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Writ of Error to Court of Errors and Appeals.

NEW JERSEY, SS. :
(Seal)

TO THE HONORABLE, THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW JERSEY :

10

Because in the record and proceedings and also in the affirmance of the judgment of the Court of Quarter Sessions of the County of Passaic, upon a certain indictment against Peter Keegan, late of Jersey City, in the County of Hudson and State of New Jersey, wherein the said Peter Keegan was indicted and convicted in the Court of Quarter Sessions of the County of Passaic, of a crime of grand larceny and receiving stolen goods, and which conviction was affirmed by the Supreme Court of the State of New Jersey :

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Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted and is thereof convicted of a certain jury of the County of Passaic, taken before the State of New Jersey, and the said Peter Keegan as it is said, manifest error hath intervened to the great damage of the said Peter Keegan as from his complaint we have received information, we being willing, in this behalf to correct the error in due manner, if any there shall be, in the affirmation of the judgment of conviction of the said Peter Keegan, by the Supreme Court of New Jersey, and that speedy justice be done to him; the said Peter Keegan, command you that if judgment be thereon given, then that you distinctly and jointly send

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Writ of Error to Court of Errors and Appeals.

under your seal the record and proceedings aforesaid, with all things touching the same, to our Justices of the Court of Errors and Appeals of the State of New Jersey, the last resort in all causes, on the 20th day of March next, and this writ, with 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 law ought to be done.

WITNESS, HONORABLE EDWIN ROBERT WALKER, Esq., Our Chancellor, at Trenton, aforesaid, the 29th day of February, 1928.

I. F. GOLDENHORN,
Attorney for Peter Keegan,
1 Newark Avenue,
Jersey City, N. J.

JOSEPH F. S. FITZPATRICK,
Clerk.

A True Copy.
JOSEPH F. S. FITZPATRICK,
Clerk.

Writ of Error.

NEW JERSEY SUPREME COURT.

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

VS.

PETER KEEGAN,
Plaintiff-in-Error.

10

NEW JERSEY, SS.:

The State of New Jersey to the Court of General
Quarter Sessions in and for the County of Passaic:

(SEAL) GREETING:

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Because in the record and proceeding and also
in the giving of judgment in a certain indictment
pending before you, in which said indictment Peter
Keegan was a defendant and which said indict-
ment was for breaking and entering and receiving
stolen goods, and upon which indictment he is
convicted, as we are informed, and, as we are fur-
ther informed manifest error hath intervened in
the said proceedings and trial, to the great dam-
age of the said Peter Keegan, as by his complaint
we are informed, we being willing that speedy jus-
tice shall be done in this behalf, do command you
distinctly and openly to send under your seal, the
said indictment and the records and proceedings
aforesaid, with all things touching and concerning
the same, and also the entire record of proceedings
had upon the trial of the said indictment to our

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Writ of Error.

Supreme Court on the twenty-fourth day of December, 1925, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

10 Witness, William S. Gummere, Esq., our Chief Justice at Trenton, aforesaid, the fourth day of December, 1925.

EDWARD J. KELLEHER,
Clerk.

GEORGE E. CUTLEY,
Attorney.

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Judgment.

STATE OF NEW JERSEY.

PASSAIC COUNTY, to wit: Be it Remembered, That at a Court of Quarter Sessions, held at Paterson, in and for the said County of Passaic, on the Seventeenth day of October, in the year of our Lord one thousand nine hundred and twenty-four, being the day on which the Grand Jury heretofore summoned to come before the Court of Oyer and Terminer and now sitting in and for said County, desires to present bills and no Justice of the *Supreme* Court being present at the Court House in said County, before the Honorable Joseph A. Delaney, Judge of the said Court of Quarter Sessions in and for the said County of Passaic, according to the form of the statute in that case made and provided; by the oath of

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1. William D. Plum, Foreman,
2. Frank Vreeland,
3. William H. Bailey,
4. Joseph A. Dougherty,
5. George H. Crawford,
6. Charles H. Albonica, Jr.,
7. Morris Rhode,
8. Matthew A. Pierce,
9. Mrs. Nellie A. Frazier,
10. Eli Mirandon,
11. Richard Randall,
12. John Wagner,
13. James Rigby,
14. Mrs. Kate Paton,
15. Miss Ethel H. Moulton,
16. William S. McDermott,
17. Joseph Boyle,
18. James Beckett, Jr.,

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Judgment.

19. Joseph Keil,
20. Ernest Barber,
21. Mrs. Sarah L. Miller,
22. Mrs. Gertrude Van Riper,
23. Max Thompson.

10 good and lawful *men* of the said County of Passaic, duly summoned and then and there sworn and charged to inquire in behalf of the State of New Jersey in and for the said County of Passaic; it is presented in manner and form following, to wit:

The Bills herewith presented are true Bills.

J. WILLARD DE YOE,
Prosecutor.

WILLIAM D. PLUMB,
Foreman.

20

COURT OF OYER AND TERMINER,
IN AND FOR THE COUNTY OF PASSAIC.

September Term, A. D. Nineteen Hundred and
Twenty-four.

30 PASSAIC COUNTY, to wit:—The Jurors of the State of New Jersey, in and for the body of the County of Passaic, upon their oath PRESENT, that Eugene Murphy, William Dunlap, William Price, Peter Keegan otherwise known as Peter Pepper; and Jacob Wilkenfeld, late of the City of Clifton, in the County of Passaic aforesaid, on the twelfth day of August, in the year of our Lord nineteen hundred and twenty-four, with force and arms, at the City aforesaid, in the county aforesaid, and within the jurisdiction of this Court, the building of Interstate Forwarding Company, a corporation
40 recognized by the laws of this State, there situate,

Judgment.

by night wilfully and maliciously did break and enter with intent the goods and chattels in the said building then and there being found, unlawfully to steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Eugene Murphy, William Dunlap, William Price, Peter Keegan, otherwise known as Peter Pepper; and Jacob Wilkenfeld, on the Twelfth day of August, in the year of our Lord nineteen hundred and twenty-four, in the City of Passaic in the County aforesaid, and within the jurisdiction of this Court the building of Interstate Forwarding Company a corporation recognized by the laws of this State, there situate, by day wilfully and maliciously did break and enter with intent the goods and chattels in the said building then and there being found, unlawfully to steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Eugene Murphy, William Dunlap, William Price, Peter Keegan, otherwise known as Pete Pepper; and Jacob Wilkenfeld, on the Twelfth day of August, in the year of our Lord nineteen hundred and twenty-four in the City of Clifton, in the County aforesaid, and within the jurisdiction of this Court the building of Interstate Forwarding Company a corporation recognized by the laws of this State, there situate, wilfully and maliciously did enter without breaking the same, with intent the goods and chat-

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Judgment.

tels in the said building then and there being found unlawfully to steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

10 And the Jurors aforesaid, upon their oath aforesaid, do further present that the said Eugene Murphy, William Dunlap, William Price, Peter Keegan, otherwise known as Peter Pepper; and Jacob Wilkenfeld, on the Twelfth day of August, in the year of our Lord nineteen hundred and twenty-four in the City of Clifton, in the County aforesaid, and within the jurisdiction of this Court, one Clydesdale automobile truck of the value of \$3000.00 one lot of woolen goods of the value of \$1200.00; one case of cotton yard, one barrel of
 20 okite of the value of \$1000.00 and one lot of plush goods of the value of \$5000.00; in all of the value of ten thousand two hundred dollars of the moneys, goods and chattels of Interstate Forwarding Company, a corporation recognized by the laws of this State, then and there being found, unlawfully did steal, take and carry away, contrary to the form of the statue in such case made and provided and against the peace of this State, the government and dignity of the same.

30 And the jurors aforesaid, upon their oath aforesaid, do further present that the said Eugene Murphy, William Dunlap, William Price, Peter Keegan, otherwise known as Peter Pepper; and Jacob Wilkenfeld, on the Twelfth day of August, in the year of our Lord nineteen hundred and twenty-four in the City of Clifton in the county aforesaid, and within the jurisdiction of this Court, one
 40 Clydesdale automobile truck of the value of \$3000.00; one lot of woolen goods of the value of

Judgment.

\$1200.00; one case of cotton yarn and one barrel of okite of the value of \$1000.00 and one lot of plush goods of the value of \$5000.00; in all of the value of ten thousand and two hundred dollars, of the moneys, goods and chattels of Interstate Forwarding Company, a corporation recognized by the laws of this State, before then unlawfully stolen taken and carried away, unlawfully did receive and have they the said Eugene Murphy, William Dunlap, William Price, Peter Keegan, otherwise known as Peter Pepper; and Jacob Wilkenfeld then and there well knowing the same to have been unlawfully stolen, taken and carried away, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

10

J. WILLARD DE YOE,
Prosecutor of the Pleas.

20

Witness:

ANTHONY BATTEL.

THEREUPON, the said Court of Quarter Sessions did receive such indictment and the Clerk of the said Court of Quarter Sessions did file the same in the said Court, and also did thereupon make entry thereof in the Minutes of said Court at the then session of said Court, and afterwards, to wit, at the same term of said Court of Quarter Sessions, holden at Paterson, in and for the County of Passaic aforesaid, to wit: on the Seventh day of November, A. D. Nineteen Hundred and Twenty-four at a session thereof before the Honorable Joseph A. Delaney, Judge of said Court, in and for said County of Passaic, according to the statute in such case made and provided, comes the said Peter Kee-

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Judgment.

gan, otherwise known as Peter Pepper in his own proper person, and now touching the premises in said indictment above specified and charged against him, being him, being asked in what manner he will acquit himself, says, he is not guilty and of this puts himself upon the country, etc., and J. Willard De Yoe, Esquire, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let a jury come here before the Judge aforesaid at Paterson aforesaid, in the County of Passaic aforesaid, at the same session of the Court of Quarter Sessions aforesaid, on the eighth day of December, next ensuing, being as yet of the Term of September, A. D. Nineteen hundred and Twenty-four, of twelve good and lawful persons, each of whom shall be a citizen of this State and a resident within the County of Passaic 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 Peter Keegan otherwise known as Peter Pepper to recognize upon their oaths whether the said Peter Keegan otherwise known as Peter Pepper be guilty as in the said indictment specified, or not guilty, because as well the said J. Willard De Yoe, Esquire, Prosecutor of the Pleas for the said County of Passaic aforesaid, who prosecutes for the State of New Jersey aforesaid, in this behalf, as the said Peter Keegan otherwise known as Peter Pepper have put themselves upon the said jury, and the same day is given to the parties aforesaid, at the same place.

And thereupon, on the First day of December, A. D. Nineteen Hundred and Twenty-five, being of the Term of September, of said Court, before the Court of Quarter Sessions aforesaid holden by the

Judgment.

Honorable Joseph A. Delaney, Judge as aforesaid, come as well the said Willard De Yoe, Prosecutor of the Pleas, aforesaid, who prosecutes as aforesaid, as the said Peter Keegan otherwise known as Peter Pepper, in his own proper person and the jurors of said jury, by the Sheriff of the County of Passaic aforesaid, for this purpose empanelled and returned, to wit: 10

1. John Tanis
2. William D. Norman
3. Joseph Grimshaw
4. Isabell Rosener
5. Belle Ellis
6. George C. King
7. Wesley A. Ackerman
8. Herbert McAuliffe 20
9. Abraham Kaufman
10. Martha Mathews
11. Emma G. Fritz
12. Bertha C. Carlson

also come, who to speak the truth of the matters within contained, being chosen, tried and sworn upon their oaths, say that the said Peter Keegan otherwise known as Peter Pepper is guilty of the premises in the within indictment named and specified, in manner and form as by the indictment is charged against him. 30

And thereupon, on the Fourth day of December, A. D. Nineteen Hundred and Twenty-five, it was demanded of the said Peter Keegan otherwise known as Peter Pepper if he hath or knoweth anything to say wherefore the Court here ought not upon the premises and verdict proceed to judgment against him, who nothing further says, unless as he has said before. 40

Judgment.

Wherefore, all and singular, the premises being seen and by the Court herefully understood, it is considered by the Court, and the sentence of the law is that the said Peter Keegan otherwise known as Peter Pepper, shall be confined in the State Prison at hard labor, for the maximum term of seven years and the minimum of four years.

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JOS A. DELANEY,
Judge.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss. :

20

I, JOHN McCUTCHEON, Clerk of said County and Clerk of the County Court thereof, DO HEREBY CERTIFY that the foregoing is a true transcript of record and proceedings in the case of Peter Keegan otherwise known as Peter Pepper, convicted of Breaking, Entering, Larceny and Receiving, in our Court of Quarter Sessions, as the same is taken from and compared with the original record now remaining on file and of the record in my Office.

30

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Eighteenth day of December, A. D. Nineteen Hundred and twenty-five.

