

New Jersey Court of Errors and Appeals

THE STATE,
Defendant-in-Error,

vs.

MICHAEL ROMBOLO,

Defendant below,

Plaintiff-in-Error.

In Error. 10

BRIEF FOR PLAINTIFF-IN-ERROR.

The plaintiff in error, (hereafter called defendant), was convicted of murder in the first degree.

The list of 48 jurors was served on defendant in compliance with Sec. 82, Criminal Procedure Act, but at the trial, the crier, knowing that 17 of this list were engaged in other cases, did not put their names in the box, and failed to announce that fact to the Court or the parties, until such number as he did put in, (31), was exhausted through challenges, disqualification and two absences, (p. 16), and at which time but seven jurors had been selected. On the defendant's objection the Court expressed the view that he was prejudiced by the absence of so substantial a portion, almost 40% of the special panel, and continued the case until a later hour. On resuming, the crier announced to the Court that 9 more jurors on the list were then available and the Court, over the objection of the defendant, ordered their names put in the box, and refused the defendant's request for information as to their identity. From

this group 3 more jurors were obtained, and when exhausted the Court directed that the remaining names on the general panel be placed in the box. By the time the eleventh juror was seated the defendant's challenges were exhausted. The proceedings appear in case pp. 18-24.

The defendant testified and was cross-examined as to previous conviction. He admitted the conviction on his plea of guilty of carrying concealed weapons (p. 131, l. 27; p. 132, l. 25).

For the ostensible purpose of contradiction he was repeatedly asked if he had not been convicted of *burglary* and this he denied (p. 131). He was further asked if he did not plead guilty to an indictment charging breaking and entering. This he did not categorically admit or deny, but answered, "I pleaded guilty of carrying concealed weapons, because I was drunk and nothing else" (p. 132, l. 22).

By way of contradiction the State introduced S-11, exemplified as a "true copy and correct transcript of the record and proceedings" of a prosecution of defendant in Pennsylvania (p. 245).

The exhibit consisted of (1) complaint, on information and belief, that defendant broke and entered a house at night, drew and pointed a revolver or gun and threatened to shoot a 16 year old girl; (2) magistrate's docket setting forth charges of breaking and entering with intent, etc., carrying concealed weapons and wantonly pointing firearms, and that 6 witnesses were sworn for Commonwealth; (3) indictment, with counts for burglary with intent to steal, breaking and entering with intent to steal, concealed weapons, and wantonly pointing revolver, endorsed that the defendant pleaded guilty; (4) letter from District Attorney to constable stating that defendant pleaded guilty to breaking and entering; (6) record of sentence, setting forth charge as burglary, etc.;

(7) another record of sentence setting forth charges as breaking and entering with intent, etc., carrying concealed weapons, wantonly pointing firearms; (8) order discharging defendant and referring to charge as breaking and entering; (9) certificate of managers of Reformatory stating charge as burglary, for which he was sentenced August 28, 1907; (10) certificate of superintendent, stating that defendant had been convicted of burglary August 28, 1907 (Exhibit S-11, pp. 230-247). 10 |

The Court charged that the record was in evidence "solely to affect his credibility" (Charge, pp. 218-219).

The right of the jury to fix the penalty of life imprisonment under Chap. 270, Laws 1916, p. 576 was charged (p. 223) and after some deliberation the jury propounded the question "Can a man be pardoned if found guilty of murder in the first degree with recommendation" and was told that he could (p. 229). 20 :

The Court refused several requests to charge including definitions of deliberation, malice, passion and wilfulness.

I.

The jury that tried defendant was not legally drawn.

The present case is not distinguishable in principle from *State vs. Lapp*, 84 N. J. L., 19, construing Sec. 27 of the Jury Act (3 Comp. St. 1910, p. 2975) to require that the names of all the jurors emptory challenge be in the box when the drawing of the jury commences. Justice Garrison said, 30

"The right of challenge which is thus in a measure dependent upon the order in which the names are drawn from the box, may be 40

radically affected if additional names can be put in the box after the drawing of the jury has begun."

The statutory requirements relating to petit juries must be observed even though a special panel is drawn (*State vs. Tomasse*, 75 N. J. L., 739).

10 Here the drawing was begun with the defendant, having 20 challenges, deluded by the belief that the 48 names on the special panel were in the box and that by the exhaustion of his challenges he might create a residual group of 28 from which his jury would be taken. The exercise of such a privilege of exclusion and the limitation of a group from which the jury should spring were the obvious objects of the statutory provisions relating to his challenges and the timely service of the panel upon him. (Act Concerning Crim. Proc. Sec. 80-83, Comp. St. 1910, pp. 1846-
20 1847).

In fact, and unknown to him, there were but 31 names in the box and were he to have exhausted his challenges in the circumstances, the remaining names would be 11. Instead therefore of outlining a group from which his jury should come, he would, by the exercise of his right, unwittingly deplete the special panel and render a draft upon the general panel necessary, to the total disappointment of his purpose. Counsel
30 does not feel that comment is necessary on the impropriety of misleading a defendant charged with treason, murder or other serious offence enumerated in Sec. 80 of Criminal Practice Act to believe that his jury will be drawn from a special panel when, by the surreptitious omission of names, such selection is made impossible if the defendant but exercises his full right of challenge.

The complaint is not that the panel was vitiated
40 by the absence of the 17 jurors as was urged in

Patterson vs. State, 48 N. J. L., 381, but that, by reason of the omission of the names from the box, the withholding of information of the fact, and of the identity of the jurors from defendant until many of the challenges were used, there was an impairment of his right of challenge, dependent, as Justice Garrison said, upon the order in which the names are drawn.

The Court, of its own motion, ordered a continuance after 7 jurors were obtained and the crier announced his exclusion of the 17 names from the box. After recess 9 additional names on the special panel were placed in the box and defendant's request for information of their identity was refused by the Court (p. 21, ll. 25-30). 10

Whatever prejudice the defendant suffered through the original irregularity of leaving out names, it was aggravated by depositing these 9 additional names and blindfolding him as to their identity. The notes made by the stenographer show 2 absences, 3 disqualifications and 7 accepted jurors at the time when the crier announced the exhaustion of the 31 names put in the box. It is apparent that the remaining 19 were challenged peremptorily, and the State by Sec. 81, Cr. Proc. Act, could have challenged 12 at the most. The defendant, therefore, had consumed not less than seven peremptory challenges before he learned that the drawing had proceeded from a partial list. 20 30

Sec. 83, Crim. Proc. provides that "when the 'special panel * * * shall be exhausted from 'any cause before a jury for the trial of the indictment shall be obtained, talesmen shall be taken from the general panel." It is submitted that the action of the crier in withholding the names from the box did not, within the purview of the Act, constitute an "exhaustion" of the list. The exhaustion was not of the panel in its entire- 40

ty, but only of such part as was reflected by the names in the box. The phrase "exhausted from any cause", unless it gives the countenance of the law to every form of interference with the rights of the State and defendant, must be taken to refer to those causes of exhaustion recognized by approved forensic practice, such as challenge, excuse, disqualification, exemption, absence, either delinquent or through other trial engagement, etc. But the requirement of Section 82 that the list be served on the defendant for his aid in determining the exercise of his right of challenge must be either nugatory, or else it imports and is designed to inform the defendant, in connection with the next section, that the jury will be drawn from that list unless it is exhausted from causes having legal sanction, and which exhaustion and causes shall be manifest to him according to the forms of law. Such a wholesome construction of the act would require that all the names served be put in the box, and, as the names are called, the defendant enabled intelligently to challenge, to judge (and perhaps be heard) on the legality of the process of exhaustion and the legal efficacy of the causes assigned.

In the present case the special panel, (as such), was destroyed at the outset by a court officer for a reason, which, if true, was sufficient only in his judgment. in leaving out the names without assent of Court, Prosecutor or defendant, and making the disclosure not only after defendant had ignorantly sacrificed rights of challenge but further made the disclosure in a manner which rendered it futile for defendant to dispute the accuracy or sufficiency of the alleged facts upon which his course was taken.

The eleventh and twelfth jurors were selected from the general panel (p. 23, l. 15).

The defendant's challenges were exhausted before the twelfth juror was seated. What different situation might have existed had all the names

been placed in the box, and the defendant informed at every stage which jurors were present, and which were not, it is impossible to conjecture; but the salient fact is in the record that he had no right of challenge, as to the last juror and this because of the proceedings against which he objected to the extent to which they were brought to his notice.

The drawing of the jury was illegal:

1. Because of the abstraction of the 17 names at the outset which, by law, should have been in the box in order to constitute an entire panel or list. 10

2. Because defendant's right of challenge was impaired by the concealment from him of the fact that the drawing was from only a partial list.

3. By the addition of 9 names after the 31 were exhausted, and the defendant's peremptory challenges materially consumed. 20

4. By the refusal to inform defendant of the identity of the talesmen whose names were thus added, although informing him that the list was still partial.

5. By drawing on the general panel and treating the special list as exhausted when admittedly there were still eight names which it never contained.

A plain disregard of the statutory provisions with regard to the formation of the trial jury, or a departure therefrom by which a party is deprived of a substantial right is ground for reversal. 30

24 Cyc, 255.

The right of peremptory challenge within the number allowed by law is absolute and cannot be abridged or impaired by any arbitrary rule of court as to the mode of impanelling a jury.

24 Cyc, 351. 40

II.

The admission of the exemplified copy of Defendant's conviction in Pennsylvania with the documents annexed thereto was injurious error.

By Section 1 of Evidence Act, Comp. Stat. 1910, p. 2217, the conviction of the defendant might
 10 have been shown on his cross-examination. By Section 7 of the same Act his conviction might be proved by the examination of the defendant or otherwise, and his answers upon cross-examination might have been contradicted by other evidence.

An examination of the garbled array of documents offered as an exemplified judgment of conviction discloses that the defendant pleaded guilty to the crime of breaking and entering (p. 238). The defendant was asked if he pleaded guilty
 20 to the crime of breaking and entering and did not admit or deny, but stated that he pleaded guilty to carrying concealed weapons (p. 132, l. 22). Further pursuit of the inquiry would have brought forth a responsive admission or denial, but the inquiry was not followed up. The proof to be offered under the statute was limited to such as was "contradictory", and it is evident that there could be no contradiction of the defendant as to the point upon which he was not called upon to
 30 speak directly. The only record competent upon rebuttal was that which showed a conviction at variance with his testimony on cross-examination; and even were the record of his plea to have been proper for this purpose, the accompanying documents, because of their confusion must necessarily have injured the defendant in the eyes of the jury.

The jury was permitted to read the hearsay affidavit of Rudolph Yanda, setting forth on mere information the circumstances of the offense (p.
 40 230); were permitted to learn from the magistrate's docket that six witnesses were sworn

against the defendant (p. 233, l. 2); were permitted to see the indictment charging the defendant with four crimes of a violent character (p. 235); were permitted to see the endorsement on the back of the indictment enumerating the four counts and containing a memorandum that the defendant generally pleaded guilty (237); were permitted to read the correspondence from District Attorney to constable (p. 237); to read the record of two sentences, one apparently on conviction of burglary (p. 239, l. 12) and the other apparently for the distinct offence of breaking and entering, concealed weapons and pointing firearms (p. 239, l. 35); to conceive therefrom that the defendant had been twice convicted, and to have the misconception confirmed by the correspondence on pages 242, 243 and 244, the first of which states that the defendant was sentenced for burglarly August 28, 1907 and the second stating that on the same day he was convicted of burglarly. The prosecutor had inquired concerning his conviction of burglary, which conviction he denied (p. 31, ll. 5-32). The documents offered were prejudicial because of containing the informal declarations and memoranda that the defendant had been convicted of burglary, which declarations and memoranda were inconsistent with the proof contained in the judicial part of the record. Sections 1 and 7 of the Evidence Act construed together so as to give effect to both sustain the view that the defendant's answers may be contradicted by other evidence, but that such other evidence as to the fact of conviction must be proved *by the record thereof*. The foundation for the production of such record must be laid through the defendant's denial of the conviction on cross-examination, and the record produced must be limited to the record of conviction. If this argument is of any merit, then it was improper and prejudicial to permit the jury to see and use the record of the complaint,

sentence, incarceration, charge, etc., and doubly prejudicial if such extraneous documents contained matters defamatory of the defendant and contradictory of the record of conviction itself.

20 The purpose of the inquiry being merely to affect the defendant's credit his admission of a conviction of crime on the occasion referred to was sufficient to affect his credit without further inquiry. Such inquiry could be pursued only to contradict, and it is submitted that the papers offered in evidence grossly transcended the function of mere contradiction, and improperly tended, beyond that, falsely to show that the defendant had been guilty of one or more offenses of a character which would depict him as a man of violence and extreme lawlessness.

Bullock v. State, 65 N. J. L., 574.

20 Inquiry on cross-examination as to any details beyond the fact of conviction is improper.

State v. Mount, 72 N. J. L., 365.

30 It is difficult to perceive how the defendant's denial that he was convicted of burglary, his assertion that he was convicted of carrying concealed weapons or his evasion of the question whether he had been convicted of breaking and entering rendered necessary the introduction of the miscellaneous combination of documents offered as "a true copy and correct transcript of the Record and Proceedings in said stated case, at No. 120, August Term, 1907, in the Court of Quarter Sessions of said County." (Exemplification, p. 245.)

40 The requirement of the statute and the proof on defendant's cross-examination rendered nothing admissible along the lines of a judicial record excepting the record of a *conviction*. Whatever may have been the defendant's admissions or denials they did not render proper on rebuttal the introduction of a transcript of records and proceedings in any "stated case."

The error was especially harmful where such record and proceedings contained matter so clearly disparaging of the defendant. The record produced in the present instance merely masked evidence which would have been rejected if frankly offered by the State. The defendant made timely and specific objection to the proof (p. 93, l. 32).

The right of contradiction being limited to the proof of conviction, any hurtful additions to the record of what is recognized as a conviction entitles the defendant to a reversal. 10

In *State v. Henson*, 66 N. J. L., 607, Justice Van Syckel adopts the definition of conviction contained in *Commonwealth v. Lockwood*, 109 Mass., 323:

"The ordinary legal meaning of conviction, when used to designate a particular stage of a prosecution triable by a jury, is the confession of the accused, in open court, or the verdict rendered against him by the jury, which ascertains and published the fact of his guilt; while judgment or sentence is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained." 20

A witness was produced who identified defendant as the person previously convicted (p. 193, ll. 12-25) and, in addition, was called upon to identify a photograph of the defendant taken at the reformatory (p. 198, l. 39), which photograph was offered in evidence (p. 199, l. 25). Endorsed on the photograph was the memorandum that defendant was charged with burglary (p. 252, l. 9). Inasmuch as the design of this testimony was to identify the defendant as the convict, the additional proof of a prison photograph with a disparaging record annexed thereto was beyond the authorization of the statute and hurtful to defendant. 30

People v. Smith, 24 N. E. R. 852, N. Y. Ct. of Appeal. 40

Unless proof of the sworn allegation made against the defendant, of his sentence, the circumstances of his delivery, the reformatory record of his offence and his physical appearance while under restraint were just as competent under our statute as the proof of the conviction itself, then this defendant was seriously prejudiced by the offer of Exhibit S-11.

10

III.

The court's definition of malice was erroneous.

The charge of the Court on the subject of malice was "Malice as used by the law, means the intent to do bodily harm. If a man should intend to do another bodily harm and in the carrying out of that purpose should kill him, he would be guilty of murder" (p. 214, ll. 32-37). The charge was reiterated (p. 216, ll. 4-10).

20

It will be noted that the Court made it immaterial what degree of bodily harm was intended and left the jury to understand that an intent to do slight or trivial bodily harm, such as the slapping of the shoulder or the undue squeezing of the hand imported murderous malice if another were killed in the carrying out of that purpose. In *Wilson v. State*, 60 N. J. L., 171, it appears that Justice Magie charged the jury in the same terms. The accuracy of the charge, however, does not appear to have been made the subject matter of exception and its sufficiency was not passed upon by the Appellate Court. Adjudications since have distinctly laid down the principle that malice is implied from the intent to do only *serious* bodily harm or to take life.

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State v. Orraye, 84 N. J. L., 556;
State v. Silverio, 79 N. J. L., 482.

40

Under the charge given, the jury were authorized to find that the defendant bore malice if he had an intent to do any bodily harm to another and if in carrying out that intent a life was lost, even though fortuitously and from supervening causes not associated with such intent, he would be guilty of murder.

IV.

The advisory instructions of the Court, relative to the powers of the Court of Pardons, were erroneous. 10

The Court instructed the jury that, under Chap. 270, Laws 1916, p. 576, they might recommend the punishment of imprisonment at hard labor for life in lieu of the death penalty. After some deliberation on the part of the jury they returned to Court and propounded a question: as to the right of the Court of Pardons to act in the case, and were answered: "Without some limitation by the Legislature upon the Court, which does not exist in this Act, I would say yes; that he could be pardoned" (p. 229). Apart from misleading the jury as to the power of the Legislature to regulate the functions of a Constitutionally prescribed body, and apart from the fact that the instruction, while stating that the act referred to (Chap. 270, Laws 1916, p. 576) did not limit the Court of Pardons, left the jury to infer that other Legislative enactments might have done so, the intrinsic error committed was the giving of an advisory instruction upon matters not contained in the evidence. 20 30

There is nothing in the Act of 1916 which permits a trial jury in homicide cases to base their recommendation upon aught but the evidence in the case. The oath to decide the case according to the evidence still prevails, and the attitude of a trial judge should be opposed to encouraging them to take into consideration matters extraneous 40

to the evidence submitted. A fortiori, they should be restrained from acting in contemplation of the likelihood or unlikelihood of subsequent judicial action which might nullify their verdict. It is quite supposable in the present instance the jury would have arrived at a different verdict had the Court withheld from them the information they sought as to the functions of the Court of Pardons. Their course in suspending their deliberations for the purpose of seeking such advice clearly manifests that the information which they desired was to constitute a criterion for their verdict and they thereby were proceeding upon considerations which were illegal and reprehensible. It does not seem that argument should be called for to refute the idea that the Act of 1916 authorized juries to go beyond the evidence submitted in order to find a basis for the recommendation which it authorized them to make.

- 20 The propriety of instructions to a jury must be determined with reference to the evidence, and therefore, a charge which asserts correctly an abstract principle of law, but is not applicable to the evidence, or which is based upon the existence of material facts of which there is no evidence, should not be given.

12 Cyc., 651;

Smith vs. State, 41 N. J. L., 598.

- 30 An instruction must be viewed with regard to the issues raised by the pleadings and the evidence.

12 Cyc., 654;

38 Cyc., 1617 and 1777, cited in *State vs.*

Egan, 84 N. J. L., 701;

Cochran vs. State (Md.), 87 Atl., 400.

V.

The refusal of the Court to define "deliberation" was error.

The tenth request was "Deliberation consists in weighing the considerations whether or not the person attacked should be killed by the defendant and a deliberate killing is effected only when, after such weighing of such considerations, the defendant with mental calmness, determines that he shall kill." The Court refused to charge this definition, and nowhere in the charge made any substitute therefor. The request was appropriate in view of the evidence showing a sudden quarrel between the defendant and the deceased and was sufficient in form under

State vs. Mangano, 77 N. J. L., 544.

VI.

The Court erred in refusing to define "passion."

The requests to charge were as follows:

16. "Malice and passion cannot exist at the same time in the human mind, and a homicidal act cannot proceed from both impulses. In the eye of the law malice excludes passion, and passion presupposes the absence of malice. They cannot co-exist as the moving cause of a homicide."

17. "The term 'passion' includes both anger and terror, provided they reach a degree of intensity sufficient under all the circumstances of the case to obscure temporarily the reason of the person affected."

18. "In determining the degree of passion which, engendered by adequate cause, is sufficient to reduce a felonious homicide from murder to manslaughter, the true criterion is the effect that the provocation in question would have produced upon any ordinary man of reasonable disposition, taking into consideration the circumstances of exasperation and frightfulness prevailing at a time before the time when the act was committed."

The refusal of each of the foregoing was error.

The testimony of the defendant was that he shot deceased believing that the latter was a striker who, associated with other strikers, was waylaying defendant to attack him. "Then I, not knowing if there were a lot of strikers there, his friends, drew the gun and turned this way, and fired the gun" (p. 122, ll. 37-40).

10 "Q. Why did you not stop to pick up your bags and hat? A. I was frightened; I did not know if he had a lot of companions and friends there and I was afraid I would be shot."

In the light of the evidence, any passion possessing the defendant might have been engendered only by fear which, under the authorities, is uniformly regarded as an emotion upon which passion is postulated. Many authorities are cited under

20 21 Cyc., 738.

Any state of mind rendering it incapable of cool reflection is sufficient.

Commonwealth vs. Collandro, 80 Atl., 571,
quoting 6 Words & Phrases, 5227, also

Any state of any particular faculty which, under such conditions, becomes extremely sensitive or uncontrollably excited.

30 *Hocker vs. Commonwealth*, 111 S. W.,
676;
Commonwealth vs. Croson, 92 Atl., 754.

It is respectfully submitted that the conviction should be reversed and a new trial ordered.

RICHARD DOHERTY,

FRANK J. V. GIMINO,

Attorneys of Plaintiff-in-Error.

40 RICHARD DOHERTY,

Of Counsel with Plaintiff-in-Error.

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Writ of Error.

The State of New Jersey to Hon. Mark
A. Sullivan, Judge of the Hudson
County Court of Oyer and Termin-
er. Greeting:

10

(Seal).

For as much in the record and proceedings as
well as in giving judgment in a certain indict-
ment found in our Court of Oyer and Terminer, in
and for the County of Hudson against Michael
Rombolo, whereby the said Michael Rombolo is
charged with the murder of one Frank Kenny,
and whereof the said Michael Rombolo, by a cer-
tain jury of the said County thereupon between
us and the said Michael Rombolo, was thereupon
convicted, as is said, manifest error hath interven-
ed to the great damage of the said Michael Rom-
bolo, as by his complaint we are informed; we
being willing that the said error, if any there be,
should be duly corrected and full and speedy
justice done to the said Michael Rombolo in this
behalf, do command you that if judgment be given
thereupon, then you send distinctly and openly
under your seal, the record and proceedings afore-
said, and the entire record of the proceedings had
upon his trial aforesaid with all things touching
the same, together with this writ to our Court of
Errors and Appeals of New Jersey, at Trenton,
on the Eighth day of July, next, in order that the
said record and proceedings being inspected, we
may further cause to be done thereupon for the
correction of said error what of right and ac-
cording to the laws and customs of this State
ought to be done.

20

30

40

Witness, Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey, at Trenton
aforesaid, the Nineteenth day of June, A. D. 1916.

THOMAS F. MARTIN,
Clerk.

RICHARD DOHERTY,
Attorney of Plaintiff-in-Error.

Return.

10 The answer of Mark A. Sullivan, Esquire, Judge
of the Court of Oyer & Terminer holden in and
for the County of Hudson, and within named, the
record and proceedings of the Plaint whereof
mention is within made with all things touching
the same, I send to the judges of our Court of
Errors and Appeals of the last resort of all causes
at Trenton, N. J., at the day and year within con-
tained, in a certain schedule to this writ annexed
20 as within I am commanded.

MARK A. SULLIVAN,
Judge.

Indictment.

STATE OF NEW JERSEY, HUDSON COUNTY, TO
WIT.: Be it remembered, that at a Court of Oyer
and Terminer holden at Jersey City, in and for
the said County of Hudson, on the First Tuesday
of April in the year of our Lord, one thousand
30 nine hundred and sixteen, before Honorable Fran-
cis J. Swayze, one of the Justices of the Supreme
Court of Judicature of the State of New Jersey,
and Honorable Mark A. Sullivan, and Honorable
George G. Tennant, Judges of the Court of Com-
mon Pleas in and for the said County of Hudson,
according to the form of the statute in such case
made and provided, by the oaths of Frank L.
Hilton, Foreman, and Dr. W. Homer W. Axford,

Indictment.

Edward J. Batchelar, Dr. Henry H. Brinkerhoff, Charles L. Cast, Frank B. Eddy, Edward I. Edwards, Jr., Charles B. Faller, Edmund S. Frenau, Charles A. Fridenberg, Frank Odendahl, Joseph B. Payton, Frederick W. Pelzer, Herman H. Prusser, Dr. Charles H. Purdy, Harry Reed, Thomas F. Rooney, Dr. Oscar J. Russi, M. C. F. Silbersdorff, Elias H. Sisson, Archibald A. Smith, 10
Walter Vanderbach, Thomas V. Weaver, good and lawful men of said county, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of Hudson, it is presented in manner and form following, that is to say, that the bills following are true bills.

F. L. HILTON,

Foreman

And the foregoing being presented to the said Court on the Second day of May, in the year of 20
our Lord one thousand nine hundred and sixteen, with bills of indictment Nos. 52 to 90 inclusive, it is ordered by said Court that the said Bill of Indictment so as aforesaid included as Bill Number 54 for Murder as charged upon Michael Rombolo remain in the Court of Oyer and Terminer for trial and disposal according to law and said bill is in words as follows.

HUDSON OYER AND TERMINER.

30

April Term, A. D. 1916.

HUDSON COUNTY, TO WIT.: The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath PRESENT, That Michael Rombolo, late of the City of Jersey City in the said County of Hudson, on the twenty-first day of April in the year of our Lord one thousand nine hundred and sixteen, with force and arms, at the City of Jersey City 40

Indictment.

aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one Frank Kenny in the peace of God and of this State, then and there being, did wilfully, feloniously, and of his malice aforethought, kill and murder, contrary to the form of the statute in such case made and provided, and against the peace of this State, the
 10 government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said Michael Rombolo, on the twenty-first day of April in the year of our Lord one thousand nine hundred and sixteen, at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, did feloniously kill and slay one Frank Kenny contrary to the form of the statute in such case made and
 20 provided, and against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said Michael Rombolo, on the twenty-first day of April in the year of our Lord one thousand nine hundred and sixteen, at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one Frank Kenny in the peace of God and
 30 of this State, then and there being, an assault did make, and him, the said Frank Kenny, then and there did beat, wound and ill-treat and other wrongs, to the said Frank Kenny then and there did, to the great damage of the said Frank Kenny, 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.

ROBERT S. HUDSPETH,

Prosecutor of the Pleas.

Indictment.

ENDORSED:—Bill No. 54 Hudson Oyer and Terminer, April Term 1916, *The State v. Michael Rombolo*, Indictment for Murder.

ROBERT S. HUDSPETH,
Prosecutor of the Pleas.

A TRUE BILL,

F. L. HILTON,
Foreman. 10

Presented May 2, 1916. And it is thereupon ordered that this Bill of Indictment remain in this Court of Oyer and Terminer for trial and disposal according to law.

JOHN J. MCGOVERN,
Clerk.

And afterwards to wit.: On the Fourth day of May, in the year of our Lord one thousand nine hundred and sixteen, at a session of the Court of Oyer and Terminer of the County of Hudson, 20
aforesaid being now of the Term of April, one thousand nine hundred and sixteen, in the said year before the Honorable Mark A. Sullivan, Judge of the Court of Common Pleas in and for County of Hudson, who doth constitute and hold the Court of Oyer and Terminer in and for the County of Hudson here cometh the said Michael Rombolo under the custody of the Sheriff, in whose custody he had before been committed for the cause aforesaid, who being brought here in his 30
proper person by the Sheriff aforesaid, to whom he is also here committed, and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charge upon him, how he will acquit himself thereof, he says he is not guilty thereof, and therefore for good and evil he puts himself upon the country, and Robert S. Hudspeth, Esq., Prosecutor of the Pleas of said County, who prosecutes for the State of New 40
Jersey, in this behalf, doth the like.

Indictment.

Therefore let said indictment be continued until May Eighteenth, Nineteen hundred and Sixteen, and let a jury come before the Honorable Mark A. Sullivan, Judge of the Court of Common Pleas in and for the County of Hudson aforesaid, constituting and holding the Court of Oyer and Terminer for said County being now of the Term
 10 of April, One thousand Nine hundred and Sixteen, of twelve good and lawful men of this State and residents in the County of Hudson, over 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 Michael Rombolo to recognize on their oath whether the said Michael Rombolo be guilty of murder as in the indictment aforesaid, is charged against him, or not guilty thereof, because as well
 20 the said Robert S. Hudspeth, Prosecutor of the Pleas of the County of Hudson, aforesaid, who prosecutes for the State of New Jersey, in this behalf, as the Michael Rombolo have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

At which time, that is to say on the Eighteenth day of May, in the year of our Lord One thousand Nine hundred and Sixteen, at Jersey City
 30 aforesaid, in the County of Hudson aforesaid, before the Honorable Mark A. Sullivan, Judge as aforesaid, constituting and holding the Court of Oyer and Terminer as aforesaid, here come as well the said Robert S. Hudspeth, Prosecutor of the Pleas aforesaid who prosecutes as aforesaid as well the said Michael Rombolo under the custody of the Sheriff aforesaid to whose custody he has been hitherto committed and who being brought
 40 to the bar in his proper person by the Sheriff

Indictment.

of said County of Hudson and also the jurors of the jury by the Sheriff of the County of Hudson aforesaid, for the purpose chosen empanelled and returned, to wit:—Philip Antrim, Henry Cohen, Otto Keim, Morris Wolf, John F. Dalton, James F. Ness, William Behm, Samuel H. Piercy, Jacob Kreitzer, Daniel Black, George Bertman, Leo Fishback being called come who being chosen, tried 10 and sworn to speak the truth concerning the premises, and thereupon the trial of the said issue commenced before the said Court and jury, and at which day the evidence of the parties is submitted and the Attorneys are heard thereupon and the said issue after a charge from the Court was submitted to the said Jury, and the said Jury in charge of the said officers of the Court, duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards, to 20 wit: at the last day aforesaid at the City of Jersey City aforesaid, the said Jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said Robert S. Hudspeth, Esquire, Prosecutor of the Pleas as aforesaid, and of the said Michael Rombolo, do say that the said Michael Rombolo is guilty of murder in the first degree as in the aforesaid indictment is charged against him, and the Jury at the time of rendering 30 said verdict did not recommend imprisonment at hard labor for life.

Therefore let the said Indictment be continued until June 2nd, 1916.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and it is by the Court here considered, and adjudged, that the said Michael Rombolo be and is hereby sentenced to death during the week beginning Monday July 24th, 1916. 40

Judgment entered and signed this Second day of June, One thousand Nine hundred and Sixteen. teen.

MARK A. SULLIVAN,
Judge of the Court of
Oyer and Terminer in
and for the County of
Hudson, State of New
Jersey.

10

Attest:

JOHN J. MCGOVERN,
Clerk.

Testimony.

HUDSON COUNTY COURT OF OYER AND TERMINER.

20

STATE

vs

MICHAEL ROMBOLO.

Wednesday, May 17, 1916.

30

This cause came on for trial in the Hudson County Court of Oyer and Terminer on this seventeenth day of May, nineteen hundred and sixteen, and Mr. Robert S. Hudspeth, Prosecutor of the Pleas of Hudson County, and Mr. George T. Vickers, First Assistant Prosecutor of the Pleas of said county, representing the State, appeared before Honorable Mark A. Sullivan, Judge of the Court of Common Pleas of said county, and the said Prosecutor stated to the said Judge that there was no Justice of the Supreme Court present in said county, and moved that the said Judge, Mark A. Sullivan, should hold the Court of Oyer and Terminer of Hudson County as provided by law in the absence of any Supreme Court Justice, and thereupon by direction of the said Judge proclamation was made by the crier of the holding of the

40

Application of Richard Doherty.

Court of Oyer and Terminer of said county by said Judge, then and there, in the Hudson County Court House, in Jersey City, on the said seventeenth day of May, Nineteen hundred and sixteen: whereupon the said Prosecutor of the Pleas moved the trial of the defendant under said indictment in said Court so constituted.

Mr. Richard Doherty, Counsellor at Law, appeared for the defendant, who was brought to the bar, the said Michael Rombolo. **10**

Proceedings were thereupon had as hereinafter noted.

MR. DOHERTY: We formally move for a continuance of this case, and for that purpose to submit the following affidavit.

20

Mr. Doherty then read the affidavit, made by himself, as follows:

HUDSON COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY

vs.

MICHAEL ROMBOLO,

Defendant.

On Indictment for Murder. Affidavit.

30

STATE OF NEW JERSEY, }
County of Hudson. } **SS.:**

"RICHARD DOHERTY, being duly sworn, on his oath says: That he is the attorney of the above named defendant; that on May 16, 1916, he conversed with Honorable Mark A. Sullivan, Judge of the Hudson County Court of Common Pleas, holding the Hudson County Court of Oyer and Terminer, for the trial of

40

Application of Richard Doherty.

10 the above indictment, and informed him of deponent's intention forthwith to apply to Chief Justice Gummere for the holding of a Supreme Court for the purpose of hearing deponent's application for a foreign jury in said indictment, and sought from Judge Sullivan authority to say that the trial of said cause would be deferred for the purpose of permitting said application to be made to the Court when convened.

"Deponent applied to the Chief Justice, at his home in Newark, about two P. M., on the same day and was informed by him that the Supreme Court would sit at the Court House in Newark, on Thursday morning, May 18, 1916, at 10 o'clock, for the purpose of hearing said application, and directed deponent to serve notice on the Prosecutor of the application to be made at that time.

20 "Deponent, without delay, returned to Jersey City, and caused such notice to be prepared and served the same upon Assistant Prosecutor McCarthy, about four o'clock on said date. At Mr. McCarthy's suggestion deponent appeared before Judge Sullivan and was informed that the service of said notice would not influence the Court in postponing the trial, which was set for Wednesday, May 17th. Deponent informed Judge Sullivan that at the interview earlier in the day Judge Sullivan had said that he would defer the matter of postponing the case to whatever action the Chief Justice might take. This 30 Judge Sullivan disputed, stating that he had said that he would postpone the case only in the event of receiving an order or at least a request from Justice Gummere to do so. Deponent at said interview did not hear Judge Sullivan express any such purpose.

"Deponent further says that the Jersey Journal, circulating in Hudson County, on May 16, 1916, published an article concerning the defendant's case, in which it stated that deponent claims that it will be impossible for 40 his client to have a fair trial by a local jury

Application for Adjoinment.

and that he alleges that prejudice here is too great.

“RICHARD DOHERTY.

“Sworn to and subscribed before }
me, this 17th day of May, Nine- }
teen Hundred and Sixteen. }

“Frank J. V. Gimino,
“Attorney at Law
“of New Jersey.”

10

THE COURT: It is a novel proposition for counsel to appear before me and expect an adjournment of a case on the ground of having given notice to the Prosecutor to apply for a foreign jury on a day following the date set down for the defendant's trial, in order to lead this Court to adjourn the trial of the case. 20

MR. DOHERTY: The application is made also upon the further ground that the defendant thinks he cannot have a fair trial because of a certain publication in the Jersey Journal and because of prejudice against him in the community.

THE COURT: I do not think the defendant will have anything but a fair trial. I will deny your motion. 30

MR. DOHERTY: I ask an exception.

THE COURT: You can have no exception.

MR. DOHERTY: I will file this affidavit.

MR. VICKERS: The State objects to the filing of the affidavit in the cause.

THE COURT: You cannot file the affidavit. It is no part of this trial or case.

MR. DOHERTY: I ask an exception.

Mr. Doherty places the said affidavit on the stenographer's desk. 40

Proceedings in Drawing of the Jurors.

MR. HUDSPETH: I now move for the trial of the cause and ask that a jury be drawn.

THE COURT: A jury may be drawn and sworn.

10 Thereupon jurors were drawn to serve as jurors in this case, objections or inquiries being made to drawn jurors as next noted.

JUROR JOHN L. WILLIAMS, drawn and called.

MR. DOHERTY: The defendant challenges for principal cause.

THE COURT: What is principal cause? What does counsel understand that to be?

MR. DOHERTY: Bias.

20 THE COURT: Let him be sworn on his voire dire.

The juror is sworn accordingly.

INTERROGATION BY MR. DOHERTY:

Q. Have you formed any opinion as to this defendant? A. Who is the defendant?

Q. Have you read about this case or heard of it? A. I have read about it and heard about it.

30 Q. Have you formed any opinion as to the defendant's guilt?

Objected to and excluded. Exception.

Q. Have you any prejudice against the defendant because of what you heard or read? A. I have no prejudice to any extent.

Q. You have no prejudice at all? A. No.

40 Q. Would the fact, if developed in the evidence, that this defendant was a strike-breaker, create any prejudice in your mind against him in that matter so that you might not be able to render an impartial verdict?

Proceedings in Drawing of the Jurors.

Objected to as not a proper line of inquiry.

Objection sustained. Exception by defendant's counsel.

Q. In this case, considering what you have heard or read of the facts, would you require any greater proof as to the innocence of this defendant, or any less proof as to his guilt, than you would require as to his innocence or guilt than you would in an ordinary case or a case about which you had not read or been informed? 10

Objected to. Objection sustained. Exception.

Q. Would it create a prejudice in your mind other than as in any other case?

Objected to. Objection sustained. Exception. 20

Q. In view of what you have heard or read about this case would it in any way interfere with your rendering a verdict on the evidence alone? A. I don't think it would.

MR. DOHERTY: We interpose a peremptory challenge.

The juror was accordingly rejected.

30

JUROR ADAM ZOLLER, drawn and called.

MR. DOHERTY: I ask the juror be examined for bias.

Objected to as not competent. Decision reserved while the juror is examined.

INTERROGATION BY MR. DOHERTY:

Q. Do you know the defendant? A. No.

Q. Did you know Frank Kenny, who it is alleged was killed by the defendant? A. No, sir. 40

Proceedings in Drawing of the Jurors.

Q. Have you read or heard anything about the facts of this case?

Objected to. Objection sustained.

Q. Have you conceived any prejudice against this defendant as the result of any information that you have heretofore received concerning this
10 case?

Objected to that such a prejudice is insufficient in law to disqualify him. Objection sustained. Exception.

MR. DOHERTY: I submit the challenge.

INTERROGATION BY MR. VICKERS:

Q. Will you render a verdict according to the evidence no matter what opinion you may have
20 formed concerning the merits of this case? A. I will.

THE COURT: The juror may be sworn.
Exception by defendant.

MR. DOHERTY: We challenge peremptorily.
The juror was accordingly rejected.

HENRY COHEN, drawn and called as a juror.

MR. DOHERTY: Defendant challenges for
30 principal cause on the ground of bias.

THE PROSECUTOR: We object that this is not a proper cause of challenge. It must be that the juror has formed or expressed an opinion inimical to the defendant. He can be examined as to that opinion.

THE COURT: I will allow the defendant to examine this juror. Swear him on the *voire dire*.

40 The juror was then sworn accordingly.

Proceedings in Drawing of the Jurors.

INTERROGATION BY MR. DOHERTY:

Q. Do you know the defendant Michael Rom-
bolo? A. No.

Q. Did you know Frank Kenny, alleged to have
been killed by this defendant? A. I did not.

Q. Have you formed any opinion adverse to this
defendant such as would interfere with a fair and
impartial decision as a juror in deciding this case
on the evidence exclusively? A. No, sir. 10

Q. You are entirely indifferent in this matter
as between the State and the defendant? A. Yes.

This juror was thereupon sworn as a juror
in this case.

GEORGE S. FORCE, drawn and called as a juror.

MR. DOHERTY: Are you over sixty-five
years of age? 20

JUROR: Yes.

MR. DOHERTY: We challenge.

Objected to as not the proper way to chal-
lenge. Challenge allowed.

JOHN F. RILEY, drawn and called as a juror.

MR. DOHERTY: Are you sixty-five? 30

Objected to as not proper.

THE COURT: That is not the proper way
to challenge. Ask him on his voire dire.

Exception by defendant's counsel.

Juror sworn on voire dire.

MR. DOHERTY: What is your age?

JUROR: Fifty.

Challenged peremptorily by defendant.

Proceedings in Drawing of the Jurors.

MICHAEL FLANNIGAN, drawn and called as a juror, did not answer.

THE COURT: Did he answer this morning?

CLERK BOWLY: I don't know. Mr. Kelly called the list this morning.

10 THE COURT: You may proceed to call the next juror.

MR. DOHERTY: I object to the jurors being called out of turn.

THE COURT: Very well. Mr. Bowly, you will not call any juror until we find out about the juror that has been last called.

Pause.

MR. BOWLY: I have received word from the Clerk that Mr. Michael Flannigan did not answer the roll call this morning.

20 THE COURT: He did not appear?

MR. BOWLY (Clerk): He did not answer the roll call this morning.

THE COURT: You may proceed, Mr. Bowly.

MR. DOHERTY: We object that no sufficient cause for Mr. Flannigan's absence has been shown.

THE COURT: Proceed. I overrule the objection. Call the next juror.

MR. DOHERTY: We except.

30

LAWRENCE ROSENBAUM, drawn and called as a juror.

MR. DOHERTY: We challenge for principal cause, for age.

THE COURT: Swear the juror on his voire dire.

Juror sworn accordingly.

40 MR. DOHERTY: How old are you, Mr. Rosenbaum?

Proceedings in Drawing of the Jurors.

JUROR: Eighty.

MR. DOHERTY: We challenge for cause.

THE COURT: Challenge sustained.

JAMES F. NESS, drawn and called as a juror.

MR. DOHERTY: Challenge for principal
cause on account of age. 10

THE COURT: The juror may be sworn for
examination.

Juror sworn for examination.

MR. DOHERTY: What is your age?

JUROR: Fifty-six.

MR. DOHERTY: The challenge is withdrawn.

The juror not being further challenged was
sworn as a juror in this case.

20

EDWARD DORAN, being drawn and called as a
juror, did not answer or appear.

THE COURT: Did he appear this morning?

CLERK: No.

THE COURT: You may proceed.

MR. DOHERTY: We object on the ground
that there should be a valid ground shown for
the juror's absence.

30

CHARLES A. KING, drawn and called as a juror:

MR. DOHERTY: Challenge for age.

THE COURT: Swear him on his *voire dire*.

Juror sworn accordingly.

MR. DOHERTY: What is your age?

JUROR: Seventy, very soon.

THE COURT: You may sit down, Mr. King.

40

Proceedings in Drawing of the Jurors.

HENRY G. JACKENS, drawn and called as a juror.

MR. DOHERTY: We challenge for age.

THE COURT: Let him be sworn on his voire dire.

Juror sworn accordingly.

MR. DOHERTY: What is your age?

JUROR: Fifty-four.

10

Challenged peremptorily by defendant.

CLERK BOWLY: That exhausts the names I have in the box. Seventeen jurors are engaged in the trial of other cases. There are now seven jurors in the jury box.

20

THE COURT: You may deposit in the box the balance of the names of the general panel and from them proceed to draw the balance of the jurors necessary to fill the jury box for this case.

30

MR. DOHERTY: We object on the ground that the special panel served has not been exhausted in a legal sense, and we are short only because of the failure of special panel jurors to appear, or because they are engaged in other cases. The defendant does not waive any legal objection he may have. All of the special panel should have been free and available for this case.

THE COURT: As to those that did not appear there is no ground for the objection. But it appears that there are seventeen men now serving in other cases. What have you to say as to that, Mr. Prosecutor?

MR. HUDSPETH: We had such a case before your Honor, but it did not go up.

MR. VICKERS: Where a juror has not been present cases have gone up.

40

THE COURT: About that there is no diffi-

Proceedings in Drawing of the Jurors.

culty. But here are seventeen men actually present in this court house, engaged in other cases, who are listed on this special panel, and yet they are not available in this case. I will hear the Prosecutor on that.

Recess for ten minutes.

THE COURT: I will hear what you have to say, Mr. Prosecutor.

10

MR. HUDSPETH: The statute seems to be very broad. It provides that if for any cause a juror does not respond and the forty-eight names are exhausted, the Court may proceed to draw talesmen from the general panel, and when the general panel is exhausted the Court may direct the Sheriff to make the required number from those present in court. It seems to me that if jurors called are found to be engaged in the trial of other causes they are absent for legal cause; otherwise the Court might be held up indefinitely.

