

NEW JERSEY
Court of Errors and Appeals

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

vs.

MICHAEL CHIACCIO,
Plaintiff-in-Error.

} On Error to Supreme
Court.

Brief for Defendant-in-Error

In this brief I will refer to the Plaintiff-in-Error as the defendant and the Defendant-in-Error as the State.

STATEMENT OF FACTS

This case was originally tried in the Somerset County Court of Quarter Sessions on October 20th, 1924, before Common Pleas Judge Frank L. Cleary and jury, the trial lasting two days. The jury brought in a verdict of "Guilty on the first count in the Indictment," which charged the defendant with receiving stolen goods.

On December 5th, 1925, a Writ of Error was taken out in the New Jersey Supreme Court and the case submitted in the October Term, 1925. The New Jersey Supreme Court rendered its decision January —, 1926. Holding that as there was no certificate of the entire record of the proceedings had at the trial, that the case came before them on a strict Writ of Error. Judgment of the trial court was affirmed.

On February 2nd, 1926, the State entered an order of Affirmance and Remittiture in the Supreme Court. Counsel for the defendant thereupon obtained a Writ of Error to the Supreme Court, which writ was filed March 16th, 1926. However, counsel for the defendant, on March 18th, 1926, before the Supreme Court, moved to amend the record and proceedings in order to include the certificate of the trial judge. This motion was denied by the Supreme Court upon the grounds that the case was then before the Court of Errors and Appeals on a Writ of Error. Thereafter, on March 25th, 1926, counsel for the defendant, before the Court of Errors and Appeals, moved to dismiss this writ of error, without prejudice, and that the record and proceedings be remitted to the Supreme Court without prejudice, to apply to the Supreme Court to reinstate the Writ of Error for the purpose of amending the record. This motion was denied by the Court of Errors and Appeals, holding to the rule as stated in the case of the State v. Brown, 76 N. J. L. 479.

The evidence in this case shows that on the 28th day of August, 1924, in the Township of Franklin, in the County of Somerset, the defendant, Michael Chiacchio, received certain stolen goods consisting of eighty-three rolls of cotton plush of the value of five thousand seven hundred dollars (\$5,700.00), and three cases of dress goods of the value of eighteen hundred and seventy-five dollars (\$1,875.00), the property of the Atchison Motor Freight and D. Morton Atchison and Kessell and Hober, and the Elkton Textile Company. The goods were stolen and taken in a robbery, carried away and unlawfully obtained from the Atchison Motor Freight and the said D. Morton Atchison, on the date aforesaid.

Walter Johnson, a truck driver employed by the Atchison Motor Company, was driving a red Packard truck between New York and Philadelphia. This truck was the property of D. Morton Atchison & Son, and accompanying Johnson, the driver, was a helper by the name of Alex Kelley. The cargo on the truck consisted of the property as specified in the preceding paragraph of this statement. The evidence shows that this truck left Phila-

delphia about half-past one on the morning of August 28th, 1924, and it was about three o'clock that morning when they came to Clarksville and Kingston, in Somerset County, New Jersey. Alex Kelley was driving the truck while Johnson slept, and the truck was then held up by nine men armed with revolvers, who ordered Johnson and Kelley down from the truck. The bandits then loaded Johnson and Kelley in a touring car and drove them around the country for a few hours and dumped them off near Dayton or Cranberry. Neither Johnson or Kelley could identify the robbers. Kelley's testimony corroborates Johnson's testimony and Kelley states that after a short while they passed through Clarksville, he noticed a car in back of him, and as he looked back the second time, he saw another car; then one of the cars drove right in front of his truck and commanded Kelley to stop the truck. Just about this time, a shot was fired by one of the occupants of the car which ordered Kelley to stop. Kelley then woke Johnson up, and they were both ordered to alight from the truck.

