

Handwritten notes in cursive script, including the name "May 1868" and other illegible text.

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WRIT OF ERROR.

(Filed Oct. 7, 1924.)

NEW JERSEY, SS.

THE STATE OF NEW JERSEY to HON.
WILLIAM H. SMATHERS, Presiding Judge
of the Atlantic County Quarter Ses- 10
(SEAL) sions Court, holden at Mays Landing,
in and for the County of Atlantic, of
the May term, in the year of our Lord,
one thousand, nine hundred and twenty-
four.

Because in the indictment, record, process, pro-
ceeding to try the hereinafter named defendants,
and also giving of judgment upon a certain in-
dictment against John Letter and Anthony DeCanio,
late of the City of Pleasantville, in the County of 20
Atlantic and State of New Jersey, and on or about
the 17th day of May, in the year of our Lord, one
thousand, nine hundred and twenty-four, at the City
of Atlantic City aforesaid, in the county aforesaid,
and within the jurisdiction of this Court, did forcibly
take from the person of Thomas Callahan, money,
jewelry and clothing of the value of five hundred
dollars (\$500.00), by violence and by putting him,
the said Thomas Callahan, in fear; whereof, before 30
you, they have been indicted, and were thereof con-
victed by a certain jury of the county, taken between
the State of New Jersey, and the said John Letter
and Anthony DeCanio; as it is said manifest error
hath intervened to the great damage of the said
John Letter and Anthony DeCanio, as from their
complaint we have received information. We being
willing, in their behalf, to correct the error in due

manner, if any there shall be, and that speedy justice be done to them, the said John Letter and Anthony DeCanio command you, that if judgment be thereon given, then that you distinctly and openly send, under your seal, the entire record and proceedings aforesaid, with all things touching the same, to our Supreme Court, to be holden at Trenton, on the ninth day of September, next, and the writ, that the record and proceedings aforesaid being inspected, we may
 10 further cause to be done thereupon, for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, at Trenton aforesaid, the twentieth day of August, 1924.

EDWARD J. KELLEHER,
Clerk.

JOSEPH A. CORIO,
Attorney.

20

RETURN.

The answer of William H. Smathers, Esquire, Judge of the Court of Quarter Sessions of the County of Atlantic within named, the record and proceedings whereof mention is within made, with
 30 all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

WM. H. SMATHERS,
Judge of the Court of Quarter Sessions of Atlantic County.

ATLANTIC COUNTY, to wit:

Be It Remembered that at a Court of Quarter Sessions holden at Mays Landing, in and for the County of Atlantic on the thirteenth day of May, in the year of our Lord, one thousand nine hundred and twenty-four, before the Honorable Luther A. Campbell, a Justice of the Supreme Court of the State of New Jersey, and the Grand jury being desirous of making presentment of sundry bills of indictment
 10 according to the form of the statute in such case made and provided, by the oath of Hubert Rowsell, Emil Morgenweck, William Gordon, Carrie C. Hurley, Dorie D. Hoover, Bertram E. Whitman, Jeremiah P. Gregory, Samuel Ireland, M. A. Devine, James Yates, Joseph English, Irene B. Davis, Carl A. Hopf, John T. French, Sr., Edward R. Merrick, William S. Turner, John C. Thomas, Anthony M. Ruffu, Ashley Garrison, Charles J. Williams, Edgar Sheppard, Rev. E. A. Rock, Henry Mitchell, good
 20 and lawful men and women of the said County of Atlantic, duly summoned and then and there to inquire for the State of New Jersey, in and for the body of the County of Atlantic.

It Is Presented in manner and form following, that is to say:

State of New Jersey,	}	Highway Robbery.	30
v.			
John Letter Anthony DeCanio.			

The bills herewith presented are true bills.
 JOHN T. FRENCH, SR.,
Foreman.

Filed May 21, 1924, at 3:30 P. M.
 WM. A. BLAIR,
Clerk.

IN THE COURT OF OYER AND TERMINER OF ATLANTIC COUNTY.

May Term, A. D. 1924.

ATLANTIC COUNTY, to wit:

10 The Grand Inquest of the State of New Jersey in and for the body of the County of Atlantic, upon their respective oath and affirmation, those who affirmed having first alleged themselves to be conscientiously scrupulous against taking an oath, Present That John Letter and Anthony DeCanio, late of the City of Pleasantville, in the said County of Atlantic on and about the seventeenth day of May, in the year of our Lord, one thousand nine hundred and twenty-four, at the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this court, did forcibly take from the person of Thomas Callahan, money, jewelry and clothing of the value of five hundred (\$500) dollars by violence and by putting him, the said Thomas Callahan in fear, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided and against the peace of this state, the government and dignity of the same.

20 LOUIS A. REPETTO, Prosecutor of the Pleas.

30

[ENDORSED]

8583. Atlantic Court of Oyer and Terminer May Term, 1924, Indictment for Robbery. The State v. John Letter and

Anthony De Canio.
Louis A. Repetto, Prosecutor of the Pleas.
A true Bill John T. French, Sr. Foreman.
Plea 6/4/24 Not guilty as to both
Trial 8/12/24 10 to 15 years in State prison.
Filed, entered and impounded May 21, 1924.

10

William A. Blair, Clerk.

ATLANTIC COUNTY QUARTER SESSIONS COURT.

Number 8583.
Color white.

20

STATE,
v.
JOHN LETTER and ANTHONY DiCANIO.

May Term, 1924.
Aug. 12, 1924.
Hon. Wm. H. Smathers, Presiding
S. C. Hinkle, for State.
Jos. Altman, for defendant.
Robbery Indictment (Allegation).

30

Jury.

- 1. Mike Farkis, sworn.
2. Chas. C. Whitaker, sworn.

- 3. Chalkley L. Gaskill, sworn.
- 4. Jeremiah Blackman, sworn.
- 5. Geo. Blood, sworn.
- 6. Eliza G. Williams, sworn.
- 7. Ella M. Dietrich, sworn.
- 8. Geo. Rudolph, sworn.
- 9. Mary J. Curry, sworn.
- 10. Clarence Cowan, sworn.
- 11. Flora Gravatt, sworn.
- 12. Minnie Leeds, sworn.

10

Witnesses for State.

- 1. Thomas Callahan, sworn.
- 2. Geo. F. Levins, sworn.
- 3. Harry Parzow, sworn.
- 4. Wm. Bunting, sworn.
- 5. Frank Ferretti, sworn.
- 6. Jos. Farley, sworn.
- 7. Samuel Weakley, sworn.
- 8. Frank Ferretti (recalled), sworn.
- 9. Emanuel Eckstein, sworn.
- 10. Emanuel Eckstein (recalled), sworn.

20

Witnesses for defendant.

- 1. Anthony DeCanio, sworn.
- 2. John P. Letter, sworn.
- 3. Anthony DiCanio (recalled), sworn.
- 4. Thomas Callahan (recalled), sworn.

Jury retired at 2:23. Jury returned at 2:37. Constable Lillie Cloud & Wm. Cline (sworn).

Verdict Guilty as to both defendants.

30

Sentence 8/12/24.

John Letter—States Prison, 10-15 years.

Anthony DiCanio—States Prison, 10-15 years.

ATLANTIC QUARTER SESSIONS.

8583.
white.

STATE,	}	May Term, 1924.	10
v.		Aug. 12, 1924.	
JOHN LETTER and AN-	}	Hon. Wm. H. Smathers,	
THONY DiCANIO.		Presiding	
		S. C. Hinkle, for State.	
	}	Jos. Altman, for defendant.	
		Charge Robbery.	
	}	Plea Not Guilty.	

The above named defendants, John Letter and Anthony DiCanio, being brought into court charged, pleaded Not Guilty to the crime as laid to their charge.

Whereupon, on the motion of S. C. Hinkle, Esquire, Asst. Prosecutor, on the part of the state, it was ordered that the sheriff return a panel of the jury to try the issue joined in the aforesaid plea.

Whereupon the sheriff returned the following named persons to serve as jurors who were sworn as follows, to wit:

- 1. Mike Farkis, worn.
- 2. Chas. C. Whittaker, sworn.
- 3. Chalkley L. Gaskill, sworn.
- 4. Jeremiah Blackman, sworn.
- 5. Geo. Blood, sworn.
- 6. Eliza G. Williams, sworn.
- 7. Ella M. Dietrich, sworn.

30

- 8. Geo. Rudolph, sworn.
- 9. Mary J. Curry, sworn.
- 10. Clarence Cowan, sworn.
- 11. Flora Gravatt, sworn.
- 12. Minne Leeds, sworn.

The following witnesses who were sworn, Thomas Callahan, Geo. F. Levins, Harry Parzow, Wm. Bunting, Frank Ferretti, Jos. Farley, Samuel Weakley, Frank Ferretti (recalled), Emanuel Eckstein and Emanuel Eckstein (recalled), having been called for the state and Anthony DiCanio, John P. Letter, Anthony DiCanio (recalled), and Thomas Callahan (recalled), having been called for the defendant, and the evidence being closed and the counsel having summed up the case and the Court having charged the jury, they retired at 2.23 P. M., with Constables Lillie Cloud and Wm. Cline, who were sworn to attend them and being absent until 2.37 P. M., they returned again into the court and being called, all appear, and being asked, say that they have agreed upon a verdict and by their foreman, further say that they find the defendants, John Letter and Anthony DiCanio, GUILTY, and so say they all.

Whereupon, it is on this 12th day of August, A. D. 1924, ordered that the defendants, John Letter and Anthony DiCanio, be placed at the bar and they being accordingly set at the bar, the Court doth order and adjudge that the defendants, John Letter and Anthony DiCanio, be committed to State Prison for a term of NOT LESS THAN TEN YEARS AND NOT MORE THAN FIFTEEN YEARS.

Quarter Sessions Judgment Book 13, page 321.

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30

STATE OF NEW JERSEY,
COUNTY OF ATLANTIC.

I. WILLIAM A. BLAIR, Clerk of the County of Atlantic, and also Clerk of the Common Pleas, etc., Courts holden therein, said court being a court of record, having a common seal, do hereby Certify, That the foregoing is a true copy of the proceedings and judgment record in the case of State v. John Letter and Anthony DeCanio, as the same are filed and entered in my said office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Mays Landing, N. J., this 24th day of August, A. D. 1924.

WILLIAM A. BLAIR,
Clerk.
By ALFRED T. GLENN, JR.,
Deputy Clerk.

10

20

30

JOINDER IN ERROR.

(Filed Oct. 9, 1924.)

NEW JERSEY SUPREME COURT.

10

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	In Error. Joinder in Error.
JOHN P. LETTER and An- THONY DeCANIO,		
<i>Plaintiff-in-Error.</i>		

20 And hereupon, the State of New Jersey, by Louis A. Repetto, Prosecutor of the Pleas of Atlantic County, comes into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings aforesaid, the reasons for reversal and the matters assigned for error and the judgment aforesaid, in manner aforesaid, may in all things be affirmed.

Dated October 9, 1924.

30

LOUIS A. REPETTO,
*Prosecutor of the Pleas of
Atlantic County.*

TESTIMONY.

ATLANTIC COUNTY COURT OF QUARTER SESSIONS.

STATE, v. JOHN LETTER & ANTHONY DiCANIO.	}	On Indictment, etc.	10
---	---	---------------------	----

August 12, 1924.

Before SMATHERS, J., and a jury.

20

APPEARANCES:

For the state, S. CAMERON HINKLE, Esq.
For the defendants, JOSEPH ALTMAN, Esq.

Mr. Altman: I would like to challenge for cause if I may. Have any of you ladies or gentlemen read anything about this case, or about these young men, and if so, are your minds open and not susceptible of being prejudiced by what you have read? 30

The Prosecutor: Objected to, if the Court please.

The Court: Sustained.

Mr. Altman: I think it is within the province of counsel to challenge any juror if he is so prejudiced that he cannot bring in a true and just verdict of innocence if he so feels, due to his prejudice.

The Court: I think his oath overcomes any possibility or probability of that.

10 Mr. Altman: The jurors haven't taken the oath yet.

The Court: They are about to.

Mr. Altman: I don't wish to have an argument with the Court; may I take an exception?

The Court: All right, sir.

(Exception noted.)

20 (Mr. Hinkle opens the case for the State to the jury.)

THE CASE FOR THE STATE.

THOMAS CALLAHAN, SWORN.

30 By Mr. Hinkle:

Q. Mr. Callahan, where do you live?

A. Perth Amboy, New Jersey.

Q. And were you in Atlantic City on or about the 17th of May, 1924?

A. Yes, sir.

Q. And on that occasion, did you meet these defendants, Letter and DiCanio?

A. Yes, sir.

Q. Where did you meet them?

A. I met them—when I remember meeting them I met them in the taxicab.

Q. Now, describe to the Court and jury, please, that meeting, how it occurred and what was said by them and what was said by you.

A. Well—

Q. Talk loud.

A. I was in this saloon and had a few drinks and I was under the weather, and these fellows, I remember being with them, I was in the taxicab when they were choking me.

Q. Choking you?

A. Yes, sir.

Q. Tell all that was said and done as far as you can remember.

A. And when they were choking me I came to my 20 senses and asked them please to leave me alone, and they said, "Where is your money?" they said, "Where is your money?" and I said, "If it is money you want you have got me here alone and you must have it," I said, "You must have the money," and they started beating me, throwing me one to another, kicking me, and they nearly knocked me into insensibility, and when I started talking I said, "My money must be in my clothes some place," and they started to rip my clothes off me and he started 30 choking me.

Q. Who?

A. Letter, with his arm like that, and I tried to plead for mercy, and I couldn't hardly talk; I tried to beat him away from his grip, and I pleaded for mercy, and he said, "Kill him, give it to him right here, we have got him in a good place and

we will throw him in the creek." and I pleaded for mercy right up in his eyes.

Q. You say you were pleading for mercy?

A. That is right, pleading for mercy, and I told him I had a wife and four children, if they wanted the money take it and let me go, they started choking me and beating me—

Q. Who did that?

A. Letter. Both of them were pulling my clothing from me.

Q. Both were pulling your clothing?

A. Yes, sir.

Q. Were you in the taxicab at that time?

A. Yes, sir.

Q. Do you know how long you had been riding?

A. About ten or fifteen minutes.

Q. Then what happened after they commenced to pull your clothing, what happened, what did they do to you and with you?

A. After they got all my clothing off I pleaded for mercy and he said, "Shoot him"—Letter says to DiCanio—DiCanio had the gun, and when I looked around and saw the gun I pleaded for mercy again. I don't know why they let me out, whether they gave me mercy or not, but I was glad to get out, and after I had pleaded, and everything, they did open the door and shove me out.