(Seal)

JOHN McCUTCHEON,
Clerk.

40

Judgment.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss.:

I, JOSEPH A. DELANEY, Judge of the Court of Quarter Sessions in and for the County of Passaic, do hereby in the schedule hereto annexed send to our Justices of our Supreme Court of Judicature, of the State of New Jersey, at Trenton, the record and proceedings mentioned in the within Writ of Error, with all things touching the same, as I am within commanded. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, at Paterson, this Eighteenth day of December, A. D. Nineteen Hundred and twenty-five.

(Seal) JOS A. DELANEY, Judge. 20

A true copy,

EDWARD J. KELLEHER, Clerk.

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Testimony.

PASSAIC COUNTY QUARTER SESSIONS.

Before—Hon. JOSEPH A. DELANEY, *J.*, and a Jury.

10	<p style="text-align: center;">THE STATE</p> <p style="text-align: center;">vs.</p> <p>WILLIAM DUNLAP, PETER KEEGAN, alias PETER PEPPER, and JACOB WILKENFELD,</p> <p style="text-align: right;">Defendants.</p>
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Paterson, N. J., December 1, 1925.

20	<p>APPEARANCES:</p> <p>JAMES DUNN, Esq., Assistant Prosecutor, for the State.</p> <p>WILLIAM A. KAVANAUGH, Esq., for Defendant, William Dunlap.</p> <p>GEORGE E. CUTLEY, Esq., for Defendant, Peter Keegan.</p>
30	<p>THOMAS F. MEANY, Esq., for Defendant, Jacob Wilkenfeld.</p>

(A jury being empanelled and found satisfac-
tory, they were sworn.)

(Mr. Dunn opens for the State.)

40

George P. Carroll. Called by State. Direct.

GEORGE P. CARROLL, sworn for the State.

DIRECT EXAMINATION BY MR. DUNN:

Q. Where do you reside? A. Leonia, New Jersey.

Q. Are you connected with the Interstate Forwarding Company? A. Yes, I am president. 10

Q. Were you president of that concern during the year nineteen hundred and twenty-four? A. I was.

Q. What is the nature of the business of the Interstate Forward Company? A. They are forwarders of merchandise of mills in the vicinity of Passaic, Paterson and New York City.

Q. During the month of August nineteen hundred and twenty-four were you so engaged, your concern, I mean? A. Yes, sir. 20

Q. That was about August eleventh, nineteen hundred and twenty-four? A. Yes, sir.

Q. On or about August eleventh, nineteen hundred and twenty-four did you have occasion to ship any goods to New Jersey? A. Yes, sir.

Q. How did you ship them? A. By auto truck from New York.

Q. What kind of a truck was it? A. We use Clydesdales and Macks. This particular truck was a five ton Clydesdale. 30

Q. Can you give the jury any better description than that? A. Yes, sir, it is what we term a semi-box truck, that is, it was enclosed on both sides and in the front and had a three foot tail board, that left open only about half of the year. The top was covered with tarpaulin.

Q. What color was it? A. Green, with a gray running deer. 40

George P. Carroll. Called by State. Direct.

Q. Who drove the truck on August eleventh? A. Edward Sharpe.

Q. Did anybody else go with him on the truck?

A. No, I checked that load on the truck myself. We all jumped in the last minute, that was the last truck leaving New York and he put the tail board up and it was covered over when he left
10 New York. He was alone on the truck.

Q. What was on the truck, Mr. Carroll? A. Four cases of cotton yarn, eleven bales of cotton yarn, a barrel of Okite, four buckets of spools with four dozen in each bucket, sixty bundles of cotton plush, making a total value of sixty-six hundred seventy-six dollars and thirty-four cents.

Q. What year truck was that? A. As near as I can remember it was nineteen hundred and eigh-
20 teen.

Q. What was the value of the truck? A. Twelve hundred dollars.

Q. Where was that truck directed to go on that date, Mr. Carroll? A. It was directed to go to the Interstate garage on Bloomfield Avenue, Clif-
ton.

Q. Have you any system of checking up the procedure of these trucks after they leave your place?

30 Mr. Meany: I object to it. It does not make any difference whether he has any system or not.

The Court: The answer is yes or no.

A. Yes, sir.

Q. Do you keep a record of the course, of the trip of these trucks? A. Yes, sir.

40 Q. What do your records indicate as to this truck after it left your plant?

George P. Carroll. Called by State. Direct.

Objected to by Mr. Kavanaugh.

Objection sustained by the Court.

Q. Did you go to Clifton subsequent to August eleventh? A. Yes, sir, I was there on the forenoon of the eleventh.

Q. After the forenoon of the eleventh did you go to Clifton? A. Not for several days. 10

Q. Did you learn subsequent to the eleventh that your truck about which you have just testified had disappeared?

Mr. Kavanaugh: I object to it on the ground that it is hearsay.

Objection overruled.

Defendant excepts. Exception allowed and signed and sealed accordingly. 20

JOS. A. DELANEY,
Judge.

A. Yes, sir.

Q. When did you learn that? A. The following morning, the morning of the twelfth.

Q. As a result of what you learned did you do anything? A. I notified all the members of the Motor Truck Owners Association of Newark, I notified them and asked them to send out a general alarm, I also notified the Hoboken, Jersey City, Passaic and Clifton police. 30

Q. When did you next see your truck? A. The night of the twelfth. No, I did not see it for several days after. My agent in Passaic saw it the day after in Newark.

Mr. Kavanaugh: I object to that and ask that it be stricken out.

The Court: Strike it out. 40

George P. Carroll. Called by State. Direct.

Q. When did you see the truck yourself after that time? A. It was Wednesday or Thursday of that week, some two days after the robbery, about as near as I can recall it.

Q. What was the condition of it when you saw it? A. The next time I saw it, you mean the physical condition of the truck?

10 Q. Yes. A. The same as it had been except the radiator had been mashed in.

Q. Where did you see it? A. In the garage at Clifton.

Q. Do you recall whose garage it was? A. The garage owned by the Brighton Mills but it was leased by the Interstate Forwarding Company.

Q. Was there any merchandise on the truck when you saw it? A. No.

20 Q. After the eleventh of August did you subsequently see any of the merchandise that was on the truck when you last saw it on the eleventh? A. Yes, sir.

Q. Where did you see the merchandise? A. In the police station at Newark.

30 Q. What merchandise did you then recognize was the merchandise you had seen on August eleventh? A. The bundles of plush, less two, a barrel of Okite, and four packages of woolen, less two pieces out of one package and one case of cotton yarn.

Q. Did any of these bundles or packages have any identification mark on them or any name so far as you recall? A. All of them.

Mr. Dunn: By consent of counsel for the respective defendants, two photographs are offered in evidence.

George P. Carroll. Called by State. Direct.

Mr. Meany: If the prosecutor will tell us what the purpose is it might clarify the situation.

Mr. Dunn: My original purpose was to ask Mr. Carroll to identify some of the articles that appear in these pictures. I was then going to ask other questions but if you object I will prove them. 10

Mr. Meany: I am not objecting but I simply wanted to know the purpose.

Mr. Dunn: The second purpose will be to show the location of the goods in the garage they were found in but the primary purpose is to permit Mr. Carroll, if he can, to show some marks of identification.

Photographs admitted in evidence and marked Exhibit S-1 and S-2 for the State. 20

Q. I show you an exhibit marked S-1 and ask you if you see on that exhibit any merchandise about which you have already testified? A. Yes, I see the cases of yarn and some of the plush, bundles of plush.

Q. Are there any distinguishing marks on these cases by which you can identify them? A. On the cases, yes, but I cannot see the marks on the plush.

Q. I show you exhibit S-2 and ask you if there are any articles of merchandise on that about which you have already testified that you recognize on that exhibit? A. Yes, sir, bundles of plush. I can see the marks on the plush and the barrel of Okite and a case of yarn. I don't see the marks on this here but the bundles of plush have a mark on. 30

Q. Inside and appearance is the barrel indicated on this exhibit similar or not to the barrel of Okite to which you have testified? A. Yes, sir, similar. 40

George P. Carroll. Called by State. Direct.

Q. Mr. Carroll, would you mind coming down from the stand for a moment? First I would like to have this marked as an exhibit for the State for the purpose of identification.

Bundle of plush marked Exhibit S-3 for Identification.

10

Q. Mr. Carroll, I would like to have you examine exhibit S-3 for identification and tell me if you know what it contains? A. This is our cotton plush.

Q. Will you just examine that a little further and advise me whether or not this is the raw cotton plush about which you have already testified? A. Yes, sir.

20

Q. Was this a portion of the plush you saw at police headquarters subsequent to August eleventh? A. Yes, sir.

Q. It is the same plush you saw there on that day, is this plush the same plush you saw at police headquarters that day? A. Yes, sir.

Q. It is the same plush that left your premises on August eleventh? A. Yes, sir.

Q. Was it similarly wrapped when it left your premises on August eleventh? A. Yes, sir.

30

Mr. Dunn: I offer the exhibit in evidence.
Bundle of plush admitted in evidence and marked Exhibit S-3 for the State.

Q. Where was the garage located in Clifton? A. On Bloomfield Avenue.

Q. In the County of Passaic? A. Yes, sir.

Q. Did you see the garage after you saw it on the morning of August eleventh? A. Yes, sir, I

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George P. Carroll. Called by State. Direct.

saw it, I don't know if it was Wednesday or Thursday of that week. Thursday, I think.

Q. Was your attention called to anything when you saw it on Wednesday or Thursday of that week which you had not see on August eleventh? A. Yes, sir.

Q. What was it? A. The broken window in the rear. 10

Q. Was that window broken on the morning of August eleventh? A. It was not.

Q. How large a window was it? A. The window arrangement was something similar to the court arrangement, two lower sashes and an upper throw-out. The size of each sash is thirty by forty and it has four panes of glass and each glass is twelve and a half by eighteen and a half.

Mr. Kavanaugh: No cross examination. 20

DIRECT EXAMINATION CONTINUED BY MR. DUNN:

Q. What was the value of the merchandise recovered? A. Six thousand six hundred and seventy-six dollars and thirty-four cents less one thousand thirty-nine dollars and forty-eight cents.

Q. That was what? A. The one thousand thirty-nine dollars and forty-eight cents we had to pay for. 30

John Steaken. Called by State. Direct.

JOHN STEAKEN, sworn for the State.

DIRECT EXAMINATION BY MR. DUNN:

Q. Were you employed by the Interstate Forwarding Company? A. Yes, sir.

Q. Are you still employed by them? A. Yes, sir.

10 Q. Were you employed by them in August nineteen hundred and twenty-four? A. Yes, sir.

Q. In what capacity? A. Agent for the Interstate Forward Company.

Q. Where were you located? A. Bloomfield road, Allwood.

Q. What is located at that point? A. Brighton Mill of Allwood is there.

20 Q. What were you in charge of? A. The trucks and all business on this end.

Q. Were you in a building, did you have charge of any building? A. I was in charge of the whole garage.

Q. The garage of the Interstate Forwarding Company? A. Yes, sir.

Q. How many trucks did the Interstate Forwarding Company have at that time that would come to your garage?

30 Question withdrawn.

Q. How many cars could your garage accommodate? A. It could accommodate a great many, but I don't believe we have over, say fifteen cars in there.

Q. Were you in charge of the garage during the period of August eleventh to the twelfth and thirteenth? A. Yes, sir.

40

John Steaken. Called by State. Direct.

Q. On the day of August eleventh did any truck come into your garage from the Interstate Forwarding Company? A. They all came in.

Q. When you say all came in how many trucks came in on August eleventh? A. I believe we had eight truck at that time.

Q. What were the colors of the eight trucks? A. They all had the green body and the gray chassis. 10

Q. Did you lock up the premises on the night of August eleventh? A. Yes, sir.

Q. At what time? A. Between six thirty and seven.

Q. Prior to that time did the trucks come in containing merchandise from New York, four cases of cotton goods, barrel of okite—

Question withdrawn. 20

Q. Did you examine the trucks and check the trucks that came into the garage? A. I asked the man—

Mr. Kavanaugh: I object to that and ask that it be stricken out.

The Court: Strike it out.

Q. On the morning of August the twelfth were the eight trucks in the garage? A. No, sir. 30

Q. What truck was missing? A. Seven thousand nine hundred and four.

Q. Whose truck was that? A. The Interstate Forwarding Company's.

Q. Did you observe that truck when it came into the garage? A. Yes, sir.

Q. When did it come into the garage? A. On the night of August eleventh.

John Steaken. Called by State. Direct.

Q. What time? A. Between six thirty and six forty-five.

Q. What was its condition when it came into the garage as to whether or not it had any merchandise on? A. I had a load on.