Daniel J. Dunn, a member of the State Police, testified that on the twenty-eighth day of August, 1924, that he stopped the defendant, who was coming out of a dirt road leading from Rocky Hill in his Auto-car truck. Corporal Dunn asked the defendant what he was doing coming out of that road, and the defendant's explanation was that he had become lost and had a hard time finding the highway. Corporal Dunn lifted the cover of the truck and examined the material and it was plush or velour. The corporal further testified that this road was a short cut from Rocky Hill to the Lincoln Highway. He further testified that there were forty or fifty rolls of plush in the truck, and that the truck had a tarpaulin tied over the load which completely hid from view the goods in the truck. The trooper also noticed a tag attached to the rolls or bundles, and the tag bore the name of Kessel and Hober. After putting the defendant through a brief examination the troopers allowed him to proceed. The State trooper and his partner, Trooper Linderman, then returned to their station at Franklin Park about thirty

minutes later, and as soon as they arrived there, they received word that a truck had been held up and a load of plush taken from it. They at once communicated with Mr. Crawford, of Philadelphia, and asked him to watch out for the truck.

D. Morton Atchison testified as follows: That this truck driven by Kelley and Johnson left on the morning of August 28th, and carried eighty-three pieces of plush and three cases and a package of dress goods. In his testimony he described the kind of material, which material was marked for identification. Mr. Atchison also testified that at the hearing, the defendant made a statement that he took the goods off of this red Packard truck and then later on he entered a denial, telling the authorities that he got the goods in New Brunswick. C. Gilbert Crawford, a detective of the State of Pennsylvania, and director of the Crawford Detective Agency, testified in this case and stated that he carried on the investigation of this case in the State of Pennsylvania. His testimony shows that he learned of this robbery about twenty minutes to ten on the morning of August 28th, 1924. A systematic search was then instituted by the State troopers and the police of New Jersey, and through certain information, Mr. Crawford went to Riverside, New Jersey, where they located the defendant in this case. They observed the defendant drive to the rear of his house, the Auto-car truck which had been stopped by the State troopers. It was after four o'clock when Mr. Crawford arrived at the defendant's home in Riverside. The defendant admitted to Mr. Crawford and Corporal Dunn that it was he (the defendant) who was stopped on the highway, and he then confessed to hauling the plush from the truck down on a side road in the woods, and the defendant told a story about three men loading the plush from the red Packard truck on to his truck. The officers then obtained a warrant for the defendant's arrest through Justice Potts at Kingston. Mr. Crawford further testified that they recovered part of the goods in Philadelphia and finally located the place where the defendant had driven to on the afternoon of August 28th. The investi-

gation resulted in recovering part of the goods, and the two receivers of the goods made confessions. He testified that some of the goods were found at 1104 North Fourth Street, Philadelphia, which goods were identified as the goods stolen and received by the defendant in this case.

The defendant, Chiaccio, claims that he was misused by Mr. Crawford and members of the State police, but this assertion is denied by Mr. Crawford and members of the police, who stated that they at no time misused the defendant. The defendant denied knowledge that the goods were stolen and claims that he was merely carrying on his business as a trucker and that he knew nothing about the robbery and the circumstances connected with it, and in his testimony he states that he didn't know the men from whom he procured the plush and did not know the men who assisted him in loading the plush, and who drove with him from New Brunswick to the place where the red Packard truck was stuck. He further testified that he unloaded the goods at 215 Market Street, Philadelphia, and that he did not know who the person was who received them, nor did he know the man who assisted him in unloading the goods. After being out for a short time, the jury returned into court and by their foreman rendered a verdict of "Guilty" as charged.

POINT I

This point is not well taken as in this case there is no certificate of the entire record of the proceedings had at the original trial such as is required under Section 136 of our Criminal Procedure Act. "A return made to a writ of error of the "entire record" is confined to such record as the writ commands the court to return and does not include the entire proceedings had at the trial." *State v. Armstrong*, 88 N. J. L. 280. That being the case this cause comes to this court on a strict Writ of Error and the question as to whether the verdict was against the weight of evidence or not is not properly before this court.