Q. Was the taxi going?

A. The taxi came to a stop and they gave me a shove out.

Q. How much money did you lose?

A. \$500, close to that.

Q. Close to \$500?

A. Yes, sir.

Q. Did they leave you any clothing at all?

A. I had a necktie on me, that is all, that was the only piece of clothing on me.

Q. Then what did you do?

A. There was a railing along the road there, and I ran under the railing—I didn't know where I was going—and I found I was in a marsh and meadows, and I realized what I was running into and I had sense enough left and I turned around and looked and seen the automobile turn around and go back in the opposite direction where I was going, and I run for three miles, in my estimation, the way I was, and I come to three or four houses, and a light was in one house and I knocked at the door, and a man came and I asked him to let me—

Mr. Altman: I object.

Q. Did you get any clothes at that house?

A. Yes, sir.

Q. Did you have any on when you went there? 20

A. No, sir.

Q. Now, where did you carry your money that night?

A. Inside my two shirts, along on my belt.

Q. Since that time, did anybody give you any money for restitution for these losses?

Mr. Altman: I object.

Mr. Hinkle: If you object I won't press it, I thought you wanted to show it.

The Court: Objection sustained.

Q. Did you have any photographs taken immediately after your injury?

A. An hour or two afterwards.

Q. I show you a picture marked "No. 1" and ask you if you recognize that?

A. Yes, sir.

Q. Is that a picture of yourself after this attack?

A. Yes, sir.

Mr. Hinkle: I offer that in evidence.

10 Mr. Altman: I object.

The Court: State your objection.

Mr. Altman: In the first instance, it isn't the proper way to prove a picture, and in the second instance, it is immaterial.

20 Mr. Hinkle: A picture, if the Court please, can be proven by anybody who will say that it is a likeness of what then existed; it doesn't have to be a photographer, or anything of the kind, any person who say, "I recognize that."

Mr. Altman: Please don't show it to the jury.

Mr. Hinkle: I am offering it for the purpose of showing the way this man was beaten.

30 The Court: What did he say, that that was taken within a few hours after the occurrence?

Q. What time did this occur?

A. Between three and four o'clock in the morning.

Q. What time were these pictures taken?

A. About nine o'clock, to my knowledge.

The Court: What does he say about the picture, is it a picture of himself?

Mr. Hinkle: Yes, sir.

The Court: And does that picture show the condition you were in after the occurrence?

The Witness: Yes, sir, your Honor. 10

The Court: I will admit it.

Mr. Altman: I ask for an exception.

(Exception noted.)

(Said picture marked Exhibit S1.)

Q. I show you a picture marked "No. 2" and ask you whether that was taken at the same time? 20

A. Yes, sir.

Q. And is that you?

A. Yes, sir.

Q. Showing your condition?

A. That is me.

Mr. Hinkle: I offer this.

Mr. Altman: I object.

The Court: It will be admitted. 30

(Said picture marked Exhibit S2.)

Q. I show you a book on the front marked "First National Bank, Perth Amboy, New Jersey," did you ever see that book before?

A. Yes, sir.

Q. Whose is it?

A. My book.

Q. What is it?

A. First National Bank.

Q. Deposit book, bank book?

A. Yes, sir.

Mr. Hinkle: I offer that in evidence, if the Court
10 please.

The Court: It will be admitted and marked S3.

(Said book marked Exhibit S3.)

Q. I show you a check bearing number "449, P.
A. D. D. Co. Pay check."

A. That is my pay check, Perth Amboy Dry Dock
Company.

20 Q. That is your identification to draw pay?

A. Yes, sir.

Mr. Hinkle: I offer that in evidence.

The Court: It will be admitted and marked S4.

(Said check marked Exhibit S4.)

Mr. Altman: I object unless it is connected with
30 this case; I don't object to it being admitted now
as an introduction.

Q. Did you have the exhibits S3 and S4, the book
and check, on you at the time this attack was made
on you?

A. Yes, sir.

Q. And did you lose them at that time?

A. Yes, sir.

Q. I show you a bundle of clothing, just pick those
out and see if you recognize them?

A. I recognize them all since I see them, yes, sir;
I know I had two handkerchiefs with me.

Q. This is your clothing?

A. Yes, sir.

Mr. Hinkle: I offer the lot in evidence.

10

The Witness: A pair of socks I had on me, and a
pair I had in my pocket.

Mr. Hinkle: I offer those in evidence.

Mr. Altman: I object.

The Court: They will be admitted and marked
S5; unless they are connected up they can't hurt
you in any way. 20

(Said bundle of clothing marked Exhibit S5.)

Q. Do you know what kind of clothes Letter wore
this night?

A. Yes, sir.

Q. What kind of clothing was it?

A. A light suit.

Q. Does that look like the suit—I show you a light
suit. 30

Mr. Altman: I object.

Q. Ever see it before?

A. Yes, sir.

Q. Where?

A. I can't say it is the same one, but a suit exactly like it.

Q. Where did you see that, or one exactly like it?

A. On Mr. Letter.

Mr. Altman: I object.

The Court: If you state your objection the Court
10 will rule on it.

Mr. Altman: My objection is the suit has not been connected with Mr. Letter.

The Court: How can it be if you object?

Mr. Altman: That is why I object.

The Court: You don't want it to be?
20

Mr. Altman: I don't know.

The Court: I will permit.

(Exception noted.)

Mr. Altman: If the Court please, I object to your remark as to my not wanting it admitted.

The Court: The Court will decline to grant that.
30

Mr. Altman: May I have an exception to your declaration?

The Court: No, sir.

Mr. Hinkle: I ask that be marked.

The Court: It will be marked S1 for identification.

(Said suit marked identification S1.)

Cross-examination.

By Mr. Altman:

Q. What is your business?

10

A. Boilermaker helper.

Q. What is your salary?

Mr. Hinkle: I object to that, if the Court please, as being irrelevant and immaterial.

The Court: I will permit it.

A. My salary, I make \$24.00 a straight week, and overtime when I make it, make as high as \$38.00, 20 \$40.00 and \$45.00 a week.

Q. Married man?

A. Yes, sir.

Q. Family?

A. Yes, sir.

Q. Where do you live?

A. Perth Amboy, New Jersey.

Q. How much money did you have when you came to Atlantic City?

A. I had over \$500.

30

Q. About how much, do you know?

A. I had \$476 or \$474 drawn from bank and had \$90 that never was in the bank, I had that cash—I had all cash, but \$90 besides what I had drawn from bank.

Q. Where did you have this money, you say?

A. Inside my both shirts lying on my belt, next to my flesh.

Q. Your trouser belt?

A. Yes, sir.

Q. You didn't have a money belt, did you?

A. I had no money belt.

Q. I will illustrate to the jury, that is, before you, as a matter of accuracy. You had your money inside your shirt lying next to your belt?

10 A. Underneath both shirts.

Q. Next to your skin?

A. Yes.

Q. What would you do when you needed money while you were spending it, if you did?

A. Of course, I would have to go inside my shirt and get some, if I had none in my pockets.

Q. Then you had to go inside your shirt and pick out some money. All of it, would you have to take all of it out of your shirt?

20 A. Not necessarily.

Q. How would you get a bill out?

A. Just off the roll, take one out.

Q. Fish in between your shirt and belt and take one bill from the roll?

A. In my pocket?

Q. No, inside your shirt.

A. If I wanted it, yes.

Q. Did you want it that night before you met these men?

30 A. Did I want it that night? I suppose I did if I needed it to spend any.

Q. Did you?

A. Yes, I spent money before I met them.

Q. Did you go inside of your shirt to get the money, my question is?

A. That I don't remember.

Q. You say you met these men in a taxicab at first, that is the first place?

A. The first place I remember being with them.

Q. How about inside the cafe you came out of, didn't you meet them there?

A. Weren't in their company at all.

Q. Weren't they in the same cafe you were?

A. I don't remember them.

Q. Who were you with in the cafe?

A. I went in personally myself.

Q. I didn't ask you that, sir. Who were you with in the cafe?

A. I remember talking to—I think his name is Levine, George Levine.

Q. Who else?

A. Talking to the bartender.

Q. Were you sitting with any people at a table?

A. Yes, sir.

Q. Well, now, who were they?

A. I don't know who they were.

Q. Men?

A. One man.

Q. Ladies there?

A. Yes.

Q. At this table?

A. Yes, sir.

Q. How long were you in the cafe?

A. I can't remember how long I was in there.

Q. As a matter of fact, you were in there quite a while, weren't you?

A. Probably I was, I can't say whether it was one hour, two hours or three hours.

Q. Mr. Callahan, you won't say it wasn't four hours, will you?

A. I won't say that, no.

Q. It could have been four hours?

A. It could have.

- Q. Were you drinking sarsaparilla there?
 A. Yes.
 Q. Ginger ale?
 A. Yes.
 Q. Rootbeer. Did you have any Coca-Cola?
 A. I had drinks of soda water.
 Q. Have any ice cream?
 A. No, sir.
 10 Q. And sundaes with cherries on top?
 A. No, sir.
 Q. You weren't drunk, were you?
 A. I was under the influence of liquor.
 Q. How did you get that way, on sarsaparilla?
 A. No, sir; I did not.
 Q. As a matter of fact, you were quite drunk, weren't you?
 A. Well, I was intoxicated, yes.
 Q. In fact, wasn't there a fight in this cafe while
 20 you were there and these boys were there?
 A. That I can't remember.
 Q. Will you say there was not?
 A. I don't remember no fight.
 Q. Can't you remember Mr. Letter having a fight
 in there?
 A. Don't remember having a fight.
 Q. Can't you remember you having an altercation
 in there?
 A. No.
 30 Q. Can't you remember sitting down and drink-
 ing with Mr. Letter and Mr. DiCanio?
 A. No.
 Q. About buying your drinks, can you remember
 that?
 A. I can't, not as I remember.
 Q. Mr. Callahan, as a matter of fact, you treated
 the house?

- A. Treated someone, but I don't know who I
 treated.
 Q. Don't you know now what their names were?
 A. Of who?
 Q. The people you treated?
 A. No, sir.
 Q. Don't you remember Letter, DiCanio and you,
 and some other gentlemen and ladies being in there
 sitting around a table?
 10 A. No, sir.
 Q. Don't you recall when the fight started you
 all had to run out of there
 A. No, sir, I don't remember; if it happened I
 don't remember it.
 Q. Why don't you remember these things?
 A. I was under the influence of liquor.
 Q. Sir?
 A. I was under the influence of liquor.
 Q. You remember what Mr. Letter's clothing
 20 looked like?
 A. I do, I do, I will never forget them.
 Q. Were you under the influence of liquor then
 when you saw the suit?
 A. Then when I remember his clothing I was
 knocked and beaten so hard I will never forget
 them; that brought me to my senses, I will never
 forget him and his clothing.
 Q. Did you know you had your \$500 with you
 when you stepped into that taxicab?
 30 A. I certainly must have had it.
 Q. Do you know that you had, sir, please?
 A. I had it with me all the time.
 Q. Wil you please answer this question? Do you
 know whether or not you had your money when you
 stepped into that taxicab?
 A. Certainly I had it.
 Q. How do you know you had it?

A. I had it all the time on me.

Q. The fact that you had it all the time on you makes you now say you had it when you stepped into the cab; the fact that you say you had it on you all the time makes you say you had the money when you stepped into the cab?

A. I can't say I had it all the time.

10 Q. When is the last time you looked at it prior to getting into the cab?

A. Paying a bill, I think, at the hotel.

Q. What hotel?

A. The hotel I was in.

Q. Do you remember that?

A. Do I remember it?

Q. Yes, paying the bill.

A. Yes.

Q. You remember that?

A. Yes, sir.

20 Q. Were you intoxicated then?

A. Well, not as bad as I was after I paid it.

Q. After you paid it do you remember having your money?

A. I never looked for it after that.

Q. What did you do with it after you paid your bill?

A. Put it back.

Q. Do you know the ladies that were in your party?

30 A. No, sir.

Q. Never saw them before?

A. No, sir.

Q. Never saw them since?

A. No, sir.

Q. Were they intoxicated?

A. I couldn't say.

Q. How much money did you give them, if you gave them any?

A. I gave them none.

Q. Are you sure of that?

A. I had no reason to give it to them.

Q. Do you know whether or not they took any from you?

A. No, I don't know whether they took anything from me or not.

Q. Did you have a fight in the lavatory of the hotel where you were drinking?

A. A fight in the lavatory?

10

Q. Yes.

A. No, sir, I did not.

Q. What did these young ladies look like, do you know?

A. I could never recognize them again if I saw them.

Q. You wouldn't know them if you saw them?

A. I don't think I would.

Q. As a matter of fact, you can't really recollect what happened in that hotel, can you, other than you feel that you had your money under your shirt?

20

A. Yes.

Q. Everything else is a blank to your mind?

A. From the time a little before I left it things went blank before me.

Q. What kept your money next to your skin?

A. What kept it there?

Q. Yes.

A. I felt it was a safe place to keep it.

30

Q. What thing kept it next to your skin?

A. My belt was tight.

Q. You tightened your belt?

A. Yes, sir.

Q. Were you sitting down?

A. Yes, sir.

Q. And standing up?

A. Yes, sir.

Q. Walking around?

A. Yes, sir.

The Court: Did you have it in any container inside?

The Witness: Yes, in next to my skin.

10 The Court: Did you have a bag in there?

The Witness: No, sir.

GEORGE F. LEVINS, SWORN.

By Mr. Hinkle:

20 Q. Mr. Levins, where do you live?

A. Philadelphia.

Q. Were you in Atlantic City on or about the 17th of May, of this year?

A. I don't know whether it was the 17th or not, it was on a Friday evening; I was down singing at the Parisian Cafe.

Q. Did you see this previous witness, Mr. Callahan, in the cafe?

A. I was talking to Mr. Callahan in the cafe.

30 Q. Did you see John Letter, this defendant here?

A. I didn't see Mr. Letter until the fight started, that is the first time.

Q. Did you see Mr. DiCanio there?

A. Earlier in the evening.

Q. Were they with Mr. Callahan?

A. I didn't see them inside the cafe at all.

Q. Did you see them outside of the cafe?

A. I didn't go outside to see the fight; I knew the fight was going on and I let them fight it out.

Q. Who was fighting?

A. It seemed as though somebody hit Mr. Letter and Mr. Letter came in after this man and said, "You won't hit me"—I don't know his name—

Q. It wasn't Callahan?

A. No, sir. He said, "You won't hit me and get away with it," and he was taking his coat off at the same time. Right after Mr. Letter came in Mr. DiCanio came in, I thought to help him in the fight, I don't know. 10

Mr. Altman: I object to that.

