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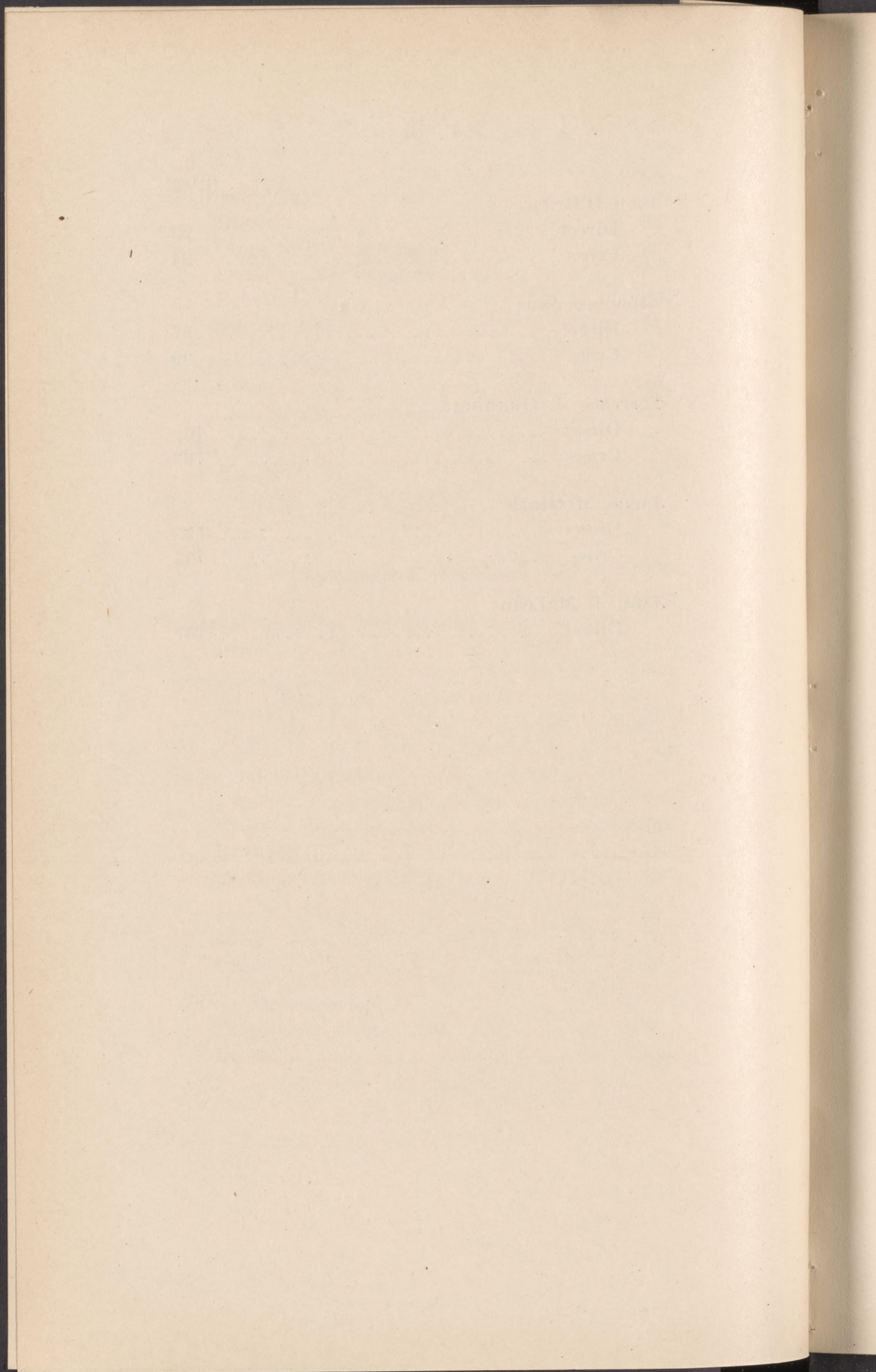
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Writ of Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

New Jersey—ss.:

The State of New Jersey, To Our Supreme Court,
GREETING:

10

Because in the record and proceedings and also in the giving of judgment in a certain plant which was in our said Supreme Court, before you, between the State of New Jersey, prosecutor, and defendant-in-error, and Harry Knowles, defendant and plaintiff-in-error, in error to the Essex County Quarter Sessions Court, manifest error hath intervened to the great damage of the said defendant as by its complaint we are informed; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice be done to the parties aforesaid, do command you that if judgment be thereupon given, then you distinctly and openly send, under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the Twenty-eighth day of January, 1925, together with this writ and the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error what of right and according to the law and custom of the State of New Jersey ought to be done.

20

30

WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the eighth day of January, nineteen hundred and twenty-six.

THOMAS I. MARTIN,
Clerk.

40

HAROLD SIMANDL,
Attorney.

Order Allowing Writ.

NEW JERSEY SUPREME COURT.

10

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

HARRY KNOWLES,
Plaintiff-in-Error.

20

The answer of the Justices of the Supreme Court of 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.

WM. S. GUMMERE,
C. J.

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Writ of Error.

New Jersey—ss.:

The State of New Jersey to Newton H. Porter, Judge of The Court of Quarter Sessions and Court of Oyer and Terminer of the County of Essex:

(Seal) Because in the record and process and also in giving of judgment upon a certain indictment against Harry Knowles, late of the City of Newark, in the said County of Essex:

10

“That Edward Nagel, John O’Brien, Clarence Goetz, Alphonso Janz, Raymond Buckingham, Harry Knowles and Walter Meisenbacker on the twenty-sixth day of April, in the year of our Lord one thousand nine hundred and twenty-four, at the City of East Orange in the county of Essex aforesaid did wilfully and maliciously break, destroy and damage certain goods and chattels, to wit: an omnibus, the property of the Public Service Transportation Company, a corporation, with intent to destroy and render useless the same 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

“That Edward Nagel, John O’Brien, Clarence Goetz, Alphonso Janz, Raymond Buckingham, Harry Knowles and Walter Meisenbacker, on the twenty-sixth day of April in the Year of our Lord one thousand nine hundred twenty-four at the City of East Orange in the County of Essex aforesaid did make and assault upon Dominick Savi, and then and there did beat, wound and ill-treat the said Dominick, contrary to the form of the statute in such case made and provided, and against the

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Writ of Error.

peace of this State, the government and dignity of the same.

10 Pro ut the said indictment, and the several counts therein, whereof, before, you, he the said Harry Knowles hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Harry Knowles, as it is said, manifest error hath intervened to the great damage of the said Harry Knowles, as from his complaint we have received 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, the said Harry Knowles, commands you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and 20 proceedings aforesaid, with all things touching the same to our Justices of our Supreme Court, to be held at Trenton, on the 18th day of November next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

30 Witness: William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, this 29th day of October A. D. One Thousand Nine hundred and twenty-four.

EDWARD J. KELLEHER,
Clerk.

RICHARD M. GLASSNER,
Attorney.

40 Presented in open Court this 29th day of October, 1924.

NEWTON H. PORTER,
Judge.

Return.

State of New Jersey,
County of Essex—ss.:

I, Newton H. Porter, Judge of the Court of Quarter Sessions in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the indictment, Judgment Record and Proceedings together with the entire record of the Proceedings, had at the trial and all things touching and concerning the same as by the within Writ to me directed, I am commanding.

10

In Witness Whereof, I have hereunto set my hand and the official seal of said Court at Newark, N. J., this second day of December, A. D. 1924.

20

NEWTON H. PORTER,
Judge of the Court of Quarter Sessions, Essex County, New Jersey.

(Seal)

Indictment.

State of New Jersey,
County of Essex—ss.:

30

Be it remembered, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the first Tuesday in April, in the year of our Lord one thousand nine hundred and twenty four, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath

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Indictment.

of Halsey T. Tichenor, John J. Keefe, William D. Jacobs, William E. Stern, Henry S. Leland, Louis Schneider, Sidney S. Schwartz, Alpheus L. Brown, Walter F. Edwards, Werner Runge, Fred T. Terlinde, Walter Nuffort, William S. Leonard, Theo. D. Faulks, Henry P. Browning, Christian Schwab, Henry Hornecker, William F. Yeomans, Elmer S. Carr, John P. Lux, Louis E. Scholder, J. Howard Phillippi, Herbert E. Ehlers, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

Essex County, to wit: The Grand Jurors of the State of New Jersey for the County of Essex, upon their oath present that Edward Nagel, John O'Brien, Clarence Goetz, Alphonso Janz, Raymond Buckingham, Harry Knowles and Walter Meisenbacker on the twenty-sixth day of April, in the year of our Lord one thousand nine hundred and twenty-four at the City of East Orange in the County of Essex aforesaid did wilfully and maliciously break, destroy and damage certain goods and chattels, to wit, an omnibus, the property of the Public Service Transportation Company, a corporation, with intent to destroy and render useless the same 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 Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Edward Nagel, John O'Brien, Clarence Goetz, Alphonso Janz, Raymond Buckingham, Harry Knowles and Walter Meisenbacker on the twenty-sixth day of April, in

Indictment.

the year of our Lord one thousand nine hundred and twenty-four, at the City of East Orange in the County of Essex aforesaid did make an assault upon Dominick Savi, and then and there did beat, wound and ill-treat the said Dominick, 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

J. O. BIGELOW,
Prosecutor of the Pleas.

On the tenth day of June, A. D. Nineteen Hundred and twenty-four, on which day the said Indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of Quarter Sessions, and to be delivered to the Clerk of the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was then and there made in the minutes of said Court at the same time pursuant to the statute in such case made and provided. 20 30

PLEA.

And afterwards, that is to say, on the tenth day of September, A. D. Nineteen Hundred and twenty-four, at a Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the Hon. Newton H. Porter, Presiding 40

Indictment.

10 Judge of the Court of Common Pleas, Harry Knowles (impleaded) in the custody of Harry B. O'Connell, Sheriff of the County of Essex aforesaid, and the said Harry Knowles being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, now he would acquit himself thereof, says that he is Not Guilty thereof, and therefore for good and evil he puts himself upon the country, &c. and John O. Bigelow, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like.

20 Therefore, let a jury thereupon come before the Court of Quarter Sessions to be holden at Newark, in and for the County of Essex, on the sixth day of October, A. D. Nineteen Hundred and twenty-four, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Harry Knowles to recognize upon their oath whether the said Harry Knowles is Guilty of the premises in the said indictment specified or Not Guilty because the said
30 John O. Bigelow, Esquire, Prosecutor &c. as the said Harry Knowles puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

JUDGMENT RECORD.

40 And afterwards, that is to say on the sixth day of October, Nineteen Hundred and twenty-four, at

Indictment.

the same Court of Quarter Sessions, holden before the Honorable Newton H. Porter, Judge of the Court of Common Pleas, the defendants, Edward Nagel, John O'Brien, Clarence Goetz, Walter Meisenbacker, Alphonse Janz, Ray Buckingham, and Harry Knowles, having heard the indictment read to them say that the State ought not be permitted to further prosecute this indictment against them as they each have been lawfully acquitted of said offence charged against them, and at the same Court the trial on Plea of *Autee foise* acquit was tried, before the Hon. Newton H. Porter, Judge as aforesaid, comes the said John O. Bigelow, who prosecutes as aforesaid, and the said Harry Knowles, impleaded, and the jury of whom mention is before made, and by Harry B. O'Connell, Sheriff of the County of Essex for this purpose empanelled and returned to wit: after the following challenges by the defendant 4, by consent 1, Frederick Baldwin, Arthur O. F. Dauber, Samuel B. Brewster, Denisson D. Byers, Carl W. Demarest, Jr., William Cherry, Arthur E. Conover, John Dear, Solomon C. Bennett, Charles H. Boughton, James Harry Noon, H. Edward Ayres, being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say their oath, by direction of the Court, the jury without leaving the box say they have agreed upon their verdict and by their foreman say, "we find that the defendants have not been lawfully acquitted of the offense charged against them in indictment

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Indictment.

No. 17, September Term, 1924, and so they say all.

10 And afterwards, that is to say, on the same day and at the same Court of Quarter Sessions the trial of Indictment was moved, whereupon, at the same Court, holden before the Honorable Newton H. Porter, Judge of the Court of Common Pleas, comes the said John O. Bigelow, who prosecutes as aforesaid, and the said Harry Knowles, impleaded, and the jury of whom mention is before made, by Harry B. O'Connell, Sheriff of the County of Essex, for this purpose empanelled and returned, after the following challenges were made to wit: by the defendant 2, by consent 1, Grover C. Greene, Frederick S. Bush, Rudolph Muenster, 20 Wilfred C. MacBrair, Clinton P. King, Wilfred Prior, William F. Dehnert, William S. Barker, Harold Sinclair, William A. Henry, Walter W. Hofman and Augustus Drucker, being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath "We find the 30 defendant, Harry Knowles, Guilty in manner and form as is set forth in the indictment, and so they say all.

SENTENCE.

Whereupon, all and singular, the premises being seen and by the Court nowhere fully understood, on this 20th day of October, A. D. Nineteen Hundred and twenty-four. The Court (Hon. Newton 40

Indictment.

H. Porter), order sentence suspended and that defendant be committed to the care of the Probation Officer of this County for a period of one year on condition that he pay said Probation Officer a sum equal to a fine of \$50 the first week of said period and the further sum of one dollar a week for the remaining said period of one year and be subject to the rules and regulations and further order of the court, and the defendant be in Mercy, etc. 10

Judgment signed Oct. 20, 1924.

NEWTON H. PORTER,
Judge. 20

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Testimony.

ESSEX COUNTY COURT OF QUARTER
SESSIONS,

Monday, October 6, 1924.

10 On Indictment No. 17 for Assault and Battery
and Malicious Mischief.

STATE

v.

HARRY KNOWLES, EDWARD NAGEL, JOHN O'BRIEN,
CLARENCE GOETZ, ALPHONSO JANS, RAYMOND
20 BUCKINGHAM and WALTER MEISENBACKER.

Before—HON. NEWTON H. PORTER, *Judge*, and a
Jury.

WILLIAM A. WACHENFELD, Second Assistant
Prosecutor of the Pleas, for the State.

RICHARD M. GLASSNER for Harry Knowles.

30 JOSEPH D'ALESSIO for Edward Nagel, John
O'Brien, Clarence Goetz, Raymond Bucking-
ham and Walter Meisenbacker.

Mr. Wachenfeld opens for the State.

The Court (Addressing the jury): Judge Mc-
Glennon of our Court of Errors and Appeals is a
character witness for one of the defendants, and
in order to accommodate the Judge's convenience
we are now going to have him testify out of order.

40

George Cornelius McGlennon—for Defts.—Direct.

It is the practice for the state to put in its case first, but we are going to depart from that custom in order to allow Judge McGlennon to put in his testimony.

GEORGE CORNELIUS MCGLENNON, sworn in behalf of defendants:

10

Direct examination by Mr. Glassner:

Q. Judge McGlennon, you are a Justice of the Court of Errors and Appeals? A. Yes, sir.

Q. Do you know the defendant Harry Knowles? A. Yes, sir.

Q. Do you know his reputation for truthfulness and peacefulness? A. Yes.

20

Q. What is it?

The Court: Just a moment. Where does the Judge live and where does Knowles live.

Q. Where do you live, Judge? A. I live at 420 North Second Street, East Newark.

Q. Do you know where Mr. Knowles lives? A. Mr. Knowles lives in Verona at the present time.

By the Court:

30

Q. Were you at any time neighbors, Judge? A. Yes. Mr. Knowles's family lived in East Newark as long as I can remember and this boy Harry, the brother of George and Stephen, I have known since he was born. In fact, I was a school teacher over there and this boy was a pupil of mine up until 1917.

Mr. Wachenfeld: The state admits his qualifications.

40

Dominick Savi—for State—Direct.

Q. Tell us what you have known of him. A. I have always considered Harry——

Mr. Wachenfeld: I think that the proper question should be put to the Judge.

10 *By Mr. Glassner:*

Q. What is his reputation for truthfulness, Judge? A. Well, from personal connection with the boy I have always found him to be exceedingly truthful.

Mr. Wachenfeld: I think the Judge is confined to that question about his reputation, either good or bad.

20 The Court: That is correct.

The Witness: His reputation, as I know him, is exceedingly good.

By the Court:

Q. As to truthfulness? A. Yes.

By Mr. Glassner:

30 Q. Do you know his reputation as to peaceableness? A. It is equally as good.

Mr. Wachenfeld: That is all, Judge.

DOMINICK SAVI, sworn in behalf of State.

Direct examination by Mr. Wachenfeld:

Q. Where do you reside? A. 31 Heckel Street.

Q. Newark? A. Silver Lake.

40

Dominick Sari—for State—Direct.

Q. Who were you working for in the month of April of this year? A. The General Transportation.

Q. The General Transportation Company? A. Yes.

Q. What did you do for them? A. Operating a bus. 10

Q. How long had you been working for them? A. How long? Seven months.

Q. What kind of a car, or bus, did you operate for them? What was the make of it? A. I operated any kind they would give me.

Q. You operated different cars for them? A. Yes.

Q. Were you on one route or different routes? A. Any route they would give me.

Q. What route were you on on the 26th day of April? A. I was on Ampere. 20

Q. Where did that route start and where did it end? A. I started from Bamberger's.

Q. Bamberger's in Newark? A. Yes.

Q. To where? A. To——(witness pauses).

Q. Do you know where your other terminal was?

By the Court:

Q. What city? A. East Orange. 30

By Mr. Wachenfeld:

Q. Dodd and Prospect, does that recall anything to you? A. Dodd and Prospect.

Q. Do you know that is so or do you only say so because I suggested it to you? A. I know it.

Q. Do you remember having some trouble on that day? A. Yes. 40

Dominick Savi—for State—Direct.

Q. Where did that take place? A. That took place in East Orange.

Q. Whereabouts? What street? A. I don't know the street, but I know where it was; near a shop there; they swung me into a pole.

10 Q. Do you know the name of that street? A. No, sir.

Q. But you know it was in East Orange? A. Yes, sir.

Q. You say they swung you into a pole? A. Yes.

Q. Who do you mean by "they"? A. The two Ford cars.

20 Q. How many people were in the two Ford cars? A. Three in the red Ford car and four in the touring Ford.

Q. There were two Ford cars? A. Yes.

Q. You call one of them the "red," is that right? A. Yes.

Mr. Glassner: I object. That is leading.

The Court: It is not very leading. He just said "red" and he said one of them was a touring car.

30 Q. What do you mean by "red," red paint? A. Paint.

Q. Did the red car have a top on it or what? A. No, sir; the red car did not have no top; it was a cut down car.

Q. How about the black Ford? A. It had a top on it.

Q. You mean it was a touring car with a top, was it? A. A touring car with a top.

Q. You say there were three in that car? A. Yes.

40

Dominick Savi—for State—Direct.

Q. And four in the other? A. Yes.

Q. Did you see any of those boys that were in either one of those two Ford cars until they drove, as you say, your car into the pole? A. No, sir; I didn't see them until they dashed me into the pole on that side, and they ripped up my hood, and took a hammer—— 10

Q. Wait a minute. Did you see those boys before? A. No, sir.

Q. Did you see them down at Bamberger's? A. No, sir.

Q. Had you been spoken to by other men down at Bamberger's? A. Yes, sir.

Mr. Glassner: I object.

The Court: Why?

Mr. Glassner: I do not see the relevancy of it. 20

Q. Where were these other men who spoke to you?

Mr. Glassner: I object. He does not say which men he refers to.

By the Court:

Q. Are you referring to the same men? A. No, sir. 30

By Mr. Wachenfeld:

Q. Where did they speak to you? A. Right at Bamberger's door, or stand, when I was just about to start, to pull out.

Q. Did anybody else speak to you from the time you left Bamberger's until you got up to the street in East Orange, the name of which you cannot remember? A. No, sir. 40

Dominick Savi—for State—Direct.

Q. What did these men tell you that spoke to you down at Bamberger's? A. They told me to pull off the line, and I had passengers in the car, then, and I said I couldn't. There was a young lady in the car, and when I got down to East Orange I had a few of them in. When I had a bunch of workmen, they wanted to get in early, and I was late and I said, "I will make it shorter; I will cut through that street." Then these two cars came and cut me off the pole.

Q. Were there any passengers in the bus? A. Yes.

Q. What were they? A. A lady and four men working in Smith's.

Q. Where is Smith's? A. Right along there.

20 *By the Court:*

Q. A young lady and four men? A. Yes.

By Mr. Wachenfeld:

Q. What happened? A. They lifted up my hood and started operating on the motor.

Q. How did you come to stop? A. They cut me off, and rather than hit the pole I said, "I better stop than have an accident."

30 Q. How many cars were there? A. The red car cut me off.

Q. How? A. Right off in front.

Q. When he cut you off what did that cause you to do? A. I stopped.

Q. After you stopped what happened? A. One fellow jumped off the black Ford and grabbed a hammer out of the black Ford, ripped up the hood and breaks two of my spark plugs, and then one took a hammer or brick, or one got a stone, and broke the other two.

40

Dominick Savi—for State—Direct.

Q. Where were you at the time they did this?

A. Right staying at the wheel.

Q. Did you do anything towards stopping them?

A. No, sir.

Q. What did you do? A. Nothing at all.

Q. When they got through breaking up your engine, as you describe, what did they do next? Did they do anything else? A. I got on the step and one guy pulled me off the step. I took a piece of paper to make a statement of my clock, and they pulled me off, and one guy grabbed me and said, "Give me that paper." I said, "What for?" He grabbed me and sloughed me and I fell, and one guy kicked me below my belt.

10

Q. After you had fallen, did he? A. When I was on the ground.

Q. Were you struck any more by the man? Were you sloughed, as you call it, or kicked, when you were on the ground any more? A. No, just that.

20

Q. Do you see any of those boys that were there that day here? A. Yes.

Q. Where are they? A. Sitting over there (indicating).

Q. How many of them? A. I know there are three.

30

Mr. Glassner: I object. If he can identify them I have no objection.

The Court: I think it is a proper question.

By the Court:

Q. How many do you recognize? A. I recognize four right there.

40

Dominick Savi—for State—Direct.

Q. Which four are they? A. The first one there (indicating).

Q. You had better go down and pick out the men you say. A. This one (indicating).

10 Mr. Wachenfeld: Will you stand up, please, and give us your name.

Voice: Edward Nagel.

Mr. Wachenfeld: The second man is who?

Mr. D'Alessio: Raymond Buckingham.

Mr. Wachenfeld: Who is the third one?

Mr. D'Alessio: Alphonso Jans.

By Mr. Wachenfeld:

20 Q. Do you recognize any of those men? A. Yes, sir.

Q. What is his name (indicating)? A. John O'Brien.

Q. Do you recognize anybody else up there? A. Yes, sir; there are two more.

Q. Which two? A. These two here (indicating).

30 Mr. Wachenfeld: Give us their names, please.

Voice: Walter Meisenbacker and Clarence Goetz.

Q. Is that all you recognize? A. Yes.

Q. Do you know which of these men you have just identified is the boy there that took the hammer or stone and broke the engine? A. Yes, sir.

Q. Which one is it? A. That is the fifth one down.

Dominick Savi—for State—Direct.

Mr. Wachenfeld: Stand up, please, the fifth one down.

(A man in the audience arises.)

Q. Is that the man? A. Yes.

Mr. Wachenfeld: Your name is O'Brien? 10

Voice: Yes, sir.

Q. Do you recognize the man that struck you, or as the expression was, who sloughed you? A. Yes, sir.

Q. Which one? A. The first one.

Mr. Wachenfeld: What is your name?

Voice: Nagel.

Q. Do you know who it was that kicked you when you were down? A. No, sir. 20

Q. You didn't see him? A. No, sir; they were all in a clique, all in one bunch.

Q. How near were they to you in one bunch? A. Right on top of me.

Q. At the time you were pulled from the steps of your bus where were you pulled to? A. Right off the step, right off, not even a foot away from the car. 30

Q. What were you, out in the roadway, or on the sidewalk, or what? A. That would be the sidewalk if there was a sidewalk, but there wasn't no sidewalk there.

Q. What did they say? A. They didn't say anything to me. They wanted the slip of paper off me.

Q. What did they say with reference to the paper? A. They said, "If you don't give me the paper we will hit you." 40

Dominick Savi—for State—Direct.

Q. Who said that, one or more than one? A. All of them.

Q. What did you say to them? A. "You can bet all your wages——"

10 Q. Did they say anything to you? A. No, sir; they got in their car and beat it away, and I cuts up across to a telephone booth and calls up the police.

