

Q Did you see him? A Yes, sir.

Q About what time did you get up to the jail? A Half-past ten.

Q And what time did you see your husband? A Half-past ten they called him and I seen him.

Q And whereabouts did you see him? A In the office behind screens.

Q What time did you leave him—did you go away? A I was there about twenty minutes.

Q And when you got ready to go what did your husband do or go? A He went inside. He kissed the baby and went inside.

Q Well, went inside, where do you mean by "inside?" Just tell us where your husband went? A He went upstairs where was his cell.

Q Did you see him go to his cell? A Sure; I saw him climb up the stairs.

Q And did you stand there to the screen until he got up to his cell? A Yes, sir and my baby say "Bye, bye, papa, bye, bye."

Q While he was talking to you did he speak to anyone else? A No, sir.

Q After he left you while he was on his way up to the cell did he speak to anyone? A No, sir; can't see anyone.

Q And then after he got up to his cell what did you do? A I went away.

Q Did you see him again that day? A No, sir; didn't see him any more.

Cross examination by Mr. McDermit.

Q You were up to the jail half-past eleven o'clock Sunday morning a week ago? A I went there half-past ten; they called him and after I was there I don't know how long.

Q You were there yesterday morning, too, weren't you? A Sure.

Q And you talked with him yesterday morning about what you were going to testify to here to-day before the jury about what the Italian interpreter from Mr. McDermit's office says, didn't you? A No, I did not.

Q Didn't talk to your husband yesterday at all about anything concerning him talking to Angelo a week ago Sunday? A No; I didn't say, I don't see my husband to speak to him enough.

Q Spoke a word to him about this thing. No, I don't mean about her seeing her husband speak to Angelo, but whether your husband didn't tell you yesterday at the jail about what Mr. McDermit's clerk testified to as a conversation between your husband and Laudisi a week ago Sunday? A Only twenty minutes they left me there to speak to my husband and we are speaking of our own affairs.

Q Speaking of his love towards you, I suppose. That is all.

FREDERICK WEIMER recalled in rebuttal for the State.

Direct examination by Mr. Mott.

Q You are chief of the detectives of the prosecutor's office? A Yes, sir.

Q On Decoration Day morning were you with Mr. Godfrey up at the scene of the homicide near Grove street? A Yes, sir.

Q Did you go there with Mr. Godfrey? A I did, sir.

Q And while you were there did you see the defendant? A I did, sir.

Q Who got there first, you or the defendant? A I did. Mr. Godfrey and I.

Q From the time you saw the defendant did you observe him with any degree of care? A Yes, sir.

Q And were you present when he got in the automobile? A Yes, sir.

Q And did you and Mr. Godfrey take him away? A Yes, sir.

Q From the time you first saw him until the time he got in the automobile did he at any time faint? A No, sir.

Q Did he fall to the ground? A No, sir.

Q Did he require assistance to get in the automobile? A No, sir.

Cross examination by Mr. McDermit.

Q You testified in this case before, didn't you? A Yes, sir.

Q The same case? A Yes, sir.

Q And how is your memory, good? A I think so.

Q And you were asked to give us the details of what took place up there, were you not? A I answered every question that was put to me.

Q Yes. Now you remember about him sitting on the stump of the tree there? A Yes, sir.

Q And do you remember how long he sat on the stump of the tree? A Oh, a very short time.

Q Do you remember being asked the question how long he sat there on the stump of the tree? A I don't remember that.

Q Who sat there with him? A There was nobody sat there; he sat there alone.

Q Yes; and how close—how close were you to that stump of the tree before you started to arrest him? A He wasn't arrested.

Q He wasn't arrested? A No, sir; not at that time.

Q You and Godfrey went over to the stump of the tree where the body lay; how much of a distance? A I should think that would be about thirty feet from about where the body lay to the stump.

Q He had been sitting there some fifteen or twenty minutes, hadn't he? A I should say probably fifteen minutes.

Q You were there over an hour, were you not? A I don't think so.

Q Didn't you say you were there three-quarters of an hour? A Probably three-quarters.

Q Didn't you say, sir, on your direct testimony? A Well, it was probably three-quarters of an hour we were there.

Q Three-quarters of an hour. Now you walked over to where he sat on the stump of the tree. He was sitting there over half an hour, wasn't he? A Oh, no.

Q He was sitting there twenty minutes? A I should say he was sitting there probably fifteen or twenty minutes.

Q Fifteen or twenty minutes. And after the body was taken away— A Yes, sir.

Q And McKenzie had come? A Yes, sir.

Q Then you and Sergeant Walter Godfrey— A Yes, sir.

Q —went over to the stump of the tree and told Angelo he must go with you people, didn't you? A We asked him to come up to the station house with us.

Q Yes; and he got up, you got one side of him and Walter on the other and you marched to where the automobile was—how much of a distance? A Oh, four or five feet.

Q Four or five feet. You brought your automobile pretty close to where the stump of the tree was? A Well, there was no walk there.

Q And the first man into the automobile, of course, was the defendant or was it you or was it Walter? A No; it was the defendant.

Q The defendant; he went in first? A Yes, sir.

Q You opened the door? A Yes.

Q And assisted him up? A No; opened the door and he got in himself.

Q Yes. You opened the door and showed him the way? A Sure.

Q And you were taking him up to the police station to have him talk to you in regard to this affair, is that right? A That is right.

Q And you took him over to the East Orange precinct? A Yes, sir.

Q You thought first that was in East Orange? A Pretty near on the line.

Q You thought first that it was an East Orange case? A Yes, sir.

Q Anyhow you didn't have any talk with the prisoner up at the station house? A He stayed there a little while.

Q Except what you testified to here the other day. Now there was quite a good many people there at that time? A Yes, sir.

Q And as long as you didn't have Angelo under arrest there wasn't any necessity for any keen observation, was there, of his movements around the place there? A He wasn't a prisoner.

Q You say he wasn't under arrest. You didn't even arrest him then. Now what necessity was there, can you explain, for any keen observation as to his movements around that big territory there? A He was there, pointed out as being the husband of this dead woman, and we naturally would watch him.