20

THE COURT: I have ruled in two cases before this that the challenge which Mr. Doherty interposes is in the opinion of this Court a good challenge. I do not think that the law provides that the defendant shall have the names of the jurors in a special panel as some mere vapping of the law. I think it is a substantial right that he has, to get a list of the jurors who are going to try his case, in order that he may inquire something about them, so that he may know whether he ought to challenge them when they are called. The reason of the law is, it seems to me, that the defendant shall have an opportunity of examining the names of the panel of jurors. If I should see that out of the special panel of forty-eight names there should be twenty or twenty-five men who did not appear, it would seem to me

30

40

Proceedings in Drawing of the Jurors.

10 I would not go on with the case. The difficulty is that the seventeen jurors engaged in other cases are here in other courts in this building, and they are trying other cases, when in fact they should be here in this court room by reason of being on this special panel. If a few men are sick the defendant does not lose a substantial right; but if so many do not appear who could be on the jury, the defendant is prejudiced by their non-appearance if the Court should direct other jurors to be drawn from the general panel.

We will adjourn until two o'clock this afternoon in order to see whether we can get the other jurors here.

20 The jurors who have been sworn in the case will be kept together by the proper officers of the Court.

(Recess accordingly.)

After the recess the Court reconvened and proceedings were had as follows:

THE COURT: Have you some other names, Mr. Bowly?

MR. BOWLY: Yes. Nine.

30 THE COURT: You may put in the names you have.

MR. DOHERTY: I object to having a partial list of the jurors put in the box. The defendant is entitled to the names of all the jurors who are available in order to intelligently and adequately exercise his right of challenge.

THE COURT: We are going to have all the jurors' names in the box who are available.

40 MR. DOHERTY: That is a subterfuge.

Proceedings in Drawing of the Jurors.

THE COURT: It is not a subterfuge. What are you objecting to?

MR. DOHERTY: To putting a partial number of the jurors in the box and leaving out the remainder, for the reason that we have only a certain number of challenges remaining, and if the jury is to be drawn in that piecemeal manner we will exhaust our right of challenge, and then when other jurors are put in the box and called we may not have any challenges left. 10

THE COURT: The Clerk may put the names in the box and draw jurors.

MR. DOHERTY: I ask an exception to your Honor's ruling.

THE COURT: I do not think you are entitled to an exception. Your objection may be noted. 20

MR. DOHERTY: I would like to know the identity of the jurors whose names are now put in the box.

THE COURT: They are names on the panel of forty-eight jurors served on the defendant according to law.

MR. DOHERTY: I ask that the Court make the proper inquiry that the defendant may be informed who those jurors are.

THE COURT: I will not. The Clerk will proceed to draw other jurors. 30

MR. DOHERTY: I ask that my objection and exception to your Honor's ruling may be noted.

The Clerk thereupon drew names of jurors from the wheel box, the first one called being GEORGE DONOVAN.

MR. DOHERTY: Challenge for principal cause on the ground of bias. 40

Proceedings in Drawing of the Jurors.

THE COURT: Swear the juror.
Juror sworn on voire dire.

INTERROGATION BY MR. DOHERTY:

Q. Do you entertain any prejudice against this defendant? A. No, sir.

Objected to as immaterial.

10

Q. Do you entertain any prejudice against this defendant such as would interfere with a fair and impartial exercise of your duties as a juror, or would interfere with your rendering a verdict according to the evidence as given? A. No, sir.

Q. Do you know the defendant? A. No, sir.

Q. Did you know Frank Kenny, alleged to have been killed by the defendant? A. No, sir.

20

Q. Were you present this morning during the calling of the jurors?

Objected to as immaterial. Objection sustained. Exception.

MR. DOHERTY: I submit the challenge.

THE COURT: The juror may be sworn. There being no challenge the juror may be sworn.

MR. DOHERTY: We could not exercise our right of peremptory challenge until the Court ruled on our challenge for cause.

30

THE COURT: Do you challenge him peremptorily?

MR. DOHERTY: I have already challenged.

THE COURT: You have not.

MR. DOHERTY: I rely on my statement before.

THE COURT: You will answer my question. You have brought me to the limit of my patience. I will not permit these quibbles. Do you challenge the juror?

40

MR. DOHERTY: We challenge him peremptorily.

Proceedings in Drawing of the Jurors.

JOHN TAYLOR, drawn and called as a juror.

MR. DOHERTY: The defendant challenges the juror for age.

THE COURT: He may be sworn.

The juror is sworn on his voire dire.

INTERROGATION BY MR. DOHERTY:

Q. How old are you? A. Seventy, nearly 10
seventy-one.

THE COURT: You may be excused, and sit down.

The names being exhausted when ten jurors were in the jury box, the clerk announced he had no more names.

MR. VICKERS: I would like to know whether the other jurors engaged in other cases who 20
are part of this special panel are still engaged in those other cases.

MR. BOWLY (Clerk): They are still engaged.

THE COURT: How many have you put in the box now?

MR. BOWLY: Nine, and eight are now engaged in the trial of a case before Judge Campbell.

MR. HUDSPETH: Were those eight actually 30
empanelled at the opening of Judge Campbell's court this morning?

MR. BOWLY: They were empanelled yesterday about three o'clock and are still serving in the same case.

THE COURT: I think you may put in the box the balance of the general panel from which to draw the balance of the jury.

MR. DOHERTY: I would like to have it noted on the record that we object to that 40
procedure.

Dr. Raymond Hendrickson—Direct.

The Clerk then proceeded to call further jurors, the first one being GEORGE BERTMAN. He was not challenged, and he was sworn in this case.

When the twelfth juror was called, namely, LOUIS FISCHBACH, the defendant's challenges were
 10 exhausted.

Fischbach was sworn as a juror, making the twelfth juror in the jury box and sworn to try this case.

The jury as thus constituted was thereupon called, and each of them was found to be present in the box, each juror having been sworn and accepted without challenge.

20 Mr. Vickers opened the case for the State, and told the jury facts the State expected to prove.

Thereupon witnesses were examined and other proceedings had as follows:

DR. RAYMOND HENDRICKSON, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

30 Q. You are a practicing physician in this city?
 A. No, sir.

Q. What is your profession? A. Ambulance surgeon at the City Hospital.

Q. Were you such on the 21st of April last? A. Yes.

Q. Do you remember being called to Union St., about eleven or some little time after eleven o'clock that night? A. Yes.

40 Q. With the ambulance? A. Yes.

Dr. Raymond Hendrickson—Cross.

Q. You received a call to go somewhere? A. Yes.

Q. Did you go there? A. Yes; I answered the call.

Q. Did you find anything had occurred there? A. When we reached the call we found this man Frank Kenny, apparently dead, in a drug store, with a gunshot wound in the chest, and a cut on his face about one inch and a half from the median line. He had lost considerable blood, as appeared from the surroundings. 10

Q. What drug store was that you found him in? A. West Side Avenue.

Q. What did you do with him? A. Pronounced him dead and left the body there.

Q. I show you a photograph, please look at it and see if you identify the person delineated there? A. Yes. I think I could. 20

Q. Who is it? A. Why Frank Kenny was the name given me by the officer.

Q. Is that the man you say you found in the drug store and who you said was dead at the time? A. Yes.

Objected to as leading. Question allowed.

Photograph marked for identification S-1 for identification.

30

CROSS EXAMINATION BY MR. DOHERTY:

Q. You did not know Frank Kenny in his life time? A. No.

Q. You don't know whether the man was named Frank Kenny or not? A. I took the officer's word for it.

Q. Did you pursue your examination of the body beyond the examination of the chest? A. No.

Q. You did not look at his face? A. I did.

Q. Was the body clothed at the time you saw it? A. Partially. 40

Dr. Raymond Hendrickson—Re-Direct—Re-Cross.

Q. What clothing had been removed before your arrival? A. Just his shirt was unbuttoned.

Q. What was there characteristic about the wound that warrants you in saying it was a gunshot wound? A. I couldn't say positively it was a gunshot wound.

10 Q. All your testimony is based on what was told you by others, beyond the fact of your mere arrival at the place where the body was.

Objected to as not describing correctly the testimony of the witness. Question allowed.

A. The only thing I can say was I took his name from the officer there.

RE-DIRECT BY MR. HUDSPETH:

20 Q. Did you take the fact of the death of this man from anyone? A. No, sir.

Q. Where did you ascertain that? A. I never asked any questions.

Q. How did you know he was dead? A. By my examination.

Q. Your own examination? A. Yes.

Q. And you reached the conclusion he was dead? A. Yes.

30 Q. Can you identify the officer who was there at the time? A. I don't think I could.

Q. Have you seen him in court here to-day? A. I don't believe I could recognize him.

RE-CROSS EXAMINATION BY MR. DOHERTY:

Q. What test did you reply to the purpose of ascertaining whether the injured person was alive? A. I used a stethoscope to ascertain whether the heart was still beating or not.

40 Q. And you concluded it was not beating because you could not hear it? A. That was my examination.

William R. Harrison—Direct—Cross.

Q. You don't know whether it was beating or not? A. Yes, I do.

Q. Could it not beat without your hearing it? A. I don't think it could with the stethoscope.

Q. Were there people in the drug store? A. Yes.

Q. Was there any conversation there? A. I did not hear any. 10

Q. Will you dispute there any conversation there? A. There might have been.

WILLIAM R. HARRISON, called by the State and sworn testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Reside in Jersey City? A. Yes.

Q. What is your business? A. Photographer. 20

Q. Have you done photographing for the prosecutor? A. Yes.

Q. Were you requested to make a photograph in this case of the dead man Frank Kenny?

Objected to as irrelevant, immaterial.

Question allowed.

Q. Did you take these two photographs? A. Yes.

Q. Where? A. At Maguires morgue, April 22nd, 1916. 30

Q. The photographs represent whom? A. One Frank Kenny.

Photographs offered in evidence.

Q. Was that man dead or alive when you took the photographs? A. Dead.

CROSS EXAMINATION BY MR. VICKERS:

Q. Did you get your directions from the Assistant of the Prosecutor? A. Yes. 40

Henry Paradise—Direct.

Q. And in making the photograph you just carried out those directions? A. Yes.

Q. And the directions were to photograph the naked body of Mr. Kenny? A. I was not told to photograph the naked body, but that was the condition of the body when I reached the morgue; It was prepared for the autopsy.

10 Q. You took no photograph of the body dressed?
A. No.

THE COURT: The photographs are admitted in evidence. (Marked S-1 and S-2 JM.)

MR. DOHERTY: We object to the admission of the photographs in evidence on the ground that they have not been sufficiently proven.

20 THE COURT: Your objection is too late. The photographs were handed to you when the offer was made and you handed them back and made no objection.

MR. DOHERTY: I submit they should not be admitted.

THE COURT: I have ruled on that.

HENRY PARADISE, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

30 Q. Where do you live? A. 27 Prescott street.

Q. What is your business? A. Assistant undertaker.

Q. Are you connected with any undertaking establishment? A. Yes; Joseph J. Maguire, Morgue Keeper, Grand and Arlington Avenue.

Q. Was that his place of business on the 21st of April last? A. Yes.

40 Q. He has a City Morgue? A. City and County both.

Henry Paradise—Direct.

Q. Do you remember the night of the 21st of last month going down to Union street and West Side avenue for a body? A. Yes.

Q. Did you go there? A. Yes.

Q. What with? A. Undertaking wagon.

Q. Did you have any one to assist you? A. Yes.

Q. Where did you go? A. To the drug store northeast corner of Union street and West Side avenue. 10

Q. Did you find a body there? A. Yes.

Q. Do you know whose body it was? A. Not then.

Q. Have you since ascertained? A. Yes.

Q. Whose was it? A. It was identified at the morgue as that of Frank Kenny.

Q. I show you photographs S-1 and S-2. Do you recognize the person represented there? A. I do. 20

Q. Is that the body of the man you found at Union Street and West Side avenue in the drug store? A. Yes.

Q. What did you do with him? A. I took him from the drug store and disrobed him and prepared him for the autopsy.

Q. This man was dead when you took him from the drug store? A. Yes.

Q. Was an autopsy performed on the body? A. Yes; in Maguires morgue. 30

Q. When? A. Next day.

Q. Were you present at the time of the autopsy? A. Yes.

Q. When you prepared the body of this man for the morgue, what did you do with it? A. Put him on a slab and disrobed him.

Q. Do you remember what clothing you took off him? A. Yes.

Q. What? A. Black overcoat, blue suit of clothes, white shirt with a stripe in it, gray under- 40

Mrs. Elsie Kenny—Direct.

wear, black patent leather shoes, and a green soft hat.

Q. Could you identify the overcoat? A. I could.

Q. Do you recognize this overcoat I show you?

A. Yes. That is the overcoat.

Q. Look at that coat carefully and tell us whether it is in the same condition now as it was
10 when you took it from this man's body? A. Yes, sir; practically the same condition.

Overcoat offered in evidence by the State.
Admitted and marked S-3.

No cross examination.

MRS. ELSIE KENNY, called by the State and sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. VICKERS:

Q. Are you the wife of Frank Kenny, deceased?

A. I am.

Q. What is your age? A. Twenty-three.

Q. How old was Frank? A. Twenty-eight.

Q. When did you last see Frank Kenny alive?

A. About half-past ten.

Q. What date? A. Twenty-first of April.

Q. Do you remember the day of the week? A. Friday.

30 Q. Good Friday? A. Good Friday.

Q. On that evening had you been out with him anywhere? A. Yes. We had been visiting churches down in the city.

Q. Do you know this defendant Rombolo here; did you see him on that night? A. Yes.

Q. Where did you see him first? A. When I was standing on West Side and Union Street, on the corner.

40 Q. Is there a drug store there? A. Yes, on the corner.

Mrs. Elsie Kenny—Direct.

Q. Is that the drug store to which your husband was afterwards taken? A. Yes.

Q. Do you know the name of that drug store? A. Koblins.

Q. At the time you saw this defendant at the drug store, corner Union avenue and West Side avenue, where was your husband? A. In Allens candy store, about a half block from where I was. 10

Q. Was it at the drug store or on one of the other corners of Union and West Side avenue you first saw this defendant Rombolo? A. I was standing on the side where the saloon was, near my home that is across the way from the drug store.

Q. Did the defendant then say anything to you? A. Yes. He tried to bunk into me, and said Hello Chicken, and other insulting remarks.

Trying to bunk into me is objected to. 20

THE COURT: You may tell what happened.

Q. Tell what he did? Describe his movements, if you can. A. He bunched his arm into me and I got frightened, the looks of him scared me, and he said hello chicken and I looked in the direction of my husband and seeing him coming I walked towards my husband.

Q. Were you then walking in the direction of your home or away from your home? A. Away. 30

Q. How far from that corner was your home at that time? A. In the middle of the block.

Q. In the opposite direction from the candy store? A. Yes.

Q. Did you meet your husband? A. Yes.

Q. When you met your husband did you continue walking away from your home, or toward it? A. Towards our home.

Q. Did you then walk in the direction of this defendant and past him or in another direction? 40

A. We passed him.

Mrs. Elsie Kenny—Direct.

Q. In walking past him did you again see the defendant or hear him? A. Not until we were one door from home; he started to use profane language, and my husband asked him who he was talking to, and he said I'll give you fight and my husband said you better move on.

Q. At this precise moment was the defendant on
10 the same side of the street where your home is?
A. Yes.

Q. Was the defendant then in the street or on the sidewalk? A. On the street.

Q. Where were you? A. Walking down the gutter.

Q. By that you mean on the street also, on the roadway? A. Yes.

Q. In walking from the point where you passed the defendant when you were walking with your
20 husband to get to your home, did you have to cross your street, or was your home on the same side of the street where you were walking? A. It was on the same side.

Q. What did you do then? A. When my husband turned around and asked what he wanted I pulled him across the street away from Rombolo.

Q. When you heard this man, this defendant, were you and your husband walking towards your home, or what? A. We were walking towards
30 our home.

Q. And as you were doing that, in what position was the defendant with respect to you, and was he standing still or walking? A. He was walking, following us.

Q. Was he also on the sidewalk at that time?
A. Yes.

Q. You stepped down with your husband from the sidewalk first did you? A. Yes.

Q. After your husband spoke to this man what
40 did the defendant do to your husband, if anything? A. He said Do you want to fight? and

Mrs. Elsie Kenny—Cross.

Frank told him no, and said Go on you wopp about your business; and then this man put his hand in here and pulled out a revolver and fired a shot, and Frank fell at my feet and I screamed.

Q. You mean he reached inside of his coat and pulled a revolver? A. Yes.

Q. At that moment when he put his hand inside of his coat and pulled the revolver, how far was Frank from him? A. About two feet. 10

Q. Can you show by any object in the court room the distance you call two feet? A. From me to the end of this desk.

MR. VICKERS: —Mr. Doherty, what distance would you call that?

MR. DOHERTY: Four or five feet.

Q. After your husband fell what did the defendant do? A. He run down Union street. 20

Q. When next after that, after your husband had been shot and this defendant had run away, when next did you see the defendant Rombolo and where? A. I did not see him after that.

Q. Do you mean now, to-day, is the first time you have seen him since? A. Yes.

Q. Were you at the drug store when Dr. Henderson came there? A. Yes.

Q. At the time the Doctor pronounced your husband dead? A. They were just taking me out of the drug store. 30

Q. Do you know that your husband was afterwards buried? A. Yes.

Q. I show you S-1 and S-2; are they photographs of your husband? A. Yes.

CROSS EXAMINATION BY MR. DOHERTY:

Q. You lived on the south side of Union Street, didn't you, that is the side towards Bayonne and not the side towards West Hoboken? A. Yes. 40

Mrs. Elsie Kenny—Cross.

Q. You and your husband travelled home that night on a car, I presume? A. Yes.

Q. Trolley car? A. Yes.

Q. And got off where? A. West Side and Union Street.

Q. Your house was down West Side and Mal-lory Avenue; this street on the west? A. Yes.

10 Q. You got off the car at the North side of Union Street, that is the nearest crossing? A. Yes.

Q. And your husband left you to go to a candy store nearby? A. Yes.

Q. And that candy store you say is Allens? A. Ellens.

Q. And that is on West Side Avenue between Union Street and—? A. Union and Clendenny.

20 Q. Then did your husband go back over the route that the car had come, or did he go still further down West Side Avenue? A. He came towards me after he left the store.

BY THE COURT:

Q. After he got off the car to go to this candy store did he have to go back a half block or go right over? A. He went back a half block.

BY MR. DOHERTY:

30 Q. And he left you standing on a corner? A. Yes; on the corner of the saloon where our home was.

Q. He left you standing on the saloon corner? A. Yes.

Q. That was the corner on the west side of West Side Avenue and on the south side of Union St., is that correct? A. (No answer.)

40 Q. How long were you standing there before the man you spoke of approached you? A. About a couple of minutes.

Mrs. Elsie Kenny—Cross.

Q. Had your husband left your side? A. He was just coming towards me and noticed the Italian bothering me.

Q. He was coming out of the candy store? A. Yes.

Q. From what direction did the man you describe as an Italian come from? A. From West Side Avenue. 10

Q. You were standing on West Side Avenue? A. West Side and Union, right on the corner.

Q. From which direction did he proceed, was it from the north, or from the south, or did he come up Union Street? A. He came from West Side, right around the corner.

Q. Around the corner into what street? A. Into West Side Avenue.

Q. Into West Side Avenue, how did he come out, from Clendenny Avenue or Boyd Avenue? A. 20
From Boyd Avenue.

Q. Then he came from the south as you were standing on the southwest corner? A. (No answer.)

Q. Did he pass you at all? A. Yes; he passed and then he passed that remark.

Q. Where was this man when you saw him first; the exact spot? A. On West Side Avenue.

Q. How far south of Union Street when you saw him first? A. I couldn't say that. 30

Q. How near was he to you when you saw him first? A. I was standing right by the saloon when he came past me. I did not take notice what way he came.

Q. Did you see him at all before he came up right where you were? A. No, sir.

Q. Then you are not certain when you say he came north on West Side Avenue or that he came up from the direction of Boyd Avenue? A. I knew he came from around the corner, but I did 40
not bother; I was looking for my husband.

Mrs. Elsie Kenny—Cross.

Q. Around what corner do you mean he came?
A. He came around the corner.

Q. Tell us how he walked—did he walk to West Side Avenue and then turn around to the left and go down to Union; or did he come down Union and then walk with his right to West Side Ave.?

A. He came down Union right where I was standing and then passed the remark and then went back again to West Side, and then stood on the corner there.

Q. You were on the corner too? A. He was further than I was.

Q. Which of you were standing on the corner; you or he? A. I was.

Q. And he was not standing on the corner; he was standing down the street, was he not? A. About a half a foot from me.

20 Q. At any time after the man spoke to you, did that man go down West Side Avenue and stand nearer to an airdome that is there? A. No, sir.

Q. You are in a position to testify to his movements right after he spoke to you, because you watched him? A. Not after he passed that remark; I got scared and I just looked at him.

Q. Did you look at him again after he passed that remark to you? A. No, sir.

30 Q. Then you don't know what became of the man who spoke to you because you did not continue to look at him? A. I took my husband's arm and went towards him.

Q. Then you don't know what became of the man who spoke to you because you did not continue to look at him? A. Yes, sir. When I turned around I knew it was the same.

Q. How do you know it was the same man you saw then? A. Because I couldn't forget his face;
40 the sight of it made me afraid.

Mrs. Elsie Kenny—Cross.

Q. His face made an impression on your mind?

A. Yes.

Q. You testified at the inquest? A. Yes.

Q. Were you asked this question: "Would you recognize the man?" and did you answer "Hardly, I did not look at him enough." (Page 10.) A. I said that; but when I seen his picture in the paper before I seen anything I said that is the man who killed Frank. 10

Q. So that up to the time you saw the defendant's picture in the paper you did not have any mental impression of the appearance at all of the man whom you saw at West Side Avenue and Union Street?

Question objected to. Question allowed.

Question read by direction of the Court.

BY MR. HUDSPETH:

20

Q. Do you understand that question?

Interruption objected to. Objection overruled.

Exception.

A. Yes, sir.

BY MR. DOHERTY:

Q. What is the answer? A. After the shooting I got hysterical and I did not remember anything for a while after. 30

Q. How long was the inquest held before you saw the defendant's picture in the newspaper? A. I guess about a week.

Q. And at the time of the holding of the inquest you were not in a position to recognize the man who spoke to you on this evening at West Side Avenue and Union Street?

Objected to as calling for a mere conclusion on her part. Question allowed. 40

Mrs. Elsie Kenny—Cross.

Q. Do you understand the question? A. Yes, sir.

Q. Is it true that at the time of the inquest you could not recognize the man who spoke to you? A. Yes.

Q. And afterwards you were able to recognize him only on account of the suggestion that was
10 contained in the picture you saw in the newspaper; is that true? A. Yes.

Q. So that you are identifying in this case only the picture in the newspaper and not the man who spoke to you at West Side Avenue and Union Street? A. Oh, I could tell it was the man.

Q. Then you did not testify at the inquest, would you recognize the man, and did you answer, "No, sir, hardly; I did not look at him enough?" A. Yes.

20 Q. And that was true when you testified, was it not? A. Yes.

Q. You have testified to-day that the man who spoke to you on that night nudged or touched you with his elbow. Did you so testify at the inquest?

Objected to unless it is shown she was asked as to that. Objection sustained. Exception.

30 Q. Were you asked the following question and did you give the answer I will read, at the Coroner's Inquest, namely;—

Objected to unless the question is asked for the purpose of contradiction.

MR. DOHERTY: It is asked for the purpose of showing an inconsistent statement.

Q. On last Friday night your husband met his death. Will you kindly tell the jury how and in
40 what manner he came to his death? Were you asked that by the Coroner? A. Yes.

Mrs. Elsie Kenny—Cross.

Q. "Answer:—We were coming home at 10:30 from the city, and he felt like eating candy, and he said 'You wait here and I'll get the candy.' And this Italian came up to me standing at Union Street, and said Hello Chicken—and watched me, and I saw my husband coming out of the candy store"—Did you so testify? A. Yes.

It is objected that the whole answer should be read. Objection sustained.

10

Q. I walked over when I seen my husband come out of the store, and as he got on the corner I met him in the gutter, and he noticed that the fellow was annoying me, and he said "Did he say anything to you," and I said "No, he did not"—and I started to walk down Union Street. The first thing I knew he was in back of my husband, cursing at him. I told Frank to come on, but he turned and said "Who do you mean, me," He said Yes, and he said I will give you a fight; and my husband turned to him, to his face, and he put his hand in here and pulled a gun. Did you so testify at the inquest? A. Yes.

20

Q. At the inquest you said nothing about the Italian nudging you. Can you account for your failure to say anything about that at the inquest?

Objected to. Objection sustained.

30

Q. At the time you testified at the inquest did you have any recollection of the fact that the man who spoke to you nudged or touched you with his elbow? A. No, sir; everything came back after.

Q. Everything came back after the inquest? A. Yes. I was hysterical like.

Q. Did you not know what you were testifying to at the inquest? A. Yes.

40

Mrs. Elsie Kenny—Cross.

Q. What came back to you after the inquest that you were not able to recall at the time it was held?

Objected to as immaterial. Objection sustained.

10 Q. Was it true that the Italian came up from Union Street, or did he come up from Williams Avenue? A. He came from Williams Avenue.

Q. Was it true that he passed you and said Hello Chicken? A. Yes.

Q. You were watching him when he said that; looking at him? A. Just gave one look at him. I was afraid.

Q. Were you facing him before he spoke to you? A. Yes.

20 Q. Were there other people on the sidewalk at the time? A. I did not notice.

Q. You don't know whether there were or not? A. No.

Q. You say you gave a very slight glance towards him at the time he spoke to you? A. Yes.

Q. How do you know he was speaking to you? A. Because he came right close to me.

MR. HUDSPETH: I want to get that. She made a sign with her elbow.

30 MR. DOHERTY: I object to the Prosecutor's statement.

THE COURT: The jury has noticed whether there was a sign.

Q. He came right close to you? A. Yes.

Q. Was that before or after you heard the expression Hello Chicken? A. It was as soon as he passed me.

40 Q. Do you mean as he came back, or after he passed? A. He came right by me.

Mrs. Elsie Kenny—Cross.

Q. On which side of you did he pass; right or left? A. Right.

Q. As you were facing Williams Avenue? A. No. I was facing towards Clendenny avenue.

Q. Then did he come up from the back of you? A. He came right around in front.

Q. Your back was turned to him as he approached? A. No. I was just about standing when he 10 came around this way, up around the front.

Q. Was there anything more said by this man to you than Hello Chicken? A. No, sir.

Q. He made no further advances towards you and did not speak to you again? A. No, sir.

Q. On the other hand, he turned around and went back some distance in the direction from which he had come? A. Yes.

Q. Just where was your husband when this man spoke to you, with respect to being on the street 20 or on the sidewalk? A. Coming over from Union Street.

Q. He was coming over towards you? A. Yes.

Q. Did you go to meet him? A. Yes.

Q. In which direction did you travel when you went to meet him; over towards the drug store corner, or did you go along the west side of West Side Avenue? A. Straight west.

Q. Do you mean you crossed Union Street to meet your husband? A. Yes. 30

Q. When the man said Hello chicken to you, did he say it with any accent which indicated to you what his nationality was? A. I could tell in a minute he was Italian.

Q. From what? A. He had a broken accent.

Q. When he said Hello chicken? A. Yes.

Q. Would you let us hear the accent he used when he said Hello chicken?

Objected to on the ground that this lady 40 might not be able to imitate, and not being

Mrs. Elsie Kenny—Cross.

an Italian herself might not have an accent.
Objection sustained.

Q. Did you form the conclusion that he was an Italian only from the way he said Hello chicken?

A. And from his looks.

Q. That is all? A. Yes.

Q. Were you asked this question at the Coroner's
10 Inquest and did you give this answer? What did you judge his nationality was? A. Italian; he said fighta—want to fighta. Did you testify like that before?

Objected to as not laying the foundation for contradiction. Objection sustained.

MR. DOHERTY: I want to show an inconsistent statement in which she said she based her identification of the man on one single
20 statement he made.

THE COURT: I will sustain the objection.

MR. DOHERTY: Exception.

Q. Do I understand correctly that your husband was coming out of the candy store just as this man spoke to you? A. He was crossing the street.

Q. Coming towards you? A. Yes.

Q. What was your reason then for staying on the same corner where you met the Italian, instead
30 of going to meet your husband at once?

Objected to as containing an unwarranted assumption of fact.

THE COURT: She said she crossed Union Street in an attempt to meet him.

Q. How long after the man spoke to you did you start over to meet Mr. Kenny? A. I couldn't say.

Q. Where did you meet Mr. Kenny with refer-
40

Mrs. Elsie Kenny—Cross.

ence to the distance between you and the candy store; did you meet him outside of the candy store? A. In the middle of the gutter on Union Street I met him.

Q. How far away then was the Italian you spoke of who spoke to you? A. I couldn't say.

Q. Do you know where he was? A. Right on the corner. 10

Q. You were not watching him to see whether he was still there or not. Now are you sure he was still near the corner, or still in that neighborhood, at the time you joined your husband in the middle of Union Street? A. Yes. He was standing at the corner because I could just see him standing there with a side glance.

Q. How many times did you look sideways at this man after this man spoke to you? A. Once.

Q. That was when your husband joined you in the middle of the street? A. Yes. 20

Q. Your husband asked you if this man had annoyed you or said anything to you? A. Yes.

Q. And what did you tell him? A. I said No, and I took him by the arm and we walked down the street.

Q. At the time you told your husband you had not been annoyed, you really felt that you had not been annoyed; is not that true? A. No. I did feel that I was. I was all upset by it. 30

Q. You were upset on account of the man saying Hello chicken, and saying nothing more, and then standing on the corner? A. Yes, and the looks of him.

Q. Did your husband say anything to him before starting down Union Street to go home? A. No, sir; not a word.

Q. Not a word? A. Not a word.

Q. Did the Italian say anything or had your husband before you and Mr. Kenny started down Union Street? A. He was cursing like mad. 40

Mrs. Elsie Kenny—Cross.

Q. I will ask you what cursing you heard him utter. What did you hear him say that you characterize as a curse? A. Shall I say the words out?

Q. Yes. I must ask you to say them. Did he use the word damn? A. S. B.

Q. That is son of a bitch; is it? A. Yes.

10 Q. What else did he say. I wish you would give us the expression.

THE COURT: Tell us whatever you remember he said.

A. You God damn son of a bitch, I'll get somebody to-night, he was saying on the corner there.

Q. When you tell us he was saying that do you mean he was repeating that expression or did he say it but once? A. Once I only heard him saying

20 it.

Q. As you and your husband started down Union Street? A. (No answer.)

Q. You don't know to whom he was talking at that time, do you? A. No, sir.

Q. And were you looking at him when he was thus expressing himself, or were you giving your attention to your husband? A. Looking at my husband.

30 Q. You don't know whether he is the one he said that to or not? A. He was the only one around.

Q. There was a saloon right on that corner? A. Yes.

Q. And you don't know whether that remark that you heard came from the saloon or whether it was from this man? A. I could tell it was from him.

Q. How could you tell it was from him? A. He was the only one around there.

40 Q. And you say he was the only one there al-

Mrs. Elsie Kenny—Cross.

though you were not looking in the direction where he was, do you? A. Yes.

Q. Is it not true that you don't know whether he was the only one there or not? A. I am quite sure he was the only one there.

Q. I am not asking you about your certainty. I am asking you whether you have any knowledge whether anybody else was there behind you at that time or not. A. (No answer.) 10

Q. Do you know or not? A. I didn't see anybody around.

Q. Did Mr. Kenny say anything to the man before you started down Union Street? A. No, sir.

Q. Did you hear anybody standing, an Italian or any other person, standing on Union Street at that time, say, What do you want? Did you hear that expression? A. No, sir.

Q. As you and Mr. Kenny walked down to your home did you have hold of your husband? A. I had him by the arm. 20

Q. Were you pulling him along? A. Yes.

Q. Your husband wanted to go back and fight this man, did he not? A. No. He was going to ask him what he wanted.

Q. How do you know that; did he tell you? A. Yes.

Q. He told you he was going to ask him what he wanted? A. Yes. 30

Q. Is there an electric light on that corner? A. No, sir.

Q. It is dark? A. Yes.

Q. And it was dark all the way from West Side Avenue down to the place where you lived, was it not? A. (No answer.)

Q. As the result of your state of mind after being addressed by this man, will you tell us that your memory is accurate as to everything that happened after that? A. Yes. 40

Mrs. Elsie Kenny—Cross.

Q. When was it you got the lapse of memory you say affected you when you were testifying before the Coroner, when was it you started to forget?

Objected to as not a fair characterization of her statement about her memory at that time.

10

THE COURT: —The jury has heard what she said. I will allow the question.

A. After the shooting.

Q. When you and Mr. Kenny were walking down Union Street, you walked out in the roadway? A. No. We went on the sidewalk.

Q. Did you reach the sidewalk by just walking over the cross walk, or did you reach it diagonally? A. Diagonally.

20

Q. About what point west of West Side Avenue did you and Mr. Kenny get up on the sidewalk; up above or below the corner.

THE COURT: You can indicate in this room if it is long enough.

BY MR. DOHERTY:

Q. Do you understand? A. Yes. I don't know just how far.

30 Q. How far did you walk along the sidewalk after you did get on the sidewalk? A. To our home?

Q. Yes. A. About one door to our home.

Q. That would be about twenty-five feet? A. I couldn't tell you.

Q. Do you mean you walked along the sidewalk until you got one door from your home? A. Yes.

Q. My question was how far on the sidewalk did you walk along the sidewalk to your home? A. How many houses do you mean?

40

Mrs. Elsie Kenny—Cross.

Q. Yes. A. About five.

Q. That would be about 125 feet; will you say that? A. About that I guess.

Q. While you were walking along the sidewalk did you see Mr. Kenny look back at all? A. No.

Q. The man who had spoken to you was then out of your sight, was he not, as you were walking along the sidewalk? A. We did not notice him. **10**
He was behind us, but we never knew it.

Q. Why do you say he was behind you when you admit you did not look back? A. We were within one door of our home when we started to cross again and he was right behind us.

Q. Will you swear that was the same man spoke to you on West Side Avenue? A. Yes.

Q. Did you testify before the Coroner that the man crossed nigh you while you were standing on West Side Avenue? A. I don't remember. **20**

Q. When he passed nigh you at Union Street what did he say? A. When we were near him?

Q. Yes. A. The same thing again.

Q. Repeat it? A. You God damn son of bitch, I'll fight you.

Q. You God damn son of a bitch I'll fight you? A. Yes.

Q. And that was the first thing he said when he came up behind you; was it? A. Yes.

Q. Did your husband answer him? A. He turned around and asked him who he was talking to. **30**

Q. Is that all that your husband said, Who are you talking to? A. Yes.

Q. Is it not true, as we read in your former answer before the Coroner that you said, He turned and said Who do you mean; me? Which was it your husband said? A. Asked him what he wanted.

Q. Did he say Who are you talking to? Who do you mean, me? Or ask him what he wanted? **40**
A. Asked him what he wanted.

Mrs. Elsie Kenny—Cross.

Q. Did he not say, Who do you mean, me? A. No.

Q. And he did not say Who are you talking to? A. No.

Q. And what did the man behind say in reply to that question, Who are you talking to? A. He says You; I'll give you fighta.

10 Q. Did you testify before the Coroner he said, Yes, I will give you a fight? A. Yes.

Q. And he was right on the sidewalk standing beside the two of you? A. Yes.

Q. At what point did you and your husband go out to the gutter; was it then or later on? A. It was then. I pulled Frank out to the gutter.

Q. Off the sidewalk? A. Yes.

Q. Why did you do that? A. I thought the Italian would hit him.

20 Q. You did it to save your husband? A. Yes.

Q. Had you said anything to your husband before you pulled him off the sidewalk after the Italian spoke to you? A. I just said Come away Frank, he might hit you.

Q. You testified at the Coroner's inquest, I told Frank to come in. Is that true? A. Yes.

Q. Which did you say, Come away Frank, he might hit you, or did you say Come in? A. I said both.

30 Q. Did your husband come away or not? A. He came towards me.

Q. Did the Italian follow him? A. He stayed right where he was.

Q. Did you and your husband continue to pass on together, or did you stand there? A. Just stood there.

Q. How long did you stand there? A. Not a half a minute, when he put his hand in there and pulled the revolver.

40 Q. During that half minute nothing was said

Mrs. Elsie Kenny—Cross.

by you or your husband or the Italian? A. No, sir.

Q. Did you still have hold of your husband?

A. I had him by the arm.

Q. And you attempted to hold him the half minute? A. Yes.

Q. Why? A. Why, I did not want him to go back and have any argument. 10

Q. Did he want to go back and have an argument? A. No. He just told him to go about his business.

Q. And from that you concluded your husband wanted to go back and have an argument and the Italian might hit him?

Objected to as immaterial. Objection sustained. Exception.

Q. Was your husband in motion or standing still when he was shot? A. Standing still. 20

Q. In what direction was he facing? A. Towards our house.

Q. Which side did he have turned to the man on the sidewalk?

Objected to. Objection sustained.

Q. Was your husband facing the man at the time he was shot, or did he have his side towards him? A. Facing him. 30

Q. Face to face? A. Yes.

Q. And standing still? A. Yes.

Q. Motionless? A. Yes.

Q. And so were you? A. Yes.

Q. And you were both silent? A. Yes.

Q. The defendant had a moustache at that time, did he not? A. Yes.

Q. Were you standing in the gutter at the time your husband was shot? A. Yes.

Q. And your husband was too? (No answer) 40

Mrs. Elsie Kenny—Cross.

Q. When I say in the gutter I mean right up near the curb. A. Near the curb he was.

Q. You were not standing out towards the middle of the road? A. No.

Q. You were standing by your husband's side? A. Yes.

Q. You were not behind him four or five feet?

10 A. No.

Q. With reference to the point where you and your husband were standing where was the defendant at the time the shot was fired; was he towards West Side Avenue, towards Mallory Avenue, or directly opposite you? A. Directly opposite.

Q. Standing about how far away from you? A. About two feet.

Q. You have already said that from where you are sitting to this rail here; is that the distance? 20 A. That is about the distance, yes.

Q. There was a house right at the point where you people were standing? A. Yes.

Q. Was there a fence around the area of that house? A. No.

Q. A hedge? A. No.

Q. Was the point where the shooting occurred more or less than 200 feet from West Side Avenue? A. I couldn't say.

30 BY THE COURT:

Q. How many houses from the corner was it, do you know, about how many houses down from West Side Avenue was it? A. About five houses from the saloon.

Q. Does the saloon run along Union Street? A. The side of it does.

Q. And then there were three or four other houses? A. About five other houses.

Mrs. Elsie Kenny—Cross.

BY MR. DOHERTY:

Q. One shot was fired? A. One shot.

Q. And the man who fired the shot immediately ran? A. Yes.

Q. There was nothing said by him immediately before the shot was fired? A. No sir.

Q. Did he have a bundle? A. He had a bag of buns. 10

Q. How do you know they were buns? A. I was told they were buns.

Q. In which arm did he carry it? A. I couldn't tell you.

Q. Did you see the bag? A. Yes.

Q. As the three of you were standing on Union Street did you see it? A. Yes.

Q. Had you seen it before? A. Yes.

Q. Will you state now all the man who spoke to you on West Side Avenue carried was a bundle? 20
A. Carried what?

Q. Carried any bundle or any bag? A. He carried a bag.

Q. You say that positively? A. Yes.

Q. When did you first notice he carried the bag?
A. When he stood by me.

Q. Is it not a fact that you testified to his possession of the bag only because somebody told you he had a bag? A. No, I seen the bag, and he had a bag. 30

Q. Was your husband excited or resentful at the time when you were down at Union and West Side Avenue?

Objected to as calling for a conclusion.

Objection sustained. Exception.

Q. Did your husband say anything more to you about the presence of the man at Union and West Side Avenue except to ask you whether he said anything to you? A. No sir. 40

Q. And that is all he said? A. Yes.

Mrs. Elsie Kenny—Cross.

Q. Are you sure? A. Quite sure.

Q. And going down Union Street your husband made no comment about the man standing upon the corner? A. No sir.

Q. At no time did your husband strike this defendant? A. No, sir.

Q. And did not threaten to do so? A. No,
10 sir.

Q. Is it not a fact that you and your husband were walking down Union Street in the middle of the roadway as the defendant walked down in the same direction on the sidewalk, and that your husband left your side and rushed at the defendant, and that they had a fight? A. No, sir. We were on the sidewalk.

Q. Your husband did not at any time move towards the defendant? A. No, sir.

20 Q. But you say, always at your suggestion or with your guidance he moved away from the defendant. Is that true? A. Yes.

Q. How far is the street on which you live on Boyd avenue? A. Two blocks.

Q. Since the Coroner's inquest have you called at Police Headquarters in Jersey City?

Objected to as immaterial.

THE COURT: What is the purpose of that?

30 MR. DOHERTY: She testified that at the Coroner's inquest she was unable to recall certain circumstances which she has now testified to.

THE COURT: She says when she saw this picture in the paper that she immediately recognized it. I will sustain the objection.

MR. DOHERTY: Exception.

THE COURT: You may have one.

MARK A. SULLIVAN.

40 Q. You have not seen the defendant at all since that night until to-day? A. No, sir.

Mrs. Elsie Kenny—Re-Direct.

Q. Were you ever requested by the police authorities to identify him?

Objected to as immaterial.

THE COURT:—Do you mean was she ever confronted with this man?

Q. You were never brought into the presence of this defendant for the purpose of identifying him, 10
were you? A. No.

Q. Have you rehearsed your testimony with anybody? A. No, sir.

Q. You received no suggestion from any source at all as to how you should shape your testimony on this trial? A. No, sir.

Q. Have you discussed your testimony with anybody at all before you came here to-day? A. No, sir.

Q. Not even with a representative of the Prosec- 20
utor? A. No, sir.

Q. You were not interviewed by Mr. Charlock—

Objected to as immaterial. Objection sustained. Exception.

MARK A. SULLIVAN.

RE-DIRECT EXAMINATION BY MR. VICKERS:

Q. I call your attention to this defendant and that he is now clean shaven, and ask you whether 30
at the Coroner's inquest and before you had seen his picture in the paper, you testified that the man who had shot your husband had a small black moustache? A. Yes.

Q. The man who you say shot your husband, is he the same man who nudged you at the corner? A. Yes.

Q. And is this defendant the same man who nudged you at the corner and who shot your husband? A. Yes. 40

Mrs. Elsie Kenny—Re-Cross.

Q. At the time of your husband's death how long had you been married? A. Five months.

Q. Do you know what your husband bought at this candy store?

Objected to as immaterial. Objection sustained.

10 Q. You say you know or that you do not know in which hand or under which arm the defendant carried this package of buns or bag? A. I couldn't say.

Q. Either at the time when he faced your husband when he was shot, or at the time he was on the corner, you can't say under which arm he carried the bundle or bag? A. No, sir.

20 Q. Up to this night and the time that this man accosted you as he did on the corner, so far as you know, had you ever seen that man or spoken to him? A. No, sir.

RE-CROSS EXAMINATION BY MR. DOHERTY:

Q. What period of time elapsed from when you first saw the defendant until the time he ran away—how many minutes elapsed? A. Do you mean after the shooting?

30 Q. No. From the time you first saw the man on the corner up to the time he ran away, was that a minute or less than a minute?

Objected to because the question confines the witness to a period of time which may not be sustained by the facts, was it a minute or less than a minute.

THE COURT: I think that is so. I think the first question was unobjectionable; that is, how long was it.

A. I couldn't say.

40 Q. Did you and your husband in walking down

Mrs. Elsie Kenny—Re-Cross.

Union Street walk along briskly or slowly? A. Slowly.

Q. And you got but three glimpses at the man altogether; first as he spoke to you, next as you looked sideways when your husband joined you; and third when he came down and followed you and spoke to you at Union Street? A. Yes.

Q. Those are the only three times you saw him? 10
A. Yes.

Q. And you don't know in which hand he carried the buns? A. No.

THE COURT: That is repetition. It has all been gone over.