10 Q. What was the condition of the garage when you locked it up that night? A. Everything was locked up.

Q. What time did you get to the garage in the morning? A. About a quarter to seven.

Q. What was the condition of the garage when you arrived there at that time? A. Everything looked locked up but when I opened up inside I found the big door with the latch off.

Q. What door is that? A. The door where trucks come in.

20 Q. You found what? A. The latch on the big door was off. It had been opened.

Q. Did you observe anything else about the garage that was not in the same condition it was the night before? A. I remember this truck was parked in the center and I noticed it was gone at once, it had stuck out a little further than the rest and I went across to Mr. Dunn's house and asked him if he heard—

30 Q. As a result of seeing the truck missing you went across the street? A. Yes, sir.

Q. Did you observe anything else about the garage that was not in the same condition as the night before? A. Not at that particular moment.

Q. Subsequent to that did you examine the window in the garage? A. Afterward we did and found the window broken in the back.

Q. How long afterward? A. Half an hour afterward.

John Steaken. Called by State. Cross.

Q. What was the condition of the window the night before? A. O. K.

Q. Was anyone in the garage during the time you opened the door and when you discovered the window open? A. No, sir.

Q. Subsequent to that time, the last time you saw the truck was August the eleventh, subsequent to that time did you see the truck? A. On the afternoon of August twelfth. 10

Q. Where? A. On Railroad Avenue near Right Street.

Q. Where? A. Near Right Street.

Q. What city? A. Newark.

Q. Was anything on the truck when you saw it? A. Three cases of cotton yarn.

Q. Was anybody in possession of the truck when you came there? A. No, sir. 20

Q. How did you come to find the truck? A. A garage man called up the office at Allwood and notified us the truck was down there.

Q. Do you know about what time that was in the afternoon? A. We will say about three o'clock.

Q. Did you go to any garage in Newark, the garage of Mr. Haft? A. No, sir.

Mr. Kavanaugh: No cross examination. 30

CROSS EXAMINATION BY MR. MEENEY:

Q. What was the number of this truck? A. One one nine ought four.

Q. What were the numbers of the other Interstate Forwarding Company's trucks? A. They ran from eleven thousand nine hundred up to eleven thousand seven or eight.

Q. Can you tell the numbers of the others? A. No, sir. 40

Thomas E. Dunn. Called by State. Direct.

THOMAS E. DUNN, sworn for the State.

DIRECT EXAMINATION BY MR. DUNN:

Q. Where did you reside on August twelfth, nineteen hundred and twenty-four? A. Bloomfield Avenue, Clifton.

10 Q. Did you sleep there on the night of the eleventh and the morning of the twelfth? A. Yes, sir.

Q. Did anything unusual occur during the morning of August the twelfth, nineteen hundred and twenty-four? A. I was startled by the exhaust of a machine.

Q. Where did you hear that exhaust with reference to your home? A. It sounded to me immediately in front of my house.

20 Mr. Kavanaugh: I object to it and ask that it be stricken out.

The Court: Strike it out.

Q. As a result of what you heard what did you do? A. I arose up in bed and looked out of the window.

30 Q. What did you see? A. I could distinguish what appeared to me to be a truck disappearing towards Passaic.

Q. How far away from the garage was it when you saw it? A. I should judge seventy-five feet, possibly.

Q. Was it proceeding from the garage or towards the garage? A. Towards Passaic.

Q. Is that away from the garage, do you know where the garage of the Passaic Forwarding Company is? A. Yes, sir.

40 Q. Where is that with reference to your home?
A. Directly across the street.

Thomas E. Dunn. Called by State. Cross.

Q. Was this truck you saw going to or away from the garage when you saw it? A. Away.

Q. About what time of the morning was that, do you recall? A. I should judge between two and three.

Q. Were you able to tell whose truck it was? A. No.

Q. Or the color of the truck? A. No, not from that distance. 10

CROSS EXAMINATION BY MR. KAVANAUGH:

Q. You are sure it was between two and three in the morning of August twelfth, nineteen hundred and twenty-four? A. I should judge it was from the conditions. It was not day-light yet and I judged from that that was the time. 20

Q. What time had you gone to bed that evening, the evening of the eleventh? A. I don't remember exactly.

Q. Did you go to bed early or late? A. I usually go to bed fairly early but I don't remember exactly that particular night.

Q. As far as your best judgment serves you it was between two and three o'clock in the morning? A. I should judge that.

Q. Any later? A. That is what I would judge it. 30

Q. Any earlier? A. That is right as I judge it.

Anthony Battelle. Called by State. Direct.

ANTHONY BATTELLE, sworn for the State.

DIRECT EXAMINATION BY MR. DUNN:

Q. Are you connected with any police department? A. I am in the City of Clifton.

10 Q. Were you so connected in August, nineteen hundred and twenty-four? A. Yes, sir.

Q. On the morning of August twelfth, nineteen hundred and twenty-four, did you receive a report of anything that had taken place?

Mr. Kavanaugh: I object to it on the ground that it is leading.

Question withdrawn.

20 Q. On the morning of August twelfth were you on duty? A. I was.

Q. Did anything happen that morning? A. I came in and was handed a report of a robbery in the Interstate Forwarding Company's garage on Bloomfield Avenue, Allwood.

Q. Did you make any investigation? A. I did.

Q. What time did you receive the report? A. Nine o'clock in the morning.

Q. Of what day? A. Of the twelfth of August.

30 Q. Did you do anything as a result of that report you received? A. I went to the garage and made an investigation.

40 Q. What did you observe there if anything? A. Upon my arrival there I looked around the garage and found a window on the South side in the rear end of the building had been broken. I looked around the garage, I saw footprints alongside of the wall and I also saw a door had been broken, a piece of it had been ripped off. I then took a report on what had been missing.

Max Haft. Called by State. Direct.

Q. Did you learn what was missing?

Objected to by Mr. Meeney.

Question withdrawn.

Mr. Meeney: I would ask that there be stricken from the records any reference made by the last witness to a robbery, that being entirely hearsay.

10

The Court: I think the objection is rather late but I will permit counsel to note an exception.

MAX HAFT, sworn for the State.

DIRECT EXAMINATION BY MR. DUNN:

20

Q. Where do you live? A. Newark.

Q. What business are you in? A. Trucking.

Q. During the month of August, nineteen hundred and twenty-four, were you in charge of a garage? A. Yes, sir.

Q. Where was that located? A. Six twenty-nine High.

Q. Six twenty-nine High Street, what city? A. Newark.

30

Q. Do you recognize in the court room anybody that spoke to you on or about August twelfth with reference to hiring this garage from you?

Mr. Kavanaugh: I object to it as leading.

Objection sustained.

Q. On or about August twelfth did you hire this garage to anybody? A. Yes, sir, there were two

40

Max Haft. Called by State. Direct.

men came to my garage one time on a Saturday night they was in my office.

Mr. Kavanaugh: I object to that.

The Court: The answer is yes.

10 Mr. Kavanaugh: I object to the question on the ground that the State is bound by the allegation in this indictment. The allegations are that on the twelfth day of August these defendants in the City of Clifton, Passaic County, New Jersey, carried away a certain amount—or rather a certain automobile belonging to the Interstate Forwarding Company and containing certain merchandise and also that on
20 the twelfth day of August in the City of Clifton and so on these defendants received certain goods that are specifically set out further on. What happened in the City of Newark either on the twelfth of August or any other day is absolutely immaterial, incompetent and irrelevant so far as this indictment. This indictment reads on the twelfth day of August, nineteen hundred and twenty-four, in the City of Clifton, Passaic County, and names these particular defendants. This testimony has absolutely nothing to do with this allegation in
30 this indictment. It is entirely irrelevant, immaterial and incompetent what happened in Newark, Essex County, and cannot be brought in this case as evidence. For that reason I respectfully ask that no part of the answer be admitted or I ask to have it stricken out.

The Court: The answer was yes. The answer will stand and the motion is denied.

Defendant excepts. Exception allowed and signed and sealed accordingly.

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JOS. A. DELANEY,
Judge.

Max Haft. Called by State. Direct.

Q. To whom did you hire it? A. Mr. Wilkenfeld and Mr. Murphy he want a room for rent in the garage. I tell him what stuff he has got to put in and he told me he bought stuff and goods from bankruptcy and he hired the garage and next week he is come in on a truck with the goods. The next week one days, I remember it was a rainy day about seven o'clock in the morning, because it was a little bit dark, and I seen a truck backing up into my garage and I came to see what truck it was and I seen the people and this here Wilkenfeld that I see here, there was three men, there was Murphy and Dunlop and this fellow—three men there was and the driver and I give him the key and they unload up the goods and everything and the driver and the truck they go away. 10

Q. You have got to speak more slowly and you will have to talk loud. Go on. A. He take off the goods and after he is go away from the garage. 20

Q. Who took off the goods? A. The whole bunch Murphy and Dunlop and the driver and Wilkenfeld is come later.

Q. What time of the morning was that? What time of the day was that they took the goods off? A. I think it was about seven o'clock, maybe before, maybe a little bit later.

Q. In the morning or night? A. In the morning. 30

Q. You say Murphy and Dunlop was there? A. Murphy and Dunlop and the driver.

Q. Do you know who the driver is? A. I think I seen him one time, maybe I could tell if I seen him, the driver. I seen him only one time.

Q. Did you see Dunlop in court? A. Yes, sir, I seen Dunlop in court today.

Q. Did you see Wilkenfeld in court? A. Yes, sir. 40

Max Haft. Called by State. Direct.

Q. Will you come down from the stand and identify Dunlop first if you can by putting your hand on his shoulder. Come down and put your hand on Dunlop's shoulder. A. That is him. (Indicating one of the gentlemen sitting in one of the counsel chairs).

10 Q. Indicate which one is Wilkenfeld? A. This one. (Indicating the defendant Wilkenfeld.)

Mr. Dunn: The first defendant pointed out and identified was the defendant Dunlop.

Q. Is there anybody else in the court room you can identify that was there that day? A. No.

20 Q. Do I understand you to say that Dunlop and Wilkenfeld were there with the goods? A. Dunlop and Murphy and the driver.

Q. What were they unloading it from? A. From a big truck.

Q. What color truck was it? A. A green one and besides it was closed.

Q. Did you say that Wilkenfeld came in later? A. Yes, sir.

Q. Was the stuff off the truck when Wilkenfeld arrived? A. The stuff is off the truck and Wilkenfeld come later.

30 Q. After the stuff got off the truck Wilkenfeld came in? A. Yes, sir.

Q. Did Wilkenfeld talk to the others in the garage? A. Yes, sir.

Q. Who was that? A. That there was Murphy and Dunlop.

Q. Wilkenfeld talked to them? A. Yes, sir.

40 Q. How large is the garage? A. About eight cars and in the back is a storage room on one side is a storage room. I got two garages, one small one and one big one.

Max Haft. Called by State. Direct.

Q. I show you exhibit S-1 and 2 and ask you if those are pictures of your garage? A. Yes, sir, I have seen that and I see in the picture the stuff in the garage.

Mr. Kavanaugh: I ask that that be stricken out.

The Court: Strike it out.

10

Q. Are these two exhibits pictures of your garage? A. Yes, sir.

Q. Did you ever see the merchandise that appears on these pictures in your garage? A. One time when I give him the key I go to see what he has because I see the goods white plus was in there.

Q. Do you recall the time they brought the truck and merchandise in the garage? A. Yes, sir.

20

Q. You remember testifying about them unloading the stuff? A. Yes, sir.

Q. Is that a picture of the stuff after it was unloaded? A. I see one time in the back room.

Q. Is that a picture of the stuff after it was unloaded? A. Yes, sir.

Q. Where was Wilkenfeld and Murphy and Dunlop standing when they were talking, whereabouts were they standing when they were talking after the goods came into the garage? A. They were standing here by the stove.

30

Q. By the stove? A. Yes, sir.

Q. How far is that away from the goods? A. From here over to there.

Q. Did you hear what they said? A. No.

Q. How many men drove the truck into your garage? A. Three.

Q. Do you know the names of the men who drove the truck into your garage that morning? A. No, before I don't know, now I do.

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Max Haft. Called by State. Direct.

Q. What did you find out their names were? A. Murphy, Dunlop and I remember the driver, there was one driver.

Q. What was his name? A. I think I heard Keegan.

Q. Do you see this fellow you call Keegan in court? A. Now I see he is here.

10 Q. Now you see him in court? A. Yes, sir.

Q. Is that what you said? A. I didn't see him but now I see him in court.

Q. Now will you come down from the stand and pick out Keegan? Come down here and put your hand on Keegan's shoulder. A. This is the one.

Q. Is that Keegan? A. I don't know. I see him in the garage, I see him now in court, he is go with the bunch.

20

Mr. Dunn: For the purpose of the records, I will say it was the defendant, Keegan, upon whom the witness placed his hand and to whom we are referring.