A careful reading of the testimony introduced by the State, however, shows conclusively that the defendant without a doubt knew that the goods were stolen. This, however, was a question of fact for the jury's determination and there was proof beyond a reasonable doubt to the minds of the jurors that Chiaccio was guilty of the crime of receiving stolen goods. The testimony of Trooper Dunn shows that goods were in the defendant's possession and the goods were also identified by other witnesses for the State as the goods that were stolen by the bandits and removed from the red Packard truck into the Auto-car truck of the defendant, and on (Case, P. 128, lines 22-30), the witness Thomas Turner positively identifies the goods in question. All of this testimony was introduced and became a question of fact for the jury to pass upon, and without a question, they were convinced that the goods in the defendant's possession were the goods that were stolen and later transferred to the defendant's truck. The defendant cites the case of *State vs. Malverosa*, 108 Atlantic, 95. This case was a case decided in the Court of General Sessions in the Court of the State of Delaware and bases part of its decision upon Section 4741 of the Revised Code of Delaware. The case in this respect has no bearing upon the case at bar and in the opinion it is further stated that knowledge that the goods were stolen may come from declarations made at the time or from circumstances surrounding the transaction, and the jury may consider circumstances in determining whether the defendant had knowledge that the goods were stolen.

The State respectfully directs the Court's attention to (Case, P. 90, lines 30-35), where the defendant admitted that he hauled the plush from a truck down on a side road in the woods. This shows circumstances strong enough to show that the goods were stolen, and is conclusive proof that the goods stolen were the goods found in the possession of the defendant, which goods were positively identified. In this respect, the case of *State vs. D-Adame*, 82 N. J. L. 35, lays down the rule that guilty knowledge may be found where the defendant

received the goods, under such circumstances as to satisfy a man of ordinary intelligence and caution that they were stolen. *State vs. Lesson* (Volume 3, N. J. Misc. Report, P. 972).

The defendant contends that the court should have quashed the indictment because the indictment failed to allege the name of the person who stole, and furthermore, because the record failed to disclose that the thief had ever been arrested, indicted or convicted. The State contends that according to Section 166 of the Crimes Act, that it is not necessary for the State to allege in a case of this nature who stole. The defendant in error urges the case of *State vs. Rom.*, 72 A. 431. This case has no bearing on the case at bar, but merely decided the point that the testimony of the thief is competent to prove that the goods were stolen. Furthermore, the State is not obliged to seek out and bring the thief to court to testify that he stole the goods, or that he was convicted of stealing the goods. This as a matter of common knowledge, most times would be impossible, and therefore, if the State shows that the defendant received the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that they were stolen, it is sufficient to put the receiver of the goods on his guard.

POINT II

Under this point the defendant argues Point 3 in his Assignment of Error. It is a well established rule that the plaintiff in error should in his assignments point out the precise evidence which was erroneously rejected. *State vs. Herron*, 77 N. J. L. 523, also *State vs. Oliver*, 130 Atl 446. The third assignment does not specify any precise evidence and is therefore of no account. The question propounded by defendant's counsel was: "If the crime occurred in Somerset County, why was the defendant placed in jail in New Brunswick, Middlesex County, before he was taken to Somerville?" Nevertheless, in (Case, P. 24, line 36), the very same question was

asked the witness, and he answered the same, and stated that the defendant was placed in New Brunswick Jail to keep him there until the next morning. In any event, this matter was discretionary with the trial court, and if the court excluded it on the ground that it was irrelevant, immaterial and incompetent it was solely in the court's power to do so. The State contends that whatever the answer might have been to a question of this nature it was not in any sense prejudicial to the interest of the defendant, and could not be termed as a harmful error, and moreover the question was answered.

POINT III

The court did quash the second count of this indictment. Nevertheless, "The granting of a motion to quash an indictment is a matter of discretion and is not reviewable unless in violation of settled legal principles of Equity or Law." *State v. Potter*, 83 N. J. L. 428. Certainly no settled principle of law was violated by the court's refusal to quash the first count of the indictment. Furthermore, the defendant urges that the indictment is defective, due to the fact that it did not contain the word "feloniously." It is not necessary to include the word "feloniously" in an indictment which charges and alleges in clear legal language the crime committed. The indictment in this case is a part of the record. (Case, P. 3, lines 13-36). The State contends that the first count of the indictment charges in legal statutory language, the crime of receiving stolen goods, and that it is not necessary to include as part of the verbage in the indictment the word "feloniously." And the State further contends that the fact that a person receives stolen goods and takes them away with him is evidence sufficient to show the intent to deprive the owner of his goods.