Q. Do you know with which hand he fired the shot? A. No.

Q. Do you know where he obtained the revolver? A. Where he obtained the revolver? 20

Q. Yes. Did you see him take it out of his pocket? A. Out of his coat pocket. Yes.

Q. Which pocket? A. In here he put his hand.

Q. On which side?

MR. VICKERS: The witness says here, indicating with her right hand into the left breast.

Q. Do you mean to say that he put his right hand into the left inside pocket of his coat? A. Yes. 30

Q. And you say that you don't know in what arm he carried the buns? A. No, sir.

Q. Do you think he had the buns under his right arm? A. I did not notice.

Q. Did you see the buns? A. Yes, the bag.

Q. But you did not notice under which arm he carried it, but what you did notice is his 40

Mrs. Elsie Kenny—Re-Direct.

right arm put in his left side inside pocket? A. Yes, his hand.

Q. Did the defendant run away immediately, or was there any pause between the firing of the shot and the commencement of the defendant's flight down the street? A. No, sir.

Q. Did he start to run after or before the shot was fired? A. After.

Q. How soon after? A. Right after he done it.

Q. You say there was no pause at all. I ask you now to explain your testimony that he ran after the shot was fired?

Objected to as metaphysical.

THE COURT: I will say now that your examination must conclude now.

MR. DOHERTY: I ask an exception.

THE COURT: You may have no exception.

MR. VICKERS: I neglected to ask one question.

RE-DIRECT EXAMINATION BY MR. VICKERS:

Q. The building on the corner that you say is a saloon building, is that a long building? A. Yes, sir.

Q. It runs about a hundred feet along Union Street? A. Yes.

Q. And that is what you call about four houses along Union Street? A. Yes.

Dr. Arthur B. Haskings—Direct.

DR. ARTHUR B. HASKINGS, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. What is your business? A. Physician.

Q. Have you an official position in this county?

A. Assistant to the County physician.

Q. During the time the autopsy was performed on the body of Frank Kenny? A. I performed it as assistant County physician.

Q. Where, and what did you find? A. I performed it at Maguire's Morgue, Jersey City, April 22nd, last. The body was that of a man, Frank Kenny who measured about five feet four inches in height and weighed approximately 165 pounds, and of about 29 years of age. The body was clothed, in an overcoat, coat, vest, shirt, under-shirt, drawers, stockings and shoes. The coat was blood stained, and also mudstained or dirt-stained,—his overcoat, and also the front part of his coat and part of his vest. Above the pocket of the overcoat was a small hole, the fabric of it was broken; it was a circular shaped hole and penetrated through his clothing. His clothing was removed.

On examination of the nude body from the exterior, about three and a half inches above the left nipple and four inches to the left of the nipple, I found a circular shaped wound of the skin, or rather irregular shaped wound of the skin, not quite half an inch diameter. Also stain around the nose. No other marks of violence on external examination of the body.

On opening the body, the chest was found filled with a large quantity of blood. On turning the body over a considerable amount of blood escaped from the mouth before opening it. I found

Dr. Arthur B. Haskings—Direct.

an opening corresponding to the wound previously described and the second rib was perforated and broken. The upper part of the left lung was wounded; and passing along this wound to the root of the lung, that is where the lung comes together, I found that the bronchias and bronchial blood vessels were completely cut. The bronchias is the small end of the windpipe. Then passing
10 through the upper portion, or at least the top of the left lobe of it, the lung was similarly wounded, and I found an opening where the wound had continued through the aorta, which is the large blood vessel or main blood vessel of the body which passes down along the front and side of the spinal column. Then the body of the ninth dorsal vertebra, which would be about here, was wounded, and there had been a complete perforation through this body of the bone
20 of the vertebra or back bone. On examination of that it was found the spinal cord was completely cut. Then I found a lateral bruise of the vertebra, just a little piece of bone going to the right side had been broken. Then, lodged in the muscles of the back, on the right side, about at the shoulder blade, I found a leaden bullet, apparent calibre 38. The conditions of the other organs were such as to be consistent with continued health and life. Therefore I conclude that the death was from a bullet wound
30 involving the chest and aorta and spinal cord, the principal cause of death being hemorrhage; the hemorrhage resulting from the wound mentioned.

Q. I show you an overcoat. Have you seen that before? A. This is the overcoat I have referred to.

Q. Was that taken from the body of Frank Kenny? A. So it appears to me.

Dr. Arthur B. Haskings—Direct.

Q. Do you find perforations in that overcoat?
A. Yes sir, as I have stated.

Q. And do the perforations in the other clothing correspond with those? A. Yes.

Q. Did you examine the contents of that overcoat? A. No. Never.

Q. I show you two photographs, S/1 and S/2, and ask you if you recognize the person those photographs represent? A. That is the body on which I performed the autopsy to which I have testified, Frank Kenny, and this is the wound I have described. 10

Q. That is above the left nipple? A. $3\frac{1}{2}$ inches above the left nipple and four inches to the left of the nipple.

Q. How long have you been assistant of the County physician? A. Officially since 1910; unofficially since 1902. 20

Q. Have you performed many autopsies? A. Upward of two thousand.

Q. Familiar with gunshot wounds? A. In the course of my work I have had occasion to deal considerably with them, and also with my experience with fire arms.

Q. Have you had experience with fire arms? A. I have.

Q. Pistols and revolvers? A. I have.

Q. From your experience that you have described could you tell us, considering the wound that this man suffered from, from what angle the shot was fired? 30

Objected to as incompetent and not on proper foundation. Objection sustained.

Q. From your experience, from the post-mortems you performed and autopsies, and taking this wound into consideration that you have described

Dr. Arthur B. Haskings—Cross.

in the body of Frank Kenny, can you tell from what direction that pistol shot came?

Objected to. Objection sustained.

Q. Can you tell us what course that bullet took after entering the body? A. The general direction of the bullet. It had three actual deflections in the body due to bony substances. The
10 general direction was from above downwards, backwards, and to the right: the bullet, however, had been deflected by striking three bony substances; but that was the general direction.

CROSS EXAMINATION BY MR. DOHERTY:

Q. Was there any burning of the knap of the overcoat around the perforations you spoke of?
A. No.

20 Q. Or near them? A. No. I noticed no burning of the material anywhere.

Q. One entry of the bullet was pretty near the neck? A. I assume there was but one bullet entrance, there being but one bullet, and it was in the upper part of the chest, and then took the course I have described.

Q. And the first obstacle the bullet encountered was a rib? A. The second rib.

30 Q. Did you penetrate that rib or not? A. Penetrated it.

Q. And penetrated it throughout its thickness? A. The rib is larger than the bullet, and it penetrated the rib.

Q. And pursued a straight direction in that rib? A. The angle of impact had the appearance of a right angle, or close or approximately to a right angle.

40 Q. On breaking the structure of the rib the bullet continued on the same course? A. No. It was deflected downward about forty-five degrees.

Dr. Arthur B. Haskings—Re-Direct.

Frank Smith—Direct.

Q. Was that the only course of deflection? A. At that point. And then it struck the double column. That was the first deflection, on the rib.

Q. The first deflection was on the rib? A. Yes.

Q. Independent of any reflection, the direction of the bullet was from the left to right and backward? A. And downwards. The angle to the perpendicular would be about forty-five degrees. **10**

Q. Three inches to the left and above what? A. Four inches to the left and three and a half inches above and from the left nipple.

Q. How far from the spine was the bullet found? A. About an inch and a half. **20**

RE-DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Have you got that bullet? A. I have.

Q. Will you produce it? A. This is it.

Bullet offered in evidence. Objected to as irrelevant. Received as S/4. Exception.

FRANK SMITH, called by the State and sworn, testified as follows: **30**

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Where do you live? A. 121 Clendenny avenue.

Q. With whom? A. Mother.

Q. How old are you? A. Nineteen.

Q. Do you remember the shooting affair on Union Street on the 21st of last April? A. Yes.

Q. Where were you at the time? A. I was standing corner of West Side Avenue and Union street. **40**

Frank Smith—Direct.

Q. What did you then hear or see regarding the shooting? A. I first seen Frank Kenny and his wife in the middle of the street at West Side avenue, and I seen the Italian down near the nickelet.

10 Q. Where was the nickelet in reference to Union Street and Westside Avenue? A. On the right-hand side between Union Street and Williams Avenue.

Q. Is that north or south of Union Street? A. South.

Q. You saw the Italian first near the nickelet? A. Yes.

Q. What attracted your attention toward him? A. I seen him looking back at Frank Kenny and his wife and saying what do you want.

20 Q. How far were Frank Kenny and his wife away from the Italian at that time? A. About fifty feet.

Q. In which direction, where were they? A. Frank Kenny and his wife were corner of Union Street and West Side avenue, and the Italian was on West Side between Union and Williams avenue.

Q. What else did you see? A. The next thing I saw was Frank Kenny and his wife going down Union street—walking down on the street.

30 Q. What became of the Italian? A. He turned around and walked back of them on the sidewalk.

Q. How far did they continue apart? A. When they got down a little further the Italian was about twenty feet behind.

Q. How fast were Mr. and Mrs. Kenny walking? A. A slow walk.

Q. How fast was the Italian walking? A. Kind of fast.

40 Q. Did you keep your eyes on the three? A. Yes, sir.

Frank Smith—Direct.

Q. Why? A. Because I was following the Italian down.

Q. What next did you see or hear? A. The next thing I seen Frank Kenny and his wife stepped out from the gutter.

Q. How far from the sidewalk? A. I should judge about six feet.

Q. Still going along Union street? A. Yes, 10 sir, just going across the street.

Q. Where was the Italian then? A. On the sidewalk.

Q. Did you hear him do or say anything? A. Not then.

Q. What next did you see? A. Mrs. Kenny was trying to pull her husband away to the other side of the street, and as Kenny turned the Italian pulled a gun and fired a shot.

Q. How far was Kenny from him then? A. 20 Six or eight feet.

Q. Did Kenny say anything, or his wife, at the time this man drew his gun? A. No, sir.

Q. Did you hear the Italian say anything? A. No, sir.

Q. How far after Kenny and his wife had gone to go cross the street did the Italian go after he shot? A. About the middle of the street.

Q. Will you look at this defendant on trial; was he or not the man you described as the 30 Italian you saw near the nicklelet on West Side avenue? A. Yes.

Q. Was he or not the man you saw walking behind Mrs. Kenny as you walked down Union street? A. Yes.

Q. Was he or not the man you say you saw draw the gun and shoot Frank Kenny? A. Yes.

Q. What became of this man you mention as an Italian after you fired the shot? A. He run down Union street and I run back of him, and 40 when he got near the lots I lost sight of him.

Frank Smith—Direct.

Q. Did you notice whether he had a hat on or a cap? A. He had a hat on and he dropped the hat as he was running.

Q. Where? A. I should judge about three doors before he came to the lots on Union street.

Q. Did you pick up his hat? A. No.

Q. Did you see anybody pick it up? A. Yes.

10 Q. Who George Flaherty.

Q. Policeman? A. Yes.

Q. After you lost sight of him where did you go? A. Up Union street, until I saw Officer Flaherty coming down.

Q. On which side of the street did this man run? A. The left side.

Q. On the street or sidewalk? A. Sidewalk.

Q. Did he meet any one in his course to the vacant lots? A. No, sir.

20 Q. Did you see any one in the front of him? A. No, sir.

Q. Did you see any one chasing him? A. Only Flaherty, the officer.

Q. What time was this? A. About ten forty-seven.

Q. Was there any light there? A. Only one.

Q. An electric light? A. Yes.

Q. On Union street? A. Yes.

Q. Did you see this man pull his gun? A. Yes.

30 Q. Where did he pull it from? A. Inside of his pocket here.

Q. Did you see the motion of his hand as he sought for the gun? A. Yes.

Q. Did you see him draw it from his pocket? A. Yes.

Q. Did you notice with which hand he drew it? A. With his right hand.

Q. How far were you away from him when he fired the shot? A. About fifteen feet. I was

40 between them.

Frank Smith—Direct.

Q. You stood between Kenny and his wife and this Italian? A. Yes.

Q. Did you notice whether this man had anything in his hand? A. He had two bundles.

Q. In what form were they? A. They looked like buns—

Answer stricken out by the Court.

Q. What was he carrying? A. Bags, paper bags. 10

Q. Where did you see he had a bag? A. When he was standing at Williams and Union avenue.

Q. Do you know what became of the paper bag? A. No, sir. Afterwards I learned it had been found.

Q. Did you see it in his hand again? A. No sir.

Q. It had disappeared? A. Yes.

Q. When was it you last saw this paper bag in the hand of this man? A. When he was walking down Union street back of Kenny, and the last I seen it was when he pulled the shot out of his pocket. 20

Q. Did you notice what became of it? A. No sir.

Q. Did you notice whether he dropped it? A. No.

Q. But you did see it in his hand just before he pulled the gun? A. Yes. 30

Q. Are you sure of that? A. Yes.

Q. In which hand did you see the bag just before this man pulled this gun and fired this shot? A. In his left hand.

Q. In which hand did he have it before that when you saw him walking down the street with it? A. In his right hand.

Frank Smith—Cross.

CROSS EXAMINATION BY MR. DOHERTY :

Q. You were standing on the corner of West Side avenue and Union street before your attention was directed to anybody? A. Yes.

Q. How long had you been standing there up to that time? A. About half an hour.

10 Q. And the first time you saw the Italian was when he was standing in front of the nickolet? A. Yes.

Q. Afterwards he walked along with Mr. and Mrs. Kenny and said what do you want? Is that right? A. Yes.

Q. You were standing directly on one of the corners of Union street and West Side avenue? A. Yes.

20 Q. How far away were Mr. and Mrs. Kenny from the Italian when he asked what they wanted? A. About fifty feet.

Q. Did Kenny make an answer? A. I did not hear any.

Q. Were Mr. and Mrs. Kenny walking in the middle of the street then? A. They were on the sidewalk on Union street.

Q. How far below West Side avenue when you first saw them? A. When I first saw them they were about ten feet.

30 Q. Ten feet below the building line of the saloon on West Side avenue when you first saw them? A. Yes.

Q. And how far down West Side avenue was the Italian then? A. About fifty feet.

Q. Do you want us to understand that the Italian was calling to Kenny as Kenny was around the corner? A. No, sir.

Q. Was Mr. Kenny in the Italian's sight at the time he asked him what he wanted? A. Yes.

40 Q. How do you know that? A. Because I seen him.

Frank Smith—Cross.

Q. Then what do you mean by saying that the first time you saw the Italian he was fifty feet from Union street, and the first time you saw the Kennys they were ten feet from West Side avenue? A. I said before Kennys were in the middle of the street and the Italian was on the walk.

Q. Then it is not true that the first time you saw Kenny he was ten feet from West Side avenue, on Union street? A. No. 10

Q. Was the Italian standing in front of the air-dome? A. Yes.

Q. Where were the Kennys when the Italian started to move from there? A. Going down Union street. They were about three doors from their house.

Q. When the Italian started to move over to Union street, and then continued down? (No answer.) 20

Q. You followed behind the Italian? A. Yes.

Q. Why did you follow him? A. Well, I thought there was going to be a fight down there.

Q. What led you to believe that there was going to be a fight?

Objected to. Question allowed.

A. By the way he was talking.

Q. Who was talking? A. The Italian. 30

Q. What did he say? A. "What do you want?"

Q. And from that you made up your mind there was going to be a fight? A. Yes.

Q. Did he say anything else that you now remember? A. No, sir.

Q. Did Kenny say anything that you are able to forget?

Objected to.

Q. That you are forgetting? 40

Objected to.

Frank Smith—Cross.

Q. Do you remember Mr. and Mrs. Kenny saying anything back to the Italian? A. No, sir.

Q. Would you have heard it if they had? A. I would, I guess.

Q. How many times did the Italian say "What do you want"? A. I only heard him say it once.

Q. So that his conduct in standing by the
10 nickelet and saying "What do you want" once, led you to believe there was going to be a night?
A. Yes.

Q. Did I understand you to say that at the time of the shooting you were nearer to Mallory avenue than to the parties? A. Towards Mallory avenue. I was back of the Italian going towards Mallory. I was about fifteen feet behind him.

Q. Where were the Kennys at that time? A. They were in front of him on the sidewalk.

20 Q. I mean at the time of the shooting? A. At the time of the shooting Kenny and his wife stepped out into the gutter, his wife pulled him into the gutter.

Q. At any time after that did Kenny get back on the sidewalk? A. No, sir.

Q. At any time before Kenny was pulled into the roadway by his wife, was he walking in the roadway before his wife pulled him out there? A. No, sir.

30 Q. You say you saw the defendant carrying bundles in his right hand? A. Yes.

Q. And he changed them to the left? A. He had them in the left and changed them to the right—no; he had them in the right and changed them to the left.

Q. When did he change them to the left? A. When he was going down Union street.

Q. You testified before the coroner, did you not? A. Yes.

40 Q. Was this question asked you and did you

Frank Smith—Cross.

give this answer? "Just state to the jury what you know regarding this case." And did you answer: "I was standing corner of Union street and West Side avenue and I seen Frank Kenny and his wife walk down Union street; this Italian followed, and as he followed them I walked down back of him. He pulled his gun out of the inside pocket and fired and as he fired I ran after him; 10 he went through the lots, and I stopped there." In that answer you said nothing of buns or bags?

Objected to. Excluded.

Q. Did anybody since you testified at the Coroner's inquest suggest to you that he changed the buns from his right hand to the left? A. No, sir.

Q. Are you acquainted with any of the Kenny family? A. No, sir. 20

Q. Are you acquainted with any relative of Mrs. Kenny? A. Yes; her brother.

Q. Is he a neighbor? A. Yes.

Q. A companion? A. No, sir.

Q. Did you at any time that night hear Kenny say anything to the Italian? A. No, sir.

Q. Did you hear the Italian say anything to him except "What do you want"? A. No, sir.

Q. Did you hear the Italian say "You son of a bitch, I'm going to get somebody to-night"? A. 30 No, sir.

Q. At the time the Italian overtook the Kennys on Union street you were then fifteen feet behind? A. Yes.

Q. Did the Italian at that time repeat the expression "son of a bitch"? A. I did not hear it.

Q. Did you hear Mr. Kenny say, "Who do you mean; me"? A. No, sir.

Q. Did you hear Kenny say "What do you 40 want"? A. No.

Frank Smith—Re-Direct—Re-Cross.

Q. There was no word spoken at all according to your best recollection? A. Not by Kenny.

Q. By the Italian? A. By the Italian there was.

Q. What? A. "What do you mean"?

Q. He said that when he was on West Side avenue? A. Yes.

10 Q. After that there was not a word spoken by any of these parties? A. Not that I heard.

Q. Did you hear Mrs. Kenny ask her husband to go in the house? A. No, sir.

RE-DIRECT EXAMINATION BY MR. HUDSPETH:

Q. How far do you say the Italian was following the Kennys before he shot? A. About fifteen feet behind them.

20 Q. Was that about the relative distance between the parties all the way down Union street while you were following? A. Yes.

Q. Did he get any nearer to them? A. He got nearer to Kenny when Kenny and his wife stepped out in the gutter, and then he got about six or eight feet to them.

Q. How far was he when he fired the shot from them? A. About the same distance.

Q. How far were you from the Italian then?

30 THE COURT: We have gone all over this before.

RE-CROSS EXAMINATION BY MR. DOHERTY:

Q. Did you see the Kennys get off a car? A. No, sir.

Q. Did you see any car there at the time? A. I did not notice any.

Q. Did you see Mr. Kenny coming across the street from the candy store? A. No, sir.

40 Q. Did you see Mrs. Kenny standing on the

Charles Smith—Direct.

corner of Union street where the saloon is? A. Not until I saw the husband come over.

Q. Did you see him come over? A. I did not see him come over, but I seen them both together there.

Q. And then they passed towards their home, down Union street? A. Yes.

Q. The airdome was not doing business there that night, was it? A. No, sir. 10

Q. There is a nickelet on the block above? A. Yes.

Q. And at the time when you were standing there were the patrons of the nickelet coming out? A. No, sir.

CHARLES SMITH, called by the State and sworn, testified as follows:

20

DIRECT EXAMINATION BY MR. VICKERS:

Q. How old are you? A. Eighteen.

Q. Where do you live? A. West Side Avenue.

Q. Did you see this shooting of Frank Kenny? A. Yes.

Q. Will you tell the Court and jury what you saw take place there? A. About ten-forty-five P. M. Good Friday night, I was standing corner of Union street and West Side avenue in front of the drug store there, and I noticed a man, apparently an Italian— 30

Defendant's motion to strike out "apparently an Italian," denied.

Q. Go on. A. He was walking slowly towards Union street, towards the airdome on West Side avenue, and he was hollering "What do you want, what do you want?" And I turned around and I saw Mr. and Mrs. Kenny standing on Union 40

Charles Smith—Direct.

street and West Side avenue, and then they slowly walked down Union street, and got down a little ways when the Italian followed, and they were about a door before their house when they stopped and the Italian caught up to them, and then there were some words spoken, I could hear the murmur but I couldn't say what they were; the
10 man put his right hand in his inside coat pocket and drew a gun and shot Kenny.

Q. At the moment Kenny was shot was he in the gutter or on the sidewalk? A. In the gutter.

Q. Did Kenny drop then? A. Yes.

Q. And what became of the man who shot Kenny then? A. Immediately ran down Union street towards Mallory avenue.

Q. Did this man who shot Kenny have any parcel or package in his hand at the time? A.
20 Yes.

Q. What? A. A bag.

Q. Did you follow him? A. No.

Q. Did you see Frank Smith, the witness who was here before you, on that street at that time? A. Yes.

Q. Do you know him? A. Yes.

Q. Are you related to him? A. No.

Q. Had you and Frank Smith been standing together on the corner just before this thing took
30 place? A. Yes.

Q. You and he were there conversing together? A. Yes, sir.

Q. Afterwards did you see the hat picked up by the officer or some other person there on that stretch along Union street towards the lots? A. No, sir.

Q. Do you know whether or not the defendant who is here on trial is the man whom you saw there and whom you say shot Frank Kenny on
40 this night in question? A. I ain't sure, no sir.

Charles Smith—Cross.

Q. When immediately after this shot was fired and the man who did the shooting ran away, did you go up to where Frank Kenny had fallen and where Mrs. Kenny was? A. Yes.

Q. Did you at that moment hear Mrs. Kenny say anything? A. Yes.

Q. What? A. She hollered, "Oh a wopp shot Frank, a wopp shot Frank."

10

CROSS EXAMINATION BY MR. DOHERTY:

Q. The first thing that attracted your attention was a man near the front of the air-dome asking the Kennys "What do you want"? A. Yes.

Q. Where were the Kennys then, crossing the street? A. No. Standing in the middle of Union street, on West Side avenue.

Q. The man who was talking to them was in the next block in front of the airdome? A. Yes.

20

Q. About a hundred feet away? A. About seventy-five.

Q. Then the Kennys walked down slowly to Union street? A. Yes.

Q. And you heard the man standing in front of the airdome say no more? A. No, sir. I heard him say nothing.

Q. Did the Kennys walk to their house all the way in the middle of the street? A. I couldn't say for sure whether they did or not.

30

Q. Did you testify at the Coroner's inquest? A. Yes.

Q. Were you asked this question: "Describe what you saw". And did you answer. "About ten-forty-five I was standing corner of West Side avenue and Union street, and I noticed an Italian hollering standing in front of the airdome on West Side avenue between Williams avenue and Union street, and the Italian hollered What

40

Charles Smith—Cross.

do you want?" and Mrs. Kenny pulled her husband and went to Union street and stood there a minute and then walked over Union street, and they were still in the street." Did you testify to that? A. Yes.

Q. How many times did the man holler, "What do you want?" A. Two or three times.

10 Q. You say he was an Italian because of the form of his expression? A. Yes.

Q. Did you walk down to the Italian? A. No, sir.

Q. Did you cross the street after Kennys passed down? A. No, sir.

Q. What was your reason for crossing the street? A. I thought there was going to be a fight and so I walked over.

20 Q. Why did you think there was going to be a fight? A. Because of the menacing way the Italian was standing there.

Q. You are sure it was not the threatening way he was carrying the buns?

Objected to as frivolous. Objection sustained.

A. No.

30 Q. What was the menacing way he was standing there? A. It was easily seen he was looking for trouble.

Q. You saw he was looking for trouble? A. Yes; the way he carried himself.

Q. What was the way you say he was menacing and looking for trouble? A. Because he walked slow down Union street after the Kennys.

Q. Did he say anything? A. No, sir.

Q. Did he move more rapidly or slower than the Kennys?-

Q. First he moved slowly and then faster.

40 Q. When did you make up your mind that

Charles Smith—Cross.

there was going to be a fight. A. When he started to walk slowly up the street.

Q. The Kennys were then on the sidewalk as he was following them? A. No; they were in the gutter.

Q. At any time at all were the Kennys on the sidewalk? A. I couldn't say for sure they was.

Q. You saw what went on there? A. I know, 10 but my mind was on the Italian mostly.

Q. Were you asked these questions at the Coroner's inquest, "How far down Union street were you before you heard the shot? A. I couldn't judge the distance. Did you testify? A. Yes."

Q. "On which side of the street? A. On the left going down." Did you so testify? A. Yes.

Q. "Towards Mallory avenue? A. Yes."

Q. "They were standing in the middle of the street when he passed them almost in front of 20 their house; he turned and I noticed he had a bag of buns in his left hand and his right was at his side." Did you testify that? A. Yes.

Q. "They started to say something, and Mr. Kenny kind of walked into the Italian and the Italian pulled a revolver. I did not see the gun, but I heard it only." Did you so testify? A. Yes.

Q. Is that true that Kenny left his wife and walked into the Italian? A. He left his wife, 30 and it was easy to see that she tried to stop him going towards the Italian, and he walked only a step or two when the Italian pulled the gun.

Q. Mr. Kenny wanted to break away from his wife to attack the Italian, is that what you mean?

Objected to as immaterial. Objected sustained. Exception.

Charles Smith—Cross.

Q. Was Mrs. Kenny holding her husband shortly before the shot was fired? A. Yes.

Q. When the Kennys started to go down Union street did Mrs. Kenny have to pull her husband to stop him from going down there? A. I couldn't say she had to pull him. She held his arm.

Q. Did you testify at the Coroners inquest,
10 "The Italian hollered out, 'What do you want?' Mrs. Kenny pulled her husband and went down Union street?" A. Yes; she took him by the arm.

Q. So she pulled her husband again before the shooting?

Objected to. Objection sustained. Exception.

Q. Did she pull her husband just before the
20 shooting? A. She made an attempt to pull him I know.

Q. But you don't know whether she succeeded or not? A. No.

Q. You did not pay much attention to what she was doing? A. My mind was on the Italian.

Q. Did you see him change the bags from the left hand to the right? A. I did not.

Q. While the Italian was walking down Union street did you see him change the bag from one
30 hand to another? A. No.

Q. You were watching him altogether? A. Yes, I was watching him.

Q. Exclusively? (No answer.)

Counsel's characterization objected to.

Q. You were giving your entire attention to the Italian while they were walking down Union street? A. Yes, sir.

Q. And no time did you see the Kennys walking
40 on the sidewalk going down Union street? A. No, sir.

Charles Smith—Cross.

Q. But you saw the Italian on the sidewalk?
A. Yes.

Q. When Kenny kind of walked into the Italian, where was it he started towards the Italian, was he then in the middle of the street? A. Rather seemed to be in the gutter than in the middle of the street, and the Italian was on the sidewalk.

Q. Mr. Kenny left the roadway and got up on the sidewalk? A. No, sir. 10

Q. Did not walk against him at all? A. Towards him a couple of steps.

Q. How far away were the men when the shot was fired from each other? A. About six or seven feet.

Q. You say the man who fired the shot ran away after? A. Yes.

Q. Did he run rapidly? A. I don't know whether he ran rapidly or not. 20

Q. You ran after him? A. No, sir.

Q. Did Frank Smith run after him? A. Yes.

Q. You were asked at the inquest did he run away. He just walked, kind of staggered. Did you testify that way? A. Ran away from the scene of the shooting?

Q. Yes, sir. A. No.

Q. You did not say that? A. No.

Q. Did you see him stagger? A. Just as the shot was given he wavered and fell. 30

Q. Did you say stagger? A. No.

Q. Were you asked this question, "Did you notice whether he was drunk?" And did you say, "He had something in, the way he walked, you know." Did you so testify? A. Yes.

Q. In what way could you tell he had something in? A. By the walk he walked; he was not staggering and he was not walking straight

Charles Smith—Cross.

BY THE COURT:

Q. Which corner of West Side avenue were you standing on when you first saw this Italian? A. The corner where the drug store was.

Q. Is that on the north side or south side of Union street? A. Right across the way from Union; I don't know whether north or south.

10 Q. Is it nearer to Bayonne than to Montgomery street? A. No, sir. It is nearer Montgomery street.

Q. On which side of West Side avenue was it, nearer the Boulevard or the Hackensack river? A. Nearer the Boulevard.

Q. As I understand it this Italian was on the other side of West Side avenue? A. Yes.

Q. And on the other side of Union street? A. Yes.

20

THE COURT: That is the southeast corner.

MR. VICKERS: Southwest corner.

THE COURT: Southwest corner is right.

BY MR. DOHERTY:

Q. You say the Italian walked away in a menacing way. Do you mean by reason of his appearance of being drunk? A. No. They walked down Union street I guess trying to keep him away from them—

30

Q. What do you mean by your direct testimony that the Italian walked in a menacing way?

Objected to on the ground that the witness did not say it on his direct examination.

Question allowed.

A. By the way he followed them after they walked away from him.

Q. When did they walk away from him? A. When he was standing in front of the airdome

40

Charles Smith—Cross.

after he hollered, they were walking down Union street, and then they were walking away from him and he followed.

Q. They walked down Union street in a westerly direction and he was south of West Side avenue? A. Yes.

Q. And when they were walking down Union street they were walking away from him? A. **10**
Yes.

Q. And after they walked away from him then he followed them? A. Yes.

Q. And you consider that that was in a menacing way? A. Yes.

Q. But all you heard him say was, "What do you want"? A. Yes.

Q. And Mr. Kenny did not answer him? A. No.

Q. Did you testify before the Coroner that **20**
they started to say something and Mr. Kenny walked into the Italian? Who started to say something? A. There were words, I could hear the murmur of the words coming from down there, but I couldn't understand what they were.

Q. Who was talking? A. I couldn't say.

Q. How far away were you at that time? A. I was corner of West Side Avenue.

Q. Where you were at the time of the shooting? A. At the time of the shooting I was corner of **30**
West Side Avenue and Union Street at the saloon.

Q. Two hundred feet away? A. I couldn't say.

Q. Was it the full length of the saloon building and five houses? A. Four or five houses, yes.

Q. Was there a light down Union Street or on West Side Avenue? A. On West Side Avenue.

Q. On the easterly corner, the southeasterly corner of West Side Avenue? A. Right opposite where I was standing.

Q. It was absolutely dark where the shooting **40**

Charles Smith—Cross.

took place? A. There is an electric light lamp there, but it was dark where the shot was.

Q. Did you testify at the Coroner's Inquest, "They were standing on the side of the street, and he faced them, almost at their house he turned and I noticed he had a bundle in his hand." Did you testify that? A. Yes.

10 Q. You testify you could see all that at the distance of two hundred feet in the dark?

Objected to. Excluded. Exception.

Q. You observed that from the point where you stood to the point where the Italian stood? A. Yes.

Q. And it was dark where he was? A. Yes.

Q. And dark where you were? A. The light was in back of me.

20 Q. Did you see the pistol? A. No.

Q. Did you see the flash? A. Yes.

Q. Can you account for being able to see the bag of buns and not being able to see the pistol in the same distance? A. No.

Q. How was the defendant dressed? A. A dark suit and soft hat. That is all I noticed about his clothing.

30 Q. Were you asked this question at the Coroner's Inquest: "Was there light there? There was a light on the corner, I did not notice his clothes, but I know he had a black stubby moustache." Did you say that? A. Yes.

Q. Did you notice his clothes? A. I did not take much notice of his clothes.

Q. Was this true that you testified to before the Coroner that you did not notice his clothes? A. Yes.

Q. And what you say now, that you noticed his clothes is not true?

40 Objected to. Objection sustained.

Charles Smith—Cross.

Q. When the shooting occurred in what direction was Kenny facing? A. Facing the Italian.

Q. In which direction was he facing? A. He was facing towards his house,—the houses.

Q. In which direction was the man facing who did the shooting? A. Facing Mr. Kenny.

Q. They were directly face to face? A. Yes.

Q. That was the moment the shot was fired? **10**
A. Yes.

Q. And you saw that, did you? A. Yes.

Q. When did you next see the Italian? A. I saw him down in the City Hall one day.

Q. Who was there when you saw him? A. There was a lot of people around there.

Q. You saw him set up in a line of men? A. Yes.

Q. Do you know who the other men were?

Objected to as improper cross examination. **20**

Objection sustained. Exception.

Q. Did you ever make an identification of this defendant as the man you saw? A. No sir.

Q. You did not identify him in Police Headquarters?

Objected to as improper cross examination.

Objection sustained.

Q. Do you know where Mr. Kenny lived? A. **30**
Yes.

Q. Were you acquainted with him? A. No sir.

Q. Never knew him in his life time? A. No, sir

Q. When did you find out where he lived: before or after this shooting?

Objected to as immaterial. Objection sustained.

Exception.

MARK A. SULLIVAN, **40**
Judge.

(Seal).

Cornelius J. Flanagan—Direct.

CORNELIUS J. FLANAGAN, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Are you connected with the Jersey City Police Department? A. Yes.

10 Q. And were you on the 21st of last month? A. Yes.

Q. Do you remember this shooting of Frank Kenny at Union street? A. Yes.

Q. On that night? A. Yes.

Q. Tell what you know about it? A. Ten forty-five I was standing at Boyd avenue and West Side and heard a shot up the street, and I ran up West Side Avenue, and the crowd on the corner told me to run down the street—

20 Objected to.

THE COURT: Strike out what the crowd told him.

Q. What else? A. I run down Union street after this fellow, and I met Officer Flaherty and Smitty down the street, the fellow that was already on the stand, and they told me what way this fellow ran. I chased him. That is all I done. The hat was found in front of 33 school.

Q. Whom did you chase? A. This Rombolo.

30 Q. You chased some one down that street? A. Yes.

Q. Did you see that some one running or walking? A. No, sir.

Q. Did you find anything? A. Flaherty handed me a hat at the school. Smith was with Flaherty at the time.

Q. What did you do with the hat? A. I kept it.

Q. Where is it? A. I gave it to Lieutenant Collins.

40 Q. Did you see the body of anyone that had been shot? A. Yes. I seen Frank Kenny lying

Cornelius J. Flanagan—Cross.

on—between the sidewalk and the curbstone, that is, about the distance of four feet.

Q. Did you know where Kenny lived at that time? A. No, sir.

Q. Did you know him personally at that time? A. No.

Q. I show you Exhibits S-1 and S-2; do those photographs represent the man that you saw lying dead at the place you indicated? A. It was so dark I couldn't notice him. I looked at him, but I couldn't take much notice of him. A handkerchief was put in the drugstore over his head. 10

Q. Did you see Mrs. Kenny? A. I seen her in front of the body that was shot in the drugstore.

Q. How far were you away from where you found this body lying at the time you heard the shot? A. Boyd avenue is two blocks on the right-hand side going towards Bayonne; it was about three hundred feet down where the shot was fired. 20

CROSS-EXAMINATION BY MR. DOHERTY:

Q. You saw the body in front of the Kenny home? A. Yes; 349.

Q. It was so dark you couldn't recognize the features? A. I was on a dead run, and I seen the wife there and I asked did he shoot himself. 30

Q. Could you recognize him in the light that was there? A. I could if I had stopped.

Q. It is quite dark there? A. Yes.

Q. Do you say the hat was picked up by Flaherty in front of 33 school? A. When I was running down Union street, and Smith came over and told me here is his hat—

Q. Did you find the hat in front of 33 school at all? A. No. 40

Alexander H. Hunter—Direct.

ALEXANDER H. HUNTER, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Where do you live? A. 135 Kensington avenue.

10 Q. Do you remember this shooting of Kenny on April 21st last? A. Yes.

Q. Where were you about half-past ten or eleven that night? A. On the corner of Boyd avenue in a saloon. Mesick's, corner of West Side and Boyd.

Q. Was anyone there with you? A. I had a friend with me.

Q. What were you doing there? A. Standing there drinking a glass of beer.

20 Q. Did you see the defendant on trial that night while you were there? A. Yes.

Q. About what time did you see him first there? A. About ten-twenty.

Q. Was he there before you were there? A. He came there while I was there. He came in alone.

Q. What did he do? A. He came in and ordered a glass of brandy from the bartender.

Q. Did you observe his condition? A. Not at first.

30 Q. At any time while he was there? A. I took notice to him after he gave an argument to the bartender.

Q. What was that? A. He asked for a glass of brandy, and he gave him a dollar bill and got the change, and he said, "What is the matter; do you charge fifteen cents for that brandy?" and the bartender he says, "Yes, that is the price"; and he says, "You don't get fifteen cents for that brandy." And the bartender said, "That is the price." And he then said he had plenty of money, 40 and put a dime on the bar and said, "Take that

Alexander H. Hunter—Direct.

tip." And the bartender said, no, he did not want it. And he said, "You ought to charge twenty-five." And then he took the dime and walked out, and came back and ordered a glass of beer and paid and got his change and went out, and returned and then he went out again, and then I stood there about five minutes and went outside, and I heard a shot, and I ran down West Side 10 avenue to Union and down Union, and I heard Mrs. Kenny holler, "My God, a wopp shot him."

Q. Did you know Kenny at that time? A. No, sir. I saw his body there.

Q. I show you photographs. Is that the picture of the body you saw there? A. Yes.

Q. Is that the man you found shot? A. Yes.

Q. Was he alive or dead? A. They took him to the drugstore, he gurgled a little, I don't know whether he was alive or dead, and there was bits 20 of blood came out of his nose, and I put my handkerchief over his face.

Q. Did he speak? A. No.

Q. Were his eyes open or closed? A. Closed.

Q. Did he speak at all? A. No.

Q. How was this defendant dressed? A. Blue suit and soft green hat.

Q. Was he clean shaven or did he have hair on his face? A. Clean shaven and had a little moustache. 30

Q. Did you pay any attention to his actions? A. Yes; I was standing alongside of him; he was kind of mad. Looked as if looking for trouble.

"Looking as if," etc., stricken out.

Q. Describe his actions? A. He was standing there and arguing about the brandy.

Q. What did he say? A. "I can get it for five cents."

Q. What in his conduct indicated he was quar- 40

Alexander H. Hunter—Cross.

relsome? A. Because he gave the bartender an argument over the price of the brandy.

Q. Did he say anything to you? A. No, sir.

Q. Did he say anything to your friend? A. No, sir.

Q. Who was your friend? A. Simon.

Q. What is your occupation? A. Work for the
10 Pennsylvania railroad.

Q. Did you at that time? A. Yes, sir.

Q. And do you still? A. Yes, sir.

Q. Look at the defendant here and say whether or not he is the man who came into the bar-room, that came in that saloon, and had this argument with the barkeeper? A. He is the fellow.

Q. After he disappeared from the bar-room did you see him again? A. After he came out the first time he came back again.

20 Q. After he finally disappeared from the bar-room did you see him again? A. I have not seen him since that day.

CROSS-EXAMINATION BY MR. DOHERTY:

Q. The ferocious argument that you spoke about consisted of this man after getting a drink of beer or brandy, saying he could get it in New York for five cents? A. He did not say in New York.

30 Q. That he could get it for five cents? A. Yes.

Q. And that was the whole argument? A. Practically.

Q. And that satisfied you the defendant was a dangerous man? A. Yes; that he was seeking trouble.

Q. And the next moment when he offered the bartender ten cents and said he had plenty of money, it impressed you he was a dangerous man? A. Yes.

40 Q. The fact that he tipped the bartender did

Alexander H. Hunter—Cross.

not indicate to you that he was a mild-tempered man? A. No, sir.

Q. Have you rehearsed your testimony with anybody? A. No, sir.

Q. You say your attention was first called to this man's condition of sobriety or otherwise by this argument? A. Yes.

Q. And when he told the bartender he could get that brandy for five cents, was it then apparent to you that he was drunk? A. Not that he was drunk, but that he had been drinking. **10**

Q. And he was good-natured? A. Yes.

Q. When you testified that his disposition was quarrelsome and he looked mad, that was not true? A. It looked to me as if he was mad.

Q. Is it not a fact that this man came in there twice and that he was joking each time? A. No; he was not joking. **20**

Q. He was not joking when he said he could get a fifteen-cent drink in some places for five cents? A. No, sir.

Q. What did he say the second time? A. Nothing. Came in and got a glass of beer and drank it and walked out.

Q. You said he then came out of the saloon and walked away up on West Side avenue. Do you mean in the direction of Union street? A. Yes.

Q. How do you know he went that way? A. **30**
The first time he stayed on Boyd avenue. The second time I don't know where he went.

Q. Did you not state that when he came out the second time he went up West Side avenue? A. No, sir.

Q. You were a witness at the Coroner's inquest? A. Yes, sir.

Q. Did you testify there as follows: "He came back to the saloon a second time? Yes, he looked kind of mad. He gave the bartender ten cents, and he gave him back five cents; he walked out **40**

Henry Simon—Direct.

of the saloon and then walked up West Side avenue." Did you testify that? A. No, sir. I don't know that he walked up West Side avenue.

Q. Did you testify that he walked up West Side avenue? A. Not the second time.

Q. "He walked outside of the saloon and then walked up West Side avenue, and two minutes
10 after I came up and was standing corner of Union and West Side avenue when I heard two shots, and heard somebody cry murder, and I ran down Union street." Did you testify that? A. Yes.

Q. Did you testify as follows: "Was he intoxicated? Yes; he seemed pretty well intoxicated."
A. Well, he had been drinking.

Q. Is that the testimony you gave before the Coroner, that he seemed to be pretty well intoxicated? A. Yes.

20 Q. That means that he was more than average drunk?

Objected to.

A. Yes.

HENRY SIMON, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

30 Q. Where do you live? A. 299 Union street.

Q. What is your business? A. Lehigh Valley trainman.

Q. Do you know Hunter, the preceding witness? A. Yes.

Q. Were you with him on the night of April 21st at Mesick's saloon? A. Yes.

Q. Did you see this defendant there? A. Yes.

40 Q. Just tell the Court and jury what you saw him do and say in that place at that time? A. I

Henry Simon—Direct.

was standing there against the bar and he came in the side entrance of the saloon, and he asked for a brandy; and I don't know whether he gave a dollar bill or not, but he got charged fifteen cents for it, and he told the bartender he could get it for five cents; and then he got arguing with the bartender quite a while, and he went out, and I went out by the front door and watched 10 him, and he went around the four corners like and came in again.

Q. Why did you watch him? A. He had kind of starey eyes and looked with a kind of search at the whole bunch in there.

Q. Go on? A. He came in again and stood up at the bar and got a beer, and stood there watching Mr. Hunter and myself for quite a while and then went out again.

Q. Did he speak to you or Hunter? A. No. 20

Q. To anybody else except the bartender? A. To some young fellow. He said, "Hello," and that man said "Hello" to him. That is all I heard.

Q. How did he act in that saloon?

Objected to. Allowed. Exception.

MARK A. SULLIVAN,

(Seal.)

Judge.

A. He did not act anything too pleasant. 30

Q. What do you mean by that? A. Well, he was not agreeable.

Answer stricken out.

Q. He came in twice? A. Yes.

Q. What became of him after the second time?

A. I don't know.

Q. Did you hear a shot? A. Yes.

Q. How long after he left the second time? A. About five minutes. 40

Henry Simon—Cross.