Q Kept your eye on him? A Yes, sir.

Q Not especially? A Yes, sir; we watched him. In fact we wanted to have a talk with him to find out what he knew about it.

Q I see. But you more particularly watched him after he was sitting on the stump of the tree? A Not necessarily. We just kept an eye on him.

Q You more particularly kept your eye on him after he sat on the stump of the tree. You don't know how long Angelo was on the ground there? A Oh, yes, he was around there half an hour.

Q You don't know whether he fainted or whether he didn't faint? A I didn't see him faint and I saw him there all the time.

Q You simply didn't see him faint? A I didn't see him faint, no, sir.

Q Or swoon? A Nor he didn't faint.

Q Didn't faint in your arms, anyhow? A No, sir.

WALTER GODFREY, re-called for

Further cross examination by Mr. McDermit on the main case.

Q Those are the shoes that were identified as taken from the body of the deceased lady? A Those shoes have been in my possession since the day they were taken from the body.

Q Where did you take the shoes off? A Up in the morgue, sir.

Q Weren't taken off on the ground up there? A No, sir; they were not.

Q That is the condition those shoes were when they came to you? A It was, sir.

Q Now, what was the condition of the soil that morning where the body lay? A Dry.

Q And of course you see the condition of those shoes? A I do, sir. There had been rain the night before and there might have been some places wet but where the body lay it was dry.

Q There wasn't the whole—the whole part of those shoes wasn't laying in any part of a pond of water there? A Where the body laid it was perfectly—

Q A part of the swamp—wet ground and mud? A Where the body laid it was perfectly dry.

Q Then there couldn't have got the dirt upon those shoes just from where that body laid there? A Not where it laid; no, sir.

Q This dirt must have got on the shoes in some other place? A Probably coming across the lots.

Q Yes; couldn't have been there if they took the Chester path—the path couldn't have been very dry from that appearance, could it? A The road could have been muddy, sir.

Q Yes. Why did you have your trained eye on Cerciello? A Because I knew that he was the husband of the dead woman and the brother-in-law—

Mr. McDermit. Why—

The Court. Wait a minute. You have asked the question, let him answer it.

Witness. I knew that was the husband of the dead woman and his brother was with him. I knew that I would want to find out something about the case, so I kept my eye on them and followed them up to the stump. I found out who they were and told them not to leave there until I was ready to go with them.

Q You had no personal acquaintance with Mr. Angelo or Vincenzo previous to this morning? A Never saw them before that morning.

Q You didn't know who they were until someone called your attention to the fact up there who they were when they got there? A I saw them come across the lot; someone said, "Here comes the husband of the dead woman."

Q And you didn't know anything about who was coming across the lot until that statement was made to you? A No, sir; I did not.

Q How long was Vincenzo and Angelo on the spot over there? A On the ground?

Q Yes. A I should think after they arrived there fully twenty to twenty-five minutes; perhaps a few minutes longer; not longer than that.

Re-direct.

Q You took both brothers up to the station house? A Yes, sir.

Q Both brothers went in the automobile? A Yes, sir; both went in the automobile to the East Orange police station.

TESTIMONY CLOSED.

ESSEX COUNTY COURT OF OYER AND TERMINER.

November 25, 1913.

STATE

vs.

ANGELO CERCIELLO.

Eighth Day.

Appearances as before.

Mr. McDermit summed up for the defendant.

Mr. Mott called the attention of the court to the use by defendant's counsel of a stenographic copy of the minutes of the trial and stated that defendant's counsel has thereon private marks and that he has exhibited the same to the jury.

The court instructed counsel for the defendant to refrain from exhibiting either the stenographic minutes or the marks to the jury.

Defendant's counsel prays an exception to the ruling of the court, and the same is allowed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

The Court. At the close of the address of counsel for defendant to the jury he presented to the court eleven requests to charge. The court directed the attention of counsel to the invariable practice in this court which has universally been that all requests to charge be handed to the court before the summing up is commenced. The court states that it will receive the requests to charge and give them such consideration as it is able to do at this late time.

Defendant's counsel prays an exception to the ruling of the court, and the same is allowed, and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. Mott summed up for the State.

During the summing up by Mr. Mott he stated if the State could prove a case against Vincenzo that he would be re-arrested and indicted for the murder as accessory after the fact.

Mr. McDermit moved that the court instruct the jury to disregard the remarks.

The court denied the motion.

Defendant's counsel prays exception to the ruling of the court, and the same is allowed and sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

RECESS.

Mr. Mott continued to sum up for the State.

Mr. McDermit objected to the statement by the prosecutor to the jury that Fiore is in prison and that he was rubbing his hands upon the floor, and that a jury in this county said that he was guilty, and that Fiore was tried for being an accessory, and that the allegation there was the administration of poison.

The Court. I will instruct the jury to disregard the Fiore case both as mentioned by counsel for the State and for the defense.

Charge.

MARTIN, *J.*

Gentlemen of the Jury: The court desires to express its appreciation of the careful and painstaking manner in which you have listened to the taking of the evidence and the arguments of counsel. It has been particularly noticeable throughout that you have given very careful attention to the proceedings which have been carried on before you.

The duty of the court is to instruct the jury in reference to the principles of law governing the case. The principles of law as charged by the court should be accepted by the jury as a correct statement of law. The jury, however, are the sole judges of the facts, the weight of the testimony, the credibility of the witnesses, the inferences to be drawn from the evidence and the conclusions to be reached upon the facts. The court in referring to the testimony is not to be understood as determining any facts but merely as attempting to illustrate or explain the application of the principles of law. If the court errs in its statement of any of the testimony, you are to rely upon your own recollection and not upon the recollection of the court. If the court refers to certain parts of the evidence, seemingly giving them particular emphasis, you are not to disregard other evidence which you may deem of equal or greater importance. It is your duty to consider and weigh all the evidence and pertinent proof bearing upon the question of the guilt of the defendant and the degree and character of his offense; not only the evidence that is mentioned by the court, but also all of the facts which may appear by the testimony. If it has been suggested or stated during the course of the trial that some facts have or may have occurred, or testimony has been offered and excluded, or if testimony has been presented and subsequently stricken out, you will disregard all such

statements, offers and excluded testimony. The mere asking of a question conveying an inference which is not supported by the answer is not evidence. Mere statements of counsel on either side or promises to connect evidence which are not fulfilled are not evidence in the case. Your verdict can, therefore, lawfully and properly only be based on the testimony remaining in the case before you.

