

NEW JERSEY COURT OF ERRORS AND APPEALS

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

vs.

JAMES BOSSONE,
Plaintiff-in-Error.

Brief.
On Appeal.

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STATEMENT

James Bossone, the defendant in this case, was convicted in the Monmouth County Court of Quarter Sessions, and this writ of error is brought to reverse the conviction.

Five men whom the defendant Bossone has characterized as gunmen came to Long Branch, and went to Bossone's store, and then went to a restaurant known as "Frank's," and from there to Asbury Park, and upon their return Bossone claims that he left them and went home; that they made a proposition to him to commit burglary on the Cubberly house and that he refused, stating that he made too good a living in Long Branch to be implicated in anything like that.

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The State permitted two of the men who accompanied Bossone to turn State's evidence. Bossone was a resident of Long Branch and conducted a cigar store on Broadway. All of the other parties were from New York City. The testimony of the two witnesses, Criscuolo and Carlucci, who turned State's evidence, was that there were only four men in the party, the two witnesses, a party named Zump, who was afterwards murdered in New York, and Bossone. The two witnesses who turned State's evidence placed the burglary upon Zump, who was dead, and upon Bossone. Bossone claims that there were six persons, Criscuolo, Carlucci and his brother, and a little fellow named Jimmy.

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Bossone is corroborated in this to the extent that there were five present, by Lillian Stewart and Pauline Milo, two of the State's witnesses for the State, one of whom described him as "a little fellow," and Bossone described him as "a little man named Jimmy," so that the State's witnesses contradicted each other as to the number in the party.

10 Two things should be borne in mind which are highly improbable, one is that Bossone who lived in Long Branch and who is charged with actually committing the burglary went to New York and procured five men to come down and be witnesses to him and one of the other in committing the burglary, and the other is that after the burglary was committed it appears that the defendant Bossone got none of the booty, and that it was taken over to New York, according to the witnesses who turned State's evidence by Zump, and he divided it, and that when the witnesses who were allowed to turn State's evidence were arrested they were able to produce the jewelry, and Bossone did not have any of the jewelry or any of the proceeds thereof.

20 Bossone was convicted not only for the burglary, but for grand larceny, and under a count for breaking and entry. Bossone became acquainted with the gunmen during the summer time when they were travelling around Long Branch and were known to the police, and were also known to Detective Walling. Yet the other members of the party were allowed to escape indictment, and the one indicted with Bossone was allowed to escape by turning State's evidence, and the whole burden was placed upon the local man as appears inferentially through the influence of Detective Walling (p. 136), who assumed to act for the Grand Jury after Carbone had admitted he was present when the burglary was committed. (P. 136, li. 11, 12 and 13.)

POINT I

Assignments of Error 1, 2, 3, 4, 5, 6, 7, 8 and 10, 44 and 45 can be considered together.

40 Stated generally, the position is that the Court of Quarter Sessions did not have jurisdiction to try the indictment

because the indictment was found in the Court of Oyer and Terminer, and there was no order made by the Court of Oyer and Terminer sending the indictment to the Court of Quarter Sessions for trial, and that this was not only a trial before a Court without jurisdiction but was also a denial of due process of law under the constitution of the United States. And further, that the indictment was not returned to the Court of Quarter Sessions, but was returned to John W. Slocum, Presiding Judge of the Court of Common Pleas, and it further appears on page 9 that the order was made by John E. Foster, Esquire, Judge, and was not made by the Court of Oyer and Terminer. 01

There was no statutory authority for John E. Foster, as Judge of the Court of Quarter Sessions, to order an indictment found in the Court of Oyer and Terminer filed and retained in the Court of Quarter Sessions for trial, the only indictments which could be ordered filed and retained in the Court of Quarter Sessions for trial or other disposition would be the indictments found by the Grand Jury in the Court of Quarter Sessions, and if an indictment was found in the Court of Oyer and Terminer it could only be sent for trial to the Quarter Sessions by an order made by the Court of Oyer and Terminer. 20

Section 6 of the Crimes Act, 1898, provides that in the absence of a Justice of the Supreme Court, while permitting a Judge of the Court of Quarter Sessions to receive the indictment, says that "All indictments so received which are not triable in the Courts of Quarter Sessions shall be delivered by said courts to the courts of Oyer and Terminer in their respective counties." 30

This plainly requires that any indictment found in the Court of Oyer and Terminer shall be delivered to that Court for Trial, and can only be tried in the Court of Quarter Sessions when sent to the Court of Quarter Sessions as provided in Section 8 of the criminal procedure act, and the Court of Quarter Sessions shall only have jurisdiction after the order of the Court of Oyer and Terminer shall be delivered to the Clerk of the Court of Quarter Sessions and filed by him, and then the Court of Quarter Sessions shall 40

have power to issue process and proceed upon and hear and determine said indictment as if the same had originally been found in the Court of Quarter Sessions.

It is clear in this case that there was no Judge of the Supreme Court present when the Grand Jury presented the indictments, and that therefore, there was no authority under the statutes above quoted for the Court of Quarter Sessions to try this case and the Court of Quarter Sessions was without jurisdiction.

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This point was before the Court in the case of *State vs. Winters*, and the Court of Appeals refused to affirm the ground stated in the Supreme Court, because no objection had been taken at the trial on the ground that the Court of Quarter Sessions would have been competent had a proper order been made and that therefore the defendant waived any irregularity in the procedure and for the further reason that the Court had been remanded from the Supreme Court to be proceeded with according to law.

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In this case, the point has been directly raised by objection taken to the competency of the Court to try the cause.

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There can be no implied jurisdiction; it must be either granted expressly by statute or must be by common law. In this case, there is no statute warranting the Court of Quarter Sessions in trying the case and the Section 6, above quoted, requires the delivery of all indictments to the Court of Oyer and Terminer which are not triable in the Court of Quarter Sessions, and no indictment found in the Court of Oyer and Terminer is triable in the Court of Quarter Sessions without the order provided in Section 8 of the Criminal Procedure Act.

As in this case, an order was made by a Judge of the Court of Quarter Sessions, the maxim quoted in the case of *the State vs. Turner*, 72 N. J. L., page 406, does not apply.

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“Where the indictment is found in the Oyer and is to be tried in the Sessions, there must be an order directing delivery of the indictment to the quarter sessions (*Crusier*, 18 L. 206; *Holt* 58 L. 11), and the words ‘handed down’ are equiv-

alent to 'ordered to be delivered' (Engeman 54 L. 247; Woods, 66 L. 247; Woods 66 L. 458). The jurisdiction of the Court of Quarter Sessions being general, its proceedings will be assumed to be regular and all things necessary to give it jurisdiction will be presumed, the contrary not appearing (Davidson, 66 A. 945). Where the accused is tried without objection by the Quarter Sessions for a crime which that Court is competent to try, his acquiescence waives any irregularity in sending the indictment from the Oyer to that Court. (Winter, 61 L. 613)."

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The case of the State vs. Polhemus, 65 N. J. L. p. 394, does not apply to the present controversy. In that case, the Grand Jury was received by the Justice of the Supreme Court and the Judge of the Court of Common Pleas, and a rule was entered in the minutes of the Oyer, ruling the case down to the Quarter Sessions, and in that case it also appeared that the jury was sworn in the Quarter Sessions.

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It might be remarked at this time, in answer to the objection in the Supreme Court, that the Court quoted the statute approving the objection being made by motion to quash. State vs. Goldman, 65 N. J. L., p. 397.

It might be proper to here point out, in reply to what the Court said in the opinion, Case, p. 178, last line,

"The defendant's motion was not the proper way to present the question."

The question was not only presented by motion to quash in accordance with the statute above referred to, but also objection was made to the jurisdiction of the Court. Case, p. 28, l. 3 and 4:

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"We claim that this Court has not yet acquired jurisdiction for the trial of the indictment."

The Court said, Opinion, p. 179, l. 1:

"All he could do if his view was correct was object to the trial in the Sessions, and he had waived this right, if he ever had it, by pleading in that Court."

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The trial Court permitted the plea to be withdrawn for the purpose of making the objections in the motion. P. 28, l. 24.

But even though the Court had not permitted the withdrawal of the plea, it would be manifestly unjust to force a defendant to trial in a Court not having jurisdiction. The statutory jurisdiction cannot be waived.

10 Where jurisdiction is conferred by statute, it must be according to the words of the statute, and jurisdiction cannot be conferred by implication. In ninety-nine cases out of a hundred, defendants are brought in on a *capias*, who are brought to the bar without having an opportunity to consult counsel, or to examine an indictment, and they are required to plead so that they can furnish bail or that bail can be fixed.

20 It is the universal practice that when the defendant has an opportunity to consult counsel and examine the indictment and proceedings, that such plea may be withdrawn, and any objection made to have the same effect as if no plea had ever been entered.

The case of the State vs. Polhemus, 65 N. J. L., p. 387, does not apply, because it was held in that case that the objection was not made until after conviction and sentence.

The State vs. Wood, cited by the Supreme Court, 66 N. J. L., p. 463, does not apply because in that case the records showed an order made in the Court of Oyer and Terminer.

30 In the State vs. Spina, 75 N. J. L., p. 270, the Court held:

“The indictments which are triable in the Sessions, by necessary implication, are to be retained by that Court and tried there.”

Where jurisdiction is conferred by statute, it cannot be conferred by implication, and if the statutory language does not warrant the jurisdiction, the statutory procedure must be strictly followed in order to confer jurisdiction, and it cannot be conferred by implication.

40 The question under consideration has never been passed upon by the Court of Appeals in this State.

POINT II

Assignments 11, 12 and 46 can be considered together, under Point 2, that the Court granted a severance over the objection of the defendant, and second, after granting the severance the Court refused to postpone the trial in order to give the defendant an opportunity to prepare his defense for a separate trial.

The facts of the motion and the exception are set forth on pages 22 and 23 of the State of the case.

While it is undoubtedly true that it is within the discretion of the Court to grant separate trials where persons are jointly indicted, it should only be done when some reason is given for the Court to exercise its discretion. In this case, no reason was given and the motion was simply made by the prosecutor.

The grounds of the application should be stated at the time the application is made so that it can appear upon the record in order to ascertain whether the Court properly exercised its discretion, or had any reason upon which to base its discretion.

The defendant had been arraigned and pleaded jointly and the first notice that the defendant had that a severance would be asked for was when he appeared in Court for trial and the joint indictment had been moved for trial and the jury empaneled, and he promptly objected because the case had been prepared on the theory that the defendants were to be tried jointly and that he was surprised when the motion for severance was made by the prosecutor, after the indictment had been moved for trial.

The cases are collected in 14th Century Digest, Col. 2151, Sec. 1380. The statute in this State in the Criminal Procedure Act, Section 64, provides a means where persons jointly indicted may make application for a separate trial. This is done upon affidavit and a statement of the grounds for the application.

An interpretation of this Act can be found in *State vs. Kerr*, 24 N. J. L. Journal, p. 435, and the procedure in 12 Cyc., p. 508.

It was unjust to the defendant, under the circumstances,

to permit a severance at that time, without stating the grounds and therefore he was prejudiced in his defense and his conviction should be set aside.

Secondly: The Court refused to postpone the case upon motion made by the defendant, Bossone. The defendants were not only arraigned and plead jointly but the jury was selected and served upon them as required by the Criminal Procedure Act where the charge is burglary.

10 If the Prosecutor wanted a severance, he should have made his application prior to the selection of the jury, and the serving of the same.

It was manifestly unjust to the defendant, Bossone, to place him in a position for a joint trial and then move for a severance without stating any reasons. The defendant Bossone having prepared his case on the theory of a joint trial asked for a postponement so that he could be prepared for a separate trial.

20 It might be that the defendant's counsel, having conferred with the co-defendant and the co-defendant having stated that Bossone knew nothing about the burglary and that the co-defendant would corroborate Bossone's testimony in every particular.

30 The prosecution should not be allowed to place the defendant at such a disadvantage. The prosecution is well able to protect itself; it has unlimited means and money at its command. It has numerous detectives and officers upon whom they can call for information while the defendant is usually a man of limited means and is unable to spend much money in the preparation of his defense, particularly in a case of this kind where the co-defendant and his associates come from another State. The co-defendant in this State later turned State's evidence, in order to save himself and his associates, and as will appear later in the argument of other points, a gang of gun-men and thieves come from another State and were allowed to turn State's evidence upon a local man, and were granted immunity and the defendant placed at a disadvantage without being able to prepare himself to meet the perjured testimony which was

40 given for self-preservation.

The Supreme Court passed over this objection by the following statement:

"The granting of a severance to the co-defendant and the refusal to postpone the trial were matters entirely without the discretion of the trial Judge. The discretion was not abused in this case." Opinion, p. 179, l. 4.

12 Cyc., p. 508:

"The application for a severance must be supported by affidavits showing good cause therefor. The application, if by the defendant, should precede his plea. If made after arraignment and plea, and the setting of a day for the trial, or after the organization of the jury has begun and part of the evidence has been heard, it comes too late."

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It appears in the Case, p. 23, line 6, upon the objection to the severance, as follows:

"Coming in this case after the case has been set down for trial a number of days, and after the jury has been summoned and drawn, it would be absolutely unfair to put the defendant Bossone here on trial after a motion for severance made by the prosecution."

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So it appears that the motion was made after the jury had been drawn, and after the setting of a day for trial and without any cause being shown therefor, except the mere whim of the prosecution in moving the severance.

The only statutory provision for a separate trial of persons jointly indicted is found in Section 54 of the Criminal Procedure Act, and provides that

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"When an indictment is removed to the Supreme Court by certiorari, or otherwise, upon application to said Supreme Court upon affidavit that some one or more of said persons so jointly indicted with him, whom he shall name, is or are, as he is advised by his counsel, whom he shall also name, etc."

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The only cases in this State which counsel has been able to find, is the State vs. Kerr, 24 N. J. L. Journal, where Justice Dixon passed upon the application of the defendant, and upon Section 64 of the Criminal Procedure Act, and after considering the reasons, granted a severance to the defendant, and the State vs. Roesell, 62 N. J. L., p. 219, and where the Court said:

10 "The power of the Court to order several accused persons charged in the same indictment, is well settled. The counsel of the plaintiff-in-error made no point on that exception, either in their brief or in the oral argument." State v. Roesell, 62 N. J. L., p. 219.

20 It does not appear in the decision of that case but what the application for the exercise of the discretion in granting a severance was made at the proper time and in the proper form, and it also appears that no objection or exception was made to the granting of the severance, while in the case at bar it appears that timely objection was made and exception taken; and the case of the State vs. Baum, where it appears

 "that it is within the discretion of the trial court to grant separate trials where two are jointly indicted." State vs. Baum, 64 N. J. L., page 410.

30 In the above case it does not appear but that the application for the exercise of discretion was made at the proper time, and upon proper reasons being given for the exercise of the discretion. And it does not appear that any objection was made at the trial or exception taken to the ruling of the Court, and in that it differs from the case at bar. It was clearly an abuse of discretion for the Court to grant a severance under the circumstances of this case and after the jury had been sworn, even though the prosecutor had given some reason for his application.

40 It was also an abuse of discretion to order the case on for trial after a severance had been granted, and after the jury had been sworn and the defendant Bossone had

prepared his case for trial under a joint indictment for a joint trial.

We respectfully submit that the defendant suffered a grievous injury by granting the severance, and not being granted a postponement in order to properly prepare his defense for a separate trial.

We respectfully submit that a new trial should be granted for this reason.

POINT III

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Under Assignment 13, the Court refused a bill of particulars requested by the defendant. The bill of particulars served upon the prosecutor and presented to the Court are substantially set out on pages 24 and 25 in the Case, in which the defendant asks for information of the facts upon which the prosecution bases its case in each count under the indictment and also as to whether it was expected to prove whether Bossone was a principal or an accessory, and whether an accessory before or after the fact.

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The answer to the bill of particulars was necessary to assist the defendant in preparing the case, so that the defendant did not have to guess under which count in the indictment the prosecution intended to proceed. The refusal of this bill of particulars is highly prejudicial to the defendant, and the conviction should be set aside for this reason.

“The Judge has discretion which is, except for gross abuse, not revocable, to direct, upon application that the prosecution shall furnish a bill of particulars.” 12 Cyc., 505, par. 4.

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This, standing alone, might not be sufficient to reverse, but coupled with Points 4 and 5, should be sufficient.

POINT IV

The indictment contained five counts, one for burglary, one for breaking and entering in the day time with intent to steal, one for entering without breaking with intent to steal, one for grand larceny, and one for receiving stolen

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goods. This motion to elect was made at the opening of the case on page 25 bottom, and 30, and also at the close of the State's case on page 139, and also at the close of the case on page 169.

10 A defendant should not be compelled to go to trial on a serious charge such as this and allow the prosecutor to go on a fishing expedition as to which count he should hold the defendant upon, and the defendant should not be put in a position of any uncertainty in making his defense, and this is illustrated in this case where two accomplices were permitted to turn State's evidence against the defendant.

The State has every means of preparing its case; has the benefit of the work of its detectives; has the benefit of the testimony taken before the Grand Jury of which the defendant has no knowledge, and in this case has the benefit of the testimony of an accomplice, and it was highly prejudicial for the Court not to direct the prosecutor to elect upon which count to proceed.

20 "In some of the State Courts, a motion to compel an election is too late when made after plea, but in the Federal Courts, it may be made at any time before conclusion of the trial." 22 Cyc., p. 404.

"The ruling thereon will not be reviewed except in a clear case of abuse of such discretion." 22 Cyc., 405.

30 Motion to elect was made at the opening of the case, bottom of page 25, at the close of the State's case, page 139, l. 10, and at the close of the entire case, p. 169. This coupled with refusal for bill of particulars shows an abuse of discretion for which the defendant should have a new trial.

POINT V

40 Under the Fifteenth reason, the grounds of which are found on page 29 of the case, defendant assigned error because the Court permitted the prosecutor to state that he intended to try the defendant Criscuolo under the in-

dictment or to make a disposition of it. This was prejudicial to the defendant because the only effect of this statement to the jury could be to prejudice them against the defendant and leave the inference that when Criscuolo testified in favor of the State, which he subsequently did, that there was no agreement between Criscuolo and the prosecutor by which Criscuolo was to be granted immunity.

POINT VI

Under the Sixteenth reason, that the Court permitted jewelry to be shown to the jury which was not specified in the indictment for grand larceny. The jewelry is set out on page 7, Counts 4 and 5 of the indictment. 10

On page 31, Mrs. Cubberly testified to one ruby ring, with four stones, one stone missing, which was not set out in the indictment; one marquise ring and one diamond brooch, which were not set out in the indictment for grand larceny.

The testimony should have been confined to the articles set out in the indictment and as the prosecutor refused to elect and chose to retain this count, the admission of this testimony was prejudicial to the defendant, and the conviction should be set aside. 20

POINT VII

Because the Court permitted the testimony of Mrs. Florence Cubberly to stand, concerning James Bossone's knowledge of her bull-dog. This testimony was offered with the evident intent to influence the jury by creating the inference that James Bossone was implicated in the burglary because he knew the bull-dog and the dog did not make any noise when the burglary was committed. Her testimony is on pages 35 to 38 and it is also apparent that it was introduced to influence the jury and create an inference prejudicial to the defendant, because it was again referred to in the testimony of Leon Cubberly, on page 42. The Court said it was remote: the prosecution continued on its examination and the Court allowed it to stand, and 30 40

it certainly had its full weight in influencing the jury and prejudicing them against the defendant.

POINT VIII

Under Assignment Nineteen, the prosecutor was permitted to interrupt and stop the witness.

10 The testimony appears on page 59 where the accomplice Criscuolo was testifying and had said in referring to Bossone, "Before that he says that he was known in Long Branch, he did not want to be seen." If the witness had been permitted to finish it, it would have corroborated Bossone's testimony on the bottom of page 143, where Bossone says that he does not want to be implicated in anything like the robbery which was proposed to him.

POINT IX

Assignments 21 and 23 can be considered together.

20 On pages 68 and 69, the evidence of the testimony of what Zump said to the witness was admitted. This is objectionable because not said in the presence of the defendant, and because the defendant should not be bound by such testimony and was sufficient in itself to be a turning point in the mind of the jury against the defendant.

POINT X

30 Assignments and Specifications 24, 25, 26 and 27 and 28 can be considered together.

On cross-examination of Criscuolo, the Court refused to permit questions affecting the credibility or to shake the credit of Criscuolo by injuring his character.

The testimony and exceptions are as follows:

"Q. And you were in the Baff murder, weren't you?"

(Objected to as immaterial. Objection sustained.)

40 MR. LAWRENCE: We are not trying this case.

MR. FAY: If your Honor please, this man is a witness, he is not a party; and as I understand the rule a witness is compelled to answer questions that may degrade or otherwise affect his credibility as a witness, and the only thing that he can claim for protection is the protection that it may incriminate him.

THE COURT: The question is objected to because it does not indicate that he has ever been convicted of murder or any crime.

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MR. FAY: A man does not have to be convicted in order to affect him as a witness, in order to affect his credibility as a witness.

THE COURT: Objection has been made, and I sustain the objection and allow you an exception.

(Exception noted for defendant.)

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JOHN W. SLOCUM, Judge.

Page 74, line 29, to page 75, line 20.

Q. Where did you get that nickname?

A. Well, they gave it to me in New York.

Q. How many times have you been arrested for murder?

(Objected to. Objection sustained.)

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JOHN W. SLOCUM, Judge.

Page 77, lines 10 to 20.

Q. Do you know Dr. Maoni?

A. Yes, sir.

Q. How long have you known him?

A. How long have I known him?

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Q. Yes.

A. I knowed Dr. Maoni about five or six years.

Q. Where is his place?

A. 219 Grand Street.

Q. Didn't you rob his place?

(Objected to as immaterial. Objection sustained.)

(Exception noted for defendant.)

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JOHN W. SLOCUM, Judge.

Page 102, lines 15 to 30.

RAFFAELLO CRISCUOLO, CROSS.

Q. Mr. Criscuolo, did you shoot a push-cart man on
Market and —

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(Objected to as immaterial. Objection sustained.)

(Exception noted for defendant.)

JOHN W. SLOCUM, Judge.

(L. S.)

THE COURT: And I criticise counsel severely for
asking it after several similar irrelevant and immaterial
questions have been asked and the Court ordered the wit-
ness not to answer them.

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MR. FAY: I pray an exception to the statement of
the Court.

THE COURT: You may have an exception.

(Exception noted for defendant.)

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JOHN W. SLOCUM, Judge.

Page 105, lines 1 to 30.

This examination was based upon Article 129, Stevens Digest of Law of Evidence, page 225, First Edition:

"When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any question which tends, 1, to test his accuracy, veracity, or credibility, or, 2, to shake his credit by injuring his character."

"Witnesses have been compelled to answer such questions though the matter suggested was irrelevant to the matter in issue."

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While there may be many cases in which it is within the discretion of the Court and while a witness cannot be compelled to incriminate himself, and he may take advantage of the protection that his evidence might incriminate himself, still he is not excused from having his credibility attacked so as to shake his credit.

In this case, particularly, the witness, according to Bossone's testimony, was a man of desperate character, and they had admitted to him that they committed the Jones' burglary, page 144, and they were known to him as gunmen, page 149, and when men of that desperate character are permitted to come into a community and turn State's evidence upon a local man, and all are admitted to be accomplices, when it is almost incredible to believe that if Bossone was to commit a burglary, he would go to New York, and not have two or three witnesses come and see him commit it so that they could turn State's evidence upon him, and that the accomplices would receive all the proceeds of the burglary and be able to locate and return the jewelry as testified to by Detective Walling, p. 134, l. 25, and Criscuolo, p. 99, l. 12. Under such circumstances, the broadest latitude should be allowed the defendant upon the cross-examination of such a witness.

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The famous case of *Rex vs. Orton*, referred to in the examples under Article 29, Stephen's Digest of Evidence, illustration A.,

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10 “Where the question was whether the man committed perjury in swearing that he was R. T., B. deposed that he made tattoo marks upon the arm of R. T., which at the trial were not there and never had been on the arm of A. B. was asked and was compelled to answer the question whether many years after the alleged tattooing, and many years before the occasion on which he was examined, he committed adultery with the wife of one of his friends.”

If that question could be asked in such an important trial to a witness under the circumstances stated in the text, how much more important is it where the witness is an accomplice who is testifying to save himself, and where if a latitude should be allowed to shake his credit where he has admitted himself that he is an accomplice.

20 A distinction is made under the authorities between the cases where these questions are asked of a witness, and where they are asked of a defendant.

Where they are asked for the defendant, the Court will not permit testimony of other criminal act to prejudice the defendant on his trial, but this rule does not apply in the case of a witness.

“Scope of the cross-examination is not limited when directed to the credit of a witness.”

The cases are collected in McKelvey on Evidence, page 409, Section 259, as follows:

30 “The purpose of the cross-examination is to test the truthfulness, candor, intelligence, memory, bias, or interest of the witness, and any question to that end within reason is usually allowed.

40 “There is no distinction between the American and English cases in respect to this rule. The fact that a question may tend to disgrace the witness is no objection to it, provided it is fairly directed toward testing the veracity of the witness. A witness may be asked whether he has been in prison for crime, in case of a witness who was a

Catholic priest, whether he was not married after his ordination, whether the witness had been in a conspiracy to defraud an insurance company, and other questions of similar character. As preliminary to the cross-examination of a witness as to the facts in the case, it is common practice to make inquiry into his relations with the party on whose behalf he was called — business, social and family; also to inquire as to his feelings toward the party against whom his testimony has been given. This is permissible in order to place his testimony in a proper light with reference to bias in favor of the one party or prejudice against the other.

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“It is to be observed that, in case of questions put tending to bring out disgraceful acts on the part of the witness, the witness may, if the answer will tend to criminate him, assert his privilege of refusing to answer; but subject to this qualification the field is unlimited.”

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Courts sometimes become confused and do not make the distinction between cases where a person in a criminal case is a defendant and a witness produced at the trial.

The distinction is made, however, in the case of the *State vs. Roop*, 58 N. J. L., page 481, the Court there said:

“This question was quite proper to be asked of this witness. There is no privilege of a witness excusing answers to questions as to the situation, employment and associations when of his own choice. If the answers tend to disgrace, the position is of his own selection. 1 Greenl. Evid., 456. There was, moreover, in this case, another ground for the admission of such an inquiry. In response to previous questions, the witness had admitted that she had admitted that she “had been a ruined girl for about eighteen months,” but averred that she had reformed. Whether she was at this time of the examination living in a house of ill-fame was proper to be inquired about.”

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See Wigmore on Evidence, Sec. 979, and following.

There is no question that it would be improper to ask such questions of a defendant. The only question that could be asked a defendant would be whether he had been convicted of crime.

10 The case of the State vs. Barker, cited in the Supreme Court, 39 Vroom, p. 27, does not apply to the present case. In that case, it was the defendant who was on the witness stand and not an accomplice, and in that case the defendant actually answered the questions favorable to himself, and the Court held that such favorable answers did not prejudice his defense.

The Court said:

20 "It is not perceived that the questions objected to, answered as they were by the defendant in the negative, could have so prejudiced the plaintiff-in-error." State vs. Barker, 68 N. J. L., page 27.

The distinction in this case is that the questions were not permitted to be answered, and an exception was taken to the ruling of the Court.

30 An examination of the accomplice's testimony will show that his answers were not responsive, even upon direct examination; that he evinced an anxiety to tell a story which he had previously prepared, and that in many instances he merely repeated the answers to leading questions, or gave answers which were suggested by arguments taking place upon objections to testimony.

We respectfully submit that the case of the State vs. Roop, 58 N. J. L., p. 481, settles the law in this State, so far as the Supreme Court is concerned, the question never having been passed upon by this Court, and we respectfully submit that the rule stated in Wigmore on Evidence, above cited, should be adopted.

POINT XI

The Court erred in its charge under the 33rd, 34th and 35th, 36th, 37th and 38th Assignments of Error, and more particularly to that part of the charge where the Court said:

“That the defendant may be convicted on the unsupported evidence of Pish, but owing to the fact that witnesses of his character are often subject to strong temptation to shift the burden of guilt, you should receive such evidence with caution unless you find it corroborated.”

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The rule that the defendant cannot be convicted upon the uncorroborated testimony of an accomplice is too well known to need a citation of authorities.

The Court did not go far enough in saying that such evidence should be received with caution unless you find it corroborated, but should have said that the defendant could not be convicted upon such testimony unless it is corroborated. This coupled with the other prejudicial reasons for reversal should lead to a reversal in this case.

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POINT XII

Assignments of Error 29 and 30 relate to permitting the witness for the State, Charles Nudd, to read from a book kept in the office of a garage, to show that the defendant had purchased gasoline, and also admitting the book in evidence.

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The only time that a book of account can be used in evidence is to prove dealings between persons having mutual accounts or store books, and it is an exception to hearsay evidence for that purpose, but to admit books of account kept by a witness to be introduced in evidence against a defendant in a criminal case is unheard of.

The reading of the book was objected to and an exception sealed on page 128, and the offering of the book was objected to on page 130, and admitted over this objection. To make it more prejudicial and as an additional reason for

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reversal in this case, it was referred to by the Judge in his charge on page 137, line 5.

POINT XIII

We were entitled to the 10th request to charge as stated on page 18, and a refusal not to charge as requested was error.

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POINT XIV

The Judge charged reasonable doubt, as follows:

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"The defendant, James Bossone, is presumed to be innocent, and his guilt, whatever your conclusion from the facts may be, must be established in your mind and in your judgment beyond a reasonable doubt before you can convict; and if in the case there should arise a reasonable doubt as to the guilt or innocence of the defendant, it is your duty to acquit him of the charge made in the indictment. The benefit of a reasonable doubt always goes to the defendant and is always applied in his favor. He is never presumed to be guilty, and your conclusion of guilt must be beyond a reasonable doubt in order for you to convict; and if your conclusion of guilt is not beyond a reasonable doubt, it is your duty to acquit."

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This charge does not define reasonable doubt, as required by the decisions in this State; the Judge should have given a definition of "reasonable doubt," and not having given it when requested, the conviction should be reversed.

The cases in this State are *State vs. Ackerman*, 62 N. J. L., p. 456; *State vs. Lax*, 71 N. J. L., 386.

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A famous definition of reasonable doubt is given in the case of the *State vs. Donnelley*, 26 N. J. L., p. 615.

POINT XV

The 37th Assignment of Error refers to the charge of the Court on principal and accessory. The Court said:

"If you believe from the evidence that Bossone got out of that car on Second Avenue and pointed out the Cubberly house and that Zump entered it and perpetrated the robbery, under these circumstances, I charge you that the defendant Bossone is a principal and not an accessory."

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"Presence at the scene of a crime does not render one participes criminis in the absence of actual participation, nor does his failure to interfere make him a participant, so it is a circumstance in determining whether he was present as aider or abettor." State vs. Fox, 70 N. J. L., 353.

We respectfully submit that the conviction should be reversed.

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Respectfully submitted,

THOMAS P. FAY,
Attorney for Plaintiff-in-Error.

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New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY, Defendant in Error,	}	On Indictment Brief of State for Burglary. of New Jersey.	10
vs.			
JAMES BASSONE and RAFFAELLO CRISCUOLO, Plaintiffs in Error.			

As will be seen by the indictment and testimony in the printed case, James Bassone and Raffaello Criscuolo were jointly indicted for burglary; that they entered the dwelling house of one Florence M. Cubberly and stole jewelry valued at Fifteen Hundred Dollars. A severance was granted, Bassone was tried and committed. 20

Assignment of Error, Nos. One, Two, Three, Four, Five, Six, Seven, Eight, Ten, Forty-four and Forty-five, all relate to the handing up of the indictment by the Grand Jury and trial in the Quarter Sessions.

As will appear by the return of the Writ of Error, (page 4, lines 39 and 40 of the printed case) "that at a Court of Oyer and Terminer of the County of Monmouth, held on the first Tuesday in October, One Thousand Nine Hundred and Fourteen, before Honorable Samuel Kalisch, one of the Associate Justices of the Supreme Court, and Honorable John E. Foster, Presiding Judge of the Court of Common Pleas and of the General Quarter Sessions in and for said County of Monmouth, a Grand Jury was summoned, and that Grand Jury was charged by said Samuel Kalisch in the Court of Oyer and Terminer"; that later an indictment was presented, (page 6 of the 40

printed case) and on the Seventeenth day of December, Nineteen Hundred and Fourteen, at a session of the Court of Quarter Sessions before the Honorable John E. Foster, Judge, it was ordered that "all indictments be filed and retained in this Court for trial or other disposition" (page 8, line 37 of the printed case); that on the Thirty-first day of December, James Bassone plead "not
 10 guilty" to the said indictment (page 9, line 19 of the printed case).

The practice of receiving indictments from the Grand Jury organized in the Court of Oyer and Terminer by the Court of Quarter Sessions is in accordance with the provisions of the laws of 1898, page 868, Section 6, wherein it provides:

20 "If one of the Justices of the Supreme Court shall not be present at the Court House in any County of this State * * * on any day when the Grand Jury * * * desire to present any indictment * * * then the Court of Quarter Sessions, in and for any such County may receive such indictments or presentments * * * the same as the Court of Oyer and Terminer might do if
 30 said Justice of the Supreme Court were personally present; all indictments so received which are not triable in the Court of Quarter Sessions shall be delivered by said Court to the Courts of Oyer and Terminer in their respective Counties."

The indictment in question was one which could be tried by the Court of Quarter Sessions, therefore was ordered filed and retained in the Court of Quarter Sessions for trial or other disposition.
 40 State of the Case, page 9, lines 3 and 4.

"It will be presumed where the indictment is received in the Quarter Sessions from the Grand Jury organized in the Oyer and Terminer, that there was not any Justice of the Supreme Court then present at the Court House."

State vs. Turner, 72, N. J. Law, page 404, 60 Atl. p. 1112.