Q. At the time they pulled you from your bus were the four you spoke of and the woman still in the bus? A. No, the woman was out.

Q. How did she get out? A. She got out all right. I was sitting in the seat when she got out.

20 Q. You mean, after you stopped the bus and the boys were around your car? A. The boys were around the car when she was in the car, operating on my motor, and she got out and started to holler.

Q. Do you know where she went to? A. She went down the street.

Q. Do you know her name and address? A. No, sir.

Q. Where did the men go? A. They got on their Ford and went after another——

30 Q. No, I mean the passengers? A. They went to work.

Q. When they got out? A. Some man was——

Q. Were any of those four men or that girl there at the time you were pulled from your bus? A. No, sir.

Q. You say you called up the police? A. Yes.

Q. Where did you telephone to? A. East Orange.

Q. The headquarters or some precinct? A. Some precinct.

40 Q. After you telephoned did any policeman come there? A. Yes, sir.

Dominick Sari—for State—Direct.

Mr. Wachenfeld: Stand up, please.

(Two men in the audience arise.)

Mr. Wachenfeld: What are your names, please?

Voice: Read and Zink.

- Q. Do you recognize those two men? A. Yes. 10
- Q. Who are they? A. East Orange policemen.
- Q. Where did you see them? A. They were right on the corner when I called up.
- Q. Before you called up? A. After I called up. They was over there, they were just coming around the corner.
- Q. Were they in uniform at that time or in civilian clothes? A. They were in uniform.
- Q. Both of them? A. Yes, sir.
- Q. How did they come there, walk or come in a conveyance? A. They came in a Ford. 20
- Q. Did you tell them what happened? A. Yes, sir.
- Q. Did you give them a description of these boys? A. Yes, sir.
- Q. Where did they go? A. They turned around and went to get those fellows. Then they come over to the car awhile and I said, "Wait for the wrecker to come and pull me out of there," and they said, "Could you identify these fellows?" 30 I said, "Yes, if you bring them in front of me," and they brang me, and I pointed them out.
- Q. That was the same day? A. Yes.
- Q. Did you tell the police officers by what kind of names these fellows were called? A. Yes, sir.
- Q. Did you give them a description of them? A. Yes.
- Q. Was it the same description as you gave here? A. Yes. 40

Dominick Savi—for State—Cross.

Q. Where was it you next saw these defendants, out in the street or in the house? A. Out in the street.

Q. Where your bus was standing? A. A little ways from it, about twenty-five feet away from the bus.

10 Q. Could you operate your bus after it had been damaged? A. No, sir.

Q. What happened then? Did you stay there? A. I went to headquarters with them.

Q. After the police officers brought them back? A. Yes, sir.

Q. Do you know when that bus was repaired, after the occurrence? Do you know about repairing it? A. I don't know anything about it.

20 Mr. D'Alessio: I object.

The Court: He has answered, he says he doesn't know.

Cross examination by Mr. D. Alessio:

Q. At what time was that on April 26 that this assault occurred? A. I cannot tell the time.

Q. Morning or afternoon? A. In the morning.

Q. Early or late? A. Early.

30 Q. Where did you say you started from that morning? A. From Bamberger's.

Q. And proceeded to East Orange? A. Yes.

Q. You don't know what street you were on when you were stopped? A. Yes, sir.

Q. Was that street part of the regular route? A. Yes, sir; it was.

Q. How long did you drive on that route? A. How long?

40 Q. Yes. A. A month.

Dominick Savi—for State—Cross.

Q. You mean to tell me you drove that route a month and didn't know the street you were on?

A. Yes, sir.

Q. Can you read? A. No, sir.

Q. When did you first see these two cars? A. When I first saw them two cars, when they cut me off. 10

Q. What do you mean? A. Cut me off, don't you know what cut me off means?

The Court: Do not argue with counsel. Answer the questions.

Q. They pulled right in front of you? A. Yes.

Q. Which car? A. The red car.

Q. Where was the other? A. Right on the side of the bus. 20

Q. What do you mean, in back of the red car or alongside of it? A. At the side of the bus.

Q. Where was the red car? A. In front of me.

Q. How many people were in that car? A. Three.

Q. How many in the black car? A. Four.

Q. You say four in one and three in the other?

A. I saw them before I got out of the bus.

Q. You recognize six of these men sitting there? A. Yes. 30

Q. Can you tell me which of these men were in the red car? A. Yes, sir.

Q. All right. Point them out. A. Shall I go down there?

By the Court:

Q. Yes, go down there and point them out.

A. Here (indicating) is one of them. 40

Dominick Savi—for State—Cross.

Mr. Wachenfeld: We had better put it on the record.

Mr. D'Alessio: That is Nagel.

By Mr. Wachenfeld:

10 Q. The second one is who? A. Raymond Buckingham and John O'Brien.

By Mr. D'Alessio:

Q. You say you saw all seven of these men?
A. Yes.

Q. So that you would know them again? A. Yes.

20 Q. How is it you can only identify six? Where was the seventh man? A. I said I seen one—

Q. You say you recognize six? A. Yes.

Q. Where was the seventh man at that time? You picked out six. Where was the seventh?

A. You know I cannot mind seven fellows, the first time I see them, I can remind six of them.

Q. But you cannot think of seven? A. No.

Q. Which men broke the spark plugs, the men in the red or the black car? A. The men in the red car.

30 Q. All three of them, did they, or just one of them? A. Just one of them.

Q. Which one is that? A. That is the fifth one (indicating).

The Court: What is his name?

Voice: O'Brien.

The Court: All right; indicating O'Brien.

40 Q. What did the men in the black car do? A.

Dominick Savi—for State—Cross.

A. He got off and wanted to know—come and give me an argument.

Q. How long did it take this man to break the spark plugs? A. About a second.

Q. In one second's time, do you mean to tell me, that he broke these spark plugs, and then picked up a rock and broke another one? A. You said— 10

Q. Answer the question. A. Just broke them, just a second.

Q. How long was he in the car from the time he started to break them until he finished breaking them? A. About three minutes.

Q. Where were you during this time? A. Sitting in back of the wheel.

Q. Just sitting watching them? A. Yes. 20

Q. Did you tell him to stop? A. No.

Q. You did not get out? A. I got as far as the foot board.

Q. After he finished? A. Yes.

Q. You did not get out while he was breaking them? A. No.

Q. Why not? A. I didn't want to get out.

Q. You were in charge of that bus? A. Yes.

Q. You were responsible for any damage to that bus while in your hands, weren't you? A. I don't know. 30

Q. You don't know? A. No, sir.

Q. Aren't you there to protect that bus if anybody attacks it? A. Yes.

Q. Why didn't you get out? A. I didn't want to get out.

Q. While he was breaking the spark plugs where were the other six men? A. Right alongside of him.

Dominick Savi—for State—Cross.

Q. Whatching him break the spark plugs? A. Yes.

Q. After these three minutes were up, what did you do then? A. They grabbed me off the steps and started to hit me.

10 Q. When you started to get out from the seat to the step? A. When they got all done.

Q. What did they do then? A. They pulled me off the steps and started to pile on me.

Q. Who did the piling? A. The bunch of them.

Q. What do you mean? A. The ones I picked out.

Q. Six out of the seven struck you at one time? A. Not at one time; they cannot hit a fellow all at one time.

20 Q. You said you were struck how many times? A. I said I was kicked—below the belly, below the belt.

Q. Seven men struck you one blow? A. I didn't say that.

Q. Seven men all at one time? A. No, sir.

Q. All right. Who did it? A. Didn't I point out five men to you?

Q. Did five men strike you one blow and kick you once? A. I didn't say they did it all at once.

30 Q. All right, then, pick out the men who did it. A. Here is one of them (indicating).

Q. Who is the other? A. There is the other (indicating) and one of the others there.

Mr. D'Alessio: That is Nagel, Buckingham, Jans and O'Brien.

Q. You were only truck one blow, weren't you— one blow, you were struck? A. I said I was struck a blow.

40 Q. And kicked once? A. Yes.

Joseph R. Read—for State—Direct.

Q. Which one of these four men struck the one blow? A. I don't know.

Q. Which one kicked you? A. I don't know. I was on the ground when they kicked me.

Re-direct examination by Mr. Wachenfeld:

10

Q. After you went to police headquarters, after the officers brought these boys back, did you leave the bus where the accident happened? A. Yes, sir.

Q. Did you see it again after that? A. No, sir.

Q. Do you know what kind or make bus it was? A. Yes, sir.

Q. What make was it? A. A Packard.

Cross examination by Mr. Glassner:

20

Q. You never saw these boys before, did you? A. No, sir.

Q. The first you ever saw them was at the time of the affray? A. Yes.

Q. They are not the men who spoke to you at Bamberger's before you started? A. No, sir.

Q. The defendant Nagel, you did not see, either at the affray or before, is that correct? A. No, sir.

Q. I beg your pardon, I meant the defendant Knowles. You did not see either at the affray or at Bamberger's? A. No, sir.

30

JOSEPH R. READ, sworn in behalf of State.

Direct examination by Mr. Wachenfeld:

Q. Officer, you are connected with what police department? A. East Orange.

40

Joseph R. Read—for State—Direct.

Q. Did you see this man George McGlennon who just testified on the stand, on the 26th day of April, up there? A. I did, yes.

Q. How did you come to go over where McGlennon was? A. In response to a telephone call at police headquarters.

10 Q. Did you go alone or with some one? A. With Officer Zink.

Q. Were you in plain clothes or in uniform? A. In uniform.

Q. How did you go over there? A. The police car, a Ford.

Q. Where did you find Savi, on what street? A. Norman and Walnut.

Q. Was he on Norman or on Walnut? A. He was on North Walnut, facing Norman Street.

20 Q. Was he in his bus or out of it at the time you saw him? A. Out of it.

Q. What was the condition of his bus? A. It was damaged. I don't know just how much; the wires pulled loose and the spark plugs destroyed.

Q. Where was the bus standing? A. On Walnut Street, facing north.

Q. Do you know whether or not at the time there was a strike of some of the bus drivers?

30 Mr. D'Alessio: I object.

The Court: I think it is very material, and admissible, and I will allow it.

Q. Do you know whether there was or not? A. It was reported to us that there was a strike, yes, sir.

Q. When you got there did you notice the make of that bus, what kind of a motor it was?

A. No, I did not.

Joseph R. Read—for State—Direct.

Q. Where was Savi at that time? A. He was standing on the ground.

Q. What was he doing? A. He was complaining of being hurt.

Q. How was he complaining of being hurt?
A. In the stomach some place. 10

Q. Any other place? A. No.

Q. Did you speak to him about what happened? A. Yes, sir.

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

Q. Did he give you a description of the boys and the cars that he said were involved? A. He gave us a description of the cars, yes.

Q. After that what did you do? A. We went to the starting place, where the jitneys start, North Park and Dodd, thinking they might have gone there to repeat the act. 20

Q. When you got there did you see them afterwards? A. Yes, sir.

Q. Where? A. They came through Burchard Avenue, two cars, following a bus that was coming over Prospect Street way.

Q. That would be east, on the back trip, to Newark? A. Yes, sir.

Q. So the two cars the defendants were riding in followed a bus which was making its back trip? A. One was a cut down Ford, painted red, and the other was a touring car. 30

Q. What was its color? A. Black.

Q. What were these boys or occupants doing at the time you saw them following another jitney bus, as you say? A. They came through Marcy Avenue and got back of this car, and we followed them to see what they were doing, and we supposed that they had seen us, and continued on, 40

Joseph R. Read—for State—Direct.

continued to proceed in Renshaw Avenue, and proceed towards Newark.

Q. Where were these two cars going? A. They proceeded south on Prospect Street.

10 Q. Then what happened? A. I headed them off.

Q. How did you head them off? A. Speeded up.

Mr. D'Alessio: I object. I ask that this testimony be all stricken out. It has nothing to do with this; it is outside of the charge, if they followed any other bus.

The Court: I will allow it. He is describing how he arrested these defendants.

20 Q. How did you head them off? A. Drove in front of them.

Q. Did they stop at that time? A. They did, yes, sir.

Q. One or both cars? A. Both.

Q. Did you speak to them? A. I did, yes, sir.

Q. Tell them why you cut them off, why you stopped them? A. I did.

30 Q. What did you tell them? A. Told them that a complaint had been made against them and requested them to come back to where this bus driver was located.

Q. What did they say as to that? A. They did; they turned and went back.

Q. Did they drive in their own car, themselves? A. They drove in their cars, yes.

Q. You said they were following this other bus at the time you saw them? A. We supposed they were.

40 Q. What makes you suppose that?

Joseph R. Read—for State—Cross.

Mr. D'Alessio: I object.

Mr. Wachenfeld: I have no objection to striking it out.

The Court: Strike it out.

Q. Tell us exactly what you saw that made you reach that conclusion? A. We went to the corner of Prospect and Dodd where this bus is supposed to start from, and we concluded we would watch that bus, so if they showed up again—we had gotten as far as Marcy Avenue and these cars came out behind it into Prospect Street and followed it a ways, I guess, well, two blocks. Whether they saw us or not I don't know, but we suppose they did, and instead of following the bus on through Renshaw Avenue they proceeded south on Prospect Street. 10 20

Q. But you actually saw them following the bus for about two blocks? A. Yes, sir.

Q. Were you present in the police court when these men were arraigned? A. I was, yes.

Q. Were you there when O'Brien was arraigned? A. I was.

Q. Do you know how he pleaded?

Mr. D'Alessio: I object.

(Question withdrawn.) 30

Cross examination by Mr. D'Alessio:

Q. Mr. Read, you are an East Orange officer? A. Yes.

Q. Will you kindly repeat how you came to the scene of this alleged assault? Were you called there? A. I was called there by my lieutenant.

Q. On the telephone? A. Yes, sir. 40

Joseph R. Read—for State—Cross.

Q. You didn't see any actual assault, did you?

A. No, sir.

Q. Didn't see the car broken up? A. I saw it after it was broken up.

10 Q. You didn't see it in the act of being broken up? A. No.

Q. How far from the scene of this so-called assault and malicious mischief did you find the bus? A. Probably at a distance of four or five blocks.

Q. About what time was this when you got your call? A. Shortly after seven.

20 Q. In the morning? A. I don't know just the minute. We go to work at seven o'clock. It was a few minutes after that that we received the telephone call.

Q. A few minutes after seven? A. Yes.

Q. About what time did you arraign these defendants? A. I don't know just the time.

Q. Approximately about a half an hour later? A. After we had been in the station house and back, that means about eight o'clock, according to the records.

Q. Where did you find Savi? A. He was standing on the ground near his car.

30 Q. Was anybody around the neighborhood there at all? A. I didn't see anybody that I could remember.

Q. Nobody at all? A. I didn't see anybody.

Q. Did he tell you that he had 'phoned for an officer? A. I don't remember whether he had told us or not. We did not inquire who 'phoned.

40 Q. Do you know whether there is any telephone booth anywhere near the corner of Norman and Walnut Street? A. Well, there is a store there.

Joseph R. Read—for State—Re-direct.

Q. How far from there? A. Probably fifty feet from there.

Q. You saw no witnesses there when you made your complaint, did you? A. Sir?

Q. I mean, when you got to the scene, you found nobody to take to the police station as witnesses against these defendants? A. No, sir. 10

Q. No one? A. No, sir.

Q. Savi was the only one? A. Yes, sir.

Re-direct examination by Mr. Wachenfeld:

Q. Now, officer, do you see any of the men, or boys, you might call them, here, now, that were in the red Ford that day? A. Their faces all look familiar to me. I cannot remember just which ones were in the different cars. 20

Q. How many were there? A. Seven of them.

Q. Do you see any of the seven of them here? A. Yes, they are all sitting there.

Q. Do you recognize each of them? A. Well, their faces.

Q. Well, now, look at them and tell us. A. Well, I only saw them a few minutes during the court proceedings.

Q. You saw them that morning? A. Yes, sir. 30

Q. You saw them again in the police court? A. Yes, sir.

Q. Look at them and tell us whether they are the same ones, or strangers? A. They all look to be the same ones, excepting this one (indicating).

Mr. Wachenfeld: Your names is Nagel, isn't it?

A Voice: Nagel, yes, sir. 40

Joseph R. Read—for State—Re-cross.

Q. Mr. Knowles—how about that man? A. He was there.

10 Mr. Glassner: I object to an identification of that kind, if your Honor please. The witness should pick him out.

The Court: That was the only man who was not identified by the other witnesses. I think it is proper for him to direct his attention to that particular man.

Q. Come down.

20 Mr. Glassner: I object on behalf of the defendant Knowles. I have no objection to his saying that Knowles was there.

Mr. Wachenfeld: You haven't any objection to his testimony.

Mr. Glassner: None at all.

The Court: That testimony stands then.

Q. You say that Mr. Knowles, the man that stood up, was there, or wasn't there? A. He was there, yes, sir.

Cross examination by Mr. Glassner:

30

Q. You are quite sure of that officer? A. Yes, sir.

Q. He was where? A. He was in the police court and he was in one of the cars. I don't remember which one.

Q. In other words, all you know about him was that he was there present in the cars when you arrested all these seven men? A. He was in either one there, I don't know which one.

40

Joseph R. Read—for State—Re-cross.

Q. How long after the affray did you make the arrest? A. Probably twenty minutes, something like that.

Q. All you know about it was that thirty minutes after, when you arrested these seven men, that you found Mr. Knowles among them? A. Yes, sir. 10

Q. Were you present at the proceeding in the police court? A. Yes, sir; I was.

Q. Do you know whether he was charged with any offense? A. I know there was one of them charged with assault and battery and the other with malicious mischief, and the other five with disorderly conduct.

Q. Isn't it a fact, that Mr. Knowles was not identified and could not be identified by the complaining witness Savi? Isn't that a fact, officer? A. He probably didn't identify him. 20

Q. I mean in charging the men with the offense of assault and battery and malicious mischief, or whatever you call it up there, isn't it a fact that Mr. Harry Knowles was not identified by the complaining witness? A. I don't know whether he was identified or was with the crowd, but anyhow—

Q. I know, but do you know whether the complaining witness charged him with inflicting any injury upon him? A. I don't know that. 30

Q. You are not sure—he was not identified. A. All seven of them were in the police court.

Q. That is correct. But you don't know, whether, however, in the police court the complaining witness said he could not identify him and didn't know him, or whether he pointed to him and said, "That man struck me"? A. I don't know. 40

Philip F. Zink—for State—Direct.

PHILIP F. ZINK, sworn in behalf of State.

Direct examination by Mr. Wachenfeld:

- 10 Q. You are connected with the East Orange police department, are you? A. Yes, sir.
- Q. And have been for some time? A. Yes, sir.
- Q. How long, about? A. About 24 years.
- Q. Were you at headquarters with Officer Read on this morning in question? A. Yes, sir.
- Q. After you got instructions did you go to some place in East Orange where you saw this man Savi? A. Yes, sir.
- Q. Where did you go? A. Norman Street and North Walnut.
- 20 Q. How did you get there? A. We rode in the car right out of the station and through Walnut.
- Q. Drove out or walked out? A. No, we went with the Ford car.
- Q. Were you and officer Read in uniform? A. Yes, sir.
- Q. About what time of day was that? A. Some time after seven o'clock. We go to work at seven.
- 30 Q. Where did you find Savi, in the jitney bus? A. His car was standing on North Walnut facing Norman Street.
- Q. Did you see him at the time? A. Yes, sir.
- Q. Was he hurt? A. He complained about his stomach, that somebody kicked him.
- Q. Did you notice the jitney bus? A. Yes.
- Q. What was the matter with it? A. The hood was up and the spark plugs were broke off.
- 40 Q. Were you present when Savi and Read talked together? A. We were right together, yes, sir.

Philip F. Zink—for State—Direct.

Q. Did he tell you what happened? A. Yes, sir.

Q. Give you a description of the cars these men were in? A. Yes, sir.

Q. After you got a description there, what did you do? A. I said to Officer Read—

Q. Don't tell us what you said to Read. Tell us what you did. A. We left there right away and went to Prospect and Dodd Street. 10

Q. What is there? A. We thought we would go up there and see if they were up around there. There was another bus there.

Q. What is there? A. That is the terminal there.

Q. Of that jitney line? A. Yes.

Q. Did you see any of these cars there that were described to you by Savi? A. Not at the time. 20

Q. What did you do? A. We waited until another bus followed out, and followed it.

Q. Where? What route? A. We went out Norman Street and at the railroad track where two cars followed out behind this bus that was going to Newark.

Q. What did they do? A. They followed right on there and that bus went to Renshaw Avenue, and they continued on south to Prospect Street. 30

Q. What did you do then? A. We went on out and Officer Read headed them off and stopped them.

Q. At what distance did these two Ford cars follow this bus you speak of? A. Possibly fifty or sixty feet. We were in back of them; supposed to be about that distance.

Q. After that what happened? A. We pulled up and I got out of the car, and one of them got 40

Philip F. Zink—for State—Direct.

10 out of their car, and I went over to them and told them I had a complaint about two cars and this answered the description, and seven men, four in the black car and three of them in the red one. I said, "I don't know whether you are the fellows or not," and I got their names and addresses.

Q. Did you tell them a complaint was made against them? A. Yes, sir. I asked them would they come back. So they come up and I asked if these wasn't the ones.

Q. What did they say as to that? A. They didn't say anything. They come back.

20 Q. Did they say anything at all to you, whether they would come back or not, whether they wanted or didn't want to? A. No, sir; didn't make any complaint at all.

Q. Did you tell them at that time what you wanted them to go back for? A. Yes, sir.

Q. What did you tell them? A. I told them a jitney bus driver was insulted down there and I wanted them to come down and see if they were the ones.

Q. Did you say insulted or assaulted? A. Assaulted.

30 Q. Well, you said "insulted." We will agree with you that an assault is an insult, anyway. When you told them that what did they say? A. They said they were not there.

Q. And do you see these men here now that you saw in those two cars? A. Yes.

Q. You say there were seven, four in one car and three in another, is that right? A. Yes, sir.

Q. Do you recognize these seven here today? A. Yes, sir; these are the whole seven.

Philip F. Zink—for State—Cross.

Q. You would say that that was the whole seven? A. Yes.

Q. Do you know whether or not at that time there was a strike of the bus drivers? A. Yes; there was a strike.

Cross examination by Mr. D'Alessio:

10

Q. Did you see these men when they were sitting in the cars? A. Yes, sir.

Q. Can you tell me who were sitting in the red car and who were sitting in the black car? A. No, I don't think I could pick them out. I know one man in the red car.

Q. Who was in the red car? A. Nagel.

Q. How many were with him? A. There was two more with him.

20

Q. What kind of a car did they have? A. A Ford car cut down, painted red.

Q. It was a touring car? A. No, it wasn't. There was room to sit down in the back.

Q. You don't know who was in the car with him? A. No, I don't think I could pick them out, not in the Court there.

Q. Did you go to the scene of this so-called assault with Officer Read? A. Yes, sir.

Q. You went there together with him? A. Yes, sir.

30

Q. Where was Savi when you got there? A. Standing on the side of his motor car.

Q. Did you ask Savi what had happened? A. Yes, sir.

Q. Did you ask Savi if he had called up the precinct? A. No, I didn't ask him.

Q. Did he tell you what direction this man had

40

Philip F. Zink—for State—Cross.

gone in? A. Yes; he said he had gone towards Watsessing.

Q. Did he show you the car, or the bus? A. Yes.

Q. Did he say who had broken these plugs? A. Yes.

10 Q. Whom did he say? A. O'Brien.

Q. Did he say who hit him? A. Yes.

Q. Who? A. Nagel.

Q. He didn't say four hit him? A. No.

Q. How did he happen to mention Nagel's name? A. When we brought him down to identify him.

Q. No. When you first went down there, before you took him to the police station, did he tell you who hit him? A. Yes, sir; he did.

20 Q. How did he tell you, by name or how? A. He walked right over and said, "There is the man who hit me."

Q. You saw Savi before you arrested this man? A. Yes.

Q. Did Savi tell you who hit him at that time?

A. No. I thought you meant when he came back.

Q. He just told you one man hit him at that time? A. Yes.

30 Q. Not four? A. No.

Q. Did he tell you how many were in his bus at the time he was supposed to be hit? A. No.

Q. Did he tell you it was more than one man who broke the plugs? A. No, sir.

Q. Did he tell you they pulled him off the bus? A. No, sir.

Q. Did he just tell you they struck him? A. No, sir.

40 Q. You didn't see the jitney in the act of being damaged? A. No.

Philip F. Zink—for State—Cross.