Counsel further states that the indictment was defective because it contained counts that were duplicatus and that each count contained separate and distinct crimes. This is not so, and even if the counts were duplicated, it

could not in any event harm the defendant because it would be charging the same crime twice in the same indictment. The defendant's contention in this respect is unfounded because (Case, P. 198) the court heard counsel as to the second count and granted the motion to defendant's counsel to quash the second count in the indictment, and the court stated at that time that he would send the case to the jury with the instructions that they were to only take cognizance of the first count. Therefore, it is the contention of the State that the third point urged by the defense is entirely without foundation.

POINT IV

Under this point the same rule as is argued under Point 2 applies, as this is Point 5 in the defendant's assignment of error and this assignment does not specify what the precise evidence was which was erroneously admitted. Furthermore the facts show that the defense claims that pieces of goods which were marked for identification were improperly admitted in the case. A tag which was attached to the goods was admitted as the same tag that Corporal Dunn saw attached to the rolls of plush at the time he stopped the Auto-car truck driven by the defendant. The same witness, Corporal Dunn, on (Case, P. 30-31) was shown a piece of cloth and identified it as the same kind of goods as contained in the rolls on the truck driven by the defendant. The prosecutor then asked to have the bill-head and the tag and the goods admitted in evidence. Objection being raised by defendant's counsel the court refused to admit the exhibits at that time, but permitted them to be marked for identification, and on (Case, P. 124) Thomas H. A. Turner had identified the exhibits offered by the State, and later on the same witness in his testimony in (Case, P. 127, lines 11-22) testified that he saw part of the stolen goods which were located and the marks of identification and numbers on each piece of the goods corresponded exactly with the record and the number on the goods which were stolen

en route to New York. After hearing Mr. Turner's testimony on this point and the argument of counsel, the court admitted the exhibits in evidence in the case, and the court said at the time that the exhibits herein offered were not offered as being part of the goods that were taken that day, but were simply offered to show the type of goods that were shipped on the truck. This evidence was very properly admitted and, furthermore, the witness, Turner, had personal knowledge of the goods, because he was employed by the Manayunk Plush Manufacturing Company, the manufacturers of the goods which were stolen and part of which goods were later found in Philadelphia and identified by him as part of the stolen goods. There was no error whatever in this part of the case, as the evidence was very material and competent to aid the jury in coming to a proper conclusion in this case. Furthermore, the court states that the goods were offered merely to show the type of the goods there were on the truck.

POINT V

This point is not well taken, as under Section I, paragraph 6, of the Criminal Procedure Act, the Court of Quarter Sessions may receive indictments when the Justice of the Supreme Court shall be absent "and all indictments so received, which are not triable in the Court of Quarter Sessions, shall be delivered by said courts to the Court of Oyer and Terminer in their respective counties." The Somerset County Court of Quarter Sessions having received this indictment and under the law having jurisdiction to try the same, no order from the Court of Oyer and Terminer was necessary. Furthermore, this objection is now untimely, as this question should have been raised at the time of the trial and the record shows that no objection was then raised. The case which the defendant cites, that is, *Cruser v. State*, 18 N. J. L. 206, is an old case and has been over-ruled by the more recent case of *State v. Winters*, 61 N. J. L. 613.

POINT VI

The defendant urges that the Supreme Court erred in refusing to review the testimony in the case in its entirety as is provided under Section 136 of our Criminal Procedure Act. Section 136 of the Criminal Procedure Act provides that "the entire record of the proceeding had upon trial of any criminal cause may be returned by the plaintiff in error therein with the writ of error, bringing up the bill of exceptions as signed and sealed in the cause, etc." There is no certificate of the entire record by the trial judge in this case and the State now contends that the Supreme Court did not err in refusing to review the testimony as under Section 136 the State basing its contention upon the opinion of Chancellor Magie in the case of *State v. Clark*, 75 N. J. L. 473, and cases cited thereunder. If, however, the Supreme Court had reviewed the case in its entirety, testimony would have shown that the defendant had received the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that the said goods were stolen. The other points argued under this section in the brief of the defendant have been fully answered in the previous points in this brief.