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Cases upholding this practice under the Statutes may be found in State vs. Spina, 75 N. J. Law, page 270, 67 Atl. page 1049. State vs. Turner, 72 N. J. Law, page 404, 60 Atl. page 1112.

In the case of State vs. Spina, above referred to, it will be noted that the Court Commenting upon those words employed in Section 6 of the Laws of 1898 above cited which; "required the indictments received, which was not triable in the Court of Quarter Sessions shall be delivered by it to the Court of Oyer and Terminer, necessarily implies that in such case the indictment triable in the Sessions is to be retained in that Court and tried therein."

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And such was the order of the Judge of the Court of Quarter Sessions on the receipt of the indictment; State of case, page 9, lines 3 and 4.

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In view of the Statute above set forth and cases cited thereon, it is earnestly urged that the practice in this case was proper, but, should there be any error in the method of receiving the indictment or bringing it on to trial in the Court of Quarter Sessions, such error was waived by the Defendant pleading to the indictment in the Court of Quarter Sessions and going to trial therein. See **State vs. Winters**, 61 N. J. Law, page

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613, 41 Atl. page 220; **State vs. Woods**, 66 N. J. Law, pag 458, 49 Atl. page 716; **State vs. Polhemus**, 65 N. J. Law, page 387, 47 Atl. page 470; **State vs. Golman**, 65 N. J. Law, page 394, 47 Atl. page 641.

Ninth:

10 As to Assignment Number Nine, the fact that the indictment contains the common law conclusion as well as "contrary to statute in such case made and provided" seems to be inconsequential as the conclusion "contrary to the statute in such case made and provided," if erroneous, may be treated as surplusage. See **Cruiser vs. State**, 18 N. J. L., page 206, 22 Cyc. page 250.

Eleventh and Twelfth:

20 These Assignments deal with the granting of an order of severance and refusal to postpone the trial.

As is stated in **Roesel vs. State**, 62 N. J. Law, page 219: "The error assigned on order of the Court directing that the two persons accused should be tried separately requires no discussion."

30 The power of the Court to order several accused charged in the same indictment to be tried separately is well settled. See also 12 Cyc, page 506; that the severance is a matter in the discretion of the Court; that the Defendant must suffer manifest injury and wrong by the exercise of this discretion which was obviously not so in this case. See **State vs. Baum**, 64 N. J. Law, page 410, 45 Atl. page 806.

40 It seems unnecessary to comment on the fact that the question of an adjournment is a matter in the discretion of the trial court. Bishop's New Criminal Procedure, 2nd Ed. Vol. 2, Section 951, par. 2; 9 Cyc, page 167, and no wrong or injury was suffered by defendant by going on with the trial.

The defendant had his witnesses and used them in the case, nor were the facts of the case changed by reason of the severance.

The fact that an affidavit is alleged to have been obtained subsequent to the trial from Criscuolo forms no part of this record, and can only be used in a proper manner where the facts and circumstances connected with the affidavit and the means by which it was obtained can be exploited. 10

Thirteenth:

Assignment of Error Number Thirteen relates to the refusal of the Trial Court to order the State to furnish a Bill of Particulars.

The defendant demanded that the State furnish a Bill of Particulars setting forth answers to an elaborate set of questions propounded in the Bill of Particulars, which demand was denied by the Trial Court as is seen. The indictment for burglary sets forth the commission of the act in all its details and there is no vagueness or uncertainty upon which the defendant can found his right to a Bill of Particulars. I can find no instance where a Bill of Particulars was required on such indictment. The instances where a demand for a Bill of Particulars has been allowed are based upon the fact of uncertainty in the indictment. A clear discussion of the right to a Bill of Particulars is to be found in Bishop's New Criminal Procedure, 2nd Ed. Vol. 2, page 503, and it is only in those cases where the indictment is general in its charges and indefinite, such as embezzlement, disorderly houses, etc., that a Bill of Particulars is granted. See State vs. Hatfield, 66 N. J. Law, page 443, 49 Atl. page 515. 20 30

Fourteenth:

Assignment of Error Number Fourteen, as will 40

be seen by the indictment (at pages 6, 7 and 8 of the printed case), that the indictment contains five counts not of five different offenses, but all of the counts in the indictment are based on one transaction. Upon the Prosecutor moving the case, the Court refused the request of the Defendant that the Prosecutor elect upon which count he intended to proceed.

- 10 An indictment containing the same counts will be found in the case of *State vs. Baum*, 64 N. J. Law, page 410, 45 Atl. page 806. The compelling of an election by the prosecuting officer being a matter in the judicial discretion of the Trial Court. *Bishop's New Criminal Procedure*, 2nd Ed. Vol. 1, Section 454, par. 2, 22 Cyc, pages 400-401.

- 20 And as in this case, all the counts in the indictment were based on the same transaction, it is apparent that the Defendant sustained no injury by reason of the fact that the Court at the beginning of the trial refused to compel the Prosecutor to elect.

- 30 It is to be noted that the request for an election was again made at the end of the State's case, (See page 139 of the printed case, line 20) and the Prosecutor at that time consented to the striking out of the count for breaking and entering in the day time; that at the close of the case a motion was made and the count for receiving stolen goods was stricken out and the case went to the Jury on the three remaining counts, namely, breaking and entering in the night time, burglary and larceny. By this proceeding it must be manifest that the Defendant did not suffer injury in the matter if the election by the Prosecutor of the counts contained in the indictment.

Fifteenth:

- 40 I can see no error injurious to the Defendant in this Assignment.

Sixteenth:

This Assignment of error is not founded on fact.

At pages 32, 33 and 34 of the printed case, witness, Florence M. Cubberly, was shown jewelry which she identified as belonging to her and which had been stolen from her. The objection of the Counsel for the defense was to the fact that if Prosecutor showed jewelry not mentioned in the fourth count, he objected to it. As a matter of fact no jewelry was shown witness and identified by her that was not mentioned in the fourth count of the indictment, even though jewelry not mentioned in the indictment, which was stolen, was shown witness it would be properly.

10

Seventeenth:

At bottom of page 35, 36, 37 and 38 of the printed case, Florence M. Cubberly was asked concerning a white bull dog and whether Bassone knew that she had such a dog in the house. As soon as it was ascertained that her knowledge of this fact was hearsay, objection was made by the Counsel for the defense, which objection was not only sustained by the Court but the Prosecutor expressly stated that he would consent that it be all stricken out.

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Eighteenth:

At page 35 of the printed case, witness, Florence M. Cubberly, after having previously testified that the jewelry stolen from her was contained in a box, (at line 12) testified that same jewelry box had been found in the hedge about thirty-five feet from the house a few weeks after the robbery. This evidence was admissible on at least two grounds: first, to show that the jewelry was

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stolen, taken out of the jewelry box and the box thrown away, where it was later found; second, it corroborated Raffaello Criscuolo, who at page 65 of the printed case at line 6, testified that while they were engaged in the robbery, Zump, who had actually entered the house and in the presence of Criscuolo spoke of the jewelry box and of taking the jewelry out of it and leaving it up there and threw it away somewhere.

Nineteenth:

That part of the testimony to which the Nineteenth Assignment refers, appears to be on page 59 of the printed case, starting at line 12, and continuing to about line 8 on page 60. Instead of the Prosecutor stopping the witness Criscuolo, as alleged in the Assignment of Error Number Nineteen, the stopping seems to have been on the part of the Counsel for the defense, and when the Counsel for the defense expressly alleged that Prosecutor was stopping the witness and held up his hand, the Court said: "I have not observed anything of the kind." At any rate, no exception was taken to the evidence.

Twentieth:

The evidence in reference to this Assignment of Error is to be found at page 60, line 10, to the bottom of the page. Here again ensued a colloquy between Counsel and the Court. The questions asked by the Prosecutor were certainly proper. Simply drawing witness's attention to the testimony which she had previously given, but before new testimony was given by witness, Raffaello Criscuolo, the colloquy above referred to ensued, and (at page 61) Prosecutor endeavored to continue his examination but the Counsel for the de-

fense again objected (lines 5 and 6, page 61) and the Prosecutor discontinued that part of the examination as he said (at lines 8 and 9, page 61) "to save time the question is withdrawn."

Certainly defendant suffered no injury from any testimony given at that time.

Twenty-first:

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This Assignment of Error I cannot see is substantiated by the testimony.

While it is true that Zump was dead at the time Criscuolo gave his testimony in this case, I cannot find any testimony as to his conversation with Zump when the Defendant, Bassone, was not present at the time.

Twenty-second:

20

The testimony in reference to this Assignment of Error appears to be on page 67 of the printed case at line 26 and in the testimony therein set forth it does not appear that Criscuolo testified as to any other transaction, it was the Counsel for the defense who objected to evidence of any other transaction and the Court at that time stated that it was not evidence of any other transaction.

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Twenty-third:

By this evidence it will be seen that the witness Criscuolo testifies to the disposition of the jewelry.

It will be recalled that by the testimony of Criscuolo, Zump stole the jewelry and that it was afterwards recovered in a pawn shop, as is testified to by this witness that "Jimmy," meaning the Defendant, actually went to New York and met

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someone in the presence of the witness, after the jewelry had been disposed of, and I submit that this testimony is relevant.

**Twenty-fourth, Twenty-fifth, Twenty-sixth,
Twenty-seventh and Twenty-eighth:**

10 Testimony in reference to these Assignments is to be found on pages 74, 75, 76, 77, 102, 104 and 105.

The law is well settled that questions put to a witness upon cross-examination, and designed to affect his credit, which do not ask concerning a conviction of any crime, are properly excluded.

20 None of the questions by the Counsel for the defense tended to show conviction. See Fodor vs. Fuche, 79 N. J. Law, page 529, 76 Atl. page 1081; State vs. Henson, 66 N. J. Law, page 601, 50 Atl. page 468, 616; State vs. Barker, 68 N. J. Law, pages 19-27, 52 Atl. page 284. Section 1, Evidence Act, page 362.

Relative to the criticism by the Court of the Counsel for the defense in asking these questions it seems was absolutely justified because of the fact that of the legality of these questions and the persistence with which Counsel for the defense insisted upon injecting illegal matter into the case.

30 **Twenty-ninth and Thirtieth**

40 Apply to the testimony of Charles Nudd and is to be found on page 126 of the printed case, by which it will be seen that Nudd was in charge of a garage during the month of October, 1914, that on or about the 30th day of October, 1914, an automobile entered the garage and he sold the occupants nine gallons of gasoline and two quarts of oil, and at that time entered the sale into an account book of the garage. He describes the oc-

cupants of the car that visited the garage and corroborates the testimony of the other State's witnesses that Bassone and others went to the garage to buy gasoline and oil. Objection was made to Nudd's referring to this book.

It seems elementary that a witness may under such circumstances use a book to refresh his memory of the transaction. *More-Jonas Glass Co. vs. West Jersey S. R. Co.*, 76 N. J. Law, page 708, 72 Atl. page 65. 10

Thirty-first and Thirty-second:

These Assignments of Error have been already dealt with in Assignment of Error Number Fourteen.

Thirty-third:

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This Assignment of Error is so vague and indefinite that I am unable to ascertain just what is meant.

Thirty-fourth:

First:

In reference to the first part of this Assignment of Error, the law is well settled that a Jury may convict on the testimony of an accomplice alone, if, in their judgment, it is credible. See *State vs. Lieberman*, 76 Atl. page 331, 80 N. J. Law, page 506. 30

Fourth:

This Assignment is not good law. Certainly it must be that no Judge should charge that as in this case he was requested to charge, that the Captain of the Police "has a natural and unavoid- 40

able tendency and bias of the minds to construe everything as evidence against the accused and disregard everything which does not tend to support their pre-conceived opinion of the matter in which they are engaged."

10 The charge of the Court does not bear on this point at page 174, lines 30 to 40, and the law thereon I believe to be properly stated.

Tenth:

This request was covered by the charge set out on page 175, lines 12 to 30.

Thirty-fifth:

20 This Assignment is dealt with in Assignment Number Fourteen.

As to the remaining Assignments of Error as to the charge of reasonable doubt, principal and accessory, the Court correctly stated the law, and all of the balance of the Assignments of Error are vague and indefinite and do not point out the particular matter complained of or have already been treated in the Assignments of Error above set forth, and I therefore make no particular comment upon them.

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Respectfully submitted,

CHARLES F. SEXTON,

Counsel for Defendant in Error.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JAMES BASSONE AND
RAFFAELLO CRISCUOLO,
Plaintiffs in Error

On Indictment
for Burglary.

Writ of Error.

STATE OF THE CASE

THOMAS P. FAY, of Counsel
for Plaintiff in Error.

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In Error — Writ of Error

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JAMES BASSONE,
Plaintiff in Error.

In Error.
Writ of Error.

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NEW JERSEY, SS.

(Seal of the Supreme
Court of the State of
New Jersey)

The State of New Jersey to the
Chief Justice and other Jus-
tices of our New Jersey
Supreme Court, GREETING:
For, as much as in the record
and proceedings and also in
the giving of judgment upon
a certain indictment against

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James Bassone, late of the City of Long Branch, in the
County of Monmouth, for a high misdemeanor, for that on
the thirtieth day of October, in the year of our Lord, one
thousand nine hundred and fourteen, with force and arms
at the City of Long Branch aforesaid, in the County of
Monmouth, and within the jurisdiction of this Court, the
dwelling house of Florence Cubberly, there situate by night,
wilfully and maliciously did break and enter with intent,
the goods and chattels of the said Florence Cubberly in said
dwelling house then and there being found, then and there
feloniously to steal, take and carry away, 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.

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And the Grand Inquest aforesaid upon their oaths and
affirmation aforesaid, do further present that the said James

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In Error — Writ of Error

10 Bassone and Raefello Criscallo, on the thirtieth day of October, in the year of Our Lord, one thousand nine hundred and fourteen, at the City of Long Branch aforesaid, in the County aforesaid, and within the jurisdiction of this Court, the dwelling house of Florence Cubberly there situate, by day, wilfully and maliciously did break and enter with intent the goods and chattels of said Florence Cubberly in the said dwelling house then and there being found, feloniously to steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of the State, the government and dignity of the same.

20 And the Grand Inquest aforesaid, upon their oath and affirmation aforesaid, do further present that the said James Bassone and Raefello Criscallo on the thirtieth day of October in the year of Our Lord, one thousand nine hundred and fourteen, at the City of Long Branch, in the County of Mônmouth, aforesaid and within the jurisdiction of this Court, the dwelling house of Florence Cubberly there situate, wilfully and maliciously did enter without breaking the same with intent, the goods and chattels of the said Florence Cubberly 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 statute in such case made and provided, and against the peace of the State, the government and dignity of the same.

30 And the Grand Inquest aforesaid, upon their oath and affirmation aforesaid, do further present that the said James Bassone and Raefello Criscallo on the thirtieth day of October, in the year of Our Lord one thousand nine hundred and fourteen, in the County aforesaid, and within the jurisdiction of this Court, one wedding ring, one diamond ring, one dinner ring (20 odd diamonds), one ruby fly pin, one diamond crown brooch, 21 diamonds, one lion's head, one gold neck chain, one string gold beads, one cameo brooch, one paid old fashioned bracelets, one lock bracelet, one long gold chain, set with rhyne stones, one metal pin, one three-
40 stone ring, one emerald and two diamonds, of the value of

In Error — Writ of Error

Fifteen hundred dollars, of the goods and chattels of Florence Cubberly, then and there being found, feloniously and wilfully did then and there steal, take and carry away, 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.

And the Grand Inquest aforesaid, upon their oath and affirmation aforesaid, do further present that James Bassone and Raefello Criscallo, late of the City of Long Branch, in the said County of Monmouth, on the thirtieth day of October, in the year of Our Lord, one thousand nine hundred and fourteen, with force and arms at the City of Long Branch aforesaid, in the County of Monmouth, aforesaid, and within the jurisdiction of this Court, one wedding ring, one engagement ring, one diamond ring (20 odd diamonds), one ruby fly pin, one diamond crown brooch, 21 diamonds, one lion head, one diamond in mouth, one gold neck chain, one string gold beads, one cameo brooch, one pair old fashioned gold bracelets, one lock bracelet, one long gold chain set with rhyne stones, one metal pin, one three-stone ring, one emerald, two diamonds, of the value of Fifteen hundred dollars, of the goods and chattels of Florence Cubberly, before then unlawfully stolen, taken and carried away, unlawfully did receive and have they the said James Bassone and Raefello Criscallo, then and there well knowing the said goods and chattels to have been unlawfully stolen, taken and carried away, 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.

And whereas, said indictment, proceedings and judgment were removed by writ of error, into our New Jersey Supreme Court before the Justices thereof, and the judgment of the Court of Quarter Sessions of the County of Monmouth was in all things affirmed, as is said, manifest error hath intervened to the great damage of James Bassone as from his complaint we have information, we being willing in his behalf to correct the error in due manner, if any there shall be and that speedy justice be done to him,

In Error — Writ of Error

10 the said James Bassone, command you, that if the judgment be thereon given, then that you send to our Judges of our Court of Errors and Appeals in the last resort in all causes at Trenton, on the twenty-first day of January, nineteen hundred and sixteen, distinctly and openly under your seal, the record and proceedings and judgment aforesaid, with all things touching and concerning the same, together with this writ, that the record and proceedings aforesaid being inspected we may cause to be further done thereupon for correcting that error, what of right and according to the laws and custom of the State of New Jersey ought to be done.

WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the second day of February, nineteen hundred and sixteen.

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THOMAS F. MARTIN,
Clerk.
THOMAS P. FAY,
Attorney for Defendant, Plaintiff in Error.

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Rule on Affirmation

NEW JERSEY SUPREME COURT

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JAMES BASSONE,
Plaintiff-in-Error.

In Error to Monmouth
County Quarter Sessions.
Rule on Affirmance.

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This cause having been duly argued at the present term of this Court, by Thomas P. Fay, of counsel for the plaintiff-in-error, and Charles F. Sexton, of counsel for the defendant-in-error, and the Court having considered the same, and finding no error in the record or proceedings in the Monmouth County Quarter Sessions;

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It is, thereupon, Ordered and Adjudged, that the judgment of the Monmouth County Quarter Sessions, removed by writ of error in this cause, be affirmed with costs, and that the record be remitted to the Monmouth County Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

Entered March 2, 1916.

On motion of Charles F. Sexton, attorney of Defendant in Error.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

30

(Seal of the
Supreme Court)

In Testimony Whereof, I have
set my hand and the seal of
said Court at Trenton, this
seventh day of March, A. D.
nineteen hundred and sixteen.
WM. C. GEBHARDT, Clerk.

The answer of the Justices of the Supreme Court of

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Rule on Affirmation

the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WILLIAM S. GUMMERE, (L. S.)

C. J.

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On Indictment

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JAMES BASSONE,
Plaintiff in Error.

On Indictment for
Breaking with Intent, etc.
Assignments of Error and
Specifications of Defense. 10

Afterwards, that is to say, on the twenty-fifth day of April, in the year nineteen hundred and sixteen, in the Court of Errors and Appeals of last resort, comes the said James Bassone, by Thomas P. Fay, his attorney, and says, that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and in the record and also in the giving of a verdict, conviction and judgment aforesaid, there is manifest error; and further, that on trial below, and by the judgment of the Supreme Court, they suffer manifest error, wrong and injury. And they humbly assign error, and also specify the causes in the record of the proceedings had upon said trial returned with the writ of error, upon which they rely for reversal according to the statute in such case made and provided, and also in accordance with the rules of common law, the rules and practice of this Court and the rules and practice of the State of New Jersey. 20 30

1. Because the indictment was not properly returned to the Court of Oyer and Terminer.

2. Because there was no order of the Court of Oyer and Terminer sending the indictment from the Court of Oyer and Terminer to the Court of Quarter Sessions.

3. Because the indictment was not properly returned to any Court having jurisdiction. 40

On Indictment

4. Because the indictment was wrongfully returned to the Court of Quarter Sessions.

5. Because the indictment was not returned to a Court of competent jurisdiction, but was returned to the Court of Quarter Sessions.

10 6. Because Justice Samuel Kalisch, a Justice of the Supreme Court holding the Court of Oyer and Terminer in and for the County of Monmouth, and a member of the Court of Quarter Sessions, was not present when the indictment was handed in, and because no other Justice of the Supreme Court was present.

7. Because the indictment was returned to John W. Slocum, Judge of the Court of Quarter Sessions of the County of Monmouth, and not in open Court.

20 8. Because the defendant was denied due process of law under the fourteenth amendment of the constitution of the United States, in being tried before a Court not having jurisdiction.

9. Because the indictment includes both the common law conclusion of an indictment "against the peace of this State, the government and dignity of the same," and also the statutory conclusion "contrary to the statute in such case made and provided," thus confusing the defendant as to what charge he was called upon to answer.

30 10. Because the indictment was returned to Judge John W. Slocum, Judge of the Court of Quarter Sessions of the County of Monmouth, the record does not show the indictment was returned in open Court.

11. Because the Court granted a severance over the objection of the defendant.

12. Because the Court refused to postpone the case after granting a severance and forcing the defendant to go to trial after he had prepared for a joint trial.

13. Because the Court refused the bill of particulars as requested by the defendant.

14. Because the Court refused to make the prosecutor elect upon which count in the indictment he would proceed.

40 15. Because the Court permitted the prosecutor in his

On Indictment

opening to state that he intended to try the defendant for whom the Court had allowed a severance.

16. Because the Court permitted jewelry to be shown to the jury which was not specified in the indictment for grand larceny.

17. Because the Court permitted the witness Florence Cubberly to be asked and to answer that James Bassone knew she had a bull dog.

18. Because the Court permitted the jewelry box to be put in evidence over the objection of the defendant.

19. Because the prosecutor stopped the witness Criscuolo when he said Bassone told him "that he was in Long Branch, he didn't want to be seen."

20. Because the Court permitted the prosecutor to recite as testimony something that had not occurred when he said:

Q. Criscuolo, when you stopped at Second Avenue before this robbery, the car stopped, you say, at the corner of Second Avenue and Morris Avenue?

A. Morris Avenue.

Q. Now you say that Zump and the defendant got out of the car?

A. Yes, sir.

Q. And walked toward the house?

A. And I walked —

21. Because the Court permitted Criscuolo to state a conversation with Zump when it appeared that Zump was dead at the time.

22. Because the Court permitted the witness Criscuolo to testify to other criminal transactions.

23. Because the Court allowed statement by witness Criscuolo, concerning the disposal of the jewelry with Zump, to stand, as afterwards it appeared the defendant Bassone was not present.

24. Because the Court refused to allow counsel for the defendant on cross-examination to ask the witness Criscuolo concerning his participation in the Bath murder as affecting his credibility.

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On Indictment

25. Because the Court refused to allow the defendant's counsel on cross-examination to ask the witness how many times he had been arrested for murder as affecting his credibility.

26. Because the Court refused to allow counsel for the defendant to ask Criscuolo on cross-examination whether he did not rob the place of Dr. Maoni as affecting his credibility as a witness.

10

27. Because the Court refused to allow defendant upon cross examination of Criscuolo to ask him whether he had shot a push-cart man as affecting his credibility as a witness.

28. Because the Court criticised the defendant's counsel upon his cross-examination of a witness affecting his credibility.

29. Because the Court permitted the witness Charles Nudd to read from a book kept in the office of a garage to the prejudice of the defendant.

20

30. Because the Court permitted the book produced by Charles Nudd to be admitted in evidence.

31. Because the Court after the state rested its case refused to order the prosecutor to elect upon which count in the indictment he would proceed.

32. Because the Court refused at the close of the case to direct the prosecutor to elect upon which count in the indictment he would proceed.

33. Because the Court lawfully refused to charge the defendant as requested by the defendant.

30

34. Because the Court refused to charge requests Numbers One, Four and Ten as follows:

40 "FIRST: A jury should not convict upon the testimony of an accomplice. The uncorroborated testimony of an accomplice is not sufficient to warrant the jury to bring in a verdict of guilty against either of these defendants. Corroboration of an accomplice upon an immaterial point is not sufficient to warrant the jury in finding a verdict of guilty, but such corroboration must be upon a point material to the issue and should you find that the testimony of the

On Indictment

accomplice is not corroborated upon a point material to the issue, it is your duty to bring in a verdict of not guilty.

FOURTH: That in weighing the testimony of detectives greater care should be used by the jury in relation to the testimony of persons who are employed to find evidence against the accused, than in other cases, because of the natural and unavoidable tendency and bias of the minds of such persons to construe everything as evidence against the accused and disregard everything which does not tend to support their pro-conceived opinion of the matter in which they are engaged. 10

TENTH: Mere presence at the scene or perpetration of the crime does not render a party *particeps criminis*. To constitute him a party to the criminal act, there must not only be presence upon the scene, but actual participation — an aiding and abetting in the crime committed. 20

Therefore, if you find that the defendant Bassone was actually present on the scene of the perpetration of the crime of burglary, but did not actually participate therein, you should acquit the defendant, James Bassone.

35. Because the Court in its charge said that the "defendant could not be found guilty of one or all of the first, third and fourth counts in the indictment under the evidence."

36. Because the Court erroneously charged the jury on the question of reasonable doubt. 30

37. Because the Court erroneously charged the jury on the law of principal and accessory.

38. Because the charge of the jury was erroneous.

39. That said indictment and the matter therein are sufficient in law to convict the said James Bassone of the offense declared in said indictment, or of any other offense in law.

40. That upon the trial illegal evidence offered by the state was admitted against the objection and exception on the part of said James Bassone, as more particularly appears 40

On Indictment

in the several bills of exceptions sealed upon the admission of evidence.

41. Upon said trial legal evidence offered on the part of the said James Bassone was excluded, as more particularly appears in the several bills of exceptions sealed upon the exclusion of evidence.

10 42. Illegal evidence admitted on said trial was allowed to stand against motion on behalf of said James Bassone to strike out the same as more particularly appears in the several bills of exceptions sealed upon refusal to strike out evidence.

43. Because the Supreme Court erred in not setting aside the conviction for the assignments of error and the specification of causes for reversal as set out above and urged in the Supreme Court.

20 44. Because the Supreme Court erred in affirming the judgment and refusing to set aside the conviction and in holding that "where the record shows that an indictment was found in the Oyer and fails to show an order sending it to the Sessions for trial, but shows that the defendant pleaded in the Sessions an objection for the apparent irregularity is waived."

45. That the Supreme Court erred in holding that "a motion to quash an indictment found in the Oyer is not a proper way to raise an objection to a trial in the Sessions."

30 46. The Supreme Court erred in holding that "the granting of a severance to a co-dependant and refusal to postpone the trial are matters within the discretion of the trial judge."

47. The Supreme Court erred in holding, "In an indictment for burglary it is not orrir to refuse a demand of the defendant for "a bill of particulars" when what he really seeks is that the State elect the Count on which it will ask a conviction.

40 48. The Supreme Court erred in holding that, "it is proper for a prosecutor in opening a case against one defendant, after a separate trial has been granted a co-de-

On Indictment

fendant, to state that he intends to try the co-defendant or make some disposition of the indictment as to him."

49. The Supreme Court erred in holding that "it is proper on an indictment for burglary, containing also a count for larceny, to prove that certain jewelry was stolen, even though it is not specified in the count for larceny."

50. The Supreme Court erred in holding that "questions asked of a witness on cross examination as to his guilt of other crimes without asking if he had been convicted thereof are properly excluded. State v. Barker, 69 N. J. L., 19." 10

51. The Supreme Court erred in holding that "it is not error to charge that a defendant may be convicted on the unsupported evidence of an accomplice."

THOMAS P. FAY,
Attorney for Plaintiff-in-Error.

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Filed May 23, 1916.

NEW JERSEY COURT OF ERRORS AND APPEALS

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

vs.

JAMES BASSONE,
Plaintiff-in-Error.

On Indictment for breaking with intent, etc.

ASSIGNMENTS OF ERROR AND SPECIFICATION
OF DEFENCES

THOMAS P. FAY
Attorney for Plaintiff-in-Error
196 Broadway
Long Branch, N. J.

Due and legal Service of a Copy of the within Assign-
ments acknowledged this 22nd day of May, 1916.

CHARLES F. SEXTON,
Attorney for Defendant-in-Error.

Writ of Error

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
 Defendant in Error,
 vs.
 JAMES BASSONE,
 Plaintiff in Error.

Writ of
 Error.

10

NEW JERSEY: ss: The State of New Jersey to John
 W. Slocum, Judge of the Court of
 Quarter Sessions of the county of
 Monmouth, Holden at Freehold, in
 [L. S.] and for the county of Monmouth, of
 the Term of January, nineteen hun-
 dred and fifteen.

20

Because in the record and process and also in the
 giving of judgment upon a certain indictment against James
 Bassone of the City of Long Branch, in the county of
 Monmouth, for breaking and entering in the night time the
 house of Florence Cubberly with intent to steal, and for
 breaking and entering in the day time the house of Florence
 Cubberly with intent to steal, and with entering either in
 the day time or night time the house of Florence Cubberly
 with intent to steal and with grand larceny, and for receiv-
 ing stolen goods.

30

Pro ut the said indictment and several counts therein
 whereof before you they have been indicted, and are thereof
 convicted by a certain jury of the county, taken between
 the State of New Jersey and the said James Bassone, as it
 is said manifest error hath intervened to the great damage
 of the said James Bassone, as from his complaint we have
 received information, we being willing in his behalf to

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Writ of Error

correct the error in due manner in any there shall be, and that speedy justice be done to him, the said James Bassone, command you that if judgment be thereon given, then that you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching the same to our Supreme Court of Judicature of the State of New Jersey, to be holden at Trenton, on the first day of June, A. D. 1915, and this writ that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws and customs of New Jersey ought to be done.

10

Witness his Honor, William S. Gummere, Esq., our Chief Justice of our said Supreme Court of Judicature, at Trenton aforesaid, the twenty-third day of February, nineteen hundred and fifteen.

20 THOMAS P. FAY, WILLIAM C. GEBHARDT,
Attorney. Clerk.

The answer of John W. Slocum, Judge of the Court of Common Pleas, constituting the Court of General Quarter Sessions in and for the County of Monmouth, the record and proceedings whereof mentioned is within made, and all things touching and concerning the same, to the Supreme Court of New Jersey, at the day and place within named, I certify and send in the schedule annexed to this writ, as I am within commanded.

30

JOHN W. SLOCUM,
P. J.

State of New Jersey,
County of Monmouth, ss:

Be it remembered that at a Court of Oyer and Terminer held at Freehold in and for the said County of Monmouth on the first Tuesday in October one thousand nine hundred and fourteen before Samuel Kalisch, Esquire, one of the

40

Panel of Jury

associated Justices of the Supreme Court of Judicature of the State of New Jersey, and John E. Foster, Esquire, Presiding Judge of the Court of Common Pleas and of the General Quarter Sessions in and for the said County of Monmouth according to the form of the Statute in such case made and provided by the oaths of

1. Thomas Slocum	
2. William H. Alexander	10
3. Charles T. Clayton	
4. Henry T. Ely	
5. Curtis B. Forman	
6. Willard A. Hegerman	
7. George T. Jones	
8. George H. Ivins	
9. Jonathan H. Jones	
10. William Kain	20
11. John W. Keough	
12. John Lively	
13. William Maurer	
14. Franklin Rue	
15. Joseph P. Sproul	
16. Henry C. Tilton	
17. John H. Willey.	
18. P. Otto Weigand	30
19. C. Ward Golden	

good and lawful men of said county of Monmouth, then and there duly summoned according to the form of the Statute in such cases made and provided and then and there duly sworn and charged by the said Samuel Kalisch, Judge as aforesaid, presiding in said Court of Oyer and Terminer in and for the said County of Monmouth to inquire in behalf of the State of New Jersey in and for the said County of Monmouth.

Indictment

It is presented in manner and form following, to wit:
(Endorsed) October Term, 1914,

Caption

Thomas L. Slocum, Forman.

Filed Dec. 17, 1914,

Joseph McDermott, Clerk

10

IN THE COURT OF OYER AND TERMINER OF
MONMOUTH COUNTY OCTOBER TENTH,
IN THE YEAR OF OUR LORD, ONE
THOUSAND NINE HUNDRED
AND FOURTEEN.

20

MONMOUTH COUNTY, to wit:

THE GRAND INQUEST OF THE STATE OF
NEW JERSEY IN and for the body of the County of
Monmouth upon their respective oaths

30

PRESENT that James Basone and Raefello Cris-
callo late of the City of Long Branch in the said County
of Monmouth, on the thirtieth day of October in the year
of our Lord one thousand nine hundred and fourteen with
force and arms at the City of Long Branch aforesaid, in
the County of Monmouth, and within the jurisdiction of
this Court, the dwelling house of Florence Cubberly there
situate by night, wilfully and maliciously did break and
enter with intent the goods and chattels of the said Florence
Cubberly 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 statute in such cases made
and provided, and against the peace of this state, the govern-
ment and dignity of the same.