Q. In which direction did you hear a shot? A. In the direction of Union street.

Q. What did you do after you heard the shot? A. Run down Union to West Side.

Q. Hunter with you? A. Yes.

Q. Did you see anything unusual? A. I seen a man's body laying in the gutter.

10 Q. Did you see a woman there? A. Yes.

Q. Did you see the woman here to-day? A. Yes.

Q. Do you recognize her as Mrs. Kenny? A. Yes.

Q. Was she there with the body? A. Yes.

Q. Where was the body? A. In the gutter.

Q. Do you know what occurred to that man? A. It seems he had been shot.

Q. Did you see blood on him? A. Yes.

20 Q. I show you Exhibits S-1 and S-2. Do you recognize the person indicated on those photographs? A. Yes.

Q. Do those photographs indicate the man lying there shot? A. Yes.

Q. Did you see the defendant again after he had left Mesick's the second time? A. No. Not until next Saturday afternoon I seen him in the County jail, in Jersey City.

30 Q. How was he dressed in the saloon? A. Green hat with a blue band on it, and dark suit on, white collar and tie, and brown shoes.

Q. Stiff hat or soft hat? A. Soft.

Q. Did he have any package or bundle? A. No, sir.

Q. Did you know Kenny in his life time? A. No, sir.

Q. That was the first time you saw him when you found him lying there? A. Yes.

CROSS-EXAMINATION BY MR. DOHERTY:

40 Q. The argument consisted of the defendant say-

Henry Simon—Cross.

ing he could get the brandy elsewhere for five cents and the barkeeper saying not that grade of brandy? A. I can't remember that. He said he could get the brandy for five cents. I don't remember anything said about the grade.

Q. What did the bartender say? A. This man kept repeating it all the time.

Q. And that is all he said? A. That is all he 10 said then.

Q. Did you see him slip the bartender a dime? A. I did not notice it.

Q. How many times did he repeat he could get the brandy for five cents? A. Three or four times.

Q. Did the bartender answer him at all? A. Only one time that I remember.

Q. And that was all the argument? A. Yes.

Q. You said he and the bartender argued quite 20 a while. Is that true? A. You know how a haggle would go along.

Q. What? A. They haggled there for a while.

Q. What do you mean? A. Argued.

Q. After he got his change there? A. Yes.

Q. You say his eyes were staring? A. Yes.

Q. Was he drunk? A. He had been drinking quite a little.

Q. Was he drunk? A. Just enough to make him stagger. 30

Q. And you came out of the saloon to watch him? A. No. I stayed in the saloon and watched him.

Q. Where did he go? A. Across the street and up across the four corners like.

Q. The four corners of Boyd avenue? A. He did not go all the way down the other end of Boyd avenue; he went across the street and West Side, and then back again to the saloon.

Q. When he left the saloon the second time you 40 don't know in what direction he went? A. No.

Henry Simon—Cross.

Q. Were you in the saloon when he left the second time? A. Yes.

Q. Did he leave you behind in the saloon when he left the second time? A. Yes.

Q. Did you stay behind in the saloon after he left the second time? A. Yes.

Q. How long after he went away did you hear
10 a shot fired? A. About five minutes.

Q. You testified before the Coroner? A. Yes.

Q. Did you testify this way: "Did you see who fired the shots? I did not see the man who fired the shots; I seen him before he fired the shots." Did you testify that? A. The man that I thought who fired the shots. After I came back and seen him in the County jail that was the same man that fired the shot.

Q. You testified that you saw the man before
20 he fired the shots? A. After I seen him again in the County jail.

Q. In your testimony before the Coroner did you say that you saw the man after he fired the shots or the shot? A. Shot.

Q. You did not twice use the words shots in your testimony, "I did not see the man who fired the shots, I seen him before he fired the shots." Did you so testify? A. There was only one shot fired.

Q. Did you so testify? A. I don't remember.
30

Q. So at the time you testified before the Coroner you did not know whether you heard one or two shots? A. I heard one shot; that is all.

Nettie Grimm—Direct.

NETTIE GRIMM, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Where do you live? A. 488 West Side Avenue.

Q. And do your parents live there? A. Yes. 10

Q. They have a bake-shop there? A. Yes.

Q. Do you help them in the bakery? A. Yes.

Q. Do you remember the night of the 21st of April last some Italian coming into your shop for some rolls? A. Yes.

Q. Do you see this defendant on trial? (No answer.)

Q. Do you see the man being tried here today? A. Yes.

Q. Do you recognize him? A. Yes. 20

Q. Did you see him in the bake shop in question on the night of April 21st last? A. Yes.

Q. What time of the night? A. Twenty-five to eleven he was in the store.

Q. Who was with you there? A. My cousin.

Q. What is her name? A. Ellen Steffens.

Q. Is she here? A. Yes.

Q. Did you have the shop lighted at that time and doing business? A. Yes.

Q. Do you remember his coming in? A. Yes. 30

Q. What happened after he came in? A. We were waiting on the store and he asked for lemon pie, and my cousin gave him a lemon pie, and he did not want to believe it was a lemon pie, and my cousin showed him, and then he said "How much is it, a cent?" and she said "No, five cents." And then my cousin waited on another customer, and he stood there; and then he picked out some buns, and then we waited on other customers; and then he picked out some rolls; and then he asked when the last train left 40

Nettie Grimm—Direct.

for New York, and we looked at the card and we told him ten after five, and then he asked what time it is, and we told him ten minutes after eleven; but he did not want to believe us that the train had left already.

Q. What did he have when he left? A. Three paper bags.

10 Q. How did he act when he made these purchases? A. Well.

Q. Did you notice anything about his actions that attracted your attention? A. As we were waiting on him I noticed by the stare in his eyes he had been drinking.

Q. Anything else? A. That's all. I took particular notice of his clothes.

Q. How long was he in the store? A. About ten minutes.

20 Q. After he left did you hear anything that attracted your attention? A. I went outside and I guess about ten minutes after that I heard a shot.

Q. In which direction? A. To the right from our store, towards Union.

Q. Below West Side avenue? A. Yes.

Q. What did you do when you heard this shot, if anything? A. I run down to see what it was.

30 Q. Did you go down to where the man had been shot? A. Yes.

Q. Did you see the body? A. I just saw it as they were carrying him to the drugstore.

Q. Are you sure this is the same man that came in and made the purchases you described when your cousin was there? A. Yes.

Q. How was he dressed? A. Dark blue suit, brown tan shoes, dark soft hat, and stiff collar, and he had a mustache on.

Nettie Grimm—Cross.

Q. Did you afterwards see him in Jersey City?

A. In the City Hall.

Q. At Police Headquarters? A. Yes.

Q. Under what circumstances? A. After he was arrested in Newark he was brought there and we were supposed to identify him as the man that was in our store buying the buns, as the buns were found there and they were the buns bought 10 in our store.

Q. Did you see the buns? A. No. My father. They told him what kind of buns they were, and they were ours.

Q. Did you pick out this man? A. Yes.

Q. Was he in line with other men at the time? A. Yes.

Q. Did you have any difficulty picking him out? A. No, I just went up and said, "this is the man who was in the store." 20

Q. Did he look at you?

Objected to. Objection sustained.

CROSS EXAMINATION BY MR. DOHERTY:

Q. When you handed him the pie he asked you if the pie was a cent? A. Yes.

Q. The pies are small there since the war broke out? A. No. We have them the same size.

Q. That was a joke he made there? A. I 30 don't know. My cousin sold him the pie.

Q. Then after the pie was delivered to him and he made that expression, he stood aside while other customers were served? A. Yes.

Q. And then he bought some buns? A. Yes.

Q. And then stepped aside for other customers, and then bought rolls and went out? A. Yes.

Q. Where did he go? A. To the store next door; he went that way, and the lady told us there was an Italian in her store. 40

Edward Flaherty—Direct.

Q. He was quite drunk? A. He did not stagger or anything that I noticed.

Q. But he had been drinking? A. Yes; you could see that.

Q. You say when she gave him the lemon pie he said it was not lemon pie? A. Yes.

Q. You couldn't see any lemon in it? A. No.
10 You could see the letter on it though.

Q. Your cousin served the pie? A. Yes.

Q. You don't know whether it was a lemon pie?
A. She told me it was. I was there.

sworn, testified as follows:

EDWARD FLAHERTY, called by the State and
DIRECT EXAMINATION BY MR. HUDSPETH:

20 Q. What is your position? A. Patrolman in the
Jersey City Police department, seventeen days.

Q. What were you doing last April? A. Working for the Public Service railway.

Q. Were you then a chanceman? A. No, sir.

Q. Had you passed your examination? A. Yes.

Q. But not appointed? A. Appointed, but not
sworn in.

Q. Now you are sworn in? A. Yes.

30 Q. Do you remember this shooting on the 21st
of April last when Kenny was shot? A. Yes.

Q. Did you know him before that? A. No.

Q. Did you try to follow the man alleged to
be the shooter? A. Yes.

Q. Where did you commence the chase? A. I
was standing on West Side avenue when I heard
a shot that was fired down Union street, and I
started down.

Q. Did you see any one running? A. Yes.

Q. How near did you get to the running figure?
40 A. About two hundred feet.

Edward Flaherty—Cross.

Q. How far did you follow? A. Within about fifty feet of the lot he turned into.

Q. Where did you commence the chase? A. West Side avenue and Union Street.

Q. How far down Union street did you chase this person? A. About five hundred feet.

Q. Did he disappear then? A. Yes.

Q. Did you lose him? A. Yes. 10

Q. Did you find anything in that neighborhood while you were chasing him? A. Yes.

Q. What? A. Hat.

Q. I show you a hat. Is that it? A. I don't know.

Q. Why not? A. I picked it up and continued to run and handed it to Officer Flanagan in the dark and did not examine it at all.

Q. Have you seen it since, excepting now? A. No, sir. 20

CROSS EXAMINATION BY MR. DOHERTY:

Q. Where were you standing at the time the shot was fired? A. West Side avenue and Union street.

Q. Were you looking in the direction of the Kennys? A. Yes.

Q. Where were they when you first saw them?

Objected to as not cross examination. 30
Question allowed.

A. When I first saw them they were in front of 341 Union street.

Q. How far is that from West Side avenue? A. About 125 feet.

Q. Were they walking or standing still? A. Walking.

Q. How far did they walk before they came to a halt?

Edward Flaherty—Cross.

Objected to as not proper cross examination. Question allowed.

Q. I would judge about fifty feet.

Q. Where did they walk; on the sidewalk or on the roadway? A. I seen them on the sidewalk, and afterwards in the middle of the street.

10 Q. How far did they walk in the middle of the street? A. About twenty-five feet.

Q. Did you not say a moment ago that they walked fifty feet in the middle of the street? A. No, sir.

Q. Did they walk at any time in the middle of the street? A. Yes.

Q. About fifty feet? A. No, sir.

Q. About twenty-five feet you say now? A. Yes.

20 THE COURT: That is what he has always said to-day during this examination.

Q. Where was the man you chased when you first saw him? A. I don't understand the question.

Q. You chased a man? A. Yes.

Q. Where was that man when you first saw him that evening? A. On Union street.

Q. What was he doing there? A. I don't know.

30 Q. What were Mr. and Mrs. Kenny doing when you first saw them? A. Walking down Union street.

Q. Just walking? A. Walking, apparently fooling.

Q. Did you see the defendant at any time on West Side avenue? A. No.

Q. You testified before the Coroner? A. Yes.

Q. You were not a member of the police department at that time? A. Just appointed.

40 Q. But you had not assumed your duties as such? A. No.

Edward Flaherty—Cross.

Q. At the Coroner's inquest did you testify as follows: "Q. Were they walking together or standing? A. When I seen the affair the couple, which I afterwards learned to be Mr. and Mrs. Kenny, were in the roadway, in the middle of the street, walking; I was on West Side avenue when my attention was called to the affair; one fellow was walking towards the corner; I seen a man, whom I afterwards learned to be Kenny, leave his wife and walk over to the man on the sidewalk; I started to walk down slowly when I heard the woman scream." Did you testify that way? A. Yes. 10

Q. Was it true? A. Yes.

Q. Was this question asked you: "You say you saw some one following Mr. and Mrs. Kenny? No, I did not see him. Mr. and Mrs. Kenny were walking down the street as though fooling. I walked across the street. Did you see anybody behind them? I noticed nothing suspicious." 20

Objected to as not contradictory. Objection sustained. Exception.

(Seal.)

MARK H. SULLIVAN, *Judge.*

Q. Were they walking down the street as if fooling? A. Yes.

Q. What were they doing? A. Mr. Kenny was apparently looking behind as if tripping himself, and Mrs. Kenny had him by the arm, pulling him along. 30

Q. Where were they when you noticed that? A. On the sidewalk.

Q. He was apparently tripping himself? A. Yes.

Q. Looking behind? A. Yes.

Q. And she was apparently pulling him along? A. Yes.

Q. Where was the defendant at that time, do you know? A. No, sir. 40

Edward Flaherty—Cross.

Q. Did you not have as good a view of the sidewalk of the street as you had of the roadway?

A. No.

Q. The first time you saw the defendant was when Mr. Kenny left Mrs. Kenny and walked to the sidewalk where the defendant was? A. Yes.

10 Q. Did he move rapidly when he approached the defendant? A. No. He walked over slowly.

Q. Where was Mrs. Kenny? A. She followed.

Q. Can you tell us what the positions of the several parties were at the time the shot was fired? A. Several parties? I don't understand that.

Q. Can you tell the position of the man who fired the shot with respect to Mr. Kenny, and Mr. Kenny's position with respect to his wife?

20 A. Mr. Kenny had his back to his wife and facing the man who shot him.

Q. And facing towards the south side of Union street? A. He was facing the buildings on Union street.

Q. How far was Mr. Kenny from the man who did the shooting? A. I should judge about an arm's length.

Q. Was Mr. Kenny standing or in motion at the time the shot was fired? A. Standing, apparently.

30 Q. How long had he been standing before you heard the shot? A. I couldn't tell you the exact time.

Q. Is it not a fact that Mr. Kenny moved very rapidly towards the defendant on the sidewalk and that the defendant moved away from him towards Mallory Avenue? A. No, sir.

Q. Was there any pause between the firing of the shot and the commencement of the defendant's flight? A. No, sir.

40 Q. Will you testify that the shot was fired be-

Edward Flaherty—Cross.

fore the defendant begun to move towards Mallory avenue, or after? A. I don't know.

Q. He might have been moving already towards Mallory avenue before that shot was fired? Is that true? A. Yes.

Q. Did you hear any talk between the defendant and Mr. Kenny? A. No.

Q. Did you see the witnesses Charles Smith 10 and Frank Smith there? A. Where?

Q. In the vicinity of Union street and West Side avenue? A. I seen one Smith.

Q. Which one? A. I don't know his name; I don't know his first name; he is the taller of the two Smiths who were here today.

Q. Was it the first Smith or the second Smith who testified here today? A. The first.

Q. You did not see the younger Smith? A. No.

Q. Which corner of Union street and West Side 20 avenue were you standing on; the drugstore corner? A. No; not the drugstore corner.

Q. The saloon corner? A. No.

Q. Give us the point of the compass there; the southeast or the northwest corner? A. I was standing on the corner of the airdome; there is an open airdome, corner of West Side avenue and Union street.

Q. That is the corner nearest to Mallory avenue and the corner nearest to Montgomery street? A. 30 Yes.

Q. You have stated that you testified before the Coroner, "I was on West Side avenue when my attention was attracted or called to the affair; one fellow was walking towards the corner." Who was that whom you saw walking towards the corner? A. I don't believe I said that one fellow was walking to the corner. I think I did say there was a fellow on the opposite side of the street walking towards Kenny and the man that 40 shot him.

Edward Flaherty—Cross.

Q. You at no time saw the defendant there before the shot? A. No.

Q. Where did you find the defendant's hat, in regard to lying on the sidewalk or the roadway? A. On the sidewalk.

Q. How far from the point where he started to run? A. About two hundred feet.

10 Q. Was he in your sight when his hat fell off? A. Yes.

Q. From the position you occupied at the time the shot was fired, Mr. Kenny's back was turned to your, was it? A. No.

Q. You were standing on the northwest corner of Union street and West Side avenue? A. On the curb.

Q. On the curb at the corner? A. No on the extreme corner, no, sir.

20 Q. Were you within the line of either Union street or West Side avenue?

Objected to as unintelligible.

A. I don't understand.

Q. Near the curb of what streets? A. The adjoining streets of West Side avenue and Union streets.

30 Q. I want to know where you were standing when you heard the report and saw the flash of the gun. Please make your position at that time clear. A. Standing with one foot on the curb and the other on the cross-walk of West Side avenue and Union street.

Q. Which cross-walk; the one that runs from the north side of Union street to the south side, or from the west side of West Side avenue to the east side? A. I don't understand that.

BY THE COURT:

40 Q. Did you have one foot on the cross-walk that goes over to Union Street or that goes to

Cornelius J. Flanagan—Direct.

West Side avenue? A. The cross-walk that goes over to Union street.

BY MR. DOHERTY:

Q. You had one foot on the cross-walk that goes over Union street and you were facing down Mallory avenue? A. Yes, sir.

Q. Were there any trees there on the south side of Union street between where you were standing and the point where the shooting took place? A. There is a row of trees on Union street. 10

Q. And those trees were leafing at this time to some extent? A. Yes.

Q. And there was a deep shadow cast over the point where the shooting took place? A. Yes.

Q. That it would be impossible for you to see whether Kenny stood at arm's length of the defendant or a greater or less distance? A. Yes. 20

Q. And when you say he stood at arm's length, you are not basing your testimony on what you actually observed; that is true, is it not? A. Yes.

Q. Will you tell us why you made that statement that he stood at arm's length?

Objected to, and question withdrawn.

CORNELIUS J. FLANAGAN, recalled by the State, testified further as follows: 30

DIRECT EXAMINATION BY MR. VICKERS:

Q. I show you a hat and ask you whether that is the hat that was given to you at that time by Mr. Flaherty as he was pursuing the running man? A. Yes, it is.

Hat offered in evidence Received as S-5.
No cross examination.

Frank Hague—Direct.

FRANK HAGUE, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. You are the one of the Commissioners of Jersey City? A. I am.

10 Q. And you are the Commissioner of Public Safety? A. Yes.

Q. Since the 21st day of April, of this year have you made an arrest of the defendant in the case, and if so where and under what circumstances?

Objected to as irrelevant. Question allowed.

20 A. On the night of the arrest I was called to Inspector Leonard's office—

Objected to as irrelevant, immaterial and incompetent, and motion made by defendant to strike it out.

THE COURT: He may proceed.

MR. DOHERTY: Exception.

WITNESS: I there obtained information of the whereabouts of this defendant.

30 MR. DOHERTY: I want it understood that my objection applies to all this testimony.

MR. VICKERS: No. Some may be competent.

THE COURT: The witness may proceed.

WITNESS: In the company of Lieutenant Collins I went to Newark Police Headquarters.

Objected to as irrelevant and immaterial.

THE COURT: Go on.

MR. DOHERTY: What is the ruling?

40 THE COURT: You will have to have it struck out, and you cannot move to interrupt a sentence.

Frank Hague—Direct.

MR. DOHERTY: I move to strike out the evidence that has been given so far. It is unnecessary and irrelevant, immaterial and incompetent.

THE COURT: Motion denied.

MR. DOHERTY: Exception.

WITNESS: We arrived at Police Headquarters. 10

MR. DOHERTY: I object that he should not be allowed to go on according to his own desires.

THE COURT: Objection overruled.

MR. DOHERTY: Exception.

WITNESS: —We arrived in the vicinity of Police Headquarters in the vicinity of seven o'clock, and there met Lieutenant Hayes, and Ryan and Wolf there, in a few minutes, and went to 121 Canal Street, Newark, New Jersey. We 20
lingered in that vicinity for probably half an hour.

Objected to that this has nothing to do with the arrest of the defendant. Objection sustained.

MR. DOHERTY: I move to strike out the testimony.

THE COURT: Motion denied.

MR. DOHERTY: Exception.

WITNESS: —In company with six detectives, 30
and including detective Collins and myself, we proceeded to investigate 121 Canal Street, the house there. Officer Donelly and his partner went into the rear of 117 Canal Street, covering the rear house and the front house, and two other officers, Lieutenant Quinn—

THE COURT: Is this necessary to find out how this man was arrested. I think you should get down to how he was arrested. 40

Frank Hague—Direct.

Q. Are you now speaking of the locality in which the defendant was actually arrested? A. Yes.

Q. Was it from this house defendant came, immediately preceding his arrest?

Objected to as leading and immaterial.

10 A. Yes.

THE COURT: Is it material?

MR. VICKERS: I don't know.

THE COURT: You should know. Put your questions to him.

Q. There at that point you have described and at the time you have now reference to, did you in company with these other persons you have named or any of them, arrest the defendant? A. Yes.

20 Q. With respect to the immediate arrest, will you tell this Court and jury how you arrested him and the circumstances of it, and the conduct of the defendant at the time he was arrested?

Objected to as irrelevant, immaterial and incompetent. Question allowed. Exception.

MR. JOHNSON: I ask the Court to admonish

the witness to confine himself to what transpired at the time of the arrest.

30 THE COURT: The testimony must be confined to the arrest and what the defendant did or anybody there at the time.

A. The other officers disappeared in the house at 121—

Stricken out by the Court.

WITNESS: —I was standing in front of 121 Canal Street alone—

40 Defense moves to strike out what occurred at that time. Motion denied. Exception.

Frank Hague—Direct.

WITNESS: —I observed a man coming from a saloon next to 121 Canal Street, who afterwards proved to be the defendant. He entered the grocery store at 121 Canal Street, and I followed him in, probably ten feet behind him. By the time I got to the front door and inside he had passed into the inner room. I called to him I wanted to see him a second. He turned and put his hand into his right pocket and said "What do you want?" And with that three or four Italian men who were present got up and jumped between the defendant and myself. I seen the defendant starting for the hall door leading out into the hallway. I saw immediately that I couldn't reach the defendant by moving through the rooms.

Page 1

Motion to strike out "I saw &c. denied. Exception.

20

WITNESS: —The defendant ran to the hall door as I ran to the front door. He arrived at the hall door before I did, and I observed him running through the hallway into the yard, and I followed him into the yard, and I couldn't see him, it was so dark, but I heard a commotion, footsteps, and I ran into the street, and I saw the defendant running and Lieutenant Quinn apparently following him—that was at 121 Canal Street. And I called to Lieutenant Quinn and I says "Is that the man I chased through the hall?"

30

Talk to Quinn objected to and motion made to strike out. Denied. Exception.

WITNESS: —He says "Get your man, you can run faster than I." And I says "Ali right, I will get him; keep up as best as you can." I started after the defendant, and it continued for about four hundred feet. I followed him and I was closing in on him very rapidly, and I observed the defendant starting into a playground, ap-

40

Frank Hague—Cross.

parently a stable, as I observed from a distance, but afterwards I learned that it was a playground, putting his hand into his right pocket as he started going to the playground. There was about ten or fifteen men at the playground as the defendant passed through, and those men apparently were trying to obstruct my way, and he was then

10 ten or fifteen feet ahead of me, and had his right hand in his pocket, and then he apparently tried to double-cross over to go behind some building there, and I went in and closed in on him, and his hand was in his right hand pocket, and as I closed in on him I caught him, and he said "You son of a bitch," and then I after I got him I noticed the gun had disappeared, and I said to Lieut. Quinn "Get the gun." I then started out with him. And then I said to Detective Schroeder

20 of Newark, "Get this, I don't know whether it is a gun or a pistol or something else," and then Schroeder put his hand in the defendant's right hand pocket, and I said "Have you got a gun?" and he said "Yes, I have got a gun." And I said, "Make sure he has no other." And he said he has no other. And then we took him away about a block and a half, and then the detectives we had passed on our run arrived and when they reached us, that was two or three minutes after we ar-

30 rested the defendant, I turned him over to Lieut. Quinn, and they proceeded back to the station.

Q. Is this the man you at that time arrested?
A. Yes.

Q. And was he afterwards brought to Police Headquarters in Jersey City? A. Yes.

CROSS EXAMINATION BY MR. DOHERTY:

Q. How many times did he put his hand to his back pocket? A. I did not say he put his hand to

40 his back pocket.

Frank Hague—Cross.

Q. How many times did he put his hand to his pocket while you were chasing him? A. Once.

Q. That was as he was stepping out of the hallway? A. No.

Q. As you went in after him in the grocery store? A. He put his hand in his pocket in the store. Do you mean now before I ran. Before I started to pursue him?

10

Q. He put his hand there as you overtook him at this building where he went to double around as you say? A. At the playground, as he entered the playground he put his hand in his pocket.

Q. He called you a vile name? A. Yes. He was swearing all night in Newark.

Q. Did Lieut. Quinn search him? A. No. Lieut. Quinn's partner.

Q. Where? A. About two feet from where we placed him under arrest. Lieut. Quinn's partner was right behind the Lieutenant about ten seconds.

20

Q. You did not have him in custody when he was searched? A. Yes, I did.

Q. Then three were holding him when he was searched? A. No. Two held him and one searched him. The detective went in his pocket at my request. I asked him to get the gun. The defendant dropped the gun or it disappeared.

Q. Did he have it out of his pocket? A. I testified he did.

30

Q. He just took it out of his pocket and put it back? A. No.

Q. What did he do with the gun after he took it out? A. He couldn't do nothing with it. I had him secured. His hand was here all the time.

Q. You had hold of his hand so that he could not put the gun in his pocket? A. I did not have him by the hand. I had him by the arm. His hand was free.

40

Timothy A. Hearn—Direct—Cross.

TIMOTHY A. HEARNS, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. Are you a member of the Jersey City Police department? A. Yes.

10 Q. After the shooting of Frank Kenny did you search in the neighborhood where the shooting took place? A. I did.

Q. And did you find these paper parcels which I show you here, paper bags? A. I found one of them.

Q. Where? A. Just at the foot of the concrete steps leading from the house this side of where Kenny lived.

20 Q. That is the place that has been described here as the place of the shooting? A. Yes.

Q. Did you then go with these buns to the bake shop where the young lady who was on the stand here was?

Objected to as immaterial. Objection sustained.

Q. I show you this paper parcel and ask you whether that is the bag you found at that time and whether it was brought here by the police? A. This is the rolls that I found in this bag.

30 Q. In the bag inside? A. Yes.

CROSS EXAMINATION BY MR. DOHERTY:

Q. When did you find it? A. Somewheres around twelve o'clock.

Q. On the same night? A. The same night of the shooting.

Q. Did you look around the neighborhood generally for any other objects which might be useful in the development of this case? A. When I

Mrs. Marie Camillo—Direct.

arrived at the scene of the shooting I saw the package of rolls lying there.

Q. You saw only one bag? A. One bag when I got there.

Q. Did you put any identifying mark on the bag? A. I had that bag in my possession in the Fourth precinct since the shooting. The bag where the rolls were in was kind of busted, and I put them in another bag. 10

Q. Where did you find them? A. On the sidewalk in front of the foot of the steps.

Q. What number? A. 347 or 345.

Q. You know the house where Kenny lived? A. 344, and it was either the first or second house this side where I found the bag.

Q. Do you mean the first or second house towards Mallory or West Side? A. Nearer to West Side. 20

MRS. MARIE CAMILLO, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Where do you live? A. 199 Boyd avenue.

Q. What is your husband's name? A. Theodore Camillo.

Q. What is his business? A. 199. 30

Q. What is his work? A. Shoemaker.

Q. Do you know this defendant Michael Rombolo? A. He is come in my house.

Q. He lived there? A. Yes, lived here.

Q. When did he come to live in your house? A. Since that April.

Q. This year? A. Yes.

Q. Did he have a room there? A. Yes.

Q. Board there? A. Yes. 40

Mrs. Marie Camillo—Direct.

Q. And keep his clothes there? A. Yes, keep everything.

Q. When did he leave your house? A. Leave when?

Q. When did he go away? A. Friday night seven o'clock.

Q. Was that before Easter? A. Yes, Friday
10 night before the Easter.

Q. Did he ever come back? A. No. He says he never come back. He say Saturday and Sunday he go to New York for a friend.

Q. Did he come back? A. Eleven o'clock that night.

Q. When did he go away for good? A. When he come home eleven o'clock my husband open. We sleep in the other room.

Q. When did he leave? A. He go away Friday
20 night at seven o'clock, and he say he come back Monday morning to come to work, but he never come back. He come back Saturday ten minutes to seven and wash his face. That was on Saturday morning. He never come back any more.

Q. Did he leave anything behind him? A. His clothes.

Q. What became of his clothes?

Objected to.

Q. Did you ever see this satchel before? A. I
30 know it.

Q. Whose satchel is it? A. I know the clothes. Open it, I know the clothes.

Q. I open it. A. Yes. That is his old clothes, this man's clothes.

Q. Where was that satchel when he went? A. He went away and never told me nothing. Nobody came back you know.

Q. Did anyone take that satchel away from your
40 house?

Mrs. Marie Camillo—Direct.

Objected to. Objection sustained.

Q. What became of this satchel after he went away?

Objected to as immaterial. Question allowed.

Exception.

Q. Do you understand my question? A. No. 10

MR. HUDSPETH:—I think it is important enough for us to have an interpreter. She can't very well understand my questions.

BY THE COURT:

Q. Madam, after this man went away on a Saturday morning, he left this satchel at your house? A. Yes.

Q. What became of it then? A. Two boy came in and says wants to look for the man. 20

Objected to. Objection overruled. Exception.

Q. Never mind what they said. Did they take it away? A. Two boys come and look for the man.

Objected to. Objection overruled. Exception.

BY. MR. HUDSPETH: 30

Q. Calo stand up. Do you recognize that as one of the boys? A. I don't know. I never seen the boys before.

Q. Did you ever see that boy before? A. No, I never see him before.

Q. Do you know him? A. I think he is one of the boys comes for the clothes; I don't know.

Q. Did you give to the boy who came for the defendant's bag his clothes? A. No. 40

Mrs. Marie Camillo—Cross.

Q. What did you do with him? A. He want to see this man and I say the man is gone and he don't come back no more.

Answer stricken out.

Q. Did you give the bag and clothes to the boy?

A. No, I keep it inside. I know give him nothing.

10 THE COURT: I think you might use the interpreter Mr. Puglia.

MR. DOHERTY: I understand that Mr. Puglia has been subpoenaed as a witness.

MR. VICKERS: We don't want the interpreter. We are through with this witness.

CROSS EXAMINATION BY MR. DOHERTY:

Q. (In English.)

20 Q. You say he kept his things in your house?

A. Yes.

Q. And he kept them in this suit case? A. I never carried the satchel.

Q. Did you ever see any clothes of his in this box or suit case? A. Yes.

Q. Did you ever see anything else in that suit case except clothes? A. I know the clothes, I know him.

30 THE COURT: Evidently she don't understand. Mr. Puglia, you will interpret.

(EXAMINATION CONTINUED THROUGH INTERPRETER)

Q. Did you see anything else in that suit case except clothes? A. Nothing else.

Q. Did you ever see a revolver? A. Yes, I see a revolver.

Q. In the suit case? A. No, I never see it.

Q. Never saw a revolver? A. Yes, I did see, I saw that in the house.

40

Mrs. Marie Camillo—Cross.

Q. How long was he living in that house when you saw the revolver? A. A couple of days.

Q. Where did you see it? A. Under his pillow.

Q. What, if anything, did you do with that revolver? A. Told my husband he should take this gun away from here because I am afraid.

Q. What became of the revolver? A. My husband took it away from there and put it away, and then in the evening this Rombolo came and says, "Where is the revolver," and my husband says, "I have it, it is safe." **10**

Q. When you found the revolver there he was not home? A. No; he was gone to work.

Q. When your husband spoke to him about keeping the revolver safe, did you then say anything to Rombolo about the revolver?

Objected to as not proper cross examination and indefinite, and would not have been competent on the part of the State. **20**

Objection sustained.

MR. DOHERTY: I ask to have the witness detained here, as I might want to call her.

THE COURT: Very well.

Q. You say he left the house at seven o'clock on Friday before Easter, and returned about eleven. Did you see him when he returned at that time? A. I did not see him myself but my husband saw him. **30**

Q. Did you see him any time during the night while he was sleeping at your house that Friday night? A. No sir. I saw him in the morning.

Q. He slept on the first floor of your house when he was there? A. Yes.

Q. That is the room beside your husband's shoe shop? A. Yes.

Q. That night you slept up-stairs? A. No, no. **40**

Mrs. Marie Camillo—Cross.

Q. Down-stairs? A. Other people lived upstairs.

Q. During that night did any policeman call at your house? A. They came but we did not hear them.

Answer stricken out on motion of Prosecutor.

10

Q. Did your husband get up during the night at any time? A. No, sir.

Q. Have you not testified that your husband got up to let Rombolo in?

Objected to.

THE COURT: I suppose all her testimony as to Rombolo coming back that night should perhaps be stricken out as hearsay. She is simply testifying to what her husband told her about that. Do you want it stricken out?

20

Q. Did you see Rombolo in the morning before he went away? A. Yes.

Q. Did you talk to him in the morning? A. Yes.

Q. Did you tell him while you were talking to him that policemen had been at the house? A. Yes, I did. I asked him if he had done anything, and he said he had not done anything, and I said as long as you have not done anything the policemen don't care for you.

30

Q. Did you see the revolver that morning? A. No, sir.

Q. What time did he usually leave the house to go to work in the mornings? A. Seven o'clock or before seven.

Q. How long before seven? A. About ten minutes.

Q. So that he left the house this morning at the regular time he usually left the house to go to work? A. Yes.

40

Mrs. Marie Camillo—Re-Direct.

Q. Where was he when you saw him that morning? A. In the kitchen. He was up dressed and washed when he heard me talking and then he went away.

RE-DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Where was this bag and the defendant's clothes on Saturday morning when you say he went away? A. In his room; in the room where he slept. 10

Q. Have you seen those clothes before; do you know them? A. Yes.

Q. And the bag? A. Yes.

Q. Now is that bag and these clothes the property of the defendant?

Objected to as covered by the direct examination. 20

THE COURT: She has already identified the clothes. As to the bag there has been no identification.

Q. Is that the defendant's bag or not? A. Yes.

Q. Did he or not leave that bag and those clothes behind when he went away on that Saturday morning?

Objected to.

THE COURT: She has already said he did, but I will allow the question. 30

A. Yes, sir.

(Bag and clothes put in evidence by the State, being exhibits S-6 and S-7.)

Joseph Calo—Direct.

JOSEPH CALO, called by the State and sworn, testified as follows:

DIRECT EXAMINATION *Bf* Mr. HUDSPETH:

Q. Where do you live? A. 121 South Canal street, Newark.

10 Q. With whom? A. With my aunt.

Q. What does she do? A. She has a store.

Q. Do you know this defendant Rombolo? A. No.

Q. Did you see him at any time in your aunt's store? A. Yes, once.

Q. When? A. I think it was on Thursday, in the morning.

Q. Do you remember when Easter Sunday was? A. Yes.

20 Q. Was it the Thursday before or after Easter Sunday? A. After.

Q. Did he want you to do anything for him? A. Yes.

Q. What? A. To come here in Jersey City and get a valise.

Q. Where did he say for you to go and get the valise? A. Where it was.

Q. Did you go there? A. Yes.

Q. How did you find the place? A. I asked the people; I had a paper.

30 Q. Is this the paper? A. Yes.

Q. Who gave it to you? A. Himself.

Q. Who? A. Louis.

Q. Who, the defendant? A. Yes.

Q. What did the defendant say to you? A. To go to this address and get his valise.

Q. Was there anybody with you when you went to this address? A. Yes, another.

Q. Who? A. I do not know the other party's name.

Joseph Calo—Cross.

Q. Did you go to this address 199 Boyd avenue, Jersey City? A. Yes.

Q. Did you see this woman Mrs. Camillo who was on the stand here a moment ago? A. Yes.

Q. Did you get the valise and clothes from her?

Objected to as irrelevant and incompetent.

Question allowed. Exception.

10

A. No; she would not give me nothing.

Q. After she refused to give you nothing where did you go and what did you do?

Same objection, ruling and exception.

A. Then the police took us.

Q. That is, the Jersey City police took you? A. Yes.

Q. They took you where? A. To the Fourth Police House.

(Envelope put in evidence by the State S-8.)

20

No Cross examination.

—•—

STATE RESTS.

—•—

The last witness is recalled at the request of the counsel for the defense.

30

JOSEPH CALO, recalled, testified further as follows:

CROSS EXAMINATION BY MR. DOHERTY:

Q. Was this all you got from the defendant, this envelope empty? A. Yes, sir. He also gave me forty-five cents for the car fares.

—•—

Mr. Doherty opened the case for the defense, stating matters he expected to prove.

40

Michael Rombolo—Direct.

MICHAEL ROMBOLO, the defendant, called on his own behalf, and sworn, and examined through Italian interpreter, testified as follows:

DIRECT EXAMINATION BY MR. DOHERTY:

Q. You are the defendant in this case; are you?
A. Yes.

10 Q. Where were you born? A. I was born in Candanserra, Italy.

Q. What is your age? A. Twenty-nine.

Q. How long have you been in this country? A. Thirteen years.

Q. When you came to this country where did you go to live? A. West Virginia.

Q. What kind of work did you do there? A. Worked in the mines.

20 Q. How long did you work in West Virginia? A. Seventeen months.

Q. Then where did you go? A. From there I went to Pittsburgh, Pittston.

Q. What kind of work did you do there? A. I worked in a factory. I worked one month or two months down there, and from there I went to Westmoreland.

Q. Do you mean Westmoreland, Canada? A. Yes. Seven or eight years I remained in that place.

30 Q. What kind of work did you do there? A. I worked in the mines for Saxon and Company.

Q. Did you ever own a revolver in the State of Pennsylvania? A. No.

Q. When did you first own a revolver? A. About four months ago.

Q. Where did you get it? A. An Italian who went to Italy sold the gun to me.

Q. When did you come to Jersey City? A. The first time I came here I went to New York,

Michael Rombolo—Direct.

and they told me in New York there was work in Jersey City, and I went to the shop where I was working at the time.

Q. What shop was that? A. This shop where there is a strike; I don't know the name of the place.

Q. Was the strike on when you went there? A. I did not know there was a strike on. 10

Q. How long were you working before you found out there was a strike on there? A. One day.

Q. How did you find out? A. On that morning, the evening when I was arrested when the thing happened, I found people in the street and they told me if you work there we are going to kill you this evening. I said there was money coming to me, my pay, and I was going to get the money and go away.

Q. What day was that? A. This was Friday 20 morning.

Q. The same day the shooting occurred? A. Yes.

Q. Who told you that? A. The people in the street.

Q. At the time the strike was on in this factory was there a policeman there?

Objected to as irrelevant, immaterial and incompetent. Objection sustained. Excep- 30 tion.

Q. Who were these people who told you that?

Objected to as immaterial. Allowed.

A. They were people outside of the factory in the street; there were a lot of people there.

Q. What street was it where they told you that?

Objected to. Allowed.

A. The street outside of the shop, in front of the shop, under the bridge.

Q. At that time did you have a revolver in your pocket? 40

Michael Rombolo—Direct.

Objected to as immaterial. Allowed.

A. No, sir.

Q. Where was your revolver? A. Home.

Q. Any time of the day did you take your revolver out with you? A. No, sir.

Q. Did you take it out in the evening? A. In the evening about eight o'clock.

10 Q. I want you to tell the jury why you took the revolver out of the house that night? A. About five o'clock when I left the factory, I went home, I went there to change my clothes, and I told the boss of my house I was going to New York; and then I went to the depot and asked what time the train was due in order to go to New York, and they told me I could have a train once every hour.

20 THE COURT: The question is why did he take a revolver out that night.

WITNESS:—I did not go to New York because there were a lot of strikers there; and then I went home and took the gun, and I went to the moving picture show, and then after that, after I went to the moving picture show I went to a saloon and had a couple of drinks, and then I went out, and while walking, after I left the moving pictures, I went to a fruit store and bought a few things, and while I left there and was about to go home I
30 went down Union street, and as I was passing by I met this man and this woman pass me, and the man touched me and he said to me, "You get out of the way, you Dago Guinea." And then he struck me right here with his fist (indicating his breast) and then the woman told the man "Let him alone, come home." And then he left the woman, with his hand in his pocket, and he came towards me. And then I, not knowing if there were a lot of strikers there, his friends, drew the
40 gun and turned this way, and fired the gun.

Michael Rombolo—Direct.

Q. How were you facing when you fired the shot? A. This is the street, and I took the gun this way, and he was here and I shot the gun and turn the other way. Then I run away.

MR. VICKERS: The description should be on the record.

THE COURT: The witness stood up, indicating that he was facing parallel with the street on which he was, and pulled the gun out of his pocket with his right hand and while facing towards the back he fired the revolver off and ran in the opposite direction. 10

Q. When you fired the shot were you looking towards Mallory avenue or in another direction?

Objected to on the ground that the witness has not mentioned Mallory avenue, and as leading. Objection sustained. 20

Q. Which way were you facing at the time you fired the shot? A. Straight.

Q. Straight which way? A. Directly home.

Q. Which way would you go to go home from where you were standing? A. There was a place there where there are no houses, like a yard, I crossed this land and lot, and then I dropped my hat, and I even left the hat there because I was afraid somebody would shoot at me.

Q. Did you drop anything else but your hat? A. Bags I had. 30

Q. Why did you not stop to pick up your bags and hat? A. I was frightened; I did not know if he had a lot of companions and friends there, and I was afraid I would be shot.

Q. At the time you fired the shot were you moving or standing? A. I was moving at the time to run.

Q. How far away from you was Mr. Kenny when you last saw him? 40

Michael Rombolo—Direct.

Objected to on the ground that this witness has not said that man with whom he had this altercation was the deceased.

THE COURT: I think that will be a question for the jury.

MR. DOHERTY: I withdraw the question.

10 Q. When you last saw the man who was walking along with the woman, and who was trying to get away from the woman while she was holding him, how far away from you was that man when you last saw him? A. He was near by, about a pace or palm.

Q. When you saw him that near to you were you then standing or in motion? A. I was moving and about to go home.

20 Q. When you saw this man a pace away from you, were you then moving rapidly or were you running?

Objected to as leading. Objection sustained.

Q. How fast or how slow were you moving at the time when Mr. Kenny was only one pace away from you?

Objected to on the ground that the witness has not stated the man he fired at was Mr. Kenny. Question allowed.

30 Q. How fast or how slow were you moving at the time when the man you spoke about was only a pace from you? A. First I was going very slow.

Q. At the time this man was one pace from you how fast were you going? A. He was trying to pass me at that time, and he touched me, and told me to get out of the way you guinea dago, and then he hit me as I said before.

40 Q. Did you say anything to him at all? A. I did not say anything, I did not do anything, but

Michael Rombolo—Direct.

I said, "Why do you call me that way, why do you act that way for"—and he struck me, and this woman who was there in the street tried to stop him, and said, "Let him alone, lets go home." And then he says, "Let me go." And then he said, "I'll knock the piss out of him."

Q. Did you see any other men there except the man who was walking with the lady? A. No. 10
No other men there.

Q. That is the only man you are talking about?
A. Yes.

Q. When did you first see the lady? A. I saw her when I was going home, I saw her and the man.

Q. Did you ever that night see the lady standing alone? A. No.

Q. Did you talk to the lady who with the man, or any other lady, while she was standing corner of Union street and West Side avenue? A. That 20
never happened during my time I was in the United States to talk to a woman standing on the street.

Answer stricken out.

(Question repeated.) A. No, sir.

Q. Did you say, "Hello chicken"? A. No.

Q. To any woman that night? A. No, I did not say that to any woman. 30

Q. Where was the revolver in your house when you put it in your pocket that evening? A. I had it in my drawer.

Q. Did you ever keep it under your pillow in that house? A. One night I had it under the pillow. I forgot all about it and I put it under the pillow.

Q. Did Mr. Camillo have possession of your revolver at any time you lived with him? A. Yes. 40

Michael Rombolo—Direct.

Q. How did he come to have your revolver? A. That was the time I forgot the gun under the mattress.

Q. After the trouble with the man and the woman and you ran, where did you go? A. I went straight home.

Q. And slept home? A. Yes.

10 Q. What time did you get up? A. Six o'clock, about six or half past six, and then I washed myself and changed my clothes, and then I went away.