POINT VII

The contention of the defendant under Point 7 has been fully answered under Points 2 and 4 of this brief. No other points raised by the Assignment of Errors are argued by counsel in his brief and are, therefore, considered as abandoned.

The State respectfully wishes to call to the Court's attention the fact that the record of this case does not include any record either of defendant's counsel's motion before the Supreme Court or the motion to dismiss the writ of error made before the Court of Errors and Appeals. The State believes the record of these motions should be included in the state of the case as submitted and that the record now before the court is incomplete,

defective and not a true record of the entire proceedings. The State maintains that there were no errors committed either by the Supreme Court or the trial court in this proceeding and that the defendant was given a fair and impartial trial. The defendant in this appeal seeks to show that the Supreme Court erred in not reviewing the entire proceedings and to raise questions of fact which questions have been passed upon by the trial jury, who are the sole judges of the facts. No rights of the defendant have been prejudiced and, therefore, the defendant has suffered no wrong or injury and the State urges that the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

FRANCIS L. BERGEN,

Prosecutor of the Pleas.

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v.

MICHAEL CHIACCIO,
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On Error to Su-
preme Court.

Brief for Plaintiff-in-Error.

STATEMENT OF FACTS

Michael Chiaccio, plaintiff-in-error, the defendant in the trial court, was convicted for receiving stolen goods in the month of October, 1924, in the Somerset County Court of Quarter Sessions, upon which conviction he was sentenced to be committed to the State Prison for not less than one year, nor more than three years.

The cause was reviewed by the Supreme Court upon briefs which were submitted October Term, 1925, Case No. 103, without oral arguments, which court entered a judgment of affirmance.

The cause is now before the Court on Writ of Error to the Supreme Court to review the record and proceedings in which it is alleged by the plaintiff-in-error that manifest error has been committed both by the trial court and by the Supreme Court, according to the Assignments of Errors and Specifications of Causes for Reversal filed herein.

The plaintiff-in-error, Michael Chiaccio, is engaged and was engaged at the time of the conviction, in the business of carting, trucking, and transporting by automobile trucks, goods of all description at Riverside, New Jersey, and that he was engaged for hire to transport and cart a load of goods from a place near Franklin Park, which is near Somerville, New Jersey, to Philadelphia. It was alleged that a robbery had occurred on the highway between Kingston and Clarksville, New Jersey, on the 28th day of August, 1924, upon which occasion it is alleged eighty-three rolls of cotton plush of the value of fifty-seven hundred dollars, and three cases of dress goods of the value of eighteen hundred and seventy-five dollars, the property, goods and chattels of Atchinson Motor Freight, and the property of D. Morton Atchison and Kessel and Hober, and the Elkton Textile Co., was stolen, and it was alleged that the plaintiff-in-error had received the stolen goods. *The State conceded that pieces of plush which they used as exhibits during the trial of various colors were only used for the purpose of showing the jury the kinds of goods which were manufactured by the owners of the goods claimed to have been stolen on the day in question, and further to show that the exhibits corresponded with the color and textile of the goods that the State claimed were in the possession of the plaintiff-in-error, and upon the plaintiff-in-error's truck.* The plaintiff-in-error, after having been stopped by State troopers who took the license number of the automobile and the name of the plaintiff-in-error, was permitted to continue his journey to Philadelphia; neither he nor the goods were held at that time, but later, upon complaints, the State troopers apprehended the plaintiff-in-error at his home at Riverside, New Jersey, at which time there were no goods in the custody or possession of the plaintiff-in-error. The State attempted to prove that after an investigation the goods were found by detectives in the possession of people in Philadelphia, but nothing was said that the plaintiff-in-error had delivered said goods to