40

Indictment

And the Grand Inquest aforesaid upon their oath and affirmation aforesaid, do further present that the said James Basone and Raefello Criscallo on the thirtieth day of October in the year of our Lord One thousand nine hundred and fourteen at the City of Long Branch aforesaid, in the County aforesaid, and within the jurisdiction of this Court, the dwelling house of Florence Cubberly there situate, by day, wilfully and maliciously did break and enter with intent, the goods and chattels of said Florence Cubberly in the said dwelling house then and there being found, feloniously to steal, take and carry away, contrary to the form of the statute in such case, made and provided, and against the peace of this State, the government and dignity of the same. 10

And the Grand Inquest aforesaid, upon their oath, and affirmation aforesaid, do further present that the said James Bosone and Raefello Criscallo on the thirtieth day of October in the year of our Lord one thousand nine hundred and fourteen at the City of Long Branch in the County aforesaid, and within the jurisdiction of this Court, the dwelling house of Florence Cubberly there situate, wilfully and maliciously did enter without breaking the same with intent, the goods and chattels of the said Florence Cubberley 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 statute in such case made and provided and against the peace of this State, the government and dignity of the same. 20

And the Grand Inquest aforesaid, upon their oath and affirmation aforesaid, do further present, That the said James Bosone and Raefello Criscallo on the thirtieth day of October in the year of our Lord one thousand nine hundred and fourteen in the county aforesaid and within the jurisdiction of this Court, 1 wedding ring, 1 diamond ring, 1 dinner ring (20 odd diamonds), 1 Ruby Fly Pin, 1 Diamond Crown Brooch, 21 Daimonds, 1 Lion's Head, 1 Gold Neck Chain, 1 string Gold Beads, 1 Cameo Broach, 1 pair Old Fashion Gold Bracelets, 1 Lock Bracelet, 1 Long Gold chain, 30 40

Indictment

set with Rhyne stones, 1 metol Pin, 1 Three Stone ring, 1 Emerald, 2 Diamonds of the value of fifteen hundred dollars of the goods and chattels of Florence Cubberly then and there being found, feloniously and wilfully did then and there steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

- 10 And the Grand Inquest aforesaid, upon their oath and affirmation aforesaid, do further present that James Bosone and Raefello Criscallo late of the City of Long Branch in the said County of Monmouth, on the thirtieth day of October in the year of our Lord one thousand nine hundred and fourteen with force and arms at the City of Long Branch aforesaid, in the County of Monmouth, aforesaid, and within the jurisdiction of this Court, 1 Wedding ring, 1 Engagement Diamond Ring, 1 Dinner Ring (20 Odd Diamonds), 1 Ruby Fly (Pin), 1 Diamond Crown Brooch, 21 Diamonds,
- 20 1 Lion Head, 1 diamond in mouth, 1 Gold Neck chain, 1 string Gold Beads, 1 cameo Brooch, 1 Pair Old Fashion Gold Bracelets, 1 Lock Bracelet, 1 Long Gold Chain set with Rhyne stones, 1 Metol Pin, 1 Three stone ring, 1 emerald, 2 Diamonds of the value of fifteen hundred dollars of the goods and chattels of Florence Cubberly before then unlawfully stolen, taken and carried away, unlawfully did receive and have they the said James Bosone and Raefello Criscallo then and there well knowing the said goods and chattels to have been unlawfully stolen, taken and
- 30 carried away, 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.

RULIF V. LAWRENCE,
Prosecutor of the Pleas.

- And afterwards, to wit, on the seventeenth day of December, in the year of our Lord one thousand nine hundred and fourteen, at a session of the Court of Quarter
- 40 Sessions aforesaid, being as yet of the term of October,

Indictment

aforesaid, before the Honorable John E. Foster, Esquire, Judge, at Freehold, aforesaid,

It is ordered that all the indictments be filed and retained in this court for trial or other disposition.

Whereupon on the thirty-first day of December, in the year of our Lord one thousand nine hundred and fourteen, at a court of general quarter sessions at Freehold, aforesaid in the County of Monmouth aforesaid as yet of the term of October aforesaid, before John W. Slocum, presiding Judge of the Court of Common Pleas here cometh the said James Basone, who being brought to the bar here, in his proper person by Cornelius B. Barkalow, Esquire, Sheriff of the County of Monmouth, to whom also he is here committed and having heard the indictment read and being commanded of and concerning the premises in the said indictment above specified and charged how he will acquit himself thereof says he is not guilty thereof and thereupon for good and evil he puts himself upon the country and Rulif V. Lawrence Esquire, Prosecutor of the Pleas for said County who prosecutes for the State of New Jersey, doth the like. 10 20

Therefore let the said indictment be continued until the nineteenth day of February in the year of our Lord one thousand nine hundred and fifteen, and on February 19, 1915, on motion of Rulif V. Lawrence, Prosecutor, a severance was granted and application was made by Thomas P. Fay, attorney for the defendant for a bill of particulars which application was refused. The plea of not guilty was then withdrawn and a plea of guilty entered for the purpose of making a motion to quash the indictment, and after arguments heard, the court denied the motion, whereupon the plea of guilty was withdrawn and the plea of not guilty was renewed, and the jury thereupon here come before the judge aforesaid at Freehold aforesaid in the County of Monmouth aforesaid on the nineteenth day of February in the year of our Lord, one thousand nine hundred and fifteen of the term of January, twelve good and lawful men each of whom shall be a citizen of this state and resident 30 40

Indictment

within the County and State aforesaid above the age of twenty-one years and under the age of sixty-five years and by whom the truth of the matter may be better known and who are not of kin of the said James Basone, to recognize upon their oaths whether the said James Basone be guilty of Breaking with Intent, &c. above specified or not guilty because as well the said Rulif V. Lawrence, Prosecutor of the Pleas for the said County of Monmouth aforesaid who prosecutes for the said State of New Jersey, in that behalf as the said James Basone, has put, himself upon the said jury and the same day is given to the parties aforesaid and the same place, at which time, that is to say on the nineteenth day of February, in the year of our Lord, one thousand nine hundred and fifteen, being as yet of the term of January, aforesaid, before the judge aforesaid here cometh as well the said Rulif V. Lawrence, Prosecutor of the Pleas who prosecutes as aforesaid as the said James Basone being brought to the bar here in his proper person by the said Sheriff of the county aforesaid and the jurors of said jury by the Sheriff of the county aforesaid for this purpose are impanelled and returned, that is to say :

1. George C. Tilton
2. Marl Kilmartin
3. John P. Adair
4. William S. Benson
5. Joseph C. Brower
6. Robert Casdan
7. Dewitt Dangler
8. Elisha E. Lippinsott
9. Joseph Cherry
10. Samuel Cooper
11. Oscar P. Luyster
12. John P. O'Brien

being called come who being chosen, tried and sworn to speak the truth of an conerning the premises and thereupon the trial of said issue commenced before the said court

Indictment

and jury and the evidence being closed and counsel heard the said issue under a charge of the said court was submitted to the said jury, and the said jury in charge of the said officers in court duly sworn for that purpose were taken to a private room to consider of their verdict and afterwards at Freehold aforesaid the jury returned into and before said court in charge of said officers sworn as aforesaid to keep them in charge, and then and there in the presence of said Rulif V. Lawrence, Prosecutor of the Pleas, and of the said James Basone, do say upon being asked in due form that they have agreed upon their verdict and by their foreman further say that they find the defendant, James Basone, guilty, on the first, third and fourth counts in the said indictment. 10

Whereupon it is ordered that the verdict and proceedings be entered and recorded and the defendant be remanded and thereupon the said James Basone, on the twenty-sixth day of February, in the year of our Lord one thousand nine hundred and fifteen, being produced in and before the Court at Freehold aforesaid, it is ordered and adjudged that the defendant be committed in the State Prison for a term not more than seven years nor less than three years and six months. 20

Judgment signed this twenty-sixth day of February, A. D. 1915.

JOHN W. SLOCUM,

P. J. 30

State of New Jersey,
County of Monmouth, ss:

I, Joseph McDermott, Clerk of the said County, and also clerk of the Court of Common Pleas constituting the general quarter sessions do hereby certify that the foregoing copy of record and poceedings in the case of State vs. James Basone is a true and correct copy thereof as the same remains on file in my office. 40

Indictment

IN WITNESS WHEREOF I
have hereunto set my hand and
seal of said County this first day of
March, A. D. nineteen hundred and
fifteen.

(Seal)

JOSEPH McDERMOTT,

Clerk.

10

(Stamp)

20

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40

Indictment

MONMOUTH COUNTY COURT OF
QUARTER SESSIONS.

THE STATE OF NEW JERSEY,

vs.

JAMES BOSSONE,

On Indictment
for Breaking
with Intent,
&c.

10

20

I, the undersigned, Presiding Judge of the Court of Quarter Sessions in and for the county of Monmouth before whom the above stated indictment was tried, do hereby certify that the foregoing proceedings is the entire record of the proceedings had upon the trial of the indictment in the above stated cause in the State of New Jersey against James Bassone, which was tried in the court aforesaid on the nineteenth day of February, last past.

Dated March 10th, 1915.

30

A True Copy,

JOHN W. SLOCUM,
Presiding Judge.

WM. C. GEBHARDT,
Clerk.

40

Assignment of Errors.

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, Defendant in Error, vs. JAMES BASSONE, Plaintiff in Error.	} On an indictment for breaking with intent, &c. Assignment of Errors.
----	---	--

20 Afterwards, that is to say, on the 16th day of March, in the year nineteen hundred and fifteen, in the Supreme Court, come the said James Bassone, by Thomas P. Fay, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and in the record, and also in the giving of the verdict, conviction and judgment aforesaid, there is manifest error, and further that on the trial below, and by the judgment of the Monmouth County Quarter Sessions Court, he suffered manifest error, wrong and injury And he humbly assigns error and also specifies the causes in the record of the proceedings had upon the said trial returned with the writ of error upon which he relies for reversal according to the statute in such case made and

30 provided.

(1) Because the indictment was not properly returned to the Court of Oyer and Terminer.

(2) Because there was no order of the Court of Oyer and Terminer sending the indictment from the Court of Oyer and Terminer to the Court of Quarter Sessions.

(3) Because the indictment was not properly returned to any court having jurisdiction.

40 (4) Because the indictment was wrongfully returned to the Court of Quarter Sessions.

Assignment of Errors.

(5) Because the indictment was not returned to a court of competent jurisdiction, but was returned to the court of Quarter Sessions.

(6) Because Justice Samuel Kalisch, a justice of the Supreme Court, holding the Court of Oyer and Terminer in and for the Court of Monmouth, and a member of the Court of Quarter Sessions, was not present when the indictment was handed in, and because no other justice of the Supreme Court was present. 10

(7) Because the indictment was returned to Judge John W. Slocum, Judge of the Court of Quarter Sessions of the County of Monmouth, and not in open court.

(8) Because the defendant was denied due process of law under the 14th amendment of the Constitution of the United States, in being tried before a court not having jurisdiction.

(9) Because the indictment includes both the common law conclusion of an indictment "against the peace of this State, the government and dignity of the same," and also the statutory conclusion "contrary to the statute in such case made and provided," thus confusing the defendant as to what charge he was called upon to answer. 20

(10) Because the indictment was returned to Judge John W. Slocum, Judge of the Court of Quarter Sessions of the county of Monmouth, the record does not show the indictment was returned in open court.

(11) Because the court granted a severance over the objection of the defendant. 30

(12) Because the Court refused to postpone the case after granting a severance and forcing the defendant to go to trial after he had been prepared for a joint trial.

(13) Because the court refused the bill of particulars and requested by the defendant.

(14) Because the court refused to make the prosecutor elect upon which count in the indictment he would proceed.

(15) Because the court permitted the prosecutor in his opening to state that he intended to try the defendant for whom the court had allowed a severance. 40

Assignment of Errors.

(16) Because the court permitted jewelry to be shown to the jury which was not specified in the indictment for grand larceny.

(17) Because the court permitted the witness Florence Cubberly to be asked and to answer that James Bassone knew she had a bull dog.

10 (18) Because the Court permitted the jewelry box to be put in evidence over the objection of the defendant.

(19) Because the prosecutor stopped the witness Criscuolo when he said Bassone told him "that he was in Long Branch he didn't want to be seen."

(20) Because the court permitted the prosecutor to recite as testimony something that had not occurred when he said:

Q. Criscuolo, when you stopped at Second Avenue before this robbery, the car stopped, you said, at the corner of Second Avenue and Morris Avenue?

20 A. Morris Avenue.

Q. Now you say that Zump and the defendant got out of the car?

A. Yes, sir.

Q. And walked towards the house?

A. And I walked——

(21) Because the court permitted Criscuolo to state a conversation with Zump when it appeared that Zump was dead at the time.

30 (22) Because the court permitted the witness Criscuolo to testify to other criminal transactions.

(23) Because the court allowed statement by witness Criscuolo, concerning the disposal of the jewelry with Zump, to stand, as afterwards it appeared the defendant Bassone was not present.

(24) Because the Court refused to allow counsel for the defendant on cross-examination to ask the witness Criscuolo concerning his participation in the Bath Muder as affecting his credibility.

40 (25) Because the court refused to allow the defendant's counsel on cross-examination to ask the witness how

Assignment of Errors.

many times he had been arrested for murder as affecting his credibility.

(26) Because the court refused to allow counsel for the defendant to ask Criscuolo on cross-examination whether he did rob the place of Dr. Maoni as affecting his credibility as a witness.

(27) Because the court refused to allow defendant upon cross-examination of Criscuolo to ask him whether he had shot a pushcart man as affecting his credibility as a witness. 10

(28) Because the court criticised the defendant's counsel upon his cross-examination of a witness affecting his credibility.

(29) Because the court permitted the witness Charles Nudd to read from a book kept in the office of a garage to the prejudice of the defendant.

(30) Because the court permitted the book produced by Charles Nudd to be admitted in evidence. 20

(31) Because the court after the state rested its case refused to order the prosecutor to elect upon which count in the indictment he would proceed.

(32) Because the court refused at the close of the case to direct the prosecutor to elect upon count in the indictment he would proceed.

(33) Because the court lawfully refused to charge the defendant as requested by the defendant.

(34) Because the court refused to charge requests numbers one, four and ten, as follows: 30

"FIRST: A jury should not convict upon the testimony of an accomplice. The uncorroborated testimony of an accomplice is not sufficient to warrant the jury to bring in a verdict of guilty against either of these defendants. Corroboration of an accomplice upon an immaterial point is not sufficient to warrant the jury in finding a verdict of guilty, but such corroboration must be upon a point material to the issue and should you find that the testimony of the accomplice is not corroborated upon a point material to the issue, it is your duty to bring in a verdict of not guilty. 40

Assignment of Errors.

FOURTH: That in weighing the testimony of detectives greater care should be used by the jury in relation to the testimony of persons who are employed to find evidence against the accused, than in other cases, because of the natural and unavoidable tendency and bias of the minds of such persons to construe everything as evidence against the accused and disregard everything which does not tend to support their pre-conceived opinion of the matter in which they are engaged.

TENTH: Mere presence at the scene of perpetration of the crime does not render a party *particeps criminis*. To constitute him a party to the criminal act there must not only be presence upon the scene but actual participation—an aiding and abetting in the crime committed.

Therefore, if you find that the defendant Bassone was actually present on the scene of the perpetration of the crime of burglary, but did not actually participate therein you should acquit the said defendant, James Bassone."

(35) Because the court in its charge said that the "defendant could be found guilty of one or all of the first, third and fourth counts in the indictment under the evidence."

(36) Because the court erroneously charged the jury on the question of reasonable doubt.

(37) Because the court erroneously charged the jury on the law of principle and accessory.

(38) Because the charge of the jury was erroneous.

(39) That said indictment and the matter therein are sufficient in law to convict the said James Bassone, of the offense declared in said indictment, or of any other offense in law.

(40) That upon the trial illegal evidence offered by the State was admitted against objection and exception on the part of said James Bassone, as more particularly appears in the several bills of exceptions sealed upon the admission of evidence.

(41) Upon said trial legal evidence offered on the part of the said James Basone was excluded as more parti-

Assignment of Errors.

cularly appears in the several bills of exceptions sealed upon the exclusion of evidence.

(42) Illegal evidence admitted on said trial was allowed to stand against motion on behalf of said James Bassone to strike out the same as more particularly appears in the several bills of exceptions sealed upon refusal to strike out evidence.

THOMAS P. FAY,

Attorney for Defendant.

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Joinder in Error

NEW JERSEY SUPREME COURT.

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THE STATE,

Defendant in Error,

vs.

JAMES BASSONE,

Plaintiff in Error.

20

IN ERROR.

Joinder in
Error.

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And thereupon, afterwards, to wit, on the twenty-sixth day of May, in the year of Our Lord one thousand nine hundred and fifteen, the said State of New Jersey, by Charles F. Sexton, Prosecutor of the Pleas of the County of Monmouth, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

CHARLES F. SEXTON,

Prosecutor of the Pleas.

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Notice of Argument

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,

Defendant in Error,

vs.

JAMES BASSONE,

Plaintiff in Error.

On Appeal.

Notice of
Argument.

10

20

SIR:

TAKE NOTICE of the argument of the issue joined in this cause before the Supreme Court of New Jersey, to be held at the State House, in the City of Trenton, State of New Jersey, on the first Tuesday of June, next, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Yours respectfully,

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THOMAS P. FAY,
Attorney for Plaintiff in Error.

Dated May 25th, 1915.

To Charles F. Sexton, Esq.,
Attorney for Defendant-in-Error.

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Motion for Severance

MONMOUTH COUNTY QUARTER SESSIONS.

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THE STATE OF NEW JERSEY,

vs.

JAMES BASSONE AND
RAFFAELLO CRISCUOLO,

Defendants.

On Indictment
for Burglary.

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Freehold, N. J., February 9, 1915.

MR. LAWRENCE: If the court please, in the two Bassone cases, boh for burglary, I move a severance at this time.

THE COURT: The order may be made. There is no objection to it, is there, Mr. Fay?

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MR. FAY: Yes, I do object. I endeavored to get from the prosecutor of the pleas from the very beginning some line on the prosecution of this case, and this case has been prepared now on the theory that the defendants were to be tried jointly; and there coming at this time a motion for severance on the part of the prosecution and not on behalf of the defendant, comes as a surprise.

MR. SEXTON: Mr. Fay only represents Bassone. I do not see how he can be prejudiced.

40

Motion for Severance

MR. FAY: I had a conference with the defendant as counsel in this case and the whole defence was prepared on the ground that these defendants should be tried jointly. There is no reason why this application should not have been made in time to prepare a defence for trial separately. Coming in this case after the case has been set down for trial a number of days, and after the jury has been summoned and drawn, it would be absolutely unfair to put the defendant Bassone here on trial after a motion for severance made by the prosecution. I therefore ask you Honor to deny the motion at this time, and if the motion should be granted that your Honor postpone this case so that it can be prepared on the theory of a separate trial. 10

THE COURT: The motion of the prosecutor will be granted. A severance is entirely proper and an order will be made to that effect. Now I do not know of any reason why the case should be further adjourned, whether they be tried jointly or severally. You have gone over all the ground of your defence and know what the charges are in the indictment and what you have got to meet. No, we will proceed with the trial. 20

(Exception noted for Defendant.)

[L. S.]

MR. FAY: Before the court proceeds with the trial, I made a motion before his Honor Justice Kalisch, this indictment having been found in the Court of Oyer and Terminer, for a bill of particulars. The question arose as to whether a proper order had been made for the transfer of the indictment from the Court of Oyer and Terminer to the Court of Quarter Sessions. Justice Kalisch referred me to your Honor. I served a demand for that bill of particulars upon the prosecutor, and have his acknowledgment of service of that demand. I then applied to your Honor for an order for a bill of particulars in this case, and now I formally make the demand in court. 30 40

Motion for Severance

THE COURT: The application will be denied.

10 MR. FAY: One moment. I wish to state a number of grounds for a bill of particulars in this case. This is an indictment which charges first the breaking and entering of a dwelling-house in the night time with intent, etc., which is the common law form known as the offence of burglary, and it is provided for in the 131st section of the Crimes Act.

20 The second count charges breaking and entering in the daytime with intent, etc., which is condemned in the 132nd section of the Crimes Act. The third count is for entering either in the day or night without breaking, which is condemned by the 133rd section of the Crimes Act. The fourth count is for larceny, which is condemned by the 158th section of the Crimes Act. And the fifth count is for receiving stolen goods, which is provided for in the 166th section of the Crimes Act.

30 So the indictment as drawn sets forth five separate and distinct statutory offences, in which the elements are different and on which different evidence would be necessary to be introduced in order to sustain a conviction under the various sections as set forth in the act of 1898. Therefore we ask a bill of particulars to point out to us under which section of the act they expect to proceed, and also for which offence they expect to ask a conviction; and for a statement of the facts—not the evidence but the facts—which the state expects to prove under each separate count of the indictment; and whether they expect to prove that Bas-
40 sone is a principal or an accessory; under the first, accessory before the fact or accessory after the fact, under the first, second, third and fourth counts; that we be furnished a bill of particulars stating the time of the act, whether it was in the daytime or night time; as to whether the state intends to prove more than larceny under the fourth count or larceny under the third count, or breaking and entering with intent, as alleged in the third count, or burglary with intent, as alleged in the first count; that we be furnished with a bill

Motion for Severance

of particulars of the facts under the fifth count; that we be furnished with a bill of particulars of the facts relied upon to prove that the defendant received stolen goods under the fifth count of the indictment; that we be furnished with a bill of particulars of the facts relied upon to prove grand larceny under the fourth count of the indictment; that we be furnished with a bill of particulars of the facts concerning the entering without breaking of the dwelling house with intent, as alleged in the third count of the indictment; that we be furnished with a bill of particulars of the facts to prove that the defendant Bassone broke and entered the house with intent to steal, as alleged in the second count; that we be furnished with a bill of particulars of the facts intended to prove the breaking and entering in the night time, as alleged in the first count; that the state furnish a bill of particulars showing the facts so that the defendant Bassone can prepare his defence for burglary as alleged in the first count, breaking and entering as alleged in the second count, entering without breaking as alleged in the third count, larceny as alleged in the fourth count and receiving stolen goods as alleged in the fifth count; and that the state furnish a bill of particulars so that the defendant Bassone can tell upon which count the state relies for a conviction, and so that the defendant can prepare his defence under such count.

THE COURT: I will deny your motion.

[L. S.]

MR. LAWRENCE: I move the case of the State against James Bassone, indictment No. 138, for breaking and entering, and the other counts, the Cubberly property.

MR. FAY: If the Court please, at this time I move that the state elect under which count they expect to proceed.

Motion for Severance

MR. LAWRENCE: The state declines to elect until the close of the state's case.

MR. FAY: I ask the Court to make an order that they elect.

10 THE COURT: I decline to make an order. It is not in time that they should be compelled to elect. I will deny the motion.

MR. FAY: I pray an exception to the Court's refusal.

THE COURT: No, sir; I refuse to give an exception to that.

MR. Lawrence: It is a pure matter of discretion.

20 THE COURT: Oh, absolutely.

MR. FAY: I pray an exception to the Court's refusal at this time to grant an exception.

THE COURT: I will not grant it. And there is no good of repeating these different exceptions, which amount to the same thing in a different form.

30 MR. FAY: If the Court please, just now I am pursuing this case to make the record legal as I understand it.

THE COURT: I am perfectly willing to have it legal as I understand it.

MR. FAY: And the ruling of the Court I take no exception to, except that I want to have the record so that I can take a possible review. There is no attempt to antagonize the Court in any way.

40 THE COURT: I do not think there is, and I have no

Motion to Quash

objection to your taking exceptions where you are properly entitled to them.

MR. FAY: Now, if the Court please, I move to quash the indictment on the ground that the indictment contains charges of five separate and distinct criminal offences, and not in counts setting forth a single criminal offence by various allegations in various counts.

10

THE COURT: Do you want to argue it?

MR. FAY: No.

THE COURT: I will deny your motion.

MR. FAY: I pray an exception.

(Exception noted for defendant)

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JOHN W. SLOCUM,

Judge.

[L. S.]

Now I wish to move to quash the indictment in this court because the indictment is found in the Court of Oyer and Terminer and is now being tried in the Court of Quarter Sessions, and there is no order of the Court of Oyer and Terminer sending it to the Court of Quarter Sessions for trial, but there is an order of the Court of Quarter Sessions retaining the indictment in this court for trial. The idea of that is that the court has not jurisdiction to proceed with the trial. The Court of Oyer and Terminer can send an indictment from the Court of Oyer and Terminer to the Court of Quarter Sessions for trial. Under the case of State v. Winters if nothing appears upon the record as to any order being made then it is presumed that such an order has been made; but where an order is made by the Court of

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Opening for the State

Quarter Sessions, as has been done in this case, retaining an indictment in this court for trial found in the higher court, we claim that this court has not as yet acquired jurisdiction for the trial of the indictment.

THE COURT: The motion will be denied.

10 MR. FAY: I pray an exception.

THE COURT: Exception granted.

(Exception noted for defendant)

JOHN W. SLOCUM,

Judge.

[L. S.]

20 MR. FAY: The plea of not guilty is usually considered as withdrawn when a motion of that kind is made. I hope the Court will so consider it.

THE COURT: The plea is considered withdrawn for the purpose of making these motions.

OPENING FOR THE STATE.

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MR. LAWRENCE: If the Court please, and gentlemen of the jury: This is an indictment against the defendant James Bassone and Raffaello Criscuolo, which charges them with breaking and entering the dwelling house of Mrs. Cubberly, the wife of Leon Cubberly, at Long Branch on the 30th day of October last. While the indictment is joint, Criscuolo is not being tried at this time, because a motion has been made by the state for what is known as a severance, and Criscuolo is to be tried separately

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from Bassone under this indictment. So that under this

Opening for the State

indictment you are to consider merely the case of Bassone.

The indictment contains a number of counts designed to cover the crime, and the state will show that Bassone and Criscuolo and possibly another were at Long Branch on the night of the date in question, and during that night or the early hours of the morning the testimony will show the home of Mrs. Cubberly was entered. Bassone was with the men at the time and assisted in the breaking and entering of this dwelling house. The entrance was made in the bedroom of Mr. and Mrs. Cubberly while they were asleep, and the robbers took from the room a jewel case containing items of jewelry which Mrs. Cubberly will detail to you on the stand. 10

The crime was a peculiarly vicious one, and we expect to make it a complete case against this defendant. I want to say to you that the other defendant, Criscuolo, is to be tried under this indictment, or a disposition is to be made of it. 20

MR. FAY: I object to that and ask to have error assigned upon the record to such a statement of counsel.

THE COURT: Isn't that the effect of a severance?

MR. FAY: No, but it is not the effect of a severance for him to state to this jury now that he expects to try the other defendant, when, as my information is, that he does not expect to try him. 30

THE COURT: Well, now, there is no evidence before the jury of the kind.

MR. LAWRENCE: I will say to you that the defendant is to be tried or his case disposed of.

MR. FAY: Yes, that is better.

MR. LAWRENCE: That is just exactly what I said 40

Mrs. Florence M. Cubberly—Direct

before, Mr. Fay. So that you will confine your attention to the activities of Bassone in connection with this matter.

MRS FLORENCE M. CUBBERLY, Sworn for the State.

10 DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Mrs. Cubberly, where do you reside?

A. 133 Morris Avenue, Long Branch.

Q. And you are the wife of Leon Cubberly?

A. I am.

Q. Were you living at 133 Morris Avenue on the morning of October 30th last?

A. I was.

20 Q. Did anything occur, Mrs. Cubberly, at your residence on that date?

A. I was robbed.

Q. That is to say, the house was robbed?

A. The house was robbed.

Q. And will you fix the time, if you know, when the entry was made?

A. Sometime between eleven o'clock on October 29th and eight o'clock in the morning of October 30th. That is as near as I can fix it. I was awake at eleven o'clock.

Q. And at that time had anything happened?

30 A. No.

Q. When did you discover that anything had happened?

A. On the morning of October 30th, soon after eight o'clock, when I came down stairs.

Q. Then what did you discover, Mrs. Cubberly?

A. As I went into the dining room I noticed that a fruit stand had been overturned in the dining room. I went out in the kitchen and one of the windows was up and the kitchen door stood wide open.

40 Q. And as a result of that what did you do?

Mrs. Florence M. Cubberly—Direct

A. I called my husband and then went to the telephone and notified the police.

Q. I assume that the police responded?

A. Yes. Then I discovered my jewelry was missing.

Q. Now I was going to ask you, after that what discovery did you make?

A. I discovered that my box that was on my dresser when I went to bed with my jewelry in it was gone, and all the jewelry. 10

Q. Did you ever see that before? (Box shown witness.)

A. Yes.

Q. What is it?

A. That is the box that contained my jewelry.

Q. And where was that box, Mrs. Cubberly.

A. It was on the dresser in my bedroom.

Q. Was it there when you retired, Mrs. Cubberly, on the evening of the 28th? 20

A. 29th.

Q. And about what hour did you retire, do you remember?

A. About half past ten or quarter of eleven.

Q. Now what did the box contain when you retired that night?

A. Shall I enumerate the articles piece by piece?

Q. Yes.

A. One dinner ring, one ring with an emerald and two diamonds, one solitaire engagement ring, one wedding ring, one ruby ring with four rubies and one stone missing, one marquise ring with chip diamonds and the center stone missing, one diamond brooch with twenty-one diamonds, one cameo pin, one ruby fly pin, another pin I don't know how to describe, a string of gold beads, of which the string was broken but the loose beads and the string were in the box, three bracelets, a badge of the Asbury Park Baby Carnival, a little alligator leather box that I had a jeweled chain in, a black velvet bow. There may be some other things that I can't remember. 30 40

Mrs. Florence M. Cubberly—Direct

Q. Would you recognize any of the jewelry if you saw it again?

A. I would.

(The prosecutor hands the witness a quantity of jewelry and asks her whether she ever saw it before.)

10 A. This is mine.

Q. Will you describe that for the record?

MR. FAY: I object to any except as stated in the indictment. There is a list of jewelry annexed to the fourth count in the indictment, and if the prosecutor has shown the witness something that is not in the fourth count I object to it, unless they intend to waive that count in the indictment.

20 MR. LAWRENCE: No, we are not going to waive any count in the indictment as yet.

MR. FAY: I think at this time I am entitled to have that done with this evidence.

MR. LAWRENCE: The prosecutor will announce that unless he connects this evidence with the defendant he will consent that it be stricken out. Now we expect to connect it. Of course I cannot develop the case all at once, that is obvious.

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THE COURT: It must be connected, otherwise it would be ordered out.

40 MR. FAY: But that is not the point that I make. It is specifically stated in the indictment, the jewelry alleged to have been taken. Now to say that if he does not connect it with the defendant he will order it stricken out, that is not my point. If at this time he strikes out the fourth count in the indictment then it will be possible for him to take that course.

Mrs. Florence M. Cubberly—Direct

THE COURT: Under the count for burglary it is competent to show not only the burglary but anything that was taken at the time.

MR. FAY: That is proper, but there is a count in this indictment alleging specific articles which were taken. So at this time it is proper to have that disposed of, if he is going to offer any additional evidence except as stated in that count. 10

THE COURT: I will overrule the objection and allow you an exception.

(Exception noted for defendant.)

JOHN W. SLOCUM,
Judge

[L. S.]

20

Q. Now, Mrs. Cubberly, if you will describe what you have in your hand.

A. I have in my hand a gold bracelet, chain bracelet, with a ruby in the top of the clasp and four little pearls surrounding it.

Q. Is that your bracelet?

A. It is.

Q. Where was that bracelet when you last saw it? 30

A. In my jewel box on my dresser.

Q. I show you an article and ask you if you ever saw that before.

A. I did.

Q. Is that your ring?

A. It is.

Q. And where was it when you last saw it?

A. In the jewel box on my dresser.

Q. Will you describe the ring, please?

A. This is a ring with four rubies, one missing. 40

Mrs. Florence M. Cubberly—Direct

Q. I show you a breastpin and ask you if you ever saw that before.

A. I have.

Q. And where was it when you last saw it?

A. In the jewel box on my dresser.

Q. Is that your breastpin?

A. That is my breastpin.

10 Q. I show you a string of beads and ask you if you ever saw those before.

A. I have.

Q. Where did you last see them?

A. In the jewel box on my dresser, the rest of these beads in the box.

Q. Is that string of beads yours?

A. It is.

Q. I show you two pins and ask you if you ever saw those before.

20 A. I have.

Q. Where did you last see them?

A. In the jewel box on my dresser.

Q. Will you describe those pins, please?

A. One is a ruby fly pin and the other is a —I don't know how to describe it. It is a pin with some sort of a stone in, a gold pin.

Q. Now you say that those items which I have called your attention to were in your jewel box when you retired on the evening of the 29th of October last?

30 A. Yes.

Q. Were they there when you arose on the 30th of October?

A. They were not.

Q. Is this the first time that you have seen these items since the entry that you have described?

A. It is.

Q. Now you have given us a list of the jewelry that was taken, Mrs. Cubberly. Will you give me, if you can, the value?

40 A. About \$2,000.

Mrs. Florence M. Cubberly—Direct

Q. That is of the whole?

A. Of everything that was in the box.

Q. Of everything that was taken?

A. Yes.

Q. Now you say that diamonds were taken, diamond jewelry?

A. Yes.

Q. Have you seen any of that since the entry was made? 10

A. I have not.

Q. May I ask where you found, if you did find, the jewel box?

A. In the hedge.

Q. Well, did you find it or did some one else find it?

A. I found it.

Q. Where was it?

A. It was in our hedge.

Q. How far from the house? 20

A. About thirty-five feet.

Q. And when did you find it, Mrs. Cubberly?

A. Soon after the robbery.

Q. Won't you fix that more definitely? How soon after the robbery?

A. A few weeks. I don't remember.

Q. Was it some weeks after the robbery?

A. I don't remember the date. I know it was a few weeks after the robbery. I think it was on a Saturday, but I can't fix the date. 30

Q. Mrs. Cubberly, do you know James Bassone, the defendant?

A. I know him now by sight, but I didn't know him. I knew him by reputation and knew of him, but I have never spoken to him.

Q. What protection, if any, did you have about your house on the night of the robbery or the morning of the robbery?

A. We had a white bulldog sleeping in our bedroom, or in our bedroom. 40

Mrs. Florence M. Cubberly—Direct

Q. Did the bulldog manifest any excitement any time during the night, so far as you know?

A. No.

Q. Do you know whether the defendant James Bassone knew that you had a bulldog?

A. He did.

10 (Objected to.)

MR. LAWRENCE: That seems not to be material, if your Honor please, and yet I will announce that I propose to connect it.

MR. FAY: She snapped it out and I made the objection as quick as possible. It was a timely objection.

20 THE COURT: I will allow it to remain, subject to Mr. Fay's objection.

(Objection noted for defendant.)

JOHN W. SLOCUM,
Judge

[L. S.]

Q. Now, Mrs. Cubberly, have you any personal knowledge as to whether Mr. Bassone knew that bulldog?

30 A. I have.

Q. What was your personal knowledge?

(Objected to.)