Q. When you got to the spot where this bus was did you see anybody standing around there beside Savi? A. No, not there.

Q. Did Savi tell you how long that he had been attacked before you got there? A. No, sir.

Q. He didn't tell you that? A. No.

Q. You didn't take any witnesses from there to the police precinct? A. No, there wasn't any around.

10

Q. Did he tell you who was there outside of these defendants? A. Not as I remember.

Q. As a rule, officer, when you get to the scene of a fight or assault do you make it a practice to ask whether anybody saw that assault? A. Yes, I do.

Q. Did you ask it on this occasion? A. No, I don't think I did; I think we started right out.

20

Cross examination by Mr. Glassner:

Q. I haven't any doubt about your willingness to tell me the truth. Tell us where it was that you first saw the defendant, Harry Knowles?

A. I saw him in the car.

Q. That was where? A. That would be on the corner of Edgerton Terrace and Prospect Street.

30

Q. How far away from the scene of the affray? A. That I couldn't really tell you.

Q. A mile or a block? A. Quite a distance from Norman Street to Edgerton Terrace, I really couldn't say.

Q. It was more than a block away, wasn't it? A. Yes, I should say so.

Q. Would you say half a mile or so? A. Say a half a mile. I couldn't give you the distance.

40

Michael Hawkins—for State—Direct.

Q. Do you know how long the affray actually took place before the arrest? A. No.

Q. You were not present, were you, at the affray? A. No, sir.

Q. Which car was he in, do you remember?

10 A. Knowles?

Q. Yes. A. I think it was in the dark car where the four men were in. I am not sure.

Q. You are not sure? A. No.

MICHAEL HAWKINS, sworn in behalf of State.

Direct examination by Mr. Wachenfeld:

20 Q. Where do you live? A. 1076 Springfield Avenue, Irvington.

Q. What is your business? A. Foreman, Public Service.

Q. What position? A. Public Service transportation, at the present time.

Q. But in the beginning, in what department were you a foreman? A. Mechanical department.

30 Q. Did you see one of the busses owned by your company up near Norman Street, in East Orange, on the day in question? A. Yes, sir.

Q. Did you go there to find it? A. Yes.

Q. Where did you find it? A. I found it on Norwood Avenue and I forget the name of the street. It was on the righthand side of the road.

Q. Did you see Savi there at that time? A. No.

Q. What was the make of your bus? A. A Packard.

40 Q. Was it damaged? A. Yes, it was.

Michael Hawkins—for State—Direct.

Q. What time did you get there? A. I got there around nine o'clock.

Q. What was the damage? A. The hood was up, the spark plugs were broken; the magneto wires were torn off.

Q. How many spark plugs were broken? A. 10
Four.

Q. Could you tell how they were broken? A. In my opinion it was broken by a brick.

Mr. D'Alessio: I object.

Q. Tell us how long you have been a mechanic? A. About seven years.

Q. What have you been doing during the seven years? A. Repairing busses.

Q. What parts? A. All parts. 20

Q. Had you seen them damaged by various causes? A. Yes.

Q. Now, tell us what in your opinion caused the damage to these spark plugs.

Mr. D'Alessio: I object to his opinion. He is not qualified to state what caused that accident.

The Court: I will allow it and grant you an exception.

Defendant's counsel prays an exception 30
to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

NEWTON H. PORTER Judge.

A. They were broken by bricks, because there was brick dust on the motor.

Q. How many spark plugs were broken? A. 40
Four.

Michael Hawkins—for State—Cross.

Q. What other damage was done? A. The carburetor and accelerator wire was broken, windshield, upper and lower was broken; motor spark plug was out.

Q. What is that? A. Over the valves.

10 Q. Did you take the car from where it was or have it towed? A. I had it towed.

By the Court:

Q. The wires were off what? A. Broken off the plug, torn from the magneto.

Q. They were broken, you said? A. Yes, sir.

Cross examination by Mr. D'Alessio:

20 Q. What time did you get there? A. Around nine o'clock.

Q. Who sent you there? A. I got a call from the Public Service Transportation, Roseville car barns.

Q. Where is your place? A. At that time I was located at the city line garage.

Q. You got there two hours after it happened? A. I assume, according to the witness.

30 Q. What was the matter when you got there? A. The motor hood was up, spark plugs broken, brick dust in the motor, magneto wires torn off, upper and lower windshield broken.

Q. Would a brick do all that damage? A. Absolutely.

Q. Would a brick pull that wire out? A. No.

Q. What would pull that wire out? A. A hand could pull it out.

40 Mr. D'Alessio: I move that all the testimony given by this witness in behalf of the

John Noon—for State—Direct.

State be stricken out of the record, as there is no connection in the testimony as to the damage to the car by this defendant.

The Court: It is important, nevertheless, to show what damage to the car, if any, existed. This witness has testified that this bus was damaged in a certain way. I think it is relevant and I will admit it and grant you an exception if you wish it. 10

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

NEWTON H. PORTER Judge.

By the Court:

20

Q. Did you know this bus? A. Oh, yes, it was in my garage.

Q. How soon before this occurrence had you seen it? A. I had seen it the day before.

Q. Were those windows broken? A. No.

Q. Were those other things present at that time? A. Impossible; you could not run it, if it were.

30

Q. I appreciate the wires must have been in it. It was in good condition, was it? A. Yes.

JOHN NOON, sworn in behalf of State.

Direct examination by Mr. Wachenfeld:

Q. Mr. Noon, where do you live? A. 28 Prospect Place, East Orange.

40

John Noon—for State—Direct.

Q. Whom do you work for? A. For the A. P. Smith Manufacturing Company.

Q. What do you do for the Smith Company?

A. I am janitor there.

10 Q. Were you on duty there at the plant on the morning of April 26th? A. Yes, sir.

Q. Did you see anything happen there which involved a bus, one jitney bus or some busses and men? A. Yes, sir; I was a little distance away from them.

Q. How far were you away from them, Mr. Noon? A. I was about five hundred yards. I was at the front door sweeping the sidewalk, in the front of the building.

20 Q. What street is Smith's plant located at, where you were sweeping the sidewalk? A. It is on Lawrence Street, and this occurrence happened at Norman and Lawrence Street.

Q. How far away was this jitney bus at the time something happened, about? A. About five hundred yards. It was just exactly—

30 Q. Tell what you saw, in your own words. Tell the jury what you saw and how you saw it? A. Well, I seen this bus coming up the street. It was not the regular route for this bus, see? It was down by Smith's, it used to come, and I seen this automobile following it.

Q. You saw this automobile. Was it one or more than one? A. One first. The automobile caught up with him just at the corner there, and he crossed and dragged him at the corner.

Q. What do you mean? A. He just wedged it ahead of him, and he stopped his bus.

Q. What happened then? A. Why, these men jumped out of the other bus that were in it.

40 Q. What do you mean? A. These men that

John Noon—for State—Direct.

followed him. There were three of them, I believe, in it.

Q. Which men are you talking about? Are you talking about somebody that came out of the jitney bus or came out the other car? A. No, this man that I understood was running the jitney bus—oh, no, I mean to say came out of the automobile. 10

Q. That is what I wanted to find out. A. Yes.

Q. What did they do after they came out of the automobile? A. They stopped his car.

Q. What "they"? A. They stopped his car, and I see one of them race ahead out of the car.

Q. What do you mean, ahead of the jitney bus? A. Yes.

Q. What did they do then? A. I couldn't see that. 20

Q. What did you see next after you saw one of them race ahead of the jitney bus? A. I saw them doing something with the machinery, after; what it was I don't know; I was too far away. I saw him get down from the seat.

Q. Then what happened? A. They followed him a short distance on the street.

Q. Who followed him a short distance on the street? A. I couldn't tell you which of them. 30

Q. Did you see these men who got out of the two automobiles, as you call them? Did you see them do anything to the man who was driving the jitney bus? A. Somebody did something to him.

Q. Tell us just exactly what you saw somebody do to him? A. I saw him knocked down, that is all.

Mr. Glassner: I object to it in that form. 40

John Noon—for State—Direct.

The Court: Reframe it, Mr. Wachenfeld.

Mr. Wachenfeld: I hope the Court appreciates the difficulty I am having when he gets his pronouns mixed up.

10 Q. Just exactly what did you see? A. I seen this automobile come up behind him just as he got to the corner.

Q. Yes. A. And they got just up to the front of his machine and he stopped, of course.

Q. Now, you have told us— A. They stopped in the side of the street.

Q. Now, you told us that. Then you also told us that you saw somebody race ahead, and you saw somebody do something with the machinery and you couldn't tell exactly what it was? A.
20 Yes.

Q. Now, what did you see after that? A. I seen them knock him down on the street.

Q. Did you see who knocked him down? A. I could not tell you.

Q. Who got knocked down? A. The driver.

Q. The driver of what? A. The driver of this jitney bus.

Q. You saw the driver of this jitney bus knocked down, did you? A. Yes, sir.
30

Q. How was he knocked down? A. He was either pushed or knocked. I was at a distance.

Q. Who did it? Some women around there, or some girls? Who did it? A. No, sir.

Q. Who did it? A. Some young fellows.

Q. Where did the young fellows come from?
A. It was on that automobile that overtook him.

Q. You say you saw him pushed or knocked down? A. Yes.

40 Q. Did you see a stick in their hand or what

John Noon—for State—Direct.

did it? A. No, sir; I didn't see anything in their hand.

Q. But you saw the jitney driver knocked down?

A. Saw him knocked down.

Q. Could you tell us whether you saw hundreds around when the man struck the jitney driver?

10

A. I could not, no, sir.

Q. Could you tell us whether it was more than one, five or ten? A. No, sir.

Q. Could you tell us whether it was more than one? A. I could not tell you how many was acting at the time.

Q. After the jitney driver fell down, or was knocked down, at the time, what did you see the boys do? A. He got up and returned back to his car.

20

Q. When he was down did you see the boys do anything else to him? A. I did not, sir.

Q. After he got up did the boys stay there? A. They walked up the street a little distance.

Q. Then what did they do? A. They did not go very far up and an East Orange policeman come.

Q. When what? A. When an East Orange policeman come.

Q. These boys that were in the car were not there when the East Orange policeman came, were they? A. No, they had started up to Dodd Street.

30

Q. In which direction would that be? A. That is on the Bloomfield side.

Q. Would that be toward Ampere or Watsessing, or what? A. It is right on the Bloomfield side, on the west side, on the northwest side.

Q. You have told us that you saw one car first.

40

John Noon—for State—Direct.

Did you see another car after that? A. I did, yes, sir; but the other car did not come up; it stood down in the woods; it stood a distance away.

Q. It was quite a distance away from what?

10 A. From the corner.

Q. How far away was it from the jitney bus when the jitney bus stopped? A. That car?

Q. Yes. A. That car was about from between half a block away——

Q. What was the color of that car? A. I mostly saw it was a black car.

Q. What was the color of the other car? A. If my memory serves me right it was part of it painted red.

20 Q. You think it was painted red, but you are not certain about it, is that right? A. I am not certain about it, but I think it was partly painted red.

Q. Did both of the men in both cars come out at the time the driver was assaulted? A. No, sir; only the first car. The other car did not come to the corner.

Q. Are you sure about that? A. Yes, sir.

Q. The other car did not come to the corner?

30 A. No, sir; only the first car.

Q. You say that the black car, as you call it, stopped about a half a block away from the jitney bus, is that right? A. Yes—oh, yes, on this side, on the East Orange side.

Q. Did the men get out of that car? A. They did not go there.

Q. What do you mean? A. They did not go there until later.

Q. How much later? A. I could not tell you.

John Noon—for State—Direct.

He was—when they did come the little damage that was done to the car was done by the first car that come.

By the Court:

Q. Were they there when this man was knocked down? A. They were not. The other fellows in the other car was not there. 10

By Mr. Wachenfeld:

Q. They were not there? A. No, sir.

Q. Now, did you see them do anything to this man while he was on the ground? A. Now, I don't know how they knocked him down; I did not see no weapon in their hands. 20

Q. After he was knocked down on the ground did you see these men do anything to him? A. I did not, sir.

Q. Are you sure about that? A. Yes, sir.

Q. Do you read and write? A. Yes, sir.

Q. Did you make a statement to the police? A. Yes, sir; I made a statement—I didn't make no statement, but I say they did nothing else but that, only that. I was there and they knocked him down. 30

Q. Well, now, look at this statement, won't you, and tell me if that is the one that you signed for one of the officers? Is that your signature? A. Yes, sir. I won't keep you long (witness puts on glasses).

The Court: Read it to yourself.

Q. Now, didn't you in there— A. That is correct. 40

John Noon—for State—Direct.

Q. Didn't you, in that, say that you did see——

The Court: Wait a minute.

Q. Didn't you, in that, say that you did see
these men who were in the Ford car kick the
jitney driver while he was on the ground?

10

Mr. D'Alessio: I object. That statement can be retracted.

The Court: He has testified and has made a statement contradictory to the one he has now made.

Mr. D'Alessio: He cannot impeach his own witness.

The Court: He is not impeaching it. He is neutralizing it, and I will admit it.

20

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

NEWTON H. PORTER

Judge.

Q. With reference to what you said about the black car Mr. Noon, will you look at the first part of this statement. Did you say, "I was a watchman for A. P. Smith & Company and I saw the jitney bus that was being overtaken by men in two automobiles. The jitney bus stopped right near the pole situated near the corner of North Walnut Street and Norman Street, East Orange, opposite Mrs. Hanson's store." You saw two automobiles, is that correct, overtake a jitney bus? A. Yes.

30

Q. You saw two automobiles overtaking— A.
There was only one, first.

40

John Noon—for State—Cross.

Q. What do you mean by "one first"? A. There was one on East Orange—

(At this point the Court takes a recess from one to two P. M.)

Cross examination by Mr. D'Alessio:

10

Q. Mr. Noon, you read and write? A. Yes, sir.

Q. Whom did you give this statement to? A. Well, I think it was a representative of this Court.

Q. A representative of the Court? A. Of the Court.

Q. Did you write it yourself? A. No, sir; I did not.

Q. Who wrote it, the detective? A. The gentleman who took the statement.

20

Q. Did he dictate it to you or did you answer questions? A. He only asked me questions. He did not dictate the answers.

Q. He wrote it down as you answered? A. Yes, sir.

Q. Did you sign it? A. Yes, sir.

Q. Did you read it over before you signed it? A. Yes, sir.

Q. Do you know every word that you have written in your statement? A. Yes, sir.

30

Q. How old are you? A. I am fifty-eight, sir.

Q. You are working with the Smith Company? A. Yes, sir.

Q. Did you see any one man strike the driver of this jitney bus? A. Not any one, no, sir; but I seen him struck by two or three.

Q. You saw him struck? A. I seen him knocked down on the street.

Q. You just saw him lying on the street, you

40

John Noon—for State—Cross.

say? A. I saw him knocked down on the street by these men.

Q. Did you see what he was struck with, whether it was a person's hand, or what? A. I could not say that. I did not see any instruments in any of their hands.

10 Q. You did not see their hands strike him, did you? A. No, I did not see what they struck him with.

Q. Did you see them doing anything to him after he was down? A. Yes, I saw them kick him with their feet.

Q. Who did you see kick him? A. I could not tell you.

20 Q. But did you see how many of them kicked him? A. I saw one or two of them kick him. I could not tell you how many.

Q. What did you see Savi do, the driver of the bus? A. He got up and ran away.

Q. What did these men do that were there? A. They returned to the street, down to the corner.

Q. Got in their car and went away? A. Yes.

30 Q. Which direction did the driver of the jitney run in, did you notice? A. He left the jitney right there, sir.

Q. Which direction did he run in? A. He come up over Renshaw Avenue, and that was not the road for him to come.

Q. You don't understand the question. I mean, after getting up from the ground you say he ran. A. Yes, sir.

Q. Which way did he run? A. He run up the street. He ran towards on the Bloomfield side.

40 Q. He ran towards the Bloomfield side, you say? A. Yes.

Motion for Direction of Verdict.

Q. Did you notice how long these men were there, about how long? A. Well, they stopped there for some little time, after the occurrence.

Q. Have you any idea about how long? A. I couldn't say, sir, whether it was five or ten minutes.

Q. What time was this, about, do you know? A. Yes, sir; it was about half-past seven, to the best of my ability, in the morning.

Q. What time do you go to work? A. I be there about a quarter of seven, but seven is my time.

Q. You could not pick out any man that struck him, could you? A. I could not, sir.

Q. Could you pick out any man that attacked the jitney? A. No, sir; I didn't think there was anything coming out of it.

Q. In other words, you are doubtful as to who did it, is that the idea? A. Yes, sir.

STATE RESTS.

Mr. Glassner: The defendant Harry Knowles rests.

DEFENDANT HARRY KNOWLES RESTS.

Mr. Glassner: At this point I wish to move for direction of a verdict of acquittal in favor of the defendant, Harry Knowles. Harry Knowles is the only one whom the complaining witness did not identify; neither was there any testimony on the part of any other witness that took part

Motion for Direction of Verdict.

in the affray, or was at the scene of the affray, and there is absolutely no evidence to go to the jury.

10 The Court: Motion denied on the ground that there is some evidence which I think is sufficient evidence to require it to go to the jury. The testimony of the policeman is that he was there shortly after in company with these men, and I think that is sufficient evidence to go to the jury; that is sufficient to warrant me in sending it to the jury.

Defendant's counsel prays an exception to this ruling of the Court.

20 Exception allowed; let it be sealed, and it is signed and sealed accordingly.

NEWTON H. PORTER Judge.

30 Mr. D'Alessio: With regard to the direction of a verdict of acquittal on the assault and battery indictment, towards Buckingham, O'Brien, Goetz and Jans, the testimony of the complaining witness, especially, is to the effect that some men struck him—four, but he cannot pick out any one that definitely hit him. It would be impossible for four men to strike one blow; then he does not say anything about Goetz, in regard to the assault, and in regard to these facts, and I think your Honor ought to direct a motion for acquittal for these

40 men on that charge.

Motion for Direction of Verdict.

The Court: I will deny your motion and will charge the jury with respect to that at the proper time. It is not necessary that each of the defendants strike him to constitute guilt.

Mr. D'Alessio: Now I move the Court to direct a verdict of acquittal against Buckingham, Nagel, Jans and Goetz, and Meisenbacker, on the indictment for malicious mischief. The testimony of the driver was to the effect that only O'Brien struck the spark plugs with a hammer and broke the plugs. There is no evidence to show that anyone of the other men even touched the bus. 10

The Court: Motion denied for the same reason. 20

Counsel for defendants pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

NEWTON H. PORTER Judge.

Mr. D'Alessio opens for the defendants Edward Nagel, John O'Brien, Clarence Goetz, Raymond Buckingham and Walter Meisenbacker. 30

Mr. Glassner: If your Honor please, the defendant, Harry Knowles, has rested, there being no evidence in the case connecting him. Shall I sum up now?

The Court: No; you had better sum up when we finish. 40

EDWARD NAGEL, one of the defendants, sworn in his own behalf.

Direct examination by Mr. D'Alessio:

10 Q. Mr. Nagel, on the morning of April 26 were you anywhere in the vicinity of Norman and Walnut Streets, East Orange? A. Yes.

Q. How did you get up there? A. I drove up in a Ford car.

Q. Where were you bound for? A. Verona.

Q. What for? A. To take Mr. Knowles there, home.

Q. Were you alone? A. No, Buckingham was with me.

20 Q. What do you mean? Was he riding in the same car with you? A. Right in the same car with me.

Q. Was anybody else in your party? A. No.

Q. Nobody else in your party? A. There was another Ford car in back of us.

Q. How is it you happened to be off that morning and had time to drive up to Verona? A. I was not working; there was a strike called and I had nothing else to do.

30 Q. What time was that strike called? A. I could not exactly say what time, exactly, it was called, because I was at home asleep.

Q. How long after that strike was called did you go to East Orange? The same day? A. A matter of a few hours.

Q. What time did you get to this corner of Norman and Walnut Streets? A. About 7:30.

Q. Did you see a general transportation bus up there? A. Yes.

40 Q. When you first came up to the bus was it moving or stopped? A. It was moving.

Edward Nagel—for Defendants—Direct.

Q. It was moving? A. Just a minute. You say when I first came up?

Q. Yes. A. No, it was standing still.

Q. What was going on there, did you see? A. Yes; they were letting passengers off.

Q. Did you go near the bus? A. I did; I drove
alongside of it. 10

Q. Why did you do that? A. I figured then it would be a good time to notify the driver. I went to him; I had not seen him before.

Q. Did you get off your car? A. Yes.

Q. Who was in the car with you? A. Buckingham.

Q. Did Buckingham get off the car? A. Yes.

Q. Did you approach this driver? A. Yes.

Q. Did you say anything to him? A. I did
not get a chance. 20

Q. What do you mean? A. When he saw us stop he climbed off his bus and started to run.

Q. Which way did he run? A. I would say in a northwesterly direction.

Q. Did you then get near him? A. Not within twenty feet of him.

Q. Did anyone else besides you and Buckingham approach this driver? A. No, because the other car stopped half a block away. 30

Q. In back of you? A. Yes.

Q. Which car were you in? A. The red one.

Q. Which car was that? A. The Ford.

Q. How many passengers? A. Two passengers.

Q. What kind of a body? A. A cut-down body.

Q. What did you do then? A. The other car came up and we drove away.

Q. How far away from there did you drive before you were stopped and arrested? A. A matter of half or three-quarters of a mile, I should say. 40

Edward Nagel—for Defendants—Cross.

Q. Then what happened? A. We were going south, over Prospect Street.

Q. In what direction? A. South—and a car with two cops in it pulled up and ran ahead of us, cut us into the curb and stopped us.

10 Q. What did they tell you? A. They asked us if we had anything to do with the bus being smashed up.

Q. What did you say to them? A. No.

Q. Did you see anybody touch that bus while you were there? A. No.

Q. Did you see anybody around the neighborhood at the time you went there? Did you notice anybody—rather, did you notice anybody outside the bunch that was with you and the driver? A.
20 I cannot really recall.

Q. You did not touch this driver? A. No.

Q. Did Buckingham touch him? A. No.

Q. Did anyone get out and go near him? A. No.

Q. Did anybody touch that bus? A. Not while I was there.

Q. Were all the other fellows there while you were there? A. No.

Q. Did they go away when you were there? A.
30 No.

Mr. Wachenfeld: Are there any other questions now?

Mr. Glassner: No; we have rested.

Cross examination by Mr. Wachenfeld:

Q. What were you working at at that time?
A. Chauffeur.

Q. For whom? A. The General Transportation
40 Company.

Edward Nagel—for Defendants—Cross.

Q. They were the owners of this bus that was damaged on this occasion? A. Yes.

Q. A strike had been called that morning? A. Yes.

Q. You were in favor of the strike and acted according to your orders, didn't you? 10

Mr. D'Alessio: I object to that as immaterial and irrelevant.

The Court: Why, you asked him about the strike.

Mr. D'Alessio: He is bringing up that he has acted according to orders.

The Court: I will allow it.

A. I didn't know anything about the strike until after I went to work; I didn't even know there was one happened. 20

Q. Until after you went to work? A. Until after I started to work.

Q. Did you go to work that morning? A. No.

Q. What do you mean, after you started to work? A. I was working days; I was home sleeping when the strike was called.

Q. What do you mean when you say, "After I started to work"? A. I got up in the morning with the intention of going to work. 30

Q. You found out about the strike? A. Yes.

Q. So you didn't go to work? A. No.

Q. You knew the strike was called? A. Yes.

Q. You didn't go to work because the strike was called? A. Yes.

Q. That is the reason you stayed off the job that morning? A. Yes.

Q. How long had you known these other boys? How long had you known Buckingham? A. About a month. 40

Edward Nagel—for Defendants—Cross.

Q. Do you know what business he was in? A. Chauffeur.

Q. Working for whom? A. The General Transportation Company.

10 Q. How about Knowles? A. I don't know. I knew Knowles that morning.

Q. Didn't know him before that morning? A. Yes, knew him before that morning.

Q. Who was he working for? A. Chauffeur.

Q. For whom? A. General Transportation Company.

Q. Do you know O'Brien? A. Yes.

Q. How long have you known him? A. Four years.

Q. Do you know Goetz? A. Yes.

20 Q. Same business? A. Yes.

Q. How about Jans? A. No; he was driving for the A. B. C. Cab Company.

Q. What is that, a taxi cab company? A. Yes.

Q. How about Meisenbacker? A. About a month, I knew him.

Q. What is his business? A. Chauffeur.

Q. For whom? A. The General Transportation Company.

30 Q. You were going to Verona? A. This morning, yes.

Q. You say you worked nights? A. Yes.

Q. You worked nights? A. No—I worked days.

Q. When did you work? A. I generally left about 6:30.

Q. Who owned the red car? A. I did.

Q. You say you took with you Knowles and Buckingham? A. No, I said Buckingham.

Q. Was Knowles with you? A. Not with me.

40 Q. Where was he? A. In the other touring car.

Edward Nagel—for Defendants—Cross.