The law presumes that the defendant is innocent and this presumption of innocence can only be overcome by evidence showing beyond a reasonable doubt the guilt of the defendant and the defendant is entitled to the benefit of the reasonable doubt not only as to the commission of the crime and the nature of the offense, but also as to the degree of the offense. The State must also show all of the essential elements of the crime and of the grade or degree of the offense of which he is charged. The burden of proving the guilt of the defendant beyond a reasonable doubt is upon the State and does not shift from the State throughout the case, although, of course, evidence obtained from the defendant or any of his witnesses may be considered as part of all the evidence in the case. Reasonable doubt is a term often used and probably pretty well understood but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel any abiding conviction to a moral certainty of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the

understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt, because if the law should go further than this and require absolute certainty it would exclude circumstantial evidence altogether.

This defendant is presented by an indictment found at this term of court by the Grand Jury in which the Grand Jurors present that Angelo Cerciello, of the Town of Bloomfield, in the County of Essex, on the 30th day of May, in the year 1913, with force and arms, at the town aforesaid, in the county aforesaid, did, wilfully, feloniously and of his own malice aforethought, kill and murder Alvira Cerciello. The fact that he is described as being late of the Town of Bloomfield and that the evidence shows that he lived in the City of Newark, of course, is immaterial, and you may, under this indictment, if you find that the murder was actually committed on the 29th day of May, find him guilty, notwithstanding that the indictment charged that the crime was committed on the 30th day of May. There was no surprise alleged as to the proof offered as to the probability that this woman met her death on the 29th of May. The fact that the Grand Jury has found the indictment is of no evidential value against this defendant. The finding of an indictment is merely a step in the regular course of legal procedure which must necessarily be taken before any person can be put upon trial for certain offenses, so therefore, we have a case of a charge against the defendant for having committed murder. The charge against the defendant in the indictment is in the statutory form charging that he did wilfully, feloniously and of his own malice aforethought kill and murder the deceased Alvira Cerciello, on the 30th day of May, 1913. It is not in the old common law form which requires the specific statement in great detail of the manner and means of the alleged commis-

sion of the crime. Under the indictment, however, the defendant may be found guilty of murder in the first degree, murder, in the second degree or manslaughter, and, of course, may be acquitted.

Murder is the unlawful killing of a human being with malice aforethought by a person of sound memory and discretion. Our Crimes Act, in Section 107, in so far as it relates to this matter, is as follows:

> "Murder which shall be perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premeditated killing * * * shall be murder in the first degree, and all other kinds of murder shall be murder in the second degree, and the jury before whom any person indicted for murder shall be tried, if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or in the second degree."

Manslaughter is the killing of another upon a sudden transport of passion or heat of blood upon a reasonable provocation and without malice. The jury is to determine the guilt or innocence of the defendant, and if they find that the deceased met her death at the hands of the defendant by means of a deadly weapon used by him the presumption of law is that the murder was murder in the second degree. To raise the grade of such offense to murder in the first degree, you must be satisfied beyond a reasonable doubt that the distinguishing features of that grade of crime exist, that is, that there was present in the defendant an intent to take life and that such intent was wilfully, deliberately and premeditatedly executed. Normally premeditation comes first, that is, entertainment by the mind of a design to kill. Then follows deliberation, the weighing of consideration, *pro* and *con*, after which, the killing being determined upon, becomes wilful, deliberate and premeditated in the sense intended by the statute. The conception of such

a design and its deliberate execution necessarily takes some appreciable time. An intent to kill carried out does not constitute murder in the first degree unless coupled with premeditation and deliberation, which require time.

Not a long time—not necessarily an hour or a minute—but still an appreciable time. It is true that these words "wilful, deliberate and premeditated" do not import any prescribable period of time. The mental acts to which they severally refer are capable of being performed with that degree of celerity with which the human mind is proverbially capable of acting. To reduce the crime to the grade of manslaughter the evidence must show a lack of what the law calls malice. Malice, as the law uses the term in defining these crimes, consists in the intent to do serious bodily harm. Intent to do serious bodily harm is malice. Manslaughter is criminal homicide, but manslaughter is without intent to do serious bodily harm. Murder is criminal homicide with malice. That is with intent to do serious bodily harm. Of course, you know an intent is an act of the mind which cannot be seen but can properly be inferred from the conduct and the acts of the party. In this case, if you find that the death of the deceased ensued upon a wound inflicted by the defendant while he wielded the hatchet, or under circumstances from which you draw the inference of intent to do serious bodily harm, there is present the element of malice, and it is murder in the first or the second degree, according to the principles heretofore charged, and not manslaughter.

The State has presented evidence which it claims supports the indictment, and it is the duty of the court briefly to outline some of the testimony. During the time between nine or half-past nine o'clock Thursday evening, and the morning of Decoration Day at seven o'clock the life of Alvira Cerciello, then about nineteen years old, was destroyed in a lonely spot