THE COURT: I shall allow it, subject to objection.

JOHN W. SLOCUM,
Judge.

40 [L. S.]

Mrs. Florence M. Cubberly—Direct
(Exception noted for defendant.)

A. My husband had told me——

Q. Pardon me just a moment. Now if you are going to give any hearsay that is not admissible.

THE COURT: Only what you know personally.

10

Q. Only what you know personally, that is my question. If you don't know it personally I wish you would say so.

A. I don't know it personally.

MR. FAY: I ask to have it all stricken out.

MR. LAWRENCE: I will consent that it be stricken out.

20

THE COURT: Well, it ought to be. That will be stricken out, the knowledge about the bulldog.

MR. LAWRENCE: That is to say, that part of it in reference to——

THE COURT: Everything that she said that Bassone knew that she had a bulldog.

30

MR. FAY: I mean everything in reference to the bulldog, including the question that Bassone knew that

she had a bulldog, because she has stated now that she got the knowledge from her husband.

THE COURT: I have made a ruling to strike out everything after that answer where Mrs. Cubberly said that Bassone knew that she had a bulldog.

40

Mrs. Florence M. Cubberly—Direct

MR. FAY: Now she has stated that she know it because her husband told her so.

THE COURT: No, she has not stated that.

MR. FAY: I refer to the stenographer's minutes.

10 BY THE COURT:

Q. Is that the only way you knew it?

A. Your Honor, I knew that he knew the bulldog, but I can't tell how I knew it. I can say that I know that he knew the bulldog, but he won't allow me to tell how I knew it.

THE COURT: If you swear that you knew it of your own personal knowledge it will stand.

20

MR. FAY: In view of her testimony that she knew it from what her husband said——

MR. LAWRENCE: If your Honor please, to save time we will consent that it all be stricken out.

THE COURT: It will be all stricken out, all the testimony relating to the bulldog.

30

BY MR. LAWRENCE:

Q. What, if anything, was in the jewel case when you found it?

A. Just what is there now.

Q. Will you describe what is in it now?

A. There are some loose gold beads, and a badge of the Baby Parade in the Asbury Park Carnival, and a leather jewel box and a piece of tissue paper which was in that

40

box the last time I saw the box.

Mrs. Florence M. Cubberly—Cross

Q. And that box is in the same condition it was when you found it, is it?

A. It is, and it was closed when I found it.

MR. LAWRENCE: We offer this jewel box and the jewelry which has been identified by Mrs. Cubberly.

MR. FAY: I object to the offer of the jewel box or the jewelry at this time. It has not been connected in any way with this defendant. 10

THE COURT: I will admit it subject to Mr. Fay's objection.

(Exception noted for defendant.)

JOHN W. SLOCUM,

Judge. 20

[L. S.]

CROSS-EXAMINATION.

BY MR. FAY:

Q. Mrs. Cubberly, when was it you last saw these articles of jewelry, the bracelet, gold beads, breastpin and ring with four rubies and butterfly pin and small pin? 30
When did you last see them before October 29th?

A. I saw them.

Q. On October 29th?

A. On October 29th.

Q. Did you know that they were all in this box at that time?

A. I did.

Q. And when did you first miss them?

A. On October 30th.

Q. At what time? 40

Mrs. Florence M. Cubberly—Redirect

A. About one or two o'clock.

Q. In the afternoon?

A. In the afternoon.

Q. What time did you communicate with the Police Department?

A. Between eight and nine o'clock in the morning, perhaps. About eight o'clock in the morning.

10 Q. You said you never knew Mr. Bassone until you saw him here; is that right?

A. No, not by sight. I have heard of Mr. Bassone.

Q. But I mean you didn't know him by sight and never saw him until you saw him here today?

A. Oh, no, not today; but I never knew Mr. Bassone by sight until after the robbery.

Q. You didn't see him at your house on the night of the 29th, did you, or the morning of the 30th?

A. I did not.

20 Q. And you don't know whether this jewel box was taken on the night of the 29th or the morning of the 30th, do you?

A. I do not.

REDIRECT EXAMINATION.

BY MR. LAWRENCE:

30 Q. Just one omitted question. Mrs. Cubberly, was your bulldog absent at any time prior to the night of this robbery?

A. Yes.

Q. When was that?

A. Many times. He was away from home, you mean?

Q. Yes.

A. Many times.

Q. Was there any occasion that you had to take particular notice of the bulldog on his return?

40 (Objected to.)

Leon Cubberly—Direct

A. Yes.

Q. Will you describe his condition?

MR. FAY: In the first place it is not redirect. In the second place the dog had been away many times. It does not permit of a cross-examination of her upon that subject.

MR. LAWRENCE: The question is withdrawn for the moment, with the understanding that Mrs. Cubberly may be recalled.

10

LEON CUBBERLY, Sworn for the State.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Mr. Cubberly, you reside at Long Branch, do you?

20

A. Yes, sir.

Q. And you are the husband of Mrs. Cubberly, the witness just on the stand?

A. I am.

Q. Do you recall the circumstance of your house being entered?

A. I do.

Q. Do you know when it was entered, Mr. Cubberly?

30

A. Yes, sir.

Q. When?

A. Sometime between the night of October 29th and the morning of the 30th.

Q. Were you aroused at all by the entry of the thieves?

A. No, sir.

Q. You made an investigation to ascertain how the house was entered, did you?

A. Yes, sir.

40

Leon Cubberly—Direct

Q. And what did you observe?

A. That the kitchen window over the sink was open and raised, and the rear door wide open, rear kitchen door wide open.

Q. What time did you retire the night before?

A. Between half past ten and eleven o'clock.

10 Q. Was there any one or anything in the room besides yourself and wife when you retired?

A. Yes.

Q. What?

A. My bulldog.

Q. What kind of a bulldog was it?

A. A bull terrier.

Q. So far as you know was there any manifestation of excitement on the part of the bulldog during the night?

A. No, sir.

Q. Just describe that bulldog, will you, please?

20 A. He was entirely white, with his ears cut, and he weighed about seventy-five pounds, and about seven years old; had a collar with my name and address on it.

Q. Do you know James Bassone, the defendant?

A. Yes, sir.

Q. And how long had you know him at the time of this robbery?

A. Probably four or five years.

Q. Did you ever have any conversation with Bassone concerning this bulldog?

30 A. Yes, sir.

Q. How long was that before the robbery?

A. Probably two or three years.

BY THE COURT:

Q. Two or three years?

A. Yes, sir.

BY MR. LAWRENCE:

40 Q. Nothing more recent than that?

Leon Cubberly—Direct

A. No, sir.

Q. What were the circumstances concerning the bulldog?

MR. FAY: I object to anything further, if he had a conversation two or three years ago concerning it.

THE COURT: Yes, I think that is a little remote. 10

Q. Was anything said or done in that conversation which indicated the acquaintance of Bassone with your bulldog, without stating what it was? Yes or no.

A. Yes.

Q. Then Bassone did know this bulldog, did he?

A. Yes, sir.

Q. And knew him at the time of the robbery?

A. Yes, sir.

20

MR. FAY: I object to the acquaintanceship with the dog that he spoke of two or three years previous to the robbery, and besides, the question is leading.

MR. LAWRENCE: It has already been answered.

MR. FAY: I know, it was answered before. "Yes, sir," comes so quickly.

THE COURT: I will allow it to stand. 30

Q. Do you know the jewel box?

A. Yes, sir.

Q. And is that the jewel box? (Box shown witness.)

A. Yes, sir.

Q. Those items of jewelry that have been offered in evidence, did you see those? Have you ever seen those before.

40

Leon Cubberly—Direct

MR. FAY: If your Honor please, so far as was are concerned we will admit that that is the jewel box and that on the night of October 29th or the morning of October 30th it contained the jewels stated there, so we won't waste any more time proving it.

10

Q. You know the jewelry that was taken, do you?

A. Yes, sir.

Q. Was there anything else taken but jewelry, so far as you know?

A. Not as far as I know.

Q. And can you describe the jewelry?

MR. LAWRENCE: One moment. Mr. Fay, do you admit that the jewelry was taken, the quantity described by Mrs. Cubberly?

20

MR. FAY: The jewelry here in court.

MR. LAWRENCE: But you won't admit that the other was taken?

MR. FAY: No, sir.

Q. Can you describe the jewelry that was taken, Mr. Cubberly?

30

A. Not so very well. I made a list of it immediately afterwards.

Q. In what form did you make the list?

A. I made a blueprint of it.

Q. I show you a paper and ask you what that is.

A. That is a blueprint of the—

MR. FAY: I object. He said he couldn't describe it, the list of it.

BY THE COURT:

40

Leon Cubberly—Direct

Q. When did you make the list or blueprint?

A. The morning after the robbery.

BY MR. LAWRENCE:

Q. Were you acquainted with the jewelry?

MR. FAY: I object. I object on the further ground
that he cannot refer to any paper made by himself as evi- 10
dence in this case if he cannot describe the jewelry.

MR. LAWRENCE: Only in the event that he cannot
describe the articles.

MR. FAY: Well, that is not for the prosecutor to
say that is for the witness to say.

MR. LAWRENCE: I will ask him. 20

MR. FAY: You have suggested it now, of course, he
can say.

THE COURT: Ask your question.

Q. Mr. Cubberly, can you remember the items of
jewelry taken?

A. I think so.

Q. Well, go ahead and describe it. 30

A. There was a large dinner ring, about an inch and
a half long, containing a number of large and small dia-
monds. There was a single ring containing an emerald and
two diamonds. There was a single solitaire engagement
ring. There was a ring without—a stone missing. There
were two chain bracelets. There was a cameo pin with a
woman's head on it. There was a crown—

Q. The cameo pin with a woman's head on it, would
you recognize it if you saw it again?

A. Yes. 40

Leon Cubberly—Direct

Q. I show you a pin and ask you if that is the pin that you have just referred to.

10 A. Yes. There was a crown pin with twenty-one diamonds in it. There was a sort of a watch pin, a bulldog's head with diamonds in the eye and diamonds in the mouth of the lion's head—a lion's head rather than a bulldog's head. There was a peculiar metal pin, I don't know the exact kind. It was round and has clasps on it. There was a ruby fly pin. There were gold beads, my cuff buttons with small diamonds into them. There was a sword pin with two pearls and a small diamond. Several small gold chains.

Q. Now, Mr. Cubberly, I show you the indictment in this case and ask you whether the list of items contained therein correctly describes the jewelry taken from your house, either on the evening of the 29th or the morning of the 30th of October.

20

MR. FAY: If your Honor please, I object to that. He has described what was there and it is a matter for the court to say whether it is contained in the indictment or not, and not for the witness.

THE COURT: Yet, I think that objection is good. He has described the jewelry.

30 MR. LAWRENCE: Well, I only want to prove that this gentleman is describing the same jewelry that we have listed in this indictment.

THE COURT: Well, he has described the jewels that were stolen.

Q. Now, Mr. Cubberly, will you describe your premises, the location and any characteristics in the way of hedges or fences or whatever there may be?

40 A. The property is located at 133 Morris Avenue. It is 110 feet wide, and the street in the entire block is

Leon Cubberly—Direct

practically built up with the exception of the three lots between my house and Second Avenue.

Q. How wide did you say your lot was?

A. 110 feet. There is a very high hedge on the east side of my house, running from the center of the house back to the rear line. It is very dense and about seven feet high. The kitchen entrance is on the side toward the hedge. The house is maybe thirty feet from this hedge. The kitchen is also on the northeast corner, where we found the doors open. There are two stairways leading upstairs, and in the front of the house there are two bedrooms. Our bedroom is on the southwest side, and the adjoining room on the east side communicating with our room. Our room also communicated through a double room to the hall. 10

Q. Now with reference to the streets, your property faces Morris Avenue?

A. Yes, sir. 20

Q. What are the adjoining streets?

A. Second Avenue to the east and Third Avenue to the west.

Q. How far is Second Avenue from your residence?

A. It is about four hundred feet from my east line.

Q. What was the other avenue?

A. Third.

Q. How far is that from your property? From the west line that would be, wouldn't it?

A. From the west line, yes. I should say it would be a thousand feet. 30

Q. Now will you describe the conditions on Second Avenue with reference to the foilage or trees?

A. Second Avenue in that vicinity is practically all trees on the west side, which is the side toward my house.

Q. Approaching Morris Avenue?

A. Yes.

Q. And does that condition prevail about Morris Avenue on Second?

A. From the north and from the south. 40

Leon Cubberly—Cross

Q. You spoke of the hedges in the front of your property, on the street side?

A. On the side, not the front.

Q. There are no hedges in front?

A. Not on my property.

Q. What is the height of the hedge as it approaches the street line on the side of your lot next to Second Avenue?

10 A. About seven feet.

Q. And does that height continue clear to the sidewalk?

A. No, from between the houses to the rear of the lot. There is no hedge in front; several trees there.

Q. Then is there an unobstructed view from the porch of your house, we will say, to Second Avenue?

A. Yes, sir.

Q. There is no intervening hedge to interfere with the view?

20 A. There is a hedge on the second property from me toward the west.

Q. How high, approximately?

A. About four feet.

BY MR. FAY:

CROSS EXAMINATION.

30 Q. How far is it toward the west from yours?

A. The house or the property?

Q. The house.

A. I should say about one hundred and fifty feet.

Q. And is the property line of houses along that street the same distance from the curb line?

A. Mostly all alike. My house is a little back and I think Dr. Wise's house is a little back.

Q. Dr. Wise's house is a larger house than yours, isn't it?

40 A. Yes, sir.

Leon Cubberly—Cross

Q. What time was it that you discovered that the jewel box was gone?

A. About two o'clock.

Q. You discovered it before Mrs. Cubberly?

A. No, sir.

Q. And what time did you telephone to the police about it?

A. I didn't telephone the police.

Q. Who did telephone?

10

A. Mrs. Cubberly.

Q. You were present?

A. I was in the house.

Q. And then you examined the house to find out where it had been entered?

A. Yes, sir.

Q. And then you found the window open?

A. Yes, sir.

Q. Any one else in the house besides you and Mrs. Cubberly?

20

A. The maid.

Q. And do you know whether the maid opened the window or not?

A. The maid was right with us when we came down stairs.

Q. Yes, but did you go upstairs at two o'clock in the afternoon when you first came down?

A. No, sir.

Q. You had had breakfast that day?

30

A. Yes, sir.

Q. What time did you have breakfast?

A. Half past eight.

Q. Then of your own knowledge you don't know whether the maid had opened that window or not, do you?

A. She hadn't—

Q. I mean of your own knowledge.

A. When I first saw the window she had not opened it.

Q. Then you saw it later and it was open?

40

Leon Cubberly—Cross

A. No, sir; when I saw the window it was open and she had not opened it.

Q. Do you know that of your own knowledge?

A. Yes, sir.

Q. When did you first see the window?

A. About eight o'clock in the morning.

Q. And you had breakfast at half past eight?

10 A. Yes, sir.

Q. What time did the maid get up that morning?

A. Eight o'clock.

Q. Do you know positively that she got up at eight o'clock and cooked breakfast and had breakfast at half

A. Yes, sir.
past eight?

Q. And the open window made no impression upon you at that time, did it?

A. It did, yes, sir.

20 Q. What impression did it make?

A. That somebody had been in the house the night before.

Q. You didn't search to see if anything was gone, did you?

A. Yes, sir.

Q. And you didn't discover it?

A. Didn't discover anything gone when I left for the office in the morning.

Q. And nothing was discovered until two o'clock?

30 A. No, sir.

Q. Didn't it occur to you to look immediately to see whether the jewel box was gone?

A. No, sir.

Q. You thought somebody had broken into the house?

A. Yes, sir.

Q. What other indication did you find that the house had been broken into?

40 A. There was a fruit vase that laid on the side table in the dining room was knocked over and partly broken, and my overcoat laid on the threshold of the kitchen door,

Leon Cubberly—Redirect

half inside and half out, and my bulldog was downstairs.

Q. What time was that?

A. Eight o'clock.

Q. Where was the girl then?

A. With us.

Q. Did she go downstairs at the same time?

A. All came down at the same time.

Q. All came down at the same time?

A. Yes, sir.

10

Q. The girl had not been down before that time?

A. Not to my knowledge.

Q. You didn't see any one around the place, did you, that morning?

A. No, sir.

Q. You didn't see anybody enter or go out of the house that night?

A. No, sir.

Q. What time did you say you went to bed?

20

A. Between half past ten and eleven.

Q. On what date?

A. October 29th.

Q. And the house was entered either on October 29th after half past ten or eleven o'clock or in the morning before eight o'clock?

A. Yes, sir

REDIRECT EXAMINATION.

30

BY MR. LAWRENCE:

Q. I omitted to ask you the value of property taken.

MR. FAY: It is over \$20 and it is in evidence.

MR. LAWRENCE: Well, I desire to ask him.

THE COURT: You may ask him.

40

Leon Cubberly—Recross—Redirect

Q. What was the value of the property taken?

A. I figured it up about \$2,000.

RECROSS EXAMINATION.

BY MR. FAY:

10 Q. You say you figured it up \$2,000, did you?

A. Yes, sir.

Q. What value did you put on this?

(Showing witness piece of jewelry.)

A. I don't know at the present time.

Q. What value did you put on this?

(Showing witness another piece of jewelry.)

20

A. I couldn't tell you at the present time.

Q. What value did you put on this breast-pin?

A. I couldn't tell you.

Q. What value did you put on the ring?

A. I couldn't tell you.

Q. What value did you put on the butter-fly pin?

A. I couldn't tell you.

Q. And what value did you put upon this?

A. I couldn't tell you.

30

REDIRECT EXAMINATION.

BY MR. LAWRENCE:

Q. How did you arrive at your valuations at that time?

A. Mrs. Cubberly and I took a list and went over it and figured the cost of all the items and then made a gen-

40 eral estimate of the total.

Raffaello Criscuolo—Direct

Q. And you do recall the general aggregate, you say?

A. Yes, sir.

Q. But you are unable to recall a specific item, are you?

A. Yes, sir

RAFFAELLO CRISCUOLO, Sworn for the State.

10

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Criscuolo, where do you live?

A. 150 Mott Street, New York.

Q. And where have you been recently?

A. New York.

Q. Yes, but I mean in the last few days.

A. This last few days in jail.

Q. In fact, you have been in jail for how long?

A. Since December 4th.

Q. Do you know James Basone, the defendant?

A. Yes, sir.

Q. Do you know him by any other name?

A. Well, they call him Kid Hennessy.

Q. Has he any other name, as far as you know?

20

(Objected to.)

A. No other name I know except Bassone.

Q. Excepting those two names?

A. That is all.

Q. And he is the man behind the table here?

A. Yes, sir.

Q. Do you know Eugene Carlucci?

A. Yes, sir.

Q. Do you know Ellis Gupistoso, or Zump?

A. Yes, sir.

Q. What does that mean in Italian?

30

40

Raffaello Criscuolo—Direct

A. Because the fellow was lame and walked lame, that is why they called him Zump.

Q. Do you recall the morning of the 30th of October last?

A. The 30th?

Q. Yes.

A. I was in Long Branch.

10 Q. You were at Long Branch?

A. Yes, sir.

Q. And what hour of the morning was it, Criscuolo?

A. Well, it was about one o'clock.

Q. In the morning?

A. Yes.

Q. Any one with you there?

A. Eugene Carlucci, Ellis Zump and Jimmy Bassone.

20 Q. How did it happen, Criscuolo, that you met or were with Zump, Carlucci and Bassone at one o'clock in the morning at Long Branch on the 30th?

A. Well, we come from New York on the 29th of October, come towards Long Branch. We got to Long Branch about half past ten.

Q. Go on.

A. We passed Broadway, where he had the cigar store, 225 Broadway, and he wasn't there, so we went to the restaurant and met him there.

Q. That is, you mean Bassone?

A. Yes, with a couple of friends.

30 Q. Bassone ran a cigar store in Long Branch?

A. Yes, sir.

Q. You didn't find him there and went to a restaurant?

A. Yes, we found him there and he invited us to have something to eat. "What are you eating here?" So we went in there and had something to eat, and we had a steak. After we eat he paid the bill.

Q. From there where did you go?

40 A. From there he told the chauffeur to go to Asbury Park, and he showed us the direction to go. We got to

Raffaello Criscuolo—Direct

Asbury Park and he told us the way to get up there.

Q. What was the name of the chauffeur?

A. Eugene Carlucci.

Q. And where did you meet Carlucci?

A. New York.

Q. Whose car did Carlucci have?

A. His own car.

Q. And had he driven you down?

A. He drove us right down to Long Branch. 10

Q. Who else beside you, Zump?

A. Ellis Zump.

Q. What time did you leave New York in this car?

A. We left New York about a little after half past seven, something like that.

Q. You go to Long Branch?

A. We got to Long Branch about half past ten, because we took the road all the way from New York.

Q. What did you go to Asbury Park for?

A. Went in some house on Sunset Avenue and I don't know the other street. 20

Q. Some girls there, weren't there?

A. Yes, sir; some girls there.

Q. Whose girls were there?

A. I know some girl named May and some other girls.

Q. What are the other girls' names?

A. I didn't know their names. I know them when I see them. 30

(The Prosecutor asks Pauline Milo to stand.)

Q. Is she the girl?

A. Yes, sir.

(The Prosecutor asks Lilian Stewart to stand.)

Q. They were the two girls?

A. Yes, sir. 40

Raffaello Criscuolo—Direct

Q. That you went to see at Asbury Park on Sunset Avenue?

A. Yes, sir.

Q. Now after you left Asbury Park where did you go?

10 A. We stood in the house about half an hour there, sat down around a table, and then this Zump looked at his watch and said, "It is kind of late and we had better go." So Zump turned around and says, "Well, we might be back again tonight." So we went away. We went away and stopped on Second Avenue, where the machine was, and this Zump stopped there and we got off the machine, Jimmy Bassone and Zump.

Q. Jimmy Bassone and Zump?

A. And Zump. So then they went toward that house, some house there.

Q. That is, Bassone and Zump?

20 A. Zump.

Q. Now did you remain in the car?

30 A. No, I stepped out of the car. I got as far as the corner there. There is a kind of street, I don't know the other streets of it. It is a big wide street there under some tree. It was kind of dark. And I seen this Zump walk up and Jimmy Bassone come back, and one time this Zump went in the house and he robbed this house. And by and by this Jimmy Bassone went out to look over there to see if anybody come. Finally this Zump come down with some jewelry.

Q. That is, you mean Bassone watched to see if somebody came along?

A. Yes, sir.

(Objected to.)

MR. LAWRENCE: The witness said that in his own words.

40 MR. FAY: But counsel has injected that Jimmy Bas-

Raffaello Criscuolo—Direct

sone watched and counsel knows he has no right to do that.

(Testimony repeated.)

Q. Now going back a bit, you say you came down to Long Branch that night?

A. Well, we come to Long Branch that night, on account of we come down to see somebody, see this Jimmy Bassone come to New York before that time.

10

Q. How many days before had he seen you in New York?

A. Well, about a week before.

Q. And he saw you, did he?

A. He seen this Zump. He was kind of good friends of his and me together, and stopped in a cafe.

Q. What did he say to you about coming to Long Branch?

A. He said, "Come to Long Branch." He says I will see something.

20

Q. Said what?

A. He will try to see some job about \$4,000 or \$5,000.

Q. Now then, you came to Long Branch as a result of what Bassone said to you; is that right?

A. Well, that is what he says to Zump and I was present, I heard it.

Q. Therefore when you came down it was because he had asked you to come, had he?

(Objected to.)

30

THE COURT: I will permit him to answer whether Bassone had asked him to come to Long Branch or not.

MR. FAY: I think the question should be properly framed. My objection is to the form of the question, entirely leading. He can ask the witness anything that was said but he cannot put the words in his mouth, because it is quite evident that the witness will follow him very quickly.

40

Raffaello Criscuolo—Direct

THE COURT: When there is any dispute about a question here the witness should hesitate long enough to have the stenographer read the question.

MR. FAY: He didn't answer before my objection.

(Question repeated.)

10

MR. LAWRENCE: That is not leading. How can that be leading? It calls for an answer yes or no.

MR. FAY: It is not only leading, it calls for a conclusion.

THE COURT: I think it is objectionable in that form and I will sustain the objection.

20

Q. When you met Bassone the week before in New York did he describe the particular house you were going to in Long Branch?

A. No, sir.

Q. Now after Zump and Bassone got out of the car and walked toward the house you say you remained where, on the corner?

A. I remained on the corner.

Q. Now how long were they gone before they came back?

30

A. Half an hour.

Q. When they came back what, if anything, happened?

A. This Zump came down with jewelry.

Q. Did you see the jewelry?

A. Yes, I seen some jewelry.

Q. What kind of jewelry was it?

A. There was a ring, a ruby ring with four stones in, one missing. There was a butterfly ring with nine stones in the middle and all small stones on the side.

40

Q. What kind of stones were they?

Raffaello Criscuolo—Direct

A. Diamonds. There was a little butterfly pin with a ruby in the middle. I can't tell you how many stones there was in it. There was a crown that had diamonds in it, all diamonds in it. There was two bracelets with a ruby on top, made something like a chain. And I seen a pin like a sword with three rubies, one missing. I also seen an engagement ring with a big stone and another ring with two diamonds in the middle and a ruby in the middle; that is, a three stone ring with two diamonds and one ruby. That was pawned for \$125.

10

Q. Criscuolo, when Jimmy got out of the car with Zump did you hear him say anything after that to Zump before the house was entered?

A. Yes, sir.

Q. What was it?

A. He says, "What are you trying to hand me for a sucker? That ain't all the stuff you got."

Q. Pardon me. You haven't answered my question.

20

MR. FAY: I object to the Prosecutor saying that.

THE COURT: Repeat the question and answer.

(Question and answer repeated.)

Q. Answer.

A. Before that he says that he was known in Long Branch, he didn't want to be seen.

Q. No.

30

MR. FAY: One minute. The witness is responding to the Prosecutor's question and I submit he ought to have a chance to answer the question.

THE COURT: Yes, you may ask your question and counsel will have a chance to object to it.

MR. FAY: What I object to is while the witness is

40

Raffaello Criscuolo—Direct

answering a question he puts up his hand and says "No." When he gets what he doesn't want he has no right to say no.

THE COURT: I have not observed anything of the kind.

10 Q. Criscuolo, when you stopped at Second Avenue before this robbery, the car stopped, you said, at the corner of Second Avenue and Morris Avenue?

A. Morris Avenue.

Q. Now you say that Zump and the defendant got out of the car?

A. Yes, sir.

Q. And walked towards a house?

A. And I walked —

20 MR. FAY: I object. He is reciting something that has not occurred.

THE COURT: That is what the witness testified to.

MR. FAY: But it is objectionable. He cannot go over and recite testimony which has been given. If he wants to ask questions he can ask them, but to recite the testimony of the witness, that is not proper examination.

30 MR. LAWRENCE: I want to direct the witness' attention to a particular thing. Now, if your Honor please, I certainly have the right to do that, to what was said at that particular moment. To do that I must direct the witness' attention to that past testimony.

MR. FAY: I object to it.

THE COURT: I will allow it subject to your objection.

JOHN W. SLOCUM,
Judge.

40 [L. S.]

Raffaello Criscuolo—Direct

Q. When you and Zump and Bassone —

MR. FAY: And I ask to have the question repeated already asked, to which I objected.

MR. LAWRENCE: To save time the question is withdrawn.

THE COURT: Now you are going to ask an entirely new question and the other is stricken out? 10

MR. LAWRENCE: Yes.

Q. When you and Bassone and Zump got out of the car and walked towards this house what was said by Bassone either to you or to Zump?

THE COURT: If anything. 20

A. I heard him say, "That is the house and there is three parties in it, the husband and wife and servant woman; and they got a bulldog. This bulldog generally is in the garage."

Q. You heard Bassone say that?

A. Yes, sir.

Q. To whom?

A. To Zump.

MR. FAY: I object. There he goes again. "You heard Bassone say that?" 30

MR. LAWRENCE: He said so.

MR. FAY: I will address myself to the court. It is entirely improper, if your Honor please, for counsel to make a statement. It is evidence in itself without its coming from the witness, which it did in that case. After he got through the Prosecutor said, "You say Bassone said 40

Raffaello Criscuolo—Direct

that?" That is entirely objectionable and I object to it. The Prosecutor is not under oath.

THE COURT: The last question may be stricken out.

10 Q. Now I ask you again what Bassone said if anything to Zump as they walked towards the house which was robbed.

A. That is what I heard him say.

Q. I wish you would repeat it for the record.

A. Well, I heard him say there was three parties in that house, the husband and wife and a servant woman, and they got a bull-dog, a white bull-dog, they generally keep it in the garage. This bull-dog was in the house that night.

20 MR. FAY: I object and ask to have that stricken out.

THE COURT: Unless you know it was there.

A. I didn't know the bull-dog. I heard them say it.

Q. That is what you heard Bassone say?

A. That is what I heard.

Q. While you were there at the corner of Second and Morris Avenues?

30 A. Yes, before they was walking up I heard them saying that.

Q. Before they walked to the house?

A. Before they walked to the house.

BY MR. LAWRENCE:

Q. Did Zump enter the house pointed out by Bassone?

A. Yes, sir.

Q. Now did Bassone do anything just as he got out of the car?

40 A. The only thing Bassone done, he was watching

Raffaello Criscuolo—Direct

out and he had a raincoat on and a cap, but he was standing there just watching it.

Q. Was anything said by Bassone with reference to the raincoat or cap?

A. He says, "I am known here and that is why I put this raincoat on and cap."

Q. Now how long was Zump gone before he came back from the house?

A. Half an hour. 10

Q. How many times, if you know, did he go into the house?

A. He come there the first time and he showed up some stuff there.

Q. Showed up the stuff to whom?

A. Jimmy was there present.

Q. To Jimmy Bassone?

A. Yes; and Jimmy says, "For Crist's sake, is that all the stuff you can get? They have got a lot of money there at that house. You can get three or four thousand dollars jewelry. She always carries them." He says there, "Well, I will take a chance, another chance of going back." And he went back and there was a chair by the window and in the window he saw something white and jumping. 20

MR. FAY: I object. He was not present.

BY THE COURT: 30

Q. Are you telling what Zump said?

A. What Zump said when he came down.

BY MR. LAWRENCE:

Q. In the presence of the defendant.

MR. FAY: I object to what Zump said in the presence of the defendant. 40

Raffaello Criscuolo—Direct

THE COURT: I will admit it subject to your objection.

(Objection noted for defendant.)

JOHN W. SLOCUM,
Judge.

10 [L. S.]

Q. Go on about this white thing.

A. He seen this white thing, so he thought it was a ghost at first, but he says there was a ghost in the house, and all at once he seen something spring at him and he says, "That is the bull-dog," and he jumped out of the window and come back and he says, "We had better beat it. Go on, drive, or they will wake up and have sheriffs." We went and we stopped at some garage on Broadway.

20 Q. What did Zump have this jewelry in, anything?

A. In his hand. He had it in his pocket.

Q. Did you ever see this jewelry case before?

(Box shown witness.)

A. I never seen that jewel case.

Q. Was anything said by Zump in the presence of Bassone with reference to the jewel case?

30 MR. FAY: I object, on the ground that any conversation by Zump, even though made in the presence of the defendant, is incompetent.

(Objection overruled.)

(Exception noted for defendant.)

JOHN W. SLOCUM,
Judge.

40 [L. S.]

Raffaello Criscuolo—Direct

Q. Go ahead and answer that question.

(Question repeated.)

A. Yes, sir. I heard this Zump say when he come across to the machine, he says, "There was a jewel box up there. I took the stuff out and I left the box up there, threw it away somewhere." That is all I heard about the box. 10

Q. You saw the jewelry that night?

A. Yes, sir.

Q. I show you the jewelry that has been offered in evidence and ask you if you ever saw it before.

A. Yes, sir, seen this bracelet and seen this here.

Q. That is part of what Zump brought out of the house, is it?

A. Yes, sir. Well, I seen this butterfly, I seen this jewelry; yes, sir. 20

Q. Did you have some jewelry after this robbery?

A. Yes, sir; that jewelry, some of that jewelry, was sold.

Q. Sold by whom?

A. By this Zump.

Q. And did you get any part of it, Criscuolo?

A. The only thing I got was ten dollars. He gave me some money, but I knew well where he used to sell his stuff.

Q. Took it back to New York, did he? 30

A. Took it back all to New York.

Q. After the automobile left Second Avenue where did it go?

A. Went over to Jimmy's house. We went first over to the garage to buy some gasoline.

Q. Did he buy gasoline then?

A. Nine gallons of gasoline and two quarts of oil.

Q. Then where did you go?

A. Then from there we went towards Jimmy's house, took Jimmy home. 40

Raffaello Criscuolo—Direct

Q. By the way, who paid for that gasoline and oil?

A. I am pretty sure that Jimmy paid. I don't remember so well.

Q. That is Bassone?

10 MR. FAY: I ask to have that stricken out, the remark of the Prosecutor when the witness answered that he knows Jimmy bought it, he didn't know, "That is, Bassone?" That is the Prosecutor's evidence again. I ask to have it stricken out.

(Question repeated.)

MR. LAWRENCE: I will ask the question.

THE COURT: You mean the defendant?

20 MR. FAY: I object to the form of the question as leading.

(Objection sustained.)

Q. What Jimmy do you mean?

A. Jimmy Bassone.

Q. After Bassone and Zump went towards this house who came back first, after the robbery?

A. Jimmy Bassone.

30 Q. What if anything did Jimmy say?

A. Jimmy Bassone?

Q. Yes, what did Jimmy Bassone say? You say he came back first.

A. He says, "The job is all through now."

Q. Now then, you went to Jimmy Bassone's house and then where did you go?

40 A. Well, after we left the garage we bought this gasoline, nine gallons of gasoline and two quarts of oil. We went towards Jimmy's house on Willow Avenue. We stopped there, went in the house and Zump showed some

Raffaello Criscuolo—Direct

jewelry there. Then Jimmy Bassone said, "Well, you had better go away now. I will find how much stuff was kept up there. I will look in the newspaper tomorrow morning." He says, "I will be back in New York in a couple days," and a couple days after he came to New York.