Q. What did you mean when you placed your hand on that gentleman, what did you mean about him? A. What I mean?

30 Q. Where had you seen him? A. I think I see a man like this when they take me in Paterson jail. In Paterson jail I see a man, I tell him I think this is the man, I am not for sure.

Q. Didn't you say that was the man? A. I tell him I think it was the man, not for sure. I see him one time, I can't remember the man.

(At this time a recess was taken until 2 P. M.)

40

Max Haft. Called by State. Direct.

MAX HAFT (recalled):

DIRECT EXAMINATION CONTINUED BY MR. DUNN:

Q. I think you said this morning that the defendant, Wilkenfeld, had said to you something about buying some goods at a bankruptcy sale? A. Yes, sir.

10

Mr. Kavanaugh: I object to it as immaterial and incompetent.

Objection overruled.

Q. Did you have a talk with the defendant, Wilkenfeld, after the goods came to your garage? A. Yes, sir.

Q. Who was present at that time? A. Wilkenfeld, Murphy and Dunlop.

20

Q. What, if anything, did Wilkenfeld say? A. These are the goods I talked to you about. These are the goods I bought in bankruptcy.

Q. Do you recall what kind of a day it was when the goods were brought to your garage? A. I think it was August the twelfth.

Q. Do you recall what kind of a day it was? A. A rainy day, August twelfth.

Q. Were the goods taken out of your garage after that time by anybody? A. By the men from Newark headquarters.

30

Q. Did the police take them out? A. The police took them out a couple of weeks later.

Q. During that couple of weeks that the goods were in your garage did you see the defendant, Wilkenfeld, or the defendant, Dunlop in the garage? A. I seen lots of times.

Q. Do you recall what, if anything, they did during that two weeks? A. What do you mean?

40

Max Haft. Called by State. Direct.

Q. During the two weeks you saw them in the garage? A. Yes, I seen them in the garage.

Q. What were they doing? A. One time they bring a customer to show him the goods.

Q. Do you recall whether or not the defendant Keegan came to the garage after that time, after the goods were there? A. No.

10 Q. Did the defendant, Wilkenfeld, ever have any talk with you with reference to hiring a truck?

Mr. Meeney: The prosecutor is evidently leading up to a thought he wants to embed in the mind of the witness. I object to the form of the question.

The Court: I cannot very well pass upon the question until it is asked.

20 Question withdrawn.

Q. Did the defendant Wilkenfeld ever have any talk with you with reference to hiring a truck to take any goods to Brooklyn.

Mr. Meeney: I object to that on the same ground. It is a leading question.

Objections sustained.

30 Q. Did Wilkenfeld ever hire a truck from you? A. No, sir.

Q. Did he ever try to hire a truck from you? A. No.

Q. Did either of the other defendants, Dunlap or Keegan, hire a truck from you? A. No.

Q. On or about August twelfth, nineteen hundred and twenty-four, did you have any cars for sale? A. No.

40 Q. Did you have any cars for sale on or about August twenty-sixth, nineteen hundred and twenty-four? A. No.

Max Haft. Called by State. Cross.

Q. Did the defendant Dunlap or the defendant Keegan ever inquire from you about buying a car?

A. No.

Q. Or make any inquiries about buying a car?

A. No.

CROSS EXAMINATION BY MR. CUTLEY:

10

Q. When you went down from the witness stand the first time you picked out Wilkenfeld and Dunlap? A. Yes, sir.

Q. You looked all around the room then? A. Yes, sir.

Q. You had looked around the room before you got down here? A. No, I know him.

Q. Why didn't you pick out Keegan? A. I told you I didn't know for sure about Keegan.

20

Q. In other words, you wouldn't say for sure? A. I can't tell you for sure. I can tell you about Dunlap and Wilkenfeld.

CROSS EXAMINATION BY MR. MEANY:

Q. Wilkenfeld was not there when the truck came in? A. He was there later.

Q. Wilkenfeld was not there when the truck came in? A. No.

Q. Later you say he talked to two other men in the place there? A. Yes, sir.

30

Q. When Wilkenfeld talked to these two men it was the twenty-sixth, wasn't it, of August?

Mr. Dunn: You are referring to which conversation between Wilkenfeld and these two men?

Mr. Meany: There was only one testified to.

40

Max Haft. Called by State. Redirect.

Q. The first time after these goods were brought into your place? A. Yes, sir.

Q. That conversation between Wilkenfeld and the other two defendants took place on the twenty-sixth of August? A. I don't know exactly, I don't understand.

10 Q. You testified that Wilkenfeld talked to two other men who were in your place? A. Yes, sir.

Q. That was on the twenty-sixth of August, wasn't it?

Objected to by Mr. Dunn.

The Court: Was on the twenty-sixth of August?

The Witness: I think it was on the twenty-sixth.

20 Q. You referred to a conversation which Wilkenfeld had with two other men who were supposed to have been on the truck when the goods were brought in? A. Yes, sir.

Q. That conversation was on the twenty-sixth of August, wasn't it? A. August twelfth, after the truck was come in.

Q. The twelfth? A. Yes, sir.

30 Q. You say you saw Wilkenfeld talking to these two men on the twelfth? A. Yes, sir.

REDIRECT EXAMINATION BY MR. DUNN:

Q. Was Wilkenfeld there while the truck was being unloaded? A. He is come after.

Q. How long after? A. About an hour or an hour and a half.

Michael Kane. Called by State. Direct.

MICHAEL KANE was sworn for the State.

DIRECT EXAMINATION BY MR. DUNN:

Q. Were you employed by Mr. Haft during the month of August, nineteen hundred and twenty-four? A. Yes, sir.

Q. In what capacity? A. As a driver. 10

Q. Do you know the defendant, Wilkenfeld? A. I don't know him by name. I only seen him once in the garage I can remember.

Q. Would you mind stepping down from the stand and putting your hand on the one you say you saw in the garage in August? A. Him. (Indicating the defendant, Wilkenfeld.)

Q. I show you exhibits S-1 and S-2 and ask you if you ever saw the merchandise that appears in these photographs in the garage of Mr. Haft? A. I did the day of the raid. 20

Q. Do you recall when that was? A. I don't know the date, it was on a Tuesday.

Q. Was that the same day the officers took the merchandise out of the Haft garage? A. Yes, sir.

Objected to by Mr. Kavanaugh.

Objection sustained.

Q. Do you recall how the goods were taken out of the garage by Mr. Haft? A. With Mr. Haft's truck. 30

Q. Who was on the truck, who was in charge of the goods? A. Well, the man that seized it.

Q. Who were they? A. Newark detectives.

Q. Prior to that time when the goods were taken out as you have described, did you see Mr. Wilkenfeld in the garage? A. After that? 40

John L. Day. Called by State. Direct.

Q. Before that? A. Before that I did.

Q. Do you know how long this merchandise was in the garage? A. No, sir, I do not.

Q. Did you see Mr. Wilkenfeld in the garage while this merchandise was there? A. I seen him a couple of days before the raid.

10 Q. Did you drive the truck upon which these goods were brought to police headquarters? A. Not bringing them down there.

Q. When they were brought to police headquarters? A. No, sir, one of the detectives drove it.

Q. Were you present at the time? A. Yes, sir.

No cross examination.

20 JOHN L. DAY, sworn for the State.

DIRECT EXAMINATION BY MR. DUNN:

Q. Are you connected with the Newark police department? A. I am.

Q. In what capacity? A. Official photographer.

Q. I show you exhibits S-1 and 2 and ask you if you took these pictures? A. I did.

30 Q. When did you take them? A. On the morning of the seizure of the goods before they were moved from the garage.

Q. What date was that, what month and what year? A. I can't tell you the date.

Q. Were you present when the goods were moved out of the garage? A. I was.

Q. Did you accompany the goods to police headquarters? A. I did.

George E. Kass. Called by State. Direct.

Q. Do these pictures picture the condition of the goods in the garage when you took the picture? A. They do.

Q. Are they correct pictures of the garage and merchandise? A. Yes, sir.

No cross examination.

10

GEORGE E. KASS, sworn for the State.

DIRECT EXAMINATION BY MR. DUNN:

Q. By whom are you employed? A. The City of Newark.

Q. In what capacity? A. Sergeant of Police.

Q. On August the twenty-sixth of seventh did you have occasion to visit the garage of Max Haft? A. I did.

20

Q. Will you tell us what you found when you arrived there? A. In company with Detectives Morgan, Johnson and Lieutenant Lincarducci and Diamond from the Prosecutor's office we went to number six hundred and twenty-nine High Street, Newark. We left the Prosecutor's office in Essex County about nine forty-five and reached number six hundred and twenty-nine High Street at ten o'clock. We surrounded the place and Detective Lincarducci, Diamond and I went in the front way, and we got there a view of the lower floor. On the left was a fire door. In the rear we found another large door leading to the left and further in, more to the westerly end of the building we found another doorway and stairs leadings to the second floor. We went up to the second floor and walked into a rear room and found three men, Michael

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40

George E. Kass. Called by State. Direct.

Kane, John Kane and a man by the name of Miller. We backed them up into a corner and while detectives Morgan and Johnson, I believe it was, held the three upstairs, Detective Diamond, Lincarducci and I went downstairs on the first floor again. We had brought some tools from the prosecutor's and we went to the rear and ripped the lock off the rear fire door. In there we found white plush and some boxes and a barrel of okite, that is back in the rear of this garage. We then went from there and ripped the lock off the door on the south side of the building and located some stuff in there. We went back upstairs and questioned the three lads upstairs on the upper floor and they told us—

10

Mr. Kavanaugh: I object to anything they told them.

20

Objection sustained.

Q. I want to ask you if these exhibits S-1 and 2 indicate the—just indicate on this S-1 where this fire door is, if you will. A. The most westerly side of the building. There was a car standing there. This fire door here is the one I refer to, on the left, that would be here.

Q. Was this door closed? A. It was padlocked.

30

Q. Was that the door you spoke about opening? A. Yes, sir.

Q. When you opened the door, what did you see? A. these things were standing directly behind the opening as you rolled the door back and on this side there was some of this same stuff you have there piled up.

40

Q. Would you kindly come down from the stand for a moment and I ask you if you recognize Exhibit S-3 being some of the pieces that were in the place at that time? A. Yes, sir.

George E. Kass. Called by State. Direct.

Q. Just go on. A. What do you mean?

Q. After opening the door what happened? A. We went upstairs and after having a conversation with the men upstairs we decided to wait in the garage for the return of the owner. We waited there for about an hour or so when Mr. Haft came walking up the driveway and we stopped him and asked him whether he owned the garage and he admitted he was the garage owner. After having a talk with him we decided to wait a little bit longer for the property owners to come. Shortly after that Mr. Wilkenfeld came in with a raincoat on his arm. We allowed him to step into the garage and then we stopped him and asked him what he was doing there, what he wanted, and he became confused and wanted to know why we wanted to know. We told him we were police officers and wanted to know what he was doing there. He said he came over to engage a truck from Mr. Haft to move him. We took him on upstairs with the rest of the men and in the meantime we had telephoned to headquarters and the photographer came up and took a photograph of the garage and then we had the young men, Kane and Miller, assist in loading the truck. A little while after this—

Q. Was this roll you have identified as being part of the goods taken to where? A. Police headquarters.

Q. After that where was it taken? A. It was given to the property clerk, Mr. Wihans. In the meantime Mr. Dunlap and a man by the name of Marone came in. They were stopped and asked what they wanted, what they were doing there, and Dunlap said he and Marone had come over to buy a Ford car. We asked him what they wanted a Ford car for and they were not all sure and they said

George E. Kass. Called by State. Cross.

all they had was the address of Six hundred and twenty-nine High St., that they heard there was a car there to be bought and they wanted to use it for transporting liquor. We held them there. We stayed there the balance of the afternoon and picked up the men as they came on in.

10 Q. What date was this, Officer Kass, when you went to the garage? A. August twenty-sixth, nineteen hundred and twenty-four.

Q. Was that ten o'clock in the morning or evening? A. In the morning.

CROSS EXAMINATION BY MR. CUTLEY:

20 Q. I understood you to say when you arrived at the garage on High Street you found three men in the room? A. In a room upstairs.

Q. What were they doing? A. They were around a pot-stove.

Q. This was in the month of August? A. Yes, sir.

Q. Was it very cold? A. They were sitting around a pot-stove where there had been a sort of cot-bed by the stove on the left and up in a corner. There is where they were sitting, up in the corner.