between Grove and North Eighteenth streets in Bloomfield, near the edge of a wood. The body was discovered in the morning by Daniel Robinson, the face of the body lying downward resting on the right forearm. Dr. McKenzie, the county physician, testified that there were two wounds on the forehead above the right eye, one one and a half inches and the other two and three-quarter inches in length, that penetrated to the bone; a half inch cut on the right side of the nose, another two and a half inches in length on the cheek, another four and three-quarter inches, which penetrated to the bone and nearly severed the right ear; twelve cuts two to six inches in length on the head which went into the skull in eight places; a cut one and a quarter inches on the left side; bruises on both forearms; a cut in the right upper arm; a cut in the index finger on the right hand, which almost severed it; the left hand almost cut off at the wrist and the index finger of the left hand almost severed at the base. He also stated that she was not pregnant. The county physician stated that any one of the wounds of the forehead and back of the head that went in to the bone could easily have caused her death; that of such blows, as he described, there were at least eleven or twelve—there were eleven or twelve—that a person could not receive all the wounds standing up, and the inference is left that either all the blows were struck while she was prone on the ground or that after the first fatal blow she fell to the ground and that the rest were struck while she lay upon the earth—or perhaps the inference may be drawn, and, of course, it is for you to consider whether or not you will do so that if, when she fell, she fell with her face upon the ground or towards the earth, that the blows which were upon her face—on the right side of her face, apparently, there being more there than on the left side, were received by her standing. Whether or not this defendant is lefthanded or righthanded has not been

shown in the testimony. Whether or not a blow could be struck on the right side of her face wielded in the right hand of a person in front of her and not behind her, are questions, of course, for your consideration. The ground around the body was covered with foot-prints but they were too uncertain to permit of any inference being drawn from them except that apparently the sharp heel of a woman't shoe had left an impress in the earth. The shoes of the deceased are high-heeled and show marks of dirt on them. That is to say they apparently show that. It is for you to decide whether or not they do. There was blood upon the place where the body lay and apparently a trail of blood running from ten feet in a southeasterly direction from the point where the body lay. Some of the hair on the head of the woman was cut and her switch or false hair was picked up near the body. A side-comb apparently from her hair, a handkerchief and a bracelet of the deceased were picked up in various places from six to fifteen feet from the body. About fifty yards from the body a small flask, apparently a whiskey bottle, was found on Decoration Day. About twenty-five feet from the body a button was also found. On Sunday, June 1st, Angelo Rich, found a new hatchet on dry ground in the high weeds about one hundred feet southeasterly from the place where the body lay, and about twenty feet westerly from North Eighteenth street. The hatchet was examined by Dr. Harrison H. Martland, the pathologist of the City Hospital in Newark, in his labaratory in that hospital and the substance appearing in various places upon it were by him, after applying what he told you were scientific and proper tests, declared to be human blood. He also examined the strands of hair upon the hatchet, there being a few strands left there now, and he states that they are of the same color and apparently of the same texture as the hair of the deceased submitted to him by Mr. Godfrey, and which

has been offered in evidence before you. The State has introduced these facts and claims that from them you ought reasonably to infer that the deceased met her death at the hands of some person who wielded the hatchet that was found by Angelo Rich. On Thursday night, May 29, it rained from 7:15 until ten o'clock and it was dark and cloudy until twelve o'clock. No testimony appears in the case as to the condition of the heavens—that is to say as to whether or not it was cloudy—after twelve o'clock until daylight the next morning, because, as Professor Weiner stated, the observation of the condition—the appearance of the heavens ceases between those hours. There was, of course, observation taken, as he stated, as to whether or not it rained. It did not rain on Decoration Day except between ten minutes past one to forty-five minutes past two in the afternoon. On May 31, and on June 1st, it did not rain. If, therefore, the hatchet were used for the purpose of murdering the deceased and if the murder were committed after it rained at ten o'clock on Thursday night, the hatchet was exposed to the rain on Decoration Day only for one hour and thirty-five minutes up to the time that it was found by Angelo Rich. The testimony is that the blood of the deceased was found upon the hatchet in a dried condition. That is to say the testimony supports the inference that the blood of the deceased was found upon the hatchet in a dried condition, and that there remains a finger-print thereon. That is to say that there is a finger-print in dried blood on Exhibit S. 2. A reproduction of the finger-print is in evidence. The defendant when arrested was taken to police headquarters in Newark and an impression from his fingers was made. The witnesses Flak and Schwartz have testified at considerable length as to the merits of the finger-print system of identification of individuals. They have to a certain extent briefly outlined its origin and history and finally its

adoption in certain places as a means of identification. One expert examined at least two or three hundred thousand finger-prints and the other some thirty or forty thousand finger-prints. They say that they have never found that finger-prints of different fingers are alike and that the papillary ridges of the fingers are formed by perspiration ducts remaining in form similar from childhood to old age, and one of the experts said that there are ten thousand ridges or lines on the finger contained in one square inch and that, mathematically, this admits—or as calculated to be by eminent specialists—a possibility of a great number of combinations of the different ridges and lines. Both of those experts said that the finger-prints of the hatchet and the finger-print of the defendant's third finger on his left hand are the same. The testimony of an expert is of little assistance to the jury unless the reasons for his opinion are satisfactory and trustworthy. If you are satisfied that the finger-print on the hatchet and the one made by the defendant's third finger of his left hand actually existed and that the finger-print system of identification is reliable, then it is for you to consider and weigh with great care the alleged similarities which have been brought to your attention by the evidence. If you reach the conclusion that the same finger made the print in the blood when it was wet on the hatchet that made the finger-print at headquarters on the paper produced here, then it will be for you to consider whether or not you are satisfied that the deceased met her death at the hands of this defendant. And in that connection if you believe the testimony of Deskovitch and Laudisi or either of them that this defendant, while in his cell in the jail, knowing that he had been accused of the crime, rubbed his fingers upon the floor of his cell for the purpose of obliterating the capacity of his fingers to make an imprint, you may consider that evidence and give it such weight as you deem it en-

titled to receive in connection with what, if any, weight you will give to the alleged finger-print identification.