those people. There was no proof that the goods used in exhibits in the trial were the very identical goods alleged to have been stolen, nor the very identical goods in the possession of the plaintiff-in-error when stopped by the State troopers. On pages 128, 129 and 130 of the State of Case in Supreme Court and in this case will be found testimony with reference to the goods, the offering of the exhibits, the objections, the exceptions, and the rulings of the trial court which after reading will show that the exhibits were offered merely to show the jury nothing more than the fact that the goods used by way of exhibits were manufactured by those people alleged by the State to have been the owners of the goods stolen in the robbery at the place and at the time in question, and conceded that the exhibits were offered for no other purpose excepting that they were alleged to have corresponded with the kind of goods upon the truck of the plaintiff-in-error when stopped by the State troopers. The plaintiff-in-error testified that he had an auto-truck and took some goods from New Brunswick, New Jersey, which goods were found in a lot of bundles, the biggest of which was three feet long, but had no wooden cases, denied stealing the goods or receiving goods by him, knowing the same to have been stolen. The trial lasted one day and a half, and the jury in less than a quarter of an hour found the verdict guilty.

POINT I

Because the verdict was clearly against the weight of evidence.

There was no direct proof, beyond a reasonable doubt, that the goods were in the defendant's possession or control, nor was there proof that the goods alleged to have been in the possession of the plaintiff-in-error were stolen goods, nor was there proof that the goods alleged to have been in the possession of the plaintiff-in-error were the goods of the person mentioned as owner in the in-

dictment, all of which must be proven beyond a reasonable doubt before a conviction can be sustained. *State v. Malvarosa*, 108 Atl. 95.

The trial Court should have quashed the indictment because the indictment failed to allege the name of the person who stole, and, further, because the record failed to disclose that the thief had ever been arrested, indicted or convicted. The thief had not been called to testify that the goods had been stolen. *State v. Rom*, 72 Atl. 431.

POINT II

The Court excluded legal, relevant and competent testimony.

Witness Dunn, for the State, was asked on cross-examination, on page . . . why he brought plaintiff-in-error to New Brunswick, if the crime had been committed in Somerset County and trial judge excluded the testimony. The plaintiff-in-error contends that the question was relevant and pertinent and by the Court refusing to permit the answer he was prejudiced. *State v. Lewis*, 121 Atl. 83.

POINT III

Trial Court refused to quash either or both counts in indictment.

The indictment failed to contain the word "feloniously," which is a necessary allegation in view of the statute, because the receiving must be with intent to deprive the owner of his goods, and therefore fatal. Further, the indictment was defective because it contained counts which were *duplicatus*, and, further, because each count charged several and distinct crimes.

POINT IV

Trial Court permitted evidence to go in, over objection, which was irrelevant, immaterial and incompetent.

The State produced pieces of goods and the Court permitted the goods to be marked for identification, which goods when marked had not been proven to be the goods of the person named in the complaint or indictment nor the goods alleged to have been in the possession of the defendant; in fact, the State practically conceded that they were not, yet the Court allowed them to go in at the close of the State's case.

Now, the State introduced evidence on redirect examination to attempt to identify the goods and the trial Court allowed the goods to be marked for identification and later to go into the case, over objection made by the plaintiff-in-error. *State v. Lewis*, 121 Atl. 83.

POINT V

Court of Quarter Sessions had no jurisdiction to try the matter, since no order was made by the "Oyer and Terminer." (Compiled Statutes, see 8.) *Cruser v. State*, 18 L. 206.

POINT VI

Because the Supreme Court erred in refusing to review the testimony from the State of the Case in its entirety under Section 136 of the Criminal Procedure Act, which testimony if reviewed would have shown that the State had failed to prove that the plaintiff-in-error had received the goods alleged to have been stolen, failed to prove that the plaintiff-in-error had knowledge that the goods had been stolen, that the State had failed to identify in the goods as those alleged to have belonged to the owners of the goods alleged to have been stolen;

that there was no testimony from the thief; that there was no testimony as to who had stolen the goods; that there was no testimony from whom the goods had been stolen, or the following would have shown conclusively that the State conceded that the exhibits which they used in the trial were not necessarily the goods alleged to have been stolen, but that they were merely used for the purpose of showing the jury the kind of goods manufactured by the alleged owners of the alleged stolen goods.

Mr. Beekman—"I offer these various pieces of cloth; also this tag and the bill that has been marked for identification, in evidence. And in addition to that, if the Court has no objection to it and counsel has no objection to it, I would like to introduce a map of the northern section of New Jersey, which covers the section of road over which these operations took place the night of August 28th."