30 Q. Did you have any conversation with Haft? A. Yes, sir.

Q. What did he say about where the goods came from? A. He said he wasn't the owner and told the story that on the morning of the twelfth, prior to the twelfth, he said he thought it was Saturday morning, he thought it was, that two men came to him and asked him to hire a garage or space in his garage, and I believe, he asked them, he said he asked them, one hundred dollars for it and they

George E. Kass. Called by State. Redirect.

quibbled over the price and he finally let them have it for seventy-five dollars and he heard no more of them until Tuesday morning. They agreed to take the place but he heard no more of them and that morning he said he was up in bed and that it was somewhere between the hours of six and seven in the morning that he heard a racket in the driveway and heard something drive up the driveway and he stuck his head out the window and hollered what are you doing, trying to break my place up and they told him it was all right and they drove the truck on back to the garage which was seventy-five feet to the rear of his house. The men went in there and unloaded the goods and shortly after the truck backed out and two men stayed. 10

Q. When did he notify the police, if he ever did?

A. He never notified the police. 20

Q. Do you believe his story?

Mr. Dunn: I object to it as irrelevant.

Objection sustained.

Q. Did you have him arrested? A. Yes, sir.

CROSS EXAMINATION BY MR. MEANEY:

Q. This was a public garage? A. No, sir. 30

Q. What was it, a private garage? A. A garage conducted by Mr. Haft in his express business.

Q. Were there any outside cars in there? A. No, sir.

Q. Are you sure about that? A. No, sir.

REDIRECT EXAMINATION BY MR. DUNN:

Q. Did Haft say to you who drove the truck in? 40

George E. Kass. Called by State. Redirect.

Mr. Meaney: I object to it on behalf of my client.

Question withdrawn.

Q. In reference to the defendant Wilkenfeld, was anything said about either of the other defendants by Haft at that time?

10

Mr. Kavanaugh: I object to the question.

Question withdrawn.

Q. The conversation as I recall, the conversation of a moment ago, I think Mr. Cutley asked the detective what Haft said. Now I want to know, I want the detective to tell all that Haft said on that occasion about any of the defendants.

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Mr. Kavanaugh: I object to it on the ground that it is purely hearsay.

The Court: Under the circumstances I will admit it.

Defendant excepts. Exception allowed and signed and sealed accordingly.

JOS. A. DELANEY,
Judge.

30 A. He says the two men there when we had this conversation at police headquarters in a small room off the detectives' room, he said that Mr. Dunlap was one. Mr. Dunlap was sitting in the center of the room and the other men, Mr. Wilkenfeld, he said was the other. He wasn't quite sure of Dunlap's name, but he said that was one of the men that came in on the truck. The other man he wasn't sure, I don't know whether this is proper or not, another man he identified as being

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George E. Kass. Called by State. Recross.

another one he said he knew the other man only to call him Keegan. As a result of that there were some photograph shown to Mr. Haft and when I say some I mean probably two hundred and fifty or three hundred and he picked out Keegan's picture.

Q. Did he say what part Keegan had played in it? A. He said he thought he was the driver. 10

RECROSS EXAMINATION BY MR. KAVANAUGH:

Q. What day was this on? A. The twenty-sixth of August, nineteen hundred and twenty-four.

Q. This alleged crime was alleged to have taken place on the twelfth of August? A. So they told me.

Mr. Kavanaugh: If your Honor please, I 20
ask the testimony heretofore adduced by Detective Kass that is alleged to have happened on the morning of August twenty-sixth or anything that happened at any time on August twenty-sixth, nineteen hundred and twenty-four be stricken absolutely from the records because it is absolutely immaterial, irrelevant and incompetent. The State is bound on this indictment now being tried to what happened on the morning of August twelfth, nineteen 30
hundred and twenty-four, and anything that happened on the thirteenth, fourteenth, fifteenth, twentieth or the twenty-sixth, or any other date on any other morning, or on any other day on any other morning, it is absolutely irrelevant, incompetent and immaterial and absolutely illegal. For this reason I respectfully ask your Honor to strike it out.

The Court: Motion denied. 40

Motion for Direction of Verdict.

Defendant excepts. Exception allowed and signed and sealed accordingly.

JOS. A. DELANEY,
Judge.

State rests.

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Mr. Kavanaugh: I ask for a direction of verdict in favor of all the defendants on the ground that the State by none of its witnesses brought here this morning has adduced any evidence whatsoever, not even a particle or scintilla of evidence to sustain any of the counts in this indictment. There is not one particle, there is not one scintilla of evidence adduced before your Honor or this jury present here trying those defendants to show that any one of those defendants or anyone else on the twelfth day of August, nineteen hundred and twenty-four, in the City of Clifton, in this County of Passaic, New Jersey broke and entered a garage belonging to the interstate Forwarding Company and took from that garage any of the materials named in the indictment or received any of the goods alleged to have been received in the indictment.

The only evidence adduced before your Honor this morning and afternoon, by the State's witnesses in an attempt to sustain the allegations in this indictment is evidence of some facts, something that happened in an entirely different County in this State, namely, in the City of Newark, County of Essex, which is entirely separate and apart from the County

Motion for Direction of Verdict.

of Passaic in the State of New Jersey, and is entirely separate and apart from the Court of Quarter Sessions, the Court of Special Sessions or any other court of this County of Passaic.

What happened in Newark, if anything did, is absolutely irrelevant and immaterial for the purpose of this indictment being tried. I say to your Honor in all sincerity that the State has failed to sustain the allegations in this indictment in this case. Your Honor well knows and I don't have to prove it to your Honor that the State is bound to show in order to sustain the allegations in this indictment, is bound to show that these defendants or any of these defendants committed the crime on August twelfth, nineteen hundred and twenty-four that is alleged in this indictment in all its counts. 10 20

There has not been a scintilla, not a particle of evidence of any kind that these men were in Clifton, in the County of Passaic, or any other city in the County of Passaic on the day in question and for that reason I respectfully ask your Honor immediately to direct a verdict in favor of the defendants. 30

(Counsel argue motion.)

The Court: I shall deny the motion.

Defendants except. Exception allowed and signed and sealed accordingly.

JOS. A. DELANEY,
Judge.

*Motion for Direction of Verdict as to Defendant
William Dunlap.*

10 Mr. Meaney: The thing I want to call your Honor's attention to is that the evidence adduced by the State so far as Wilkenfeld is concerned is that some time after the goods were delivered in Newark in Essex County, that he came in and talked to two men. Outside of that there is not a bit of evidence against him. The police probably picked up everybody who walked into that garage at the time.

20 The indictment as your Honor knows charges them with breaking, entering and larceny in Clifton. There is no suggestion that Wilkenfeld or that any of the other defendants were there. The only connection he had with it was that he walked into a public garage in Newark, where these goods were supposed to be in a closet. He had a conversation but there is none says he has driven the truck or was on the truck or was there when the truck was brought in there, but on the same day after the goods had been disposed of. I respectfully move for a direction of verdict on the part of my client. Even if uncontradicted by the defendant the State has not made out such a case as would entitle the jury without
30 any evidence put in on the part of the defendant to find them guilty beyond a reasonable doubt.

The Court: That is a matter for the jury to determine, but I shall withhold my judgment on your motion.

40 Mr. Kavanaugh: I make another motion specifically in favor of the defendant, William Dunlap, and my motion is this: In view of the testimony adduced on the part of the State regarding what happened in the City of New-

*Motion for Direction of Verdict as to Defendant
William Dunlap.*

ark and in view of the fact that this indictment is founded upon a certain alleged crime alleged to have taken place on the twelfth day of August, nineteen hundred and twenty-four, in the City of Clifton, County of Passaic, and in view of the fact that there has not been a scintilla, a particle of evidence, adduced by the State this morning or afternoon to connect in any way my client, William Dunlap, with the alleged breaking, entering and larceny and the receiving of these stolen goods on August twelfth, nineteen hundred and twenty-four, at the City of Clifton in the County of Passaic, and in view of the fact that the only evidence adduced on the part of the State to connect in any way William Dunlap was, that on August twenty-sixth, nineteen hundred and twenty-four, some weeks after the alleged crime was alleged to have happened and set forth in this indictment, he came in with a man named Marone to inquire about an automobile in the garage of Mr. Haft at six twenty-five High Street in the City of Newark, County of Essex, to buy that automobile. And that when he came in there, before he had a chance to go into the garage he was pounced upon by detectives of the Newark Police Department and arrested for committing no crime whatsoever.

On the ground that there has not been a bit of evidence to show that Dunlap had anything to do with his breaking, entering and receiving stolen goods on August twelfth and in view of the fact that there has not been a bit of evidence to show that he had any connection with it either in Clifton or any other city in the

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Renewal of Motions.

10 County of Passaic or any other place and in view of these facts I say to your Honor this jury sitting here trying this case cannot by any stretch of the imagination or any stretch of reasoning power bring in a verdict beyond a reasonable doubt of the guilt of William Dunlap on the evidence adduced by the State, and for these reasons I respectfully ask your Honor to direct a verdict in favor of Dunlap.

On the ground that these ladies and gentlemen of this jury cannot convict him beyond a reasonable doubt and cannot bring in a conviction under the law.

The Court: I shall deny the motion and permit an exception.

20 Defendant excepts. Exception allowed and signed and sealed accordingly.

JOS. A. DELANEY,
Judge.

Defendant Rests.

Mr. Meaney: I now renew my motion.

The Court: I shall deny your motion.

30 Defendant excepts. Exception allowed and signed and sealed accordingly.

JOS. A. DELANEY,
Judge.

Mr. Kavanaugh: May I now renew both my motions I made at the close of the State's case?

40 The Court: I shall deny the motions and exceptions will be noted as to each of them.

The Court's Charge.

Defendant excepts. Exception allowed and signed and sealed accordingly.

JOS. A. DELANEY,
Judge.

Mr. Cutley: May I now have an exception as to your Honor's ruling for my client? 10

Defendant excepts. Exception allowed and signed and sealed accordingly.

JOS. A. DELANEY,
Judge.

Mr. Meaney sums up for the defendant, Wilkenfeld.

Mr. Kavanaugh sums up for the defendant, Dunlap. 20

Mr. Cutley sums up for the defendant, Keegan.

Mr. Dunn sums up for the State.

The Court then charged the jury as follows:

The Court's Charge.

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The Court: Members of the Jury, the State charges Eugene Murphy, William Dunlap, William Price, Peter Keegan, otherwise known as Peter Pepper, and Jacob Wilkenfeld, with the commission of the crimes of breaking, entering, larceny and receiving, in that on the twelfth day of August, nineteen hundred and twenty-four, they broke into the garage of the Interstate Forwarding Company, located in Clifton, in this County, and did 40

The Court's Charge.

take therefrom the property of Interstate Forwarding Company to the value of ten thousand dollars.

In this trial today, however, we are only concerned with Wilkenfeld, Dunlap and Keegan. The other names I have mentioned, we are not concerned with in this present inquiry.

10 Members of the Jury, the law places a special duty upon you and that is to determine the guilt or innocence of these defendants from the evidence that has been produced.

You are the sole judges of the question of fact and for that reason the Court will not attempt to detail the testimony, because, you would not be guided by the Court's memory of the evidence, but must depend entirely upon your memory of the
20 testimony that has been presented, in determining the guilt or innocence of these defendants.

The law, however, casts a special duty upon the Court, and that is to lay down for your guidance certain rules of law applicable to cases of the character of which the defendants are on trial, which you will apply to the testimony, and which will aid you in coming to your conclusion.

Let me suggest at the outset, that the burden of proof is on the State. The State charges these defendants with the commission of crime, and under the law they are presumed to be innocent of the
30 commission of crime until the State establishes their guilt beyond a reasonable doubt.

Reasonable doubt is not a mere possible 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 state that they cannot say they feel an abiding conviction to
40 a moral certainty of the truth of the charge.

The Court's Charge.

So I say to you, that if from the evidence that has been produced, the State has satisfied you beyond a reasonable doubt that these defendants, Kenfield, Dunlap and Keegan, unlawfully entered the premises of the Interstate Forwarding Company on the twelfth day of August, nineteen hundred and twenty-four, and took therefrom the property of that company, it becomes your duty to convict them. 10

If, on the other hand, you are not so satisfied, as I have indicated, it becomes your duty to acquit them.

You may convict each of the defendants of any or all of the counts contained in the indictment.

With these suggestions I will now leave the matter in your hands for your determination. Swear the officers. 20

(The jury then retired.)

(The jury was recalled.)

The Court: I understand I referred to one of the defendants as Kenfield. You understand his name is Wilkenfeld. The prosecutor has drawn my attention to that. The matter is now in your hands for your determination.

Mr. Meaney: I ask a general exception to the charge of the Court. 30

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, }SS.:

I, JOSEPH A. DELANEY, Judge of the Passaic County Court of Quarter Sessions and the Judge who presided over the aforesaid cause, certify that the above book contains the entire record of the proceedings had upon the trial of the said cause and that the same is returned by the plaintiff-in- 40

The Court's Charge.

error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Dated, December 12, 1926.