On January 5th, 1913, the deceased was married to the defendant and they lived together up to her death at the corner of Eighth street and Chester avenue in the two rooms in back of the store where they conducted a small grocery business. The next apartment of the same floor was occupied by Vincenzo Cerciello, his wife and children. An interior means of communication existed through a door between the kitchen of each apartment. Josephine Urso testifies that on Thursday night she visited the store between seven and 7:30 and saw the deceased and the defendant. The deceased said, "This evening we are going out," and repeated it once or twice and said that the defendant knew where—the defendant then said that she knew where he had to go. Whereupon she rejoined that he could go and she would prepare the evening meal and later they would go together. Nichola Minauro testified to a similar declaration of the deceased in the presence of the defendant about the same time. Later, the defendant, according to the testimony of Cerruto and of the defendant himself went to purchase bananas. About 9:15 to 9:30, Nunzaiata Dambola went to buy cigarettes or matches to the store and the defendant was standing in the store and the deceased was seated with her head on her arm. Nichola Urso went by the store at a time, he thinks, about 9.20 and saw the defendant turn off the gas in his store, apparently in the act of closing the store. At two o'clock on the morning of Decoration Day the defendant apparently telephoned police headquarters and talked with McMahon, informing him that his wife had gone out to the theatre and had not returned and that she had $200 with her. He also, according to McMahon, said something about going out to get ice cream. On the morning of Decoration Day, Armelinda Freda called

at half-past six at the store to purchase some sugar; the defendant was there, and he said that his wife had gone out the night before at 9:30 to buy ice cream and had not returned; she asked him why he had not try to find his wife and he said "may be would someone would club me down." He stated that she had $200 with her and that he had not called upon any members of her family to see if by any chance she had gone there. The witness, Mrs. Armelinda Freda, said that his bed had been slept in but no one had slept in his wife's sleeping place. Laurenzo Ferrara, the shoemaker, said that the deceased had been at his shop several times during the day on Thursday, and that in the evening they were going to the moving picture show at 7:30. On Decoration Day the defendant asked him if he had seen the deceased and told him about her going out to buy ice cream the night before. Vincenzo Cerciello, the brother of the defendant, testified that he had a revolver which he always kept loaded and that shortly after the deceased died he found it unloaded and that he loaded it again. A cartridge was found on September 27th, in the trap of the closet in his apartment. Angelo Maria Campione testified that she could see from her place persons passing the street in the neighborhood of Eighth street and Chester avenue, from little after nine o'clock until 11:30, and that she saw no person pass except a colored man and a colored woman. Isadore Bennett said that he had an ice cream store in the neighborhood and it happened to be opened all the night of May 29th, and the morning of May 30. Tries, the clerk or bookkeeper down in the office of Rising & Thorne, said that the hatchet in question was a Hammond hatchet and that it was of a kind which was generally sold in Newark and that Vincenzo Cerciello was a customer of Rising & Thorne. The defendant himself testified and gave his story of the happenings of that night. He said that 8:30 after coming back

from seeing Cerruto they sat down to supper and after a half hour they had some coffee, his wife went out into the store to wait on some customers and she came back, he requested her to have a little beer, but she declined, saying she wanted some ice cream, whereupon he told her, he says to "Go ahead and get your ice cream, you have all the money." The deceased left at 9:05, or thereabouts, he thought, to purchase ice cream and he did not see her after that alive. The defendant says that he closed the store at 9:45 and dosed in his apartments until about half-past ten, when he woke up and noticing the absence of his wife he spoke to his brother who asked him, after speaking of the peculiarity and strangeness of the fact that she did not return, if he had had any quarrel with her. He said, "No." And thereupon the defendant went out to look for his wife, going on the streets—or some of the streets in his immediate neighborhood; that he returned in a short time and went out again and stood on the corner and waited for her. The defendant went out afterwards several times that night, remaining for periods which he described as half an hour or perhaps three-quarters. I think possibly he described one period as being only a quarter of an hour. On one of these occasions he went into the saloon of the witness whom he produced here and telephoned to police headquarters as stated by Mr. McMahon. The defendant, however, said that he did not say anything about the theatre but that he called up and told them that his wife was going out to get some ice cream. The defendant said at one point in his cross examination that he did not know that the money —the $200—was gone until the next day. He says that he began to cry early in the evening and that they were all very anxious about Alvira, but for some reason no one other than himself went out to look for her, and he and his brother and sister-in-law have stated the reason. He says he did not go to any ice

cream places in that neighborhood because all of the ice cream places which he saw or knew about were closed at that time and that he did not desire to awaken any person.

The State claims that the defendant's explanations are unsatisfactory, that some of them are untrue and that some of them are conflicting. The State, however, must prove the facts and cannot rely upon the merely alleged conflicting or untrue stories of the defendant. It must go further than that and show facts from which the inferences may reasonably be drawn in order to reach the conclusions which the State claims this testimony supports. The State claims that that is supplied in the testimony of Peter Deskovitch. Deskovitch stated that he was a fellow prisoner with the defendant and that the defendant talked to him and Laudisi many times and that while he, Deskovitch, was particularly concerned about his own case, he did hear and now remembers some of the things which the defendant stated to him, and among those things are that the defendant said, "My wife must come out of the grave to say that I did it;" "that the hatchet condemns me"; "that my brother and sister-in-law can help or hurt me"; that "the man who came up to the jail was not the man, but it was a young man from whom he bought the hatchet." The witness also said that the defendant rubbed his hands on the floor of the cell with the palms downward.

The State claims that these alleged facts and the circumstances surrounding them show that the defendant prepared himself with the hatchet, inveigled his wife into going to the lonely spot, and there wilfully, deliberately and premeditatedly killed his wife. The State claims that the alleged confession of the defendant to Laudisi is true, and urges for your further consideration and the attachment of weight and credibility to the story of Laudisi, the facts, which are in partial corrorboration of some of the statements, which Laudisi says, that the defendant made to him.

The defendant in his defense denies the principal charge and states what his movements were on the night in question. He denies that he ever quarreled with his wife or that he had any reason to do so. He said he had no motive whatever for doing such a horrible deed. He denies the alleged incriminating statements to Laudisi and Deskovitch. He denies the alleged rubbing of his hands on the floor of the cell and denies that he told conflicting stories of his actions on the night in question.

In a crime of this character it is not necessary to prove motive. But the defendant insists that no man would, in all human probability, do such a deed without a motive, and that no motive has been shown here to exist and that therefore an important practicable element of fact has not been shown. You have a right to consider whether or not the testimony shows any motive.