Q. You then went back to New York, did you?

A. We went back to New York the same night or the same morning. It was about two o'clock we started there from Long Branch. And about election day Jimmy came down and met us in Mulberry Street, at the corner of Plum and Mulberry. This Ellis Zump was there, a couple friends of mine there. He says, "I told you you people was trying to make a sucker out of me." Zump says, "Oh, for God's sake don't talk that way. That is all I got." He says, "I will show you a paper, the job was \$2,800." I telephoned Eugene Carlucci to Brooklyn. I am supposed to work on election day, generally work every election. We got in this machine and rode towards Brooklyn in this machine. Jimmy Bassone and Ellis Zump had a conversation in the car about the job. Well, after that we went to Brooklyn. From Brooklyn we came back to New York. Jimmy Bassone left us. Before he went away he says to Zump, "Well, you come to Long Branch I will find out a better job."

MR. FAY: I object to evidence of any other transactions except this.

THE COURT: That is not evidence of any other transaction. It is evidence of a conversation that they had at this time.

MR. LAWRENCE: Part of the resgestae, if your Honor please.

(Exception noted for defendant.)

JOHN W. SLOCUM,
Judge.

[L. S.]

Raffaello Criscuolo—Direct

MR. FAY: If the court please, you know a number of cases of how particular the court is about allowing anything else to prejudice the defendant in a case of felony.

THE COURT: I have admitted the evidence and allow you an exception.

10

(Exception noted for defendant.)

JOHN W. SLOCUM,
Judge.

[L. S.]

Q. Just continue with that conversation.

A. And then from there, before he left us he told Ellis Zump, "You come to Long Branch and I will find a better job."

20

MR. FAY: I object. That hasn't anything to do with this.

THE COURT: Yes, I will strike that out.

Q. So that is all the conversation at that time, was it?

A. At that time.

Q. Then where did Bassone go?

30

A. He went back to Long Branch.

Q. Now in the meantime what had become of the jewelry?

A. The jewelry?

Q. Yes.

A. It was sold.

Q. What became of the proceeds or the money, do you know?

A. Well, the ring was pawned. This Ellis Zump was trying to sell the stuff the next day and he couldn't get the right price. He was offered \$300 for the jewelry. Well,

40

Raffaello Criscuolo—Direct

then he got a girl to hock the diamond ring with three stones, a friend of his, to come in the pawnshop and hock this ring for \$125. So he got \$125 for the ring. From there he sold another ring, a butterfly, I think, nine stones in it, and another single ring for \$190. This money, I got \$10 out of it. He gave me \$10. The rest of the money he says, "I am going to save this money till Jimmy comes back." And Jimmy come back and they was having a conversation, I don't know what they done. 10

MR. FAY: I ask to have that conversation between Zump and this witness stricken out.

MR. LAWRENCE: I think it is entirely competent.

MR. FAY: It was let in on the theory that Bassone was there. Now he says that Bassone came later. 20

MR. LAWRENCE: It is a statement of fact.

THE COURT: I will allow it to stand and allow you an exception.

JOHN W. SLOCUM,
Judge.

[L. S.]

(Exception noted for defendant.) 30

Q. How much money all together did you get, Criscuolo out of this?

A. \$23.

Q. He gave you \$10 at one time?

A. \$10 at another time and I got three dollars out of Jimmy Bassone.

Q. Now, Criscuolo, you make this statement voluntarily, don't you?

A. Yes, sir. 40

Raffaello Criscuolo—Direct

Q. No promise has been made to you by the Prosecutor?

A. No, sir.

Q. Nor by the State?

A. Or by myself.

Q. And you have endeavored to assist the State in recovering this stuff, haven't you, to some extent?

10 A. Yes, sir.

Q. As a matter of fact, this stuff here was recovered through you, was it not?

A. Yes, sir.

RECESS TILL 1.15 P. M.

20

(Trial of the cause resumed at 1.15 P. M.)

RAFFAELLO CRISCUOLA, resumed.

BY MR. LAWRENCE:

30 Q. Just one more question. You have said, Criscuolo, that the jewelry produced here was recovered through your assistance?

A. Yes, sir.

Q. And where was it recovered?

A. In New York.

Q. And were you present in New York at the time of its recovery?

A. Yes, sir.

Q. With whom?

A. Captain Walling.

40

Q. And who else?

Raffaello Criscuola—Cross

A. The sheriff and some other detective, I don't know his name.

Q. The County Detective?

A. He was sitting there before.

Q. Mr. McCormick?

A. Mr. McCormick.

Q. And you informed them where they might go to recover the jewelry, did you?

A. Yes, sir.

10

CROSS EXAMINATION.

BY MR. FAY:

Q. Where did you say you resided, Mr. Criscuolo?

A. 150 Mott Street.

Q. That is known as Chinatown, is it?

A. No, sir.

Q. New York City?

A. New York City.

Q. How long have you lived there?

A. I am living in New York—in that house, that same building? About ten years.

Q. How long have you know Eugene Carlucci?

A. I have know Eugene Carlucci about six or seven months.

Q. How long did you know Angelo Gupistoso?

A. About twelve years.

Q. How long have you known Jerry Carlucci?

A. Jerry Carlucci I know about six or seven months.

Q. You have known him the same length of time you knew his brother Eugene?

A. His brother?

Q. And you saw him on the night of the 29th of October, did you not?

A. Yes, sir.

Q. He came with you, didn't he?

20

30

40

Raffaello Criscuola—Cross

A. Yes, sir.

Q. And do you know James Caredo?

A. No, sir.

Q. Sometimes known as James Ford?

A. I don't know.

10 Q. There was another party with you besides Jerry Carlucci and Eugene Carlucci and Jimmy Bassone and yourself and Angelo Gupistoso, was there?

MR. LAWRENCE: Which night are you referring to?

MR. FAY: I am referring to the time that I stated, Mr. Lawrence.

MR. LAWRENCE: The 29th of October?

20 MR. FAY: Yes.

Q. There was another party with you, was there not?

A. No, sir.

Q. Wasn't there a man that is known as a second-story man with you?

A. No, sir.

30 Q. Wasn't there a man with you who is one of the most famous second-story men in the country?

(Objected to.)

A. No, sir.

MR. FAY: It is cross-examination.

40 MR. LAWRENCE: I know, but even then he has no right to characterize any person.

Raffaello Criscuola—Cross

THE COURT: You may name any one if you like, but not by that name.

Q. You knew James Caredo, the man that was arrested for shooting the Chief of Police of Bayonne, didn't you?

A. I don't know him, not as I know.

Q. Why didn't you say on your direct examination that Jerry Carlucci was along with Eugene Carlucci on this night in question until I asked you? 10

A. Jerry Carlucci wasn't with me at all that night, wasn't with us at all.

Q. Didn't you say a minute ago that he was with you?

A. Eugene Carlucci was with us, not his brother.

Q. His brother?

A. His brother was not.

Q. You now say his brother was not, do you?

A. He wasn't there that night. 20

Q. Didn't you say when I asked you a minute ago if Jersey Carlucci didn't accompany you and Eugene Carlucci down there, didn't you say that he did?

A. No, sir; I didn't.

Q. And Zump had a wooden leg, didn't he?

A. Yes, sir.

Q. And do you say that Zump went and got in this house, a man that had a wooden leg?

A. He can run as fast as you can, with a wooden leg. 30

Q. I didn't ask you that question, how fast he could run.

THE COURT: Just answer the question.

A. That is the man that went into the house.

Q. You say that Bassone came up to New York after you?

A. Yes, sir. 40

Raffaello Criscuola—Cross

Q. And brought you down? What did he bring you down there for?

A. He didn't bring us down at all. He told us to come down.

Q. What did he tell you to come down for?

A. He was speaking to Angelo Gupistoso and Ellis Zump.

10 Q. What did he tell you to come down for?

A. That he had a job to do.

Q. And what did you say when he told you that?

A. He was speaking to——

Q. No——

A. What did I say?

Q. Yes.

A. I says, "Speak to Zump."

Q. You told him to speak to Zump when he spoke to you?

20 A. Yes.

Q. Why did you tell him to speak to Zump when he spoke to you about it?

A. Because Zump knew the trade.

Q. You didn't know anything about the trade?

A. No, sir; I never was a thief in my life.

Q. Your name is Pish, isn't it?

A. My name is Pish.

Q. And you were in the Baff murder, weren't you?

30 (Objected to as immaterial. Objection sustained.)

MR. LAWRENCE: We are not trying this case.

MR. FAY: If your Honor please, this man is a witness, he is not a party; and as I understand the rule, a witness is compelled to answer questions that may degrade or otherwise affect his ceridibility as a witness, and the only thing that he can claim for protection is the protection that

40 it may incriminate him.

Raffaello Criscuola—Cross

THE COURT: The question is objected to because it does not indicate that he has ever been convicted of murder or any crime.

MR. FAY: A man does not have to be convicted in order to affect him as a witness, in order to affect his competency or credibility as a witness.

THE COURT: Objection has been made and I sustain the objection and allow you an exception.

10

(Exception noted for defendant.)

JOHN W. SLOCUM,
Judge

[L. S.]

20

Q. Didn't Jimmy Caredo and Jerry Carlucci leave the automobile that night and leave you and Eugene Carlucci and Bassone there?

A. No, sir.

Q. Do you know a person known as alias James Ford?

A. No, sir.

Q. What time do you say you arrived at Long Branch?

A. We arrived at Long Branch about half-past ten.

Q. About half-past ten?

30

A. Yes, sir.

Q. What time did you leave New York?

A. We left New York about half-past seven.

Q. Who did you meet in New York before you left?

A. In New York we telephoned for Eugene Carlucci.

Q. Who telephoned for him?

A. I did.

Q. You did?

A. Yes, sir.

Q. Where did you get him?

40

Raffaello Criscuola—Cross

A. I got him on the corner of Kenmare and Mulberry in a cafe.

Q. You say you telephoned for him?

A. Yes, sir.

Q. Where did you telephone to?

A. 1955 Hamilton, Brooklyn.

Q. Where did you telephone from?

10 A. From New York.

Q. And what did you say to him?

A. Told him to come down.

Q. What for?

A. I was going out on a joy ride.

Q. Eugene Carlucci is the man you usually get on a joy ride, is he?

A. No, sir; a lot of cars go out joy riding.

Q. Well, he is the man you usually get when you go out joy riding around the country towns, isn't he?

20 A. No, sir.

Q. You frequently had Eugene Carlucci on your joy rides between midnight and daylight, haven't you?

A. Not all the time.

Q. Sometimes you got some other chauffeur, didn't you?

A. Yes, sir.

Q. And when you returned from these joy rides with the booty did you divide with Eugene Carlucci?

30 (Objected to.)

A. No, sir.

MR. LAWRENCE: That is objected to as improper.

THE COURT: I will let it stand now.

40 MR. LAWRENCE: I know, but it has not been developed that the joyride involved thieving at all.

Raffaello Criscuola—Cross

MR. FAY: This is cross-examination and the broadest latitude is allowed.

THE COURT: Well, it is in.

Q. Your name is known as Pish, isn't it?

A. Yes, sir.

Q. Where did you get that nickname?

10

A. Well, they gave it to me in New York.

Q. How many times have you been arrested for murder?

(Objected to. Objection sustained.)

JOHN W. SLOCUM,

Judge.

[L. S.]

20

(Exception noted for defendant.)

Q. When you got Eugene Carlucci that night who was with you then?

A. There was Ellis Zump, known as—his right name is Angelo Gupistoso. There was I, there was a couple friends around the cafe there.

Q. Who was that?

A. Eugene Carlucci there too at the time the car come down. 30

Q. Jerry Carlucci?

A. Eugene Carlucci.

Q. Was Jerry Carlucci there?

A. Jerry Carlucci was not there.

Q. Who were the friends?

A. There was a couple friends around there. I have got a lot of friends in New York.

Q. I am asking you who they were.

A. I can't remember them. I can't remember who 40

Raffaello Criscuola—Cross

they were. They were a lot of friends that I didn't know their names.

Q. On this occasion when you telephoned for the automobile to come to you there were two of your friends there and you can't remember their names?

A. There was plenty of friends. There was plenty of friends around there. There was a cafe, by the sidewalk, standing right there by the machine.

10

Q. Didn't you say there were two friends there?

A. There was two. I said there was plenty of friends there.

Q. You can't mention their names, can you?

A. Not as I know.

Q. Where did you go when you got to Long Branch?

A. We stopped from the cafe, we went towards Desbrosses Street.

20 BY THE COURT:

Q. No, he asked you when you got to Long Branch were did you go.

A. Well, we went down Broadway in front of the cigar store, 225 Broadway. From there we stopped there, we seen the cigar store was closed, so we went down to the restaurant.

BY MR. FAY:

30

Q. Where did you go then?

A. We ate something there.

Q. Who did you see at the restaurant?

A. I seen Jimmy Bassone.

Q. Anybody else did you see there?

A. A couple friends in there, his friends.

Q. A couple of his friends?

A. His friends.

40 Q. How many were in the party where you got in the restaurant?

Raffaello Criscuola—Cross

- A. There was three of us.
- Q. Did you see the officer there?
- A. There was an officer there; yes, sir.
- Q. Where did you go then?
- A. We went to Asbury Park.
- Q. What did you say to Bassone when you first saw him when you went into this restaurant?
- A. I didn't say nothing. The only thing he said to me, "Hello, how do you feel?" "Fine." 10
- Q. You didn't say anything?
- A. No, sir.
- Q. Well, why did you go down?
- A. I had always come down to Long Branch. He can say it himself.
- Q. Why did you go down on this night?
- A. I happened to be with my friends and I go down.
- Q. You say you telephoned for the automobile?
- A. Well, I telephoned. I was going joy riding, yes. 20
- But this Gupistoso says, "I want to go to Long Branch. I have got to see Jimmy personally."
- Q. Then you telephoned for the automobile and you came down because you always come down?
- A. I like to come down too.
- Q. What did you go down for?
- A. What did I go down for?
- Q. Yes.
- A. I come down the same as the other fellows, come down to see the place. I always, in the summer, I am always at Long Branch. 30
- Q. Then you didn't come down because Bassone had come up and asked you to come down and commit a burglary, did he?
- A. Yes, sir. He told Ellis Zump about it and I was standing there. He told me first about it.
- Q. He didn't see you that night, did he?
- A. Not that same night.
- Q. Why did you say you came down to see the place? 40

Raffaello Criscuola—Cross

A. I went down that same night, the 29th of October, I went right in Frank De Lissa's place. It is a restaurant there.

Q. I am asking you why, not asking you where you went. We know that; you have told us that. Tell us why you came down.

10 A. I always was together with Charlie. I have worked out with him twelve years. Any place he goes I go.

Q. If he goes to pull off a trick you go with him?

A. That don't go with me. If he does a trick I don't know what it is. But I know some things that he was going to do, what he said, that is all.

Q. All you said to Jimmy when you met him in there was "Hello"?

A. We was speaking.

Q. What was the conversation?

20 A. I can't remember.

Q. You can remember the other conversations very easily; why can't you remember that?

A. Well, I can't remember all that.

Q. You don't remember anything that took place there?

A. Well, there was said a couple words there and he says, "How do you like Long Branch?" I says, "All right."

30 Q. This is the first time you had ever been to Long Branch?

A. No, sir.

Q. Why would he ask you how you liked Long Branch when you came down at night?

A. Because I was there a couple times.

Q. Were you there all last summer?

A. I was.

Q. Were you looking the town over for places where you could commit burglaries?

A. No, sir.

40 Q. Zump did that, he was your companion and friend?

Raffaello Criscuola—Cross

A. No, sir; we never done anything like it.

Q. He was your companion?

A. He was my companion.

Q. He was with you?

A. He was with me but I never liked to anything wrong.

Q. You were just looking the town over to see whether you liked it or not; is that it?

10

A. I was stopping at Jimmy's house a couple days.

Q. And where else?

A. At Naples Hotel, Broadway.

Q. Had a car, didn't you?

A. Had a machine, this man.

Q. So after being down there all summer, when you got down there on this night about half-past ten the only thing Bassone asked you was how you liked the town?

A. No, he got Charlie on the side and he told him about it and Charlie said, "He has got a good job for me tonight."

20

Q. Did you hear him talk to Charlie?

A. Yes, sir.

Q. You were standing right there?

A. I heard a couple words.

Q. Why do you say they said a couple words?

A. They got by the front table in the window.

Q. Then you didn't have any more conversation with them at all?

30

A. They said, "Come on and take us to Asbury Park."

Q. I thought you had supper.

A. We did have supper.

Q. Who paid for the supper?

A. Zump.

Q. You didn't have a word to say while eating supper?

A. Yes, I was talking about things in New York, this and that.

40

Raffaello Criscuola—Cross

Q. That is as near as you can come to it, this and that, is it? Didn't you have a pawn ticket with you, Mr. Pish?

A. No pawn tickets. I didn't have no pawn ticket with me.

Q. You didn't?

A. No, sir.

10 Q. Didn't you have a pawn ticket for a diamond ring that was pawned?

A. The fellow that had a pawn ticket was Ellis Zump, Angelo Gupistoso. I seen him give that to Jimmy Bassone.

Q. You didn't have it, eh?

A. No, sir; I hadn't it.

Q. You said nothing about a pawn ticket to him?

A. No, sir; I didn't have no pawn ticket at all.

20 Q. Then all the time that you had dinner there you had nothing to say, eh?

A. Just talking about New York, "How is the cabarets in New York?" this and that.

Q. You are sure you talked about this and that all the time, are you?

A. He says, "I am going to New York if we get any money and have a good time."

Q. Is this some of this and that that you were telling us about?

30 A. Well, I can't remember a lot of things.

Q. How long did you stay there and have dinner?

A. About half an hour.

Q. Half an hour?

A. Yes.

Q. Where did you go then?

A. To Asbury Park.

Q. You are sure of that, are you?

A. Yes, sir.

Q. You can't be mistaken about that?

A. No, sir.

40 Q. You didn't go to Bassone's house?

Raffaello Criscuola—Cross

A. No, sir.

Q. You are positive about that, are you, that you didn't go to Bassone's house?

A. First we went to Long Branch and Asbury Park first.

Q. You didn't go to Bassone's house before you went to Asbury Park?

A. Before going to Asbury Park we didn't go over to Bassone's house. 10

Q. Do you know Mrs. Bassone?

A. Yes, sir.

Q. Did you ever see her?

A. Yes, sir.

(Mrs. Bassone requested to stand.)

Q. Is this Mrs. Bassone?

A. Yes, sir.

Q. Where did you go when you got to Asbury Park? 20

A. He showed me the way to go up there, but I know the street, it was Sunset Avenue. I don't know the other street. It is right on a corner.

Q. Who showed you the way?

A. Jimmy Bassone, showed the chauffeur the way.

Q. You never had been there before?

A. I never was there before. That is the first time I was there.

Q. What time did you get down there?

A. We got there about half-past eleven. 30

Q. Half-past eleven?

A. Yes, sir.

Q. Did you go in the house?

A. We went in the house.

Q. How long did you stay there?

A. Well, about a half an hour or something like that.

Q. Half an hour or something like that?

A. Well, about half an hour. I can't remember how long we stood there. About half an hour. I figured on about half an hour. 40

Raffaello Criscuola—Cross

Q. Where did you go then?

A. Well, we got out. This fellow Zump, before we got out of the house he looked at his watch and he looked at the time and he says, "It is about time to go away now," he says, "Boys, come on." So Jimmy Bassone says to the girls, "We might be back here tonight," but we didn't go back no more.

10 Q. Where did you go?

A. From there we go to Long Branch.

Q. Where did you go then?

A. We stopped on Second Avenue.

Q. How do you know you stopped on Second Avenue?

A. Because I know the streets. I was in Long Branch before.

Q. Oh, you are well acquainted with the streets?

A. I know a couple streets, well, just a few.

20 Q. You knew Long Branch well enough when you got there at half-past ten for him to ask you how you liked it, did you, because you knew the streets?

A. He says, "How do you like it?" I says, "I don't like it in Long Branch." I don't like to stay there at all, never did like it.

Q. Never liked to stay?

A. Never did like it; no, sir.

Q. What places on Second Avenue did you stop?

A. We stopped on the corner of Second Avenue.

30 This is the car track; the trolley cars run that way. That is what you call Second Avenue. We stopped right the corner of the next street. I don't know the street.

Q. I thought you said you know the streets there.

A. Well, a couple streets, I just know Second Avenue by looking at the sign.

Q. There was a sign on the corner of Second Avenue where you stopped? Do you say there was a sign on the corner of Second Avenue?

40 A. We was there and Jimmy Bassone says, "This is Second Avenue."

Raffaello Criscuola—Cross

Q. The only reason then you knew it is because Jimmy Bassone told you?

A. He says, "This is Second Avenue."

Q. Is that the only reason you knew it, because he said so?

A. Well, I know it is the only reason, I know it because he told me it was. It was dark.

Q. You said a little while ago you knew it was Second Avenue yourself. 10

A. I know—well, I mean I knew it was trolley cars and I says, "Is that Second Avenue?" He says, "That is Second Avenue now."

Q. You didn't know the name of the street you stopped on, did you?

A. No, sir.

Q. You didn't know whether it was down at West End or not?

A. It was down—down towards the river there, towards the ocean. 20

Q. Down towards the ocean, eh?

A. Yes, sir.

Q. You stopped on Second Avenue down towards the ocean?

A. Well, going towards the ocean. First comes Third Avenue and then comes Second Avenue going down that way.

Q. You don't know whether it was West End that you stopped at or not, do you? 30

A. I don't know West End at all.

Q. You don't know whether it was on Bath Avenue or not, do you?

A. No, sir.

Q. You don't know where Bath Avenue is, do you?

A. I don't know where Bath Avenue is.

Q. You don't know whether it was Pavilion Avenue or not, do you?

A. I don't know. 40

Raffaello Criscuola—Cross

Q. All you know is you stopped somewhere on Second Avenue?

A. Second Avenue, because I know his brother lives there.

Q. Whose brother lives there?

A. Jimmy Bassone's brother, Charlie Bassone.

Q. Was it near his brother's house that you stopped?

10 A. Well, it is Second Avenue. I know it was Second Avenue.

Q. I am asking you whether it was near his brother's house that you stopped.

A. No, sir; we stopped away off out further.

Q. Now when you stopped what happened?

A. When we stopped there with the machine?

Q. Yes.

A. Well, we stopped there.

Q. It that all that happened?

20 A. Well, we stopped there and then this Jimmy Bassone says, "Stop." We stopped the machine. Then this Jimmy Bassone and this Zump went out and Jimmy Bassone. Now I stepped out myself and stopped on the corner and he says, "Come on, I will show you the house."

Q. Who did he say that to, you?

A. Says that to Charlie. I stood right there and heard it.

Q. You stayed right there?

A. Yes, sir.

30 Q. Where did Jimmy Caredo go?

A. Who is Jimmy Caredo?

Q. Alias Jimmy Ford.

A. That fellow wasn't with us at all. I didn't even know any fellow by that name.

Q. What name do you know him by?

A. I don't know that fellow at all personally. I don't know him.

Q. You don't know him?

A. No, sir.

40 Q. Where did Jerry Carlucci go?

Raffaello Criscuolo—Direct

MR. LAWRENCE: I object. The witness has already said he was not there. I submit it is a trick question, asked to catch this man, and in view of his previous testimony I submit it is not proper.

MR. FAY: I object to the comment of counsel under cross-examination. It is the only legitimate way to conduct a cross-examination. You have a right to search the mind and conscience of the witness to the uttermost depths, and you have a right to pursue any reasonable method to do it; and for the Prosecutor to inject and call a question a trick question, when you are searching the conscience of a witness upon the stand that you believe you ought in justice to your client to go to the depth of it, I think it is wrong for the Prosecutor to make such a remark. 10

THE COURT: I will allow the question. 20

(Question repeated.)

A. Jerry Carlucci was not there at all.

MR. FAY: Now, Mr. Lawrence, I object to—

MR. LAWRENCE: Now one moment, Mr. Fay. I submit, if your Honor please, I understand the method of conducting a case quite as well as Mr. Fay. - 30

THE COURT: What is the matter with counsel now?

MR. LAWRENCE: Mr. Fay in some way is about to comment upon the idea that I was suggesting to this witness.

MR. FAY: No, that you showed a demonstration of approval. 40

Raffaello Criscuola—Cross

MR. LAWRENCE: I understand why he makes these remarks and I submit the Prosecutor ought to be protected as well as somebody else.

THE COURT: Yes, both of you gentlemen know just what the rules are, and if you both observe what you know you will have no trouble.

10

MR. LAWRENCE: I agree with the court.

Q. Now which way did Zump go?

A. Zump went up towards Morris Avenue.

Q. Oh, you know where Morris Avenue is, do you?

A. I know where Morris Avenue is because he had a place in Morris Avenue.

Q. He walked up then from where he stopped towards Morris Avenue, did he?

20

A. I know Morris Avenue, because he says, "This is the way," and walked up this way towards up Morris Avenue.

Q. Now he walked up towards Morris Avenue?

A. Yes, sir.

Q. How far up towards Morris Avenue did he go?

A. In the middle of the block, right on the corner of Second Avenue. He stopped on Second Avenue where the machine was right in the middle of the block. It is a big house.

30

Q. Now he walked up Second Avenue about a half a block, did he?

A. No, sir.

THE COURT: No, he didn't say that. Towards Morris Avenue.

MR. FAY: I will ask the stenographer to read that.

THE COURT: You asked him that question at
40 though he was talking about Second Avenue, and he was

Raffaello Criscuola—Cross

not talking about that. He got out at the corner of Second Avenue and walked up about the middle of the block.

MR. FAY: I think your Honor is mistaken.

(Testimony repeated.)

BY THE COURT:

10

Q. Let me understand. Did you tell the court that your machine stopped on the corner of the street or in the middle of the block?

A. On the corner of the street.

MR. FAY: He says in the middle of the block on Second Avenue.

THE COURT: It has been repeated two or three times. 20

MR. FAY: He has got it both ways. He has got to stand by it.

BY MR. FAY:

Q. Now do you know where Pavilion Avenue is?

A. No, sir.

Q. How far from where you stood did he walk towards Morris Avenue after you stopped? 30

A. Well, in the middle—about four or five houses from the corner, from Second Avenue, up towards the right.

Q. But how far did he walk along Second Avenue?

A. Well, around about half a block.

Q. About half a block along Second Avenue? That is what I thought. Now he walked along Second Avenue about a half a block and then he turned into Morris Avenue, did he? 40

Raffaello Criscuola—Cross

A. He didn't walk in Second Avenue half a block, he walked into Morris Avenue half a block.

Q. But you say you stopped in the middle of the block.

A. We stopped on the corner of Second Avenue and from Second Avenue we walked a half a block towards Morris Avenue, in Morris Avenue.

10 Q. Now what street did you stop on the corner of and Second Avenue?

A. All I know, we stopped on the corner of Second Avenue.

Q. And what street?

A. There was a tree there, right under a tree. And then Jimmy says, "Walk up this way, and to the right, towards your right, this is Morris Avenue."

20 Q. Then you stopped on the corner of the street below Morris Avenue and walked up to Morris Avenue and he says, "This is the corner of Morris Avenue"?

A. We stopped on the corner of Second Avenue and he says, "Walk, turn on your right, on the corner, and this is Morris Avenue."

Q. Do you know that there are a number of trees on the corner of Pavilion Avenue and Second Avenue, Long Branch?

A. Pavilion Avenue, I don't know where Pavilion Avenue is.

30 Q. I thought you were familiar with the streets.

THE COURT: He said several times in direct answer to that same question that he did not know Pavilion Avenue.

Q. There are trees along that street for quite a distance, are there not, for two or three blocks?

40 A. I don't know. I don't know about the street what you are speaking about. I know about Second Avenue and Morris Avenue.

Raffaello Criscuola—Cross

Q. Trees two or three blocks along that street, aren't there?

THE COURT: One minute. The court objects now when the witness has said at least six times that he is not familiar with Pavilion Avenue.

MR. FAY: I am asking about Second Avenue.

10

THE COURT: But you don't ask him about Second Avenue, that is the trouble.

Q. Do you not know that on Second Avenue for a distance of several blocks there are trees?

A. Well, there is a couple trees, not very much; one or two trees where the machine stopped. That is all I took notice of in the night.

Q. That is all you saw, one or two trees?

20

A. That is all I could see in the night. I didn't look any place at all. I see the sidewalk, it has got trees. I couldn't tell you the full amount on Morris Avenue.

Q. Then you didn't recognize the place you stopped?

A. I recognized where was was, on Second Avenue, corner of Morris Avenue.

Q. That is the only thing you know, you were on Morris Avenue?

A. Well, because he said it this night. I know it was there. I didn't know the streets.

30

Q. Now what was said when the car stopped?

A. When the car stopped he says—when we got off the car the machine was standing on the corner of Second and Morris Avenue. He says, "This is Morris Avenue. Walk up a couple houses and I will show you the house."

Q. Who did he say that to?

A. Charlie Zump.

Q. Where were you?

A. I was there present.

Q. Did you get out of the car?

40

Raffaello Criscuola—Cross

A. Yes, sir.

Q. What did you get out for?

A. I got out just to see where he was going.

Q. Why did you want to see where they were going?

A. I wanted to see what house he was talking about.

Q. Was this the house he talked about up in New York?

10 A. He didn't talk about it in New York. He talked about it when he was in Long Branch.

Q. You wanted to see about the house yourself something, did you?

A. I wanted to see where he was going, what house he was going.

Q. And where did they go?

A. Where did they go?

Q. Yes.

20 A. Charlie Zump and Jimmy walked towards the house and when they got to the house they stopped.

Q. The house?

A. Yes. There is a light in the house. The lot is about from here towards the door, the door coming to here.

Q. It was about that far from the corner?

A. Yes. And there is grass on the sidewalk, and it is a big house, a nice looking house.

MR. SEXTON: I submit he didn't say that, if your Honor please.

30

THE COURT: No, he didn't say that. Counsel must not say that the witness said street when he did not say street. He said the house was about that far back from the street.

THE WITNESS: From the sidewalk.

40 MR. FAY: I pray an exception to this whole procedure, because the witness is under cross-examination and I have a right to make any statement to him and it is for

Raffaello Criscuola—Cross

him to correct me. It is for the witness to correct me.

THE COURT: You are permitted to put any question that might be in your mind to the witness.

MR. FAY: As to what took place at this time, I can suggest anything and it is for him to say whether it is true or not.

10

THE COURT: You ask your questions and I will rule on them as they come up.

Q. How far did they go when they left you?

A. They went about four or five houses in Morris Avenue, they walked up about four or five houses.

Q. About four or five houses on Morris Avenue?

A. Yes, I could see them from the corner.

Q. And what did they do after they walked up four or five houses?

20

A. I seen this Zump leave Jimmy on the corner and went in.

Q. Went in?

A. Went in the lot there.

Q. He left him on the corner where?

A. Right in the middle of the block, right in front of the house, where the house was burglarized.

Q. You said on the corner.

A. I didn't say on the corner. I said he left him right on the corner in front of the house. This is the house, this is the lot where he walked in. (Illustrating.)

30

Q. Did you say you saw him on the corner?

A. I said I was looking from the corner.

Q. Do you say that now?

A. That is what I say.

Q. You saw Zump leave him and he go in and Jimmy come back?

A. Jimmy come back.

Q. Came back where?

40

Raffaello Criscuola—Cross

- A. Towards the machine.
- Q. What did he say when he got to you?
- A. When he got to me he said, "It is all right now."
- He said, "He is in."
- Q. He said, "It is all right, he is in"?
- A. Yes, sir.
- Q. What did you say?
- 10 A. What did I say?
- Q. Yes.
- A. I says, "What is he in?" He says, "In the house."
- Q. What else did you say?
- A. What else did I say?
- Q. Yes.
- A. I said, "What is up there?" He says, "There is a lot of money up there."
- Q. What did you say to him?
- A. I said, "What is up there?" He says, "There is a
- 20 lot of money and jewelry up there."
- Q. Is that all you said?
- A. Yes, sir.
- Q. Where did you go then?
- A. I stood right in the machine.
- Q. When did you get back in the machine?
- A. Right after Jimmy went back.
- Q. Where did Jimmy go?
- A. He went towards the same place he walked before.
- Q. He went back again to the same place?
- 30 A. Yes, sir.
- Q. He didn't say anything at all but just walked away from you and walked back again, did he?
- A. He said, "I am going back and see." He says, "I am going to watch out."
- Q. Then what happened?
- A. What happened?
- Q. Yes.
- A. About a half an hour after we seen Jimmy coming
- back.
- 40 Q. Half an hour afterwards?

Raffaello Criscuola—Cross

A. Yes.

Q. And all this time you were on the corner, were you?

A. Yes, sir; sitting in the machine.

Q. Who was sitting in the machine?

A. I and Eugene Carlucci.

Q. And after half an hour they came back; what did they say then?

A. Jimmy come back first. He says, "He is coming out."

Q. Yes.

A. And then Zump came back, Ellis Zump, come back and he says, "I done the job, the job was good."

Q. Yes.

A. So Jimmy says, "Did you get all the stuff?" He says, "No. That is all I got." He says, "Oh, for Lord's sake, what do you mean? Don't hand me for a sucker. You have got more." So he says, "I will take another chance of going back."

Q. Yes.

A. And he went back and saw something white in the house.

Q. Saw a ghost?

A. That is what he thought it was, but after he seen it was a bulldog, he rushed out of the same place he went in.

Q. You said he thought it was a ghost.

A. Yes, he thought it was a ghost. He says, "I thought it was a ghost in the house, something white;" and he come back and says, "It is a bulldog."