Q. Where was Mr. Callahan at that time?

A. At the bar with this man who hit Mr. Letter and two girls, drinking.

Q. What else do you happen to know about the conduct of these people that evening? 20

A. When the fight started it was all a jumbled affair, like excitement, and I thought the fight was over girls, because Mr. DiCanio was looking at the girls—in fact, I said to him, I said to him, I said "Why don't you take the girls if you want them, these two fellows are drunk," I thought the fight was over the girls—and when they got outside, I believe he lived at the corner hotel, the same side as the Parisian—

Mr. Altman: I object. 30

Q. Was Mr. Letter there when the man came in?

A. No, sir.

Q. Was Mr. DiCanio there?

A. No, they both left, all that was in there was

the bartender, the man who owned the place, and two other men, I didn't know who they were.

Q. Did Mr. Callahan have any money?

A. The first I seen Mr. Callahan expose any money, he was playing the slot machine, and he owed the bartender three or four dollars and the bartender called him on it, and he pulled some money out, I don't know how much he had, but he pulled it out.

10 Q. Where from did he pull it?

A. I don't know, he had it in his hand.

Q. Then what did Mr. Callahan do with the money?

A. Why, Mr. Callahan was treating fellows off and on all through the evening and then he was paying for it now and then, whenever the fellows would call him, that is the only time I seen him expose the money.

20 Q. How long was Mr. Letter and Mr. DiCanio around there during the time Callahan was there?

A. Mr. DiCanio, I imagine, might have been there about an hour, to my knowledge, before the fight, but I didn't see Mr. Letter until the fight started, that is when I first recognized Mr. Letter when he came in after the man going to hit him.

Q. And Letter and the man walked out on the sidewalk?

30 A. No, sir, that is where this man hit Letter first, and they walked inside. This man came inside after he hit Mr. Letter and Mr. Letter came in after him.

Q. Was there a fight in there?

A. A little wrestling match, that is all.

Q. Did Mr. Callahan take any part in that?

A. I didn't see him then; these girls and Mr. Callahan and the other man were jumping around, I don't know where they were.

Q. Did you see Mr. Callahan leave the cafe?

A. I didn't see him, the last time I saw him he was standing at the bar, drinking.

Q. Did you see Mr. Letter or Mr. DiCanio leave?

A. No, sir, due to the fact I walked in back to the cafe with another man when the fight started, figuring I wasn't no friend of theirs and had no duty to take an active part in it.

The Court: What is the name of the place? 10

The Witness: Parisian Cafe, on Missouri Avenue, between Pacific and Atlantic.

The Court: It must have been some joint.

Q. Did Mr. Letter show any evidence of having been hit?

A. He had some blood around his mouth, that is all I noticed, whether it was from his teeth or where, 20 I don't know; when he came in there.

Q. Was there much of it?

A. I didn't notice much, they started right in mixing it up on the inside, and I didn't pay any more attention.

Cross-examination.

By Mr. Altman:

30 Q. You say Callahan was treating the fellows there all evening?

A. Every once in a while when I came to the bar I seen somebody standing there drinking and would hear him say, "Come on and get something," and they would order up something.

Q. And the girls.

A. I seen him sitting in the cafe with two girls earlier in the evening and he was treating them.

Q. In other words, Callahan was spending his money quite freely to your observation?

A. I don't know what they were charging for the drinks, but he was drinking enough.

Q. But he was spending his money freely, treating the girls and treating the fellows?

A. Yes, sir.

10 Q. Did you notice the condition of Letter as to sobriety or not?

A. Well, I wouldn't want to say whether he was sober or drunk; when I seen him he was mad, that is all I could tell you.

Q. Did he act to you like a drunken man?

A. He was so mad it was hard to tell; when a man gets mad it is hard to tell unless he is examined.

Q. Had he been drinking?

20 A. I didn't see Mr. Letter drink but one glass and I think it was beer.

Q. Did you see him in the cafe, himself?

A. No, sir; not until the fight started.

Q. Was DiCanio in the bar?

A. I seen Mr. DiCanio in the cafe, he was sitting at the table back of me in the cafe by himself and was talking to the proprietor's brother, I believe.

Q. Was he drinking?

30 A. I didn't see him drinking in there; of course, he may have been, I didn't have my eye on him at all.

Q. You saw Callahan playing a machine?

A. He was playing the slot machine there in the bar, that is when I first seen the money, he was getting change, quarters in change off the bartender, and he owed the bartender around three or four dollars when the bartender called him for it and told

him he owed the money and he wouldn't give him any more change until he paid him.

Q. What denomination machine was it, what could you put in that at a time?

A. Why, I believe a quarter was the only coin it took.

Q. How long did he play the machine, to your observation?

A. I stayed there and watched Mr. Callahan for about twenty minutes, at least. 10

Q. That is, he played this quarter machine for twenty minutes?

A. Yes, sir.

Q. Do you know whether he won or not?

A. I wasn't keeping tabs on that, I was talking to several men and looking at him at the same time.

Q. During this fight you were talking about out on the sidewalk where Letter was probably licked, and they came inside, you say there was a lot of confusion? 20

A. Yes, sir. When they came inside, Mr. Fleishman tried to separate them and get them outside, and consequently, it caused excitement.

Q. People were running around?

A. Not running, but they were moving.

Q. Moving fast?

A. Yes, sir.

Q. Callahan among them?

A. He would, I suppose, but I didn't see Callahan after the fight started. 30

Q. Did you see Callahan that night go between his top shirt and undershirt and take some money out of it?

A. No, sir, the first I seen the money was in his hand.

HARRY PARSOW, SWORN.

By Mr. Hinkle:

- Q. Where do you live?
 A. Astor Apartments.
 Q. In Atlantic City?
 A. Yes, sir.
 10 Q. What is your business?
 A. Taxicab.
 Q. Were you driving a taxicab on or about the 17th of May of this year?
 A. Yes, sir.
 Q. Did you at that time see this witness, Thomas Callahan, who was on the witness stand first?
 A. Well, I didn't see him until he got in the car.
 Q. But you did see him that night?
 A. Yes, sir.
 20 Q. Did you see DiCanio, the defendant here?
 A. Yes, sir.
 Q. Did you see Letter, the other defendant, that night?
 A. Yes, sir.
 Q. What time of the night did you first see them?
 A. I seen them about four o'clock in the morning.
 Q. And where were you then?
 A. Well, I was at the front.
 30 Q. Front of what?
 A. Of that cafe.
 Q. On Missouri Avenue?
 A. Missouri Avenue.
 Q. Standing there?
 A. Yes, sir.
 Q. Waiting for anyone who would hire you?
 A. Yes, sir.

- Q. Did someone hire you?
 A. Yes.
 Q. Who?
 A. DiCanio.
 Q. What did he say to you?
 A. He came out and said, "You got the car here?" and I said, "Yes," and he said, "Wait a minute, take me home," and I said, "All right," and I was waiting around there—

10

Mr. Altman: I object.

- Q. What followed after that?
 A. I was waiting around there and I seen John Letter come out with his nose bleeding.
 Q. Then what happened?
 A. Then I pulled out my handkerchief and I gave him the handkerchief, and then I seen Tony fighting inside, I thought that was over the girls, I didn't know what it was about, so later on he told me to 20 pull up to the corner and I pulled up there.
 Q. Who told you?
 A. Tony.

The Court: Who is Tony?

- Q. DiCanio?
 A. Tony DiCanio.
 Q. He told you to pull up to the corner?
 A. Yes, sir. 30
 Q. Then what happened?
 A. This man Callahan, they got him in the car.
 Q. Who did?
 A. Tony DiCanio, and they made me drive them out the boulevard.
 Q. You say Tony DiCanio got who in the car?
 A. Callahan.

Q. And who else was there?

A. John Letter.

Q. Just the three got in your car?

A. Yes, sir.

Q. On the front or back seat?

A. Back seat.

Q. All three of them?

A. Yes, sir.

10 Q. Could Callahan walk?

A. He ran.

Q. Who ran?

A. Callahan, and I thought they were friends of his, he was a friend of theirs, see, and I thought probably he didn't want to go home and they wanted to take him home, and they got him in the car, and I was going uptown and he made me drive them out the boulevard.

Q. Who said that?

A. Tony DiCanio.

20 Q. What boulevard did you drive out?

A. I went out Albany Avenue.

Q. And that is the one that goes to Pleasantville station?

A. Yes, sir.

Q. You followed that road?

A. Yes, sir.

Q. How far did you go on the boulevard?

A. I went about one mile from Pleasantville.

30 Q. Now, after you left the Albany bridge along there, did anything occur?

A. I heard something break in my car and one of the windows was broken, I didn't know what it was, you see, I thought somebody was shooting at me, or something, I didn't know what it was, and I kept on going, and then they started fighting in the car, Mr. Letter was drunk terribly, he was unconscious.

Q. Mr. Letter?

A. Yes, John Letter, and they started in fighting in the car, and this Callahan he was crying for them to let him go.

Q. Tell all that occurred. ?

A. And Mr. DiCanio had hold of him and he wouldn't let him go until he got the money.

Q. Did you see them working on Callahan?

A. I couldn't see them working on Callahan much, I was driving, and I didn't want to look back.

Q. Could you hear what was said? 10

A. A few words.

Q. What did you hear?

A. I heard Tony tell Tom Callahan to give him his money, and he cried he had no money, so Tony made him undress himself.

Q. Undress himself?

A. Yes. And then they were lookin around for the money. At that time Mr. Letter was sleeping, he didn't know what was going on.

Q. He didn't know what was going on? 20

A. No, sir.

Q. Then what happened?

A. After he was stripped I stopped the car and they let him out.

Q. When they let him out, how was he dressed?

A. All he had was stockings and his necktie on.

Q. Did he have stockings on?

A. Yes, sir.

Q. Then what happened?

A. Then they made me drive them back to the 30 Parisian Cafe.

Q. You say when they got into your car at the corner you say DiCanio told you to drive out the boulevard?

A. Yes, sir.

Q. And then when you got out there and they got

rid of Callahan you say they made you drive back to the cafe?

A. Yes, sir.

Q. What do you mean by that?

A. They forced me, I didn't want to leave that man go naked.

Q. How?

A. Tony DiCanio had a gun in his hand.

10 Q. What did he say about that gun, what did he do about it?

A. Well, he just told me to drive them back and had the gun in his hand.

Q. And you drove back?

A. Yes, sir, I will say I did.

Q. Now, did he say anything to you if you informed the police what he would do, that he would do anything to you?

A. He didn't mention anything to me about the police.

20 Q. He did not?

A. No, sir.

Q. What did he say about you driving back?

A. Not that I remember.

Q. Don't remember whether he said anything?

A. No, all he said was, "Drive me back to the Parisian."

Q. Did you say you didn't want to leave the man?

30 A. Yes, sir; I didn't want to leave the man, because the man was naked, and they said, "The hell with the man, let's go back, we want to go back to the girls and see whether they got the money or not." I don't believe they got the money,, and that is the reason they made me drive them back to the girls.

Q. Then what happened?

A. I drove them back and left them off there, and then I went back to my apartment, but I couldn't

sleep, I was worried over this, and I came down and got in my car and went to the city hall and told them.

Mr. Altman: I object to this part of the testimony.

Q. But you did take these two defendants back to the cafe?

A. Yes, sir. 10

Q. Did they get out there?

A. Yes, sir.

Q. Walked in there, did they?

A. Walked in the cafe.

Q. What became of the clothes and things they had in the taxicab?

A. I can't remember. I seen them throw one over the fence. I was so dizzy in the car I nearly fainted in front of the wheel, but I opened the door and got some air and I felt better, but I just seen them throw 20 the clothes—Mr. DiCanio throw the clothes over the fence.

Q. He threw them over the fence on the boulevard?

A. Yes, sir.

Q. And afterwards did you go back and point out where that was?

A. No.

30 Q. Did you tell where the things had been thrown over the fence?

A. Yes.

Mr. Altman: I object, unless that was in the presence of the defendant.

Q. Who did you tell that to?

A. Captain Ferreti, detective.

Q. Now, during this time they were trying to get the money from Callahan, did anybody curse you, call you a Jew?

A. Tony did.

Q. What did he say?

A. Explain it right here?

Q. Yes, go ahead, we want it all.

A. He said, "You Jew son-of-a-bitch, don't look around, drive fast," so I did drive fast.

10 Q. Why had you looked around?

A. I was looking at the way they were fighting with the man.

The Court: Were both of them fighting the man?

The Witness: All I seen, your Honor, is Tony DiCanio's hand go to the man's face, and as he told me to turn around I did, I didn't want to interfere with him, because he had a gun in his hand.

20

Cross-examination.

By Mr. Altman:

Q. You say that Mr. Letter was terribly drunk?

A. Yes, sir.

Q. And that he was lying in the car unconscious?

A. Yes, sir; going onto the boulevard.

30 Q. From what you saw he was lying in the car unconscious while you were going over the boulevard?

A. Yes, sir.

Q. Will you tell the ladies and gentlemen of the jury whether or not Mr. Letter, on the boulevard, from what you saw, attempted to abuse this man or take his money, referring to Mr. Letter?

A. I can't understand that.

(Question repeated.)

A. No, sir.

Q. He was lying in the car sort of unconscious?

A. Yes, sir.

Q. You said, Mr. Parsow, on direct examination, you didn't believe they got the money?

A. Yes, sir.

Q. And that is why they went back to the cafe?

A. Yes, sir.

10

Q. Have you any evidence to present to this Court to substantiate your belief? Do you understand that?

A. I understand.

Q. In other words, why do you say that?

A. Why do I say that?

Q. Yes, why do you say you don't believe they got the money?

A. Because they were talking in the car, Tony says, "I believe them girls got the money," so when they went back I left them off.

20

Q. After this thing had occurred?

A. Yes, sir.

Q. DiCanio said, "I believe the girls have the money?"

A. Yes.

Q. Was Letter in a stupor then, was he still dead drunk?

A. He woke up then on Atlantic Avenue.

Q. But during the time the money was taken you say Letter was lying in the car in a stupor, unconscious?

30

A. For a while he was, and every time Tony would knock the man over to him he would get up again. Letter hit him once, I seen that, that is all.

Q. How could he hit him if he was unconscious, dead drunk?

A. I am telling you, every time he pushed the man over to him he would wake him up.

Q. Then your impression is, if it is that way, that Letter was lying in the car in a drunken stupor, that DiCanio pushed Callahan toward him, and Letter would push Callahan off him, is that the idea?

A. He swung at him one time.

Q. Like this, like getting away?

A. Yes.

10 Q. Did he stand up and swing, or swing while he was lying down?

A. He was sitting down.

Q. I would like to illustrate to see whether I am right or wrong. Was he in the cab like this?

A. Yes, sir.

Q. And when he swung did he swing from this position like that?

A. Yes, sir.

20 Q. He didn't get up and swing this way?

A. No, sir, the car wasn't big enough, no sir.

Q. You say DiCanio passed the remark that they didn't get the money?

A. Yes, sir.

Q. Referring to the cafe when you got your passengers, did you see Letter in a fight there?

A. I seen him come out with his nose bleeding.

Q. As the result of a fight his nose was bleeding?

A. Yes, sir.

30 Q. Blood flowing freely?

A. Yes, sir.

Q. Was his mouth cut?

A. Blood was all over his mouth.

Q. Did you loan him a handkerchief?

A. Yes, sir. I didn't know John Letter no more than I know him now.

Q. Was Callahan drunk?

A. Paralyzed drunk.

Q. Paralyzed drunk?

A. Yes.

Q. That is, Mr. Callahan was paralyzed drunk?

A. Yes, sir.

Q. Do you know who broke the window?

A. I guess Mr. Letter broke the window with his left hand there, because he was that way; here is the car and he was sitting this way and DiCanio was

this way, to the right. He must have turned around 10 and his his elbow.