Now the defendant, both as to his actions and as to his explanations, should be judged by his intelligence, his surroundings and his abilities. You also have a right to consider the same test in connection with what he did or the statement of his movements on the night in question. While he may not have done, according to his statement, some of the things that perhaps other persons would have done under like conditions, yet you are to judge him by his intelligence, his surroundings, and the circumstances of the case as he understood them at the time.

The defendant also claims that the finger-print identification system is in its infancy or experimental stage and is now more of a fad than an exact science, and that it is not a safe and sure guide for the identification of finger-prints and for the identification of individuals.

The defendant's statements of his movements on the night in question have been corrorborated as to what

occurred in the house by the testimony of both his brother and sister-in-law.

The defendant has also suggested for your consideration through the testimony which has been presented here that this woman may have been killed for the purpose of robbery. Whether that is so or not, of course, is for your consideration, but you may consider whether or not a robber would be likely to go any further than was necessary in order to secure the plunder she had upon her person.

The defendant urges also that at all events, even though you may not believe the evidence offered or claimed in support of his position, it at least produces a reasonable doubt as to his guilt. In other words the defendant's position is that he is not required to prove that he is innocent, and, of course that is true, and that even though these facts which he has adduced, which I have referred to, and the other facts in the case, do not satisfy you of his innocence, yet that they ought to produce in your mind reasonable doubt of his guilt.

Now, gentlemen, it is for you to consider and weight the testimony and ascertain where the truth lies. You may, amongst other considerations, consider the manner and appearance of the witness upon the stand, his method of telling his story, his means of observation, his intelligence, skill, ability, and such other guides as you in your wisdom and in your conscience will find to assist you in ascertaining what credibility and what weight you will attach to the testimony. You may consider the interest of a witness in testifying.

Laudisi said that he had not been promised any help for testifying in this case. Whether or not you believe that and think possibly that he may have been promised assistance and is not telling the truth about it is a matter entirely for your consideration. But there is this further consideration which the court ought to present to you in determining the

weight, if any, which you will attach to the evidence of Laudisi. You have a right to consider, amongst other things, his great interest in testifying and all the circumstances surrounding the giving of his testimony. He has been found guilty of murder in the first degree and should under the law, in due season, be sentenced to death. Under the law he ought to suffer this penalty for the commission of the crime for which he has been convicted. If he has, however, told the truth and been received as a witness for the State he has an equitable claim to recommendation to the mercy of the pardoning power, the Court of Pardons, which cannot be withheld without the violation of an established rule of practice. To what extent such recommendation will be efficacious it will be for that tribunal, in which the constitution has placed the power to pardon, to decide. Whether it will commute the sentence to life imprisonment or to a milder form of punishment is for it alone to determine, but hitherto such recommendation has been effective in obtaining some remission of punishment. On the other hand the jury has a right to convict on the testimony of Laudisi, if in their judgment it is entirely credible and worthy of belief.

You have a right to consider the interest of the defendant in testifying. He has a very great interest in any verdict you may render and you may conside what effect, if any, that interest in your verdict has had upon the truthfulness of the story which he has told here in your presence. You have the right to consider the interest of Vincenzo Cerciello, the brother of this defendant, the interest of his sister-in-law, Rosie Cerciello. You have a right to consider the interest of Deskovitch—whether he has any interest or not in the first place—he seems to have been acquitted already, and if he has any interest, what that interest is and what effect it has upon his testimony here now. You have a right to consider

the interest of these different police officers—if they have an interest which would effect the stories which they tell you here on the stand. You may apply the test generally to all of the witnesses in the case.

Gentlemen of the jury, if you find that the defendant is guilty beyond a reasonable doubt of murder in the first degree your verdict should be "guilty of murder in the first degree." If the testimony falls short of this and you find beyond a reasonable doubt that the defendant is guilty of murder in the second degree, then your verdict should be "guilty of murder in the second degree," and if the testimony falls short of this and you find beyond a reasonable doubt the defendant guilty of manslaughter then your verdict should be guilty of "manslaughter." If you do not find him guilty as stated, then your verdict must necessarily be "not guilty." You are to give the prisoner the benefit of all reasonable doubts in every part of this case, not only on the question of whether he is guilty at all but also as to the question of the offense and the degree of its criminality.

Probably the duty of a citizen to act as a juror in a murder case is the highest duty which he can be called upon to perform purely as a citizen. For the consequences that may follow your verdict neither you nor this court is responsible. When we have discharged our duties fairly, conscientiously and firmly, our responsibilities are at an end and we leave the consequences to the law. The law fixes the penalty. The responsibility is not the jury's and not the court's. It belongs to and rests upon the law.

Gentlemen, this is an exceedingly important case. It should be given your most careful consideration. It involves the life of this defendant and the proper administration of justice, and for these reasons it is a matter which deserves your most careful deliberation.

The defendant has presented some requests to charge which I have had an opportunity to examine shortly. The first request is:

"That the defendant cannot be convicted of any offense unless the jury find from the evidence that the accused had a specific design to effect the death of the deceased. The jury must find beyond a reasonable doubt that such was the defendant's specific design."

I so charge you.

"3. That if the jury have a reasonable doubt derived from all the evidence, they are bound to give the defendant the benefit of the doubt."

I so charge you.

"7. That the jury may not at their pleasure and without regard to the elements of credibility, which the evidence of the accused may possess, reject it because of his interest or because they are not satisfied that he had been corroborated. It is the duty of the jury always to consider the evidence of the accused with all the evidence in the case."

I so charge you, and I might add, gentlemen, that, of course, you are to consider and weigh the story told to you by the defendant and you are to attach to that story such weigh and give it such credibility as you in your best judgment deem proper to do after considering all of the various matters in the case and considering the reasons why you should rely upon his story and the reasons which effect his credibility.

"8. That if a transaction is susceptible to more than one construction, the jury must adopt the construction most favorable to the accused."

I so charge you.