Q. He first came back and told you it was a ghost and then went back?

A. No, the same time. He says, "I thought it was a ghost;" and then he says, "It was a bulldog," after he fell over a rocking chair.

Q. He fell over a rocking chair?

A. He fell over a rocking chair, running out.

Q. Now what happened after that?

A. From there we left.

10

20

30

40

Raffaello Criscuola—Cross

- Q. Where did you go?
 A. We went towards Broadway.
 Q. Where did you go then?
 A. In the garage, near the headquarters there.
 Q. Yes.
 A. And we bought some gasoline.
 Q. Yes.
 A. Nine gallons of gasoline.
 Q. Yes.
 A. And two quarts of oil.
 Q. Didn't you say on your direct examination that you bought that gasoline before you went down to Asbury Park?
 A. No, sir.
 Q. Where did you go after you bought the gasoline?
 A. We went towards Jimmy's house, to Westwood Avenue.
- 20 Q. Where did you go then?
 A. Stopped right on Willow Avenue.
 Q. Yes.
 A. Right in front of the house.
 Q. Where did you go then?
 A. Went right in the house.
 Q. How long did you stay in the house?
 A. Stayed in the house about twenty-five or thirty minutes.
- 30 Q. Where did you go then?
 A. Where did we go then?
 Q. Yes, where did you go then?
 A. Well, when we sat in the house the chauffeur was outside and he says, "What are you doing?" but he didn't go in. He says, "All right. Well, you better go to New York." Well, from there we went straight to New York. "I will be back to New York in a few days. I want to see how things is."
- 40 Q. You said he complained that he didn't get enough, you were trying to do him?
 A. He seen the stuff.

Raffaello Criscuola—Cross

Q. Didn't you say that he said you were trying to do him?

A. He didn't say I was trying to do him. He said Charlie was trying to do him. I didn't have the jewelry.

Q. And if Jimmy was with him and saw him get this jewelry why would he say to him that he was trying to do him in the house?

A. Well, because this fellow was in there alone.

10

Q. What time did you leave there to go to New York?

A. Well, we left to go to New York about half-past one, we start from there to go to New York, from Long Branch.

Q. Left to go to New York about half-past one?

A. Started to go to New York about half-past one.

Q. And what time did you leave Long Branch, did you say, to go to Asbury Park?

A. About half-past eleven.

Q. Half-past eleven?

20

A. Half-past eleven; yes, sir.

Q. When you got to New York where did you go?

A. We got to New York in the morning about five or six o'clock in the morning, we got to New York.

Q. What did you do when you got to New York?

A. What did we do when we got to New York?

Q. Yes.

A. Charlie went home and I went home and then we got up in the afternoon.

Q. You say you helped to get the jewelry, you helped the Prosecutor to get the jewelry and went to New York with Mr. Walling? 30

A. We are talking about—you asked me where did I go after I went to New York.

Q. You answer this question now. I am talking about another.

A. I am telling you I went to bed.

Q. I am asking you now if you said you went with Mr. Walling to get this jewelry. You went with Mr. Walling, did you, to get this jewelry? 40

Raffaello Criscuola—Cross

A. Yes, went with Mr. Walling when I got the jewelry, I went to New York January 5th.

Q. January 5th?

A. Yes, sir.

Q. Where did you locate this jewelry?

A. I locate that around the neighborhood.

Q. Where?

10 A. Around the neighborhood where I knew where this Ellis Zump sold the stuff.

Q. Now I am asking you where you located it.

A. Where I located it?

Q. Yes.

A. I sent friends of mine to try to help me out to get me out of the case, and they located it for me.

Q. You said you located it.

20 A. I was in the house. I couldn't locate it. They was holding me there and keeping me prisoner. I couldn't go in the street and locate the stuff.

Q. You said you went with Officer Walling.

A. Yes, I stood in the house and sent for a couple of friends.

Q. In whose possession was it?

A. A friend of mine.

Q. A friend of yours?

A. Yes, sir.

Q. A friend of yours was able to locate it and you were able to get it; is that right?

30 A. A friend of mine went out and I says, "I want you to try to help me out." I wanted to find out where the stuff was.

Q. Didn't you tell him where it was?

A. I just mentioned, "Just go over," because I knowed Ellis Zump before he died, where he tried to bring the stuff, and I said, "See if he has got any stuff to help me out of the case." I didn't like to be in trouble.

Q. But you didn't tell them where you sold the other stuff, did you?

40 A. Where I sold the other stuff?

Raffaello Criscuola—Cross

Q. Where you sold the other stuff, at the baker shop in Mott Street, New York; you didn't tell them that?

A. I didn't sell no stuff at all. Ellis Zump went in a place and tried to sell the stuff.

Q. And you didn't tell him that you got \$200 for it, did you

A. Who?

Q. You.

10

A. He got \$190 for the stuff, Ellis Zump.

Q. You know the baker in Mulberry Street where you tried to sell stuff, don't you?

A. I know the baker; yes, sir.

Q. What is his name?

A. I don't know his name.

Q. Don't know his name?

A. I just know him. I don't know his name.

Q. And the rest of this jewelry is there now, isn't it?

A. No, sir; not as I know.

20

Q. You said you went with Officer Walling so as to get yourself out of this scrape, didn't you?

A. No, sir; I was arrested for this case and I know I was in Long Branch this night and I says, "I am going to get myself out of trouble and try and do the best for you."

Q. Did you make an affidavit?

A. No, sir. I made an affidavit to a man to get out of the trouble.

Q. Why did you say no, sir?

A. I didn't understand what you meant.

30

Q. You did make that affidavit?

A. I made that affidavit.

Q. Where did you make it?

A. Where did I make it?

Q. Answer the question.

A. I made it right here.

Q. Where?

A. Up at the office there.

Q. When?

A. I made that the same day they took me from New 40

Raffaello Criscuolo—Cross

York on extradition papers.

Q. Who was present when you made it?

A. Who was present? Captain Walling and the Assistant Prosecutor and that gentleman there—I don't know his name.

Q. Was Eugene Carlucci present?

A. He was not present.

10

MR. FAY: May I ask for the production of the affidavit, if the court please?

THE COURT: Why would you be entitled to that affidavit?

MR. FAY: To see whether the witness' story now corresponds with the one made in the affidavit.

20

THE COURT: No, I will not order him to produce the affidavit.

Q. Do you know of the day that you made that affidavit?

A. I made it. Yes, I know the date, January 5, 1915.

Q. When did you agree to make the affidavit?

A. The same day I got brought from New York, the 5th.

30

Q. You had pointed out where the jewelry was before that time, had you not?

A. No, sir.

Q. I thought you said that when you were arrested you sent for some friends and told them to locate the jewelry.

A. I says after I made the affidavit, I says, "I am willing to try and find out where this jewelry is." And we went to New York to try and locate some of the stuff and I happened to get this.

Q. When did you go to New York?

40

A. I went back to New York the next day, on the 6th.

Raffaello Criscuola—Cross

Q. Did you know that Eugene Carlucci had made the affidavit?

A. No, sir.

Q. You know Eugene Carlucci, do you?

A. Yes, sir.

Q. Is he here?

A. He is here.

Q. Where is he?

10

A. Sitting down there. (Indicating.)

Q. Did you have a talk with him?

A. No, sir.

Q. Haven't had any talk with him at any time?

A. No, sir.

Q. Never have seen him since the night you were down at Long Branch?

A. I only see him now in court.

Q. That is the first time you have seen him since that night?

20

A. That is the first time I have seen him, because I was locked up. I couldn't see anybody.

Q. I mean since the night of October 30th.

A. The 29th?

Q. The 29th.

A. The 29th.

Q. You didn't know that he had made an affidavit, did you?

A. No, not as I know.

Q. Didn't you know that he was arrested in New York?

30

A. I didn't know he was arrested in New York.

Q. Didn't you know that both he and his brother were arrested in New York?

A. I didn't know.

Q. You didn't know that?

A. No, sir.

Q. What benefit are you to derive from making the affidavit?

A. I made that on my own account.

40

Raffaello Criscuola—Cross

Q. What benefit are you to derive?

A. Because I have got an old lady to support and I don't like to be in trouble. I have been in a lot of trouble for nothing and I don't like to be in this trouble.

Q. And you expect to be able to support the old lady by reason of having made this affidavit and found this jewelry?

10 A. No, sir.

Q. Then why did you say you didn't want to be in this trouble, because you had an old lady to support?

A. I was arrested with these people just because I go to Long Branch. If I didn't go to Long Branch I wouldn't be in this trouble.

Q. Do you know Dr. Maoni?

A. Yes, sir.

Q. How long have you known him?

A. How long have I known him?

20 Q. Yes.

A. I knowed Dr. Maoni about five or six years.

Q. Where is his place?

A. 219 Grand Street.

Q. Didn't you rob his place?

(Objected to as immaterial. Objection sustained.)

(Exception noted for defendant.)

30

JOHN W. SLOCUM,
Judge.

[L. S.]

Q. Do you know where Will Jones' place is in Long Branch?

MR. SEXTON: I object, if it is on the same line as already asked.

40

THE COURT: He may answer the question.

Raffaello Criscuola—Cross

Q. Do you know where Will Jones' place is in Long Branch?

A. No, sir.

Q. Never been there?

A. No, sir; I have never been there.

Q. When you made this affidavit in January what was said to you if you would make the affidavit?

A. Nothing at all. There was said nothing at all. I sent myself to the Assistant Prosecutor to make the affidavit. 10

Q. And when you went to New York what was said?

A. There was nothing at all was said.

Q. Not a thing said?

A. No, sir.

Q. Why do you say you have got a mother to support and you expect to be able to support her?

A. I have got a mother to think of. My old mother is dying on account of my being in trouble, and so I like to take good care of her. I lost my father. That is the only friend I have got, as well as my mother. 20

Q. And you expect then to get out by reason of giving this testimony, so you can take care of your mother, do you?

A. I didn't expect nothing. I didn't know what to do. It is up to the jury and it is up to the Prosecutor, and it is up to the Judge. I don't know nothing.

Q. You don't know nothing?

A. I don't know nothing. 30

Q. Haven't you got an arrangement with the Prosecutor?

A. No, sir.

Q. Didn't you have some understanding with him?

A. No, sir; no understanding at all. This is the first time I have seen the Prosecutor.

Q. The Assistant Prosecutor?

A. I seen the Assistant Prosecutor because I sent for him.

Q. You had an understanding with him, didn't you? 40

Raffaello Criscuola—Cross

A. No, sir; no understanding at all.

Q. With McCormick or Walling?

A. No, sir; no understanding at all.

Q. Why did you say you expected to get out to support your mother?

10 A. I didn't say that. I said I am going to keep out of trouble to support my mother, because that is the only friend I have got. I lost my father and I don't want to be in any trouble.

Q. That is the reason you said you made the affidavit?

A. That is the reason I made it. It come from my heart and I had to make it. I suffered three months down in jail for nothing at all.

Q. Did you have to support your mother when you shot that pushcart ——

20 (Objected to.)

MR. SEXTON: Mr. Fay knows better.

MR. FAY: Let me finish the question.

30 MR. SEXTON: We already know the question, but it is immaterial and it is only for the purpose of injecting it into this case. I only object to keep him from repeating it.

THE COURT: I cannot stop counsel. If he asks things that are reprehensible he ought to be responsible for it.

MR. FAY: I understand my rights in cross-examination.

40 THE COURT: Yes, and others understand them just as well as you. You ask your question and I will rule on it

Raffaello Criscuola—Cross

Q. Mr. Criscuolo, did you shoot a pushcart man on Market and —

(Objected to as immaterial. Objection sustained.)

(Exception noted for defendant.)

JOHN W. SLOCUM, 10
Judge.

[L. S.]

THE COURT: And I criticise counsel severely for asking it after several similar irrelevant and immaterial questions have been asked and the court ordered the witness not to answer them.

MR. FAY: I pray an exception to the statement of the court. 20

THE COURT: You may have an exception.

(Exception noted for defendant.)

JOHN W. SLOCUM,
Judge.

[L. S.]

Q. Mr. Criscuolo, where is Zump now? 30

A. He is dead.

Q. How long has he been dead?

A. Since November 9th.

Q. And from November 9th up until January where were you?

A. Where was I?

Q. Yes.

A. I was up there at my friend's house when he died. I took him up to the house because the fellow was shot and he was taken to the morgue, 26th Street. From there he 40

Raffaello Criscuolo—Redirect

was brought up to the house and I stood up there all the while till five days, they took him away.

Q. Wasn't this material got in Zump's house?

A. That stuff, I don't know where they got it. I know my friends went out and got it. I couldn't tell you where they got it nor where they didn't get it.

10

REDIRECT EXAMINATION

BY MR. LAWRENCE:

Q. Criscuolo, did you say that you hadn't seen Carlucci?

A. Eugene Carlucci?

Q. After the 29th of October didn't you see him after that?

20

A. I seen him after the 29th of October.

Q. And how long after the 29th of October did you see him?

A. A week after.

Q. Now in a week after did you see him again?

A. Yes, sir.

Q. Where did you see him then?

A. I seen him in New York.

Q. Now after you were arrested did you see Carlucci again?

30

A. No, sir.

Q. Until today?

A. Until today I seen him.

Q. I show you a paper and ask you if you have ever seen that paper.

A. Yes, sir; I have seen this ticket.

Q. That is a pawn ticket, is it not?

A. Yes, sir.

MR. SEXTON: I object to his repeating what it is.
40 Let the witness say.

Raffaello Criscuolo—Redirect

THE COURT: Yes, the witness should testify to what the paper is. Strike it out.

Q. I show you a paper and ask what that it.

A. That is a pawn ticket.

Q. Have you seen that pawn ticket before?

A. Yes, sir.

Q. Where?

A. In Charlie's pocket. He handed this ticket to Jimmy in the restaurant on Broadway.

Q. To Jimmy Bassone?

A. Bassone.

Q. Did you hear a conversation between Jimmy Bassone and Zump about that ticket?

A. Yes. He said "Give me that ticket."

(Objected to.)

THE COURT: Answer that question. That can be done by yes or no.

Q. Did you hear a conversation between them?

A. Yes, sir.

Q. When was that conversation?

A. The 29th of October.

Q. That was the same night that you came to Long Branch?

A. Yes, sir.

Q. And what time of day was it?

A. It was at night.

Q. At night?

A. About half-past ten at night.

Q. And where was the conversation?

A. In Frank De Lissa's restaurant.

Q. At Long Branch?

A. Long Branch.

Q. What was the conversation?

A. The conversation was —

Raffaello Criscuolo—Redirect

MR. FAY: I object to the conversation.

THE COURT: Well, this has no bearing on the articles that have been alleged to have been stolen?

10 MR. LAWRENCE: No, I think not, your Honor, and yet in the cross-examination Mr. Fay brought out, he refers to that pawn ticket.

THE COURT: I do not recall it if he did.

MR. LAWRENCE: I want to show for the purpose of establishing the intimacy between the defendant and Zump and this witness, the circumstances involving this pawn ticket. Now it is true that I do not understand that this pawn ticket relates to any of these articles that were stolen.

20 THE COURT: Then I shall sustain the objection.

MR. LAWRENCE: May I just suggest to the court, Mr. Fay's question was this: "Didn't you give a pawn ticket to Bassone?" That was the question that Mr. Fay asked and the witness answered no. Now I want to establish the history of that precise pawn ticket, and it does seem to me that it is competent to show that.

30 THE COURT: He said he had no pawn ticket. He denied it.

MR. FAY: May I ask an omitted question?

THE COURT: Yes.

BY MR. FAY:

40 Q. Have you ever been convicted of crime?
A. No, sir.

Eugene Carlucci—Direct

EUGENE CARLUCCI, sworn for the State.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Where do you live, Eugene?

A. 232 Sackett Street, Brooklyn.

Q. Do you know Long Branch?

10

A. No, I don't know Long Branch.

Q. Have you ever been to Long Branch?

A. Yes, sir.

Q. When were you at Long Branch?

A. On October 29th.

Q. Do you know the defendant James Bassone?

A. Yes, sir.

Q. Do you know the witness just on the stand known as Pish?

A. Yes, sir.

20

Q. And did you know Zump?

A. Yes, sir.

Q. Do you know Bassone by any other name?

A. Well, Zump, whenever Zump says Bassone I didn't understand him is Long Branch Jimmy.

Q. Long Branch Jimmy?

A. Yes, that is the way Zump would describe him to me. Of course I didn't know him by Kid Hennessy.

MR. FAY: I object to what he said and move to strike it out. 30

BY THE COURT:

Q. You say you did know Bassone by the name of Long Branch Jimmy?

A. Yes, sir.

MR. FAY: Then he went on to say he didn't know him by any other name. 40

Eugene Carlucci—Direct

THE COURT: He said he didn't know him as Kid Hennessy because Zump didn't describe him that way.

A. No, I didn't know him if he said Kid Hennessy. If he said Long Branch Jimmy I would know who he meant.

BY MR. LAWRENCE:

10

Q. Is the person you know as Long Branch Jimmy the defendant?

A. Yes, sir.

Q. What is your business?

A. Hacking, hire automobiles.

Q. You are a chauffeur?

A. Yes, sir.

Q. And were on the 29th day of October last?

A. Yes, sir.

20

Q. You say you came to Long Branch on the 29th day of October last?

A. Yes, sir.

Q. Running your car?

A. Yes, sir.

Q. And who was in the car when you came down?

A. Zump and Pish.

Q. No one else?

A. No, sir; and myself.

Q. What time did you leave New York?

30

A. About seven o'clock.

Q. Where did you meet Zump and Pish in New York?

A. On Kenmare Street, in a cafe.

Q. Who sent you word to meet them there?

A. Pish, over the telephone.

Q. And where did he telephone to you?

A. He telephoned to my house, 1955 Hamilton; got a phone in the house.

Q. Now after you arrived in the cafe in Kenmare Street who informed you where you were to go?

40

A. Zump.

Eugene Carlucci—Direct

Q. And what hour did you leave New York City?
You said seven o'clock?

A. About seven o'clock.

Q. About what hour did you arrive in Long Branch?

A. A little after ten, I couldn't say the exact time.

Q. On arriving at Long Branch where did you first go?

A. We stopped near the cigar store on the left hand side going in Long Branch, and then we went to the restaurant. 10

Q. Did you know the cigar store?

A. No, sir; I didn't know it. That was the first time I ever was there.

Q. Who got out at the cigar store?

A. Zump. They looked in there and Jimmy wasn't in and they says, "Come on to the restaurant. He is in there." Some friends come out too.

Q. All right. Then you went from there to the restaurant? 20

A. Yes, sir.

Q. Then they went in the restaurant, did they?

A. Yes, sir.

Q. Did you go into the restaurant also?

A. Yes, sir.

Q. And did you have your supper there?

A. Yes, sir.

Q. Whom did you see in the restaurant?

A. Why, there was Long Branch Jimmy and a few of his friends, I didn't know who they were. They were several people in the restaurant, in fact. 30

Q. And Pish and Zump?

A. And Zump.

Q. And yourself?

A. Yes, sir.

Q. How long did the party remain in the restaurant; that is, your party, I mean?

A. Oh, I would say—well, right after the meal we went out; a little after the meal we went out. 40

Eugene Carlucci—Direct

Q. About how long a time was consumed in eating the meal?

A. Well, I should judge about an hour and a quarter, something like that.

Q. Now from the restaurant where did you go?

A. We went to Asbury.

10 Q. As you came out of the restaurant did you see anybody?

A. No.

Q. You went to Asbury Park?

A. Yes.

Q. Who suggested or directed you to drive your car to Asbury Park?

A. Long Branch Jimmy.

Q. Do you remember where you went to in Asbury Park?

20 A. Well, we went to a little house there after so many turns through the little parkways, and landed in a little house. We landed in this place, this house was right near the corner, and we went inside there.

Q. Did you go in too?

A. Yes, sir; I went in.

Q. Whom did you meet in there?

A. There was a few girls in there. I don't know, three or four girls.

Q. Were you introduced to the girls?

30 A. No, everybody walked in, you know. They were all welcome.

Q. Didn't need any introduction at that house?

A. Well, I didn't get any, my being a chauffeur. A chauffeur ain't supposed to be human.

Q. How long did they remain at the house, at that house?

A. Well, about thirty-five or forty minutes.

Q. Where did you go from that house?

A. We stopped at—we went to a street where there is car tracks and he said that was Second Avenue.

40 Q. Who said that?

Eugene Carlucci—Direct

A. Jimmy, Second Avenue; had to go to Second Avenue. And when we got to Second Avenue, some corner there, I don't know the name of that—I don't know the name of that, I don't know what corner it was, we stopped there.

Q. About what time did you get to that point, have you any idea?

A. Sometime between twelve and one, I couldn't say exact. 10

Q. Then what happened?

A. The three of them got out.

Q. By the three you mean Jimmy —

A. Pish, Zump and Long Branch Jimmy got out and they went towards this house. Pish stood on the corner.

Q. Who went towards the house?

A. Jimmy and Zump went towards the house.

Q. Now did you see how far up the street they went?

A. They went up—well, I could see a distance of about two hundred feet. 20

Q. Well, with reference to the number of houses on the street, about how many houses up the street did they go?

A. Well, probably about two houses, three houses, something like that.

Q. You are not clear about that?

A. No, sir.

Q. How long were they gone?

A. About a half hour.

Q. And Pish remained standing near the car or did he get back in the car? 30

A. On the corner, and after awhile, about ten minutes, he got in the car.

Q. Now as Bassone got out of the car how was he dressed?

A. He had—I think he had a raincoat on, with a cap.

Q. Did he say anything about his clothing as he got out of the car, as you remember?

A. No.

Q. If you don't remember you can say no. 40

Eugene Carlucci—Direct

A. No.

Q. After Bassone and Zump came back did you hear any conversation?

A. No, they were speaking low in the back.

Q. Did you hear any conversation on the sidewalk before they got into the car?

10 A. Well, I heard Zump say, "The house is down further." That is all I heard.

BY THE COURT:

Q. What was that?

A. I heard him say the house was down further, the house was down in that direction.

Q. Down further?

A. Down further.

20 BY MR. LAWRENCE:

Q. Did you hear any conversation between Bassone and Zump as they left to go up the street?

A. No.

Q. After they came back and got in the car did you hear any further conversation between Bassone and Zump?

A. Yes, Bassone seemed to be angry.

Q. What did he say?

30 A. He says—I don't exactly remember his words, but there was something on the line of "Trying to do me out," something like that. I don't remember his words at all.

Q. How long did your car stand on Second Avenue?

A. About a half hour.

Q. Did Zump go back a second time to this house?

A. Yes, sir.

Q. You say that?

A. Yes, sir.

Q. And what was it, if you know, that caused him to go back a second time?

40 A. I don't know what it was. There was a dispute

Eugene Carlucci—Direct

between Long Branch Jimmy and Zump and he went back.

Q. And you say you could not hear the conversation?

A. No, sir.

Q. How long was Zump gone the second time before he returned?

A. Oh, a few minutes, about five minutes; less than that.

Q. At the time that Zump and Bassone had the conversation where was Pish, standing near the car? 10

A. I don't remember whether he was in the back of the car or was on the corner. I don't exactly remember. I was a little worried, being my engine wasn't running proper, and I was thinking more of my engine.

Q. May I ask whether you were running your engine while it was standing there?

A. No, sir; stopped it. I took the boards out too. There was something the matter with the clutch. That is what had me worried. 20

Q. Well, after Zump came back the second time did your car then move off?

A. Yes, sir.

Q. And where did you go?

A. We drove down to a garage and got some gasoline.

Q. How much gasoline did you get?

A. Nine or ten gallons.

Q. Anything else?

A. And some oil; and we drove to Jimmy's house.

Q. Now who paid for the gasoline and the oil that was gotten there at the garage? 30

A. I don't know; somebody in the back paid, I don't know whether it was Jimmy or Zump.

Q. Did you pay for it?

A. No, sir; I didn't pay for it.

Q. Where was Jimmy sitting at that time?

A. In the rear of the car.

Q. Was any one with you on the front seat at all?

A. No, no one was with me in front.

Q. These three persons were in the back seat? 40

Eugene Carlucci—Direct

- A. In the back.
- Q. Now then, you say you went to Jimmy's house.
- A. Jimmy's house.
- Q. And how long did you remain there?
- A. Oh, about twenty minutes, twenty-five minutes.
- Q. Did you leave your car and go into the house?
- A. No, sir; they were gone about fifteen minutes
- 10 when I jumped in there and told them to hurry up. I wanted to get home. They said they would come right out and after that they came out.
- Q. Did Bassone come with them?
- A. No, Bassone didn't. Zump and Pish came out.
- Q. Then where did you go?
- A. Drove to New York.
- Q. About what time did you leave Bassone's house?
- A. Well, it might have been about two or three o'clock, around that time. Of course I landed —
- 20 Q. What time did you arrive in New York?
- A. Landed in New York about six or seven o'clock. I had a blowout on my way down. I think I landed in New York about six or seven o'clock, close to it if it wasn't; a very cold morning.
- Q. On the way to New York was there any conversation between Pish and Zump as to the purpose of the visit to Long Branch?
- A. No, sir.
- Q. Did you learn the object of Bassone and Zump
- 30 going up the street to the house you spoke of?
- A. No, sir.
- Q. Do you know why they went there?
- Q. Do you know of anything that happened that night?
- A. I know that something did happen now.
- Q. Now?
- A. Yes.
- Q. But you didn't know it at that time?
- A. No, sir.
- 40

Eugene Carlucci—Cross
CROSS EXAMINATION

BY MR. FAY:

- Q. You were arrested in New York, were you not?
A. No, sir.
Q. Didn't Officer Walling take you to the office of
Lawyer Martin? 10
A. Yes, sir.
Q. What did he take you there for?
A. I don't know; to consult my lawyer, I guess.
Q. Had a detective with him?
A. What is that?
Q. Was there a Brooklyn detective with him?
A. Yes, there was.
Q. And they took you there to consult your lawyer?
A. Well, I don't know what he took me there for. 20
He took me there to see if I knew anything about the case.
Q. Who else did they take with you?
A. Myself only.
Q. Your brother there?
A. No, sir.
Q. And you begged to be let off, didn't you, there?
A. No, sir.
Q. Did you tell them where to find Pish?
A. Yes, sir.
Q. And Pish was arrested on information which you
gave them? 30
A. I don't know, sir.
W. Was Mr. McCormick there, this gentleman sitting here, with glasses?
A. I don't remember. There were several men there.
I don't remember Mr. McCormick being there.
Q. Where did you first see Mr. McCormick?
A. I think it was in this office here.
Q. When was that?
A. Well, I can't exactly place the date. 40

Eugene Carlucci—Cross

Q. Did you do anything particular in the office there that day?

A. Why, sure; I told them I didn't know it was a call of that kind, I went out, and if there was anything wrong I would help them get the fellows and the stuff.

Q. Didn't you ask them to let your brother off?

A. No, sir.

10 Q. You had a talk with Jimmy in New York about it, didn't you?

A. No, sir.

Q. Never saw Jimmy in New York?

A. Yes, sir; I saw him talking to my brother.

Q. And didn't you have something to say to him too?

A. No, sir; I didn't.

Q. Wasn't he at your house?

A. He never was at my house.

Q. Was your sister present?

20 A. No, sir; I was going out of the garage on a call when he stepped in the garage and I seen him speak to my brother and I went along on my call.

Q. Didn't you have something to say to him?

A. No, sir.

Q. Did you make an affidavit in the Prosecutor's office?

A. Yes, sir.

Q. Did you have a copy of that paper?

A. Yes, sir.

30 Q. And did you give Mr. Bassone a copy of that affidavit?

A. No, sir.

Q. Was a copy of it given to him by your sister?

A. No, sir.

Q. What time did you say you arrived in Asbury Park?

A. Oh, I don't know what time I arrived in Asbury Park. I figured on about twelve o'clock, something of that kind, or close to it.

40 Q. What time did you go to New York?

Eugene Carlucci—Cross

- A. Back again, you mean?
- Q. Yes.
- A. Oh, I guess between two and three.
- Q. What time did you arrive in New York?
- A. About six or seven.
- Q. Who else was with you besides Pish, Zump and Jimmy Bassone?
- A. No one else but myself. 10
- Q. Wasn't James Caredo there?
- A. I don't know him.
- Q. Alias James Ford?
- A. I don't know him.
- Q. Weren't you with him over in Bayonne?
- A. No, sir.
- Q. Did you say anything about October 29th in the affidavit which you made in the Prosecutor's office?
- A. No, sir.
- Q. After you were taken to your lawyer's office in Brooklyn you were allowed to go, were you? 20
- A. Yes, sir.
- Q. And Pish was arrested in place of you?
- A. I don't know.
- Q. Don't you know as a matter of fact that Pish was arrested?
- A. No, sir; I don't know whether he was arrested right after it or not. I know he was arrested afterwards. They took me up to the lawyer's because that was the man I used to work for before. I drove private for him. 30
- Q. And he was arrested on the information which you gave?
- A. Yes, sir.
- Q. How much of this jewelry did you get?
- A. None of it. I didn't get paid for my job.
- Q. You went out frequently with Zump and ——
- A. Yes, my brother met those boys about two months previous to this and we used to get paid pretty regular, but finally we got to trusting them and then they owed us money and we had to keep on going out with them in order to 40

Eugene Carlucci—Cross

get what they owed us, and on this trip they promised they would pay me sure and I went along.

Q. And you had been going out frequently with them on midnight trips, had you?

A. No, sir; we used to go out to the cabarets in Broadway, New York, at night.

10 Q. Well, you got paid when you went back to New York on this trip?

A. No, sir; not on this trip I didn't.

Q. Did you ask them for any money when you got back?

A. Certainly.

Q. Who did you ask?

A. Zump. He seemed to be the money man.

Q. You say you didn't hear anything that was said in the car?

A. No, sir.

20 Q. And didn't hear any conversation between Pish and Bassone?

A. At what time?

Q. When they got to Long Branch on Second Avenue.

A. No, sir.

Q. Heard no conversation between Pish and Bassone?

A. Well, they were speaking together at times, and so was Zump speaking to Jimmy at times. But I didn't get any information what they were talking about.

30 Q. You were standing right there, weren't you?

A. No, sir.

Q. Weren't they right alongside the car?

A. No, sir.

Q. How far did they go after they left your car?

A. At what time?

Q. At night, on Second Avenue, the time I am speaking about.

A. On Second Avenue?

Q. Yes.

40 A. How far away?

Eugene Carlucci—Cross

- Q. Yes.
- A. I guess about two hundred feet.
- Q. Two hundred feet?
- A. Two hundred to three hundred feet. I couldn't say very well.
- Q. How many houses did they pass?
- A. Oh, I guess about three houses.
- Q. Passed three houses? 10
- A. About three. I ain't sure at that time.
- Q. Went in the fourth?
- A. I ain't sure about that. They went toward one frame house there. They went right towards the yard there.
- Q. Didn't you tell Bassone that you wanted to help your brother out?
- A. No, sir.
- Q. And you didn't want his name brought into it?
- A. No, sir. 20
- Q. And didn't you beg him not to bring his name in?
- A. No, sir.
- Q. And didn't your sister make a copy of the affidavit which you had made and give it to Bassone?
- A. No, sir.
- Q. Your sister-in-law?
- A. No, sir; not that I know of.
- Q. Jerry's wife?
- A. Not that I know of.
- Q. Now you say that you never traveled with James Caredo, alias James Ford, do you? 30
- A. No, sir.
- Q. You say you didn't?
- A. No, sir.
- Q. And you say that you don't know him?
- A. I don't know him, sir.
- Q. And never have met him?
- A. No, sir.
- Q. That he was not present on this night in question?
- A. He was not. 40

Lilian Stewart—Direct

Q. And you say that you never were over in Bayonne with him?

A. No, sir; I never was in Bayonne in my life.

10

LILIAN STEWART, sworn for the State.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Miss Stewart, where do you live?

A. 125 Sunset Avenue.

Q. New York City?

A. Wanamassa.

Q. And were you living there on the 29th of October last?

20

A. I was.

Q. Do you know James Bassone, the defendant?

A. I do.

Q. Do you know one Zump, a man by the name of Zump?

A. No, I do not.

Q. Otherwise known as Gupistoso?

A. No. I may know him if I see him.

Q. Do you know Raffaello Criscuolo, the man who was here on the stand?

30

A. Yes, I remember seeing him once.

Q. And do you know Eugene Carlucci, the witness just on the stand a moment ago?

A. I saw him once the same evening.

Q. Where did you see those men?

A. They came to my house to visit a friend of Mr. Bassone's, and they just stayed about twenty minutes and that was all.

Q. Can you fix the time that they came?

40 A. Well, I should judge it was around 10.30, somewhere around there.

Lilian Stewart—Cross

Q. And can you fix the month? Was it the 29th of October?

A. October; yes, it was around that date, I know.

MR. FAY: I object.

MR. FAY: She said it was in the month of October. That was her answer.

10

THE COURT: I will let it stand.

Q. Was there any other time that Criscuolo and Carlucci and Bassone and this other man that we call Zump were at your house?

A. No, sir.

Q. That was the only time that they ever had been there together?

A. Yes, sir.

20

Q. Then you say they remained twenty minutes?

A. Just about twenty minutes.

Q. Do you know how they came there?

A. In an automobile, yes.

Q. Do you know who was driving the car?

A. Yess, this fellow that was on the stand just now I believe was driving the car.

(Carlucci asked to stand up.)

30

A. Yes, sir.

Q. That is the man that was driving the car?

A. Yes, sir.

CROSS-EXAMINATION.

BY MR. FAY:

Q. You were home on the night yourself when they came, were you?

40

Pauline Milo—Direct

- A. Yes, sir.
 Q. You saw them all, did you?
 A. Yes, I did.
 Q. And how many were in the party?
 A. There was still another one besides these four.
 Q. Do you know who it was?
 A. No, I didn't know any of them at all.
 10 Q. And they didn't mention the name of the other party that was there, did they, that came with them?
 A. No, sir.
 Q. And the other party went away with them?
 A. Yes, sir.