Q. You think he broke it with his elbow?

A. I guess he did.

Q. But you don't know how it was broken?

A. No, sir.

Q. And you don't know for this jury who broke it?

A. No, sir.

Q. But you do know Callahan was paralyzed 20 drunk?

A. Yes, sir.

Q. Was he paralyzed drunk coming from the cafe?

A. I didn't see him, but when he got in the car he fell right in the car.

Q. And at that time was Letter lying in the car?

A. He was in the car already.

Q. Lying there?

A. Yes, sir.

Q. And Callahan fell in?

A. Yes, sir.

Q. Was DiCanio drunk?

A. I guess he was half drunk.

Q. Was Callahan fighting back with DiCanio in the car, trying to defend himself?

A. Yes, sir.

Q. What was he saying during all this quarreling in the car on the boulevard?

A. He was pleading with them to let him go.

By Mr. Hinkle:

Q. Who got in your car first?

A. Mr. Letter.

Q. Got in first?

10 A. Yes, sir.

Q. Then who got in?

A. Tom Callahan.

Q. Who got in last?

A. Mr. DiCanio.

Q. Who paid you for the trip?

A. No one did.

Q. Who did you ask for the money?

A. No one, after what had happened.

20 Q. You just took them out there and this came off and then you didn't get your money?

A. Yes.

WILLIAM BUNTING, SWORN.

By Mr. Hinkle:

30 Q. Mr. Bunting, you are a member of the Police Department, detective work?

A. Yes, sir.

Q. Do you remember the 17th of May of this year when Callahan was said to have been robbed on the Absecon Boulevard?

A. Yes, sir.

Q. Did you do some work on that case?

A. I went up to Mr. DiCanio's house, me and Bishop, and brought him in.

Q. Where did you find him?

A. In bed.

Q. What time was that?

A. I guess about half past six.

The Court: You will have to speak louder, Mr. Bunting.

Q. In the morning?

A. Yes, sir.

Q. Did you take him to the police station?

A. Yes, sir.

Q. Did he say anything to you?

A. Why, he said, "What do you fellows want?" and we said we wanted to take him down to the jail, and he said, "You are kidding," and we said no, we weren't kidding, we want you to go down so he got dressed and we went down.

Q. Did he say anything at all going along the street?

10

20

Mr. Altman: I object, if the Court please, the question has been answered.

Mr. Hinkle: I don't know how it can be answered; it wasn't asked before.

The Court: I will permit it.

(Exception noted.)

30

A. Nothing pertaining to this case.

Q. What else did you do in connection with this case?

A. That is about all.

Q. Did you go and look for clothing?

A. No, sir, we were on house duty that night and the case was turned over to the other officers.

Cross-examination.

By Mr. Altman:

Q. Do you know whether it was 6.30 o'clock of the same morning that this man was supposed to have been robbed?

A. Yes, sir, the same morning.

10 Q. 6.30 o'clock?

A. I am not positive just the time, about that.

Q. And you found DiCanio at his home?

A. Yes, sir.

FRANK FERRETI, SWORN.

By Mr. Hinkle:

20

Q. You are captain of the detective department?

A. Yes, sir.

Q. Were you on duty on the night and early morning of May 17th, 1924?

A. Yes, sir.

Q. Did you hear of the alleged robbery of Callahan on that morning?

A. The first I heard of it —

30 Mr. Altman: I object to the answer.

Q. Say yes or no.

A. Yes, sir.

Q. Who first called your attention to that?

A. Taxicab driver.

Q. This man who was on the stand here?

A. Yes, sir.

Q. And as the result of that, what did you do?

A. When the complaint had come in I detailed Detectives Bishop and Bunting up there to bring DiCanio down and lock him up.

Q. Did they do that?

A. Yes, sir.

Q. Did they bring him to you?

A. Yes, sir.

Q. Did he say anything to you?

A. He was identified by the complainant — 10

Mr. Altman: I object to that and move that it be stricken; it is not responsive.

The Court: The question is: Did he say anything to you?

The Witness: Yes, sir.

Q. What did he say?

20

A. At first he denied it, later he admitted it.

Q. What did he admit?

A. He admitted him and Letter—I asked him who his partner was —

Mr. Altman: I object to this unless Letter can be connected with the admission, legally connected.

Mr. Hinkle: We hope we can, if we can't we will strike it out. 30

Mr. Altman: I object to it coming in at this time as being prejudicial to the defendant.

The Court: Proceed, I will permit the question.

(Exception noted.)

Mr. Altman: If it pertained to Letter in Letter's absence?

The Court: Yes, sir.

The Witness: He told me the man that was with him in the holdup was Letter, he lived on South Massachusetts, one of those streets among —

10 Mr. Altman: I object, if the Court please.

Q. He told you where he lived?

A. Yes, sir.

Mr. Altman: I move that the testimony produced by this witness be stricken insofar as it pertains to Letter not being present.

20 The Court: I will hear you, Mr. Hinkle.

Mr. Hinkle: Of course, we can't put in all the State's case at one time. Now, he said certain things and if in giving that narrative he names some other person as being present, of course, it is natural for this witness, in order to tell the whole truth, to tell what was said. I am not in the position of a man who is seeking something unfairly, and I will say to this Court if there is nothing to connect Letter, I am frank to say to the Court and the jury that that
30 conversation ought not to be considered by them at all, quite frank to say that.

Mr. Altman: If the Court please, may I suggest to the Court that it is not uncommon in the law under conditions such as this that the witness testify to the Court at side bar and the Court decide

whether or not the testimony should come in, and save harmless the other defendant.

The Court: The Court will take full responsibility for presiding over the court without any suggestions from counsel. I will permit the answer to stand at this time. Proceed.

(Exception noted.)

10

Mr. Altman: I didn't mean it in that way, if the Court please; I just wanted it so it wouldn't prejudice this boy. If your Honor took that construction that I wanted to direct the procedure, I beg your pardon.

Q. He told you of some other man who was with him, and he told you where the man lived. What else did he say?

A. He said he didn't get the money. He didn't 20 have it on him.

Q. He said the man didn't have it on him?

A. Yes.

Q. What else did DiCanio say?

A. DiCanio said, "Don't tell him I told you, I don't want to be a rat."

Q. Do you recall anything else he said? Do you know anything about the finding of these clothes, was that done under your direction?

A. I wasn't there when they were found. 30

Cross-examination.

By Mr. Altman:

Q. How long have you been in the detective bureau?

A. 11 years.

Q. Did you get a statement from this boy?

A. What do you mean, a written statement?

Q. Did you get a written statement from this boy?

A. No, sir.

Q. Who was there when he spoke to you?

A. Detective Farley was in the room, but I don't think he heard it.

10 Q. Don't you always get a written statement from the accused in cases such as this if you can?

A. No, sir.

Q. You don't?

A. No, sir.

Q. Did you ask him to sign a statement?

A. No, sir.

Q. Did you call any of your fellow detectives in to hear him confess?

A. Detective Farley was there.

20 Q. I asked if you called any detectives in to hear him confess?

A. No, sir, because DiCanio would talk to me better than anybody else.

Q. Your answer is no?

A. No.

Mr. Hinkle: His answer is as testified to. I ask that the answer stand.

30 The Court: Proceed, it is standing, there is no move to strike it out.

Q. Captain Ferreti, did you promise this boy any immunity to testify to you?

A. No, sir.

Q. Did you speak to him at all about it?

A. I told him to tell the truth.

Q. And he immediately told you what you say is the truth?

A. Yes, sir.

Q. You wouldn't like to put a man in jail, would you?

A. No, sir.

Q. I didn't think you would. He said he didn't want to be known as a rat, is that it?

A. Yes, sir.

Q. What is a rat?

10

A. What the underworld calls a rat is a man that squeals on one another.

Q. Wasn't this boy squealing on himself?

A. Yes, sir.

Q. I ask you this question, captain, all that you testified to pertaining to the conversation between you and DiCanio is what you gave here in Court, and there wasn't anything more said between you and DiCanio?

20

A. Yes, sir.

Q. Well, Mr. Hinkle, asked you if that is all that was said, why didn't you give it to him?

A. I warned DiCanio as to his rights as to the crime he was charged with, that he didn't have to say anything unless he so desired, but what he did say would be used in Court for or against him.

Q. When was that?

A. In my office.

Q. After he told you or before?

A. Before—and he had better tell the truth.

30

Q. Pertaining, as you say, to the confession of the crime, so as to get everything in here, is that all DiCanio told you about the crime, that is, what you have related here—anything more?

A. All that I can remember.

Q. Nothing more you can remember?

A. No, sir.

Q. And no one was in the room that heard him say that other than Detective Farley and you don't think he heard because he wasn't listening?

A. We were all busy, the complaint was there, we brought Letter in later, Detective Eckstein was on the case, I couldn't tell who was in the room and who was not, but I know Farley was there.

Q. At the time of the confession I am talking about?

10 A. You see, DiCanio—I have known his family for years —

Q. Please, captain. My question is: At the time of the confession no one else was in the room but you, DiCanio and Officer Farley?

A. As far as I can remember.

Q. Well, if there were anybody else in the room would you have remembered it?

20 A. Bunting and Bishop were in and out of the office, I can't remember who was there and who wasn't I was paying attention to DiCanio and trying to get to the bottom of it.

Q. How long have you been a detective?

A. 11 years.

Q. And this boy was talking freely about a crime of highway robbery and you didn't call any of these men over who were walking about the room?

30 A. He didn't admit anything at all, he was identified by the complainant, and he told me then he would tell the truth, and he told me Letter was with him.

Q. At the time he gave you the confession you testified that Bunting and Bishop and Farley were walking around the room, and that the complaining witness was there, and my question to you now is, confessing to a highway robbery, you at that time didn't call your fellow officers over to hear the confession?

A. I told Farley about it.

Q. Please answer my question. Did you call them over to hear the confession?

A. No, sir, I don't think I did.

Q. Do you know that you did not?

A. I don't think I did.

JOSEPH FARLEY, SWORN.

10

By Mr. Hinkle:

Q. Mr. Farley, you are a detective?

A. Yes, sir.

Q. Working for the Atlantic City Police Department?

A. Yes, sir.

Q. Do you remember the 17th of May, 1924, when Callahan was alleged to have been robbed? 20

A. Yes, sir.

Q. Did you work on that case?

A. Yes, sir.

Q. What did you first do?

A. I arrived in the office at nine o'clock and they informed me about this highway robbery that had taken place on the Albany Avenue Boulevard, and told me that Tony DiCanio had been arrested for it, and I talked to Tony DiCanio —

Q. Did he voluntarily make any statement or did you 30
ask him to make a statement?

A. I spoke to Tony DiCanio and asked him what his trouble was, and he said he got crazy and got himself in a lot of serious trouble, and I asked Tony if he wanted to talk to me or to Captain Ferreti, and Tony said he would talk to Captain Ferreti and me.

Q. Did you hear him say anything in his talk while he was talking to Captain Ferreti?

A. I did.

Q. Had Captain Ferreti said anything to him in the nature of a warning before he talked?

A. Yes, sir.

Q. What did he say?

A. He was going to ask him questions concerning the crime and to answer them as he seen fit, but he didn't have to answer anything.

10 Q. What did DiCanio say?

A. Captain Ferreti told Tony to tell the truth of the story, and Tony said him and Johnny Letter were out drinking in the Parisian Grill and had met this man —

Mr. Altman: I at this time press my objection.

20 Q. Never mind about Letter; he told you he and another were out drinking?

Mr. Altman: I object to that.

The Court: I will permit it.

(Exception noted.)

The Witness: That they were in the Parisian Grill, that is a cafe near Pacific on Missouri Avenue, and he spoke to me about the other man having a fight in there, and later on meeting this man Callahan and taking a taxicab and driving out the Albany Avenue Boulevard.

30 Q. Go on; what else did he say?

A. And he told me that Johnny Letter is the man that beat Mr. Callahan up, with his assistance.

Mr. Altman: I object again and move it be stricken. My asking for these things doesn't help—

The Court: I think I will strike that. You can't bind the defendant unless he is present, one of the defendants, rather.

Q. He said, "He and another man" don't name the man, say "He and another man" if he referred to another man. 10

Mr. Altman: I object to that. This jury knows who the other man is whether you call him Letter, man, or what. It has the same legal effect, it prejudices Letter.

The Court: I will permit it; if he is connected up by showing who the other man is, the procedure is proper. 20

(Exception noted.)

Q. What did DiCanio say?

A. He said that they didn't get any money off of Callahan, and I asked Tony DiCanio where Mr. Letter lived, and he replied 207 South Seaside Avenue.

Q. Did you subsequently go to that house?

A. I did, in company with Detective Eckstein and Detective Weakly. 30

Q. Did you find anybody there?

A. I did.

Q. Who was that?

A. Johnny Letter, this man sitting here.

Q. Did you see him there?

A. I did.

Q. Talk with him?

A. Yes, sir.

Q. As a matter of fact, you then arrested him, didn't you?

A. I had to get through a window.

Q. Go on, tell us about that.

A. Mr. Letter was sound asleep and wouldn't answer the door; Mrs. Letter, his mother, had knocked on the door and the boy didn't answer the door, she was all excited, and I finally went from one room
10 onto a roof and into this man's window which was open, and immediately shook him and got him up sitting on the bed, and by that time I had the door open and Detective Eckstein and Detective Weakly got in there.

Q. What did you say to him?

A. I told him I was an officer and had a warrant for his arrest.

Q. What did he say to that?

A. Wanted to know the charge, and I told him
20 what the charge was, and I went under his pillow and pulled out a 32-calibre revolver loaded.

Q. Would you know that gun if you saw it?

A. Yes, sir.

Q. I show you a revolver and ask you whether you are able to say that is the gun—was it loaded, you say?

A. Yes, sir.

Q. Was that it, or a gun like that?

A. Yes, sir, this is the gun, this is the gun I took
30 from under the pillow.

Q. I show you some shells, do you know anything about them?

A. They are the same style shell taken out of the gun, the same kind.

Mr. Hinkle: I offer in evidence the gun and the

shells and ask they be admitted and marked as one exhibit.

(Said gun and shells marked Exhibit S7.)