10 JOS. A. DELANEY,
Judge,
Passaic County Common Pleas,
Quarter Sessions, etc.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss.:

20 I, JOHN F. LEE, JR., official stenographer of the Passaic County Quarter Sessions, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the State of New Jersey versus William Dunlap, Peter Keegan and Jacob Wilkenfeld, which trial was had before the Hon. Joseph A. Delaney, Judge of the Passaic County Quarter Sessions in and for the County of Passaic, and a jury on Tuesday, December 1st, 1925, at Paterson, New Jersey.

30 JOHN F. LEE, JR.,
Official Stenographer,
Passaic County Common Pleas.

Assignments of Error.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">PETER KEEGAN, Plaintiff-in-Error.</p>	}	<p style="text-align: center;">On Writ of Error.</p>
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Afterwards, to wit, in the Supreme Court of Judicature of the State of New Jersey, comes the said Peter Keegan, the, Plaintiff-in-Error, by I. Faerber Goldenhorn, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and sustained in the entire record of the proceedings had upon the trial, bringing up the exceptions as signed and sealed in the cause, and also in the giving of judgment aforesaid there is manifest error in this, to wit: 20

1. The Court charged the Jury as follows:

“You may convict each of the defendants of any or all of the counts contained in the indictment,” though it was error to so charge because the indictment contained five counts, the first of which counts charged plaintiff-in-error with breaking and entering, &c., in the night time, the second count charging him with breaking, &c., in the day time and the third count charging him with entering without breaking, &c. This contradiction required the trial judge to instruct the Jury that the defendant could not be guilty under all counts. 30 40

Assignments of Error.

Pro ut the exceptions brought up with the entire record of the proceedings had upon the trial, and signed and sealed in the cause.

2. The Trial Court charged the Jury:

10 "So I say to you, that if from the evidence that has been produced the State has satisfied you beyond a reasonable doubt that these defendants, Kenfield, Dunlap and Keegan, unlawfully entered the premises of the Interstate Forwarding Company on the twelfth day of August, nineteen hundred twenty-four, and took therefrom the property of that company, it becomes your duty to convict them.

20 If on the other hand, you are not so satisfied, as I have indicated, it becomes your duty to acquit them," though it was error to do so, since the indictment in its first count charged plaintiff-in-error with breaking and entering, &c., wilfully and maliciously by night, &c., in its second count charging the plaintiff-in-error with breaking and entering, &c., wilfully and maliciously; and its third count charging him with entering without breaking, &c., wilfully and maliciously.

30 *Pro ut, &c.*

3. The court refused to direct a verdict of acquittal, although the allegations of the indictment were not sustained by the evidence, in that no evidence had been produced to show that plaintiff-in-error had committed a crime within the jurisdiction of the Court of Oyer and Terminer in and for the County of Passaic, as alleged in the indictment

40 *Pro ut, &c.*

Assignments of Error.

4. The Court refused to direct a verdict of acquittal, although there was no evidence to sustain the allegations of the indictment.

Pro ut, &c.

5. The Court refused to direct a verdict of acquittal, although there was no evidence that the plaintiff-in-error had broken and entered a garage &c., in the City of Clifton, in the County of Passaic as alleged in the indictment. 10

Pro ut, &c.

6. The Court refused to direct a verdict of acquittal, although there was no evidence that the plaintiff-in-error took &c. from the garage any of the materials named in the indictment, as charged in the indictment. 20

Pro ut, &c.

7. The Court refused to direct a verdict of acquittal, although there was no evidence that the plaintiff-in-error has received &c., any of the goods alleged to have been received, as charged in the indictment.

Pro ut, &c.

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8. The Court gave judgment against plaintiff-in-error although there was no evidence that plaintiff-in-error had committed any of the crimes charged in the indictment, in the City of Clifton and County of Passaic, as the indictment alleged.

9. The judgment and sentence of the said Court of Quarter Sessions in and for the said County of Passaic was given and placed against the said 40

Assignments of Error.

plaintiff-in-error; whereas, from the evidence adduced upon the trial, judgment should have been given in favor of the said plaintiff-in-error.

- 10 The Court gave judgment against the said plaintiff-in-error, although from all the evidence adduced upon the trial, judgment should have been given in favor of the plaintiff-in-error.

Plaintiff-in-error prays that the judgment may be reversed for the aforesaid reasons.

I. FAERBER GOLDENHORN,
Attorney for and of Counsel with
Plaintiff-in-Error.

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Amended Assignment of Errors.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error, vs. PETER KEEGAN, Plaintiff-in-Error.	}	On Error.	10
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Plaintiff-in-Error hereby amends the assignments of errors heretofore filed in this cause, said amendment to be as follows: paragraph 11—The Court erred in sentencing plaintiff-in-error.

I. FAERBER GOLDENHORN, 20
 Attorney for and of Counsel with
 Plaintiff-in-Error.

I hereby consent to the filing of the within amendment.

J. VINCENT BARNETT,
 Prosecutor of the Pleas.

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Specification of Causes for Reversal.

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, Defendant-in-Error, vs. PETER KEEGAN, Plaintiff-in-Error.	}	On Writ of Error.
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The plaintiff-in-error specifies the following causes in the record of the proceedings had upon the trial relied upon for a reversal of this judgment, as follows:

1. The trial court refused to direct a verdict of acquittal, although moved to do so on the ground that there was no evidence before the Court and Jury to show that the plaintiff-in-error had committed the offenses named in the indictment, in the County of Passaic, and that the jurisdiction of the Court had not been proved by the state.

2. The trial court charged the jury as follows:

“You may convict each of the defendants of any or all of the counts contained in the indictment,” though it was error to so charge because the indictment contained five counts, the first of which counts charged plaintiff-in-error with breaking and entering, &c., in the night time, the second count charging him with breaking, &c., in the day time and the third count charging him with entering without breaking, &c. This contradiction required the trial judge to instruct the Jury that the defendant could not be guilty under all counts.

Specifications of Causes for Reversal.

3. The trial court refused to direct a verdict of acquittal, although moved to do so on the ground that there was no evidence to show that the plaintiff-in-error broke and entered, by night with intent to steal, &c., the goods and chattels, &c., as charged in the first count of the indictment.

4. The trial court refused to direct a verdict of acquittal, although moved to do so on the ground that there was no evidence to show that the plaintiff-in-error broke and entered, &c., by day, as charged in the second count of the indictment. 10

5. The trial court refused to direct a verdict of acquittal, although moved to do so on the ground that there was no evidence to show that the plaintiff-in-error entered without breaking, &c., as charged in the third count of the indictment. 20

6. The trial court refused to direct a verdict of acquittal, although moved to do so on the ground that there was no evidence to show that the plaintiff-in-error stole, &c., one automobile truck, &c., as charged in the fourth count of the indictment.

7. The trial court refused to direct a verdict of acquittal, although moved to do so on the ground that there was no evidence to show that the plaintiff-in-error unlawfully received and had one automobile truck, &c., as charged in the fifth count of the indictment. 30

8. The trial court charged the jury:

“So I say to you, that if from the evidence that has been produced the State has satisfied you beyond a reasonable doubt that these defendants, Kenfield, Dunlap and Keegan, un- 40

Specifications of Causes for Reversal.

lawfully entered the premises of the Interstate Forwarding Company on the twelfth day of August, nineteen hundred twenty-four and took therefrom the property of that company, it becomes your duty to convict them.

10 If, on the other hand, you are not so satisfied, as I have indicated, it becomes your duty to acquit them," though it was error to do so, since the indictment in its first count charged plaintiff-in-error with breaking and entering &c., wilfully and maliciously by night &c.; in its second count charging the plaintiff-in-error with breaking and entering &c., wilfully and maliciously; and in its third count charging him with entering without breaking &c., wilfully and maliciously.

20 9. The trial court permitted the following question to be asked of and answered by the witness Kass:

30 "Q. The conversation as I recall, the conversation of a moment ago, I think Mr. Cutley asked the detective what Haft said. Now I want to know, I want the detective to tell all that Heft said on that occasion about any of the defendants.

40 A. He says the two men there when we had this conversation at police headquarters in a small room off the detectives' room, he said that Mr. Dunlap was one. Mr. Dunlap was sitting in the center of the room and the other men, Mr. Wilkenfeld, he said was the other. He wasn't quite sure of Dunlap's name, but he said that was one of the men that came in on the truck. The other man he wasn't sure, I

Specifications of Causes for Reversal.

don't know whether this is proper or not, another man he identified as being another one he said he knew the other man only to call him Keegan. As a result of that there were some photographs shown to Mr. Haft and when I say some I mean probably two hundred and fifty or three hundred and he picked out Keegan's picture." 10

The objection to this evidence is on the ground that it was pure hearsay.

I. FAERBER GOLDENHORN,
Attorney for and of Counsel with
Plaintiff-in-Error.

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Joinder in Error.

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, Defendant-in-Error, vs. PETER KEEGAN, Plaintiff-in-Error.	}	In Error to Court of Quarter Ses- sions of Ber- gen County.
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20 And thereupon the State of New Jersey, defend-
 ant-in-error, by J. Vincent Barnett, its attorney,
 comes in court and says, that there is no error
 either in the record and proceedings aforesaid or
 in the giving of judgment aforesaid, and it prays
 here, that the court here may proceed to examine,
 as well the record and proceedings aforesaid, as
 the matters aforesaid assigned for error, and the
 judgment aforesaid, in the manner aforesaid, given,
 may in all things, be affirmed, etc.

J. VINCENT BARNETT,
 Attorney for Defendant-in-Error.

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Affidavit of Max Haft.

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

MAX HAFT of full age, being duly sworn according to law, upon his oath, deposes and says:

That he was a witness for the State of New Jersey at the trial of the case of the State of New Jersey vs. Peter Keegan et als., tried on December 3rd, 1925, in the Passaic County Court of Quarter Sessions. 10

That he never ^{SAW} say Peter Keegan until the trial of the above issue which was held December 3rd, 1925.

That he never ^{SAW} say Peter Keegan at the garage mentioned in the State of the Case of the aforementioned issue.

That he never saw the said Peter Keegan at the Paterson Jail. 20

That the said Peter Keegan heretofore referred to is the Peter Keegan which he saw in the Passaic County Court on December 3rd, 1925, located in the City of Paterson.

This affidavit is made for the purpose of stating that if the deponent conveyed the impression that the aforementioned Peter Keegan was at any of the above mentioned places, such impression is entirely erroneous. 30

MAX HAFT.

Sworn to and subscribed before me }
 this 4th day of October, 1926. }

ABRAHAM SEPENUK,
 Attorney at Law of New Jersey.

Motions Made on the Resentence.

PASSAIC COUNTY QUARTER SESSIONS.

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THE STATE OF NEW JERSEY,

VS.

PETER KEEGAN,
Defendant.

Paterson, N. J., March 5, 1928.

Before—Hon. JOSEPH A. DELANEY, *J.*

APPEARANCES:

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J. VINCENT BARNITT, Esq., Prosecutor of the
Pleas, for the State.ISAAC F. GOLDENHORN, Esq., for the Defend-
ant.

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Mr. Barnitt: If the Court please, I move the case of the State against Peter Keegan. For sentence.

Mr. Goldenhorn: In this case I desire to move for a new trial based on newly discovered evidence. The newly discovered evidence consists of an affidavit of Max Haft who was the only witness that identified the defendant as having been at the scene of the crime. That affidavit is attached to the book which was filed in the Supreme Court, the original record having been filed there. No record of that affidavit was filed in this Court. On that

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Motions Made on the Resentence.

evidence I desire to ask your Honor to grant him a new trial in this case.

The Court: Your motion is denied.

Mr. Goldenhorn: Will your Honor grant an exception to that ruling.

The Court: An exception will be noted.

Mr. Goldenhorn: I now desire to move an arrest of judgment in this case on the record itself. It does not appear that the crime, if any was committed, was committed in the County of Passaic. If any crime was committed at all it was committed in the County of Essex where this defendant was arrested with others. 10

The Court: Your motion will be denied.

Mr. Goldenhorn: And I ask an exception.

The Court: An exception will be noted.

Mr. Goldenhorn: Now I want to ask your Honor if you won't be good enough to suspend sentence in this case. The other defendants have each and every one of them been granted their liberty. Peter Keegan has spent a great deal of time in jail and all of the goods that were alleged to have been stolen were returned. Keegan has a wife and children to support. No harm has been done to anybody. I don't believe the complainant himself would at this time press any complaint against him. He has been put to a great deal of expense in his defense. He has taken a Writ of Error to the Supreme Court and a very large record was printed and a very expensive one. The Supreme Court sustained this Court but in its opinion said I might address my remarks to this Court. I now urge as strong as I have ever urged anything that your Honor grant mercy to this man and that your Honor suspend sentence. I think the ends of justice have been amply carried out. There is an- 20 30 40

Motions Made on the Resentence.

other thing I might add further; since the happening of this crime, if this man were connected with it, which I myself seriously question because of the failure of identification, he has lived an honest life since then and has made amends to the law for anything he may have done. I think the ends of justice would be met if your Honor would suspend sentence in this case.