Q. Did you see Mrs. Camillo that morning? A. Yes.

Q. Did she tell you anything? A. They were talking with their boarders in the house, stating that the police had called at the house, but I don't know anything about it, and then I boarded
20 a car and went to New York.

Q. Did you handle your revolver at any time next morning? A. Yes.

Q. Did you examine it? A. Yes.

Q. Why? A. I opened it and I learned that one cartridge was discharged.

Q. How much did you drink that night? A. A glass of gin and a couple of glasses of beer, not much, I was not drunk, half drunk, half sober.

Q. When you left your house in the morning
30 why did you not go to work at Ryersons? A. I was afraid on account of the strike because they had threatened to kill me.

Q. Where did you go? A. New York, and then I remained in New York for three days.

Q. What did you do in New York? A. It was Easter and I had a good time with my friends.

Q. When you left New York after three days where did you go? A. I went to Newark.

Q. What did you do in Newark? A. Then I
40 found a job there to work in a steel plant, and

Michael Rombolo—Direct.

then I sent this card to get my clothes because I did not know I had killed anybody.

Q. Did you ever hear anything at all— A. No sir—

Q. —about a shot you fired that night hurting anybody? A. No, sir.

Q. After you fired that shot and ran away did you stop to look back to see whether anybody had been hurt? A. No, sir. 10

Q. I want you to tell us why you fired that shot? A. Because this man threatened to kill me, and then he struck me, and then because he used bad words, Dago, guinea, and so forth.

Q. Just before you fired that shot were you afraid that you were in any danger?

Objected to as leading. Objection sustained.

THE COURT: That is grossly improper; very improper indeed. This man goes under-stand certain parts of English as is shown by some of his answers, and asking such a question is putting the answer in his mouth. 20

MR. DOHERTY: I don't want to do what is not proper. It is hard to frame the question.

Q. What were you thinking of just before you fired that shot? A. I was thinking of going home.

Q. Did you have any understanding or any idea of why the man who was with the woman threatened to strike you or hurt you? A. No, sir. 30

Q. Was there any light at that place? A. It was dark.

Q. Where was the man that you speak of when you first saw him, in respect to being on the sidewalk or out in the roadway? A. The woman was in the street, and as he passed me and struck me, and after he struck me he went also in the street, and then the woman says "Let's go home, let him alone;" and then the man left the woman again 40

Michael Rombolo—Direct.

and came towards me and threatened me with bad words.

Objected to as repetition.

Q. Do you know Giuseppi Calo, the boy who testified here? A. (English) Yes. I know him; I see him in the street a couple day when I was
10 there.

Q. Did you send him for your clothes and give him this envelope? A. Yes.

Q. What was the day you were arrested? A. Yes.

Q. You were arrested by Director Hague? A. Yes.

Q. Where did you first see Mr. Hague? A. In the store.

Q. The grocery store spoken of? A. Yes.

20 Q. Did you have your revolver in your possession then? A. Yes. I had it in my pocket.

Q. Did Mr. Hague speak to you? A. He spoke with men in the store.

Q. Did you hear him speak? A. A little bit.

Q. Did you run away from that store? A. Yes, I did.

Q. Why? A. I ran away to get out, to buy some cigars, and when I went out in the street I met four or five more who were waiting for me.

30 Q. What did you do then? A. I tried to run away because I had the gun in my pocket, and then I walked out about twenty paces and then about six followed me and captured me, and arrested me.

Q. While you were running away did you draw your gun or attempt to draw your gun or revolver? A. No.

Q. Where was the gun taken away from you? A. In my pocket.

40 Q. Where was it taken from you? A. This pocket here.

Michael Rombolo—Cross.

Q. At what place did they take it from you?
A. In the street.

Q. Did you while the officers were chasing you take your gun out of your pocket and put it back again? A. No, sir.

Q. Going back to the night you had the trouble on Union street, in which pocket were you carrying your revolver then? A. Right here (indicating the right hand side inside pocket of his coat). 19

Q. With which hand did you take the pistol out of your pocket? A. With this one here. (Indicating the left hand), and then I fired with this one here (indicating the right).

CROSS EXAMINATION BY MR. HUDSPETH:

Q. When you were working in the mines in Pennsylvania were you working among Italians? A. Americans and Italians. 20

Q. Were a number of Italians there? A. Yes.

Q. How long did you work in the mines in Pennsylvania? A. About seven years.

Q. You have not had very much education, have you? A. Yes, a little bit.

Q. Where were you educated, where did you get any education? A. A little bit in Italy, and then—

Q. Any in this country? A. And then I was also in the reform school in the United States. 30

Q. That was in Pennsylvania, was it not? A. Yes.

Q. It was Reformatory School? A. Yes.

Q. A prison? A. Yes.

Q. When were you there? A. In 1907.

Q. How long did you stay there? A. Eighteen months.

Q. After you got out where did you go? A. Pittsburgh, Greensburgh, and Westmoreland. 40

Michael Rombolo—Direct.

Q. Did you work among Italians in Greensburgh and Westmoreland? A. Yes.

Q. Why were you sent to the Reformatory?

Objected to. Objection sustained.

Q. For what crime were you sent to the reformatory?

10

Objected to. Objection sustained.

Q. Of what crime were you convicted for which you were sent to the reformatory? A. Because I was drunk, the boss of my house had a christening party, and then a farmer who was a friend of mine was there—

Q. Do you know of what crime you were convicted? A. For nothing; because there were people who spoke against me, some Italians.

20

Q. Don't you know you were convicted of a crime? A. No, sir, because I was drunk.

Q. Don't you know you were convicted of a crime other than being drunk? A. I was drunk and they found a razor in my pocket.

Q. Now you have volunteered the statement that at the time you were convicted it was because you were drunk and had a razor on your person—

30

Objected to on the ground that the entire question is based on the premise that it was a statement volunteered by the witness. Objection sustained.

Q. Now you have said that at the time you were convicted it was because you were drunk and had a razor on your person. Is it not a fact that you were convicted not of being drunk and of carrying a razor on your person but of committing a burglary and having a loaded revolver concealed

40 on your person?

Michael Rombolo—Cross.

Objected to as to the latter part of the question having a loaded revolver &c. Objection sustained because of the form of the question.

Q. Were you not convicted of burglary? A. No.

Q. And were you not charged with carrying a concealed revolver on your person at the time of the commission or attempting to commit that burglary? 10

Objected to as before. Question allowed. Exception.

MARK A. SULLIVAN,
Judge.

(Seal).

Question read and objection sustained because the question says were you not charged.

Q. Were you not convicted on the charge of burglary and carrying a concealed revolver? 20

Same objection. Question allowed. Exception.

MARK A. SULLIVAN,
Judge.

(Seal).

A. I was charged with carrying a concealed weapon, a gun, and they found a razor in my pocket, but not of burglary. 30

Q. And were you not convicted of a burglary? A. No.

Q. You were in court upon whatever charge you were convicted of in Pennsylvania, were you not?

Objected to as incompetent. Question allowed. Exception.

MARK A. SULLIVAN,
Judge. 40

(Seal).

Michael Rombolo—Cross.

A. I was in court, yes.

Q. And was there not read to you a charge of breaking and entering with intent and carrying concealed weapons and wantonly pointing fire arms?

Same objection; ruling, and exception.

10

MARK A. SULLIVAN,
Judge.

(Seal).

THE COURT: This is simply for the purpose of contradiction.

A. No, sir.

20

Q. And did you not in Court on August '10, 1907, in the Court of Oyer and Terminer and General Jail Delivery and the Court of General Sessions of the Peace, of West-Moreland County, Pennsylvania, plead guilty to an indictment charging you with breaking and entering? A. I pleaded guilty of carrying concealed weapons because I was drunk, and nothing else.

Q. And upon your conviction you were sentenced to the reformatory, were you not? A. Yes.

Q. Have you not made an affidavit in this court and in this very cause, that you were never convicted of any crime in Pennsylvania? A. What do you mean by that?

30

Q. Did you on the fifteenth day of May, that is the 15th of this month, sign and swear to an affidavit before Frank J. Gemino, who is present in court with your counsel at the counsel table, in that affidavit denying that you had ever been convicted of a criminal offense in Pennsylvania?

Objected to as irrelevant, immaterial and incompetent. Question withdrawn.

40

Q. You have said to your counsel that you ac-

Michael Rombolo—Cross.

quired a revolver from some Italian. When was that? A. Four or five months ago.

Q. Where was it? A. In Pittston.

Q. Why was it? A. We were living together in the same house and as he was to go to Italy he says "If you want to buy this gun I will give it to you cheap." And I bought it.

Q. But you were a law-abiding man and citizen 10
at that time? A. Yes.

Q. Then why did you buy a revolver from this Italian friend of yours? A. I bought it in order to keep the same in the house, and also some time I might go out in the night time.

Q. What did you want a revolver for? A. I had it home. I did not carry the gun.

Q. What did you have it for at all? A. I carried it because there was a strike there and they threatened to kill me in the morning. 20

Q. At the time you bought this gun from your Italian friend there was a strike in Pennsylvania where you were working? A. No.

Q. Where was the strike? A. The strike was here.

Q. When you bought this gun in Pennsylvania from your Italian friend when he was going away, why did you buy it? A. Because I bought the gun in order to keep in my pocket and if anybody was going killing to kill me, I could kill him first. 30

Q. Did you carry the gun at all times to protect you from such a thing as that? A. I did not carry the gun to kill anyone.

Q. Did you carry it on your person after you came here in Jersey City? A. No, sir. I had it home in my suit case.

Q. How in the world could you protect yourself from being killed if you kept the gun home in your suit case? A. Before I had no trouble with anyone. 40

Michael Rombolo—Cross.

Q. If you got this gun to protect yourself from being killed, how could you protect yourself with it if you had the gun home in your suit case? A. I had it in my suit case.

Q. Was it loaded? A. As I got it from that man it remained that way.

Q. Was it loaded? A. It was loaded, yes.

10 Q. That is the same gun that you shot Frank Kenny with?

Objected as containing an unwarranted assumption.

Q. Is that the same gun you shot this night of April 21st, as you have described? A. Yes. The same gun which was left to me by this Italian.

Q. I show you a revolver. Do you recognize that as being the same gun? A. Yes.

20 Q. That is it? A. Yes.

Revolver put in evidence as S-9.

Q. When you came from Pennsylvania did you bring that along in your valise? A. Yes, my suit case.

Q. And you were carrying it to protect yourself and that is the way you kept it? A. I carried it in my valise.

Q. To protect your life? A. I carried it, I had it home, and I carried it.

30 Q. Why did you bring it with you from Pennsylvania? A. Because I had it in my valise.

Q. What did you want it for? A. Because I had it in my valise.

Q. What did you have it for? A. To defend my own person.

Q. Is that the reason you brought it here in Jersey City? A. I carried it to Jersey City and I had it home.

40 Q. And that was to defend yourself? A. Yes, because there was a strike.

Michael Rombolo—Cross.

Q. Then when you took this job in Jersey City you had a revolver which was loaded and which you had to defend yourself from being killed; is that so? A. Yes, to defend myself.

Q. And when you went to this place to work down on the west side where you say there was a strike, you had the gun in your possession, had you not? A. I had it always home; I did not 10 carry this gun on this job.

Q. How in the world could you protect yourself from an attack if you kept that gun in your valise and you were running around on the streets? A. When they told me in the morning that I would be shot, that I would be killed, if I kept on working there, then I took the gun in the evening and put it in my pocket.

Q. Then you want the jury to understand that although you had this revolver in your possession 20 for protection, you never carried it around on your person until this particular day when you were told by some strikers you would be killed if you continued to work? A. Yes.

Q. This morning of the 21st of April, was the first day you went to work at this place in Jersey City, was it not? A. It was two weeks I had been working there.

Q. The same place you were working at on the 21st of April? A. Yes. 30

Q. That was Ryerson's, was it not? A. Yes. Ryerson.

Q. Where was the factory situated? A. On the side of the water.

Q. Down here on Newark Bay? A. Yes.

Q. Near what street or avenue? A. I do not know the names of the streets or avenues.

Q. How far was it from 199 Boyd Avenue where you were living at the time? A. About a mile.

Q. How far was it from the point on Union St., 40

Michael Rombolo—Cross.

where you fired this gun on the night of April 21st? A. About two blocks.

BY THE COURT:

Q. That is, your home was about two blocks from the factory? A. My home was two blocks away from that place.

10 BY MR. HUDSPETH:

Q. How far was the factory away from that place? A. About a mile.

Q. That is where you have admitted you fired the shot on Union Street. Was it a mile from the factory? A. Yes.

Q. And the factory was way down on the meadows, was it not, upon Newark Bay? A. Yes, by the sea there.

20 Q. There is where the strike was going on? A. Yes.

Q. And it was outside of the factory building you say you were told by some of the strikers that if you did not stop working there they would shoot you? A. It was under the bridge, while I was going to work in the morning to the factory.

Q. That is a bridge by the factory? A. Yes.

Q. What time did you quit work that evening? A. Half past five.

30 Q. Then you came to your boarding place on Boyd Avenue and got dressed up and went out? A. Yes.

Q. When you went out where was your revolver? A. Home.

Q. When you came home that evening you had been warned you would be shot if you did certain things? A. Yes.

40 Q. And you came home in the face of that warning, knowing that you had that revolver to protect yourself, and came home and washed your-

Michael Rombolo—Cross.

self and dressed and went out without it? A. Yes.

Q. Left it behind you? A. Yes.

Q. And went to a place where you might be killed? A. No; I went to New York.

Q. But you did not take your revolver with you? A. No.

Q. And you were afraid the strikers would attack you? A. Yes, but don't you see I made my mind up not to go to New York, but to go to the moving picture because I could get a train every hour, and then I went home and got my gun. 10

Q. But when you went out that evening you went with the idea that you might be attacked by strikers? A. Yes.

Q. Why did you not take the gun with you? A. Because I was going to New York and did not need a gun. 20

Q. You had to go some little distance from your house to Jackson Avenue station, did you not? A. Yes; it would take about ten minutes.

Q. You came back when you found the trains ran every hour, back to the house on Boyd Avenue? A. Yes.

Q. You were all dressed up and washed and prepared to go to New York to visit? A. Yes.

Q. Will you explain why you wanted to go back to the house before you went to the moving picture, being dressed up and washed, to get your revolver? A. Because I was going to have some good time in the moving pictures and in the village. 30

Q. You were going to have a good time in the moving pictures and for that reason you wanted to have your loaded revolver? A. Because I was frightened by the strikers.

Q. And you had that in your mind since you quit work that afternoon? A. I was about to go to New York, and then I changed my mind. 40

Michael Rombolo—Cross.

Q. But you were frightened since the strikers warned you you were going to be shot, were you not? A. I went in the saloon and was going to have a good time as usual.

Q. What alarmed you about being shot? A. Because from what I was told in the morning, "If you go to work you will be killed this evening."
10

Q. You felt that that might happen if you went out that night? A. Yes.

Q. Now, when you left the house you told your landlady that you were going to New York and you would be back Monday to go to work again? A. I told her I was going to New York and I would come back and get my clothes and find another job.

Q. Did you not tell the landlady you were going
20 to New York and you would not be back until Monday morning, when you would be back to go to work? A. I told her that I was going to New York and that I did not know when I was coming back, it might be two or three days.

Q. This was Friday night? A. Yes.

Q. And your week did not end until Saturday for your wages, did it? A. Yes; but I had to look for a job first, and then go home and get my clothes.

30 Q. Your pay day was Saturday? A. No. The pay day was Friday.

Q. Had you been paid that Friday? A. Yes.

Q. All the rest were paid Friday, that were working? A. Yes. All paid Friday.

Q. When was the end of the week in your factory? A. Friday.

Q. Was it not Wednesday? A. No; Friday they paid.

Q. Are you sure? A. Yes.

40 Q. Don't you know the end of the week in that factory was Wednesday, the pay day? A. The pay day was Friday.

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Q. You came back after you found out the trains run every hour, and got your gun, and then started out again to go to the moving pictures. Is that right? A. Yes.

Q. Where was the moving picture you were going to? A. I do not know the name of the street. I was only two weeks in the city.

Q. Had you been at that picture show house 10 before? A. No.

Q. Before you went to the show did you go in a saloon to get something to drink? A. Yes. I had a little drink.

Q. Where did you go? A. On the corner of the front avenue, the saloon on the corner.

Q. How many drinks did you have there? A. Beer, one or two glasses of beer, nothing else.

Q. Was that the first you drank that evening? A. The first time I drank there was as soon as I 20 came out of the shop.

Q. Do you remember going in a saloon corner of Union Street and West Side Avenue? A. Yes; I do remember.

Q. Had you been there before? A. No, sir.

Q. You got a drink there, did you not? A. Yes.

Q. Had some talk with the bartender about the price? A. No.

Q. Do you know where Mesick's saloon is? A. I do not know. 30

Q. You remember being in a saloon corner of West Side Avenue and some other street and you had some talk with the bar-keeper about the price of the liquor? A. Yes, I do remember.

Q. Where was that saloon? A. On the corner, but I don't know the name of the street.

Q. After you got through talking to the bar-keeper and drank your drink and paid for it, you went out, did you not? A. Yes.

Q. And came back again after that? A. No, I 40 did not.

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Q. Did you see any men in this saloon on the corner when you first went there? A. I saw people in the saloon.

Q. Did you speak to any of them? A. No, sir.

Q. But you only went there once? A. Only once. I went in and I drank and I went out.

Q. And you did not come back again? A. I
10 did not return to that saloon.

Q. Did you go from there to the moving pictures? A. No; that was after the moving pictures.

Q. You came from the moving pictures and went there? A. Yes.

Q. And then you went to the bake shop? A. Yes.

Q. And you bought a lemon pie there and some rolls, did you not? A. Yes.

20 Q. Are these the rolls, do you remember? A. (In English) That is no mine.

Q. Here is another package? A. That is mine.

Q. These are yours? A. Yes.

MR. HUDSPETH: The second package of rolls with currants in apparently, he says are his.

Marked for Identification S-10 for Identification.

30 Q. When you went in the bake shop do you remember who you bought the lemon pie from, a girl or a woman? A. A man.

Q. Did you see a girl there? A. Yes; a girl was there.

Q. Did you talk to her? A. No, sir.

Q. You did not have any talk or anything to do with a girl in the bake shop at all? A. I did not say anything. I took the stuff and walked out.

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Q. What was the first thing you bought in that bake shop? A. I guess they are there.

BY THE COURT:

Q. As between the pie and the buns, which was the first you bought? A. I don't remember.

BY MR. HUDSPETH:

Q. Do you remember how much you paid for the pie? A. Ten cents I think. 10

Q. How much did you pay for the rolls? A. Five cents I think.

Q. Do you remember that you had all the packages in one paper bag? A. Yes, sir.

Q. Your memory is pretty good about what occurred in that bake shop, is it? A. Yes.

Q. After leaving the bake shop, having put the pie and rolls and having them in one paper bag, where did you go? A. I tried to go home. 20

Q. Did you not go to a fruit shop first before you went home? A. I don't remember.

Q. Where was the bake shop? A. I don't know the address; I said that before.

Q. Was it on West Side avenue? A. You tell those words; it may be that. I was working around there.

Q. Was it not the street with the car tracks? A. Yes; the same street.

Q. Do you know the number 488 West Side avenue, do you remember that? A. No. 30

Q. Do you remember it was between the saloon where you got this drink that you have spoken of and Union street? A. Yes, I do not remember.

Q. Don't you remember now that this bake shop was right near the saloon and Union street but fronted on West Side avenue? A. I don't remember.

Q. You say when you left the bake shop, which was on West Side avenue, you were going home? A. I was going home from the bake shop. 40

Michael Rombolo—Cross.

Q. The nearest way for you to get home was to go along West Side avenue south to Boyd avenue, was it not? A. Going through Union street I would make a short cut.

Q. The nearest way for you to get home from that bake shop was to cross West Side avenue and go to Boyd avenue south, was it not? A. Yes; it
10 was nearer to go through Union street.

Q. Was not the nearest way for you to go the other way, to go south on West Side avenue until you got to Boyd avenue, and then cross West Side avenue, and continue to Boyd avenue, and then until you came to your home on Boyd avenue? A. Going through Union street was the nearest I could go.

Q. Don't you know in going to Union street you were going away from your home instead of
20 going towards it? A. No. I don't know all the streets there. Just I was working there two weeks and I came home nine o'clock every night, and Sunday I was there; I don't know all those streets.

Q. You knew where your home was? A. Yes.

Q. And you knew how to get there from this bake shop? A. I don't know that bake shop. I don't go there every night to that bake shop.

Q. You knew you had to go through West Side
30 avenue here in order to get to your home, did you not?

No answer.

Q. You know where West Side avenue is where the street cars run? A. I do.

Q. And you knew where your house was, where you lived on Boyd avenue east of West Side avenue, did you not? A. Yes.

Q. And you knew when you came out of the
40 bake shop that you had to go across West Side avenue in order to get home? A. Yes.

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Q. Now will you tell after you left this bake shop on West Side avenue between Union street and Boyd avenue, if you were going to go home with your purchase, why it was you went back to Union street? A. Because I did not know the streets.

Q. Will you tell us, if you were going home, and your house being on Boyd avenue on the east side and south of Union street, why you went east along Union street, directly away from your home? 10

THE COURT: You have not got your directions correct.

Q. Will you tell the jury why it was if you were going home after you left the bake shop, why you went along Union street? A. When I left the bake shop I went towards the street where I was living. 20

Q. If you continued down Union street westerly, if you were going home, how were you going to get there? A. I was going on the same street where the street car runs, and then I intended when I reached the corner to go home.

Q. How did you reach Boyd avenue from Union street? A. That night when I left my work I went to Boyd street and did not go to Union street. 30

Q. Before this shot was fired you had gone westerly along the street to your home. How would you go through Union street to Boyd avenue where your home was? A. I was walking through the street in order to go home like everybody else was.

Q. Did you ever go that way before to your home? A. Yes.

Q. To get to Boyd avenue you had to go through some vacant lots, did you not, from Union street? 40
A. To go to the street where I was living?

Michael Rombolo—Cross.

Q. Yes. A. I don't even know what that street is.

Q. But you had to go through some lots to go to your home from Union street? A. Yes.

Q. And in order to reach your house that way you had to climb the fence, did you not? A. No. There was no fence there.

10 Q. Are you sure of that? A. Yes.

Q. Had you ever been that way before? A. I passed there that night. I saw no fence there. I just going home and go to sleep.

Q. You went through Union street and some vacant lots and without climbing a fence you got home? A. I did not see any fence.

Q. You said a little while ago that was the nearest way to go home. How do you know that?

A. Because finding myself on Union street, instead
20 of making that curve I could go straight home.

Q. Why were you on Union street after you were on West Side avenue and bought pies and cakes? A. Because I was walking.

Q. Had you ever been that way before? A. A couple of times before that.

Q. Down Union street? A. Yes.

Q. Across lots? A. Yes, sir.

Q. To your home? A. Before I did not go through the lots.

30 Q. How did you go before? A. Below Union street is also a restaurant, I used to go there to eat and go home.

Q. Is that on Magnolia avenue? A. No.

Q. Is that on Mallory street? A. I don't know the street, not that right.

Q. Do you know where Mallory street or Mallory avenue is? A. No.

Q. Do you know Williams street? A. No. I don't know that street.

40 Q. Is there any street between Union street and

Michael Rombolo—Cross.

Boyd avenue along West Side avenue? A. I don't know.

Q. Do you know whether you went over or across a street after you left Union street to go to your home on Boyd avenue? A. No, sir.

Q. After coming out of this bake shop you say you started for home and to get there you started down Union street. When you reached the corner, was that the corner of West Side avenue and Union street after you left the bake shop and was that where you first saw this woman and man? A. Yes, that was the first time. 10

Q. Don't you know that when you first saw any one there it was the woman? A. I told you before I did not know this woman and I never saw her before.

Q. Which did you see first, the man or the woman? A. I saw both together. 20

Q. Were they standing or were they walking? A. They were walking.

Q. Walking which way? A. They were walking on the left side of Union street.

Q. And going down Union street westerly? A. They were going down, and I was walking slowly.

Q. Were they on the sidewalk? A. They were on the sidewalk.

Q. When you first saw them did you see their backs? A. I said before that they faced me. 30

Q. Were they coming towards you? A. Yes.

Q. They were coming towards you? A. Yes.

Q. But you were not going home? A. Yes, I was going home, but I was walking very slow.

Q. Did you not have to pass Kenny's house the way you were going to go home? A. What did I know of Kenny's house?

Q. You recollect you fired the shot? A. Yes.

Q. You had to pass that point to get home? A. I said before I don't know nothing about his house. 40

Q. Did you not have to go on past where you

Michael Rombolo—Cross.

fired that shot in order to go home to your house?

A. Yes.

Q. Were not the Kennys walking ahead of you in the same direction as you were going? A. Yes, on the same sidewalk.

Q. About how far ahead of you when you first saw them? A. The first time I saw them as I
10 was walking this way and they were walking behind me.

Q. Was that at West Side avenue and Union street? A. A little distance from it.

Q. Down Union street? A. Yes, down Union street.

Q. Which were furthest down the street, the man or the woman or you? A. I.

Q. Then you were ahead of them, were you? A. Yes. Did I not say that before?

Q. How long did you continue ahead of them
20 walking down Union street before Kenny spoke to you? A. Now you mean to say how many minutes he stood talking to me?

Q. No.

Question repeated by interpreter.

A. About three or four feet.

Q. You were walking three or four feet ahead of Kenny and his wife, they were walking behind
30 you? A. Yes.

Q. How far did you walk in that position before Kenny came up to you? A. Ask me again.

Q. How far had you gone from the time you first saw Kenny until Kenny caught up with you? A. Near about—about a palm, the span of a hand, that is when he reached me the first time, when he struck me.

Q. Where was that? A. In that place, on the sidewalk.

Q. On Union street? A. Yes, on Union street.
40

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Q. How far was that from West Side avenue?

A. About three blocks.

Q. Where Kenny struck you, about three blocks from West Side avenue? A. What do you mean? The street I was on.

Q. Do you know where West Side avenue is where the street car runs? A. Where the car passes I know.

10

Q. You know you were walking down Union street to go home, don't you? A. Yes.

Q. And you know Kenny and his wife were walking behind you? A. They were coming behind me but I was walking very slowly.

Q. How far did you go beyond West Side avenue, where the street cars run, before Kenny struck you? A. About one hundred feet; I don't know.

Q. You were walking pretty slowly, weren't you? A. Yes.

20

Q. And Kenny and his wife caught up with you? A. Yes.

Q. And they were walking on the sidewalk? A. Yes.

Q. When Kenny got up to you you say he spoke to you? A. Yes.

Q. Called you a dago and guinea? A. Yes.

Q. And struck you? A. Yes.

Q. Up about the shoulder? A. Right here in front.

30

Q. On the chest? A. Yes.

Q. Over the right breast, is that right? A. Yes (indicating shoulder).

Q. How was it you had faced around so that he was able to strike you where you say he struck you at this time? A. When he first struck me he passed on the sidewalk from the street, when he struck me he got on the street in the gutter, and the woman who was with him. I did not know whether she was his wife or who she was, and she told him, "Let's go home."

40

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Q. When Kenny walked ahead of you after he caught up to you walking slowly, did he then turn around? A. Yes.

Q. Had you said anything to either him or his wife up to that time? A. No.

Q. Had you done anything at all so far as they were concerned? A. No. I did not say anything.
10 I did not do anything.

Q. Did you not speak to the wife then or before that? A. I did not tell the wife anything. Never. I did not speak to her.

Q. When Kenny spoke to you he and his wife were on the sidewalk, were they not? A. Yes; but the wife was in the street.

Q. The wife was in the street and Kenny was on the sidewalk, is that the fact? A. Yes, when he struck me with his fist he was on the sidewalk.
20

Q. And you were on the sidewalk at the same time? A. Yes.

Q. After he struck you where did Kenny go? A. He left the sidewalk and went also in the street with the woman.

Q. Which way were you then facing when he left the sidewalk and got out in the street? A. I was looking at him.

Q. Then you were looking towards the street, were you not? A. Yes, sure. I said it one time already.
30

Q. You were looking towards the street and Kenny and his wife were standing down on the street, were they not? A. The wife was in the street, and she said, "Let's go; let him alone."

Q. Were they right beside each other, the wife and Kenny? A. No, they were alone.

Q. They were close together? A. First they were close by, and when the woman said, "Let's go home," then he left the wife and came towards
40 me to strike me again.

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Q. Did not Mrs. Kenny have hold of her husband's arm while they were on the street, you being on the sidewalk? A. She was not holding the husband. She only said, "Let's go home."

Q. Did she take hold of his arm? A. No.

Q. Instead of going home with her he stepped towards you; is that so? A. Yes, to strike me.

Q. Before he stepped towards you how far were you and he apart? A. About four paces. 10

Q. Will you show us what you mean by four paces? A. From me to that table. (Prosecutor's table—about ten feet.)

Q. So he was from you about ten or twelve feet when his wife said, "Let's go home"; is that so? A. Yes.

Q. And instead of going home as his wife requested him he made a motion towards you? A. Yes; he came towards me and struck me, and I don't know if he had weapons or not. 20

Q. Stand up and show how he came towards you as if to strike you? A. He was coming towards me with a hand in his pocket, and he came to me and says, "I'll hit you," and then he used that word.

Q. Which hand was in his pocket? A. The right hand.

Q. In which pocket? A. In the right side pocket of his coat. 30

Q. Did he have an overcoat on? A. Yes.

Q. And his left hand was clenched? A. Yes.

Q. And with his right hand in his overcoat pocket and his left hand clenched and extended he came towards you, did he? A. Yes, sir.

Q. And you were facing him as he came towards you? A. Yes.

Q. Will you stand up, please? A. Yes.

Q. I am Mr. Kenny for the purpose of illustration, and you are on the sidewalk, and I am 40

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on the road, and I have my right hand in my overcoat and my left I have raised this way, coming towards you, and you are facing me? A. Yes, I face you.

Q. You are facing me fearing I am going to attack you? A. Yes.

10 Q. Now what did you do? A. I do this way and shoot and turn and run away, I don't see you at all.

Q. You turned by turning your right side towards Mr. Kenny? A. Yes.

Q. And with the right hand you point the gun in the air? A. Yes.

Q. And with the left you indicate which way you run? A. I just run on the sidewalk and go on.

Q. With your right hand you drew your gun? A. Yes, I have this pocket and I move this way.

20 Q. With the left hand, as Mr. Kenny came towards you, from your description, while you were standing on the sidewalk, you pulled the gun from your inside pocket? A. Yes.

Q. And shoved it from your left hand to your right hand? A. Yes.

Q. And then fired your gun with your right hand? A. Yes.

30 Q. And fired the gun in the direction of Kenny, who you say you thought was going to attack you? Is that right? A. Yes.

Q. Did you not indicate this moment that when you drew your gun you drew it from your pocket, your outside pocket, with your right hand? Now which is true—whether you took it from your inside pocket or not? A. I took it from the inside pocket on the right side with my left hand, and with my right hand fired the gun.

Q. Did you see what effect that shot had? A. No. I did not see anything, because I ran away.

40 Q. You ran pretty fast? A. Yes. I ran pretty

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fast. When the fellow fell down I had no hat or anything, and I run.

Q. What did you do then with the gun? A. Put it in my inside pocket again.

Q. The same pocket you took it from? A. Yes.

Q. When did you put it in your pocket? A. After I had fired the shot, while going home.

Q. You say you did not speak to any woman corner of West Side avenue and Union street? A. No, I did not speak to any woman. 10

Q. And you did not pass any woman that was alone on that corner? A. I did not see any woman alone.

Q. That the first you saw of them was as they were going down Union street, that is Kenny and his wife, and as you were going down Union street? A. The first time I saw them was when they passed me and he struck me. 20

Q. And you were ahead of them all the time until Kenny caught up to you and struck you? A. Yes. 20

Q. Did you hear Mrs. Kenny say anything at all from the time you first saw her near West Side avenue until you heard her say to her husband, "Let's go home"? A. After he struck me.

Q. What did she say? A. The woman said, "Let's go home; let him alone."

Q. Did you hear her say anything up to that at any time? A. No. 30

Q. Did you say anything at all during the time you were going along Union street? A. No.

Q. Not a word? A. I did not speak with any one.

Q. Not even when Kenny struck you or after he struck you? A. After he struck me I asked him why he struck me.

Q. Where were you when you asked him that? A. He was on the side of the sidewalk. 40

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Q. Was he still on the sidewalk when he struck you? A. He was on the street at that time.

Q. What was his answer when you asked him why he struck you? A. When I asked him why he struck me he says: "You go on, you damn guinea"—or words to that effect.

Q. As you walked down Union street you had this package or a similar one, did you not? A.
10 Yes.

Q. Will you please stand up and show us how you carried it? A. This way.

Q. That is the way you carried it? A. I had it in this hand too.

Q. As you went along Union street show us how you carried it? A. This hand.

Q. The right hand? A. Yes.

Q. When you fired the shot where was this bag? A. I passed it to the other hand.
20

Q. You passed this package from the right hand to the left hand before you fired the shot that killed Kenny, did you? A. I do not remember how I passed these bags.

Q. Why do you change your answer?

Objected to as no variation.

THE COURT: I do not see any unusual variation that a man might not make naturally.

Q. How many packages did you have; more than one? A. Two.
30

Q. Did you carry both in the same hand? A. Yes.

Q. Were the pie and the buns in one package? A. I do not remember.

Q. Did you get a package of celery at the fruit store? A. I don't remember.

Q. When you got home did not say anything about this trouble to your boarding house mistress or to her husband, did you? A. No.
40

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Q. About what time did you reach your home on Boyd avenue? A. About eleven o'clock.

Q. You went right to your room, did you not? A. Yes.

Q. You lost your hat on the way? A. Yes, it fell off.

Q. While you were running you lost your hat? A. Yes, while I was running. 10

Q. And you lost these packages too while you were running away, did you not? A. Yes.

Q. And did you not pick up your hat? A. I was afraid that I would be shot from behind.

Q. Was there any one near when you dropped your hat? A. I am telling you now.

Q. Why did you not pick up your hat? It was dark there; how could any one see you? A. I did not do it because I was afraid he might shoot me or his companions if there was any. 20

Q. Did you see any companions with that man that was shot? A. It was dark and I couldn't see.

Q. Did you not say that you saw no one but these two people all this time? A. I am telling you again I did not see any one else.

Q. Those were the only two people you saw all this time after you left that bake-shop, is not that so? A. Yes.

Q. Then why were you afraid of being shot by any one when you dropped your hat? A. I did not know whether there was any strikers around there. 30

Q. You threw the packages in order to facilitate your getting away, did you not? A. Yes; I threw away everything.

RECESS.

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Q. When you got home you did not say anything to your boarding mistress or her husband of what happened? A. No, sir.

Q. You went immediately to your room and went to bed? A. Yes.

Q. And you went to bed with your clothes on? A. No, sir. I undressed myself.

10 Q. What did you take off? A. Coat and pants; that's all.

Q. Did you go to bed with your clothes on? A. When I went to bed I took all my clothes off.

Q. When you got to the house the door was locked and you knocked on the door and asked for some one to open it; is not that so? A. Yes.

Q. And the old man came and let you in? A. Yes.

Q. And did you not when you got there go
20 right in your room and lie down with all your clothes on? A. Yes. I did that about five minutes because the boss of the house was present at the time, but when he left I undressed myself and went to bed.

Q. That was about twelve o'clock? A. I don't know the time.

Q. The old man let you in? A. Yes.

Q. And he went to his room and you went to your room? A. Yes.

30 Q. And you did not lie down with your clothes on until the old man went to his room? A. While the old man remained in my room about five minutes I laid on my bed with all my clothes.

Q. You went away next morning and left all your clothes behind, and your satchel? A. Yes.

Q. And you never came back to that place again? A. No. I went to New York, Brooklyn, three days.

Q. Whom did you stay with in Brooklyn that

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two or three days? A. I was in a restaurant in Brooklyn.

Q. What were you doing there? A. To pass Easter with friends.

Q. Who were the friends? A. In an Italian restaurant and to have my dinner with some other Italians.

Q. How long did you stay in Brooklyn? A. 10 One day.

Q. And then you went to New York? A. Yes, Mulberry street.

Q. How long did you stay in New York? A. About three days.

Q. Who with? A. I never was in New York; I was there walking.

Q. After three days in New York, where did you go? A. Newark.

Q. During all the time you were in Brooklyn 20 and New York what did you do for clean linen and clothes except what you had on your back? A. I had the same clothes on and the same linen.

Q. All that time? A. Yes.

Q. You were asked by Mr. Doherty whether the old man had found your gun under the pillow at one time and you said yes, you had forgotten it, the wife found it, and you said you had forgot it; is that so? A. Yes; that is true.

Q. Then that was a time you had not the gun 30 on your person when you forgot to take it from under the pillow when the old lady discovered it there; is that true? A. When I left the gun under my pillow?

Q. You forgot it, didn't you? A. One night as I went to bed I had the gun in my pocket and I placed it under the pillow.

Q. You took it out of the pocket of your coat that you had been wearing around and put it under your pillow? A. At that time.

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Q. And when you went away that morning to work, you forgot to take the gun with you, didn't you? A. I never carried the gun when I went to work.

Q. How did you usually carry your gun when you did carry it? A. Here.

Q. That is on the inside pocket of your coat
10 on the right hand side? A. Yes.

Q. Is this your coat I show you now? A. Yes.

Q. Is this your business coat, the one you usually wore? A. I would wear it Sunday in the summer time and this time I was not working.

Q. What is that? A. When this coat was all new I wore it two or three times in the summer time.

Q. You wore it to work? A. Yes; I used to
20 for about a month.

Q. There was a pistol pocket? A. Yes.

Q. The right hand inside pocket? A. Yes.

Q. Will you explain why you required to put that patch in the pistol pocket at the lower extremity of it? A. I bought this coat with this thing on.

Q. You bought this coat with that patch on? A. Yes, yes.

Q. Did you buy this coat new? A. No, sir.

30 Q. You bought it second hand? A. Yes, second hand.

Q. From whom? A. Down in Pittston from a second hand store last year.

Q. And you mean to tell this Court and jury that you got this coat second hand at Pittston last year? A. Yes.

Q. And when you bought it it had that patch on the inside pocket? A. Yes, I get him like that.

Q. If that patch was there was the hole in the
40 pocket there also? A. I did not know it had a hole even.

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Q. Was that hole in the pocket when you bought it? A. I don't know.

Q. Will you look where that patch covers and tell the Court whether that is not a hole worn through that lining.

Objected to as immaterial. Objection sustained.

10

Q. Does that patch cover a worn hole in the pocket; does it not?

Objection sustained.

Q. Who told you there had been police at the house? A. The boarders were talking about it at the time when I went downstairs to wash my face.

Q. What boarders? A. The people who were boarding with me in the same house, three or four 20 persons were boarding there at the time.

Q. Who were they? A. I don't know their names.

Q. Did these boarders whom you don't know while you were washing that morning state the police had been at the house? A. Yes.

Q. Did you say anything? A. No, never, I did not speak.

Q. What did you suppose the police had been there for if you had not done anything? 30

Objected to as irrelevant. Question allowed. Exception.

A. Could I know why the police came there?

Q. The police coming there did not frighten you, did it? A. Not my room.

Q. In your mind you had not done anything wrong, had you? A. In my mind?

Q. You had not done anything wrong, had you?

A. It came to my mind that I had fired a shot 40

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in the previous evening, but what was the effect of the shot I did not know.

Q. You did not think you had killed a man?

A. No.

Q. And you did not know what the police were there? A. No, sir.

Q. Or that they wanted you? A. No.

10 Q. Then what did you examine your gun for?

A. They said the police were in their room.

Q. Is that the reason you examined your gun?

A. I examined my gun as soon as I got up from bed.

Q. Why? A. Because it came to my mind that I had fired a shot.

Q. You claimed that you had always left your gun at home in the valise or in a drawer; is not that so? A. Yes.

20 Q. Why did you take that gun away that morning when you were going in the morning to spend Easter? A. I took the gun with me because I thought I would not come back in that place any more.

Q. Did you not tell your landlady you were coming back on Monday? A. I says I may come and I may not. I said if I find a different position I may come back and take my valise.

30 Q. If you took your gun with you knowing take your bag and clothes? A. Because I did not you would not come back again why did you not know if I could find work or not.

Q. If you did not know if you could find work or not why did you not leave your gun at home where you usually left it? A. I forgot it in my pocket.

Q. You went to Newark and remained there some days, did you not? A. A day; one day and one night.

40 Q. How many days and nights was it you had

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been away from Boyd avenue before you sent these boys over for your clothes? A. Four or five or six days.

Q. And during all that time you had no change in linen or clothes, had you? A. No, sir.

Q. Why did you not go over for those clothes yourself when you had no knowledge that you had done anything wrong? A. As I found a position in Newark and they were friends of mine, or town's people, so I sent a boy down there to get my satchel. **10**

Q. Why did you not go for your clothes yourself before sending the boys? A. I was afraid to go myself and to take the valise because I was afraid of strikers.

Q. Where did you find the boys to go over there? A. In Canal street.

Q. At the store? A. Yes, in a store. **20**

Q. Was it a friend of yours kept that store where you got the boys? A. No, sir.

Q. How did you happen to go in this store, a strange place, and get two boys to go for you to Jersey City? A. As the owner of the store was from a town near by mine in Italy, we became acquainted.

Q. Do you remember telling those boys when you engaged them to go over to Jersey City and gave them this torn envelope with the address on it, 199 Boyd avenue, one of the boys said, "Why don't you go yourself?" You said, "I am too tired"? Is that so? A. Yes, and I gave them also 45 cents in order to pay the car fares. **30**

Q. Why did you tell them were too tired? A. Because I did not feel good that day.

Q. And that was so, was it not? A. Yes, it was so.

Q. Then it was not that you were afraid of the strike, but that you were too tired was the **40**

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reason you did not want to go to Jersey City? A. It was for both reasons, that I was too tired and also that I was afraid of the strikers.

Q. Do you remember when you were brought to Jersey City a prisoner; do you not? A. Yes.

10 Q. Do you remember making a statement in the presence of Chief Monohan and other officers at Police Headquarters which was taken down in writing? A. Yes.

Q. Were you told then what you were charged with? A. Yes.

Q. And do you remember that Monohan and Inspector Leonard and Mr. Davidson were present when you made the statement? A. Yes.

Q. Now I show you what purports to be that statement and your signature of Mike Rombolo, Is that your signature? A. Yes.

20 Q. Did you make that to that statement after it had been taken down in writing? A. Yes. I was asked to sign my name and I signed it.

Q. Was this read to you? A. I ~~had~~ no interpreter there. I don't know what it said.

Q. Do you mean to say that you signed that statement without knowing what the statement was? A. Yes; all that the statement contained I did not know. I was asked to sign my name and I signed it.

30 Q. You say you did not know what the statement contained because it was in English? A. No, sir, not at all.

Q. Did you not make your answer to every question asked you in English? A. I was forced to do so and I did it.

Q. The conversation between you and the officers was carried on in English language, was it not? A. Yes.

40 Q. And you knew what this statement contained so far as that conversation was concerned, did you not?

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Objected to as unintelligible. Objection sustained.

Q. This matter was talked about in English, was it not?

Objected to as unintelligible. Allowed. Exception.

A. Yes, all English. 10

Q. Questions asked you in English and you answered in English? A. Yes, so far as I could go.

Q. You were asked this; "You are charged with murder that you did on Friday April 21st instant, shoot a man named Frank Kenny, at Boyd avenue and West Side avenue. What have you to say? A. I never shot a man and know nothing about the murder." Were you asked that and did you make that answer in that statement? 20

Objected to as irrelevant and immaterial and not directed to any obvious inconsistency with the witness's testimony. Question allowed. Exception.

A. The first time I said no.

Q. Were you also asked: "Why did you shoot that man?" and did you answer "I never shot a man"? A. I told him I did not know anything.