Q. I show you a book marked Exhibit S3 and ask you if you ever saw that before?

A. Yes, sir.

Q. Where did you first see it?

A. Sticking out of Johnny Letter's coat pocket. 10

Q. On the occasion of his arrest?

A. Yes, sir.

Q. Do you know who took it out?

A. Yes, sir.

Q. Who?

A. Detective Eckstein.

Q. Did you see him do it?

A. Yes, sir.

Q. I show you Exhibit S4, being brass check, did
20 you ever see that before?

A. Yes, sir.

Q. Where?

A. On a bureau in Johnny Letter's room.

Q. Who found that, do you know?

A. Detective Eckstein; it was lying there, I seen
it.

Q. I show you the clothes marked for identification, did you see them that morning?

A. Yes, sir, this is the suit we took out of the
30 room.

Q. Out of his room, Letter's room?

A. Yes.

Mr. Hinkle: I now offer them in evidence.

Mr. Altman: I object.

The Court: It will be admitted and marked S8.

(Said suit marked Exhibit S8.)

Q. I show you a handkerchief, two handkerchiefs and a shirt, where did you see them before?

A. Out of Mr. Letter's room?

Mr. Hinkle: I offer those in evidence.

10

Mr. Altman: I object; I don't see the materiality of that, they were in Mr. Letter's room, the same proposition as the suit.

The Court: I will admit them, let them be marked S9.

(Said garments marked Exhibit S9.)

20 (Exception noted.)

Q. What else, if anything, did Letter say to you?

A. I talked to Mr. Letter.

Q. What did he say to you? First when you were talking to him did you say anything to him?

A. I did.

Q. What did you say to him?

A. I read the warrant to the man and he said he was drinking, and I asked him where he was drinking at and he said the Parisian Grill, and I asked him who he was with and he said Mr. DiCanio, and at that time he didn't know Mr. DiCanio was arrested.

30

Q. What else was said by Letter?

A. There wasn't a whole lot said then, his mother carried on so we came on out and into the city hall,

and I brought Mr. Parsow in front of Mr. Letter, the gentleman who was on this stand —

Q. What was the result?

A. Mr. Parsow told Mr. Letter in front of me he was the man and also that he helped to beat Mr. Callahan up.

Q. What else did Mr. Letter say?

A. Mr. Letter said he couldn't quite remember what took place that night, said he had been drinking and couldn't account for the bank book being in his pocket or this man's check being in his room, couldn't give me any explanation at all of how it got there.

10

Q. Who was present when this conversation occurred, what detectives?

A. Detective Weakly and Detective Eckstein were present part of it.

Q. What else did Mr. Letter have to say?

A. That is about all Mr. Letter had to say about it. He denied the job other than saying he was drinking in the Parisian Grill and was in company with Mr. DiCanio, and he told me about a fight he had in the Parisian Grill.

20

Q. But denied he had been in the taxicab, is that right?

Mr. Altman: I object to that, that wasn't the testimony.

Q. What was the testimony about that?

30

A. He denied he did the job.

The Court: The question is proper, "Did he deny he was in the taxicab?" nothing wrong with that.

Q. What about that, Mr. Farley?

A. He said he was with Mr. DiCanio.

Q. What did Mr. Letter say when Mr. Parsow identified him as being the man?

A. Mr. Letter didn't talk to Mr. Parsow, he didn't say nothing, just brought him up for identification purposes.

Cross-examination.

By Mr. Altman:

10

Q. At the time Mr. Parsow identified Mr. Letter, as you say, was Magistrate Paxon there?

A. No, sir.

Q. Didn't Parsow identify Letter in front of Paxon?

A. Yes, sir.

Q. When was that; wasn't that at the same time you are relating?

A. No, sir.

20

Q. When was that?

A. I had Mr. Parsow in the office—in fact, I told Mr. Parsow to remain in the office until I came back, after having Mr. Letter's address to go up and make the arrest, if I was fortunate enough to locate him, which resulted in my coming back with Letter, and Mr. Parsow was still in the office.

Q. My question was: When was Magistrate Paxon present when Parsow identified Mr. Letter, what day was it?

30

A. That I don't know.

Q. Weren't you there?

A. Not when Parsow identified him in front of Paxon?

Q. Weren't you there when Paxon gave these boys a year?

A. Yes, I was there then.

Q. Didn't Parsow identify him there?

A. Certainly, Parsow identified this man in front of Paxon, but not the first time.

Q. I mean, at the hearing they had in the city hall?

A. You are speaking of the hearing for the revolver?

Q. Yes, sir.

A. Yes, sir, he was identified.

Q. And they got a year in jail?

A. They did.

10

Q. On the charge of having that revolver under his pillow?

A. No, sir.

Q. What was the charge, if you know?

A. For carrying concealed weapons, and in the account of this holdup on the Albany Avenue Boulevard Mr. Callahan and Parsow testified one of the two men held him up with the gun.

Q. And Letter was never identified as having that gun on the boulevard, was he?

20

A. That I can't say, whether he was or not.

Q. But Letter was identified with having that gun under the pillow at his home?

A. I found that gun under his pillow.

Mr. Hinkle: I don't know whether it is the thought of counsel to retry this case—evidently Mr. Paxon as committing magistrate sentenced this man for carrying a concealed weapon, whether he had it under his pillow or somewhere else, I don't think we ought to inquire about it.

30

Mr. Altman: There are a lot of things connected with this matter, and Magistrate Paxon under the facts had no right to give this boy one day if the gun was under his pillow.

Mr. Hinkle: Neither have you any right to raise that proposition here except by taking an appeal from the magistrate's decision.

Mr. Altman: I knew none of the facts and I wanted to ascertain them.

The Court: Proceed.

- 10 Q. You heard Captain Ferreti testify?
A. I did.
Q. Did you hear the alleged confession that occurred between DiCanio and Ferreti?
A. Was said to Captain Ferreti and myself.
Q. And you repeated it here in court?
A. Captain Ferreti had asked Tony—in fact, I had brought Tony DiCanio to Mr. Ferreti.
Q. And you did repeat it in court?
A. To the best of my knowledge, I did.
- 20 Q. Did you hear Captain Ferreti say he didn't think you heard it?
A. I did.
Q. Is he wrong?
A. He is.
Q. You stood there and heard it?
A. I heard every word he spoke; I stood alongside of Mr. DiCanio and Captain Ferreti.
Q. All three of you immediately together?
A. Yes, sir.
- 30 Q. You are not mistaken?
A. No, sir.
Q. But Ferreti is?
A. I don't know whether he is or not, but I am positive.
Q. Did you get a written statement?
A. I did not.
Q. Why didn't you?

- A. I didn't ask for any.
Q. Did you find any money on these boys?
A. I didn't, no, sir.
Q. Do you know of anybody else who found any money on them in your presence?
A. No, sir.
Q. What time did you go to arrest Letter?
A. A little after ten o'clock on the morning of May 17th.
Q. And you rapped on his door? 10
A. I rapped, and his mother rapped, and his sister rapped.
Q. You raised an alarm to get him up?
A. Yes, sir.
Q. And you climbed out on the porch?
A. Yes, sir.
Q. And you got in his room and you had to shake him to rouse him?
A. I got hold of him, all right.
Q. You shook him to rouse him, did you? 20
A. Yes, sir.
Q. Was he drunk then?
A. No, sir.
Q. Would you say he had been drinking?
A. Yes, sir.
Q. How was his face, any dry blood on his face?
A. He had a little mark around his lip.
Q. A little mark?
A. Yes, sir.
Q. How did you know it was a little mark? 30
A. I could see it.
Q. Did you look at it closely?
A. I did.
Q. Will you say there wasn't any dry blood all over his face coming from his nose?
A. No, sir; there was no blood.

Q. I don't wish to argue with you, I asked you if there wasn't any dry blood?

The Court: He answered you, the record is plain enough.

Q. By no blood, you mean no blood was running, or dry blood?

A. No blood at all, with the exception of a little
10 scar on there.

SAMUEL WEAKLY, SWORN.

By Mr. Hinkle:

A. Detective, Atlantic City Police Department.

Q. Were you on duty about the 17th of May of
20 this year?

A. I was, sir.

Q. Did you hear of the alleged robbery of Callahan?

A. I did.

Q. Did you work on that case?

A. I did.

Q. With what other detectives?

A. Farley and Eckstein.

Q. What did you do?

A. The first thing we did we went up to Letter's
30 house.

Q. On Seaside Avenue?

A. Yes, sir, 207.

Q. Who went with you?

A. Captain Ferreti drove the car, Eckstein, Farley and myself.

Q. When you got up there, what did you do?

A. We went to the door and the mother and sister let us in, and we asked for the boy and Mr. Farley went upstairs and we surrounded the house.

Q. Were you there after Mr. Farley opened the door—did you enter his room?

A. Yes, sir.

Q. Who was in the room?

A. Farley and Letter was in the room and Eckstein and myself and his mother was standing at the
10 door.

Q. Did you see this gun, S7, that morning?

A. Yes, sir, I saw this gun, a gun like it.

Q. Where did you see it?

A. In Letter's room.

Q. Was it loaded?

A. It was loaded with cartridges, yes, sir.

Q. Such as would fit it?

A. Yes, sir.

Q. Ball cartridges, that is ?

A. Yes, sir.

Q. I show you a book, S3, did you see that that morning?

A. Yes, sir.

Q. Where did you find that, or where did you see it?

A. Detective Eckstein took it out of a coat that was in Mr. Letter's room.

Q. What coat was that?

A. I think it was this coat here.

Q. Of the suit S7?

A. That is the suit we brought down.

Q. I show you a check, S4 —

Mr. Altman: I raise objection again to that suit, your Honor, as being immaterial.

Mr. Hinkle: It is in evidence.

The Court: The Court will refuse to allow you an exception because the matter has been ruled upon before.

Q. I show you check, S4; did you ever see that before?

A. Yes, sir.

10 Q. Where?

A. Letter's room.

Q. On the occasion of his arrest?

A. On the occasion of his arrest, yes, sir; that is the only time I was there.

Q. Did you see this pile of clothing, shirts, and handkerchiefs?

Q. Open that—I don't know the number?

A. Yes, sir, we took them from Letter's room.

20 Q. Now, did you hear Letter talking that morning about the affair?

A. Yes.

Q. Did you tell him who you were?

A. Mr. Farley did that.

Q. And after Mr. Farley told him who you were and what the charge was, what did Mr. Letter say?

A. He said he didn't know anything about all this stuff.

Q. Didn't know anything about it?

A. No.

30 Q. Well then, what did you do with Mr. Letter?

A. After talking with him up to the room we took him down to the city hall, to the detective bureau.

Q. Was anybody brought in to identify him?

A. Yes, this taxicab driver.

Q. Parsow?

A. Whatever his name is.

Q. And what did Mr. Parsow say in Mr. Letter's presence?

A. He said he was the man that was with DiCanio and that was out on the boulevard in the taxicab.

Q. What did Letter say to that?

A. Letter didn't have much to say seemed as though he knew his business and kept silent.

Mr. Altman: I move that that be stricken. 10

The Court: It may be, yes.

Cross-examination.

By Mr. Altman:

Q. What properties on that gun make you say it is the same gun that was found in Letter's room?

A. It is the same looking gun and we brought it from there and put it in the property room of the 20 detective bureau and it has been there since.

Q. Do you know that gun has been there since?

A. As far as I know.

Q. You didn't put it there?

A. Detective Farley did, and I was there with them.

Q. Were you there when he took it out?

A. Yes, sir.

Q. Were you there when Detective Farley and 30 Captain Ferreti were talking to DiCanio?

A. No, sir.

Q. When did Detective Joseph Farley take that out?

A. Last night.

Q. You are sure it wasn't Detective Manuel Eckstein who took it out?

A. I said Detective Farley.

FRANK FERRETI, recalled.

By Mr. Hinkle:

Q. Captain, did you see this Exhibit S3 on the morning of the arrest of Letter?

A. Letter's room, Detective Eckstein brought it out of one of his pockets.

10 Q. And Exhibit S4, the little brass pay check?

A. Yes, sir, that came out of Letter's room.

Q. Out of his room?

A. Yes, sir.

Q. Did you see the gun that morning?

A. Yes, sir, that is the gun that Detective Farley pulled from under Letter's pillow.

Q. Was it loaded at the time?

A. Yes, sir.

Q. With ball cartridges?

20 A. Yes, sir.

Cross-examination.

By Mr. Altman:

Q. How do you know that is the gun, Captain?

A. I examined it at the time and a little nickel work was off the end there.

Q. Off where?

30 A. Right there. (Indicating.)

Q. You just examined it now, didn't you?

A. Yes, sir, I looked for that mark.

Q. That is what you were looking at?

A. Yes, sir.

Q. You didn't anticipate the question at all, did you?

A. I did not.

Q. That is, my question?

A. No, sir.

Q. Did you point out that identification mark to any other of your officers?

A. No, sir.

Q. Mr. Farley picked it up, didn't he?

A. Yes, sir.

Q. Mr. Farley put it into the custody of the man at the city hall, didn't he?

A. I think Farley turned the gun over to me. 10

Q. Did you put it in the custodian's possession?

A. Put it in the envelope and turned it over that morning —

Q. Do you know who put it in the custodian's possession in the city hall?

A. No, sir.

Q. It was in an envelope?

A. In an envelope.

Q. Do you know if the custodian gets articles in an envelope would that envelope be sealed? 20

A. Yes, sir.

Q. And that would be given to the custodian?

A. Yes, sir.

Q. And if Mr. Weakly would testify Mr. Farley took that gun from the custodian's possession last night, he would have had to open that package?

A. Opened it?

Q. To positively testify that gun was taken from the custodian's possession?

A. The gun could be in an envelope and he could 30 turn it over.

Q. In order to know the contents there would have to be some conversation about it, or examination?

A. The evidence in such and such a case, exactly.

Q. How do you know that account book was taken from Letter's room?

A. Because it was found there, I seen it.

Q. Where was it found?

A. In the room there.

Q. Where?

A. I don't know exactly, but we were all searching the room.

Q. Don't you know it was found in the pocket of his clothes?

A. Detective Eckstein found that, I can't testify
10 to what he done.

Q. Don't you know it was found in the pocket of his clothes?

A. No, sir, Detective Eckstein found that.

MANUEL ECKSTEIN, SWORN.

By Mr. Hinkle:

20

Q. What is your business?

A. Detective, Atlantic City Police Department.

Q. Were you on duty on the 17th of May, 1924?

A. Yes, sir.

Q. At the time when this alleged robbery occurred?

A. Yes, sir.

Q. Did you work on the case?

A. Yes, sir.

30

Q. What did you first do?
A. Why, after Detective Farley and Captain of Detectives Ferreti had questioned DiCanio, in company with Captain of Detectives Ferreti, and Detective Joseph Farley and Samuel Weakly I went to 207 South Seaside Avenue.