The Court: The sentence of the Court is that you be confined in State Prison, at hard labor, for a term of not more than seven years or less than four years.

Mr. Goldenhorn: May I urge the Writ of Error and may I ask your Honor to continue the same amount of bail. We have a surety company—

The Court: You may take that up with the Prosecutor.

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Assignments of Error.NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE STATE, vs. PETER KEEGAN, Defendant.	}	On Writ of Error to Supreme Court.	10
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The defendant, Peter Keegan, assigns the following Assignments of Error:

1. That the Supreme Court erred in giving its judgment affirming the conviction of the said Peter Keegan, upon the record in this cause.
2. That the affidavits attached to the record in this cause should have been considered by the Supreme Court in determining the merits of this cause. 20
3. That upon the entire record, there was no identification of Peter Keegan by anyone, and he should not have been convicted.
4. That the Court of Quarter Sessions of the Peace of Passaic County, never had any jurisdiction to try said cause. 30
5. That if any crime was committed, it was not committed in the County of Passaic in the State of New Jersey, and that a conviction of Peter Keegan therefore was illegal.

Dated, February 27th, 1928.

I. FAERBER GOLDENHORN,
 Attorney for Peter Keegan,
 1 Newark Avenue,
 Jersey City, New Jersey. 40

Statement of [Name]

I, the undersigned, being duly sworn, depose and say that the following is a true and correct copy of the [document]

The [document] is a copy of the [document] prepared by [Name] on [Date] and is a true and correct copy of the original [document]

I declare under penalty of perjury that the foregoing is true and correct.

Subscribed and sworn to before me this [Date] at [Location]

Notary Public for the State of [State]

My commission expires on [Date]

Witness my hand and seal this [Date] at [Location]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

New Jersey Court of Errors and Appeals

The State of New Jersey, Defendant-in-Error,	} On Writ of Error to Supreme Court
vs.	
Peter Keegan, Plaintiff-in-Error.	

BRIEF OF DEFENDANT-IN-ERROR

The plaintiff-in-error and two others were tried upon an indictment found by the Grand Jury of Passaic County containing five counts, the first of which charged these defendants, together with two other defendants, Eugene Murphy and William Price, who were not tried, with breaking and entering, by night, a building belonging to the Interstate Forwarding Company, with intent to steal and carry away certain goods and chattels therein; the next count charged a breaking and entering by day, with the same intent; the third count charged an entering, without breaking, and the stealing, taking and carrying away of certain goods found therein; the fourth count charged grand larceny; and the fifth count charged the receiving, knowingly, of stolen goods.

The trial resulted in the conviction of the three defendants, Peter Keegan, the plaintiff-in-error, William Dunlap and Jacob Wilkenfeld, the jury finding them "guilty of the premises in the within indictment named and specified, in manner and form as by the indictment is charged against them." As the result of the conviction, the trial court sentenced the plaintiff-in-error, Peter Keegan, to confinement in State Prison, at hard labor, for

the maximum term of seven years and the minimum term of four years.

The present writ of error is sued out by Keegan alone. The defendant, William Dunlap, had previously sued out a writ of error from the Supreme Court to the Passaic Quarter Sessions and the matter having been heard by the Supreme Court, the judgment of conviction was affirmed by Supreme Court at the October Term, 1926 (136 Atl. Rep. 510). Subsequently, the said William Dunlap sued out a writ of error from the Court of Errors and Appeals to the Supreme Court, which writ of error was dismissed by the Court of Errors and Appeals at the October Term, 1927. Jacob Wilkenfeld never sued out a writ of error. A writ of error was sued out by plaintiff-in-error from the Supreme Court to the Quarter Sessions Court, which resulted in an affirmance of the conviction. (Vol. 6, N. J. A. R., No. 12, page 216.)

The only point discussed in the brief is that the Court erred in refusing to direct a verdict of acquittal as far as the plaintiff-in-error was concerned and the Court erred in giving judgment against the plaintiff-in-error when there was no evidence that he had committed any of the crimes charged in the indictment.

I would respectfully call to the attention of the Court an error which appeared in the printed State of the Case as prepared by the plaintiff-in-error. It may be that this has been corrected, but, desirous of not having the matter overlooked, it will be observed by the Court on page 56 of the State of the Case, line 7, the date of the certification of the Hon. Joseph A. Delaney of the transcript of the testimony and the Court's charge is

given as December 12, 1926. This date of such certification is incorrect. The true date is January 12, 1926. I mention this, particularly, in view of an affidavit attached to the printed State of the Case but which is, in truth and fact, no part of the record of the trial. The affidavit is referred to on page 67 of the State of the Case and it will be observed that it was sworn and subscribed to on the 4th of October, 1926, many months after the close of the trial and conviction. I have particularly referred to this affidavit under Point Three of my brief.

POINT ONE.

THE COURT DID NOT ERR IN REFUSING TO DIRECT A VERDICT OF ACQUITTAL.

An examination of the case can lead to but one conclusion and that is that there was no error in this judicial action. The proof submitted on the part of the State disclosed the following facts: On the night of August 11th, 1924, a garage of the Interstate Forwarding Company, in the Town of Clifton, County of Passaic, was broken into and one of its trucks loaded with cotton goods was feloniously taken therefrom. These goods were afterwards found in the City of Newark, in the garage owned by a man named Max Haft. It appears from the evidence that two days before this occurrence, Wilkenfeld and Murphy, two of the defendants convicted on the trial of the indictment, called at Haft's place and rented from him a room in his garage, stating that they desired to store there, certain merchandise which they had bought

at a bankruptcy sale. The morning after the robbery, Murphy together with Dunlap and Peter Keegan, the plaintiff-in-error, a co-defendant came to Haft's garage with a large truck carrying cotton goods stolen from the Interstate Forwarding Company's garage. They unloaded these goods and left them there, Keegan driving the truck away. Shortly after that, and before Dunlap and Murphy had left, Wilkenfeld arrived and told Haft in the presence of Dunlap and Keegan, that they were the goods which he had previously spoken of and which had been bought at the bankruptcy sale. Some days after this, Wilkenfeld and Dunlap brought to Haft's garage an intending customer and exhibited the stolen goods to him as their property. No denial of these facts was attempted, the defendants resting without offering any evidence in their own behalf. The mere recital of these facts demonstrates that the question of the guilt or innocence of the defendants of the charges contained in the indictment was one to be determined by a jury and not by the court.

Max Haft, a witness called on behalf of the State, who, it appears, was the owner of the garage in Newark, where the truck with the goods loaded thereon was brought, testified (S. of C., page 29, lines 23-40) as follows:

"Q. Who took off the goods? A. The whole bunch Murphy and Dunlap and the driver and Wilkenfeld is come later.

Q. What time of the morning was that? What time of the day was that they took the goods off? A. I think it was about seven o'clock, maybe before, maybe a little bit later.

Q. In the morning or night? A. In the morning.

Q. You say Murphy and Dunlap was there? A. Murphy and Dunlap and the driver.

Q. Do you know who the driver is? A. I think I seen him one time, maybe I could tell if I seen him, the driver, I seen him only one time.

Q. Did you see Dunlap in court? A. Yes, sir, I seen Dunlap in court today.

Q. Did you see Wilkenfeld in court? A. Yes, sir."

And then proceeding to the continued examination of this witness, commencing (S. of C., page 33, lines 35-40):

"Q. How many men drove the truck into your garage? A. Three.

Q. Do you know the names of the men who drove the truck into your garage that morning? A. No, before I don't know, now I do."

And then continuing on page 34:

"Q. What did you find out their names were? A. Murphy, Dunlap, and I remember the driver, there was one driver.

Q. What was his name? A. I think I heard Keegan.

Q. Do you see this fellow you call Keegan in court? A. Now I see he is here.

Q. Now you see him in court? A. Yes, sir.

Q. Is that what you said? A. I didn't see him but now I see him in court.

Q. Now will you come down from the stand and pick out Keegan? Come down here and put your hand on Keegan's shoulder? A. This is the one.

Q. Is that Keegan? A. I don't know. I see him in the garage, I see him now in court, he is go with the bunch.

Mr. Dunn—For the purpose of the records I will say it was the defendant, Keegan, upon whom the witness placed his hand and to whom we are referring.

Q. What did you mean when you placed your hand on that gentleman, what did you mean about him? A. What I mean?

Q. Where had you seen him? A. I think I see a man like this when they take me in Paterson jail. In Paterson jail I see a man, I tell him I think this is the man, I am not for sure.

Q. Didn't you say that was the man? A. I tell him I think it was the man, not for sure. I see him one time, I can't remember the man."

On page 37 (S. of C.) this witness being cross-examined by Mr. Cutley, trial attorney for Mr. Keegan, commencing (S. of C., page 37, lines 10-22):

"Q. When you went down from the witness stand the first time you picked out Wilkenfeld and Dunlap? A. Yes, sir.

Q. You looked all around the room then? A. Yes, sir.

Q. You had looked around the room before you got down here? A. No, I know him.

Q. Why didn't you pick out Keegan? A. I told you I didn't know for sure about Keegan.

Q. In other words, you wouldn't say for sure? A. I can't tell you for sure. I can tell you about Dunlap and Wilkenfeld."

On page 44 (S. of C.) the State referred, particularly, to the testimony of one George E. Kass, a witness produced by the State and who, at the time, was Sergeant of Police of the Newark Police Department. The testimony referred to was conducted upon re-direct examination by the State. This re-direct examination was introduced after it appeared that Mr. Cutley asked a question on cross-examination of Mr. Kass on page 44, (S. of C., lines 29 and 30):

"Q. Did you have any conversation with Haft? A. Yes, sir."

Now again referring to testimony produced on re-direct examination by the State, commencing (S. of C., page 45, line 40):

"Q. Did Haft say to you who drove the truck in?

Mr. Meaney—I object to it on behalf of my client.

Question withdrawn.

Q. In reference to the defendant Wilkenfeld, was anything said about either of the other defendants by Haft at that time?

Mr. Kavanagh—I object to the question.

Question withdrawn.

Q. The conversation as I recall, the conversation of a moment ago, I think Mr. Cutley asked the detective what Haft said. Now I want to know, I want the detective to tell all that Haft said on that occasion about any of the defendants.

Mr. Kavanagh—I object to it on the ground that it is purely hearsay.

The Court—Under the circumstances, I will admit it.

Defendant excepts. Exception allowed and signed and sealed accordingly.

Jos. A. Delaney,

Judge.

A. He says the two men there when we had this conversation at police headquarters in a small room off the detectives' room, he said that Mr. Dunlap was one. Mr. Dunlap was sitting in the center of the room and the other man, Mr. Wilkenfeld, he said was the other. He wasn't quite sure of Dunlap's name, but he said that was one of the men that came in on the truck. The other man he wasn't sure, I don't know whether this is proper or not, another man he identified as being another one he said he knew the other man only to call him Keegan. As a result of that there were some photographs shown to Mr. Haft and when I say some I mean probably two hundred and fifty or three hundred and he picked out Keegan's picture.

Q. Did he say what part Keegan had played in it? A. He said he thought he was the driver."

From the foregoing testimony, it was clearly for the jury to pass upon the question as to the guilt or innocence of the defendant, Keegan, and not for the court, and, therefore, the court did not err in refusing to direct a verdict on behalf of the plaintiff-in-error, Keegan.

POINT TWO.

THE COURT DID NOT ERR IN GIVING JUDGMENT AGAINST THE PLAINTIFF-IN-ERROR, PETER KEEGAN.

With reference to this point which plaintiff-in-error refers to on page five of his brief, the defendant-in-error believes that the point is sufficiently covered by the facts and statements referred to in Point One of the brief of the defendant-in-error, and, therefore, the defendant-in-error will not attempt to make any further discussion of this second contention of the plaintiff-in-error.

POINT THREE.

REGARDING THE AFFIDAVIT OF MAX HAFT REFERRED TO ON PAGE 67 OF THE STATE OF THE CASE.