Q. How many men were in the other touring car? A. All of them but Jans.

Q. Where was Jans? A. I don't know where he was at the time.

Q. Did you see him? A. Not at the time.

Q. When did you see him first that morning? 10
A. Fifteen or twenty minutes after I left Walnut and Norman Streets.

Q. Where did you see him then? A. Walking down Springdale Avenue with an East Orange police officer.

Q. Walking down Springdale Avenue? A. Yes.

Q. Were they either one of these officers who testified this morning? A. No.

Q. Who was the officer? A. Terrence Gunning.

Q. Is he here now? A. Yes, sir. 20

Mr. Wachenfeld: Stand up, Mr. Gunning.

(A man in the audience stands up.)

Q. You say you were going to Verona this morning? A. Yes.

Q. What for? A. They were taking Knowles home, and as I did not have anything better to do I went with them. 30

Q. I thought you said a while ago that you were taking him home? A. No; I say they were taking him home.

Q. Did it take two cars to take Knowles home? A. Perhaps it did not, but I didn't have anything better to do.

Q. You now say you were taking Knowles home, is that right? A. Sir?

Q. The two cars were taking Knowles home? A. Yes. 40

Edward Nagel—for Defendants—Cross.

Q. You started to go directly to Verona? That is where Knowles lives? A. Yes.

Q. You had no intention of interfering with anybody? All attending to their own affairs up there? A. To tell you the truth I didn't think
10 much about the strike.

Q. Where did you see this bus in East Orange?
A. Walnut and Norman Streets.

Q. You and Buckingham had a conversation, had you, about stopping and warning that driver, telling him that a strike had been called? A.
Yes.

Q. Who first suggested that you do that? A.
I cannot really recall.

Q. You had not thought anything about the
20 strike, you say? A. No.

Q. Was it Buckingham or you that first suggested it? A. I don't know whether it was him or I.

Q. Were these men on strike orders? A. (No response.)

Q. You don't know who suggested it? A. No.

Q. Who drove the car? A. I did.

Q. You stopped the car? A. Yes.

Q. Where? A. Alongside the bus.

Q. Was the bus standing still at that time?
30 A. Yes.

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

Q. Wasn't moving? A. No, sir.

Q. How near did you drive your car to the bus?

A. Oh, twenty feet.

Q. In front or back of it? A. Alongside of it.

Q. Twenty feet away? A. Yes.

Q. How wide is that roadway there? A. It is
not a paved street.

Q. How wide is it? A. A matter of fifty feet.
40 I would say.

Edward Nagel—for Defendants—Cross.

Q. You wanted to speak to the driver of that bus, did you? A. Yes.

Q. Why didn't you stop your bus closer than twenty feet? A. I never even gave it a thought.

Q. When you got out you did not stop twenty feet from the curb stone and walk over, did you? 10
A. There was no curb there.

Mr. D'Alessio: I object.

(Question withdrawn.)

Q. You wanted to speak to this man in the jitney? A. Yes.

Q. Why did you think you had to stop twenty feet away from him? What was wrong? A. I stopped right where he was. 20

Q. What was the reason? A. No reason at all.

Q. You got out of your car? A. Yes.

Q. Buckingham got out? A. Yes.

Q. Where was the other car at that time? A. About half a block in back.

Q. Stopped or going? A. Stopped.

Q. Do you know what caused them to stop taking Knowles to Verona just because you stopped? A. No.

Q. No reason why they should stop? A. No. 30

Q. This was not by any prearranged plan, was it? A. No.

Q. They didn't know you were going to stop back of this jitney driver? A. No.

Q. Yet, you don't know why they stopped a whole half block in back of you and why you stopped twenty feet away from the bus? A. No.

Q. What street was this on when you saw the jitney bus? A. Walnut Street. 40

Edward Nagel—for Defendants—Cross.

Q. A little bit off its regular route? A. Yes.

Q. How came you to go up into Walnut Street to go to Verona? That is an unpaved street. A. Yes.

10 Q. And you were in a hurry to get Knowles home? A. Yes.

Q. You could have gone right up on Bloomfield Avenue to Verona, couldn't you, in a straight road? A. No.

Q. Why couldn't you? A. Starting from 14th Street how would I hit Bloomfield Avenue?

Q. Couldn't you go over to Bloomfield Avenue, over 14th Street—could you? A. Yes, I could.

20 Q. Why is it you took this little irregular route until you came out on this street that the bus happened to be on? A. The only reason I know, a matter of habit, of driving up there to home.

Q. Was 14th Street paved? A. Yes.

Q. Will you tell us how you happened to go up on this street where the bus was when it was off its regular route? A. Further than the street is paved—that street will take you direct to Lawrence Street, right over Watsessing.

30 Q. Tell us how this other car, where your companions were, happened to stop half a block away when they didn't know what you stopped for. A. No.

Q. When you got out you walked over towards the bus? A. Yes.

Q. Was anybody getting out of the bus at that time? A. Yes, the driver.

Q. Was anybody else? A. No.

Q. Were any passengers in it? A. No.

40 Q. What did your friends do over in the black car? A. Stayed and looked at us.

Edward Nagel—for Defendants—Cross.

Q. Stayed or sat? A. Sat looking at us.

Q. They didn't know what you were going to do? A. No.

Q. You walked up to the jitney bus? A. We walked towards the bus.

Q. What happened? A. He got out and ran.

Q. How near did you get to him before he got out and ran? A. I just got out of the Ford when he got out and ran.

Q. How far did he run? A. Oh, a matter of—well, say about three-quarters of a block.

Q. What did he do then? A. I didn't pay any more attention to him. Stopped and turned around.

Q. What did you do? A. Got back in my Ford and went on.

Q. You saw that bus when it was moving that morning, didn't you? A. Yes.

Q. It did not seem to be mechanically wrong? It was running under its power all right, wasn't it? A. Yes.

Q. What did you do, then, after you got into the automobile? A. Got in the Ford there and drove off.

Q. What did the others do? A. They followed me.

Q. Not any of you seven men touched this jitney? A. No.

Q. Did you see anybody else break it up? A. No.

Q. Break the spark plugs and pull out the wires? A. No.

Q. You didn't strike this jitney driver? A. No.

Q. Didn't threaten him? A. No.

Q. You were on your way to Verona, to take Knowles home? A. Yes.

Edward Nagel—for Defendants—Cross.

Q. And the only explanation of the fact that you were on Walnut and Norman Streets is the one you already have given, is it? A. Yes.

By the Court:

10 Q. Did you observe this jitney bus when you drove up to it? A. It was half a block away when I first saw it.

Q. When you first drove up and got out of your car did you observe the jitney bus? A. Yes.

Q. Was the hood up or down? A. I really couldn't say.

Q. Was the windshield broken? A. No.

By Mr. Wachenfeld:

20

Q. When you got back—did you drive to Verona? A. No.

Q. Where did you go? A. Went directly up Norman Street.

Q. To what? A. Prospect.

Q. Prospect to where? A. Springdale Avenue.

Q. When you were going on Prospect Street, toward Springdale Avenue, you were going south on Prospect Street? A. Yes.

30

Q. Away from Verona and away from Bloomfield Avenue, which is the main artery for traffic leading over to Verona? A. Yes.

Q. Why, if you wanted to take Knowles home? A. Why, I decided I would go back home.

Q. What happens that you changed your mind about taking Knowles home? A. Nothing at all.

Q. Were the other cars still with you when you were going south on Prospect Street? A. I believe so, yes.

40

Edward Nagel—for Defendants—Cross.

Q. What made him change his mind, that is, the car Knowles was in, if you know? A. I don't know.

Q. You didn't say anything to the other boys about the fact that you had changed your mind, that you and Buckingham were going to leave him and go down south on Prospect Street? 10
A. No.

Q. You have no other explanation to give?
A. No.

Q. Your best explanation is that you were looking for another jitney bus which was violating strike orders, was it? A. No.

By the Court:

Q. When you were arrested, up on Prospect Street, or whatever it was, who was in the car then? A. Buckingham and Jans. 20

Q. Where was Jans? A. Sitting in the back.

By Mr. Wachenfeld:

Q. You say Jans at that time was in your car, is that right? A. Yes; I had picked Jans up.

Q. While he was walking on Springdale Avenue? A. Springdale Avenue. 30

Q. That was after all these things happened?
A. Yes.

Q. Jans was in your car at the time the two police officers, Read and Zink, picked you up, is that right? A. Yes, sir.

RAYMOND BUCKINGHAM, one of the defendants,
sworn in his own behalf.

Direct examination by Mr. D'Alessio:

- Q. Mr. Buckingham, were you with Eddie Nagel on the morning of April 26? A. Yes, sir.
- 10 Q. Were you at Norman and Walnut Streets with Nagel? A. Yes, sir.
- Q. When did you first see that bus? A. Well, we were going up in that direction. The bus was just about to a stop when I saw it.
- Q. Who was driving the car you were in? A. Nagel.
- Q. What did Nagel do then? A. You mean after we drove up to the bus?
- Q. No, when you saw the bus stop at the corner.
- 20 A. I suggested we drive over that way.
- Q. Then what? A. We drove over there and he was stopped. Nagel said, no, we should not stop. I said we might as well stop.
- Q. Did you stop? A. Yes.
- Q. What did you do after you stopped? A. We got out of the car and walked towards the bus.
- Q. How near the bus did you get? A. I guess it was a little closer than anyone was, me being on the outside.
- 30 Q. Did you talk to this driver? A. No.
- Q. What do you mean? A. The bus driver ran.
- Q. Did he get out of his bus and run? A. Yes.
- Q. When did he get out of his bus? A. He got out of his bus when I saw he was in the car.
- Q. Had you got out of your car when he started to run? A. I got out of my car and then he got out of his bus and ran.
- Q. Where did he go? A. At the right side of the bus, around a big open lot, and ran over in
- 40 that direction towards the factory.

Raymond Buckingham—for Defendants—Cross.

Q. Did you get anywhere near him? A. No, sir.

Q. Did you get near him? A. No.

Q. Did you touch that bus? A. No.

Q. Did you see that bus with the hood open?
A. The bus usually runs with the hood open. Whether or not it was open at the time I could not say. 10

Q. Did you see whether that bus had the hood open or not? A. I couldn't say.

Q. Did you touch the bus? A. No.

Q. Did you touch the driver? A. No.

Q. Did anybody from the other car get out?
A. No.

Q. How close was the other car? A. I reached about half a block. 20

Q. They didn't get any closer than that? A. No, sir.

Cross examination by Mr. Wachenfeld:

Q. They didn't get out of the car at all? A. No, sir.

Q. Were you in the police court when you were arraigned and a charge made against you? A. Yes, sir.

Q. Did you hear O'Brien plead guilty when the Court advised him what it was? 30

Mr. D'Alessio: I object. It has no bearing.

Mr. Wachenfeld: I will withdraw it as far as this witness is concerned.

Q. As far as your story goes, none of these men in the black Ford car—we will call it—got out of the car at all? A. No. 40

Raymond Buckingham—for Defendants—Cross.

Q. Never moved? A. No, sir.

Q. Never did a thing that was wrong? A. No, sir.

Q. You are sure of it? A. Positive.

10 Q. You knew all the boys in there? A. I didn't know them very well.

Q. You knew them pretty well? A. Yes.

Q. Where did you meet Nagel that morning?
A. On 14th Street.

Q. Where on 14th Street? A. Near the car barns.

Q. Near the East Orange line, you mean? A. 14th Street and Orange Street, in that neighborhood.

20 Q. How did you get there? A. I happened to be there at two o'clock in the morning.

Q. How was that? A. I pulled a bus in the garage at two o'clock.

Q. You stayed in the neighborhood? A. I didn't stay in the neighborhood.

Q. Where were you? A. I was in the lunch wagon.

Q. From two o'clock until when? A. Until approximately four or five or later than that. As far as the time was concerned, I couldn't say.

30 Q. Why did you say four or five? A. I said around that time; maybe later.

Q. What time did you meet Nagel? A. It was about, I should judge, 6:30 or seven o'clock.

Q. Where did you meet him? A. On Orange Street.

Q. Right on the street? A. Yes, sir.

Q. Not by appointment? A. No, sir.

Q. So that you did not get any sleep that night at all? A. No, sir.

Raymond Buckingham—for Defendants—Cross.

Q. So rather than sleep you thought you would take a run up to Verona, did you? A. Yes.

Q. What for? A. Just a view I took of it.

Q. It was no novelty for you to ride, was it? A. No, sir.

Q. What was the idea of it? A. I didn't have anything else to do. I wanted to know the outcome of the strike before I went home to sleep. 10

Q. Where were you going then? A. I figured after we got back from Verona we would go back to the garage, inside.

Q. What did you go to Verona for? A. Merely for the ride. They asked me to go along.

Q. You were driving a bus all night long, and were off duty, and without getting any sleep for three or four hours, you went up to Verona simply for the ride? A. Yes. 20

Q. Is that what you meant when you said that was the idea of it? A. Yes, sir.

Q. You are sure that was the only reason you went to Verona? A. Yes, sir.

Q. For the ride? A. Positive.

Q. Do you know why they were going to Verona? A. No. They said they were going to Verona and wanted to know if I would go along.

Q. Was anybody else there at the time Nagel told you that they were going to Verona? Were any of your other buses there? A. I didn't see them; they might have been. 30

Q. As far as you were concerned they weren't there? A. No.

Q. What did Nagel say to you when he asked you to go to Verona? A. He asked me if I would like to take a ride to Verona.

Q. Did he tell you why he was going to Verona? A. No; he didn't say. 40

Raymond Buckingham—for Defendants—Cross.

Q. As a matter of fact, that was to take Knowles home. He lives in Verona? A. No.

Q. You were so tickled to death to ride up to Verona that you were going to sacrifice your sleep, were you? A. I wouldn't say I was tickled to death.

10 Q. Don't you ever sleep? A. Yes, sometimes.

Q. Had anyone said anything about taking Knowles home? A. No, sir.

Q. Did you know there were two cars taking Knowles to Verona? A. No, sir.

Q. When did you become aware of the fact that there was another car taking Knowles to Verona? A. After we got over to the Ampere section.

20 Q. What kind of a car was it? A. A car cut down, no top on it.

Q. How far behind were they? A. They were a block behind.

Q. Did you know they were following you up then? A. I asked Nagel if they were there, and he said yes.

Q. He told you why they were with you? A. No.

30 Q. Then at that time Nagel didn't tell you that in that car—there was a man in that car named Knowles who they were going to take home? A. No.

Q. Where did you first see this bus, did you say? A. After I gave instructions to run out of Walnut Street.

Q. Walnut near what? A. Near Norman Street.

Q. That bus, on its usual course, usual route, does not go over Norman Street? A. No.

40 Q. It was off its beat that morning? A. Yes.

Raymond Buckingham—for Defendants—Cross.

Q. You noticed it? A. Yes, sir. On its first trip it is supposed to go over the other block.

Q. You spoke to Nagel and said you had to do something about it? A. Yes.

Q. What did you suggest? A. I suggested we find out who is driving it.

10

Q. Why? A. Because it is the bus I drive.

Q. That is the bus you drove before the strike was called? A. Yes.

Q. You wanted to find out who had your particular job this morning? A. Yes.

Q. That was your interest? A. Yes.

Q. You told Nagel that is what you wanted to go for? A. I didn't tell him necessarily; I told him I wanted to drive up.

Q. You told Nagel that there was your bus that you ought to have been driving if the strike had not been called and you wanted to see who was driving? A. I didn't say that all, no.

20

Q. What did you say? A. Told him to drive over so I could see who was driving.

Q. You went out of your course to find out who was driving that bus? A. Yes.

Q. When you got over near the bus was the bus driving or was it stopped? A. The bus was stopped.

30

Q. What did you do? A. I got out.

Q. Where did Nagel stop his Ford? How near the bus? A. He stopped a little bit ahead.

Q. How far ahead? A. Fifteen or twenty feet.

Q. Ahead of it? A. To the left of it.

Q. And ahead of it, is that right? A. Yes.

Q. You heard Nagel say he stopped at the side of it. A. It wasn't exactly ahead of it; I said to the side of it.

40

Raymond Buckingham—for Defendants—Cross.

Q. You don't think fifteen feet is ahead? A. I said to the side of it.

Q. Ahead how far? A. No exact feet. If you got it, I suppose it would be about three or four feet ahead of it.

10 Q. Just far enough ahead to prevent the bus from moving on without striking you? A. No; the bus couldn't possibly hit the car.

Q. Not while it was standing still, but could it move into the car in the position in which it was? A. He stopped; and he was also off the street. Had there been a sidewalk he would have been on the sidewalk there.

Q. When you got out, what did you say to the driver? A. Didn't say anything to the driver.

20 Q. And Nagel didn't say anything? A. No.

Q. Where was the other car, the black car, at the time you stopped and got out? A. In back of the place.

Q. How far in back? A. About half a block.

Q. Sure about that? A. Positive.

Q. Neither of them got out? A. No.

Q. Sure about that? A. Positive.

Q. And the driver ran? A. Yes.

30 Q. You didn't pull him out of that bus? A. No, sir.

Q. How far did he run? A. Ran about a hundred or a hundred and fifty feet out in the open lot. Where he went from there I couldn't say.

Q. You didn't break that bus? A. No.

Q. You didn't see anybody else break it? A. No.

Q. You didn't see anything that was wrong or out of the ordinary that morning? A. No, sir.

Q. Then what did you do? A. After he ran

Raymond Buckingham—for Defendants—Cross.

naturally we could not talk to him and we drove on.

Q. Where did you drive to? A. As far as the street is concerned, I am not very well acquainted with the section.

Q. You knew where Verona was? A. No—yes. 10

Q. You knew you were going away from Verona? A. When I went on Prospect we were, yes.

Q. Wasn't your curiosity aroused to such an extent that you inquired of your friend why that happened, that you were going away from Verona? A. Certainly it was.

Q. Did you call his attention to that? Did you make that statement, that: "You are not going to Verona now, you are going another way"? A. Yes. 20

Q. What did he say? A. He said he had changed his mind and he was going home and I said, "I am glad of it."

Q. I thought you wanted to take a ride to Verona? A. I didn't say I was tickled to death over the idea of going to Verona.

Q. You said you had nothing else to do and you were glad to go? A. No, I didn't say I was glad to go.

Q. You had not spoken to the men in the black car at all? A. No. 30

Q. No one had spoken to them? A. No.

Q. They followed right on with you? A. Yes.

Q. Until you got right to the usual course of the jitney bus? A. Going back to Newark.

Q. You were following a jitney bus at the time you saw the two policemen, weren't you? A. No.

Q. Wasn't there a jitney in front of you? A. Yes; there was a jitney in front of us, possibly a block or two blocks. 40

Raymond Buckingham—for Defts.—Re-direct.

Q. You don't know how you happened to be so near the jitney bus? A. It happened we turned down there and he was ahead of us.

Q. When did you see the two policemen? A. When they drove up alongside of us and ordered us to stop.

10 Q. Did you stop then? A. Yes.

Re-direct examination by Mr. D'Alessio:

Q. How long was it before this morning that you had seen this bus? A. I pulled the bus in the garage about two o'clock.

Q. That same morning? A. Yes.

Q. How long had you driven that bus? A. That bus wasn't a very good bus—in the garage half the time.

20 Q. Was anything wrong with it when you pulled in that morning? A. It never had run right.

Q. What was the matter with it? A. I should say the carburetor was plugged up.

Q. What about the windshield? A. The top windshield was broken. As far as the back was concerned, I couldn't say.

30 Q. Anything the matter with the plugs and wires? A. I don't know.

Re-cross examination by Mr. Wachenfeld:

Q. Did you have the same spark plugs in the car that morning when you drove it? A. Yes, there were. I couldn't drive it if there weren't.

Q. They weren't broken with a hammer, or broken when you had it? A. No.

Clarence B. Goetz—for Defendants—Direct.

By Mr. D'Alessio:

Q. Who broke that, anyone? A. I broke it.

Q. That night? A. Not that night; two nights before.

10

CLARENCE B. GOETZ, one of the defendants, sworn in his own behalf.

Direct examination by Mr. D'Alessio:

Q. On the morning of April 26 were you at Norman and Walnut Streets? A. Yes, sir.

Q. How did you get there? A. I drove my car there.

Q. What kind of a car have you got? A. A 20 Ford touring car.

Q. Was there anybody else in that car besides yourself? A. Yes, sir.

Q. Who was in that car? A. Harry Knowles, Walter Meisenbacker and John O'Brien.

Q. Mr. Knowles— A. —no, not John O'Brien—I just couldn't say who there were there now.

Q. You are sure of Knowles and Meisenbacker; you are not sure of O'Brien? A. No, sir.

Q. Were you driving ahead or in back of 30 Nagel's car? A. I was following Nagel's car.

Q. When did you first see this jitney bus? A. Oh, about a block away or so.

Q. What do you mean, a block away? A. Well, about a city block.

Q. You mean you were a block away from Norman and Walnut when you first saw it? A. Something like that.

Q. Was this car stopped at Norman and Walnut when you first saw it, this bus? A. Yes. 40

Clarence B. Goetz—for Defendants—Cross.

Q. Did you drive up to this bus? A. Yes.

Q. Who did? A. Nagel.

Q. How far behind were you? A. Maybe half a block or a little more.

10 Q. Did you see Nagel or Buckingham get out of the car? A. I did.

Q. Did they approach the bus? A. Yes, sir.

Q. What did you see next? A. The only thing I saw was the driver running away.

Q. Did you see Buckingham or Nagel go near the driver? A. I did not.

Q. Did you see either one of them go near or ahead of that bus? A. No, sir.

Q. What happened after the driver ran away? A. We come back in the car and drove on.

20 Q. Did you get out of your car? A. No, sir.

Q. Did anybody else in the car get out? A. No.

Q. You say Nagel and Buckingham got back in the car? A. Yes.

Q. What did they do? A. They started on.

Q. What did you do? A. We followed after them.

Q. Now, nobody in that car went near that bus? A. No, sir.

30 Q. No one in your car went near the driver? A. No, sir.

Cross examination by Mr. Wachenfeld:

Q. What had you been working at at the time?

A. I was a chauffeur for the General Transportation Company.

Q. You didn't go to work that morning, did you? A. No, sir.

40 Q. A strike was on and you didn't intend to work? A. No, sir.

Clarence B. Goetz—for Defendants—Cross.

Q. Where did you see Nagel first? A. Orange and 14th Streets.

Q. What was he doing there? A. He started out to go to work. When he got there he was told the drivers were out on strike.

Q. Who told him that? A. Some fellows that were standing there. 10

Q. Didn't you hear Nagel say here, this morning, that he had intended to start out to work?

A. He said he started out to work and didn't find out the strike was on until he got near the place of business.

Q. Who was the man who told you—the name of the man who told you that? A. I couldn't tell you.

Q. Why not? A. It was only a short while. 20

Q. If the information you got from that man impressed you to such an extent why can you not remember who you got it from? A. I don't remember him, not well enough.

Q. How did you happen to notice him? A. He was going to work.

Q. Who? A. The man.

Q. And who else? A. Nagel.

Q. Oh, so you went to work with Nagel that morning? A. Yes, sir; we started to work; we didn't go to work. 30

Q. How far did you get? A. 14th Street.

Q. If you had gone to work that morning where would you have started from? A. Just above 15th Street.

Q. So you got within a block of your work before you were informed by a stranger that there was a strike on? A. Yes.

Q. Sure about that? A. Yes.

Q. How did you happen to start out in that 40

Clarence B. Goetz—for Defendants—Cross.

Ford on this morning? Did you walk to work or ride to work that morning? A. I rode to work.

Q. Sure about that? A. Yes.

10 Q. Who was in your car at the time you started to take this drive, around seven o'clock? A. After I got over there I met Mr. Knowles and Mr. Meisenbacker. I cannot just remember who the other fellow was.