Mr. Rimo—"I do not object to the map; I object to the introduction of these pieces of cloth on the ground that they should have been offered previous to this time. There was opportunity and they should have been introduced in direct testimony."

The Court—"Has there been testimony that these pieces of cloth are pieces taken from the shipment?"

Mr. Beekman—"No, absolutely not. *They are not introduced for that purpose.* One of the witnesses testified that he examined the stuff on the truck of the defendant when he stopped him coming out of this road. He described it, the cloth, he was asked how the plush which he saw at this time corresponded with the plush that was then exhibited to him. He said it did correspond. This particular brown piece was referred to only. And, now, additional proof is in the case to show that this is the type of plush that they manufacture at the Manayunk Plush and was the stuff taken from this truck; that this was the kind of plush that was loaded on that truck; that this is the gentleman here who owns the truck *and that is the kind of stuff that would be on the truck that night.* There is testimony to show there

were three types of cloth on the truck, namely, blue, gray and blown of plush and that part of the plush was embossed and part was not embossed, and these are just merely to show the jury the type of cloth that was on that truck, which corresponds in one particular with the cloth this man looked at when he stopped the defendant's truck along the road and this is the type of cloth that was recovered. There is no dispute with counsel for the defendant that these people have recovered part of their goods, and these are the goods that they recovered and correspond with the goods that were stolen on that night. They are simply offered to the jury to show the jury what type of goods they were."

The Court—"You wish to object to the introduction of this exhibit with the understanding it is not being offered as being part of the goods that were taken that night. Simply being offered to show the type of the goods that were shipped on the truck and which were afterwards stolen, and manufactured by this firm, I will allow it under that circumstance. *You may have your exception.*"

(Exhibit marked S 1, S 2 and S 3. The blue plush S 5 and the gray plush S 6.)

Mr. Beekman—"The State rests."

We disagree with the Supreme Court in refusing to review the testimony because of the lack of the certificate of the trial judge, when in the State of the Case, there will be found a certificate of the official stenographer and a return to the writ signed by the trial judge which makes up the entire case, because we contend that the only purpose of the certificate of the trial judge is to certify to the court that the printed book contains the entire record and proceedings, and when the official stenographer certifies that the testimony was taken down stenographically and transcribed by him to the best of his knowledge and understanding, which certificate is in the State of the Case and shows not only the testimony, but the objections and rulings and exceptions of the court, along with the proper return to the writ made by

the trial judge himself, that the State of the Case as it stood in the Supreme Court contained all that a certificate of the very trial judge could have mentioned. It being the understanding of the plaintiff-in-error that in order to make sure that no injustice has been done, that the court would examine the record with the relation to the exclusion to testimony, admission of testimony, the charge of the court, and the exceptions granted. *State v. Lewis*, 121 *Atl. Rep.* 83.

POINT VII

We contend and say that the Supreme Court erred in saying that the second point, "The Court excluded legal, relevant and competent testimony," and the fourth point "That the Court admitted illegal evidence of the State over the objection for the defendant when it said that these assignments of error were futile because they do not specify anything," and use the case of the *State v. Oliver*, 130 *Atl.* 146, in support of its ruling, because the learned Supreme Court in an opinion written by Justice Trenchard in the case of the *State v. Lewis*, in 121 *Atl.* 83, which properly laid down the rule when it said in part of its opinion, "However, in order to make sure that no injustice has been done, we have examined the record with relation to the exclusion of testimony, to the admission of testimony, the charge of the court, and the comments of the prosecutor, showing as it did in that case where the same situation applied that the court would not defeat justice by laying down such a hard and harsh rule, and we think there was manifest error." We respectfully submit and contend that manifest errors have been committed both by the trial court and the Supreme Court as will be seen by the record, and that the jury failed to give the defendant the benefit of reasonable doubt and other errors in the records, have prejudiced his rights to such damage as to entitle plaintiff-in-error to a reversal of the conviction and a right of a new trial.

ROMULUS P. RIMO,
Attorney for Plaintiff-in-Error.