Q. You went with them?

A. Yes, sir.

Q. When you got there were you looking for anybody?

A. Yes, sir, John Letter.

Q. Did you find him there?

A. Yes, sir.

Q. Where was he when you found him?

A. In his bedroom on the first sleeping floor of 207 South Seaside Avenue.

Q. When you got in the bedroom was anybody else in the room ahead of you? 10

A. Yes, sir.

Q. Who?

A. Detective Joseph Farley.

Q. Was Letter awake?

A. Yes, sir.

Q. Did you tell Letter who you were?

A. Detective Farley had instructed Letter who he was and who the men were with him.

Q. And then what was said between Letter and any of you? 20

A. Farley read the warrant to Letter and he said he was drinking, he was out with DiCanio drinking and he didn't know what had happened and he had been in the Parisian Grill with DiCanio. We made a search of his room and in the pocket of—I think it was Exhibit 7 or 8 —

Q. A suit of clothes?

A. Yes, sir. I found the bank book.

Q. That is, Exhibit S3?

A. This exhibit here. 30

Q. Where was Exhibit S4, the little check found?

A. On the bureau.

Q. Had the gun been found when you got in?

A. Detective Farley found the gun and gave it to me.

Q. Was it loaded?

A. Not when he gave it to me.

Q. I show you the gun that has been offered in evidence.

A. That is the gun; you will find some stains of blood on it somewhere.

Q. Did the defendant, Letter, say anything else?

A. No, sir. We then took Letter to the police department, detective bureau, and brought in Walter Parsow, the taxicab driver, who identified Letter as being one of the men in the automobile with
10 the complaining witness, Callahan.

Q. What did Letter say as to that?

A. Letter didn't reply, didn't make any denials or any admissions.

Q. Do you know anything else about the case of importance?

A. No, sir.

Cross-examination.

20 By Mr. Altman:

Q. Was Captain Ferreti in Letter's room at the time the arrest was made?

A. Yes, sir.

STATE RESTS.

30 (At this point a recess was taken until 1.30 P. M.)

(Trial resumed at 1.30 P. M. pursuant to adjournment.)

(Mr. Altman opens the case to the jury for the defendants.)

THE CASE FOR THE DEFENDANT.

ANTHONY DICANIO, SWORN.

By Mr. Altman:

Q. Face the jury and speak loudly so this last lady can hear you. What is your name? 10

A. Anthony DiCanio.

Q. Where do you live?

A. 18 North Delaware.

Q. Atlantic City, New Jersey?

A. Yes, sir.

Q. How long have you lived in Atlantic City?

A. Twenty years.

Q. Do you know Mr. Callahan?

A. I do not.

Q. Did you see him on the night of this alleged 20 robbery?

A. I did.

Q. Where did you see him?

A. In the Parisian Cafe.

Q. Where is that?

A. Missouri Avenue near Pacific on the right-hand side going toward the boardwalk.

Q. Were you drinking there?

A. I was.

Q. Was Callahan? 30

A. He was.

Q. Was Letter?

A. He was.

Q. And finally did all three of you, Callahan, Letter and you get into a taxicab?

A. Both Callahan and I carried Letter in the cab.

Q. Did you finally get in there?

- A. Yes, sir.
 Q. Callahan and you carried Letter into the cab?
 A. Yes, sir.
 Q. Where did the cab go?
 A. The cab went toward the boulevard.
 Q. Did you finally get out on the boulevard?
 A. We got out there by running in the machine but not out of the machine.
 10 Q. What occurred in the cab on the boulevard, tell the ladies and gentlemen of the jury?
 A. We were going out there and Callahan and I got in an argument, he started using vile names to me and we started fighting, and he started getting hold of my clothes and I started on his and started ripping.
 Q. Both of you drunk?
 A. Both of us.
 Q. What was Letter doing?
 20 A. Letter was just taking in a doze like, lying down paralyzed drunk.
 Q. Did you take any money from Callahan at all?
 A. I didn't have no intention of taking no money.
 Q. You say clothes were torn in the fight?
 A. They were.
 Q. How did Callahan get out of the machine?
 A. He opened the door and ran out, jumped and started running.
 Q. Had the machine stopped?
 A. Yes, sir.
 30 Q. Were you licking Callahan?
 A. I was.
 Q. Where did you go after this occurred?
 A. Went back to the Parisian.
 Q. Then where did you go?
 A. Went home.
 Q. Did you go to sleep?
 A. Yes, sir.

- Q. At your home?
 A. Yes, sir.
 Q. How long have you lived at this address you were arrested at?
 A. As far as I can remember about twelve years.
 Q. Twelve years?
 A. Yes, sir.
 Q. Name in the 'phone book?
 A. Yes, sir.
 Q. Did you know this taxicab driver before this 10 night?
 A. I did.
 Q. And he knew you?
 A. Yes, sir.
 Q. In other words, he knew you were DiCanio?
 A. Yes, sir.
 Q. Did he know where you lived?
 A. That I couldn't say.
 Q. Did you have a gun? 20
 A. I did not.
 Q. Was a gun found on you by the detectives?
 A. It was not.

Cross-examination.

By Mr. Hinkle:

- Q. What did you go out there for on the boulevard?
 A. When we were fighting at the Parisian Cafe 30 Callahan said, "Let us take a ride so we can get out of this argument."
 Q. Why didn't you ride home?
 A. Sir?
 Q. Why didn't you ride home?
 A. I didn't think it was necessary to go home.

Q. I agree with you, but don't you think it was advisable?

Mr. Altman: I object to what the witness does, as to the advisability of where he should go.

The Court: I will permit it.

10 (Exception noted.)

Q. Will you answer the question?

A. Why didn't I go home.

Q. Why didn't you go home, didn't you think it was advisable?

A. I did in a way.

Q. In what way?

A. I thought if we got a little air we could sober up.

20 Q. Why didn't you go home?

A. Well, I don't know just how to answer that question, why I didn't go home. I wanted to take Letter home with Callahan, and Callahan said, "We will take a ride first and sober him up."

Q. Did you know where Callahan lived?

A. No, sir.

Q. Did you know where Letter lived?

A. Yes, sir.

Q. Why didn't you take Letter home?

30 A. I wanted to take him out for a ride so he wouldn't go home drunk.

Q. Did Letter go home drunk?

A. He was pretty well drunk, I wouldn't say he was that way after he sobered up a little.

Q. When did he first sober up?

A. When I took him for a little walk.

Q. Where?

A. On Pacific Avenue.

Q. After you got back to the Parisian Cafe?

A. Yes, sir.

Q. Why didn't you take him right home then?

A. I took him for a walk and got in a jitney and took him home.

Q. Have you ever been convicted of crime?

A. I was when I was thirteen years old.

Q. Only once?

A. That is all I can remember.

Q. Can't you remember more than once? 10

A. No, sir, I can't.

Q. Haven't you been put on probation several times as the result of some convictions?

A. For stealing bicycles I was put on probation.

Q. How old are you?

A. 22.

By Mr. Altman:

Q. You say you were convicted for a crime once, 20 and stealing a bicycle and you were put on probation, is that the same conviction you are talking about?

A. Yes, sir.

Q. And you were thirteen years of age at that time?

A. I was.

By the Court:

Q. You say you and Callahan got this other man 30 Letter and put him in the taxicab?

A. Yes, sir, I walked out with him.

Q. Then he was more drunk than either you or Callahan?

A. He was.

Q. And the altercation between Callahan and you

two was principally between Callahan and you, wasn't it?

A. Yes, sir.

Q. What were you two fighting about?

A. We were going out on the boulevard and he started calling me vile names, and I told him to keep the mother out of it, and he said, "I will do all the cursing I want," and as he said that I hit him and we started to fight; he fell towards Letter who was
10 in a stupor and kind of gave him a push.

Q. What did the fight between you and him consist of, simply hitting each other?

A. Positively.

Q. How did he lose all his clothes?

A. He started to rip mine and I started to rip his.

Q. Did you take all his clothes off him?

A. No, sir.

Q. Did he have more clothes than his tie on him
20 when he got out of the car?

A. He did. The only thing that was left in the machine, your Honor, was his coat, and as he opened the door and got out I threw it after him; we didn't ask to leave him there, or' no such thing.

Q. When two men fight you don't customarily tear clothes off, do you?

A. Not exactly, but he started to grab mine—I was drunk myself, but I knew what I was doing.

Q. You knew what you were doing all the time?

30 A. I did.

By Mr. Hinkle:

Q. What clothes were you wearing the night of the fight?

A. A blue suit.

Q. Where is that now?

A. Mine was stolen, he said he couldn't find it in the room, it was gone, my brother said.

Q. These are the clothes you had on when you were arrested?

A. No, sir, they are not.

Q. What clothes did you have on?

A. A blue suit.

Q. The one you say was stolen?

A. I did.

10

By Mr. Altman:

Q. You were arrested at home?

A. I was.

Q. In bed?

A. Yes, sir.

Q. You didn't have your blue suit on lying in bed?

A. No, sir.

20

JOHN LETTER, SWORN.

By Mr. Altman:

Q. What is your name, please?

A. John P. Letter.

Q. Where do you live?

A. 207 Seaside Avenue.

Q. How old are you?

A. 27 years of age.

30

Q. Do you remember your fight at the Parisian Cafe on the night of this trouble you are in now?

A. I became intoxicated and I started —

The Court: No, do you remember?

The Witness: No, I don't, I can't say I remember it distinctly.

Q. Do you remember getting in the taxicab?

A. No, sir.

Q. Did you have anything to do with attacking Mr. Callahan?

A. No, sir.

Q. Do you remember Mr. DiCanio and you getting
10 back to the Parisian Cafe?

A. No, sir, I do not.

Q. What do you recall about that night at all?

A. The last I remember I was in the cafe drinking; I don't remember leaving the cafe.

Q. Do you remember going home in a jitney with DiCanio?

A. No, I do not.

Q. You were arrested where?

A. I was arrested at my home.

Q. You were sleeping at the time?
20

A. Yes, sir.

Q. That gun, where was it found?

A. I believe it was in some part of the bed, under the pillow or some place else.

Q. Did you have it with you the night you were out?

A. No, sir.

Q. Q. How did it get under your pillow, do you know?

A. I don't know, it is generally kept in the drawer
30 of the bureau.

Q. Could you have taken it from the drawer of the bureau and put it under your pillow?

A. If I did I don't remember doing it.

Q. But you could have?

A. Yes, sir.

Cross-examination.

By Mr. Hinkle:

Q. You have been convicted of crime, haven't you?

A. Yes, sir.

Q. On more than one occasion?

A. I beg your pardon?

Q. On more than one occasion?
10

A. Yes, sir.

Q. How many times?

A. Two or three times, I believe.

Q. Which is it?

A. Three times I believe.

Q. You say you believe the gun was found in some part of the bed?

A. I was sleeping at the time the gun was found.

Q. And you don't know how it got in the bed?
20

A. I do not.

Q. Who slept with you?

A. I slept by myself.

Q. Do you remember going to bed?

A. No, sir, I do not.

Q. Don't remember who put you in bed?

A. I do not.

Q. You live at home with your family, mother and sister?

A. Yes, sir.
30

Q. Father?

A. Yes, sir.

Q. Were they home that night?

A. I don't remember anything at all about that evening.

Q. Do you remember the next morning?

A. Yes, sir.

Q. Were they home then?
A. My mother and sister?

By the Court:

Q. You don't know whether you had any gun out with you that evening?

A. I never carry a gun.

Q. Do you know whether you had a gun that evening?

A. I know I didn't have it with me.

Q. You remember that?

A. Yes, sir, I was sober when I went out, your Honor.

Q. You heard the taxicab driver say you or the other man had a gun, didn't you?

A. I don't recall what the taxicab driver's testimony was.

20 Mr. Altman: I don't like to get into a controversy with the Court, but —

The Court: Have you an exception? Put it on the record.

Mr. Altman: It is not an accurate recital of the evidence; the taxicab driver didn't say Mr. Letter had a gun, he said DiCanio had a gun.

30 The Court: If you had listened to the question you probably would be enlightened.

Mr. Altman: I think the question was, "Did you hear the taxicab driver say you or DiCanio had a gun?" He didn't say that, he said DiCanio had a gun, he didn't say anything about Mr. Letter, and that is why I objected.

Q. Did you hear him say that either one or the two of you had a gun that night?

A. I don't remember the testimony.

Q. Did you hear him refer to a gun?

A. The gun has been mentioned several times.

Q. You don't know what he said about it?

A. I don't know the exact words.

By Mr. Hinkle:

Q. You mean to say you don't know what the taxicab driver said about a gun today in court?

A. I don't know the exact words.

Q. Do you remember what he said?

A. I do not.

Mr. Altman: I object, he says he doesn't remember. He has answered it. I don't know how he can remember if the attorneys can't.

Q. Do you remember what he said?

A. I do not.

Q. Have you good hearing?

A. My left side is slightly affected.

Q. Could you hear the testimony produced this morning?

A. Some of it.

Q. Couldn't hear all of it?

A. No, sir.

Q. What part didn't you hear?

A. I don't remember the exact testimony.

Q. Do you remember what Detective Eckstein said?

Mr. Altman: I object.

A. My memory isn't the best, I don't remember every word that was repeated.

Mr. Altman: I don't think it is proper cross-examination; may I have an exception?

(Exception noted.)

Q. Did you hear what Detective Farley said?

Mr. Altman: Did you rule on that?

10 The Court: I said you may have an exception. Do you want another one to this?

Mr. Altman: Yes.

(Exception noted.)

A. That is rather general, isn't it, that question?

Q. You answer my question.

A. I couldn't swear to it, no.

20 Q. Didn't you all during his testimony continually mumble, "He is a liar," or something to that effect?

A. I don't use profanity, Mr. District Attorney.

Q. Is that what you would call profanity?

A. It is rather strong English.

Q. It is very plain English: Didn't you use that word, even perhaps stronger than that, but didn't you say and mumble in quite a clear tone that Detective Farley was a liar?

A. What was it that Mr. Farley said?

30 Q. All Detective Farley said about you, you kept saying constantly, "He is a liar."

A. No.

Q. You didn't say that?

A. No.

Q. Is your memory good?

A. No, it is not.

Mr. Altman: I object to that.

The Court: Counsel has a right to test a man's credibility.

(Exception noted.)

Q. Will you answer that?

A. My memory is not good.

Q. Even when you are sober? 10

A. I have a bad memory.

Q. Even sober, is that correct?

A. Sober, yes, sir.

Q. Did you hear the detective say where he got that book?

A. I heard one say he found it in the room.

Q. You heard that, did you?

A. Yes, sir.

Q. Did you hear him say where they found the check, that brass check? 20

A. I believe he said he found that in the room.

Q. You believe he did?

A. I am not sure, because my left ear is affected.

ANTHONY DICANIO, recalled.