Q. How about O'Brien? A. I couldn't say whether it was him or not.

Q. Couldn't tell whether he was in the car that morning or not? A. No, sir.

Q. Do you know whether Jans was in the car or not? A. He was not in our car.

20 Q. How can you distinguish whether Jans was there and you cannot remember whether O'Brien was in your car? A. I couldn't say as to that.

Q. How many were in your car? A. Three or four in our car.

Q. Four and yourself? A. Three including myself.

Q. You, Meisenbacker and Knowles, is that right? A. Yes.

Q. Is that all that was in your car? A. There was one more.

30 Q. Who was that? A. I couldn't say.

Q. Why are you so vague as to who the fourth man was? A. If I knew I would surely tell you.

Q. You were arrested by the police that morning? A. Yes.

Q. Still, four men were in your car? A. Yes.

Q. And you still don't know who the fourth man was? A. No.

Q. How long have you known O'Brien? A. Three or four years.

40

Clarence B. Goetz—for Defendants—Cross.

Q. He was driving a jitney bus in the same company you were A. Yes.

Q. And you cannot tell us whether he was in the car that morning or not? A. No, sir.

Q. Where did you start to go that morning?
A. To Verona. 10

Q. What for? A. To take Harry Knowles home.

Q. Who asked you to do that? A. He did.

Q. He asked you what? A. He asked me to do it.

Q. You told him you would? A. Yes.

Q. How did these other fellows get in your car?
A. They were standing around there and they said they would like to go on the ride, too, if we were going to Verona, and they come with us. 20

Q. Who said they would like to go for a ride?
A. Meisenbacker—and Knowles said he would like to go home.

Q. Who was the other man? A. I don't know.

Q. The same vagueness as to that man? A. Yes.

Q. They all volunteered that they would like to go on this ride to Verona? A. Yes.

Q. And you said, "All right, we will go," is that right? A. Yes. 30

Q. What was said by Nagel and Buckingham?
A. What?

Q. What was said by Nagel and Buckingham at that time? A. They have not said anything to me.

Q. And you didn't say anything to them? A. No.

Q. You were right there when the conversation occurred? A. Not right where we were standing.

Q. How near were they? A. Five or six feet.

Q. If they did hear that conversation they 40

Clarence B. Goetz—for Defendants—Cross.

didn't say anything to you about the fact that they needed the morning air in Verona and they were going to get in their car and go along, did they? A. No, sir.

10 Q. So that you were very much surprised when you found that the red car was ahead, right then?
A. We happened to see them ahead and we followed to see where they were going. We were on our way to Verona.

Q. Why were you interested as to where they were going? A. I don't know; I couldn't say that. People have peculiar ideas.

20 Q. Nagel said he wanted to take Knowles home. He knew all about—he was on his way to take Knowles home and you didn't know whether that was true or not? A. That may be; I couldn't say.

Q. As far as you were concerned, you didn't know anything about Knowles or the fact that they were going to take him home? A. No, sir.

Q. You followed them after you got started? A. Yes.

30 Q. What did you see them do? A. We were following them over straight, maybe a half a block or a block behind them, and we saw them stop alongside the bus, and we thought we would see what they were going to do.

Q. Had you any idea at that time what they were going to do? A. No, sir.

Q. What did they do? A. They stopped the bus.

Q. How far in back of the jitney bus did you stop your car? A. Maybe half a block or three-quarters.

40 Q. You were interested in seeing what they were going to do? A. Yes.

Clarence B. Goetz—for Defendants—Cross.

Q. Why didn't you get nearer? A. It does not always pay to get too near.

Q. Did you expect trouble? A. No.

Q. Did you expect anything to happen that morning? A. Sometimes things happen and you get pulled into it.

Q. But you did not expect anybody to put bricks in the machinery that morning, did you? A. No.

10

Q. Why stay so far away? Wouldn't you see better if you were nearer? A. Why, we would get in trouble if we got three feet from it.

Q. You always are cautious, is that right? A. Yes, generally.

Q. Still you got into trouble? A. Yes, the first time I got in trouble.

20

Q. Did you stop a block away because you thought there might be trouble and you did not want to get mixed up in it? A. Yes.

Q. You mean you thought that there might be trouble? A. Just curiosity.

Q. What was in that curiosity that indicated to your mind that there was going to be trouble? A. Sometimes I have a hunch that things are going to happen.

Q. And you had a hunch that morning that something was going to happen? A. Yes.

30

Q. What caused the hunch; the strike? A. Yes.

Q. And the fact that your two friends in this other car were the people who were not working that morning? A. Yes, sir.

Q. This particular bus was the bus that, if a strike had not been called, Buckingham would have been operating? A. Yes, sir.

Q. You had knowledge^{as} of all these things, didn't you? A. Yes.

40

Clarence B. Goetz—for Defendants—Cross.

Q. That is why you thought there was going to be trouble? A. Yes.

Q. But you were wrong in your hunch? There wasn't any trouble at all, was there? A. No.

Q. All you saw was a jitney bus driver run?

10 A. Yes.

Q. What made him run? A. He ran when he saw these two fellows coming.

Q. You didn't even get out of your car? A. No.

Q. O'Brien didn't get out? A. No, sir, not O'Brien; no, sir. I beg your pardon, none of the four got out.

Q. And you cannot tell us who the four men were? A. No.

20 Q. After nothing happened, and the jitney bus driver ran away, what did you do? A. I followed after Nagel.

Q. What for? A. I don't know. We just followed him the same as we followed him up there.

Q. You had not followed him up there? A. We were on our way to Verona.

Q. You followed Nagel? Nagel was going away from Verona? A. I wanted to see what the driver had said to him, if he had said anything.

30 Q. What driver had said to him? A. To Nagel and Buckingham, after they had time to talk to him.

Q. You wanted to hear what the story was? A. Yes.

Q. How far had you gone before you got the information you wanted about what the driver of the bus had said? A. Maybe six or eight blocks.

Q. How did you get your information? Called to you from the other car, or did you stop and

Walter Meisenbacker—for Defendants—Direct.

have a conversation? A. I called to him and asked him.

Q. What did you do after you got the information that you were following Nagel for? A. We turned around. We were going up on our way to Verona.

Q. But you weren't on your way, were you? A. No, sir. 10

Q. But you were still following the red car at the time you were stopped by the police? A. Yes.

Q. You had not changed your mind about starting to take Knowles home yet, had you? A. No.

Q. Why didn't you turn around as soon as you got the information? A. Well, I couldn't say.

Q. You couldn't say, is that it? A. I don't just remember, no. 20

Q. You couldn't say, and, "I don't remember." Is that the only answer you have to give? A. That is all I can think of.

WALTER MEISENBACKER, one of the defendants, sworn in his own behalf.

Direct examination by Mr. D'Alessio:

Q. Mr. Meisenbacker, on the morning of April 26, were you at Norman and Walnut Streets? A. Yes. 30

Q. Whose car were you in? A. Goetz's car.

Q. Who else was in that car besides Goetz and yourself? A. O'Brien and Knowles.

Q. And Goetz and yourself, is that right? A. Yes, sir.

Q. Was there another car with you? A. Why, yes. 40

Walter Meisenbacker—for Defendants—Cross.

Q. Who was in that car? A. Buckingham and Nagel.

Q. When did you first see this bus? A. Why, going over Walnut Street.

10 Q. Was he stopped or moving when you first saw him? A. He was stopped.

Q. Did your car go up to the bus? A. No; half a block in back of it.

Q. Did anybody go up to that bus? A. Yes; Nagel's car, the red car.

Q. Did anyone get out of that red car? A. Yes.

Q. Who did? A. Nagel and Buckingham.

Q. Did they start to approach that bus? A. Yes.

20 Q. What did you see then? A. I didn't see anything else.

Q. Did they approach the driver or not? A. They did approach the driver, yes.

Q. What did the driver do? A. He started to run.

Q. Did they get anywhere near the driver? A. They did not.

Q. Did they touch the bus? A. They did not, no.

30 Q. What did they do when the driver started to run? A. They got back in their car.

Q. Did anybody get out of your car and go near the bus? A. No.

Q. What did Goetz do after he got back in the car? A. Followed.

Cross examination by Mr. Wachenfeld:

Q. You say they did approach the driver of this jitney, did they? A. Yes.

40 Q. They walked toward him, is that what you mean? A. Yes, sir.

Walter Meisenbacker—for Defendants—Cross.

Q. Did you hear them say anything to him?

A. I did not; I was half a block away.

Q. O'Brien was in your car, wasn't he? A. Yes.

Q. And Goetz was driving it? A. Goetz was driving our car.

10

Q. Who was seated in your car next to Goetz?

A. Knowles.

Q. How long had you been driving around before you saw this incident happen in which the jitney bus was connected? A. How long had we been driving before we saw the jitney bus?

Q. Yes? A. I should judge about fifteen minutes.

Q. What were you going to do, going around about fifteen minutes in an irregular route? A. It takes about fifteen minutes to go over that route.

20

Q. Fifteen minutes from Orange Street? A. Yes, going slow.

Q. You can go from Orange Street to 14th Street in Bloomfield in much less than fifteen minutes, can't you? A. That is rough guessing.

Q. Pretty rough, too, isn't it? A. Yes, sir.

Q. You say you were driving for fifteen minutes? A. Yes.

30

Q. Where were you going during the fifteen minutes? A. Just going over the regular route.

Q. To where? A. To Springdale Avenue.

Q. To where? A. Up Springdale Avenue.

Q. The regular route? A. The regular route.

Q. Springdale Avenue to what, to Washington Street, wouldn't you? That is a pretty good route, too, all pavements, isn't it? A. Yes.

Q. That would be your regular route? A. Yes.

Q. That would be the route you would suggest, 40

Walter Meisenbacker—for Defendants—Cross.

anyway, having a knowledge of those streets around there, wouldn't you? A. Yes.

Q. If you wanted to go to Verona? A. Yes.

Q. How did you get to Norman? A. I wasn't driving; I was just sight-seeing, mind, I just
10 drove around.

Q. Did you have any conversation with your companions as to what sights you were going to see? A. No.

Q. Who was the boss of that? A. The driver was the boss.

Q. You did not say that you wanted to see the sights that morning, did you? A. No.

Q. You didn't know you were going to take Knowles home that morning? A. No.

20 Q. You were just there? A. Yes.

Q. How did you come to get in that car? A. O'Brien and myself came out of the restaurant and they asked us if we wanted to take a ride.

Q. Who spoke to you and asked you if you wanted to take a ride? A. Knowles.

Q. What was the situation? You and O'Brien came out and someone spoke to you and asked you if you wanted to take a ride? A. Yes.

Q. Who spoke to you? A. Knowles.

30 Q. What did he say to you? A. Asked us if we wanted to take a ride.

Q. Did he ask you where you wanted to take a ride? A. No.

Q. Did he say anything else? A. No.

Q. You didn't know where you were going? A. No, sir.

Q. Whether you were going up the River Styx or up to Verona? A. No.

Q. So you got in this bus, with O'Brien in back?
40 A. Yes.

Walter Meisenbacker—for Defendants—Cross.

Q. You boys talked together during this fifteen minutes, didn't you, or did you wait until the spirit moved you enough to say anything? A. Why, yes, we talked about the strike, that was all.

Q. The strike was the main topic of conversation, wasn't it? A. Yes. 10

Q. It had just happened? A. Yes.

Q. And you fellows were interested in how it was coming out, weren't you? A. Yes.

Q. And the sights you wanted to see was the number of jitney buses that were working when you were not working, wasn't it? A. I wouldn't say that, no.

Q. What sights did you want to see? A. To kill time. We had nothing else to see. 20

Q. Was it all killing time or just to see things? A. Just killing time.

Q. You didn't know at this time that this red car, driven by Nagel, was going, too, did you? A. I did not.

Q. When did you first see it? A. I saw it when he started off. We followed him.

Q. Started off from where? A. South 14th Street.

Q. You knew Nagel? A. Yes. 30

Q. And Buckingham? A. Yes.

Q. You know all those boys, you were all pretty good friends, weren't you? A. Yes.

Q. You knew Nagel and your other friend Buckingham, in this other car, didn't you? A. I didn't know it was him, then, no.

Q. When did you first know it was Nagel? A. When they stopped in front of the jitney bus.

Q. Didn't know until they stopped that it was Nagel? A. No, sir. 40

Walter Meisenbacker—for Defendants—Cross.

Q. That is the first time you knew it was Nagel?

A. Yes.

Q. Did you make any inquiries of the driver of your car why he was following this other car?

A. No, sir.

10 Q. Why not? Didn't it arouse your curiosity?

A. No, sir.

Q. Did you think it was an ordinary event to have these people following in the line of another car? A. Sometimes you don't take notice of these things.

Q. You took notice of it that morning? A. I said I noticed it when we got out to the jitney bus.

20 Q. You said you noticed it when you followed it but that you didn't know it was Nagel until you stopped at the jitney bus. A. I say I noticed it when we went out of 14th Street.

Q. But you followed it from 14th Street to where it stopped next to the jitney bus? A. Yes.

Q. You didn't know it was Nagel? A. No.

Q. You didn't have your curiosity aroused enough to ask your driver why he was following the other car? A. No.

30 Q. You thought that was usual? A. It is possible, yes.

Q. It happened this morning—I asked you if it wasn't so unusual that you asked the question as to the why and wherefore of it. A. No.

Q. You did not ask the question? A. No.

Q. Why not? A. Because we were busy in conversation.

Q. Talking about the strike? A. Yes.

40 Q. Not so busy that you didn't notice—you noticed the car followed by the other car? A. I didn't notice it.

John O'Brien—for Defendants—Direct.

Q. You didn't see anybody strike the driver of the jitney bus? A. No.

Q. You didn't see the jitney bus damaged? A. No, sir.

Q. Didn't see anything happen? A. No.

By the Court:

10

Q. Did you work that night? A. No, sir.

Q. What were you in the restaurant for? A. I come over to work the next morning.

Q. You were on the way to work? A. Yes.

Q. Had your breakfast there? A. Yes.

Q. How far is the garage from the restaurant?
A. It is not half a block; it is right near the car barns.

20

JOHN O'BRIEN, one of the defendants, sworn in his own behalf.

Direct examination by Mr. D'Alessio:

Q. O'Brien, where were you on the morning of April 26? A. Norman and Walnut Streets.

Q. Whose car were you in? A. Goetz.

Q. Where were you sitting? A. In the back. 30

Q. Who was driving it? A. Clarence.

Q. Who was driving that car? A. Knowles, in the front and—

Q. Were you in front or in back of Nagel's car? A. In back.

Q. When did you first see that bus? A. When they were going up around the corner, when our car stopped.

Q. Was he stopped or going when you saw him? A. He was stopped. 40

John O'Brien—or Defendants—Cross.

Q. What did you do? A. Nagel and Buckingham got out.

Q. Where did they stop? A. The pulled up a little in front and to the side.

10 Q. Did they get near the bus? A. They started to walk, and then they stopped, and the next I saw was the fellow that was operating the bus running away.

Q. What did he do, stop his bus, first, and then run away? A. Yes.

Q. Did Nagel or Buckingham get anywhere near the driver before he ran? A. No.

Q. Did you see him touch him in any way? A. No.

Q. Did you see them touch the bus? A. No.

20 Q. What did they do then? A. Come back to the car and drove away.

Q. How far was your car away when you saw them stop? A. Half a block up.

Q. Did anybody get out of your car? A. No.

Q. What did you do when Nagel got in his car and drove away? A. Our car followed him right after.

Q. You didn't see anybody struck? A. No.

Q. Didn't see any bus touched? A. No.

30 Q. Didn't see anybody wield any bricks? A. No.

Cross examination by Mr. Wachenfeld:

Q. You didn't do anything wrong, did you, that morning, O'Brien? A. No.

Q. Didn't see anything wrong? A. No.

40 Q. Why did you plead guilty when you were arraigned in the Orange Police Court, to disorderly conduct?

John O'Brien—or Defendants—Cross.

Mr. D'Alessio: I object.

The Court: Objection overruled.

A. I didn't plead anything.

Mr. D'Alessio: We will admit that.

Mr. Wachenfeld: I refuse to have him admit it, if your Honor please. (Addressing Mr. D'Alessio) What do you mean? 10

Mr. D'Alessio: I will admit the fact that there is a mark there, "Guilty."

Mr. Wachenfeld: That this man is guilty?

Mr. D'Alessio: No, I will not admit that. I will admit that the complaint is marked "Guilty."

Q. You say that you did not plead guilty to that indictment? A. No, sir. I did say—it was all read off. I wasn't asked anything at all. 20

Q. Do you remember it being read? A. What?

Q. The complaint? A. Yes.

Q. The complaint was read and you were formally arraigned, with the Judge sitting there? A. Yes.

Q. And he told you what the complaint against you was? A. Yes.

Q. And these friends of yours were there at the same time? A. Yes. 30

Q. And when he asked you how you plead, you said, "Guilty," did you? A. I didn't say anything.

Q. Didn't he ask how you pleaded? A. He did, but I didn't answer; I didn't say anything.

Q. The clerk asked you how you plead and you didn't say anything? A. He asked me how I plead— 40

John O'Brien—or Defendants—Cross.

Q. Wait a minute. The clerk said to you, "How do you plead, guilty or not guilty?" and you said nothing? A. Yes, sir.

Q. Why didn't you say something? A. Because I didn't have a chance to say anything.

10 Q. Why didn't you have a chance to say anything? A. When he asked me a question one of the officers asked me about a hammer, and somebody talked about a hammer, and nothing more was said to me until the next man was asked how he plead.

Q. Why didn't you say, when the clerk asked you the question, "Mr. O'Brien, guilty or not guilty"— A. That is what I told you.

20 Q. Why didn't you sing out, "Not guilty"? A. I didn't say anything at all.

Q. Why not? A. I just after told you, I didn't have a chance.

Q. Why didn't you tell the clerk, after this interview occurred, "Mr. Clerk, I didn't get a chance to answer." Did you tell him that? A. No, sir.

30 Q. Did you say, "Mr. Clerk, I intended to say, Not guilty, and I did not get an opportunity, and I want to enter my plea not guilty"? A. No, I did not ask if I should plead. I was told I couldn't.

Q. When? A. Right after, when the next person was called.

Q. What did you want to do, change your plea? A. I wanted to make sure what to say.

40 Q. Do you mean to say, now, that in the East Orange Police Court, in the presence of Judge Stasse that you did not answer, "Guilty" when that complaint was read to you? A. I did not.

ALPHONSO JANS, one of the defendants, sworn in his own behalf.

Direct examination by Mr. D'Alessio:

Q. Mr. Jans, on the morning of April 26, about 7:30, were you at Norman and Walnut Streets? 10

A. No, sir.

Q. You were not? A. No, sir.

Q. Do you recall meeting Nagel and O'Brien, and the rest of the boys sitting there in the course of that morning? A. About twenty minutes of eight.

Q. You met them at twenty minutes of eight? A. Yes.

Q. Where? A. At Arlington and Springdale Avenues. 20

Q. Right on the corner? A. Maybe fifty feet back from the corner.

Q. How far from Norman and Walnut Streets is Arlington and Springdale Avenues? A: I imagine it is between half and two-thirds of a mile.

Q. Were you on that corner alone when you met these cars? A. No.

Q. Who was with you? A. Terry Gunning.

Q. Who is he? A. A police officer of East 30 Orange.

By the Court:

Q. Terry who? A. Terry Gunning.

By Mr. D'Alessio:

Q. He was there when these cars drove up? A. Yes. 40

Alphonso Jans—for Defendants—Direct.

Q. What did you do there? A. I walked over and started to talk to him.

Q. Then what did you do? A. I got on with Nagel.

Q. Who was with Nagel at the time you got on?

10 A. Buckingham.

Q. You got on, making a third? A. Yes.

Q. Where did you go then? A. They started to take me to work.

Q. Were you a jitney driver? A. No, sir.

Q. What were you doing? A. Working for the A. B. C. Cab Company.

Q. What happened then? A. We got off to Prospect Street and we were stopped.

Q. Who stopped you? A. Two police officers.

20 Q. What did they do? A. Took us back to where this bus was.

Q. Had you seen this bus before? A. No, sir.

Q. Had you seen this driver before? A. No.

Q. What did they do then? A. They asked this driver if he could identify anybody that hit him and I think he picked out two.

Q. Where did he pick them out? A. On the corner.

30 Q. Who did he pick out? A. I think it was Nagel and O'Brien.

Q. As having hit him? A. Yes.

Q. Where were you taken then? A. Police headquarters.

Q. Was a charge made against you? A. Not at that time; only against Nagel and O'Brien.

Q. Was a charge made against you at any time? A. Later on that morning.

Q. Did the driver identify you as being there? A. Yes.

40 Q. Did he pick you out this morning as one of

Alphonso Jans—for Defendants—Cross.

the men that struck him? A. Yes, I think he did.

Q. You did not meet these men until twenty minutes of eight? A. About that.

Q. How long after that were you arrested? A. I don't know; shortly afterwards; it was not long.

10

Cross examination by Mr. Wachenfeld:

Q. What do you mean by "shortly after," Mr. Jans? Five minutes or half on hour? A. It wasn't that long. Maybe five or ten minutes.

Q. After you met these boys? A. Yes.

Q. During that five or ten minutes what were you doing with these boys? A. They were going to take me to work.

20

Q. Where were you going? A. I was going to 383 Springdale Avenue. That is where my boss keeps the cabs.

Q. What time were you supposed to be there? A. I was supposed to be there about half-past seven.

Q. It would not take minutes from where you met these fellows to go to work? A. No.

Q. How long would it take from Norman Street to 383 Springdale Avenue? A. I don't know.

30

Q. Where did they pick you up? A. Springdale and Arlington.

Q. How near to there do you work? A. A block and three-quarters. I had been at 383 Springdale. That is where we keep our cabs.

Q. I thought that is where you were going. A. No, sir; I was going to Ampere.

Q. I asked you where you worked and you said you were going to 383 Springdale Avenue. Is

40

Alphonso Jans—for Defendants—Cross.

that where you were going? A. That is where we keep the cabs at. Our office is in Ampere, on 18th Street.

10 Q. Didn't you tell me a little while ago, when I asked you where you were going—you said to work, to 383 Springdale Avenue, that is where the boss kept the cabs? A. That is where the boss does keep them.

Q. Weren't you going to work when they picked you up? A. No, I was going to 18th Street.

Q. Did you say that? A. Perhaps I did. I made a mistake.

20 Q. This is the first time you mentioned 18th Street to me. You say you were going to 18th Street, is that right? A. Yes.

Q. 18th street and what? A. 4th Avenue.

Q. What section is that in? A. Ampere.

Q. At the time you were stopped by this police officer you were going south on Prospect Street? A. Yes.

Q. Away from Ampere? A. Yes.

Q. Weren't you in a hurry to get to work? A. I suppose I was, but my boss had already taken my cab out.

30 Q. How does it happen, if you were going to Ampere, that you were driving in this car with Goetz, that you were arrested in, and that you were going in the opposite direction to where you were going to work? A. Somebody mentioned they wanted to go for gas, as far as I know.

Q. Who mentioned that? A. I don't know who it was.

Q. Where do you live? A. In Roseville.

Q. In Roseville? A. Yes.

40 Q. Whereabouts? A. Park Avenue.

Alphonso Jans—for Defendants—Cross.

Q. What were you doing in Springdale Avenue?

A. Walking down Springdale Avenue towards Ampere. I had already been up to the yard to see if my cab was in, first. It wasn't in, and I came out.

Q. Was it in or not? A. It was not in.

10

Q. What time in the morning was that? A. I imagine it must have been around twenty minutes of eight.

Q. Did you see anybody up there that morning when you were going towards your work, that you knew? A. I walked down with Terry Gunning.

Q. Of the Police Department of East Orange?

A. Yes.

Q. How long had you known him? A. Since I have been working there.

20

Q. How long is that? A. Eight months.

Q. What is that, a taxi cab concern? A. Yes.

Q. You say you met Officer Gunning? A. Yes.

Q. Where? A. Right across the street from the boss's house.

Q. You mean from 383? A. Yes, sir.

Q. I thought you said you walked down there?

A. I did, with him.

Q. After you met him you walked where? A. To Arlington and Springdale.

30

Q. That was where you walked down 18th Street? A. Yes.

Q. Was Gunning with you when you met these other boys and got in their car? A. Yes.

Q. What time do you usually go to work? A. About half-past seven.

40

Police Officer TERRENCE J. GUNNING, sworn in
behalf of defendants:

Direct examination by Mr. D'Alessio:

Q. What is your business, Mr. Gunning? A.
10 Police officer.

Q. Where? A. East Orange.

Q. Do you recall, on the morning of April 26,
meeting one Alphonse Jans? A. Yes, sir.

Q. Where did you meet him? A. He was a
new driver, a new bus driver, coming out this way
when I was coming down Springdale Avenue.