Q. Were you also asked this question: "What time were you in the bakery shop on West Side Avenue when you bought the buns, and did you answer "Six P. M." A. Yes. 30

Q. Were you not asked this question: "When you bought the head of lettuce at the fruit store, how much did you pay for it?" and did you answer, "I paid six cents; it was celery, not lettuce." Did you say that? A. Yes. I bought celery holidays when I leave the job.

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Q. Were you asked: "Did you have any trouble with a man on Good Friday night?" and did you answer "I did not have any trouble with any one"? A. Yes.

Q. You said when you went in the bake-shop that you got what you purchased from a man and did not get anything from a girl or girls. Did
10 you have any conversation with a girl or girls in that bake-shop? A. This was six o'clock when I left the shop.

Q. Did you have any talk with a girl or girls in the bake-shop where you bought the pie or buns?

THE COURT: He has a right to know what time you mean. He says this was six o'clock, and apparently there may have been two occasions he was there. I think he should have his mind directed in the question to the
20 time you mean.

MR. HUDSPETH: If this man is not telling the truth why should I put him straight?

Question allowed. Exception.

A. I did not talk with any one. I bought celery and I went away.

THE COURT: That is not responsive. Repeat the question.

Question objected to as indefinite. Question allowed. Exception.
30

MARK A. SULLIVAN,
Judge.

(Seal.)

Question repeated.

A. I spoke with a woman who handed me the celery and I paid six cents and she said all right.

Q. Did you have any talk with a girl in the
40 bake-shop? A. No.

Michael Rombolo—Cross.

Q. Where you bought the pie and buns? A. No.

Q. You have said you went to the depot, the railroad depot, to see what time the train went to New York, and you found out they went every hour, and then you went back home; is that true? A. Yes.

Q. Is that where you found out about the 10 trains, at the depot where you went? A. Yes.

Q. Did you not when you went in this bake-shop and found fault about the price of the pie, or what the pie was, whether lemon pie or not, ask one of the girls what time the trains went to New York, and did she not go and look for you and tell you? A. (English) "I was told me some people every day you can take de train go to New York, and some people say de train go every hour, and I go to de station and daye tell me 20 go every hour, and one go about ten minutes ago."

Q. Did not this girl in the bake-shop you were buying these things tell you what time the trains went to New York? A. I did not buy anything in the store.

Q. Did not buy anything in the store, in the bake-shop? A. I just ask to see what time, I did not buy anything in the bake-shop.

Q. Did you not find out what time the trains went to New York from the girls in the bake-shop and not from the agent at the depot? A. I asked many people. 30

Q. Did you ask the girl in the bakery shop what time the trains went to New York; did you ask that in the bakery? A. Yes, in the bakery, yes.

Q. And did she not tell you? A. Yes, every hour.

Q. And that is where you found out about the trains, is it not? A. And then I went also to the station and made inquiries to find out what time 40 the trains left.

Michael Rombolo—Cross.

Q. In your statement were you asked: "What time did the girl in the baker's shop tell you that the next train for New York left the West Side station", and did you not answer ten o'clock?

A. Yes; the girl said ten o'clock.

10 Q. You ran away, as you said, when you saw Commissioner Hague in the store in Newark because you were afraid; afraid that you would be arrested because you had the gun. Was that true? A. Yes.

Q. How did the police know at that time that you had the gun? A. I saw they were asking.

Q. Did any one tell you you had a gun and they were going to arrest you or words to that effect? A. I know they were police.

Q. How did you know they knew you had a gun or suspect you had a gun?

20 Objected to. Objection sustained.

Q. You were asked this question: "Why did you have your gun in your inside coat pocket?

A. I always carried it in my inside coat pocket. Did you mean by that that you always carried the gun with you in your inside coat pocket?

A. I had nothing to say and nothing to do with anybody but I carried the gun in my inside coat pocket.

30 Q. Put up your hand again and show me how you fired that pistol when you fired it off at the time Mr. Kenny was shot?

Objected to as fourth demonstration asked of witness. Objection overruled.

A. I put up this left hand and took it out of my pocket and put it in my right hand and raised it so.

40 Q. Did you use your right hand in pulling your revolver?

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Objected to on the ground that there is no evidence that he pulled the gun before in his left. Objection overruled. Exception.

MARK A. SULLIVAN,
Judge.

(Seal.)

A. With my right hand.

10

Q. Were you not asked by the police: "Why did you have your gun in your inside coat pocket?"

A. I always carried it in my inside coat pocket.

Question, are you right handed or left handed?

Answer, I am left handed. Question, which hand do you use when you fire your gun? Answer, Left hand."

Q. Now, which is true, what you say to-day or what you said to the police in that statement about that? A. I did not understand that question of the police when I was asked at that time. They would not give me an interpreter.

20

Q. You made another statement, did you not, to the police, beside the one I have just quoted and called your attention to? A. Yes.

Q. The statement that I have asked your attention to particularly and asked you certain questions in connection therewith, where you identified your signature, was that the first statement you made? A. Maybe, I don't know.

30

Q. Chief Monahan was present when you made your first statement? A. Yes.

Q. And did not Chief Monahan say to you after you had made your first statement, "Now is your chance to tell the truth, and if you want to tell the truth about this shooting you may have the opportunity," and did you not thereupon say "All right," or words to that affect, "I'll tell the truth," and then make the second statement?

Objected to as irrelevant, immaterial and 40

Michael Rombolo—Cross.

incompetent. Objection overruled. Exception.

A. And then I said I will tell the truth.

Q. And you made the second statement? A. Yes.

10 Q. And I show you what purports to be your statement signed by one Mike Rombolo, and ask you if this is the second statement and if that is your signature to it. A. This must be.

(A.) Q. Now in this statement did you not in answer to this question, "You are charged with murder that you did on Friday, April 21st, 1916, shoot a man, Frank Kenny, at Union street and West Side avenue; what have you to say?" Answer, "I left Ryerson's shop 5.30 P. M. and I then went to a fruit store on West Side avenue and bought a bunch of celery for six cents, and then went home, and I changed my clothes, and I told my boss I was going to New York, and I went to the West Side station to find out when a train went to New York, and they told me at ten P. M., and then I went to a moving picture show on West Side avenue near Boyd avenue. After the show I went home. On my way home, at Union and West Side avenue, I saw a man and woman. When I passed the man I brushed against him and he called me a guinea and dago, and struck me on the right breast. I told him I was no guinea or dago; and then he tried to hit me again. The woman said leave him alone, come home. He tried to hit me again, and then I drew my gun and shot him once. I then went home. About seven o'clock on Saturday I went to New York, and on the following Tuesday, April 25th, I went to Newark, N. J., and stayed there until I was arrested April 27th." And were you now asked "if the woman was holding him could

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Michael Rombolo—Cross.

you not have run away before you fired the shot?" Answer, "O yes, I could have run away, and any one could run away." Is that correct?

Objected to as complicated, and that the witness might answer truly yes to one part and to another part no. Objection overruled. Exception.

10

Q. Did you hear what I said? A. Yes, sir.

Q. Did you hear and understand what I read to you? A. Some, not all.

Q. Let the Interpreter read it from the statement.

The Interpreter reads from the statement in Italian, presumably the question marked (A). Same objection by defendant's counsel. Same ruling by the Court. Exception.

20

(Seal.) MARK A. SULLIVAN, *Judge*.

A. I said that with one exception, that part where it is said he, I, pushed against Kenny; it was Kenny pushed against me.

Q. And what you said in that statement was put to you and answered in English? A. Yes.

Q. And were you also asked: "After he struck you and the woman was holding him could you not have run away before you fired the shot? Answer, O yes, I could have run away, and any one could run away?" A. I said "Every one can run away."

30

Q. You did not know you shot Kenny or a man, did you? A. No.

Q. You did not know you had killed Kenny or a man? A. No.

Q. You did not know that this shot, that this shot you admitted on the Friday in question you shot, had hit Kenny or any other man? A. No, sir.

40

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Q. You only heard that when? A. When I was arrested by the police.

Q. That is when they told you that this had happened? A. Yes.

Q. And you never admitted that you murdered Kenny, have you? A. No, sir.

Q. You never admitted that you shot him? A. I thought I did not catch him.

Q. Do you know what homicide is? A. Yes.

Q. And you never admitted that you committed homicide to any one, did you? A. No.

Q. You have a brother, have you not? A. Where; in America?

Q. Anywhere. A. I have three brothers in Italy.

Q. Have you got a brother named Joseph Rombolo, have you not? A. In Italy, yes.

20 Q. He lives in Bredori, in the province of Candasero? A. Yes, that is right.

Q. Since you have been in the county jail you have written him a letter, have you not? A. Yes.

Q. I show you a letter. Do you recognize that as being a letter you wrote to your brother Joseph Rombolo since you have been in the county jail? A. Yes.

30 Q. Did you in that letter say to your brother in substance this, your letter being in Italian and this translation being in English, "With my same displeasure I will let you know that I have committed a homicide and have been incarcerated, and that my case will be tried in a couple of months from now."

Objected to as irrelevant, immaterial and incompetent. Question allowed. Exception.
(Seal.) MARK A. SULLIVAN, *Judge*.

40 A. I can only write a little bit. Maybe the man who wrote the letter made a mistake.

Michael Rombolo—Cross.

Q. I repeat the question: Did you tell your brother in that letter that you had committed a homicide and that you were incarcerated in the jail and that your case would be tried in a couple of months?

Objected to on the ground that it now appears that the defendant did not write that letter himself. Question allowed, subject to cross examination. Exception. 10

A. I stated that I was in jail, but I did not say anything about these nonsenses.

BY THE COURT:

Q. What do you mean by these nonsenses? A. About having committed homicide.

BY MR. HUDSPETH:

Q. Look at that letter and say whether or not you made those expressions that are contained in that letter, to your brother? 20

Objected to on the ground that it should first be established that the witness wrote the letter. Objection sustained.

Q. Did you write that letter? A. No, I did not write the letter myself.

Q. Did you have anyone write that letter for you? A. I asked another person to write a letter for me. 30

Q. Who? A. I think his name was Dominick.

Q. Where was it you asked him to write that letter for you? A. I told him to write this letter to my brother in Italy.

Q. To your brother Joseph Rombolo? A. Yes.

Q. Did you tell him what to write to your brother Joseph? A. I told him to write my brother a few lines and let him know I was in jail. 40

Michael Rombolo—Cross.

Q. For what? A. That I had a little trouble, here; that's all.

Q. What trouble? A. That I had some trouble.

Q. What trouble? A. I told him I was in trouble but I did not state any facts.

Q. Did you tell him you were committed for a homicide? A. No, sir.

10 Q. For killing anyone? A. No, sir.

Q. For shooting any one? A. No, sir.

Q. Nor nothing to that effect? A. No.

Q. Then if the person you asked to write that letter for you to your brother Joseph has in that letter the statement of the fact that you had committed a homicide and were incarcerated in the jail for it, and that your case was coming on for trial, you did not tell him to write that? A. No. The only thing I said to write was that I was
20 incarcerated and that I had a little trouble in the United States.

Q. Have you got a friend named Franco Salsoda, 162 Main street, Pittston, Pennsylvania? A. Yes.

Q. Did you write or cause to be written to him a letter as to your trouble? A. Yes, I did.

Q. Who was it you had write that letter for you? A. A person who was in jail with me.

Q. Who was it? A. I don't remember.

30 Q. Who was it? A. I don't remember.

Q. Did you tell him, that man whom you asked to write that letter for you to your friend Salsoda, "I let you know that I find myself incarcerated because I have shot at one?" A. That I have trouble here and that they come and help me.

Q. Did you ask or say: "I pray you, if you can, help me to procure a lawyer?" A. No, I did not.

Q. Now, when you had this letter written to Salsoda, Mr. Franco Salsoda, did you also through
40 the same party, have a letter written to Papino Papina, a friend of yours? A. Yes.

Michael Rombolo—Cross.

Q. He lives 13 State street, Buffalo, N. Y.? A. Yes.

Q. Did you tell this man who was writing the letter for you to Mr. Papina, to tell him, "I let you know that I find myself for a homicide done; I pray you, if you can, procure me a lawyer, you and also the townspeople; I have nothing else to say?" A. I told him to come here in Jersey City. 10

Q. Is that all? A. Yes.

Q. Now take this letter and read the Italian text and let me know whether or not you had this man say to your friend, "I let you know that I find myself incarcerated for a homicide done."

A. I cannot write or read.

Q. Can't you read Italian? A. I no read.

MR. HUDSPETH: Mr. Interpreter, read that letter to him in Italian.

THE COURT: Can there be any doubt that he knew he was incarcerated for a homicide done? 20

MR. HUDSPETH: This puts a different aspect on the matter. Here he says homicide done.

THE COURT: I couldn't spell out any admission from what you read there.

MR. HUDSPETH: The one to his brother Joseph, the first one, he says "with the same displeasure I let you know I have committed a homicide." 30

THE COURT: That is the first one. But this second one, he says "I am incarcerated for a homicide done." That's all. He knew that then that that was the charge against him.

MR. HUDSPETH: We will only take cognizance of the first one.

Q. Take that first letter that I asked him about 40

Michael Rombolo—Cross.

to his brother Joseph and read that to him in Italian, where he says about his displeasure and that he committed a homicide. Did you tell him to write that?

(Interpreter reads to the witness in a foreign language.)

10 Cross examination objected to on the ground that the matter is exhausted. Objection overruled. Exception.

A. No. They wrote the letter as they wanted. They put in what he wanted.

Q. That is, the man you got to write this letter put in what he wanted to put in? A. Yes. I told him to write my brother that I was incarcerated. That's all. But I did not say anything about the other things.

20 BY THE COURT:

Q. When you ran away from this shooting and went through these lots, and came to Boyd avenue, did you go back then in the direction of West Side avenue along Boyd avenue? A. Directly home.

Q. Did that bring you across West Side avenue again? A. Yes.

30 Q. Then when you were going down Union street, you were going in the opposite direction? A. No, sir.

Q. As I understand it you left West Side avenue and started down Union street towards Mallory avenue; is that so? A. Yes.

Q. And then this shooting took place? A. This was at the time when I was about to go home.

Q. And then you ran through the lots to the next street, Boyd avenue? A. After I done the shooting, yes.

40 Q. And then you went up West Side avenue

Michael Rombolo—Cross.

again to the crossing? A. Yes; I went right home.

Q. You lived on the other side of West Side avenue? A. On this side, not this side.

Q. On the side towards Mallory avenue? A. No.

BY MR. HUDSPETH:

Q. Did you live on the same side of West Side avenue as where you did the shooting? A. On the same side as the shooting took place. 10

RE-DIRECT BY MR. DOHERTY:

Q. When you turned into the lots you had to go through two blocks to get to Camillo's shoe store? A. Yes.

Q. And Camillo's shoe store is on Boyd avenue down near Mallory? A. Yes. 20

Q. And once you crossed through the lots and got into Boyd avenue you did not have to turn back again to West Side avenue to get to Camillo's, but you went further down towards Mallory avenue; is that right? A. Yes, I did.

Q. How far from Mallory avenue is Camillo's house where you lived? A. A little distance. I don't know.

Q. Were those three letters shown to you written in your presence? A. They wrote them in my presence but I did not tell them to write them in that way. I did not tell them things they put in. 30

Q. They were written by Italian prisoners in the jail? A. Yes.

Q. And you had told those men what you were in jail for? A. Yes. He knew it.

Q. And you knew what he was in for too, did you not? A. Yes. He had some trouble with a woman. 40

Michael Romolo—Re-Direct.

Q. And so at the time when he wrote those letters it was not necessary for you to tell him what to say to your brother or other friends, what the charge was against you?

Objected to as leading and suggestive.
Objection sustained. Exception.

(Seal.) MARK A. SULLIVAN, *Judge*.

10

Q. Did you have anybody in the jail write any other letters but those three? A. Only those three.

Q. And your reason for asking anybody to write those letters for you was that you wanted to get assistance from outside and other persons to prepare your case?

Objected to. Objection sustained.

20

Q. What was your reason for writing those three letters? A. To get some help in order to procure a lawyer.

Q. When those letters were written by your friends what was done with them? A. I send the three and they did not send them.

Q. When did you find out those letters were not sent to your brother and friends? A. I noticed it because I did not receive any answer.

Q. When did you ascertain they were in possession of the Prosecutor of the Pleas of this County?
A. I notice that now.

30

Q. The statements made to the police were prepared for you in the police headquarters, were they not? A. I do not know.

Q. Where were you when those statements were signed by you? A. When they were signed in the police station, do you mean?

Q. Yes, sir. A. I was there.

Q. What time of the day or night was that?

40

A. About half past eight, I think.

Michael Romolo—Re-Direct.

Q. What time was the first statement signed?

A. About nine o'clock.

Q. What time was the second statement signed?

A. About twelve o'clock, I think.

Q. Three hours after the first? A. I think so.

Q. During that three hours after, between the signing of the first and second statements, where were you? A. I was there in the police station. 10

Q. What were you doing and what were they

Q. Who was with you? A. A policeman.
doing? A. I was there and they were forcing me to say these things.

Q. How many of them were there? A. A lot of them; six or seven first off.

Q. Any Italians there? A. No, sir.

Q. In your first statement you said you did not shoot anybody and you knew nothing about any murder. Up to that time had anybody told 20
you that the shot that you fired had hit anybody?
A. Yes, I told them.

Q. What? A. Yes, I did.

(Question read: "In your first statement, etc." as above.)

A. When the Chief came he told me, "You can tell me the truth." Then I told the Chief the truth.

Q. In your first statement you said you did not shoot anybody and you knew nothing about 30
any murder. Up to that time had anybody told you that the shot that you fired had hit anybody?

A. The police said, "That was you."

Q. After they told you that did they then ask you the question whether you had any trouble with anybody on the night of Friday, April 21st?

A. Yes.

Q. And what did you understand the word trouble to mean as contained in that question?

A. I did not know what they meant about trouble. 40

Michael Romolo—Re-Direct.

Q. And you answered them that you did not have any trouble with any one, is that true? A. At first, as I did not know the meaning of the word trouble I did not tell anything, but when the chief came and told me to tell the truth I told it.

10 Q. You say you did not tell the chief that you fired the gun with your left hand. Did you say anything at all to the chief of what you did with your left hand that night? A. I told him I used my right hand.

Q. Is everything that was said to you by the chief and everything you said to the chief in those papers that have been read to you here to-day?

20 Objected to on the ground that there was conversation between the witness and the chief aside from the statement. Question withdrawn.

Q. You have told the Prosecutor that after Kenny struck you you were then 10 or 12 feet apart, the two of you. Did you fall that distance apart as the result of him stepping back or as the result of your stepping back? A. Because he drew back on account of his wife calling him at the time and pulling him back, and then he
30 rushed forward again.

Q. When he struck you or after he struck you was your position in any way changed, or did you stand like after you were struck? A. I drew back about a pace.

BY THE COURT:

Q. Did you have your moustache taken off between the time of the shooting and the time of your arrest? A. I had some trouble with my
40 moustache while I was smoking a cigarette in

Michael Romolo—Re-Direct.

the county jail, and then I caused it to be removed.

Q. That was after your arrest? A. Yes.

RE-DIRECT BY MR. DOHERTY:

Q. You now have a moustache? A. Yes.

Q. Is your moustache now the same shape as the moustache that you displayed before your arrest?

10

Objected to on the ground that the shape is immaterial.

MR. VICKERS With the consent of the defense we would like to produce a map of the streets, and we would like to have it admitted that Field Book of Jersey City, Volume I, is the official map on the files of the County of that locality, and that the street numbers are given thereon and the locations of the respective houses.

20

MR. DOHERTY: What for?

MR. VICKERS: That 199 is marked, and Boyd avenue is marked, and Union street and West Side avenue, and that on Field May 20 Number 488, which is the candy store of Grimm, is indicated as being just north of Williams avenue.

MR. DOHERTY: I can't assume the responsibility for the correctness of that map respecting house numbers.

30

THE COURT: So far as the location of 199 Boyd avenue is concerned and the various streets in that vicinity, is it satisfactory to the defense?

MR. DOHERTY: 199 is south side of Boyd avenue pretty well down.

MR. VICKERS: By consent of the defense we offer that for that purpose on Plat 29.

40

Theodore Camillo—Direct.

MR. DOHERTY: The admission relates only to Boyd avenue.

THE COURT: Well, the admission is as to the house of the defendant and the position of the streets and Union street and Mallory avenue and West Side avenue.

10 THEODORE CAMILLO, called by the defense, and sworn and examined through Italian Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. DOHERTY:

Q. You are here as a witness for the State, are you? A. I don't know. I was called here.

MR. VICKERS: We admit the State subpoenaed him.

20 Q. You are the owner of the house in which Mike Rombolo boarded? A. Yes.

Q. You are a shoe maker? A. Yes.

Q. And the lady who testified here this morning, Mary Camillo, is your wife? A. Yes.

Q. I ask you to give your attention to Friday, April 21st the Friday before Easter, Good Friday. On that night did you see Mike Rombolo? A. No. He went to New York.

30 Q. Why do you say he went to New York; did you go with? A. No. He said he was going there to celebrate Easter with his compatriots.

Q. When did he say that? A. On Friday night when he left at seven o'clock.

Q. When did you see him next after that? A. I saw him again on Friday night eleven o'clock when he come home.

40 Q. Tell us where and what occurred at that time? A. He knocked at the door. I was sleeping at the time. I got up and opened the door for him.

Theodore Camillo—Direct.

Q. What else happened after you opened the door? A. Nothing else, he went to sleep and I went to sleep.

Q. Could you tell whether he was drunk or sober when he got home at that time? A. Yes; he was drunk.

Q. Was he able to walk? A. He was leaning against the wall, but I think he went down a flight of stairs fell down stairs. 10

(I think &c. stricken out.)

Q. State whether or not he fell? A. I heard some rumble, some noise, he was about to get in his bed and then he fell on the floor.

(Answer allowed to stand against objection.)

Q. How long did you stay in his room after he went to bed? A. A few minutes. As soon as he went to sleep I went to sleep too; I was undressed. 20

Q. Did you see him again between that time and the next morning? A. Yes. He got up about six o'clock in the morning.

Q. Had you been in his room between the time he went to bed and the time you saw him at six o'clock that morning? A. No. We slept.

Q. Did any police call at your house while he was sleeping there? 30

Objected to as irrelevant and calling for a conclusion as to whether the defendant was sleeping.

Q. While he was in bed? A. They went upstairs and downstairs and I was sleeping.

Answer stricken out.

Q. Did you see them? A. When.

Q. When they were in the house? 40

Theodore Camillo—Cross.

Objected to on the ground of an unwarrantable assumption that police were there. Objection sustained. Exception.

Q. Did you see any policemen in your house at all that night? A. No.

10 Q. Do you know anything at all about the gun or revolver belonging to Rombolo? A. Yes. My wife found a revolver under the pillow in the bed in which he was sleeping.

Q. Did you ever have possession of that revolver? A. Yes. I put it away. I kept the gun about a day because my wife was frightened and asked me to put it away.

Q. What did you do with it? A. Put it in a drawer in the bureau.

20 Q. Did you ever see it again? A. No. I gave it to him. He asked for it. I gave it back again.

CROSS EXAMINATION BY MR. VICKERS: (In English.)

Q. How long have you lived in this country? A. 27 years.

Q. Always lived in Jersey City during that time? A. No. New York. Jersey City fifteen years.

30 Q. How long do you know Mike Rombolo? A. Just two weeks he lives in my house.

Q. Do you know what part of Italy he comes from? A. I don't know.

Q. Do you know if he comes from the same part of Italy from which you came? A. No.

Q. On this night when he came home you were asleep? A. Yes.

Q. And then you heard somebody on the door pounding? A. Yes.

40 Q. And you got up out of bed and opened the door? A. Sure, I hear the noise.

Theodore Camillo—Cross.

Q. What did Rombolo say when you opened the door? A. He say, "What for you take so much time to open the door quick."

Q. He said, "Why the hell do you take so long to open the door, why the hell don't you open quick?" A. Yes.

Q. And you said, "Why you come home?" A. Yes. 10

Q. And you said, "You say you go to New York?" A. Yes.

Q. And then he laid on the bed in his clothes and fell asleep? A. Yes.

(Examination through Interpreter.)

Q. When he came home did he have a hat on? A. I did not see that because I did not light the gas.

Q. You couldn't say because it was dark? A. 20
That is right.

Q. Is this the hat he started out with when he started out for New York? A. No, sir.

Q. What kind of hat did he wear? A. A blue hat.

Q. A soft hat? A. Yes.

(Examination in English.)

Q. When he started for New York that night he told you he was going to spend Easter with some friends in New York and come back to work Monday morning, did he not? A. Yes, that is what he said. 30

Q. Was he breathing heavily, like that (imitates) when he came upstairs and you opened the door? A. Yes.

Q. Puffing? A. Yes.

MR. DOHERTY: I want it on the record that the examiner is breathing sterorously.

Theodore Camilo—Re-Direct.

Frank Monahan—Direct.

Q. You couldn't see his face when you opened the door? A. No.

Q. There was no light in the room? A. No.

Q. And because he pounded on the door and made a noise and because he said to you, "Why the hell do you take so long", and because he was breathing like that you thought he was drunk?
10 A. He is drunk, and I open quick, and he say, "It is some time you take to open". He wanted me to open more quick.

RE-DIRECT BY MR. DOHERTY:

Q. You were sleeping rather sound that night?
A. Yes, I sleep.

(Translated.

20 Q. You don't know how long he was pounding before you woke? A. I heard the knocking at the door and I woke up.

Q. You were mad at him waking you up? A. Yes, I did not like it he come home so late.

Q. Who spoke first, you or he, when you said, "Why the hell do you come this hour," or when he said, "Why the hell don't you come to the door quicker?" A. He was the first one to speak.

30

FRANK MONAHAN, called by the defense and sworn testified as follows:

DIRECT EXAMINATION BY MR. DOHERTY:

Q. You are Chief of Police of Jersey City? A. Yes.

Q. And have been for some time? A. Yes.

Q. At any time during the month of April, 1916, did you exercise any official duties in respect of
40 a strike or a condition of labor trouble existing down at the iron plant of the Joseph T. Ryerson Company firm? A. Yes.

Q. What did you do in that respect?

Frank Monahan—Direct.

Objected to as immaterial. Objection sustained. Exception.

MARK A. SULLIVAN,
Judge.

(Seal.)

Q. Did you in the exercise of your duties as Chief obtain any information as to the prevalence of the strike at the Joseph T. Ryerson Plants? A. 10
Yes; I heard there was a strike there of course.

Q. What did you do about the strike after the official information you obtained?

Objected to as immaterial. Objection sustained.

Q. Can you state whether that strike was accompanied by any features of lawlessness; or personal violence?

Objected to as immaterial unless it has bearing with respect to some act done or something said which the witness knows did affect the defendant or might have. 20

THE COURT: You may show there was a strike but the individual troubles you cannot go into. I will also allow you to show there was disorder there, but not the particular details.

Q. The information you obtained as to the existence of the strike came to you in an official way as chief of police? 30

Objected to. Allowed.

A. Yes.

Q. And what official action did you take with respect to the conditions of which you were then informed?

Objected to as irrelevant, immaterial and incompetent. Objection sustained. Exception. 40

Frank Monahan—Direct.

Q. When did the Ryerson strike start, do you know? A. I couldn't give you the exact date.

Q. How long did it continue?

Objected to.

A. It finished last Monday.

10 Q. And how long preceding last Monday was the strike in progress, if you know? A. Pretty near a month; I won't be positive.

Q. Was that strike still pursued or substantially pursued on the date of April 21st, 1916? A. Yes.

Q. Will you state whether the methods pursued in that strike required you officially to adopt any means or issue any orders for the suppression or prevention of lawlessness or violence?

Objected to. Allowed.

20 A. I detailed a sufficient number of men to keep order.

Q. How long was that detail of men maintained?

BY THE COURT:

Q. When was it detailed first? A. I cannot recall the date.

Q. About when? A. It was over a month ago. I think the strike was in progress about six weeks all told.

30 BY MR. DOHERTY:

Q. Are we to understand that during the entire period there were men detailed there? A. Yes; every day and night.

Q. How many men were detailed there each day?

Objected to as irrelevant, immaterial and incompetent. Objection sustained. Exception.

MARK A. SULLIVAN,
Judge.

(Seal.)

Frank Monaham—Direct.

Q. Before the detailing of the men to Ryerson's plant had any acts of violence been reported to the police, to you, in connection with the strike?

Objected to.

A. No; not that I recall.

Q. What, then, was the purpose of detailing the men?

10

Objected to as immaterial. Objection sustained. Exception.

MARK A. SULLIVAN,

(Seal.)

Judge.

Q. Subsequent to the detailing of the men there was any official report made to you of acts of violence, and prior to the 21st of April?

Objected to on the ground that it is hearsay at best, that it is irrelevant unless communicated to this defendant and influencing him, and that there is no foundation laid for the question when he was on the witness stand.

20

THE COURT: The defendant has said threats were made against him personally. I will allow the question.

A. There was a couple of men assaulted, I think, around the first or second day of the strike, at the West Side depot of the New York & New Jersey Central Railroad. Now I would not be positive whether the persons who committed the assault were strikers or not.

30

Q. You were not there? A. No, sir.

MR. VICKERS: The State moves to strike out the answer as incompetent, hearsay, and irrelevant.

MR. DOHERTY: We object to that.

THE COURT: I think it is incompetent. 40

Frank Monaham—Cross.

I will expunge it from the record.

MR. DOHERTY: Exception.

MARK A. SULLIVAN,

(Seal.)

Judge.

Q. Did you ever go to the scene of the strike yourself? A. Yes.

10 Q. Can you tell us the date when you were there? A. I was three times all told. Once a day or two after the strike broke out; again about a week after; and I was there about a week before the strike was declared off.

Q. Were any of your visits there made between the dates of April 6th and April 21st? A. I don't recall the dates at all.

Q. At the time of your visits were policemen detailed there to preserve order? A. Yes.

20 Q. On the occasion of any of your visits did you see strikers performing picket duty in the vicinity of the Ryerson plant.

Objected to as immaterial. Objection sustained. Exception.

MARK A. SULLIVAN,

(Seal.)

Judge.

CROSS EXAMINATION BY MR. VICKERS:

30 Q. The depot of the Newark branch of the New Jersey Central Railroad at West Side avenue is near this plant, is it not? A. I guess it is about four blocks away.

Q. And it is ten blocks or more from Union street, is it not, fifteen blocks? A. I guess about ten.

DEFENDANT RESTS.

Nettie Grimm—Direct.

NETTIE GRIMM, recalled by the State, testified further in rebuttal as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. From Plat Book Volume I, I call your attention to plat 20, and indicate to you West Side avenue here, and Boyd avenue, towards the Hackensack river, that is to say towards the west, from where Boyd avenue runs into West Side avenue, and to the north is a street; do you know the name of that street? A. Williams avenue. 10

Objected to as not re-direct examination and not a proper question to address to this witness, who is not qualified by any special topographical knowledge, and therefore the defense moves to strike out the answer.

THE COURT: The objection is that this map has not been proven. 20

Question withdrawn.

Q. Directing your attention to Plat 29, which is in evidence, and particularly calling your attention to a street marked Williams avenue, can you show on this map, which shows West Side and Williams avenues, about where your store is located?

Objected to on the ground that it is based on the assumption that this plat is in evidence for the purpose of this question, whereas it is in evidence only for the purpose of showing the location of 199 Boyd avenue and its proximity to that only. 30

THE COURT: The only purpose it was in evidence was to prove the location of the residence of the defendant. I sustain that objection.

Q. Irrespective of the map, standing there in Williams avenue and facing east, is your store 40

Nettie Grimm—Direct.

to the left-hand or to the right-hand side of Williams avenue on West Side avenue?

Objected to as not rebuttal. Allowed. Exception.

MARK A. SULLIVAN,
Judge.

(Seal.)

10 A. Facing Williams avenue?

Q. No. Standing in Williams avenue, is your store to the left or right? A. To the right.

Q. Nearer to Boyd avenue? A. No. To Williams. It is nearer to Williams avenue than to Boyd.

Q. Between what streets is it? A. Williams avenue and Boyd avenue.

Q. It is nearer to Boyd than to Union? A. Yes.

20 Q. And on the east side of West Side avenue? Yes.

Q. Are you familiar with the four corners of Union avenue and West Side? A. Yes, Union street.

Q. Union street and West Side avenue? A. Yes.

Q. On the same side of the street on which your store is located and the corner nearest your store, what is that building? A. Bakery store.

30 Q. And on the same side of West Side avenue, but across Union street, what is that corner? A. A drug store.

Q. Going from that drug store west across West Side avenue and on that corner what is that building? A. An air dome.

Q. Going from that air dome across Union street on the opposite of West Side avenue from your store, what is the building on that corner? A. A saloon.

40 Q. Whose saloon is that? A. Shields'.

Nettie Grimm—Cross.

Q. Do you know where Messick's saloon is? A. Yes.

Q. Is that on the same side of West Side avenue where your store is? A. Yes.

Q. Is it this side of Boyd avenue, that is to say nearer to you, or— A. The other side, on the corner.

Q. That is, on the same corner corresponding to the corner of the bakery on Union and West Side, is it? A. Yes. 10

Q. The fruit store, is that between your store and Mesick's saloon, or is it between your store and the bakery? A. Our store and the bakery.

Q. So that it is one door nearer to Union street; is that right? A. Yes.

Q. Your store is a bakery? A. Yes.

Q. And the corner store is also a bakery? A. Yes. 20

Q. Ellen's candy store, in what position is it in relation to your store? A. It is on the same side of West Side avenue as our store, but on the block that the drug store is on.

Q. That is to say, to get to Ellen's candy store you have to go along West Side avenue on the same side of the street where your store is and cross over Union street beyond the drug store? A. Yes.

Q. How far is it beyond the drug store? A. 30
About the middle of the block, just between Union street and Clendenny, about the middle of it.

CROSS EXAMINATION BY MR. DOHERTY:

Q. You testified yesterday that your store was opposite Williams avenue. A. Not just opposite. There is a liquor store right opposite and then comes the fruit store and then our store.

Q. And from your store you can't see down the avenue? A. No, sir. 40

Thomas Collins—Direct

Q. How many stores are between your store and Boyd avenue? A. Two, a fruit and a saloon house on the corner.

Q. What is next to Shields' on West Side avenue? A. Dry goods store.

Q. What is next to that? A. Another air dome.

10 Q. How wide is the dry goods store, can you tell us? A. It is not very wide.

Q. Is it as wide as Shields'? A. Just about as wide.

Q. Are they not both 25-foot houses? A. I don't know.

Q. The air dome takes in the greater part of the lot, does it not, on the west side of West Side avenue between Union and Williams avenues? A. Yes.

20

THOMAS COLLINS, called by the State and sworn, testified in rebuttal as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. You are a member of the Jersey City police department? A. Yes.

30 Q. Are you familiar with the locality of Union street of West Side avenue in Jersey City? A. Well, yes, a little acquainted with it, the location of it.

Q. Do you know whether below the buildings where this alleged shooting occurred, where the vacant lots are, that is to say towards the Hackensack, whether between Union street and Boyd avenue, there is any fence interrupting a progress straight across? A. Between Union street and Williams avenue there is a lot leading from Union to Williams.

40

Q. So that in going down on the southerly

Thomas Collins—Cross—Re-Direct.

side of Union street across through the lots to get to Williams avenue is it necessary to go through or over that fence? A. To go over that fence in that one particular.

Q. Have you seen that locality since this shooting? A. Yes.

Q. How far does the fence extend in these lots? A. There is a garden there. Some of the families 10 in the house has a little garden plot, and the fence, I should judge, is four or four and a half to five feet high. There is an alleyway leads through one lot to Williams avenue about two feet six inches wide.

Q. So that it is either to go through this gate or go over the fence? A. Yes.

Objected to. Objection sustained.

CROSS EXAMINATION BY MR. DOHERTY: 20

Q. Is the north side of Williams avenue built up? A. No, sir.

Q. There are vacant lots? A. Yes. Plenty of vacant lots.

RE-DIRECT BY MR. VICKERS:

Q. At the point below the houses on Union street do any of the vacant lots on Williams avenue extend to any lots on Union street, except 30 where this fence is that you indicated? A. No, I don't think so.

Motion to strike out answer denied.

Wesley Bickard—Direct.

WESLEY BICKARD, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. Where do you reside? A. Huntington, Pennsylvania.

10 Q. What is your position there? A. I am Superintendent of the Bertillion and Finger Print Department.

Q. Is that an institution? A. Yes.

Q. What is the name of the institution? A. Pennsylvania Industrial Reformatory.

Q. Do you know this defendant Rombolo? A. Yes.

Q. Anytime in 1907 and 1909 was he committed to your institution?

20 Objected to as not proper rebuttal. Question allowed. Exception.

Objected to further that a foundation was not laid in defendant's examination. Question allowed. Exception.

A. Yes.

Q. At the time that this defendant was in that institution who was the general superintendent of the institution?

30 Objected to as irrelevant. Allowed subject to being stricken out if not properly connected afterwards. Exception.

A. Thomas Blair Patton.

Q. I show you what purports to be a record of conviction of one Mike Rombolo, and ask you to examine it and to say whether or not you can tell therefrom whether this defendant is the Mike Rombolo named in the record before you, and the same person you know to have been an
40 inmate of the institution at the time you refer to?

Wesley Bickard—Direct.

Objected to as irrelevant, immaterial and incompetent and not proper rebuttal.

THE COURT: I think the characterization of it as a record is not proper.

MR. DOHERTY: We object to the relevancy of saying that this man was an inmate of the institution.

THE COURT: I sustain the objection to the 10 question as asked.

Q. Without reference to papers. Can you tell whether or not this defendant is the person named in these papers?

Objected to on the ground that the papers are not identified, and there is nothing to show the relevancy of the fact if the defendant is the person named in those papers. Allowed, subject to be stricken out. Excep- 20 tion.

MARK A. SULLIVAN,
(Seal.) Judge.

A. Yes.

Q. Is he that person? A. Yes.

Papers offered in evidence, being apparently exemplified copy under the act of Congress.

THE COURT: Show it to Mr. Doherty and see if he has any objection to its admission in evidence. 30

So shown.

MR. DOHERTY: I object; it is a melange of private correspondence, complaints to Justice of the Peace and Constables, recital of crimes, and that there is no verification of the certification, and that the certification does not head the body of the paper, and if there is any certification I do not see any. 40

Wesley Bickard—Cross.

THE COURT: Are there two records here, Mr. Vickers.

MR. VICKERS: No.

THE COURT: Why are there two certificates?

10 MR. VICKERS: Because originally it was a certified copy, and that was not satisfactory to the State, and I sent it back, and therefore it is exemplified.

THE COURT: I will admit the record.

MR. DOHERTY: Exception.

MARK A. SULLIVAN,

(Seal.)

Judge.

Papers marked S/11, J.³, M.³. Copy appears later on herein.

CROSS EXAMINATION BY MR. DOHERTY:

20 Q. Do you know what these papers are? A. No, sir. I simply recognize him as the man.

Q. Have you not testified in your direct examination that you recognized him by looking at these papers?

Objected to that the witness did not so testify.

Q. Did you so testify? A. No.

30 Objection sustained.

Q. You are still in the employ of the State of Pennsylvania? A. Yes.

Q. Were you attached to the institution during the time Rombolo was there? A. Yes.

Q. How long was he there? A. As near as I can tell about eighteen or twenty months.

Q. Did you ever see the commitment which was your warrant for detaining him?

40 Objected to on the ground that this witness did not say he detained him, and that it is

Wesley Bickard—Cross.

irrelevant, immaterial and incompetent.
Question allowed.

THE COURT: Did you ever see the commitment under which he was held?

A. Yes, sir.

Q. Did that commitment state he was sentenced to ten years in state's prison for burglary?

10

Objected to on the ground that the witness cannot characterize the commitment which is part of the exemplified records that are submitted in this case, which are exemplified and must be given full faith and credence in this court and cannot be attacked collaterally. Question allowed.

A. I couldn't say whether they were just the exact words that were in that paper. I read the commitment just a day before I came down here.

20

Q. Have you looked at these papers at all? A. Not at those papers. I looked over the commitment papers we have in our office.

Q. I show you what purports to be the record of a plea made in the case of the Commonwealth versus Mike Rombolo in the Court of Oyer and Terminer for the County of Westmoreland, and I ask you whether according to that record the charge against him was not breaking and entering?

30

Objected to as irrelevant, immaterial and incompetent. Objection sustained.

Q. Does this, what purports to be a record of a plea of guilty, refer to a charge against the defendant as that of breaking and entering?

Objected to that the record speaks. Objection sustained.

Q. Was he detained in that institution on a

40

Wesley Bickard—Cross.

charge of breaking and entering? A. I think this young man's charge was burglary.

Q. Do you know? A. The commitment paper said burglary.

Q. You have seen the commitment paper? A. He acknowledged burglary.

Q. You saw the commitment paper? A. Yes.

10 Q. And that states burglary? A. Well, it states on that commitment paper that he drew a gun in the presence of a young lady.

Q. Is that a copy of the commitment? A. I couldn't tell whether it is or not.

Q. How do you know that paper you talk about was a commitment or not when you cannot recognize a copy?

20 Objected to on the ground that the witness is not produced for the purpose of giving the legal effect. Objection overruled.

Q. Will you state whether or not that is copy of the commitment?

THE COURT: If you know.

A. I can't just recall. I looked at those papers before I left there.

30 Q. You don't know what was in the commitment? A. I know what was in the commitment given to me. I am furnished with a commitment paper.

Q. Would you be able to recognize a copy of the paper that was furnished to you? A. Yes.

Q. Is this it? A. No, sir. That is not it.

Q. Is there one here? (Witness examines S/11.)
A. No, sir.

Q. Was he received in the institution to serve a definite or indeterminate sentence? A. Indeterminate sentence.

40 Q. And was discharged from that institution on whose order? A. The board of directors.

Wesley Bickard—Cross.

Q. After twenty months, do you say? A. I think about twenty months.

Q. Was he under your immediate supervision during that time? A. For a short time.

Q. The latter part of his term? A. No, sir.

Q. He was taken from your supervision and was placed under the supervision of some other officer there? A. Yes.

10

MR. DOHERTY: I observe at this time that the certificate relates to the papers and docket entry.

THE COURT: That is not the certificate you are looking at. The certificate is on the third page in front of that.

MR. DOHERTY: This purports to be an exemplification of the transcript and record of proceedings. That did not engage my attention at the time it was shown to me; and I now ask to have this record expunged because it is not an exemplification of a conviction which would only be admissible in rebuttal, and because it does not contradict the defendant, who has already admitted he was convicted of an offense.

20

THE COURT: What part is missing?

MR. DOHERTY: It is not what is missing, but what is superfluous. The complaint before a Justice of the Peace is improper. Next is the indictment in question. Next is a letter from some guardian—

30

THE COURT: Never mind, Mr. Doherty. I will admit it all as a copy of the record.

MR. DOHERTY: I find nowhere here a record of any formal judgment.

THE COURT: That is unfortunate. It is there. Counsel does not recognize it.

MR. DOHERTY: Mr. Vickers, will you show me where the judgment is in those records?

40

Wesley Bickard—Re-Direct.

MR. VICKERS: I will try. Here it is (shows).

10 MR. DOHERTY: Now in the interest of accuracy, I have seen the judgment. I would like to call the attention of the Court to the fact that the certification is that it is only a true copy and correct transcript of the proceedings in the case in Quarter Sessions, and I ask your Honor to expunge any documents which do not appear to be within the terms of the certification.

MR. VICKERS: We consent to the request of the defense to expunge any part of the record which does not come within the certification.

20 THE COURT: I do not think this Court has such power. The authorities of that State say under the seal of the great State of Pennsylvania that is our record. And I have no right to take anything out of it. I will deny the motion.

MR. DOHERTY: Exception.

(Seal.) MARK A. SULLIVAN,
Judge.

RE-DIRECT BY MR. VICKERS:

30 Q. I show you a photograph. Do you know whether you know that to be a photograph taken at your institution in your department of this defendant at the time of his incarceration there, and bearing a record of his coming to the institution, of the identity of the prisoner, and of the charge under which he was there committed?