"10. That in order to convict the defendant upon the evidence of circumstances, it is necessary, not only that all the circumstances concur to show that he committed the crime charged, but that they are

inconsistent with any other rational conclusion. It is not sufficient that the circumstances proved, coinside with, account for, and therefore render probable, the hypothesis sought to be established by the prosecution; but they must exclude to a moral certainty every other hypothesis but the single one of guilt, or the jury must find the defendant not guilty."

I so charge you.

"11. That when the evidence against the defendant is made up wholly of a chain of circumstances, and there is a reasonable doubt as to one of the facts essential to establish guilt, it is the duty of the jury to acquit."

I so charge you.

Each of the rest of the requests to charge is refused except as already charged and the defendant is allowed a separate exception to each refusal of the court to charge as requested.

My duty now, gentlemen, is at an end and yours is about to begin.

Mr. McDermit. I take a general exception to the charge.

The Court. It is allowed.

WM. P. MARTIN, (L. S.)

DEFENDANT'S REQUESTS TO CHARGE.

"2. That to convict the accused of murder, one kind of malice is essential, viz.: premeditated design to take life; no other quality of malice is sufficient, and this kind of malice must be proved affirmatively to the satisfaction of the jury beyond a reasonable doubt."

Defendant's counsel prays an exception to the Court's refusal to charge as requested, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

"4. Before the jury can convict, they must find that the cause of the death of the deceased has been positively proven to be murder committed by the defendant."

Defendant's counsel prays an exception to the Court's refusal to charge as requested, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

"5. That neither preponderance of evidence nor any weight of preponderant evidence is sufficient in a criminal case, unless it generates a full belief of the guilt of the party charged to the exclusion of all reasonable doubt."

Defendant's counsel prays an exception to the Court's refusal to charge as requested, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

"6. The question of the parties intent is clearly to be considered; defendant's intentions as stated by him should at all times be considered and given such weight as you believe he should recive."

Defendant's counsel prays an exception to the Court's refusal to charge as requested, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

"9. That the defendant is not responsible for the death of the deceased unless it was caused by his own act or omission, or the act or omission of some other person for which he is lawfully responsible; and

if the act or omission of the defendant was merely a condition incident to the death and not a proximate cause thereto, he is not responsible."

Defendant's counsel prays an exception to the Court's refusal to charge as requested, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* ANGELO CERCIELLO, *Plaintiff in Error.*	*In Error.* *Certificate.*

I, William P. Martin, presiding judge of the Court of Oyer and Terminer, and the judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff in error therein, with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Wm. P. Martin

Presiding Judge of the Court of Oyer and Terminer of Essex County, New Jersey.

Dated, April 20, A. D. 1914.

Assignment of Errors.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* ANGEO CERCIELLO, *Plaintiff in Error.*	*In Error.*

Afterwards, that is to say on the first Tuesday of March in the year of our Lord nineteen hundred and fourteen, at the March term of the New Jersey Court of Errors and Appeals, in the last resort in all causes, comes the said Angelo Cerciello, by McDermit & McDermit, his attorneys, and says that in the entire record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this to wit:

1. Because the court erred in allowing Exhibit S. 2, a hatchet, to go in evidence against the objections of counsel for the defense.

2. Because the court erred in allowing Exhibit S. 5, and Exhibit S. 6 to go in evidence against the objection of counsel for the defense.

3. Because the court erred in allowing the testimony of Eugene De Stefano to go before the jury, without restricting it and instructing the jury for what purpose same was introduced.

4. Because the court erred in sustaining an objection of the prosecutor to the following question asked

by counsel for the defense on cross examination of the State's witness Eugene De Stefano:

"Q Stating that you knew Angelo Cerciello and that you also knew his wife and that you knew them to be good people."

5. Because the court erred in allowing Exhibit S. 8, a revolver, to go in evidence against the objection of counsel for the defense.

6. Because the court erred in allowing Exhibit S. 9, a bottle, to go in evidence against the objection of counsel for the defense.

7. Because the court erred in its refusal to strike out the testimony of Gelsemine Longo, a witness for the State, as the same was incompetent, immaterial and irrelevant to the issue.

8. Because the court erred in allowing the prosecutor to ask the following question of Vincenzo Cerciello, a witness for the defense, against the objection of counsel for the defense, to wit:

"Q Is it not the reason you don't dare to answer these questions that you are afraid you will be rearrested for this murder."

9. Because the court erred in its refusal to allow counsel for the defense to put in evidence a certain record of the Fifth Precinct Police Station which continued matters material to the defense.

10. Because the court erred in permitting to go in evidence against the objection of counsel for the defense certain glasses, alleged to be magnifying glasses.

11. Because the court erred in permitting Katie Minichino, a witness for the State, to testify against the objection of the counsel for the defense to one particular incident that she, witness, found the deceased crying and also because she was allowed to testify to statements made by the deceased which are hearsay.

12. Because the court erred in its refusal to charge as requested of counsel for the defendant, to tell the jury to disregard certain remarks made by the prosecutor during his summing up to wit:

If the State could prove a case against Vincenzo that he would be rearrested and indicted for murder as accessory after the fact.

13. Because the court erred in its charge to the jury as follows: "On the other hand the jury had a right to convict on the testimony of Laudisi; if in their judgment it is entirely credible and worthy of belief."

14. Because the court erred in its refusal to charge as requested by counsel for the defense as follows to wit:

"That to convict the accused of murder one kind of malice is essential, viz., premeditated design to take life; no other quality of malice is sufficient and this kind of malice must be proved affirmatively to the satisfaction of the jury beyond a reasonable doubt."

15. Because the court erred in its refusal to charge as requested by counsel for the defense as follows to wit:

"Before the jury can convict they must find that the cause of the death of the deceased has been positively proven to be murder committed by the defendant."

16. Bcause the court erred in its refusal to charge as requested by counsel for the defense as follows to wit:

"That neither preponderance of evidence nor any weight of preponderant evidence is sufficient in a criminal case, unless it generates a full belief of the guilt of the party charged to the exclusion of all reasonable doubt."