Q. Where is that? A. North on Clinton Street,
on Springdale Avenue.

Q. What time? A. I leave the house about
20 twenty minutes past seven.

Q. About how long after that did you meet
him? A. He was a new driver. When I came
down he came on across to the other side.

Q. You live right near there? A. I live within
a thousand feet of where the cabs are kept.

Q. In other words, it would take you above
five minutes to come over? A. Yes.

Q. You met him coming out? A. Yes.

Q. And you believe at that time it was about
30 7:30? A. I left the house about twenty-five min-
utes after seven.

Q. Did you walk up with him? A. He walked
up with me to within two hundred feet of Arling-
ton Avenue.

Q. You stopped on the corner with him? A.
No, sir.

Q. You left him there? A. Yes.

Q. What time was that? A. About twenty
40 minutes to eight, I guess.

Terrence J. Gunning—for Defendants—Cross.

Q. Were you there when these cars drove up?

A. Yes, sir.

Q. Did you see him get on one of the cars? A. He got on. There was only one car drove up. There was two in the car. It was a low cut-down car. He got in the back. There was two in front. 10

Q. He drove away and left? A. Yes.

Q. What time, about, was this, would you judge? A. About twenty minutes to eight.

Cross examination by Mr. Wachenfeld:

Q. Did you see two cars that morning, there, Mr. Gunning? A. No, sir; only one.

Q. What street was that on? A. This car was coming through Springdale Avenue and I was coming down. This car came in back of me. 20

Q. That would be towards Main Street and East Orange? A. No, south on Springdale Avenue.

Q. You didn't see a black Ford car with four men in it? A. No, sir.

Q. These cars were not together at that time? A. No, sir.

Q. How long have you known Jans? A. I knew him since I have been on the post. 30

Q. Were you on duty that morning? A. No, sir; going on duty.

Q. What time did you start in? A. Anywheres from the neighborhood of a quarter to eight.

Q. Did you see Jans going to work every morning about that hour? A. Yes, sir.

Q. You walked up to the corner with him, did you? A. Yes. 40

Terrence J. Gunning—for Defendants—Cross.

Q. Were you there when he got in the car?

A. Yes.

Q. Did you hear any conversation with the occupants of that car? A. He asked them were they going down and they said yes. They said, "Jump in," and he jumped in. That is the conversation I heard.

By the Court:

Q. Did you know they were arrested afterwards? A. No.

Q. You were not present? A. No, I don't know anything about the case at all.

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JAMES MCGRATH, sworn in behalf of the defendants:

Direct examination by Mr. D'Alessio:

Q. What is your business, Mr. McGrath? A. Nothing at all.

Q. Where do you live? A. 383 Springdale Avenue. 10

Q. Do you recall, on the morning of April 26 of this year, meeting Alphonse Jans? A. Perfectly well.

Q. At what time, about, in the morning? A. I did not exactly meet him; I saw him in the window; I saw him from my bedroom window. I saw him going up Springdale Avenue about half-past seven or twenty minutes to eight. My boy was up a little before that and he took the car that Jans was going to have down to the office, so that when Jans came up there was no car there. Gunning was going on the other side of the street to his work and Jans went over and joined him. 20

Q. You saw him walking up with Officer Gunning? A. Yes.

Q. What time was this, about? A. About twenty-five minutes to eight. 30

Q. On Springdale Avenue? A. Yes.

Cross examination by Mr. Wachenfeld:

Q. You saw him for a period of how long, Mr. McGrath? A. As far as I could see him from my house.

Q. For a period of two or three minutes, is that right? A. Yes. 40

James McGrath—for Defendants—Cross.

Q. Would you say it was more than that? A. It would take him about that long to go in the yard, you know.

Q. Give me your best estimate of how long you saw him. A. Two or three minutes.

10 Q. Of course, you don't know where he was before that? A. No.

Q. Or where he went afterwards? A. No.

Q. But you did see him walking with Officer Gunning? A. Yes.

Q. Where do you live? A. 383 Springdale Avenue.

Q. Mr. Jans does not work for you, does he? A. He works for my boy.

Q. Is he in the taxi cab business? A. Yes.

20 Q. Does he keep the cab that Jans drives? A. Keeps the cab at my house. My boy was up before Jans came.

Q. Was the taxi cab there that morning? A. My boy was up before Jans came and took it away.

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JOHN J. MCLEAN, sworn in behalf of the defendants:

Direct examination by Mr. D'Alessio:

Q. Where do you live? A. 226 North 2nd Street.

10

The Court: East Orange?
The Witness: Newark.

By Mr. D'Alessio:

Q. Do you know where Mr. Jans lives? A. 274 Park Avenue.

Q. Is that anywhere near 226 North 2nd Street? A. About four blocks.

Q. How long have you known Mr. Jans? A. 20
About fifteen years; had him in my employ for about three and a half years.

Q. What is your business? A. Plumbing business.

Q. Do you know his reputation for truthfulness? A. I know him to be very good.

Q. No; his reputation for peacefulness? A. For peacefulness? Very good.

By the Court:

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Q. Let me understand. You know it to be very good? A. I do, yes.

DEFENDANT RESTS.

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JOSEPH R. READ, recalled in behalf of State in rebuttal:

Direct examination by Mr. Wachenfeld:

10 Q. Were you present at the East Orange Police Court on the day in which this defendant Nagel, and the defendant John O'Brien were arraigned and advised of the charge made against him? A. I was.

Q. How did O'Brien plead, after the clerk asked him how he pleaded? A. Pleaded guilty.

Q. Did you hear him plead guilty? A. I did.

Cross examination by Mr. D'Alessio:

20 Q. Who read the complaint? A. The Court Clerk.

Q. Did he read the complaint to these men severally, or individually, or collectively, rather? A. Separately.

Q. He read them separately? A. Yes.

Q. And you heard Mr. O'Brien plead guilty? A. I did.

Q. Were you there at the time this hammer was brought in? A. I brought it in.

30 Q. Was that during the time that the complaint was being read? A. It was.

Q. Was the talk about pleas stopped when you came in with the hammer? A. No.

Q. It was not stopped? A. No.

Q. Had anybody pleaded before you got in?

The Court: How could he tell that?

Mr. D'Alessio: If he heard. The rest of them heard. He must have heard.

Philip F. Zink—for State—Rebuttal—Direct.

Q. How many did you hear plead? A. I heard that boy plead.

Q. Didn't you just say they were taking pleas when you walked in? A. No.

Q. What did you say then? A. I brought the hammer in before they started to plead.

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Q. You heard O'Brien plead guilty? A. Yes. He was also asked by the Chief why he broke the spark plugs and he said——

Mr. D'Alessio: That is all.

Re-direct examination by Mr. Wachenfeld:

Q. What did he say? A. He said this man was an unregistered driver, or something, and he didn't want to see anybody hurt, so he thought he would put the bus out of commission so they wouldn't be hurt.

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PHILIP F. ZINK, recalled in behalf of the State in rebuttal:

Direct examination by Mr. Wachenfeld:

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Q. Were you present at the East Orange Police Court when the defendants were arraigned on a complaint made against them? A. Yes, sir.

Q. Did you hear them plead? A. Yes, sir.

Q. How did the defendant John O'Brien plead? A. Guilty.

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*Charge.**Cross examination by Mr. D'Alessio:*

Q. Were you inside at the time the plea was being read? A. Yes, sir; I was.

10 Q. Weren't out side with Officer Read getting the hammer? A. No, sir; I helped bring them in there.

Q. Who read these pleas? A. The Court Clerk.

Q. Did he ask them separately how they pleaded, or all in a group? A. No, sir; separately.

STATE RESTS.

20 Mr. D'Alessio sums up for defendants Edward Nagel, John O'Brien, Clarence Goetz, Raymond Buckingham and Walter Meisenbacker.

Mr. Glassner sums up for defendant Harry Knowles.

Mr. Wachenfeld sums up for the State.

Charge.

The Court charges the jury as follows:

PORTER, J.:

30 Gentlemen of the jury, you have been called to try the case against these defendants. It is your function, and sole function, to determine, solely from the evidence that has been adduced here, whether or not these men are guilty as charged. It is the function of the Court to charge you with respect to the law; it is the function of the Court to impose sentence on these defendants if they are found guilty at your hands; you have nothing to do with that.

Charge.

The Grand Jury of this county have brought a charge against these seven defendants by what is known as an indictment. That indictment will be taken with you into the jury room and can be examined by you. Briefly, it charges that Edward Nagel, John O'Brien, Clarence Goetz, Alphonso Jans, Raymond Buckingham, Harry Knowles and Walter Meisenbacker, on the 26th day of April, 1924, in the City of East Orange, in this county, did wilfully and maliciously break and destroy and damage certain goods and chattels, to wit, an omnibus, the property of the Public Service Transportaion Company, a corporation, with intent to destroy and render useless the same, 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 second charge is that these same defendants did, on the same day, in the City of East Orange, make an assault upon Dominick Savi, and then and there did beat, wound and ill-treat the said Dominick Savi, contrary to the form of the statute in such case made and provided. These are the charges that these men are answering here in this court.

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Assault and battery is the touching of another, wilfully striking or touching. Malicious mischief is the other charge, that is, wilfully breaking the property of another. The fact that these men are jointly indicted does not make it necessary that each one of them actually struck this complaining witness or that each one of them actually caused this damage to this jitney bus; but if any one of them did either of these acts, in concert with the others, going there for that purpose, and having determined to do this, he is guilty with the others.

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Charge.

As has been pointed out, if a man commits an offense against the criminal laws and another accompanies him as a look-out, or participates in some way, he is equally guilty with the one who did the damage. So I charge you, as a matter of law, that if you find that any of these acts were committed by one of them and the others were there in compliance with that plan, each other one is equally guilty with the one who struck the blow.

These defendants, and each of them, are presumed to be innocent until proven guilty, but the defendants are entitled to the benefit of any reasonable doubt arising from the evidence. The burden is on the state to prove each and every material element of the crime. If upon such proof there be such doubts with regard either to the guilt of the accused, or either of them, or as to the degree of criminality of either of them, they are entitled to the benefit of that doubt. Such burden of proof remains upon the prosecution throughout the case, and never shifts.

Reasonable doubt is defined by the highest court of the state in these words: "It is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. The evidence must establish the truth of the facts to a moral certainty, a certainty that convinces and directs

Charge.

the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. But if, after carefully reconsidering the evidence, giving the accused the benefit of reasonable doubt, you are led to the conclusion that they are guilty, you should so declare by your verdict." 10

The accused may be convicted by circumstantial evidence, if the facts sworn to are satisfactorily proved, which involves a consideration of the credibility and accuracy of observation and memory of the witnesses.

In the next place, assuming the facts sworn to are satisfactorily proved, the further inquiry arises whether the facts proved are explained or explainable on any other rational conclusion than that the prisoners are guilty. 20

There has been some testimony introduced with respect to the good character or good reputation of, I think, two of the defendants. Evidence of good character or reputation and of the peaceableness of the accused is always competent on the trial of an issue such as this and is entitled to consideration by the jury in making up their verdict. If after such consideration there exists a reasonable doubt of guilt, even though that doubt be engendered merely by his previous good repute, he is entitled to an acquittal. 30

The facts in this case are that this complaining witness, Dominick Savi, on the day that a strike occurred on the line of this jitney bus, was driving a jitney bus, and he testifies that in a certain place in East Orange two Ford automobiles came up to him and that the occupants of those cars whom he identified as the defendants in this case, or some of them, struck him and kicked him, 40

Charge.

10 and knocked him down, and destroyed his jitney bus, or at least did some damage to it. He further says that he immediately reported it to the police; that the police came; that he told them of the occurrence, and two officers who were detailed to the case testified that they went out to where the
15 jitney bus route was, and that they there saw two Ford automobiles answering the description that this complaining witness gave them, and they placed these men under arrest, and brought them back where the jitney bus was still, and the complaining witness identified them, and a complaint was made against them in the East Orange Court.

20 The complaining witness identifies the defendants here this morning also as those that were present at that time, with the exception of one man who, I think, was Mr. Knowles, who he was unable to identify. The witness—the old gentleman who was sweeping the sidewalk in the neighborhood—says that he saw the occurrence, saw this man struck, and saw him thrown, and saw these men, or some men, around this car doing something to the machinery.

30 Now, what did the defendants say? The defendant Jans offers what is known as an alibi, namely, that he was not present at the time of this occurrence. He says that about half-past seven, as I recall it, he went to some place on Springdale Avenue, where his employer kept a jitney bus, and found it gone, and walked out, and he is corroborated by two witnesses in that he walked with one of these witnesses up a street, where he met two of these defendants in the red cut-down automobile, or Ford car; that they gave him a ride, and that he therefore was not present
40 at the time when this thing occurred.

Charge.

Of course, if you gentlemen believe that this is true, and if you believe that that establishes the fact that he was not present at the time that this occurrence took place, he must be acquitted, because if he were not there he could not have participated in this.

All of the other defendants were chauffeurs. All of the other defendants were working, I believe, for this concern. They explain this on the theory that one of them was going to Verona and the others went along. They were out of work. A strike had been called, and they had nothing to do and said that they would go with him to Verona in the two cars. They have told you why they took this particular route to go to Verona, from where they started. They tell you why they stopped their cars by this bus. They explain that two of them in the first car, the cut-down red Ford, got out for the purpose of acquainting this driver of the fact that there was a strike, to talk with him about it, or see him about it, but that before they had an opportunity to talk with him about it he fled. He did not know what they wanted, apparently, because they had not said a word to him. They did not threaten him and did not do anything to him; they just stopped. They deny that they stopped him, although his testimony is that they cut him off. They say that before they could say a word to him he got out of his bus and ran. They deny having damaged the automobile; they deny having struck him.

The other four defendants who were in the other car say they stopped half a block away, but that none of the things occurred that this complaining witness testified to have occurred. They corroborate their companions in that they just

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Charge.

stopped to walk toward the jitney bus and the other fellow ran, and then they came down Prospect Street. They have explained to you why they did not go on to Verona.

10 From there the testimony does not hang together; the stories of the defendants' witnesses and of the State's witnesses, as, is usual, do not coincide. It is your function to decide wherein the truth lies, and in deciding who is telling the truth and who is not, you must satisfy yourself with respect to what motives the various witnesses may have had in telling the stories that they did tell on the stand, and in giving the evidence that they have given. Why do not the stories coincide? That is the function of the jury, and as I stated at
20 the outset, you must decide, you must be satisfied beyond a reasonable doubt, of the truth of these charges, before you arrive at a verdict of guilty. If you are satisfied beyond a reasonable doubt of the guilt of these accused, it will be your duty to bring in a verdict of guilty as to those whom you believe are guilty beyond a reasonable doubt. If, on the other hand, you have a reasonable doubt and you feel that the State has not proven beyond a reasonable doubt the truth of the charges
30 against all of them, you can acquit all of them, if you believe that the State has not proven beyond a reasonable doubt the charges against any of them, or you may acquit those who you feel have not been proven guilty.

In reciting briefly, as I have, some of the facts, I wish you to disregard anything I have said with respect to the evidence unless it coincides with your own recollection. I may have erred in my recollection of what the evidence was. If I have,

Charge.

you must disregard it, because your recollection of what the evidence is must be your sole guide and not what counsel have referred to as the evidence, or what the Court has referred to as the evidence.

You may now retire.

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(The jury retires.)

Counsel for defendant Harry Knowles prays a general exception to the charge of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

NEWTON H. PORTER

Judge.

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Reasons for Reversal.

NEW JERSEY SUPREME COURT.

In Error.

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STATE OF NEW JERSEY,
Defendant-in-Error,
vs.

HARRY KNOWLES,
Plaintiff-in-Error.

20 And now comes the said Harry Knowles, by
Richard M. Glassner, attorney for plaintiff-in-
error, Harold Simandl, of counsel, and says that
in the record and proceedings aforesaid, and also
in the matters recited and contained in the said
writ of exceptions, and also in giving the verdict
and judgment aforesaid, there is manifest error,
and the said Harry Knowles says that said judg-
ment should be reversed and assigns the following
reasons or causes:

30 1. That the verdict rendered by the jury in the
above entitled matter was against the weight of
evidence.

2. Because the Trial Court charged the jury as
follows:

“Assault and battery is the touching of
another, wilfully striking or touching.”

3. Because the Trial Court charged the jury
as follows:

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Reasons for Reversal.

"Malicious mischief is the other charge, that is, wilfully breaking the property of another."

4. Because the Trial Court charged the jury as follows:

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"The fact that these men were jointly indicted, does not make it necessary that each one of them actually struck this complaining witness or that each one of them actually caused this damage to this jitney bus; but if any one of them did either of these acts, in concert with the others, going there for that purpose and having determined to do this, he is guilty with the others."

5. Because the Trial Court charged the jury as follows:

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"So I charge you, as a matter of law, that if you find that any of these acts were committed by one of them and the others were there in compliance with that plan, each other one is equally guilty with the one who struck the blow."

6. Because the Trial Court charged the jury as follows:

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"The facts in this case are that this complaining witness, Dominick Savi, on the day that a strike occurred on the line of this jitney bus, was driving a jitney bus, and he testifies that in a certain place in East Orange two Ford automobiles came up to him and that the occupants of those

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Reasons for Reversal.

cars whom he identified as the defendants in this case, or some of them, struck him and kicked him, and knocked him down and destroyed his jitney bus or at least did some damage to it."

- 10 7. Because the Trial Court charged the jury as follows:

20 "All of the other defendants were chauffeurs. All of the other defendants were working, I believe, for this concern. They explain this on the theory that one of them was going to Verona and the others went along. They were out of work. A strike had been called, and they had nothing to do and said that they would go with him to Verona in the two cars. They have told you why they took this particular route to go to Verona, from where they started. They tell you why they stopped their cars by this bus. They explain that two of them in the first car, the cut-down red Ford, got out for the purpose of acquainting this driver of the fact that there was a strike, to talk with him about it, or see him about it, but that before they had an opportunity to talk with him about it he fled. He did not know what they wanted, apparently, because they had not said a word to him. They did not threaten him and did not do anything to him; they just stopped. They deny that they stopped him, although his testimony is that they cut him off. They say that before they could say a word to him he got out of his bus and ran. They deny having damaged the automobile; they deny having struck him."

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Reasons for Reversal.

8. Because the Trial Court charged the jury as follows:

“The other four defendants who were in the other car say they stopped half a block away, but that none of the things occurred that this complaining witness testified to have occurred. They corroborate their companions in that they just stopped to walk toward the jitney bus and the other fellow ran, and then they came down Prospect Street. They have explained to you why they did not go on to Verona.” 10

9. Because the Trial Court erroneously refused to direct a verdict of acquittal in favor of the defendant Harry Knowles, on the ground that there was no evidence upon which the jury could have found that the defendant participated in the alleged affair. 20

10. Because the Trial Court charged the jury as follows:

“If, on the other hand, you have a reasonable doubt and you feel that the state has not proven beyond a reasonable doubt the truth of the charges against all of them, you can acquit all of them, if you believe that the state has not proven beyond a reasonable doubt the charges against any of them, or you may acquit those who you feel have not been proven guilty.” 30

WHEREFORE because the aforesaid reasons or some of them constitute error prejudicial to the said plaintiff-in-error, he, the said Harry Knowles, 40

Assignments of Error.

prays that the said judgment and sentence be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof.

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RICHARD M. GLASSNER,
Attorney for Plaintiff-in-Error.

HAROLD SIMANDL,
Of Counsel.

Assignments of Error.

NEW JERSEY SUPREME COURT.

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In Error.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

HARRY KNOWLES,
Plaintiff-in-Error.

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New Jersey—ss.:

Afterwards, that is to say, on the day of
A. D. Nineteen Hundred and Twenty-
four, before our said Supreme Court of the State
of New Jersey, comes the said Harry Knowles, by
Richard M. Glassner, his attorney, Harold
Simandl of Counsel, and says that in the record
and proceedings aforesaid, and also in the matters
recited and contained in said bill of exceptions
and also in giving the judgment aforesaid, there
40 is manifest error in this, to wit.

Assignments of Error.

1. That the verdict rendered in the above entitled matter, by the jury, was against the weight of evidence.

2. That the said Court before whom, &c. at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Knowles, erroneously charged the jury as follows:

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“Assault and battery is the touching of another, wilfully striking or touching.”

3. That the said Court before whom, &c. at and upon the trial of the said issue so joined, between the State of New Jersey and the said Harry Knowles, erroneously charged the jury as follows:

“Malicious mischief is the other charge, that is wilfully breaking the property of another.”

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4. That the said Court before whom &c. at and upon the trial of the said issue so joined, between the State of New Jersey and the said Harry Knowles, erroneously charged the jury as follows:

“The fact that these men were jointly indicted, does not make it necessary that each one of them actually struck this complaining witness or that each one of them actually caused this damage to this jitney bus; but if any one of them did either of these acts, in concert with the others, going there for that purpose and having determined to do this, he is guilty with the others.”

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5. That the said Court before whom, &c. at and upon the trial of the said issue so joined, be-

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Assignments of Error.

tween the State of New Jersey and the said Harry Knowles, erroneously charged the jury as follows:

10 “So I charge you, as a matter of law, that if you find that any of these acts were committed by one of them and the others were there in compliance with that plan, each other one is equally guilty with the one who struck the blow.”

6. That the said Court before whom, &c. at and upon the trial of the said issue so joined, between the State of New Jersey and the said Harry Knowles, erroneously charged the jury as follows:

20 “The facts in this case are that this complaining witness, Dominick Savi, on the day that a strike occurred on the line of this jitney bus, was driving a jitney bus, and he testifies that in a certain place in East Orange, two Ford automobiles came up to him and that the occupants of those cars whom he identified as the defendants in this case, or some of them, struck him and kicked him, and knocked him down, and destroyed his jitney bus, or at least did some damage to it.”

30 7. That the said Court before whom, &c. at and upon the trial of the said issue so joined, between the State of New Jersey and the said Harry Knowles erroneously charged the jury as follows:

40 “All of the other defendants were chauffeurs. All of the other defendants were working, I believe, for this concern. They explain this on the theory that one of them was going to Verona and the others went along. They were out of work. A strike had been called, and they had nothing to do

Assignments of Error.

and said that they would go with him to Verona in the two cars. They have told you why they took this particular route to go to Verona, from where they started. They tell you why they stopped their cars by this bus. They explain that two of them in the first car, the cut-down red Ford, got out for the purpose of acquainting this driver of the fact that there was a strike, to talk with him about it, or see him about it, but that before they had an opportunity to talk with him about it he fled. He did not know what they wanted, apparently, because they had not said a word to him. They did not threaten him and did not do anything to him; they just stopped. They deny that they stopped him, although his testimony is that they cut him off. They say that before they could say a word to him he got out of his bus and ran. They deny having damaged the automobile; they deny having struck him.”

8. That the said Court before whom, &c. at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Knowles, erroneously charged the jury as follows:

“The other four defendants who were in the other car say they stopped half a block away, but that none of the things occurred that this complaining witness testified to have occurred. They corroborate their companions in that they just stopped to walk toward the jitney bus and the other fellow ran, and then they came down Prospect Street. They have explained to you why they did not go on to Verona.”

Assignments of Error.

9. That the said Court before whom, &c. at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Knowles, erroneously refused to direct a verdict of acquittal in favor of the defendant, Harry Knowles, on the ground that there was no evidence upon which the jury could have found that the defendant participated in the alleged affair.

10. That the said Court before whom, &c. at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Knowles, erroneously charged the jury as follows:

20 "If, on the other hand, you have a reasonable doubt and you feel that the state has not proven beyond a reasonable doubt the truth of the charges against all of them, you can acquit all of them, if you believe that the state has not proven beyond a reasonable doubt the charges against any of them, or you may acquit those who you feel have not been proven guilty."

30 There are divers other errors in the record and proceedings aforesaid, and in the giving of judgment and passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

Wherefore, the said Harry Knowles prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof.

RICHARD M. GLASSNER,
Attorney for Plaintiff-in-Error.

40 HAROLD SIMANDL,
Of Counsel.

Certificate of Judge.

THE STATE OF NEW JERSEY

VS.

HARRY KNOWLES.