Objected to as not rebuttal. Question allowed.

40 A. Yes. I took that photograph of this Rom-bolo.

Wesley Bickard—Re-Cross.

Q. By reference to this record, and the particular page purporting to be a communication by the general superintendent, Mr. Payton, to whom you have referred, I ask you whether you can identify the record of this prisoner from the photograph on these papers of S/11?

MR. DOHERTY: Objected to on the same 10 ground.

THE COURT: I will allow the question.

MR. DOHERTY: Exception.

MARK A. SULLIVAN,
(Seal.) Judge.

A. Yes.

Q. The number is a regular part of the record and the prisoners are known thereby and it appears in the exemplification and on the photograph and record? A. Yes. 20

Objected to as it speaks for itself. Objection overruled. Exception.

MARK A. SULLIVAN,
(Seal.) Judge.

Photograph offered in evidence. Marked S/12.

Exception.

MARK A. SULLIVAN,
(Seal.) Judge. 30

RE-CROSS BY MR. DOHERTY:

Q. Was a subpoena sent to you in Pennsylvania in this case? A. No. I was requested to come there.

Q. Are your transportation paid by yourself or the State of Pennsylvania?

Objected to. Excluded. Exception.

Q. You are here on your personal outlay of money, are you not? 40

Philip Leonard—Direct.

Objected to. Excluded. Exception.

MR. VICKERS: We offer in evidence the two police statements.

Objected to as not proven. Objection sustained.

10 THE COURT: The witness says some of it is right and he did not understand some of the questions, and he did not read it over, and it does not appear to have been read over to him.

PHILIP LEONARD, called by the State and sworn, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

20 Q. You are inspector of police in the Jersey City police department? A. Yes.

Q. I show you paper writing dated 27th of April, 1916, and ask you whether that was written and signed in your presence? A. Yes.

Q. Were the questions therein contained asked of this defendant and were the answers therein contained given by this defendant? A. Yes.

Objected to as leading. Objection sustained. Answer stricken out.

30 Q. Was the conversation which took place at the time of the taking of this statement between the police authorities and the defendant conducted in English or in a foreign language? A. In English.

Q. By whom was this paper signed? A. By Michael Rombolo.

Q. This defendant? A. This defendant.

40 Q. In your presence and before the paper was signed by this defendant and after it was written, what was done with it? A. Read to him in the presence of myself, and Lieutenant Van Horne,

Philip Leonard—Direct.

Chief Monahan, and Arnold Davidson, a newspaper man.

Q. And after it being read to the defendant was it then signed by him as it appears by the paper? A. After it was read to him he signed it.

Q. Thereafter were you present at the writing and taking of the paper which I show you now, number 193 in red ink? A. Yes. 10

Q. What was said at the time of the writing of this second paper which you have in your hand, was the conversation between the police authorities and the defendant in English or in a foreign language? A. In English.

Q. And after the writing of this second paper, which is numbered in red ink 193, to distinguish it from the other paper which is numbered 194, by whom was the paper signed? A. Michael Rombolo, this defendant. 20

Q. And after the writing of the paper after it was signed by the defendant Mike Rombolo, what was done with regard to the paper? A. It was read to Michael Rombolo.

Both papers offered in evidence. Objected to as not rebuttal, and as irrelevant and immaterial and not contradictory of any statement made by the defendant.

THE COURT: If that is all your objection I will admit them in evidence. 30

Exception.

MR. DOHERTY: We object on the ground that it has not been proven to be a voluntary statement.

THE COURT: That is a different proposition.

MR. VICKERS: I would like to be heard on that point.

THE COURT: The difficulty is this. Here is a paper lying on my desk, and a man might think it refers to a third man and he 40

Philip Leonard—Cross.

might sign it, but I couldn't testify he knew what was in that paper.

MR. VICKERS: The contents have been identified by the defendant himself, and it appears it is such a paper as is a voluntary statement.

10 THE COURT: He denies having made some of the statements in it.

MR. VICKERS: It is a question now for the jury as to whether the defendant tells the truth or whether the paper does.

20 THE COURT: It is a question for the Court whether I will admit that in evidence. It does not appear that this witness read that statement to the defendant. He says that the statement was read to him. Just the same as a third person might read something to another man and I testified that the paper was read to him. Unless this witness read it to the defendant himself I don't see how he can say the defendant knew everything that was in that when he signed it.

BY THE COURT:

Q. Who read the statement to him? A. Lieutenant Van Horne. I stood alongside of Lieutenant Van Horne as he read, and as he read it I also read it. I assisted in taking the statement.
30

Q. Were you standing alongside of him when he was reading? A. Yes.

Q. While he was reading both of them? A. Yes.

Q. Did you follow him in reading the statement as he read it to the defendant? A. Yes.

CROSS EXAMINATION BY MR. DOHERTY:

40 Q. Does this statement to which you now refer contain the entire conversation that was held be-

Philip Leonard—Cross.

tween the defendant and those that were present?

A. Practically the entire conversation.

Q. What do you mean? A. Well, sometimes he would not quite understand, and we would not, or Lieutenant Van Horne would not write the question until he was thoroughly familiar with the question.

Q. What was the difficulty? A. Well, at times 10 he would say that he did not quite understand, did understand it in a different way.

Q. Was it equivalent to his defective knowledge of English? A. He contended that

Q. And in his expression did he use broken English or plain? A. He used very good English, very good.

Q. Was his memory good? A. Pretty fair.

Q. He made no grammatical errors at all? A. Well, of course, there was a bit of Italian cursing 20 there.

Q. Were his choice words perfect? A. Pretty good. Every bit as good as the interpreters here to-day. He could speak English very good.

Q. Over what period of time did the conversation extend that purports to have been collected by that paper? A. Well, I guess about, the first paper possibly 2½ hours.

Q. Show me which you call the first paper? A. 194.

30

Q. This is the contents of the conversation that lasted 2½ hours? A. About that.

Q. And much was said by the defendant and by those who interrogated him that was not put in this paper? A. Yes.

Q. Why were certain parts of the conversation selected for inscription on this paper? A. There was many things he said that had no bearing on the case.

Q. Who was directing the preparation of this 40

Philip Leonard—Cross.

paper? A. I had a whole lot to do with it, and the chief also.

Q. Did you and the chief decide what should go on the paper and what should be left off? A. We would ask him a question, and sometimes, in fact he decided on three or four occasions previous to making that second statement which was
 10 completed between one and one thirty in the morning of April 28th, he on two or three or five or six occasions decided he would tell the truth, and possibly for eight or ten minutes on each occasion he would not say anything, he would simply hang his head and act as though he was going to say something, and finally would refuse to say anything.

Motion to strike out the question denied.

Question read.

20

A. Yes.

Q. In what room did this interview take place?

A. In the chief's office.

Q. Was anybody present except yourself, the chief, Mr. Davidson and Lieut. Van Horne? A. Well, I think three or four times, possibly half a dozen times, Lieut. Collins entered the office, and I think we had Detective Lynch in there sitting
 30 from the chief's office to the outer office to try and learn all that I possibly could in connection with the case.

"And learn," etc., stricken out.

Q. Will you tell us why four witnesses were required to sign this statement?

Objected to as containing an unwarranted assumption of fact, that they were required.

Objection sustained. Exception.

40

MARK A. SULLIVAN,

Philip Leonard—Cross.

(Seal.)

Judge.

Q. Who invited Mr. Davidson, if anybody, to sign this paper? A. I did.

Q. Tell us why you did?

Objected to. Objection sustained. Exception.

MARK A. SULLIVAN, 10

(Seal.)

Judge.

Q. Why did you sign it as a witness? A. Because I was present there and I felt it was my duty to do so.

Q. Was your dutiful disposition based on the fact that this defendant might deny he made this statement?

Objected to as calling for a conclusion and mental process of the witness. Objection sustained. Exception.

20

MARK A. SULLIVAN,

(Seal.)

Judge.

Q. Were you in uniform? A. Yes.

Q. Was the Chief? A. Yes.

Q. Was the defendant in custody? A. Yes.

MR. DOHERTY: The statement is objected to on the ground that there is no proof of it being a voluntary statement, and it is not proper rebuttal, and is immaterial and irrelevant. 30

Paper received in evidence. Exception. Paper is marked S-13.

MARK A. SULLIVAN,

Judge.

(Seal).

Q. How long after the first statement was prepared and signed was the second statement prepared and signed? A. About an hour and forty minutes.

40

Philip Leonard—Cross.

Q. What hour did you complete the second paper? A. About five minutes to three P. M. of the 28th.

Q. When did the defendant arrive at headquarters? A. Somewhat around 8 or 9 o'clock of the 27th, in the evening.

Q. And during all that time who was present
 10 and taking part in the conversation taking place in the chief's office having the object of the making of these statements? A. I was not in the conversation with him for possibly an hour or an hour and a half after he arrived, because it was necessary for me to learn all I possibly could from witnesses who had been summoned to the headquarters. I talked to those witnesses previous to talking to him in regard to the case.

Q. Did you tell him at any time that you had
 20 spoken to the witnesses? A. Yes. I did, and he knew that.

Q. Why was the conversation with him resumed after he signed the first paper? A. First he denied having any connection with the shooting up to the time of the signing of the first statement, which was shortly before one thirty on the morning of April 28th—

Q. Is that denial here? A. In the first statement.

Q. Will you point it out in the first statement?
 30 A. Yes, I can.

Objected to as immaterial as to what this witness thinks as to the effect of statement, and that the statement is in evidence and witness' opinion on the subject is incompetent and immaterial. Question allowed.

A. Here is one answer, "I never shot a man and know nothing about a murder." "Were you
 40 identified to-night by anyone as the man who

Philip Leonard—Cross.

shot another man Good Friday night April 21st, 1916. Yes, I was identified," &c. "Why did you shoot that man? I never shot a man." He was asked, "Did you have any trouble with a man on Good Friday night? A. I did not have any trouble with anyone."

Q. Are you finished? A. That's all.

Q. Was it for the purpose of furnishing the defendant an opportunity for changing this previous statement that the conversation was continued? A. Yes. 10

Q. And that was the only purpose, was it? A. That was the only purpose, if he so desired.

Q. To get him to take back those former statements and state something different? A. To make a truthful statement, a complete confession.

Q. Is that what is known in police practice as the third degree? 20

Objected to immaterial and improper.
Question withdrawn.

Q. Who was present at the time of the taking of the second statement? A. The same witnesses. Possibly Lieut. Collins and Detective Lynch were in there.

Q. Do you recall? A. No. I don't think Detective Lynch was in there when the second statement was taken. 30

Q. Was Lieutenant Collins, Chief of Police, Lieutenant Van Horne and Mr. Davidson there during the entire time the statement was taken? A. The Chief, Lieutenant Van Horne and myself were there all the time, and I asked Davidson to step in and hear what the man said, and he did so.

Q. Did Lieut. Van Horne in the statement write down the defendant's exact language? A. Pretty close to it. 40

Philip Leonard—Cross.

Q. But did he paraphrase it and use his own language? A. Very much this man's own language.

Q. You mean he often changed the defendant's language? A. No.

Q. Why do you say he very much used his language? A. Because except the accent he put
10 down his answers.

Q. He put down all, except he left off the accent? A. Pretty much.

Q. Did he on the second statement use this language "I left Ryerson's shop at 5:30 P. M.?" A. Yes.

Q. He said "5:30 P. M.?" A. Yes. It was all made very plain to him.

Q. Did he say that? A. I can recall what he said to that without reference to the statement.

20 Q. Did he say, "5:30 P. M.?" A. Yes.

Q. Did he say, "I brushed against him?" A. Yes.

Q. There was no confusion about that; he did not say that the man brushed against him? A. No. He done that. We asked him a few questions bearing on that case, and as I told you we lost very much time with him because at times he would pretend to not understand, and we wanted to bring it that he finally would state how the
30 shooting occurred and the cause of it, and he stated that after he went to the moving picture he went home and on his way he saw a man and woman—

Objected to. Objection sustained.

Q. Did he say "I went to New York. On the following Tuesday, April 25th, I went to Newark, N. J., and stayed there until I was arrested April 27th.?" A. Yes. We had a clean way there and
40 had him like dead.

Philip Leonard—Cross.

Q. Did he say Newark, N. J.? A. He said "New Jersey; Newark, New Jersey."

Q. But you will say he said "April 25th?" A. Yes, I will say he said "April 25th."

Q. He said "Tuesday, April 25th?" A. Yes, sir.

Q. And he said "Thursday, April 27th?" A. Yes.

10

Q. Can you tell whether you or the chief asked him this question: "After he struck you and the woman was holding him, could you not have gone away if you wanted to before you fired the shot?" Who asked that? A. The chief.

Q. And his answer was: "Oh, yes, I could have run away, anybody could have run away?" Was that all he said in that connection? A. That's all.

Q. Did he say he could have run away for safety? A. No, sir. He braced himself back in the chair and smiled, and said "Oh, yes, anybody could have run away."

20

Q. Is that all he said about running away? A. "Anybody could have run away. I could have run away. Anybody could have run away."

Q. Nobody asked any question of him as to whether he could have run away in safety or without danger to his life? A. No.

Q. The subject was dropped as soon as he said he could have run away? A. Yes.

30

Statement admitted in evidence and marked S-14. Exception.

(Seal.)

MARK A. SULLIVAN,
Judge.

TESTIMONY CLOSED.

40

*Court's Charge to the Jury.***Court's Charge to the Jury.**

Gentlemen of the Jury:

The counsel for the defendant and counsel for the State have performed their duty, and it now rests upon you and me to perform our duty. It has been said, and it is true, that this is a very serious position for you men to be in, and for me to be in. You are a jury who are to pass upon the question of whether or no this man is guilty of first degree murder, second degree murder, or manslaughter under the indictment. It is serious, but we should not allow the seriousness of the situation to oppress us so far as to affect our judgment. Your judgment can be rendered better by acting as ordinary, reasonable, healthy-minded human beings, and by refusing to be oppressed to that your judgment will be affected by the seriousness of your situation.

The law has been said to be cold-blooded. The law is not cold-blooded. It is calm, it is quiet, it is unafraid; it is free from passion, it is free from sentiment, it is free from prejudice. We are accustomed to represent justice as a figure blindfolded, with a bandage around her eyes, the reason being that justice is supposed not to see the character of the man who stands before her, not whether he be rich or poor, or black or white, or what his nationality, or creed or position in life may be; but simply to judge him on the evidence without regard to these other accidental things. That is the way that you men are to judge this case. Over the door of this court-house, in one of the panels in the front of this building, you will find a legend written that, "Justice seeks no praise and fears no blame." That is the spirit in which you should approach the decision of this case which is before

Court's Charge to the Jury.

you. You are to render your verdict on the evidence, according to your consciences, and then no one can find fault with what you have done.

This defendant is on trial for murder, and the indictment which charges the murder also contains a charge of what is known in the law as manslaughter. There is also in the indictment a count for assault and battery; but I deem it my duty to say to you now that you may disregard the count for assault and battery, because there is no evidence that has been produced during the course of this trial which would warrant you in finding this man guilty of assault and battery. He is guilty either of murder or manslaughter, or he is not guilty of any crime. 10

To support this indictment the State must prove the facts sufficient for that purpose by evidence beyond a reasonable doubt. A reasonable doubt would exist when the judgment of the jury, after a careful review of all the evidence, finds itself unconvinced of the guilt of the prisoner. If such a doubt exists you are bound to give the benefit of it to the prisoner—but you are not bound to give him the benefit of anything but such a reasonable doubt. 20

Under this indictment there may be a conviction of any grade of criminal homicide established by the evidence. If the evidence does not establish the guilt of a higher degree beyond a reasonable doubt, the defendant is entitled to the benefit of a reasonable doubt in that respect, and he should only be convicted of that degree of crime which the evidence establishes beyond a reasonable doubt. 30

To make out the case the State must have established beyond a reasonable doubt, first, the death of Frank Kenny. You have heard the testi- 40

Court's Charge to the Jury.

mony of Frank Kenny's wife and the other witnesses adduced by the State as to the fact of him being shot on Union Street, as to the fact of him being carried to the drug store, as to the fact of him being declared dead by the attendant who came with the ambulance, as to the fact of him being subsequently removed to the morgue and an
 10 autopsy having been performed upon him, and of his subsequent burial. There are no contradictions as to the fact that Frank Kenny was alive on the evening of April 21st, the date set in this indictment, and that he was killed on that night.

The next thing that it is incumbent upon the State to establish beyond a reasonable doubt is the manner in which Frank Kenny was killed, and to connect this defendant with the killing. His wife says that he was shot while on the street,
 20 on Union Street near to West Side Avenue—shot by this defendant. The State produces other witnesses who testify to the same effect. This defendant, it seems, says that he does not know whether he shot Frank Kenny or not, but that he recollects having some sort of a quarrel or an altercation, or words of some kind with some man on Union Street near the West Side Avenue at this particular time, and that he fired the shot in such a way that he could not and did not see
 30 whether it hit anybody, and that he fled. The physician who performed the autopsy in this case says that he found a wound running from the left side of the body, as the Court recollects it, downwards and towards the right, and extending to the spinal cord in the backbone of the dead man; that the bullet which made the wound was round in the body of the dead man; that it had severed the spinal cord, and that in the opinion of the physician who performed this autopsy death was
 40 caused by that bullet and by that wound. There

Court's Charge to the Jury.

is no contradiction of those facts, and if you believe them you must find that Frank Kenny met his death by reason of that bullet wound.

Now, it is incumbent upon the State to prove that this defendant was the man who inflicted that wound, and for that purpose you have heard the testimony of the wife, the testimony of these two boys who appear to have been on or near one of the corners there, the testimony of this policeman, Flaherty; and the testimony of the defendant. It is for you to say from all of that testimony whether you believe that this defendant did shoot Frank Kenny in the manner in which his wife claims that this defendant did the act. 10

If you find that he did, and that death resulted from that wound, then immediately there arises a presumption of law that the killing of this man, Frank Kenny was murder. In other words, our law conceives human life to be such a sacred thing that any criminal homicide is presumed by the law to be murder, but murder in the second degree; and in order to raise the degree of crime it is incumbent upon the State to prove besides the fact of the criminal homicide, that the killing was done willfully deliberately and with premeditation. I think that the reading of our statute as to what murder consists of (that is, with reference to this particular case) may help you somewhat in deciding this case. The statute says: 20 30

“Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, 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 by whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, designate by their verdict whether it 40

Court's Charge to the Jury.

be murder in the first degree or in the second degree."

So that the difference between murder in the first degree and murder in the second degree consists in this; that in murder in the first degree there must be an intent to take human life, and it must be a willful, deliberate and premeditated act
 10 upon the part of the one who takes that life. If any of those elements be wanting, and it be murder, then it is only murder in the second degree.

Every defendant who is charged with crime under our system of law is presumed to be not guilty, and the burden of proving the guilt rests upon the State. In this case this defendant is presumed by the law to be innocent, and the burden of proving the guilt rests upon the State. The State must prove that guilt beyond a reasonable
 20 doubt, in the sense in which I have before explained a reasonable doubt.

Now, the difference between murder and manslaughter lies in the presence or absence of what the law terms malice; and with regard to what malice is you may disregard what counsel said it was, and take what I say malice is; because if I make a mistake in charging you what malice is, that can be corrected by the upper courts; but if
 30 you take your definition of malice from counsel in deciding the case, it can not be corrected by anybody.

Malice, as used by the law, means the intent to do bodily harm. If a man should intend to do another man bodily harm and in the carrying out of that purpose should kill him, he would be guilty of murder; but it would be murder in the second degree unless the killing was willful, deliberate and premeditated.

Court's Charge to the Jury.

Now, all of those elements—those three elements—are necessary for first degree murder. It may occur to the mind of a juror, “How long must a man have thought about this thing, deliberated upon it and premeditated the murder before he can be guilty of murder in the first degree?” The cases in this State lay down this with regard to that particular point; that it is not necessary that the design to kill shall have continued for any set space of time, but it is sufficient if the design to kill be fully and clearly conceived in the mind and purposely and deliberately executed. If that be done, then it is murder in the first degree. 10

On that same point I will read you one of the decisions of this State:

“To constitute murder in the first degree there must be an intention to take life. No particular length of time need intervene between the formation of the purpose to kill and its execution. It is not necessary that the deliberation and premeditation should continue for an hour or a minute. It is enough that the design to kill be fully conceived and purposely executed.” 20

That is what is meant, therefore, by murder in the first degree under the law of this State.

Now, if from your examination of the facts you find that willfulness was absent, or that premeditation was absent, or that deliberation was absent, either or all of them, then it would be murder in the second degree, provided you found that this defendant killed Frank Kenny with malice, in the sense that I have before described what malice is. 30

Manslaughter, which is charged in this indictment, is where a person kills another upon a sudden transport of passion or heat of blood, upon a 40

Court's Charge to the Jury.

reasonable provocation and without malice. You see the difference between murder and manslaughter lies in the presence or absence of malice, the presence or absence of the intent to do bodily harm. If there is no intent to do bodily harm and a life be taken, it is manslaughter; but if there be an intent to do bodily harm and a life
 10 be taken in the carrying out of that intent, it is murder; and if in addition to that there is willfulness, deliberation and premeditation, then it is murder in the first degree.

It is contended on the defendant's behalf that at the time that this shooting occurred he was somewhat intoxicated. It is my duty to tell you, gentlemen, that intoxication wilfully entered into furnishes no excuse for crime, and no defense
 20 against the consequences which the law denounces against crime.

It is an essential ingredient of the crime of murder in the first degree that there should be an intent to take life. Any intoxication may be considered with reference to the existence of that intent, and its wilful, deliberate and premeditated character; and I charge you that if the evidence shows that at the time of doing the act the defendant was so intoxicated that his faculties were prostrated, and he was rendered incapable of
 30 forming a specific intent to take life—which I have stated is an essential ingredient of this crime—then, although it is no defense and no justification for crime, his offense may thereby be mitigated to murder in the second degree. But I charge you that in dealing with such a condition you ought to use great caution not to give immunity to persons who commit crime when they are inflamed by intoxicating drink. You must discriminate between the conditions of mind
 40 merely excited by intoxicating drink and yet

Court's Charge to the Jury.

capable of forming a specific intent to take life, and such prostration of the faculties as renders a man incapable of forming the intent.

Now, the proof is before you, and you must determine from this evidence whether the faculties of the defendant were so prostrated that he was incapable of forming this intent. That is the only way in which intoxication can enter into your deliberations with regard to this crime; because, as to murder in the second degree, murder in the second degree committed by a drunken man is just the same as if it were committed by a man who was not drunk; and with regard to the first degree, the only point that you must examine into is whether the intoxication which has been attempted to be proved was of such a degree that it rendered the defendant incapable of forming an intent to take human life. If he was capable of forming that intent, then his intoxication has nothing whatever to do with your determination of whether he be guilty of first degree murder or not.

There is another defense suggested or interposed by this defendant that is known in the law as self-defense, and our statute says that any person who shall kill another in his or her own defense shall be guiltless, and totally acquitted and discharged. The right of self-defense arises from the law of nature and has been sanctioned by the common law as well as by our statutes. The killing of an assailant is justifiable when that act is, or reasonably appears to be, necessary to preserve one's own life, or to save one's self from serious bodily harm. It must be borne in mind that the justification is based upon the situation at the time the wound is given by him who pleads justification, and that it is further based, not upon whether there was actual peril, but whether there was reasonable apprehension of such peril.

Court's Charge to the Jury.

In view of the fact that this extraordinary remedy is founded upon necessity, or reasonably apparent necessity, it can in no sense extend beyond the actual continuance of that necessity, real or apparent, by which it is warranted; and before he gives the fatal wound the accused must have done everything exacted by the law to avoid taking life. Whether he has done this and whether there was apparent necessity for the killing are questions for you gentlemen to consider under those instructions.

Now, it has been introduced in evidence that this man was convicted of a crime in the State of Pennsylvania, and the record of his conviction has been brought to this court and introduced in evidence. You have nothing whatever to do with the introduction of that paper; the Court having admitted it in evidence, it is binding upon you as a record of conviction, and so far as you are concerned you can not dispute it. If I have made a mistake in admitting that as a record of conviction I can be corrected by the upper courts; but it is binding upon you and you must take it as a record of the conviction of this man in Pennsylvania.

That former conviction, gentlemen, is not allowed to be put in evidence in order to have you thereby determine that this man would be more likely to commit a murder than any other man, but it is put in evidence solely to affect his credibility, in order that you gentlemen may say whether that conviction detracts from his truthfulness in this case. At common law a man who was convicted of crime was never again allowed to be a witness in court. Once he had been convicted of crime that debarred him forever from taking the witness stand and testifying, because the law said that a man who had been convicted of crime was not worthy of being believed. That

Court's Charge to the Jury.

was the old law. But years ago that law was changed in this State and in England, and in almost all of the other states of this country; so that now the mere fact that a man has been convicted does not debar him from taking the witness stand, but his conviction may be shown to the jury so that they may determine whether in their opinion, in that particular instance, they are going to say that conviction affects his credibility. Now, that is the only purpose of showing a former conviction, gentlemen. 10

Counsel for the State and counsel for the defendant have summed up this case to you at great length. You may not agree with what they say the testimony was. You may disagree with what counsel for the State said it was, in some particulars. You may disagree with what counsel for the defendant said the testimony was, in certain particulars. I charge you that you are to be governed by what you recollect the testimony to have been, not by what I said it was and not by what counsel on either side said it was. Your recollection is to govern you. Your judgment is to be formed by what you recollect the testimony to have been; and it is upon that testimony, gentlemen, and upon your recollection of it that you are to found your verdict in this case. 20

You are not to be swayed by passion, or prejudice, or sentiment, or sympathy, but you are to found your verdict on the evidence as it has been presented to you in this court—upon that, and upon nothing else, applying to the testimony, of course, your judgment as reasonable men, as men of affairs. 30

You are judges in this case. You are the judges of the fact. You occupy a position of determining what the facts are. I have nothing whatever to do with that. I have to see that this trial is conducted in an orderly way, charge you what the 40

Court's Charge to the Jury.

law is, and then let you determine from the testimony that has been presented what, in your opinion, is the fact. Now, you can not guess things; you must determine them upon the evidence that has been adduced. You can not pull conclusions down out of the air. They must be based upon evidence, and be such conclusions as reasonable
10 men would be likely to draw.

There has been some heat in the trial of this case at times. You are to disregard that. Particularly are you to disregard anything that you may have read about this case in the newspapers. You are to try and blot out of your mind all your knowledge of this case except that received by your here in this courtroom in the presence of the Court. That is what you are to found your judgment upon.

20 Your first duty, it would seem to the Court, would be to determine who is telling the truth in this case, what part of the stories that you have heard is true. It is impossible to reconcile the story of Mrs. Kenny with the story of this defendant, as the Court views it. Mrs. Kenny says that this defendant came up to her while she was standing quietly on the corner and accosted her, and stood in the near vicinity; and then when her husband joined her that this defendant fol-
30 lowed them down Union street and shot her husband without her husband ever touching him.

This defendant says that that is not so; that he never accosted her; that he never spoke a word to her while she was on the corner; that he didn't see her there; that the first he saw of her was when she was with her husband. It is for you, gentlemen, to say who is telling the truth. You have heard the other witnesses and it is for you to try and test those two main stories by the
40 testimony which the other witnesses have given.

Court's Charge to the Jury.

Are those two stories or either of them corroborated by other stories which you have heard here, and which one is corroborated? Has the State by its corroboration and by its testimony satisfied you beyond a reasonable doubt that this defendant is guilty of the crime with which he is charged?

Now, in weighing the testimony of a witness 10
you have a right to consider, first, the probability of the story which that witness has told, or its improbability. You have a right to consider the manner of the witness in testifying upon the stand, because very frequently it is of assistance to a person to watch another testifying. It may help us; it may help the jury to determine whether he is telling the truth or no by looking at him and seeing his way of testifying. You have also 20
a right to consider the manner in which the story which the witness told on direct examination stood the test of cross-examination, or whether it broke down under the cross-examination. You also have a right to consider whether the witness has any interest in the outcome of this trial, and whether that interest which the witness has would be likely to swerve the witness from telling the truth. You have a right to consider, in testing Mrs. Kenny's story, for instance, whether the fact that her husband was the one who suffered death, 30
who was shot down on the street, who died as the result of this act concerning which we have been receiving testimony—whether that gives her such interest in the outcome of this trial that she would be likely to lie to you.

On the other hand, you have a right to consider that this defendant is the most interested person in the world in what your verdict is going to be. He could not be compelled to take the stand. No man who is charged with crime can be compelled 40
to take the stand and be a witness against him-

Court's Charge to the Jury.

self; so that it was entirely voluntary upon his part to take the witness stand at all. But when he takes it he lays himself open to cross-examination of opposing counsel. You have also the right to consider his great interest in the outcome of the trial. He is the one who is on trial here. Now, does that interest which he has in your
 10 verdict, in your opinion, influence him to such an extent that he would attempt to mislead you in an endeavor to go free of the legal consequences of his act? That is for you to determine, gentlemen.

There was also admitted in evidence, gentlemen, after considerable discussion, a statement, or, at least, two statements which were taken by the police from this defendant. With regard to the admission of those statements you have nothing
 20 whatever to do. That is the Court's duty, and the Court has acted upon it; and, as in the case of the record of the judgment, if the Court has made a mistake there it can be rectified; and you are to take those statements as in evidence. Of course, you may consider the contents of those statements in the light of all the testimony that you heard concerning them, and give to them what credit you think belongs to them in the light of that testimony.

30 Now, there is one thing more that I think you should be apprised of, and that is this: that up to this year in the State of New Jersey the punishment for murder in the first degree was death. But the last Legislature has passed this act which is now the law of the State of New Jersey, and which it will be necessary for me to read to you in order that you may know just what the law is with regard to the crime of murder in the first degree and its punishment:

40 "Every person convicted of murder in the first degree, his aiders, abettors, counsellors

Court's Charge to the Jury.

and procurers shall suffer death, unless the jury at the time of rendering the verdict in such case shall recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

That is the law of this State, gentlemen, at the present time with regard to punishment for murder in the first degree.

10

Is there anything now to which counsel desire to call the attention of the Court?

MR. DOHERTY'S ASSOCIATE: I have a request to charge.

(Side-bar conversation between Mr. Doherty's associate and the Court.)

THE COURT: No; I won't charge that.

(Side-bar conversation between Mr. Vickers and the Court.)

20

THE COURT: It has been suggested to me, gentlemen, that probably I may not have elucidated this last law to you sufficiently, and I want you to be in full possession of the facts.

If you shall return a verdict of murder in the first degree and nothing else, the punishment which would be inflicted on that verdict would be death. If you desire to return a verdict of murder in the first degree, coupled with imprisonment for life, then you must so put it into your verdict; because the law reads that "every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers shall suffer death, unless the jury at the time of rendering the verdict in such case shall recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

30

Now, I hope that is clear. You may retire, gentlemen, and if you desire any further instruc-

40

Court's Charge to the Jury.

tion upon any of the points in this case I will be in attendance here until you return your verdict.

(An officer was sworn and the jury retired.)

10 THE COURT: (Handing papers to the stenographer.) The Court refuses to charge those requests except as already charged. (Referring to requests of counsel for the defendant.)

Counsel for the defendant excepted as follows:

1. Exception to refusal of the Court to charge as requested.

MARK A. SULLIVAN,
Judge.

(Seal.)

20 2. General exception to the charge.

MARK A. SULLIVAN,
Judge.

(Seal.)

3. Exception to the Court's statement about there being no evidence in the case that would warrant the jury in finding the defendant guilty of assault and battery.

MARK A. SULLIVAN,
Judge.

(Seal.)

30 4. Exception to the Court's definition of malice.

MARK A. SULLIVAN,
Judge.

(Seal.)

5. Exception to the Court's definition of manslaughter.

MARK A. SULLIVAN,
Judge.

(Seal.)

6. Exception to what the Court said about granting immunity because of intoxication.

MARK A. SULLIVAN,
Judge.

40

(Seal.)

*Defendant's Requests to Charge.***Defendant's Requests to Charge.**

1. The defendant should be acquitted under the indictment if the jury is satisfied that he shot the deceased to repel an attack upon himself under circumstances from which he justifiably apprehended that either his life was in danger, or that he was in peril of serious bodily harm.

10

2. The jury is the sole judge of whether he had a justifiable apprehension that he was in danger of grave bodily harm, and in determining the question it must consider all of the testimony, including such as may tend to show the state of the defendant's mind at the time when the shot was fired; his testimony that he was attacked by a man unknown to him; to whom he had given no provocation; that the attack took place at a dark spot; the fact that the deceased threatened him and advanced towards him in a threatening manner; the fact that the deceased, without explanation, attacked him but a short time after the so-called strikers had warned him that injury would be inflicted upon him; all these and every other circumstance in the case may be taken into consideration by the jury in determining whether he had a justifiable apprehension of being in serious bodily danger.

20

3. It is not necessary, in order to justify the defendant in repelling the attack of deceased, that the defendant was then in actual danger; he is entitled to an acquittal on the ground of self-defense if he merely and honestly believed that he was in such danger at the time when he shot deceased.

30

4. The defendant must be acquitted unless the jury find from the evidence that he entertained at the time when he fired, a specific intent to take life or a specific intent to inflict a bodily harm or injury on the deceased from which his death would naturally and probably result.

40

Defendant's Requests to Charge.

5. If he fired in the direction of the deceased while the latter was advancing menacingly towards him, not with the intention of shooting him, but only to stay his advance or to show him that he was armed for defence, then, even though at that time the defendant was not warranted in apprehending grave bodily harm, his act was justified and he should be acquitted of the charge of murder.

6. The defendant can not be convicted of the offence of murder unless he shot the deceased with an intent to take life or inflict such injury from which death would naturally and probably result, and that he did such shooting or formed such intent with malice.

7. While malice may be presumed from the act of killing, such presumption only continues until circumstances of justification and mitigation are shown; and the presumption does not endure after testimony is offered to show that the killing was either unintended or was done in self-defense. After such proof is offered, it then becomes the duty of the jury to decide whether, beyond a reasonable doubt, it is shown that the defendant entertained such a corrupt or wanton purpose or such mischievous disposition as indicated that his act was prompted by actual malice towards the deceased.

8. The defendant can not be convicted of murder in the first degree unless the jury is satisfied from the evidence, beyond a reasonable doubt, that the killing was done, first, with malice aforethought; second, wilfully; third, deliberately; and, fourth, with premeditation. All four factors must have been shown beyond a reasonable doubt. All four are separate and distinct in their nature, and the jury can not conclude from the testimony indicating intent or malice that the act was done with premeditation or deliberation.

Defendant's Requests to Charge.

9. In law a wilful killing is one based upon a specific intent to take human life.

10. Deliberation consists in weighing the considerations, whether or not the person attacked should be killed by the defendant; and a deliberate killing is effected only when, after such weighing of such considerations, the defendant, with mental calmness, determines that he shall kill. **10**

11. A wilful, deliberate killing, with malice aforethought, does not constitute murder in the first degree, in the present case, unless the killing was also premeditation; and premeditation, in this respect, means that after deliberating to kill, there was a pause in the mental processes of the defendant, after which he decided that he would carry such deliberation into effect.

12. If the defendant, after deliberating on the question of killing the deceased, carried his design into effect instantly without further premeditation on the subject, he is not guilty of murder in the first degree. **20**

13. In deciding upon the truth of what actually transpired, you may take into consideration whatever contradictions and disagreement may appear in the testimony of the several witnesses, and when several witnesses undertake to give contradictory accounts of the same happening or event you must determine which is telling the truth, and discard the testimony of the others. **30**

14. The theory of the State is that the defendant attacked the deceased without any provocation whatever and without any previous altercation, quarrel or argument. In considering this testimony you may consider whether or not, in the course of ordinary human conduct, the defendant would be likely to draw and discharge a weapon against a stranger whom he had never known, and **40**

Defendant's Requests to Charge.

who had given him no cause or provocation whatever.

15. The drunkenness of the defendant, if proven to your satisfaction, may be taken into consideration by you in determining the question of premeditation. If his intoxication so prostrated his mental faculties as to render him incapable of forming a specific intent to kill, he can not be convicted of murder in the first degree.

16. Malice and passion can not exist at the same time in the human mind, and homicidal act can not proceed from both impulses. In the eye of the law malice excludes passion and passion presupposes the absence of malice. They can not co-exist as the moving cause of a homicide.

17. The term "passion" includes both anger and terror, provided they reach a degree of intensity sufficient under all the circumstances of the case to obscure temporarily the reason of the person affected.

18. In determining the degree of passion which, engendered by adequate cause, is sufficient to reduce a felonious homicide from murder to manslaughter, the true criterion is the effect that the provocation in question would have produced upon an ordinary man of reasonable disposition, taking into consideration the circumstances of exasperation and frightfulness prevailing at a time before the time when the act was committed.

Additional request to charge:

That the Court charge the jury to disregard the arguments made by the prosecutor when using the plot book, as to the position of the saloon, the route the defendant took on his way home, the relative position of the light and the spot where the deceased was shot.

Defendant's Requests to Charge.

At 11:05 p. m. the jury returned to the court room for further instruction.

THE COURT: The question which the foreman has handed to the Court reads as follows: "Can a man be pardoned if found guilty of murder in the first degree with recommendation?" That is the question, as I understand it, that the jury wants answered.

10

JURORS: Yes, sir.

THE COURT: The statute which I have read to you says nothing whatever about that. It would seem to the Court that he could be pardoned if the Court of Pardons desired to set that man free, or to grant him a pardon; it would seem that that could be done; that it would be in their power. Without some limitation by the Legislature upon the court, which does not exist in this act, I would say yes; that he could be pardoned.

20

MR. DOHERTY'S ASSOCIATE: Would your Honor please instruct the jury that recommendation for mercy means nothing?

THE COURT: You may retire, gentlemen.
[The jury retired.]

[End.]

30

40

*Exhibit S-11.***Exhibit S-11.**

CRIMINAL INFORMATION.

COMMONWEALTH OF PENNSYLVANIA, }
 County of Westmoreland. } ss.:

10 COMMONWEALTH OF
 PENNSYLVANIA
vs.
 MIKE ROMBOLO.

Before me, the subscriber, ALEX H. WHITE, a Justice of the Peace in and for said county, came Rudolph Yanda, who, upon oath administered according to law, deposes and says that at Derry Township, in the County of Westmoreland, on the 4th day of August, A. D. 1907,

20

That Defendant above named did unlawfully, secretly, and maliciously with force and arms break and enter at night complainant's dwelling house with intent to commit a felony and did draw and point a revolver or gun which was fully loaded at complainant's minor daughter aged 16 years and demand of said Katie Yanda that she keep quiet or he would shoot her.

30

Information made on information received from Katie Yanda and believed by your affiant to be true.

Complainant therefore prays and desires that a warrant may issue and the aforesaid Defendant

MIKE ROMBOLO

may be arrested and held to answer the charge of Breaking and Entering and Carrying Concealed

40

Exhibit S-11.

weapons and wantonly pointing fire arms, and further deponent sayeth not.

Sworn to and subscribed	RUDOLPH YANDA	
before me this 5th	Pros.	
day of August, A. D.	tent, in \$50.00 sub.	
1907.	con. to appear at and	
ALEX H. WHITE,	through August session	
Justice of the Peace.	in Court of Quarter Ses-	10
(Seal)	sions of said County, to	
My commission ex-	testify, etc. Taken be-	
pires First Monday in	fore me, this 5th day of	
May, 1909.	August, 1907.	

COMMONWEALTH OF	ALEX H. WHITE,	
PENNSYLVANIA	Justice of the Peace.	
<i>versus</i>	(Seal)	
.....	My commission ex-	
.....	pires First Monday in	
	May, 1909.	20

We, and each of us,
do acknowledge ourselves jointly and severally
indebted to the Commonwealth of Pennsylvania,
in the sum of Dollars,
lawful money of the United States of America, to
be levied of our and each of our lands and tene-
ments, goods and chattels, for the use of said
Commonwealth, conditioned that the said
..... shall be and appear
at the Term of Oyer 30
and Terminer and Quarter Sessions for the County
of Westmoreland, to be held at Greensburg, on
the Monday of, 19 ,
at the Court House, then and there to answer
the above charge of
as may be preferred against the said
.....
and shall abide and not depart the Court without
leave, and shall, in the meantime keep the peace

Exhibit S-11.

and be of good behavior toward all citizens of the Commonwealth, then this obligation to be void, otherwise to be and remain in full force, virtue and effect. I, bail, am owner in fee simple of located, Value, \$....., Rec. Deed Book, Vol., Page

10 Sworn and subscribed
before me this (Seal)
day of,
A. D. 191 . (Seal)
.....
Justice of the Peace. (Seal)
My commission expires, 19 .

23 NOTE:—The Terms of Criminal Court begins as follows: February Term, First Monday in February; May Term, Second Monday in May; August Term, Last Monday of August; November Term, Second Monday of November, each year. All bonds should be made accordingly.

COMMONWEALTH
vs.
MIKE ROMBOLO.

Charge: Breaking & entering with Intent &c. Carrying Concealed Weapons. Wantonly pointing firearms.

30 Warrant issued to H. G. Baldrige, Constable, Aug. 5th, 1907, on oath of Rudolph Yanda, Pros., and now, Aug. 5th, 1907, pros. tent, in \$50.00 sub. con. that the Complainant Rudolph Yanda will appear at the Court of Quarter Sessions to testify, etc. And now Aug. 5th, 1907.

40

Exhibit S-11.

Defendant arrested and brought to office and hearing had. 6 witnesses sworn for Commonwealth. Evidence heard and Deft. committed to County Jail at Greensburg in default of \$1000.00 bail to answer to above charges at August Term, Q. S.

COUNTY OF WESTMORELAND, SS.:

10

I, a Justice of the Peace in and for said county, certify that the above is a true transcript from my docket, and that the recognizances were duly taken and acknowledged before me as aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, at Latrobe, Pa., this 6th day of August, A. D. 1907.

ALEX. H. WHITE. (Seal)

My commission expires First Monday in May, 1909. 20

(Endorsement.)

No. 120. Aug. Term, 1907.

Fine		COMMONWEALTH OF	
Information, 50c..	50	PENNSYLVANIA	
Entry, 50c	25	vs.	
Warrant, 50c	50	MIKE ROMBOLO.	
Defendant's Recognizance for hearing, 50c		Charge: Breaking & Entering, &c. Carrying	
Commitment, 50c..	50	Concealed Weapons.	
Discharge to jailor, 50c		Wantonly pointing	30
Subpoena, 30c, first and 10c, add,		fire arms.	
Hearing, 75c	50	Information made Aug. 5th, 1907.	
Continuance, 25c..		On Oath of Rudolph Yanda.	
Discontinuance, 50c			
Oath, 10c, 6	60	CORAM:	
Defendant's Recognizance, 50c ...		ALEX H. WHITE,	
Ent. Judg. on Con.		Justice of the Peace.	
Fine, 50c			
		Costs, \$.....	40

Exhibit S-11.

	Record Conviction, 25c ..	Pros. Priv. Counsel
	Transcript and Certificate, 75c. 50	Deft. Counsel
	3 35	Pros. found, Filed Aug. 7, 1907.
	Witness, 50c	Post Office address, Jno. M. Hawk, Clerk.
	mileage 3c cir.	Post Office address.
10	Mike Fannan 80	Bail found
	Pete Strawper ... 80	Deft. found
	Jim Villonsi 80	Officer:
	Constable, H. G. Baldrige, Executing warrant 1 00	
	\$1.00 for each deft.	
	Mileage, 6 circular 60	
	Serving subpoena, 50c first and 15c add.	
20	Mileage, 6c circular Executing Commit- ment 1 00	
	\$1.00 for first, 50c for each add.	
	Mileage 1 20	
	6c circular.	
	Prisoner's fare ... 25	
	Bail where deft. is in custody on Mittimus, \$1.00.	
	Officer to assist .. 2 00	See Cost Book No. 7, page 282, Controller's Office.
30	6 05	

IN THE COURT OF OYER AND TER-
MINER AND GENERAL JAIL DELIVERY
and the Court of Quarter Sessions
of the Peace for the County of
Westmoreland, Commonwealth of
Pennsylvania.