BY MR. LAWRENCE:

- Q. There was a girl by the name of May there, wasn't there, that night?
 20 A. Yes, sir.
 Q. Did May go anywhere with any person that night during the time those men were there?
 A. No, I am not quite sure whether it was that night. There was some kind of a ball. I am not positive whether it was that night.
 Q. Now didn't this other person take May to that ball?
 A. Mr. Bassone took May to a ball around that date but I can't say positively it was that night.

30

PAULINE MILO, sworn for the State.

DIRECT EXAMINATION BY MR. LAWRENCE:

- Q. Miss Milo, you know Miss Stewart, do you?
 A. I do.
 Q. And were you at her home during the month of
 40 October, 1914?

Pauline Milo—Direct

A. Yes, I was.

Q. Do you recall the circumstance of Mr. Bassone coming to the house?

A. Yes.

Q. Who was with him?

A. Why, there was a man they called Zump.

Q. Called Pish?

A. Called Pish, yes, and the chauffeur and another young man. 10

Q. Another man?

A. A little fellow, he was.

BY THE COURT:

Q. Zump, Fish, the chauffeur and another man?

A. Yes, sir.

BY MR. LAWRENCE:

20

Q. Let me understand that —

(Objected to.)

MR. LAWRENCE: Oh, I certainly must be permitted to examine the witness.

Q. How many came with Bassone, two or three?

A. Three.

30

Q. And that is all, is it?

A. That was all.

Q. And the three consisted of the chauffeur, did it?

(Objected to.)

THE COURT: Let him tell.

Q. Well, I will ask why were they? Who were the three?

40

Pauline Milo—Cross. Charles Nudd—Direct

A. The chauffeur, Pish, Zump and this other little fellow I didn't know. I never saw his again.

Q. How long did they remain in the house?

A. Why, only fifteen or twenty minutes; twenty minutes at the most.

Q. Do you know how they came there?

A. They came in an automobile.

10

CROSS EXAMINATION

BY MR. FAY:

Q. What time did they come there?

A. Well, it was about half past ten, it wasn't very late.

20

Q. No later than half-past ten?

A. No, it was not.

Q. How long did they stay?

A. Only about twenty minutes at the most.

Q. And didn't they mention the name of this other man that was there, the little man?

A. No, I don't think they did.

Q. Did he have anything to say while he was there?

A. No, sir; nothing at all.

Q. Just came with them and went away with them?

30

A. Yes, sir.

CHARLES NUDD, sworn for the State.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Mr. Nudd, where do you live?

A. Long Branch.

40

Q. And what is your business?

Charles Nudd—Direct

A. Night washer at McFaddin's garage.

Q. Where is that located?

A. Broadway.

Q. Give us the number.

A. 251 and 252, I think it is.

Q. And were you so engaged during the month of October, 1914?

A. Yes, sir.

Q. Will you tell us what your duties were at the garage?

A. Washing cars.

Q. What else?

A. Waiting on people coming in nights.

Q. Selling gasoline?

A. Yes, sir.

Q. And oil?

A. Oil.

Q. Do you know the defendant, James Bassone?

A. By sight.

Q. Did you see him during the month of October at your garage?

A. I know he was there one night, the morning of October 30th, I believe.

Q. After you made the sale of gasoline or oil what was your practice? Did you record the sale?

A. Recorded it on a book.

Q. I show you a book and ask you what it is.

MR. FAY: Just allow me to see the book.

MR. LAWRENCE: Yes.

(Book examined by Mr. Fay.)

Q. I show you a book and ask you what it is.

A. Nine gallons of gas —

(Objected to.)

10

20

30

40

Charles Nudd—Direct

- Q. What is that book?
 A. That is the time book or the account book.
 Q. You say that you sold nine gallons of gas and
 two quarts of oil?
 A. Two quarts of oil.
 Q. To whom?
 A. To that car that came in.
 10 Q. Now do you know the date that you sold it?
 A. It was on the morning of the 30th of October.
 Q. And after making the sale what did you do with
 reference to your book?
 A. I took out the money and put it up on the book
 and charged it up.
 Q. Will you refer to the page in the book and show
 me where you made that entry?
 A. Page 17.
 Q. And line what on page 17?
 20 A. It is the fifty sale, \$1.17.
 Q. What is the line?
 A. Nine gallons of gas.
 Q. No, what line on the page?
 A. The fifth line.
 Q. What do you find entered there?
 A. Nine gallons of gas.

30 MR. FAY: I object to his reading anything he finds
 on the book.

THE COURT: I will permit him to read it and allow
 you an exception.

(Exception noted for defendant.)

JOHN W. SLOCUM,
 Judge.

40 [L. S.]

Charles Nudd—Direct

Q. Just read that entry.

A. 9 gallons of gas.

Q. How much?

A. \$1.17.

Q. Under that is what?

A. 2 quarts of oil, 30 cents.

Q. Do you know who paid for that gasoline and oil?

A. A fellow with a cap and a raincoat, black coat.

10

Q. Would you recognize the man if you saw him again?

A. I couldn't exactly say.

Q. Do you know James Bassone, the defendant?

A. I have known him since that time.

Q. Since that time?

A. Yes, sir.

Q. Now are you able to say whether it was James Bassone who paid you for that gasoline and oil that night?

A. I wouldn't swear to it.

20

Q. Excepting that you describe him as a man with a cap and a —

(Objected to.)

A. A cap and a raincoat.

THE COURT: He has already described him as a man with a cap and a raincoat.

30

Q. Was there anyone else in that car besides the man with the cap and the raincoat?

A. There was a chauffeur and two other men, four all told.

Q. Would you recognize any of the other men if you saw them again?

A. No, I don't know as I would.

Q. Where did the car stop?

A. Stopped outside and I let them in and they stopped right by the big door where the gas tank was.

40

Charles Nudd—Direct

Q. Who signaled you to go out and serve them?

(Objected to.)

A. They blew a horn.

Q. Some one blew a horn?

A. Yes.

10

MR. LAWRENCE: I offer the book.

MR. FAY: I object to it.

THE COURT: I will admit it and allow you an exception.

(Exception noted for defendant.)

20

JOHN W. SLOCUM,
Judge.

[L. S.]

Q. Can you describe the car?

A. I believe it was a black car.

Q. Do you know whether it was a native or foreign car?

A. Native car.

Q. I mean by that —

30

MR. FAY: I object to you stating what you mean.

Q. Do you know what I mean by a native or a foreign car? With reference to the license, as to the state where it was licensed, was it a New Jersey car or a car of some other state?

A. I couldn't say.

Q. That you couldn't say?

A. No.

40

Q. You do remember it was a black car?

Charles Nudd—Cross

MR. FAY: I object to what he does remember.

A. Yes.

Q. Do you recall whether the man who paid you was sitting in the car?

A. In the back of the car.

Q. Now I will ask you directly, do you know whether it was James Basone who was in the car?

10

MR. FAY: I object. He has answered no, he doesn't, and he has no right to ask it over again. It is the third time he has asked it.

THE COURT: That has been asked.

MR. LAWRENCE: Well, if your Honor thinks I should not ask it again I will withdraw the question.

Q. Are you able to say whether it was the man behind the table—

20

THE COURT: You have already asked it and he has answered it so there is no need of repetition.

CROSS EXAMINATION.

BY MR. FAY:

30

Q. What time did you go on that night, Mr. Nudd?

A. What time did I go on? I go on at eight o'clock at night and go off at eight the next morning.

Q. You have quite some customers come in during the night, do you?

A. Well, sometimes and sometimes not.

Q. What time did you say this customer came?

A. Between twelve and two; nearer around one o'clock, one one or half-past.

40

William D. Walling—Direct

Q. And after that you had a larger number of sales, after that time, before you went off in the morning, than you had before that at night, didn't you?

A. No, sir.

Q. Do you make the entries as persons come in?

A. I believe it was the only sale outside of a hack; I think there is one hack sale.

10 Q. On October 30?

A. On October 30th.

(Book shown witness.)

Q. The only sale was on October 30th?

A. Well, that is not the only sale but that is my only sale. Mine are only two sales; they are all after two o'clock, below mine.

20 Q. Was there any other item on that day, balance \$8.39?

A. There is a balance from the 29th. The book is balanced up when the boss leaves.

Q. What time?

A. Most any time he leaves, when he goes off.

Q. On the 29th?

A. On the 29th.

Q. And that balance is made on the afternoon of the 29th, is it?

30 A. No, on the night of the 29th, around twelve o'clock, that is balanced up.

WILLIAM D. WALLING, Sworn for the State.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. You are connected with the police force in Long Branch, are you not?

A. Yes, sir.

40 Q. And you had occasion to investigate this robbery of the Cubberly house, didn't you?

William D. Walling—Cross

A. Yes, sir.

Q. As the result of your investigation you came in contact with Pish and Zump, did you?

A. With Pish, no Zump. Zump was killed before I—

Q. Now that investigation led you to New York, did it not?

A. It did. 10

Q. And did you go to New York with Pish?

A. I went to New York with Pish on January 7th, 1915.

Q. And for what purpose?

A. For the purpose of recovering some jewelry that was taken from Mrs. Cubberly's house.

Q. And did you in fact recover the jewelry that has been produced here?

A. I did; yes, sir.

Q. Where was that jewelry recovered? 20

A. In Pish's house. He sent out for a friend of his and told him to go around and see some fellows in that neighborhood and get that stuff together. He brought in three or four different parties. Amongst them was a baker on Mulberry Street, and all we got was this, and they promised to send the rest of it in, but it has never come in yet.

Q. Who was with you in New York?

A. Sheriff Barkalow and the County Detective, McCormick. 30

CROSS EXAMINATION.

BY MR. FAY:

Q. Walling, how did you come to go to New York with Pish?

A. After I had arrested him in Brooklyn he had been one month in the Raymond Street jail when I extradited 40

William D. Walling—Cross

him. Coming over in the train he says, "I have done a month now for nothing." "Well," I said, "It is up to you. If you think you have done a month for nothing tell me what you have done and I will be the judge of that." He says, "I want to make an affidavit." I says, "You can't make any affidavit to me, you can make it to the Prosecutor when you get down there if you want to." So he did make
10 an affidavit before the Assistant Prosecutor, in the presence of the Clerk, Mr. Throckmorton, and myself and McCormick was there too, I think, if I am not mistaken.

Q. And you were present when that affidavit was made?

A. I was; yes, sir.

Q. What did it contain as near as you can recollect?

A. A full and complete confession of the Cubberly robbery and some other stuff.

Q. Where did you go when you went back to New
20 York?

A. In his company?

Q. Yes.

A. First went over to police headquarters and got two Italian detectives and then went over to his house.

Q. Who were the men that he sent out for to go and get the stuff?

A. I don't know who they were; friends of his in the neighborhood.

Q. He knew where to get it, did he?

A. He sent them out, and we were in the house about
30 two hours, I should judge, and probably a little bit longer, waiting for these parties to pick up this stuff.

Q. And they brought it in, did they?

A. They brought in the stuff that I brought back; yes, sir.

Q. Did you say the baker was there?

A. The baker was there, and admitted buying the stuff and said that he would get it and send it back, but he has never done it.

Q. And he admitted who he bought it from, did he?
40

William D. Walling—Cross

A. He didn't say.

Q. Was he asked?

A. He was asked, yes, but he wouldn't offer any information, any more than that he had bought the stuff and paid around \$500 for the jewelry, that is, the diamonds, and he said he had sold them to another party and he would try to get them back. The New York detective told him if he didn't get it back they would make a complaint against him for receiving stolen goods. 10

Q. And he was one party that Pish sent for, wasn't he?

A. No, Pish didn't send for him, he sent for two young fellows, I don't know who they were, and they went out and brought this fellow in. This fellow runs a bakeshop around in 106, I think, or something like that. I forget the number now.

Q. Where was Carlucci at that time?

A. I haven't any idea. I suppose he was over at his office where he works. 20

Q. You arrested him, didn't you?

A. No, sir.

Q. Didn't you take him as a detective to New York?

A. No, sir.

Q. To his employer's office?

A. No.

Q. Did you hear him testify to it?

A. I did. I was in his lawyer's office, or in Mr. Martin's office, who is a lawyer in the city of Brooklyn that employs him, and he was there, but I never took him there. 30

Q. With Carlucci?

A. I met him and his brother there and his father. I had had a conversation with his brother Jerry three days before I had seen Eugene. He was down in Southhampton, Long Island. They both worked for Mr. Martin, the three of them, the father and the two sons, and he agreed to have them. As soon as Carlucci told him the story I was satisfied that he was not implicated in the robbery.

Q. What was that? 40

William D. Walling—Cross

A. As soon as Carlucci told the story I was satisfied that he was not implicated in the robbery, any more than running the car down with the rest of them.

Q. I want what he said, not what you are satisfied. What did he say?

10 A. He said he ran the car down and went to Jimmy Bassone's barber shop and didn't find him there and went down to the restaurant and they found him there and went from there down to a place on Sunset Avenue, Asbury Park, stayed there for a short time and came back and stopped on Second Avenue and he seen Zump and Bassone go in this house and come out with the stuff. And I asked him if he would testify to that and he said yes; and I said, "That is good enough for me"; and on those grounds I ordered Bassone's arrest.

20 Q. When Carlucci and his brother went with you to the lawyer's office then you found the father there, did you?

A. They didn't go with me. I met them there in the morning.

Q. He says you took him there.

A. He probably misunderstood you. I don't know. I am telling you what happened.

Q. How did you happen to find them to go to their lawyer's office?

30 A. I had three days prior to seeing Eugene Carlucci went around to where Carlucci's house was, to the old gentlemen's house, and Jerry was there. The reason I came to do that, the Italian detective that I had with me in Brooklyn knew these boys and knew that they worked for Martin. This man Martin was a former Assistant District Attorney, and we put it up to him and he says, "I will produce the boys." So that is why we went there. We made that appointment and this boy had to be brought back from Southampton. It is about a hundred or more miles down the island.

40 Q. What do you know about the man that was over in Bayonne?

William D. Walling—Cross

A. I am not familiar with the Bayonne case, sir. I have got all I can do to attend to Long Branch.

Q. Well, I mean the man with Pish.

A. I don't know, sir.

(Objected to as immaterial.)

A. I haven't any idea about it at all. I can tell you this much, if you—— 10

THE COURT: You have answered the question.

A. I can give some information about the Bayonne case if you want it.

THE COURT: Only what you know of your own knowledge.

A. I know this of my own knowledge. 20

THE COURT: Well, let him ask you if he wants it. Don't volunteer it.

Q. Did you arrest Pish in Martin's office?

A. No. Pish was arrested out in Montague Street and Myrtle Avenue in an automobile in company with his brother and two other men.

Q. How did you come to go to his brother first, Jerry Carlucci first, without going to Eugene Carlucci? 30

A. I went for Eugene and Eugene was down in Southampton, I told you; and then I went to this——

Q. What did Jerry have to do with it?

A. Then we went to Mr. Martin's office ——

Q. What did Jerry have to do with it, that you went after him?

A. I went around. Jerry and Eugene and the old gentleman lives together. We went around to the house and we met Jerry there. We went around about 'nine 40

William D. Walling—Cross

o'clock, I should judge, between eight and nine o'clock, and the old man Carlucci telephoned down from his house to Southampton to have the boy come in. Martin sent a telegram down there. He was down on Mr. Martin's farm.

Q. You had a talk with Jerry before that time then, did you?

10 A. I did, yes, with Jerry, and also with the old man Carlucci.

Q. The old man Carlucci is here in court now, isn't he?

A. He is; yes, sir.

Q. And he is employed in Mr. Martin's office?

A. He works in Mr. Martin's office, so did the two boys.

Q. Are you sure the two boys work there?

20 A. Mr. Martin tells me so. That is the only way I have of knowing.

Q. Does Jerry Carlucci work there?

A. So Mr. Martin told me.

Q. You don't know otherwise?

A. I have no way of finding out any more than what he told me.

MR. LAWRENCE: We offer this account book of the garage.

30 MR. FAY: I think it was offered and admitted over my objection.

THE COURT: It has been offered and I overruled the objection.

MR. LAWRENCE: And the jewelry has already been offered and the box.

40 THE COURT: Yes.

Motion to Elect

MR. LAWRENCE: The State rests subject to its right to rebuttal.

STATE RESTS.

10

MR. FAY: I now ask the Court to direct the Prosecutor to elect—this is a statutory offence—under which count he will proceed.

THE COURT: The court refuses to make the direction.

MR. FAY: I ask the Prosecutor now to elect under which count he will proceed. 20

MR. LAWRENCE: I have no objection, if the court please, to striking out of this indictment the breaking and entering in the daytime. The rest we will elect to stand on, the rest of the counts in the indictment.

MR. FAY: Does the court deny it on the ground that this is not the proper time to make the application? 30

THE COURT: The court declines at this time because the Prosecutor is not compelled to elect until all the testimony is in, and I would not direct the Prosecutor to do something which is in his discretion.

MR. FAY: Would your Honor permit an argument upon that?

THE COURT: There is no need. I will give you the benefit of any exception you may want. 40

Motion to Elect

MR. FAY: I pray an exception.

(Exception noted for defendant.)

JOHN W. SLOCUM,

Judge.

10

[L. S.]

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MR. FAY: I would like to state the ground for striking it out on the testimony the State has already produced. There is no evidence in the case of any breaking and entering in the first count of the indictment; there is no evidence which would warrant at this time the allegation in the fourth count of the indictment of larceny. And there is no evidence that would warrant the allegation in the count for receiving stolen goods. And there is no evidence in the case that at any time any of these goods ever came into the possession of the defendant Bassone. There is no evidence to connect him in any way with receiving stolen goods. The testimony of all the witnesses so far is that this jewelry was in the possession of or under the control of Pish in New York City and that Bassone never had the possession of any part of it or ever received any. Consequently there can be no larceny either. This is an indictment for a felony, not a misdemeanor and there is no evidence that it was ever in his possession, because there is no taking of the goods by the defendant Bassone. The only ground upon which anything can be predicated would be the third count, as far as I can see, which is entering without breaking or entering; and I therefore say that the Prosecutor for those reasons should elect at this time.

40

THE COURT: I decline to make the order for him to elect and I have stated my reasons for it.

James Bassone—Direct

(Exception noted for defendant.)

JOHN W. SLOCUM,
Judge.

[L. S.]

DEFENDANT'S TESTIMONY.

10

JAMES BASSONE, Sworn for Defendant.

DIRECT EXAMINATION BY MR. FAY:

Q. Mr. Basone, where do you live?

A. Willow Avenue, Long Branch.

Q. How long have you lived there?

A. Eighteen years.

20

Q. Are you a married man?

A. Yes, sir.

Q. Is your wife in court?

A. Yes, sir.

Q. Were you acquainted with Eugene Carlucci?

A. Not as a fact, counsellor. I only knew him from Pish and Zump and this Jimmy, this boy that is arrested on being now——

(Objected to.)

30

THE COURT: It is much a mixed up answer, I don't know what the objection is. When you point to anybody I don't know who you are pointing to. Don't use any gestures. Just answer the questions.

(Question repeated.)

Q. Just answer the question.

A. From Zump and Pish.

40

James Bassone—Direct

- Q. Was he down in Long Branch last summer?
 A. Yes, sir.
 Q. How often?
 A. All summer, counsellor.
 Q. And who came down with him?
 A. There used to be five or six of them all together all the time; used to be Pish and Zump and this Jimmy and Jerry.
- 10 Q. Jerry who?
 A. Carlucci.
 Q. Jerry Carlucci?
 A. Yes.
 Q. And who is Jimmy?
 A. He used to be the job man.
 Q. Who was present on the night of October 29th?
 Who came down that night?
 A. Pish and Zump, Eugene, Jerry and this Jimmy.
- 20 Q. Where were you when you first saw them?
 A. Right in the cigar store.
 Q. Where did you go from the cigar store?
 A. They came in there, a surprise. I gave them a couple cigars and they said they was hungry, they had to get something to eat, so they stayed there for awhile, and they wanted to wash themselves, and there was no place there to wash and we stopped over to my brother's shop and they stopped there and washed up.
- 30 Q. Where did you go after you washed up?
 A. Down to Frank's restaurant.
 Q. What time did you get there?
 A. I should judge it was about ten or half past ten, counsellor.
 Q. And did you see Zump and Pish in New York and tell them you had a job to pull off down in Long Branch?
 A. Nothing of the kind.
 Q. When they came down what did they say they were down for?
- 40 A. To see a girl down there at the Ross-Fenton Farm.

James Bassone—Direct

Q. And when you left Frank's restaurant where did you go?

A. We turned right down, and that is the time we went in and got the oil. They said they didn't have enough oil. That is the time they went in and got the oil. We stayed in Frank's restaurant at least an hour and a half, playing in there and speaking and things like that, and it was close to twelve o'clock.

10

Q. Where did you go then?

A. We went right up to this place to get this oil.

Q. When you got the oil where did you go?

A. To this young girl's house, at the Ross-Fenton Farm.

Q. And how long did you stay?

A. Well, we had quite a little fun, playing and kidding and as a fact I couldn't say, counsellor, how long we did stay, and there was nobody else to stay.

Q. How many of you went in the house after you got down there?

20

A. Five.

Q. All go in the house, did you?

A. Well, there was one stood outside. Jerry stood outside.

Q. Where did you go after you left the house?

A. When we turned right around we went right through to Deal, you know, down that way, we came through Oakhurst, we went right down Ocean Avenue. After we went down Ocean Avenue, instead of turning down Morris Avenue we happened to turn down Pavilion Avenue; and while we was going down Pavilion Avenue they stopped right there. I says, "I want to get off at Morris Avenue." So this Pish over here says, "Wait a minute. Charlie has got something." I says, "What has he got to tell me?" He says, "We have got two or three places spotted over here from the summer and we have got to pull them off." I says, "My boy, I am making too much of a nice living in this town for me to be implicated in anything like that." He says, "Don't worry, we have got

30

40

James Bassone—Direct

the best jobber in the world. This boy is only about twenty or so, but he is the best you ever seen." I says, "Don't tell me that." I says, "If anybody would see me standing here anybody would know me like a fly cop." I says, "No question if anybody would see me they would know I would be mixed up in it." He says, "Don't worry,". Now at the same time Charlie was talking to me Pish has the young boy and he calls to him and says, "Get undressed." He got undressed, he put on some rubber slippers, like they wear around the house, and the minute he got outside he said, "Which one is Morris Avenue?" He says, "There is where I want to go." I says, "Come on, I will take you up there." He says, "Never mind, I will go by myself." I walked down that way a little ways and I came right back and I came home on Pavilion Avenue.

Q. Go ahead.

A. After I got home I knocked on the door and went to bed. I was abed about a couple hours—they told me they wasn't going to follow out this, they were going to go to New York. Finally I heard a knock on the door and they came there and I says, "What do you mean by coming in here like that?" I says, "You told me you were going to New York." He says, "That house where it was supposed to be so sure there was so much in it, there was nothing there." I says, "Don't tell me that." He said this Clarence In Long Branch showed them another house, Will Jones' and they had pulled that house, and that night they had asked me the way to this house when I was in a banquet with Judge Arrowsmith and Chief Walling down there at the Venice Hotel on Broadway. We were all in the banquet and they came back there in a car, and that was at least three or four weeks before that, when they pulled that job off, and Mr. Jones can tell you the same thing. They took a silver watch and they claimed they had had, said he had had \$700 in cash, they were supposed to take; and the old man, he only had a silver watch, and that is what they took, and I can prove that and I can prove I was right in the Venice restaurant and Judge Ar-

James Bassone—Direct

rowsmith was there and Chief Walling, and they stopped right in front there and they called me out, in an automobile.

THE COURT: Oh, we are talking about a different matter, a different time. Nobody is objecting. I don't know where it comes in this case.

Q. How long had you been in bed when they came to your house?

10

A. At least two hours.

Q. And you got home about what time?

A. Well, I should judge around two o'clock.

Q. Two o'clock?

A. Yes, sir.

BY MR. LAWRENCE:

Q. Two o'clock in the morning, you mean?

20

A. Yes, sir.

BY MR. FAY:

Q. Did you get any of this jewelry of the Cubberly robbery?

A. When they showed it to me I wouldn't even look at it. They showed me a lot of this little junk stuff I wouldn't give a nickel for it, a lot of little things like that, where they put on this you might say a masquerade suit, a lot of phony stuff; I wouldn't even look at it.

30

Q. What did they say?

A. They said, "That is all we got. Look what we got. That house, we thought we were going to get something. We got fooled two or three jobs in this town that way."

40

James Bassone—Cross

CROSS EXAMINATION.

BY MR. LAWRENCE:

Q. Why didn't you report this story to Captain Walling the next morning?

10

A. What would I want to do that for?

Q. Why didn't you want to do it as a good citizen?

A. Well, I was afraid of getting in trouble.

Q. So that you never reported this robbery to the police, did you?

A. No, sir.

Q. Neither did you report the Jones robbery?

A. No, sir.

Q. You knew these men, you had talked with them?

A. Yes, sir.

20

Q. And as a matter of fact Captain Walling asked you who did it and you wouldn't tell him?

A. No, sir.

Q. You say that Captain Walling didn't ask you who did this robbery?

A. He called me and I told him I was no stool pigeon and I wouldn't tell him.

Q. You wouldn't tell him?

A. No.

Q. Although you knew?

30

A. Well, I knew by the way they told me.

Q. Yes, certainly, you knew all about it?

A. Yes, sir.

Q. What is your business?

A. Well, I worked in Asbury Park with Mr. Cooper about four or five years and before that I worked with Mr. Ed Reed there, the contractor.

Q. What was your business the 29th of October last?

A. Cigar store on Broadway.

Q. Where, on Broadway?

40

A. Yes, sir.

James Bassone—Cross

Q. Now you were in the restaurant when these men came in?

A. I was not.

Q. Well, I ask you whether you were or not. Were you?

A. No, sir.

Q. Where were you?

A. Right in the cigar store. 10

Q. In your own cigar store?

A. Yes, sir.

Q. They met you there?

A. Yes, sir.

Q. Then you went from the cigar store, according to your story—

A. To the barber shop.

Q. To the restaurant?

A. To the barber shop.

Q. To the barber shop? 20

A. Yes, sir.

Q. You didn't go into the restaurant with them?

A. At last, after they washed their hands; yes, sir.

Q. Now, remember, I am talking about the 29th of October.

A. I know what you are talking about.

Q. I am not talking about a week later. You saw them a week later, didn't you?

A. Yes, sir.

Q. And that was the night of the Cooper robbery, 30 wasn't it?

(Objected to.)

THE COURT: He has a right to ask if he saw them a week later, but not the other designation.

MR. FAY: I ask the court to caution the Prosecutor not to do that again. 40

James Bassone—Cross

THE COURT: Well, he ought not and he knows he ought not.

Q. Now wasn't it a week later?

A. Yes, they came in Frank's restaurant when I was there.

10 Q. Wasn't there a week later when they came to your cigar store and then didn't you go down there afterwards?

A. I wasn't there when I was in Frank's restaurant, and they came afterwards.

Q. As a matter of fact, you saw them two hours on the 29th of October?

A. Yes, sir.

Q. And also saw them a week later?

A. I saw them several times.

Q. You knew these men?

20 A. Yes, sir.

Q. You knew them very well?

A. Yes, sir.

Q. They had been down in the summer, you say?

A. Yes, sir.

Q. They had been in your cigar store?

A. Yes, sir.

Q. And poolroom?

A. Yes, sir.

Q. Frequently?

30 A. Yes, sir.

Q. And you knew them well enough to know the names by which they went, such as Pish?

A. Yes, sir.

Q. And Zump?

A. Yes, sir.

Q. And you knew the language which they used, such as phoney stuff?

A. Yes, sir; it was phoney stuff.

40 Q. What does phoney stuff mean?

James Bassone—Cross

A. In only knew them as gunmen, supposed to be. A gunman don't pretend to be a crook.

Q. You knew them as gunmen?

A. Yes, sir.

Q. They were professional New York gunmen, weren't they?

A. Yes, sir.

Q. And they were friends of yours?

A. Yes, sir. 10

Q. Who paid for the gasoline and oil at the garage?

A. Jimmy, this boy that they haven't mentioned.

Q. That was another Jimmy, eh?

A. Yes, sir.

Q. What is his last name?

A. It is right there, counsellor. You have got it. I only know it because they claimed that he was the man that they claimed was a great jobber. He is in Bayonne. He was arrested for another robbery and they got him in Bayonne. 20

Q. Did you know him?

A. Yes, I knowed him by going down with Pish and Zump.

Q. You associated with him?

A. He came down and we ate and drank and everything.

Q. Came down and you ate and drank together?

A. Yes.

Q. As a matter of fact you did go over to the Ross-Fenton Farm? 30

A. Yes, sir.

Q. It is not really the Ross-Fenton Farm, it was a house that was occupied by Miss Stewart, wasn't it?

A. Yes, sir.

Q. And you had been there before?

A. Yes, sir.

Q. A number of times?

A. Yes, sir.

Q. You say you are married? 40

James Bassone—Cross

- A. Yes, sir.
- Q. And do you know May?
- A. Yes, sir.
- Q. May lived in the Stewart house, didn't she?
- A. Yes, sir.
- Q. And you were a friend of hers?
- A. Yes, sir.
- 10 Q. You had frequently seen her, hadn't you?
- A. Sir?
- Q. You had frequently seen May at the Stewart house?
- A. Yes, sir.
- Q. As a matter of fact you went to the Stewart house to see May, didn't you?
- A. Yes, sir.
- Q. Now you remained twenty minutes, possibly longer?
- 20 A. Yes, sir.
- Q. You had a good time there?
- A. Yes, sir.
- Q. Had a drink or two?
- A. No, we didn't have no drinks at all.
- Q. You had a good time there?
- A. A good time, I mean kidding and playing.
- Q. Kidding and playing with the girls?
- A. Well, passing jokes. We was going to go to a ball, but after we didn't go.
- 30 Q. Your wife wasn't along, was she?
- A. No, sir.
- Q. Now after you left the Stewart house you then went back to Long Branch?
- A. Yes, sir.
- Q. Now you say, Bassone, that you left the Stewart house about eleven o'clock, as I understand it.
- A. We didn't leave Long Branch till twelve going up there.
- Q. Oh, going up?
- 40 A. Yes.

James Bassone—Cross

Q. You are sure of that?

A. Positively.

Q. Now don't you confuse that with a week later.

MR. FAY: I object to the comment of counsel about a week later.

THE COURT: He has a right to ask on cross-examination if he doesn't confuse it with a different time.

10

MR. FAY: He has asked it before and I think I was criticised for doing it myself.

THE COURT: No, sir; you were not criticised for that at all. You know what you were criticised for.

Q. Wasn't it a week later that you left Long Branch about twelve o'clock?

20

A. No, it was at least three weeks later.

Q. You went out a week later, didn't you?

A. They came down steady all the time. They didn't come just that time.

Q. So it might have been a week later that they left Long Branch at twelve o'clock?

A. They came down several times.

Q. All right. Have it the way you want it. Now at what hour did you get back to Long Branch after leaving the Stewart house?

30

A. I should judge about twenty minutes to two or a quarter to two.

Q. And you actually got at your own home and got in bed about two o'clock?

A. Yes, sir.

Q. The two girls say that you were at their house, the Stewart house, about half-past ten.

A. Nobody else does. Nobody looked at any time. Only one man looked at the time and he was the dead man that they are trying to beat —

40

James Bassone—Cross

Q. Do you mean to say that you were visiting the Stewart house after midnight and stayed until one or two o'clock?

A. I judge about half-past one.

Q. Did you often do that?

A. Well, it is once. I have been there five or six times in the summer.

10 Q. And stayed till one or two o'clock in the morning?

A. Well, it is not a question of how long these other ones stayed. I know how long I stayed that night.

Q. Just answer the question.

MR. FAY: I object, because it is immaterial how long he stayed any other night.

MR. LAWRENCE: I want to test his memory what time he arrived there.

20

THE COURT: Let's keep to this particular night.

Q. How do you know you left the Stewart house at two o'clock?

A. Because the dead person said so, Charlie.

Q. Zump?

A. Yes, sir.

Q. How did he come to mention the time?

30 A. He is the one, you know, that come out of the door and pulled out the time and said what time it was.

Q. Did Zump say that it was time to go?

A. I asked him that, if it was time to go.

Q. Well, I mean did Zump say that he would have to go?

A. Zump didn't say nothing at all.

Q. Who was it started the crowd away from the Stewart house?

A. I did.

Q. You said it was time to go?

40

A. Yes, sir.

James Bassone—Cross

Q. Now in fact you did go up Second Avenue, the trolley street, didn't you, going back?

A. Yes, we came down Ocean Avenue and turned down Pavilion Avenue.

Q. And it is a fact that you walked up Morris Avenue?

A. Yes, sir.

Q. You said so on your direct examination.

10

A. I did not.

Q. Weren't you on Morris Avenue that night?

A. No, sir.

Q. You knew where Mrs. Cubberly lived, did you?

A. Certainly I did.

Q. You knew the Cubberlys too, didn't you?

A. I knew them by just looking at her, now, just the same.

Q. But you had known the Cubberlys as residents of Long Branch for some length of time?

20

A. Yes.

Q. And you knew Leon Cubberly?

A. Yes.

Q. And just as he said, he had talked with you several times?

A. Never talked only about his bulldog.

Q. About his bulldog?

A. I wanted to get a fight.

Q. You wanted him to loan his bulldog for a fight?

A. No, I asked him how good he was and if he would match him.

30

Q. Do you engage in a dogfight once in a while?

A. I have a little fun. A man that had a dog had a little fun once in a while.

Q. He had a good bull?

A. Yes.

Q. And you were ready to match that bulldog against your friend's bulldog, were you?

(Objected to.)

40

James Bassone—Cross

THE COURT: It is entirely immaterial.

Q. So that you knew the bulldog to this extent: you knew that on the night of the 29th of October that the Cubberlys had a bulldog?