I, Newton H. Porter, Judge of the Court of
 Quarter Sessions in and for the County of Essex
 and State of New Jersey, and the Judge who pre-
 sided over the cause of State of New Jersey vs.
 Harry Knowles, *et als.*, certify that the within
 printed book contains the entire record of the pro-
 ceedings had upon the trial of the said cause, and
 that the same is returned by the plaintiff in error
 therein with the writ of error bringing up the bill
 of exceptions signed and sealed in this cause.

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NEWTON H. PORTER

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Judge of the Court of Quarter Sessions
 in and for the County of Essex and
 State of New Jersey.

Dated:

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Opinion.

NEW JERSEY SUPREME COURT.

No. 60. May Term, 1925.

THE STATE	}
VS.	
HARRY KNOWLES.	

10

Error to Essex Quarter Sessions.

Argued before Gummere, Chief Justice, and Justices Kalisch and Campbell.

For the plaintiff in error, Harold Simandl.

For the State, John O. Bigelow, Prosecutor of the Pleas.

Per Curiam:

The plaintiff-in-error, together with six other men, was tried in the Essex Quarter Sessions on an indictment containing two counts, the first of which charged that the defendants did wilfully and maliciously break, destroy and damage an omnibus, the property of the Public Service Transportation Company; and the second charging an assault and battery upon one Dominick Savi, the driver of the omnibus. The trial resulted in the conviction of Knowles, and the present writ of error was sued out to review the validity of that conviction.

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The first contention before us is that the verdict convicting him of the charges made in the indictment was against the weight of the evidence. Our examination of the testimony sent up with the writ leads us to the conclusion that the jury was fully justified in its finding.

The second, third, fourth and fifth grounds of reversal are directed at alleged errors committed by the trial Court in its charge to the jury in defining the crimes of assault and battery and of malicious mischief; and instructing the jury as to the responsibility of all persons jointly engaged in the perpetration of a criminal act. In the

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Opinion.

case of *State v. Jones*, 71 N. J. L. 543, 546, and in the later case of *State v. Egan*, 84 N. J. L. 701, 706, the following rule is laid down as the test to be applied in considering alleged errors in the charge delivered to the jury in a criminal case:

10 "An instruction must be viewed with regard to the issues raised by the pleadings and the evidence; and, if a charge when so construed is free from error, it will not be ground for reversal, although wrong as an abstract proposition". Tested by this rule, we find nothing of merit in the attack upon the charge.

It is further argued that there should be a reversal in this case because of the misstatement of certain facts by the trial Judge in the charge to the jury. Assuming that the statements pointed
20 out by counsel are to some extent inaccurate, that fact will not justify a reversal, for the reason that at the close of the charge the trial Court said, "In reciting briefly, as I have, some of the facts, I wish you to disregard anything I have said with respect to the evidence unless it coincides with your own recollection. I may have erred in my recollection of what the evidence was. If I have, you must disregard it, because your
30 recollection of what the evidence is must be your sole guide, and not what the Court has referred to as the evidence". This statement nullified any inaccuracies of the trial Judge in reciting facts, and consequently, the plaintiff-in-error is not entitled to a reversal because of such alleged misstatements. *State v. Young*, 97 N. J. L. 501; last syllabus.

The last contention is that the trial Court erred in refusing to direct a verdict in favor of the defendant at the close of the case. What has been
40 said with relation to the first point argued is dispositive of this latter one.

The judgment under review will be affirmed.

Remittitur and Judgment.

NEW JERSEY SUPREME COURT.

On Error.

THE STATE OF NEW JERSEY, 10
 Defendant-in-Error,

vs.

HARRY KNOWLES,
 Plaintiff-in-Error.

The cause having been argued at the May Term, nineteen hundred and twenty-five, of this Court, by John O. Bigelow, attorney for the defendant-in-error, and Harold Simandl, Esquire, attorney for the plaintiff-in-error, and the Court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions; 20

It is thereupon ordered and adjudged that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Courts. 30

Entered December 9, 1925, on motion of

JOHN O. BIGELOW,
 Pros. of the Pleas,
 Att'y of Defd't-in-Error.

40

Assignments of Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

On Writ of Error to New Jersey Supreme Court.

10

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

HARRY KNOWLES,
Plaintiff-in-Error.

20 Afterwards, to wit, on the return day of the said writ of error before the Court of Errors and Appeals, at Trenton, comes the said Harry Knowles by Harold Simandl, his attorney, and says, that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. Because the judgment of the Supreme Court in said cause was in favor of the State of New Jersey, whereas it should have been entered in favor of Harry Knowles.

30 2. Because the Supreme Court affirmed the conviction of the said Harry Knowles, whereas it should have reversed the same.

40 And the said plaintiff-in-error, Harry Knowles, prays that the judgment aforesaid be reversed and that the conviction of the said Harry Knowles be in all things reversed, and that the record and proceedings be remitted to the Supreme Court to be proceeded with according to law and the rules and practice of said courts.

HAROLD SIMANDL,
Attorney for Plaintiff-in-Error.

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> vs. HARRY KNOWLES, <i>Plaintiff-in-Error.</i>	}	In Error.
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BRIEF OF PLAINTIFF-IN-ERROR

STATEMENT OF FACTS.

The defendant, Harry Knowles, was charged jointly with Edward Nagle, John O'Brien, Clarence Goetz, Alphonzo Jans, Raymond Buckingham and Walter Meisenbacher, with an indictment containing two counts; one, that on the 26th day of April, 1924, they did wilfully and maliciously break, destroy and damage certain goods and chattels, to wit, an omnibus, the property of the General Transportation Company, with intent to destroy and render useless the same, and in the other he was charged jointly with the same persons for an assault and battery upon one Dominick Savi, on the same day. The defendant, Harry Knowles, rested his case at the close of the case of the State, the other defendants electing to proceed with their defense. Alphonzo Jans was acquitted and all of the others convicted. The defendant was then duly sentenced and from said judgment he appealed to the Supreme Court. From the judgment of the Supreme Court affirming the Trial Court, the defendant sued out this writ.

ASSIGNMENT 1. REASON 1.

POINT I.

**THE VERDICT RENDERED BY THE JURY
WAS AGAINST THE WEIGHT OF THE EVID-
ENCE.**

The testimony in its best light shown by the State was as follows:

One Dominick Savi was driving a motor bus for the General Transportation Co. on the morning of April 26, 1924, and that while he was in the City of East Orange, two Ford automobiles came in front of his car and stopped it. These automobiles to the *best of his recollection* contained seven men, and thereupon, some of the men proceeded to break the spark plugs on the automobile, and one of the men struck him. He was then called upon to identify the men who struck him, and he identified all of the men *excepting* defendant-appellant (see C, p. 18) After the assault he notified the police. The police arrived at the scene and searched for the men accused and found two cars approximately one-half mile away from the scene of the alleged crime containing seven men. This was approximately thirty minutes after the commission of the crime. On C., page 24, the witness was again called upon to make an identification, but he could only identify six. *He could not identify the seventh man, the defendant, Harry Knowles.*

On page 27 C., the following question is put to the witness: "Q. I beg your pardon, I meant the defendant Knowles, you did not see either at the affray or at Bamberger's? A. No, sir."

The police officers testified to the arrest and the fact the defendant was present in the Police Court on the arraignment. They did not witness the affray. A witness, Noon, was called for the State.

He was standing about 500 yards or 1,500 feet from the scene of the crime. He testified on C., pages 49-50, that only one car came to the scene of the crime and the other car and its occupants stayed a great distance away, and further that when the assault was committed upon the said Savi, the other automobile, that is, one of the automobiles was not present (see C., pp. 50-51). "Q. What do you mean? A. They did not go there until later. Q. How much later? A. I could not tell you. When they did come, the little damage that was done to the car was done by the first car that came." Question by the Court: "Were they there when this man was knocked down? A. They were not, the other fellows in the other car were not there." Question by Mr. Wachenfeld: "They were not there? A. No, sir."

This was all that was produced that in any wise affected the issue. The defendant produced a character witness who testified to his good reputation for truthfulness and peaceableness, and then the defendant rested. The presence of the accused like every other important element of the crime charged had to be proven beyond a reasonable doubt.

The only evidence that may be considered is the evidence that was produced by the State and the character evidence offered by the defendant. Defendant-appellant rested his case and made a motion for direction of verdict which was denied. Thereupon, he offered to sum up his case (see C., pp. 55-56). The evidence on behalf of the other defendants offered by them after appellant had rested, cannot be used by the State in order to bolster up their case. The procedure in trying cases which has been adopted in this State has always permitted the defendant to rest his case upon the evidence of the State and thereupon only such evidence as was brought before the jury prior to the issue being closed between

himself and the State, could be used against him. *State v. Bachellor*, 98 N. J. Law, 433, 98 Atl. Rep. page 829 and the cases therein cited. *State v. Con- tarino*, 92 N. J. Law, 381; 105 Atl. Rep. page 197. This right to close the case cannot be taken away from the defendant, even though the State chooses to join him as a defendant in a joint indictment.

On page 60, line 30, the record disclosed the following: Mr. Wachenfeld: "Are there any other questions now?" Mr. Glassner: "No, we have rested."

From this it is very clear that this defendant did not participate in the case of the other defendants but had rested his case at the close of State's case.

I remind the Court that the defendant was charged in two counts, one with malicious mischief and the other, assault and battery.

In the case of *State v. Fox*, 70 N. J. Law, 353, 57 Atl. 270, it was held:

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

There was no proof that the defendant was ever employed by the General Transportation Co., the owner of the omnibus or that he was on a strike or that he was present aiding and abetting in the commission of the crime.

There was no evidence tending to show that he bore any ill will towards the owner of the omnibus or the driver of the omnibus and this essential element of the crime of malicious mischief was not proven as to him. There was no proof that he had

agreed to go to the scene of the crime and in any way participate in it.

There was no evidence tending to prove that the defendant was present aiding and abetting. There was no occasion for him to go upon the stand, because he had not been identified as anyone present, nor had any direct evidence been offered which occasioned a denial by him.

It is submitted that the verdict of the jury was the result of mistake or prejudice occasioned by the erroneous instruction of the trial Court set forth in assignments of error and reasons for reversal 7 and 8, wherein the Court assumed that all of the evidence binding upon the other defendants in their case was binding upon this defendant.

The defendant had proven a good reputation for peaceableness which was not rebutted by the State.

It is contented that the verdict is against the weight of the evidence as it is a finding of the jury predicated on mistake or prejudice and the judgment should be reversed.

ASSIGNMENT 2. REASON 2.

POINT II.

Assignment and reasons for reversal Nos. 2, 3, 4, 5, 6, 7, 8 and 10 are directed to the charge of the trial Court.

It is contended by this instruction to the jury, the Court left out of view three essential ingredients of the crime charge, viz.: malice, the unlawfulness of the act and the intention to inflict personal injury. There is no existing statute in this State defining the crime of assault and battery.

In the case of *State v. Schutte*, 87 N. J. L. 15, the Court said:

“Counsel for the plaintiff-in-error, correctly contends that both wilful wrong doing that constitutes malice in the law, and also intention to inflict injury are of the essence of a criminal assault.”

In the case of *Alston v. State*, 109 Alabama, page 51, 20 Southern, page 81, the defendant was arrested and indicted for assault and battery upon one Weeks, In the charge, the Judge instructed the jury that the least touching of another person wilfully or in anger is battery; that every man's person is sacred. It was held:

“The use of the word ‘or’ instead of ‘and’ in the seventh charge given vitiated the charge. *The least touching of another wilfully does not constitute a battery.* The touching of another in anger is a battery. The court erred in giving this charge.” (Italics mine.)

Although the trial Court is not required in the absence of a request by the defendant to define the crime, it is contended that when it assumes or und-

ertakes this duty, it is duty bound to correctly instruct the jury.

State v. Clayton, 83 N. J. L. 673:

“Our theory of jury trials proceeds upon the fundamental assumption that the jury will take the law from the Court.” * * *

The Supreme Court were of the opinion that when viewed with regard to the issues raised by the pleadings and evidence, it was free from error even though wrong as an abstract proposition.

It is difficult to find any evidence in the case of this defendant which would justify any such conclusion. There is nothing in the charge which elaborates upon the instruction.

It is contended by this instruction the Court committed error which was harmful and prejudicial to the defendant.

ASSIGNMENT 3. REASON 3.

The first count of the indictment charging "malicious mischief" was laid under Section 153 of the Crimes Act, 2 Compiled Statutes, page 1791, which reads as follows:

"Any person who shall wilfully or maliciously cut, break, burn, destroy or damage, with intent to destroy or render useless any goods or chattels, or any written chose in action or any hay, grain, or other cultivated vegetable produce, whether standing or cut down, or any tree, sapling, plant, flower, shrubs or underwood, wheresoever growing, the property of any other person, shall be guilty of a misdemeanor."

It is contended that by this instruction, the Court left out of view two essential ingredients of the crime charged, viz.: malice, and the intention to destroy or render useless the goods and chattels. In fact, it is contended that this instruction does not define a crime under our statutes.

In the case of *Folwell v. State*, 49 N. J. L. 31, 6 Atl. Rep., page 619, on page 620, the Court said:

"The word 'maliciously' when used in the the definition of a statutory crime, the act forbidden being merely *malum prohibitum*, has almost always the effect of making a bad intent or evil mind a constituent of the offense. The whole doctrine of that large class of offenses falling under the general denomination of 'malicious mischief' is founded on this theory. For example, it was declared by the Supreme Court of Massachusetts in the case of *Com. vs. Walden*, 3 Cush, 558, that the word 'maliciously' as used in the statute relating to malicious mischief, was not sufficiently defined as 'the wil-

ful doing of any act prohibited by law, and for which the defendant has no lawful excuse,' but that, to the contrary, in order to justify a conviction under the act referred to, the jury must be satisfied that the injury was done either out of a spirit of wanton cruelty or of wicked revenge." (Italics mine).

In the case of *State vs. Daniel Beckman*, 27 N. J. L. 124, the Court adopted Blackstone's definition of malicious mischief, which is as follows:

"Malicious mischief, or damage, is the next species of injury to private property which the law considers as a public crime. This is such as is done, not *animo furandi* or with an intent of gaining by another's loss which is some though a weak excuse, but either out of a spirit of wanton cruelty or black and diabolical revenge, in which it bears a near relation to the crime of arson, for as that affects the habitation, so this does the other property of individuals. And therefore, any damage arising from this mischievous disposition though only a trespass at common law, is now, by a multitude of statutes, made penal in the highest degree." 4 Bla. Com. 244.

In the case of *State v. Schultz*, 41 N. J. L. J., page 176, defendants were found guilty of a charge that they "did wilfully and maliciously break and destroy the windows and doors and other parts of the building." The evidence showed that the entrances to the building in question had been closed with planks, that the defendants had removed the planks but did not damage the building; that defendants had no title to the building but had some color or right to possession and the entry was not for the purpose of causing loss to another or wanton disregard of owner's right,, notwith-

standing there was some evidence of willingness to take a chance and exhibition of a spirit of defiance. Held:

“ ‘Malicious mischief’ as defined by Blackstone and for which an indictment will lie, is ‘an act done or injury to property of another done not *animo furandi* or with intent to gain by another’s loss, but either out of spirit of wanton cruelty or black and diabolical revenge.’ (4 Black. 243.) Wilful as employed by the statute punishing malicious mischief has been held to import more than voluntary or knowingly and to mean with evil intent or legal malice, or without reasonable grounds for believing the act to be lawful. Malice is an essential ingredient of an offense of malicious mischief. ‘Maliciously’ has been directed in many statutes against the unlawful destruction of property to have a restricted meaning peculiar to such statutes, implying that the act to which it relates must have resulted from actual ill will or revenge.” * * *

“Our statute embodies the words ‘with intent to injure any person’ and thus the elements of malice or wantonness are emphasized. It is essential that more than a mere trespass be involved, and that there be shown something which evinces actions or at least an act of moral turpitude.”

In *Wharton’s Criminal Law*, Vol. 2, page 1532, paragraph 1320, it is said:

“Neither negligent injury, nor an injury inflicted angrily in hot blood is sufficient to constitute the offense. There must be malice to the owner or possessor, though such owner or possessor is personally unknown to the wrong doer.”

The statute further provides that there must be an intention to injure or render useless.

Wharton's Criminal Law, Vol. 2, page 1536 paragraph 1325, holds:

"To sustain a conviction, there must be proof of injury done to such an extent as to impair utility, or materially diminish value."

State v. Johnson, 54 Pac. 502:

"The doctrine has not been carried to that extent in this country, *but the authorities are nevertheless substantially agreed that the malice necessary to constitute the offense is something more than the malice which is ordinarily inferred from the wilful doing of an unlawful act without excuse. The statutes were not intended to make every wilful and wrongful act punishable as a crime, but they were devised to reach that class of cases where the act is done with a deliberate intention to injure.*

Comm. v. Williams, 110 Mass 401 and *Folwell v. State*, 49 N. J. L. 36—6 Atl. 619, are then quoted as authority." * * *

"*And it seems to be generally held that in order to bring an offense under the head of malicious mischief it must appear that the mischief was itself the object of the act, and not that it was incidental to some other act lawful or unlawful.*" (Italics mine.)

State v. Cole, 90 Ind. 112:

"The injuries against which this statute is directed are not such as are inflicted with the intention of gaining by another's loss; they are those which arise out of a spirit of wanton cruelty, malicious or mischievous destructive-

ness or revenge and are of a class which have a near relation to the crime of arson. They are also such as result in a partial or total destruction of property, or in a specific injury to property, rendering it less valuable for purpose for which it was designed or used."

State v. Tarlton, 118 N. W. 706:

"To constitute an offense under that section, the act must not only be done wilfully, but for the purpose of avenging some real or imaginary wrong sustained by the party charged with the commission of the offense." The Court's opinion then quotes opinion in 110 Mass. 401 for definition.

Commonwealth v. Williams, 110 Mass 401:

"The malicious mischief or damage amounting to a crime is defined by Blackstone to be an injury done 'either out of a spirit of wanton cruelty, or black and diabolical revenge. This definition was approved and adopted in *Commonwealth v. Walden*, 3 Cush. 558-561. It was held that the word maliciously as used in the statutes relating to malicious mischief, was not sufficiently defined as the wilful doing of any act prohibited by law for which the defendant has no lawful excuse, but the jury must be satisfied that the injury was done out of a spirit of cruelty, hostility or revenge. This element must exist in all those injuries to real or personal property done wilfully and maliciously which are enumerated and made criminal in the several statutes, among the more recent of which is the statute including the act charged in this indictment. *The injury must not only be wilful that is, intentional and by design, as distinguished from that which is thoughtless or accidental, but must in addition be malicious in*

the sense above given. The wilful doing of an unlawful act without excuse, which is ordinarily sufficient to establish criminal malice, is not alone sufficient under these statutes. The act although intentional and unlawful, is nothing more than a civil injury, unless accompanied with that special malice which the words 'wilful and malicious' imply." (Italics mine.)

It is apparent from the definition of the trial Court that the jury were instructed to convict in the absence of any intent to injure or in the absence of malice. This is emphasized in the charge of the Court, where he further says :

"So, I charge you as a matter of law, that if you find that any of these acts were committed by one of them and the others were there in compliance with that plan, each and every one is equally guilty with the one who struck the blow."

Thereby predicating the guilt of any and all present at the mere wilful breaking of the automobile, in the absence of any malice or evil attempt or intent to injure or damage the property of another.

The Supreme Court were of the opinion that when viewed with regard to the issue raised by the pleadings and evidence, it was free from error even though wrong as an abstract proposition.

It is difficult to find any evidence in the case of this defendant which would justify any such conclusion. There is nothing in the charge which elaborates upon the instruction. Nowhere in the case of this defendant was there any evidence tending to prove that this defendant bore any malice or evil intent against the driver or the owner of the bus. There was no proof that he was on a strike or desired revenge.

It is contended that the trial Court by this instruction was in error which was harmful and prejudicial to the defense on its merits.

ASSIGNMENT 4. REASON 4.

This instruction permitted the jury to find the defendants guilty on both counts, if anyone of them "did either of these acts." It is obvious that the defendants were required to aid and abet in the commission of both of said offenses before they could be found guilty on both counts. The trial Court therefore committed error which was prejudicial to the defendant.

ASSIGNMENT 5 REASON 5

It is contended that by this charge, the trial Court permitted the jury to find the defendants guilty if they were present even though there may have been no intent to destroy or render useless the omnibus or in the absence of malice as defined by the decisions in our courts, and further permitted the jury to convict the defendant even though he may not have had an intention to injure Dominick Savi.

The charge is further erroneous for the reason that it permits the conviction of the defendant for both of said offenses although only one act may have been committed. For these reasons, it is contended that the charge of the trial Court was erroneous and by reason thereof, the defendant suffered prejudice and injury.

ASSIGNMENT 6 REASON 6

The appellant contends that by use of the words, "the facts in this case are," the trial Court invaded upon the right of the jury to find the evidence. It is not contended that the trial Court

is without right to comment on the evidence, so long as he leaves the right to the jury to decide for themselves disputed questions of fact. However, this expression, it is contended, is so emphatic as to impress the jury that the facts were as stated by the Court and not as the jury might have been inclined to find for themselves.

ASSIGNMENTS 7 and 8 REASONS 7 and 8

The trial Court erred in stating as facts matters not proved or in the evidence in the case.

The trial Court said: "All of the defendants were chauffeurs; all of the other defendants were working I believe for this concern. They explain this on the theory that one of them was going to Verona and the others went along. They were out of work, a strike had been called, and they had nothing to do and said they would go with him to Verona in the two cars. They have told you why they took this particular route to go to Verona, from where they started. They tell you why they stopped their cars by this bus. They explained that two of them in the first car, the cutdown red Ford, got out for the purpose of acquainting this driver of the fact that there was a strike, to talk with him about it, or see him about it, but that before they had an opportunity to talk with him about it, he fled. He did not know what they wanted, apparently, because they had not said a word to him. They did not threaten him and did not do anything to him; they just stopped. They deny that they stopped him although his testimony is that they cut him off. They said that before they could say a word to him, he got out of his bus and ran. They deny having damaged the automobile; they deny having struck him."

"The other four defendants who were in the other car say they stopped half a block away, but that

none of the things occurred that this complaining witness testified to have occurred. They corroborate their companies in that they just stopped to walk toward the jitney bus and the other fellow ran, and when they came down Prospect Street. They have explained to you why they did not go on to Verona."

It is contended that the statement of fact was inaccurate as to Knowles. That the remarks of the trial Court referred to Knowles as well as the other defendants is evident from the following excerpts taken from the charge:

"Now, what did the defendants say? * * *"
He speaks then of the defendant, Jans, and his alibi, continuing, he says:

"All the other defendants were chauffeurs." "All the other defendants were working I believe for this concern, etc."

The Trial Court continuing said: "*They were out of work; a strike had been called.*" *They have told why they took this particular route* * * * * They tell you why they stopped this car by this bus.* They explained that two of them in the first car, the cutdown red Ford, got out for the purpose of acquainting this driver of the fact that there was a strike * * * * * They did not threaten him and did not do anything to him; *they just stopped.*

No such evidence appeared in the case of this defendant. This is a statement of extraneous matter so far as this defendant is concerned.

The Supreme Court was of the opinion that when the Trial Court delivered the following instruction at the end of his charge:

“In reciting briefly as I have, some of the facts, I wish you to disregard anything I have said with respect to the evidence unless it coincides with your own recollection. I may have erred in my recollection as to what the evidence was. If I have, you must disregard it because your recollection of what the evidence is must be your sole guide, and not what counsel has referred to as evidence, or what the Court has referred to as the evidence.”

This nullified any inaccuracies of the trial judge in reciting the facts and cited *State vs. Young*, 97 N. J. Law, 501, last syllabus. The case cited is not analogous. The court in that case said:

“It is also urged by defendant that the charge of the court refreshed the minds of the jury relating to the facts. *It is not said they were untruly stated*, but that their recital refreshed the minds of the jury. *Every comment of evidence by the court has that effect, and it is not error when, as here, the jury is instructed to rely on their own recollection.*”

It is obvious from the above excerpt that there was no complaint that the facts were stated inaccurately. It is further apparent the trial court had indulged in mere comment on the evidence. In the case sub judice, a *complaint is made* that the trial court has stated to the jury as facts, matters which have no testimony or color of testimony to support them and that the remarks of the trial judge were not mere *comment* but were really statements of extraneous matter.

In the case of *State vs. Herbert*, 92 N. J. Law, 341, 105 Atlantic Reporter 804, the Trial Court told the jury:

"If the court errs in its statement of any evidence, or assumes the existence of evidence that is not actually before the jury, the jury are to rely upon their recollection and not upon the recollection of the Court."