17. Because the court erred in its refusal to charge as requested by counsel for the defense, as follows to wit:

"The question of the parties intent is clearly to be considered; defendant's intentions as stated by him should at all times be considered and given such weight as you believe he should receive."

18. Because the court erred in its refusal to charge as requested by counsel for the defense, as follows to wit:

"That the defendant is not responsible for the death of the deceased unless it was caused by his own act or omission, or the act or omission of some other person for which he is lawfully responsible, and if the act or omission of the defendant was merely a condition incident to the death and not a proximate cause thereto, he is not responsible."

19. Because the court erred in permitting the alleged finger prints of plaintiff in error to go in evidence and compare them with the alleged finger print on the hatchet Exhibit S. 2; when said finger print of plaintiff in error had been obtained from him against his will and without his consent.

20. Because the court erred in allowing the experts Flak and Schwartz to testify as to the legality of their testimony and the acceptability of the same by the law courts, and also permitted them to testify as to the merits of the finger print system.

And the plaintiff in error Angelo Cerciello prays that the judgment aforesaid be reversed and altogether held for nothing, and that he may be restored to all things which he has lost by reason of the said judgment, etc.

McDERMIT & McDERMIT,
Attorneys for Plaintiff in Error.

FRANK M.McDERMIT,
Of Counsel for Plaintiff in Error.

Reasons.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defeudant in Error,
vs.
ANGELO CERCIELLO,
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} *In Error.*

Afterwards that is to say on the first Tuesday of March, in the year of Our Lord, nineteen hundred and fourteen, at the March Term of the New Jersey Court of Errors and Appeals in the last resort in all causes, comes the said Angelo Cerciello, by McDermit & McDermit, his attorneys, and says, that in the entire record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this to wit:

1. Because the court erred in allowing Exhibit S. 2, a hatchet, to be to go in evidence against the objection of counsel for the defense, because the said exhibit was not in any way connected with the plaintiff in error or the homicide of which he was charged.

2. Because the court erred in allowing Exhibit S. 5, and Exhibit S. 6, to go in evidence against the objection of counsel for the defense, because the testimony of Dr. Martland does not show that he qualified as an expert to testify as to matters pertaining to said exhibits, and that the said exhibits were not shown to be connected in any way with the defendant or the deceased.

Reasons.

3. Because the court erred in allowing the testimony of Eugene DeStefano to go before the jury, without restricting it and instructing the jury for what purpose same was introduced and by omitting to do so, allowed the jury to consider the testimony of this witness in the light of an admission that plaintiff in error was going to murder his wife with a hatchet when the said testimony does not show it to be so, and that it is not in the nature of a threat nor a declaration of malicious intent or bad feeling towards the deceased.

4. Because the court erred in sustaining an objection of the prosecutor to the following question asked by counsel for the defense on cross examination of the State's witness Eugene DeStefano:

> "Q Stating that you knew Angelo Cerciello and that you also knew his wife and that you knew them to be good people?"

Because the same was proper cross examination.

5. Because the court erred in allowing Exhibit S. 8, a revolver, to go in evidence against the objection of counsel for the defense, as the said exhibit was not in any way connected with the plaintiff in error.

6. Because the court erred in allowing Exhibit S. 9, a bottle, to go in evidence against the objection of counsel for the defense, as said exhibit was not in any way connected with the plaintiff in error.

7. Because the court erred in its refusal to strike out the testimony of Gelsomina Longo, a witness for the State, because the same was not part of the *res gestae,* of the case, but being independent and collateral matter, and that it did not connect the plaintiff in error, with any altercation or ill feeling against his wife, the deceased, but with some other person entirely outside of the issue involved and having no bearing on the case.

Reasons.

8. Because the court erred in allowing the prosecutor of the pleas to ask the following question of Vincenzo Cerciello, against the objections of the counsel for the defense to wit: "Is it not the reason you don't dare to answer these questions that you are afraid you will be re-arrested for this murder?" Because this was not proper cross examination and was prejudicial to the defendant's right and that this witness had been heretofore discharged of the said murder charge.

9. Because the court erred in refusing counsel for the defense to put in evidence a certain record of the Fifth Precinct Police Station, which contained matters material to the defense and which would have corroborated the plaintiff in error in certain points bearing on the case.

10. Because the court erred in permitting to go in evidence against the objections of counsel for the defense certain glasses alleged to be magnifying glasses for the use of the jury, because the same were not shown to be accurate or fitted for the eyes of each member of the jury and that no evidence was offered to show by way of the manufacturer or an expert that said glasses were accurate.

11. Because the court erred in permitting Kattie Minichino, a witness for the State to testify against the objections of counsel for the defense to one particular incident that she, the witness, found the deceased crying and also because she was allowed to testify to statements made by the deceased which are hearsay.

12. Because the court erred in its refusal to charge as requested of counsel for the defendant, to tell the jury to disregard certain remarks made by the prosecutor during his summing up to wit: "If the State could prove a case against Vincenzo that he would be re-arrested and indicted for murder as accessory

after the fact" which statement was prejudicial to the rights of the defendant.

13. Because the court erred in its charge to the jury as follows: "On the other hand the jury had a right to convict on the testimony of Laudisi; if in their judgment it is entirely credible and worthy of belief; because the court made the jury understand that a verdict of guilty could be found in the testimony of Laudisi alone without giving the plaintiff in error the benefit of a reasonable doubt.

14. Because the court erred in its refusal to charge as requested by counsel for the defense as follows, to wit:

"That to convict the accused of murder one kind of malice is essential, viz., premeditated design to take life; no other quality of malice is sufficient and this kind of malice must be proved affirmatively to the satisfaction of the jury beyond a reasonable doubt.

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20. Because the court erred in allowing the experts Flak and Schwartz to testify as to the legality of their testimony and the acceptability of same by the law courts, and also permitted them to testify as to the merit of the finger print system; because this question was for the court and not for these experts to decide.

And the plaintiff in error Angelo Cerciello prays that the judgment aforesaid be reversed and altogether held for nothing, and that he may be restored to all things which he has lost by reason of the said judgment, etc.

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