By Mr. Altman:

Q. Did you make any statement to Captain of Detectives of the City of Atlantic City, Mr. Ferreti, about this crime and your part in it? 30

A. I did not.

Q. Did you make any statement to Mr. Farley?

A. I did not.

(No cross-examination.)

THOMAS CALLAHAN, recalled.

By Mr. Altman:

Q. Under your oath in this case can you testify to this jury and this Court that you had your money when you stepped into that taxicab?

10 Mr. Hinkle: That is objected to.

The Court: Sustained.

Q. Did you have your money when you stepped into the taxicab?

Mr. Hinkle: Objected to.

The Court: There has been a ruling on it.

20 Mr. Altman: I thought the objection was on the construction of my question.

The Court: They are both objectionable.

(Exception noted.)

The Court: It was asked of the witness two or three times by you.

30 Mr. Altman: Sir?

The Court: The same question has been put to the same witness on cross-examination by you two or three times.

DEFENDANTS REST.

STATE'S REBUTTAL.

MANUEL ECKSTEIN, recalled.

By Mr. Hinkle:

Q. Mr. Eckstein, where were you seated all during this trial? 10

A. At your side.

Q. And seated near you was which of the defendants?

A. Defendant Letter.

Q. Did you hear Letter make any remarks in answer to Detective Farley's testimony?

A. I did.

Q. Did he say the same thing once or more than once?

A. Repeatedly. 20

Q. And what did he say?

A. "He is a God damned liar."

Cross-examination.

By Mr. Altman:

Q. You are a detective of the Atlantic City Detective Department?

A. Yes, sir. 30

Q. You wouldn't lie to put a man in jail?

A. No.

Q. You would only want to put a guilty man in jail?

A. That is all.

BOTH SIDES REST.

CHARGE OF THE COURT.

SMATHERS, J.:

Members of the jury, you are now called upon to consider and pass upon an indictment charging that John Letter and Anthony DiCanio on the 17th of May, 1924, committed the crime which is commonly known as robbery. The jury are instructed that robbery is stealing property with violence from the person or personal custody of another person. It is necessary in order to constitute the crime that the goods shall be on the person of the owner or the owner's agent, or shall be in his presence and in his custody. The distinction between larceny and robbery is this: In larceny the property is taken privately and without the knowledge of the owner; in robbery the property is taken forcibly with the knowledge of the owner, but against his will.

In this case, members of the jury, the State is required to prove the guilt of these two defendants beyond a reasonable doubt. In the first instance you should consider whether or not these two defendants did rob the prosecuting witness, and in that connection your first consideration will be whether or not they succeeded in taking the \$500 as testified in this case from the prosecuting witness. If your conclusion is that they did not take the \$500 from the prosecuting witness, then you pass to the question of the prosecuting witness' clothing. If these defendants stole with violence, or with the use of force, the prosecuting witness' clothing, then, of course, they may be convicted of robbery just the same as if they took his money, because the offense of robbery consists in stealing personal property by the use of violence from the person of another. If your

conclusion is that the two defendants took neither the money nor the personal property described as the prosecuting witness' clothing from the prosecuting witness, then you pass to the third question, as to whether or not these two defendants attempted to rob the prosecuting witness, and did they do some overt act to carry into execution or commission their intention to rob the prosecuting witness.

Under the indictment the defendants, or either one of them, may be found guilty of robbery, or the defendants may be found guilty, or either one of them, of attempted robbery. The State is required to prove in either instance their guilt beyond a reasonable doubt. The Court instructs the jury that drunkenness in any degree cannot justify or mitigate the commission of a crime. You may retire.

Mr. Altman: The requests to charge are there, your Honor, did you see them?

The Court: They came too late, they should be submitted before argument.

Mr. Altman: I take a general exception to the charge.

(Exception noted.)

I WILLIAM H. SMATHERS, Judge of the Atlantic County Court of Quarter Sessions, hereby certify that the foregoing transcript of the record and proceedings had before me, together with the return made by the clerk of this Court, with the writ of error in this cause, constitutes the entire record of all proceedings had before me, in the trial of the issue joined between the State of New Jersey and
 10 John Letter and Antonio DiCanio, as directed to be returned by me in the writ of error to me addressed in this cause.

WM. H. SMATHERS,
 Judge of Atlantic County Court
 of Quarter Sessions.

I certify that the foregoing is a full, true and
 20 correct transcript of the stenographic notes taken by me in the above entitled cause, including the testimony of the witnesses, objections of counsel and rulings of the Court.

FRED W. ALBERT, JR.,
 Official Stenographer.

REASONS FOR REVERSAL.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	10
v.		
JOHN LETTER, AND AN- THONY DiCANIO, <i>Plaintiffs-in-Error.</i>	}	In Error. Reasons for Reversal

And now comes the said John Letter and Anthony DiCanio, and Joseph A. Corio, their attorney, and say, that in the record and proceedings aforesaid, 20 and also in giving the judgment aforesaid, there is manifest error, and said John Letter and Anthony DiCanio, say that said judgment should be reversed, and assigns the following reasons or causes:

1. Because the said trial Court refused to allow defendants to examine the jurors upon their *voir dire*, before being sworn as jurors.
2. Because no list of jurors was delivered to the 30 defendants, prior to their trial.
3. Because the trial Court admitted in evidence two photographs of the witness, Thomas Callahan, on behalf of the State without being proven according to law.

4. Because the trial Court permitted the witness, Thomas Callahan, on behalf of the State, to be asked and to answer the following question:

"Where did you see that or one exactly like it?"

5. Because the trial Court made the following comment:

10 "How can it be, if you object?
You do not want it to be?"

6. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

"Did you see THEM working on Callahan?"

7. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

20 "When *they* let him out, how was he dressed?"

8. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

"And then when you got out there and *they* got rid of Callahan, you say *they* made you drive back to the cafe?"

30 9. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

"Did you say you didn't want to leave the man?"

Answer: "Yes, sir, I didn't want to leave the man, because the man was naked, and they said, 'The hell with the man, let's go back, we want

to go back to the girls and see whether they got the money or not.' I don't believe they got the money, and that is the reason they made me drive them back to the girls."

10. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

"But you did take these *two* defendants back to the cafe?" 10

11. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

"What became of the clothes and things *they* had in the taxicab?"

12. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

"Did you tell where the things had been thrown over the fence?" 20

13. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

"Who did you tell that to?"

14. Because the trial Court permitted the witness, Harry Parsow, on behalf of the State, to be asked and answer the following question:

30 "Now during this time *they* were trying to get the money from Callahan, did anybody curse you, call you a Jew?"

15. Because the trial Court asked the witness, Harry Parsow, on behalf of the State:

"Were both of them fighting the man?"

16. Because the trial Court permitted the witness, Frank Ferreti, on behalf of the State, to be asked and answer the following question:

“What did he admit?”

17. Because the trial Court permitted the witness, Frank Ferreti, on behalf of the State, to be asked and answer the following question:

“What did he admit?”

10

18. Because the trial Court permitted the following statement to be made by the prosecutor of the pleas, in the presence of the jury:

Mr. Hinkle: “Of course, we can't put in all the State's case at one time. Now, he said certain things, and if in giving that narrative he names some other person as being present, of course it is natural for this witness, in order to tell the whole truth, to tell what was said. I am not in the position of a man who is seeking something unfairly, and I will say to this Court if there is nothing to connect Letter, I am frank to say to the Court and the jury, that that conversation ought not to be considered by them at all, quite frank to say that.”

20

19. Because the trial Court in answer to a request of defendant's counsel, that the State's offer be made at the side Bar, made the following statement in the presence of the jury.

30

“The Court will take full responsibility for presiding over the Court without any suggestions from counsel. I will permit the answer to stand at this time. Proceed.”

20. Because the trial Court permitted the witness, Frank Ferreti, on behalf of the State, to repeat the

confession of an accomplice and involving the defendant, Letter, without any testimony as to the fact that the defendant DiCanio had been warned that any statement he might make would be used against him.

21. Because the trial Court permitted the witness, Joseph Farley, on behalf of the State, to be asked and answer the following question:

“What did DiCanio say?”

10

22. Because the trial Court permitted the witness, Joseph Farley, on behalf of the State, to be asked and answer the following question:

“Go on; what else did he say?”

23. Because the trial Court permitted the witness, Joseph Farley, on behalf of the State, to be asked and answer the following question:

“What did DiCanio say?”

20

24. Because the trial Court permitted the witness, Joseph Farley, on behalf of the State, to be asked and answer the following question:

“Out of his room, Letter's room?”

25. Because the trial Court permitted the witness, Joseph Farley, on behalf of the State, to be asked and answer the following question:

“What else did Mr. Letter say?”

30

26. Because the trial Court permitted the witness, Joseph Farley, on behalf of the State, to be asked and answer the following question:

“But denied he had been in the taxicab, is that right?”

27. Because the trial Court made the following remark about question 26:

"The question is proper, 'Did he deny he was in the taxicab?' nothing wrong with that."

28. Because the trial Court asked the witness, Joseph Farley, on behalf of the State:

"What did Letter say, when Mr. Parsow identified him as being the man?"

10

29. Because the trial Court permitted the witness, Samuel Weakly, on behalf of the State, to be asked and answer the following question:

"Was anybody brought in to identify him?"

30. Because the trial Court made the following remark to defendant's counsel:

"If you had listened to this question you probably would be enlightened."

20

31. Because the trial Court permitted the defendant, John Letter, to be asked and answer the following question on cross-examination:

"You mean to say you don't know what the taxicab driver said about a gun today in Court?"

32. Because the trial Court permitted the defendant, John Letter, to be asked and answer the following question on cross-examination:

"Could you hear the testimony produced this morning?"

33. Because the trial Court permitted the defendant, John Letter, to be asked and answer the following question on cross-examination:

"What part didn't you hear?"

34. Because the trial Court refused to allow the witness, Thomas Callahan, on behalf of the State, to be asked and answer the following question on cross-examination:

"Did you have your money when you stepped into the taxicab?"

35. Because it does not appear by the record, that the defendant was in court at the time the jury returned and rendered its verdict.

10

36. Because the trial Court charged the jury as follows:

"The jury are instructed that robbery is stealing property with violence from the person or personal custody of another person. It is necessary in order to constitute the crime that the goods shall be on the person of the owner or the owner's agent, or shall be in his presence and in his custody. The distinction between larceny and robbery is this: In larceny the property is taken privately and without the knowledge of the owner; in robbery the property is taken forcibly, with the knowledge of the owner, but against his will."

20

37. Because the trial Court charged the jury as follows:

"If these defendants stole with violence, or with the use of force, the prosecuting witness' clothing, then, of course, they may be convicted of robbery just the same as if they took his money, because the offense of robbery consists in stealing personal property by the use of violence from the person of another."

30

98 *Rule Affirming Judgment as to Anthony DiCanio and Reversal as to John Letter and for Remittitur*

38. Because the Court charged the jury as follows:

"The Court instructs the jury that drunkenness in any degree, cannot justify or mitigate the commission of a crime."

39. Because the trial Court in its charge to the jury twice mentions the subject of reasonable doubt, without defining what in law is a reasonable doubt.

JOSEPH A. CORIO,
Attorney and of Counsel for the Plaintiffs-in-Error.

20 RULE AFFIRMING JUDGMENT AS TO ANTHONY DiCANIO AND REVERSING AS TO JOHN LETTER AND FOR REMITTITUR.

NEW JERSEY SUPREME COURT.

30 THE STATE OF NEW JERSEY,)
Defendant-in-Error,)
v.) In Error.
JOHN LETTER, AND AN-) Rule affirming judgment as to Anthony DiCanio and reversing as to John Letter and for Remittitur.
THONY DiCANIO,)
Plaintiffs-in-Error.)

This case was heard before the Supreme Court at the May Term, 1925, and the Court after hearing the arguments of respective counsel and duly considering the same, filed its decision to the effect that

Rule Affirming Judgment as to Anthony DiCanio and Reversing as to John Letter and for Remittitur 99

the judgment of the Atlantic County Quarter Sessions should be affirmed as to Anthony DiCanio and reversed as to John Letter.

It is therefore, Ordered that the judgment of the Atlantic County Quarter Sessions removed by writ of error in this cause be affirmed as to the plaintiff in error, Anthony DiCanio and reversed as to the plaintiff in error, John Letter, and a new trial be had as to the said John Letter, and that the record and proceedings be remitted to the Court below to be proceeded with in accordance with this judgment and the practice of said Court.

Entered May 3, 1926.

On motion of

LOUIS A. REPETTO,
Attorney for Defendants-in-Error.

A True Copy,
EDWARD J. KELLEHER,
Clerk.

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OPINION.

(Filed April 16, 1926.)

No. 4, May Term, 1925.

NEW JERSEY SUPREME COURT.

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THE STATE, <i>Defendant-in-Error,</i> v. JOHN LETTER, AND AN- THONY DiCANIO, <i>Plaintiffs-in-Error.</i>	}	In Error to Atlantic County Quarter Sessions.
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Before GUMMERE, Chief Justice, and Justices KALISCH and CAMPBELL:

For the plaintiffs-in-error, JOHN C. REED,
For the defendant-in-error, LOUIS A. REPETTO.

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PER CURIAM:

The defendants below were convicted of robbery in Atlantic County Quarter Session. The case is here before us on writ of error under the 136th and 137th section of the Criminal Procedure Act. The first cause for reversal relied on in the brief filed

on behalf of the plaintiffs in error is: Refusal of the trial Court to allow defendant to examine jurors upon their *voir dire* before being sworn as jurors. There is no substance in this. According to the record the jurors were in the box and counsel for defendants stated to the Court: "I would like to challenge for cause if I may. Have any of you ladies or gentlemen read anything about this case, or about these young men, and if so, are your minds open and not susceptible of being prejudiced of what you have read?" The prosecutor objected and the Court sustained the objection. This was right. In the first place there was no challenge for cause, and moreover such a challenge cannot be properly made to the panel in the box. A challenge for cause must be made when the juror presents himself to be sworn and before he is sworn, and such challenge must state the grounds upon which it is based. The second ground for reversal of the judgment is that the trial Judge, over objection of defendants' counsel permitted the witness Ferreti, captain of the detective department, to testify to a conversation had by him with DiCanio at the time of his arrest, and in the absence of Letter, in which conversation DiCanio said, that Letter was his partner in the holdup and was engaged with him in the robbery. This testimony was hearsay, prejudicial and harmful to Letter, and as was said by Chief Justice Gummere, in State v. Niesblaski, 82 N. J. L. 177, where the circumstances of the case are somewhat analogous to the facts under consideration, to constitute reversible error, in the present case, the defendant affected by this error was Letter. The third point relied on for reversal is, that the trial judge erred in his instructions to the jury as to what constituted robbery. The Court charged the jury, "that robbery is stealing property with violence from the per-

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son or personal custody of another person. It is necessary in order to constitute the crime that the goods shall be on the person of the owner or owner's agent or shall be in his presence and in his custody. The distinction between larceny and robbery is this:

In larceny the property is taken privately and without knowledge of the owner; in robbery the property is taken forcibly with the knowledge of the owner, but against his will. "Both definitions are 10 incorrect. Our statute declares, that any person who shall forcibly take from the person of another money or personal goods or chattels by violence or putting in fear constitutes robbery. In the present case the definition as to what constituted robbery as applied to the facts in the cause was correct, for it appears that the money was forcibly taken from the person of the owner and there was no phase of the case which involved mere larceny from the person, and hence, the erroneous definition of what constitutes larceny, was harmless. The next point made 20 and argued in the brief is that the Court erroneously instructed the jury as follows: "The Court instructs the jury that drunkenness in any degree cannot justify or mitigate the commission of crime."