"And in another portion of the charge the Court said: 'There are some facts which seem to have been established by the evidence, I do not state that they are, it is for you to determine whether or not they are.'"

It is obvious that the portions of the charge are in all respects similar to the one which the court used in the case sub judice yet in the case of State vs. Herbert, supra, the Court said:

"Of course this can only refer to disputed questions of fact."

In the case of State vs Herbert, supra the Court had under consideration a proposition alike to the situation presented in this case.

The opinion of the supreme Court in the Herbert Case and the opinion of the same Court in this case cannot be reconciled although both cases present the same question.

It was contended in the Supreme Court and it is now respectfully urged that the trial Court did not cure the error. His instructions were directed to disputed questions of fact. The case presented a close question of identification. The remarks of the trial Court greatly influenced the jury in its manner of arriving at the verdict.

No testimony appeared in the case of the defendant "that he was a chauffeur" or "that he was working for the same concern," or that "he was out

of work and had nothing to do," or that "a strike had been called." There was no evidence in this case that "two of them got out of the car for the purpose of acquainting the driver that there was a strike." There was no evidence that he was in the car which stopped the bus. In fact, none of the evidence repeated by the trial Court in its charge to which exception is here taken appeared in the case of this defendant.

The Trial Court lead the jury to believe that the testimony of the other defendants was binding upon this defendant and that their explanation as to what happened bound this defendant. The jury were lead to believe they were at liberty to consider the explanation of the other defendants as though it emanated from this defendant, although this defendant had neither testified or offered any explanation, for the reason no direct fact had been offered against him, requiring his testimony in contradiction or explanation.

In the case of *State v. Herbert*, supra, the Court said:

"The statement made by the Court, *had no foundation in fact* and was harmful being a material factor in the case to be weighed by the jury as to Weinberg's connection with the unlawful agreement, and hence, bearing materially on his guilt or innocence, and for this reason, the plaintiffs-in-error are also entitled to a reversal of the judgment." (*Italics mine.*)

In the case of *State v. Diamond*, et al, 84 N. J. L. 17, 86 Atl. on page 58, the Court said:

"This was injurious error, for it told the jury that a directly incriminating fact had been established by the testimony of a witness who had

given no such testimony. Geyer had not even pretended to identify the horse as Brewster's.*

“Such a statement by the court, viz, that a material fact has been proved, is a very different thing from telling the jury the impression made by the testimony upon the mind of the judge or his comment thereon, however erroneous it may be. The latter is avowedly an expression of opinion upon a matter that the jury are to decide; the former eliminates such matter as one that the jury in reaching its decision is to take as established. *It is injurious error, therefore, for the court in a criminal case to charge, in effect, that an incriminating fact has been proved when such fact has neither testimony nor the color of testimony to support it.* Such a charge, instead of being a comment upon testimony, made for the benefit of the jury, is an elimination of testimony, from the consideration of the jury.” (Italics mine.)

In the case of *State v. Lovell*, 88 N. J. L. 353, 96 Atl Reporter, page 39, the Court said:

“This rule, however, is clearly distinguished from the equally well-accepted rule that it is error in law for a judge in a criminal case to state in the charge a fact of the utmost importance, clearly connected with the merits, to be in proof, when such fact has neither testimony nor the color of testimony to support it.” (*Smith v. State*, 41, N. J. L. 370; *State v. Diamond*, 84 N. J. L. 17, 86 Atl. 57.)

Nor does this case fall within the rule stating that a mis-statement of fact in the instructions by the trial Court which is not in any way binding on the jury cannot for the first time be objected to in the

Supreme Court, as laid down in the case of *State v. Kroll* 93 Atl 571, and *State v. Kaskevich*, 118, Atl. at 703.

It is contended that the distinction made in the case of *State v. Lovell*, *supra*, clearly shows that this rule is only applicable to mis-statement of *facts in not in any way binding on the jury, that is, pure comment*, which under the case of *State v. Hummer*, 73 N. J. L. 714, the trial Judge has a right to do, so long as the right of the jury to decide disputed questions of fact is pointed out in the charge. This instruction, it is contended, is a charge that certain facts are in the proof when such facts have neither testimony nor the color of testimony to support them, and hence, is not a mis-statement of fact but in reality, a statement of extraneous matter in no wise connected with the facts in the case.

In this case, *there was no identification of the defendant. There was no proof of his presence at the scene of the crime. ...There was no proof that he was participating, aiding, abetting or acting in concert with the others.* He had rested his case on the State's case and the witnesses for the State had failed to identify him as being present and there was no other testimony of his presence at the scene of the commission of the crime

The Trial Court knew the defendant had rested his case. It also knew the legal effect of the defendant's announcement. The defendant was under no legal obligation to request the trial court to refrain from charging extraneous matter, as a proven fact.

The trial Court told the jury however he was at the scene of the crime. That he was a passenger in one of the automobiles. For the trial Court to as-

sume from non-existing facts that there was evidence to show his presence at the scene of the crime and evidence from which malicious and participation in the crime could be inferred, it is contended was error prejudicial to the defense on its merits.

ASSIGNMENT 9. REASON 9.

The Trial Court erred in refusing to direct a verdict for the defendant at the close of its case.

The testimony proved by the State was as follows:

“That one Dominick Savi was driving a motor bus for the General Transportation Co., on the morning of April 26th, 1924, and that while he was in the City of East Orange two Ford automobiles came in front of his car and stopped it; that these automobiles to the best of his recollection contained seven men, and that thereupon, some of the men proceeded to break the spark plugs on the automobile, and one of the men struck him. He was then called upon to identify the men who struck him, and he identified all of the men excepting the defendant (see C, p. 18). After the assault he notified the police. The police went and searched for the men identified and found two cars approximately one-half mile away from the scene of the alleged crime with seven men in it. This was approximately thirty minutes after the commission of the crime. On page 24, he was again called upon to make an identification, but he could only identify six. He could not identify the seventh man, the defendant.”

On page 27 C, the following question is put to the witness: “Q, I beg your pardon. I meant the de-

defendant Knowles, you did not see either at the affray or at Bamberger's?" The police officer testified to the arrest and that the defendant was present in the Police Court on the arraignment, but did not see the the affray nor did they know anything about it excepting that they made the arrest under the circumstances hereinbefore outlined. It was shown by the testimony on page 38 C, that as soon as the defendants were accused of the assault, they all said they were not there. A witness, Noons, was called for the State. He was standing about 500 yards or 1,500 feet from the scene of the crime. He testified on pages 49-50 that only one car came to the scene of the crime and the other car and its occupants stayed a great distance away, and further that when the assault was committed upon the said Savi, the other automobile that is, one of the automobiles was not present (see C, pp. 50-51). "Q. What do you mean? A. They did not go there until later. Q. How much later? A. I could not tell you. When they did come, the little damage that was done to the car was done by the first car that came. Question by the Court: Were they there when this man was knocked down? A. They were not, the other fellows in the other car were not there. Question by Mr. Wachenfeld: They were not there? A. No. sir."

This was all that was produced that in any wise affected the issue. The defendant produced a character witness to testify as to his good reputation for truthfulness and peaceableness, and then the defendant rested. The presence of the accused like every other important element of the crime charged had to be proven beyond a reasonable doubt. The onus of proof being upon the State, a verdict of guilty could not under the circumstances have been

supported by the meager testimony introduced before the Jury.

The defendant has a right to have the motion considered upon the evidence as it stood when the motion was made. *State v. Bachellor*, 89 N. J. L. 23; *State v. Contarino*, 92 N. J. L. 381

It is contended that there was no case for the jury at the time the motion was made and that the trial Court erred in refusing to grant the motion.

ASSIGNMENT 10. REASON 10.

This assignment of error is directed at the instruction of the Court to the jury with relation to the matter of reasonable doubt. It is contended by the use of the words "may" and "can" in the excerpt taken from the charge, the jury was left free to give to or refuse the defendant the benefit of a reasonable doubt as their judgment should indicate.

In the beginning of the charge, the Court did state that the jury were required to give the benefit of the doubt to the defendant and acquit him. However, the part of the charge to which exception is taken occurred at the end of the judge's charge and it is contended that the former instruction does not cure the error.

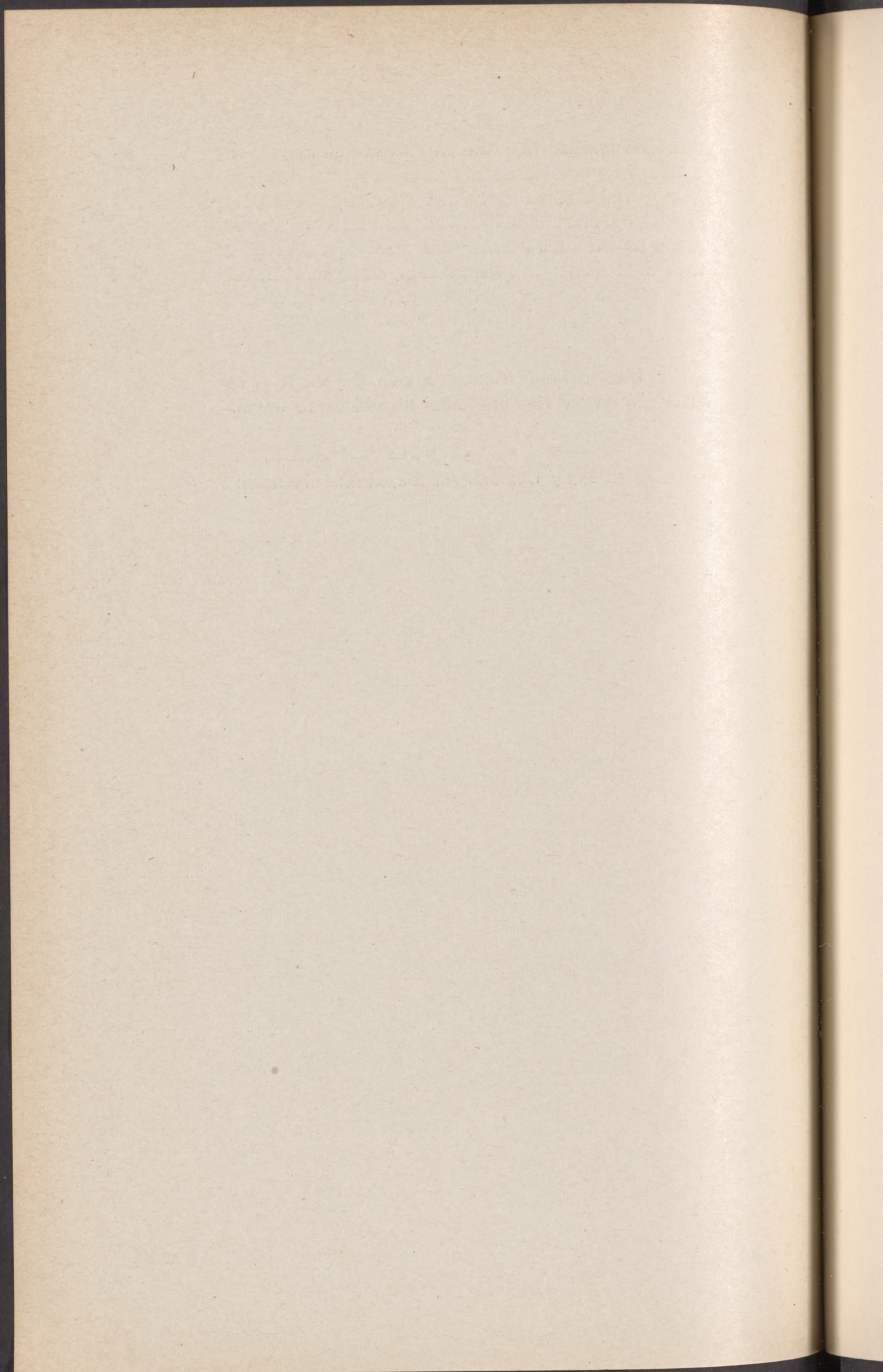
Quoting from *State v. Clayton*, 83 N. J. Law, 673, 85 Atl. Rep. 173:

"Our theory of jury trials proceeds upon the fundamental assumption that the jury will take the law from the Court not that they shall be judges of its correctness or that as between two conflicting statements of the law, they will unerringly single out the correct one."

It is contended that the part of the charge which has been here attacked is out of harmony with the other portion of the instructions to the jury upon the subject of reasonable doubt and that the juror's minds as the result were in a state of uncertainty as to their duty. An instruction, similar to the one here complained of, was considered in the case of *State v. Faure*, reported in 119 Atlantic Rep. on page 4.

For the various reasons herein argued it is respectfully urged the judgment should be reversed.

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New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

HARRY KNOWLES,

Plaintiff-in-Error.

On Error.

BRIEF OF JOHN O. BIGELOW FOR THE STATE.

The plaintiff-in-error, with six other men, was tried in the Essex Quarter Sessions on an indictment containing two counts. The first count charged that they did wilfully and maliciously break, destroy and damage an omnibus, the property of the Public Service Transportation Company, with intent to destroy and render useless the same. The second count charged an assault and battery upon Dominick Savi.

Knowles, as well as several of the other defendants, was convicted, and sued a writ of error out of the Supreme Court. That court affirmed, and thereupon he sued out the present writ.

Assignment No. 1. The Weight of the Evidence.

Savi, at the time alleged in the indictment, was operating a bus for the General Transportation Company between Market street, Newark, and Ampere. As he was driving along a street in East Orange, two automobiles intercepted him so that he had to stop his jitney (Case, p. 16, l. 28). One was a cut-down Ford car painted red, containing three men, and the other a black

Ford touring car with four men in it (Case, p. 14).

“Q What happened? A They lifted up my hood and started operating on the motor. * * * One fellow jumped off the black Ford and grabbed a hammer out of the black Ford, ripped up the hood and breaks two of my spark plugs and then one took a hammer or brick or one got a stone and broke the other two” (Case, p. 16, ll. 25 to 40).

These men then assaulted and beat Savi.

“I got on the step and one guy pulled me off the step. I took a piece of paper to make a statement of my clock and they pulled me off and one guy grabbed me and said, ‘Give me that paper.’ I said, ‘What for?’ He grabbed me and sloughed me and I fell and one guy kicked me below my belt” (Case, p. 17, l. 11).

Right after the assault, Savi telephoned the East Orange police (Case, p. 20, l. 10) and two officers immediately responded in an automobile (Case, p. 21). To them Savi told his story and when shortly the officers brought back some men, Savi recognized them as his assailants (Case, p. 21, l. 30 to p. 22, l. 10).

Policemen Read and Zink testified that they found Savi with his bus on Walnut street. He gave them a description of the cars and the officers then went “to the starting place, where the jitneys start, North Park and Dodd, thinking they might have gone there to repeat the act” (Case, p. 29, l. 17). They found a cut-down Ford painted red and a black Ford touring car following another jitney bus (Case, p. 29, l. 30).

The officers stopped these two cars and directed the drivers to drive to the place where Savi’s bus was standing, and then took the men in the two cars to the station house.

Read identified the defendant, Knowles, as one of the men in the cars. He did not know in which car (Case, p. 34).

Officer Zink corroborated Read, especially in the identification of Knowles (Case, p. 41, l. 25), and added that the seven defendants were all the men in the cars (Case, p. 38, l. 38).

Savi identified at the trial six of the defendants as being six of the men in two Ford cars (Case, p. 18, l. 10 to p. 19, l. 10). He did not pick out the defendant Knowles. It seems that the defendants identified, or some of them, were not sitting at the council table but were scattered through the audience (Case, p. 19, l. 1). It may very well be that Knowles was in the crowd in the court room and so was not found by Savi.

Knowles' counsel contends that the evidence offered by the State, is insufficient to support the verdict against him, particularly because Savi did not identify him as one of the men in the cars. Savi, however, testified that there were seven men in the two cars, and identified six of the defendants. The police officers, shortly after the assault, found the two cars still with seven men in them and identified Knowles as one of the seven. I contend that this evidence was sufficient to justify the jury in finding that Knowles was one of the men who took part in the assault.

At the conclusion of the State's case, counsel announced, "The defendant, Harry Knowles, rests" (Case, p. 55, l. 29). It should be noted, however, that he had already put upon the stand a character witness, Judge McGlennon, of this court (Case, p. 11). The mere fact that for reasons of convenience this defendant was permitted to put in his evidence before the State

made out its case, does not leave this defendant in the same situation as if he had rested on the State's case, without submitting any evidence.

When Knowles rested, the other defendants proceeded to present their case to the jury. All six of them testified. All of them except Jans averred that they were in one or the other of the two cars and that Knowles was with them; they had been chauffeurs of the General Transportation Company and had gone on strike that morning; they stopped Savi to tell him of the strike, but before they could say a word, he ran away and they did not touch him or his bus.

The evidence presented by Knowles' co-defendants, proves conclusively his presence at the time of the alleged assault. Counsel for Knowles contends, however, that this evidence should not have been considered by the jury in relation to Knowles and should not now be considered by this Court on the question of the weight of the evidence.

Counsel for Knowles did not request the Court to instruct the jury that they should not consider this evidence with relation to the defendant, Knowles, and the Court did not give any such instruction. In the absence of such an instruction it was the duty of the jury to consider all the evidence with relation to all of the defendants including Knowles. They are not presumed to have understood by the words, "the defendant, Harry Knowles, rests" (p. 55, l. 28), that the evidence thereafter given should not be considered on the charge against him.

State v. Lanto, 122 Atl. 738. "The jury is bound to presume that all evidence which has been admitted whether objected to or not, is legal; and they are obliged to consider it all in arriving at their verdict.

* * * We frequently say that it is unfair to the Trial Judge to reverse him upon a point not called to his attention. And it may, with even greater propriety, be said to be unfair to the jury to reverse its finding upon the ground that it considered evidence which it had no voice in admitting or rejecting, and which it must consider to be legal."

Wachtel-Pickert Co. v. Leonard (Mass.), 105 N. E. 354. "If defendant felt that this evidence might be used by the jury improperly, he should have asked the judge to instruct them as to its legitimate scope and legal effect."

In any aspect of the law, the verdict is supported by the evidence.

Assignment No. 2.

"Assault and battery is the touching of another, wilfully striking or touching"
(Case, p. 111, l. 29).

This excerpt from the charge on which error is assigned, is a paraphrase of Blackstone's definition;

3 Bl. Com. 120. Battery "is the unlawful beating of another. The least touching of another's person, wilfully or in anger, is a battery."

Com. v. McKie, 1 Gray (Mass.) 61.

State v. Sutton, 83 N. J. L. 46; 87 N. J. L. 192, affirming conviction of assault and battery where defendant, a street car conductor, had ejected a detective from the car for refusing to pay fare.

Assignment No. 3.

“Malicious mischief is the other charge, that is, wilfully breaking the property of another” (Case, p. 111, l. 30).

The first objection by defendant's counsel to this part of the charge is that the breaking must be malicious as well as wilful. The statute, however, denounces a breaking which is either wilful or malicious. *Crimes Act*, Sec. 153.

The second objection is that the breaking must be done with intent to destroy or render useless the property broken. Admitting that such intent was a necessary element of the crime, I call attention to the preceding paragraph of the charge wherein the Court quoted the indictment at length, including the allegation of intent and concluded, “These are the charges that these men are answering here in this court.”

State v. Friedman, 98 N. J. L. 577, 120 Atl. 9. The Court charged, “that any unlawful taking constitutes larceny,” not stating that there must be an intent to deprive the owner of his property. This Court held that considering the entire charge, there was no injurious error in that respect.

The necessity of proving intent was made clear to the jury.

Furthermore, as suggested by the opinion of the Supreme Court, the issue raised by the evidence, in this case was not whether the intent of the defendant in breaking the spark plugs of the automobile was to render useless the automobile. The issue was whether the defendant was one of the men who did the breaking.

But even if the charge was erroneous in the respect complained of, it could not prejudice the

plaintiff on the count for assault and battery. There was a general verdict of guilty covering both counts and each count was sufficient to support the sentence. Hence, there should be no reversal for this alleged error.

State v. Huggins, 84 N. J. L. 254, 258.

Assignment No. 4.

“The fact that these men are jointly indicted does not make it necessary that each one of them actually struck this complaining witness or that each one of them actually caused this damage to the jitney bus; but if any one of them did either of these acts in concert with the others, going there for that purpose and having determined to do this, he is guilty with the others” (Case, p. 111, l. 32).

Counsel for plaintiff-in-error contends that this instruction means that if a defendant committed an assault, he could be convicted of malicious mischief and vice versa. The language used by the Court does not support this contention. It clearly means that if a defendant “did either of these acts” he is guilty of the act done.

Assignment No. 5.

“As has been pointed out, if a man commits an offense against the criminal laws and another accompanies him as a look-out, or participates in some way, he is equally guilty with the one who did the damage. So I charge you, as a matter of law, that if you find that any of these acts were committed by one of them and the others were there in compliance with that plan, each other one is equally guilty with the one who struck the blow” (Case, p. 112, l. 1).

This part of the charge is in harmony with the established law of the State.

State v. Hess, 65 N. J. L. 544;

State v. Hanrahan, 87 N. J. L. 1, 88 N. J. L. 391.

Assignment No. 6.

“The facts in this case are that this complaining witness, Dominick Savi, on the day that a strike occurred on the line of this jitney bus, was driving a jitney bus * * * (Case, p. 113, l. 32).

“I wish you to disregard anything I have said with respect to the evidence unless it coincides with your own recollection. I may have erred in my recollection of what the evidence was. If I have, you must disregard it, because your recollection of what the evidence is must be your sole guide and not what counsel have referred to as the evidence, or what the Court has referred to as the evidence” (Case, p. 116, l. 35).

The only fact stated by the Court was that Savi was driving a jitney bus. This fact appears to have been assumed by all six of the defendants who testified.

This statement of the Court cannot be considered harmful to the defendant. If the evidence that Savi was driving a bus had been harmful, certainly the other defendants who presented a defense would have sought to controvert it.

Furthermore, counsel for Knowles instead of contenting himself with a general exception should have objected specifically to this statement at the trial. Lastly, it appears that the Court in the final analysis, left to the jury the decision.

State v. Kaskevich, 98 N. J. L. 23, *Id.* 902.

“So long as the right of the jury to decide disputed questions of fact for themselves is

pointed out in the charge, the judge's comments on evidence, even when they embrace actual mis-statements of fact, afford no ground for the reversal of a criminal conviction. * * * In the second place, no specific objection was taken to the mis-statement at the close of the instructions to the jury, the plaintiff-in-error contenting himself with taking a general exception to the whole charge and making his objections specifically for the first time in this Court."

Assignment No. 7.

"All of the other defendants were chauffeurs. All of the other defendants were working, I believe, for this concern" (Case, p. 115, l. 10).

Plaintiff-in-error objects to this part of the charge as well as the whole paragraph following it, not on the ground that it does not correctly state the evidence introduced by the six defendants, but rather because this evidence was presented after he had rested and hence, was no part of the case so far as he was concerned. His argument is, in effect, that it was error for the judge to comment on any of the evidence presented after Knowles rested, without instructing the jury that such comment could not be considered by them in relation to Knowles.

If counsel for the defendant had desired the Court to point out this limitation to the jury, he should have made a suitable request to charge and in the absence of such request cannot now complain.

State v. Geltzeiler, 127 Atl. 322, affd. 128 Atl. 240.

Assignment No. 8.

The evidence or alleged lack of evidence on which was based the motion to direct a verdict (Case, p. 55, l. 32) has been considered in the first part of this brief.

Assignment No. 9.

The Court charged reasonable doubt in the usual manner (Case, p. 112, l. 27). Near the close of the charge the Court further instructed them as follows:

“As I stated at the outset, you must decide, you must be satisfied beyond a reasonable doubt, of the truth of these charges, before you arrive at a verdict of guilty. If you are satisfied beyond a reasonable doubt of the guilt of these accused, it will be your duty to bring in a verdict of guilty as to those whom you believe are guilty beyond a reasonable doubt. If, on the other hand, you have a reasonable doubt and you feel that the State has not proven beyond a reasonable doubt the truth of the charges against all of them, you can acquit all of them, if you believe that the State has not proven beyond a reasonable doubt the charges against any of them, or you may acquit those who you feel have not been proven guilty” (Case, p. 116, l. 35).

The contention of counsel that the use of the words “can” and “may” in the last sentence allowed the jury to convict even though they had a reasonable doubt is hypercritical.

The judgment of the Supreme Court should be affirmed.

Respectfully submitted,

J. O. BIGELOW,
Prosecutor of the Pleas.