No. 120. August Term, 1907.

COUNTY OF WEST MORELAND, SS.:

40 THE GRAND INQUEST of the Commonwealth of

Exhibit S-11.

Pennsylvania, inquiring for the County of Westmoreland upon their respective oaths and affirmations, do present, That

MIKE ROMBOLO,

late of said county, yeoman, on the fourth day of August, in the year of our Lord one thousand nine hundred and seven, at the county aforesaid, **10** and within the jurisdiction of this Court, with force of arms, &c., about the hour of eleven in the night time of the same day, the dwelling house of Rudolph Yanda, then and there situate, wilfully and maliciously, feloniously and burglariously did break and enter, with intent the goods, chattels, money and property of the said Rudolph Yanda in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, contrary to **20** the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that the said Mike Rombolo, afterwards to wit, on the same day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with **30** force and arms, etc., feloniously did wilfully and maliciously, in the night time, break and enter the dwelling house of Rudolph Yanda, there situate, with intent the goods, moneys, chattels and property of the said Rudolph Yanda in the said dwelling house then and there being found, then and there feloniously to steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Common- **40** wealth of Pennsylvania.

Exhibit S-11.

AND THE GRAND INQUEST aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present, that the said Mike Rombolo, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., did unlawfully and maliciously carry on and about the person of him, the said Mike Rombolo, a certain concealed deadly weapon, commonly called a revolver, with an intent then and there, with the revolver aforesaid, unlawfully and maliciously to do bodily harm to Katie Yanda, and to divers other persons whose names are to this Grand Inquest as yet unknown, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

AND THE GRAND INQUEST aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present, that the said Mike Rombolo, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., did unlawfully and wantonly point a revolver or gun at the said Katie Yanda, and other persons, contrary to the form of the Act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

JOHN F. WENTLING, JR.,
District Attorney.

(Endorsement.)

COMMONWEALTH WITNESSES.

No. 120. August T., 1907.

Exhibit S-11.

RUDOLPH YANDA,
Prosecutor.

COMMONWEALTH
vs.
MIKE ROMBOLO.

.....
1st Count, Burglary.
2nd Count, Breaking
& Entering a dwelling
house with intent to **10**
commit a felony.
3rd Count, Carrying
concealed weapons.
4th Count, Pointing
fire arms.

.....
..... 191
..... True bill.
.....
..... **20**

Foreman.
Aug. 28, 1907. De-
fendant being arraigned,
pleads Guilty.

Bail\$ Jail. Eo die District Attor-
ney similiter et issue.

JNO. M. HAWK,
Clerk.

30

August 21st, 1907.

MR. H. G. BALDRIDGE,
Constable,
Latrobe, Pa.

Dear Sir:—

In the case of Rudolph Yanda against Mike
Rombolo for breaking and entering, etc., the de-
fendant has plead guilty and will be sentenced
on Wednesday, August 28th. We do not need
any witnesses of course, but you might notify the **40**

Exhibit S-11.

prosecutor to be here on sentence day and explain to the Court just what happened so that the proper sentence may be imposed.

Yours truly,

J. F. WENTLING, JR.,
District Attorney.

Notice 1.00

10 Mileage, 10c 1.00

2.00

See Cost Book No. 7,
page 282, Controller's
office.

IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY and the Court of Quarter Sessions of the Peace, for the County of Westmoreland, Commonwealth of Pennsylvania.

COMMONWEALTH

vs.

MIKE ROMBOLO.

No. 120. Aug. T., 1907.
Charge, Break. & Ent.

.....
Pros. Rudolph Yanda,

.....
And now, Aug. 10, 1907,

comes the above named defendant, who states that he is guilty of the above charge and will so

30 plead when called for trial.

his

MIKE X ROMBOLO.

mark

Witness:

William Rial,

Chas. Seanor.

(Endorsement.)

No. 120. Aug. T., 1907.

QUARTER SESSIONS, Etc.

Exhibit S-11.

COMMONWEALTH

vs.

MIKE ROMBOLO.

Plea.

Charge,

Attest

Pros.

Clerk.

And now 191 Attorney for

In the Quarter Sessions Court of Westmoreland 10
County, Pennsylvania.

COMMONWEALTH, No. 120 Aug. Term, 1907.

vs.

Charge, Burglary, etc.

MIKE ROMBOLO. And now, Aug. 28, 1907.

It is the Sentence of the Court that you Mike Rombolo here present in open Court——be confined in the Reformatory——situate in the County of Huntington, Pennsylvania, there to be kept and clothed at the expense of the County, for and during the period of——and stand 20
committed until sentence is complied with.

(Endorsement)

No. 120, Aug. Term, 1907.

Quarter Sessions.

COMMONWEALTH,

vs.

MIKE ROMBOLO.

(Filed, 191)

Clerk. 30

Attorney for

No. 120 August Sessions, 1907.

Commonwealth of Penn- Charge; Breaking and
sylvania, Entering with intent,
RUDOLPH YANDA, Pros., etc. Carrying concealed
vs. weapons. Wantonly
MIKE ROMBOLO. pointing Fire arms.

Costs.

Esquire, Alex H. . .

Coram. Alex. H. 40

Exhibit S-11.

	White,	3.35	White, filed Aug. 7,
	Constable, H. G. . .		1907. Defendant in de-
	Baldrige,	6.95	fault of \$1,000.00 bail,
	Clerk, John M. . . .		committed to County
	Hawk, 9/07 . .	3.75	Jail for trial at August
	Com.	.75	Term of Court. And
	District Attorney		Now, August 28, 1907,
10	Wentling	5.00	defendant being ar-
	Sheriff, Seanor, . . .	1.25	raigned in open Court
	Jury Fee,		pleads guilty. Being
	Com. Bill,		called for sentence, de-
	Def. Bill		fendant was asked if he
	Witnesses,	2.40	had anything to say
	Clerk, Jno. M.		why sentence should not
	Hawk 4/09,	.85	be pronounced. After
	See Cost Book No. 7,		reply, Judge McConnell
	page 282.		proceeded as follows:

20 Controller's office.

It is the sentence of the Court, that you, Mike Rombolo, here present in open court, be confined in the Pennsylvania Reformatory situate in the County of Huntington, Pennsylvania, there to be kept, clothed, fed and treated as the law directs, and stand committed until sentence is complied with.

Sept. 7, 1907, Exit Commitment to Reform-
atary.

30 April 19, 1909, defendant ordered to be dis-
charged from Pennsylvania Industrial Reforma-
tory.

*Exhibit S-11.*IN THE COURT OF QUARTER SESSIONS FOR
WESTMORELAND COUNTY.

August Session, 1907.

THE COMMONWEALTH OF PENN-
SYLVANIA,*vs.*

MIKE ROMBOLO.

10

Having received from the Board of Managers, of the Pennsylvania Industrial Reformatory, at Huntingdon, a copy of the record in the case of Mike Rombolo, who was sentenced in this court to imprisonment in said Reformatory on the 28th day of August A. D. 1907, for the crime of breaking and entering with intent etc., and whereas it appears from said record that the said Mike Rombolo has been so improved by his treatment in said Reformatory and while on parole, as to justify his final discharge from imprisonment, said discharge being recommended by the officers of said Reformatory, and by said Board of Managers; and having consulted with the District Attorney in the case as required by law, it appearing that no further reason exists for detention of the said Mike Rombolo, it is hereby ordered that he be finally discharged from further imprisonment in the Reformatory, and from further liability under said sentence.

ALEXANDER D. McCONNELL,
President Judge,
Tenth Judicial District.

STATE OF PENNSYLVANIA, }
COUNTY OF WESTMORELAND. } ss.:

I hereby certify that the above and foregoing

40

Exhibit S-11.

is a true copy of an order made and entered of record in said Court this day in case of the *Commonwealth v. Mike Rombolo*.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 17th day of April, 1909.

10

JNO. M. HAWK,
Clerk of Quarter Sessions,
Westmoreland County.

(Seal).

PENNSYLVANIA INDUSTRIAL REFORMATORY.

T. B. PATTON, General Superintendent.

Huntingdon, Pa., April 9th, 1909.

To the Honorable, The President Judge of the
Court of Common Pleas of the Judicial Dis-
trict of the State of Pennsylvania.

Sir:

20

The undersigned, Managers of the Pennsylvania Industrial Reformatory, respectfully represent unto your Honor that, under Sec. 14, of Act No. 30, of the Laws of Pennsylvania, Session of 1887, they are charged with the duty of certifying to your Honor the case of each prisoner sentenced from your Judicial District, who in their opinion, may be safely and properly relieved from further liability under his sentence; that in the performance of the said duty they hereby certify that

30

#5739 Mike Rombolo was received into said Reformatory from the Court of Quarter Sessions of Westmoreland County on the 11th day of Sept. 1907, under sentence imposed on him by said Court, on the 28th day of Aug. 1907, for the crime of burglary as will further appear by a copy of his commitment hereto attached; that said Mike Rombolo has been detained in the custody of said Reformatory from said day of September, 1907, until this day, and still remains in its custody;

40

that, as will be more fully shown to your Honor

Exhibit S-11.

by the certificate of the General Superintendent, the Physician and the Moral Instructor of said Reformatory, copies of which are hereunto attached, that he has been under influences while confined in the Reformatory which if obeyed by him are well calculated to lead him to live a correct life hereafter, and to warrant the Managers in stating that there is at least a reasonable probability that he will live and remain at liberty, if now released, without violating the law. Therefore your petitioners, the Managers of the Pennsylvania Industrial Reformatory, do hereby request your Honor to issue your order as provided by said statute releasing said Mike Rombolo and directing his absolute and final discharge. 10

IN WITNESS WHEREOF, the undersigned Managers of said Pennsylvania Industrial Reformatory have hereunto set their names and attached the seal of said Reformatory, at Huntingdon, this 9th day of April, A. D. 1909. 20

LYMAN D. GILBERT, President.

J. D. DORRIS,

A. G. MORRIS,

GEO. H. STEWART,

JAMES D. LANDIS.

(Seal).

PENNSYLVANIA INDUSTRIAL REFORMATORY. 30

T. B. PATTON, General Superintendent.

Huntingdon, Pa., April 9th, 1909.

To The Board of Managers,

Pennsylvania Industrial Reformatory,
Gentlemen:

In compliance with the requirements of Section 14, Act No. 30, Laws of Pennsylvania, of the Session of 1887, I hereby certify that #5739 Mike Rombolo was received into the Pennsylvania Industrial Reformatory on the 11th day of Sept. 1907, sentenced to imprisonment therein for the 40

Exhibit S-11.

crime of burglary of which he had been convicted in the Court of Quarter Sessions of the County of August 28th, 1907, State aforesaid, as will further appear by a copy of his commitment dated Westmoreland and now on file in this office. I further certify that while an inmate of the Reformatory he has been subjected to such treatment along moral, industrial, educational, and religious lines as is well calculated to improve his condition and make him the better qualified to assume the duties of citizenship in the outside world. I, therefore, join with the Physician and Moral Instructor in recommending that his final discharge be asked for.

Very respectfully,

T. B. PATTON,
General Superintendent.

20

PENNSYLVANIA INDUSTRIAL REFORMATORY.

T. B. PATTON, General Superintendent.

Huntingdon, Pa., April 9th, 1909.

To the General Superintendent,

Dear Sir:

We hereby certify that Mike Rombolo #5739, who has been subject to the rules and regulations of the Pennsylvania Industrial Reformatory, has been so improved by his treatment in said Reformatory as to justify his liberation and final release from further liability under said sentence, and we join in the recommendation that proper steps be taken to secure the final discharge of said former inmate.

Yours respectfully,

L. D. SMITH,
Physician.

I. H. LIKENS,
Moral Instructor.

40

No. 120 Aug. Term, 1907.

*Exhibit S-11.**Commonwealth vs. Mike Rombolo.*

Filed April 19, 1909.

JNO. M. HAWK, Clerk,

I, JAMES B. GALLAGHER, Clerk of the Court
Quarter Sessions in and for said County and
State, do hereby certify that the foregoing and
annexed pages contain a true copy and correct
transcript of the Record and proceedings in said **10**
stated case, at No. 120, August Term, 1907, in
the Court of Quarter Sessions of said County,
so full and entire as the same remains of record
in my office.

IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the seal of the said Court, at
Greensburg, Pa., this 11th day of May, 1916.

JAMES B. GALLAGHER,
Clerk of the Court of
Quarter Sessions. **20**

(Seal.)

I, LUCIEN W. DOTY, President Judge of the
Court of Oyer and Terminer and General Jail
Delivery and the Court of Quarter Sessions Of
the Peace, for the County of Westmoreland, Com-
monwealth of Pennsylvania, do certify, that Jas.
B. Gallagher was at the time of signing the an-
nexed attestation and now is Clerk of the Court
of Oyer and Terminer and General Jail Delivery
and the Court of Quarter Sessions of the Peace, **30**
for the County of Westmoreland, Commonwealth
of Pennsylvania, to whose acts as such full faith
and credit are and ought to be given; and that
the said attestation is in due form.

IN WITNESS WHEREOF, I have hereunto sub-
scribed my name this 11th day of May, in the year
of Our Lord One thousand Nine hundred and Six-
teen.

LUCIEN W. DOTY, **40**
P. J.

Exhibit S-11.

I, JAMES B. GALLAGHER, Clerk of the Court of Oyer and Terminer and General Jail Delivery and the Court of Quarter Sessions of the Peace, for the County of Westmoreland, Commonwealth of Pennsylvania, do certify, that the Honorable Lucien W. Doty, by whom the foregoing certificate was made and given, was at the time of making
 10 and giving the same and is now President Judge of the Court of Oyer and Terminer and General Jail Delivery and the Court of Quarter Sessions of the Peace, for the County of Westmoreland, Commonwealth of Pennsylvania, to whose acts as such full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

IN TESTIMONY WHEREOF, I have hereunto set
 20 my hand and affixed the seal of the said Court of Oyer and Terminer and General Jail Delivery and the Court of Quarter Sessions of the Peace, for the County of Westmoreland, Commonwealth of Pennsylvania, at Greensburg, this 11th day of May, in the year of our Lord One thousand Nine hundred and Sixteen.

JAMES B. GALLAGHER.

(Seal.)

30 STATE OF PENNSYLVANIA, }
 WESTMORELAND COUNTY. } SS.:

I, JAMES B. GALLAGHER, Clerk of the Court Sessions in and for said County and State, do hereby certify, that the foregoing and annexed pages contain a true copy and correct transcript of the Papers and Docket entry in said stated case, at No. 120, August Term, 1907, in the Court of Quarter Sessions of said County, so full and en-
 40 tire as the same remains of record in my office.

Exhibit S-13. (194)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, at Greensburg, Pa., this 11th day of May, 1916.

JAMES B. GALLAGHER,
Clerk of the Court of
Quarter Sessions.

(Seal.)

(Endorsement.)

10

No. 120, Aug. Term, 1907.

In re,

Commonwealth v. Mike Rombolo.

Exemplification Record.

Fees, —————\$

Office of Clerk of Courts,

Westmoreland County, Pennsylvania.

S-11.

J. M.

20

Exhibit S-13. (194)

Police Department, Jersey City, N. J., April 28, 1916.

Statement of Mike Rombolo, Residence 199 Boyd avenue, made to Lieutenant Van Horne.

I am Lieutenant Van Horne of the Jersey City Police Department, and I am going to ask you some questions in reference to the crime for which you are arrested. You may answer them or not, just as you wish, but what you do say must be of your own free will, a voluntary statement, which will be taken down in writing and used at your trial. 30

Q. What is your name? A. Mike Rombolo.

Q. Where do you live? A. 199 Boyd ave.

Q. How old are you? A. 29 years.

Q. What is your occupation? A. Laborer.

Q. How long have you worked at that? A. Thirteen years. 40

Exhibit S-14. (193)

Q. You are charged with murder, that you on Friday, April 21st, 1916, shot a man (Frank Kenny), at Boyd and West Side Avenue. What have you to say? A. I never shot a man and know nothing about a murder.

10 Q. What time were you in the saloon at West Side Avenue and Boyd Avenue, Friday, April 21st? A. About 7 P. M.

Q. How much did you pay for your drink? A. Five cents.

Q. How much did the saloon keeper want for your drink? A. I don't know.

Q. Was the drink of liquor you had brandy? A. No, it was gin.

Q. Were you identified to-night by any one as the man who shot another man Good Friday night, April 21, 1916? A. Yes, I was identified by a
20 young man as the man who shot another man.

Q. Why did you shoot that man? A. I never shot a man.

Q. What time were you in the baker shop on West Side Avenue when you bought the buns? A. Six P. M.

Q. How much did you pay? A. I bought 20 cents worth.

Q. Who sold you the buns? A. A man.

Q. How many girls were in the store when you
30 bought the buns? A. I remember a couple of girls there behind the counter.

Q. When you bought the head of lettuce at the fruit store how much did you pay for it? A. I paid six cents. It was celery, not lettuce.

Q. Did you take the celery with you? A. Yes, I took it with me.

Q. Did you have any trouble with a man on Good Friday night? A. I had no trouble with anyone.

40 Q. When was the last time you were in Rochester New York? A. Never in my life.

Exhibit S-14. (193)

Q. What time did the girl in the baker's shop tell you the next train for New York would leave the West Side Avenue station? A. Ten o'clock.

Q. What time was it when she told you about the train to New York? A. About nine o'clock.

Q. When you were arrested on South Canal Street, Newark, N. J., why did you run away? A. I thought the police were going to arrest me because I had a gun in my pocket. 10

Q. Which pocket did you have your gun in? A. Inside right hand pocket of my inside coat.

Q. Why did you have your gun in your inside coat pocket? A. I always carry it in my inside coat pocket.

Q. Are you right or left handed? A. I am left handed.

Q. Which hand do you use when you fire your gun? A. Left hand. 20

MIKE ROMBOLO.

WITNESSES:

FRANK MONAHAN, Chief of Police,

ARNOLD M. DAVIDSON,

PHILIP LEONARD, Inspector of Police.

Exhibit S-14. (193)

Police Department, Jersey City, N. J., April 28, 1916. Statement of Mike Rombolo, residence 199 Boyd Avenue, made to Lieut. Van Horne. 30

I am Lieutenant Van Horne, of the Jersey City Police Department, and I am going to ask you some questions in reference to the crime for which you are arrested. You may answer them or not, just as you wish, but what you do say must be of your own free will, a voluntary statement, which will be taken down in writing and used at your trial.

Q. What is your name? A. Mike Rombolo. 40

Q. Where do you live? A. 199 Boyd Avenue.

Exhibit S-14. (193)

Q. How old are you? A. 29 years.

Q. What is your occupation? A. Laborer.

Q. How long have you worked there? A. 13 years.

Q. You are charged with murder, that you did on Friday, April 21, 1916, shoot a man (Frank Kenny) at Union Street and West Side Avenue?

- 10 What have you to say? A. I left Ryerson shop at 5:30 P. M., I then went to a fruit store in West Side Avenue and bought a bunch of celery for six cents, and then went home. I changed my clothes. I told the boarding boss that I was going to New York. I went to the West Side Avenue station to find out what time the train went to New York. They told me the train would leave at 10 o'clock. I then went from the depot to a moving picture show on West Side Avenue, near
- 20 Boyd. After the show I went home. On my way home at Union and West Side Avenue, I saw a man and woman. When I passed the man I brushed against him. He called me a guinea and dago and struck me on the right breast. I told him I was no guinea or dago. Then he tried to hit me again. The woman said "Leave him alone, come home." He tried to hit me again, then I pulled my gun and shot him once. Then went home. About 7 A. M. Saturday, I went to New
- 30 York. On the following Tuesday, April 25th, I went to Newark, N. J., and stayed there until I was arrested Thursday, April 27.

Q. Did the man who you shot knock you down when he struck you? A. No. He knocked me backwards.

Q. Was the gun that was found on you when you were arrested the one you shot the man with? A. Yes.

Q. After he struck you and the woman was

40

holding him could you not have gone away if you wanted to, before you fired the shot? A. Oh, yes; I could have run away, anyone could have run away.

Q. Where did you get your gun? A. At Pittston, Pa.

MIKE ROMBOLO.

FRANK MONAHAN, Chief of Police.

ARNOLD M. DAVIDSON, Reporter.

PHILIP LEONARD, Inspector of Police.

10

Exhibit S-8:

Envelope postmarked, Pittston, Pa., April 11, 1916, 1 P. M., addressed to Mr. Mike Rombolo, No. 199 Boyd Avenue, Jersey City, N. J.

20

30

40

S-12, J. M.

Photograph, bearing frontal designation 5739, Penna. Reformatory, September, 1907. Endorsed, Penna. Industrial Reformatory, Huntingdon, Pa. Name Mike Rombolo, No. 5739. Alias.

Rec'd. Sept. 11, 1907, from Westmoreland Co. Charge Burglary.

10 Paroled No. Violated Parole, No.
Borne 1887. Height ft. in. Hair Weight
Cuts or Marks.
Discharged April 20, 1909.

HUDSON COUNTY COURT OF OYER AND TERMINER.

20 STATE,
vs.
MICHAEL ROMBOLO.

Transcript of Testimony.

Exhibits, and Charge of Court on trial for murder.

Trial had May 17 and 18, 1916.

30 I, Jacob Moeser, the stenographer, who took the testimony in the foregoing case, hereby certify that the foregoing is a true and correct transcript of said testimony and of all of the same and a true statement of the entire proceedings had at the trial.

J. MOESER.

J. MOESER, Court Reporter,
Hudson County Court House.

Certification of Record.**HUDSON COUNTY COURT OF OYER AND TERMINER.**

STATE, <i>vs.</i> MICHAEL ROMBOLO.	}	Sur Indict- ment for Murder.
--	---	------------------------------------

10

I, Mark A. Sullivan, Judge of the Hudson County Court of Oyer & Terminer, do hereby certify that the foregoing is a correct transcript of the entire record of the proceedings had upon the trial of the above entitled cause.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Court to be affixed hereto this 23rd day of June, Nineteen hundred and Sixteen.

MARK A. SULLIVAN. **20**
 Judge.

Attest:

JOHN J. MCGOVERN,
 Clerk.

(Seal.)

30**40**

Specification of Causes.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> MICHAEL ROMBOLO, <i>Plaintiff-in-Error,</i> <i>Defendant below.</i>	In Error. Specifica- tion of Causes.
----	---	---

The defendant writes down and specifies the following cause for reversal, appearing in the entire record of the proceedings at the trial of the indictment in the above matter.

1. The Court, notwithstanding the objection of
 20 the defendant, permitted the jury to be drawn for the trial of the indictment, notwithstanding that the names of seventeen of the jurors constituting part of the special panel served on the defendant were not in the box, for the reason that they were engaged in the trial of other cases in the same building.

2. The Court, after seven of the jurors had been obtained from a list of the jurymen on the special panel, from which seventeen names were
 30 omitted, permitted the crier to place in the box the names of nine additional jurymen of the special panel.

3. The Court refused to obtain the necessary information or to make the proper inquiry that the defendant might be informed as to the identity of a list of nine jurymen whose names were put in the box after seven of the jurors had been obtained.

40 4. The Court permitted the putting into the box

Specification of Causes.

of the balance of the general panel over the number on the special panel, while eight of the jurymen on said special panel were present in the Court House engaged in the trial of another case.

5. The Court, without right or necessity, ordered the cross-examination of the witness, Elsie Kenny, to conclude, notwithstanding the objection of the defendant. 10

6. After the jury retired, they returned to Court and were instructed by the judge as follows:

"THE COURT: The question which the foreman has handed to the Court reads as follows: 'Can a man be pardoned if found guilty of murder in the first degree with recommendation?' That is the question, as I understand it, that the jury wants answered. 20

"JURORS: Yes, sir.

"THE COURT: The statute which I have read to you says nothing whatever about that. It would seem to the Court that he could be pardoned if the Court of Pardons desired to set that man free, or to grant him a pardon; it would seem that that could be done; that it would be in their power. Without some limitation by the Legislature upon the Court, which does not exist in this act, I would say yes; that he could be pardoned. 30

"MR. DOHERTY'S ASSOCIATE: Would your Honor please instruct the jury that recommendation for mercy means nothing?

"THE COURT: You may retire, gentlemen."

7. The Court, on the cross-examination of Elsie Kenny, sustained the objection of the Prosecutor of the Pleas to the question:

Specification of Causes.

"Was your husband excited or resentful at the time when you were down at Union and West Side Avenue?"

8. The Court, on the cross-examination of Elsie Kenny sustained the objection of the Prosecutor of the Pleas to the question:

10 "Since the Coroner's Inquest have you called at Police Headquarters in Jersey City?"

9. The Court, on the cross-examination of Elsie Kenny sustained the objection of the Prosecutor of the Pleas to the question:

"Were you not interviewed by Mr. Charlock?"

20 10. The Court, on the cross-examination of Charles Smith, sustained the objection of the State to the question:

"When did you find out where he lived; before or after the shooting?"

11. The Court, on the cross-examination of Edward Flaherty, sustained the Prosecutor's objection to the question:

30 "Was this question asked you: 'You say you saw some one following Mr. and Mrs. Kenny? A. No, I did not see him. Mr. and Mrs. Kenny were walking down the street as though fooling. I walked across the street. 'Q. Did you see anybody behind them? A. I noticed nothing suspicious.'"

12. The Court, notwithstanding the objection of the defendant, required the defendant to answer, on cross-examination, the following question:

"Were you not convicted on the charge of burglary and carrying a concealed revolver?"

40 13. The Court, notwithstanding the objection of the defendant, required the defendant to answer on cross-examination the following question:

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"You were in Court upon whatever charge you were convicted of in Pennsylvania, were you not?"

14. The Court, notwithstanding the objection of the defendant, required the defendant to answer, on cross-examination, the following question:

"And was there not read to you a charge of breaking and entering with intent and carrying concealed weapons and wantonly pointing fire arms?"

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15. The Court, notwithstanding the objection of the defendant, required the defendant to answer, on cross-examination the following question:

"Did you have any talk with a girl or girls in the bake shop where you bought the pie or buns?"

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16. The Court, notwithstanding the objection of the defendant, required the defendant to answer on cross-examination the following question:

"Did you use your right hand in pulling your revolver?"

17. The Court, notwithstanding the objection of the defendant, required the defendant to answer on cross-examination the following question:

"Now, in this statement did you not in answer to this question, 'You are charged with murder that you did on Friday, April 21st, 1916, shoot a man, Frank Kenny, at Union Street and West Side Avenue: what have you to say?' A. 'I left Ryerson's shop 5:30 P. M., and I then went to a fruit store on West Side Avenue and bought a bunch of celery for six cents, and then went home, and I changed my clothes, and I told my boss I was going to New York, and I went to the West Side Station to find out when a train went to New

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Specification of Causes.

10 York, and they told me at ten P. M., and then I went to a moving picture show on West Side Avenue near Boyd Avenue. After the show I went home. On my way home, at Union and West Side Avenue, I saw a man and woman. When I passed the man I brushed against him and he called me a guinea and dago, and struck me on the right breast. I told him I was no guinea or dago; and then he tried to hit me again. The woman said leave him alone, come home. He tried to hit me again, and then I drew my gun and shot him once. I then went home. About seven o'clock on Saturday I went to New York, and on the following Tuesday, April 25th, I went to Newark, N. J., and stayed there until I was arrested April 27th.' And were you not asked 'If the woman was holding him could you not have run away before you fired the shot?' 'Oh, yes, I could have run away, and anyone could run away.' Is that correct?"

20

18. The said Court, notwithstanding the objection of the defendant required the defendant to answer on cross-examination the following question:

30 "Did you in that letter say to your brother in substance this, your letter being in Italian and this translation being in English, 'With the same displeasure I will let you know that I have committed a homicide and have been incarcerated, and that my case will be tried in a couple of months from now.'"

19. The Court sustained the objection of the Prosecutor to the question propounded to the defendant on re-direct examination:

40 "And so at the time when he wrote those letters it was not necessary for you to tell him what to say to your brother or other friends, what the charge was against you?"

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20. The Court sustained the objection of the Prosecutor to the question propounded to Frank Monahan on direct-examination:

"What did you do in that respect?" (referring to the exercise of the official duties of the witness in respect of a strike or a condition of labor trouble existing at the iron plant of the Joseph T. Ryerson Company firm.) **10**

21. The Court sustained the objection of the Prosecutor to the question propounded to Frank Monahan on direct-examination:

"How many men were detailed there each day?" (referring to the place where labor disorders existed.)

22. The Court sustained the objection of the Prosecutor to the question propounded to Frank Monahan on direct-examination: **20**

"What, then, was the purpose of detailing the men?"

23. The Court, notwithstanding the objection of the defendant, expunged from the record the testimony of Frank Monahan as follows:

"There was a couple of men assaulted, I think, around the first or second day of the strike, at the West Side depot of the New York and New Jersey Central Railroad. Now I would not be positive whether the persons who committed the assault were strikers or not." **30**

24. The Court sustained the objection of the Prosecutor to the question propounded to Frank Monahan on direct-examination:

"On the occasion of any of your visits did you see strikers performing picket duty in the vicinity of the Ryerson plant?" **40**

25. The Court, notwithstanding the objection

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of the defendant, permitted Wesley Bickard to answer on direct-examination the question:

10 "I show you what purports to be a record of conviction of one Mike Rombolo, and ask you to examine it and to say whether or not you can tell therefrom whether this defendant is the Mike Rombolo named in the record before you, and the same person you know to have been an inmate of the institution at the time you refer to?"

26. The Court, notwithstanding the objection of the defendant, permitted Wesley Bickard to answer, on direct-examination the question:

"Without reference to papers. Can you tell whether or not this defendant is the person named in these papers? A. Yes.

"Q. Is he that person? A. Yes."

20 27. The Court, notwithstanding the objection of the defendant, admitted in evidence as an exemplified copy a conviction in the State of Pennsylvania, the miscellaneous collection of documents being marked "S-11."

28. The Court refused to expunge from the record, although duly moved so to do, the documents which did not appear to be within the terms of the supposed exemplified record of defendant's conviction.

30 29. The Court, notwithstanding the objection of the defendant, permitted Wesley Bickard on re-direct-examination to testify as follows.

"Q. By reference to this record, and the particular page purporting to be a communication by the General Superintendent, Mr. Payton, to whom you have referred, I ask you whether you can identify the record of this prisoner from the photograph on these papers of S-11? A. Yes."

30. The Court, notwithstanding the objection of

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the defendant, permitted Wesley Bickard on re-direct-examination to testify as follows:

"Q. The number is a regular part of the record and the prisoners are known thereby and it appears in the exemplification and on the photograph and record? A. Yes."

31. The Court, notwithstanding the objection of the defendant, admitted in evidence the photograph marked "S-12." **10**

32. The Court sustained the objection of the Prosecutor to the question propounded to Philip Leonard on cross-examination:

"Q. Will you tell us why four witnesses were required to sign this statement?"

33. The Court sustained the objection of the Prosecutor to the question propounded to Philip Leonard on cross-examination: **20**

"Tell us why you did?" (referring to the invitation to Mr. Davidson to sign as witness the supposed confession of defendant.)

34. The Court sustained the objection of the Prosecutor to the question propounded to Philip Leonard on cross-examination:

"Was your dutiful disposition based on the fact that this defendant might deny he made this statement?" **30**

35. The Court admitted in evidence, notwithstanding the objection of the defendant, the police statement or confession marked "S-13."

36. The Court admitted in evidence, notwithstanding the objection of the defendant, the police statement or confession marked "S-14."

37. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"The defendant must be acquitted unless **40**

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the jury find from the evidence that he entertained at the time when he fired, a specific intent to take life or a specific intent to inflict a bodily harm or injury on the deceased from which his death would naturally and probably result."

10 38. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"If he fired in the direction of the deceased while the latter was advancing menacingly towards him, not with the intention of shooting him, but only to stay his advance or to show him that he was armed for defense, then, even though at that time the defendant was not warranted in apprehending grave bodily harm, his act was justified and he should be acquitted of the charge of murder."

20 39. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"The defendant cannot be convicted of the offence of murder unless he shot the deceased with an intent to take life or inflict such injury from which death would naturally and probably result, and that he did such shooting or formed such intent with malice."

40. The Court, although duly requested by the defendant, refused to charge the jury as follows:

30 "While malice may be presumed from the act of killing, such presumption only continues until circumstances of justification and mitigation are shown; and the presumption does not endure after testimony is offered to show that the killing was either unintended or was done in self-defense. After such proof is offered, it then becomes the duty of the jury to decide whether, beyond a reasonable doubt, it is shown that the defendant entertained such a corrupt or wanton purpose or such mischievous disposition as indi-

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cated that his act was prompted by actual malice towards the deceased."

41. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"The defendant cannot be convicted of murder in the first degree unless the jury is satisfied from the evidence, beyond a reasonable doubt, that the killing was done, first, with malice, aforethought; second, willfully; third deliberately; and fourth with premeditation. All four factors must have been shown beyond a reasonable doubt. All four are separate and distinct in their nature, and the jury cannot conclude from the testimony indicating intent or malice that the act was done with premeditation or deliberation." 10

42. The Court, although duly requested by the defendant, refused to charge the jury as follows: 20

"In law a willful killing is one based upon a specific intent to take human life."

43. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"Deliberation consists in weighing the considerations, whether or not the person attacked should be killed by the defendant; and a deliberate killing is effected only when, after such weighing of such considerations, the defendant, with mental calmness, determines that he shall kill." 30

44. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"A willful, deliberate killing, with malice aforethought, does not constitute murder in the first degree, in the present case, unless the killing was also premeditated; and premeditation, in this respect, means that after deliberating to kill, there was a pause in the mental processes of the defendant, after which he decided that he would carry such deliberation into effect." 40

Specification of Causes.

45. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"If the defendant, after deliberating on the question of killing the deceased, carried his design into effect instantly without further premeditation on the subject, he is not guilty of murder in the first degree."

10 46. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"Malice and passion cannot exist at the same time in the human mind, and a homicidal act cannot proceed from both impulses. In the eye of the law malice excludes passion and passion presupposes the absence of malice. They cannot co-exist as the moving cause of a homicide."

20 47. The Court, although duly requested by the defendant, refused to charge the jury as follows:

"The term 'passion' includes both anger and terror, provided they reach a degree of intensity sufficient under all the circumstances of the case to obscure temporarily the reason of the person affected."

48. The Court, although duly requested by the defendant, refused to charge the jury as follows:

30 "In determining the degree of passion which, engendered by adequate cause, is sufficient to reduce a felonious homicide from murder to manslaughter, the true criterion is the effect that the provocation in question would have produced on ordinary man of reasonable disposition, taking into consideration the circumstances of exasperation and frightfulness prevailing at the time when the act was committed."

49. The Court, at the trial of the said indictment, charged the jury as follows:

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"Malice, as used by the law, means the intent to do bodily harm. If a man should intend to do another man bodily harm and in the carrying out of that purpose should kill him, he would be guilty of murder."

50. The Court, at the trial of the said indictment, charged the jury as follows:

"You see the difference between murder and manslaughter lies in the presence or absence of malice, the presence or absence of the intent to do bodily harm. If there is no intent to do bodily harm and a life be taken, it is manslaughter; but if there be an intent to do bodily harm and a life be taken in the carrying out of that intent, it is murder." 10

51. The Court, at the trial of the said indictment, charged the jury as follows:

"Before he gives the fatal wound the accused must have done everything exacted by the law to avoid taking life. Whether he has done this and whether there was apparent necessity for the killing are questions for you gentlemen to consider under those instructions." 20

52. The Court, at the trial of the said indictment, charged the jury as follows:

"I deem it my duty to you to say that you may disregard the count for assault and battery, because there is no evidence that has been produced during the course of this trial which would warrant you in finding this man guilty of assault and battery. He is guilty either of murder or of manslaughter, or he is not guilty of any crime." 30

RICHARD DOHERTY,
Attorney of and of Counsel
with Plaintiff in Error.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,

Defendant-in-Error,

v.

MICHAEL ROMBOLO,

Plaintiff-in-Error,

Defendant below.

In Error.

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Afterwards, to wit: on the tenth day of July, Nineteen Hundred and sixteen, comes the said plaintiff in error, Michael Rombolo, by Richard Doherty, his attorney, without waiving his right to object to the defects and diminutions of the said record, judgment and proceeding, says in the
 20 said record, judgment and proceeding, as well as in the matters in the bill of exceptions contained and set forth, that is manifest error.

There is error in this, to wit: that the said Court before whom, etc., on the cross-examination of Elsie Kenny, sustained the objection of the Prosecutor of the Pleas to the question:

"Was your husband excited or resentful at the time when you were down at Union and West Side Avenue?"

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to the manifest injury of the defendant.

There is error also in this, to wit: that the said Court before whom, etc., on the cross-examination of Elsie Kenny, sustained the objection of the Prosecutor of the Pleas to the question:

"Since the Coroner's Inquest have you called at Police Headquarters in Jersey City?"

to the manifest injury of the defendant.

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There is error also in this, to wit: that the said Court before whom, etc., on the cross-examination of Elsie Kenny, sustained the objection of the State to the question:

“Were you not interviewed by Mr. Charlock?”

to the manifest injury of the defendant.

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There is error also in this, to wit: that the said Court before whom, etc., on the cross-examination of Charles Smith, sustained the objection of the State to the question:

“When did you find out where he lived; before or after this shooting?”

to the manifest injury of the defendant.

There is error also in this, to wit: that the said Court before whom, etc., on the cross-examination of Edward Flaherty, sustained the Prosecutor's objection to the question:

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“Was this question asked you: ‘You say you saw some one following Mr. and Mrs. Kenny? A. No, I did not see him. Mr. and Mrs. Kenny were walking down the street as though fooling. I walked across the street.

“Q. Did you see anybody behind them? A. I noticed nothing suspicious.’”

to the manifest injury of the defendant.

There is error also in this, to wit: that the said Court before whom, etc., notwithstanding the objection of the defendant, required, the defendant to answer on cross-examination the following question:

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“Were you not convicted on the charge of burglary and carrying a concealed revolver?”

to the manifest injury of the defendant.

There is error also in this, to wit: that the said Court before whom, etc., notwithstanding

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the objection of the defendant, required the defendant to answer on cross-examination the following question:

“You were in Court upon whatever charge you were convicted of in Pennsylvania, were you not?”

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“Did you have any talk with a girl or girls in the bake shop where you bought the pie or buns?”

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“Did you use your right hand in pulling your revolver?”

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the objection of the defendant, required the defendant to answer on cross-examination the following question :

“Now in this statement did you not in answer to this question ‘You are charged with murder that you did on Friday April 21st, 1916 shoot a man, Frank Kenny, at Union Street and West Side Avenue; what have you to say?’ Answer, ‘I left Ryerson’s shop 5.30 P. M. and I then went to a fruit store on West Side Avenue and bought a bunch of celery for six cents, and then went home, and I changed my clothes, and I told my boss I was going to New York, and I went to the West Side Station to find out when a train went to New York, and they told me at ten P. M., and then I went to a moving picture show on West Side Avenue near Boyd Avenue. After the show I went home. On my way home, at Union and West Side Avenue, I saw a man and woman. When I passed the man I brushed against him and he called me a guinea and dago, and struck me on the right breast. I told him I was no guinea or dago; and then he tried to hit me again. The woman said leave him alone, come home. He tried to hit me again, and then I drew my gun and shot him once. I then went home. About seven o’clock on Saturday I went to New York, and on the following Tuesday, April 25th, I went to Newark, N. J., and stayed there until I was arrested April 27th.’ And were you not asked ‘If the woman was holding him could you not have run away before you fired the shot?’ Answer ‘O yes, I could have run away, and any one could run away.’ Is that correct?”

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"Did you in that letter say to your brother in substance this, your letter being in Italian and this translation being in English, 'With the same displeasure I will let you know that I have committed a homicide and have been incarcerated, and that my case will be tried in a couple of months from now.'"

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- 10 There is error also in this, to wit: that the said Court before whom, etc., sustained the objection of the Prosecutor to the question propounded to the defendant on re-direct examination:

"And so at the time when he wrote those letters it was not necessary for you to tell him what to say to your brother or other friends, what the charge was against you?"

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"What did you do in that respect?" (referring to the exercise of the official duties of the witness in respect of a strike or a condition of labor trouble existing at the iron plant of the Joseph T. Ryerson Company firm.)

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There is error also in this, to wit: that the said Court before whom, etc., sustained the objection of the Prosecutor to the question propounded to Frank Monahan on direct examination:

"How many men were detailed there each day?" (referring to the place where labor disorders existed.)

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There is error also in this, to wit: that the said Court before whom, etc., sustained the objection of the Prosecutor to the question propounded to Frank Monahan on direct examination:

“What, then, was the purpose of detailing the men?”

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There is error also in this, to wit: that the said Court before whom, etc., notwithstanding the objection of the defendant, expunged from the record the testimony of Frank Monahan as follows:

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“I show you what purports to be a record of conviction of one Mike Rombolo, and ask you to examine it and to say whether or not you can tell therefrom whether this defendant is the Mike Rombolo named in the record be-

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fore you, and the same person you know to have been an inmate of the institution at the time you refer to?"

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"Without reference to papers. Can you tell whether or not this defendant is the person named in these papers? A. Yes.

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There is error also in this, to wit: that the said Court before whom, etc., notwithstanding the objection of the defendant, admitted in evidence as an exemplified copy a conviction in the State of Pennsylvania, the miscellaneous collection of documents being marked "S/11", to the manifest injury of the defendant.

There is error also in this, to wit: that the said Court before whom, etc., refused to expunge from the record, although duly moved so to do, the documents which did not appear to be within the terms of the supposed exemplified record of the defendant's conviction, to the manifest injury of the defendant.

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"Q. By reference to this record, and the particular page purporting to be a communication by the General Superintendent, Mr. Payton, to whom you have referred, I ask

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you whether you can identify the record of this prisoner from the photograph on these papers of S/11? A. Yes."

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There is error also in this, to wit: that the said Court before whom, etc., sustained the objection of the Prosecutor to the question propounded to Philip Leonard on cross-examination:

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"Was your dutiful disposition based on the fact that this defendant might deny he made this statement?"

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deliberately; and fourth, with premeditation. All four factors must have been shown beyond a reasonable doubt. All four are separate and distinct in their nature, and the jury cannot conclude from the testimony indicating intent or malice that the act was done with premeditation or deliberation."

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"A wilful, deliberate killing, with malice aforethought, does not constitute murder in the first degree, in the present case, unless the killing was also premeditated; and premeditation, in this respect, means that after deliberating to kill, there was a pause in the mental processes of the defendant, after which he decided that he would carry such deliberation into effect."

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There is error also in this, to wit: that the said Court before whom, etc., at the trial of the said indictment, charged the jury as follows:

30 "You see the difference between murder and manslaughter lies in the presence or absence of malice, the presence or absence of the intent to do bodily harm. If there is no intent to do bodily harm and a life be taken, it is manslaughter; but if there be an intent to do bodily harm and a life be taken in the carrying out of that intent, it is murder."

to the manifest injury of the defendant.

There is error also in this, to wit: that the said Court before whom, etc., at the trial of the said indictment, charged the jury as follows:

40 "Before he gives the fatal wound the accused must have done everything exacted by the law to avoid taking life. Whether he has done this and whether there was apparent necessity for the killing are questions for you gentlemen to consider under those instructions."

Assignments of Error.

to the manifest injury of the defendant.

There is error also in this, to wit: that the said Court before whom, etc., at the trial of the said indictment, charged the jury as follows:

"I deem it my duty to say to you that you may disregard the count of assault and battery, because there is no evidence that has been produced during the course of this trial 10 which would warrant you in finding this man guilty of assault and battery. He is guilty either of murder or of manslaughter, or he is not guilty of any crime."

to the manifest injury of the defendant.

And the said Michael Rombolo prays that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that he may be restored to 20 all things which he may have lost by occasion of the said judgment, etc.

RICHARD DOHERTY,
Attorney of and of Counsel with
Plaintiff-in-Error.

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TO THE PRESENT TIME
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