That drunkenness in any degree cannot justify the commission of crime as a general legal proposition is correct. Drunkenness cannot be pleaded, successfully in justification of the commission of any unlawful act. The plea of justification implies a lawful 30 reason for the commission of the alleged unlawful act. It has been universally held that drunkenness affords no legal justification. But to say that drunkenness in any degree cannot . . . mitigate the commission of crime is inaccurate.

It has been held by our Court of Errors and Appeals in *Warner v. State*, 56 N. J. L. 686, 690, and in *Wilson v. State*, 60 Id., 171, that when the character

and extent of a crime is made by law to depend upon the state and condition of the defendant's mind at the time and with reference to the act done, intoxication as circumstance affecting such state and condition of the mind is a proper subject for inquiry and consideration by the jury, as to the degree of crime committed.

It is to be particularly noted that in the present case of proof of intoxication of Letter was not offered either as a justification or in mitigation of the 10 crime alleged against him, but as an important circumstance for the jury to consider whether he was in such a physical and mental state, as to make it improbable that he had any connection with, or in any wise to have participated in the robbery alleged to have been committed in the taxicab by DiCanio, in view of the testimony to the effect that the defendant was practically carried to the cab and was "lying in the car unconscious," "in a drunken stupor," 20 at the time of the commission of the alleged robbery.

The trial Judge in stating to the jury that drunkenness in any degree cannot justify or mitigate the commission of crime, and without saying anything further on the subject, unwarrantly assumed that the defense of intoxication interposed by Letter was in justification of the charge against him, and, if not, at least, in mitigation of the offense. The incalculable harm done by this instruction to the jury was to take practically from its consideration in the 30 question whether Letter's intoxication was to such a degree that he was mentally and physically disabled from abetting or participating in the alleged robbery. This was error.

For if the drunkenness of Letter was to such a degree that he was not able to conceive any intent to commit the unlawful act and was physically helpless,

to abet or to participate in the commission of the unlawful act, proof of such a mental and physical state, was as effective a defense to the accusation made against him, as if he had been mentally and physically disabled by paralysis or some other disease, from conceiving the criminal design and from executing it.

For the reasons given the judgment against Di-
 10 Canio is affirmed and the judgment against Letter
 is reversed, and as to him a new trial is ordered.

WRIT OF ERROR.

NEW JERSEY, ss:

The State of New Jersey to our Justices
 of our Supreme Court, Greeting:

20 (Seal) Because in the record and proceedings
 and also in the giving of the judgment
 upon a certain indictment, which was in
 our said Supreme Court before you, between the
 State of New Jersey, defendant in error, and An-
 thony DiCanio, plaintiff in error, on a writ of error
 issued out of the Supreme Court, to the Judges con-
 stituting the Court of Quarter Sessions, in and for
 the County of Atlantic, as is said, manifest error
 hath intervened to the great damage of the said
 30 Anthony DiCanio, as from his complaint we have re-
 ceived information, we being willing in this behalf
 to correct the error in due manner, if any there shall
 be, and that speedy justice be done to him, the said
 Anthony DiCanio, do command you that if judgment
 be given, then you send distinctly and openly under
 your seal, the entire record, proceedings and indict-
 ment aforesaid, with all things touching and con-

cerning the same, to our Court of Errors and Ap-
 peals, before the Judges thereof, on the thirty-first
 day of May, A. D. 1926, and this writ and that the
 record and proceedings aforesaid being inspected we
 may cause further to be done what of right and ac-
 cording to law ought to be done.

Witness, Honorable Edwin Robert Walker, Chan-
 cellor and President Judge of our said Court of Er-
 rors and Appeals, at Trenton, aforesaid on the 11th
 day of May, in the year of our Lord, one thousand 10
 nine hundred and twenty-six.

THOMAS F. MARTIN,
Clerk.

JOHN C. REED.

[ENDORSEMENT]

Due and legal service of a copy of 20
 the within writ duly acknowledged this
 15th day of May, A. D., 1926.

Louis A. Repetto,
 Prosecutor of the Pleas of
 Atlantic County.
 By R. L. Walker, Jr.,
 Special Assistant.

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ASSIGNMENT OF ERRORS.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 STATE OF NEW JERSEY, } On Error to Supreme
 Defendant-in-Error, } Court.
 v. } Assignment of Er-
 20 ANTHONY DiCANIO, } rors.
 Plaintiff-in-Error. }

Afterward, to wit, in the New Jersey Court of
 Errors and Appeals, in the last resort in all causes,
 20 comes the said Anthony DiCanio by John C. Reed,
 Esquire, his attorney and says:

That in the record and proceedings aforesaid,
 there is manifest error in the judgment, in this, to
 wit;

1. The Supreme Court erred in giving judgment
 for the defendant in error, the State of New Jer-
 sey, instead of for the plaintiff in error, Anthony
 DiCanio; for one or more of the assignments of er-
 30 ror and causes for reversal filed in the New Jersey
 Supreme Court and brought up with the record.

JOHN C. REED,
*Attorney for and of Coun-
 sel with the Plaintiff-in-
 Error.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

STATE OF NEW JERSEY,
 Defendant-in-Error,
 v.
 ANTHONY Di CANIO,
 Plaintiff-in-Error.

ON ERROR TO SUPREME COURT.

BRIEF FOR PLAINTIFF-IN-ERROR.

ANTHONY DI CANIO, the plaintiff-in-error, was
 indicted privily with one JOHN LETTER, tried and
 convicted in the Atlantic Quarter Sessions as
 charged in the indictment for the crime of robbery in
 that they "Did forcibly take from the person of one
 Thomas Callahan, money, jewelry and clothing of
 the value of \$500.00 by violence and by putting him,
 the said Thomas Callahan, in fear" (Case, p. 4), and
 thereupon they were sentenced to imprisonment in
 the state prison for a term of not less than 10 years
 and not more than 15 years, (Case, p. 8). That judg-
 ment of conviction was reviewed by the Supreme
 Court on error and the entire record of the proceed-
 ings had at the trial was certified under Sections 136

and 137 of the Criminal Procedure Act (Case, p. 90) where the judgment of conviction as to Letter was reversed and, as to Di Canio was affirmed (Case, p. 98). The latter now seeks to review the judgment of the Supreme Court affirming his conviction.

It was the theory of the State and the evidence produced on the part of the State tended to prove that about 4 o'clock on the morning of May 17, 1924, Callahan and Letter and the plaintiff-in-error, Di Canio, left a resort in Atlantic City, located on South Missouri Avenue, known as Parisian Cafe, entered a taxicab operated by one Parslow and were driven out upon the Pleasantville Boulevard, and that somewhere on that highway Letter and Di Canio stripped Callahan of his clothing, took \$500.00 from his person, forced him out of the taxicab and were driven back to the Parisian Cafe, leaving him naked on the highway to shift for himself. The testimony of what occurred during the intervening time between leaving the cafe and returning was chiefly that given by Parslow, the driver of the cab, and Callahan, the alleged victim. The testimony of Di Canio was inconsistent with the theory of robbery as testified to by Callahan and is explanatory of the testimony of Parslow, not in itself inconsistent with the theory either that no robbery was attempted or none was committed. Parslow informed the police authorities of the occurrence, who acting on that information, went to the home of Di Canio where he was found about 6.30 o'clock on the same morning and placed under arrest. An indictment was later returned against both Letter and Di Canio and their trial and conviction followed which subsequently the Supreme Court reviewed with the result above stated (see State of case, p. 100). It is to test the legality of the judgment of that Court affirming the conviction of

the plaintiff-in-error that this writ of error is sued out.

I.

The single question intended to be discussed or raised on this writ of error in challenge of the judgment under review relates to the instructions to the jury by the trial Court. That instruction which we deem erroneous and prejudiced is as follows:

"The jury is instructed that robbery is stealing property with violence from the person or personal custody of another person. It is necessary in order to constitute the crime that the goods shall be on the person of the owner or the owner's agent, or shall be in his and in his custody * * * in robbery the property is taken forcibly, with the knowledge of the owner, but against his will. * * * If these defendants stole with violence, or with the use of force, the prosecuting witness' clothing, then, of course, they may be convicted of robbery just the same as if they took his money, because the offense of robbery consists in stealing personal property by the use of violence from the person of another * * * Under the indictment the defendants, or either of them, may be found guilty of robbery, or the defendants may be found guilty, or either one of them, of attempted robbery."

The learned trial Judge also defined erroneously, the crime of larceny, although the case presented no element of that crime.

The instruction given was erroneous and confusing for by it the jury in one part of the charge was given to understand that to constitute the crime the prop-

erty must be forcibly taken from the person of another, in another portion of the charge the jury is told that stealing property with violence from the person or personal custody of another is necessary to constitute the offense and in still another portion of the charge the jury is instructed that the offense is complete if the goods at the time of taking shall be on the person of the owner or the owner's agent or shall be in his presence or in his custody.

Robbery as defined by the statute upon which the present indictment is founded is committed by:

"Any person who shall forcibly take from the person of another, money or personal goods and chattels * * * by violence or putting in fear. 2 C. S. 1785, Section 120."

The jury takes the law from the Court and when the judge undertakes to charge the law, he is bound to charge correctly.

State v. Linker, 94 N. J. Law 411.

The express charge to the jury was that the defendants or either of them might be found guilty of either robbery or attempted robbery by which it is to be inferred that the trial judge had in mind the statutory offense of assault with intent to rob. He did not define the crime of assault with intent to rob although he charged the jury that both defendants might be found guilty of that crime. The statutory definition is this:

"Any person who shall wilfully or maliciously assault another with any offensive weapon or instrument or by menaces, or in and by other forcible and violent manner and means demand of another, any money or personal goods and chattels, with intent to rob him, etc."

2 C. S. 1785, Section 121.

He did define, incorrectly, it is true, the crime of larceny from the person, but larceny from the person is a wilful or malicious theft of money, goods, etc., from the person of another without such force or putting in fear as is sufficient to constitute robbery.

2 C. S. 1785, Section 122.

The doctrine of the cases is that one indicted for a crime may be convicted of any offense of a lower degree, provided such lower offense is necessarily included in the higher one charged in the indictment. There was no evidence that at the time of the alleged robbery, Callahan had on his person any money or property whatever, indeed the evidence renders it fairly certain that before leaving the cafe in the company of Letter and Di Canio he had there been robbed of all his money or had wasted it so that they took nothing from his person while on the other hand the evidence of an attempt by forcible and violent means to rob him while in the taxicab, if the jury believed that evidence is abundant.

The jury having been instructed that "in larceny the property is taken privately and without the knowledge of the owner and there being no pretense of taking save from the person of the prosecuting by violence and through fear and no instruction whatever having been given defining the crime of attempted robbery, the effect of the instruction was that to inform the jurors that they were not at liberty to find the defendants or either of them guilty of larceny but that they were at liberty to find a verdict of guilty on the evidence whether they found in fact a robbery successfully accomplished or not, and to withdraw from the jury the consideration of the evidence as establishing the crime of assault with intent

to rob which evidence but for such erroneous instruction and such omission of instruction the jury might have thus considered. This was highly prejudicial to the plaintiff-in-error, because although robbery and assault with intent to rob are both high misdemeanors, the punishment on conviction fixed by the statute is imprisonment for a term not exceeding 15 years while the maximum term of imprisonment for the latter is 7 years.

The judgment should be reversed.

Respectfully submitted,
JOHN C. REED,
Of Counsel for Plaintiff-in-Error.

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTHONY DI CANIO,
Plaintiff-in-Error.

ON ERROR TO SUPREME COURT.

BRIEF OF STATE --- DEFENDANT-IN-ERROR.

DiCanio, with one Letter, was indicted, tried by a Jury and convicted in Atlantic County on an indictment, which charged that defendants jointly "did forcibly take from the person of Thomas Callahan, money, jewelry and clothing to the value of five hundred dollars, by violence and by putting him, the said Thomas Callahan, in fear, to the evil example," etc. (State of Case, page 4, lines 20 to 25.)

The clothes of Callahan and his money were taken by violence and by putting Callahan in fear. (State of Case, pages 13 to 19 and pages 21 and 22.)

The conviction of the defendants was reviewed by the Supreme Court and judgment against Letter was reversed; but judgment against DiCanio was affirmed. (Opinion filed April 16, 1926.) DiCanio now comes into this Court and complains *only* of the charge by the trial Judge to the Jury. (Brief of Plaintiff-in-Error, page 3.)

The indictment was drawn under Section 120 of Crimes Act. (Compiled Statutes, page 1785), which reads:

“Any person who shall forcibly take from the person of another, money or personal goods and chattels, of any value whatever, by violence or putting him in fear, and his aiders, procurers and abettors, shall be guilty of a high misdemeanor and punished by a fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.”

The language used by Court in his charge (State of Case, page 88) and complained of (Plaintiff's Brief, page 3) in defining robbery, was fairly correct and certainly not harmful to DiCanio. It could not have misled the Jury.

The reference to larceny and the definition thereof, no matter how erroneous, was harmless.

Harmless error is not ground for reversal.

Larceny was not charged in the indictment.

Larceny was not involved.

That the Judge charged the Jury, the defendants could be found guilty of robbery, *or* attempted robbery, was in full accord with the testimony.

Plaintiff's inference that the Judge had in mind *assault with intent to rob* is not a fair or correct inference. It is more likely the Judge had in mind Section 216 of the Crimes Act (Compiled Statutes, page 1812), which reads:

“Any person who shall attempt to commit any offenses mentioned in this act, . . . though such offense be not actually committed, shall be guilty of a misdemeanor, etc.”

This carried a lighter punishment than robbery, or assault with intent to rob.

It is conceded by Plaintiff (Plaintiff's Brief, page 5, lines 7, 8, 9 and 10), that conviction may follow where the offense is of lower degree than crime named in indictment.

LOUIS A. REPETTO,

Prosecutor of the Pleas,

For the Defendant-in-Error.

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TESTIMONY

TESTIMONY listing names of individuals and their corresponding page numbers, including Michael Joseph, John Joseph, and William Joseph.