It will be observed, upon a reading of the State of the Case, that on page 67 there has been made part of the State of the Case, by the plaintiff-in-error a certain affidavit presumably made by Max Haft on the fourth day of October, 1926. It will be observed from the State of the Case that the

plaintiff-in-error was convicted on the first of December, 1925 (S. of C., page 10 and 11), approximately over ten months before the making of the affidavit by Max Haft. It is needless for the Prosecutor to point out to the Court's attention the fact that this affidavit, as shown on page 67 of the State of the Case, is not in fact a part of the record of the proceedings, as will be observed upon a reading of the presiding Judge's certificate, dated January 12th, 1926, shown on page 56 of the State of the Case, in which certificate the presiding Judge certifies that the above book, that is, the book of record of the case on the pages preceding the certificate, contains the entire record of the proceedings had upon the trial of the said cause. Therefore, the State feels that it is unnecessary to discuss any of the subject matter as contained in the affidavit and the mention made of such affidavit by the plaintiff-in-error in his brief wherein he makes mention, on page three, of this affidavit.

POINT FOUR.

REGARDING THE MOTIONS MADE BY THE PLAINTIFF-IN-ERROR ON RE-SENTENCE.

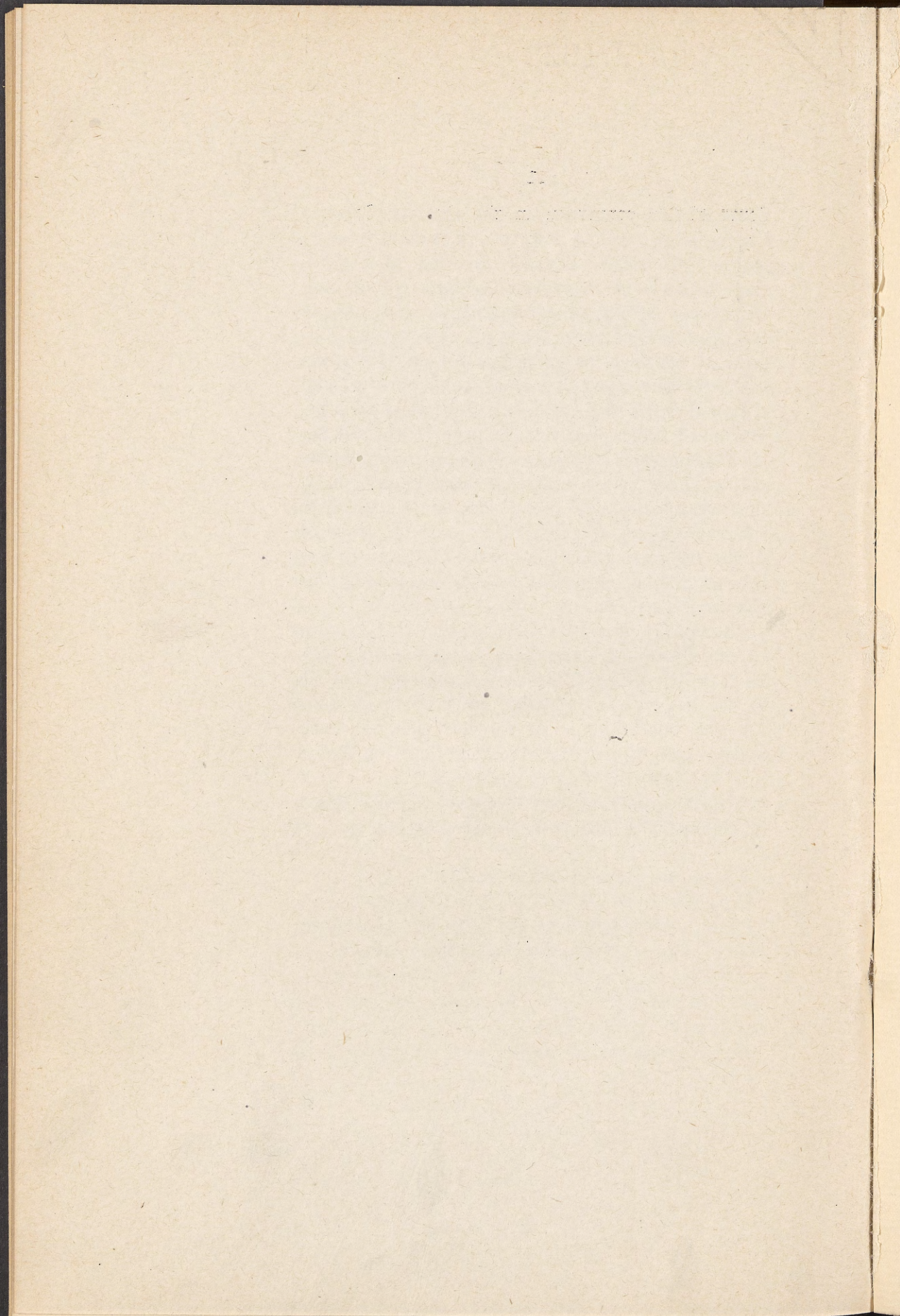
The Court will kindly observe upon referring to pages 68-69-70 of the State of the Case, the plaintiff-in-error has referred to some motions that Mr. Goldenhorn, acting for the plaintiff-in-error, made on the occasion when the Prosecutor moved to have the plaintiff-in-error re-sentenced by the Court, which motion was made by the Prosecutor as a result of the affirmance by the Supreme

Court of the conviction in the Quarter Sessions Court. The motions referred to were made on March 5th, 1928. Counsel for the plaintiff-in-error in his brief on pages 5-6 refers to these motions made at the time referred to, and now, in his brief, desires the Court of Errors and Appeals to consider, as additional reasons for a reversal of the conviction, the denial by the trial Judge of the motions made at the time of such re-sentence. And, in addition, on page 71, Counsel for plaintiff-in-error has assigned as error in the Supreme Court, under assignments of error, No. 2, that the affidavits, (I presume counsel intended to refer to the one affidavit of Max Haft), attached to the record in this cause, should have been considered by the Supreme Court in determining the merits of this case.

The defendant-in-error believes that this is not a proper form of assignment of error in this Court. In fact, the defendant-in-error maintains that all of the assignments of error referred to on page 71, with the exception of the first one, are such assignments of error to which the Court of Errors and Appeals will give no consideration.

It is respectfully submitted that the judgment of conviction should be affirmed.

Respectfully submitted,
J. VINCENT BARNITT,
Prosecutor of the Pleas and of Counsel
with the Defendant-in-Error.



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128 MAY. T. 1928

New Jersey Court of Errors and Appeals

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

vs.

PETER KEEGAN,
Plaintiff-in-Error.

On Writ
of Error.

**BRIEF OF
PLAINTIFF-IN-ERROR.**

The defendant Peter Keegan was indicted by the Grand Jury of Passaic County, with Eugene Murphy, William Dunlap, William Price and Jacob Wilkenfeld, in that he, with them, did break and enter, with intent to steal, the property of the Interstate Forwarding Company, and in said indictment was the count that he, in company with them, did break and enter the same building, with intent to steal certain chattels; and there was a further count, in said indictment, that he, with them, did enter without breaking, the said building; and there was a further count in said indictment, that he, with them, did steal an automobile truck with woolen goods thereon, of the value of \$5,000.00; and there was a further count in said indictment, that he, with them, did receive certain goods and chattels, known to be stolen.

There is nothing in said indictment charging the said Peter Keegan, with them, of any conspiracy to do any of the enumerated things set forth in the indictment.

A reference to the State of the Case, will nowhere disclose that the said Peter Keegan was at any time or place seen with the other defendants, except that in the testimony of one, Max Haft, a witness called on behalf of the State, who testified on page 32 of the State of Case, as follows:

“Q. What did you find out their names were?
A. Murphy, Dunlop and I remember the driver, there was one driver.

Q. What was his name? A. I think I heard Keegan.

Q. Do you see this fellow you call Keegan in court? A. Now I see he is here.

Q. Now you see him in court? A. Yes, sir.

Q. Is that what you said? A. I didn't see him but now I see him in court.

Q. Now will you come down from the stand and pick out Keegan? Come down here and put your hand on Keegan's shoulder? A. I don't know. I see him in the garage, I see him now in court, he is go with the bunch.

(For the purpose of the records, I will say it was the defendant Keegan, upon whom the witness placed his hand and to whom we are referring.)

Q. What did you mean when you placed your hand on that gentleman, what did you mean about him? A. What I mean?

Q. Where had you seen him? A. I think I see a man like this when they take me in Paterson Jail. In Paterson Jail I see a man, I tell him I think this is the man, I am not for sure.

Q. Didn't you say that was the man? A. I tell him I think it was the man, not for sure. I see him one time, I can't remember the man.”

This is the only reference anywhere in the case, by any witness, for or on behalf of the State, identifying Keegan in any way, anywhere, with the attempted robbery, the robbery or the possession of stolen goods.

Nowhere else, in the testimony adduced at the trial does the name of Keegan appear, except in the indictment.

The defendant Keegan has added to the State of the Case, an affidavit by the same Max Haft, who testified at the trial, and which in his affidavit, sworn and subscribed on the 4th day of October, 1926, before Abraham Sepenuk, an attorney at law of New Jersey, stated that he never saw the defendant Peter Keegan until the trial of this cause, which was held on December 3rd, 1925; that he never saw Peter Keegan at the garage mentioned in the State of the Case of the aforementioned issue; that he never saw said Peter Keegan at the Paterson Jail; that the said Peter Keegan heretofore referred to is the Peter Keegan which he saw in the Passaic County Court on December 3rd, 1925, located in the City of Paterson, and that the affidavit which is made by him was made because the testimony of the said Max Haft might have conveyed the impression that the aforementioned Peter Keegan was at any time, at any of the above mentioned places, and that if such impression was created in the minds of the jurors, it was entirely erroneous.

Counsel for said Peter Keegan wishes to state to the Court, that the conviction of the other defendants, as he is advised, was sustained by the Court of Errors and Appeals of this State. That the appeal for the said Peter Keegan was never argued. That the present counsel for said Peter Keegan was substituted as counsel for him, long after the conviction in this cause was had, and that counsel feels that so far as the said Peter Keegan is concerned, there was no evidence whatever to associate him with the other defendants in any manner or form, and that there was no evidence to connect him in any way whatever with the breaking and enter-

ing, larceny of any of the goods and chattels mentioned in the indictment in this cause.

That, so far as the evidence in this cause is concerned, the said Peter Keegan was not seen at the garage where the truck was found, nor was he seen with the defendants at any time or place anywhere, except in court, and that there is no testimony on the part of any witness for the State, to connect the said Peter Keegan with the crime charged against him and the others in the indictment aforesaid.

It is important for this Court to remember, that the said Max Haft, who made the affidavit attached to the State of the Case, was the owner of the garage to which the defendants mentioned in the indictment, brought the stolen auto truck, and that while he recognized all of the other defendants as having participated in the delivery of the truck to his garage, he absolutely fails to identify the defendant Peter Keegan as one of the persons who came to his garage with the stolen auto truck.

No other witness is called on behalf of the State to identify or place the said Peter Keegan at the garage where the stolen auto truck was brought at any time, and it is apparent that in the misunderstanding of the testimony given by the said Max Haft, at the trial of this cause, because of his bad English, or for some other reason, that the jury got the impression from his testimony, that the said Peter Keegan was present and had participated with the others in the commission of the crime for which they were convicted.

A reading of the case from beginning to end, will convince this court that there was no evidence against the said Peter Keegan as would justify this Court in sustaining a conviction against him for the crime charged in the indictment.

There was no evidence adduced on behalf of any witness for the State, to show that the defendant Peter Keegan was present and entered or broke the premises of anyone, at any time, day or night, as charged in the first count in the indictment.

There was no evidence to show that Peter Keegan knew any of the other defendants, or that he had any business relations with them, or that he conspired with them or with any of them, or associated with them or any of them, for the purpose of breaking into and entering the garage mentioned in the indictment, or that he took or participated with any of the other defendants, in taking any of the goods and chattels mentioned in the indictment.

The Court therefore erred in refusing to direct a verdict of acquittal so far as the said Peter Keegan was concerned; and the Court erred in giving judgment against said Peter Keegan where there was no evidence that said Peter Keegan had committed any of the crimes charged in the indictment.

Upon the whole case, the plaintiff-in-error feels justified in asking this Court for a reversal of the judgment found against the said Peter Keegan, and asks for a venire de novo.

Counsel for plaintiff-in-error moved in arrest of Judgment because in the record it did not appear that Keegan committed any crime in Passaic County, where he was tried; that motion was denied and a proper exception taken and sealed by the Judge.

Nowhere is there any evidence by any one that Keegan was seen in Passaic County when any crime was committed or that he took part with anyone in the commission of a crime in Passaic County.

As the record disclosed no evidence that Keegan committed any crime in Passaic County, the mo-

tion in arrest of Judgment should have been granted.

The motion for a new trial should have been granted because of the newly discovered evidence of the witness Haft.

Respectfully submitted,

I. FAERBER GOLDENHORN,
Attorney for Peter Keegan,
Plaintiff-in-Error,
No. 1 Newark Ave.,
Jersey City.