A. Certainly, I knew it all the time.

Q. What kind of a bulldog was it?

10 A. Well, I couldn't describe him. I have seen him in the automobile every day downtown.

Q. What kind of a bulldog was it?

A. A big white bulldog.

Q. And you had known that, that they had that white bulldog, for some time before this robbery, a year or so before?

A. Yes, sir.

Q. Yes, a long while?

A. Yes, sir.

20 Q. Did you ever meet Zump and Pish in New York?

A. Yes, sir.

Q. Prior to this?

A. Yes, sir.

Q. A number of times?

A. Yes, sir.

Q. I show you a paper and ask you if you ever saw it before.

A. Yes.

Q. What is that paper?

30

(Objected to.)

A. It is a diamond ring.

THE COURT: He has a right to ask him if he has ever seen that paper before. He said yes.

Q. What is that paper?

40

(Objected to.)

James Bassone—Cross

A. A pawnshop ticket.

Q. That is, you say, for a diamond ring?

A. Yes.

Q. And there is a mark, 200; what does that indicate?

A. Two hundred dollars.

Q. What do you know about that pawn ticket?

(Objected to.)

10

THE COURT: The objection is sustained unless it has to do with some of these articles that are alleged to be stolen.

MR. LAWRENCE: Well, I don't suppose we will know unless the witness answers.

MR. FAY: You know it doesn't. You don't have to have the witness tell you.

20

Q. You got this pawn ticket from Zump, didn't you?

A. No, sir.

Q. Who did you get it from?

A. This Jimmy that is in Bayonne now. His wife can prove it herself, in New York.

Q. When you got to New York you met these boys, did you?

A. Yes, sir.

Q. Where did you meet them, Bassone?

30

A. Right on Grand Street.

Q. That is where they hang out?

A. That is where Zump lived at; yes, sir.

Q. You knew Zump as a professional gunman, you said?

A. Yes, sir.

Q. And also Pish?

A. Yes, sir.

Q. So that you rarely went to New York when you didn't see them in Grand Street? You saw them in Grand

40

James Bassone—Cross

Street every time you went to New York, you would see them, wouldn't you?

A. Yes, sir.

Q. You knew these men as Pish and Zump; what did they know you as?

A. I got acquainted with Zump as running a moving picture house in Mulberry Street.

10 Q. But what was their name for you? What was the name they called you?

A. Kid Hennessy.

Q. They also knew you as Long Branch Jimmy, didn't they?

A. Never, and nobody else knows it, only what they put. You can't find any other man that put it up.

Q. They knew you as Kid Hennessy?

A. Yes, sir.

Q. Aren't you an ex-prizefighter?

20 A. I was.

Q. You knew of these boys having in their possession diamonds and jewelry?

A. Yes, sir.

Q. And you sometimes loaned them money on these articles, didn't you?

A. Never.

Q. What would you loan them money on, their pawn tickets?

A. Nothing.

30 Q. They frequently did have such articles in their possession?

A. I don't know what they had.

Q. Well, I say you know of their having diamonds?

A. Yes, sir.

Q. You knew that they were stolen property?

A. No, sir.

Q. You had heard them tell where they got it?

A. How would I know it was stolen property?

Q. I ask you.

40 A. How would I know they were stolen?

James Bassone—Cross

Q. Not unless they told you, and I ask you that.

A. How could I prove that they were stolen?

Q. I ask you if they ever told you.

A. No, sir; they said they bought them.

Q. Didn't they have a liberal supply of diamonds?

A. Pish had a kind of cluster and a diamond locket and watch and chain and also Zump had a cluster pin, a big pin, as big as a five cent piece, always wore it, wore it for years, steady, a cluster of diamonds, a chain and locket, and Pish had the same.

10

Q. How long had you known those boys?

A. I had known them for about three years or more.

Q. Three years?

A. Yes, sir.

Q. Been an intimate acquaintance of theirs?

A. Yes, sir.

Q. Now, Bassone, how did these boys know there was such a place as the Stewart house?

20

A. At the Stewart house we happened to meet one of the girls from Long Branch when Pish was there to a ball. Pish was in Long Branch.

Q. As a matter of fact you first took the boys to the Stewart house, didn't you?

(Objected to.)

THE COURT: I don't see how that is competent. They were all there together. He testified to that.

30

MR. LAWRENCE: The only point is that he has already testified that they took him down. I want to show that he —

THE COURT: And the others have testified that he took them; so the testimony is in, as to which the jury believe.

Q. Did you at any time report to Captain Walling,

40

James Bassone—Redirect

of the Long Branch police, that these boys were in Long Branch? You never did, did you?

A. They came there for two years. He knew it all the while. He knew they was there every summer and they were hacking down to the beach.

Q. Did you ever report to Captain Walling that those boys were in Long Branch?

10 A. No, sir.

Q. Did you report the Jones robbery to Captain Walling?

A. No, sir.

Q. You knew who did it?

A. Yes, sir.

Q. And you never told Captain Walling?

A. No, sir.

Q. Did you report the Cooper robbery to Captain Walling?

20 A. No, sir.

Q. You knew who did it?

MR. FAY: I object. That is not in this case.

THE COURT: I don't think it is in the case at all. The other was brought in by some of the witnesses but the Cooper robbery has not been brought in the case at all, as I recall it.

30 Q. In fact, Mr. Bassone, you never reported any robbery reported in Long Branch, although you knew, to Captain Walling, did you?

A. No, sir; none of them.

REDIRECT EXAMINATION

BY MR. FAY:

40 Q. You said that you were afraid to report to Captain Walling about this. Why were you afraid?

James Bassone—Redirect

A. There was no question they would just as leave kill me as not, because each one of them has got two or three boys buried under the ground. We can prove it to them.

Q. You saw Jerry Carlucci in New York, did you?

A. Yes, sir.

Q. Did he give you a copy of the affidavit?

A. Yes, sir.

Q. That his brother had made?

A. Yes, Eugene gave it to me himself, that is the fact; and he says he didn't have no time, he had to go an errand and he couldn't give me a copy, and I took it to Jerry's wife—she is a stenographer—and took some writing and showed to Jerry's wife down there and she copied them for me and she said as long as I didn't get her husband into the case, "Because we have got children, kids, we will do whatever I can, everything, you know, to get Jimmy out."

MR. LAWRENCE: May I see that? (Examines paper.)

MR. LAWRENCE: We will consent that you use this affidavit and read it if you want to.

Q. When Eugene Carlucci gave you that affidavit what did he say?

A. He says —

MR. LAWRENCE: I object. He has not testified that she gave it to him.

A. Eugene gave it to me.

MR. LAWRENCE: Eugene Carlucci?

A. Yes. Jerry was right there in the garage, and he read it over and I says, "That is a nice thing to get me in trouble when I don't know anything about it, and you fel-

James Bassone—Recross

lows done it all, you fellows is out.” He says, “Jimmy, don’t worry. I am willing to sign another one and say that I am all wrong.” After that when I showed it to him and he signed it he said he would commit perjury.

BY MR. FAY:

- 10 Q. Did you see Pish after Carlucci made this affidavit?
 A. Yes, sir.
 Q. Did you have a talk with Pish?
 A. Yes, sir.
 Q. What did Pish say?
 A. He says, “I only wish I was out, I would kill him. I would show him if he would make an affidavit like that.”

20

RECROSS EXAMINATION

BY MR. LAWRENCE:

- Q. Did you read that affidavit?
 A. I don’t know how to read.
 Q. Can’t even read, eh?
 A. No, sir.
 Q. Did you have it read to you?
 30 A. Yes, sir.
 Q. Don’t you know that that affidavit relates to the Cooper robbery, not the Cubberly robbery?
 A. That is the only affidavit he had and he gave that to me to copy it.
 Q. Well, I ask you now don’t you know that that affidavit relates to the Cooper robbery and not the Cubberly robbery?
 A. I don’t know which one.
 Q. Don’t you know that the Cooper robbery occurred
 40 a week after the Cubberly robbery?

James Bassone—Recross

(Objected to.)

MR. LAWRENCE: He has already brought it out by examining on this affidavit.

MR. FAY: No, I asked him if he got that affidavit from Eugene Carlucci.

THE COURT: If you are going to offer it —

10

MR. FAY: I am not going to offer it.

MR. LAWRENCE: The insistence will be that this affidavit must be read. He has handed to this witness as a party in interest a paper which was copied from an affidavit said to have been made by Eugene Carlucci, for the purpose of showing that Carlucci committed perjury. The State is able to show and desires to show that Carlucci in that affidavit refers to an entirely different matter and that there is no perjury contained in it at all. It does not refer to this Cubberly robbery.

20

THE COURT: Well, you can prove that without doing it by this witness.

MR. FAY: The affidavit was not introduced for any such purpose at all; it was introduced for the purpose of showing that he got it from Carlucci and that he talked with Carlucci, in which conversation Carlucci asked him not to get his brother in it.

30

THE COURT: You may show that in a different form, but not at this time.

MR. LAWRENCE: May I ask whether you have ever been convicted of crime?

A. No, sir.

40

Mrs. Carrie Bassone—Direct

MRS. CARRIE BASSONE, sworn for defendant.

DIRECT EXAMINATION BY MR. FAY:

- Q. You are the wife of James Bassone?
 A. Yes.
- 10 Q. How long have you been married?
 A. Eight years.
 Q. Where do you live?
 A. 257 Willow Avenue, Long Branch.
 Q. On the morning of October 30th did your husband come home and go to bed?
 A. Yes, sir.
- Q. Did any persons come and get him up out of bed?
 A. Yes, sir.
- Q. What time?
 20 A. I couldn't exactly judge the time, because I hadn't a watch in the kitchen. I was in bed at that time. I got up and opened the door for him.
- Q. It was in the nighttime, was it?
 A. Yes, sir.
- Q. Do you know who they were?
 A. I heard Jim say, "Who is it?" and he said, "Open the door. It is me," and it was Pish's voice, and then I heard several other strange voices, I couldn't tell who they were.
- 30 Q. What did they say?
 A. They were talking very low, I couldn't hear what they were saying. And I heard Jim say, "Youse better go away, don't put me in any trouble, because I don't know anything about it. What did youse want to come down here for?" And several other times —
- Q. Never mind about any other time.

Mrs. Carrie Bassone—Cross

CROSS EXAMINATION

BY MR. LAWRENCE:

Q. Mrs. Bassone, how many times have you talked over your testimony with Mr. Fay?

A. I haven't talked it over with Mr. Fay any times.

Q. How many times have you talked it over with your husband? 10

A. No times.

Q. As a matter of fact you have gone over this story and told exactly what you were going to say, haven't you?

A. Yes, I know what I was going to say, what I heard.

Q. You told Mr. Fay what you had heard?

A. Yes, sir.

Q. How many times have you seen Mr. Fay?

A. I have seen him no times, just seen him in court. 20

Q. How many times has he been to see you? How many times have you been up to his office?

A. I have been up to his office for myself because the trial comes.

Q. How many times have you been to his office to talk over this case?

A. No times.

BY THE COURT:

Q. You told Mr. Fay what you were going to testify to, didn't you? 30

A. Yes, told him this morning in court.

Q. You and Jim have talked this matter over, haven't you?

A. No, sir.

Q. You knew that Jim was indicted?

A. Yes, sir.

Q. Indicted sometime ago?

A. Yes, I knew it in the paper. 40

Mrs. Carrie Bassone—Cross

Q. And you and Jim must have talked about the matter?

A. No, sir. We talked nothing.

Q. You say that is so?

A. Yes, that is so.

Q. How long have you known Pish?

A. I know him about three years, about all.

10 Q. You have known him just as long as your husband?

A. Yes, sir.

Q. You knew he was a New York gunman?

A. Yes, sir.

Q. And did you know Zump?

A. Yes, I know them both together.

Q. They used to come to the house to see Jim, did they?

A. Yes, sir.

20 Q. How often did they come to the house?

A. Well, they would come pretty often, but most of the time they would never find him home and they would go out and look for him and then they would come back and tell me that they couldn't find him and ask me where he was.

Q. How many times do you suppose they have been to your house in the last three years?

A. I couldn't exactly tell you how many times, but they have been there nearly all the time.

30

MR. FAY: I object to that as immaterial.

Q. Been so many times that you can't remember?

(Objected to.)

THE COURT: No, I will allow it.

40 Q. You say so many times you can't remember; is that right?

Mrs. Carrie Bassone—Cross

A. Yes, I told you that three times.

Q. Would they come there in an automobile?

A. Yes, sir.

Q. And occasionally Jim would go out with them, wouldn't he?

A. Not all the time.

Q. Not all the time, of course, I understand.

A. Jim told me he didn't want anything to do with them. 10

Q. Once in a while Jim would go out with the boys for a ride, wouldn't he?

A. Yes, I was there too.

Q. You didn't go to Miss Stewart's house, did you?

A. No.

(Objected to.)

Q. Did you know Jim went there? 20

(Objected to.)

THE COURT: It is immaterial.

Q. When was the last time the boys were at your house, October 29th?

A. I don't remember the date.

Q. They came there on October 29th, didn't they? 30

A. Yes, sir.

Q. Well, you heard Jim say that he didn't get in till two o'clock, didn't you?

A. Yes, Jim come there and I asked him where—they took him in an automobile.

Q. Were you awake when Jim came home?

A. No, he knocked at the door and woke me up.

Q. That is, Jim knocked at the door and waked you up?

A. Yes, then he came in and he said he was going out 40

Mrs. Carrie Bassone—Cross

again and I asked him where he was going and he said Asbury Park.

Q. Two o'clock in the morning?

A. No, it was earlier than that.

Q. You heard Jim state that he finally got home at two o'clock in the morning?

A. Oh, after they got home from Asbury Park?

10 Q. Yes.

A. He told me he was going to Asbury Park.

Q. You went to bed and he came back with the boys, didn't he?

A. No, he came back without the car, came alone.

Q. You are sure of that?

A. Yes, the boys took him home.

Q. Before he went to Asbury Park?

A. Before he went to Asbury Park the boys took him home.

20 Q. I don't just understand what you mean by that, before they went to Asbury Park the boys took him home.

A. Yes, he came home and told me that he was going to Asbury Park.

Q. Well, he did go to Asbury Park, didn't he?

A. After they took him home.

Q. Well, he did come home?

A. Yes.

Q. When did he finally get home and get to bed, about four o'clock?

30 A. I don't know. I didn't have my watch in my bedroom.

Q. Can't you tell us generally the time he got home? You are so perfectly sure about the other matter; why don't you remember when he got home and went to bed?

A. Well, it must have been about two o'clock.

Q. It might have been later than two, might it not?

A. No, about two o'clock.

Q. How do you know it was not later than two o'clock?

40 A. Because I asked him what time it was and he says,

Mrs. Carrie Bassone—Cross

"It is about two o'clock," he says, "because I left" ——

Q. Well, you just thought of that now, didn't you?

(Objected to.)

Q. Did Jim often stay out at night as late as this?

A. No, sir.

Q. He didn't often stay out as late as that?

10

A. Sometimes he would and sometimes he wouldn't.

Q. How often did he ever stay out until two o'clock in the morning?

A. I couldn't tell. I don't remember.

Q. More than once?

A. I don't know. I couldn't tell you.

Q. You are sure about that morning, are you?

A. Yes, and then after he come home to bed about—two hours after they come and knocked at the door and waked him up.

20

Q. You say two hours after he got in bed?

A. Well, it must have been about that time, because he was asleep. I waked him up.

Q. Wait a moment. This is interesting. You say that he got home about two o'clock and went to bed; is that right?

A. I am not positively sure two o'clock.

Q. Two hours afterwards they rapped on the door?

A. Well, about that time. I couldn't exactly tell it was two o'clock.

30

Q. Now that would be four o'clock in the morning that Pish came there; is that night?

A. Yes, about that time. I am not exactly sure.

Q. You want your testimony to stand that way, do you?

(Objected to.)

Q. Where is your home?

A. On Willow Avenue, Long Branch.

40

Mrs. Carrie Bassone—Cross. Thomas P. Fay—Direct

- Q. How far is that from Morris Avenue?
 A. One block.
 Q. Only one block away?
 A. Yes, sir.
 Q. You know where the Cubberlys live, do you?
 A. No, sir.
 Q. You don't know where they live?
 10 A. No, sir.
 Q. Do you know Mrs. Cubberly?
 A. I don't know her but once. I met her by a friend
 of mine but I didn't have no introduction to her or anything.

BY MR. FAY:

- Q. You live with your mother, do you not?
 A. Yes, my grandmother.
 Q. In the same house with you?
 20 A. My grandmother.

THOMAS P. FAY, sworn for defendant.

- THE WITNESS: Mrs. Bassone did not talk about
 her husband's case with me until she got in court today, and
 I wish to corroborate her testimony to that extent. No
 30 conversation with me had any time at my office or else-
 where concerning this case until in court today.

No Cross Examination

40

Both Sides Rest

Motion to Elect

MR. FAY: I ask the Prosecutor again to elect on which count of the indictment he will ask for a conviction.

MR. LAWRENCE: Well, I am not sure that I ought to elect at all, if your Honor please, but I will say to counsel on the other side that I shall insist upon summing up that this defendant under the present criminal procedure act is to be held under the breaking and entering at night count, which is the first count, as I understand it; also the third count, the fourth and the fifth counts. 10

MR. FAY: I ask the court now to direct the Prosecutor to elect on which count he will proceed. There has been no testimony whatsoever of receiving stolen goods and no testimony whatever of larceny.

THE COURT: I do not see anything in the case to sustain any finding of receiving stolen goods. 20

MR. LAWRENCE: I am willing to strike that count out.

MR. FAY: There is no evidence of any taking or larceny. This is a felony, it is not a misdemeanor. They are all parties or principals. They are either principals or accessories, where the crime is of the grade of felony.

THE COURT: I shall not direct anything further. The Prosecutor has elected three legs to stand on, which are the first, third and fourth counts in the indictment. 30

MR. FAY: I pray an exception to the Prosecutor's refusal to elect and the court's refusal to direct.

(Exception noted for defendant.)

JOHN W. SLOCUM,
Judge.

[L. S.]

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Charge of the Court

CHARGE OF THE COURT

Gentlemen of the Jury:

10 This is an indictment found and filed in this court by the grand jury of this county on December 19, 1914, charging James Bassone and Raffaello Criscuolo with having committed the crime of breaking and entering the home of Mrs. Cubberly, on Morris Avenue, Long Branch, New Jersey. A severance was granted, so that the case now before you is simply that of the State against James Bassone.

20 There are five independent counts in this indictment. The second count and the fifth count have been eliminated, leaving the first, third and fourth for your consideration. You must ascertain if under the evidence in the cause the defendant is guilty of any or all of these crimes. He may be proven guilty of one of them or all three of them, but it is for you gentlemen to sift the evidence and weigh it carefully under the directions which I shall presently give you, and then say under which, if any, of these counts he is guilty.

30 It appears that the home of Mrs. Cubberly was entered either late in the night of October 29th or early in the morning of October 30, 1914. You have heard the description given by Mrs. Cubberly of how they found the kitchen door open and the window raised. But, gentlemen, there is no question about the burglary, neither is there any question about the value of the jewels. The value is of no figure in the count in the indictment for breaking and entering.

40 The charge of burglary, as you know, consists in breaking into the dwelling house of another in the nighttime with intent to commit a felony therein, whether the felonious purpose is accomplished or not. In this case it was accomplished. The question is whether Bassone was guilty; whether he was one of the guilty parties who committed that burglary. Now you will recall the testimony of Raffaello Criscuolo. He is the witness commonly known as Pish. I am not much on those Italian names but I know that the

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jury will remember them better than I. He said he lived at 159 Mott Street, in New York City, and at the present time he is in jail here in Monmouth County; that he knew Eugene and Zump; that he was in Long Branch with them October 29th and October 30th. He says there were four in the party; Bassone was one of them; that they came from New York on October 29th and arrived at Long Branch at about half past ten; that they met Bassone in a restaurant; they had something to eat in this restaurant; that Bassone paid the bill and then he, Bassone, told the chauffeur, Eugene, to go to Asbury Park; that they did go to Asbury Park there is no question. Bassone admits that he went there with the others. He then says—this is referring now to Pish—that they returned to Long Branch and stopped on Second Avenue; that after they stopped Bassone, Zump and himself got out of the car; the car stopped not far from the corner and under a tree; that he waited on the corner and that Zump and Bassone went up the street where the Cubberly house was. He says that Bassone had been in New York previous to his coming to Long Branch and that Bassone talked with Zump about coming to Long Branch and committing certain crimes in his presence, and he related to you what he said he heard Bassone say to Zump. He says that he stood at the corner of this street, (its name was unknown to him,) Second Avenue, and after standing there a little while he got in the car with the chauffeur; that Zump and Bassone were away from the car about half an hour and then returned, and that Zump brought some of the jewelry with him; you heard him describe the jewelry. He then told about the ring being pawned for \$125, and that there was some altercation between Bassone and Zump as to the value of the property that he said was taken from the Cubberly house, and that Zump went back to the Cubberly house the second time; and that finally, when they left Second Avenue with this jewelry in the possession of Zump, that they proceeded direct—I won't say direct—proceeded to Bassone's home on Willow Avenue; that they were there about twenty min-

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10 utes or so and then left; Bassone remaining at home and the other three going back to New York City. Pish says that he got \$10 at that time and that later he got \$10 more and \$3 of Jimmy Bassone. Pish said that they had stopped at a garage on Broadway, Long Branch, and bought ten gallons of gasoline and two quarts of oil and then took Jimmy home. Now that is what Raffaello, known as Pish, says. Of course you will recall that James Bassone said that he was at the garage and that they bought the gas, or some of them bought it; but he says it was earlier in the evening and before they went to Asbury Park. Now there is a great difference in that testimony, and where there is a difference you gentlemen are the judges of the facts.

20 He also testified to some jewelry being pawned for \$190. All of those facts are just as fresh in your minds and may be fresher than they are in mine. You will recall that later, sometime in January, this witness testified that he went to New York City with the sheriff of this county, Captain Walling, and the County Detective, and through him they obtained some of the jewels or some jewelry, which was offered in evidence before you today.

30 Eugene, the chauffeur, swore that he was in Long Branch; that his car was hired, and that he drove them to Long Branch on the same date, October 29th, and returned about seven o'clock A. M., on October 30th; he swore that the only persons in the car were Zump, Pish, himself and a fellow known as Long Branch Jimmy. He recognizes the defendant, James Bassone, as the person known to him as Long Branch Jimmy. He says that on that night James Bassone was wearing a raincoat and cap; that Bassone was angry with Zump and made some remark about "trying to do him," but he did not recall the exact words. Lillian Stewart and Pauline Milo were two witnesses called to corroborate in part the story of the chauffeur and Pish as to their moves in Monmouth County. You will remember that it has been testified by them that after going to Long Branch they went to Asbury Park, and that it was after 40 half-past ten. These two girls testified that these men were

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there and Bassone admits that he was there with them. In that connection, however, I should say that the fact that the defendant was at the house near Asbury Park or that he went there to see a woman should not influence the jury or prejudice the jury to convict him of the burglary. Nor should the fact that his name was known as Kid Hennessy or that he spoke to Mr. Cubberly three years before about the dog weigh in evidence to convict him of the crime of burglary; because the crime is entirely independant of those circumstances. These circumstances are simply put before you gentlemen to corroborate the story of these two accomplices, and it is for you to say how far they corroborate if at all. 10

Then you heard the testimony of Nudd, who was the watchman and nightman at McFaddin's garage, which simply went to the time when the car was at the garage. The book has been offered in evidence and you will give it such consideration as you think proper. 20

Now the defendant, James Bassone, was sworn in his own behalf and he says that he knew these two accomplices and also two or three others; that they had been in Long Branch all the previous summer; and you heard him describe his meeting them in Long Branch; and whenever the story of this defendant and the story of the other witnesses conflict it is for you gentlemen to decide who is telling the truth. The effect of Bassone's testimony is a practical denial, an explicit denial, I should say, of his having any connection with the robbery of the Cubberly house. He says that one of them—I don't know which one of them—said that they were going "to pull off something" and he told them that he didn't want to go; he was too well known in Long Branch, and that he got out on Pavilion Avenue and walked home; while on the other hand, the other two accomplices say that they took him home in the automobile and they went in the house together, and after they got there they examined the stolen property. 30

Now, gentlemen, I am quite satisfied that the facts are firmly fixed in your mind, and I simply want to lay down 40

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the rules for you to observe in consideration of the testimony, and then you apply the facts under the rules as laid down by the court.

10 The degree of credit which ought to be given to the accomplice's testimony is a matter exclusively within the province of the jury, and great care should be used in weighing such testimony. You should take into consideration the motives of the accomplice in giving his testimony, whether it was with a view of protecting himself from arrest and indictment or in order to procure immunity for himself or some member of his family; and if in this case you find that the witness Eugene Carlucci was threatened with arrest, or if his brother was threatened with arrest and he gave his testimony for the purpose of saving himself or his brother, then I charge you that great caution should be exercised by the jury in weighing such testimony.

20 The defendant is a competent witness in his own behalf and you have no right to disregard or to discredit his testimony through mere caprice, or merely because he is a defendant; and you should treat him the same as any other witness and only the same test should be applied to his testimony as is applied to other witnesses in the case. The law makes him a competent witness and you are bound to consider his testimony and give it such weight as you believe it entitled to; and if in weighing his testimony, together with the other testimony in the case, it is sufficient to raise a reasonable doubt in your minds as to his guilt, you are
30 bound to acquit him.

There was one detective or police officer called in the case, and in regard to his testimony the court instructs you as follows: the jury may consider the witness' manner of testifying and his interest or want of interest in the case, and to say whether or not the testimony of the person acting as a detective or public officer is biased, whether the interest he serves has influenced him to such an extent that would affect his testimony.

40 The defendant, James Bassone, is presumed to be innocent and his guilt, whatever your conclusion from the facts

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may be, must be established in your mind and in your judgment beyond a reasonable doubt before you can convict; and if in the case there should arise a reasonable doubt as to the guilt or innocence of the defendant it is your duty to acquit him of the charge made in the indictment. The benefit of a reasonable doubt always goes to the defendant and is always applied in his favor. He is never presumed to be guilty, and your conclusion of guilt must be beyond a reasonable doubt in order for you to convict; and if your conclusion of guilt is not beyond a reasonable doubt it is your duty to acquit. 10

If you believe that the defendant was not actually present, aiding and abetting in the commission of the offence of burglary, and was only an accessory, either before or after the fact, it is your duty to acquit the defendant. In that connection I charge you and direct your attention to the law, which is that all persons are principals who are guilty of acting together in the commission of an offence. Where an offence is actually committed by one or more persons but others who are present and knowing the unlawful intent aid, by act or encourage by word or gestures those actually engaged in the commission of the unlawful act, such persons so aiding or encouraging are principals and to be punished as such. If you believe from the evidence that Bassone got out of that car on Second Avenue and pointed out the Cubberly house and that Zump entered it and perpetrated the robbery, under those circumstances, I charge you that the defendant Bassone is a principal and not an accessory. 20 30.

If two or more persons are engaged in the prosecution of a felony the acts of each in the prosecution of such felony are binding upon all and all are equally responsible for the acts of each in the prosecution of such felony.

The defendant may be convicted on the unsupported evidence of Pish; but owing to the fact that witnesses of his character are often subject to strong temptation to shift the burden of guilt, you should receive such evidence with caution unless you find it corroborated. Such corroboration 40

More presence at the scene of perpetration of the crime does not render a party a principal. To constitute him a party to the criminal act there must not only be presence upon the scene, but actual participation — an aiding and abetting in the crime committed.

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should relate to some portion of the testimony material to the issue, but need not extend to every material fact. It should tend to identify the defendant as the criminal or show his connection with the offence.

The burden of proof is on the State and the State must prove, as I have said before, that Bassone is guilty of the charge against him beyond a reasonable doubt.

10 As to the thirteenth and fourteenth requests of the defendant, I think I have covered them, but will state them so as to have same clearly before you.

The burden of proof is always upon the State, and it is incumbent upon the State to establish guilt; if you believe that the evidence in this case is equally balanced, then it is your duty to acquit the defendant.

20 It is the jury's duty to judge the weight and importance of the testimony. It is the duty of the court to instruct the jury on the law and if upon questions of facts the jury disagrees with the facts stated to them by the court, as to their accuracy; or the credibility of the witnesses of the weight of the evidence, the jury is the sole judge, and should disregard any opinion expressed by the court as to the recital of facts, the weight of the testimony or the credibility of witnesses.

30 Now, gentlemen, I submit the case to you under these directions and urge on you very serious consideration of all the evidence. I think the counsel on both sides have urged that upon you and I know you will give it your honest thought.

MR. FAY: The defendant excepts to the refusal of the court to charge request No. 1 and request No. 4 except as modified, and No. 10.

The defendant also prays a general exception to the whole charge.

JOHN W. SLOCUM,
Judge.

40 [L. S.]

Mere presence at the scene of perpetration of the crime does not render a party particeps criminis. To constitute him a party to the criminal act, there must not only be presence upon the scene, but actual participation — an aiding and abetting in the crime committed.

Opinion

NEW JERSEY SUPREME COURT

June Term, 1915

STATE OF NEW JERSEY

v.

JAMES BASSONE

Opinion.

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Submitted June Term, 1915.

1. Where the record shows that an indictment was found in the Oyer and fails to show an order sending it to the Sessions for trial, but shows that the defendant pleaded in the Sessions, an objection for the apparent irregularity is waived. 20

2. A motion to quash an indictment found in the Oyer is not a proper way to raise an objection to a trial in the Sessions.

3. The granting of a severance to a co-defendant and a refusal to postpone the trial are matters within the discretion of the trial judge.

4. In an indictment for burglary it is not error to refuse a demand of the defendant for a "bill of particulars" when what he really seeks is that the State elect the count on which it will ask a conviction. 30

5. It is proper for a prosecutor in opening a case against one defendant, after a separate trial has been granted a co-defendant, to state that he intends to try the co-defendant or make some disposition of the indictment as to him.

6. It is proper on an indictment for burglary, containing also a count for larceny, to prove that certain jewelry was stolen, even though it is not specified in the count for larceny. 40

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7. Questions asked of a witness on cross-examination as to his guilt of other crimes without asking if he had been convicted thereof, are properly excluded, *State v. Barker*, 68 N. J. L. 19 followed.

8. It is not error to charge that a defendant may be convicted on the unsupported evidence of an accomplice.

10 ERROR TO MONMOUTH SESSIONS.

Before the Chief Justice and Justices Swayze and Bergen.

Thomas P. Fay, for the Plaintiff in Error.

Charles F. Sexton, for the State.

The opinion of the Court was delivered by *Swayze, J.*

20 The objection that the Court of Quarter Sessions did not have jurisdiction to try the case because the indictment was found in the Oyer and no order was made sending it to the Sessions for trial is untenable in the face of our repeated decisions. *Winteres v. State*, 61 N. J. Law, 613; *State v. Polhemus*, 65 N. J. Law, 387; *State v. Goldman*, 65 N. J. Law, 394; *State v. Woods*, 66 N. J. Law, 458; *State v. Turner*, 72 N. J. Law, 404; *State v. Spina*, 75 N. J. Law, 270. The attempt to differentiate the case by the fact that the plea of not guilty was withdrawn and a motion to quash made on the ground that there was no order of the Oyer and Terminer sending the case to the Sessions for trial, is ineffectual for two reasons; (1) because under 30 the authorities cited the plea entered in the Sessions amounted to a waiver of the irregularity which could not afterwards be withdrawn; (2) because even if the waiver could have been withdrawn, there was no reason for quashing the indictment. Confessedly that had been properly found in Oyer: it might have to be tried there but could not be quashed even if the Prosecutor had erred in bringing it on for trial in the Sessions. The indictment could not be vitiated by action subsequent to its finding. The defendant's 40 motion was not the proper way to present the question.

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All he could do, if his view was correct, was to object to the trial in the Sessions, and he had waived this right, if he ever had it, by pleading in that Court.

The granting of a severance to the co-defendant, and the refusal to postpone the trial were matters entirely within the discretion of the trial judge. This discretion was not abused in this case.

There was no error in refusing to compel the State to furnish a "bill of particulars," as counsel calls it. What he seems to have wanted was that the State elect the count on which it would ask for a conviction. This was done in time. 10

It was proper for the prosecutor in opening to state that he intended to try the co-defendant under the indictment or to make a disposition of it. He was entitled to explain to the jury why both defendants were not on trial when both had been indicted.

It was proper to prove under the count for burglary what jewelry was stolen, whether it was specified in the count for larceny or not. The fact might be a very important circumstance tending to prove the crime of burglary. 20

The evidence as to defendant's knowledge that Mrs. Cubberly had a bull-dog was all stricken out.

The statement of Zump was entirely harmless, and if the refusal to strike it out was error, it was harmless error.

The exclusion of questions asked of Criscuole on his cross-examination as to his being guilty of other crimes without asking if he had been convicted thereof, might raise the interesting question so well discussed by Professor Wigmore, Sections 979 and following, were it not already settled adversely to the defendant by a decision of this Court. *State v. Barker*, 68 N. J. Law 19-27. We there said that we had no doubt that similar questions asked by the prosecutor of the pleas of the defendant were incompetent and should have been excluded, and we sustained the judgment only because the defendant's negative answer prevented any prejudice to his defense on the merits. A fortiori, similar questions asked, not of the defendant, but 30 40

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of a witness, are incompetent. In the face of *State v. Barker*, it is idle to cite cases from other jurisdictions. The ruling of the trial judge was correct.

There was no error in charging that the defendant might be convicted on the unsupported evidence of an accomplice. *State v. Hyer*, 39 N. J. Law, 598; *State v. Lieberman*, 80 N. J. Law, 506. The trial judge properly cautioned the jury as to the weight to be given to such evidence.

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The judgment is affirmed.

Filed Dec. 15, 1916.

WM. C. GEBHARDT,
Clerk.

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